How New York's proposed budget could change the state tax credit landscape

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In brief

New York Governor Andrew Cuomo released his FY14-15 budget on January 21, 2014, which was subsequently revised by 21-day and 30-day amendments on February 12, 2014, and February 21, 2014, respectively. Click here for our summary of the budget as introduced, and here for our summary of subsequent amendments.

In addition to substantial tax reform, the budget also proposes significant changes to the state's tax credits regime. If enacted, for tax years beginning on or after January 1, 2014, such tax credit changes include: prohibiting certain retroactive tax credit claims, revising the definition of a qualified New York manufacturer, repealing the existing Investment Tax Credit for certain taxpayers, establishing a new 'refined' Investment Tax Credit, and creating a real property tax credit for qualified New York manufacturers. Several existing tax credits would also be revised, including the Brownfield Cleanup Program, the Youth Works Program, and the Empire State Commercial Production Tax Credit.

Finally, in addition to the creation and modification of tax credits, the proposed legislation would revise the manner in which the MTA Surcharge tax is calculated for taxpayers claiming tax credits on their New York State tax returns.

In detail

Elimination of retroactive credit claims

Under the proposed new law, taxpayers must claim any tax credits on an originally filed tax return, with certain exceptions. This proposed revision to the tax law would generally eliminate the ability of a taxpayer to claim tax credits that were not previously claimed on an original return.

Definition of a qualified New York manufacturer

Under the governor's proposed budget, the definition of a qualified New York manufacturer would be expanded and applied uniformly across multiple New York tax credits. These revisions include the requirement that a qualified New York manufacturer is one that either has $10 million of New York manufacturing property, or has all of its real and personal property located in New York. To the extent such requirements are not satisfied, a taxpayer or combined group may be considered a New York manufacturer if they employ at least 2,500 manufacturing employees in New York and have manufacturing property in New York worth at least $100 million dollars.

Meeting the definition of a qualified New York manufacturer would have implications to both income tax and tax credit matters. Those qualified New York manufacturers located in upstate regions would enjoy a reduction to the income tax rate (to zero) on entire net income and, therefore, would not be subject to income tax in New York. Qualified New York manufacturers would also be eligible for various tax credits, including a modified Investment Tax Credit (ITC) and a newly created refundable real property tax credit.

Investment Tax Credit

Significant revisions to the ITC are proposed under the FY 14-15 budget. The proposed ITC would be limited to certain taxpayers (e.g., qualified New York manufacturers, qualified New York agricultural businesses, and qualified New York mining businesses) with respect to property used in the production of goods for sale or research and development property for use in the experimental or laboratory sense. Many taxpayers that have previously claimed the ITC would no longer be eligible, including financial service institutions, air or water pollution control facilities, and qualified film producers. To the extent a taxpayer has unused carry forward credits at the close of a taxable year beginning January 1, 2013, and before January 1, 2014, such taxpayer shall be able to utilize its available tax credits.

Real property tax credit for manufacturers

A qualified New York manufacturer is allowed a tax credit equal to 20% of the real property taxes it paid during the taxable year related to real property in New York owned, or in certain cases leased, by such taxpayer that is principally used during the taxable year for manufacturing. Such property taxes may not have been deducted in the computation of entire net income nor would this credit be allowed for property taxes claimed if the real property taxes are included in another credit claimed by the taxpayer. Unlike other real property tax credits in New York, eligible property taxes do not include a payment in lieu of taxes made by the qualified New York manufacturer under the new credit. Any amount of credit not deductible in the current tax year is treated as an overpayment of tax to be credited or refunded.

Enhancements and extensions to existing New York tax credits

Several existing New York credits would be either extended or expanded under the proposed new law. Within the FY 14-15 budget is a two year extension of the Empire State Commercial Production Tax Credit through December 31, 2016. Under current law, this credit would expire on December 31, 2014. The Youth Works Tax Credit would also be enhanced by qualifying certain employees who work ten hours per week if the employees are enrolled in high school full time and providing an additional tax credit to employers that employ such youth for one additional year. Finally, the Brownfield Cleanup Program would be both extended and reformed under the governor's proposed budget. This enhancement would extend the credit for another 10 years through December 31, 2025, and include several other reforms such as 'bonus' credits.

Impact to the Metropolitan Transportation Business Tax Surcharge

There are several proposed changes to the metropolitan transportation business tax surcharge. The entire net income tax rate would be reduced from 5.9 percent to zero for certain qualified upstate New York manufacturers. Further, the tax would be computed, if these changes are enacted, before the deduction of any credits otherwise allowable.

The takeaway

The governor's proposed budget contains significant changes to New York tax– with a profound impact on the state's tax credit regime. From the introduction of new tax credits, the repeal of existing programs, and the extension of other key programs, businesses currently enjoying state tax credits and incentives – and those that might be eligible in the future – should track the development of New York's FY14-15 budget closely to determine the potential impact of any changes.

Let's talk

If you have any questions regarding the New York budget's tax credit implications, please contact:

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