

STATE OF NEW YORK

4236

2023-2024 Regular Sessions

IN SENATE

February 6, 2023

Introduced by Sen. O'MARA -- 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 and the administrative code of the city of New York, in relation to business income base and certain small business taxpayers

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

1 Section 1. Subparagraph (iv) of paragraph (a) of subdivision 1 of
2 section 210 of the tax law, as amended by section 12 of part A of chap-
3 ter 59 of the laws of 2014, is amended to read as follows:

4 (iv) (A) for taxable years beginning before January first, two thou-
5 sand sixteen, if the business income base is not more than two hundred
6 ninety thousand dollars the amount shall be six and one-half percent of
7 the business income base; if the business income base is more than two
8 hundred ninety thousand dollars but not over three hundred ninety thou-
9 sand dollars the amount shall be the sum of (1) eighteen thousand eight
10 hundred fifty dollars, (2) seven and one-tenth percent of the excess of
11 the business income base over two hundred ninety thousand dollars but
12 not over three hundred ninety thousand dollars and (3) four and thirty-
13 five hundredths percent of the excess of the business income base over
14 three hundred fifty thousand dollars but not over three hundred ninety
15 thousand dollars;

16 (B) for taxable years beginning on or after January first, two thou-
17 sand twenty-five, if the business income base is not more than four
18 hundred thousand dollars the amount shall be four percent of the busi-
19 ness income base; if the business income base is more than four hundred
20 thousand dollars but not over five hundred thousand dollars the amount
21 shall be the sum of (1) sixteen thousand dollars, (2) six and one-half
22 percent of the excess of the business income base over four hundred
23 thousand dollars but not over five hundred thousand dollars and (3)
24 twenty percent of the excess of the business income base over four

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

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1 hundred fifty thousand dollars but not over five hundred thousand
2 dollars;

3 (C) for taxable years beginning on or after January first, two thou-
4 sand twenty-six, if the business income base is not more than four
5 hundred thousand dollars the amount shall be two and one-half percent of
6 the business income base; if the business income base is more than four
7 hundred thousand dollars but not over five hundred thousand dollars the
8 amount shall be the sum of (1) ten thousand dollars, (2) six and one-
9 half percent of the excess of the business income base over four hundred
10 thousand dollars but not over five hundred thousand dollars and (3)
11 thirty-two percent of the excess of the business income base over four
12 hundred fifty thousand dollars but not over five hundred thousand
13 dollars.

14 § 2. Paragraph 39 of subsection (c) of section 612 of the tax law, as
15 amended by section 1 of part C of chapter 59 of the laws of 2022, is
16 amended to read as follows:

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

25 (B) (i) For the purposes of this paragraph, the term small business
26 shall mean: (I) a sole proprietor [~~who employs one or more persons~~
27 ~~during the taxable year and~~] who has net business income [~~or net farm~~
28 ~~income~~] of greater than zero but less than [~~two~~] five hundred [~~fifty~~]
29 thousand dollars;

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

34 (III) a limited liability company, partnership, or New York S corpo-
35 ration that during the taxable year [~~employs one or more persons and~~]
36 has New York gross business income attributable to a non-farm business
37 that is greater than zero but less than one million five hundred thou-
38 sand dollars.

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

47 (C) To qualify for this modification in relation to a non-farm small
48 business that is a limited liability company, partnership, or New York S
49 corporation, the taxpayer's income attributable to the net business
50 income from its ownership interests in non-farm limited liability compa-
51 nies, partnerships, or New York S corporations must be less than [~~two~~]
52 five hundred [~~fifty~~] thousand dollars.

53 § 3. Paragraph 35 of subdivision (c) of section 11-1712 of the admin-
54 istrative code of the city of New York, as amended by section 2 of part
55 C of chapter 59 of the laws of 2022, is amended to read as follows:

1 (35) (A) In the case of a taxpayer who is a small business or a
2 taxpayer who is a member, partner, or shareholder of a limited liability
3 company, partnership, or New York S corporation, respectively, that is a
4 small business, who or which has business income and/or farm income as
5 defined in the laws of the United States, an amount equal to fifteen
6 percent of the net items of income, gain, loss and deduction attribut-
7 able to such business or farm entering into federal adjusted gross
8 income, but not less than zero.

9 (B) (i) For the purposes of this paragraph, the term small business
10 shall mean: (I) a sole proprietor [~~who employs one or more persons~~
11 ~~during the taxable year and~~] who has net business income [~~or net farm~~
12 ~~income~~] of greater than zero but less than [~~two~~ five hundred [~~fifty~~]
13 thousand dollars;

14 (II) a limited liability company, partnership, or New York S corpo-
15 ration that during the taxable year [~~employs one or more persons and~~]
16 has net farm income that is greater than zero but less than [~~two~~ five
17 hundred [~~fifty~~] thousand dollars; or

18 (III) a limited liability company, partnership, or New York S corpo-
19 ration that during the taxable year [~~employs one or more persons and~~]
20 has New York gross business income attributable to a non-farm business
21 that is greater than zero but less than one million five hundred thou-
22 sand dollars.

23 (ii) For purposes of this paragraph, the term New York gross business
24 income shall mean: (I) in the case of a limited liability company or a
25 partnership, New York source gross income as defined in subparagraph (b)
26 or paragraph three of subsection (c) of section six hundred fifty-eight
27 of the tax law, and, (II) in the case of a New York S corporation, New
28 York receipts included in the numerator of the apportionment factor
29 determined under section two hundred ten-A of the tax law for the taxa-
30 ble year.

31 (C) To qualify for this modification in relation to a non-farm small
32 business that is a limited liability company, partnership, or New York S
33 corporation, the taxpayer's income attributable to the net business
34 income from its ownership interests in non-farm limited liability compa-
35 nies, partnerships, or New York S corporations must be less than [~~two~~]
36 five hundred [~~fifty~~] thousand dollars.

37 § 4. This act shall take effect immediately and shall apply to taxable
38 years beginning on or after January 1, 2025.