

REGULATORY IMPACT STATEMENT

DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 209-B of the Tax Law generally imposes a tax surcharge on every corporation subject to section 209 of the Tax Law, other than a New York S corporation, for the privilege of exercising the corporation's 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 the metropolitan commuter transportation district, for all or any part of the corporation's taxable year. Section 7 of Part A of Chapter 59 of the Laws of 2014 amended Tax Law, section 209-B(1)(f) to require the Commissioner to adjust the rate of the metropolitan transportation business tax surcharge for taxable years beginning on or after January 1, 2016. Section 7 of Part A of Chapter 59 also amended Tax Law, section 209-B(1)(e) to require the Commissioner to adjust the thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge.

2. Legislative objectives: New Part 9 of the Business Corporation Franchise Tax regulations complies with the mandate of section 209-B(1)(f), as amended, setting forth the rate for taxable years beginning on or after January 1, 2016. The previously established statutory rate was 25.6 percent of the tax imposed under section 209 of the Tax Law. As required by section 209-B(1)(f), the commissioner has computed the metropolitan transportation business tax surcharge, using the state fiscal year 2016-2017 fiscal projections, at the rate of 28 percent of the tax imposed under section 209 of the Tax Law for taxable years beginning on or after January 1, 2016 and before January 1, 2017.

Part 9 also implements section 209-B(1)(e) of the Tax Law, which requires the Commissioner to adjust the thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge, after reviewing, at the end of each year, the cumulative percentage change in the consumer price index and adjusting such receipts thresholds if the consumer price index has changed by 10 percent or more since January 1, 2015 or since the date that the thresholds were last adjusted by the Commissioner.

The thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge will not be changed beginning on or after January 1, 2016, but will remain the same as set forth in section 209-B(1) of the Tax Law, since the Commissioner has reviewed the cumulative percentage change in the consumer price index, under section 209-B(1)(e) of the Tax Law, and found that the consumer price index has not changed by 10 percent or more since January 1, 2015. The thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge will remain the same as set forth in section 209-B(1) of the Tax Law until such time as the Commissioner next reviews the cumulative percentage change in the consumer price index and adjusts such receipts thresholds.

3. Needs and benefits: This rule sets forth amendments to the Business Corporation Franchise Tax regulations reflecting amendments to Tax Law, section 209-B contained in Chapter 59 of the Laws of 2014, This rule benefits taxpayers by putting in place the metropolitan transportation business tax surcharge effective January 1, 2016 for Tax Year 2016.

4. Costs: (a) Costs to regulated parties for the implementation and continuing compliance with this rule: There is no additional cost or burden to comply with these amendments. There is no additional time

period needed for compliance. (b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: Since the need to make amendments to the New York State Business Corporation Franchise Tax regulations under Article 9 of the Tax Law arises due to the statutory changes mandating that the commissioner adjust the metropolitan transportation business tax surcharge and thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district, there are no costs to this agency or the State and local governments that are due to the promulgation of this rule.

(c) Information and methodology: This analysis is based on a review of the statutory requirements and on discussions among personnel from the Department's Taxpayer Guidance Division, Office of Counsel, Office of Tax Policy Analysis Bureau of Tax and Fiscal Studies, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: Local governments, as employers, would be required to implement the new withholding tables and other methods in the same manner and at the same time as any other employer.

6. Paperwork: This rule will not require any new forms or information. The reporting requirements for employers are not changed by this rule.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: Since section 209-B, as amended by Section 7 of Part A of Chapter 59 of the Laws of 2014 requires that the commissioner adjust, under certain circumstances, the metropolitan transportation business tax surcharge and thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district, there are no viable alternatives to providing such rate and threshold adjustments using the methodology prescribed in Tax Law, section 209-B.

9. Federal standards: This rule does not exceed any minimum standards of the federal government for the same or similar subject area.

10. Compliance schedule: The required rate information has been made available to regulated parties, by means of the emergency adoption of New Part 9 of the Business Corporation Franchise Tax regulations on December 31, 2015, in sufficient time to implement the rate effective January 1, 2016. This rule readopts the rule establishing the rate as an emergency measure and proposes it as a permanent rule.