

22-2 May 17, 2022

FINANCE MEMORANDUM

Interest and Penalty Relief for Taxpayers Retroactively Subject to the State Pass Through Entity Tax Addback Provision for the 2021 Tax Year

Overview

For tax years beginning on or after January 1, 2021, General Corporation Tax (“GCT”) and Banking Corporation Tax (“Bank Tax”) taxpayers are now required to add back New York State Pass Through Entity Tax (“PTET”) deducted from Federal Taxable Income (the “Chapter 59 addback”).¹ Unincorporated Business Tax (“UBT”) taxpayers were previously required to add back New York State PTET deducted in 2021.² The Department of Finance (“DOF”) will not apply interest or impose penalties for GCT and Bank Tax taxpayers with respect to additional tax due resulting from the Chapter 59 addback, if paid by June 15, 2022.

Taxpayers eligible for interest and penalty relief

GCT and Bank Tax taxpayers subject to the Chapter 59 addback who have already filed a 2021 tax return must file an amended return adding back the NYS PTET. For any taxpayer who files an amended return and makes the required payment of additional tax on or before June 15, 2022, DOF shall not apply interest or impose penalties with respect to the additional tax resulting from the Chapter 59 addback. Failure to file an amended return by June 15, 2022, will result in penalties and interest on the tax due from the Chapter 59 addback accruing from June 16, 2022.

GCT and Bank Tax taxpayers subject to the Chapter 59 addback whose 2021 tax return is due before June 15, 2022, who have not yet filed their 2021 tax return or an extension to file that return, may file their return and pay the additional Chapter 59 addback tax on or before June 15, 2022, and DOF will not apply any interest or impose penalties on the additional tax due resulting from the Chapter 59 addback. Failure to file a 2021 return or a valid and timely extension by June 15, 2022, will result in penalties and interest on the tax due from the Chapter 59 addback accruing from June 16, 2022. No relief will be provided with respect to tax due for reasons other than the Chapter 59 addback. Taxpayers in this situation should also see the following paragraph.

1. See L. 2022, Ch. 59, Part MM, Subpart B § 9 amending New York City Administrative Code (“Ad. Code”) § 11-602(b)(3) (applicable to the GCT) and L. 2022, Ch. 59, Part MM, Subpart B § 10 amending New York City Administrative Code § 11-641(b)(2) (applicable to the Bank Tax) (the “addback provision” or the “Chapter 59 addback”).

2. See Admin. Code §11-507(4).

GCT and Bank Tax taxpayers subject to the Chapter 59 addition whose 2021 tax return is due before June 15, 2022, who have not filed their 2021 tax return or an extension to file that return, and who also have tax due for reasons other than the Chapter 59 additions should file an extension on or before the date their return is normally required to be filed. Failure to file an extension or a return by the normally prescribed date will result in interest and penalties on the tax due from the Chapter 59 addback accruing from June 16, 2022, and from the tax due for any other reason from when the return was normally required to be filed.

GCT and Bank Tax taxpayers subject to the Chapter 59 addback who have filed or will file an extension must make sure that the total of any payments of estimated tax required to be made with respect to the extension is sufficient to include the additional tax due resulting from the enactment of Chapter 59 addback. With respect to any estimated payment required to be made solely because of the enactment of the Chapter 59 addback, these taxpayers will have until June 15, 2022, to make such required estimated payment without being subject to the penalty for underpayment of estimated tax. The taxpayers to which this paragraph applies shall be subject to the penalty for underpayment of estimated tax if this payment is made after June 15, 2022. Further, these taxpayers will be fully subject to the penalty for underpayment of estimated tax with respect to an underpayment for any reason other than the Chapter 59 addback.

2021 Filing Instructions

Taxpayers entitled to relief under this Finance Memorandum filing a return or an amended return for this purpose on or before June 15, 2022 should enter special condition code "PT" in the special condition code box at the top of the return.

GCT

GCT taxpayers filing an original or amended return for tax year 2021 must include the amount of the Chapter 59 addback on Form NYC 3L or 3A, Schedule B, line 5a, Form NYC-4S, Schedule B, line 3a, or Form NYC-4S-EZ, Schedule B, line 2, whichever is applicable.

Bank Tax

Bank Tax taxpayers filing an original or amended return for tax year 2021 must include the amount of the Chapter 59 addback on Form NYC-1, Schedule B, line 12.