

STATE OF NEW YORK

3946

2019-2020 Regular Sessions

IN ASSEMBLY

January 31, 2019

Introduced by M. of A. WEPRIN -- Multi-Sponsored by -- M. of A. BENEDETTO, COOK, DenDEKKER, DINOWITZ, GOTTFRIED -- read once and referred to the Committee on Ways and Means

AN ACT to amend the general city law and the tax law, in relation to imposing the earnings tax on nonresidents

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

Section 1. The general city law is amended by adding a new article 2-E to read as follows:

ARTICLE 2-E

CITY EARNINGS TAX ON NONRESIDENTS

Section 25-m. Authorization to impose tax.

25-n. Administrative provisions.

25-o. Deposit and disposition of revenues.

§ 25-m. Authorization to impose tax. In addition to any other taxes, now authorized by law, any city having a population of one million or more is hereby authorized and empowered to adopt and amend local laws imposing a tax on the earnings of nonresidents of such city to be administered in the manner provided for in this article by the administrator as defined in section one of the model local law hereinafter set forth.

The tax authorized by this article may be imposed only if the city imposing the tax authorized by this article also imposes a tax on the personal income of its residents. The rates of such tax shall be the rates contained in section two of the model local law and such rates may be reduced and increased, provided that the rates shall not be fixed higher than those contained in section two of such model local law.

The terms of such local law shall be substantially the same as the following model local law except that the appendix and the supplement to the appendix in such local law may be amended for the purpose of conforming it with the United States internal revenue code or other

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

LBD07518-01-9

1 federal laws relating to taxation as presently in effect or as they may
2 be amended.

3 EARNINGS TAX ON NONRESIDENTS

4 Sec. 1. Meaning of terms.--As used in this local law, the following
5 terms shall mean and include: (a) "Administrator" means the state tax
6 commission.

7 (b) "City" means the city imposing the tax.

8 (c) "Payroll period" and "employer" shall mean the same as payroll
9 period and employer as defined in subsections (b) and (d) of section
10 thirty-four hundred one of the internal revenue code, and "employee"
11 shall also include all those included as employees in subsection (c) of
12 such section of such code.

13 (d) "Wages" shall mean wages as defined in subsection (a) of section
14 thirty-four hundred one of the internal revenue code, except that (1)
15 wages shall not include payments for active service as a member of the
16 armed forces of the United States and shall not include, in the case of
17 a nonresident individual or partner of a partnership doing an insurance
18 business as a member of the New York insurance exchange described in
19 section six thousand two hundred one of the insurance law, any item of
20 income, gain, loss or deduction of such business which is such individ-
21 ual's distributive or pro rata share for federal income tax purposes or
22 which such individual is required to take into account separately for
23 federal income tax purposes and (2) wages shall include (i) the amount
24 of member or employee contributions to a retirement system or pension
25 fund picked up by the employer pursuant to subdivision f of section five
26 hundred seventeen or subdivision d of section six hundred thirteen of
27 the retirement and social security law or section 13-225.1, 13-327.1,
28 13-125.1, 13-125.2 or 13-521.1 of the administrative code of the city of
29 New York or subdivision nineteen of section twenty-five hundred seven-
30 ty-five of the education law, (ii) the amount deducted or deferred from
31 an employee's salary under a flexible benefits program established
32 pursuant to section twenty-three of the general municipal law or section
33 twelve hundred ten-a of the public authorities law, (iii) the amount by
34 which an employee's salary is reduced pursuant to the provisions of
35 subdivision b of section 12-126.1 and subdivision b of section 12-126.2
36 of the administrative code of the city of New York, and (iv) the amount
37 of member or employee contributions to a retirement system or pension
38 fund picked up or paid by the employer for members of the Manhattan and
39 Bronx surface transportation authority pension plan and treated as
40 employer contributions in determining income tax treatment under section
41 414(h) of the internal revenue code.

42 (e) "Net earnings from self-employment" shall mean the same as net
43 earnings from self-employment as defined in subsection (a) of section
44 fourteen hundred two of the internal revenue code, except that the
45 deduction for wages and salaries paid or incurred for the taxable year
46 which is not allowed pursuant to section two hundred eighty-C of such
47 code shall be allowed, and except that an estate or trust shall be
48 deemed to have net earnings from self-employment determined in the same
49 manner as if it were an individual subject to the tax on self-employment
50 income imposed by section fourteen hundred one of the internal revenue
51 code diminished by (1) the amount of any deduction allowed by subsection
52 (c) of section six hundred forty-two of the internal revenue code and
53 (2) the deductions allowed by sections six hundred fifty-one and six
54 hundred sixty-one of said code to the extent that they represent
55 distributions or payments to a resident of the city. However, "trade or
56 business" as used in subsection (a) of section fourteen hundred two of

1 such code shall mean the same as trade or business as defined in
2 subsection (c) of section fourteen hundred two of such code, except that
3 paragraphs (4), (5) and (6) of such subsection shall not apply in deter-
4 mining net earnings from self-employment taxable under this local law.
5 Provided however, in the case of a nonresident individual or partner of
6 a partnership doing an insurance business described in section six thou-
7 sand two hundred one of the insurance law, any item of income, gain,
8 loss or deduction of such business which is the individual's distribu-
9 tive or pro rata share for federal income tax purposes or which the
10 individual is required to take into account separately for federal
11 income tax purposes shall not be considered to be "net earnings from
12 self-employment".

13 (f) "Taxable year" shall mean the taxpayer's taxable year for federal
14 income tax purposes.

15 (g) Resident individual.--A resident individual means an individual:

16 (1) who is domiciled in the city, unless (A) he or she maintains no
17 permanent place of abode in the city, maintains a permanent place of
18 abode elsewhere, and spends in the aggregate not more than thirty days
19 of the taxable year in the city, or (B) (i) within any period of five
20 hundred forty-eight consecutive days he or she is present in a foreign
21 country or countries for at least four hundred fifty days, and (ii)
22 during such period of five hundred forty-eight consecutive days he or
23 she is not present in the city for more than ninety days and does not
24 maintain a permanent place of abode in the city at which his spouse
25 (unless such spouse is legally separated) or minor children are present
26 for more than ninety days, and (iii) during any period of less than
27 twelve months, which would be treated as a separate taxable period based
28 on a change of resident status, and which period is contained within
29 such period of five hundred forty-eight consecutive days, he or she is
30 present in the city for a number of days which does not exceed an amount
31 which bears the same ratio to ninety as the number of days contained in
32 such period of less than twelve months bears to five hundred forty-
33 eight, or

34 (2) who is not domiciled in the city but maintains a permanent place
35 of abode in the city and spends in the aggregate more than one hundred
36 eighty-three days of the taxable year in the city, unless such individ-
37 ual is in active service in the armed forces of the United States.

38 (h) Nonresident individual.--A nonresident individual means an indi-
39 vidual who is not a resident.

40 (i) Resident estate or trust.--A resident estate or trust means: (1)
41 the estate of a decedent who at his or her death was domiciled in the
42 city,

43 (2) a trust, or a portion of a trust, consisting of property trans-
44 ferred by will of a decedent who at his or her death was domiciled in
45 the city, or

46 (3) a trust, or portion of a trust, consisting of the property of:

47 (A) a person domiciled in the city at the time such property was
48 transferred to the trust, if such trust or portion of a trust was then
49 irrevocable, or if it was then revocable and has not subsequently become
50 irrevocable; or

51 (B) a person domiciled in the city at the time such trust, or portion
52 of a trust, became irrevocable, if it was revocable when such property
53 was transferred to the trust but has subsequently become irrevocable.
54 For the purposes of the foregoing, a trust or portion of a trust is
55 revocable if it is subject to a power, exercisable immediately or at any
56 future time, to revest title in the person whose property constitutes

1 such trust or portion of a trust, and a trust or portion of a trust
 2 becomes irrevocable when the possibility that such power may be exer-
 3 cised has been terminated.

4 (j) Nonresident estate or trust.--A nonresident estate or trust means
 5 an estate or trust which is not a resident.

6 (k) Unless a different meaning is clearly required, any term used in
 7 this local law shall have the same meaning as when used in a comparable
 8 context in the laws of the United States relating to federal taxes but
 9 such meaning shall be subject to the exceptions or modifications
 10 prescribed in or pursuant to article two-E of the general city law or by
 11 the laws of this state. Any reference in this local law to the internal
 12 revenue code, the internal revenue code of nineteen hundred eighty-six
 13 or to the laws of the United States shall mean the provisions of the
 14 internal revenue code of nineteen hundred eighty-six (unless a reference
 15 to the internal revenue code of nineteen hundred fifty-four is clearly
 16 intended), and amendments thereto, and other provisions of the laws of
 17 the United States relating to federal taxes, as the same are included in
 18 this local law as an appendix and supplement to the appendix or as
 19 included by reference to an appendix and supplement to the appendix of a
 20 title enacted by the same local law as enacts this local law. (The
 21 quotation of the aforesaid laws of the United States is intended to make
 22 them a part of this local law and to avoid constitutional uncertainties
 23 which might result if such laws were merely incorporated by reference.
 24 The quotation of a provision of the federal internal revenue code or of
 25 any other law of the United States shall not necessarily mean that it is
 26 applicable to or has relevance to this local law.)

27 (l) The term "partnership" shall include, unless a different meaning
 28 is clearly required, a subchapter K limited liability company. The term
 29 "subchapter K limited liability company" shall mean a limited liability
 30 company classified as a partnership for federal income tax purposes.

31 The term "limited liability company" means a domestic limited liabil-
 32 ity company or a foreign limited liability company, as defined in
 33 section one hundred two of the limited liability company law, a limited
 34 liability investment company formed pursuant to section five hundred
 35 seven of the banking law, or a limited liability trust company formed
 36 pursuant to section one hundred two-a of the banking law.

37 Sec. 2. Persons subject to tax.--(a) Imposition of tax.--A tax is
 38 hereby imposed for each taxable year beginning after July first, two
 39 thousand eighteen on the wages earned, and net earnings from self-em-
 40 ployment, within the city, of every nonresident individual, estate and
 41 trust which shall comprise a tax at the rate of one percent on all wages
 42 and all net earnings from self-employment.

43 (b) Exclusion.--(1) In computing the amount of wages and net earn-
 44 ings from self-employment taxable under subsection (a), there shall be
 45 allowed an exclusion against the total of wages and net earnings from
 46 self-employment in accordance with the following table:

<u>Total of Wages and Net Earnings</u>	
<u>From Self-Employment</u>	<u>Exclusion Allowable</u>
<u>Not Over \$10,000</u>	<u>\$3,000</u>
<u>Over \$10,000 But Not Over \$20,000</u>	<u>\$2,000</u>
<u>Over \$20,000 But Not Over \$30,000</u>	<u>\$1,000</u>
<u>Over \$30,000</u>	<u>NONE</u>

53 (2) The exclusion allowable shall be applied pro rata against wages
 54 and net earnings from self-employment.

55 (3) For taxable periods of less than one year, the exclusion allow-
 56 able shall be prorated pursuant to regulations of the administrator.

1 (c) Limitation.--In no event shall a taxpayer be subject to the tax
2 under this local law in an amount greater than he or she would be
3 required to pay if he or she were a resident of the city and subject to
4 a tax on personal income of residents of the city adopted by the city
5 pursuant to authority granted by the general city law.

6 Sec. 3. Taxable years to which the tax imposed by this local law
7 applies; tax for taxable years beginning after July first, two thousand
8 twenty.--The tax imposed by this local law is imposed for each taxable
9 year beginning on or after July first, two thousand twenty.

10 Sec. 4. Accounting periods and methods.--(a) Accounting periods.-- A
11 taxpayer's taxable year under this local law shall be the same as his
12 taxable year for federal income tax purposes.

13 (b) Change of accounting periods.--If a taxpayer's taxable year is
14 changed for federal income tax purposes, his or her taxable year for
15 purposes of this local law shall be similarly changed. If a taxable
16 period of less than twelve months results from a change of taxable year,
17 the exclusion allowable under section two of this local law shall be
18 prorated under regulations of the administrator.

19 (c) Accounting methods.--A taxpayer's method of accounting under this
20 section shall be the same as his or her method of accounting for federal
21 income tax purposes. In the absence of any method of accounting for
22 federal income tax purposes, net earnings from self-employment within
23 the city shall be computed under such method as in the opinion of the
24 administrator clearly reflects net earnings from self-employment within
25 the city.

26 (d) Change of accounting methods.--(1) If a taxpayer's method of
27 accounting is changed for federal income tax purposes, his or her method
28 of accounting for purposes of this local law shall be similarly changed.

29 (2) If a taxpayer's method of accounting is changed, other than from
30 an accrual to an installment method, any additional tax which results
31 from adjustments determined to be necessary solely by reason of the
32 change shall not be greater than if such adjustments were ratably allo-
33 cated and included for the taxable year of the change and the preceding
34 taxable years, beginning after July first, two thousand twenty, not in
35 excess of two, during which the taxpayer used the method of accounting
36 from which the change is made.

37 (3) If a taxpayer's method of accounting is changed from an accrual
38 to an installment method, any additional tax for the year of such change
39 of method and for any subsequent year which is attributable to the
40 receipt of installment payments properly accrued in a prior year, shall
41 be reduced by the portion of tax for any prior taxable year attributable
42 to the accrual of such installment payments, in accordance with regu-
43 lations of the administrator.

44 Sec. 5. Returns and payment of tax.--On or before the fifteenth day
45 of the fourth month following the close of the taxable year, every
46 person subject to the tax shall make and file a return and any balance
47 of the tax shown due on the face of such return shall be paid therewith.
48 The administrator may, by regulation, provide for the filing of returns
49 and payment of the tax at such other times as he or she deems necessary
50 for the proper enforcement of this local law. The administrator may
51 also provide by regulation that any return otherwise required to be made
52 and filed under this local law by any nonresident individual need not be
53 made and filed if such nonresident individual had, during the taxable
54 year to which the return would relate, no net earnings from self-employ-
55 ment within the city. Any regulation allowing such waiver of return may

1 provide for additional limitations on and conditions and prerequisites
2 to the privilege of not filing a return.

3 Sec. 6. Combined returns, employer's returns and payments.--The state
4 tax commission may require:

5 (1) The filing of any or all of the following:

6 (A) A combined return which in addition to the return provided for in
7 a local law authorized by this article may also include returns required
8 to be filed under a local law authorized by article thirty of the tax
9 law and under article twenty-two of the tax law.

10 (B) A combined employer's return which in addition to the employer's
11 return provided for in a local law authorized by this article may also
12 include employer's returns required to be filed under a local law
13 authorized by article thirty of the tax law and under article twenty-two
14 of the tax law.

15 (2) Where a combined return or employer's return is required, and with
16 respect to the payment of estimated tax, the state tax commission may
17 also require payment of a single amount which shall be the total of the
18 amounts (total taxes less any credits or refunds) required to be paid
19 with the returns or employer's returns or in payment of estimated tax
20 pursuant to the provisions of local laws imposed under the authority of
21 article two-E of the general city law, article thirty of the tax law and
22 pursuant to the provisions of article twenty-two of the tax law.

23 Sec. 7. Effect of invalidity in part; inconsistencies with other
24 laws.--(a) If any clause, sentence, paragraph, subsection, section,
25 provision or other portion of this local law or the application thereof
26 to any person or circumstances shall be held to be invalid, such holding
27 shall not affect, impair or invalidate the remainder of this local law
28 or the application of such portion held invalid, to any other person or
29 circumstances, but shall be confined in its operation to the clause,
30 sentence, paragraph, subsection, section, provision or other portion
31 thereof directly involved in such holding or to the person and circum-
32 stances therein involved.

33 (b) If any provision of this local law is inconsistent with, in
34 conflict with, or contrary to any other provision of law, such provision
35 of this local law shall prevail over such other provision and such other
36 provision shall be deemed to have been amended, superseded or repealed
37 to the extent of such inconsistency, conflict or contrariety.

38 § 25-n. Administrative provisions. (a) General. Any local law adopted
39 pursuant to this article shall also contain provisions necessary and
40 appropriate for the collection and the administration of the tax herein
41 authorized.

42 (b) Methods of review.--Such local law shall also contain provisions
43 substantially the same as the following:

44 (i) Any final determination of the amount of any tax payable hereunder
45 shall be reviewable for error, illegality or unconstitutionality or any
46 other reason whatsoever by a proceeding under article seventy-eight of
47 the civil practice law and rules if application therefor is made to the
48 supreme court within four months after the giving of the notice of such
49 final determination, provided, however, that any such proceeding under
50 article seventy-eight of the civil practice law and rules shall not be
51 instituted unless (A) the amount of any tax sought to be reviewed, with
52 such interest and penalties thereon as may be provided for by local law
53 or regulation, shall be first deposited and there is filed an undertak-
54 ing, issued by a surety company authorized to transact business in this
55 state and approved by the superintendent of financial services of this
56 state as to solvency and responsibility, in such amount as a justice of

1 the supreme court shall approve to the effect that if such proceeding be
2 dismissed or the tax confirmed the petitioner will pay all costs and
3 charges which may accrue in the prosecution of such proceeding or (B) at
4 the option of the petitioner such undertaking may be in a sum sufficient
5 to cover the taxes, interest and penalties stated in such determination
6 plus the costs and charges which may accrue against it in the prose-
7 cution of the proceeding, in which event the petitioner shall not be
8 required to pay such taxes, interest or penalties as a condition prece-
9 dent to the application.

10 (ii) Where any tax imposed hereunder shall have been erroneously,
11 illegally or unconstitutionally collected and application for the refund
12 thereof duly made to the proper fiscal officer or officers, and such
13 officer or officers shall have made a determination denying such refund,
14 such determination shall be reviewable by a proceeding under article
15 seventy-eight of the civil practice law and rules, provided, however,
16 that such proceeding is instituted within four months after the giving
17 of the notice of such denial, that a final determination of tax due was
18 not previously made, and that an undertaking is filed with the proper
19 fiscal officer or officers in such amount and with such sureties as a
20 justice of the supreme court shall approve to the effect that if such
21 proceeding be dismissed or the tax confirmed, the petitioner will pay
22 all costs and charges which may accrue in the prosecution of such
23 proceeding.

24 (iii) No assessment of additional tax shall be made after the expira-
25 tion of more than three years from the date of the filing of the return
26 except that where no return has been filed or, in the case of the filing
27 of a wilfully false or fraudulent return with intent to evade the tax,
28 the tax may be assessed at any time; provided, however, where a taxpayer
29 omits from his or her return an amount which should be properly included
30 therein which is in excess of twenty-five percent of the amount of the
31 gross income derived by him or her from any trade or business, no
32 assessment of additional tax shall be made after the expiration of more
33 than six years from the date of the filing of the return, except as
34 otherwise provided herein.

35 (c) Delegation of functions.--The local law may provide that the
36 administrator of the tax imposed, as defined in the local law, may dele-
37 gate his or her powers and functions under the local law to one of his
38 or her deputies or to any employee or employees of his or her department
39 and authorize banks or trust companies which are depositories or finan-
40 cial agents of the city to receive and give a receipt for any tax
41 imposed under the local law.

42 § 25-o. Deposit and disposition of revenues. One-half the revenues
43 resulting from the imposition of the tax authorized by this article
44 shall be:

45 (a) paid into the treasury of the city and shall be credited to and
46 deposited in the general fund of such city and shall be available for
47 any lawful city purpose; and

48 (b) deposited in the metropolitan transportation authority financial
49 assistance fund established pursuant to section ninety-two-ff of the
50 state finance law.

51 (c) Such revenues shall be deposited and disposed of in the same
52 manner as revenues resulting from the imposition of the taxes authorized
53 by article thirty of the tax law.

54 § 2. Section 1301 of the tax law is amended by adding a new subsection
55 (c) to read as follows:

1 (c) The taxes authorized by this article may be imposed only if the
2 general city law authorizes the adoption of a city tax on the earnings
3 of nonresidents and the city imposing the tax authorized by this article
4 also imposes such tax on the earnings of nonresidents.

5 § 3. Subsection (b) of section 1305 of the tax law, as amended by
6 chapter 5 of the laws of 1999, is amended to read as follows:

7 (b) City nonresident individual. A city nonresident individual means
8 an individual who is not a resident of such city [~~or the state of New~~
9 ~~York~~].

10 § 4. Separability. If any clause, sentence, paragraph or part of this
11 act shall be adjudged to be unconstitutional or invalid, such judgment
12 shall not affect, impair, or invalidate, the remainder thereof, but
13 shall be confined in its operation to the clause, sentence, paragraph,
14 section or part thereof directly involved in the controversy in which
15 such judgment shall have been rendered.

16 § 5. This act shall take effect immediately. The commissioner of
17 taxation and finance is authorized to promulgate immediately and on an
18 emergency basis all necessary and reasonable rules and regulations for
19 the timely implementation of this act.