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New York State Tax Relief Commission Final Report

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Executive Summary

On October 2, 2013, Governor Andrew M. Cuomo announced the formation of the Tax Relief Commission. The Governor charged this Commission with devising a series of targeted tax relief proposals – valued at $2 billion within three years – that would be focused on alleviating the crushing burden on individuals, families and businesses of New York's most onerous taxes, with an emphasis on local and school property taxes. Implementing the Commission's recommendations would not only provide New Yorkers with much needed relief from the nation's highest property taxes, but at the same time enhance New York's economic competitiveness by reducing the cost of doing business in the State.

The Commission commends Governor Cuomo for his decision to focus on providing targeted tax relief, and for charging this bi-partisan Commission with determining the best manner in which to do so.

The top income tax rate is scheduled to reset back to 6.85 percent in 2018 and the Commission recommends this reset take place as scheduled in order to further strengthen New York's economic climate. Some Commission members favor setting aside any future surplus to help ensure the 6.85 rate is restored in 2018.

As a result of the property tax cap enacted by the Governor and the Legislature, property taxes are no longer growing at exorbitant rates.

Property Tax Relief

Despite progress made under the property tax cap, New Yorkers continue to face some of the highest property tax bills in the nation, whether measured in absolute terms, or as a percentage of home value, and the Commission believes that it is essential to use $1 billion of the $2 billion revenue pool to further reduce the burden of the property tax on homeowners. The remaining $1 billion should be used to provide additional tax relief to businesses, families and individuals.

The Commission recommends that the State provide a two-year program to freeze residential property taxes only for homeowners in jurisdictions that abide by the 2 percent real property tax cap. In the first year, eligible homeowners would see a tax rebate equal to the amount of the increase in a homeowner's tax bill. In the second year, homeowners in jurisdictions that abide by the property tax cap would receive a rebate of their tax increase *only if they reside in jurisdictions that take meaningful concrete steps toward finding permanent structural savings by sharing services with other jurisdictions or consolidating governments in their entirety.* Only through such bold steps can New York hope to achieve a long-term reduction in real property taxes.

In addition, while programs that cap and freeze real property taxes can keep the burden of real property taxes from increasing, there is a need to provide relief to taxpayers who are already over-burdened by the current level of property taxation. Accordingly, the Commission further recommends that the State develop a program that would target real property tax relief based on an individual homeowner's ability to pay, and do so in a manner that is fair to families across the State.

The Importance of Local Government Consolidation and Service Sharing

The State has taken laudatory steps to consolidate and streamline operations, and local governments should follow suit. The State is consolidating its back office operations in a single Business Service Center. It has brought all of its information technology resources together in one single Office of Information Technology Services, consolidated office space and reformed the procurement process, all of which will save the State hundreds of millions of dollars in future years. Based on this experience, the State should work with local governments to replicate this model.

Business Tax Reductions

This Commission also recognizes the need to make significant improvements to the State's business tax structure. The Tax Relief Commission's recommendations are informed by the work and the proposals of the Tax Reform and Fairness Commission. In November 2013 Governor Cuomo's Tax Reform and Fairness Commission, co-chaired by Carl McCall and Peter Solomon, released a report calling for fundamental changes in the State's tax code to make it more equitable and to increase New York's economic competitiveness. That report endorsed property tax relief, changes to estate and corporate taxes and acceleration of the phase out of the temporary utility 18-a assessment, among other tax relief measures.

The Commission recommends:

Reduce Property Tax on Manufacturers: Of the $49 billion in real property taxes levied in 2012, $15 billion, or 30.8 percent was paid by commercial/industrial parcels. Property taxes represent the largest tax businesses face in the State, more than three times what is paid under the corporate franchise tax. To help manufacturers survive and to attract new manufacturers to the State, the Commission is recommending a corporate and income tax credit equal to 20 percent of the amount of real property taxes paid by this industry, but would like to see the credit increased for upstate manufacturers if possible.

Lower Corporate Tax Rates and Simplify Structure: The Commission recognizes more needs to be done to spur economic growth statewide. This requires lower rates and a simplified tax structure. We propose additional tax relief for businesses in New York, including the reform and simplification of the State's primary corporate income taxes coupled with a reduction in the corporate income tax rate to 6.5 percent, the lowest corporate rate since 1968.

Reduce Corporate Tax Rate for Upstate Manufacturers: The rate for manufacturers upstate would be reduced further, to 2.5 percent, the lowest rate ever.

Accelerate Phase Out of Utility Surcharge: To further encourage business expansion, the temporary utility assessment (18-a), scheduled to be eliminated in 2018, would be eliminated in 2014 for industrial customers and all other customers will see an accelerated phase out of the surcharge.

Together, these proposals will tackle significant barriers to investment and job growth that exist in the current tax regime.

Increase Estate Tax Exemption Threshold and Lower Rate: The Commission also recognizes the need to update the estate tax. New York remains one of only 17 states with either an estate tax or an inheritance tax, and only two states currently have a lower exemption. Because estate tax thresholds have not kept pace with the rise in home values, more and more middle–income New Yorkers find themselves subject to the tax. The Commission is therefore recommending a major reform of the estate tax, increasing the State's threshold to $5.25 million, indexed for inflation, and lowering the tax rate to 10 percent. This also will help to ensure that small businesses, including farms, are not forced out of business by the State's disproportionately low threshold for estate taxes, as well as eliminate an incentive for successful New Yorkers to leave the State.

Eliminate Nuisance Taxes: Finally, the Commission endorses the majority of the Tax Reform and Fairness Commission proposals to simplify the structure of New York's tax system by eliminating nuisance taxes.

In summary, the plan that the Commission has identified will provide $2 billion in tax relief by 2016-17 as follows:

Tax Relief Recommendations	
Recommendations	FY 2016-17 Fiscal Impact ($ Millions)
Real Property Tax Relief	($1,000)
Estate Tax Reform*	($381)
Corporate Tax Reform	($346)
Accelerate Article 18-A Temporary Assessment Phase-Out	($200)
Manufacturers Real Property Tax Credit	($136)
Rate Reduction for Upstate Manufacturers	($24)
Total FY 2016-17 Tax Reductions	($2,087)
*Value grows to $627 million in FY 2017-18 and $772 million in FY 2018-19.	

Background Material

I. Real Property Tax Relief

The Commission finds that property tax relief must be a significant component of the State's overall tax reduction effort. The Commission recommends an approach that encourages local governments to reduce the cost of operations. By almost any measure, New York's real property taxes are among the highest in the country. In 2010, New York's taxpayers had the dubious honor of paying the highest actual tax bills in the United States. A recent national study by the Tax Policy Center which estimated the average residential property tax bill for the years 2007-2011 found that the average residential tax bill in New York was $5,040.[1] This five year average exceeded all but three other states -- New Jersey, Connecticut and New Hampshire.

When viewed as a percentage of home value, New York fares a little better, with an average effective tax rate of 1.59 percent.[2] However, this disguises the extreme variability in tax rates in New York. The six counties in the United States with the highest tax rate when measured as a percentage of home value are all in New York.

Options for Real Property Tax Relief

New York's real property taxes are a serious burden to New York's working families and senior citizens. The enactment of a real property tax cap was an essential first step in bringing the growth of real property taxes under control. The Commission believes that local governments could intensify efforts to become more efficient through consolidation and shared services. The State should do its part to encourage local governments to take these actions.

Freezing Real Property Taxes

The Commission recommends that for those jurisdictions that adopt local budgets that remain within the 2 percent tax cap, the State provide a tax rebate equal to the amount of the increase in a homeowner's tax bill. This option would effectively freeze taxes for homeowners at their 2014 levels, while providing an incentive to school districts and local governments to keep growth in their real property tax levy at or below the real property tax cap of 2 percent. The Commission recommends that the period of the freeze be limited to a maximum of two years, with the second year provided only to those local governments and school districts that once again abide by the 2 percent tax cap and in year 2 develop and agree to implement a plan of shared services and administrative consolidations. Since the freeze is based on the real property tax cap, the City of

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[1] Benjamin H. Harris and Brian David Moore, Residential Property Taxes by State, Tax Policy Center, November 2013. State Property Tax Summary, 2012.
[2] Ibid.

New York would be excluded from this proposal. When fully phased in, total tax relief would grow to $976 million, with an average benefit of $354 for nearly 2.8 million homeowners.

Property Tax Relief Based on the Ability To Pay:

While programs that cap and freeze real property taxes can keep the burden of real property taxes from increasing, there is an additional need to provide relief to taxpayers who are already over-burdened by the current level of property taxation. The Commission recommends that the State develop a program that would target real property tax relief based on an individual homeowner's ability to pay. As previously noted, low and middle income taxpayers face an effective real property tax rate that exceeds the rate they pay under the income tax. These burdens not only make the dream of homeownership unaffordable for many New Yorkers, but they also have a negative impact on New York's economy. Young families are increasingly choosing to avoid high tax areas when deciding where to live and work. In addition, senior citizens are being forced to abandon New York upon reaching retirement age, electing to live in areas of the country with lower costs of living.

Given that tax burdens decrease as income rises, a relief program could be structured to provide a greater proportion of benefits to those with the highest burdens as a share of their income.

The parameters that determine the amount of credit can be adjusted to provide more tax relief to heavily burdened families or significant relief to a larger number of taxpayers. The Commission is open to different alternatives.

II. Tax Relief for Businesses

One of the greatest challenges facing State policy makers is to change the perception that New York is hostile to businesses.

To continue the progress the Governor and the Legislature have achieved in reducing business tax burdens, the Commission is recommending that the State pursue major reform of its primary business income taxes as well as additional tax relief to help the State's manufacturing sector.

IIa. Corporate Tax Reform

New York's corporate franchise tax is largely outdated and extremely complex. Aside from some recent efforts to improve its competitiveness (the adoption of single sales factor apportionment and limited use of market based sourcing), the tax remains largely the same as it was when enacted in the 1940's. Businesses must calculate their tax liability under four different tax bases and remit tax under the base resulting in the highest amount of tax. An additional tax of .09 percent applies to a corporation's subsidiary capital allocated to New York. In addition, businesses with a presence in the MTA district are subject to a business tax surcharge of

17 percent of their liability allocated to the district. The current tax rate of 7.1 percent has been in effect since 2007.

Despite changes in federal laws and regulations permitting cross ownership of finance and banking firms, financial service companies and banks are taxed under different articles of the tax law. This distinction artificially treats these businesses as separate corporate entities despite the unitary nature of their operations. In addition, the tax law discourages banking corporations from investing and creating jobs in New York. As banks add jobs and increase deposits in New York, their taxes increase proportionally. This anomaly in the tax law was addressed for corporate franchise taxpayers by adopting single sales factor apportionment, which bases a corporation's New York liability on the share of receipts they earn from the New York market.

While companies that sell goods can source their receipts to the location of their customers, service businesses must source their receipts to the location where the service is performed. This results in a strong disincentive for these businesses to employ people in New York, hindering New York's ability to attract and grow the jobs in the modern economy.

In addition, the complexity of the system results in a lengthy and adversarial audit process. Many audits can take years to resolve. While the Department of Taxation and Finance has implemented several measures to streamline and simplify its audit procedures, a significant share of corporate income tax collections, more than 20 percent, is received after the completion of the audit process. This has a detrimental impact on public corporations who must establish reserves on their financial reports to account for uncertain tax positions, depressing their reported earnings.

The Commission recommends merging the Corporate Franchise and Banking Franchise taxes along the lines of what was recommended by the Tax Reform and Fairness Commission, with some changes and additional rate relief for all corporate taxpayers. The Commission recommends that several of the components of the prior Commission's proposal that were included to achieve revenue neutrality be dropped or amended. Most importantly, the Commission believes that the current corporate income tax rate should be reduced from 7.1 to 6.5 percent. This will bring corporate franchise tax rates to their lowest level since 1968.[3] Furthermore, other provisions should be amended to lessen the negative impact on businesses that may result from changes in the original proposal.

This reform of the corporate tax would improve the incentives to invest and grow jobs in New York, simplify the tax code and streamline the current audit process. With the additional changes as suggested above, the proposal would be effective for tax years 2015 and after and

[3] The bank tax rates will be the lowest since 1971.

would reduce corporate tax revenue by $346 million annually when fully implemented in 2016-17.

IIb. Accelerate Elimination of 18-A Temporary Assessment

The Temporary Utility Assessment (18-A Surcharge) is an assessment on electric, gas, water and steam utilities. The surcharge is scheduled to be phased out over a three and one-half year period beginning in 2014-15. New Yorkers already pay some of the highest energy bills in the nation. The surcharge increases the already high burden on families struggling to pay high utility bills. Furthermore, the 18-A Surcharge is particularly burdensome for New York businesses, especially those in energy intensive industries. According to National Grid, the surcharge will cost a typical large business $30,000; $540 for a typical small business, and $55 per year for an average household.[4]

Legislation was recently adopted to phase out this surcharge by 2017-18. The Commission believes that the surcharge should be eliminated for certain taxpayers immediately; to accomplish this we suggest providing an additional $200 million in relief targeted at manufacturing/industrial customers and residential consumers. This will immediately improve the business climate for industrial customers where electric power is a significant cost of production. This proposal, when combined with the proposed tax credit for property taxes on manufacturers and an additional manufacturing rate cut, is designed to kick-start upstate manufacturing.

IIc. Real Property Tax Relief for Businesses

New York and the nation are on the cusp of a manufacturing revival. A recent report by the Boston Consulting Group found that more than half of executives at manufacturing companies with sales of more than $1 billion plan to return some production to the United States from China or are considering it, according to the report. That's up from 37 percent in February 2012.

And the number of respondents in the process of moving back also rose, with 21 percent engaged in returning work to the United States, or "reshoring," compared with 10 percent in 2012.[5] The study cites more competitive labor rates, proximity to customers, product quality and skilled labor and transportation costs[6] as the major reasons for this turnaround. The company projects that manufacturing and service related jobs could increase by 2.5 million to 5 million jobs by 2020. Given New York's strengths in these areas, the State must do more in

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[4] 18-a Surcharge Extension Will Harm New York's Economy, http://area-alliance.org/index.php/2013/03/18-a-surcharge-extension-will-harm-new-yorks-economy/
[5] http://economix.blogs.nytimes.com/2013/09/23/more-manufacturing-coming-back-to-the-u-s/?_r=1
[6] Ibid.

terms of reducing other costs of doing business in order to take advantage of this more favorable economic climate and to attract these new manufacturing jobs.

While much (well deserved) attention has been paid to the burden of real property taxes on homeowners, a significant share of real property taxes are paid by businesses. Of the $49 billion in real property taxes levied in 2012, $15 billion, or 30.8 percent, was paid by commercial/industrial parcels. An additional $3.4 billion, or 6.9 percent, is paid by utility companies. Property taxes represent the largest share of taxes, at 37.8 percent, of all taxes paid by business.

Percent Share of Total Business Tax Burden	
Tax Type	Percent Share
Income Tax	14.5%
Sales Tax	18.9%
Property Tax	37.8%
Business Taxes	28.8%
Total	100.0%

Tax Credit for Real Property Taxes Paid by Manufacturers

The Commission believes that business property taxes need to be reduced. We recognize the large revenue base this tax provides to local governments. To focus our efforts on upstate manufacturing, the Commission recommends that the State develop a program to provide real property tax relief to manufacturers in New York. The program would take the form of a credit against corporate income taxes and would be equal to 20 percent of their annual real property taxes. If possible, the Commission would like to see the credit increased further for upstate manufacturers.

This credit would address what is arguably one of the major factors inhibiting the State's competitiveness in attracting new manufacturing businesses, especially in Upstate New York and the suburbs of New York City. The Commission estimates that the credit would provide $136 million in annual tax relief to over 21,000 establishments[7] in the manufacturing sector in New York.

IId. Rate Reduction for Upstate Manufacturers

The Commission also recommends the State take additional steps to provide tax relief for upstate manufacturers. To this end, the Commission recommends that the corporate income tax rate be reduced to 2.5 percent for manufacturers located outside of the MTA region, the lowest rate ever. This is estimated to provide an additional $24 million in tax relief for over

[7] This number includes firms with multiple locations.

4,300 Upstate businesses and would complement the proposal to reduce property taxes on manufacturers.

III. Estate Tax Reform

New York is one of only 17 states to impose an estate or inheritance tax. The estate tax is based on federal law as it existed in 1998, and is badly in need of reform. The federal exemption level is now $5.25 million, while the State's estate tax exemption level is only $1 million. Only two other states have an exemption below that amount.

The Commission recognizes the need to provide incentives to keep successful middle class homeowners, small businesses and farmers as New York residents. As a result, the Commission is also recommending a major reform of the estate tax. This reform will help to ensure that small businesses, including farms, are not forced out of business by the State's disproportionately low threshold for estate taxes. The proposed change also recognizes that estate tax thresholds have not been modified to keep pace with the value of homes owned by middle-income New Yorkers.

The current exemption threshold of $1 million has been criticized as too low given significant increases in the value of assets that make up the majority of the value of estates. With rising home values and a healthy equity market, many middle class households are subject to New York's estate tax, while owing no federal estate tax. In addition, there are concerns that the low exemption level may serve as a factor in taxpayer migration from New York to other states (e.g., Florida) that do not impose an estate tax.

Raise the Threshold to the Current Federal Exemption of $5.25 million

The American Taxpayer Relief Act of 2012 made permanent and modified aspects of the federal estate tax law. The unified exemption for estate and gift tax purposes was set at $5 million and was indexed for inflation. In 2013 the amount is $5.25 million. The Commission recommends equalizing the State exemption threshold with the Federal level of $5.25 million, with indexing. The Commission also recommends lowering the "top" estate tax rate from its current rate of 16 percent to 10 percent.

The combination of an increase in the exemption to $5.25 million along with a reduction in the top tax rate would exempt nearly 90 percent of all estates from the imposition of the estate tax, protect family farms and small businesses and eliminate the incentive for middle-class and wealthy New Yorkers to leave the State to avoid the tax.

IV. Tax Simplification Measures:

The Commission also recognizes the fine work that the Tax Simplification and Fairness Commission has undertaken.[8] As noted, several of the major reforms recommended by this Commission are based on its work. The Commission would also like to recommend several of the tax simplification measures identified by the Fairness Commission, including:

- Elimination of the tax on Agricultural Cooperatives;
- Elimination of the Stock Transfer Tax;
- Repeal of the “Add On” Minimum Tax in the Personal Income Tax (PIT):

The report also identified administrative actions that could be taken immediately by the Department of Taxation and Finance. These recommendations also have merit and should be taken as soon as reasonably possible.

[8] NYS Tax Reform and Fairness Commission, Final Report, November 2013, http://www.governor.ny.gov/assets/documents/greenislandandreportandappendicies.pdf