

New York

New York Businesses, Practitioners Await Guidance on Corporate Tax Changes

As the new year approaches, businesses and practitioners are waiting for guidance from the New York Department of Taxation and Finance on details of the sweeping tax cuts enacted in 2014, including a major tax break for manufacturers.

Manufacturing companies are among the biggest winners under the new law, which reduced the business income base rate for qualified manufacturers to zero percent, retroactive to Jan. 1, 2014.

“These new laws are a great benefit to manufacturers,” Brian Gordon, state and local tax director at the accounting firm Sanders, Thaler, Viola & Katz LLP, told Bloomberg BNA in a Nov. 25 e-mail.

“Since they are effective for 2014, tax preparers should ensure that they understand these laws so they can take advantage of them this coming filing season.”

‘Qualified Manufacturer.’ One of the areas in which practitioners are awaiting guidance is in the definition of “qualified manufacturer.” Under the new law, a qualified manufacturer is generally defined as one with at least \$1 million of manufacturing property and at least 50 percent of receipts from manufacturing, according to a summary of tax provisions released by the department in April.

Leah Robinson, a partner with Sutherland, Asbill & Brennan LLP, told Bloomberg BNA that the topic is “generating a lot of buzz.”

“Much of the statute is rather straightforward, but there are some aspects that would benefit from clarification,” she said in a Dec. 1 e-mail.

Robinson said tax practitioners are interested in guidance on combined reporting, specifically whether a single member of a combined group is considered a qualified manufacturer if it meets the qualifications but the group as a whole doesn’t.

“The statute clearly contemplates a non-combined separate entity qualifying and contemplates an entire group qualifying or failing to qualify as a group,” she said. “But the statute does not appear to prevent one member of the group from qualifying on its own. In fact, the lack of prohibition, coupled with the specification that for purposes of computing the tax bases, a combined group should be treated as a single corpora-

tion ‘except as otherwise provided’ appears to leave open the possibility.”

Robinson also said some practitioners are wondering whether the department will restrict the tax benefit in some way because the tax break “may be bigger than the Legislature realized.”

Geoffrey Gloak, a department spokesman, told Bloomberg BNA in a Dec. 2 e-mail that two technical memorandums with guidance on corporate tax reform are expected to be issued by early January.

One will cover “the new real property tax credit and rate reductions provisions targeted to manufacturers.” The second, he said, will address “transitional filing provisions for taxpayers affected by corporate tax reform (e.g. estimated payments, extensions of time to file, short period returns, and dissolution).”

Accounting Reserve Issue. Some accounting firms are also grappling with how to advise clients on the financial accounting reserve issue related to the qualified manufacturer benefit, Robinson said. She said the benefit may be challenged as discriminating against out-of-state companies in violation of the Commerce Clause.

For companies with reserve requirements, she said, the question becomes: “Do you have to reserve for the possibility that someone else will challenge” the law and the court requires paying back the taxes?

Kenneth Pokalsky, vice president of government affairs at the Business Council of New York State, said manufacturing companies are interested in guidance on how a combined report determines whether manufacturing activities are inside or outside the combined report.

“The reason why those questions come up is because we changed the standard for creating combined reports,” Pokalsky told Bloomberg BNA on Nov. 24, referring to the law’s adoption of full unitary water’s-edge combined reporting.

Pokalsky said the question of who is a manufacturer isn’t an issue because “we’ve had differential treatment of manufacturers” in various provisions of the tax code for a long time.

Clarifications, Corrections. Pokalsky said he expects the Legislature to draft a “clean-up” bill in 2015 that will deal with technical and language issues, some of the “unintended consequences” of the law and perhaps some larger policy issues. He said some of the unintended consequences are “fact-dependent.”

Gordon said additional clarification is needed regarding the state's new economic nexus standard.

"Clarification is needed as far as the extent that Public Law 86-272 does, or does not, protect against taxation of out of state corporations," he said. "Also, the determination and calculation of economic nexus for cor-

porate partners is confusing, and could lead to errors in tax calculations. I believe that should be clarified."

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