New York Tax Department Unveils Draft Business Franchise Tax Regs

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New York S and C corporations would be required to pay a first installment equal to a percentage of the preceding year's estimated taxes under business franchise tax rules proposed by the state's tax agency.

The New York State Department of Taxation and Finance on October 5 unveiled proposed regulations on the state business corporation franchise tax, which include new requirements for S and C corporations to make mandatory first installment payments as well as changes to a tax lien's definition and time limit.

Timothy Noonan of Hodgson Russ LLP told *Tax Notes* October 9 that the regs "cover fairly basic rules related to the payment of estimated taxes by corporations."

The draft regs are part of a larger effort by the New York tax department to update its regs since overhauling the corporate tax system in 2015, an effort "many practitioners welcome," Noonan said.

Jennifer White of Reed Smith LLP said the proposed regs "are a great addition for taxpayers making estimated tax payments, particularly in light of the changes in federal tax law that may have a large impact on taxpayers beginning in 2017."

However, Noonan said the proposed regs fail to "correct some of the fairly onerous rules around estimated payments."

Under the proposed regs, every New York S and C corporation subject to the business corporation franchise tax must pay a mandatory first installment of estimated tax for the preceding year. If such tax was between $1,000 and $100,000, the installment would be equal to 25 percent of the preceding year's tax, or 40 percent of the preceding year's tax if that tax exceeded $100,000, according to the draft regs.

"This can be incredibly burdensome for taxpayers whose income varies from year to year, or for a taxpayer that has a huge liquidity event in year 1 and minimal income in year 2," Noonan said.

Noonan continued, "We've long hoped to see the creation of a safe harbor, or some form of penalty relief in special circumstances. Nothing like that appears to be incorporated in these proposed regulations."

The New York tax department also amended the definition of a tax lien in the draft regs, including the instance that a tax becomes a lien when a taxpayer ceases to "derive receipts from activity in this state."

Under the regs, the tax department included that a tax remains a lien until “expiration of 20 years from the date such taxes became due and payable” or the tax is paid in full, whichever occurs first.