



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The New York State and New York City minimum income taxes were repealed, effective for tax years beginning on or after January 1, 2014.

As a result, this TSB-M is obsolete and cannot be relied upon for tax years on or after that date insofar as the TSB-M addresses matters relating to the minimum income tax.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

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-83-(8) I
Income Tax
April 19, 1983

New York State Minimum Income Tax
Applicability of Federal Tax Benefit Rule

Numerous inquiries have been received concerning the applicability of the tax benefit rule of Internal Revenue Code section 58(h) to the New York State Minimum Income Tax.

Section 58 of the Internal Revenue Code provides rules for Application of Minimum Tax for tax preferences. Specifically section 58(h), effective for tax years beginning after December 31, 1975, provides that the "Secretary shall prescribe regulations under which items of tax preference shall be properly adjusted where the tax treatment giving rise to such items will not result in the reduction of the taxpayer's tax under this subtitle for any taxable years."

Currently, there are no federal regulations on the tax benefit rule. However, Revenue Ruling 80-226, 1980-2 CB-26 states in pertinent part that section 58(h) of the code provides that items of tax preferences are to be properly adjusted when the tax treatment giving rise to such items does not result in a reduction of the taxpayer's tax . . . The intent of Congress in enacting section 58(h) of the code was that tax preference items that are of no tax benefit to a taxpayer are not to be included in the computation of the minimum tax on tax preferences . . . When preference items do not yield the taxpayers any tax benefit they are not to be taken into account in computing their minimum tax liability."

The tax benefit rule of section 58(h) of the Internal Revenue Code is not an exception to the definition of items of tax preference. Rather, it is an adjustment to be taken into account in the computation of the federal minimum tax on items of tax preference.

Section 622(b) of the New York State Tax Law provides that the term items of tax preference shall mean the federal items of tax preference as defined in the laws of the United States, of a resident individual . . . for the taxable year . . ." with certain specified modifications. Section 123.1(b)(1) of the New York State Code of Rules and Regulations provides that "The New York items of tax preference of a resident individual . . . are the Federal items of tax preference . . . (see section 57 of the Internal Revenue Code) . . . 11 section 57 defines what an item of tax preference is.

Accordingly, since the tax benefit rule of Internal Revenue Code section 58(h) does not change the definition of an item of tax preference, it is not to be taken into account for purposes of computing the New York State minimum income tax.