

Important Notice

Summary of 1995 Corporation Tax Law Changes

New York S Corporations

The Article 22 tax equivalent rate used in the computation of the franchise tax on New York S corporations has been changed. The franchise tax on New York S corporations is the higher of:

- the tax on the S corporation's entire net income base computed as if it were a C corporation, reduced by the Article 22 (personal income tax) tax equivalent; or
- the fixed dollar minimum tax, reduced by the Article 22 tax equivalent.

The Article 22 tax equivalent is the amount determined by multiplying the entire net income base by a rate. That rate for tax years beginning in 1995 is 7.59375%; the rate for tax years beginning after 1995 is 7.875%.

Metropolitan Transportation Business Tax (MTA) Surcharge

The Metropolitan Transportation Business Tax Surcharge (MTA surcharge) has been extended for two years for Articles 9, 9-A, 32 and 33 of the Tax Law.

For taxes imposed on transportation and transmission corporations and utilities under sections 183, 184, 186 and 186-a of Article 9 of the Tax Law, the surcharge rate will apply for calendar years 1995 and 1996 and for short periods ending before December 31, 1997. Section 189-a of Article 9 of the Tax Law imposes the surcharge on gas importers for any tax month ending on or before June 30, 1997. For taxes imposed on general business corporations, banking corporations and insurance corporations under Articles 9-A, 32 and 33 of the Tax Law, the surcharge will apply for calendar years 1995 and 1996, fiscal years ending in 1996 and 1997 and short periods ending before December 31, 1997.

There are special provisions for declarations and payments of estimated tax. In general, no penalty will be imposed if any underpayment of estimated tax, resulting from the 1995 amendments to the Tax Law extending the MTA surcharge, is corrected with the first installment due after August 15, 1995. No interest under section 1084 or addition to tax under section 1085(a) will be imposed for payments of MTA tax surcharge due under section 189-a if all payments due are made by the due date of the August 31, 1995, quarterly report.

Alternative Minimum Taxable Income

The New York alternative minimum tax rate for tax years beginning after 1994 is 3.5% of a taxpayer's minimum taxable income. See TSB-M-90(13)C and TSB-M-94(5)C for additional details on the computation of the minimum taxable income base and the minimum tax credit.

Bank Tax

The bank tax provisions that were scheduled to end for tax

years beginning on or after January 1, 1995, have been extended for two years.

Taxation of Telecommunication Services

Article 9 of the Tax Law has been amended in relation to the taxation of telephone corporations, as well as the taxation of telecommunication services. The franchise taxes imposed by sections 184 and 184-a of the Tax Law have been amended with respect to telephone companies. They will now apply only to corporations formed for, or principally engaged in, local telephone business. The section 186-a tax on furnishing utility services has been amended to remove the provisions subjecting telephony and telegraphy and telephone and telegraph service receipt⁶ to tax under that section. The charges representing these receipts will now be subject to tax under newly enacted section 186-e, excise tax on telecommunication services. Section 186-c, which imposes a surcharge in the Metropolitan Commuter Transportation District (MCTD) on the tax imposed under section 186-a, has been amended to add a similar surcharge on the section 186-e excise tax on telecommunication services in the MCTD. Other sections of Article 9 have been amended to incorporate the modifications outlined above, as well as certain other miscellaneous provisions.

Mortgage Servicing Credit

The Tax Law has been amended to allow an annual credit against the Article 9-A tax for servicing certain mortgages. The credit may only be claimed by a mortgage banker, licensed under Article twelve-D of the Banking Law, for servicing mortgages acquired by the State of New York Mortgage Agency (SONYMA). The amount of the credit is dependent on the types of properties that secure the mortgage loans serviced.

The credit for servicing mortgages may reduce the taxpayer's tax due under Article 9-A of the Tax Law to zero. Any unused portion of the credit for servicing mortgages may not be carried forward to future taxable years. The credit is effective immediately.

Consigned Works of Art

The Arts and Cultural Affairs Law has been amended to provide that proceeds from the sale of consigned works of art by an art merchant are treated as revenue from the sale of tangible goods. The amendment applies to works of art which are (1) created by an artist or craftsman and (2) consigned by such artist or craftsman to an art merchant. Therefore, commissions received on the sale of art works held by an art merchant on consignment are treated as receipts from sales of personal property (rather than receipts for services performed) in calculating the receipts factor of the Article 9-A business allocation percentage. This treatment does not apply to commissions from consigned works sold at a public auction.

This amendment applies to the sale of consigned works made on and after August 9, 1995.