

For-Profit Health Maintenance Organizations Are Now Subject to the Franchise Tax on Insurance Corporations under Article 33

Chapter 57 of the Laws of 2009 amended Article 33 of the Tax Law (franchise tax on insurance corporations) to impose the franchise tax on for-profit health maintenance organizations (for-profit HMOs) authorized under Article 44 of the Public Health Law. Previously, for-profit HMOs were subject to tax under Article 9-A of the Tax Law. The amendments apply to taxable years beginning on or after January 1, 2009.

The legislation does not affect nonprofit health maintenance organizations. Nonprofit health maintenance organizations required to obtain a certificate of authority under Article 44 of the Public Health Law are not subject to the franchise tax on insurance corporations under Article 33.

Premiums-based tax

Under Article 33, for-profit HMOs authorized under Article 44 of the Public Health Law are subject to the franchise tax imposed under section 1502-a of the Tax Law. The tax is based solely on gross direct premiums, less return premiums, written on risks located or resident in New York State. The tax is imposed for the privilege of exercising a corporate franchise or for carrying on business in a corporate or organized capacity within New York State.

The franchise tax is calculated in the same manner as the additional franchise tax based on premiums under section 1510(a) of the Tax Law except that the tax rate is:

- 1.75% for accident and health insurance contracts, including contracts with for-profit HMOs for health services; and
- 2.00% for all other premiums.

In no event may the tax imposed under section 1502-a of the Tax Law, before the application of tax credits, be less than \$250.

Section 1510(c)(2) of the Tax Law was amended to provide that the term gross direct premiums does not include any premiums that New York State is prohibited from taxing pursuant to federal law, including premiums for health benefits through the Federal Employees Health Benefits program under Title 5 US Code section 8909(f) and premiums paid to Medicare organizations under Title 42 US Code sections 1395w-24(g), 1395w-112(g), or 1395mm(k)(4)(B).

MTA Surcharge

For-profit HMOs that do business, employ capital, own or lease property, or maintain an office in the Metropolitan Commuter Transportation District (MCTD) must pay a metropolitan transportation business tax surcharge on business done in the Metropolitan Transportation Authority region (MTA surcharge). The MCTD includes New York City (the counties of New York (Manhattan), Bronx, Kings (Brooklyn), Queens, and Richmond (Staten Island)), and the counties of Rockland, Nassau, Suffolk, Orange, Putnam, Dutchess, and Westchester.

The MTA surcharge for for-profit HMOs is equal to 17% of the franchise tax based solely on premiums under Tax Law section 1502-a, after the deduction of any tax credits allowed under Article 33, and as allocated to the MCTD. The MCTD allocation percentage for for-profit HMOs is calculated by dividing the direct premiums described as taxable premiums under section 1510 that are written on risks located or resident in the MCTD by the direct premiums described as taxable premiums under section 1510 that are written on risks located or resident in New York State.

Tax Return Requirements

As a result of this new law, for taxable years beginning on or after January 1, 2009, for-profit HMOs are no longer permitted or required to file a combined return with a parent corporation or any other related corporation that is subject to tax under Article 9-A of the Tax Law. For-profit HMOs are now required to file Form CT-33-NL, *Non-Life Insurance Corporation Franchise Tax Return*, on an individual basis. For-profit HMOs are not permitted and will not be required to file a return on a combined basis with other insurance corporations. For-profit HMOs subject to the MTA surcharge are also required to file Form CT-33-M, *Insurance Corporation MTA Surcharge Return*.

Estimated Tax

For-profit HMOs now must file declarations of estimated tax and make estimated tax payments based on the Article 33 tax for taxable years beginning on or after January 1, 2009. For-profit HMOs should adjust the June 15, 2009, estimated tax payment to take into account any changes in tax liability resulting from the enacted legislation. Mandatory first installment payments computed on and originating from the Article 9-A 2008 tax year will be applied to the 2009 Article 33 filing period. Any overpayment of tax from the 2008 tax year will also be applied to the 2009 Article 33 filing period.

(Tax Law sections 1500(a), 1502-a, 1510(c)(1), 1510(c)(2), 1512(a)(10))

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.