Testimony to

Senate Finance Committee and Assembly Ways and Means Committee

FY 2026 Executive Budget: Taxation Issues

Submitted by

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My name is Ken Pokalsky and I am Vice President of The Business Council of New York State, Inc. We are New York's largest statewide employer association, representing 3,200 private sector employers from across New York, in all major business sectors.

We appreciate this opportunity to submit comments for inclusion in the record for today's joint hearing on taxation issues in the FY 2026 Executive Budget and additional issues that may be considered by the Senate and Assembly during the budget negotiations process.

As always, we welcome the opportunity to discuss these recommendations and concerns with members of the Senate Finance and Assembly Ways and Means committees and other members of the State Legislature.

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Executive Budget Tax Provisions

PTET Election Date – We greatly appreciate the inclusion of Part Q in S.3009/A.3009 which extends the election date for the pass-through entity tax to September 15 of the tax year to which the election would apply (compared to March 15 under current law.) This amendment would apply under both the state (Article 24-A) and New York City (Article 24-B) PTET provisions and support the amendments setting different PTET estimated payment levels depending on a taxpayer's election date. Importantly, this amendment would be revenue-neutral to New York State and New York City.

And while we understand the Department's interest in assuring effective tax compliance provisions, we do not support the proposed language to invalidate a taxpayer's election if they fail to make a timely payment of estimated taxes. Under the Executive Budget language, this invalidation would apply regardless of the election date. No such provision was included in the current state or New York City PTET provisions, and we believe this provision is unnecessary going forward. Importantly, both Article 24-A (the state-level PTET) and Article 24-B (the NYC PTET) incorporate by reference all provisions of Article 22 (the state personal income tax statute), including its provisions for assessments, interest on underpayment of tax, additions to tax and civil penalties. We believe these broadly applicable enforcement mechanisms allow for an adequate and measured Departmental response to any late payment of estimated taxes. And, from a practical perspective, cash basis PTET taxpayers should want to have their full PTET paid on a timely basis, so, there is little incentive to delay payments.

We strongly support adoption of Part Q, with the elimination of the election invalidation provision. This amendment will allow additional taxpayers to benefit from the PTET mechanism, including entities formed after the current March 15 deadline and entities that experience unforeseen circumstances making a PTET election beneficial.

Federal Partnership Adjustments – We also appreciate your willingness to consider alternative approaches to responding to federal partnership adjustments that are proposed in S.3009-A/A.3009-A, Part V.

As discussed in the Article VII bill memo, the new federal partnership audit regime established by the Bipartisan Budget Act of 2015 assesses any audit-based adjustments as additions to tax due, rather than adjustments to a taxpayer's return. However, since "addition to taxes" are not expressly provided for under NYS Tax Law, the obligation for taxpayers to report such federal adjustments is unclear.

While we appreciate the need to address this grey area in the Tax Law, we have significant concerns with the approach proposed in Part V, which is inconsistent with the federal approach under the BBA and with the state's historic tax treatment of partnerships and will result in an over-payment of taxes in many instances with unclear mechanisms for individual taxpayers to successfully seek refunds.

Our specific concerns include the following:

- Part V requires any additional tax be paid at the partnership level, with no ability for the increased liability to be "pushed out" to the partners as allowed under the federal regime. A "push out" would allow for a more accurate determination and allocation of the tax liability. Among other things, ownership changes in the impacted partnership between the reviewed year and final determination date would impact both the computation and economic burden of adjustments; the current proposal does not allow partnerships to account for those changes.

- The legislation provides that partners may request a refund of overpayments from BBA adjustments, but the provision for refund requests does not appear to include an ability for the direct or indirect partners to request a refund to the extent that the partnership's payment exceeds the amount of tax the partners would owe on that income – that means the partners have no ability to remediate overpayments of tax that occur by reason of the apportionment, allocation and tax rate requirements discussed below.

- If a partnership lacks the necessary information to compute its direct and indirect corporate and individual partners' distributive shares (something they would not be required to do under current law), the partnership must assume a 100% NYS allocation for Article 9A or 33 taxpayers and treat all individual taxpayers as NYC residents. This approach will manifestly overstate the amount of income allocated or apportioned to NYS and NYC under Article 9A, Article 33, and the NYS and NYC personal income taxes because corporations are entitled to market-based sourcing and many partnerships will have non-resident ultimate beneficial owners that the partnership cannot itself identify (and that its upper-tier partners could potentially identify). Also, the reference to "distributive share" is circular and unclear; the legislation refers to it both as an amount to be determined and as a base if that amount cannot be determined. For federal income tax purposes, "distributive share" means the items of income, loss, deduction and credit allocated to a partner. Here, it appears the statute intends to ascribe an additional meaning that includes the partner's share of income allocated or apportioned to NYS and NYC for tax purposes, an application which seems to require a separate defined term. Also, it is not clear how that concept is intended to work in the case of a corporate partner because the partnership has the information necessary to determine the apportionment of its income at the partnership level, but the corporation may make elections (such as the fixed percentage method for Qualified Financial Instruments), have losses, and file combined returns that impact its overall tax due on that income.

- The base for computing tax is "gross income or gain," which is unclear because it is not tied to the additional income that is potentially subject to tax. In other words, not only does the legislation omit the term "additional" with respect to gross income or gain, it also does not account for adjustments to amounts of deduction or loss that may impact the tax due, or to a change in the allocation of income, deduction or loss among partners, which would result in no additional income at the partnership level, but may result in a reallocation of income and tax among the partners. This means that, without a "push out" election, the legislation may impose tax on the partnership even when the partnership has no additional income, and any adjustment needs to occur at the partner level to reflect the tax due.

- It requires the tax to be calculated as the sum of a) the distributive share of all direct and indirect partners multiplied by the highest tax rate applicable under the state's PIT for the reviewed year, plus b) the distributive share of all direct and indirect partners multiplied by the highest tax rate applicable under the NYC PIT for the reviewed year. This rate, again, manifestly overstates the rate that would be applicable to the direct and indirect partners because it is the highest marginal rate, only applies to income over $25,000,000, and is far in excess of the corporate franchise tax rate.

The effect of these provisions is that in many cases, the total additional tax calculated at the partnership level will exceed the total tax due if each partner were to individually calculate their tax liability on their distributive share. This approach will also interfere with the ability of non-NY resident partners to claim credits in their home states for taxes paid to NYS under this proposed mechanism.

We note that while the state and NYC PTET statutes both use a similar approach to calculating the entity tax liability, under the PTET statutes individual partners are allowed to calculate their actual tax due on their share of partnership income and/or apply for a refund of any PTET tax amount overpaid by the partnership.

Importantly, these concerns would be addressed if Part V were modified to include a mechanism (default or election) for the partnership to push out the calculation and payment of additional taxes to its individual partners.

To address our concerns, we strongly recommend that:

* the state should consider using the MTC model legislation as the basis for a final statute, modified accordingly to be consistent with provisions of NYS tax law.

* any final statute to address the BBA audit regime should include a mechanism for additional tax to be determined and paid by individual partners (whether this "push out" provision is the default or a partnership election, as is the case in the MTC model legislation.)

* in addition to providing a push-out election, the MTC model also provides for payment of estimated taxes during the course of a federal audit (to limit potential interest costs) and allows for refund claims to be filed up to one year after a federal adjustment report was required to be filed with the state, since IRS partnership audits may not be finalize until after NY's refund filing deadline for the examined year.

* similar to the BBA regime, allow for tax to reported and paid on returns for the tax year of the final determination, in order to avoid requiring taxpayers to file multiple amended returns in the case of adjustments that impact multiple years, or in the case of multiple adjustments from multiple partnerships.

We note that draft Part V requires impacted partnerships to, when reporting to the state their final federal adjustments, provide the state with "direct and indirect partner identifying information and any other information the commissioner may require" which should help the Department with compliance oversight.

Part T – "Make Permanent the Estate Tax Three-Year Gift Addback Rule" – We also discussed a potential amendment to the Executive Budget provision on the estate addback rule. Our concern is that under the proposed language the addback would be current treated as a non-deductible state estate tax under Section 2058 of the Internal Revenue Code because it relates to amounts not included in the federal gross estate (which is contrary to what Section 2058 requires for deductibility). This proposed amendment would be revenue neutral to New York State but would result in the addback amount to become deductible as a debt for federal estate tax purposes under Section 2053 of the Internal Revenue Code.

We recommend that the legislature make the following changes to the proposed amendments to Tax Law section 954(a)(3):

> (3) Increased by the amount of any taxable gift under section 2503 of the internal revenue code not otherwise included in the decedent's federal gross estate, made during the three year period ending on the decedent's date of death, but not including any gift made: (A) when the decedent was not a resident of New York state; or (B) before April first, two thousand fourteen; or (C) between January first, two thousand nineteen and January fifteenth, two thousand nineteen; or (D) that is real or tangible personal property having an actual situs outside New York state at the time the gift was made. ~~Provided, however, that this paragraph shall not apply to the estate of a decedent dying on or after January first, two thousand twenty-six.~~ The amount by which the total tax imposed under this article exceeds the total tax that would have been imposed under this article if this subsection (a)(3) did not apply shall be treated as an obligation of the decedent as of the decedent's death that is subject to the provisions of this article (but which shall not be deductible for purposes of this article).

Executive Budget Tax Credit Provisions

Semiconductor Industry – The investments in semiconductor facilities in Saratoga County have been transformative, bringing significant direct and indirect jobs and investment to the Capital Region, and we believe the pending fab investment is Central New York will have similar long-lasting effects. For these reasons, we support the Executive Budget's proposals to support the semiconductor industry. These include:

* a new Semiconductor Supply Chain credit under the existing Excelsior Jobs program, including a 7% wage credit for new hires, a 3 percent investment tax credit (ITC), and a 7 percent credit for research and development investments. (S.3009/A.3009, Part H).

* a new Semiconductor Research and Development credit providing a 15 percent ITC for investments greater than $100 million. (S.3009/A.3009, Part B).

Five Borough Jobs Campaign - The Business Council is supporting the "The Five Borough Jobs Campaign," a New York City-wide coalition of local economic development corporations, business improvement districts, and businesses, in their support for two Executive Budget proposals:

*a five-year renewal of the Relocation and Employment Assistance Program (REAP), which has played a crucial role in fostering business growth and job creation across throughout the city, and which program supports a wide range of jobs in key sectors.

* a new Relocation Assistance Credit for Employees (RACE) program. This relocation assistance credit targets New York City and would provide a Corporation and Unincorporated Business Tax credit for out-of-state businesses (except retail and hotels) that relocate to a location in New York City of at least 20,000 square feet, with the credit up to $5,000 per relocated employee available for up to eleven tax years after the relocation, with the credit to be refundable for the first five years. (both REAP and RACE are in S.3009/A.3009, Part X).

Other Tax Law Considerations

Work Opportunity Tax Credit – We strongly encourage negotiation of a state counterpart to the federal "work opportunity tax credit" as part of the SFY final budget. Both the Senate and Assembly included a "pilot project" version of the WOTC in their SFY 2025 budget resolutions. While we are comfortable with a temporary credit as a test, we urge adoption of a more robust program as proposed in S.2429 (Skoufis)/A.4012 (Bronson). This proposal would authorize tax credits of $500 per eligible employee, with the credit available for the state's 2025, 2026 and 2027 tax years, and set an aggregate cap on available credits at $90 million, with no more than $30 million in credits available for any one tax year. This credit will promote the state's interest in bringing additional New Yorkers into the workforce, by providing an incentive for the hiring of persons from one of ten targeted groups that face barriers to employment. Importantly, for taxpayers, especially smaller and newer taxpayers with limited profits, the legislation would make the credit refundable, meaning that if the credit exceeds the taxpayer's tax liability for a given tax year, the excess is treated as a refundable overpayment.

State implementation will be straightforward as the criteria and calculations for the state WOTC will be the same as under federal law, and the New York State Department of Labor is already responsible for certifying employee eligibility under the federal WOTC, under federal designation.

At a time when employers are looking to expand their search for employees, and the state is working to expand the workforce and support the re-entry of workers into the workforce, we believe this targeted hiring incentive would be a "win-win" for the state.

Interest Payments on Tax Assessments – We are hearing growing concerns regarding lengthy, even multi-year delays in the adjudication of tax disputes by the New York City Tax Appeals Tribunal. Taxpayers rely on the Tribunal as an unbiased forum. However, in recent years, cases are not being heard and hearings are being scheduled and then cancelled without explanation. Currently, no cases are scheduled to be heard by the Tribunal. This situation leaves taxpayers with no recourse to address their concerns. But while cases sit without a forum to be heard, taxpayers are incurring historic interest rates. And if such administrative reviews result in increased tax liability, the taxpayer is also subject to increased interest payments that accrued during the period of the Tribunal's delayed review. To address this fundamentally unfair outcome, we urge the Senate and Assembly to advance legislation to eliminate the City's authority to impose interest on tax assessments that are appealed to the Tribunal if the Tribunal fails to adjudicate the case within one year of the filing of such petition. We believe this is a fair approach that provides a reasonable level of interest payments on disputed tax liability, while protecting taxpayers from excessive interest assessments due to adjudicatory delays that are wholly beyond their control.

"Rate parity" for non-C corporation manufacturers – The Business Council supports a personal income tax exemption for income earned by a shareholders of or partners in "qualified pass-through manufactures," to achieve treatment comparable under the corporate franchise tax (Article 9-A) which provides a zero "entire net income" tax rate for manufacturers. This mechanism is proposed in S.4064 (Mannion)/A.4168 (Stirpe). This legislation does the same thing for manufacturers organized as partnerships, LLCs, s-corporations or sole proprietorship. We note that this proposal was in the Assembly budget resolution for FY 2023 (A.9009-B, Part GG) and FY 2024 (A.3009-B, Part HH). This legislation will reduce state-imposed costs on smaller manufacturing firms across New York State. Under this bill, the tax rate reduction applies to businesses that are principally engaged in manufacturing (i.e., more than 50 percent of its gross receipts are derived from the sales of goods produced by manufacturing), and that have all of its capital (or at least $1 million of manufacturing capital) located in New York State. This legislation advances the State's overall interest in supporting high paying private sector jobs, and in supporting business sectors that are embracing advancing technology.

Unemployment Insurance Taxes

We appreciate the Administration's commitment to pay 2025 interest assessments on the state's unemployment insurance (UI) program's outstanding federal advances (still more than $6 billion) with General Fund resources, rather than imposing additional payroll taxes on New York employers. This interest payment is estimated at around $165 million. Over the past four federal fiscal years, New York employers have paid nearly $600 million in these "interest assessment surcharges" (under NYS Labor Law §581-d), payments on top of record-high federal and state UI payroll taxes. From our research, it appears that New York is the only state that imposes a separate payroll tax for such interest charges – and of course, California is the only state other than New York that has yet to repay its pandemic-era federal UI borrowing. Importantly, we note that the actual appropriation language in the State Operations bill (S.3000-A/A.3000-A), still – even after the 30-day amendments -- specifies that interest payments be made from the "Enterprise Funds/Unemployment Insurance Benefit Fund/Interest Assessment Account" rather than the General Fund. This needs to be rectified in the final budget agreement. In addition, we also urge the repeal of §581-d, the interest assessment surcharge, and permanently shift the payment of interest on federal advances to the General Fund, the approach taken by most if not all other states.

Even with this modest reform, the state needs to address the closure of the remaining $6 billion (actually $6.178 billion as of 2/26/25) in outstanding federal advances. Under current state law, this entire debt is being repaid through increased state and federal payroll taxes on employers. Of 35 states that took federal UI program advances during the pandemic, New York is **the only state** that has **not** committed a penny of public funds to addressing their UI program's debt and financial stability. Most states used a combination of federal CARES Act and ARPA funds to address their UI debt (for a total of more than $26 billion) and California and Massachusetts applied some general fund resources. Given that New York's extraordinary level of layoffs and UI claims in 2020 were driven by state-mandated business closures, there is a strong argument that some level of state funds should be dedicated to bringing the state's UI system back to a firm financial footing.

We note that under existing state law, the indexing of maximum weekly UI benefits is frozen until the UI fund is returned to solvency, and while organized labor is pushing for increased benefits, we also note that organized labor also lobbied against the use of emergency federal funds to help address the program's deficit. We urge the legislature to avoid imposing any new costs on the system until the ongoing deficit is addressed – indeed, under federal law, New York employers will be penalized with even higher federal payroll taxes if the state were to do so.

Increased Business Taxes – We applaud Governor Hochul for avoiding new or increased business taxes in the Executive Budget proposal.

However, we raise the issue here in anticipation of such proposals in the Senate or Assembly budget resolutions, e.g., both the Senate and Assembly budget resolutions for FY 2025 proposed a new 9% corporate franchise tax (Article 9-A) rate for taxpayers with a business income base greater than $5 million. This proposal would vault New York toward the top of the list of corporate tax rates among the states, with only Minnesota (9.8%), Illinois (9.5%) and Alaska (9.4%) with higher rates. However, for corporations operating in New York City, these proposed rate increases would be on top of the City's corporate tax of 8.85 percent (on income apportioned to the city), or 9 percent for financial corporations, increasing the top marginal rate in New York to nearly 20 percent.

Article 9-A's net income-based tax rates only apply to C-corporations, whose earnings are also subject to New York's progressive income tax rates once paid to shareholders. Dividend payments to shareholders are not deductible business expenses for the corporation, but once received by shareholders those dividend payments are subject to progressive taxation at the federal, New York State and – if applicable – New York City level under those jurisdictions' personal income tax laws. The result is that C-corporation profits are subject to two levels of taxation, including under already progressive personal income tax laws, and this bill would exacerbate that double-taxation effect.

However, there is no compelling tax policy reason to impose progressive corporate franchise tax rates, as a corporation's level of taxable income does not reflect their relative profitability, i.e., profits as a percentage of total sales, nor does their taxable income reflect the ability to pay of their shareholders (which includes many whose shares are owned in public or private retirement funds.)

We are also concerned that the legislature may advance other business tax changes being advanced by pro-spending advocates. These include but not limited to proposals for a significant reduction in the state's 95% exemption of "global intangible low taxed income," and a reduction in the personal income tax credit applied against the opt-in "pass through entity tax."

Our detailed analysis and opposition to these proposals is attached to this testimony.

In short, The Business Council strongly opposes budget provisions that would impose hundreds of millions in increased taxes on both corporations and small and mid-sized businesses doing business in New York State. The sponsors' justifications are based in part on claims of inadequate federal aid to states (even though federal funds to New York increased by 44% from pre-pandemic SFY 2022 compared to projected levels for SFY 2026), and inadequate state spending (which over the same period increased by 40%, nearly double the inflation rate.)

We also challenge the curious argument that since (in the view of some legislators and advocates) that the state legislature should punish businesses operating in New York State with significantly higher taxes because they disagree with provisions of federal tax law, based on the argument that their overall taxes are too low – even though New York's corporate franchise tax receipts are at an all-time high, impacted by multiple factors including an already-existing tax rate increase on higher-earning businesses.

These proposals would set apart New York's taxation of corporations and small and mid-sized businesses from the approach taken by other states in significant ways, including by reducing the benefit of measures designed to maintain a more competitive tax code that were adopted with broad, bipartisan support in the New York State legislature. We believe it would be counter-productive to impose even greater tax burdens on private sector businesses, especially as we see other states adopting tax reductions.

MEMO IN OPPOSITION

BILL	S.953 (Hoylman-Sigal)/A.1971 (Kelles)
ISSUE	Business Tax Increases
POSITION	Opposed

The Business Council strongly opposes this legislation that would impose hundreds of millions in increased taxes on both corporations and small and mid-sized businesses doing business in New York State. The sponsors' justifications are based in part on claims of inadequate federal aid to states (even though federal funds to New York increased by 44% from pre-pandemic SFY 2022 compared to projected levels for SFY 2026), and inadequate state spending (which over the same period increased by 40%, nearly double the inflation rate.)

The bill's sponsors also make the curious argument that since (in their view) the federal corporate income tax rate is too low, New York State should punish businesses *operating in New York State* with significantly higher taxes – even though the state's corporate franchise tax receipts are at an all time high, impacted by multiple factors including an already-existing tax rate increase on higher-earning businesses.

The provisions of this legislation, in effect, penalizes New York business taxpayers for taking advantage of federal tax provisions disapproved of by the bill's sponsors, including amendments that that specifically target small and mid-sized businesses for higher taxes – an approach being taken by few, if any, other states.

In fact, this bill sets apart New York's taxation of corporations and small and mid.-sized businesses in significant ways, including by reducing the benefit of measures designed to maintain a more competitive tax code that were adopted with broad, bipartisan support in the New York State legislature.

We believe it would be counter-productive to impose even greater tax burdens on private sector business, especially as we see other states adopting tax reductions.

For these reasons, and as detailed below, The Business Council strongly opposes S.953/A.1971.

GILTI Exemption – Section 1 of this bill would reduce the corporate franchise tax (Tax Law Article 9-A) exemption for "global intangible low taxed income" (GILTI) from 95 percent to 50 percent. The 95 percent deduction was adopted at the end of the state's 2019 state legislative session, and was the result of a bipartisan agreement to decouple from this provision of the federal "Tax Cuts and Jobs Act of 2017," or TCJA. (see Chapter 39, Laws of 2019, Part I). It also assured the equal treatment of domestic dividends and deemed foreign dividends under New York's Tax Law, avoiding an issue of likely litigation.

By backtracking on this provision, New York's treatment of foreign earnings would be inconsistent with the majority of states that employ broad conformity with the Internal Revenue Code as the starting point for calculating state-level tax liability. Virtually all "conformity" states have adopted a GILTI exemption of 95 percent or greater, including but not limited to Pennsylvania, Massachusetts, Connecticut and Illinois. All told, 28 states with a corporate income tax provide a GILTI exemption of at least 95%, including both "red" and "blue" states. (Note that this is not an issue in California, which is not a general a IRC conformity state, nor Texas, which conforms to the pre-TCJA version of the Internal Revenue Code for purposes of its franchise tax.)

The Business Council strongly supported New York's decoupling from the federal GILTI regime and strongly opposes this proposed legislation that would increase New York State taxation of foreign earnings that have yet to be paid to a New York corporate taxpayer. It would place New York Businesses at a competitive disadvantage not only domestically but globally as well.

The TCJA subjected a portion of undistributed earnings of foreign subsidiaries ("controlled foreign corporations," or CFCs) to ongoing federal taxation, as part of a multi-part tax reform package that included significant rate reductions and other beneficial measures. This provision (IRC §951A) established the concept of GILTI and was intended to impose federal tax on income earned in low-tax foreign jurisdictions from "intangible" property, such as patents, copyrights, and trademarks. However, GILTI is actually a tax on the overall business income of foreign subsidiaries that is not actually distributed to the U.S. parent, as it is calculated as a function of the taxpayer's foreign fixed assets, and not actual earnings from intangible assets in "tax havens." Moreover, at the federal level, the impact of GILTI is partially offset by federal tax credits that would not be replicated at the state level under this legislation.

New York State's corporate franchise tax has long exempted this type of undistributed income of domestic and foreign subsidiaries. However, due to the way the federal law was drafted, GILTI was not covered by New York's then-existing statutory exemption. Therefore, New York's tax law – left unamended – would have required GILTI to be included in the tax returns of New York business taxpayers and would have resulted in discrimination of foreign versus domestic income.

Without an exemption, New York corporate taxpayers would be subject to state-level tax on income that has not, and may never actually be, received by the New York taxpayer. In addition, the State tax levy is not reduced by the foreign tax credits allowed at the federal level, nor by the federal rate reductions – provisions of the federal TCJA that offset the GILTI tax, that were not replicated at the state level.

There are compelling reasons why New York should maintain its 95 percent GILTI exemption from state-level taxation under its corporate franchise and insurance taxes. This approach is consistent with New York's policy of not taxing the earnings of foreign subsidiaries when those earnings have not been distributed to a New York taxpayer. Imposing State taxes on foreign earnings will adversely impact New York's business climate. It will be contrary to the State's efforts to retain and attract multi-national businesses and will set New York apart from the majority of states which exempt GILTI from state-level taxation.

Corporate Franchise Tax Rates – Section 2 of this legislation would increase the marginal corporate franchise tax rate on net income to 8 percent for taxpayers with a business income base of over $2.5 million, to 12 percent of a taxpayer's business income base in excess of $10 million, and to 14 percent of a taxpayer's business income base in excess of $20 million. At present, the general Article 9-A rate is 6.5 percent, however a temporary rate of 7.25 percent applies to corporations with taxable income over $5 million for the 2021 through 2026 tax years.

This proposal would vault New York to the top of the list of corporate tax rates among the states, higher than New Jersey which presently has the only rate above 10 percent.

For corporations operating in New York City, these increased state tax rates would also be on top of the City's corporate tax of 8.85 percent (on income apportioned to the city), or 9 percent for financial corporations, increasing the top marginal rate in New York to over 20 percent.

These rate increases only apply to C-corporations, whose earnings are also subject to progressive income tax rates once paid to shareholders. Dividend payments to shareholders are not deductible business expenses for the corporation, but once received by shareholders those dividend payments are subject to progressive taxation at the federal, New York State and – if applicable – New York City level under those jurisdictions' personal income tax laws. The result is that C-corporation profits are subject to two levels of taxation, including under already progressive personal income tax laws, and this bill would exacerbate that double-taxation effect.

There is no compelling tax policy reason to impose progressive corporate franchise tax rates, as a corporation's level of taxable income does not reflect their relative profitability, i.e., profits as a percentage of total sales, nor does their taxable income reflect the ability to pay of their shareholders (which includes many whose shares are owned in public or private retirement funds.)

New York's permanent corporate franchise tax rate of 6.5 percent is somewhat competitive, being "only" the 21st highest among the states. However, it still adds to a very high total business tax burden in New York. A recent study by the Council on State Taxation (an association of business tax professionals that advocates on state tax structures but not tax rates) showed that combined state and local taxes paid by New York businesses totaled $90.3 billion, nearly as high as Texas (at $90.9 billion) - a state with a significantly larger state economy and workforce - and almost double Florida's combined business tax burden. On a per-employee basis, New York's combined tax burden on business was $12,100 per employee, second to only North Dakota (whose tax revenues are skewed by high extractive industry taxes), and 55 percent above the national average.

Importantly, other states are taking a different approach. In contrast to New York's proposal, a number of states are reducing their business taxes. Among other northeast states, For example, Pennsylvania reduced its corporate tax rate from 9.99 percent to 8.99 percent effective January 1, 2023, and will continue to reduce the rate by 0.5 percentage points each year until it reaches 4.99 percent at the beginning of 2031.

From an economic policy perspective, we believe it is the wrong time to impose additional costs on employers. From a tax policy perspective, we believe this proposal make little sense.

Pass Through Entity Tax – Part 4 of this legislation would significantly reduce the effectiveness of New York's mechanism to restore federal deductibility of state taxes on the income of non-incorporated businesses. Specifically, it would reduce the value of the personal income tax credit for pass-through entity tax from 100 percent to 75 percent of the pass-through entity tax.

The "pass through entity tax" (PTET) and the related tax credit was adopted in 2021 (see Chapter 59, Laws of 2021, Part C) to benefit New York's mostly small and mid-sized unincorporated businesses, which were adversely impacted by the cap on state and local tax deductions included in the TCJA.

Generally speaking, unincorporated businesses are not subject to income tax at the entity level. Instead, their income is attributed to the business owners (whether or not the income is actually distributed to such owners) and taxed under the state's progressive personal income tax.

In the wake of the TCJA, states took steps to restore federal deductibility of state-imposed taxes. New York joined more than 20 other states (including California, Connecticut, New Jersey, Massachusetts, Illinois, Ohio, Michigan, among others) to adopt a PTET. Under a PTET, an unincorporated business is subject to an entity-level income tax, with the impact of the tax "distributed" proportionately to its owners. Those owners are able to deduct their share of the PTET on their federal returns, while receiving a state tax credit equal to their share of the state PTET payment.

The result is that New York State has no change in net revenues, as PTET income is offset by the PTET credit, and our state's small business taxpayers are restored to their pre-TCJA tax treatment.

Under this proposed legislation, the offsetting credit would be reduced to 75 percent of the PTET tax liability, which will ultimately result in a great State tax liability imposed on the owners of small and mid-sized businesses than the liability imposed prior to the enactment of the PTET statute

The PTET statute was designed to support New York State's small and mid-sized business community at no cost to the State by restoring deductibility of state taxes limited under federal tax reform. This regime was adopted with significant bipartisan support in the New York State legislature. We see no compelling reason to effectively reducing this valuable tax benefit for small and mid-sized businesses.

Section 199A Tax - Section 5 of the bill would amend the state's personal income tax law by imposing an additional tax corresponding to the value of a taxpayer's federal deduction under IRC §199A. The rate would be set at the highest applicable federal personal income tax rate applicable to such income.

Section 199A is another provision of the Internal Revenue Code added by the TCJA. It provides a 20 percent federal income tax deduction for "qualified business income." This deduction is limited to joint return filers with under $315,000 in taxable income or single filers with up to $157,500 in taxable income (the deduction is phased out for joint return taxable income between $315,000 and $415,000 and for single filers with taxable income between $157,500 and $207,500.) It only applies to income from domestic businesses, and those organized as a sole proprietorship, partnership, S corporation, trust or estate to qualify.

Importantly, New York State is decoupled from this provision of the IRC, meaning that small businesses do not receive a comparable deduction on their state-level personal income taxes.

Ironically, however, in approving the FY 2023 budget, the state legislature did adopt an increase in both the state and New York City personal income tax small business income exclusion from 5 to 15 percent of net business or farm income, and expanded eligibility to include LLCs, partnerships and sub-S corporations with total income up to $1.5 million.

In short, this provision of S.953/A.1971 imposes a state tax penalty on New York State small businesses for provisions of federal tax law that provides no state-level tax benefit, and more than offsets state-level small business relief approved just two years ago. We oppose this imposition of increased tax liability on small business and farm businesses.