A.4009-B, Part I, Subpart A

STAFF CONTACT : Ken Pokalsky | Vice President | 518.694.4460

BILL
A.4009-B, Part I, Subpart A
SUBJECT
Increased Corporate Franchise Tax Rate
DATE
March 30, 2023
OPPOSE

The Business Council strongly opposes this provision in the Assembly one-house budget bill that would impose a temporary 9.25 percent tax rate on Article 9-A corporate franchise tax payers with a business income base over $5 million for tax years 2024 through 2026. The “permanent” rate for Article 9-A taxpayers is 6.5 percent.

While the Executive Budget already proposed to extend by three years a “temporary” 0.75 percent increase in Article 9-A rate through 2026, this proposal would result in a more than three-fold increase in that temporary rate, adding $1 billion or more in tax liability on a relatively limited share of New York’s business taxpayers.

This Assembly proposal also would dedicate partial receipts from this tax rate increase to the MTA (up to $153 million by FY 2027) and for other statewide transit (up to $51 million for FY 2027), showing that this proposal is an Assembly alternative to an increased MTA regional payroll tax increase, proposed in the Executive Budget but rejected by both houses in their one-house budget proposals.

Importantly, this proposal would impose a significantly increased tax on businesses statewide income primarily for New York City transportation funding, instead of adopting a much smaller tax increase across a far broader business taxpayer base within the MTA region, as was proposed in the Executive Budget.

Further, these same businesses are already subject to a surcharge on their Article 9-A tax liability related to income earned within the MTA region, with that full surcharge dedicated to funding the MTA. **This existing corporate tax surcharge is projected to raise $1.4 billion for the MTA in FY2022.**

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, 2022 and 2023 tax years.

This proposal would vault New York to seventh highest corporate tax rates among the states. New Jersey is the highest, with a total rate of 11.5 percent, however, their Governor has committed to letting its 2.5 percent corporate tax surtax to sunset at the end of the 2023 tax year.

For corporations operating in New York City, these increased state tax rates are in addition to the City's corporate tax of 8.85 percent (on income apportioned to the city), or 9 percent for financial corporations, making the top rate for those business the highest in the United States.

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.

However, unlike under the personal income tax, 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. The Council on State Taxation (an association of business tax professionals that advocates on state tax structures but not tax rates) determined that **combined state and local taxes paid by New York businesses in 2021 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 2021 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), with New York's combined burden 55 percent above the national average.

Importantly, other states are taking a different approach. In contrast to this Assembly proposal, 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. In his recent State of the State message, New Jersey Governor Phil Murphy committed to sunsetting that state's corporate business tax's 2.5 percent surcharge at the end of 2023, as currently scheduled (the surcharge is applicable to entities with entities allocated taxable net income over $1 million.)

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.

For these reasons, The Business Council strongly opposes A.4009-B, Part I, Subpart A.