

TAX UPDATES FROM NEW YORK CITY – SEPTEMBER 2022

Hodgson Russ TriState Tax Alert
September 12, 2022

In this installment of the TriState Tax Alert, the focus is on recent New York City tax developments. Last week the Governor signed legislation that expands New York City's Business Corporation Tax nexus standards to include an economic nexus threshold that conforms to New York State's business corporation tax nexus standards. The legislation also expands the effective date of New York City's Pass-Through Entity Tax ("NYC PTET") backwards to January 1, 2022! Taxpayers need to act quickly to take advantage of the NYC PTET because to qualify the taxpayer must have a New York State Pass-Through Entity Tax election in place by the **September 15, 2022**, due date!

New York City's Expanded Business Corporation Tax Nexus Standards

The 2014 – 2015 New York State Budget significantly reformed New York State's corporate tax system, including adopting an economic nexus threshold that allows the State to levy its business corporation tax on a corporation that derives a certain threshold of receipts in New York State. While New York City's corporate tax reform, which occurred a year later, adopted many of the statutory changes to the State's corporate tax, the City was not able to adopt the economic nexus provisions effective as of January 1, 2015.

Last week, the Governor brought New York City into conformity with New York State by signing into law a bill that adopts the same market-based sourcing rules that apply for State corporate tax purposes to the City Business Corporation Tax. Under this new law, for tax years beginning on or after January 1, 2022, the City can levy its Business Corporation Tax on a corporation that has at least \$1 million in New York City receipts. A corporation also has Business Corporation Tax nexus if it has less than \$1 million in New York City receipts, but has at least \$10,000 in receipts within the City, and is part of a unitary group that has at least \$1 million in New York City receipts. Plus, a corporation that has at least ten customers or locations in New York City and is part of a unitary group that satisfies the \$1 million in receipts threshold will also have nexus for Business Corporation Tax purposes.

No changes were made to the City's General Corporation Tax, which for tax years on or after January 1, 2015, applies to any corporation that is an S corporation, or a qualified subchapter S subsidiary, under subchapter S of the Internal Revenue Code of 1986, as amended.

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New York City's Pass-Through Entity Tax Retroactive to January 1, 2022

The NYC PTET is a new optional tax that allows New York City resident owners of pass-through entities to benefit from a local pass-through entity tax regime. If an eligible entity elects to pay the NYC PTET, its partners, members or shareholders subject to New York City personal income tax will be eligible for a credit for the pass-through entity tax paid on their New York City personal income tax returns.

The State legislature passed the New York State Pass-Through Entity Tax as a part of the 2021 – 2022 New York State budget to provide taxpayers with some relief against the federal \$10,000 limitation on state and local tax deductions enacted as a part of the Tax Cuts and Jobs Act. This year's New York State budget included a provision that enacted the NYC PTET. The NYC PTET was originally enacted with a January 1, 2023, effective date, which was changed last week when the Governor signed S.9454, making the NYC PTET retroactive back to January 1, 2022.

The NYC PTET is an entity level tax that applies at a flat rate of 3.876% and functions similar to the New York State Pass-Through Entity Tax. An election may be made by eligible partnerships and limited liability companies with New York City resident partners. S corporations must have only New York City resident shareholders to be eligible. Do not confuse this tax with New York City's historic pass-through entity taxes, the New York City Unincorporated Business Tax, applicable to partnerships and other unincorporated businesses, and its General Corporation Tax, applicable to federal S corporations, which are not elective!

To date there is limited guidance on the NYC PTET. However, the law is clear that City taxpayers must continue to make New York City personal income tax estimated tax payments calculated as if they were not entitled to the tax credit for the 2022 taxable year. Under the legislation, electing entities are not required to make any NYC PTET estimated payments for the 2022 tax year but, of course, will want to make those payments before the end of the year (at least for a cash basis taxpayer) in order to claim the federal deduction in 2022. This is similar to the double-payment system New York State had in effect in 2021, during the first year of its pass-through entity tax regime. Stay tuned for more details in upcoming installments of the TriState Tax Alert.

Exemption from City Business Income Taxation of Certain COVID-19 New York Small Business Recovery Grants

The State Legislature also enacted an exemption from business income taxation for grants received from certain New York small business recovery programs. The exemptions are under New York City's Unincorporated Business Tax, General Corporation Tax, Business Corporation Tax and Banking Corporation Tax and are effective retroactive to tax year 2021.

Contact [Open Weaver Banks](#) (646.218.7524), [Debra Herman](#) (646.218.7532), or [Elizabeth Pascal](#) (716.848.1622) if you have any questions about how these tax updates may impact you or your business.