New York State
Business Environment Information
2009

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NEW YORK STATE
BUSINESS ENVIRONMENT INFORMATION

Personal Income Tax:

New York's personal income tax rates range from 4% to 8.97%; (New York's top personal income tax rate is scheduled to revert to 6.85% in 2012). The maximum personal income tax rate of 8.97% applies to all taxpayers with taxable incomes over $500,000; the bottom bracket rate of 4% applies to taxable incomes up to $16,000 (married/joint returns). New York City and the City of Yonkers (Westchester County) both levy a local personal income tax which is in addition to the State personal income tax.

Corporate Income Tax:

a) Rates.

New York State's maximum corporate franchise (income) tax rate for most corporate taxpayers is 7.1%; for qualified New York manufacturers the corporate franchise tax is 6.5%.

Corporations pay the highest tax computed on the following four alternative bases:

1. a tax of 7.1% (6.5% for qualified NYS manufacturers) on allocated entire net income.
2. a tax of 0.15% on allocated business and investment capital (maximum for qualified NYS manufacturers: $350,000; maximum for non-manufacturers: $10 million for tax years beginning on/after January 1, 2008 but before January 1, 2011; $1 million for tax years beginning on/after January 1, 2011);
3. a tax of 1.5% on allocated minimum taxable income; and
4. a separate minimum tax at fixed dollar amounts, based on New York receipts, ranging from $25 to $5,000, as follows:

If New York receipts are:	The fixed dollar minimum tax is:
Not more than $100,000	$25
More than $100,000, but not over $250,000	$75
More than $250,000, but not over $500,000	$175
More than $500,000, but not over $1,000,000	$500
More than $1,000,000, but not over $5,000,000	$1,500
More than $5,000,000, but not over $25,000,000	$3,500
Over $25,000,000	$5,000

An additional tax of 0.09% applies to a corporation's allocated subsidiary capital.

A surcharge rate of 17% also applies to a taxpayer's post-credit tax liability allocable to the 12-county Metropolitan Commuter Transportation District (MCTD). This includes the City of New York, Long Island, and the mid-to-lower Hudson River Valley.

b) Computation.

Single Sales Factor -- New York corporations use a single (100%) sales factor allocation formula.

Like most other states' corporate taxes, New York's corporation franchise tax on allocated entire net income starts with federal taxable income. Taxpayers then make several state-specific modifications, many of which serve to significantly narrow the definition of entire net income, and, thus, the corporate franchise tax base.

c) Incentives.

New York offers an array of incentives to encourage business investment and economic development within the Empire State. These incentives, which take the form of tax credits, deductions, or allocation formula changes, can reduce a company's overall effective tax burden to as low as the statutory minimum tax (1.5%), and include the following:

INVESTMENT

Investment Tax Credit (ITC) -- Corporations are allowed a credit against tax equal to 5% of new capital invested in buildings and/or depreciable tangible personal property used primarily in production by manufacturing, processing, assembling and certain other types of activities. The credit drops to 4% for investments by corporations in excess of $350 million or for investments made by personal income taxpayers. The credit first applies to the tax payable for the year the investment is made. A new business may elect to receive as a refund any unused part of the tax credit earned. All businesses may carry forward any unused portions of the credit for up to 15 years.

Investment in qualified research and development property is eligible for a 9% credit against the corporate franchise tax (7% against the personal income tax).

Expenditures for the construction or improvement of certified industrial waste or air pollution facilities are eligible for the ITC.

New businesses (generally, those operating in New York State for less than five years) may take a refund of unused credits.

Unused credits may be carried forward for up to 15 years.

SECURITIES INDUSTRY ITC-- Effective for property placed in service after October 1, 1998, but before October 1, 2011, the investment tax credit (ITC) (and economic development zone ITC) is extended to tangible personal property principally used in the ordinary course of business:

- as a broker or dealer in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities, or of commodities (as defined in the Internal Revenue Code);
- of providing investment advisory services for a regulated investment company (as defined in the IRC), or lending, loan arrangement or loan origination services to customers in connection with the purchase or sale of securities; or
- as an exchange registered as a national securities exchange (within the meaning of the Securities Exchange Act of 1934) or a board of trade (as defined in the NYS Not-for-Profit Corporation Law).

INSURANCE COMPANY ITC -- The ITC currently available to corporations, banks, and personal income taxpayers that are broker/dealers in securities is extended to insurance taxpayers. The credit is available for equipment or buildings used in the broker/dealer activity and in activities connected with broker/dealer operations such as the provision of investment advice and lending activities associated with the purchase and sale of securities. The ITC provides a credit equal to 5 percent of the cost of qualified expenditures up to $350 million. Qualified investment expenditures in excess of $350 million are eligible for a 4 percent credit.

Eligibility for the credit requires the location of the employees performing the administrative and support functions associated with the qualified use of the equipment to be substantially within New York. Taxpayers that lease property to an affiliated broker/dealer are eligible for the credit. The credit is available for property placed in service between January 1, 2002 and before October 1, 2011.

QUALIFIED FILM PRODUCTION FACILITY ITC – The ITC is available for property principally used as a qualified film production facility (i.e., a film production facility in the State which contains at least one sound stage having a minimum of 7,000 square feet of contiguous production space) among that eligible for the investment tax credit (ITC), where the taxpayer (owner of the facility) is providing three or more services to any qualified film production company (an entity principally engaged in the production of a qualified film and which controls the qualified film during production) using the facility, including such services as: studio lighting grid; lighting and grip equipment; multi-line phone service; broadband information technology access; industrial scale electrical capacity; food services; security services; and heating, ventilation and air conditioning.

Employment Incentive Tax Credit (EITC) – An additional credit of 1.5% to 2.5% of the same new capital investment used as the basis for the ITC is available to taxpayers that increase employment after such investment. The credit may be claimed in each of the two years following the year the ITC is claimed if employment in those years reaches specified levels, as follows:

If employment in the current year is at least 101%, but less than 102% of employment in the year prior to the investment, the credit is 1.5%.

If employment is at least 102%, but less than 103% of employment in the year prior to the investment, the credit is 2%.

If employment is greater than 103% of employment in the year prior to the investment, the credit is 2.5%.

Unused credits may be carried forward for up to 15 years.

EMPIRE ZONES

Enhanced incentives are available to eligible taxpayers investing and increasing employment in a New York Empire Zone. If not refundable, unused EZ credits have an unlimited carryforward.

Empire Zone Investment Tax Credit (EZ-ITC) -- The investment tax credit is enhanced for businesses investing in Empire Zones, and is taken in place of the regular investment tax credit or the research and development investment tax credit. As with other credits, the EZ-ITC cannot reduce corporate tax due below the greater of the alternative minimum tax or the statutory minimum tax.

The EZ-ITC is a **10%** credit against the corporate franchise tax (8% against the personal income tax) for new capital invested in buildings and/or depreciable tangible personal property. New businesses may take a refund of up to 50% of the unused credit, and all businesses may carry forward unused credits until exhausted.

Empire Zone Employment Incentive Tax Credit (EZ-EITC)-- An employment incentive tax credit (EITC) equal to 30% of the EZ-ITC, is available to corporations in each of the three years following the year the EZ-ITC is claimed if employment in those years is at least 101% of that immediately prior to the EZ investment. Unused credits may be carried forward until exhausted.

Empire Zone Wage Tax Credit (EZ-WTC) -- Businesses creating full-time jobs in EZs may take a credit against corporate franchise, personal income, insurance, or bank taxes in an amount not to exceed 50% of the tax otherwise due.

For "targeted" employees (those receiving EZ wages who are eligible for targeted jobs tax credit, eligible under the workforce investment act (WIA), public assistance recipients, those whose income is below federal poverty guidelines, or those honorably discharged from a branch of the armed forces), the credit is $3,000 in the first year and for each of the four succeeding taxable years.

For non-targeted employees (all other EZ employees, except corporate general officers), the credit is equal to 50% of the targeted employee credit, or $1,500.

New businesses may take a refund of 50% of any unused credit, and all businesses may carry forward unused credits until exhausted.

The Wage Tax Credit is increased by $500 for each qualifying individual who received during the taxable year wages in excess of $40,000 by a business certified in an EZ designated as an investment zone (i.e., a manufacturer, or a zone designated pursuant to "distressed area" criteria).

Empire Zone Capital Credit -- A credit against the corporate franchise tax or the personal income tax is allowed for up to 25% of the following:

Investments in qualified zone businesses employing no more than 250 persons in New York State; and

Cash contributions to community development projects in EZs.

Credits cannot exceed $300,000 in aggregate or $100,000 in each of the above categories.

Qualified Empire Zone Enterprises (QEZE) -- Empire Zone businesses investing and creating new jobs in Empire Zones may qualify for additional enhanced benefits that include:

- QEZE Sales Tax Credit/Refund – Qualified Empire Zone Enterprises (QEZEs) may be eligible for a credit or refund of NYS sales/use taxes paid on purchases of goods and services used predominantly in such zone. This credit/refund is available for a 10-year period. (Note: For QEZEs first EZ-certified on/after April 1, 2009, the State credit/refund is only available in locations where the local option sales tax credit/refund has been adopted.)
- QEZE Credit for Real Property Taxes –
  - Qualified Empire Zone Enterprises certified prior to April 1, 2005 are allowed a refundable credit against business tax equal to a percentage (up to 100%) of real property taxes paid in the zone.
  - Qualified Empire Zone Enterprises EZ-certified on/after April 1, 2005 are allowed a refundable credit against business tax equal to the **greater** of the 25 percent of wages/benefits of net new employees (up to $10,000 per net new job) **or** the capital investment amount (generally, 10% of federal basis of real property times the greater of the percentage of such property physically occupied and used by the QEZE, or percentage of basis attributable to construction/rehabilitation/expansion), capped at the actual amount of property taxes paid. (**Note: For QEZEs certified on/after April 1, 2009 the credit is capped at 75% of eligible real property taxes paid**.)
- QEZE Tax Reduction Credit –Qualified Empire Zone Enterprises are allowed a credit against tax equal to a percentage of income taxes attributable to the zone enterprise. This credit can reduce income tax to zero.

RESEARCH/EMERGING TECHNOLOGY

Qualified Emerging Technology Employment Credit -- A credit of $1,000 per new full-time employee (employees in excess of 100% of base year employment level), available for one 3-year period (the year the credit is first claimed and in each of the next two years provided minimum employment levels are maintained). Unused credits are refundable.

Qualified Emerging Technology Company Capital Tax Credit -- A taxpayer is allowed a credit equal to a percentage of each qualified investment in a qualified emerging technology company and certified by the Commissioner of Taxation and Finance as follows:

- 10% of qualified investments, provided the taxpayer certifies that the qualified investment will not be sold, transferred, traded, or disposed of during the four years following the year in which the credit is first claimed; or
- 20% of qualified investments, provided the taxpayer certifies that the qualified investment will not be sold, transferred, traded, or disposed of during the nine years following the year in which the credit is first claimed.

Investments made by or on behalf of an owner of the business, including, but not limited to a stockholder, partner or sole proprietor, or any related person, are not eligible for this credit. The total amount of credit allowable to a taxpayer for all years, taken in the aggregate, cannot exceed $150,000 (at the 10% rate) and $300,000 (at the 20% rate). The use of credit is limited to 50% of the tax otherwise due; unused credits can be carried forward indefinitely (no refund provision). Provides for the recapture of a pro rata share of the credit in the event the qualified investment is not held for the requisite period.

Qualified Emerging Technology Company Facilities, Operations and Training Credit

Qualified Emerging Technology Companies (QETC), as defined in the Public Authorities Law, are allowed a credit equal to the sum of:

  - **18%** of the cost or other basis for federal income tax purposes of “research and development property” acquired by the taxpayer by purchase and placed in service during the taxable year;
  - **9%** for “qualified research expenses” paid or incurred by the taxpayer in the taxable year; and,
  - **100%** of “qualified high technology training expenditures” paid or incurred by the taxpayer, up to $4,000 per employee per taxable year.

- To be an “eligible taxpayer” a QETC shall:
  - have no more than 100 full-time employees, of which at least 75% are employed in New York State;
  - have a ratio of research and development funds to net sales (as referred to in Public Authorities Law section 3102-e) which equals or exceeds 6% during its authorized taxable year; and
  - have gross revenues, along with the gross revenues of its affiliates and related members, not exceeding $20 million for the taxable year immediately preceding the year the taxpayer claims this credit

- An eligible taxpayer may claim these credits for four consecutive taxable years, except, if a taxpayer is located in an academic incubator facility and relocates within New York State to a nonacademic incubator site, then the taxpayer (1) may make a revocable election to defer the credit to the first taxable year beginning after such relocation, and (2) shall be eligible for the credit for 5 consecutive taxable years.
- The credit is capped at $250,000 per eligible taxpayer per year.
- The credit can reduce tax to the higher of the AMT or fixed dollar minimum (for corporate taxpayers).
- Unused credits are refundable.
- Sunsets on December 31, 2011 (e.g., credit is not applicable for taxable years beginning on/after January 1, 2012).

FILM/TV

<u>Empire State Film Production Credit</u> – A refundable credit against corporate franchise (income) tax and personal income tax for qualified film production companies, or sole proprietors of qualified film production companies.

- The credit is the product of 30% and the qualified production costs paid or incurred in the production of a qualified film, provided that at least 75% of the production costs ("stagework") are spent in New York State.
- The credit is allowed for the taxable year in which the production of such qualified film is completed.
- "Qualified Film" excludes documentary films, news or current events programs, interview or talk programs, game shows, award ceremonies, sports programming, soap operas, commercials, music videos, or "reality" programs.
- $350 million has been allocated for this credit for 2009-2010.
- Credits are paid as follows:
  - Credits for less than $1 million will be paid in full in State fiscal year 2009-10;
  - Credits between $1 million -$5 million will be paid out 50% in each of State fiscal years 2009-10 and 2010-11;
  - Credits greater than $5 million will be paid out in 33% increments in each of State fiscal years 2009-10, 2010-11, and 2011-12.
- Credit is available for tax years ending on/before December 31, 2014.
- New York City is authorized to allow this credit against NYC tax; NYC credit is 5% of qualified production costs; NYC program capped at $12.5 million per year.

<u>Empire State Commercial Production Tax Credit</u> -- This credit is provided to a taxpayer that is a qualified commercial production company, or a partner of a partnership (including a member of a limited liability company that is treated as a partnership for federal income tax purposes) that is a qualified commercial production company. (A New York S corporation may not use this credit against its own tax; instead, the credit is provided to its shareholders who are subject to tax under Article 22 of the Tax Law.)

To be eligible for this credit, at least 75% of the production costs (excluding post production costs) paid or incurred directly and predominately in the actual filming or recording of a qualified commercial must be incurred in New York State.

New York will provide $7 million of credit annually to be disbursed to all eligible commercial production companies as follows:

- Growth Credit ($3 million) – a refundable credit equal to 20% of the qualified production costs attributable to the use of tangible property or the performance of services in New York in the production of a qualified commercial. Total qualified production costs must be greater in the current year than the average of the three previous years for which the credit was applied. However, until a qualified production company has established a three-year history for the credit, the benchmark for the credit will be the greater of the previous year's or the average of the two previous years' qualified production costs. If the qualified production company has never applied for the credit, the previous year's data will be used to create a benchmark. The credit is applied only to the excess of the current calendar year's costs over the previous calendar year's cost. The annual $3 million cap will be disbursed on a pro rata basis to all eligible commercial production companies. No qualified production company will be allocated more than $300,000 of credit annually. The credit is allowed for the tax year in which the production of the qualified commercial is completed.
- Downstate Credit ($3 million) –a refundable credit equal to 5% of the qualified production costs attributable to the use of tangible property or the performance of services in New York in the production of the qualified commercial within the Metropolitan Commuter Transportation District (MCTD, which includes New York City and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester). Total qualified production costs in the current calendar year must be greater than $500,000 and the credit applies only to such costs exceeding $500,000. The annual $3 million cap will be disbursed on a pro rata basis.
- Upstate Credit ($1 million) – a refundable credit equal to 5% of the qualified production costs attributable to the use of tangible property or the performance of services in New York in the production of the qualified commercial outside the MCTD. Total qualified production costs in the current calendar year must be greater than $200,000, and the credit applies only to such costs exceeding $200,000. The annual $1 million cap will be disbursed on a pro rata basis.

The credit may not reduce the tax due to less than the fixed dollar minimum tax.

The amount of credit not applied to the tax in the current tax year (the excess credit) may be refunded or credited as an overpayment to next year's tax. The refund is limited to 50% of the excess credit in the current year; the balance may be carried forward to the following year and may be deducted from the tax in that year. The amount of the excess credit not applied to the tax in the next succeeding tax year will be credited or refunded (without interest). Production costs used as the basis for allowance of this credit or used in the calculation of this credit cannot be used to claim any other credit.

This program expires December 31, 2011. (The Empire State commercial production tax credit is administered by the Governor's Office for Motion Picture and Television Development: http://www.nylovesfilm.com/tax/CommercialTaxCredit.htm; *nyfilm@empire.state.ny.us*).

Investment Tax Credit for Qualified Film Production Facilities – The ITC is available for property principally used as a qualified film production facility (i.e., a film production facility in the State which contains at least one sound stage having a minimum of 7,000 square feet of contiguous production space) among that eligible for the investment tax credit (ITC), where the taxpayer (owner of the facility) is providing three or more services to any qualified film production company (an entity principally engaged in the production of a qualified film and which controls the qualified film during production) using the facility, including such services as: studio lighting grid; lighting and grip equipment; multi-line phone service; broadband information technology access; industrial scale electrical capacity; food services; security services; and heating, ventilation and air conditioning.

BROWNFIELDS

Three refundable credits are available to taxpayers that have executed a "Brownfield Cleanup Agreement" with the New York State Department of Environmental Conservation (DEC) and have received a certificate of completion pursuant to such agreement:

Brownfield Redevelopment Credit – consists of the sum of the following three components:

- Site preparation costs (incurred after Brownfield Cleanup Agreement and for up to 5 years after issuance of certificate of completion);
- Tangible property costs (incurred in year of issuance of remediation certificate and for up to 10 years after the date of such certificate.*)
- On-site groundwater remediation costs (incurred after Brownfield Cleanup Agreement and for up to 5 years after issuance of certificate of completion).

Costs must be incurred on/after date of execution of "Brownfield Cleanup Agreement" with DEC.

For qualified sites admitted to the Brownfield Cleanup Program prior to June 23, 2008, the credit is determined using the following "applicable percentages":

- 12% Articles 9, 9-A, 32, or 33
- 10% Article 22
- + 8% If at least 50% of the area of the qualified site relating to the credit is located in an "Environmental Zone"
- + 2% If the remediation certificate indicates the qualified site has been remediated to Track 1 (as defined in the En Con Law).

For qualified sites admitted to the Brownfield Cleanup Program on/after June 23, 2008:

- the tangible property credit component is capped at:
  - **$35 million**, or three times the costs included in the calculation of the site preparation credit component and the on-site groundwater remediation credit component, whichever is less; or
  - **$45 million**, or six times the costs included in the calculation of the site preparation credit component and the on-site groundwater remediation credit component, whichever is less, **in the case of a qualified site to be used primarily for manufacturing activities**.
- the applicable percentages, **up to a maximum of 50%**, for purposes of calculating the site preparation credit component and the on-site groundwater remediation credit component are based on the level of cleanup achieved, as follows:
  - soil cleanup for unrestricted use, the protection of groundwater or the protection of ecological resources, the applicable percentage shall be 50%;
  - soil cleanup for residential use, the applicable percentage shall be 40%, except for Track 4 which shall be 25%;
  - soil cleanup for commercial use, the applicable percentage shall be 33%, except for Track 4 which shall be 25%;
  - soil cleanup for industrial use, the applicable percentage shall be 27%, except for Track 4 which shall be 22%.

Remediated Brownfield Credit for Real Property Taxes – for real property taxes paid for a qualified site. The amount of the credit against the taxpayer's income tax increases based upon the number of persona employed at the qualified site.

Amount of Credit:

- Generally is equal to 25% of the product of the "employment number factor" and the "eligible real property taxes paid or incurred by the developer of the qualified site during the taxable year."
- Employment Number Factor: 0-24 employees: 0; 25-49 employees: 25%; 50-74 employees: 50%; 75-99 employees: 75%; 100 or more employees: 100%.
- Environmental Zone – If the real property which is the subject of this credit is attributed to a qualified site located in an En-Zone, the amount of the credit is equal to the product of the employment number factor and the eligible real property taxes (i.e., not subject to the 25% limitation).
- Credit Limitation -- $10,000 times the average number of full-time employees employed by the developer and a lessee or lessees of a portion of the qualified site during the taxable year.
- Option with QEZE Real Property Tax Credit – taxpayer must make a binding election whether to claim this credit of QEZE real property tax credit.

Environmental Remediation Insurance Credit – For premiums paid for environmental remediation insurance, up to the lesser of $30,000 or 50% of the cost of premiums.

The Brownfield Program is administered by DEC: http://www.dec.state.ny.us/website/der/bcp/

GREEN BUILDINGS

A green buildings tax credit is available to enhance the supply of environmentally sound buildings in New York. The credit includes six components, which are based on the capitalized costs (excluding land costs) of constructing green buildings, rehabilitating buildings to become green buildings, and purchasing and installing fuel cells, photovoltaic modules, and environmentally sensitive non-ozone depleting refrigerants.

The credit may be claimed over a five-year period by owners or tenants of eligible buildings, or by successor owners or tenants. In the year of a sale or termination of tenancy, the credit amount is allocated between the former and successor owners or tenants based upon the number of days during the year that the building was used by each.

Eligible buildings -- A building or project must contain at least 20,000 square feet of interior space and must not require a federal or state construction permit because it is located on wetlands. In addition, the building must be

- classified b2, b3, b4, c1, c2, c5, or c6 for purposes of the New York State Uniform Fire Prevention and Building Code; or
- a residential multi-family building with at least 12 dwelling units; or
- one or more residential multi-family buildings with at least two dwelling units that are part of a single or phased construction project; or
- any combination of buildings described above.

Certifications -- A taxpayer claiming the credit must obtain from the New York State Department of Environmental Conservation (DEC) an initial credit component certification, as well as an eligibility certification for each year in which the credit is claimed.

Credit amount -- The maximum amount of the credit for each component is specified in the initial credit component certification. The maximum amounts that may be claimed in each of the five years are as follows:

- *Green whole-building credit component*--1.4% of allowable costs (1.6%, if the building is located in an economic development area), but not to exceed aggregate costs of $150 per square foot for the base building and $75 per square foot for tenant space;
- *Green base building credit component*--1% of allowable costs (1.2%, if the building is located in an economic development area), but not to exceed aggregate costs of $150 per square foot;
- *Green tenant space credit component*--1% of allowable costs (1.2%, if the building is located in an economic development area), but not to exceed aggregate costs of $75 per square foot;
- *Fuel cell credit component*--6% of allowable costs, but not to exceed aggregate costs of $1,000 per kilowatt;

- *Photovoltaic module credit component*--20% of the incremental costs of a building-integrated module or 5% of the cost of a nonintegrated module, but not to exceed aggregate costs of $3 per watt;
- *Green refrigerant component*--2% of the cost of air conditioning equipment using a non-ozone depleting refrigerant.

Planning considerations -- The green building credit provisions are applicable to property that is placed in service, or that has received a final certificate of occupancy, in taxable years beginning after 2000.

Limitations and carryovers -- Credit component certifications are limited to $25 million, and aggregate dollar limitations apply to each year through 2009; an additional $25 million is available for credits from 2006 to 2014.

The Green Buildings Program is administered by DEC: http://www.dec.state.ny.us/website/ppu/grnbldg/index.html

ALTERNATIVE FUEL/ENERGY

Alternative Fuel Vehicle Refueling Credit -- New York Tax Law sections 187-b, 210.24 and 606(p) were amended to conform the New York alternative fuels credit to the federal credit for alternative fuel vehicle refueling property.

Previously, the alternative fuels credit was allowed for clean-fuel vehicle refueling property located in New York State when a deduction under section 179A of the Internal Revenue Code (IRC) was allowed. The federal deduction under section 179A of the IRC is not available for clean-fuel vehicle refueling property placed in service after December 31, 2005. Instead, a federal credit is now allowed under section 30C of the IRC for alternative fuel vehicle refueling property. Therefore, Tax Law references to *clean fuel vehicle refueling property* have been changed to *alternative fuel vehicle refueling property* and references to the deduction under section 179A of the IRC have been changed to reference the credit allowed under section 30C of the IRC.

- *Alternative fuel vehicle refueling property* means property that is qualified within the meaning of section 30C of the Internal Revenue Code, but does not include alternative fuel vehicle refueling property relating to a qualified hybrid vehicle.

Taxpayers will be allowed a credit for alternative fuel vehicle refueling property placed in service during the tax year. The credit is equal to 50% of the cost of new alternative fuel vehicle refueling property located in New York State, used in a trade or business, and for which a credit is allowed under section 30C of the Internal Revenue Code.

This credit is not refundable, but any excess can be carried over to the following year or years. In addition, recapture of the credit may be required if the property ceases to qualify.

The credit applies to tax years beginning on or after January 1, 2006, but terminates for tax years beginning after December 31, 2010. (Tax Law sections 187-b and 210.24, see instructions at: http://www.tax.state.ny.us/pdf/2007/corp/ct40i_2007.pdf ; Tax Law section 606(p), see instructions at: http://www.tax.state.ny.us/pdf/2007/inc/it253i_2007.pdf)

Biofuel Production Credit -- A credit is available for biofuel produced at a biofuel plant in New York State on or after January 1, 2006. The credit is equal to 15-cents-per gallon after the production of the first 40,000 gallons per year presented to market. The credit is capped at $2.5 million per taxpayer, per taxable year, for up to no more than four consecutive taxable years per biofuel plant.

Clean Heating Fuel Credit -- A refundable credit is available for bioheat used for space heating or hot water production for **residential** purposes within New York State. Bioheat means a fuel comprised of biodiesel blended with conventional home heating oil, which meets the specifications of the American Society of Testing and Materials (ASTM) designation D 396 or D 975. The credit is $0.01 per percent of biodiesel per gallon of bioheat, not to exceed 20 cents-per-gallon, purchased by the taxpayer. The credit applies to bioheat purchased on/after January 1, 2008 and before January 1, 2012.

TRAINING

Security Training Tax Credit

A refundable tax credit, administered by the State Office of Homeland Security in conjunction with the Tax Department, for qualified building owners, effective for taxable years beginning on/after January 1, 2005. Taxpayers must apply to the State Office of Homeland Security for an allocation of credit and credit certification in order to claim this credit.

The credit is equal to the sum of the number of qualified security officers providing protection to a building(s) owned by the taxpayer multiplied by $3,000. Where a qualified security officer ("worker" in the legislation) is employed for less than a full year, such credit amount must be prorated, pursuant to regulations to be promulgated by the Tax Commissioner.

"Qualified building owner" is defined to mean a building owner whose building entrances, exits and common areas are protected by licensed security personnel, whether or not employed directly by the building owner or indirectly through a contractor.

"Qualified security officers" are defined as those who:

- Are employed in positions which are under a legally binding written agreement, including a service contract between qualified building owners and security contractors, enforceable by employees, that provides for a minimum hourly wage rate of at least $9.50 for 2005; $9.85 for 2006; and $10.85 for 2007 and after; and
- Have completed a certified qualified security training program approved by the State Office of Homeland Security.

The aggregate amount of "security training tax credits" is limited to $5 million in any calendar year. The State Office of Homeland Security must allocate this aggregate amount among taxpayers in order of priority based upon the filing date of the application for credit allocation. The statute provides that any taxpayer who is allocated a security training tax credit in a taxable year shall receive the credit for the succeeding two taxable years, and shall have priority over other applicants in such succeeding two taxable years.

If the total amount of allocated credits applied for exceeds the aggregate amount for the year, such excess will treated as having been applied for on the first day the subsequent year. The aggregate amount for any taxable year subsequent to a taxable year where certificates for credits total less than $5 million, will be increased by the amount of such shortfall.

OTHER

<u>Credit for Hiring Persons With Disabilities</u> -- A credit is available for employers who employ individuals with disabilities. The credit equals 35% of the first $6,000 of first year wages paid to the disabled employee (maximum of $2,100 per employee). However, if the first year wages qualify for the federal work opportunity tax credit, the New York credit will apply to second year wages. To be eligible for the credit, an 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.

<u>Long-Term Care Insurance Credit</u> – A credit is allowed for long-term care insurance premiums paid during the taxable year, equal to 20% of the premium paid for long-term care insurance during the taxable year (*credit was 10% for tax years beginning before 1/1/2004*). The credit may not reduce the tax below the AMT or fixed dollar minimum. Unused credits can be carried forward indefinitely.

<u>Automated External Defibrillator Credit</u> – For tax years on/after January 1, 2001, a credit may be taken for the purchase of automated external defibrillators, such as those used for first-aid treatment of heart attacks. The credit is equal to the cost of each defibrillator purchased, but may not exceed $500 per unit. Credit cannot reduce tax below the AMT or fixed dollar minimum. Unused credits cannot be carried forward.

Sales/Use Tax:

a) New York State imposes a sales/use tax at the rate of 4%.

b) Counties and cities may impose a sales tax up to a combined maximum of 3% within their respective territorial limits. A number of localities have been authorized to impose tax at additional rates (i.e., in excess of 3%), ranging from ¼% to 1 5/8%.

c) An additional 0.375% sales tax rate is charged in counties located within the Metropolitan Commuter Transportation District (12-county area in the lower Hudson Valley, New York City and Long Island.

d) Manufacturing Exemptions -- Manufacturing machinery and equipment, and fuels and utilities used or consumed in the manufacturing process are exempt from sales/use tax.

e) Aircraft Exemptions – Maintenance and certain other services performed on aircraft, as well as tangible personal property purchased and used in performing the services, where such property becomes a physical component part of the property upon which the services are performed or where such property is a lubricant applied to aircraft, are exempt until December 1, 2009. Similar permanent exemptions apply to commercial aircraft.

f) EZ - Sales/Use Tax Exemptions -- Purchases of building materials that will become an integral part of non-retail commercial or industrial real property located in an EZ are exempt from the State sales/use tax (i.e., eligible for refund of sales taxes paid) and, if authorized by local law, may also be exempt from the local sales/use tax.

g) Industrial Development Agencies (IDAs) -- Sales tax does not apply to purchases of materials incorporated into buildings owned by an industrial development agency. Companies that receive IDA funding may also claim exemption for certain other purchases made as agents of IDAs.

Real Property Tax

a) New York State does not levy real property taxes, however property taxes are levied by local governments. The counties, which are the principal taxing local units, operate under the town system, so that much of the actual administration and collection of taxes is accomplished at the municipal level.

b) Counties, cities, towns, villages and school and special districts all have independent powers of taxation. Rates vary according to location.

c) Real Property Tax Exemption -- Under Real Property Tax Law section 485-b, commercial and industrial facilities, constructed or reconstructed outside of New York City at a cost of more than $10,000, may be eligible for a ten-year partial exemption from the real property tax levied by counties, cities, towns, villages and/or school districts The maximum exemption amounts to 50% of any increase in value in the first year following completion, and declines by five percentage points for the succeeding nine years.

Pollution-control facilities are exempt from local real property taxes and ad valorem levies (upon application by the taxpayer to the local taxing authorities) to the extent of any increase in value resulting from the construction or reconstruction of such facilities to comply with New York State environmental conservation and/or health laws, codes and regulations.

d) EZ - Real Property Tax Exemption -- Businesses or homeowners constructing, reconstructing, or improving real property located within an EZ may be eligible for a partial exemption from real property taxes for up to 10 years. The exemption begins as a total exemption of the improvement to real property for up to 7 years, and is reduced by 25% per year for the next three years (a 10-year average exemption of 85%).

This credit is offered at local option, and cannot be combined with any other available property tax abatement.

Personal Property Tax

Property taxes in New York are imposed on real property only. Personal property, whether tangible or intangible, is exempt from ad valorem taxation.

Unemployment Insurance

The unemployment insurance tax rate for a new employer in New York State is 4.1% and is imposed upon the first $8,500 of taxable wages paid by the employer to each employee during the calendar year. New York's experience rates for employers range from 1.3% to 9.7% and are applied to the same $8,500 wage base. (For more information on NYS unemployment insurance, see: http://www.labor.state.ny.us/ui/ui_index.shtm ; http://www.labor.state.ny.us/ui/bpta/ratemenu.shtm)

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