

# 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  
41 thousand 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.