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New York State: Passthrough entity tax implications for New York City businesses; revised draft regulations on sourcing of investment management services

New York State legislation currently pending the governor's signature would allow a passthrough entity to elect to pay a passthrough entity tax (PTET) in New York City if the entity elects into the New York State PTET by September 15, 2022.

The legislation also would:

- Impose economic nexus provisions on C corporations doing business in New York City
- Create deductions for various COVID-19 pandemic relief programs for small business

With regard to a separate development, revisions to draft regulations may affect sourcing of investment management services in New York State.

2022 New York City PTET election

[Senate Bill S9454](#) [PDF 17 KB] once signed into law, would allow a New York City partnership or resident S corporation to elect to be subject to the New York City PTET for tax years starting on or after January 1, 2022.

As originally enacted in [Budget Bill A09009C](#), the New York City PTET is effective for tax years starting on or after January 1, 2023.

The New York State Department of Taxation and Finance issued an advisory on its [PTET webpage](#) regarding this legislation. The advisory provides that if Senate Bill S9454 is enacted and a New York City partnership or resident S corporation wants to opt in to the New York City PTET for tax year 2022, then that partnership or resident S corporation must first have opted in to the New York State PTET by the extended election deadline of **September 15, 2022**.

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New York City economic nexus

The legislation also includes economic nexus provisions for C corporations doing business in New York City. A corporation would be deemed to be doing business in New York City if it has receipts within the city of \$1 million or more, adjusted annually for inflation.

A corporation that is a member of a unitary group would be deemed to be doing business in New York City if: (1) it has at least \$10,000 of receipts within the city; and (2) members of the group that have at least \$10,000 of receipts in the city, in the aggregate, have receipts within the city of \$1 million or more.

The economic nexus provisions would not apply to S corporations because S corporations in New York City are taxed under the pre-tax reform general corporation tax, which would not be affected by this legislation.

The legislation also would create a deduction for amounts received by small businesses through the various COVID-19 pandemic relief programs.

Draft apportionment regulations

New York State again revised its draft corporate tax reform regulations regarding the sourcing of investment management services to passive unincorporated business entities—such as hedge funds.

The revised draft regulation—20 NYCRR §4-4.4(c)(2) (July 1, 2022)—would source receipts from investment management services to the location where the customer manages the contract. For these purposes, the location is defined by reference to 20 NYCRR §4-4.1(e) as “the primary location at which an employee or other representative of the customer serves as the person with responsibility for monitoring or managing the day-to-day execution of the contract of sale.”

KPMG observation

The previous version of the draft regulation would have sourced such receipts to the location where the decision is made to execute on a given transaction. New York State auditors who were involved with this draft regulation have indicated that no substantive change from the July 2019 draft regulation was intended. Nevertheless, any change in wording could result in a change for certain taxpayers.

The state’s introduction to this revised regulation indicates that the language is based on that of other (unmentioned) states and of the model rules of the Multistate Tax Commission (MTC). While the MTC approach does contain that language, it is unclear exactly what the MTC’s meaning is.

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