

1981 Legislation

New Business Investment Gains

Chapter 103 of the Laws of 1981 added Section 612(c)(20) which provides a subtraction modification in computing New York State adjusted gross income for up to 100% of the capital gain includable in federal adjusted gross income realized from the sale of a new business investment. This modification can eliminate completely from New York State tax the capital gains on certain new business investments.

New business investment gains may result from the sale of new business investments issued by a new business as defined in Section 612(o) of the Tax Law.

Section 612(o)2 provides that a taxpayer may subtract from his federal adjusted gross income a portion of an amount constituting a new business investment gain, as follows:

<u>If new business investment held for:</u>	<u>The modification is equal to the following proportion of the gain includable in Federal adjusted gross income:</u>
At least four years, but less than five years	25%
At least five years, but less than six years	50%
At least six years, or more	100%

Section 612(o)3 provides that a taxpayer who is allowed the modification above, but that amount is less than 100%, and within 6 months of the realization of the new business investment gain, the taxpayer purchases another new business investment which is then held for 6 months or more, the taxpayer may subtract from federal adjusted gross income 10% of the gain includable in federal adjusted gross income. If less than the full proceeds of the sale is reinvested, this modification must be reduced accordingly. At the taxpayer's option, this modification can be claimed in the tax year in which the gain is realized or the tax year in which the last day of the 6 month holding period occurs.

For purposes of this legislation, the following definitions are used:

1. New business investment gain means the gain from the sale of a new business investment issued to the taxpayer which is a capital asset held for more than one year and on which the taxpayer is entitled to a federal long-term capital gain deduction. (Section 612(o)1(A))

2. New business investment includes:

- (a) original issuance capital stock as part of a new issue,
- (b) other original issuance securities of a new issue of a like nature as stocks which are designed as a means of investments and issued for the purpose of financing corporate enterprises and providing for a distribution of rights in such enterprises,
- (c) debt obligations such as bonds and debentures for a term of at least one year, whether secured or unsecured, and
- (d) certificates and other instruments representing proprietary interests, whether limited or otherwise, in and assumption of general liabilities, whether limited or otherwise, of a partnership enterprise.

The investments must be issued according to the plan for money or other property (other than stock or securities) on or before the end of the third full taxable year of the business or within 42 months of the date the plan is adopted whichever is sooner. (Section 612(o)1(C))

3. New business means a business enterprise which is a corporation or partnership organized or formed under the laws of any state which:

- (a) adopts a plan on or after July 1, 1981 to conduct a new business and to issue new business investments,
- (b) is subject to taxation for the first time by corporation tax (Article 9, excluding Section 182), franchise tax on business corporations (Article 9-A), or a partnership that would have been subject to unincorporated business income tax (as such was in effect on January 1, 1980), as if the tax were still imposed,
- (c) is subject to tax the first time on and after July 1, 1981 and the first taxable period includes the date of the adoption of such plan (or the first taxable period of the business enterprise begins within one year from the date of adoption of such plan),
- (d) is conducted (or will be conducted) with at least 90 percent of the assets being located and employed in New York State and 80 percent of the employees are principally employed in New York State,
- (e) files a new business certificate with the State Tax Commission within 90 days after the adoption of the plan or when the first tax return is required to be filed, whichever is sooner, and

- (f) for any taxable period, must have derived more than 60 percent of its total income from sources other than royalties, rents, dividends, interest, annuities and sales or exchanges of stock or securities. (Section 612(o)1(B))

A new business does not include:

- (a) any new business in which 25 percent or more of the stock is owned by a corporation which is subject to the franchise tax on business corporations or,
- (b) a business which is substantially similar in operation and ownership to a business entity that was previously taxable or is taxable. (Section 612(o)1(B))

Pending further guidelines with respect to the specific requirements thereof, the plan required of a new business must fall within the following guidelines:

- (1) The plan must be in writing.
- (2) The existence of the plan must be evidenced by a written provision included in the partnership agreement or, in the case of a corporation, the articles of incorporation or by-laws.
- (3) The plan must state that the business enterprise intends to conduct a new business within the meaning and intent of section 612(o) of the Tax Law and to issue 'new business investments' as defined in section 612(o)1(C) of the Tax Law.
- (4) The plan must include a complete description of the nature of the business activities conducted, or intended to be conducted, by the business enterprise and the manner in which such activities are, or will be, carried out.
- (5) The plan must set forth specific data with respect to the value, location and employment of all assets of the business enterprise and the number and job location of its employees.
- (6) The plan must include a complete description of the investments to be issued by the business enterprise which qualify as 'new business investments' and how and when such investments will be issued.

Additional information concerning this legislation and the new business certificate will be published in a subsequent memorandum.

The following sections of the Administrative Code of the City of New York are amended or added to provide legislation corresponding to Article 22 with respect to New Business Investment Gains: T46 -112.0(c)(19) and T46-112.0(n).

This legislation was signed May 15, 1981, is effective immediately, and applies to new business investments issued by a new business on or after July 1, 1981.