

# Rosen Seymour Shapss Martin & Company LLP

*Certified Public Accountants & Profitability Consultants*

## State and Local Tax Update

Dear Clients and Friends of the Firm:

### *New York State 2009 - 2010 Budget*

Discussed below are some of the major highlights of the 2009-10 New York State budget which make some significant changes to the Tax Law.

#### **PERSONAL INCOME TAX**

**New Higher Tax Rates:** The new law adds two new tax rates for the 2009 through 2011 tax years. For joint return filers earning more than \$300,000 but less than \$500,000, the highest tax rate is 7.85%. The 7.85% rate begins for unmarried residents, married residents filing separately, and estates and trusts at \$200,000 and for a resident head of household at \$250,000. For all filers, income in excess of \$500,000 is taxed at the rate of 8.97%.

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**Gains From the Sale of New York Property:** The law amends the personal income tax for non-residents whereby New York source income will include the gain from the sale of

interests in a partnership, limited liability company, S-corporation and closely held C-corporation (i.e. with 100 or fewer shareholders) owning real property located in New York State if the value of the real property exceeds 50% of the value of all of the assets in the entity. For sales of entity interests occurring on and after May 7, 2009, any gain recognized upon such sale will be allocated among the assets in the entity, and the amount allocated to New York real property will be treated as New York source income.

**Middle Class STAR:** Effective immediately, the middle class STAR rebate program has been eliminated.

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**Revisions to the Empire Zone Program:** The new law provides for significant changes to the Empire Zone Program. While maintaining the existing grounds for Decertification, the Commissioner of Economic Development is required to promulgate regulations for Decertification based on three new tests. The first new test requires Decertification if there's a finding that the business was certified prior to August 1, 2002 and either the business re-formed as a different entity and just transferred employees from an existing entity to a newly created entity with similar ownership, or the business acquired, purchased, leased or had transferred to it real property previously owned by an entity with similar ownership.

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*Certified Public Accountants & Profitability Consultants*

## State and Local Tax Update

Dear Clients and Friends of the Firm:

### *New York State 2009 - 2010 Budget*

Discussed below are some of the major highlights of the 2009-10 New York State budget which make some significant changes to the Tax Law.

#### **PERSONAL INCOME TAX**

**New Higher Tax Rates:** The new law adds two new tax rates for the 2009 through 2011 tax years. For joint return filers earning more than \$300,000 but less than \$500,000, the highest tax rate is 7.85%. The 7.85% rate begins for unmarried residents, married residents filing separately, and estates and trusts at \$200,000 and for a resident head of household at \$250,000. For all filers, income in excess of \$500,000 is taxed at the rate of 8.97%.

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**Estimated Taxes:** For purposes of calculating estimated tax payment safe harbors for the 2009 tax year, upper income earners must calculate their 2008 liabilities as if the new tax rates and itemized deduction phase-out had been in place for 2008. New York City's personal income tax law contains similar changes. These estimated tax payment provisions do not apply to any installment due earlier than May 22, 2009.

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**Gains From the Sale of New York Property:** The law amends the personal income tax for non-residents whereby New York source income will include the gain from the sale of

interests in a partnership, limited liability company, S-corporation and closely held C-corporation (i.e. with 100 or fewer shareholders) owning real property located in New York State if the value of the real property exceeds 50% of the value of all of the assets in the entity. For sales of entity interests occurring on and after May 7, 2009, any gain recognized upon such sale will be allocated among the assets in the entity, and the amount allocated to New York real property will be treated as New York source income.

**Middle Class STAR:** Effective immediately, the middle class STAR rebate program has been eliminated.

### **BUSINESS RELATED TAXES, FEES AND CREDITS**

**Filing Fees:** Effective for tax years beginning on and after January 1, 2009, the filing fees previously imposed only on LLCs and LLPs have been extended to all partnerships with \$1 million or more in New York source gross income. The fee equals \$1,500 for gross incomes between \$1 million and \$5 million, \$3,000 for gross incomes between \$5 million and \$25 million and \$4,500 for gross incomes exceeding \$25 million.

**Mandatory First Installment:** For tax years beginning on and after January 1, 2010, the new law requires that most businesses make a mandatory first-estimated tax payment of 40% of the tax imposed for the prior taxable year if the preceding year's tax exceeded \$100,000. Under prior law, the required first estimate was 30% of the tax for the preceding taxable year.

**Revisions to the Empire Zone Program:** The new law provides for significant changes to the Empire Zone Program. While maintaining the existing grounds for Decertification, the Commissioner of Economic Development is required to promulgate regulations for Decertification based on three new tests. The first new test requires Decertification if there's a finding that the business was certified prior to August 1, 2002 and either the business re-formed as a different entity and just transferred employees from an existing entity to a newly created entity with similar ownership, or the business acquired, purchased, leased or had transferred to it real property previously owned by an entity with similar ownership.

The second new test applies to all certified businesses, regardless of when they were certified. Referred to as the "one-to-one" test, it considers whether the sum of the annual wages paid to all employees and investments in the facility are greater in value than the tax benefits provided to the enterprise under the Empire Zone Program. This test looks at wages and employee benefits, investments, and tax benefits during a three-year period, but it is unclear what three-year period will be used.

The third new test is whether the business enterprise had changed ownership or moved its operations out of the Empire Zone.

In addition to passing new regulations, the Commissioner is required to conduct a review in 2009 of all certified business enterprises to determine whether they pass the one-to-one test and, if applicable, the new test for those businesses first certified prior to August 1, 2002. If a business qualifies, the Commissioner will issue a Retention Certificate. Any business that fails will be Decertified. Decertification may be appealed by filing a notice within 15 business days and a formal written appeal within 60 days following the date of

the Commissioner's revocation notification. Although it appears that decertification is retroactive to January 1, 2008, there is a reasonable argument that decertification under the new rules would be effective no earlier than April 7, 2009.

Any business seeking Zone certification after April 1, 2009 must project that the sum of its wages for zone employment during the first three years following certification and the dollar value of its capital investment in the zone during the first three years after certification will equal more than 20 times the sum of the income, franchise and sales tax benefits to be enjoyed by the business in the three years following certification. Manufacturers, however, need only satisfy a ten-to-one test.

Any new application to become an Empire Zone business must be received by June 30, 2010, one year earlier than in the prior law.

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