THE CITY OF NEW YORK
DEPARTMENT OF FINANCE

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by sections 389(b) and 1043 of the New York New York City Charter and section 11-687(1) of the Administrative Code of the City of New York, I hereby promulgate the within amendment to the Rules Relating to the General Corporation Tax. .

/S/ Andrew S. Eristoff
Commissioner of Finance

Section 1. Subdivision a of section 11-34 of Title 19 of the Rules of the City of New York Relating to the General Corporation Tax, promulgated August 15, 1968 is amended to read as follows:

(a) An alternative basis for measuring the primary tax is entire net income plus certain compensation with various adjustments, or the portion of such sum allocable to New York City, if such calculation results in a higher amount than that computed on any of the other three alternative bases. The rate of the tax measured by income plus compensation is five and one-half percent for taxable years beginning before January 1, 1971, [and] six and seven-tenths percent for taxable years beginning on or after [such date] January 1, 1971 and ending on or before December 31, 1974, ten and five one-hundredths percent for taxable years beginning on or after January 1, 1975 and before January 1, 1977, nine and one half percent for taxable years beginning on or after January 1, 1977 and before January 1, 1978, nine percent for taxable years beginning on or after January 1, 1978 and before January 1, 1987, and eight and eighty-five one-hundredths percent for taxable years beginning after December 31, 1986. The applicable rates for taxable years beginning in 1974 and ending in 1975 shall be those set forth in Ad. Code section 11-604(1)(C).

§ 2. Subdivision (b) of such section is amended to read as follows:

(b) The measure of the tax is computed as follows:

(1) [add] Add to the amount of entire net income or net loss (treated as a negative figure)(see example 4) for the year, if any,

(i) all salaries and other compensation paid to [the taxpayer's elected or appointed officers and to] every stockholder owning in excess of five percent of its issued capital stock, but only if and to the extent that a deduction was allowed for such salaries and compensation in computing entire net income (or net loss); and

(ii) to the extent not required by subparagraph (i),

(A) for taxable years beginning before July 1, 1996, all salaries and other compensation paid to the taxpayer's elected or appointed officers, but only if and to the extent that a deduction was allowed for such salaries and compensation in computing entire net income (or net loss);

(B) for taxable years beginning on or after July 1, 1996 but before July 1, 1998, 75 percent of the total amount of salaries and other compensation paid to the taxpayer's elected or appointed officers for which a deduction was allowed in computing entire net income (or net loss);

(C) for taxable years beginning on or after July 1, 1998 but before July 1, 1999, 50 percent of the total amount of salaries and other compensation paid to the taxpayer's elected or appointed officers for which a deduction was allowed in computing entire net income (or net loss); and

(D) for taxable years beginning on or after July 1, 1999, no part of salaries and other compensation paid to the taxpayer's elected or appointed officers.

(iii) Notwithstanding anything to the contrary in subparagraph (ii) of this paragraph (1), the full amount of salaries or other compensation paid to any elected or appointed officer for which a deduction was allowed in computing entire net income (or net loss) shall be added to that amount if such officer was, at any time during the taxable year, a stockholder owning more than five percent of the taxpayer's issued capital stock.

(2) [deduct] Deduct from such total

(i)for taxable years beginning before July 1, 1997, $15,000,

(ii)[any net loss for the fiscal or calendar year upon which the report is based to the extent not considered above in subparagraph (i);]for taxable years beginning on or after July 1, 1997 but before July 1, 1998, $30,000,

(iii) for taxable years beginning on or after July 1, 1998, $40,000,

(or a proportionate part [thereof] of the applicable amount in the case of a return for less than a year.) [and]

(3) [multiply] Multiply the balance by 30 percent.

§ 3. Such section is amended by adding a new subdivision (f) to read as follows:

(f) The provisions of subdivision (b) of this section are illustrated by the following examples:

Example 1: HCO Corporation is a calendar year taxpayer with three shareholders, B, C and D. B owns 4% and C and D each own 48% of HCO's stock. HCO has two subsidiaries. For calendar year 1999, HCO's gross income, other than income from its subsidiaries is $2,000,000. HCO has no investment income or capital. HCO's business allocation percentage is 100%. B is an officer of HCO; C and D are employees but not officers. HCO pays B a salary of $250,000 and C and D each a salary of $500,000. All of B's salary is attributable to subsidiary capital. No portion of C's or D's salary is attributable to subsidiary or investment capital or income. HCO has other deductions of $700,000, of which HCO attributes $100,000 to subsidiary capital and $600,000 to business capital. HCO's federal taxable income is $50,000. After adding back deductions attributable to subsidiary capital, HCO's entire net income is $400,000. The tax on the entire net income base would be $35,400 (8.85% x $400,000). HCO is not subject to tax on the capital base.

HCO's alternative tax base is determined as follows:

entire net income	$400,000
plus	
C and D's salaries	$1,000,000
less	
fixed dollar amount	($40,000)
	$1,360,000
multiplied by 30%	x .30
	$408,000

B's salary is not added back because no deduction was allowed for it in determining entire net income. The tax on the alternative basis would be $36,108 ($408,000 x 8.85%). Therefore, HCO pays tax on the alternative tax basis.

Example 2: The facts are the same as in example 1 except that only 60% of B's salary is attributable to subsidiary capital and, therefore, $150,000 of B's salary is disallowed as an expense attributable to subsidiary capital. After adding back that portion of B's salary attributable to subsidiary capital, HCO's entire net income is $300,000. For calendar year 1999, only 50% of that portion of B's salary deductible in determining HCO's entire net income is added back in calculating the alternative tax base.

HCO's alternative tax base is determined as follows:

Entire net income	$300,000
plus	
C&D's salaries	$1,000,000
plus 50% of B's deductible salary	$50,000
less	
Fixed dollar amount	($40,000)
	$1,310,000
Multiply by 30%	x.30
	$393,000

The tax on the alternative base would be $34,781 which is more than the tax calculated on the entire net income base ($26,550). Therefore, HCO would pay tax on the alternative base.

Example 3: The facts are the same as in Example 1 but D is an officer but not a shareholder of HCO and the taxable year is calendar year 2000. No part of B's or D's salary is added back for years beginning after June 30, 1999.

HCO's alternative tax base is determined as follows:

entire net income	$400,000
plus	
C's salary	$500,000
less	
fixed dollar amount	($40,000)
	$860,000
multiplied by 30%	x .30
	$258,000

The tax on the alternative base would be $22,833 ($258,000 x 8.85%). Because that amount is less than the tax measured by entire net income, $35,400, HCO would pay tax on the entire net income basis.

Example 4: ABC Corporation is a calendar year taxpayer. For calendar year 2000, ABC's gross income is $1,000,000 all of which is business income. ABC's business allocation percentage is 100%. ABC pays a salary of $700,000 to A, its vice president for finance. A also owns 6% of the stock of ABC. ABC has $400,000 of other deductions. ABC has a net loss for the year of ($100,000). ABC is not liable for tax on the capital base.

ABC's alternative tax base is calculated as follows:

Net loss	($100,000)
plus	
A's salary	$700,000
less	
fixed dollar amount	($40,000)
	$560,000
multiplied by 30%	x .30
	$168,000

Because A owns more than 5% of ABC's stock, all of A's salary is added back in calculating the alternative tax base. The tax calculated on the alternative base is $14,868, which is higher than the tax on the ENI base, $0. Therefore, ABC pays tax on the alternative base.

BASIS AND PURPOSE OF AMENDMENTS

These amendments affect the portion of the Rules Relating to the New York City General Corporation Tax governing the calculation of the tax on the alternative income-plus-compensation base to reflect legislative changes made by Ch. 625 of the Laws of 1996. These amendments also clarify that compensation is to be added back only to the extent a deduction was allowed for such compensation in determining entire net income and to clarify the calculation of the alternative base where entire net income is a net loss.

/S/ Andrew S. Eristoff
Commissioner of Finance