



Testimony to

**Senate Finance Committee and Assembly Ways and Means
Committee**

FY 2025 Executive Budget: Taxation

Presented by

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We applaud Governor Hochul for proposing a balanced budget for SFY 2025 that addresses the state's most pressing educational, social, safety and infrastructure needs while avoiding major new revenue measures. We note that state revenues remain buoyed by "temporary" increases in both marginal personal income tax rates and the net income-based corporate franchise tax rate on higher profit businesses, adding to the already high state and local tax burden on business. Likewise, combined federal and state unemployment insurance payroll taxes on employers are at all time high levels. At this point in the state's economic recovery, we agree it would be ill advised policy to impose significant new or increased taxes on New York's private sector, or residents.

As a result, this year's Executive Budget proposes no significant adverse tax policy proposals for us to address today.

Instead, we would like to focus our testimony on tax initiatives that would support the state's private sector and encourage job growth that are not included in the Executive Budget. We believe this proposals are deserving of consideration as the Administration and Legislature negotiates a final budget agreement.

As always, we appreciate this opportunity to provide input to the legislative process and welcome the opportunity to provide you with any additional information on these issues.

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- Pass Through Entity Tax amendments – The Business Council supports inclusion in the FY 2025 final budget provisions making two procedural, revenue neutral amendments to the pass-through entity tax (PTET) at both the state and New York City level.

First, we support amendments currently presented in S.8115 (Skoufis)/A.8451 (Paulin) that would allow a taxpayer to make the PTET election by September 15 of the tax year to which the election applies. Current law requires the election to be made by March 15 of the tax year. As of November 2023, thirty-six states, including New York, have adopted a PTET, and a significant majority of those states allow this election to be made with the filing of their tax returns (typically March 15 or April 15 following the end of the applicable tax year) or have no limitation on their election date. Our research shows that only three other states follow New York's approach to require elections to be on March 15 of the tax year to which the election applies. (Note, the FY 2023 state budget allowed for an extended election period for the 2022 tax year, until February 15, 2023, to accommodate taxpayers impacted by a technical amendment to the PTET law, illustrating the state's ability to accommodate later elections.)

The PTET was adopted at the state level in 2021 and for New York City in 2022, for the purpose of restoring the federal deductibility of state taxes on business income paid under the personal income tax, such as for Sub-S corporations, partnerships, and LLCs. Since then, this program has benefitted thousands of mostly small unincorporated businesses.

In extending the election date for the PTET election, this legislation will better fulfill the legislative intent of making the PTET mechanism available to eligible New York businesses. This will allow existing taxpayers more time to assess the impact of the election, and allow unincorporated businesses created after March 15 of a tax year to take advantage of the PTET program for that year.

Second, as reflected in our recommended amendments to S.8115/A.8451, we support allowing the use of the annualized income installment method for the computation of estimated payments under the EITE. Generally, taxpayers under the state and city EITE are required to make four equal estimated payments. We propose that, as is the case under the personal income tax, a taxpayer may establish that its annualized income installment is less than the otherwise required installment and pay such lower amount without being subject to an underpayment penalty (the "annualized income installment method"). The annualized income installment method provides the most accurate picture of annualized income based on facts known from the beginning of the taxable year to date.

Under this method, the four required installments of estimated tax must be paid by the standard due dates, but the amount due for each required installment may vary. The amount due is a percentage of the annual tax based on the taxpayer's income, as annualized, for the months in the taxable year ending before the due date of the required installment (the "annualization period"). Any reduction in a required installment which results from the application of this method is recaptured by increasing the amount of the next required installment by the amount of such reduction and by increasing subsequent required installments to the extent that such reduction has not previously been recaptured.

- Work Opportunity Tax Credit – The Business Council supports inclusion in the budget a new "work opportunity tax credit" as proposed in this S.4833-A (Skoufis)/A.8905 (Bronson). This credit will promote the state's interest in bringing additional New Yorkers into the workforce, by providing an incentive for the hiring of those in one of ten targeted groups that face barriers to employment (e.g., formerly incarcerated, food assistance recipients, SSA recipients, long-term unemployed, etc.) Any size employer who hires qualified employees would be eligible for this credit.

This proposal amplifies the impact of the longstanding federal Work Opportunity Tax Credit by adopting a comparable WOTC credit under New York's personal income, corporate franchise, and insurance tax. Importantly, to maximize its impact, the state WOTC credit will be refundable, meaning if the credit exceeds tax liability, the excess will be refunded as an overpayment of taxes. In contrast, the federal WOTC is subject to carry-forward rules, meaning that its full value may not be realized by the employer for several years.

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.

The credit is equal to 25 percent of wages paid to qualified individuals who perform at least 120 but less than 400 hours of service for the employer, and 40 percent for employees with 400 or more hours, applicable to the first \$6,000 of wages paid, for a maximum credit of \$2,400. For qualified disabled veterans, the credit applies to the first \$24,000 in wages, for a maximum credit of \$9,000.

At both the federal and state level, credits are only claimed after a qualified employee is hired and paid the minimum hours required. Under federal law, the credit is available for an employee's first year of work, and an employer cannot claim the WOTC for employees who are rehired by an employer - provisions that will be reflected in state law as well. Finally, state law should specify that an employer can only claim the WOTC or an alternative state credit, such as the state's existing credit for hiring veterans or disabled persons, for any individual employee.

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

And, importantly, this proposal sets up the state WOTC as a pilot program, applicable only to tax years 2025, 2026 and 2027, with an overall cap of \$30 million in authorized credits.

- Small Business Manufacturing Tax Rates – We support legislation to provide a personal income tax exemption for income earned by a "qualified pass-through manufacture, as proposed in S.4236 (O'Mara). This legislation would complete the state's 2014 initiative to cut business income taxes for New York manufacturers, which initially reduced to zero the "entire net income" rate for manufacturers under the corporate franchise tax, which is applicable to businesses organized as "c-corporations." This legislation does the same thing for manufacturers organized as partnerships, LLCs, s-corporations or sole proprietorship, whose income is "passed through" to their owners and taxed under the personal income tax. This legislation will help 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 their 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.

- Thirty-Day Safe Harbor -- Workers who travel outside their home state on business trips for temporary periods have unforeseen tax liabilities and return filing obligations in many states where they travel, and hard-pressed to comply with the varying and disparate state rules for withholding income earned by their traveling employees. New York is no exception, imposing individual personal income tax liability on the first day of in-state work by a non-resident, and imposing PIT withholding obligations on their employer on the fourteenth day of in-state work. We have heard from member companies that New York's approach has discouraged business activity in and business travel to New York State. Moreover, it imposes compliance burdens especially on business executives and other high earners more likely to be subject to state audit actions. While Congress continues to consider "mobile workforce" legislation, which would set a uniform 30-day safe harbor for personal income tax liability and withholding obligations for employees working outside their resident state, an alternative approach is state-level legislation with a reciprocity provision which would provide the safe harbor to residents of only those states that have similar law. This type of legislation has already been adopted in Illinois (2019), West Virginia (2021), and Louisiana (2021). This legislation protects both employees traveling to a nonresident state for fewer than 30 days and employers (including businesses, associations, governments, and unions) by eliminating withholding obligation for those employees.

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