

TAX ALERT

NEW YORK'S 2017-2018 BUDGET BILL EXTENDS TOP PERSONAL INCOME TAX RATE AND MAKES OTHER CHANGES

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The 2017-2018 New York State budget was recently signed into law by Governor Andrew Cuomo. The Budget Bill includes important provisions related to personal income and sales and use tax. Below is a summary of some of the more significant items:

Personal Income Tax

- The Budget bill included a 2-year extension of the top statutory rate of 8.82%. Also known as the “millionaire’s tax,” for 2017-2019, the top statutory rate of 8.82% applies to unmarried individuals with income over \$1,077,550, married taxpayers with income over \$2,155,350 and heads of households with income over \$1,616,450. For taxable years beginning on or after 2020, the top rate will be 6.85% for unmarried individuals with income over \$215,400, married taxpayers with income over \$323,200 and heads of household with income over \$269,300.
- The current 6.45% and 6.65% tax rates will be gradually reduced beginning in 2018 until the rates reach 5.5% and 6%, respectively, in 2025.
- The New York itemized deduction for individuals with New York State adjusted gross income over \$10 million remains capped at 25% of the federal charitable contribution deduction for tax years ending before 2020 (this limitation previously applied to tax years ending before 2018). The New York itemized deduction for individuals with New York State adjusted gross income over \$1 million and not more than \$10 million will be capped at 50% of the federal charitable contribution deduction for tax years ending before 2020 (previously 2018). For tax years ending after 2019 (previously 2017), the New York itemized deduction for individuals with New York State adjusted gross income over \$1 million will be capped at 50% of the federal charitable contribution deduction.

Income from Investments in Partnerships

- The gain on the sale of an entity owning shares in a New York co-op is New York source income for nonresident individuals if more than 50% of the entity’s assets consist of shares in a cooperative housing corporation. This amendment took effect for years beginning on or after January 1, 2017.
- The sale of an interest in a partnership by a nonresident partner is New York source income if the sale is subject to Internal Revenue Code § 1060. As a consequence, a sale of such interests by nonresidents would be subject to New York State personal income tax. This amendment took effect immediately upon the passage of the Budget.

Sales and Use Tax

- The definition of a retail sale is expanded to include a sale to a single-member limited liability company (“SMLLC”) or its subsidiary for resale to the owner of the SMLLC, if the SMLLC or its subsidiary is treated as a disregarded entity for federal income tax purposes. This change took effect immediately upon the passage of the Budget.
- The definition of a retail sale has also been expanded to include a sale to a partnership for resale to one or more of its partners or a sale to a trustee for resale to a trust beneficiary. The retail sale amendment took effect immediately upon the passage of the Budget.
- Prior law permitted a use tax exemption if a taxable product or service was purchased by a nonresident, provided that the nonresident was not engaged in a New York trade or business at the time of the purchase. Effective immediately upon the passage of the Budget, this exemption no longer applies to entities unless that entity had been doing business outside of New York for at least six months prior to the purchase of the taxable product or service.

Our [prior alert dated February 16, 2017](#) described a potential change to New York’s Real Estate Transfer Tax (“RETT”) which was included in Governor Cuomo’s budget proposal. This change would have expanded the types of transactions to which the RETT applies. The final budget does not include any changes to the RETT.

Please contact your Mazars USA professional or our State and Local Tax Services team with any questions.



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