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Featured article: NYC issues guidance on and reporting for OBBBA, allows R&E "catch-up" election

The New York City Department of Finance on September 9 issued Finance Memorandum 26-2, providing guidance on, and taxpayer reporting instructions for, New York City's One Big Beautiful Bill Act (OBBBA) conformity revisions enacted under New York's budget legislation, including modifications for IRC Sections 174A, 163(j), and 168(n). The Memorandum applies to New York City's Unincorporated Business Tax (UBT), General Corporation Tax (GCT), Banking Corporation Tax (BTX), and Business Corporation Tax (BCT) (collectively "the Business Taxes" or "Business Taxpayers") for tax years beginning after December 31, 2024.

IRC Section 174A. The Memorandum affirms that Business Taxpayers must disregard the federal treatment under Section 174A and instead must amortize domestic R&E expenditures in the same manner as foreign R&E expenditures under Section 174, except that the applicable period for that amortization is five years beginning with the midpoint of the tax year in which those expenditures are paid or incurred. Business Taxpayers must submit a pro forma federal Form 4562 Part VI, showing a recomputed amount of the amortization deductions. To the extent the Section 174A deduction was taken into account on a

corporate taxpayer's federal balance sheet, that balance sheet value must be adjusted to reflect only the New York City allowable portion of the deduction when reporting the value of assets on the applicable City forms.

The Memorandum also states that **no modification is required** for the transition rules pursuant to section 70302(f) of the OBBBA, which allow a "catch-up" deduction for 2022-2024 qualified domestic R&E expenditures. As a result, amounts deducted under the one-year or two-year federal income tax elections do not have to be added back.

IRC Section 163(j). The Memorandum affirms that Business Taxpayers subject to the Section 163(j) interest expense limitation must follow the applicable steps provided in FM 18-11 to report and attribute the interest expense deducted, except that the amount of the Section 163(j) limitation must be recalculated by excluding depreciation, amortization, or depletion from adjusted taxable income. Business Taxpayers must add back the incremental federal interest deduction attributable to the additional adjusted taxable income resulting from IRC Section 163(j)(8)(A)(v), measured as the difference between adjusted taxable income calculated with and without regard to that provision.

Business Taxpayers also must attach a pro forma federal Form 8990 and enter zero on line 11 of that form to calculate the New York City amount of business interest expense deduction for the current tax year and the amount of excess interest to be carried forward, if any. Carryforwards of interest expense from tax years beginning prior to January 1, 2025, are not affected by this recalculation.

IRC Section 168(n). The Memorandum affirms that Business Taxpayers must add back to their federal gross income the amount allowed as an exclusion or deduction of any depreciation of qualified production property pursuant to Section 168(n) when calculating taxable income for the Business Taxes. Business Taxpayers should deduct the depreciation of that qualified production property pursuant to Section 167(a) so that the depreciation deduction and adjusted basis reduction or any deduction or exclusion allowed by Section 168(n) does not apply.

Interest and penalty abatement. No interest or penalty will accrue on a Business Tax return filed within a valid extension period, or on an amended return for a tax year beginning after December 31, 2024, and before January 1, 2026, that solely reports modifications required by Part G of Chapter 59 of the Laws of 2026 (“Part G modifications”). When filing an original return under a valid extension or an amended return that reports OBBBA modifications resulting in additional tax liability, interest, or penalties, taxpayers must enter a special condition code “OB” in the space indicated near the top of the applicable form. Taxpayers must submit a worksheet that isolates the amount of tax liability from Part G modifications shown on the return. Each of the Business Taxes has a separate worksheet for this purpose. Taxpayers may access the

worksheets through their eServices account at www.nyc.gov/eservices. An amended return that solely reports Part G modifications must use special condition code “AB,” in the space indicated near the top of the applicable form and no worksheet is required.

Taxpayers subject to the UBT, GCT, or BTX that made an estimated payment for the 2026 tax year will not be subject to the addition to the tax pursuant to Sections 11-676(3) or 11-525(c) of the Administrative Code by reason of the increase in tax liability for the 2025 tax year solely due to the OBBBA modifications. However, estimated tax payments for any Business Taxes made after May 28, 2026, must accurately take into account those modifications.

Other OBBBA conformity developments

California legislation provides for Section 162(m) OBBBA conformity update effective for tax years beginning after December 31, 2025

California A.B. 2222, enacted on September 30, amends Cal. Rev. & Taxn. Code Sec. 24343 that the OBBBA amendments to Section 162(m) “relating to remuneration from controlled group members and allocation of deduction, shall apply, except as otherwise provided.”

Section 162(m) limits the compensation deduction of a "publicly held corporation" to $1 million per "covered employee" in the tax year when the deduction otherwise would apply. Effective for tax years beginning after December 31, 2025, the OBBBA expands how the deduction limitation applies to public corporations by adding a definition of the aggregated group that must include the publicly held corporation. The OBBBA also imposes new rules on the allocation of the $1 million deduction limitation among members of that aggregated group. (See PwC’s Insight for more on the federal changes.)

Illinois DOR issues GIL on GILTI alternative apportionment petition

The taxpayer filed a Petition for Alternative Apportionment requesting modification of the statutory apportionment formula that includes 50% of GILTI in taxable income but does not include corresponding apportionment factors. [IL DOR, IT 26-0008-GIL (Alternative Apportionment), 7/28/2026]

The petition argues that this attributes income to Illinois without equitable factor relief and proposed an alternative method by including “50% of GILTI income in the sales factor denominator.” This method “aligns income with economic activity and corrects distortion. The statutory method produces a grossly distorted result and taxation without factor representation[.]”

The DOR replied that in order to make a determination under IITA Section 304(f) as to whether the statutory apportionment provisions reflect the market for the person's goods, services, or other sources of business income, it is necessary that the taxpayer first determine its apportionment under the statutory provisions. "If the apportionment under such sections does not fairly reflect the taxpayer's market, then an alternative apportionment method may be permitted."

The Department, however, found that the taxpayer failed to provide:

- A determination of its apportionment under IITA Section 304 for the tax year;
- Information relative to the market for the taxpayer's goods and services;
- Information to support a determination of whether the statutory apportionment provisions fail to fairly reflect the taxpayer's market or fairly represent the extent of the market for the taxpayer's goods, services, or other sources of business income in Illinois; or
- Evidence that the proposed alternative method produces a reasonable result.

While the Department declined to grant the taxpayer's petition for alternative apportionment for the tax year, it stated that the taxpayer may supplement its petition with additional information as outlined above. The Department noted that 86 Ill. Adm. Code 100.3390(e)(1) requires a petition to be filed at least 120 days prior to the due date (including extensions) for the first return for which permission is sought to use the alternative apportionment method.

Massachusetts DOR issues revised corporation excise tax forms and instructions

The Massachusetts Department of Revenue has issued guidance on business taxes affected by the Massachusetts Supplemental Budget and provided links to forms and instructions that were updated on August 4. [Massachusetts Department of Revenue, New guidance on business taxes affected by the Supplemental Budget, DOR News, 8/19/2026]

The updated 2025 Massachusetts Corporation Excise Return forms provide that taxpayers who timely filed their 2025 return or timely made their 2025 extension payment prior to enactment of the Supplemental Budget may claim relief from interest or penalties on underpayments, late payments, or underpaid estimated payments resulting from the Supplemental Budget's conformity adjustments to IRC Sections 163(j)(8), 168(n), 174, 174A, and 179, and any exclusions taken under IRC Section 1400Z-2.

For taxpayers that filed their 2025 return prior to enactment of the Supplemental Budget, the Supplemental Budget requires an amended return reflecting conformity changes within 90 days of enactment (i.e., by September 10, 2026). The Supplemental Budget does not specify a deadline for estimated payment penalty and interest relief for taxpayers that have made a valid extension. However, the updated 2025 forms direct extended filers to claim penalty and interest relief with their 2025 original return, which presumably would be filed by the extended filing deadline.

Specifically, to claim relief from penalties on late payments and underpayments for the 2025 tax year for a business corporation that has a valid extension but has not yet filed a return, the business corporation must attach to its original 2025 tax return (1) Massachusetts Schedule M-2220 (Underpayment of Massachusetts Estimated Tax by Corporations) and (2) Massachusetts Schedule TDS (Taxpayer Disclosure Statement), including:

- The following statement: “Taxpayer is applying for relief related to Massachusetts conformity with the provisions of federal law P.L. 119-21” and clearly specify which IRC provision(s) are being adjusted. Relevant provisions include:
    - Domestic Research and Experimental Expense Deductions under Section 174 and Section 174A;
    - Special Depreciation Allowance for Qualified Production Property under Section 168(n);
    - Increased Dollar Thresholds for Deductible Amounts when Expensing Certain Business Assets under Section 179;
    - Modification of Limitation on Business Interest Expense Deduction under Section 163(j); and
    - Changes to the Tax Treatment of Investments in Qualified Opportunity Zones under Section 1400Z-2
- An explanation of how the adjustment was calculated, and how it is reflected in the attached Schedule M-2220.

Taxpayers are advised to visit mass.gov/dor for more up-to-date and detailed information concerning penalty and interest relief related to Massachusetts conformity with the provisions of federal law P.L. 119-21.

Massachusetts DOR announces suspension of penalties and interest for certain taxpayers impacted by OBBBA nonconformity

The Massachusetts Department of Revenue has announced the suspension of penalties and interest for certain taxpayers affected by OBBBA nonconformity. [New guidance on business taxes affected by the June supplemental budget, Mass. Dept. of Revenue, updated 9/23/2026]

Under H. 5470 (the FY 26 supplemental budget), enacted 6/12/2026, "interest and penalties shall not be imposed on an underpayment or late payment of tax for taxable years beginning in 2025 where a taxpayer filed a return ... prior to the enactment of this act that did not [take de-conformity into account], and the taxpayer files a subsequent return ... to adjust the previous return [to take these changes into account] .... within 90 days of enactment of this act." That deadline for filing was September 10, 2026.

The DOR noted that the Administration has introduced legislation to extend this deadline to March 1, 2027. “In the meantime,” the DOR announced, “we have been directed to suspend penalties and interest for affected taxpayers.”

North Carolina DOR issues FAQs on IRC conformity, R&E expensing

The North Carolina Department of Revenue issued Frequently Asked Questions (FAQs) regarding recent legislation updating North Carolina's IRC conformity and requiring Section 174A modifications (see Session Law 2026-31, S.B. 595. enacted on July 2). [NC DOR, FAQs Regarding Recent Session Law Changes, 9/11/2026]

Domestic R&E expenditures. The FAQ confirms that an individual or a corporation must add 80% of the amount of domestic R&E expenditures taken on the federal income tax return for the tax year under Section 174A(a) to AGI or FTI. The individual or the corporation is allowed to deduct 25% of the modification for domestic R&E expenditures from AGI or FTI in the subsequent four tax years. C corporations are to report the required addition on Form CD-405 Schedule H, Line 1(h), and the deduction on Form CD-405 Schedule H, Line 3(g).

The FAQs state that this adjustment for domestic R&E expenditures is effective for tax years beginning on or after January 1, 2022, for taxpayers that "elect for federal income tax purposes the retroactive application of Section 174A(a)" for a tax year beginning in 2022, 2023, or 2024. This includes any deduction for unamortized domestic R&E expenditures paid or incurred before January 1, 2025, under OBBBA section 70302(f)(2)(A) and applies to all taxpayers, not just small businesses.

Filing returns. Taxpayers impacted by North Carolina's 2026 IRC conformity legislation should file (or amend) the applicable North Carolina tax return and include any necessary documentation supporting the taxpayer's calculation of North Carolina taxable income. If an amended return results in additional tax due, the taxpayer will owe the additional tax along with applicable penalties and interest on tax not paid by the original due date. However, taxpayers may request a waiver of penalties within the provisions of the Department's Penalty Waiver Policy.

Pennsylvania issues new Section 163(j) guidance, Philadelphia issues BIRT OBBBA guidance

The Pennsylvania Department of Revenue (DOR) on September 10 issued Corporation Tax Bulletin 2026-01, providing guidance for the Pennsylvania treatment of IRC Section 163(j) effective for tax years beginning on or after January 1, 2025. Further, the Philadelphia DOR issued City Business Income and Receipts Tax (BIRT) guidance regarding nonconformity with the federal 2025 reconciliation bill, the One Big Beautiful Bill Act (OBBBA). [Corporation Tax Bulletin 2026-01, issued 9/10/2026; Advisory notice: Philadelphia joins Pennsylvania in decoupling from certain federal tax provisions in the One Big Beautiful Bill Act, issued 9/17/2026]

The Pennsylvania Section 163(j) guidance provides that taxpayers should calculate their federal interest expense deduction (under the pre-OBBBA limitation) on a separate-entity basis, essentially negating prior guidance, which provided that taxpayers would have no Pennsylvania separate- company interest expense limitation for a tax year if the federal consolidated group was not subject to a limitation. The Philadelphia guidance implements legislation affecting 2025 tax year BIRT filers for the Section 163(j) limitation, immediate expensing of qualified production property (QPP), and deductions for R&E expenditures.

Click here for PwC's Insight on the Pennsylvania and Philadelphia guidance.

Let’s talk

For a deeper discussion of how these issues might affect your business, please contact:

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