



## **Summary of Budget Bill Corporation Tax Changes Enacted in 2014**

This memorandum contains a summary of the corporation tax changes that were part of the 2014-2015 New York State budget (Chapters 55, 59, and 60 of the Laws of 2014). The following legislative changes are summarized in this memo:

- [Co-operative agricultural corporation franchise tax repealed](#)
- [Corporate tax reform](#)
- [Empire State commercial production credit changes](#)
- [Empire State film production and post-production tax credits expanded](#)
- [Gift for prostate and testicular cancer research and education fund expanded](#)
- [Limitation on tax credit eligibility](#)
- [Low-income housing credit changes](#)
- [Musical and theatrical production credit established](#)
- [New York Youth Works Tax Credit Program enhanced](#)
- [Real property tax credit for qualified New York manufacturers established](#)
- [START-UP NY telecommunication services excise tax credit established](#)
- [Tax rate changes for Article 9-A taxpayers](#)
- [Workers with Disabilities Tax Credit Program established](#)

### **Co-operative agricultural corporation franchise tax repealed (Articles 9 and 9-A)**

The Tax Law was amended to repeal Article 9, section 185, co-operative agricultural corporation franchise tax, and to make conforming amendments to various other sections of the Tax Law. Additionally, agricultural co-operatives are provided an exemption from the Article 9-A franchise tax. These changes apply to tax years beginning on or after January 1, 2018.

(Part S of Chapter 59 of the Laws of 2014)

### **Corporate tax reform (Articles 9, 9-A, and 32)**

New York State enacted comprehensive corporate tax reform legislation that affects taxpayers subject to tax under Articles 9-A (franchise tax on business corporations) and 32

(franchise tax on banking corporations) and taxpayers subject to the metropolitan transportation business tax (MTA surcharge).

The changes in effect for tax years beginning on or after January 1, 2015, are:

- Article 32 is repealed and these taxpayers are subject to tax under a revised Article 9-A.
- Tax is paid on the highest of three bases: business income, business capital, and the fixed dollar minimum tax.
- The alternative minimum tax and the subsidiary capital tax are eliminated.
- The capital base tax is phased out over a six-year period beginning in tax year 2016.
- The tax rate on the business income base for most corporations is reduced from 7.1% to 6.5% for tax years beginning on or after January 1, 2016.
- The organization tax and taxes on changes of capital imposed on domestic corporations by section 180 of the Tax Law, and the license and maintenance fees imposed on foreign corporations by section 181 of the Tax Law, are eliminated.
- The MTA surcharge was made permanent for Articles 9, 9-A, and 33. Calculation of the surcharge for Articles 9 and 33 remains unchanged. For Article 9-A taxpayers, the surcharge is computed using the New York State franchise tax before credits. The surcharge is apportioned to the MTA using an equally weighted three-factor formula consisting of property, payroll, and receipts. The surcharge rate is changed to 25.6% for tax year 2015, and subject to adjustment by the Commissioner after 2015.
- The nexus standards for both the state franchise tax and the MTA surcharge are expanded to include receipts derived from activity in New York and the metropolitan commuter transportation district, respectively. The fulfillment services exception to nexus has been eliminated.
- Income is now classified into three categories: business income, investment income, and other exempt income. Investment income and other exempt income are not subject to tax. The separate treatment of subsidiary capital and income is eliminated.
- Interest expenses must be directly and indirectly attributed to investment income and other exempt income. Interest expenses that exceed investment income or other exempt income are required to be added back to entire net income. Alternatively, taxpayers may elect to reduce investment income and other exempt income by 40%.
- Thrifts and community banks are allowed new subtraction modifications to business income.

- Business income is apportioned based on a single receipts factor apportionment formula using customer sourcing rules. The categories of receipts for which sourcing is specifically addressed are expanded.
- Net operating losses generated before tax year 2015 are converted to a subtraction deduction that is applied against apportioned business income. Unused subtraction deduction amounts may be carried forward. Certain limitations apply to both the deduction and carryforward.
- The computation of net operating losses is simplified and a three-year carryback is allowed. However, no net operating loss incurred in 2015 and after may be carried back to a tax year that begins before 2015. Net operating losses may also be carried forward subject to certain limitations.
- The aggregate theory for determining partnership income has been retained.
- Corporations are required to file a combined report if they are engaged in a unitary business and meet a more than 50% common stock ownership test. Alternatively, corporations that meet the ownership test are allowed to make a commonly-owned group election covering a seven-year period. This seven-year election is irrevocable. Upon expiration, the election is automatically renewed for another seven years unless the group affirmatively declines. Certain alien corporations as well as aviation, railroad and trucking companies are now required to be included in a combined group.
- Credits allowed under Tax Law section 210 may continue to be claimed with the exception of the minimum tax credit, which has been eliminated. Carryovers of credits may continue to be used, applying rules in effect prior to 2015. A new alternative base tax credit equal to the amount of tax paid to another state computed on a tax base identical to the capital base or the fixed dollar minimum base is allowed.

For additional information on corporate tax reform, visit the Tax Department's Web site ([www.tax.ny.gov](http://www.tax.ny.gov)).

(Part A of Chapter 59 of the Laws of 2014)

### **Empire State commercial production credit changes (Article 9-A)**

Several legislative amendments were made to the Empire State commercial production credit.

The credit was extended through tax years beginning before January 1, 2017. Under previous law, the credit was set to expire on December 31, 2014.

The Governor's Office for Motion Picture and Television Development is authorized to issue \$3 million of the \$7 million in credits annually to eligible production companies that film or record qualified commercials outside of the metropolitan commuter transportation district (MCTD). If the total amount authorized for this credit component remains unallocated as of

July 31 of a given year, the excess will be allocated to the credit for growth component under section 28(a)(2)(i) of the Tax Law. Previously, the excess credit allocation was determined after the end of each calendar year.

To be eligible for this credit, the amount of total qualified production costs of a qualified company for commercials filmed or recorded outside the MCTD must be greater than \$100,000, and the credit applies only to such costs exceeding \$100,000. Prior to the legislative amendments, the cost threshold was over \$200,000.

These provisions took effect on March 31, 2014.

For more information on this credit, see the New York State Governor's Office for Motion Picture and Television Development Web site at [www.nylovesfilm.com](http://www.nylovesfilm.com).

(Part O of Chapter 59 of the Laws of 2014; Tax Law sections 28 and 210.38)

### **Empire State film production and post-production tax credits expanded (Article 9-A)**

Amendments to the Tax Law expanded the additional credit allowed for film production and post-production projects in upstate New York. Effective January 1, 2015, wages and salaries paid to qualified individuals directly employed by a qualified film or qualified independent film production company for services performed in production or post-production work of a qualified film in the counties of Albany or Schenectady will qualify for the additional credits.

For more information on these credits, see [TSB-M-13\(6\)C](#), *Summary of Budget Bill Corporation Tax Changes Enacted in 2013 – Effective for Tax Years 2013 and After*, or visit the New York State Governor's Office for Motion Picture and Television Development Web site at [www.nylovesfilm.com](http://www.nylovesfilm.com).

(Part JJ of Chapter 59 of the Laws of 2014; Tax Law sections 24 and 31)

### **Gift for prostate and testicular cancer research and education fund expanded (Article 9-A)**

The Tax Law was amended to expand the voluntary gift contribution for the prostate cancer research and education fund to include testicular cancer research and education. Corporate franchise tax return filers may make gifts on their returns to the prostate and testicular cancer research and education fund. The gift can be any whole dollar amount and will not reduce the amount of tax owed.

(Part A of Chapter 60 of the Laws of 2014; Tax Law section 209-E)

### **Limitation on tax credit eligibility (Articles 9, 9-A, 32, and 33)**

A new section 41 was added to the Tax Law which provides that any taxpayer, including a shareholder of an S corporation or partner in a partnership, convicted of an offense defined in Article 200 (*Bribery Involving Public Servants and Related Offenses*), Article 496 (*Corrupting the Government*), or section 195.20 (*Defrauding the Government*) of the Penal Law is not

eligible to claim any tax credit allowed under Articles 9, 9-A, 32, or 33, or any business tax credit allowed under Article 22.

*A business tax credit allowed under Article 22* is a tax credit allowed to taxpayers under Article 22 which is substantially similar to a tax credit allowed to taxpayers under Article 9-A.

The provision became effective on April 30, 2014, and applies to acts committed on or after that date.

(Part H (Subpart A) of Chapter 55 of the Laws of 2014; Tax Law section 41)

### **Low-income housing credit changes (Articles 9-A, 32, and 33)**

The New York State Low-Income Housing Tax Credit Program was established in 2000 to promote the construction and rehabilitation of low-income housing in New York State. The credit is similar to the federal low-income housing credit and is administered by the New York State Division of Housing and Community Renewal.

The Public Housing Law was amended as follows:

- Effective March 31, 2014, the statewide aggregate dollar amount of low-income housing tax credits that may be used for qualifying low-income housing projects was increased from \$48 million to \$56 million.
- Effective April 1, 2015, the statewide aggregate dollar amount of low-income housing tax credits that may be used for qualifying low-income housing projects is increased from \$56 million to \$64 million.

(Part P of Chapter 59 of the Laws of 2014; Public Housing Law section 22(4))

### **Musical and theatrical production credit established (Article 9-A)**

The Tax Law was amended to establish a refundable credit for qualified musical and theatrical production companies.

The amount of the credit is the product (or pro rata share of the product, in the case of a member of a partnership) of the following:

- 25%; and
- the sum of the qualified production expenditures and transportation expenditures.

A taxpayer may not use the qualified production expenditures or transportation expenditures that are the basis in the allowance or calculation of this credit to claim any other credit under the Tax Law.

The credit cannot reduce the tax due to an amount less than the fixed dollar minimum under Tax Law section 210.1(d). If the credit allowed for any tax year reduces the tax to the

minimum amount, any excess credit may be treated as an overpayment of tax to be credited or refunded. However, no interest will be paid on the refund.

The credit is administered by Empire State Development (ESD). For more information about qualifying for this credit, visit the ESD Web site at [www.esd.ny.gov](http://www.esd.ny.gov). The statewide total amount of credit to be allocated by ESD is \$4 million per calendar year.

The Tax Department and ESD are authorized to share information regarding this credit. In addition, the name, address, and the amount of credit earned by a business claiming this credit may be published. The amount of credit claimed by a taxpayer that is a member of a limited liability company (LLC), a partner in a partnership, or a shareholder in a New York S corporation may not be released. However, the amount of the credit earned by the entity may be released.

These provisions are effective for tax years beginning on or after January 1, 2015, and expire on January 1, 2019.

(Part HH of Chapter 59 of the Laws of 2014; Tax Law sections 24-a and 210-B.47)

#### **New York Youth Works Tax Credit Program enhanced (Article 9-A)**

The New York Youth Works Tax Credit Program (the program) was established by Chapter 56 of the Laws of 2011 and previously amended by Chapter 59 of the Laws of 2012 and Chapter 59 of the Laws of 2013. The program provides tax incentives to qualified businesses employing at-risk youths in full-time and part-time positions. The program is administered by the Department of Labor (DOL).

The program was expanded to add a supplemental credit of \$1,000 for each qualified employee retained for an additional year after their first year of employment and employed in a full-time job, and \$500 for each qualified employee retained for an additional year after their first year of employment and employed in a part-time job of at least 20 hours per week, or 10 hours per week if enrolled in high school full-time. This supplemental credit applies to employees hired in 2014 and later.

The existing credit provisions were also amended to reduce the number of hours of work required by full-time high school students from 20 to 10 hours per week to qualify for the credit.

In addition, the credit allocation caps for programs two through five were increased from \$6 million to \$10 million.

The program allocation caps and dates are as follows:

<b>Program</b>	<b>Total allocation cap</b>	<b>Employee hiring dates</b>
Program 2	\$10 million in 2014	1/1/14 – 12/31/14
Program 3	\$10 million in 2015	1/1/15 – 12/31/15
Program 4	\$10 million in 2016	1/1/16 – 12/31/16
Program 5	\$10 million in 2017	1/1/17 – 12/31/17

These amendments apply to tax years beginning on or after January 1, 2014.

For more information on this program, see [TSB-M-13\(10\)C, \(9\)I](#), *Extension and Expansion of the New York Youth Works Tax Credit Program*, or visit the DOL Web site at [www.labor.ny.gov](http://www.labor.ny.gov).

(Part U of Chapter 59 of the Laws of 2014; Labor Law section 25-a and Tax Law section 210.44)

#### **Real property tax credit for qualified New York manufacturers established (Article 9-A)**

The Tax Law was amended to establish a real property tax credit for qualified New York manufacturers. A qualified New York manufacturer is allowed a credit equal to 20% of real property taxes paid during a tax year for real property:

- located in New York, and
- principally used in manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing.

The credit is nonrefundable and cannot reduce the tax due to an amount less than \$25.

This credit is effective for tax years beginning on or after January 1, 2014.

For more information, see the [instructions](#) for Form CT-641, *Manufacturer's Real Property Tax Credit*.

(Part R of Chapter 59 of the Laws of 2014; Tax Law sections 208.9, 210.1(a)(vi), 210.1(b)(2), 210.1(c)(iii), 210.1(d)(6), and 210.48)

#### **START-UP NY telecommunication services excise tax credit established (Article 9-A)**

The Tax Law was amended to establish the START-UP NY telecommunication services excise tax credit. The credit is available to a business or an owner of a business that is approved to participate in the START-UP NY program by Empire State Development and located in a tax-free NY area.

The credit is equal to the excise tax on telecommunication services imposed by section 186-e of the Tax Law that is passed through to the approved business. The credit may be

claimed when the tax is separately stated on a bill from the telecommunication service provider and the bill has been paid by such business.

The credit is limited to the amount of excise tax attributable to the services provided to an approved business at its location within a tax-free NY area during the tax year. When claiming this credit, the amount of the excise tax on telecommunication services used as a deduction in the computation of federal taxable income must be added back to entire net income.

For Article 9-A taxpayers, the credit cannot reduce the tax due to an amount less than the fixed dollar minimum under Tax Law section 210.1(d) unless the taxpayer has a tax-free NY area allocation factor of 100%. In that instance, the tax can be reduced to zero. If the credit allowed for any tax year reduces the tax to the minimum amount, or to zero, any excess credit may be treated as an overpayment of tax to be credited or refunded. However, no interest will be paid on the refund.

This provision is effective for tax years beginning on or after January 1, 2014.

(Part T of Chapter 59 of the Laws of 2014; Tax Law sections 39(c-1), 39(k)(4), 208.9(b)(20-a), and 210.49)

### **Tax rate changes for Article 9-A taxpayers**

The Tax Law was amended to change the tax rates for Article 9-A taxpayers. For purposes of these rates, the following definitions apply:

*A qualified New York manufacturer* is a manufacturer that meets the eligibility requirements under Tax Law section 210.1(a)(vi).

For tax year 2014, an *eligible qualified New York manufacturer* is a taxpayer that meets the eligibility requirements specified in [TSB-M-13\(1\)C](#), *Article 9-A Tax Rates for Eligible Qualified New York Manufacturers*, and is subject to the tax rates for an eligible qualified New York manufacturer. Beginning with the 2015 tax year, these entities are considered qualified New York manufacturers and are subject to the tax rates for qualified New York manufacturers.

A taxpayer is a *qualified emerging technology company* (QETC) if it meets the definition under Public Authorities Law (PAL) section 3102-e(1)(c), regardless of the \$10 million limitation under PAL section 3102-e(1)(c)(1). A combined group is considered a QETC if all members of the group meet the definition of a QETC.

For tax year 2014, a *small business* is defined for entire net income (ENI) purposes<sup>1</sup> under Tax Law section 210.1(f) and for capital base purposes under Tax Law section 210.1-c. Beginning with tax year 2015, there is a uniform definition for a small business under Tax Law

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<sup>1</sup> For tax year 2014, this base is referred to as the entire net income base. For tax years after January 1, 2015, this base is referred to as the business income base.

**TSB-M-15(1)C**  
**Corporation Tax**  
 February 12, 2015

section 210.1(f) for purposes of both the business income base and the capital base that now includes an employment test.

**Changes to the entire net income base (business income base) tax rates.** For tax years beginning on and after January 1, 2014, the tax rates applicable to the income base are as follows:

Type of business	For tax years beginning in:				
	2014	2015	2016	2017	2018 and thereafter
Qualified New York Manufacturers*	0.0%	0.0%	0.0%	0.0%	0.0%
Qualified Emerging Technology Companies (QETCs)	5.9%	5.7005%	5.4990%	5.4990%	4.8750%
Qualified small business taxpayers with:					
ENI base of \$290,000 or less	6.5%	6.5%	6.5%	6.5%	6.5%
ENI base of more than \$290,000 but not more than \$390,000	<ul style="list-style-type: none"> <li>• \$18,850</li> <li>• plus 7.1% of the amount over \$290,000</li> <li>• plus 4.35% of the amount over \$350,000</li> </ul>	<ul style="list-style-type: none"> <li>• \$18,850</li> <li>• plus 7.1% of the amount over \$290,000</li> <li>• plus 4.35% of the amount over \$350,000</li> </ul>	6.5%	6.5%	6.5%
Remaining Taxpayers	7.1%	7.1%	6.5%	6.5%	6.5%

\*Includes eligible qualified New York manufacturers

**Changes to the capital base tax.** For tax years beginning on or after January 1, 2014, the following tax rate schedule and tax caps apply:

Type of business	For tax years beginning in:							
	2014	2015	2016	2017	2018	2019	2020	2021 and thereafter
Qualified New York Manufacturers & QETCs	0.1362%	0.15%	0.106%	0.085%	0.056%	0.038%	0.019%	0%
Cooperative Housing	0.04%	0.04%	0.04%	0.04%	0.04%	0.04%	0.025%	0%
Remaining Taxpayers	0.15%	0.15%	0.125%	0.10%	0.075%	0.05%	0.025%	0%

- For tax years beginning on or after January 1, 2014, and before January 1, 2015, the tax is capped at \$350,000 for qualified New York manufacturers and QETCs, and \$1 million for all other taxpayers.
- For tax years beginning on or after January 1, 2015, the tax is capped at \$350,000 for qualified New York manufacturers and QETCs, and \$5 million for all other taxpayers.
- Small business taxpayers are exempt from the capital base tax for their first two years.

***Changes to the minimum taxable income base.*** For tax years beginning on or after January 1, 2014, and before January 1, 2015, the tax rates applicable to the minimum taxable income base are as follows:

<b>Type of business</b>	<b>Tax year 2014</b>
Eligible Qualified New York Manufacturers	0.75%
Qualified New York Manufacturers & QETCs	1.362%
Remaining Taxpayers	1.5%

This tax base is eliminated for tax years beginning on or after January 1, 2015.

***Changes to the fixed dollar minimum.*** The following tax rate schedule applies to C corporations that are eligible qualified New York manufacturers for the 2014 tax year:

<b>New York receipts</b>	<b>Tax year 2014</b>
Not more than \$100,000	\$12.50
More than \$100,000 but not over \$250,000	\$37.50
More than \$250,000 but not over \$500,000	\$87.50
More than \$500,000 but not over \$1,000,000	\$250
More than \$1,000,000 but not over \$5,000,000	\$750
More than \$5,000,000 but not over \$25,000,000	\$1,750
Over \$25 million	\$2,500

**TSB-M-15(1)C**  
**Corporation Tax**  
 February 12, 2015

The following tax rate schedule applies to C corporations that are qualified New York manufacturers and QETCs for tax years beginning on or after January 1, 2014:

<b>New York receipts</b>	<b>For tax years beginning in:</b>				
	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018 and thereafter</b>
Not more than \$100,000	\$22.70	\$22	\$21	\$21	\$19
More than \$100,000 but not over \$250,000	\$68.10	\$66	\$63	\$63	\$56
More than \$250,000 but not over \$500,000	\$158.90	\$153	\$148	\$148	\$131
More than \$500,000 but not over \$1,000,000	\$454	\$439	\$423	\$423	\$375
More than \$1,000,000 but not over \$5,000,000	\$1,362	\$1,316	\$1,269	\$1,269	\$1,125
More than \$5,000,000 but not over \$25,000,000	\$3,178	\$3,070	\$2,961	\$2,961	\$2,625
Over \$25 million	\$4,540	\$4,385	\$4,230	\$4,230	\$3,750

The following tax rate schedule is applicable to the remaining C corporation taxpayers:

<b>New York receipts</b>	<b>For tax years beginning in:</b>	
	<b>2014</b>	<b>2015 and thereafter</b>
Not more than \$100,000	\$25	\$25
More than \$100,000 but not over \$250,000	\$75	\$75
More than \$250,000 but not over \$500,000	\$175	\$175
More than \$500,000 but not over \$1,000,000	\$500	\$500
More than \$1,000,000 but not over \$5,000,000	\$1,500	\$1,500
More than \$5,000,000 but not over \$25,000,000	\$3,500	\$3,500
More than \$25,000,000 but not over \$50,000,000	\$5,000	\$5,000
More than \$50,000,000 but not over \$100,000,000	\$5,000	\$10,000
More than \$100,000,000 but not over \$250,000,000	\$5,000	\$20,000
More than \$250,000,000 but not over \$500,000,000	\$5,000	\$50,000
More than \$500,000,000 but not over \$1,000,000,000	\$5,000	\$100,000
Over \$1 billion	\$5,000	\$200,000

(Parts A and R of Chapter 59 of the Laws of 2014; Tax Law sections 210.1(a), 210.1(b), 210.1(c), and 210.1(d))

### **Workers with Disabilities Tax Credit Program established (Article 9-A)**

The Labor Law and the Tax Law were amended to establish the Workers with Disabilities Tax Credit Program. This program provides tax credits to *qualified employers* for employing individuals with developmental disabilities and is administered by the New York State Department of Labor (DOL). To participate in this program, taxpayers must apply to the DOL by November 30th of the prior year. For more information on this program, visit the DOL Web site at [www.labor.ny.gov](http://www.labor.ny.gov).

A *qualified employer* is an employer that has been certified by the DOL to participate in the Workers with Disabilities Tax Credit Program and employs one or more qualified employees.

The credit amount equals:

- 15% of the qualified wages paid after January 1, 2015, to a qualified full-time employee who is employed by the qualified employer for at least 6 months and works at least 30 hours per week; and
- 10% of the qualified wages paid after January 1, 2015, to a qualified part-time employee who is employed by the qualified employer for at least 6 months and works at least 8 hours per week.

The maximum amount of credit allowed per qualified employee for any tax year is \$5,000 for a full-time employee and \$2,500 for a part-time employee. The total amount of credit allowed to a qualified employer for the tax year is computed by the DOL and stated on the employer's final certificate of eligibility issued by the DOL. The program has an annual allocation of \$6 million.

The credit is not refundable. The credit cannot reduce the tax due to less than the applicable fixed dollar minimum tax under section 210.1(d) of the Tax Law. However, any amount of credit or carryover of credit not deductible for the tax year may be carried over to be deducted for a maximum of three tax years. An employer that claims the workers with disabilities tax credit is not eligible to claim the employment of persons with disabilities credit under section 210-B.12 of the Tax Law.

The Tax Department is authorized to release the name and address of any taxpayer claiming this credit along with the amount of the credit earned by the taxpayer.

This provision applies to tax years beginning on or after January 1, 2015, and before January 1, 2020.

(Part MM of Chapter 59 of the Laws of 2014; Labor Law section 25-b and Tax Law section 210-B.48)

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.