

09-2 July 14, 2009

FINANCE MEMORANDUM

2009 Legislative Highlights

In this legislative session, the City of New York has substantially changed its taxing scheme for City business taxes. The purpose of this Finance Memorandum is to provide a general overview of the most significant of these changes. Many of these changes bring New York City's taxing scheme into conformity with New York State. The legislation also changes certain administrative and enforcement provisions to more closely conform to New York State.

In addition, the Unincorporated Business Tax has been modified to provide relief for small businesses and simplify tax filing requirements by raising the threshold amount that triggers filing returns and making estimated tax payments so that businesses with gross income under \$100,000 have no tax liability.

Specifically, the following taxes have been modified:

General Corporation Tax:

- **Allocation amongst various taxing jurisdictions:**
 - Single Sales Factor to Replace Three-Factor: A single sales factor will replace the current three-factor allocation formula consisting of equally weighted property, payroll and receipts factors. The new allocation formula will be phased in over a ten year period, beginning in 2009.
 - Broker/Dealer Receipts: Certain receipts from the services of registered brokers and dealers of securities and commodities must now be sourced using the customer's mailing address.
- **Requirements for Combined Filing:** Starting in 2009, filing a combined return is now mandatory where there are substantial intercorporate transactions among the related corporations, regardless of the transfer prices charged in those transactions. Additionally, a "captive" regulated investment company or a "captive" real estate investment trust must be included in a combined return with a related New York City taxpayer where a greater-than-50 percent ownership test is met.
- **Minimum Tax:** The \$300 fixed minimum tax that applied to all taxpayers has been replaced with a graduated minimum tax based on gross receipts. The new minimum tax ranges from \$25 to \$5,000 based on the taxpayer's annual receipts allocated to New York City.

- **Tax on Capital:** The maximum amount that can be owed under the alternative general corporation tax measured by business and investment capital has been increased from \$350,000 to \$1 million.
- **Grandfathered Filers:** Certain companies owned by bank holding companies can no longer rely on “grandfathered” filing status provided as part of the Gramm Leach Bliley transitional provisions and must now file a Banking Corporation Tax return instead.

Unincorporated Business Tax:

- **Increase in offset credits:** A full credit is now available for liabilities of \$3,400 or less, and a partial credit for liabilities between \$3,400 and \$5,400. The effect of the credits is that unincorporated businesses with taxable incomes under \$100,000 pay no tax, and unincorporated business with taxable incomes under \$150,000 pay a reduced tax.
- **Filing Threshold:** Unincorporated Businesses are only required to file a UBT return if their gross income before deductions for cost of goods sold or services performed is more than \$95,000.
- **Allocation amongst various taxing jurisdictions:**
 - **Single Sales Factor to Replace Three-Factor:** A single sales factor will replace the current three-factor allocation formula consisting of equally weighted property, payroll and receipts factors. The new allocation formula will be phased in over a ten year period, beginning in 2009.
 - **Broker/Dealer Receipts:** Certain receipts from the services of registered brokers and dealers of securities and commodities must now be sourced using the customer’s mailing address.

Tax on Banking Corporations:

- **Net Operating Loss Carryforwards Added:** New York City now allows banks to carry Net Operating Losses incurred in tax years after 2008 forward to later years.
- **Change in Alternative Tax Base for Foreign Banks:** Beginning in 2011, for purposes of computing the alternative tax, foreign banks will use the same alternative tax base, i.e. taxable assets, as domestic banks. Foreign banks will no longer be required to compute their alternative tax based upon the par value of issued common stock.
- **Allocation amongst various taxing jurisdictions:** A single sales factor will replace the current three-factor allocation formula for banking corporations that substantially provide management administrative or distributive services to investment companies. The new allocation formula will be phased in over a ten year period, beginning in 2009.
- **Requirements for Combined Filing:** A “captive” regulated investment company or a “captive” real estate investment trust must now be included in a combined banking corporation tax return with a related New York City taxpayer where the greater-than-50 percent ownership test is satisfied.
- **Economic Nexus for Credit Card Companies:** Effective in 2011, credit card companies with customers having a mailing address in New York City are subject to the banking corporation tax regardless of whether the credit card company has any physical location within the City.

Utility Tax:

- **Statute of Limitations for Refunds Increased:** Refunds may now be requested within three years from the time a Utility Tax return is filed and two years from the time the tax is paid.

Collection and Administrative Provisions:

- **Financial Institution Data Matching:** Financial institutions must now conduct electronic matches in order to help New York City uncover and seize non-exempt funds held in the bank accounts of debtors owing warranted tax debt to the City.
- **Voluntary Disclosure:** A comprehensive voluntary disclosure and compliance program similar to New York State's program has been established.
- **Mandatory Electronic Filing:** New York City now has the authority to adopt rules that require electronic filing of tax returns.
- **Interest Rates:** Interest rates on underpayments and, in some cases, overpayments, may now be set by the Commissioner for the remainder of a current tax quarter, effective immediately. In addition, the rate of interest on underpayments of income and excise taxes had been increased from the federal short-term rate plus five percent to the federal short-term rate plus seven percent. Finally, the default rate for underpayments has been increased from six percent to seven and one half percent.
- **Corporate Dissolution:** A corporation that has done business in New York City and has incurred tax liability will not be issued a certificate of dissolution by the Department of State unless the New York City Commissioner of Finance had issued a consent stating that the corporation has paid its New York City tax obligations.

Civil and Criminal Tax Enforcement Provisions:

- **Civil Penalties:** Certain taxpayers and tax preparers who file using tax software may be required to file electronically, and will be subject to penalties for failure to do so. The penalty for deficiencies due to fraud applicable to the Unincorporated Business Tax, the General Corporation Tax, the Bank Tax and the Utility Tax has been increased, and a new false and fraudulent penalty has been added.
- **Hotel Occupancy Tax Penalties:** Records access requirements and penalty provisions have been revised to more closely conform to New York State sales tax provisions regarding sales tax on hotels.
- **Tax Crimes Sections Revised:** Provisions detailing crimes applicable to specific taxes have been redefined to conform to recent New York State revisions, and now define and punish tax crimes as applicable to all city taxes. Certain tax-specific crimes, such as those for Cigarette Tax and Hotel Occupancy Tax, were retained.

The Department of Finance will issue additional guidance about how these changes are being implemented over the next few months.