The New York Legislature has approved budget legislation for the Fiscal Year 2021 (the Budget Bill). Consistent with Governor Andrew Cuomo’s earlier promises, the Budget Bill does not contain significant revenue raising provisions, but there are some notable tax changes. The Budget Bill was finalized as the New York State Department of Taxation and Finance has separately extended certain payment and filing deadlines. See our prior Legal Alert. Following is a brief summary of some of the tax provisions contained in the Budget Bill:

**Decoupling from CARES Act** – The Budget Bill decouples New York State franchise tax (under Article 9-A) and the New York City corporation tax from certain changes to Internal Revenue Code Section 163(j) within the federal CARES Act. For tax years beginning before January 1, 2022, the Budget Bill also decouples New York State and New York City personal income taxes from any amendments made to the Internal Revenue Code after March 1, 2020 (including CARES Act amendments).

**Technical Amendments to Telecommunications Ceiling Program** – The Budget Bill codifies that for New York property tax purposes, the equalization rate to be used for telecommunications ceiling purposes is the prior year’s rate.

**Film Tax Credit Program Revisions** – The Budget Bill includes several changes to the Empire State Film Production Credit and Empire State Film Post Production Credit, including reductions to the available credit and new limitations on productions qualifying for the credits.

**Excelsior Tax Credit Program and Enhanced Credits for “Green Projects”** – The Budget Bill extends the Excelsior Tax Credit Program, which offers refundable tax credits to encourage businesses to expand in and relocate to New York, to tax years beginning in 2029. Additionally, the Budget Bill enhances jobs credits, refundable investment tax credits, and research and development tax credits provided through the Excelsior Tax Credit Program for qualified “Green Projects” (i.e., a project deemed by the Commissioner of the New York Department of Economic Development “to make products or develop technologies that are primarily aimed at reducing greenhouse gas emissions or supporting the use of clean energy”).

**Tobacco Products Tax Definition of “Wholesale Price”** – New York Tax Law imposes an excise tax on tobacco products at a rate of 75% of the “wholesale price.” The Budget Bill modifies the definition of “wholesale price” to mean the actual price for which tobacco products are sold to a New York registered distributor.
Cigarette Tax Enforcement & Penalties – The Budget Bill codifies a variety of enhanced cigarette tax enforcement and licensing penalties against retail dealers who sell unstamped or unlawfully stamped cigarettes.

Legislative and Executive Proposals That Were Not Adopted

Digital Advertising – Legislation proposed in the New York State Senate to establish a digital advertising tax similar to the tax proposed in Maryland was not included in the Budget Bill. See our prior Legal Alert.

Franchise Tax Proposal for Small Businesses – The Budget Bill does not include Governor Cuomo’s proposal to reduce the corporate franchise tax rate on income of qualified “small business taxpayers.”

Cannabis – The Budget Bill does not include Governor Cuomo’s proposal to create a cannabis control law to regulate adult-use cannabis and create a structure to oversee the licensure, cultivation, production, distribution, sale, and taxation of cannabis within New York State.

If you have any questions about this legal alert, please feel free to contact any of the attorneys listed under Related People/Contributors or the Eversheds Sutherland attorney with whom you regularly work.