



MULTISTATE INCOME/FRANCHISE TAX

New York 2024 Executive Budget would extend higher Article 9-A tax rates and amend MCTMT

Tax Alert

Overview

New York's governor released the 2023-2024 New York Executive Budget ("Budget") on February 1, 2023. The Budget contains provisions proposing to extend certain higher Article 9-A (Franchise Tax on Business Corporations) business income tax rates that were set to expire at the end of 2023. The Budget would also amend the Metropolitan Commuter Transportation Mobility Tax ("MCTMT") to provide the limited partner exclusion only to passive limited partners who neither take part in the control of the partnership or participate in management or operations of the partnership and to increase the tax rate. The Budget would further make technical changes to the New York State and New York City pass-through entity taxes, among other provisions.

This Tax Alert summarizes some of the proposals in the 2023-2024 New York Executive Budget.

Summary of the Budget

Highlights of the Budget [Revenue Bill](#), as well as the increase to the tax rate imposed in the MCTMT, which is included in the Budget [Transportation Bill](#), are noted below.

- Extend certain higher tax rates under Article 9-A through tax year 2026.
 - This provision would extend the current 7.25% business income tax rate for three years, through tax year 2026, for taxpayers with a business income base over \$5 million. This provision would also extend the current 0.1875% capital base tax rate for three years, through tax year 2026.
- Address the taxability of certain limited partners' distributive share under the MCTMT

- This provision would amend for purposes of the MCTMT the definition of “net earnings from self-employment” (“NESE”), which currently is tied to the definition of NESE in IRC section 1402 and generally excludes distributive share items of income or loss of limited partners, to address the treatment of limited partners who are actively engaged in the management, operations, or control of the partnership. Specifically, this provision would require the distributive share items of such non-passive limited partners to be subject to the MCTMT and would take effect immediately. A question exists as to whether the New York State Department of Taxation and Finance (“Department”) would seek to apply this provision retroactively.
- Increase the MCTMT tax rate
 - This provision would increase the top MCTMT rate from 0.34% to 0.50% -- both on payroll of employers conducting business in the Metropolitan Commuter Transportation District (“MCTD”) (in excess of \$437,500 in any calendar quarter) and NESE attributable to the MCTD (if such earnings exceed \$50k for the tax year). The increase on the payroll-based tax would be effective for quarters beginning on or after July 1, 2023. The increase to the NESE-based tax rate would take place in two steps: step one would be an increase to 0.42% and would apply to taxable years beginning on or after January 1, 2023 and before January 1, 2024; step two would be an increase to 0.50% and would apply to taxable years beginning on or after January 1, 2024.
- Technical Changes to the Pass-Through Entity Tax – Several technical changes are proposed to the New York State Pass-Through Entity Tax (“PTET”) and the New York City Pass-Through Entity Tax (“NYC PTET”), including but not limited to:
 - Proposal to amend the definitions for “pass-through entity taxable income” and “city pass-through entity taxable income” to require entities to include any PTET taxes, NYC PTET taxes, and substantially similar taxes paid to other jurisdictions that were paid and deducted in the taxable year for federal income tax purposes, in the computation of their PTET taxable income and NYC PTET taxable income; to be effective from the date of enactment of the PTET and NYC PTET, as applicable.
 - Proposal to amend the definition of “city taxpayer” to include city resident trusts and estates so that S-corporations and partnerships with city resident trust and estate owners may elect to participate in NYC PTET; to be effective for tax years beginning on or after January 1, 2023.
 - Proposal to clarify that entities must elect into PTET and NYC PTET “on or before” the due date of the first estimated payment and that the election cannot be revoked after such due date; to be effective from the date of enactment of the PTET and NYC PTET, as applicable.
- Allow the Department the right to appeal Tax Appeals Tribunal decisions
 - This provision would extend to the Department the right to appeal adverse Tax Appeals Tribunal decisions. If enacted, this provision would take effect immediately and apply to decisions and orders of the Tax Appeals Tribunal issued on or after that

date. This provision was proposed in prior legislative sessions and was not enacted.

- Require state S corporation conformity with federal treatment
 - This provision would require all federal S corporations to be treated as S corporations for New York purposes unless the corporation is a qualified New York manufacturer and chooses New York C corporation status. If enacted, this provision would apply to taxable years beginning on or after January 1, 2024. A version of this provision was proposed in prior legislative sessions and was not enacted.
- Extend reduced transfer tax rates for qualifying real estate investment trusts (“REITs”)
 - This proposal would extend for three years (until September 1, 2026) tax rate reductions for REITs under the New York State real estate transfer tax and the New York City real property transfer tax for conveyances of real property or an interest therein.
- Authority to abate interest and penalties for taxpayers impacted by declared disasters
 - This proposal would authorize the Department to abate interest charges on the underpayment of tax for taxpayers who are affected by a disaster declared by the president or the governor, regardless of a tax deadline extension provided by the Department. A separate proposal would allow the Department to waive penalties for underpayment of estimated taxes by corporate taxpayers impacted by casualty, disaster, or other unusual circumstances (similar to law in effect under the personal income tax). If enacted, these provisions would be effective immediately.
- Tax credits & incentives proposals include, but are not limited to:
 - Extending the film tax credit for an additional five years, increasing the annual funding cap of the tax credit, capping the credit for salaries of certain workers, and increasing the credit for qualified expenses to 30%;
 - Making the Investment Tax Credit for qualified farmers refundable through December 31, 2027; and
 - Re-enacting the New York City biotechnology tax credit, which expired in 2019.

Considerations

As the release of the Budget generally marks the beginning of the budget process, it is too early to predict which, if any, of these provisions may be enacted. Still to come are 30-day amendments issued by the governor, the single house bills to be released by the senate and the assembly, and negotiation leading to a final budget which generally must be passed by the legislature and signed by the governor in time for the state fiscal year beginning on April 1, although the enactment date of the Budget has extended into early or mid-April in some prior years.

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