

New York State 2009-2010 Budget Bill Taxes Nonresident Individuals on Sale of Interests in New York Real Estate Holding Entities

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New York generally taxes nonresident individuals on their income from New York sources, including income from real property located in New York, whether from operations or sale of the real property. Nonresident individual partners of partnerships (or members of limited liability companies taxable as partnerships) with New York source income are taxed on their distributive shares of such income. Prior to the enactment of the 2009-2010 budget bill, however, New York did not tax nonresident individuals on the sale of their interests in entities holding New York real property.

Under the recently passed 2009-10 New York budget bill, nonresident individuals will be subject to New York state tax on certain sales or exchanges of interests in entities holding New York real property occurring on or after May 7, 2009. The new law applies to sales or exchanges of interests in partnerships, limited liability companies, non-publicly traded C corporations with fewer than 100 shareholders and S corporations if, on the date of the interest's sale, the fair market value of real property in New York equals at least fifty percent of the value of the entity's total assets (including, for the purpose of calculating an entity's total assets, only assets the entity has held for at least two years prior to the sale date).

The New York source income on the sale or exchange of an entity interest is the federal income tax gain or loss, multiplied by a fraction equal to the value of all New York real property divided by the fair market value of the total assets of the entity on the date of the transfer (as noted, including in total assets only assets held by the entity for

at least two years prior to the sale date.) The new provision applies regardless of whether gain on the sale or exchange of the entity interest is due to appreciation in the entity's New York real property, and may apply even where such New York property has unrecognized losses. The marginal personal income tax rates currently applicable to individuals range from 4% to 8.97%, and New York taxes capital gains at the same rate as ordinary income.

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