

New York Passes SALT Workaround and Other Tax Changes

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As part of New York States 2021 – 2022 budget, Governor Cuomo has approved some major changes to the tax law effecting both businesses and individuals. What seems clear are two things, legislature wants to increase taxes to raise revenue, but also create a benefit to individual constituents with regard to getting state and local tax (SALT) deductions on their federal returns through a SALT work around. We have summarized a few of the major changes to the law below.

Personal income tax rates: While the highest individual income tax rate in New York State for 2020 was 8.82%, those making more than \$1,077,550 (single filers) or \$2,155,350 (married joint filers) will be seeing the top rate increase 0.83% to 9.65%. In addition, two new brackets created for those who have taxable income over \$5,000,000 and \$25,000,000 will be taxed at 10.3% and 10.9%, respectively. Good news for the middle class – the budget retains a previously approved phase in of a lower tax rate on income from \$43,000 – \$161,550 (single filers) and \$161,550 – \$323,200 (married joint filers) to be taxed at 5.97% and 6.33%, respectively. These rates are set to run from 2021 through 2027.

Corporate franchise tax rates: The corporate income tax rate of 6.5% will continue to be in effect for income under \$5,000,000, however there will be an increase in the rate to 7.25% on income above that threshold. Such increased rate will be in effect through 2023. The capital-based tax has been reinstated after what was supposed to be an elimination of such tax and is assessed at 0.1875% of capital.

Pass through entity tax election: Based upon IRS Notice 2020-75, the Treasury has essentially given a green light to state jurisdictions which will allow them to work around the individual itemized deduction tax cap of \$10,000. Other states have been quick to embrace the programs, including New Jersey and Connecticut – for 2020. In 2021, New York State will create an optional pass-through entity tax for partnerships and S corporations whereby the pass-through entity will pay New York State tax on behalf of the individuals and reduce the flow through entity's federal taxable income for such payments -effectively giving the individuals a full deduction on the federal level for such payment of state tax.

Tax Credits: The budget retains or slightly modifies some key tax credits such as the Empire State film production and post-production credits to 2026 and extends availability of existing musical and theatrical production tax credits through 2025. It also adds a new tax credit program whereby eligible New York City musical and theatrical production companies can claim credits from 2021 to 2023 equal to 25% of qualifying production expenditures, subject to certain limits. Lastly the budget includes a \$35,000,000 restaurant return to work tax credit program related to increases in hiring full time equivalent employees.

Please look for further details of our analysis on the pass-through entity tax election for partnerships and S corporations in a blast coming shortly. Should you have any further thoughts or concerns, please feel free to reach out to your SKP tax professionals for guidance and planning opportunities that this new law presents.