



FINANCE MEMORANDUM 02-3

October 29, 2003 - Revised

New York City Tax Consequences of Certain Retroactive Federal and New York Tax Law Changes

This Memorandum describes certain retroactive Federal and New York City tax law changes and their impact on certain New York City taxpayers.

BONUS DEPRECIATION

Federal law changes. The Job Creation and Worker Assistance Act of 2002, P.L. 107-147, (the "2002 Act") allows taxpayers an additional 30 percent depreciation deduction in the first year "qualified property" is placed in service. The 2002 Act allows a similar additional 30 percent first year depreciation deduction for "qualified New York Liberty Zone property" and allows "qualified New York Liberty Zone leasehold improvements" to be depreciated over a five-year period using a straight-line method. The 2002 Act also allows an additional first year expense deduction of up to \$35,000 for "qualified New York Liberty Zone property" under Internal Revenue Code ("IRC") §179 in addition to the otherwise allowable deduction.

The Jobs and Growth Tax Relief Reconciliation Act of 2003, PL 108-27, (the "2003 Act") provides an additional first year depreciation deduction equal to 50 percent of the adjusted basis of qualified property acquired and placed in service after May 5,

2003. Qualified property is defined in the same manner as for purposes of the 30 percent additional first year depreciation deduction provided by the 2002 Act except that the applicable time period for acquisition (or self construction) of the property is after May 5, 2003 and before January 1, 2005 (or 2006 in some cases). Property eligible for the 50 percent additional first year depreciation deduction is not eligible for the 30 percent additional first year depreciation provided by the 2002 Act.

Definitions.

"*Qualified property*" (as defined in IRC §168(k)(2)) generally includes certain personal property acquired after September 10, 2001 and before January 1, 2005 (2006 in certain circumstances).

"*Qualified New York Liberty Zone property*" (as defined in IRC §1400L(b)(2)) generally includes those same types of personal property if used substantially in the New York Liberty Zone in connection with the active conduct of a trade or business in the New York Liberty Zone where the original use began with the taxpayer in the Liberty Zone after September 10, 2001. It also includes certain real property acquired to replace property damaged or destroyed in the attacks on the World Trade Center on September 11, 2001. The property must be placed in service before December 31, 2006 (2009 for eligible real property.) For New York City tax purposes, property that qualifies as both "qualified property" and "qualified New York Liberty Zone property" will be eligible for enhanced depreciation benefits.

"Qualified Resurgence Zone property" is "qualified property" used substantially in the Resurgence Zone in connection with the active conduct of a trade or business where the original use began with the taxpayer in the Resurgence Zone after September 10, 2001.

The New York Liberty Zone generally encompasses the area of the borough of Manhattan below Canal Street.

The Resurgence Zone (defined in sections 11-507(22) and 11-602.8(m) of the Administrative Code of the City of New York) generally encompasses the area in Manhattan between Canal Street and Houston Street.

City Decoupling Provisions. New York City "decoupled" from the bonus depreciation deductions allowed by the 2002 Act and the 2003 Act except for bonus depreciation deductions for "qualified Resurgence Zone property," "qualified New York Liberty Zone property," and "qualified New York Liberty Zone leasehold improvements." Consequently under the New York City General Corporation Tax ("GCT"), Unincorporated Business Tax ("UBT"), and Banking Corporation Tax ("Bank Tax") law, depreciation deductions for all other "qualified property" are limited to the deduction that would have been allowed for such property under IRC §167 had the property been acquired by the taxpayer on September 10, 2001 (and, therefore, not eligible for the enhanced deductions allowed by the 2002 and 2003 Acts.) Local Law 17 of 2002. **The depreciation deductions for "qualified Resurgence Zone property," "qualified New York Liberty Zone property," and "qualified New York Liberty Zone leasehold improvements" and the first year expense deduction under Internal Revenue Code §179 are the same for New York City GCT, UBT and Bank Tax purposes as for Federal tax purposes.**

The amendments made by Local Law 17 also require a GCT, UBT or Bank Tax taxpayer to make appropriate adjustments to the amount of any gain or loss included in entire net income or unincorporated business entire net income upon the disposition of any property for which the Federal and New York City depreciation deductions differ as a result of decoupling.

Who Must File. Taxpayers who filed New York City GCT, UBT or Bank Tax returns for tax years ending after September 10, 2001 and who claimed the enhanced depreciation benefits for "qualified property," **other than** "qualified Resurgence Zone property," "qualified New York Liberty Zone property," or "qualified New York Liberty Zone leasehold improvements," must file amended returns for any such tax year to properly report the depreciation deductions for such property and to pay any additional tax due plus accrued interest. The correct depreciation deduction can be determined using form NYC-399Z available on the Department's website: www.nyc.gov/finance. Taxpayers required to file amended returns should use the appropriate form (NYC-4S, NYC-3L, NYC-3A, NYC-202, NYC-204, NYC-1 or NYC-1A) making sure that the box for "amended return" is checked, and should include form NYC-399Z.

Taxpayers who filed such amended returns before January 4, 2004, will not be liable for any late payment penalties for any additional tax paid with such an amended return as a result of the decoupling from Federal depreciation deductions but they will be liable for interest on any additional tax due.

To ensure proper processing of an amended return filed on or before January 4, 2004, it should be mailed to the NYC Department of Finance, 25 Elm Place, 5th Floor, Brooklyn, NY 11201, Attn: NYC 399-Z Section. Amended returns filed on or after

January 5, 2004, should be mailed to the address specified on the tax return form.

EXTENDED NOL CARRYBACK PERIOD

Background. The 2002 Act extended the general net operating loss ("NOL") carryback period from two to five years for certain NOLs arising in tax years ending in 2001 and 2002. The five-year temporary carryback period also applies to NOLs arising in those years otherwise eligible for a three-year carryback under Federal law. Taxpayers may elect to disregard the five-year carryback period.

City Tax Treatment. The same NOL carryback periods allowed for Federal tax purposes apply for New York City GCT and UBT purposes. However, under New York City tax law, the amount of any NOL that may be carried back from a given tax year is limited to \$10,000. Any excess loss from that year must be carried forward. This and all other New York City modifications to the Federal NOL deduction will apply to NOLs eligible for the five-year carryback period under the 2002 Act. For additional information see Ad. Code §§11-507(2) and 11-602(f).

City Refund Claims Based on NOL Carryback. Refunds of GCT paid resulting from an NOL carryback should be claimed on form NYC-8CB. UBT refunds based on an NOL carryback should be claimed on an amended form NYC-202 or 204. No NOL deduction is allowed under the New York City Banking Corporation Tax.

The Department of Finance has issued this Finance Memorandum for the purpose of advising taxpayers and tax professionals of, and explaining the Department's current position and procedures with respect to the issue addressed so that they may act accordingly. Finance Memoranda are advisory in nature and are merely explanatory. Finance Memoranda are not declaratory rulings or rules of

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