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MULTISTATE INCOME/FRANCHISE TAX

New York enacts fiscal year 2027 budget including New York City surcharge on non-primary residences

Tax Alert

Overview

On May 28, 2026, the New York State budget for fiscal year 2027, Assembly Bill A10009C ("budget bill") was enacted, which includes a three-year extension of the higher Article 9-A corporate income tax rate and the capital base tax. The legislation also decouples New York State ("State") and New York City ("City") tax law from certain provisions of the One Big Beautiful Bill Act ("OBBBA") and establishes a City surcharge on residential property that does not serve as a primary residence, often described as a "pied-à-terre" or "second home" tax. The enacted legislation does not adopt several proposals advanced earlier in the session, including increased corporate and personal income tax rates; a tax on all-cash real estate transactions above $1 million; extension of the annual PTET election date from March 15 to September 15; or reductions to the State and City pass-through entity tax credits.

This Tax Alert summarizes some of the relevant provisions of the enacted budget bill.

Corporate and business tax changes

Extension of Article 9-A corporate tax rate (Part E)

The budget bill extends the State's Article 9-A business income tax rate under N.Y. Tax Law § 210 for an additional three years. For taxable years beginning before January 1, 2030, taxpayers with a business income base greater than $5 million remain subject to a rate of 7.25 percent, after which the rate reverts to 6.5 percent; the capital base tax rate of 0.1875 percent was extended for another three years, for taxable years beginning before January 1, 2030.

Federal decoupling for State and City taxpayers (Parts F and G)

Parts F and G decouple State and City tax law, respectively, from certain provisions of OBBBA. Both parts apply to taxable years beginning on or after January 1, 2025. Part F adds decoupling provisions to the New York State Franchise Tax on Business Corporations, the New York State Personal Income Tax, and the New York State Franchise Tax on Insurance Corporations. Part G adds decoupling provisions to the New York City business taxes (the Business Corporation Tax, the General Corporation Tax, the Banking Corporation Tax, and the Unincorporated Business Tax). The State and City address two of the same federal provisions but reach the result through different statutory language and some different applications.

- **IRC § 168(n), qualified production property.** Both the State and City decouple from this OBBBA amendment for tax years beginning on or after January 1, 2025. Accordingly, depreciation is computed as if the taxpayer had not made the IRC § 168(n) election. The City adds an additional provision specifying that qualified production property is not treated as IRC § 1245 property for City business tax purposes, which has no State counterpart.

- **IRC §174A, research and experimental expenditures (R&E).** For tax years beginning on or after January 1, 2025, both jurisdictions decouple from the OBBBA expensing of domestic R&E, but the mechanics differ. The State generally decouples from the treatment of R&E under IRC §§ 174 and 174A. The State amortizes foreign and domestic R&E over sixty months as if the election in IRC § 174A(c) applied, beginning with the month in which the taxpayer first realizes benefits from such expenditures. The City decouples from IRC § 174A and amortizes domestic R&E in the same manner as foreign R&E under IRC § 174, except that the amortization is rated over five years beginning at the midpoint of the taxable year in which the expenditures are paid or incurred, and foreign R&E remains on the IRC § 174 15-year amortization schedule.
- **OBBBA catch-up election for pre-2025 R&E.** The State expressly decouples from the OBBBA catch-up election (see Public Law 119-21, title VII, § 70302(f)(2)(A)) which allows deduction for domestic R&E expenditures which were paid or incurred in taxable years beginning after December 31, 2021, and before January 1, 2025, in the 2025 tax year or ratably over the next two taxable years. Any amount claimed as a federal deduction under the OBBBA catch-up election must be added back for State purposes and amortized as if IRC § 174 in effect as of January 1, 2022. Unlike the State's add-back provision, which expressly references deductions "pursuant to federal Public Law 119-21, title VII, section 70302(f)(2)(A)," the City's IRC § 174A add-back provision does not specifically reference the OBBBA catch-up election, leaving uncertainty for City taxpayers that make such election.
- **IRC §§ 163(j) and 179, City-only items.** For § 163(j), the City increases taxable income to account for the increase in the federal interest deduction attributable to additional adjusted taxable income from depreciation, amortization, or depletion. For § 179, the City generally fixes the dollar limitations by reference to pre-2025 law, while the State conforms to the higher federal limits.
- **Penalty and interest abatement for the 2025 transition.** The effective-date provisions of both Part F and Part G provide that no interest or penalty will accrue on returns under a valid extension that are filed within the period of extension, or on amended returns filed for taxable years beginning on or after January 1, 2025 and before January 1, 2026, that solely report the modifications required by the legislation. Since abatement is limited to returns that solely report the required modifications, this will not extend to underpayments that include unrelated adjustments.

New York City surcharge on non-primary residences (Part HH)

The budget bill adds a new Article 30-C to the tax laws authorizing a city with a population of one million or more to impose a surcharge on residential property that does not serve as a primary residence. The budget bill also adds new chapter 32 (§§ 11-3201–11-3208) to title 11 of the New York City Administrative Code, which formally enacts this surcharge, often described as a pied-à-terre or second home tax. The surcharge is imposed beginning July 1, 2026 on a covered property that is not a primary residence and sunsets June 30, 2031, unless extended. The thresholds and valuation methods are structured in two phases.

Phase one: fiscal years beginning on or after July 1, 2026 and before July 1, 2028. During the phase one period, the surcharge applies to class one property with a market value of at least $5 million, and to residential condominium and residential cooperative dwelling units with a market value of at least $1 million. The rates are tiered as follows:

Property type	Market value tier	Rate
Class one property	$5M up to $15M	0.8%
Class one property	Above $15M up to $25M	1.05%
Class one property	Above $25M	1.3%
Condo or co-op dwelling unit	$1M up to $3M	4.0%

Property type	Market value tier	Rate
Condo or co-op dwelling unit	Above $3M up to $5M	5.25%
Condo or co-op dwelling unit	Above $5M	6.5%

Phase two: fiscal years beginning on or after July 1, 2028. During the phase two period, the surcharge applies to all covered property with a market value of at least $5 million, measured using a method that considers sales of comparable properties. The rates are tiered as follows:

Market value tier (all covered property)	Rate
$5M up to $15M	0.8%
Above $15M up to $25M	1.05%
Above $25M	1.3%

The New York City Department of Finance will make an annual initial determination of whether a covered property is not a primary residence and will provide a notice to the owner with an opportunity for such owner to submit proof of primary residence. For the fiscal year beginning July 1, 2026, the Department will provide that notice no later than August 30, 2026. A primary residence determination will be based on factors identified by the Department's rules, including whether the property was occupied in the aggregate for a majority of days during a calendar year by a covered owner.

Notably, the legislation does not expressly address whether a qualifying City statutory resident (*i.e.*, an individual who maintains a permanent place of abode in the City and spends more than 183 days in the City, whether or not domiciled there for any portion of the taxable year) may be treated as occupying a covered property as a primary resident for surcharge purposes.

The surcharge is administered and collected in the same manner as real property taxes, is separate and distinct from other real property taxes, and is not reduced by any abatement, credit, or exemption of real property taxes otherwise authorized by law. The Department may impose penalties of up to 50 percent of the surcharge for inaccurate or misleading certifications submitted negligently or in bad faith. In addition, on June 5, 2026, the Department published proposed regulations providing additional details related to the surcharge, including the imposition of a penalty equal to 300 percent of the surcharge difference caused by a lower valuation due to inaccurate or misleading certifications.

Other legislative changes

REIT transfer tax provisions (Part M) – Extends for three years (until September 1, 2029) 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.

Sales tax vendor re-registration (Part N) – Establishes a sales tax vendor re-registration program requiring existing vendors to re-register and obtain updated certificates of authority by December 31, 2030; also includes a limited penalty and interest relief program allowing qualifying vendors to resolve outstanding sales tax liabilities, generally with penalty abatement and a 50 percent reduction of accrued interest, for amounts paid by December 31, 2026.

Alternative fuels (Part S) – Extends the existing statutory framework relating to providing exemptions, reimbursements and credits from various taxes for certain alternative fuels to September 1, 2031.

Personal income tax subtraction related to IRC § 962 election (Part AA) – Provides that the amount of any distribution included in federal adjusted gross income pursuant to IRC § 962(d) may be subtracted from federal adjusted gross income for personal income tax purposes. Applies to tax years beginning on or after January 1, 2026.

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