

**NEW YORK STATE AND CITY LEGISLATIVE SUMMARY  
FOR THE YEAR 2002**

**NEW YORK CITY DEPARTMENT OF FINANCE**

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## **2002 NEW YORK STATE AND NEW YORK CITY LEGISLATIVE SUMMARY**

The following are brief summaries of New York State laws and New York City local laws approved in 2002 that affect City taxes or other areas within the Department of Finance's jurisdiction. Citations are provided after each summary for readers who wish to consult the laws themselves.

### **Real Property Tax**

#### **REAL PROPERTY TAX INCREASE AUTHORIZED FOR SECOND HALF OF CITY FISCAL YEAR 2003**

As part of the effort to restore balance to the City's fiscal year 2003 budget, a local law has been adopted to authorize the City Council to increase real property tax rates for the fiscal year's second half, covering the period from January 1 to June 30, 2003. Acting on that authorization, the Council has increased the second half tax levy by \$903 million.

- NYC Local Law 40 of 2002

#### **STATE SCHOOL TAX RELIEF PROGRAM (STAR) CHANGES ADOPTED**

A modified School Tax Relief (STAR) benefit has been extended to cooperatively owned Mitchell-Lama and other mutual housing companies organized under sections 33 (Limited Profit), 93 (Limited Dividend), 125 (Redevelopment Companies), and 556 (Housing Development Fund Companies) of the Private Housing Finance Law.

Another amendment establishes an income verification program for those homeowners receiving an enhanced STAR benefit. Other major provisions of this legislation include: a cost-of-living-adjustment to the income limitation for the enhanced STAR exemption; multiple exemptions for legally separated married couples living apart pursuant to a legal separation; and multiple exemptions for physically separated residences within the same tax parcel.

- Chapter 83 (Part E), NYS Laws of 2002

#### **CLASS SHARES ADJUSTED FOR CITY FY 2003 REAL ESTATE TAX LEVY**

The maximum increase in "current base proportions" has been reduced from five percent to two percent for purposes of calculating the "class shares" for the FY 2003 real estate tax levy. The City Council is authorized to alter the current base proportion of any or all other tax classes so that the sum of the current base proportions equals one. Furthermore,

if the City has sent out tax bills prior to the passage of this act, the City is authorized to amend current and adjusted base proportions and to send out amended tax bills. (Revised bills reflecting these changes, as well as the above-noted real estate tax increase, were sent to property owners in December 2002.)

- Chapter 93 (Part H), NYS Laws of 2002

### **REALTY TAX EXEMPTION FOR HOME CONSTRUCTION EXTENDED**

The City's 421-b property tax exemption program applies to the construction of new one- and two-family homes. Legislation has been enacted to extend the program for an additional four years. Construction must commence on or after July 1, 2002 and before July 1, 2006, provided construction is completed no later than July 1, 2008.

- Chapter 160, NYS Laws of 2002

### **UNIFORM DEADLINES ESTABLISHED FOR PLACING CERTIORARI PROCEEDINGS ON COURT CALENDAR**

The Real Property Tax Law has been amended to change the date when a certiorari proceeding is deemed abandoned. Previously, the statute provided that a proceeding was deemed abandoned four years from the date of the commencement of the proceeding. The new provision sets a uniform deadline for placing a certiorari proceeding on the court calendar so that a proceeding would be deemed abandoned if it is not placed on the calendar within four years from the last date provided by law for the commencement of the proceeding. This is applicable to all properties in New York City.

- Chapter 186, NYS Laws of 2002

### **INCOME LIMITS INCREASED UNDER PARTIAL REAL ESTATE TAX EXEMPTION PROGRAM FOR LOW-INCOME DISABLED PERSONS**

The State Legislature has authorized, and the City has adopted, an increase in the income ceiling applicable in determining a low-income disabled homeowner's eligibility for a partial real estate tax exemption pursuant to section 459-c of the Real Property Tax Law. The income ceiling in order to qualify for the maximum 50-percent exemption has been increased by \$1,000, from \$20,500 to \$21,500. For purposes of the declining exemption, ranging from 45 percent to 5 percent, as income increases, each bracket has been increased by \$1,000, so that a homeowner whose income is less than \$29,900, rather than \$28,900, can qualify for the 5-percent exemption. These changes apply beginning with the City's 2003-2004 assessment roll.

- Chapter 201, NYS Laws of 2002 and NYC Local Law 31 of 2002

## **MAXIMUM INCOME ELIGIBILITY LEVELS RAISED FOR SENIOR CITIZEN HOMEOWNER EXEMPTION**

Through State and City legislation, the maximum income levels applicable in determining eligibility for the Senior Citizen Homeowner Exemption authorized by section 467 of the Real Property Tax Law have been increased by \$1,000. The income ceiling for obtaining the maximum 50-percent exemption has been raised from \$20,500 to \$21,500. The brackets of the declining exemption schedule have been revised to reflect the \$1,000 increase; thus a senior homeowner whose income is below \$29,900 (instead of \$28,900) can qualify for the 5-percent exemption. These changes apply beginning with the City's 2003-2004 assessment roll.

- Chapter 202, NYS Laws of 2002 and NYC Local Law 4 of 2003

## **WAIVER OF OUTSTANDING TAXES AUTHORIZED FOR HOUSING DEVELOPMENT FUND COMPANIES**

A new section has been added to the Private Housing Finance Law with regard to the payment of real estate tax arrears. The law provides that a Housing Development Fund Company owning "eligible property" may enter into a regulatory agreement with the City's Department of Housing Preservation and Development and, if the housing company complies with the terms of such regulatory agreement, the arrears, penalties and interest will be forgiven on the property. An "eligible property" is one owned by a Housing Development Fund Company that acquired title to the property from the City and provides housing for its resident shareholders. This waiver applies to total arrearages as of January 1, 2002, relating to outstanding real estate taxes prior to January 1, 2001.

- Chapter 315, NYS Laws of 2002

## **EXEMPTIONS FOR SINGLE ROOM OCCUPANCY REHABILITATION EXTENDED**

Section 488-a of the Real Property Tax Law authorizes localities to provide tax exemptions and abatements for rehabilitation of multiple dwellings used for single-room occupancy. An amendment to this section provides a five-year extension of the program. The local legislative body is empowered to adopt and amend local laws or ordinances up to and including December 31, 2007 as long as the improvements commence prior to December 31, 2007.

- Chapter 330, NYS Laws of 2002

## **EXEMPTION FOR MULTI-FAMILY RESIDENTIAL HOUSING EXTENDED**

The real estate tax exemption for multiple dwellings available pursuant to section 421-a of the Real Property Tax Law has been extended for an additional four years. For

projects in the area of Manhattan, south of or adjacent to 110<sup>th</sup> Street, a 20-year exemption is available for projects commenced after January 1, 1992 and before December 31, 2007. All other projects must have commenced after January 1, 1975 and before December 31, 2007.

- Chapter 349, NYS Laws of 2002

### **SITE ELIGIBILITY LIMITATIONS ON MULTIPLE DWELLING EXEMPTION BENEFITS LIBERALIZED**

Where a real estate tax exemption for a new multiple dwelling is sought under Real Property Tax Law section 421-a on the basis that the site was previously under-utilized, a recent local law has added an additional test to be used in determining under-utilization. The additional test, which applies to projects whose construction commenced on or after October 15, 2002, stipulates that if the site was not zoned to permit residential use on the date 36 months prior to the commencement of construction, it will be considered under-utilized if the previously existing nonresidential building on the site had a floor area ratio that was 75 percent or less of the floor area ratio of the residential building that replaces it. However, for projects below 110<sup>th</sup> Street in Manhattan, “50 percent” replaces “75 percent” in that test.

- NYC Local Law 29 of 2002

### **EXEMPTION/ABATEMENT FOR REHABILITATION OF MULTI-FAMILY RESIDENTIAL HOUSING EXTENDED**

The tax exemption and abatement program under section 489 of the Real Property Tax Law, commonly referred to as J-51, has been extended for four years. This extension authorizes the local legislative body to enact local laws or ordinances consistent with the purpose of this section. It also broadened the authority to grant a 34-year exemption to privately owned buildings substantially rehabilitated or converted with a government subsidy, loan or grant. Previously, the 34-year exemption was available only to buildings conveyed by the City that were substantially rehabilitated or converted with a government loan, subsidy or grant, and privately owned buildings that were moderately rehabilitated.

- Chapter 418, NYS Laws of 2002

### **LOCALITIES AUTHORIZED TO CONTRACT WITH FINANCIAL INSTITUTIONS FOR THE COLLECTION OF FEES AND CHARGES**

A municipal corporation may enter into a contract with one or more banks or trust companies for the purpose of collecting water or sewer use fees, charges, rates or rentals or special assessments that are not collected with real property taxes. The legislation imposes a liability on a bank or trust company that enters into a contract with a municipality for all loss or damage resulting from the failure of the bank's or trust

company's officers, employees or agents to discharge their duties or from any improper discharge of those duties. Additionally, the bank or trust company is also liable to the individual from whom it has received such moneys as payment of the charges, fees or assessments if the financial institution has failed to properly credit such payment. The liability would also include any penalty and interest imposed thereon.

- Chapter 217, NYS Laws of 2002

### **PROPERTY TAX EXEMPTION EXTENDED TO CERTAIN PROPERTIES ACQUIRED BY THE FEDERAL GOVERNMENT**

Approximately 600 properties in Manhattan, Brooklyn and Queens with mortgages insured by or held by the Federal government are facing foreclosure as a result of the Federal 203(k) home mortgage scandal. In a joint effort of the City's Department of Housing Preservation and Development and the Federal Department of Housing and Urban Development, the properties will be transferred from the Federal government to a qualified sponsor for rehabilitation, with the Federal government contributing \$130 million towards the rehabilitation. However, because the City will never hold title to the properties, they would not have been entitled to a real estate tax exemption after the rehabilitation is completed. The statute (subdivision three of section 692 of the General Municipal Law) has been amended to permit a tax exemption for these properties.

- Chapter 492, NYS Laws of 2002

### **REDUCED WATER CHARGE LAW FOR HOSPITALS AND CHARITIES EXTENDED**

Chapter 890 of the Laws of 1982 established reduced water charges for hospitals and charities in New York City whose water charges were greater than \$5,000 but less than \$10,000. That law, which was due to expire on September 1, 2002, has been extended to September 1, 2004.

- Chapter 510, NYS Laws of 2002

### **MORTGAGE INVESTING INSTITUTIONS MADE LIABLE FOR INTEREST ON LATE TAXES FOR FAILURE TO GIVE NOTICE OF ESCROW ACCOUNT TERMINATION**

Section 953 of the Real Property Tax Law requires mortgage investing institutions to inform mortgagors within 21 days of satisfying the mortgage loan that their real property tax escrow account has been or will be terminated and that they will be responsible for paying real property taxes directly to the taxing authority unless a new real estate tax escrow account is established. The institution is also required to give the name, address and phone number of the collecting officer and advise the mortgagor to contact the tax collector. An amendment to that section, which took effect September 17, 2002,

provides that a mortgage investing institution that does not comply with these provisions will be responsible for any interest or penalty imposed on the former mortgagor for non-payment or late payment of real property taxes in the first taxable year following satisfaction of the mortgage.

- Chapter 520, NYS Laws of 2002

### **WAITING PERIOD ELIMINATED FOR SCRIE BENEFIT ADJUSTMENT WHERE SENIOR RENTER'S INCOME PERMANENTLY REDUCED**

Under the Senior Citizen Rent Increase Exemption (SCRIE) Program, low-income elderly tenants of rent-regulated apartments can be exempted from the portion of any rent increase that would cause the total rent to exceed one-third of the tenant's income; affected landlords are compensated for the lost rental income through real estate tax abatements. A SCRIE recipient whose income is permanently reduced by more than 20 percent can apply for an increased SCRIE benefit, but the law imposed a waiting period of up to one year before the application could be filed. That waiting period has been eliminated by an amendment that takes effect on March 23, 2003.

- Chapter 594, NYS Laws of 2002

## **Business Income Taxes**

### **CITY BUSINESS TAXES PARTIALLY UNCOUPLED FROM LIBERALIZED FEDERAL DEPRECIATION RULES**

The Federal Job Creation and Worker Assistance Act of 2002 allows taxpayers an additional 30-percent depreciation deduction in the first year qualified personal property acquired after September 10, 2001 is placed in service. The same deduction is allowed for qualified real and personal property acquired after that date in Manhattan below Canal Street (designated by the Act as the "New York Liberty Zone"). In addition, for qualified property acquired in the New York Liberty Zone after September 10, 2001, the Act allows a first-year expense deduction of up to \$35,000, on top of the expense deduction otherwise allowed under Internal Revenue Code section 179. For City general corporation tax, banking corporation tax and unincorporated business tax purposes, taxpayers with qualified property in the New York Liberty Zone or in the area of Manhattan between Houston Street and Canal Street (referred to as the "resurgence zone") will be allowed the same additional depreciation and expense deductions for that property as are allowed under the 2002 Federal Act. However, with respect to all other property, the provisions of the Act will not apply, and, instead, taxpayers will be allowed only the deductions that would apply had the property been acquired on September 10, 2001. Upon the disposition of such property the Federal gain or loss must be adjusted to

reflect the City deductions claimed. These rules apply to tax years ending after September 10, 2001.

- Chapter 93 (Part G), NYS Laws of 2002 and NYC Local Law 17 of 2002

### **DEFINITION OF “THRIFT” INSTITUTION LIBERALIZED FOR BANK TAX BAD DEBT DEDUCTION PURPOSES**

Under the City banking corporation tax, thrift institutions are eligible for a more beneficial bad debt deduction than commercial banks. To qualify as a thrift, at least 60 percent of a bank’s total assets must consist of assets specified in the law, including cash, governmental obligations and residential mortgage loans. The list of qualifying assets has been expanded to include certain additional items such as community development loans and investments, certain loans indirectly secured by residential real estate and certain loans to small businesses and small farms located in low-income or moderate-income census tracts. The expanded list applies to tax years beginning after 2001. (These changes in the City law conform to changes in the State banking corporation tax.)

- Chapter 85 (Part U), NYS Laws of 2002

**Cross-references:** For additional legislative changes affecting City business income taxes, see the item headed “City Taxpayer Assistance and Business Tax Clarification Measure Adopted” in the Tax Administration section of this report and the item in the Utility Tax section of this report.

## **Personal Income Tax**

### **TAX RELIEF GRANTED TO VICTIMS OF 9/11 TERRORIST ATTACKS**

Persons who died as a result of the terrorist attacks on September 11, 2001 have been exempted from the New York City (as well as the New York State) personal income tax for tax years 2000 and 2001 (and 2002 for those dying in 2002). The exemption does not apply to persons designated by the United States Attorney General as participants or conspirators in the attacks.

- Chapter 85 (Part Q), NYS Laws of 2002

### **PERSONAL INCOME TAX DEDUCTION FOR COLLEGE TUITION EXPENSES CLARIFIED**

The New York State personal income tax gives taxpayers the option of claiming a credit or an itemized deduction for qualified college tuition expenses. Although a taxpayer who elects the credit on his or her State return cannot claim a credit against the City personal income tax, a City itemized deduction can be claimed where the itemized deduction



election is made on the State return. The provision granting the credit/deduction has been amended to make it clear that the \$10,000 limit on eligible tuition expenses applies with respect to each eligible student (who can be the taxpayer, his or her spouse and any dependent of the taxpayer). The amendment also clarifies that tuition payments made by a dependent will be deemed to be made by the taxpayer for purposes of claiming the credit/deduction. These changes apply to tax years beginning after 2000.

- Chapter 85 (Part N), NYS Laws of 2002

## **Sales and Use Taxes**

### **SALES TAX HOLIDAYS DECLARED TO AID LOWER MANHATTAN BUSINESSES**

During the periods from June 9 to 11, July 9 to 11 and August 20 to 22, 2002, temporary sales tax exemption programs were in effect in Manhattan below Houston Street. The exemptions, covering the full 8.25 percent State and City sales taxes, applied to most sales of tangible personal property, restaurant meals and prepaid telephone calling cards, and to hotel stays and cabaret charges, where the price was less than \$500. The exemptions did not apply to sales of such items as motor vehicles, gasoline, cigarettes, alcoholic beverages and building materials.

- Chapter 85 (Part Y), NYS Laws of 2002 and New York City Council Resolution 278

### **REVISED STATE AND LOCAL SALES TAX RULES ADOPTED FOR MOBILE TELECOMMUNICATIONS SERVICES**

In order to conform to the requirements of the Federal Mobile Telecommunications Sourcing Act of 2000, New York State and local sales tax provisions have been amended to provide that all charges for mobile telephone service are to be taxed only at the location of the customer's place of primary use, regardless of where the calls are actually made. "Place of primary use," as defined in the Federal Act, generally means the address representative of where the customer's use of the mobile service primarily occurs, and must be either the customer's residential street address or the primary business street address in the case of a business customer. The sales tax provisions have also been amended to permit the unbundling of certain services sold together for a single price. For example, if taxable mobile telecommunications services are sold together with exempt wireless Internet access services for a single price, the charges for the latter, if determinable by a reasonable and verifiable standard, may be broken out and treated as separately stated, nontaxable charges. These changes take effect on August 2, 2002.

- Chapter 85 (Part S), NYS Laws of 2002

## **CERTAIN PROPERTY AND SERVICES USED IN PRODUCING FILMS FOR SALE EXEMPTED FROM STATE AND LOCAL SALES TAXES**

An exemption from New York State and local sales and use taxes has been adopted for purchases of tangible personal property and certain services (including utility services) used in the production of a film for sale, regardless of the medium used to convey the film to the purchaser. The exemption takes effect December 1, 2002.

- Chapter 66, NYS Laws of 2002

## **FORMULA FOR CALCULATING PREPAID SALES TAX ON CIGARETTES REVISED**

Cigarette stamping agents are required to prepay New York State and local sales taxes on the cigarettes they distribute based on a periodically adjusted base retail price established by statute. Effective September 1, 2002, the base retail price adjustment will be made using a new formula that takes into account average manufacturers' list prices as reported to the State Department of Taxation and Finance plus the amount of the State cigarette excise tax; formerly, the adjustment was made based on changes in the U.S. Labor Department's consumer price index for tobacco and smoking products.

- Chapter 85 (Part E), NYS Laws of 2002

## **PARTIAL SALES TAX EXEMPTION FOR ALTERNATIVE FUEL VEHICLES AND QUALIFIED HYBRID VEHICLES EXTENDED**

The partial sales and use tax exemption based on the incremental cost of purchasing an alternative fuel vehicle has been extended for one year, to February 29, 2004. In addition, the eligibility requirement that the incremental cost be separately stated in the bill of sale has been made inapplicable to 2000 to 2002 model year qualified hybrid vehicles (generally defined as a vehicle that draws power from both an internal combustion engine and an energy storage device rechargeable through a braking system that recovers waste energy). Finally, the incremental cost with respect to a qualified hybrid vehicle will be deemed to be \$3,000 where a comparable vehicle without special equipment does not exist for comparison purposes.

- Chapter 597, NYS Laws of 2002

## **Cigarette Tax**

### **CITY CIGARETTE TAX INCREASED AND ENFORCEMENT PROVISION ENHANCED**

Effective July 2, 2002, the City cigarette tax has been increased from eight cents for a pack of twenty cigarettes to \$1.50 a pack. The State will share in the proceeds of the tax,

receiving 46.5 percent of the revenue generated from July 2, 2002 through March 31, 2003, and 46 percent thereafter. The revenue that will be divided is calculated after the payment of refunds and the collection of interest and penalties. In addition, the new law authorizes the City to seize vehicles in which bootleg cigarette have been transported.

- Chapter 93 (Part E), NYS Laws of 2002 and NYC Local Law 10 of 2002

## **Utility Tax**

### **CITY UTILITY TAX HARMONIZED WITH FEDERAL MOBILE TELECOMMUNICATIONS SOURCING ACT OF 2000 AND OTHER RULES REGARDING UTILITY SERVICE PROVIDERS REVISED**

As part of an omnibus tax bill, amendments have been made to the City utility tax with respect to the taxation of wireless telecommunications services.

Effective August 1, 2002, the Federal Mobile Telecommunications Sourcing Act of 2000 establishes a uniform method of assigning wireless calls to taxing jurisdictions by mandating that charges for wireless services be assigned for tax purposes to the customers "place of primary use" (PPU). This new allocation method is inconsistent with the City utility tax, which is limited geographically to calls that "originate and terminate" in the City. The utility tax was enacted decades ago based on the traditional landline phone service model. The new State legislation replaces the "originate and terminate" provision with respect to wireless calls with a simplified method of determining the wireless receipts subject to the tax. Under the new method, the tax will apply to a fixed percentage (84 %) of the total charge for wireless services billed to the customer's PPU. In addition, the new law expands the definition of a "utility" to include a business that is not subject to the supervision of the New York State Public Service Commission if at least eighty percent of its gross receipts consists of charges from the sale of mobile telecommunications services to customers; formerly, a non-PSC-supervised utility provider was considered a "vendor of utility services." (Under the City's taxing scheme, a "utility" is subject to the utility tax but is exempt from the general corporation tax or unincorporated business tax, whereas a "vendor of utility services" is subject to both the utility tax and the GCT or UBT, with a reduction in the latter taxes to reflect receipts subject to the utility tax.)

The new law also makes other technical changes to the utility tax and the corporate and unincorporated business income taxes. Under the new law, no City business income tax will be imposed on partners with respect to the distributive share of the income, gain, loss or deduction that they receive from a partnership that is subject to the City utility tax. Similarly, a partner that is itself subject to the utility tax will not be required to include in its tax base any gross income or gross receipts from the distributive share it receives from a partnership subject to the utility tax.

- Chapter 93 (Part C), NYS Laws of 2002

## **Real Property Transfer Tax**

### **REDUCED TRANSFER TAX RATES CONTINUED FOR QUALIFYING REIT TRANSFERS**

A 50-percent reduction in the rate of the New York City real property transfer tax (and the New York State real estate transfer tax), currently in effect for qualifying transfers to existing real estate investment trusts (REIT's), has been extended through August 31, 2005. The rates had been scheduled to return to their higher levels on September 1, 2002.

- Chapter 85 (Part K), NYS Laws of 2002

## **Fines and Fees**

### **MAXIMUM FINES FOR CERTAIN PARKING VIOLATIONS IN CITY INCREASED**

The maximum fine for violating No Stopping or No Standing rules in the City has been increased from \$50 to \$100; for handicapped parking violations the maximum fine has been increased to \$150. (These amounts do not include surcharges and late payment penalties that can apply.) In addition, a vehicle will be subject to towing if the amount of an outstanding parking violation judgment against it, including interest, exceeds \$230; formerly, eligibility for towing was based on the number of outstanding tickets. These new maximums will apply beginning on October 1, 2002.

- Chapter 93 (Part B), NYS Laws of 2002

### **CITY IMPOSES CELL PHONE SURCHARGE**

Acting on State authorizing legislation, the City has imposed a surcharge on wireless communications service provided to customers whose place of primary use is within the City. The surcharge is 30 cents per month for each wireless communications device, and is required to be included in billing statements issued by the service providers, beginning with the first bill issued after October 6, 2002. Revenues from the surcharge, less a two-percent administrative fee retained by the service supplier, are to be used for the construction and operation of public safety communications networks serving the City.

- Chapter 93 (Part F), NYS Laws of 2002 and NYC Local Law 15 of 2002

### **ENHANCED 911 EMERGENCY TELEPHONE SYSTEM SURCHARGE INCREASED**

The existing E911 surcharge on land line telephone bills, which helps fund an enhanced 911 emergency phone system in the City, has been increased from 35 cents to \$1 per

telephone access line per month, effective beginning with the first bill issued by a service supplier after October 6, 2002.

- Chapter 93 (Part D), NYS Laws of 2002 and NYC Local Law 16 of 2002

### **FEES INCREASED FOR SERVICES OF CITY SHERIFF**

Various fees fixed by section 8011 of the Civil Practice Law and Rules for services performed by sheriffs, including the City Sheriff's office within the Department of Finance, have been increased, effective February 24, 2003. Among others, the fee for receiving and entering an order of attachment has been raised from \$10 to \$15, the fee for levying upon real or personal property under an order of attachment has been raised from \$26.50 to \$40, and the fee for executing a warrant of eviction in connection with a summary proceeding has been increased from \$50 to \$75. (The increased fees under this measure also apply to comparable services performed by City Marshals.)

- Chapter 655, NYS Laws of 2002

### **Tax Administration**

#### **CITY TAXPAYER ASSISTANCE AND BUSINESS TAX CLARIFICATION MEASURE ADOPTED**

State legislation has been enacted to implement a variety of improvements in City tax administration and to clarify the application of certain business income tax rules. The following is a description of the legislation's major provisions:

#### **DOF Authorized to Compromise Tax Liability ("Offers in Compromise")**

The Department of Finance has been given the authority to compromise any liability for City income or excise taxes (but not real property taxes) for less than the full amount owed. Modeled after the provisions governing the New York State Tax Department's authority, the new rules apply in cases in which the Department of Finance has determined that the taxpayer lacks the means to pay the full amount owed because the taxpayer has been discharged in bankruptcy or has been found to be insolvent. An offer in compromise would be available only where it is unlikely that more than the compromise amount could be recovered through legal proceedings. Judicial approval would be required for offers in compromise of tax liabilities greater than \$100,000, exclusive of interest and penalties. (The State Tax Law has been conformed to this provision by increasing the threshold for judicial approval of offers in compromise for State tax purposes from \$25,000, inclusive of interest and penalties, to \$100,000, exclusive of interest and penalties.)

## **DOF Authorized to Vacate Tax Judgements**

Previously, when the Department of Finance determined that a judgment for unpaid taxes (referred to as a "warrant") should be vacated, the agency was required to make an application to the New York Supreme Court. That application usually took several months to be acted upon. In the meantime, the taxpayer's credit could become impaired because court records indicated that the warrant remained unsatisfied. The new law authorizes the Department of Finance (as well as the State Department of Taxation and Finance) to vacate tax warrants without prior court approval, thus greatly reducing the time required for completing the process.

## **Private Mail Delivery Service Postmarks Recognized for City Tax Purposes**

The Internal Revenue Service and the New York State Department of Taxation and Finance allow taxpayers to use approved private mail delivery services and to receive the benefits of having the postmark date imprinted by the delivery service deemed to be the date of delivery. Rules comparable to the State's mailing rules have been adopted for purposes of filing and payment with respect to City taxes, thereby eliminating any taxpayer confusion that may currently arise due to inconsistent rules and increasing taxpayer convenience in meeting City tax filing and payment requirements. These new rules apply to documents required to be filed and payments required to be made on or after October 17, 2002.

## **GCT and UBT Allocation Rules for Publishers and Broadcasters Clarified and Updated**

The City unincorporated business tax income allocation formula has been amended to require that taxpayers apportion receipts from retail subscribers of cable television services based on actual charges to subscribers in the City. This method of apportionment more accurately sources cable subscription fee income than the former method based on audience location. The general corporation tax income allocation formula has been modernized by bringing it into conformity with parallel 1996 amendments (modified as described above) to the UBT that expanded the special sourcing rules for broadcasters to cover "cable, direct or indirect satellite transmission and any other means of transmission." These amendments apply to tax years beginning after 2001.

## **Treatment of Banks Electing S Corporation Status Clarified for City Tax Purposes**

Under the Federal Small Business Job Protection Act of 1996, banking corporations may elect to be treated as S corporations. As a result of this Federal change, a technical amendment to the City banking corporation tax has been enacted in order to make it clear that, as is the case under the general corporation tax, an electing bank must calculate its income for City bank tax purposes as if it had not made the Federal S corporation election. This amendment applies to tax years beginning after 1996.

## **City Corporate Tax Treatment of Qualified Subchapter S Subsidiaries Clarified**

The Job Protection Act also permitted S corporations to disregard the separate corporate tax status of certain 100-percent-owned subsidiaries, called QSSS's, beginning in 1997. The effect is that the QSSS's financial assets and income are treated for Federal income tax purposes as belonging to the parent S corporation and are reported on the parent's Federal tax return. For City general corporation tax and banking corporation tax purposes, amendments to the law have been adopted to make it clear that the QSSS will be treated as a separate corporate entity, and must determine its income without regard to the Federal QSSS election. These amendments apply to tax years beginning after 1996.

## **City Tax Definition of “Partnership” Conformed to Federal Definition**

For City corporate and unincorporated business tax purposes, as well as for purposes of all other City-administered income and excise taxes, the term “partnership” will mean any entity classified as a partnership for Federal income tax purposes. These amendments apply to tax years beginning after 2001.

- Chapter 513, NYS Laws of 2002

## **NEW YORK STATE TAX AMNESTY PROGRAM TO INCLUDE SEVERAL CITY TAXES**

A New York State tax amnesty program adopted as part of this year's State budget includes the State-administered City resident personal income tax, nonresident earnings tax and sales and use taxes. The amnesty applies to outstanding liabilities for taxable periods ending on or before December 31, 2000, or, in the case of quarterly sales tax filers, to tax periods ending on or before February 28, 2001. Taxpayers that qualify for amnesty are eligible for a waiver of certain penalties and a two-percentage-point reduction in the otherwise applicable rate of interest. Amnesty applications can be filed during the period beginning November 18, 2002 and ending January 31, 2003. Effective April 1, 2003, the interest rate on tax underpayments will be increased by two percentage points.

- Chapter 85 (Part R), NYS Laws of 2002

## **Miscellaneous**

### **CITY'S ENERGY COST SAVINGS PROGRAM AND LOWER MANHATTAN ENERGY PROGRAM EXTENDED**

The sunset dates for new applicants to qualify for benefits under the programs to reduce energy costs for qualifying businesses in the City have been extended from July 1, 2002 to July 1, 2003 in the case of the Energy Cost Savings Program (ECSP) and from April 1, 2004 to July 1, 2004 in the case of the Lower Manhattan Energy Program (LMEP).

ECSP provides benefits, in the form of special rebates and discounts, to firms moving to designated areas of the City or making prescribed levels of investment to expand or upgrade their premises within designated areas of the City. LMEP provides similar benefits to owners of buildings in Lower Manhattan and requires that the benefits be passed through to qualified commercial tenants. The energy suppliers that offer reduced energy bills to participants in these programs are reimbursed for their lost revenues by means of credits against their City utility taxes.

- Chapter 114, NYS Laws of 2002

### **DEPARTMENT OF FINANCE GAINS AUTHORITY TO ACCEPT ELECTRONIC SIGNATURES**

Legislation sponsored by the State Office of Technology amends the Electronic Signatures and Records Act (ESRA) to facilitate the use and acceptance of electronic signatures and records. This has been accomplished by conforming the definition of "electronic signature" currently found in ESRA to the Federal definition as used in the Federal "E-Sign Law". The new State law provides that "state agencies and local governments are authorized and empowered, but not required, to produce, receive, accept, acquire, record, file, transmit, forward and store information by use of electronic means." In addition, it states that the use of electronic records or signatures by persons or entities is voluntary, unless required by law.

The Department of Finance has been promoting an electronic payment program that allows for payments of the general corporation tax, bank tax and unincorporated business tax by direct debits to the taxpayers' bank accounts through a procedure referred to as "ACH" debits. The Department has been seeking to extend this program to electronic filing of tax returns in order to increase participation in its "NYCeFile" program. Tax documents received through NYCefile cost the City less to process and are virtually error-free from a processing standpoint. The new legislation provides expanded authority to accept electronic signatures as part of filing a tax return or other document with the Department.

- Chapter 314, NYS Laws of 2002

### **NEW REPORTING REQUIREMENT ADOPTED FOR NYC REAL ESTATE CONVEYANCES**

Effective January 1, 2003, conveyances of real property in the City will not be recorded by the City Register unless accompanied by a transfer report on a form prescribed by the State Board of Real Property Services. A \$25 dollar fee will be imposed for every such form that is submitted. The current \$25 fee imposed with the submission of the City real property transfer tax return will no longer apply. The transfer form will contain information that includes the mailing address of the new owner, the tax billing address, the tax map designation, and the full sales price relating to the conveyance. The Department of Finance will be required to furnish this information on a monthly basis to



the State Board of Real Property Services and the information will also be available to the public.

- Chapter 259, NYS Laws of 2002

### **SUNSET DATES EXTENDED FOR CERTAIN ECONOMIC DEVELOPMENT AGENCIES**

Provisions of the General Municipal Law and the Public Authorities Law relating to industrial development agencies and industrial development authorities have been amended to extend their expiration dates from July 1, 2002 to July 1, 2005.

- Chapter 112, NYS Laws of 2002

### **PREDATORY LENDERS BARRED FROM RECEIVING CITY FINANCIAL ASSISTANCE OR DESIGNATION AS DEPOSITORY OF CITY FUNDS**

Under a measure adopted by the City Council over a Mayoral veto, a financial institution that itself or through an affiliate engages in “predatory lending” practices with regard to home loans in the City, may be ineligible to receive financial assistance from City agencies, including abatement of taxes such as real property, sales or mortgage recording taxes. In addition, such a financial institution may be disqualified from receiving City contracts or being designated as a depository of City agency funds.

- NYC Local Law 36 of 2002