Key Changes of the NY Budget Bill for Individuals and Businesses

On April 19, 2021, Governor Cuomo signed into law S2509C/A3009C, the New York FY 2021-2022 State Budget Bill ("Bill"), which includes provisions for tax rate changes for individuals and corporations, a new elective Pass-through Entity Tax, and clarity on credits with a remote workforce during the COVID-19 pandemic. The Bill also decouples New York from the federal exclusion and deferral of capital gains for investments in qualified opportunities funds (QOFs).

What is Included in the NY Budget Bill?

1. **Personal Income Tax Rate Increases**

   Effective January 1, 2021, the top marginal tax rate for personal income increased from 8.82% to 10.9% for those reporting more than $25 million in income. This is at the top of two additional income tax brackets created by the Bill, illustrated below:

Taxable Income	Marginal Rate
Over $1.1 million ($2.2 million married filing joint (MFJ)) but not more than $5 million	9.65%
Over $5 million but not over $25 million	10.3%
Over $25 million	10.9%

   These increased tax rates would position New York as having the greatest individual income tax rate in the United States, with the combined New York State and City rate imposed on high-earning residents being 14.776% (10.9% for New York State plus 3.876% for New York City).

   The rate changes also include a reduction for some of the middle-class tax brackets for individuals reporting New York income between $21,400 ($43,000 MFJ) and $215,400 ($323,200 MFJ).

   The rate changes are set to revert to the 2020 tax rates for tax years beginning after 2027.

2. **Corporate Franchise Tax**

   There were two significant changes related to business corporation franchise tax for tax years beginning on or after January 1, 2021 and before January 1, 2024.

   First, for taxpayers with a business income base greater than $5 million, the business corporation franchise tax increased from 6.5% to 7.25%. This change could result in the highest combined New York State and City tax rate from corporations being 18.425% for large financial institutions, or 18.275% for other corporations (7.25% New York State plus 2.175% Metropolitan Transit Authority plus 8.85% New York City (9% for large financial institutions)).

Second, the NY Budget Bill imposes an increased business capital tax rate of 0.1875% for certain non-manufacturing taxpayers for taxable years beginning on or after January 1, 2021 and before January 1, 2024. Notably, this is a reinstatement of the business capital tax at the New York state level, which was originally due to be phased out for tax years beginning after 2020.

3. **Elective Pass-through Entity Tax (SALT Cap Workaround)**
   a. Imposition of the Tax

      Through the Bill, New York has joined several other states that have enacted legislation for an IRS-approved workaround to the SALT Cap of the Tax Cuts and Jobs Act (TCJA) enacted on December 22, 2017. The TCJA limited an individual's deduction for state and local taxes paid during the calendar year to $10,000 for tax years beginning after December 31, 2017 and before January 1, 2026.

      For tax years beginning on or after January 1, 2021, the Bill allows partnerships, limited liability companies ("LLCs") treated as pass-through entities and S corporations doing business in the state to elect to pay entity-level income tax ("Pass-Through Entity Tax") to the extent the income is sourced to New York. The Pass-Through Entity Tax will be imposed at rates ranging from 6.85%-10.9%, depending on the income sourced to New York. *Note: see below for the specific application of the rates.*

      The Pass-Through Entity Tax entitles partners, members and shareholders to a credit against their New York State personal income tax liability. The credit is based up the share of the entity-level tax paid and the profit percentage of the partnership, LLC or S corporation. For purposes of computing their taxable income for New York State personal income tax, if the amount of the credit allowable exceeds the tax due for the year, the excess will be treated as an overpayment to be credited or refunded to the partner, member or shareholder.

   b. Rates

      The Pass-Through Entity Tax is imposed for each taxable year on the taxable income of every electing partnership, LLC and S corporation at the following rates:

Pass-through Entity Taxable Income	Marginal Rate
Below $2 million	6.85%
Over $2 million but not over $5 million	9.65%
Over $5 million but not over $25 million	10.30%
Over $25 million	10.90%

c. Election and Payment

The election is made annually and must be made by the due date of the first estimated payment of the tax. Once the election is made it is irrevocable for the calendar year.

4. COVID-19 Remote Work

Generally, New York follows the "convenience of the employer" rule to determine income tax sourcing for employees. The convenience of the employer rule provides generally that an employee who works a job based in New York and lives in another state for convenience and not necessity must still source working days to New York State, and their employer must withhold taxes accordingly. This rule is still in effect throughout the state-declared COVID-19 disaster emergency.

Under the Bill, for the duration of the state-declared COVID-19 disaster emergency, employers will be allowed to claim tax benefits and incentives that are based on maintaining a presence within New York (or within specific areas of New York State), even if the employees are not physically located within the State. Specifically, for these purposes, a taxpayer that has required some or all of its employees to work remotely may designate such remote work as having been performed at the location such work was performed prior to the emergency declaration.

In order to take advantage of this provision, an eligible taxpayer must certify, that for the entire period for which it claims the benefit, such taxpayer continued to operate its business within New York and that, but for the shift to working remotely due to COVID-19 closures, they would have been eligible for the tax benefit.

This provision was deemed to be in effect on or after March 7, 2020 and shall not expire until December 31, 2021 or the date the COVID-19 disaster is declared over, whichever is sooner.

5. Qualified Opportunity Funds

For tax years beginning on or after January 1, 2021, the Bill decouples New York from the federal exclusion for capital gains that are reinvested in a QOF as defined under the

Internal Revenue Code Section 1400Z-2(a)(1)(A). This provision applies to corporate franchise tax, insurance premium tax, personal income tax and New York City taxes.

Learn More

If you would like to discuss how your business may be impacted or would like more information about Bennett Thrasher's State & Local Tax services, contact Brian Sengson or Stephen Bradshaw by calling 770.396.2200.

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