



NEW YORK STATE LEGISLATURE

Senate Finance Committee Assembly Ways & Means Committee

Senator Catherine Young, Chair
Assembly Member Helene Weinstein, Chair

**HEARINGS ON THE 2018-19 EXECUTIVE BUDGET
PROPOSAL: TAXES**

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Good morning Senator Young and Assembly Member Farrell and members of the Committee. My name is Michael Kink, and I serve as the Executive Director of the Strong Economy for All Coalition. Thank you for the opportunity to present testimony today.

Strong Economy for All is a labor-community coalition working on issues of economic fairness, jobs, income inequality and effective government policies to promote broad prosperity.

We are made up of some of New York's most engaged and effective unions and community organizations, including SEIU Locals 1199 and 32BJ; the United Federation of Teachers, New York State United Teachers and the Professional Staff Congress of CUNY, NYSUT; the New York State Nurses Association, the Retail, Wholesale and Department Store Union and the Communication Workers of America; the New York City Central Labor Council, the Municipal Labor Committee; and community groups including the Coalition for the Homeless, Citizen Action of New York, Make the Road New York, New York Communities for Change and the Alliance for Quality Education.



Strong for All was established to fight for policies and programs that will address New York's worst-in-the-nation income inequality, and we'd like to say clearly and directly that fair-share tax policies are essential to addressing economic inequality in New York, properly funding needed investments in our future, and assuring broader prosperity for all New Yorkers.

This year we urge the Legislature to respond to the new federal tax laws with a progressive revenue package for New York that will

- Close loopholes Congress wouldn't close
- Respond to new loopholes Trump and Congress opened up
- Provide a money-back guarantee for taxpayers on job creation and pay increases by huge multinational corporations
- Fight the opioid epidemic with a new windfall profits tax
- Revive the stock transfer tax after Trump gave Wall Street huge tax breaks
- Ask New York City billionaire real estate developers and condo-buyers to pay their fair share for transit and infrastructure statewide



OVER \$16 BILLION IN POTENTIAL NEW REVENUE

- CLOSE THE CARRIED INTEREST LOOPHOLE AT THE STATE LEVEL \$3.5 billion per year (page 5)
- CLOSE THE NEW PASS-THROUGH LOOPHOLE AT THE STATE LEVEL Over a billion per year (page 10)
- FEDERAL TAX CUT CLAWBACK FOR CORPORATIONS THAT DON'T RAISE PAY OR CREATE JOBS: Over a billion per year or more job creation (page 12)
- MULTI-MILLIONAIRES TAX: \$2.3 billion per year (page 15)
- NEW YORK CITY LUXURY LAND TAX TO FUND TRANSIT, JOBS & CLIMATE ADAPTATION: Several billion dollars per year (page 18)
- OPIOID PAINKILLER PRESCRIPTIONS & WINDFALL PROFITS TAX: Over a billion dollars (page 21)
- STOCK TRANSFER TAX: \$5.5 billion per year (page 25)



CLOSE THE CARRIED INTEREST LOOPHOLE AT THE STATE LEVEL

In response to the federal tax law, states can and should close loopholes that Congress refused to close.

A perfect example is the carried-interest loophole, which allows hedge fund billionaires and private equity titans to pay lower tax rates than teacher and truck drivers. Campaign cash and furious lobbying kept the loophole alive, despite Trump's promises to kill it.

State legislation¹ has been or will be introduced in nine states and the District of Columbia² to tax carried interest at the state level until Congress takes action – Governor Cuomo³ and New Jersey Governor Phil Murphy⁴, for example, have signaled they're in favor, and lawmakers in states from California to Illinois to Connecticut are pushing bills forward.

¹ <https://www.theguardian.com/us-news/2017/mar/27/connecticut-debt-tax-loophole-greenwich-rich-residents>

² <https://www.thenation.com/article/this-loophole-will-let-hedge-fund-managers-dodge-18-billion-in-taxes-this-year/>

³ <https://www.nytimes.com/2018/01/03/nyregion/albany-cuomo-state-of-the-state.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=second-column-region®ion=top-news&WT.nav=top-news&r=0>

⁴ http://www.nj.com/politics/index.ssf/2017/12/murphy_says_his_administration_will_end_fiscal_sle.html



The Strong Economy for All Coalition urges the Legislature to take action to repatriate revenue lost to the federal-level carried interest loophole and bring it to New York for new investments in schools, jobs, housing, clean energy infrastructure and essential government services.

Governor Cuomo's executive budget proposal incorporates language in the Revenue bill on this issue based on legislation introduced by Assembly Member Jeffrion Aubrey and Senator Jeff Klein to close the loophole, and we encourage the Legislature to include this language in the final state budget bill.

Elected officials on both sides of the aisle have called for closing something known as the "carried interest loophole," a legal fiction used by wealthy financiers to lower their federal tax rates below those paid by many working Americans.⁵

According to the New York Times,

Partners at private-equity firms and hedge funds typically treat a big portion of the fees they charge their clients as a capital gain — that is, as profit on the sale of an investment — so they can pay tax at the capital-gains rate of 20 percent (plus a surtax of 3.8 percent typically). Ordinary income is taxed at a rate of

⁵ <http://www.usatoday.com/story/opinion/2015/09/15/hedge-fund-carried-interest-donald-trump-jeb-bush-editorials-debates/72268922/>



up to 39.6 percent. But labeling fees as capital gains is a stretch, in part because the partners generally earn their fees by managing other people's money, not by investing their own.⁶

Closing the loophole would save the federal government an estimated \$18 billion per year, according to an analysis by law professor Victor Fleischer.⁷

State legislatures could pass legislation to tax the carried interest income of hedge fund and private equity partnerships headquartered in their respective states at the rate of ordinary income.

New York's private equity and hedge funds are conservatively estimated to be earning \$35.7 billion per year in under-taxed carried interest. A state bill to recapture this revenue at the ordinary income level would add an estimated \$3.5 billion additional dollars to New York's coffers.

What is the carried interest loophole?

Simply stated, the carried interest loophole is the mistreatment of hedge fund and private equity fees as capital gains, rather than ordinary income.

⁶ <http://mobile.nytimes.com/2016/03/11/opinion/new-york-challenges-a-tax-privilege-of-the-rich.html? r=0>

⁷ <http://www.nytimes.com/2015/06/06/business/dealbook/how-a-carried-interest-tax-could-raise-180-billion.html? r=0>



Hedge fund and private equity funds are usually structured as partnerships. The fund manager is the general partner of the funds, and the investors are limited partners.

Investors often supply the majority of the capital, and the fund manager is supposed to supply investment expertise. For the services the investment manager provides, they charge certain fees.

In both hedge funds and private equity funds, the standard fee structure is "2 and 20"—two percent of the fund assets per year are taken as the management fee, which covers operating costs. Twenty percent of all gains over a certain benchmark rate are taken by the fund manager as the performance fee.⁸

The problem comes from how that twenty percent performance fee is treated for tax purposes. To an outsider, it may seem that this twenty percent fee is compensation for services. According to the Tax Policy Center, a joint project of the Brookings and Urban Institutes, the vast majority of tax analysts share this view.⁹

⁸ <https://www.fas.org/sgp/crs/misc/RS22689.pdf>

⁹ <http://www.taxpolicycenter.org/briefing-book/key-elements/business/carried-interest.cfm>

...treated the performance fee as a fee for services, it would be federally taxed at the ordinary income level, where the highest

marginal tax rate had been 39.6%, and is now 37%. Instead, many fund managers treat this fee as an investment profit.

Profits on investments held longer than one year receive preferential treatment in the tax code, with the highest marginal rate on long-term capital gains set at 20%.¹⁰

That difference of 19.6% may not sound like a lot of money, but the academics estimate the tax revenue loss from the carried interest loophole to be \$18 billion per year nationwide – and \$3.5 billion for New York.

The Strong Economy for All Coalition urges the Legislature to take action to repatriate revenue lost to the federal-level carried interest loophole and bring it to New York for new investments in schools, jobs, housing, clean energy infrastructure and essential governments services.

¹⁰ Plus a 3.8% Medicare surtax



CLOSE THE NEW PASS-THROUGH LOOPHOLE AT THE STATE LEVEL

- Billionaire real estate investors got a special loophole in the new federal tax law
- Some hedge funds and private equity funds are using the new loophole too -- they'll all pay lower tax rates than teachers and truck drivers
- A state surtax on high-dollar pass-through LLCs won't hit local small businesses -- and it will raise over a billion per year
- The mechanism for this is a two-part move to (a) recapture some of the new GOP tax breaks for the super-rich and (b) increase filing fees for high-dollar LLCs
- The richest New Yorkers are getting a \$3.7 billion reduction in taxes on pass through income - recapturing 25% of this "windfall" from the richest of the rich would result in nearly \$1 billion in revenue for NYS
- And to ward off wealthy individuals from restructuring their incomes and starting LLCs to lower their tax liability we should increase LLC fees

<u>NYS gross income</u>	<u>new fee structure</u>
< \$1 million	exempt
\$1-\$5 million	\$3,000
\$5-\$10 million	\$5,000
\$10-\$25 million	\$10,000
\$25-\$100 million	\$25,000
\$100-\$500 million	\$50,000
\$500 million-\$1 billion	\$100,000
\$1 billion +	\$200,000



- Since some LLCs have huge amounts of income, it's only fair to apply the same fixed-dollar minimum taxes on the 9A corporate tax to the new LLC fee structure.
- In 2015, DOB projects that the current fee structure will generate \$88 million. Our proposed fee structure above would generate approximately \$600 million, or roughly \$500 million more than the existing fee structure.
- Current state LLC fees are tiny in the context of the amount of money moving through LLCs. We propose a structure that would generate \$500 million, according to the NYS Tax and Finance Department.



A MONEY-BACK GUARANTEE FOR TAXPAYERS:

CLAW BACK THE FEDERAL TAX CUT FOR BIG CORPORATIONS THAT DON'T RAISE PAY OR CREATE JOBS

- President Trump and the GOP-led Congress said their tax law would lead to higher pay and job creation -- but they didn't put any hard demands on big companies: they just gave them cash
- Now multinational corporations are executing hundreds of billions of dollars in stock buybacks, giving the cash to rich investors -- not workers¹¹
- In recent fourth-quarter earnings reports, huge corporations are reporting hundreds of millions of dollars in earnings due to new tax breaks:
 - **Pfizer** reported an \$11 billion gain under the new law¹².
 - **Verizon** said its revenues would increase by \$3.5 to \$4 billion in 2018 due to new tax breaks¹³.

¹¹ <http://money.cnn.com/2018/01/07/investing/stocks-week-ahead-tax-law-wall-street/index.html>

¹² <http://www.foxbusiness.com/markets/2018/01/30/pfizer-reports-11b-gain-from-new-tax-law.html>

¹³ <https://seekingalpha.com/article/4139417-verizon-communications-vz-ceo-lowell-mcadam-q4-2017-results-earnings-call-transcript?part=single>

- Amazon reported about \$800 million in quarterly profit directly attributable to the new law, or \$3.2 billion per year¹⁴.
- New York can and should make sure this money goes towards job creation and pay increases like Trump and Congress promised it would
- We recommend that the Legislature impose a “clawback” tax on publicly-traded companies that got tax breaks but don’t create jobs or raise pay in a significant and meaningful way
- New York should track publicly-traded companies on the new tax-break profits reported to shareholders
- And we should require publicly-traded companies to report their job creation and pay increase actions as part of quarterly tax filings
- Where companies just buy back stock and don’t create jobs or raise pay significantly, we recommend that the state assess a 75% “**jobs failure fee**” on new federal tax breaks and put the money towards direct job creation efforts in New York, like mass transit, clean energy, early childhood education or public health and addiction prevention

¹⁴ <https://www.cnn.com/2018/02/01/amazon-earnings-q4-2017.html>



- We hope that Verizon and Pfizer and Amazon will create jobs and raise pay – but if they don't, we could raise over \$13 billion in a year to create over 150,000 new jobs from just these three companies¹⁵.
- New York taxpayers deserve a "money-back guarantee" on the Trump/Congress job-creation promises
- We won't touch small businesses or start-ups -- we'll either encourage big companies to do the right thing and create jobs or we'll directly create jobs ourselves.

¹⁵ Job-creation statistics and methodology:
http://www.nelp.org/content/uploads/2015/03/Filling_Good_Jobs_Deficit_Recovery_Agenda.pdf



PASS AN UPDATED MULTI-MILLIONAIRES TAX

We worked hard in 2011 to build broad public support for the Millionaires Tax, and that public support has only grown stronger in the years since. As you know, the incomes of the highest-earning filers in New York have soared in the past decade, while our tax brackets remain linked to income distributions of the 1970s and 1980s.

And our current Millionaires Tax hasn't led high-earning New Yorkers to run away to other states: our state has gained 63% MORE millionaires since we instituted the tax in 2009.¹⁶

Now it's time to update New York's Personal Income Tax structure to require more from those most able to pay: the multi-millionaires and billionaires at the very top.

We strongly support a "multimillionaires tax" that would set new Personal Income Tax brackets at income levels of \$2 million, \$5 million, \$10 million and \$100 million per year, raising over \$2.3 billion per year for New York needs, including public schools, lifesaving health care, affordable housing and a 21st-century clean-energy transportation and power infrastructure.

¹⁶

<https://www.democratandchronicle.com/story/news/politics/albany/2017/03/17/number-ny-millionaires-rose-63-since-2009/99311558/>

New York's super-rich choose to live here because of business, investment and cultural opportunities not offered anywhere else in the world.

The "Knight Frank Wealth Report," a world guide to prime property and wealth, continues to place New York at the very top of the global cities most attractive to Ultra High Net Worth Individuals (UHNWIs).

This year's report predicts a 30% increase for UHNWIs in New York City (those with \$30 million in investible assets not counting their primary residence).

New York currently has 6,570 UHNWIs – it's the number-one city worldwide, ahead of London, Hong Kong, Singapore and Shanghai.¹⁷

The Wealth Report includes detail on millionaires and multi-millionaires living just in New York City:

- 339,200 Millionaires (over \$1 million in wealth not including primary residence) – up six points over last year.
- 15,180 Multi-Millionaires (over \$10 million) – also up six points.
- 6,570 UHNWIs (over \$30 million) – up seventeen percent in a single year¹⁸.

¹⁷ <http://www.knightfrank.com/wealthreport>



The number has grown since New York instituted our Millionaires Tax, and Knight-Frank predicts it will grow by 30% by 2028.

Knight-Frank also predicted a dramatic increase in the number of wealthy individuals living in New York and working in the Technology and Information sector – while they see employment in finance and real estate increasing 5.4% here over the next five years, they predict a 21% increase in high-income tech jobs.¹⁹

Knight Frank predicts that New York City will be the number-one city worldwide for UHNWIs in 2028, far ahead of cities, states and city-states that tax residents at far higher rates than we do.²⁰

New York has room to tax billionaires and millionaires fairly and appropriately and remain very attractive in terms of property, business and culture.

There's no reason to hold back for fear of fleeing millionaires and billionaires, particularly when academic studies repeatedly

¹⁸ <http://content.knightfrank.com/research/83/documents/en/the-wealth-report-2017-4482.pdf>

¹⁹ <http://www.knightfrank.com/globalcities/2017/new-york-real-estate>

²⁰ <http://www.knightfrank.com/wealthreport>



demonstrate that UHNWIs and HNWIIs don't make decisions based on incremental changes in state tax policy.²¹

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https://web.stanford.edu/group/scspi/_media/pdf/pathways/summer_2014/Pathways_Summer_2014_YoungVarner.pdf



IMPOSE A NEW YORK CITY LAND VALUE TAX ON LUXURY CONDOS AND DEVELOPMENT TO FUND TRANSIT, JOBS & CLIMATE ADAPTATION STATEWIDE

- New York City real estate has soared in value, while the transportation, infrastructure, housing and energy systems that make it so valuable have suffered
- The NYC subways were built with a land tax on speculative real estate – now that they need to be rebuilt, it's time for billionaire real estate moguls and huge Real Estate Investment Trusts to contribute to the rebuilding
- Governor Cuomo's "value capture" proposal would only target areas where new transit expansions create new value – it wouldn't capture the explosive increase in Manhattan land and condo prices over the last decade
- We can create thousands of jobs all over New York and the with funding from a reasonable land tax on just the most valuable Manhattan office buildings and speculative luxury housing that could raise **several billion dollars** per year.
- We're talking luxury real estate and high-end development, not working or middle-class homes

- For example, “in the area immediately south of Central Park in Manhattan now known as Billionaire’s Row, condos at a half-dozen towers for the super-rich list for an average of \$14.5 million. Buyers from abroad are common.”
- “The penthouse at 432 Park Avenue—the tallest residential building in the Western Hemisphere—went for \$95 million to a Saudi. At One57, a residential skyscraper on 57th Street, the luxury penthouse was sold for \$100.4 million, the buyer reported to be the prime minister of Qatar. About one-third of Manhattan condo sales since the 2008–2009 recession have been to foreign buyers or to a limited liability corporation (LLC) often used to shield the identity of the ultimate owner.”²²
- These owners can and should pay their fair share of the cost of keeping New York safe and productive – and it’s not fair that billionaires’ condos in New York City are taxed less than working-class housing in Buffalo or Brentwood
- Similarly, the highest-end new speculative office and luxury condo developments in Manhattan should be required to pay towards strengthening and improving the infrastructure, transit and clean energy infrastructure that’s part of a statewide system for all New Yorkers

²² <http://prospect.org/article/heights-privilege>



- It's not fair for the residents of "Billionaires' Row" to pay lower property taxes than residents of Buffalo or the Bronx²³ – they should pay their fair share, through targeted land value taxes, luxury condo assessments and non-resident "pied-a-terre" fees

²³ <http://fiscalpolicy.org/policy-brief-property-tax-relief-circuit-breaker>;
<https://www.empirecenter.org/publications/benchmarking2016/>



ASSESS A FEE ON OPIOID PAINKILLER PRESCRIPTIONS & A WINDFALL PROFITS TAX ON OPIOID WEALTH

- New York is facing a deadly public health crisis of addiction and overdose, driven by prescription painkillers and other narcotics
- Pharmaceutical companies and pharmacy benefits managers have abused the prescribing system to explode sales and distribution of dangerous painkillers beyond their proper use
- A state surtax on prescription painkillers and an assessment on big Pharma and family fortunes built on opioids will raise billions for treatment, public health and overdose prevention.

What A Windfall Profits Tax Should Look Like

- While excise taxes like those proposed by Governor Cuomo are useful for funding treatment services, they do not get at an important issue. Profiting off of addiction is wrong. A windfall profits tax would be a direct way to limit profiting from tragedy and deter future malfeasance.
- The classic example of a windfall profits is the 1980's federal Crude Oil Windfall Profit Tax Act (P.L. 96-223). CRS notes that the tax

“purpose of the tax was to recoup for the federal government much of the revenue that would have otherwise gone to the oil industry as a result of the decontrol of oil prices. Supporters of the tax viewed this revenue as an unearned and unanticipated windfall caused by high oil prices, which were determined by the OPEC (Organization of Petroleum Exporting Countries) cartel.”

- A windfall profits tax is in order when corporations are able to generate excessively high profits due to abnormal market conditions or manipulation. We believe that the impact of addiction is generating such conditions.
- Legislation could be written to direct the New York Department of Health, using its trove of Opioid-related data and health policy expertise, to set a baseline for opioid consumption in 1999 or a prior year, and measure the volume of sales against the population growth in the state.
- Sales above a level determined by the New York Department of Health as normal should be taxed at a much higher rate than the current excise tax proposals. The federal windfall profit tax used a variety of rates depending on the type of oil, ranging from 22.5% to 70%.



The determination of what is and is not an opioid is already defined in New York law and used in the opioid surtax in the budget:

Opioid" shall mean an "opiate" as defined by subdivision twenty three of section thirty-three hundred two of the public health law, and Any natural, synthetic, or semisynthetic "narcotic drug" as defined by Subdivision twenty-two of such section, that has agonist, partial agonist, or agonist/antagonist morphine-like activities or effects similar to natural opium alkaloids and any derivative, congener, or combination thereof, listed in schedules II-IV of section thirty-three hundred six of the public health law.

Distributors and manufacturers are already defined and required to register in New York State under Education Law Section 6808(4):

4. Wholesaler's or manufacturer's registration.
 - a. Obtaining a registration. A wholesaler or manufacturer shall be registered as follows:
 - (1) The application shall be made on a form prescribed by the department.
 - (2) The application shall be accompanied by a fee of eight hundred twenty-five dollars.
 - b. Renewal of registration. All wholesalers' and manufacturers' registrations shall be renewed on dates set by



the department. The triennial registration fee shall be five hundred twenty dollars or a pro rated portion thereof as determined by the department.

c. Display of registration. The registration shall be displayed conspicuously at all times in the place of business.

d. Change of location. In the event that the location of such place of business shall be changed, the owner shall apply to the department for inspection of the new location and endorsement of the registration for the new location. The fee for inspection and endorsement shall be one hundred seventy dollars, unless it appears to the satisfaction of the department that the change in location is of a temporary nature due to fire, flood or other disaster.

- The tax should be applied equally to all taxable distributors and manufacturers in the state once the "normal" amount of opioids have been sold for the year.



BRING BACK THE STOCK TRANSFER TAX

- Big banks and Wall Street traders get the biggest benefits from the GOP Tax Scam
- New York still collects a multi-billion dollar Stock Transfer Tax that is rebated back to the banks
- We can leave small investors alone and impose a tiny transfer tax on high frequency and high-dollar trades that will raise **\$5.5 billion** per year.
- We support the legislation to be re-introduced this year by Assembly Member Phil Steck and encourage the Legislature to move forward with this measure as part of the final budget package.