



MULTISTATE INCOME/FRANCHISE TAX

New York enacts 2023 – 2024 Budget Act Tax Alert

Overview

On May 3, 2023, New York’s 2023-2024 Budget Act, including [S.4009C/A.3009C](#) and [S.4008C/A.3008C](#) (collectively the “2023-2024 Budget Act”) was signed into law. The tax-related provisions include extending for another three years certain expiring Article 9-A tax rates, setting a fixed rate for the Metropolitan transportation business tax surcharge (“MTA surcharge”), increasing the top Metropolitan Commuter Transportation Mobility Tax (“MCTMT”) rate, making some technical changes involving the New York State and New York City pass-through entity taxes, and other changes. The Budget Act omits personal income tax rate increases that were proposed by the New York State Legislature.

This Tax Alert summarizes certain provisions enacted in the 2023-2024 Budget Act.

Article 9-A rates, MTA surcharge, and the MCTMT

The 2023-2024 Budget Act includes the following provisions:

- Extends the current 7.25% corporate income tax rate for taxpayers with apportioned income over \$5 million through 2026; also extends the current 0.1875% capital base tax rate through 2026.
- Establishes a fixed 30% rate for the MTA surcharge beginning January 1, 2024.
- Increases the MCTMT rate, which generally is imposed on employer payroll expense and on individuals with net earnings from self-employment (“NESE”) attributable to the Metropolitan Commuter Transportation District (“MCTD”). The amendments focus on New York City-based employers and New York City business activities (*i.e.*, excluding the New York suburban counties included in the MCTD), and imposes:
 - A new increased rate of 0.60% (previously 0.34%) on payroll expense for employers who engage in business in New York

City with payroll expense in excess of \$437,500 in any calendar quarter effective for tax quarters beginning July 1, 2023; and

- A new increased rate on individuals with NESE attributable to New York City (if such earnings exceed \$50,000) of 0.47% , effective for tax years beginning January 1, 2023 and 0.60% for tax years beginning January 1, 2024 (previous rate was 0.34%).
- Amends for purposes of the MCTMT the definition of NESE, which previously was tied to the definition of NESE in Internal Revenue Code 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. This provision requires the distributive share items of such non-passive limited partners to be subject to the MCTMT and takes effect immediately.

NYS Tax Commissioner appeals, False Claims Act, and NYS and NYC Pass-through Entity Tax changes

The newly enacted 2023-2024 Budget Act also:

- Extends to the New York State Tax Commissioner the right to appeal adverse New York State Tax Appeals Tribunal decisions in consultation with the attorney general, when the decision at issue “is premised on interpretation of the state or federal constitution, international law, federal law, the law of other states, or other legal matters that are beyond the purview of the state legislature.” Interest and penalties on the underlying tax liability at issue in the decision under appeal that would continue to accrue are stayed when the Commissioner appeals until fifteen days after the issuance of a judicial decision where no further appeals of such decision are allowed. This provision takes effect immediately and applies to decisions and orders of the New York Tax Appeals Tribunal issued on or after May 3, 2023.
- Amends New York’s False Claims Act to include persons, defined as “any natural person, partnership, corporation, association or any other legal entity or individual, other than the state or a local government,” who are alleged to have “knowing concealed or knowingly and improperly avoided an obligation to pay taxes to the state or a local government.” This provision takes effect immediately and in any pending case applies to any tax obligation knowingly concealed or knowingly avoided before, on, or after May 3, 2023. However, that in any action filed after May 3, 2023, this provision applies to tax obligations knowingly concealed or knowingly avoided on or after May 1, 2020.
- Makes several technical changes to the New York State Pass-Through Entity Tax ("PTET") and the New York City Pass-Through Entity Tax ("NYC PTET"), including:
 - Amends 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. This is effective from the date of enactment of the PTET and NYC PTET, as applicable.
 - Amends 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. This is effective for tax years beginning on or after January 1, 2023.

- Clarifies 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. This is effective from the date of enactment of the PTET and NYC PTET, as applicable.

Other changes

The Budget Act also extends and amends the following provisions:

- Extends for three years (until September 1, 2026) tax rate reductions for qualifying real estate investment trusts (“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.
- Amends certain tax credits and incentives, including but not limited to:
 - Designating the New York State Investment Tax Credit as refundable for eligible farmers for taxable years beginning before January 1, 2028.
 - Repealing provisions allowing for the transfer of unused Investment Tax Credit in a corporate reorganization, as defined under Internal Revenue Code section 368 (a)(1)(D). An analysis will be required to assess if such reorganizations may result in recapture of previously claimed investment tax credits.
 - Establishing a refundable Child Care Tax Credit for businesses that expand childcare services for the children of their employees, directly or through a third-party through December 31, 2024.
 - Authorizing the renewal of the New York City Biotechnology Tax Credit for taxable years beginning on or after January 1, 2023 and before January 1, 2026 for emerging biotechnology companies with 100 or fewer employees.
 - Modifying the Brownfield Redevelopment Tax Credit to allow the site preparation credit component of the credit to be claimed for a period of 7 years after certificates of completion issued between July 1, 2015 and June 24, 2021, and for an additional period for certain sites within the state.
 - 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%.

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