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| TO: | Tax Committee Members |
| FROM: | Ken Pokalsky |
| SUBJECT: | Overview of 2023 - 2024 Tax Legislation |
| DATE: | 9/23/24 |

In the current two-year legislative cycle, the New York Senate and Assembly introduced more than 1,700 bills that made some modification to the state’s Tax Law, including some 700 first time proposals. The following provides an overview of tax and revenue proposals that were neither approved by the legislature nor included in either one-house budget resolution in 2024. Most did not advance in either house (exceptions noted). Importantly, all legislation will expire on December 31,2024 and would require reintroduction in 2025.

Where we have taken a formal position on legislation, we have indicated our support or opposition.

As always, we welcome your input on these and other tax proposals, including any proactive reforms you intend to raise and support in the 2025 legislative session.

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**Carbon Tax/Assessments**

Proposals for a carbon tax or assessment will be made in context of the state’s aggressive carbon reduction and renewable energy commitments and could come in various forms. Proposals to date would dedicate receipts to carbon reduction and clean energy programs. Current proposals include:

- S.2579 (Parker)/A.7321 (Ardila) – This legislation that would impose a tax on the distribution or sale of carbon-based fuels of at least $35 per ton of CO2 equivalency, increasing by $15 per year to a maximum rate of $185, with revenues used for rebates to low and moderate-income residents and for carbon reduction projects. Revenue estimate – None provided.

- S.732 (Parker)/A.4306 (Paulin) – This legislation directs the Department of Environmental Conservation to set a per ton price for the emission of CO2 from electric power generation, with that price to be used by the state grid operator to introduce a carbon pricing mechanism into competitive wholesale electricity markets. Revenue estimate – None provided.

- CLCPA – As the state moves forward to implement the “Climate Leadership and Community Protection Act,” adopted in 2019, it is considering a “tax and invest” program under which major greenhouse gas emitters will be required to secure allowances for their GHG emissions. A regulatory program is under development, and expected to be implemented by 2025. It is expected to include an allowance auction mechanism that could generate significant new revenues, with estimates between $4 and $10 billion or more annually.

**Corporate Franchise Tax**

The FY 2024 state budget extended temporary Article 9A tax rates through the 2026 tax year. The following lists other legislation affecting business income taxes in general, including several proposals for significant rate increases as well as several targeted tax reductions.

- S.4064 (Manion)/A.4168 (Stirpe) – The Business Council supports this legislation, which provides a personal income tax exemption for income earned by a “qualified pass-through manufacture.” Revenue projection – $188 million in savings annually.

- S.2858 (Skoufis)/A.2582 (Kim) – We oppose this legislation that adds a new Corporation Tax section to impose a tax of “ten percent of base tax liability” against any company subject to US SEC pay ratio reporting requirements that reports a ratio of at least one hundred to one but less than two hundred fifty to one and at the rate of “twenty-five percent of base tax liability” if their ratio is 250 to 1 or greater. Applicable to tax years commencing on or January 1, 2020. Revenue projection – None provided.

- S.3440 (Skoufis)/A.2195 (Kim) – We opposes this legislation that would reinstate the Article 32 franchise tax on banking corporations, basically re-adopting the statute as it existed prior to its repeal as part of the 2014 tax reform package that subjected banking corporations to the Article 9-A corporate franchise tax. It would apply an ENI rate of 7.1 percent and its own apportionment rules. Revenue estimate – $200 million to $250 million annually.

- A.8179-B (Burke), dubbed the “robot tax,” would impose a corporate franchise tax surcharge equal to the sum of all taxes imposed by the state and any political subdivision based on employee wages, including, but not limited to, income tax, unemployment insurance, and local occupational taxes, for an employee's final year of employment where such employee was displaced due to the “employee's position being replaced by technology,” e.g., machinery, artificial intelligence algorithms, or computer applications.

**Data/Digital Products**

There has been a growing interest in New York and elsewhere in taxes aimed at “technology” companies and their use of customer data. The current proposals in New York include the following.

- S.2012 (Krueger)/A3959 (Braustein) – We are opposing this excise tax on “data mining.” Designed to avoid ITFA conflicts, this bill imposes an excise tax on the collection of consumer data by “commercial data collectors.” The tax is calculated by a graduated rate schedule that begins at 5 cents per individual per month for commercial data collectors collecting data on over a million New Yorkers in a month. The rate gradually increases, with the highest rate 50 cents per individual per month paid on the number of individual New Yorkers over 10 million on whom data is collected in a month. The tax would apply regardless of the format (electronic or otherwise) in which it is collected by commercial data collectors and would apply if the entity collects consumer data beyond contact information and information (e.g., credit card information) necessary to conduct sales. Revenue estimate – None provided.

- S.5551 (Gianaris)/A.5842 (Walker) – We oppose this legislation that would adopt a new Article 15 of the Tax Law to impose a tax on any person or entity’s “gross revenues derive[d] from digital advertising services in the state.” Revenue estimate – None provided.

- S.1845 (Comrie) – We oppose this legislation that would amend the corporate franchise tax to include a new, separate, additional five percent tax on corporation’s “gross income” that is “derived from” the “data [which] individuals of this state share with such.” The bill further provides that the proceeds from this tax would be redistributed to “each taxpayer of the state,” with the redistribution process overseen by a newly formulated “New York Data Fund Board.” Revenue estimate – None provided.

- S.3192 (Ramos)/A.4821 (Reyes) – Creates a new tax on gross receipts from digital advertising ranging from 2.5 percent on “global” gross receipts between $100 million to $1 billion, to 10 percent on gross receipts above $15 billion; revenues to fund a new “unemployment bridge program” for workers that do not qualify for unemployment insurance benefits. Revenue estimate – At least $500 million annually.

- S.5662 (Gounardes) - Imposes a new tax on data “controllers” and “processors” of 2 percent of gross receipts derived from the collection, processing, and/or sale of data subjects who reside in New York. Revenue estimate – None provided.

**Federal “Decoupling”**

Pending legislative issues related to the TCJA include the following:

- S.1980 (Hoylman)/A.3690 (Kelles) – We oppose this legislation that imposes an additional corporate franchise tax levy equal to the difference between the federal corporate income tax rate effective in 2017 (35 percent) and the lower rate (21 percent) adopted by the “Tax Cuts and Jobs Act;” a reduction in the GILTI exemption from 95 percent to 50 percent; and an additional levy under the personal income tax on any pass-through business income deducted under the TCJA’s Section 199A, at a rate equal to the federal PIT rate that would apply to such taxpayer’s federal income tax purposes (with an exemption for certain small businesses). Revenue projection – $9 billion annually.

- S.543-B (Gianaris)/A.2170-B (Dinowitz) – We have opposed this legislation which decouples from the federal exclusion of gains from qualified opportunity zones in calculating taxable income under state and New York city business and personal income taxes. **Note** – This legislation did pass the Senate in both 2023 and 2024.

- NYC Corporation Tax – The Business Council continues to support an exemption in New York City’s “corporate tax of 2015” for global intangible low taxed income, comparable to that adopted in Articles 9-A and 33. While legislation has been drafted, at this time there is no NYC-specific GILTI legislation introduced in either the Senate or Assembly.

**“Investment Management Services” (aka “Carried interest”)**

While New York subjects wage and nonwage income to the same personal income tax rates, there is legislation aimed at extracting the benefit of federal tax law treatment from New York State taxpayers.

- A.1415 (Aubry) – We oppose this legislation that would impose a 19 percent surcharge under Articles 9A and 22 on income from newly defined “investment management services;” with the provisions becoming effective when adopted by Connecticut, New Jersey, Massachusetts and Pennsylvania. Revenue estimate – None provided.

**Payroll Taxes**

This considers new tax proposals based on employers’ payrolls (excluding payroll-based unemployment insurance taxes.)

- S.4883 (Ramos) – This legislation would impose a payroll tax on all private employers with a payroll in New York of more than $250,000 per quarter at a rate ranging from 0.11 to 0.34 percent, based on total payroll with proceeds dedicated to providing childcare assistance. Estimated revenues – None provided.

- S.7590 (Rivera)/A.7897 (Paulin), The “New York Health Act,” aka “government-run health care system” to extend public health care coverage to virtually all New Yorkers, placing significant limits on availability of private health care; to be funded by a new payroll tax (2 percent on employees, 8 percent on employers and 10 percent on the self-employed with additional surcharges on other taxable income, including capital gains); with projected costs up to $250 billion.

**Personal Income Tax**

The state’s so-called “millionaires’ tax,” (i.e., the “temporary” top marginal rates and brackets) were extended for five years through tax year 2027, as part of the FY2022 state budget. Even with this extension, there have been proposals to add higher rates and additional brackets, including legislative budget initiatives proposed but not adopted earlier this year. Several propose similar rate schedules, and several would dedicate increased state revenues to specific spending programs, including education, housing and health care.

- S.2782 (Brisport)/A.3193 (Solages) – Adopts an inheritance tax on estates valued at between $250,000 and $5 million, with exemptions for primary residences and family farms. If business assets are more than half of the value of an estate, the inheritance tax can be deferred, but that deferred tax liability will incur interest until the date the assets are sold. It also imposes a tax on gifts. Finally, it adopts a new estate tax structure with marginal rates ranging from 5 percent for estates over $750,000 to 50 percent for estates over $30 million. Revenue estimate – $8 billion annually.

- A.798 (Carroll) – As part of a broader “metropolitan transportation infrastructure financing authority act of 2021", authorizes an additional personal income tax of 0.25 percent on taxpayers residing in the metropolitan commuter transportation district with a taxable income greater than $500,000. Revenue estimate – None provided.

- S.2162 (Rivera)/A.2576 (Kim) – This legislation imposes an additional personal income tax levy on a taxpayer’s long term capital gains at a rate calculated as the difference between the federal rate applied to a specific taxpayer’s ordinary income and the federal preferential rate applied to capital gains. Revenue estimate – $7 billion annually. A.3152 (Kim) proposes a similar mechanism.

- S.2059 (Jackson)/A.3115 (Meeks) – Adopts eleven new personal income tax brackets and rates, ranging from 7.5 percent for taxable income between $450,000 and $600,000, to a maximum of 15 percent for taxable income above $110,000,000. Revenue estimate – Between $12 billion and $18 billion annually.

- S.602-A (Gianaris)/A.4474-A (O'Donnell) – Adopts a New York City personal income tax surcharge of .534 percent applicable to income over $1 million for joint filers, over $750,000 for heads of households and $500,000 for single filers. All revenues are dedicated to support the MTA and provide low-cost fairs to low-income commuters. Revenue estimate – None provided.

**Sales and Use Tax**

At this point, there are no proposals to increase the state sales tax rate. The legislative focus has been on extending the sales tax, or imposing surcharges, on targeted categories of sales.

- S.2556 (Hoylman)/A.1523 (Carroll) – We oppose this legislation repeals the sales tax exemption for private aircraft, which was reinstated in 2015. Revenue estimate – None provided.

- S.336 (Jackson)/A.537 (Epstein) – This legislation imposes an additional 2 percent sales tax on luxury items, including motor vehicles over $70,000 excluding commercial and electric vehicles; jewelry over $5,000; and articles of clothing, footwear, handbags, luggage, umbrellas, wallets or watches sold for over $1,000, with increased revenues dedicated to the State University and City University systems. Revenue estimate – None provided.

- S.283 (Gounardes)/A.2259 (Simon) – In one of the few tax reduction bills not directly tied to the state’s COVID response, this bill would reduce the state sales tax to 2 percent for any goods or services purchased from any business with 20 or less employees. Revenue estimate – None provided.

**Stock Transfer Tax & Stock-Related Tax Issues**

While still in effect, this tax has been rebated back to taxpayers since 1981. It imposes a tax of 1.25 cents to 5 cents on transfers of stocks, stock certificates, stock sales agreements, certificates of deposit and other listed transactions that occur within New York State. Several bills would reduce or eliminate the tax rebate or make other tax law changes relative to stocks. A number of bills are still pending, although they were not pushed as hard in 2023 as in prior sessions.

- S.1297 (Sanders)/A.4574 (Steck) – We oppose this legislation that repeals the rebate for stock transfer taxes paid and dedicates the receipts to several specific spending programs including the MTA, housing, highway and bridge construction, water infrastructure, and local government assistance. Revenue estimate – up to $13 billion annually.

- S.2402 (Myrie) – We oppose this legislation that reduces the stock transfer tax rebate to 60 percent and dedicates the receipts to newly created state infrastructure investment fund. Revenue estimate – $6.4 billion annually.

- S.2002 (May)/A.4877 (Kelles) – We oppose this legislation that imposes 1.5 percent tax on the value of shares reacquired by a corporation even if such corporation subsequently cancels such stock (under current law, such transactions would be exempt from the stock transfer tax). As drafted, this legislation would generate no state revenue as the stock transfer tax remains 100 percent rebated to taxpayers.

- S.3562 (Krueger) – We have not yet taken a position on this bill that specifies that a deduction for stock options must be based on the price of the stock at the time of issuance of the option, not the price of the stock when sold. Revenue estimate – None provided, however, the bill memo cites $2.5 billion in annual federal deductions.

- A.2613 (Dilan) – We oppose this legislation that reduces the rebate on the stock transfer tax to 80 percent and devotes all net receipts to support of the MTA. Revenue estimate – None provided.

- S2327 (Bailey) – We have not taken a position on this bill that would exempt from the personal income tax the full amount of capital gains derived from the sale of stock or member interest from a New York corporation or limited liability company to an employee-owned enterprise that has its commercial domicile in New York State.

**Real Property and Real Estate Transaction Taxes**

There are a number of proposals to amend the local real property tax, including those that dedicate reviews to specific spending programs.

- S.318 (Salazar)/A.407 (Epstein) – We have not taken a position on this legislation subjects mezzanine debt and preferred equity investments to the state’s mortgage recording tax. Revenue estimate – None provided.

- A.1814 (Glick) – We have not taken a position on his bill, the so-called “pied-a-terre" tax, which amends the state Real Property Tax law to allow New York City to impose an additional tax surcharge on non-primary residence class one and class two properties. Revenue estimate – None provided.

**Tax Credits**

There has been increased scrutiny of state economic development-related tax credits and other tax expenditures. Over the past several years, several measures have passed reducing or restricting tax credits related to brownfield redevelopment, film credits and other economic development programs. Likewise, there are several proposals requiring additional public disclosures by taxpayers claiming credits. At this point there are few specific proposals to repeal or otherwise limit the use of tax credits. They include:

- S.3389 (Krueger) and A.7949-A (Simon) – Repeals a number of exemptions from sales and use tax and petroleum business tax, as well as provisions to eliminate from economic development programs projects that support fossil fuel production, distribution or use. Revenue estimate – $1.5 billion.

- S.7291 (Ryan)/A.199 (Magnarelli) – We oppose this legislation that superimposes on all state and local economic development incentive agreements a requirement for the recoupment of financial incentives awarded businesses upon failure to fulfill the terms of such incentives. Revenue estimate – None provided.

- S.1742 (Ramos) – We oppose this legislation that precludes an entity subject to the corporate franchise tax from claiming any state tax credits if the taxpayer received any “federal emergency economic assistance” and also engaged in stock buybacks.

Note, also, that there are numerous proposals to create new or expand or extend existing tax credits and exemptions. We will be providing an overview of these tax credit proposals in a separate memo.

**Unemployment Insurance Tax**

New York is one of only two states (with California) with outstanding federal advances for their unemployment insurance programs. New York’s UI debt remains at more than $6 billion, resulting in increased state and federal payroll taxes on employers, and an annual state-level special assessment to pay interest costs. At present, there are no proposals to increases state unemployment insurance tax rates, or to further increase the state’s taxable wage base (which, based on 2013 legislation will continue to increase in annual increments to $11,800 in 2021 and eventually to $13,000 by January 1, 2026). However, there are several proposals addressing the state’s UI tax structure and program debt.

- S.4551 (Helming)/A.4657 (McGowan) and A.3053 (Zebrowski) – We are not supporting these bills that would temporarily lower unemployment insurance taxes and – in the case of S.4551/A.4657 – establishes an “unemployment insurance solvency reserve fund” that would receive appropriations to be used to pay down federal advances, as they would be ineffective in producing permanent UI tax cost savings.

- A.2982 (Ra) – We support this legislation that suspends assessment of the unemployment insurance interest assessment surcharge and appropriates $500 million to pay interest on federal UI advances.

- S.6593 (Borrello)/A.6068 (Hawley) – We support the intent of this legislation, the "New York Business Emergency Relief Act of 2023,” which directs the governor to use specified to pay the debt to the federal unemployment insurance trust fund.

- S.6833 (Parker) – We oppose this legislation to require employers who have relocated their businesses outside of New York State have continued liability for contributions to the unemployment insurance fund for an additional two quarters.

**“Wealth Tax”**

Several states have proposed wealth-based taxes to address the unrealized gains of assets held by high wealth and/or high-income taxpayers.

- S.1570 (Ramos)/A.5092 (Kelles) – We oppose this legislation would impose a tax on the unrealized earnings of residents with $1 billion dollars or more in net assets based on a “mark to market” valuation. Revenue estimate –$23.3 billion in year one (the legislation provides an option to pay year 1 of the tax in 10 annual installments), $1.2 billion in annual recurring revenues.

- S.2893 (Brisport)/A.5470 (Mitaynes) – We oppose this legislation which proposes the repeal of section 3 of article 16 of the state constitution to allow the ad valorem taxation of intangible personal property and the taxation of undistributed profits. This bill is seen by some as addressing potential NYS constitutional bars on provisions of S.1570/A.5092.