

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 1096 of the Tax Law, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendments to the Business Corporation Franchise Tax Regulations, as published in Subchapter A of Chapter I of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York and the Franchise Tax on Banking Corporations Regulations, as published in Subchapter B of Chapter I of such Title:

Section 1. Section 3-7.5 of such regulations is amended to read as follows:

A taxpayer [which] that claims a capital loss carry back or carry forward must submit a copy of its Federal schedule of capital gains and losses for the loss year and for any year or years to which the loss is being carried. A claim for refund based on a capital loss carry back must [also be accompanied by the documents required by section 3-8.9 of this Part] be filed on the forms and in the manner prescribed by the commissioner.

Section 2. Subdivisions (b), (c) and (d) of section 3-8.9 of such regulations are repealed and subdivision (a) is amended to read as follows:

[(a)] A taxpayer claiming a credit or refund of franchise tax paid under article 9-A for a year to which a net operating loss is carried back as a deduction must file [an application for credit or refund of the tax paid. The taxpayer must:

(1) file its claim on forms prescribed by the Tax Commission (see: section 6-3.3 of this Title – Forms to be used);] an amended return for the tax year for which a credit or refund is claimed

[(2) file its claim] within the period of limitations on credit or refund pursuant to [Subpart 8-2 of this Title] section 1087 of the Tax Law;

(3) submit a copy of its claim filed with Internal Revenue Service requesting refund or credit of Federal income tax;

(4) submit a copy of the document sent to the taxpayer by the Internal Revenue Service indicating approval of refund or credit of Federal income tax for the carry back year or years. If the document is not filed within 90 days of the date of its issuance, interest will not be paid after the 90th day].

Section 3. Subdivision (a) of section 6-1.3 of such regulations is amended to read as follows:

(a) General. If the amount of the taxable income of any taxpayer or of any shareholder of any taxpayer[, which] that has elected to be taxed under subchapter S of chapter one of the Internal Revenue Code, as reported for Federal income tax purposes, is changed or corrected by a final determination of the Commissioner of Internal Revenue or other officer of the United States, or other competent authority, or if a renegotiation of a contract or subcontract with the United States results in a change in taxable income, the taxpayer is required to report such changed or corrected taxable income or the results of such renegotiation within 90 days, or 120 days in the case of a taxpayer making a combined report for the taxable year affected, after the final determination. The taxpayer must concede the accuracy of such determination or state wherein it is erroneous.

Section 4. Section 6-1.4 of such regulations is amended to read as follows:

Any taxpayer [which] that files an amended return with the Internal Revenue Service must, within 90 days thereafter, file an amended report with the [Tax Commission] commissioner.

Section 5. Subdivision (g) of section 6-3.1 of such regulations is repealed, the title, and subdivisions (a), (b), (d), and (e) are amended to read as follows:

Section 6-3.1 Form of reports. (Tax Law, Section 211(1), (2) [and], (2-a), and (3); Section 1085(n))

(a) Reports are required to be filed on the forms and in the manner prescribed by the Commissioner of Taxation and Finance. [All taxpayers are required to file either the long form (CT-3) or the short form (CT-4), as prescribed by the commissioner. A subchapter S corporation must submit a copy of its Federal form 1120S

"U.S. Small Business Corporation Income Tax Return" with its report] The forms and instructions are available from the department and may be downloaded from the department's website.

(b) [A taxpayer filing its report on long form (CT-3) must submit with such report a copy of its Federal form 1120 with the following schedules:

- (1) cost of goods sold;
- (2) dividends;
- (3) capital gains and losses;
- (4) taxes;
- (5) other deductions; and
- (6) any other necessary schedules.

A corporate stockholder of a tax exempt DISC must file a copy of form CT-3B submitted by the DISC (see subdivision (c) of this section) and consolidated report form CT-3C. A change in Federal taxable income must be reported on form CT-3360. Form CT-3360 must be accompanied by a copy of the revenue agent's report and copies of all other pertinent information] A change in Federal taxable income must be reported on an amended New York State return and must be accompanied by a copy of the Federal amended return or the Federal revenue agent's report, and copies of all other related information. For information relating to the time for filing changes in Federal taxable income, see section 6-4.2 of this Part.

(d) A foreign corporation which is not a taxpayer, but has an employee, including any officer, within New York State, is required to file an information report [on form CT-245]. A DISC exempt from tax imposed by article 9-A is required to file an information report [on form CT-3B].

(e) Every taxpayer must submit such other reports and other information which the [Commissioner of Taxation and Finance] commissioner may require in the administration of article 9-A.

Section 6. Subdivision (b) of section 6-3.3 is of such regulations is repealed and the title and subdivision (a) are amended to read as follows:

Section 6-3.3 Forms [to be used].

[(a) Report forms may be obtained from the Department of Taxation and Finance, Taxpayer Assistance Bureau, Forms Control Unit, W. Averell Harriman State Office Campus, Albany, NY 12227] The forms and instructions are available from the department and may be downloaded from the department's website.

Section 7. Section 6-4.2 of such regulations is amended to read as follows:

Any change in Federal taxable income must be reported within 90 days, or 120 days in the case of a taxpayer making a combined report for the taxable year affected, after the date of final determination by the Commissioner of Internal Revenue or other officer of the United States, or other competent authority. For a description of change in Federal taxable income and final determination, see section 6-1.3 of this Title.

Section 8. Subdivision (a) of section 21-1.3 of such regulations is amended to read as follows:

(a) If the amount of the taxable income for any year of any taxpayer as reported for Federal income tax purposes is changed or corrected by a final determination of the Commissioner of Internal Revenue or other officer of the United States or other competent authority, the taxpayer is required to report to the [Tax Commission] commissioner such changed or corrected taxable income within 90 days, or 120 days in the case of a taxpayer making a combined return for the year affected, after the final determination. The taxpayer must concede the accuracy of such determination, or state wherein it is erroneous.

Section 9. Section 21-1.4 of such regulations is amended to read as follows:

Any taxpayer [which] that files an amended return with the Internal Revenue Service must file an amended return within 90 days, or 120 days in the case of a taxpayer making a combined return for the year being amended, thereafter with the [Tax Commission] commissioner.

Section 10. Section 21-3.1 of such regulations is amended to read as follows:

(a) Returns are required to be filed on [forms prescribed by the Tax Commission. All taxpayers are required to file form CT-32. A taxpayer must submit with such return a copy of its actual Federal form 1120 or 1120F and all attachments. In addition, it must submit the following information:

(1) payor and amount of each dividend;

(2) payor and amount of each item of gross interest income described in paragraph (b)(12) of section 18-2.4 of this Title;

(3) description and amount of each item of other income;

(4) the amount and type of taxes paid to each jurisdiction; and

(5) a schedule showing all computations pertaining to an IBF]

the forms and in the manner prescribed by the Commissioner of Taxation and Finance. The forms and instructions are available from the department and may be downloaded from the department's website.

(b) [When a consolidated return is filed for Federal income tax purposes, the taxpayer must also submit with its form CT-32 a copy of the consolidating spreadsheets and supporting schedules required for Federal income tax purposes.

(c) A change in Federal taxable income must be reported on an amended return and must be accompanied by a copy of the amended Federal return or the Federal revenue agent's report, and copies of all other related information. For information relating to the time for filing changes in Federal taxable income, see section 21-4.2 of this Part.

[(d)] (c) Any banking corporation [which] that is not a taxpayer, but [which] that has one or more employees or officers within New York State, is required to file an information report [on form CT-245].

[(e)] (d) Every taxpayer must submit such other returns and other information which the [Tax Commission] commissioner may require in the administration of article 32 of the Tax Law.

[(f)] (e) Every return must have annexed to it a certification that the statements in the return are true. The certification must be made by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer of the taxpayer authorized to act in that capacity. The fact that an individual's name is signed on the certification of the return shall be prima facie evidence that such individual is authorized to sign and to certify the return on behalf of the corporation.

[(g) Annual return forms are supplied by the Tax Commission. Copies of the prescribed forms will, upon request, be furnished by the Tax Commission. Failure to receive a blank form does not excuse failure to file the return.]

Section 11. Subdivision (b) of section 21-3.3 of such regulations is repealed and the title and subdivision (a) are amended to read as follows:

Section 21-3.3 Forms [to be used].

[(a) Return forms may be obtained from the Department of Taxation and Finance, Taxpayer Assistance Bureau, Forms Control Unit, W. Averell Harriman State Office Campus, Albany, NY 12227] The forms and instructions are available from the department and may be downloaded from the department's website.

Section 12. Section 21-4.2 of such regulations is amended to read as follows:

Any change in Federal taxable income must be reported within 90 days, or 120 days in the case of a taxpayer making a combined return for the year affected, after the date of final determination by the Commissioner of Internal Revenue or other officer of the United States, or other competent authority. For a description of change in Federal taxable income and final determination, see section 21-1.3 of this Part.

Dated: Albany, New York
March 28, 2011

Thomas H. Mattox
Commissioner of Taxation and Finance