

9. Current Entire Net Income Base (“ENI”) Is Eliminated

- a. The current ENI base is eliminated.
- b. The new law replaces ENI with the “business income” base: ENI, less net investment income and other exempt income.

The current law’s ENI exclusions for income from subsidiary capital and 50% of dividends from non-subsidiaries are removed. The definition of "entire net income" is modified to include income of an alien (non-United States organized) corporation that is effectively connected with the conduct of a trade or business within the U.S. as determined under Internal Revenue Code §882.

Current law separately classifies the net assets of a corporation as subsidiary, investment or business capital. Net income from subsidiary capital is excluded from ENI. Income from investment capital is allocated according to the issuer’s allocation percentage (“IAP”) -- the New York State presence of the issuer’s stock, bond or other security. Subsidiaries pay a separate subsidiary capital tax based on the ratio of capital employed in New York by that subsidiary.

Under the new law, investment income is no longer allocated based on the IAP. Instead, investment income is exempt (net of attributable interest expense). The law restricts investment income, however, to income from investments in stock held for more than six consecutive months. Dividends, gains and losses from stock that currently constitutes subsidiary capital would be classified as investment income if the subsidiary is not in a unitary business relationship with the taxpayer. If unitary, the subsidiary would be includible in the combined return and its income subject to tax as business income.

A new category of “other exempt income” has been created. It consists of dividends from stock of unitary subsidiaries not included in the combined group (e.g., alien corporations with no effectively connected income), and exempt income from “controlled foreign corporations” (CFCs), which is income includible in federal gross income under Internal Revenue Code §951, received from a unitary corporation that is not included in the combined report.