STATE OF NEW YORK

5441

2021-2022 Regular Sessions

IN SENATE

March 5, 2021

Introduced by Sen. O'MARA -- 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 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:

Section 1. Subparagraph (iv) of paragraph (a) of subdivision 1 of section 210 of the tax law, as amended by section 12 of part A of chapter 59 of the laws of 2014, is amended to read as follows:

(iv) **(A)** for taxable years beginning before January first, two thousand sixteen, if the business income base is not more than two hundred ninety thousand dollars the amount shall be six and one-half percent of the business income base; if the business income base is more than two hundred ninety thousand dollars but not over three hundred ninety thousand dollars the amount shall be the sum of (1) eighteen thousand eight hundred fifty dollars, (2) seven and one-tenth percent of the excess of the business income base over two hundred ninety thousand dollars but not over three hundred ninety thousand dollars and (3) four and thirty-five hundredths percent of the excess of the business income base over three hundred fifty thousand dollars but not over three hundred ninety thousand dollars;

(B) for taxable years beginning on or after January first, two thousand twenty-three, if the business income base is not more than four hundred thousand dollars the amount shall be four percent of the business income base; if the business income base is more than four hundred thousand dollars but not over five hundred thousand dollars the amount shall be the sum of (1) sixteen thousand dollars, (2) six and one-half percent of the excess of the business income base over four hundred thousand dollars but not over five hundred thousand dollars and (3) twenty percent of the excess of the business income base over four

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

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hundred fifty thousand dollars but not over five hundred thousand dollars;

(C) for taxable years beginning on or after January first, two thousand twenty-four, if the business income base is not more than four hundred thousand dollars the amount shall be two and one-half percent of the business income base; if the business income base is more than four hundred thousand dollars but not over five hundred thousand dollars the amount shall be the sum of (1) ten thousand dollars, (2) six and one-half percent of the excess of the business income base over four hundred thousand dollars but not over five hundred thousand dollars and (3) thirty-two percent of the excess of the business income base over four hundred fifty thousand dollars but not over five hundred thousand dollars.

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

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

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

(C) (i) For the purposes of this paragraph, the term small business shall mean: (I) a sole proprietor [~~or a farm business who employs one or more persons during the taxable year and~~] who has net business income [~~or net farm income~~] of less than [~~two hundred fifty~~] five hundred thousand dollars; or (II) a limited liability company, partnership or New York S corporation that during the taxable year has New York gross business income attributable to a non-farm business that is greater than zero but less than one million five hundred thousand dollars or net farm income attributable to a farm business that is greater than zero but less than five hundred thousand dollars. (ii) For purposes of this paragraph, the term New York gross business income shall mean: (I) in the case of a limited liability company or a partnership, New York source gross income as defined in subparagraph (B) of paragraph three of subsection (c) of section six hundred fifty-eight of this article, and, (II) in the case of a New York S corporation, New York receipts included

in the numerator of the apportionment factor determined under section two hundred ten-A of this chapter for the taxable year.

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

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

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

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

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

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

nies, partnerships or New York S corporations must be less than five hundred thousand dollars.

§ 4. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2023.