

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; Tax Law section 209-B generally imposes a tax surcharge on every corporation subject to Tax Law section 209, 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. Tax Law section 209-B(1)(f) requires the Commissioner to adjust the rate of the metropolitan transportation business tax surcharge for taxable years beginning on or after January 1, 2016. The rate is to be adjusted as necessary to ensure that the receipts attributable to the surcharge will meet and not exceed the financial projections for each state fiscal year, as reflected in the enacted budget for that fiscal year.

2. Legislative objectives: New subdivision (d) of section 9-1.2 of Part 9 of 20 NYCRR complies with the mandate of section 209-B(1)(f), setting forth the rate for taxable years beginning on or after January 1, 2018 and before January 1, 2019 and follows subdivision (c), which set the rate for taxable years beginning on or after January 1, 2017 and before January 1, 2018. As required by section 209-B(1)(f), the First Deputy Commissioner of Taxation and Finance, being duly authorized to act due to the vacancy in the office of the Commissioner, has determined that the rate of the metropolitan transportation business tax surcharge will be 28.6 percent of the tax imposed under Tax Law section 209 for taxable years beginning on or after January 1, 2018 and before January 1, 2019. The previously established statutory rate was 28.3 percent of the tax imposed under Tax Law section 209.

3. Needs and benefits: This rule sets forth amendments to the Business Corporation Franchise Tax regulations required by Tax Law section 209-B(1)(f). This rule benefits taxpayers by putting in place the metropolitan transportation business tax surcharge effective January 1, 2018 for Tax Year 2018.

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 this amendment. 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-A of the Tax Law arises due to a statutory mandate that the Commissioner adjust the metropolitan transportation business tax surcharge, 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, Management Analysis and Project Services Bureau, and the Division of Budget.

5. Local government mandates: There are no costs or burdens imposed on local governments to comply with this amendment.

6. Paperwork: This rule will not require any new forms.

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

8. Alternatives: Since section 209-B(1)(f) requires the Commissioner to adjust, under certain circumstances, the metropolitan transportation business tax surcharge, there are no viable alternatives to providing such rate 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 areas.

10. Compliance schedule: The required rate information has been made available to regulated parties, by means of the emergency adoption of new subdivision (d) of section 9-1.2 of Part 9 of the Business Corporation Franchise Tax regulations on December 1, 2017, in sufficient time to implement the rate effective January 1, 2018. This rule establishes the rate for the 2018 tax year as an emergency measure and proposes it as a permanent rule.