

BRIEFING

June 2006

State & Local Tax
Practice Group

2006–07 New York State Budget

On April 26, 2006, the New York State Legislature voted to override Governor Pataki's veto of the original budget legislation (SB 6460). The governor had called for a reduction in business and personal income taxes (from 7.5 percent to 6.75 percent and from 6.85 percent to 6.75 percent, respectively), an unlimited § 179 deduction, the elimination of the minimum taxable income and capital bases and a coordination of New York's estate tax with federal rules. Instead, the Legislature enacted the following:

CHANGES TO BUSINESS-RELATED TAXES AND FEES

Extension of the REIT Real Estate Transfer Tax Reduction

The new legislation extends the tax reduction on the New York State real estate transfer tax and the New York City real property transfer tax for conveyances of real property to existing real estate investment trusts (REITs). The new extension is effective until August 31, 2008. In addition, the bill makes the tax reductions retroactive to the previous sunset date of September 1, 2005.

Counterpart Article 9-A Tax Credits

The budget legislation provides article 9-A counterpart provisions to the following personal income tax credit changes: the commercial production credit, the extended film production credit, the amended conservation easement, and the biofuel production credit, to name a few.

The Gramm-Leach-Bliley Act

The transitional Gramm-Leach-Bliley Act provisions are extended through January 1, 2008.

PERSONAL INCOME TAX

Empire State Child Credit

Perhaps the most anticipated portion of the budget is the new Empire State Child

Credit. This legislation affords taxpayers a tax credit of up to \$330 per child for qualifying children (i.e., children between the ages of four and 16). Husbands and wives filing joint federal returns but required to determine their New York taxes separately may apply the credit against the tax imposed on either or may divide the credit between them.

Elimination of the Marriage Penalty

The new budget increases the standard deduction for a husband and wife filing jointly, and for a surviving spouse, to \$15,000. For married individuals filing separately, the standard deduction for tax years beginning after 2005 is \$7,500. The new standard deduction amounts for married taxpayers are now in line with single taxpayers.

THE NEW STANDARD DEDUCTION AMOUNTS FOR MARRIED TAXPAYERS ARE NOW IN LINE WITH THOSE OF SINGLE TAXPAYERS.

Stock Options

The legislation requires the commissioner of taxation and finance to prescribe rules and regulations governing the computation of source income by nonresident taxpayers who have been granted statutory stock options, restricted stock, nonstatutory stock options, or stock appreciation rights, and who, during the grant period, perform services within New York for, or are employed by, the corporation granting the option, stock, or right. See also *Matter of Stuckless, TAT* (May 12, 2005); *motion to reargue granted, TAT* (December 15, 2005).

Brownfield Tax Credits

The budget legislation extends the brownfield tax credits to sites subject to a qualifying brownfield site cleanup agreement entered into prior to September 1, 2010. The legislation was set to expire on August 31, 2006. The brownfield program is designed to encourage the redevelopment of underutilized or environmentally contaminated sites.

Conservation Easement Credit

For tax years beginning after 2005, the new budget adopts New York Tax Law § 606(kk) to provide a personal income tax credit for taxpayers owning land subject to an easement held by a public or private conservation agency. The credit is designed to help preserve open space within the state. The credit is equal to 25 percent of the allowable school district, county, and town real property taxes on the land. The credit cannot exceed \$5,000 in any tax year.

Earned Income Tax Credit

Effective 2006, the EITC has been expanded and is now available to a non-custodial taxpayer/parent over the age of 17. The credit is 20 percent of what would have been allowed under the Internal Revenue Code. See Chapter 58, Laws of 2006.

New York City School Tax Credit

This credit is increased from \$125 to \$230 for joint filers and surviving spouses. Singles qualify for 50 percent.

Volunteer Firefighters

For tax years beginning after 2006, qualifying volunteer firefighters and ambulance workers will receive a \$200 personal income tax credit.

Farmer's School Property Tax

Currently, farmers are allowed a credit against their personal income or corporate income taxes for the school taxes they pay on their farmland. The credit is equal to the school taxes they pay on their base acreage of farmland, equal to 250 acres or less, and 50 percent of the school taxes on their farmland above 250 acres. The credit is also phased out for incomes that exceed \$100,000. The new budget increases the base acreage of farmland to 350 acres and increases the credit phase out to incomes above \$200,000. Also, the definition of "federal gross income from farming" is amended to include gross income from Christmas tree operations. Shareholders of qualifying corporations may elect, for purposes of the credit, to take into account their pro rata shares of the corporation's income and principle payments.

Film Production Credit

The new budget extends the Empire State and New York City film production credits through 2011. The legisla-

tion also increases the annual cap on the credit that is allowed for the production of film and television shows. The cap is increased from \$25 million at the state level and \$12.5 million at the city level to \$60 million and \$30 million, respectively.

Commercial Production Credit

The new legislation enacts a \$7 million tax credit pool allocated to qualified production companies filming or recording commercials in New York. The tax credit pool is divided between commercial activity growth, downstate and upstate. The credit is scheduled to expire on January 1, 2012.

Biofuels Production Tax Credit

For purposes of the corporate franchise, personal income, and Article 9 corporation taxes, a biofuel production credit was enacted, applicable to taxable years beginning after 2005 and before 2013. This credit will provide manufacturers of qualified bio-fuel products (primarily ethanol and bio-diesel) with a refundable tax credit or 15 cents for each gallon of bio-fuel produced at a biofuel plant, after the production of the first 40,000 gallons per year are presented to market. The credit is capped at \$2.5 million per taxpayer per taxable year for up to four consecutive taxable years per biofuel plant.

THE NEW BUDGET INCREASES THE CREDIT FOR **RETAIL** ESTABLISHMENTS FROM 3.5 PERCENT OF A STATE-ONLY BASE TO 5 PERCENT OF A **STATE AND LOCAL** BASE.

SALES TAX

Sales Tax Vendor Credit

The legislation amends the Tax Law § 1137(f) provisions governing computation of the sales tax vendor credit. The new budget increases the credit for retail establishments, including many small vendors, from 3.5 percent of a state-only base (i.e., 4 percent state sales tax rate) to 5 percent of a state and local base. The quarterly cap on this credit was also increased from \$150 to \$200, except that for returns due for quarterly or longer periods ending on or before the last day of February 2007, the credit is limited to \$175.

Collection Certification for Contractors, Affiliates, and Subcontractors

The laws governing sales tax collection certification for various contractors, affiliates, and subcontractors are simplified.

Admission Charges to Amusement Parks

The new budget makes permanent the partial state and local sales tax exemption for admission charges to qualifying amusement parks. The exemption was scheduled to expire on April 1, 2006.

MISCELLANEOUS

STAR Property Tax Rebate Program

Another one of the more costly and controversial provisions of the budget is the creation of a new property tax

GOVERNOR PATAKI

HAS PROMISED TO BLOCK THE
ISSUANCE OF PROPERTY TAX
REBATE CHECKS ON
CONSTITUTIONAL GROUNDS.

rebate. For school years beginning on or after July 1, 2006, the law provides an additional 30 percent tax rebate to the owner or owners of parcels entitled to the basic or enhanced School

Tax Relief (STAR) exemption. New York Tax Law § 178 requires the commissioner of taxation and finance to remit the STAR tax rebates to qualifying homeowners. However, Governor Pataki has promised to block the issuance of rebate checks on constitutional grounds.

Empire Zone Changes

The legislative budget amends the Empire Zone Program by allowing companies who make new significant capital investments of at least \$750 million to qualify as "new business" for purposes of zone benefits at the location of a significant investment even if they currently have a New York State presence. To qualify, the business will be required to meet a targeted job growth schedule.

Fixed Dollar Minimum Tax Exception

For tax years beginning after January 1, 2005, corporations that do not conduct business, employ no capital and neither own nor lease property in New York are exempt from the minimum tax provided they filed a final tax return and owe no back taxes. Chapter 61,

Laws of 2006. Vetoed April 20, 2006, overridden April 24 and 26, 2006.

CONCLUSION

If you would like to learn more about these or any other recent changes to the tax law, or if you would like to learn more about what our State and Local Tax Practice Group can do for you, please call or e-mail a senior member of our group.

Paul R. Comeau pcomeau@hodgsonruss.com

Alvan L. Bobrow abobrow@hodgsonruss.com

Mark S. Klein mklein@hodgsonruss.com

Christopher L. Doyle cdoyle@hodgsonruss.com

Timothy P. Noonan tnoonan@hodgsonruss.com

Arthur J. Roth, Special Consultant to the Firm
aroth@hodgsonruss.com

By phone:

New York 212.751.4300

Boca Raton 561.394.0500

Buffalo 716.856.4000

Albany 518.465.2333

Would you like to be notified of important changes to the tax law by e-mail? Sign up for our mailing list on our Web site at www.hodgsonruss.com/document_260.html.

WEB LINKS

For the text of the New York State Budget, visit:
assembly.state.ny.us/leg/?bn=A09560

For Governor Pataki's initial executive budget, visit:
publications.budget.state.ny.us/executive.html

For Governor Pataki's budget address, visit:
www.ny.gov/governor/2006_budget/index.html

This alert is a publication of Hodgson Russ LLP. Its contents are intended for general informational purposes only, and should not be construed as legal advice or legal opinion on any specific facts or circumstances.

Information contained in the alert may be inappropriate to your particular facts or situation. Please consult an attorney for specific advice applicable to your situation. Hodgson Russ is not responsible for inadvertent errors in this publication.