

Rosen Seymour Shapss Martin & Company LLP

Certified Public Accountants & Profitability Consultants

State and Local Tax Update

Dear Clients and Friends of the Firm:

Below please find a summary of the 2008 New York State and City Tax Updates.

New York State

- **Electronic Filing Mandate**
 - Beginning January 1, 2009, all general business and the NYS S Corporation (Article 9-A) returns and extensions are required to utilize electronic payment (e-pay) and electronic filing (e-file) for ***all tax documents***, except those required for personal income and earnings tax purposes.
 - If a tax return preparer is required to file authorized tax documents electronically and the preparer fails to file one or more of those documents electronically, then the preparer will be subject to a ***penalty of \$50 for each failure to electronically file an authorized tax document***.
 - *Tax Documents* include returns, reports, estimated payments or any other documents related to a tax or other matter administered by the NYS Tax Department.
 - The Tax Department intends to issue future guidance in advance of any changes or addition to the e-filing mandate for corporation tax returns

- **Filing fees for limited liability companies ("LLCs") and limited liability partnerships ("LLPs")**
 - For tax years beginning after 2007, certain entities that have any income, gain, loss or deduction derived from New York sources are required to pay a filing fee. The filing fee is due within 30 days of the last day of the tax year. The entities affected by this requirement are:
 - Domestic and foreign LLCs that are treated as partnerships for federal income tax purposes;
 - Every LLC that is a disregarded entity for federal income tax purposes;
 - LLPs subject to Article 8-B of the Partnership Law; and
 - Foreign LLPs.
 - In addition, for tax years beginning after 2007, the filing fee will be based on the New York source gross income of the LLC or LLP for the tax year immediately preceding the tax year for which the fee is due. Under previous law, the fee was based on the number of partners or members in the LLC or LLP. If the LLC or LLP does not have any New York source gross income for the tax year immediately preceding the tax year for which the fee is due and the LLC or LLP has current year New York source gross income, gain, loss or deduction, the LLC or LLP will pay the minimum filing fee of

\$25.00. LLCs that are disregarded entities for federal income tax purposes and have NYS income, gain, loss or deduction will pay the minimum fee of \$25.00. Additionally, no income tax credits may be applied against the filing fee.

- **General Provisions**
 - New York State recognizes the Federal Section 179 increase to \$250,000 for all tax types
 - New York State decoupled from federal bonus depreciation
 - **Empire Zone Wage Tax Credit**
 - Certain application filing deadlines have been extended through December 31, 2009
 - Certain applications by a previously qualified entity or a related party must be filed by June 30, 2011
 - **Extension of Investment Credit**
 - The investment credit is extended to apply to property placed in service before October 1, 2011
 - **Low-income Housing credit**
 - The cap on the statewide aggregate amount of the low - income housing credit is increased to \$20,000,000
 - **Codification of the Voluntary Disclosure Program**
 - The previously unofficial Voluntary Disclosure Program has been codified
 - No civil penalties
 - No civil prosecution
 - No criminal prosecution
 - **Extension of the reportable transaction filing requirement**
 - Reportable transactions reporting extended through July 1, 2011
- **Article 9-A Franchise Tax**
 - **Extension of the "Temporary" MTA Surcharge**
 - The 20 year old "temporary" MTA surcharge is extended through tax years ending before December 31, 2013
 - **Capital base tax rate changes**
 - For taxable years beginning on or after January 1, 2008, the rate of tax on the capital base for Article 9-A taxpayers has been reduced from .178% (.00178) to .15% (.0015) of each dollar of the taxpayer's total business and investment capital allocated to New York. However, the rate for cooperative housing corporation as defined in the Internal Revenue Code (IRC) continues to be .04% (.0004).

In addition, the capital base tax limitations have been amended as follows:

- The capital base tax is now limited to \$350,000 only for **qualified New York manufacturers** as described below.
- For all other taxpayers, the capital base tax is limited to \$10,000,000 for taxable years beginning on or after January 1, 2008 but before January 1, 2011, and \$1,000,000 for taxable

years beginning on or after January 1, 2011.

- A manufacturer is defined in the law as a taxpayer that during the taxable year is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing

○ **Fixed Dollar Minimum Tax**

- The tax law has been amended to change the fixed dollar minimum tax amounts for C corporations and S corporations under Article 9-A. For taxable years beginning on or after January 1, 2008, the fixed dollar minimum tax will be based on the New York receipts of the corporation. Prior to the amendments, the fixed dollar minimum tax was based on gross payroll.
- In addition, the fixed dollar minimum tax \$800 for taxpayers with a gross payroll of \$1,000 or less, with total receipts within and without New York State of \$1,000 or less, and the average value of assets that are \$1,000 or less will no longer apply. These taxpayers will now pay a fixed dollar minimum tax of \$25.
 - The fixed dollar minimum tax for New York S corporations will be determined in accordance with the following table:

	Then the S Corp. fixed-dollar minimum tax	Then the C Corp. fixed-dollar minimum tax
If New York Receipts Are	is	is
Not more than \$100,000	\$ 25	\$ 25
More than \$100,000 but not over \$250,000	\$ 50	\$ 50
More than \$250,000 but not over \$500,000	\$ 175	\$ 175
More than \$500,000 but not over \$1,000,000	\$ 300	\$ 500
More than \$1,000,000 but not over \$5,000,000	\$1,000	\$1,500
More than \$5,000,000 but not over \$25,000,000	\$3,000	\$3,500
More than \$25,000,000	\$4,500	\$5,000

○ **Increase in the Mandatory 1st Installment for Certain Corporations**

- Effective for taxable years beginning on or after January 1, 2009, the mandatory 1st installment of estimate tax is increased to 30% for corporations whose preceding year's tax is \$100,000 (excluding the MTA surcharge) or greater. The remaining estimated tax is then due in three equal installments of 23 1/3 %
- Taxpayers required to pay at the 3% rate and who are subject to the

MTA surcharge are required to calculate their mandatory MTA estimated first installment also tax at 30%.

- **Individuals**
 - **Middle Class STAR Rebates**
 - The increases in the STAR rebate scheduled to begin in 2008 are postponed till 2009
 - **New York City School Tax Credit Postponed**
 - Effective for the 2008 tax year, taxpayers whose income (AGI minus any IRA or individual retirement annuity included in AGI) exceeds \$250,000 shall not be entitled to any school tax reduction credit
 - The increases in the NYC school tax credit scheduled to begin in 2008 are postponed till 2009

- **Sales Tax**
 - **Mandatory Re-registration**
 - Re-registration is required for all persons now required to file monthly or quarterly sales tax returns
 - Persons holding certificates of authority in effect for at least 3 years must register
 - Re-registration fee of \$50 required with re-registration
 - Re-registration period begins on November 1, 2008 and runs through March 31, 2012

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

Sincerely,
Rosen Seymour Shapss Martin & Company LLP

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