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2020 New York State Tax Update

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Dannible & McKee's Annual Tax & Financial Planning Conference
November 12, 2020

Disclaimer

Circular 230

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Polling Question

Business Tax Climate

Tax Foundation Study

The 10 best states in the prior year Index were:

1. Wyoming
2. South Dakota
3. Alaska
4. Florida
5. Montana
6. New Hampshire
7. Nevada
8. Oregon
9. Utah
10. Indiana

The 10 worst states in the prior year Index were:

41. Louisiana
42. Iowa
43. Maryland
44. Vermont
45. Minnesota
46. Arkansas
47. Connecticut
48. California
49. New York
50. New Jersey

Business Tax Climate

Tax Foundation Study

The 10 best states in this year's Index are:

1. Wyoming (0)
2. South Dakota (0)
3. Alaska (0)
4. Florida (0)
5. Montana (0)
6. New Hampshire (0)
7. Nevada (0)
8. Utah (+1)
9. Indiana (+1)
10. N. Carolina (+5)

The 10 worst states in this year's Index are:

41. Alabama (-1)
42. Louisiana (-1)
43. Vermont (+1)
44. Maryland (-1)
45. Arkansas (+1)
46. Minnesota (-1)
47. Connecticut (0)
48. New York (+1)
49. California (-1)
50. New Jersey (0)

Business Tax Climate

Tax Foundation Study

New York's Specific Index Ranks

	Overall	Corporate Tax	Individual Tax	Sales Tax	Property Tax	Unemploy. Insurance
2021 Report	48	15	48	43	45	38
2020 Report	49	13	48	43	46	38
Increase (Decrease)	1	(2)	0	0	1	0

Projected Top Marginal Tax Rates

**Shown with SALT Cap Retained*	Current Tax Structure	Proposed Biden Plan	Increase (Decrease)
Top Federal Tax Rate	37.00%	39.60%	2.60%
Social Security Tax	0.00%[1]	6.20%[2]	6.20%
Medicare Payroll Tax	1.45%	1.45%	0.00%
Additional Medicare Surtax	0.90%	0.90%	0.00%
Pease Limitation	0.00%[3]	1.188%[4]	1.19%
Top Marginal Federal Tax Rate	**39.35%**	**49.34%**	**9.99%**
New York State	8.82%	8.82%	0.00%
Top Marginal Tax Rate (Fed & NYS)	**48.17%**	**58.16%**	**9.99%**

[1] Currently imposed on only the first $137,700 of wage income

[2] Restoration of 6.2% of wage income above $400,000 (employee portion only)

[3] No current reduction in itemized deductions (Pease Limitation)

[4] Proposed plan includes restoring 3 percent limitation on itemized deductions above income threshold (3% x 39.6% = 1.188%)

2021 New York State Budget

2021 New York State Budget Extends and Amends Several Tax Credits

- The 2020-2021 New York State Budget was signed on April 3, 2020 and includes no new taxes, continues to phase in tax cuts for the middle class, enacts the strongest Paid Sick Leave program in the nation, and advances other progressive priorities.
- The spending plan also grants Governor Andrew Cuomo extraordinary powers to withhold or reduce payments to schools and local governments as the year progresses if the coronavirus threatens state collections.
- Even before the coronavirus began to fully unfold, the budget deficit was projected to be at least $6 billion, but is now estimated to grow to $15 billion or more.

2021 New York State Budget Extends and Amends Several Tax Credits

- Like many other states, New York is depending upon more aid from the Federal government to help make up this deficit. The state is also considering lowering state spending by $4 billion, and freezing hiring, new contracts, and pay raises.
- There are also several proposals being talked about to raise taxes on the ultrarich – multi-millionaires and billionaires to help cut the budget deficit.

Polling Question

2021 New York State Budget Extends and Amends Several Tax Credits

- **Continuing Middle Class Tax Cuts** – This year's Enacted Budget continues to lower Personal Income Tax rates for middle-class New Yorkers. In 2020, the third year of the multi-year tax cuts enacted in 2016, income tax rates have been lowered from 6.85% to 6.09% for taxpayers in the $43,000-$161,550 income bracket, and to 6.41% in the $161,550-$323,200 income bracket.
- These cuts are expected to save 4.7 million New Yorkers over $1.8 billion this year. Furthermore, income tax rates will continue to drop to 5.5% for taxpayers in the $27,900-$161,550 tax bracket and 6% in the $161,550-$323,200 bracket.
- When the cuts are fully phased in, middle class taxpayers will have received an income tax rate cut up to 20%, amounting to a projected $4.2 billion in annual savings for 6 million filers by 2025. As the new rates phase in, they will be the state's lowest middle-class tax rates in more than 70 years.

2021 New York State Budget Extends and Amends Several Tax Credits

- **<u>Excelsior Jobs Program</u>** – The budget created several enhanced Green Economy Tax Credits. A "green project" is a project that makes products of developed technologies that are primarily aimed at reducing greenhouse gas emissions or supporting the use of clean energy.
- Excelsior Jobs Program generally consists of four fully refundable tax credits which businesses can claim over a benefit period of 10 years. To earn credits, businesses must first meet and maintain established job and investment thresholds, as follows:
  1. Excelsior Jobs Credit:
     - A credit of **<u>6.85%</u>** of wages per net new jobs.
     - For a qualified green project, a credit of up to **<u>7.5%</u>** of wages per net new job.

2021 New York State Budget Extends and Amends Several Tax Credits

2. Excelsior Investment Tax Credit:
   - A credit valued at **<u>2%</u>** of qualified investments.
   - For a qualified green project, a credit valued at **<u>5%</u>** of qualified investments.
3. Excelsior Research and Development Tax Credit:
   - A credit of 50% of the portion of the Federal R&D tax credit that relates to expenditures in NYS up to **<u>6%</u>** of research expenses attributable to activities conducted in NYS.
   - For a qualified green project, a credit of 50% of the portion of the Federal R&D tax credit that relates to expenditures in NYS up to **<u>8%</u>** of research expenses attributable to activities conducted in NYS.

2021 New York State Budget Extends and Amends Several Tax Credits

4. Excelsior Real Property Tax Credit:
   - Available to businesses locating in certain distressed areas and to businesses in targeted industries that meet higher employment and investment thresholds (Regionally Significant Project).

2021 New York State Budget Extends and Amends Several Tax Credits

- **Making the "New York Buy American" Act Permanent** – The FY 2021 Enacted Budget makes the Buy American Act, which was set to expire in April 2020, a permanent fixture in New York State. The Buy American Act requires state agencies to use high-quality American-made structural iron and steel, continuing to support the state's steel and iron industry, create union jobs, and ensure our infrastructure projects will last long into the future.
- **Long-Term Care Insurance Credit** – For tax years beginning after January 1, 2020, the long-term care insurance credit amount has been reduced to $1,500. Only taxpayers with a New York adjusted gross income (AGI) of less than $250,000 are eligible.

2021 New York State Budget Extends and Amends Several Tax Credits

- **Hire-A-Veteran Credit** – The Hire-A-Vet credit has been extended to January 1, 2022. To qualify for the nonrefundable tax credit, a taxpayer must: hire a qualified veteran who begins his or her employment before January 1, 2021 and employs the qualified veteran in New York State for one year or more and for at least 35 hours each week.
- The tax credit can be claimed in the tax year the veteran completes one year of employment with you.
- The credit is equal to 10% of the total amount of wages paid during the veteran's first full year of employment, but not more than $5,000. If the qualified veteran is a disabled veteran, the credit can be as much as $15,000.

New York State Treatment of Federal Changes Under the CARES Act

New York State Treatment of Federal Changes Under the CARES Act

- The Coronavirus Aid, Relief, and Economic Security (CARES) Act was passed and signed into law on March 27, 2020. Some of the tax relief provided in the CARES Act consisted of statutory relief from certain revenue raising amendments from the 2017 Tax Cuts and Jobs Act (TCJA).
- On April 3, 2020, New York became the first state to decouple from several features of the CARES Act for corporate business and personal income taxes. Also, the State decoupling extended to New York City taxes, as well.
- New York State is considered a "rolling" Internal Revenue Code (IRC) state. Which means the State automatically conforms to Federal amendments to the IRC unless the State formally decouples from a particular IRC section or an entire IRC amendment. For example, the State has historically decoupled from the Federal bonus depreciation provisions of IRC Section 168.
- On June 10, 2020, New York State issued a Special Tax Department Notice No. N-20-7 related to the impact of the changes to the IRC on the 2019 New York State personal income tax returns.

Business Interest Expense – Section 163(j)

- The TCJA added limitations to the amount of business interest allowed to be deducted by certain taxpayers beginning with the 2018 tax year.
- The TCJA provision limited the business interest deduction to 30% of adjusted taxable income for the year.
- Any disallowed business interest would carry forward to future tax years, subject to the same 30% adjusted taxable income limitation.
- **Note**: The Section 163(j) limitation exempts some small businesses (typically with annual average gross receipts of no more than $25 million in 2018, and $26 million in 2019).

Business Interest Expense – Section 163(j)

- The CARES Act temporarily and retroactively increases the limitation of deductible business interest from 30% of adjusted taxable income to <u>50%</u> of adjusted taxable income.
- The CARES Act change only applies to tax years beginning in <u>2019 and 2020 (does not retroactively apply to 2018</u>).
  - Partners in a partnership subject to Section 163(j) provisions will only see the 50% limitation for 2020 (not for 2018 or 2019).
- The CARES Act also allows taxpayers to elect to calculate the 2020 interest limitation using 2019 adjusted taxable income.
- By decoupling, the State will not follow the CARES Act's increasing the limitation from 30% of ATI to 50% of ATI for the 2019 and 2020 tax years. Thus a separate IRC Section 163(j) calculation and tracking of the New York limit will be required along with any resulting carryover of excess interest expense not utilized.

Modifications for Net Operating Losses

- The Tax Cuts and Jobs Act (TCJA) changed the rules for NOL's by:
  - Repealing the NOL carryback provisions for losses incurred in tax years ended after December 31, 2017; and
  - For losses in tax years beginning after December 31, 2017, the NOL deduction was limited to 80% of taxable income.
- The NOL's generated in tax years ended after December 31, 2017, were allowed to be carried forward indefinitely to future tax years, subject to the taxable income limitation (80%) in each subsequent year.

Modifications for Net Operating Losses

- **<u>The CARES Act modified the NOL rules by</u>**:
  - Temporarily removing the taxable income limitation (80%) for tax years beginning before 2021.
  - This allows for an NOL equal to up to 100% of taxable income for tax years 2018 through 2020.
  - For tax years beginning on or after January 1, 2021, the TCJA NOL rules will return (the 80% taxable income limitation for NOL's arising after 2017).

Modifications for Net Operating Losses

- **<u>The CARES Act modified the NOL Carryback rules by</u>**:
  - NOL's arising in tax years beginning after December 31, 2017 and before January 1, 2021, can be carried back to each of the **<u>five</u>** tax years preceding the tax year of the loss (NOL).
- **<u>Special Note:</u>** The NOL carryback provisions are mandatory under the tax law, <u>unless the taxpayer elects to waive the carryback period</u>. Failure to comply with the mandatory carryback provision with no election to waive the carryback period could result in a disallowance of the loss in a future year.
- Revenue Procedure 2020-24 was issued to address some of these issues, including special rules for 2018 and 2019 NOL's.
- As a result of the State's decoupling, this potential loss of a portion or all the New York tax benefits if a taxpayer decides to carryback an NOL for Federal purposes (under the enhanced carryback period provided by the CARES Act), requires additional analysis and planning for potentially affected taxpayers.

Losses for Noncorporate Taxpayers

- The TCJA added a provision for "excess business losses" and the amount of allowable losses that can be utilized in a tax year (for non-C-corporation businesses).
- The TCJA limited the allowable loss to the sum of aggregate business income plus $250,000 ($500,000 for married filing joint).
- Excess business losses would convert to a net operating loss, which would be subject to the 80% taxable income limitation under the same TCJA NOL rules.

Losses for Noncorporate Taxpayers

- The CARES Act **retroactively** removed the "Excess Business Loss" limitation under Section 461 for business losses arising in 2018, 2019, and 2020.
  - The Excess Business Loss rules will return for tax years beginning after December 31, 2020 and before January 1, 2026.
- For tax returns filed for 2018 and 2019, action may need to be taken to amend and recalculate the tax returns to account for the retroactive law change. Failure to do so may result in a disallowance of losses claimed in future years.
- By decoupling, the State will continue to limit Excess Business Losses. So, affected State taxpayers must track and modify their allowable and limited Excess Business Losses independent of the amounts provided under the CARES Act used for Federal purposes.

CARES Act Changes to Depreciation

- **TCJA Law Change:** Allows 100% expensing for qualified property (generally, depreciable assets other than buildings) that are acquired and **placed in service after September 27, 2017** and before 2023 (before 2024 for "longer production period" property and certain aircraft).
- The depreciation rules were modified to create one category of QIP versus three different classifications of commercial real estate improvements as previously used.

Qualified Improvement Property (QIP)

- What is Qualified Improvement Property?
  - QIP is any improvement to an interior portion of a building that is nonresidential real property, if the improvement is made by the taxpayer and placed in service after the date the building was first placed in service.
  - QIP does <u>not</u> include an improvement for which the expenditure is attributable to:

    (1) Enlargement of the building;

    (2) Any elevator or escalator; or

    (3) The internal structural framework of the building.

CARES Act Changes to Depreciation

- The TCJA failed to classify "qualified improvement property" as 15-year property as was intended. Thus it fell into the 39-year recovery period for nonresidential real property, <u>not eligible for bonus depreciation</u>.

CARES Act Changes to Depreciation

- The CARES Act provides for a technical correction to the TCJA (not a law change) with respect to "Qualified Improvement Property" (QIP).
- The CARES Act specifically designates QIP as 15-year property, eligible for 100% bonus depreciation, for property placed in service after December 31, 2017.
- By decoupling, the State will require taxpayers who placed QIP into service during 2018 through 2020 to expense the cost over a 39-year life. This will create additional differences between Federal and state depreciation computations.

CARES Act Changes to Depreciation

- Example:
  - Taxpayer placed into service on January 1, 2019, QIP for $100,000:
    - Federal – Claim 100% bonus depreciation with a 15-year life.
    - New York – 39-year life and depreciation expense in the amount of $2,461 ($100,000 x 2.461%).

Modification of Limitations on Charitable Contributions During 2020

- Under the TCJA, the limit for charitable contributions by individuals to qualifying charities was increased by 60% of their contribution base (generally, adjusted gross income) and for corporations the limit is generally 10% of modified taxable income.
- Under the CARES Act, the limit by individuals for contributions to qualifying public charities was increased from 60% to 100% of their contribution base. There are also special rules for specific types of contributions and for contributions to various types of charities. For corporations, qualifying contributions can be as much as 25% of modified taxable income. There are also special rules for contributions of food inventory.
- By decoupling, the State will follow the rules under the TCJA, so individuals and corporations may have additional differences between their Federal and State charitable contributions.

Polling Question

New Paid Leave for COVID-19

Paid Leave for COVID-19

- Legislation was signed on March 18, 2020, job protection and pay was provided for New York employees who have been quarantined due to COVID-19.
- Paid sick time for quarantine leave depends on employer size (number of employees) and annual income.
- Job protection applies for the duration of the order of quarantine or isolation.
- Employees and the employer submit forms to employer's insurance carrier, who processes and must pay or deny within 18 days of receipt.

Paid Sick Leave – COVID-19

1 to 10 Employees; Net Income up to $1M*	1 to 10 Employees; Net Income over $1M*	11 to 99 Employees	100+ Employees	Public Employers (any size)
New paid sick days are not required. Paid Family Leave and disability benefits apply	5 paid sick days	5 paid sick days	14 paid sick days	14 paid sick days

*Net income is determined based upon the employer's previous tax year.

Note – employment size is determined as of January 1, 2020.

Paid Leave for COVID-19 – General Information

- Paid leave for COVID-19 does not apply to quarantine required due to voluntary travel to any state affected by the NYS travel advisory.
- For paid sick leave (COVID-19), employee benefit uses their "regular rate of pay" (if they had been working).
- After COVID-19 paid leave is used, employees may be eligible to receive Paid Family Leave.
- If employee is not showing symptoms and is able to work remotely from home, COVID-19 paid leave is not available.

New York State
Paid Sick Leave

New York State – Paid Sick Leave

- Legislation was signed on April 3, 2020 granted New York employees with annual sick leave under the Paid Sick Leave mandate adopted as part of the FY 2021 Executive Budget (benefits become available starting January 1, 2021).
- Paid Sick Leave provides employees with sick leave that is generally paid (unpaid for some employees of small employers).
- The amount of sick leave is dependent on the size of their employer (number of employees).
- Law sets minimum standards, and current employer policies may already exceed standards (still must comply with certain rules).

New York State – Paid Sick Leave

- Beginning on September 30, 2020, employees will begin "accruing" sick leave.
  - Note: Use of accrued time does not begin until January 1, 2021.
- The amount of sick leave is dependent on the size of their employer (number of employees).
- Sick leave must be accrued at a rate "not less than one hour for every thirty hours worked."
- Unused accrued leave may be carried forward to the next year (although use of hours is still capped by employer size).

New York State – Paid Sick Leave

- Alternative Accrual System:
  - Instead of accruing 1 hour of leave for every 30 hours worked, employers may choose to provide the full amount of sick leave required by law at the beginning of the year.
  - If chosen, the up-front sick leave is not subject to later revocation or reduction (if employee does not work expected number of hours, for example).

Paid Sick Leave – Leave to Employees

100+ Employees	5 to 99 Employees	4 or Fewer Employees (Net Income up to $1M*)	4 or Fewer Employees (Net Income > $1M*)
Employers must provide up to **56** hours of **paid** sick leave per calendar year.	Employers must provide up to **40** hours of **paid** sick leave per calendar year.	Employers must provide up to **40** hours of **unpaid** sick leave per calendar year.	Employers must provide up to **40** hours of **paid** sick leave per calendar year.

* Net income is determined based upon the employer's previous tax year.

Paid Sick Leave – Eligibility

- Paid sick leave applies to:
  - All private-sector employees in New York State, regardless of industry, occupation, part-time status, and overtime exempt status.
  - Nonprofit employers must comply with the law.
- Paid sick leave does NOT apply to:
  - Federal, state, and local government employees.

Paid Sick Leave – Permitted Use

- Beginning January 1, 2021, employees may use accrued leave for the following reasons impacting the employee or a member of their family for whom they are providing care or assistance with care:
  - **Sick Leave:**
    - Mental or physical illness, injury, or health condition, regardless of whether it has been diagnosed or requires medical care at the time of the request for leave; or
    - For the diagnosis, care, or treatment of a mental or physical illness, injury, or health condition, or need for medical diagnosis or preventative care.

Paid Sick Leave – Permitted Use

- **Safe Leave:**
  - For an absence from work when the employee or employee's family member has been the victim of domestic violence as defined by the State Human Rights Law, a family offense, sexual offense, stalking, or human trafficking due to any of the following as it relates to the domestic violence, family offense, sexual offense, stalking, or human trafficking:

Paid Sick Leave – Permitted Use

- **Safe Leave (Continued):**
  - Obtain services from a domestic violence shelter, rape crisis center, or other services program;
  - Participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members;
  - Meet with attorney or social services provider;
  - File a complaint or domestic incident report;
  - Meet with a district attorney's office;
  - Enroll children in a new school; or
  - Other actions necessary to ensure health and safety.

Paid Sick Leave – Miscellaneous Provisions

- Rate of Pay:
  - Employees are paid at their normal rate of pay or the applicable minimum wage rate (whichever is greater).
- Family member (defined):
  - Employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent.
  - Child or parent of an employee's spouse or domestic partner.
- Telecommuting/Nonresident Employers:
  - Paid sick leave applies to employees only for the hours when they are **physically working in New York State.**

Polling Question

New York State
Telecommuting Update

New York State – Telecommuting Update

- Due to the COVID-19 pandemic, the issue of telecommuting and taxation has quickly become one of the most relevant topics in state taxation.
- Due to mandatory closures and physical location capacity limitations, most businesses are utilizing "telecommuting" during the COVID-19 pandemic, and many businesses will continue going forward.
- Since early 2020, the question regarding New York businesses and employees working "remotely" <u>outside of New York</u> has resulted in many new questions with little to no guidance.

New York State – Telecommuting Update

- Generally thought of as an employment tax or wage withholding tax issue, but will having employees working for a New York employer out-of-state subject the employer to additional compliance (sales tax, income tax, etc.)?
- Example:
  - Employee in a New York business (no other locations) will telecommute. Employee telecommutes from another state (parent home, vacation home, etc.).
  - What are the tax implications to the employee for doing so?

New York State – Telecommuting Update

- Has New York issued formal guidance on this topic?
  - No formal guidance but see below.
- What has New York provided on this topic?
  - Without any announcement, the New York Tax Department updated their "Residency FAQ" webpage and added one additional question and answer:

New York State – Telecommuting Update

Residency FAQ Update:

- My primary office is inside New York State, but I am telecommuting from outside of the state due to the COVID-19 pandemic. Do I owe New York taxes on the income I earn while telecommuting?
  - *If you are a nonresident whose primary office is in New York State, your days telecommuting during the pandemic are considered days worked in the state unless your employer has established a bona fide employer office at your telecommuting location.*

New York State – Telecommuting Update

"Convenience Rule" (NY TSB-M-06(5)I):

- Standard Rule (non-convenience).
  - Generally the employee is subject to state income tax where physically present and services are performed.
- Convenience Rule.
  - Expands on standard rule to include days outside of the state, unless work outside of state is for the necessity of the employer, and not the convenience of the employee.

New York State – Telecommuting Update

"**Convenience Rule" (NY TSB-M-06(5)I)**:

- What is the "necessity of the employer?"
  - Rule was last updated in 2006 and is need of an update to accommodate today's work environment.
  - Employee's home must be "bona fide employer office."
    - Primary factors, secondary factors, and other factors determine bona fide employer office under the NYS TSB-M.

New York State – Convenience Rule

Factors – Bona Fide Employer Office:

- Must meet (a) the primary factor: **or**
- At least 4 secondary factors **and** 3 other factors.

Primary Factor – Bona Fide Employer Office:

- If the employee duties require use of "specialized facilities" that cannot be made available at the employer's place of business, and those facilities are available at or near the employee's home, then the home office will meet the primary factor.

Convenience Rule – Secondary Factors

1) Home office is a requirement or condition of employment.
2) Employer has bona fide business purpose for the employee's home office location.
3) Employee performs some of the core duties of employment at the home office.
4) Employee meets with clients, patients, or customers on a regular or continuous basis at the home office.
5) Employer does not provide employee with designated office space or accommodations at its regular place(s) of business.
6) Employer reimburses expenses for the home office (80%+).

Convenience Rule – Other Factors

1) Employer maintains separate telephone line and listing for home office.
2) Employee home office address/phone number listed by employer.
3) Employee uses specific area of home *exclusively* for business.
4) Employer's business is selling products and employee keeps inventory of products/samples at home office.
5) Business records of the employer are stored at home office.
6) Home office location has a sign of the employer.
7) Advertising for employer shows home office location.
8) Home office is covered by business insurance policy.
9) Employee is entitled to home office deduction.
10) Employee is not an officer of the company.

Convenience Rule

- Due to the convenience rules (many of which are outdated), it is unlikely that the test would be met for a "typical" telecommuter.
- What are the tax implications to the telecommuting employee working outside of New York?
  - Normally, state tax rules are in place to avoid "double taxation" of the same income to multiple jurisdictions.
  - The convenience rules determine where the income is "derived from," which determines any available resident tax credit to provide protection from double taxation.

Convenience Rule

<u>Example - Resident tax credit issue (double taxation)</u>:

- Employee lives and works in New York. Due to COVID-19, employer directed employee to telecommute. Employee decides to temporarily relocate out of New York to North Carolina to stay with employee's family due to COVID-19 risk.
- Employee will <u>not</u> meet New York's convenience rule. While in North Carolina, employee will be subject to New York tax and payroll withholding (workdays will be New York). Employee would be treated as "nonresident" of North Carolina, and under North Carolina tax rules, income earned while present in North Carolina <u>will also be taxed in North Carolina</u>.

Convenience Rule

Example – Resident tax credit issue (double taxation):

- Relevant issues:
  - New York may treat income earned as derived in New York, due to convenience rule factors.
  - North Carolina tax law would treat income earned while present in North Carolina as derived in North Carolina.
- Employee may be subject to tax in both New York (resident) and North Carolina (nonresident) under applicable state law.
- New York would likely disallow a resident tax credit for the taxes paid to North Carolina, as the income must be both "derived therefrom and subject to tax" in the other jurisdiction.

Convenience Rule

States that have implemented "convenience" rules:

1) Arkansas;
2) Connecticut; *
3) Delaware;
4) Massachusetts;
5) Nebraska;
6) New York; and
7) Pennsylvania.

* Applies only if other state also adopted similar convenience rules.

Convenience Rule – Final Thoughts

- The New York convenience rules in today's business climate are very outdated and will pose many challenges to New York employers and employees.
- This issue may be tested by legal challenges, as we are starting to see in other jurisdictions.
  - In October, New Hampshire announced a lawsuit against similar convenience rules of Massachusetts to protect New Hampshire residents.
  - Previous cases in New York have been successfully defended, but COVID-19 issues may change facts and circumstances.
- Several states have commented that "nexus" rules with respect to temporary changes for COVID-19 will be relaxed or suspended. <u>New York has not issued a response or guidance</u>.

New York State
Paid Family Leave

NYS Paid Family Leave

- Originally signed into law on April 4, 2016 and effective January 1, 2018, New York's Paid Family Leave program was created to provide New Yorkers with job-protected paid leave for:
  - Bonding with newborn, adopted, or fostered child;
  - Care for a family member with a serious condition; and
  - Time off when a family member is deployed abroad on active military service.

NYS Paid Family Leave

- New York's Paid Family Leave (PFL) is not the same as the Family and Medical Leave Act (FMLA).
  - FMLA is a Federal law and provides leave under certain circumstances, generally involving medical issues.
- New York PFL premiums are 100% paid by employee contributions through payroll deductions.
- Employers are not required to contribute, but may contribute or pay the entire PFL premium.

NYS Paid Family Leave

- <u>Eligible employees</u>:
  - Employees with a regular work schedule of 20 or more hours per week are eligible after 26 weeks of employment; and
  - Employees with a regular work schedule of less than 20 hours per week are eligible after 175 days worked.

Paid Family Leave – Phase-in Schedule

Effective	Paid Time Off	% Employee Avg Weekly Wage	% NYS Average Weekly Wage	Max Weekly NYS Wage Benefit
1/1/2018	8 weeks	50%	50%	$ 652.96
1/1/2019	10 weeks	55%	55%	$ 746.41
1/1/2020	10 weeks	60%	60%	$ 840.70
1/1/2021	12 weeks	67%	67%	$ 971.61

Paid Family Leave – Contribution Schedule

Effective	Premium Rate*	Maximum Annual Contribution	Maximum Weekly Contribution
1/1/2018	0.126%	$ 85.56	$ 1.65
1/1/2019	0.153%	$ 107.97	$ 2.08
1/1/2020	0.270%	$ 196.72	$ 3.78
1/1/2021	0.511%	$ 385.34	$ 7.41

* Premiums deducted from employee after-tax wages.

Paid Family Leave and COVID-19

- On April 3, 2020, Governor Cuomo passed Assembly Bill A9506B, which provides New York employees with additional protections under NYS Paid Family Leave, among other provisions.
- Law guarantees workers job protection and financial compensation in the event they, or their minor child, are subject to a mandatory or precautionary order of quarantine or isolation issued by the State of New York.
- Paid Family Leave may be used to care for a family member who has contracted COVID-19, which may qualify as a serious health condition.

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Questions