NEW YORK STATE BUDGET REFORM 2014-2015
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New York State's 2014 budget includes significant changes impacting corporate and individual tax laws. Following are details on the extensive new provisions.

CORPORATE INCOME TAX

1. Corporate Franchise Tax Rate – Minimum Taxable Income Base Eliminated
   a. Currently, corporations filing under Article 9-A must compute the amount of tax due using four different bases (see below).
   b. The new law eliminates the tax on minimum taxable income and the separate tax on subsidiary capital. It also adjusts the fixed dollar minimums.

Current Law:
Minimum Tax Base on General Corporations
Currently, corporations filing under Article 9-A must compute the amount of tax that would be due using four different bases:

1. Entire net income (ENI) base,
2. Business capital base,
3. Minimum taxable income base, and
4. A fixed dollar minimum tax base.

Taxpayers currently pay tax based upon the highest of those four bases, plus a tax on subsidiary capital.

Minimum Tax Base on Banking Corporations
Under Article 32, every banking corporation subject to tax must compute its basic tax, which is measured by ENI, and its alternative minimum tax and pay the higher of the two amounts.

New Law:
Elimination of Minimum Taxable Income Base
Effective for tax years beginning on or after January 1, 2015, the new law eliminates the tax on minimum taxable income and the separate tax on subsidiary capital currently applicable to corporations. It eliminates the Article 32 alternative entire net income base, the Article 32 taxable assets base, and the Article 32 fixed dollar minimum tax. Therefore, corporations or banks (now both under Article 9-A), are required to calculate tax on three different bases:

1. Business income base (formerly known as the ENI base),
2. Business capital base, and
3. A fixed dollar minimum tax base

(and, in some cases, an updated Metropolitan Transportation Business Tax).

The new law enacts additional tax brackets and substantially increases the tax amount. The current fixed-dollar minimum tax ranges from $25 to $5,000 with the maximum rate applicable to receipts over $25,000. The new fixed dollar minimum tax ranges from $25 to $200,000, with the maximum rate applicable to receipts over $1 billion.

Alternative Minimum Tax

For tax year 2014, the tax rate is:

- 0.75% for Qualified New York Manufacturers;
- 1.36% for Qualified New York Manufacturers and Qualified Emerging Technology Companies (QETCs); and
- 1.5% for all other taxpayers.

The Alternative Minimum Tax base is eliminated for tax years beginning on or after January 1, 2015.

Separate Tax on Subsidiary Capital Eliminated

The new law eliminates the ENI deduction for income from subsidiary capital. Therefore, each item of income that qualifies as income from subsidiary capital will now be classified as either:

1. Investment income,
2. "Other exempt income," or
3. Business income (which is subject to tax).

2. Corporate Franchise Tax Rate – ENI Base Calculation Rate Reduction
    a. The corporate franchise tax rate is reduced from 7.1% to 6.5% of "net income base" for taxable years beginning on or after January 1, 2016.
    b. Specific industries have also received a rate reduction:
        i. "Qualified New York Manufacturers" have a tax rate of 0%
        ii. "Qualified Emerging Technology Companies" (QETCs) are taxed at 5.9% in 2014, and have the rate gradually decreased to 4.875% beginning in 2018.
        iii. "Small businesses" can begin utilizing the 6.5% rate in tax year 2014.

Qualified New York Manufacturers currently must meet property and receipts tests. Under the new law, they will be required to continue to meet these tests:

- Either all or at least $1 million of manufacturing property is in New York; and
- At least 50% of receipts must be from manufacturing.
    - A taxpayer, or combined group, that fails the receipts test may still be a Qualified New York Manufacturer if it has at least 2,500 New York manufacturing employees and at least $100 million of manufacturing property in New York.

A taxpayer is a *qualified emerging technology company* if it meets the definition in Public Authorities Law Section 3102-e(1)(c), except that the $10 million limitation under §3102-e(1)(c)(1) does not apply. Specifically, a "qualified emerging technology company" is a company located in New York State whose primary products or services are classified as "emerging technologies" or a company which has research and development activities in New York State and whose ratio of research and development funds to net sales equals or exceeds the average ratio for all surveyed companies as determined by the National Science Foundation and whose total annual product sales are $10 million or less.

"Emerging technologies" include:

- advanced materials and processing technologies;
- engineering, production, and defense technologies;
- electronic and photonic devices and components;
- information and communication technologies, equipment and systems that involve advanced computer software and hardware, visualization technologies, and human interface technologies;
- biotechnologies; and
- remanufacturing technologies

A *small business taxpayer* is defined as a taxpayer with (1) ENI of $390,000 or less, (2) $1 million or less in the aggregate amount of money and other property it received for stock, as a contribution to capital and as paid-in surplus, and (3) 100 or fewer New York employees. The taxpayer cannot be part of an affiliated group unless the group itself would meet the test if it had filed a combined return. The employment test does not apply to the 2014 tax year.

Note, though, that this is a single branch of the franchise tax. Thus, while the rate is favorable for certain taxpayers, other calculations, such as the Fixed Dollar Minimum, will remain, and may impose a tax burden.

3. <u>Corporate Franchise Tax Rate – Phase-out of Business Capital Base Calculation</u>
   a. The business capital base calculation will be completely phased out for all taxpayers by the year 2016.
   b. Specific industries such as Qualified New York Manufacturers, QETCs and Cooperative Housing Corporations will have their rates phased out slightly quicker.
      i. For tax year 2014, the tax is capped at $350,000 for qualified New York manufacturers including QETCs, and $1 million for all other taxpayers.
      ii. 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.
   c. Small business taxpayers are exempt from the capital base tax in their first two years.

4. <u>Article 32 Bank Franchise Tax Repealed</u>
   a. The special rules governing the taxation of banks are repealed, and banks are merged into the Article 9-A corporate franchise tax.

Prior to the changes enacted in Tax Law, New York taxed general business corporations and financial services corporations under the franchise tax outlined in Article 9-A. (Most "corporate" entities were taxed under the provisions of Article 9-A.) Each New York State tax was outlined in a different article (for reference, the personal income tax is held within Article 22). Banking corporations had their own separate franchise tax regime, which was Article 32.

Under Article 32, banking corporations are currently taxed on the highest of four alternative bases:

- a 7.1% tax on the amount of entire net income apportioned to New York;
- a tax ranging from 0.002% to 0.01% on taxable assets;
- a 3% tax on alternative entire net income; or
- a fixed minimum tax of $250.12

Effective for tax years beginning on or after January 15, 2015, Article 32 is being eliminated completely and banks will be taxed under the same provisions of Article 9-A that are applicable to most other corporate entities.

Currently, Article 9-A also taxes corporations on the highest of four alternative tax bases:

- a tax at the rate of 7.1% on the amount of entire net income apportioned to New York;
- a tax at the rate of 0.15% on business and investment capital that has been apportioned to New York (up to a maximum capital tax of $1 million);
- a tax at the rate of 1.5% on minimum taxable income; or
- a fixed minimum income tax ranging from $25 to $5,000 based on the amount of the taxpayer's New York gross receipts.

(Note that the "minimum tax" is repealed on a going forward basis, and the "capital base" tax is being phased out).

In addition to this baseline change that banks will need to calculate, there are myriad additional differences between Article 32 and Article 9-A taxation. This means that the Article 32 favorable treatment of international banking facilities and the 22.5% deduction for interest income on government obligations are both eliminated as of tax years beginning January 15, 2015.

Article 9-A, for example, has a tax on the value of subsidiary capital allocated to New York at the rate of 0.09%. There is no subsidiary capital tax under Article 32. Article 32 does not have an investment capital concept. Article 9-A requires that foreign corporations doing business in New York apportion worldwide net income and capital to New York; Article 32 requires banks to apportion only U.S. effectively connected income (and related total assets).

Banks, under Article 32, previously apportioned entire net income and taxable assets based on receipts, payroll, and deposits. Under the new Article 9-A provisions, apportionment based upon receipts only may increase or decrease depending upon the taxpayer.

Current Article 32 receipts factor sourcing methods are changed:

- Income on loans secured by real property, currently sourced according to the location of income producing activity, will be sourced to the location of the real property;
- Interest on other loans, currently sourced according to the income producing activity, will be sourced to the location of the borrower;
- Interest on corporate bonds, currently sourced according to the income producing activity, will be sourced to the commercial domicile of the issuing corporation;

- New sourcing rules are created for apportioning income from financial instruments
  - *Qualified Financial Instruments* (QFIs) are investments that are marked to market under Internal Revenue Code §475 or §1256. This includes commodities as well as securities.
  - Taxpayers can elect to apportion 8% of QFI net income (dividend income, interest income, and net gains) to New York, or alternatively use customer-based sourcing.
  - This irrevocable election is made on an annual basis and applies to all QFI income of all members of the combined group.

EisnerAmper LLP comment: Federal law changes in the traditional banking industry relate back to the 1999 repeal of the 1932 Glass-Steagall Act restrictions by the Gramm-Leach-Bliley Act (1999). As the traditional "bank" industry continues to undergo structural changes, and more and more hybrid financial services entities straddle the line, it was becoming apparent that the determination of whether an entity was a "bank" could vastly sway that entity's New York tax burden. The new Tax Law "merges" Article 32 into Article 9-A by removing Article 32 altogether, and at the same time, makes key changes to Article 9-A.

5. Sourcing of Receipts
   a. The legislation creates new Tax Law §210-A, generally providing for the sourcing of receipts based on customer location.

The new law retains the current single-factor receipts only apportionment method under Article 9-A and expands the market-based "destination" sourcing method that currently applies to sellers of tangible personal property, asset management services performed for Regulated Investment Companies, certain broker-dealer services, television broadcasters, and magazine publishers. The new law expands specifically addressed categories subject to the destination sourcing rule, including for example digital products (online games, audio and audio visual works, and the like).

EisnerAmper LLP comment: Out-of-state taxpayers in the services industry that currently benefit from the performance-based apportionment method may be unfavorably impacted when the recipient of the services is located inside New York State. Under current law, receipts from the sale of capital assets (property not held for sale in the regular course of business) are excluded from the receipts factor. The new law has no comparable exclusion.

6. Unitary Business
   a. The legislation also adds Tax Law §210-C to generally require combined reporting if the taxpayer is engaged in a unitary business and a 50% common-ownership test is met.

Under current law, separate corporations are permitted or required to file combined "unitary" reports as a group. Based upon an analysis of substantial inter-corporate transactions and/or distortion, companies are included or excluded from the combined group. Under the new law, a combined report is required of corporations engaged in a unitary business, subject only to a more than 50% common-ownership test (the new law does not address pure holding companies, normally excluded from a New York combined report). The new law does not define a "unitary business," although there is guidance in federal case law and a substantial body of non-binding jurisprudence in other states. If a taxpayer owns less than 20% of the voting stock of a corporation, it is presumed to be non-unitary.

The new law provides for a 7-year election to treat as includible in a combined group all corporations that meet a more-than-50% ownership test. In a significant departure from current law, even alien (non-United States organized) corporations, currently not includible, can be included in the combined report provided that the corporation has a permanent establishment or effectively connected income in the United States.

EisnerAmper LLP comment: While the new provisions may eliminate controversies over the currently applicable “distortion test” that measures eligibility for inclusion in a combined return against the ultimate benchmark of whether or not a combined group exhibits “distortion” of New York State income, it is clear that a new era of tax planning has dawned. Corporations should carefully examine the advantages and disadvantages of the 7-year election. Taxpayers should address the inclusion of alien corporations. In many instances, the combined group will change, making historical audit results less than predictive of future tax liability.

7. <u>Net Operating Losses (NOLs)</u>
   a. With respect to net operating losses (NOLs), the legislation provides for:
      i. a prior NOL conversion subtraction, and
      ii. a deduction for NOLs generated in taxable years beginning after 2014.

The new law changes the way that NOLs are computed. Under current law, NOLs are limited to the federal, pre-apportioned NOL. Under the new law, NOLs are computed on a post-apportionment basis. A taxpayer’s degree of presence in New York in the year the NOL is generated will directly affect the amount of NOL available to be carried forward and deducted from future business income. This is a significant departure from current law, under which NOLs are computed subject to the ceiling of the federal NOL, on a pre-apportionment basis.

The new law provides for a 20-year carryforward period for NOLs, with NOLs to be deducted on a first-in, first-out basis. The new law also allows a taxpayer to carryback the NOL for up to three tax years, but not to any years starting before January 1, 2015. This means that the 3-year carryback will not be fully implemented until years starting on or after January 1, 2018.

In addition to a new NOL that would arise in a year beginning with 2015, a taxpayer would have the benefit of its pre-2015 NOL, calculated based upon complicated transition rules providing for a “prior NOL conversion” (PNOLC) subtraction pool that is calculated with reference to the “base year” of 2014. These rules enable taxpayers to carry forward existing NOLs and reflect an interplay between the NOL changes and the changes in the combination rules. An “unabsorbed NOL” is determined as of the end of the base year (for calendar year taxpayers, 2014). This amount is divided by the Business Allocation Percentage for the base year, and multiplied by the tax rate applicable in the base year (i.e., 7.1%). The resulting amount is divided by 6.5%, the tax rate under the new law.

The amount of combined NOLs for a combined group is calculated using the separate PNOLCs of each of the taxpayer members of the combined report. If a taxpayer was included in a combined report for the base year but begins to file separately, its PNOLC will be computed based on the portion the taxpayer contributed to the group's Conversion Subtraction pool. If a combined group included members in the base year that are no longer included, the group's Conversion Subtraction pool will be computed based on the portion the balance the group members contributed to the group's Conversion Subtraction pool. If a taxpayer was included in a combined report for 2014 and is included in a combined group consisting of additional members in 2015, then the Conversion Subtraction pool will be computed based on the sum of the Conversion Subtraction pools computed separately for the group and for the additional members.

The amount of a taxpayer's Conversion Subtraction will be allowable over a ten-year period (1/10th per year) on a carryforward basis (i.e., in a given year, in addition to the unused Conversion Subtraction from prior years). A one-time election, which must be made on a timely filed return for the tax year beginning on or after January 1, 2015, but before January 1, 2016 (the 2015 year for calendar year filers), is allowable to deduct up to half of the Conversion Subtraction pool over a two-year period. A taxpayer making this election cannot carryforward any unused amount of the Conversion Subtraction beyond that two-year period.

Under NOL ordering rules, the NOL deduction for the year is applied after the PNOLC subtraction. Any unused PNOLC may be carried forward until tax year 2035 for calendar year filers.

EisnerAmper LLP comment: The new provisions can considerably complicate the computation of a taxpayer's deferred tax asset. A taxpayer is required to quantify not only the current year's NOL, but also the "unabsorbed NOL," quantify the Conversion Subtraction pool given appropriate inclusion in or out of the combined group of any given member, apply the new law to make a judgment as to the proper members of the combined group, and reach a conclusion as to the advantage or disadvantage of the one-time election.

8. <u>Economic Nexus</u>
   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.

9. <u>Current Entire Net Income Base ("ENI") Is Eliminated</u>
    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 <u>exempt</u> (net of attributable interest expense). The law restricts investment income, however, to income from investments in stock held for <u>more than six consecutive months</u>. 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.

10. <u>Terms Redefined</u>
    a. The legislation revises the definitions of
        i. "business capital,"
        ii. "business income,"
        iii. "investment capital," and
        iv. "investment income."

Prior to the changes in law, taxpayers computed the tax on capital base by:

1. allocating investment capital (less attributable liabilities, including debt and other liabilities) by the Investment Allocation Percentage,
2. allocating business capital (less attributable liabilities) by the Business Allocation Percentage, and
3. computing tax on the sum of those two amounts.

The new law removes “investment capital” from the computation of the capital base. As such, investment capital is no longer taxable (the tax will be computed based solely upon business capital). However, the definition of investment capital has been altered, and narrowed. Since business capital is defined by reference to investment capital, the new definition of investment capital means that business capital will now include more items of income than it did under the current rules.

“Business income” is defined as entire net income minus investment income and other exempt income. In no event will the sum of investment income and other exempt income exceed entire net income. The new law provides for an election under Tax Law §210-A(5)(a)(1) to apportion income from qualified financial instruments (“QFIs”) at 8% and, if the election is made, then QFI income will be treated as business income.

The definition of “investment income” (which had been defined as income from investment capital) will, as of tax years beginning January 1 2015, only include “investments in stock that are held by the taxpayer for more than six consecutive months, but not held for the sale to customers in the regular course of business.” (There is a presumption that stock acquired during the second half of a tax year, which necessarily has not met the six-month holding period, will be held for six months. However, if the stock is disposed of during the following year and the holding period was actually less than six months, taxpayers are required to adjust business capital and business income in that following tax year.) Note stock of unitary corporations, stock in a corporation that is included in a combined report, bonds, or other corporate or governmental securities cannot qualify as investment income, regardless of holding period. (Taxpayers directly or indirectly owning less than 20% of the voting power of a corporation are presumed to be non-unitary.)

Any interest deductions directly or indirectly attributable to investment capital or income must be subtracted in determining investment income. Alternatively, instead of direct or indirect attribution for interest expenses, taxpayers can elect to reduce their investment income by 40% under a new safe-harbor election provision.

Further, the new law creates an “other exempt income” category. “Other exempt income” is defined as the sum of exempt “controlled foreign corporation” (CFC) income and exempt unitary corporation dividends. As above, other exempt income is reduced by interest expense directly or indirectly attributable to that income with the safe harbor election also available. (Taxpayers that elect under the 40% safe-harbor provisions are required to elect the same for both investment income and other exempt income.)

The law makes clear that investment income and other exempt income may not exceed entire net income. Thus, the excess of any interest or other deductions over other exempt income or investment income must be added back when computing entire net income for purposes of computing the business income base.

11. <u>"Other Exempt Income" Is Defined</u>
    a. A new provision is created to define "other exempt income" as the sum of exempt controlled foreign corporation (CFC) income and dividends paid by a member of the unitary corporate group.

12. <u>Exclusions from income for Subsidiary Capital and Dividends Are Removed</u>
    a. The existing entire net income exclusions for income from subsidiary capital and 50% of dividends from non-subsidiaries are removed.

13. <u>Licenses and Fees</u>
    a. The legislation repeals the organization and license taxes and maintenance fees under Tax Law §180 and §181.

14. <u>MTA Surcharge</u>
    a. The MTA surcharge under Tax Law §209-B is made permanent, and the rate is increased from 17% to 25.6% for taxable years beginning after 2014 and before 2016.
    b. For subsequent years, the MTA rate is to be adjusted by the commissioner.
    c. The MTA surcharge is an extra tax on corporations that have nexus in the Metro Transit District, which includes New York City and the surrounding suburbs.

INTERNATIONAL

15. <u>Alien Corporation Definition of ENI Changed</u>
    a. With respect to an alien corporation (not treated as a domestic corporation under any provision of the IRC), the definition of "entire net income" is modified to refer to income that is effectively connected with the conduct of a trade or business within the U.S., as determined under IRC Sec. 882.
    b. Previously, an alien corporation subject to Franchise Tax included income from all sources in ENI.

PERSONAL INCOME TAX

16. <u>A Personal Income Tax credit for Homeowners and Renters in New York City Earning less than $200,000</u>
    a. "Circuit Breaker" Tax Relief for Renters and Low-Income Homeowners:
        i. For New York City residents, the Budget creates a new $85 million progressively structured "Circuit Breaker" tax relief program. Qualifying homeowners and renters will be eligible to receive a refundable tax credit against the personal income tax when their property taxes or rent exceeds a certain percentage of their income.

ii. This threshold varies from 4 to 6% of income. A refundable credit ranges from 1.5 to 4.5% of excess real property tax.
iii. The credit is also available for qualifying renters. The real property tax equivalent for renters (i.e., the amount of real property tax that a renter is deemed to have paid for purposes of calculating the credit) is set at 15.75% of adjusted rent paid in the taxable year.

17. Personal Income Tax Additional Minimum Tax Repealed
    a. New York City's Additional Minimum Personal Income Tax is also repealed.
    b. The Additional Minimum Personal Income Tax was imposed on the New York minimum taxable income of every individual, estate, or trust at the rate of 6%.
    c. Furthermore, individuals or fiduciaries of an estate or trust are allowed a specific deduction of $5,000 ($2,500 if married and filing separately).
    d. This provision takes effect immediately and applies to taxable years beginning on or after January 1, 2014.

MCTMT

18. Metropolitan Commuter Transportation Mobility Tax
    a. The legislation conforms the due dates for the Metropolitan Commuter Transportation Mobility Tax (MCTMT) for taxpayers with income from self-employment with the due dates for the personal income tax. (The provision uncouples the due date for estimated MCTMT payments for self-employed individuals from the date for estimated MCTMT payments for employers.)
    b. The legislation also allows the tax commissioner to require the filing of MCTMT combined returns in certain situations for taxable years beginning on or after January 1, 2015.

SALES AND USE TAX

19. Lower Manhattan Tax Exemption
    a. The legislation extends the sales and use tax exemptions for qualifying leases in certain areas of Lower Manhattan for two years.

Subpart A of Part GG of Chapter 59 of the Laws of 2014 extends the Sales Tax incentives for businesses to locate or relocate their offices and employees in the two eligible areas (as defined in Tax Law section 1115(ee)(7)(D)) in lower Manhattan. This part extends by two years the cutoff date by which a qualifying commercial office space lease must commence. For purposes of a lease in the eligible area that is generally bounded by Murray Street on the north, this date is extended from September 1, 2013 to September 1, 2015. For a lease in the eligible area that generally consists of the World Trade Center site, World Financial Center and Battery Park City area, this date is extended from September 1, 2015 to September 1, 2017.

This part also extends the sunset date of the Sales Tax exemptions in Tax Law section 1115(ee) by two years. The exemptions for qualifying purchases in the eligible area generally below Murray Street now expire on December 1, 2016 and the exemptions for qualifying purchases in the World Trade Center site, World Financial Center and Battery Park City eligible area now expire on December 1, 2018.

These changes take effect immediately and are deemed to have been in full force and effect after August 31, 2013.

20. Vending Machine Sales of Food and Drink
    a. The threshold for the exemption from sales and use tax for candy and confectionery, fruit drinks that contain less than 70% of natural fruit juice, and soft drinks, sodas, and beverages that are ordinarily dispensed at soda fountains (other than coffee, tea, and cocoa) sold through any vending machine activated by the use of a coin, currency, credit card, or debit card, is increased from 75 cents to $1.50, effective June 1, 2014.

21. Alternative Fuels Exemption
    a. The legislation extends the sunset date for the sales and use tax exemption for alternative fuels, including E85, compressed natural gas (CNG), hydrogen, and B20 from September 1, 2014, to September 1, 2016.

22. Prepaid Tax for Distributors of Motor Fuel
    a. The rate of the prepaid sales tax for distributors of motor fuels is increased and the applicable regions are changed effective June 1, 2014.

TAX CREDITS AND OFFSETS

23. Income Tax Credit for Qualified Manufacturers
    a. Under the new law, "Qualified New York Manufacturers" are eligible to claim a refundable tax credit under the Franchise Tax (or personal income tax) equal to 20% of such manufacturer's real property tax paid on property owner or under certain circumstances leased by such taxpayers.

The credit is also allowed for property taxes paid on real property leased from an unrelated third party if the taxes are paid pursuant to explicit requirements in a written lease and remitted directly to the taxing authority. The Article 9-A tax credit can reduce tax to $25 while the Article 22 credit is refundable. The credit is effective for tax years beginning on or after January 1, 2014.

A taxpayer that claims the credit must add back to taxable income any amount of real property taxes deducted at the federal level.

Also, property taxes used as the basis for this credit may not be used for any other tax credit.

A "Qualified New York Manufacturer" is defined as "… a manufacturer which has property in New York which is described in clause (A) of subparagraph (i) of paragraph (b) of subdivision twelve of this section and either (I) the adjusted basis of such property for federal income tax purposes at the close of the taxable year is at least one million dollars or (II) all of its real and personal property is located in New York. In addition, a "Qualified New York Manufacturer" means a taxpayer defined as a qualified emerging technology company under paragraph (c) of subdivision one of section thirty-one hundred two-e of the public authorities law regardless of the $10 million dollar limitation expressed in subparagraph one of such paragraph (c)".

A manufacturer must also satisfy the existing receipts and property tests:

- At least 50% of receipts must be from manufacturing; and
- Either all or at least $1 million of manufacturing property is in New York.

A manufacturer that fails the receipts test may still qualify if it employs at least 2,500 people in manufacturing in New York and has $100 million in manufacturing property in the state.

24. Relocation and Employment Assistance Program
    a. The relocation and employment assistance program credit taken against the New York City utility tax and/or the commercial rent or occupancy tax for relocations is extended from July 1, 2013, to July 1, 2015.

25. Empire State Commercial Production Tax Credit
    a. The Empire State Commercial Production Tax Credit is extended by two years so that it applies to taxable years beginning before January 1, 2017 (formerly 2015).
    b. The threshold minimum spending activity required to qualify for credit pool allocated to production outside of the Metropolitan Commuter Transportation District is lowered from $200,000 to $100,000.

26. Empire State Film Production Credit
    a. Currently, qualified film production companies are allowed a credit equal to 30% of the qualified production costs paid or incurred in the production of a qualified film.
    b. The new legislation expands the Empire State Film Production Credit by adding Albany and Schenectady counties to the list of counties participating in the 10% additional credit for upstate counties.
    c. The additional credit equals 10% of the amount of wages paid to individuals directly employed by a qualified film production company in connection with a qualified film with a minimum budget of $500,000.

27. A Musical and Theatrical Production Income Tax Credit
    a. The budget creates a 25% refundable credit against taxes for production, promotion, performance and transportation expenses for qualified live, dramatic stage shows on national tour.
    b. The credit is first effective for taxable years beginning on or after January 1, 2015 and expires on January 1, 2019.

28. Workers with Disabilities Tax Credit
    a. The budget creates an income tax credit for the hiring of persons with developmental disabilities effective for taxable years beginning on or after January 1, 2015 and expiring January 1, 2020.

29. Excise Tax Credit on Telecommunication Services
    a. A credit for excise tax on telecommunication services for businesses located in tax-free START-UP NY areas.

30. Real Property Tax Freeze Credit
    a. The budget provides a real property tax freeze credit to taxpayers who are STAR recipients or would be STAR-eligible. The credit is a refundable personal income tax credit for homeowners who reside in school and municipal jurisdictions that abide by the property tax cap.

31. Low Income Housing Credit
    a. The aggregate dollar amount of credit that the Commissioner of the Division of Housing and Community Renewal may allocate to eligible low-income buildings is increased from $48 million to $56 million effective immediately and further raised to $64 million dollars effective April 1, 2015.

32. The Youth Works Tax Credit
    a. The Youth Works Tax Credit is amended to allow an additional $1,000 credit for eligible employees who are employed for one additional year. The legislation also amends the eligibility requirements of qualified employees to include full-time high school students working at least 10 hours.

33. Noncustodial Parent Earned Income Tax Credit
    a. The Noncustodial Parent Earned Income Tax Credit is extended for two years making it applicable to taxable years beginning on or after January 1, 2016 and before January 1, 2017 (previously 2015).

EXEMPTIONS

34. Exemption from Taxable Income for any Distributions from Length-of-Service Defined Contribution or Benefit Plans to Volunteer Firefighters and Ambulance Workers
    a. The legislation creates an exemption from taxable income for any distributions from length-of-service-defined contribution or benefit plans to volunteer firefighters and ambulance workers over the age of 59½, effective for taxable years beginning on and after January 1, 2014.

PROCEDURE CHANGES

35. Electronic Filing
    a. The signature requirements on returns prepared by tax professionals are modified.

TRUSTS & ESTATES

36. Trusts

   a. The legislation amends the New York State Tax Law and the New York City Administrative Code in relation to taxing residents who are grantors of exempt resident trusts that qualify as non-grantor incomplete gift trusts on the income from such trusts and taxing residents who are beneficiaries of all other exempt resident trusts or nonresident trusts on the distributions of accumulated income that they receive from such trusts.

Part I of Chapter 59 of the Laws of 2014 requires New York beneficiaries of exempt resident trusts to pay tax on accumulated income distributed to them. The accumulated income will be taxed at the rate in effect in the year in which it is paid out to the beneficiary. Furthermore, the income of a particular type of exempt resident trust, known as an "incomplete gift, non-grantor trusts" (ING trusts), will be taxed to the grantor of the trust.

In general, from an income tax perspective, income that is earned by a resident trust (a trust that becomes irrevocable while its creator is a New York resident) may be included in the income of the grantor, the trust, or the beneficiaries of the trust. Under the Tax Law, however, the accumulated income (i.e., the income of a trust that is not distributed to a beneficiary in the year it is earned) of some types of resident trusts is not subject to any New York tax at the grantor level, the trust level, or the beneficiary level. New York previously exempted from tax a resident trust if it has no trustees or assets located in New York and its income is not derived from New York sources ("exempt resident trusts").

This legislation closes that loophole in two different ways. With regard to an "ING trust", the bill requires the New York resident grantor of the ING trust to pay tax on the income of the trust. The fact that the transfer of property to the trust was an incomplete gift means that the New York grantor has retained some degree of control over the property, thereby creating a proper nexus for the State to tax the grantor on the income from that property. With regard to all other exempt resident trusts, distributions of the accumulated income of the trust will under the new law be taxed to the New York resident beneficiaries who receive the distributions. In computing the tax, income accumulated on behalf of beneficiaries that are not yet born or that are under the age of 21 will not be subject to the tax. Credits are to be applied to avoid the income from the trusts being taxed twice at the State level.

This provision takes effect immediately and applies to income accumulated by a trust in a tax year starting on or after January 1, 2014. However, to mitigate transition issues, there is an exclusion for distributions by exempt resident trusts (except ING trusts) of accumulated income made before June 1, 2014, and income earned by ING trusts that are liquidated on or before June 1, 2014.

37. Estate Tax
    a. The enacted law increases the estate tax exclusion threshold from $1 million to $2.06 million for decedents dying on or after April 1, 2014, and before April 1, 2015.
    b. The exclusion threshold increases each succeeding year, up $5.25 million over the next four years.
    c. Additionally, the law maintains the top tax rate at 16%, and indexes to inflation effective January 1, 2019.

Part X of Chapter 59 of the Laws of 2014 amends the estate tax to decouple the tax from federal law. The estate tax was commonly known as a “pick-up” tax because the tax equaled the federal credit for state estate taxes as it existed on July 22, 1998. The unified threshold of $1 million is replaced with an applicable credit equal to the tax calculated on a “basic threshold” amount equal to $2,062,500 for those dying in State Fiscal Year 2014-15; $3,125,000 in SFY2015-16; $4,187,500 in SFY2016-17; and $5,250,000 from April 1, 2017 to December 31, 2018. The basic threshold will equal the federal basic threshold amount with annual indexing for those dying on or after January 1, 2019. The applicable credit is reduced for New York taxable estates exceeding the basic threshold amount and equals zero for those exceeding one hundred five percent of such amount. This is similar to the loss of the benefit of the $1 million unified threshold under previous law.

Gifts taxable under Internal Revenue Code §2503 that were not otherwise included in the gross estate for Federal Estate Tax purposes and that were made during the three years ending on the date of death must be added to the New York gross estate. However, gifts made while the decedent was a nonresident of New York State and gifts made prior to April 1, 2014 or on or after January 1, 2019 are not included.

The Generation Skipping Tax has also been repealed as of April 1, 2014.

PROPERTY TAX

38. Commercial Revitalization Abatement
    a. Effective March 31, 2014, the benefit period for property tax abatements under the Commercial Revitalization Abatement Program is extended from March 31, 2020, to March 31, 2022, and the eligibility period is extended from March 31, 2014, to March 31, 2016.
    b. Additionally, the application and construction performance deadlines for abatements under the Industrial and Commercial Abatement Program (ICAP) are extended from 2015 to 2017.
    c. The eligibility period for similar Title 4-A tax abatements for certain commercial properties is extended from 2014 to 2016.

39. Extended Fees for Oil and Gas Units
    a. For property tax purposes, the enacted law extends the fees for the establishment of oil and gas units of production until March 31, 2018. Previously, the fees were set to expire March 31, 2015.