NEW YORK STATE SENATOR

Elaine Phillips

Senate Passes Senator Phillips' Bill To Prevent State Corporate Tax Increase As A Result Of Federal Tax Code Change

ELAINE PHILLIPS June 20, 2018

Senator Elaine Phillips announced today that the New York State Senate passed her bill that prevents an unintended State corporate tax increase on financial institutions as a result of the loss of Federal Deposit Insurance Corporation (FDIC) premium deductions. The bill was part of several measures championed by the Senate Majority to promote opportunity for businesses and nonprofits throughout New York.

“With financial institutions in New York, especially on Long Island, already paying extremely high taxes, the inability to deduct Federal Deposit Insurance Corporation premiums could be crushing,” Senator Phillips said. This measure would prevent an unintended state and corporate tax increase, which would have occurred due to the federal tax code change, and will ease the burden for hardworking taxpayers.”

The bill, S.9029, prevents an unintended State corporate tax increase on financial institutions as a result of the loss of Federal Deposit Insurance Corporation (FDIC) premium deductions. This bill maintains treatment of FDIC premiums by allowing New York taxpayers to continue to deduct.

The measures passed today build on the Senate Majority’s Jobs and Opportunity Agenda, part of the three-pronged “Blueprint for a Stronger New York” that focuses on making the state less costly and more attractive for hardworking New Yorkers. When combined together, the Blueprint’s Affordability, Opportunity, and Security Agendas comprise a powerful and comprehensive plan to give all New Yorkers the opportunity to succeed.

Protecting New York Businesses from Federal Tax Changes

In response to the Federal Tax Cuts and Jobs Act of 2017, the Senate passed several pieces of legislation to protect New York businesses, corporations, and nonprofits from unintended tax increases. These measures maintain the tax treatment of these entities that was in effect prior to last year’s major federal tax overhaul. These bills are consistent with actions taken throughout the Legislative session and during the passage of the 2019 Enacted Budget to prevent the state from receiving windfalls as a result of the Federal tax changes, which were first proposed by the Senate. Legislation includes:

- S.8991A: Prevents an unintentional tax increase on the financial services industry – one of New York’s largest industries. Under the new federal tax law, a change was made in an effort to repatriate foreign held intangible assets such as patents, copyrights, and trademarks. However, a technical change led to other types of intangible income such as financial transactions to be included, which eliminated the state exemption for foreign financial transactions. This bill preserves the state's treatment of controlled foreign corporation (CFC) income that has been in place for decades.

- S.9052: Prevents an unintentional tax increase on partnerships. Under the new federal tax law, changes were made to tax earnings of foreign companies that are owned, either directly or indirectly, by U.S. taxpayers. The creation of a transition tax to repatriate those funds has a negative impact on partners, especially in large accounting firms, because it would subject their share of the partnership to state taxation prior to receiving the income. This bill decouples partnerships from the federal transition tax and preserves the state's treatment of partnerships by ensuring that income will not be subject to state taxation until it is received by the partner.
- S9030A: Prevents an unintended new tax of businesses as a result of the loss of deductions of business interest expenses. Under the new federal tax law, deductions were capped at 30% of business interest expenses in exchange for a five year period where businesses could expense capital investments. While New York is already decoupled from Federal bonus depreciation, this legislation ensures that New York's businesses are not subject to a higher state tax liability as a result of the interest deduction cap.
- S.8831: Corrects an unintended new tax on nonprofits. A recent change made in the Federal Internal Revenue Code provides for an unrelated business tax (UBIT) on any amount a nonprofit employer has paid for commuter benefits such as mass transit or parking fees. Current state law imposes a state tax of 9% on UBIT whenever federal law does. As a result, without this important legislation, New York will automatically impose an additional 9% tax on all nonprofits which would divert millions of dollars away from the nonprofit sector each year. This bill excludes payments for transportation costs to

ensure that nonprofits can continue to perform their mission and serve New Yorkers across the state.

Other Measures to Improve the Business Environment of New York:

Making New York More Manufacturer-Friendly

- S.7561A: Extends the corporate franchise zero percent tax rate to all manufacturers located in the state. When zero percent corporate franchise tax rate was first introduced in 2014 it only applied to manufacturers organized as C corporations, about 25% of all manufacturers. This left the remaining manufacturers to pay the higher rate and put them at a competitive disadvantage with manufacturers in states with no income tax. New York is currently ranked 49th as a manufacturing friendly state, but this new legislation could boost it to one of the top-ranked states in the nation and attract new manufacturers to invest in the state's workforce. According to a recent study by the Beacon Hill Institute, an extension of the zero percent tax rate to all manufacturers, regardless of structure, would result in an increase in private sector jobs and a boost in economic activity and local tax collection to offset the loss of revenue to the state.

Authorizing Small Business Savings Accounts to Help in Emergencies

- S.3557: Helps create or retain jobs during times of hardship by allowing small businesses to contribute to a tax-deferred savings account. Contributions to the account could be withdrawn tax-free during times of specified economic hardship, for the purpose of job retention or creation, or times where the Governor deems it a natural disaster to warrant assistance from the federal government.

Reducing Regulatory Fines on Small Businesses

- S.4120A: Gives first-time offenders of state small business regulations a reprieve from paying fines to help foster a productive relationship between the state and business owners. The measure would prevent the state from fining a small business for a first violation of regulations, unless the agency determines that the violation directly affects public health or safety. The agency then would provide literature or an in-person meeting to inform such small business of its regulations to improve compliance.

The bills will be sent to the Assembly, with the exception of S4120B and S8831, which have already passed the Assembly and will be sent to the Governor for review.