

### **Income Tax Changes Taking Effect in 1999**

In 1999 and in prior years, Governor George E. Pataki signed several pieces of legislation which reduce tax rates, expand tax credits and provide new and increased deductions to taxpayers. The city of Yonkers also adopted legislation reducing tax rates for Yonkers residents. This memorandum contains brief summaries of the legislative changes affecting the New York State, New York City and city of Yonkers personal income taxes for tax years beginning on and after January 1, 1999. The information provided in this memorandum relating to legislation enacted in prior years that takes effect in 1999 was also addressed in TSB-M-99(3)-I.

### **The following reflects legislation enacted in prior years that takes effect in 1999**

#### **Withholding, wage reporting and unemployment insurance reporting are combined**

Chapter 477 of the Laws of 1998 amended the Tax Law and the Administrative Code of the City of New York to consolidate employer unemployment insurance, withholding and wage reporting filing and payment responsibilities. Starting with the tax return that covered the first calendar quarter of 1999, that was due April 30, 1999, the majority of employers had to complete only one report for both the New York State Department of Labor and the New York State Department of Taxation and Finance to report unemployment insurance, income tax withholding and wage reporting information. In addition, only one check is required to pay the combined amount of unemployment insurance contributions and withholding taxes due with the quarterly return.

The new law also clarifies and better organizes the penalties associated with the new quarterly returns and the requirements to provide the annual employee withholding reconciliation information by clearly dividing the Tax Law section 685 (v) penalties into those relating to failure to file, late filing and failures to provide complete and correct information.

For more detailed information, see publication NYS-50, *Employer's Guide to Unemployment Insurance, Wage Reporting and Withholding Tax*.

(See Tax Law, sections 9(a)(6), 171-a(8), 658(d)(2), 674, 685(v), 697(e), 697(1), 698, and the Administrative Code of the City of New York, sections 11-1774(a)(2) and 11-1774(a)(4).)

### **New York City resident income tax rate reduction**

Beginning with tax year 1999, the New York City resident income tax rates are reduced over a three-year period. In addition, the New York City Safe City, Safe Streets surcharge, which had been in effect since 1990, expired at the end of 1998.

(See Tax Law, sections 1301(a), 1304, 1310(e) and the Administrative Code of the City of New York, sections 11-1701(a), 11-1710(b) and 11-1706(c).)

### **State school tax reduction credit for New York City residents**

As part of the State School Tax Relief (STAR) program enacted in 1997, a refundable State School Tax Reduction Credit is provided against the New York City income tax for New York City residents and part-year residents. The credit was effective for tax years beginning in 1998 and after. If the credit exceeds the taxpayer's New York City personal income tax for the year, the excess will be refunded, without interest. Also, proration of the credit is required if the taxpayer changes resident status during the year.

For taxable years beginning in 1999, the credit amounts for persons under age 65 have increased as follows:

- For married taxpayers filing jointly (where neither spouse is 65 or older) and surviving spouses, the credit is increased to \$35.
- For unmarried individuals, heads of a household or married individuals filing separately, the credit is increased to \$39.

For persons age 65 and over, the credit remains at \$125 for taxpayers who are married filing jointly (if at least one spouse is 65 or older) and for surviving spouses. The credit remains at \$62.50 for taxpayers who are unmarried, head of household or married filing separately.

(See Tax Law, section 1310(e).)

### **Reduction of the city of Yonkers resident income tax surcharge**

For tax years beginning in 1999, the amount of the city of Yonkers income tax surcharge is reduced from 15% to 10% of the net state tax. As a result, new withholding tables and methods for city of Yonkers resident taxes have been issued and were effective January 1, 1999.

(Enacted by Special Ordinance No. 30-1998 of the City of Yonkers.)

### **Estimated income tax threshold for the imposition of penalty**

For tax years beginning on and after January 1, 1999, the penalty for the underpayment of estimated income tax will not be imposed for taxpayers who have a tax due shown on their return (that is, tax reduced by any withholding and any other credits) of less than \$300 per jurisdiction (New York State, city of New York and city of Yonkers). The threshold for tax years prior to January 1, 1999 remains at \$100.

(See Tax Law, section 685(d)(1), and the Administrative Code of the City of New York, section 11-1785(d)(1).)

### **Farmers' school tax credit**

For tax years which began prior to January 1, 1999, for purposes of determining which property taxes would qualify for the farmers' school tax credit, only real property taxes levied by a school district on qualified agricultural property **owned** by the taxpayer qualified. For tax years beginning on or after January 1, 1999, in the case of the sale of qualified agricultural property under a *land sales contract*, the buyer will be treated as the owner of the property if the following conditions are met:

- the buyer must be obligated under the land sales contract to pay the school district property taxes on the purchased property, and
- the buyer must be entitled to deduct those taxes as a tax expense for federal income tax purposes.

A buyer who meets these conditions will be considered the owner even if legal title to the property (that is, the deed) has not been transferred to the buyer. Accordingly, the buyer, if an eligible farmer, will be entitled to claim the credit (subject to the credit limitation based on income).

**Note:** If the buyer is treated as the owner under these provisions, the seller may not claim the credit for that property.

A *land sales contract*, commonly referred to as an "installment land contract," is an agreement to transfer land ownership in exchange for a series of principal and interest payments. The seller does not transfer formal title for the property to the buyer until all or a certain number of payments are made. In addition to "installment land contract," a land sales contract may also be referred to as "contract for deed," "bond for deed," "conditional sale of real estate," "contract for sale of land," and "land contract." An arrangement for a "lease with an option to purchase" is not a land sales contract.

(See Tax Law section 606(n). For further information regarding this credit, see Publication 51, *Questions and Answers on New York State's Farmers' School Tax Credit* and Publication 51.1, *Update to Publication 51*.)

### **Child and dependent care credit**

For tax years beginning after 1998, taxpayers with New York adjusted gross income of \$35,000 or less will be allowed 100% of the federal child and dependent care credit. The credit is gradually phased down from 100% to 20% of the amount of federal credit for taxpayers with New York adjusted gross income between \$35,000 and \$50,000. The rate is 20% for taxpayers with New York adjusted gross income over \$50,000.

As in prior years, this is a refundable credit for residents and part-year residents.

(See Tax Law, section 606(c)(1).)

### **The following reflects legislation enacted in 1999 that takes effect in 1999**

#### **Tax relief granted to members of the Armed Forces serving as part of Operation Allied Force (Kosovo)**

New York State's tax relief provisions now conform to the federal tax relief provisions granted to members of the armed forces and support personnel serving in a *qualified hazardous duty area* as a part of Operation Allied Force.

Serving in a *qualified hazardous duty area* means serving in the Republic of Yugoslavia (Serbia/Montenegro), Albania, the Adriatic Sea and the northern Ionian Sea (above the 39<sup>th</sup> parallel) during the period for which any member of the armed forces is entitled to *special pay* under federal law for services performed in the area. The term also includes any area in which services are performed by an individual who is part of Operation Allied Force and who is outside the U.S. while deployed away from his or her permanent duty station.

The available tax benefits granted these members of the armed forces and support personnel under New York State Tax Law include:

- An extension of time to file their New York income tax returns or gift tax returns until at least 180 days after departure from the qualified hazardous duty area, with no penalty or interest charges. The deadline for payment of taxes, including any installment of estimated tax, is similarly extended.
- A suspension from all New York tax return examinations and collections for the same period of time.

- Exemption from New York personal income tax for military pay received while serving in a qualified hazardous duty area to the extent that military pay is exempt from federal income tax.
- Interest on overpayments of income tax or gift tax from the original due date of the return if the return is filed by the extended due date.

Those hospitalized as a result of injury sustained while serving in a qualified hazardous duty area and the spouses of those qualified under these provisions are also entitled to this relief.

Also, if a member of the armed forces or support personnel dies as a result of serving in a qualified hazardous duty area, no New York State personal income tax or gift tax will be imposed for any tax year during which the decedent served in the area.

(See Tax Law sections 696 and 1332, and section 11-1796 of the Administrative Code of the City of New York.)

### **Repeal of New York City nonresident earnings tax for New York State residents**

Effective July 1, 1999, the New York City nonresident earnings tax, also known as the “commuter tax,” was eliminated for New York State residents who are not residents of the city of New York but who earn wages or carry on a trade or business in the city of New York.

With the elimination of the nonresident earnings tax on these individuals came the elimination of the requirement for employers to withhold New York City nonresident earnings tax on wages paid to these individuals. Accordingly, effective for payrolls made on or after July 1, 1999, an employer is not required to withhold New York City nonresident earnings tax from wages of an employee who resides outside the city of New York but within New York State.

In addition, New York State residents who are not residents of the city of New York but who carry on a trade or business in the city on or after July 1, 1999, may need to change their estimated tax payments for their 1999 New York City nonresident earnings tax.

For further information regarding the repeal, see TSB-M-99(4)(I) and TSB-M-99(6)(I).

(See Tax Law, section 1305 and the General City Law, section 25-m(1)(h).)

## **Holocaust exemption enhanced**

A new section has been added to the Tax Law to exempt from all State and local taxes imposed on or measured by income, amounts paid by eligible settlement funds, or eligible grantor trusts, to victims or targets of Nazi persecution. Accordingly, this new section applies to the New York State, New York City and city of Yonkers personal income taxes.

This new section enhances the current personal income tax holocaust exemptions provided for under sections 612(c)(35) and 612(c)(36) of the Tax Law which were enacted by Chapter 56 of the Laws of 1998. (For additional information, see TSB-M-97(4)(I)).

The new section defines *victims or targets of Nazi persecution* to include individuals, corporations, partnerships, sole proprietorships, unincorporated associations, a community, congregation, group, organization or other entity persecuted because of race, religion, ethnicity, sexual orientation, national origin or physical or mental disability. This definition also includes the heirs, successors, administrators, executors, affiliates or assignees of these victims or targets, or any other claimant receiving funds from either an eligible settlement fund or an eligible grantor trust.

An *eligible settlement fund* is defined as an entity that is treated as a designated or qualified settlement fund under Internal Revenue Code section 468B established for the principal purpose of resolving and satisfying claims relating to the Holocaust, World War II and its prelude and aftermath, victims or targets of Nazi persecution, transactions with or actions of the Nazi regime or treatment of refugees fleeing Nazi persecution by or in the Swiss Confederation (i.e., Switzerland). An *eligible grantor trust* is a trust established for the principal purpose of satisfying such claims.

When eligible payments are included in federal taxable income, a New York subtraction modification from federal adjusted gross income is allowed for these payments and all accumulated interest. This exemption does not apply to amounts received from assets acquired with these assets, or amounts acquired with the proceeds from the sale of these assets.

The new section also exempts designated or qualified settlement funds and grantor trusts established for the victims or targets of Nazi persecution by or in the Swiss Confederation from State and local taxes imposed on or measured by income, the New York City commercial rent tax and all State and local sales and use taxes.

To obtain more information on the *Holocaust Victim Assets Litigation* against Swiss banks and other Swiss entities, call 1-888-635-5483, or visit the official website at [www.swissbankclaims.com](http://www.swissbankclaims.com).

(See Tax Law sections 13, 612(c)(35) and 612(c)(36) and the Administrative Code of the City of New York, sections 11-1712(c)(33) and 11-1712(c)(34).)

### **Innocent spouse relief**

For tax years beginning on or after January 1, 1999, the New York State, New York City and city of Yonkers personal income taxes will conform to the Internal Revenue Code provisions of joint and several liability and innocent spouse relief relating to joint returns. Under the new law, a husband and wife who file a joint return are generally jointly and severally responsible for the tax and any interest or penalties due on the return. This means that if one spouse doesn't pay the tax due, the other may have to. However, one spouse may qualify for relief on a joint return if:

- there is an understatement of tax because the other spouse omitted income or claimed false deductions or credits;
- the husband and wife that filed the joint return are divorced, separated, or no longer living together; or
- given all the facts and circumstances, it would be unfair to hold the spouse liable for the tax.

(See Tax Law, section 654 and the Administrative Code of the City of New York, section 11-1755.)

### **Interest on amended income tax returns**

For tax years beginning on or after January 1, 1999, section 688(a)(3) of the Tax Law is amended relating to the payment of interest on an overpayment of personal income tax as a result of the filing of an amended return or a claim for credit or refund. Under the new law, interest on an overpayment of tax claimed on an amended return or a claim for credit or refund will be payable from the due date of the original return to the date the refund is issued. However, section 688(c) of the Tax Law is also amended to provide that if the Department refunds the overpayment within forty-five days after the amended return or a claim for credit or refund is filed, no additional interest will be paid from the date the amended return or a claim for credit or refund is filed until the date the refund is issued.

(See Tax Law, sections 688(a)(3) and 688(c).)

### **Taxpayers' Bill of Rights now extends to private collection agencies**

For tax years beginning on or after January 1, 1999, the application of the Taxpayers' Bill of Rights (Article 41) now extends to private businesses, and employees thereof, which the Tax Department contracts with to provide collection services. These private contractors must extend to taxpayers the same rights and courtesies that are extended to taxpayers by the Tax Department.

(See Article 41 of the Tax Law)

**Zone equivalent area credit extension**

The wage tax credit available for certified businesses that provide jobs in a Zone Equivalent Area (ZEA) has been extended for taxable years beginning on or after January 1, 1999. Businesses certified by the Commissioners of Economic Development and Labor that satisfy the criteria for the ZEA wage tax credit are now eligible for this credit during the ten-year period immediately following the date of designation as a ZEA. Prior to this extension, the credit expired five years after the ZEA designation.

(See Tax Law, sections 606(k)(2)(A)(iii) and 606(k)(3).)