

# STATE OF NEW YORK

9454

## IN SENATE

May 30, 2022

Introduced by Sen. KRUEGER -- (at request of the NYC Finance) -- read twice and ordered printed, and when printed to be committed to the Committee on Cities 1

AN ACT to amend the administrative code of the city of New York, in relation to the exclusion of certain grants as taxable income for certain business taxes, the imposition of the business corporation tax, the credit of certain overpayments of tax against other taxes owed, and the disclosure of owners of limited liability companies with respect to the real property transfer tax; to amend the tax law, in relation to a city pass-through entity tax; and to amend chapter 59 of the laws of 2022, relating to a city pass-through entity tax, in relation to the city pass-through entity tax

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

1 Section 1. Subdivision (c) of section 11-506 of the administrative  
2 code of the city of New York is amended by adding a new paragraph 12 to  
3 read as follows:

4 (12) The amount of any grant received through either the COVID-19  
5 pandemic small business recovery grant program, pursuant to section  
6 sixteen-ff of the New York state urban development corporation act, or  
7 the small business resilience grant program administered by the depart-  
8 ment of small business services, to the extent the amount of either such  
9 grant is included in federal taxable income.

10 § 2. Subdivision (a) of section 11-526 of the administrative code of  
11 the city of New York is amended to read as follows:

12 (a) General. The commissioner of finance, within the applicable period  
13 of limitations, may credit an overpayment of tax and interest on such  
14 overpayment against any liability in respect of any tax imposed by [~~this~~  
15 ~~chapter or by chapters six, seventeen and nineteen of~~] this title, on  
16 the person who made overpayment, and the balance shall be refunded. Such  
17 credit of an overpayment shall be applied before such overpayment, or  
18 any portion thereof, is paid to the state commissioner of taxation and  
19 finance pursuant to section one hundred seventy-one-m of the tax law.

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

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1 § 3. Paragraph (a) of subdivision 8 of section 11-602 of the adminis-  
2 trative code of the city of New York is amended by adding a new subpara-  
3 graph 16 to read as follows:

4 (16) the amount of any grant received through either the COVID-19  
5 pandemic small business recovery grant program, pursuant to section  
6 sixteen-ff of the New York state urban development corporation act, or  
7 the small business resilience grant program administered by the depart-  
8 ment of small business services, to the extent the amount of either such  
9 grant is included in federal taxable income.

10 § 4. Section 11-641 of the administrative code of the city of New York  
11 is amended by adding a new subdivision (t) to read as follows:

12 (t) Entire net income shall not include the amount of any grant  
13 received through either the COVID-19 pandemic small business recovery  
14 grant program, pursuant to section sixteen-ff of the New York state  
15 urban development corporation act, or the small business resilience  
16 grant program administered by the department of small business services,  
17 to the extent the amount of either such grant is included in federal  
18 taxable income.

19 § 5. Paragraph (a) of subdivision 8 of section 11-652 of the adminis-  
20 trative code of the city of New York is amended by adding a new subpara-  
21 graph 17 to read as follows:

22 (17) the amount of any grant received through either the COVID-19  
23 pandemic small business recovery grant program, pursuant to section  
24 sixteen-ff of the New York state urban development corporation act, or  
25 the small business resilience grant program administered by the depart-  
26 ment of small business services, to the extent the amount of either such  
27 grant is included in federal taxable income.

28 § 6. Subparagraph 3 of paragraph (b) of subdivision 8 of section  
29 11-652 of the administrative code of the city of New York, as added by  
30 section 1 of part D of chapter 60 of the laws of 2015, is amended to  
31 read as follows:

32 (3) taxes on or measured by profits or income paid or accrued to the  
33 United States, any of its possessions, territories or commonwealths,  
34 including taxes in lieu of any of the foregoing taxes otherwise general-  
35 ly imposed by any possession, territory or commonwealth of the United  
36 States, or taxes on or measured by profits or income paid or accrued to  
37 the state or any subdivision thereof, including taxes paid or accrued  
38 under article nine, nine-A, thirteen-A, twenty-four-A, twenty-four-B of  
39 the tax law or under article thirty-two of the tax law as in effect on  
40 December thirty-first, two thousand fourteen;

41 § 7. Subdivision 1 and the opening paragraphs of subdivisions 2 and  
42 2-a of section 11-653 of the administrative code of the city of New  
43 York, as added by section 1 of part D of chapter 60 of the laws of 2015  
44 and paragraph (a) of subdivision 1 as amended by section 20 of part Q of  
45 chapter 60 of the laws of 2016, are amended to read as follows:

46 1. (a) For the privilege of doing business, or of employing capital,  
47 or of owning or leasing property in the city in a corporate or organized  
48 capacity, or of maintaining an office in the city, or of deriving  
49 receipts from activity in the city, for all or any part of each of its  
50 fiscal or calendar years, every domestic or foreign corporation, except  
51 corporations specified in subdivision four of this section, shall annu-  
52 ally pay a tax, upon the basis of its business income, or upon such  
53 other basis as may be applicable as hereinafter provided, for such  
54 fiscal or calendar year or part thereof, on a report that shall be  
55 filed, except as hereinafter provided, for taxable years beginning  
56 before January first, two thousand sixteen, on or before the fifteenth

1 day of March next succeeding the close of each such calendar year, or,  
2 in the case of a taxpayer that reports on the basis of a fiscal year,  
3 within two and one-half months after the close of each such fiscal year,  
4 and for taxable years beginning on or after January first, two thousand  
5 sixteen, on or before the fifteenth day of April next succeeding the  
6 close of each such calendar year, or, in the case of a taxpayer that  
7 reports on the basis of a fiscal year, within three and one-half months  
8 after the close of each such fiscal year, and shall be paid as herein-  
9 after provided.

10 (b) [~~Intentionally omitted~~] A corporation is deriving receipts from  
11 activity in the city if it has receipts within the city of one million  
12 dollars or more in a taxable year. For purposes of this section, the  
13 term "receipts" means the receipts that are subject to the allocation  
14 rules set forth in section 11-654.2 of this subchapter, and the term  
15 "receipts within the city" means the receipts included in the numerator  
16 of the receipts fraction determined under section 11-654.2 of this  
17 subchapter. For purposes of this paragraph, receipts from processing  
18 credit card transactions for merchants include merchant discount fees  
19 received by the corporation.

20 (c) A corporation is doing business in the city if (1) it has issued  
21 credit cards to one thousand or more customers who have a mailing  
22 address within the city as of the last day of its taxable year, (2) it  
23 has merchant customer contracts with merchants and the total number of  
24 locations covered by those contracts equals one thousand or more  
25 locations in the city to whom the corporation remitted payments for  
26 credit card transactions during the taxable year, or (3) the sum of the  
27 number of customers described in subparagraph one of this paragraph plus  
28 the number of locations covered by its contracts described in subpara-  
29 graph two of this paragraph equals one thousand or more. As used in this  
30 subdivision, the term "credit card" includes bank, credit, travel and  
31 entertainment cards.

32 (d) [~~Intentionally omitted~~] (1) A corporation with less than one  
33 million dollars but at least ten thousand dollars of receipts within the  
34 city in a taxable year that is part of a unitary group that meets the  
35 ownership test under section 11-654.3 of this subchapter is deriving  
36 receipts from activity in the city if the receipts within the city of  
37 the members of the unitary group that have at least ten thousand dollars  
38 of receipts within the city in the aggregate meet the threshold set  
39 forth in paragraph (b) of this subdivision.

40 (2) A corporation that does not meet any of the thresholds set forth  
41 in paragraph (c) of this subdivision but has at least ten customers, or  
42 locations, or customers and locations, as described in paragraph (c) of  
43 this subdivision, and is part of a unitary group that meets the owner-  
44 ship test under section 11-654.3 of this subchapter, is doing business  
45 in the city if the number of customers, locations, or customers and  
46 locations, within the city of the members of the unitary group that have  
47 at least ten customers, locations, or customers and locations, within  
48 the city in the aggregate meets any of the thresholds set forth in para-  
49 graph (c) of this subdivision.

50 (3) For purposes of this paragraph, any corporation described in para-  
51 graph (c) of subdivision two of section 11-654.3 of this subchapter  
52 shall not be considered.

53 (e) [~~Intentionally omitted~~] At the end of each year, the commissioner  
54 shall review the cumulative percentage change in the consumer price  
55 index. The commissioner shall adjust the receipt thresholds set forth in  
56 this subdivision if the consumer price index has changed by ten percent

1 or more since January first, two thousand twenty-two, or since the date  
2 that the thresholds were last adjusted under this subdivision. The  
3 thresholds shall be adjusted to reflect the cumulative percentage change  
4 in the consumer price index. The adjusted thresholds shall be rounded to  
5 the nearest one thousand dollars. As used in this paragraph, "consumer  
6 price index" means the consumer price index for all urban consumers  
7 (CPI-U) available from the bureau of labor statistics of the United  
8 States department of labor. Any adjustment shall apply to tax periods  
9 that begin after the adjustment is made.

10 (f) If a partnership is doing business, employing capital, owning or  
11 leasing property in the city, or maintaining an office in the city, or  
12 deriving receipts from activity in the city, any corporation that is a  
13 partner in such partnership shall be subject to tax under this subchap-  
14 ter as described in the regulations of the commissioner of finance.

15 A foreign corporation shall not be deemed to be doing business,  
16 employing capital, owning or leasing property, or maintaining an office  
17 in the city, or deriving receipts from activity in the city, for the  
18 purposes of this subchapter, by reason of:

19 An alien corporation shall not be deemed to be doing business,  
20 employing capital, owning or leasing property, or maintaining an office  
21 in the city, or deriving receipts from activity in the city, for the  
22 purposes of this subchapter, if its activities in the city are limited  
23 solely to:

24 § 8. Subdivision 1 of section 11-677 of the administrative code of the  
25 city of New York is amended to read as follows:

26 1. General. The commissioner of finance, within the applicable period  
27 of limitations, may credit an overpayment of tax and interest on such  
28 overpayment against any liability in respect of any tax imposed by [~~any~~  
29 ~~of the named subchapters of this chapter or~~] this title on the taxpayer  
30 who made the overpayment, and the balance shall be refunded out of the  
31 proceeds of the tax. Such credit of an overpayment shall be applied  
32 before such overpayment, or any portion thereof, is paid to the state  
33 commissioner of taxation and finance pursuant to section one hundred  
34 seventy-one-m of the tax law.

35 § 9. Subdivision h of section 11-2105 of the administrative code of  
36 the city of New York, as added by chapter 297 of the laws of 2019, is  
37 amended to read as follows:

38 h. When the grantor or grantee of a deed for a building used as resi-  
39 dential real property containing [~~one-to-four-family~~] up to four family  
40 dwelling units is a limited liability company, the joint return shall  
41 not be accepted for filing unless it is accompanied by a document which  
42 identifies the names and business addresses of all members, managers,  
43 and any other authorized persons, if any, of such limited liability  
44 company and the names and business addresses or, if none, the business  
45 addresses of all shareholders, directors, officers, members, managers  
46 and partners of any limited liability company or other business entity  
47 that are to be the members, managers or authorized persons, if any, of  
48 such limited liability company. The identification of such names and  
49 addresses shall not be deemed an unwarranted invasion of personal priva-  
50 cy pursuant to article six of the public officers law. If any such  
51 member, manager or authorized person of the limited liability company is  
52 itself a limited liability company or other business entity other than a  
53 publicly traded entity, a REIT, an UPREIT, or a mutual fund, the names  
54 and addresses of the shareholders, directors, officers, members, manag-  
55 ers and partners of the limited liability company or other business  
56 entity shall also be disclosed until full disclosure of ultimate owner-

1 ship by natural persons is achieved. For purposes of this subdivision,  
2 the terms "members", "managers", "authorized person", "limited liability  
3 company" and "other business entity" shall have the same meaning as  
4 those terms are defined in section one hundred two of the limited  
5 liability company law.

6 § 10. Subsection (b) of section 868 of the tax law, as added by  
7 section 1 of subpart B of part MM of chapter 59 of the laws of 2022, is  
8 amended to read as follows:

9 (b) In order to be effective, the annual election to be taxed pursuant  
10 to this article must be made by [~~a city taxpayer and (1) if the entity  
11 is an S corporation, by any officer, manager or shareholder of the S  
12 corporation who is authorized under the law of the state where the  
13 corporation is incorporated or under the S corporation's organizational  
14 documents to make the election and who represents to having such author-  
15 ization under penalty of perjury; or (2) if the entity is not an S  
16 corporation, by any member, partner, owner, or other individual with  
17 authority to bind the entity or sign returns pursuant to section six  
18 hundred fifty-three of this chapter~~] an individual as described in  
19 subsection (b) of section eight hundred sixty-one of this chapter who  
20 made the annual election to be taxed pursuant to article twenty-four-A  
21 of this chapter for the taxable year.

22 § 11. Paragraph 3 of subsection (b) of section 864 of the tax law, as  
23 added by section 1 of part C of chapter 59 of the laws of 2021, is  
24 amended to read as follows:

25 (3) [~~The~~] Notwithstanding paragraph four of subsection (c) of section  
26 six hundred eighty-five of this chapter, the required annual payment is  
27 the lesser of: (A) ninety percent of the tax shown on the return for the  
28 taxable year; or (B) one hundred percent of the tax shown on the return  
29 of the electing partnership or electing S corporation for the preceding  
30 taxable year.

31 § 12. Paragraph 3 of subsection (b) of section 871 of the tax law, as  
32 added by section 1 of subpart B of part MM of chapter 59 of the laws of  
33 2022, is amended to read as follows:

34 (3) [~~The~~] Without regard to paragraph four of subsection (c) of  
35 section six hundred eighty-five of this chapter, the required annual  
36 payment is the lesser of: (A) ninety percent of the tax shown on the  
37 return for the taxable year; or (B) one hundred percent of the tax shown  
38 on the return of the electing city partnership or electing city resident  
39 S corporation for the preceding taxable year.

40 § 13. Paragraph 3 of subsection (c) of section 873 of the tax law, as  
41 added by section 1 of subpart B of part MM of chapter 59 of the laws of  
42 2022, is amended to read as follows:

43 (3) Any [~~city~~] taxpayer eligible to claim a credit authorized pursuant  
44 to subsection (g) of section thirteen hundred ten of this chapter or a  
45 credit authorized pursuant to subsection (kkk) of section six hundred  
46 six of this chapter because such taxpayer is a partner or member in an  
47 electing city partnership or a shareholder in an electing city resident  
48 S corporation, either directly or through a disregarded entity, that is  
49 a general, managing or controlling partner of the electing city partner-  
50 ship or managing or controlling shareholder of the electing city resi-  
51 dent S corporation, or owns greater than fifty percent of the interests  
52 or profits of the electing city partnership or electing city resident S  
53 corporation, or is under a duty to act for the electing city partnership  
54 or electing city resident S corporation in complying with the provisions  
55 of this article, or was the individual that made the election on behalf  
56 of the electing city partnership or electing city resident S corporation

1 authorized by section eight hundred sixty-eight of this article, shall  
2 be jointly and severally liable for the tax imposed pursuant to this  
3 article on such electing city partnership or electing city resident S  
4 corporation.

5 § 14. Section 12 of subpart B of part MM of chapter 59 of the laws of  
6 2022 is amended to read as follows:

7 § 12. This act shall take effect immediately and shall apply to taxa-  
8 ble years beginning on or after January 1, [~~2023~~] 2022; provided, howev-  
9 er, that subparagraph 3 of paragraph (b) of subdivision 8 of section  
10 11-602 of the administrative code of the city of New York as amended by  
11 section nine of this act and paragraph 2 of subdivision (b) of section  
12 11-641 of the administrative code of the city of New York as amended by  
13 section ten of this act other than the amendments in those sections  
14 relating to article 24-B of the tax law, shall be deemed to have been in  
15 full force and effect on and after January 1, 2021.

16 § 15. (a) Notwithstanding section 868 of the tax law, as amended by  
17 section ten of this act, the election to be taxed pursuant to article  
18 24-B of the tax law for taxable year 2022 must be made by March 15,  
19 2023, in a manner prescribed by the commissioner.

20 (b) Further for the taxable year 2022, notwithstanding section 871 of  
21 the tax law, as amended by section twelve of this act, an electing city  
22 partnership or electing city S corporation shall not be required to make  
23 estimated tax payments for taxable year 2022.

24 (c) For taxable year 2022, city taxpayers who are partners, members or  
25 shareholders of electing city partnerships and electing city S corpo-  
26 rations shall continue to make the required New York city personal  
27 income tax estimated tax payments, calculated as if they were not enti-  
28 tled to the tax credit allowed pursuant to subsection (g) of section  
29 1310 of the tax law. Any addition to tax imposed under subsection (c) of  
30 section 685 of the tax law for the failure of a partner or member of an  
31 electing city partnership or a shareholder of an electing city S corpo-  
32 ration to make such required estimated tax payments for the 2022 taxable  
33 year shall be calculated as if such partner, member, or shareholder was  
34 not entitled to a tax credit allowed pursuant to subsection (g) of  
35 section 1310 of the tax law.

36 § 16. This act shall take effect immediately; provided, however,  
37 sections one, three, four, and five of this act shall be retroactive to  
38 and deemed to have been in full force and effect as of January 1, 2021,  
39 and shall be applicable to tax years beginning on or after such date;  
40 and provided further, however, sections six, seven, ten, eleven, twelve,  
41 thirteen, fourteen, and fifteen of this act shall apply to tax years  
42 beginning on or after January 1, 2022.