

**New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau**

TSB-M-89 (10)C
Corporation Tax
July 28, 1989

Taxability of Aviation Corporations
under Article 9-A

Introduction

Sections 318 and 321 of Chapter 61 of the Laws of 1989 remove all aviation corporations, which are defined as any corporation, joint-stock company or association principally engaged in the conduct of aviation (including air freight forwarders acting as principal and like indirect air carriers), from taxability under Sections 183 and 184 of Article 9. Sections 320 and 323 of Chapter 61 remove all aviation corporations from the imposition of the surcharge under Sections 183-a and 184-a. Instead, all aviation corporation will be subject to tax under Article 9-A and the Metropolitan Transportation Business Tax Surcharge under Section 209-B. With certain exceptions, these amendments to the Tax Law will be effective for taxable years beginning on or after 1/1/89.

Transition Period

All aviation corporations will cease to be subject to tax under Section 183 after the calendar year ending 12/31/88 (privilege period ending 12/31/89). However, certain aviation corporations will continue to be subject to tax under Section 184 after the calendar year ending 12/31/88. Aviation corporations which file on a calendar year for New York State tax purposes but on a fiscal year for federal tax purposes will be required to file a short period report under either Section 184 or Article 9-A, depending upon the ending date of the fiscal taxable year. Aviation corporations which file a federal tax report on a fiscal year ending either 1/31/89, 2/28/89 or 3/31/89 will be required to file a CT-184 (Section 184) for the short period beginning 1/1/89 and ending on the last day of the fiscal taxable period. Aviation corporations which file a federal tax report on a fiscal year ending from 4/30/89 - 11/30/89 will be required to file a CT-3 or CT-4 (Article 9-A) for the short period beginning 1/1/89 and ending on the last day of the fiscal tax period. Aviation corporations which file a federal tax report for the calendar year ending 12/31/89 will be required to file a CT-3 or CT-4 for the entire taxable period 1/1/89-12/31/89. Thereafter, all aviation corporations will be subject to Article 9-A and must file either CT-3 or CT-4. The following chart shows the New York State requirements for the period of transition:

<u>Federal Filing Period</u>	<u>CT-183 and CT-184 for Cal. Yr. 1988</u>	<u>NYS Requirements for 1989</u>
1/1/88 - 12/31/88	Yes	CT-3 or CT-4 for Cal. Yr. 1989
2/1/88 - 1/31/89	Yes	CT-184 for 1/1/89-1/31/89. CT-3 or CT-4 filed on federal basis, 2/1/89-1/31/90.
3/1/88 - 2/28/89	Yes	CT-184 for 1/1/89-2/28/89. CT-3 or CT-4 filed on federal basis, 3/1/89-2/28/90.

<u>Federal Filing Period</u>	<u>CT-183 and CT-184 for Cal. Yr. 1988</u>	<u>NYS Requirements for 1989</u>
4/1/88 - 3/31/89	Yes	CT-184 for 1/1/89-3/31/89. CT-3 or CT-4 filed on federal basis, 4/1/89-3/31/90.
5/1/88 - 4/30/89	Yes	CT-3 or CT-4 for 1/1/89-4/30/89. CT-3 or CT-4 filed on federal basis, 5/1/89-4/30/90.
6/1/88 - 5/31/89	Yes	CT-3 or CT-4 for 1/1/89-5/31/89. CT-3 or CT-4 filed on federal basis, 6/1/89-5/31/90.
7/1/88 - 6/30/89	Yes	CT-3 or CT-4 for 1/1/89-6/30/89. CT-3 or CT-4 filed on federal basis, 7/1/89-6/30/90.
8/1/88 - 7/31/89	Yes	CT-3 or CT-4 for 1/1/89-7/31/89. CT-3 or CT-4 filed on federal basis, 8/1/89-7/31/90.
9/1/88 - 8/31/89	Yes	CT-3 or CT-4 for 1/1/89-8/31/89. CT-3 or CT-4 filed on federal basis, 9/1/88-8/31/90.
10/1/88 - 9/30/89	Yes	CT-3 or CT-4 for 1/1/89-9/30/89. CT-3 or CT-4 filed on federal basis, 10/1/89-9/30/90.
11/1/88 - 10/31/89	Yes	CT-3 or CT-4 for 1/1/89-10/31/89. CT-3 or CT-4 filed on federal basis, 11/1/89-10/31/90.
12/1/88 - 11/30/89	Yes	CT-3 or CT-4 for 1/1/89-11/30/89. CT-3 or CT-4 filed on federal basis, 12/1/89-11/30/90.
Short period report ending prior to 4/19/89	Yes	CT-184 for 1/1/89 to the ending date of federal short period report. CT-3 or CT-4 filed in conjunction with new federal reporting period.
Short period report ending after 4/19/89	Yes	CT-3 or CT-4 for 1/1/89 to ending date of federal short period report. CT-3 or CT-4 filed in conjunction with new federal reporting period.

Allocation

Under Article 9-A, taxpayers principally engaged in the conduct of aviation (including air freight forwarders acting as principal and like indirect air carriers) will compute their Entire Net Income pursuant to Section 208.9 of the Tax Law. However, the method of computing the business allocation percentage will differ for these taxpayers. Sections 332 and 333 of Chapter 61 of the Laws of 1989 provide the different methods of allocation.

Air freight forwarders acting as principal and like indirect air carriers will compute the receipts factor of their Business Allocation Percentage pursuant to Section 210.3(a)(2)(B) of Article 9-A while other taxpayers principally engaged in the conduct of aviation will allocate entire net income pursuant to Section 210.3(a)(7) of Article 9-A.

Taxpayers principally engaged in the activity of air freight forwarding acting as principal and like indirect air carriage will allocate business income on the basis of the property factor, receipts factor, and wage factor. Section 210.3(a)(2)(B) states that receipts arising from such activity shall be allocated to New York State as follows: 100% of such receipts if both the pick up and delivery associated with such receipts are made in New York State and 50% of such receipts if either the pickup or delivery associated with such receipts is made in New York State.

For purposes of the tax on the minimum taxable income base, air freight forwarders acting as principal and like indirect air carriers use the business allocation percentage with a single weight for the receipts factor.

Section 210.3(a)(7) provides that a taxpayer principally engaged in aviation, other than an aviation corporation which allocates pursuant to Section 210.3(a)(2)(B), will determine the amount of entire net income to be allocated to New York State by multiplying business income by a business allocation percentage which is equal to the arithmetic average of:

1. the percentage determined by dividing its aircraft arrivals and departures within New York State during the period covered by its report by its total aircraft arrivals and departures within and without New York during such period, and
2. the percentage determined by dividing revenue tons handled by the taxpayer at airports within New York during the period covered by its report by revenue tons handled by the taxpayer at airports within and without New York during such period, and
3. the percentage determined by dividing the taxpayer's originating revenue within New York during the period covered by its report by its originating revenue within and without New York during such period.

Arrivals and departures means the number of landings and takeoffs of the aircraft of the taxpayer and the number of air pickups and deliveries by aircraft of the taxpayer. Arrivals and departures solely for maintenance or repair, refueling (where no debarkation or embarkation of traffic occurs), arrivals and departures of ferry and personnel training flights or arrivals and

departures in the event of emergency situations shall not be included in computing the arrival and departure percentage. In addition, the commissioner may also exempt from such percentage the aircraft arrivals and departures of all non-revenue flights.

Originating revenue means revenue to the taxpayer from the transportation of revenue passengers and revenue property first received by the taxpayer either as originating or connecting traffic at airports.

Revenue tons handled by the taxpayer at airports means the weight in tons of revenue passengers (200 pounds per passenger) and revenue cargo first received either as originating or connecting traffic or finally discharged by the taxpayer at airports.

Aviation taxpayers allocate for minimum taxable income base purposes using the same business allocation percentage as they use to allocate business income.

Net Operating Loss

Section 337 of Chapter 61 provides that taxpayers principally engaged in aviation (other than air freight forwarders acting as principal and like indirect air carriers) will be allowed a net operating loss for calendar years 1985 through 1988, provided such taxpayer was subject to taxation under Article 9 of the Tax Law for the entire 4 calendar periods, beginning January 1, 1985 and ending December 31, 1988. The net operating loss will be computed "as if" such taxpayer had been subject to Article 9-A of the Tax Law instead of Article 9 for the calendar years 1985-1988 and will be treated as if such loss had been incurred in calendar year 1988. The net operating loss will only be allowed as a carryforward, starting with the first taxable year beginning in 1989 in which a taxpayer principally engaged in aviation becomes subject to Article 9-A of the Tax Law.

A taxpayer principally engaged in aviation (other than air freight forwarders acting as principal and like indirect air carriers) will compute its net operating losses in accordance with its federal taxable period. A federal calendar year taxpayer must use its federal loss, subject to adjustments to entire net income pursuant to Sections 208.9(a) and (b) of the Tax Law, for the calendar years 1985-1988 in order to determine its "as if" net operating losses.

A federal fiscal year taxpayer must use its federal loss, subject to adjustments to entire net income pursuant to Sections 208.9(a) and (b) of the Tax Law, for the fiscal periods 1985-1986, 1986-1987 and 1987-1988. The remainder of the net operating loss will be determined by prorating the federal loss, subject to adjustments, for the fiscal periods 1984-1985 and 1988-1989. The proration for these periods will be accomplished by multiplying the federal loss, subject to adjustments, for such period by the number of months in 1985 or 1988 and dividing the product by 12.

Ex. Z Corporation suffered a \$24,000 federal loss for the period 10/1/88 9/30/89. The loss will be prorated by multiplying \$24,000 by 3 (the number of months remaining in 1988) and dividing the product by 12.

$$\begin{array}{r} \$24,000 \\ \times 3 \\ \hline \$72,000 \end{array} \quad 72,000 \div 12 = \$6,000 \text{ Prorated NY Net Operating Loss}$$

The total New York Net Operating Loss will be achieved by adding together only the loss years during the period 1985-1988, and not netting income against loss for these periods.

Ex. C. Corp. had federal losses, after adjustments, for the years 1985-1988 as follows:

1985 - (\$9,000)
1986 - \$7,000
1987 - (\$3,000)
1988 - \$5,000

The total Net Operating Loss is \$12,000 (1985 and 1987 loss years) since the income years of 1986 and 1988 are ignored.

A taxpayer principally engaged in the conduct of aviation (including air freight forwarders acting as principal and like indirect air carriers) will not be allowed a net operating loss carryforward to any taxable year covering all or any part of 1989 (1) if such corporation is acquired by or acquires another corporation subject to tax under Article 9-A during the period covered by 1989 or (2) if such corporation is merged or consolidated during the period covered by 1989.

Air freight forwarders acting as principal and like indirect air carriers do not qualify for a net operating loss prior to 1989. For additional information regarding net operating losses, see TSB-M-89(13)C.

Safe Harbor Lease and ACRS Deduction

When computing entire net income, the required addbacks for Safe Harbor Leases and ACRS depreciation under sections 208.9(b)(8), 208.9(b)(9) and 208.9(b)(10) and the required deductions for Safe Harbor Leases and ACRS depreciation under sections 208.9(a) (9), 208.9(a) (10) and 208.9(j) were amended by Sections 327 and 329 of Chapter 61 to exclude property of taxpayers principally engaged in the conduct of aviation (other than air freight forwarders acting as principal and like indirect air carriers) which was placed in service before taxable years beginning in 1989. Air freight forwarders acting as principal and like indirect air carriers are excluded from this amendment and thus will be required to compute the required addbacks and deductions without consideration of this amendment.

Investment Tax Credit

Any taxpayer principally engaged in the conduct of aviation (including air freight forwarders acting as principal and like indirect air carriers) which is allowed an investment tax credit pursuant to Section 210.12 of the Tax Law, may not apply this credit against tax due for any taxable year ending in 1989. However, this investment tax credit will be allowed to be carried over to the following seven taxable years until it is used up.

Metropolitan Transportation Business Tax Surcharge

Taxpayers principally engaged in aviation (including air freight forwarders acting as principal and like indirect air carriers) will be subject to the Metropolitan Transportation Business Tax Surcharge under Section 209-B. The taxpayer's business activity carried on within the metropolitan commuter transportation district will be allocated pursuant to Section 209-B.2(b)(2), for taxpayers principally engaged in air freight forwarding acting as principal and like indirect air carriers, and Section 209-B.2-a, for other taxpayers principally engaged in the conduct of aviation. The allocation provisions in sections 209-B.2(b)(2) and 209-B.2-a are the same as the business allocation percentage provisions in sections 210.3(a)(2)(B) and 210.3(a)(7) except the words "within (in) the Metropolitan Commuter Transportation District" is substituted for "within (in) this state" and the words "within the entire state" is substituted for "within and without this state"

Combined Report

Section 335 of Chapter 61 amended Section 211.4 of the Tax Law to provide that no taxpayer which allocates in accordance with Section 210.3(a)(7) will be permitted to make a report on a combined basis unless all corporations covered by the report allocate in accordance with Section 210.3(a)(7).

Estimated Payments

Aviation corporations whose Article 9-A taxable year begins on 1/1/89 will still be required to make estimated tax payments on 3/15/89 and 6/15/89 under Section 184. Such estimated tax payment will be credited against any outstanding Section 184 tax liability and any excess will be credited against the taxpayer's Article 9-A tax liability.