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:

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

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

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

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

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

(2) A corporation that does not meet any of the thresholds set forth in paragraph (c) of this subdivision but has at least ten customers, or locations, or customers and locations, as described in paragraph (c) of this subdivision, and is part of a unitary group that meets the ownership test under section 11-654.3 of this subchapter, is doing business in the city if the number of customers, locations, or customers and locations, within the city of the members of the unitary group that have at least ten customers, locations, or customers and locations, within the city in the aggregate meets any of the thresholds set forth in paragraph (c) of this subdivision.

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

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

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

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

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

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

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

1. 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 [~~any of the named subchapters of this chapter or~~] this title on the taxpayer who made the overpayment, and the balance shall be refunded out of the proceeds of the tax. 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.

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

h. When the grantor or grantee of a deed for a building used as residential real property containing [~~one- to four-family~~] up to four family dwelling units is a limited liability company, the joint return shall not be accepted for filing unless it is accompanied by a document which identifies the names and business addresses of all members, managers, and any other authorized persons, if any, of such limited liability company and the names and business addresses or, if none, the business addresses of all shareholders, directors, officers, members, managers and partners of any limited liability company or other business entity that are to be the members, managers or authorized persons, if any, of such limited liability company. The identification of such names and addresses shall not be deemed an unwarranted invasion of personal privacy pursuant to article six of the public officers law. If any such member, manager or authorized person of the limited liability company is itself a limited liability company or other business entity other than a publicly traded entity, a REIT, an UPREIT, or a mutual fund, the names and addresses of the shareholders, directors, officers, members, managers and partners of the limited liability company or other business entity shall also be disclosed until full disclosure of ultimate owner-

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

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

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

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

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

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

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

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

(3) Any [~~city~~] taxpayer eligible to claim a credit authorized pursuant to subsection (g) of section thirteen hundred ten of this chapter **or a credit authorized pursuant to subsection (kkk) of section six hundred six of this chapter** because such taxpayer is a partner or member in an electing city partnership or a shareholder in an electing city resident S corporation, either directly or through a disregarded entity, that is a general, managing or controlling partner of the electing city partnership or managing or controlling shareholder of the electing city resident S corporation, or owns greater than fifty percent of the interests or profits of the electing city partnership or electing city resident S corporation, or is under a duty to act for the electing city partnership or electing city resident S corporation in complying with the provisions of this article, or was the individual that made the election on behalf of the electing city partnership or electing city resident S corporation

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

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

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

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

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

(c) For taxable year 2022, city taxpayers who are partners, members or shareholders of electing city partnerships and electing city S corporations shall continue to make the required New York city personal income tax estimated tax payments, calculated as if they were not entitled to the tax credit allowed pursuant to subsection (g) of section 1310 of the tax law. Any addition to tax imposed under subsection (c) of section 685 of the tax law for the failure of a partner or member of an electing city partnership or a shareholder of an electing city S corporation to make such required estimated tax payments for the 2022 taxable year shall be calculated as if such partner, member, or shareholder was not entitled to a tax credit allowed pursuant to subsection (g) of section 1310 of the tax law.

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