

Income/Franchise:

New York City Department of Finance Highlights 2022 Law Changes on Economic Nexus and PTET

Finance Memorandum 22-3, N.Y.C. Dept. of Fin. (9/16/22). The New York City (City) Department of Finance (Department) issued a memorandum providing an overview of recently enacted state tax law changes, which among other revisions:

URL: <https://www1.nyc.gov/assets/finance/downloads/pdf/fm/2022/fm-22-3.pdf>

1. Align certain provisions of the City Administrative Code with New York State Tax Law – including adding an economic nexus standard for the City Business Corporation Tax (BCT) applicable to tax years beginning on or after January 1, 2022; and
2. Amend the newly created City pass-through entity tax (NYC PTET) [see previously issued Multistate Tax Alert for more details on original enactment of the NYC PTET earlier this year], providing that the NYC PTET is in effect beginning with tax year 2022, rather than with tax year 2023 [see SB 9454, signed by gov. 8/31/22, and *State Tax Matters*, Issue 2022-35, for more details on this legislation].

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-new-york-2022-2023-budget-includes-revisions-to-pass-through-entity-tax-and-creates-new-york-city-pass-through-entity-tax.pdf>

URL: <https://www.nysenate.gov/legislation/bills/2021/s9454>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220902_4.html

According to the Department's memorandum, the new law amends the BCT to include economic nexus standards like those found under the Article 9-A state franchise tax on business corporations, now providing that corporations deriving receipts of \$1 million or more from City sources will be subject to the BCT. Furthermore, "a corporation with less than \$1 million, but at least \$10,000 of receipts from City sources, will also be subject to the BCT if the corporation is part of a unitary group that, in the aggregate, derives receipts from City sources of \$1 million or more." The Department notes that these economic nexus threshold amounts may be adjusted annually to reflect changes in the Consumer Price Index.

The memorandum also explains how new law amends and expands the existing economic nexus provisions for credit card issuers. Previously, according to the Department, a corporation was doing business in the City if, for the taxable year, it met one of the following three listed criteria:

- The corporation had at least 1,000 or more credit card customers who have a mailing address in the City;
- The corporation had merchant customer contracts amounting to 1,000 or more locations in the City; or
- The sum of such credit card customers and contract locations described in the above two bullets amounted to 1,000 or more.

Now, under the new law, "a corporation with at least ten credit card customers or merchant locations, or ten customers and locations, in the City, will be considered to be doing business in the City if it is part of a unitary group of which the aggregate of all members of such group having at least ten customers or merchant

locations, or ten customers and locations, within the [C]ity” meets any one of these three listed criteria. Please contact us with any questions.

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