

Computation of the Surcharge Retaliatory Tax Credit
Chapter 999 of the Laws of 1984
Article 33

Chapter 999 of the Laws of 1984 amended subdivisions (a) and (d) of Section 1505-a of the Tax Law. The amendment to Subdivision (a) of Section 1505-a extends the Metropolitan Business Tax Surcharge for an additional 24 months and the amendment to Subdivision (d) of Section 1505-a provides for a surcharge retaliatory tax credit which will be allowed under Article 33 of the Tax Law.

Chapter 931 of the Laws of 1982 originally enacted the Metropolitan Business Tax Surcharge (Section 1505-a) and also provided that the retaliatory tax credit must be computed without the inclusion of retaliatory taxes paid to another state as a result of the imposition of the Metropolitan Business Tax Surcharge (Section 1505-a(d)). Chapter 999 of the Laws of 1984 extended the Metropolitan Business Tax Surcharge for an additional 24 months and also provided for a surcharge retaliatory tax credit based upon retaliatory taxes paid to another state as a result of the imposition of the Metropolitan Business Tax Surcharge.

The surcharge retaliatory tax credit provided by Subdivision (d) of Section 1505-a will allow any taxpayer organized or domiciled in this state, which is subject to the Metropolitan Business Tax Surcharge and pays retaliatory tax because of the Metropolitan Business Tax Surcharge imposed, to claim a surcharge retaliatory tax credit based on retaliatory taxes paid to another state because of the imposition of the Metropolitan Business Tax Surcharge. The surcharge retaliatory tax credit will be allowed in an amount equal to 90% of the retaliatory taxes paid to another state as a result of the imposition of the Metropolitan Business Tax Surcharge and must be applied against the Metropolitan Business Tax Surcharge, computed pursuant to Section 1505-a of Article 33 of the Tax Law, for the same year the retaliatory taxes paid or assessed were attributable. However, in no case may the surcharge retaliatory tax credit claimed as a refund be greater than the Metropolitan Business Tax Surcharge payable in the year to which the surcharge retaliatory tax credit is carried and claimed as a refund. If the amount of surcharge retaliatory tax credit computed is greater than the amount of Metropolitan Business Tax Surcharge paid for that year, the amount of refund is limited to the Metropolitan Business Tax Surcharge paid and the excess surcharge retaliatory tax credit may not be carried forward or backward to another year.

Section 8 of Chapter 999 of the Laws of 1984 defines the term "surcharge taxable year" as "the taxable years of all insurers organized or domiciled in this state beginning in a calendar year for which the tax surcharge is imposed by this section and to which amounts paid to other states are attributable." The Metropolitan Business Tax Surcharge is imposed upon an insurance corporation for the privilege of exercising its corporate franchise, or doing business, or employing capital, or owning or leasing property or maintaining an office in the metropolitan commuter transportation district for all or any parts of taxable years commencing on or after January 1, 1982 but ending

before December 31, 1986. The "surcharge taxable years" will include returns filed for calendar years 1982, 1983, 1984 and 1985, fiscal years ending in 1983, 1984, 1985 and 1986 or short periods ending in 1983, 1984 and 1985. Short period returns ending in 1982 and 1986 may also be subject to the surcharge if the short period ending in 1982 commenced on or after January 1, 1982 and the short period ending in 1986 ended before December 31, 1986 and the 48 month limitation has not been met. For each insurance corporation, the "surcharge taxable years" will include either 4 calendar years, 4 fiscal years or a combination of calendar years, fiscal years and short periods equaling 48 months. The total of the "surcharge taxable years" may be less than 48 months, but in no case shall the "surcharge taxable years" exceed 48 months for any taxpayer.

Section 8 of Chapter 999 of the Laws of 1984 defines the form "limitation date" as "the first day of the sixth calendar year beginning after the close of the calendar year in which an insurer's surcharge taxable year begins." The "limitation date" refers to the last date of payment of retaliatory taxes which may be used in the computation of a surcharge retaliatory tax credit for a particular "surcharge taxable year" and used to claim a refund of surcharge paid for that particular "surcharge taxable year". No credit may be claimed for taxes paid to another state after the "limitation date" for a "surcharge taxable year". The following chart will show the limitation dates:

<u>Surcharge Taxable Year</u>	<u>Limitation Date</u>
Calendar years, fiscal years or short periods beginning in 1982	January 1, 1988
Calendar years, fiscal years or short periods beginning in 1983	January 1, 1989
Calendar years, fiscal years or short periods beginning in 1984	January 1, 1990
Calendar years, fiscal years or short periods beginning in 1985	January 1, 1991
Short period beginning in 1986 but ending before December 31, 1986	January 1, 1992

Section 8 of Chapter 999 of the Laws of 1984 defines the term "excess credits" as "the amount by which total credits claimed pursuant to this subdivision for all surcharge taxable years beginning in a calendar year exceed four million dollars." If the total amount of surcharge retaliatory tax credit claimed in any "surcharge taxable year" for taxes paid to other states (before the "limitation date") because of the Metropolitan Business Tax Surcharge exceed four million dollars, each such credit claimed by an insurance corporation for such "surcharge taxable year" shall be reduced proratably so that the total credits of all such insurance corporations shall not exceed four million

dollars for such "surcharge taxable year". Insurance corporations shall remain liable for their pro rata share of any "excess credits" for up to three years after the "limitation date". The surcharge taxable years" are 1982, 1983, 1984, 1985 and 1986.

The retaliatory tax credit which allows the taxpayer to claim 90% of the retaliatory taxes paid to other states as a result of the franchise tax, as provided in Section 1511 of Article 33, will continue to be computed on the Franchise Tax Return for Insurance Corporations (Form CT-33) and claimed as a credit on such return. The surcharge retaliatory tax credit, as provided by Subdivision (d) of Section 1505-a, may not be claimed as a tax credit on Form CT-33 but instead must be computed and claimed as a refund on Form CT-33R. The only exception to this is when the surcharge retaliatory tax credit may be claimed in the same year the surcharge was paid, then the surcharge retaliatory tax credit may be claimed on form CT-33M.