



MULTISTATE INCOME/FRANCHISE TAX

## New York enacts economic nexus for NYC Business Corporation Tax and accelerates NYC PTET to tax year 2022

### Tax Alert

## Overview

On August 31, 2022, New York enacted [Senate Bill 9454](#) (“S.9454”), which aligns a number of tax provisions in the New York City (“NYC”) Administrative Code to provisions in the New York State (“NYS”) Tax Law. The new law also accelerates the effective date of the NYC Pass-through Entity Tax (“PTET”), enacted earlier this year, to tax years beginning in 2022, whereas previously, the NYC PTET was to take effect for tax years beginning in 2023. [See the previously issued [Tax Alert](#) dated April 27, 2022 for more details on the original enactment of the NYC PTET.] While the 2022 NYC PTET election date is March 15, 2023, only entities that made the NYS PTET election are eligible to make the NYC PTET election. Therefore, to make the NYC PTET election for 2022, a pass-through entity must make the NYS PTET election by [September 15, 2022](#).

This Tax Alert summarizes certain provisions in S.9454 and provides taxpayer considerations.

## NYS Senate Bill 9454

S.9454 includes the following provisions:

- The NYC Business Corporation tax (not the Unincorporated Business Tax, the General Corporation Tax, or the Banking Corporation Tax) was amended to include bright line economic nexus provisions effective January 1, 2022, similar to those effective January 1, 2015, under NYS Tax Law. In general, a corporation will have NYC nexus and must file a tax return and pay applicable tax if it derives NYC receipts of \$1 million or more in a taxable year (with special rules for combined groups) based on NYC’s apportionment statute.
- Since the NYC base year for adopting economic nexus is 2022, statutorily required increases to the economic nexus threshold

amounts (e.g., \$1 million or more of receipts) based on annual changes to the consumer price index may not be the same as in NYS where the base year was 2015. For example, the \$1 million threshold effective in NYS in 2015 was raised to \$1.138 million for tax years beginning in 2022. [TSB-M-21\(3\)C](#) (December 28, 2021).

- The legislation also amends nexus thresholds for credit card issuers effective January 1, 2022, that are part of a combined group filing. Under the current rules, a corporation is doing business in NYC if (1) it has issued credit cards to 1,000 or more customers who have a mailing address within NYC, (2) it has merchant customer contracts and the total number of locations covered by those contracts equals 1,000 or more locations in NYC, or (3) the sum of the number of customers plus the number of locations covered by its contracts equals 1,000 or more. The amendment provides that a credit card issuer also has NYC nexus if members of a combined group each with at least 10 customers or locations or customers and locations within NYC in the aggregate meet any of the foregoing thresholds.
- The NYC PTET, enacted earlier this year effective for tax years beginning in 2023, is now in effect for tax years beginning in 2022, with a required election due by March 15, 2023. However, only entities that made the NYS PTET election are eligible to make the NYC PTET election. Therefore, to make the NYC PTET election for 2022, a pass-through entity must make the NYS PTET election by September 15, 2022.
  - For 2022, the pass-through entity is not required to make NYC PTET estimated payments. However, for 2022 the partners or shareholders of electing entities are required to make NYC estimated tax payments calculated without considering the NYC PTET. Starting in 2023 the pass-through entity will be required to make NYC PTET estimated tax payments.
  - If the NYC PTET payments are made after the pass-through entity's 2022 tax year, taxpayers may not benefit from the federal tax deduction for the NYC PTET in 2022.
  - The March 15, 2023 election due date is after the pass-through entity's 2022 tax year. As such, taxpayers possibly may not benefit from the federal tax deduction for the NYC PTET in 2022.
- The annualized income installment method of computing estimated tax payments, which generally recomputes installments to correlate to when the taxpayer receives income during the year, would not be permitted in computing estimated payments for the NYS PTET or the NYC PTET effective as of January 1, 2022.

## Considerations

Businesses that do not currently file tax returns in NYC should consider whether the new nexus provisions impact their filing obligations. Regarding the NYC PTET, pass-through entities electing to opt into the NYC PTET for tax year 2022 must first have opted in to the NYS PTET by the September 15, 2022 election deadline and made required payments to NYS by such date to be eligible.

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