

DEPARTMENT OF FINANCE

02-1 March 1, 2002

FINANCE MEMORANDUM

Interest Rates on New York City Income and Excise Taxes and Annual Vault Charges for the Quarter Beginning April 1, 2002

This memorandum provides the interest rates for underpayments and, in certain cases, overpayments of City Income and Excise Taxes and the Annual Vault Charge for the quarter beginning April 1, 2002. Section I contains the applicable rates and lists the taxes to which they apply. Section II describes the procedure for setting such rates as set out by Chapter 241 of the Laws of 1989. Section III provides the calculation of the interest rates for the subject quarter.

I. City Income and Excise Taxes Subject to Interest Rate Setting

The interest rate setting procedure described in this memorandum is applicable to the following City taxes, as divided into those that require rates to be set for both overpayments and underpayments and those that only require rate setting for underpayments.

A. Interest Rates on Overpayments

Interest on overpayments of the following taxes which remain or become overpaid on or after April 1, 2002 will be paid at the rate of 6%:

- City Unincorporated Business Income Tax (Chapter 5 of Title 11 of the Administrative Code of the City of New York)
- City Business Taxes (General Corporation Tax and Banking Corporation Tax) (Chapter 6 of Title 11 of the Administrative Code of the City of New York)
- Tax Upon Foreign and Alien Insurers (Chapter 9 of Title 11 of the Administrative Code of the City of New York)

Interest on overpayments of Estimated Tax payments for the General Corporation Tax which remain or become overpaid on or after April 1, 2002 is to be paid at the rate of 5% (Section 11-608 (5) of the Administrative Code of the City of New York).

B. Interest Rates on Underpayments

Interest on underpayments of the following taxes and charges which remain or become underpaid on or after April 1, 2002 is to be paid at the rate of 6%:

- City Unincorporated Business Income Tax (Chapter 5 of Title 11 of the Administrative Code of the City of New York)
- City Business Taxes (General Corporation Tax and Banking Corporation Tax (Chapter 6 of Title 11 of the Administrative Code of New York City)
- Commercial Rent or Occupancy Tax (Chapter 7 of Title 11 of the Administrative Code of New York City)
- Tax on Commercial Motor Vehicles and Motor Vehicles for Transportation of Passengers (Chapter 8 of Title 11 of the Administrative Code of New York City)
- Tax Upon Foreign and Alien Insurers (Chapter 9 of Title 11 of the Administrative Code of New York City)
- Utility Tax (Chapter 11 of Title 11 of the Administrative Code of New York City)
- Horse Race Admissions Tax (Chapter 12 of Title 11 of the Administrative Code of the City of New York)
- Cigarette Tax (Chapter 13 of Title 11 of the Administrative Code of the City of New York).
- Tax on Transfer of Taxicab Licenses (Chapter 14 of Title 11 of the Administrative Code of the City of New York)
- Tax on Coin Operated Amusement Devices (Chapter 15 of Title 11 of the Administrative Code of the City of New York)
- Real Property Transfer Tax (Chapter 21 of Title 11 of the Administrative Code of the City of New York)
- Tax on Retail Licensees of the State Liquor Authority (Chapter 24 of Title 11 of the Administrative Code of the City of New York)
- Tax on Occupancy of Hotel Rooms (Chapter 25 of Title 11 of the Administrative Code of the City of New York)
- Annual Vault Charge (Chapter 27 of Title 11 of the Administrative Code of the City of New York)

II. Procedure

A. Authorization to Set Interest Rates

Chapter 241 of the Laws of 1989 amended the following sections of the Administrative Code to establish the new interest rate setting procedure: § 11-537(f) (City Unincorporated Business Income Tax); § 11-687(5) (City Business Taxes); § 11-715(h) (Commercial Rent or Occupancy Tax); § 11-817(g) (Tax on Commercial Motor Vehicles); § 11-905(g) (Tax Upon Foreign and Alien Insurers); § 11-1114(g) (Utility Tax); § 11-1213(g) (Horse Race Admissions Tax); § 11-1317(d)(2) (Cigarette Tax); § 11-1413(g) (Tax on Transfer of Taxicab Licensees); § 11-1515(g) (Tax on Coin Operated Amusements); § 11-2114 (g) (Real Property Transfer Tax); § 11-2414(g) (Tax on Retail Liquor Licensees); § 11-2525 (g) (Tax on Occupancy of Hotel Rooms); and § 11-2714(g) (the Annual Vault Charge). Pursuant to Chapter 47 of the Laws of 1997, as of June 1, 1998 “no annual vault charge or additional charge shall be imposed pursuant to” Chapter 27 of Title 11 of the Administrative Code. § 11-2702(a)(D). Although the charge is no longer imposed, the interest rate for underpayments is applied to outstanding arrears.

Pursuant to the Administrative Code, interest is paid on refunds of the Unincorporated Business Income Tax, the General Corporation Tax, the Banking Tax and the Tax Upon Foreign and Alien Insurers. Consequently, for these taxes, the Commissioner is required to set both overpayment and underpayment interest rates. For all the other taxes listed above, the Commissioner is required to set only underpayment rates.

B. Calculation of Rates

The various Administrative Code provisions listed above provide the Commissioner with substantially the same rate setting authority for each tax. The rates will be based on the federal short-term rate. The applicable federal short-term rate is the short-term interest rate for the first month of the calendar quarter prior to the quarter in which the rate is to be applied.

For overpayments, the interest rate will be set at the sum of the federal short-term rate plus two percentage points. *See, e.g.*, § 11-537(f)(2)(A). For underpayments, the rate will be the sum of the federal short-term rate plus three percentage points. *See, e.g.* § 11-537(f)(2)(B). For any month, the federal short-term rate is defined as the rate determined by the United States Secretary of the Treasury during such month according to Internal Revenue Code § 1274(d) to be used in connection with I.R.C. § 6621, the determination of interest on overpayments and underpayments. Internal Revenue Code § 1274(d)(1)(C) (i) provides for the calculation of the federal short-term rate for any calendar month:

The Federal short-term rate shall be the rate determined by the Secretary based on the average market yield [during any 1-month period selected by the Secretary and ending in the calendar month in which the determination is made] on outstanding marketable obligations of the United States with remaining periods to maturity of 3 years or less.

The statute further requires that the rate be rounded to the nearest full percent. If the rate “is a multiple of one-half of one percent, such rate shall be increased to the next highest full percent.” *See, e.g.*, § 11-537(f)(3) (A). “[T]he federal short-term rate for the first month in each calendar quarter shall apply to the first calendar quarter beginning after such month.” *See, e.g.*, § 11-537(f)(3)(B).

The statute includes a default rate in the event that rates are not set. If rates are not set, the rate will be deemed to be set at six percent per annum. In addition, rates may not be less than six percent per annum. *See, e.g.*, § 11-537(f)(1). For estimated tax payments made on account for the General Corporation Tax which become overpaid, if rates are not set, the rate of interest on such overpayments will be four percent per annum. § 11-608(5). Furthermore, the rate of interest for such General Corporation Tax estimated tax overpayments shall not be less than four percent per annum. § 11-687(5)(a).

The various code provisions further require that the rates be published in the City Record. The rates must be published no later than twenty days before the beginning of the quarter during which the rates apply. The Administrative Code specifies that the setting and publication of such interest rates will not be a rule within the City Charter definition of a rule. *See, e.g.*, § 11-537(f)(4).

III. April 2002 Calculation

On January 18, 2002, pursuant to I.R.C. § 1274, the Internal Revenue Service issued Revenue Ruling 2002-5, publishing the applicable federal interest rates (AFR) for February 2002. The applicable rate, rounded to the nearest full percent, was 3%. Therefore, since January 2002 is the first month of the January-March 2002 calendar quarter, the rate set pursuant to I.R.C. § 1274 during January 2002 (for February 2002) is applicable to the April-June 2002 calendar quarter.

Applying the statutory additions to the federal short-term interest rate, the rate for overpayments for this quarter would have been the federal rate plus two percentage points, or 5%. However, because the statute provides that the interest rates shall not be less than six percent, the interest rate for overpayments for the April-June 2002 calendar quarter will be 6%. Because the interest rate floor for estimated tax payments made for the General Corporation Tax is set at 4% instead of 6%, the calculated interest rate for such overpayments will be 5%. For underpayments, the rate would be the federal rate plus three percent, or 6%. The rates were published in the February 26, 2002 edition of the City Record.