

# STATE OF NEW YORK

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1596

2019-2020 Regular Sessions

## IN SENATE

January 15, 2019

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Introduced by Sens. O'MARA, AKSHAR, AMEDORE, BOYLE, GALLIVAN, HELMING, JACOBS, ORTT, RITCHIE, SEWARD -- 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, in relation to tax credits for qualified pass-through manufacturers

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

1 Section 1. Subsection (b) of section 612 of the tax law is amended by  
2 adding a new paragraph 43 to read as follows:

3 (43) Any income, gain, loss and deduction, to the extent it is  
4 included in federal adjusted gross income and is, combined, less than  
5 zero, of an individual or trust from a qualified pass-through manufac-  
6 turer, as defined in paragraph forty-four of subsection (c) of this  
7 section.

8 § 2. Paragraph 39 of subsection (c) of section 612 of the tax law, as  
9 added by section 1 of part Y of chapter 59 of the laws of 2013, is  
10 amended and a new paragraph 44 is added to read as follows:

11 (39) In the case of a taxpayer who is a small business who has busi-  
12 ness income and/or farm income as defined in the laws of the United  
13 States, an amount equal to three percent of the net items of income,  
14 gain, loss and deduction attributable to such business or farm entering  
15 into federal adjusted gross income, but not less than zero, for taxable  
16 years beginning after two thousand thirteen, an amount equal to three  
17 and three-quarters percent of the net items of income, gain, loss and  
18 deduction attributable to such business or farm entering into federal  
19 adjusted gross income, but not less than zero, for taxable years begin-  
20 ning after two thousand fourteen, and an amount equal to five percent of  
21 the net items of income, gain, loss and deduction attributable to such  
22 business or farm entering into federal adjusted gross income, but not  
23 less than zero, for taxable years beginning after two thousand fifteen.

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

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1 For the purposes of this paragraph, the term small business shall mean a  
2 sole proprietor or a farm business who employs one or more persons  
3 during the taxable year and who has net business income or net farm  
4 income of less than two hundred fifty thousand dollars. For the purposes  
5 of this paragraph, the term small business shall exclude any business  
6 that is a qualified pass-through manufacturer, as defined in paragraph  
7 forty-four of this subsection for the current tax year.

8 (44) (A) Any income, gain, loss and deduction, to the extent included  
9 federal adjusted gross income and is, combined, greater than zero, of an  
10 individual or trust from a qualified pass-through manufacturer. Income  
11 from a qualified pass-through manufacturer shall not include an amount  
12 representing reasonable compensation for an individual controlling ten  
13 percent or more of the qualified business or entity.

14 (B) The qualified pass-through manufacturer may be organized as a sole  
15 proprietorship, a partnership, a limited liability company electing to  
16 be treated as a partnership or sole proprietorship, or an S corporation.

17 (C) For the purposes of this subsection, the term qualified pass-  
18 through manufacturer shall mean a business that is a qualified New York  
19 manufacturer, as defined by subparagraph (vi) of paragraph (a) of subdi-  
20 vision one of section two hundred ten of this chapter, except that the  
21 term "gross receipts" shall be replaced by "business receipts" in deter-  
22 mining whether the business is "principally engaged" in manufacturing. A  
23 qualified pass-through manufacturer shall not include a business that is  
24 currently participating in the START-UP NY program.

25 § 3. Paragraph 2 of subsection (a) of section 606 of the tax law is  
26 amended by adding a new subparagraph (B-1) to read as follows:

27 (B-1) Property placed in service during the tax year that is otherwise  
28 eligible for the investment tax credit described in subparagraph (A) of  
29 this paragraph, will not be eligible for the investment tax credit if  
30 the use of the property is by a qualified pass-through manufacturer, as  
31 defined in paragraph forty-four of subsection (c) of section six hundred  
32 twelve of this article for the current tax year.

33 § 4. This act shall take effect immediately.