

**SUMMARY TSB-M
CORPORATION TAX LEGISLATIVE CHANGES AFFECTING THE 1997 TAX YEAR**

The following is a brief summary of the 1997 Corporation Tax legislative changes that have application to the 1997 tax year. Included also are reminders of certain 1996 Corporation Tax legislative changes that also have application to the 1997 tax year. These enactments primarily provide for credits, simplified procedures and a tax reduction.

A summary of additional 1997 Corporation Tax legislative changes that affect tax years after 1997 will be available in a future Technical Services Bureau Memorandum. A summary of the provisions of the Taxpayer Bill of Rights Act of 1997 (Chapter 577 of the Laws of 1997) will also be available in a future Technical Services Bureau Memorandum.

S-CORPORATIONS

Federal Conformity

The Tax Law has been amended to conform to changes in federal tax treatment of S corporations, primarily those enacted by the 1996 Federal Small Business Job Protection Act, including the following:

- extends New York S corporation treatment to federal S corporations that are banks taxable under Article 32 of the Tax Law, effective for taxable years beginning after 1996.
- conforms to a large extent the Articles 9-A and 32 S corporation regimes to the federal tax treatment of qualified subchapter S subsidiaries (*QSSS*), effective for taxable years beginning after 1996.
- grants the Commissioner of Taxation and Finance authority to validate certain late or invalid New York S elections, effective for taxable years beginning after 1982.

(Chapter 389, Laws of 1997)

Employment Incentive Credit

The Employment Incentive Credit and the Economic Development Zone Employment Incentive Credit, currently available to corporations under the Article 9-A corporation franchise tax, have been extended to shareholders of New York S corporations under the Article 22 personal income tax. These provisions apply to property placed in service on or after January 1, 1997.

(Chapter 389, Laws of 1997)

New York QSSS Treatment

In most instances, New York State will follow the federal *QSSS* paradigm in the Articles 9-A and 32 franchise taxes. When *QSSS* treatment is followed, the assets, liabilities, income and deductions of the *QSSS* will be included on the parent's franchise tax return. However, with regard to other taxes under the Tax Law, such as sales and excise taxes, and the Article 9 license and maintenance fees, the *QSSS* will continue to be recognized as a separate corporation. For further information, see TSB-M-97(6)C. (Chapter 389, Laws of 1997)

CREDITS

Power For Jobs Credit

Effective July 29, 1997, a Power for Jobs Program was established to make low-cost power available to businesses, small businesses and not-for-profit corporations for job retention and creation. A new tax credit was created for utilities participating in the program against the tax on the furnishing of utility services imposed by section 186-a of Article 9 of the Tax Law. The credit is equal to the amount of the "net lost revenues" incurred by the utility due to the sale of power at a reduced rate under the Power for Jobs Program.

The credit may be used only for the same taxable year during which the credit arose and may not be carried forward or backward to any other taxable period. To qualify, the utility must file with the return on which the credit is claimed, a certificate from the Department of Public Service verifying the calculation of the credit. The program is scheduled to expire on December 31, 2003. (Chapter 316, Laws of 1997)

Credit For Rehabilitation of Historic Barns

The investment tax credit under Article 9-A was expanded by Chapter 309 of the Laws of 1996 to include expenditures paid or incurred for the rehabilitation of certain historic barns. These changes are applicable to taxable years beginning on or after January 1, 1997. The amount of the credit is 25% of the taxpayer's "qualifying rehabilitation expenditures" paid or incurred for any barn located in New York State that is a "qualified rehabilitated building." For further information regarding this credit, see TSB-M-97(5)C.

Farmers' School Property Tax Credit

The farmers' school property tax credit, added by Chapter 309 of the Laws of 1996, is applicable to taxable years beginning on or after January 1, 1997. The amount of the credit is the amount of school district real property taxes paid on qualified farmland and buildings, subject to certain acreage and income limitations.

Chapter 389 of the Laws of 1997 made certain amendments to the credit relating primarily to the eligibility requirements and the income limitation on the credit. These amendments apply to taxable years beginning on or after January 1, 1998. For further information, see Publication 51, Questions and Answers on New York State's Farmers' School Tax Credit.

BANK TAX

S Election

For taxable years beginning after 1996, federal S corporations which are banks taxable under Article 32 of the Tax Law will be eligible to make a New York State S election. This election is made by filing Form CT-6, *Election by a Federal S Corporation to be Treated as a New York S Corporation*. (Chapter 389, Laws of 1997)

* For New York QSSS treatment for Banks , see page 2.

Extender

The tax provisions concerning commercial banks that were adopted by Chapter 298 of the Laws of 1985, Chapter 817 of the Laws of 1987 and Chapter 525 of the Laws of 1988, and were scheduled to expire January 1, 1997, have been extended for four years. These provisions will not apply to taxable years beginning on or after January 1, 2001. (Chapter 59, Laws of 1997)

OTHER

Utility Rate Changes

The decrease in the tax rate under section 184 of the Tax Law (Article 9-Additional Franchise Tax on Transportation and Transmission Corporations and Associations) from 0.75% to 0.60% on gross earnings of railroad and trucking companies is effective for taxable years beginning in or after 1997. (Chapter 309, Laws of 1996)

Investment Tax Credit and Employment Incentive Credit Extender

The period for the carry forward of excess Investment Tax Credit and Employment Incentive Credit has been extended. Pre-1987 tax credits may be carried forward through 2001, rather than 1996, while post-1986 credits may be carried forward for fifteen years, rather than ten years. (Chapter 389, Laws of 1997)

MTA Surcharge Extender

The MTA surcharges imposed under Articles 9, 9-A, 32 and 33 of the Tax Law have been extended through taxable years ending prior to December 31, 2001. The surcharge on the tax on gas importation is extended through taxable months ending on or before June 30, 2001. (Chapter 59, Laws of 1997)

Business Corporation Law(BCL)

The process of merging or consolidating a New York corporation into a corporation organized under the laws of another jurisdiction has been streamlined. As of February 22, 1998, a New York corporation may merge or consolidate with a non-New York corporation, where the surviving or consolidated corporation is organized under the laws of another state, without requiring a tax clearance from the Department of Taxation and Finance. In lieu of a tax clearance, a new provision was added to the Business Corporation Law (section 907(e)(2)(H)) which provides that a certification shall appear on the certificate of merger (or consolidation) that 1) all taxes and fees accrued against the domestic corporation have been paid and 2) a cessation franchise tax report (estimated or final) through the anticipated date of merger or consolidation has been filed by the domestic corporation. Where an estimated return is filed, an agreement is to appear on the certificate stating that the surviving or consolidated foreign corporation will, within 30 days after the filing of the certificate of merger or consolidation with the Department of State, file a final return, and promptly pay all taxes and fees (if any) that are due by the domestic corporation. (Chapters 449 & 494, Laws of 1997)