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

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

For taxable years beginning before January first, two thousand sixteen, **and before January first, two thousand twenty-one,** the amount prescribed by this paragraph shall be computed at the rate of seven and one-tenth percent of the taxpayer's business income base. For taxable years beginning on or after January first, two thousand sixteen, the amount prescribed by this paragraph shall be six and one-half percent of the taxpayer's business income base. For taxable years beginning on or after January first, two thousand twenty-one and before January first, two thousand twenty-four for any taxpayer with a business income base for the taxable year of more than five million dollars, the amount prescribed by this paragraph shall be seven and one-quarter percent of the taxpayer's business income base. **For taxable years beginning on or after January first, two thousand twenty-four for any taxpayer with a business income base for the taxable year of more than two and one-half million dollars, the amount prescribed by this paragraph shall be eight percent of the taxpayer's business income base; for any taxpayer with a business income base for the taxable year in excess of ten million dollars, the amount prescribed by this paragraph shall be twelve percent of the taxpayer's business income base in excess of ten million dollars; for any taxpayer with a business income base for the taxable year in excess of twenty million dollars, the amount prescribed by this paragraph shall be fourteen percent of the taxpayer's business income base in excess of twenty million dollars.** The taxpayer's business income base shall mean the portion of the taxpayer's business income apportioned within the state as hereinafter provided. However, in the case of a small business taxpayer, as defined in paragraph (f) of this subdivision, the amount prescribed by this paragraph shall be computed pursuant to subparagraph (iv) of this paragraph and in the case of a manufacturer, as defined in subparagraph (vi) of this paragraph, the amount prescribed by this paragraph shall be computed pursuant to subparagraph (vi) of this paragraph, and, in the case of a qualified emerging technology company, as defined in subparagraph (vii) of this paragraph, the amount prescribed by this paragraph shall be computed pursuant to subparagraph (vii) of this paragraph.

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

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

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

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

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

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

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

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

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

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