New York State Department of Taxation and Finance

Taxpayer Services Division
Technical Services Bureau

TSB-M-97(3)I
Income Tax
December 8, 1997

Recent Income Tax Changes Taking Effect in Tax Year 1997 or 1996

This memorandum contains brief summaries of legislative changes to the New York State personal income tax, the New York City personal income tax and nonresident earnings tax, and the City of Yonkers resident income tax surcharge and nonresident earnings tax, that take effect in tax year 1996 or 1997.

The following changes reflect legislation enacted in prior years that takes effect in 1997.

New York State Personal Income Tax Rates and Standard Deduction Amounts

Tax year 1997 is the third year of the three-year personal income tax cut enacted in 1995. For tax years 1997 and after, the highest rate of tax has been reduced to 6.85%. In addition, the standard deduction amounts are increased. For tax years 1997 and after, the standard deduction amounts are as follows:

Single	$ 7,500
Married filing jointly and surviving spouse	$13,000
Married filing a separate return	$ 6,500
Head of a household	$10,500
Dependent filer	$ 3,000

Investment Credit Carryover Limitation

Chapter 389 of the Laws of 1997 extended the New York investment tax credit carryover period for corporations taxable under Article 9-A of the Tax Law. However, the extension does not apply to taxpayers taxable under the New York State personal income tax. Accordingly, the investment credit carryover period for individuals and estates and trusts who are sole proprietors, partners, members of limited liability companies, and shareholders of New York S corporations continues as follows:

> A taxpayer may not carryover an unused investment tax credit that arose from a tax year beginning before 1987 to a tax year beginning in 1997 and after. In addition, any carryover of an unused investment tax credit that arose from a tax year beginning in 1987 and after may be carried over to the next ten tax years after the year in which the credit arose. Where a taxpayer has unused carryovers from more than one year, the carryover from the oldest tax year is deemed to be used up first.

Credit for Rehabilitation of Historic Barns

For tax years beginning in 1997 and after, a taxpayer (including a member of a partnership or LLC, a shareholder of a New York S corporation, or a beneficiary of an estate or trust) may be allowed a credit for restoring a historic barn. The term “barn” means a building originally used for storing farm equipment, agricultural products or livestock. The amount of the credit is 25% of the taxpayer’s qualified rehabilitation expenditures, as defined in §47(c)(2) of the Internal Revenue Code, paid or incurred to restore a historic barn located in New York State. The credit does not pertain to (a) barns used for residential purposes immediately before their rehabilitations, (b) barns converted to residential use by means of the rehabilitation, or (c) barns for which the historic appearance is materially altered by the rehabilitation. (For further information regarding this credit, see TSB-M-97(1)I.)

Farmers’ School Tax Credit

For tax years beginning in 1997 and after, a taxpayer (including a member of a partnership or LLC, a shareholder of a New York S corporation, or a beneficiary of an estate or trust) who is an eligible farmer may be entitled to **a refundable income tax credit**. An “eligible farmer” is a taxpayer whose federal gross income from farming is at least two-thirds of his federal gross income from all sources in the year.

The credit is allowed for school taxes paid on land, structures and buildings owned by an eligible farmer that are located in New York State and used or occupied for agricultural production. The credit equals:

- 100% of the school district property taxes paid on qualified agricultural property on acreage not exceeding the base acreage amount, plus

- 50% of the school district property taxes paid on qualified agricultural property on acres exceeding the base acreage amount.

The “base acreage” amount is 100 acres in 1997, 175 acres in 1998, and 250 acres in years after 1998. The credit is phased out for farmers with New York adjusted gross income between $100,000 and $150,000.

Further changes are in effect for tax years after 1997 to expand the definitions of an "eligible farmer" and the type of income used to compute the amount of the credit. (For further information regarding this credit, see Publication 51, Questions and Answers on New York State’s Farmers’ School Tax Credit.)

The following change reflects legislation enacted in 1997 that applies to tax years 1996 and after.

Subtraction Modification for Long-Term Care Health Insurance Premiums

For tax years beginning in 1996 and after, a New York State deduction is allowed for premiums paid for qualifying long-term care insurance covering the taxpayer. "Qualifying long-term care insurance" means a policy that is both approved by the New York State Superintendent of Insurance (pursuant to section 1117(g) of the Insurance Law) and is a qualified long-term care insurance contract under section 7702B of the Internal Revenue Code. The New York deduction is allowed without regard to whether the taxpayer itemized his or her deductions. If a husband and wife are each covered by a qualified policy, they may both take the subtraction. However, one spouse may not claim the unused part of the other spouse's subtraction.

The New York subtraction is limited to the lesser of the amount of premiums paid during the year; or

If a taxpayer's age at the end of 1996 or 1997 was:	** The limitation for that year is:*
40 or younger	$ 200
at least 41 but not older than 50	375
at least 51 but not older than 60	750
at least 61 but not older than 70	2,000
71 or older	2,500

* The limitation amounts are subject to increase after 1997.

Previously, for 1996, in order to qualify for the modification, premiums paid on certain long-term care health insurance policies were required to meet certain conditions specified by the New York State Insurance Department. In addition, the covered taxpayers were required to be at least 55 years of age.

Accordingly, taxpayers who paid premiums on qualified policies covering themselves during 1996 are entitled to file amended returns for 1996. Residents should file their amended return Form IT-201-X, and Nonresidents and Part-Year Residents should use Form IT-203 and write <u>AMENDED</u> at the top of the form.

For tax years beginning in 1997 and after, long-term care insurance premiums become deductible as an itemized deduction for federal income tax purposes. As a result of the New York subtraction modification, the federal deduction is not allowed in determining the New York itemized deduction for tax years beginning after 1996.

For a list of qualifying policies, call the New York State Insurance Department at 1-800-342-3736.

The following changes reflect legislation enacted in 1997 that applies to tax year 1997 and after.

Credit for New York City Unincorporated Business Tax for City of New York Residents and Part-Year Residents

For tax years beginning in 1997 and after, residents and part-year residents of New York City may be eligible for a **nonrefundable credit** of unincorporated business tax imposed. The credit is available to an individual, an estate, or a trust, or to a partner in a partnership or a beneficiary of an estate or trust on their personal income tax returns. This credit is allowed against (a) the New York City resident tax, including surcharges, and (b) the New York City tax on the ordinary income portion of a lump-sum distribution.

The amount of the credit is 65% of the unincorporated businesses taxes paid by taxpayers with city taxable incomes of $42,000 or less; The credit phases down from 65% to 15% for taxpayers with city taxable incomes between $42,000 and $142,000. The credit is 15% for taxpayers with city taxable incomes greater than $142,000. Special computation rules apply to part-year residents.

Child and Dependent Care Credit

For tax years beginning in 1997, the maximum child and dependent care credit is increased from 30% to 60% of the amount of the federal credit for taxpayers with New York adjusted gross income of $10,000 or less. **For tax years beginning after 1997**, the maximum child and dependent care credit is increased to 100% of the amount of the federal credit for taxpayers with New York adjusted gross income of $17,000 or less. In addition, the credit is phased down from 100% to 20% of the amount of the federal credit for taxpayers with New York adjusted gross income between $17,000 and $30,000.

New York City Resident Rates, New York City Personal Income Tax Surcharges and New York City Minimum Income Tax Rates

- The current New York City resident tax rates, including the regular tax, the 14% surcharge, and the 2.85 % minimum income tax have been extended through 1999 ;
- The safe streets-safe city tax has been extended through 1998.

New York City Nonresident Earnings Tax

The New York City earnings tax on nonresidents of .45% on wages and .65% on net earnings from self-employment, and the New York personal income tax itemized deduction for the portion of New York City nonresident earnings tax attributable to these rates, have been extended through tax year 1999.

Yonkers Personal Income Tax Surcharge and Nonresident Earnings Tax

The City of Yonkers income tax surcharge on residents and the City of Yonkers nonresident earnings tax has been extended through tax year 1999.

New Line To Aid Missing/Exploited Children

The tax forms for 1997 will include a new line for a check-off box to contribute to the ***Missing and Exploited Children Clearinghouse Fund.***

Limited Liability Trust Company

After July 20, 1997, the term Limited Liability Company now includes a "Limited Liability Trust Company" formed pursuant to Section 102-a of the Banking Law.

Taxpayer's Bill of Rights Act of 1997

In an effort to ensure that taxpayers are treated fairly and without prejudice, a more comprehensive and meaningful Taxpayer Bill of Rights has been signed into law. The Taxpayer's Bill of Rights Act of 1997 provides taxpayers with additional rights and equitable relief.

The changes specifically relating to income tax include:

a. Increasing the amount of civil liability that can be compromised without an Opinion of Counsel being filed from $2,500 to $25,000, as of September 10, 1997;

b. Permitting an offer in compromise, effective January 1, 1998, where certain conditions are met, by a taxpayer who is jointly and severally liable with a former spouse on a joint tax return;

c. Allowing a **refundable** New York State and New York City or Yonkers **claim of right credit** for tax years beginning in 1997 and after. "Claim of Right" income is income properly recognized on a prior year's tax return, where the receipt of such income is subsequently determined to be erroneous and is repaid. The credit is allowed on a taxpayer's New York State personal income tax return where the repayment is claimed as a credit rather than a deduction for federal income tax purposes. A New York deduction continues to be allowed where the repayment is claimed as a deduction for federal income tax purposes;

d. Extending the interest and penalty-free period for payment of personal income tax on a Notice and Demand issued after March 31, 1997, for amounts of $100,000 or more from ten calendar days to ten business days, and for amounts of less than $100,000 to twenty-one calendar days;

e. Permitting disclosure of certain information in response to requests for information made after September 10, 1997, to individuals who are no longer married or who are separated, where a deficiency with respect to a joint return has been assessed. Where individuals who filed the return are no longer married or who are separated, the Department of Taxation and Finance may disclose to such an individual who makes a request, whether an attempt has been made to collect the deficiency from the other individual, the general nature of the collection activity, and the amount collected;

f. Effective September 10, 1997, recognizing mailing dates recorded or marked by a federally authorized delivery service as if it were a U.S. Postal Service postmark for income tax mailing purposes;

g. Permitting disclosure of information to a person determined to be liable for the responsible officer penalty under §685(g) of the Tax Law for withholding tax, about any other persons liable for the same penalty, effective September 10, 1997.

New Hire Reporting

In response to recent Federal Welfare Reform legislation that specified employer reporting responsibilities and required that all states implement New Hire reporting programs, New York State has enacted legislation, effective October 1, 1997, to conform the existing New York State program to the federal requirements, but lowers the penalty for failing to report a person from $50 to $20. (For a detailed explanation of changes, see Important Notice N-97-10.)

S Corporations

For tax years beginning in 1997 and after, the New York S election is extended to (1) shareholders of S corporations subject to Article 32 (Bank Tax) and (2) shareholders of the parent corporation of a qualified subchapter S subsidiary taxable under either Article 9-A or Article 32. (For further information, see TSB-M-97(6)C and TSB-M-97(9)C.)

MABSTOA Pensions

For tax years beginning in 1997 and after, the Tax Law was amended to provide that pensions received by the Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) employees are exempt from New York State and local taxes. In addition, consistent with other officers and employees of the State or its political subdivisions, members of MABSTOA must now, in computing New York adjusted gross income, include the amount of IRC section 414(h) retirement contributions shown on their wage and tax statements. The new law also requires MABSTOA to withhold New York State and local income taxes on these section 414(h) retirement contributions.