

# STATE OF NEW YORK

29

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. KAPLAN, ADDABBO, AKSHAR, BRESLIN, RAMOS, SKOUFIS --  
read twice and ordered printed, and when printed to be committed to  
the Committee on Budget and Revenue

AN ACT to amend the tax law, in relation to the business income base  
rate and expanding the small business subtraction modification

The People of the State of New York, represented in Senate and Assem-  
bly, 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-two, if the business income base is not more than two  
18 hundred ninety thousand dollars the amount shall be four percent of the  
19 business income base; if the business income base is more than two  
20 hundred ninety thousand dollars but not over three hundred ninety thou-  
21 sand dollars the amount shall be the sum of (1) eleven thousand six  
22 hundred dollars, (2) six and one-half percent of the excess of the busi-  
23 ness income base over two hundred ninety thousand dollars but not over

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

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1 three hundred ninety thousand dollars and (3) eighteen and thirteen  
2 hundredths percent of the excess of the business income base over three  
3 hundred fifty thousand dollars but not over three hundred ninety thou-  
4 sand dollars;

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

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

24 (B) (i) For the purposes of this paragraph, the term small business  
25 shall mean: (I) a sole proprietor [~~or a farm business~~] who employs one  
26 or more persons during the taxable year and who has net business income  
27 or net farm income of less than two hundred fifty thousand dollars, or  
28 (II) a limited liability company, partnership or New York S corporation  
29 that during the taxable year employs one or more persons and has New  
30 York gross business income attributable to a non-farm business that is  
31 greater than zero but less than one million five hundred thousand  
32 dollars or net farm income attributable to a farm business that is  
33 greater than zero but less than two hundred fifty thousand dollars.

34 (ii) For purposes of this paragraph, the term New York gross business  
35 income shall mean: (I) in the case of a limited liability company or a  
36 partnership New York source gross income as defined in subparagraph (B)  
37 of paragraph three of subsection (c) of section six hundred fifty-eight  
38 of this article, and, (II) in the case of a New York S corporation, New  
39 York receipts included in the numerator of the apportionment factor  
40 determined under section two hundred ten-A of this chapter for the tax-  
41 able year.

42 (C) To qualify for this modification in relation to a non-farm small  
43 business that is a limited liability company, partnership or New York S  
44 corporation, the taxpayer's income attributable to the net business  
45 income from its ownership interests in non-farm limited liability compa-  
46 nies, partnerships or New York S corporations must be less than two  
47 hundred fifty thousand dollars.

48 § 3. This act shall take effect immediately and shall apply to taxable  
49 years beginning on or after January 1, 2022.