

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
COMMISSIONER OF TAXATION AND FINANCE
ALBANY, NEW YORK

Pursuant to the authority contained in subdivision First of section 171 and subsection (a) of section 697 of the Tax Law, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendments to the New York State Personal Income Tax Regulations under Article 22 of the Tax Law, as published in Subchapter A of Chapter II of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to read as follows:

Section 1. Section 113.1 of such regulations is REPEALED and a new section 113.1 is added to read:

Section 113.1 New York deduction of a resident individual. (Tax Law, § 613)

(a) The New York deduction of a resident individual on the New York State return shall be the individual's New York standard deduction, as allowed under section 614 of the Tax Law, unless the individual elects to deduct the New York itemized deduction, as allowed under section 615 of the Tax Law.

(b) A resident individual may only elect to claim itemized deductions on the New York State return if itemized deductions were claimed on the individual's Federal income tax return for the same taxable year.

(c) For more information concerning the New York deduction of a resident individual, see Parts 114 and 115 of this Article.

Section 2. Paragraph (1) of subdivision (a) of section 114.1 of such regulations is amended to read as follows:

(a) "General." (1) A resident individual may claim the New York standard deduction on such individual's New York State personal income tax return, even though itemized deductions were claimed for the same year on such individual's Federal income tax return. The amount of the New York standard deduction which can be claimed

must be determined in accordance with [subdivision (b) of this] section 614 of the Tax Law.

Section 3. Subdivision (b) of section 114.1 of such regulations is REPEALED and subdivision (c) of such section is relettered to be subdivision (b) and amended to read as follows:

(b) For purposes of section 614 of the Tax Law, the following definitions will apply:

(1) Unmarried individual. [For purposes of this section, an] An “unmarried individual” is a resident individual who is not married, nor the head of a household, nor a surviving spouse, nor an individual whose Federal exemption amount is zero.

(2) Dependent individual. [For purposes of this section, a] A “dependent individual” is a resident individual whose Federal exemption amount is zero.

Section 4. Paragraph (2) of subdivision (a) of section 115.1 of such regulations is amended to read as follows:

(2) Except as provided under section [115.5 of this Part] 615(f) of the Tax Law, the New York itemized deduction of a resident individual means the total amount of deductions from Federal adjusted gross income, other than Federal deductions for personal exemptions, as provided in the laws of the United States for the taxable year, with the modifications [specified in sections 115.2 and 115.3 of this Part] required by sections 615(c) and (d) of the Tax Law.

Section 5. Section 115.2 of such regulations is REPEALED and a new section 115.2 is added to read:
§ 115.2 Modifications reducing Federal itemized deductions. (Tax Law, §615(c))

(a) The total amount of itemized deductions from Federal adjusted gross income must be reduced by the amount of the items specified in section 615(c) of the Tax Law. The total amount of subtraction modifications required by section 615(c) of the Tax Law may be limited to the extent provided in subdivision (b) of this section.

(b) New York State modifications to the Federal itemized deduction amounts subject to Federal floors,

reductions and limitations. (1) When a modification required by any of the paragraphs in section 615(c) of the Tax Law pertains to Federal itemized deductions that have been reduced or limited by Federal provisions other than the overall limitation on itemized deductions required by section 68 of the Internal Revenue Code, then the modification required by that paragraph will be determined on a pro rata basis. (An example of this type of modification is the modification for premiums paid for long-term care insurance under section 615(c)(4) of the Tax Law; the premiums are an item of deduction on the Federal return as a medical expense. Medical expenses are only allowed as a deduction to the extent that they exceed 7.5 percent of adjusted gross income.) The amount of each modification is determined by multiplying the amount of all Federal itemized deductions that are subject to the particular floor, reduction, or limitation being applied, after application of such floor, reduction, or limitation, by a fraction. The numerator of the fraction is the amount of the item of deduction, which is subject to modification as required by a particular paragraph of section 615(c) of the Tax Law, that would have been allowed for Federal income tax purposes if there were no Federal floor, reduction or limitation. The denominator is the amount of all Federal itemized deductions that are subject to the particular floor, reduction, or limitation being applied, before application of such floor, reduction, or limitation. The numerator and the denominator of the fraction are determined without regard to the effect of the overall limitation.

Example: For the 2003 tax year, taxpayer Y is a single taxpayer with a Federal adjusted gross income of \$80,000. Y is 61 years old. Y's Federal form 1040 schedule A contains the following information:

<u>Total medical and dental expenses</u>	<u>18,000</u>
<u>Less: Limitation (7.5% of 80,000)</u>	<u>6,000</u>
<u>Medical and dental expenses allowed</u>	<u>12,000</u>

Of Y's total medical and dental expenses, \$2,000 were for long term care insurance

premiums (this amount is below the Federal deduction limit for an individual who is 61 years old). Section 615(c)(4) requires that Y must make a subtraction modification for long term care insurance premiums allowed as a Federal itemized deduction. The amount of the subtraction modification is computed as follows:

The total medical and dental expenses allowed after the limitation is applied, \$12,000, is multiplied by a fraction. The numerator is the amount subject to the modification in section 615(c)(4), the long term care insurance premium of \$2,000. The denominator is the total medical and dental expenses before application of the limitation, \$18,000.

The subtraction modification for long term care insurance premiums is: $\$12,000 \times \$2,000/\$18,000 = \$1333.$

(2) When the amount of the Federal itemized deductions otherwise allowable for the taxable year is reduced by the overall limitation on itemized deductions required by section 68 of the Internal Revenue Code, then the amount of the modifications required by any of the paragraphs in section 615(c) of the Tax Law that are also subject to the overall limitation will be reduced on a pro rata basis. (Examples of this type of modification are: state and local income taxes described in section 615(c)(1) of the Tax Law; expenses or amortizable bond premiums described in section 615(c)(3) of the Tax Law; and charitable contributions included in the items of deduction, for a shareholder of a non-electing S corporation, described in section 615(c)(6) of the Tax Law.) The amount of the reduction for all the modifications subject to the overall limitation is determined by multiplying the total amount of all the modifications required by section 615(c) that are subject to the overall limitation by a fraction. The numerator of the fraction is the amount of the reduction in Federal itemized deductions resulting from the application of the overall limitation. The denominator of the fraction is the total amount of the Federal itemized deductions otherwise allowable for the taxable year before the overall limitation is applied minus the amount of the

itemized deductions excluded from the overall limitation by the provisions of subdivision (c) of section 68 of the Internal Revenue Code. That subdivision provides that certain deductions will not be subject to the reduction of itemized deductions required by subdivision (a) of section 68 (that is, those deductions relating to medical expense, deductions allowed for investment interest, and deductions for casualty or theft losses).

Example: For the 2003 tax year, taxpayer X is a single taxpayer with a Federal adjusted gross income of \$200,000. X's Federal form 1040 Schedule A contains the following information:

<u>Total medical and dental expenses</u>	<u>25,000</u>	
<u>Less: Limitation (7.5% of \$200, 000)</u>	<u>15,000</u>	
<u>Medical and dental expenses allowed</u>		<u>10,000</u>
<u>Taxes: State and Local income</u>	<u>4,000</u>	
<u>Real estate property taxes</u>	<u>3,500</u>	
<u>Total Taxes</u>		<u>7,500</u>
<u>Home mortgage interest</u>		<u>5,000</u>
<u>Gifts to charity</u>		<u>2,500</u>
<u>Total itemized deductions before overall limitation</u>		<u>25,000</u>
<u>The amount of itemized deductions after the limitation</u>		<u>22,988</u>

To compute the New York itemized deduction, X must determine the amount of the subtraction modification required by section 615(c) after taking into consideration the pro rata reduction for items subject to the Federal overall limitation.

The amount of the itemized deductions that is subject to a section 615 (c) modification and is subject to the overall limitation is \$4000 (the amount of the state and local income taxes). In this example, X's gifts to charity are not subject to any section 615(c) modification.

This amount, \$4000, is multiplied by a fraction to compute the pro rata reduction in the subtraction modification. The numerator is \$2012, which is the amount that X's total itemized deductions are reduced by the overall limitation (\$25,000 - \$ 22,988 = \$2012). The denominator is \$15,000, which is the total itemized deductions before the overall limitation is applied minus the amount of the itemized deductions excluded from the overall limitation by IRC section 68(c), in this case, the medical and dental expenses (\$25,000 - \$10,000 = \$15,000).

The computation of the pro rata reduction is: $\$4,000 \times \$2,012 / \$15,000 = \536 .

The total section 615(c) subtraction modification for items subject to the overall limitation for X in computing the New York itemized deduction is $\$3464$ ($\$4,000 - \$536 = \$3,464$).

(c) Section 615(c)(6) of the Tax Law requires a shareholder of a Federal S corporation to reduce Federal itemized deductions by the amount of items of deduction attributable to such S corporation included in Federal itemized deductions if the S corporation has not made the election under section 660(a) of the Tax Law to be treated as a New York S corporation. An exception is made for a resident shareholder of an S corporation that cannot make such election. Examples of S corporations that cannot make the section 660(a) election are: a foreign S corporation (that is, an S corporation that is not incorporated in New York State) that does not do business in New York State and an S corporation that is subject to tax under article 9 of the Tax Law.

Section 6. Section 115.3 of such regulations is REPEALED and a new section 115.3 is added to read as follows:

§ 115.3 Modifications increasing Federal itemized deductions. (Tax Law, § 615(d))

(a) The total amount of itemized deductions from Federal adjusted gross income should be increased by the amount of the items specified in section 615(d) of the Tax Law.

Section 7. Section 115.4 of such regulations is amended to read as follows:

Sec. 115.4 Partners and shareholders of S corporations. (Tax Law, §615(e))

(a) “Partners.” Where a resident individual is a member of a partnership and such individual determines New York taxable income by using itemized deductions, then such individual's share of any partnership items of deduction covered by any of the provisions of [section] sections 615(c) and 615(d) of the Tax Law and as further specified in sections 115.2 [or] and 115.3 of this Part is also subject to modification. The amount of the modification should be computed by the partner in accordance with the rules contained in section 117.3 of this Article. In such case, the partner should combine such partner's share of each modification of a partnership deduction with any corresponding modification applicable to such partner's individual Federal itemized deductions. This treatment of partnership modifications is different from the treatment of estate and trust modifications, which are all combined into a single net figure, called the New York fiduciary adjustment, as provided in section 119.1 of this Article.

(b) “Shareholders of S corporations.” (1) Where a resident individual is a shareholder of an S corporation for which the election to be treated as a New York S corporation under section 660(a) of the Tax Law is in effect, or is a shareholder of an S corporation that cannot make the election provided for under section 660(a) of the Tax Law (e.g., a foreign S corporation (i.e., an S corporation that is not incorporated in New York State) that does not do business in New York State, or an S corporation that is taxed under article 9 of the Tax Law), and such individual determines New York taxable income by using itemized deductions, then such individual shareholder's share of any S corporation items of deduction covered by any of the provisions of [section 115.2 of this Part, except subdivision (e) thereof, or by section 115.3] sections 615(c) and (d) of the Tax Law and sections 115.2 and 115.3 of this Part is also subject to modification. The amount of the modification should be computed by the shareholder in accordance with section 617(a) of the Tax Law. In such case, the resident individual shareholder should combine the share of each modification of an S corporation deduction with any corresponding modification applicable to such shareholder's individual Federal itemized deductions. This treatment of S corporation modifications is different

from the treatment of estate and trust modifications, which are all combined into a single net figure, called the New York fiduciary adjustment, as provided in section 119.1 of this Article.

(2) A resident individual shareholder of a foreign S corporation (i.e., an S corporation that is not incorporated in New York State) that does business in New York State, or an S corporation incorporated in New York State, either of which can make the election provided for by section 660(a) of the Tax Law but does not, is not subject to the provisions of this subdivision. The shareholder would be required to make the modification [referred to in section 115.2 of this Part] required by section 615(c)(6) of the Tax Law.

(3) In the case of a New York S termination year (see section 208.1-A of the Tax Law), the amount of the modifications referred to in paragraphs (1) and (2) of this subdivision must be determined in accordance with the provisions of section 612(s) of the Tax Law and section 112.12 of this Part.

Dated: Albany, New York
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Andrew S. Eristoff
Commissioner of Taxation and Finance