# 2010-1011 JOINT BUDGET HEARING

# February 1, 2010 – 1:00PM

# TAXES

# HEARING ROOM B

# LEGISLATIAVE OFFICE BUILGING

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| NYS Dept. of Taxation & Finance | Ms. Jamie Woodward<br>Acting Commissioner |
| Manhattan Institute Empire Center | E.J. McMahn |
| New Yorkers for Fiscal Fairness | Ron Deutsch<br>Executive Director |
| Fiscal Policy Institute | Frank Mauro<br>Executive Director |
| Verizon and NYS Telecommunication Association | David Lamendola<br>Director of Government Relations |
| | Robert Puckett<br>President of NYS Telephone Association |

| Organization | Name / Title |
| --- | --- |
| NY Aviation Management Association | Joel Russell<br>President |
| Center for a Tobacco Free New York | Russell Marchione<br>Director |
| Citizens Committee for Children | Danielle Marchione<br>Director of Communication & Government Relations |
| Hunger Action Network | Andreas Kriefall<br>Upstate Director |
| Unshackle Upstate | Brian Sampson<br>Executive Director |
| Harter, Secrest & Emery, LLP | John Jennings<br>Attorney |
| New York Bio-Technology | Nathan Tinker<br>Executive Director |
| Teamster Local 812 | John O'Neil<br>President |
| UFCW Local 1500 | Pat Purcell<br>Assistant to President |
| National Supermarket Association | Nelson Eusebio<br>Executive Director |
| The Bodega Assoc. of United States | Ramon Murphy<br>President |
| NY Association of Convenience Stores | Jim Calvin<br>Executive Director |
| Food Industry Alliance of NY | Michael Rosen<br>Vice President |
| NYS Business Council | Marcus Ferguson<br>Director of Government Affairs |

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| Northbridge Environmental Management Consultants | Kevin Dietly<br>Principal |
| Pepsi New York | Mark Johnson<br>CFO |

**Testimony of**

**Jamie Woodward, Acting Commissioner**

**STATE OF NEW YORK**

**DEPARTMENT OF TAXATION AND FINANCE**

**Before the Joint Legislative Fiscal Committees**

**February 1, 2010**

Chairman Kruger, Chairman Farrell, and distinguished members of the Committees, I am Jamie Woodward, Acting Commissioner of the Department of Taxation and Finance. On behalf of Governor Paterson and the Department's dedicated employees, I thank you for the opportunity to come before you today.

Joining me are members of the Department's executive staff Robert Plattner, Deputy Commissioner of our Office of Tax Policy Analysis, and Patricia Mitchell, the Department's Chief Financial Officer.

I would like to bring you up-to-date on many topics and issues that have consumed our days at the Tax Department in recent months. Last year's Budget challenged us in many ways. By far, our most daunting challenge this past year, and the one that put the most significant strain on Department resources, as well as taxpayers and tax practitioners, was the implementation of the Metropolitan Commuter Transportation Mobility Tax. Enacted in early May, the tax required us to be ready to receive retroactive payments on an entirely new tax by the end of

October. Unlike some of the smaller new taxes we have successfully implemented in recent years, this major tax was to be collected from hundreds of thousands of employers, partners, and sole proprietors within the MTA region with estimated revenue of $1.5 billion for the MTA. As you can imagine, the Department had to quickly reallocate resources dedicated to other projects and activities to meet the short time frame for implementation. I am immensely proud of our Department's work in this area. Nevertheless, we are mindful of the difficulties this has caused taxpayers and tax practitioners and we continue to improve the program as issues arise.

In another new role for the Department, we worked closely with the Departments of Environmental Conservation and Health to develop procedures to implement the bottle bill amendments enacted with last year's budget. The legislation required deposit initiators for all applicable beverage containers to register with the Tax Department by June 1. After nearly eight months of legal challenges and court decisions changing implementation and filing due dates, a total of 236 deposit initiators have registered and paid over $22.4 million in unclaimed deposits.

We were also in the forefront of tax administration as regards tax preparers this year. As you know, Tax Department investigations uncovered a shocking amount of tax fraud perpetrated by tax preparers. Last year you passed a tax preparer registration program that also included the creation of a Task Force to determine possible educational requirements and other standards for tax preparers. The work of the task force is underway, and we were pleased to see that the IRS recently announced a registration program as well. Our goal is to conform our program to that of the IRS to the greatest extent possible, in order to minimize the burden on preparers while protecting the taxpayer.

I would like to turn now to our latest legislative program, the PAID program, now in full swing until March 15th. Enacted as part of the Deficit Reduction Plan, this program offers taxpayers with older outstanding liabilities an opportunity to pay significantly reduced penalties and interest that have accrued on tax bills if they act by the March deadline. Under the PAID program, no discount is given on the actual tax amount due. In mid-January, at the start of the program, the Department mailed 700,000 letters of invitation to these eligible taxpayers. We have fielded thousands of phone inquiries, seen over 18,000 visits to our PAID web site, and accepted applications from approximately 8,000 taxpayers. In an attempt to collect revenue

already owed to the State, rather than raise taxes, we are stirring up some very old matters. While the vast majority of liabilities involved are due and owing, we have become aware that there are some that, in fact, should be canceled. We will work with any taxpayer to review their matter with a goal of resolving it appropriately and expeditiously. The program will not only produce much-need revenue, but it will also serve to reduce our old assessment inventory and allow us to better target our resources to pursue taxes owed to the State going forward.

As I'm sure you are aware, over the past several years, the department has substantially improved its tax enforcement program as part of a strategy to narrow an unacceptable tax collections gap that results from under-reporting of income, non-compliance, and even criminal behavior. Our strategic goal is simple -- we are striving to create a smarter, more effective, and more credible presence that will deter non-compliance and increase voluntary compliance. Our approach involves both increasing the severity of the consequences for tax evasion while directing resources toward programs that encourage taxpayers to comply voluntarily.

Our enforcement program is "smarter" because it is driven by more business intelligence and data analysis than ever before. The more information we have, the more we are able to select appropriate candidates for audit, find assets held by those who owe legally collectible tax debt, and, where appropriate, build stronger cases for criminal prosecution.

The IRS estimates that when government lacks ready access to third-party data and other evidence of income, 54% of taxpayers underreport their income. In contrast, when government is provided information such as W-2 wages, 99 percent of taxpayers correctly report their income. The lesson is clear. More taxpayers will report when they know that underreporting can and will be detected.

New laws enacted last year are just one step in giving us third party information that we need to move taxpayers in the direction of voluntary compliance. Legislation enacted in 2008 required financial institutions to match their account data with our inventory of warranted tax debt. While all financial institutions are not yet fully compliant, given the results so far, we anticipate that this data match will produce $25 million in new revenue in the current fiscal year.

This year's Executive budget includes an important proposal that seeks to require banks to send us the same aggregate credit card sales information they are compiling for the IRS to further enhance our compliance efforts and increase voluntary compliance.

Equipped with these new tools, we are sending more bills, conducting more audits, taking more collection actions and initiating more criminal investigations than ever before. These efforts have returned huge dividends, and have been supported through additional personnel resources added during these difficult fiscal times. We anticipate that in fiscal year 09-10, our activities will produce the highest recoveries in the state's history -- approximately $ 2.75 billion, in cash, including revenue from the PAID program. In addition, we expect that our fraud detection and pre-refund audits will save the state another $700 million.

As we have increased and improved our enforcement program and collection capabilities in recent years, we have continued to devote resources to our core mission, to promote voluntary compliance. We have sought to improve our outreach and education programs, and to provide more ways for taxpayers to bring disagreements or intractable tax problems to our attention outside of the collections and enforcement arena. To this end, in consultation with members of the Legislature last year, we installed our first taxpayer rights advocate. The Office of the Taxpayer Rights Advocate (OTRA) was established on October 1, 2009, as an independent bureau within the Department of Taxation and Finance, reporting directly to the Commissioner. Its mission is to promote taxpayer rights, assist distressed taxpayers, advocate for the fair and reasonable administration of our tax laws, and to promote voluntary compliance by addressing inefficiencies and systemic flaws in our procedures. OTRA also seeks to help increase voluntary compliance through public outreach and education on key issues.

Especially in these difficult economic times, OTRA plays a crucial role in DTF's strategic plan. By ensuring fair, reasonable, and balanced enforcement, both taxpayers and the integrity of our system are preserved and protected. The taxpayer rights advocate has already drafted legislation contained in the Executive Budget proposal to reform our Offers in Compromise program. The proposed legislation will provide the Department with the tools needed to assist distressed taxpayers while generating increased revenues from otherwise uncollectible accounts.

Last year we assumed responsibility for the Office of Real Property Services (ORPS) human resources and fiscal matters. Expanding on this successful effort, the Executive budget includes a proposal to consolidate ORPS with the Department of Tax and Finance. We expect the merger will result in further administrative savings, particularly in Information Technology as well as facilities management. We are already working with ORPS to identify savings areas and efficiencies while maintaining our core missions.

Also on the subject of cost savings initiatives, last year we notified taxpayers that we would not be mailing income tax forms and instructions automatically as the majority of taxpayers, nearly 95%, access forms electronically, use software, or file taxes using paid preparers. The measure saved $1.2 million and had no adverse effects on filing behavior or revenue. Similarly, this year we will ask taxpayers who itemized last year to use our web site or to call us for their 1099G state income tax refund information. We anticipate over $700,000 in printing and postage savings as a result.

In all areas of our contact with taxpayers, we will continue to encourage them to conduct their business with us using efficient technologies such as our web site, email, and direct deposit options. Improvements in the way we communicate with taxpayers through clearer communications, streamlining our mail and print processes, and using the web have resulted in approximately $5 million in cumulative savings. While we have provided web based only filing for many of the new programs we have implemented, due to the breadth and scope of the MTA Payroll tax, we offered both web filing and a paper filing option. We will continue to convert taxpayers to online or electronic filing and will keep you informed as we change our business practices.

Finally, as you know, Governor Paterson included in his Executive Budget a proposal to raise the cigarette tax $1 per pack. In conjunction with that, he directed my Department to issue regulations with respect to the sales by stamping agents to Indian sellers. I am pleased to report to you today that these regulations will be proposed shortly. We anticipate the full regulatory process will take approximately six months to complete.

I will be happy to answer any questions you may have for me and my colleagues today. Thank you.

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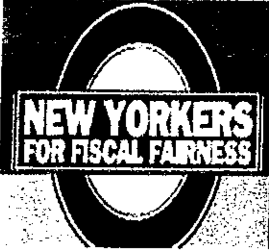


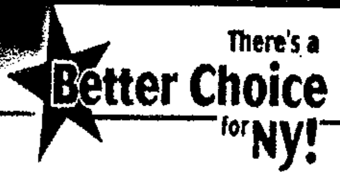


**Testimony to the Senate and Assembly Joint Fiscal Committees**

**2010-11 Executive Budget Proposal**

**February 1, 2010**

**Submitted by:**

**Ron Deutsch, Executive Director, New Yorkers for Fiscal Fairness**

I would like to thank the distinguished members of the committee for the opportunity to speak here today. My name is Ron Deutsch and I am the Executive Director of New Yorkers for Fiscal Fairness. Our organization spearheads the Better Choice Budget Campaign, a coalition of over 100 Labor, faith-based, human service and grassroots organizations representing over 1 million New Yorkers. We urge you to explore other possible spending cuts and revenue raising options that would help mitigate the potential devastating impacts of the cuts to services proposed by the Governor. Taking $7.4 billion dollars out of our state's economy during a recession will only make the current economic situation worse, not better. There are better choices to be made.

**State Spending Cap: A Bad Choice for NYS**

In his 2010-2011 Executive Budget Proposal the Governor is calling for the enactment of a state spending cap. We believe this to be a bad choice for NYS. Colorado is the birthplace of the state spending cap. In 1992, Colorado enacted a Taxpayers Bill of Rights (TABOR), a constitutional amendment that limits the annual growth in state revenues and expenditures. In recent years, anti-government groups have pushed spending cap proposals like Colorado's in numerous other states. These proposals have gone under a variety of names, such as "Tax and Spending Control" (Nevada) or "Stop Over Spending" (Michigan) and now the "State Spending Cap" in New York. Unfortunately these types of caps can have very negative consequences.

**Spending Caps Negatively Impact Colorado**

Colorado's state spending cap contributed to a significant decline in public services in Colorado. It resulted in:

- Colorado declining from 35th to 49th in the nation in K-12 spending;
- higher education funding dropping by 31 percent;
- Colorado falling to near the bottom of national rankings in providing children with full, on-time vaccinations; and
- the share of low-income children in the state who lacked health insurance doubled, making Colorado the worst in the nation by this measure.

In 2005, these problems led Colorado voters to approve a statewide measure to suspend TABOR for five years in order to allow the state to rebuild its public services.

**Spending Cap Proposals in Other States**

In recent years, several national anti-government groups have led campaigns in numerous other states to enact Spending Caps. Since 2004, serious efforts have occurred in 20 states: Arizona, Colorado, Florida, Georgia, Kansas, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, and Wisconsin. Most of these proposals failed to make the ballot. In the three states where proposals did make the ballot — Maine, Nebraska, and Oregon — voters rejected them.

**Unintended Consequences of a Spending cap:**

Despite the Governor Paterson's assertions to the contrary, a state spending cap will inevitably drive up local property taxes. As evidenced in Colorado, the state spending cap did not decrease the cost of healthcare or education it simply resulted in less state spending on these critical needs. In New York we have seen that when the state shirks its funding responsibilities, local property taxes rise to make up for the shortfall. This will inevitably be the case if this spending cap is enacted.

**What do Colorado's Business Leaders Say about the Spending Cap:**

"Coloradoans were told in 1992 . . . that TABOR guaranteed them a right to vote on any and all tax increases. . . . What the public didn't realize was that it would contain the strictest tax and spending limitation of any state in the country, and long-term would hobble us economically." — Tom Clark, Executive Vice President, Metro Denver Economic Development Corporation

"The TABOR . . . has an insidious effect where it shrinks government every year, year after year after year after year; it's never small enough. ...That is not the best way to form public policy." — Brad Young, former Colorado state representative (R) and Chair of the Joint Budget Committee

"[Business leaders] have figured out that no business would survive if it were run like the Spending Cap faithful say Colorado should be run -- with withering tax support for college and universities, underfunded public schools and a future of crumbling roads and bridges." — Neil Westergaard, Editor of the Denver Business Journal

## STAR Restructuring and the Circuit Breaker Proposal

The Governor has rightly proposed making some changes to the STAR program. Limiting STAR exemption for homes valued over $1.5 million make great sense. His proposal to also limit it to homes with incomes below $250,000 also makes sense. We need to seriously reevaluate the current STAR program and its ability to deliver tax relief to families most burdened by the property tax. We need to take it a step further and completely restructure STAR into a circuit breaker type program to ensure that the people that are the most heavily burdened by the property tax (paying 10-40% or more of their income in property taxes) would get the most assistance. The Governor has also proposed a circuit breaker that would be funded with surplus funds generated from the spending cap. I have some major reservations about the Governor's proposed circuit breaker proposal.

**Major concerns with the Governor's Circuit Breaker proposal include the following:**

1) In contrast to virtually all effective circuit breaker programs nationwide, it would apply only to school taxes, ignoring the burden faced by hundreds of thousands of residents of mostly poorer counties where county and municipal taxes often exceed the school tax;

2) It allows the state to change annually the formula it will use to calculate the amount of the income tax credit, effectively negating one of the key features of a circuit breaker, which is to provide some level of confidence that one's maximum property tax obligation will be relatively predictable in future years;

3) Its implementation will only begin when the state runs a budget surplus, an unpredictable but definitely not imminent timeframe which ignores the urgency of the problem;

4) It sets a $2000 maximum credit for any homeowner, significantly reducing the benefit for those being forced to pay the highest percentages of their income in property tax and who are therefore at greatest risk of losing their homes;

5) It would use future increases in available funding to include more people with lesser property tax burdens (based on the percentage of income paid in property tax) rather than raising the maximum individual credit or otherwise increasing the benefit for those who are most overburdened; (this undermines the fundamental concept of the circuit breaker as "targeted" relief, thereby making it less meaningful to those most overburdened and less cost-effective as a relief mechanism)

6) It includes a curious and cumbersome provision that would actually REDUCE the level of circuit breaker relief for those whose local school tax levy increase exceeds inflation in a given year and INCREASE the level of relief when the levy only rises at the inflation rate or less; (the reduction effectively penalizes the substantial number of individuals who may well have voted in the minority against the higher levy increase.)

7) It does not include renters. Every effective circuit program acknowledges that renters pay a property tax equivalent through their landlord and that lower and middle income renters can be just as overburdened by that portion of their rent as their homeowner counterparts.

8) It has different income brackets for upstate and downstate. Since the circuit breaker is based on the relationship BETWEEN one's income and tax bill, calculated as a percentage -- which has uniform validity statewide -- there is no reason for a geographic differentiation, and such a differentiation is actually inequitable.

9) It does not use graduated rate brackets in transitioning from one income range to another, thereby creating inequitable "notch" effects or "cliff "effects.

10) Despite the Governor's focus on school property taxes, his proposal does not address the state policy that most directly affects local school property taxes which is the adequacy and consistency of state aid. Incredibly, the Governor's proposal omits any commitment to the funding of the state's share of school costs under the landmark foundation formula legislation enacted in 2007 to settle the Campaign for Fiscal Equity lawsuit. This omission is even more amazing since the Governor's proposal also includes a formula for reducing the circuit breaker credit for homeowners depending on the school district that they live in and the rate at which that school district increases its property tax levy.

I support the Omnibus Consortium's (a coalition of property tax reform groups from across NYS) circuit breaker (S4239A and A8702) because it has none of the above problems. When fully phased in (fourth year), it would have a $250,000 maximum income eligibility. It would provide income percentage "triggers" of 6% on income of $100,000 or less, 7% on income between $100,001 and $150,000, and 8.5% on income between $150,001 and $250,000. It has a 5 year prior residency requirement. The income tax credit for all those meeting the income and residency guidelines would be 70% of property taxes paid in excess of the relevant percentages. All ad valorem taxes paid on the home (i.e. those based on its value) are counted. Renters are included beginning in the second year.

S4239A and A8702 will provide the relief so urgently needed to stop the forced exodus of New York residents from their homes, and it will do so at a relatively modest cost ($1.1 Billion the first year). Detailed information about the Omnibus Consortium and its circuit breaker can be found at www.omnibustaxsolution.org.

## Better Choices for Budget Balancing and Closing the GAP

### Use the Tax Stabilization Reserve Fund and State Rainy Day Fund ($1.5 billion):

The Tax Stabilization Reserve Fund (TSRF) is for unplanned end of year deficits and totals $1.039 billion. The state rainy day fund has approximately $400 million reserved for economic downturns. These funds are an important backstop or cushion for getting through the current fiscal year without making billions in cuts to vital services as the Governor has proposed.

The relevance of the TSRF and rainy Day Fund to the current situation is that (1) NYS has a reserve fund of approximately $1.5 billion that it can borrow from if disbursements made during the 2010-11 SFY end up

exceeding the receipts and money available for use during the SFY. The Governor and the Legislature should not make more cuts than are necessary given this $1.5 billion cushion.

**Reform Brownfield Clean Up Program (approximately $1 billion):** On July 23, 2008, Governor David A. Paterson signed into law legislation to reform certain aspects of the State's Brownfield programs. This legislation amends Chapter 1 of the Laws of 2003, which established the Brownfield Cleanup Program (BCP). The BCP, among other things, provides BCP tax credits in return for the cleanup and redevelopment of BCP sites. The principal reforms enacted relate to restructuring the tax credits to provide balance between remediation and redevelopment credits. Legislation was passed in 2008, but the cap for tax credits is still set too high. In a report by the Comptroller in June 2008, current projects could cost the state $3 billion. New York and Connecticut have redevelopment incentives as well as cleanup incentives, while MA, NJ, PA, and VT only have cleanup incentives. Tax credits should be more aligned with the amount of remediation and level of clean up that happens, rather than the cost of redevelopment.

The problem remains that many programs that were grandfathered in to the program prior to the changes will still receive exorbitant redevelopment credits which could cost the state billions. This program needs to be further reformed so we are not excessively subsidizing redevelopment.

**Empire Zone Program ($600 million):** Empire Zone program sunsets in 2010 and should be eliminated in its current form. This would save the state approximately $600 million per year. This program has proven to be ineffective and fraught with abuse. We have advocated its elimination for years. The governor is proposing a new program to replace it that he states is more linked to job creation than the current program. We already have IDAs at the local level (that also need to be reformed) but would serve the same function as a statewide program.

**Stop Hiring pricey Private Consultants (approximately $200 million per year):** In SFY 2008-09, the state spent $2.9 billion on consultants and paid them an average annual rate of $160,719. Consultants charge 62% more than state employees who do the same work including the cost of state employee benefits. Consultant spending for the first half of this year is at the same rate as last year. The state should reduce the use of these high priced consultants before any state employee loses their job or pay. Replacing half of these consultants with state employees will save the state over $656 million over the next three years.

**Promote the Bulk Purchase of Pharmaceuticals (approximately $200-$500 million):** Language inserted into last year's budget allows the Department of Health to negotiate directly with drug companies for lower cost drugs. According to recent studies, New Yorkers spend over $20 billion a year on prescription drugs. Approximately $4 billion (or more) of this spending is in the Medicaid program. We should use our purchasing power to force drug companies to provide us with lower cost drugs. We could save hundreds of millions or more if we were able to get drugs for what the federal government currently pays. The Progressive States Network has model legislation for states that are attempting to reign in prescription drug costs.

## State Issues/Revenue Raisers:

**Collect Taxes that are Due on Cigarettes (approximately $500 million):** The impact of price on cigarette consumption is well documented. The more expensive tobacco products are the more people will want to quit smoking. The good news is the Empire State now has one of the highest cigarette taxes in the nation at $2.75 per pack. But there's a problem. Hundreds of millions of dollars in cigarette taxes aren't being collected. New York has been unable or unwilling to collect taxes on tobacco products sold at Native American retail outlets. This torrent of tax free cigarettes is both a significant public health problem and economic burden to all New Yorkers. But a new law allows the state to collect all cigarette taxes before the products reach the reservation and put an end to this public health embarrassment. Native Americans would be provided coupons to purchase tax free cigarettes while sales to non-native Americans would be subject to the tax. We also support the increase on cigarette taxes the Governor has proposed.

**Soda Tax ($1 billion):** A 1 cent per once tax on sugary soft drinks could result in an additional $1 billion in revenue. The basic argument is that each New Yorker now drinks the equivalent of 11 cans of soda a week, up from five cans a week in 1970. Three of the six additional sodas per capita are sweetened with sugar. Three cans per week adds up to "13 more pounds of straight sugar" a year according to Doctor Richard Daines (NYS Department of Health Commissioner). That's about 21,000 calories worth of sugar. Daines also points out that 34% of NY children are overweight or obese.

This year, Gov. Paterson proposed adding a syrup/sugar tax on sugar-sweetened drinks (raising $400+ million this year a billion next) as part of a package of spending cuts and tax hikes aimed at closing the state's yawning budget gap. Polls at that time found New Yorkers opposed to the new tax by a margin of 60% to 37% but that should not deter the legislature from supporting this tax this year.

**Plastic Bag Tax ($340 million with a 5 cent tax):** In an effort to reduce the use of plastic bags in our state we could institute a per bag tax. The average person in NYS uses approximately 333 plastic bags per year. While a small percentage of these bags get recycled most are simply thrown away. This tax is an excellent way to help the environment and generate dollars for the state. Other countries/states/cities already have this type of tax (most notably San Francisco – and Ireland charges .33 cents for each bag) and Mayor Bloomberg tried to get a .05 cent tax per bag enacted in NYC. The Mayors efforts were in vain as the state would not approve such a tax at the time. It is estimated that a tax of between .05 cents and .25 cents would generate between $340 million and $3 billion. New Yorkers currently use approximately 6.3 billion plastic bags per year.

**Severance/Extraction Tax on Marcellus Shale Natural Gas ($100 million conservatively):**
Most states with significant mineral resources levy a tax on the extraction of those resources. State severance taxes compensate state residents for the extraction of valuable mineral resources.
**"If"** drilling is allowed in the Southern Tier of NYS, a severance tax would have substantial benefits and few drawbacks. As NYS is one of the few states in the nation with possible significant mineral wealth that does not have a severance tax it will not make us uncompetitive. The creation of a severance tax could compensate state and local governments for costs associated with natural gas production, provide funds to mitigate potential environmental hazards, and serve as a valuable source of revenue. The tax would be paid by oil and gas developers, many of whom may be from out-of-state.

The Governor has proposed a 3 percent tax that would be imposed on natural-gas producers in the Marcellus and Utica Shale formation in the Southern Tier and central New York using a horizontal well. The state doesn't expect any revenue in the 2010-11 fiscal year, but estimates $1 million in the following fiscal year. These estimates are far too low and should be subject to a much higher tax rate. We should work with the state of Pennsylvania to ensure that our taxes are similar to theirs.

**Make Permanent the Temporary PIT Increase (no fiscal impact till 2012):** Passage of a tax increase on wealthy NYers was included in last year's budget. Rates went from 6.85% to 7.85% for families making between $300,000-$500,000 and to 8.97% for families with incomes over $500,000. This income tax increase was put in place for 3 years and will sunset in 2011. It should be made permanent.

# Close the Stock Transfer Tax Loophole ($3.2 billion)

(Secs. 270-281-a State Tax Law): The stock transfer tax is basically a sales tax on the transfer of individual stock. Any stock transaction involving the New York Stock Exchange, American Stock Exchange or NASDAQ is subject to the tax. The original issuance of stock is not subject to the tax. However, transfers of treasury stock are taxable.

The tax has been in effect for decades but unfortunately the money is currently tallied, assessed, collected and then handed right back to the brokers who paid it in the form of a 100% rebate. The tax was collected until 1981. The state began rebating the tax in 1979 (at 30%), 1980 (at 60%) and in 1981 (at 100%).

The way it works is simple. The broker fills out a return (form MT-650), submits payment to the state and the state wires the money right back to the broker. In the past the state had to momentarily take possession of the tax to fulfill the arcane requirements of its bond agreement with the Municipal Assistance Corporation (this is no longer the case).

In order to discourage speculation, supporters of the Stock Transfer Tax Loophole Closure should also consider tying the tax to trading volume: the lower the trading volume, the lower the tax. A side benefit of the plan would be to lessen the frenzied volatility that caused many of the recent problems on Wall Street.

NYS currently rebates 100% of the nearly $16 billion in Stock Transfer taxes back to brokers right after it is paid. We suggest that 80% be rebated and the State retain 20% which would result in $3.2 billion annually in state revenue.

**The Tax rate and basis is as follows:**

| Selling Price (per share) | Rate (per share) |
|---|---|
| Less than $5 | 1 ¼ cents |
| $5 or more but less than $10 | 2 ½ cents |
| $10 or more but less than $20 | 3 ¾ cents |
| $20 or more | 5 cents |
| Transactions other than sales | 2 ½ cents per share |

**Stock Transfer Tax Collections Before Rebates***

| State Fiscal Year Ending In: | Amount: |
|---|---|
| 1980 | 452,743,623 |
| 1981 | 580,660,890 |
| 1982 | 561,440,112 |
| 1983 | 793,351,417 |
| 1984 | 1,023,718,768 |
| 1985 | 973,710,060 |
| 1986 | 1,232,497,287 |
| 1987 | 1,527,383,132 |
| 1988 | 1,755,983,416 |
| 1989 | 1,375,278,554 |
| 1990 | 1,610,760,964 |
| 1991 | 1,706,615,076 |
| 1992 | 2,210,761,060 |
| 1993 | 2,365,933,800 |
| 1994 | 2,935,823,760 |
| 1995 | 3,003,612,181 |
| 1996 | 3,595,094,985 |
| 1997 | 4,104,580,775 |
| 1998 | 5,572,567,976 |
| 1999 | 6,782,443,468 |
| 2000 | 7,494,935,815 |
| 2001 | 7,631,765,383 |
| 2002 | 6,682,575,506 |
| 2003 | 9,288,841,525 |
| 2004 | 10,605,122,527 |
| 2005 | 11,549,250,124 |
| 2006 | 11,593,533,764 |
| 2007 | 13,419,216,071 |
| 2008 | 16,313,860,949 |
| 2009 | 15,991,810,068 |

*The tax is rebated at the following rates:
Beginning October 1, 1979: 30%
Beginning October 1, 1980: 60%
Beginning October 1, 1981: 100%

Source: Table 22, New York State Department of Taxation and Finance, 2008-2009 New York State Tax Collections: Statistical Summaries and Historical Tables, November 2009.

## Close Corporate Tax Loopholes: Making Business Taxes More Equitable

One of the ways in which New York's tax structure has not kept pace with economic and other changes is in the area of unincorporated businesses. Typically, people tend to think that the universe of unincorporated businesses is dominated by small businesses, the self-employed, sole proprietorships, and fledgling partnerships. Numerically, that might be the case. But in New York State there are a very large number of very large unincorporated businesses with substantial receipts and business income. In New York City, which does tax the business income of unincorporated businesses, Limited Liability Companies (LLCs) and Limited Liability Partnerships (LLPs) paid $800 million in taxes in 2005, nearly three-fourths of the total unincorporated business tax liability, and an amount equal to 40 percent of the total collected under the City's General Corporation Tax.[i]

Within the finance sector, the role played by private equity and hedge funds has increased dramatically in recent years. These entities typically are organized as LLCs or LLPs, and to some extent, the strong growth in the City UBT liability in recent years stemmed from LLCs and LLPs in the finance sector. Eleven of the world's largest private equity firms are headquartered in the city. Thirteen of the world's top 50 performing hedge funds are based in New York City.[ii]

Large LLCs and other business partnerships benefit from state public services and from state laws that grant them special legal advantages not available to other forms of businesses.[iii] The State should seek to tax appropriately these large business entities. New York City's 7,600 LLCs and LLPs had combined taxable income in New York City in 2005 of $20 billion, which works out to an average of $2.6 million in business income per entity. These are not small businesses. Yet, the State has gone in the other direction in terms of appropriately taxing these large businesses. Obviously, since New York City already imposes a four percent business income tax on unincorporated businesses, there are limits to how much the State could tax such entities. But the current state fee structure is extremely nominal.

The State should consider action in three areas involving unincorporated businesses.

### A. Increasing filing fees for large LLCs and other partnership entities ($50-$100 million)

In 2003, the maximum Limited Liability Company (LLC) filing fee was increased from $10,000 to $25,000. Initially authorized for two years and then extended for two more, the higher maximum was in effect for tax years 2003-06. The fee structure was still on the member basis at this point. Filing fee collections, which are paid as part of New York State's Personal Income Tax, increased from $26.5 million in 2002 to an average of about $72 million for 2003-06. In 2008, however, the member basis was replaced with a fixed fee structure and the maximum lowered to $4,500, even for entities with New York source gross income of $25 million or more. (The same fee structure applies to the fixed dollar *minimum* tax for S and C corporations.)

In 2009, filing fees were established for non-LLC general partnerships on the same fee structure as for LLCs. The revenue projection for this change was estimated by the State Tax and Finance Department at $50 million. The State should consider restoring the $25,000 maximum filing fee and have it apply to both LLCs and general partnerships over some very high business receipts or income threshold. An alternative would be to add one or more additional brackets at the top end of the graduated fee structure. Given the number and size of such entities in New York, such a change might generate $50 million to $100 million in additional revenue.

### B. Taxing Nonresident Hedge Fund Management Fees ($60 million)

In his 2010 Executive Budget proposal, the Governor proposed to "expand the nonresident personal income tax to include income received from hedge fund management fees." The revenue impact was estimated at $60 million. This was not included in the enacted budget but should be considered. As the Governor's proposal explained, "Currently, only a small portion of such income is taxed as compensation, with the remainder deemed tax-free capital gains. This proposal would result in equal treatment of this income for residents and nonresidents."[iv]

## C. Eliminating the Carried Interest Exemption under New York City's Unincorporated Business Tax ($50 million)

While not a state revenue item, it would be important in helping New York City to close its Fiscal Year 2010 budget for the State Legislature to eliminate the carried interest exemption loophole in the City's Unincorporated Business Tax. This would put the taxation of private equity and hedge funds on the same footing as that of thousands of smaller businesses. The City taxes the fees received by managing partners in private equity and hedge funds but exempts "carried interest" from taxation. Carried interest refers to the profit share received by managing partners, usually 20 percent of the profits generated by the pooled investment of the limited partners.[v]

In his Executive Budget for FY 2010, the Mayor has proposed generating over $900 million by increasing the city sales tax rate by half a percent and by eliminating the sales tax exemption for clothing and footwear. This proposal is extremely regressive, and would impose an effective tax burden on low- and moderate-income households that is twice that for high-income households. Eliminating the carried interest exemption is needed on tax equity grounds but it would also help the City avoid or at least lessen its reliance on extremely regressive taxes. While any estimate of the possible yield of such a change is very rough, eliminating the carried interest exemption could generate upwards of $50 million annually.

## Other Business related taxes:

- **Qualified Production Activities Income (QPAI) Decoupling ($25 million).** This action would conform New York to the practices of 18 other states that have decoupled from the federal deduction related to qualified production activities and require taxpayers to add back this deduction for New York tax purposes. The deduction was originally intended to provide a tax incentive to manufacturers by preserving and promoting domestic manufacturing jobs and domestic production. However, the deduction is now allowed on a vast array of activities which go beyond the familiar concept of manufacturing. It is possible that a multi-state firm could use the deduction to reduce its New York taxes without having a single production employee in the State.

- **Bad Debt Deduction ($25 million).** This deduction would conform New York to federal rules and the practices of other states that allow certain banks to deduct only bad debts that have been actually written-off rather than amounts placed in reserve. The amount placed in reserve to cover such debt is based upon the historical bad debt experience of the taxpayer. Currently, a bank is allowed to take deductions based on an estimate of debts that are expected to become worthless in the future - providing a deduction for debts before they actually become "bad" or uncollectible. This approach generally inflates the amount of the deduction and thereby reduces taxable income.

- **Bank Subsidiary Capital ($35 million).** This action would require the add back of expenses related to subsidiary capital under the bank tax, and eliminate the 20 percent reduction in the wage factor portion of the apportionment formula to ensure the bank tax appropriately reflects a bank's presence in New York. Eliminating this discounting of the wage factor would ensure a bank's tax liability appropriately reflects that bank's level of activity and presence in New York. Under current law, bank taxpayers are allowed to deduct 17 percent of interest income from subsidiary capital, 60 percent of dividend income and net gains from subsidiary capital, and 22.5 percent of income from government obligations from income subject to tax. However, unlike corporate taxpayers that are allowed similar deductions, bank taxpayers are not required to add back to income the expenses related to these deductions. In addition, banks use a three-factor formula of wages, deposits and receipts to apportion income to New York. However, under current law, the wage factor is discounted such that only 80 percent (rather than 100 percent) of the bank's total New York wages are included in the apportionment formula.

- **Cooperative Insurance Companies ($23 million)** . This proposal would limit the exemption under the insurance tax for cooperative insurance companies. This proposal would ensure that insurance companies that provide the same types of services are treated equally under the Tax Law. It would also deny the insurance tax exemption to companies that have expanded their activities beyond those intended for eligibility for the tax exemption and remove the unfair advantage afforded to these companies under current law.

- **Tax Full Cost of Remote Booking of Hotel Occupancy ($15 million).** The Budget would require travel companies that rent hotel rooms online or by telephone to collect the sales tax on the markups and service fees charged to customers. When the travel company books the room, it pays the hotel for all applicable taxes based on this discounted price and the hotel remits the sales tax to the State. The travel company then places additional service fees and markups on top of this discounted price and bills its customers. No State or local tax is collected on these fees or markups.

- **Extend sales tax to services not currently covered (will depend in items covered):** Consider extending the sales tax to some of the services that are currently exempt from sales taxation like Accounting and Attorneys fees.

- **Adopt a Throwback Rule:** Pending resolution nationally of the creation of "nowhere income" by the workings of PL 86-272, New York State should adopt a throwback rule. NYS should not continue the flawed idea of Single Sales Factor; and/or Single Sales factor should be suspended until PL 86-272 is repealed (or revised enough to ensure that SSF does not result in a huge increase in "nowhere income"); and/or the Tax Department should be required to do detailed annual reporting on the revenue and distributional impacts of SSF; and/or a temporary commission to evaluate the impact of SSF should be established.

- **Broader Tax credit reform:** There is currently a huge and growing bank of unused tax credits. This is a very dangerous phenomenon. Tax Credit reforms should take into consideration: (1) the limit on the carry over of unused credits should be changed back to the 5-year limit contained in New York State's 1987 corporate tax reform legislation; (2) an employment ratchet must be added to the ITC; (3) a moratorium should be placed on the creation of any new credits until a thorough review and reform is completed in regard to the existing credits

- **Adopt Corporate Tax Disclosure:** Corporate tax disclosure should be adopted for publicly traded firms subject to taxation under 9-A and 32 and any successor taxes.

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[i] The amount of UBT taxes paid by LLPs and LLCs exceeded the total bank tax collections for that year. See, City of New York, Department of Finance, Office of Tax Policy, ***Statistical Profiles of New York City Business Income Taxes, Tax Year 2005***.

[ii] Fiscal Policy Institute, ***Re-thinking the New York City Business Tax Treatment of Private Equity Fund and Hedge Fund "Carried Interest,"*** April 15, 2008.

[iii] Michael Mazerov, ***Reforming the Tax Treatment of S-Corporations and Limited Liability Companies Can Help State Finance Public Services***, Center on Budget and Policy Priorities, April 8, 2009.

[iv] Governor David Paterson, ***2009-10 New York State Executive Budget***, p. 127.

[v] Fiscal Policy Institute, ***Re-thinking the New York City Business Tax Treatment of Private Equity Fund and Hedge Fund "Carried Interest,"*** April 15, 2008.

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**David Lamendola**
Vice President
Government Affairs – NY & CT

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**Testimony by:
David Lamendola
Verizon
Before the Joint Legislative Hearing of the
Senate Finance and Assembly Ways and Means Committees
February 1, 2010**

Thank you Chairman Kruger, Chairman Farrell, Senators and Assembly members for granting me the opportunity to present testimony today regarding the proposed budget.

I am here today to discuss one of the Governor's Executive Budget proposals that is not getting a great deal of attention and will harm lower-income New Yorkers that are struggling to make ends meet in this economic downturn. Specifically, the Governor is recommending that cities and villages across New York be allowed to raise the local gross receipts tax on utilities from 1% to 3%. According to the Division of Budget, this increase will raise over $110 million dollars. However, we believe the increase would be closer to $200 million or more. We also find this somewhat puzzling since the Governor is also calling for real property tax relief from the same taxpayers that will end up paying the increased utility tax.

Raising the rate by another 2% is going in the wrong direction if lawmakers believe consumers are paying too many taxes on their phone bills. Does anyone really think an average 17.3 PERCENT tax rate on telecommunications services is the right thing to do for the citizens of New York? Verizon respectfully suggests that New York needs to simplify and reduce the taxes on telecommunications services, not make them more complex and raise rates even further.

On the positive side, the budget contains a proposal that requires the Department of Taxation and Finance to provide recommendations to reform state and local taxes on telecommunications services. Verizon suggests that this study be undertaken prior to any new taxes being added to an already over-burdened industry and customers. We think this study will build upon the Legislature's leadership and the findings in the Senate's "Staff Report to the Select Committee on Budget and Tax Reform on Modernizing New York State's Telecommunications Taxes." One of the main points the report made was that "New York State's telecommunications tax system is long overdue for an upgrade." We think so too since Verizon and its customers generate nearly $1.4 Billion dollars a year in state and local taxes in New York.

On behalf of Verizon, thank you for the leadership exhibited in the past by both houses on these critical issues. I hope we can move forward together in ensuring New York's economic success in the future.

Thank you.

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**Facts about telecommunications taxes in New York:**

**According to a Study Published by CCH in conjunction with the Council on State Taxation in March, 2005:**

- **NY has 10 different combined state and local tax bases on telecommunications.**
- **NY has the highest number of state taxes on telecommunications services in the United States.**
- **NY is in the top 5 for the highest number of local taxes imposed on telecommunications services in the United States.**
- **NY is the third highest state in the United States for the most total taxes on telecommunications.**
- **NY has the third highest property tax rate on telecommunications provider's real property in the United States.**
- **NY already has an 8.3% state tax rate on telecommunications services and an average 9% local tax rate on telecommunications for a total average rate of 17.3% . . .**

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*NEW YORK STATE TELECOMMUNICATIONS ASSOCIATION, INC.*
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**TESTIMONY BY**
**ROBERT R. PUCKETT, PRESIDENT**
**OF**
**THE NEW YORK STATE TELECOMMUNICATIONS ASSOCIATION, INC.**
**BEFORE THE**
**JOINT LEGISLATIVE HEARING OF THE SENATE FINANCE AND ASSEMBLY WAYS AND MEANS COMMITTEES**

**FEBRUARY 1, 2010**

THANK YOU CHAIRMAN KRUGER AND CHAIRMAN FARRELL, SENATORS AND ASSEMBLY MEMBERS FOR GRANTING ME THE OPPORTUNITY TO PRESENT THIS TESTIMONY TODAY REGARDING THE PROPOSED EXECUTIVE BUDGET.

MY NAME IS ROBERT PUCKETT. I CURRENTLY SERVE AS PRESIDENT OF THE NEW YORK STATE TELECOMMUNICATIONS ASSOCIATION (NYSTA). MY 35 PLUS MEMBERS INCLUDE LARGE CARRIERS SUCH AS AT&T, SPRINT AND WINDSTREAM AND SMALLER CARRIERS THROUGHOUT THE STATE SUCH AS MIDDLEBURGH TELEPHONE COMPANY OR ONEIDA COUNTY RURAL TELEPHONE COMPANY. MY MEMBERS' NETWORKS REPRESENT THE "CENTRAL NERVOUS SYSTEM" OF THIS STATE'S TELECOMMUNICATIONS NEEDS AND OF TODAY'S INFORMATION BASED ECONOMY. THEY PROVIDE EVERYTHING FROM POTS (PLAIN OLD TELEPHONE SERVICE) TO NETWORKS CAPABLE OF PROVIDING HIGH SPEED INTERNET SERVICES AND HAVE RECENTLY BEGUN ROLLING OUT VIDEO SERVICES IN MANY MARKETS.

I AM HERE TODAY TO ADDRESS TWO PROPOSALS CONTAINED IN THE GOVERNORS' PROPOSED 2010-2011 BUDGET.

THE FIRST PROPOSAL CONTAINED IN THE BUDGET WOULD REQUIRE THE DEPARTMENT OF TAXATION AND FINANCE, IN CONSULTATION WITH THE DEPARTMENT OF PUBLIC SERVICE AND OFFICE OF REAL PROPERTY SERVICES (ORPS) TO DEVELOP RECOMMENDATIONS CONCERNING THE TAXATION OF THE VARIOUS SEGMENTS OF THE TELECOMMUNICATIONS INDUSTRY.

THIS RECOMMENDATION BUILDS UPON LAST YEARS LEGISLATION, WHICH YOUR RESPECTIVE CHAMBERS PASSED, WHICH REQUIRED THE DEPARTMENT OF TAXATION TO ISSUE A REPORT OF THE VARIOUS TAXES, FEES, AND SURCHARGES IMPOSED UPON THE VARIOUS TELECOMMUNICATIONS PROVIDERS. THE DEPARTMENT ISSUED THEIR REPORT LAST AUGUST.

I APPLAUD THE GOVERNORS' PROPOSAL AND YOU FOR YOUR INSIGHT IN RECOGNIZING THE NEED TO STUDY THE TELECOMMUNICATIONS INDUSTRY AND THE TAXATION POLICIES APPLICABLE TO THE INDUSTRY. THIS LATEST PROPOSAL BUILDS UPON THESE EFFORTS BY RECOGNIZING THE NEED TO DEVELOP APPROPRIATE AND BALANCED RECOMMENDATIONS REGARDING TAXATION OF THE INDUSTRY.

THE TELECOMMUNICATIONS INDUSTRY NOW HAS ROBUST COMPETITION. NEW YORKERS HAVE AN ARRAY OF OPTIONS FROM SERVICES OFFERED BY THE TRADITIONAL INCUMBENT LOCAL EXCHANGE CARRIERS TO SERVICES PROVIDED BY WIRELESS PROVIDERS, CABLE TV PROVIDERS, AND INTERNET TELEPHONE PROVIDERS. AS A RESULT OF THIS INCREASED COMPETITION, THE TRADITIONAL INCUMBENT LANDLINE PROVIDERS HAVE LOST SIGNIFICANT MARKET SHARE OVER THE PAST SEVERAL YEARS.

CABLEVISION, ONE OF THE TWO DOMINANT CABLE TV PROVIDERS IN THE STATE, HAS BEGUN BOASTING THAT THEY ARE NOW THE LARGEST PROIVDER OF PHONE SERVICE ON LONG ISLAND, THEREBY SURPASSING VERIZON. YET, WHILE THE INDUSTRY HAS CHANGED, THE TAX POLICY GOVERNING IT HAS NOT, AND THEREFORE WE ARE FACED WITH DIFFERING TAX STRUCTURES ON THE VARIOUS INDUSTRY SEGMENTS. THIS SITUATION HAS CREATED AN UNLEVEL PLAYING FIELD BETWEEN COMPETITORS. WE HAVE BEEN ADVOCATING FOR THE NEED TO LOOK AT THESE TAX POLICIES AND THE NEED TO BRING PARITY TO THE MARKET PLACE. ULTIMATELY, THE FAILURE TO DO SO WILL IMPACT THE HEALTH OF THE VARIOUS INDUSTRY SEGMENTS, AND THUS POTENTIALLY NEW YORK'S CONSUMERS, BY HARMING THE ABILITY TO MAINTAIN A MULTI-PROVIDER COMPETITIVE MARKETPLACE.

THEREFORE WE APPLAUD ANY AND ALL EFFORTS TO REVIEW EXISTING TAX POLICY AND WELCOME RATIONAL AND REASONABLE CHANGES THAT WILL LEVEL THE PLAYING FIELD AND RECOGNIZE THE NEW MARKETPLACE.

WHILE I AM HERE TODAY ON BEHALF OF THE INDUSTRY TO THANK YOU FOR YOUR PAST WORK AND ASK THAT YOU HEED THE CALL ISSUED BY THE GOVERNOR'S MOST RECENT PROPOSAL, THERE IS A SECOND BUDGET ISSUE THAT ACTS COUNTER TO THESE GOOD INTENTIONS. THE GOVERNOR ALSO INCLUDED A PROPOSAL THAT IS DIAMETRICALLY OPPOSED TO HIS PROPOSAL TO REQUIRE A REPORT CONCERNING TAX POLICIES.

THE GOVERNOR INCLUDED A PROPOSAL THAT RECOMMENDS GIVING LOCALITIES THE ABILITY TO RAISE TAXES ON TELECOMMUNICATIONS PROVIDERS AND THEIR CUSTOMERS. THIS SEEMS INCONSISTENT BECAUSE UNTIL THE STUDY IS COMPLETED, THERE ISN'T A COMPLETE TAXATION PICTURE. WITHOUT THE COMPLETE PICTURE, ADDING ANOTHER TAX IS COUNTERPRODUCTIVE. SPECIFICALLY, THIS PROPOSAL RECOMMENDS ALLOWING LOCALITIES THE OPTION TO INCREASE TAXES COLLECTED UNDER SECTION 186A OF THE TAX CODE FROM 1% OF GROSS REVENUES TO 3% OF GROSS REVENUES.

ASIDE FROM THE FACT THAT THE TAXATION PICTURE IS INCOMPLETE AT BEST, WE BELIEVE THAT NOW IS NOT THE TIME TO RAISE TAXES ON THIS INDUSTRY. FIRST, WE BELIEVE THE OVERALL TAXATION OF THE TELECOMMUNICATIONS INDUSTRY AS COMPARED TO GENERAL BUSINESS IS EXCESSIVE. I HAVE NOTED MANY TIMES THAT THE OVERALL LEVEL OF TAXATION FOR THE TELECOMMUNICATIONS INDUSTRY IS 17.29 % COMPARED TO 8.44% FOR GENERAL BUSINESS. SECOND, GIVEN THE OVERALL

ECONOMIC PROBLEMS FACED BY ALL NEW YORKERS AND NEW YORK BUSINESSES IN TODAY' ECONOMY, NOW IS NOT THE TIME TO RECOMMEND A NEW TAX. THIS INCREASE WILL EXACERBATE AN ALREADY OVERTAXED INDUSTRY AND THEIR CUSTOMERS. FURTHER, IT WILL WORK AGAINST THE GOVERNOR'S, AND LEGISLATURE'S, VERY OWN POLICIES IN BRINGING AFFORDABLE, ADVANCED BROADBAND SERVICES TO EVERYONE. FINALLY, IT MAY MAKE IT THAT MUCH MORE DIFFICULT TO IMPLEMENT CHANGES THAT FLOW FROM THE ADMINISTRATION'S FIRST BUDGET PROPOSAL.

FOR THESE REASONS, THE NEW YORK STATE TELECOMMUNICATIONS ASSOCIATION STRONGLY OPPOSES THIS PROPOSAL AND RECOMMENDS THAT THE LEGISLATURE REJECT THIS TAX INCREASE.

ON BEHALF OF MY MEMBERS, THANK YOU FOR THE LEADERSHIP EXHIBITED IN THE PAST BY BOTH HOUSES ON THESE CRITICAL ISSUES. I HOPE WE CAN MOVE FORWARD TOGETHER IN ENSURING NEW YORK'S ECONOMIC SUCCESS IN THE FUTURE.

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# NEW YORK Aviation Management Association NYAMA

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Joint Legislative Public Hearings on the 2010-2011 Executive Budget
S.6610/A.9710 Part Z Subpart B
New York Aviation Management Association
Joel Russell, President

Good morning Chairman Kruger, Chairman Farrell, and members of the legislature. I am Joel Russell, President of the New York Aviation Management Association (NYAMA). I am also the Airport Manager for Albany International Airport.

NYAMA represents over 120 airports and aviation organizations across New York. Our diverse membership includes small general aviation airports as well as large hub airports and aviation professionals from all walks of life. NYAMA has been the Voice of Aviation in New York for 34 years.

My comments, while addressing the latest aviation tax proposal in the Executive Budget, will also speak to the need for enacting tax reforms that will allow New York's aviation industry to effectively compete with neighboring states for aviation-related investment.

Part Z, Subpart B of the Governor's revenue bill is entitled, "Sales Tax Avoidance Provisions—Aircraft and Vessels." This subpart will make the retail sale exclusions for transfers of property between affiliated parties inapplicable to transfers of aircraft and vessels.

What this means, as far as we can tell, is that specific assets, in this case an aircraft or a vessel owned by out-of-state companies, transferred to a New York based affiliated entity would now be subject to New York State sales tax. There is no estimate as to the potential revenue to the state.

NYAMA believes that the true net benefit to New York State from this tax will be negative.

You will recall that the current state budget contains a new "charter aircraft" tax. The provision eliminated the exemption from sales and use taxes applicable to certain charter aircraft that were used to transport affiliated officers and employees. Subpart B seeks to preclude similar tax transactions between affiliated parties that qualify for the exclusions from the definition of retail sale.

These tax actions will make it more expensive to do business in New York. A number of neighboring and nearby states, including Massachusetts, Connecticut, New Hampshire, Rhode Island, New Jersey and Delaware currently provide sales tax relief or more-favorable tax treatment for the purchase of aircraft. Because of this competition, our evidence indicates an immediate negative impact as a result of the charter aircraft tax enacted last year.

As you would expect, tax actions like this send strong signals to the aviation industry in the region that New York is unfriendly to business. These taxes—unique to New York—discourage aviation businesses from investing in significant transportation efficiencies here that improve their national and global competitiveness. NYAMA reports that, immediately upon enactment of the new aircraft asset ownership penalty last year, charter aircraft operators began moving their aircraft and associated jobs to other states. Most recently, two New York based companies have lost or are in the process of losing based aircraft as a direct result of the tax. These companies would have generated nearly $2 million in charter service revenue and employed eight crew members earning a total of $600,000 in New York taxable income annually.

NYAMA has estimated that each lost business jet accounts for a reduction of approximately $183,000 to New York State's recurring tax stream on an annual basis. We have thus far been unable to access information from the Tax Department or the Division of the Budget as to what, if any, tax revenue was actually generated by the charter tax.

Because of these effects, NYAMA challenges the revenue enhancement assumptions behind these taxes and instead maintains that taxing a highly mobile asset well in excess of what is charged in neighboring states results in the location and relocation of aircraft to other jurisdictions and has a net revenue and jobs loss to New York. The transfer of aircraft from outside the state to in-state should be a welcomed event. More planes and business jets locating here is a sign of economic growth, industry expansion and job creation. This new tax proposal will stifle this transfer of valuable assets to New York with little or no fiscal benefit.

What should New York be doing?

NYAMA believes that the state's fiscal crisis provides opportunity, and that pro-aviation business tax reform should be a priority for the state in 2010. The recent study by the New York State Department of Taxation and Finance—A Review of the Sales and Use Tax Exemption for Private Aircraft Parts and Service—demonstrates that this particular tax exemption has been a tremendous success, resulting in an expansion of aviation maintenance and repair businesses, the creation of jobs here in New York and an increase in state tax revenue.

Armed with this evidence, the legislature passed, and the Governor signed into law, a bill that repealed the sunset on this tax exemption and made the exemption permanent. This display of firm commitment to the aviation industry by the New York State Legislature and the real prospect for additional tax reform directly contributes to positive investment decisions by aviation companies. The recent decision by SheltAir to invest $20 million in a redevelopment project at Long Island MacArthur Airport, a project that is

expected to create 100 additional long-term sustainable jobs, moved forward after this maintenance tax exemption was made permanent. The risk is that this investment commitment will be sustained in the face of more taxes on aircraft ownership.

NYAMA now advocates, via the "Aviation Jobs Bill" championed by Assemblyman Robin Schimminger and Senator William Stachowski, the extension of this proven job-stimulus effort for maintenance and repair to include the purchase of aircraft.

This tax law change is critical. New York State is at a significant competitive disadvantage with regard to attracting sales and basing aircraft in New York and this legislation promises to reverse this situation and create long-term, sustainable jobs and enhanced revenues to the state.

NYAMA, therefore, urges the Legislature to reject this new Subpart B provision of the Revenue bill, repeal the ill-conceived charter tax and enact aviation tax relief comparable to that of our neighboring states so that we nurture and support the growth of our state's vital aviation sector.

Thank you.

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# Unshackle Upstate

## Joint Legislative Public Hearing on Executive Budget
## Taxes
## February 1, 2010 – 1 p.m.

## Brian Sampson, Executive Director, Unshackle Upstate

Chairman Kruger, Chairman Farrell and members of the joint fiscal committees, thank you for the opportunity to speak today. My name is Brian Sampson, Executive Director of Unshackle Upstate, a bi-partisan coalition of over 70 business and trade organizations representing a growing group of 45,000 companies and employing more than 1 million people. We hail from across Upstate New York with a goal of achieving reforms in Albany that will make Upstate a stronger place to do business. The coalition has been demanding reductions in state and local taxes; state debt; mandates; and fees.

I am here today to offer Unshackle Upstate's comments and concerns included within this year's Executive Budget. Overall, our organization has viewed the excessive escalation of state spending in recent years as the most glaring concern in this year's Executive Budget. While the Governor has maintained that his spending plan for 2010-11 is only a .6% increase over the prior year's budget, he fails to recognize that this is an increase of 12% over two years. So, even a small percentage increase this year fuels an already unsustainable budget.

**Taxes**

Unfortunately not only does the Executive Budget increase spending, it places additional taxes on everyday working families. Since last February, the citizens of this state have been forced to endure additional tax burdens brought on by two Deficit Reduction Plans and the Enacted State budget. A-All three added additional burdens on New Yorkers in the form of increased health insurance costs, increased SUNY tuition, and surcharges on gas and

electric utility companies that will end up costing consumers more. Additionally, just last year alone, New Yorkers were nickel and dimed with added sport fishing and hunting licensing fees, increased DMV fees and fines, and the expansion of the bottle bill. Furthermore, business owners across the state, both large and small, were forced to "reregister" their sales tax certificates with the state for a one-time fee of $50 dollars.

But perhaps the most glaring tax from last year was the three-year personal income tax surcharge...identified by some of your colleagues as the Millionaires Fair Share Tax... that affects individuals and small businesses alike. We were lead to believe that passing that increases would remedy that states ills. Interestingly enough, Governor Paterson has admitted that the increase in income taxes levied last year has not worked. In October, the governor stated that income taxes fell 36 percent, meaning our revenues in this area fell more in 2009 than they did in 2008.

The hope was that this year's Executive Budget would not increase taxes and fees. In fact the Governor himself said many times that they would be avoided. Yet, the budget includes another $1 billion dollars in actions that increase taxes and fees. A large component includes $240 million dollars in health care assessments and surcharges that will affect hospitals, home care providers and nursing homes across the state as well as an expansion of the HCRA surcharge to physicians' services. These actions alone will not only jeopardize the quality of health care that we all receive, but the ultimate price tag will be borne by the taxpayers.

The HCRA surcharge is a tax on most hospital services which is paid by all persons who have health insurance coverage in the State. Currently, there is a HCRA surcharge of 9.63% for inpatient, outpatient, emergency and ambulatory services. Under the governor's proposal, this surcharge would be expanded to include certain radiology and office-based surgery procedures...both more commonly used practices.

The HCRA surcharge has increased from 8.18% in 1996 to its current rate. The tax is included in premiums and every time it is adjusted upwards the net result is an increase in premium rate calculations year after year. This situation is further compounded because as these premiums rise, the taxpayers are forced to pay for the rising costs due to collective bargaining agreements for the public sector employees.
So let's sum this up: between the Covered Lives Assessment, the Insurance Premium tax, 332 assessments, and the HCRA surcharge, the state collects over $4 billion in insurance taxes and the amount of premium attributable to these state taxes can be up to 10%. That is a great cost to taxpayers and the

reason why, year after year, we oppose increased taxes in healthcare systems.

Thus far, we have testified that revenues are down and taxes are up. Not a new trend in this state. So it is wildly confusing to us as to why, in the Executive Budget, there is a severance tax on natural gas producers. The governor has proposed a 3% tax on the severing of natural gas from the Marcellus or Utica Shale formation using horizontal wells. Why is this proposal so troubling? Because New York State is already seeking to tax an industry before it even has a chance to develop.

We have already seen the reluctance of leaders in this industry to invest in New York. Why would they when Pennsylvania has welcomed them with open arms. We instead greet them at the border with a new tax...before they even get here.

The leaders of this state should be exploring new and inventive ways to grow our economy while developing new methods of energy efficiency. A severance tax of this kind is simply the wrong way to go and if enacted, will be a job killer to areas of Upstate New York that need economic development the most.

It is clear to us that as a state, we continue to go in the wrong direction when it comes to tax policy. In addition to the reprehensible budgetary actions of last year, New York State cultivates a habitual addiction of increasing taxes and fees on its citizens, even during times of strife. Instead of exploring potential avenues of reforms, budgetary cuts and savings, state spending continues to rise, additional taxes are added and as a result, our population is fleeing.

In recent years, we have witnessed the cost of driver licenses swell from $50 to $64.50 and vehicle registration fees increase from $44 to $55. In addition, the DMV is still proceeding with a plan that will force New Yorkers to purchase new license plates for an added fee of $25 dollars.

Unfortunately, after we have been forced to pay more DMV fees, the cost of using our cars on New York State roads and bridges has risen as well. This month, the fourth Thruway rate hike in five years went into effect, resulting in a 5% increase for all drivers. This brings the cumulative increase since 2004 to 45% for passenger cars. It is important to note that these toll and fee increases have a disproportionate affect on Upstate New Yorkers, who rely on their cars much more than downstate residents. Furthermore, Upstate residents are still awaiting a capital plan to address our neglected roads and

bridges. And perhaps we would be more patient if in fact the money we pay for tolls, portions of our license, and the gas tax went to roads and bridges. Instead it continually gets diverted to the General Fund and that must stop.

To further exemplify where New York is headed, the following are some interesting and telling facts about the state of our state according to the Tax Foundation:

- During the past three decades New York has consistently had one of the nation's highest state/local tax burdens, ranking first or second every year since 1977. Currently estimated at 11.7% of income, New York's state/local tax burden percentage is the 2nd highest nationwide, well above the national average of 9.7%. New Yorkers pay $6,419 per capita in state and local taxes.

- New York ranks 49th in the Tax Foundation's State Business Tax Climate Index. The Index compares the states in five areas of taxation that impact business: corporate taxes; individual income taxes; sales taxes; unemployment insurance taxes; and taxes on property, including residential and commercial property.

- In 2006, state and local governments combined collected $1,131 per capita in general sales taxes, which ranks 12th highest nationally and New York's gasoline tax stands at 42.5 cents per gallon—the highest gas tax in the nation.

We need to stop this trend. We need to correct some of these statistics and improve the quality of life in our communities regardless of whether it is Brooklyn or Buffalo, Irondequoit or Islip.

In order to alleviate New York State from its tax and spend culture, first spending policies must be addressed. So let's head to that side of the ledger.

**Spending**

As documented by the Empire Center for New York State Policy in its report titled, "Blueprint for a Better Budget," New York State's spending is consistently higher than other state governments. According to the report, if New York had budgeted at the national per-capita average in 2008, it would have spent nearly $32 billion less.

Prior to the release of the Executive Budget last month, Unshackle Upstate outlined a plan that would rightsize the state budget by the year 2015. Under

our plan, we are recommending that the state budget return to the level it was in 2000 – $77.5 billion and then be adjusted according to the consumer price index to reach no more than $109 billion by 2015. To achieve this goal, Unshackle Upstate proposes that this year's budget be reduced by nearly $12 billion. Then the budget should decrease by at least $2 billion per year to meet the 2015 goal.

We have outlined a variety of spending reductions in order to achieve this goal. Some of these proposals include:

- .a state employee furlough program that will save the state $840 million dollars
- additional consolidation of state agencies to save New York State $250 million dollars
- increased oversight to the state's Medicaid program and others.

A full list of the cuts is included in your packet. Unshackle Upstate feels that these cuts represent a reasonable avenue to correct some of the disastrous spending decisions of the past.

As an organization, we continue to advocate for both a state spending cap as well as a property tax cap. The Executive Budget attempted to address these two very important issues, but unfortunately missed the mark. First, there is no outright property tax cap, but a circuit breaker program that will not structurally reform or alleviate the property tax burden in this state. It also has arbitrary income thresholds for eligibility of $300,000 for New York City and its suburbs and $200,000 for Upstate, is contingent upon a state surplus, and does not apply to businesses.

In addition, the proposed spending cap has two major, glaring deficiencies – (1) the spending cap would start with an already unsustainable rate of spending as I mentioned earlier and (2) the program sunsets in 2014. Unshackle Upstate has been strongly pushing for real reform in these two areas and is forced to oppose these measures as they will not accomplish positive results for New York State taxpayers.

An additional area of state spending that severely needs to be addressed is the amount of funding that is dedicated to the New York State workforce and more importantly, its pension system. While we are supportive of the Governor's commitment to consolidate state agencies and the continued exploration of reducing the New York State workforce, more needs to be done.

In September, Unshackle Upstate released a report titled, "New York's Double Standard: How public employee pay and benefits have outpaced the private sector - and unique state laws are widening the gap." It examines differences in pay and benefits between private- and public-sector employees, and how two state laws guarantee that public workers get increases even when they fail to ratify a contract.

Among the report's findings:

- Across Upstate New York, salaries for state and local government employees are 10 percent higher than the private-sector average. The report provides a comparison of public and private salaries in nine regions of the state.
- New York leads the nation in per-capita contributions to public-employee retirement, at $486 per taxpayer for the 2006-2007 fiscal year.
- Monroe County taxpayers would save more than $40 million annually if schools and local governments matched the national average of employer contributions for health care insurance. Across the 57 counties of Upstate New York, the projected savings would be measured in the hundreds of millions of dollars each year.

The report takes issue with two state laws. In other states, employee pay and benefits are frozen in place if a contract expires before a new one is negotiated. In New York, because of the Triborough Amendment enacted in 1982, employee pay and benefits increase indefinitely under the terms of an expired contract. The Taylor Law, enacted in 1967, guarantees that fringe benefits can't be changed unless both sides agree.

While government officials support the Taylor Law as a way of preventing strikes by municipal unions in New York, this law severely limits the ability of governments to negotiate fair contracts with unionized labor specifically provisions like compulsory "interest arbitration," which has tended to drive up salaries while hindering creative approaches to improving efficiency and reducing costs. The primary issue in binding arbitration should be a more rigorous definition of "ability to pay" on the part of the affected community. Very often, we see cash-strapped municipalities forced to pay exorbitant salaries to its workforce.

Unshackle Upstate also recommends that New York rework the Triborough Amendment and allow the state to freeze salary and benefit levels to the last in-contract year for public employees who are working without contracts.

One other area of state spending that is in desperate need of reform lies within our excessive Medicaid system. Unshackle Upstate is advocating that the state hold Medicaid spending flat to 2008 levels and provide up to $2.7 billion dollars in savings. Our coalition is also asking the state to implement necessary reforms for long-term sustainable savings and avoid a "one-size-fits-all" approach in Medicaid reimbursement rates.

In addition, and perhaps most importantly, Unshackle Upstate has advocated for the establishment of a Medicaid Commission similar to the Berger Commission of 2006. The Commission must be a broad-based, non-partisan panel created to undertake a rational, independent review of the services offered in our Medicaid system and how they are delivered. The purpose of the Commission will be to recommend systematic Medicaid reforms in New York that appropriately respond to individual needs for high-quality, affordable and accessible care, but with meaningful efficiencies in delivery and financing that promote long-term affordability and cost containment.

As I stated earlier, Unshackle Upstate is committed to helping New York State achieve real cuts to spending that will alleviate the need for increased taxes and fees like we have seen in the past. Our $12 billion dollars in suggested spending cuts in conjunction with our plan to rightsize the state budget will result in real reform for New York and will make our state a better place to live, work, and raise a family.

We strongly urge the Legislature to reject **ANY** spending increase this year and work hard to ensure that the 2010-11 state budget is reduced to reasonable spending levels that the state can afford. In addition, we need leadership that will result in a 2010-11 State Budget free of any new or increased taxes, fees or assessments. Residents and businesses have been forced to do more with less during this economic downturn, now its time for our state government to do the same.

I greatly appreciate the opportunity to share Unshackle Upstate's priorities with you this afternoon and would be happy to respond to any questions you may have.

Thank You.

Submitted only

Harter Secrest & Emery LLP

ATTORNEYS AND COUNSELORS

WWW.HSELAW.COM

Testimony of John M. Jennings, Esq.
Attorney, Harter Secrest & Emery, LLP
Joint Budget Committee, Tax
Monday, February 1, 2010

Thank you, Mr. Chairman, and committee members for inviting me to speak to you today.

I'm here to talk briefly about the state's Qualified Emerging Technology Company tax credit program. It was designed to foster investment and growth in the small, high technology companies that the State's economy will increasingly rely upon. It's no surprise that the State is focusing on these types of jobs. They are higher paying, and have more indirect economic benefits than most any other sector of the economy. The focus of the Governor's recent report on Diversifying the New York Economy through Industry Higher-Education Partnerships is developing policies to foster growth in these areas.

As you know, the Empire Zone program is being phased out. Governor Paterson has proposed a new "Excelsior Jobs Program" to foster economic growth, but that program is geared more towards large, well established entities that are in a position to hire 50 or more employees. One of the few programs that targets smaller, early stage companies is the QETC tax program. The state must continue its commitment to it. And with a few changes, these credits can even more effectively spur growth within the state.

This is especially crucial as we face competition from other states and other countries. As explained by the previous two speakers, New York has the building blocks, the billions in research and development, to experience significant growth. But clearly, one of the crucial problems faced by these small New York companies is access to capital.

Traditional tax credits do not really help. In all likelihood, these companies are years away from earning a profit, and so their tax liability is minimal. You can not pay the bills with stockpiled tax credits.

The QETC tax credit program was designed to address these issues. First, the program includes a refundable tax credit for investments in Facilities, Operations and Training. In other words, small companies are rewarded with an actual refund check for making investments in their own growth here in New York. Second, the program includes an investment credit to spur the outside investment that they so desperately need.


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To give you a brief overview, eligible companies must have products or services that are classified as "emerging technology," such as new media, communications, IT, engineering, advanced materials, biotech and electronics. The company must have annual product sales under $10M and gross revenue under $20M (in the previous tax year). It must have 100 full-time employees or fewer with at least 75% based in New York and New York-based research and development spending totaling over 6% of net sales.

First, the Facilities Operations and Training Credit: Since its inception in 2005, this credit has proved to be quite beneficial. It is a refundable credit, capped at $250,000 per year for four years. The credit is comprised of three parts:

1. A research and development property credit for costs related to the purchase or lease of property to be used for research and development.
2. A qualified research expense credit for costs associated with in house research and development.
3. A high technology training credit for training expenses of employees at colleges or universities in New York.

This is a great program, but there are two things that need to be addressed. First, the program is set to expire at the end of next year, and it must be made permanent. Second, the credit must be enhanced by increasing the annual cap to make it more comparable to current programs found in states such as Pennsylvania, Washington, Maryland, North Carolina, Wisconsin and Illinois, and countries such as Canada, England, and Singapore.

Last legislative cycle, Senate Bill 3430 sought to accomplish these goals, and I would commend the members of the panel to look at that legislation as a model.

The second aspect of the QETC tax program that I want to address is the Capital Credit, designed to spur outside investments in these companies. As it currently operates, the credit provides a 10% credit for entities that invest in a QETC and hold on to that investment for four years. The total aggregate amount of the credit is $150,000 over four years. The credit also allows a 20% credit up to $300,000 for investments that are held for 9 years.

From a practical standpoint, these time frames are much too long. Investors need much more flexibility when dealing with the highly volatile world of small emerging technology companies. Predictably, these credits have gone practically unused, and the commendable underlying purpose of the program has gone unfulfilled.

Assemblyman Morelle and Senator Valesky have sponsored legislation this session to remake the credit to more effectively drive investment into these small companies. The bill numbers are A. 1892 and S. 3083. This legislation would increase the amount of the credit, shorten the applicable time frame to three years, and create a special increased tax credit for qualified seed investments. This legislation would do much to spur investment in New York companies.

I commend the legislature for its efforts to spur the innovation economy in New York by creating this program. However, the QETC program must be enhanced to keep our state competitive. It is strategic because it fosters investment in the very early stage companies that are just launching, and it provides competitive benefits for the small emerging companies that choose to stay and grow here in New York.

In closing, I recommend that members of this committee read a recent report titled, "State Legislative Best Practices in Support of Bioscience Industry Development." The Biotechnology Industry Organization put together the report to highlight the value of this sector of the economy and to outline state policies that foster the most growth in that area. The report can be found at BIO's website, www.bio.org.

The report contains some highly effective programs that other states are implementing to attract and grow the high technology jobs that New York needs. Unfortunately, no New York programs are highlighted in this report. Enhancing the QETC tax credit would go a long way to position New York to be more competitive in the development of emerging and high technology companies and the jobs that they create.

Thank you for your time today.

Submitted only

Tapes

# JOINT COUNCIL No. 16

## INTERNATIONAL BROTHERHOOD OF TEAMSTERS

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**TESTIMONY OF JOHN O'NEILL**
**TEAMSTERS LOCAL 812**

**FEBRUARY 1, 2010**

Thank you Senator Carl Kruger, Assembly Member Denny Farrell and esteemed members of the New York State Senate Finance and Assembly Ways and Means Committees. It's an honor to be here today, and to address you on behalf of my union, the Teamsters Local 812. My name is John O'Neil, and I am here on behalf of our over 4,000 members, and with the full support of the Teamsters Joint Council 16, which represents over 125,000 working men and women across the State, to express our vehement opposition to all proposals for a sugar beverage tax.

The proposed excise tax in the Governor's 2010-2011 Executive Budget, which would charge $7.68 per gallon for beverage syrups and $1.28 per gallon for bottled soft drinks, powders, or base products unfairly targets an industry generating billions of dollars in economic activity and wages annually.

We are very concerned about the fiscal crisis that our country and state is currently facing. With New York State facing an enormous deficit, we understand that it is necessary to make tough cuts in services and raise some taxes and fees. However, new proposed taxes need to be equitable, fair, and not target particular workers or industries. This tax creates a disparate impact on one industry without any real justification.

Scientific research does not support the belief that non-diet sodas contribute to obesity any more than any number of other foods. Singling out one food or drink over another is counter-productive to the pressing need to fight obesity.

Equally as important is the harm such a tax would do to a successful industry in New York State. Teamsters Local 812 represents 4,000 members, many of whom are in the soft drink industry, primarily at Coca Cola and Pepsi. A tax on non-diet soda will threaten the six production facilities where 812 members work. These jobs provide solid wages and benefits that help support a middle class lifestyle. The average rate of pay is $50,000 per year with pensions and health coverage worth an additional $16,000 per year.

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According to the American Beverage Association, this industry supports 160,000 jobs in New York State, pays $6.7 billion in wages and supports $25 billion in economic activity. To single this industry out for an excise tax is a costly mistake.

This is an industry, with thousands of good paying jobs, that has been hit hard, by both the recession and last year's passage of the costly Bottle Bill. In these tough economic times, New York cannot afford to bleed anymore middle-class jobs.

We agree that New York needs comprehensive action and shared sacrifice but the syrup excise tax does not embody those objectives.

7

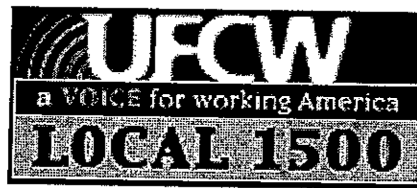
Testimony

Of

Patrick Purcell, Jr.

Assistant to the President,

United Food and Commercial Workers Union Local 1500




**2010-1011 JOINT BUDGET HEARING**

**February 1, 2010 – 1:00PM**

**TAXES**

**HEARING ROOM B**

**LEGISLATIVE OFFICE BUILDING**

Good Afternoon. My name is Patrick Purcell Jr. and I am the Assistant to the President of United Food & Commercial Workers Union Local 1500, Bruce W. Both. UFCW Local 1500 is New York State's largest local union representing grocery store workers. Local 1500 represents over 23,000 workers employed by Pathmark, Stop and Shop, Shop Rite, King Kullen, Gristedes, Key Food, D'Agostino's, Fairway, and many other independent stores.

I want to thank you for allowing me to address this Committee today. The President of my Union, Bruce W. Both, sits on the Governor's Food Policy Council and the New York State Supermarket Commission. He is an advocate for the development of a State food policy that fairly balances the needs of workers, consumers and employers. Through our Building Blocks Project, a campaign to bring supermarkets to underserved communities, our Union has proudly stepped out in front to work with community groups, elected leaders, healthcare advocates and many others to ensure that a sound food policy creates good food, good jobs and good health for all New Yorkers.

Our Union opposes a Sugar Sweetened Tax. I have also heard it called the "lifestyle tax", the "Soda Tax" and the "Obesity Tax". This tax should simply be called what it is: a regressive tax.

It is a fact that millions of New Yorkers live in communities where, unfortunately, aspects of their lifestyle are chosen for them. Lack of access to full service supermarkets, limited income and minimal consumer choice is what leads many New Yorkers to choosing these products. Many are not purposely choosing the wrong product, their choosing what is available.

This is no different than the debate we have been having for years about why people in lower income communities are eating so much fast food. All we have to do is walk down the streets of these communities and see that fast food places provide the majority of affordable options. Retailers with healthier menu's, such as "Salad works" or "Hale and Hearty Soups" do not open in these communities, unlike their massive expansion into upscale neighborhoods. So, should we also propose the "Big Mac and Whopper Tax"?

No tax is going to change the behavior of people if they have other real barriers. Furthermore it is penalizing people who have limited ability to make that change if they could. I ask you to please kill this tax on lower income New Yorkers.

I ask you to please kill this tax on lower income New Yorkers.

I want to leave you with a more important message Senator. The people of the State of New York need greater access to full service supermarkets so they have more options. The connection between supermarkets and a community's health is clear. That would be both physical and economic health. I would implore the State and its elected officials to work with our Union and the supermarket industry representatives more closely. I have repeatedly asked that elected officials meet with us to better understand how supermarkets work and how the State is undermining industry growth and the growth of good jobs with their broad and incorrect assumptions about the industry and their well intended but misconceived food and tax policies.

I would like to extend to you, as I have to others, an invite to walk with me around a Supermarket so we may help you and others have a clearer understanding of their operation.

Thank you Senator.

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**New York Association of Convenience Stores**
130 Washington Avenue, Suite 300, Albany NY 12210

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**Testimony of James S. Calvin, President**
**NEW YORK ASSOCIATION OF CONVENIENCE STORES**
Concerning the 2010-2011 Executive Budget
*before the*

**SENATE COMMITTEE ON FINANCE**
Hon. Carl Kruger, Chairman

**ASSEMBLY COMMITTEE ON WAYS & MEANS**
Hon. Herman D. Farrell Jr., Chairman

February 1, 2010, Albany NY

Chairman Kruger, Chairman Farrell, honorable Members of the Committee, thank you for the opportunity to speak today.

I appear on behalf of 7,500 neighborhood mini marts and convenience stores that sell products that are perennially targeted for higher taxes.

The state excise tax on cigarettes, for example, has quintupled in the past decade. As a direct result, cigarette tax evasion has become so pervasive that half the cigarettes consumed in New York today are purchased without payment of any state tax whatsoever [1].

Yet the new Executive Budget recommends another dollar-a-pack increase. This would be a mistake. It would succeed only in driving more smokers to the tax-free side of the street – costing our stores even more business, costing our State even more revenue, and further thwarting the campaign to reduce smoking. All because of the price differential created by the exorbitant tax.

The lesson? Any tax that is sufficient in size to compel consumers to change their consumption of a product is equally sufficient to compel them to shift their purchases to places where they can readily buy the product without paying the higher tax-included price.

Enter the over-sized "obesity tax" on sugar-sweetened beverages now proposed by Governor Paterson. It would artificially add at least $1.50 to the retail price of a typical 12-pack of non-diet Coke or Pepsi cans, nearly 10 times the state excise tax on a 12-pack of beer.

The price differential would chase our customers away to neighboring states that have no such tax, or to nearby Native American stores who ignore state taxes altogether, replicating the cigarette tax evasion epidemic that has crippled our industry and drains One Billion Dollars a year from New York State coffers.

Based on our painful – and continuing – experience with cigarette taxes, we firmly believe this beverage tax would further damage tax-collecting retail businesses, deplete rather increase state revenue, and defeat the public health policy objective. We strongly urge you to reject it.

Thank you for keeping the views of the convenience store community in mind.

[1] "An Update – Additional Cigarette Tax Revenue Sources For New York State," Brian P. O'Connor, Ph.D., March 2009, www.nyacs.org/documents/09OConnortaxstudyupdate.pdf, Table 3, Demand for Cigarettes in New York State

**FOOD INDUSTRY ALLIANCE OF NEW YORK STATE, INC.**

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Chairman Kruger, Chairman Farrell. Members of the Committee.

Good afternoon. My name is Michael Rosen. I am the Senior Vice President for the Food Industry Alliance.

The Food Industry Alliance is a statewide not-for-profit trade association representing the interests of all sizes of food stores. The membership includes multi-state chain operations like A & P/Pathmark and Price Chopper; New York chains like D'Agostino and King Kullen; independent grocers like Shop Rite, Key Foods, C-Town and IGA; convenience store operations like 7-Eleven as well as grocery distributors like Krasdale in the Bronx and the Key Food Cooperative on Staten Island.

We have approximately 800 members, which operate close to 10,000 stores.

With respect to the new soft drink tax, we view this new food tax as being an extremely regressive and misguided proposal. Although it has been referred to as a soda tax or sugar tax, it covers a broad range of beverages including fruit drinks, flavored waters, sports drinks, energy drinks, iced teas and iced coffees.

We question whether it is good tax policy in this bad economy to impose a new tax on food products like iced tea, cranberry cocktail, lemonade and vitamin water.

The tax rate is set at 1¢ per fl. oz., which equates to $1.44 per 12 pack of 12 oz cans. However, since the tax is imposed at the bottler or distributor level, it has a built in multiplier effect for the consumer in that each party in the distribution chain will be forced to include the excise tax into their margin and then build the increase into the wholesale price or retail price.

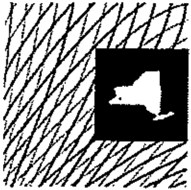
For example, soda is primarily a direct delivery product. In most cases, it is delivered directly from the bottler to the retailer. Food stores typically operate on a 20% margin. Assuming the soda companies don't add anything to cover their costs, the $1.44 will go to $1.73 at which point the grocer will set the retail at the next price point which might be at $1.75 or possibly higher. The consumer then will pay sales tax on the new retail.

For other products like fruit drinks and iced teas, product typically is shipped from the bottler to a wholesaler and then to a retailer before it reaches the consumer. In this distribution scheme, you will have an additional markup taken at each stage, which means the impact of the tax on the public will be greater.

One of the premises of this proposal is that it will influence purchasing decisions in that sugared drinks will cost more than diet beverages. However, some of our members report that they may choose to examine their beverages sales so as to combine the regular and diet price into one new retail price per brand. In other words, rather than two prices within a product, they may decide to blend the regular and diet prices so as to maintain one price for all Ocean Spray juices, all Coca-Cola sodas, one Snapple Iced Tea price and so forth. They believe this will be less confusing for the public and minimize pricing errors under item pricing, unit pricing and advertised specials.

In closing, we think this proposal will hit families pretty hard in an already bad economy. We hope the state can find other means of raising money rather than in taxing food.

Thank you for giving me an opportunity to testify this morning. I will be happy to answer any questions.

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*Testimony to*

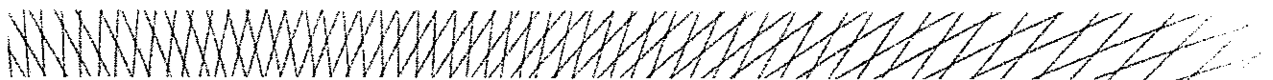
# Joint Legislative Hearing on Taxes

***Tax on Sugar Beverages***

*Presented by*

**Marcus W. Ferguson**
**Director of Government Affairs**

*February 1, 2010*



Chairman Farrell, Chairman Kruger and members of the Joint Legislative Budget Committee, my name is Marcus Ferguson and I am the Director of Government Affairs at The Business Council of New York State. I am here on behalf of New York's grocers and beverage companies. I thank you for the opportunity to speak this afternoon. I will briefly address the issue of sugar beverage taxes.

A sugar beverage tax, which would be imposed in addition to the existing state sales tax of four percent plus a local tax of up to 5.5 percent and the deposit, is designed to offset government costs related to obesity. Items subject to it include fruit drinks which contain less than 70 percent of natural fruit juice, soft drinks, sodas and beverages such as are ordinarily dispensed at soda fountains (other than coffee, tea and cocoa), whether or not the item is sold in liquid form.

This additional beverage tax on soft drinks would cause serious economic impacts across New York. It would amount to lost jobs and the dislocation of existing businesses. The Governor's plan would impose an excise tax on syrups and simple syrups at a rate of $7.68 a gallon and $1.28 a gallon on bottled soft drinks. Such a tax would raise prices on drinks leading to lost sales and jobs not only in the beverage industry but would be a loss to other businesses that supply these companies and sell their products.

When demand for a product drops substantially, the result will be a loss in jobs, as producers respond to the drop in demand by cutting back on production. This happens because as the price of a good increases demand for the product will

drop, as consumers either purchase substitutes or stop buying the product altogether.

Aside from a loss of jobs in the thousands, such a measure would also put New York retailers at a competitive disadvantage with neighboring states, particularly those retailers close to border areas, where price differentials with neighboring states would be most apparent. The last thing we need is to see consumers shopping in neighboring lower-taxed jurisdictions (states). Given the disproportionate impact of the recession on these counties already, especially in the Southern Tier, the proposed tax would be devastating to retailers and beverage interests.

The State of New York shares contiguous borders with five other states – Connecticut, Massachusetts, New Jersey, Pennsylvania and Vermont – as well as Canada.

**Sales tax Breakdown**

- New York-8%;General State Sales Tax of 4%, plus county sales tax ranging from 3% to 5.5%
- Connecticut-6%; General Sales Tax exempts food products but specifically excludes soft drinks from such exemption
- Massachusetts-0%; 5% "Excise Tax" specifically excludes soft drinks

- New Jersey-7%; General Sales Tax exempts "unprepared" food products; soft drinks not included in the definition, and vending machine products specifically mentioned as taxable
- Pennsylvania-6%; "Excise Tax" on "tangible personal property"; soft drinks included in the definition.
- Vermont-0%; 6% Excise Tax exempts food and beverages consumed off the premises where sold

This means that, even at present, New York retailers are at a disadvantage relative to their cross-border competitors, with store owners near the Vermont and Massachusetts borders facing a seven to eight percent tax burden where these other two states have no sales tax. An additional tax on sugar-sweetened soft drinks will only exacerbate this disadvantage.

In addition, New York retailers face an internal cross-border dilemma that store owners in many other states do not face. Several New York counties such as Oneida County, which has the highest combined state and local sales taxes in the entire state at 9.5%, is in close proximity to Oneida Indian tribal lands, as are the Counties of Chautauqua, Erie and Allegany.

Retailers in this region of the state have been battling with unfair competition from illicit purchases of gasoline and cigarettes by non-Native Americans from Native retailers for years. State sales taxes do not apply to purchases made in tribal stores from Native American consumers. Non-Native Americans, however, are obligated to pay such taxes, though enforcement has been a long-standing

problem for state and county governments. These proposed taxes will likely induce still more customers to make their purchases in lower-tax jurisdictions, and will hit stores near tribal stores even worse.

The loss of sales will also translate into a loss of revenues for the state. While the budget proposal is designed to raise additional state revenue this proposed tax will result in a reduction of potentially hundreds of millions of dollars in economic activity. Thus the cost of generating an estimated $465 million in revenue could actually mean a net loss in revenue when factoring in the losses to the economy.

The practical economic impact of Governor Paterson's proposed "obesity tax" on sugar-sweetened soft drinks will likely cost several thousand jobs statewide, and more in the counties along New York's interstate borders. In the short run, such a high, cross-border price differential will hurt those counties along the border, some of which are already experiencing higher unemployment than the rest of the state. In the long run, the result will be far more devastating, as activity shifts out of New York's high-tax jurisdiction to lower-taxed ones, and retailers of all types relocate out of state in response.

Again, we appreciate this opportunity to provide input on this important issue and look forward to the opportunity to discuss this further with members of the State Legislature, and answer any questions you may have on our comments today.

Thank you.

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# Testimony of Kevin S. Dietly[1]

*Joint Legislative Hearings on the 2010-2011 Executive Budget Proposal*
*In Opposition to the Proposed Beverage Excise Tax*

Good afternoon Chairmen Kruger and Farrell and members of the Joint Committee. I am Kevin Dietly, a Principal at Northbridge and a consultant to the American Beverage Association on economic, environmental, and other strategic issues facing the industry. I have conducted research on public policy issues for clients in the food and beverage industry for more than 20 years as well as extensive economic and financial analysis for the US Environmental Protection Agency. Northbridge specializes in financial, economic, and information systems consulting to government and business, with offices in six cities across the US.

I have been involved in the analysis of beverage tax proposals throughout the US and have collaborated with a number of economists in assessing the impacts of existing and proposed taxes. Most recently I have assisted with evaluations of a proposed beverage tax in Maine, the so-called "fat tax" proposed by Governor Paterson in late 2008, and a potential federal beverage tax.

Following some background information on beverage taxes, I would like to focus my remarks in two general areas: first, a preliminary assessment of the economic impacts of the recently proposed tax in New York, drawing on available research conducted in New York and nationally. Second, I would like to address the "hidden tax" aspect of the proposal and the implications of that tax structure for consumers and the hoped-for health benefits of the tax.

**Beverage Tax Background**

Experience with selective beverage taxes (by that I mean taxes imposed on only certain categories of beverages) is very limited. Only two states have beverage excise taxes today in the US – Arkansas and West Virginia – and neither uses caloric content in determining the specific beverages upon which the tax is levied.

The Governor's budget figures indicate that the proposed tax would cost New York businesses $1 billion per year. To appreciate the magnitude of that tax on the industry, you must recognize that the total retail sales of all products subject to the tax in New York are between $4 and $5 billion per year. This tax proposes to add $1 billion to the cost of producing these products; the economic impact of such a large tax would clearly be profound.

To bring the numbers down to a manageable level, consider the impact of the tax on some commonly purchased products (Figure 1). The tax would represent at least a 47 percent increase in the price of a 12-pack of soda, using average prices in the NY market in 2008; the comparable figure for a two-liter bottle of soda is a 57 percent increase. These increases assume that the tax on each product is passed directly through to consumers with no additional markup – an unlikely scenario.

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[1] Principal, Northbridge Environmental Management Consultants, Westford, MA, representing the American Beverage Association

*Figure 1*

## Sample Impacts of the Proposed Beverage Tax

| Sample Product | 2008 Average Base Price – NY Market | Tax at 1¢ Per Oz | Price After Tax (No Markup or Sales Tax or Deposit) | Percentage Increase (No Markup or Sales Tax or Deposit) |
|---|---|---|---|---|
| 12-pack soda | $3.05 | $1.44 | $4.49 | 47% |
| 2-liter soda | $1.19 | $0.68 | $1.87 | 57% |

*Source: Prices for NY market area averaged across seven brands surveyed; price data from Beverage Digest Fact Book 2009, Appendix F*

For these same products, if we factor in the sales tax and the container deposit, the new price for the 12-pack would be $5.45 and the new price for the 2-liter would be $2.07. State-mandated fees and taxes would represent 79% and 74% of those products' prices.

**Economic Impacts of the Excise Tax**

Introducing his assessment of a proposed national beverage tax, Dr. Robert Hahn of the Georgetown Center for Business and Public Policy commented that a beverage tax of this magnitude "would likely result in a significant short-term reduction in economic output in the industries currently involved in the production of beverages…"[2]

The mechanism through which these taxes affect the beverage and related industries is as follows:

- Imposition of the tax raises costs to produce and/or sell beverages
- Beverage producers pass these costs on to consumers, leading to higher consumer prices
- Consumers respond to higher prices by either switching to alternative products that provide similar utility to them at a lower price and/or by buying less of the taxed products (without substituting another product)
- The aggregate effect of changes in consumer behavior is likely to be a reduction in total sales of both taxed and non-taxed beverages
- Lower sales for beverage companies and retailers cause short-term disruptions in their businesses leading to:
  - Lost jobs, wages, and economic output in those industries directly affected
  - Lost jobs, wages, and economic output in industries and businesses that supply those companies (so-called indirect effects)
  - Lost tax revenue to governments from lower wages and corporate income

[2] "The Potential Economic Impact of a U.S. Excise Tax on Selected Beverages," Robert Hahn for the American Beverage Association, August 31, 2009, www.nofoodtaxes.com/economic-impact-of-a-proposed-beverage-tax/

- For products that are not taxed, sales may rise somewhat (if they are truly substitutes for the taxed products) or they may decline as well (if they are compliments rather than substitutes for the taxed products)

The economic analyses described below both take a net impact approach, incorporating both the sales losses and gains in various beverage sectors.

*Study of 2008 Proposed "Fat Tax"*

In last year's budget, Governor Paterson initially proposed an 18 percent sales tax on selected beverages. An economic analysis of that tax projected:

- 6,100 jobs lost in New York
- Disproportional sales and job losses in border areas – particularly devastating in the Southern Tier counties already reeling from the recession
- Market distortions around Native American reservations and the eventual displacement of retail businesses to neighboring states[3]

The Governor's newly proposed tax is substantially higher. Based on preliminary data, the proposed tax would add an average of 23 percent across all the taxed product categories, even without factoring in any markup of the tax by retailers and restaurants. In addition, this proposed tax would affect more beverage sectors than were analyzed in the 2008 study. We can quickly conclude that the estimate of 6,100 jobs lost from the 2008 analysis is far too low.

*2009 National Analysis*

In his assessment of a potential federal tax, Robert Hahn examined a scenario in which a wide range of beverages would be assessed a $1.07 tax per gallon. We have adjusted the results of that analysis to match the proposed $1.28 per gallon and used industry employment, wage, and output data to adjust the results to New York alone. While this is only a preliminary analysis (a more rigorous assessment of the New York proposal is underway), it does provide an indication of the magnitude of the impacts this new tax could produce:

- More than 20,000 jobs lost in New York in the beverage, retail, and supplier industries
- More than $1 billion in lost wages
- More than $4 billion in lost economic output for the state

*Summary of Economic Analyses*

The proposed tax would dramatically affect New York's beverage industry, its retail customers, and its suppliers: over 20,000 jobs could be lost. A key issue for this assessment is the consumer response to higher prices. This behavioral link between price and consumption also lies at the heart of the proponents' advocacy for the tax approach – that taxing certain foods or beverages will improve health by driving people away from those products. I will address this issue next.

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[3] "The Negative Economic & Employment Implications of New York's Proposed Beverage Excise Tax." Capitol Hill Research Center, February 2, 2009.

## The Problem of a Hidden Tax

To achieve any of the claimed health benefits, the tax must reduce consumption of the affected products ***and*** of the substitute products that consumers purchase must be "healthier." The Governor and tax advocates claim that consumption of the taxed products will fall and a healthier population will emerge. An economic assessment of those claims raises serious doubts about their validity.

### *Impact of a Hidden Tax on Consumption*

I contend that using an excise tax to raise money for the budget is unlikely to produce the intended consumer behavior. Because of that, the health and nutritional benefits claimed for the tax are little more than window dressing for a substantial new tax on businesses and consumers.

Let me expand on this thesis by comparing the Governor's "fat tax" from last year with the proposal before us today. Last year's proposal would have levied an 18 percent sales tax on selected beverages at the point of sale – that is at the checkout stand – and the tax would have been posted clearly and separately on the receipt. This method of assessing a tax would directly communicate its existence to consumers and allow consumers to know what products were carrying the tax and how much it was costing them every time they shop.

In contrast, the $1.28 per gallon tax is an excise tax. The tax would be levied against beverage manufacturers, distributors, and wholesalers that import packaged beverages, beverage concentrates, or powders into the state at the point of importation or production. Each month the manufacturer or distributor would file a tax return and send a check off to the state.

The effect of the excise tax on producers and distributors is precisely the same as any other large production cost increase – for example a spike in the price of energy or raw materials. That increased cost of business must be addressed in order for the company to remain viable. The company can choose to raise prices and/or cut other costs.

Companies are likely to take a portfolio approach to covering these costs, raising prices on a range of products including non-beverage products sold by the companies. The more diversified the company is, the greater its ability to spread these costs among other products and sectors.[4] At the end of the day, consumers may end up paying for the excise tax on sweetened beverages through higher prices for products ranging from salsa to soda and bottled water to Borax.

So, while the use of a hidden excise tax may be a politically expedient course (since it hides the tax from obvious detection by consumers), it largely obliterates price signals to consumers about what the Government has deemed to be "good" and "bad" beverages.

### *What Do Consumers Buy Instead?*

Another article of faith for tax advocates is that lower consumption of taxed beverages leads to consumption of "better" alternatives. This is a simplistic assumption and one that is not borne

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[4] Note that for a small New York beverage distributor or independent bottler, a tax of this magnitude is a death sentence. Excise taxes are extremely discriminatory against small operators because of their limited ability to spread costs to other products. The tax would make them less competitive and cost them market share.

out by evidence. It would be convenient for proponents of the tax to argue that a highly taxed case of soda will motivate a consumer to buy a case of diet soda instead. Unfortunately, the economic literature does not support that as a likely outcome.

A 2009 study found that the beverages most likely to increase in consumption if regular soda prices rose were high fat milk and 100 percent juices; diet soda and bottled water consumption did not increase in response to higher regular soda prices.[5] What the literature does not explore is substitution outside of the beverage category for consumers. The actual substitute for a highly taxed soda might be a cookie or a candy bar – selections that might avoid the tax, but would have more calories and fat.

Given the lack of a clear link between the tax and the behavior changed that the proponents are seeking, I encourage you to evaluate critically the true caloric and health benefits attributed to this proposed tax.[6]

*Summary*

In the end, then, the problem of understanding and modeling consumer behavior becomes the crux of the analysis for both health advocates and economists on this issue. By hiding the tax from public view, the Governor and tax supporters may avoid some of the unpleasant publicity their fat tax attracted last year, but they also undermine the health-based rationale used to justify a billion dollars in new taxes.

What we are left with is a large new tax that will cost jobs, disproportionately hurt small businesses, and take money out of consumers' pockets for everyday grocery items.

Thank you very much for your time and I would be glad to answer any questions about my remarks.

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[5] "Demand Interrelationships of At-Home Nonalcoholic Beverage Consumption in the United States, Dharmasena, S. and Capps, O., 2009 cited in Hahn.

[6] See, for example, http://mercatus.org/publication/taxing-sin

**Testimony of Mark Johnson**
**Vice President for Finance for the Pepsi-Cola and Canada Dry Bottling Companies of NY**

**February 1, 2010**

**New York State Budget Hearing on Taxes**

Good afternoon Chairman Kruger, Chairman Farrell and members of the Committee. I would like to thank you for the opportunity to present testimony today regarding Governor Paterson's proposal to impose a massive and punitive tax on New York based companies and consumers with a so-called sugar beverage tax.

My name is Mark Johnson and I am the Vice President of Finance for the Pepsi-Cola and Canada Dry Bottling Companies of NY. Our workforce consists of over 1500 people located throughout six distribution centers and two manufacturing facilities in New York City, Long Island & Westchester County.

I currently work out of our new $90 million dollar family owned facility on Brush Avenue in Senator Jeff Klein's district. As a company, we have historically always plowed back our profits into our business and the New York economy and we hope to continue to do so in the future.

I am here today to register my strong opposition to the proposed "obesity" tax on sugared beverages. This new tax will cause serious harm to our already impacted New York based business and destroy well paying jobs while doing nothing to address obesity.

It is extremely important to note that many of our local company's jobs are union jobs with medical and pension benefits.

The recent expansion of the "Bottle Bill" which just went into effect, has already contributed to a drastic reduction in sales volume and the loss of 12% of our manufacturing workforce. The proposed "obesity" tax will

have three (3) times the volume and job loss impact that the Bottle Bill had. Another punitive $1 billion tax on top of the Bottle Bill expansion market shifting tax will be disastrous for our New York City company and the beverage industry.

Just to give you an example, the projected tax hit on our New York City company, based on Governor Paterson's proposal, is more than two (2) times our current payroll.

**Let me be clear on this. This tax increase on our small New York based company alone is twice our actual payroll. This is an incredible burden that must be stopped.**

Moreover, passage of this punitive tax will undoubtedly exacerbate and accelerate the soft drink contraband issue that currently exists in New York.

Metro New York is a highly competitive and costly market to produce, sell and distribute beverages. Eighty percent of our sales is carbonated soft drinks "CSD's." A shift to bottled water has driven CSD market declines over the past several years. Last year, CSD's declined 2% and are expected to decline again this year. Our sales per outlet continue to decline at family delis, restaurants and bodegas. With the economic crisis already impacting our marketplace and sales, we have also seen customers file for Chapter 11.

It is important to note that overall, CSD's are at 30% of total liquid refreshment beverages "LRB's" and are projected to drop to 29% in 2011. LRB's include CSD's, water, enhanced milk, fruit beverages, teas and sports and energy drinks.

Our job base is extremely dependent upon sales volume. We operate in an industry where the price / volume relationship is highly elastic, meaning increases in price result directly in decreases in volume. Lower volume means fewer products to produce, warehouse, sell and merchandise.

**Simply put, this means lost jobs.**

Lower volume also means lower fixed cost coverage which will require additional tax driven price increases, thus the "domino effect."

In addition to the internal cost challenges and CSD market declines, a robust contraband economy exists (we call it transshipping) which already exploits the deposit system in New York by bringing in cheaper non-deposit (and potentially untaxed) product from outside New York. PepsiCo has a team of 20 former policeman and surveyors who regularly investigate this activity, but only capture a portion of this illegal traffic. These contraband sales grow in economic downturns like the one we are currently in and will only increase with the imposition of an onerous tax.

Here's how it works; the "obesity" tax will expand the price gap between products produced and sold within New York versus outside New York making non-New York products cheaper to purchase. This price gap is essentially a profit source and motivator for contraband activity. For example, the cost differential for a truckload of can soda from NJ versus NY would be at least $12,000. I challenge any one of you to go down Route 4 in New Jersey where soft drinks will be on sale and signs read "Buy Before You Get to New York." The raw cash incentives to purchase this contraband will undercut our local New York union workforce and would be enormous and lasting. It is impractical to believe you can catch or audit the majority of this activity since we are the highest small store family operated beverage distribution market in North America with over 22,000 outlets.

I believe everyone can agree that obesity is a complex problem and that yet another New York State tax will do little to address the health and activity driven solutions that will take years to develop. However, enacting this large massive tax increase on an already impacted New York based industry will surely have many unintended consequences. Such a tax will have the effect of destroying the current New York City beverage footprint and employee base.

**I strongly urge you, on behalf of our local business and our employees, to consider these facts and vote against this tax and in favor of jobs for New Yorkers.**

I would welcome the opportunity to answer any questions you may have regarding these important issues.

Thank you.

Respectfully submitted,

Mark J. Johnson
VP Finance
Pepsi-Cola Bottling Co. of NY
650 Brush Avenue
Bronx, New York 10465

Submitted Testimony

**Joint Hearing on Tax Impacts of the 2010-2011 Proposed Budget**
**Testimony of Bill Flaherty, Group Vice President**
**Pepsi Bottling Ventures**

**February 1, 2010**

Dear Chairmen and Members of the Committee:

My name is Bill Flaherty and I am the Group Vice President responsible for the Pepsi Bottling Ventures sales operations in Long Island, New York, covering all of Nassau and Suffolk counties. Pepsi Bottling Ventures is an independent company.

In my 20 years in the Pepsi system, I've been assigned to sales divisions across the United States responsible for significant multi-state operations. My assignment in Long Island began four years ago, and I am fully responsible for sales and operations here, with full Profit and Loss statement accountability.

Last year, Pepsi Bottling Ventures' Long Island business included 170 full-time employees plus 40 independent distributors and their staff of approximately 100 individuals. Sales from our three facilities total approximately 11 million cases annually, and generate almost $100 million in revenue. Since the implementation of the 2009 Bottle Bill expansion, our employee base has declined by approximately 5% - including our own employees and the independent distributor's employees. **We also executed temporary layoffs of warehouse union employees in the Fall for the first time in the history of our company.** While we've worked hard to protect as many jobs as possible, the majority of which are union jobs, the pressure the Bottle Bill expansion exerted on our business was too much to overcome.

A year ago, we estimated the cost of the 2009 expanded Bottle Bill to just our business to be approximately $5 million. This represented more than 150% of our recent annual operating profits. A key reason for this is that retail and wholesale prices for beverages in metro New York are highly competitive. So, despite high costs (wages, real estate, energy, etc.) profit margins were kept low by competitive pricing and access to alternate beverages that have not been included in the New York State expanded Bottle Bill. In order to offset the high costs of the expanded Bottle Bill, we were forced to increase our

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pricing by almost 15%. As a consequence, **we suffered an immediate decline in volume of 25%** (which has since settled at between 12% and 15%). This led to the necessity for us to reduce our workforce.

Now, faced with the possibility of an additional obesity tax, the cost of the expanded Bottle Bill seems insignificant. We estimate that the direct impact of this new tax on just our Pepsi business on Long Island to be approximately $25 million annually. We would be forced to raise our prices substantially, and the result would be devastating to our financial viability and, more importantly, to our entire workforce. In fact, all 240 jobs will be at risk.

Long Island and New York's proximity to states that do not share a Bottle Bill or obesity tax creates an additional threat to our company. The free flow of products from those states (primarily New Jersey) creates a greater opportunity for the illegal sale of products produced in those states to be sold locally at a much lower cost (since out of state producers are not subject to the same taxes and costs that we are). This problem already exists today, but by exponentially increasing the cost advantage to out of state producers, the temptation for our local customers to "illegally import" our product becomes even greater.

Obesity is a problem that our industry, and our business, recognizes must be solved. Unfortunately, implementing this significant tax on our industry will have a devastating impact on employment in the state of New York. In our business, the majority of these jobs enjoy high wages, great medical benefits, and solid pensions. In fact, our voluntary turnover rate of almost zero (excluding retirement) is reflected by the average tenure of our employees of 16 years.

Please consider all these factors and vote against any more soft drink taxes in favor of protecting New York state jobs.

Thank you for the opportunity to provide this testimony. Please feel free to contact me directly if you would like to discuss this matter further.

Sincerely,

Bill Flaherty
Group Vice President

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Submitted Only

**Testimony of Russell Sciandra, American Cancer Society
Before the
Joint Legislative Committee on Taxes
February 1, 2010**

Chairman Kruger, Chairman Farrell and distinguished members of the committee: Thank you for the opportunity to appear today.

Cigarettes still kill nearly 25,000 New Yorkers every year and cause over $8 billion dollars per year in health-care costs, of which $5.4 billion dollars is paid by Medicaid. If their price actually reflected the burden they impose on society in terms of health care and lost productivity due to illness and disability, a pack of cigarettes would cost $21.91.

The American Cancer Society strongly endorses Governor Paterson's proposal to increase the cigarette tax by one dollar from $2.75 to $3.75 per pack because it will lead to reduced smoking, saving thousands of lives and billions of dollars. We estimate this increase will encourage more than 50,000 adult smokers to quit and prevent 100,000 children from ever becoming smokers.

These estimates are based on well-established economic measures of the impact of price on cigarette consumption. Most notably, a recent paper in the journal Health Economics ("Cigarette Demand: A Meta-Analysis of Elasticities," by Craig A. Gallet and John A. List, V. 12, p.821-835) examined *523* published estimates of cigarette price elasticity from the academic literature. It found a median adult short-run price elasticity of 0.40 (long-run elasticity was 0.44). This means that for every 10 percent increase in price, there is a 4 percent decrease in consumption. About half the decreased consumption is due to adult smokers quitting, and half due to smokers who continue smoking at a reduced rate.

Since 2000, New York's cigarette tax has increased from 56 cents to $2.75 a pack. During that period, the number of packs subject to tax has declined by 42 percent, from just over a billion per year to just under 608 million.

Health Department surveys show the rate of adult smoking has declined nearly 25 percent since 2000, from 21.6 percent to 16.8 percent. Moreover, the average number of cigarettes consumed per day by those who continue smoking has declined 25 percent, from 14.7 to 11 per day. A large part of the decline in taxed sales is due to the fact that far fewer New Yorkers are smoking, while those who continue to smoke are smoking less. The higher tax is not the only reason for this decline in consumption, but it has been a major factor.

So the Legislature's public health objective in raising the tax is being achieved: there is less smoking and, consequently, there will be less tobacco-caused disease among New Yorkers. And the second objective, an increase in revenue, is also being achieved – New York today takes in nearly twice as much revenue from the cigarette tax today as it did in 2000.

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Clearly, tax evasion, especially that occurring through Indian reservations, has been a brake on both achievements. The excise tax is not paid on at least a third of the cigarettes smoked in New York. If it were, fewer would be used and state revenues would be higher.

That's why we applaud Governor Paterson's announcement that he will implement tax collection on tribal sales to non-Indians by the end of the year. Doing so will encourage at least 100,000 more smokers to quit and bring in at least half a billion dollars more in much needed revenue.

Doing both – increasing the tax by one dollar and collecting the tax due on cigarettes shipped to Indian reservations will deliver to New York a public health jackpot – as much as a billion dollars in increased revenue and a huge reduction in smoking among adults and, especially, kids.

While it is raising the cigarette tax, the Legislature should also proportionately increase the tax on other tobacco products, especially chewing tobacco, snuff, and roll-your-own tobacco, and it should close the loophole that allows so-called "little cigars" to be taxed at a much lower rate than cigarettes.

"Little cigars" are in every respect cigarettes except they are wrapped in paper that contains tobacco and therefore are taxed at the much lower cigar rate. They look like cigarettes, come in packs of twenty just like cigarettes, contain cigarette tobacco and cause cancer just like cigarettes. Their design is nothing but a tax dodge that allows them to evade the cigarette tax, and as the price of cigarettes increases, they become an increasingly attractive low-price alternative, especially to teenagers. They should be taxed at the same rate as cigarettes.

Thank you.

EMPIRE CENTER

FOR NEW YORK STATE POLICY

*A project of the Manhattan Institute for Policy Research*

**Testimony of Edmund J. McMahon**
*Senior Fellow, Manhattan Institute for Policy Research*
*Director, Empire Center for New York State Policy*

Before the Joint Legislative Fiscal Committees
February 1, 2010

I'm sure the witnesses following me today will have a lot to say about the specific tax proposals contained in Governor Paterson 2010-11 Executive Budget. I would like to concentrate on the broader economic and fiscal context in which you will be shaping the final budget and revenue package for next year.

Let me begin by reminding everyone that the 2009-10 state budget included tax and fee increases that were initially valued at $6.1 billion, or 7.4 percent of total state fund revenues. This was the largest tax and fee increase in New York State's history.

The MTA bailout plan, adopted last May, permanently imposed an additional $1.8 billion in taxes and fees throughout the 12-county downstate region, where most of the state's personal and business income taxes originate. These statewide and regional taxes and fees created a further drag on an economy that was already being clobbered by the most severe downturn of the post-war era.

The largest item in last year's revenue package was a temporary state personal income tax (PIT) increase that raised New York's top-bracket marginal rate by more than 31 percent, to its highest level in a quarter-century, along with the permanent elimination of remaining itemized deductions for tax filers earning at least $1 million in taxable income. Taken together, these actions represented New York's largest personal income tax increase in nearly 50 years. In percentage terms, New York's marginal rate hike was the second largest enacted by any state in 2009.[1]

New York's top state income tax rate is the sixth highest in the nation and the second highest among neighboring states.[2] New York City residents are subject to the nation's highest combined top rate on state and local income taxes—12.6 percent. Governor Paterson's STAR proposal in the 2010-11 budget will effectively raise this even further, to over 12.8 percent.

But the impact of last year's state tax increase was even larger than it appeared. That's because the 2009-10 state budget expanded a pernicious provision of New York's income-tax law, which imposes the top rate on every dollar of taxable income earned by filers in the highest three brackets. This quirk—found in no other state with a supposedly graduated income tax--is expected to generate fully 20 percent of the added revenue projected from last year's temporary tax increase.

Higher income taxes create a disincentive to work, save and invest in New York. They sap the working capital of small businesses, and they provide the state's most successful and mobile taxpayers with another reason to consider shifting their base of operations to lower-taxed states. [3]

Raising income taxes is also unwise as a matter of fiscal policy. New York has long been more dependent on income taxes than almost any other state—and that dependence actually increased after the enactment of the Pataki tax cuts in 1995. Contrary to the claims made by proponents of last year's tax hike, the distribution of tax liability under the 1995 PIT structure has been highly progressive.

Last year at this time, before the latest PIT increase was adopted, the annual Revenue Report of the Assembly Ways and Means Committee cited New York's "inherently unstable," "volatile" and "unsustainable" dependence on a small number of high-income taxpayers.[4] According to updated figures contained in Governor Paterson's 2010-11 budget documents, the highest-earning one percent of New York income taxpayers generated 43 percent of total income tax receipts in 2007—the highest such share on record.[5]

The 2009 income tax increase is effectively designed to squeeze more money out of taxable income base that has shrunk by a full 40 percent over the past two years. Under the circumstances, it's not surprising that DOB now projects the tax increases will generate about $400 million less than originally expected. Some of this shortfall may be due to quirks in the timing of tax payments, rather than changes in taxpayer behavior, and DOB has also raised its estimated revenue return from affected taxpayers in 2010-11. This increase appears to stem largely from a sharp projected increase in capital gains realizations, resulting from the expectation that federal capital gains rates are likely to increase a year from now.

In general, the tax climate at the federal level in the near future is not going to be friendly to New York. President Obama today released a budget reaffirming his desire to restore the higher, pre-2001 marginal rates for the highest federal tax brackets. The president also is seeking to impose further limits on the value of itemized deductions—including state and local tax deductions—for taxpayers in the highest brackets.[6] All of these changes have flow-through implications for New York's tax base, which will translate into less money for the state treasury.

Economists and tax-policy analysts have long recognized a link between taxpayer behavior and changes in marginal rates, especially in higher income brackets, where taxpayers have more control over the timing and nature of their incomes. When rates rise sharply, taxpayers respond by working and earning less, by shifting their tax "domicile" to lower-tax jurisdictions, and by using legal strategies to shift or shelter income in tax-exempt investments.

As you know, our PIT structure piggybanks (with few exceptions) on the federal individual income tax. Based on a U.S. Treasury Department analysis of taxpayers' responses to the Bush tax cuts, we have estimated that a return to the pre-2001 top federal tax rates will have the side effect of depressing New York's state tax revenues by $400 million a year. Larger increases in federal rates will have a larger flow-through effect on state revenues from the PIT, and on New York City revenues as well.[7]

In sum, the impact of federal tax increases is another important factor to consider as you weigh alternative tax policies. If you maintain the higher top rates enacted in 2009, the disincentive to work, save and New York will be stronger than it has been in many years. Indeed, given changes in the federal deductibility of state and local taxes, the tax cost of New York will be even higher than it was when our statutory marginal rates peaked in the late 1970s.[8]

In closing, here are three immediate priorities for the Legislature's consideration:

**First, do not add any more to the state tax burden.**

**Second, commit now to allowing the temporary PIT increase to sunset on schedule at the end of 2011 -- if not sooner.**

Converting the 2009 tax increases into permanent law will be a drag on New York's economic recovery. What you gain in short-term revenues will be lost in long-term economic growth.

**Third -- index PIT brackets to inflation as part of 2010-2011 budget.**

New York should follow the federal governments lead and index its own tax brackets to inflation. Because inflation is near zero today, this reform has negligible short-term fiscal cost, but would protect New Yorkers from bracket creep over the long term—when many economists feel an upturn in inflation is quite possible. If New York tax brackets had been indexed to inflation starting in 1997, the permanent top bracket would now be $53,467 instead of $40,000, personal exemptions would be $1,337 instead of $1,000.

**And fourth -- eliminate unwarranted tax credits and preferences.**

In 1986, the federal government implemented reforms that greatly simplified the income tax and broadened the tax base, while sharply cutting tax rates. Many of these reforms flowed through to New York's income tax due to the state's adoption of many federal definitions. Unfortunately, since 1986 the trend has been to create new credits and exclusions and make New York's taxes more complicated.

Some of these tax credits are simply another name for outright subsidies of favored industries. The most glaring example in this category is the fully refundable film tax credit.

More than a half-billion dollars in credits were allocated through the program between 2004 and 2008 – meaning that all other New York taxpayers will pay an average of $4 million more in taxes for each of the 120 productions supposedly attracted to the state during that period. The governor now proposes allocating an additional $2.1 billion more to the film credit program over the next five years.

Proponents of the credit frequently argue that it has been effective in creating jobs. This is probably correct in a narrow sense; on the other hand, it would be surprising if a labor-intensive industry did <u>not</u> create jobs when the government was subsidizing 30 percent of its production costs. Most other industries would also no doubt welcome a 30 percent taxpayer subsidy – but that's hardly an argument for expanding it.

Ending the film credit program will preserve resources that could be more wisely devoted to support of broad and permanent state tax reforms designed to promote enduring economic growth in New York. Paving the way for such reforms should be the Legislature's highest tax policy priority during the years ahead.

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[1] Exceeded only by Hawaii's 33 percent rate increase. For more, please see http://taxfoundation.org/taxdata/show/25537.html

[2] The only states with higher rates are Hawaii and Oregon, both now 11 percent; New Jersey at 10.75 percent; California at 10.55 percent; and Rhode Island at 9.9 percent.

[3] For further discussion of the economic impact of higher income tax rates, please see the testimony at http://www.empirecenter.org/testimony/2009/03/EJMTaxTestimony31209.cfm

[4] New York State Assembly Revenue report, February 2009, p. 40, http://www.assembly.state.ny.us/comm/WAM/2009RevRep/2009RevRep.pdf

[5] 2010-11 Executive Budget, *Economic and Revenue Outlook*, p. 193

[6] See p.40 of *The Budget Message of the President* at http://www.whitehouse.gov/omb/budget/fy2011/assets/message.pdf

[7] E.J. McMahon, "High Stakes Taxing: New York's Prospects Under the Next President's Tax Agenda," Empire Center for New York State Policy, September 2008. http://www.empirecenter.org/Special-Reports/2008/09/highstakestaxing091708.cfm

[8] E.J. McMahon and Josh Barro, "Empire of Excess," *City Journal*, Winter 2010, Vol. 20, No. 1, p. 62.

**New York Pepsi-Cola Distributors Association, Inc.**

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## MEMORANDUM IN OPPOSITION: SUGAR BEVERAGE TAX

The New York Pepsi-Cola Distributors Association, with the full support of the Teamsters Joint Council 16, representing over 125,000 working men and women across the State, are vehemently opposed to all proposals for a sugar beverage tax.

Our Association represents 130 independent businesses, serving all of New York City and employing 220 deliverymen. With New York State facing an enormous deficit, we understand that it is necessary to make tough cuts in services and raise some taxes and fees. However, this tax creates a disparate impact on an industry—already hit hard by last year's Bottle Bill and the Recession—that employs thousands of hard working New Yorkers. This tax will increase the price of our product, causing the loss of jobs and enticing out-of-state distributors—who do not employ New York State residents and will avoid paying the appropriate taxes—to enter the New York market.

The Teamsters Local 812 represents 4,000 members, many of whom are in the soft drink industry at Pepsi. This tax would threaten the six production facilities where 812 members work. These jobs provide solid wages and benefits that help support a middle class lifestyle.

In these tough economic times, New York cannot afford to bleed anymore middle-class jobs. We agree that New York needs comprehensive action and shared sacrifice but the syrup excise tax does not embody those objectives.