

State Tax Observations

NYS Budget Bill Includes Increased Corporate and Personal Income Tax Rates and a New Pass-Through Entity Tax

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The New York State legislature and Governor Cuomo last week agreed on a budget for the year. The FY 2021-2022 State Budget Bill (the Bill), which the Governor is expected to sign, contains significant tax law changes to the New York corporate and personal income taxes and adds a new pass-through entity tax. It also provides a benefit for companies with remote workers during the pandemic. The most significant changes and some thoughts follow.

Business Corporation Franchise Tax

For tax years beginning on or after January 1, 2021 and prior to January 1, 2024 (tax years 2021-2023), the corporate tax rate increases from 6.5% to 7.25% for taxpayers with a business income base of more than \$5 million.

The rate increase appears to be structured as a “cliff” rate, rather than a graduated rate, so that **all** income is subject to the 7.25% rate if the \$5 million income base is exceeded. The \$5 million “business income base” amount refers to post-apportioned net income subject to tax in New York.

With this change, the highest combined New York State and City tax rate on corporations is 18.275% (a 7.25% New York State rate, plus a 2.175% Metropolitan Transit Authority rate, plus an 8.85% New York City rate).

A second corporate tax rate increase involves the reinstatement and increase in the State's capital base tax rate.

For tax years 2021-2023, the capital tax is imposed at a 0.1875% rate. The tax sunsets as of 2024. Co-ops, manufacturers and small companies are exempt.

Personal Income Tax

The State personal income tax rate increases effective as of January 1, 2021, for single filers reporting over \$1.1 million and joint filers reporting over \$2.2 million (from 8.82% to 9.65%). Further, there are additional income tax brackets and increased rates for those reporting over \$5 million (10.3%) and over \$25 million (10.9%) in income.

The combined New York State and City personal income tax rate imposed on residents will be the highest in the country at 14.776% [including 10.9% (State) plus 3.876% (New York City)].

Pass-Through Entity Tax (PTE Tax)

An elective pass-through entity level tax effective for tax years starting in 2021 is also contained in the Bill. With the PTE tax, New York State joins New Jersey, Connecticut, Rhode Island and a number of other states that are taking advantage of the recent IRS approval of the SALT workaround of the federal tax law that limits itemized deductions for state and local individual income taxation.

The entity, partnership or S corporation, is required to elect into the PTE tax annually by the due date of the first estimated tax payment (March 15 for calendar year filers) of the tax year for which the election is

effective. Once made, the annual election is irrevocable for the year. In addition, once filed, a PTE tax return cannot be amended without permission from New York State.

The PTE tax rates range over several brackets from 6.85% for PTE taxable income of less than \$2 million to 10.90% on PTE taxable income exceeding \$25 million.

Resident and nonresident partners, members or shareholders are allowed a credit against their New York State personal income tax liability for their share of the PTE tax that was paid on their behalf. An individual claiming the credit adds back to income an amount equal to the amount of the credit. If the PTE tax credit for an individual exceeds that person's New York State personal income tax due, the excess is available as a credit or refund.

The Bill contains a resident credit for New York State residents' share of the PTE tax payment of a "substantially similar" PTE tax paid to other states.

Tax Benefits Impacted by Remote Workers

The Bill allows, for the duration of the state-declared COVID-19 disaster, a company that required some or all its employees to work remotely to designate the remote work as having been performed at the location where it was performed prior to the emergency declaration for purposes of the tax benefits. Those tax benefits include those from the Excelsior jobs program and the START-UP NY program.

This provision expires on December 31, 2021, or the date the COVID-19 disaster is declared over, whichever is earlier. Other credit provisions are also contained in the Bill.

Contact Us

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