

Institute of International Bankers

New York State Corporate Tax Reform

June 18, 2014

New York Corporate Tax Reform - History

- Gramm-Leach-Bliley Act (“GLBA”) enacted in 1999
- Transitional provisions related to GLBA first effective in 2000
- Various working groups through 2010 with outlines and draft bill issued by Department in 2010 and 2011
- Two tax commissions in 2013
- January 21, 2014 Budget Bill includes Corporate Tax Reform
- A.8559-D/S.6359-D (Chapter 59 of the Laws of 2014) enacted March 31, 2014

New York Corporate Tax Reform- Major Provisions

- Repeals Article 32 and merges it into a substantially modified Article 9-A (generally as of 1-1-15)
- Expands economic nexus provisions
- Modifies combined reporting rules
- Revises tax bases and rates
- Eliminates subsidiary capital tax and related modifications
- Modifies “investment income” definition and adds “other exempt income”
- Provides various thrift/community bank subtraction modifications
- Modifies net operating loss rules
- Adopts increased customer based apportionment rules and a QFI 8% election
- Modifies the Metropolitan Business Tax surcharge
- No New York City conformity but GLBA transitional provisions extended

New York Corporate Tax Reform-Nexus

- Current Article 9-A nexus rules expanded to include economic nexus provisions
- Deriving receipts standard of \$1M or more of receipts from New York sources applies to all corporations, not just credit card banks
- Special rules for combined groups

New York Corporate Tax Reform-Combined Reporting

- More than 50% direct or indirect ownership and unitary tests
- Includes domestic corporations, alien corporations treated as domestic corporations, alien corporations with effectively connected income (ECI), captive real estate investment trusts (REITs) and captive regulated investment companies (RICs) not included under Article 33 and combinable captive insurance companies
- Excludes corporations taxable under other articles and non-captive REITs and RICs
- Commonly-owned group election
- Designated agent
- Calendar/fiscal year members

New York Corporate Tax Reform-Tax Bases and Rates

- Business Income Tax base and rates
 - Business income is ENI less investment income and other exempt income
 - ENI starting point for domestic corporations and alien corporations treated as domestic is federal taxable income
 - ENI starting point for other alien corporations is ECI with no treaty modifications
 - 7.1% rate for general corporations reduced to 6.5% for tax years beginning on or after 1-1-16
- Capital Tax base rate
 - 0.15% rate for general corporations phased down to 0% for tax years beginning on or after 1-1-21
 - Cap for general corporations is \$5M
- Fixed Dollar Minimum Tax base rate
 - Amount increased based on New York receipts, with maximum of \$200,000 if New York receipts exceed \$1B
- Subsidiary Capital Tax is repealed

New York Corporate Tax Reform-“Investment Income” and “Other Exempt Income”

- Investment income is generally income and net capital gains from stock of non-unitary corporations held for more than six consecutive months, other than stock held for sale to customers in the regular course of business
- Investment income is reduced by interest expense and hedging losses attributed thereto
- Other exempt income is the sum of exempt CFC income and exempt unitary corporation dividends
- Other exempt income is reduced by interest expense attributed thereto
- Investment income and other exempt income could be treated as taxable business income if from a qualified financial instrument (“QFI”) and fixed percentage method of apportionment election is made

New York Corporate Tax Reform-Thrift/Qualified Community Bank Subtraction Modifications

- **Qualified residential loan subtraction modification (“r” modification)**
 - Available to thrift institutions and qualified community banks that maintain a qualified residential loan portfolio (at least 60% of total assets at end of taxable year consist of specific assets)
 - To be a qualified community bank the average value during the taxable year of the assets of the taxpayer, or the assets of the combined reporting group of the taxpayer, must not exceed \$8B
 - Subtraction equals the amount by which 32% of ENI exceeds the amount deducted under IRC sections 166 and 585 less any amounts included in federal taxable income as a result of a loan recovery
- **Qualified Community Bank/Small Thrift subtraction modification (“s” modification)**
 - Available to small thrift institutions and qualified community banks
 - To be a small thrift the taxpayer must be a savings bank, a savings and loan association or other savings institution AND the average value during the taxable year of the assets of the taxpayer, or the assets of the combined reporting group of the taxpayer, must not exceed \$8B
 - Subtraction is computed by (1) multiplying net interest income from loans (defined) during the taxable year by a fraction, the numerator of which is the gross interest income during the taxable year from qualifying loans and the denominator of which is the gross interest income during the taxable years from all loans, and (2) multiplying the amount in (1) by 50%

New York Corporate Tax Reform-Thrift/Qualified Community Bank Subtraction Modifications (continued)

- **“s” modification (continued)**
 - Qualifying loans are originated by the qualified community bank or small thrift (or purchased in connection with a commitment to purchase prior to origination), the loan is a small business loan or a residential mortgage loan, the principal amount of which is \$5M or less, and either the borrower is located in New York and the loan is not secured by real property or the loan is secured by real property located in New York
- **Qualified Community Bank/Small Thrift Institution REIT subtraction modification (“t” modification)**
 - A qualified community bank or small thrift institution that maintained a captive REIT on April 1, 2014 shall utilize a subtraction equal to 160% of the dividends paid deduction allowed to that captive REIT for the taxable year for federal income tax purposes
- The taxpayer can utilize only one of the modifications but the taxpayer cannot utilize the “r” or “s” modification in any tax year in which it maintains the captive REIT that qualifies the taxpayer for the “t” modification

New York Corporate Tax Reform-Net Operating Loss (“NOL”)

- Pre-Corporate Tax Reform NOLs: Prior NOL Conversion Subtraction
 - NOL subtraction conversion pool is determined by multiplying unabsorbed NOLs at the end of the base year by the BAP for the base year and by 7.1% for general corporate taxpayers. This amount is then divided by 6.5% for general corporate taxpayers
 - The subtraction reduces allocated business income to the higher of the tax on the capital base or the fixed dollar minimum
 - The allowable annual subtraction can only equal 1/10 of the total pool plus prior year carryforwards. The subtraction can be carried forward until tax years beginning on or after 1-1-36
 - Alternatively, taxpayer can elect to utilize not more than 50% of the pool in 2015 and not more than 50% in 2016 with no carryforwards after 2016
 - Special rules apply where pre-corporate tax reform NOLs reside in separate companies or different combined groups than the combined group that will exist post-corporate tax reform

New York Corporate Tax Reform – NOLs

(continued)

- Post-Corporate Tax Reform NOLs
 - Post apportioned business loss
 - The amount that reduces a taxpayer's allocated business income is limited to the higher of the tax on its business capital base or its fixed dollar minimum
 - No longer limited to federal NOL deduction or subject to federal tracing rule
 - Twenty year carryforward and three year carryback (but not prior to 2015)

New York Corporate Tax Reform-Appportionment

- Single sales factor with customer based sourcing
- Financial transactions
 - Financial instruments that are QFIs - Customer sourcing v. fixed percentage
 - Financial instruments that are non-QFIs - Customer sourcing
 - Other receipts from broker or dealer activities
 - Receipts from credit card and similar activities
 - Receipts from certain services to investment companies
 - Hierarchy for determining “commercial domicile” of business customer
- Receipts from other services and other business receipts
 - Inclusion in the numerator is determined by a hierarchy

New York Corporate Tax Reform-Metropolitan Business Tax Surcharge

- Computed on the Metropolitan Commuter Transportation District's (MCTD) portion of the highest tax base before credits
- Portion of business carried on in MCTD is determined by a three factor receipts, property and payroll formula
- Rate increased on 1-1-15 to 25.6% of the tax imposed on business income (7.1% in 2015 for general corporate taxpayers) and subsequent year rate determined by the Commissioner

New York Corporate Tax Reform-Tax Department Implementation

- Regulations and TSB-Ms
- FAQs on website
- Forms and instructions