STATE OF NEW YORK

3734

2021-2022 Regular Sessions

IN ASSEMBLY

January 28, 2021

Introduced by M. of A. STIRPE, WALLACE, WOERNER, PALMESANO -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to pass-through manufacturers zero percent tax rate

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

Section 1. Subsection (b) of section 612 of the tax law is amended by adding a new paragraph 42 to read as follows:

(42) Any income, gain, loss and deduction, to the extent it is included in federal adjusted gross income and is, when combined and combined with additions for federal deprecation required by paragraph eight of this subsection and subtractions for New York allowed by subsection (k) of this section, less than zero, of an individual or trust from a qualified pass-through manufacturer, as defined in paragraph forty-three of subsection (c) of this section.

§ 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 and a new paragraph 43 is added to read as follows:

(39) In the case of a taxpayer who is a small business who has business income and/or farm income as defined in the laws of the United States, an amount equal to three 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. For the purposes of this paragraph, the term small business shall mean 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

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

LBD01016-01-1

income of less than two hundred fifty thousand dollars. For the purposes of this paragraph, the term small business shall exclude any business that is a qualified pass-through manufacturer, as defined in paragraph forty-three of this subsection for the current tax year.

(43) (A) Any income, gain, loss and deduction, to the extent included in federal adjusted gross income and is, when combined and combined with additions for federal deprecation required by paragraph eight of this subsection and subtractions for New York allowed by subsection (k) of this section, greater than zero, of an individual or trust from a qualified pass-through manufacturer. Income from a qualified pass-through manufacturer shall include wages of an individual controlling ten percent or more of the qualified business or entity. Income or loss from a qualified pass-through manufacturer shall not include an amount representing reasonable compensation for personal services, as defined in the internal revenue code section one hundred sixty-two regulations, for an individual controlling ten percent or more of the qualified business or entity.

(B) The qualified pass-through manufacturer may be organized as a sole proprietorship, a partnership, a limited liability company electing to be treated as a partnership or sole proprietorship, or an S corporation.

(C) For the purposes of this subsection, the term qualified pass-through manufacturer shall mean a business that is a qualified New York manufacturer, as defined by subparagraph (vi) of paragraph (a) of subdivision one of section two hundred ten of this chapter, except that the term "gross receipts" shall be replaced by "business receipts" in determining whether the business is "principally engaged" in manufacturing. A qualified pass-through manufacturer shall not include a business that is currently participating in the START-UP NY program.

§ 3. Paragraph 2 of subsection (a) of section 606 of the tax law is amended by adding a new subparagraph (B-1) to read as follows:

(B-1) Property placed in service during the tax year that is otherwise eligible for the investment tax credit described in subparagraph (A) of this paragraph, will not be eligible for the investment tax credit if the use of the property is by a qualified pass-through manufacturer, as defined in paragraph forty-three of subsection (c) of section six hundred twelve of this article for the current tax year.

§ 4. Subdivision 1 of section 210-B of the tax law is amended by adding a new paragraph (g) to read as follows:

(g) Property placed in service during the tax year that is otherwise eligible for the investment tax credit described in this subdivision, will not be eligible for the investment tax credit if the use of the property is by a qualified New York manufacturer, as defined in subparagraph (vi) of paragraph (a) of subsection one of section two hundred ten of this article for the current tax year.

§ 5. For purposes of determining the modifications of paragraphs 39 and 43 of subsection (c) of section 612 of the tax law and the investment tax credit disallowance of subparagraph (B-1) of paragraph 2 of subsection (a) of section 606 of the tax law, the amounts shall be multiplied by the following percentages: (a) for tax years beginning on or after January 1, 2023: forty percent; (b) for tax years beginning on or after January 1, 2024: eighty percent; and (c) for tax years beginning on or after January 1, 2025: one hundred percent.

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