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

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Corporation Tax
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1999 Summary of Corporation Tax Legislative Changes Taking Effect in 2000 and After

In 1999, Governor George E. Pataki signed legislation that primarily reduces tax rates, creates new tax credits, and expands current tax credits. This memorandum briefly summarizes the corporation tax legislative changes taking effect in 2000 and after.

Subsidiary Capital Tax Base Exclusions (Article 9-A)

For tax years beginning on or after January 1, 2000, Article 9-A taxpayers will be required to exclude from subsidiary capital (before allocation) 30% of the value of their investment in the stock of, or any indebtedness from, any of their subsidiaries which are subject to tax under Section 186 of the Tax Law (water works companies, gas companies, electric or steam heating, lighting and power companies). For tax years beginning after 2000, 100% of such amounts will be excluded. The exclusion for indebtedness applies only to the extent that such indebtedness is included in subsidiary capital.

Also for tax years beginning on or after January 1, 2000, Article 9-A taxpayers will be required to exclude from their subsidiary capital (before allocation) 100% of the value of their investment in the stock of, or any indebtedness from, any of their subsidiaries which are taxable under Article 32 (banking corporations) or 33 (insurance corporations) of the Tax Law. This exclusion for indebtedness also applies only to the extent that such indebtedness is included in subsidiary capital.

(See Tax Law, section 210.1(e).)

Combined Filing for Air Freight Forwarders (Article 9-A)

For tax years beginning on or after January 1, 2001, the Tax Law has been amended to allow the filing of a combined report under Article 9-A by a corporation principally engaged in aviation and a corporation that is a qualified air freight forwarder with respect to such aviation corporation. A corporation is a *qualified air freight forwarder* with respect to another corporation: (1) if it owns or controls, either directly or indirectly, 100% of the capital stock of the other corporation, or if 100% of its capital stock is owned or controlled, either directly or indirectly, by the other corporation, or if 100% of the capital stock of both corporations is owned or controlled, either directly or indirectly, by the same interests; (2) if it is principally engaged in the business of air freight forwarding; and (3) if its air freight forwarding business is carried on principally with the airline or airlines operated by the affiliated corporation.

Each taxpayer contained in the combined report must elect to have the air freight forwarder(s) included. The election is made by filing a combined report that includes such air freight forwarder(s).

Every corporation included in a combined report under this provision must use the three-factor formula consisting of revenue aircraft arrivals and departures, revenue tons handled, and originating revenues when computing the combined business allocation percentage, the combined alternative business allocation percentage, and the combined Metropolitan Transportation Business Tax Surcharge allocation percentage. (See *Business Allocation Percentage for Aviation Corporations* below.)

(See Tax Law, section 211.4.)

Business Allocation Percentage for Aviation Corporations (Article 9-A)

For tax years beginning on or after January 1, 2001, a corporation principally engaged in aviation is required to include in the numerator of the three allocation factors only 60% of each factor attributable to New York. Accordingly, 40% of the revenue aircraft arrivals and departures, revenue tons handled, and originating revenues are excluded from the numerators of the factors when computing the business allocation percentage and the alternative business allocation percentage.

However, the 40% reductions do not apply when computing the Metropolitan Transportation Business Tax Surcharge (MTBTS) allocation percentage. The numerators of the three MTBTS allocation factors must still contain 100% of each factor attributable to New York.

(See Tax Law, section 210.3 (a)(7).)

Alternative Minimum Tax Rate Reduction (Article 9-A)

For tax years beginning after June 30, 2000, the tax rate on the minimum taxable income base is reduced from 3% to 2 ½%.

(See Tax Law, section 210.1(c)(ii).)

Corporate Acquisitions, Mergers and Consolidations Provisions are Repealed (Article 9-A)

Legislation enacted in 1989 created adverse tax consequences that would result from certain corporate acquisitions, mergers and consolidations. These included the loss of certain credit carryovers, addback of interest expense, loss of net operating loss carryforward, and loss of subsidiary capital status (see TSB-M-89(17)C for details).

The adverse tax consequences created by the 1989 legislation have been eliminated as a result of the repeal of Tax Law sections 208.9(b)(6-a), (12), (13) and (14); 208.9(f)(2-a), (2-b) and (2-c);

208.13; 208.14; 208.15; 208.16; 208.17; 208.18; 210.12(g)(9), (10) and (11); and 210.18(f)(5), (6) and (7) and the amendment of sections 208.4; 208.6; 208.9(a)(2); 210.12-A(c); 210.12(e); 210.12-D(c); and 210.18(e). These changes are effective for taxable years beginning on or after January 1, 2000.

Qualified Emerging Technology Company (QETC) Employment Credit Expanded (Articles 9-A and 22)

For taxable years beginning on or after January 1, 2000, the QETC Employment Credit will be allowed to taxpayers subject to the personal income tax under Article 22 of the Tax Law. The credit will be available to individuals, partners and members of LLCs, and New York S corporation shareholders. The credit is designed to encourage the creation of jobs in a QETC as defined under section 3102-e of the Public Authorities Law.

For taxable years beginning on or after January 1, 2001, certain remanufacturing companies may qualify as QETCs and therefore may be eligible for the QETC Employment Credit. The definition of “emerging technologies” in Public Authorities Law section 3102-e has been broadened to include certain companies that use remanufacturing processes to restore eligible commodities to their original performance standards.

Section 3102-e(1)(b)(5) of the Public Authorities Law provides:

(5) *remanufacturing technologies*, which shall be defined as processes whereby eligible commodities are restored to their original performance standards and are thereby diverted from the solid waste stream, retaining the majority of components that have been through at least one life cycle and replacing consumable portions to enable such commodities to be restored to their original functions. For the purposes of this subdivision, "eligible commodities" shall mean commodities (excluding paper) used in conjunction with or as a part of equipment performing the functions of facsimile machines, photocopiers, printers, duplication equipment, or any combination thereof, including, but not limited to the following: magnetic ink character recognition cartridges, photo conductor assemblies, electrostatic cartridges, thermal imaging cartridges, toner cartridges, ink jet cartridges, and printer cartridges. Provided further, that "eligible commodities" shall also include equipment used to record single frame images on film, where such equipment and film are marketed and sold as a single integrated consumer product, and where such equipment and film may be submitted in whole to a photograph processor for the purposes of processing.

(See Tax Law, section 606(q) and Public Authorities Law, section 3102-e(1)(b)(5).)

Qualified Emerging Technology Company (QETC) Capital Tax Credit Expanded (Articles 9-A and 22)

For taxable years beginning on or after January 1, 2000, the QETC Capital Tax Credit will be allowed to taxpayers subject to the personal income tax under Article 22 of the Tax Law. The credit will be available to individuals, partners and members of LLCs and New York S corporation shareholders. The credit is designed to encourage investment in a QETC, as defined under section 3102-e of the Public Authorities Law, which is certified as a QETC by the Commissioner of Taxation and Finance.

For taxable years beginning on or after January 1, 2001, certain remanufacturing companies may qualify as QETCs. Accordingly, a taxpayer, which makes a qualified investment in a certified QETC that is engaged in remanufacturing technologies, will be eligible for the QETC Capital Tax Credit for taxable years beginning on or after January 1, 2001.

(See Tax Law, section 606(r) and Public Authorities Law, section 3120-e(1)(b)(5).)

Expansion of Farmers' School Tax Credit (Article 9-A)

For tax years beginning on or after January 1, 2001, the statutory definition of *qualified agricultural property*, for purposes of the farmers' school tax credit has been expanded to include land set aside or retired under a federal supply management or soil conservation program. (Note: This amendment continues existing Department policy that such property qualifies for the credit).

In addition, for tax years beginning on or after January 1, 2001, the "base acreage" for purposes of computing the credit may be increased by acreage enrolled or participating in a federal environmental conservation acreage reserve program, pursuant to Title Three of the Federal Agricultural Improvement and Reform Act of 1996.

(See Tax Law, section 210.22.)

New Credit Allowed for the Purchase of an Automated External Defibrillator (Articles 9-A, 32 and 33)

For taxable years beginning on or after January 1, 2001, a taxpayer subject to tax under Article 9-A (business corporations), 32 (banking corporations), and 33 (insurance corporations) may claim a credit for the purchase (other than for resale) of an automated external defibrillator as defined under section 3000-b of the Public Health Law. The amount of the credit is equal to the cost to the taxpayer of the automated external defibrillator purchased during the taxable year. The credit cannot exceed $500 for each unit purchased; however, there is no limit on the number of units for which the credit may be taken. The credit cannot reduce the tax to less than the following minimum taxes:

- the larger of the tax on minimum taxable income base or fixed dollar minimum tax as computed under Article 9-A;
- the fixed minimum tax of $250 computed under Article 32; or
- the fixed tax of $250 under Article 33.

Any amount of the credit not deducted in the current tax year may **not** be carried over to the following year or years. The credit is not refundable. In addition, the credit is not allowed against the metropolitan transportation business tax surcharge (MTA surcharge) under Articles 9-A, 32 or 33.

Section 3000-b(1)(a) of the Public Health Law provides that an:

> *Automated external defibrillator* means a medical device, approved by the United States food and drug administration, that : (i) is capable of recognizing the presence or absence, in a patient, of ventricular fibrillation and rapid ventricular tachycardia; (ii) is capable of determining, without intervention by an operator, whether defibrillation should be preformed on the patient; (iii) upon determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to the patient's heart; and (iv) then, upon action by the operator, delivers an appropriate electrical impulse to the patient's heart to perform defibrillation.

(See Tax Law, section 210.25.)

EDZ Wage Tax Credit and ZEA Wage Tax Credit Increased (Articles 9-A, 32 and 33)

For taxable years beginning on or after January 1, 2001, the wage tax credit for wages paid in Economic Development Zones (EDZs) and Zone Equivalent Areas (ZEAs) increases to $3,000 for targeted employees and $1,500 for other individuals. In addition, for taxable years beginning on or after January 1, 2001, the number of years for which the ZEA wage tax credit can be claimed has been increased, from two years to five years.

(See Tax Law, sections 210.19 and 1456(e) and 1511(g).)

Tax Rate Reductions for Banking Corporations (Article 32)

The tax rate on allocated entire net income for tax years beginning before July 1, 2000, is 9%. This rate is being reduced as follows:

Tax Years Beginning	Tax Rate
After June 30, 2000, and before July 1, 2001..................	8 ½ %
After June 30, 2001, and before July 1, 2002..................	8 %
After June 30, 2002...	7½ %

These tax rate reductions will not be reflected in the computation of the MTA surcharge. The MTA surcharge is to be computed as if the tax rate reductions had not occurred.

(See Tax Law, sections 1455(a) and 1455-B.1.)

Reduction in Section 1505 Limitation for Non-Life Insurance Companies (Article 33)

For tax years beginning before July 1, 2000, the rate for the limitation on tax under section 1505 (the cap) for non-life insurance companies is 2.6% of gross direct premiums. This cap is being reduced as follows:

Tax Years Beginning	Rate
After June 30, 2000, and before July 1, 2001..................	2.4 %
After June 30, 2001, and before July 1, 2002..................	2.2 %
After June 30, 2002...	2 %

These tax rate reductions will not be reflected in the computation of the MTA surcharge. The MTA surcharge is to be computed as if the tax rate reductions had not occurred.

(See Tax Law, sections 1505(a)(1) and 1505-A(a).)

Repeal of Section 1502-a (Article 33)

For tax years beginning on or after January 1, 2001, section 1502-a of the Tax Law is repealed. Under section 1502-a, the State Insurance Fund computes its Article 33 tax liability under section 1505 of the Tax Law instead of under sections 1502 and 1510. The repeal of this provision will result in the State Insurance Fund computing its Article 33 franchise tax liability under sections 1502 and 1510, which is the same manner as its competitors.

(See Tax Law, section 1502-a.)

Tax Rate Reductions for Insurance Corporations (Article 33)

The tax rate on allocated entire net income for tax years beginning before July 1, 2000, is 9%. This rate is being reduced as follows:

Tax Years Beginning	Tax Rate
After June 30, 2000, and before July 1, 2001	8 ½ %
After June 30, 2001, and before July 1, 2002	8 %
After June 30, 2002	7½ %

These tax rate reductions will not be reflected in the computation of the MTA surcharge. The MTA surcharge is to be computed as if the tax rate reductions had not occurred.

(See Tax Law, sections 1502(a)(1), and 1505-A(a).)

Local Telephone Companies - Excess Dividends Tax (Article 9, Section 183)

For tax years beginning on or after January 1, 2002, local telephone companies with no more than one million access lines in New York State, are not subject to the excess dividends tax imposed under Article 9, section 183 of the Tax Law.

Local telephone companies are those telephone companies which provide or furnish telecommunication services for hire, where the service consists of carrier access service; or where the service originates and terminates within the same local access and transport area (LATA), or LATA-like Rochester nonassociated independent area (LATA-like area).

While local telephone companies will not be subject to the Section 183 excess dividends tax, they remain subject to the Section 183 franchise tax based on the net value of issued capital stock employed in New York State. This tax is reported on Form CT-183, *Transportation and Transmission Corporation Franchise Tax Return on Capital Stock*. Since the tax imposed under Section 183 is payable in advance, this amendment will first affect the Form CT-183 that will be due on March 15, 2002. That return is based on the corporation's 2001 calendar year.

Local telephone companies are also subject to the tax on gross earnings imposed under Section 184 of the Tax Law, which is reported on Form CT-184, *Transportation and Transmission Corporation Franchise Tax Return on Gross Earnings*.

(See Tax Law, section 183.3)

Gas Import Tax (Article 9)

Section 189.1 of the Tax Law was expanded to **exclude** an electric corporation, as defined in section 2.13 of the Public Service Law, from the imposition of the tax on the importation of natural gas. Also, section 189.6 of the Tax Law was amended to exempt from tax, gas service used to generate electricity for sale. This exemption does not include gas service sold to a co-generation facility, as defined in section 2.2-a of the Public Service Law, or a qualified facility which is a co-generation facility as defined by section 201 of the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617), and used to generate electricity for sale directly to a public utility which is subject to the jurisdiction of the Public Service Commission as to rates on sales to customers. These changes are effective for taxable months beginning on or after January 1, 2001.