



MULTISTATE INCOME/FRANCHISE TAX

New York City provides interest and penalty relief for S corporations making the New York State pass-through entity tax election

Tax Alert

Overview

On May 17, 2022, the New York City Department of Finance (“DOF”) issued [Finance Memorandum 22-2](#) (the “Finance Memo”) which includes information on interest and penalty relief for certain taxpayers required to add back the New York State pass-through entity tax (“NYS PTET”) deducted for federal income tax purposes for tax years beginning on or after January 1, 2021. Specifically, the DOF will not impose interest or penalties on S corporations electing to pay NYS PTET at the entity level that are subject to the General Corporation Tax (“GCT”) or Banking Corporation Tax (“Bank Tax”) with respect to additional tax due resulting from the NYS PTET addback if paid by June 15, 2022.

This Tax Alert summarizes the relief included in the Finance Memo.

Finance Memorandum 22-2

On April 9, 2022, New York’s Governor signed into law New York’s 2022-2023 Budget Act, including [Senate Bill S8009C/Assembly Bill A9009C](#) (“the Budget Act”), which clarified for New York City GCT and Bank Tax purposes, the addback for “taxes on or measured by profits or income” under New York City Administrative Code sections 11-602(8)(b)(3) and 11-641(b)(2) includes the NYS PTET. This amendment is effective for tax years beginning on or after January 1, 2021 and impacts S corporations subject to the GCT or Bank Tax that have made the NYS PTET election. Pursuant to the Finance Memo, the DOF will not impose penalties or apply interest for GCT and Bank Tax taxpayers with respect to the additional tax due resulting from the NYS PTET addback if paid by June 15, 2022.

GCT and Bank Tax taxpayers subject to the NYS PTET addback who have already filed a 2021 tax return must file an amended return adding back

the NYS PTET. If the taxpayer files an amended return and makes the required payment of additional tax on or before June 15, 2022, the DOF will not apply interest or impose penalties with respect to the additional tax resulting from the addback. Failure to file an amended return by June 15, 2022 will result in penalties and interest on the tax due from the addback accruing from June 16, 2022.

GCT and Bank Tax taxpayers subject to the NYS PTET addback whose 2021 tax return is due before June 15, 2022, and who have not yet filed their 2021 tax return or extension to file, may file their return or extension and pay the additional tax related to the addback on or before June 15, 2022 to be relieved of penalties and interest on the additional tax due resulting from the addback. Failure to file an extension or return by the normally prescribed due date will result in penalties and interest on the tax due from the addback accruing from June 16, 2022, and from the tax due for any other reason from when the return was normally required to be filed. The DOF will not provide relief with respect to tax due for reasons other than the NYS PTET addback.

GCT and Bank Tax taxpayers subject to the NYS PTET addback who have filed or will file an extension must ensure that the total of any estimated tax payments required are sufficient to include the additional tax due resulting from the NYS PTET addback. GCT and Bank Tax taxpayers have until June 15, 2022 to make such required estimated payment without being subject to the penalty for underpayment of estimated tax. These taxpayers will be fully subject to the penalty for underpayment of estimated tax with respect to an underpayment for any reason other than the NYS PTET addback.

Taxpayers entitled to relief under the Finance Memo filing a return or an amended return for this purpose on or before June 15, 2022 should enter special condition code "PT" in the special condition code box at the top of the return. GCT taxpayers filing an original or amended 2021 return must include the amount of the NYS PTET addback on Form NYC 3L or 3A, Schedule B, line 5a, Form NYC-4S, Schedule B, line 3a, or Form NYC-4S-EZ, Schedule B, line 2, whichever is applicable. Bank Tax taxpayers filing an original or amended return must include the amount of the NYS PTET addback on Form NYC-1, Schedule B, line 12.

Partnerships subject to the New York City Unincorporated Business Tax ("UBT") were already required to add back NYS PTET for tax years beginning on or after January 1, 2021 under New York City Administrative Code section 11-507(4). As such, the relief under the Finance Memo does not apply to these taxpayers.

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Have a question relating to this or any other pass-through entity tax regime? Reach out to one of our national multistate pass-through entity tax specialists.

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