New York 2019-2020 State Budget Bill Enacted

Overview

On April 12, 2019, Governor Andrew Cuomo of New York signed into law the 2019-2020 Budget Act (S1509C/A2009C) (Budget Act).[1] The Budget Act includes amendments to the Article 9-A franchise tax on business corporations (including certain state credits and incentives) and the sales tax. In addition, the Budget Act clarifies the treatment of certain federal tax provisions enacted in the Tax Cuts and Jobs Act of 2017[2] (federal tax reform) for New York tax purposes. Further, the Budget Act makes certain changes to the New York City tax law.

This Tax Alert summarizes the more significant New York State and New York City tax law changes included in the Budget Act. Please see here for our alert providing information on New York State law changes enacted in end-of-session legislation, including changes to state corporate tax treatment of Global Intangible Low Taxed Income and revisions to New York's remote seller sales threshold for purposes of collecting sales tax.

Corporate Income Tax

Inclusion of Global Intangible Low Taxed Income (GILTI) in the Apportionment Factor – Part C[3]

The Budget Act amends N.Y. Tax Law section 210-A by adding a new subdivision, 5-a, to the apportionment statute, which addresses the apportionment of a taxpayer's GILTI inclusion under Internal Revenue Code (IRC) section 951A. The new provision directs taxpayers to include net GILTI receipts in the apportionment factor denominator and no GILTI receipts in the apportionment factor numerator. The net GILTI amount is defined as the amount required to be included in the taxpayer's federal gross income pursuant to IRC section 951A less the amount of deduction allowed under IRC section 250(a)(1)(B)(i).[4] This is consistent with the treatment the New York State Department of Taxation and Finance (Department) adopted in TSB-M-19(1)C and in the instructions to New York Tax the 2018 Forms CT-3 and CT-3A. The same provision was also added to the New York City Business Corporation Tax and the New York City General Corporation Tax.[5] These provisions are applicable for tax years beginning on or after January 1, 2018.[6]

Amendment to Qualified New York Manufacturer Test– Part D

For purposes of determining whether a taxpayer is a qualified New York manufacturer (QNYM), which provides for beneficial taxation to corporations, including a zero percent tax rate on the business income base, a taxpayer generally must meet a receipts test and an asset test. Specifically, under prior law, to meet the asset test to qualify as a QNYM, a taxpayer was required to own certain qualifying property in New York State, the adjusted basis for federal income tax purposes of which was at least $1 million at the close of the taxable year.

The federal tax reform revisions to bonus depreciation under IRC section 168(k) generally permit the immediate expensing of certain qualified property with a related reduction to the federal income tax basis in such property, which may impede a corporation from qualifying as a QNYM. Since New York State decouples from IRC section 168(k),[7] a taxpayer's asset basis generally would generally be higher for New York State tax purposes. Accordingly, the Budget Act amends the Tax Law, so the QNYM asset test is based on the adjusted basis of qualifying property for New York State tax purposes, rather than for federal income tax purposes.[8]

---

[1] Chapter 59, Laws of 2019. A copy is accessible here.
[2] Public Law 115-97.
[3] The references in the section titles are to the applicable sections in the Budget Act.
[4] S1509C, Part C, Section 1.
[5] S1509C, Part C, Sections 2 and 3.
[6] S1509C, Part C, Section 4.
[7] *See* N. Y. Tax Law § 208.9(b)(17).
[8] S1509C, Part D, Section 2. Under prior law, a taxpayer alternatively could satisfy the QNYM test if the taxpayer employed during the taxable year at least two thousand five hundred employees in manufacturing in New York and the taxpayer had property in the state used in manufacturing, the adjusted basis of which for federal income tax purposes was at least one hundred million dollars at

A similar provision was added to the New York City Business Corporation Tax, which provides a reduced tax rate on the business income base for "qualified New York manufacturing corporations" with business income below certain thresholds.[9] These provisions are applicable for tax years beginning on or after January 1, 2018.[10]

Exclude from Entire Net Income Certain Contributions to Capital – Part X

As part of federal tax reform, the IRC was amended to generally exclude from tax free treatment under IRC section 118 contributions to corporations by governmental entities or civic groups.[11] The Budget Act decouples from this provision, so that contributions to corporations from governmental entities and civic groups continue to be excluded from entire net income under Article 9-A,[12] as under prior federal law.

The Budget Act did not include an amendment to decouple from IRC section 118 in the New York City Business Corporation Tax, which is the tax generally imposed on C corporations in New York City, or the New York City Banking Corporation Tax (BCT), which is applicable to S corporations qualifying as banking corporations. In accordance, certain state and local tax contributions will be taxable in New York City for C corporations and for S corporations taxable under the BCT. The Budget Act did include an amendment to decouple from IRC section 118 under the New York City General Corporation Tax, generally applicable to S corporations in New York City that are not subject to the BCT.[13] These provisions are applicable for tax years beginning on or after January 1, 2018.[14]

Credits & Incentives

New York Employee Training Incentive Program– Part B

Effective immediately, eligibility for the Employee Training Incentive Program ("ETIP") was expanded to include training provided "in-house" by an approved business. Previously, under the ETIP, it was required to use an approved external training provider. In addition, the definition of internship programs eligible to receive funding under the program was expanded to include internships in the fields of software development and clean energy. Internship programs in advanced technology and life sciences continue to be eligible as well.[15]

Empire State Commercial Production Credit – Part AAA

Effective for taxable years beginning on or after January 1, 2019,[16] the credit percentage rate for computation of the Empire State Commercial Production Credit was increased:

- For companies filming or recording qualified commercials "downstate" within the Metropolitan Commuter Transportation District ("MCTD"), the credit rate was increased from 5% of qualified production costs exceeding $500,000, to 20% of such costs.
- For companies filming or recording qualified commercials in New York State outside of the MCTD, the credit rate was increased from 5% of qualified production costs to 30% and the credit rate now applies to all qualified production costs (previously limited to incremental qualified production costs above $100,000) provided that such production costs exceed $100,000.

In addition, the definition of the term "qualified commercial" was expanded to include commercials distributed over the internet and to clarify that qualified commercials may be "of any length."[17]

Empire State Film Production Credit – Part SSS

The Empire State Film Production Credit was extended by two years, through December 31, 2024.[18]

---

the close of the taxable year. Under the amended Budget Act provision, the relevant adjusted basis of property for this purpose is adjusted basis for New York State tax purposes. S1509, Part D, Section 1.
[9] S1509C, Part D, Section 3.
[10] S1509C, Part D, Section 4.
[11] *See* IRC § 118(b)(2).
[12] S1509C, Part X, Section 1.
[13] S1509C, Part X, Section 3.
[14] S1509C, Part X, Section 4.
[15] S1509C, Part B, Sections 1, 2 and 3.
[16] S1509C, Part AAA, Section 2.
[17] S1509C, Part AAA, Section 1.
[18] S1509C, Part SSS, Sections 1, 2 and 3.

Sales and Use Taxes

Eliminate Internet Tax Advantage – Part G

The Budget Act amends the N.Y. Tax Law sections 1101(e)(1) and 1131(1) to require marketplace providers to collect sales tax on sales of tangible personal property. "Marketplace provider" generally is defined as a person who collects the purchase price from customers and provides the forum where the transaction occurs, either physical or virtual. To reduce the number of persons who have tax collection responsibilities, the amendment relieves sellers using marketplace providers of any tax collection responsibilities, as long as the seller receives a certification from the marketplace provider indicating that they will collect the tax on the seller's behalf. A seller who makes sales of tangible personal property through a marketplace provider and obtains properly completed certification that the marketplace provider will collect the tax generally would have no New York State sales tax collection and remittance responsibilities. These provisions apply to sales made on or after June 1, 2019.[19]

Discontinue the Energy Services Sales Tax Exemption – Part H

The Budget Act repeals the exemption under N.Y. Tax Law section 1105(b) and N.Y. Tax Law section 1105-C from sales and use taxes on receipts from the transportation, transmission, or distribution of gas or electricity when provided by someone other than the vendor of the gas or electricity. Additionally, the Budget Act repeals the separate authorization of N.Y.C. Admin. Code section 11-2001(b) for the reduced sales tax rate of 4.5%. These provisions are effective on June 1, 2019.[20]

Extend Certain Sales Tax Exemption Related to the Dodd-Frank Protection Act - Part V

The Budget Act amends N.Y. Tax Law section 1115(jj) by extending the sales and use tax exemption that is provided to certain financial institutions subject to the Dodd-Frank Wall Street Reform and Consumer Protection Act to June 30, 2021.[21]

Real Estate Transfer Tax

Amendments to Real Estate Transfer Tax

The Budget Act increases the New York Real Estate Transfer Tax (currently 0.4%)[22] by $1.25 for each $500 of consideration (0.25%) on conveyances of property in New York City where (i) the total consideration is $3 million or more if the property is residential real property or (ii) the total consideration is $2 million or more for other real property.[23] A supplemental New York Real Estate Transfer Tax also was enacted for conveyances of residential real property in New York City with consideration of $2 million or more, which caps at 2.9% for conveyances with consideration of $25 million or more.[24] The supplemental tax is in addition to the existing "additional tax" of 1% imposed on each conveyance of New York residential real property or interest therein when the consideration for the entire conveyance is $1 million or more.[25]

The new provisions take effect July 1, 2019 and apply to conveyances occurring on or after such date other than conveyances which are made pursuant to binding written contracts entered into on or before April 1, 2019.[26]

Considerations

The Budget Act addresses certain changes to New York State and New York City taxes in response to federal tax reform, although additional changes may be forthcoming. Taxpayers impacted by the enactment of the Budget Act and/or with concerns over federal tax reform as applied to New York State or New York City tax law should reach out to their tax advisors.

---

[19] S1509C, Part G, Section 7.
[20] S1509C, Part H, Section 5.
[21] S1509C, Part V, Section 1.
[22] N. Y. Tax Law § 1402.
[23] S1509C, Part OOO, Section 1.
[24] S1509C, Part OOO, Section 3.
[25] New York Tax Law Section 1402-a.
[26] S1509C, Part OOO, Section 5.

Contacts:

If you have questions regarding S1509C or other New York State or New York City tax matters, please contact any of the following Deloitte professionals:

Abe Teicher
Partner, Income/Franchise
Deloitte Tax LLP, New York
+1 212 436 3370
ateicher@deloitte.com

Don Roveto
Partner, Income/Franchise
Deloitte Tax LLP, New York
+1 212 492 2276
droveto@deloitte.com

Jack Trachtenberg
Principal, Income/Franchise
Deloitte Tax LLP, New York
+1 212 436.4324
jtrachtenberg@deloitte.com

Ken Jewell
Managing Director, Washington National Tax
Deloitte Tax LLP, Parsippany
+1 973 602 4309
kjewell@deloitte.com

Dennis O'Toole
Managing Director, Income/Franchise
Deloitte Tax LLP, New York
+1 212 436 6136
deotoole@deloitte.com

Doug Tyler
Managing Director, Credits & Incentives
Deloitte Tax LLP, New York
+1 212 436 3703
dtyler@deloitte.com

Phil Lee
Managing Director, Sales/Use
Deloitte Tax LLP, Jericho
+1 516 918 7809
philee@deloitte.com

Mary Jo Brady
Senior Manager, Income/Franchise
Deloitte Tax LLP, Jericho
+1 516 918 7087
mabrady@deloitte.com

Irene Manos
Senior Manager, Credits & Incentives
Deloitte Tax LLP, Stamford
+1 917 371 7880
imanos@deloitte.com

The authors of this alert would like to acknowledge the contributions of Anna Uger to the drafting process. Anna is a Tax Senior Consultant working in the New York Multistate Tax practice of Deloitte Tax LLP.

For further information, visit our website at www.deloitte.com/us/multistatetax

Follow @DeloitteTax