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

TSB-M-94 (2) C
Corporation Tax
August 15, 1994

Important Notice
Summary of 1994 Corporation Tax Law Changes

Surcharges

State tax surcharge rates will be:

-- 121/2% for tax years ending after June 30, 1994, and before July 1, 1995;

-- 71/2% for tax years ending after June 30, 1995, and before July 1, 1996; and

-- 21/2% for tax years ending after June 30, 1996, and before July 1, 1997. For more information, see TSB-M-94(3)C.

Depreciation

Federal depreciation under section 168 of the Internal Revenue Code applies to property placed in service in tax years beginning after 1993. Taxpayers subject to Articles 9-A, 32 and 33 are affected. This completes the recoupling process that began with the recoupling of federal and state rules for property placed in service in New York after 1984.

Alternative Minimum Taxable Income

Net Operating Loss Deduction

The computation of the Article 9-A alternative minimum taxable income base conforms to federal alternative minimum taxable income in the treatment of net operating losses. A deduction for net operating losses is allowed. Also, a minimum tax credit against the regular tax for the part of the net operating loss deduction not used as a deduction is permitted. For a complete description of these changes, see TSB-M-94(5)C.

Receipts Factor

The Article 9-A receipts factor is double-weighted for allocating minimum taxable income for tax years beginning after 1993.

Investment Tax Credit

Article 9-A corporations with unused investment tax credits or employment incentive credits earned after 1987 have ten years to carry forward those credits. Pre-1987 investment tax credit and additional investment tax credit carryforwards must be used by 1997.

Additional Mortgage Recording Tax Credit

Article 9-A taxpayers are allowed to treat unused additional mortgage recording tax credits as overpayments of tax that may be refunded or credited (without interest). The credit is now made available directly to S corporations. This change applies to credits attributable to special additional mortgage recording tax due and paid in tax years beginning on or after January 1, 1994. For more information, see TSB-M-94(4)C.

Zone Equivalent Area Wage Tax Credit

A wage tax credit, similar to the economic development zone (EDZ) wage tax credit, is available to qualified Article 9-A, 32 and 33 businesses located in a zone equivalent area (ZEA), effective with tax years beginning on or after January 1, 1994. A ZEA is a census track or block numbering area that, as of the 1990 census, has a poverty rate of at least twenty percent and an unemployment rate at least 1.25 times the statewide unemployment rate.

A list of all ZEAs will be compiled by the Department of Economic Development.

The credit is allowed for two years.

Taxpayers claiming the ZEA credit are not allowed to count the employees used to compute the credit when computing any employment incentive credit.

The credit is refundable in the same manner as the EDZ wage tax credit.

For a complete description of the EDZ and ZEA benefits available, see TSB-M-86(13.4) Corporation Tax.

Combined Reports

Article 9-A corporations that have made an election under section 936 of the Internal Revenue Code are not required or permitted to be included in a combined report. This provision applies to tax years beginning on or after January 1, 1994.

Estimated Tax

The Tax Law has been amended to conform with recent amendments to the Internal Revenue Code estimated tax provisions. Large corporations are required to pay 100% (formerly 97%) of their current year's tax. A large corporation is any taxpayer whose allocated entire net income was at least one million dollars during any of the three preceding tax years.

Penalty for underpayment of estimated tax will not apply to any underpayment caused by this provision if the underpayment is corrected with the first installment due on or after September 15, 1994.

Alternative periods are available for measuring income when determining estimated tax installments using the annualization method. The periods of 4, 7 and 10 months are added to the existing 3-, 6- and 9- or 5-, 8- and 11-month periods.

Foreign Airlines

A foreign air carrier may exclude the following from entire net income:

-- income derived from the international operation of aircraft which is subject to the provisions of section 883 of the Internal Revenue Code;

-- income from outside the United States that is derived from the operation of aircraft; and

-- foreign passive income that is described in section 881(a) of the Internal Revenue Code.

In addition, business capital does not include assets employed to generate foreign income that is excluded from entire net income. Investment capital does not include investments the income from which is foreign income excluded from entire net income. Business and investment capital are computed without regard to liabilities directly or indirectly attributable to assets or inves:tments which are excluded from business and investment capital.

These exclusions apply only if the country where the foreign airline has its major base of operations, and is organized, resident or headquartered provides an equivalent exemption from national and local taxes to U. S. airlines.

For tax years beginning after 1988, foreign air carriers qualifying for these exclusions must compute their business allocation percentage using the standard formula based on property, receipts and wages. They may not use the special airline allocation formula. However, when making that computation, they omit:

-- property employed in generating excluded income,

– receipts excluded from income, and

-- wages directly attributable to excluded income.

The same exclusions are made when a foreign air carrier computes its Metropolitan Commuter Transportation District allocation percentage.

The changes apply to tax years beginning on or after January 1, 1989, with regard to the computation of allocated entire net income and on and after January 1, 1994, with regard to the computation of business and investment capital.

Bank Tax

The bank tax provisions which were scheduled to sunset have been extended for one year. The extended provisions were scheduled to sunset for tax years beginning on or after January 1, 1994.

Also, effective for tax years beginning on or after January 1, 1994, taxpayers are allowed a deduction for sixty percent of the excess of gains from subsidiary capital over losses from subsidiary capital, to the extent the gains and losses were taken into account in determining federal taxable income.