

22-3 September 16, 2022

FINANCE MEMORANDUM

2022 Legislative Highlights

This Finance Memorandum provides an overview of the law¹ that Governor Kathy Hochul recently signed which, among other changes, aligns certain provisions of the New York City Administrative Code with the New York State Tax Law. These amendments include the addition of an economic nexus standard for the Business Corporation Tax (“BCT”), exclusion from entire net income of amounts received under specific COVID-19 grant programs, greater flexibility in the credit of overpayments, and additional clarification for Real Property Transfer Tax (“RPTT”) reporting requirements. The legislation also amends the effective date of the New York City Pass-Through Entity Tax (“NYC PTET”).

Economic Nexus Standard for the BCT

The law amends the BCT to include economic nexus standards like those found under the State Franchise Tax on Business Corporations (“State Article 9-A Tax”). The Administrative Code now provides that corporations deriving receipts of \$1 million or more from New York City (the “City”) sources will be subject to the BCT. A corporation with less than \$1 million, but at least \$10,000 of receipts from City sources, will also be subject to the BCT if the corporation is part of a unitary group that, in the aggregate, derives receipts from City sources of \$1 million or more. These threshold amounts may be adjusted annually to reflect changes in the Consumer Price Index (“CPI”).²

Additionally, the law amended and expanded the existing economic nexus provisions for credit card issuers.

Previously, a corporation was doing business in the City if, for the taxable year, it met one of the following criteria:

(1) the corporation had at least 1,000 or more credit card customers who have a mailing address in the City; (2) the corporation had merchant customer contracts amounting to 1,000 or more locations in the City; or (3) the sum of such credit card customers and contract locations described in (1) and (2) above amounted to 1,000 or more. The Administrative Code now provides that a corporation with at least ten credit card customers or merchant locations, or ten customers and locations, in the City, will be considered to be doing business in the City if it is part of a unitary group of which the aggregate of all members of such group having at least ten customers or merchant locations, or ten customers and locations, within the city, meets (1), (2), or (3) of the previous paragraph.

These nexus amendments are applicable to tax years beginning on or after January 1, 2022.

Covid-19 Small Business Grants Exclusion

The law amends the Unincorporated Business Tax (“UBT”), the General Corporation Tax (“GCT”), the Banking Corporation Tax (“Bank Tax”), and the BCT to exclude amounts received under the New York State COVID-19 Small Business Recovery Grant Program and the New York City Small Business Resilience Grant Program from entire net income. This amendment is retroactive to tax years beginning on or after January 1, 2021.

1. L. 2022, S9454 (c.555)

2. The Commissioner is required to adjust the threshold amounts if the CPI has changed by 10% or more since January 1, 2022, or since the date the thresholds were last adjusted by the Commissioner.

NYC PTET Effective Date

The law amends the effective date of the NYC PTET from January 1, 2023, to January 1, 2022. To make the NYC PTET election for 2022, taxpayers must have opted into the New York State Pass-Through Entity Tax (“NYS PTET”) by the September 15, 2022 election deadline. The deadline to make the NYC PTET election for 2022 is March 15, 2023. An electing city partnership or S corporation is not required to make estimated tax payments for the NYC PTET for taxable year 2022. Beginning in 2023, these taxpayers will be required to make estimated payments. For more on the NYC PTET please visit <https://www.tax.ny.gov/bus/ptet/>.

Additionally, the bill amends the Administrative Code to make clear that taxpayers may not deduct from entire net income any tax paid pursuant to the NYC or NYS PTET.

Overpayment Credits

The law amends the Administrative Code to provide that the Commissioner may credit overpayments of the UBT, BCT, GCT, and Bank Tax against any tax liability the taxpayer has for any other City tax imposed pursuant to Title 11 of the Administrative Code . Previously, overpayments under the UBT and other business taxes could only be credited against specific taxes in Title 11 of the Administrative Code.³ By contrast, the Tax Law authorized New York State to credit an overpayment of State corporate tax against any tax liability imposed under the Tax Law. This credit of overpayment against other City taxes shall be applied before any part of such overpayment is paid to the State.

RPTT Reporting Requirements for LLCs

The law amends the Administrative Code to make clear the reporting requirements for limited liability companies that are grantors or grantees of deeds for certain residential real properties that contain up to 4 residential dwelling units. The law now clarifies that the reporting requirement does not apply to a member, manager, or authorized person of such limited liability company if the member, manager, or authorized person is a publicly traded entity, a REIT, an UPREIT, or a mutual fund. The Legislature made the same clarifying amendment to the Tax Law in 2021.

3. This includes, amongst other taxes, the UBT, the Bank Tax, the BCT, the GCT, the Commercial Rent Tax, the Utility Tax, the Cigarette Tax, the RPTT, and the Hotel Room Occupancy Tax.