

THE GENETELLI CONSULTING GROUP
State and Local Tax Services
431 FIFTH AVENUE
NEW YORK, NY 10016

(212) 684-4111
FACSIMILE: (212) 213-1020
EMAIL: rgenetelli@genetelli.com

Subject: New TSB-M on NYS Combined Reporting
Date: March 14, 2008

To Our Clients and Friends:

Attached for your information is New York State Department of Taxation and Finance Technical Services Bureau Memorandum 08(2)C, March 3, 2008. TSB-M-08(2)C supersedes and replaces TSB-M-07(6)C, which was issued on June 25, 2007 to set forth the Department's interpretation of the revised combination statute.

By way of background, for tax years beginning after 2006, New York State amended the Tax Law with respect to the circumstances under which combined reports are permitted or required. Based on the amendment, combination is permitted or required where substantially all (i.e., at least 80 percent) the capital stock of the corporations is owned or controlled by the same corporation or interests, and substantial intercorporate transactions exist among the related corporations, regardless of the transfer price for such intercorporate transactions. New York City has not conformed to the New York State amendment (i.e., the New York City combined reporting requirements remain as they were for tax years beginning before January 1, 2007), potentially allowing for different outcomes for taxpayers with substantial intercorporate transactions conducted on an arm's length basis.

New York State initially issued TSB-M-07(6)C to interpret the Tax Law amendment. TSB-M-07(6)C set forth steps to determine whether a combined report was required and, if so, which corporations were in the combined group. TSB-M-07(6)C also specified when intercorporate receipts, expenditures and asset transfers satisfied the substantial intercorporate transaction requirement. In certain instances, a multi-year test was applied to determine whether intercorporate receipts and expenditures met the substantial intercorporate transaction requirement.

TSB-M-08(2)C substantially incorporates the information contained in TSB-M-07(6)C. However, TSB-M-08(2)C: (1) changes what constitutes a substantial intercorporate asset transfer; (2) changes what items are excluded in determining whether a taxpayer has substantial intercorporate receipts or expenditures; and (3) provides additional information relating to the combined reporting of REIT's, RIC's and insurance corporations.

THE GENETELLI CONSULTING GROUP
State and Local Tax Services

If you have any questions regarding the within, or any other state and local tax matters, please do not hesitate to contact me.

Richard W. Genetelli
The Genetelli Consulting Group
State and Local Tax Consultants
431 Fifth Avenue, 3rd Floor
New York, NY 10016
Tel: (212) 684-4111
Fax: (212) 213-1020
<http://www.genetelli.com>