

**NEW YORK STATE AND NEW YORK CITY LEGISLATIVE
SUMMARY FOR THE YEAR 2004**

NEW YORK CITY DEPARTMENT OF FINANCE

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The following are brief summaries of New York State laws and New York City local laws adopted during 2004 that affect City taxes and other areas within the Department of Finance's jurisdiction. Citations are provided after each summary for readers who wish to consult the laws themselves.

REAL PROPERTY TAX

City Real Estate Tax Rebate Program Established For Owners of Homes and Cooperative and Condominium Apartments

For the City's fiscal years beginning July 1, 2003, 2004 and 2005, owners of one-, two- and three-family homes and cooperative and condominium apartments are eligible for an annual real estate tax rebate equal to the lesser of \$400 or the annual real estate tax on the home or apartment. To qualify for the rebate, the dwelling must be the owner's primary residence and the owner cannot owe more than \$25 in back taxes. Owners of cooperative apartments in projects operated by mutual companies organized under certain provisions of the State Private Housing Finance Law are not eligible for the rebate. For the fiscal year ended June 30, 2004, rebate applications must be filed not later than October 15, 2004. For the succeeding fiscal years, the application is due by March 15 of the fiscal year. However, a separate rebate application is not required where the owner is receiving the STAR real estate tax exemption under section 425 of the Real Property Tax Law.

- Chapter 60 (Part V), NYS Laws of 2004 and NYC Local Law 40 of 2004

Coop/Condo Tax Abatement Program Extended

Beginning in 1996, the City has granted annual real estate tax abatements to eligible owners of Class Two cooperative and condominium dwelling units. The abatement program was due to expire in 2004 but has been extended for four year, through the City fiscal year ending June 30, 2008. Under the program, dwelling units in buildings with an average unit assessed value not greater than \$15,000 receive an abatement equal to 25 percent of the real estate taxes on the unit. In buildings with an average unit assessed value exceeding \$15,000, unit owners receive an abatement equal to 17.5 percent of the unit's real estate taxes. The abatement is not available to sponsors or their successors or to owners of more than three dwelling units in a building.

- Chapter 97, NYS Laws of 2004

Department of Finance Empowered to Require Payment of Real Estate Taxes by Electronic Funds Transfer

The Department of Finance has been given the power to require the payment of real estate taxes by electronic funds transfer where the annual real estate tax on a parcel is at least \$300,000. EFT payment may also be required where a taxpayer pays real estate taxes for more than one property by a single payment and the total annual liability is at least \$300,000, or where taxes are paid for more than one taxpayer by a single bill or by a single entity, such as a mortgage escrow agent, and the total annual payment is at least \$300,000. The Department is also authorized to accept EFT payments from taxpayers who are not subject to the mandatory EFT payment requirements. EFT payments may be made under either a taxpayer-initiated payment program or an automatic debit program. Taxpayers or other persons required to participate in the EFT payment program will receive a written notification to that effect from the Department. The new law establishes a procedure under which a taxpayer can apply for a waiver of the requirement where a hardship exists.

- Chapter 60 (Part T), NYS Laws of 2004

Real Estate Tax Exemption For Private Home Construction Extended to Certain Multiple Dwellings

Section 421-b of the Real Property Tax Law establishes a real estate tax exemption program in New York City for newly constructed, reconstructed or converted one- and two-family homes that are owner-occupied and meet certain other conditions. The exemption is available for up to 10 years under a declining exemption schedule. An amendment to the law has extended the exemption to newly constructed, reconstructed or converted owner-occupied multiple dwellings containing not more than four dwelling units. To qualify for the exemption, however, the multiple dwelling must be developed in a governmentally assisted project located on property acquired by the Federal government through foreclosure of a Federally insured mortgage and conveyed to an approved owner for rehabilitation pursuant to an agreement with the Federal government.

The private home portion of the law has also been amended to make a tax lot ineligible for the exemption for a period of three years following the demolition of a home on the lot.

- Chapter 448, NYS Laws of 2004

City's Tax Lien Sale Program Continued

A program that authorizes the City Commissioner of Finance to enforce the collection of unpaid real estate taxes (and certain other municipal charges) through the sale of tax liens on the delinquent parcels has been continued until March 1, 2006.

- NYC Local Law 4 of 2004

Cooperative Corporations Receiving STAR Exemption Subject to New Information and Crediting Requirements

Cooperative apartment corporations that have tenant-stockholders who are eligible to receive the STAR real estate tax exemption under section 425 of the Real Property Tax Law will be required to provide to each such tenant-stockholder a written notice stating the full amount of the exemption, explaining how the amount was calculated and detailing how the exemption will be credited. Under another new requirement, the exemption must be credited in one of the following ways: a full credit against each month's maintenance until the credit is exhausted; a proportional credit over a six-month or 12-month period; or a single up-front payment of the total benefit.

- Chapter 469, NYS Laws of 2004

Absentee Landlords' Real Estate Tax Surcharge Postponed

In 2003, State and local laws were adopted (and summarized in the 2003 Legislative Summary) to impose a 25 percent real property tax surcharge on owners of one- to three-family homes who did not occupy the property as their primary residence and received rental income from it. The surcharge was scheduled to take effect on July 1, 2003, but it has been postponed until the City's fiscal year beginning July 1, 2006.

- NYC Local Law 6 of 2004

Eligibility Criteria Modified For Housing Development Fund Company Tax Forgiveness Program

In 2002, a new section 577-b was added to the Private Housing Finance Law to allow the City's Department of Housing Preservation and Development to forgive certain real estate tax arrears on foreclosed multiple dwellings sold by the City to tenant cooperatives organized as housing development fund companies under the PHFL. An "eligible property" was defined as one owned by a housing development fund company that acquired title from the City and that provides housing accommodations to its resident shareholders. Effective July 27, 2004, this definition has been modified by deleting the requirement that title must have been acquired from the City and providing that the company must be controlled by and provide housing accommodations to its resident shareholders or members, or must agree, on terms approved by HPD, to offer to building residents the opportunity to acquire ownership and control of the company.

- Chapter 225, NYS Laws of 2004

Low-Income Housing Exemption Modified

The exemption under section 420-c of the Real Property Tax Law for low-income housing accommodations in New York City that participate in the Federal low-income housing tax credit program has been modified with respect to exemption applications

approved on or after September 28, 2004. Among other changes, the new law defines an “eligible entity” as a corporation, partnership or limited liability company at least 50 percent of the controlling interest of which is held by a charitable organization exempt from Federal income taxation under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code. It also eliminates the requirement that the project must have received a governmental loan.

- Chapters 522 and 526, NYS Laws of 2004

Financial Disclosure Requirements for Assessors Streamlined and Delayed

A law approved in 2003 required all municipal real property tax assessors to file annual financial disclosure statements, beginning in 2004. That law has been amended to simplify the filing requirements for most assessors and to exempt from the requirements assessors earning less than \$20,000 a year. In addition, the reporting requirements have been postponed until 2005.

- Chapter 85, NYS Laws of 2004

Rules Modified on State Financial Assistance For Local Real Property Tax Administration

A State triennial aid program that provides financial assistance to localities that reinspect and reappraise all locally assessed realty will be eliminated after 2008. At the same time, an annual aid program for localities that meet prescribed assessment standards has been made permanent—it had been set to expire after 2009—and a provision calling for a phase-down of aid after 2004 from \$5 to \$3 per parcel has been eliminated. (Under a provision of existing law, annual grants to individual assessing units are capped at \$500,000.)

- Chapter 655, NYS Laws of 2004

Refiling of Alternative Veteran’s Exemption Application Permitted

Once the alternative veteran’s exemption under section 458-a of the Real Property Tax Law has been granted it continues in effect, and existing law requires that an application be refiled only where the veteran’s disability percentage has increased or decreased. An amendment to the law will permit a veteran to refile an application if other changes affect qualification for an increased or decreased exemption.

- Chapter 646, NYS Laws of 2004

Filing Fee and Certification Rules Adopted For New Multiple Dwelling Exemption Program

Section 421-a of the Real Property Tax Law, which provides exemptions for newly constructed multiple dwellings in the City, has been amended to specify the maximum fees that the City's Department of Housing Preservation and Development may charge in connection with the filing of exemption applications, and to allow the Department to rely on certifications by licensed architects or engineers submitted in connection with applications, with penalties provided for false certifications.

- Chapter 744, NYS Law of 2004

PERSONAL INCOME TAX

City Earned Income Tax Credit Adopted

For tax years beginning on or after January 1, 2004, New York City residents are eligible for an earned income tax credit against the City personal income tax equal to five percent of the earned income tax credit allowed for Federal income tax purposes. If the City credit is greater than the taxpayer's tax liability (net of other allowable credits), the excess will be treated as an overpayment and refunded to the taxpayer. If the taxpayer is a City resident for only part of the tax year, the credit will be prorated based on the percentage that adjusted gross income for the resident period is of the adjusted gross income for the full year.

- Chapter 60 (Part V), NYS Laws of 2004 and NYC Local Law 39 of 2004

Rules Prescribed For Personal Income Tax Reporting Upon a Change of Residence Status

The New York State and New York City personal income tax laws have been amended to provide that the special accrual rules that apply upon a change of status from resident to nonresident or from nonresident to resident, will apply whether the change occurs during the taxable year or at the beginning of the taxable year, as a result of a change of domicile or as a result of the application of the statutory residence rules (which consider days of presence in New York and the maintenance of a permanent place of abode in New York).

In addition, where a member of a partnership or a shareholder of an S corporation changes residence status, his or her distributive share of income and deductions from the partnership or S corporation is to be allocated to the resident and nonresident periods on a proportionate basis throughout the taxable year of the partnership or S corporation. The portion of the distributive share to be allocated to the period of residency is to be determined based on the number of days of residency within the entity's reporting period over the total number of days in the entity's reporting period. However, the Tax Commissioner can require, or the taxpayer can elect, to include specific items in the

resident and nonresident periods in a manner that reflects the date of accrual of an item by the partnership or S corporation.

These new rules apply to taxable years beginning on or after January 1, 2004.

- Chapter 712, NYS Laws of 2004

SALES TAX

Clothing/Footwear Sales Tax Exemption Suspended Again and Temporary Tax Holidays Declared

The State and City sales tax exemption for articles of clothing and footwear costing less than \$110, which was suspended in 2003 for a one-year period ending May 31, 2004, has again been suspended, this time until May 31, 2005. During the latest suspension period, two one-week sales tax holidays on under \$110 items of clothing and footwear have been scheduled, the first running from August 31 to September 6, 2004 and the second from January 31 to February 6, 2005.

- Chapters 60 (Part A), 101 (Part A) and 120 (Part F), NYS Laws of 2004

Aircraft Servicing and Storage Exempted From Sales Tax

Otherwise taxable services will be exempt from State and local sales taxes when performed on an aircraft. The exemption will also apply to charges for storing the aircraft while it is being serviced, and to tangible personal property purchased and used by the service provider in performing the service, where such property becomes a physical component part of the property being serviced or is a lubricant applied to the aircraft. The exemption takes effect on December 1, 2004 and expires on December 1, 2009.

- Chapter 60 (Part L), NYS Laws of 2004

Refund Allowed For Sales Taxes Paid by Certain Vessel Operators Providing Local Transit Service

Effective December 1, 2004, operators of vessels with a seating capacity greater than 20 that are used to transport passengers for hire by water can qualify for a refund of State and local sales and use taxes paid on purchases of the vessels and of parts, equipment, lubricants, diesel fuel, maintenance, servicing or repair services related to the operation of the vessels. To qualify for the refund, the vessels must be used to provide local transit service in the State pursuant to a certificate of public convenience and necessity or a franchise agreement with New York City. The amount of the refund is determined under a table that considers the percentage that vessel hours in local transit service is of total

vessel operating hours in the State. (A comparable refund provision already exists for certain omnibus operators providing local transit service.)

- Chapter 60 (Part M), NYS Laws of 2004

Certain Sellers to NYS Agencies Required to Register and Collect State and Local Sales Taxes on In-State Sales

Beginning January 1, 2005, sellers that contract to sell to New York State agencies or public authorities goods or services valued at more than \$15,000, and that make total sales delivered by any means to locations within the State of goods or taxable services valued at more than \$300,000, will be required to register as sales tax vendors with the State Department of Taxation and Finance. The registration requirement may also apply to certain affiliates or subcontractors of the seller. Once registered, the seller, affiliate or subcontractor must comply with all requirements of the sales tax law. The new requirements will not apply to certain contracts, such as emergency contracts, where the seller is the only person capable of fulfilling the contract.

- Chapter 60 (Part N), NYS Laws of 2004

Sales Tax Exemption for Hybrid and Alternative Fuel Vehicles Extended and Simplified

The State and local sales tax exemption for the incremental cost of purchasing a hybrid or alternative fuel vehicle, due to expire on February 29, 2004, has been extended until February 28, 2005. The determination of the exempt amount has also been simplified by providing that the incremental cost of a qualified hybrid vehicle will be fixed at \$3,000.

- Chapter 60 (Part D), NYS Laws of 2004

Partial Sales Tax Exemption Adopted For Certain Amusement Charges

An amusement park whose admission charge entitles patrons to ride at least 75 percent of its rides at no extra cost, and that meets certain other conditions, will be exempt from State and local sales taxes on 75 percent of the admission charge. The exemption applies beginning July 28, 2004, but is scheduled to expire on April 1, 2005.

- Chapters 218 and 506, NYS Laws of 2004

BUSINESS INCOME TAXES

REAP Business Tax Credit Program Extended and Expanded

The City's Relocation and Employment Assistance Program (REAP) provides tax credits against the general and banking corporation taxes, unincorporated business tax and utility

tax for relocating and adding employees at qualifying premises in designated areas of the City. Depending on when, and the area to which, the relocation occurs, the credit is \$500, \$1,000 or \$3,000 for each “eligible aggregate employment share” (roughly equivalent to one eligible full-time employee). Until 2004, the REAP credit was available only to firms that relocated from outside the City or from below 96th Street in Manhattan to other areas of the City. Under a 2004 statutory amendment a \$3,000-per-employee REAP credit will be available to firms that relocate to qualifying premises in Lower Manhattan (roughly the area below Houston Street) from outside the City. To be eligible for the new credit the company must have conducted substantial business operations outside the City for at least 24 consecutive months prior to the year of relocation and must not have maintained any employees in the City between January 1, 2002 and the date it leases or purchases the relocation premises. The credit is available for 12 years; if the amount of the credit exceeds annual tax liability, the excess is refundable for the year of relocation and the next four years. Unused credits that are not refundable can be carried forward for five years. The Lower Manhattan benefit has been made retroactive to relocations occurring on or after July 1, 2003.

The 2004 law also made several changes in the preexisting REAP program, including an amendment allowing leased premises to qualify for eligibility based on improvements made by the tenant to its own space rather than requiring building-wide improvements by the landlord, and an increase in the cap on the number of employees for which small businesses can claim the credit. A provision is also added to permit a discretionary reduction in the REAP benefit where a firm relocates from Lower Manhattan to another REAP-eligible area. The regular benefit will apply if the relocation involves no more than 100 employees; however, where the number of relocated employees exceeds 100, the Mayor or his or her designee is given the discretion to reduce the number of employees eligible for the credit based on the number being moved from Lower Manhattan.

The Lower Manhattan REAP benefit is scheduled to sunset for new applicants on July 1, 2008. The preexisting program, which had technically expired on July 1, 2003, has been reinstated retroactive to that date and has also been extended through June 30, 2008.

- Chapter 143, NYS Laws of 2004

Expiring Banking Corporation Tax Provisions Extended

In 1985, the New York City and New York State banking corporation taxes were extensively revised; a number of the changes were subject to sunset provisions that have been periodically extended. Most recently, these provisions have been extended through taxable years beginning before January 1, 2006. In addition, certain transitional provisions relating to the City/State corporate tax treatment of financial services companies in light of the enactment of the Federal Gramm-Leach-Bliley Act (which

deregulated certain financial services activities) have been extended to cover tax years beginning before January 1, 2006.

- Chapter 60 (Part G), NYS Laws of 2004

Film Production Credit Adopted For Corporate and Unincorporated Business Tax Purposes

For tax years beginning on or after January 1, 2004, a credit is allowed against the State Article 9-A franchise tax and the State personal income tax in an amount equal to 10 percent of specified costs incurred on or after August 20, 2004 in the production of films in New York. The total of all such credits that can be claimed during any calendar year is limited to \$25 million. The law providing the State credit also authorizes New York City to adopt a local law to allow a similar but lesser credit against the City's general corporation tax and unincorporated business tax for costs incurred in producing films in the City. Acting on this authority, the City has adopted local legislation, applicable to tax years beginning on or after January 1, 2005, to allow a City corporate or UBT credit equal to five percent of eligible production costs incurred in producing a qualified film or television program in the City. The credit can be claimed for costs incurred on or after August 20, 2004, provided the film is completed on or after January 1, 2005. The total of all City credits that can be claimed during any calendar year is capped at \$12.5 million. Claimed credits in excess of the cap can be carried over to the following year. Both the State and City credit programs expire as of August 20, 2008.

- Chapters 60 (Part P) and 745, NYS Laws of 2004 and NYC Local Law 6 of 2005

Federal Depreciation and Expensing Benefits For Certain SUV's Limited For City UBT and Corporate Tax Purposes

For tax years beginning on or after January 1, 2004, the City's unincorporated business tax and general and banking corporation taxes will be uncoupled from certain Federal depreciation and expensing provisions that allow favorable tax treatment for large sport utility vehicles. Instead, these SUV's will be subject to the same Federal depreciation and expensing allowances as apply to passenger automobiles.

- Chapter 60 (Part S), NYS Laws of 2004

Floor on Overpayment Interest Rate Eliminated For Unincorporated Business Tax and Foreign and Alien Insurers Tax Purposes

The interest rate on overpayments under the City unincorporated business tax and foreign and alien insurers tax is set quarterly pursuant to a statutory formula; however, the rate could not be less than six percent. This six-percent floor on overpayment interest has

been eliminated, effective as of August 20, 2004. (In 2003, the interest rate floor was eliminated for City corporate tax purposes.)

- Chapter 60 (Part U), NYS Laws of 2004

MORTGAGE RECORDING TAX

Mortgage Recording Tax Extended to Certain Transactions Involving Wraparound Mortgages and Spreader Agreements

The mortgage recording tax has been amended to classify as a taxable mortgage an agreement whereby the proceeds of a debt secured by a mortgage of New York City realty are used to reduce all or part of a mortgagee's equity interest in a wraparound or similar mortgage on the property. The tax will apply to the amount of the proceeds used for that purpose, regardless of whether there is a net increase in the total indebtedness secured by all mortgages on the property.

The mortgage recording tax has also been amended to make it applicable to the recording of a spreader agreement or additional mortgage that imposes its lien on New York City realty that was not covered by the primary mortgage, unless the newly covered property is owned by the mortgagor who owns the realty covered by the primary mortgage. In connection with this new rule, the State Tax Commissioner is authorized to disregard certain transfers of such properties undertaken for tax avoidance purposes rather than for an independent business or financial purpose; a tax avoidance purpose is presumed—subject to rebuttal by clear and convincing evidence—where the transfers are between “related parties.”

These changes apply to mortgages recorded on or after January 17, 2005.

- Chapters 60 (Part Q) and 745, NYS Laws of 2004

MISCELLANEOUS

City Authorized to Claim Certain State Tax Overpayments as Offsets Against City Tax Warrant Judgment Debt

The City Commissioner of Finance and the State Commissioner of Taxation and Finance have been authorized to enter into an agreement under which certain State tax overpayments due to a taxpayer can be credited against tax warrant judgment debt owed to the City by that taxpayer. The State overpayments that can be claimed by the City as offsets are those arising under the State's corporate franchise taxes and the State, City and Yonkers personal income taxes. Under the new law, the City can claim an offset for any City-administered income or excise tax that is the subject of a docketed tax warrant issued by the Department of Finance. This new offset program is similar to one that

currently allows various state and local agencies to offset State tax overpayments against debts owed to them. The new law establishes priorities where there is more than one claimant to a State overpayment.

- Chapter 60 (Part R), NYS Laws of 2004

Realty Transfer Report Filing Fee Restored

A filing fee required in connection with the filing of New York City real property transfer tax returns for non-deed transfers (such as those involving cooperative apartment and economic interest transfers), which was inadvertently eliminated as a result of a 2002 statutory amendment, has been restored as of October 28, 2004. The fee, currently \$50, is the same as the transfer report filing fee payable in connection with regular real estate transfers.

- Chapter 521, NYS Laws of 2004

Prompt Refund of Overturned Parking Fines Required

Effective October 28, 2004, parking fines that are overturned on appeal must be refunded by the Parking Violations Bureau within 30 days from the entry of the appellate judgment. If the refund is not made within that time, the Parking Violations Bureau will be liable to the motorist for a penalty equal to the penalty imposed for late payment of parking fines. Any refund, however, can be reduced by the amount of outstanding fines and penalties owed by the same individual.

- Chapter 515, NYS Laws of 2004

Enhanced Powers of City Marshals Continued

In 1997, temporary legislation was adopted to give City Marshals the same powers as those vested in the City Sheriff with regard to the enforcement of money judgments issued by the Supreme Court and Family Courts in New York City. The expiration date of that authorization has been extended from June 30, 2004 to June 30, 2009.

- Chapter 128, NYS Laws of 2004

City's "Red-Light Camera" Program Extended

Legislation that authorizes New York City to issue tickets for red-light violations, based on images recorded by photo-monitoring devices installed at intersections, which had been scheduled to expire on December 1, 2004, has been extended until December 1, 2009. The City will be required to submit a report on the program by March 1, 2009.

- Chapter 667, NYS Laws of 2004