

# PKF PERSPECTIVES

## NYS AND NYC TAX LAW CHANGES



*The New York State legislature has recently overridden Governor Pataki's veto of tax measures*

*that result in sizable additional tax burdens on New York taxpayers. The change in the law is effective immediately and must be considered in calculating estimated income taxes in 2003. Sales tax increases have already taken effect as of this writing and should be collected on taxable sales.*

A summary of the more significant provisions follows.

### Personal Income Tax Rates

New York State has enacted legislation which creates a three-year (2003, 2004, 2005) temporary increase in the state personal income tax by adding two new rates as follows: **7.5** percent of taxable income over \$150,000 for married filing jointly taxpayers, over \$125,000 for head of household filers, and over \$100,000 for single or married taxpayers filing separately; and, **7.7** percent for all filers with income in excess of \$500,000. The top rate for taxpayers with income over \$500,000 is imposed for the 2003, 2004 and 2005 calendar years. The 7.5 percent rate is reduced to 7.375 percent in 2004 and to 7.25 percent in 2005. State withholding tables will be adjusted to reflect the new liability. The new tax brackets are as follows:

	Taxable Income	Current and New Additional Tax Rates
<b>Single or Married, filing separate</b>		
Current Tax Brackets	< \$8,000 \$8,000 - \$11,000 \$11,000 - \$13,000 \$13,000 - \$20,000 > \$20,000	4.0% of taxable income \$320 + 4.5% of taxable income > \$8,000 \$455 + 5.25% of taxable income > \$11,000 \$560 + 5.9% of taxable income > \$13,000 \$973 + 6.85% of taxable income > \$20,000
	↓	
New Additional Tax Brackets	\$20,000 - \$100,000 \$100,000 - \$500,000 > \$500,000	\$973 + 6.85% of taxable income > \$20,000 \$6,453 + 7.5% of taxable income > \$100,000 \$36,453 + 7.7% of taxable income > \$500,000
<b>Head of Household</b>		
Current Tax Brackets	< \$11,000 \$11,000 - \$15,000 \$15,000 - \$17,000 \$17,000 - \$30,000 > \$30,000	4.0% of taxable income \$440 + 4.5% of taxable income > \$11,000 \$620 + 5.25% of taxable income > \$15,000 \$725 + 5.9% of taxable income > \$17,000 \$1,492 + 6.85% of taxable income > \$30,000
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New Additional Tax Brackets	\$30,000 - \$125,000 \$125,000 - \$500,000 > \$500,000	\$1,492 + 6.85% of taxable income > \$30,000 \$8,000 + 7.5% of taxable income > \$125,000 \$36,125 + 7.7% of taxable income > \$500,000
<b>Married, filing joint or Widow(er)</b>		
Current Tax Brackets	< \$16,000 \$16,000 - \$22,000 \$22,000 - \$26,000 \$26,000 - \$40,000 > \$40,000	4.0% of taxable income \$640 + 4.5% of taxable income > \$16,000 \$910 + 5.25% of taxable income > \$22,000 \$1,120 + 5.9% of taxable income > \$26,000 \$1,946 + 6.85% of taxable income > \$40,000
	↓	
New Additional Tax Brackets	\$40,000 - \$150,000 \$150,000 - \$500,000 > \$500,000	\$1,946 + 6.85% of taxable income > \$40,000 \$9,481 + 7.5% of taxable income > \$150,000 \$35,731 + 7.7% of taxable income > \$500,000

New York City has also increased the highest tax rate from 3.648 to 4.25 percent for single taxpayers with taxable income over \$100,000 and for married taxpayers with taxable income over \$150,000. Residents with taxable income over \$500,000 will be taxed at 4.45 percent. **Thus, the combined New York State and City income tax rate for taxpayers with taxable income over \$500,00 is 12.15 percent.**

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### Effect on 2003 Personal Income Tax Estimated Tax Payments

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High income taxpayers as described above are required to take the new tax rates into consideration in calculating their 2003 New York State and City estimated tax payments.

In order to avoid the penalty for underpayment of estimated tax, the total amount of estimated tax and withholding tax paid must be:

- at least 90 percent of the amount of income tax due as shown on your return for 2003,

**or**

- 100 percent of the tax shown on your return for 2002 (110 percent of that amount if the New York adjusted gross income shown on that return is more than \$150,000, or, if married filing separately for 2003, more than \$75,000). To qualify for this provision, you must have filed a return for 2002 for a full 12-month year.

Under the new law, in determining whether you paid 100 percent of the tax shown on the 2002 return, **you must recompute your 2002 tax using the 2003 tax rates and rules.**

The new law provides that you will not be charged a penalty for any shortage in your April 15, 2003 payment that is attributable to the changes. However, you must adjust your future payments in June 2003, September 2003 and January 2004 to take into account these changes.

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### Sales Tax Provisions

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The new legislation increases the New York State sales tax rate from 4 percent to 4.25 percent effective June 1, 2003. The New York City rate has been increased by one quarter percent to 4.125 percent. **The total New York City rate is now 8.625 percent which includes a metropolitan surcharge rate of .25 percent.** These rate increases are also temporary and are set to expire on May 31, 2005. In an additional tax revenue measure, the legislature also reinstated the sales tax on clothing and footwear on items costing less than \$110. This has been replaced with a two-week state sales tax holiday period in the months of January and September. Vendors who collect these taxes have been notified of new jurisdictional reporting codes to report the tax rate collection on their periodic filings.



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### Withholding on Non-Resident Partners

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Effective for tax years ending after 2002, partnerships, limited liability companies (LLCs) and S Corporations are required to make estimated tax payments on behalf of non-resident partners, members and shareholders. The estimated tax payment required is equal to the partner's, member's or shareholder's distributive share or pro-rata share of the entity's income derived from New York sources multiplied by the highest rate of tax for the particular partner.



For example, if the partner, member or shareholder is an individual, the new highest personal income tax rate of 7.7 percent would be applied to the New York source income attributable to that partner. A corporation would require withholding at the 7.5 percent corporate tax rate.

Any payment made by the entity is considered a payment of estimated tax. If the entity fails to withhold, such entity is subject to a penalty of \$50 for each partner unless it is shown that such failure is due to reasonable cause.

### Exceptions

The penalty shall not apply to any partner, member or shareholder for whom estimated tax required to be paid does not exceed \$300. The withholding tax also does not apply if the entity is authorized by New York State to file a group return and such partner, member or shareholder has elected to be included on the group return.

### Information Statements

All entities required to withhold tax under these new provisions must furnish, within 30 days after the estimated tax is paid to the partner, member or shareholder, a written statement showing the estimated tax paid on behalf of that person.

### Overpayments

Overpayments of estimated tax will only be refunded if the overpayment is attributable to a person for whom the entity is not required to pay such estimated tax.

### Initial Withholding Tax Payment

**SEPTEMBER**

Any estimated tax required to be paid by the new law is deemed timely made if made by September 15, 2003. No additions to tax or penalty will be assessed if payment is made by such date. In other words, since the new law applies to years beginning after 2002, payment would have been required to be made by April 15, 2003 and June 15, 2003. The September 15, 2003 payment would include estimates for the first three quarters of 2003.

**Keep in Mind regarding Withholding on S Corporations:** S Corporations are required to make proportionate distributions to shareholders in accordance with their applicable ownership percentage. Since a withholding payment to a non-resident partner is a distribution, a "make-up" distribution would be required to the resident partners.

**Keep in Mind regarding Withholding on Partnerships:** Certain loan agreements with lenders restrict the level of distributions to partners. Partnerships should review any restrictive covenants and consider the effects of this legislation.

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### New Filing Fees for LLCs

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For tax years 2003 and 2004, the annual New York State LLC filing fee is increased from \$50 to \$100 per member and is now applicable to single member LLCs. The minimum fee has increased from \$325 to \$500 and the maximum from \$10,000 to \$25,000. These filing fees are now due within 30 days after the end of the calendar year.

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### Real Property Gains Withholding

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Effective September 1, 2003, estimated tax is required upon the sale of real property by a non-resident taxpayer. The non-resident is required to estimate the personal income tax liability on the gain from the sale or transfer. The legislation precludes the recording of a deed without certification of payment or certain exceptions which may be applicable. There are exceptions to this withholding, the most notable being on the sale of one's principal residence.

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### New York State Depreciation Changes

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New York State law generally follows Federal tax rules regarding depreciation deductions with one new exception. As part of Federal Tax Acts of 2002 and 2003, companies are allowed to take 30 percent and 50 percent bonus depreciation in the year of acquisition. The 50 percent rate applies to qualified property placed in service after May 31, 2003. Under the new law, New York State has "decoupled" from the Federal bonus system (except for property in the Resurgence Zone and New York Liberty Zone [generally lower Manhattan]). **Thus, these incremental depreciation deductions are not allowable for New York State purposes.**



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### Royalty and Interest Deductions

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Many New York based companies over the years have created "intangible holding companies" in favorable states and contributed valuable intangibles such as trademarks and trade names to these entities. These corporations are created for business, legal and potentially tax purposes. As part of the change in the law (starting for tax years beginning after 2002), New York State corporate taxpayers are required to add back (i.e., not deduct) royalty and interest payments made to related intangible holding companies where it cannot be shown that the payments are made for a valid business purpose. A valid business purpose is one not motivated primarily by the avoidance of tax and does not change, in a meaningful way, the economic position of the taxpayer, apart from its tax effect.

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### New York City Tax Amnesty

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The legislation provides for a tax amnesty program beginning July 1, 2003, effective for a 3-month period. The amnesty program would apply to certain City administered taxes related to liabilities arising or transactions occurring on or before December 31, 2001. The taxes eligible for amnesty would include the following:

- unincorporated business tax,
- City business tax,
- commercial rent tax,
- tax on commercial vehicles,
- tax on foreign insurers,
- utility tax,
- tax on racehorse admissions,
- City cigarette tax,
- taxicab license transfer tax,
- tax on coin-operated amusement devices,
- City real property transfer tax,
- City tax on retail licensees of the State liquor authority,
- City tax on hotel room occupancy, and
- the annual vault charge.

The amnesty is not available for any taxpayer that is currently under audit as of March 10, 2003 or for any taxpayer who is party to an appeal proceeding.

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## In the Words of ...

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***I believe we should all pay our tax bill with a smile. I tried - but they wanted cash.***

... Anonymous

***Part of the \$10 million I spent on gambling, part on booze and part on women. The rest I spent foolishly.***

... George Raft

***Whoever said money can't buy happiness simply didn't know where to go shopping.***

... Bo Derek

Items in this publication should not be considered official statements of position, nor advice for individuals or organizations without consulting a tax advisor. For more information, please contact Howard Pell or Leo Parmegiani at:

**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@pkfnyc.com

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