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Income Tax
June 9, 2008

Federal Economic Stimulus Act of 2008 – Effect on Personal Income Tax

This memorandum explains how certain provisions of the Economic Stimulus Act of 2008 (hereinafter, the Act) affect the personal income tax. These provisions are the federal economic stimulus payments (rebate checks), the 50% special depreciation allowance under Internal Revenue Code (IRC) section 168(k), and the expensing rule under IRC section 179.

Federal economic stimulus payments and New York filing requirements

Federal economic stimulus payments (rebate payments) made during 2008 as a result of the Act will not be subject to personal income tax.

Taxpayers who file a 2007 federal return **solely** to get the rebate payment (and are not required to file for any other reason) are not required to file a 2007 New York tax return.

Taxpayers who amend a previously filed 2007 federal return **solely** to include nontaxable benefits to reach the $3,000 qualifying income level to get the rebate (and are not amending for any other reason) do **not** need to file an amended 2007 New York tax return.

Fifty percent special depreciation allowance

For federal income tax purposes, the Act amends IRC section 168(k) to allow a taxpayer, in computing his or her federal gross income, to depreciate 50% of the adjusted basis of certain qualified property in the year that the property was placed in service. To qualify for the 50% special depreciation allowance under the new federal law, the qualified property must be placed in service after December 31, 2007, but generally before January 1, 2009.

New York adjusted gross income is the individual's federal adjusted gross income, as defined in the IRC for the tax year, with modifications allowed under New York State Tax Law sections 612(b) and 612(c). Tax Law sections 612(b)(8) and 612(c)(16) require modifications to federal adjusted gross income for property placed in service on or after June 1, 2003, that qualifies for the 50% special depreciation allowance under IRC section 168(k), when that allowance is claimed for a tax year beginning after 2002. The modifications apply to qualified property except for (1) qualified resurgence zone property described in Tax Law section 612(m) (defined below), and (2) qualified New York Liberty Zone property described in IRC section 1400L(b)(2) (without regard to subparagraph (C)(i) of such paragraph).

Accordingly, in computing New York adjusted gross income, a taxpayer must add to federal adjusted gross income the total amount of the depreciation deduction for qualified section 168(k) property allowable under IRC section 167. The taxpayer must also subtract from federal adjusted gross income the depreciation deduction for qualified property allowable under IRC section 167 as if the property did not qualify for the federal 50% special depreciation allowance under IRC section 168(k)(2) (that is, the amount of depreciation allowed under IRC section 167 as that section would have applied to the property had it been acquired on September 10, 2001).

When there is a disposition of a property for which the modifications described above have been made, a modification must be made to reflect the difference, if any, in depreciation allowable for federal and New York purposes.

Definitions. *Qualified resurgence zone property* means qualified property described in IRC section 168(k) for which substantially all of the use is in the resurgence zone in the active conduct of a trade or business by the taxpayer in the zone, and the original use in the zone commences with the taxpayer on or after January 1, 2003.

The *resurgence zone* means the area of New York County bounded on the south by a line running from the intersection of the Hudson River with the Holland Tunnel, and running from there east to Canal Street, then running along the centerline of Canal Street to the intersection of the Bowery and Canal Street, running from there in a southeasterly direction diagonally across Manhattan Bridge Plaza, to the Manhattan Bridge and along the centerline of the Manhattan Bridge to the point where the centerline of the Manhattan Bridge would intersect with the easterly bank of the East River, and bounded on the north by a line running from the intersection of the Hudson River with the Holland Tunnel and running from there north along West Avenue to the intersection of Clarkson Street then running east along the centerline of Clarkson Street to the intersection of Washington Avenue, then running south along the centerline of Washington Avenue to the intersection of West Houston Street, then east along the centerline of West Houston Street, then at the intersection of the Avenue of the Americas continuing east along the centerline of East Houston Street to the easterly bank of the East River.

Q*ualified New York Liberty Zone property* is that property as described by IRC section 1400L(b)(2).

The *New York Liberty Zone* was established by the federal Job Creation and Worker Assistance Act of 2002. That Act defines the New York Liberty Zone as the area located on or south of Canal Street, East Broadway (east of its intersection with Canal Street), or Grand Street (east of its intersection with East Broadway) in the Borough of Manhattan in the city of New York.

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

Section 179 expensing deduction

For federal income tax purposes, the Act allows a qualifying business to expense up to $250,000 of IRC section 179 property purchased by the taxpayer in a tax year beginning in 2008. Prior to the Act, the 2008 expensing limit for IRC section 179 property would have been

$128,000. The $250,000 amount provided under the new federal law is reduced if the cost of all IRC section 179 property placed in service by the taxpayer during the tax year exceeds $800,000.

New York adjusted gross income is the individual's federal adjusted gross income as defined in the Internal Revenue Code (IRC) for the tax year, with modifications allowed under Tax Law sections 612(b) and 612(c). Tax Law section 612(b)(36) requires that a taxpayer, with the exception of an eligible farmer as defined by Tax Law section 606(n), make an addition modification for the amount of any deduction claimed under IRC section 179 for a sport utility vehicle with a vehicle weight in excess of 6000 pounds. Also, Tax Law section 612(c)(37) requires a taxpayer to subtract from federal adjusted gross income any amount required to be recaptured pursuant to IRC section 179(d) with respect to sport utility vehicles.

There are no other modifications to federal adjusted gross income required for IRC section 179 property. Accordingly, except with respect to sport utility vehicles, New York conforms to the IRC section 179 expensing provision for personal income tax purposes.

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