

STATE OF NEW YORK

4168

2023-2024 Regular Sessions

IN ASSEMBLY

February 10, 2023

Introduced by M. of A. STIRPE, WALLACE, WOERNER, CONRAD, LUPARDO,
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 Assem-
bly, do enact as follows:

1 Section 1. Subsection (b) of section 612 of the tax law is amended by
2 adding a new paragraph 44 to read as follows:

3 (44) 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-seven of subsection (c) of this section.

10 § 2. Paragraph 39 of subsection (c) of section 612 of the tax law, as
11 amended by section 1 of part C of chapter 59 of the laws of 2022, is
12 amended and a new paragraph 47 is added to read as follows:

13 (39) (A) In the case of a taxpayer who is a small business or a
14 taxpayer who is a member, partner, or shareholder of a limited liability
15 company, partnership, or New York S corporation, respectively, that is a
16 small business, who or which has business income and/or farm income as
17 defined in the laws of the United States, an amount equal to fifteen
18 percent of the net items of income, gain, loss and deduction attribut-
19 able to such business or farm entering into federal adjusted gross
20 income, but not less than zero.

21 (B) (i) For the purposes of this paragraph, the term small business
22 shall mean: (I) a sole proprietor who employs one or more persons during
23 the taxable year and who has net business income or net farm income of
24 greater than zero but less than two hundred fifty thousand dollars;

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

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1 (II) a limited liability company, partnership, or New York S corpo-
2 ration that during the taxable year employs one or more persons and has
3 net farm income attributable to a farm business that is greater than
4 zero but less than two hundred fifty thousand dollars;[~~or~~]

5 (III) a limited liability company, partnership, or New York S corpo-
6 ration that during the taxable year employs one or more persons and has
7 New York gross business income attributable to a non-farm business that
8 is greater than zero but less than one million five hundred thousand
9 dollars[~~+~~]; or

10 (IV) For the purposes of this paragraph, the term small business shall
11 exclude any business that is a qualified pass-through manufacturer, as
12 defined in paragraph forty-seven of this subsection for the current tax
13 year.

14 (ii) For purposes of this paragraph, the term New York gross business
15 income shall mean: (I) in the case of a limited liability company or a
16 partnership, New York source gross income as defined in subparagraph (B)
17 of paragraph three of subsection (c) of section six hundred fifty-eight
18 of this article; and (II) in the case of a New York S corporation, New
19 York receipts included in the numerator of the apportionment factor
20 determined under section two hundred ten-A of this chapter for the taxa-
21 ble year.

22 (C) To qualify for this modification in relation to a non-farm small
23 business that is a limited liability company, partnership, or New York S
24 corporation, the taxpayer's income attributable to the net business
25 income from its ownership interests in non-farm limited liability compa-
26 nies, partnerships, or New York S corporations must be less than two
27 hundred fifty thousand dollars.

28 (47) (A) Any income, gain, loss and deduction, to the extent included
29 in federal adjusted gross income and is, when combined and combined with
30 additions for federal depreciation required by paragraph eight of this
31 subsection and subtractions for New York allowed by subsection (k) of
32 this section, greater than zero, of an individual or trust from a quali-
33 fied pass-through manufacturer. Income from a qualified pass-through
34 manufacturer shall include wages of an individual controlling ten
35 percent or more of the qualified business or entity. Income or loss from
36 a qualified pass-through manufacturer shall not include an amount
37 representing reasonable compensation for personal services, as defined
38 in the internal revenue code section one hundred sixty-two regulations,
39 for an individual controlling ten percent or more of the qualified busi-
40 ness or entity.

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

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

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

54 (B-1) Property placed in service during the tax year that is otherwise
55 eligible for the investment tax credit described in subparagraph (A) of
56 this paragraph, will not be eligible for the investment tax credit if

1 the use of the property is by a qualified pass-through manufacturer, as
2 defined in paragraph forty-seven of subsection (c) of section six
3 hundred twelve of this article for the current tax year.

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

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

12 § 5. For purposes of determining the modifications of paragraphs 39
13 and 47 of subsection (c) of section 612 of the tax law and the invest-
14 ment tax credit disallowance of subparagraph (B-1) of paragraph 2 of
15 subsection (a) of section 606 of the tax law, the amounts shall be
16 multiplied by the following percentages: (a) for tax years beginning on
17 or after January 1, 2025: forty percent; (b) for tax years beginning on
18 or after January 1, 2026: eighty percent; and (c) for tax years begin-
19 ning on or after January 1, 2027: one hundred percent.

20 § 6. This act shall take effect immediately and shall apply to tax
21 years beginning on or after January 1, 2025.