



**Tax Provisions in the
New York State
2008-09 Budget**

2008-09 Budget Overview

- Challenging fiscal environment and unique circumstances
 - Facing deficit
 - Initial projected budget gap over \$4 billion
 - Indications of further softening of economy
 - Triggered by subprime mortgage crisis
 - Rising energy costs
 - Political considerations
 - New administration
 - Election year



2008-09 Budget Overview

■ Principles used

- Increase tax equity & close tax loopholes
- Conformity with tax treatment adopted by other taxing jurisdictions
 - States
 - Federal government
- Achieve fiscal stability
- Assist in & increase compliance with tax law
- Aid administerability & promote efficiency of tax system



2008-09 Budget Overview

- Affects broad range of Tax Department responsibilities and taxes
 - 8 compliance and enforcement initiatives
 - 7 structural amendments
 - 3 sales tax provisions
 - 3 tobacco tax provisions
 - 7 tax credit provisions
 - 3 STAR amendments



Compliance & Enforcement Initiatives

- Voluntary Disclosure & Compliance Program
- Financial Institution Data Match System
- Voluntary Compliance Initiative
- Tax shelter reporting
- ABT enforcement provisions
- Vendor re-registration
- E-file/e-pay
- Federal offset fee



Voluntary Disclosure and Compliance Program

- Establishes procedure for taxpayers to voluntarily disclose past tax obligations and enter into a compliance agreement to avoid civil penalties and criminal prosecution
- Eligibility generally restricted to new liabilities
 - Liabilities resulting from a Federal or New York reportable or listed transaction are ineligible
- Compliance agreement includes terms to require future compliance and penalties if agreement is intentionally violated



Financial Institution Data Match System

- Requires Department to develop and operate a financial institution data match system for State tax collection purposes
 - System includes all warranted tax debt
 - Financial institutions doing business in New York must provide quarterly reports



Voluntary Compliance Initiative (VCI)

- Reopens the 2005-2006 VCI for the period from 11/1/08 through 1/31/09
 - Tax avoidance transactions disclosed during the reopened VCI receive a 100% waiver of penalty
 - Taxpayers disclosing a listed or reportable transaction will receive a 50% waiver of penalty



Tax Shelter Reporting

- The disclosure and penalty provisions relating to participation in abusive tax shelter transactions are extended through June 2011
 - Were originally set to expire on 7/1/09



Alcoholic Beverage Tax (ABT) Enforcement Provisions

- Makes permanent the current ABT enhanced tax enforcement provisions
 - Were scheduled to sunset 10/31/09
- These provisions include:
 - Alcohol distributor and transporter registration requirements
 - Invoice and transporter manifest requirements for the importation and movement of liquor in the State
 - Seizure and forfeiture authority for both liquor and vehicles transporting it where untaxed liquor is discovered in violation of the ABT



Vendor Re-registration

- Directs the Tax Department to conduct a sales tax re-registration program
- Provides for a \$50 re-registration application fee to be paid by monthly and quarterly vendors
- Re-registration provides a means to update taxpayer information, delete obsolete registrations, and collect new data to support administration of the sales tax
- Program will begin 11/1/08



E-file/E-pay

- Authorizes mandated electronic filing and payment except for State and New York City personal income taxes
- Payments must be paid electronically if documents must be e-filed
- Imposes \$50 penalty for each failure to e-file or e-pay when mandated



Federal Offset Fee

- Requires taxpayers to pay fee charged by Federal government and other states for offsetting tax refunds to pay NYS income tax debts owed
 - Currently, State pays fee
- Fee is deemed part of the taxpayer's tax debt and would be eligible for offset against the refund



Structural Amendments

- Credit card nexus
- REITs/RICs
- LLC fee/S & C corp fixed dollar min tax
- Capital base rate, cap, and base changes
- Qualified production activities income (QPAI) deduction
- Mandatory first installment
- MTA surcharge extender



Credit Card Nexus

- A banking corporation operating as a credit card bank will be subject to Article 32 Bank Tax
- Must meet any of these thresholds:
 1. Issued credit cards to 1,000+ customers with NY mailing addresses
 2. 1,000+ merchant locations in NY covered by merchant customer contracts with the banking corporation
 3. Receipts of \$1 million+ from cardholder customers with NY mailing addresses
 4. Receipts of \$1 million+ from merchant customer contracts with merchant customers relating to NY locations
 5. 1,000+ NY cardholder customers and merchant locations, or \$1 million+ in receipts from NY cardholder customers and merchant customers relating to NY locations



Credit Card Nexus

- Provision contains distinct combined filing rules for credit card banks
 - Credit card bank will be presumed to file separate return
 - If a bank doing a credit card business was included in a combined return for its most recent return filed for a taxable year beginning before 2008, it may continue to be included in the combined return
 - A credit card bank could be required to file a combined return with non-taxpayer banks if those banks provide services for or support to the credit card bank



Real Estate Investment Trusts (REITs)/ Regulated Investment Companies (RICs)

- Requires captive REITs or RICs to file a NY combined return with the closest controlling taxpayer corporation
- Eliminates the Internal Revenue Code (IRC) deduction for dividends paid by the REIT/RIC to any member of the affiliated group that includes the captive under Art. 9-A and 33; the deduction is phased out over three years under Art. 32
- A captive REIT/RIC will not be required to be combined if a bank that owns or controls the captive is part of an affiliated group:
 1. whose members own \$8 billion or less in assets and
 2. that does not include any corporation engaged in businesses that a subsidiary of a bank holding company would not be permitted to engage in unless that business is de minimis
- Provisions are repealed for tax years beginning on or after 1/1/11



LLC Fee / S & C Corp Fixed Dollar Min Tax

- Changes basis to NY source gross income
 - Limited Liability Companies (LLCs)
 - Fee ranges from \$25 to \$4,500
 - Disregarded entities subject to the \$25 fee
 - Was per-member fee; not applicable to disregarded entities
 - S corporations
 - Fixed dollar minimum tax ranges from \$25 to \$4,500
 - Was based on gross payroll
 - C corporations
 - Fixed dollar minimum tax ranges from \$25 to \$5,000
 - Was based on gross payroll



Capital Base Rate, Cap, and Base Changes

- Rate reduced from 0.178% to 0.15%
- \$1 million liability cap for non-manufacturers is raised to \$10 million
 - Reverts to \$1 million in 2011 tax year
- Manufacturers retain \$350K cap if they have:
 - Manufacturing property in NY with a federal basis of \$1 million or more OR
 - All manufacturing property located in NY
 - Qualified Emerging Technology Companies (QETCs) are deemed manufacturers and are not subject to above test



Qualified Production Activities Income (QPAI) Deduction

- Decouples from federal QPAI deduction
 - IRC 199 deduction
- Taxpayers must add-back amount of deduction to federal taxable income
- Deduction is also disallowed for NYC general corporation, bank, and personal income taxes



Mandatory First Installment

- Mandatory first installment is increased from 25% to 30% of prior year liability
- Only applies to taxpayers with a prior year tax liability over \$100,000
- Applies to taxpayers subject to:
 - Article 9-A
 - Article 32
 - Non-life insurance companies under Art. 33
 - Art. 9, Sections 182, 182-a, 184, 186-a, 186-e
 - MTA surcharge
- Effective for tax years beginning on/after 1/1/09



MTA Surcharge Extender

- Temporary Metropolitan Transportation Authority (MTA) surcharges imposed on business taxpayers located in the MTA region are extended to taxable years ending before 12/31/13
 - Were scheduled to sunset for taxable years ending before 12/31/09



Sales Tax Provisions

- Sales tax nexus
- Sales by exempt organizations
- NYC/MAC sales tax



Sales Tax Nexus

- Creates an evidentiary presumption that certain sellers are “vendors” and required to collect and remit State and local sales tax when:
 - sellers enter into agreements with NY residents under which the residents are compensated for referring customers to the sellers, including via internet, and
 - gross receipts from such sales are more than \$10,000
- Offers a limited amnesty for past sales tax if the seller registers as a vendor and begins to collect tax by 6/1/08



Sales by Exempt Organizations

- Requires non-profit tax-exempt organizations to collect sales tax on:
 - retail online and mail-order catalog sales
 - rentals or leases of tangible personal property
 - certain services (e.g., utility services, services to real property)
- Takes effect on 9/1/08



NYC/MAC Sales Tax

- Provides for a smooth transition to the reimposition of NYC's Art. 29 local sales and use taxes upon the 7/31/08 expiration of the Municipal Assistance Corporation (MAC) sales tax
- Imposes sales tax at the current general rate of 4% (6% on parking services) and conforms the base of the Art. 29 NYC local sales tax to the current MAC sales tax base
- Allows certain NYC sales and use tax on natural gas used to generate electricity to be passed-through to electric corporations



Tobacco Tax Provisions

- Increases cigarette tax rate to \$2.75 per pack from current \$1.50
- Conforms definition of cigarette and cigar to the federal definition
- Changes the tax on moist snuff to a weight-based rate of 96-cents per ounce

Cigarette rate increase takes effect on June 3rd, other changes effective July 1st



Tax Credit Provisions

- Empire State film production credit
- Brownfields moratorium
- Low-income housing credit
- Financial services ITC extender
- Credit for accessible taxicabs for individuals with disabilities extender
- Bioheat credit extender
- Power for Jobs credit extender



Empire State Film Production Credit

- Credit rate is increased from 10% to 30% of qualified production costs
- Entire amount of excess credit can be refunded in one year
 - Previously, refund taken over two years
- Credit allocation by Governor's Office for Motion Picture and Television Development is increased from \$60 million annually in 2008 through 2011 to:
 - \$65 million in 2008
 - \$75 million in 2009
 - \$85 million in 2010
 - \$90 million in 2011 and 2012
 - \$110 million in 2013



Other Tax Credit Provisions

- Institutes a 90-day moratorium on applications to the Brownfield Cleanup Program
- Low-income housing credit aggregate amount increased by \$4 million
- Financial services investment tax credit extended to 10/1/11
- Credit for accessible taxicabs for individuals with disabilities extended to 12/31/10
- Bioheat credit reinstated for 1/1/08-12/31/11
- Power for Jobs credit extended to 6/30/09



STAR Amendments

- Allow offsets of Basic Middle Class STAR rebates
 - Similar to the current offsets of refunds allowed against tax debts or debts owed to State agencies
- Delay scheduled increase in Basic Middle Class STAR rebate checks for 1 year
- Restructure NYC school tax credits
 - Delay the scheduled increase in the New York City school tax credit for 1 year
 - Reduces the credit to zero for taxpayers with income in excess of \$250,000



For More Information

- *Summary of Tax Provisions in SFY2008-09 Budget*
- <http://www.tax.ny.gov>
- Office of Tax Policy Analysis
(518) 457-3187

