

STATE OF NEW YORK

5041

2019-2020 Regular Sessions

IN ASSEMBLY

February 6, 2019

Introduced by M. of A. CARROLL -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing the minimum taxable income base for business corporations

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

1 Section 1. Subdivision 1 of section 210 of the tax law is amended by
2 adding a new paragraph (c) to read as follows:

3 (c) Minimum taxable income base. (1) For taxable years beginning on or
4 after January first, two thousand twenty-one, the amount prescribed by
5 this paragraph shall be computed at the rate of three percent of the
6 taxpayer's minimum taxable income base. The "taxpayer's minimum taxable
7 income base" shall mean the portion of the taxpayer's minimum taxable
8 income allocated within the state, subject to any modifications required
9 by subparagraphs two and three of this paragraph.

10 (2) Except as provided in clause (C) of this subparagraph or in
11 subparagraph three of this paragraph, at the election of the taxpayer
12 there shall be deducted from the portion of its entire net income allo-
13 cated within the state either or both of the items set forth in clauses
14 (A) and (B) of this subparagraph, except that only one of such
15 deductions shall be allowed with respect to any one item of property.

16 (A) Depreciation with respect to any property as described in clause
17 (C) of this subparagraph, not exceeding twice the depreciation allowed
18 with respect to the same property for federal income tax purposes. Such
19 deduction shall be allowed only upon condition that entire net income be
20 computed without any deduction for the depreciation or amortization of
21 the same property, and the total of all deductions allowed in any taxa-
22 ble year or years with respect to the depreciation of any such property
23 shall not exceed its cost or other basis.

24 (B) Expenditures paid or incurred during the taxable year for the
25 construction, reconstruction, erection or acquisition of any property

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

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1 such as described in clause (C) of this subparagraph which is used or to
2 be used for purposes of research and development in the experimental or
3 laboratory sense. Such purposes shall not be deemed to include the ordi-
4 nary testing or inspection of materials or products for quality control,
5 efficiency surveys, management studies, consumer surveys, advertising,
6 promotions or research in connection with literary, historical or simi-
7 lar projects. Such deduction shall be allowed only on condition that
8 entire net income for the taxable year and all succeeding taxable years
9 be computed without the deduction of any such expenditures and without
10 any deduction for depreciation of the same property, except to the
11 extent that its basis may be attributable to factors other than such
12 expenditures, or in case a deduction is allowable pursuant to this
13 clause for only a part of such expenditures, on condition that any
14 deduction allowed for federal income tax purposes on account of such
15 expenditures or on account of depreciation of the same property be
16 proportionately reduced in computing entire net income for the taxable
17 year and all succeeding taxable years. With respect to property which is
18 used or to be used for research and development only in part, or during
19 only part of its useful life, a proportionate part of such expenditures
20 shall be deductible. If all or part of such expenditures with respect to
21 any property shall have been deducted as provided herein, and such prop-
22 erty is used for purposes other than research and development to a
23 greater extent than originally reported, the taxpayer shall report such
24 use in its report for the first taxable year during which it occurs, and
25 the department may recompute the tax for the year or years for which
26 such deduction was allowed, and may assess any additional tax resulting
27 from such recomputation regardless of the time limitations set forth in
28 section ten hundred eighty-three of this chapter.

29 (C) Such deductions shall be allowed only with respect to tangible
30 property which is depreciable pursuant to section one hundred sixty-sev-
31 en of the internal revenue code, having a situs in this state and used
32 in the taxpayer's trade or business, (i) constructed, reconstructed or
33 erected after December thirty-first, nineteen hundred sixty-three,
34 pursuant to a contract which was, on or before December thirty-first,
35 nineteen hundred sixty-seven, and at all times thereafter, binding on
36 the taxpayer or, property, the physical construction, reconstruction or
37 erection of which began on or before December thirty-first, nineteen
38 hundred sixty-seven or which began after such date pursuant to an order
39 placed on or before December thirty-first, nineteen hundred sixty-seven,
40 and then only with respect to that portion of the basis thereof or the
41 expenditures relating thereto which is properly attributable to such
42 construction, reconstruction or erection after December thirty-first,
43 nineteen hundred sixty-three, or (ii) acquired after December thirty-
44 first, nineteen hundred sixty-three, pursuant to a contract which was,
45 on or before December thirty-first, nineteen hundred sixty-seven, and at
46 all times thereafter, binding on the taxpayer or pursuant to an order
47 placed on or before December thirty-first, nineteen hundred sixty-seven,
48 by purchase as defined in section one hundred seventy-nine (d) of the
49 internal revenue code, if the original use of such property commenced
50 with the taxpayer, commenced in this state and commenced after December
51 thirty-first, nineteen hundred sixty-three, or (iii) acquired,
52 constructed, reconstructed, or erected subsequent to December thirty-
53 first, nineteen hundred sixty-seven, if such acquisition, construction,
54 reconstruction or erection is pursuant to a plan of the taxpayer which
55 was in existence December thirty-first, nineteen hundred sixty-seven and
56 not thereafter substantially modified, and such acquisition,

1 construction, reconstruction or erection would qualify under the rules
2 in paragraphs four, five or six of subsection (h) of section forty-eight
3 of the internal revenue code provided all references in such paragraphs
4 four, five and six to the dates October nine, nineteen hundred sixty-
5 six, and October ten, nineteen hundred sixty-six, shall be read as
6 December thirty-first, nineteen hundred sixty-seven. A taxpayer shall be
7 allowed a deduction under items (i), (ii) or (iii) of this clause only
8 if the tangible property shall be delivered or the construction, recon-
9 struction or erection shall be completed on or before December thirty-
10 first, nineteen hundred sixty-nine, except in the case of tangible prop-
11 erty which is acquired, constructed, reconstructed or erected pursuant
12 to a contract which was, on or before December thirty-first, nineteen
13 hundred sixty-seven, and at all times thereafter, binding on the taxpay-
14 er. Provided, however, for any taxable year beginning on or after Janu-
15 ary first, nineteen hundred sixty-eight, a taxpayer shall not be allowed
16 a deduction under this paragraph with respect to tangible personal prop-
17 erty leased by it to any other person or corporation. For purposes of
18 the preceding sentence, any contract or agreement to lease or rent or
19 for a license to use such property shall be considered a lease. With
20 respect to property which the taxpayer uses itself for purposes other
21 than leasing for part of a taxable year and leases for a part of a taxa-
22 ble year, the taxpayer shall be allowed a deduction under this paragraph
23 in proportion to the part of the year it uses such property.

24 (D) If the deductions allowable for any taxable year, pursuant to this
25 subdivision, exceed the portion of the taxpayer's entire net income
26 allocated to this state for such year, the excess may be carried over to
27 the following taxable year or years and may be deducted from the portion
28 of the taxpayer's entire net income allocated to this state for such
29 year or years; provided, however, that in no event shall such excess,
30 insofar as it reflects deductions taken with respect to items set forth
31 in clause (B) of this subparagraph, be carried over to taxable years
32 commencing on or after January first, two thousand twenty-one.

33 (E) In any taxable year when property is sold or otherwise disposed
34 of, with respect to which a deduction has been allowed pursuant to
35 clause (A) or (B) of this subparagraph, the gain or loss thereon enter-
36 ing into the computation of federal taxable income shall be disregarded
37 in computing entire net income, and there shall be added to or
38 subtracted from the portion of entire net income allocated within the
39 state the gain or loss upon such sale or other disposition. In computing
40 such gain or loss the basis of the property sold or disposed of shall be
41 adjusted to reflect the deduction allowed with respect to such property
42 pursuant to clause (A) or (B) of this subparagraph. Provided, however,
43 that no loss shall be recognized for the purposes of this clause with
44 respect to a sale or other disposition of property to a person whose
45 acquisition thereof is not a purchase as defined in section one hundred
46 seventy-nine (d) of the internal revenue code.

47 (3) At the election of the taxpayer there shall be deducted from the
48 portion of its entire net income allocated within the state either or
49 both of the items set forth in clause (A) or (B) of this subparagraph,
50 except that only one of such deductions shall be allowed with respect to
51 any one item of property, and except that a deduction of the item set
52 forth in clause (B) may not be taken with respect to taxable years
53 commencing on or after January first, two thousand twenty-one.

54 (A) Depreciation with respect to any property such as described in
55 clauses (C) and (D) of this subparagraph, not exceeding twice the depre-
56 ciation allowed with respect to the same property for federal income tax

1 purposes. Such deduction shall be allowed only upon condition that
2 entire net income be computed without any deduction for the depreciation
3 or amortization of the same property, and the total of all deductions
4 allowed in any taxable year or years with respect to the depreciation of
5 any such property shall not exceed its cost or other basis multiplied by
6 the taxpayer's business allocation percentage determined under this
7 paragraph for the first year it deducts such depreciation under this
8 subparagraph.

9 (B) Expenditures paid or incurred during the taxable year for the
10 construction, reconstruction, erection or acquisition of any property
11 such as described in clause (C) of this subparagraph which is used or to
12 be used for purposes of research and development in the experimental or
13 laboratory sense. Such purposes shall not be deemed to include the ordi-
14 nary testing or inspection of materials or products for quality control,
15 efficiency surveys, management studies, consumer surveys, advertising,
16 promotions or research in connection with literary, historical or simi-
17 lar projects. Such deduction shall be allowed only on condition that it
18 does not exceed the amount of the expenditures multiplied by the taxpay-
19 er's business allocation percentage determined under this paragraph for
20 the year the expenditures are paid or incurred and that entire net
21 income for the taxable year and all succeeding taxable years be computed
22 without the deduction of any such expenditures and without any deduction
23 for depreciation of the same property, except to the extent that its
24 basis may be attributable to factors other than such expenditures, or in
25 case a deduction is allowable pursuant to this clause for only a part of
26 such expenditures, on condition that any deduction allowed for federal
27 income tax purposes on account of such expenditures or on account of
28 depreciation of the same property be proportionately reduced in comput-
29 ing entire net income for the taxable year and all succeeding taxable
30 years. With respect to property which is used or to be used for research
31 and development only in part, or during only part of its useful life, a
32 proportionate part of such expenditures shall be deductible. If all or
33 part of such expenditures with respect to any property shall have been
34 deducted as provided herein, and such property is used for purposes
35 other than research and development to a greater extent than originally
36 reported, the taxpayer shall report such use in its report for the first
37 taxable year during which it occurs, and the tax commission may recom-
38 pute the tax for the year or years for which such deduction was allowed,
39 and may assess any additional tax resulting from such recomputation
40 regardless of the time limitations set forth in section ten hundred
41 eighty-three of this chapter.

42 (C) Such deductions shall be allowed only with respect to tangible
43 property which is depreciable pursuant to section one hundred sixty-sev-
44 en of the internal revenue code, having a situs in this state and used
45 in the taxpayer's trade or business. The deductions provided for in
46 clause (A) of this subparagraph shall (i) be allowed only with respect
47 to tangible property which is (I) constructed, reconstructed or erected
48 after December thirty-first, nineteen hundred sixty-seven, pursuant to a
49 contract which was, on or before December thirty-first, nineteen hundred
50 sixty-eight, and at all times thereafter, binding on the taxpayer or,
51 property, the physical construction, reconstruction or erection of which
52 began on or before December thirty-first, nineteen hundred sixty-eight
53 or which began after such date pursuant to an order placed on or before
54 December thirty-first, nineteen hundred sixty-eight, and then only with
55 respect to that portion of the basis thereof or the expenditures relat-
56 ing thereto which is properly attributable to such construction, recon-

1 struction or erection after December thirty-first, nineteen hundred
2 sixty-three or (II) acquired after December thirty-first, nineteen
3 hundred sixty-seven, pursuant to a contract which was, on or before
4 December thirty-first, nineteen hundred sixty-eight, and at all times
5 thereafter, binding on the taxpayer or pursuant to an order placed on or
6 before December thirty-first, nineteen hundred sixty-eight, by purchase
7 as defined in section one hundred seventy-nine (d) of the internal
8 revenue code, if the original use of such property commenced with the
9 taxpayer, commenced in this state and commenced after December thirty-
10 first, nineteen hundred sixty-seven, or (III) acquired, constructed,
11 reconstructed, or erected subsequent to December thirty-first, nineteen
12 hundred sixty-eight, if such acquisition, construction, reconstruction
13 or erection is pursuant to a plan of the taxpayer which was in existence
14 December thirty-first, nineteen hundred sixty-eight, and not thereafter
15 substantially modified, and such acquisition, construction, recon-
16 struction or erection would qualify under the rules in paragraph four,
17 five or six of subsection (h) of section forty-eight of the internal
18 revenue code provided all references in such paragraphs four, five and
19 six to the dates October nine, nineteen hundred sixty-six, and October
20 ten, nineteen hundred sixty-six, shall be read as December thirty-first,
21 nineteen hundred sixty-eight. A taxpayer shall be allowed a deduction
22 under items (I), (II) or (III) of this clause only if the tangible prop-
23 erty shall be delivered or the construction, reconstruction or erection
24 shall be completed on or before December thirty-first, nineteen hundred
25 seventy, except in the case of tangible property which is acquired,
26 constructed, reconstructed or erected pursuant to a contract which was,
27 on or before December thirty-first, nineteen hundred sixty-eight, and at
28 all times thereafter binding on the taxpayer. (ii) The deduction
29 provided for in clause (B) of this subparagraph shall be allowed only
30 with respect to tangible property (I) the construction, reconstruction
31 or erection of which is completed after December thirty-first, nineteen
32 hundred sixty-seven, and then only with respect to that portion of the
33 basis thereof or the expenditures relating thereto which is properly
34 attributable to such construction, reconstruction or erection after
35 December thirty-first, nineteen hundred sixty-three, or (II) acquired
36 after December thirty-first, nineteen hundred sixty-seven by purchase as
37 defined in section one hundred seventy-nine (d) of the internal revenue
38 code, if the original use of such property commenced with the taxpayer,
39 commenced in this state and commenced after December thirty-first, nine-
40 teen hundred sixty-three. Provided, however, for any taxable year
41 beginning on or after January first, nineteen hundred sixty-eight, a
42 taxpayer shall not be allowed a deduction under this subparagraph with
43 respect to tangible personal property leased by it to any other person
44 or corporation. For purposes of the preceding sentence, any contract or
45 agreement to lease or rent or for a license to use such property shall
46 be considered a lease. With respect to property which the taxpayer uses
47 itself for purposes other than leasing for part of a taxable year and
48 leases for a part of a taxable year, the taxpayer shall be allowed a
49 deduction under this subparagraph in proportion to the part of the year
50 it uses such property.

51 (D) A deduction under clause (A) of this subparagraph shall be allowed
52 with respect to tangible property described in clause (C) only if such
53 property is principally used by the taxpayer in the production of goods
54 by manufacturing; processing; assembling; refining; mining; extracting;
55 farming; agriculture; horticulture; floriculture; viticulture; or
56 commercial fishing. For purposes of this clause, manufacturing shall

1 mean the process of working raw materials into wares suitable for use or
2 which gives new shapes, new qualities or new combinations to matter
3 which already has gone through some artificial process by the use of
4 machinery, tools, appliances and other similar equipment. Property used
5 in the production of goods shall include machinery, equipment or other
6 tangible property which is principally used in the repair and service of
7 other machinery, equipment or other tangible property used principally
8 in the production of goods and shall include all facilities used in the
9 manufacturing operation, including storage of material to be used in
10 manufacturing and of the products that are manufactured.

11 (E) Subject to the limitation imposed by clauses (A) and (B) of this
12 subparagraph, if the deductions allowable for any taxable year, pursuant
13 to this paragraph, exceed the portion of the taxpayer's entire net
14 income allocated to this state for such year, the excess may be carried
15 over to the following taxable year or years and may be deducted from the
16 portion of the taxpayer's entire net income allocated to this state for
17 such year or years; provided, however, that in no event shall such
18 excess, insofar as it reflects deductions taken with respect to items
19 set forth in clause (B) of this subparagraph, be carried over to taxable
20 years commencing on or after January first, two thousand twenty-one.

21 (F) In any taxable year when property is sold or otherwise disposed
22 of, with respect to which a deduction has been allowed pursuant to
23 clause (A) or (B) of this subparagraph, the gain or loss thereon enter-
24 ing into the computation of federal taxable income shall be disregarded
25 in computing entire net income, and there shall be added to or
26 subtracted from the portion of entire net income allocated within the
27 state the gain or loss upon such sale or other disposition. In computing
28 such gain or loss the basis of the property sold or disposed of shall be
29 adjusted to reflect the deduction allowed with respect to such property
30 pursuant to clause (A) or (B) of this subparagraph. Provided, however,
31 that no loss shall be recognized for the purposes of this clause with
32 respect to a sale or other disposition of property to a person whose
33 acquisition thereof is not a purchase as defined in section one hundred
34 seventy-nine (d) of the internal revenue code.

35 § 2. Section 208 of the tax law is amended by adding a new subdivision
36 8-B to read as follows:

37 8-B. (a) The term "minimum taxable income" shall mean the entire net
38 income of the taxpayer for the taxable year:

39 (1) increased by the amount of the federal items of tax preference set
40 forth in section fifty-seven of the internal revenue code (with the
41 modifications set forth in paragraph (b) of this subdivision), which
42 items of tax preference shall have the same meaning and be computed in
43 the same manner as under section fifty-seven of the internal revenue
44 code;

45 (2) determined with the federal adjustments described in paragraph (c)
46 of this subdivision, which adjustments shall have the same meaning and
47 be computed in the same manner as under sections fifty-six and fifty-
48 eight of the internal revenue code;

49 (3) increased by the net operating loss deduction; and

50 (4) reduced, for taxable years beginning after two thousand twenty-
51 one, by the alternative net operating loss deduction, as defined in
52 paragraph (d) of this subdivision.

53 (b) The federal items of tax preference referred to hereinabove shall
54 be modified by deducting "tax-exempt interest" and "accelerated depreci-
55 ation or amortization on certain property placed in service before Janu-

1 ary 1, 1987", as determined under paragraphs five and seven of
2 subsection (a) of section fifty-seven of the internal revenue code.

3 (c) The adjustments referred to hereinabove shall be:

4 (1) "Depreciation" as determined under paragraph one of subsection (a)
5 of section fifty-six of the internal revenue code. For purposes of this
6 subparagraph, the depreciation item of adjustment provided for here
7 shall not include any amount attributable to property for which the tax
8 benefits of the accelerated cost recovery system are not available under
9 this article by reason of subparagraph ten of paragraph (b) of subdivi-
10 sion nine of this section;

11 (2) "Mining exploration and development costs" as determined under
12 paragraph two of subsection (a) of section fifty-six of the internal
13 revenue code;

14 (3) "Treatment of certain long-term contracts" as determined under
15 paragraph three of subsection (a) of section fifty-six of the internal
16 revenue code;

17 (4) "Installment sales of certain property" as determined under para-
18 graph six of subsection (a) of section fifty-six of the internal revenue
19 code;

20 (5) "Circulation expenditures of personal holding companies" as deter-
21 mined under subparagraph (C) of paragraph two of subsection (b) of
22 section fifty-six of the internal revenue code;

23 (6) "Merchant marine capital construction funds" as determined under
24 paragraph two of subsection (c) of section fifty-six of the internal
25 revenue code;

26 (7) "Disallowance of passive activity loss" as determined under
27 subsection (b) of section fifty-eight of the internal revenue code; and

28 (8) "Adjusted basis", as it appears in paragraph seven of subsection
29 (a) of section fifty-six of the internal revenue code, but without
30 taking into account the references therein to paragraph five of
31 subsection (a) of section fifty-six of the internal revenue code.

32 (d) The term "alternative net operating loss deduction" means the net
33 operating loss deduction allowed for the taxable year, except as
34 provided herein.

35 (1)(A) The net operating loss for any year beginning after nineteen
36 hundred eighty-nine which is included in determining such deduction
37 shall be determined with the adjustments provided in subparagraph two of
38 paragraph (a) of this subdivision, and shall be reduced by the items of
39 tax preference determined under subparagraph one of paragraph (a) of
40 this subdivision, attributable to such year. An item of tax preference
41 shall be taken into account only to the extent such item increased the
42 amount of the net operating loss for the taxable year.

43 (B) In the case of loss years beginning before two thousand twenty-
44 two, the amount of the net operating loss which may be carried over to
45 taxable years beginning after two thousand twenty-one shall be equal to
46 an amount which may be carried from the loss year to the first taxable
47 year of the taxpayer beginning after two thousand twenty-one.

48 (2) In determining the amount of such deduction, loss carryforwards
49 and carrybacks shall be computed in the manner set forth in paragraph
50 two of subsection (b) of section one hundred seventy-two of the internal
51 revenue code, except that, for the reference therein to taxable income,
52 there shall be substituted the phrase "ninety percent of minimum taxable
53 income determined without regard to the alternative net operating loss
54 deduction".

55 (3) The amount of such deduction shall not exceed ninety percent of
56 minimum taxable income determined without regard to such deduction,

1 provided, however, the term "ninety percent" shall be read as "forty-
2 five percent" with respect to taxable years beginning in two thousand
3 twenty-one.

4 (e) The department may, whenever necessary in order to properly
5 reflect the minimum taxable income of any taxpayer, determine the year
6 or period in which any item of income or deduction shall be included,
7 without regard to the method of accounting employed by the taxpayer.

8 (f) If the period covered by a report under this article is other than
9 the period covered by the report to the United States treasury depart-
10 ment, the minimum taxable income shall be appropriately modified pursu-
11 ant to regulations promulgated by the United States treasury department.

12 § 3. This act shall take effect January 1, 2021 and shall apply to
13 taxable years commencing on or after such date.