AN ACT to amend the tax law in relation to
the imposition of an Unincorporated
Business Tax

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

Section 1. The tax law is amended by adding a new article 24-A, to read as
follows:

Article 24-A
Unincorporated Business Tax

Section
860 Definitions
861 Imposition and rate of tax
862 Unincorporated business credit provisions

863 Payment of estimated tax
864 Filing of return and payment of tax
865 Accounting periods and methods
866 Procedural provisions

§ 860. Definitions. For purposes of this article:

(a) Affected partnership. Affected partnership means any partnership as
provided in section 7701(a)(2) of the Internal Revenue Code. An affected
partnership includes any limited liability company treated as a partnership for
federal income tax purposes.
(b) Lower-tier partnership. A lower-tier partnership means any partnership in which an affected partnership has a direct ownership interest.

(c) Unincorporated business tax. Unincorporated business tax means the total tax imposed by this article without regard to the unincorporated business credit calculated under subdivision (a) of section eight hundred sixty-two of this article.

(d) Unincorporated business credit. Unincorporated business credit means the total credit calculated under subdivision (a) of section eight hundred sixty-two of this article without regard to any limitation imposed by paragraph (3) of that subdivision.

(e) Ownership percentage. Ownership percentage means a fraction, the numerator of which is the net total of the partner’s distributive share of income, gain, loss and deductions of, and guaranteed payments from, the affected partnership for such taxable year, and the denominator of which is the sum, for such taxable year, of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments to, all partners in the affected partnership for whom or which such net total (as separately determined for each partner) is greater than zero.

(f) Unincorporated business net income. Unincorporated business net income means the sum of (1) federal ordinary business income, as described in section 702(a)(8) of the Internal Revenue Code and as applied to the partnership by section 703 of the Internal Revenue Code, of the affected partnership; and (2) taxes paid or incurred during the taxable year under this article by the affected partnership to the extent deducted in computing federal ordinary income; and (3) guaranteed payments paid by the affected partnership to its partners as described in section 707(c) of the Internal Revenue Code.

(g) Unincorporated business taxable income. Unincorporated business taxable income of an affected partnership means the sum of (1) the affected partnership’s unincorporated business net income or loss (excluding the affected

The Department welcomes input on the tax base to which the UBT should apply.
partnerships’ distributive share of any such amounts from a lower-tier partnership included in subparagraph (2)), allocated to New York State pursuant to subdivision (b) of section eight hundred sixty-one of this article, and (2) any unincorporated business net income of a lower-tier partnership to the extent it was sourced to New York by such lower-tier partnership pursuant to the principles of subdivision (b) of section eight hundred sixty-one of this article.

§ 861. Imposition and rate of tax.

(a) General. A tax is hereby imposed for each taxable year on the unincorporated business taxable income of every affected partnership doing business within this state. This tax shall be in addition to any other taxes imposed and shall be at the rate of five percent for each taxable year beginning on or after January first, two thousand nineteen.

(b) Allocation to New York. In determining the amount of unincorporated business taxable income, the unincorporated business net income or loss of the affected partnership shall be allocated to this state by multiplying the unincorporated business net income or loss of the affected partnership by the average of the following three percentages:

(1) Property percentage. The property percentage is computed by dividing (A) the average of the values, at the beginning and end of the taxable year, of real and tangible personal property owned and rented by the affected partnership and located within this state, by (B) the average of the values, at the beginning and end of the taxable year, of all real and tangible personal property owned or rented by the affected partnership and located both within and without New York State.

(2) Payroll percentage. The payroll percentage is computed by dividing (A) the total wages, salaries and other personal service compensation paid or incurred during the taxable year to employees of the affected partnership, in connection with the business carried on within this state, by (B) the total of As alternative, the UBT could be structured as a franchise tax with two or three alternative bases, such as a capital base or a fixed dollar minimum base.

The tax in this discussion draft is imposed on all partnerships doing business in New York. The Department would appreciate feedback on whether the tax should instead be made optional, which would have implications for the structure and administrative complexity of the proposal.

The tax could also exempt smaller partnerships, for example, by exempting unincorporated business taxable income below a specified threshold.

The tax applies only to partnerships. The Department welcomes input on whether to apply the tax to New York S corporations, which would have implications for the structure and calculation of the tax. Consideration might also be given to applying the tax to sole proprietorships and single member limited liability companies that are owned by individuals.

The tax is set at a rate of five percent. The Department would welcome perspectives on whether the rate should be set higher or lower, which would affect the economic impact of the proposal on various taxpayer tranches.
all wages, salaries and other personal service compensation paid or incurred
during the taxable year to employees of the affected partnership in connection
with the business carried on both within and without New York State.

(3) Gross income percentage. The gross income percentage is computed by
dividing (A) the gross sales or charges for services performed by or through an
office, branch or agency of the affected partnership located within New York
State, by (B) the total of all gross sales or charges for services performed
within and without New York State. The sales or charges to be allocated to New
York State include all sales negotiated or consummated, and charges for services
performed, by an employee, agent, agency or independent contractor chiefly
situated at, connected by contract or otherwise with, or sent out from, offices,
branches of the affected partnership, or other agencies, situated within New
York State.

§ 862. Tax credits.

(a) Unincorporated business credit. An affected partnership that is a
partner in a lower-tier partnership shall be allowed a credit against the tax
imposed under this article as computed under paragraphs one through three of
this subdivision.

(1) Calculation of credit. The unincorporated business credit shall be
calculated by multiplying the affected partnership’s ownership percentage of a
lower-tier partnership by the larger of:

(A) the unincorporated business tax of the lower-tier partnership; or
(B) the unincorporated business credit calculated by the lower-tier
partnership

(2) Credit from multiple lower-tier entities. If an affected partnership
has a direct ownership interest in more than one lower-tier partnership, the
unincorporated business credit shall be the sum of the credits calculated under
paragraph one of this subdivision with regard to each lower-tier partnership in
which the affected partnership has a direct ownership interest.
(3) Limitation on credit. If the unincorporated business credit calculated under this subdivision for any taxable year exceeds the amount of tax due under this article for such year, such credit shall be used to reduce the tax due to zero and any excess shall not be carried forward.

(b) Personal income tax credit. A taxpayer subject to tax under article twenty-two of this chapter that is a partner in an affected partnership subject to tax under this article shall be allowed a credit against the tax imposed under article twenty-two of this chapter, computed pursuant to the provisions of subsection (bbbb) of section six hundred-six of this chapter.

(c) Corporation franchise tax credit. A taxpayer subject to tax under article nine-A of this chapter that is a corporate partner in an affected partnership subject to tax under this article shall be allowed a credit against the tax imposed under article nine-A of this chapter, computed pursuant to the provisions of subdivision fifty-three of section two hundred ten-B of this chapter.

§ 863. Payment of estimated tax.

(a) Definition of estimated tax. Estimated tax means the amount that an affected partnership estimates to be the tax imposed by section eight hundred sixty-one of this article for the current taxable year, less the amount that it estimates to be the sum of any credits allowable against the tax.

(b) General. The estimated tax shall be paid as follows for an affected partnership that reports on a calendar year basis:

(1) If such estimated tax can reasonably be expected to exceed one thousand dollars on or before March fifteenth of the taxable year, the estimated tax shall be paid in four equal installments on March fifteenth, June fifteenth, September fifteenth and December fifteenth.

(2) If such estimated tax can reasonably be expected to exceed one thousand dollars after March fifteenth and not after June fifteenth of the
taxable year, the estimated tax shall be paid in three equal installments on
June fifteenth, September fifteenth and December fifteenth.

(3) If such estimated tax can reasonably be expected to exceed one
thousand dollars after June fifteenth and not after September fifteenth of the
taxable year, the estimated tax shall be paid in two equal installments on
September fifteenth and December fifteenth.

(4) If such estimated tax can reasonably be expected to exceed one
thousand dollars after September fifteenth of the taxable year, the estimated
tax shall be paid on December fifteenth.

(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) Fiscal year. This section shall apply to a taxable year other than a
calendar year by the substitution of the months of such fiscal year for the
corresponding months specified in this section.

(e) Installments paid in advance. An affected partnership may elect to pay
any installment of its estimated tax prior to the date prescribed for the
payment thereof.

§ 864. Filing of return and payment of tax.

(a) General. On or before the fifteenth day of the third month following
the close of the taxable year, each affected partnership required to file a
return under paragraph one of subdivision (c) of section six hundred fifty-eight
of this chapter, shall also be required to report the information required under
this article on such return.

(b) Information on return. Each affected partnership shall report any tax
due under this article on the face of such return and such other pertinent
information as the commissioner may by regulations and instructions prescribe.
The balance of any tax shown on the face of such return, not previously paid as
installments of estimated tax, shall be paid with such return.
(c) Information provided to partners. Each affected partnership subject to tax under this article shall report to each partner its distributive share of:

1. the unincorporated business net income of the affected partnership;
2. the unincorporated business taxable income of the affected partnership;
3. the unincorporated business tax imposed on the affected partnership;
4. and
5. the total unincorporated business credit calculated by the affected partnership under subdivision (a) of section eight hundred sixty-two of this article, before application of the limitation on such credit under paragraph (3) of such subdivision.

§ 8.65. Accounting periods and methods.

(a) Accounting periods. An affected partnership’s taxable year under this article shall be the same as the affected partnership’s taxable year for federal income tax purposes.

(b) Accounting methods. An affected partnership’s method of accounting under this article shall be the same as the affected partnership’s method of accounting for federal income tax purposes.

(c) Change of accounting period or method.

(1) If an affected partnership’s taxable year or method of accounting is changed for federal income tax purposes, the taxable year or method of accounting for purposes of this article shall be similarly changed.

(2) If an affected partnership’s method of accounting is changed, any additional tax that results from adjustments determined to be necessary solely by reason of such change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the affected partnership used the method of accounting from which the change is made.

§ 8.66. 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.

(b) Liability for tax. Only the affected partnership shall be liable for the tax under this article, and no partner shall be personally liable for such tax.

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

(d) Secrecy provision. All the provisions of subsection (a) of section six hundred ninety-seven of this chapter will be applied 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 directly or indirectly under this article to an affected partnership, its lower-tiered entity or entities and to any taxpayer under article nine-A or twenty-two of this chapter that owns, in whole or in part, directly or indirectly, such affected partnership.

§ 2. Section 606 of the tax law is amended by adding new subsection (bbbb) to read as follows:

(bbbb) Credit for unincorporated business tax for partners.

(1) A taxpayer partner of an affected partnership subject to tax under article twenty-four-A of this chapter shall be entitled to a credit against the tax imposed by this article as provided in this subsection. For purposes of
this subsection, the terms "affected partnership," "ownership percentage",
"unincorporated business tax," and "unincorporated business credit" shall have
the same meanings as under article twenty-four-A of this chapter.

(2) The credit shall be equal to the product of:

(i) the taxpayer’s ownership percentage of the affected partnership;

(ii) ninety-three percent;

(iii) and the greater of:

(A) the unincorporated business tax of the affected partnership; or

(B) the unincorporated business credit of the affected partnership.

(3) If a taxpayer has a direct ownership of a partnership interest in
multiple affected partnerships subject to tax under article twenty-four-A of
this chapter, the taxpayer’s credit shall be the sum of such credits calculated
under paragraph two of this subsection with regard to each partnership in which
the taxpayer has a direct ownership interest.

(4) If the amount of the credit allowable under this subsection for any
taxable year shall exceed the taxpayer’s tax for such year, the excess allowed
for the taxable year may be carried over to the following year or years and may
be deducted from the taxpayer’s tax for such year or years.

§ 3. Subparagraph (B) of paragraph (1) of subsection (i) of section 606 of
the tax law is amended by adding a new clause (xliv) to read as follows:

(xliv) Credit for unincorporated business

for partners under subsection (bhhh)
subdivision fifty-three of
section two hundred ten-B

§ 4. Section 210-B of the tax law is amended by adding a new subdivision
(53) to read as follows:

53. Credit for unincorporated business tax for partners.

(a) A corporate partner of an affected partnership subject to tax under
article twenty-four-A of this chapter shall be entitled to a credit against the
tax imposed by this article as provided in this subdivision. For purposes of
this subdivision, the terms “affected partnership,” “ownership percentage,” “unincorporated business tax,” and “unincorporated business credit” shall have the same meanings as under article twenty-four-A of this chapter.

(b) The credit shall be equal to the product of:

(i) the taxpayer’s ownership percentage of the affected partnership;

(ii) ninety-three percent; and

(iii) the greater of:

(A) the unincorporated business tax of the affected partnership; or

(B) the unincorporated business credit of the affected partnership.

(c) If a corporation has a direct ownership interest in multiple affected partnerships subject to tax under article twenty-four-A of this chapter, the corporation’s credit under this subdivision shall be the sum of such credits calculated under paragraph two of this subdivision with regard to each partnership in which the corporation has a direct ownership interest.

(d) The credit allowed under this subdivision for any taxable year will not reduce the tax for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer’s tax for such year or years.

§ 5. Subdivision 1 of section 171-a of the tax law, as amended by section 15 of part AAA of chapter 59 of the laws of 2017, is amended to read as follows:

(1) All taxes, interest, penalties and fees collected or received by the commissioner or the commissioner’s duly authorized agent under articles nine (except section one hundred eighty-two-a thereof and except as otherwise provided in section two hundred five thereof), nine-A, twelve-A (except as otherwise provided in section two hundred eighty-four-d thereof), thirteen,
thirteen-A (except as otherwise provided in section three hundred twelve thereof), eighteen, nineteen, twenty (except as otherwise provided in section four hundred eighty-two thereof), twenty-B, twenty-one, twenty-two, twenty-four-A, twenty-six, twenty-eight (except as otherwise provided in section eleven hundred two or eleven hundred three thereof), twenty-eight-A, twenty-nine-B, thirty-one (except as otherwise provided in section fourteen hundred twenty-one thereof), thirty-three and thirty-three-A of this chapter shall be deposited daily in one account with such responsible banks, banking houses or trust companies as may be designated by the comptroller, to the credit of the comptroller. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under such articles of this chapter, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds or reimbursements under such articles of this chapter out of which amount the comptroller shall pay any refunds or reimbursements to which taxpayers shall be entitled under the provisions of such articles of this chapter. The commissioner and the comptroller shall maintain a system of accounts showing the amount of revenue collected or received from each of the taxes imposed by such articles. The comptroller, after reserving the amount to pay such refunds or reimbursements, shall, on or before the tenth day of each month, pay into the state treasury to the credit of the general fund all revenue deposited under this section during the preceding calendar month and remaining to the comptroller's credit on the last day of such preceding month, (i) except that the comptroller shall pay to the state department of social services the amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against past-due support pursuant to
subdivision six of section one hundred seventy-one-c of this article, (ii) and
except that the comptroller shall pay to the New York state higher education
services corporation and the state university of New York or the city university
of New York respectively that amount of overpayments of tax imposed by article
twenty-two of this chapter and the interest on such amount which is certified to
the comptroller by the commissioner as the amount to be credited against the
amount of defaults in repayment of guaranteed student loans and state university
loans or city university loans pursuant to subdivision five of section one
hundred seventy-one-d and subdivision six of section one hundred seventy-one-e
of this article, (iii) and except further that, notwithstanding any law, the
comptroller shall credit to the revenue arrearage account, pursuant to section
ninety-one-a of the state finance law, that amount of overpayment of tax imposed
by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three
of this chapter, and any interest thereon, which is certified to the comptroller
by the commissioner as the amount to be credited against a past-due legally
enforceable debt owed to a state agency pursuant to paragraph (a) of subdivision
six of section one hundred seventy-one-f of this article, provided, however, he
shall credit to the special offset fiduciary account, pursuant to section
ninety-one-c of the state finance law, any such amount creditable as a liability
as set forth in paragraph (b) of subdivision six of section one hundred seventy-
one-f of this article, (iv) and except further that the comptroller shall pay to
the city of New York that amount of overpayment of tax imposed by article nine,
nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter
and any interest thereon that is certified to the comptroller by the
commissioner as the amount to be credited against city of New York tax warrant
judgment debt pursuant to section one hundred seventy-one-l of this article, (v)
and except further that the comptroller shall pay to a non-obligated spouse that
amount of overpayment of tax imposed by article twenty-two of this chapter and
the interest on such amount which has been credited pursuant to section one
hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one
hundred seventy-one-f or one hundred seventy-one-l of this article and which is
certified to the comptroller by the commissioner as the amount due such non-
obligated spouse pursuant to paragraph six of subsection (b) of section six
hundred fifty-one of this chapter; and (vi) the comptroller shall deduct a like
amount which the comptroller shall pay into the treasury to the credit of the
general fund from amounts subsequently payable to the department of social
services, the state university of New York, the city university of New York, or
the higher education services corporation, or the revenue arrearage account or
special offset fiduciary account pursuant to section ninety-one-a or ninety-one-
c of the state finance law, as the case may be, whichever had been credited the
amount originally withheld from such overpayment, and (vii) with respect to
amounts originally withheld from such overpayment pursuant to section one
hundred seventy-one-l of this article and paid to the city of New York, the
comptroller shall collect a like amount from the city of New York.
§ 6. Subdivision 1 of section 171-a of the tax law, as amended by section
16 of part AAA of chapter 59 of the laws of 2017, is amended to read as follows:
(1) All taxes, interest, penalties and fees collected or received by the
commissioner or the commissioner's duly authorized agent under articles nine
(except section one hundred eighty-two-a thereof and except as otherwise
provided in section two hundred fifty thereof), nine-A, twelve-A (except as
otherwise provided in section two hundred eighty-four-d thereof), thirteen,
thirteen-A (except as otherwise provided in section three hundred twelve
thereof), eighteen, nineteen, twenty (except as otherwise provided in section
four hundred eighty-two thereof), twenty-one, twenty-two, twenty-four-A, twenty-
six, twenty-eight (except as otherwise provided in section eleven hundred two or
eleven hundred three thereof), twenty-eight-A, twenty-nine-A, thirty-one (except
as otherwise provided in section fourteen hundred twenty-one thereof), thirty-
three and thirty-three-A of this chapter shall be deposited daily in one account
with such responsible banks, banking houses or trust companies as may be
designated by the comptroller, to the credit of the comptroller. Such an account
may be established in one or more of such depositories. Such deposits shall be
kept separate and apart from all other money in the possession of the
comptroller. The comptroller shall require adequate security from all such
depositories. Of the total revenue collected or received under such articles of
this chapter, the comptroller shall retain in the comptroller's hands such
amount as the commissioner may determine to be necessary for refunds or
reimbursements under such articles of this chapter out of which amount the
comptroller shall pay any refunds or reimbursements to which taxpayers shall be
entitled under the provisions of such articles of this chapter. The commissioner
and the comptroller shall maintain a system of accounts showing the amount of
revenue collected or received from each of the taxes imposed by such articles.
The comptroller, after reserving the amount to pay such refunds or
reimbursements, shall, on or before the tenth day of each month, pay into the
state treasury to the credit of the general fund all revenue deposited under
this section during the preceding calendar month and remaining to the
comptroller's credit on the last day of such preceding month, (i) except that
the comptroller shall pay to the state department of social services that amount
of overpayments of tax imposed by article twenty-two of this chapter and the
interest on such amount which is certified to the comptroller by the
commissioner as the amount to be credited against past-due support pursuant to
subdivision six of section one hundred seventy-one-c of this article, (ii) and
except that the comptroller shall pay to the New York state higher education
services corporation and the state university of New York or the city university
of New York respectively that amount of overpayments of tax imposed by article
twenty-two of this chapter and the interest on such amount which is certified to
the comptroller by the commissioner as the amount to be credited against the
amount of defaults in repayment of guaranteed student loans and state university
loans or city university loans pursuant to subdivision five of section one hundred seventy-one-d and subdivision six of section one hundred seventy-one-e of this article, (iii) and except further that, notwithstanding any law, the comptroller shall credit to the revenue arrearage account, pursuant to section ninety-one-a of the state finance law, that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter, and any interest thereon, which is certified to the comptroller by the commissioner as the amount to be credited against a past-due legally enforceable debt owed to a state agency pursuant to paragraph (a) of subdivision six of section one hundred seventy-one-f of this article, provided, however, he shall credit to the special offset fiduciary account, pursuant to section ninety-one-c of the state finance law, any such amount creditable as a liability as set forth in paragraph (b) of subdivision six of section one hundred seventy-one-f of this article, (iv) and except further that the comptroller shall pay to the city of New York that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter and any interest thereon that is certified to the comptroller by the commissioner as the amount to be credited against city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-l of this article, (v) and except further that the comptroller shall pay to a non-obligated spouse that amount of overpayment of tax imposed by article twenty-two of this chapter and the interest on such amount which has been credited pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-l of this article and which is certified to the comptroller by the commissioner as the amount due such non-obligated spouse pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter; and (vi) the comptroller shall deduct a like amount which the comptroller shall pay into the treasury to the credit of the general fund from amounts subsequently payable to the department of social
services, the state university of New York, the city university of New York, or
the higher education services corporation, or the revenue arrearage account or
special offset fiduciary account pursuant to section ninety-one-a or ninety-one-c
of the state finance law, as the case may be, whichever had been credited the
amount originally withheld from such overpayment, and (vii) with respect to
amounts originally withheld from such overpayment pursuant to section one
hundred seventy-one-l of this article and paid to the city of New York, the
comptroller shall collect a like amount from the city of New York.
§ 7. This act shall take effect for taxable years beginning on or after
January first, two thousand nineteen; provided however that the amendments to
subdivision 1 of section 171-a of the tax law made by section five of this act
shall not affect the expiration of such subdivision and shall expire therewith,
when upon such date as the provisions of section six of this act shall take
effect.