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NYC Corporate Tax “Bright Line” Economic Nexus Adopted and NYC Pass-Through Entity Tax Effective Date Moved Up

New York State Governor Kathy Hochul has signed into law a bill that imposes “bright-line” economic nexus based on in-City receipts, applicable to tax years beginning on or after January 1, 2022, under the New York City corporate business tax. Ch. 555, N.Y. Laws of 2022 (A. 10506, S.9454). The law enacted last week provides, among other things, that corporations “deriving receipts” of \$1 million or more from New York City sources in the tax year will be subject to City corporate tax, regardless of whether they otherwise do business, employ capital, own or lease tangible property, or maintain an office in the City.

Although economic nexus has been in place since 2015 for New York State corporate tax purposes—with the threshold currently set at \$1.138 million of receipts from in-State sources—until now, the Legislature had not enacted broad-based economic nexus legislation for New York City corporate tax purposes. As a result, for the past seven years, there have been significantly different nexus standards for the State and City corporate taxes.

Also similar to the State tax, a corporation with less than \$1 million of New York City receipts will nonetheless meet the economic nexus threshold for the tax year if it (i) has at least \$10,000 of City receipts, (ii) is part of a unitary group that meets the ownership test for combination, and (iii) the aggregate City receipts of the unitary

group are at least \$1 million, unless the corporation cannot be included in a City combined return. The \$1 million threshold is subject to annual adjustment by New York City if the consumer price index has changed by at least 10 percent in the calendar year.

The legislation does not apply to the City general corporation tax (applicable only to S corporations) or to the City unincorporated business tax (“UBT”).

CORPORATE PARTNER ECONOMIC NEXUS

Another change is to the existing nexus provisions for corporate partners that will cause a corporate partner in a partnership that is “deriving receipts” from City activities to be subject to City corporate tax “as described in the regulations of the commissioner of finance.” A literal reading of the change could be interpreted to mean that *any* amount of City receipts earned by the partnership will cause the corporate partner to have nexus with the City. However, if the City were to issue a regulation like the current New York State draft regulation applicable to corporate partners, then a corporate *general* partner would only meet the economic nexus threshold if its own City receipts when combined with the City receipts of the partnership total at least \$1 million, and a corporate *limited* partner would also need to be directly or indirectly engaged in the partnership’s business activities to meet the threshold.

ACCELERATES NYC PASS-THROUGH ENTITY TAX

The New York City elective pass-through entity tax, enacted in April 2022 and previously not available until 2023, has been accelerated and is now available for tax years beginning on or after January 1, 2022. For 2022, the election must be made by March 15, 2023. However, the City pass-through entity tax election can only be made if a timely New York State election has been made which for 2022 has been extended to September 15, 2022. As a result, if an entity wants to make a City election for 2022, it must first make a State election by **September 15, 2022**.

CREDIT OF CORPORATE TAX AND UBT AGAINST OTHER CITY TAXES

The amendments allow the Commissioner of Finance to apply overpayments of City corporate tax or UBT to any New York City tax liabilities, including excise taxes, before the overpayment can be used to offset certain unpaid New York State taxes under N.Y. Tax Law § 171-m for which a tax warrant has been issued.

For additional information about the legislation, contact **Irwin M. Slomka**, **Craig B. Fields**, or another member of Blank Rome's **State + Local Tax** group.

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