

# STATE OF NEW YORK

3690

2023-2024 Regular Sessions

## IN ASSEMBLY

February 3, 2023

Introduced by M. of A. KELLES, SHRESTHA -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to raising the tax rate on corporate income; in relation to increasing the state conformity to federal taxation of corporate profit shifting; and in relation to imposing an additional tax on individual business income in response to federal tax benefits for pass-through business income

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

Section 1. Paragraph (b) of subdivision 6-a of section 208 of the tax law, as amended by section 1 of part I of chapter 39 of the laws of 2019, is amended to read as follows:

(b) "Exempt CFC income" means (i) except to the extent described in subparagraph (ii) of this paragraph, the income required to be included in the taxpayer's federal gross income pursuant to subsection (a) of section 951 of the internal revenue code, received from a corporation that is conducting a unitary business with the taxpayer but is not included in a combined report with the taxpayer, (ii) such income required to be included in the taxpayer's federal gross income pursuant to subsection (a) of such section 951 of the internal revenue code by reason of subsection (a) of section 965 of the internal revenue code, as adjusted by subsection (b) of section 965 of the internal revenue code, and without regard to subsection (c) of such section, received from a corporation that is not included in a combined report with the taxpayer, and (iii) ~~[ninety-five]~~ fifty percent of the income required to be included in the taxpayer's federal gross income pursuant to subsection (a) of section 951A of the internal revenue code, without regard to the deduction under section 250 of the internal revenue code, received from a corporation that is not included in a combined report with the taxpayer, less, (iv) in the discretion of the commissioner, any interest deductions directly or indirectly attributable to that income. In lieu

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

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1 of subtracting from its exempt CFC income the amount of those interest  
2 deductions, the taxpayer may make a revocable election to reduce its  
3 total exempt CFC income by forty percent. If the taxpayer makes this  
4 election, the taxpayer must also make the elections provided for in  
5 paragraph (b) of subdivision six of this section and paragraph (c) of  
6 this subdivision. If the taxpayer subsequently revokes this election,  
7 the taxpayer must revoke the elections provided for in paragraph (b) of  
8 subdivision six of this section and paragraph (c) of this subdivision. A  
9 taxpayer which does not make this election because it has no exempt CFC  
10 income will not be precluded from making those other elections. The  
11 income described in subparagraphs (ii) and (iii) of this paragraph shall  
12 not constitute investment income. The income described in subparagraph  
13 (iii) of this paragraph shall not constitute exempt unitary corporation  
14 dividends.

15 § 2. The opening paragraph of paragraph (a) of subdivision 1 of  
16 section 210 of the tax law, as amended by section 1 of part HHH of chap-  
17 ter 59 of the laws of 2021, is amended to read as follows:

18 For taxable years beginning before January first, two thousand  
19 sixteen, and before January first, two thousand twenty-one, the amount  
20 prescribed by this paragraph shall be computed at the rate of seven and  
21 one-tenth percent of the taxpayer's business income base. For taxable  
22 years beginning on or after January first, two thousand sixteen, the  
23 amount prescribed by this paragraph shall be six and one-half percent of  
24 the taxpayer's business income base. For taxable years beginning on or  
25 after January first, two thousand twenty-one and before January first,  
26 two thousand twenty-four for any taxpayer with a business income base  
27 for the taxable year of more than five million dollars, the amount  
28 prescribed by this paragraph shall be seven and one-quarter percent of  
29 the taxpayer's business income base. For taxable years beginning on or  
30 after January first, two thousand twenty-four for any taxpayer with a  
31 business income base for the taxable year of more than two and one-half  
32 million dollars, the amount prescribed by this paragraph shall be eight  
33 percent of the taxpayer's business income base; for any taxpayer with a  
34 business income base for the taxable year in excess of ten million  
35 dollars, the amount prescribed by this paragraph shall be twelve percent  
36 of the taxpayer's business income base in excess of ten million dollars;  
37 for any taxpayer with a business income base for the taxable year in  
38 excess of twenty million dollars, the amount prescribed by this para-  
39 graph shall be fourteen percent of the taxpayer's business income base  
40 in excess of twenty million dollars. The taxpayer's business income base  
41 shall mean the portion of the taxpayer's business income apportioned  
42 within the state as hereinafter provided. However, in the case of a  
43 small business taxpayer, as defined in paragraph (f) of this subdivi-  
44 sion, the amount prescribed by this paragraph shall be computed pursuant  
45 to subparagraph (iv) of this paragraph and in the case of a manufactur-  
46 er, as defined in subparagraph (vi) of this paragraph, the amount  
47 prescribed by this paragraph shall be computed pursuant to subparagraph  
48 (vi) of this paragraph, and, in the case of a qualified emerging tech-  
49 nology company, as defined in subparagraph (vii) of this paragraph, the  
50 amount prescribed by this paragraph shall be computed pursuant to  
51 subparagraph (vii) of this paragraph.

52 § 3. Paragraph (b) of subdivision 5-a of section 210-A of the tax law,  
53 as amended by section 3 of part I of chapter 39 of the laws of 2019, is  
54 amended to read as follows:

55 (b) For New York C corporations, global intangible low-taxed income  
56 shall not be included in the numerator of the apportionment fraction.

1 [~~Five~~] **Fifty** percent of global intangible low-taxed income shall be  
2 included in the denominator of the apportionment fraction.

3 § 4. Paragraph 2 of subsection (kkk) of section 606 of the tax law, as  
4 added by section 2 of part C of chapter 59 of the laws of 2021, is  
5 amended to read as follows:

6 (2) The credit shall be equal to seventy-five percent of the part-  
7 ner's, member's or shareholder's direct share of the pass-through entity  
8 tax.

9 § 5. The tax law is amended by adding a new section 608 to read as  
10 follows:

11 § 608. Additional tax. (a) There is imposed an additional tax upon the  
12 amount of an individual's New York taxable income that corresponds to  
13 any deduction taken pursuant to section 199A of the internal revenue  
14 code, or any successor provision thereto. This section shall not apply  
15 to a taxpayer with a federal taxable income below the threshold amount,  
16 as defined in section 199A(e) of the internal revenue code, plus fifty  
17 thousand dollars for a single filer taxpayer or one hundred thousand  
18 dollars in the case of a joint return.

19 (b) The rate of the additional tax imposed pursuant to this section  
20 shall be equal to the highest federal income tax rates in effect for the  
21 taxable year that would apply to the amount deducted under section 199A  
22 of the internal revenue code, or any successor provision thereto, but  
23 for the application of such section. The amount of an individual's New  
24 York taxable income that corresponds to the amount of any deduction  
25 taken pursuant to section 199A is the amount that bears the same  
26 relationship to the taxpayer's total New York taxable income as the  
27 amount deducted under section 199A bears to the taxpayer's total federal  
28 taxable income as determined without regard to such deduction.

29 (c) The additional tax under this section shall be administered, and  
30 penalties shall be imposed, in the same manner as the other taxes  
31 imposed by this article.

32 § 6. This act shall take effect immediately and shall apply to taxable  
33 years commencing on and after such effective date.