

New Business investment Deferral

Chapter 103 of the Laws of 1981 added Section 612(p) (as amended by chapter 1063) which provides for an optional modification whereby a reinvested amount of long term capital gain may be subtracted from federal adjusted gross income. The reinvested gain must be from the sale of a capital asset as defined in Section 1221 of the Internal Revenue Code and may not be from the sale of an investment in a new business (defined below). The proceeds of this sale must then be invested into a new business (defined below) within one year from the date of sale and this investment must be held for at least twelve months. The modification [under Section 612(c)(23)] is made in the year the 12 month holding period ends.

For the purposes of Section 612(p), a new business is defined as a business enterprise which:

- 1) has been taxable for no more than 3 years (including short taxable years)
- 2) over 50% of the voting stock is not owned by a corporation.
- 3) is not substantially similar in operation or ownership, directly or indirectly, to a business entity taxable or previously taxable under sections 183, 184, 185 or 186 of Article 9, Articles 9A, 32 or 33 of this chapter or which was or would have been subject to tax under Article 23 or the income (or losses) of which is (or was) includable under Article 22 of this chapter.
- 4) locates and employs at least 90% of its assets in New York State
- 5) employs 80% of its employees (excluding partners) in New York State.
- 6) derives less than 40% of its gross income from dividends, interest, royalties (other than mineral, oil or gas royalties or copyright royalties) and annuities.
- 7) reports at least \$2500 in gross income in any taxable year.

The gain (included in New York adjusted gross income) from the sale of a capital asset may be excluded from federal adjusted gross income if the entire proceeds from the sale are reinvested in a new business (defined above). If less than the entire proceeds are reinvested in the new business, only a portion of the gain may be excluded from federal adjusted gross income, in the year the 12 month retention period ends, as follows:

Long term gain realized (included in New York adjusted gross income)	X	<u>sale proceeds reinvested</u> total sale proceeds
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equals the amount of long term capital gain to be subtracted from federal adjusted gross income

Chapter 103 of the Laws of 1981 (amended by Chapter 1043) also added Section 612(q) which provides for a recapture of amounts deferred under Section 612(p).

When a deferral is made under Section 612(p) and the investment is later sold, the amount previously deferred under Section 612(c)(23) must be added to federal adjusted gross income. However, if within 12 months of the sale, the proceeds are totally reinvested in another new business which is held for at least 12 months, no recapture of the deferral under Section 612(p) is required. If only a portion of the sale proceeds is reinvested in another new business within 12 months of the sale, a portion of the amount deferred under Section 612(c)(23) must be added to federal adjusted gross income, which is computed as follows:

$$\begin{array}{r} \text{Amount previously deferred} \\ \times \quad \frac{\text{amount not invested}}{\text{total proceeds of the sale}} \end{array}$$

equals the amount to be added to federal adjusted gross income

The recapture, of previously deferred amounts under Section 612(c)(23), is required by Section 612(b)(22). This recapture is made 1) in the tax year in which the required 12 month period, for which a reinvestment can be made, ends or 2) if a reinvestment in a new business was made within 12 months but was not held for a 12 month period, the year in which the 12 month holding period ends.

The New Business Deferral under Section 612(p) and the recapture of this deferral under Section 612(q) are applicable to tax years beginning on or after January 1, 1982.

The Administrative Code of the City of New York, Title T has been correspondingly amended by adding new sections T46-112.0(o) [modification under section T46.112.0(c)(21)] and T46-112.0(p) [modification under section T46-112.0(b)(23)].