

State Tax Observations

Time to Contemplate New York State's Decoupling from the Federal TCJA

By Sandy Weinberg, Principal, Alan S. Kufeld, Partner and Jill Cantor, Senior Tax Manager

While some are shaking off those post-holiday blues and others are excited about their NFL playoff picks, New York accountants, tax lawyers and taxpayers have other things to ponder. For starters, it's time to consider and begin applying New York's decoupling from the Federal Tax Cuts and Jobs Act (TCJA).

On December 28, 2018, the New York State (NYS) Department of Taxation and Finance released a Technical Memorandum (TSB-M-18(6)I) explaining how New York State's tax treatment of certain federal items of income and deductions will differ for tax years 2018 and after. Here are the key areas of decoupling.

Itemized Deductions

A taxpayer may still choose to itemize deductions on his or her NYS return even if not itemizing on the federal return in light of the TCJA. The reason: NYS is not following federal elimination of the following itemized deductions:

- State and local real estate taxes paid over the \$10,000 federal limit;
- Casualty and theft losses, including those incurred outside a federally declared disaster area;
- Unreimbursed employee business expenses;
- Certain miscellaneous deductions that are no longer allowed on the federal return (e.g., tax preparation fees, investment expenses, and safe deposit box fees).

Alimony or Separate Maintenance Payments

NYS is not mirroring the new federal treatment of alimony or separate maintenance payments under an alimony or separation agreement. On federal returns for these agreements executed or modified after December 31, 2018, payments are no longer deductible by the payer and no longer included as income by the recipient.

- NYS requires taxpayers to **subtract** applicable alimony or separate maintenance **payments** made during the year from federal adjusted gross income; and
- **add** to federal adjusted gross income any of these payments **received** during the tax year.

Qualified Moving Expenses Reimbursement and Moving Expenses

Unlike for federal tax purposes, NYS is not eliminating the deduction for qualified moving expenses. Thus, for 2018 through 2025, when calculating NYS AGI, the taxpayer will subtract from federal AGI any qualified moving expenses paid during the year and any qualified moving expense reimbursement received during the year.

529 College Savings Accounts

NYS is not following the federal tax changes which expand on the types of withdrawals allowed from 529 college savings accounts. Currently, federal law allows withdrawals for K-12th grade school tuition as qualified withdrawals; New York does not allow such withdrawals.

For NYS purposes, a withdrawal is not “qualified if the funds are not used for the higher education of the designated beneficiary.” Higher education means post-secondary education institutions. Therefore, a withdrawal from a NYS 529 college savings account that is used to pay tuition for an elementary, or secondary public, private or religious school is a nonqualified withdrawal. Accordingly, any NYS tax benefits would be recaptured at the time a distribution is made from a NY 529 account to fund K-12 expenses. In other words, the NYS tax deduction and any earnings on contributions would be subject to NYS tax.

Changes to the 2018 Empire State Credit

NYS will compute the 2018 Empire State credit based on the 2017 federal credit amounts and income, rather than the 2018 federal credit.

Contact Us

For questions regarding New York State or other state income taxes and the impact of decoupling from the federal treatment, contact:

Sandy Weinberg, JD
Principal
sweinberg@pkfod.com | 203.705.4170

Alan S. Kufeld, CPA
Partner
akufeld@pkfod.com | 646.449.6319

Jill Cantor, JD, CPA
Senior Tax Manager
jcantor@pkfod.com | 203.705.4174

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