

## **Summary of Personal Income Tax Legislative Changes Enacted in 2004**

This memorandum contains brief summaries of the personal income tax changes that are part of the 2004-2005 New York State budget bills (Chapters 58, 59, and 60 of the Laws of 2004) and Chapter 273 of the Laws of 2004 (relating to donations for prostate cancer research, detection, and education).

### **Low-income housing credit**

The New York State low-income housing tax credit program was established in 2000 to promote the construction and rehabilitation of low-income housing in New York State. The credit is similar to the federal low-income housing credit and is administered by the New York State Division of Housing and Community Renewal. The Public Housing Law has been amended to increase the statewide aggregate dollar amount of low-income housing tax credits that may be used for qualifying low-income housing projects from \$4 million to \$6 million per year.

This provision takes effect immediately.

(Public Housing Law, section 22)

### **Alternative fuels credit**

Section 606(p) of the Tax Law, relating to the alternative fuels credits, has been amended to extend the credits for one year. The credits are now available for qualifying property placed in service in tax years beginning before January 1, 2005. Prior to the amendments, the credits were only available for property placed in service in tax years beginning before January 1, 2004. The credits apply to electric vehicles, qualified hybrid vehicles, clean-fuel vehicle property, and clean-fuel vehicle refueling property. In addition, for tax years beginning on or after January 1, 2004, a qualified hybrid vehicle only qualifies for the alternative fuels credit for hybrid vehicles. For tax years beginning prior to January 1, 2004, a qualified hybrid vehicle could qualify for either the alternative fuels credit for qualified hybrid vehicles or the alternative fuels credit for clean-fuel vehicle property. For additional information, see TSB-M-04(3.1)I, *Amendments to the Alternative Fuels Credits and Exemptions*.

This provision takes effect immediately and applies as described above.

(Tax Law, section 606(p))

## **Hearing rights**

The Tax Law has been amended to change Tax Department practice with respect to the availability of hearing rights in certain cases. Specifically, there are no longer formal prepayment hearing rights where tax, interest, and/or penalty: (1) is owed due to mathematical or clerical errors on the return; (2) is owed due to changes made to the taxpayer's federal return by the Internal Revenue Service or other competent federal authority (federal changes); or (3) is owed because the taxpayer has not paid all or part of the amount of the tax that the taxpayer has shown as due on the taxpayer's return. However, after payment of the tax, interest, and/or penalty owed, the taxpayer may still file a timely claim for refund or credit; and, if the Tax Department denies the claim, the taxpayer may then apply for a conciliation conference in the Bureau of Conciliation and Mediation Services or petition for a hearing in the Division of Tax Appeals.

These amendments apply to all taxes administered by the Tax Department, including New York State, city of New York, and Yonkers personal income taxes. The amendments do not apply to the Tax on Mortgages (Article 11 of the Tax Law) or the Stock Transfer Tax (Article 12 of the Tax Law).

These amendments take effect immediately and apply to notice and demands and notices of additional tax due issued on or after December 1, 2004.

(Tax Law, sections 173-a, 681(d), 682(a), and 684(c)), 1081(d), 1082(a) and 1084(c))

## **Sales of stock in a cooperative housing corporation**

For tax years beginning on or after January 1, 2004, the *New York source income* (the numerator of the income percentage) of a nonresident will include the gain, to the extent included in federal adjusted gross income, from the sale, conveyance, or other disposition (sales or transfers) of shares in a cooperative housing corporation. The gain will be includible in New York source income if the gain is in connection with the grant or transfer of a proprietary leasehold by the owner of the shares, where the cooperative unit represented by these shares is located in New York State. The amendment is applicable whether the nonresident owns the shares in the cooperative housing corporation directly, by a partnership, in trust, or otherwise. The gain must be included in New York source income whether or not the cooperative unit represented by such shares is used in a trade or business.

In addition, a special estimated personal income tax must be paid by nonresidents on the gain from sales or transfers that occur on or after November 18, 2004. 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 shares by the highest applicable rate of New York State personal income tax in effect for the tax year. The amount of the estimated personal income tax due must be paid to the New York State Tax Department within 15 days of the delivery of the instrument effecting the sale or transfer.

Estimated personal income tax is not required to be paid where:

- The transferor or transferee is an agency or authority of the United States of America, an agency or authority of the state of New York, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
- The proprietary leasehold being transferred in connection with the sale, conveyance, or other disposition of the shares of stock in a cooperative housing corporation is a principal residence of the seller or transferor within the meaning of Internal Revenue Code section 121.

For additional information, see TSB-M-04(5)I.

(Tax Law, sections 631 and 663)

### **Designation of Empire Zones extended**

The General Municipal Law has been amended to extend the date areas are designated as an Empire Zone to March 31, 2005. Prior to this change, the designation of areas as Empire Zones would have expired on September 13, 2004.

This amendment took effect on August 20, 2004.

(General Municipal Law, Section 969 (a))

### **Film production credits**

New sections 24 and 606(gg) have been added to the Tax Law, and section 606(i) has been amended, to provide for an Empire State film production credit. The credit is provided to a taxpayer that is a qualified film production company, or a partner of a partnership (including a member of a limited liability company that is treated as a partnership for federal income tax purposes) or a shareholder of a New York S corporation that is a qualified film production company.

If the taxpayer satisfies certain criteria regarding a threshold level of activity in New York State, the credit equals 10% of qualified production costs paid or incurred in the production of certain qualified films and television shows. The credit is allowed for the tax year in which production of the film is completed.

If the amount of the credit exceeds the taxpayer's tax for the year, 50% of the excess will be treated as an overpayment of tax to be credited or refunded (without interest) and the balance not credited or refunded will be carried over to the next succeeding tax year. Any amount of the credit carried over to the next succeeding tax year that exceeds the taxpayer's tax for that year will be credited or refunded (without interest).

The amendment also authorizes the city of New York to adopt local laws to allow a film production credit against the city of New York personal income tax. The city of New York film production credit must be substantially identical to the Empire State film production credit. However, the percentage of qualified production costs used to calculate the credit is 5%. At the time this TSB-M was written, the city of New York had not amended its local law to provide for the credit.

In addition, there is an annual cap of \$25 million on the aggregate amount of New York State credits allowed and, if enacted, an annual cap of \$12.5 million on the aggregate amount of city of New York credits allowed. The Empire State Film Production Credit Program will be administered by the Department of Economic Development's Governor's Office for Motion Picture and Television Development. The city of New York Film Production Credit Program would be administered by the Mayor's Office of Film, Theater and Broadcasting. If the total amount of allocated credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for that year, the excess will be treated as having been applied for on the first day of the subsequent year. For more information about this credit, contact the New York State Governor's Office for Motion Picture and Television Development by e-mail at [nyfilm@empire.state.ny.us](mailto:nyfilm@empire.state.ny.us) or by calling (212) 803-2330.

These provisions take effect immediately and apply to tax years beginning on or after January 1, 2004, with respect to qualified production costs paid or incurred on or after that date. However, no credit can be claimed for a qualified film completed on or after August 20, 2008.

(Tax Law, sections 24, 606(gg), 1310(f))

### **City of New York offsets**

A new section 171-l has been added to the Tax Law to authorize the Commissioner of Taxation and Finance to offset certain New York State tax overpayments against city of New York tax warrant judgment debts arising from docketed tax warrants for unpaid city of New York taxes due under Title 11 of the Administrative Code of the City of New York.

These provisions take effect immediately.

(Tax Law, section 171-l)

### **City of New York earned income credit**

Effective for tax years beginning on or after January 1, 2004, a new city of New York earned income credit is allowed against the city of New York personal income tax. The credit is available to city of New York residents and part-year residents. For a city of New York resident, the credit is equal to 5% of the federal earned income credit allowed for the same tax year. For a part-year resident, the credit is equal to 5% of the federal earned income credit allowed for the same tax year multiplied by a fraction, the numerator of which is the taxpayer's city of New York adjusted gross income for the period of residence, and the denominator of which is the taxpayer's city of New York adjusted gross income computed as if the taxpayer were a city

of New York resident for the entire tax year. This credit is in addition to any New York State credits. (Note: Because of the differences in computation methods, if the taxpayer meets the conditions to qualify for the city of New York earned income credit, the taxpayer will have a city of New York earned income credit amount even if the taxpayer's New York State earned income credit amount is zero.)

(Tax Law, section 1310; Administrative Code of the City of New York, section 11-1706(d))

### **Prostate cancer research, detection, and education fund**

For tax years beginning on or after January 1, 2004, new section 630 has been added to the Tax Law to allow personal income tax return filers to make gifts on their returns to the prostate cancer research, detection, and education fund. The gift can be any whole dollar amount and will not reduce the amount of tax owed.

In addition, section 95-e of the State Finance Law was amended to provide that New York State will match the gifts made by taxpayers to the fund dollar for dollar.

(Tax Law, section 630; State Finance Law, 95-e)

### **Long-term care insurance credit**

For tax years beginning on or after January 1, 2004, the long-term care insurance credit has been increased from 10% of the premiums paid during the tax year to 20% of the premiums paid during the tax year.

(Tax Law, 606(aa))

### **Qualified emerging technology company (QETC) employment credit and QETC capital tax credit expanded**

Effective August 20, 2004, certain biotechnology companies may qualify as QETCs and therefore may be eligible for the QETC employment credit. In addition, taxpayers that make a qualified investment in a QETC may be eligible for the QETC capital tax credit. The definition of *emerging technologies* in Public Authorities Law section 3102-e has been broadened to include certain companies that use biotechnologies involving the scientific manipulation of living organisms to produce products conducive to improving the lives and health of plants, animals, and humans.

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

(5) biotechnologies, which shall be defined as technologies involving the scientific manipulation of living organisms, especially at the molecular and/or the sub-molecular genetic level, to produce products conducive to improving the lives and health of plants, animals, and humans; and the associated scientific research, pharmacological, mechanical and computational applications and services connected with these improvements. Activities included with such applications and services shall include, but not be limited to, alternative mRNA splicing, DNA sequence amplification, antigenetic switching, bioaugmentation, bioenrichment, bioremediation, chromosome walking, cytogenetic engineering, DNA diagnosis, fingerprinting, and sequencing, electroporation, gene translocation, genetic mapping, site-directed mutagenesis, bio-transduction, bio-mechanical and bio-electrical engineering, and bio-informatics; . . .

For additional information on these credits, see TSB-M-00(2)I.

(Public Authorities Law, section 3102-e(1)(b)(5); Tax Law, section 606 (r))