STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

COMMISSIONER OF TAXATION AND FINANCE

ALBANY, NEW YORK

Pursuant to the authority contained in subdivision First of section 171, subsection (c) of section 631, subsection (a) of section 697, and section 1332 of the Tax Law, and section 15-118 of the Code of the City of Yonkers, the Commissioner of Taxation and Finance hereby makes and adopts the following amendments to the New York State Personal Income Tax Regulations under Article 22 of the Tax Law, as published in Subchapter A of Chapter 11 of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York:

Section 1. Subdivision (d) of section 132.15 of such regulation is amended to read as follows:

(d) Property percentage.

(1) General. The property percentage is computed by dividing

(i) the average of the values, at the beginning and end of the taxable year, of real and tangible personal property owned by or rented to the taxpayer, which is connected with the business and located within New York State, by

(ii) the average of the values, at the beginning and end of the taxable year, of all real and tangible personal property, owned by or rented to the taxpayer, which is connected with the business and located both within and without New York State. For this purpose, real and tangible personal property includes real and tangible personal property rented to the taxpayer and used in the business. Real property the income or gain from which is allocated pursuant to section 132.16 of this Part is disregarded in computing the property percentage described in this paragraph.

(2) Rented real and tangible personal property.

(i) The fair market value of real and tangible personal property, both within and without New York State, which is rented to the taxpayer is determined by multiplying the gross rents payable during the taxable year by eight.

(ii) Gross rent, as used in this paragraph, is the actual sum of money or other consideration payable directly or indirectly by the taxpayer or for [his]the taxpayer's benefit for the use or possession of the property, and includes:

(a) any amount payable for the use or possession of real and tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise;

(b) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement;

(c) a proportionate part of the cost of any improvement to real and tangible personal property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other arrangement, based on the unexpired term of the lease commencing with the date the improvement is completed (or the life of the improvement if its life expectancy is less than the unexpired term of the lease); provided, however, that where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight, and the value of the building is determined in the same manner as if owned by the taxpayer. The proportionate part of the cost of an improvement (other than a building on leased land) is generally equal to the amount of amortization allowed in computing New York adjusted gross income, whether the lease does or does not contain an option of renewal.

(iii) Gross rents do not include:

(a) any portion of a payment or credit, to the proprietor of the business or to a partner in the partnership conducting the business, for the use of real <u>or tangible personal</u> property;

(b) amounts payable as separate charges for water and electric service furnished by the lessor;

(c) amounts payable for storage, where no designated space under the control of the taxpayer as a tenant is rented for storage purposes; or

(d) that portion of any rental payment which, in the discretion of the [Tax Commission]<u>Commissioner</u>, is applicable to property subleased by the taxpayer and not used by [him]<u>the taxpayer</u> in the carrying on of the business.

(3) <u>Other valuation methods</u>. If the general method outlined in this subdivision results in valuations which are inaccurate or which are not fair and equitable, any other method which will fairly and equitably reflect the value may be adopted by the [Tax Commission]<u>Commissioner</u>, either on [its]<u>the Commissioner's</u> own motion or on request of a taxpayer. A request by a taxpayer for an alternative method may be made at the time the New York State nonresident personal income tax return to which the request relates is filed. A request is made by using the proposed method in the personal income tax return. The proposed method must be fully explained in the personal income tax return. Any request must contain all facts with respect to the property forming the basis for the proposed valuation and also a computation of the value of the rented real <u>and tangible personal</u> property based on gross rents in accordance with paragraph (2) of this subdivision. Once approved by the [Tax Commission]<u>Commissioner</u>, such basis or such other method must be used for subsequent years until the facts upon which it is based are materially changed.

Section 2. Clauses (a), (b) and (c) of subparagraph (i) of paragraph (3) of subdivision (b) of section 262.2 of such regulation are amended to read as follows:

(a) General. The percentage computed by dividing (1) the average of the values, at the beginning and end of the taxable year, of real and tangible personal property owned or rented to the taxpayer, which is connected with net earnings from self-employment and located within the City of Yonkers, by (2) the average of the values, at the beginning and end of the taxable year, of all real and tangible personal property owned by or rented to the taxpayer, which is connected with the net earnings from self-employment and located both within and without the City of Yonkers. For this purpose, real property includes real property whether owned or rented to the taxpayer (also see section 262.3 of this Part). For this purpose, real and tangible personal property includes real and tangible personal property whether owned or rented to the taxpayer (also see section 262.3 of this Part).

(b) Rented real and tangible personal property.

(1) The fair market value of real and tangible personal property, both within and without the City of Yonkers, which is rented to the taxpayer, is determined by multiplying the gross rents payable during the taxable year by eight.

(2) Gross rents, as used in this clause, is the actual sum of money or other consideration payable directly or indirectly by the taxpayer or for [his]the taxpayer's benefit for the use or possession of the property, and includes:

(i) any amount payable for the use or possession of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profit or otherwise;

(ii) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement;

(iii) a proportionate part of the cost of any improvement to real or tangible personal property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other arrangement, based on the unexpired term of the lease commencing with the date the improvement is completed (or the life of the improvement if its life expectancy is less than the unexpired term of the lease); provided, however, that where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight, and the value of the building is determined in the same manner as if owned by the taxpayer.

(3) Gross rents do not include:

(i) any portion of a payment or credit to the proprietor of the business, or to a partner in the partnership conducting the business, for the use of real or tangible personal property;

(ii) amounts payable as separate charges for water and electric service furnished by the lessor;

(iii) amounts payable for storage where no designated space under the control of the taxpayer as a tenant is rented for storage purposes; or

(iv) that portion of any rental payment which, in the discretion of the [State Tax Commission]Commissioner, is applicable to property subleased by the taxpayer and not used by [him]the taxpayer in the carrying on of the business.

(c) Other valuation methods. If the general method outlined in this subdivision results in valuations which are inaccurate or which are not fair and equitable, any other method which will fairly and equitably reflect the value may be adopted by the [State Tax Commission]Commissioner, either on [its]the Commissioner's own motion or on request of a taxpayer. A request by a taxpayer for an alternative method may be made at the time the City of Yonkers earnings tax return to which the request relates is filed. A request is made by using the proposed method in the City of Yonkers earnings tax return. The proposed method must be fully explained in the City of Yonkers earnings tax return. Any request must contain all facts with respect to the property forming the basis for the proposed valuation, and also a computation of the value of the rented real or tangible personal property based on gross rents in accordance with clause (b) of this subparagraph. Once approved by the [State Tax Commission]Commissioner, such basis or such other method must be used for subsequent years until the facts upon which it is based are materially changed.

Dated: Albany, New York
July 12, 2016

Commissioner of Taxation and Finance
Jerry Boone