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

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Income Tax
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1997 Income Tax Changes That Take Effect in Tax Year 1998 or Later Tax Years

In 1997, Governor George E. Pataki signed several new chapters into law. This memorandum contains brief summaries of the legislative changes to the New York State and New York City personal income taxes that take effect in tax year 1998 or after.

The following changes reflect legislation enacted in 1997 that first affect tax year 1998.

Credit for Residential Solar Electric Generating Equipment

For tax years beginning in 1998 and after, an individual who purchases and installs solar electric generating equipment may be allowed a credit. The amount of the credit is 25% of the lesser of:

- expenditures made for qualified solar electric generating equipment (including design, installation, and materials costs, but not including interest or other finance charges) that is placed in service in 1998 and after; or

- an amount equal to $1.50 times the number of watts included in the rated capacity of the equipment. For purposes of this credit, the maximum rated capacity is ten kilowatts (10,000 watts). Therefore, the maximum allowable credit is $3,750 (25% x 10,000 watts x $1.50).

The equipment must be used in connection with the individual's primary residence, and the residence must be located in New York State. This credit is not refundable, but any unused credit can be carried over for five years.

"Solar electric generating equipment" is that which, when installed in connection with a residence, uses solar energy for the purpose of providing electricity for use within the residence. In addition, the equipment must conform to the requirements set forth in section 66-j of the Public Service Law, which provides in part that the equipment is to be connected to the electric system and operated in conjunction with an electric corporation's transmission and distribution facilities.

The legislation also provides:

- for a proration of the credit where two or more taxpayers share a residence; and

- a requirement that government grants not includable in federal gross income be excluded when computing the amount of expenditures.

Credit for Employment of Persons with Disabilities

For tax years beginning in 1998 and after, a credit is available to employers who employ persons with disabilities. The credit amount per employee can be up to $2,100. The credit is also available to shareholders of New York S corporations.

A taxpayer is allowed the credit for employing a qualified employee within New York State. A "qualified employee" is an employee who:

- qualifies as a “vocational rehabilitation referral” for purposes of the federal work opportunity credit (Internal Revenue Code §51);

- has worked for the employer on a full-time basis for at least 180 days or 400 hours; and

- is certified by the New York State Education Department or, in the case of a visual handicap, by the New York State Commission for the Blind and Visually Handicapped:

  (1) with a disability that constitutes or results in a substantial hardship to employment; and

  (2) who has completed or is receiving services under an individualized written rehabilitation plan approved by the New York State Education Department or the New York State Commission for the Blind and Visually Handicapped .

The New York credit amount is 35% of the eligible wages paid to a qualified employee. As long as the federal work opportunity credit is operative, eligible wages for the New York credit are the first $6,000 of “qualified second-year wages.” If the federal credit lapses, eligible wages for the New York credit are the first $6,000 of “qualified first-year wages.” “Qualified first-year wages” are wages paid or incurred by the taxpayer during the taxable year to a qualified employee for services rendered during the one-year period beginning with the date the employee begins work for the taxpayer. “Qualified second-year wages” are wages paid or incurred by the taxpayer during the taxable year to a qualified employee for services rendered during the one-year period beginning one year after the employee begins work for the taxpayer.

The New York credit is available for employees who begin work for a taxpayer on or after January 1, 1997. The federal credit is currently operative and applies to employees who begin work on or before June 30, 1998. Accordingly, the New York credit for employees who begin work between January 1, 1997 and June 30, 1998 is based on their qualified second-year wages. For employees who begin work after June 30, 1998, and assuming the federal credit is not

extended, the New York credit will be based on their qualified first-year wages. If the federal credit is extended so that these employees are eligible for the federal credit, the New York credit will be based on their qualified second-year wages.

This credit is not refundable, but any unused credit can be carried over for an unlimited number of years.

Employment Incentive Credit

The Employment Incentive Credit, currently available to corporate taxpayers under the Tax Law Article 9-A franchise tax, has been extended to the personal income tax.

The credit is applicable to taxpayers (including partners of partnerships, beneficiaries of estates and trusts, and shareholders of New York S corporations) that are allowed the Investment Tax Credit under section 606(a) of the Tax Law. The new credit is allowed for property placed in service on or after January 1, 1997. The credit requires a level of employment for the taxable year of at least 101% of the employment in the base year. The "base year" is the year immediately prior to the year in which the Investment Tax Credit is allowed (or in the case of a new business, the “base year” is the year in which the Investment Tax Credit is allowed).

The “Employment Incentive Credit” is computed as a percentage ranging from 1.5% to 2.5% of the investment credit base (the cost or other basis of the employment incentive credit property). The applicable percentage is dependent on the degree of increase in employment during the taxable year in which the credit is claimed over that in the base year. The credit is available in each of the two years after the year in which the Investment Tax Credit is allowed. The credit is refundable if the taxpayer qualifies as a new business and elects to have the credit in excess of tax refunded. Otherwise, any excess credit can be carried over for up to ten years.

Economic Development Zone Employment Incentive Credit

The Economic Development Zone Employment Incentive Credit, currently available to corporate taxpayers under the Tax Law Article 9-A franchise tax, has been extended to the personal income tax.

The credit is applicable to taxpayers (including partners of partnerships, beneficiaries of estates and trusts, and shareholders of New York S corporations) that are allowed the Economic Development Zone Investment Tax Credit under section 606(j) of the Tax Law. The new credit is allowed for property placed in service on or after January 1, 1997. The credit requires a level of employment for the taxable year of at least 101% of the employment in the base year. The “base year” is the year immediately prior to the year in which the Economic Development Zone Investment Tax Credit is allowed (or in the case of a new business, the “base year” is the year in which the investment tax credit is allowed).

The “Economic Development Zone Employment Incentive Credit” is 30% of the Economic Development Zone Investment Tax Credit. The credit is available in each of the three years immediately following the tax year in which the Economic Development Zone Investment Tax Credit is allowed. Fifty percent of the excess of this credit over the taxpayer's tax is refundable if the taxpayer qualifies as a new business and elects to have that portion refunded. Otherwise, the excess credit can be carried over indefinitely.

Alternative Fuels Credit

Taxpayers will be allowed a credit for electric vehicles, clean-fuel vehicle property, and clean-fuel vehicle refueling property placed in service during the tax year. The alternative fuels credit is applicable to **property placed in service in a tax year beginning after 1997 and before 2003.**

The amount of the credit is:

- 50% of the incremental cost of a new electric vehicle registered in New York State and for which a federal credit is allowed under Internal Revenue Code §30. The incremental cost of a new electric vehicle is the difference between the cost of the electric vehicle and the cost of a similar gasoline powered vehicle. The credit is limited to $5,000 per electric vehicle;

- 60% of the cost of the new clean-fuel components of clean-fuel vehicles registered in New York State and for which a deduction is allowed under Internal Revenue Code §179-A. The credit is limited to $5,000 per clean-fuel vehicle with a gross vehicle weight rating of 14,000 pounds or less, and $10,000 for clean-fuel vehicles with a gross vehicle weight rating of more than 14,000 pounds; and

- 50% of the cost of new clean-fuel refueling property used in a trade or business and located in New York State and for which a deduction is allowed under Internal Revenue Code §179-A. There is no limit on the credit for clean-fuel refueling property.

“Clean-fuel” means natural gas, liquefied petroleum gas, hydrogen, electricity, and any other fuel that is at least 85%, singly or in combination, methanol, ethanol, and other alcohol, or ether.

The credit is not refundable, but can be carried over for an unlimited number of years. In addition, recapture of the credit may be required if the property ceases to qualify.

College Tuition Savings Deduction

The “College Choice Tuition Savings Program” has been enacted to provide a tax incentive for

saving for post-secondary education. The program, to be implemented by the State Comptroller and the New York State Higher Education Services Corporation, provides an investment vehicle to save for future education costs.

Beginning in 1998, a New York State deduction is allowed for contributions made by an account owner to one or more family tuition accounts, to the extent such contributions are not deductible or eligible for credit for federal income tax purposes. However, the contributions by the owner of an account or accounts for the taxable year shall not exceed five thousand dollars. In the case of a husband and wife who are account owners, each can contribute up to $5,000 per year, for a maximum total annual contribution of $10,000. The maximum contribution to all accounts of a single beneficiary is $100,000.

The Family Tuition Account is a savings plan that can be used towards any approved institution of higher education (public or private, two or four year post-secondary educational institutions, in or outside New York State). The owner of such an account is an individual who enters into an agreement pertaining to such account with either the Comptroller of the State of New York or a financial institution. The owner may be the designated beneficiary of the account.

The deductible portion of the amount contributed by an owner during the tax year to one or more qualified Family Tuition Accounts is deducted on the New York State tax return when computing New York adjusted gross income. The interest earned on the account is deferred for federal and State income tax purposes. Upon distribution, the earnings are exempt from New York State income tax; however, nonqualified withdrawals (i.e., those other than for the payment of higher education expenses) are taxable.

Taxpayer Bill of Rights Act of 1997

To ensure that taxpayers are treated fairly and without prejudice, a comprehensive and meaningful Taxpayer Bill of Rights was signed into law in 1997. The Taxpayer Bill of Rights Act of 1997 gives taxpayers additional rights and equitable relief. While most of its provisions became effective in 1997, two provisions pertaining solely or predominantly to income tax become effective in 1998.

- Offer in compromise for spouses and ex-spouses. As of January 1, 1998, a taxpayer who is jointly and severally liable with a spouse or former spouse on a joint tax return can make an offer in compromise of the other spouse's share of liability if:

  — The taxpayer wishing to make the offer is, at the time of the offer, either (1) separated from the spouse with whom he or she filed the joint return under a decree of divorce or separate maintenance, a written separation agreement, or a judicial decree of separation, or (2) is not considered married within the meaning of section 7703(B) of the Internal Revenue Code (relating to certain married individuals living apart); **and**

— It is shown that the collection of the other spouse's share of liability from the taxpayer making the offer cannot be accomplished within a reasonable period without imposing substantial economic hardship on the taxpayer.

- Explanation of the tax due. Any manually issued letter of proposed deficiency, notice and demand, or notice of deficiency that (a) is issued after June 30, 1998, by the Tax Department, and (b) is the first letter or notice issued to the taxpayer regarding the subject matter of the letter or notice, will describe the basis for the tax due and the amount due. However, an inadequate description will not invalidate any of the letters or notices.

New York City State School Tax Reduction Credit

As part of the State School Tax Relief (STAR) program, a refundable "State School Tax Reduction Credit" is provided under the New York City resident income tax for tax years beginning in 1998 and after. The amount of the credit is phased in over a four-year period starting with $12.00 for all taxpayers for tax years beginning in 1998 and increasing to $125.00 for joint filers and surviving spouses and $62.50 for other filers in tax years beginning after the year 2000. Proration of the credit is required if the taxpayer changes resident status during the year. If the credit exceeds the taxpayer's New York City personal income tax for the year, the excess will be refunded, without interest.

Child Care Credit

For tax years beginning in 1998 and after, the maximum 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. The credit is gradually 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. The rate is 20% for taxpayers with New York adjusted gross income over $30,000. As it was in prior years, this is a refundable credit for residents and part-year residents.

Farmers' School Tax Credit

The Farmers' School Tax Credit, which was introduced in tax year 1997, has been enhanced beginning in 1998 as follows.

- To qualify for the credit for tax year 1997, at least two-thirds of the taxpayer's federal gross income must be from farming. Beginning in 1998, at least two-thirds of the taxpayer's *excess federal gross income* must be from farming. "Excess federal gross income" is federal gross income reduced by the sum, not exceeding $30,000, of the following items included in federal gross income: (a) wages, salaries, tips, and other

  employee compensation; (b) pension payments, including social security; (c) interest and dividends; and (d) those items of gross income that are includible in the computation of net earnings from self-employment for federal income tax purposes.

- For tax year 1997, the credit is phased out between $100,000 and $150,000 of the New York adjusted gross income. Beginning in 1998, the phase-out is based on "modified New York adjusted gross income," which is the taxpayer's New York adjusted gross income reduced by any principal payments on farm indebtedness. "Farm indebtedness" is debt incurred or refinanced, which is secured by farm property, provided the proceeds of the loan are used for expenditures incurred in the business of farming.

- Beginning in 1998, the definition of a farmer's "federal gross income from farming" is expanded to include gross income from both (1) the production of maple syrup or cider, and (2) the sale of wine from a licensed farm winery as provided for in article six of the Alcoholic Beverage Control Law.

- As provided for in the original law, the maximum base acreage used in the formula to limit the credit is raised to 175 acres in 1998 and 250 acres in years after 1998.

(For further information regarding this credit, see Publication 51, Questions and Answers on New York State's Farmers' School Tax Credit.)

Long-Term Care Integration and Finance Act of 1997

For tax years beginning in 1998 and after, a New York State deduction is allowed for a portion of the fees paid by a taxpayer who is a resident of an approved continuing care retirement community located within New York State. An "approved continuing care retirement community" is one for which the Commissioner of Health of the State of New York has issued a certificate of authority to an eligible applicant for a managed long-term care plan. The deduction is for the portion of the fees that are attributable to the cost of providing long-term care benefits pursuant to a continuing care contract. The attributable portion will be determined in accordance with regulations adopted by the New York State Superintendent of Insurance. The deduction is available whether or not the taxpayer itemizes his or her deductions, and it is available in addition to the New York deduction for the payment of premiums on a long-term care insurance policy. (See the caption "Subtraction Modification for Long-Term Care Health Insurance Premiums" in TSB-M-97(3)I, *Recent Income Tax Changes Taking Effect in Tax Year 1997 or 1996.*) The deduction may not exceed the limitations set forth in section 213(d)(10) of the Internal Revenue Code for purposes of eligible long-term care premiums. The limitation amounts set forth in section 213(d)(10) are subject to annual indexing, and have not yet been set for tax years beginning in 1998 and after. However, to give an idea of the deduction available in 1998, the following table shows the section 213(d)(10) limits that were in effect for tax year 1997.

If a taxpayer's age at the	*The deduction's limitation for*

end of the tax year is:	*1997, had the deduction been allowed for 1997, would have been*:
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 following changes reflect legislation enacted in 1997 that first affects tax years after 1998

New York City Tax Rate Reduction

The tax rates under the New York City resident income tax are reduced over a three year period beginning in 1999. As a result, withholding tables and methods for New York City resident income taxes for tax year 1999 must be adopted by July 1, 1999.

Repeal of Modification for Different New York and Federal Bases in Property that is Acquired from a Decedent Dying After January 31, 2000

Under the income tax, a taxpayer who sells or otherwise disposes of property acquired from a decedent must adjust the amount of gain or loss if there is a difference between the federal and New York bases of the property. This difference occurs if the estate was not required to file a federal estate tax return but was required to file a New York estate tax return, and used alternate or special valuation on that return. This adjustment will no longer be required for property acquired from decedents who die after January 31, 2000, when the New York estate tax becomes a “pick-up” tax.