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NEW YORK: STATE AND LOCAL TAX ADVISORY

New York State Personal Income Tax Increases

Effective for a 3-year period beginning January 1, 2009, the top personal income tax rate is increased to 8.97% (taxable income above \$500,000). The rate is increased to 7.85% for joint filers with taxable income above \$300,000. Individuals with state or city adjusted gross income (AGI) over \$1 million cannot claim any itemized deductions except for 50% of their charitable contributions. (New York taxable income is equal to New York adjusted gross income, less state deductions and exemptions.)

Upper income earners are subject to a supplemental “recapture tax.” The supplemental tax recaptures the tax table benefit of having the first \$20,000 of income (for individual taxpayers), \$40,000 of income (for married persons filing jointly) taxed at rates below the highest rate. Instead, a flat rate of 8.97% applies to taxpayers with New York AGI in excess of \$550,000.

Impact on estimated tax filers...the “as if” rule

New York has also instituted a rule that says that a taxpayer’s yearly estimate required payment is the lesser of (i) 90% of the tax shown on the return for the taxable year or (ii) 100% of the tax shown on the return of the individual for the preceding taxable year, provided, however, that the tax shown on such return 2008 shall be calculated as if the 2009 rates had been in effect.

To avoid an underpayment of estimated taxes, payments must equal at least 90% of the amount of the individual's 2009 state income tax, or 100% (110% for income over \$150,000) of the individual's 2008 state income tax. This means that for married couples with income higher than \$300,000, or individuals with income over \$200,000, they will need to recalculate their 2008 tax due, in order to accurately make 2009 estimated tax payments.

Gains from the Sale of New York Property:

Sale by a non-resident of an interest in a pass-through entity

The definition of “real property located in the state” was amended to include interests in a partnership, LLC, S Corporation or closely held C Corporation (100 or fewer shareholders) owning real property in New York if the value of the real property exceeds 50% of the value of all assets of the entity. The rule applies to all sales on or after May 7, 2009. There is a two-year look back period to discourage taxpayers from transferring non-real property assets into existing entities to dilute the ratio. The gain from the sale of an interest in the entity will be allocated among the assets to determine the gain attributable to the real property portion.