NEW YORK STATE | Department of Taxation and Finance

Important:

The New York State and New York City minimum income taxes were repealed, effective for tax years beginning on or after January 1, 2014.

As a result, this TSB-M is obsolete and cannot be relied upon for tax years on or after that date insofar as the TSB-M addresses matters relating to the minimum income tax.

[See, Part J of Chapter 59 of the Laws of 2014]

The TSB-M begins on page 2 below.

Insert added on April 7, 2023.

Modifications for Personal Income Tax and Minimum Income Tax Purposes in Respect to Capital Gain Due to Changes Contained in the Federal Revenue Act of 1978.

The capital gains amendments contained in the Federal Revenue Act of 1978 are effective November 1, 1978. Since the gains from those sales made in November and December of 1978 will be reflected on the tax returns to be filed for the calendar year 1978, the State Tax Commission has adopted the following interpretation of the existing law.

Personal Income Tax

The Federal Revenue Act of 1978 revised the deduction for net capital gains (excess of net long-term capital gain over net short-term capital loss). The new law reduces net capital gains by 60% instead of 50% on all sales and exchanges made after October 31, 1978. Currently, under New York's income tax law, 60% of all net capital gains are taxed instead of 50%. In order to arrive at the amount includible in New York adjusted gross income up to the 60%, a modification of Federal adjusted gross income is required which adds back 20% of the 50% reduction.

Section 612(b)(11) of the Tax Law provides for the additional amount of taxable gains in the following terms:

> "In the case of a taxpayer who has deducted one-half of the amount by which net long-term capital gain exceeds net short-term capital loss for the taxable year, one-fifth of the amount so deducted."

Under the State Tax Commission's interpretation of section 612(b)(11) of the Tax Law, with respect to sales and exchanges after October 31, 1978, the taxpayer must add back 1/5 of 50% of his net capital gain. This results in taxation by New York of 50% of the net capital gain. (The State Tax Commission considers the modification provided for in section 612(b)(11) applicable because in deducting 60% of a net capital gain for Federal income tax purposes, a taxpayer has, of course, deducted at least 50% of the net capital gain.)

Minimum Income Tax

In computing minimum income tax, the taxpayer was allowed to reduce his Federal item of tax preference for capital gains in computing his New York items of tax preference. Section 622(b)(4) of the Tax Law provides as follows:

> "The Federal item of tax preference for capital gains shall be computed by subtracting from such tax preference item one-fifth of the net long-term capital gain deduction."

Since the language of the above modification refers directly to the Federal long-term capital gain deduction, the taxpayer is allowed to reduce his Federal item of tax preference by one-fifth of the capital gain deduction in computing his New York items of tax preference with respect to sales occurring in November and December of 1978.

The following example will illustrate the State Tax Commission's policy in respect to sales and exchanges made in November and December of 1978:

A taxpayer has a $100,000 net capital gain from sales all made in November and December of 1978.

On his Federal return, he deducts $60,000 and reports $40,000 in his Federal adjusted gross income. He reports $60,000 in his Federal item of tax preference.

His New York return would be computed as follows:

	Personal Income Tax	Minimum Income Tax
	Capital Gain	Tax Preference
Federal Amount	$ 40,000	$ 60,000
Add: 20% of $50,000.............	+10,000	
Deduct: 20% of $60,000.........	________	- 12,000
New York Amount	$ 50,000	$ 48,000

There has been no change in the treatment of losses for Federal purposes - 50% of net long term capital losses will continue to offset ordinary income (up to $3,000 per year) even though 60% of net long term capital gains are excludable from income. This 50% rule, with respect to losses, applies to New York returns as well as Federal returns since New York has no modification with respect to losses."