



This Week in State Tax (TWIST)

May 8, 2023



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New York: Budget Agreement Includes Franchise Tax Additional Rate Extension and More

On May 3, 2023, Governor Kathy Hochul signed legislation (S. 4009) necessary to implement the state's fiscal plan for the FY 23-24 year. That bill was then officially designated as Chapter 59 of the NYS Laws of 2023. The budget legislation represents a compromise between Governor Hochul (herself a Democrat) and the more progressive Democratic-controlled legislature.

One of the key tax changes affecting business taxpayers is the three-year extension of the additional 0.75 percent rate applicable to entire net income if the taxpayer's business income base, as apportioned, exceeds \$5 million. The rate increase continues to be structured as a "cliff" rate, rather than a graduated rate, so that all income is subject to the 7.25 percent rate (rather than the 6.5 percent rate) if the \$5 million income base is exceeded. Originally scheduled to sunset for tax years beginning after January 1, 2024, the additional rate will be in place through the 2026 tax year.

The bill also extends the State's business capital tax, which was previously scheduled to be phased out at the end of 2023. Notably, for tax years beginning prior to January 1, 2027, the business capital tax will continue to be imposed at a 0.1875 percent rate.

Currently, the New York corporate franchise tax Metropolitan Transit Authority surcharge rate is set each year by the Commissioner of Taxation and Finance. Under the bill, the current 30.0 percent rate (applicable to the Article 9-A tax computed on form CT-3 or CT-3-A, and then apportioned to the MTA region) will remain in place indefinitely.

The Chapter 59 bill allows the Commissioner of Taxation and Finance to seek judicial review of decisions of the State's Tax Appeals Tribunal, under certain circumstances. Those circumstances are when the Tribunal's decision is premised on an interpretation of Federal or New York State constitutional analysis, international law, Federal law, the law of other states, or other legal matters that are beyond the purview of the New York State Legislature. When the Commissioner petitions for judicial review, any interest and penalty that would otherwise continue to accrue on the underlying tax liability will be stayed until 15 days after the issuance of a final judicial decision that cannot be appealed any longer. This change takes effect immediately and applies to decisions and orders of the Tax Appeals Tribunal issued on or after May 3, 2023. The bill also makes numerous changes to New York tax credits and incentives law and increases cigarette taxes.

Another bill (S. 4008) – designated as Chapter 58 of the NYS Laws of 2023 – and also signed into law by the Governor on May 3, 2023, increases the Metropolitan Commuter Transportation Mobility Tax (MCTMT) from 0.34 percent to 0.60 percent for payroll expense above \$437,500 for employers who do business in the Bronx, Kings,

New York, Queens, and Richmond Counties (i.e., the five counties that comprise New York City), effective for the quarter beginning July 1, 2023. The Mobility Tax on self-employment income of individuals earning at least \$50,000 of such income sourced to the New York City counties is increased to 0.47 percent as of the quarter beginning July 1, 2023, and then to 0.60 percent as of the quarter beginning July 1, 2024. All other MCTMT rates remain the same relative to the other seven counties that comprise the overall twelve county MCTMT region.

With respect to the New York State and New York City “pass thru entity taxes” (which are elective “PTETs”; designed as workarounds of the Federal income tax SALT itemized deduction limitation), the bill codifies existing Tax Department policy regarding the PTET-addback of substantially similar PTETs paid to other jurisdictions.

The New York State film production credit benefits and those under the New York City musical and theatrical production tax credit regime are also substantially expanded under the Chapter 59 bill.

The bill expands the State’s “False Claims Act” (a whistleblower rewards law) beyond tax returns that were actually filed, to now also encompass the non-filing of a New York State or local tax return which decision was knowing concealment or knowingly the improper avoidance of a tax obligation. This provision applies to actions occurring on or after May 1, 2020 as to such non-filed tax obligations knowingly concealed or knowingly avoided.

Provisions in the Assembly and Senate to raise individual income tax rates, impose retail delivery fees, and/or tax digital products were not included in the final budget. Please contact [Russ Levitt](#) or [Aaron Balken](#) with questions on these changes.



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