

# STATE OF NEW YORK

2915

2021-2022 Regular Sessions

## IN SENATE

January 26, 2021

Introduced by Sen. BROOKS -- 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 the imposition of a pass-through business tax

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

1 Section 1. The tax law is amended by adding a new article 24-A to read  
2 as follows:

3 ARTICLE 24-A

4 PASS-THROUGH BUSINESS TAX

5 Section 860. Definitions.

6 861. Imposition and rate of tax.

7 862. Credits.

8 863. Payment of estimated tax.

9 864. Filing of return and payment of tax.

10 865. Accounting periods and methods.

11 866. Procedural provisions.

12 § 860. Definitions. For purposes of this article:

13 (a) Affected partnership. Affected partnership means any partnership  
14 that has elected pursuant to subsection (b) of section eight hundred  
15 sixty-one of this article to be subject to the tax imposed by this arti-  
16 cle.

17 (b) Affected S corporation. Affected S corporation means any New York  
18 S corporation that has elected pursuant to subsection (b) of section  
19 eight hundred sixty-one of this article to be subject to the tax imposed  
20 by this article.

21 (c) Affected pass-through entity. Affected pass-through entity means  
22 any affected partnership or any affected S corporation.

23 (d) Lower-tier affected pass-through entity. A lower-tier affected  
24 pass-through entity means any affected pass-through entity in which an

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

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1 affected pass-through entity has a direct or indirect ownership inter-  
2 est.

3 (e) New York S corporation. New York S corporation means, with respect  
4 to any taxable year, any entity for which an election is in effect  
5 pursuant to subsection (a) of section six hundred sixty of this chapter,  
6 including any corporation for which such election has been deemed to  
7 have been made pursuant to the provisions of subsection (i) of section  
8 six hundred sixty of this chapter.

9 (f) Partnership. Partnership means any partnership as provided in  
10 section 7701(a)(2) of the Internal Revenue Code and the regulations  
11 promulgated thereunder. A partnership includes any limited liability  
12 company or other entity that is treated as a partnership for federal  
13 income tax purposes.

14 (g) Pass-through business net income or loss. Pass-through business  
15 net income or loss of an affected pass-through entity means the sepa-  
16 rately and nonseparately computed items, as described in section 702(a)  
17 of the Internal Revenue Code with respect to a partnership or section  
18 1366 of the Internal Revenue Code with respect to an S corporation, of  
19 the affected pass-through entity, adjusted as follows:

20 (1) increased or decreased by any modification described in  
21 subsections (b), (c) or (d) of section six hundred twelve of this chap-  
22 ter, subsection (c) or paragraphs two or three of subsection (d) of  
23 section six hundred fifteen of this chapter;

24 (2) the portion of any of the affected pass-through entity's separate-  
25 ly and nonseparately computed items that are allocable to nonresident  
26 individuals, trusts, or estates for purposes of article twenty-two of  
27 this chapter shall be excluded to the extent such portion is not derived  
28 from or connected with New York sources; and

29 (3) the affected pass-through entity's separately and nonseparately  
30 computed items that would otherwise be passed through to such entity  
31 from any lower-tier affected pass-through entity shall be excluded to  
32 the extent such items are taken into account in determining the tax paid  
33 by a lower-tier affected pass-through entity pursuant to section eight  
34 hundred sixty-one of this article.

35 For purposes of this subsection, the portion of any separately and  
36 nonseparately computed item that is not derived from or connected with  
37 New York sources shall be determined under regulations or guidance  
38 issued by the tax commission consistent with the applicable rules used  
39 to determine the portion of a taxpayer's distributive share of partner-  
40 ship income or pro rata share of New York S corporation income that is  
41 derived from New York sources pursuant to the rules set forth in section  
42 six hundred thirty-two of this chapter.

43 § 861. Imposition and rate of tax. (a) General. A tax is hereby  
44 imposed for each taxable year on the pass-through business net income of  
45 every affected pass-through entity doing business within this state.  
46 This tax shall be in addition to any other taxes imposed and shall be at  
47 the rate of 6.85 percent for each taxable year beginning on or after  
48 January first, two thousand twenty-one. In the case of an affected pass-  
49 through entity that is a partnership or a New York S corporation for  
50 only a portion of its taxable year, the affected partnership or affected  
51 S corporation shall be subject to this tax on only that portion of its  
52 pass-through business net income attributable to the portion of the year  
53 for which it is a partnership or a New York S corporation, as determined  
54 pursuant to regulations and guidance set forth by the commissioner.

55 (b) Election. Any partnership or New York S corporation may elect to  
56 have New York income tax imposed at the entity level under subsection

1 (a) of this section. An election under this subsection shall be made on  
2 the pass-through entity business tax return for the affected pass-  
3 through entity in such manner as the commissioner may prescribe by regu-  
4 lation or instruction. An election under this subsection must be made on  
5 an annual basis and shall be effective for the affected pass-through  
6 entity only for the taxable year for which the election is made.

7 § 862. Credits. (a) General. An affected pass-through entity shall be  
8 allowed a credit against the tax otherwise due under this article for  
9 any income tax imposed for the taxable year by another state of the  
10 United States, a political subdivision of such state, the District of  
11 Columbia or a province of Canada, upon income both derived therefrom and  
12 included in the affected pass-through entity's pass-through business net  
13 income or loss under this article. The term "income tax imposed" in the  
14 previous sentence shall include: (1) any income tax imposed upon or  
15 payable by the affected pass-through entity itself, provided such tax  
16 imposition or payment results from a tax that the commissioner deter-  
17 mines is substantially similar to the tax imposed by this article; and  
18 (2) any income tax imposed upon or payable by any direct or indirect  
19 partner or shareholder of the affected pass-through entity who is a  
20 resident individual, estate, or trust for purposes of article twenty-two  
21 of this chapter.

22 (b) Limitations. (1) The credit under this section shall not exceed  
23 the percentage of the tax otherwise due under this article determined by  
24 dividing the portion of the taxpayer's pass-through business net income  
25 that is subject to taxation by such other jurisdiction by the total  
26 amount of the taxpayer's pass-through business net income.

27 (2) The credit under this section shall not reduce the tax otherwise  
28 due under this article to an amount less than would have been due if the  
29 income subject to taxation by such other jurisdiction were excluded from  
30 the taxpayer's New York income.

31 (3) In the case of tax paid by a direct or indirect partner or share-  
32 holder that elects to claim the foreign tax credit for federal income  
33 tax purposes, the credit under this section for income tax imposed by a  
34 province of Canada shall be allowed for that portion of the provincial  
35 tax not claimed for federal purposes for the taxable year or a preceding  
36 taxable year, provided however, to the extent the provincial tax is  
37 claimed for federal purposes for a succeeding taxable year, the credit  
38 under this section must be added back in such succeeding taxable year.  
39 The provincial tax shall be deemed to be claimed last for federal income  
40 tax purposes and for purposes of this subsection.

41 § 863. Payment of estimated tax. (a) Definition of estimated tax.  
42 Estimated tax means the amount that an affected pass-through entity  
43 estimates to be the tax imposed for the current taxable year by section  
44 eight hundred sixty-one of this article.

45 (b) Annual estimated tax payment. The required annual estimated tax  
46 payment is the lesser of (1) ninety percent of the estimated tax for the  
47 year or (2) one hundred ten percent of the tax shown on the return of  
48 the affected pass-through entity for the preceding taxable year. If the  
49 affected pass-through entity was not in existence in the previous year  
50 or did not elect to be subject to the tax imposed by this article in the  
51 preceding year, then no estimated tax is due for the current taxable  
52 year.

53 (c) General. The annual estimated tax payment shall be paid as follows  
54 for an affected pass-through entity that reports on a calendar year  
55 basis:

1 (1) If such annual estimated tax payment can reasonably be expected to  
2 exceed one thousand dollars on or before March fifteenth of the taxable  
3 year, the annual estimated tax payment shall be paid in four equal  
4 installments on March fifteenth, June fifteenth, September fifteenth and  
5 December fifteenth;

6 (2) If such annual estimated tax payment can reasonably be expected to  
7 exceed one thousand dollars after March fifteenth and not after June  
8 fifteenth of the taxable year, the annual estimated tax payment shall be  
9 paid in three equal installments on June fifteenth, September fifteenth  
10 and December fifteenth;

11 (3) If such annual estimated tax payment can reasonably be expected to  
12 exceed one thousand dollars after June fifteenth and not after September  
13 fifteenth of the taxable year, the annual estimated tax payment shall be  
14 paid in two equal installments on September fifteenth and December  
15 fifteenth; and

16 (4) If such annual estimated tax payment can reasonably be expected to  
17 exceed one thousand dollars after September fifteenth of the taxable  
18 year, the annual estimated tax payment shall be paid on December  
19 fifteenth.

20 (d) This section shall apply to a taxable year of less than twelve  
21 months in accordance with procedures established by the commissioner.

22 (e) This section shall apply to a taxable year other than a calendar  
23 year by the substitution of the months of such fiscal year for the  
24 corresponding months specified in this section.

25 (f) An affected pass-through entity may elect to pay any installment  
26 of its estimated tax prior to the date prescribed for the payment there-  
27 of.

28 § 864. Filing of return and payment of tax. (a) General. On or before  
29 the fifteenth day of the fourth month following the close of the taxable  
30 year, each affected pass-through entity shall be required to transmit to  
31 the commissioner a return in a form prescribed by the commissioner.

32 (b) Information on return. Each affected pass-through entity shall  
33 report any tax due under this article on the face of such return and  
34 such other pertinent information as the commissioner may by regulations  
35 and instructions prescribe. The balance of any tax shown on the face of  
36 such return, not previously paid as installments of estimated tax, shall  
37 be paid with such return.

38 § 865. Accounting periods and methods. (a) Accounting periods. An  
39 affected pass-through entity's taxable year under this article shall be  
40 the same as the affected pass-through entity's taxable year for federal  
41 income tax purposes.

42 (b) Accounting methods. An affected pass-through entity's method of  
43 accounting under this article shall be the same as the affected pass-  
44 through entity's method of accounting for federal income tax purposes.

45 (c) Change of accounting period or method. (1) If an affected pass-  
46 through entity's taxable year or method of accounting is changed for  
47 federal income tax purposes, the taxable year or method of accounting  
48 for purposes of this article shall be similarly changed.

49 (2) If an affected pass-through entity's method of accounting is  
50 changed, any additional tax that results from adjustments determined to  
51 be necessary solely by reason of such change shall not be greater than  
52 if such adjustments were ratably allocated and included for the taxable  
53 year of the change and the preceding taxable years, not in excess of  
54 two, during which the affected partnership used the method of accounting  
55 from which the change is made.

1 § 866. Procedural provisions. (a) General. All procedural provisions  
2 of article twenty-two of this chapter will apply to the provisions of  
3 this article in the same manner and with the same force and effect as if  
4 the language of article twenty-two of this chapter had been incorporated  
5 in full into this article and had been specifically adjusted for and  
6 expressly referred to the tax imposed by this article, except to the  
7 extent that any provision is either inconsistent with a provision of  
8 this article or is not relevant to this article.

9 (b) Liability for tax. Only the affected pass-through entity shall be  
10 liable for the tax under this article, and no partner or shareholder  
11 that has a direct or indirect ownership interest in the affected pass-  
12 through entity shall be personally liable for such tax.

13 (c) Deposit and disposition of revenue. All taxes, interest, penal-  
14 ties, and fees collected or received by the commissioner under this  
15 article shall be deposited and disposed of pursuant to the provisions of  
16 section one hundred seventy-one-a of this chapter.

17 (d) Secrecy provision. All the provisions of subsection (a) of section  
18 six hundred ninety-seven of this chapter will be applied to the  
19 provisions of this article. Notwithstanding any provisions of this chap-  
20 ter to the contrary, the commissioner may disclose information and  
21 returns regarding the calculation and payment of the tax imposed by this  
22 article to an affected pass-through entity, to its lower-tiered affected  
23 pass-through entity or entities, and to any partner or shareholder that  
24 has a direct or indirect ownership interest in the affected pass-through  
25 entity and to which is allocable any separately or nonseparately  
26 computed items, as described in section 702(a) of the Internal Revenue  
27 Code with respect to a partnership or section 1366 of the Internal  
28 Revenue Code with respect to an S corporation.

29 § 2. The opening paragraph of paragraph (a) of subdivision 1 of  
30 section 210 of the tax law, as amended by section 10 of part T of chap-  
31 ter 59 of the laws of 2015, is amended to read as follows:

32 For taxable years beginning before January first, two thousand  
33 sixteen, the amount prescribed by this paragraph shall be computed at  
34 the rate of seven and one-tenth percent of the taxpayer's business  
35 income base. For taxable years beginning on or after January first, two  
36 thousand sixteen, the amount prescribed by this paragraph shall be six  
37 and one-half percent of the taxpayer's business income base. The taxpay-  
38 er's business income base shall mean the portion of the taxpayer's busi-  
39 ness income apportioned within the state as hereinafter provided. Howev-  
40 er, in the case of a small business taxpayer, as defined in paragraph  
41 (f) of this subdivision, the amount prescribed by this paragraph shall  
42 be computed pursuant to subparagraph (iv) of this paragraph and in the  
43 case of a manufacturer, as defined in subparagraph (vi) of this para-  
44 graph, the amount prescribed by this paragraph shall be computed pursu-  
45 ant to subparagraph (vi) of this paragraph, and, in the case of a quali-  
46 fied emerging technology company, as defined in subparagraph (vii) of  
47 this paragraph, the amount prescribed by this paragraph shall be  
48 computed pursuant to subparagraph (vii) of this paragraph. Notwith-  
49 standing the provisions of this paragraph, with respect to any taxpayer  
50 that has a direct or indirect ownership interest in one or more pass-  
51 through entities that has elected to be subject to tax pursuant to  
52 subsection (a) of section eight hundred sixty-one of this chapter,  
53 including any taxpayer that is a small business taxpayer, a manufactur-  
54 er, or a qualified emerging technology company, the taxpayer's business  
55 income base will be decreased by an amount equal to the product of (1)  
56 the sum of the portions of the taxpayer's distributive or pro rata share

1 of each separately and nonseparately computed item as described in  
2 section 702(a) or section 1366 of the Internal Revenue Code that is  
3 derived from or connected with New York sources as computed pursuant to  
4 subsection (g) of section eight hundred sixty of this chapter that is  
5 being taken into account in determining the tax paid by an affected  
6 pass-through entity pursuant to subsection (a) of section eight hundred  
7 sixty-one of this chapter and (2) a fraction, the numerator of which is  
8 the tax rate imposed on affected pass-through entities by subsection (a)  
9 of section eight hundred sixty-one of this chapter and the denominator  
10 of which is the tax rate imposed on the business income base of the  
11 taxpayer pursuant to this paragraph. If the amount of the reduction  
12 allowable to the taxpayer under the previous sentence for any taxable  
13 year shall exceed the taxpayer's tax base for such year, the excess  
14 allowed for the taxable year may be carried over to the following year  
15 or years and may be used to reduce the taxpayer's tax base in such  
16 subsequent year or years.

17 § 3. Section 209-B of the tax law is amended by adding a new subdivi-  
18 sion 7 to read as follows:

19 7. In determining the amount of the surcharge to be imposed on a  
20 taxpayer pursuant to this section, the amount of such surcharge will be  
21 determined without taking into account any affected pass-through entity  
22 reduction computed pursuant to paragraph (a) of subdivision one of  
23 section two hundred ten of this chapter.

24 § 4. Subsection (a) of section 611 of the tax law, as amended by chap-  
25 ter 28 of the laws of 1987, is amended to read as follows:

26 (a) General. The New York taxable income of a resident individual  
27 shall be his New York adjusted gross income less his New York deduction  
28 and New York exemptions, as determined under this part. Notwithstanding  
29 the foregoing provision, with respect to any resident individual that  
30 has a direct or indirect ownership interest in one or more affected  
31 pass-through entities subject to the tax imposed pursuant to article  
32 twenty-four-A of this chapter, the resident individual's New York taxa-  
33 ble income shall be adjusted to exclude such individual's distributive  
34 or pro rata shares of each separately and nonseparately computed item,  
35 as described in section 702(a) of the Internal Revenue Code with respect  
36 to a partnership or section 1366 of the Internal Revenue Code with  
37 respect to an S corporation, from all affected pass-through entities in  
38 which the taxpayer has a direct or indirect ownership interest. If the  
39 amount of the adjustment made pursuant to the previous sentence shall  
40 exceed the resident individual's New York taxable income for such year,  
41 the excess allowed for the taxable year may be carried over to the  
42 following year or years and may be used to reduce the resident individ-  
43 ual's New York taxable income in such subsequent year or years.

44 § 5. Section 618 of the tax law is amended by adding a new subsection  
45 6 to read as follows:

46 (6) With respect to a resident estate or trust that has a direct or  
47 indirect ownership interest in one or more affected pass-through enti-  
48 ties subject to the tax imposed pursuant to article twenty-four-A of  
49 this chapter, the resident estate's or trust's New York taxable income  
50 shall be adjusted to exclude such estate's or trust's distributive or  
51 pro rata shares of each separately and nonseparately computed item, as  
52 described in section 702(a) of the Internal Revenue Code with respect to  
53 a partnership or section 1366 of the Internal Revenue Code with respect  
54 to an S corporation, from all affected pass-through entities in which  
55 the taxpayer has a direct or indirect ownership interest. If the amount  
56 of the adjustment made pursuant to the previous sentence shall exceed

1 the estate's or the trust's New York taxable income for such year, the  
2 excess allowed for the taxable year may be carried over to the following  
3 year or years and may be used to reduce the estate's or trust's New York  
4 taxable income in such subsequent year or years.

5 § 6. Subsection (e) of section 601 of the tax law is amended by adding  
6 a new paragraph 5 to read as follows:

7 (5) Nonresident partners and shareholders in affected pass-through  
8 entities. Notwithstanding any other provision of this subsection, with  
9 respect to every nonresident and part-year resident individual and trust  
10 and every nonresident estate that has a direct or indirect ownership  
11 interest in one or more affected pass-through entities subject to the  
12 tax imposed pursuant to article twenty-four-A of this chapter, the tax  
13 imposed pursuant to paragraph one of this subsection shall be an amount  
14 equal to the sum of the modified tax base and the surtax tax base multi-  
15 plied by their respective applicable New York source fractions.

16 (A) Modified tax base. The modified tax base of a taxpayer under this  
17 paragraph shall be calculated in the same manner as the tax base in  
18 paragraph two of this subsection, except that, notwithstanding  
19 subsection (a) of section six hundred eleven or subdivision six of  
20 section six hundred eighteen of this article, separately and nonsepa-  
21 rately computed items with respect to such affected pass-through enti-  
22 ties shall not be excluded, and the rate tables under subsections (a),  
23 (b) and (c) and the supplemental tax under subsection (d-1) of this  
24 section shall be applied by reducing each tax rate in excess of 6.85% to  
25 6.85%, and adjusting each tax table accordingly. The applicable New York  
26 source fraction for the modified tax base shall be calculated in the  
27 same manner as the New York source fraction under paragraph three of  
28 this subsection, including the exclusion of separately and nonseparately  
29 computed items with respect to such affected pass-through entities under  
30 subsection (a) of section six hundred eleven or subdivision six of  
31 section six hundred eighteen of this article, as applicable, in calcu-  
32 lating the numerator of such fraction. If the amount of such separately  
33 and nonseparately computed items so excluded exceeds the numerator of  
34 the New York source fraction for such year before such exclusion, the  
35 excess may be carried over to the following year or years and may be  
36 used to reduce the numerator of the taxpayer's applicable New York  
37 source fraction under this subparagraph for such taxable years.

38 (B) Surtax tax base. The surtax tax base of a taxpayer under this  
39 paragraph shall be equal to the portion of the taxpayer's New York taxa-  
40 ble income to which the 8.82% rate would have applied in computing the  
41 taxpayer's modified tax base under the preceding subparagraph (after  
42 taking into account the tax table benefit recapture provisions under  
43 subsection (d-1) of this section) if the tax rate had not been capped at  
44 6.85% under that subparagraph multiplied by a factor of 1.97%. The  
45 applicable New York source fraction for the surtax tax base shall be  
46 calculated in the same manner as the New York source fraction under  
47 paragraph three of this subsection, except that separately and nonsepa-  
48 rately computed items with respect to such affected pass-through enti-  
49 ties shall not be excluded in calculating the numerator of such frac-  
50 tion.

51 § 7. Section 606 of the tax law is amended by adding a new subsection  
52 (kkk) to read as follows:

53 (kkk) Taxpayers with direct or indirect ownership interests in  
54 affected pass-through entities. Notwithstanding the other provisions of  
55 this subsection, a taxpayer that has a direct or indirect ownership  
56 interest in an affected pass-through entity that is subject to tax

1 pursuant to article twenty-four-A of this chapter is not entitled to  
2 claim a credit otherwise provided by this section to the extent that the  
3 credit was claimed by the affected pass-through entity for purposes of  
4 determining its tax liability under article twenty-four-A of this chap-  
5 ter.

6 § 8. Subsection (d) of section 620 of the tax law, as added by chapter  
7 166 of the laws of 1991, is amended to read as follows:

8 (d) S corporation shareholders and partners. In the case of a share-  
9 holder of an S corporation, the term "income tax" in subsection (a) of  
10 this section shall [~~not~~] include (1) any such tax imposed upon or paya-  
11 ble by the [~~corporation, but shall include any such tax~~] shareholder  
12 with respect to the income of the corporation [~~imposed upon or payable~~  
13 by the shareholder], without regard to whether an election independent  
14 of the federal S election was required to effect such imposition upon  
15 the shareholder of such S corporation and (2) such shareholder's pro  
16 rata share of any such tax imposed upon or payable by the corporation,  
17 provided such tax imposition or payment results from a tax that the  
18 commissioner determines is substantially similar to the tax imposed by  
19 article twenty-four-A of this chapter. In the case of a partner in a  
20 partnership, the term "income tax" in subsection (a) of this section  
21 shall (1) include any such tax imposed upon or payable by the partner  
22 with respect to the income of the partnership and (2) such partner's  
23 distributive share of any such tax imposed upon or payable by the part-  
24 nership, provided such tax imposition or payment results from a tax that  
25 the commissioner determines is substantially similar to the tax imposed  
26 by article twenty-four-A of this chapter.

27 § 9. Section 620 of the tax law is amended by adding a new subsection  
28 (e) to read as follows:

29 (e) Taxpayers with direct or indirect ownership interests in affected  
30 pass-through entities. Notwithstanding the other provisions of this  
31 section, a taxpayer that has a direct or indirect ownership interest in  
32 an affected pass-through entity that is subject to tax pursuant to arti-  
33 cle twenty-four-A of this chapter is not entitled to claim a credit  
34 otherwise provided by this section to the extent that any income tax is  
35 claimed as a credit pursuant to section eight hundred sixty-two of this  
36 chapter by the affected pass-through entity for purposes of determining  
37 its tax liability under article twenty-four-A of this chapter.

38 § 10. Subparagraph (A) of paragraph 4 of subsection (c) of section 658  
39 of the tax law, as amended by section 72 of part A of chapter 59 of the  
40 laws of 2014, is amended to read as follows:

41 (A) General. Every entity other than an entity subject to tax under  
42 article twenty-four-A of this chapter, which is a partnership, other  
43 than a publicly traded partnership as defined in section 7704 of the  
44 federal Internal Revenue Code, subchapter K limited liability company or  
45 an S corporation for which the election provided for in subsection (a)  
46 of section six hundred sixty of this part is in effect, which has part-  
47 ners, members or shareholders who are nonresident individuals, as  
48 defined under subsection (b) of section six hundred five of this arti-  
49 cle, or C corporations, and which has any income derived from New York  
50 sources, determined in accordance with the applicable rules of section  
51 six hundred thirty-one of this article as in the case of a nonresident  
52 individual, shall pay estimated tax on such income on behalf of such  
53 partners, members or shareholders in the manner and at the times  
54 prescribed by subsection (c) of section six hundred eighty-five of this  
55 article. For purposes of this paragraph, the term "estimated tax" shall  
56 mean a partner's, member's or shareholder's distributive share or pro



1 rata share of the entity income derived from New York sources, multi-  
2 plied by the highest rate of tax prescribed by section six hundred one  
3 of this article for the taxable year of any partner, member or share-  
4 holder who is an individual taxpayer, or paragraph (a) of subdivision  
5 one of section two hundred ten of this chapter for the taxable year of  
6 any partner, member or shareholder which is a C corporation, whether or  
7 not such C corporation is subject to tax under article nine, nine-A or  
8 thirty-three of this chapter, and reduced by the distributive share or  
9 pro rata share of any credits determined under section one hundred  
10 eighty-seven, one hundred eighty-seven-a, six hundred six or fifteen  
11 hundred eleven of this chapter, whichever is applicable, derived from  
12 the entity.

13 § 11. Section 612 of the tax law is amended by adding a new subsection  
14 (y) to read as follows:

15 (y) The election by a partnership or S corporation pursuant to  
16 subsection (b) of section eight hundred sixty-one of this chapter shall  
17 have no impact on the additions and subtractions to be taken into  
18 account under subsection (n) of this section and such election shall  
19 have no impact on the determination of the basis of a partner or share-  
20 holder in an interest in the partnership or in the stock or indebtedness  
21 of the S corporation.

22 § 12. Subdivision 1 of section 171-a of the tax law, as amended by  
23 section 3 of part XX of chapter 59 of the laws of 2019, is amended to  
24 read as follows:

25 1. All taxes, interest, penalties and fees collected or received by  
26 the commissioner or the commissioner's duly authorized agent under arti-  
27 cles nine (except section one hundred eighty-two-a thereof and except as  
28 otherwise provided in section two hundred five thereof), nine-A,  
29 twelve-A (except as otherwise provided in section two hundred eighty-  
30 four-d thereof), thirteen, thirteen-A (except as otherwise provided in  
31 section three hundred twelve thereof), eighteen, nineteen, twenty  
32 (except as otherwise provided in section four hundred eighty-two there-  
33 of), twenty-B, twenty-D, twenty-one, twenty-two, [~~twenty-four~~] twenty-  
34 four-A, twenty-six, twenty-eight (except as otherwise provided in  
35 section eleven hundred two or eleven hundred three thereof),  
36 twenty-eight-A, twenty-nine-B, thirty-one (except as otherwise provided  
37 in section fourteen hundred twenty-one thereof), thirty-three and thir-  
38 ty-three-A of this chapter shall be deposited daily in one account with  
39 such responsible banks, banking houses or trust companies as may be  
40 designated by the comptroller, to the credit of the comptroller. Such an  
41 account may be established in one or more of such depositories. Such  
42 deposits shall be kept separate and apart from all other money in the  
43 possession of the comptroller. The comptroller shall require adequate  
44 security from all such depositories. Of the total revenue collected or  
45 received under such articles of this chapter, the comptroller shall  
46 retain in the comptroller's hands such amount as the commissioner may  
47 determine to be necessary for refunds or reimbursements under such arti-  
48 cles of this chapter out of which amount the comptroller shall pay any  
49 refunds or reimbursements to which taxpayers shall be entitled under the  
50 provisions of such articles of this chapter. The commissioner and the  
51 comptroller shall maintain a system of accounts showing the amount of  
52 revenue collected or received from each of the taxes imposed by such  
53 articles. The comptroller, after reserving the amount to pay such  
54 refunds or reimbursements, shall, on or before the tenth day of each  
55 month, pay into the state treasury to the credit of the general fund all  
56 revenue deposited under this section during the preceding calendar month

1 and remaining to the comptroller's credit on the last day of such  
2 preceding month, (i) except that the comptroller shall pay to the state  
3 department of social services that amount of overpayments of tax imposed  
4 by article twenty-two of this chapter and the interest on such amount  
5 which is certified to the comptroller by the commissioner as the amount  
6 to be credited against past-due support pursuant to subdivision six of  
7 section one hundred seventy-one-c of this article, (ii) and except that  
8 the comptroller shall pay to the New York state higher education  
9 services corporation and the state university of New York or the city  
10 university of New York respectively that amount of overpayments of tax  
11 imposed by article twenty-two of this chapter and the interest on such  
12 amount which is certified to the comptroller by the commissioner as the  
13 amount to be credited against the amount of defaults in repayment of  
14 guaranteed student loans and state university loans or city university  
15 loans pursuant to subdivision five of section one hundred seventy-one-d  
16 and subdivision six of section one hundred seventy-one-e of this arti-  
17 cle, (iii) and except further that, notwithstanding any law, the comp-  
18 troller shall credit to the revenue arrearage account, pursuant to  
19 section ninety-one-a of the state finance law, that amount of overpay-  
20 ment of tax imposed by article nine, nine-A, twenty-two, thirty, thir-  
21 ty-A, thirty-B or thirty-three of this chapter, and any interest there-  
22 on, which is certified to the comptroller by the commissioner as the  
23 amount to be credited against a past-due legally enforceable debt owed  
24 to a state agency pursuant to paragraph (a) of subdivision six of  
25 section one hundred seventy-one-f of this article, provided, however, he  
26 shall credit to the special offset fiduciary account, pursuant to  
27 section ninety-one-c of the state finance law, any such amount credita-  
28 ble as a liability as set forth in paragraph (b) of subdivision six of  
29 section one hundred seventy-one-f of this article, (iv) and except  
30 further that the comptroller shall pay to the city of New York that  
31 amount of overpayment of tax imposed by article nine, nine-A, twenty-  
32 two, thirty, thirty-A, thirty-B or thirty-three of this chapter and any  
33 interest thereon that is certified to the comptroller by the commission-  
34 er as the amount to be credited against city of New York tax warrant  
35 judgment debt pursuant to section one hundred seventy-one-l of this  
36 article, (v) and except further that the comptroller shall pay to a  
37 non-obligated spouse that amount of overpayment of tax imposed by arti-  
38 cle twenty-two of this chapter and the interest on such amount which has  
39 been credited pursuant to section one hundred seventy-one-c, one hundred  
40 seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or  
41 one hundred seventy-one-l of this article and which is certified to the  
42 comptroller by the commissioner as the amount due such non-obligated  
43 spouse pursuant to paragraph six of subsection (b) of section six  
44 hundred fifty-one of this chapter; and (vi) the comptroller shall deduct  
45 a like amount which the comptroller shall pay into the treasury to the  
46 credit of the general fund from amounts subsequently payable to the  
47 department of social services, the state university of New York, the  
48 city university of New York, or the higher education services corpo-  
49 ration, or the revenue arrearage account or special offset fiduciary  
50 account pursuant to section ninety-one-a or ninety-one-c of the state  
51 finance law, as the case may be, whichever had been credited the amount  
52 originally withheld from such overpayment, and (vii) with respect to  
53 amounts originally withheld from such overpayment pursuant to section  
54 one hundred seventy-one-l of this article and paid to the city of New  
55 York, the comptroller shall collect a like amount from the city of New  
56 York.

1 § 13. Section 601 of the tax law is amended by adding a new subsection  
2 (j) to read as follows:

3 (j) For every resident individual, estate or trust that has a direct  
4 or indirect ownership interest in one or more pass-through entities that  
5 has elected to be subject to tax pursuant to subsection (a) of section  
6 eight hundred sixty-one of this chapter, there is hereby imposed for  
7 each taxable year a surtax at the rate of 1.97% on the amount by which  
8 the portion of such individual's, estate's or trust's New York taxable  
9 income subject to tax at the rate of 8.82% would increase if the resi-  
10 dent individual's, estate's or trust's New York taxable income was  
11 adjusted to add back such individual's, estate's or trust's distributive  
12 or pro rata shares of separately or nonseparately computed items from  
13 such pass-through entities.

14 § 14. Paragraph 1 of subsection (e) of section 601 of the tax law, as  
15 amended by chapter 170 of the laws of 1994, is amended to read as  
16 follows:

17 (1) General. [~~There~~] Except as provided in paragraph five of this  
18 subsection, there is hereby imposed for each taxable year on the taxable  
19 income which is derived from sources in this state of every nonresident  
20 and part-year resident individual and trust and every nonresident estate  
21 a tax which shall be equal to the tax base multiplied by the New York  
22 source fraction.

23 § 15. This act shall take effect immediately and shall apply for  
24 taxable years beginning on or after January 1, 2021; provided, however  
25 that the amendments to subdivision 1 of section 171-a of the tax law  
26 made by section twelve of this act shall not affect the expiration of  
27 such subdivision and shall be deemed to expire therewith.