

## New York 2020-2021 State Budget Bill Enacted

### Overview

On April 3, 2020, Governor Andrew Cuomo of New York signed into law the 2020-2021 Budget Act (including [S.B. 7509-B/A.B. 9509](#); [S.B. 7508-B/A.B. 9508-B](#); and [S.B. 7506B/A.B. 9506B](#)) (Budget Act).<sup>1</sup> The Budget Act incorporates amendments to New York State and New York City corporate and personal income tax provisions and clarifies the tax treatment of certain federal tax provisions enacted under the recently enacted federal Coronavirus Aid, Relief, and Economic Security (CARES) Act (*i.e.*, P.L. 116-136), including: i) decoupling from a specific CARES Act amendment to Internal Revenue Code (IRC) section 163(j) for New York State and New York City corporate income tax purposes; ii) decoupling the New York State and New York City personal income tax provisions from CARES Act amendments; iii) amending and extending certain New York State tax credits; and iv) extending current personal income tax rates in New York City through 2023.

This Alert summarizes the more significant New York State and New York City tax law changes included in the Budget Act.

### Corporate Income Tax

The recently enacted CARES Act includes several significant business tax provisions intended to improve cash flow and liquidity. These federal tax provisions would, among other things, temporarily eliminate the 80% limitation and provide a temporary five-year carryback for certain net operating losses (NOLs). The CARES Act provides that NOLs arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, are allowed as a carryback to each of the five taxable years preceding the taxable year of such loss.<sup>2</sup>

The CARES Act also amends IRC section 163(j) as applied to taxable years beginning in 2019 and 2020. IRC section 163(j) generally limits the deduction for business interest expense to the sum of i) the taxpayer's business interest income; ii) 30% of the taxpayer's adjusted taxable income (ATI); and iii) the taxpayer's floor plan financing interest expense for the taxable year. The CARES Act increases the 30% ATI threshold to 50% for taxable years beginning in 2019 and 2020. In addition, the CARES Act allows taxpayers to elect to use their 2019 ATI as their ATI in 2020.<sup>3</sup>

The Budget Act decouples from the specific CARES Act amendment that increased the IRC section 163(j) limitation from 30% of ATI to 50% of ATI for 2019 and 2020 tax years.<sup>4</sup> Thus, for purposes of the New York State corporate tax (Article 9-A) and certain New York City business income taxes (Business Corporation Tax, General Corporation Tax and Unincorporated Business Tax) the deduction for interest expense will be limited to 30% of a taxpayer's ATI plus its business interest income and floor plan financing interest expense for the taxable year consistent with prior law.<sup>5</sup>

As such, this Budget Act provision will require separate IRC section 163(j) calculation of the New York interest expense deduction limitation and separate tracking and utilization of any resultant carryover of excess interest expense. Furthermore, due to the lower percentage limitation in New York as compared to federal, it is possible for a taxpayer to have a New York

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<sup>1</sup> Respectively, Chapters 59, 58 and 56, Laws of 2020.

<sup>2</sup> For further information, please see our alert, "CARES Act Business Tax Provisions with Significant Multistate Tax Considerations," which may be accessed [here](#).

<sup>3</sup> For further information, please see our alert, "CARES Act Business Tax Provisions with Significant Multistate Tax Considerations," which may be accessed [here](#).

<sup>4</sup> S7508B, Part WWW, Secs. 1,4,5 and 6.

<sup>5</sup> *Id.*

## External Multistate Tax Alert

interest expense deduction limitation and no federal interest expense deduction limitation for tax years beginning in 2019 or 2020.

This Budget Act amendment does not apply to IRC section 163(j)(10)(B)(i); therefore, it would appear that New York taxpayers would be permitted to elect to use their 2019 ATI as their ATI in 2020, consistent with the federal treatment, when computing the New York interest expense deduction limitation for the State and City business taxes noted above.

The Budget Act also extends the tax on subsidiary capital under the New York City General Corporation Tax (generally applicable to federal S corporations for tax years beginning January 1, 2015) through 2023.<sup>6</sup>

## Personal Income Tax

The Budget Act decouples the New York State and New York City personal income taxes from all CARES Act amendments<sup>7</sup> (including the IRC section 163(j) amendments and the NOL amendments described above). In fact, the Budget Act amendment affects IRC amendments beyond CARES Act amendments, stating that “for taxable years beginning before January first, two thousand twenty-two, any amendments made to the internal revenue code of nineteen hundred eighty-six after March first, two thousand twenty shall not apply to this article.”<sup>8</sup> As such, this amendment enacts a short-term static Internal Revenue Code conformity as of March 1, 2020 for New York State and New York City personal income tax purposes.

The Budget Act amendments also extend the current personal income tax rates in New York City through 2023.<sup>9</sup>

Finally, the Budget Act Amendments allow a qualified employer to revoke its 2020 election to participate in the “Employer Compensation Expense Program” before April 15, 2020; for years beginning in 2021 and thereafter, revocation would be permitted no later than January 15 of the calendar year after the employer election was made.<sup>10</sup>

In 2018, the N.Y. Tax Law added a new Article 24 implementing an optional Employer Compensation Expense Tax (ECET).<sup>11</sup> This new Article was intended to address the impact of the federal tax reform on individual taxpayers recognizing that while federal tax reform limits the state and local tax deduction for an individual, payroll taxes remain deductible for an employer. The optional ECET allows employers to annually elect to be taxed on the payroll expense paid to covered employees at the rate of 5% (phased in over a 3-year period, with a 1.5% rate in 2019 and a 3% rate in 2020) on all annual payroll expenses in excess of \$40,000 per employee.<sup>12</sup> The covered employee would be allowed a corresponding state personal income tax credit.<sup>13</sup>

## Credits & Incentives

The Budget Act amendments amend and extend certain New York State tax credits and New York City programs, including:

- Adding a new “green project” category under the “Excelsior” tax credit program, which provides enhanced jobs tax credits, investment tax credits and research and development tax credits to qualified participants;<sup>14</sup> extending the

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<sup>6</sup> S7508B, Part XXX, Subpart G, Sec. 5.

<sup>7</sup> S7508B, Part WWW, Secs. 2 and 3.

<sup>8</sup> Id.

<sup>9</sup> S7508B, Part XXX, Subpart G, Secs.2, 3 and 4.

<sup>10</sup> S7506B, Part X, Sec.1.

<sup>11</sup> Chapter 59, Laws of 2018, S7509C, Part MM, Sec. 1.

<sup>12</sup> Id.

<sup>13</sup> Id., Sec. 2.

<sup>14</sup> S7509B, Part L, Secs. 1 & 4.

## External Multistate Tax Alert

program funding through 2029 and permitting credits to be taken until tax years beginning on or after January 1, 2040;<sup>15</sup>

- Extending the state film credit through 2025; authorizing an additional \$420 million in funds available for the credit and certain other amendments;<sup>16</sup>
- Extending the state hire-a-veteran credit for one year through 2022;<sup>17</sup>
- Extending the New York City “Relocation and Employment Assistance Program” (REAP) through June 30, 2025;<sup>18</sup> and
- Extending the New York City “Industrial and Commercial Abatement Program” (ICAP) until March 1, 2025.<sup>19</sup>

## Considerations

The Budget Act addresses certain changes to New York/New York City corporate and personal income taxes in response to the CARES Act and other matters. Taxpayers impacted by the enactment of the Budget Act should feel free to reach out to one of the New York tax advisors listed below or to the Deloitte professional with whom they normally work for further assistance.

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<sup>15</sup> S7509B, Part L, Sec. 5.

<sup>16</sup> S7509B, Part M, Secs. 1-6.

<sup>17</sup> S7509B, Part B, Sec. 3.

<sup>18</sup> S7506B, Part RR, Secs. 1-3 and 5.

<sup>19</sup> S7506B, Part SS, Secs. 3-4 and 8-9.

## External Multistate Tax Alert

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