

2013-14 NEW YORK STATE BUDGET

State & Local Tax Alert
April 9, 2013

On March 28, the 2013-14 New York State budget was signed into law. We have summarized the highlights of the revenue provisions below.

Personal Income Tax

- The **itemized charitable deductions** under the Tax Law for individuals whose adjusted gross income exceeds \$10 million will remain at current levels for three more years. The current levels are 25 percent of the federal charitable deduction under I.R.C. §170. Without this amendment, effective this year the limit would have increased to 50 percent of the federal charitable deduction. Conforming amendments have also been made to the New York City Administrative Code (Article 30 of the Tax Law).
- The budget extends the current **personal income tax rate** regime until 2017. This includes the so-called 8.82 percent “millionaires’ tax,” which applies to joint-filing incomes in excess of \$2 million, and the inflation indexing of the standard deduction. The bill also adds a provision to New York City Administrative Code §11-1714, requiring the city standard deduction for a city resident to be adjusted in the same manner as the State resident standard deduction under Tax Law §614.
- The **alternative fuels credit** has been expanded to include recharging equipment for electric vehicles placed in service during the year. The credit previously applied only to equipment used for alternative fuel vehicle refueling. The amount of the credit is the lesser of \$5,000 or 50 percent of the cost of the equipment. However, recharging equipment purchased with proceeds from grants, including NYSERDA grants, is not eligible for the credit. This credit is nonrefundable and is available only through 2017.
- The budget creates a new credit, the **family tax relief credit**, designed to benefit middle income taxpayers with children for the 2014 through 2016 tax years. The credit is unique in that the Commissioner of the Department of Taxation and Finance will determine a taxpayer’s eligibility prior to the taxpayer filing for the year in question. If the taxpayer is eligible for the credit, the commissioner will advance the taxpayer a \$350 payment on or before October 15 of the tax year in question. Taxpayers who improperly receive the credit are expected to make a reconciliation payment when they file future returns.

Attorneys

Paul Comeau
William Comiskey
Ariele Doolittle
Christopher Doyle
Joseph Endres
Debra Herman
Daniel Kelly
Joshua Lawrence
Timothy Noonan
Elizabeth Pascal

Practices & Industries

State & Local Tax

2013-14 NEW YORK STATE BUDGET

As noted, the commissioner will base his eligibility determination on the taxpayer's return filed two years before the tax year in question. To be eligible for the new credit, the taxpayer's return that was filed two years prior to the year the credit is claimed must have (a) been a New York resident, (b) claimed one or more dependent children who were under the age of 17 on the last day of the taxable year, (c) had New York adjusted gross income of at least \$40,000 but no greater than \$300,000, and (d) had a tax liability as determined by the provision of greater than or equal to zero.

Sales Tax

- The budget created a new sales and use tax **exemption for natural gas** purchased and converted (or for conversion) into compressed natural gas for use or consumption in the engine of a motor vehicle. The expressed legislative intent underlying this exemption is to encourage development of a non-petroleum fuel market in New York.

Business-Related Taxes

- Once again the “temporary” **Metropolitan Transportation Authority (MTA) business tax surcharge** has been extended—this time through the 2018 tax year. Before this extension, it was scheduled to expire after the 2013 tax year.
- The **royalty income exclusion** provisions are now eliminated from the royalty expense add-back requirements. Doing so closes a perceived loophole that previously allowed low-business-allocation-percentage (BAP) taxpayers to avoid any significant expense add-back while permitting high-BAP taxpayers to qualify for a substantial income exclusion. This amendment applies by eliminating the exclusion for royalty income received and replacing it with four exceptions to the add-back requirement. Generally, the first exception applies if the taxpayer establishes that the related recipient included the royalty in a tax base of a U.S. state or possession to which an effective rate of tax (the nominal rate multiplied by the recipient's apportionment percentage) applied that was 80 percent or more of the rate of tax applicable to the taxpayer in New York. The second exception applies if the related recipient paid all or part of the royalty payment it received to a third party for a valid business purpose. The third exception applies if the related recipient is organized under the laws of a foreign country that has a tax treaty with the United States. The fourth exception applies if the commissioner determines that exemption from the add-back requirement is necessary to properly reflect the paying taxpayer's income.

Other Changes of Note

- The budget adds an extra four years to the application of the **temporary state energy and utility service conservation assessment**. The amendment also alters the formula for computing the utility conservation assessment for later years. The 2 percent levy on a utility entity's gross operating revenues from intrastate utility operations in the preceding calendar year (minus the amount the utility company is assessed under Subdivisions 1 and 2 of New York Public Service Law §18-a for the corresponding state fiscal year) continues for state fiscal years beginning April 1, 2013, and April 1, 2014. The levy drops to 1.75 percent for the state fiscal year beginning April 1, 2015, and then to 1.5 percent for the state fiscal year beginning April 1, 2016. With respect to the utility conservation assessment due for the state fiscal year beginning April 1, 2017, utility entities must make a payment equal to 50 percent of the assessment they paid for the state fiscal year beginning April 1, 2016, on or before March 10, 2017. The ultimate expiration and repeal of the conservation utility assessment and the force of assessments made under the law prior to its repeal is also amended.

2013-14 NEW YORK STATE BUDGET

- The budget establishes a program that **suspends New York State driver's licenses** of taxpayers with past-due tax liabilities of at least \$10,000. For purposes of the program, "tax liabilities" includes any fixed and final tax, surcharge, or fee administered by the Tax Department, as well as any penalty or interest due on the amount. The department is required to notify the individual of the pending license suspension at least 60 days prior to commencement of the suspension. Suspensions under the program will be lifted once the taxpayer either pays the outstanding liabilities or enters into an installment payment agreement or similar arrangement. Individuals whose licenses are suspended under the program may obtain restricted use licenses to allow them to travel to work, school, and medical appointments.
- The Tax Department now has authorization for **warrantless levies**. If any individual fails to pay (or collect and pay over) any tax 21 calendar days after notice and demand is given (or 10 days if the amount exceeds \$100,000), the department can serve an income execution on the individual or his or her employer without filing a tax warrant. When serving an income execution without first filing a warrant, the department must do so within six years after the first date a warrant could have been filed.
- For small businesses and small farms, an **income tax exemption** has been added equal to 5 percent of net income to be phased in over a three-year period (3 percent in 2014, 3.75 percent in 2015, and 5 percent in 2016 and thereafter). The exemption is available to businesses and farms that employ at least one person and have less than \$250,000 in net business income.

If you have any questions about this or any other aspect of New York State's new budget, please call any member of our State & Local Tax Practice Group.