PKF PERSPECTIVES

CHANGES IN NEW YORK STATE TAXES

The recently-approved 2005-2006 New York State Budget contains various provisions affecting taxes. Listed below are several of the more significant changes.

PERSONAL INCOME TAX

A refundable personal income tax credit is now provided for the special additional mortgage recording tax paid by lenders on residential mortgages. ***This credit, however, is not available to taxpayers within the twelve-county Metropolitan Commuter Transportation District (MCTD) if the mortgage relates to real property that in the aggregate contains six or less residential units.*** The credit is effective retroactively beginning in tax year 2004.

Effective June 1, 2005, the mortgage recording tax was increased within the MCTD from 25 cents to 30 cents per $100 of indebtedness.

LIMITED LIABILITY COMPANY FEES

With little surprise, the "temporary" Limited Liability Company fee, which went into effect in 2003 and was to expire on January 1, 2005, is extended for 2005 and 2006. The fee is $100 per member with a $500 minimum, except for a single-member fee, which remains at $100. These provisions are scheduled to "expire" on January 1, 2007 after which the fee reverts to its original $50 per member fee with a $325 minimum, and a zero fee for single-member LLC's.

ELECTRONIC FILING OF RETURNS

Electronic filing of individual income tax returns is mandated for certain income tax return preparers. The provision affects preparers filing more than 200 New York State returns who use tax preparation software during calendar year 2005. For calendar year 2006, the number of returns drops to 100. At the same time, taxpayers may elect not to have their return electronically filed. Taxpayers may want to consider this alternative, for security and economic reasons.

This provision will benefit the State by lowering its administrative costs. At the same time, taxpayers are being given little back in return for what we believe is an imposed inconvenience. PKF is studying this requirement and tentatively believes that the effect of electronic filing will be to increase, rather than decrease, the time needed to complete our compliance responsibilities for New York State filers.

RECIPROCAL OFFSETS

Reciprocity is being created between New York State and New York City with regard to applying tax overpayments against tax debts. In addition, the State is authorized to enter into agreements with tax administrators in other states to offset New York State overpayments against tax liabilities owed other states, provided that the other states agree to offset overpayments due their taxpayers against tax debts owed New York.

BUSINESS TAX – SINGLE RECEIPTS FACTOR

The New York State business allocation rules, used to determine what portion of a business' income is allocable to New York, will be substantially modified. The law affects corporations, and requires the use of a single factor – the receipts factor – instead of the existing three factors traditionally used by most states. This provision is to be phased-in over a three-year period starting in 2006. As part of the transition rules, the weight of the receipts factor will be increased from 50 percent to 60 percent in 2006, and to 80 percent in 2007. The single receipts factor will be fully effective for tax years beginning on or after January 1, 2008.

In our view, it is unclear as to whether the intent of the change is to affect all businesses, whether or not operated in corporate form. We expect that this point will be clarified in the near future.

The change will favor businesses whose primary base of operations is located in New York, and correspondingly have a negative effect on businesses primarily located outside New York and doing business in the State. Perhaps the New York State Legislature believes that the change will provide sufficient incentive for corporations to relocate their base of operations to New York.

SMALL BUSINESS TAX RELIEF

The change lowers the rate of tax on small businesses and expands the availability of the small business rate. The rate of tax on income is lowered from 6.85 percent to 6.5 percent. Also, the amount of income qualifying for the small business rate is increased. Previously, a small business was one whose income did not exceed $290,000. In this case, the 6.85 percent rate is applied to the first $200,000 of income. If income, however, exceeded $250,000, then the preferential rate phased out. The new law now provides that the first $290,000 of income is subject to the reduced rate, with the benefit phasing out on income above $350,000. This change applies to taxable years beginning after January 1, 2005.

CAPITAL BASE TAX

Corporations, for New York State tax purposes, compute their tax under several different sets of rules, and pay tax on whichever way produces the largest tax. One way is the Capital Base method, which calculates a tax based on the value of corporate assets. This method was subject to a cap of $350,000 in tax. The new law increases the cap to $1 million for all taxpayers, excluding manufacturers.

***Noah must have taken into the Ark two taxes, one male and one female. And did they multiply bountifully! Next to guinea pigs, taxes must have been the most prolific animals*.**

Will Rogers
1879-1935
American Entertainer

PKF

Certified Public Accountants
A Professional Corporation
29 Broadway
New York, NY 10006
Telephone: (212) 867-8000
Telefax: (212) 687-4346
www.pkfnewyork.com
E-mail: info@pkfny.com

September 2005