

STATE OF NEW YORK

8179--B

2023-2024 Regular Sessions

IN ASSEMBLY

October 27, 2023

Introduced by M. of A. BURKE, REYES, DE LOS SANTOS -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to enacting the "robot tax act"

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

1 Section 1. This act shall be known and may be cited as the "robot tax
2 act".

3 § 2. The tax law is amended by adding a new section 209-A to read as
4 follows:

5 § 209-A. Additional tax on using technology to displace workers. 1.
6 (a) For the privilege of exercising its corporate franchise, or of doing
7 business, or of employing capital, or of owning or leasing property in a
8 corporate or organized capacity, or of maintaining an office, or of
9 deriving receipts from activity in this state, for all or any part of
10 its taxable year, there is hereby imposed on every corporation subject
11 to tax under section two hundred nine of this article, or any receiver,
12 referee, trustee, assignee or other fiduciary, or any officer or agent
13 appointed by any court, who conducts the business of any such corpo-
14 ration, a tax surcharge, in addition to the tax imposed under section
15 two hundred nine of this article, to be in an amount equal to the sum of
16 any taxes or fees imposed by the state or any political subdivision
17 thereof computed based on an employee's wage, paid by the corporation or
18 the employee, including, but not limited to, state income tax, state
19 unemployment insurance, and local occupational taxes, for an employee's
20 final year of employment with the company where such employee was
21 displaced in such taxable year due to the employee's position being
22 replaced by technology. For the purposes of this section, the term
23 "technology" shall include, but not be limited to, machinery, artificial
24 intelligence algorithms, or computer applications.

25 (b) A corporation is deriving receipts from activity in this state if
26 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.

LBD13007-03-3

1 taxable year. For purposes of this section, the term "receipts" means
2 the receipts that are subject to the apportionment rules set forth in
3 section two hundred ten-A of this article, and the term "receipts within
4 this state" means the receipts included in the numerator of the appor-
5 tionment factor determined under section two hundred ten-A of this arti-
6 cle.

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

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

27 (ii) A corporation that does not meet any of the thresholds set forth
28 in paragraph (c) of this subdivision but has at least ten customers, or
29 locations, or customers and locations, as described in paragraph (c) of
30 this subdivision, and is part of a unitary group that meets the owner-
31 ship test under section two hundred ten-C of this article is doing busi-
32 ness in this state if the number of customers, locations, or customers
33 and locations, within this state of the members of the unitary group
34 that have at least ten customers, locations, or customers and locations,
35 within this state in the aggregate meets any of the thresholds set forth
36 in paragraph (c) of this subdivision.

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

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

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

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

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

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

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