

Income/Franchise:

New York: Introduced Budget Extends Expiring Business Income Tax Rate and Increases MCTMT Rate

FY 2024 Executive Budget Legislation, N.Y.S. Div. of the Budget (2/1/23). New York Governor Kathy Hochul introduced her FY 2024 Executive Budget, which incorporates some tax-related proposals such as:

URL: <https://www.budget.ny.gov/pubs/archive/fy24/ex/fy24bills.html>

- Extending 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;
- Extending the current 0.1875% capital base tax rate for three years, through tax year 2026;
- Amending for purposes of the Metropolitan Commuter Transportation Mobility Tax (MCTMT) the definition of “net earnings from self-employment” (NESE) which currently is 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 operations of the partnership; this would allow for the distributive share items of such non-passive limited partners to be subject to the MCTMT and would take effect immediately;
- Increasing the top MCTMT rate from 0.34% to 0.50%, both on payroll (in excess of \$437,500 in any calendar quarter) and NESE attributable to the Metropolitan Commuter Transportation District (MCTD) (if such earnings exceed \$50k for the tax year), although the increase to the rate imposed on NESE 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); the increase on the payroll-based tax would be effective for quarters beginning on or after July 1, 2023;
- Making 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:
 - Amending 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;
 - Clarifying that entities must elect into PTET and NYC PTET “on or before” the due date of the first estimated payment and that election cannot be revoked after such due date; and
 - Amending 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 the NYC PTET;
- Providing the New York Department of Taxation and Finance (Department) with the right to appeal adverse New York Tax Appeals Tribunal decisions, which would apply to decisions and orders issued by the New York Tax Appeals Tribunal on or after the date of enactment;

- Requiring 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, applicable to taxable years beginning on or after January 1, 2024;
- Allowing 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 waivers in effect under the personal income tax);
- 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.

See forthcoming Multistate Tax Alert for more details on this proposal, and please contact us with any questions in the meantime.

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