

# ANNUAL REPORT ON NEW YORK STATE TAX EXPENDITURES

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# TAX EXPENDITURE REPORT

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# INTRODUCTION

The Division of the Budget and the Department of Taxation and Finance prepared this fourteenth annual New York State Tax Expenditure Report. This report contains information on historical and current taxable year tax expenditures associated with the personal income tax (Article 22), the franchise tax on business corporations (Article 9-A), the sales and compensating use tax (Article 28), the corporation and utility (Article 9) taxes (other than the organization tax under Section 180 of the Tax Law which the Department of State administers), the bank tax (Article 32), the insurance tax (Article 33), the petroleum business tax (Article 13-A), and the real estate transfer tax (Article 31).

Sections II through IX of this report contain the expenditures for each of the covered taxes. Section X highlights the tax expenditures that span more than one tax article. Finally, Section XI analyzes the tax expenditure proposals contained in the Governor's 2003-2004 Executive Budget.

## **Defining Tax Expenditures**

This report defines tax expenditures as features of the Tax Law that by exclusion, exemption, deduction, allowance, credit, deferral, preferential tax rate, or other statutory device reduce the amount of a taxpayer's liability to the State by providing either economic incentives or tax relief to particular classes of persons or entities to achieve a public purpose. This definition is less subjective than an approach that defines tax expenditures by first defining a normal tax structure because it avoids judgments about what constitutes "normal." Nonetheless, significant differences of opinion exist (on both the State and federal levels) regarding the proper definition of a tax expenditure.

For example, statutory devices that may reduce a taxpayer's liability (but which are not considered tax expenditures in this report), are the provisions allowing for the formation of limited liability companies (LLCs). Basically, LLCs provide liability protection to their members without the entity level tax that corporations pay to achieve the same limited liability protection. Although a per-partner fee applies, in certain instances a revenue loss could occur. Many new firms could choose this form of business. Existing corporations became LLCs, in part, to reduce their tax liability.

This report does not propose to offer an official list of tax expenditures. Rather, it describes as many statutory "tax expenditures" as possible and provides revenue estimates for as many provisions as can be isolated and measured.

## **Technical Issues**

The purpose of the annual report is to provide estimates of the cost of tax expenditures. Tax expenditure cost refers to the estimated amount by which a tax expenditure reduces taxpayers' liabilities to the State for a taxable year or on a calendar year basis if a taxable year basis is not appropriate. The estimates generally cover five historical years. These estimates may differ from those published in previous reports because improved information on which to base the estimate has become available. Finally, the forecast projects the cost of the tax expenditure to the current calendar year.

# INTRODUCTION

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The table below lists the taxes included in this report and the years for which estimates are provided.

	<u>Historical</u>	<u>Forecast</u>
Income Tax	1996, 1997, 1998, 1999, 2000	2003
Corporation Franchise Tax*	1995, 1996, 1997, 1998, 1999	2003
Sales Tax	1996, 1997, 1998, 1999, 2000	2003
Corporation & Utilities	1995, 1996, 1997, 1998, 1999	2003
Bank Tax*	1995, 1996, 1997, 1998, 1999	2003
Insurance Tax*	1995, 1996, 1997, 1998, 1999	2003
Petroleum Business Tax	1997, 1998, 1999, 2000, 2001	2003
Real Estate Transfer Tax	1995-1996, 1996-1997, 1997-1998, 1998-1999, 1999-2000	2003-2004

\* Tax year ending in December for calendar year filers and ending in January through November in the subsequent year for fiscal year filers.

The estimates represent the foregone revenue associated with each tax expenditure. This report defines foregone revenue as the difference between tax liability under the existing tax structure and the tax liability under an alternative tax regime. The alternative regime assumes that the particular tax provision does not exist in the Tax Law. Although conceptually straightforward, this approach involves implicit assumptions that influence the interpretation of the results.

Technical measurement problems prevent the summing of tax expenditures and the drawing of any precise conclusions about their aggregate value. The estimation process cannot always accurately capture these problems, which include the interaction of different tax provisions. In addition, tax expenditure estimates do not take into account how the elimination of a tax provision might alter taxpayer behavior. For example, the net revenue loss from the investment tax credit does not take into account the change in investment behavior that could result from the elimination of the investment tax credit. These important limitations of the methodology must be kept in mind when reviewing the cost of tax expenditures.

In addition to the estimated cost of each tax expenditure, this report presents information about each relevant provision. This includes the legal citation from either the New York Tax Law or the Internal Revenue Code (IRC); enactment dates; termination dates, if applicable; major changes in the provisions between the historical years and the present time; and a brief description of each provision as it existed in the historical years. These descriptions provide only an overview and not detailed technical explanations of the provisions.

This report does not provide a detailed legislative history of each item. The description notes if a provision will terminate either by repeal or sunset. Repealing a provision means that legislation

removed the section from the Tax Law or Internal Revenue Code. Sunsetting refers to the termination of the effect of certain provisions as of a date specified in the law.

## **Federal Exclusions**

The personal income (Article 22), corporate franchise (9-A), bank (Article 32) and insurance (Article 33) taxes are all based, to some extent, on the federal tax structure. There are provisions in federal law which reduce the base subject to New York tax because the exclusion flows through to New York law. For example, employer contributions for medical insurance and care are excluded from federal adjusted gross income. This exclusion flows through to New York which uses federal adjusted gross income as a starting point for determining New York income. In most cases, New York policymakers have opted to conform to the federal base for these taxes. Conformity eases administration of the Tax Law while at the same time promoting taxpayer compliance. These items do not constitute tax expenditures in the same sense as provisions specifically designed by New York policymakers to promote economic development or to provide specific tax relief. To focus attention on New York source tax expenditures, federal exclusions are listed in the Appendix which provides estimates of the revenue foregone by conformity to these provisions.

## **Changes to the Report**

State legislation enacted in recent years has resulted in the addition, deletion, or modification of various provisions in the report this year. The changes are as follows:

### Additions:

- A new personal income tax credit is available for 20 percent of the cost of installing fuel cell electricity generating equipment in the taxpayer's principal residence, up to a maximum credit of \$1,500.
- Additions to the sales tax include tax expenditures for:
  - film production;
  - certain mobile telecommunications services; and,
  - nonprofit property/casualty insurance companies.

### Modifications:

- The personal income tax credit for residential fuel oil storage tanks, previously scheduled to expire after 2002, was extended through 2003. Also, the credit was amended effective April 1, 2002 to equal up to \$500 of the costs of removing or permanently closing a tank and replacing it with a new tank. Previously, three separate credits of up to \$250 each applied for removal, permanent closure, and replacement.

## **INTRODUCTION**

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- The alternative fuels vehicle credit, previously scheduled to expire after 2002, was extended through 2003. In addition, the credit calculation for hybrid vehicles has been clarified so that retroactive to 2000, taxpayers can claim a \$2,000 credit for the purchase of a qualified hybrid vehicle.
- The Investment Tax Credit for Financial Services under Article 9-A, Article 32, and Article 33 was extended to apply to property placed in service before October 1, 2008. This credit had been scheduled to expire for property placed in service after October 1, 2003.
- The limitation on the Low Income Housing Credit was amended to alter the total amount of credit available. The total statewide amount of credit available was doubled from \$20 million, or \$2 million per year, to \$40 million, or \$4 million per year.
- The Empire Zone (EZ), Zone Equivalent Area (ZEA), and Qualified Empire Zone Enterprise (QEZE) tax credits were amended to provide various technical corrections to the terms and requirements of the credits.

### **Reliability of the Estimates**

Estimates of the cost of tax expenditures have different levels of reliability based on the accuracy of both the data and the estimation procedure. For all of the taxes, with the exception of the sales and compensating use tax, the Department of Taxation and Finance assigns the highest category of reliability, Level 1, to estimates based on information from actual tax returns that were verified for accuracy. It assigns Level 2 to estimates based on data files containing unverified or incomplete information from actual tax returns. Neither of these return data sources is augmented with audit information. In Level 3 estimates, average marginal tax rates are applied to aggregate data. This sometimes includes federal tax return data from the Internal Revenue Service's "Statistics of Income." Level 4 estimates are based on national tax expenditure estimates made by the federal Joint Committee on Taxation (JCT) or the Office of Management and Budget (OMB) or are estimates derived from non-tax data sources.

Estimates for most of the sales tax expenditures are derived from non-tax data sources. Therefore, a somewhat different reliability scheme is employed with all estimates given the fourth level of reliability. Within this fourth level, the report further categorizes estimates based on the accuracy and suitability of the data sources. Category A estimates use both New York State and industry-specific data. Category B estimates use New York-specific data from industry sources, or national data derived from direct industry information such as industry associations. Category C estimates use data other than state or industry-specific data.

The last level of estimates, Level 5, includes those items for which no reliable data source currently exists. Earlier Tax Department discussion papers contain a complete analysis of the reliability classification system.

In some cases the reliability of estimates can change from year to year. This is especially the case for base year and forecast estimates versus historical estimates. For example, provisions previously estimated with either less reliable tax return data or federal tax information might become Level 1 (highest reliability) if added directly to tax returns and verified for accuracy. This could cause current and projected estimates to differ from historical estimates.

Regardless of data source, the reliability of estimates for the budget year is of distinctly lower quality than that of the historical numbers. The hazards of forecasting generally are exacerbated when point estimates of the value of particular provisions of law are involved. Changes in taxpayer behavior, business organization, and other factors as well as “updating” methodologies can all have profound implications for the estimates of particular provisions in the budget year.





# PERSONAL INCOME TAX

This section provides revenue estimates of tax expenditures for 39 provisions of the 2003 New York State personal income tax. Tax expenditures are first estimated for the 2000 tax year (the latest year for which historical tax data are available) and then projected to the 2003 tax year. This section also provides historical estimates from 1996 through 1999 for comparison. Table 1 lists the income tax provisions for which estimates exist, and the estimates themselves. To provide some perspective, it also shows total personal income tax liability for the 2000 tax year. The data used to generate the estimates do not include late filed returns, audited returns or fiduciary returns because no contemporaneous data exist to make the estimates. On average, the sample used to make the estimates covers between 90 and 95 percent of total personal income tax liability.

## **Description of Tax**

The computation of the New York State personal income tax starts with the federal definition of adjusted gross income as included in the Internal Revenue Code (IRC). The IRC permits certain exclusions and adjustments in arriving at federal adjusted gross income. New York allows several subtraction modifications and requires certain addition modifications in arriving at New York adjusted gross income (NYAGI). Taxpayers can then reduce their NYAGI by subtracting the higher of the New York standard deduction or New York itemized deductions. New York itemized deductions generally conform to federal itemized deductions; however, certain modifications, such as an add-back for income taxes, apply. Federal law, to which New York conforms, requires certain high income taxpayers to further limit itemized deductions. In addition, an overall New York State deduction limitation applies to upper-income taxpayers. New York taxpayers may also subtract from NYAGI a \$1,000 exemption for each dependent, not including the taxpayer and spouse.

The above computation determines taxable income. After computing taxable income, taxpayers apply a marginal tax rate schedule to compute their tax. If New York adjusted gross income exceeds \$100,000, then taxpayers must also compute a supplemental tax that recaptures the tax benefit that results from income being taxed at less than the top marginal rate. Taxpayers may then subtract certain credits in arriving at their actual tax liability. An add-on minimum tax then applies to certain federal tax preference items.

Many of the effective dates for the income tax items occurred in 1960. The State personal income tax was originally enacted in 1919, but the present system of federal conformity with respect to income and deductions did not begin until 1960. Therefore, the report uses 1960 as the effective date for the provisions existing since the reorganization of the State's income tax. Many provisions have also been amended since their enactment; however, this report does not provide a detailed legislative history of each item covering the entire intervening time frame.

# PERSONAL INCOME TAX

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Tax year 1997 marked the final year of a three-year income tax reduction program enacted in 1995. The table below indicates the major elements of the tax reduction legislation.

<u>Provision</u>	<u>Tax Year</u>			
	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997 and After</u>
Top Rate	7.875%	7.59375%	7.125%	6.85%
Married Standard Deduction	\$9,500	\$10,800	\$12,350	\$13,000*
Single Standard Deduction	\$6,000	\$6,600	\$7,400	\$7,500
Head of Household Standard Deduction	\$7,000	\$8,150	\$10,000	\$10,500
Earned Income Credit (% of Federal)	7.5%	10%	20%	20%**

\* Legislation enacted in 2000 increased the amount to \$13,400 in 2001, \$14,200 in 2002, and \$14,600 after 2002.

\*\* Legislation enacted in 1999 increased the credit to 22.5 percent in 2000 and 25 percent after 2000. Legislation enacted in 2000 further increased the credit to 27.5 percent in 2002 and 30 percent after 2002.

The rate reductions occurring between 1994 and 1997 generally reduced the cost of most tax expenditures during that time period. In addition, increases in standard deduction amounts and credits have tended to reduce the cost of tax expenditures because they reduce the value of itemized deductions and the number of taxpayers. However, many tax expenditures increase in value due to growth in taxpayers, incomes, and factors associated with the tax expenditure.

The descriptive paragraph on each income tax expenditure summarizes the provision as it appears in the Tax Law in effect as of January 1, 2003. It also includes any differences applicable between the 2000 and 2003 tax years. The listing does not include provisions repealed or sunsetted prior to 2003.

## Data Sources

The major sources of data used in this section and the Appendix include:

- 2000 Personal Income Tax Study File - A data file based on a statistical sample of approximately 113,000 New York State personal income tax returns. The sample is weighted to be consistent with income and liability totals for the taxpayer population contained on the New York State Department of Taxation and Finance's master file. Double checking all sample data ensures accuracy and reliability. This data file is then used in conjunction with a personal income tax simulation model, a set of complex computer programs which simulate the various features of the Tax Law and variations thereof for the years being estimated.
- Personal Income Tax Clearing House (PITCH) - A data file containing income tax return information as data entered by bank sources, Tax Department data-entry staff, and taxpayers/preparers via electronic media and includes data from returns processed to date. These data do not undergo the rigorous control process and double-checking procedures like those used in the 2000 personal income tax study. The PITCH data are extrapolated to 2003 together with the personal income tax study file.

- 2000 Federal Statistics of Income (SOI) - An annual statistical report produced by the U.S. Treasury Department. It contains Internal Revenue Service data collected from the federal tax returns filed by New York residents. Verification of the data for accuracy ensures high data quality. The SOI sample of New York taxpayers contains over 15,000 returns.
- Office of Management and Budget (OMB) federal tax expenditure estimates - OMB's estimates of federal tax expenditure items listed in this report came from the fiscal year 2003 Corporate and Individual Income Tax Revenue Loss Estimates for Tax Expenditures. Historical estimates were based on prior reports.
- U.S. Congressional Joint Committee on Taxation (JCT) federal tax expenditure estimates - JCT's estimates of federal tax expenditure items listed in this report came from "Estimates of Federal Tax Expenditures for Fiscal Years 2003-2007" released in December 2002. The JCT publishes this pamphlet annually. Historical estimates were based on prior reports.

### **Methodology**

For estimating tax expenditures in 2003, components of income, modifications, and itemized deductions on the 2000 sample return file are extrapolated to 2003 levels using growth assumptions based on the economic forecast provided by the Division of the Budget during December 2002. This data file is then used with the personal income tax model revised to simulate 2003 tax law.

The federal Office of Management and Budget and U.S. Joint Committee on Taxation tax expenditure estimates of federal tax expenditure items are prorated to New York using New York's share of total U.S. personal income and applying New York State effective tax rates.

Tax expenditures with values of less than \$0.1 million are indicated with an asterisk.

**Table 1**  
**2003 New York State Personal Income Tax Expenditure Estimates**  
**(2000 Total Personal Income Tax Liability = \$24,733 Million)**  
**(Millions of Dollars)**

<u>Tax Item</u>	<u>History</u>					<u>Forecast</u>	<u>Reliability</u> <u>Level</u>
	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2003</u>	
<b>New York Modifications</b>							
1. Pension/Annuity Exclusion	306.6	317.9	317.6	365.0	390.5	410.0	1
2. Exclusion of Social Security and Tier I Railroad Retirement Benefits (Taxable Social Security for Federal Purposes but New York Exempt)	253.3	274.2	283.3	309.5	394.9	470.0	1
3. Exclusion of Interest on U.S. Obligations	202.6	181.7	184.9	173.0	203.8	145.0	1
4. Exclusion of Pensions, Annuities, Interest and Lump Sum Payments Received by New York State and Municipal Retirees	276.6	268.3	293.4	314.1	372.3	403.0	1
5. Exclusion of Pensions, Annuities, Interest and Lump Sum Payments by Federal Retirement Systems	67.0	61.7	64.8	68.9	79.0	86.0	1
6. Disability Income Exclusion	N/A	N/A	N/A	N/A	N/A	N/A	5
7. Exclusion of Interest or Dividends on Obligations or Securities of a U.S. Agency	N/A	N/A	N/A	N/A	N/A	N/A	5
8. Exclusion of Interest or Dividend Income on Obligations or Securities Taxable for Federal Purposes but Exempt for New York Tax Purposes	N/A	N/A	N/A	N/A	N/A	N/A	5
9. Exclusion of Accelerated Death Benefits and Viatical Settlements	*	*	*	*	*	*	4
10. Exclusion for Contributions to New York State College Choice Tuition Savings Program	--	--	6.0	12.0	17.0	29.0	4
11. Deferral of Gain from Sale of Qualified Emerging Technology Investments	--	--	*	*	*	*	4
12. Exclusion of Payments to Victims of Nazi Persecution	*	*	*	*	*	*	4
<b>New York Itemized Deductions and Exemptions</b>							
13. Value of Standard Deductions for Those Returns with Itemized Deductions in Excess of Standard Deduction	1,024.5	1,012.4	1,016.9	1,069.7	1,179.9	1,145.0	1
14. Itemized Deductions							
a. Medical/Dental Deduction	57.9	50.0	51.9	56.1	67.2	60.0	1
b. Interest Deduction	545.0	560.0	571.0	615.2	724.1	636.0	1
c. Charitable Contribution Deduction	270.6	294.3	315.3	379.7	447.9	410.0	1
d. Casualty/Theft Deduction	4.2	4.2	3.0	3.6	3.9	4.0	1

	<u>Tax Item</u>	<u>History</u>					<u>Forecast</u>	<u>Reliability</u>
		<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2003</u>	<u>Level</u>
	e. Taxes Paid Deduction	326.1	344.7	353.6	375.2	416.7	385.0	1
	f. Miscellaneous Deductions Subject to 2 Percent of AGI Limitation	172.9	176.5	188.4	208.6	250.0	238.0	1
	g. Other Miscellaneous Deductions	15.4	15.3	16.8	21.8	21.3	20.0	1
15.	Dependent Exemptions	282.3	253.6	259.5	266.2	279.2	283.0	1
<b>New York Credits</b>								
16.	Household Credit	114.3	106.5	107.2	106.5	107.2	102.0	1
17.	Earned Income Credit	290.9	322.1	346.0	360.8	423.1	687.0	1
18.	Real Property Tax Credit (Circuit Breaker)	37.2	40.2	39.0	34.0	32.1	32.0	1
19.	Farmers' School Property Tax Credit	--	12.4	18.5	19.0	19.6	23.0	2
20.	Investment Credit	23.0	20.2	22.5	24.7	25.3	30.0	2
21.	Investment Credit for Financial Securities Industry	--	--	1.2	2.8	0.7	1.0	2
22.	Child and Dependent Care Credit	35.5	40.1	76.8	139.4	201.6	232.0	1
23.	Accumulation Distribution Credit	4.0	1.2	0.5	0.1	0.2	0.1	2
24.	Empire Zone and Zone Equivalent Areas Tax Credits	2.5	3.3	8.5	10.8	12.5	25.0	2
25.	Special Additional Mortgage Recording Tax Credit Carryforward	4.1	3.0	3.2	1.5	2.1	3.0	2
26.	Solar Electricity Generating Equipment Credit	--	--	0.3	0.2	0.2	0.2	2
27.	Employment of Persons with Disabilities Credit	--	--	*	0.2	0.2	0.2	2
28.	Alternative Fuels Vehicle Credit	--	--	*	0.2	0.2	0.2	2
29.	Emerging Technology Companies Credits	--	--	--	--	0.3	0.3	2
30.	College Tuition Credit 2/	--	--	--	--	--	164.0	4
31.	Petroleum Tank Credit	--	--	--	--	--	10.0	4
32.	Defibrillator Credit	--	--	--	--	--	*	4
33.	Green Buildings Credit	--	--	--	--	--	*	4
34.	Low Income Housing Credit	--	--	--	--	*	0.8	2
35.	Transportation Access Credit	--	--	--	--	*	*	2
36.	Qualified Empire Zone Credits	--	--	--	--	--	25.0	4
37.	Industrial or Manufacturing Business Credit	--	--	--	--	1.3	3.0	2
38.	Long-Term Care Insurance Credit	--	--	--	--	--	5.0	4
39.	Fuel Cell Electricity Generating Equipment Credit 1/	--	--	--	--	--	2.0	4

1/ A new tax expenditure item or a revision of the methodology or revisions in the data sources resulted in an estimate which better reflects the tax expenditure value.

2/ Estimate includes value of itemized deduction and credit.

\* Less than \$0.1 million.

-- The tax expenditure was not applicable for these years.

N/A No data available

# PERSONAL INCOME TAX

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## New York Modifications

The NYAGI of a resident or nonresident individual is defined as federal adjusted gross income with modifications as specified by New York Tax Law, Article 22, Section 612.

### 1. Pension/Annuity Exclusion

**Citation:** Section 612(c)(3-a)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1982

**Description:** Taxpayers aged 59 ½ and over may exclude from New York adjusted gross income pensions and annuities, to the extent included in federal adjusted gross income, but not in excess of \$20,000 (\$20,000 each for two married pensioners or annuitants filing jointly).

**Estimates:** 2000: \$390.5 million - 2003: \$410.0 million

**Data Source:** PIT Simulation Model

**Reliability:** Level 1

### 2. Exclusion of Social Security and Tier 1 Railroad Retirement Benefits (Taxable Social Security for Federal Purposes but New York Exempt)

**Citation:** Section 612(c)(3-c)

**Effective Date:** Effective for taxable years beginning after December 31, 1983

**Description:** Taxpayers may exclude from New York adjusted gross income Social Security and Tier 1 railroad retirement benefits, to the extent included in federal adjusted gross income.

**Estimates:** 2000: \$394.9 million - 2003: \$470.0 million

**Data Source:** PIT Simulation Model

**Reliability:** Level 1

### 3. Exclusion of Interest on U.S. Obligations

**Citation:** Section 612(c)(1)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1960

**Description:** Taxpayers may exclude from New York adjusted gross income interest income on obligations of the United States and its possessions, to the extent included in FAGI. Federal law prohibits New York from taxing this item.

**Estimates:** 2000: \$203.8 million - 2003: \$145.0 million

**Data Source:** PIT Simulation Model

**Reliability:** Level 1

### 4. Exclusion of Pensions, Annuities, Interest and Lump Sum Payments Received by New York State and Municipal Retirees

**Citation:** Section 612(c)(3)(i)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1960

**Description:** Retirement payments received by officers and employees (or their beneficiaries) of New York State and its municipalities (including corporations and authorities), to the extent includable in federal adjusted gross income, may be subtracted in

computing New York adjusted gross income. The State Constitution prohibits taxation of this income.

**Estimates:** 2000: \$372.3 million - 2003: \$403.0 million

**Data Source:** PIT Simulation Model

**Reliability:** Level 1

**5. Exclusion of Pensions, Annuities, Interest and Lump Sum Payments by Federal Retirement Systems**

**Citation:** Section 612(c)(3)(ii)

**Effective Date:** Effective for tax years beginning on or after January 1, 1989

**Description:** Payments received by officers and employees (and their beneficiaries) from federal retirement systems, to the extent includable in federal adjusted gross income, may be subtracted in determining New York adjusted gross income. A 1989 U.S. Supreme Court ruling (Davis v. Michigan Department of Treasury) mandated that states must provide equal tax treatment for federal and state/local pensions.

**Estimates:** 2000: \$79.0 million - 2003: \$86.0 million

**Data Source:** PIT Simulation Model

**Reliability:** Level 1

**6. Disability Income Exclusion**

**Citation:** Section 612(c)(3-b)

**Effective Date:** Effective for taxable years beginning after December 31, 1983

**Description:** A taxpayer may subtract up to \$5,200 of disability income included in federal adjusted gross income, to the extent that such income would have been excluded from federal gross income prior to January 1, 1984, under the repealed provisions of IRC Section 105(d). The total exclusion for disability and pension and annuity income may not exceed \$20,000. The exclusion is reduced by the amount that the taxpayer's adjusted gross income exceeds \$15,000.

**Estimate:** No data available. Included in "other" category for New York modifications in second pass data and, therefore, cannot be separately identified.

**Reliability:** Level 5

**7. Exclusion of Interest or Dividends on Obligations or Securities of a U.S. Agency**

**Citation:** Section 612(c)(2)

**Effective Date:** Effective for taxable years on or after January 1, 1960

**Description:** Taxpayers may subtract from federal adjusted gross income, interest or dividend income on obligations or securities of a U.S. agency, to the extent that such income has been included in federal adjusted gross income. Federal law prohibits New York from taxing this income.

**Estimate:** No data available. Included in "other" category for New York modifications in second pass data and, therefore, cannot be separately identified.

**Reliability:** Level 5

## PERSONAL INCOME TAX

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### 8. Exclusion of Interest or Dividend Income on Obligations or Securities Taxable for Federal Purposes but Exempt for New York Tax Purposes

**Citation:** Section 612(c)(6)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1960

**Description:** The taxpayer may subtract from federal adjusted gross income interest or dividend income on obligations or securities, to the extent that such income is exempt for New York income tax purposes under New York law but is subject to federal income tax.

**Estimate:** No data available. Included in “other” category for New York modifications in second pass data and, therefore, cannot be separately identified.

**Reliability:** Level 5

### 9. Exclusion of Accelerated Death Benefits and Viatical Settlements

**Citation:** Section 612(c)(30)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1991 for death benefits and for payments received on or after July 27, 1994 on viatical settlements

**Description:** Taxpayers may subtract from federal adjusted gross income accelerated payments of part or all of the death benefit or special surrender value of a life insurance policy as a result of certain diagnoses (i.e., terminal illnesses), specified in the Insurance Law. Also, taxpayers may subtract the amount received from a viatical settlement company from the sale of a life insurance policy. Persons with catastrophic or life threatening illnesses are eligible for this subtraction when they sell such policies to a viatical settlement company licensed by the State Insurance Department.

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** Federal Office of Management and Budget

**Reliability:** Level 4

### 10. Exclusion for Contributions to New York State College Choice Tuition Savings Program

**Citation:** Section 612(c)(32)

**Effective Date:** Effective for taxable years beginning after December 31, 1997

**Description:** Taxpayers may subtract from federal adjusted gross income (FAGI) up to \$5,000 per year (\$10,000 for married couples filing jointly) of contributions to “family tuition accounts,” as defined in Article 14-A of the Education Law, to the extent not deductible or eligible for credit for federal tax purposes. The maximum amount of total contributions may not exceed \$100,000 per person.

**Estimates:** 2000: \$17.0 million - 2003: \$29.0 million

**Data Source:** Office of the State Comptroller

**Reliability:** Level 4

### 11. Deferral of Gain from Sale of Qualified Emerging Technology Investments

**Citation:** Section 612(c)(34)

**Effective Date:** Effective for qualified investments acquired on or after March 12, 1998

**Description:** Gain from the sale of qualified emerging technology investments may be subtracted from federal adjusted gross income, if reinvested in another qualified emerging technology investment. The amount subtracted must be added to federal adjusted gross



income when the reinvestment is sold, if the gain is not reinvested in a qualified emerging technology investment.

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** Industry Data

**Reliability:** Level 4

### 12. Exclusion of Payments to Victims of Nazi Persecution

**Citation:** Section 612(c)(35) and (36)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1995

**Description:** Taxpayers may subtract certain distributions, to the extent included in FAGI, made based on their status as a victim of Nazi persecution as defined in Public Law 103-286. The subtraction also applies to distributions received by victims' spouses and needy descendants. In addition, a subtraction is allowed for items of income included in FAGI attributable to assets stolen or hidden from, or otherwise lost by victims of Nazi persecution immediately prior to, during, or after World War II.

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** New York State Banking Department

**Reliability:** Level 4

### New York Itemized Deductions and Exemptions

Individual taxpayers who elect not to use the standard deduction may reduce their New York adjusted gross income by their itemized deduction, and all taxpayers are allowed exemptions for dependents who qualify for the federal exemption.

### 13. Value of Standard Deductions for Those Returns with Itemized Deductions in Excess of Standard Deduction

**Citation:** Section 614

**Effective Date:** Effective for taxable years beginning on or after January 1, 1960

**Description:** Because all taxpayers are entitled to a standard deduction as a minimum, itemizers have their standard deduction "built into" their total deduction.

**Estimates:** 2000: \$1,179.9 million - 2003: \$1,145.0 million

**Data Source:** PIT Simulation Model

**Reliability:** Level 1

### 14. Itemized Deductions

Taxpayers who itemize deductions on their federal returns may also itemize on their New York State returns if the aggregate of such deductions, minus state and local income taxes and certain other modifications, exceeds the New York standard deduction. New York itemized deductions flow through from federal law. Thus, the citations below reference the Internal Revenue Code. They are authorized in New York Tax Law, Article 22, Section 615. New York limits the availability of itemized deductions for certain high income taxpayers. The maximum percentage of disallowed deductions equals 50 percent for all taxpayers with NYAGI above \$525,000.

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The federal itemized deduction limitation further reduces the value of the deductions. This limitation, to which New York mostly conforms, requires taxpayers to reduce their itemized deductions (other than medical expenses, gambling losses, casualty and theft and investment interest) by three percent of the amount by which their 2003 FAGI exceeds \$139,500 (\$69,750 for married filing separately). This threshold is indexed annually for inflation. Deductions subject to the limitation cannot be reduced by more than 80 percent. Because the interaction of the different itemized deductions cannot be accurately captured in the estimation process, the effect of the federal limitation cannot be itemized by deduction type.

**a. Medical/Dental Deduction**

**Citation:** IRC Section 213

**Effective Date:** Effective for taxable years beginning on or after January 1, 1960

**Description:** Medical and dental expenses paid during the taxable year by and on behalf of the individual or his/her spouse or dependent may be deducted from federal adjusted gross income, as an itemized deduction, to the extent that the expenses (a) exceed 7.5 percent of adjusted gross income, and (b) are not compensated for by insurance or otherwise.

**Estimates:** 2000: \$67.2 million - 2003: \$60.0 million

**Data Source:** PIT Simulation Model

**Reliability:** Level 1

**b. Interest Deduction**

**Citation:** IRC Section 163

**Effective Date:** Effective for taxable years beginning on or after January 1, 1960

**Description:** A taxpayer may deduct mortgage and investment interest paid or accrued during the taxable year on debt owed by the taxpayer. However, interest incurred on loans made to purchase securities, the income from which is tax-exempt in New York, is not deductible for New York purposes. Generally, mortgage interest is totally deductible (certain limitations apply).

**Estimates:** 2000: \$724.1 million - 2003: \$636.0 million

**Data Source:** PIT Simulation Model

**Reliability:** Level 1

**c. Charitable Contribution Deduction**

**Citation:** IRC Section 170

**Effective Date:** Effective for taxable years beginning on or after January 1, 1960

**Description:** Taxpayers may subtract from federal adjusted gross income contributions made to qualified organizations, up to a limit of 50 percent of their adjusted gross income. In certain cases, lower limits may apply.

**Estimates:** 2000: \$447.9 million - 2003: \$410.0 million

**Data Source:** PIT Simulation Model

**Reliability:** Level 1

**d. Casualty/Theft Deduction**

**Citation:** IRC Section 165

**Effective Date:** Effective for taxable years beginning on or after January 1, 1960

**Description:** Individuals may deduct casualty losses. Casualty losses mean uncompensated losses sustained as a result of the total or partial destruction of property, caused by a sudden, unexpected or unusual event. Losses incurred as a consequence of the theft or embezzlement of the taxpayer's property may also be deducted from federal gross income. In both cases, a deduction is allowed only with respect to individual losses which exceed \$100 and to the extent that total net losses exceed 10 percent of federal adjusted gross income.

**Estimates:** 2000: \$3.9 million - 2003: \$4.0 million

**Data Source:** PIT Simulation Model

**Reliability:** Level 1

**e. Taxes Paid Deduction**

**Citation:** IRC Section 164, Section 615(c)(1)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1960

**Description:** Individuals may deduct from federal adjusted gross income, real and personal property taxes which have been paid to any state, local or foreign government during the year.

**Estimates:** 2000: \$416.7 million - 2003: \$385.0 million

**Data Source:** PIT Simulation Model

**Reliability:** Level 1

**f. Miscellaneous Deductions Subject to 2 Percent of AGI Limitation**

**Citation:** IRC Sections 67, 212, 280A

**Effective Date:** Effective for taxable years beginning after December 31, 1986 (Sec. 67); on or after January 1, 1960 (Sec. 212); after December 31, 1975 (Sec. 280A)

**Description:** Taxpayers may deduct certain miscellaneous expenses. Miscellaneous itemized deductions consist of three broad categories of personal expenses: deductible employee expenses, deductible expenses of producing income and other deductible expenses (essentially, tax counsel and assistance and appraisal fees). The first two categories include such items as work clothes and uniforms, union dues and expenses, safe deposit box rentals, and malpractice insurance premiums.

**Estimates:** 2000: \$250.0 million - 2003: \$238.0 million

**Data Source:** PIT Simulation Model

**Reliability:** Level 1

**g. Other Miscellaneous Deductions**

**Citation:** IRC Section 67

**Effective Date:** Effective for taxable years beginning on or after January 1, 1987

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**Description:** Taxpayers may deduct miscellaneous expenses not subject to the 2 percent AGI limitation. These include gambling losses (up to the amount of gambling winnings), impairment-related work expenses and certain other expenses.

**Estimates:** 2000: \$21.3 million - 2003: \$20.0 million

**Data Source:** PIT Simulation Model

**Reliability:** Level 1

### 15. Dependent Exemptions

**Citation:** Section 616

**Effective Date:** Effective for taxable years beginning on or after January 1, 1960

**Description:** In computing taxable income, taxpayers may deduct \$1,000 for each exemption for qualified dependents to which they are entitled a deduction for federal income tax purposes.

**Estimates:** 2000: \$279.2 million - 2003: \$283.0 million

**Data Source:** PIT Simulation Model

**Reliability:** Level 1

### New York Credits

Credits are amounts which may be subtracted from the individual's computed State tax liability.

### 16. Household Credit

**Citation:** Section 606(b)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1978

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**Description:** Taxpayers with certain incomes may claim a nonrefundable credit as shown in the table below:

Single Filing Status If Federal AGI is:			All Other Filing Statuses If Federal AGI is:			
<u>Over</u>	But Not <u>Over</u>	The Credit <u>Is</u>	<u>Over</u>	But Not <u>Over</u>	The Credit <u>Is</u>	+ <u>For Each Federal Exemption</u>
\$ 0	\$ 5,000	\$75	\$ 0	\$ 5,000	\$75	\$15
5,000	6,000	60	5,000	6,000	60	15
6,000	7,000	50	6,000	7,000	50	15
7,000	20,000	45	7,000	20,000	45	15
20,000	25,000	40	20,000	22,000	50	10
25,000	28,000	20	22,000	25,000	40	10
28,000	No Credit		25,000	28,000	35	5
			28,000	32,000	15	5
			32,000	No Credit		

**Estimates:** 2000: \$107.2 million - 2003: \$102.0 million

**Data Source:** PIT Simulation Model

**Reliability:** Level 1

## 17. Earned Income Credit

**Citation:** IRC Section 32, Tax Law Section 606(d)

**Effective Date:** Effective for taxable years beginning after 1993

**Description:** Taxpayers may claim a credit equal to 30 percent of their federal earned income credit. In previous tax years, the credit equaled the following percentages of the federal credit:

<u>1994</u>	<u>1995</u>	<u>1996-1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
7.5%	10%	20%	22.5%	25%	27.5%

The credit is fully refundable to residents, nonrefundable to nonresidents, and partly refundable to part-year residents. The table below shows income eligibility parameters and maximum amounts for the 2003 tax year:

	Maximum Creditable <u>Earnings</u>	Federal Credit <u>Rate</u>	Maximum State Credit <u>Credit</u>	Income for Start of Phase-out <u>(MFJ)*</u>	<u>Others</u>	Income Cut-off <u>(MFJ)*</u>	<u>Others</u>
Taxpayers With 1 Child	\$7,490	34%	\$764	\$14,730	\$13,730	\$30,666	\$29,666
Taxpayers With 2 or More Children	\$10,510	40%	\$1,261	\$14,730	\$13,730	\$34,692	\$33,692
Taxpayers Age 25-64 Without Children	\$4,990	7.65%	\$115	\$7,240	\$6,240	\$12,230	\$11,230

\* Earned income or federal adjusted gross income, whichever is greater.

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Taxpayers must subtract from the earned income credit the amount of household credit used to reduce tax liability.

**Estimates:** 2000: \$423.1 million - 2003: \$687.0 million

**Data Source:** Earned Income Tax Credit Study

**Reliability:** Level 1

### 18. Real Property Tax Credit (Circuit Breaker)

**Citation:** Section 606(e)

**Effective Date:** Effective for taxable years beginning after December 31, 1977

**Description:** Qualified individuals may claim a credit in the amount of 50 percent of excess real property taxes, determined according to the level of household gross income, subject to certain specified conditions and limits. Eligibility for the credit depends on the size of household gross income (\$18,000 or less), property use, the value of the property or the adjusted rent of a tenant. The credit claimant must be a resident of the State for the entire taxable year. The maximum credit is \$375 for taxpayers age 65 and over and \$75 for taxpayers under age 65. The amount of the credit decreases as household gross income increases. Only one credit is allowed per household. The credit is refundable.

**Estimates:** 2000: \$32.1 million - 2003: \$32.0 million

**Data Source:** Real Property Tax Credit Study

**Reliability:** Level 1

### 19. Farmers' School Property Tax Credit

**Citation:** Section 606(n)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1997

**Description:** Taxpayers primarily engaged in farming may claim a refundable credit equal to 100 percent of total school property taxes paid on qualified New York agricultural property up to 250 acres, and 50 percent of the school taxes paid on acres in excess of 250. To be eligible, taxpayers must earn two thirds of their federal income from farming. For purposes of this test, total gross income is reduced by the sum (not to exceed \$30,000) of earned income, pensions, social security, interest, and dividends. The credit phases out for taxpayers with NYAGI in excess of \$100,000, after subtracting principal on farm indebtedness. Recapture provisions apply if the taxpayer converts the property to a nonqualified use in the two years subsequent to first use of the credit.

**Estimates:** 2000: \$19.6 million - 2003: \$23.0 million

**Data Source:** PIT Simulation Model

**Reliability:** Level 2

### 20. Investment Credit

**Citation:** Section 606(a), a-1

**Effective Date:** Effective for taxable years beginning on or after January 1, 1969

**Description:** Taxpayers may claim an investment tax credit (ITC) of 4 percent of the cost of tangible property including buildings and structural components of buildings which are depreciable, have a useful life of four years or more, are located within the State, and are used principally for the production of goods. Eligible costs also include those associated

with retail enterprises' investments in qualified rehabilitated building, and research and development (R&D) property. The rate of credit for R&D property equals 7 percent.

Beginning in 1997, a credit applies for 25 percent of the taxpayer's qualified expenditure paid to rehabilitate historic barns and similar structures. Qualified expenditures do not qualify for the regular ITC.

Effective for tax years beginning after 1997, taxpayers who increase their number of employees may be eligible for the employment incentive tax credit (EIC) with respect to property acquired or constructed on or after January 1, 1997. This credit applies to property that is eligible for the investment tax credit.

The taxpayer is allowed the EIC for each of the two years next succeeding the taxable year for which the investment tax credit is allowed. The amount of the EIC is as follows:

1.5 percent of the investment tax credit base if employment is at least 101 percent but less than 102 percent of the employment base year,

or

2.0 percent of the investment tax credit base if employment is at least 102 percent but less than 103 percent of the employment base year,

or

2.5 percent of the investment tax credit base if employment is at least 103 percent of the employment base year.

Where the allowable credit exceeds the taxpayer's liability for a given year, the taxpayer may carry forward the excess credit for 10 subsequent tax years. In the case of a new business, only excess credit may be received as a refund.

An 8 percent credit is allowed if qualified property is located within State-designated Empire Zones. The regular ITC cannot be claimed for property on which an Empire Zone credit is claimed.

**Estimates:** 2000: \$25.3 million - 2003: \$30.0 million

**Data Source:** Personal Income Tax Clearing House data file

**Reliability:** Level 2

### 21. **Investment Credit for Financial Securities Industry**

**Citation:** Section 606(a)(2)(A)

**Effective Date:** Effective for property placed in service on or after October 1, 1998, and before October 1, 2008

**Description:** An investment credit is allowed for qualified property used in the financial services industry. The rate of credit, maximum amounts, carryforward provisions, and recapture rules are generally the same as for the regular investment credit.

Qualified property includes property principally used in the ordinary course of the taxpayer's trade or business:

- as a broker or dealer in connection with the purchase or sale of stocks, bonds, or other securities (as defined in Internal Revenue Code (IRC) Section 475(c)(2)), or of commodities (as defined in IRC Section 475(e)), or in providing lending, loan arrangement or loan origination services to customers in connection with the purchase or sale of securities (as defined in IRC Section 475(c)(2));

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- of providing investment advisory services for a regulated investment company as described in IRC Section 851.

In addition, qualified property includes property principally used in the ordinary course of the taxpayer's business as an exchange registered as a national securities exchange (such as the New York stock exchange) or a board of trade defined under the New York Not-For-Profit Corporation Law, or an entity wholly owned by one or more national security exchanges or boards of trade that provides automation or technical services to the national security exchanges or boards of trade.

Property purchased by a taxpayer affiliated with a regulated broker, dealer, or national securities exchange or board of trade, or property leased by a taxpayer to an affiliated regulated broker, dealer, national securities exchange or board of trade is eligible for this credit if the property is used by the affiliate in an activity described above.

The credit is not allowed unless all or substantially all of the taxpayer's or affiliate's employees performing the administrative and support functions resulting from or relating to the qualifying uses of the property are located in New York State.

**Estimates:** 2000: \$0.7 million - 2003: \$1.0 million

**Data Source:** Personal Income Tax Clearing House data file

**Reliability:** Level 2

### 22. Child and Dependent Care Credit

**Citation:** Section 606(c)

**Effective Date:** Effective for taxable years beginning after December 31, 1976

**Description:** Taxpayers may claim a credit for a percentage of the federal credit for household and dependent care expenses necessary to allow gainful employment. A husband and wife filing a joint federal return, but electing to file separate New York returns, may apply the credit only against the tax of the spouse with the lower taxable income.

Prior to the 1996 tax year, the credit equaled 20 percent of the federal child and dependent care credit and was not refundable. Beginning in 1996, taxpayers with NYAGI of \$10,000 or less could claim a credit, equal to 30 percent of the federal child and dependent care credit. The 30 percent rate increased to 60 percent for the 1997 tax year. The credit rate phased down to 20 percent of the federal credit at NYAGI of \$14,000. Since 1996, the credit is fully refundable to residents, nonrefundable to nonresidents, and partly refundable to part-year residents. Beginning in 1998 the credit equaled 100 percent of the federal credit for taxpayers with NYAGI of \$17,000 or less, and phased down to 20 percent at NYAGI of \$30,000 and above. For 1999, the phase-out range was \$35,000 to \$50,000.

Beginning for tax years after 1999, the credit equals the following percentages of the federal credit:

110 percent for NYAGI of \$25,000 or less

110-100 percent for NYAGI between \$25,000 and \$40,000

100 percent for NYAGI between \$40,000 and \$50,000

100-20 percent for NYAGI between \$50,000 and \$65,000

20 percent for NYAGI greater than \$65,000



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	<u>Tax Year</u>					After <u>1999</u>
	Before <u>1996</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	
Maximum Percentage	20%	30%	60%	100%	100%	110%
NYAGI Range of Phase-Down to 20%	NA	10,000 - 14,000	10,000 - 14,000	17,000 - 30,000	35,000 - 50,000	50,000 - 65,000
Refundability	No	Yes	Yes	Yes	Yes	Yes

**Estimates:** 2000: \$201.6 million - 2003: \$232.0 million

**Data Source:** PIT Simulation Model

**Reliability:** Level 1

### 23. Accumulation Distribution Credit

**Citation:** Sections 621 and 635

**Effective Date:** Effective for taxable years beginning on or after January 1, 1962

**Description:** Beneficiaries of trusts (residents and nonresidents) receiving an accumulation distribution can claim a credit for tax paid by the trust fiduciary on income included in the distribution.

**Estimates:** 2000: \$0.2 million - 2003: \$0.1 million

**Data Source:** Personal Income Tax Clearing House data file

**Reliability:** Level 2

### 24. Empire Zone and Zone Equivalent Areas Tax Credits

**Citation:** Section 606(j), (j-1), (k), (l)

**Effective Date:** Effective for tax years beginning on or after January 1, 1986. (“Empire Zone” renamed from “Economic Development Zone” effective May 15, 2000.) However, the methods for computing the wage tax credit and the capital corporation credit were amended for tax years beginning on or after January 1, 1994. Amendments providing that taxpayers located in Zone Equivalent Areas (ZEAs) can take a modified Empire Zone wage tax credit were effective January 1, 1994.

**Description:** Taxpayers may qualify for credit for investments in zone capital corporations, direct equity investments in certified zone businesses and contributions to community development projects. The credit equals 25 percent of the sum of each type of investment. The maximum credit per taxpayer is \$300,000 and cannot exceed one half of the taxpayer’s pre-credit tax.

In addition, effective for property placed in service on or after January 1, 1997, an employment incentive credit applies. This credit applies in addition to the regular Empire Zone ITC, for taxpayers that increase their average number of employees by at least one percentage point over the preceding base year. This credit is 50 percent refundable to new businesses.

A taxpayer may also claim a wage tax credit for doing business and creating jobs in economic development zones. The credit has two components. This credit equals the product of the average number of newly hired targeted Empire Zone employees receiving Empire Zone wages times \$3,000. The corresponding credit amount for other employees

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equals the product of the average number of newly hired nontargeted Empire Zone employees receiving Empire Zone wages times \$1,500.

Taxpayers employing individuals in areas eligible to become Empire Zones but not so designated (Zone Equivalent Areas, or ZEAs) may take a credit for EDZ wages paid for full-time employment in jobs created in the ZEA. Taxpayers must take the credit during the five year period following designation as a ZEA. The credit equals \$3,000 times the average number of targeted employees and \$1,500 times the average number of nontargeted employees hired during the first year. The total wage tax credit cannot exceed 50 percent of tax due before credits.

Taxpayers may also qualify for an investment tax credit of 8 percent of the cost or other federal basis of tangible personal property, including buildings and structural components of buildings located within a designated economic development zone.

Qualifying new businesses may request a refund of 50 percent of the unused wage (both Empire Zone and ZEA) and investment credits in lieu of carrying those credits over to future tax years. Unused capital credits may be carried over to future tax years.

**Estimates:** 2000: \$12.5 million - 2003: \$25.0 million

**Data Source:** Personal Income Tax Clearing House data file

**Reliability:** Level 2

### 25. Special Additional Mortgage Recording Tax Credit Carryforward

**Citation:** Section 606(i)

**Effective Date:** The credit is effective for taxable years beginning after December 31, 1978. Carryforward applies for tax years beginning after December 31, 1993

**Description:** Prior to tax year 1994, S corporation shareholders may claim a credit equal to their prorata share of the special additional mortgage recording tax paid by the corporation pursuant to Section 253(1-a) of Article 11 of the New York Tax Law. The amount of any credit which exceeded tax liability could be carried forward and used in subsequent years. Beginning after 1993, the credit is available only to the S corporation, not at the shareholder level. However, shareholders may claim credits earned, but not used, before tax year 1994.

**Estimates:** 2000: \$2.1 million - 2003: \$3.0 million

**Data Source:** Personal Income Tax Clearing House data file

**Reliability:** Level 2

### 26. Solar Electricity Generating Equipment Credit

**Citation:** Section 606(g-1)

**Effective Date:** Effective for property placed in service in taxable years beginning on or after January 1, 1998

**Description:** Taxpayers may claim a credit equal to 25 percent of qualified solar electric generating equipment expenditures, which are expenditures for the purchase and installation of equipment used at a principal residence in New York, and meeting requirements set forth in Section 66-j of the Public Service Law. Qualified expenditures are capped at the product of 1) \$6.00 and 2) the number of watts in the rated capacity of the solar electric generating equipment, up to 10,000 watts. However, the maximum credit is \$3,750. If the credit exceeds tax liability, taxpayers may carry over the credit for five years.

Taxpayers sharing a principal residence may prorate the credit between them. In addition, interest and other finance charges, and government grants, are not included in qualified expenditures.

**Estimates:** 2000: \$0.2 million - 2003: \$0.2 million

**Data Source:** Personal Income Tax Clearing House data file

**Reliability:** Level 2

### 27. **Employment of Persons with Disabilities Credit**

**Citation:** Section 606(o)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1998, applicable to individuals who begin work on or after January 1, 1997

**Description:** Employers may claim a credit equal to 35 percent of the first \$6,000 of wages paid to workers with disabilities, as certified by the State Department of Education or other designated State agency. The credit applies for the second year of employment if a federal work opportunity tax credit applies for the first year. Alternatively, taxpayers may claim the credit based on the first year of employment if no work opportunity tax credit applies. Taxpayers may carry over unused credit amounts to subsequent tax years.

**Estimates:** 2000: \$0.2 million - 2003: \$0.2 million

**Data Source:** Personal Income Tax Clearing House data file

**Reliability:** Level 2

### 28. **Alternative Fuels Vehicle Credit**

**Citation:** Section 606(i), (p)

**Effective Date:** Effective for property placed in service in taxable years beginning on or after January 1, 1998. For qualified hybrid vehicles, effective for property placed in service in taxable years beginning on or after January 1, 2000. The tax credit provisions do not apply to property placed in service in taxable years beginning after December 31, 2003.

**Description:** Credits are allowed for electric vehicles; clean fuel vehicles using natural gas, methanol and other alternative fuels; and clean fuel refueling facility property. The tax credits equal: 50 percent of the incremental cost of new electric vehicles registered in New York (capped at \$5,000 per vehicle); 60 percent of the cost of new clean-fuel components for alternative fuel vehicles registered in New York (capped at \$5,000 per vehicle with a gross vehicle weight rating of 14,000 pounds or less, and \$10,000 for those over 14,000 pounds); and 50 percent of the cost of new clean-fuel refueling property used in a trade or business. In addition, purchasers of qualified hybrid vehicles may claim a \$2,000 credit per vehicle registered in New York State. Taxpayers may not claim both the hybrid vehicle credit and the clean-fuel vehicle credit on the same vehicle.

**Estimates:** 2000: \$0.2 million - 2003: \$0.2 million

**Data Source:** Personal Income Tax Clearing House data file

**Reliability:** Level 2

### 29. **Emerging Technology Companies Credits**

**Citation:** Section 606(q)(r)

**Effective Date:** Effective for tax years beginning on or after January 1, 2000

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**Description:** The New York State Emerging Industry Jobs Act provides tax credits for qualified emerging technology companies that create new jobs, or for certain corporate taxpayers that invest in emerging technology companies located in New York State. The credits include an employment tax credit of \$1,000 for each individual employed over a base year level and a capital tax credit that varies in amount depending on how long the investment is held.

**Estimates:** 2000: \$0.3 million- 2003: \$0.3 million

**Data Source:** New York State Department of Labor, Industry Data

**Reliability:** Level 2

### 30. College Tuition Credit

**Citation:** Section 606(t)

**Effective Date:** Effective for tax years beginning on or after January 1, 2001

**Description:** A refundable credit is permitted for undergraduate college tuition expenses paid by New York residents on behalf of themselves, their spouses, or dependents to attend qualifying in-State or out-of-State institutions of higher education. The credit equals 4 percent multiplied by 75 percent of expenses, up to a maximum of \$10,000 of expenses per student. The minimum credit equals the lesser of 75 percent of expenses or \$150.

In lieu of the credit, both resident and nonresident taxpayers may elect to deduct qualifying expenses as an itemized deduction, under Tax Law section 615(d)(4). The maximum deduction is equal to 75 percent of up to \$10,000 of expenses per student.

Qualifying tuition expenses are defined as net of scholarships and financial aid. Qualifying institutions include colleges and business, trade, technical or other occupational schools recognized and approved by the regents of the University of the State of New York, or by other nationally recognized accrediting agencies accepted by the regents, which provide study leading to a post-secondary degree, certificate, or diploma. Tuition paid by a dependent student who is claimed on their parents' New York return is attributed to the parent and used by the parent to claim the credit or deduction.

**Estimates:** 2000: Not Applicable - 2003: \$164.0 million

**Data Source:** New York State Department of Education

**Reliability:** Level 4

### 31. Petroleum Tank Credit

**Citation:** Section 606(p-1)

**Effective Date:** Effective for tax years beginning on or after January 1, 2001. However, the requirements for claiming the credit were changed for residential fuel oil storage tanks removed or permanently closed after March 31, 2002. Expires in tax years beginning after December 31, 2003.

**Description:** Taxpayers may claim a credit of up to \$500 for costs associated with removing or permanently closing a residential petroleum tank, and replacing it with a new tank. The credit applies to tanks which provide heating fuel to single to four-family residences located in New York, and unused credits may be carried forward to future tax years.

**Estimates:** 2000: Not Applicable - 2003: \$10.0 million

**Data Source:** NYS Oil Heat Association, U.S. Bureau of the Census (1990 Census of Housing)

**Reliability:** Level 4

**32. Defibrillator Credit**

**Citation:** Section 606(s)

**Effective Date:** Effective for tax years beginning on or after January 1, 2001

**Description:** Taxpayers may claim a credit for the purchase of an automated external defibrillator, as defined in section 3000-b of the Public Health Law. The amount of credit equals the cost of such purchase, up to a maximum of \$500 per defibrillator.

**Estimates:** 2000: Not Applicable - 2003: Minimal

**Data Source:** Estimate from Article 9-A Research File

**Reliability:** Level 4

**33. Green Buildings Credit**

**Citation:** Section 606(y)

**Effective Date:** Effective for costs incurred on or after June 1, 1999 and certified by the Department of Environmental Conservation prior to 2004. The credit is allowable for tax years 2001 through 2009.

**Description:** Taxpayers may claim a credit for the purchase of recyclable building materials and other environmentally preferable tangible personal property. Credits may also be claimed for the purchase of fuel cells, photovoltaic modules, and environmentally sensitive non-ozone depleting refrigerants.

**Estimates:** 2000: Not Applicable - 2003: Minimal

**Data Source:** Statutory limitation

**Reliability:** Level 4

**34. Low Income Housing Credit**

**Citation:** Section 606(x)

**Effective Date:** Effective for tax years beginning on or after January 1, 2000, with respect to commitments for construction of low-income housing agreed upon on or after May 15, 2000.

**Description:** Taxpayers may claim credits under the “New York State Low Income Housing Tax Credit Program.” Based on the existing federal program, the program requires an agreement between the taxpayer and the commissioner of the New York State Division of Housing and Community Renewal (DHCR) for a long-term commitment to low-income housing. The amount of the credit a taxpayer may claim is determined by the commissioner of the DHCR and 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 \$40 million, or \$4 million each year.

**Estimates:** 2000: Minimal - 2003: \$0.8 million

**Data Source:** Statutory limitation

**Reliability:** Level 2

**35. Transportation Access Credit**

**Citation:** Section 606(z)

## PERSONAL INCOME TAX

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**Effective Date:** Effective for tax years beginning on or after January 1, 2000

**Description:** Taxpayers may claim a credit for qualified transportation improvement contributions. The taxpayer must make a certified contribution of at least \$10 million to a qualified transportation improvement project in a prior tax year. The projects must enhance a qualified business facility, and may include the construction or improvement of transportation infrastructure and related facilities and systems, including bridges, ramps, highways, and mass transit facilities. In addition, the taxpayer must create, by the third full tax year after the tax year during which the contribution was made, more than 1,000 jobs in connection with the qualified business facility. The credit equals 6 percent of the taxpayer's increased qualified business facility payroll for the tax year. Recapture applies if, after the third full tax year after the contribution is made, the employment increase test is not met.

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** Estimate from Article 9-A Research File

**Reliability:** Level 2

### 36. Qualified Empire Zone Credits

**Citation:** Section 606(bb), (cc)

**Effective Date:** Effective for tax years beginning on or after January 1, 2001

**Description:** Taxpayers may claim credits under the "The Empire Zones Program Act." These include Qualified Empire Zone Enterprise (QEZE) tax credits for real property taxes and tax reduction credits. Qualified empire zone enterprises include business enterprises certified as EDZ businesses prior to July 1, 2005. Allowances of credit are for taxpayers that are sole proprietors of a qualified Empire Zone enterprise, or a member of a partnership which is a QEZE. The QEZE credit for real property taxes and the QEZE tax reduction credit may be claimed for 15 years and the credit for real property taxes is refundable.

**Estimates:** 2000: Not Applicable - 2003: \$25.0 million

**Data Source:** Estimate in part based on data provided by the Empire State Development and the Office of Real Property Services

**Reliability:** Level 4

### 37. Industrial or Manufacturing Business Credit

**Citation:** Section 606(t-1)

**Effective Date:** Effective for tax years ending after January 1, 2000 and prior to January 1, 2007

**Description:** Industrial or manufacturing businesses (IMBs), sole proprietors of IMBs, and partners in an IMB are allowed a credit for taxes paid or passed through to the IMB under the provisions of Tax Law Sections 186-a, 186-c, 189 and 189-a of Article 9 for gas, electricity, steam, water or refrigeration, or the services of providing such, where they are used or consumed in New York.

Businesses qualifying for the IMB credit include any that meet the definition of such businesses under the ITC. That is, any business which during the taxable year is principally engaged in: manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, commercial fishing or research and development; or is an industrial waste treatment facility or an air pollution control facility; or is principally engaged in a combination of such activities.

**Estimates:** 2000: \$1.3 million - 2003: \$3.0 million

**Data Source:** New York State Department of Public Service, Industry Data

**Reliability:** Level 2

**38. Long-Term Care Insurance Credit**

**Citation:** Section 606(aa)

**Effective Date:** Effective for tax years beginning on or after January 1, 2002

**Description:** Taxpayers may claim a credit equal to 10 percent of the premiums paid for long-term care insurance policies approved by the New York State Department of Insurance. Unused credit may be carried forward to future tax years.

**Estimates:** 2000: Not Applicable - 2003: \$5.0 million

**Data Source:** New York State Department of Insurance

**Reliability:** Level 4

**39. Fuel Cell Electricity Generating Equipment Credit**

**Citation:** Section 606(g-2)

**Effective Date:** Effective for tax years beginning on or after January 1, 2003

**Description:** Taxpayers may claim a credit equal to 20 percent of qualified fuel cell electric generating equipment expenditures. Qualifying expenditures are associated with the purchase of on-site electricity generation systems utilizing proton exchange membrane fuel cells of up to 25 kilowatts of rated capacity, and used in the taxpayer's principal residence in New York. The maximum credit is \$1,500, and taxpayers may carry over any unused credit for five years.

**Estimates:** 2000: Not Applicable - 2003: \$2.0 million

**Data Source:**

**Reliability:** Level 4





# CORPORATION FRANCHISE TAX

This section of the report provides tax expenditure estimates for 30 separate provisions of the corporation franchise tax on general business corporations. It contains estimates of the tax expenditures for tax years 1995 through 1999 (1999 is the latest year for which Article 9-A tax return data are available). The list of tax expenditures is based on the Tax Law as of January 1, 2003. The estimates are also extrapolated to the 2003 tax year. The tax year refers to both the 2003 calendar year and fiscal years ending in 2004. Table 2 summarizes the tax expenditure estimates. It also includes total Article 9-A corporate franchise tax liability for the 1999 tax year.

## Description of Tax

Article 9-A imposes a corporate franchise tax on general business corporations for the privilege of conducting business in New York. Certain other corporations (public utilities, banks and insurance companies), pay tax under other articles of the Tax Law. The corporation franchise tax has four separate bases: allocated entire net income; allocated business and investment capital; allocated minimum taxable income; and a fixed dollar minimum. Corporations pay the highest tax computed on these bases less applicable credits, but not less than the higher of the minimum tax or fixed dollar amount. The Tax Law imposes an additional tax on allocated subsidiary capital. Because of the similarities between the entire net income and alternative minimum taxable income computations, the tax expenditure provisions and estimates discussed in this section pertain only to the allocated entire net income and allocated business and investment capital bases.

The computation of corporation franchise tax on the allocated entire net income and allocated minimum taxable income bases generally starts with federal taxable income. Taxpayers then make several state-specific modifications to arrive at New York entire net income and alternative minimum taxable income. Both income bases consist of both business and investment income. Taxpayers allocate each type of income to New York by its respective allocation percentage. The sum of these allocated incomes equals the taxable income bases. The following rates are:

- 7.5 percent of allocated entire net income; or
- A tax rate of 2.5 percent of alternative minimum taxable income.

The tax on allocated business and investment capital starts with the taxpayer's total assets. Taxpayers reduce their assets by both long- and short-term liabilities to arrive at total capital. Total capital minus subsidiary capital and investment capital equals business capital. Taxpayers then multiply each type of capital by its respective allocation percentage. Total allocated business and investment capital forms the allocated capital base. (A separate tax applies to allocated subsidiary capital.) A 0.178 percent tax rate applies to allocated capital.

The fixed dollar minimum ranges from \$100 to \$1,500 depending on the gross payroll for the taxable year.

# **CORPORATION FRANCHISE TAX**

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## **Data Sources**

The major sources of data used to compute the tax expenditure estimates include:

- 1999 Article 9-A Corporation Franchise Tax Study File - This file, compiled by the Department of Taxation and Finance, includes all corporations filing under Article 9-A except the fixed minimum tax filers and S corporations. It includes selected data items from the tax returns for each corporation. Simulations of the file generate the base case tax expenditures.
- Congressional Joint Committee on Taxation (JCT) Estimates of Federal Tax Expenditures - Because no data for federal exclusion items which are listed in the Appendix exist at the State level, the estimates of the federal tax expenditure items come from prorations of JCT estimates to New York.

## **Methodology**

The projections of the tax expenditures from 1999 to 2003 use a variety of economic forecast variables. Projections of items under federal exclusions from income in the Appendix were taken from the JCT estimates of federal tax expenditures and prorated to New York. Several of the items were projected using relevant economic data from DRI-WEFA. The remaining items were computed using historical trends.

Tax expenditures whose values are less than \$0.1 million are considered minimal and are designated by an asterisk.

**Table 2**  
**2003 New York State Article 9-A Tax Expenditure Estimates**  
**(1999 Total Corporate Franchise Tax Liability = \$1,586.9 Million)**  
**(Millions of Dollars)**

Tax Law	History					Forecast	Reliability
	1995	1996	1997	1998	1999	2003	Level
<b>New York Modifications to Federal Taxable Income</b>							
1. Exclusion of Interest, Dividends and Capital Gains from Subsidiary Capital	1,427.0	1,786.9	1,141.7	1,423.3	1,560.0	1,297.8	1
2. Deduction of Fifty Percent of Dividends from Non-Subsidiary Corporations	16.7	24.8	19.8	21.9	45.5	37.4	1
3. New Small Business Exemption (Capital Base only)	N/A	N/A	N/A	N/A	N/A	N/A	5
4. Deduction of Receipts from School Bus Operation	N/A	N/A	N/A	N/A	N/A	N/A	5
5. Exclusion of Income for Foreign Airlines	*	*	*	*	*	*	2
<b>Allocation Percentages</b>							
6. Optional Treatment of Cash	3.5	0.0	4.1	3.9	4.9	5.1	1
7. Exclusion of Wages of Executive Officers in Allocation Percen	N/A	N/A	N/A	N/A	N/A	N/A	5
<b>Credits</b>							
8. Investment and Retail Enterprise Tax Credit, Employment Incentive Credit and Rehabilitation Credit for Historic Barns	109.2	136.7	142.1	119.5	101.5	93.2	1
9. Investment Tax Credit for Financial Services Industry	--	--	--	6.3	56.7	75.0	1
10. Eligible Business Facilities Credit (Job Incentive Credit)	0.1	0.1	*	*	*	--	1
11. Special Additional Mortgage Recording Tax Credit	0.2	3.0	0.3	0.7	0.7	0.7	1
12. Empire Zone and QEZE Credits							
a. Empire Zone and Zone Equivalent Areas Tax Credits	4.6	6.2	6.3	36.5	50.9	48.0	1
b. Empire Zones Program Act	--	--	--	--	--	126.3	4
13. Credit for Servicing SONYMA Mortgages	0.0	0.0	0.0	*	*	*	1
14. Agricultural Property Tax Credit	--	--	*	*	*	*	1
15. Credit for Employing Individuals with Disabilities	--	--	--	*	0.2	0.2	1
16. Alternative Fuels Vehicle Credit	--	--	--	*	*	*	1
17. Emerging Technology Companies Credits 1/	--	--	--	--	*	*	1
18. Green Buildings Tax Credit	--	--	--	--	--	3.0	4

<u>Tax Law</u>	<u>History</u>					<u>Forecast</u>	<u>Reliability</u>
	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2003</u>	<u>Level</u>
19. Transportation Access Credit	--	--	--	--	--	*	2
20. Low Income Housing Credit	--	--	--	--	--	3.2	4
21. Automated External Defibrillator Credit	--	--	--	--	--	1.5	2
22. Industrial or Manufacturing Business Credit (IMB) 1/	--	--	--	--	0.4	21.0	1
23. Long-Term Care Insurance Credit	--	--	--	--	--	*	4
<b>Corporate Exemptions</b>							
24. Exempt Companies	N/A	N/A	N/A	N/A	N/A	N/A	5
25. Companies Whose Income "Passes Through" to Shareholders							
a. Real Estate Investment Trusts (REITs)	N/A	N/A	N/A	N/A	N/A	N/A	5
b. Regulated Investment Companies (RICs)	N/A	N/A	N/A	N/A	N/A	N/A	5
26. Businesses Using Fulfillment Services	--	--	N/A	N/A	N/A	1.0	5
27. Corporate Parent with Bank and Insurance Subsidiaries	--	--	--	--	--	5.0	4
28. Corporate Parent with Gas and Electric Subsidiaries	--	--	--	--	--	17.0	4
29. Homeowners Association Exemption from Fixed Dollar Minimum Tax	--	--	--	--	--	*	2
<b>Preferential Tax Rates</b>							
30. Qualifying Small Business Corporations	12.4	12.5	11.5	12.3	13.2	2.6	2

1/ A new tax expenditure item or a revision of the methodology or revisions in the data sources resulting in an estimate which better reflects the tax expenditure value.

\* Less than \$0.1 million.

-- The tax expenditure was not applicable for these years.

N/A No data available

## New York Modifications to Federal Taxable Income

In computing New York entire net income (ENI), Article 9-A of the New York Tax Law allows modifications to federal taxable income.

### 1. Exclusion of Interest, Dividends and Capital Gains from Subsidiary Capital

**Citation:** Section 208(9)(a)(1)

**Effective Date:** Effective for tax years beginning on or after January 1, 1944

**Description:** Taxpayers may subtract dividends, interest, and gains derived from subsidiary corporations from federal taxable income in the computation of New York entire net income. The value of the tax expenditure for the exclusion of income from subsidiary capital is \$1.173 billion in 2002.

**Estimates:** 1999: \$1,560.0 million - 2003: \$1,297.8 million

**Data Source:** Corporation Franchise Tax Study File

**Reliability:** Level 1

### 2. Deduction of Fifty Percent of Dividends from Non-Subsidiary Corporations

**Citation:** Section 208(9)(a)(2)

**Effective Date:** Effective for tax years beginning on or after January 1, 1944

**Description:** A New York corporation may deduct from federal taxable income 50 percent of dividend income received from non-subsidiary corporations (other than DISCs). For tax years beginning on or after January 1, 1989, New York conforms with IRC Section 246(c); stock must be held for 45 days or more to qualify for the deduction.

**Estimates:** 1999: \$45.5 million - 2003: \$37.4 million

**Data Source:** Corporation Franchise Tax Study File

**Reliability:** Level 1

### 3. New Small Business Exemption (Capital Base only)

**Citation:** Section 210(1-c)

**Effective Date:** Effective for tax years beginning on or after January 1, 1981

**Description:** The law exempts new small businesses from the alternative tax based on allocated business and investment capital. This exemption applies to the first two years of operation of a business which:

- operates as a small business corporation as defined under the Internal Revenue Code;
- has at least 90 percent of its assets and 80 percent of its employees located and employed within New York State;
- is not a subsidiary of a taxable New York corporation; and
- is not a corporation which is substantially similar in operation and in ownership to a business entity (or entities) previously taxable under Article 9-A.

**Estimate:** No data available

**Reliability:** Level 5

### 4. Deduction of Receipts from School Bus Operation

**Citation:** Section 208(9)(a)(4)

**Effective Date:** Effective for tax years beginning on or after January 1, 1962

## CORPORATION FRANCHISE TAX

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**Description:** A taxpayer may exclude income and deductions with respect to amounts received from school districts and nonprofit religious, charitable or educational organizations for the operation of school buses in determining a corporation's taxable entire net income.

**Estimate:** No data available

**Reliability:** Level 5

### 5. Exclusion of Income for Foreign Airlines

**Citation:** Section 208(9)(C-1)

**Effective Date:** The law applies income provisions retroactive to January 1, 1989. The allocation of foreign airlines' business capital became effective for taxable years beginning on or after January 1, 1994.

**Description:** Foreign airlines may exclude from entire net income all income from international operations of aircraft effectively connected to the United States, foreign passive income and income earned overseas from overseas operations of aircraft. Certain foreign airlines may exclude from the capital based tax business and investment assets connected with such exempt income. These tax benefits apply provided the "home country" provides similar treatment to United States airlines.

**Estimates:** 1999: Minimal - 2003: Minimal

**Data Source:** Research File

**Reliability:** Level 2

### Allocation Percentages

The law subjects business corporations to tax only on the portion of their income and capital attributable to New York activities. Consequently, formulas have been devised (called allocation percentages) for the purpose of determining that portion of a corporation's business income and capital, investment income and capital, and subsidiary capital taxable in New York. The tax provisions listed in this section are the consequence of preferences given through the calculation of the allocation percentages as described in New York Tax Law, Article 9-A.

### 6. Optional Treatment of Cash

**Citation:** Section 208(7)

**Effective Date:** Effective for tax years beginning on or after January 1, 1944

**Description:** Taxpayers with investment capital may elect to report cash as entirely investment or business capital. Taxpayers reporting cash as investment capital allocate using the generally lower investment allocation percentage.

**Estimates:** 1999: \$4.9 million - 2003: \$5.1 million

**Data Source:** Corporation Franchise Tax Study File

**Reliability:** Level 1

### 7. Exclusion of Wages of Executive Officers in Allocation Percentage

**Citation:** Section 210(3)(a)(3)

**Effective Date:** Effective for tax years beginning on or after January 1, 1944

**Description:** The payroll factor portion of a corporation's business allocation percentage does not include wages, salaries and other personal service compensation paid to general

## CORPORATION FRANCHISE TAX

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executive officers. As a consequence of this exclusion, a taxpayer's proportion of total income or capital allocated to New York for State tax purposes could be reduced or increased, depending on the particular corporate circumstances.

**Estimate:** No data available

**Reliability:** Level 5

### Credits

Credits include amounts, stipulated by Article 9-A, Section 210 of the New York State Tax Law, which the taxpayer may subtract in calculating New York tax liability.

### Description of Credits

The following table presents data for Article 9-A tax credits and their various components. Where applicable, the summary table presents total credit amounts by the following components of each credit:

Credit Earned -	The amount of credit generated in the current tax year.
Credit Claimed -	The amount of credit which the taxpayer could use, including carryforwards from prior years.
Credit Used -	The amount of credit the taxpayer actually used to reduce tax liability.
Credit Carried Forward -	Any unused amount of credit allowed to offset tax liability in future years.

The credit used is the tax expenditure for the year. For additional detail on credits, see the Office of Tax Policy Analysis' publication "Analysis of Article 9-A General Business Corporation Franchise Tax Credits for 1999."

# CORPORATION FRANCHISE TAX

## Article 9-A Tax Credits in 1999 (\$ millions)

<u>Component</u>	<u>Total Credit Earned</u>	<u>Unused Credit from the Prior Year</u>	<u>Total Credit Available</u>	<u>Recaptured Credit</u>	<u>Credit Claimed</u>	<u>Credit Used</u>	<u>Refundable Credit</u>	<u>Credit Carried Forward</u>
Investment Tax Credit	176.2	1,492.7	1,668.8	9.8	1,659.0	101.5	12.0	1,545.5
Investment Tax Credit for Financial Services	69.5	16.9	86.3	0.2	86.1	56.7	0.2	29.3
Special Additional Mortgage Recording Credit	2.9	2.9	5.7	0.0	5.7	0.7	2.9	2.1
Job Incentive Credit	--	--	--	--	--	0.0	--	--
EZ Credits	75.9	108.9	184.9	1.5	183.4	51.0	4.2	128.3
Alternative Minimum Tax Credit	7.9	52.0	52.0	0.0	52.0	10.1	--	41.9
Mortgage Servicing Tax Credit	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Agricultural Property Tax Credit	0.5	0.0	0.5	0.0	0.5	0.0	0.4	0.1
Credit for Employing Individuals with Disabilities	0.2	0.0	0.2	0.0	0.2	0.2	0.0	0.1
Alternative Fuels Vehicle Credit*	0.5	0.6	1.2	0.0	1.2	0.1	0.0	0.9
QETC Credit	0.4	0.0	0.4	0.0	0.4	0.0	0.1	0.3
IMB Credit**	0.4	--	0.4	--	0.4	0.4	0.0	--
Total 1/	\$334.4	\$1,674.0	\$2,000.4	\$11.5	\$1,988.9	\$220.7	\$19.8	\$1,748.5

\* The provisions of this credit allow for the transfer of excess credit to affiliates of the taxpayer. In 1999, corporations transferred \$200,000 to affiliates.

\*\* The provisions of this credit do not allow a carryforward of excess credit.

1/ Total row reflects the vertical summation of the individual credit components. Horizontal calculations within the column are not valid.

## 8. Investment Tax Credit, Retail Enterprise Tax Credit, Additional Investment Tax Credit, Employment Incentive Credit, and Rehabilitation Credit for Historic Barns

### a. Investment Tax Credit (ITC)

**Citation:** Section 210(12)

**Effective Date:** Effective for tax years beginning on or after January 1, 1969. The sections of this credit covering research and development (R&D) property and pollution control facilities represent a consolidation of previously separate tax benefits and are effective for tax years beginning on or after January 1, 1987.

**Description:** The law allows a credit, based on the cost or other basis for federal tax purposes, for depreciable tangible personal property acquired, constructed, reconstructed or erected after December 31, 1968; having a useful life of four years or more; located within the State of New York; and used primarily for the production of goods by a variety of processes. The claiming of a depreciation or expense deduction for such property under certain other tax provisions, or the leasing of the



## CORPORATION FRANCHISE TAX

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property to another individual or corporation disqualifies the taxpayer from exercising a claim under this provision. A taxpayer may carry forward any unused credit and apply it against the tax for subsequent years or, in the case of a qualified new business, claim it as a refund.

The law allows a credit for expenditures paid or incurred during the tax year for the construction, reconstruction, erection or improvement of pollution control, waste treatment and acid rain control facilities. To qualify for the credit, facilities must be located within the State, used by the corporation as part of its regular business activities and certified by the State Commissioner of Environmental Conservation or a representative. The law allows a credit with respect to tangible property, including buildings and structural components of buildings, which: has been constructed, reconstructed, acquired or erected after June 30, 1982; is depreciable under federal tax law; has a useful life of four years or more; is located within New York State; and used for the purpose of research and development in the laboratory or experimental sense. This credit is not allowed with respect to property which has been leased to another individual or corporation, or which has been the basis of a claim for an elective expense deduction, a credit for eligible business facilities or a regular investment tax credit.

For credits generated on or after 1987, the allowable carryforward of the investment tax credit is 15 years. The cut-off of pre-1987 investment tax credit carryforwards was 2002. Companies who have lost ITC credits due to mergers or acquisitions can file amended returns beginning on April 1, 2001. Credits can be claimed retroactively to tax years beginning on or after January 1, 1997.

The taxpayer may take ITC credit on R&D property at an optional rate of 9 percent of the cost or other basis for federal tax purposes of qualified property. For taxable years beginning after 1990, the rate equals 5 percent of the first \$350 million of the investment credit base. A 4 percent rate applies to amounts above \$350 million. Taxpayers earned \$176.2 million of ITC in 1999.

**NOTE:** ITC recapture refers to the difference between credit taken and credit allowed for actual use when qualified ITC property is disposed of or ceases to be in qualified use prior to the end of its useful life. Any ITC recapture may be added to the tax otherwise due in the year of disposition or disqualification. An ITC refund is available to new businesses which are eligible to claim the ITC. They may elect to receive a refund of their unused ITC instead of carrying the credit forward.

**b. Retail Enterprise Tax Credit**

**Citation:** Section 210(12)(k)

**Effective Date:** Effective for investments made on or after June 1, 1981

**Description:** A retail enterprise, not eligible for the investment tax credit, may receive a credit based on expenditures incurred or paid, with respect to a qualified rehabilitated building used in the corporation's retail sales activities. The amount of the credit is the applicable investment tax credit percentages for the amount of qualified rehabilitation expenditures. The qualified rehabilitated building must be

## CORPORATION FRANCHISE TAX

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located in New York State.

**c. Additional Investment Tax Credit**

**Citation:** Section 210(12-A)

**Effective Date:** Effective for tax years beginning on or after January 1, 1976 and prior to January 1, 1987

**Description:** A corporation, which has been allowed an investment tax credit with respect to property, the acquisition, construction, reconstruction or erection of which commenced after January 1, 1976 and before January 1, 1987, may receive an additional 50 percent of the investment tax credit for each of the three years following the year in which the original credit was allowed provided:

- The taxpayer's average number of employees in New York (except general executive officers) in the subsequent year equals at least 101 percent of the average number of employees in New York (except general executive officers) during the year immediately preceding the year in which the original credit was allowed.
- For tax years 1982 and after, if a taxpayer is not subject to tax and does not have a tax year immediately preceding the tax year in which the investment tax credit is allowed, the additional investment tax credit may be claimed so long as the average number of employees is at least 101 percent of the average number during the tax year immediately preceding the year in which the original credit was allowed.

The additional investment tax credit may not reduce the tax liability to an amount less than the greater of the minimum taxable base or the fixed dollar minimum.

The amount of the credit not deducted may be carried over to the following year or years and may be deducted from the taxpayer's tax. The additional investment tax credit may be carried forward to tax years beginning before January 1, 2002.

**d. Employment Incentive Credit (EIC)**

**Citation:** Section 210(12-D)

**Effective Date:** Effective for tax years beginning on or after January 1, 1987

**Description:** Taxpayers who increase their number of employees may be eligible for the employment incentive tax credit with respect to property acquired or constructed on or after January 1, 1987. This credit applies to property that is eligible for the investment tax credit.

The taxpayer is allowed a credit for each of the two years next succeeding the taxable year for which the investment tax credit is allowed. The credit may be carried forward 15 years. Where an investment tax credit was allowed for a taxable year beginning after 1990, the amount of the credit is as follows:

- 1.5 percent of the investment tax credit base if employment is at least 101 percent but less than 102 percent of the employment base year,
- or
- 2.0 percent of the investment tax credit base if employment is at least 102 percent but less than 103 percent of the employment base year,

or

2.5 percent of the investment tax credit base if employment is at least 103 percent of the employment base year.

Taxpayers earned \$29.9 million in EIC in 1999.

**e. Rehabilitation Credit for Historic Barns**

**Citation:** Section 210(12)(L)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1997

**Description:** Taxpayers may claim a corporate franchise tax credit for the rehabilitation of historic barns in New York State. The credit equals 25 percent of qualified rehabilitation expenditures. The definition of a qualified rehabilitated barn has the same meaning as a “qualified rehabilitated building” for purposes of the federal rehabilitation credit under Section 47 of the Internal Revenue Code. In accordance with federal law for rehabilitation of historic buildings, the barn must be first placed in service before 1936 and would only qualify for the credit based on substantial rehabilitation. Generally, a building will have been considered substantially rehabilitated only if the expenditures exceed the greater of the adjusted basis of the barn or \$5,000. A taxpayer may not claim both the regular investment tax credit on manufacturing property and the investment tax credit for rehabilitation of historic barns on the same property.

**Estimates:** 1999: \$101.5 million - 2003: \$93.2 million; Information on the ITC and EIC credits used in any year is not separately available

**Data Source:** Corporation Franchise Tax Study File

**Reliability:** Level 1

**9. Investment Tax Credit for Financial Services Industry**

**Citation:** Section 210(12)

**Effective Date:** Effective for property placed in service on or after October 1, 1998 and before October 1, 2008

**Description:** An investment credit is allowed for qualified property used in the financial services industry. The rate of credit, maximum amounts, carryforward provisions, and recapture rules are generally the same as for the regular investment credit.

Qualified property includes property principally used in the ordinary course of the taxpayer’s trade or business:

- as a broker or dealer in connection with the purchase or sale of stocks, bonds, or other securities (as defined in Internal Revenue Code (IRC) Section 475(c)(2)), or of commodities (as defined in IRC Section 475(e)), or in providing lending, loan arrangement or loan origination services to customers in connection with the purchase or sale of securities (as defined in IRC Section 475(c)(2));
- of providing investment advisory services for a regulated investment company (as described in IRC Section 851).

In addition, qualified property includes property principally used in the ordinary course of the taxpayer’s business as an exchange registered as a national securities exchange (such as the New York stock exchange) or a board of trade defined under the New York Not-For-Profit Corporation Law, or an entity wholly owned by one or more national security exchanges or boards of trade that provides automation or technical services to the national

## **CORPORATION FRANCHISE TAX**

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security exchanges or boards of trade.

Property purchased by a taxpayer affiliated with a regulated broker, dealer, or national securities exchange or board of trade, or property leased by a taxpayer to an affiliated regulated broker, dealer, national securities exchange or board of trade is eligible for this credit if the property is used by the affiliate in an activity described above.

The credit is not allowed unless all or substantially all of the taxpayer's or affiliate's employees performing the administrative and support functions resulting from or relating to the qualifying uses of the property are located in New York State.

**Estimates:** 1999: \$56.7 million - 2003: \$75.0 million

**Data Source:** Corporation Franchise Tax Study File

**Reliability:** Level 1

### **10. Eligible Business Facilities Credit (Job Incentive Credit)**

**Citation:** Section 210(11), Regulation 5.1-1

**Effective Date:** Effective for tax years beginning on or after January 1, 1968

**Description:** Owners or operators of a business establishment certified for eligibility by the New York State Job Incentive Board (prior to April 1, 1983) or the State Tax Commission (subsequent to April 1, 1983) may claim a credit. An eligible business facility has been defined as one which is located in an eligible low-income area and creates or retains at least five jobs. The certificate of eligibility may be renewed by a business for up to 10 years. After March 31, 1983, no new projects were approved for certification. The Commissioner of Taxation and Finance is empowered to issue certificates of eligibility for tax credits or renewal or extension thereof on or after April 1, 1983.

**Termination Date:** Credit expires for tax years beginning after January 1, 2000

**Estimates:** 1999: Minimal - 2003: Not Applicable

**Data Source:** Corporation Franchise Tax Study File

**Reliability:** Level 1

### **11. Special Additional Mortgage Recording Tax Credit**

**Citation:** Section 210(17), (21)

**Effective Date:** Effective for tax years beginning after December 31, 1978

**Description:** A corporation may claim a credit equal in amount to the special additional recording tax paid on mortgages recorded on or after January 1, 1979, on property located within New York. A taxpayer may carry forward any unused mortgage recording tax credit for use in subsequent years.

Effective for special additional mortgage recording tax paid in tax years beginning after January 1, 1994, the S corporation, not the shareholder, may elect to treat the unused portion of the credit as either a refund or carryforward. S corporations may also elect to take a refund, regardless of whether the credit is carried from a New York C year or a New York S year.

Certain mortgages on property in the metropolitan commuter transportation district, recorded on or after May 1, 1987, are ineligible for the credit. The same restriction applies to mortgages on real property in Erie County.

**Estimates:** 1999: \$0.7 million - 2003: \$0.7 million

**Data Source:** Corporation Franchise Tax Study File

**Reliability:** Level 1

## 12. Empire Zone and Qualified Empire Zone Enterprise Credits

### a. Empire Zone and Zone Equivalent Areas Tax Credits

**Citation:** Section 210(12-B), (12-C), (19), (20)

**Effective Date:** Effective for tax years beginning on or after January 1, 1986. (However, the methods for computing the wage tax credit and the capital corporation credit were amended effective for tax years beginning on or after January 1, 1994.) Amendments providing that taxpayers located in Zone Equivalent Areas (ZEAs) can take a modified Empire Zone (EZ) wage tax credit were effective January 1, 1994.

**Description:** Taxpayers may qualify for an enhanced investment tax credit (EZ-ITC) of 8 percent for personal income taxpayers or 10 percent for corporations, applied towards the cost or other federal basis of tangible personal property, including buildings and structural components of buildings located within a designated EZ. The provisions of the EZ-ITC are generally the same as those for the regular ITC.

Taxpayers may also claim an EZ employment incentive credit (EZ-EIC) similar to the regular EIC, based upon EZ-ITC claimed and employment increased within an EZ. The amount of the EZ-EIC allowed is 30 percent of the EZ-ITC for each of the three years following the year for which the original EZ-ITC was allowed. However, the credit is allowed only for those years during which your average number of employees (except general executive officers) in the EZ, is at least 101 percent of the average number of employees (except general executive officers) in the EZ, during the tax year immediately preceding the tax year for which the original EZ-ITC was allowed.

A taxpayer may claim a wage tax credit for doing business and creating jobs in Empire Zones (EZ-WTC). The wage tax credit has two components. This credit equals the product of the average number of newly hired targeted EZ employees receiving EZ wages multiplied by \$3,000. The corresponding credit amount for other employees equals the product of the average number of newly hired nontargeted EZ employees receiving EZ wages multiplied by \$1,500.

Taxpayers employing individuals in areas that met EZs eligibility criteria but were not so designated - Zone Equivalent Areas (ZEAs) - may take a credit for ZEA wages paid for full-time employment in jobs created in the ZEA. Taxpayers must take the credit during the 10 year period following designation as a ZEA. The credit equals \$3,000 multiplied by the average number of targeted employees and \$1,500 multiplied by the average number of nontargeted employees. The total wage tax credit in any tax year cannot exceed 50 percent of tax due (before credits). The EZ-WTC and the ZEA-WTC are available to the taxpayer for five years.

Finally, taxpayers may qualify for a credit for investments in zone capital corporations, direct equity investments in certified zone businesses and contributions to community development projects (EZ capital corporation credit). The credit equals 25 percent of the sum of each type of investment. The maximum credit per taxpayer is \$100,000 for each investment type for an aggregate limit of \$300,000 and cannot

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exceed one half of the taxpayer's pre-credit tax.

Taxpayers may carry unused credits forward indefinitely. "New business" taxpayers may elect to have 50 percent of their unused ZEA-WTC or EZ-WTC or their EZ-ITC for the tax year refunded, in lieu of carryover. The EZ-EIC may be taken against the alternative minimum tax for tax years beginning on or after January 1, 2001.

**Estimates:** 1999: \$50.9 million - 2003: \$48.0 million

**Data Source:** Corporation Franchise Tax Study File

**Reliability:** Level 1

### b. **Qualified Empire Zone Enterprise (QEZE) Credits**

**Citation:** Section 210(27), (28)

**Effective Date:** Effective for tax years beginning on or after January 1, 2001

**Description:** The Empire Zones Program Act created a tax credit for real property taxes and a tax reduction credit for Qualified Empire Zone Enterprises (QEZEs). QEZEs include business enterprises certified as EZ businesses prior to July 1, 2005, that meet an annual employment test. Allowances of credit are for corporate taxpayers such as businesses under Article 9-A, banks, and insurance companies, as well as sole proprietorships and partnerships under Article 22, that are qualified EZ enterprises. The QEZE tax credit for real property taxes and the tax reduction credit may be claimed for 15 years. The credit for real property taxes is refundable. The tax reduction credit can be applied against the alternative minimum tax and the fixed dollar minimum, potentially reducing a taxpayer's liability to zero.

**Estimates:** 1999: Not Applicable - 2003: \$126.3 million

**Data Source:** Estimate in part based on data provided by Empire State Development and the Office of Real Property Services

**Reliability:** Level 4

### 13. **Credit for Servicing SONYMA Mortgages**

**Citation:** Section 210(21-a)

**Effective Date:** Effective for tax years beginning on or after January 1, 1995

**Description:** Mortgage bankers, registered under Article 12-D of the Banking Law and that meet certain regulatory requirements established by the State of New York Mortgage Agency (SONYMA), may claim a credit against their franchise tax. The credit equals 2.93 percent of the total principal and interest collected by the bank for each SONYMA mortgage secured by a one-to-four family residence. In addition, mortgage bankers may receive an amount equal to the interest collected during their taxable year on each SONYMA mortgage, secured by a five or more family residence, multiplied by a fraction. The fraction depends on the types of properties which secure the serviced mortgage loans.

The credit may be applied against the mortgage banker's liability to reduce their liability to zero. There is no carryforward of any excess credit.

**Estimates:** 1999: Minimal - 2003: Minimal

**Data Source:** Corporation Franchise Tax Study File

**Reliability:** Level 1

### 14. **Agricultural Property Tax Credit**

**Citation:** Section 210(22)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1997

**Description:** Eligible farmers may claim a real property tax credit against the corporate franchise tax. The credit is available to an eligible farmer defined as a taxpayer whose gross income from farming is at least 2/3 of total gross income. Eligible farmers also include those who paid school district property taxes on qualified agricultural property pursuant to a land contract. The credit equals the total school property taxes paid on qualified agricultural property in the State up to the acreage limitation, and 50 percent of the school taxes paid on acres in excess of the limitation. The acreage limitation equals 100 acres in 1997 and 250 acres after 1997. The credit is phased out for taxpayers with New York adjusted gross income (entire net income) in excess of \$100,000. Recapture provisions provide for an add back of the credit if the taxpayer converts the property to a nonqualified use in the 2 years subsequent to the first year of the credit.

**Estimates:** 1999: Minimal - 2003: Minimal

**Data Source:** Corporation Franchise Tax Study File

**Reliability:** Level 1

### 15. **Credit for Employing Individuals with Disabilities**

**Citation:** Section 210(23)

**Effective Date:** Effective for tax years beginning on or after January 1, 1998, with respect to employees who begin work on or after January 1, 1997

**Description:** Employers who employ individuals with disabilities may claim a credit for a portion of wages paid to such individuals. The credit equals 35 percent of the first \$6,000 of first year wages paid to the disabled employee (a maximum of \$2,100 per employee). However, if the first year's wages qualify for the federal work opportunity tax credit, the New York credit will apply to second year wages. Unused credits are not refundable but they may be carried forward indefinitely.

To become eligible for the State credit, the disabled employee must work for the employer on a full time basis for at least 180 days or 400 hours, and must be certified as disabled by the State Education Department. Visually handicapped individuals may receive certification from the appropriate agency responsible for vocational rehabilitation of the blind and visually impaired.

**Estimates:** 1999: \$0.2 million - 2003: \$0.2 million

**Data Source:** Corporation Franchise Tax Study File

**Reliability:** Level 1

### 16. **Alternative Fuels Vehicle Credit**

**Citation:** Section 210(24)

**Effective Date:** Effective for property placed in service in taxable years beginning on or after January 1, 1998. Provisions relating to expanding the availability of existing alternative fuels tax credits for electric vehicles, clean fuel vehicle property, and qualified hybrid vehicles apply to taxable years beginning on or after January 1, 2000. The credit sunsets on December 31, 2003.

**Description:** A tax credit is allowed for electric vehicles, clean fuel vehicles using natural

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gas, methanol and other alternative fuels, qualified hybrid vehicles and clean fuel refueling facility property. For corporate franchise taxpayers, the credits may be transferred to affiliates. The tax credits equal: 50 percent of the incremental cost of new electric vehicles registered in New York (capped at \$5,000 per vehicle); 60 percent of the cost of new clean-fuel components for alternative fuel vehicles registered in New York (capped at \$5,000 per vehicle with a gross vehicle weight rating of 14,000 pounds or less, and \$10,000 for those over 14,000 pounds); \$2,000 for qualified hybrid vehicles; and 50 percent of the cost of new clean-fuel refueling property used in a trade or business. For tax years beginning on or after January 1, 2000, the credits apply to electric vehicles and clean fuel vehicle property sold or leased to governmental agencies. The vehicles must be manufactured in New York State. In addition, the manufacturing and processing activities relating to the vehicles must create at least 25 full-time jobs in New York.

**Estimates:** 1999: Minimal - 2003: Minimal

**Data Source:** Corporation Franchise Tax Study File

**Reliability:** Level 1

### 17. Emerging Technology Companies Credits

**Citation:** Section 210 12(E)(F)

**Effective Date:** Effective for tax years beginning on or after January 1, 1999

**Description:** The New York State Emerging Industry Jobs Act provides corporate franchise tax credits for qualified emerging technology companies that create new jobs, or for certain corporate taxpayers that invest in emerging technology companies located in New York State. The credits include an employment tax credit of \$1,000 for each individual employed over a base year level and a capital tax credit that varies in amount depending on how long the investment is held.

**Estimates:** 1999: Minimal - 2003: Minimal

**Data Source:** Corporation Franchise Tax Study File

**Reliability:** Level 1

### 18. Green Buildings Tax Credit

**Citation:** Section 210(31)

**Effective Date:** Effective for tax years beginning on or after January 1, 2001

**Description:** The credits would provide incentives for the purchase of recyclable building materials and other environmentally preferable tangible personal property. It also contains tax credits for the purchase of fuel cells, photovoltaic modules, and environmentally sensitive non-ozone depleting refrigerants. The credits apply to costs incurred on or after June 1, 1999, for property placed in service or that has received a final certificate of occupancy in tax years beginning on or after January 1, 2001.

**Estimates:** 1999: Not Applicable - 2003: \$3.0 million

**Data Source:** Statutory limitation

**Reliability:** Level 4

### 19. Transportation Access Credit

**Citation:** Section 210(32)

**Effective Date:** Effective for tax years beginning on or after January 1, 2000



**Description:** The taxpayer must make a certified contribution of at least \$10 million to a qualified transportation improvement project in a prior tax year. The projects must enhance a qualified business facility, and may include the construction or improvement of transportation infrastructure and related facilities and systems, including bridges, ramps, highways, and mass transit facilities. In addition, the taxpayer must create, by the third full tax year after the tax year during which the contribution was made, more than 1,000 jobs in connection with the qualified business facility. The credit is equal to 6 percent of a taxpayer's payroll at the facility in excess of the average base year payroll. After the third full tax year after the contribution is made the employment increase test is not met, then there is a recapture of the credit. The new law applies to contributions made on or after January 1, 2000. In addition to taxpayers under the corporate franchise tax, taxpayers under the personal income tax, the utilities tax, the bank tax and the insurance tax are also eligible for this credit.

**Estimates:** 1999: Not Applicable - 2003: Minimal

**Data Source:** Research File

**Reliability:** Level 2

### 20. Low Income Housing Credit

**Citation:** Section 210(30)

**Effective Date:** Effective for tax years beginning on or after January 1, 2000, with respect to commitments for construction of low-income housing agreed upon on or after May 15, 2000.

**Description:** The "New York State Low Income Housing Tax Credit Program," based on the existing federal program, 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, or \$2 million each year. Legislation passed in 2002 doubled the yearly limit to \$4 million. The credit program applies to corporate franchise taxpayers, personal income taxpayers, banks and insurance companies. The provision takes effect immediately.

**Estimates:** 1999: Not Applicable - 2003: \$3.2 million

**Data Source:** Statutory limitation

**Reliability:** Level 4

### 21. Automated External Defibrillator Credit

**Citation:** Section 210(25)

**Effective Date:** Effective for tax years beginning on or after January 1, 2001

**Description:** Credit for purchase of automated external defibrillator. The credit will be the cost to the taxpayer during the taxable year, not exceeding \$500 for each purchase.

**Estimates:** 1999: Not Applicable - 2003: \$1.5 million

**Data Source:** Research File

**Reliability:** Level 2

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### 22. Industrial or Manufacturing Business Credit (IMB)

**Citation:** Sections 606(t-1) and 210(26-a)

**Effective Date:** Effective for tax years ending after January 1, 2000

**Description:** Industrial or manufacturing businesses (IMBs) or sole proprietors of IMBs or partners in an IMB will be allowed a credit to be taken against taxes due under Article 9-A or Article 22. The credit is the sum, or pro-rata share of such, of taxes paid or passed through to the IMB, during the taxable year, due under the provisions of Tax Law Sections 186-a, 186-c, 189 and 189-a of Article 9 for gas, electricity, steam, water or refrigeration; or the services of providing such, where they are used or consumed in New York. Energy providers will provide taxpayers, on request, information on the amounts due and paid for these taxes during the taxpayer's liability year.

Businesses qualifying for the IMB include any that meet the definition of such businesses under the ITC. That is, any business which during the taxable year is principally engaged in: manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, commercial fishing or research and development; or is an industrial waste treatment facility or an air pollution control facility; or is principally engaged in a combination of such activities.

**Estimates:** 1999: \$0.4 million - 2003: \$21.0 million

**Data Source:** Corporation Franchise Tax Study File

**Reliability:** Level 1

### 23. Long-Term Care Insurance Credit

**Citation:** Section 210(25-a)

**Effective Date:** Effective for tax years beginning on or after January 1, 2002

**Description:** A taxpayer may take a credit equal to 10 percent of the cost of purchasing long-term care insurance, as defined in the Insurance Law. Any unused credit may be carried forward.

**Estimates:** 1999: Not Applicable - 2003: Minimal

**Data Source:** New York State Department of Insurance

**Reliability:** Level 4

## Corporate Exemptions

Certain entities are exempt from the Article 9-A corporate franchise tax.

### 24. Exempt Companies

**Citation:** Sections 3 and 209(4)(5)(6)(7) and (9)

**Effective Date:** Certain companies have been exempt from tax since Article 9-A was enacted in 1944. Other exemptions have been added over the years as new entities have been granted an exemption legislatively or in accordance with federal exemption language. The approximate effective date of each of the following types of companies or organizations are noted in parenthesis after each item.

**Description:** The following companies or organizations are exempt from taxation under Article 9-A:

- Limited Profit Housing Companies (6/7/74)
- Limited Dividend Housing Companies (1/1/74)

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- Trust Companies organized under a law of New York, all of the stock of which is owned by not less than 20 savings banks organized under a law of New York (3/31/44)
- Urban Development Corporation and its subsidiaries (1/1/69)
- Domestic corporations exclusively engaged in the operation of one or more vessels in foreign commerce (3/31/44)
- Domestic International Sales Corporations (DISCs), to the extent a DISC is required to have its income imputed to its shareholders (1/1/71)
- Passive Trusts (3/31/44)
- Certain corporations organized other than for profit and those corporations which are generally exempt from federal tax by the Internal Revenue Code (3/31/44)
- Corporations exempt pursuant to federal Public Law 86-272 wherein a foreign corporation has limited its activities in New York to the mere solicitation of orders by its employees or representative (9/14/59)
- Real Estate Mortgage Investment Conduits (REMICs) (1/1/87)
- Industrial Development Agencies (1/1/69)
- Housing Development Fund Companies (7/24/86)
- Corporations exempt from tax under IRC Sections 501(c)(2) and (25) (1/1/87)
- Beginning January 1, 1995, certain cooperative heating and cooling service companies that are organized without capital stock and that are exempt from tax pursuant to IRC Section 501(c)12. Such corporations pay an annual fee of \$10 to the Commissioner of Taxation and Finance in lieu of all corporation franchise taxes.

**Estimate:** No data available

**Reliability:** Level 5

### 25. Companies Whose Income “Passes Through” to Shareholders

**Citation:** Sections 209(5), (7), (8); 210(1)

**Effective Date:** Effective for tax years beginning after December 31, 1972 (Section 209(5)); after December 31, 1980 (Section 209(7)); after December 31, 1982 (Section 209(8)); after December 31, 1989 (Section 210(1))

Article 9-A provides special treatment for the following companies:

#### a. Real Estate Investment Trusts (REITs)

**Citation:** Section 209(5)

**Effective Date:** Effective for tax years beginning after December 31, 1972

**Description:** To the extent that the REIT passes through its income to the shareholders, the REIT is exempt from the franchise tax. The shareholders have their dividend or distributed gain taxed at their own rate of tax, usually under the personal income tax. Any undistributed income by the REIT would be subject to the franchise tax.

**Estimate:** No data available

**Reliability:** Level 5

#### b. Regulated Investment Companies (RICs)

**Citation:** Section 209(7)

**Effective Date:** Effective for tax years beginning after December 31, 1980

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**Description:** To the extent that the RIC passes through its income to the shareholders, the RIC is exempt from the franchise tax. The shareholders have their dividend or distributed gain taxed at their own rate of tax, usually under the personal income tax. Any undistributed income by the RIC would be subject to the franchise tax.

**Estimate:** No data available

**Reliability:** Level 5

### 26. Businesses Using Fulfillment Services

**Citation:** Sections 208(19) and 209(2)

**Effective Date:** September 1, 1997

**Description:** A corporation shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in this State for the purposes of the corporation franchise tax by reason of the use of fulfillment services of an entity other than an affiliated entity and the ownership of property stored on the premises of such entity in conjunction with such services. Fulfillment services are defined as the: acceptance of orders; responses to consumers inquiries; billing collection activities; and shipment of orders from an inventory of products regularly offered for sale by the purchaser of such services.

**Estimates:** 1999: No data available - 2003: \$1.0 million

**Reliability:** Level 5

### 27. Corporate Parent with Bank and Insurance Subsidiaries

**Citation:** Section 210(2)

**Effective Date:** Effective for tax years beginning after December 31, 1999

**Description:** Allows the corporate parent to exclude from its subsidiary capital tax base, capital attributable to subsidiaries taxable under Article 32 (bank) or 33 (insurance) taxes.

**Estimates:** 1999: Not Applicable - 2003: \$5.0 million

**Data Source:** Industry representatives

**Reliability:** Level 4

### 28. Corporate Parent with Gas and Electric Subsidiaries

**Citation:** Section 210(2)

**Effective Date:** The 30 percent exclusion is effective for tax years beginning on or after January 1, 2000. The 100 percent exclusion applies to tax years beginning on or after January 1, 2001

**Description:** Allows the corporate parent to exclude from its subsidiary capital tax base, capital attributable to gas and electric subsidiaries taxable under Section 186 of the Tax Law. The provision is phased in by allowing a 30 percent exclusion of this subsidiary capital for tax years beginning on or after January 1, 2000 and a 100 percent exclusion for tax years beginning on or after January 1, 2001.

**Estimates:** 1999: Not Applicable - 2003: \$17.0 million

**Data Source:** Public Service Commission Financial Statistics of Major Investor-Owned Utilities Report Data

**Reliability:** Level 4

**29. Homeowners Association Exemption from Fixed Dollar Minimum Tax**

**Citation:** Section 210(1)

**Effective Date:** Effective for tax years beginning on or after January 1, 2000

**Description:** Article 9-A is amended to exempt qualified homeowners association, which have no homeowner's taxable income, from payment of the fixed dollar minimum tax. The associations would still be subject of the other taxable bases under Article 9-A, if applicable. This provision applies to tax years beginning on or after January 1, 2000.

**Estimates:** 1999: Not Applicable - 2003: Minimal

**Data Source:** Research File

**Reliability:** Level 2

### Preferential Tax Rates

**30. Qualifying Small Business Corporations**

**Citation:** Section 210(1)(a)

**Effective Date:** Effective for taxable years beginning after December 31, 1986

**Description:** Special tax rates apply to corporations which qualify as small business taxpayers. The law defines a small business taxpayer as a taxpayer which meets the federal definition of small business (IRC Section 1244(c)(3)) and which has worldwide entire net income (ENI) of not more than \$290,000 for the taxable year. For tax years beginning before July 1, 1999, small business taxpayers with ENI of less than \$200,000 use a tax rate of 8 percent rather than the 9 percent generally imposed under Article 9-A. The 8 percent rate is recaptured on ENI between \$200,000 and \$290,000. For tax years beginning on or after July 1, 1999, small business taxpayers with ENI of less than \$200,000 pay a 7.5 percent rate. The 7.5 percent rate is recaptured between \$200,000 and \$290,000.

**Estimates:** 1999: \$13.2 million - 2003: \$2.6 million

**Data Source:** Corporation Franchise Tax Study File

**Reliability:** Level 2



## SALES AND USE TAX

This section of the report provides tax expenditure descriptions and estimates for 130 provisions of the sales and use tax law. The list of expenditures is based on the Tax Law in effect as of January 1, 2003. The tax expenditure estimates only pertain to the State portion of the tax and do not include any estimates of the revenue foregone by local governments levying sales and use taxes.

The report presents historical estimates for calendar years 1996 through 2000. Table 3 lists the tax expenditures and provides historical year and projected 2003 estimates of their “cost.” It also lists the years for which data are available. For recently added tax expenditures, the report displays historical estimates only for years the item existed as a tax expenditure. The effective dates recorded in the report refer to the date the applicable provision took effect.

### **Description of Tax**

The New York State sales and use tax was enacted in 1965 and took effect August 1, 1965. This tax applies primarily to sales of tangible personal property in New York State, not for subsequent resale. The sales and use tax also applies to a variety of services, notably, services to real or personal property, telephone calls and commercial energy use. Certain admissions, hotel rooms and restaurant meals are also taxed. Generally the tax base includes tangible personal property unless the law provides a specific exclusion or exemption and does not include services unless the law specifically enumerates the service as taxable.

The Tax Law provides manufacturers’ exemptions for the purchase, repair and maintenance of machinery and equipment used in production. Other exempt items include food, medicine, residential energy, and sales to and by exempt entities. Although most services are not subject to sales or use tax, this report examines only services which are specifically exempted by New York State law. Thus, this report does not list excluded services (e.g., accounting services, engineering services, etc.) as tax expenditures.

Also, a sales tax transaction can be exempt from tax because the good or service is exempt or because its use, purchaser or seller is exempt. In valuing the exemptions, no account is taken of the fact that if the good or service were made taxable, some of the transactions would remain exempt because of the nature of the use, purchaser, or seller. Hence, the value of a particular good or service may be included in two or more tax expenditure estimates. Because of this overlapping, the revenue value of eliminating an exemption would not coincide with the estimated value herein.

The New York State Department of Taxation and Finance administers the sales and use tax for the State and its constituent jurisdictions that also impose the tax. The State rate equals 4 percent. Local rates range from 2.5 percent to 4.25 percent. Communities within the Metropolitan Commuter Transportation District are subject to an additional 1/4 of 1 percent tax rate. In State fiscal year 2001-2002, the Department collected about \$8.3 billion for the State and approximately \$8.8 billion for local governments from sales and use taxes.

# SALES AND USE TAX

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## Data Sources

Most tax expenditure estimates for the sales tax use aggregate, non-tax data sources because no tax return data exists for the many exclusions and exemptions. Sales and use tax returns report only the seller's taxable receipt. Thus, the estimates are only suggestive of the revenue loss associated with each of the provisions and are rounded to the nearest million dollars.

The major non-tax data sources used to compute the tax expenditure estimates include:

- government publications and surveys such as the Economic Census and the Survey of Current Business;
- data compiled by individual New York State agencies such as information from the Department of Transportation and the Department of Environmental Conservation; and
- industry surveys and information, such as the information provided by the Air Transport Association.

## Methodology

The report bases the historical estimates on the most recent data available. If data are not available for a particular year covered by the report, the tax expenditure is estimated from the most recent data. For example, where 1997 represents the latest year for which relevant data are available, the 1997 data are used to derive a 1998, 1999, and 2000 estimate. Historical estimates may vary from prior year reports due to the availability of more recent data. From the most recent data, tax expenditure estimates are projected to 2003 levels. Historical estimates are projected to 2003 levels using the New York State Division of the Budget's December 2002 forecast of the U.S. and New York economies. Where applicable, such measures as price, employment and productivity were used to extrapolate to the expenditure value. For certain expenditures, the Division of the Budget's forecast was supplemented with industry specific projections.



**Table 3**  
**2003 New York State Sales and Use Tax Expenditure Estimates**  
**(2001-02 Total NY Sales and Use Tax Liability = \$8,300 Million)**  
**(Millions of Dollars)**

<u>Tax Item</u>	<u>Data Source Year(s)</u>	<u>History</u>					<u>Forecast</u>	<u>Reliability Level</u>
		<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2003</u>	
<b>Services</b>								
1. Certain Information Services		N/A	N/A	N/A	N/A	N/A	N/A	5
2. Certain Information Services Provided Over the Telephone		N/A	N/A	N/A	N/A	N/A	N/A	5
3. Services Performed on a Non-Trade Basis		N/A	N/A	N/A	N/A	N/A	N/A	5
4. Laundering, Tailoring, Shoe Repair and Similar Services	1997	50.0	51.0	52.0	53.0	55.0	61.0	4B
5. Capital Improvement Installation Services	1995 and 1998	252.0	251.0	249.0	267.0	284.0	299.0	4C
6. Services Related to Railroad Rolling Stock	1996 through 1998	2.0	2.0	2.0	2.0	2.0	2.0	4B
7. Services to Property Delivered Outside New York		N/A	N/A	N/A	N/A	N/A	N/A	5
8. Municipal Parking Services	1997	--	3.0	3.0	3.0	3.0	4.0	4A
9. Certain Parking and Garaging Services	1997	*	*	*	*	*	*	4A
10. Certain Protective and Detective Services	1998	*	*	*	*	*	*	4A
11. Medical Emergency Alarm Call Services	1997	*	*	*	*	*	1.0	4C
12. Coin-Operated Car Wash Services 2/	1995	--	*	2.0	2.0	2.0	2.0	4C
<b>Food</b>								
13. Certain Food Products	1996 through 1999	990.0	1,008.0	1,033.0	1,076.0	1,144.0	1,349.0	4B
14. Food Sold to Airlines	1996 and 1997	9.0	9.0	9.0	9.0	9.0	8.0	4B
15. Food Sold at School Cafeterias	1995 and 1999	46.0	48.0	50.0	51.0	54.0	60.0	4A
16. Food Purchased with Food Stamps	1996 and 1997	17.0	14.0	14.0	15.0	16.0	19.0	4A
17. Water Delivered Through Mains or Pipes	1996 and 1997	85.0	87.0	87.0	87.0	88.0	90.0	4B
18. Mandatory Gratuity Charges	1996 through 1998	14.0	15.0	16.0	16.0	17.0	19.0	4A
19. Wine Used for Wine Tastings 2/	1997 and 1998	--	*	*	*	*	*	4A
20. Vending Machine Sales of Hot Drinks and Certain Foods 2 1995, 1997, 2001		--	2.0	7.0	7.0	7.0	8.0	4C
21. Vending Machine Sales of Candy, Juice and Soft Drinks 2/ 1995 and 1997		--	--	--	--	1.0	5.0	4B
22. Food Sold at Senior Citizen Housing Communities	1996 through 1998	--	--	--	--	*	*	4B
<b>Medical</b>								
23. Drugs, Medicine and Medical Supplies	1996 and 1997	264.0	284.0	314.0	357.0	401.0	563.0	4C
24. Eyeglasses, Hearing Aids and Prosthetic Aids	1996 and 1997	53.0	57.0	58.0	60.0	61.0	68.0	4C

	<u>Tax Item</u>	Data Source <u>Year(s)</u>	History					Forecast	Reliability
			<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2003</u>	<u>Level</u>
25.	Veterinarian Services	1995 and 1997	19.0	21.0	23.0	26.0	29.0	39.0	4B
26.	Service Dogs	1998	*	*	*	*	*	*	4B
<b>Energy</b>									
27.	Energy Sources for Residential Purposes	1996 through 2000	427.0	408.0	352.0	414.0	474.0	462.0	4A
28.	Fuel, Gas, Electricity, Refrigeration and Steam Used in Research & Development and Production	1996 through 1998	138.0	137.0	123.0	133.0	159.0	153.0	4B
29.	Fuel, Gas, Electricity, Refrigeration and Steam Used in Farming and Commercial Horse Boarding	1996 through 1999	6.0	7.0	6.0	6.0	7.0	7.0	4B
30.	Reduced Rate on Gas and Electric Service	1998	--	--	--	--	*	21.0	4B
31.	Gas and Electricity Used in Transmission, Distribution and Storage 2/		--	--	--	--	N/A	N/A	5
<b>Transportation</b>									
32.	Commercial Vessels	1996	1.0	2.0	2.0	2.0	2.0	2.0	4C
33.	Barge Repairs	1997	*	*	*	*	*	*	4C
34.	Commercial Aircraft	1996 and 1997	17.0	19.0	19.0	20.0	20.0	20.0	4C
35.	Fuel Sold to Airlines	1996 through 1998	43.0	41.0	31.0	41.0	52.0	53.0	4A
36.	Parts for Foreign Aircraft		N/A	N/A	N/A	N/A	N/A	N/A	5
37.	Intra-family Sales of Motor Vehicles		N/A	N/A	N/A	N/A	N/A	N/A	5
38.	Motor Vehicles and Vessels Sold to Nonresidents		N/A	N/A	N/A	N/A	N/A	N/A	5
39.	Alternative Fuel Vehicles	All Years	*	*	*	*	*	*	4B
40.	Alternative Fuel Vehicle Refueling Equipment 2/	1997	--	--	*	*	*	*	4C
41.	Rental of Trucks in Certain Cases		N/A	N/A	N/A	N/A	N/A	N/A	5
42.	Tractor-Trailer Combinations	1992 and 1996	10.0	10.0	11.0	12.0	11.0	9.0	4A
43.	Sales of Property by Railroads in Reorganization	1995 through 1997	*	*	*	*	*	*	4A
44.	Commercial Buses 2/	1999	--	*	2.0	2.0	2.0	2.0	4A
<b>Communication and Media</b>									
45.	Interstate or International Telephone & Telegraph Service	1996 through 1999	171.0	212.0	234.0	255.0	260.0	328.0	3
46.	Internet Access Service	1996 through 1998	--	11.0	15.0	23.0	26.0	33.0	4C
47.	Cable Television Service	1996 through 1999	84.0	91.0	95.0	104.0	113.0	125.0	4A
48.	Newspapers and Periodicals	1998 through 2000	64.0	65.0	66.0	69.0	69.0	63.0	4B
49.	Shopping Papers	1996 through 2000	2.0	2.0	2.0	2.0	2.0	2.0	4C
50.	Telephone Service Used by the Media	1996 through 1998	*	*	*	*	*	*	4A
51.	Certain Coin-Operated Telephone Charges	All Years	*	*	1.0	5.0	4.0	3.0	4A





Tax Item	Data Source Year(s)	History					Forecast	Reliability
		1996	1997	1998	1999	2000	2003	Level
113. Nonprofit Medical Expense Indemnity or Hospital Service Corporations	All Years	8.0	8.0	7.0	7.0	8.0	9.0	4A
114. Nonprofit Property/Casualty Insurance Companies 1/		--	--	--	--	--	N/A	5
115. Rural Electric Cooperatives	1996 through 1999	*	*	*	*	*	*	4A
116. Municipal Trash Removal Services	1996 through 1999	31.0	31.0	32.0	32.0	32.0	32.0	4B
<b>Admission Charges</b>								
117. Certain Admission Charges	1997	40.0	41.0	43.0	45.0	46.0	52.0	4B
118. Events Given for the Benefit of Charitable Organizations, Veterans' Posts and Indian Nations		N/A	N/A	N/A	N/A	N/A	N/A	5
119. Events Given for the Benefit of Certain Orchestras and Opera Companies		N/A	N/A	N/A	N/A	N/A	N/A	5
120. National Guard Organization Events		N/A	N/A	N/A	N/A	N/A	N/A	5
121. Municipal Police and Fire Department Events		N/A	N/A	N/A	N/A	N/A	N/A	5
122. Certain Athletic Games		N/A	N/A	N/A	N/A	N/A	N/A	5
123. Carnivals or Rodeos for Certain Charitable Organizations	1997	*	*	*	*	*	*	4B
124. Agricultural Fairs	All Years	*	*	*	*	*	*	4A
125. Historical Homes, Gardens, Sites and Museums		N/A	N/A	N/A	N/A	N/A	N/A	5
<b>Credits</b>								
126. Sales Tax Vendor Credit	All Years	27.0	23.0	23.0	41.0	56.0	51.0	3
127. Tangible Property Sold by Contractors in Certain Situations		N/A	N/A	N/A	N/A	N/A	N/A	5
128. Veterinary Drugs		N/A	N/A	N/A	N/A	N/A	N/A	5
129. Construction Materials Used in Empire Zones		N/A	N/A	N/A	N/A	N/A	N/A	5
130. Bus Companies Providing Local Transit Service	1996 through 1998	*	*	*	*	*	*	3

1/ A new tax expenditure item or a revision of the methodology, data or data source.

2/ First estimate in history is a partial calendar year estimate.

-- The tax expenditure was not applicable for these years.

\* Less than \$1 million.

N/A No data available

# SALES AND USE TAX

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## Services

### 1. **Certain Information Services**

**Citation:** Section 1105(c)(1)

**Effective Date:** August 1, 1965; meteorological services effective September 1, 1995

**Description:** An exclusion is allowed for the furnishing of information that is personal or individual in nature, the services of advertising or other agents acting in a representative capacity, information services used by newspapers, radio broadcasters and television broadcasters in the collection and dissemination of news and meteorological services.

**Estimate:** No data available

**Reliability:** Level 5

### 2. **Certain Information Services Provided Over the Telephone**

**Citation:** Section 1105(c)(9)

**Effective Date:** September 1, 1990

**Description:** An information service that would be exempt from tax if delivered in printed form is also exempt from tax when provided over the telephone. This exemption complements Section 1105(c)(1), which is Item #1 above.

**Estimate:** No data available

**Reliability:** Level 5

### 3. **Services Performed on a Non-Trade Basis**

**Citation:** Section 1105(c)(3)(i)

**Effective Date:** August 1, 1965

**Description:** An exclusion is allowed for installation, repair and maintenance services rendered by an individual who is engaged directly by a private homeowner or lessee in or about his residence and who is not in a regular trade or business offering those services to the public.

**Estimate:** No data available

**Reliability:** Level 5

### 4. **Laundering, Tailoring, Shoe Repair and Similar Services**

**Citation:** Section 1105(c)(3)(ii)

**Effective Date:** August 1, 1965

**Description:** Any receipts from laundering, dry cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining are excluded from tax.

**Estimates:** 2000: \$55.0 million - 2003: \$61.0 million

**Data Source:** U.S. Department of Commerce, Economic Census

**Reliability:** Level 4B

### 5. **Capital Improvement Installation Services**

**Citation:** Section 1105(c)(3)(iii)

**Effective Date:** August 1, 1965

**Description:** An exclusion is allowed for installing property which, when installed, will constitute an addition or capital improvement to real property.

**Estimates:** 2000: \$284.0 million - 2003: \$299.0 million

**Data Source:** U.S. Department of Commerce, Census of Construction; U.S. Department of Commerce, Statistical Abstract of the United States

**Reliability:** Level 4C

**6. Services Related to Railroad Rolling Stock**

**Citation:** Section 1105(c)(3)(viii)

**Effective Date:** September 1, 1985

**Description:** Excluded from tax are repair and maintenance services rendered with respect to railroad rolling stock primarily engaged in carrying freight, but not including any charge for parts.

**Estimates:** 2000: \$2.0 million - 2003: \$2.0 million

**Data Source:** New York State Department of Transportation

**Reliability:** Level 4B

**7. Services to Property Delivered Outside New York**

**Citation:** Section 1115(d)

**Effective Date:** August 1, 1965

**Description:** Services to tangible personal property which are otherwise taxable are tax exempt when the property is delivered outside New York State for use outside the State.

**Estimate:** No data available

**Reliability:** Level 5

**8. Municipal Parking Services**

**Citation:** Section 1105(c)(6)

**Effective Date:** December 1, 1996

**Description:** Charges for parking, garaging or storing motor vehicles at facilities owned and operated by local governments and local public parking authorities.

**Estimates:** 2000: \$3.0 million - 2003: \$4.0 million

**Data Source:** New York State Office of the Comptroller; City of New York Department of Transportation

**Reliability:** Level 4A

**9. Certain Parking and Garaging Services**

**Citation:** Section 1105(c)(6)

**Effective Date:** June 1, 1990

**Description:** Charges for parking, garaging or storing vehicles at a garage which constitutes part of the premises occupied solely as a private one- or two-family dwelling are exempt.

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** New York State Department of Taxation and Finance

**Reliability:** Level 4A

**10. Certain Protective and Detective Services**

**Citation:** Section 1105(c)(8)

**Effective Date:** June 1, 1990

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**Description:** Protective and detective services provided by a portwatchman licensed by the Waterfront Commission of New York Harbor are exempt from tax.

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** New York Shipping Association, Inc.

**Reliability:** Level 4A

### 11. Medical Emergency Alarm Call Services

**Citation:** Section 1115(r)

**Effective Date:** September 1, 1994

**Description:** Exempt from tax are medical emergency alarm services that would otherwise be taxable as protective services under Section 1105(c)(8).

**Estimates:** 2000: Minimal - 2003: \$1.0 million

**Data Source:** New York State Department of Taxation and Finance

**Reliability:** Level 4C

### 12. Coin-Operated Car Wash Services

**Citation:** Section 1115(t)

**Effective Date:** December 1, 1997

**Description:** The sales tax exempts the service of washing, waxing or vacuuming a motor vehicle, or other property, by means of self-service coin-operated equipment.

**Estimates:** 2000: \$2.0 million - 2003: \$2.0 million

**Data Source:** New York State Car Wash Association

**Reliability:** Level 4C

## Food

### 13. Certain Food Products

**Citation:** Sections 1115(a)(1), 1105(d)(i)(3)

**Effective Date:** August 1, 1965

**Description:** Exempt from tax are food, food products, beverages, dietary foods and health supplements sold for human consumption. The exemption does not include candy and confectionery, fruit drinks which contain less than 70 percent of natural fruit juice, soft drinks, sodas, beer, wine or other alcoholic beverages. In addition, sales of food (other than sandwiches) or drink of a type commonly sold in food stores (other than food stores principally engaged in selling prepared foods) are exempt when sold by a restaurant or other establishment in an unheated state, for off-premises consumption.

**Estimates:** 2000: \$1,144.0 million - 2003: \$1,349.0 million

**Data Source:** Sales and Marketing Management, 1997 Survey of Buying Power: Supermarket Business, 49th Annual Consumer Expenditure Study

**Reliability:** Level 4B



- 14. Food Sold to Airlines**  
**Citation:** Section 1105(d)(ii)(A)  
**Effective Date:** August 1, 1965  
**Description:** The sales tax does not apply to food or drink which is sold to an airline for consumption by passengers while in flight.  
**Estimates:** 2000: \$9.0 million - 2003: \$8.0 million  
**Data Source:** Air Transport Association  
**Reliability:** Level 4B
- 15. Food Sold at School Cafeterias**  
**Citation:** Section 1105(d)(ii)(B)  
**Effective Date:** September 1, 1968  
**Description:** Food or drink sold to nursery school, kindergarten, elementary or secondary school students at a restaurant or cafeteria located at the school is excluded from tax. Also excluded are food and nonalcoholic beverages sold at a restaurant, tavern, or other establishment located on the premises of a college or university when sold to enrolled students under a contractual arrangement whereby the students do not pay cash at the time they are served.  
**Estimates:** 2000: \$54.0 million - 2003: \$60.0 million  
**Data Source:** New York State Department of Education  
**Reliability:** Level 4A
- 16. Food Purchased with Food Stamps**  
**Citation:** Section 1115(k)  
**Effective Date:** October 1, 1987  
**Description:** Receipts from the sale of food eligible to be purchased with Food Stamps are exempt from tax when such food is purchased with Food Stamps.  
**Estimates:** 2000: \$16.0 million - 2003: \$19.0 million  
**Data Source:** New York State Office of Temporary and Disability Assistance  
**Reliability:** Level 4A
- 17. Water Delivered Through Mains or Pipes**  
**Citation:** Section 1115(a)(2)  
**Effective Date:** August 1, 1965  
**Description:** Water delivered to consumers through mains or pipes is exempt.  
**Estimates:** 2000: \$88.0 million - 2003: \$90.0 million  
**Data Source:** New York State Department of Public Service; Office of the State Comptroller; New York City Department of Finance  
**Reliability:** Level 4B
- 18. Mandatory Gratuity Charges**  
**Citation:** Section 1105(d) and Regulation Section 527.8(1)  
**Effective Date:** August 1, 1965  
**Description:** A separately stated charge specifically designated as a gratuity is exempt where all such monies received are paid over to employees.

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**Estimates:** 2000: \$17.0 million - 2003: \$19.0 million

**Data Source:** Cornell University School of Hotel and Food Service Management

**Reliability:** Level 4A

### 19. Wine Used for Wine Tastings

**Citation:** Section 1115(a)(33)

**Effective Date:** December 1, 1997

**Description:** Exempt from tax is the wine that a winery, wine wholesaler or wine importer furnishes to customers or prospective customers at a wine tasting.

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** New York State Department of Taxation and Finance

**Reliability:** Level 4A

### 20. Vending Machine Sales of Hot Drinks and Certain Foods

**Citation:** Section 1105(d)(i)(3)

**Effective Date:** December 1, 1997; December 1, 1999 for credit/debit card-operated

**Description:** Exempt from tax are hot drinks sold through coin-operated vending machines and vending machines accepting credit cards or debit cards. In addition, vending machine sales of other food and beverage, including food and beverage sold for on-premises consumption, are exempt if the food or beverage would be exempt when sold at a grocery store.

**Estimates:** 2000: \$7.0 million - 2003: \$8.0 million

**Data Source:** U.S. Department of Commerce, Economic Census - Retail Trade; Vending Times

**Reliability:** Level 4C

### 21. Vending Machine Sales of Candy, Juice and Soft Drinks

**Citation:** Section 1115(a)(1)

**Effective Date:** September 1, 2000

**Description:** This provision exempts candy, fruit drinks and soft drinks sold for 75 cents or less through a vending machine.

**Estimates:** 2000: \$1.0 million - 2003: \$5.0 million

**Data Source:** U.S. Department of Commerce, Economic Census - Retail Trade; Vending Times; New York State Automatic Vending Association

**Reliability:** Level 4B

### 22. Food Sold at Senior Citizen Housing Communities

**Citation:** Section 1115(w)

**Effective Date:** December 1, 2000

**Description:** Sales by a senior citizen independent housing community of food or drink (except alcoholic beverages) for on-premise consumption are exempt from tax when served to residents and their guests at the dining facility or in the resident's room.

**Estimates:** 2000: Minimal - 2003: Minimal  
**Data Source:** New York State Division of the Budget  
**Reliability:** Level 4B

**Medical**

**23. Drugs, Medicine and Medical Supplies**

**Citation:** Section 1115(a)(3), (g)  
**Effective Date:** August 1, 1965 for drugs and medicines; September 1, 1976 for medical equipment and supplies and services to medical equipment  
**Description:** Exempt from tax are drugs and medicines intended for use, internally or externally, in the cure, mitigation, treatment or prevention of illnesses or diseases in human beings. The exemption extends to medical equipment and supplies required for such use or to correct or alleviate physical incapacity, services to medical equipment, and products consumed by humans for the preservation of health. This exemption does not include cosmetics or toilet articles and does not include purchases of medical equipment and supplies by a person who provides medical or dental services for compensation.  
**Estimates:** 2000: \$401.0 million - 2003: \$563.0 million  
**Data Source:** U.S. Department of Commerce, Survey of Current Business  
**Reliability:** Level 4C

**24. Eyeglasses, Hearing Aids and Prosthetic Aids**

**Citation:** Section 1115(a)(4), (g)  
**Effective Date:** August 1, 1965 (Sec. 1115(a)(4)); September 1, 1969 (Sec. 1115(g))  
**Description:** Eyeglasses, hearing aids, prosthetic aids and artificial devices and component parts purchased to correct physical incapacity in human beings, as well as services performed upon these items are exempt from tax.  
**Estimates:** 2000: \$61.0 million - 2003: \$68.0 million  
**Data Source:** U.S. Department of Commerce, Survey of Current Business  
**Reliability:** Level 4C

**25. Veterinarian Services**

**Citation:** Section 1115(f)  
**Effective Date:** June 1, 1967  
**Description:** Services rendered by a licensed veterinarian in the practice of veterinary medicine are exempt from tax. Tangible personal property designed for use by domestic animals or poultry is also exempt when sold by a veterinarian. However, the veterinarian is liable for the sales tax on the purchase of such property. Thus, only the markup on these items is tax exempt.  
**Estimates:** 2000: \$29.0 million - 2003: \$39.0 million  
**Data Source:** American Veterinary Medical Association; The Nelson A. Rockefeller Institute of Government, New York State Statistical Yearbook  
**Reliability:** Level 4B

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### 26. Service Dogs

**Citation:** Section 1115(s)

**Effective Date:** September 24, 1995

**Description:** This provision exempts the sales of any good or service necessary to acquire, sustain or maintain a guide dog, a hearing dog or a service dog which is used by a person with a disability.

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** New York State Department of Agriculture and Markets; Guide Dog Foundation; Guiding Eyes for the Blind; Canine Companions for Independence

**Reliability:** Level 4B

### Energy

### 27. Energy Sources for Residential Purposes

**Citation:** Sections 1105-A, 1115(a)(25)

**Effective Date:** October 1, 1980 (Section 1105-A); September 1, 1985 (Section 1115(a)(25))

**Description:** Receipts from the retail sale of wood used for residential heating purposes, fuel oil, propane (except when sold in containers that hold less than 100 pounds), natural gas, electricity and steam, and gas, electric and steam services used for residential purposes are taxed at the rate of zero percent and thus are exempt from State sales tax. Residential use of natural gas obtained from a gas well located on the landowner's property is exempt.

**Estimates:** 2000: \$474.0 million - 2003: \$462.0 million

**Data Source:** New York State Department of Taxation and Finance; New York State Energy Research and Development Authority

**Reliability:** Level 4A

### 28. Fuel, Gas, Electricity, Refrigeration and Steam Used in Research & Development and Production

**Citation:** Section 1115(a)(10), (b)(ii), (c)(1)

**Effective Date:** August 1, 1965

**Description:** Fuel oil, gas, electricity, refrigeration, and steam; and gas, electric, refrigeration and steam service used directly and exclusively in research and development in the experimental or laboratory sense, or used directly and exclusively in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, assembling, generating, refining, mining, or extracting are exempt from the sales tax.

**Estimates:** 2000: \$159.0 million - 2003: \$153.0 million

**Data Source:** New York State Energy Research and Development Authority, Patterns and Trends 1998; U.S. Department of Energy, Energy Information Administration; U.S. Department of Commerce, Economic Census - Manufacturing

**Reliability:** Level 4B

- 29. Fuel, Gas, Electricity, Refrigeration and Steam Used in Farming and Commercial Horse Boarding**  
**Citation:** Section 1115(c)(2)  
**Effective Date:** September 1, 2000  
**Description:** Fuel, gas, electricity, refrigeration and steam; and gas, electric, refrigeration, and steam service used in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation are exempt from tax. Prior to September 1, 2000, energy used directly and exclusively in farm production was exempt by Tax Law Section 1115(c)(1) and is now included here.  
**Estimates:** 2000: \$7.0 million - 2003: \$7.0 million  
**Data Source:** U.S. Department of Agriculture; New York State Department of Agriculture and Markets  
**Reliability:** Level 4B
- 30. Reduced Rate on Gas and Electric Service**  
**Citation:** Section 1105-C  
**Effective Date:** September 1, 2000  
**Description:** On September 1, 2000, and on September 1 of each year following, the sales and use tax rate on transportation, transmission or distribution of gas or electricity when sold by someone other than the vendor of the gas or electricity is reduced by 25 percent of the rate in effect on September 1, 2000. Therefore, from January 1, 2003 through August 31, 2003 the State tax rate is reduced by 3 percent. Beginning September 1, 2003 the State tax rate is reduced to zero.  
**Estimates:** 2000: Minimal - 2003: \$21.0 million  
**Data Source:** New York State Department of Taxation and Finance  
**Reliability:** Level 4B
- 31. Gas and Electricity Used in Transmission, Distribution and Storage**  
**Citation:** Section 1115(w)  
**Effective Date:** June 1, 2000  
**Description:** This provision exempts gas or electricity or gas or electric service used directly and exclusively to provide gas or electric service consisting of operating a gas pipeline or gas distribution line or an electric transmission or distribution line and ensuring the necessary working pressure in an underground gas storage facility.  
**Estimates:** No data available  
**Reliability:** Level 5

### Transportation

- 32. Commercial Vessels**  
**Citation:** Sections 1101(b)(16), 1105(c)(3)(iv), 1115(a)(8)  
**Effective Date:** August 1, 1965 (Sections 1105(c)(3)(iv), 1115(a)(8)); December 1, 1996 (Section 1101(b)(16))  
**Description:** Sales of commercial vessels primarily engaged in interstate or foreign commerce and property used by or purchased for the use of such vessels for fuel, provisions,

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supplies, maintenance and repairs are exempt as well as services rendered with respect to commercial vessels.

**Estimates:** 2000: \$2.0 million - 2003: \$2.0 million

**Data Source:** U.S. Department of Energy, Energy Information Administration; New York State Department of Taxation and Finance, PBT Master File

**Reliability:** Level 4C

### 33. Barge Repairs

**Citation:** Section 1115(q)

**Effective Date:** December 1, 1993

**Description:** Exempt from tax are maintenance and repair services (including parts) performed on a barge having a cargo capacity of at least 1,000 short tons used exclusively to transport goods in the conduct of its owner's business and primarily engaged in transportation between New York State and any other state or foreign country.

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** U.S. Department of Commerce

**Reliability:** Level 4C

### 34. Commercial Aircraft

**Citation:** Sections 1101(b)(17), 1105(c)(3)(v), 1115(a)(21)

**Effective Date:** March 1, 1979 (Sections 1105(c)(3)(v), 1115(a)(21)); December 1, 1996 (Section 1101(b)(17))

**Description:** Exempt from tax are commercial aircraft primarily engaged in intrastate, interstate or foreign commerce; machinery or equipment to be installed on such aircraft; property used by or purchased for the use of such aircraft for maintenance and repairs; flight simulators purchased by commercial airlines; and services rendered with respect to exempt purchases.

**Estimates:** 2000: \$20.0 million - 2003: \$20.0 million

**Data Source:** U.S. Department of Commerce, Annual Capital Expenditures Report

**Reliability:** Level 4C

### 35. Fuel Sold to Airlines

**Citation:** Section 1115(a)(9)

**Effective Date:** August 1, 1965

**Description:** Fuel sold to an airline for use in its airplanes is exempt from tax.

**Estimates:** 2000: \$52.0 million - 2003: \$53.0 million

**Data Source:** New York State Energy Research and Development

**Reliability:** Level 4A

### 36. Parts for Foreign Aircraft

**Citation:** Section 1118(8)

**Effective Date:** September 1, 1977

**Description:** Parts, engines, consumable technical supplies, and maintenance and ground equipment used exclusively in the operation, handling, or maintenance of aircraft are exempt from use tax if it is a foreign airline which brings such items into New York from a foreign

country. These items must be used on aircraft owned by the foreign airline, and are exempt only if similar items would not be subject to tax in the airline's home country if taken into such country by a U.S. airline.

**Estimate:** No data available

**Reliability:** Level 5

### 37. **Intra-family Sales of Motor Vehicles**

**Citation:** Section 1115(a)(14)

**Effective Date:** September 1, 1969 for transactions between spouses; September 1, 1972 for transactions between parents and children

**Description:** Motor vehicles sold between husband and wife, or by a parent to a child or child to parent are exempt from tax.

**Estimate:** No data available

**Reliability:** Level 5

### 38. **Motor Vehicles and Vessels Sold to Nonresidents**

**Citation:** Section 1117(a)

**Effective Date:** August 1, 1965, as amended December 1, 1994 and March 1, 2001

**Description:** Sales of motor vehicles and vessels in New York to nonresidents are exempt from the sales tax provided the nonresident purchaser is not registering the newly purchased vehicle or vessel for use in New York.

**Estimate:** No data available

**Reliability:** Level 5

### 39. **Alternative Fuel Vehicles**

**Citation:** Section 1115(p)(1), (2), (4)

**Effective Date:** September 1, 1992

**Description:** The additional cost of new alternative fuel vehicles (attributable to the alternative fuel equipment) above the sale price of comparable gasoline or diesel powered vehicles is exempt from tax. Also exempt are the parts and labor charges related to converting a gasoline or diesel vehicle to alternative fuel. Alternative fuel vehicles include vehicles fueled by alcohol, natural gas, propane or hydrogen, or electric powered vehicles as well as hybrid-electric and dual-fuel vehicles. The exemption does not apply to electric vehicles used by regulated gas or electric companies.

**Termination Date:** Expires February 29, 2004

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** U.S. Department of Energy, Energy Information Administration

**Reliability:** Level 4B

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### 40. **Alternative Fuel Vehicle Refueling Equipment**

**Citation:** Section 1115(p)(3)

**Effective Date:** March 1, 1998

**Description:** Receipts from the sale of commercial alternative fuel vehicle refueling property, including electric vehicle recharging equipment, and from the service of installing such property are exempt from tax.

**Termination Date:** Expires February 29, 2004

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** U.S. Department of Energy, Energy Information Administration; New York State Energy Research Development Authority

**Reliability:** Level 4C

### 41. **Rental of Trucks in Certain Cases**

**Citation:** Section 1115(a)(22)

**Effective Date:** May 15, 1981

**Description:** Certain rentals or leases of trucks, tractors, or tractor-trailer combinations to an authorized carrier, pursuant to a written contractual agreement are exempt. To qualify for exemption the equipment must be for use as augmenting equipment in the transportation, for hire, of tangible personal property, provided the owner of the vehicle, or an employee of the owner, operates the vehicle.

**Estimate:** No data available

**Reliability:** Level 5

### 42. **Tractor-Trailer Combinations**

**Citation:** Section 1115(a)(26), (g)

**Effective Date:** January 1, 1988

**Description:** Exempt from tax are tractors, trailers or semitrailers, and property installed on such vehicles for their equipping, maintenance or repair, provided the vehicle is used in combination where the gross weight of such combination exceeds 26,000 pounds. Related services performed on these vehicles are also exempt.

**Estimates:** 2000: \$11.0 million - 2003: \$9.0 million

**Data Source:** New York State Department of Motor Vehicles; Federal Highway Administration; U.S. Department of Commerce

**Reliability:** Level 4A

### 43. **Sales of Property by Railroads in Reorganization**

**Citation:** Section 1115(h)

**Effective Date:** August 1, 1975

**Description:** Sales of tangible personal property by a railroad in reorganization to a profitable railroad are exempt if the transactions are part of a plan of reorganization and restructuring.

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** New York State Department of Transportation

**Reliability:** Level 4A



**44. Commercial Buses**

**Citation:** Section 1115(a)(32), (u)

**Effective Date:** December 1, 1997

**Description:** Exempt from tax are buses, and parts, equipment and lubricants used in operating the bus, provided the vehicle weighs at least 26,000 pounds and measures 40 feet and is used to transport persons for hire. Related services performed on these vehicles are also exempt.

**Estimates:** 2000: \$2.0 million - 2003: \$2.0 million

**Data Source:** The Bus Association of New York State

**Reliability:** Level 4A

**Communication and Media**

**45. Interstate or International Telephone and Telegraph Service**

**Citation:** Section 1105(b)

**Effective Date:** August 1, 1965

**Description:** Interstate and international telephone and telegraph services are tax-exempt.

**Estimates:** 2000: \$260.0 million - 2003: \$328.0 million

**Data Source:** New York State Department of Taxation and Finance

**Reliability:** Level 3

**46. Internet Access Service**

**Citation:** Section 1115(v)

**Effective Date:** February 1, 1997

**Description:** The sales tax exempts Internet access service. Incidental services such as Internet communications or navigation software, an email address, news headlines, space for a Web site and certain other Web site services, when offered in conjunction with Internet access and merely incidental to the access service, are considered part of the exempt service.

**Estimates:** 2000: \$26.0 million - 2003: \$33.0 million

**Data Source:** U.S. Department of Commerce, Statistical Abstract of the United States

**Reliability:** Level 4C

**47. Cable Television Service**

**Citation:** Section 1105(c)(9)

**Effective Date:** September 1, 1990

**Description:** The provision of cable television services is exempt from tax.

**Estimates:** 2000: \$113.0 million - 2003: \$125.0 million

**Data Source:** New York State Department of Public Service

**Reliability:** Level 4A

**48. Newspapers and Periodicals**

**Citation:** Sections 1101(b)(6), 1115(a)(5), Regulation Section 528.6, Section 1118(5)

**Effective Date:** August 1, 1965 (Section 1115(a)(5)); December 1, 1994 (Section 1101(b)(6))

## SALES AND USE TAX

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- Description:** The sales of newspapers and periodicals, including newspapers and periodicals delivered electronically are exempt from tax. In addition, the paper and ink used to publish newspapers and periodicals is exempt.
- Estimates:** 2000: \$69.0 million - 2003: \$63.0 million
- Data Source:** U.S. Department of Commerce, Survey of Current Business and U.S. Industrial Outlook
- Reliability:** Level 4B
- 49. Shopping Papers**
- Citation:** Section 1115(a)(20), (i)
- Effective Date:** September 1, 1977
- Description:** Receipts from the retail sale of a shopping paper to the publisher is tax-exempt as well as the receipts from the sale of printing services performed in publishing such paper. In addition, the paper and ink used to publish a shopping paper is exempt.
- Estimates:** 2000: \$2.0 million - 2003: \$2.0 million
- Data Source:** U.S. Department of Commerce, U.S. Industrial and Trade Outlook
- Reliability:** Level 4C
- 50. Telephone Service Used by the Media**
- Citation:** Section 1115(b)(i)
- Effective Date:** August 1, 1965
- Description:** Charges for telephone and telegraph service used by newspapers, radio broadcasters, and television broadcasters in the collection or dissemination of news are exempt if the charges are toll charges or charges for mileage.
- Estimates:** 2000: Minimal - 2003: Minimal
- Data Source:** New York State Department of Taxation and Finance
- Reliability:** Level 4A
- 51. Certain Coin-Operated Telephone Charges**
- Citation:** Section 1115(e)
- Effective Date:** June 1, 1966 for 10 cent exemption; September 1, 1998 for 25 cent exemption
- Description:** Coin-operated telephone charges of 25 cents or less are tax-exempt.
- Estimates:** 2000: \$4.0 million - 2003: \$3.0 million
- Data Source:** New York State Department of Public Service; New York State Telephone Association
- Reliability:** Level 4A
- 52. Digital Cable Equipment**
- Citation:** Sections 1115(a)(12-b), 1105(c)(3)(ix)
- Effective Date:** September 1, 2000
- Description:** Machinery, equipment, apparatus, parts, tools, and supplies used directly and predominantly to upgrade cable television systems to allow for the provision of digital cable service or for use by a cable system operator in receiving, initiating, amplifying, processing,

transmitting, re-transmitting, switching or monitoring of switching of Internet access service. Installing, maintaining, servicing or repairing the exempt items is also exempt.

**Termination Date:** August 31, 2003

**Estimates:** 2000: \$3.0 million - 2003: \$3.0 million

**Data Source:** New York State Cable Television Association

**Reliability:** Level 4A

### 53. **Telecommunications and Internet**

**Citation:** Sections 1115(a)(12-a), 1105(c)(3)(x)

**Effective Date:** September 1, 2000

**Description:** These provisions exempt tangible personal property used directly and predominantly in the receiving, initiating, amplifying, processing, transmitting, re-transmitting, switching or monitoring or switching of telecommunications services for sale or Internet access services for sale. Prior to September 1, 2000 telephone central office equipment and telephone station apparatus were exempt by Tax Law Section 1115(a)(12) and is now included here. Installing, maintaining, servicing or repairing the exempt items is also exempt.

**Estimates:** 2000: \$50.0 million - 2003: \$45.0 million

**Data Source:** New York State Public Service Commission; Federal Communications Commission

**Reliability:** Level 4B

### 54. **Internet Data Centers**

**Citation:** Section 1115(a)(37), (y)

**Effective Date:** September 1, 2000

**Description:** Machinery, equipment, and certain other tangible personal property sold to a person operating an Internet data center that is required for and directly related to the provision of Internet Web site hosting and other Web site services at the data center are exempt. Also exempt are certain services to the exempt tangible personal property and building security services.

**Estimates:** 2000: \$2.0 million - 2003: \$9.0 million

**Data Source:** New York State Division of the Budget

**Reliability:** Level 4B

### 55. **Radio and Television Broadcasting**

**Citation:** Section 1115(a)(38), (aa)

**Effective Date:** September 1, 2000

**Description:** Exempt from tax are purchases by radio and television broadcasters of machinery, equipment, parts, tools, and supplies used in the production and transmission of live or recorded programs. Installing, maintaining, servicing or repairing the exempt items is also exempt. Moreover, the services of producing, fabricating, processing, printing, or imprinting tangible personal property furnished to the service provider by the broadcaster and performed in connection with the production, post-production, or the transmission of live or recorded programs are exempt. A broadcaster includes federal communications

## SALES AND USE TAX

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commission licensed radio and television stations, radio and television networks, and cable television networks.

**Estimates:** 2000: \$1.0 million - 2003: \$3.0 million

**Data Source:** New York State Division of the Budget

**Reliability:** Level 4B

### 56. Film Production

**Citation:** Section 1115(a)(39) and Section 1115(bb)

**Effective Date:** December 1, 2002

**Description:** Tangible personal property used or consumed directly and predominantly in the production of a film for sale is exempt, regardless of the medium by which the film is conveyed to the purchaser. For purposes of this exemption, *film* means feature films, documentary films, shorts, television films, television commercials, and similar productions. The exemption also extends to services rendered to the exempt property and to fuel and utility services used directly and exclusively in production.

**Estimate:** 2000: No data available

**Reliability:** Level 5

### 57. Certain Mobile Telecommunication Services

**Citation:** Section 1115(cc)

**Effective Date:** August 1, 2002

**Description:** The sales of mobile telecommunication services by a home service provider is exempt from tax if the mobile telecommunications customer's place of primary use is within a taxing jurisdiction outside of New York State.

**Estimate:** 2000: Not Applicable - 2003: \$11.0 million

**Data Source:** Cellular Telecommunications and Internet Association and New York State Department of Taxation and Finance

**Reliability:** 4C

## Industry

### 58. Tools and Supplies Used in Production

**Citation:** Sections 1105-B(a), 1115(a)(36)

**Effective Date:** March 1, 1981, December 1, 1998

**Description:** Receipts from the retail sales of parts with a useful life of one year or less, tools and supplies for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale by manufacturing, processing, generating, assembling, refining, mining or extracting are exempt from State sales tax.

**Estimate:** No data available

**Reliability:** Level 5

- 59. Farm Production and Commercial Horse Boarding**  
**Citation:** Sections 1115(a)(6), 1105(c)(3)(vi), 1105(c)(5)(iii)  
**Effective Date:** August 1, 1965 (Section 1115(a)(6)); September 1, 1982 (Section 1105(c)(3)(vi)), September 1, 2000 (Section 1105(c)(5)(iii))  
**Description:** Exempt from tax is tangible personal property for use or consumption predominantly in the production, for sale, of tangible personal property by farming or in a commercial horse boarding operation. Also exempt are the services of installing, repairing, maintaining and servicing tangible personal property and real property used predominantly in farming or in a commercial horse boarding operation. Prior to September 1, 2000 this exemption was limited to property used directly and predominantly in farm production, not including property incorporated in a building or structure.  
**Estimates:** 2000: \$54.0 million - 2003: \$63.0 million  
**Data Source:** U.S. Department of Agriculture, Agricultural Survey; New York State Department of Agriculture and Markets  
**Reliability:** Level 4B
- 60. Research and Development Property**  
**Citation:** Section 1115(a)(10)  
**Effective Date:** August 1, 1965  
**Description:** Tangible personal property purchased for use or consumption directly and predominantly in research and development in the experimental or laboratory sense is exempt from tax.  
**Estimates:** 2000: \$114.0 million - 2003: \$136.0 million  
**Data Source:** National Science Foundation  
**Reliability:** Level 4B
- 61. Machinery and Equipment Used in Production**  
**Citation:** Section 1115(a)(12)  
**Effective Date:** August 1, 1965  
**Description:** Exempt from sales tax are machinery and equipment for use or consumption directly or predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale by manufacturing, processing, generating, assembling, refining, mining or extracting.  
**Estimates:** 2000: \$253.0 million - 2003: \$241.0 million  
**Data Source:** U.S. Department of Commerce, New York State Public Service Commission  
**Reliability:** Level 4B
- 62. Services to Machinery and Equipment Used in Production**  
**Citation:** Section 1105-B(b)  
**Effective Date:** March 1, 1981  
**Description:** Receipts from the services of installing, repairing, maintaining or servicing exempt production machinery and equipment or exempt parts, tools and supplies are exempt.  
**Estimates:** 2000: \$15.0 million - 2003: \$14.0 million  
**Data Source:** New York State Department of Taxation and Finance  
**Reliability:** Level 4A

## SALES AND USE TAX

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### 63. **Wrapping and Packaging Materials**

**Citation:** Section 1115(a)(19)

**Effective Date:** July 1, 1974

**Description:** Cartons, containers, wrapping and packaging materials and supplies are nontaxable when used by a vendor in packaging or packing tangible personal property for sale and actually transferred by the vendor to the purchaser.

**Estimate:** No data available

**Reliability:** Level 5

### 64. **Commercial Fishing Vessels**

**Citation:** Sections 1115(a)(24), 1105(c)(3)(vii)

**Effective Date:** August 1, 1985

**Description:** Exempt from tax are the sales of commercial fishing vessels used directly and predominantly in the harvesting of fish for sale, and property used by or purchased for the use of such vessels for fuel, provisions, supplies, maintenance and repairs. Related services are also exempt.

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** National Marine Fisheries; Cornell Cooperative Extension of Suffolk County, Marine Program

**Reliability:** Level 4B

### 65. **Certain Services Used in Gas or Oil Production**

**Citation:** Section 1105(c)(3)(ix), (c)(5)

**Effective Date:** December 1, 1998

**Description:** Exempt from tax are the services of installing, maintaining, repairing or servicing tangible personal property used directly and predominately in producing gas or oil for sale. Also exempt are maintenance and repair services rendered to real property or land used directly and predominately in producing gas or oil for sale.

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** New York State Department of Taxation and Finance; New York State Department of Environmental Conservation

**Reliability:** Level 4B

### 66. **Pollution Control Equipment**

**Citation:** Section 1115(a)(40)

**Effective Date:** March 1, 2001

**Description:** Machinery or equipment used in the control, prevention, or abatement of pollution or contaminants from manufacturing or industrial facilities are exempt from sales and use taxes.

**Estimates:** 2000: Not Applicable - 2003: \$6.0 million

**Data Source:** U.S. Department of Commerce

**Reliability:** Level 4B

**67. Property Manufactured by the User**

**Citation:** Section 1110(c)

**Effective Date:** March 1, 2001

**Description:** The compensating use tax imposed on certain self-produced items used by a manufacturer on its own premises is computed on the cost of materials rather than on the manufacturer's normal selling price.

**Estimates:** 2000: Not Applicable - 2003: Minimal

**Data Source:** New York State Department of Taxation and Finance

**Reliability:** Level 4A

### Miscellaneous

**68. Certain Property Sold Through Vending Machines**

**Citation:** Section 1115(a)(13), (13-a)

**Effective Date:** August 1, 1965 (Section 1115(a)(13)); 50-cent exemption effective December 1, 1997 (Section 1115(a)(13-a))

**Description:** Tangible personal property sold through coin-operated vending machines at 10 cents or less is exempt, provided the retailer is primarily engaged in making such sales. Also exempt is tangible personal property sold through coin-operated bulk vending machines at 50 cents or less, provided the retailer is primarily engaged in making such sales.

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** U.S. Department of Commerce, Census of Retail Trade; Vending Times

**Reliability:** Level 4A

**69. Trade-in Allowance**

**Citation:** Section 1101(b)(3)

**Effective Date:** August 1, 1965

**Description:** Allowances for trade-ins on automobiles and any other items qualify as reductions of taxable receipts, provided the item traded in is intended for resale by the vendor.

**Estimates:** 2000: \$640.0 million - 2003: \$667.0 million

**Data Source:** National Automobile Dealers Association; Motor Vehicle Manufacturers Association, Facts and Figures

**Reliability:** Level 4B

**70. Certain Hotel Room Rent**

**Citation:** Section 1105(e)(1),(2)

**Effective Date:** August 1, 1965

**Description:** The rent for occupancy of a hotel room by a permanent resident or where the rent is not more than two dollars per day is exempt from tax.

**Estimates:** No data available

**Reliability:** Level 5

## SALES AND USE TAX

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### 71. Dues for Fraternal Societies

**Citation:** Section 1105(f)(2)(ii)(a), (b)

**Effective Date:** August 1, 1965

**Description:** Dues and initiation fees paid to a fraternal society, order or association operating under the lodge system or any fraternal association of students of a college or university are excluded from tax. Also excluded are dues paid to any social or athletic club which are ten dollars or less a year.

**Estimates:** 2000: \$10.0 million - 2003: \$10.0 million

**Data Source:** U.S. Department of Commerce, Survey of Current Business

**Reliability:** Level 4C

### 72. Dues for Homeowners Associations

**Citation:** Section 1105(f)(ii)(c)

**Effective Date:** September 1, 1995

**Description:** The Tax Law exempts the dues paid to a homeowners association operating social or athletic facilities for its members.

**Estimate:** No data available

**Reliability:** Level 5

### 73. Homeowner Association Parking Services

**Citation:** Section 1105(c)(6)

**Effective Date:** December 1, 1997

**Description:** Charges paid by a homeowner association member for parking, garaging or storing motor vehicles at a facility owned or operated by the association are exempt.

**Estimates:** 2000: \$5.0 million - 2003: \$6.0 million

**Data Source:** U.S. Department of Commerce; Federation of New York Housing Cooperatives; New York City Association of Realtors

**Reliability:** Level 4B

### 74. Store Coupons

**Citation:** Regulation Section 526.5(c)

**Effective Date:** August 26, 1976

**Description:** Coupons issued by a retailer, for which there is no reimbursement by a manufacturer or distributor, are deducted from the price for sales tax purposes.

**Estimates:** 2000: \$3.0 million - 2003: \$3.0 million

**Data Source:** New York State Department of Taxation and Finance

**Reliability:** Level 4C

### 75. Excise Taxes Imposed on the Consumer

**Citation:** Regulation Section 526.5(b)

**Effective Date:** August 26, 1976

**Description:** Most consumer excise taxes are excluded from the receipt subject to sales tax. For example, the federal tax on telephone service and the State tax on motor fuels are both excluded from the sales tax base.

**Estimates:** 2000: \$35.0 million - 2003: \$34.0 million



**Data Source:** New York State Department of Taxation and Finance; U.S. Department of Commerce, Statistical Abstract of the United States

**Reliability:** Level 4A

**76. Property Sold by Morticians**

**Citation:** Section 1115(a)(7)

**Effective Date:** August 1, 1965

**Description:** Exempt from tax is tangible personal property sold by a mortician, undertaker or funeral director. However, sales to them for use in conducting funerals do not qualify as a sale for resale and are taxable. Thus, only the markup on those items is tax-exempt.

**Estimates:** 2000: \$10.0 million - 2003: \$10.0 million

**Data Source:** The Nelson A. Rockefeller Institute of Government, New York State Statistical Yearbook; National Funeral Directors Association

**Reliability:** Level 4B

**77. Flags**

**Citation:** Section 1115(a)(11)

**Effective Date:** August 1, 1965

**Description:** Flags of the United States of America and the State of New York are tax-exempt.

**Estimate:** No data available

**Reliability:** Level 5

**78. Garage Sales**

**Citation:** Section 1115(a)(18)

**Effective Date:** September 1, 1973

**Description:** Sales of products at private residences are not taxable if the sales do not take place more than three days in a calendar year, are reasonably expected not to exceed \$600, and if no member of the household conducts a trade or business selling similar products.

**Estimate:** No data available

**Reliability:** Level 5

**79. New Mobile Homes**

**Citation:** Section 1111(f)

**Effective Date:** September 1, 1983

**Description:** Thirty percent of the receipts or consideration from sales of new mobile homes is exempt from tax.

**Estimates:** 2000: \$2.0 million - 2003: \$2.0 million

**Data Source:** Manufactured Housing Institute

**Reliability:** Level 4A

**80. Used Mobile Homes**

**Citation:** Section 1115(a)(23)

**Effective Date:** January 1, 1982

**Description:** Sales of used mobile homes are fully tax exempt.

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**Estimate:** No data available

**Reliability:** Level 5

### 81. Registered Race Horses

**Citation:** Section 1115(a)(29)

**Effective Date:** June 1, 1994

**Description:** The sales tax exempts racehorses registered with the Jockey Club, the United States Trotting Association or the National Steeplechase and Hunt Association (or such a horse during the first 24 months of its' life if eligible to be so registered) purchased or used for entry in events on which pari-mutuel wagering is authorized by law. The exemption, however, does not apply to a horse which had never raced in such an event during the first 4 years of its life.

**Estimate:** No data available

**Reliability:** Level 5

### 82. Race Horses Purchased Through Claiming Races

**Citation:** Section 1111(g)

**Effective Date:** July 1, 1985

**Description:** The sale in New York of race horses through claiming races, if not otherwise exempt, is taxable on the full initial purchase price. On the second or later sale of the same horse in the same calendar year within the State, the tax applies only to the excess of the purchase price over the highest of the prior purchase prices.

**Estimate:** No data available

**Reliability:** Level 5

### 83. Race Horses Purchased Out of State

**Citation:** Section 1118(9), (10)

**Effective Date:** July 28, 1981 (Section 1118(9)); July 1, 1985 (Section 1118(10))

**Description:** Race horses purchased by New York residents outside New York and brought into the State for the purpose of entering racing events on five or less days in any one calendar year for which pari-mutuel racing is authorized, if not otherwise exempt, are exempt from use tax. For those race horses not otherwise exempt and entered in racing events in New York on more than five days and subject to use tax, the tax does not apply to the extent that the value of the race horse exceeds \$100,000.

**Estimate:** No data available

**Reliability:** Level 5

### 84. Training and Maintaining Race Horses

**Citation:** Section 1115(m)

**Effective Date:** July 19, 1988

**Description:** Exempt from tax are the services of training and maintaining race horses. Also exempt is the tangible personal property actually transferred by a trainer to the race horse owner in conjunction with the above services.

**Estimates:** 2000: \$3.0 million - 2003: \$3.0 million  
**Data Source:** American Horse Council; Barents Group, LLC  
**Reliability:** Level 4C

**85. Property Sold to Contractors for Capital Improvements or Repairs for Exempt Organizations**

**Citation:** Section 1115(a)(15), (16)

**Effective Date:** September 1, 1969

**Description:** Tangible personal property sold to a contractor, subcontractor or repairman is exempt from tax if the property is used in erecting structures, maintaining, servicing, repairing or adding to or altering the real property of an exempt organization and such property becomes an integral component part of the realty.

**Estimates:** 2000: \$50.0 million - 2003: \$54.0 million

**Data Source:** U.S. Department of Commerce, Statistical Abstract of the United States and Census of Construction - 1997

**Reliability:** Level 4C

**86. Property Donated by a Manufacturer to an Exempt Organization**

**Citation:** Section 1115(l)

**Effective Date:** September 1, 1986

**Description:** Tangible personal property manufactured and donated by the manufacturer to an exempt organization is exempt from tax provided that the manufacturer offers the same kind of property for sale in the regular course of business and that the manufacturer has not made any other use of the donated property.

**Estimate:** No data available

**Reliability:** Level 5

**87. Sales and Use Tax Paid to Other States**

**Citation:** Section 1118(7)

**Effective Date:** August 1, 1965

**Description:** Exempt from tax are property or services upon which a sales or use tax was properly paid to another state, providing such state allows a corresponding exemption for taxable purchases in New York, and no credit or refund is available from such other state. However, tax is due to New York to the extent that the tax imposed by New York is at a higher rate than the rate of such other state.

**Estimate:** No data available

**Reliability:** Level 5

**88. Precious Metal Bullion and Coins**

**Citation:** Section 1115(a)(27)

**Effective Date:** September 1, 1989

**Description:** Precious metal bullion and coins purchased for investment are exempt.

**Estimates:** 2000: \$95.0 million - 2003: \$101.0 million

**Data Source:** Commodities and Mercantile Exchange

**Reliability:** Level 4C

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### 89. Computer Software Transferred to Affiliated Corporations

**Citation:** Section 1115(a)(28)

**Effective Date:** September 1, 1991

**Description:** Computer software that was originally purchased as a nontaxable custom computer program, and which is subsequently sold by the original purchaser to a corporation which is a member of an affiliated group to which the original purchaser also belongs, is exempt from tax.

**Estimate:** No data available

**Reliability:** Level 5

### 90. Services to Computer Software

**Citation:** Section 1115(o)

**Effective Date:** September 1, 1991

**Description:** Installing, maintaining, servicing or repairing prewritten computer software is exempt from tax when the charge for such services is reasonable and separately stated on an invoice or other statement of the price given to the purchaser.

**Estimate:** No data available

**Reliability:** Level 5

### 91. Self-use of Prewritten Software by its Author

**Citation:** Section 1110(g)

**Effective Date:** September 1, 1991

**Description:** The use tax on prewritten computer software used by its author or creator is calculated on the cost of the blank medium, such as the disks or tapes, and not at the price at which the software is normally offered for sale.

**Estimate:** No data available

**Reliability:** Level 5

### 92. Computer System Hardware

**Citation:** Section 1115(a)(35)

**Effective Date:** June 1, 1998; March 1, 2001 for Internet Web sites

**Description:** Exempt from tax are purchases, leases or rentals of computer system hardware used or consumed directly and predominantly in designing and developing computer software for sale or in providing the service, for sale, of designing and developing Internet Web sites.

**Estimates:** 2000: \$9.0 million - 2003: \$14.0 million

**Data Source:** U.S. Department of Commerce

**Reliability:** Level 4C

### 93. Promotional Materials Mailed Out of State

**Citation:** Section 1115(n)(1), (2)

**Effective Date:** September 1, 1989

**Description:** Exempt from tax are promotional materials mailed out of state, envelopes and cheshire labels used in mailing promotional materials from points in New York State to

customers outside New York State. A pro rata exemption is also allowed for charges for the use of a mailing list, in connection with mailing such promotional materials.

**Estimates:** No data available

**Reliability:** Level 5

**94. Printed Promotional Materials**

**Citation:** Section 1115(n)(4), (5) and (6)

**Effective Date:** March 1, 1997

**Description:** Exempt from tax are printed promotional materials distributed by U.S. mail or common carrier. Also exempt are certain services purchased in connection with the exempt promotional materials, such as mailing list services and a printer's storage service.

**Estimates:** 2000: \$29.0 million - 2003: \$29.0 million

**Data Source:** U.S. Department of Commerce, Economic Census

**Reliability:** Level 4C

**95. U.S. Postage Used in the Distribution of Promotional Materials**

**Citation:** Section 1115(n)(3)

**Effective Date:** September 1, 1991

**Description:** Separately stated charges by a vendor to the purchaser of promotional materials, or of taxable services to such promotional material, for the cost of mailing such promotional materials by means of the United States Postal Service to the purchaser's customers or prospective customers are exempt from tax where such charges do not exceed the vendor's United States Postal Service costs.

**Estimate:** No data available

**Reliability:** Level 5

**96. Clothing and Footwear**

**Citation:** Section 1115(a)(30)

**Effective Date:** March 1, 2000

**Description:** Exempt from tax are items of clothing and footwear costing less than \$110. The exemption applies to most clothing and footwear worn by human beings. It also applies to most fabric, thread, yarn, buttons, snaps, hooks, zippers and like items which become a physical component part of exempt clothing or are used to make or repair the exempt clothing.

**Estimates:** 2000: \$442 million - 2003: \$621.0 million

**Data Source:** New York State Division of the Budget

**Reliability:** Level 4B

**97. Coin-Operated Photocopying Machines**

**Citation:** Section 1115(a)(31)

**Effective Date:** December 1, 1997

**Description:** Copies made using a coin-operated photocopy machine where the charge is 50 cents or less per copy are exempt from tax.

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**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** Vending Times

**Reliability:** Level 4C

**98. Luggage Carts**

**Citation:** Section 1115(a)(13-b)

**Effective Date:** December 1, 1997

**Description:** Exempt from tax are temporary transportation devices (e.g., luggage carts) sold through coin operated equipment, provided the retailer is primarily engaged in making such sales.

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** New York State Department of Taxation and Finance

**Reliability:** Level 4C

**99. Emissions Testing Equipment**

**Citation:** Section 1115(a)(31)

**Effective Date:** September 1, 1997

**Description:** Exempt from tax is enhanced emissions inspection equipment certified by the Department of Environmental Conservation for use in an enhanced emissions inspection and maintenance program as required by the federal clean air act of 1990, where such equipment is purchased and used by an official inspection station authorized to conduct the enhanced emissions inspections.

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** New York State Department of Environmental Conservation

**Reliability:** Level 4A

**100. College Textbooks**

**Citation:** Section 1115(a)(34)

**Effective Date:** June 1, 1998

**Description:** Course textbooks purchased by full or part-time students enrolled in an institution of higher education are exempt.

**Estimates:** 2000: \$24.0 million - 2003: \$27.0 million

**Data Source:** New York State Department of Education

**Reliability:** Level 4B

**101. Live Dramatic or Musical Arts Production**

**Citation:** Section 1115(x)

**Effective Date:** March 1, 2001

**Description:** Exempt from sales and use taxes are certain items of tangible personal property and certain services that are used directly and predominantly in producing live dramatic or musical arts performances. The performances must take place in a theater or other similar place of assembly with a fixed seating capacity of at least 100.

**Estimates:** 2000: Not Applicable - 2003: \$3.0 million

**Data Source:** New York State Division of the Budget

**Reliability:** Level 4A

### 102. **Qualified Empire Zone Enterprises**

**Citation:** Section 1115(z)(1), (z)(2)

**Effective Date:** March 1, 2001

**Description:** Tangible personal property and certain services purchased by a Qualified Empire Zone Enterprise (QEZE) and used directly and predominantly by the QEZE in the empire zone in which the QEZE has qualified for benefits are exempt from sales and use tax. Also exempt is tangible personal property sold to a contractor, subcontractor, or repairman is exempt from tax if the property is used in erecting structures, maintaining, servicing, repairing, adding to, or altering the real property of a QEZE located within an empire zone.

**Estimates:** 2000: Not Applicable - 2003: \$60.0 million

**Data Source:** New York State Division of the Budget

**Reliability:** Level 4C

### **Exempt Organizations**

### 103. **New York State Agencies and Political Subdivisions**

**Citation:** Section 1116(a)(1)

**Effective Date:** August 1, 1965

**Description:** Exempt from tax is the State of New York, or any of its agencies, instrumentalities, public corporations, or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons.

**Estimates:** 2000: \$815.0 million - 2003: \$861.0 million

**Data Source:** New York State Division of the Budget; U.S. Department of Commerce

**Reliability:** Level 4C

### 104. **Industrial Development Agencies**

**Citation:** Section 1116(a)(1), and General Municipal Law Article 18-A

**Effective Date:** May 26, 1969

**Description:** An Industrial Development Agency (IDA) qualifies as an exempt government organization under Section 1116(a)(1) and receives all the benefits of that status. In addition, Article 18-A of the General Municipal Law grants tax exempt status to purchases made by an IDA project beneficiary (as agent of the IDA) and for sales by an IDA, even where it is a vendor of services or property of a kind ordinarily sold by private persons.

**Estimates:** 2000: \$138.0 million - 2003: \$109.0 million

**Data Source:** New York State Department of Taxation and Finance

**Reliability:** Level 4A

### 105. **Federal Agencies**

**Citation:** Section 1116(a)(2)

**Effective Date:** August 1, 1965

**Description:** Exempt from tax is the United States of America, and any of its agencies and instrumentalities where it is the purchaser, user or consumer, or where it sells services or property of a kind not ordinarily sold by private persons.

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**Estimates:** 2000: \$150.0 million - 2003: \$156.0 million

**Data Source:** U.S. Department of Commerce, Bureau of the Census Governments Division

**Reliability:** Level 4B

### 106. United Nations

**Citation:** Section 1116(a)(3)

**Effective Date:** August 1, 1965

**Description:** Exempt from tax is the United Nations, or any international organization of which the United States is a member, where it is the purchaser, user or consumer, or where it sells services or property of a kind not ordinarily sold by private persons.

**Estimate:** No data available

**Reliability:** Level 5

### 107. Diplomats and Foreign Missions

**Citation:** Federal treaties with diplomat's country

**Effective Date:** Effective dates vary by Federal treaties

**Description:** Diplomats of foreign countries and foreign missions are exempt from all national, state and local taxes if the treaty with the foreign nation provides a reciprocal exemption for U.S. diplomats abroad.

**Estimate:** No data available

**Reliability:** Level 5

### 108. Charitable Organizations

**Citation:** Section 1116(a)(4)

**Effective Date:** August 1, 1965

**Description:** Exempt from tax are purchases by nonprofit organizations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, fostering national or international amateur sports competition, or for the prevention of cruelty to children or animals. These organizations may not be engaged substantially in political activities and no part of net earnings may inure to the benefit of a private shareholder or individual.

**Estimates:** 2000: \$245.0 million - 2003: \$259.0 million

**Data Source:** U.S. Department of Commerce, Survey of Current Business

**Reliability:** Level 4C

### 109. Veterans' Posts or Organizations

**Citation:** Section 1116(a)(5), (g)

**Effective Date:** September 1, 1974 (Section 1116(a)(5)); December 1, 1993 (Section 1116(g))

**Description:** Exempt from tax are purchases by posts or organizations of past or present members of the armed forces of the United States, provided that such post or organization is organized in New York and at least 75 percent of its members are past or present members of the U.S. armed forces and substantially all other members are their spouses or cadets, and no part of net earnings inures to the benefit of a private shareholder or individual. Purchases



of hotel accommodations by individual members acting as duly authorized representatives of the post or organization are also exempt from tax.

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** New York State Department of Taxation and Finance; Food Institute, Food Industry Review

**Reliability:** Level 4C

### 110. Indian Nations and Members of Such Indian Nations

**Citation:** Section 1116(a)(6); Federal restrictions

**Effective Date:** September 1, 1976

**Description:** The following Indian Nations residing in New York are exempt where they are the purchaser, user or consumer: Cayuga, Oneida, Onondaga, Poospatuck, Saint Regis Mohawk, Seneca, Shinnecock, Tonawanda and Tuscarora. In addition, members of these Nations are excluded from tax for purchases made by them on the reservation in New York State.

**Estimates:** 2000: \$2.0 million - 2003: \$2.0 million

**Data Source:** U.S. Bureau of the Census; U.S. Bureau of Indian Affairs

**Reliability:** Level 4C

### 111. U.S. Military Base Post Exchanges

**Citation:** 4 U.S. Code, Sections 104-110

**Effective Date:** August 1, 1965

**Description:** Sales, except sales of motor fuels, made on a military base by a post exchange or commissary are exempt.

**Estimates:** 2000: \$7.0 million - 2003: \$7.0 million

**Data Source:** Regional sales offices of U.S. Armed Services

**Reliability:** Level 4A

### 112. Nonprofit Health Maintenance Organizations

**Citation:** Section 1116(a)(7)

**Effective Date:** April 1, 1980

**Description:** Purchases by a nonprofit health maintenance organization subject to the provisions of Article 44 of the Public Health Law are tax exempt.

**Estimates:** 2000: \$3.0 million - 2003: \$3.0 million

**Data Source:** New York State Health Department

**Reliability:** Level 4A

### 113. Nonprofit Medical Expense Indemnity or Hospital Service Corporations

**Citation:** Insurance Law Article 43, Section 4310(j)

**Effective Date:** June 15, 1939

**Description:** The Insurance Law provides for an exemption from all State and local taxes (including State and local sales taxes) for certain entities. These entities include nonprofit corporations organized for the purpose of family medical expense indemnity, dental expense indemnity, hospital services or health services.

## SALES AND USE TAX

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**Estimates:** 2000: \$8.0 million - 2003: \$9.0 million  
**Data Source:** New York State Insurance Department  
**Reliability:** Level 4A

### 114. Nonprofit Property/Casualty Insurance Companies

**Citation:** Insurance Law, Article 67, Section 6707  
**Effective Date:** December 20, 2000  
**Description:** The Insurance Law provides for an exemption from sales and use tax for a nonprofit property/casualty insurance company subject to the provisions of Article 67 with respect to any property owned by it or under its jurisdiction, control or supervision.  
**Estimate:** No data available  
**Reliability:** Level 5

### 115. Rural Electric Cooperatives

**Citation:** Section 1116(a)(8)  
**Effective Date:** September 1, 1983  
**Description:** Exempt from tax on their purchases are cooperatives and foreign corporations doing business in this State pursuant to the Rural Electric Cooperative Law.  
**Estimates:** 2000: Minimal - 2003: Minimal  
**Data Source:** Rural Electric Cooperatives Association; U.S. Department of Agriculture  
**Reliability:** Level 4A

### 116. Municipal Trash Removal Services

**Citation:** Section 1116(e)  
**Effective Date:** June 30, 1980  
**Description:** Receipts from the service of trash removal are exempt from tax where such service is rendered by or on behalf of a municipal corporation of the State other than New York City.  
**Estimates:** 2000: \$32.0 million - 2003: \$32.0 million  
**Data Source:** Office of the State Comptroller  
**Reliability:** Level 4B

## Admission Charges

### 117. Certain Admission Charges

**Citation:** Section 1105(f)(1)  
**Effective Date:** August 1, 1965; December 1, 1997 for circus admissions  
**Description:** Exempt from tax are admission charges of ten cents or less, plus admission charges to: race tracks; boxing or wrestling matches; live circus performances, dramatic or musical arts performances; motion picture theaters; and sporting facilities where the patron is to be a participant, such as bowling alleys, health and fitness centers, and swimming pools.  
**Estimates:** 2000: \$46.0 million - 2003: \$52.0 million  
**Data Source:** U.S. Department of Commerce, Economic Census  
**Reliability:** Level 4B

**118. Events Given for the Benefit of Charitable Organizations, Veterans' Posts and Indian Nations**

**Citation:** Section 1116(d)(1)(A)

**Effective Date:** August 1, 1965

**Description:** In general, admissions are exempt if all of the proceeds go exclusively to the benefit of a tax-exempt charitable organization, Indian Nations, or organization of past or present members of the Armed Forces.

**Estimate:** No data available

**Reliability:** Level 5

**119. Events Given for the Benefit of Certain Orchestras and Opera Companies**

**Citation:** Section 1116(d)(1)(B)

**Effective Date:** August 1, 1965

**Description:** Admissions are exempt if all of the proceeds go exclusively to the benefit of a society or organization conducted for the sole purpose of maintaining symphony orchestras or operas and receiving substantial support from voluntary contributions.

**Estimate:** No data available

**Reliability:** Level 5

**120. National Guard Organization Events**

**Citation:** Section 1116(d)(1)(C)

**Effective Date:** August 1, 1965

**Description:** Admissions are exempt if all of the proceeds go exclusively to the benefit of a national guard organization.

**Estimate:** No data available

**Reliability:** Level 5

**121. Municipal Police and Fire Department Events**

**Citation:** Section 1116(d)(1)(D)

**Effective Date:** August 1, 1965

**Description:** Admissions are exempt if all of the proceeds go exclusively to the benefit of a police or fire department of a political subdivision of the State, including its pension or disability funds, or to volunteer fire and ambulance companies.

**Estimate:** No data available

**Reliability:** Level 5

**122. Certain Athletic Games**

**Citation:** Section 1116(d)(2)(A)

**Effective Date:** August 1, 1965

**Description:** Admissions to any athletic game or exhibition are exempt where the proceeds go exclusively to the benefit of elementary or secondary schools.

**Estimate:** No data available

**Reliability:** Level 5

## SALES AND USE TAX

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### 123. Carnivals or Rodeos for Certain Charitable Organizations

**Citation:** Section 1116(d)(2)(B)

**Effective Date:** July 30, 1983

**Description:** Admissions to carnivals or rodeos in which any professional performer or operator participates for compensation are exempt when the entire net profit inures exclusively to the benefit of a tax-exempt charitable organization having as its charitable purpose the operation of a school.

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** U.S. Department of Commerce, Economic Census - Services Industries

**Reliability:** Level 4B

### 124. Agricultural Fairs

**Citation:** Section 1116(d)(3)(A)

**Effective Date:** August 1, 1965

**Description:** Admissions to agricultural fairs are exempt if no part of net earnings inures to the benefit of any stockholders or members of the association conducting the fair, and if the proceeds from the fair are used exclusively for the improvement, maintenance and operation of such agricultural fairs.

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** New York State Department of Agriculture

**Reliability:** Level 4A

### 125. Historical Homes, Gardens, Sites and Museums

**Citation:** Section 1116(d)(3)(B), (C)

**Effective Date:** August 1, 1965

**Description:** Admissions to an historical home or garden, historic sites, houses and shrines, or museums which are maintained and operated by a society or organization devoted to the preservation and maintenance of such historic places are exempt, provided that no part of net earnings goes to the benefit of any private stockholder or individual.

**Estimate:** No data available

**Reliability:** Level 5

## Credits

### 126. Sales Tax Vendor Credit

**Citation:** Section 1137(f)

**Effective Date:** September 1, 1994; March 1, 1999 for increased rate

**Description:** A vendor allowance credit is provided to vendors who collect sales tax and remit the tax with their timely filed and fully paid quarterly or annual returns. The credit is equal to three and one-half percent of the State sales tax collected, up to a maximum credit of \$150 per return. Prior to March 1, 1999 the credit equaled one and one-half percent up to \$100 per return.

**Estimates:** 2000: \$56.0 million - 2003: \$51.0 million

**Data Source:** New York State Department of Taxation and Finance

**Reliability:** Level 3

**127. Tangible Property Sold by Contractors in Certain Situations**

**Citation:** Section 1119(a)

**Effective Date:** August 1, 1965

**Description:** A credit for taxes paid is allowed on the sale to or use by a contractor or subcontractor of tangible personal property if that property is used solely in the performance of a preexisting lump sum or unit price construction contract. The credit would only be applicable following a sales and use tax rate change.

**Estimate:** No data available

**Reliability:** Level 5

**128. Veterinary Drugs**

**Citation:** Section 1119(a)

**Effective Date:** September 1, 1978

**Description:** A credit for taxes paid is allowed on the sale to, or use by, a veterinarian of drugs or medicine if they are used by the veterinarian in rendering exempt services to livestock or poultry used in the production for sale of tangible personal property by farming. The credit also extends to farmers, who qualify for the farming exemption, for use by such persons on livestock or poultry.

**Estimate:** No data available

**Reliability:** Level 5

**129. Construction Materials Used in Empire Zones**

**Citation:** Section 1119(a)

**Effective Date:** September 1, 1986

**Description:** A credit for taxes paid is allowed on the sale of tangible personal property purchased for use in constructing, expanding or rehabilitating industrial or commercial real property located in an Empire Zone, but only to the extent that such property becomes an integral component part of the real property.

**Estimate:** No data available

**Reliability:** Level 5

**130. Bus Companies Providing Local Transit Service**

**Citation:** Section 1119(b)

**Effective Date:** March 1, 1974

**Description:** A credit for taxes paid is allowed on the sale to, or use by, an omnibus carrier in New York of any omnibus, parts, equipment, lubricants, motor fuel, diesel fuel, maintenance, or service or repair purchased and used in the operation of any such omnibus by such carrier. The amount of credit is based on the ratio of the vehicle mileage in local transit service in New York to the total vehicle mileage in the State.

**Estimates:** 2000: Minimal - 2003: Minimal

**Data Source:** New York State Department of Taxation and Finance

**Reliability:** Level 3



## CORPORATION TAX

This section of the report provides descriptions of 44 separate tax expenditure provisions of the Article 9 tax. The list of tax expenditures is based on the Tax Law as of January 1, 2003. Total tax liability of Article 9 has been included to provide perspective.

### Description of Tax

Article 9 of the Tax Law imposes initial taxes and annual fees on domestic and foreign corporations. It also imposes gross receipts-based taxes on a variety of specialized businesses. The temporary Metropolitan Transit Authority business surcharge applies, based on the taxpayer's business activities in the Metropolitan Commuter Transportation District (MCTD).

Section 180 imposes an organization tax, at a rate of 1/20 of 1 percent, on the total amount of the par value of stock authorized to be issued by domestic corporations. The tax rate on shares without par value is five cents per share. The tax also applies to any subsequent change in authorized stock or capital structure.

Section 181.1 imposes a license fee on foreign (out-of-state) corporations (but not insurance corporations or corporations taxed under separate Articles). The rate is the same as for the organization tax but only applies to registered out-of-state corporations exercising a franchise or carrying on business in New York State.

Section 181.2 of the Tax Law requires an additional annual maintenance fee of \$300 from all foreign corporations, including S corporations (but not insurance corporations or certain banking corporations). Foreign corporations may credit the maintenance fee against any tax due under Articles 9 or 9-A and against taxes paid under other Articles.

Section 183 of the Tax Law imposes a franchise tax on transportation and transmission companies and associations (excluding aviation companies which are taxable under Article 9-A) at the highest of three alternatives. Businesses must pay 1.5 mills on each dollar of net value of their issued capital stock in New York State. However, if the dividends paid on their capital stock are 6 percent or more, the tax rate is 0.375 mills per dollar of par value for each 1 percent of dividends paid. The third alternative is a fixed minimum of \$75. Effective January 1998, trucking and railroad companies previously taxable under Section 183 became taxable under Article 9-A unless an election had been made to remain under Article 9. Effective January 2000, gas pipelines became taxable under Article 9-A.

Section 184 imposes an additional franchise tax on transportation and transmission corporations and associations. The rate was 0.6 percent on gross earnings for trucking companies and railroads and 0.75 percent on gross earnings from all sources within New York for other such corporations. The rate for all companies subject to Section 184 dropped to 3/8 percent as of July 1, 2000.

For taxable years prior to 1995, telephone businesses were subject to tax on intrastate gross earnings. Beginning in 1995, Section 184 applies only to those telecommunications corporations or associations principally engaged in a local telephone business. Companies principally engaged

## CORPORATION TAX

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in long distance services are excluded from the tax. In addition, the law provided two exclusions to equalize the tax treatment of telecommunications services provided by local carriers, which remain subject to the Section 184 tax, and long distance carriers. Excluded from Section 184 are receipts from sales for ultimate consumption from interLATA, interstate, or international services (effective January 1, 1995), and 30 percent of intraLATA toll services, including interregion regional calling plan services (effective January 1, 1996). In January 1998, trucking and railroad companies formerly taxable under Section 184 became taxable under Article 9-A unless they elected to remain under Article 9. In January 2000, gas pipelines became taxable under Article 9-A.

The franchise tax on agricultural cooperatives imposed by Section 185 is the highest of three alternatives. The first is a tax at 1 mill per dollar on the value of issued capital stock allocated to New York. The second alternative is a tax at a rate based on dividends of 6 percent or more, paid on the value of issued capital stock allocated to New York. A \$10 minimum tax is the other alternative.

Section 186, which was repealed effective January 1, 2000, provided for a franchise tax on waterworks companies, gas companies, electric or steam heating, lighting and power companies. The tax was imposed at a rate of 3/4 of 1 percent on gross earnings and 4 1/2 percent on the amount of dividends paid which exceeded 4 percent of the amount of the taxpayer's paid-in capital employed in New York State. The minimum tax alternative of \$125 applied, but only in case and to the extent that the tax computed under the primary method was less than \$125. Energy and water companies formerly taxable under this Section are now taxable under Article 9-A.

Section 186-a provides for a gross receipts tax on the furnishing of utility services. A utility is defined as any seller of gas, electricity, steam, water, or refrigeration. Utilities that provide telephone or telegraph services which are subject to the supervision of the Public Service Commission pay the tax on their gross receipts not derived from the sale of telecommunications services at a rate of 2.5 percent. Telecommunications service receipts are taxable under Section 186-e.

For tax years covered in the History portion of the following Table 4, 1995 to 1999, the tax rate that applied was 3.5 percent. That rate was reduced effective October 1, 1998 to 3.25 percent and further reduced to 2.5 percent effective January 1, 2000. For taxable years beginning on or after January 1, 2000 separate additional rate reduction schedules will apply to receipts from the sale of an energy commodity and to receipts from charges for the transportation, transmission, distribution or delivery of energy, as follows:

<u>Calendar Year</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005 and After</u>
Commodity Rate	2.1%	2.0%	1.9%	0.85%	0.4%	0%
T&D Rate	2.5%	2.45%	2.4%	2.25%	2.125%	2.0%

Section 186-e provides for an excise tax on telecommunications services at a rate of 2.5 percent on the gross receipts of all providers of telecommunications services. The tax applies



to gross receipts from all intrastate services and interstate and international services that either originate or terminate in New York and are billed to a service address in the State.

Section 189 formerly imposed a tax at a rate of 4.25 percent, equivalent to the combined 186 and 186-a rates, on the value of natural gas purchased out-of-state and imported into New York for consumption within the State. Section 189 is now subject to the same phase-out schedule as the 186-a tax on receipts from the sale of an energy commodity. For calendar quarters in 2003 the rate will be 0.85 percent.

Most of the revenue from the Article 9 tax resulted from the gross receipts-based taxes (Sections 184, 186, 186-a and 186-e). Section 186 was repealed effective January 1, 2000. The tax expenditures are minor relative to the revenue base but include the allowance of credits against the tax. In addition, tax expenditures result from the exemption of some businesses from the gross receipts taxes.

### **Data Sources**

The major source of data used to compute the tax expenditure estimates under Article 9 is the 1999-2000 Business Tax Files. This is an unverified file of all taxpayers filing a return under Article 9.

### **Methodology**

The projections of the tax expenditures from 1999 to 2003 use a variety of economic forecast variables. The expenditure estimates were computed using historical trends.

Tax expenditures whose values are less than \$0.1 million are considered minimal and are designated by an asterisk.

**Table 4**  
**2003 New York State Corporation and Utilities (Article 9) Tax Expenditure Estimates**  
**(1999 Corporation and Utilities Tax Liability = \$1,433.1 Million)**  
**(Millions of Dollars)**

<u>Tax Item</u>	<u>History</u>					<u>Forecast</u>	<u>Reliability</u> <u>Level</u>
	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2003</u>	
<b>Section 181 - License and Maintenance Fees on Foreign Corporations</b>							
<u>Corporate Exemptions</u>							
1. Banking and Insurance Companies	N/A	N/A	N/A	N/A	N/A	N/A	5
<b>Section 183 - Franchise Tax on Transportation and Transmission Corporations and Associations</b>							
<u>Credits</u>							
2. Special Additional Mortgage Recording Tax Credit	*	*	*	*	*	*	2
3. Alternative Fuels Vehicle Credit 1/	--	--	--	*	*	*	4
4. Employment of Persons with Disabilities Credit 1/	--	--	--	0.0	*	*	4
5. Green Buildings Tax Credit 1/	--	--	--	--	--	*	4
6. Transportation Access Credit 1/	--	--	--	--	--	*	2
<u>Corporate Exemptions</u>							
7. Ferry Companies	N/A	N/A	N/A	N/A	N/A	N/A	5
8. Taxicabs and Omnibuses	*	*	*	*	*	*	2
9. Railroads and Vessels Engaged in Interstate or Foreign Commerce	N/A	N/A	N/A	N/A	N/A	N/A	5
10. Corporations Principally Engaged in Providing Telecommunications for Air Safety and Navigation Purposes	N/A	N/A	N/A	N/A	N/A	N/A	5
<b>Section 184 - Additional Franchise Tax on Transportation and Transmission Corporations and Associations</b>							
<u>New York Modifications to Gross Income</u>							
11. Exclusion of Interstate and Foreign Income	N/A	N/A	N/A	N/A	N/A	N/A	5
12. Exclusion of Receipts from InterLATA, Interstate, and International Telephone Services 1/	0.9	1.0	1.3	2.7	2.3	3.0	2
13. Exclusion of Thirty Percent of Receipts from IntraLATA Toll Telephone Services	--	2.2	2.2	2.5	2.5	2.8	2



<u>Tax Item</u>	<u>History</u>					<u>Forecast</u>	<u>Reliability</u>
	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2003</u>	<u>Level</u>
<b>Section 186-a - Tax on the Furnishing of Utility Services</b>							
<u>Credits</u>							
34. Power for Jobs Tax Credit	--	--	4.2	45.2	61.2	71.0	4
<u>Exemptions</u>							
35. Exempt Companies	N/A	N/A	N/A	N/A	N/A	N/A	5
36. Exempt Organizations	N/A	N/A	N/A	N/A	N/A	N/A	5
37. Water Pollution Facilities	N/A	N/A	N/A	N/A	N/A	N/A	5
38. Commercial, Industrial, and Not-For-Profit Relief	--	--	--	--	--	80.0	4
<b>Section 186-e - Excise Tax on Telecommunications Services</b>							
<u>New York Modifications to Gross Income</u>							
39. Exclusion of Cable Television Service	66.4	66.8	71.9	72.2	79.4	90.0	3
40. Exclusion of Receipts from Certain Telecommunications Services for Air Safety and Navigation Purposes	N/A	N/A	N/A	N/A	N/A	N/A	5
<u>Credits</u>							
41. Credit for Tax Paid in Another Jurisdiction	*	1.5	*	*	*	*	2
<u>Exemptions</u>							
42. Exempt Organizations	N/A	N/A	N/A	N/A	N/A	N/A	5
<b>Section 189 - Franchise Tax on Businesses Importing Natural Gas into New York State</b>							
<u>Corporate Exemptions</u>							
43. Co-Generation Facilities	4.3	4.2	4.3	4.8	4.7	1.0	2
44. Credit for Tax Paid in Another Jurisdiction 1/	*	*	*	N/A	N/A	N/A	5

1/ A new tax expenditure item, a revision of the methodology or revisions in the data sources resulting in an estimate which better reflects the tax expenditure value.

\* Less than \$0.1 million.

-- The tax expenditure was not applicable for these years.

N/A No data available

**Article 9**  
**Section 181**  
**License and Maintenance Fees on Foreign Corporations**

**Corporate Exemptions**

Certain entities are exempt from the license fee and banking and insurance annual maintenance fee.

**1. Banking and Insurance Companies**

**Citation:** Section 181.1 (license fee); 181.2 (annual maintenance fee)

**Effective Date:** April 4, 1895, September 1, 1976

**Description:** Certain banking corporations, fire, marine, casualty and life insurance companies, cooperative fraternal insurance companies, and building and loan associations are not subject to the license fee or the annual maintenance fee.

**Estimate:** No data available

**Reliability:** Level 5

**Section 183**  
**Franchise Tax on Transportation and**  
**Transmission Corporations and Associations**

Section 183 taxes transportation and transmission corporations and associations on the basis of allocated capital stock. Generally a corporation's stock is allocated to New York in the ratio that the corporation's gross assets (exclusive of U.S. obligations and cash on hand and on deposit) employed in business in the State bear to gross assets (exclusive of U.S. obligations, cash on hand and on deposit) employed in business everywhere. Effective January 1, 2000, gas pipelines became taxable under Article 9-A.

**Credits**

**2. Special Additional Mortgage Recording Tax Credit**

**Citation:** Section 187

**Effective Date:** December 8, 1978

**Description:** The credit is permitted against all taxes except Sections 180, 181, 186-a, 186-e and 189 taxes and fees. It is based on the amount of special additional mortgage recording taxes paid by the taxpayer, with certain restrictions. No credit is allowed for special additional mortgage recording taxes paid on certain mortgages recorded in the Metropolitan Community Transportation District or Erie County.

**Estimates:** 1999: Minimal - 2003: Minimal

**Data Source:** Business Tax Files

**Reliability:** Level 2

## CORPORATION TAX

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### 3. **Alternative Fuels Vehicle Credit**

**Citation:** Section 187-b

**Effective Date:** Effective for property placed in service in taxable years beginning on or after January 1, 1998. The tax credit provisions do not apply to property placed in service in taxable years beginning after December 31, 2003.

**Description:** Corporation taxpayers, such as utilities, are allowed to claim credits for clean fuel vehicles using natural gas, methanol and other alternative fuels, qualified hybrid vehicles, and clean fuel refueling facility property. Gas and electric utility companies are excluded from claiming the electric vehicle tax credit allowable to other taxpayers and are also excluded from the sales tax exemption for the incremental cost of an electric vehicle. These companies may claim all other credits and sales/use tax exemptions allowed under the bill, including those for refueling facilities. For corporation taxpayers, the credit equals 60 percent of the cost of new clean-fuel components for alternative fuel vehicles registered in New York (capped at \$5,000 per vehicle with a gross vehicle weight rating of 14,000 pounds or less, and \$10,000 for those over 14,000 pounds); \$2,000 for qualified hybrid vehicles; and 50 percent of the cost of new clean-fuel refueling property used in a trade or business.

**Estimates:** 1999: Minimal - 2003: Minimal

**Data Source:** New York State Department of Environmental Conservation, Industry Representatives

**Reliability:** Level 4

### 4. **Employment of Persons with Disabilities Credit**

**Citation:** Section 187-a

**Effective Date:** Effective for taxable years beginning on or after January 1, 1998, applicable to individuals who begin work on or after January 1, 1997

**Description:** Employers may claim a credit equal to 35 percent of the first \$6,000 of wages paid to workers with disabilities, as certified by the State Department of Education or other designated State agency. The credit applies for the second year of employment if a federal work opportunity tax credit applies for the first year. Alternatively, taxpayers may claim the credit based on the first year of employment if no work opportunity tax credit applies. Taxpayers may carry over unused credit amounts to subsequent tax years.

**Estimates:** 1999: Minimal - 2003: Minimal

**Data Source:** Federal credit data

**Reliability:** Level 4

### 5. **Green Buildings Tax Credit**

**Citation:** Section 187-d

**Effective Date:** Effective for tax years beginning on or after January 1, 2001

**Description:** The credits would provide incentives for the purchase of recyclable building materials and other environmentally preferable tangible personal property. It also contains tax credits for the purchase of fuel cells, photovoltaic modules, and environmentally sensitive non-ozone depleting refrigerants. The credits apply to costs incurred on or after June 1, 1999, for property placed in service or that has received a final certificate of occupancy in tax years beginning on or after January 1, 2001.

**Estimates:** 1999: Not Applicable - 2003: Minimal

**Data Source:** Statutory limitation

**Reliability:** Level 4

### 6. **Transportation Access Credit**

**Citation:** Section 187-e

**Effective Date:** Effective for tax years beginning on or after January 1, 2000

**Description:** The taxpayer must make a certified contribution of at least \$10 million to a qualified transportation improvement project in a prior tax year. The projects must enhance a qualified business facility, and may include the construction or improvement of transportation infrastructure and related facilities and systems, including bridges, ramps, highways, and mass transit facilities. In addition, the taxpayer must create, by the third full tax year after the tax year during which the contribution was made, more than 1,000 jobs in connection with the qualified business facility. The credit equals 6 percent of the taxpayer's increased qualified business facility payroll for the tax year. After the third full tax year after the contribution is made the employment increase test is not met, then there is a recapture of the credit. The new law applies to contributions made on or after January 1, 2000.

**Estimates:** 1999: Not Applicable - 2003: Minimal

**Data Source:** Research File

**Reliability:** Level 2

### **Corporate Exemptions**

Certain entities are exempt from the Section 183 franchise tax on capital stock.

### 7. **Ferry Companies**

**Citation:** Section 183.1(b)

**Effective Date:** April 14, 1914

**Description:** Ferry companies operating between any of the boroughs of the City of New York under a lease granted by the City are exempt from tax under this section.

**Estimate:** No data available

**Reliability:** Level 5

### 8. **Taxicabs and Omnibuses**

**Citation:** Section 183.1(c)

**Effective Date:** April 11, 1951 (taxicabs); January 1, 1960 (omnibuses)

**Description:** With certain exceptions, and so long as the State tax on motor fuel exceeds two cents per gallon, corporations classified as taxicabs and omnibuses are exempt from the tax imposed by Section 183.

# CORPORATION TAX

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**Estimates:** 1999: Minimal - 2003: Minimal

**Data Source:** Article 9-A Study File

**Reliability:** Level 2

## 9. Railroads and Vessels Engaged in Interstate or Foreign Commerce

**Citation:** Section 183.7

**Effective Date:** November 11, 1981 for taxable periods beginning on or after January 1, 1981 (original exclusion for vessels only, June 15, 1896)

**Description:** A railroad, palace car or sleeping car corporation or a navigation, canal, ferry (except a ferry operating between any of the boroughs of New York under a lease granted by the City), steamboat or any other corporation formed for or principally engaged in the operation of vessels in interstate or foreign commerce is not subject to the Section 183 tax, even though they maintain an office or otherwise employ capital in New York.

**Estimate:** No data available

**Reliability:** Level 5

## 10. Corporations Principally Engaged in Providing Telecommunications for Air Safety and Navigation Purposes

**Citation:** Section 183.1(b)

**Effective Date:** January 1, 1995

**Description:** Corporations principally engaged in selling of telecommunications to air carriers solely for the purposes of air safety and navigation are exempt from the tax. Providers must be at least 90 percent owned (directly or indirectly) by air carriers and have the principal function of fulfilling requirements of the Federal Aviation Administration (FAA) or International Civil Aviation Organization (ICAO) relating to the existence of a communication system between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of these entities).

**Estimate:** No data available

**Reliability:** Level 5

### Section 184 Additional Franchise Tax on Transportation and Transmission Corporations and Associations

Section 184 imposes an additional franchise tax on transportation and transmission corporations and associations based on their gross earnings within the State. Beginning in 1995, the tax on telecommunications companies under Section 184 applies only to those telecommunications corporations or associations principally engaged in a local telephone business. Effective January 1, 2000, gas pipelines became taxable under Article 9-A.



## New York Modifications to Gross Income

### 11. Exclusion of Interstate and Foreign Income

**Citation:** Section 184.1

**Effective Date:** June 15, 1896

**Description:** Corporations, joint stock corporations or associations formed for or principally engaged in a railroad business, and canal, steamboat, ferry, navigation or corporations formed for or principally engaged in the operation of vessels may exclude earnings derived from business of an interstate or foreign character.

**Estimate:** No data available

**Reliability:** Level 5

### 12. Exclusion of Receipts from InterLATA, Interstate, and International Telephone Services

**Citation:** Section 184.1

**Effective Date:** January 1, 1995

**Description:** Telephone companies subject to the tax may exclude receipts from sales for ultimate consumption of interLATA, interstate and international services.

**Estimates:** 1999: \$2.3 million - 2003: \$3.0 million

**Data Source:** Business Tax Files

**Reliability:** Level 2

### 13. Exclusion of Thirty Percent of Receipts from IntraLATA Toll Telephone Services

**Citation:** Section 184.1

**Effective Date:** January 1, 1996

**Description:** Telephone companies subject to the tax may exclude 30 percent of receipts from sales for ultimate consumption of intraLATA toll services, including interregion regional calling plan services, other than carrier access services.

**Estimates:** 1999: \$2.5 million - 2003: \$2.8 million

**Data Source:** Business Tax Files

**Reliability:** Level 2

## Credits

### 14. Special Additional Mortgage Recording Tax Credit

**Citation:** Section 187

**Effective Date:** March 31, 1987

**Description:** The credit is permitted against all taxes except Sections 180, 181, 186-a, 186-e and 189 taxes and fees. It is based on the amount of special additional mortgage recording taxes paid by the taxpayer, with certain restrictions. No credit is allowed for special additional mortgage recording taxes paid on certain mortgages recorded in the Metropolitan Commuter Transportation District or Erie County.

## CORPORATION TAX

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**Estimates:** 1999: \$0.0 million - 2003: Minimal

**Data Source:** Business Tax Files

**Reliability:** Level 2

### 15. Alternative Fuels Vehicle Credit

**Citation:** Section 187-b

**Effective Date:** Effective for property placed in service in taxable years beginning on or after January 1, 1998. The tax credit provisions do not apply to property placed in service in taxable years beginning after December 31, 2003.

**Description:** The new law allows corporation taxpayers, such as utilities, to claim credits for clean fuel vehicles using natural gas, methanol and other alternative fuels; and clean fuel refueling facility property. Gas and electric utility companies are excluded from claiming the electric vehicle tax credit allowable to other taxpayers and are also excluded from the sales tax exemption for the incremental cost of an electric vehicle. These companies may claim all other credits and sales/use tax exemptions allowed under the bill, including those for refueling facilities. For corporation taxpayers, the credit equals 60 percent of the cost of new clean-fuel components for alternative fuel vehicles registered in New York (capped at \$5,000 per vehicle with a gross vehicle weight rating of 14,000 pounds or less, and \$10,000 for those over 14,000 pounds); and 50 percent of the cost of new clean-fuel refueling property used in a trade or business.

**Estimates:** 1999: \$0.0 million - 2003: Minimal

**Data Source:** New York State Department of Environmental Conservation, Industry Representatives

**Reliability:** Level 4

### 16. Employment of Persons with Disabilities Credit

**Citation:** Section 187-a

**Effective Date:** Effective for taxable years beginning on or after January 1, 1998, applicable to individuals who begin work on or after January 1, 1997

**Description:** Employers may claim a credit equal to 35 percent of the first \$6,000 of wages paid to workers with disabilities, as certified by the State Department of Education or other designated State agency. The credit applies for the second year of employment if a federal work opportunity tax credit applies for the first year. Alternatively, taxpayers may claim the credit based on the first year of employment if no work opportunity tax credit applies. Taxpayers may carry over unused credit amounts to subsequent tax years.

**Estimates:** 1999: \$0.0 million - 2003: Minimal

**Data Source:** Federal credit data

**Reliability:** Level 4

### 17. Green Buildings Tax Credit

**Citation:** Section 187-d

**Effective Date:** Effective for tax years beginning on or after January 1, 2001

**Description:** The credits would provide incentives for the purchase of recyclable building materials and other environmentally preferable tangible personal property. It also contains tax credits for the purchase of fuel cells, photovoltaic modules, and environmentally

sensitive non-ozone depleting refrigerants. The credits apply to costs incurred on or after June 1, 1999, for property placed in service or that has received a final certificate of occupancy in tax years beginning on or after January 1, 2001.

**Estimates:** 1999: Not Applicable - 2003: Minimal

**Data Source:** Statutory limitation

**Reliability:** Level 4

### 18. **Transportation Access Credit**

**Citation:** Section 187-e

**Effective Date:** Effective for tax years beginning on or after January 1, 2000

**Description:** The taxpayer must make a certified contribution of at least \$10 million to a qualified transportation improvement project in a prior tax year. The projects must enhance a qualified business facility, and may include the construction or improvement of transportation infrastructure and related facilities and systems, including bridges, ramps, highways, and mass transit facilities. In addition, the taxpayer must create, by the third full tax year after the tax year during which the contribution was made, more than 1,000 jobs in connection with the qualified business facility. The credit equals 6 percent of the taxpayer's increased qualified business facility payroll for the tax year. After the third full tax year after the contribution is made the employment increase test is not met, then there is a recapture of the credit. The new law applies to contributions made on or after January 1, 2000.

**Estimates:** 1999: Not Applicable - 2003: Minimal

**Data Source:** Research File

**Reliability:** Level 2

### 19. **Long-Term Care Insurance Credit**

**Citation:** Section 190

**Effective Date:** Effective for tax years beginning on or after January 1, 2002

**Description:** A taxpayer may take a credit equal to 10 percent of the cost of purchasing long-term care insurance, as defined in the Insurance Law. Any unused credit may be carried forward.

**Estimates:** 1999: Not Applicable - 2003: Minimal

**Data Source:** New York State Department of Insurance

**Reliability:** Level 4

## **Corporate Exemptions**

Certain companies are exempt from the Section 184 tax.

### 20. **Foreign Commerce**

**Citation:** Tax Law Article 1, Section 3

**Effective Date:** November 11, 1981 (original exclusion for vessels only, June 15, 1896)

## CORPORATION TAX

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**Description:** All corporations incorporated under the laws of the State of New York, exclusively engaged in the operation of vessels in foreign commerce, are exempted from tax on their capital stock, franchises and earnings for State and local purposes.

**Estimate:** No data available

**Reliability:** Level 5

### 21. Ferry Companies

**Citation:** Section 184.1

**Effective Date:** April 14, 1914

**Description:** Ferry companies operating between any of the boroughs of the City of New York under a lease granted by the City are exempt from Section 184 tax.

**Estimate:** No data available

**Reliability:** Level 5

### 22. Railroad Leasing

**Citation:** Section 184.3

**Effective Date:** June 1, 1917

**Description:** In lieu of the tax on gross earnings, a corporation involved in leasing railroad property to a railroad operating company is subject to an excess income tax measured at the rate of 4 1/2 percent on that portion of dividends paid in a calendar year in excess of 4 percent on the capital stock of the company.

**Estimate:** No data available

**Reliability:** Level 5

### 23. Foreign Taxicabs and Omnibuses

**Citation:** Section 184.2(b)(1)(iv)

**Effective Date:** January 1, 1988

**Description:** A foreign taxicab or omnibus company doing business in New York that makes fewer than 12 trips into New York State on an annual basis, but not otherwise owning or leasing property in State or otherwise doing business so as to become subject to tax, pays a tax equal to \$15 per trip.

**Estimates:** 1999: Minimal - 2003: Minimal

**Data Source:** Article 9-A Study File

**Reliability:** Level 3

### 24. Corporations Principally Engaged in Providing Telecommunications for Air Safety and Navigation Purposes

**Citation:** Section 184.1

**Effective Date:** January 1, 1995

**Description:** Corporations principally engaged in selling of telecommunications to air carriers solely for the purposes of air safety and navigation are exempt from the tax. Providers must be at least 90 percent owned (directly or indirectly) by air carriers and have the principal function of fulfilling requirements of the Federal Aviation Administration (FAA) or International Civil Aviation Organization (ICAO) relating to the existence of a

communication system between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of these entities).

**Estimate:** No data available

**Reliability:** Level 5

**Section 185**  
**Franchise Tax on Farmers, Fruit Growers, and**  
**Other Like Agricultural Corporations Organized and**  
**Operated on a Cooperative Basis**

Section 185 imposes a tax on farmers, fruit growers and other like agricultural corporations organized and operated on a cooperative basis. The measure of tax is capital stock within the State during the preceding year allocated by the ratio that gross assets employed in business in New York bear to gross assets employed in business everywhere.

**Credits**

**25. Special Additional Mortgage Recording Tax Credit**

**Citation:** Section 187

**Effective Date:** March 31, 1987

**Description:** The credit is permitted against all taxes except Sections 180, 181, 186-a, 186-e and 189 taxes and fees. It is based on the amount of special additional mortgage recording taxes paid by the taxpayer, with certain restrictions. No credit is currently allowed for special additional mortgage recording taxes paid on certain mortgages recorded in the Metropolitan Commuter Transportation District or Erie County.

**Estimates:** 1999: Minimal - 2003: Minimal

**Data Source:** Business Tax Files

**Reliability:** Level 2

**26. Alternative Fuels Vehicle Credit**

**Citation:** Section 187-b

**Effective Date:** Effective for property placed in service in taxable years beginning on or after January 1, 1998. The tax credit provisions do not apply to property placed in service in taxable years beginning after December 31, 2003.

**Description:** The new law allows corporation taxpayers, such as utilities, to claim credits for clean fuel vehicles using natural gas, methanol and other alternative fuels; and clean fuel refueling facility property. Gas and electric utility companies are excluded from claiming the electric vehicle tax credit allowable to other taxpayers and are also excluded from the sales tax exemption for the incremental cost of an electric vehicle. These companies may claim all other credits and sales/use tax exemptions allowed under the bill, including those for refueling facilities. For corporation taxpayers, the credit equals 60 percent of the cost of new clean-fuel components for alternative fuel vehicles registered in New York (capped at \$5,000 per vehicle with a gross vehicle weight rating of 14,000 pounds or less, and \$10,000 for those over 14,000 pounds); and 50 percent of the cost of new clean-fuel refueling property used in a trade or business.

## CORPORATION TAX

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**Estimates:** 1999: \$0.0 million - 2003: Minimal

**Data Source:** New York State Department of Environmental Conservation, Industry Representatives

**Reliability:** Level 4

### 27. **Employment of Persons with Disabilities Credit**

**Citation:** Section 187-a

**Effective Date:** Effective for taxable years beginning on or after January 1, 1998, applicable to individuals who begin work on or after January 1, 1997

**Description:** Employers may claim a credit equal to 35 percent of the first \$6,000 of wages paid to workers with disabilities, as certified by the State Department of Education or other designated State agency. The credit applies for the second year of employment if a federal work opportunity tax credit applies for the first year. Alternatively, taxpayers may claim the credit based on the first year of employment if no work opportunity tax credit applies. Taxpayers may carry over unused credit amounts to subsequent tax years.

**Estimates:** 1999: \$0.0 million - 2003: Minimal

**Data Source:** Federal credit data

**Reliability:** Level 4

### 28. **Green Buildings Tax Credit**

**Citation:** Section 187-d

**Effective Date:** Effective for tax years beginning on or after January 1, 2001

**Description:** The credits would provide incentives for the purchase of recyclable building materials and other environmentally preferable tangible personal property. It also contains tax credits for the purchase of fuel cells, photovoltaic modules, and environmentally sensitive non-ozone depleting refrigerants. The credits apply to costs incurred on or after June 1, 1999, for property placed in service or that has received a final certificate of occupancy in tax years beginning on or after January 1, 2001.

**Estimates:** 1999: Not Applicable - 2003: Minimal

**Data Source:** Statutory limitation

**Reliability:** Level 4

### 29. **Transportation Access Credit**

**Citation:** Section 187-e

**Effective Date:** Effective for tax years beginning on or after January 1, 2000

**Description:** The taxpayer must make a certified contribution of at least \$10 million to a qualified transportation improvement project in a prior tax year. The projects must enhance a qualified business facility, and may include the construction or improvement of transportation infrastructure and related facilities and systems, including bridges, ramps, highways, and mass transit facilities. In addition, the taxpayer must create, by the third full tax year after the tax year during which the contribution was made, more than 1,000 jobs in connection with the qualified business facility. The credit equals 6 percent of the taxpayer's increased qualified business facility payroll for the tax year. After the third full tax year after the contribution is made the employment increase test is not met, then there is a recapture of the credit. The new law applies to contributions made on or after January 1, 2000.

**Estimates:** 1999: Not Applicable - 2003: Minimal

**Data Source:** Research File

**Reliability:** Level 2

## Section 186

### Franchise Tax on Water-Works Companies, Gas Companies and Electric or Steam Heating, Lighting and Power Companies

Section 186 repealed effective January 1, 2000 imposed a franchise tax on water-works companies, gas companies and electric or steam heating, lighting and power companies. The tax is computed as a percentage of gross earnings (without any deduction) from New York sources. An additional excess dividends tax may have also applied.

#### Credits

#### 30. Special Additional Mortgage Recording Tax Credit

**Citation:** Article 9, Section 187

**Effective Date:** March 31, 1987

**Description:** The credit is permitted against all taxes except Sections 180, 181, 186-a and 189 taxes and fees. It is based on the amount of special additional mortgage recording taxes paid by the taxpayer, with certain restrictions. No credit is currently allowed for special additional mortgage recording taxes paid on certain mortgages recorded in the Metropolitan Commuter Transportation District or Erie County.

**Estimates:** 1999: \$1.3 million - 2003: Not Applicable

**Data Source:** Business Tax Files

**Reliability:** Level 2

#### 31. Alternative Fuels Vehicle Credit

**Citation:** Section 187-b

**Effective Date:** Effective for property placed in service in taxable years beginning on or after January 1, 1998. The tax credit provisions do not apply to property placed in service in taxable years beginning after December 31, 2003.

**Description:** The new law allows corporation taxpayers, such as utilities, to claim credits for clean fuel vehicles using natural gas, methanol and other alternative fuels; and clean fuel refueling facility property. Gas and electric utility companies are excluded from claiming the electric vehicle tax credit allowable to other taxpayers and are also excluded from the sales tax exemption for the incremental cost of an electric vehicle. These companies may claim all other credits and sales/use tax exemptions allowed under the bill, including those for refueling facilities. For corporation taxpayers, the credit equals 60 percent of the cost of new clean-fuel components for alternative fuel vehicles registered in New York (capped at \$5,000 per vehicle with a gross vehicle weight rating of 14,000 pounds or less, and \$10,000 for those over 14,000 pounds); and 50 percent of the cost of new clean-fuel refueling property used in a trade or business.

## CORPORATION TAX

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**Estimates:** 1999: \$0.0 million - 2003: Not Applicable

**Data Source:** Not Applicable

**Reliability:** Level 2

### 32. **Employment of Persons with Disabilities Credit**

**Citation:** Section 187-a

**Effective Date:** Effective for taxable years beginning on or after January 1, 1998, applicable to individuals who begin work on or after January 1, 1997

**Description:** Employers may claim a credit equal to 35 percent of the first \$6,000 of wages paid to workers with disabilities, as certified by the State Department of Education or other designated State agency. The credit applies for the second year of employment if a federal work opportunity tax credit applies for the first year. Alternatively, taxpayers may claim the credit based on the first year of employment if no work opportunity tax credit applies. Taxpayers may carry over unused credit amounts to subsequent tax years.

**Estimates:** 1999: \$0.0 million - 2003: Not Applicable

**Data Source:** Business Tax Files

**Reliability:** Level 2

## Corporate Exemptions

### 33. **Water Pollution Facilities**

**Citation:** Section 186.3

**Effective Date:** January 1, 1919

**Description:** Section 186 does not apply to a corporation organized and operated exclusively for the purpose of leasing from a city a water works system designed to alleviate water pollution within the city.

**Estimate:** 1999: No data available - 2003: Not Applicable

**Reliability:** Level 5

### **Section 186-a**

#### **Tax on the Furnishing of Utility Services**

Section 186-a imposes a tax on the gross income of businesses furnishing certain utility services, whether or not such businesses are subject to supervision by the Public Service Commission.

## Credits

### 34. **Power for Jobs Tax Credit**

**Citation:** Article 9, Section 186-a subdivision 9

**Effective Date:** July 29, 1997

**Description:** The credit is associated with the Power for Jobs Program established to make low-cost power available to business, small businesses and not-for-profit corporations for job retention and creation. It is provided to utilities delivering power to retail customers participating in the program. The credit is based upon the net loss revenue of the utility



associated with the sale of the low cost power. The credit is limited by the baseline energy use of all of the utility's customers participating in the program.

**Termination Date:** December 31, 2005

**Estimates:** 1999: \$61.2 million - 2003: \$ 71.0 million

**Data Source:** Public Service Commission staff

**Reliability:** Level 4

### Exemptions

#### 35. Exempt Companies

**Citation:** Section 186-a.2(a)(I)

**Effective Date:** January 1, 1960 (omnibuses)

**Description:** Persons engaged in operating omnibuses having a seating capacity of more than seven persons; or, street surface, rapid transit, subway and elevated railroads are not subject to the Section 186-a tax.

**Estimate:** No data available

**Reliability:** Level 5

#### 36. Exempt Organizations

**Citation:** Section 186-a.2(b)

**Effective Date:** 1937

**Description:** The State, municipalities, political and civil subdivisions of the State or municipality, public districts and corporations and associations organized and operated exclusively for religious, charitable or educational purposes are exempt from Section 186-a tax.

**Estimate:** No data available

**Reliability:** Level 5

#### 37. Water Pollution Facilities

**Citation:** Section 186-a.2(b)

**Effective Date:** January 1, 1969

**Description:** Section 186-a does not apply to a corporation organized and operated exclusively for the purpose of leasing from a city a water works system designed to alleviate water pollution within the city.

**Estimate:** No data available

**Reliability:** Level 5

#### 38. Commercial, Industrial, and Not-For-Profit Relief

**Citation:** Section 182-a.2(c)

**Effective Date:** January 1, 2000

**Description:** In addition to the reduction and elimination of the tax on the commodity, the Section 186-a tax on transmission and distribution for commercial, industrial and not-for-profit customers will be eliminated through a phased in exclusion according to the following schedule:

## CORPORATION TAX

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<u>Calendar Year</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005 and After</u>
Exclusion	0%	0%	25%	50%	75%	100%

**Estimate:** 1999: Not Applicable - 2003: \$ 80.0 million

**Data Source:** Industry Data

**Reliability:** Level 4

### Section 186-e Excise Tax on Telecommunications Services

#### New York Modifications to Gross Income

**39. Exclusion of Cable Television Service**

**Citation:** Section 186-e(2)(b)(2)

**Effective Date:** January 1, 1995

**Description:** Cable television service is specifically excluded from the definition of telecommunications services and receipts from the sale of such service are not subject to tax.

**Estimates:** 1999: \$79.4 million - 2003: \$90.0 million

**Data Source:** Annual Reports to the New York State Public Service Commission

**Reliability:** Level 3

**40. Exclusion of Receipts from Certain Telecommunications Services for Air Safety and Navigation Purposes**

**Citation:** Section 186-e(2)(b)(3)

**Effective Date:** January 1, 1995

**Description:** Receipts from the sale of telecommunications to air carriers solely for the purposes of air safety and navigation are excluded from the tax. Providers must be at least 90 percent owned (directly or indirectly) by air carriers and have the principal function of fulfilling requirements of the Federal Aviation Administration (FAA) or International Civil Aviation Organization (ICAO) relating to the existence of a communication system between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of these entities).

**Estimate:** No data available

**Reliability:** Level 5

#### Credits

**41. Credit for Tax Paid in Another Jurisdiction**

**Citation:** Section 186-e(4)(a)(2)

**Effective Date:** January 1, 1995

**Description:** To prevent actual multijurisdictional taxation of sales of telecommunications services, providers of interstate and international telecommunications services may claim a credit for a like tax paid to another state or country on a telecommunications service

taxable under Section 186-e. The amount of the credit is the amount of tax lawfully due and paid to the other country or jurisdiction not exceeding the tax due to New York.

**Estimates:** 1999: Minimal - 2003: Minimal

**Data Source:** Business Tax Files

**Reliability:** Level 2

## Exemptions

### 42. Exempt Organizations

**Citation:** Section 186-e(1)(c)

**Effective Date:** January 1, 1995

**Description:** The State, municipalities, political and civil subdivisions of the State or municipality, public districts and corporations and associations organized and operated exclusively for religious, charitable or educational purposes are exempt from Section 186-e tax.

**Estimate:** No data available

**Reliability:** Level 5

## Section 189 Franchise Tax on Businesses Importing Natural Gas into New York State

Section 189 imposed a franchise tax effective August 1, 1991, on businesses purchasing natural gas outside New York and importing the gas into the State for their own consumption. The tax was imposed at the rate of 4.25 percent on the consideration given for natural gas imported into New York State. The rate will be phased down for taxable years beginning in 2000, at the same rate as the commodity receipts rate in Section 186-a. The tax is fully eliminated in 2005.

## Corporate Exemptions

Certain companies are exempt from the Section 189 tax.

### 43. Co-Generation Facilities

**Citation:** Section 189.6

**Effective Date:** August 1, 1991

**Description:** Gas services sold to a co-generation facility, as defined under subdivision two-a of section two of the public service law or section two hundred one of the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617), that are used to generate electricity and/or steam that is supplied to (and used by) a thermal energy host located at or near the project site are exempt from the Section 189 tax.

**Estimates:** 1999: \$4.7 million - 2003: \$1.0 million

**Data Source:** Business Tax Files

**Reliability:** Level 2

## CORPORATION TAX

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### 44. Credit for Tax Paid in Another Jurisdiction

**Citation:** Section 189.7

**Effective Date:** August 1, 1991

**Description:** To prevent actual multijurisdictional taxation of purchases of natural gas, importers of natural gas may claim a credit for a like tax paid in another jurisdiction. The amount of the credit is the amount of tax lawfully due and paid to the other jurisdiction not exceeding the tax due to New York.

**Estimate:** No data available

**Reliability:** Level 5

## BANK TAX

This section of the report provides tax expenditure estimates for 25 separate provisions of the franchise tax on banking corporations. The list of expenditures contained in Table 5 is based on the Tax Law as of January 1, 2003. The estimates are based on data from the 1999 tax year, the latest year for which Article 32 tax return data are available. They are also extrapolated to the 2003 tax year. Total bank tax liability has been included to provide a benchmark for the tax expenditure estimates. The tax years refer to both the 1999 and 2003 calendar tax years and fiscal tax years ending in 2000 and 2004.

### Description of Tax

Article 32 imposes a franchise tax on banking corporations for the privilege of doing business in New York. Under Article 32 a bank's tax liability equals the larger of:

- 7.5 percent of allocated entire net income; or
- 0.1 mill on each dollar of allocated assets (reduced rates of 1/25 or 1/50 of a mill apply to a bank that meets certain criteria based on its net worth to asset ratio and the percentage of mortgages included in its total assets); or
- 3 percent of allocated alternative entire net income; or
- A minimum tax of \$250.

Corporations doing business within and without the State use formula apportionment to determine the portion of the tax base (i.e., entire net income, alternative entire net income or assets) attributable to New York. Taxpayers determine the base allocable to New York by multiplying the unallocated base by an allocation percentage based on the ratio of receipts, deposits and payroll earned or paid in New York to those everywhere.

Calculation of the taxes on allocated entire net income or allocated alternative entire net income starts with federal taxable income, which includes certain exclusions and deductions. Taxpayers then make several New York modifications and allocate the income to arrive at New York entire net income, which is multiplied by the tax rate. Alternative entire net income is the same as entire net income, except that the deductions for subsidiary interest, subsidiary dividends and interest on government obligations are not allowed. In addition, the factors of the alternative income allocation percentage are single weighted. A 3 percent tax rate applies to allocated alternative income.

The tax on allocated taxable assets starts with the taxpayer's total assets. Taxable assets equal total assets minus assets attributable to the FDIC and FSLIC. Taxpayers multiply the total by their allocation percentage. The normal tax rate imposed on this amount (one tenth, one twenty-fifth or one fiftieth of a mill), is determined by the taxpayer's net-worth-to-assets ratio and the percentage of its loans secured by mortgages.

## **BANK TAX**

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Taxpayers apply certain credits against the highest tax liability to determine their after-credit tax liability.

Many of the exclusions, deductions, modifications, allocation percentages and credits discussed above give rise to the tax expenditures listed and estimated in this section.

### **Data Sources**

The major data sources used to compute the tax expenditure estimates for Article 32 Bank Tax include:

- 1999 Bank Tax Study File - This file, compiled by the Department of Taxation and Finance, includes all banks filing under Article 32. The file is used to simulate the tax expenditure items.
- Congressional Joint Committee on Taxation (JCT) Estimates of Federal Tax Expenditures - Since no data for federal exclusion items are available at the State level, federal tax expenditure items estimated by the JCT are prorated to New York.
- Internal Revenue Service's U.S. Corporation Statistics of Income (SOI) Data File - A file consisting of a sample of federal corporate returns. The values are apportioned to estimate some federal exclusion items.

### **Methodology**

The projections of the tax expenditure from 1999 to 2003 use a variety of forecast variables. Projections of items under Federal Exclusions from Income were taken from JCT estimates of federal tax expenditures and prorated to New York. Several of the items were projected using relevant economic data from DRI-WEFA. The remaining items were computed using historical trends.

Tax expenditures whose values are less than \$0.1 million are considered minimal and are designated by an asterisk.

**Table 5**  
**2003 New York State Bank Tax Expenditure Estimates**  
**(1999 Total Bank Tax Liability = \$528.5 Million)**  
**(Millions of Dollars)**

<u>Tax Item</u>	<u>History</u>					<u>Forecast</u>	<u>Reliability</u> <u>Level</u>
	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2003</u>	
<b>New York Modifications to Federal Taxable Income</b>							
1. Bad Debt Deduction for Commercial Banks	19.0	46.9	N/A	N/A	N/A	N/A	5
2. Bad Debt Deduction for Thrift Institutions	2.9	6.5	N/A	N/A	N/A	N/A	5
3. Deduction of Money Received from the FDIC and FSLIC	5.2	3.2	0.0	0.0	0.2	0.2	1
4. Deduction for Eligible Net Income of IBFs	22.8	21.5	32.6	25.5	20.8	12.2	1
5. Deduction of 17 Percent of Interest Income from Subsidiary Capital	5.4	10.1	14.1	23.6	25.5	21.1	1
6. Deduction of 60 Percent of Dividend Income and Excess Gains from Subsidiary Capital	64.2	63.8	104.7	120.7	152.6	114.9	1
7. Deduction of 22.5 Percent of Interest Income from Government Obligations	29.0	32.7	40.4	32.4	28.3	22.4	1
<b>Alternative Bases</b>							
8. Reduced Rate of Asset-Based Tax for Banks Meeting Net Worth and Mortgage Holdings Criteria	0.2	0.0	*	*	*	*	1
9. Exclusion of Money Received from FDIC and FSLIC from Asset Based Tax	0.2	0.3	0.0	0.0	*	*	1
<b>Allocation Percentages</b>							
10. Discounting of the Wage Factor in the Calculation of Entire Net Income and Taxable Assets Allocation Percentages	25.3	20.5	26.4	21.4	18.2	15.5	1
11. Exclusion of Wages of Executive Officers in the Calculation of Entire Net Income, Alternative Entire Net Income and Taxable Assets Allocation Percentages	N/A	N/A	N/A	N/A	N/A	N/A	5
12. IBF Formula Allocation Election	57.3	39.4	41.5	32.2	29.7	24.6	1

<u>Tax Item</u>	<u>History</u>					<u>Forecast</u>	<u>Reliability</u> <u>Level</u>
	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2003</u>	
<b>Credits</b>							
13. Credit for Eligible Business Facilities	1.2	0.0	1.6	0.0	0.0	0.0	1
14. Mortgage Servicing Tax Credit	9.2	8.8	8.8	6.2	8.0	7.9	1
15. Special Additional Mortgage Recording Tax Credit	12.1	10.1	11.3	15.2	12.0	11.7	1
16. Empire Zone and Zone Equivalent Areas Tax Credits							
a. Empire Zone and Zone Equivalent Areas Tax Credits	0.0	*	0.0	1.1	2.2	2.2	1
b. Empire Zones Program Act	--	--	--	--	--	*	4
17. Credit for Employing Individuals with Disabilities	--	--	--	0.0	0.0	*	1
18. Investment Credit for Financial Services Industry	--	--	--	0.6	2.4	10.0	1
19. Credit for Purchase of Automated External Defibrillator	--	--	--	--	--	*	2
20. Transportation Access Credit	--	--	--	--	--	*	2
21. Low Income Housing Credit	--	--	--	--	--	*	4
22. Green Buildings Tax Credit	--	--	--	--	--	*	4
23. Long-Term Care Insurance Credit	--	--	--	--	--	*	4
<b>Corporate Exemptions</b>							
24. Exemption of Trust Companies Whose Capital Stock is Owned by Twenty or More New York Savings Banks	*	*	*	*	*	*	4
25. Exemption of Federal and State Chartered Credit Unions	15.1	18.5	18.1	16.1	18.1	18.1	4

\* Less than \$0.1 million.

-- The tax expenditure was not applicable for these years.

N/A No data available



**New York Modifications to Federal Taxable Income**

In computing New York entire net income, Article 32 permits modifications to federal taxable income.

**1. Bad Debt Deduction for Commercial Banks**

**Citation:** Section 1453(i)

**Effective Date:** Tax years beginning after December 31, 1986

**Description:** The Federal Tax Reform Act of 1987 required “large banks” (those with more than \$500 million in assets) to use the specific charge off method in calculating the bad debt deduction. Commercial banks with less than \$500 million in assets may use the reserve method in calculating the bad debt deduction. Effective for tax years beginning after December 31, 1986, New York State decoupled from the federal calculation of the bad debt deduction by continuing to allow large commercial banks to calculate the bad debt deduction based on the reserve method. For both large and small commercial banks the difference between the bad debt deduction under the reserve method and the direct write-off method is a tax expenditure item.

**Termination Date:** Expires for tax years beginning on or after January 1, 2003

**Estimate:** No data available

**Reliability:** Level 5

**2. Bad Debt Deduction for Thrift Institutions**

**Citation:** Section 1453(h)

**Effective Date:** Tax years beginning after December 31, 1986

**Description:** Thrift institutions may use the reserve method in calculating their deduction for bad debts on certain qualifying property. The difference between the bad debt deduction under the reserve method and the actual amount of direct write-offs is a tax expenditure item.

**Estimate:** No data available

**Reliability:** Level 5

**3. Deduction of Money Received from the Federal Deposit Insurance Corporation (FDIC) and Federal Savings and Loan Insurance Corporation (FSLIC)**

**Citation:** Section 1453(e)(9)-(10)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1985

**Description:** A taxpayer may deduct certain money or other property received from the FDIC or FSLIC to the extent not deductible in determining federal taxable income.

**Termination Date:** Expires for commercial banks on January 1, 2003

**Estimates:** 1999: \$0.2 million - 2003: \$0.2 million

**Data Source:** Bank Tax Study File

**Reliability:** Level 1

## BANK TAX

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### 4. **Deduction for Eligible Net Income of International Banking Facilities (IBF)**

**Citation:** Section 1453(f)

**Effective Date:** Effective for taxable years ending on or after December 3, 1981

**Description:** An International Banking Facility is a separate set of asset and liability accounts established for the purpose of receiving deposits from, and extending credit to, foreign individuals or businesses. IBFs are free from domestic reserve requirements and limitations on interest rates and may be established by United States banks as well as agencies of foreign banks. A financial institution which establishes an IBF, within New York, may deduct, in computing its entire net income, the adjusted eligible net income of the IBF.

**Estimates:** 1999: \$20.8 million - 2003: \$12.2 million

**Data Source:** Bank Tax Study File

**Reliability:** Level 1

### 5. **Deduction of 17 Percent of Interest Income from Subsidiary Capital**

**Citation:** Section 1453(e)(11)(i)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1985

**Description:** In computing New York entire net income banks may deduct 17 percent of interest income from subsidiary capital. For purposes of calculating the amount of the deduction, interest income from subsidiary capital is not reduced by expenses directly or indirectly attributable to subsidiary capital.

**Termination Date:** Expires for commercial banks on January 1, 2003

**Estimates:** 1999: \$25.5 million - 2003: \$21.1 million

**Data Source:** Bank Tax Study File

**Reliability:** Level 1

### 6. **Deduction of 60 Percent of Dividend Income and Excess Gains from Subsidiary Capital**

**Citation:** Section 1453(e)(11)(ii) and (iii)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1985

**Description:** In computing New York entire net income, banks may deduct 60 percent of dividend income, gains and losses from subsidiary capital. For purposes of calculating the amount of the deduction, dividend income from subsidiary capital is not reduced by expenses directly or indirectly attributable to subsidiary capital. Effective for taxable years beginning after January 1, 1994, taxpayers may deduct 60 percent of the excess of gains over losses from subsidiary capital. If losses exceed gains, taxpayers are not required to add back to entire net income 60 percent of net losses.

**Termination Date:** Expires for commercial banks on January 1, 2003

**Estimates:** 1999: \$152.6 million - 2003: \$114.9 million

**Data Source:** Bank Tax Study File

**Reliability:** Level 1

- 7. Deduction of 22.5 Percent of Interest Income from Government Obligations**  
**Citation:** Section 1453(e)(12)  
**Effective Date:** Effective for taxable years beginning on or after January 1, 1985  
**Description:** Taxpayers may deduct 22.5 percent of interest income on New York or U.S. obligations, other than obligations held for resale in connection with regular trading activities. For purposes of calculating the amount of the deduction, income from New York and U.S. obligations is not reduced by expenses directly or indirectly attributable to that capital.  
**Termination Date:** Expires for commercial banks on January 1, 2003  
**Estimates:** 1999: \$28.3 million - 2003: \$22.4 million  
**Data Source:** Bank Tax Study File  
**Reliability:** Level 1

### **Alternative Bases**

Article 32 of the Tax Law provides that the franchise tax paid by a banking corporation is to be determined by an asset-based tax if it results in a tax that is greater than that determined under the income or alternative income bases or the \$250 minimum tax. Two tax expenditure items are provided for under the asset-based tax.

- 8. Reduced Rate of Asset-Based Tax for Banks Meeting Net Worth and Mortgage Holdings Criteria**  
**Citation:** Section 1455(b)(1)(i)-(iv)  
**Effective Date:** Effective for taxable years beginning on or after January 1, 1985  
**Description:** Under the asset-based alternative tax, banks with a net worth below 5 percent of total assets and whose assets are comprised of at least 33 percent mortgages are subject to reduced rates of 0.00002 or 0.00004. The regular rate of the asset based tax equals 0.0001.  
**Termination Date:** Expires for commercial banks on January 1, 2003  
**Estimates:** 1999: Minimal - 2003: Minimal  
**Data Source:** Bank Tax Study File  
**Reliability:** Level 1
- 9. Exclusion of Money Received from Federal Deposit Insurance Corporation (FDIC) and Federal Savings and Loan Insurance Corporation (FSLIC) from Asset Based Tax**  
**Citation:** Section 1455(b)(1)(v)(A)  
**Effective Date:** Effective for tax years beginning on or after January 1, 1985  
**Description:** Under the asset based alternative tax, taxable assets do not include certain monies or other property received from the FDIC or the FSLIC.  
**Termination Date:** Expires for commercial banks on January 1, 2003  
**Estimates:** 1999: Minimal - 2003: Minimal  
**Data Source:** Bank Tax Study File  
**Reliability:** Level 1

## BANK TAX

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### Allocation Percentages

Banking corporations are taxed on the portion of their income and assets attributable to New York activities. Consequently, formulas have been devised (called allocation percentages) for the purpose of determining that portion of a banking corporation's income and assets which are taxable in New York. The tax expenditures listed result from preferences given through the calculation of the allocation percentages.

**10. Discounting of the Wage Factor in the Calculation of Entire Net Income and Taxable Assets Allocation Percentages**

**Citation:** Section 1454(a), (b) and (d)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1985

**Description:** In computing both the entire net income and taxable assets allocation percentages, the numerator of the wage factor is discounted to 80 percent of the taxpayer's wages, salaries and other personal service compensation, during the taxable year. As a consequence of the discounting of the wage factor, it is possible that the proportion of entire net income or taxable assets which is allocated to New York State for tax purposes could be reduced, depending on the particular corporation's circumstances.

**Termination Date:** Expires for commercial banks on January 1, 2003

**Estimates:** 1999: \$18.2 million - 2003: \$15.5 million

**Data Source:** Bank Tax Study File

**Reliability:** Level 1

**11. Exclusion of Wages of Executive Officers in the Calculation of Entire Net Income, Alternative Entire Net Income and Taxable Assets Allocation Percentages**

**Citation:** Section 1454(a), (b), (c) and (d)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1985

**Description:** The wages, salaries and other personal service compensation paid to general executive officers are not included in the computation of a banking corporation's entire net income, alternative entire net income and taxable asset allocation percentages. As a consequence of this exclusion, it is possible that the proportion of such income or assets which is allocated to New York State for tax purposes could be reduced, depending on the particular corporation's circumstances.

**Termination Date:** Expires for commercial banks on January 1, 2003

**Estimate:** No data available

**Reliability:** Level 5

**12. International Banking Facility (IBF) Formula Allocation Election**

**Citation:** Section 1454(b)(2)(A)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1985

**Description:** A banking corporation which establishes an IBF within New York may deduct, in computing its entire net income, the adjusted eligible net income of the IBF. In lieu of this deduction such banking corporation may elect to modify its entire net income and alternative entire net income allocation percentages by reducing payroll, receipts and deposits (from foreign persons) which are attributable to the gross income of an IBF. This

change in allocation reduces the proportion of entire net income or total alternative income allocated to New York for State tax purposes.

**Termination Date:** Expires for commercial banks on January 1, 2003

**Estimates:** 1999: \$29.7 million - 2003: \$24.6 million

**Data Source:** Bank Tax Study File

**Reliability:** Level 1

## **Credits**

Credits are amounts, stipulated by Article 32, which banking corporations may subtract from their calculated New York tax liability.

### **13. Credit for Eligible Business Facilities**

**Citation:** Section 1456(b)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1968

**Description:** Owners or operators of a business establishment which has been certified for eligibility by the New York State Job Incentive Board (prior to April 1, 1983) or the State Tax Commission (subsequent to April 1, 1983) may claim a credit. An eligible business facility is a facility which is located in an eligible area and creates or retains at least five jobs. Corporations may not carry forward this credit to future taxable years, although the certificate of eligibility may be renewed by a business for up to 10 years. After March 31, 1983, no new projects may be approved for certification. The Commissioner of Taxation and Finance is empowered to issue certificates of eligibility for tax credits or a renewal or extension thereof on or after April 1, 1983.

**Termination Date:** Credit expires for tax years beginning on or after January 1, 2000

**Estimates:** 1999: \$0.0 million - 2003: \$0.0 million

**Data Source:** Bank Tax Study File

**Reliability:** Level 1

### **14. Mortgage Servicing Tax Credit**

**Citation:** Section 1456(a)

**Effective Date:** Effective for taxable years beginning on or after April 25, 1972

**Description:** A corporation may claim a credit for servicing mortgages acquired by the New York State Mortgage Agency. The credit varies according to both dwelling size and size of the mortgage.

**Estimates:** 1999: \$8.0 million - 2003: \$7.9 million

**Data Source:** Bank Tax Study File

**Reliability:** Level 1

### **15. Special Additional Mortgage Recording Tax Credit**

**Citation:** Section 1456(c)

**Effective Date:** Effective for taxable years beginning after December 31, 1978

**Description:** A corporation may claim a credit which is equal in amount to the special additional recording tax paid on mortgages which have been recorded on or after January 1, 1979, on property which is located within New York. The amount of any unused

## BANK TAX

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mortgage recording tax credit may be carried forward and used in subsequent years. Certain mortgages on property in the Metropolitan Commuter Transportation District recorded on or after May 1, 1987, are ineligible for the credit. The same restriction applies to mortgages on real property in Erie County.

**Estimates:** 1999: \$12.0 million - 2003: \$11.7 million

**Data Source:** Bank Tax Study File

**Reliability:** Level 1

### 16. Empire Zone and Zone Equivalent Areas Tax Credits

#### a. Empire Zone and Zone Equivalent Areas Tax Credits

**Citation:** Section 1456(d)-(e)

**Effective Date:** Effective for tax years beginning on or after January 1, 1986. (However, the methods for computing the wage tax credit and the capital corporation credit were amended effective for tax years beginning on or after January 1, 1994.) Amendments providing that taxpayers located in Zone Equivalent Areas (ZEAs) can take a modified Empire Zone (EZ) wage tax credit were effective January 1, 1994.

**Description:** Taxpayers may qualify for an enhanced investment tax credit (EZ-ITC) of 8 percent for personal income taxpayers or 10 percent for corporations, applied towards the cost or other federal basis of tangible personal property, including buildings and structural components of buildings located within a designated EZ. The provisions of the EZ-ITC are generally the same as those for the regular ITC.

Taxpayers may also claim an EZ employment incentive credit (EZ-EIC) similar to the regular EIC, based upon EZ-ITC claimed and employment increased within an EZ. The amount of the EZ-EIC allowed is 30 percent of the EZ-ITC for each of the three years following the year for which the original EZ-ITC was allowed. However, the credit is allowed only for those years during which your average number of employees (except general executive officers) in the EZ, is at least 101 percent of the average number of employees (except general executive officers) in the EZ, during the tax year immediately preceding the tax year for which the original EZ-ITC was allowed.

A taxpayer may claim a wage tax credit for doing business and creating jobs in EZs (EZ-WTC). The wage tax credit has two components. This credit equals the product of the average number of newly hired targeted EZ employees receiving EZ wages multiplied by \$3,000. The corresponding credit amount for other employees equals the product of the average number of newly hired nontargeted EZ employees receiving EZ wages multiplied by \$1,500.

Taxpayers employing individuals in areas that met EZs eligibility criteria but were not so designated - Zone Equivalent Areas (ZEAs) - may take a credit for ZEA wages paid for full-time employment in jobs created in the ZEA. Taxpayers must take the credit during the 10 year period following designation as a ZEA. The credit equals \$3,000 multiplied by the average number of targeted employees and \$1,500 multiplied by the average number of nontargeted employees. The total wage tax

credit in any tax year cannot exceed 50 percent of tax due (before credits). The EZ-WTC and the ZEA-WTC are available to the taxpayer for five years.

Finally, taxpayers may qualify for a credit for investments in zone capital corporations, direct equity investments in certified zone businesses and contributions to community development projects (EZ capital corporation credit). The credit equals 25 percent of the sum of each type of investment. The maximum credit per taxpayer is \$100,000 for each investment type for an aggregate limit of \$300,000 and cannot exceed one half of the taxpayer's pre-credit tax.

Taxpayers may carry unused credits forward indefinitely. "New business" taxpayers may elect to have 50 percent of their unused ZEA-WTC or EZ-WTC or their EZ-ITC for the tax year refunded, in lieu of carryover. The EZ-EIC may be taken against the alternative minimum tax for tax years beginning on or after January 1, 2001.

**Estimates:** 1999: \$2.2 million - 2003: \$2.2 million

**Data Source:** Bank Tax Study File

**Reliability:** Level 1

**b. Empire Zones Program Act**

**Citation:** Section 1456 (o)(p)

**Effective Date:** Effective for tax years beginning on or after January 1, 2001

**Description:** The Empire Zones Program Act created a tax credit for real property taxes and a tax reduction credit for Qualified Empire Zone Enterprises (QEZE). Qualified Empire Zone enterprises include business enterprises certified as EZ businesses prior to July 1, 2005 that meet an annual employment test. Allowances of credit are for corporate taxpayers such as businesses under Article 9-A, banks, and insurance companies, as well as sole proprietorships and partnerships under Article 22, that are qualified EZ enterprises. The QEZE tax credit for real property taxes and the tax reduction credit may be claimed for 15 years. The credit for real property taxes is refundable. The tax reduction credit can be applied against the alternative minimum tax and the fixed dollar minimum, potentially reducing a taxpayer's liability to zero.

**Estimates:** 1999: Not Applicable - 2003: Minimal

**Data Source:** Estimate in part based on data provided by Empire State Development and the Office of Real Property Services

**Reliability:** Level 4

**17. Credit for Employing Individuals with Disabilities**

**Citation:** Section 1456(f)

**Effective Date:** Effective for tax years beginning on or after January 1, 1998, with respect to employees who begin work on or after January 1, 1997

**Description:** Employers who employ individuals with disabilities may claim a credit for a portion of wages paid to such individuals. The credit equals 35 percent of the first \$6,000 of first year wages paid to the disabled employee (a maximum of \$2,100 per employee). However, if the first year's wages qualify for the federal work opportunity tax credit, the New York credit will apply to second year wages.

## BANK TAX

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To become eligible for the State credit, the disabled employee must work for the employer on a full time basis for at least 180 days or 400 hours, and must be certified as disabled by the State Education Department. Visually handicapped individuals may receive certification from the appropriate agency responsible for vocational rehabilitation of the blind and visually impaired.

**Estimates:** 1999: \$0.0 million - 2003: Minimal

**Data Source:** Bank Tax Study File

**Reliability:** Level 1

### 18. Investment Credit for Financial Services Industry

**Citation:** Section 1456(i)

**Effective Date:** Effective for property placed in service on or after October 1, 1998 and before October 1, 2008

**Description:** An investment credit is allowed for qualified property used in the financial services industry. The rate of credit, maximum amounts, carryforward provisions, and recapture rules are generally the same as for the regular investment credit allowed under the corporate franchise tax (Article 9-A).

Qualified property includes property principally used in the ordinary course of the taxpayer's trade or business:

- as a broker or dealer in connection with the purchase or sale of stocks, bonds, or other securities (as defined in Internal Revenue Code (IRC) Section 475(c)(2)), or of commodities (as defined in IRC Section 475(e)), or in providing lending, loan arrangement or loan origination services to customers in connection with the purchase or sale of securities (as defined in IRC Section 475(c)(2));
- of providing investment advisory services for a regulated investment company (as described in IRC Section 851).

In addition, qualified property includes property principally used in the ordinary course of the taxpayer's business as an exchange registered as a national securities exchange (such as the New York stock exchange) or a board of trade defined under the New York Not-For-Profit Corporation Law, or an entity wholly owned by one or more national security exchanges or boards of trade that provides automation or technical services to the national security exchanges or boards of trade.

Property purchased by a taxpayer affiliated with a regulated broker, dealer, or national securities exchange or board of trade, or property leased by a taxpayer to an affiliated regulated broker, dealer, national securities exchange or board of trade is eligible for this credit if the property is used by the affiliate in an activity described above.

The credit is not allowed unless all or substantially all of the taxpayer's or affiliate's employees performing the administrative and support functions resulting from or relating to the qualifying uses of the property are located in New York State.

**Estimates:** 1999: \$2.4 million - 2003: \$10.0 million

**Data Source:** Bank Tax Study File

**Reliability:** Level 1



**19. Credit for Purchase of Automated External Defibrillator****Citation:** Section 456(j)**Effective Date:** Effective for tax years beginning on or after January 1, 2001**Description:** Credit for purchase of automated external defibrillator. The credit will be the cost to the taxpayer during the taxable year, not exceeding \$500 for each purchase.**Estimates:** 1999: Not Applicable - 2003: Minimal**Data Source:** Bank Tax Study File**Reliability:** Level 2**20. Transportation Access Credit****Citation:** Section 1456(n)**Effective Date:** Effective for tax years beginning on or after January 1, 2000**Description:** The taxpayer must make a certified contribution of at least \$10 million to a qualified transportation improvement project in a prior tax year. The projects must enhance a qualified business facility, and may include the construction or improvement of transportation infrastructure and related facilities and systems, including bridges, ramps, highways, and mass transit facilities. In addition, the taxpayer must create, by the third full tax year after the tax year during which the contribution was made, more than 1,000 jobs in connection with the qualified business facility. The credit equals 6 percent of the taxpayer's increased qualified business facility payroll for the tax year. After the third full tax year after the contribution is made the employment increase test is not met, then there is a recapture of the credit. The new law applies to contributions made on or after January 1, 2000.**Estimates:** 1999: Not Applicable - 2003: Minimal**Data Source:** Bank Tax Study File**Reliability:** Level 2**21. Low Income Housing Credit****Citation:** Section 1456(l)**Effective Date:** Effective for tax years beginning on or after January 1, 2000, with respect to commitments for construction of low-income housing agreed upon on or after May 15, 2000.**Description:** The "New York State Low Income Housing Tax Credit Program," based on the existing federal program, 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 \$40 million, or \$4 million each year. The credit program applies to corporate franchise taxpayers, personal income taxpayers, banks and insurance companies.**Estimates:** 1999: Not Applicable - 2003: Minimal**Data Source:** Statutory limitation**Reliability:** Level 4

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### 22. **Green Buildings Tax Credit**

**Citation:** Section 1456(m)

**Effective Date:** Effective for tax years beginning on or after January 1, 2001

**Description:** The credits would provide incentives for the purchase of recyclable building materials and other environmentally preferable tangible personal property. It also contains tax credits for the purchase of fuel cells, photovoltaic modules, and environmentally sensitive non-ozone depleting refrigerants. The credits apply to costs incurred on or after June 1, 1999, for property placed in service or that has received a final certificate of occupancy in tax years beginning on or after January 1, 2001.

**Estimates:** 1999: Not Applicable - 2003: Minimal

**Data Source:** Statutory limitation

**Reliability:** Level 4

### 23. **Long-Term Care Insurance Credit**

**Citation:** Section 1456(k)

**Effective Date:** Effective for tax years beginning on or after January 1, 2002

**Description:** A taxpayer may take a credit equal to 10 percent of the cost of purchasing long-term care insurance, as defined in the Insurance Law. Any unused credit may be carried forward.

**Estimates:** 1999: Not Applicable - 2003: Minimal

**Data Source:** New York State Department of Insurance

**Reliability:** Level 4

## Corporate Exemptions

Certain banks are exempt from taxation under Article 32 of the Tax Law.

### 24. **Exemption of Trust Companies Whose Capital Stock is Owned by Twenty or More New York Savings Banks**

**Citation:** Section 1452(C)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1973

**Description:** Trust companies, all of whose capital stock is owned by 20 or more savings banks organized under New York law, are exempt from the corporation franchise tax on banking corporations.

**Estimates:** 1999: Minimal - 2003: Minimal

**Data Source:** Industry Data

**Reliability:** Level 4

### 25. **Exemption of Federal and State Chartered Credit Unions**

**Citation:** State Banking Law, Article 11 Section 474; 12 U.S. Code Section 474

**Effective Date:** Effective March 13, 1945

**Description:** Pursuant to federal law and the State Banking Law, federal and State chartered credit unions cannot be subject to tax under Article 32.

**Estimates:** 1999: \$18.1 million - 2003: \$18.1 million

**Data Source:** JCT estimates prorated to New York

**Reliability:** Level 4



# INSURANCE TAX

This section of the report provides tax expenditure estimates for 26 separate provisions of the corporation franchise tax on insurance companies. The list of tax expenditures contained in Table 6 is based on the Tax Law as of January 1, 2003. The estimates are based on data from the 1999 tax year, the latest year for which Article 33 tax return data is available. They are also extrapolated to the 2003 tax year. The tax years refer to both the 1999 and 2003 calendar years and fiscal tax years ending in 2000 and 2004. Total insurance tax liability for the 1999 tax year has been included to provide some perspective to the tax expenditure estimates.

## Description of Tax

Article 33 imposes a franchise tax on insurance companies. There are two components of the tax: (1) a tax based on the higher of four bases plus a tax on subsidiary capital; and (2) a tax based on gross direct premiums written on State-located risks or residents in the State.

The first component of the tax is based on one of four alternative bases. An insurance corporation's tax liability for this component is based on the alternative that results in the largest tax, plus an additional 0.08 percent tax on subsidiary capital allocated to New York. The four bases are:

- 7.5 percent of allocated entire net income; or
- 1.6 mill on allocated business and investment capital; or
- 9 percent of entire net income plus officers' salaries less specified deductions; or
- A minimum tax of \$250.

The second component of the Article 33 tax is a tax on gross premiums, less return premiums thereon, written on risks located or resident in New York. The rate of the tax on premiums varies according to the type of insurance risk covered by a premium. However, accident and health premiums are taxed at different rates dependent on the type of insurer. A 0.7 percent tax rate applies to premiums received by corporations licensed as life and health insurers, including premiums on accident and health contracts. A 1.3 percent tax rate applies to premiums written by corporations licensed as property and casualty insurers. However, a 1.0 percent tax rate applies to premiums on accident and health contracts written by property and casualty insurers.

Corporations doing business within and without the State allocate entire net income, business and investment capital and entire net income plus officer's salaries bases to New York based on weighted ratios of premiums and wages, earned or paid in New York to those earned or paid everywhere.

In computing the Article 33 tax, insurance corporations add the tax on gross premiums to the highest of the four alternative taxes. The total tax liability of the two components less Empire Zone (EZ) credits cannot exceed 2 percent of taxable premiums. Taxpayers may then claim credits other than EZ credits against the total tax liability.

# **INSURANCE TAX**

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Many of the exclusions, deductions, modifications, allocation percentages, and credits discussed above give rise to the tax expenditures listed and estimated in this section.

## **Data Sources**

The major sources of data used to compute the tax expenditure estimates under Article 33 Insurance Tax include:

- 1999 Article 33 Insurance Tax Study File - This file, compiled by the Department of Taxation and Finance, includes the tax returns of all insurance companies filing under Article 33. The file is used to simulate all tax expenditures with the exception of federal exclusion items.
- Congressional Joint Committee on Taxation Estimates of Federal Tax Expenditures - No data is available for federal items at the State level. Federal tax expenditure items estimated by the JCT are prorated to New York.
- Internal Revenue Service U.S. Corporation Statistics of Income (SOI) Data File - A file consisting of a sample of federal corporate returns. The values are apportioned to estimate some federal exclusion items.
- Annual Statistical Tables, New York State Insurance Department.

## **Methodology**

The projections of the tax expenditures from 1999 to 2003 use a variety of economic forecast variables. Projections of items under federal exclusions from income in the Appendix were taken from JCT estimates of federal tax expenditures and prorated to New York. Several of the expenditure estimates were based on forecasts of relevant economic data from DRI-WEFA.

Tax expenditures whose values are less than \$0.1 million are considered minimal and are designated by an asterisk.

**Table 6**  
**2003 New York State Insurance Tax Expenditure Estimates**  
**(1999 Total Insurance Tax Liability = \$554.1 Million)**  
**(Millions of Dollars)**

<u>Tax Item</u>	<u>History</u>					<u>Forecast</u>	<u>Reliability</u> <u>Level</u>
	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2003</u>	
<b>New York Modifications to Federal Taxable Income</b>							
1. Exclusion of Interest, Dividends and Capital Gains from Subsidiary Capital 1/	36.7	11.5	15.6	11.4	18.6	12.9	1
2. Deduction of 50 Percent of Dividends from Non-Subsidiary Corp	5.5	7.0	6.6	5.3	3.2	1.2	1
3. Deduction of Additions to Unearned Premium Reserves	11.2	2.4	2.7	1.7	4.2	1.7	1
4. Deduction for Losses Incurred	8.7	4.6	2.6	1.6	3.1	0.9	1
<b>Alternative Bases</b>							
5. Exclusion of Assets Held as Reserves Under NYS Insurance Law Sections 1303, 1304 and 1305	*	*	*	*	*	*	4
<b>Exclusions from Premiums Based Tax</b>							
6. Exclusion of Annuities from the Tax on Premiums 1/	22.2	22.4	30.0	28.7	9.9	10.7	1
7. Exclusion from the Premiums Tax of Premiums Written on Certain Joint Underwriting Policies 1/	6.7	6.3	6.2	7.2	2.5	2.7	1
8. Exclusion from the Premiums Tax of Premiums Written on Marine Vessels	2.2	3.5	3.0	2.1	1.9	1.5	1
9. Exclusion from the Premiums Tax for Certain Non-New York Property or Individuals	N/A	N/A	N/A	N/A	N/A	N/A	5
<b>Limitation on Tax</b>							
10. Limitation on Tax Liability	216.5	207.6	193.9	230.2	171.8	164.1	1
<b>Credits</b>							
11. Fire Insurance Tax Credits - Credit for Taxes on Certain Fire Insurance Premiums	32.3	30.5	29.6	27.8	29.3	29.7	1

<u>Tax Item</u>	<u>History</u>					<u>Forecast</u>	<u>Reliability</u> <u>Level</u>
	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2003</u>	
12. Retaliatory Tax Credit 1/	39.0	38.6	45.3	33.2	30.6	20.6	1
13. Special Additional Mortgage Recording Tax Credit	*	*	*	*	*	*	1
14. Credit for Assessments Paid to the Life Insurance Company Guaranty Corporation	0.0	0.0	0.0	0.0	0.0	0.0	4
15. Credit for Eligible Business Facilities	0.0	0.0	0.0	0.0	0.0	0.0	1
16. Empire Zone Tax Credits							
a. Empire Zone Tax Credits	0.0	0.0	0.0	0.0	0.1	*	1
b. Empire Zones Program Act	--	--	--	--	--	*	4
17. Credit for Employing Individuals with Disabilities	--	--	--	0.0	*	*	1
18. Credit for Investment in Certified Capital Companies	--	--	--	--	4.4	28.0	1
19. Credit for Purchase of Automated External Defibrillator	--	--	--	--	--	*	1
20. Transportation Access Credit	--	--	--	--	--	*	1
21. Low Income Housing Credit	--	--	--	--	--	*	4
22. Green Buildings Tax Credit	--	--	--	--	--	*	4
23. Investment Tax Credit for Insurers	--	--	--	--	--	10.0	4
24. Long-Term Care Insurance Credit	--	--	--	--	--	*	4

**Corporate Exemptions**

25. Exemption from Article 33 for Specific Types of Entities Engaged in an Insurance Business 1/	278.2	262.1	236.1	244.9	271.2	254.8	4
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**Preferential Tax Rates**

26. Preferential Tax Treatment for Captive Insurance Companies	--	--	--	*	*	*	1
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1/ A new tax expenditure item, a revision of the methodology or revisions in the data sources resulting in an estimate which better reflects the tax expenditure value.

\* Less than \$0.1 million.

-- The tax expenditure was not applicable for these years.

N/A No data available



## New York Modifications to Federal Taxable Income

In computing New York entire net income modifications to federal taxable income are provided for under Article 33 of the Tax Law.

### 1. Exclusion of Interest, Dividends and Capital Gains from Subsidiary Capital

**Citation:** Section 1503(b)(1)(A)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1974

**Description:** In computing New York entire net income, taxpayers may subtract from federal taxable income dividends, interest and gains derived from subsidiary corporations that are not part of the combined filing entity.

**Estimates:** 1999: \$18.6 million - 2003: \$12.9 million

**Data Source:** Insurance Tax Study File

**Reliability:** Level 1

### 2. Deduction of 50 Percent of Dividends from Non-Subsidiary Corporations

**Citation:** Section 1503(b)(1)(B)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1974

**Description:** Insurance corporations may deduct from federal taxable income, before federal exclusion, 50 percent of dividend income received from non-subsidiary corporations. (Note: Life insurance companies are only allowed 50 percent of the company's share of such dividends.)

**Estimates:** 1999: \$3.2 million - 2003: \$1.2 million

**Data Source:** Insurance Tax Study File

**Reliability:** Level 1

### 3. Deduction of Additions to Unearned Premium Reserves

**Citation:** Section 1503(b)(1)(J)-(L), (b)(2)(O)-(Q)

**Effective Date:** Effective for taxable years beginning after December 31, 1986

**Description:** Property and casualty insurance corporations may deduct, in calculating entire net income, 100 percent of the annual net increase in unearned premium reserves. The Internal Revenue Code only allows the deduction of 80 percent of the increase. The additional amount of the deduction allowed under New York law is a tax expenditure item.

**Estimates:** 1999: \$4.2 million - 2003: \$1.7 million

**Data Source:** Insurance Tax Study File

**Reliability:** Level 1

### 4. Deduction for Losses Incurred

**Citation:** Section 1503(b)(1)(O)

**Effective Date:** Effective for taxable years beginning after December 31, 1986

**Description:** Property and casualty insurance corporations may deduct from federal taxable income, in calculating entire net income, the full amount of losses incurred. The Internal Revenue Code provides that property and casualty insurers must reduce their deduction for losses incurred by 15 percent of the sum of 1) tax-exempt interest received or accrued plus

## INSURANCE TAX

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2) the dividends attributable to stock or obligations acquired after August 7, 1986. The additional amount allowed under New York law is a tax expenditure item.

**Estimates:** 1999: \$3.1 million - 2003: \$0.9 million

**Data Source:** Insurance Tax Study File

**Reliability:** Level 1

### Alternative Bases

Under Section 1502 of Article 33 of the Tax Law insurance corporations must calculate the following alternative franchise taxes and the greatest one must be paid:

- 1) 7.5 percent of allocated entire net income;
- 2) 0.0016 of allocated business and investment capital;
- 3) 9 percent on 30 percent of allocated entire net income plus salaries of certain officers and shareholders; and
- 4) fixed minimum tax of \$250.

One tax expenditure item is provided for under the alternative tax on business and investment capital.

### 5. Exclusion of Assets Held as Reserves Under NYS Insurance Law Sections 1303, 1304 and 1305

**Citation:** State Insurance Law Sections 1303, 1304 and 1305; Tax Law Section 1500(I)(j)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1974

**Description:** Insurance corporations may deduct loss or claim reserves and unearned premium reserves (as specified in the Insurance Law) from the definition of business capital and investment capital for purposes of computing tax liability under the capital based tax.

**Estimates:** 1999: Minimal - 2003: Minimal

**Data Source:** Insurance Tax Study File, Industry Data

**Reliability:** Level 4

### Exclusions from Premiums Based Tax

The tax on insurance corporations is composed of a tax on the higher of three alternative bases or a minimum tax plus a tax on subsidiary capital and a tax on allocated premiums. The premiums based tax excludes premiums from several types of insurance.

- 6. Exclusion of Annuities from the Tax on Premiums**  
**Citation:** Section 1510(c)(1)  
**Effective Date:** Effective for taxable years beginning on or after January 1, 1974  
**Description:** The premiums tax base excludes annuities.  
**Estimates:** 1999: \$9.9 million - 2003: \$10.7 million  
**Data Source:** Insurance Study File  
**Reliability:** Level 1
- 7. Exclusion from the Premiums Tax of Premiums Written on Certain Joint Underwriting Policies**  
**Citation:** Section 1510(c)(2)  
**Effective Date:** Effective for taxable years beginning on or after January 1, 1974  
**Description:** The premiums-based tax does not include premiums on joint underwriting of group health insurance for persons aged 65 and over.  
**Estimates:** 1999: \$2.5 million - 2003: \$2.7 million  
**Data Source:** Insurance Study File  
**Reliability:** Level 1
- 8. Exclusion from the Premiums Tax of Premiums Written on Marine Vessels**  
**Citation:** Section 1510(c)(2)  
**Effective Date:** Effective for taxable years beginning on or after January 1, 1974  
**Description:** The base of the premiums-based tax does not include premiums for insurance upon marine vessels, freights or disbursements or upon personal property therein.  
**Estimates:** 1999: \$1.9 million - 2003: \$1.5 million  
**Data Source:** Insurance Study File  
**Reliability:** Level 1
- 9. Exclusion from the Premiums Tax for Certain Non-New York Property or Individuals**  
**Citation:** Section 1512(b)(1)-(3)  
**Effective Date:** Effective for taxable years beginning on or after January 1, 1974 (Section 1512(b)(3) effective for taxable years beginning on or after January 1, 1978)  
**Description:** The tax imposed on premiums does not apply to premiums from:
- Property, risks or residents located outside of New York written by nonprofit life or fire insurance companies.
  - Insurance risks on residents outside of the State of New York written by federally exempt life insurance companies organized by nonprofit voluntary employees' beneficiary associations.
- Estimate:** No data available  
**Reliability:** Level 5

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## Limitation on Tax

Article 33 provides for a maximum tax liability or “cap” for insurance corporations. The cap equals 2 percent for all insurers. The total tax before credits may not exceed this amount. Taxpayers may apply all insurance corporation tax credits, except the empire zone wage tax credit and the empire zone capital corporation credit, to reduce the tax as determined by the “cap.”

### 10. Limitation on Tax Liability

**Citation:** Section 1505

**Effective Date:** Effective for taxable years beginning on or after January 1, 1977

**Description:** Article 33 limits the total tax liability of an insurance corporation. Effective for taxable years beginning on or after January 1, 1998, the limitation, or “cap,” equals 2.0 percent of gross premiums for life insurers. Effective for tax years beginning after June 30, 2001 and before July 1, 2002, the limitation for all other insurers is 2.2 percent of gross premiums. An insurance corporation’s tax liability equals the lower of (1) the tax determined under the cap, or (2) the tax determined on the highest of four alternative bases, plus the taxes on subsidiary capital and premiums bases. Special rules apply to taxpayers claiming Empire Zone (EZ) or Zone Equivalent Area (ZEA) credits.

**Estimates:** 1999: \$171.8 million - 2003: \$164.1 million

**Data Source:** Insurance Tax Study File

**Reliability:** Level 1

## Credits

Credits are amounts, enumerated by Article 33 of the New York State Tax Law, which insurance corporations may subtract from their calculated New York tax liability. (The Empire Zone Wage Tax Credit and the Empire Zone Capital Corporation Credit may not be utilized to reduce the tax in instances where the tax is based on the limitation (or cap)).

### 11. Fire Insurance Tax Credits - Credit for Taxes on Certain Fire Insurance Premiums

**Citation:** Section 1511(a)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1974

**Description:** A credit is allowed for additional taxes on premiums written by foreign or alien corporations for any insurance against loss or damage by fire, paid by foreign and alien fire insurance companies and foreign mutual fire insurance companies. Such taxes are imposed under the Insurance Law and under the charters of the cities of Buffalo and New York. Taxpayers must have paid or accrued the taxes during the tax year covered by the return. Insurance corporations may not carry forward unused credits to any other year.

**Estimates:** 1999: \$29.3 million - 2003: \$29.7 million

**Data Source:** Insurance Tax Study File

**Reliability:** Level 1

### 12. Retaliatory Tax Credit

**Citation:** Section 1511(c)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1974

**Description:** Taxpayers may claim a credit for up to 90 percent of any retaliatory taxes paid to other states by New York domiciled or organized insurers as a result of New York State imposed taxes on insurers domiciled or organized in those other states.

**Estimates:** 1999: \$30.6 million - 2003: \$20.6 million

**Data Source:** Insurance Tax Study File

**Reliability:** Level 1

**13. Special Additional Mortgage Recording Tax Credit**

**Citation:** Section 1511(e)

**Effective Date:** Effective for taxable years beginning after December 31, 1978

**Description:** An insurance corporation may claim a credit which is equal in amount to the special additional mortgage recording tax paid on mortgages recorded on or after January 1, 1979, on property which is located within New York. Taxpayers may carry forward the amount of any unused mortgage recording tax credit. Certain mortgages on property in a Metropolitan Commuter Transportation District or Erie County are ineligible for the credit.

**Estimates:** 1999: Minimal - 2003: Minimal

**Data Source:** Insurance Tax Study File

**Reliability:** Level 1

**14. Credit for Assessments Paid to the Life Insurance Company Guaranty Corporation**

**Citation:** Insurance Law Section 7712(a)(b); Tax Law Section 1511(f)

**Effective Date:** Effective for taxable years beginning after December 31, 1986

**Description:** Life insurance corporations may claim a tax credit for a portion of the cost of assessments paid to the life insurance company guaranty corporation in prior years. The maximum credit allowed to all life insurance companies for a particular year is limited to \$40 million or 40 percent of the total tax liability of all such companies. Taxpayers may carry forward the amount of unused credits.

**Estimates:** 1999: \$0.0 million - 2003: \$0.0 million

**Data Source:** State Insurance Department

**Reliability:** Level 4

**15. Credit for Eligible Business Facilities**

**Citation:** Section 1511(d)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1978

**Description:** Owners or operators of a business establishment which has been certified for eligibility by the New York State Job Incentive Board (prior to April 1, 1983) or the State Tax Commission (subsequent to April 1, 1983) may claim a credit. An eligible business facility has been defined as one which is located in an eligible low-income area and creates or retains at least five jobs. Taxpayers may not carry forward the credit to future taxable years, although the certificate of eligibility may be renewed by a business for up to 10 years. After March 31, 1983, no new projects were approved for certification. The Commissioner of Taxation and Finance is empowered to issue certificates of eligibility for tax credits or a renewal or extension thereof on or after April 1, 1983.

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**Estimates:** 1999: \$0.0 million - 2003: \$0.0 million

**Data Source:** Insurance Tax Study File

**Reliability:** Level 1

## 16. Empire Zone Tax Credits

### a. Empire Zone Tax Credits

**Citation:** Section 1511(g)(h)

**Effective Date:** Effective for tax years beginning on or after January 1, 1986. (However, the methods for computing the wage tax credit and the capital corporation credit were amended effective for tax years beginning on or after January 1, 1994.) Amendments providing that taxpayers located in Zone Equivalent Areas (ZEAs) can take a modified Empire Zone (EZ) wage tax credit were effective January 1, 1994.

**Description:** Taxpayers may qualify for an enhanced investment tax credit (EZ-ITC) of 8 percent for personal income taxpayers or 10 percent for corporations, applied towards the cost or other federal basis of tangible personal property, including buildings and structural components of buildings located within a designated EZ. The provisions of the EZ-ITC are generally the same as those for the regular ITC.

Taxpayers may also claim an EZ employment incentive credit (EZ-EIC) similar to the regular EIC, based upon EZ-ITC claimed and employment increased within an EZ. The amount of the EZ-EIC allowed is 30 percent of the EZ-ITC for each of the three years following the year for which the original EZ-ITC was allowed. However, the credit is allowed only for those years during which your average number of employees (except general executive officers) in the EZ, is at least 101 percent of the average number of employees (except general executive officers) in the EZ, during the tax year immediately preceding the tax year for which the original EZ-ITC was allowed.

A taxpayer may claim a wage tax credit for doing business and creating jobs in EZs (EZ-WTC). The wage tax credit has two components. This credit equals the product of the average number of newly hired targeted EZ employees receiving EZ wages multiplied by \$3,000. The corresponding credit amount for other employees equals the product of the average number of newly hired nontargeted EZ employees receiving EZ wages multiplied by \$1,500.

Taxpayers employing individuals in areas that met EZs eligibility criteria but were not so designated - Zone Equivalent Areas (ZEAs) - may take a credit for ZEA wages paid for full-time employment in jobs created in the ZEA. Taxpayers must take the credit during the 10 year period following designation as a ZEA. The credit equals \$3,000 multiplied by the average number of targeted employees and \$1,500 multiplied by the average number of nontargeted employees. The total wage tax credit in any tax year cannot exceed 50 percent of tax due (before credits). The EZ-WTC and the ZEA-WTC are available to the taxpayer for five years.

Finally, taxpayers may qualify for a credit for investments in zone capital corporations, direct equity investments in certified zone businesses and contributions to community development projects (EZ capital corporation credit). The credit

equals 25 percent of the sum of each type of investment. The maximum credit per taxpayer is \$100,000 for each investment type for an aggregate limit of \$300,000 and cannot exceed one half of the taxpayer's pre-credit tax.

Taxpayers may carry unused credits forward indefinitely. "New business" taxpayers may elect to have 50 percent of their unused ZEA-WTC or EZ-WTC or their EZ-ITC for the tax year refunded, in lieu of carryover. The EZ-EIC may be taken against the alternative minimum tax for tax years beginning on or after January 1, 2001.

**Estimates:** 1999: \$0.1 million - 2003: Minimal

**Data Source:** Insurance Tax Study File

**Reliability:** Level 1

**b. Empire Zones Program Act**

**Citation:** Section 1511(r), (s)

**Effective Date:** Effective for tax years beginning on or after January 1, 2001

**Description:** The Empire Zones Program Act created a tax credit for real property taxes and a tax reduction credit for Qualified Empire Zone Enterprises (QEZE). Qualified Empire Zone enterprises include business enterprises certified as EZ businesses prior to July 1, 2005 that meet an annual employment test. Allowances of credit are for corporate taxpayers such as businesses under Article 9-A, banks, and insurance companies, as well as sole proprietorships and partnerships under Article 22, that are qualified EZ enterprises. The QEZE tax credit for real property taxes and the tax reduction credit may be claimed for 15 years. The credit for real property taxes is refundable. The tax reduction credit can be applied against the alternative minimum tax and the fixed dollar minimum, potentially reducing a taxpayer's liability to zero.

**Estimates:** 1999: Not Applicable - 2003: Minimal

**Data Source:** Estimate in part based on data provided by Empire State Development and the Office of Real Property Services

**Reliability:** Level 4

**17. Credit for Employing Individuals with Disabilities**

**Citation:** Section 1511(j)

**Effective Date:** Effective for tax years beginning on or after January 1, 1998, with respect to employees who begin work on or after January 1, 1997

**Description:** Employers who employ individuals with disabilities may claim a credit for a portion of wages paid to such individuals. The credit equals 35 percent of the first \$6,000 of first year wages paid to the disabled employee (a maximum of \$2,100 per employee). However, if the first year's wages qualify for the federal work opportunity tax credit, the New York credit will apply to second year wages.

To become eligible for the State credit, the disabled employee must work for the employer on a full time basis for at least 180 days or 400 hours, and must be certified as disabled by the State Education Department. Visually handicapped individuals may receive certification from the appropriate agency responsible for vocational rehabilitation of the blind and visually impaired.

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**Estimates:** 1999: Minimal - 2003: Minimal

**Data Source:** Insurance Tax Study File

**Reliability:** Level 1

### 18. Credit for Investment in Certified Capital Companies

**Citation:** Section 1511(k)

**Effective Date:** Effective for tax years beginning after 1998, although the credit may be earned before 1999. The credit was expanded, with a second program, to a combined statewide cap of \$130 million, effective January 1, 2001. The credit was expanded again, with a third program, to a combined statewide cap for all three programs of \$280 million, effective January 1, 2002.

**Description:** Under the three programs, taxpayers may claim a credit for 100 percent of the amount invested in certified capital companies (CAPCOs). The credit can be claimed over 10 years, at a rate of 10 percent per year. The combined statewide cap is \$280 million on the total amount of investments for which credits may be claimed (no more than \$50 million for 1999). The total for all three programs may not exceed \$28 million in any year.

**Estimates:** 1999: \$4.4 million- 2003: \$28.0 million

**Data Source:** Insurance Tax Study File

**Reliability:** Level 1

### 19. Credit for Purchase of Automated External Defibrillator

**Citation:** Section 1511(l)

**Effective Date:** Effective for tax years beginning on or after January 1, 2001

**Description:** Credit for purchase of automated external defibrillator. The credit will be the cost to the taxpayer during the taxable year, not exceeding \$500 for each purchase.

**Estimates:** 1999: Not Applicable - 2003: Minimal

**Data Source:** Insurance Tax Study File

**Reliability:** Level 1

### 20. Transportation Access Credit

**Citation:** Section 1511(p)

**Effective Date:** Effective for tax years beginning on or after January 1, 2000

**Description:** The taxpayer must make a certified contribution of at least \$10 million to a qualified transportation improvement project in a prior tax year. The projects must enhance a qualified business facility, and may include the construction or improvement of transportation infrastructure and related facilities and systems, including bridges, ramps, highways, and mass transit facilities. In addition, the taxpayer must create, by the third full tax year after the tax year during which the contribution was made, more than 1,000 jobs in connection with the qualified business facility. The credit equals 6 percent of the taxpayer's increased qualified business facility payroll for the tax year. After the third full tax year after the contribution is made the employment increase test is not met, then there is a recapture of the credit. The new law applies to contributions made on or after January 1, 2000.

**Estimates:** 1999: Not Applicable - 2003: Minimal

**Data Source:** Insurance Tax Study File

**Reliability:** Level 1



### 21. Low Income Housing Credit

**Citation:** Section 1511(n)

**Effective Date:** Effective for tax years beginning on or after January 1, 2000, with respect to commitments for construction of low-income housing agreed upon on or after May 15, 2000.

**Description:** The “New York State Low Income Housing Tax Credit Program,” based on the existing federal program, 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 \$40 million, or \$4 million each year. The credit program applies to corporate franchise taxpayers, personal income taxpayers, banks and insurance companies. The provision take effect immediately.

**Estimates:** 1999: Not Applicable - 2003: Minimal

**Data Source:** Statutory limitation

**Reliability:** Level 4

### 22. Green Buildings Tax Credit

**Citation:** Section 1511(o)

**Effective Date:** Effective for tax years beginning on or after January 1, 2001

**Description:** The credits would provide incentives for the purchase of recyclable building materials and other environmentally preferable tangible personal property. It also contains tax credits for the purchase of fuel cells, photovoltaic modules, and environmentally sensitive non-ozone depleting refrigerants. The credits apply to costs incurred on or after June 1, 1999, for property placed in service or that has received a final certificate of occupancy in tax years beginning on or after January 1, 2001.

**Estimates:** 1999: Not Applicable - 2003: Minimal

**Data Source:** Statutory limitation

**Reliability:** Level 4

### 23. Investment Tax Credit for Insurers

**Citation:** Section 1511(q)

**Effective Date:** Available for property placed in service between January 1, 2002 and October 1, 2008

**Description:** An insurance company which is a securities and commodities broker can claim an investment tax credit (ITC) for tangible personal property used in the course of its broker/dealer activities. The credit also extends to taxpayers that lease property to an affiliated broker/dealer. The property must be depreciable and have a useful life of four years or more. The taxpayer must have substantially all of the employees using the qualified property located in New York. The credit may be claimed at 5 percent for the first \$350 million of qualified investment expenditures, and 4 percent for expenditures over \$350 million. The credit applies to property placed in service between January 1, 2002 and September 30, 2008.

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**Estimates:** 1999: Not Applicable - 2003: \$10.0 million

**Data Source:** Estimates from Division of the Budget

**Reliability:** Level 4

### 24. Long-Term Care Insurance Credit

**Citation:** Section 1511(m)

**Effective Date:** Effective for taxable years beginning on or after January 1, 2002

**Description:** Taxpayers may claim a credit for 10 percent of the premium paid for long-term care insurance policy during the taxable year. To qualify for the credit, the long-term care insurance policy purchased by the taxpayer must be one approved by the Superintendent of Insurance. Amounts in excess of tax liability may be carried over to future tax years.

**Estimates:** 1999: Not Applicable - 2003: Minimal

**Data Source:** New York State Department of Insurance

**Reliability:** Level 4

### Corporate Exemptions

Article 33 of the Tax Law does not apply to several types of entities which may be engaged in an insurance business. Several additional types of entities are exempt only from the premiums tax.

### 25. Exemption from Article 33 for Specific Types of Entities Engaged in an Insurance Business

**Citation:** Section 1512(a)(1)-(8), (c)

**Effective Date:** Effective for taxable years beginning on or after January 1, 1974 (Sections 1512(a)(8) and 1512(c) effective for taxable years beginning on or after January 1, 1978)

**Description:** The corporation franchise tax on insurance does not apply to several types of entities which may be engaged in an insurance business. Among the exempt entities are:

- Charitable, religious, missionary, educational and philanthropic non-stock corporations. (1512(a)(2))
- Retirement systems or pension funds engaged solely in an annuity business. (1512(a)(3))
- Nonprofit medical expense indemnity or hospital service corporations. (This exemption applies to health service corporations such as Blue Cross and Blue Shield.) (1512(a)(4))
- Incorporated or unincorporated fraternal benefit societies. (1512(a)(5))
- Corporations for the insurance of domestic animals on a cooperative plan. (1512(a)(6))
- Not-for-profit voluntary employees' beneficiary associations exempted from federal income tax the members of which are employees (or beneficiaries or dependent of employees) of a single employer. (1512(a)(8))
- Entities conducting insurance business as a member of the New York Insurance Exchange. (1512(c))

**Estimates:** 1999: \$271.2 million - 2003: \$254.8 million

**Data Source:** New York State Insurance Department Aggregate Data.

**Reliability:** Level 4

### Preferential Tax Rates

#### 26. Preferential Tax Treatment for Captive Insurance Companies

**Citation:** Section 1502-b

**Effective Date:** Effective for tax years beginning on or after January 1, 1998

**Description:** Captive insurers are subject to a special premiums tax in lieu of the premiums and “income-based” tax that applies to other insurers. The tax imposed on captives equals the greater of the sum of the tax imposed on gross direct premiums and the tax imposed on assumed reinsurance premiums, or \$5,000. The tax rates that apply to gross direct premiums and assumed reinsurance premiums will decrease as the amount of premiums subject to tax increases, with the highest rate equaling 0.4 percent.

**Estimate:** 1999: Minimal- 2003: Minimal

**Data Source:** Tax return data

**Reliability:** Level 1



# PETROLEUM BUSINESS TAX

This section provides tax expenditure estimates for 27 provisions of the Petroleum Business Tax. Table 7 provides a list of expenditures based on the Tax Law as of January 1, 2003. The estimates are based on data for the 2001 calendar year (the latest complete year for which tax return data is available) and then extrapolated to the 2003 calendar year. Total Petroleum Business Tax liability for calendar 2001 is provided as a benchmark for the tax expenditure estimates.

## Description of Tax

Article 13-A of the Tax Law imposes a business privilege tax on petroleum businesses operating in New York State. The tax is measured by the quantity of various petroleum products refined or sold in the State or imported for sale or use in the State. Imposition of the tax occurs at different points in the distribution chain, depending upon the type of petroleum product. Motor fuel (gasoline) is subject to tax upon importation to New York State. Automotive diesel motor fuel is taxable upon the first non-exempt sale or use of the product in New York. Non-automotive diesel fuel and residual petroleum products become taxable on the final sale or use of the product in New York.

The Article 13-A business privilege tax was added to the Tax Law in 1983 and was imposed on the gross receipts of such businesses. The tax was initially imposed at the rate of 3.25 percent and was reduced to 2.75 percent on April 1, 1984. On June 1, 1990, the rate was increased to 7.2 percent and was subject to a 15 percent surcharge similar to that applied temporarily to other businesses. On September 1, 1990, the tax was restructured, converting the annual gross receipts tax to a monthly tax measured by gallons.

Some of the exemptions, credits, and reimbursements provided for in the restructuring applied to the prior gross receipts tax. Although these provisions already had been in place, the effective dates and estimates cited herein reflect the date on which they were restructured.

The rate schedule on page 151 displays the petroleum business tax rates effective January 1, 2003. These rates generally have two components: the basic tax whose rates vary by product type and the supplemental tax. For example, the motor fuel tax rate of 14 cents per gallon consists of a 8.4 cents per gallon basic tax and a 5.6 cents per gallon supplemental tax.

## Data Sources

The major sources of data used to compute the tax expenditure estimates under Article 13-A include:

- Petroleum Business Tax (PBT) Master File for 1997-2001. This is an unverified file of all taxpayers filing a return under Article 13-A. Some of the expenditure items, as indicated, were simulated using this file by reading the gallons from the database and applying the statutory tax rate for the appropriate periods to arrive at an estimate of revenue foregone. For kerosene, bunker fuel, crude oil and liquid petroleum gas, where no statutory tax rate existed, the most closely associated tax rate was selected. The rate used for each type of fuel are as follows: kerosene - the non-automotive

## **PETROLEUM BUSINESS TAX**

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diesel fuel rate; bunker fuel and crude oil the residual petroleum products rate; and for liquid petroleum gas the motor fuel rate and non-automotive diesel rates.

- Refund data from the Department's Audit Division.
- Nontax data sources such as: Data from the U.S. Department of Energy and U.S. Department of Defense and New York State Energy Research and Development Authority.

### **Methodology**

The projections of the tax expenditures from 2001 to 2003 are based, where possible, on forecasted consumption of various petroleum products. These forecasts were produced by the U.S. Department of Energy. The remaining expenditure estimates used forecasts of appropriate economic variables.

Tax expenditures whose values are less than \$0.1 million are considered minimal and are designated by an asterisk.

# PETROLEUM BUSINESS TAX

Petroleum Business Tax Rates as of January 1, 2003  
(Cents-Per-Gallon)

<u>Product</u>	<u>Base</u> <u>Tax</u>	<u>Supplemental</u> <u>Tax</u>	<u>Total</u> <u>Tax</u>
<u>Taxes:</u>			
Motor Fuel and Aviation Gasoline	8.4	5.6	14.0
Automotive Diesel Fuel	8.4	3.85	12.25
Railroad Diesel	7.1	--	7.1
Kero-jet Fuel	5.6	--	5.6
Non-automotive Type Diesel Fuel	7.6	5.6	13.2
Residual Petroleum Product	5.8	5.6	11.4
<u>Credits/Reimbursements:</u>			
Electric Utility Credit/Reimbursement	5.06	--	5.06
Unenhanced Diesel Fuel (Primarily No. 2 Fuel Oil)	5.03	--	5.03
Residual Fuel			
Manufacturing Reimbursement 1/			
Unenhanced Diesel Motor Fuel (Primarily No. 2 Fuel Oil)	7.6	5.6	13.2
Residual Petroleum Product	5.8	5.6	11.4
Commercial Gallonage			
Unenhanced Non-automotive Type Diesel Fuel (Primarily No. 2 Fuel Oil)	--	5.6	5.6
Residual Petroleum Product	--	5.6	5.6
Non-residential Heating 4/			
Unenhanced Diesel Motor Fuel	3.5		1.5
Railroad Gallonage	1.3	3.85	5.15
Farm Use Reimbursement 2/			
Motor Fuel	8.4	5.6	14.0
Commercial Fisherman Reimbursement			
Motor Fuel	8.4	5.6	14.0
Diesel Motor Fuel	8.4	3.85	12.25
Distributor of Aviation Gasoline Reimbursement	2.8	5.6	8.4
Not-for-Profit and Veterans' Group Credit/Reimbursement 3/			
Unenhanced Diesel Motor Fuel	7.6	5.6	13.2
Residual Petroleum Product	5.8	5.6	11.4

1/ Unenhanced diesel motor fuel and residual petroleum product used and consumed directly and exclusively in the production of tangible personal property are exempt from the tax.

2/ Diesel motor fuel and residual petroleum product for farm use are exempt from the tax.

3/ Unenhanced diesel motor fuel and residual petroleum product used and consumed exclusively by certain not-for-profit organizations and veterans' groups for related activities are exempt from the tax.

4/ This reimbursement rate applies where the PBT commercial gallonage rate of 7.6 cents per gallon was paid at the time of purchase and the product was subsequently used for non-residential heating purposes. Other reimbursement rates would apply if the product used was enhanced diesel motor fuel or if the full automotive or non-automotive diesel rates were paid at the time of purchase and the product was subsequently used for non-residential heating purposes.

**Table 7**  
**2003 New York State Petroleum Business Tax Expenditure Estimates**  
**(2001 Calendar Year Total Petroleum Business Tax Liability = \$978.0 Million)**  
**(Millions of Dollars)**

<u>Tax Law</u>	<u>History</u>					<u>Forecast</u>	<u>Reliability</u> <u>Level</u>
	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2003</u>	
<b>Exemptions</b>							
<u>Products</u>							
1. Kerosene	13.0	10.4	9.4	12.0	12.0	9.3	2
2. Bunker Fuel	8.9	9.1	6.7	1.1	23.8	22.9	2
3. Crude Oil and Liquid Petroleum Gases	37.6	35.2	36.5	43.0	38.1	38.5	4
<u>Sales</u>							
4. Governments	65.5	61.3	58.7	61.4	56.7	53.4	2
5. Residential Heating	286.4	231.4	262.6	255.5	276.1	279.2	2
6. Fuel Used for Manufacturing Purposes 1/	5.9	14.4	12.4	13.8	13.8	13.0	2
7. Fuel Used for Farm Production 2/	5.9	5.8	5.6	5.4	6.2	6.0	2
8. Not-for-Profit Organizations and Veterans Groups	10.0	10.5	10.8	12.2	12.6	11.5	2
9. Fuel Used for Railroad Purposes	3.9	3.6	3.1	2.8	2.3	3.0	2
10. Certain Commercial Gallonage	17.1	21.6	32.9	48.6	58.8	34.8	2
11. Fuel Used for Non-residential Heating Purposes	--	--	--	--	6.7	12.8	2
<u>Credit, Refund or Reimbursement</u>							
12. Residential Heating Fuel	0.1	*	*	*	*	*	2
13. Governments	3.7	2.5	2.7	1.5	1.5	2.0	2
14. Omnibus Carriers	3.0	2.5	2.6	4.5	4.5	4.5	2
15. Non-Public School Operators	*	*	*	0.1	0.1	0.1	2
16. Regulated Electric Utilities	22.8	40.7	33.6	13.3	9.6	*	2
17. Fuel Used for Manufacturing Purposes 3/	*	*	*	*	0.1	0.1	2
18. Certain Commercial Gallonage	*	0.1	0.1	1.6	2.5	3.0	2
19. Fuel Used by Commercial Fishers	0.3	0.3	0.3	0.6	0.6	0.6	2



<u>Tax Law</u>	<u>History</u>					<u>Forecast</u>	<u>Reliability</u>
	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2003</u>	<u>Level</u>
20. Fuel Used for Farm Production 4/	0.4	0.5	0.6	0.4	0.3	0.4	2
21. Fuel Used for Railroad Purposes	*	*	0.3	2.3	1.0	1.0	2
22. Fuel Used for Non-residential Heating Purposes 5/	--	--	--	--	*	*	2
23. Fuel Used for Mining or Extracting Purposes	--	--	--	--	*	*	2
24. Bad Debts	*	*	*	*	*	*	2
25. Not-for-Profit Organizations and Veterans Groups	*	*	*	*	*	*	2
26. Fuel Used by Passenger Commuter Ferries				0.1	0.3	0.1	2
<u>Exempt Entities</u>							
27. Governments, the United Nations and Certain Not-for-Profit Organizations	*	*	*	*	*	*	4

\* Less than \$0.1 million.

N/A No data available

-- The tax expenditure was not applicable for these years.

1/ Non-automotive diesel fuel and residual petroleum product used and consumed directly and exclusively in the production of TPP for sale as part of a manufacturing process are fully exempt from the PBT, effective January 1, 1998.

2/ Non-automotive diesel fuel used for farming was exempt from the supplemental portion of tax beginning July 1991. Non-automotive diesel fuel and residual fuel used for farming is exempt from entire tax beginning September 1, 1994.

3/ Credit or refunds were available for the supplemental portion of non-automotive diesel or residual product purchased tax paid and subsequently used to produce TPP for manufacturing. Effective January 1, 1998, these products are now fully exempt from the petroleum business tax.

4/ Refunds were available for the supplemental portion of non-automotive diesel product purchased tax paid and subsequently used for farming purposes. Full refunds are now available only for motor fuel used for farming purposes effective September 1, 1994.

5/ Prior to September 1, 2002, refunds were available for the supplemental tax plus 20 percent of the base tax. Effective September 1, 2002, these refunds are available for the supplemental tax plus 46 percent of the base tax.

# PETROLEUM BUSINESS TAX

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## Exemptions

The petroleum business tax allows certain exemptions for gallonage otherwise included in the calculation of tax.

## Products

### 1. Kerosene

**Citation:** Section 301-b(a)(1)

**Effective Date:** September 1, 1990

**Description:** Exemptions from tax apply to kerosene sold or used by a petroleum business registered as a diesel motor fuel distributor. The exemption applies to kerosene which has not been blended or mixed with any diesel motor fuel, motor fuel or residual petroleum product and is not used by the petroleum business as fuel to operate a motor vehicle or sold to a consumer to use as fuel for operation of a motor vehicle.

**Estimates:** 2001: \$12.0 million - 2003: \$9.3 million

**Data Source:** PBT Master File

**Reliability:** Level 2

### 2. Bunker Fuel

**Citation:** Section 301-b(a)(4)

**Effective Date:** September 1, 1990

**Description:** This section exempts from tax residual petroleum products sold by a business registered as a “residual petroleum business” to a consumer for exclusive use as bunker fuel, or, for use by the residual petroleum business as bunker fuel for its own vessels. Bunker fuel is petroleum fuel used in ships.

**Estimates:** 2001: \$23.8 million - 2003: \$22.9 million

**Data Source:** PBT Master File

**Reliability:** Level 2

### 3. Crude Oil and Liquid Petroleum Gases

**Citation:** Section 301-b(a)(5)

**Effective Date:** September 1, 1990

**Description:** An exemption from tax is allowed for crude oil and liquid petroleum gases such as butane, ethane, or propane.

**Estimates:** 2001: \$38.1 million - 2003: \$38.5 million

**Data Source:** Crude oil: U.S. Department of Energy; Liquid Petroleum Gases: PBT Master File and U.S. Department of Energy

**Reliability:** Level 4

## Sales

### 4. **Governments**

**Citation:** Section 301-b(c), 301-e(e)(4)

**Effective Date:** September 1, 1990

**Description:** The petroleum business tax exempts the sales of motor fuel, enhanced diesel motor fuel, diesel motor fuel, or residual petroleum products to the State of New York, the United States of America, or any of their agencies, instrumentalities, or political subdivisions. The exemption applies where such fuel is used by these entities for its own use or consumption. An exemption from tax also exists for naphtha based aviation fuel used solely for propelling military jet aircraft of the United States Armed Forces.

**Estimates:** 2001: \$56.7 million - 2003: \$53.4 million

**Data Source:** PBT Master File and U.S. Department of Defense

**Reliability:** Level 2

### 5. **Residential Heating**

**Citation:** Section 301-b(d)

**Effective Date:** September 1, 1990

**Description:** An exemption from tax applies to unenhanced diesel motor fuel, enhanced diesel motor fuel and residual petroleum product sold by a registered distributor of the product, to a consumer, exclusively for residential heating purposes.

**Estimates:** 2001: \$276.1 million - 2003: \$279.2 million

**Data Source:** PBT Master File

**Reliability:** Level 2

### 6. **Fuel Used for Manufacturing Purposes**

**Citation:** Section 301-a(f)(4), 301-a(g)(4)

**Effective Date:** January 1, 1998

**Description:** The sale or use of residual fuel or non-automotive diesel fuel for use and consumption directly and exclusively in the production of tangible personal property for sale by manufacturing, processing or assembly are exempt from the full petroleum business tax. Prior to January 1, 1998 (effective in September 1994), the above sales or uses of such fuels were exempt from the supplemental portion of the petroleum business tax. (See 17. Fuel Used for Manufacturing Purposes for reimbursement if the tax was paid on subsequent sales.)

**Estimates:** 2001: \$13.8 million - 2003: \$13.0 million

**Data Source:** PBT Master File

**Reliability:** Level 2

### 7. **Fuel Used for Farm Production**

**Citation:** Section 301-b(g)

**Effective Date:** September 1, 1994

**Description:** The sale or use of diesel motor fuel and residual petroleum product for off-highway farm production of goods for sale are exempt from the tax. However, the fuel must be delivered on the farm site and no more than 4,500 gallons of diesel motor fuel in a 30 day

## PETROLEUM BUSINESS TAX

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period may be exempted without prior clearance given by the Commissioner of Taxation and Finance. (See 20. Fuel Used for Farm Production.) Prior to September 1, 1994 (effective in July 1991), the sale of diesel motor fuel for off-highway farm production of goods for sale was exempt from the supplemental portion of the tax. No exemption was available for residual fuel prior to September 1, 1994.

**Estimates:** 2001: \$6.2 million - 2003: \$6.0 million

**Data Source:** PBT Master File

**Reliability:** Level 2

### 8. Not-for-Profit Organizations and Veterans Groups

**Citation:** Section 301-b(h)

**Effective Date:** January 1, 1996

**Description:** Not-for-profit organizations and veterans' groups purchasing and using residual fuel or non-automotive diesel fuel for their exclusive use are eligible for a full up-front exemption from the tax. These organizations include not-for-profit groups organized for religious, charitable, scientific, testing for public safety, literary or educational purposes, to foster national or international amateur sports competition, for the prevention of cruelty to children or animals, or veteran groups as listed in Section 1116(a)(4) or (5) of the Tax Law. (See 25. Not-for-Profit Organizations and Veterans Groups for a full credit/reimbursement of the tax.) Before January 1, 1996 (effective September 1, 1995), sales of unenhanced diesel motor fuel and residual petroleum product to not-for-profit organizations were exempt only from the supplemental tax.

**Estimates:** 2001: \$12.6 million - 2003: \$11.5 million

**Data Source:** PBT Master File

**Reliability:** Level 2

### 9. Fuel Used for Railroad Purposes

**Citation:** Section 301-a(e)(4); 301-j(a)(3)

**Effective Date:** January 1, 1997

**Description:** The sale of diesel motor fuel for use or consumption directly and exclusively in the operation of a locomotive or a self-propelled vehicle run only on rails or tracks is exempt from the supplemental portion of the tax. Such fuel is also taxed at a preferential rate under the base portion of the tax which is computed as the automotive diesel base rate less 1.3 cents. (See 21. Fuel Used for Railroad Purposes for refund/reimbursement of tax.)

**Estimates:** 2001: \$2.3 million - 2003: \$3.0 million

**Data Source:** PBT Master File and refund data from the Department of Taxation and Finance's Audit Division

**Reliability:** Level 2

### 10. Certain Commercial Gallonage

**Citation:** Section 301-j(a)(2)

**Effective Date:** March 1, 1997

**Description:** Commercial gallonage defined as non-automotive type diesel fuel and residual fuel that does not qualify for the utility credit/reimbursement or the manufacturing exemption or the not-for-profit exemption is exempt from the supplemental portion of the tax. This fuel

is primarily used for space heating. (See 18. Certain Commercial Gallonage for refund/reimbursement of tax.)

**Estimates:** 2001: \$58.8 million - 2003: \$34.8 million

**Data Source:** PBT Master File

**Reliability:** Level 2

### 11. Fuel Used for Non-residential Heating Purposes

**Citation:** Section 301-b(d)(2)

**Effective Date:** April 1, 2001

**Description:** A partial exemption from tax applies to unenhanced diesel motor fuel, enhanced diesel motor fuel and residual petroleum product sold by a registered distributor of the product, to a consumer, exclusively for non-residential heating purposes. The rate of the partial exemption was calculated as the then current PBT supplemental tax rate (imposed under Section 301-j) plus 20 percent of the then current PBT base rate (imposed under Section 301-a) for the applicable fuel above. Effective September 1, 2002, this partial exemption is calculated as the then current supplemental tax rate plus 46 percent of the then current PBT base rate.

**Estimates:** 2001: \$6.7 million - 2003: \$12.8 million

**Data Source:** PBT Master File

**Reliability:** Level 2

### Credit, Refund or Reimbursement

A credit, refund or reimbursement is allowed against taxes paid by certain petroleum businesses for particular petroleum products.

### 12. Residential Heating Fuel

**Citation:** Section 301-c(a)

**Effective Date:** September 1, 1990

**Description:** A reimbursement is allowed for taxes paid by subsequent purchasers of diesel motor fuel purchased in the State and sold to a consumer for use exclusively for residential heating purposes.

**Estimates:** 2001: Minimal - 2003: Minimal

**Data Source:** Refund data from the Department of Taxation and Finance's Audit Division

**Reliability:** Level 2

### 13. Governments

**Citation:** Section 301-c(b)

**Effective Date:** September 1, 1990

**Description:** This section provides a reimbursement for taxes paid pursuant to the petroleum business tax on motor fuel and diesel motor fuel purchased in the State and then sold by the purchaser to the State of New York, the United States of America, or any of their instrumentalities, agencies or political subdivisions.

**Estimates:** 2001: \$1.5 million - 2003: \$2.0 million

**Data Source:** Refund data from the Department of Taxation and Finance's Audit Division

# PETROLEUM BUSINESS TAX

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**Reliability:** Level 2

## 14. Omnibus Carriers

**Citation:** Section 301-c(c)

**Effective Date:** April 1, 1992

**Description:** A reimbursement is allowed for taxes paid on motor fuel and diesel motor fuel purchased in the State by an omnibus carrier. The reimbursement applies to fuel used in the operation of: i) an omnibus in local transit service pursuant to a certificate of convenience and necessity issued by the Commissioner of the Department of Transportation, or issued by the Interstate Commerce Commission of the United States, or pursuant to a contract, franchise or consent with a city having a population of one million or more; and, ii) as a school bus used for the transportation of children in the State pursuant to the Education Law.

**Estimates:** 2001: \$4.5 million - 2003: \$4.5 million

**Data Source:** Refund data from the Department of Taxation and Finance's Audit Division

**Reliability:** Level 2

## 15. Non-Public School Operators

**Citation:** Section 301-c(d)

**Effective Date:** April 1, 1992

**Description:** This section provides a reimbursement for taxes paid on motor fuel and diesel motor fuel purchased in the State by a non-public school operator and consumed by the operator exclusively for education related activities.

**Estimates:** 2001: \$0.1 million - 2003: \$0.1 million

**Data Source:** Refund data from the Department of Taxation and Finance's Audit Division

**Reliability:** Level 2

## 16. Regulated Electric Utilities

**Citation:** Section 301-d

**Effective Date:** September 1, 1990

**Description:** These sections extend a credit, refund, or reimbursement for the tax surcharge and part of the basic tax for fuel used in the production of electricity. For periods July 1991 and August 1991, this credit was available only for petroleum used to produce residential electricity.

**Estimates:** 2001: \$9.6 million - 2003: Minimal

**Data Source:** PBT Master File

**Reliability:** Level 2

**17. Fuel Used for Manufacturing Purposes**

**Citation:** Section 301-c(j)

**Effective Date:** January 1, 1998

**Description:** Purchasers who subsequently sell residual fuel or non-automotive diesel fuel used and consumed for manufacturing purposes may be reimbursed for the full petroleum business tax. (See 6. Fuel Used for Manufacturing Purposes for the up-front exemption.) Prior to January 1, 1998 (effective in September 1994), the above purchasers making such sales were eligible for reimbursement of the supplemental portion of the petroleum business tax.

**Estimates:** 2001: \$0.1 million - 2003: \$0.1 million

**Data Source:** Refund data from the Department of Taxation and Finance's Audit Division

**Reliability:** Level 2

**18. Certain Commercial Gallonage**

**Citation:** Section 301-c(i)(1, 2)

**Effective Date:** March 1, 1997

**Description:** Reimbursements are allowed to a consumer where such consumer purchased non-automotive type diesel fuel or residual fuel, absorbed the supplemental portion of the tax in the purchase price and used such gallonage as "commercial gallonage." The reimbursement is calculated as the amount of such gallonage multiplied by the then applicable supplemental tax rate. (See 10. Certain Commercial Gallonage for refund/reimbursement of tax.) Prior to March 1997 (and subsequent to September 1994), commercial gallonage was eligible for a credit/reimbursement at a rate of one-half the then applicable supplemental tax plus surcharge on the supplemental tax under Section 301-k.

**Estimates:** 2001: \$2.5 million - 2003: \$3.0 million

**Data Source:** Refund data from the Department of Taxation and Finance's Audit Division

**Reliability:** Level 2

**19. Fuel Used by Commercial Fishers**

**Citation:** Section 301-c(e)

**Effective Date:** September 1, 1994

**Description:** A reimbursement is allowed for diesel motor fuel and motor fuel used in the operation of a commercial fishing vessel by commercial fishers while such vessel is engaged in harvesting fish for sale.

**Estimates:** 2001: \$0.6 million - 2003: \$0.6 million

**Data Source:** Refund data from the Department of Taxation and Finance's Audit Division

**Reliability:** Level 2

**20. Fuel Used for Farm Production**

**Citation:** Section 301-c(e), (f)

**Effective Date:** September 1, 1994

**Description:** Reimbursements are allowed for diesel motor fuel and residual fuel purchased in this State and sold by such purchaser to a consumer for farm use. In addition, a purchaser of motor fuel who uses the fuel for farm production is eligible for a reimbursement of the PBT. The reimbursement is only allowed if it is not more than 1,500 gallons of gasoline

## PETROLEUM BUSINESS TAX

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purchased in a 30 day period, or for greater amounts with prior clearance by the Commissioner of Taxation and Finance. The motor fuel must be delivered on the farm site and consumed off-highway in the production of goods for sale. (See 7. Fuel Used for Farm Production for the up-front exemption.) Prior to September 1, 1994 (effective in July 1991), the sale of diesel motor fuel for off-highway farm production of goods for sale was exempt from the supplemental portion of the tax. No exemption was available for residual or motor fuel prior to September 1, 1994.

**Estimates:** 2001: \$0.3 million - 2003: \$0.4 million

**Data Source:** Refund data from the Department of Taxation and Finance's Audit Division

**Reliability:** Level 2

### 21. Fuel Used for Railroad Purposes

**Citation:** Section 301-c(k)(1, 2)

**Effective Date:** January 1, 1997

**Description:** Reimbursements are allowed to subsequent purchasers, who are registered as distributors of diesel motor fuel, have absorbed the full PBT automotive diesel rate and then sell such fuel as "railroad diesel." The amount of the reimbursement is equal to the difference between the full automotive diesel rate and the railroad diesel rate. (See 9. Fuel Used for Railroad Purposes for exemption from tax.)

**Estimates:** 2001: \$1.0 million - 2003: \$1.0 million

**Data Source:** Department of Taxation and Finance Audit Division

**Reliability:** Level 2

### 22. Fuel Used for Non-residential Heating Purposes

**Citation:** Section 301-c(a)(2)

**Effective Date:** April 1, 2001

**Description:** A partial reimbursement from tax applies to diesel motor fuel purchased in the State and then sold by such purchaser to a consumer exclusively for non-residential heating purposes. The partial reimbursement is provided only when such diesel motor fuel is delivered into a storage tank (which is not equipped with a hose or other apparatus where such fuel can be dispensed into the tank of a motor vehicle) – and where such tank is attached to the heating unit burning such fuel. Additionally, the purchaser must possess documentary proof that it absorbed the full amount of the PBT.

The rate of the partial reimbursement was calculated as the then current PBT supplemental tax rate (imposed under Section 301-j) plus 20 percent of the then current PBT base rate (imposed under Section 301-a) applicable for the specific diesel motor fuel rate above. Effective September 1, 2002, this partial exemption is calculated as the then current supplemental tax rate plus 46 percent of the then current PBT base rate.

**Estimates:** 2001: Minimal - 2003: Minimal

**Data Source:** Department of Taxation and Finance Audit Division

**Reliability:** Level 2



### 23. Fuel Used for Mining or Extracting Purposes

**Citation:** Section 301-c(1)

**Effective Date:** April 1, 2001

**Description:** A purchaser may obtain a reimbursement of the PBT paid on diesel motor fuel or residual petroleum product when such fuel is purchased exclusively for use and consumption directly and exclusively in the production of tangible personal property for sale by mining or extracting. The reimbursement is provided only where such fuel is delivered at the mining or extracting site and is consumed other than on the highways of the State. Additionally, the purchaser must possess documentary proof that it absorbed the full amount of the PBT.

**Estimates:** 2001: Minimal - 2003: Minimal

**Data Source:** Refund data from the Department of Taxation and Finance's Audit Division

**Reliability:** Level 2

### 24. Bad Debts

**Citation:** Section 301-1

**Effective Date:** September 1, 1994

**Description:** A registered petroleum business or aviation fuel business may apply for a refund for PBT that it has paid with respect to gallonage sold in-bulk by the business for the purchaser's own consumption. The same must then give rise to a debt that becomes worthless for federal income tax purposes. In addition, a sale of motor fuel and enhanced diesel motor fuel to a filling station is a sale in-bulk for such filling station's own use and consumption. Sales by a filling station are not eligible for this refund.

**Estimates:** 2001: Minimal - 2003: Minimal

**Data Source:** Refund data from the Department of Taxation and Finance's Audit Division

**Reliability:** Level 2

### 25. Not-for-Profit Organizations and Veterans Groups

**Citation:** Section 301-c(h)

**Effective Date:** January 1, 1996

**Description:** Purchasers who subsequently sell residual fuel or non-automotive diesel fuel used and consumed exclusively by certain not-for-profit organizations and veterans' groups may apply for a full refund of the PBT. These organizations include the organizations listed in Section 1116(a)(4) or (5) of the Tax Law. (See 8. Not-for-Profit Organizations and Veterans Groups for the full up-front exemption.)

**Estimates:** 2001: Minimal - 2003: Minimal

**Data Source:** Refund data from the Department of Taxation and Finance's Audit Division

**Reliability:** Level 2

### 26. Fuel Used by Passenger Commuter Ferries

**Citation:** 301-c(m)

**Effective Date:** December 1, 2000

**Description:** A reimbursement is allowed for diesel motor fuel and residual petroleum product used and consumed by a passenger commuter ferry when such fuel is used exclusively in providing a mass transportation service.

## PETROLEUM BUSINESS TAX

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**Estimates:** 2001: \$0.3 million - 2003: \$0.1 million

**Data Source:** Refund data from the Department of Taxation and Finance's Audit Division

**Reliability:** Level 2

### Exempt Entities

#### 27. Governments, the United Nations, and Certain Not-for-Profit Organizations

**Citation:** Section 305

**Effective Date:** July 1, 1983

**Description:** Organizations exempt under the Sales Tax (Section 1116(a)) that import petroleum into New York exclusively for their own use and consumption are not considered petroleum businesses and are exempt from the PBT. These organizations include: the State of New York, the United States of America and any of its agencies, instrumentalities, or political subdivisions; the United Nations; or any international organization of which the United States is a member; any trust, corporation, association, fund or foundation operated exclusively for religious, charitable, or scientific purposes, or to foster international amateur sports competition, for the prevention of cruelty to children or animals, veteran's groups; certain Indian nations or tribes and certain not-for-profit health maintenance organizations.

**Estimates:** 2001: Minimal - 2003: Minimal

**Data Source:** PBT Master File

**Reliability:** Level 4

# REAL ESTATE TRANSFER TAX

This section of the report provides tax expenditure estimates for 17 separate provisions of the real estate transfer tax. Table 8 provides a list of expenditures based on the Tax Law as of January 1, 2003. The estimates are based on liability data from the 1999-00 fiscal year. Base year 1999-00 liability is also extrapolated to the 2003-04 fiscal year. The estimates are based on an examination of liability incurred between April 1 and March 31. Real estate transfer tax liability for the 1999-00 fiscal year has been included to provide some perspective to the tax expenditure estimates.

## Description of Tax

Adopted in 1968, Article 31 of the New York State Tax Law imposes a real estate transfer tax on the conveyance of real property or an interest in real property where the consideration exceeds \$500. Payment is due no later than fifteen days after the delivery of the instrument effecting the conveyance (such as a deed). The rate of tax equals two dollars for every five hundred dollars (or fraction thereof) of consideration. Responsibility for payment rests with the person making the conveyance, the grantor. If the grantor (the seller) has failed to pay the tax or is exempt from liability, the grantee (the buyer) is responsible for payment.

The transfer tax also applies to conveyances of shares of stock in a cooperative housing corporation, the creation of long-term leaseholds and subleases, and transfers or acquisitions of a controlling interest in an entity which owns an interest in real property.

Together with the basic transfer tax, an additional one percent tax (the “mansion” tax) is imposed on the conveyance of residential real property or interest therein where the consideration is one million dollars or more. The additional tax is imposed upon the grantee. However, if the grantee is exempt from tax, then the tax is imposed on the grantor.

## Data Sources

The major source of data used to compute the tax expenditure estimates include:

- Real Estate Transfer Tax Return Database - This file, compiled by the Department of Taxation and Finance, includes information on all transfers of real property. It includes data items from the TP-584 tax return filed with each transfer and is an unverified data file.

## Methodology

Historical estimates are projected to Fiscal Year 2003-04 levels using various economic forecast variables. Several items were projected using economic data from Data Resources Incorporated (DRI). Others were projected with the use of the New York State Division of the Budget’s forecast of the U.S. and New York economies.

**Table 8**  
**2003 New York State Real Estate Transfer Tax Expenditure Estimates**  
**(Fiscal Year 2000 Total Real Estate Transfer Tax Liability = \$340.2 Million)**  
**(Millions of Dollars)**

	<u>Tax Law</u>	<u>History</u>					<u>Forecast</u>	<u>Reliability</u> <u>Level</u>
		<u>1995-96</u>	<u>1996-97</u>	<u>1997-98</u>	<u>1998-99</u>	<u>1999-00</u>	<u>2003-04</u>	
<b>Exclusions</b>								
1.	Continuing Lien Deduction	3.6	3.1	3.5	3.3	2.6	3.2	2
<b>Exemptions</b>								
2.	State of New York	N/A	N/A	N/A	N/A	N/A	N/A	5
3.	The United Nations and United States of America	N/A	N/A	N/A	N/A	N/A	N/A	5
4.	Conveyances to the United Nations, United States of America, or State of New York	3.0	4.2	3.5	3.6	3.5	3.5	2
5.	Conveyances Which Secure a Debt or Other Obligation	0.2	0.3	0.4	0.4	0.2	0.3	2
6.	Conveyances that Confirm, Correct, Modify or Supplement a Prior Conveyance	0.2	0.2	1.2	0.2	0.1	0.2	2
7.	Bona Fide Gifts and Conveyance Without Consideration	0.3	0.4	0.3	0.4	0.3	0.3	2
8.	Tax Sale	0.1	0.1	0.1	0.3	0.2	0.2	2
9.	Mere Changes of Identity	9.5	7.0	13.3	3.1	1.3	3.0	2
10.	Deeds of Partition	*	*	*	*	*	*	2
11.	Federal Bankruptcy Act	2.6	5.7	1.4	3.0	2.8	3.1	2
12.	Contract to Sell or Option to Purchase Without Use	0.1	0.1	0.2	0.2	0.5	0.3	2
13.	Option or Contract to Purchase With Right to Occupy	0.3	0.3	0.3	0.3	0.2	0.3	2
<b>Credit</b>								
14.	Credit for Prior Transfer Tax Paid	*	0.6	0.6	*	0.5	0.3	2
15.	Cooperative Housing Corporation Transfer Credit	0.3	0.7	0.7	0.8	0.6	0.7	2
<b>Preferential Tax Rates</b>								
16.	Real Estate Investment Trust Transfers (Initial Formation)	*	*	*	*	*	*	2
17.	Real Estate Investment Trust Transfers (Existing REITs)	--	0.4	1.2	1.4	A/	0.8	2

\* Minimal

-- The tax expenditure was not applicable for these years.

N/A No data available

A/ Tax Law prohibits the disclosure of individual taxpayer information.

## Exclusions

### 1. Continuing Lien Deduction

**Citation:** Section 1402

**Effective Date:** August 1, 1968 (amended May 1, 1983)

**Description:** The real estate transfer tax excludes the amount of any lien or encumbrance remaining at the time of sale involving a one-, two-, or three-family house or individual residential condominium unit, from the total consideration used to calculate the tax due. Additionally, consideration does not include the value of any lien or encumbrance at the time of sale where consideration is less than \$500,000.

**Estimates:** FY2000: \$2.6 million - FY2004: \$3.2 million

**Data Source:** RETT Database

**Reliability:** Level 2

## Exemptions

Section 1405 of the New York State Tax Law exempts certain organizations from payment of the transfer tax. Liability for any tax incurred, when an exempt organization is the grantor, becomes the responsibility of the grantee and is payable no later than 15 days after delivery of the instrument effecting the conveyance. Where both parties are exempt there is no tax due. Section 1405 also exempts certain conveyances from tax.

### 2. State of New York

**Citation:** Section 1405(a)(1)

**Effective Date:** August 1, 1968

**Description:** This section exempts the State of New York or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to an agreement with another state or Dominion of Canada) from liability for the transfer tax.

**Estimate:** No data available

**Reliability:** Level 5

### 3. The United Nations and United States of America

**Citation:** Section 1405(a)(2)

**Effective Date:** August 1, 1968

**Description:** The real estate transfer tax excuses the United Nations, the United States of America and any of its agencies or instrumentalities from incurring liability for payment of the tax.

**Estimate:** No data available

**Reliability:** Level 5

### 4. Conveyances to the United Nations, United States of America, or State of New York

**Citation:** Section 1405(b)(1)

**Effective Date:** August 1, 1968

## REAL ESTATE TRANSFER TAX

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- Description:** Exempt from tax are conveyances to the United Nations, the United States of America, the State of New York, or any of their agencies, political subdivisions, instrumentalities or any public corporation (including public corporations created pursuant to an agreement with another state or Dominion of Canada).
- Estimates:** FY2000: \$3.5 million - FY2004: \$3.5 million
- Data Source:** RETT Database
- Reliability:** Level 2
5. **Conveyances Which Secure a Debt or Other Obligation**
- Citation:** Section 1405(b)(2)
- Effective Date:** August 1, 1968
- Description:** The transfer tax exempts conveyances used to secure a debt or other obligation.
- Estimates:** FY2000: \$0.2 million - FY2004: \$0.3 million
- Data Source:** RETT Database
- Reliability:** Level 2
6. **Conveyances that Confirm, Correct, Modify or Supplement a Prior Conveyance**
- Citation:** Section 1405(b)(3)
- Effective Date:** August 1, 1968
- Description:** The real estate transfer tax does not apply to conveyances which without additional consideration confirm, correct, modify or supplement a prior conveyance.
- Estimates:** FY2000: \$0.1 million - FY2004: \$0.2 million
- Data Source:** RETT Database
- Reliability:** Level 2
7. **Bona Fide Gifts and Conveyance Without Consideration**
- Citation:** Section 1405(b)(4)
- Effective Date:** August 1, 1968
- Description:** Conveyances exempted from the tax include: conveyances made without consideration, bona fide gifts, bequests or inheritances.
- Estimates:** FY2000: \$0.3 million - FY2004: \$0.3 million
- Data Source:** RETT Database
- Reliability:** Level 2
8. **Tax Sale**
- Citation:** Section 1405(b)(5)
- Effective Date:** August 1, 1968
- Description:** The real estate transfer tax exempts any conveyance given in connection with a tax sale.
- Estimates:** FY2000: \$0.2 million - FY2004: \$0.2 million
- Data Source:** RETT Database
- Reliability:** Level 2

**9. Mere Changes of Identity**

**Citation:** Section 1405(b)(6)

**Effective Date:** July 1, 1989

**Description:** The transfer tax does not apply to a conveyance used to effectuate a mere change in identity or form of ownership where there is no change in beneficial ownership. This exemption is not applicable to conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling.

**Estimates:** FY2000: \$1.3 million - FY2004: \$3.0 million

**Data Source:** RETT Database

**Reliability:** Level 2

**10. Deeds of Partition**

**Citation:** Section 1405(b)(7)

**Effective Date:** August 1, 1968

**Description:** Exempt from the tax are conveyances which consist of a deed of partition. Partition is the division of property between several persons who are co-owners of the property. The object of a partition is to end the joint tenancy or tenancy in common and divide the property among the respective co-owners.

**Estimates:** FY2000: Minimal - FY2004: Minimal

**Data Source:** RETT Database

**Reliability:** Level 2

**11. Federal Bankruptcy Act**

**Citation:** Section 1405(b)(8)

**Effective Date:** August 1, 1968

**Description:** This section exempts from taxation any conveyance given pursuant to the Federal Bankruptcy Act.

**Estimates:** FY2000: \$2.8 million - FY2004: \$3.1 million

**Data Source:** RETT Database

**Reliability:** Level 2

**12. Contract to Sell or Option to Purchase Without Use**

**Citation:** Section 1405(b)(9)

**Effective Date:** July 1, 1989

**Description:** The real estate transfer tax exempts a conveyance which consists of a contract to sell real property without the use or occupancy of such property. Likewise, exempt from tax are conveyances granting an option to purchase real property without the use or occupancy of the property.

**Estimates:** FY2000: \$0.5 million - FY2004: \$0.3 million

**Data Source:** RETT Database

**Reliability:** Level 2

## REAL ESTATE TRANSFER TAX

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### 13. **Option or Contract to Purchase With Right to Occupy**

**Citation:** Section 1405(b)(10)

**Effective Date:** July 1, 1989

**Description:** An exemption from the transfer tax is allowed for conveyances of an option or contract to purchase real property, which includes the right to use or occupy the property, providing:

- (i) the consideration is less than \$200,000;
- (ii) such property or at least one unit of a two- or three-family house was used solely as the grantor's personal residence; and
- (iii) the real property consists of a one-, two-, or three-family house, an individual residential condominium unit or the sale of stock in a cooperative housing corporation in connection with a grant or transfer of a proprietary leasehold covering an individual residential cooperative unit.

**Estimates:** FY2000: \$0.2 million - FY2004: \$0.3 million

**Data Source:** RETT Database

**Reliability:** Level 2

### **Credit**

The real estate transfer tax allows credits for taxes paid in certain transactions.

### 14. **Credit for Prior Transfer Tax Paid**

**Citation:** Section 1405-A

**Effective Date:** July 1, 1989

**Description:** A grantor is allowed credit against the tax due on a conveyance of real property to the extent tax was paid by the grantor on a prior creation of a leasehold for all or a portion of the same real property or on the granting of a contract or option to purchase all or a part of the same real property.

**Estimates:** FY2000: \$0.5 million - FY2004: \$0.3 million

**Data Source:** RETT Database

**Reliability:** Level 2

### 15. **Cooperative Housing Corporation Transfer Credit**

**Citation:** Section 1405-B

**Effective Date:** July 1, 1989

**Description:** A credit is allowed for a proportionate part of the amount of tax paid upon the conveyance to the cooperative housing corporation of real property comprising the cooperative dwelling(s). The credit applies to the conveyance of cooperative shares to unit purchases. It is allowed only to the extent that the original conveyance of the real property to the cooperative housing corporation effectuates a mere change in identity or form of ownership, and not a change in the beneficial ownership of the property.

**Estimates:** FY2000: \$0.6 million - FY2004: \$0.7 million

**Data Source:** RETT Database

**Reliability:** Level 2



## Preferential Tax Rates

The real estate transfer tax allows a preferential tax rate in the following instances.

### 16. Real Estate Investment Trust Transfers (Initial Formation REITs)

**Citation:** Section 1402(b)

**Effective Date:** June 9, 1994 (amended July 13, 1996)

**Description:** The transfer tax rate is reduced to \$1.00 per \$500 (or fractional part thereof) on transfers of real property effected through qualifying “real estate investment trust transfers” in order to form a REIT occurring on or after June 9, 1994.

**Estimates:** FY2000: Minimal - FY2004: Minimal

**Data Source:** New York State Department of Taxation and Finance

**Reliability:** Level 2

### 17. Real Estate Investment Trust Transfers (Existing REITs)

**Citation:** Section 1402(b)

**Effective Date:** July 13, 1996

**Description:** The transfer tax rate is reduced to \$1.00 per \$500 (or fractional part thereof) on transfers of real property to existing REITs effected through qualifying “real estate investment trust transfers” occurring on or after July 13, 1996 and before September 1, 2005.

**Estimates:** FY2000: A/ - FY2004: \$0.8 million

**Data Source:** New York State Department of Taxation and Finance

**Reliability:** Level 2



## CROSS-ARTICLE TAX EXPENDITURES

Certain tax expenditures appear in more than one Article of the Tax Law. For example, taxpayers can claim the investment tax credit against the personal income tax and the corporation franchise tax. Table 9 lists tax expenditure provisions common to the personal income, corporation franchise, bank, and insurance taxes for the 2003 tax year. The charts which follow present tax expenditure information for selected expenditures common to more than one tax. They show the share of the tax expenditure from each tax article forecasted for 2003.

**Table 9**  
**2003 Tax Year**  
**Selected Cross-Article Tax Expenditure Estimates**  
**(Millions of Dollars)**

	Personal Income <u>Tax</u>	Corporation Franchise <u>Tax</u>	Bank <u>Tax</u>	Insurance <u>Tax</u>
Additional Holocaust Tax Exemption 1/	*	*	--	--
<i>Federal Flow-Through Provisions</i>				
MACRS/ACRS Depreciation	230.0	325.5	189.6	21.4
Deferred Tax on Installment Sales	10.1	5.8	30.0	*
Expensing on Certain Depreciable Business Property	21.0	14.8	*	*
Expensing of Research and Development Costs	1.2	63.1	--	--
Amortization of Business Start-Up Costs	1.6	0.2	N/A	N/A
Deductibility of Charitable Contributions	380.0	30.6	47.5	*
<i>State Credits</i>				
Investment Tax Credit	30.0	93.2	--	--
Investment Credit for Financial Services Industry	1.0	75.0	10.0	10.0
Special Additional Mortgage Recording Tax Credit 2/	3.0	0.7	11.7	*
Empire Zone and QEZE Credits 3/	50.0	174.3	2.2	*
Eligible Business Facilities Credit	--	--	0.0	0.0
Alternative Fuels Vehicle Credit 2/	0.2	*	--	--
Credit for Employing Individuals with Disabilities 2/	0.2	0.2	*	*
Emerging Technology Companies Credit	0.3	*	--	--
Automated Defibrillator Credit	*	1.5	*	*
Green Buildings Credit 2/	*	3.0	*	*
Low Income Housing Credit	0.8	3.2	*	*
Industrial/Manufacturing Business Credit	3.0	21.0	--	--
Transportation Access Credit 2/	*	*	*	*
Long-Term Care Insurance Credit	5.0	*	*	*

1/ The Additional Holocaust Tax Exemption appears in section 13 of the Tax Law. The exemption is different from the Exclusion of Payments to Victims of Nazi Persecution found in the Personal Income Tax section of the report. The provision exempts qualified settlement funds or grantor trusts established for the benefit of victims or targets of Nazi persecution by or in the Swiss Confederation from all state taxes imposed on or measured by income, as well as sales and use tax (not shown here). Amounts received by such victims or targets of Nazi persecution, including accumulated interest, are also exempt from State taxes imposed on or measured by income.

2/ These expenditures are also permitted under certain sections of the Corporation Tax (Article 9). See the Corporation Tax section of the report for more details.

3/ Also, there is a QEZE sales tax expenditure of \$60.0 million.

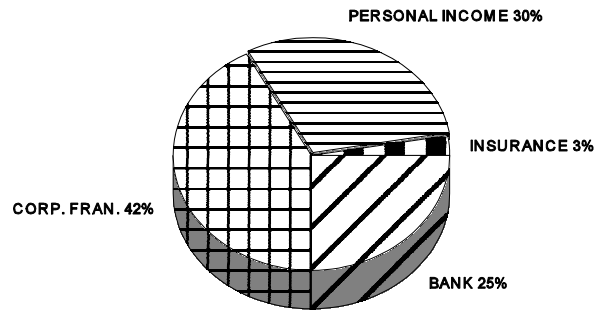
\* Less than \$0.1 million

N/A No data available

-- Not applicable

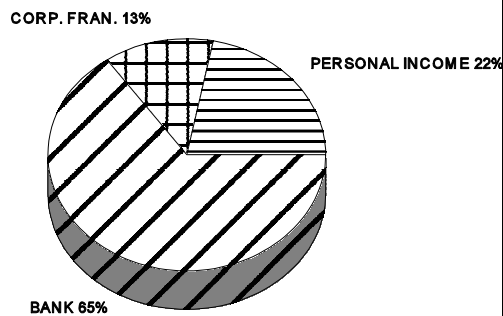
**SHARE OF SELECTED FEDERALLY BASED TAX EXPENDITURES  
BY TAX ARTICLE  
FOR 2003-04 PROJECTIONS**

**MACRS/ACRS Depreciation**



The total value of the tax expenditure is \$766.5 million.

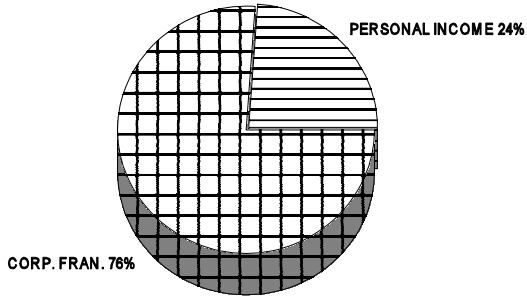
**Deferred Tax on Installment Sales**



The total value of the tax expenditure is \$45.9 million.

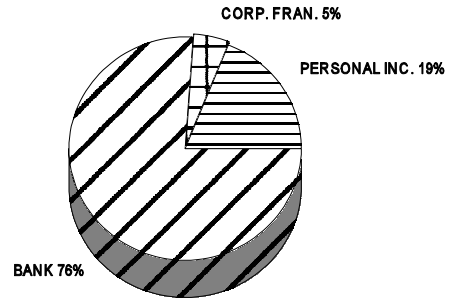
**SHARE OF SELECTED STATE SPECIFIC TAX EXPENDITURES  
BY TAX ARTICLE  
FOR 2003-04 PROJECTIONS**

**Investment Tax Credit**



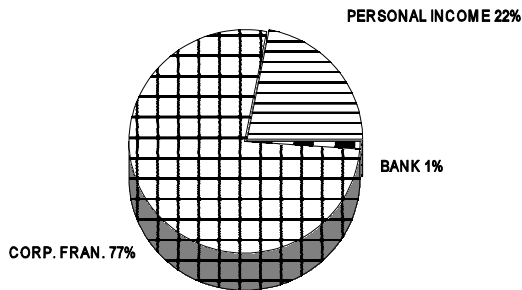
The total value of the tax expenditure is \$123.2 million.

**Special Additional Mortgage  
Recording Tax Credit**



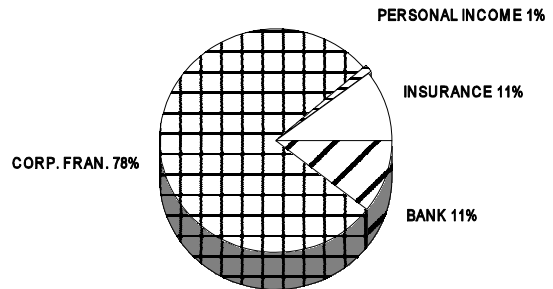
The total value of the tax expenditure is \$15.4 million.

**Empire Zone/ZEA/QEZE  
Tax Credits**



The total value of the tax expenditure is \$226.5 million.

**Investment Tax Credit for  
Financial Services Industry**



The total value of the tax expenditure is \$96.0 million.



## 2003-2004 EXECUTIVE BUDGET TAX EXPENDITURE PROPOSALS

This section describes the proposals contained in the 2003-2004 Executive Budget that modify, add or repeal specific tax expenditures. Each description begins with background information on the tax expenditure proposal, a summary of the proposal, reasons for recommending the change, and a discussion of revenue implications. Table 10 provides a listing of these provisions.

**Table 10**  
**2003-2004 Executive Budget Proposals Affecting Tax Expenditures**

	2003-2004 Fiscal Year <u>Estimate</u> (\$ millions)
<u>Sales Tax</u>	
Amend the Clothing and Footwear Sales and Use Tax Exemption	363
<u>Personal Income Tax</u>	
Add Back Expensing for Certain Sport Utility Vehicles 1/	1
Tax Credit for Rehabilitating an Historic Home	0
<u>Bank Tax</u>	
Make Permanent the Bank Tax and Extend the GLBA Transition Provisions	0
<u>Insurance Tax</u>	
Establish a Fourth CAPCO Program	0
Switch to a Premiums-only Tax for Insurance Companies - This would repeal the following tax expenditures from the insurance tax section:	
- Exclusion of Interest, Dividends and Capital Gains from Subsidiary Capital	13
- Deduction of 50 Percent of Dividends from Non-Subsidiary Corporations	1
- Deductions of Additions to Unearned Premium Reserves	2
- Deduction for Losses Incurred	1
- Exclusion of Assets Held as Reserves Under NYS Insurance Law Sections 1303, 1304 and 1305	*
- Limitation on Tax Liability	164
<u>Corporate Franchise Tax</u>	
Provide for Local Participation in the QEZE Program	0

1/ Also applies under the corporate franchise tax.

\* Minimal

## EXECUTIVE BUDGET PROPOSALS

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### 1. **Proposal to Amend the Clothing and Footwear Sales and Use Tax Exemption**

**Background:** Clothing and footwear items priced under \$110 are exempt from State sales tax. Counties and cities have the option of providing the exemption from their local sales taxes.

**Proposal:** The proposal changes the sales tax exemption for clothing and footwear from a year-round exemption for items priced under \$110 to four recurring week-long exemptions for clothing items priced under \$500. These week-long sales tax holidays for clothing would apply to each of the seven-day periods that begin on the Tuesday before Dr. Martin Luther King Jr. Day, the first Saturday in April, the second Saturday in July, and the Tuesday before Labor Day.

**Discussion:** This proposal effectively exempts clothing for a total of only one month out of the year, consumers will benefit by the higher threshold of \$500 compared to the prior \$110 threshold. Moreover, the exemption periods are timed to cover busy shopping periods including the back-to-school period just before Labor Day. Limiting the exemption to four seven-day periods each year will likely make it possible for those localities which were not able to afford the year-round exemption to elect the amended exemption, thus improving the competitive position of vendors throughout the State.

**Estimate:** The proposal would increase revenues in SFY 2003-04 by \$363 million.

### 2. **Proposal to Add Back Expensing for Certain Sport Utility Vehicles (SUVs)**

**Background:** Federal tax law allows certain taxpayers purchasing certain SUVs to claim a special expense deduction originally intended for the purchase of large farm vehicles. This provision also flows through to New York State's personal income and corporate franchise taxes.

**Proposal:** The proposal would require personal income and corporate franchise taxpayers to add back to federal AGI the expense deduction allowed under Internal Revenue Code (IRC) Section 179 for certain SUVs. An exemption to this addback is allowed for eligible farmers.

**Discussion:** The purpose of the bill is to close a loophole caused by federal law that flows through to New York's personal income and corporate franchise taxes. The IRC allows taxpayers to claim depreciation in excess of that allowed for passenger automobiles for certain SUVs and other vehicles with gross vehicle weights of over 6,000 pounds. Currently, in lieu of depreciation, a first year expense deduction of \$25,000 can be claimed for these vehicles. The provision was originally intended to apply only to certain farm vehicles, but approximately 40 larger vehicles qualify, including many larger SUVs.

**Estimate:** The proposal would increase revenues by \$1 million in SFY 2003-04 and \$2 million annually thereafter.

### 3. **Proposal to Create a Tax Credit for Rehabilitating an Historic Home**

**Background:** The proposal would provide taxpayers with an economic incentive to help revitalize older neighborhoods by providing a personal income tax credit for rehabilitating an historic home.

**Proposal:** Taxpayers would be allowed a credit equal to either 15 percent or 25 percent of the qualified rehabilitation expenditures made to a qualified historic home. The 15 percent credit would apply to exterior work which has been approved by a local landmark



commission or the Office of Parks, Recreation and Historic Preservation (OPRHP). The 25 percent credit would apply to both interior and exterior work affecting primary significant historic spaces and it must be approved by OPRHP or a certified local government pursuant to the National Historic Preservation Act. To qualify for the credit, the historic home must be a targeted area residence as defined in the Internal Revenue Code or be located in an Empire Zone. A targeted area residence is a building located within a census tract in which 70 percent or more of the families have income which is 80 percent or less of the Statewide median income or in an area of chronic economic distress. The credit is capped at \$50,000 per taxpayer, and taxpayers with New York adjusted gross income under \$100,000 can receive any excess credit in the form of a refund. Those with higher incomes can carryforward excess credit to future tax years. The credit would become effective for tax years beginning on or after January 1, 2004.

**Discussion:** The proposal establishes a financial incentive for rehabilitating historic homes located in economically distressed areas of the state. The proposal would accomplish a dual purpose: it provides an incentive for preserving a diminishing asset - historic homes, and it provides a mechanism to promote the rehabilitation of the State's housing stock. This would have an important impact on the revitalization of decaying neighborhoods by promoting neighborhood stability, reducing blight, and enhancing nearby property values.

**Estimate:** The proposal would have no revenue impact in SFY 2003-04.

#### 4. **Proposal to Make Permanent the Bank Tax and Extend the GLBA Transition Provisions**

##### **Background:**

- a. Significant amendments were made in 1985 to the bank taxes imposed by New York State and New York City, including the creation of Article 32 of the Tax Law. Amendments were also made in 1987 to the bad debt deduction provisions of both these taxes. The 1985 and 1987 provisions are scheduled to sunset for taxable years beginning on or after January 1, 2003.
- b. The federal Gramm-Leach-Bliley Act (GLBA) - enacted in 1999 - allows banks, insurance companies, and securities firms for the first time to freely affiliate. The State and City of New York enacted transitional provisions designed to guide financial institutions in the proper filing and reporting of tax liability while the tax issues raised by the legislation were being studied. The transition provisions sunset for taxable years beginning on or after January 1, 2003.

**Proposal:** The proposal would make permanent the State and City bank taxes and the related bad debt provisions. In addition, the GLBA transition provisions would be extended one year.

**Discussion:** The bank tax amendments were enacted with a sunset provision, and the sunset has been extended six times since then. Making these provisions permanent will prevent future uncertainty on the part of bank taxpayers. It will also prevent a return to the method of taxation banks were subject to before the enactment of these provisions. Extending the

## EXECUTIVE BUDGET PROPOSALS

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relief provided by the GLBA transition provisions for one year will allow additional time for the issues involved to be studied.

**Estimate:** Enactment of this proposal is necessary in order to maintain the current Article 32 revenue stream. There will be no fiscal impact to making permanent or extending these provisions.

### 5. **Proposal to Establish a Fourth CAPCO Program**

**Background:** Under the Tax Law, insurance companies that invest in certified capital companies (CAPCOs) are entitled to a tax credit equal to their investment, although a total statewide cap on the aggregate amount of credits taken applies. The credit is taken at 10 percent per year over 10 years. There have been three CAPCO programs to date since 1998. Currently, the combined statewide cap for all three programs is \$280 million.

**Proposal:** The proposal would establish a fourth CAPCO program that would apply to investments in State supported research centers. Insurance taxpayers would be allowed a credit under Article 33 for 50 percent of investments made in CAPCOs under program four. The aggregate amount of certified capital for which taxpayers may be allocated tax credits may not exceed \$250 million. Although investments may be made starting in 2003, the credits may not be claimed until 2005.

**Discussion:** The CAPCO programs have proven to be a successful vehicle for funding venture capital companies in New York and encouraging those companies to invest in small companies which are developing and manufacturing products and systems in New York. State supported research centers are vital to the development of the high technology industry in New York State. The tax credits provided under CAPCO Program Four will encourage investment in those State supported research centers.

**Estimate:** The proposal would have no fiscal impact in SFY 2003-04. The proposal will decrease revenues by \$12.5 million per year over a period of 10 years starting in SFY 2005-06.

### 6. **Proposal to Switch to a Premiums-only Tax for Insurance Companies.**

**Background:** Currently, insurance companies are subject to tax on income and premiums under Article 33 of the Tax Law. The income tax is computed on the highest of four bases, plus an addition tax on subsidiary capital. In addition, insurers must pay a tax on gross premiums at a rate ranging between 0.7 percent and 1.3 percent, depending on the type of premiums written. Total tax liability under Article 33 is limited so as not to exceed 2 percent of gross premiums.

**Proposal:** The proposal would eliminate the income base of taxation and make the premiums tax the sole basis of tax. The rate of tax on gross premiums would be equalized at 2 percent for all Article 33 taxpayers. The limitation on tax based on 2 percent of gross premiums would be eliminated. The fixed dollar minimum tax of \$250 would remain as part of this proposal. This proposal does not affect captive insurers.

**Discussion:** The current tax imposed on insurance corporations in New York is complicated, in large part due to the several bases that are used to determine total tax liability. This bill would simplify the way New York taxes insurance companies and would conform the State's insurance corporation tax to the system of taxation used by most other states, which is a tax based solely on premiums. Such a premiums based tax is simpler to

understand and administer. Furthermore, a review of these other states' taxes shows that a rate of 2 percent of premiums written, received or procured by insurance companies, as proposed in this bill (except for captive insurance corporations), is near the median of such other states' rates.

**Estimate:** This proposal would have the effect of repealing six insurance tax expenditures. However, the effect of each tax expenditure must be considered separately, and thus a combined total estimate cannot be given. Table 10 lists the 2003-04 estimated values for each of these expenditures.

### 7. **Proposal to Provide for Local Participation in the QEZE Program**

**Background:** The Qualified Empire Zone Enterprise (QEZE) real property tax (RPT) credit allows a business certified as a QEZE to receive a credit equal to a portion of property taxes paid. If employment increases enough, or if the business is new, all property taxes can be offset through the credit. Any unused credit may be refunded.

**Proposal:** The proposal institutes a mechanism by which municipalities share in 50 percent of the cost of the QEZE RPT.

**Discussion:** Localities derive substantial benefits from the presence of QEZEs, but under the current program, the entire cost of the QEZE program is borne by the State. This proposal would ensure that businesses can still receive the same RPT benefit, but the cost is split between the State and local governments. QEZEs would file for the credit and the Tax Department would allow 50 percent of the credit to be used against the QEZE's liability or refunded. The Department would then issue a voucher for the remaining 50 percent which the taxpayer would present to the local County Director of Real Property Tax Services, along with an application for refund of property taxes paid.

**Estimate:** Because this proposal applies to any (QEZE) certified on or after January 1, 2004, the savings would be very little in the out years. There is no impact until SFY 2005-06 at which time, this proposal will generate a revenue increase of \$4 million.



# APPENDIX

## Federal Exclusions from Income

This Appendix summarizes federal “flow through” tax expenditure provisions which impact the New York State Personal Income, Corporation Franchise, Bank, and Insurance Taxes. These taxes begin with definitions of income which are derived from provisions of the federal Internal Revenue Code. As a result of this “coupling” of State definitions of income base to federal definitions, exclusions or deductions from income at the federal level become exclusions or deductions at the State level. Therefore, these provisions automatically become tax expenditures at the State level. The descriptions apply for federal law as of January 1, 2003. Therefore, estimates for the 1996-2000 tax years (1995-1999 for Corporation Franchise Tax, Bank Tax and Insurance Tax) might reflect law provisions which have changed since that time.

Code Sections 101-137 set forth items that are excluded from income. In addition, other special types of income are specifically excluded by law. The following types of income are also exempt:

- items that are protected by the U.S. Constitution,
- items that are exempted by virtue of any act of Congress, and
- items that arise under the provisions of foreign tax treaties.

These exclusions (and exemptions) are not interchangeable with deductions from gross income (e.g., losses, expenses, bad debts, etc.). Deductions must be shown on the taxpayer’s return, while exclusions generally are not.

Each of these estimates is derived from methodologies which allocate federal tax expenditures to a New York State tax equivalent. Federal exclusions and deductions from income and their associated New York State tax expenditure value are presented in the following tables.

New York State Tax Expenditure Estimates of  
Federal Exclusions from and Adjustments to Income

**Personal Income Tax**

<u>Provision</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2003</u>
<p>1. <i>Deduction for IRA and Keogh Contributions</i> Taxpayers may deduct up to \$3,000 (\$2,000 before 2002) of contributions to qualified IRA plans. For married couples, each spouse may deduct \$3,000. Limitations apply for taxpayers covered by an employer-provided retirement plan. In addition, taxpayers may exclude earnings from plans for which they elected not to deduct contributions. Separate limits apply for contributions to a Keogh plan.</p>	80.9	79.3	73.6	76.1	73.3	77.0
<p>2. <i>Exclusion of Income Earned Abroad by U.S. Citizens</i> A citizen or resident of the United States whose principal residence is in a foreign country may exclude, for federal income tax purposes, income earned in foreign countries and related housing costs.</p>	38.9	39.0	46.6	48.4	45.9	54.4
<p>3. <i>Limited Exception to Passive Loss Rules on Rental Real Estate</i> Taxpayers may deduct up to \$25,000 of passive losses attributable to rental real estate against active income.</p>	90.8	92.8	106.2	91.4	90.0	76.5
<p>4. <i>Exclusion of Capital Gains on Home Sales</i> Taxpayers may exclude up to \$250,000 (single) and \$500,000 (married joint) of gain from the sale or exchange of a principal residence. This exclusion applies for each sale or exchange.</p>	--	342.5	359.7	359.2	358.0	422.2
<p>5. <i>Exclusion of Capital Gains from Small Business Stock</i> Investors may exclude, subject to certain dollar limitations, one half of capital gains from investment in the stock of a qualified small business when held at least five years. In addition, gain may be deferred if reinvested in other qualified small business stock within 60 days.</p>	0.8	0.0	0.1	0.8	1.3	3.2

**Personal Income Tax**

<u>Provision</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2003</u>
6. <i>Exclusion of Scholarship and Fellowship Income</i> Scholarship and fellowship income may be excluded from a student's federal gross income.	19.0	17.8	21.7	21.5	22.7	25.1
7. <i>Exclusion of Employee Meals and Lodging</i> The value of meals supplied on the employer's business premises and lodging provided as a condition of employment are excluded from an employee's federal gross income.	12.9	12.2	13.0	13.2	13.3	16.4
8. <i>Exclusion of Public Assistance Benefits</i> Public assistance benefits are excluded from federal gross income.	11.9	8.6	6.9	7.0	6.9	8.3
9. <i>Exclusion of Veterans' Benefits</i> Various benefits received by veterans or their beneficiaries are tax-exempt.	63.9	58.4	62.1	63.3	62.6	74.9
10. <i>Exclusion of Employer Contributions for Medical Insurance and Care and Long Term Care Insurance</i> Contributions made by an employer to a health insurance plan which provides compensation to the employee for personal injury and sickness and premiums for long term care insurance may be excluded from the employee's gross income for federal income tax purposes.	1,458.9	1,331.0	1,391.1	1,482.6	1,552.7	2,164.6
11. <i>Exclusion of Employer Contributions for Employee Pensions</i> Employer contributions to an employee's pension plan are excluded from the employee's federal gross income. Also, earnings are excludible until distributed. Various limitations apply to contributions on behalf of highly-compensated employees.	1,548.0	1,611.2	1,674.2	1,726.5	1,615.5	2,373.7
12. <i>Exclusion of Workers' Compensation Benefits</i> Amounts received under workers' compensation acts, accident and health insurance, and similar plans are excluded from gross income.	96.0	100.7	103.6	99.2	104.3	127.9

**Personal Income Tax**

<u>Provision</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2003</u>
<p><i>13. Exclusion of Employer-Provided Tuition Assistance</i>                      Employees may exclude up to \$5,250 of employer-paid tuition for undergraduate and graduate college education.</p>	5.0	4.2	4.4	4.6	4.9	10.7
<p><i>14. Exclusion of Employer-Provided Child Care</i>                      The value of child care provided by an employer is excluded from the employee's federal gross income. The exclusion may not exceed \$5,000 (\$2,500 for married filing separately).</p>	18.7	26.0	12.9	13.0	13.5	16.4
<p><i>15. Exclusion of Certain Employer-Provided Transportation Benefits</i>                      Employees may exclude from income certain qualified transportation fringe benefits, for commuter vehicles, transit passes, and parking.</p>	29.2	31.9	37.1	40.1	41.3	54.9
<p><i>16. Exclusion of Benefits and Allowances to Armed Forces Personnel</i>                      Combat pay and certain other in-kind benefits and cash allowances received by members of the Armed Forces are excluded from federal gross income.</p>	45.3	41.1	42.4	41.5	40.5	45.3
<p><i>17. Exclusion of Accelerated Death Benefits</i>                      Taxpayers may exclude accelerated death benefits paid under life insurance contracts.</p>	--	4.0	4.0	4.0	4.0	4.0
<p><i>18. Deduction for Contributions to Medical Savings Accounts</i>                      Self-employed taxpayers and taxpayers employed in small businesses may deduct up to 65 percent (single) and 75 percent (family) of contributions to medical savings accounts. The maximum deductible amounts to which the 65/75 percentages apply are \$2,500 for individual coverage and \$5,050 for family coverage.</p>	--	0.3	0.4	0.4	0.4	0.4



**Personal Income Tax**

<u>Provision</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2003</u>
<p>19. <i>Deduction for Self-Employed Persons' Health and Long Term Care Insurance</i>            Self-employed taxpayers may deduct the entire cost of health insurance and long term care premiums they provide for themselves and their families. The deduction is not allowed for any month in which the taxpayer or spouse is eligible to participate in an employer's health insurance plan.</p>	15.3	15.7	20.0	23.3	26.3	58.6
<p>20. <i>Exclusion of Employer-Provided Adoption Assistance</i>            Taxpayers may exclude up to \$5,000 (\$6,000 for special needs adoptees) qualified adoption expenses provided by their employers.</p>	0.2	2.4	2.5	2.3	2.4	9.1
<p>21. <i>Exclusion of Employer-Paid Premiums on Life Insurance, Accident Disability Insurance, and Accidental Death Insurance Plans</i>            Employer-paid life insurance premiums for coverage up to \$50,000 and premiums for accident disability and accidental death may be excluded from an employee's federal gross income.</p>	48.6	43.3	37.7	37.2	36.8	42.7
<p>22. <i>Exclusion of Interest on Life Insurance Policy and Annuity Cash Value</i>            Interest which is credited annually on the cash value of a life insurance policy or annuity contract is not included in the income of the policy holder or annuitant.</p>	273.6	260.0	269.8	260.8	274.5	383.0
<p>23. <i>Exclusion of Interest on Qualified New York State and Local Bonds</i>            Interest payments from qualified New York State and municipal bonds are excluded from the taxpayer's federal gross income.</p>	217.2	314.2	366.0	348.9	345.2	404.8
<p>24. <i>Expensing of Exploration and Development Costs of Oil and Gas</i>            Investors in oil and gas extraction enterprises may deduct from federal gross income exploration and development costs incurred during the taxable year.</p>	*	*	*	*	*	*

**Personal Income Tax**

<u>Provision</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2003</u>
<p>25. <i>MACRS/ACRS Depreciation</i>                      Depreciable property used in the ordinary course of trade or business, and which has been placed in service after 1980, may be depreciated at an accelerated rate over a prescribed period. The taxpayer may either claim the depreciation deduction using the ACRS method of depreciation, or elect to deduct all or a part of the cost of the property from federal gross income as an expense deduction. Modified ACRS applies to New York property placed in service after December 31, 1986. In addition, in lieu of regular depreciation, for certain property placed in service after September 10, 2001 and before September 11, 2004, taxpayers may deduct 30 percent of the cost of the qualifying property in the first year that it is placed in service. The subsequent depreciation schedule is then modified to reflect this first-year “bonus” depreciation.</p>	105.1	117.8	122.2	108.9	167.7	230.0
<p>26. <i>Amortization of Business Start-Up Costs</i>                      A taxpayer may elect to amortize, over a period of at least 60 months, the investigatory and start-up expenses of a business in which the taxpayer actively participates.</p>	2.3	1.7	1.6	1.5	0.8	1.6
<p>27. <i>Capital Gains at Death</i>                      Capital gains on property which is transferred at death by inheritance or otherwise is exempt from taxation, being excluded from the federal gross income of both the deceased and the recipient of the property.</p>	668.3	481.5	515.6	524.8	497.7	604.4
<p>28. <i>Farm Income Stabilization: Expensing of Capital Outlays</i>                      Farmers are allowed to deduct certain capital outlays for the taxable year during which they are paid or incurred, instead of being apportioned over an extended period in the form of depreciation deductions.</p>	13.9	14.5	15.6	18.4	23.6	28.9

**Personal Income Tax**

<u>Provision</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2003</u>
<p>29. <i>Capital Asset Treatment of Timber Income, Iron Ore and Coal Royalties</i>                      Income earned from the sale of timber or royalties received pursuant to the lease of coal or iron ore mining rights may be treated as income from long term capital assets, allowing the owner to claim any capital losses against either capital gains or ordinary income.</p>	*	*	*	*	*	*
<p>30. <i>Expensing of R&amp;D Costs</i>                      A taxpayer may elect to deduct costs incurred or paid during the taxable year with respect to research and development in connection with the taxpayer's trade or business. Alternatively, these expenses may, under specified conditions, be amortized over a period of not less than 60 months.</p>	0.1	0.1	0.7	0.6	0.8	1.2
<p>31. <i>Expensing up to \$25,000 on Certain Depreciable Business Property</i>                      Businesses investing less than \$225,000 in depreciable property during the taxable year may deduct as an expense, in lieu of depreciation, up to \$25,000 (\$35,000 in a Liberty Zone) of the cost of new equipment put in service during the tax year.</p>	6.8	6.0	17.1	22.8	17.1	21.0
<p>32. <i>Exclusion of Social Security and Tier I Railroad Retirement Benefits</i>                      A minimum one-half of Social Security and Tier I benefits received by single taxpayers with modified adjusted gross income (MAGI) between \$25,000 and \$34,000 is excluded from federal gross income. For single taxpayers with income above \$34,000, a minimum of 15 percent is excluded. For married taxpayers with MAGI between \$32,000 and \$44,000, a minimum of one half of Social Security is excluded, and for married taxpayers with MAGI above \$44,000, a minimum of 15 percent is excluded.</p>	261.9	274.8	310.1	308.1	353.5	386.6
<p>33. <i>Deferred Tax on Installment Sales</i>                      Non-dealer taxpayers may report certain sales using the installment method of accounting as provided by IRC Section 453.</p>	4.3	5.1	8.0	5.8	7.5	10.1

**Personal Income Tax**

<u>Provision</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2003</u>
<p>34. <i>Deduction for Student Loan Interest</i>                      Taxpayers may deduct up to \$2,500 of interest paid on qualified education loans. The deduction phases out when modified AGI exceeds \$65,000 (single) and \$130,000 (married joint).</p>	--	1.4	4.8	7.0	7.3	13.4
<p>35. <i>Exclusion for Education IRAs</i>                      Taxpayers may exclude distributions (including earnings) from education IRAs if used for qualified higher education. The exclusion is completely phased out when modified AGI exceeds \$110,000 (single) and \$220,000 (married joint).</p>	--	0.4	*	0.4	0.6	2.6
<p>36. <i>Deduction for Higher Education Expenses</i>                      Taxpayers may deduct up to \$3,000 per year of qualified higher education expenses. The deduction is phased out when AGI exceeds \$65,000 (\$130,000 for married couples filing jointly).</p>	--	--	--	--	--	59.9
<p>37. <i>Deduction for Educator Expenses</i>                      Eligible educator taxpayers may deduct up to \$250 of expenses paid for books, supplies, computers, and other equipment which they use in their grades K-12 classrooms.</p>	--	--	--	--	--	1.0

## Corporation Franchise Tax

<u>Provision</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2003</u>
<p>1. <i>Expensing of Certain Outlays for Farmers (Soil and Water Conservation Expenditures, etc.)</i>  Farmers may deduct certain capital outlays from gross income for the tax year in which they pay or incur such costs, instead of apportioning them over an extended period in the form of depreciation deductions.</p>	0.5	0.5	0.5	0.5	0.5	0.5
<p>2. <i>Expensing of Certain Depreciable Business Property</i>  Taxpayers have an option to immediately expense the first \$25,000 (\$35,000 in a Liberty Zone) of the cost of eligible business property (Section 179 property) which is not chargeable to a capital account.</p>	*	0.0	*	*	*	14.8
<p>3. <i>MACRS/ACRS Depreciation</i>  Depreciable property used by the taxpayer in the ordinary course of trade or business, and which has been placed in service after 1980, may be depreciated at an accelerated rate over a prescribed period. The taxpayer may either claim the depreciation deduction using the ACRS method of depreciation, or elect to deduct all or a part of the cost of the property from federal gross income as an expense deduction. Modified ACRS (MACRS) applies to property placed in service after December 31, 1986. In addition, in lieu of regular depreciation, for certain property placed in service after September 10, 2001 and before September 11, 2004, taxpayers may deduct 30 percent of the cost of the qualifying property in the first year that it is placed in service. The subsequent depreciation schedule is then modified to reflect this first-year "bonus" depreciation.</p>	121.2	131.2	130.2	144.1	145.0	325.5

## Corporation Franchise Tax

<u>Provision</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2003</u>
<p>4. <i>Utility Generation Property Transition Provisions</i>  Taxpayers that are qualified public utilities and were taxed under former Section 186 in 1999 and earlier may claim for New York depreciation on property placed in service before January 1, 2000, a deduction equal to the amount of depreciation expense shown on the taxpayer's books and records for the taxable year, rather than the federal MACRS amount. Similarly, the basis for gain or loss upon disposition of such transition property that the taxpayer owned in 1999 is generally the book cost of the property less the aggregate of New York depreciation deductions taken.</p>	--	--	--	--	--	N/A
<p>5. <i>Expensing of Research and Development Costs</i>  A corporation may deduct from federal gross income costs incurred or paid during the tax year for research and development in connection with its business.</p>	13.8	34.6	37.3	35.9	38.7	63.1
<p>6. <i>Amortization of Business Start-Up Costs</i>  A corporation may amortize, over a period of at least 60 months, certain investigatory and business start-up expenses.</p>	0.2	0.2	0.2	0.2	0.2	0.2
<p>7. <i>Deferred Tax on Installment Sales</i>  Non-dealer sellers of property, other than inventory, may use the installment method of accounting as provided by IRC Section 453.</p>	4.6	4.6	4.6	5.8	5.8	5.8
<p>8. <i>Deductibility of Charitable Contributions</i>  Taxpayers may deduct charitable contributions, not exceeding 10 percent of taxable income computed as specified, from gross income.</p>	8.7	10.1	17.2	18.2	19.7	30.6
<p>9. <i>Expensing of Exploration and Development Costs</i>  Taxpayers may deduct exploration costs and development expenditures of a mine or natural deposit as expenses in the year incurred.</p>	*	*	*	*	*	*

**Corporation Franchise Tax**

<u>Provision</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2003</u>
<i>10. Completed Contract Accounting</i> Under the completed contract accounting method, taxpayers report income and expenses associated with a long term contract in the tax year of contract completion. Expenses that are not allowable to the contract (i.e., period costs), are deductible in the year paid or incurred depending on the accounting method employed.	N/A	N/A	N/A	N/A	N/A	N/A
<i>11. Amortization of Pollution Control Facilities and Reforestation Expenditures</i> Instead of taking MACRS depreciation, a taxpayer may elect to amortize over a 60-month period qualified pollution control facilities, used in connection with a plant or other property in operation before 1976.	N/A	N/A	N/A	N/A	N/A	N/A

**Bank Tax**

<u>Provision</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2003</u>
<p>1. <i>MACRS/ACRS Depreciation</i>            Depreciable property used in the ordinary course of trade or business, and which has been placed in service after 1980, may be depreciated at an accelerated rate over a prescribed period. The taxpayer may either claim the depreciation deduction using the ACRS method of depreciation, or elect to deduct all or a part of the cost of the property from federal gross income as an expense deduction. Modified ACRS applies to New York property placed in service after December 31, 1986.</p>	112.6	121.8	120.9	130.6	116.2	189.6
<p>2. <i>Expensing up to \$25,000 on Certain Depreciable Business Property</i>            Taxpayers have an option to immediately expense up to \$25,000 (\$35,000 in a Liberty Zone) of the cost of eligible business property ("Section 179 property") which is not chargeable to a capital account.</p>	*	*	*	*	*	*
<p>3. <i>Deductibility of Charitable Contributions</i>            A corporation may deduct charitable contributions, not exceeding 10 percent of taxable income computed as specified, from gross income.</p>	11.5	13.4	20.2	21.4	32.1	47.5
<p>4. <i>Amortization of Business Start-Up Costs</i>            A corporation may elect to amortize, over a period of 60 months or more, the investigatory and start-up expenses of a business.</p>	N/A	N/A	N/A	N/A	N/A	N/A
<p>5. <i>Deferred Tax on Installment Sales</i>            Pursuant to the Tax Reform Act of 1986, non-dealer taxpayers may report certain sales using the installment method of accounting as provided by IRC Section 453.</p>	20.0	20.0	20.0	25.0	25.0	30.0



## Insurance Tax

<u>Provision</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2003</u>
<p>1. <i>MACRS/ACRS Depreciation</i>            Depreciable property used in the ordinary course of trade or business, and which has been placed in service after 1980, may be depreciated at an accelerated rate over a prescribed period. The taxpayer may either claim the depreciation deduction using the ACRS method of depreciation, or elect to deduct all or part of the cost of the property from federal gross income as an expense deduction. Modified ACRS applies to New York property placed in service after December 31, 1986.</p>	18.7	20.0	19.8	22.0	17.8	21.4
<p>2. <i>Expensing up to \$25,000 on Certain Depreciable Business Property</i>            Taxpayers have an option to immediately expense up to \$25,000 (\$35,000 in a Liberty Zone) the cost of eligible business property ("Section 179 property") which is not chargeable to a capital account.</p>	*	*	*	*	*	*
<p>3. <i>Deductibility of Charitable Contributions</i>            Charitable contributions, not exceeding 10 percent of taxable income computed as specified, may be deducted from a corporation's gross income.</p>	*	*	*	*	*	*
<p>4. <i>Amortization of Business Start-Up Costs</i>            A corporation may elect to amortize, over a period of no less than 60 months, the investigatory and start-up expenses of a business.</p>	N/A	N/A	N/A	N/A	N/A	N/A
<p>5. <i>Deferred Tax on Installment Sales</i>            Pursuant to the Tax Reform Act of 1986, non-dealer taxpayers may report certain sales using the installment method of accounting as provided by IRC Section 453.</p>	*	*	*	*	*	*

## Insurance Tax

<u>Provision</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2003</u>
6. <i>Small Life Insurance Company Taxable Income Adjustment</i> Small life insurance companies may claim a special deduction from gross income which is not available to other insurance corporations. The deduction is 60 percent of that portion of tentative life insurance company taxable income which does not exceed \$3 million for the taxable year. A phase out of the deduction occurs for amounts over \$3 million.	0.9	0.9	0.9	0.9	0.9	0.9
7. <i>Deduction of Life Insurance Reserves for Life Insurance Companies</i> Life insurance companies may deduct a net increase in reserves which are maintained with respect to its insurance contracts and annuity contracts.	6.4	6.1	6.9	7.7	5.3	5.3
8. <i>Exclusion of Investment Income on Life Insurance and Annuity Contracts</i> Life insurance gross income excludes investment income on life insurance and annuity contracts, in the form of policy holder dividends.	0.9	0.9	1.4	1.8	2.0	2.1
9. <i>Deduction of Unpaid Property Loss Reserves for Property and Casualty Insurance Companies</i> Taxpayers may deduct the discounted value of the increase in their year end reserve balance. Effective for tax years beginning on or after December 31, 1986, Article 33 taxpayers may also deduct the discounted amount of the increase.	59.4	47.9	50.5	56.1	66.1	60.1

\* Less than \$0.1 million.

N/A No data available

-- The tax expenditure was not applicable for these years.