

## State Tax Observations

# NYS 2020-2021 Budget Bill Signed Into Law: Decouples from Certain CARES Act Tax Provisions

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Recently, Governor Cuomo signed into law the New York State (NYS) Fiscal Year 2020-2021 Budget Bill (Bill) which did not increase taxes but, importantly, decoupled from many of the favorable federal Coronavirus Aid, Relief, and Economic Security (CARES) Act provisions. Discussed below are the Bill's major highlights.

### Decoupling from the Federal CARES Act

NYS is known as a "rolling" Internal Revenue Code (IRC) conformity state. This means NYS automatically conforms to IRC amendments unless it legislatively decouples from a particular IRC section or amendment. The Bill has done just that for both businesses and individuals as follows.

#### Business Taxes

**Interest Expense Limitations:** For tax years beginning in 2019 and 2020, for NYS and New York City (NYC) business taxes, the favorable increase in the business interest expense deduction limitation from 30% to 50% in IRC §163(j), as amended by the CARES Act, will not be followed.

**Net Operating Losses (NOLs):** NYS and NYC previously decoupled from federal NOL rules. The Bill did not change that.

**Bonus Depreciation:** The CARES Act favorably expanded IRC §168(k) to include 15-year qualified improvement property thereby making it eligible for bonus depreciation. Since NYS and NYC had already decoupled from bonus depreciation, the Bill has no effect.

#### Personal Income Taxes

For taxable years beginning before January 1, 2022, NYS and NYC IRC conformity is changed to fixed-date conformity. Therefore, any amendments to the IRC made after March 1, 2020 will not apply as follows.

**Interest Expense Limitations:** Similar to businesses, the increase in the IRC §163(j) limitations are not applicable.

**Bonus Depreciation:** Similar to businesses, NYS already decoupled from IRC Section 168(k).

**Business Loss Limitations:** The CARES Act temporary deferral of the business loss limitation for non-corporate taxpayers under IRC §461(l) has not been adopted.

**Net Operating Losses (NOLs):** The CARES Act provisions allowing the carry back of NOLs from 2018, 2019, and 2020 for five years, as well as the elimination of the 80% utilization limit for tax years before January 1, 2021, are not adopted.

## Non-Decoupling Provisions

### Personal Income Taxes

**Personal Income Tax Rates:** The Bill does not impact the lowering of personal income tax rates already in place. In 2020, the third year of the multi-year tax cuts enacted in 2016, income tax rates have been lowered from 6.85 percent to 6.09 percent for taxpayers in the \$43,000-\$161,550 income bracket, and to 6.41 percent in the \$161,550-\$323,200 income bracket.

**Long-Term Care Credit:** Effective for tax years beginning in 2020, the long-term care insurance credit is amended by limiting eligibility to taxpayers with NYS adjusted gross income of less than \$250,000 and to cap the credit amount at \$1,500. If the credit exceeds the taxpayer's tax, the excess may be carried forward.

**Unclaimed Earned Income Credit:** Effective for tax year 2020, if the NYS Department of Taxation and Finance (the Department) determines that a taxpayer has an unclaimed earned income credit, it is required to compute and issue an earned income credit.

**Standard Deduction:** If a taxpayer utilized an itemized deduction but the Department determines that the NYS standard deduction is greater, the Department may re-compute the taxpayer's tax liability using the NYS standard deduction and notify the taxpayer if such adjustment is made.

### Property Tax

**STAR Program Changes:** The Bill grants discretion to the NYS Department of Taxation and Finance Commissioner (Commissioner) to extend the enrollment period of the STAR income verification program past 2019. Also, where appropriate, the Commissioner is authorized to remit to affected property owners a payment in the amount equal to the difference between the school tax bill that the property owner actually received and the school tax bill that the property owner would have received had (s)he enrolled in the program in a timely manner. It also repeals the law regarding enforcement of delinquent state tax liabilities through the suspension of eligibility for STAR exemptions.

### Miscellaneous Tax Provisions

**Extension of the Excelsior Tax Credit Program and Enhanced Tax Credits for Green Projects:** The Bill redefines the term Green Project, "as a project deemed by the Commissioner to make products or develop technologies that are substantially aimed at reducing greenhouse gas emissions or supporting the use of clean energy... ." The Bill also extends the Excelsior Tax Credit Program through 2029 with Credit Components not to exceed \$200 million in the aggregate for each of the years from 2025-2029. Lastly, the Bill enhances credits within the Excelsior Jobs Program by increasing the refundable jobs credit to 7.5% from 6.85% for net new jobs in a qualifying Green Project, increasing the refundable investment tax credit from 2% to 5% for new capital investment in a qualifying Green Project, and increasing the maximum research and development tax credit to 8% from 6% of eligible expenses in a qualifying Green Project.

**Changes in the Film Production Tax Credit:** The Bill extended the film tax credit to 2025. Effective for applications for film tax credits filed on or after April 1, 2020, it reduces the rates for the post-production credits in film-making to 25% from 30% of qualifying production costs paid or incurred in the production of a qualified film. It also requires a "qualified film" (with the exception of a television pilot) to have a minimum budget of \$1 million if it is shot in Westchester, Rockland, Nassau, or Suffolk county or any of the five boroughs of New York City. If a majority of the shooting days of a "qualified film" (with the exception of a

television pilot) are in another NYS county, it must have a minimum budget of \$250,000 to be creditable. Certain television programs are also excluded from the definition of “qualified film.” The Bill also provided that certain costs should not be included in determining the credit such as relocation costs.

**Extension of the Hire-A-Veteran Credit Extended for Two Years:** The Bill extends the Hire-A-Vet credit to the 2020 and 2021 hiring periods. To be eligible for the credit, a veteran must work for at least a year and at least 35 hours per week. This is a refundable tax credit to employers equal to 10% of wages paid to a qualified veteran (up to \$5,000) and 15% of wages paid to a disabled veteran (up to \$15,000).

**Tobacco Products Tax Amended:** Effective for tobacco products possessed in New York on or after October 1, 2020, the Bill amends the definition of “wholesale price” to reflect the price at which a tobacco product is sold to a NYS registered distributor, including the federal excise taxes paid by the manufacturer or other person. The Bill also clarifies that the invoice received by a distributor with respect to its purchase of a tobacco product will be presumptive evidence of the wholesale price of such tobacco product. Effective June 1, 2020, the Bill further defines “retailer dealer” to include “all persons required to collect the tax” and adds a new section concerning “affiliated persons.” Lastly, it also authorizes the imposition of penalties for failure to maintain and make available for inspection adequate books and records required for cigarette and tobacco products taxes.

**Excise Tax on Alcoholic Beverages Amended:** Effective June 1, 2020, the Bill eliminates the excise tax on liquors containing not more than 2% of alcohol by volume as well as allowing the Commissioner to permit registered distributors to purchase alcoholic beverages from another registered distributor without paying tax. The Bill further excludes taxpayers holding certain licenses from filing requirements under certain specified conditions.

**Cigarette Tax Enforcement and Penalties:** The Bill imposes stricter penalties on cigarette dealers or their affiliates who unlawfully possess or sell unstamped cigarettes.

**Enforcement Initiatives:** Effective immediately, the Bill extends through April 1, 2025 the authority of the Commissioner to use the financial institution data-matching system for collection of fixed and final tax debts, as well as to serve an income execution without filing a warrant.

## Additional Highlight

In addition to the Budget Bill, one notable highlight is that the Department was authorized, through May 9, 2020, to accept digital signatures in lieu of handwritten signatures on documents related to the determination or collection of tax liability. The authority was implemented through Governor Cuomo’s Executive Order on March 7, 2020. The Commissioner will determine for which documents this directive applies and will define the requirements for accepted digital signatures.

## Contact Us

If you have any questions or need assistance regarding the recently enacted New York State Fiscal Year 2020-2021 Budget Bill or state taxes generally, contact your client partner or the following:

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