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2017 New York State Tax Update

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Circular 230

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New York State Taxes - How Much and From Where?

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New York State Taxes - How Much and From Where?

- During SFY 2016-2017, the tax department collected $71.2 billion from state-imposed taxes and fees, as follows:
  - Personal income tax - $47.6 billion.
    - *$47.0 billion 2015 - 2016.*
    - *$21.5 billion 1999 - 2000.*

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New York State Taxes - How Much and From Where? - continued -

- State sales tax plus excise and user taxes - $15.2 billion.
  - *$14.8 billion 2015 - 2016.*
  - *$9.8 billion 1999 - 2000.*
- Business taxes - $6.0 billion.
  - *$6.9 billion 2015 - 2016.*
  - *$5.5 billion 1999 - 2000.*
- Property transfer taxes - $2.2 billion.
  - *$2.7 billion 2015 - 2016.*
  - *$1.4 billion 1999 - 2000.*

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New York State Taxes - How Much and From Where? - continued -

- Other taxes and fees - $164 million.
  - *$154 million 2015 - 2016.*
  - *$46 million 1999 - 2000.*
- New York State Population (2017) – 19,889,657.
  - Tax Collections - $71.2 billion = $3,578 per person.
- New York State Population (2000) – 18,976,457.
  - Tax Collections - $38.3 billion = $2,018 per person.
- Population increase 5.8 percent.
- Tax increase 77 percent per person.

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New York State Taxes - How Much and From Where? - continued -

- For a complete breakdown go to:

  https://www.tax.ny.gov/pdf/2016-17_collections/2016_17_Collections_Report.pdf.

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2017 Budget Bill and Legislation

- On April 10, 2017, Governor Andrew Cuomo signed into law New York's 2017/2018 Budget Bill.
- The following is a summary of the major changes from the Budget Bill and other subsequent legislation.

Personal Income Tax

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Reduction in Personal Income Tax Rates

- Beginning in 2018, the 6.45 percent personal income tax rate ($40,000 - $150,000 bracket) will be reduced by 0.12 percent each year until it reaches 5.5 percent in 2025; and
- Beginning in 2018, the 6.65 percent personal income tax rate ($150,000 - $300,000 bracket) will be reduced by 0.08 percent until it reaches 6 percent in 2025.

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2-Year Extension of Millionaire's Tax

- New York's current top individual income tax rate of 8.82 percent was set to expire at the end of 2017. The legislation extended this sunset date so that the higher rate will now expire at the end of 2019. The tax is applicable to unmarried individuals with an income over $1 million, married persons and surviving spouses with an income over $2 million, and heads of the household with an income over $1.5 million.

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2-Year Extension of Charity Deduction Cap

- New York currently limits an individual's deductions for gifts to charity to:
  - 50 Percent of the Federal deduction if his or her income is between $1 million and $10 million; or
  - 25 Percent of the Federal deduction if his or her income is over $10 million.
- This limit had been set to expire at the end of 2017. The legislation extended this sunset date so that the limit will now expire at the end of 2019.

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BUSINESS-RELATED TAX

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Sale or Transfer of a Partnership Interest by Non-Resident Partners

- Generally, for personal income tax purposes, the sale of a partnership interest is treated as a sale of an intangible asset, unless the assets of such partnership include New York real property and the value of such property is 50 percent or more of the total fair market value of all the partnership's assets on the date of sale.
- The budget amends this provision by declaring that the gain recognized from the sale or transfer of a partnership interest by a non-resident partner that is subject to Internal Revenue Code Section 1060 allocation will be treated as the sale of the underlying assets of the partnership, and will generate New York sourced income to the extent that the assets associated are located in New York. This provision is effective immediately.

Parent and Disregarded Entity Single Taxpayer for Tax Credit Purposes

- In *Matter of Weber*, DTA No. 825857, the New York Tax Appeals Tribunal reversed New York's longstanding policy, ruling that a common parent and two single-member limited liability companies (SMLLCs) were to be treated as separate entities in determining eligibility for state tax credits based on the activities of the SMLLCs. The act changes the definition of SMLLCs, declaring that they are single entities for purposes of determining eligibility for New York tax credits derived from their activities. This provision applies retroactively to all tax years in which the statute of limitation is still open.

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Maximum Fixed-Dollar Minimum Tax for Non-Captive REITs or RICs

- The bill sets the maximum fixed-dollar minimum tax for a non-captive real estate investment trust (REIT) or regulated investment company (RIC) at amounts from $25 (if New York receipts less than or equal to $100,000) and up to $500 (if New York receipts greater than $500,000).

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SALES AND USE TAX

Transaction Between Related Entities

- Generally, all retail sales of tangible personal property (TPP) are subject to New York sales and use tax. However, when a person acquires TPP for the purpose of later re-selling or leasing that property, the initial purchase of property is excluded from the definition of retail sale; thus, the initial purchase is exempt from the imposition of the sales tax.
- Taxpayers have been able to decrease the amount of sales tax that they pay on the purchase of valuable TPP, such as artwork, by having one entity purchase the TPP, with the purchasing entity then selling or leasing the TPP to a related entity at a much lower price. Since sales tax is imposed on the sales price for the TPP being sold, this related-party transaction results in a reduction of the sales tax imposed on the transaction.

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Transaction Between Related Entities - continued -

- The budget legislation eliminates this opportunity by amending the definition of retail sale to include certain purchases of TPP that are purchased for resale or for lease to a related entity. For these purposes, related-entity sales include:
  - Sales to a single member LLC or subsidiary that is disregarded for Federal income tax purposes, for resale to its single member or shareholder;
  - Sales to a partnership for resale to one or more of its partners; and
  - Sales to a trustee for resale to a trust beneficiary.

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Change the Treatment of Newly Formed Entities for Use Tax Purposes

- Generally, when a New York resident purchases tangible personal property in another state and then brings the TPP into New York, the resident must pay "use tax" to New York, which complements the sales tax that applies to sales that take place inside New York.
- However, when a non-resident moves from another state into New York and brings his or her TPP into the state, generally no use tax is due. People have exploited this exemption by forming new entities in other states to acquire TPP and then relocating the entities to New York. The budget legislation purports to eliminate this opportunity by providing that this use tax exemption only applies to entities that have been doing business outside of New York for at least six months prior to bringing the TPP to New York.

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CREDITS AND INCENTIVES

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Excelsior Jobs Program

- The Budget Act amends the Excelsior Jobs Program (Program) including the following:
  - Increases the value of the research and development credit from 3 percent of qualified research expenditures attributable to activities in New York to 6 percent. *NY Econ. Dev. Law Sec. 355.* This provision applies to tax years beginning on or after January 1, 2018.
  - Effective immediately, reduces certain minimum net job thresholds required to participate in the Program for some types of business operations. *NY Econ. Dev. Law Sec. 353.*
  - Effective immediately, amends regionally significant project provisions with the new minimum net job and capital investment thresholds for some types of business operations. *NY Econ. Dev. Law Sec. 352.*

Excelsior Jobs Program - continued -

- Expands eligibility requirements for the Program to include a new category for "Life Sciences Companies" that create a minimum of 5 jobs. The definition of a regionally significant project is also amended to include a life sciences company that creates 20 net new jobs in New York while making a significant capital investment in New York. *NY Econ. Dev. Law Secs. 352-354.* This provision takes effect immediately and applies to tax years beginning on or after January 1, 2018.

- Additionally, taxpayers under the Program may now take credits until the end of 2029, due to the amendment of *NY Econ. Dev. Law Sec. 354(5)*; this provision takes effect immediately.

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Life Sciences Research and Development Tax Credit

- The Budget Act creates a new Life Sciences Research and Development Tax Credit with $10 million of funding per year for qualified life sciences companies. Under these new provisions, taxpayers must be certified as an eligible life science company and be a “new business” as defined under state statutes.

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3-Year Extension of Film Credit and Film Post Production Credit

- The Budget Act amends New York tax law to extend the Empire State Film Production Tax Credit Program through December 31, 2022. Previously, this credit was set to expire after 2019.

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Income Tax Relief for Individuals Affected by the Flooding of Lake Ontario and the St. Lawrence Seaway - TSB-M-17(2)I

- Income tax relief is available to certain individuals whose primary residences were damaged by the flooding of Lake Ontario and the St. Lawrence Seaway. Individuals may take a subtraction modification when using a distribution from an eligible retirement plan to pay for repairs to their primary residences.

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Amendments to the Personal Income Tax Regulations Regarding the Allocation of Business Income - TSB-M-17(1)I

- The Personal Income Tax Regulations have been amended to clarify that rented tangible personal property must be included in the property percentage for taxpayers who are required to allocate income from a business carried on partly in and partly outside New York State, the MCTD, or Yonkers.

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PAID FAMILY LEAVE

Paid Family Leave - Overview

- New York State will join California, Rhode Island, and New Jersey as the only states that provide Paid Family Leave benefits beginning January 1, 2018. This law allows employees to:
  - Take time off to bond with their newborn child;
  - Care for a close relative with a serious health condition; or
  - Help relieve pressures on a family when someone is called to active military service.

Paid Family Leave - Overview - continued -

- Time off to bond with newborn child/adoption/foster care:
  - Child born/adopted within consecutive 52 week period (including prior to January 1, 2018).
  - Leave can be prior to actual adoption or placement in foster care.
  - Disability and Family Leave Benefits can be taken during post partem (cannot be taken at same time).

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Paid Family Leave - Overview - continued -

- Care for close relative with serious health condition:
  - Child, parent, grandchild, grandparent, spouse.
  - Employee must be in close and continuing proximity to the care recipient.
  - “Serious health condition” means an illness, injury, impairment, or physical/mental condition that involves:
    - Inpatient care in a hospital, hospice, or residential health care facility; or
    - Continuing treatment by a health care provider.

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Paid Family Leave - Overview - continued -

- Time off for qualified military service of a family member:
  - Spouse, child, parent of a covered service member.
  - Period of leave during covered service member's call to active military duty.
  - Claims for benefits must be made and processed in the same manner as other claims for family leave benefits.

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Eligibility

- The new Paid Family Leave Program will apply to any private New York employer that's covered by the workers' compensation law.
- Employees that work at least 20 hours per week are eligible after 26 weeks of being employed.
- Employees that regularly work less than 20 hours per week are eligible after 175 days worked.
- Eligible employees cannot be required to take all their sick leave or vacation time before using paid family leave

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Eligibility - continued -

- Eligible employees will receive 8 weeks of paid leave at a rate of 50 percent of their average weekly wage, not to exceed 50 percent of the New York State Average Weekly Wage ($1,305.92 in 2017).
- This will phase into 12 weeks of paid leave with a 67 percent wage cap by year 2021. The chart on the next slide outlines the graduating benefits through 2021.

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Eligibility - continued -

Year	Weeks Available	Max Percentage of Employee Average Weekly Wage	Cap Percentage of State Average Weekly Wage
2018	8	50%	50%
2019	10	55%	55%
2020	10	60%	60%
2021	12	67%	67%

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Funding

- Insurance coverage is required to be available for employees effective January 1, 2018.
  - In most cases, this coverage will be added to an employer’s Disability Insurance Policy.
  - Employers can deduct the insurance premiums through employee payroll deductions to cover the entire cost, essentially making it an employee funded benefit.
  - The maximum contribution in 2018 is 0.126 percent of an employee’s weekly wage up to the annualized New York State Average Weekly Wage.

Employer Responsibilities

- While the benefits provided under the Paid Family Leave Program are employee-funded, employers have reporting responsibilities that cannot be ignored:
  - Employers should contact their disability insurance carrier about obtaining Paid Family Leave coverage.
  - Employees are entitled to be reinstated to their same or comparable job upon return from Paid Family Leave.
  - Failure to reinstate employees to their same or comparable job may leave employers exposed to discrimination and/or retaliation claims.

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Employer Responsibilities - continued -

- Employers must continue employees health insurance while they are on Paid Family Leave. Employers may require that employees continue to pay their health insurance premium contributions.
- Employers must ensure that their employees are aware of the Paid Family Leave Program and that their organizational policies comply with the law.
- Employers must display a poster regarding Paid Family Leave coverage in their place of business, similar to workers' compensation or disability benefits coverage.

Employer Responsibilities - continued -

- Out-of-state employers and employees:
  - An employee who works from their home in New York is covered even if employer is located outside of New York.
  - An employee that is required to travel occasionally into New York State to perform duties, such as a salesperson, will not be considered a New York State employee unless the employment is based in the state.
  - An employer that is located outside of New York State does not need to cover employees who live in New York but work outside of New York.

Employee Responsibilities

- Additional protections:
  - Employees have a right to return to their same or comparable job upon return from Paid Family Leave.
  - Employees are guaranteed continued health insurance while on leave. Employers may require employees continue to pay their health insurance premium contributions.
  - Citizenship and immigration status do not impact eligibility.
  - Employers cannot discriminate against employees for taking Paid Family Leave.

Employee Responsibilities - continued -

- How to Apply:
  - Employee notifies employer 30 days prior to leave, when practical.
  - Employee fills out a claim form according to employer instructions. Claim forms are available from employer, insurance carrier, or www.ny.gov/paidfamilyleave.
  - Employee obtains supporting documentation for leave (birth certificate, military deployment certification, etc.).
  - Employee submits claim form and supporting documentation to insurance carrier or as directed by employer. Insurance carrier must pay or deny a claim within 18 days of receipt of the completed claim.

Employee Responsibilities - continued -

- Waiver of Family Leave Benefits:
  - Employee shall be provided the option to file a waiver of benefits, if:
    - Regular employment schedule is 20 hours or more but employee will not work 26 consecutive weeks; or
    - Regular employment schedule is less than 20 hours per week and employee will not work 175 days in a 52 consecutive week period.

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Tax Considerations

- Benefits paid to employees will be taxable non-wage income that must be included in Federal gross income.
- Taxes will not automatically be withheld from benefits; employees can request voluntary tax withholding.
- Premiums will be deducted from employees' after-tax wages.
- Employers should report employee contributions on Form W-2 using Box 14 - State Disability Insurance Taxes Withheld.
- Benefits should be reported by the State Insurance Fund on Form 1099-G and by all other payers on Form 1099-MISC.

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New York State Abandoned Property Law

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What is it?

- Each state has its own unclaimed property laws. Your business may be liable for penalties and interest, if it fails to timely report its unclaimed property. New York's Abandoned Property Law requires that organizations holding unclaimed property report and surrender such property to the New York State Comptroller's Office of Unclaimed Funds (OUF).

To Whom Does it Apply?

- New York's Abandoned Property Law applies to any organization that holds unclaimed property. Banks, insurance companies, corporations, and courts are among the many organizations New York State requires to report such property.

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What are Some Types of Unclaimed Funds?

- Unclaimed funds are money or the rights to money that have been dormant or forgotten. Some common examples include: savings accounts, checking accounts, uncashed checks, telephone/utility deposits, rental security deposits, wages, insurance benefits/policies, safe deposit box contents, mortgage insurance refunds, stocks and dividends, mutual funds, certificates of deposit, trust funds, and estate proceeds.

What are Some Types of Unclaimed Funds? - continued -

- There must be a fixed and certain legal obligation between the holder and owner of the property. Property must remain unclaimed by the owner for a set statutory or dormancy, period, and during the dormancy period, there must be no contact between the holder and the owner otherwise the dormancy period can reset.
- Note: Access property type tables at: http://www.osc.state.ny.us/ouf/reporters/files/table.pdf.

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Reporting Requirements

- The law requires organizations to review their records annually and transfer accounts that have reached specified dormancy thresholds (generally 2 - 5 years depending on type of property) to the Comptroller, who serves as custodian of the funds until the rightful owners claim them.
- While the filing and reporting obligations vary based on the business type, the cut-off for most businesses is December 31, 201X, with a reporting date of March 10th of the following year. Reporting formats include both paper and electronic filing and submission formats differ based on the number of items being reported.

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Reporting Requirements - continued -

- Reporting includes:
  1. A detailed listing of funds that you are transferring;
  2. Payment by check, and/or a transfer of securities; and
  3. A summary of the report details and remittance filed on "Verification and Checklist Form AC2709."

Reporting Requirements - continued -

- Some states have aggregate and negative reporting requirements.
- Aggregate reporting allows holders to report smaller amounts in the aggregate, with some states requiring that the holder provide owner information. The aggregate reporting threshold for New York is less than $20.
- Negative reporting requires holders to file reports confirming that they do not have any unclaimed property on their books and records.
- New York does not have a negative reporting requirement.
- Note: Access reporting requirements at:

  http://www.osc.state.ny.us/ouf/reporters/index.htm.

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Due Diligence Requirements

- The second type of compliance requirement is a due diligence requirement. As opposed to requiring holders to simply report and remit the unclaimed property, some states require that the holder perform a due diligence search of the owner by sending letters to the last known address. Due diligence typically applies when property values exceed a specified dollar amount. In New York, holders are required to mail letters to owners regardless of property value at least 90 days before reporting, and send certified letters to the owners, for all property of $1,000 or more at least 60 days prior to reporting.

Interest Charges for Late Payment or Delivery of Abandoned Property

- If you are late delivering abandoned property, New York State can charge you late filing interest. Interest is 10 percent per year from the date payment or delivery was due to the date you make payment or delivery.

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Penalties

- If you fail to file full and complete reports or affidavits the statute requires in the manner the Comptroller prescribes, you may be subject to penalties of one hundred dollars for each day the report or affidavit shall be <u>willfully</u> delayed or withheld.

Voluntary Disclosure Program Requirements

- Eligible organizations that hold unclaimed funds, but have not filed required reports, are invited to participate in the Office of Unclaimed Funds Voluntary Compliance Program.

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Voluntary Disclosure Program Requirements - continued -

- Benefits of participation include:
  - Reduced reach back period - 10 years plus dormancy on general ledger items;
  - 6 Months to file your report without interest or penalty assessment; and
  - Increased potential for your customers to be reunited with their lost funds.

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Voluntary Disclosure Program Requirements - continued -

- To be Eligible holders of unclaimed funds must:
  - Have not been contacted about an audit for New York State; and
  - Be a first-time reporting organization (in some cases companies who filed in the past may apply again if they failed to report a particular type of property and want to voluntarily correct the error).
- Note: Access Voluntary Disclosure Requirements at:

  http://www.osc.state.ny.us/ouf/reporters/voluntary.htm.

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Are there any Unclaimed Funds in YOUR Name?

- Use this website to find out if there are any unclaimed funds being held in your name: https://ouf.osc.state.ny.us/ouf/?wicket-crypt=UrtcGxqSOUI.

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