

16-3 February 26, 2016

FINANCE MEMORANDUM

Additional Investment Capital Identification Periods for Certain Non-Dealers under the Business Corporation Tax (Corporate Tax of 2015)

This memorandum provides additional investment capital identification periods for certain non-dealers that apply under certain specified circumstances occurring on or after October 1, 2015. It supplements previously issued Finance Memorandum 15-3, Investment Capital Identification Requirements for the Corporate Tax of 2015.

The information contained in this Finance Memorandum supplements the information previously published in Finance Memorandum 15-3, *Investment Capital Identification Requirements for the Corporate Tax of 2015*. The purpose of this memorandum is to describe additional investment capital identification periods for certain non-dealers that apply under specified circumstances that occur on or after October 1, 2015. These additional investment capital identification periods do not apply to corporations and partnerships that are dealers for purposes of IRC section 1236. For dealers, the presence or absence of the federal identification of a security as held for investment under IRC section 1236 is determinative for New York City (the “City”) investment capital purposes.

The City Business Corporation Tax and the New York State Franchise Tax under Article 9-A of the Tax Law contain the same definition of investment capital, and the City and New York State are implementing the same procedures for the identification of investment capital. Assets that a corporation identifies as investment capital at the state level for Article 9-A purposes will constitute investment capital at the City level for Subchapter 3-A purposes. Accordingly, this memorandum is parallel to New York State Department of Taxation and Finance Technical Memorandum TSB-M-15(4.1)C, (5.1)I (the “State Memorandum”) and a corporation that satisfies the investment capital identification requirements for Article 9-A corporations set forth in the State Memorandum also satisfies the investment capital identification requirements for Subchapter 3-A corporations set forth below. This memorandum also incorporates measurement dates from the State Memorandum, as set forth below.

Under the circumstances described below that occur on or after October 1, 2015, non-dealer corporations and non-dealer partnerships will be allowed an additional period of time to identify stock as investment capital if the stock otherwise meets the investment capital qualifications specified in subparagraphs (i) through (iv) of paragraph (a) of subdivision 4 of section 11-652 of Subchapter 3-A of Chapter 6 of Title 11 of the New York City Administrative Code and described in Finance Memorandum 15-3. When an additional investment capital identification period applies, the time period for a corporation or partnership (as specified below) to identify the stock as investment capital begins on the later of the measurement date specified below or the date of this memorandum and ends on the close of business of the

90th day thereafter (hereinafter referred to as the *additional identification period end date*). Stock eligible to be identified as investment capital under this memorandum is limited to stock owned by the identifying corporation or partnership by the additional identification period end date.

To be valid, a corporation or partnership must make the identification of such stock as investment capital during the additional identification period allowed per this memorandum and in the manner specified in Finance Memorandum 15-3 under the headings *Identification procedures for non-dealers* and *Corporate partnership rules*. (Note that this was also a requirement for the identification of stocks as investment capital during the transition period described in that Finance Memorandum). Any stock purchased by non-dealer corporations and partnerships after the additional identification period end date would have to be clearly identified as stock held for investment before the close of the day on which the stock was acquired in order for the stock to be eligible for investment capital treatment.

Circumstances in which an additional investment capital identification period applies for corporations:

- In the case of a corporation that first becomes subject to tax under Subchapter 3-A on or after October 1, 2015, the measurement date is the date that the corporation begins doing business, employing capital, owning or leasing property, or maintaining an office in the City, or, if earlier, the corresponding measurement date under the State Memorandum.
- In the case of a corporation that is not a taxpayer in the City, has not been included in a combined report previously filed with New York State or the City, and that first meets the capital stock requirement to be included in a combined report with a taxpayer (under section 11-654.3(2)(a) of Subchapter 3-A of Chapter 6 of Title 11 of the New York City Administrative Code) on or after October 1, 2015, the measurement date for that corporation is the day that corporation meets the capital stock requirement to first be included in a combined report.

Circumstances in which an additional investment capital identification period applies for partnerships:

Finance Memorandum 15-3, under the heading *Corporate partnership rules*, explains that a non-dealer partnership is required to make the investment capital identification for stock that the partnership owns in order for its corporate partners that use the aggregate method to compute their tax to claim that stock as investment capital. The partnership must make the identification of such stock as investment capital during the additional investment capital identification period described in this memorandum under the circumstances described below. To the extent that the additional investment capital identification period described in this memorandum conflicts with the rule expressed in Finance Memorandum 15-3 in the second paragraph under the heading *Corporate partnership rules*, the additional investment capital identification period described in this memorandum takes precedence.

- In the case of a partnership that, on or after October 1, 2015, first begins doing business, employing capital, owning or leasing property, or maintaining an office in the City, the measurement date with respect to stock owned by that partnership is the date that partnership begins doing business, employing capital, owning or leasing property, or maintaining an office in the City, or, if earlier, the corresponding measurement date under the State Memorandum.

- In the case of a partnership that is not itself doing business, employing capital, owning or leasing property, maintaining an office or deriving receipts in the City but, on or after October 1, 2015, first has as a partner one or more corporations subject to tax in the City under Subchapter 3-A, the measurement date is the first date that the partnership has as a partner a corporation that is otherwise subject to tax in the City (i.e., the date that the corporation joins the partnership) or, if earlier, the corresponding measurement date under the State Memorandum.
- In the case of a partnership that is not itself doing business, employing capital, owning or leasing property, maintaining an office or deriving receipts in the City, and prior to October 1, 2015, none of its corporate partners were subject to tax in the City, but, on or after October 1, 2015, one or more of its existing corporate partners becomes subject to tax in the city, the measurement date is the first date that one of its existing corporate partners becomes subject to tax in the City or, if earlier, the corresponding measurement date under the State Memorandum.

Identification procedures for stock acquired pursuant to options:

For corporations and partnerships that are not dealers for purposes of IRC section 1236, under the specified circumstances above, any stock purchased by those corporations and partnerships on or after the additional identification period end date pursuant to an option acquired by those corporations or partnerships before that date, may not be identified as investment capital unless the corporation or partnership clearly identified the option in its records as held for investment before that date.

For investment capital identification procedures for stock purchased by non-dealer corporations or non-dealer partnerships pursuant to an option acquired after the additional identification period end date, see Finance Memorandum 15-3, under the heading *Identification procedures for stock acquired pursuant to options*.

Note: This is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in this statement.