S.2833 (Hoylman) / A.4595 (Kelles)

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BILL

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SUBJECT

Increased Taxes on
Business Income

DATE

January 01, 2022

OPPOSE

We strongly oppose this legislation that would imposes an **additional corporate franchise tax**, on top of the current 6.5 percent tax on "entire net income," with the additional tax equal to the difference between the federal corporate income tax rate effective in 2017 (35 percent) and the current federal rate – now 21 percent, as adopted by the "Tax Cuts and Jobs Act (TCJA)." The effect would be to **more than triple the state's corporate franchise tax rate from 6.5 percent to 20.5 percent.**

This bill also imposes an additional levy under the state's personal income tax (PIT) on a taxpayer's business income received from pass-through entities (i.e., partnerships, LLCs, S-corporations) that was subject to a federal deduction under the TCJA's Section 199A, at a rate equal to the highest federal PIT rate that would apply to the amount deducted under 199A by any such taxpayer's (we assume this would mean the taxpayer's marginal federal PIT rate). As a result, **this provision would increase the maximum state PIT rate on this portion of business income from 8.82 percent to nearly 46 percent.** (The bill would exempt taxpayers with total taxable income from all source less than $207,500.)

The bill estimates up to $9 billion in increased state revenues, and while it does indicate what share would be generated the individual provisions, the bill would result in a massive, unprecedented increase in state business income taxes.

The bill would catapult New York to the top of state's corporate income tax rates, almost double the next highest state – Iowa, at 12 percent, the only state with a double-digit marginal corporate income tax rate.

These increases would have an outsized impact on New York-based businesses, including C corporations, whose business activities are concentrated in-state. Under the corporate franchise tax, income is apportioned to states based on their in-state sales. A C corporation with

mostly New York customers would be hit proportionately more heavily by this rate increase than would a multi-state business. There would be a disproportionate impact on New York based unincorporated businesses as well, as non-resident taxpayers would only pay this additional tax on earnings from in-state business activity.

This bill incorrectly assumes that all, or even most, corporations saw an effective federal tax reduction of 14 percent under TCJA, equal to the reduction in the federal tax rate. Instead, the TCJA made countervailing amendments that partially offset the impact of the rate reduction, including but not limited to: the taxation of deemed repatriated foreign dividends, the repeal of the domestic production deduction, a cap on the deduction of business interest expenses, the elimination of net operating loss carrybacks, a reduction in the dividends-received deductions, and others.

We believe the bill memo underestimates the impact of this legislation, as a tripling of the corporate tax rate alone could bring in $6 to $8 billion itself. This means that the state is extracting billions from businesses that otherwise would be used to invest in the company, pay wages and benefits, be saved for future investments and – yes – be paid out to shareholders, where the income would be taxed a second time (by the federal government and New York State) under the personal income tax.

As a final point, we object to the bill's intent of punishing New York's business and individual taxpayers based on concerns about elements of federal tax policy. We see this approach in this and other pending legislative proposals. In a state ranked as the highest-taxed, or among the highest-taxed, state in the nation by almost every measure, we believe this is poorly reasoned and economically damaging tax policy.

For these reasons, The Business Council strongly opposes adoption of S.2833 (Hoylman) / A.4595 (Kelles).