NEW YORK STATE | Department of Taxation and Finance

Technical Memorandum
TSB-M-16(3)C
Corporation Tax
June 7, 2016

Summary of Corporation Tax Changes Enacted in 2016 Budget Bill

This memorandum contains a summary of certain Article 9-A corporation tax changes that were enacted as part of the 2016-17 New York State budget (Chapter 60 of the Laws of 2016). The following legislative changes are summarized in this memo:

- Qualified financial instruments and other exempt income
- Special additional mortgage recording tax credit
- Leased assets

For information on any other corporate tax provisions contained in the 2016-17 enacted budget bill, see the *Summary of Tax Provisions in SFY 2016-17 Budget*. For more information, see the Tax Department website (at *www.tax.ny.gov*).

Qualified financial instruments and other exempt income

Part P of Chapter 60 of the Laws of 2016 amended the definition of a qualified financial instrument (QFI) to clarify that stock that generates *other exempt income*[1], and is **not** marked to market under IRC section 475 or 1256, is not a QFI with respect to such other exempt income (even if other stocks are marked to market in the tax year)[2].

Generally, when a taxpayer holds one stock that is marked to market, that stock, and all other stock held by the taxpayer, are treated as QFIs. When a taxpayer elects the 8% fixed percentage method for apportionment, all income, gain or loss generated by QFIs is included in business income. This amendment excludes all stock that generates other exempt income and is not marked to market from the definition of a QFI, with respect to the other exempt income generated. Therefore, other exempt income generated from such stock is excluded from business income.

This amendment does not change the treatment of gains or losses from the sale of stock that generates or could generate other exempt income. Such gains and losses are always included in business income. All stock that generates or could generate other exempt income continues to be considered business capital and is subject to the capital base tax.

Part P also corrected cross-references, typographical errors and citations, and repealed obsolete references in the corporate tax reform provisions in Article 9-A of the Tax Law.

[1] Other exempt income includes dividends and certain controlled foreign corporation income received from unitary affiliates that are not included in a combined report with the taxpayer.
[2] Stock that is not marked to market may still be considered a QFI with respect to the net gains from the sale of such stock if the taxpayer holds other stock that is marked to market.

These changes apply to tax years beginning on or after January 1, 2015.

(Tax Law sections 24(c), 24(e)(4), 38(a), 38(e), 209(1)(e), 210-A(5)(a), 210-B(7)(c), 210-B(9)a)), 210-B(45), and 210-C(3)(a))

Special additional mortgage recording tax credit

Part LL of Chapter 60 of the Laws of 2016 made the Special Additional Mortgage Recording Tax Credit (SAMRTC)[3] for residential mortgages refundable. A *residential mortgage* is a mortgage of real property that has been or will be principally improved by one or more structures containing a total of not more than six residential dwelling units, each with its own separate cooking facilities. Article 9-A taxpayers who, **as mortgagee**, paid special additional mortgage recording tax on these residential mortgages in any tax year beginning on or after January 1, 2015, may elect to treat the unused portion of the SAMRTC attributable to those mortgages as an overpayment of tax to be credited or refunded, rather than as a carryforward.

The credit may not reduce the tax liability to less than the fixed dollar minimum tax. If the credit allowed reduces the tax to the minimum amount, any excess may be treated as an overpayment of tax to be credited to the next year's tax or refunded. However, no interest will be paid on the refund. Any carryforward of the SAMRTC from a prior period, including credit earned under former Article 32 or Article 9-A in a tax year beginning prior to January 1, 2015, is not eligible to be refunded.

These changes are effective for tax years beginning on or after January 1, 2015, and only apply to special additional mortgage recording tax paid on or after January 1, 2015, as mortgagee with respect to those certain residential mortgages.

(Tax Law section 210-B(9)(b))

Leased assets

Part NN of Chapter 60 of the Laws of 2016 provides that total assets include leased real property that is not properly reflected on a balance sheet, for purposes of the asset tests under the entire net income subtraction modifications for:

- a thrift institution or a qualified community bank that maintains a qualified residential loan portfolio, and

- a qualified community bank or a small thrift institution that earns interest income from qualifying loans.

Leased real property that is not properly reflected on the balance sheet is valued at the annual lease payment multiplied by eight.

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[3] The SAMRTC is not allowed on residential mortgages if the real property is located in Erie County or any of the counties within the Metropolitan Commuter Transportation District (MCTD). The MCTD includes the counties of New York, Bronx, Queens, Kings, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

These changes apply to tax years beginning on or after January 1, 2015.

(Tax Law sections 208(9)(r) and 208(9)(s))

Note: A TSB-M 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 a TSB-M.