PKF PERSPECTIVES

# NEW YORK STATE & NEW YORK CITY TAX LAW CHANGES

## NEW YORK STATE

The Governor has signed the 2010-11 Budget Bill which results in some modifications to New York State tax law. We summarize below.

### Personal Income Tax

New York itemized deductions are modified as follows:

- state and local sales taxes: reduces the deduction amount to the extent included in federal itemized deductions.
- charitable contribution deductions for the 2010 through 2012 tax years for taxpayers with New York adjusted gross income of more than $10 million: reduced to 25% of the corresponding federal deduction.

### Unified Estate Tax Credit

For estates and for decedents dying on or after January 1, 2010, the unified credit against estate taxes is calculated as if the federal applicable exclusion amount is $1 million.

### New York Source Income

Effective with the 2010 taxable year, New York source income for non-residents includes:

- Past related employment income received from an in-state business, trade or profession, including payments from covenants not to compete and termination agreements.
- Distributions to non-resident shareholders of a New York S corporation related to installment payments or Internal Revenue Code Section 338(h)(10) elections.

### Clothing and Footwear Sales Taxes

For the period October 1, 2010 through March 31, 2011, there is no sales tax exemption on clothing and footwear purchases of less than $110 per item.

The sales tax exemption is reinstated on April 1, 2011, but is limited to clothing and footwear purchases of less than $55 per item until March 31, 2012.

On April 1, 2012, the original sales tax exemption is restored.

Counties, cities, or school districts may continue to provide sales tax exemption for clothing and footwear purchases of less than $110, or to elect or repeal the exemption in the same manner as the State.

### Hotel Sales Tax

Effective September 1, 2010, the tax law is amended to require “room remarketers” to collect sales tax on hotel rooms booked by them on behalf of consumers.

## Definition of "Vendor"

For sales made or uses occurring on or after June 1, 2009, a "vendor" for purposes of withholding sales and use taxes does not include a seller who uses an in-state affiliated person to provide accounting, legal or advice services to the seller.

Such advice may include making decisions about: (1) strategic planning; (2) marketing; (3) inventory; (4) staffing; (5) distribution; and (6) cash management.

## Aircraft, Vessel Sales between Affiliated Entities

The transfer, distribution or contribution of an aircraft or vessel pursuant to a merger or consolidation is excluded from sales tax as long as the two corporations to be merged or consolidated are not affiliated.

Aircraft and vessel transfers between affiliated entities are taxable.

## Affiliated Livery Vehicle

Retroactively effective beginning June 1, 2009, transportation services by an affiliated livery vehicle in a city with a population of 1 million or more persons is excluded from sales tax.

## Bad Debt Credit

The sales tax bad debt credit or refund for purchases made by private label credit cards is repealed effective July 1, 2010.

## "STAR" Program

Beginning with the 2011-2012 school year, the combined income of all owners of a parcel subject to the School Property Tax Relief (STAR) program is limited to $500,000.

## Unclaimed Money Orders and Miscellaneous Property

Dormancy period for:

- Money orders: from seven to five years
- Unclaimed amounts for services not rendered or for goods not delivered: three years

## Empire State Film Production Tax Credit

A new film credit is created for qualified post-production costs. Unless otherwise eligible for the Empire State film credit:

> Qualified film production companies are allowed a tax credit equal to 10% of qualified post-production costs paid for a qualified film at a qualified post-production facility.

The credit is available for the tax year in which production is completed. An additional $420 million is allocated to the firm production tax credit in 2010 and each year thereafter through 2014.

## Low-Income Housing Tax Credit

The low-income housing tax credit is expanded by an additional $4 million, for an aggregate credit amount of $28 million.

## Biofuel Production and QETC Credit

Beginning in the 2010 tax year, the biofuel production credit is capped at $2.5 million per taxable year at the entity level for taxpayers who are partners in a partnership or shareholders in a New York S corporation.

The qualified emerging technology company (QETC) facilities, operations and training credit is capped at an annual aggregate of $250,000 at the entity level.

## Vendor Sales Tax Credit

The sales tax credit for vendors who file sales tax returns under New York tax law or pay the sales tax as required by New York tax law Sec. 10 is eliminated.

## Temporary Deferral of Article 9-A Tax Credits

Beginning in the 2010 taxable year and through the 2012 taxable year, if a taxpayer's total amount of certain business tax credits exceeds $2 million, the excess amount will be deferred to and used or refunded in taxable years beginning on and after January 1, 2013.

No interest will be paid on the deferred credits.

## Electronic Filings and Payments

For taxable periods beginning after December 31, 2010, the Commissioner is authorized to provide a reasonable correction period for tax documents and payments that are timely filed electronically, but are later rejected.

Tax return preparers and software companies are prohibited from charging a separate fee for filing state tax documents electronically. Violations of this rule will result in a $500 penalty for the first violation and $1,000 for each succeeding violation.

# NEW YORK CITY

New York City tax law has been amended effective for tax years beginning after 2009. A new highest rate tax bracket has been created. The highest rate affects New York City residents with taxable incomes over $500,000.

## Revised New York City Tax Rates

### *Married filing jointly and qualified widow(er)*

***If the NYC taxable income is:***

Not Over $21,600

The tax is: 2.907% of NYC taxable income

Over $21,600 but not over $45,000

The tax is: $628 + 3.534% of excess over $21,600

Over $45,000 but not over $90,000

The tax is: $1,455 + 3.591% of excess over $45,000

Over $90,000 but not over $500,000

The tax is: $3,071 + 3.648% of excess over $90,000

Over $500,000

The tax is: $18,028 + 3.876% in excess over $500,000

### *Head of household*

***If the NYC taxable income is:***

Not over $14,400

The tax is: 2.907% of the NYC taxable income

Over $14,400 but not over $30,000

The tax is: $419 + 3.534% of excess over $14,400

Over $30,000 but not over $60,000

The tax is: $970 + 3.591% of excess over $30,000

Over $60,000 but not over $500,000

The tax is: $2,047 + 3.648% of excess over $60,000

Over $500,000

The tax is: $18,098 + 3.876% of excess over $500,000

### *Single, married filing separately and estates and trusts*

***If the NYC taxable income is:***

Not over $12,000

The tax is: 2.907% of the NYC taxable income

Over $12,000 but not over $25,000

The tax is: $349 + 3.534% of excess over $12,000

Over $25,000 but not over $50,000

The tax is: $808 + 3.591% of excess over $25,000

Over $50,000 but not over $500,000

The tax is: $1,706 + 3.648% of excess over $50,000

Over $500,000

The tax is: $18,122 + 3.876% of excess over $500,000

## 2010 New York City Withholding Tables

New withholding tables take effect September 1, 2010. The new tables will provide the amounts required to be withheld in order for an employee to catch up on his/her total withholding for tax year 2010. In addition, the new rate will apply to those instances where withholding is required at the highest effective rate (such as supplemental wages and certain lottery winnings).

## 2010 Estimated Tax

As a result of the tax rate changes, a taxpayer's 2010 estimated income tax may be underpaid. To avoid the penalty for underpayment of estimated tax for tax year 2010, the total amount of estimated tax and withholding tax paid must be:

- at least 90% (66-2/3% for farmers and fishermen) of the amount of income tax due as shown on the taxpayers return for 2010; ***or***

- 100% of the tax shown on the taxpayer's return for 2009; ***however,***

- 110% of the tax shown on the taxpayer's return for 2009 if he/she is not a farmer or fisherman and his/her New York adjusted gross income is more than $150,000 or, if married filing separately for 2010, more than $75,000.

To qualify for the latter provisions, the taxpayer must have filed a return for 2009, and it must have been for a full 12-month year.

No penalty will apply to any shortage in a taxpayer's April 15, 2010, or June 15, 2010 estimated tax payment that is attributable to the tax law amendment provided the taxpayer includes any shortfall in his/her September 15, 2010 payment.

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