STATE OF NEW YORK

8179

2023-2024 Regular Sessions

IN ASSEMBLY

October 27, 2023

Introduced by M. of A. BURKE, REYES -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to imposing a tax on certain businesses when people are displaced from their employment due to certain technologies

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The tax law is amended by adding a new section 209-A to read as follows:

§ 209-A. Additional tax on using technology to displace workers. 1. (a) For the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in a corporate or organized capacity, or of maintaining an office, or of deriving receipts from activity in this state, for all or any part of its taxable year, there is hereby imposed on every corporation subject to tax under section two hundred nine of this article, or any receiver, referee, trustee, assignee or other fiduciary, or any officer or agent appointed by any court, who conducts the business of any such corporation, a tax surcharge, in addition to the tax imposed under section two hundred nine of this article, to be in an amount equal to the sum of any taxes or fees imposed by the state or any political subdivision thereof computed based on an employee's wage, paid by the corporation or the employee, including, but not limited to, state income tax, state unemployment insurance, and local occupational taxes, for an employee's final year of employment with the company where such employee was displaced in such taxable year due to the employee's position being replaced by technology. For the purposes of this section, the term "technology" shall include, but not be limited to, machinery, artificial intelligence algorithms, or computer applications.

(b) A corporation is deriving receipts from activity in this state if it has receipts within this state of one million dollars or more in the

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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taxable year. For purposes of this section, the term "receipts" means the receipts that are subject to the apportionment rules set forth in section two hundred ten-A of this article, and the term "receipts within this state" means the receipts included in the numerator of the apportionment factor determined under section two hundred ten-A of this article.

(c) A corporation is doing business in this state if: (i) it has issued credit cards to one thousand or more customers who have a mailing address within this state as of the last day of its taxable year; (ii) it has merchant customer contracts with merchants and the total number of locations covered by those contracts equals one thousand or more locations in this state to whom the corporation remitted payments for credit card transactions during the taxable year; or (iii) the sum of the number of customers described in subparagraph (i) of this paragraph plus the number of locations covered by its contracts described in subparagraph (ii) of this paragraph equals one thousand or more. As used in this subdivision, the term "credit card" includes bank, credit, travel and entertainment cards.

(d)(i) A corporation with less than one million dollars but at least ten thousand dollars of receipts within this state in a taxable year that is part of a unitary group that meets the ownership test under section two hundred ten-C of this article is deriving receipts from activity in this state if the receipts within this state of the members of the unitary group that have at least ten thousand dollars of receipts within this state in the aggregate meet the threshold set forth in paragraph (b) of this subdivision.

(ii) A corporation that does not meet any of the thresholds set forth in paragraph (c) of this subdivision but has at least ten customers, or locations, or customers and locations, as described in paragraph (c) of this subdivision, and is part of a unitary group that meets the ownership test under section two hundred ten-C of this article is doing business in this state if the number of customers, locations, or customers and locations, within this state of the members of the unitary group that have at least ten customers, locations, or customers and locations, within this state in the aggregate meets any of the thresholds set forth in paragraph (c) of this subdivision.

(e) At the end of each year, the commissioner shall review the cumulative percentage change in the consumer price index. The commissioner shall adjust the receipt thresholds set forth in this subdivision if the consumer price index has changed by ten percent or more since January first, two thousand fifteen, or since the date that the thresholds were last adjusted under this subdivision. The thresholds shall be adjusted to reflect that cumulative percentage change in the consumer price index. The adjusted thresholds shall be rounded to the nearest one thousand dollars. As used in this paragraph, "consumer price index" means the consumer price index for all urban consumers (CPI-U) available from the bureau of labor statistics of the United States department of labor. Any adjustment shall apply to tax periods that begin after the adjustment is made.

(f) If a partnership is doing business, employing capital, owning or leasing property in this state, maintaining an office in the state, or deriving receipts from activity in this state, any corporation that is a partner in such partnership shall be subject to tax under this article as described in the regulations of the commissioner.

2. (a) A foreign corporation shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office

in this state, or deriving receipts from activity in this state, for the purposes of this article, by reason of: (i) the maintenance of cash balances with banks or trust companies in this state; (ii) the ownership of shares of stock or securities kept in this state, if kept in a safe deposit box, safe, vault or other receptacle rented for the purpose, or if pledged as collateral security, or if deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts; (iii) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation; (iv) the maintenance of an office in this state by one or more officers or directors of the corporation who are not employees of the corporation if the corporation otherwise is not doing business in this state, and does not employ capital or own or lease property in this state; (v) the keeping of books or records of a corporation in this state if such books or records are not kept by employees of such corporation and such corporation does not otherwise do business, employ capital, own or lease property or maintain an office in this state; or (vi) any combination of the foregoing activities.

(b) An alien corporation shall not be deemed to be doing business, employing capital, owning or leasing property, maintaining an office in this state, or deriving receipts from activity in this state, for the purposes of this article, if its activities in this state are limited solely to: (i) investing or trading in stocks and securities for its own account within the meaning of clause (ii) of subparagraph (A) of paragraph (2) of subsection (b) of section eight hundred sixty-four of the internal revenue code; (ii) investing or trading in commodities for its own account within the meaning of clause (ii) of subparagraph (B) of paragraph (2) of subsection (b) of section eight hundred sixty-four of the internal revenue code; or (iii) any combination of activities described in subparagraphs (i) and (ii) of this paragraph. An alien corporation that under any provision of the internal revenue code is not treated as a "domestic corporation" as defined in section seven thousand seven hundred one of such code and has no effectively connected income for the taxable year pursuant to clause (iv) of the opening paragraph of subdivision nine of section two hundred eight of this article shall not be subject to tax under this article for that taxable year. For purposes of this article, an alien corporation is a corporation organized under the laws of a country, or any political subdivision thereof, other than the United States, or organized under the laws of a possession, territory or commonwealth of the United States.

3. Any receiver, referee, trustee, assignee or other fiduciary, or any officer or agent appointed by any court, who conducts the business of any corporation, shall be subject to the tax imposed by this article in the same manner and to the same extent as if the business were conducted by the agents or officers of such corporation. A dissolved corporation which continues to conduct business shall also be subject to the tax imposed by this article.

§ 2. This act shall take effect immediately and shall apply to taxable years starting January 1, 2024. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.