

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 City Law Changes

Discussed below are the major highlights of the recently enacted New York City law changes.

GENERAL CORPORATION TAX:

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.

UNINCORPORATED BUSINESS TAX:

Increase in offset credits: Effective for taxes filed in calendar year 2009, 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.

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.

SALES TAX:

Sales Tax Rate: Effective August 1, 2009 the New York City local sales and use tax rate has been increased from 4% to 4.5% thereby increasing the total sales tax rate to 8.875%.

Repeal of clothing and footwear exemption costing \$110 or more: As of August 1, 2009, purchases of clothing and footwear costing \$110 or more per item or pair in New York City are subject to the full 8.875% rate of tax. Purchases costing less than \$110 remain fully exempt.

Transportation and delivery of gas or electricity: As of August 1, 2009, all receipts from the sale of the services of transporting, transmitting, distributing, or delivering gas or electricity are subject to the 4.5% New York City local tax, even if purchased from someone other than the vendor of the gas or electricity. The commodities of gas and electricity themselves are already subject to New York City local tax.

Changes to the sales and use tax returns: As a result of these changes, certain adjustments must be made to information on the sales and use tax returns and schedules to ensure correct reporting and revenue distribution. The sales tax return covering the quarter from June 1, 2009, through August 31, 2009, will contain a double set of entry lines for each of the rates affected by this increase: one to report sales and uses occurring from June 1 through July 31, and one to report sales and uses for August 1 through August 31. It is important to report transactions on the correct line according to the date of the transaction.

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 by publication of a notice. 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.

Should you require any additional information on the New York City Law Changes, please feel free to contact Steven J. Eller at (212) 303-1051 or via email at seller@rsmcpa.com.

Sincerely,
Rosen Seymour Shapss Martin & Company LLP

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