

Summary of 1999 Corporation Tax Legislative Changes Taking Effect in 1999

In 1999, legislation was enacted to extend or expand several existing tax credits as well as other corporation tax changes. This memorandum briefly summarizes these legislative changes.

Exemption for income received by victims or targets of Nazi persecution (Articles 9-A, 32 and 33)

On August 9, 1999, Section 13 of the Tax Law was added to extend tax exemptions for victims or targets of Nazi persecution to Article 9-A, 32 and 33 taxpayers. Amounts (including accumulated interest) received by victims or targets of Nazi persecution from an eligible settlement fund or eligible grantor trust are exempt from all New York State and local taxes imposed on or measured by income.

Section 13 defines *victims or targets of Nazi persecution* to mean any individual, corporation, partnership, sole proprietorship, unincorporated association, community, congregation, group, organization, or other entity persecuted or targeted for persecution because of race, religion, ethnicity, sexual orientation, national origin, or physical or mental disability or handicap. This definition also includes the heirs, successors, administrators, executors, affiliates or assignees of these victims or targets, or any other claimant receiving funds from either an eligible settlement fund or an eligible grantor trust. An *eligible settlement fund* is defined as an entity that is treated as a designated or qualified settlement fund under Internal Revenue Code section 468B established for the principal purpose of resolving and satisfying claims relating to the Holocaust, World War II and its prelude and aftermath, victims or targets of Nazi persecution, transactions with or actions of the Nazi regime or treatment of refugees fleeing Nazi persecution by or in the Swiss Confederation. An *eligible grantor trust* is a trust established for the principal purpose of satisfying such claims.

When eligible payments are included in federal taxable income or entire net income, a New York subtraction modification for these payments is allowed in calculating New York entire net income. This exemption does not apply to amounts received from assets acquired with these assets, or amounts acquired with the proceeds from the sale of these assets.

The new section also exempts qualified settlement funds and grantor trusts established for the benefit of victims or targets of Nazi persecution by or in the Swiss Confederation from New York State and local taxes imposed on or measured by income, the New York City commercial rent tax and all New York State and local sales and use taxes.

For additional information, visit the official *Holocaust Victim Assets Litigation* website at www.swissbankclaims.com.

(See Tax Law, section 13)

**Extension of wage tax credit for zone equivalent areas (ZEA)
(Articles 9-A, 32 and 33)**

The wage tax credit available for certified businesses that provide jobs in a zone equivalent area (ZEA) has been extended for taxable years beginning on or after January 1, 1999. Businesses certified by the commissioners of Economic Development and Labor that satisfy the criteria for the ZEA wage tax credit are now eligible for this credit during the ten-year period immediately following the date of designation as a ZEA. Prior to this extension, the credit expired five years after the ZEA designation.

(See Tax Law, sections 210.19(b)(1), 1456(e)(3), and 1511(g)(2))

Certified capital company (CAPCO) credits extended (Article 33)

The program that provides insurance companies with a credit against their franchise tax for investing in certified capital companies (CAPCOs) has been extended through 2001. This one-year extension is denoted as *Certified Capital Company Program Two* (Program Two).

Insurance companies that participate in Program Two can invest up to \$30 million in CAPCOs and collectively claim credits totaling up to \$30 million. The credit must be claimed over ten years with ten percent allowed each year. Any credits not used can be carried over for an unlimited number of years. The total credit available in any particular taxable year, which is the combination of the ten percent allowed for that year plus any carryovers from prior years, cannot reduce the tax below the fixed dollar minimum tax.

Insurance companies may make investments in CAPCOS under Program Two beginning in 1999. However, they will not be allowed to claim the tax credits until 2001.

The maximum credit allowable for investments in one or more CAPCOs by a particular insurance company or a group of affiliated insurance companies in any one year will be \$8 million in Program Two. However, if the aggregate amount of certified capital (\$30 million) has not been reached sixty days prior to the end of the year, the \$8 million limit will cease to apply for the remainder of the year.

CAPCOs participating in *Certified Capital Company Program One* (which allowed tax credits for 1999 and 2000) are eligible to apply for certification in Program Two. The Superintendent of Insurance is required to start accepting applications for certification for Program Two by November 1, 1999.

(See Tax Law, sections 11 and 1511 (k).)

Alternative fuels credit expanded (Article 9-A)

For taxable years beginning in 2000 or 2001, credit will be allowed for electric vehicles manufactured in New York State or clean-fuel vehicle property which is installed in or manufactured as a part of a motor vehicle in New York State if these vehicles are sold or first leased to a governmental unit during the taxable year. A *governmental unit* means the United States, any state, political subdivision, or possession of the United States, or any agency or instrumentality of any of the foregoing.

To be eligible for the credit, the taxpayer must execute a written contract with a governmental unit for the sale or lease of the vehicles on or before December 31, 1999. In addition, as the result of the production, manufacture, or installation activities relating to these vehicles, at least twenty-five new full-time jobs (excluding those of general executive officers) must be created in New York State. The electric vehicles must be eligible for credit under Internal Revenue Code (IRC) section 30, exclusive of the limitation in IRC section 30(d)(3) regarding property used by governmental units. The clean-fuel property must be eligible for credit under IRC section 179A, exclusive of the limitation in IRC section 179A(e)(5) relating to property used by a governmental unit.

The credit for electric vehicles sold or first leased to a governmental unit is 50% of the incremental cost of producing the vehicles while the credit for clean-fuel vehicle property is 60% of the cost of the property. The total amount of credit allowed a taxpayer for both electric vehicles and clean-fuel vehicle property is capped at \$2.5 million, in the aggregate, for all years.

The credit may not reduce the tax to less than the higher of the tax on the minimum taxable income base or the fixed dollar minimum tax. Any excess credit may be carried over to the following year or years. In lieu of a carryover, any excess credit on electric vehicles or clean-fuel vehicle property sold or first leased to a governmental unit may be refunded.

(See Tax Law, section 210.24.)