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N.Y. Tax Law Sections 860 to 866 (Art. 24-A)

§ 860. Definitions.

For purposes of this article:

(a) Eligible partnership. Eligible partnership means any partnership as provided for in section 7701(a)(2) of the Internal Revenue Code that has a filing requirement under paragraph one of subsection (c) of section six hundred fifty-eight of this chapter other than a publicly traded partnership as defined in section 7704 of the Internal Revenue Code. An eligible partnership includes any entity, including a limited liability company, treated as a partnership for federal income tax purposes that otherwise meets the requirements of this subdivision.

(b) Eligible S corporation. Eligible S corporation means any New York S corporation as defined pursuant to subdivision one-A of section two hundred eight of this chapter that is subject to tax under section two hundred nine of this chapter. An eligible S corporation includes any entity, including a limited liability company, treated as an S corporation for federal income tax purposes that otherwise meets the requirements of this subdivision.

(c) Electing partnership. Electing partnership means any eligible partnership that made a valid, timely election pursuant to section eight hundred sixty-one of this article.

(d) Electing S corporation. Electing S corporation means any eligible S corporation that made a valid, timely election pursuant to section eight hundred sixty-one of this article that is either an electing resident S corporation or electing standard S corporation.

(e) Taxpayer. Taxpayer means any electing partnership or electing S corporation.

(f) Pass-through entity tax. Pass-through entity tax means the total tax imposed by this article on electing partnerships and electing S corporations.

(g) Direct share of pass-through entity tax. Direct share of pass-through entity tax means the portion of pass-through entity tax calculated on pass-through entity taxable income that is also included

in the taxable income of a partner or member of the electing partnership or the taxable income of a shareholder of the electing S corporation under article twenty-two of this chapter.

(h) Pass-through entity taxable income. Pass-through entity taxable income means: (1) In the case of an electing partnership, the sum of (i) all items of income, gain, loss, or deduction derived from or connected with New York sources to the extent they are included in the taxable income of a nonresident partner subject to tax under article twenty-two under paragraph one of subsection (a) of section six hundred thirty-two of this chapter; and (ii) all items of income, gain, loss, or deduction to the extent they are included in the taxable income of a resident partner subject to tax under article twenty-two of this chapter.

(2) In the case of an electing standard S corporation, the sum of all items of income, gain, loss, or deduction derived from or connected with New York sources to the extent they would be included under paragraph two of subsection (a) of section six hundred thirty-two of this chapter in the taxable income of a shareholder subject to tax under article twenty-two of this chapter.

(3) In the case of an electing resident S corporation, the sum of all items of income, gain, loss, or deduction to the extent they are included in the taxable income of a shareholder subject to tax under article twenty-two of this chapter.

(i) Taxable year. An electing partnership's or electing S corporation's taxable year pursuant to this article shall be the same as the electing partnership's or electing S corporation's taxable year for federal income tax purposes.

(j) Electing resident S corporation. An electing resident S corporation is an electing S corporation that certifies at the time of its election that all of its shareholders are residents of New York for purposes of article twenty-two of this chapter.

(k) Electing standard S corporation. An electing standard S corporation is an electing S corporation that is not an electing resident S corporation.

§ 861. Pass-through entity tax election.

(a) Any eligible partnership or eligible S corporation shall be allowed to make an annual election to be taxed pursuant to this article.

(b) In order to be effective, the annual election must be made (1) if the entity is an S corporation, by any officer, manager or shareholder of the S corporation who is authorized under the law of the state where

the corporation is incorporated or under the S corporation's organizational documents to make the election and who represents to having such authorization under penalty of perjury; or (2) if the entity is not an S corporation, by any member, partner, owner, or other individual with authority to bind the entity or sign returns pursuant to section six hundred fifty-three of this chapter.

(c) The annual election must be made by the due date of the first estimated payment under section eight hundred sixty-four of this article and will take effect for the current taxable year. Only one election may be made during each calendar year. An election made under this section is irrevocable as of the due date.

(d) Special rules for electing S corporations. (1) An electing S corporation must certify at the time of its election that all shareholders are residents of New York for purposes of article twenty-two of this chapter to be considered an electing resident S corporation.

(2) If an electing S corporation does not make a certification under paragraph one of this subsection at the time of its election, the electing S corporation is automatically treated as an electing standard S corporation.

(3) If an electing S corporation makes a certification under paragraph one of this subsection to be an electing resident S corporation, this certification is irrevocable as of the due date of the election.

§ 862. Imposition and rate of tax.

A tax is hereby imposed for each taxable year on the pass-through entity taxable income of every electing partnership and every electing S corporation. This tax shall be in addition to any other taxes imposed under this chapter and shall be determined in accordance with the following table:

For each taxable year beginning on or after January first, two thousand twenty-one: If pass-through entity taxable income is: Not over \$2,000,000 6.85% of taxable income. Over \$2,000,000 but not over \$5,000,000 \$137,000 plus 9.65% of the excess over \$2,000,000. Over \$5,000,000 but not over \$25,000,000 \$426,500 plus 10.30% of excess over \$5,000,000. Over \$25,000,000 \$2,486,500 plus 10.90% of the excess over \$25,000,000.

§ 863. Pass-through entity tax credit.

(a) Personal income tax credit.

(1) A taxpayer subject to tax under article twenty-two of this chapter that is a direct partner or member in an electing partnership or a direct shareholder of an electing S corporation subject to tax under

this article shall be allowed a credit against the tax imposed pursuant to article twenty-two of this chapter, computed pursuant to the provisions of subsection (kkk) of section six hundred six of this chapter. An entity that is disregarded for tax purposes will be disregarded for purposes of determining if a taxpayer is a direct partner or member of an electing partnership or direct shareholder of an electing S corporation.

(2) Limitation on credit. No credit shall be allowed to a taxpayer under paragraph one of this subsection unless the electing partnership or electing S corporation paid the tax imposed under this article and provided sufficient information on the pass-through entity tax return as prescribed by the commissioner to identify that taxpayer. Such information shall include, but not be limited to, the social security number or taxpayer identification number of the article twenty-two taxpayer who will claim the credit (even in the case of a disregarded entity owned by such taxpayer).

(b) Limitation on credit. The aggregate amount of credits claimed by all partners, members or shareholders of an electing partnership or electing S corporation pursuant to subsection (a) of this section shall not exceed the tax due under subsection (a) of section eight hundred sixty-two of this article from such electing partnership or electing S corporation for the taxable year.

§ 864. Payment of estimated tax.

(a) Definition of estimated tax.

Estimated tax means the amount that an electing partnership or electing S corporation estimates to be the tax imposed by section eight hundred sixty-two of this article for the current taxable year.

(b) General. The estimated tax shall be paid as follows for an electing partnership and an electing S corporation:

(1) The estimated tax shall be paid in four equal installments on March fifteenth, June fifteenth, September fifteenth and December fifteenth in the calendar year prior to the year in which the due date of the return required by this article falls.

(2) The amount of any required installment shall be twenty-five percent of the required annual payment.

(3) The required annual payment is the lesser of: (A) ninety percent of the tax shown on the return for the taxable year; or (B) one hundred percent of the tax shown on the return of the electing partnership or electing S corporation for the preceding taxable year.

(c) Application to short taxable year. This section shall apply to a

taxable year of less than twelve months in accordance with procedures established by the commissioner.

(d) Installments paid in advance. An electing partnership or electing S corporation may elect to pay any installment of its estimated tax prior to the date prescribed for the payment thereof.

§ 865. Filing of return and payment of tax.

(a) General. On or before March fifteenth following the close of the taxable year, each electing partnership and each electing S corporation must file a return for the taxable year reporting the information required pursuant to this article. For each electing partnership and each electing S corporation that has a fiscal taxable year, the return is due on or before March fifteenth following the close of the calendar year that contains the final day of the entity's taxable year.

(b) Certification of eligibility. Every return filed pursuant to subsection (a) of this section shall include, in a format as prescribed by the commissioner, a certification by an individual authorized to act on behalf of the electing partnership or electing S corporation that the taxpayer:

- (1) made a timely, valid election to be subject to tax pursuant to this article; and
- (2) that all statements contained therein are true.

(c) Information on the electing partnership return. Each electing partnership shall report on such return:

- (1) Any tax due pursuant to this article. The balance of any tax shown on such return, not previously paid as installments of estimated tax, shall be paid with such return;
- (2) Identifying information of all partners and/or members eligible to receive a credit pursuant to section eight hundred sixty-three of this article;
- (3) Each partner's and/or member's share of the pass-through entity tax imposed on the electing partnership;
- (4) Each partner's and/or member's distributive share of the pass-through entity taxable income calculated pursuant to paragraph one of subsection (h) of section eight hundred sixty of this article;
- (5) The classification of each partner and/or member as a resident or nonresident for purposes of calculating the electing partnership's

pass-through entity taxable income under paragraph one of subsection (h) of section eight hundred sixty of this article; and

(6) Any other information as required by the commissioner.

(d) Information on electing S corporation return. Each electing S corporation shall report on such return:

(1) Any tax due pursuant to this article. The balance of any tax shown on such return, not previously paid as installments of estimated tax, shall be paid with such return;

(2) Identifying information of all shareholders eligible to receive a credit pursuant to section eight hundred sixty-three of this article;

(3) Each shareholder's direct share of the pass-through entity tax imposed on the electing S corporation; and

(4) Any other information as required by the commissioner.

(e) Special rules for partners, members and shareholders that are disregarded entities. To meet the requirements of paragraph two of subsection (c) of this section for an electing partnership or paragraph two of subsection (d) of this section for an electing S corporation, the electing partnership or electing S corporation must provide information sufficient to identify both the disregarded entity that is a partner, member and/or shareholder and the taxpayer subject to tax under article twenty-two of this chapter eligible for a credit under subsection (a) of section eight hundred sixty-three of this article.

(f) Extensions and amendments. (1) The commissioner may grant a reasonable extension of time for payment of tax or estimated tax (or any installment), or for filing any return, statement, or other document required pursuant to this article, on such terms and conditions as it may require. No such extension for filing any return, statement or other document, shall exceed six months.

(2) No amended returns. Once a return has been filed by an electing partnership or electing S corporation, it may not be amended without the consent of or otherwise authorized by the commissioner.

(g) Information provided to partners. Each electing partnership subject to tax under this article shall report to each partner or member its:

(1) classification as a resident or nonresident for purposes of calculating the electing partnership's or electing S corporation's pass-through entity taxable income under subsection (g) of section eight hundred sixty of this article;

(2) direct share of the pass-through entity tax imposed on the electing partnership; and

(3) any other information as required by the commissioner.

(h) Information provided to shareholders. Each electing S corporation subject to tax under this article shall report to each shareholder its:

(1) direct share of the pass-through entity tax imposed on the electing S corporation;

(2) the electing S corporation's status as an electing resident S corporation or electing standard S corporation; and

(3) any other information as required by the commissioner.

§ 866. Procedural provisions.

(a) General. All provisions of article twenty-two of this chapter will apply to the provisions of this article in the same manner and with the same force and effect as if the language of article twenty-two of this chapter had been incorporated in full into this article and had been specifically adjusted for and expressly referred to the tax imposed by this article, except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to this article. Notwithstanding the preceding sentence, no credit against tax in article twenty-two of this chapter can be used to offset the tax due pursuant to this article.

(b) Notwithstanding any other law to the contrary, the commissioner may require that all forms or returns pursuant to this article must be filed electronically and all payments of tax must be paid electronically.

(c) Liability for tax. (1) An electing partnership or electing S corporation shall be liable for the tax due pursuant to this article.

(2) Except as provided in paragraph three of this subsection, any article twenty-two taxpayer eligible to claim a credit pursuant to subsection (kkk) of section six hundred six of this chapter because he or she is a partner or member in an electing partnership or a shareholder in an electing S corporation, either directly or through a disregarded entity, shall be severally liable to the extent not paid by the electing partnership or electing S corporation for his or her direct share of pass-through entity tax.

(3) Any article twenty-two taxpayer eligible to claim a credit pursuant to subsection (kkk) of section six hundred six of this chapter

because he or she is a partner or member in an electing partnership or a shareholder in an electing S corporation, either directly or through a disregarded entity, that is a general, managing or controlling partner of the electing partnership or managing or controlling shareholder of the electing S corporation, or owns greater than fifty percent of the interests or profits of the electing partnership or electing S corporation, or is under a duty to act for the electing partnership or S corporation in complying with the provisions of this article, or was the individual that made the election on behalf of the electing partnership or electing S corporation under subsection (b) of section eight hundred sixty-one of this article shall be jointly and severally liable for the tax imposed pursuant to this article on such electing partnership or electing S corporation.

(d) Deposit and disposition of revenue. All taxes, interest, penalties, and fees collected or received by the commissioner pursuant to this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter.

(e) Secrecy provision. All the provisions of paragraphs one and two of subsection (e) of section six hundred ninety-seven of this chapter will apply to the provisions of this article. Notwithstanding any provisions of this chapter to the contrary, the commissioner may disclose information and returns regarding the calculation and payment of the tax imposed by this article and any credit calculated on taxes paid pursuant to this article by an electing partnership or electing S corporation to a partner, member or shareholder of such entity that is eligible for or claims to be eligible for a credit under subsection (a) of section eight hundred sixty-three of this article.