2010 – 2011 NEW YORK STATE BUDGET

Governor Patterson signed the 2010-2011 New York State budget into law on August 4, 2010. The budget contains many significant tax changes for individuals and businesses.

Individuals: For individuals there are new limitations on deductions for individuals, especially for individuals with New York taxable income over $500,000. There were also new rules requiring certain types of termination pay and certain gains to New York S corporation shareholders to be sourced to New York for non-residents.

Businesses: In this budget and legislation passed earlier, businesses saw significant changes to business credits including the replacement of the Empire Zone Program with the Excelsior Program, changes to the Film Tax Credit, and deferrals of tax credits for certain businesses.

Sales Tax: Significant changes to the sales tax law intended to increase revenue were enacted including a temporary elimination of the exemption for clothing and footwear under $110, elimination of vendor credits for certain businesses, and requirements for hotel room remarketers such as on-line companies to charge sales tax for certain fees.

Following is a summary of some of the key income tax provisions affecting individuals and businesses, and key changes to sales tax and other rules:

KEY CHANGES TO PERSONAL INCOME TAXES

- CHARITABLE DEDUCTIONS FOR HIGH INCOME INDIVIDUALS – Itemized deductions for charitable contributions allowed for New York returns will be temporarily limited for high income taxpayers (generally with AGI greater than $10 million) to 25% of the federal deduction for the 2010 through 2012 tax years.
- SALES TAX DEDUCTION ADDBACK - Taxpayers that take an itemized deduction for state and local sales taxes on their federal returns will be required to add those amounts back on the NY return beginning this year (2010 tax returns).
- INCREASED TAX RATES FOR HIGH INCOME NYC RESIDENTS - Tax rates for New York City residents that earn above $500,000 will increase from 3.2% to 3.4% beginning this year (2010 tax returns).
- TAXATION OF TERMINATION PAY TO NONRESIDENTS - Certain termination pay such as termination agreements and covenants not-to-compete will be taxable to nonresidents if they relate to services or business performed in New York.
- INSTALLMENT SALES AND DEEMED ASSET SALES – The new laws require that certain installment sale gains and gains from deemed asset sales from corporate liquidations received by S corporation nonresident shareholders are taxable in New York to the extent that they were originally sourced to NY. These changes are effective for 2010 returns and some provisions are retroactive to all open tax years.

KEY CHANGES TO BUSINESS TAXES

- **TEMPORARY DEFERRAL OF TAX CREDITS** – Businesses with more than $2 million in aggregated tax credits will be required to defer claiming amounts in excess of $2 million until 2013. The credits so deferred will be claimed over the years 2013 through 2014. Contact us for details if this may affect you.
- **CAP ON BIOFUEL PRODUCTION CREDITS AND QETC CREDITS** – For partners of partnerships and S corporation shareholders the cap on the biofuel production credit and QETC Facilities, Operations and Training credit will be applied at the entity level effective for 2010 returns.
- **EXCELSIOR PROGRAM** – The Excelsior Jobs Program was signed into law earlier in 2010 by Governor Patterson and is intended to replace the Empire Zone Program. This program consists of 4 credits which will be available for tax years beginning in 2011. To be eligible for the program, businesses must generally be in certain industries specified under the act and must meet certain job creation targets specific to the industry. The credits available under the program consist of a jobs tax credit of up to a $5,000 per net new employee, an investment tax credit of up to 2% of qualified investments, a real property credit which begins at 50% of real property taxes and declines 10% per year after the first year, and an R&D credit of 10% of the portion of the federal credit attributable to R&D performed in NY. Businesses certified under the Empire Zones Program prior to its expiration on June 30, 2010 will be able to remain in the program or elect to drop out of the program permanently and apply for the Excelsior Program. We will be providing additional details regarding this program in future updates. Please contact us if you would like further details or believe you may be eligible for this program.
- **FILM PRODUCTION CREDIT AND NEW POST PRODUCTION CREDIT** – The new budget allocates an additional $420 million annually from 2010 through 2014 for the Empire State Film Production Credit. Included in this amount is $7 million annually allocated to a new Post Production Credit. The Post production credit will generally be equal to 10% of qualified post production costs at a qualified New York post production facility. The new law also extends the Film production credit to certain Independent production companies. Additional changes to certain eligibility requirements were also included in the budget.

KEY CHANGES TO SALES TAXES

- **EXEMPTION FOR CLOTHING UNDER $110 SUSPENDED** – The current sales tax exemption for clothing and footwear under $110 is suspended from October 1, 2010 through March 31, 2011 and will phase back in from April 2011 through March 2012.
- **REMARKETERS SUBJECT TO HOTEL ROOM OCCUPANCY TAXES** – Remarketers such as online travel companies will be required to collect sales tax on certain sales of hotel rooms and charges imposed by such companies will likewise be subject to tax.
- **VENDOR CREDITS ELIMINATED** – Certain vendors filing sales tax returns, generally those filing monthly and reporting $300,000 or more in gross receipts in any quarter, will no longer be allowed the $200 maximum credit available for the timely filing of their returns effective for sales tax returns due on September 20, 2010.
- **AFFILIATE NEXUS PROVISIONS NARROWED** – The new law narrows the “affiliate nexus” provisions as of June 1, 2009, so that a New York vendor will not create sales tax nexus for an affiliated out-of-state company merely by providing advice, accounting or legal services to the out-of-state entity, or by overseeing strategic planning, marketing, inventory, staffing, distribution or cash management for the non-New York entity.
- **CORPORATE AIRCRAFT AND VESSELS** – Effective immediately, the exclusion for certain intercorporate transfers, contributions, or distributions involving aircraft or other vessels under the Tax Law will not apply except for consolidations and mergers of non-affiliated companies. Previously certain out-of-state purchases of aircraft transferred to New York could be excluded from the requirements to pay sales tax.