

Supplemental Summary of Corporation Tax Legislative Changes Enacted in 2005

This TSB-M is the summary of corporation tax legislation enacted in 2005 that was not addressed in TSB-M-05(3)C, *Summary of Corporation Tax Legislative Changes Enacted in 2005*.

The following legislative changes are summarized in this memo:

- Investment tax credit for qualified film production facilities;
- Fuel cell electric generating equipment credit;
- Security officer training tax credit;
- Enhancement of farmer's school tax credit eligibility;
- Exception to the recapture of the empire zone investment tax credit;
- Alternative fuels credit for clean fuel vehicle refueling property;
- Power for jobs tax credit extension; and
- World Trade Center Memorial Foundation contribution.

Investment tax credit for qualified film production facilities (Article 9-A)

The Tax Law has been amended to provide an investment tax credit to a taxpayer subject to tax under Article 9-A that acquires property where (a) the property is principally used as a qualified film production facility, including qualified film production facilities located in an empire zone as designated pursuant to Article 18-B of the General Municipal Law, and (b) the taxpayer provides three or more services to any qualified film production company using that facility. These services include, but are not limited to, the provision of:

- a studio lighting grid,
- lighting and grip equipment,
- multi-line phone service,
- broadband information technology access,
- industrial scale electrical capacity,
- food services,
- security services, and
- heating, ventilation, and air conditioning.

For purposes of the investment tax credit, the use of a qualified film production facility by a qualified film production company is not considered a lease of such facility to such company. In addition, *qualified film production facility* and *qualified film production company* means those facilities and companies as defined under section 24 of the Tax Law (relating to the Empire State film production credit.) However, any property used to claim the Empire State film production credit cannot be used to claim the investment tax credit.

This provision applies to property placed in service after January 1, 2005, or to buildings or structural components of buildings for which the final certificate of occupancy is received after January 1, 2005.

(Tax Law, section 210.12)

Fuel cell electric generating equipment credit (Articles 9, 9A, 32, and 33)

Effective for tax years beginning on or after January 1, 2005, a new credit against tax is allowed for qualified fuel cell electric generating equipment expenditures, up to a maximum credit amount of \$1,500 for each generating unit in any tax year. The credit will be allowed to taxpayers subject to tax under sections 183, 184, or 185 of Article 9, Articles 9-A, 32, or 33 of the Tax Law in the tax year in which the fuel cell electric generating equipment is placed in service.

Qualified fuel cell electric generating equipment expenditures are those costs incurred on or after July 1, 2005, that are associated with the purchase of on-site electricity generation systems utilizing proton exchange membrane fuel cells, providing a rated baseload capacity of no less than one kilowatt of electricity and no more than one hundred kilowatts of electricity. The equipment must be located in New York at the time it is placed in service. These expenditures also include those costs incurred on or after July 1, 2005, for materials, labor for on-site preparation, assembly and original installation, engineering services, designs and plans directly related to the construction or installation, and utility compliance costs.

Qualified fuel cell electric generating equipment expenditures do not include interest or other finance charges, or any amount of a federal, state or local grant received by the taxpayer that was used for the purchase and/or installation of such equipment, where such interest, finance charge, or grant was not included in the federal gross income of the taxpayer.

This credit is not available to taxpayers subject to tax under sections 183, 184, or 185 of Article 9 of the Tax Law who are substantially engaged in the commercial generation, distribution, transmission, or servicing of energy or energy products. For corporations taxable under Article 9, sections 183 and 184, the credit and carryover of the credit are first applied against the tax imposed under section 183, and cannot reduce the section 183 tax below the minimum tax. Any excess credit is then applied against the tax imposed by section 184. For section 185 taxpayers, the credit and carryover of the credit may not reduce the tax below the fixed dollar minimum tax.

For Article 9-A taxpayers, the credit and carryover of the credit may not reduce the tax below the fixed dollar minimum tax or the tax on the minimum taxable income base, whichever is higher.

For Article 32 and Article 33 taxpayers, the credit and carryover of the credit may not reduce the tax to less than \$250.

The credit is not refundable. However, any amount of credit not used in the current tax year may be carried forward and applied in subsequent tax years.

This provision takes effect for tax years beginning on or after January 1, 2005, for costs incurred on or after July 1, 2005.

(Tax Law, sections 187-n, 210.37, 1456(t), and 1511(x))

Security officer training tax credit (Articles 9, 9-A, 32, and 33)

The Tax Law has been amended to provide for a security officer training tax credit. The credit is provided to a taxpayer subject to tax under Article 9, 9-A, 32 or 33 which is a qualified building owner employing qualified security officers. If the amount of the credit awarded exceeds the taxpayer's tax for the year, the excess will be credited or refunded (without interest).

There is an annual cap of \$5 million on the aggregate amount of New York State credit allowed. The security officer training tax credit program will be administered by the New York State Office of Homeland Security. Taxpayers must file an application with the Office of Homeland Security to receive an allocation of the credit. For more information about this credit, visit the New York State Office of Homeland Security website at www.security.state.ny.us.

(Tax Law, sections 26, 187-n, 210.37, 1456(t), and 1511(x))

Enhancement of farmer's school tax credit eligibility (Article 9-A)

For tax years beginning on or after January 1, 2006, the definition of *federal gross income from farming* for purposes of eligibility for the Article 9-A Farmer's school tax credit, will include gross income from a commercial horse boarding operation as defined in section 301 of the Agriculture and Markets Law.

(Tax Law, section 210.22)

Exception to the recapture of the empire zone investment tax credit added (Article 9-A)

Article 9-A has been amended to provide for an exception to the recapture provisions of the empire zone investment tax credit (EZ-ITC). In general, a recapture of the EZ-ITC must be made when the qualified property for which an EZ-ITC has been claimed is disposed of or ceases to be in qualified use prior to the end of its useful life. The sale or other disposition of a partner's interest in a partnership is considered a disposition for purposes of the recapture provisions.

As a result of the amendment, the EZ-ITC recapture provisions do not apply with respect to manufacturing property, where a partner disposes of its partnership interest, or the partnership disposes of the manufacturing property, if:

- the basis of the manufacturing property (or a project that includes such property) was \$300 million or more for federal income tax purposes at the time it was placed in service by the partnership in the empire zone, and
- the partner owned the partnership interest for at least 3 years from the date such property was placed in service by the partnership in the empire zone.

However, if the property ceases to be in qualified use by the partnership after it is placed in service, the recapture provisions do apply to such partner in the year the property ceases to be in qualifying use.

This provision applies to tax years beginning on or after December 20, 2005.

(Tax Law, section 210.12-B)

Alternative fuels credit for clean-fuel vehicle refueling property (Articles 9 and 9-A)

The Tax Law has been amended to renew the alternative fuels credit for clean-fuel vehicle refueling property for corporations subject to tax under section 183, 184, or 185 of Article 9, or under Article 9-A. The credit applies to clean-fuel vehicle refueling property placed in service in New York in tax years beginning on or after January 1, 2005.

The alternative fuels credit previously available for electric vehicles, clean-fuel vehicle property, and qualified hybrid vehicles has expired for any property placed in service in tax years beginning on or after January 1, 2005. Unused alternative fuels credits previously earned may be carried forward until used. Article 9-A taxpayers may elect to transfer these unused credits to their affiliates.

The renewed alternative fuels credit for clean-fuel vehicle refueling property is equal to 50% of the cost of clean-fuel vehicle refueling property placed in service in New York State for which a deduction under Internal Revenue Code (IRC) section 179A is allowed. The cost is not limited by the federal expense limits of IRC section 179(b)(2), and the credit may be allowed even if some or all of the cost is expensed under IRC section 179.

Clean-fuel vehicle refueling property is defined by IRC section 179A(d). It includes property, other than buildings and structural components of buildings, that is used for storing or dispensing clean-fuel into the fuel tank of a motor vehicle powered by such fuel or for recharging electric vehicles. The property must be located at the point where the vehicles are refueled or recharged, it must be eligible for the depreciation deduction, and the original use must commence with the taxpayer. Clean-fuel vehicle refueling property does **not** include qualified hybrid vehicle refueling property.

Clean-fuel means natural gas, liquefied petroleum gas, hydrogen, and electricity. It also means any other fuel that is at least 85%, singly or in combination, methanol, ethanol, any other alcohol, or ether.

The credit is not refundable, but any unused credit may be carried forward and applied in subsequent tax years.

For an Article 9-A taxpayer, the credit is allowed for clean-fuel vehicle refueling property placed in service during the tax year. The credit and carryover of the credit may not reduce the tax to below the fixed dollar minimum tax or the tax on the minimum taxable income base, whichever is higher. In addition, an Article 9-A taxpayer may elect to transfer its unused alternative fuels credit to an affiliate. An affiliate is the taxpayer's parent, an 80% or more owned subsidiary, or other member of the taxpayer's affiliated group as defined in section 1504(a) of the Internal Revenue Code. The taxpayer and affiliate must both consent to the election. Once the election is made, the credit becomes the credit of the affiliate, and any credit recapture becomes chargeable to the affiliate. This election is made at the time the credit claim is filed.

For an Article 9 taxpayer, the credit is allowed for clean-fuel refueling property placed in service during the tax year. However, the credit will not be allowed for property placed in service in a tax year that begins after July 26, 2008. Under sections 183 and 184 of Article 9, the credit and carryover of the credit are first applied against the tax imposed under section 183 and cannot reduce the section 183 tax below the minimum tax. Any excess credit is then applied against the tax imposed by section 184. Under section 185 of Article 9, the credit and carryover of the credit may not reduce the tax below the minimum tax.

A recapture of the credit is required if within the recovery period (depreciable life):

- a) the property ceases to be used as clean-fuel vehicle refueling property, or
- b) less than 50% of the use of the property in a tax year is in a trade or business in New York State, or
- c) the taxpayer receiving the credit sells or disposes of the property and knows or has reason to know that the property will be used in a manner described in a) or b) above.

(Tax Law, sections 187-b and 210.24)

Power for jobs tax credit extension (Article 9)

The power for jobs tax credit has been extended to include calendar year 2006. The credit is claimed on Forms CT-186-P, *Utility Services Tax Return-Gross Income*, and CT-186-E, *Telecommunications Tax Return and Utility Services Tax Return*, and is available to qualified electric corporations.

(Tax Law section 186-a (9))

World Trade Center Memorial Foundation contribution (Article 9-A)

For tax years beginning on or after January 1, 2005, taxpayers subject to tax under Article 9-A may make gifts on their corporate franchise tax returns to the World Trade Center Memorial Foundation. The gift can be any whole dollar amount and will not reduce the amount of tax owed.

(Tax Law, section 209-F)