Green Hasson Janks & Tax Services

STATE & LOCAL TAX ALERT

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New York Enacts Major Corporate Income/Franchise Tax Changes

On March 31, 2014, New York State Governor Andrew Cuomo signed into law major corporate tax changes that will affect taxpayers that have operations in New York as well as taxpayers that are doing business in the State. The changes are generally effective for tax years beginning on or after January 1, 2015, unless noted below.

With the passing of this new legislation, New York has provided favorable tax treatments to in-state companies while shifting the tax burden to out-of-state companies that are doing business in New York. The State has implemented favorable tax benefits for manufacturers including the elimination of the corporate income/franchise tax and new investment tax credits for the purchase of qualified machinery and equipment. Corporate tax rates have been reduced and the State has instituted a market-based sourcing approach to determine the source of service and intangible revenue. For businesses that are providing services in New York, this could be a big benefit over the current rules, which require that service revenue be sourced based on where the services are performed. The state has implemented an economic nexus threshold to determine whether out-of-state corporations are subject to tax in New York. The State has also mandated unitary combined reporting for groups of related corporations that meet certain common characteristics.

These changes are part of Governor Cuomo's push to retain businesses and expand the growth opportunities of these businesses in the state while providing favorable tax treatment to businesses that are looking to relocate or expand in New York. We have summarized the major highlights of the legislation below. For more detailed information on each of these items, please click on the following link, which will take you to New York Senate Bill 6359.

http://legiscan.com/NY/text/S06359/2013

Reduction in Tax Rates

For tax years beginning on or after January 1, 2016, the corporate income tax rate has been reduced from 7.1 percent to 6.5 percent. The Metropolitan Tax Authority ("MTA") surcharge has been increased to 25.6 percent for tax years beginning on or after January 1, 2015 and ending before January 1, 2016. Any subsequent increases in the MTA for future years will be determined by the State at a later time.

For tax years beginning on or after January 1, 2014, the corporate income/franchise tax has been eliminated for a "qualified New York manufacturer," with the capital base tax rate gradually phased to 0 percent by 2021. A "qualified New York manufacturer" is defined as a manufacturer that has property in New York that is eligible for the investment tax credit and either 1) the fair market value of that property has an adjusted basis for federal income tax purposes of at least $1 million at the close of the tax year, or 2) all of the manufacturer's real and personal property is located in New York .

Economic Nexus Provisions

A corporation will be deemed taxable in New York, if its receipts from New York customers equal or exceed $1 million during the taxable year regardless of whether the company has a "physical presence" in the State.

Market Based Sourcing Apportionment

The enacted legislation set forth a number of complex apportionment sourcing rules for sales other than the sale of tangible personal property. Generally, income derived from the performance of services should be sourced to New York if the customer

is either 1) located in New York, or 2) if the customer receives the benefit of the service in New York. Special sourcing rules were enacted for the sale of digital products, a variety of financial transactions, royalties, aviation services, transportation and revenue generated from the sale or licensing of intangible property, including copyrights, trademarks, patents and trade names.

Combined Reporting

New York currently requires each corporation to file a separate New York State corporate tax return unless it would otherwise be distortive to file separately. Distortion may exist when a corporation has substantial intercompany transactions with related parties. To the extent that it would otherwise be distortive to file on a separate company basis, New York currently requires the filing of a combined return when certain intercompany transaction percentages are met.

Under the enacted legislation, New York has moved to a mandatory unitary combined reporting requirement for tax years beginning on or after January 1, 2015. A combined return must be filed when a group of related companies meet the following criteria: 1) when a taxpayer owns or controls, directly or indirectly, more than 50 percent of the capital stock of one or more other corporations, or 2) when the taxpayer's capital stock is owned or controlled more than 50 percent by one or more other corporations, or 3) when two or more corporations' capital stock is owned or controlled, directly or indirectly, more than 50 percent by a common interest.

Business Credits

The enacted legislation provides for a new investment tax credit ("ITC") with respect to qualified depreciable property located in New York that is (a) principally used by the taxpayer in the production of goods, (b) used by a taxpayer in an industrial waste treatment or pollution control facility, (c) used as research and development property, (d) used in a broker-dealers business in connection with the purchase or sale of stocks, bonds or other securities, (e) used by an investment advisory firm to provide services to a regulated investment company and (f) used in a qualified film production facility.

The legislation also creates a refundable tax credit for both corporate franchise and personal income tax purposes for qualified manufacturers (see definition above) equal to 20 percent of real property tax paid on property used for manufacturing during the taxable year.

Corporate Partners

Under the enacted legislation, corporate partners will be required to compute their New York State corporate income/franchise tax based on the "aggregate method". The "aggregate method" requires that a corporate partner flow thru their share of income/loss and apportionment factors of the partnership in which they own an interest and combine these with the income and factors of the corporate partner prior to determining the amount of income at the corporate partner level that is subject to taxation in New York. Additionally, the newly enacted law provides that a corporate partner is deemed to be doing business in New York if it owns an interest in a partnership that is employing capital, owing or leasing property in the state, or deriving income subject to tax in New York.

Foreign Corporations

Finally, foreign corporations (non-US) whose activity in New York are limited to (a) investing or trading in stocks and securities for its own account, or (b) investing or trading in commodities for its own account, is deemed to be not "doing business" for New York corporate income/franchise tax purposes.

Green Hasson Janks Recommendation

This enacted legislation by New York significantly overhauls the State's taxation of corporate taxpayers. Corporations that are doing business in New York will need to assess the impact of this legislation on their entire income/franchise tax reporting to the State, including the impact of 1) the new combined reporting provisions, 2) the market based sourcing apportionment rules and 3) the ability of the business to generate potentially lucrative credits and incentives. The above legislation is similar to what many other states have implemented over the past few years. Tax laws that are designed to provide significant benefits to in-state companies while shifting the tax burden to businesses located outside of the state that derive income from New York sources. Businesses should discuss the impact of these new legislative changes with their tax advisors. &

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