



## 2024 New York Tax Update – Year in Review

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Published Date: Feb 1, 2025

2024 was yet another busy year for New York taxes. The Budget was, once again, full of new and interesting tax provisions, albeit lighter on changes than the last few years. There were various highlights, including new rules regarding representatives, guidance from New York City on changes to the Business Corporation Tax, and a challenge to the Tax Department’s New Corporate Regulations related to Public Law 86-272.

For those unable to stay up to date with New York’s tax changes throughout 2024, this article provides key updates on many of the important tax changes as we head into 2025.

### 2024 – 2025 Budget Bill

On Apr. 20, 2024, 19 days after the Apr. 1 deadline, New York Governor Kathy Hochul signed into law several bills, including A8809/S8309, A8808/S8308, and A8806/S8306 (collectively, the “Budget”), which enact into law New York State’s \$237 billion budget for the fiscal years 2024–2025. Here are some of the Budget highlights:

**Amendment of Sales and Use Tax Returns.** Part H of the Budget adopted specific provisions in Article 28 to establish a new process and timeline for filing amended sales tax returns. Effective for filing periods beginning on or after Dec. 1, 2024, businesses required to collect tax under Tax Law Article 28 (Sales and Compensating Use Taxes) are permitted to amend previously filed returns if the amendment does not reduce or eliminate a past-due tax liability related to that specific filing period. If no past-due tax liability exists, and the amended return results in an overpayment, the business can claim a credit or request a refund. This claim must be made within three years from the original tax due date or within two years from the date the tax was paid—whichever is later. The Department will impose stricter penalties for filing false Sales and Use Tax returns—specifically, any person who willfully files a return containing false

information intending to reduce or eliminate tax liability will face a penalty of up to \$1,000 per return.

**Itemized Deduction Limitation.** Part A of the Budget extends the current itemized deduction limit for high-income earners through 2030, five years beyond its previous expiration date. This provision affects individuals with New York adjusted gross income exceeding \$10 million, limiting their itemized deductions to 25% of their charitable contributions. This extension serves multiple purposes in New York's fiscal strategy. First, it maintains a significant revenue stream for the state by limiting tax deductions for the highest earners. However, preserving the 25% deduction for charitable contributions continues to provide an incentive for philanthropic giving among wealthy individuals. The stability offered by this five-year extension also provides predictability for both tax planning and state revenue projections. These itemized deduction limits have been in place since 2010.

**Clarification of the Metropolitan Commuter Transportation District (“MCTD”).** Part C of the Budget clarifies that effective Jan. 1, 2024, the Metropolitan Commuter Transportation Mobility Tax applies to the net earnings from self-employment of individuals attributable to the MCTD, including the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester. The tax is imposed at a rate of .34 percent if such earnings attributable to the MCTD exceed \$50,000 for the tax year.

**Cannabis Taxation.** Two significant changes affect cannabis taxation.

1. For medical cannabis, the excise tax rate will decrease from 7% to 3.15%, making treatment more affordable for patients. The medical cannabis trust fund revenue will now be distributed equally between manufacturing and dispensing counties, eliminating previous allocations to drug abuse prevention and law enforcement programs.
2. Effective June 1, 2024, the previous THC-based potency tax on adult-use cannabis products has been replaced with a wholesale excise tax of 9% (Part L of the Budget). The state maintains a retail excise tax of 9% and a local retail excise tax rate of 4%. Additionally, the adult-use cannabis products tax will be administered under the provisions of Tax Law Article 28, beginning Dec. 1, 2024. By removing the THC potency tax, businesses no longer need to perform detailed THC-content calculations to determine tax liabilities. This is particularly beneficial for smaller businesses and cultivators, reducing administrative overhead. Revenue collected from cannabis taxes continues to be directed toward social equity and community reinvestment programs, as outlined in New York’s Marijuana Regulation and Taxation Act. These funds are used to support communities disproportionately affected by the War on Drugs, provide resources for cannabis-related workforce development, and aid small business incubators for social equity applicants in the cannabis industry. Simplifying the cannabis tax system is expected to improve compliance rates among cannabis operators and lower barriers to entry for new businesses.

**Closing the Amended Return Loophole.** The Budget in Part D modifies Tax Law section 689 and section 1089 to permit the Tax Department to take action on an amended return (such as issuing a deficiency notice or denying a refund claim) when the taxpayer previously filed a petition with the Division of Tax Appeals for the tax year. Note that the burden of proof can still shift to the Tax Department if it increases the amount of a statutory notice.

**Delinquent Sales Tax Vendor Provisions Extended.** Part G of the Budget provides a five-year extension of Tax Law section 1137 that authorizes the Tax Department to mandate a non-compliant sales tax vendor to deposit sales tax collections into segregated accounts in trust for the state and to suspend or revoke a vendor's sales tax certificate of authority if the vendor did not comply with the segregated account program's requirements. The extension is authorized through Dec. 31, 2029.

**Commercial Security Tax Credit Program.** The newly established commercial security tax credit program represents a significant initiative to combat retail theft across New York State. Qualified businesses with 50 or fewer employees can receive a tax credit of \$3,000 per retail location when they implement approved security measures. The program sets different qualifying thresholds based on business size: companies with 25 or fewer employees must spend at least \$4,000 on security measures, while those with 26-50 employees must invest a minimum of \$6,000 per location. The program encompasses a wide range of eligible security measures, including professional security officers, surveillance systems, perimeter security lighting, access control systems, and various anti-theft devices approved by the New York State Division of Criminal Justice Services. To qualify, businesses must also participate in community anti-theft partnerships with local law enforcement agencies. The program has been carefully structured with an annual cap of \$5 million in total credits, and businesses must apply by Oct. 31 each year. This initiative demonstrates New York's commitment to supporting small businesses while addressing the growing concern of retail theft.

**Newspaper and Broadcast Media Jobs Tax Credit Program.** The Budget introduces a \$5,000 credit for net new jobs at eligible newspaper and broadcast media companies, up to \$20,000 per employer. The program also offers a credit of 50% of eligible wages, up to \$50,000 of wages per employee and \$300,000 total per employer, for eligible retained jobs. Eligible businesses must be independently owned, or for print media businesses, showing a 20% reduction in jobs or circulation over a five-year period. The credit applies to tax years 2025, 2026, and 2027. The credit is capped at \$30 million per tax year, with up to \$4 million for the new jobs credit and up to \$26 million for the existing job credit (S.8306-C/A.8806-C, Part AAA).

**Authorized Combative Sports Tax.** All authorized combative sports, including kickboxing, MMA, boxing, and wrestling, are now subject to a uniform tax rate of 3% on the gross receipts from ticket sales. The previous tax rate for some combative sports was 8.5%, and the new rate standardizes the tax rate across all combative sports to reduce the burden on events (MMA and kickboxing) that previously faced higher rates.

**Housing Development Incentives.** The Budget includes several housing development incentives aimed at addressing the ongoing housing crisis and boosting the supply of affordable housing, particularly in New York City:

1. *Affordable Housing from Commercial Conversions.* The program provides tax incentives for developers who convert nonresidential properties (e.g., office buildings) into affordable housing units. Eligible conversions must create six or more rental units, with at least 20% as affordable, with projects starting by June 30, 2031, and completed by Dec. 31, 2039 (S.8306-C/A.8806-C, Part GG).
2. *Extension of 421-a Program.* The 421-a program provides property tax exemptions to developers who include affordable housing units in new residential projects. The program, which was set to expire, has been extended for six years for projects already in the development pipeline. Only projects that commenced before June 15, 2022, can qualify for the extended benefits (S.8306-C/A.8806-C, Part T).
3. *485-x Tax Incentive.* A new 485-x tax incentive has been introduced to encourage the construction of affordable housing units. The program replaces the expired 421-a program for new construction. Developers must allocate a certain percentage of units as affordable, with specific income thresholds based on Area Median Income (AMI). The program offers four “affordability options” based on the size of the project and the percentage of affordable units. There is up to a 100% real property tax exemption for the construction period and the first 10 years of certain projects (S.8306-C/A.8806-C, Part U).
4. *Accessory Dwelling Units.* There is a new statewide real property tax abatement for newly constructed “accessory dwelling units.” The credit is 100% of the increased property tax for the first five years, after which it declines by 25% annually. The exemption is limited to \$200,000 per property (S.8306-C/A.8806-C, Part GG).

**Items of Interest Left Out of the Budget.** Perhaps of more interest are items that did not make it into the Budget:

- Increases in personal income tax rates for earners above \$5 million and over \$25 million.
- Repeal of the sales tax exemption for private aircraft and boats valued over \$230,000.
- A requirement that vacation rental marketplace providers collect sales tax on vacation rentals that they facilitate.
- Mandatory New York State S corporation elections.

**A Challenge to the Tax Department’s New Corporate Regulations re: P.L. 86-272.** Public Law 86-272 (P.L. 86-272) was enacted to limit a state’s power to impose a net income tax on an interstate business in specific situations. P.L. 86-272 generally provides that a state cannot assess a net income tax if an out-of-state company’s only business activity carried on within the state is

limited to the solicitation of orders for sales of tangible personal property, which are approved and fulfilled by shipment/delivery from a point outside of the state. In 2021, the Multistate Tax Commission (MTC) issued a revised policy statement addressing the protections afforded by P.L. 86-272 in relation to activities conducted via the internet.<sup>1</sup> In response, specific states have begun issuing their own guidance, often incorporating certain provisions of the MTC statement.

The New York Tax Review for 2023 covered the adoption of New York’s new Corporate Tax Reform Regulations in detail.<sup>2</sup> Those regulations included N.Y. Comp. Codes R. & Regs. tit. 20, section 1-2.10, on P.L. 86-272, known as the internet activities rule. The regulation is retroactive to 2015. The regulation includes a list of activities protected under federal law but also states that “in order to be exempt by virtue of Public Law 86-272, the activities in New York State of employees or representatives, or activities engaged in via the Internet, must be limited to the solicitation of orders for the sale of tangible personal property.” The Revised Regulations further provide multiple examples of unprotected activities conducted via the internet (e.g., providing internet chat assistance to customers).

American Catalog Mailers Association (ACMA) filed a complaint on Apr. 5, 2024, with the New York Supreme Court of Albany County requesting that the Revised Regulations be deemed invalid.<sup>3</sup> The complaint states, in part, that the Revised Regulations “effectively erase longstanding federal protections against overreach by state tax agencies, such as the Department,” and that “only Congress, not the Department, has the power to amend or repeal this federal statute.” ACMA argues that the Revised Regulations directly conflict with and effectively rewrite P.L. 86-272 through its guidance on internet activities and, therefore, are invalid.

ACMA is a Washington-based not-for-profit organization created to advocate for its merchant members who sell merchandise through catalogs, by telephone and/or over the internet. ACMA argued that its members “have relied in good faith on the plain text of P.L. 86-272, not to mention decades of settled law and practice, could suddenly find themselves at risk of audits by the Department stretching back nearly a decade, and ultimately imposing taxes, penalties and interest.”

ACMA also argued against the Department’s position that the Revised Regulations are retroactive to Jan. 1, 2015, citing that the MTC’s guidance from which the Revised Regulations stem wasn’t published until 2021.

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<sup>1</sup> A copy of the MTC’s statement can be found here: <https://www.mtc.gov/wp-content/uploads/2023/04/025-MTC-Statement-on-PL-86-272.pdf>.

<sup>2</sup> 2023 New York Tax Update – Year in Review, Daniel Kelly February 1, 2024, TaxStringer, available at: <https://www.nysscpa.org/most-popular-content/2023-new-york-tax-update-year-in-review#sthash.6qjJ8DVZ.dpbs> (the complete set of adopted regulations is available through the Tax Department’s website here: [https://www.tax.ny.gov/bus/ct/corp\\_tax\\_reform.htm](https://www.tax.ny.gov/bus/ct/corp_tax_reform.htm)).

<sup>3</sup> A copy of the complaint is available here: <https://www.brannlaw.com/wp-content/uploads/2024/04/2024-04-05-ACMA-DJ-Complaint.pdf>.

The case could take years to resolve; therefore, taxpayers who have historically claimed P.L. 86-272 protection should evaluate their operations to confirm their position is still valid considering the new guidance.

## **Business Corporation Tax Guidance**

On Sept. 12, 2024, the New York City Department of Finance (DOF) issued revised guidance on its Business Corporation Tax (BCT) regulations after announcing earlier this year it was developing regulations to implement the BCT in light of recent state regulations promulgated in Dec. 2023.

The revised guidance<sup>4</sup> discusses various intended deviations in the BCT treatment of certain items from the New York State corporate franchise tax regulations. The Department has revised its prior position on several issues, particularly regarding the allocation of flow through income from partnerships and the business address presumption. Below is a summary of a few of the relevant regulatory updates and key deviations from New York State's corporate franchise tax regulations.

### *Partnership Apportionment*

The DOF previously announced an intention to deviate from the aggregate methodology New York State uses to apportion partnership receipts. In particular, the DOF suggested that it would apply the New York City Unincorporated Business Tax's income allocation methodology to the distributive shares of income that corporations receive from partnerships. That proposal created uncertainty around income classification, income allocation, losses, expense attribution, and nexus, among other things. After considering public comments received on this proposed approach, the DOF decided to abandon this method. The DOF was not specific about how it will approach apportioning or allocating income from partnerships, but the Notice implies New York City will conform to the New York State corporate franchise tax regulations. This method should result in consistent apportionment methods and tax calculations for New York State and New York City corporate tax purposes, though we await the issuance of the City's final regulations.

### *Evidentiary Standard*

The DOF previously announced an intention to deviate from the "clear and convincing evidence" standard New York State adopted for overcoming presumptions that apply to income apportionment. Despite receiving comments from practitioners and policy advocates supporting conformity with New York State standards, the DOF's revised guidance states it intends to propose a regulatory framework based on individual facts and circumstances, relying on case law for determining which evidentiary standard applies. The practical implication of this decision

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<sup>4</sup> NYC Department of Finance Guidance on the BCT:  
<https://www.nyc.gov/assets/finance/downloads/pdf/24pdf/bct-regulations-update.pdf>

remains uncertain, and the specific language (and examples) used in the regulation package will be important.

#### *Sourcing Passive Investment Customer Receipts*

Under the New York State corporate franchise tax regulations, receipts from a passive investment customer (“PIC”)<sup>5</sup> for management, administration, and distribution services may be sourced to New York in proportion to the proportionate value of the PIC owned by investors and beneficial owners located in New York. This approach has informational requirements that can be difficult for many investment managers to meet. In particular, if the PIC's investor and beneficial locations are unknown, in whole or in part, the New York State regulations appear to require the taxpayer to presume that receipts from the PIC arise from the location where the investment management agreement is managed by the PIC.

In the Notice, the DOF indicated it would not follow this backup presumption and may instead presume that 8% of receipts from investors and beneficial owners with unidentifiable locations arise from New York City.

#### *Billing Address Presumption for Digital Products/Services*

New York State currently applies a billing address presumption to receipts from other services and business activities and from digital products/services if those taxpayers meet certain requirements. One of those requirements includes that the taxpayer must have more than 250 customers for that same product or service, or substantially similar products or services. DOF has indicated that the same 250-customer threshold that applies for New York State purposes will also apply for City purposes.

#### *IRC Section 860E Decoupling*

The DOF said that it intended to deviate from New York State, which decoupled from IRC Section 860E when it comes to reporting excess inclusion income (EII) on the New York State corporate franchise tax return. In response to comments expressing concern over this deviation, the DOF responded, “The York City] Administrative Code ... contains no statutory modification relating to excess inclusion. The Department intends to maintain conformity with the federal taxable income and retain the excess inclusion when calculating [entire net income], as has been historically done under the General Corporation Tax.” The DOF further stated that the feedback received noted concerns about the calculation of net operating losses in a year in which there is EII. The DOF acknowledged that “[t]his feedback highlights practical concerns regarding the

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<sup>5</sup> A “passive investment customer” is defined by 20 NYCRR § 4-4.1(b)(3) as: “a customer that is an entity, such as a company or corporation (other than a publicly traded corporation), limited partnership, general partnership, limited liability company, limited liability partnership, or trust, that pools capital from passive investors for the purpose of trading or making investments in stocks, bonds, securities, commodities, loans, or other financial assets, but that does not otherwise conduct a trade or business. Passive investment customer does not include an investment company as defined in section 210-A(5)(d).”

integration of the excess inclusion minimum into the BCT framework." The DOF plans to issue additional guidance on this issue as it drafts the proposed regulations.

The DOF's Notice is a non-binding summary of technical rules it expects to adopt in its BCT regulations, and implies that, apart from those rules, its proposed regulations will conform to the New York State corporate franchise tax regulations. Until the DOF releases the language of its proposed regulations, the exact form of those regulations and the technical application of the statute to some key calculations will remain uncertain and unresolved.

### **New Rules Regarding Representatives**

On Sept. 27, 2024, Gov. Hochul signed A10222/S09713 into law, which amends Tax Law § 2014. The new law expands the list of individuals who may appear on behalf of taxpayers before the division of tax appeals to include any person of the taxpayer's choosing who is at least 18 years of age. According to the bill's memo, taxpayers are currently foreclosed from utilizing individuals they trust who could effectively represent their interests. For example, family members, trusted confidants, or community service providers who are ready, willing, and able to effectively communicate a taxpayer's position or work through the issue are unable to provide assistance in a potentially stressful situation. Additionally, under current law, a tax return preparer is unable to advocate for their clients and defend their work product unless that preparer is also an attorney, certified public accountant or enrolled agent with the Internal Revenue Service. The bill fails to address whether this change overrules the rules for representatives in a mediation before the Bureau of Conciliation and Mediation Services, which is more restrictive.<sup>6</sup>

### **Interest Rates**

Interest rates continued to run at extremely high rates from late 2023 through 2024. During all of 2024, the income tax late payment and assessment interest rate was 10.5%, withholding and corporation tax interest rates were 12%, and the sales tax interest rate was 14.5%.<sup>7</sup> Despite these record-high interest rates, there is a bit of positive news for the first quarter of 2025, as the Department has lowered rates for three of the four tax types mentioned above. The current income tax late payment and assessment interest rate is down to 9.5%, while the withholding and corporation tax interest rates are down to 11%. The sales tax interest rate remains steady. This decrease also impacted the rate of refunds, which decreased from 7% to 6% across the board.<sup>8</sup>

2024 was another busy year for New York tax purposes. This article covers many key updates, but there is always more to discuss. I look forward to seeing what 2025 has to offer.

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<sup>6</sup> See Tax Law § 170(3-a)(d).

<sup>7</sup> A link to the Tax Department's 2024 interest rate table is available at: <https://www.tax.ny.gov/pay/interest/2024/p1.htm>.

<sup>8</sup> A link to the Tax Department's 2025 interest rate table is available at: <https://www.tax.ny.gov/pay/interest/2025/p1.htm/>.



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