

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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SUBJECT

NEW YORK CITY COMMERCIAL RENT TAX LAW CHANGES FOR SMALL BUSINESSES

SUMMARY

On December 22, 2017, New York City Mayor Bill de Blasio amended New York City's Commercial Rent Tax (CRT) Law by allowing a full or partial credit for businesses with total income of up to \$10,000,000 and annualized base rents of up to \$550,000.

DETAILS

Background - What is CRT?

New York City's CRT is an effective 3.9 percent tax imposed on base rent paid for commercial premises located south of 96th Street in Manhattan. Prior to the CRT law amendment, CRT liability was imposed on all tenants paying at least \$250,000 in annualized base rent. The amendment creates a small business exception for businesses with total income of under \$5,000,000, increasing the annualized base rent threshold to \$500,000. Base rent is generally the amount of rent paid to the landlord (including payments for real estate tax, water/sewer charges and certain other expenses), less any amounts received from a subtenant. The CRT is administered on a fiscal year basis, which begins on June 1 and ends on May 31.

CRT Reform – What has changed?

Businesses with less than \$5,000,000 in total income in the preceding tax year *and* paying less than \$500,000 in annual base rent will receive a full tax credit, effectively exempting them from CRT liability. Total income is defined as the amount reported for federal income tax purposes in the federal tax year immediately preceding the period of the credit that is equal to:

- ▶ gross receipts less returns and allowances,
- ▶ less cost of goods sold,
- ▶ plus other income items, such as dividends, interest and net gains or losses.

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A partial tax credit is available on a sliding scale for higher thresholds. The tax credit phases out at \$10,000,000 in annual total income and \$550,000 in annual base rent. A business calculates its credit using a statutory formula. The credit is equal to the amount of tax multiplied by the "income factor" and the "rent factor." The "income factor" is the amount of total income between \$5,000,000 and \$10,000,000 divided by \$5,000,000. The "rent factor" is the amount of base rent paid between \$500,000 and \$550,000 divided by \$50,000. The formula to calculate the CRT credit is shown below:

$$\text{(Credit)} = \text{(tax)} * \text{(income factor)} * \text{(rent factor)}$$

For example, a business which has a total income of \$7,500,000 and pays \$525,000 in base rent will receive a credit on their CRT equal to one quarter of their tax owed:

$$\text{Tax} = \$525,000 * 3.9\% = \$20,475$$

$$\text{Credit} = \$20,475 * (\$2,500,000/\$5,000,000) * (\$25,000/\$50,000)$$

$$\text{Credit} = \$20,475 * 50\% * 50\%$$

$$\text{Credit} = \$5,119$$

The credit is allowed beginning July 1, 2018. While the amendment may affect a tenant's tax liability, it does not affect the filing obligation. All tenants with \$200,000 or more in base rent are still required to file CRT returns.

BDO INSIGHTS

- ▶ The amendment specifically targets small businesses that fit within the stated thresholds.
- ▶ Businesses which have been historically non-compliant for CRT purposes may be eligible to participate in a Voluntary Disclosure Agreement, which offers a waiver of penalties as well as a limited look-back period of three or six years.
- ▶ BDO has successfully assisted numerous clients with New York City CRT concerns.

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