

DRAFT LBDC

A BUDGET BILL submitted by the Governor  
in accordance with Article VII of the Constitution

AN ACT to amend the tax law, in relation to federal gross income  
and federal deductions allowed pursuant to the internal  
revenue code (Part \_\_);

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 PART \_\_

2 Section 1. Paragraph (b) of subdivision 6-a of section 208 of the tax  
3 law, as amended by section 5-a of part T of chapter 59 of the laws of  
4 2015, is amended to read as follows:

5 (b) "Exempt CFC income" means (i) the income required to be included  
6 in the taxpayer's federal gross income pursuant to subsection (a) of  
7 section 951 of the internal revenue code, received from a corporation  
8 that is conducting a unitary business with the taxpayer but is not  
9 included in a combined report with the taxpayer, and (ii) to the extent  
10 not included in subparagraph (i) of this paragraph, such income required  
11 to be included in the taxpayer's federal gross income pursuant to  
12 subsection (a) of such section 951 of the internal revenue code by  
13 reason of subsection (a) of section 965 of the internal revenue code, as  
14 adjusted by subsection (b) of section 965 of the internal revenue code,  
15 and without regard to subsection (c) of such section, received from a  
16 corporation that is not included in a combined report with the taxpayer,  
17 less, (iii) in the discretion of the commissioner, any interest  
18 deductions directly or indirectly attributable to that income. In lieu

1 of subtracting from its exempt CFC income the amount of those interest  
2 deductions, the taxpayer may make a revocable election to reduce its  
3 total exempt CFC income by forty percent. If the taxpayer makes this  
4 election, the taxpayer must also make the elections provided for in  
5 paragraph (b) of subdivision six of this section and paragraph (c) of  
6 this subdivision. If the taxpayer subsequently revokes this election,  
7 the taxpayer must revoke the elections provided for in paragraph (b) of  
8 subdivision six of this section and paragraph (c) of this subdivision. A  
9 taxpayer which does not make this election because it has no exempt CFC  
10 income will not be precluded from making those other elections.

11 § 2. Subparagraph 6 of paragraph (a) of subdivision 9 of section 208  
12 of the tax law, as amended by section 4 of part A of chapter 59 of the  
13 laws of 2014, is amended to read as follows:

14 (6) any amount treated as dividends pursuant to section seventy-eight  
15 of the internal revenue code to the extent that such dividends are not  
16 included in the computation of the deduction allowed under section two  
17 hundred fifty of such code;

18 § 3. Paragraph (b) of subdivision 9 of section 208 of the tax law is  
19 amended by adding a new subparagraph 23 to read as follow:

20 (23) The amount of any federal deduction allowed pursuant to  
21 subsection (c) of section 965 of the internal revenue code.

22 § 4. Paragraph 1 of subsection (c) of section 1085 of the tax law, as  
23 amended by section 13-a of part Q of chapter 60 of the laws of 2016, is  
24 amended to read as follows:

25 (1) If any taxpayer fails to file a declaration of estimated tax under  
26 article nine-A of this chapter, or fails to pay all or any part of an  
27 amount which is applied as an installment against such estimated tax, it  
28 shall be deemed to have made an underpayment of estimated tax. There

1 shall be added to the tax for the taxable year an amount at the under-  
2 payment rate set by the commissioner pursuant to section one thousand  
3 ninety-six of this article, or if no rate is set, at the rate of seven  
4 and one-half percent per annum upon the amount of the underpayment for  
5 the period of the underpayment but not beyond the fifteenth day of the  
6 [third] fourth month following the close of the taxable year. Provided,  
7 however, that, for taxable years beginning on or after January first,  
8 two thousand seventeen and before January first, two thousand eighteen,  
9 no amount shall be added to the tax with respect to the portion of such  
10 tax related to the amount of any interest deductions directly or indi-  
11 rectly attributable to the amount included in exempt CFC income pursuant  
12 to subparagraph (ii) of paragraph (b) of subdivision six-a of section  
13 two hundred eight of this chapter or the forty percent reduction of such  
14 exempt CFC income in lieu of interest attribution if the election  
15 described in paragraph (b) of subdivision six-a of such section is made.  
16 The amount of the underpayment shall be, with respect to any installment  
17 of estimated tax computed on the basis of either the preceding year's  
18 tax or the second preceding year's tax, the excess of the amount  
19 required to be paid over the amount, if any, paid on or before the last  
20 day prescribed for such payment or, with respect to any other install-  
21 ment of estimated tax, the excess of the amount of the installment which  
22 would be required to be paid if the estimated tax were equal to ninety-  
23 one percent of the tax shown on the return for the taxable year (or if  
24 no return was filed, ninety-one percent of the tax for such year) over  
25 the amount, if any, of the installment paid on or before the last day  
26 prescribed for such payment. In any case in which there would be no  
27 underpayment if "eighty percent" were substituted for "ninety-one  
28 percent" each place it appears in this subsection, the addition to the

1 tax shall be equal to seventy-five percent of the amount otherwise  
2 determined. No underpayment shall be deemed to exist with respect to a  
3 declaration or installment otherwise due on or after the termination of  
4 existence of the taxpayer.

5 § 5. This act shall take effect immediately and shall apply to taxable  
6 years beginning on or after January 1, 2017.