

## New York 2016-2017 Budget Act amends state tax law

### Overview

On April 13, 2016, Governor Andrew Cuomo of New York signed into law the 2016-2017 Budget Act (S6409C/A9009C) (Budget Act).<sup>1</sup> This legislation includes amendments to the New York tax reform legislation contained in the 2014-2015 New York State Budget and the New York City tax reform legislation contained in the 2015-2016 New York State Budget; certain state credits and incentives; and state sales tax provisions. The legislation also conforms New York State and New York City filing due dates for certain tax returns to the recent changes made to federal income tax return due dates.

This Alert summarizes the more significant New York State and City tax law changes included in the Budget Act.

### Income and franchise taxes

The more significant changes enacted in the Budget Act include the following:

- In determining the inclusion of receipts and net gains for apportionment purposes from specified types of “qualified financial instruments” (QFIs) described in New York Tax Law Sec. 210-A.5(a)<sup>2</sup> that are marked to market under IRC Secs. 475 or 1256 (and generally any non-marked instrument of the same type as such instruments), taxpayers may annually elect to use a fixed percentage method (QFI election). If a QFI election is made, generally 8 percent of all income from QFIs is treated as business income.
  - The Budget Act includes an amendment clarifying that if a QFI election is made, stock that generates “other exempt income,” as defined in N.Y. Tax Law § 208.6-a (i.e., exempt CFC income or exempt dividends from a unitary corporation not in the New York combined reporting group) and is not marked to market is not a QFI with respect to that income. Conversely, if a QFI election is made, stock that generates other exempt income and that is marked to market is not covered by this provision and therefore is a QFI with respect to that income. Before this provision was enacted, the QFI election potentially could have resulted in inadvertently converting certain other exempt income into taxable business income. The corresponding change was also made to the New York City Business Corporation Tax. This provision takes effect as if enacted as part of the New York tax reform legislation contained in the 2014-2015 New York State Budget and the New York City tax reform legislation contained in the 2015-2016 New York State Budget.
- For federal income tax purposes, the required due dates have changed for filing calendar year corporate and partnership returns for tax years beginning after December 31, 2015.<sup>3</sup> For calendar-year taxpayers, federal corporate returns generally will be due April 15; federal partnership returns generally will be due March 15. The federal S corporation return due date of March 15 for a calendar-year taxpayer has not changed.
  - The Budget Act conforms certain New York State and New York City tax return due dates to the recently amended federal income tax return due dates. Note that the first installment payment due date for corporations will not change and will remain as March 15, although the first installment will be based on the second preceding year’s tax due—except for certain S corporations, whose first installment would be based on the preceding year’s tax due,<sup>4</sup> as described below.
    - For New York State purposes, calendar-year federal S corporations that have not elected to be treated as “New York S corporations”—and therefore are treated as C corporations—now must file a return by April 15, a month later than the federal calendar-year S corporation return due date of March 15. Calendar-year federal S corporations that have elected to be treated as “New York S corporations” continue to have a filing deadline of March 15.<sup>5</sup> Although the new statutory provision pertaining to the

<sup>1</sup> [Chapter 60, Laws of 2016](#).

<sup>2</sup> Specifically, loans; federal, state, and municipal debt; asset backed securities and other government agency debt; corporate bonds; dividends and net gains from sales of stock or partnership interests; other financial instruments; and physical commodities. N.Y. Tax Law Sec. 210-A.5(a).

<sup>3</sup> On July 31, 2015, President Obama signed H.R. 3236, the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 which contains, among other things, important changes to the due dates for income tax returns of C corporations, partnerships, estates, and trusts. This enacted federal legislation also makes changes to the extension periods allowed for such filings. Generally, the effective date of the changes will affect tax filings for taxable periods beginning after December 31, 2015.

<sup>4</sup> N.Y. Tax Law Sec. 213-b(a), as amended by Section 10, Part Q, Chapter 60, Laws of 2016.

<sup>5</sup> N.Y. Tax Law Sec. 658(c)(2).

mandatory first installment merely refers to “S corporations,” the legislative intent may be for the provision to solely address “New York S corporations.”<sup>6</sup> Based on this interpretation, calendar-year federal S corporations that have elected to be treated as “New York S corporations” would have a mandatory first installment due on March 15 based on the preceding year’s tax due. Similarly, calendar-year federal S corporations not electing to be treated as “New York S corporations” would have a mandatory first installment due on March 15 based on the second preceding year’s tax due.

- The due date to file New York City returns for federal S corporations, which are taxed as corporations under the pre-2015 New York City tax reform provisions, has not changed and will remain March 15 for calendar-year taxpayers,<sup>7</sup> with a first installment based on the preceding year’s tax.<sup>8</sup>
- The corporate tax reform changes within the 2014-2015 and 2015-2016 New York State Budgets provided various subtraction modifications—essentially an additional interest or bad debt deduction—for certain New York State and New York City taxpayers, including certain thrift institutions and qualified community banks and taxpayers that own qualified affordable housing and low income community loans (applicable to New York City only) to encourage small business and residential loans. In each case, the computation of the deduction takes into account the taxpayer’s amount of total assets.
  - The Budget Act includes amendments that impact the measurement of total assets. Specifically, leased real property not reflected on the taxpayer’s balance sheet is included in total assets, and will be valued at the annual lease payment multiplied by eight. These provisions take effect as if they were enacted as part of the New York tax reform legislation contained in the 2014-2015 New York State Budget and the New York City tax reform legislation contained in the 2015-2016 New York State Budget.
- The Budget Act also:
  - Changes the due date of the *Partnership, Limited Liability Company and Limited Liability Partnership Filing Fee Payment Form* (Form IT-204 LL) to the fifteenth day of the third month following the close of the tax year (March 15 for calendar year taxpayers) for tax years beginning on or after January 1, 2016;
  - Changes the filing/payment date of the New York City Unincorporated Business Tax from the fifteenth day of the fourth month following the close of the tax year (April 15 for calendar year taxpayers) to the fifteenth day of the third month following the close of the tax year (March 15 for calendar year taxpayers) for tax years beginning on or after January 1, 2016;
  - Extends New York’s current e-filing requirements until December 31, 2019; and
  - Extends New York’s disclosure and other requirements related to “listed transactions” and “reportable transactions” until a repeal date of July 1, 2019. This provision applies retroactively as of July 1, 2015 (when the law was previously repealed by statute).

### Credits and incentives

The more significant changes to the New York State tax law related to tax credits and incentives include the following—which, unless indicated otherwise, are effective immediately:

- Amends New York’s “Excelsior Jobs Program”<sup>9</sup> by reducing caps on total credits allocated for this program by New York for tax years 2016-2024, and permitting the issuance of tax credits unallocated as of 2024, when such program is scheduled to expire, for taxable years beginning in 2025 and 2026—notwithstanding certain limitations. No such tax credit may be allowed for taxable years beginning on or after January 1, 2027.
- Increases the funding available for New York’s “Urban Youth Jobs Tax Credit Program” for 2016 and 2017 from the previous \$20 million per year to \$50 million per year. The amendments also make a portion of the available funding for 2016 and 2017 available for jobs created statewide.
- Amends the “Qualified New York Manufacturer Real Property Tax Credit” to indicate that taxpayers principally engaged in the production of goods by farming, agriculture, horticulture, floriculture, viticulture, or commercial

<sup>6</sup> This is despite seemingly inconsistent language in amended N.Y. Tax Law Sec. 213-b(a) providing (i) for an alternative first installment amount where a taxpayer’s preceding year’s tax exceeds \$100,000, when a New York S corporation has a maximum fixed dollar tax of \$4,500 (N.Y. Tax Law Secs. 210.1 and 210.1(d)(1)(A)); and (ii) special first installment rules for S corporations subject to the MTA surcharge which by statute does not apply to New York S corporations (N.Y. Tax Law Sec. 209-B.1(a)).

<sup>7</sup> N.Y. City Admin. Code Sec. 11-605.1.

<sup>8</sup> N.Y. City Admin. Code Sec. 11-608.1.

<sup>9</sup> [Excelsior Jobs Program](#) Tax credits are available for strategic businesses such as hi-tech, bio-tech, clean-tech, and manufacturing that create jobs or make significant capital investments.

fishing may qualify for this tax credit as a lessee of real property, even if the lease is with a related party. Previously, all qualifying leases must have been entered into with an unrelated party.

- Extends New York's "Hire-A-Vet Credit" to include taxable years beginning before January 1, 2019.
- Extends New York's "Commercial Production Credit" to include taxable years beginning before January 1, 2019.
- Extends New York's "Credit for Companies Who Provide Transportation to Individuals with Disabilities" to include taxable years beginning before January 1, 2023.
- Creates a new tax credit for retention of farm employees available to Article 9-A and Article 22 taxpayers. The credit is applicable to taxable years beginning on or after January 1, 2017, and is initially equal to \$250 per eligible retained farm employee. This credit amount per retained job will increase to \$600 per eligible retained farm employee in tax years beginning on or after January 1, 2021, and before January 1, 2022.

### Sales and use taxes

The more significant changes to the New York State tax law related to sales and use taxes include the following:

- Exempts (provided a proper resale certificate is provided) purchases of hotel room occupancies by room remarketers when those purchases are made from hotels for later resale. In 2010, room remarketers became required to collect New York State sales tax and New York City hotel room occupancy tax on hotel room occupancies sold. However, the legislation enacted in 2010 did not exempt room remarketers' purchases of hotel room occupancies that they supplied to their customers.<sup>10</sup> Instead, the 2010 legislation provided a credit or refund to room remarketers for the tax they paid to hotel operators when certain conditions were met. The Budget Act's change appears to eliminate the burdens on both parties and facilitate compliance. This new exemption applies to rent paid for hotel room occupancies on or after June 1, 2016.
- Exempts beer, cider, liquor, or wine used by producers at tastings from New York's alcoholic beverage tax, and exempts such beverages, as well as certain inventory items, from New York use tax. This provision is effective immediately, and applies to tax years beginning on or after April 1, 2016.
- Excludes sales of fuel for use in commercial and general aviation aircraft from local sales taxes and from the prepayment of sales tax on motor fuels. These provisions are effective as of December 1, 2017.

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<sup>10</sup> See Chapter 57, Laws of 2010.

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