The Business Council

S.4009 (Budget)/A.3009 (Budget), Part I, Subpart A

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S.4009 (Budget)/A.3009 (Budget), Part I, Subpart A

SUBJECT

Extension of "Temporary" Corporate Franchise Tax Rates

DATE

February 16, 2023

OPPOSE

We oppose the Executive Budget proposal (S.4009/A.3009, Part I, Subpart A) to extend through the 2026 tax year the temporary Article 9A tax rates adopted in the FY 2022 state budget. This extension would apply to both to the 7.25% rate for entities with a business income base over $5 million, and the alternative 0.1875% capital base tax rate. Under current law, both are set to expire at the end of the 2023 tax year.

As quick background, the corporate franchise tax requires entities to pay the higher of three alternative tax calculations, including a percentage of net income, a percentage of in-state capital or a fixed dollar minimum (S-corporations are only subject to the fixed dollar minimum).
The Executive Budget proposal is anti-competitive for several reasons.

Importantly, the corporate franchise tax provisions affected by this proposal only apply to C-corporations, whose earnings are also subject to progressive income tax rates once paid to shareholders, in addition to such earning also being taxed at the corporation level, resulting in double taxation. 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 taxes. The result is that C-corporation profits are subject to two levels of taxation, including already progressive personal income tax rate, and this budget proposal exacerbates that double-taxation effect.

However, unlike under the PIT, there is no compelling tax policy reason to impose progressive corporate franchise tax rates, as 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.

Further, the alternative capital base tax rate is a disincentive to maintaining physical or financial capital in New York State and was already being phased out by New York State due to its anti-competitive impact prior its “temporary” extension in the FY 2022 state budget. In fact, under provisions of the state’s 2015 tax reform legislation, the capital base rate would have sunset after the 2021 tax year. Instead, the Executive Budget proposes to extend this tax on capital by another three years.

New York’s permanent corporate franchise tax rate of 6.5% 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. According to 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), 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:

- under legislation adopted in 2022, Pennsylvania reduced its corporate tax rate from 9.99% percent to 8.99% effective January 1, 2023, 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% surcharge at the end of 2023, as currently scheduled (the surcharge is applicable to entities with entities allocated taxable net income over $1 million.)

New York is among the few states yet to fully recover jobs lost in the Covid-induced national recession, and employers in New York face a wide range of state-imposed costs, regulations and restrictions that impair our economic competitiveness and ability to recover from economic downturns.

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 these proposals make little sense.

For these reasons, The Business Council opposes extension of corporate franchise tax rates proposed in this year's Executive Budget. They should be allowed to sunset as scheduled at the end of the 2023 tax year.