Summary of Corporation Tax Legislative Changes Enacted in 2008

This memorandum contains brief summaries of the corporation tax legislative changes that are part of the fiscal 2008-2009 New York State budget bill (Chapters 57 and 59 of the Laws of 2008). The memorandum covers corporation tax changes under Articles 9 (corporation tax), 9-A (franchise tax on business corporations), 13 (tax on unrelated business income), 32 (franchise tax on banking corporations), and 33 (franchise tax on insurance corporations) of the Tax Law.

The following legislative changes are summarized in this memo:

- Voluntary Disclosure and Compliance program
- Financial institution data-match system for state tax collection purposes
- Voluntary Compliance Initiative
- Extension of tax shelter reporting requirements
- Real estate investment trusts (REITs) and regulated investment companies (RICs)
- Modification for the federal Domestic Production Activities deduction
- Metropolitan Transportation Authority surcharge extender
- Mandatory first installment
- Electronic filing and electronic payment mandate
- Low-income housing credit
- Investment tax credit for the financial services industry
- Power for jobs tax credit
- Capital base tax rate changes
- Fixed dollar minimum tax
- Empire State film production credit
- Credit for taxicabs and livery service vehicles accessible to persons with disabilities
- Clean heating fuel credit
- Empire Zone wage tax credit
- Banking corporations doing business in New York State

Voluntary Disclosure and Compliance program

The Tax Law has been amended to add new Article 36, Compliance and Enforcement Initiatives. Section 1700 of Article 36 establishes the Voluntary Disclosure and Compliance program to be administered by the Department of Taxation and Finance.

The Voluntary Disclosure and Compliance program allows eligible taxpayers to voluntarily disclose and pay certain underreported tax liabilities and interest. By executing a compliance agreement with the department, taxpayers will avoid tax penalties as well as civil and administrative actions by the department. In addition, the taxpayer will not be subject to any criminal tax prosecution in New York State for the disclosed conduct.

An *eligible taxpayer* is an individual or entity subject to any tax imposed by, or pursuant to the authority of the Tax Law or any other law imposing administrative tax responsibilities on the Tax Department, who meets all of the following criteria:

- The taxpayer is not currently under audit by the department for any taxes.
- The taxpayer is voluntarily disclosing a New York tax liability that the department has not determined, calculated, researched, or identified at the time of the disclosure.
- The taxpayer is not currently a party to any criminal investigation being conducted by an agency of the state or any political subdivision thereof.
- The taxpayer is not seeking to disclose participation in a tax avoidance transaction that is a federal or New York State reportable or listed transaction.

The term *taxpayer* includes any person required to pay or collect any of the taxes covered by the program. A taxpayer can be an individual, partnership, estate, trust, corporation, limited liability company, joint stock company, or any other company, trustee, receiver, assignee, referee, society, association, business, or any other person subject to tax.

An eligible tax for the program is any tax currently or previously imposed under the Tax Law or administered by the department. To be eligible the tax must not have been previously assessed.

This provision took effect April 23, 2008. For more information on this program, see TSB-M-08(6)I, (11)C, (6)M, (4)R, (10)S, *Voluntary Disclosure and Compliance Program*, and the Tax Department Web site (*www.nystax.gov*).

(Tax Law section 1700)

Financial institution data-match system for state tax collection purposes

The Tax Law has been amended to add new Article 36, Compliance and Enforcement Initiatives. Section 1701 of Article 36 requires the department to develop and operate a financial institution data-match system for state tax collection purposes. This system will assist the department in the collection of tax debts.

Each financial institution doing business in New York State must, in conjunction with the department or the department's authorized designee (the designee), develop and operate a data-match system to facilitate the identification and seizure of non-exempt financial assets of tax debtors identified by the department or the designee. If a financial institution has a data-match system developed or used to administer the child support enforcement programs of this state that is approved by the department or the designee, the financial institution may use that system to comply with the provisions of section 1701 of the Tax Law.

Each financial institution will be required to provide identifying information each calendar quarter to the department for each tax debtor identified by the department if the tax debtor maintains an account at the institution. The identifying information must include the tax debtor's name, address, and social security number or other taxpayer identification number, and all account numbers and balances in each account. The financial institution will not be liable under state law to any person for the disclosure of this information to the department or designee, or for any other action taken in good faith to comply with section 1701 of the Tax Law.

Both the financial institution and the designee are prohibited from disclosing to the tax debtor that the name of the tax debtor has been received from or furnished to the department, unless the department authorizes them in writing to do so. However, a financial institution may disclose to its depositors or account holders that the department has the authority to request certain identifying information on certain depositors or account holders under the financial institution data-match system.

A violation of the disclosure policy will result in the imposition of a civil penalty equal to the greater of one thousand dollars ($1,000) or the amount in the account of the person to whom the disclosure was made, for each instance of unauthorized disclosure by the financial institution. This civil penalty can be assessed and collected as if the penalty were tax.

For purposes of this new provision:

Debt means all liabilities, including unpaid tax, interest, and penalty, that the department is required by law to collect and that have been reduced to judgment by the docketing of a New York State tax warrant in the office of a county clerk located in New York State or by the filing of a copy of the warrant in the office of the Department of State.

Tax debtor means a natural person or any entity other than a natural person named on a New York State tax warrant and identified thereon as a judgment debtor.

Financial institution means any financial institution authorized or required to participate in a financial institution data-match system or program for child support enforcement purposes under federal or state law.

(Tax Law section 1701)

Voluntary Compliance Initiative

The Tax Law has been amended to reopen the Voluntary Compliance Initiative (VCI) that was established by Chapter 61 of the Laws of 2005, Part N, section 11. The VCI allows taxpayers to report and pay underreported tax liabilities and interest attributable to abusive tax avoidance transactions. This voluntary compliance initiative applies to tax liabilities under Articles 9, 9-A, 22, 30, 32, or 33 of the Tax Law attributable to the use of tax avoidance transactions for tax years beginning before January 1, 2005.

Taxpayers participating in this initiative will have the option to participate with a waiver of the right to appeal their liability for any taxes paid under the program, or to participate with the right to appeal.

- If a taxpayer forgoes the right to appeal, all applicable penalties are waived, except that only 50% of the penalty for failure to participate in the first VCI will be waived in the case of disclosure of a listed or reportable transaction.

- If the taxpayer participates with appeal rights, all applicable penalties are waived except the negligence and substantial understatement penalties as they were in effect on December 31, 2004. In the case of disclosure of a listed or reportable transaction, only 50% of the penalty for failure to participate in the first VCI will be waived.

Under the original VCI legislation, an eligible taxpayer who was entitled to participate in the VCI but did not participate, could be assessed a failure to participate penalty of 100% of the interest due on any deficiency attributable to a tax avoidance transaction. However, as described above, if an eligible taxpayer elects to participate in the reopened VCI and complies with the requirements for participation, 50% of this penalty will be waived in the case of disclosure of a listed or reportable transaction and 100% in the case of all other tax avoidance transactions.

The reopened VCI begins November 1, 2008, and ends January 31, 2009. For more details, see Publication 672, *New York State Tax Shelter Voluntary Compliance Initiative November 1, 2008, through January 31, 2009 Questions and Answers*, which is available on our Web site at *www.nystax.gov*.

(Ch. 61 of the Laws of 2005, Part N, section 11)

Extension of tax shelter reporting requirements (Articles 9, 9-A, 13, 22, 32, and 33)

Chapter 57 of the Laws of 2008 amended Part I of Chapter 60 of the Laws of 2007. The amendment extends the expiration date of the reporting requirements and related administrative provisions concerning the disclosure of certain federal and New York State reportable transactions, and related information regarding tax shelters, to July 1, 2011. The provisions were due to expire on July 1, 2009.

For more information regarding the reporting requirements and related administrative provisions concerning the disclosure of certain transactions and related information, see the following documents that are available on the Tax Department Web site (*www.nystax.gov*):

- TSB-M-05(2)C, (4)I, *Disclosure of Certain Transactions and Related Information Regarding Tax Shelters*

- TSB-M-05(2.1)C, (4.1)I, *Supplement to the Disclosure of Certain Transactions and Related Information Regarding Tax Shelters*

- TSB-M-05(2.2)C, (4.2)I, *Additional Supplement to the Disclosure of Certain Transactions and Related Information Regarding Tax Shelters*

- TSB-M-07(4)C, (4)I, *Amendments to the Procedural Regulations Relating to New York Reportable Transactions*

- TSB-M-07(5)C, (5)I, *Notification of New York Listed Transaction – Certain Charitable Contribution Deductions*

- TSB-M-07(7)C, (6)I, *Extension of Tax Shelter Provisions*

- TSB-M-08(9)C, (4)I, *Extension of Tax Shelter Provisions*

(Tax Law sections 25, 683(c)(11), 685, 1083(c)(11), and 1085, and Department Regulations Part 2500 (20NYCRR Part 2500))

Real estate investment trusts (REITs) and regulated investment companies (RICs) (Articles 9-A, 32, and 33)

Part FF-1 of Chapter 57 of the Laws of 2008 makes amendments, including certain technical corrections to Part F of Chapter 60 of the Laws of 2007 for certain REITs and RICs. Generally, the new legislation requires all captive REITs and captive RICs to be included in a combined return with the corporation that directly or indirectly owns or controls over 50% of the voting stock of the captive REIT or captive RIC.

A *captive REIT* means a REIT that is not regularly traded on an established securities market and more than 50% of the voting stock is owned or controlled, directly or indirectly, by a single corporation that is not exempt from federal income tax and is not a REIT.

A *captive RIC* means a RIC that is not regularly traded on an established securities market and more than 50% of the voting stock is owned or controlled, directly or indirectly, by a single corporation that is not exempt from federal income tax and is not a RIC.

Any voting stock in a REIT or RIC that is held in a segregated asset account of a life insurance corporation (as described in Internal Revenue Code (IRC) section 817) is not taken into account for purposes of determining whether a REIT or RIC is a captive REIT or captive RIC.

Amendments to the Article 9-A corporate franchise tax for captive REITs and captive RICs. The legislation requires a captive REIT or captive RIC to be included in a combined report under Article 9-A with the corporation that directly owns or controls over 50% of the voting stock of the captive REIT or captive RIC if that corporation is (1) subject to Article 9-A or (2) required to be included in a combined report under Article 9-A.

If the above condition is not met, the captive REIT or captive RIC must be included in a combined return or report with the closest controlling stockholder of the captive REIT or captive RIC.

The *closest controlling stockholder* is the corporation that indirectly owns or controls over 50% of the voting stock of the captive REIT or captive RIC, is subject to tax under Article 9-A, 32, or 33, or is otherwise required to be included in a combined return or report under Article 9-A, 32, or 33, and is the fewest tiers of corporations away in the ownership structure from the captive REIT or captive RIC.

The legislation also provides rules for the application of the other combined reporting provisions of Article 9-A to these captive REITs or captive RICs, including the requirement for a qualified REIT subsidiary to join the combined return of its captive parent.

A captive REIT or captive RIC required to be included in a combined return under Tax Law section 211.4 must compute entire net income as required under Tax Law section 209.5 (in the case of a captive REIT) or Tax Law section 209.7 (in the case of a captive RIC). However, the deduction under the IRC for dividends paid by the captive REIT or captive RIC to any member of the affiliated group that includes the corporation that directly or indirectly owns over 50% of the voting stock of the captive REIT or captive RIC is not allowed for taxable years beginning on or after January 1, 2008.

The legislation clarifies that a captive REIT or captive RIC that is required to be included in a combined return under Article 32 or Article 33 is not subject to tax under Article 9-A. The amendments also remove the requirements of the 2007 legislation for certain REITs and RICs to file a combined return under Article 9-A.

(Tax Law sections 209.4, 209.5, 209.7, 211.4(a)(6), and 211.4(b)(1))

Amendments to the Article 32 franchise tax on banking corporations for captive REITs and captive RICs. Part FF-1 adds provisions relating to the combination of captive REITs or captive RICs, as well as the determination of entire net income of a captive REIT or captive RIC included in a combined return. These provisions parallel the amendments made to Article 9-A described above. However, under Article 32, the federal deduction for dividends paid by the captive REIT or captive RIC to any member of the affiliated group is phased out over four years. Fifty percent of the deduction for dividends paid is allowed for the 2008 taxable year, 25% is allowed for 2009 and 2010, and no deduction for dividends paid is allowed for taxable years beginning on or after January 1, 2011.

A captive REIT or captive RIC will not be required to be included in a combined return if the banking corporation or bank holding company which directly owns or controls over 50% of the voting stock of the captive or is the controlling stockholder of the captive is part of an affiliated group (1) that does not include a corporation doing a business a subsidiary of a bank holding company would not be permitted to do, unless de minimis, and (2) whose members own assets with a combined average value that does not exceed $8 billion.

The legislation further provides that the franchise tax on banking corporations applies to any captive REIT or captive RIC required to be included in a combined return under the bank tax. The Gramm-Leach-Bliley (GLBA) transitional provisions do not apply to a captive REIT or captive RIC required to be included in a combined return under Article 32.

The legislation also eliminates the 2007 changes relating to the disallowed investment proceeds of banking corporations. The changes are obsolete under the new combined reporting requirements.

(Tax Law sections 1452(d), 1452(m)(4), 1453(e)(11)(ii), 1453(e)(11)(iii), 1453(e)(18), 1453(u), 1462(f)(2)(v), and 1462(f)(3))

Amendments to the Article 33 franchise tax on insurance corporations for captive REITs and captive RICs. Part FF-1 adds provisions relating to the combination of a captive REIT or a captive RIC with a corporation subject to tax under section 1501 of Article 33 (life insurance corporation), as well as the determination of entire net income of a captive REIT or captive RIC included in a combined return. These provisions parallel the amendments made to Article 9-A.

The legislation also repeals the 2007 changes relating to the disallowed investment proceeds of insurance corporations, as well as the changes regarding subsidiary capital attributable to REITs and RICs. These 2007 changes are obsolete under the new combined reporting requirements.

(Tax Law sections 1503(b)(1)(A), 1503(b)(1)(B), 1503(b)(2)(H), 1503(b)(17), 1504(c)(2), 1515(f)(4), and 1515(f)(5))

Effective date. The provisions described above apply to taxable years beginning on or after January 1, 2008, and are repealed for taxable years beginning on or after January 1, 2011.

Modification for the federal Domestic Production Activities deduction (Articles 9-A, 13, 32, and 33)

For tax years beginning on or after January 1, 2008, the federal Domestic Production Activities deduction allowed under Internal Revenue Code (IRC) section 199 will not be allowed. Therefore, in computing entire net income under Articles 9-A, 32, and 33 of the Tax Law, taxpayers must add to federal taxable income the amount of the IRC section 199 deduction. Under Article 13 of the Tax Law, in computing unrelated business taxable income, taxpayers must add the amount of the IRC section 199 deduction to federal unrelated business taxable income.

(Tax Law sections 208.9(b)(19), 292(a)(7), 1453(b)(14), and 1503(b)(2)(U))

Metropolitan Transportation Authority (MTA) surcharge extender (Articles 9, 9-A, 32, and 33)

The MTA surcharges imposed under Articles 9, 9-A, 32, and 33 of the Tax Law have been extended through tax years ending prior to December 31, 2013.

(Tax Law sections 183-a(1), 184-a(1), 186-c(1), 209-B(1), 1455-B(1), and 1505-a(a))

Mandatory first installment (Articles 9, 9-A, 32, and 33)

All taxpayers whose preceding year's tax, exclusive of the MTA surcharge, exceeds $1,000 are required to pay a mandatory first installment of estimated tax. The installment must be paid with the tax return required to be filed for the preceding taxable year, or with an application for extension of time to file that return. All taxpayers subject to the mandatory first installment that are doing business in the Metropolitan Commuter Transportation District (MCTD) are also required to make a mandatory first installment of estimated tax for the MTA surcharge. The mandatory first installment of estimated tax for the MTA surcharge is paid with the surcharge return required to be filed for the preceding taxable year, or with the application for extension of time to file that surcharge return. The MCTD includes New York City (the counties of New York (Manhattan), Bronx, Kings (Brooklyn), Queens, Richmond (Staten Island)), and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

For taxable years beginning on or after January 1, 2009, the Tax Law has been amended to provide an increase in the mandatory first installment for general business corporations (Article 9-A), banking corporations (Article 32), non-life insurance corporations (Article 33), and entities subject to tax under sections 184, 186-a, and 186-e of Article 9, whose preceding year's tax, exclusive of the MTA surcharge, exceeds $100,000. Those taxpayers are required to pay a first installment equal to 30% of the preceding year's tax. However, for life insurance corporations subject to tax under section 1510(b)(1), the mandatory first installment remains at

40% of the preceding year's tax if that preceding year's tax exceeds $1,000. Additionally, taxpayers who are required to pay their first installment at the 30% rate and are subject to the MTA surcharge under section 184-a, 186-c, 209-B, 1455-B, or 1505-a of the Tax Law are also required to calculate their estimated tax for the MTA surcharge at 30% of the preceding year's MTA surcharge. The remaining three estimated tax payments are adjusted so that the total payments do not exceed 100% of the tax estimated to be due.

The mandatory first installment of estimated tax and estimated MTA surcharge remains at 25% of the preceding year's tax and MTA surcharge, respectively, for those taxpayers whose preceding year's tax exceeds $1,000, but is less than or equal to $100,000.

(Tax Law sections 197-b(1)(a), 213-b(a), 1461(a), and 1514(a)(1))

Electronic filing and electronic payment mandate (Articles 9, 9-A, 13, 32, and 33)

Section 29 has been added to the Tax Law to authorize the Tax Department to require electronic filing (e-file) and electronic payment (e-pay) of all tax documents, except those required for personal income and earnings tax purposes. The requirement to e-file personal income tax documents is contained in Tax Law section 658(g)(10) and is not affected by the new legislation.

As of the date this memorandum was issued, the e-file mandate described below will apply to all general business and New York State S corporation (Article 9-A) returns and extensions beginning January 1, 2009. The Tax Department will issue a future guidance document in advance of any change or addition to the e-filing mandate for corporation tax returns. For up-to date information on e-file, including information as to which returns or documents are currently required to be e-filed, visit our Web site at *www.nystax.gov* and click on the e-file logo.

For purposes of new section 29 of the Tax Law, the following terms have been defined:

- *Authorized tax document* means a tax document that the Tax Department has authorized to be filed electronically.

- *Electronic* means computer technology.

- *Original tax document* means a tax document that is filed during the calendar year for which that tax document is required or permitted to be filed.

- *Tax* means **any** tax or other matter administered by the Tax Department. However, the term *tax* does not include the New York State, New York City, and Yonkers income and earnings taxes imposed under Articles 22, 30, 30-A, or 30-B of the Tax Law.

- *Tax document* means a return, report, or any other document relating to a tax or other matter administered by the Tax Department.

- *Tax return preparer* means any person who prepares for compensation, or who employs or engages one or more persons to prepare for compensation, any authorized tax document. For purposes of section 29, the term *tax return preparer* also includes a payroll service.

- *Tax software* means any computer software program intended for tax return preparation purposes. For purposes of section 29, the term *tax software* includes, but is not limited to, an off-the-shelf software program loaded onto a tax preparer's or taxpayer's computer, an online tax preparation application, or a tax preparation application hosted by the Tax Department.

If a tax return preparer prepares more than 100 original tax documents during any calendar year beginning on or after January 1, 2007, and if in any succeeding calendar year the tax return preparer prepares one or more authorized tax documents using tax software, then for that succeeding calendar year and for each subsequent calendar year, all authorized tax documents must be e-filed by that tax return preparer in accordance with instructions issued by the Tax Department.

If a taxpayer does not use a tax return preparer to prepare an authorized tax document during any calendar year beginning on or after January 1, 2008, but instead prepares that tax document itself using tax software, then, for that calendar year and for each subsequent calendar year, all authorized tax documents prepared by the taxpayer using tax software must be e-filed in accordance with instructions issued by the Tax Department.

Taxpayers must, in accordance with instructions issued by the Tax Department, e-pay any tax liability or other amount that is required to be paid with an authorized tax document that must be e-filed.

If a tax return preparer is required to file authorized tax documents electronically and the preparer fails to file one or more of those documents electronically, then the preparer will be subject to a penalty of $50 for each failure to electronically file an authorized tax document. However, a penalty will not be imposed if the failure is due to reasonable cause and not due to willful neglect. Reasonable cause includes, but is not limited to, a taxpayer's election not to electronically file the authorized tax document.

If a taxpayer is required to electronically pay any tax liability or other amount due shown on, or required to be paid with, an authorized tax document that is required to be filed electronically, and the taxpayer fails to electronically pay one or more of the liabilities or other amounts due, then the taxpayer will be subject to a penalty of $50 for each failure to pay electronically.

The new provisions do not affect the withholding and sales tax PrompTax systems under sections 9 and 10 of the Tax Law.

(Tax Law section 29)

Low-income housing credit (Articles 9-A, 32, and 33)

The New York State low-income housing tax credit program was established in 2000 to promote the construction and rehabilitation of low-income housing in New York State. The credit is similar to the federal low-income housing credit and is administered by the New York State Division of Housing and Community Renewal.

The Public Housing Law has been amended to increase the statewide aggregate dollar amount of low-income housing tax credits that may be used for qualifying low-income housing projects from $16 million to $20 million.

(Public Housing Law, section 22(4))

Investment tax credit for the financial services industry (Articles 9-A, 32, and 33)

The Tax Law has been amended to extend the availability of the investment tax credit for the financial services industry to property placed in service before October 1, 2011. Before the amendment, the credit was only available for property placed in service before October 1, 2008.

(Tax Law sections 210.12, 1456(i), 1511(q))

Power for jobs tax credit (Article 9)

The power for jobs tax credit has been extended to include calendar year 2009. The credit is available to qualified electric corporations that are local distribution companies. 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*. To claim the power for jobs tax credit, taxpayers must obtain a certificate from the Department of Public Service to verify the correctness of the calculation of the tax credit.

(Tax Law section 186-a(9))

Capital base tax rate changes (Article 9-A)

For taxable years beginning on or after January 1, 2008, the rate of tax on the capital base for Article 9-A taxpayers has been reduced from .178% (.00178) to .15% (.0015) of each dollar of the taxpayer’s total business and investment capital allocated to New York. However, the rate for a cooperative housing corporation as defined in the Internal Revenue Code (IRC) continues to be .04% (.0004).

In addition, the capital base tax limitations have been amended as follows:

- The capital base tax is now limited to $350,000 only for **qualified New York manufacturers** as described below.

- For all other taxpayers, the capital base tax is limited to $10,000,000 for taxable years beginning on or after January 1, 2008 but before January 1, 2011, and $1,000,000 for taxable years beginning on or after January 1, 2011.

A *qualified New York manufacturer* is a manufacturer that has property in New York State that is principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing **and** either (1) the adjusted basis of that property for federal income tax purposes is at least $1,000,000 at the end of the taxable year; or (2) all of its real and personal property is located in New York State. In addition, a qualified emerging technology company (QETC), as defined in section 3102-e of the Public Authorities Law (determined without regard to the $10 million limitation contained in section 3102-e(1)(c)(1) of that law), is a qualified New York manufacturer. A combined group may be considered a QETC and meet the definition of a qualified New York manufacturer if all members of the group meet the definition of a QETC (as described in the previous sentence).

A *manufacturer* is defined in the law as a taxpayer that during the taxable year is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing. A combined group is considered a manufacturer for purposes of Tax Law section 210.1(b) only if the combined group during the taxable year is principally engaged in the activities set forth in this definition or any combination thereof. A taxpayer or combined group is principally engaged in activities described above if, during that taxable year, more than 50% of the gross receipts of the taxpayer or combined group, respectively, are derived from receipts from the sale of goods produced by such activities. In computing a combined group's gross receipts, intercorporate receipts are eliminated.

These provisions are effective for tax years beginning on or after January 1, 2008.

(Tax Law section 210.1(b))

Fixed dollar minimum tax (Article 9-A)

The Tax Law has been amended to change the fixed dollar minimum tax amounts for C corporations and S corporations under Article 9-A. For taxable years beginning on or after

January 1, 2008, the fixed dollar minimum tax will be based on the New York receipts of the corporation. Prior to the amendments, the fixed dollar minimum tax was based on gross payroll.

In addition, the fixed dollar minimum tax of $800 for taxpayers with a gross payroll of $1,000 or less, with total receipts within and without New York State of $1,000 or less, and the average value of assets that are $1,000 or less will no longer apply. These taxpayers will now pay a fixed dollar minimum tax of $25.

The fixed dollar minimum tax for New York S corporations will be determined in accordance with the following table:

If New York receipts are:	The fixed dollar minimum tax is:
Not more than $100,000	$25
More than $100,000, but not over $250,000	$50
More than $250,000, but not over $500,000	$175
More than $500,000, but not over $1,000,000	$300
More than $1,000,000, but not over $5,000,000	$1,000
More than $5,000,000, but not over $25,000,000	$3,000
Over $25,000,000	$4,500

The fixed dollar minimum tax for C corporations will be determined in accordance with the following table:

If New York receipts are:	The fixed dollar minimum tax is:
Not more than $100,000	$25
More than $100,000, but not over $250,000	$75
More than $250,000, but not over $500,000	$175
More than $500,000, but not over $1,000,000	$500
More than $1,000,000, but not over $5,000,000	$1,500
More than $5,000,000, but not over $25,000,000	$3,500
Over $25,000,000	$5,000

For purposes of the fixed dollar minimum tax, New York receipts are the portion of the taxpayer’s total receipts attributable to New York, computed in accordance with Tax Law section 210.3(a)(2) (relating to the computation of the New York receipts factor).

If the C or S corporation’s taxable year is less than twelve months, the amount of New York receipts for purposes of determining the fixed dollar minimum tax is computed by dividing the amount of the New York receipts for the taxable year by the number of months in the taxable year and multiplying the result by twelve. In addition, the tax is reduced by 50% if the taxable year is less than 6 months, and by 25% if the taxable year is more than 6 months but not more than 9 months.

However, if a New York S corporation changes its status to a C corporation during the taxable year, the fixed dollar minimum tax is computed as if the corporation were a C corporation for the entire taxable year.

Foreign C and S corporations authorized to do business in New York State and whose total tax liability (including MTA surcharge) is less than $300 must increase their payment so that the total of the corporation taxes and MTA surcharge equals $300 in order to satisfy the maintenance fee requirement imposed by Tax Law section 181.2.

(Tax Law sections 210.1(d)(3), 210.1(d)(4), and 210.1(g))

Empire State film production credit (Article 9-A)

For taxable years beginning on or after January 1, 2008, the Empire State film production credit has been increased from 10% to 30% of the qualified production costs paid or incurred in the production of certain qualified films and television shows. Also, if the amount of the credit allowed exceeds the taxpayer's tax, the entire excess is treated as an overpayment to be credited or refunded (without interest) in the tax year the credit is claimed. Previously, only 50% of the excess credit was treated as an overpayment to be credited or refunded for the tax year the credit was claimed.

The Empire State film production credit has been extended to include tax years ending on or before December 31, 2013. In addition, the statewide aggregate dollar amount of Empire State film production credit that may be allowed has been increased to $65 million for tax year 2008, $75 million for tax year 2009, $85 million for tax year 2010, $90 million for tax years 2011 and 2012, and $110 million for tax year 2013.

For more information about this credit, contact the New York State Governor's Office for Motion Picture and Television Development by e-mail at *nyfilm@empire.state.ny.us*.

These provisions apply to tax years beginning on or after January 1, 2008.

(Tax Law sections 24 and 210.36(b))

Credit for taxicabs and livery service vehicles accessible to persons with disabilities (Article 9-A)

The credit for taxicabs and livery service vehicles accessible to persons with disabilities has been extended. The credit is allowed for the incremental cost associated with the purchase of taxicabs and livery service vehicles accessible to persons with disabilities or the conversion of a motor vehicle to a taxicab or livery service vehicle accessible to persons with disabilities. The incremental costs must be incurred on or after January 1, 2006, and before January 1, 2011.

Under previous law, the credit applied to incremental costs incurred on or after January 1, 2006, and before January 1, 2009.

(Tax Law section 210(40))

Clean heating fuel credit (Article 9-A)

The clean heating fuel credit has been reinstated to include purchases of bioheat on or after January 1, 2008, and before January 1, 2012. Under previous law, the credit applied to bioheat purchased on or after July 1, 2006, and before July 1, 2007. Accordingly, no credit is available for bioheat purchased on or after July 1, 2007, and before January 1, 2008. The credit is available for tax years beginning after December 31, 2005, and before January 1, 2012.

The credit is available for New York State Article 9-A corporation franchise tax taxpayers for the tax year in which the bioheat is purchased. The bioheat must be used for space heating or hot water production for residential purposes within New York State. For more information, see TSB-M-08 (5)C, (1)I, *Clean Heating Fuel Credit.*

(Tax Law section 210(39))

Empire Zone (EZ) wage tax credit (Article 9-A)

EZ wage tax credit – The EZ wage tax credit has been amended to allow the owner of a qualified investment project (QUIP) or a significant capital investment project (SCIP) (as defined under sections 957(s) and 957(t) of the General Municipal Law (GML)) to postpone the start of its five-year wage tax credit period to the first taxable year of the business enterprise's business tax benefit period, as determined under section 14(a)(1-a), during which payments of empire zone wages are made and the eligibility requirements under Tax Law section 210.19(d) are met.

QUIP/SCIP designation deadlines – Section 959 of the General Municipal Law was amended to extend the deadline to submit applications to the Empire State Development Corporation to become certified as the owner of a QUIP from December 31, 2007, to December 31, 2009. Applications to become certified as the owner of a SCIP submitted by an entity previously qualified as a QUIP, or a related person, must be submitted by June 30, 2011.

This provision is effective as of April 23, 2008.

(Tax Law section 210.19(c))

Banking corporations doing business in New York State (Article 32)

Criteria for doing business in New York State. Section 1451(c) has been added to the Tax Law to provide criteria under which a banking corporation is doing business in this state in a corporate or organized capacity and, therefore, is subject to the franchise tax on banking corporations under Article 32. Under the new law, a banking corporation is doing business in New York State for a taxable year if it satisfies **any one** of the following criteria:

1) It has issued credit cards to 1,000 or more customers who have a mailing address within New York State as of the last day of its taxable year.

2) It has merchant customer contracts with merchants and the total number of locations covered by those contracts equals 1,000 or more locations in New York State to whom the banking corporation remitted payments for credit card transactions during the taxable year.

3) It has receipts of $1,000,000 or more in the taxable year from its customers who have been issued credit cards by the banking corporation and who have a mailing address within New York State.

4) It has receipts of $1,000,000 or more arising from merchant customer contracts with merchants relating to locations in New York State.

5) For the taxable year, the sum of the number of customers described in criteria (1) plus the number of locations covered by its contracts described in criteria (2) equals 1,000 or more, or the total amount of its receipts described in criteria (3) and criteria (4) equals $1,000,000 or more.

For purposes of the above criteria, receipts from processing credit card transactions for merchants include merchant discount fees received by the banking corporation.

Credit card includes bank, credit, travel, and entertainment cards.

Allocation rules. Tax Law section 1454(a)(2)(D) provides allocation rules for receipts from certain bank activities. This section was amended to clarify when receipts from bank, credit, travel, and entertainment card receivables are earned within the state. Under the new law,

• interest, and fees and penalties in the nature of interest, and

• service charges and fees

are earned within the state if the mailing address of the card holder in the taxpayer's records is in the state. Receipts from merchant discounts will continue to be earned within the state if the merchant is located within the state.

Requirements to file a combined return with other Article 32 corporations. A banking corporation doing business in New York State solely because it meets one or more of the criteria in Tax Law section 1451(c) (hereinafter, credit card bank) will not be included in a combined return pursuant to Tax Law section 1462(f)(2)(i) with another banking corporation or bank holding company that is exercising its corporate franchise or doing business in this state unless the credit card bank or the Tax Department shows that a combined return is necessary to properly reflect the tax liability of the credit card bank, the banking corporation, or the bank holding company.

However, any banking corporation that meets one or more of the criteria in Tax Law section 1451(c) and that was included in a combined return for its last taxable year beginning before January 1, 2008, may continue to be included in a combined return for future taxable years. Once this banking corporation has been included in a combined return for any taxable year beginning on or after January 1, 2008, it must continue to be included in a combined return until it obtains the consent of the Tax Department to cease being included in a combined return because the combined return no longer properly reflects the tax liability under Article 32 of any of the corporations included in the combined return.

Requirements to file a combined return with banking corporations that are not subject to tax under Article 32. A credit card bank is required to be included in a combined return with any of the following corporations that provide services for or support to the credit card bank's operations:

- any banking corporation not subject to tax under Article 32 if 65% or more of the voting stock of that corporation is owned or controlled, directly or indirectly, by the credit card bank;

- any banking corporation or bank holding company not subject to tax under Article 32 that owns or controls, directly or indirectly, 65% or more of the voting stock of the credit card bank; or

- any banking corporation not subject to tax under Article 32 if 65% or more of the voting stock of that corporation is owned or controlled, directly or indirectly, by the same corporation or corporations that own or control, directly or indirectly, 65% or more of the voting stock of the credit card bank.

However, if the credit card bank or the Tax Department shows that the inclusion of any of these corporations in the combined return fails to properly reflect the tax liability of the credit card bank, a combined return will not be required with those corporations.

Services for or support to the credit card bank's operations include such activities as billing, credit investigation and reporting, marketing, research, advertising, mailing, customer service, information technology, lending and financing services, and communication services, but will not include accounting, legal, or personnel services.

For more information on these provisions, see TSB-M-08(7)C, *Amendments to Article 32 Concerning Doing Business in New York State, Allocation, and Requirements to File a Combined Return*.

These provisions are effective for tax years beginning on or after January 1, 2008.

(Tax Law sections 1451(c), 1454(a)(2)(D), and 1462(f)(2)(v))

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.