

STATE OF NEW YORK

943

2019-2020 Regular Sessions

IN SENATE

January 9, 2019

Introduced by Sens. O'MARA, BOYLE, GALLIVAN, 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 twenty-one, if the business income base is not more than four
18 hundred thousand dollars the amount shall be four percent of the busi-
19 ness income base; if the business income base is more than four hundred
20 thousand dollars but not over five hundred thousand dollars the amount
21 shall be the sum of (1) sixteen thousand dollars, (2) six and one-half
22 percent of the excess of the business income base over four hundred
23 thousand dollars but not over five hundred thousand dollars and (3)

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

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

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

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

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

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

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

1 (II) in the case of a New York S corporation, New York receipts included
2 in the numerator of the apportionment factor determined under section
3 two hundred ten-A of this chapter for the taxable year.

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

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

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

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

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

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

1 income from its ownership interests in non-farm limited liability compa-
2 nies, partnerships or New York S corporations must be less than five
3 hundred thousand dollars.

4 § 4. This act shall take effect immediately and shall apply to taxable
5 years beginning on or after January 1, 2021.