



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
OFFICE OF TAX POLICY ANALYSIS
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Corporate Tax Reform

Broad Principles

Equity

In the context of business taxes, the central concern is for horizontal equity, that is, that similarly situated taxpayers receive equivalent tax treatment. This principle is often described in shorthand as providing “a level playing field.”

Economic Efficiency

Efficiency in a tax system requires that the distortion of economic behavior and decision making inherent in any tax or subsidy be kept at a minimum. Generally, this dictates that taxes be imposed upon a broad base at the lowest rates possible consistent with revenue needs.

Simplicity

Simplicity furthers a variety of the other features of a sound tax system. Simplicity makes compliance and administration easier, helps minimize economic distortion, and promotes both fairness and public perceptions of fairness.

Ease of Compliance and Administration

Ease of compliance reduces the filing burdens on taxpayers and improves voluntary compliance. Ease of administration allows both taxpayers and the revenue agency to maximize the efficient use of their resources in carrying out their functions.

Reliability/Stability

The tax system should provide sufficient revenue to fund the functions of government in a stable and predictable manner.

Economic Competitiveness

The tax system (coupled with the governmental services provided) should provide a favorable foundation for sustained economic growth.

Corporate Tax Reform

Specific Components

Unification of Articles 9-A and 32

- Article 32 would be merged into Article 9-A.

Corporations Subject to Tax

- The following corporations would be subject to tax:
 - existing Article 9-A taxpayers; and
 - existing Article 32 taxpayers.
- Jurisdiction to tax would be asserted over corporations without a physical presence in New York where economic nexus was present.

Entire Net Income Base and Rate

- Entire net income would continue to be federal taxable income with most of the current Article 9-A modifications.
- There would be a single rate for all corporations subject to tax.
- The business income-investment income nomenclature would be continued.
- Investment income would be exempt from tax.
- The exemption for income from subsidiary capital would be eliminated. As a result, dividends, gains, and losses from subsidiary capital would be either business income or investment income.
- Investment income would be defined as dividends, gains, and losses from stocks held for more than six months and income that cannot be apportioned under the Constitution.
 - The six month holding period for stocks would count across tax years.
 - In instances where the holding period is split across tax years, a taxpayer would be allowed to classify income from stock as investment income in the first year if it intends to hold the stock for more than six months. If the stock is not held for six months, the dividends, gains and losses from the stock for year one and year two would be required to be included in the year two return as business income.
 - Taxpayers would be denied a deduction for interest expenses attributable to investment income.
 - Dividends, gains, and losses from stock of a non-unitary subsidiary would be investment income if the stock were held for more than six months.
 - Gains and losses from the sale of a partnership interest would be investment income if a corporate partner owns an interest in a non-unitary partnership for more than six months.
- Business income would be entire net income less investment income.
 - Interest income, gains, and losses from debt instruments would be presumed to be business income unless the income cannot be apportioned as such under the U.S. constitution.
 - Dividends, gains, and losses from stock of a unitary corporation, whether or not a subsidiary, would be business income.
 - Gains and losses from the sale of a partnership interest would be business income if the interest is in a partnership that is unitary with the corporate partner.
 - The current rules that classify income and expenses from repurchase agreements and stock lending transactions as business income and expenses would be applicable to all taxpayers.
 - The election to treat income from cash as business income or investment income would be eliminated.
 - Income from cash would be business income.

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- The current approach to items of income, gain, loss, and deduction that flow through a partnership to a corporate partner (i.e., the aggregate method) would be retained.

Special Provisions

- Eliminate many special provisions, including:
 - special international banking facilities provisions;
 - deduction for interest income on government obligations;
 - carryback of net operating losses; and
 - special New York banking deduction for bad debt (re-couple with the Federal bad debt deduction).

Apportionment of Business Income

- Business income would be apportioned based on a single receipts factor using customer apportionment.
- The following new sourcing rules would be adopted:
 - Receipts from loans secured by real property would be sourced to New York if the real property is located in the State.
 - Receipts from loans not secured by real property would be sourced to New York if the borrower is located in the State.
 - Receipts from digital products would generally be sourced to New York if the product is used in the State.
 - These rules were proposed as a part of the 2009-10 Executive Budget but were not ultimately enacted.
 - Receipts from services would generally be sourced to New York if the customer is located in the State.
- Receipts would be sourced based on rules derived from current sourcing rules for:
 - interest, fees, penalties, and service charges and fees from credit cards;
 - merchant discounts;
 - broker/dealer activities;
 - services provided to a RIC;
 - sales of tangible personal property;
 - railroad and trucking activity;
 - air freight forwarding activity;
 - rentals of real and tangible personal property;
 - royalties from the use of patents, copyrights, and other intangibles;
 - transportation of gas through pipes;
 - aviation services (other than air freight forwarders); and
 - advertising in newspapers, periodicals, TV, and radio.
 - Receipts from internet advertising would be sourced to New York if the potential customers are located in the State.

Combined Reporting

- A full unitary method for combined reporting with a water's-edge election similar to the approach used by California would be adopted.
- Requirements to be combined would be:
 - unitary business test; and
 - fifty percent stock ownership test.

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- One corporation directly or indirectly owns another (based on voting power) or corporations are controlled by a common interest or by related parties.
- The substantial intercorporate transactions test would be eliminated.
- The income of the entire unitary business would be apportioned among the New York taxpayers in the unitary group, each of whom would file a separate New York tax return (similar to the recently adopted Massachusetts method).
 - The taxpayers would include their pro rata share of the combined group's New York net income or New York net loss in the computation of their total New York business income.
 - Each taxpayer would have its own NOL carryovers and capital loss carryovers that could not be used by other members of the unitary business to reduce their liability.
 - These rules would replace the current separate return limitation year (SRLY) rules.
 - Credits and credit carryovers would be claimed by the taxpayer on its own New York return and could not be used by other members of the unitary business to reduce their liability.
 - An election to file a group return would be available as an accounting and billing convenience.
 - Income and expenses from each unitary business, e.g., from operations with its affiliates, subsidiaries, and partnerships, would be separately determined and summed to determine liability.
- The captive REIT/RIC combination requirements would be incorporated without the special exclusion for affiliated groups whose members own assets that do not exceed \$8 billion in average value.
- The combined reporting requirements for overcapitalized captive insurance companies would be continued.
- Since all corporations would allocate business income using just the receipts factor, all Article 9-A corporations would be eligible to be included in a combined group, including aviation, railroad, and trucking companies.

Alternative Tax Bases

- A fixed dollar minimum tax would be retained.
- The current alternative minimum tax would be repealed.
- A new alternative tax would serve as a backstop to the entire net income base.
- The following are under consideration for an alternative tax:
 - a net worth tax; and
 - variations of a gross receipts tax.
- The tax liability under both the fixed dollar minimum and the alternative tax could not be reduced by most credits.

MTA Surcharge

- The MTA base and apportionment factor would conform to the State base and apportionment factor.

Other Business Taxes and Fees

- The following taxes and fees would be repealed:
 - organization tax and tax on changes of capital under Section 180 of the Tax Law;
 - license fees on foreign corporations imposed by Section 181.1 of the Tax Law; and
 - tax on subsidiary capital.
- The annual maintenance fee imposed on foreign corporations would be reduced to \$25.

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- Anti-abuse provisions to address overcapitalized insurance corporations would be adopted in Article 33.
- Article 33 corporations not licensed by the New York State Insurance Department that are doing a non-insurance business in New York would be subject to tax under the new structure.

Rate Reduction

- Base broadening and new sourcing rules would be coupled with a rate reduction to maintain revenue neutrality.
 - The rate reduction will be dependent on the fiscal implications of the structural reform decisions made.

New York State/New York City Conformity

- Continue to work with New York City to conform the City and State tax structures.