STATE OF NEW YORK

2915

2021-2022 Regular Sessions

IN SENATE

January 26, 2021

Introduced by Sen. BROOKS -- 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 imposition of a pass-through business tax

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

Section 1. The tax law is amended by adding a new article 24-A to read as follows:

ARTICLE 24-A
PASS-THROUGH BUSINESS TAX

Section 860. Definitions.
861. Imposition and rate of tax.
862. Credits.
863. Payment of estimated tax.
864. Filing of return and payment of tax.
865. Accounting periods and methods.
866. Procedural provisions.

§ 860. Definitions. For purposes of this article:

(a) Affected partnership. Affected partnership means any partnership that has elected pursuant to subsection (b) of section eight hundred sixty-one of this article to be subject to the tax imposed by this article.

(b) Affected S corporation. Affected S corporation means any New York S corporation that has elected pursuant to subsection (b) of section eight hundred sixty-one of this article to be subject to the tax imposed by this article.

(c) Affected pass-through entity. Affected pass-through entity means any affected partnership or any affected S corporation.

(d) Lower-tier affected pass-through entity. A lower-tier affected pass-through entity means any affected pass-through entity in which an

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

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affected pass-through entity has a direct or indirect ownership interest.

(e) New York S corporation. New York S corporation means, with respect to any taxable year, any entity for which an election is in effect pursuant to subsection (a) of section six hundred sixty of this chapter, including any corporation for which such election has been deemed to have been made pursuant to the provisions of subsection (i) of section six hundred sixty of this chapter.

(f) Partnership. Partnership means any partnership as provided in section 7701(a)(2) of the Internal Revenue Code and the regulations promulgated thereunder. A partnership includes any limited liability company or other entity that is treated as a partnership for federal income tax purposes.

(g) Pass-through business net income or loss. Pass-through business net income or loss of an affected pass-through entity means the separately and nonseparately computed items, as described in section 702(a) of the Internal Revenue Code with respect to a partnership or section 1366 of the Internal Revenue Code with respect to an S corporation, of the affected pass-through entity, adjusted as follows:

(1) increased or decreased by any modification described in subsections (b), (c) or (d) of section six hundred twelve of this chapter, subsection (c) or paragraphs two or three of subsection (d) of section six hundred fifteen of this chapter;

(2) the portion of any of the affected pass-through entity's separately and nonseparately computed items that are allocable to nonresident individuals, trusts, or estates for purposes of article twenty-two of this chapter shall be excluded to the extent such portion is not derived from or connected with New York sources; and

(3) the affected pass-through entity's separately and nonseparately computed items that would otherwise be passed through to such entity from any lower-tier affected pass-through entity shall be excluded to the extent such items are taken into account in determining the tax paid by a lower-tier affected pass-through entity pursuant to section eight hundred sixty-one of this article.

For purposes of this subsection, the portion of any separately and nonseparately computed item that is not derived from or connected with New York sources shall be determined under regulations or guidance issued by the tax commission consistent with the applicable rules used to determine the portion of a taxpayer's distributive share of partnership income or pro rata share of New York S corporation income that is derived from New York sources pursuant to the rules set forth in section six hundred thirty-two of this chapter.

§ 861. Imposition and rate of tax. (a) General. A tax is hereby imposed for each taxable year on the pass-through business net income of every affected pass-through entity doing business within this state. This tax shall be in addition to any other taxes imposed and shall be at the rate of 6.85 percent for each taxable year beginning on or after January first, two thousand twenty-one. In the case of an affected pass-through entity that is a partnership or a New York S corporation for only a portion of its taxable year, the affected partnership or affected S corporation shall be subject to this tax on only that portion of its pass-through business net income attributable to the portion of the year for which it is a partnership or a New York S corporation, as determined pursuant to regulations and guidance set forth by the commissioner.

(b) Election. Any partnership or New York S corporation may elect to have New York income tax imposed at the entity level under subsection

(a) of this section. An election under this subsection shall be made on the pass-through entity business tax return for the affected pass-through entity in such manner as the commissioner may prescribe by regulation or instruction. An election under this subsection must be made on an annual basis and shall be effective for the affected pass-through entity only for the taxable year for which the election is made.

§ 862. Credits. (a) General. An affected pass-through entity shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States, a political subdivision of such state, the District of Columbia or a province of Canada, upon income both derived therefrom and included in the affected pass-through entity's pass-through business net income or loss under this article. The term "income tax imposed" in the previous sentence shall include: (1) any income tax imposed upon or payable by the affected pass-through entity itself, provided such tax imposition or payment results from a tax that the commissioner determines is substantially similar to the tax imposed by this article; and (2) any income tax imposed upon or payable by any direct or indirect partner or shareholder of the affected pass-through entity who is a resident individual, estate, or trust for purposes of article twenty-two of this chapter.

(b) Limitations. (1) The credit under this section shall not exceed the percentage of the tax otherwise due under this article determined by dividing the portion of the taxpayer's pass-through business net income that is subject to taxation by such other jurisdiction by the total amount of the taxpayer's pass-through business net income.

(2) The credit under this section shall not reduce the tax otherwise due under this article to an amount less than would have been due if the income subject to taxation by such other jurisdiction were excluded from the taxpayer's New York income.

(3) In the case of tax paid by a direct or indirect partner or shareholder that elects to claim the foreign tax credit for federal income tax purposes, the credit under this section for income tax imposed by a province of Canada shall be allowed for that portion of the provincial tax not claimed for federal purposes for the taxable year or a preceding taxable year, provided however, to the extent the provincial tax is claimed for federal purposes for a succeeding taxable year, the credit under this section must be added back in such succeeding taxable year. The provincial tax shall be deemed to be claimed last for federal income tax purposes and for purposes of this subsection.

§ 863. Payment of estimated tax. (a) Definition of estimated tax. Estimated tax means the amount that an affected pass-through entity estimates to be the tax imposed for the current taxable year by section eight hundred sixty-one of this article.

(b) Annual estimated tax payment. The required annual estimated tax payment is the lesser of (1) ninety percent of the estimated tax for the year or (2) one hundred ten percent of the tax shown on the return of the affected pass-through entity for the preceding taxable year. If the affected pass-through entity was not in existence in the previous year or did not elect to be subject to the tax imposed by this article in the preceding year, then no estimated tax is due for the current taxable year.

(c) General. The annual estimated tax payment shall be paid as follows for an affected pass-through entity that reports on a calendar year basis:

(1) If such annual estimated tax payment can reasonably be expected to exceed one thousand dollars on or before March fifteenth of the taxable year, the annual estimated tax payment shall be paid in four equal installments on March fifteenth, June fifteenth, September fifteenth and December fifteenth;

(2) If such annual estimated tax payment can reasonably be expected to exceed one thousand dollars after March fifteenth and not after June fifteenth of the taxable year, the annual estimated tax payment shall be paid in three equal installments on June fifteenth, September fifteenth and December fifteenth;

(3) If such annual estimated tax payment can reasonably be expected to exceed one thousand dollars after June fifteenth and not after September fifteenth of the taxable year, the annual estimated tax payment shall be paid in two equal installments on September fifteenth and December fifteenth; and

(4) If such annual estimated tax payment can reasonably be expected to exceed one thousand dollars after September fifteenth of the taxable year, the annual estimated tax payment shall be paid on December fifteenth.

(d) This section shall apply to a taxable year of less than twelve months in accordance with procedures established by the commissioner.

(e) This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(f) An affected pass-through entity may elect to pay any installment of its estimated tax prior to the date prescribed for the payment thereof.

§ 864. Filing of return and payment of tax. (a) General. On or before the fifteenth day of the fourth month following the close of the taxable year, each affected pass-through entity shall be required to transmit to the commissioner a return in a form prescribed by the commissioner.

(b) Information on return. Each affected pass-through entity shall report any tax due under this article on the face of such return and such other pertinent information as the commissioner may by regulations and instructions prescribe. The balance of any tax shown on the face of such return, not previously paid as installments of estimated tax, shall be paid with such return.

§ 865. Accounting periods and methods. (a) Accounting periods. An affected pass-through entity's taxable year under this article shall be the same as the affected pass-through entity's taxable year for federal income tax purposes.

(b) Accounting methods. An affected pass-through entity's method of accounting under this article shall be the same as the affected pass-through entity's method of accounting for federal income tax purposes.

(c) Change of accounting period or method. (1) If an affected pass-through entity's taxable year or method of accounting is changed for federal income tax purposes, the taxable year or method of accounting for purposes of this article shall be similarly changed.

(2) If an affected pass-through entity's method of accounting is changed, any additional tax that results from adjustments determined to be necessary solely by reason of such change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the affected partnership used the method of accounting from which the change is made.

§ 866. Procedural provisions. (a) General. All procedural provisions of article twenty-two of this chapter will apply to the provisions of this article in the same manner and with the same force and effect as if the language of article twenty-two of this chapter had been incorporated in full into this article and had been specifically adjusted for and expressly referred to the tax imposed by this article, except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to this article.

(b) Liability for tax. Only the affected pass-through entity shall be liable for the tax under this article, and no partner or shareholder that has a direct or indirect ownership interest in the affected pass-through entity shall be personally liable for such tax.

(c) Deposit and disposition of revenue. All taxes, interest, penalties, and fees collected or received by the commissioner under this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter.

(d) Secrecy provision. All the provisions of subsection (a) of section six hundred ninety-seven of this chapter will be applied to the provisions of this article. Notwithstanding any provisions of this chapter to the contrary, the commissioner may disclose information and returns regarding the calculation and payment of the tax imposed by this article to an affected pass-through entity, to its lower-tiered affected pass-through entity or entities, and to any partner or shareholder that has a direct or indirect ownership interest in the affected pass-through entity and to which is allocable any separately or nonseparately computed items, as described in section 702(a) of the Internal Revenue Code with respect to a partnership or section 1366 of the Internal Revenue Code with respect to an S corporation.

§ 2. The opening paragraph of paragraph (a) of subdivision 1 of section 210 of the tax law, as amended by section 10 of part T of chapter 59 of the laws of 2015, is amended to read as follows:

For taxable years beginning before January first, two thousand sixteen, the amount prescribed by this paragraph shall be computed at the rate of seven and one-tenth percent of the taxpayer's business income base. For taxable years beginning on or after January first, two thousand sixteen, the amount prescribed by this paragraph shall be six and one-half percent of the taxpayer's business income base. The taxpayer's business income base shall mean the portion of the taxpayer's business income apportioned within the state as hereinafter provided. However, in the case of a small business taxpayer, as defined in paragraph (f) of this subdivision, the amount prescribed by this paragraph shall be computed pursuant to subparagraph (iv) of this paragraph and in the case of a manufacturer, as defined in subparagraph (vi) of this paragraph, the amount prescribed by this paragraph shall be computed pursuant to subparagraph (vi) of this paragraph, and, in the case of a qualified emerging technology company, as defined in subparagraph (vii) of this paragraph, the amount prescribed by this paragraph shall be computed pursuant to subparagraph (vii) of this paragraph. Notwithstanding the provisions of this paragraph, with respect to any taxpayer that has a direct or indirect ownership interest in one or more pass-through entities that has elected to be subject to tax pursuant to subsection (a) of section eight hundred sixty-one of this chapter, including any taxpayer that is a small business taxpayer, a manufacturer, or a qualified emerging technology company, the taxpayer's business income base will be decreased by an amount equal to the product of (1) the sum of the portions of the taxpayer's distributive or pro rata share

of each separately and nonseparately computed item as described in section 702(a) or section 1366 of the Internal Revenue Code that is derived from or connected with New York sources as computed pursuant to subsection (g) of section eight hundred sixty of this chapter that is being taken into account in determining the tax paid by an affected pass-through entity pursuant to subsection (a) of section eight hundred sixty-one of this chapter and (2) a fraction, the numerator of which is the tax rate imposed on affected pass-through entities by subsection (a) of section eight hundred sixty-one of this chapter and the denominator of which is the tax rate imposed on the business income base of the taxpayer pursuant to this paragraph. If the amount of the reduction allowable to the taxpayer under the previous sentence for any taxable year shall exceed the taxpayer's tax base for such year, the excess allowed for the taxable year may be carried over to the following year or years and may be used to reduce the taxpayer's tax base in such subsequent year or years.

§ 3. Section 209-B of the tax law is amended by adding a new subdivision 7 to read as follows:

7. In determining the amount of the surcharge to be imposed on a taxpayer pursuant to this section, the amount of such surcharge will be determined without taking into account any affected pass-through entity reduction computed pursuant to paragraph (a) of subdivision one of section two hundred ten of this chapter.

§ 4. Subsection (a) of section 611 of the tax law, as amended by chapter 28 of the laws of 1987, is amended to read as follows:

(a) General. The New York taxable income of a resident individual shall be his New York adjusted gross income less his New York deduction and New York exemptions, as determined under this part. Notwithstanding the foregoing provision, with respect to any resident individual that has a direct or indirect ownership interest in one or more affected pass-through entities subject to the tax imposed pursuant to article twenty-four-A of this chapter, the resident individual's New York taxable income shall be adjusted to exclude such individual's distributive or pro rata shares of each separately and nonseparately computed item, as described in section 702(a) of the Internal Revenue Code with respect to a partnership or section 1366 of the Internal Revenue Code with respect to an S corporation, from all affected pass-through entities in which the taxpayer has a direct or indirect ownership interest. If the amount of the adjustment made pursuant to the previous sentence shall exceed the resident individual's New York taxable income for such year, the excess allowed for the taxable year may be carried over to the following year or years and may be used to reduce the resident individual's New York taxable income in such subsequent year or years.

§ 5. Section 618 of the tax law is amended by adding a new subsection 6 to read as follows:

(6) With respect to a resident estate or trust that has a direct or indirect ownership interest in one or more affected pass-through entities subject to the tax imposed pursuant to article twenty-four-A of this chapter, the resident estate's or trust's New York taxable income shall be adjusted to exclude such estate's or trust's distributive or pro rata shares of each separately and nonseparately computed item, as described in section 702(a) of the Internal Revenue Code with respect to a partnership or section 1366 of the Internal Revenue Code with respect to an S corporation, from all affected pass-through entities in which the taxpayer has a direct or indirect ownership interest. If the amount of the adjustment made pursuant to the previous sentence shall exceed

the estate's or the trust's New York taxable income for such year, the excess allowed for the taxable year may be carried over to the following year or years and may be used to reduce the estate's or trust's New York taxable income in such subsequent year or years.

§ 6. Subsection (e) of section 601 of the tax law is amended by adding a new paragraph 5 to read as follows:

(5) Nonresident partners and shareholders in affected pass-through entities. Notwithstanding any other provision of this subsection, with respect to every nonresident and part-year resident individual and trust and every nonresident estate that has a direct or indirect ownership interest in one or more affected pass-through entities subject to the tax imposed pursuant to article twenty-four-A of this chapter, the tax imposed pursuant to paragraph one of this subsection shall be an amount equal to the sum of the modified tax base and the surtax tax base multiplied by their respective applicable New York source fractions.

(A) Modified tax base. The modified tax base of a taxpayer under this paragraph shall be calculated in the same manner as the tax base in paragraph two of this subsection, except that, notwithstanding subsection (a) of section six hundred eleven or subdivision six of section six hundred eighteen of this article, separately and nonseparately computed items with respect to such affected pass-through entities shall not be excluded, and the rate tables under subsections (a), (b) and (c) and the supplemental tax under subsection (d-1) of this section shall be applied by reducing each tax rate in excess of 6.85% to 6.85%, and adjusting each tax table accordingly. The applicable New York source fraction for the modified tax base shall be calculated in the same manner as the New York source fraction under paragraph three of this subsection, including the exclusion of separately and nonseparately computed items with respect to such affected pass-through entities under subsection (a) of section six hundred eleven or subdivision six of section six hundred eighteen of this article, as applicable, in calculating the numerator of such fraction. If the amount of such separately and nonseparately computed items so excluded exceeds the numerator of the New York source fraction for such year before such exclusion, the excess may be carried over to the following year or years and may be used to reduce the numerator of the taxpayer's applicable New York source fraction under this subparagraph for such taxable years.

(B) Surtax tax base. The surtax tax base of a taxpayer under this paragraph shall be equal to the portion of the taxpayer's New York taxable income to which the 8.82% rate would have applied in computing the taxpayer's modified tax base under the preceding subparagraph (after taking into account the tax table benefit recapture provisions under subsection (d-1) of this section) if the tax rate had not been capped at 6.85% under that subparagraph multiplied by a factor of 1.97%. The applicable New York source fraction for the surtax tax base shall be calculated in the same manner as the New York source fraction under paragraph three of this subsection, except that separately and nonseparately computed items with respect to such affected pass-through entities shall not be excluded in calculating the numerator of such fraction.

§ 7. Section 606 of the tax law is amended by adding a new subsection (kkk) to read as follows:

(kkk) Taxpayers with direct or indirect ownership interests in affected pass-through entities. Notwithstanding the other provisions of this subsection, a taxpayer that has a direct or indirect ownership interest in an affected pass-through entity that is subject to tax

pursuant to article twenty-four-A of this chapter is not entitled to claim a credit otherwise provided by this section to the extent that the credit was claimed by the affected pass-through entity for purposes of determining its tax liability under article twenty-four-A of this chapter.

§ 8. Subsection (d) of section 620 of the tax law, as added by chapter 166 of the laws of 1991, is amended to read as follows:

(d) S corporation shareholders and partners. In the case of a shareholder of an S corporation, the term "income tax" in subsection (a) of this section shall [~~not~~] include (1) any such tax imposed upon or payable by the [~~corporation, but shall include any such tax~~] shareholder with respect to the income of the corporation [~~imposed upon or payable by the shareholder~~], without regard to whether an election independent of the federal S election was required to effect such imposition upon the shareholder of such S corporation and (2) such shareholder's pro rata share of any such tax imposed upon or payable by the corporation, provided such tax imposition or payment results from a tax that the commissioner determines is substantially similar to the tax imposed by article twenty-four-A of this chapter. In the case of a partner in a partnership, the term "income tax" in subsection (a) of this section shall (1) include any such tax imposed upon or payable by the partner with respect to the income of the partnership and (2) such partner's distributive share of any such tax imposed upon or payable by the partnership, provided such tax imposition or payment results from a tax that the commissioner determines is substantially similar to the tax imposed by article twenty-four-A of this chapter.

§ 9. Section 620 of the tax law is amended by adding a new subsection (e) to read as follows:

(e) Taxpayers with direct or indirect ownership interests in affected pass-through entities. Notwithstanding the other provisions of this section, a taxpayer that has a direct or indirect ownership interest in an affected pass-through entity that is subject to tax pursuant to article twenty-four-A of this chapter is not entitled to claim a credit otherwise provided by this section to the extent that any income tax is claimed as a credit pursuant to section eight hundred sixty-two of this chapter by the affected pass-through entity for purposes of determining its tax liability under article twenty-four-A of this chapter.

§ 10. Subparagraph (A) of paragraph 4 of subsection (c) of section 658 of the tax law, as amended by section 72 of part A of chapter 59 of the laws of 2014, is amended to read as follows:

(A) General. Every entity other than an entity subject to tax under article twenty-four-A of this chapter, which is a partnership, other than a publicly traded partnership as defined in section 7704 of the federal Internal Revenue Code, subchapter K limited liability company or an S corporation for which the election provided for in subsection (a) of section six hundred sixty of this part is in effect, which has partners, members or shareholders who are nonresident individuals, as defined under subsection (b) of section six hundred five of this article, or C corporations, and which has any income derived from New York sources, determined in accordance with the applicable rules of section six hundred thirty-one of this article as in the case of a nonresident individual, shall pay estimated tax on such income on behalf of such partners, members or shareholders in the manner and at the times prescribed by subsection (c) of section six hundred eighty-five of this article. For purposes of this paragraph, the term "estimated tax" shall mean a partner's, member's or shareholder's distributive share or pro

rata share of the entity income derived from New York sources, multiplied by the highest rate of tax prescribed by section six hundred one of this article for the taxable year of any partner, member or shareholder who is an individual taxpayer, or paragraph (a) of subdivision one of section two hundred ten of this chapter for the taxable year of any partner, member or shareholder which is a C corporation, whether or not such C corporation is subject to tax under article nine, nine-A or thirty-three of this chapter, and reduced by the distributive share or pro rata share of any credits determined under section one hundred eighty-seven, one hundred eighty-seven-a, six hundred six or fifteen hundred eleven of this chapter, whichever is applicable, derived from the entity.

§ 11. Section 612 of the tax law is amended by adding a new subsection (y) to read as follows:

(y) The election by a partnership or S corporation pursuant to subsection (b) of section eight hundred sixty-one of this chapter shall have no impact on the additions and subtractions to be taken into account under subsection (n) of this section and such election shall have no impact on the determination of the basis of a partner or shareholder in an interest in the partnership or in the stock or indebtedness of the S corporation.

§ 12. Subdivision 1 of section 171-a of the tax law, as amended by section 3 of part XX of chapter 59 of the laws of 2019, is amended to read as follows:

1. All taxes, interest, penalties and fees collected or received by the commissioner or the commissioner's duly authorized agent under articles nine (except section one hundred eighty-two-a thereof and except as otherwise provided in section two hundred five thereof), nine-A, twelve-A (except as otherwise provided in section two hundred eighty-four-d thereof), thirteen, thirteen-A (except as otherwise provided in section three hundred twelve thereof), eighteen, nineteen, twenty (except as otherwise provided in section four hundred eighty-two thereof), twenty-B, twenty-D, twenty-one, twenty-two, [~~twenty-four~~] **twenty-four-A**, twenty-six, twenty-eight (except as otherwise provided in section eleven hundred two or eleven hundred three thereof), twenty-eight-A, twenty-nine-B, thirty-one (except as otherwise provided in section fourteen hundred twenty-one thereof), thirty-three and thirty-three-A of this chapter shall be deposited daily in one account with such responsible banks, banking houses or trust companies as may be designated by the comptroller, to the credit of the comptroller. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under such articles of this chapter, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds or reimbursements under such articles of this chapter out of which amount the comptroller shall pay any refunds or reimbursements to which taxpayers shall be entitled under the provisions of such articles of this chapter. The commissioner and the comptroller shall maintain a system of accounts showing the amount of revenue collected or received from each of the taxes imposed by such articles. The comptroller, after reserving the amount to pay such refunds or reimbursements, shall, on or before the tenth day of each month, pay into the state treasury to the credit of the general fund all revenue deposited under this section during the preceding calendar month

and remaining to the comptroller's credit on the last day of such preceding month, (i) except that the comptroller shall pay to the state department of social services that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against past-due support pursuant to subdivision six of section one hundred seventy-one-c of this article, (ii) and except that the comptroller shall pay to the New York state higher education services corporation and the state university of New York or the city university of New York respectively that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against the amount of defaults in repayment of guaranteed student loans and state university loans or city university loans pursuant to subdivision five of section one hundred seventy-one-d and subdivision six of section one hundred seventy-one-e of this article, (iii) and except further that, notwithstanding any law, the comptroller shall credit to the revenue arrearage account, pursuant to section ninety-one-a of the state finance law, that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter, and any interest thereon, which is certified to the comptroller by the commissioner as the amount to be credited against a past-due legally enforceable debt owed to a state agency pursuant to paragraph (a) of subdivision six of section one hundred seventy-one-f of this article, provided, however, he shall credit to the special offset fiduciary account, pursuant to section ninety-one-c of the state finance law, any such amount creditable as a liability as set forth in paragraph (b) of subdivision six of section one hundred seventy-one-f of this article, (iv) and except further that the comptroller shall pay to the city of New York that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter and any interest thereon that is certified to the comptroller by the commissioner as the amount to be credited against city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-l of this article, (v) and except further that the comptroller shall pay to a non-obligated spouse that amount of overpayment of tax imposed by article twenty-two of this chapter and the interest on such amount which has been credited pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-l of this article and which is certified to the comptroller by the commissioner as the amount due such non-obligated spouse pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter; and (vi) the comptroller shall deduct a like amount which the comptroller shall pay into the treasury to the credit of the general fund from amounts subsequently payable to the department of social services, the state university of New York, the city university of New York, or the higher education services corporation, or the revenue arrearage account or special offset fiduciary account pursuant to section ninety-one-a or ninety-one-c of the state finance law, as the case may be, whichever had been credited the amount originally withheld from such overpayment, and (vii) with respect to amounts originally withheld from such overpayment pursuant to section one hundred seventy-one-l of this article and paid to the city of New York, the comptroller shall collect a like amount from the city of New York.

§ 13. Section 601 of the tax law is amended by adding a new subsection (j) to read as follows:

(j) For every resident individual, estate or trust that has a direct or indirect ownership interest in one or more pass-through entities that has elected to be subject to tax pursuant to subsection (a) of section eight hundred sixty-one of this chapter, there is hereby imposed for each taxable year a surtax at the rate of 1.97% on the amount by which the portion of such individual's, estate's or trust's New York taxable income subject to tax at the rate of 8.82% would increase if the resident individual's, estate's or trust's New York taxable income was adjusted to add back such individual's, estate's or trust's distributive or pro rata shares of separately or nonseparately computed items from such pass-through entities.

§ 14. Paragraph 1 of subsection (e) of section 601 of the tax law, as amended by chapter 170 of the laws of 1994, is amended to read as follows:

(1) General. [~~There~~] **Except as provided in paragraph five of this subsection, there** is hereby imposed for each taxable year on the taxable income which is derived from sources in this state of every nonresident and part-year resident individual and trust and every nonresident estate a tax which shall be equal to the tax base multiplied by the New York source fraction.

§ 15. This act shall take effect immediately and shall apply for taxable years beginning on or after January 1, 2021; provided, however that the amendments to subdivision 1 of section 171-a of the tax law made by section twelve of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith.