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| TO: | Senator Liz Krueger |
| FROM: | Ken Pokalsky |
| SUBJECT: | Key Tax Issues for 2025 |
| DATE: | 12/18/24 |

I appreciate the opportunity to discuss several of our key Tax legislation concerns for 2025. The following provides an overview of these issues. Please let us know if you would like additional information on any of these issues, and we would be happy to do follow-up discussions with you, your staff and/or Senate Finance staff.

**Proactive Tax Reform Agenda**

Extended PTET election period - S.8115-B (Skoufis)/A.8451-A (Paulin) – Allows “pass through entity tax” election up to September 15 of a tax year (currently March 15), requires “catch up” payment of estimated taxes, authorize taxpayers to use an “annualized income installment method” for the computation of estimated payments as allowed for PIT estimated payments. Most states allow PTET election upon filing of tax returns. [Our memo in support](https://www.bcnys.org/memo/s8115-b-skoufisa8451-paulin).

“Work Opportunity Tax Credit - S.4833-B (Skoufis)/A.8905 (Bronson) - Creates a counterpart to the federal WOTC under corporate franchise, personal income and insurance tax, with a capped, refundable tax credit that provides an incentive for the hiring of persons in one of ten targeted groups that face barriers to employment. Federal data shows the WOTC is underutilized in NYS. A version was included in both Senate and Assembly one-house budget resolutions of SFY 2025, i.e., S.8309-A, Part FF and A.8809-A, Part CC. State implementation will be straightforward as the criteria and calculations for the state WOTC will be the same as under federal law, and the New York State Department of Labor is already responsible for certifying employee eligibility under the federal WOTC, under federal designation. [Our memo in support](https://www.bcnys.org/memo/s8309-part-ff-budget-and-a8809-part-cc).

Manufacturing “rate parity” – S.4064 (Mannion)/A.4168 (Stirpe) - Provides a personal income tax exemption for income earned by a “qualified pass-through manufacture,” to achieve comparable treatment with manufacturers under Article 9-A, which provides a zero “entire net income” rate for manufacturers. This legislation does the same thing for manufacturers organized as partnerships, LLCs, s-corporations or sole proprietorship. Note, this was in the Assembly budget resolution for SFY 2023 (A.9009-B, Part GG) and 2024 (A.3009-B, Part HH). [Our memo in support](https://www.bcnys.org/memo/a3009-b-budget-part-hh).

Eliminate insurance tax “double taxation” - Amend Article 9-A to explicitly exclude “insurance subsidiary capital” (as defined in Tax Law §1500(h) from the definition of “business capital” to remove the unintended double taxation on regulatory capital for P&C insurance corporation taxed under 9-A. 2014 tax reform repealed the Article 9-A tax on subsidiary capital in its entirety, as part of broader reform, including its exclusion from “business capital”, unintentionally leaving insurance subsidiary capital in the 9-A capital base calculation. The inclusion of Insurance Subsidiary Capital in the capital base calculation results in double taxation on regulatory capital for P&C insurance corporation that was not considered or contemplated in the legislative history. Legislation being drafted.

**Legislation of Concern**

False Claims Act - S.9813 (Krueger)/A.10514 (Rules/Weinstein) at the Request of the Attorney General. Further modifies the FCA application to tax issues to redefine what constitutes “material” information in a way contrary to agency definitions and case law (more detailed analysis available upon request) and applies the FCA to multiple persons if any person subject to the claim has income over $1 million or assets over $5 million. [Our memo in opposition](https://www.bcnys.org/index.php/memo/s9813-kruegera10514-rulesweinstein-request-attorney-general).

Data Tax – S.2012 (Krueger)/A.3959 (Braunstein) – We oppose the creation of a new monthly excise tax on the collection of the consumer data. As drafted, this legislation would impose a tax on such data collectors, regardless of what the collected data is used for, including cases where the data is only used in providing the data collector’s services to its customers. This is a broader application of a data collection tax than proposed in other bills pending in New York. [Our memo in opposition.](https://www.bcnys.org/memo/s2012-krueger-a3959-braunstein)

Tax Credit Repeals - S.8309-A, Part GG (Budget) – While we have opposed the Senate’s budget resolution proposal to repeal tax exemptions related to the development or use of certain fossil fuels, we have particular concern regarding proposals that would result in “tax pyramiding” though imposition of taxes on industrial inputs, e.g., the repeal of the Petroleum Business Tax exemption for manufacturing and the Sales Tax exemption for fuel and natural gas used in manufacturing. [Our memo in opposition](https://www.bcnys.org/memo/s8309-part-gg).

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