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October 2008 **E.B. 2008-20**

2008 NEW YORK STATE REFERENCE MANUAL FOR REGIONAL SCHOOLS

Income Tax Management and Reporting for Small Businesses and Farms

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The information for this manual was edited by Joseph A. Bennett, Senior Extension Associate of Agricultural Finance and Management for the Department of Applied Economics and Management at Cornell University, and Kathryn R. Bennett, CPA of Bennett & Company, CPA's in Wilson, New York.

COMMON NEW YORK STATE TAX FORMS

IT-2	Wage and Tax Statement Summary
IT-150	Resident Income Tax Return (Short Form)
IT-150-X	Amended Resident Income Tax Return (Short Form)
IT-201	Resident Income Tax Return (for Full-Year State Residents Only)
IT-201-ATT	Itemized Deduction, and Other Taxes and Tax Credits
IT-201-X	Amended Resident Income Tax Return
IT-204	Partnership Return
IT-212	Investment Credit (Noncorporate Filers)
IT-213	Claim for Empire State Child Credit
IT-214	Claim for Real Property Tax Credit
IT-215	Claim for Earned Income Credit
IT-216	Claim for Child and Dependent Care Credit
IT-217	Claim for Farmers School Tax Credit (Noncorporate Filers)
IT-220	Minimum Income Tax
IT-221	Disability Income Exclusion
IT-230	Separate Tax on Lump Sum Distribution
IT-240	Sales and Use Tax for Nonfilers
IT-242	Conservation Easement Tax Credit
IT-245	Claim for Volunteer Firefighter & Ambulance Workers' Credit
IT-249	Claim for Long-Term Care Insurance Credit
IT-258	Claim for Nursing Home Assessment Credit
IT-272	Claim for College Tuition Credit for New York State Residents
IT-398	NYS Depreciation Schedule for IRC §168K Property
IT-399	New York State Depreciation
IT-800	Opt-Out Record for Tax Practitioners
IT-2105	Estimated Income Tax Payment Voucher for Individuals
CT-3-S	New York S Corporation Franchise Tax Return
CT-4-S	New York S Corporation Franchise Tax Return (Short Form for Small Businesses)
CT-46	Investment Credit (for Corporations)
CT-47	Claim for Farmers School Tax Credit (for Corporations)
NYS-45-MN	Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return (Manual Version) (NYS-45-ATT-MN for Attachment)

NYS INCOME TAX KEY NUMBERS

Standard Deductions and Exemptions

The standard deductions and exemptions for 2008, based on tax status, are shown in Figure A.

FIGURE A. NYS Standard Deductions and Exemptions for 2008

Standard Deduction		2008
Tax status:	Joint (surviving spouse)	$ 5,000
	Head of household	10,500
	Single	7,500
	Married filing separately	7,500
	Dependent filers	3,000
Exemption		1,000

A New York State (NYS) exemption is not available for either the taxpayer or the spouse.

New York Personal Income Tax Rates

There are three separate rate tables for (1) married filing jointly and qualifying widow(er); (2) heads of households; and (3) single, married filing separately, and estates and trusts (see Figure B). Filing status conforms to federal status except that when the New York resident status of spouses differs, separate returns must be filed.

The temporary highest tax bracket in effect for tax years 2003 to 2005 were eliminated in 2006.

FIGURE B. NYS Income Tax Table for 2008

Married Filing Jointly and Qualifying Widow(er)

Over	Not Over	Tax	
$ 0	$16,000	4.00% of the excess over	$ 0
16,000	22,000	$ 640 plus 4.50% " " " "	16,000
22,000	26,000	910 plus 5.25% " " " "	22,000
26,000	40,000	1,120 plus 5.90% " " " "	26,000
40,000		1,946 plus 6.85% " " " "	40,000

Head of Household

Over	Not Over	Tax	
$ 0	$11,000	4.00% of the excess over	$ 0
11,000	15,000	$ 440 plus 4.50% " " " "	11,000
15,000	17,000	620 plus 5.25% " " " "	15,000
17,000	30,000	725 plus 5.90% " " " "	17,000
30,000		1,492 plus 6.85% " " " "	30,000

Single or Married Filing Separately or Estates and Trusts

Over	Not Over	Tax	
$ 0	$ 8,000	4.00% of the excess over	$ 0
8,000	11,000	$ 320 plus 4.50% " " " "	8,000
11,000	13,000	455 plus 5.25% " " " "	11,000
13,000	20,000	560 plus 5.90% " " " "	13,000
20,000		973 plus 6.85% " " " "	20,000

SUMMARY OF 2008–2009 NYS TAX PROVISIONS[1]

[1]Reprinted from the "NYS Summary of Tax Provisions in SFY 2008–09 Budget—April 2008" with permission.

Compliance and Enforcement Initiatives

Voluntary Compliance and Disclosure Program

Part CC-1 of Chapter 57 of the Laws of 2008 adds a new Article 36 to the Tax Law that establishes a procedure by which an eligible taxpayer may avoid civil penalties and criminal prosecution for past tax obligations, by voluntarily disclosing those obligations and by entering into a disclosure and compliance agreement with the Tax Department (the Department). To be eligible, a taxpayer must not be currently under audit or a criminal investigation. The tax liability disclosed must be one not already determined or identified by the Department at the time of disclosure. A taxpayer cannot disclose under the program a tax liability that is the result of participation in an abusive tax avoidance transaction that is either a federal or a New York reportable or listed transaction.

The program is also available to taxpayers who disclose a delinquent tax liability that was deliberately or fraudulently evaded. If the taxpayer's financial situation requires, an installment payment plan may be entered into. In addition to terms regarding payment of the past tax liability, the compliance agreement will include terms to require the taxpayer to comply with the Tax Law in the future. The intentional failure by the taxpayer to pay the disclosed liability in accordance with the compliance agreement or the intentional violation of any term of the agreement may cause the agreement to be rescinded, in which case the taxpayer would face the penalties and criminal prosecution that the Department had waived in entering the agreement.

Financial Institution Data Match

Part CC-1 also requires the Department to develop and operate a financial institution data match system for state tax collection purposes. All warranted tax debt, including all unpaid tax, interest and penalties due from a person or entity must be included in the system together with information for identifying the tax debtor. Each financial institution doing business in the state must provide a report for each calendar quarter that includes all account numbers and balances in each account for each tax debtor identified. If a financial institution has a data match system developed to administer the state's child support enforcement programs, that system may be approved as the institution's system for collection of warranted state tax debt.

Voluntary Compliance Initiative (VCI)

Part CC-1 also reopens the 2005-2006 VCI for the period from November 1, 2008, through January 31, 2009. Certain taxpayers with liabilities under Articles 9, 9-A, 22, 30, 32, or 33 of the Tax Law attributable to the use of tax avoidance transactions for tax years beginning before January 1, 2005, that were eligible to participate in that prior program, may participate in this program and disclose tax avoidance transactions to the Department. If the taxpayer is disclosing a listed or reportable transaction, the penalty for failure to disclose during the 2005–2006 program, which is equal to 100% of the interest that would be due, will be reduced to an amount equal to 50% of that interest. For all other tax avoidance transactions that are disclosed during this reopened VCI program, the 100% of interest penalty is waived. If a taxpayer fails to disclose during this VCI program, then the 100% penalty will be imposed.

Tax Shelter Reporting

Part DD-1 of Chapter 57 of the Laws of 2008 extends the requirement for reporting participation in abusive tax shelter transactions through June 2011. Taxpayers and material advisors that are required to file a reportable or listed transaction disclosure statement with the Internal Revenue Service must continue to provide a duplicate disclosure statement to New York.

Alcoholic Beverage Tax (ABT) Enforcement Provisions

Part TT-1 of Chapter 57 of the Laws of 2008 makes permanent the current ABT enhanced tax enforcement provisions, enacted as part of Chapter 508 of the Laws of 1993. These provisions include alcohol distributor and transporter registration requirements. The provisions also include invoice and transporter manifest requirements for the importation and movement of liquor in the state. Further, the provisions include seizure and forfeiture authority for both liquor and vehicles transporting it where untaxed liquor is discovered in violation of the ABT.

These provisions were scheduled to sunset October 31, 2009.

Sales and Use Tax Vendor Re-Registration

Part LL-1 of Chapter 57 of the Laws of 2008 directs the commissioner of Taxation and Finance to conduct a sales tax vendor re-registration. A vendor re-registration will provide a means to update taxpayer information, delete obsolete registrations, and collect new data to support administration of the sales tax. The legislation also imposes a $50 vendor re-registration application fee to be paid by existing monthly and quarterly vendors and permits the commissioner to retain from the fees collected amounts necessary to cover the reasonable costs of implementing, administering, and enforcing the registrations authorized under the re-registration program. New sales tax registrations will continue to be at no charge. These provisions take effect on November 1, 2008, with the re-registration to be completed by March 31, 2012.

Electronic Filing and Payment

Part UU-1 of Chapter 57 of the Laws of 2008 authorizes the commissioner of Taxation and Finance to require electronic filing (e-file) and payment (e-pay) of all tax documents, except those required for state and local income and earnings taxes. Tax preparers who prepare more than 100 original tax documents in any calendar year beginning on or after January 1, 2007, and at least one tax document authorized by the commissioner to be e-filed using tax software in any succeeding calendar year, are required to e-file all authorized tax documents in that year and all subsequent years. Taxpayers who opt to use tax software to prepare their tax documents authorized to be e-filed during any calendar year beginning on or after January 1, 2008, are required to e-file those documents for that year and all subsequent years. All payments must be paid electronically if the accompanying documents must be e-filed.

The legislation provides penalties for failure to e-file or e-pay when it is mandated by the commissioner. Tax preparers are subject to a penalty of $50 for each failure to e-file and taxpayers are subject to a penalty of $50 for each failure to e-pay. Tax preparers may avoid the penalty if they can show reasonable cause for their failure to e-file, such as the taxpayer's election not to e-file. These requirements take effect immediately, provided that no penalty will be imposed for failures that occur within 60 days after enactment.

Federal Offset Fee

Part BB-1 of Chapter 57 of the Laws of 2008 authorizes the commissioner of Taxation and Finance to implement a process where the fee imposed by the federal government, and other states, for offsetting tax refunds to pay NYS income tax debts owed by those taxpayers would be absorbed by the taxpayer rather than the state of New York. The fee would be deemed part of the taxpayer's tax debt and would also be eligible for offset against the refund.

Taxation of Credit Card Banks

Part EE-1 of Chapter 57 of the Laws of 2008 provides that a banking corporation operating as a credit card bank will be subject to taxation in New York under the Article 32 Franchise Tax on Banking Corporations when its operations in New York meet certain tests. A credit card bank will be considered doing business in New York if it meets any one of the following:

1. It has issued credit cards to 1,000 or more customers with mailing addresses in New York State as of the last day of its taxable year.
2. There are 1,000 or more locations in New York State covered by contracts with merchant customers to whom the banking corporation remitted payments for credit card transactions during the taxable year.
3. It has receipts of $1 million or more during the taxable year from customers who have been issued credit cards by the banking corporation and have mailing addresses within New York State.
4. It has receipts of $1 million or more from merchant customer contracts with merchants relating to locations in New York State.
5. It has either
   a. 1,000 or more cardholders and merchant locations in New York State, or
   b. Receipts of $1 million or more from card holders and merchant locations in New York State.

The term *credit card* is defined to include various forms of cards that are generally considered credit cards, including bank, credit, travel, and entertainment cards. It also provides that interest, fees and penalties in the nature of interest, service charges, and other fees are earned within New York State if the mailing address of the card holder is within the state.

The legislation provides that a credit card bank that is an Article 32 taxpayer will not be included in a combined return with another Article 32 taxpayer unless it is necessary to properly reflect the tax liability of the taxpayers involved. However, a credit card bank that was included in a combined return for its most recent filing before January 1, 2008, may still be included in the combined return for future tax years. The credit card bank must remain in the combined return in future tax years unless it obtains the consent of the commissioner to file separately because combined filing no longer properly reflects the tax liability of the combined group.

A credit card bank that is an Article 32 taxpayer will also be required to file a combined return with a banking corporation that is not an Article 32 taxpayer if the nontaxpayer bank is providing services for, or support to, the credit card bank's operations, *and*

1. The credit card bank owns 65% or more of the stock of the nontaxpayer bank;
2. The nontaxpayer bank owns 65% or more of the stock of the credit card bank; or
3. The same parent company owns 65% or more of the stock of both the nontaxpayer bank and the credit card bank.

Combination will not be required if it can be shown that it would not properly reflect the tax liability of the credit card bank. For purposes of this provision, services for, or support to, the credit card bank's operations include billing, credit investigation and reporting, marketing, research, advertising, mailing, customer service, information technology, lending and financing services, and communications services, but not accounting, legal, or personnel services.

The provisions of this section are effective immediately and apply to taxable years beginning on or after January 1, 2008.

Tax Treatment of REITs and RICs

Part FF-1 of Chapter 57 of the Laws of 2008 makes certain technical corrections and structural alterations to Part F of Chapter 60 of the Laws of 2007. Generally, the legislation requires all captive real estate investment trusts (REITs) and captive regulated investment companies (RICs) to file a combined return with the closest corporation that directly or indirectly owns or controls the captive.

Amendments to the Article 9-A Corporate Franchise Tax

The legislation requires a captive REIT or captive RIC to file a combined return under Article 9-A with the corporation that directly owns or controls over 50% of the voting stock of the captive if that corporation is either of the following:

1. An Article 9-A taxpayer
2. A corporation required to file a combined return under Article 9-A

In the event that the 50% threshold is not met, the captive must file a combined return with the closest controlling stockholder of the captive if the stockholder is

1. Subject to tax under Article 9-A, 32, or 33, or
2. Required to file a combined return under any of those articles.

The closest controlling stockholder is the corporation that indirectly owns or controls over 50% of the voting stock of the captive and is the fewest tiers of corporations away. The legislation also provides rules for the application of the other combined reporting provisions of Article 9-A to these captives, including the requirement for a qualified REIT subsidiary to join the combined return of its captive parent.

The amendments also provide that in the case of a captive included in a combined return, the entire net income of the captive is determined in accordance with the provisions concerning noncaptive REITs or RICs, except that the deduction allowed by the Internal Revenue Code for dividends paid by the REIT or RIC is not allowed for taxable years beginning on or after January 1, 2008.

The legislation clarifies that a captive REIT or captive RIC that is required to file a combined return under Article 32 or Article 33 is not subject to tax under Article 9-A. The amendments remove the requirements of the 2007 legislation for certain REITs and RICs to file a combined return under Article 9-A.

Amendments to the Article 32 Franchise Tax on Banking Corporations

Part FF-1 adds provisions relating to the combination of these captives, as well as the determination of the entire net income of a captive REIT or captive RIC included in a combined return. These provisions parallel the similar amendments made to Article 9-A described earlier. However, under Article 32, the federal deduction for dividends paid by the captive to affiliates is phased out over 4 years. Fifty percent of the dividends-paid deduction is allowed for the 2008 taxable year, 25% is allowed for 2009 and 2010, and no dividends-paid deduction is allowed for taxable years beginning on or after January 1, 2011.

A captive REIT or captive RIC will not be required to be included in a combined return if the bank that owns or controls over 50% of the voting stock of the captive or is the controlling stockholder of the captive is part of an affiliated group that meets the following criteria:

1. The group does not include a corporation doing a business a subsidiary of a bank holding company would not be permitted to do, unless de minimis.
2. The group's members own assets the combined average value of which does not exceed $8 billion.

The legislation provides that the franchise tax on banking corporations applies to any captive REIT or captive RIC required to file a combined return under the bank tax. The Gramm-Leach-Bliley (GLBA) transitional provisions do not apply to a captive REIT or a captive RIC. A captive REIT or captive RIC that was subject to tax under Article 9-A in 2007 will not be considered an Article 9-A taxpayer under the GLBA provisions in 2008.

The legislation also eliminates the 2007 amendments regarding the disallowed investment proceeds of banking corporations. The amendments are obsolete under the new combined reporting requirements.

Amendments to the Article 33 Franchise Tax on Insurance Corporations

Part FF-1 adds provisions relating to the combination of these captives, as well as the determination of entire net income of a captive REIT or captive RIC included in a combined return. These provisions parallel the similar amendments made to Article 9-A. The legislation also eliminates the 2007 amendments regarding the disallowed investment proceeds of insurance corporations, as well as the amendments made regarding subsidiary capital attributable to REITs and RICs. The 2007 amendments are obsolete under the new combined reporting requirements.

In addition to the tax changes made by this part, the legislation also mandates that a report be prepared by the commissioner regarding the effects of these changes on taxpayers. The report is due by June 1, 2009.

The provisions of this section are effective immediately and apply to taxable years beginning on or after January 1, 2008, and are repealed for taxable years beginning on or after January 1, 2011.

Limited Liability Company and Corporate Fees

Part AA-1 of Chapter 57 of the Laws of 2008 restructures the member-based filing fees for limited liability companies (LLCs) and limited liability partnerships, and changes the basis for the fixed-dollar minimum (FDM) tax on New York Article 9-A C and S corporations. The new structure is outlined in Figure C.

FIGURE C. Changes in Filing Fee Amounts and FDM Tax

NY Source Gross Income or Receipts	LLC Fee	S Corp FDM	C Corp FDM
Not more than $100,000	$ 25	$ 25	$ 25
$100,001–$250,000	50	50	75
$250,001–$500,000	175	175	175
$500,001–$1,000,000	500	300	500
$1,000,001–$5,000,000	1,500	1,000	1,500
$5,000,001–$25,000,000	3,000	3,000	3,500
$25,000,001–Over	4,500	4,500	5,000

LLCs (and Limited Liability Partnerships)

The reform converts the current filing fee of $50 per member ($325 minimum and $10,000 maximum) to a fee based on New York source gross income as shown in Figure C. Additionally, single-member LLCs, which are disregarded entities for federal income tax purposes, are now required to remit a filing fee of $25 beginning in 2008.

C and S Corporations

The current 2007 and prior fixed-dollar minimum tax on these corporations ranges from $100 for payrolls of $250,000 or less to $1,500 for payrolls of $6.25 million or more. The new fixed-dollar minimum will vary depending on the amount of New York receipts as outlined in Figure C. The current fixed-dollar minimum of $800 for corporations with total receipts, assets, and payroll all $1,000 or less, is eliminated, with these entities paying $25 under the new structure. The fixed-dollar minimum tax is only one of four tax bases that a C corporation may pay tax under. Therefore, it is possible that this new structure will allow C corporations to pay tax on their entire net income, capital, or minimum taxable income.

Foreign C and S corporations whose total tax liability (including MTA surcharge) is less than $300 must still raise their payment to this amount to satisfy the maintenance-fee requirement.

The new fee and fixed-dollar minimum structure will apply to taxable years beginning on or after January 1, 2008.

Capital Base Changes

Part GG-1 of Chapter 57 of the Laws of 2008 reduces the capital base tax rate and temporarily increases the capital base liability cap. For taxable years beginning on or after January 1, 2008, the rate is reduced from 0.178% to 0.15%, and the $1 million liability cap for nonmanufacturers is increased to $10 million. The cap reverts to $1 million for taxable years beginning on or after January 1, 2011.

The $350,000 capital base liability cap for manufacturers is retained, but clarifying language regarding eligibility is added to the statute. To qualify, a taxpayer must have manufacturing property in New York State with a federal adjusted basis of at least $1 million or have all of its real and personal property located in New York State. Taxpayers meeting the definition of a qualified emerging technology company (QETC) in § 3102-e of the Public Authorities Law are deemed manufacturers and are not subject to the property test.

Qualified Production Activity Income (QPAI) Deduction

Part HH-1 of Chapter 57 of the Laws of 2008 decouples New York State from Internal Revenue Code (I.R.C.) § 199. Taxpayers are now required to add back the qualified production activities income (QPAI) deduction when computing New York taxable income. This requirement will apply to taxpayers subject to tax under Articles 9-A, 13, 22, 32, and 33 of the Tax Law as well as those subject to New York City's general corporate business tax, banking corporation tax, and personal income tax. The decoupling will apply to taxable years beginning on or after January 1, 2008.

Mandatory First Installment

Part JJ-1 of Chapter 57 of the Laws of 2008 increases the percentage that taxpayers, with a prior-year tax liability over $100,000, must use to calculate their mandatory first installment payment of franchise tax and MTA surcharge. For these large taxpayers, the percentage is increased from 25% to 30% of the prior year's liability. This increase is applicable to all taxpayers subject to tax under Articles 9-A and 32 of the Tax Law and non–life insurance companies subject to tax under Article 33. Under Article 9, the increase only applies to taxpayers subject to tax under Sections 182, 182-a, 184, 186-a, and 186-e of the Tax Law. Taxpayers with a prior-year liability between $1,000 and $100,000 will continue to use the

25% amount to calculate their mandatory first installment. The increase applies to taxable years beginning on or after January 1, 2009.

MTA Surcharge Extender

Part II-1 of Chapter 57 of the Laws of 2008 extends the temporary MTA surcharges that are imposed on business taxpayers and are scheduled to sunset for taxable years ending before December 31, 2009. The legislation extends the sunset date for 4 years to taxable years ending before December 31, 2013. The provisions of this section are effective immediately and apply to taxable years ending on or after December 31, 2009.

Sales and Use Tax

Sales Tax Nexus

Part OO-1 of Chapter 57 of the Laws of 2008 creates a presumption that sellers entering into agreements with New York residents under which the residents are compensated for referring customers to the sellers are "vendors" for purposes of the state and local sales and use taxes. As sales tax vendors, these sellers have a requirement to collect and remit New York State and local sales and use taxes on taxable property and services sold in New York. The customer referrals may take place through an Internet Web link or by any other means. The legislation also provides for a $10,000 de minimis exclusion. That is, only sellers that have gross annual receipts of more than $10,000 from sales to customers in the state that are referred to the seller by all residents with this type of agreement are included in the presumption.

The legislation provides that the presumption may be rebutted by proof that the resident with whom the seller has an agreement does not engage in any solicitation in New York that would satisfy the nexus requirements of the United States Constitution.

Part OO-1 also includes a limited amnesty, under which a seller that is a vendor only by virtue of this bill (and that meets certain other conditions) that registers as a sales tax vendor and commences collecting tax by June 1, 2008, will not be liable for past due tax.

Part OO-1 takes effect immediately.

Sales by Exempt Organizations

Part KK-1 of Chapter 57 of the Laws of 2008 requires tax-exempt nonprofit organizations to collect sales tax on additional classes of retail sales. Specifically, it amends § 1116(b) of the Tax Law to provide that the following sales by tax-exempt nonprofit organizations are not exempt from state and local sales and compensating use taxes by virtue of the general exemption provided in § 1116(a): utility services taxed under § 1105(b) and services to real property taxable under § 1105(c)(5), whether or not sold from the exempt organization's "shop or store"; tangible personal property and §§ 1105(b) and 1105(c)(5) services sold remotely (such as via telephone, the Internet, or mail order); and tangible personal property leased or rented by an exempt organization to another person. Consequently, exempt organizations engaging in such sales will be required to register as vendors if not already registered and collect sales tax on these retail sales. This change will take effect on September 1, 2008.

New York City Sales Tax

Part SS-1 of Chapter 57 of the Laws of 2008 provides for a smooth transition to the reimposition of New York City's Article 29 local sales and use taxes after the Municipal Assistance Corporation (MAC) sales and use taxes expire. Since 1975, the MAC sales and use taxes have been imposed in New York

City in place of the city's local sales taxes authorized to be imposed under Article 29. This part authorizes the imposition of the Article 29 local taxes at the rate of 4% (6% on parking services) in New York City and conforms the base of such taxes to the base of the expiring MAC taxes. It also amends the New York City (NYC) Administrative Code to impose the taxes on the conformed base. These provisions take effect on August 1, 2008.

Part SS-1 also amends the Public Service Law to allow certain energy businesses to pass through to an electric company an amount equal to the city sales and use tax on the natural gas used by them. An energy business must have entered into a contract with an electric corporation for the sale of electricity before June 1, 2000, to be eligible for the pass-through. This provision takes effect immediately.

Miscellaneous Provisions

Increase Cigarette Tax Rate

Part RR-1 of Chapter 57 of the Laws of 2008 increases the New York State cigarette excise and use tax rates on cigarettes, from $1.50 to $2.75 for each pack of 20 cigarettes. In addition, part RR-1 changes the disposition rate of revenue into the Tobacco Control and Insurance Initiatives Pool from 61.22% to 70.63%. This act takes effect on June 3, 2008. A floor tax is imposed on cigarettes stamped at the pre–June 3, 2008, rate and unaffixed tax stamps on hand at the close of business June 2, 2008.

Reclassify Little Cigars

Part MM-1 of Chapter 57 of the Laws of 2008 changes the definition of a cigarette for New York State and New York City excise taxes to parallel the federal definition by defining cigarettes to include little cigars. It clarifies that certain rolls for smoking need to be treated as cigarettes for federal excise tax purposes before they can fall under the definition for New York State and New York City excise tax purposes. The federal definition of a cigar is added to the Tax Law for further clarification. This act takes effect on July 1, 2008.

Convert Tax on Moist Snuff

Part QQ-1 of Chapter 57 of the Laws of 2008 adds the federal definition of snuff to the Tax Law to allow snuff to be categorized separately from other tobacco products. In addition, Part QQ-1 changes the tax rate for snuff from the current rate of 37% of the wholesale price to a rate of 96 cents per ounce with a proportionate rate for any fractional parts of an ounce. This act takes effect on July 1, 2008.

Higher Education Services Corporation Data Sharing

Part M of the Chapter 57 of the Laws of 2008 expands the current data exchange that exists between the Department and the Higher Education Services Corporation (HESC) to include any education loan debt collected by HESC including judgments owed to the federal or New York State government. The expansion is effective immediately.

Centralized Contract Procurement Fee

Part F of Chapter 56 of the Laws of 2008 imposes a fee of one-half of 1% of the price on "authorized users" making purchases of commodities, services, or technology under centralized contracts established by the commissioner of General Services. *Authorized users* would include persons or entities (including state agencies) authorized to purchase commodities, services or technology under centralized contracts pursuant to §§ 163.3 and 163.4 of the State Finance Law. Contractors would be required to electronically pay over collected fees to, and electronically file a return with, the Department

quarterly. Electronic filing and payment would not be required if the contractor demonstrated to the Office of General Services (OGS) that it could not reasonably comply with these requirements.

Part F takes effect on the sixtieth day after enactment, and applies to bids issued on or after the first day of the calendar quarter next succeeding the date of enactment (July 1, 2008). For "small businesses," the bill would take effect on July 1, 2008, and apply to bids issued on or after the first day of the calendar quarter next succeeding that date (October 1, 2008).

Child Health Plus Income Verification

Part C of Chapter 58 of the Laws of 2008 allows the commissioner of Taxation and Finance to enter into agreements with the Department of Health to verify income data used to determine eligibility for subsidized health insurance coverage under Child Health Plus and Medical Assistance and Family Health Plus. These provisions take effect immediately and are deemed to be in full force and effect on or after April 1, 2008.

Tax Credits

Empire State Film Production Credit

Part WW-1 of Chapter 57 of the Laws of 2008 amends the Empire State film production credit to increase the credit rate, accelerate the credit refund, and increase the statutory credit allotment. The credit rate is increased from 10% to 30% of qualified production costs. The credit refund language is amended to allow the entire amount of excess credit to be refunded in 1 year. Previously, any excess credit was refunded across 2 tax years.

Finally, the total amount of credit that can be awarded by the Governor's Office for Motion Picture and Television Development is increased from $60 million annually in 2008 through 2011 to $65 million in 2008, $75 million in 2009, $85 million in 2010, $90 million in 2011 and 2012, and $110 million in 2013.

Empire Zones

Part CCC-1 of Chapter 57 of the Laws of 2008 makes two amendments to the Empire Zones (EZ) Program pertaining to qualified investment projects (QUIPs) and significant capital investment projects (SCIPs).

EZ Wage Tax Credit

QUIPs and SCIPs will be able to delay the start of the 5-year period in which to claim the EZ wage tax credit. The 5-year period will begin in the first year of the QUIP's or SCIP's QEZE tax benefit period. Generally, the 5-year period begins in the first year a taxpayer pays EZ wages. *EZ wages* are defined as wages paid by a certified taxpayer for full-time employment (excluding general executive officers) during the tax year in an area designated or previously designated as an EZ, if the employment is in a job created in the EZ during the period of its designation as an EZ, or within 4 years of the expiration of the EZ designation.

QUIP/SCIP Designation Deadlines

The deadline to submit applications to the Empire State Development Corporation to become certified as the owner of a QUIP is extended from December 31, 2007, to December 31, 2009. Applications to become certified as the owner of a SCIP submitted by an entity previously qualified as a QUIP, or a related person, must be submitted by June 30, 2011.

Brownfield Cleanup Program Temporary Moratorium

Part VV-1 of Chapter 57 of the Laws of 2008 institutes a 90-day moratorium on the Brownfield Cleanup Program (BCP). The Department of Environmental Conservation (DEC) will not accept any applications for BCP participation for 90 days following enactment of Chapter 57.

Participants in the BCP that have received a certificate of completion from DEC may be eligible to claim the following three tax credits:

1. The Brownfield redevelopment tax credit
2. The remediated Brownfield credit for real property taxes
3. The environmental remediation insurance credit

Low-Income Housing Credit

Part XX-1 of Chapter 57 of the Laws of 2008 increases the statewide aggregate credit limit for the low-income housing credit from $16 million to $20 million. The New York State low-income housing tax credit program is based on the existing federal program and requires an agreement between the taxpayer and the commissioner of the New York State Division of Housing and Community Renewal for a long-term commitment to low-income housing. The amount of the credit depends on the applicable percentage of the qualified basis of each low-income building. The credit amount allocated is allowed as a credit against tax for 10 tax years. Unused credits may be carried forward indefinitely. The total amount of credit available is $20 million each year. The credit program applies to personal income, corporate franchise, bank, and insurance taxpayers.

Financial Services ITC

Part YY-1 of Chapter 57 of the Laws of 2008 extends the sunset date for the financial services Investment Tax Credit (ITC) from October 1, 2008, to October 1, 2011. The financial services ITC allows brokers or dealers in securities to receive the ITC for equipment or buildings used in broker/dealer activity and in activities connected with broker/dealer operations such as the provision of investment advisory services for a regulated investment company as well as lending activities associated with the purchase and sale of securities. The credit allowances are the same as the traditional ITC.

Credit for Accessible Taxicabs for Individuals with Disabilities

Part ZZ-1 of Chapter 57 of the Laws of 2008 extends for 2 years the tax credit allowed under the personal income tax and the corporation franchise tax for taxi and livery companies that upgrade their vehicles to make them accessible for individuals with disabilities. The credit is now available through December 31, 2010. The legislation also updates terminology in the Tax Law pertaining to the tax credit.

Bioheat Tax Credit

Part AAA-1 of Chapter 57 of the Laws of 2008 reinstates the tax credit allowed under the Personal Income Tax and the Corporation Franchise Tax for the purchase of bioheat for residential customers. The credit expired June 30, 2007, and is reinstated for period January 1, 2008, through December 31, 2011. The credit is equal to $0.01 per percent of biodiesel per gallon of bioheat, not to exceed 20 cents per gallon, purchased by the taxpayer.

Power for Jobs

Part Y of Chapter 59 of the Laws of 2008 extends the Power for Jobs program. This extension will allow public utilities delivering low-cost power to businesses and not-for-profit corporations under the Power for Jobs program to continue receiving tax credits through calendar year 2009 for the transmission of power prior to June 30, 2009. The extension is effective immediately.

School Tax Relief (STAR)

Delay Increase in Middle-Class STAR Rebate

Part S of Chapter 57 of the Laws of 2008 delays for 1 year the scheduled increase in the basic Middle-Class School Tax Relief (STAR) rebate. The increase will now be fully phased in for school tax year 2010–2011 instead of 2009–2010.

Restructure NYC School Tax Credits

Part R of Chapter 57 of the Laws of 2008 delays for 1 year the scheduled increase in the NYC school tax credit. Married couples filing jointly will receive a credit of $290 for tax years beginning in 2008, $310 for tax years beginning in 2009, and $335 for tax years beginning after 2009. All other individuals will be eligible for a credit of $145 for tax years beginning in 2008, $155 for tax years beginning in 2009, and $167.50 for tax years beginning after 2009. Part R also reduces the NYC school tax credit to zero for taxpayers with income in excess of $250,000, beginning in 2008.

Offset against Middle-Class STAR Rebate

Part Q of Chapter 57 of the Laws of 2008 allows offsets against the basic Middle-Class STAR rebate. This new offset is similar to the current offsets of tax refunds allowed against tax debts, or debts owed to other state agencies. The offsets would apply to basic STAR rebates issued for the 2008–2009 school year and subsequent school years.

NYS TAX PROVISIONS' INTERACTION WITH CURRENT FEDERAL LEGISLATION[2]

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Federal Economic Stimulus Act of 2008—Effect on Personal Income Tax

Federal Economic Stimulus Payments and New York Filing Requirements

Federal economic stimulus payments (rebate payments) made during 2008 as a result of the Federal Economic Stimulus (FES) Act of 2008 will not be subject to personal income tax.

50% Special Depreciation Allowance

For federal income tax purposes, the FES Act amends I.R.C. § 168(k) to allow a taxpayer, in computing his or her federal gross income, to depreciate 50% of the adjusted basis of certain qualified property in the year that the property was placed in service. To qualify for the 50% special depreciation allowance under the new federal law, the qualified property must be placed in service after December 31, 2007, but generally before January 1, 2009.

New York adjusted gross income (AGI) is the individual's federal AGI, as defined in the Internal Revenue Code for the tax year, with modifications allowed under New York State Tax Law §§ 612(b) and 612(c). Tax Law §§ 612(b)(8) and 612(c)(16) require modifications to federal AGI for property placed in service on or after June 1, 2003, that qualifies for the 50% special depreciation allowance under I.R.C. § 168(k), when that allowance is claimed for a tax year beginning after 2002. The modifications apply to qualified property except for (1) qualified resurgence zone property described in Tax Law § 612(m) (defined later), and (2) qualified New York Liberty Zone property described in I.R.C. § 1400L(b)(2) (without regard to subparagraph (C)(i) of such paragraph).

Accordingly, in computing New York AGI, a taxpayer must add to federal AGI the total amount of the depreciation deduction for qualified § 168(k) property allowable under I.R.C. § 167. The taxpayer must also subtract from federal AGI the depreciation deduction for qualified property allowable under I.R.C. § 167 as if the property did not qualify for the federal 50% special depreciation allowance under I.R.C. § 168(k)(2) (i.e., the amount of depreciation allowed under I.R.C. § 167 as that section would have applied to the property had it been acquired on September 10, 2001).

When there is a disposition of a property for which the modifications described above have been made, a modification must be made to reflect the difference, if any, in depreciation allowable for federal and New York purposes.

[Tax Law §§ 612(b)(8), 612(c)(16), 612(k), 612(l), and 612(m)]

I.R.C. § 179 Expensing Deduction

For federal income tax purposes, the FES Act allows a qualifying business to expense up to $250,000 of I.R.C. § 179 property purchased by the taxpayer in a tax year beginning in 2008. Prior to the FES Act, the 2008 expensing limit for I.R.C. § 179 property would have been $128,000. The $250,000 amount provided under the new federal law is reduced if the cost of all I.R.C. § 179 property placed in service by the taxpayer during the tax year exceeds $800,000.

New York AGI is the individual's federal AGI as defined in the Internal Revenue Code for the tax year, with modifications allowed under Tax Law §§ 612(b) and 612(c). Tax Law § 612(b)(36) requires that a taxpayer, with the exception of an eligible farmer as defined by Tax Law § 606(n), make an addition modification for the amount of any deduction claimed under I.R.C. § 179 for a sport utility vehicle with a vehicle weight in excess of 6,000 pounds. Also, Tax Law § 612(c)(37) requires a taxpayer to subtract from federal AGI any amount required to be recaptured pursuant to I.R.C. § 179(d) with respect to sport utility vehicles.

There are no other modifications to federal AGI required for I.R.C. § 179 property. Accordingly, except with respect to sport utility vehicles, New York conforms to the I.R.C. § 179 expensing provision for personal income tax purposes.

[Tax Law §§ 612(b)(36) and 612(c)(37)]

OTHER NYS MANDATES

Income Tax Mandates for Tax Return Preparers

The income tax mandate for tax return preparers now includes partnership returns and partnership extensions in addition to income tax returns and extensions for tax years beginning on or after January 1, 2008.

Who Is Covered by the Mandate

A tax return preparer must e-file all individual income tax and partnership returns and extensions beginning on January 1, 2009, if the preparer was subject to the mandate in a prior year or if the preparer

- Prepared more than 100 combined original individual or partnership returns for tax year 2007 in calendar year 2008, and
- Used tax software to prepare one or more New York State individual and/or partnership returns for tax year 2008 in calendar year 2009.

Penalties

A $50 penalty applies to each return or extension that a tax return preparer fails to e-file, unless the taxpayer opts out of e-filing or the preparer has other reasonable cause for failure to comply.

Business Tax E-file Mandate for Tax Return Preparers

This new mandate requires tax return preparers who meet certain requirements to e-file authorized tax document beginning on or after January 1, 2009. The mandate also requires electronic payment of the balance due on any authorized tax document.

Who Is Initially Covered by the Mandate

A tax return preparer must e-file all general business and NYS S corporation (Article 9-A) returns and extensions beginning on January 1, 2009, and electronically pay the balance due if the preparer

- Prepared more than 100 original Article 9-A documents in calendar year 2008, including tax documents for prior periods; and
- Used tax software to prepare one or more Article 9-A tax documents in 2009.

Penalties

A $50 penalty applies to each document that a tax return preparer fails to e-file, unless the taxpayer opted out of e-filing or the preparer has other reasonable cause for failure to comply.

The taxpayer will be subject to a $50 per tax document penalty for failing to electronically pay the balance due. The Department cannot abate the payment penalty for reasonable cause.

SUMMARY OF NYS INCOME TAX FORMULA

Step 1: Federal AGI

Step 2: Modifications

- Additions
- Subtractions

Step 3: New York State AGI

Step 4: Allowable deductions

- Standard deduction
- Itemized Deduction as adjusted
  - Subtractions
  - Additions
  - Limitations

Step 5: Dependent exemptions

Step 6: Taxable Income

Step 7: Tax computation

Step 8: Allowable credits/other taxes

Step 9: Voluntary contributions

FILING STATUS

Tax return preparers should apply the filing status used for federal income tax purposes. If a taxpayer did not have to file a federal return, the preparer should use the filing status that would have applied for federal income tax purposes. For New York State purposes, the only exceptions to this rule apply to married individuals who file a joint federal return *and* who meet the following criteria:

1. One spouse is a New York State resident and the other is a nonresident or part-year resident. In this case, the taxpayers must either
   a. File separate New York returns using filing status *Married filing separately*, or
   b. File jointly, as if the taxpayers both were New York State residents, using filing status *married filing jointly*.
2. The taxpayer is unable to file a joint New York return because the address or whereabouts of their spouse is unknown, it can be demonstrated that reasonable efforts have been made to locate the spouse, and good cause exists for the failure to file a joint New York return. In this case, the taxpayer may file a separate New York return using filing status *married filing separately*.
3. The taxpayer's spouse refuses to sign a joint New York return; reasonable efforts have been made to have the spouse sign a joint return; there exists objective evidence of alienation from the spouse such as judicial order of protection, legal separation under a decree of divorce or separate maintenance, or living apart for the 12 months immediately preceding application to file a separate return or commencement of an action for divorce or commencement of certain family court proceedings; and good cause exists for the failure to file a joint New York return. In this case, the taxpayer may file a separate New York return using filing status *married filing separately*.

2-DIGIT SPECIAL CONDITION CODES

If the taxpayer qualifies for one or more of the four special conditions below, use the specified 2-digit code(s):

- *Code C7 Combat zone*–Enter this code if the taxpayer qualifies for an extension of time to file and pay their tax due under the combat zone or contingency operation relief provisions. See Publication 361, *New York State Income Tax Information for Military Personnel and Veterans.*
- *Code K2 Killed in action (KIA)*–Enter this code if a representative is filing a return on behalf of a member of the armed forces who died while serving in a combat zone. See Publication 361 for information on filing a claim for tax forgiveness.
- *Code E3 Out of the country*–Enter this code if the taxpayer qualifies for an automatic 2-month extension of time to file his or her federal return because he or she is out of the country.
- *Code E5 Extension of time to file beyond 6 months*–Enter this code if the taxpayer qualifies for an extension of time to file beyond 6 months under § 157.3(b)(1)(i) of the personal income tax regulations because they are outside the United States and Puerto Rico.

NEW YORK MODIFICATIONS

Additions to Adjusted Gross Income

Interest Income on State and Local Bonds and Obligations

Interest income from state and local bonds and obligations from states other than New York State or its local governments are added back for NYS purposes.

Public Employee 414(h) Retirement Contributions

Enter the amount of 414(h) retirement contributions, if any, shown on the wage and tax statement(s), federal Form W-2, if the taxpayer is one of the following public employees:

- A Tier 3 or Tier 4 member of the New York State and Local Retirement Systems, which include the NYS Employees' Retirement System and the NYS Police and Fire Retirement System
- A Tier 3 or Tier 4 member of the NYS Teachers' Retirement System
- An employee of the State or City University of New York who belongs to the Optional Retirement Program
- A member of any tier of the NYC Employees' Retirement System, the NYC Teachers' Retirement System, the NYC Board of Education Retirement System, the NYC Police Pension Fund, or the NYC Fire Department Pension Fund
- A member of the Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) Pension Plan

Do not enter contributions to a I.R.C. § 401(k) deferred arrangement, I.R.C. § 403(b) annuity, or I.R.C. § 457 deferred compensation plan.

New York's 529 College Savings Program Distributions

When a withdrawal is a nonqualified withdrawal, the worksheet must be completed to calculate the nonqualified portion that must be added back for tax purposes.

The withdrawals are nonqualified if any of the following apply:

1. The funds are used for purposes other than the higher education of the designated beneficiary.
2. The withdrawal is actually disbursed in cash or in kind from the college savings program, even if the amount withdrawn is reinvested in New York's 529 college savings program within the Internal Revenue Code 60-day rollover period.
3. On or after January 1, 2003, the funds are transferred from New York's 529 college savings program to another state's program (whether for the same beneficiary or for the benefit of another family member).

Nonqualified withdrawals *do not* include any withdrawals made in 2008 as a result of the death or disability of the designated beneficiary, regardless of how the funds are used.

Other New York Additions

Write in the applicable item number(s) (A-1 through A-26) and the amount of each addition in the *Identify* area. Enter the total amount of these other additions in the dollar column.

A-1—Income from Certain Obligations of U.S. Government Agencies or Instrumentalities

If the taxpayer, during 2008, received or was credited with any interest or dividend income from any U.S. government authority, commission, or instrumentality that federal laws exempt from federal income tax but do not exempt from state income tax, then include that income. If the taxpayer is uncertain whether a particular federal bond or obligation is subject to state income tax, contact the Tax Department.

A-2—Interest Expense on Loans Used to Buy Obligations Exempt from NYS Tax, Amortized Bond Premium on Bonds That Are Exempt from NYS Tax and Other Expenses Relating to the Production of Income Exempt from NYS Tax

1. If the taxpayer's federal AGI includes a deduction for interest expense used to buy bonds, obligations, or securities whose interest income is taxable for federal purposes but exempt from New York State tax, then include that interest expense
2. If the taxpayer's federal AGI includes a deduction for the amortization of bond premiums on bonds whose interest income is taxable for federal purposes but exempt from NYS tax, then include that amortized premium
3. If the taxpayer's federal AGI includes a deduction for expenses relating to the production of income that is taxable for federal purposes but exempt from New York State tax, then include that interest expense.

A-3—NYC Flexible Benefits Program (I.R.C. § 125)

(Addition applies to flexible benefits program established by New York City.)

A-4—Health Insurance and the Welfare Benefit Fund Surcharge

(Addition applies to career pension plan members of the NYC Employees' Retirement System or the NYC Board of Education Retirement System.)

A-5—Special Additional Mortgage Recording Tax Deduction

If a taxpayer deducted special additional mortgage recording tax in computing their federal AGI, and the special additional tax was paid before January 1, 1988, and in a prior year the taxpayer was allowed an NYS personal income tax credit for that tax, then include the amount deducted.

Do not make the addition for the tax paid to record a mortgage on or after January 1, 2004, even if a credit for that tax was claimed.

A-6—Special Additional Mortgage Recording Tax Basis Adjustment

Where property on which the taxpayer paid a special additional mortgage recording tax was sold or disposed of, and a special additional tax was paid before January 1, 1988, and in a prior year the taxpayer claimed a New York State personal income tax credit for that tax, then include the amount, if any, of the federal basis of the property that was not adjusted to reflect the amount of the credit allowed.

A-7—Sales or Dispositions of Assets Acquired from Decedents

Note: This adjustment is not required for property acquired from decedents who died on or after February 1, 2000.

Assets of decedents can sometimes have different bases for state and federal tax purposes. This requires adjustments in the gain or loss on the sale or disposition of those assets.

Where, during the tax year, there was a sale or other disposition of any assets that had been inherited or sold or disposed of directly by the estate of a decedent, *and if* the estate of the decedent was not large enough to require a federal estate tax return, *and if* the executor or administrator of that estate had valued those assets for NYS income tax purposes at less than their value for federal income tax purposes, *then* include the *difference between*

1. The gain or loss on that sale or disposition that was included in the taxpayer's federal AGI for the tax year, *and*
2. The gain or loss that would have resulted if the assets had been valued the same for New York State income tax purposes as for federal income tax purposes.

A-8—Disposition of Solar and Wind Energy Systems

If in any tax year beginning on or after January 1, 1981, and ending before December 31, 1986, the taxpayer took an NYS solar and wind energy credit on property, *and if* that property was sold or otherwise disposed of in 2008, *and if* a reportable gain resulted for federal income tax purposes from that sale or disposition, *and if* the taxpayer had included the cost of the energy system in the federal basis of the property but did not reduce the federal basis by the state credit, *then* include the amount of the credit the taxpayer had previously claimed.

A-9—New Business Investment; Deferral Recognition

If, in any tax year beginning on or after January 1, 1982, and before 1988, the taxpayer chose to subtract all or a portion of a long-term capital gain from their federal AGI because they reinvested that amount in a new New York business, and the taxpayer sold that reinvestment in 2008, then include the amount that was previously subtracted.

A-10—Qualified Emerging Technology Investments (QETI)

If the taxpayer elected to defer the gain from the sale of qualified emerging technology investments (QETI) because they reinvested in a New York qualified emerging technology company, and if they sold that reinvestment in 2008, then they must include the amount previously deferred.

Additional Modifications A-11 through A-22 Apply to Those Taxpayers That Filed Federal Schedule(s) C-EZ, C, E, or F

A-11—Personal Income Taxes and Unincorporated Business Taxes Deducted in Determining Federal Adjusted Gross Income

Personal income taxes or unincorporated business taxes cannot be deducted in computing New York State AGI.

If a deduction for state, local, or foreign income taxes, including unincorporated business taxes, was deducted when computing federal AGI, then the taxpayer must include the amount of that deduction. For example, if the taxpayer operated a business and deducted NYC unincorporated business tax on federal Form 1040, Schedule C, as an expense of doing business, include this tax amount.

Partners–Include the taxpayer's distributive share of state, local, or foreign income taxes, including unincorporated business taxes, deducted in figuring net income.

S corporation shareholders–If the taxpayer is a shareholder of a federal S corporation for which a New York S election was in effect, and if that corporation deducted taxes imposed by Article 9-A (general business corporation franchise tax), or Article 32 (banking corporation franchise tax), of the New York State Tax Law, then include the taxpayer's pro rata share of those taxes. (However, do not include state or local taxes of another state, political subdivision of another state, or the District of Columbia.)

A-12—Percentage Depletion

If a deduction was claimed for percentage depletion on a taxpayer's federal return, then that amount must be included in computing the taxpayer's AGI.

A-13—Safe-Harbor Leases (See I.R.C. § 168(f)(8))

If, in computing federal AGI, the taxpayer included deductions attributable to a safe-harbor lease (except for mass transit vehicles) made under an election provided for by I.R.C. § 168(f)(8) as it was in effect for agreements entered into prior to January 1, 1984, then those deductions should be included.

A-14—Safe-Harbor Leases

Where a taxpayer's financial matters in 2008 involved a safe-harbor lease (except for mass transit vehicles) made under an election provided for by I.R.C. § 168(f)(8) as it was in effect for agreements entered into prior to January 1, 1984, then the taxpayer must include the income that would have been included in federal AGI if such an election had not been made.

A-15—Accelerated Cost Recovery System (ACRS) Deduction

If the taxpayer claimed accelerated cost recovery system (ACRS) depreciation on their federal return for

- Property placed in service during tax years 1981–1984 (other than I.R.C. § 280F property), or
- Property placed in service outside New York State for 1985–1993 (other than I.R.C. § 280F property),

and the taxpayer elects to continue using I.R.C. § 167 depreciation, *then* include the amount that was deducted in computing the federal AGI. Complete Form IT-399, New York State Depreciation Schedule, and attach it to the tax return.

A-16—ACRS Property; Year of Disposition Adjustment

If the taxpayer disposed of property that was depreciated for federal purposes using ACRS, and if ACRS depreciation was not allowed for state purposes (see A-15), then complete Part 2 of Form IT-399, New York State Depreciation Schedule, to determine the amount to include.

A-17—Farmers' School Tax Credit

If the taxpayer claimed the farmers' school tax credit on their 2007 New York State tax return, and if the taxpayer deducted their school taxes in computing federal AGI, then include the amount of the credit claimed in 2007 on the 2008 return.

Note: Do not make this modification if the taxpayer was required to report the amount of the credit as income on their 2008 federal return. (Under the tax benefit rule the deduction that was taken in the prior year and recouped in the subsequent year is reported as income for the subsequent year.)

A-18—Sport Utility Vehicle Expense Deduction

If the taxpayer claimed an I.R.C. § 179 deduction on the federal return with respect to a sport utility vehicle that weighs more than 6,000 pounds, and the taxpayer is not an eligible farmer as defined for purposes of the farmers' school tax credit (see Form IT-217-I, Instructions for Form IT-217, Claim for Farmers' School Tax Credit), then include the amount of that deduction.

A *sport utility vehicle* is any four-wheeled passenger vehicle manufactured primarily for use on public streets, roads, and highways. However, *sport utility vehicle* does not include the following:

1. Any ambulance, hearse, or combination ambulance-hearse used directly in a trade or business.
2. Any vehicle used directly in the trade or business of transporting persons or property for compensation or hire.
3. Any truck, van, or motor home. A *truck* is any vehicle that has a primary load carrying device or container attached, or is equipped with an open cargo area or covered box not readily accessible from the passenger compartment.

A-19—I.R.C. § 168(k) Property Depreciation

With the exception of resurgence zone property and New York liberty zone property described in I.R.C. § 1400L(b)(2), New York State does not follow the federal depreciation rules for I.R.C. § 168(k) property placed in service inside or outside New York State on or after June 1, 2003. If the taxpayer claimed a depreciation deduction for such property, and if no exception for resurgence zone or New York liberty zone property applies, then complete Part 1 of Form IT-398, New York State Depreciation Schedule for IRC Section 168(k) Property, to determine the amount to include. Attach Form IT-398 to the taxpayer's return.

A-20—Special Depreciation

The amount of depreciation or expeditures that was deducted in computing federal AGI should be included if the taxpayer made an election for tax years beginning before 1987 for the following items:

- Special depreciation
- Research and development expenditures
- Waste treatment facility expenditures
- Air pollution control equipment expenditures
- Acid deposition control equipment

A-21—Royalty and Interest Payments Made to a Related Member or Members

For tax years beginning on or after January 1, 2003, New York requires certain taxpayers to add back deductions they took on their federal return for certain royalty payments for the use of intangible property, such as trademarks or patents, and interest payments they made to a related member or members. Include the amount for any such payments the taxpayer deducted on their federal return. [See Tax Law § 612 (r).]

A-22—Environmental Remediation Insurance Premiums

If the taxpayer paid premiums for environmental remediation insurance, claimed a deduction for such premiums, and claimed the environmental remediation insurance credit, Form IT-613, Claim for Environmental Remediation Insurance Credit, then include the amount of the environmental remediation insurance credit allowed.

Additions A-23, A-24, A-25, A-26 Apply to S Corporation Shareholders Only

A-23—S Corporation Shareholders; Reduction for Taxes

If the taxpayer is a shareholder of an S corporation for which a New York S corporation election was in effect for the tax year, then include the pro rata share of the S corporation's reductions for taxes imposed on built-in gains and reductions for taxes imposed on excess net passive income as described in I.R.C. §§ 1366(f)(2) and (3).

A-24—S Corporation Shareholders; Pass-Through Loss or Deduction Items

If the taxpayer is a shareholder of an S corporation that is a New York C corporation, then include any S corporation pass-through items of loss or deduction taken into account in computing federal AGI, pursuant to I.R.C. § 1366.

A-25—S Corporation Shareholders

If the taxpayer did not include S corporation distributions in federal AGI due to the application of I.R.C. §§ 1368, 1371(e), or 1379(c), and if these distributions were not previously subject to New York personal income tax because the corporation was a New York C corporation, then include these distributions.

A-26—S Corporation Shareholders; Disposition of Stock or Indebtedness with Increased Basis

Federal law requires holders of stock or indebtedness in a federal S corporation to include undistributed taxable income in their federal AGI and take a corresponding increase in basis. New York law requires a similar increase in basis on disposition of the stock or indebtedness where the federal S corporation is or was a New York C corporation.

If the taxpayer reported a federal gain or loss because of the disposition of stock or indebtedness of an S corporation, and if that S corporation was a New York C corporation for any tax year beginning after December 31, 1980 (in the case of a corporation taxable under Article 9-A, general business corporation tax), or December 31, 1996 (in the case of a corporation taxable under Article 32, banking corporation franchise tax), then include the increase in the basis of the stock or indebtedness that is due to the application of I.R.C. § 1376(a) (as in effect for tax years beginning before January 1, 1983) and I.R.C. §§ 1367(a)(1)(A) and (B) for each tax year that a New York S election was *not* in effect.

Subtractions from Adjusted Gross Income

Pensions of New York State and Local Governments and the Federal Government

Where a pension or other distribution from a New York State or local government pension plan or federal government pension plan was received and included in the taxpayer's federal AGI, enter any pension received–or distributions made from a pension plan that represents a return of contributions in a year prior to retirement–as an officer, employee, or beneficiary of an officer or employee of the following:

- New York State, including State and City University of New York and NYS Education Department employees who belong to the Optional Retirement Program (Optional Retirement Program members may only subtract that portion attributable to employment with the State or City University of New York or the NYS Education Department)
- Certain public authorities
- Local governments within the state
- The United States, its territories, possessions (or political subdivisions thereof), or any agency or instrumentality of the United States (including the military), or the District of Columbia

Also include distributions received from a New York State or local pension plan or from a federal government pension plan as a *nonemployee spouse* in accordance with a court-issued qualified domestic relations order (QDRO) that meets the criteria of I.R.C. § 414(p)(1)(A) or that is in accordance with a domestic relations order (DRO) issued by a New York court.

For additional information, see Publication 36, *General Information for Senior Citizens and Retired Persons.*

Do *not* subtract the following forms of payment:

1. Pension payments or return of contributions that were attributable to the taxpayer's employment by an employer other than a New York public employer, such as a private university, and any portion attributable to contributions the taxpayer made to a supplemental annuity plan that was funded through a salary reduction program.
2. Periodic distributions from government (I.R.C. § 457) deferred compensation plans. However, these payments and distributions may qualify for the pension and annuity income exclusion described below.

Interest Income on U.S. Government Bonds

If interest income from U.S. government bonds or other U.S. government obligations was included in federal AGI, enter the amount of interest income earned from bonds or other obligations of the U.S. government. Dividends received from a regulated investment company (mutual fund) that invests in obligations of the U.S. government and meet the 50% asset requirement each quarter qualify for this subtraction. The portion of such dividends that may be subtracted is based upon the portion of taxable income received by the mutual fund that is derived from federal obligations. Contact the mutual fund for further information on meeting the 50% asset requirement and computing the taxpayer's allowable subtraction (if any).

Pension and Annuity Income Exclusion

Where income from a pension plan is not from a New York State or local government pension plan or federal government pension plan is included in federal AGI, and the taxpayer was 59½ before January

1, 2008, enter the qualifying pension and annuity income included in the taxpayer's 2008 federal AGI, *but not more than $20,000*. If the taxpayer became 59½ during 2008, enter only the amount received after the taxpayer became 59½, *but not more than $20,000*. If the taxpayer received pension and annuity income and is married or received pension and annuity income as a beneficiary, see the "Beneficiaries" section below.

$20,000 Limit

The pension and annuity income exclusion cannot exceed $20,000, regardless of the source(s) of the income.

Qualifying Pension and Annuity Income

The following payments qualify as pension or annuity income:

- Periodic payments for services the taxpayer performed as an employee before the taxpayer retired.
- Periodic and lump-sum payments from an IRA, but *not* payments derived from contributions made after the taxpayer retired.
- Periodic distributions from government (I.R.C. § 457) deferred-compensation plans.
- Periodic distributions from an annuity contract (I.R.C. § 403(b)) purchased by an employer for an employee and the employer is a corporation, community chest, fund, foundation, or public school.
- Periodic payments from an HR-10 (Keogh) plan, but *not* payments derived from contributions made after the taxpayer retired.
- Lump-sum payments from an HR-10 (Keogh) plan, but only if federal Form 4972 is not used. Do *not* include that part of the payment that was derived from contributions made after the taxpayer retired.
- Periodic distributions of benefits from a cafeteria plan (I.R.C. § 125) or a qualified cash or deferred profit-sharing or stock bonus plan (I.R.C. § 401(k)), but not distributions derived from contributions made after the taxpayer retired.

Qualifying pension and annuity income *does not* include distributions received as a *nonemployee spouse* in accordance with a court-issued QDRO that meets the criteria of I.R.C. § 414(p)(1)(A) or in accordance with a DRO issued by a New York court.

For additional information, see Publication 36, *General Information for Senior Citizens and Retired Persons.*

Married Taxpayers

Where the taxpayers both qualify, then each can subtract up to $20,000 of their own pension and annuity income (for a total of $40,000). However, the taxpayers cannot claim any unused part of their spouse's exclusion.

Example 1. A husband and wife, both age 63, included total pension and annuity income of $40,000 in their federal AGI on their 2008 joint federal tax return. The husband received qualifying pension and annuity payments totaling $25,000, and the wife received qualifying payments totaling $15,000. They are filing a joint 2008 NYS resident personal income tax return. The husband may claim the maximum pension and annuity income exclusion of $20,000, and the wife may claim an exclusion of $15,000, for a total pension and annuity income exclusion of $35,000.

Beneficiaries

If the taxpayer received a decedent's pension and annuity income, the taxpayer may make this subtraction if the decedent would have been entitled to it, had the decedent continued to live, regardless of the taxpayer's age. If the decedent would have become 59½ during 2008, enter only the amount received after the decedent would have become 59½, but not more than $20,000.

In addition, the pension and annuity income exclusion of the decedent that the taxpayer is eligible to claim as a beneficiary must first be reduced by the amount subtracted on the decedent's NYS personal income tax return, if any. The total pension and annuity income exclusion claimed by the decedent and the decedent's beneficiaries cannot exceed $20,000.

If the decedent has more than one beneficiary, the decedent's $20,000 pension and annuity income exclusion *must be allocated* among the beneficiaries. Each beneficiary's share of the $20,000 exclusion is determined by multiplying $20,000 by a fraction whose numerator is the value of the pensions and annuities inherited by the beneficiary, and whose denominator is the total value inherited by all beneficiaries of the decedent's pensions and annuities.

Example 2. A taxpayer received pension and annuity income totaling $7,000 as a beneficiary of a decedent who was 59½ before January 1, 2008. The decedent's total pension and annuity income was $35,000, shared equally among five beneficiaries. Each beneficiary is entitled to one-fifth of the decedent's pension exclusion, or $4,000 ($20,000 divided by 5). The taxpayer also received a qualifying pension and annuity payment of $12,600 in 2008. The taxpayer is entitled to claim a pension and annuity income exclusion of $16,600 ($12,600 attributable to the taxpayer's own pension and annuity payment, plus $4,000 received as a beneficiary[3]).

Disability Income Exclusion

If the taxpayer is also claiming the disability income exclusion, the total of the taxpayer's pension and annuity income exclusion and disability income exclusion cannot exceed $20,000.

New York's 529 College Savings Program Deduction/Earnings Distributions

If the taxpayer made contributions to one or more tuition savings accounts established under New York's 529 college savings program, enter the amount up to $5,000 ($10,000 for married taxpayers filing a joint return) on line 1 of the worksheet.

If the taxpayer made a withdrawal from one or more tuition savings accounts established under New York's 529 college savings program, and part of the withdrawal was included in federal AGI, then enter that amount on line 2 of the worksheet.

[3]The total amount of the taxpayer's pension and annuity income exclusion that can be applied against the taxpayer's pension and annuity income received as a beneficiary is limited to the taxpayer's share of the decedent's pension and annuity income exclusion.

Other New York Subtractions

S-1—Certain Investment Income from U.S. Government Agencies

Include any interest or dividend income on bonds or securities of any U.S. authority, commission, or instrumentality that is exempt from state income taxes, under federal laws, that is included in the taxpayer's federal AGI.

S-2—Certain Railroad Retirement Income and Railroad Unemployment Insurance Benefits

Include supplemental annuities or Tier 2 benefits received under the Railroad Retirement Act of 1974, or benefits received under the Railroad Unemployment Insurance Act that are exempt from state income taxes, under federal laws, that are included in the taxpayer's federal AGI.

S-3—Certain Investment Income Exempted by Other New York State Laws

Include any interest or dividend income from any obligations or securities authorized to be issued and exempt from state taxation under the laws of New York State (e.g., income received from bonds, mortgages, and income debenture certificates of limited dividend housing corporations organized under the Private Housing Finance Law).

S-4—Disability Income Exclusion

Complete Form IT-221, Disability Income Exclusion, to compute the disability income exclusion where the taxpayer was not yet 65 when the tax year ended, and the taxpayer retired on disability and was permanently and totally disabled when he or she retired.

S-5—Long-Term Residential Care Deduction

If the taxpayer was a resident in a continuing-care retirement community that was issued a certificate of authority by the NYS Department of Health, include the portion of the fees paid during the year that are attributable to the cost of providing long-term care benefits under a continuing-care contract. However, do not enter more than the premium limitation shown for the taxpayer's age in the limitation table shown in Figure D. If both spouses qualify, then each can take the subtraction. However, a taxpayer cannot claim any unused part of their spouse's subtraction.

FIGURE D. Premium Limitations Based on a Taxpayer's Age

If the taxpayer's age at the end of 2008 was:	The taxpayer cannot claim more than:
40 or younger	$ 290
at least 41 but not older than 50	$ 550
at least 51 but not older than 60	$1,110
at least 61 but not older than 70	$2,950
71 or older	$3,680

S-6—New York State Organized Militia Income

Include income that the taxpayer received as a member of the NYS organized militia for performing active service within New York State due to either state active-duty orders issued in accordance with Military Law § 6.1 or federal active-duty orders, for service other than training, issued in accordance with Title 10 of the United States Code, that was included in federal AGI. Do not include any income received for regular duties in the organized militia (e.g., pay received for the annual two-week training program).

Members of the NYS organized militia include the New York Army National Guard, the New York Air National Guard, the New York Naval Militia, and the New York Guard.

S-7—Loss from the Sale or Disposition of Property That Would Have Been Realized If a Federal Estate Tax Return Had Been Required

Note: This subtraction cannot be made for property acquired from decedents who died on or after February 1, 2000.

If the taxpayer acquired a decedent's property and, as valued by the executor, the estate was insufficient to require a federal estate tax return, and if a loss on the sale would have been realized if a federal estate tax return had been required, then include the amount of the loss.

S-8—Accelerated Death Benefits Received That Were Includable in Federal Adjusted Gross Income

Include any amount the taxpayer included in federal AGI that was received by any person as either

1. An accelerated payment or payments of part or all of the death benefit or special surrender value under a life insurance policy, or
2. A viatical settlement, as a result of a terminal illness (life expectancy of 12 months or less), or of a medical condition requiring extraordinary medical treatment, regardless of life expectancy.

S-9—Contributions for Executive Mansion, Natural and Historical Resources, Not Deducted Elsewhere

Include contributions made, but not deducted elsewhere,

1. To preserve, improve, and promote the Executive Mansion as a New York State historical resource, or
2. To the Natural Heritage Trust to preserve and improve the natural and historical resources of New York State. *Do not* include amounts the taxpayer deducted in determining federal AGI or New York itemized deductions.

S-10—Distributions Made to a Victim of Nazi Persecution

Include amounts included in the taxpayer's federal AGI from an eligible settlement fund or grantor trust as defined by § 13 of the Tax Law (because the taxpayer was persecuted or targeted for persecution by the Nazi regime), distributions received because of the taxpayer's status as a victim of Nazi persecution, or distributions received as a spouse or heir of the victim (successors or assignees, if payment is from an eligible settlement fund or grantor trust).

S-11—Items of Income Related to Assets Stolen from, Hidden from, or Otherwise Lost to a Victim of Nazi Persecution

Include items of income that are included in federal AGI attributable to, derived from, or in any way related to assets stolen from, hidden from, or otherwise lost to a victim of Nazi persecution immediately prior to, during, and immediately after World War II. For example, include interest on the proceeds

receivable as insurance under policies issued to a victim of Nazi persecution by European insurance companies immediately prior to and during World War II, or as a spouse or heir of such victim.

However, do not include income attributable to assets acquired with assets as described above or with the proceeds from the sale of any asset described above. Also, do not include any income if the taxpayer was not the first recipient of the asset, or if the taxpayer is not a victim of Nazi persecution, or if the taxpayer is not a spouse or descendent of a victim.

S-12—Professional Service Corporation Shareholders

If in a taxable year ending after 1969 and beginning before 1988, the taxpayer was required to add to federal AGI deductions made by a plan acquired through membership in a professional service corporation (PSC), then include the portion of those deductions that can be allocated to pension, annuity, or other income received from the plan, and that is included in 2008 federal AGI.

S-13—Gain to Be Subtracted from the Sale of a New Business Investment Reported on the Taxpayer's Federal Income Tax Return

If the taxpayer reported a capital gain on the federal income tax return from the sale of a new business investment, as defined in NYS Tax Law § 612(o), that was issued before 1988 and was held at least 6 years, then include 100% of that federal gain.

S-14—Qualified Emerging Technology Investments (QETI)

In general, the taxpayer may defer the gain on the sale of QETI that are

1. Held for more than 36 months, and
2. Rolled over into the purchase of replacement QETI within 365 days from, and including, the date of sale.

However, the following rules apply:

- The taxpayer must recognize any gain to the extent that the amount realized on the sale of the original QETI exceeds the cost of replacement QETI.
- The taxpayer must add back any deferred gain in the year the taxpayer sells the replacement QETI.
- The gain deferral applies only to QETI sold on or after March 12, 1998, that was held for more than 36 months. If the taxpayer elects to defer the gain from the sale of QETI, then the amount of the deferred gain should be included. This amount may not exceed the amount of the gain included in the taxpayer's federal AGI.
- If the purchase of replacement QETI within the 365-day period occurred in the same taxable year as the sale of the original QETI, or in the following taxable year and before the date the taxpayer filed their personal income tax return, then the taxpayer should take the deduction on that return.
- If the purchase of replacement QETI within the 365-day period occurred in the following taxable year and on or after the date the taxpayer filed their personal income tax return, then the taxpayer must file an amended return to claim the deduction
- If the deferred gain must be included in a subsequent year's tax return because the replacement QETI has been sold, then the taxpayer should include that amount as an addition to federal AGI (see A-10 under the additions section discussed earlier).

A QETI is an investment in the stock of a corporation, an ownership interest in a partnership or LLC that is a qualified emerging technology company, or an investment in a partnership or an LLC to the extent that such partnership or LLC invests in such companies. The taxpayer must acquire the investment as provided in I.R.C. § 1202(C)(1)(B), or from a person who acquired it pursuant to that section. I.R.C. § 1202(c)(1)(B) requires the acquisition to be original issue from the company, either directly or through an underwriter, and in exchange for cash, services, or property (but not in stock).

A *qualified emerging technology company* (QETC) is a company that is located in New York State, has total annual product sales of $10 million or less, and meets either of the following criteria:

- Its primary products or services are classified as emerging technologies.
- It has research and development activities in New York State, and its ratio of research and development funds to net sales equals or exceeds the average ratio for all surveyed companies classified (as determined by the National Science Foundation in its most recent Survey of Industry Research and Development, or any comparable successor survey, as determined by the Tax Department).

S-15—Sales or Dispositions of Assets Acquired before 1960 with Greater State Than Federal Bases

NYS income tax laws prior to 1960 and current laws regarding depletion can result in a difference in the state and federal adjusted bases of certain assets. If the taxpayer realizes a federally taxable gain from the sale of an asset that had a higher adjusted basis for state tax purposes, the taxpayer may make an adjustment to reduce their gain for state tax purposes.

Include the *lesser* of the gain itself or the difference in he adjusted bases if federal AGI includes gain that was from either

- Property that had a higher adjusted basis for NYS income tax purposes than for federal tax purposes on December 31, 1959 (or on the last day of a fiscal year ending during 1960); or
- Property that was held in connection with mines, oil or gas wells, and other natural deposits and that had a higher adjusted basis for NYS income tax purposes than for federal tax purposes when sold.

Note: If the taxpayers divides gain with respect to jointly owned property between spouses, then the taxpayers must also divide any subtraction for different adjusted bases between spouses.

S-16—Income Earned before 1960 and Previously Reported to New York State

Include any income (including annuity income) or gain the taxpayer included in the 2008 federal AGI that the taxpayer (or the decedent or estate or trust from whom the taxpayer acquired the income or gain) properly reported to NYS prior to 1960 (or during a fiscal year ending in 1960).

S-17—Living Organ Donors

If during 2008 the taxpayer was a living donor who donated one or more organs to another person for human organ transplantation, then include unreimbursed expenses incurred for travel, lodging, and lost wages up to a maximum of $10,000. This subtraction is limited to once during a lifetime.

Subtraction Modifications S-18 through S-33 Apply to Those Taxpayers That Filed Federal Schedule(s) C-EZ, C, E, or F

S-18—Trade or Business Interest Expense on Loans Used to Buy Federally Tax Exempt Obligations That Are Taxable to New York State

The taxpayer may deduct interest expense the taxpayer incurs to buy an obligation that generates investment income that is taxable to a trade or business. If the taxpayer included interest income from bonds or other obligations that is federally tax exempt but taxable to New York State, and the expense incurred in buying the obligation is attributable to a trade or business carried on, then include that expense.

S-19—Trade or Business Expenses (Other Than Interest Expense) Connected with Federally Tax-Exempt Income That Is Taxable to New York State

Expenses incurred to acquire or maintain income that is taxable to a trade or business may be deducted. These expenses should be included if all of the following apply:

1. The taxpayer included income that is federally tax exempt but taxable to New York State.
2. The expense incurred to either produce or collect that income or to manage, conserve, or protect the assets that produce that income was not deducted for federal purposes.
3. The expenses are attributable to a trade or business carried on.

S-20—Amortizable Bond Premiums on Bonds That Are Owned by a Trade or Business and the Interest on Which Is Federally Tax-Exempt Income but Taxable to New York State

Expenses incurred to buy an obligation that generates investment income that is taxable to a trade or business can be deducted. The amortized expenses should be included if all of the following conditions are met:

1. The taxpayer is including, on either line 20 or line 23, interest income that is federally tax exempt but taxable to New York State.
2. The bonds were bought for more than their face value (i.e., at a premium).
3. The taxpayer did not reduce the taxpayer's federal AGI by deducting the amortization of that premium attributable to 2008
4. The bonds were owned by a trade or business carried on by the taxpayer in 2008 (as opposed to personal investments).

S-21—Wage and Salary Expenses Allowed as Federal Credits but Not as Federal Expenses

If the taxpayer took a federal credit for which a deduction for wages and salary expenses is not allowed under I.R.C. § 280C, then include the amount of those wages not deducted on the federal return.

S-22—Cost Depletion

If the taxpayer is making addition A-12 for any percentage depletion, then include the cost depletion that I.R.C. § 611 would allow on that property without any reference to either I.R.C. § 613 or § 613-A.

S-23—Special Depreciation Expenditures

The taxpayer may carry over excess expenditures the taxpayer incurred in taxable years beginning before 1987 in connection with depreciable, tangible business property located in New York State to the following tax year or years, and deduct such expenditures in computing New York AGI for that year or years, if the expenditures exceed New York AGI for that year before the allowance of those expenditures.

Compute the amount to include on Form IT-211, Special Depreciation Schedule, and attach it to the return.

S-24—Safe-Harbor Leases

Include any amount the taxpayer included in federal AGI (except for mass transit vehicles) solely because the taxpayer made the safe-harbor election on their federal return for agreements entered into before January 1, 1984.

S-25—Safe Harbor Leases

Include any amount that the taxpayer could have excluded from federal AGI (except for mass transit vehicles) had the taxpayer not made the safe-harbor election on their federal return for agreements entered into before January 1, 1984.

S-26—New York Depreciation Allowed

Include the amount of the taxpayer's New York depreciation if the taxpayer claimed ACRS depreciation on their federal return for

- Property placed in service during tax years 1981 through 1984 (except I.R.C. § 280F property); or
- Property placed in service outside New York State for 1985 through 1993 (except I.R.C. § 280F property) for which the taxpayer elected to continue using I.R.C. § 167 depreciation (see TSB-M-99(1)I).

Complete and attach Form IT-399, New York State Depreciation Schedule, to the return.

S-27—ACRS (Year of Disposition Adjustment)

If the taxpayer disposed of property in 2008 that was depreciated for federal purposes using ACRS, and if the taxpayer's total federal ACRS deduction exceeds New York depreciation deduction for that property, then complete Part 2 of Form IT-399, New York State Depreciation Schedule, to compute the amount to include. (See A-16 from the additions section earlier.) Attach Form IT-399 to the return.

S-28—Sport Utility Vehicle Expense Deduction Recapture

Include the sport utility vehicle recapture amount if all of the following conditions are met:

1. The taxpayer previously claimed an I.R.C. § 179 deduction with respect to a sport utility vehicle that weighs more than 6,000 pounds.
2. The taxpayer had to recapture any amount of that deduction in computing federal AGI for 2008.
3. The taxpayer is not an eligible farmer as defined for the farmers' school tax credit.

(See addition A-18, discussed earlier, for the definition of a sport utility vehicle.)

S-29—I.R.C. § 168(k) Property Depreciation

With the exception of resurgence zone property and New York liberty zone property described in I.R.C. § 1400L(b)(2), New York State does not follow the federal depreciation rules for I.R.C. § 168(k)

property placed in service inside or outside New York State on or after June 1, 2003. If the taxpayer claimed a depreciation deduction for such property, and if no exception for resurgence zone or New York liberty zone property applies, then complete Part 1 of Form IT-398, New York State Depreciation Schedule for IRC Section 168(k) Property, to compute the amount of New York depreciation to include. Attach Form IT-398 to the return.

S-30—I.R.C. § 168(k) Property (Year of Disposition Adjustment)

If the taxpayer disposed of I.R.C. § 168(k) property placed in service inside or outside New York State on or after June 1, 2003 (except for resurgence zone property, and New York liberty zone property described in I.R.C. § 1400L(b)(2)), and the total federal depreciation deduction was more than the taxpayer's New York depreciation deduction for that property, then complete Part 2 of Form IT-398, New York State Depreciation Schedule for IRC Section 168(k) Property, to compute the amount of the disposition adjustment to include. Attach Form IT-398 to the taxpayer's return.

S-31—Royalty and Interest Payments Made to a Related Member or Members

For tax years beginning on or after January 1, 2003, New York requires taxpayers to add back deductions they took on their federal return for certain royalty payments for the use of intangible property, such as trademarks or patents, and for interest payments they made to a related member or members. (See instructions given earlier in the additions section for A-21.)

In such a case, the recipient of the payments must subtract the payments in computing New York AGI. If the taxpayer received such a related member payment, include the amount the taxpayer included in federal taxable income. See § 612(r) of the Tax Law.

Subtractions S-32 and S-33 Apply Specifically to S Corporation Shareholders

S-32—S Corporation Shareholders

If the taxpayer reported a federal gain or loss because of the disposition of stock or indebtedness of an S corporation, and if that S corporation was a New York C corporation for any tax year beginning after December 31, 1980 (in the case of a corporation taxable under Article 9-A, general business corporation tax), or December 31, 1996 (in the case of a corporation taxable under Article 32, banking corporation franchise tax), then include the reduction in basis of the stock or indebtedness that is due to the application of I.R.C. § 1376(b) (as in effect for tax years beginning before January 1, 1983) and §§ 1367(a)(2)(B) and (C) for each tax year that the New York election was *not* in effect.

If, with respect to stock described above, the taxpayer made any New York additions to federal AGI required under addition A-25, then include the total of those additions.

See New York Tax Law § 612(b)(20).

S-33—S Corporation Shareholders—Pass-Through Income

If the taxpayer included in their federal AGI any S corporation pass-through income pursuant to I.R.C. § 1366, and the corporation is a New York C corporation, then include the pass-through income.

STANDARD DEDUCTION AND ITEMIZED DEDUCTIONS

If the taxpayer took the standard deduction on the taxpayer's federal return, or if the taxpayer did not have to file a federal return, the taxpayer *must* take the New York standard deduction.

The standard deduction is a fixed amount, based on the taxpayer's filing status, that is a reduction to New York AGI. If a taxpayer does not itemize deductions, the standard deduction can be taken on either Form IT-150 or IT-201. The New York standard deduction for tax year 2008 is shown in Figure E.

FIGURE E. New York Standard Deduction for 2008

Single and can be claimed as dependent	$ 3,000
Single and cannot be claimed as a dependent	$ 7,500
Married filing joint return	$15,000
Married filing separate return	$ 7,500
Head of household	$10,500
Qualified widow(er)	$15,000

If the taxpayers are married and filing separate returns, both spouses must take the standard deduction unless both of them itemized deductions on the their federal returns and both of them elected to itemize deductions on the their New York State returns.

The starting point in computing New York itemized deductions amount is the taxpayer's federal itemized deductions from federal Schedule A, Itemized Deductions. However, differences between federal and NYS tax laws necessitate certain adjustments to federal itemized deductions in computing NYS itemized deduction. Therefore, even though the taxpayer itemized on federal Form 1040, it is possible that the tax may be less by claiming the standard deduction on their NYS return.

For New York purposes, adjustments to federal itemized deductions, which require worksheets to be completed, are split into three groups as follows:

1. New York does not allow certain federal deductions and has an overall limit on federal itemized deductions applicable limits to higher-income taxpayers. (A taxpayer may need to complete one or more worksheets to determine the amount of the New York subtraction adjustment.)
2. New York allows certain deductions that are not allowed for federal purposes.
3. Further adjustments may be required if the taxpayer is subject to the New York itemized adjustment for higher-income taxpayers.

Subtraction Adjustments

The following adjustments to federal returns are not allowed for NYS purposes:

- State, local, and foreign *income* taxes from federal Schedule A.
- Ordinary and necessary expenses paid or incurred in connection with income, or property held for the production of income, which is exempt from New York income tax but only to the extent included in total federal itemized deductions.

- Amortization of bond premium attributable to 2008 on any bond whose interest income is exempt from New York income tax to the extent included in total federal itemized deductions.
- Interest expense on money borrowed to purchase or carry bonds or securities whose interest is exempt from New York income tax to the extent included in total federal itemized deductions.
- If the taxpayer is a shareholder of a federal S corporation that could elect but did not elect to be a New York S corporation, any S corporation deductions included in the taxpayer's total federal itemized deductions. If an S corporation short year is involved, the taxpayer must allocate those deductions.
- Premiums paid for long-term care insurance to the extent deducted in determining federal taxable income.

Addition Adjustments

Certain amounts that are not deductible for federal purposes but that are deductible for New York State purposes:

- Interest expense on money borrowed to purchase or carry bonds or securities whose interest is subject to New York income tax, but exempt from federal income tax, if this interest expense was not deducted on the taxpayer's federal return or shown as a New York subtraction.
- Ordinary and necessary expenses paid or incurred during 2008 in connection with income, or property held for the production of income, which is subject to New York income tax but exempt from federal income tax, if these expenses were not deducted on the taxpayer's federal return or shown as a New York subtraction.
- Amortization of bond premium attributable to 2008 on any bond whose interest income is subject to New York income tax but exempt from federal income tax if this amortization was not deducted on the taxpayer's federal return or shown as a New York subtraction.

Itemized Deduction Adjustment

This adjustment applies to taxpayers with New York State AGI that exceeds $100,000.

An additional adjustment is needed for those with New York State AGI that exceeds $475,000 and $525,000.

DEPENDENT EXEMPTIONS

Unlike the taxpayer's federal return, New York does not allow a taxpayer to take personal exemptions for the taxpayer and for his or her spouse.

The value of each dependent exemption is $1,000.

TAX COMPUTATION

Information for tax computation is available according to taxpayers' taxable income:

- Tax tables are available for those taxpayers that do not exceed taxable income of $65,000.
- Tax rate schedules are available for those taxpayers that have taxable income of over $65,000 not exceeding $100,000.
- Special tax computation worksheets apply to taxpayers that have taxable income of over $100,000.

NEW YORK CREDITS

New York State Household Credit

The NYS household credit credit is claimed directly on Form IT-150, IT-201, or IT-203. The credit is available to resident, part-year resident, and nonresident individuals. The amount of the credit is determined by income and filing status:

- If the taxpayer is a single taxpayer, and the taxpayer has federal AGI of $28,000 or less, the taxpayer may qualify for a credit of up to $75.
- If the taxpayers are married filing jointly, a qualifying widow(er) with a dependent child, or a head of household with a qualifying person, and the taxpayer has federal AGI of $32,000 or less, the taxpayer may qualify for a credit of $20 to $90, plus $5 to $15 more for each additional exemption claimed on the taxpayer's federal return.
- Married taxpayers filing separate returns may also qualify for this credit.

The tables used to determine the amount of credit allowed can be found in the instructions for Forms IT-150, IT-201 and IT-203.

Taxpayers that cannot be claimed as a dependent on another taxpayer's federal income tax return may qualify for the NYS household credit.

[Tax Law § 606(b)]

Other Credits

Order of Credits

Credits should be deducted in the following order:

1. Credits allowable that cannot be carried over and that are not refundable
2. Credits allowable under this article that can be carried over, and carryovers of such credits, and among such credits,
   a. Those whose carryover is of limited duration
   b. Those whose carryover is of unlimited duration

3. Credits allowable under this article that are refundable

[Tax Law § 187-f]

Automated External Defibrillator Credit

To claim the credit for an automated external defibrillator, Form IT-250, Claim for Credit for Purchase of an Automated External Defibrillator, must be completed and attached to Form IT-201, IT-203, or IT-205. This credit is not allowed for automated defibrillators purchased for resale.

The credit is equal to the lesser of the purchase cost of the unit or $500. There is no limit on the number of units purchased during the tax year for which the credit may be taken. However, the credit cannot exceed $500 for *each* unit purchased.

An *automated external defibrillator*, as defined under Public Health Law § 3000-b, is a medical device approved by the United States Food and Drug Administration.

The automated external defibrillator credit is not refundable, and any unused credit cannot be carried forward to a future year.

[Tax Law §§ 606(s) and 606(i)]

Child- and Dependent-Care Credit

To claim the child- and dependent-care credit, Form IT-216, Claim for Child and Dependent Care Credit, must be completed and attached to Form IT-150, IT-201, or IT-203.

Where a taxpayer *qualifies* to claim the federal child- and dependent-care credit, the NYS child- and dependent-care credit can be claimed (whether or not the federal credit is actually claimed). The NYS credit is based on a percentage of the federal credit.

The NYS child- and dependent-care credit is a minimum of 20% and can be as much as 110% of the federal credit, depending on the amount of the taxpayer's New York AGI.

The credit is available to resident, part-year resident, and nonresident individuals. NYS residents and part-year residents may qualify for a refund of any child- and dependent-care credit in excess of their NYS tax liabilities. Nonresidents do not qualify for a refund of the NYS child- and dependent-care credit.

Where a claim for the federal child- and dependent-care credit, was not claimed a claim for the NYS child- and dependent-care credit can still be claimed where *all four* of the following apply:

1. The taxpayer's filing status is single, head of household, qualifying widow(er) with dependent child, or married filing joint return. However, see the special rule for married persons filing separate federal and NYS returns in the instructions for Form IT-216, Claim for Child and Dependent Care Credit.
2. The care was provided so the taxpayer (and the taxpayer's spouse, if the taxpayer was married) could work or look for work. However, if the taxpayer did not find a job and has no earned income for the year, the taxpayer cannot take the credit. If the taxpayer's spouse was a student or disabled, see the instructions for Form IT-216.
3. The taxpayer's child (or other qualifying person(s) for whom the care was provided) lived in the same home with the taxpayer for more than half the year.
4. The person who provided the care was not the taxpayer's spouse, the parent of the taxpayer's qualifying child under age 13, or a person whom the taxpayer can claim as a dependent. If the taxpayer's child provided the care, he or she must have been age 19 or older by the end of 2008.

[Tax Law § 606(c)]

Claim of Right Credit

To claim the claim of right credit, Form IT-257, Claim of Right Credit, must be completed and attached to Form IT-201, IT-203, or IT-205.

The credit is available to individuals, estates, and trusts. The amount of the credit for NYS residents, part-year residents, and nonresidents, as well as New York City or Yonkers residents, is the difference between the amount of NYS tax originally reported on the prior year's return, and the tax that would have been reported on that return if the income had not been included on that return. The taxpayer may claim a refund of any claim of right credit that is in excess of the taxpayer's NYS tax liability.

Claim of right income is income that was properly reported on a prior year's tax return but was later determined to have been paid to the taxpayer in error and therefore had to be repaid. If the taxpayer has claim of right income for federal tax purposes and is taking a federal claim of right credit on the federal return, the taxpayer may also be entitled to a claim of right credit on the NYS return for NYS taxes.

If the taxpayer has federal claim of right income and elects to take the federal deduction instead of the federal credit, the taxpayer cannot claim a credit for New York State.
[Tax Law § 662]

College Tuition Credit

To claim the college tuition credit, Form IT-272, Claim for College Tuition Credit or Itemized Deduction, must be completed and attached to Form IT-150 or Form IT-201.

The credit is available to full-year NYS resident individuals only. In the case where a taxpayer, spouse, or dependent(s) was a student enrolled at or attending an institution of higher education, the taxpayer may be entitled to the college tuition credit.

If an eligible student is claimed as a dependent on another person's NYS tax return, only the person who claims the student as a dependent may claim the credit. However, if the taxpayer's spouse is the eligible student, and separate returns are filed, special rules apply.

Eligible student means the taxpayer, the taxpayer's spouse, or the taxpayer's dependent (for whom an exemption for NYS income tax purposes is allowed).

Qualified college tuition expenses mean the tuition required for the enrollment or attendance of the eligible student at an institution of higher education. The expenses may be paid with cash, check, credit card, or borrowed funds. In addition, the eligible student does not have to be enrolled in a degree program or attend full-time for the expenses to qualify. However, *only expenses for undergraduate enrollment or attendance qualify.* Expenses for enrollment or attendance in a course of study leading to the granting of a post-baccalaureate or other graduate degree *do not qualify.*

Generally, qualified tuition expenses paid on behalf of an eligible student by someone other than the student (such as a relative) are treated as paid by the student. However, if the eligible student is claimed as a dependent on another person's NYS income tax return, qualified tuition expenses paid (or treated as paid) by the student are treated as paid by the person who claims the student as a dependent. Therefore, if the taxpayer claims the student as a dependent, the taxpayer is treated as having paid expenses that were paid from the student's earnings, gifts, inheritances, or savings. Qualified college tuition expenses paid on behalf of an eligible student from a qualified state tuition program (such as New York's 529 College Savings Program) are considered qualified college tuition expenses for purposes of this credit. However, if the student is claimed as a dependent on the taxpayer's NYS tax return, these payments are also treated as paid by the taxpayer.

Qualified tuition expenses do not include

- Tuition paid through the receipt of scholarships or financial aid. (For this purpose, financial aid does not include student loans, other loans, and grants that must be repaid either before or after the student ceases attending school.)
- Amounts paid for room and board, insurance, medical expenses (including student health fees), transportation, or other similar personal, living, or family expenses.

- Fees for course-related books, supplies, equipment, and nonacademic activities, even if the fees are required to be paid as a condition of enrollment or attendance.

An *institution of higher education* means any institution of higher education or business, trade, technical, or other occupational school that is located within or outside of New York State and that is recognized and approved by either the regents of the University of New York or a nationally recognized accrediting agency or association accepted by the regents. In addition, the institution or school must provide a course of study leading to the granting of a post-secondary degree, certificate, or diploma.

The maximum amount of qualified college tuition expenses allowed for each eligible student is $10,000, and there is no limit on the number of eligible students for whom the taxpayer may claim a credit. If the taxpayer's total qualified college tuition expenses allowed for all eligible students are $5,000 or more, the credit for 2008 is 4% of the taxpayer's qualified college tuition expenses (up to $10,000 per eligible student). Accordingly, the college tuition credit allowed for tax year 2008 is limited to $400 for each eligible student.

If the taxpayer's total qualified college tuition expenses for all eligible students are less than $5,000, the credit is equal to the lesser of the taxpayer's total qualified college tuition expenses or $200.

The taxpayer may claim a refund of any college tuition credit that is in excess of the taxpayer's NYS tax liability.

College Tuition Itemized Deduction

In lieu of claiming the credit, the taxpayer may elect to claim the New York college tuition itemized deduction if the taxpayer itemized deductions on the federal return. A worksheet is provided in the instructions for Form IT-272, Claim for College Tuition Credit or Itemized Deduction, to help the taxpayer determine whether the credit or the deduction offers the taxpayer the greater tax savings. *The taxpayer may claim the credit or the deduction, but not both.*

The college tuition itemized deduction is also available to nonresident and part-year resident taxpayers. To claim the college tuition itemized deduction, nonresidents and part-year residents must complete Schedule C of Form IT-203-B, Nonresident and Part-Year Resident Income Allocation and College Tuition Itemized Deduction Worksheet, and attach it to Form IT-203.
[Tax Law § 606(t)]

Conservation Easement Tax Credit

To claim the credit for a conservation easement, Form IT-242, Claim for Conservation Easement Tax Credit, must be completed and attached to Form IT-201, IT-203, or IT-205.

The conservation easement credit cannot exceed $5,000 in any given year. Additionally, when this credit is combined with any other income tax credit claimed for school district, county, and town real property taxes, the amount of the combined credits cannot exceed the total amount of these taxes.

A landowner taxpayer in New York State that has land that is subject to a conservation easement held by a public or private conservation agency may be entitled to a credit of 25% of the allowable school district, county, and town real property taxes the taxpayer paid in 2008 on this land (excluding real property taxes paid on buildings, structures, and improvements).

Conservation easement means a perpetual and permanent conservation easement as defined in Article 49 of the Environmental Conservation Law (ECL) on land located in New York State that meets the following requirements:

- The land is held by a public or private conservation agency.
- The easement serves to protect open space, biodiversity, or scenic, natural, agricultural, watershed, or historic preservation resources.

- The conservation easement for the land is filed with the Department of Environmental Conservation (DEC) by the person causing the document to be so recorded, as provided for in ECL Article 49.
- The land complies with the provisions of ECL, Article 49, Title 3.
- The land complies with the provisions of I.R.C. § 170(h).

Note: The taxpayer should maintain adequate records to substantiate the conservation easement's compliance with the provisions of I.R.C. § 170(h), including but not limited to a copy of federal Form 8283, Noncash Charitable Contributions, for the year of the donation. Under certain circumstances, a letter from the public or private conservation agency may also be adequate.

Dedications of land for open space through the execution of conservation easements for the purpose of fulfilling density requirements to obtain subdivision or building permits are *not* considered conservation easements for purposes of this credit.

Land means a fee simple title to real property located in New York State, with or without improvements. This includes rights of way; water and riparian rights; easements; privileges and all other rights or interests relating to or connected with real property, excluding buildings, structures, and improvements.

Public or private conservation agency means

- Any state, local, or federal government body, or
- Any private not-for-profit charitable corporation or trust that is authorized to do business in New York State; organized and operated to protect land for natural resources, conservation, or historic preservation purposes; is exempt from federal tax under I.R.C. § 501(c)(3); and has the power to acquire, hold, and maintain land or interests in land for these purposes.

A refund can be claimed for any conservation easement tax credit that is in excess of the taxpayer's NYS tax liability.
[Tax Law § 606(kk)]

Empire State Child Credit

To claim the Empire State child credit, Form IT-213, Claim for Empire State Child Credit, must be completed and attached to Form IT-150, IT-201, or IT-203.

If the taxpayer is a full-year New York State resident or married to a full-year resident, the taxpayer may be entitled to the Empire State child credit.

The taxpayer may claim the Empire State child credit if they have a qualifying child *and*

1. The taxpayer has a federal child tax credit or a federal additional child tax credit (claimed on federal Form 1040 or Form 1040A); *or*
2. The taxpayer's federal AGI is $110,000 or less, and the taxpayer's filing status is married filing joint return; $75,000 or less and the taxpayer's filing status is single, head of household, or qualifying widow(er); or $55,000 or less and the taxpayer's filing status is married filing separate return.

A *qualifying child* is a child who meets the definition of a qualifying child under the federal child tax credit (I.R.C. § 24(c)) and is at least 4 years of age on December 31 of the tax year. (There is no minimum age for the federal child tax credit.)

If the taxpayer claimed the federal child tax credit, the amount of the Empire State child credit is equal to the greater of 33% of the portion of the federal child tax credit attributable to qualifying children, or $100 multiplied by the number of qualifying children.

If the taxpayer did not claim the federal child tax credit, and the taxpayer's income does not exceed a particular amount (see item 2 above), the amount of the Empire State child credit is $100 multiplied by the number of qualifying children.

If the taxpayer filed a joint federal return but is required to file separate New York State returns because the taxpayer was a full-year New York State resident for 2008, and the taxpayer's spouse was a part-year resident or nonresident for 2008, the credit may be claimed by either spouse or may be divided in any manner by the taxpayer.

Taxpayers may claim a refund of any Empire State child credit that is in excess of their New York State tax liability.

[Tax Law § 606 (c-1)]

Fuel-Cell Electric Generating Equipment Credit

To claim the fuel-cell electric generating equipment credit, Form IT-259, Claim for Fuel Cell Electric Generating Equipment Credit, must be completed and attached to Form IT-201, IT-203, or IT-205.

The credit is 20% of qualified fuel-cell electric generating equipment expenditures or $1,500, whichever is less. There is no limit on the number of fuel-cell units that may be purchased during the year; however, the credit cannot exceed $1,500 for *each* unit purchased. The credit will be allowed for the tax year in which the fuel-cell electric generating equipment is placed in service.

Fuel-cell electric generating equipment means an on-site electricity generation system that utilizes proton exchange membrane fuel cells, providing a rated baseload capacity of at least 1 kilowatt (1,000 watts) but no more than 100 kilowatts (100,000 watts) of electricity operated in accordance with applicable industry standards.

Qualified fuel-cell electric generating equipment expenditures means qualified expenditures incurred on or after July 1, 2005, associated with the purchase of fuel-cell electric generating equipment that is installed and used in New York State.

Qualified expenditures include expenditures incurred on or after July 1, 2005, for materials, labor costs properly allocated to on-site preparation, assembly and original installation, engineering services, designs and plans directly related to the construction or installation, and utility compliance costs of the fuel-cell electric generating equipment.

Expenditures made with nontaxable federal, state, and local grants, and any interest or finance charges, *do not* qualify as fuel-cell electric generating equipment expenditures.

The fuel-cell electric generating equipment credit is not refundable. However, any credit in excess of the tax due can be carried over to the following 5 years.

[Tax Law § 606(g-2) and 606(i)]

Green Building Credit

To claim the green building credit, the taxpayer must complete Form DTF-630, Claim for Green Building Credit, and attach it to the taxpayer's Form IT-201, IT-203, or IT-205.

A taxpayer that creates, rehabilitates, and maintains a building that meets specified environmental and energy-efficiency standards may be entitled to the green building credit. This will be accomplished through the use of environmentally preferable building materials and the utilization of technologies that focus on renewable and clean energy and that also provide energy efficiency. The credit will be administered by the New York State Department of Environmental Conservation (DEC), which is responsible for determining both eligibility for the credit and the amount of credit. The credit is allowed for tax years beginning in 2001 through 2014. To qualify for this credit, the taxpayer must obtain an initial credit component certificate from DEC.

The green building credit is not refundable. However, any amount of credit or carryover of credit not utilized in the current year may be carried over to the following year or years.

[Tax Law § 19, 606(y), and 606(i)]

Historic Homeownership Rehabilitation Credit

To claim the historic homeownership rehabilitation credit, Form IT-237, Claim for Historic Homeownership Rehabilitation Credit, must be completed and attached to Form IT-201 or IT-203.

A taxpayer that rehabilitates a qualified historic home in New York State, or purchases a rehabilitated qualified historic home in New York State, may be entitled to the historic homeownership rehabilitation credit. The credit is available for tax years beginning on or after January 1, 2007, and is based on the qualified rehabilitation expenditures paid or incurred for the rehabilitation of the historic home. To qualify for the credit, the taxpayer must own *and* reside in the historic home in New York State in the year for which the taxpayer claims the credit.

The credit is administered by the New York State Office of Parks, Recreation, and Historic Preservation (OPRHP). To qualify for the credit, the rehabilitation plan for exterior work on the qualified historic home must be certified by a local landmark commission established under § 96-a or § 119-dd of the General Municipal Law or by OPRHP. If the rehabilitation plan includes both interior and exterior work, the expenditures must be approved by OPRHP or by a local government certified under § 101(c)(1) of the National Historic Preservation Act.

The amount of the credit is equal to 20% of the qualified rehabilitation expenditures. The credit cannot exceed $25,000 per taxpayer per year ($50,000 for married taxpayers filing a joint return). Additionally, if a taxpayer owns and resides in more than one qualified certified historic home in the same tax year, and each home has qualified expenditures, the total amount of credit claimed by a taxpayer cannot exceed $25,000 per year ($50,000 for married taxpayers filing a joint return).

Qualified historic home means a certified historic structure located in New York State that meets all of the following criteria:

- The home has been substantially rehabilitated. (A building will be treated as being substantially rehabilitated where qualified rehabilitation expenditures in relation to the building total $5,000 or more.)
- The home, or any portion of it, is owned, in whole or in part, by the taxpayer (including tenant-shareholders of a cooperative housing corporation).
- The taxpayer resides in the home during the tax year in which the taxpayer is allowed the credit.
- The home is a targeted area residence within the meaning of I.R.C. § 143(j) and is located in an area of a city, town, or village whose governing body has identified by resolution that such area is in need of community renewal and, by local law, has adopted an historic preservation and community renewal program.

Certified historic structure means any building (and its structural components) that is listed in the State or National Register of Historic Places or that is located in a state or national registered historic district and is certified as being of historic significance to the district.

Historic preservation and community renewal program means a program that coordinates all applicable governmental benefits and programs with the aims of preserving and/or revitalizing neighborhoods, encouraging property owners to complete substantial rehabilitation projects, and promoting smart-growth economic development. Local laws governing the program must be filed with the OPRHP.

Certified rehabilitation means any rehabilitation of a certified historic structure that has been approved and certified as being consistent with the standards established by the commissioner of the New York State OPRHP for rehabilitation by the OPRHP, a local government certified under § 101(c)(1) of the National Historic Preservation Act, or a local landmark commission established under § 96-a or § 119-dd of the General Municipal Law.

The certified rehabilitation process requires three steps:

1. An initial certification that the structure meets the definition of the term certified historic structure,

2. A second certification to be issued prior to construction certifying that the proposed rehabilitation work is consistent with standards established by the commissioner of OPRHP for rehabilitation, and
3. A final certification (*Certificate of Completion*) to be issued when the construction is completed, certifying that the work was completed as proposed and that the costs are consistent with the work completed.

Qualified rehabilitation expenditure means any amount properly chargeable to a capital account (1) in connection with the certified rehabilitation of a qualified historic home, and (2) for property for which depreciation would be allowable under I.R.C. § 168 if the qualified historic home was used in a trade or business. Qualified rehabilitation expenditures do not include the cost of acquiring any building or interest therein, any expenditure attributable to the enlargement of an existing building, or any expenditure made prior to January 1, 2007. Additionally, at least 5% of the total expenditures made in the rehabilitation process must be attributable to the exterior of the building.

In the case of a building where less than the entire building is used as the residence of a taxpayer(s), only the portion of the total expenditures made in the rehabilitation that are attributable to the residence of the taxpayer(s) shall be treated as qualified rehabilitation expenditures.

A *purchased qualified historic home* means any qualified historic home purchased by the taxpayer if all of the following conditions are met:

- The taxpayer is the first purchaser of the home following the date of the final certification step *and* the purchase occurs within 5 years of the date of final certification step (see item 3 above).
- The taxpayer resides in the home during the tax year in which he or she is allowed the credit.
- No credit was allowed to the seller with regard to this rehabilitation.
- The taxpayer is furnished with the necessary information (as determined by the commissioner of Taxation and Finance) to determine the credit.

In the case of a building that is owned by two or more taxpayers (other than a husband and wife), the qualified rehabilitation expenditures for the building are divided based on each taxpayer's percentage of ownership as shown on the Certificate of Completion (COC). Only the taxpayer who owns *and* resides in the home will be allowed to claim the credit based on his or her share of the qualified rehabilitation expenditures.

The historic homeownership rehabilitation credit is not refundable. However, any amount of credit or carryover of credit not deductible in the current year may be carried over to the following year or years.

[Tax Law § 606(pp)]

Long-Term Care Insurance Credit

To claim the long-term care insurance credit, Form IT-249, Claim for Long-Term Care Insurance Credit, must be completed and attached to Form IT-201, IT-203, or IT-205.

The credit is equal to 20% of the premiums paid during the tax year for the purchase of or for continuing coverage under a qualifying long-term care insurance policy. The credit is limited for part-year and nonresident individuals, estates, and trusts to the amount determined by multiplying the total credit amount by the taxpayer's income percentage.

A taxpayer that pays premiums for qualified long-term care insurance may be entitled to the long-term care insurance credit. A qualified long-term care insurance policy falls under one of two categories:

1. The policy is approved by the New York State superintendent of insurance under § 1117(g) of the Insurance Law and is a qualified long-term care insurance contract under I.R.C. § 7702B. (Note: Section 7702B relates to policies for which a federal itemized deduction is allowed.)
2. The policy is a group contract delivered or issued for delivery outside New York State; and the group contract is a qualified long-term care insurance contract under section I.R.C. § 7702B. The premiums paid for this insurance qualify for the credit even if the policy is not approved by the New York State superintendent of insurance.

A *qualified long-term care insurance contract* under I.R.C. § 7702B is an insurance contract that provides only coverage of qualified long-term care services. The contract must

1. Be guaranteed renewable;
2. Not provide for cash surrender value or other money that can be paid, assigned, pledged, or borrowed;
3. Provide that refunds (other than refunds on the death of the insured or complete surrender or cancellation of the contract) and dividends under the contract must be used only to reduce future premiums or increase future benefits; and
4. Generally not pay or reimburse expenses incurred for services or items that would be reimbursed under Medicare, except where Medicare is a secondary payer, or the contract makes per diem or other periodic payments without regard to expenses.

The insurance company that issued the long-term policy should be able to inform the taxpayer whether the policy qualifies under I.R.C. § 7702B.

The long-term care insurance credit is not refundable. However, any amount of credit or carryover of credit not deductible in the current tax year may be carried over to be deducted for the following year or years.

[Tax Law §§ 606(aa) and 606(i)]

New York State Earned Income Credit

To claim the NYS earned income credit, the taxpayer must complete Form IT-215, Claim for Earned Income Credit, and attach it to the taxpayer's Form IT-150, IT-201, or IT-203.

The NYS earned income credit is a special income tax credit for certain people who earn income from work. If the taxpayer claimed the federal earned income credit and filed an NYS income tax return, the taxpayer qualify to claim the NYS earned income credit.

For tax year 2008, the NYS earned income credit is equal to 30% of the taxpayer's allowable federal earned income credit. However, the NYS earned income credit will be reduced by the amount of any household credit the taxpayer is allowed.

NYS residents and part-year residents qualify for refunds of any earned income credit in excess of their NYS tax liabilities.

Nonresidents do not qualify for refunds of the NYS earned income credit.

[Tax Law § 606(d)]

Noncustodial Parent New York State Earned Income Credit

To claim the noncustodial parent NYS earned income credit, Form IT-209, Claim for Noncustodial Parent New York State Earned Income Credit, must be completed and attached it to Form IT-150 or IT-201.

For tax years beginning on or after January 1, 2006, and before January 1, 2013, NYS full-year residents who are noncustodial parents and pay child support may be eligible for the noncustodial parent NYS earned income credit (noncustodial EIC).

The noncustodial EIC may be claimed instead of the NYS earned income credit. The credit may be claimed if *all* of the following conditions for tax year 2008 are met:

- The taxpayer is a full-year NYS resident.
- The taxpayer is at least 18 years of age.
- The taxpayer is a parent of a child (or children) who did *not* reside with the taxpayer and was under 18 years of age on December 31, 2008.
- The taxpayer has an order in effect for at least one-half of the tax year requiring the taxpayer to make child-support payments payable through a support collection unit pursuant to Social Services Law § 111(h).
- The taxpayer has paid an amount in child support in the tax year at least equal to the amount of child support the taxpayer was required to pay by all court orders.

The amount of the credit is equal to the greater of

- 20% of the federal earned income credit that the taxpayer would have been allowed if the noncustodial child met the definition of a qualifying child, computed as if the taxpayer had one qualifying child and without benefit of the joint return phase out amount (even if the taxpayer's filing status is married filing joint return); *or*
- 2.5 times the federal earned income credit that would have been allowed if the taxpayer had satisfied the eligibility requirements, computed as if the taxpayer had no qualifying children.

A refund of any noncustodial EIC in excess of the taxpayer's NYS tax liability may be claimed. [Tax Law § 606(d-1)]

Nursing Home Assessment Credit

To claim the nursing home assessment credit, Form IT-258, Claim for Nursing Home Assessment Credit, must be completed and attached to Form IT-201 or IT-203.

Where a portion of the assessment imposed on a residential health-care facility (nursing home) pursuant to Public Health Law § 2807-d(2)(b) is passed through to a private-pay resident of the nursing home, the taxpayer may be entitled to claim the nursing home assessment credit. The amount of the credit is equal to the total portion of the assessment that is passed through and directly paid by an individual during the year (e.g., the total portion paid during 2008). The portion of the assessment must be separately stated and accounted for on the billing statements or other statements provided to a resident of a nursing home, and must be paid directly by the individual claiming the credit. If an individual other than the resident of the home is actually paying the portion of the assessment, the individual who paid that portion, not the resident, is entitled to claim the credit. If more than one individual is directly paying the total nursing home bill, the total portion of the assessment paid must be divided between them according to the percentage of the total nursing home expenses paid by each individual.

An individual may claim the full credit even though the resident may be receiving benefits from a long-term insurance policy. If a resident assigns his or her long-term insurance benefits to a nursing home, the resident is treated as having paid that amount toward the total nursing home bill. The credit cannot be claimed for any portion of the assessment that is paid directly to the nursing home by a health insurance policy, that is paid with public funds (e.g., Medicaid or Medicare), or that is paid by a trust or other entity.

Where a nursing home does not separately state the portion of the assessment passed through to a resident on the resident's billing statements, the nursing home should provide the resident (or the person to whom the resident's billing statements are sent) with a summary statement that indicates the total portion of the assessment paid by or on behalf of the resident during 2008 (or any succeeding year). There is no particular form for this statement. However, the statement must contain the name of the residential health-care facility, the name of the resident of the facility, the period covered by the statement (e.g., calendar year 2008) and the amount of the assessment that was passed through and actually paid (not the billed amount) by or on behalf of the resident during the calendar year. For

example, if the resident's January 2009 bill was actually paid in December 2008, the amount of the assessment passed through for January would be included on the 2008 statement.
[Tax Law § 606(hh)]

Real Property Tax Credit

To claim the real property tax credit, Form IT-214, Claim for Real Property Tax Credit for Homeowners and Renters, must be completed.

If a taxpayer is required to file an NYS income tax return (Form IT-150 or IT-201), complete and attach Form IT-214, Claim for Real Property Tax Credit for Homeowners and Renters, to the return. If a taxpayer is not required to file an NYS income tax return, Form IT-214 can be filed by itself. This form should be filed as soon as possible after January 1, 2009.

Full-year NYS residents with a household gross income of $18,000 or less may be entitled to a credit for part of the real property taxes or rent paid for their residence during 2008. Part-year residents and nonresidents of New York State do not qualify for this credit.

If all members of the taxpayer's household are under age 65, the credit can be as much as $75. If at least one member of the taxpayer's household is age 65 or older, the credit can be as much as $375.

NYS residents qualify for a refund of any real property tax credit in excess of their NYS tax liabilities. Residents who are not required to file NYS income tax returns may qualify for a refund of the full amount of the credit.

Publication 22, *FAQs: New York State's Real Property Tax Credit for Homeowners and Renters,* contains additional information on the real property tax Credit.
[Tax Law § 606(e)]

Resident Credit

To claim the resident credit for taxes paid to another state, local government, or the District of Columbia, the taxpayer must complete Form IT-112-R, New York State Resident Credit. Attach Form IT-112-R to the taxpayer's Form IT-201, IT-203, or IT-205.

Where a full-year or part-year resident of New York State and any part of their income was taxed by another state, a local government within another state, the District of Columbia, or a Canadian province, the taxpayer may claim a credit against their NYS tax. The credit is allowable only for the part of the tax that applies to income received in the other taxing authority while the taxpayer was a New York resident.

The resident credit is available to full-year and part-year resident individuals of New York State, or NYS resident estates or trusts.

A shareholder of an S corporation *is not* allowed the resident credit for any income tax imposed on or payable by the corporation to another state, local government, the District of Columbia, or a province of Canada. However, a shareholder is allowed the resident credit if taxes are calculated on the income of the S corporation but are imposed upon and payable by the shareholder.

Taxpayers with dual-residency status–If the taxpayer is a resident of New York State for personal income tax purposes and the taxpayer is also deemed a resident of another state for income tax purposes under its law or a resident of a province of Canada for income tax purposes under its law, no credit is allowed if the other jurisdiction allows a credit against its tax for the total resident tax paid to New York.

The resident credit is not refundable, and it may not reduce the NYS tax payable to an amount less than would have been due if the income subject to taxation by the other jurisdiction(s) was excluded from the taxpayer's New York income.

To claim this credit for taxes paid to a province of Canada, the taxpayer must complete Form IT-112-C, New York State Resident Credit for Taxes Paid to a Province of Canada. Attach Form IT-112-C to the taxpayer's Form IT-201, IT-203, or IT-205.
[Tax Law § 620]

Resident Credit against Separate Tax on Lump-Sum Distributions

To claim the resident credit against separate tax on lump-sum distributions, the taxpayer must complete Form IT-112.1, New York State Resident Credit Against Separate Tax on Lump-Sum Distributions. Attach Form IT-112.1 and a copy of federal Form 4972, Tax on Lump-Sum Distributions, to the taxpayer's Form IT-201, IT-203, or IT-205.

If a taxpayer is a full-year or part-year resident individual of New York State, and the ordinary income portion of a lump-sum distribution the taxpayer received was taxed by another state, a local government within another state, the District of Columbia, or a province of Canada, the taxpayer may claim a resident credit against separate tax on lump-sum distributions. The credit can be claimed against NYS tax and is allowable only for the part of the other jurisdiction's tax that applies to the income received in that jurisdiction while the taxpayer was an NYS resident.

Generally, if the taxpayer's employer distributes the entire balance of the taxpayer's qualified pension, stock bonus, or profit-sharing plans within 1 year, it is a lump-sum distribution. The ordinary income portion is that part of the lump-sum distribution that applies to the taxpayer's years of participation in the plan after 1973. However, the taxpayer may elect to treat the entire taxable portion of the distribution as ordinary income.

This credit is not refundable, and it may not reduce the taxpayer's NYS tax payable to an amount less than would have been due if the income subject to taxation by the other jurisdiction(s) was excluded from the computation of the taxpayer's separate tax on the lump-sum distribution.
[Tax Law § 620-A]

Solar Energy System Equipment Credit

To claim the credit for solar energy system equipment, the taxpayer must complete Form IT-255, Claim for Solar Energy System Equipment Credit, and attach it to the taxpayer's Form IT-201 or IT-203.

The solar energy system equipment credit is allowed for the purchase and installation of an eligible solar energy system. The equipment must be installed and used at the taxpayer's principal residence in New York State.

If the solar energy system equipment provides electricity, the taxpayer must enter into a net energy metering contract with the taxpayer's electric corporation or comply with the electric corporation's net energy metering schedule before the taxpayer can qualify for the credit. The completed solar energy system must also be connected to the electric corporation's transmission and distribution facility. Other conditions and limitations set by the electric company may apply.

Solar energy system equipment means an arrangement or combination of components utilizing solar radiation that, when installed in a residence, produces energy designed to provide heating, cooling, hot water, or electricity. The arrangement or components do not include equipment connected to solar energy system equipment that is a component or part or parts of a nonsolar energy system or that uses any sort of recreational facility or equipment as a storage medium. Solar energy system equipment that generates electricity for use in a residence must conform to the applicable requirements in Public Service Law § 66-j (e.g., the rated capacity of the system cannot exceed 10 kilowatts (10,000 watts)). However, if the solar energy system is purchased and installed by a condominium management association or a cooperative housing corporation, the rated capacity of the system cannot exceed 50 kilowatts (50,000 watts).

Qualified solar energy system equipment expenditures means expenditures for the purchase of solar energy system equipment that is installed and used at residential property located in New York State that is the taxpayer's principal residence at the time the solar energy system equipment is placed in service. Qualified expenditures include expenditures for materials, labor costs properly allocated to on-site preparation, assembly and original installation, architectural and engineering services, and designs and plans directly related to the construction or installation of the solar energy system equipment. Expenditures made with nontaxable federal, state, and local grants, and any interest or finance charges, do not qualify as solar energy system equipment expenditures.

In the case of tenant-shareholders in a cooperative housing corporation or condominium owners, a percentage of the qualified expenditures for qualified solar energy system equipment purchased and installed by the cooperative housing corporation or the condominium management association will be attributed to each unit within the building.

Principal residence means the home where the taxpayer and family live most of the time. A summer or vacation home does not qualify. A principal residence can be a house, whether owned or rented, a mobile home, cooperative apartment, or condominium. If a taxpayer moves from one principal residence to another principal residence in New York State, a separate credit is allowed for each principal residence. The taxpayer must file separate Forms IT-255, Claim for Solar Energy System Equipment Credit, to compute the allowable credit for each principal residence.

The credit will be allowed for the tax year in which the solar energy system equipment is placed in service. The credit is 25% (but not to exceed $5,000) of the qualified expenditures for the purchase and installation of a system that generates solar energy for residential use.

The solar energy system equipment credit is not refundable. However, any credit in excess of the tax due can be carried over for a maximum of 5 years.
[Tax Law § 606(g-1)]

Volunteer Firefighters' and Ambulance Workers' Credit

To claim the volunteer firefighters' and ambulance workers' credit the taxpayer must complete Form IT-245, Claim for Volunteer Firefighters' and Ambulance Workers' Credit, and attach it to the taxpayer's Form IT-201.

Active volunteer firefighters or volunteer ambulance workers may be entitled to the volunteer firefighters' and ambulance workers' credit. A $200 credit is available to full-year NYS resident individuals only. The volunteer must have been active for the entire 2008 tax year in order to qualify.

Active volunteer firefighter means a person who has been approved by the authorities in control of a duly organized NYS volunteer fire company or NYS volunteer fire department as an active volunteer firefighter of the fire company or department and who is faithfully and actually performing service in the protection of life and property from fire or other emergency, accident, or calamity in connection with which the services of the fire company or fire department are required.

Volunteer ambulance worker means an active volunteer member of a NYS ambulance company as specified on a list regularly maintained by the company for purposes of the volunteer ambulance workers' benefit law.

The taxpayer may claim a refund of any volunteer firefighters' and ambulance workers' credit in excess of the taxpayer's NYS tax liability.

For tax years beginning in 2008, a taxpayer cannot claim the volunteer firefighters' and ambulance workers' credit if they receive a real property exemption that relates to their volunteer service under Real Property Tax Law, Article 4, Title 2. However if the property has multiple owners, the owner(s) whose volunteer service was not the basis of the exemption may be eligible to claim the credit.
[Tax Law § 606(e-1)]

Credits Available to Sole Proprietors, Partners, and New York S Corporation Shareholders

The following income tax credits are available to sole proprietors, partners in a partnership (including members of LLCs that are treated as partnerships for federal tax purposes) and shareholders in a New York S corporation (unless otherwise noted):

- Alternative fuels credit
- Automated external defibrillator credit
- Biofuel production credit

- Brownfield credits
- Clean heating fuel credit
- Conservation easement tax credit (does not apply to New York S corporation shareholders)
- Empire State commercial production credit
- Empire State film production credit
- Empire zone (EZ) and qualified empire zone enterprises (QEZE) credits
- Employment of persons with disabilities credit
- Farmers' school tax credit
- Fuel-cell electric generating equipment credit
- Green buildings credit
- Handicapped-accessible taxicabs and livery services vehicle credit
- Historic barn rehabilitation credit
- Investment tax credits (including employment incentive credits)
- Long-term care insurance credit
- Low-income housing credit
- Qualified emerging technology company (QETC) credits
- Rehabilitation of historic properties credit
- Security officer training tax credit
- Special additional mortgage recording tax credit
- Credit for NYC unincorporated business tax (does not apply to New York S corporation shareholders)

A partnership or New York S corporation must provide its partners or shareholders with information to enable the partners or shareholders to claim the credit.

To claim any of these credits, or to carry over these credits from prior years, the taxpayer must use the appropriate credit claim form.

Farmers' School Tax Credit

Individuals and estates and trusts will compute the credit on Form IT-217, Claim for Farmers' School Tax Credit. Corporations will compute the credit on Form CT-47, Claim for Farmers' School Tax Credit.

An *eligible farmer* may be entitled to an income tax or corporation franchise tax credit for the *eligible taxes* the farmer pays to the extent that the taxpayer's income is below the *income limitation amount.* The credit is allowed only for school taxes paid on land, structures, and buildings owned by the farmer that are located in New York State and used or occupied for agricultural production. An eligible farmer may be a corporation subject to tax under Article 9-A of the Tax Law (the corporate franchise tax), or an individual or married couple subject to tax under Article 22 of the Tax Law (the personal income tax). In addition, an eligible farmer may be entitled to the credit if the farmer is a partner in a partnership (including members of an LLC that is treated as a partnership for federal tax purposes) or a shareholder of a New York S corporation that owns property used in agricultural production. Furthermore, an estate or trust or the beneficiaries of an estate or trust may be eligible for the credit. The credit provides school property tax relief to farmers to help protect and enhance the agricultural industry in New York State and to preserve valuable open spaces. The credit is allowed against the farmer's income tax or corporation franchise tax and is fully funded by the state.

The credit equals 100% of the school taxes paid on *qualified agricultural property* where the acreage does not exceed the *base acreage* amount and 50% of the school taxes paid on acres in excess of the base

acreage amount. A *credit recapture* provision applies where part or all of the qualified agricultural property is converted to nonqualified use.

If the credit exceeds the taxpayer's personal income tax for the year, reduced by any other credits, the excess amount will be refunded to the taxpayer, without interest. If the credit exceeds the corporation franchise tax for the year, reduced by any other credits, the excess may be refunded to the corporation, without interest, or the corporation may elect to carry the excess over to future tax years.

The taxpayer must include the amount of the credit in their New York AGI or entire net income in the tax year following the year for which the credit is allowed.

Eligible Farmer

An individual or corporation (collectively, a person) is engaged in the business of farming if the person cultivates, operates, or manages a farm for gain or profit, even though the operation may not produce a profit every year. A person is also engaged in the business of farming if the person is a member of a partnership (including an LLC that is treated as a partnership), a shareholder of an S corporation, or the beneficiary of an estate or trust that is engaged in the business of farming.

Farming includes the operation or management of livestock, dairy, poultry, fish, fruit, fur-bearing animal, and vegetable (commonly referred to as truck) farms. Farming also includes the operation and management of plantations, ranches, ranges, and orchards. Furthermore, farming includes, but is not limited to, the raising or production of the following commodities:

- Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans
- Fruits, including apples, peaches, grapes, cherries, and berries
- Vegetables, whether raised conventionally or hydroponically, including tomatoes, snap beans, cabbage, carrots, beets, and onions
- Horticultural specialties, including nursery stock, ornamental shrubs, and ornamental trees and flowers
- Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, farmed deer, farmed buffalo, ostrich, emus, fur-bearing animals, milk, and eggs
- Aquaculture products, including fish, fish products, water plants, and shellfish (provided the aquaculture products are grown and raised as opposed to merely harvested or caught)
- Honey and beeswax produced from the taxpayer's own bees
- Maple syrup and cider, provided the income from these operations is properly includable on federal Schedule F, Profit or Loss from Farming

A person who rents farm property to others may also be engaged in the business of farming.
A taxpayers will meet the definition of eligible farmer under either of the following conditions:

- Federal *gross income from farming* for the tax year is at least two-thirds of the taxpayer's *excess federal gross income*.
- The average of federal *gross income from farming* for the tax year and the 2 consecutive tax years immediately preceding that tax year is at least two-thirds of the taxpayer's *excess federal gross income* for the tax year.

Gross Income from Farming

For an individual, gross income from farming is the total farm income reported on the individual's federal income tax return for the year. This includes the following amounts:

- Gross farm income from federal Schedule F, Profit or Loss From Farming;
- Gross farm rents from federal Form 4835, Farm Rental Income and Expenses;

- The taxpayer's share of partnership or S corporation gross income from farming (this amount will be shown on the taxpayer's federal Schedule K-l);
- The taxpayer's share of distributable net income of an estate or trust from farming (this amount will be shown on the taxpayer's federal Schedule K-l); and
- Gains from sales of draft, breeding, dairy or sporting livestock shown on federal Form 4797, Sales of Business Property. (Note: Gains from the sale of farm equipment or farm real estate are not includable in gross income from farming even though those gains may be reportable on Form 4797.)

The following pro rata shares of gross income are also included:

- The taxpayer's pro rata share of gross income from farming from a New York C corporation that has made a special gross income from farming election on Form CT-47.1
- The taxpayer's pro rata share of the taxpayer's partnership's gross income from farming that represents the partnership's pro rata share of gross income from farming from a New York C corporation that has made a special gross income from farming election on Form CT-47.1
- The taxpayer's pro rata share of the taxpayer's New York S corporation gross income from farming that represents the S corporation's pro rata share of gross income from farming from a New York C corporation that has made a special gross income from farming election on Form CT-47.1

For corporations, gross income from farming is the total farm income reported on the corporation's federal income tax return for the year, which includes

- Gross receipts, less cost of goods sold, attributable to farming activities;
- Gross rents from the rental of qualified agricultural property (including land and buildings), provided the terms of the rental satisfy certain conditions described below;
- The corporation's share of partnership gross income from farming (this amount will be shown on the federal Schedule K-l received by the corporation); and
- Gains from sales of draft, breeding, dairy, or sporting livestock shown on federal Form 4797, Sales of Business Property. (Note: Gains from the sale of farm equipment or farm real estate are not includable in gross income from farming, even though those gains may be reportable on Form 4797.)

Excess Federal Gross Income

For an individual, excess federal gross income is *federal gross income* reduced by the sum, not to exceed $30,000, of the following items included in federal gross income:

- Wages, salaries, tips, and other employee compensation
- Interest and dividends
- Pension payments, including social security payments
- Those items of gross income that are includable in the computation of net earnings from self-employment for federal income tax purposes

For a corporation, excess federal gross income is *federal gross income* reduced by $30,000.

Federal Gross Income

Gross income is income before the deduction of expenses. However, gross income from sales is income after the deduction for cost of goods sold.

For an individual, gross income from all sources is all income the taxpayer (and the taxpayer's spouse, if the taxpayer is filing a joint federal return) received during the tax year in the form of money, goods, property, and services that is not exempt from federal income tax.

For a corporation, gross income is all income received by the corporation during the tax year that is not exempt from federal tax.

Qualified Agricultural Property

Qualified agricultural property includes land and land improvements located in New York State that are used in agricultural production. It also includes structures and buildings (except for buildings used by the taxpayer for residential purposes) that are located on the land and used or occupied to carry out agricultural production.

Land used in agricultural production includes land under buildings that are qualified agricultural property and land in support of a farm operation, such as farm ponds, drainage swamps, wetlands, and access roads, or land that at the time it becomes subject to a conservation easement would have been qualified agricultural property.

A structure or building qualifies if it is used in one of the following capacities:

1. In the raising and production for sale of agricultural commodities
2. For the storage of agricultural commodities for sale at a future time
3. For the storage of supplies or for the storage or servicing of equipment necessary for agricultural production
4. As land set aside or retired under a federal supply management or soil conservation program

A structure or building is not qualified agricultural property if it is used for any of the following:

1. Processing of agricultural commodities
2. Retail merchandising of agricultural commodities
3. Storage of commodities for the personal consumption of the farmer or the farmer's family
4. The residence of the farmer or the farmer's immediate family

Eligible Taxes

Only real property taxes levied by a school district on qualified agricultural property (see Part III) owned by the taxpayer qualify for the credit. Property taxes levied by towns, villages, cities, or other municipal governments do not qualify for the credit.

In the case of the sale of qualified agricultural property under a land sales contract, the buyer will be treated as the owner of the property if the following conditions are met:

- The buyer is obligated under the land sales contract to pay the school district property taxes on the purchased property; and
- The buyer is entitled to deduct those taxes as a tax expense for federal income tax purposes.

A buyer who meets these conditions will be considered the owner even though legal title to the property (i.e., the deed) has not been transferred to the buyer. Accordingly, the buyer, if an eligible farmer, will be entitled to claim the credit (subject to the credit limitation based on income). Note: If the buyer is treated as the owner under these provisions, the seller may not claim the credit for the same property.

Eligible school district property taxes levied by a school district on qualified property owned by the taxpayer's father, mother, grandfather, grandmother, brother, or sister qualify for the credit if (1) the taxpayer has a written agreement with the owner(s) that the taxpayer intends to eventually purchase that qualified agricultural property, even if the taxpayer did not actually pay the school district property taxes

on the qualified agricultural property; and (2) the owner(s) has given the taxpayer a document stating that the owner(s) is waiving his/her right to claim the credit, if any, on the qualified agricultural property that is subject to the written agreement.

The written agreement does not have to be in any particular legal form, but it must be signed by all parties to the agreement and must have been in effect for at least part of the tax year to which the credit relates. The waiver document does not have to be in any particular form, but it can be for only 1 tax year and must include the following information:

1. The name(s) of the owner(s)
2. The name of the relative with whom the owner(s) has entered into a written agreement to sell his/her qualified agricultural property
3. A statement that the owner(s) is waiving his or her right to claim the farmers' school tax credit
4. The tax year to which the waiver applies
5. The date the agreement to sell was entered into
6. The signature(s) of the owner(s)

The waiver document must be given to the taxpayer even if the owner(s) does not qualify to claim the farmers' school tax credit on the property. Once the waiver is made for a tax year, it cannot be revoked for that tax year, but the owner(s) may decide whether or not to issue a waiver for any subsequent tax year.

Base Acreage

The base acreage amount is 350 acres plus acreage enrolled or participating in a federal environmental conservation acreage reserve program pursuant to Title 3 of the Federal Agricultural Improvement and Reform Act of 1996.

Note: This allows farmers who participate in this program and whose acres of qualified agricultural property exceed the base acreage amount to receive a larger farmers' school tax credit.

Income Limitation Amount

The income limitation reduces or eliminates the credit for higher-income taxpayers. The limitation is based on modified AGI for individuals and modified entire net income for corporations. For individuals, the amount of credit allowable, after applying the base acreage limitation, is further limited if the farmer's New York AGI is between $200,000 and $300,000. If the farmer's New York AGI is $300,000 or more, no credit is allowable. Married taxpayers filing a joint return use their joint New York AGI to determine the limitation. Married taxpayers filing separate returns use their separate New York AGIs.

For a corporation, the limitation is the same as for individuals, except that the limitation is based upon the corporation's entire net income (before any allocation to out-of-state operations).

For individuals, modified New York AGI means New York AGI for the tax year reduced by the amount of principal paid on farm indebtedness during the year.

For corporations, *modified entire net income* means entire net income for the tax year (before any allocation to out-of-state operations), reduced by the amount of principal paid on farm indebtedness during the tax year.

Farm indebtedness means debt incurred or refinanced that is secured by farm property, where the proceeds of the debt are used for expenditures incurred in the business of farming.

Credit Recapture

Where qualified agricultural property is converted to nonqualified use, the following rules apply:

- No credit is allowed for the year in which the property is converted. This is true even though the property may have been qualified property for part of the year. No proration of the credit is permitted.
- If the conversion takes place before the end of the second tax year following the year in which the taxpayer first claimed a credit, the entire credit claimed on the converted property in the 2 previous years must be added back in the year of the conversion.

If the property is converted after the end of the second tax year following the year in which the credit is first claimed, there is no recapture and no addback is made.

Conversion means an outward or affirmative act changing the use of agricultural land. The idling, nonuse, or sale of the land is not by itself a conversion.

Where only a part of qualified agricultural property is converted, the following rules apply:

- In the year of conversion, no credit will be allowed for the portion of the property converted.
- If the conversion takes place before the end of the second year following the year in which the taxpayer first claimed the credit, the credit allowed on the converted property for the previous tax years must be added back in the year of conversion.

The amount of credit that must be recaptured is that portion of the credit that bears the same ratio to the total credit as the amount of land converted bears to the total amount of qualified land before the conversion.

Recapture is *not* required if the property *is* converted to nonqualified use by reason of an involuntary conversion. An involuntary conversion is a conversion because of casualty or natural disaster, of theft, or by condemnation (or by agreement under a threat of condemnation), such as when a governmental agency takes the taxpayer's land under the eminent domain rules.

[Tax Law §§ 606(n) and 606(i)]

Historic Barn Rehabilitation Credit

To claim the historic barn rehabilitation credit, complete Form IT-212-ATT, Claim for Historic Barn Rehabilitation Credit and Employment Incentive Credit, and attach it to Form IT-212, Investment Credit, which must be filed with Form IT-201, IT-203, IT-204, or IT-205.

If a taxpayer makes qualified rehabilitation expenditures, as defined in I.R.C. § 47(c)(2), the taxpayer may be entitled to the historic barn rehabilitation credit. The expenditures must be paid or incurred for any barn located in New York State that is a qualified rehabilitated building, as defined in I.R.C. § 47(c)(1).

The barn must be a building originally designed and used for storing farm equipment or agricultural products, or for housing livestock. No rehabilitation credit is allowed for a barn converted to a residence or for a barn whose historic appearance has been altered. A barn that is newly constructed to replace one that had existed on a site and was destroyed is not a qualified rehabilitated building.

Qualifying rehabilitated building is a barn (and its structural components) as defined in I.R.C. § 47(c)(1) that is located in New York State and satisfies the following criteria:

1. The barn is a certified historic structure or was first placed in service before 1936 (for exceptions, see item 4, below).
2. The barn has been substantially rehabilitated. A barn will be considered *substantially rehabilitated* only if the expenditures incurred during the 24-month period the taxpayer selected, and ending with or within the tax year, exceed the greater of the adjusted basis of the barn or $5,000. Under certain circumstances, the rehabilitation work may extend over a number of tax years.

3. The barn was placed in service before the beginning of the rehabilitation. A barn qualifies for the credit if it had been placed in service as a barn by any person prior to the rehabilitation, even if it is not in service at the time the rehabilitation is done.
4. For barns that are not certified historic structures and that were placed in service before 1936,
   - 50% or more of the existing external walls of the barn are retained in place as external walls;
   - 75% or more of the existing external walls of the barn are retained in place as internal or external walls; and
   - 75% or more of the existing internal structural framework of the barn is retained in place.
5. Depreciation (or amortization in lieu of depreciation) is allowable for the barn.

Qualified rehabilitation expenditures is defined in I.R.C. § 47(c)(2). A qualified rehabilitation expenditure must, among other things, be properly chargeable to a capital account for property that qualifies for depreciation under I.R.C. § 168.

The amount of the credit is 25% of the qualifying rehabilitation expenditures paid or incurred for any barn located in New York State that is a qualified rehabilitated building. If the historic barn rehabilitation credit exceeds the taxpayer's tax, the unused amount may be carried over to the following 10 years. If the taxpayer qualifies as the owner of a new business, the taxpayer may elect to have the excess historic barn rehabilitation credit refunded.

If a rehabilitated historic barn for which this credit has been allowed is disposed of or ceases to be in qualified use prior to the end of its useful life (i.e., the number of months the taxpayer or the taxpayer's business has chosen to depreciate the property for purposes of the I.R.C.), the difference between the credit taken and the credit allowed for actual use must be added back to the tax otherwise due in the year the qualified use ceased or the year of disposition.
[Tax Law §§ 606(a)(12) and 606(i)]

Investment Credit and Investment Tax Credit for the Financial Services Industry

A taxpayer must complete Form IT-212, Investment Credit, to claim the investment credit and attach it to Form IT-201, IT-203, IT-204, or IT-205.

To claim the investment tax credit for the financial services industry, the taxpayer must complete Form IT-252, Investment Tax Credit for the Financial Services Industry, and attach it to Form IT-201, IT-203, IT-204, or IT-205.

If a taxpayer's business purchases qualified property, the taxpayer may be entitled to the investment credit or investment credit for the financial services industry.

Additionally, for the investment tax credit for the financial services industry, all, or a substantial portion, of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such property must be located in New York State.

There are two methods the taxpayer can use to determine whether a business meets the requirement to maintain the requisite number of employees performing administrative and support functions in New York State in order to claim the investment tax credit for the financial services industry: the 80% test eligibility method and the 95% back-office test eligibility method. (For more information, see Part 1 and Part 2 on Form IT-252, Investment Tax Credit for the Financial Services Industry.)

Qualifying investment credit property is new or used tangible personal property or other tangible property (including buildings and structural components of buildings) that meets the following requirements:

- For purposes of the investment credit, the property is acquired, constructed, reconstructed, or erected after December 31, 1968. (Exception: Property principally used as a qualified film production facility must be placed in service on or after January 1, 2005. A building principally used as a qualified film production facility must have received its final certification of occupancy after January 1, 2005.)

- For purposes of the investment tax credit, the property is acquired, constructed, reconstructed, or erected on or after October 1, 1998, and before October 1, 2008, for the financial services industry.
- The property is depreciable under I.R.C. § 167 or § 168.
- The useful life of the property is 4 years or more.
- The property is acquired by purchase as defined in I.R.C. § 179(d).
- The property is located in New York State and is

1. For purposes of the investment credit, manufacturing and production property, retail enterprise property, waste-treatment property, pollution-control property, research and development property, or qualified film production facility property; or
2. For purposes of the investment tax credit for the financial services industry, is principally used in the ordinary course of the taxpayer's business in one of the following capacities:
   a. As a broker or dealer in connection with the purchase or sale of stocks, bonds, other securities [I.R.C. § 475(c)(2)], or of commodities [I.R.C. § 475(e)(2)], or in providing lending, loan arrangement, or loan origination services to customers in connection with the purchase or sale of securities [I.R.C. § 475(c)(2)]; or
   b. As an investment advisor for a regulated company (I.R.C. § 851).

The *investment credit base* is the cost or other basis of the qualified property for federal income tax purposes.

The credits are a percentage of the investment credit base. The percentage is based on the date the qualified property was acquired and can be up to 4% (7% for research and development property) of the investment credit base.

Both credits are allowed only for the tax year in which the qualifying property is placed in service. However, if either credit exceeds the taxpayer's tax, the unused amount may be carried over to the following 10 years. If the taxpayer qualifies as the owner of a new business, the taxpayer may elect to have the excess investment credit refunded.

Recapture Provision

If property on which the investment credit, the investment tax credit for the financial services industry for retail enterprise, or the research and development credit was taken is disposed of or removed from qualified use before its useful life or specified holding period ends, the difference between the credit taken and the credit allowed for actual use must be added to the taxpayer's income tax in the year of disposition. The taxpayer must also add to income tax an additional amount computed by multiplying the add-back of credit on early dispositions by the underpayment interest rate in effect on the last day of the taxpayer's tax year. The underpayment interest rate is not compounded. However, if the property was in qualified use for more than 12 consecutive years, the add-backs for credit and interest on early dispositions are not required. The recapture amount is also entered on Form IT-212.
[Tax Law §§ 606(a) and 606(i)]

SALES TAX COLLECTION LINE ON NEW YORK INCOME TAX FORMS

The NYS personal and other income tax forms have a line 59 on Form IT-201 and line 35 on Form IT-150 for taxpayers to report unpaid state and local compensating use tax on purchases made inside or outside New York State. If a taxpayer is an individual, estate, or trust that is a *New York resident* for sales and use tax purposes and *the taxpayer is filing an NYS personal income tax return or fiduciary income tax return,* that sales tax is due on the due date of the income tax return, without regard to any extension of time to file the return. In the instructions, taxpayers are informed of their legal requirements to remit such use taxes when they have made purchases outside of the state, in person, or through remote means.

Most tangible personal property is subject to sales or compensating use tax. Some examples are tobacco products, alcohol, candy, clothing, books, electronic equipment, furniture, collectibles, gasoline when purchased without paying the tax, and other items purchased in and out of the state. Taxpayers also may owe additional local tax if they bring property to their locality that they purchased in another locality that has a lower tax rate.

If a taxpayer is an individual, estate, or trust that is a New York resident for sales and use tax purposes, and *the taxpayer is not filing a NYS personal income tax return or fiduciary income tax return,* the taxpayer must pay any sales or use tax owed by filing Form ST-140, Individual Purchaser's Report of Sales and Use Tax, for the period covered by that taxpayer's tax year for federal income tax purposes. Form ST-140 is due on the date a taxpayer's federal income tax return is due, without regard to extensions of time to file. If no federal income tax return is required to be filed, Form ST-140 is due on the date a taxpayer's federal return would have been due, without regard to extensions of time to file. A taxpayer must report and pay sales or use tax liability on ST-140, Individual Purchaser's Report of Sales and Use Tax, on the same items listed previously for New York residents.

Practitioner Note

All businesses that are registered, or required to be registered, with the Tax Department for sales tax purposes must pay their sales and use taxes on their sales tax return for purchases made by the businesses.

For further questions and answers, see New York State Department of Taxation and Finance Pub. 774 (3/07), *Purchaser's Obligations to Pay Sales and Use Taxes Directly to the Tax Department*, and instructions for the specific income tax return of the taxpayer. For the current sales tax rates by county, see New York State Department of Taxation and Finance Pub. 718 (8/07), *New York State Sales and Use Tax Rates by Jurisdiction*; New York State Department of Taxation and Finance Pub. 718-A (8/07), *Enactment and Effective Dates of Sales and Use Tax Rates*; and New York State Department of Taxation and Finance Pub. 718-C (8/07), *Local Sales and Use Tax Rates on Clothing and Footwear.*

NYS VOLUNTARY CONTRIBUTIONS

Gift for Fish and Wildlife Management

Effective for any tax year commencing on or after January 1, 1982, an individual in any taxable year may elect to contribute to the conservation fund for fish and wildlife management purposes. Such contribution shall be in any whole-dollar amount and shall not reduce the amount of state tax owed by such individual. The tax commission shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provison of law, all revenues collected pursuant to this section shall be credited to the conservation fund and used only for those purposes enumerated in § 83 of the state finance law.
[Tax Law § 625]

Gift for Missing and Exploited Children Clearinghouse Fund

Effective for any tax year commencing on or after January 1, 1997, an individual in any taxable year may elect to contribute to the Missing and Exploited Children Clearinghouse Fund. Such contribution shall be in any whole-dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return form to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be paid to the Missing and Exploited Children Clearinghouse Fund established pursuant to and used only for those purposes enumerated in the state finance law.
[Tax Law § 628]

Gift for Breast Cancer Research and Education

Effective for any tax year commencing on or after January 1, 1996, an individual in any taxable year may elect to contribute to the Breast Cancer Research and Education Fund. Such contribution shall be in any whole-dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the Breast Cancer Research and Education Fund and used only for those purposes enumerated in § 97-yy of the state finance law.
[Tax Law § 627]

Alzheimer's Disease Support Services

Effective for any tax year commencing on or after January 1, 2000, an individual in any taxable year may elect to contribute to the Alzheimer's Disease Assistance Fund for support services for people with Alzheimer's disease and their families. The contribution shall be in any whole-dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the Alzheimer's Disease Assistance Fund and used only for those purposes enumerated in § 99-e of the state finance law.
[Tax Law § 629]

United States Olympic Committee/Lake Placid Olympic Training Center Fund

Effective for any taxable year commencing on or after the first day of January next succeeding the effective date of this section, an individual in any taxable year may elect to contribute an amount of $2 to the United States Olympic Committee/Lake Placid Olympic Training Center Fund. Such contribution shall not reduce the amount of state tax owed by such individual. The commissioner shall include a space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law to the contrary, all revenues collected pursuant to this section shall be credited to the United States Olympic Committee/Lake Placid Olympic Training Center Fund and used only for those purposes enumerated in § 84 of the state finance law.
[Tax Law § 626]

Gift for Prostate Cancer Research, Detection, and Education

Effective for any tax year commencing on or after January 1, 2004, an individual in any taxable year may elect to contribute to the New York State Prostate Cancer Research, Detection, and Education Fund. Such contribution shall be in any whole-dollar amount and shall not reduce the amount of state tax owed by such individual. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the New York State Prostate Cancer Research, Detection, and Education Fund and used only for those purposes enumerated in § 95-e of the state finance law.
[Tax Law § 630]

Gift for World Trade Center Memorial Foundation

Effective for any tax year commencing on or after January 1, 2005, a taxpayer in any taxable year may elect to contribute to the support of the World Trade Center Memorial Foundation Fund. Such contribution shall be in any whole-dollar amount and shall not reduce the amount of the state tax owed by such taxpayer. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the World Trade Center Memorial Foundation Fund and shall be used only for those purposes enumerated in § 79 of the state finance law.
[Tax Law § 630-a]

ESTIMATED TAX RULES

NYS Tax Law requires taxpayers to pay income tax during the year, either through withholding or estimated tax.

Generally, a taxpayer must pay estimated income tax if they expect to owe, after subtracting tax withheld and credits, at least $300 of either New York State, New York City, or Yonkers income tax, and the taxpayer expects their withholding and credits to be less than the smaller of

- 90% of the taxpayer's income tax liability for this year; or
- 100% of the taxpayer's income tax liability from the previous year (110% of that amount if the taxpayer is not a farmer or fisherman and the New York AGI on that return is more than $150,000 or, if married filing separately, more than $75,000), based upon a return covering 12 months.

Taxpayers do not have to include in their estimate any amount of sales or use tax expected to be owed on their personal income tax return.

For married taxpayers, each spouse should maintain a separate estimated income tax account. Where each spouse maintains an estimated tax account and the spouses file a joint New York State income tax return, the balances of both accounts will be credited to their joint income tax return.

For more information see Form IT-2105, Estimated Income Tax Payment Voucher for Individuals, and Form IT-2105-I, Instructions for Form IT-2105, or see Publication 94, *New York State Tax Information–Should the Taxpayer Be Paying Estimated Tax in 2009?*

OTHER ITEMS OF IMPORTANCE TO NEW YORK TAXPAYERS

Credit Card Payments for NYS Income Tax

The New York Tax Department is now accepting credit cards for payment of personal income tax liabilities and estimated tax payments, which can be made through certain plastic card vendors. The taxpayers pay the convenience fees for this service.

Electronic Filing of Returns

The legislation mandates electronic filing for certain income tax preparers. It requires those preparers filing more than 100 original personal income tax (PIT) returns during calendar-year 2006, and preparing at least one authorized return using tax preparation software in 2007, to file all authorized returns electronically. Preparers will be penalized $50 for each failure to electronically file returns. The penalty may be waived if the failure to electronically file was due to reasonable cause and not willful neglect. Taxpayers may elect not to electronically file their return, and that would also absolve the preparer from any penalty. Once a preparer is subject to mandatory electronic filing, that preparer is subject to it forever.

Signature: Personal Identification Number (PIN)

New York has simplified the signature requirement for e-filed PIT returns. Beginning with tax year 2005, the paper signature was eliminated from Form IT-201-E. All taxpayers must sign their e-file returns using the self-select five-digit personal identification number (PIN) method or the practitioner PIN method similar to that of the IRS. If filing a joint return, a PIN is needed for each taxpayer. The PIN signature eliminates the need to mail any forms or documents to the Tax Department for an e-filed tax return.

In addition, many taxpayers were previously required to enter their previous-year federal AGI as part of the signature process for NYS e-file returns. This requirement has been eliminated as well. This change to the signature process will simplify the filing process.

Please note that return preparers will be required to retain Form TR-579, New York State e-file Signature Authorization Form, for their clients who e-file.

NYS SCHOOL TAX RELIEF (STAR)

School Tax Relief (STAR) is New York State's School Tax Relief Program that grants a partial property tax exemption from school taxes. All New Yorkers who own and live in their home–whether it's a condominium, cooperative apartment, manufactured home, farm dwelling, apartment building, or mixed-use property–are eligible for the STAR exemption on their primary residence.

The STAR program provides an exemption against residential school property taxes of at least $50,000 for senior citizens with 2007 incomes under $73,000 and at least $30,000 for all other homeowners. Actual maximum amounts in each county vary depending upon the median residential property value in each county compared to the statewide median. Also, the maximum income for the enhanced senior exemption is indexed annually for inflation.

The basic and enhanced STAR property tax exemptions are homestead exemptions. Basic STAR is available to anyone who owns and lives in his or her own home. Enhanced STAR is available to senior homeowners whose incomes do not exceed the statewide standard.

There are two parts to the STAR property tax exemption:

- The basic STAR exemption is available for owner-occupied, primary residences regardless of the owners' ages or incomes. Basic STAR works by exempting the first $30,000 of the full value of a home from school taxes.
- The enhanced STAR exemption is available for the primary residences of senior citizens (age 65 and older) with yearly household incomes not exceeding the statewide standard. (The definition of *income* for this purpose is provided below.) For qualifying senior citizens, the enhanced STAR program works by exempting the first $56,800 of the full value of their home from school property taxes. For property owned by a husband and wife, or by siblings, only one of them must be at least 65 years of age as of December 31 of the year in which the exemption will begin to qualify for the enhanced exemption. Their combined annual income, however, must not exceed the STAR income standard.

The taxpayer must file an application with the local assessor. STAR applications are available from the assessor's office or on the internet. NYC residents should call the NYC Department of Finance.

Property owners who are granted the basic STAR exemption generally will not need to reapply in subsequent years because the basic STAR exemption is granted regardless of income. However, basic STAR recipients will need to notify their assessor if their primary residence changes.

To receive the enhanced STAR exemption, a taxpayer must file an application with their local assessor. Senior citizens applying for the enhanced STAR exemption must demonstrate that the combined income of all of the owners of the property, and of any owner's spouse who resides on the premises, is no greater than the income standard for the applicable income tax year. The taxpayer may do this in one of two ways:

1. *Traditional method*–Submit a copy of the taxpayer's income tax return(s) for the appropriate income tax year to the assessor with the taxpayer STAR application by the application deadline each year.
2. *STAR Income Verification Program*–Supply the taxpayer's social security number(s) and authorize the New York State Department of Taxation and Finance to verify the taxpayer's income eligibility each year. If the taxpayer choose this option, the taxpayer does not need to submit an application and copy of the taxpayer's tax return(s) to the assessor every year. To choose this option, in the initial year the taxpayer must complete form.

STAR applications must either be received in the assessor's office or be postmarked by taxable status date. Although taxable status date is March 1 in most municipalities, it varies for some cities and in some counties. When taxable status date falls on a Saturday, Sunday, or public holiday, the deadline for filing exemption applications is extended until the next business day.

Income for the enhanced STAR exemption is based on the applicants' second prior year's income tax return. For instance, on the 2008 assessment roll, income was based on the 2006 income tax return. The combined income of all of the owners and of any owner's spouse who resides on the premises may not exceed the STAR income standard (maximum) for the applicable income tax year. Income is defined as federal AGI as reported on the applicants' federal or state income tax return, less the *taxable amount*

of total distributions from individual retirement accounts or individual retirement annuities, both of which are commonly known as *IRAs*. A cost of living adjustment (COLA) is made annually to the STAR income standard; contact the assessor or call 1-888-NYSTAR5 for the current income standard.

STAR exemptions originally were equivalent to $30,000 for basic and $50,000 for enhanced STAR. The program exempted the appropriate amount from the full market value of a home for school tax purposes. The exempt amounts for some downstate counties were adjusted upward to account for higher home values and taxes in those areas.

After nearly a decade, the amounts of the exemptions vary due to several factors, including whether the municipality has reassessed its property, the level of assessment of the individual municipality, and other aspects set forth in state law. In addition to changes in the exempt amount, the amount of STAR savings may vary based on the amount of taxes being collected by the given school district.

The State Office of Real Property Services is responsible for assisting local governments in their property tax administration, especially in ensuring that assessments are consistent and equitable both within and across taxing jurisdictions.

MIDDLE-CLASS STAR REBATE PROGRAM

The Middle-Class STAR Rebate Program continues this year. The rebate check provides property tax relief in addition to the STAR exemption on the taxpayer's school tax bill.

The following conditions apply for basic STAR recipients:

- If the taxpayer is a basic STAR recipient who applied for the 2007 rebate, the taxpayer does not have to reapply as long as the taxpayer's property information remains the same. New York State will issue the taxpayer a rebate check automatically by the end of October. The amount will be about the same as last year.
- If the taxpayer did not apply for 2007, or if the taxpayer's property information changed during the year, the taxpayer must apply for the 2008 program. The taxpayer may need to apply if the taxpayer applied in 2007 but the taxpayer did not receive a check. New York State will send the taxpayer an application by the end of October. If the taxpayer is notified to apply, the taxpayer must apply be December 31, 2008, to receive a 2008 rebate check.
- If the taxpayer is a property owner, and the taxpayer's income is more than $250,000, the taxpayer is not eligible for a rebate check, even if the taxpayer has a basic STAR exemption.

If the taxpayer is an enhanced STAR recipient, generally seniors citizens, New York State will issue the taxpayer a rebate check automatically by the end of October. The taxpayer does not have to apply. Enhanced rebate amounts will be about 40% higher than last year.

The 2008 Middle-Class STAR Rebate Program is an expanded property tax relief program. It provides a property tax rebate check to homeowners who receive the STAR exemption on their property tax bill. The rebate amount is based on the taxpayer's school tax rate and the taxpayer's income, and is in addition to any amount received under basic or enhanced STAR program.

New York State receives information about qualifying property located outside New York City from the Office of Real Property Services. The Office of Real Property Services gathers property information from local assessor's offices. Information about qualifying property located in New York City is received from the NYC Department of Finance.

REDUCTION IN STATE SALES TAX ON FUELS

The NYS sales tax on gasoline and diesel fuel was capped at 8 cents per gallon on and after June 1, 2006. This reduction applies to the state portion (4%) on retail purchases of fuel. This cap amounts to 8 cents per gallon when fuel is priced at $2.00 per gallon or more. If fuel is lower than $2.00, it is taxed at the 4% sales tax rate. Local governments, including New York City, are authorized to make this same reduction or continue to charge their local tax on the full amount of the sales price of fuel.

STATE SALES TAX ON CLOTHING AND FOOTWEAR

All clothing, footwear, and certain items used to make or repair clothing costing less than $110 have a permanent exemption from the state sales tax. The permanent exemption will not apply to local sales taxes imposed by a county or city unless the local jurisdiction elects to have it apply.

NYS MINIMUM TAX

Federal items of tax preference after New York modifications and deductions are subject to the NYS minimum tax rate of 6%. The specific deduction is $5,000 ($2,500 for a married taxpayer filing separately). A farmer who has over $5,000 of preference items must complete Form IT-220 but may not be subject to minimum tax. New York personal income tax (less credits) and carryover of net operating losses are used to reduce minimum taxable income. The NYIC cannot be used to reduce the minimum income tax.

CORNELL INCOME TAX WEB SITE

Check the Cornell Agricultural and Small Business Finance Web site (http://agfinance.aem.cornell.edu) for information on the following:

- Dates and locations of current and future scheduled seminars
- Problems encountered by other Cornell Tax School practitioners
- Tax issues affecting NYS filers

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OTHER A.E.M. EXTENSION BULLETINS

EB No	Title	Fee (if applicable)	Author(s)
2008-19	Fruit Farm Business Summary: Lake Ontario Region New York 2007		White, G., DeMarree, A., and J. Neyhard
2008-18	Dairy Farm Business Summary, Northern New York Region, 2007	($12.00)	Koblauch, W., Putnam, L., Karszes, J., Murray, P., Vokey, F., Ames, M., Deming, A., Prosper, J. and R. Moag
2008-17	Dairy Farm Business Summary, Central Valleys Region, 2007	($12.00)	Knoblauch, W., Putnam, L., Karszes, J., Murray, D., Radick, C., Wickswat, C., Manning, J., Collins, B., Balbian, D., Allhusen, G., Buxton, S. and R. Moag
2008-16	Dairy Replacement Programs: Costs & Analysis December 2007		Karszes, J., Wickswat. C. and F. Vokey
2008-15	Implications of Growing Biofuels Demands on Northeast Livestock Feed Costs – Understanding the Technical Relationships between Ingredient Prices and Feed Costs		Schmit, T., Verteramo, L. and W. Tomek
2008-14	Dairy Farm Business Summary, Southeastern New York Region, 2007	($12.00)	Knoblauch, W., Putnam, L., Kiraly, M., Walsh, J., Hulle, L. and C. Wickswat
2008-13	Dairy Farm Business Summary, Western and Central Plateau Region, 2007	($12.00)	Knoblauch, W., Putnam, L., Karszes, J., Grace, J., Munsee, D., Petzen, J. and L. O'Brien
2008-12	Dairy Farm Business Summary, New York Small Herd Farms, 80 Cows or Fewer, 2007	($16.00)	Knoblauch, W., Putnam, L., Kiraly, M. and J. Karszes
2008-11	Cognitive Therapy for Suicidal Patients (3 Video Tapes) **Outside NYS cost is $25.00**		Mastronardi, K.
2008-10	Dairy Farm Business Summary, Northern Hudson Region, 2007	($12.00)	Conneman, G., Putnam, L., Wickswat, C., Buxton, S., Smith, R. and J. Karszes
2008-09	New York FarmNet Stress on the Farm Video (26min)	($20.00)	Mastronardi, K.
2008-08	An Inventory of Educational Resources for Directors of US Agricultural Cooperatives		Henehan, B. and T. Schmit
2008-07	Dairy Farm Business Summary, Western and Central Plain Region, 2007	($12.00)	Knoblauch, W., Putnam, L., Karszes, J., Hanchar, J. and K. Getty

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