

NEW YORK CITY DEPARTMENT OF FINANCE
OFFICE OF TAX POLICY

FISCAL YEAR 1998 LEGISLATIVE REPORT

*A Summary of State and Local Legislation
Affecting New York City's Tax System
and the Department of Finance*

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"STAR" PROGRAM

Star Benefits for Elderly Homeowners Accelerated

The school tax relief (STAR) program adopted in 1997 to provide real property tax relief to owners of one- to three-family homes and cooperative and condominium apartments included an enhanced benefit for homeowners age 65 and over. Scheduled to be phased in over a four-year period beginning with the 1998-1999 school year, the legislature accelerated the exemption available to qualified seniors by increasing the "base figure" for computing the exemption immediately to \$50,000 beginning with the 1998-1999 school year.

The legislation also simplified the administration of the senior citizen enhanced benefit by redefining "income" to mean the "federal adjusted gross income" reported on the applicant's latest available federal or state income tax return (with certain modifications). A provision in the new law requires that income disclosures submitted by an applicant be kept confidential except to the extent necessary to perform official duties.

The legislation also included technical amendments to establish the school tax relief fund to reimburse localities for the granting of property tax exemptions pursuant to section 425 of the state real property tax law.

□ Chapter 56, Laws of 1998

City PIT Star Credit Accelerated for Elderly

The city personal income tax credit provisions enacted last year as part of the STAR program established a schedule of credits, to be phased in over a four-year period, starting at \$12 in 1998 for all taxpayers. Beginning in 2001 the credit will be \$125 for married individuals filing joint returns and surviving spouses, and \$62.50 for other taxpayers. This schedule has been modified so as to allow taxpayers who are 65 or over to claim these higher amounts beginning in 1998. A husband and wife who file a joint return are eligible for the higher credit if either spouse is 65.

The credit provisions have also been amended to provide that no credit will be granted to any individual who is claimed as a dependent by another taxpayer.

□ Chapter 56, Laws of 1998

Star Senior Citizen Age Requirement Amended

This amendment to the STAR program liberalizes the age requirement for receiving the senior citizen enhanced exemption. Under the new rule, an applicant will be eligible for STAR if he or she reaches the age of 65 after the taxable status date but before December 31st of the same year. This bill is effective immediately.

□ Chapter 570, Laws of 1998

Star Filing Extension for Senior Citizens

This bill provided a two-month extension for submitting FY 1999 applications under the School Tax Relief (STAR) program from January 5, 1998 to March 5, 1998. The original STAR program required all applications for exemption to be submitted on or before the taxable status date, i.e., January 5, 1998. The extension benefits senior citizens who were eligible for the STAR program in FY 1999, one year ahead of non-senior citizen property owners.

□ Chapter 6, Laws of 1998

SALES AND EXCISE TAXES

Sales Tax Exemption for Clothing Purchases Liberalized

Last year legislation was adopted to provide for two temporary sales tax holidays in 1997 and 1998 for certain clothing purchases, to be followed by a permanent exemption beginning December 1, 1999. The exemptions apply to the state sales tax and, at local option, to the local portion of the tax. The 1998 State Budget Bill has liberalized these provisions as follows: (1) the exemption is extended to footwear; (2) clothing and footwear items costing less than \$500 (formerly only clothing items costing under \$100) will be exempt during the period from September 1 to September 7, 1998; (3) during a newly established period from January 17 to January 24, 1999, clothing and footwear items costing less than \$500 will be exempt; and (4) beginning December 1, 1999 a permanent exemption will apply to clothing and footwear items costing less than \$110 (formerly only clothing items costing less than \$100). New York City has passed the required local resolution to implement the sales tax exemption for the period September 1 to September 7, 1998.

□ Chapter 56, Laws of 1998

City Hotel Tax Exemptions Conformed to Sales Tax Exemptions

Organizations that are exempt from sales tax on the occupancy of hotel rooms will also be exempt from the city hotel room occupancy tax. (Currently, certain differences exist between the sales tax and city hotel tax lists of exempt organizations.) Exempt organization certificates issued for sales tax purposes will also be accepted for city hotel tax purposes. The act is effective as of July 22, 1998.

□ Chapter 454, Laws of 1998

Parking Fees Paid by Homeowner's Association Members Exempted from City Parking Taxes

Effective September 14, 1998, parking charges paid to a homeowner's association (including cooperative and condominium housing) by its members for parking space in a facility owned or operated by the association are exempted from the 6% city sales tax on parking and the additional 8% Manhattan parking tax. In addition, the 1997 law that exempted such charges from the state sales tax when the parking facility was operated by the homeowner's association has been amended to include facilities owned by such an association even though operated by a third party. The Act takes effect 60 days after it becomes law.

- Chapter 344, Laws of 1998

Sales Tax Exemption for Telecommunications Equipment Expanded

The current state and city sales tax exemption for telephone and telegraph central office equipment and station apparatus (and related parts, tools and supplies) used directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication has been expanded to include such items used in receiving, amplifying, processing, transmitting and retransmitting telephone or telegraph signals, effective September 1, 1998.

- Chapter 56, Laws of 1998

Internet Access Services Exempted from Sales Tax

Effective February 1, 1997, internet access service are exempt from state and city sales taxes. An "internet access service" is defined as the service of providing connection to the internet. The provision of communication or navigation software, an E-mail address, E-mail software, news headlines, space for a website and website services are included within the definition, provided they are merely incidental to the internet connection service.

- Passed Both Houses

College Textbooks Exempted from Sales Tax

Effective June 1, 1998, textbooks purchased by full- or part-time college students for their courses at accredited institutions of higher learning are exempt from state and city sales taxes.

- Chapter 56, Laws of 1998

Software Development Hardware Exempted from Sales Tax

Effective June 1, 1998, computer system hardware used or consumed directly and predominantly in designing and developing computer software for sale is exempt from state and city sales taxes.

- Chapter 56, Laws of 1998

Coin Phone Sales Tax Exemption Increased

Coin phone calls costing not more than 25 cents (formerly 10 cents) will be exempt from state and city sales taxes beginning September 1, 1998.

- Chapter 56, Laws of 1998

Timely Processing of State/Local Sales Tax Refund Claims Required

Applications for refund or credit of state or local sales taxes must be granted or denied by the NY State Commissioner of Taxation and Finance within six months of the receipt of the application, under a new requirement that takes effect immediately. In addition, a taxpayer will no longer be required to file an surety bond to secure court costs as a condition of seeking judicial review of the denial of a refund claim.

- Chapter 441, Laws of 1998

Building Material Sellers Allowed Additional Time to Collect and Pay Over State/Local Sales Taxes

Effective June 1, 1999, certain "materialmen" (as defined in the NY State Lien Law) who sell building materials on credit to contractors or repairmen for the improvement of real property will be required to collect and pay over state and local sales taxes due on such sales only as payments of the sales price are actually received. However, to the extent that the tax due on the full sales price has not been collected within one year from the date of the sale, any balance of tax due must be collected and paid over with the first sales tax return due from the materialman following the end of the one-year period.

- Chapter 255, Laws of 1998

"Affiliated Person" Redefined for Purposes of Fulfillment Services Provisions

In 1997 legislation was adopted to exempt out-of-state companies from state and local sales tax collection responsibilities (and from the NY State corporate franchise tax) where their only contact with New York was the use of the services of New York fulfillment firms. (Under this law "fulfillment services" include accepting orders, responding to consumer inquiries, billing and collection activities and shipping orders from inventory of the out-of-state company located at the fulfillment firm's facility.) The new law's protection did not apply where the fulfillment firm was

an "affiliate" of the out-of-state company. For this purpose, an "affiliated entity" was defined as one that either owned or controlled a majority interest in the purchaser of fulfillment services or an entity in which a majority interest was owned or controlled by the purchaser of those services. This definition has been revised to provide that entities will be considered to be affiliated with each other where one of them has a greater-than-5% interest in the other or where a greater-than-5% interest in each of them is held by another person or by a group of other persons who are themselves affiliated.

□ Chapter 75, Laws of 1998

PERSONAL INCOME TAX

Distributions to Nazi Victims Excluded from State/City PIT

Distributions to victims of Nazi persecution (or to a spouse or descendant in need), as defined in federal law, and income attributable to certain assets stolen from or otherwise lost to such a victim during or just before or after World War II are excluded from income for state and city personal income tax purposes for tax years beginning on or after January 1, 1995.

□ Chapter 56, Laws of 1998

Emerging Technology Investment Gain Deferrable Under State/City PIT

A gain from the sale of a "qualifying emerging technologies investment" (as defined in the Public Authorities Law) acquired on or after March 12, 1998 and held for more than 36 months, will be recognized for state and city personal income tax purposes only to the extent that the amount realized on the sale exceeds the cost of any qualified emerging technologies investment purchased by the taxpayer during the 365-day period beginning on the date of the sale. Any amount thus deferred must be included in income when the reinvestment that qualified the taxpayer for the deferral is sold.

□ Chapter 56, Laws of 1998

State/City Estimated PIT Safe Harbor Increased

For tax years beginning on or after January 1, 1999, the state and city personal income tax penalty for underpayment of estimated tax will not apply if the tax shown on the return for the tax year is less than \$300 (formerly \$100).

□ Chapter 335, Laws of 1998

Innocent Spouse Rules Under State/City PIT Modified

Effective for tax years beginning after 1998, each spouse included in a joint state/city personal income tax return will generally be liable only for the portion of the total tax liability attributable to such spouse unless the return includes a substantial understatement of tax attributable to grossly erroneous items of one spouse and the Commissioner of Taxation and Finance establishes that in filing the return the other spouse knew or had reason to know the facts.

- Passed Both Houses; Signed by the Governor

State Tax Commissioner Authorized to Extend Tax Deadlines on Account of Declared Disasters

The NY State Commissioner of Taxation and Finance has been authorized to postpone for up to 90 days tax deadlines relating to state imposed or administered taxes (including city taxes administered by the state) in the case of taxpayers determined to be affected by disasters declared by the President or the Governor. Among the deadlines extended are those for filing returns, paying taxes, filing petitions, filing refund claims and assessing or collecting taxes. During an extension period interest will not run on amounts owed by taxpayers but will continue to accrue on overpayments due taxpayers.

- Chapter 8, Laws of 1998

UTILITY TAX

The following changes have recently been made in the city utility tax:

- Persons not subject to supervision by the NY State Public Service Commission who sell or furnish telephone or telegraph service (referred to as vendors of utility services) are subject to the utility tax. The term "telephone or telegraph service" has been replaced by the more up-to-date term "telecommunication services," which is broadly defined--consistent with the state utility tax definition--to mean all telephone or telegraph service, including any transmission of voice, image, data, information and paging, through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar media or any combination thereof. Also included are ancillary telephone services such as dial tone, basic service, directory information, call forwarding, caller ID and call waiting. Excluded from this definition are cable television services and certain air safety and navigation transmissions to and from aircraft.
- Prior to the recent legislative change, landlords who sold gas, electricity, steam, water or refrigeration to their tenants were considered vendors of utility services and subject to the utility tax on these sales. If the landlord was the reseller of such a utility service purchased from another, the original seller was not subject to the tax on its sales to the landlord for resale. Under the amended law, which is retroactive to January 1, 1998, the original seller will be taxable on its sales to the landlord for resale, and the landlord will no longer be taxable on the sale to the tenant.

However, if the original seller is beyond the city's taxing jurisdiction, the landlord will remain liable for the tax, but in that case the tax will be based on the amount paid by the landlord for the utility service (including transportation costs) rather than on the landlord's charge to the tenant. Landlords who are exempt from the tax under these new provisions will no longer be required to file tax returns but will be required to file information returns by September 1 of each year.

- Currently, every person subject to the utility tax must file a monthly return. However, beginning in 1999 a taxpayer whose tax liability for the preceding year did not exceed \$100,000 will be permitted to file semiannual returns for the current year. For the first calendar year in which a taxpayer becomes subject to the utility tax, monthly returns will continue to be required.

□ Chapter 536, Laws of 1998

GENERAL CORPORATION TAX

Offshore Funds Shielded from State/City Corporate Taxes

For taxable years beginning on or after January 1, 1998, the state and city general and banking corporation taxes will not apply to an alien corporation whose activities in New York are limited solely to investing or trading in stocks, securities or commodities for its own account.

□ Chapter 340, Laws of 1998

REAL PROPERTY TAX

New Property Tax Credit for Disabled Homeowners

The City Council enacted a local law authorized by 1997 state legislation (section 459-c of the state real property tax law), to establish a new tax exemption for homeowners who are disabled with limited incomes. The program commences in FY 2000. In addition, state legislation was passed to allow localities to augment the exemption with a property tax credit retroactive to FY 1999. The credit, which requires Council approval, would be applied to the FY 2000 tax bill of disabled homeowners who are approved for the exemption. The state law also clarifies the calculation of the STAR exemption by specifying that all other exemptions be applied prior to the application of the STAR exemption

□ Local Law 13 of 1998; Chapter 447, Laws of 1998

Maximum Income Increase Authorized for Senior Citizen Homeowner Exemption (SCHE)

Pursuant to state law, the City currently provides a 50 percent tax exemption to senior citizen homeowners if household income is no greater than \$18,500. There is also a sliding scale exemption, with a minimum five percent exemption for those with incomes of less than \$26,900. The amendment authorizes localities to increase the maximum income permissible for a 50 percent exemption to \$19,500, raising the income eligibility for a five percent exemption to less than \$27,900. City Council approval is required before the increase can be implemented.

□ Chapter 298, Laws of 1998

421-A Program Extended

To qualify for a 421a exemption in Manhattan north of 96th Street and in the other boroughs, the deadlines for the commencement and completion of construction were January 1, 1999 and December 31, 2000, respectively. This state amendment eliminates the commencement of construction date and extends the deadline for completion to December 31, 2003.

□ Chapter 432, Laws of 1998

ICIP Eligibility Requirements Amended

This bill extends the statutory deadlines for completion of the foundation and total completion of projects south of 34th Street in Manhattan by one year to December 31, 1998 and December 31, 2000, respectively. The extension only applies to projects which had filed timely applications. The bill also permits such projects to qualify for the exemption if at least 40 percent, rather than 50 percent, of the floors contain floor-to-ceiling heights of at least 12 feet 9 inches.

□ Chapter 449, Laws of 1998

Lower Manhattan Incentive Program Amended

This bill corrects several technical drafting errors in the lower Manhattan incentive program and the parallel program in other parts of the City. First, the bill clarifies the provision that expansion tenants must make improvements to "expansion," not "eligible," premises in an amount equal to at least \$10 per square foot. The amended law also eliminates a misleading reference to alternative expenditure requirements for those businesses which employ 125 or fewer employees and signed leases commencing on or after 4/1/97. These changes are retroactive to September 17, 1997.

□ Chapter 468, Laws of 1998

New Exemption for Hudson River Parks Project

The "Hudson River Park Act" creates the Hudson River Park Trust, a public benefit corporation for the purpose of planning and developing the Hudson River Park on Manhattan's west side. The Trust is authorized to receive rents, payments in lieu of taxes, and other revenues generated from the park, and is required to use these revenues to improve, operate and maintain

the park. The state, city or other governmental instrumentalities who own land in the park retain legal and equitable title to such real property but will enter into agreements with the Trust for a term no longer than 99 years.

All income, monies, operations and properties of the trust are exempt from taxation. Any real property taxes or payments in lieu of taxes paid to the City by any enterprise operating in the Park must be transferred to the Trust once it comes into existence. The Trust comes into existence on the 30th day after appointment of at least eight members of the board of directors.

□ Passed Both Houses

Change In Computation of Class Shares

This bill limits the market value adjustment used in the calculation of class shares for FY 1999. Specifically, the amendment reduces the maximum percentage increase in the current base proportions due to market value changes in any one class from 5 percent to 2.5 percent.

□ Chapter 229, Laws of 1998

Extension to Enact Local Law Providing a Tax Exemption for Rehabilitated Property Used as Single Room Occupancy (Section 488-A of the State Real Property Tax Law)

The amendment permits legislative action by any city to which the multiple dwelling law applies to establish a tax exemption and abatement program for the rehabilitation of certain class B multiple dwellings and class A multiple dwellings used for single room occupancy. Such authority, which would have expired December 31, 1998, has been extended to December 31, 2002. The exemption is effective for 32 years and is based on any increase in assessed value due to eligible improvements. The annual tax abatement is equivalent to 12.5 percent of either 150 percent of the certified reasonable costs of the eligible improvements or the actual costs, whichever is less. The tax abatement cannot exceed a term of 20 years.

□ Chapter 245, Laws of 1998

Extension of Completion Deadlines for Assisted Housing (Section 489 of the State Real Property Tax Law)

This amendment to the J-51 program extends the period in which the local legislative body may adopt or amend local laws providing real property tax benefits for alterations and improvements to multiple dwellings to eliminate "fire and health hazards." Such authority was extended from June 1, 1999 to June 1, 2003. The bill also extends the deadline for completion of such projects from December 31, 1999 to December 31, 2003 for rehabilitation undertaken with federal, state or local grants, loans, etc. [section 489 (1)(a)(6)].

□ Chapter 246, Laws of 1998

New Evidence in Judicial Review of Assessments

This bill is comprised of several amendments to the state real property tax law concerning the review of assessments in judicial proceedings and small claims assessment review. The only provision which may have relevance to the City authorizes the use of the "uniform assessment percentage" printed on tax bills as proof of the assessment ratio for inequality claims in judicial review proceedings (sections 720). However, this provision may not have any impact on the city since the city does not apply a single "uniform assessment percentage" and does not print the assessment ratios on the tax bills. This act takes effect January 1, 1999.

- Chapter 318, Laws of 1998

Amendments to State Real Property Tax Law Definitions and Notice Requirements

This bill amends section 102 of the real property tax law with regard to the definitions of the terms "revaluation," "reassessment," and "update". These terms are now defined as a systematic review of locally assessed properties to assure assessments are at a uniform percentage of value as of the valuation date. The remaining provisions of the bill relate to assessment disclosure notices with exclusions for special assessing units (New York City and Nassau County).

- Chapter 319, Laws of 1998

Veterans' Disability Compensation Excluded from Income for Senior Citizen Homeowner Exemption

The City Council enacted a bill which excludes veterans' disability compensation from the definition of income for purposes of determining eligibility and the level of exemption benefits under the senior citizen homeowners exemption program (SCHE). The local law was authorized by state legislation enacted in 1997. The term "veterans' disability compensation" is based on the definition in title 38 of the United States Code. This provision will apply to assessment rolls prepared on or after January 1, 1999 (FY 2000 assessment roll).

- Local Law 15 of 1998

Exemptions for Improvements and Alterations of Certain Condominiums

The City Council adopted a new tax exemption for alterations and improvements to multiple dwellings that are developed as a planned community. Under this amendment the buildings must be owned as two separate condominiums containing at least 10,000 dwelling units. A full exemption is granted for any increase in assessed value resulting from alterations or improvements financed with substantial government assistance for a period of 30 years, followed by a four year phase out period in which the exemption percentage is reduced by 20 percent annually. The legislation also prohibits any equalization increase that is either directly or indirectly the result of such alterations and improvements.

The program also provides an abatement of existing taxes, including those on the land portion of the assessment. The abatement may not exceed the greater of: (a) 150 percent of the certified reasonable cost of construction as determined by HPD rules and regulations and (b) the construction cost of the alterations or improvements identified in such rules. The annual abatement may not exceed 10 percent of the total abatement granted or the amount of taxes due and payable for that year. The abatement period cannot exceed a term of 20 years. The new provisions take effect immediately.

- Local Law 24 of 1998 (adds subdivision d-1 to section 11-243 of the Administrative Code)

OTHER LEGISLATION

City Treasury's Temporary Investment Powers Extended

A law that expanded the list of temporarily permitted investments of city funds, which was due to expire June 30, 1998, has been extended until June 30, 2001. Included on the expanded list are obligations of other NY localities, highly rated general obligations of other states and highly rated short-term corporate obligations and bankers' acceptances.

- Chapter 130, Laws of 1998

List of Acceptable Security for Municipal Deposits Expanded

The list of acceptable security that banks may pledge to secure municipal deposits has been expanded to include certain highly rated obligations of other states and their localities, Puerto Rico and domestic corporations, mortgage securities, commercial paper, bankers' acceptances, "Treasury STRIPS" and certain surety bonds or letters of credit.

- Passed Both Houses

Red-Light Camera Law Expanded and Extended

The Parking Violations Bureau's red-light camera program, which had been scheduled to lapse on December 31, 1996, has been extended until December 31, 1999. In addition, the number of intersections at which cameras may be placed has been increased from 25 to 50.

- Local Law 20 of 1998

Cigarette License Revocation

In connection with a local law that restricts tobacco product advertising in order to protect children, the revocation of wholesale or retail cigarette dealer licenses is authorized where a dealer is found liable for three or more violations within an 18-month period. Clarifying amendments have also been made to the cigarette tax provisions governing suspension or revocation of licenses.

- Local Law 3 of 1998