S.3009-B, Part SS and A.3009-B, Part NN

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SUBJECT

Increased Corporate Franchise Tax Rate

DATE

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OPPOSE

The Business Council strongly opposes these legislative budget proposals that would impose more than $6 billion in increased taxes on corporations doing business in New York State, by raising the marginal tax rate under the state's corporate franchise tax (Tax Law Article 9-A).

Under the Senate's budget resolution, the state would impose a rate of 9% if a business' taxable income is above $5 million, applicable to tax years 2025 to 2029

The Assembly budget proposal would impose a rate of 7.25 % if a business' taxable income is between $5 and $10 million, and 9.25% if its taxable income is above $10 million, applicable to tax years 2025 to 2029. -The Assembly proposal would also extend the Article 9-A capital base tax rate at 0.1875% through tax year 2029.

Under current law, the "permanent" Article 9-A tax rate is 6.5%, with a "temporary" rate of 7.25% on taxable income over $5 million. First imposed for the 2021 tax year, the temporary 7.25% rate was extended through the 2026 tax year in the SFY 2024 budget. That budget also extended the 0.1875% capital base tax rate for the same period (as part of the 2014 corporate franchise tax restructuring law, the capital based alternative tax was scheduled to be fully phased out for the 2024 tax year.

The Assembly budget resolution projects increased revenues of $1.425 billion for the new fiscal year, $2.105 for SFY 2027, $1.6 billion for SFY 2028 and $1.4 billion for SFY 2029, for a total tax increase of $6.5 billion.

Stand-alone legislation in each house (S.953/A.1971) would impose even higher rates, and these rate hikes are based in part on the curious argument that (in some advocate's view) the federal corporate income tax rate is too low, so 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.

It has also been argued – including during the floor debate on the Assembly resolution – that these proposals merely increase New York's corporate rate to levels imposed in neighboring states, like New Jersey, which enacted a temporary surcharge that made its effective corporate tax rate 11.5%, the highest in the nation.

However, that argument ignores the fact that corporations doing business in New York City are also subject to an 8.75% tax rate (9% for financial corporations) imposed on their NYC allocated income, for a combined rate of 18%. In addition, corporations are subject to a 30% surcharge on their Article 9A tax liability attributed to activity within the MTA service region - a surcharge that generated $1.7 billion last year and pushes the effective tax rate over 20% for some businesses, way beyond the rates imposed by neighboring 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.

There is also 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 shareholder dividends.

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 focuses 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. 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 makes little sense.

For these reasons, The Business Council strongly opposes the corporate franchise tax rate increases proposed in S.3009-B, Part SS and A.3009-B, Part NN.