

# STATE OF NEW YORK

27

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. KAPLAN -- 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 pass-through manufacturers zero percent tax rate

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

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

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

10 § 2. Paragraph 39 of subsection (c) of section 612 of the tax law, as  
11 added by section 1 of part Y of chapter 59 of the laws of 2013, is  
12 amended and a new paragraph 43 is added to read as follows:

13 (39) In the case of a taxpayer who is a small business who has busi-  
14 ness income and/or farm income as defined in the laws of the United  
15 States, an amount equal to three percent of the net items of income,  
16 gain, loss and deduction attributable to such business or farm entering  
17 into federal adjusted gross income, but not less than zero, for taxable  
18 years beginning after two thousand thirteen, an amount equal to three  
19 and three-quarters percent of the net items of income, gain, loss and  
20 deduction attributable to such business or farm entering into federal  
21 adjusted gross income, but not less than zero, for taxable years begin-  
22 ning after two thousand fourteen, and an amount equal to five percent of  
23 the net items of income, gain, loss and deduction attributable to such  
24 business or farm entering into federal adjusted gross income, but not  
25 less than zero, for taxable years beginning after two thousand fifteen.  
26 For the purposes of this paragraph, the term small business shall mean a  
27 sole proprietor or a farm business who employs one or more persons

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

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1 during the taxable year and who has net business income or net farm  
2 income of less than two hundred fifty thousand dollars. For the  
3 purposes of this paragraph, the term small business shall exclude any  
4 business that is a qualified pass-through manufacturer, as defined in  
5 paragraph forty-three of this subsection for the current tax year.

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

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

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

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

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

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

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

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

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