New York - Tax reform heats up, changes likely

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In brief

New York Governor Andrew Cuomo issued a press release on January 6, 2014 in which he endorsed many of the recommendations previously made by his Tax Reform and Fairness Commission and the Tax Relief Commission. This endorsement increases the likelihood for tax reform in New York. The Governor's press release highlights several areas expected to be addressed by the legislature this year, including a merger of the corporate franchise tax and bank franchise tax, elimination of the corporate income tax on upstate manufacturers, a refundable credit against corporate and personal income tax based on a percentage of property tax paid, and other changes. The more detailed reform proposals previously issued by the Commissions also included requiring mandatory combined reporting, imposing economic nexus standards, single sales factor apportionment with customer sourcing rules, modernizing the sales tax, modifying the estate tax, updating local property tax administration, and simplifying tax administration. These proposals are also likely to be presented to the legislature. All New York taxpayers should consider the implications of tax reform and analyze the provisions in the upcoming FY 14-15 executive budget, which is expected by the end of January. [Press Release, Governor Andrew Cuomo, 1/6/14].

In detail

The Governor's release, though short on specifics, specifically endorses the following changes:

- merge the bank franchise tax into the corporate franchise tax and lower the rate of the combined tax to 6.5%
- eliminate the corporate income tax on Upstate New York manufacturers
- eliminate the 2% temporary utility assessment levied on commercial electric, gas, water and steam utility bills for industrial customers and accelerate the phase-out for remaining customers
- create a refundable income tax credit for manufacturers equal to 20% of the business's annual real property taxes
- gradually increase the estate tax exemption threshold until it reaches the federal exempt amount and lower the rate
- eliminate a series of so-called 'nuisance' taxes, and
- provide property tax relief to homeowners and renters, with restrictions.

Other changes that have been recommended by the two Commissions, but not specifically mentioned in the Governor's press release include proposals to:

- adopt a single receipts factor apportionment formula, with customer sourcing rules
- adopt full water's-edge unitary combined filing with a 50% ownership threshold (taxpayers would have the

option to make a binding seven year election to establish composition of the group)

- adopt economic nexus standards
- more effectively focus exemptions for subsidiary and investment income
- adopt 'effectively connected' income as the starting point for the corporate tax base calculation for non-U.S. corporations
- adopt combined reporting for all captive insurance companies not just those that are overcapitalized
- repeal the 'tax treaty' exception to the royalty addback provision
- revise the interest expense attribution provisions
- modify the alternative tax bases
- sales tax reform, including expansion of the sales tax base to include digital products
- reform the Investment Tax Credit
- repeal the Financial Services Investment Tax Credit
- reduce the Empire State Film Production Tax Credit allocation
- establish a statutory 14-day de minimis instate threshold before a nonresident would owe New York income taxes
- increase the sales tax annual filing threshold
- combine the MTA surcharge tax return with the corporate tax return, and
- enhance cooperation, including increased joint audits, between the State and New York City.

The takeaway

The Governor's press release is an indication that tax reform in New York, often discussed but never considered to be imminent, is likely to be presented to the Legislature in the near term. All taxpayers that currently pay tax in New York, or businesses that sell into the state, should consider the implications of these proposals.

One issue not addressed in the press release is whether New York City Mayor Bill de Blasio's proposal to increase personal income taxes on residents earning over $500,000 will be considered as part of any tax reform initiative. Changes to the City income tax have to be approved by the full state legislature and the Governor is considered lukewarm at best to tax increases in a surplus environment.

The executive budget, long the source of most New York tax legislation, is expected to be issued this month.

However, there are no guarantees for tax reform. Therefore, taxpayers should remain proactive when dealing with the State's *current* tax structure, including undertaking combined reporting analysis, examining their apportionment methodology, reviewing their sales tax liabilities and the exploring their potential qualification for the reduced tax rate on manufacturers or the investment tax credit.

Let's talk

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