

Anchin Alert

Anchin, Block & Anchin LLP
Accountants and Advisors



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New York Reacts to Federal Tax Reform

On March 30, 2018, the New York State legislature enacted its \$168.3B budget for the fiscal year ending March 31, 2019. Provisions in the budget were designed to offset some of the negative effects of the recently-passed federal Tax Cuts and Jobs Act.

Will these provisions hold up? Should you try to take advantage of them? Here are some early thoughts.

Employer Compensation Expense Tax System (ECET)

The new federal law essentially does away with an individual's ability to deduct state and local income taxes. However, businesses have retained the ability to deduct these taxes. The new ECET creates a system where employers can voluntarily opt-in by December 1st of the prior year and pay a new payroll tax. An employee would then be able to take a credit on his or her personal return for taxes that the employer paid into the new system on their behalf. The tax imposed on wages in excess of \$40,000 will be phased-in over three years: 1.5% in 2019, 3% in 2020 and 5% thereafter.

While this novel approach retains a tax deduction at the entity level, the economics and administrative burden of shifting the actual expense from the employee to the employer, on a voluntary basis, seems unlikely to catch on with employers. This idea, however, may be more attractive to those businesses having relatively few employees.

Charitable Deduction End-Arounds

While an individual's ability to deduct state and local taxes has been severely restricted, their ability to deduct charitable contributions has not. Beginning in **2019**, individual taxpayers will be allowed an income tax credit for 85% of a donation made to certain newly-established quasi-independent state-operated charitable funds devoted exclusively to health, education, and scientific research.

Local taxing districts can create similar charitable funds. Contributions to these funds would reduce property taxes up to 95% of the donation, or a lower amount, as established by the political subdivision.

While an interesting approach, one must consider whether the IRS will realistically permit these arrangements. If your credited state tax offset was dollar-for-dollar, one could take the approach of "what do I have to lose?" Since the tax reduction is not dollar-for-dollar the question arises – would you risk up to a 15% cost (i.e., the increased state tax) to **possibly** gain a 37% deduction (assuming you are in the top tax rate bracket), which could be subject to IRS challenge?

So far, no steps have been taken to implement this plan at either the state or local level. Even without likely adverse IRS action, the logistics in administering these programs are formidable.

Decoupling From Federal Changes

Since New York automatically conforms to federal tax law, federal changes disallowing many itemized deductions would normally carry to the New York return. The new law however has decoupled from these federal changes—allowing taxpayers to continue to claim exemptions for dependents and itemized deductions for New York State and City purposes as in the past such as well as all real estate taxes, unreimbursed business expenses, investment expenses, tax preparation fees, and all casualty losses—even though the standard deduction is claimed for federal purposes.

While admirable, this benefit has limited use since high-income taxpayers already have limitations that significantly reduced itemized deductions. However, all New Yorkers will still be able to claim “off-the-top” moving expenses and non-grandfathered alimony deductions in arriving at New York Adjusted Gross Income.

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