

NEW YORK: 2022 BUDGET BILL WILL HAVE IMMEDIATE EFFECT ON Q1 ESTIMATED PAYMENTS

On April 19, 2021, NYS Governor Andrew Cuomo signed into law the FY 2022 budget. The comprehensive budget bill included changes to corporate franchise tax, personal income tax, sales and use taxes, property tax, as well as other tax changes, many of which are scheduled to sunset after a few years. When combined with New York City's tax rates, the state's new income tax rates under the 2022 budget bill are some of the highest in the country.

Importantly, the law increases corporate franchise and personal income tax rates for the 2021 tax year, which has an immediate impact on taxpayers when calculating and paying their calendar year 2021 estimated tax payments.

Corporate Franchise Tax

For tax years beginning on or after January 1, 2021, the New York corporate franchise tax rate is raised from 6.5% to 7.25% for companies with a business income tax base of more than \$5 million. The corporate tax rate remains at 6.5% for companies with a business income tax base of \$5 million or less. The increased corporate franchise tax rate is set to expire on January 1, 2024.

The business capital tax base (the total business capital apportioned to New York State after deducting short-term and long-term liabilities attributable to assets) was set to phase out as of 2021. However, under the bill, it has been effectively reinstated with a rate of 0.1875% for tax years beginning on or after January 1, 2021 and before January 1, 2024. Small businesses will be exempt from the business capital tax base. The business capital tax base is set to completely phased out by 2024.

Personal Income Tax

The bill increases the personal income tax rates on the state's highest earners and creates two new income tax brackets, as shown in the following table.

Tax Bracket	Personal income tax rate
\$2,155,350 to \$5,000,000 (married filing jointly) \$1,616,450 to \$5,000,000 (head of household) \$1,077,550 to \$5,000,000 (single)	9.65%
Over \$5,000,000 to \$25,000,000 (New, for all individual filers)	10.30%
Over \$25,000,000 (New, for all individual filers)	10.90%

The tax rate increase is effective from 2021 through 2027. For tax years after 2027, the bill eliminates the two newly created tax brackets and the personal income tax rates are decreased to a range of 4% and 8.82%.

The bill also provides a personal income tax credit for New York resident homeowners with incomes of up to \$250,000 and whose total property tax exceeds a fixed percentage of their income. Qualified homeowners will be able to claim this new property tax relief credit for taxable years 2021, 2022 and 2023.

Pass-Through Entity (PTE) Tax Election

The bill creates an annual, irrevocable election for a new PTE tax, which would effectively operate as a workaround for owners and partners of PTEs to bypass the \$10,000 cap on the federal deduction for state and local taxes as enacted under the Tax Cuts and Jobs Act of 2017. PTE tax elections can be made for tax years beginning on or after January 1, 2021. Eligible taxpayers are entities that are treated as partnerships or S corporations for federal income tax purposes, which can include limited liability companies. For the 2021 tax year only, PTEs must make the election by October 15, 2021. For tax years after 2021, the annual election must be made by the due date of the first estimated payment (March 15).

Tax Rates for Electing PTEs

The tax rates of taxable income of electing PTEs range from 6.85% to 10.90%. Under the election, “taxable income for partnerships” is calculated as the sum of (1) all items of income, gain, loss or deduction derived from or connected with New York sources to the extent they are included in the taxable income of a nonresident partner subject to New York’s personal income tax, and (2) all items of income, gain, loss or deduction to the extent they are included in the taxable income of a resident partner subject to New York’s personal income tax. Similarly, “taxable income for S corporations” is calculated as the sum of all items of income, gain, loss or deduction derived from or connected with New York sources to the extent they would be included in the taxable income of a shareholder subject to the state’s personal income tax.

Personal Income Tax Credit

Owners (partners or S corporation members) of electing PTEs are allowed a credit against their personal income tax. The credit is not allowed if the electing PTE does not pay the tax owed under the new PTE tax, or if the electing PTE does not provide sufficient information to identify the owners. Further, the total amount of the credits for owners of electing PTEs cannot exceed the total tax due under the new PTE tax.

The credit is equal to the owner’s direct share of the PTE tax. Owners can claim credits for multiple electing PTEs. The credit is refundable to owners of electing PTEs. And finally, residents are allowed credits against their New York personal income taxes for any PTE tax substantially similar to New York’s PTE tax.

Return Due Dates

Returns for electing PTEs are due on March 15 following the close of the taxable year. For electing PTEs with a fiscal year end, the return is due by March 15 following the close of the calendar year that contains the final day of the PTE's taxable year. Electing PTEs are also required to make quarterly estimated tax payments. The bill specifies that electing PTEs cannot file an amended return without the consent of the commissioner.

Owners are jointly and severally liable for unpaid taxes owed by the electing PTE.

Remote Work

An employer that has required some or all of its employees to work remotely due to COVID-19 may designate such remote work as having been performed at the location where it was performed prior to the declaration of the state disaster emergency (i.e., New York) to preserve tax benefits that are based on maintaining a presence within that state or within specific areas of that state.

This portion of the bill is effective from March 7, 2020, and it expires on the date the state disaster emergency expires, or December 31, 2021, whichever is sooner.

Property Tax – Real Estate Transfer Tax

The bill requires any "person" who is an officer, employee, manager or member with a duty to act on behalf of a corporation, partnership, LLC or individual proprietorship to comply with New York's real estate transfer tax rules.

This part of the bill is effective for conveyances of property made on or after July 1, 2021, or pursuant to binding written contracts for conveyances of property made on or before April 1, 2021, provided that the date of execution of that contract is confirmed by independent evidence.

The bill contains an exemption from publicly traded companies, real estate investment trusts and mutual funds that are members of LLCs from the requirement to disclose all of their members or shareholders on a real estate tax return, if it is a sale of a building with up to four residential units.

Insights

- The increased corporate franchise tax rates and personal income tax rates for the highest earners are effective for the 2021 tax year. Taxpayers should assess the impact of the increased rates as soon as possible since first quarter estimated tax payments are due April 15 for calendar-year taxpayers, and New York has not extended the due date for estimated payments.
- For sales tax purposes, the bill makes a technical correction to the definition of "vendor." The correction clarifies previous legislation and administrative guidance, which have been in place since November 2019, that remote vendors have economic nexus in New York if they make over \$500,000 in sales and more than 100 sales into New York in the previous four quarterly periods.

- The bill extends a number of credits (e.g., Brownfield tax credit, Excelsior investment tax credit, film production credits), and it also creates new credits (e.g., restaurant credit, new musical and theatrical production credit).
- There were several proposals that were not included in the final bill. Notable among those proposals was the requirement that federal S corporations be treated as S corporations for New York State purposes beginning in 2022. As it was not included, therefore, federal S corporations retain the ability to elect to be New York S corporations or remain a C corporations for New York State purposes.

We will continue to monitor New York Department of Taxation and Finance's further guidance on these matters. In the meantime contact your Fust Charles Chambers LLP engagement team for more information.