

8. Economic Nexus

- a. Under the new legislation, an economic nexus provision is added to impose tax on businesses having receipts within New York of \$1 million or more in a taxable year.
- b. Currently, use of fulfillment services in New York does not trigger nexus in New York. This exception is repealed.

Under current law, a corporation must “employ capital” in the State in order to be subject to tax. Apart from a narrow exception for credit card issuers (taxed under Article 32), this has been interpreted to mean physical presence. Instead, the new law enacts a “factor presence” standard. See the “Sourcing of Receipts” discussion.

For combined groups, if a corporation does not meet the \$1 million threshold, but has at least \$10,000 of New York receipts, then the \$1 million is computed by aggregating the New York receipts of all members of the combined group.

EisnerAmper LLP comment: Out-of-state service providers should be alert to this new provision. If the service is performed in another state, but the customer (or client) that benefits from the service is located in New York, the corporation may trigger nexus. A company that sells digital products, such as downloaded audio or audio visual works, may be subject to Article 9-A regardless of where it is physically performing the service of development and sale of the digital product.