

STATE OF NEW YORK

10506

IN ASSEMBLY

May 31, 2022

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Weinstein)
-- read once and referred to the Committee on Ways and Means

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:

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

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

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

(a) General. The commissioner of finance, within the applicable period of limitations, may credit an overpayment of tax and interest on such overpayment against any liability in respect of any tax imposed by ~~[this chapter or by chapters six, seventeen and nineteen of]~~ this title, on the person who made overpayment, and the balance shall be refunded. Such credit of an overpayment shall be applied before such overpayment, or any portion thereof, is paid to the state commissioner of taxation and 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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§ 3. Paragraph (a) of subdivision 8 of section 11-602 of the administrative code of the city of New York is amended by adding a new subparagraph 16 to read as follows:

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

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

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

§ 5. Paragraph (a) of subdivision 8 of section 11-652 of the administrative code of the city of New York is amended by adding a new subparagraph 17 to read as follows:

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

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

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

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

1. (a) For the privilege of doing business, or of employing capital, or of owning or leasing property in the city in a corporate or organized capacity, or of maintaining an office in the city, or of deriving receipts from activity in the city, for all or any part of each of its fiscal or calendar years, every domestic or foreign corporation, except corporations specified in subdivision four of this section, shall annually pay a tax, upon the basis of its business income, or upon such other basis as may be applicable as hereinafter provided, for such fiscal or calendar year or part thereof, on a report that shall be filed, except as hereinafter provided, for taxable years beginning 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.