



# TaxNewsFlash

## United States



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## New York State: Economic nexus for corporations in New York City, passthrough entity tax for 2022

The governor signed [Senate Bill S9454](#), which aligns the New York City (NYC) nexus provisions for C corporations with the existing New York State bright-line economic nexus provisions for C corporations for tax years beginning on or after January 1, 2022. The legislation also enacts the NYC passthrough entity tax (PTET) for tax year 2022. (Laws of New York of 2022, Chapter 555.)

### 2022 NYC nexus provisions

Senate Bill S9454 provides that a C corporation is now subject to NYC tax if it derives receipts from activity in NYC.

- A corporation is “deriving receipts from activity in the City” if it has receipts of \$1 million or more within NYC in a tax year.
- A C corporation with less than \$1 million of receipts that is part of unitary group is “deriving receipts from activity in the City” to the extent that the respective members of the unitary group have at least \$10,000 of receipts within NYC and in the aggregate meet the \$1 million threshold in a tax year.

The legislation also expands the threshold for credit card issuers doing business in NYC. Historically, a C corporation credit card issuer is doing business in NYC if: (1) it has issued credit cards to 1,000 or more customers with a mailing address within NYC as of the last day of the tax year; or (2) it has merchant customer contracts and the total number of locations covered by those contracts is 1,000 or more within NYC and to whom the corporation pays for credit card transactions during the tax year. The legislation provides that, even if a C corporation credit card issuer does not meet any of the thresholds listed above, it is nevertheless doing business in NYC if the C corporation has at least 10 customers or locations, or customers and locations, within NYC, and is a member of a unitary group, that in the aggregate meets any of the thresholds in a tax year.

Further, the legislation provides that if a partnership is doing business or deriving receipts from activity in NYC (among other listed activities), then any C corporation that is a partner in such partnership is subject to tax.

The Commissioner will annually review the cumulative percentage change in the consumer price index (CPI). If the CPI has changed by 10% or more since January 1, 2022, or since the date the thresholds were last adjusted, then the Commissioner will adjust the receipt thresholds accordingly.

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## 2022 NYC PTET election

Senate Bill S9454 allows a NYC partnership or resident S corporation to elect to be subject to the NYC PTET for tax years starting on or after January 1, 2022 (originally January 1, 2023). The election deadline for tax year 2022 is March 15, 2023.

As a reminder, if a NYC partnership or resident S corporation wants to opt in to the NYC PTET for tax year 2022, then the NYC partnership or resident S corporation must first have opted in to the New York State PTET by the September 15, 2022, extended election deadline. The state reported that it will let entities that have opted in to the state PTET know when the online application to opt in to the 2022 NYC PTET is available. Read [TaxNewsFlash](#)

Further, the legislation provides estimated tax payment requirements for the NYC PTET. For tax year 2022, an electing NYC partnership or S corporation is not required to make estimated tax payments. However, the members or shareholders of such electing NYC partnership or S corporation must make their required NYC individual (personal) income tax estimated tax payments without taking into consideration a tax credit for the member's or shareholder's direct share of PTET paid by the partnership or S corporation.

## KPMG observation

Note that these special NYC PTET estimated tax rules, for both the partnership or S corporation and the NYC resident members or shareholders, are limited to the 2022 tax year, and are not applicable to a 2022-electing partnership or S corporation and its members or shareholders. Also, note that, despite there being no requirement for NYC PTET quarterly estimated payments for 2022, nonetheless, in order for NYC resident members or shareholders to benefit from the federal itemized deduction workaround for 2022, a 2022-electing NYC partnership or S corporation must make tax payments that are federally deductible in 2022. A similar situation existed with the inception of the state PTET regime in 2021, and the state set up an online portal for such state PTET payments in mid-December of 2021. It can be anticipated that such a payment portal will be established for 2022 NYC PTET payments later this year.

Regarding the ordering of credits related to the NYC PTET, there are potentially three credits at issue for those subject to NYC and New York State individual income tax:

- NYC PTET
- New York State PTET
- The Unincorporated Business Tax (UBT) credit

The UBT credit is applied against the NYC individual income tax liability prior to the NYC PTET credit. The state PTET and NYC PTET credits are combined and applied against the sum of the state and NYC tax liabilities, net of the UBT credit.

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