

## 5 KEY TAKEAWAYS

# New York Tax Update

On September 5th, [Kilpatrick](#) tax partner [Jeff Reed](#) presented during a webinar hosted by HalfMoon Education, Inc. The webinar discussed recent New York tax developments.

Here are five key takeaways from the webinar:

# 1

### Corporate Tax Regulations Finalized

The New York corporate tax system was reformed effective 2015. The intention was to modernize the New York corporate tax system by implementing mandatory unitary combined reporting, and market-based sourcing. The different tax regime for banking corporations was also eliminated. After going through many iterations, the regulations were finalized in late 2023. Over 400 pages long, the regulations perhaps most controversially adopt the MTC's position with respect to internet activities blowing PL 86-272 protection. With respect to combined reporting, the regulations provide several presumptions relating to newly-formed and acquired corporations and when they will be considered unitary. With respect to sourcing, the regulations provide sourcing rules for over 50 categories of receipts, and also provide guidance with respect to "intermediary transactions" (looking through the immediate customer to the ultimate customer in a transaction).

# 2

### New York Division of Tax Appeals Guidance on Incentives

Qualified New York manufacturers receive a variety of benefits, including a 0% tax rate on business income, and a real property tax credit. A recent case presents the issue of whether the incentive is unconstitutionally discriminatory by favoring New York manufacturing activity relative to manufacturing activity outside the state. The Division of Tax Appeals declined to address this issue. A different case determines that the use of third-party contract manufacturers to perform the manufacturing activity does not cause one to lose the ability to qualify as a New York manufacturer for purposes of receiving incentives. Qualified emerging technology companies ("QETCs") are eligible for a refundable credit. The New York Division of Tax Appeals recently determined that a combined group as a whole must qualify as a QETC to be eligible for the refundable credit; if one or two members of the group individually meet the definition of a QETC it is lost if those members are part of a combined group that does not meet the eligibility requirements.

# 3

### Sales of Interests in Pass-Through Entities by New York Nonresidents

Nonresidents of New York are taxed on their interests from New York sources. A recurring issue is determining how much, if any, income should be sourced to New York where a nonresident sells interests in a business that operates in New York or the assets of a New York business. This is a heavy audit area with taxpayers generally taking the position that the sale of interests in intangibles should be sourced to the state of domicile and the tax department taking the position that some portion of the sale proceeds should be sourced to New York (often measured by BAP). The presentation discussed some recent case law in this area.

# 4

### Natural Persons Held Responsible for Business Sales Tax

Some state tax departments will only go after individuals for a business's sales tax liabilities where the sales tax was collected and not remitted. New York, on the other hand, generally holds owners of the business responsible for the sales tax liabilities of the business – this may be true even where the owner has a passive role in the business and is not responsible for the day-to-day management of the business. The webinar discussed recent case law in the responsible person area.

# 5

### Return to Office Policies and Telecommuting

Many employees became accustomed to working from home during the pandemic – they may now be resistant to going to the office. In response, employers have been fashioning "return to office" policies that encourage or require employees to work from the office at least a few days a week. Such policies present several state tax issues, including nexus, and state tax withholding, especially where employees work from home in one state while being based at an office in another state. The panel discussed New York's controversial "convenience of the employer" rule and practical tips for navigating multi-state telework situations.