

Summary of Personal Income Tax Legislative Changes Enacted in 2003

This memorandum contains brief summaries of the personal income tax changes that are part of the 2003-2004 New York State budget bill (Chapter 62 of the Laws of 2003) and the New York City budget bill (Chapter 63 of the Laws of 2003).

New York State personal income tax

For tax years beginning in 2003, 2004, and 2005, the personal income tax rates are increased on certain taxable incomes. The increases were effectuated by creating two new tax brackets. The highest tax bracket is now 7.7 percent for all taxpayers who have taxable incomes in excess of \$500,000. The second highest tax bracket is initially set at 7.5 percent for 2003 and decreases by .125 percent each year for tax years 2004 and 2005. For tax years beginning after 2005, the tax rates revert to the rates in effect for 2002 (i.e., the highest rate will be 6.85%). As a result of the amendments, the New York State personal income tax rates for tax years beginning in 2003 are as follows:

Married filing jointly and qualifying widow(er)

If the New York taxable income is:	The tax is:
Not over \$16,000.....	4% of the New York taxable income
Over \$16,000 but not over \$22,000.....	\$640 plus 4.5% of excess over \$16,000
Over \$22,000 but not over \$26,000.....	\$910 plus 5.25% of excess over \$22,000
Over \$26,000 but not over \$40,000.....	\$1,120 plus 5.9% of excess over \$26,000
Over \$40,000 but not over \$150,000....	\$1,946 plus 6.85% of excess over \$40,000
Over \$150,000 but not over \$500,000..	\$9,481 plus 7.5% of excess over \$150,000
Over \$500,000.....	\$35,731 plus 7.7% of excess over \$500,000

Single, married filing separately, and estates and trusts

If the New York taxable income is:	The tax is:
Not over \$8,000.....	4% of the New York taxable income
Over \$8,000 but not over \$11,000.....	\$320 plus 4.5% of excess over \$8,000
Over \$11,000 but not over \$13,000.....	\$455 plus 5.25% of excess over \$11,000
Over \$13,000 but not over \$20,000.....	\$560 plus 5.9% of excess over \$13,000
Over \$20,000 but not over \$100,000....	\$973 plus 6.85% of excess over \$20,000
Over \$100,000 but not over \$500,000..	\$ 6,453 plus 7.5% of excess over \$100,000
Over \$500,000.....	\$36,453 plus 7.7% of excess over \$500,000

Head of household

If the New York taxable income is:	The tax is:
Not over \$11,000.....	4% of the New York taxable income
Over \$11,000 but not over \$15,000.....	\$440 plus 4.5% of excess over \$11,000
Over \$15,000 but not over \$17,000.....	\$620 plus 5.25% of excess over \$15,000
Over \$17,000 but not over \$30,000.....	\$725 plus 5.9% of excess over \$17,000
Over \$30,000 but not over \$125,000....	\$1,492 plus 6.85% of excess over \$30,000
Over \$125,000 but not over \$500,000..	\$8,000 plus 7.5% of excess over \$125,000
Over \$500,000.....	\$36,125 plus 7.7% of excess over \$500,000

(Tax Law sections 601(a), (b), and (c))

Tax benefit recapture

For tax years beginning on or after January 1, 2003, and before 2006, two additional levels of supplemental tax have been added to the tax table benefit recapture provisions which are intended to recapture the tax benefit a taxpayer receives from the tax rates that are below the highest rate in calculating taxes using the tax tables. These new temporary levels of supplemental taxes are imposed on: (1) resident individuals and estates and trusts that have New York adjusted gross incomes over \$150,000 and with taxable incomes that are subject to the second highest rate of tax; and (2) resident individuals and estates and trusts that have New York adjusted gross incomes over \$500,000.

(Tax Law section 601(d))

Underpayment of estimated tax

The Tax Law changes described in this memorandum may affect the amount of estimated tax that individuals, estates and trusts will be required to pay for 2003.

In order to avoid the penalty for underpayment of estimated tax for tax year 2003, the total amount of estimated tax and withholding tax paid must be:

- at least 90% (66 2/3% for farmers and fishermen) of the amount of income tax due as shown on your return for 2003 (or 90% of the tax due if no return was filed); or
- 100% of the tax shown on your return for 2002 (110% of that amount if you are not a farmer or a fisherman and the New York adjusted gross income shown on that return is more than \$150,000 or, if married filing separately for 2003, more than \$75,000). To qualify for this provision, you must have filed a return for 2002 and it must have been for a full 12-month year.

Further, the Tax Law now requires that, in determining whether 100% (or 110%, if applicable) of the tax shown on the 2002 return has been paid, taxpayers must recompute their 2002 tax using the 2003 tax rates and rules.

Further details will be addressed in a future TSB-M since this provision is the subject of pending legislation.

Visit the Tax Department's Web site at www.nystax.gov for Tax Law changes that may have occurred after this TSB-M was printed.

(Tax Law, section 685(c)(3)(B))

Use tax

A new line will be included on the personal income tax return for taxpayers to report unpaid sales and compensating use taxes imposed pursuant to Articles 28 and 29 of the Tax Law. These taxes apply in situations where New York State or local sales tax is not collected at the time a purchase of taxable property or a taxable service is made.

Modification for decoupling from federal bonus depreciation

Modifications to federal adjusted gross income are required for property placed in service on or after June 1, 2003, that qualified for the special bonus depreciation allowance created by the federal *Job Creation and Worker Assistance Act of 2002*, and enhanced by the federal *Jobs and Growth Tax Relief Reconciliation Act of 2003*, and for which this allowance was claimed for federal income tax purposes. These modifications apply to qualified property other than (1) qualified resurgence zone property, and (2) qualified New York Liberty Zone property described in Internal Revenue Code (IRC) section 1400L(b)(2) (without regard to subparagraph (C)(i) of such paragraph).

Further details will be addressed in a future TSB-M, since this provision is the subject of pending legislation.

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(Tax Law, sections 612(b)(8), 612(c)(16), 612(k), 612(l), and 612(m))

Modification for sport utility vehicle deduction

For tax years beginning on or after January 1, 2003, in determining New York adjusted gross income, taxpayers, except an eligible farmer, must add to federal adjusted gross income the amount deducted under IRC section 179 for a sport utility vehicle that weighs in excess of 6,000 pounds. IRC section 179 relates to an election to expense certain depreciable assets used in an active trade or business. An eligible farmer is a taxpayer who qualifies as an eligible farmer for purposes of the New York State farmers' school tax credit.

A related modification has been added to allow a subtraction for any recapture amount included in federal adjusted gross income pursuant to IRC section 179(d) attributable to the federal deduction for a sport utility vehicle as described above. The modification may be made only for a vehicle for which the addition modification described above was made in the current year or a prior tax year.

Since the Tax Law does not contain a provision for depreciation for a sport utility vehicle in lieu of IRC section 179, amounts required to be added to federal adjusted gross income are not allowed as a deduction in computing New York adjusted gross income in subsequent years. As such, the IRC section 179 expense benefit is permanently lost in computing New York adjusted gross income.

Additionally, no modification was made to the Tax Law to adjust any gain or loss for federal income tax purposes upon the subsequent sale or disposition of the property subject to the addition modification. As such, no adjustment is made to the federal gain or loss in computing New York adjusted gross income.

For purposes of these modifications, a sport utility vehicle means any four wheeled passenger vehicle which is manufactured primarily for use on public streets, roads, and highways. However, such term does not include (1) any ambulance, hearse or combination ambulance-hearse used by the taxpayer directly in a trade or business; (2) any vehicle used by a taxpayer directly in the trade or business of transporting persons or property for compensation or hire; or (3) any truck, van, or motor home. A truck is defined as any vehicle that has a primary load carrying device or container attached, or is equipped with an open cargo area or covered box not readily accessible from the passenger compartment.

(Tax Law, sections 612(b)(36) and 612(c)(37))

Related party modifications

For tax years beginning on or after January 1, 2003, in computing New York adjusted gross income, taxpayers are required to modify federal adjusted gross income with respect to certain royalty payments made with respect to the use of intangible property by a related member or members. Taxpayers are also required to modify federal adjusted gross income with respect to certain interest payments made to a related member or members or interest payments received from a related member or members.

Further details will be addressed in a future TSB-M, since this provision is the subject of pending legislation.

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(Tax Law, sections 612(r) and 208.9(o))

Filing fees for limited liability companies and limited liability partnerships

Domestic and foreign limited liability companies that are treated as partnerships for federal income tax purposes, limited liability partnerships subject to Article 8-B of the Partnership Law and foreign limited partnerships, that have any income derived from New York sources, are required to file returns with the department and pay a filing fee with the return. Effective for tax years beginning on or after January 1, 2003, the prescribed filing and payment is now due within thirty days of the last day of the tax year.

In addition, effective for tax years beginning in 2003 and 2004, the filing fees imposed have been increased. The amount of the filing fee has been increased to \$100 multiplied by the total number of members or partners of the limited liability company, limited liability partnership, or foreign limited partnership. The minimum amount of the fee has been increased to \$500 and the maximum amount of the fee has been increased to \$25,000.

Also, effective for tax years beginning in 2003 and 2004, single member limited liability companies that have income from New York State sources and are treated as disregarded entities for federal income tax purposes are subject to a return filing requirement and a filing fee. The fee is \$100 for each entity. The return and payment are due within 30 days of the last day of the tax year.

(Tax Law, section 658(c)(3))

Estimated tax payments required by partnerships, limited liability companies, and New York S corporations

Effective for tax years ending after December 31, 2002, a partnership, limited liability company that is treated as a partnership for federal income tax purposes, and New York S corporation, that has income from New York sources, is required to pay estimated taxes on behalf of its C corporation partners or members, and nonresident individual partners, members, or shareholders on their distributive or pro rata share of the respective entity's income. Estimated tax for nonresident individual partners and shareholders means a partner's or shareholder's distributive share or pro rata share of the entity's income derived from New York sources for the year less the partner's or shareholder's share of certain partnership related deductions allocated to New York State, multiplied by the highest rate of tax under section 601 of the Tax Law for the year (e.g., 7.7% for 2003). Estimated tax for corporate partners means a corporate partner's distributive share of the partnership's income derived from New York sources for the year multiplied by the highest rate of tax under section 210.1(a) of the Tax Law for the year (e.g., 7.5% for 2003). This amount is reduced by the partner's distributive share or shareholder's pro rata share of any allowable credits from the partnership or New York S corporation.

Further details will be addressed in a future TSB-M since this provision is the subject of pending legislation.

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(Tax Law, sections 658(c)(4), 685(c) and 686(i))

Estimated tax on sale of real estate by nonresident

Effective for sales or transfers of real property occurring on or after September 1, 2003, nonresident individuals, estates and trusts who sell or transfer certain real property located within New York State must pay estimated tax to the New York State Tax Department. The amount of the estimated tax is determined by multiplying the amount of the gain, if any, for federal income tax purposes from the sale or transfer of the real property by the highest applicable rate of New York State personal income tax in effect for the tax year. For tax years beginning in 2003, the highest effective rate of tax is 7.7%.

Further details will be addressed in a future TSB-M since this provision is the subject of pending legislation.

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(Tax Law, section 663)

Minimum interest rate reduced

Sections 171, twenty-sixth(a) and 697(j) of the Tax Law were amended to remove the fixed minimum interest rate payable on overpayments of tax. Previously, the minimum rate of interest payable on overpayments of tax was 6%. Under the new law, the rate is the sum of the federal short-term interest rate as provided under section 697(j)(3) of the Tax Law plus two percentage points. This provision takes effect on October 1, 2003, for interest allowable and due on refunds or any other amounts that remain or become overpaid on or after October 1, 2003.

(Tax Law, sections 171, twenty-sixth(a) and 697(j)(1))

New York City personal income tax

The New York City personal income tax rates for residents, imposed under section 11-1701(a) of the Administrative Code of the City of New York (the Code), and the 2.85% minimum income tax imposed under section 11-1702 of the Code have been extended to tax years beginning before 2006. The 14% additional tax imposed under section 11-1704.1 of the Code has been extended through 2005.

However, a new section 1304-D has been added to the Tax Law to authorize New York City to increase the rates of tax imposed for tax years beginning after 2002 and before 2006 by increasing the tax rate brackets and adding two new tax brackets. For the tax years these higher rates are

imposed, the city cannot impose the rates contained in section 11-1701(a) of the Code or the 14% additional tax under section 11-1704.1 of the Code.

For tax years beginning in 2003 and before 2006, the highest tax bracket under section 1304-D is 4.45 percent for all taxpayers who have taxable incomes in excess of \$500,000. The second highest bracket is set at 4.25 percent for tax years beginning in 2003 and decreases to 4.175 percent for tax years beginning in 2004 and 4.05 percent for tax years beginning in 2005. On June 30, 2003, New York City passed a local law to impose the tax rates contained in section 1304-D. Accordingly, the New York City personal tax rates for tax years beginning in 2003 are as follows:

Married filing jointly and qualifying widow(er)

If the city taxable income is:	The tax is:
Not over \$21,600.....	2.907% of the city taxable income
Over \$21,600 but not over \$45,000.....	\$628 plus 3.534% of excess over \$21,600
Over \$45,000 but not over \$90,000.....	\$1,455 plus 3.591% of excess over \$45,000
Over \$90,000 but not over \$150,000....	\$3,071 plus 3.648% of excess over \$90,000
Over \$150,000 but not over \$500,000...	\$5,260 plus 4.25% of excess over \$150,000
Over \$500,000.....	\$20,135 plus 4.45% of excess over \$500,000

Single, married filing separately, and estates and trusts

If the city taxable income is:	The tax is:
Not over \$12,000.....	2.907% of the city taxable income
Over \$12,000 but not over \$25,000.....	\$349 plus 3.534% of excess over \$12,000
Over \$25,000 but not over \$50,000.....	\$808 plus 3.591% of excess over \$25,000
Over \$50,000 but not over \$100,000...	\$1,706 plus 3.648% of excess over \$50,000
Over \$100,000 but not over \$500,000..	\$3,530 plus 4.25% of excess over \$100,000
Over \$500,000.....	\$20,530 plus 4.45% of excess over \$500,000

Head of household

If the city taxable income is:	The tax is:
Not over \$14,400.....	2.907% of the city taxable income
Over \$14,400 but not over \$30,000.....	\$419 plus 3.534% of excess over \$14,400
Over \$30,000 but not over \$60,000.....	\$970 plus 3.591% of excess over \$30,000
Over \$60,000 but not over \$125,000...	\$2,047 plus 3.648% of excess over \$60,000
Over \$125,000 but not over \$500,000..	\$4,418 plus 4.25% of excess over \$125,000
Over \$500,000.....	\$20,356 plus 4.45% of excess over \$500,000

(Tax Law sections 1301-A, 1304, 1304-B, and 1304-D; Administrative Code of the City of New York sections 11-1701(a), 11-1702, and 11-1704.1)

Tax table benefit recapture

For tax years beginning on or after January 1, 2003, and before 2006, a supplemental tax is added to recapture the tax benefit a taxpayer receives from the tax rates that are below the highest rate in calculating taxes using the city tax tables. The supplemental tax is imposed on: (1) New York City resident individuals and estates and trusts who have New York adjusted gross income over \$150,000 with a taxable income subject to the second highest rate of tax; and (2) New York City resident individuals, estates and trusts who have New York adjusted gross income over \$500,000. These supplemental taxes only apply to a tax year in which New York City imposes the personal income tax rates authorized under section 1304-D of the Tax Law.

(Tax Law section 1304-D(b))