



## New York State's Fiscal Year 2019-2020 Budget Bill

On April 12, 2019, Governor Cuomo signed the New York State ("NYS") Fiscal Year 2019-2020 Budget Bill ("Bill") which extends some previously enacted changes as well as adding new provisions. Discussed below are the major highlights of the Bill.

### PERSONAL INCOME TAX

**Extension of the Millionaire's Tax:** The top NYS personal income tax bracket of 8.82% was scheduled to expire after 2019. The Bill extends the "Millionaire's Tax" for five years, through 2024.

**Extension of Charitable Contribution Deduction Limitation:** Currently, the NYS itemized charitable deduction is limited to 50% of the federal deduction for individuals with adjusted gross income ("AGI") between \$1-10 million, and to 25% of the federal deduction for individuals with AGI over \$10 million. The 25% limitation for individuals with an AGI over \$10 million was set to expire at the end of 2019. The Bill extended the current 50% and 25% limitation structure through 2024.

**Inclusion of Certain NYS Gambling Winnings in Nonresident NYS Income:** Effective for tax years beginning on or after January 1, 2019, the Bill requires NYS gambling winnings in excess of \$5,000 be treated as taxable NYS source income to NYS nonresidents. It also requires withholding on gambling winnings in NYS when such winnings

would be subject to withholding under federal law.

### CORPORATE TAXES

#### **Sourcing Rule for Global Intangible Low-Taxed Income ("GILTI")**

**Apportionment:** Applicable to tax years beginning on or after January 1, 2018, the Bill provides that for both NYS and New York City ("NYC") corporate taxes net GILTI be excluded from the sales apportionment factor numerator but included in the denominator.

#### **Qualified NYS & NYC Manufacturer**

**Test:** Under current law, certain qualified NYS manufacturers are entitled to a reduced business income base tax rate, a reduced tax rate and cap on the capital base, a lower fixed dollar minimum tax, and a manufacturer's real property tax. One of the requirements was having manufacturing property in NYS with a federal adjusted basis of \$1 million. Recognizing that federal bonus depreciation could drastically reduce the basis below the threshold, for both NYS and NYC purposes the Bill changes the reference from "federal" adjusted basis to NYS adjusted basis. This takes effect immediately and applies to taxable years beginning on or after Jan. 1, 2018.

**Exclusion from Entire Net Income of Certain Contributions to the Capital of a Corporation:** TCJA amended the federal law to require that certain contributions offered by a governmental entity to a corporation's capital be included in federal gross income. As a result,

because of NYS's federal conformity, this resulted in the inclusion of these contributions in the recipient's entire net income. Effective immediately for tax years beginning on or after January 1, 2018, the Bill provides that these contributions be excluded from both NYS and NYC entire net income.

## **SALES AND USE TAX**

**Vendors May Advertise to Pay Sales Tax on Behalf of Customers:** Effective immediately, vendors required to collect and remit NYS sales tax may now advertise to customers that the vendor will pay the sales tax imposed on behalf of the customer. In advertising, vendors must state on every bill, memorandum, receipt, or other statement of the price or amount paid both the amount of tax due and that the vendor will pay the tax imposed on the transaction.

**Marketplace Providers Nexus:** Applicable to sales made on or after June 1, 2019, the Bill requires marketplace providers to collect sales and use taxes on sales of tangible personal property they facilitate. A marketplace provider is a person who, pursuant to an agreement with a marketplace seller, facilitates sales of tangible personal property, essentially, by providing a forum for the sale to take place. For nexus purposes, a marketplace provider without a physical presence in NYS must have cumulative total gross receipts of \$300,000 or more than 100 sales in the prior four quarters.

**Extension of Authority to Require Segregated Accounts for Delinquent Sales Tax Vendors:** Under current law, a noncompliant or delinquent vendor may be required to deposit sales tax it collects into a segregated account. Moreover, the Tax Commissioner has the authority to debit segregated accounts, to require a vendor to deposit the sales tax moneys at least weekly, to require the vendor to obtain a bond if the vendor failed to comply and suspend or revoke a vendor's sales tax certificate of authority if the vendor did not comply with the segregated accounts program's requirements. This was set to expire in December 2019. The Bill immediately extends this until December 2024.

## **FIDUCIARY INCOME TAX**

**SALT Relief:** For tax years beginning January 1, 2018 and before January 1, 2026, the Bill provides that trusts and estates can claim a state and local tax deduction above \$10,000 to the extent the excess is not state and local income taxes. For purposes of the \$10,000 limitation, the Bill provides that if the deduction claimed comprises both state and local income taxes and other taxes (i.e. real estate taxes), the first \$10,000 shall be presumed to be state and local income taxes.

**Miscellaneous Itemized Deductions:** For tax years beginning January 1, 2018 and before January 1, 2026, a subtraction is also permitted for miscellaneous itemized deductions such as investment fees which are not allowed for federal income tax purposes.

**Qualified Business Income Deduction ("QBI"):** For tax years beginning January 1, 2018 and before January 1, 2026, a trust or estate is required to add back the federal QBI deduction.

## **ESTATE TAX**

**Gift Clawbacks:** The Bill retroactively extends the three-year "clawback" provisions to include certain taxable gifts made by NYS residents within three years of death up through the new expiration date of December 31, 2025. This three-year rule had previously expired on January 1, 2019 and did not apply to anyone who previously made gifts and died after December 31, 2018. Gifts of real or tangible personal property having an actual situs outside NYS and gifts made when the decedent was not a resident of NYS are excluded.

## **PROPERTY TAX**

**Real Property Tax Cap:** The Bill made permanent the 2 percent cap on real property taxes that was originally enacted in 2012.

**Additional NYC Real Property Transfer Tax:** Effective July 1, 2019, the Bill imposes additional real property transfer taxes, at \$1.50 per \$500 of sales price, applicable to

residential properties valued at more than \$3 million and non-residential properties valued at more than \$2 million in NYC as well as an additional supplemental real property transfer tax on residential properties in NYC valued at over \$2 million.

## **MISCELLANEOUS TAX PROVISIONS**

**Exemptions for Suspensions of Driver's Licenses:** NYS law allows for the suspension of a taxpayer's driver license if there is \$10,000 or more in unpaid taxes. The Bill provides relief authorizing an exception from suspension for taxpayers who receive public assistance or supplemental security income or who can demonstrate that it will cause undue economic hardship.

**Imposition of Opioid Excise Tax:** The Final Bill imposes an excise tax on the first sale of opioids in NYS that takes effect July 1, 2019. However, sales to hospice and chemical dependency programs are exempt.

**Vapor Products Tax:** The Bill includes an immediate 20% supplemental tax on sales of vapor products.

**Creation of NYS Employer-Provided Child Care Credit:** Effective for tax years beginning on or after January 1, 2020, there is a credit equal to 25% of qualified child care expenditures related to an employer-provided child care facility located in NYS plus 10% of

qualified child care resources and referral expenditures. Similar to the comparable federal credit, the NYS credit is capped at \$150,000 per employer, per taxable year.

**Congestion Pricing Program for Vehicles Traveling Below 61st Street in Manhattan:** Although not expected to begin until 2021, the Bill establishes a six-person commission called the Traffic Mobility Review Board to determine the cost of driving below 61st Street in Manhattan. Potential price breaks and exemptions are yet to be determined.

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