

# STATE OF NEW YORK

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2017-2018 Regular Sessions

## IN SENATE

January 12, 2017

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Introduced by Sens. O'MARA, FUNKE, GALLIVAN, LARKIN, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law and the administrative code of the city of New York, in relation to business income base and certain small business taxpayers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subparagraph (iv) of paragraph (a) of subdivision 1 of  
2 section 210 of the tax law, as amended by section 12 of part A of chap-  
3 ter 59 of the laws of 2014, is amended to read as follows:

4 (iv) (A) for taxable years beginning before January first, two thou-  
5 sand sixteen, if the business income base is not more than two hundred  
6 ninety thousand dollars the amount shall be six and one-half percent of  
7 the business income base; if the business income base is more than two  
8 hundred ninety thousand dollars but not over three hundred ninety thou-  
9 sand dollars the amount shall be the sum of (1) eighteen thousand eight  
10 hundred fifty dollars, (2) seven and one-tenth percent of the excess of  
11 the business income base over two hundred ninety thousand dollars but  
12 not over three hundred ninety thousand dollars and (3) four and thirty-  
13 five hundredths percent of the excess of the business income base over  
14 three hundred fifty thousand dollars but not over three hundred ninety  
15 thousand dollars;

16 (B) for taxable years beginning on or after January first, two thou-  
17 sand eighteen, if the business income base is not more than four hundred  
18 thousand dollars the amount shall be four percent of the business income  
19 base; if the business income base is more than four hundred thousand  
20 dollars but not over five hundred thousand dollars the amount shall be  
21 the sum of (1) sixteen thousand dollars, (2) six and one-half percent of  
22 the excess of the business income base over four hundred thousand  
23 dollars but not over five hundred thousand dollars and (3) twenty

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 percent of the excess of the business income base over four hundred  
2 fifty thousand dollars but not over five hundred thousand dollars;

3 (C) for taxable years beginning on or after January first, two thou-  
4 sand nineteen, if the business income base is not more than four hundred  
5 thousand dollars the amount shall be two and one-half percent of the  
6 business income base; if the business income base is more than four  
7 hundred thousand dollars but not over five hundred thousand dollars the  
8 amount shall be the sum of (1) ten thousand dollars, (2) six and one-  
9 half percent of the excess of the business income base over four hundred  
10 thousand dollars but not over five hundred thousand dollars and (3)  
11 thirty-two percent of the excess of the business income base over four  
12 hundred fifty thousand dollars but not over five hundred thousand  
13 dollars.

14 § 2. Paragraph 39 of subsection (c) of section 612 of the tax law, as  
15 added by section 1 of part Y of chapter 59 of the laws of 2013, is  
16 amended to read as follows:

17 (39) (A) In the case of a taxpayer who is a small business or a  
18 taxpayer who is a member, partner, or shareholder of a limited liability  
19 company, partnership, or New York S corporation, respectively, that is a  
20 small business, who or which has business income [and/or farm income] as  
21 defined in the laws of the United States, an amount equal to [three]  
22 five percent of the net items of income, gain, loss and deduction  
23 attributable to such business [or farm] entering into federal adjusted  
24 gross income, but not less than zero, for taxable years beginning after  
25 two thousand [thirteen] seventeen, an amount equal to [three-and-three-  
26 quarters] ten percent of the net items of income, gain, loss and  
27 deduction attributable to such business [or farm] entering into federal  
28 adjusted gross income, but not less than zero, for taxable years begin-  
29 ning after two thousand [fourteen] eighteen, and an amount equal to  
30 [five] fifteen percent of the net items of income, gain, loss and  
31 deduction attributable to such business [or farm] entering into federal  
32 adjusted gross income, but not less than zero[, for taxable years begin-  
33 ning after two thousand fifteen].

34 (B) In the case of a taxpayer who is a farm business or a taxpayer who  
35 is a member, partner, or shareholder of a limited liability company,  
36 partnership, or New York S corporation, respectively, that is a farm  
37 business, who or which has farm income as defined by the laws of the  
38 United States, an amount equal to twenty percent of the net items of  
39 income, gain, loss and deduction attributable to such farm. The term  
40 farm business shall mean a farm business that has net farm income of  
41 less than five hundred thousand dollars.

42 (C) (i) For the purposes of this paragraph, the term small business  
43 shall mean: (I) a sole proprietor [or a farm business who employs one or  
44 more persons during the taxable year and] who has net business income  
45 [or net farm income] of less than [two hundred fifty] five hundred thou-  
46 sand dollars; or (II) a limited liability company, partnership or New  
47 York S corporation that during the taxable year has New York gross busi-  
48 ness income attributable to a non-farm business that is greater than  
49 zero but less than one million five hundred thousand dollars or net farm  
50 income attributable to a farm business that is greater than zero but  
51 less than five hundred thousand dollars. (ii) For purposes of this para-  
52 graph, the term New York gross business income shall mean: (I) in the  
53 case of a limited liability company or a partnership, New York source  
54 gross income as defined in subparagraph (B) of paragraph three of  
55 subsection (c) of section six hundred fifty-eight of this article, and,  
56 (II) in the case of a New York S corporation, New York receipts included

1 in the numerator of the apportionment factor determined under section  
2 two hundred ten-A of this chapter for the taxable year.

3 (D) To qualify for this modification in relation to a non-farm small  
4 business that is a limited liability company, partnership or New York S  
5 corporation, the taxpayer's income attributable to the net business  
6 income from its ownership interests in non-farm limited liability compa-  
7 nies, partnerships or New York S corporations must be less than five  
8 hundred thousand dollars.

9 § 3. Paragraph 35 of subdivision (c) of section 11-1712 of the admin-  
10 istrative code of the city of New York, as added by section 2 of part Y  
11 of chapter 59 of the laws of 2013, is amended to read as follows:

12 (35) (A) In the case of a taxpayer who is a small business or a  
13 taxpayer who is a member, partner, or shareholder of a limited liability  
14 company, partnership, or New York S corporation, respectively, that is a  
15 small business, who or which has business income [~~and/or farm income~~] as  
16 defined in the laws of the United States, an amount equal to [~~three~~  
17 fifteen percent of the net items of income, gain, loss and deduction  
18 attributable to such business [~~or farm~~] entering into federal adjusted  
19 gross income, but not less than zero[, ~~for taxable years beginning after~~  
20 ~~two thousand thirteen, an amount equal to three and three quarters~~  
21 ~~percent of the net items of income, gain, loss and deduction attribut-~~  
22 ~~able to such business or farm entering into federal adjusted gross~~  
23 ~~income, but not less than zero, for taxable years beginning after two~~  
24 ~~thousand fourteen, and an amount equal to five percent of the net items~~  
25 ~~of income, gain, loss and deduction attributable to such business or~~  
26 ~~farm entering into federal adjusted gross income, but not less than~~  
27 ~~zero, for taxable years beginning after two thousand fifteen].~~

28 (B) In the case of a taxpayer who is a farm business or a taxpayer who  
29 is a member, partner, or shareholder of a limited liability company,  
30 partnership, or New York S corporation, respectively, that is a farm  
31 business, who or which has farm income as defined by the laws of the  
32 United States, an amount equal to twenty percent of the net items of  
33 income, gain, loss and deduction attributable to such farm. The term  
34 farm business shall mean a farm business that has net farm income of  
35 less than five hundred thousand dollars.

36 (C) (i) For the purposes of this paragraph, the term small business  
37 shall mean: (I) a sole proprietor [~~or a farm business who employs one or~~  
38 more persons during the taxable year and] who has net business income  
39 [~~or net farm income~~] of less than [~~two hundred fifty~~] five hundred thou-  
40 sand dollars; or (II) a limited liability company, partnership or New  
41 York S corporation that during the taxable year has New York gross busi-  
42 ness income attributable to a non-farm business that is greater than  
43 zero but less than one million five hundred thousand dollars or net farm  
44 income attributable to a farm business that is greater than zero but  
45 less than five hundred thousand dollars. (ii) For purposes of this para-  
46 graph, the term New York gross business income shall mean: (I) in the  
47 case of a limited liability company or a partnership, New York source  
48 gross income as defined in subparagraph (B) of paragraph three of  
49 subsection (c) of section six hundred fifty-eight of the tax law, and,  
50 (II) in the case of a New York S corporation, New York receipts included  
51 in the numerator of the apportionment factor determined under section  
52 two hundred ten-A of the tax law for the taxable year.

53 (D) To qualify for this modification in relation to a non-farm small  
54 business that is a limited liability company, partnership or New York S  
55 corporation, the taxpayer's income attributable to the net business  
56 income from its ownership interests in non-farm limited liability compa-

1 nies, partnerships or New York S corporations must be less than five  
2 hundred thousand dollars.  
3 § 4. This act shall take effect immediately and shall apply to taxable  
4 years beginning on or after January 1, 2018.