S.2509-B, Part OO

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S.2509-B, Part OO
SUBJECT
Increased Corporation Franchise Tax Rate and Reinstated Capital Base Rate
DATE
March 24, 2021
OPPOSE

The Business Council is deeply concerned with, and strongly opposed to, the Senate's corporate franchise tax proposal for a dramatic increase in both its income-base tax rate and its alternative capital base tax rate.

As quick background, unlike most states, New York's Article 9-A corporate franchise tax requires corporations to calculate their tax liability on three separate basis – net business income, in-state capital, and fixed dollar minimum – and pay the highest of the three calculations.

The Senate proposal would significantly increase two of the three calculations, in a way that will harmful to New York businesses and damaging to the state's economic competitiveness.

- This Senate proposal would increase the Article 9-A business income base tax rate by ***40 percent***, from 6.5% to 9%, for businesses with taxable business income of $5 million or more. At 9%, New York's corporate income tax rate would be among the higher in the nation, with only six other states with rates at or above 9% (and six other states with no corporate income tax). Since this rate is applied to that share of a corporation's income apportioned to New York State, it will have an outsized impact on businesses whose business operations are focused here, including smaller corporations whose markets are centered in New York State. Moreover, this proposal comes at a time when few if any other states are considering corporate tax increases, placing New York as a significant outlier. This proposal also comes at a time when the Biden administration is considering a 33 percent increase in the federal corporate tax rate.
- The Senate proposal would also re-impose the Article 9-A alternative tax on physical and financial capital in New York State. The effect of this provision is to impose higher state taxes on corporations during years in which their net income declines, as in the current recession. In doing so, it imposes a tax penalty on capital-intense businesses that maintain significant physical or financial capital in New York. Few other states impose corporate taxes based

on in-state capital. Under New York's 2014 reform legislation, in recognition of the anti-competitive impact of a capital-based tax, the state began a six-step phase-out of the capital base alternative tax, with the rate scheduled to fall to 0 percent for tax years starting on or after January 1, 2021. The Senate's proposal would re-impose a permanent 0.125% capital base tax rate for non-manufacturing corporations (while retaining existing annual liability cap of $5 million). Since the capital base rate was .025 in 2020, this proposal for a permanent .15% rate represents a four-fold increase in the tax rate for 2021 and beyond.

The Senate projects that these measures would generate $813 million and $151 million, respectively, in FY 2022.

New York is still facing major challenges in recovering from the COVID pandemic and recession, and while some businesses and sectors are doing well, others continue to struggle. It is the wrong time for New York to be imposing additional costs, mandates and restrictions on its recovering businesses.

Importantly, the American Recovery Plan Act is providing state and local government, small business and individuals with crucial financial assistance that will both assist in our economic recovery and help put New York on a path to future growth.

The $30 billion in general and categorical aid flowing to New York State and its local governments will allow the State to adopt FY 2022 budget that fills potential spending gaps and provides for significant resources in key spending areas, including education, higher education, housing, health care, childcare and others.

And a well-funded state budget can be achieved without major, damaging increases in taxes on New York's private sector.

For these reasons, The Business Council urges the rejection of both corporate franchise tax proposals included in Part OO.