

Income/Franchise:

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

S.4009C/A.3009C; S.4008C/A.3008C, signed by gov. 5/3/23. New York Governor Kathy Hochul signed the New York FY 2024 Budget (Budget), which includes some tax-related provisions such as extending for another three years certain expiring Article 9-A tax rates, increasing the top Metropolitan Commuter Transportation Mobility Tax (“MCTMT”) rate, and making some technical changes involving the New York State and New York City pass-through entity taxes. The Budget omits personal income tax rate increases that were proposed by the New York State Legislature. Some highlights of the enacted Budget include:

[URL: https://legislation.nysenate.gov/pdf/bills/2023/s4009c](https://legislation.nysenate.gov/pdf/bills/2023/s4009c)

[URL: https://legislation.nysenate.gov/pdf/bills/2023/s4008c](https://legislation.nysenate.gov/pdf/bills/2023/s4008c)

- Extending the current 7.25% corporate income tax rate for taxpayers with income over \$5 million through 2026; also extending the current 0.1875% capital base tax rate through 2026;
- Establishing a permanent 30% rate for the Metropolitan transportation business tax surcharge (“MTA surcharge”) beginning January 1, 2024;
- Extending to the New York State Tax Commissioner the right to appeal adverse New York Tax Appeals Tribunal decisions; 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;
- Amending New York’s False Claims Act to include non-filers; 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;
- Increasing 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 impose a higher tax rate on:
 - Employers who engage in business in New York City; imposing a new rate of 0.60% on payroll expense for employers with payroll expense in excess of \$437,500 in any calendar quarter – this is effective for tax quarters beginning July 1, 2023; and
 - Individuals with NESE attributable to New York City; imposing a new rate of 0.47% if such earnings exceed \$50,000 for the tax year, effective for tax years beginning on or after January 1, 2023 and before January 1, 2024; and 0.60% for tax years beginning January 1, 2024;
- Amending 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; and

- Providing technical changes to the New York State and New York City pass-through entity taxes, including an amendment to 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 New York City pass-through entity tax, effective for tax years beginning on or after January 1, 2023.

See forthcoming Multistate Tax Alert for more details on the New York FY 2024 Budget, and please contact us with any questions in the meantime.

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