



NEW YORK CITY CORPORATE TAX REFORM OUTLINE

Part D of Chapter 60 of the Laws of 2015

April 30, 2015

General

- A new Subchapter 3-A is created in Chapter 6 of Title 11 of the Administrative Code of the City of New York (the “Code”) to apply for tax years starting on or after January 1, 2015. This new subchapter applies to corporations currently subject to the General Corporation Tax (“GCT”), codified as Subchapter 2 of Chapter 6 of Title 11 of the Code, and the Banking Corporation Tax (“BCT”), codified as Subchapter 3 of Chapter 6 of Title 11 of the Code, except that it does not apply to any corporation that is an S corporation, or a qualified subchapter S subsidiary, under subchapter S of the Internal Revenue Code of 1986, as amended (collectively, “S Corporations”). *[Bill §§ 1, 3 and 4; Code §§ 11-602.1 and 11-639(a) and Code § 11-651]*
- S Corporations continue to be subject to tax under the current GCT and BCT. *[Bill §§ 1, 3 and 4; Code §§ 11-602.1, 11-639(a) and 11-651]*
- Subchapter 3-A, which is modeled on the existing GCT in Subchapter 2, incorporates (with necessary modifications) statutory amendments made to the State’s corporate franchise tax under Article 9-A in the New York State 2014-2015 and 2015-16 enacted budgets. Provisions from the GCT that are now obsolete are labelled “intentionally omitted” in Subchapter 3-A, to maintain parallel numbering between Subchapters 2 and 3-A.
- Subchapter 3-A continues to phase out the three-factor income allocation formula, which is also taking place under Subchapter 2. The last year of the phase out will be 2017. Starting in 2018 there will be a single receipts factor for income allocation, except that taxpayers with less than \$50 million of receipts allocated to the City will have a one-time election to continue using the 2017 three-factor formula under Subchapter 3-A. *[Code §§ 11-604(3)(a)(10) and 11-654(3)(a)(10)]*

Corporations Subject to Tax [Bill §1; Code § 11-653]

- Subchapter 3-A unifies the taxation of general corporations and banking corporations, which means that C corporations currently subject to the GCT and BCT will become subject to the new corporate tax. Subchapter 3-A does not apply to S corporations, insurance corporations, and publicly supervised utilities.
- Nexus standards.
 - ◆ Retains existing nexus standards for the privilege of doing business, employing capital, owning or leasing property, or maintaining an office, as well as the BCT credit card nexus standard of one thousand customers, by mailing address and merchant locations.
 - ◆ Clarifies that alien corporations not deemed domestic under the Internal Revenue Code (IRC) with no effectively connected income (ECI) computed pursuant to IRC §882 are not subject to tax. In addition, such alien corporations are excluded from the combined group. *[Bill §1; paragraph (c) of subdivision 2 of Code §11-654.3]*

- Alien corporations are defined as corporations organized under the laws of a country, or any political subdivision thereof, other than the United States, or organized under the laws of a possession, territory, or commonwealth of the United States.

Classification of Income and Expenses

Business Income [Bill § 1; subdivisions 6 through 8 of Code § 11-652, unless otherwise noted]

- The starting point for the business income base is federal taxable income (FTI) for U.S corporations and ECI for alien corporations not deemed domestic under the IRC.
 - ◆ Taxpayers are required to add back treaty benefits to ECI, consistent with the current treatment of alien banks under the BCT.
 - ◆ The requirement that taxpayers add back the amount of foreign taxes paid is eliminated.
 - ◆ Most of the other existing GCT modifications are continued.
- The current exemptions for income from subsidiary capital and 50% of dividends from non-subsidiaries are eliminated.
 - ◆ The income is re-classified as investment income, other exempt income, or business income.
- Business income equals entire net income (ENI), minus investment income and other exempt income.
- Business income includes the following:
 - ◆ interest income and gains and losses from debt instruments or other obligations, unless the income cannot be included in allocable business income under the U.S. Constitution;
 - ◆ gains and losses from stock of a corporation conducting a unitary business with the taxpayer;
 - ◆ dividends and gains and losses from stock held in a non-unitary corporation for one year or less or otherwise not qualifying as investment capital,
 - ◆ dividends and gains from stocks that do not qualify as investment income because gross investment income exceeds 8% of ENI; and
 - ◆ income from cash.
- To prevent the overcapitalization of non-life insurance corporations under the new subchapter, the Commissioner of Finance is provided with discretionary powers to make a “deemed distribution” of non-premium income from overcapitalized non-life insurance corporations to the affiliated Subchapter 3-A corporations to properly reflect the activities of the unitary business. [Bill § 1; Code § 11-655(5)]
- Regulations will be promulgated by the Commissioner of Finance to address partnership items of receipts, income, gain, loss, and deduction that flow through a partnership to a corporate partner as well as gains or losses from the sale of a partnership interest itself. The City intends to be consistent with the State with respect to these regulations. [Bill § 1; Code §§ 11-653(1)(f) and 11-654(4-a)]
- Allocated business income is the amount subject to tax. [Bill § 1; Code §11-654(1)(a)(1)]

Investment Income [Bill § 1; Code § 11-652(4) and 652(5), unless otherwise noted]

- The current GCT definition of investment income is narrowed to include only income from stocks of

non-unitary corporations held for investment for more than one year and that satisfy the definition of capital asset under section 1221 of the Internal Revenue Code (IRC) at all times during the year, would generate capital gain or loss upon disposition, are clearly identified as held for investment in the same manner required under IRC section 1236(a)(1) (whether or not the taxpayer is a dealer), and, for all stock acquired after January 1, 2015, have never been held for sale to customers. Income that cannot be included in allocable business income under the U.S. Constitution is also investment income.

- ◆ If stock was not subject to the identification requirements of IRC section 1236(a), but would otherwise qualify as investment capital, the taxpayer has until October 1, 2015 to identify it as an investment.
- ◆ Stock is defined as an interest in a corporation that is treated as equity for federal income tax purposes. *[Bill § 1; Code § 11-652(3-a)]*
- ◆ Solely for purposes of the definition of investment capital and investment income, if the taxpayer owns or controls, directly or indirectly, less than 20% of the voting power of the stock of a corporation, the corporation is presumed to not be conducting a unitary business with the taxpayer.
 - The unitary determination for corporations 20% or more owned is fact-specific, with no presumption.
- The one year holding period for stocks is measured across tax years.
 - ◆ Where the holding period is split across tax years, a taxpayer may presume that it held the stock for more than one year, but, if the taxpayer does not own the stock at the time it actually files its original report for the taxable year in which it acquired the stock, the presumption shall not apply and the actual period of time the taxpayer owned the stock shall determine its character.
 - ◆ If the stock is not held for more than one year, the dividends and gains and losses from the stock generated in year 1 and year 2 are required to be included as business income in year 2, and business capital must be increased in year 2 for the amount included as investment capital in year 1.
- Gross investment income cannot exceed eight percent of the taxpayer's ENI.

Other Exempt Income *[Bill § 1; Code § 11-652(5-a)]*

- The new other exempt income category of income is defined as the sum of exempt CFC income and exempt unitary dividends.
 - ◆ Exempt CFC income is income received from a controlled foreign corporation that is conducting a unitary business with the taxpayer but is not included in the combined group.
 - This includes Subpart F income and I.R.C. §956 dividends.
 - ◆ Exempt unitary dividends are dividends from unitary corporations not in the combined group because they are: (1) taxable under another tax chapter, (2) alien corporations not deemed domestic with no ECI, (3) insurance corporations that are not taxable under Subchapter 3-A, or (4) less than 50% directly or indirectly owned by the taxpayer.

Attribution of Expenses *[Bill § 1; subdivisions 5, 5-a and 7 of Code § 11-652, unless otherwise noted]*

- Investment income and other exempt income are not taxable, and the deductions for interest expenses attributable to such income are disallowed.
 - ◆ If actual interest expense attribution exceeds income, the excess expenses are required to be

added back to income.

- ◆ In lieu of computing actual interest expenses disallowed, taxpayers generally may make a revocable election to reduce investment income and other exempt income by 40%.
 - If the election is made, it applies to both investment income and other exempt income.
 - If the election is revoked, the revocation applies to both investment income and other exempt income.
 - Taxpayers receiving dividends from unitary affiliates subject to tax under the City’s Utility Tax, other than vendors of utility services, or affiliates that would have been subject to the City’s former insurance corporation tax, are precluded from making the 40% election for those dividends and must perform actual expense attribution.
- ◆ The computation of interest expense attribution for a combined group is done on a “one company” basis. If the taxpayer chooses the 40% election, it applies to both the investment income and other exempt income of all members of the combined group. *[Bill §1 ; paragraph (e) of subdivision 4 of Code § 11-654.3]*

Tax Bases and Rates

Bases

- The business income base is the primary tax base, and the business capital and fixed dollar minimum tax bases are alternative minimum tax bases.
- The GCT alternative minimum tax on income plus compensation, the BCT alternative entire net income base, the BCT taxable assets base, and the BCT fixed dollar minimum tax are not included in Subchapter 3-A. *[Bill § 1; subparagraph (a) of paragraph E of subdivision 1 of Code § 11-654]*
- The separate tax on subsidiary capital is repealed. *[Bill § 1; subparagraph (a) of paragraph E of subdivision 1 of Code § 11-654]*

Business Income Base Tax Rates *[Bill § 1; clause (i) of subparagraph (a) of paragraph E and paragraphs J and K of subdivision 1 of Code § 11-654]*

Type of Business	Rate in Tax Year 2015 and thereafter
Qualified Manufacturing Corporations	4.425% - 8.85%
Small businesses	6.5% - 8.85%
Financial corporations	9%
Remaining taxpayers	8.85%

- The tax rate for qualified manufacturing corporations phases out between \$10 and \$20 million of allocated business income and \$20 and \$40 million of business income before allocation.
- The tax rate for small businesses phases out between \$1 and \$1.5 million of allocated business income and \$2 and \$3 million of business income before allocation.

- Qualified manufacturing corporations must meet property and receipts tests:
 - ◆ The taxpayer must have property in New York State that is principally used in the production of goods by manufacturing and either the adjusted basis of that property for federal income tax purposes is at least \$1,000,000 or more than 50% of all its real and personal property is located in the state, and
 - ◆ The taxpayer must derive more than 50% of its gross receipts from the sale of goods produced by its manufacturing activity.
 - ◆ In the case of a corporation that is a member of a combined group, the determination is made on a combined group basis.
 - ◆ No modification for large manufacturing employer is included. *[Bill § 1; Code § 11-654(1)(K)]*
- Small businesses qualify depending on their level of business income.
- Financial corporations are corporations, or combined groups, that have more than \$100 billion of total assets reflected on their balance sheet, computed under GAAP, at the end of the taxable year, and:
 - ◆ More than 50% of their overall receipts allocated pursuant to the rules under Code § 11-654.5(5), which allocate receipts from certain financial assets and certain financial activities, (including receipts from qualified and nonqualified financial instruments and commodities, and registered broker-dealer services, credit and consumer cards, and investment company services), or
 - ◆ A registration or classification as a financial institution (such as a bank, savings or thrift association registered broker dealer, or agency, branch or foreign depository) except that, in the case of a combined group, more than 50% of the assets of the group must be held by one or more corporations with a financial registration or classification.

Capital Base Tax Rates *[Bill § 1; clause (ii) of subparagraph (a) of paragraph E of subdivision 1 of Code § 11-654]*

Type of Business	Rate in Tax Year 2015 and thereafter
Cooperative housing corporations	0.04%
All other corporations	0.15%
Modification: the portion of total business capital directly attributable to stock in a subsidiary that is taxable as a utility within the meaning of the New York City Utility Tax or would have been taxable as an insurance corporation under the former New York City Insurance Corporation Tax	0.075%

- The maximum tax is \$10,000,000.
- A \$10,000 reduction applies to all capital tax calculations (provided that the capital tax cannot be less than \$0).

Fixed Dollar Minimum (FDM) Amounts [Bill § 1; clause (iii) of subparagraph (a) of paragraph E of subdivision 1 of Code § 11-654]

If New York City receipts are:	Fixed dollar minimum tax is:
Not more than \$100,000	\$25
More than \$100,000 but not over \$250,000	\$75
More than \$250,000 but not over \$500,000	\$175
More than \$500,000 but not over \$1,000,000	\$500
More than \$1,000,000 but not over \$5,000,000	\$1,500
More than \$5,000,000 but not over \$25,000,000	\$3,500
More than \$25,000,000 but not over \$50,000,000	\$5,000
More than \$50,000,000 but not over \$100,000,000	\$10,000
More than \$100,000,000 but not over \$250,000,000	\$20,000
More than \$250,000,000 but not over \$500,000,000	\$50,000
More than \$500,000,000 but not over \$1,000,000,000	\$100,000
More than \$1,000,000,000	\$200,000

A corporation's "New York City receipts" are the same as its New York City receipts for purposes of computing its business allocation percentage. If a return is filed for a period of less than one year, the minimum tax may be reduced.

Allocation of Business Income [Bill §1; Code § 11-654.2, unless otherwise noted]

- A single receipts factor apportionment methodology is being phased-in on the same schedule as the current GCT and will be fully effective for tax years beginning on or after January 1, 2018.
- Customer sourcing rules determine whether receipts are derived from activity within the City for purposes of the receipts factor.
- Taxpayers with less than \$50 million of receipts allocated to the City will have a one-time election to continue, in their first tax year commencing on or after January 1, 2018, to use the 2017 three factor business allocation percentage formula – 93% sales, 3.5% property, 3.5% payroll – to allocate income in tax years beginning on or after January 1, 2018. [Bill § 1, Code § clause (xii) of subparagraph 10 of paragraph (a) of subdivision 3 of 11-654]
- Receipts from sales of electricity are sourced to the delivery location.
- Net gains (not less than zero) from sales of real property are sourced to the location of the property.
- Royalties from the use of patents, copyrights, trademarks and similar intangibles are sourced to the City if such intangibles are used within the City.
- Receipts from digital products are generally sourced to the customer's primary use location of the product.

- New sourcing rules are created for allocating income from financial instruments.
 - ◆ Qualified financial instruments (QFIs) are loans (except loans secured by real estate), federal, state and municipal debt, asset backed securities and other government agency debt, corporate bonds, stock (except stock that is investment capital), partnership interests, physical commodities and other financial instruments not otherwise enumerated in the statute that are marked to market under IRC §475 or §1256.
 - If, in any particular year, only loans that are secured by real property are marked to market, then no loans are QFI for that year.
 - If a financial instrument is not itself marked to market, but is in the same allocation category as another financial instrument that is marked to market, then it is also a QFI.
 - In the case of a combined report, the definition of QFI is determined on a combined basis.
 - ◆ Taxpayers can use one of two sourcing methods for QFIs:
 - use customer-based sourcing for each income stream that does not constitute tax exempt income; or
 - elect to treat all income from QFIs as taxable business income and allocate 8% of the net income (dividend income, interest income, and net gains), not less than zero, from QFIs to the City.
 - The irrevocable 8% QFI election must be made on an annual basis on the taxpayer's original, timely filed return (determined with regard to extensions) and applies to all the QFI income of all members of a combined group.
 - ◆ Non-qualified financial instruments (non-QFIs) are all financial instruments that do not meet the definition of QFI and the related income is subject to customer-based sourcing.
- In cases where sourcing rules for financial transactions rely on commercial domicile, taxpayers are required to use the following hierarchy:
 - ◆ seat of management and control; and
 - ◆ billing address of the customer.
- Receipts constituting the primary spread of selling concession from underwritten securities are sourced to the customer's location.
- Receipts from credit card authorization processing and clearing and settling processing are sourced to the location where the credit card processor's customer accesses the processor's network. All other credit card processing receipts are sourced to the City using the average of 8% and the percentage of New York City access points.
- Receipts from services are generally sourced to the City if the customer receives the benefit of the service in the City.
- The special apportionment rules for trucking, railroad, transportation of gas through pipes, and aviation are used as the bases for the new receipts rules for these industries.
- Current sourcing rules continue generally for:
 - ◆ sales of tangible personal property;

- ◆ rentals of real and tangible personal property;
- ◆ broker/dealer activities, except as described above;
- ◆ interest, fees, penalties, service charges, merchant discounts, and credit card fees;
- ◆ services provided to a Regulated Investment Company (RIC); and
- ◆ advertising.

Combined Reporting *[Bill § 1; Code § 11-654.3, unless otherwise noted]*

- Subchapter 3-A adopts a unitary method for combined reporting.
- In order to be combined, corporations must:
 - ◆ Conduct a unitary business; and
 - ◆ Meet a more than 50% stock ownership test that is based on voting power.
 - This is satisfied when one corporation directly or indirectly owns more than 50% of another, or corporations are controlled by a common interest or by related parties through more than 50% stock ownership.
- The substantial intercorporate transactions test is eliminated.
- The combined group must include all domestic corporations, alien corporations deemed domestic corporations under the IRC (contiguous, stapled, and inverted corporations), alien corporations with ECI, captive REITs and RICs, and combinable captive insurance companies.
 - ◆ The captive REIT/RIC combination requirement is incorporated without any special exclusion for affiliated groups whose members own assets under \$8 billion.
 - ◆ The combined reporting requirements for captive insurance companies is changed to require combination with captive insurance companies, where less than 50% of the captives' premiums are from arrangements that constitute insurance for federal income tax purposes. *[Bill § 1; Code § 11-652(12)]*
- Combination across tax types remains prohibited.
- Eventual single receipts factor apportionment for all taxpayers (see Allocation of Business Income above) allows aviation, railroad, and trucking companies to be included in the combined group.
- Taxpayers can also make an irrevocable commonly owned group election that requires combined reporting for a 7 year period.
 - ◆ The group must include all unitary and non-unitary corporations that could be taxed under Subchapter 3-A and that meet the more than 50% stock ownership test.
 - ◆ The election must be made when the original return is timely filed (determined with regard to extensions) and may not be revoked during the 7 year period.
 - Upon expiration, the election is automatically renewed for another 7 years unless the group affirmatively declines to renew. If the election is affirmatively declined, a new election cannot be made for 3 years.
 - ◆ Each corporation in the group is deemed to have agreed to treat the income from the non-unitary

businesses as if it were from the group's unitary business and any corporation conducting a non-unitary business that is acquired during that period that could be taxed under Subchapter 3-A is included in the combined group for the remainder of the election period.

- The combined group is generally treated as if it were a single entity.
 - ◆ Each taxpayer member of the combined group is liable for the group's whole tax, not just its pro-rata share of the combined group's tax.
 - ◆ The combined group must designate one taxpayer member to be the agent for administrative purposes (e.g., filings, assessments, payments, and waivers).
 - ◆ The combined group's tax is the sum of (1) the greater of the tax on combined business income, the tax on combined business capital, or the fixed dollar minimum tax of the agent and (2) the fixed dollar minimum tax for every other taxpayer member of the group.
 - ◆ Generally, combined income is computed using the federal intercorporate deferral rules.
 - ◆ Credits, prior net operating loss conversion subtractions, and net operating loss deductions can be used by the group, not just the corporation that generated the item, and are applied in computing the combined tax.

Prior Net Operating Loss Conversion (PNOLC) Subtraction *[Bill § 1; subdivision 2 of Code § 11-654.1]*

- Net operating losses (NOLs) that were incurred before the 2015 tax year are converted into a PNOLC subtraction to stabilize their value for financial accounting purposes.
 - ◆ Taxpayers must first compute the value of the unabsorbed NOL for the base year.
 - This is computed by applying the taxpayer's (or combined group's) 2014 business allocation percentage and tax rate to the 2014 pre-apportionment New York City NOL carryforward.
 - The product is then divided by 8.85% or 9%, as applicable.
 - The final result is referred to as the PNOLC subtraction pool.
 - ◆ Taxpayers have a choice to use 1/10 of the PNOLC subtraction pool in each year for the next 20 years or until it's exhausted, whichever is first, or use 1/2 of the PNOLC subtraction pool in each tax year before the pool is exhausted, within the period beginning January 1, 2015 and ending December 31, 2016.
 - If taxpayers cannot use the entire 1/10 allotment of subtraction in one year, the unused portion is carried forward into future years and added to the amount allowed in subsequent years.
 - Years where the subtraction cannot be used still count in determining the 20 year period, including any tax year after January 1, 2015 that the taxpayer is subject to Subchapter 2 or 3.
 - ◆ If taxpayers choose to deduct 1/2 of the subtraction in the 2015-2016 period, any unused amount is lost after 2016.
 - ◆ Where two or more taxpayers and/or groups that existed and filed separately in tax year 2014 constitute one group in 2015, each taxpayer and/or group would compute its PNOLC subtraction separately based on its 2014 information; in 2015, the group's total PNOLC subtraction is the sum of the subtractions of each of its constituent taxpayers and/or groups.

- If a taxpayer leaves the group after 2015, the taxpayer takes its proportionate amount of the subtraction with it.
- If a taxpayer enters the group after 2015, its proportionate amount of the subtraction is added to the group's remaining subtraction amount.
- ◆ The PNOLC subtraction is deducted from allocated business income before the net operating loss deduction.
- ◆ Taxpayers only have to use the amount of PNOLC subtraction necessary to bring the tax on business income down to the higher of the tax measured by capital or the fixed dollar minimum tax.

NOL Deduction *[Bill §1; subdivision 3 of Code § 11-654.1]*

- The following rules apply to NOLs incurred in tax years beginning on or after January 1, 2015:
 - ◆ A taxpayer's NOL deduction (NOLD) in any specific tax year would be the sum of allocated business losses that were incurred in tax years beginning on or after January 1, 2015, less any portion of such losses that were deducted as a NOLD in a prior tax year.
 - ◆ The NOLD is no longer limited by the federal NOLD source year or amount.
 - ◆ The NOLD is a deduction against allocated business income and is applied after the PNOLC subtraction.
 - ◆ Taxpayers only have to use a NOLD in an amount necessary to bring the tax on business income down to the higher of the tax measured by capital or the fixed dollar minimum tax, with excess NOL carried forward.
 - ◆ NOLD is not allowed for a NOL sustained during any year in which the corporation generating the loss was not subject to tax under Subchapter 3-A.
 - ◆ NOLs can be carried back 3 years, provided no NOL earned in 2015 or later can be carried back to a tax year before 2015, and must be carried back to the earliest year first.
 - Taxpayers may make an irrevocable election on the original, timely filed return (determined with regard to extensions) for the year of the loss to relinquish the entire carryback period.
 - ◆ NOLs can be carried forward for as many as 20 years and must be carried forward to the earliest year first.
 - ◆ The current separate return limitation year (SRLY) rules used when corporations enter or leave a combined group are continued.

Tax Credits *[Bill §1; Code § 11-654(12) through (21)]*

- GCT credits are transitioned into Subchapter 3-A, except for obsolete credits.
- Subchapter 3-A provides for the carry forward of credits that were allowed under Subchapter 2 in tax years prior to January 1, 2015. The credit in Subchapter 3-A for Unincorporated Business Taxes paid is modified to take into account the elimination of the alternative income plus compensation base and also the varying tax rates provided for small corporations and manufacturing corporations.

Bank-Specific Provisions

- Eliminates special bank specific provisions, including: *[Bill § 1]*

- ◆ the international banking facilities provisions, and
- ◆ the deduction for interest income from government obligations.
- In an effort to encourage local lending in the City, four new ENI modifications are created.
 - ◆ The first modification is available to small thrifts and qualified community banks for holding a significant amount of New York City small business loans and New York City residential mortgages. *[Bill § 1; Code § 11-652.8(q)]*
 - Eligible taxpayers must choose between this modification and the third modification discussed below.
 - ◆ The second modification is available to small thrifts and qualified community banks that maintained a REIT on April 1, 2014. *[Bill § 1; Code § 11-652.8(r)]*
 - Taxpayers that use this modification are precluded from using the two other modifications discussed above and below.
 - ◆ The third modification is available to thrifts and qualified community banks holding a qualified residential loan portfolio. *[Bill § 1; Code § 11-652.8(s)]*
 - Eligible taxpayers must choose between this modification and the first modification discussed above.
 - ◆ The fourth modification is available for taxpayers and combined groups that have less than \$150 billion of assets and make or purchase (immediate after origination) loans secured by residential real property in the City used for affordable housing or located in a low income community. *[Bill § 1; Code § 11-652.8(t)]*
 - A phase-out applies between \$100 billion and \$150 billion of assets.
 - Taxpayers may not include loans in this modification that are incorporated into the first modification and may not include income in this modification that is included in the second modification.

Legacy GCT Provisions That Are Unique to New York City

- An entity that would otherwise meet the definition of a corporation but that was subject to the Unincorporated Business Tax (“UBT”) for its taxable year beginning in 1995 and that made an election not to be characterized as a corporation under the GCT, will also not be a corporation under Subchapter 3-A unless and until it revokes its election. *[Bill § 1, Code § 11-652(1)(b)]*
- An entity characterized as a partnership for federal income tax purposes is not a corporation. *[Bill § 1, Code § 11-652(1)(c)]*
- The application of Subchapter 3-A is not modified for Domestic International Sales Corporations.
- ENI is modified to (1) exclude a partner’s share of income, gain, loss, or deduction from a partnership that is subject to tax as a utility under Chapter 11 of Title 11 of the Code, (2) add back taxes paid under Articles 9 and 13-A of the Tax Law, (3) add back relocation expenses to the extent the taxpayer takes a Relocation Employment and Assistance Credit or a Lower Manhattan Relocation and Employment Assistance Program, (4) add back any deduction for a restricted stock option grant or exercise within the meaning of the IRC of 1954 unless the grantee disposes of the stock within 2 years from the grant date or 6 months from the stock transfer, (5) permit a deduction for certain expenses related to industrial waste treatment facilities and pollution control facilities, and (6) adjust the depreciation de-

ductions attributable to certain sport utility vehicles. *[Bill § 1, paragraph (a-1), subparagraphs (3), (4-b), (4-c) and (7) of paragraph (b), and paragraphs (g), (k) and (o) of Code § 11-652(8)]*

- ENI does not include any modifications specific to publicly supervised utilities, which are exempt from tax under Subchapter 3-A.
- Captive REITs and RICs that are combinable with insurance companies under Article 33 of the Tax Law (NYS Insurance Tax) are not excluded from tax under Subchapter 3-A. *[Bill § 1, Code § 11-653(5)(a)]*
 - ◆ Captive REITs and RICs are eligible for combination with other corporations under Subchapter 3-A, even if they are combined with an insurance company under Article 33 of the Tax Law. *[Bill § 1, Code § 11-654.3(2)(c)]*
- An exemption applies to all companies subject to the Utility Tax under Chapter 11 of Title 11 of the Code, not just those that are subject to tax under Articles 183 and 184 of the Tax Law. *[Bill § 1, Code § 11-653(4)]*
 - ◆ The exemption for vendors of utility services is proportionate to their share of receipts subject to tax under the New York City Utility Tax and is therefore partial. *[Bill § 1, Code § 11-653(4)].*
- An exemption applies for certain entities that hold title to real estate for organizations that are exempt from tax under section 501(c) of the IRC. *[Bill § 1, Code § 11-653(9)]*
- Except for business income tax rates applicable to small businesses and manufacturers, and the capital tax rates applicable to subsidiaries of publicly supervised utilities and insurance corporations, the current tax rates applicable to income and capital continue to apply (see Business Income Base Tax Rates and Capital Base Tax Rates above).
- The three-factor business allocation percentage continues to phase out the property and payroll factors through the 2017 tax year, with the exception noted in Allocation of Business Income above. *[Bill § 1; Code §§ 11-654(3) and 11-654.3(5)(a)]*
- Depreciation recapture applies to certain assets that were eligible for New York City depreciation deductions in excess of federal depreciation deductions. *[Bill § 1, Code § 11-654(3)(d) and (e)]*
- The allocation of receipts from aviation does not include any subtraction from local receipts. *[Bill § 1, Code § 11-654.2(7)]*
- No company subject to the Utility Tax under Chapter 11 of Title 11 of the Code is eligible for combination (except for vendors of utility services). *[Bill § 1, Code § 11-654.3(2)(c)]*
- Reports regarding federal or state changes include “or other basis of tax”, war loss recoveries, waivers on restrictions to assessment and collection of federal or New York State tax, and changes to New York State sales or use tax liability. *[Bill § 1, Code § 11-655(3) and (8)]*
- The default interest rate for underpayments is 7.5%. *[Bill § 1, Code § 11-656(1)(b)]*
- An initial installment equal to 25% of the tax liability for the preceding taxable year must be paid with the report for the preceding year (or application for extension of time to file). *[Bill § 1, Code § 11-658(1)]*
- The default interest rate for overpayments related to the 25% installment is 4% and the default interest rate for extensions of time to pay installments of estimated tax is 7.5%. *[Bill § 1, Code § 11-658(1) and (9)]*

Other unique New York City provisions

- Subchapter 3-A specifically defines IRC and partnership with reference to the current IRC. *[Bill § 1, subdivisions 11 and 13 of Code § 11-652]*
- Certain taxpayers that have less than \$50 million of receipts allocated to the City may make a one-time revocable election to continue using a 3 factor formula for income allocation (see Allocation of Business Income above).
- Subchapter 3-A does not include an exception to the PNOLC limitations for taxpayers subject to the small business tax rate. *[Bill § 1, Code § 11-654.1(2)(b)]*
- Subchapter 3-A does not provide for the carryover of net operating losses incurred under the GCT or BCT after January 1, 2015. *[Bill § 1, Code § 11-654.1(3)(e)]*
- The statutes of limitations applicable to assessments and refunds in connection with New York State changes of income are revised to permit the City and taxpayers to make income allocation adjustments based on New York State income allocation adjustments, *[Bill §§ 10 and 16; Code §§ 11-674.3(g) and 11-678.3(c)]*
- No penalty will apply to a late declaration or underpayment of estimated tax due prior to or on June 15, 2015 under Section 1 of the Act, if the declaration and payment are made in full by the first due date after June 15, 2015 on which an installment of estimated tax is required to be paid, together with all other such declarations and payments then due. *[Bill § 27]*

Effective Date *[Bill § 29]*

- These provisions are effective for taxable years beginning on or after January 1, 2015.

Remaining Amendments

- Remaining sections amend cross-references and repeal obsolete provisions.