

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

TSB-M-97(4)C  
Corporation Tax  
May 2, 1997

**Combined Filing for New York "S" Corporations**

Section 211.4 of the Tax Law grants the commissioner of Taxation and Finance the discretion to require or permit a group of corporations that meet certain requirements to file a report on a combined basis. Corporate Franchise Tax Regulations sections 6-2.2 and 6-2.3 describe these requirements. Section 6-2.5(d) has been added to the regulations to describe the situations where New York S corporations may request or be required to file combined returns.

A New York S corporation is a corporation taxable under Article 9-A of the Tax Law for which a New York S election is in effect. A New York C corporation is a corporation taxable under Article 9-A of the Tax Law which is not a New York S corporation.

New York S corporations became subject to corporate tax under Article 9-A for periods beginning after 1989. Therefore, they may be included in combined reports filed under Article 9-A only for tax periods beginning in 1990 and after.

The commissioner can require or permit the following corporations to report on a combined basis:

- a New York S corporation with other New York S corporations;
- New York S corporations with nontaxpayer corporations who have made the S election for federal purposes but not for New York State.

The commissioner cannot require or permit the following corporations to report on a combined basis:

- a New York S corporation with a New York C corporation,
- a New York C corporation with nontaxpayers who have made the S election for federal purposes;
- a New York S corporation with a corporation subject to tax under another Article of the Tax Law;
- a New York S corporation with an alien (non-U.S.) corporation.

If a federal or New York S corporation included in a combined group of S corporations subsequently terminates its S election, it is no longer eligible for inclusion in the combined group's return.

**Fixed Dollar Minimum Tax**

Each corporation included in the combined report except the corporation paying the combined tax and a foreign corporation which is not a taxpayer is required to pay the applicable fixed dollar minimum tax. The corporation paying the combined tax will pay the fixed dollar minimum when this tax exceeds the tax computed on the entire net income base. Each member of the combined group must pay the applicable fixed dollar minimum tax based on its separate payroll. However, New York S corporations are not subject to the \$800 minimum tax on corporations whose average gross assets, receipts and payroll are all \$1000 or less.

**Net Operating Loss Deduction**

A combined group of New York S corporations may not include in its combined net operating loss deduction any net operating loss sustained during a New York C year or during a New York S year beginning prior to 1990.

**Subsidiary Capital Tax**

New York S corporations are not subject to tax on the subsidiary capital base. Therefore, a combined group consisting of New York S corporations that have subsidiaries not included in the combined group is not required to pay the tax on the subsidiary capital base.

**State Tax Surcharge**

The state tax surcharge is computed based on the combined tax of all the members of the group. If the combined group as a whole has entire net income of not more than \$200,000 and qualifies as a small business taxpayer under section 210.1(f) of the Tax Law, it is not subject to the state tax surcharge.

For taxable years ending after June 30, 1996, the base used to compute the surcharge is the tax on the combined entire net income base or the fixed dollar minimum, whichever is higher, after deducting the personal income tax equivalent. The personal income tax equivalent is the amount of tax on the combined entire net income base computed by substituting the highest personal income tax rate for the Article 9-A tax rate. For tax years ending after June 30, 1997, the state tax surcharge has been reduced to zero. For additional information on computing the state tax surcharge for New York S corporations, refer to TSB-M-94 (3) C.

**Metropolitan Transportation Business Tax Surcharge**

New York S corporations, including combined groups consisting of New York S corporations, are not subject to the Metropolitan Transportation Business Tax Surcharge.

**Credits**

In general, New York S corporations cannot deduct credits against the Article 9-A tax since most credits pass through to the shareholders. However, for taxable years beginning after 1993, New York S corporations and New York S corporation combined groups may deduct the credit for the special additional mortgage recording tax.