

<http://libn.com/2016/02/01/railroaded/>

## Railroaded

By: Claude Solnik February 1, 2016

---

Even as New York State cut its business taxes in a widely publicized effort to provide a more business-friendly climate, it has hiked the Metropolitan Transportation Authority business surcharge tax.

The New York State Department of Taxation and Finance collects the surcharge, also known as the metropolitan commuter transportation mobility tax, but distributes it to the MTA.

Although most taxes are state-wide, the MTA tax is only collected from businesses in the Metropolitan Commuter Transportation District, including New York City, Nassau, Suffolk, Rockland, Orange, Putnam, Dutchess and Westchester counties.

Newly named New York State Commissioner of Taxation and Finance Jerry Boone, who took the helm last June, hiked the surcharge from 25.6 percent to 28 percent for 2016.

Boone said he can exercise the right to alter the tax rate when the Consumer Price Index over the past year rises at least 10 percent from the prior year.

The New York State Department of Taxation and Finance in its explanation for the hike said it was “being adopted on an emergency basis.”

The surcharge is based on a percentage of the state tax that a business pays rather than directly on revenue.

“It’s a tax on a tax,” said Joseph Perry, a partner at Marcum, with Long Island operations in Melville. “The New York State commissioner has the ability to set the rate. It’s not normal for that to happen.”

Most taxes are set by legislative action, rather than by the fiat of an individual official. But legislation sets forth the circumstances under which the rate can be hiked.

Some pointed to the MTA’s expenses on a wide range of projects, such as the new Second Avenue subway line, which is running over budget.

The authority needs to find ways to increase revenue, which include, but aren’t limited to, the commuter tax, said Raymond Haller, tax partner at Grassi & Co. in Jericho.

“Money’s going to have to come from somewhere,” Haller said. “The easiest way to do it is to raise taxes, tolls and fares. If you raise fares, you’re hurting the little people.”

The MTA business surcharge tax hike comes as the MTA raises subway fares, for instance, from \$2.50 to \$2.75.

Rather than simply putting the burden on the backs of transit users, it's putting it on the backs of businesses as well.

"Instead of increasing tax rates, they increased this surcharge," Perry added. "Essentially when you look at it from a cash flow standpoint, businesses are paying more."

The government, however, provided some good news for taxpayers, increasing the exemption for the self-employed from those earning \$10,000 last year to \$50,000 this year.

Self-employed individuals include sole proprietors, partners, members of limited liability companies and single-member limited liability companies.

"If you own a company, the company pays it," Haller said of the tax. "If you're self-employed, you pay it. If you're an employee, you don't have to pay it."

The state also made the filing process easier for people who are self-employed or partners, who had been required to file separate returns for the surcharge.

"They're going to take their earnings on their tax return and put the MTA tax," Haller said. "On your New York State return, you'll fill out a section and compute your MTA tax and remit the money with your personal income tax returns."

Others said that the new system, including the tax form as part of personal taxes, makes things easier for the government and businesses.

"It was an administrative burden and a separate form," Perry continued. "You had different times to make estimated payments."

Paperwork got simpler with additional forms becoming part of basic returns, streamlining things for the state and for companies.

"Administratively, it got easier," Perry said. "They did away with the administrative burden to file those forms separately. They provided an additional form on the individual return."

While the business surcharge rate increased, New York State in 2016 decreased the actual business income tax rate from 7.1 percent to 6.5 percent with plans to keep it at that rate.

Qualified emerging technology companies saw their rate drop from 5.7 percent in 2015 to 5.5 percent with plans to drop it to 4.875 percent in 2018, while qualified New York manufacturers pay no business tax.

"It looked like it was going down," Perry added of taxes before the MTA tax move. "Then the surtax was implemented."

If the MTA business tax rate went up, the federal government provided some relief in the form of commuter tax breaks.

Congressman Charles Schumer, D-New York, said many Long Islanders are entitled to tax breaks for using mass transit, although they may not know it.

He said more than 300,000 commuters who take the Long Island Rail Road, for instance, are eligible for these tax breaks.

“Legislation now provides permanent savings commuters can bank on,” Schumer said in a written statement. “Not all commuters know about this cost-cutting benefit available to them or exactly how to claim it.”

In order to obtain these tax deductions, commuters must apply to their employer, which Schumer said is a simple process.