

The Fiscal Year 2022 New York State Budget - The Benefits and Costs to You

April 12, 2021



New York Governor Andrew M. Cuomo and legislative leaders have announced an agreement on the state's fiscal year 2022 budget, which, among its various provisions, will significantly raise tax rates and make New York City the highest taxing jurisdiction in the country. The notable changes are discussed below, and it is important for taxpayers to consider how they may be impacted going forward.

Increase of Personal Income Tax Rates

Beginning with the 2021 tax year, the budget increases the tax rate on single filers reporting over \$1.07 million, joint filers reporting more than \$2.15 million and head of household filers reporting more than \$1.6 million, from 8.82% to 9.65%. In addition, the budget establishes two new, temporary tax brackets. Individual and joint filers making \$5 million or more will be taxed at 10.3%, and taxpayers earning over \$25 million will be taxed at 10.9%. These new rates are set to expire after 2027 when the top tax rate will revert back to 8.82%.

Based on these new rates, New York City residents earning more than \$1 million could be subject to a combined state and city income tax rate between 13.5% and

14.8%, the highest in the nation.

Additionally, the budget decouples from certain federal opportunity zone incentives. Notably, taxpayers will no longer be able to defer state and city capital gains taxes on the profits invested in “opportunity funds” that finance projects in the state’s opportunity zones.

Creation of a Pass Through Entity Tax - Intended to Help Taxpayers

The budget creates an elective Pass Through Entity (PTE) tax for eligible partnerships and S corporations effective for tax years beginning on or after January 1, 2021. The tax has the following rates:

- 6.85% for taxable income of less than \$2,000,000;
- 9.65% for taxable income of \$2,000,000 to \$5,000,000;
- 10.3% for taxable income of \$5,000,000 to \$25,000,000;
- 10.9% for taxable income of over \$25,000,000.

Partners and shareholders of electing PTEs will be entitled to a corresponding personal income tax credit. The annual election must be made by the due date of the first estimated payment, March 15 for calendar year filers (note that, guidance will need to be issued regarding a 2021 election as the budget enactment occurred after the due date). However, once the election is made it is irrevocable. Furthermore, the state will permit partners and shareholders to file for a credit for taxes paid to other states if paid under their respective PTE tax regimes.

Increase of Corporate Tax Rates

Effective for tax years beginning on or after January 1, 2021, the budget increases the state’s corporate franchise tax rate to 7.25% from 6.5% through tax year 2023 for those corporations with business income greater than \$5 million. The tax rate will remain 6.5% for companies with \$5 million or less in annual income. In addition the budget restores the capital base tax, which was to be phased out in 2021, and increases the rate to 0.1875% from 0.025%. However, cooperative housing corporations, emerging technology companies, manufacturers and small companies continue to be exempt.

Maintaining the Middle Income Tax Cut

The budget also continues the phase-in of the middle income tax cut that was enacted in 2016. In 2021, income tax rates will be lowered from 6.09% to 5.97% for taxpayers filing jointly in the \$43,000 to \$161,550 taxable income bracket, and from 6.41% to 6.33% in the \$161,550 to \$323,200 taxable income bracket.

Updates to Credit and Incentive Programs

The budget contains various changes to certain tax credits and incentives, including:

- 2-year extension of the Brownfield tax credit for certain qualified sites;
- Extension of the Empire State film production and Empire State film post-production tax credits program to 2026, while adding additional counties as eligible sites;
- Extension of credits and exemptions for alternative fuels to September 1, 2026;
- Addition of a 150% credit for qualifying small projects rehabilitating certified historic structures;
- Addition of a restaurant return-to-work credit of \$5,000 per full-time net employee increase (up to a total tax credit of \$50,000); and
- Creation of a musical and theatrical production credit of up to 25% for qualifying production expenditures.

In addition, relief is provided to businesses that were required to have employees work within New York because of certain tax credit programs, such as the Excelsior job program and START-UP NY program, but whose employees were forced by the pandemic to work remotely. Such businesses will still qualify for those tax credits for the duration of the state disaster emergency declaration.

Withholding Interest and Penalties Changes

Applicable as of June 1, 2021, employers will be subject to an increased penalty of \$100 per employee (up from \$50) for incomplete or incorrect employee withholding information.

The budget provides for a waiver of interest on the underpayment of taxes relating

to unemployment compensation received in the 2020 tax year. Under federal law, up to \$10,200 of unemployment compensation can be excluded from 2020 gross income for certain taxpayers. While New York does not conform to this exemption, interest levied for the underpayment of tax on these funds will be waived for demonstrated good cause.

Real Estate Transfer Tax Modifications

The budget amends certain provisions of the state's real estate transfer tax to include responsible person liability and prohibit sellers from passing the tax onto buyers.

Property Tax Relief

Qualifying taxpayers with incomes of up to \$250,000 are eligible for a new real property tax relief credit if their total property tax exceeds 6% of their qualified gross income.

Summary

The new budget includes many new provisions that may impact you and your business. We will continue to monitor the changes and any additional details issued. In the meantime, if you have any questions about the New York fiscal year 2022 budget, please contact [Alan Goldenberg](#), State and Local Tax Principal or your Anchin Relationship Partner.