Summary of the New York City Corporate Tax Reform Legislation

The NYC corporate tax reform law amends the City's corporate tax by adopting many of the recent statutory changes to the New York State's corporate tax that go into effect for all tax years beginning on or after January 1, 2015. The new law also reduces the corporate tax rate for small businesses that operate in the City.

These changes apply to all corporations and banks that are not S corporations under subchapter S of the Internal Revenue Code ("S corporations").

The new corporate tax provisions are contained in a new subchapter 3-A of chapter 6 of title 11 of the city's administrative code. S corporations continue to be subject to the existing General Corporation Tax or Banking Corporation Tax. (S corporation and unincorporated business taxation will be studied in 2015.)

The new corporate tax includes the following major changes (unless otherwise indicated, effective for tax years beginning on or after January 1, 2015):

- Merging the Banking Corporation Tax and the General Corporation Tax;
- Adopting combined reporting for unitary corporations that meet a more than 50% stock ownership test, with an election for non-unitary corporations to file a combined return if they meet the ownership test. Corporations that are treated as United States domestic entities or generate business income in the United States are generally eligible for combination;
- Replacing the entire net income tax base with a business income tax base;
- Adopting the phase-in of a single receipts apportionment factor from the current General Corporation Tax (fully effective for tax years beginning on or after January 1, 2018);
- Applying customer-based sourcing rules;
- Providing a one-time election to small and mid-sized taxpayers to continue using property and payroll, in accordance with the formula for 2017, to apportion income in tax years beginning January 1, 2018 and after;
- Eliminating the separate treatment of subsidiary capital and income;
- Narrowing the current definition of investment capital and investment income and exempting both from tax;
- Converting pre-2015 net operating losses (NOLs) into a prior NOL conversion subtraction pool to stabilize their value for financial accounting purposes;
- Simplifying the rules for NOLs incurred in tax years beginning on or after January 1, 2015;
- Allowing a three year carry back for NOLs incurred in tax years beginning on or after January 1, 2015;
- Repealing the alternative minimum tax base for income plus compensation;
- Eliminating the tax on assets for banks;
- Raising the maximum tax for the tax on capital base to $10,000,000 and providing low-end relief by reducing the computed amount of tax by $10,000;

- Reducing the tax rate for corporations with less than $1,000,000 of NYC business income from 8.85% to 6.5%, and applying a smaller reduction for corporations with NYC business income between $1,000,000 and $1,500,000 or overall business income between $2,000,000 and $3,000,000;
- Reducing the tax rate for manufacturing corporations with less than $10,000,000 of NYC business income from 8.85% to 4.425%, and applying a smaller reduction for manufacturing corporations with NYC business income between $10,000,000 and $20,000,000 or overall business income between $20,000,000 and $40,000,000;
- Applying a 9% tax rate to major financial corporations (> $100 billion in assets); and
- Permitting the city and taxpayers to make income allocation adjustments based on New York state income allocation adjustments, under the extended statutes of limitations applicable to federal and New York state changes to income.

Tax Bases and Rates under Subchapter 3-A

<u>Entire Net Income</u>

<table>
<tr><th>Type of Business</th><th>Rate in Tax Year 2015 and thereafter</th></tr>
<tr><td>Qualified manufacturing corporations</td><td>4.425% - 8.85%</td></tr>
<tr><td>Small businesses</td><td>6.5% - 8.85%</td></tr>
<tr><td>Financial corporations (>$100 billion in assets)</td><td>9%</td></tr>
<tr><td>Remaining taxpayers</td><td>8.85%</td></tr>
<tr><td colspan="2">- The tax rate for qualified manufacturing corporations phases out between $10 and $20 million of allocated business income and $20 and $40 million of business income before allocation.
- The tax rate for small businesses phases out between $1 and $1.5 million of allocated business income and $2 and $3 million of business income before allocation.</td></tr>
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Qualified manufacturing corporations must meet property and receipts tests.

- The taxpayer must have property in the state that is principally used in the production of goods by manufacturing and either the adjusted basis of that property for federal income tax purposes is at least $1,000,000, or more than 50% of all its real and personal property is located in New York state; and
- The taxpayer must derive more than 50% of its gross receipts from the sale of goods produced by its manufacturing activity.

Small businesses qualify depending on their level of income.

Financial corporations (subject to the 9% tax rate) are corporations, or combined groups, that:

- Report total assets exceeding $100 billion on their balance sheet, computed under GAAP, at the end of the taxable year, and
- Allocate more than 50% of their overall receipts pursuant to the rules for allocating receipts from certain financial assets (including qualified and nonqualified financial

instruments and commodities) and certain financial activities (including registered broker-dealer services, credit and consumer cards, and investment company services), or

- Are registered as a financial institution, such as a bank, savings or thrift association, registered broker dealer, or agency, branch or foreign depository, except that, in the case of a combined group, more than 50% of the assets of the group must be held by one or more corporations meeting the enumerated classifications.

Capital Base

Type of Business	Rate in Tax Year 2015 and thereafter
Cooperative housing corporations	0.04%
All other corporations	0.15%
Modification: the portion of total business capital directly attributable to stock in a subsidiary that is taxable as a utility within the meaning of the New York City Utility Tax or would have been taxable as an insurance corporation under the former New York City Insurance Corporation Tax	0.075%
- The maximum tax is $10,000,000. - A $10,000 reduction applies to all capital tax calculations (provided that the capital tax cannot be less than $0).	

Fixed Dollar Minimum

If New York City receipts are:	Fixed dollar minimum tax is:
Not more than $100,000	$25
More than $100,000 but not over $250,000	$75
More than $250,000 but not over $500,000	$175
More than $500,000 but not over $1,000,000	$500
More than $1,000,000 but not over $5,000,000	$1,500
More than $5,000,000 but not over $25,000,000	$3,500
More than $25,000,000 but not over $50,000,000	$5,000
More than $50,000,000 but not over $100,000,000	$10,000
More than $100,000,000 but not over $250,000,000	$20,000
More than $250,000,000 but not over $500,000,000	$50,000
More than $500,000,000 but not over $1,000,000,000	$100,000
More than $1,000,000,000	$200,000
A corporation’s “New York City receipts” are the same as its New York City receipts for purposes of computing its business allocation percentage. If a return is filed for a period of less than one year, the minimum tax may be reduced.	

Comparison with the revised Article 9-A of the Tax Law

The new subchapter 3-A conforms closely to the revised Article 9-A of the tax law, and differences are generally attributable to:

- Tax rates,
- Treatment of S corps,
- Small business,
- Business income allocated to the city rather than the state,
- Taxation of publicly supervised utilities under the utility tax rather than the corporate tax, and
- Pre-existing tax credits.