

Special Additional Mortgage Recording Tax
Credit and Related Modifications

Chapter 638 of the Laws of 1986 has amended various provisions of the Tax Law regarding the special additional mortgage recording tax credit and related modifications. These amendments described below will apply to tax years beginning on or after January 1, 1986.

For personal income tax purposes a credit is allowed for the special additional mortgage recording tax to a borrower or lender in the following situations.

A borrower (one who mortgages property) is allowed a credit for the special additional mortgage recording tax paid to record a mortgage on the purchase of New York residential property containing more than six dwelling units with separate cooking facilities or on the purchase of business property.

A lender (one who loans money for the purchase of property) is allowed a credit for the special additional mortgage recording tax paid to record a mortgage for residential property containing six dwelling units or less with separate cooking facilities.

The addition modifications contained in Sections 612(b)(15) and (16) have been amended to make it clear that the tax referred to in these paragraphs is the special additional mortgage recording tax.

Section 612(b)(15) was further amended to specify that the addition modification required under this paragraph is for the special additional mortgage recording tax imposed under Section 253-1-a of the Tax Law, which was excluded or deducted in arriving at federal adjusted gross income.

Section 612(b)(16) was further amended to provide that when property for which the special additional mortgage recording tax was paid is sold or otherwise disposed of at a gain or loss an addition modification must be made in the amount of the tax paid if it is reflected in the computation of basis so as to decrease federal gain or increase federal loss; however, this modification is not required where the special additional mortgage recording tax credit allowed is reflected in the computation of the federal gain or loss which results in an increase in the gain or a decrease in the loss.

In addition, the new law makes it clear that the modification under this paragraph is made at 40% when a long-term capital gain and federal capital gain deduction is involved, and is made at 50% when a deduction for a long-term capital loss subject to the 50% federal limitation is involved.

A new paragraph "7" was added to Section 622(b) of the Tax Law. This new paragraph requires an addition to federal items of tax preference on the New York State minimum income tax return under the following circumstances:

- 1) The special additional mortgage recording tax is paid and a credit is allowed on the New York State personal income tax return for such tax, and
- 2) The property on which such tax was paid and the credit was taken is sold or otherwise disposed of, and
- 3) A federal long-term capital gain arose from such sale or other disposition, and
- 4) The federal gain was decreased because the special additional mortgage recording tax paid was included in the computation of the basis of the property for federal income tax purposes, and
- 5) A federal capital gain deduction resulted from the sale.

The amount of the addition to federal items of tax preference required on the New York State minimum income tax return is 60% of the amount of the special additional mortgage recording tax paid.

Note: Section 622(b)(7) and the last paragraph under section 612(b)(16) of this memorandum are not applicable for tax years beginning in 1987 due to New York State's conformity to the Federal Tax Reform Act of 1986.

Section 601-C(a) of the Tax Law was amended to add the special additional mortgage recording tax credit and the solar and wind energy credit to the list of credits which are not allowed to be taken against the "separate tax on lump sum distributions."

Section 601-D(b) of the Tax Law was amended to add the special additional mortgage recording tax credit and the solar and wind energy credit to the list of credits which are not allowed to be taken against the "separate tax relating to qualified higher education funds" (PASS accounts).

Section 606(f) of the Tax Law was amended to provide that the special additional mortgage recording tax credit is to be used against the New York State personal income tax after the allowance of all other credits. Former Section 606(f) allowed the special additional mortgage recording tax before the allowance of all other credits.

The Administrative Code of the City of New York has been similarly amended where applicable.