BEFORE THE NEW YORK STATE SENATE FINANCE
AND ASSEMBLY WAYS AND MEANS COMMITTEES

JOINT LEGISLATIVE HEARING

In the Matter of the
2018-2019 EXECUTIVE BUDGET
ON TAXES

Hearing Room B
Legislative Office Building
Albany, New York

February 8, 2018
9:37 a.m.

PRESIDING:

Senator Catharine M. Young
Chair, Senate Finance Committee

Assemblywoman Helene E. Weinstein
Chair, Assembly Ways & Means Committee

PRESENT:

Senator Liz Krueger
Senate Finance Committee (RM)

Assemblyman Robert C. Oaks
Assembly Ways & Means Committee (RM)

Assemblywoman Sandy Galef
Chair, Committee on Real Property Taxation

Senator Diane Savino
Vice Chair, Senate Finance Committee

Assemblyman David Buchwald

Senator James N. Tedisco

Assemblyman John T. McDonald III

2018-2019 Executive Budget
Taxes
2-8-18

PRESENT: (Continued)

Assemblywoman Patricia Fahy

Assemblywoman Earlene Hooper

LIST OF SPEAKERS

LIST OF SPEAKERS, Cont.

CHAIRWOMAN WEINSTEIN: Are we ready to start? After we have had our snow day yesterday, we're anxious to get back to the hearings.

Good morning. I'm Assemblywoman Helene Weinstein, chair of the New York State Assembly Ways and Means Committee and cochair of today's hearing.

Today we begin the tenth in a series of hearings conducted by the joint fiscal committees of the Legislature regarding the Governor's proposed budget for fiscal year 2018-2019. The hearings are conducted pursuant to the New York State Constitution and Legislative Law.

Today the Assembly Ways and Means Committee and the Senate Finance Committee will hear testimony concerning the Governor's proposed budget proposals for taxes.

I will introduce our Assembly members joining us, and then our cochair, Senator Cathy Young, will introduce the Senators who are here. And we're joined by Assemblyman David Buchwald and Assemblywoman Sandy Galef, chair of our Real Property Committee.

Senator Young.

CHAIRWOMAN YOUNG: Thank you, Chairwoman.

And good morning, everyone. I'm Senator Catharine Young, and I'm chair of the Senate Standing Committee on Finance.

I'm very pleased this morning to be joined by my colleagues. First of all, vice chair of the Finance Committee, Senator Diane Savino; ranking member Senator Liz Krueger; and Senator James Tedisco.

CHAIRWOMAN WEINSTEIN: And we're also joined, as we have been for every day of each of those hearings, by our ranker on Ways and Means, Assemblyman Bob Oaks, who has no one yet to introduce. We'll see.

I just want to remind witnesses that testimony has been submitted in writing, and feel free to be concise and summarize your testimony. And I'll just remind witnesses and members to keep an eye on the clock.

With that being said, I'd like to introduce our first witnesses. We're very happy to have, from the New York State Department of Tax and Finance, the executive deputy commissioner, Nonie Manion, and the director of the New York State Division of the Budget, Robert Mujica.

I think, Mr. Mujica, you're going to go first, and then the tax commissioner. I think that's how -- so feel free to begin.

DOB DIRECTOR MUJICA: Okay, thank you.

Good morning, Chairwoman Young, Chairwoman Weinstein. My name is Robert Mujica. I'm the state director of the Division of Budget. It's always a pleasure to be with members of the Legislature, but I wish that the circumstances were different and that we were not having to discuss ways to protect New Yorkers from the federal assault.

Indeed, these are difficult times. The new tax law was sold as a middle-class tax cut, but according to the Tax Policy Center, the largest cuts as a share of income are going to taxpayers in the 95th and 99th percentile of the income distribution. Any benefits that do exist for middle-class taxpayers are temporary and expire in the year 2025. In fact, in 2027, 53 percent of taxpayers will actually be paying more taxes than before the law was enacted.

The largest benefit by far is to corporations. The new law lowers the corporate rate from 35 percent to 21 percent, which is a 40 percent tax cut. There is no similar reduction for individual taxpayers.

Furthermore, there are no assurances that any of the $1 trillion which is being given away will actually trickle down to hardworking Americans.

Yes, there are those who support many of the changes in the federal tax law, but no New Yorker can support the capping of state and local tax deductibility. In this regard, the federal bill directly and unfairly targets New York State.

Some say the rationale for this change is that SALT is a subsidy to high-tax states. We know that this claim is false. The reality is that New York is a high-income state, and the subsidy goes in the opposite direction. New York contributes more to the federal government than any other state -- a net $48 billion. We are the number-one donor state in the country, and by eliminating full SALT deductibility, the federal government is shifting even more of New York State's wealth to other states.

The origin of SALT deductibility dates back to the Revenue Act of 1862, when Abraham Lincoln enacted the federal income tax to fund the Civil War. The states demanded that federal tax liability was to be exacted after state and local taxes were deducted.

SALT was a requirement of the Revenue Act of 1913 establishing the federal income tax. And New York and many other states built their tax codes around this foundational premise, that the state taxes first and then the federal government taxes. The federal code encouraged local governments to use deductible taxes in place of nondeductible taxes to fund education and healthcare and other services.

In 1985, President Reagan tried to eliminate the SALT deduction, and he faced overwhelming resistance and bipartisan opposition. In response, that same year the National League of Cities passed a resolution calling SALT deductibility a fundamental statement of the historical right of state and local governments to raise revenues and for individuals not to be double-taxed.

But here we are today; the threat is now federal law. And the elimination of full SALT deductibility has increased taxes for 1.7 million New Yorkers by $14.3 billion. For many New Yorkers the loss of the federal deductions means that their property tax bill will increase by 25 percent. An individual earning $100,000 annually will pay $1500 or more in income taxes.

Whether most of your constituents are part of the 1.7 million or not, it will wreak havoc with our state by hurting our competitiveness with other states. People who are starting businesses that are creating jobs upstate and downstate are the same people who the federal tax law is pushing out of New York altogether.

We have made so much progress lowering taxes and improving Our competitiveness over the past seven years. The Governor and the Legislature have capped local property taxes, cut middle-class income taxes, cut business taxes, and every New Yorker now pays a lower tax than they did seven years ago. Now the federal government is undoing all that we have accomplished.

And it will wreak havoc with home values, the principal source of wealth for our country's middle class. According to Moody's, home values in many New York counties, including Westchester, Nassau, Putnam, Rockland, Orange and others, will drop by as much as 10 percent. Along with New Jersey, this is the largest impact of any other state in the nation.

This theft of New York's home values is a raid on families' individual assets. And this is all to deliver a tax cut for the largest corporations. It represents the largest wealth transfer ever from New York to other states.

Recognizing how bad it is for New York, the vast majority of New York's bipartisan congressional delegation voted against this plan. We cannot do nothing. The Governor said this before: To do nothing, to sit idle while New Yorkers are taken advantage of and while their taxes go up and property values go down is not acceptable.

In his budget address, Governor Cuomo outlined a three-point strategy to defend ourselves against this attack from Washington.

First, we will challenge the loss of income tax deductibility in the courts as unconstitutional. It violates states' rights and the principle of equal protection.

Second, we will lead the fight against this injustice to start our own repeal and replace effort.

And third, we will restructure our tax code to protect New York taxpayers. This is a massive undertaking. There are 5,692 pages in the State Tax Law -- 13 volumes -- and federal tax changes impact almost all of it. But this is not unprecedented. After the last major tax reform in 1985, the next year was very active for tax reforms in states across the country as they adjusted their tax codes to deal with the new reality.

It's our job to protect the state's taxpayers. It's what our predecessors have done before us and what other states are doing now.

To guide the evaluation and consideration of options by state policy makers, the Department of Tax and Finance issued a report on the impacts and potential state policy responses. The report identified four key goals: Promote fairness for New York State taxpayers, protect tax progressivity and state services, protect and enhance economic competitiveness, maintain the short-term and long-term revenue base -- keep New Yorkers here.

I would like to thank the commissioner

and her staff for their work on this report, and it is already bearing fruit. The report identified where the state tax code is coupled with the federal tax code, meaning the federal tax increase would lead to state tax increases as well.

We have reviewed those proposals, and we will be including legislation in our Executive Budget as part of the 30-day amendments to address these impacts. We will decouple from the federal tax code, where needed, to protect our taxpayers.

Under the legislation, the deduction for state and local taxes will be maintained for the purposes of state taxation. This action will lower the tax base to which state tax rates are applied, shielding New Yorkers from these federal changes.

This issue was created in Washington, but we can fix it in New York, and the administration looks forward to working with the Legislature to get this done.

On all of these options, the state is working with experts, employers, taxpayers and other stakeholders to develop and implement changes to the New York State tax code. This work is ongoing, and there are permutations as outlined in the Tax Department's report. It is anticipated within the 30-day amendment period that the budget will be amended to include specific proposals in response to the federal tax law changes.

Once again, we cannot simply do nothing, and the state must act. Thank you.

EX. DEP. COMMISSIONER MANION: Good morning, Chairwoman Young and Chairwoman Weinstein. My name is Nonie Manion. I'm the executive deputy commissioner at the Department of Taxation and Finance. I am pleased to appear before you today to discuss Governor Cuomo's 2019 Executive Budget.

The current budget environment is the most challenging this state has faced since the Governor first assumed office in 2011. Weak revenue growth, coupled with substantial cuts in federal aid, have combined to create a $4.4 billion shortfall. The new federal tax law only compounds these challenges.

Governor Cuomo's fiscal policies -- most notably, his adherence to the 2 percent spending cap -- have ended the era of high spending growth and tax increases. Today, every New Yorker pays a lower tax rate than they did before the Governor took office. Thanks to historic middle-class tax cuts enacted by the Governor and the Legislature, taxpayers will save $26.3 billion over the Governor's first two terms in office alone.

The Governor has also transformed the business climate, laying the groundwork for a more robust, competitive New York State. New York now has the lowest corporate tax rate since 1968, and the lowest manufacturers' tax rate since 1917. Over the course of the Governor's two terms, these tax cuts will save businesses over $7 billion.

In partnership with the Legislature, the Governor has also taken landmark steps to combat the growth in property taxes. The state's 2 percent property tax cap, enacted in the Governor's first year in office, is estimated to have lowered property taxes by an average of $2,100. This was followed by the enactment of real property tax relief credits that will provide an additional $1.3 billion in property tax relief, with an average credit of $530 by 2019.

The federal tax legislation raises taxes on millions of New Yorkers and uses that money to pay for tax cuts for the nation's largest corporations and billionaires. At the Governor's direction, the Department of Taxation and Finance issued a preliminary report outlining options for state tax reform with the potential to mitigate adverse impacts of the federal legislation on New York State.

The report lays out options for policymakers to consider in response to the loss of the deductibility of state and local taxes. The report also identifies the many flow-through impacts to the state's tax system due to the changes in the federal tax code where New York is currently conformed. We hope this report can serve as a framework for discussion of ways that the state can adjust our tax code to mitigate the impacts of the federal legislation.

The Governor is committed to protecting New Yorkers from the negative impacts of the federal tax changes. For example, we anticipate that the Governor's 30-day amendments will propose that the state decouple from the limitation on state and local tax deductions, allowing the full amount of local real property taxes to be deducted from state income taxes. Congress has taken actions that, absent changes to the state tax law, will result in tax increases for New York taxpayers. The Governor will take action to protect New Yorkers in response.

Thank you again for the opportunity to speak with you this morning and for your ongoing partnership on these critical issues. I'm happy to answer any questions that you may have.

CHAIRWOMAN WEINSTEIN: Thank you. Thank you both for being here.

So it's been several weeks since the white paper came out -- pretty dense, 37 pages. And obviously you've been moving forward in trying to answer some of the questions that you raise, with probably just about a week to go before we actually see the 30-day amendments.

So -- and in that white paper you identified some of the unintended consequences of some of the potential actions, such as the payroll tax, which depends in large part on having salaries lowered. And I was wondering how -- if you've thought of ways to address some of those consequences of people having lower salaries and what that means in areas such as alimony support, retirement benefits, implications for Social Security. I was wondering -- without yet having the finalized details, I assume you've moved in that direction. If you could fill us in on how some of those discussions are happening and how you think you'll be able to solve some of those problems.

DOB DIRECTOR MUJICA: Moving from an income tax to an employer-based tax was listed in the report as one of the options, and we also listed their complications too. It's difficult -- as you point out, there are a lot of other factors that you have to take into account. We're looking at all of those. Many of those can be fixed with statutory changes, and that's why it's taking time to go through it. But for a lot of the things that you identified, there are statutory fixes that we could use to take away some of those consequences. So we're looking at all of those now, and those are things I think we can address.

CHAIRWOMAN WEINSTEIN: And we'll be hearing from our Real Property Tax chair, but what are some of the -- in terms of the concept of a charitable deduction, some sort of a charitable deduction for property tax as a way to help reduce the amount of property taxes that people will not be able to deduct, what are some of the challenges and potential negative consequences from looking at a charitable deduction for property tax?

DOB DIRECTOR MUJICA: So a lot of other states are looking at the charitable contributions as well. And when we looked at it, an individual can make a donation to a hospital presently, they make a donation to a school presently, and get a charitable deduction. And before, there was no difference between making a charitable deduction on the personal income tax side or paying a tax.

Now, if you pay the tax, you don't get the deduction, but if you made a charitable contribution, you could. So we're looking at ways to reduce people's either property tax burden or even income tax burden by making charitable contributions to -- for our purpose, that government would also fund.

The challenge there is really just it's complicated in the Tax Law, making those changes. We have to adjust on the state side because we would lose revenue. Revenue that would normally come to the state would go to fund -- whether it be schools, whether it be healthcare, whether it be anything else that, you know, we decided to send the money to.

So there's cash flow issues that we have to take into account, there are issues related to personal income tax bonds that we have to take into account as we shift resources from dedicating it to the personal income tax to other funds. But these are also things that we think can be overcome, and the Tax Department has been working on language to do that.

CHAIRWOMAN WEINSTEIN: And I just want to refer back to -- you're saying that in the 30-days we're going to see the uncoupling that will allow state and local taxes to be deductible. You're anticipating having also the change of uncoupling to allow individuals in New York State who take a standard deduction -- or are you allowing individuals who take the federal standard deduction to be allowed to itemize in New York State? Or would they be restricted to a state standard deduction also?

DOB DIRECTOR MUJICA: That's right.

Under present law, you had to itemize at the federal level in order to itemize at the state level. So we would decouple from that and allow individuals to take the standard deduction at the federal level and still itemize at the state level.

CHAIRWOMAN WEINSTEIN: Okay. I think I'm going to turn it over to the Senate, and then we'll hear from our Real Property chair. Thank you.

CHAIRWOMAN YOUNG: Good morning.

EX. DEP. COMMISSIONER MANION: Good morning.

DOB DIRECTOR MUJICA: Good morning.

CHAIRWOMAN YOUNG: First of all, I'm very glad to hear that in the Governor's 30-day amendments there will be a provision regarding legislation that was already passed in the Senate sponsored by Senator Felder. Director Mujica, is the Governor's plan going to be any different than what has passed the Senate, or will it be the same language?

DOB DIRECTOR MUJICA: We haven't gone through exactly, Senator, that bill. But we did, you know, go through it when it passed, and it's substantially similar. So we're going through all of those provisions. But the vast majority of that bill is consistent with what we plan to propose in the 30-day amendments.

CHAIRWOMAN YOUNG: Great.

I listened to your testimony, and one of the things that I wanted to ask about was that the Governor has stated that the loss of the SALT deductibility will cost New Yorkers roughly $14 billion annually. How was that number determined?

DOB DIRECTOR MUJICA: The 14.3 is basically we look at the what -- the number or the amount of deductions that all New Yorkers presently have under state and local taxes above $10,000. So when you look at that, the remainder was 14.3; New Yorkers are no longer allowed to deduct state and local taxes above $10,000. And that number is $14.3 billion, and it's 1.7 million taxpayers.

CHAIRWOMAN YOUNG: So this number

doesn't take into account the reduction in rates to taxpayers?

DOB DIRECTOR MUJICA: So the reduction in rates to taxpayers -- everyone in the nation benefits from the reduction in the rates to taxpayers. New York, however -- New York and a few other states are far disproportionately impacted by the elimination of state and local tax deductibility.

That's why it's unfair to New York, because what you're doing is you're saying we're going to take away state and local tax deductibility, take $14.3 billion out of New York, and then we're going to give some back. Right? But the "some back," you're giving back to everyone. You're giving far less back to New Yorkers than you're giving to everyone else across the country. So it doesn't balance out.

So overall, New Yorkers should be in the same position as everyone else in the nation, and if we would have, we'd be $14.3 billion to the good.

CHAIRWOMAN YOUNG: No, I'm aware that we're a net donor state, as you pointed out.

I guess the question is, though, the 14 billion is just what people previously were able to deduct under the SALT, right? But are there other tax advantages that are under the federal tax reform that would benefit New Yorkers so that their loss isn't quite as much as the $14 billion? That's my question.

DOB DIRECTOR MUJICA: There are some changes in the federal law that do mitigate some of the 14.3, but it's still a massive transfer from New York to other states. So while yes, on the margins there are, if you look at individuals in certain parts of the state, the higher your -- the reality is that only 10 states {sic} have average state and local taxes of $10,000 or below. So that means every other county -- so only 10 counties have state and local taxes below 10,000. So every other county in the state has taxes above that amount. In parts of the state, it's more than double that amount.

So -- and then there's also a ripple effect, right, where you can't account for the declining home values which are a result of not being able to deduct your taxes. So there is an attempt by the federal government to mitigate some things, but the damage is far greater than any benefit.

CHAIRWOMAN YOUNG: Thank you.

So it sounds like you're talking about -- what was the term you used? Going to -- moving to an employer-based tax. Is that another term for a payroll tax?

DOB DIRECTOR MUJICA: It's one of the options, an employer-based tax. And a payroll tax -- anything that's on your paycheck is a payroll tax. Unemployment insurance is a payroll tax, Social Security is a payroll tax.

What we're talking about is instead of having a personal income tax or the same personal income tax, having an employer-based tax.

And I think the issue is that -- as I mentioned in the testimony, we've been deducting state and local taxes for over a hundred years, so we've built our tax code around things that we know are deductible. When you change a hundred years of precedent, we're saying, well, we need to change potentially our tax law. We would not have probably used an income tax as the basis if it was not deductible if you knew that the employer side tax would be deductible.

So we're saying we need to relook at that, and perhaps it makes more sense to have something that is deductible so that the federal government continues to allow for the deduction for --

CHAIRWOMAN YOUNG: So hence charitable foundations, possibly.

DOB DIRECTOR MUJICA: Exactly.

CHAIRWOMAN YOUNG: Okay. What percentage of the $14 billion estimate that you gave would be addressed by switching to a payroll tax?

DOB DIRECTOR MUJICA: So it depends on how you do it. In the Tax & Finance report it listed multiple options, right? There's an option for a mandatory employer-based tax, there was an option for limiting it based on income. As you go further down the income -- as Chairwoman Weinstein mentioned, as you go down in income, there's more friction and there are more things that you have to change.

And so it depends on how far down you go. If you do everyone, you can mitigate a majority of it.

It only deals with wage income, so -- you mentioned it. So dealing on the employer side only deals with wage income. You would have to look at nonwage income as well. And in the report we also mention some options for nonwage income. We think the pieces have to work together. So there's an option -- all of these pieces are not mutually exclusive. So you have something on the payroll tax side, if you want something employer-based, you have something on the charitable side as well, and then something as well for nonwage income.

Together, we think we can mitigate the

vast majority of the 14.3.

CHAIRWOMAN YOUNG: So you're not saying just a payroll tax or just a charitable foundation structure, you're saying it could be a combination of many different factors.

DOB DIRECTOR MUJICA: Exactly.

CHAIRWOMAN YOUNG: So -- I have some more questions, though. Wouldn't you have to continue to have a personal income tax to account for taxpayers who are self-employed?

DOB DIRECTOR MUJICA: So we mention that -- and the report mentions as well -- that you could create a whole new system. It's very complicated to do that and to do it that quickly. The federal government passed this bill, the president signed it on December 22nd, right. We're sitting here in February trying to redo our code.

So you could replace the system, but you could also leave the income tax in place. And if you leave the income tax in place, you deal with wage income, you have a system of credits and potentially different alternative taxes to be able to benefit, as you mentioned -- it mentioned sole proprietors and mentioned partnerships and such.

So yes, again, the different combination of pieces and as well leaving a PIT in place in the short term may be one of the easier ways to deal with this.

CHAIRWOMAN YOUNG: Would that be a real burden on the department, though? I mean, would you need extra staff, to administer, two programs or possibly three or four programs?

EX. DEP. COMMISSIONER MANION: We've been looking at all the different options that are in the report, and we've looked at the different systems that we have. We administer over 40 taxes. So looking at all the different systems that we have, we believe that we have something in place that can be the foundation for the systems that would be required for the different models.

CHAIRWOMAN YOUNG: Okay, thank you.

How do you explain to employees that their wages are going to be reduced? I mean, I think that -- even if there's a net benefit to them, I think that would be a very difficult undertaking, to say to people, you know, don't worry about it, we are reducing your wages and it may affect your retirement, it may affect collective bargaining, it may affect your Social Security benefits.

How would we do that? I think you could possibly make the Governor and the Legislature extraordinarily unpopular by taking that action.

DOB DIRECTOR MUJICA: So I think you start from the premise that the federal government raised your property taxes and raised your income taxes, right? By eliminating deductibility, that's what they did. So you start from your income taxes will go up and your property taxes are going up as a result of the federal action. So that's the first premise.

And what we're trying to do is how do we mitigate that as much as possible. And how do you mitigate that as much as possible? You're not paying a dollar more. There's take-home pay and there's the taxes you pay, whether your employer is paying the tax, whether you're withholding the tax -- your withholding is substantially similar to anything else that we're going to do. So whether you're withholding and you never see that money, you have the same amount of take-home pay. Whether there's a payroll tax as an alternative to an income tax, the employee should take home the same amount of money. So that should stay substantially the same. And there's no proposal that we're looking at which would diminish the actual dollars that an individual takes home.

If you don't do this, if you do nothing, we do know what will happen. If we do nothing, income taxes go up, property taxes go up.

So I think all of the challenges that you've identified, we're working through. And we recognize them. But the alternative would be to do nothing, and we don't think that's an acceptable policy.

CHAIRWOMAN YOUNG: What about --

Director Mujica, have you looked at people that are lower income earners and whether lowering their wages would then push them down into social programs like Medicaid? And what would the implications be of additional burdens on the taxpayers if more people are thrown into these social programs?

DOB DIRECTOR MUJICA: So those are the things that we would have to adjust for, because those are not outcomes that we're looking to have happen.

So we mention that on the -- if you do an employer side tax, that you'd want -- you can start it at any salary level, it doesn't have to be for all employees. You can start or you can create a threshold. I think the report mentioned certain thresholds, and we can pick what number that is, working with the Legislature.

But yes, as you go down, there are more and more changes that we would have to do to eligibility for certain programs, et cetera. But I think you can eliminate a lot of those by choosing a threshold that's higher than the trigger for many of those programs that you identified.

CHAIRWOMAN YOUNG: So thank you for that.

So what about people's retirement? A lot of people's retirement amounts depend on how much they're earning. You say there's a statutory fix for that?

DOB DIRECTOR MUJICA: We can do a statutory fix for final average salary for your pensions. You could change the law to fix that as well. So the answer is yes. Could we change those things, could we fix those things? Yeah.

And again, this has been built over a hundred years. We expected all of these things to be deductible. If you change it, there are lots of other places where you would have to change the law. But the fact that you'd have to change those things shouldn't stop us from doing -- creating the fix. Because again, if you don't do anything, you go back to the same thing, which is just a massive tax increase for New

Yorkers.

CHAIRWOMAN YOUNG: How would collective bargaining -- how would you fix that? If there's a collective bargaining agreement, how would you statutorily fix that?

DOB DIRECTOR MUJICA: We've been talking to -- we've had roundtables and discussions with employer groups, with tax experts. And we've had labor in the room as well, so we've been discussing with them. They understand the challenges, but they also understand how bad this impacts their members. So they're actually sitting at the table with us, saying: We recognize that there's an issue on wages, but let's work together and figure out how to fix those, on behalf of their members, because the worst thing for their members is to pay, you know, thousands of dollars more in taxes. They're all impacted by the property tax elimination, and they're impacted by the personal income tax.

So they get it, and we're working with

labor to see how you can adjust for it.

CHAIRWOMAN YOUNG: How can you ensure that there's a dollar-for-dollar correlation between reduced pay and reduced tax liability? Can you ensure that taxpayers are held 100 percent harmless?

DOB DIRECTOR MUJICA: The four principles of the report, right, one was -- number one was to protect the taxpayers and be fair. So that is what the goal here is.

The goal here is not to raise additional revenue for the state, It's to get as much of the money back from the federal government as possible and restore us to where we were.

So that is what we're crafting. And that's why it's complicated, because we want to ensure that no New Yorker is paying more in taxes now than they were before. In fact, they're going be paying less than they were before the tax bill and perhaps -- perhaps -- perhaps, because you lower their AGI, even less than actually before the federal law.

CHAIRWOMAN YOUNG: But isn't it

difficult to get a dollar-for-dollar correlation?

DOB DIRECTOR MUJICA: We're not looking at a dollar-for-dollar correlation between the two. We're talking about replacing, potentially, the personal income tax with a tax that's deductible. And how we structure that is what the Tax Department is working on now.

CHAIRWOMAN YOUNG: Okay. Thank you. I'll come back.

CHAIRWOMAN WEINSTEIN: Thank you.

We've been joined by Assemblywoman Fahy and Assemblyman McDonald.

And now we go to our chair of the Real Property Tax Committee, Assemblywoman Galef.

ASSEMBLYWOMAN GALEF: Thank you very much.

I just wanted to ask some questions in the area of STAR and real property tax proposals. You know, one of the most popular programs that we have in our state is the STAR, the school property tax relief program. When everybody gets their bill at home with their school taxes, they look down there and see how much the state is saving them and that we have some other -- you're going to be coming to a hearing on Monday, so we'll go into those particulars.

But in the budget there is a proposal to again return to a zero percent increase in the STAR program. And, you know, given all the discussions before about everybody feeling the impact of the federal government and the whole issue with local taxes, it would seem like this is not a year to not let that formula drive to the 2 percent increase, as opposed to having it frozen at zero percent.

So I wondered what the thinking was -- and maybe there's clarity in the thinking before the 30-day amendment.

EX. DEP. COMMISSIONER MANION: Well, you know that we're in the second year of the tax relief program. And the tax relief program is now calculated based on a person's income and their STAR benefits they have.

And for the lower-income people, with

the relief, they're getting 28 percent of their STAR benefit. So we think that the relief is actually offsetting -- would offset a lot of what would be increased in the STAR benefit.

ASSEMBLYWOMAN GALEF: Well, actually -- first of all, that program only lasts for another year after this year, right, with an increase. And -- I mean, to say again to our constituents that we're limiting the STAR program, which is on the tax bill -- this other one comes -- I just got my check last week. So it comes a lot later than when you're paying your taxes. And I think there's an effort, I know in the Assembly, to really work on making sure that the increase is driven forward.

So I don't think we necessarily agree with your approach just because there's another program. Last year we also had another program. We got a $130 check or a $170 check. And we were able to have it increase, have an increase in the STAR program.

EX. DEP. COMMISSIONER MANION: Yeah, the check that was received last year was the first year of the tax relief, and it was a flat check. And now the tax relief is based on your STAR benefits and your income.

We do have our system in place now where we're able to issue the relief checks much sooner. So we've been successful with that system and getting our STAR credits sent out prior to the tax bills being on time.

So we can work with the timing. You know, we've got a lot more flexibility now that we have our system up and going.

ASSEMBLYWOMAN GALEF: Right. Well, we'll get into the system because I've had a lot of people in my office that did not get it in time.

Another question is on the income verification program, which I think is a real good program that anybody in Advanced STAR would have their income verified through your office. But to require it to be mandated I think is very problematic for many people in our state. We're dealing with senior citizens. Many are not as proficient at getting everything to the Tax and Finance Department in a way that they should.

Is there not an approach that we can use for the assessors also to continue to be a part of helping seniors that are going into the enhanced program be a part of this?

EX. DEP. COMMISSIONER MANION: Well, I think that the income verification program is working well. It works well. Some areas use it very wide, other areas don't use it as much.

Again, our new system has allowed us to do the automatic verifications with it. And for the programs that we've been doing with the relief program and then the STAR credit, we have had to reach out to some of the seniors to get income worksheets, because we have to do income verification for those programs too.

So I think that we are well along the way there. And we are also finding with any new program that we open up, when we do the income verification, that there are people that are applying that think that they're eligible for it and their income is really over the threshold.

ASSEMBLYWOMAN GALEF: But what process do you go through to initiate all this? I'm just thinking -- you know, it's hard to get to the Tax Department with a phone number. And these are people that might be using the phone and not the internet. And what percentage of people are in the income verification program at this point?

EX. DEP. COMMISSIONER MANION: We do understand that a lot of people that would be applying for this may not be using the computer as much. We've improved our relationship with our assessors, and we've provided the assessors with a hotline so -- understanding that some of these people will continue to go into the assessor's office. The assessors can assist them with this. But once they sign up for it, it's a one-time thing. You know, we'll be able to do the checks.

So I think that will simplify it. It

might be a little bump in there first, but afterwards it will be much easier.

ASSEMBLYWOMAN GALEF: So the assessor's office, they can get through.

EX. DEP. COMMISSIONER MANION: Yeah, we have a hotline for them, because -- yes.

ASSEMBLYWOMAN GALEF: Okay. Another question about the annual assessment of taxable state-owned land. You're proposing a new policy that would keep it at the prior level of assessment of the year 2017 with state-owned land and then increase it annually by the growth factor.

Can you explain that a little bit and what would happen if there's new state land that is acquired that we adopt, you know, legislation that would require certain land to become state land for tax purposes? And also, what would happen in a community that's reassessing their property, so they're reassessing the state-owned land -- are you artificially keeping them at a lower level?

EX. DEP. COMMISSIONER MANION: If there's new state-owned land, it would be assessed and then that would be the base level.

For those that are going through reassessments, I think everybody that is involved in assessing the state-owned land understands the challenges with it. And so this is to reduce a lot of that administrative burden, both for the locals and for the state, in coming up with the value that the tax should be applied on.

So by staying with the 2017 and increasing for inflation, we think it's most efficient for all.

ASSEMBLYWOMAN GALEF: So you're saying that the state is going to assess the state-owned property.

EX. DEP. COMMISSIONER MANION: If it's new.

ASSEMBLYWOMAN GALEF: If you're in a reassessment situation --

EX. DEP. COMMISSIONER MANION: No, not in a -- in a reassessment situation, they wouldn't have to reassess for the state-owned land. They would be doing their reassessment for the other parts of their community. The state-owned land would stay at the 2017 value increased by the rate of inflation.

ASSEMBLYWOMAN GALEF: But many communities have really not really paid that much attention to the assessment on the state-owned-land properties because a long time ago they weren't really getting much money, they were getting PILOTs or something like that. So you're denying them the ability to really look at their property and find out what it should be assessed at. I think that's the bottom line. To save the state money, I guess.

Let me just ask you about another one where -- and this is a big issue, I would think, particularly in New York City about the cooperative apartments that are sold and that you're going to require them to have a transfer piece of paper come to you so you know who owns the co-op. Is that going to be an easy project for you?

EX. DEP. COMMISSIONER MANION: We need to be able to -- as we were doing the relief, we weren't able to identify the value of all of the different parts of the co-op. And so that was a challenge that we had, so we -- by having them reported and then report all the transactions, it follows along with our real estate transfer tax. So it's the same type of process that we would get, but we would get the information for the co-ops also. So we would have an better idea, an ongoing idea of the value of the individual co-ops within the units -- the units within the whole co-op.

ASSEMBLYWOMAN GALEF: Right. Okay.

And the other is the mobile homes, which really doesn't come under my committee. But I think you're requesting that they have a quarterly report about who is living in the mobile homes for the purpose of STAR?

EX. DEP. COMMISSIONER MANION: Yeah. We had a challenge with our STAR credit checks. Our STAR credit checks this year, we were able to get 98 percent out on time. However, our biggest challenge was in identifying the owners of the -- in the mobile home parks. So we actually -- you know, we worked with the assessors, because that's not information that they regularly get. Some of them do, and some of them don't. And we worked with them in identifying who didn't have that information. We actually sent some of our field auditors out physically to the mobile home parks to obtain the information so that we can get the START credit check out on time.

So we feel that by having a regular reporting on this, we'll have a regular accounting for who should be receiving the check.

ASSEMBLYWOMAN GALEF: All right. Having a quarterly contact -- what happens if people aren't doing it? What's the penalty?

EX. DEP. COMMISSIONER MANION: It's with -- just about anything that we do in the department, if we're not finding compliance, we have different compliance efforts that we take. We can do things through mailing or we could send the same auditors out to go physically to the place to try to get some of the information.

CHAIRWOMAN WEINSTEIN: Thank you.

Senate?

CHAIRWOMAN YOUNG: Senator Savino.

SENATOR SAVINO: Thank you, Senator Young.

Good morning. I want to go back to the decoupling legislation. As you know, we passed it in the Senate. We're happy to see it's going to be included in the 30-day amendments. But maybe I'm mistaken about this, but it's my understanding that when the state put out the fiscal plan, the additional revenue that it expected residents to have to pay due to the loss of the SALT was included. Will that be adjusted with the 30-day amendments?

DOB DIRECTOR MUJICA: Yeah, we'll have to adjust the financial plan. It didn't affect 2019, but it affected 2020. So we'll adjust the financial plan to reflect that, yes.

SENATOR SAVINO: Okay. And on -- I'm confused about the charitable contribution thing and the prepayment of taxes. I know at the end of 2017 the Governor recommended, if you could, prepay your taxes. And some counties participated, and some didn't.

Do we have a sense of how many people did? Because most people who have a mortgage in New York State impound their taxes in their mortgage. So how do you separate your property tax payment from your mortgage and be able to pay it? So did in fact people do that? And will we not anticipate the same problem with the charitable contribution issue? More of a question for the Department of Tax.

EX. DEP. COMMISSIONER MANION: We don't have a count of how many people did it. But through anecdotal information -- I know I spoke to some of the people at the Association of Counties last week, and they said that they had people in lines paying millions of dollars prior to the end of the year to ensure that they can get the deduction.

We did have people that were working

with the banks, because a lot of people have it in their escrows. And a lot of the banks did work with them in allowing for them to pay it and balance out their escrow. So it's something that would have to be coordinated.

SENATOR SAVINO: Right. But you'd have to have the resources to actually prepay your property taxes. And in some counties I would think that would be cost-prohibitive for individuals. It's just interesting, though, how you have to decouple it from your mortgage now.

For the Department of Tax and Finance, I think the budget director said that there's going to be many changes to try and adjust to what happened to us in Washington, which could require a lot of different changes in tax law and how we adapt it into hundred-year-old statutes.

Do you have, at the Department of Tax and Finance, sufficient staff to be able to make all these changes? Because when we did the workforce update, it was pretty clear the state workforce is remaining flat. There's a couple of hires to backfill after attrition, but we're not seeing a large number of new staff at Tax & Finance.

Do you believe that you'll be able to administer these new tax changes?

EX. DEP. COMMISSIONER MANION: The way we've been managing our budget is we've been moving a lot towards automation. So over 90 percent of our personal income tax filers file electronically. Well over 90 percent of our sales tax filers file electronically. And when we put the systems up and we work with our partners, the software partners that do a lot of that electronic filing, we're able to fine-tune it so that the returns and the information and the money comes in without having to rely on our employees to work with the taxpayers.

So we've been able to streamline a lot of that, really enhance our voluntary compliance. We have a good partnership with our IT people that work our systems. So we feel that we can develop the systems necessary for any tax law changes, as we do every year. There are tax law changes every year.

We do make decisions. You know, there are decisions of things that are done in that time, and we'll continue to do that.

SENATOR SAVINO: And finally, back on the SALT thing. So about two-thirds of New Yorkers don't itemize their deductions, so they really never did take advantage of the SALT. So do we have an idea of how many people are really affected and what the actual cost will be?

DOB DIRECTOR MUJICA: Well, the number we have is 1.7 million New Yorkers pay more than $10,000 in state and local taxes. So that's the universe of individuals that are affected. And that 1.7 million are associated with the $14.3 billion. And those are -- it's a portion of the individuals who itemize. So you have about a third of individuals who itemize. So of that third that itemize -- it's about 3 million -- 1.7 million of them have taxes in excess of $10,000.

SENATOR SAVINO: Thank you.

CHAIRWOMAN WEINSTEIN: Assemblyman Oaks.

ASSEMBLYMAN OAKS: Thank you.

Actually, just to follow up on Senator Savino's comments, in trying to identify the impact -- and again, I think it's -- for most of us, it's just trying to get a handle as we go forward. And thank you for your earlier comments to Senator Young's questions as well.

In the SALT deductions, some taxpayers are subject to the alternative minimum tax. And so those earners, even though they would have probably high income tax and local property taxes, if they hit the AMT, they may not use those to file because they're going to pay their base tax anyway.

Do you know if the $14.3 billion takes into account that group of payers or not?

DOB DIRECTOR MUJICA: I believe we've adjusted for that, but I would --

DEPUTY COMMISSIONER HILLER: I believe we were looking at state and local deductions that are being taken out.

ASSEMBLYMAN OAKS: I'm sorry?

DEPUTY COMMISSIONER HILLER: I believe we looked at state and local deductions that are being taken now, so folks who were on the alternative minimum tax weren't taking those deductions.

ASSEMBLYMAN OAKS: Thank you.

And just for -- I know one of the things that was highlighted was the possibility of doing something with possibly a donation and having a charitable donation.

I know there is some concern how the IRS might treat that or not. So are we anticipating that we will get a ruling back from them or are we concerned it might be challenged in court to say whether we could or couldn't do that?

DOB DIRECTOR MUJICA: So we know that the federal government acted in a way that was hostile to New York. Or they needed the money to pay for the broader tax cut.

So we're working within -- and the attorneys in Tax & Finance can speak to this as well -- we're working within the confines of the bill. As anyone in the private sector does, the state is now looking for, Are there ways within the current tax law that we can use to the advantage of our taxpayers? State and local contributions and the charitable deductions, there is a precedent. There's other states presently that have charitable deductions for educational purpose, where they get a tax credit back. That tax credit varies from as high as 100 percent and goes down from there.

So there are precedents there. Are we going to wait for a ruling? I think we have to do what's in the best interests of New Yorkers, working within the confines of the bill, and do what we think and believe fits within the framework of the bill and is legal.

Can the IRS challenge some of the things we do? Yeah, it's possible that they do that. Like I said, the Governor is looking at three different things. One is change the tax code, two is attempt to repeal and replace, and also we're suing. But we think the charitable contributions we looked at in other states are doing this as well, so we think there is an opportunity there to get some of the deductibility back. And I don't know if Amanda has anything else on this.

DEPUTY COMMISSIONER HILLER: I guess the only thing I would add is that although it's certainly possible that the IRS might make statements that would raise questions about whether a particular charitable structure was acceptable or not, at the end of the day that becomes a fact-based analysis for an individual taxpayer years from now. Speaking for the State Tax Department, we issue advisory opinions all the time, and taxpayers do not feel bound by them. And we find ourselves in court all the time, because the fact that we said it doesn't make it true.

ASSEMBLYMAN OAKS: Just for clarity, too, we're hoping to do this that will impact 2018 taxes for our state's filings in 2019; right?

DOB DIRECTOR MUJICA: We're looking right now. So when we propose it, we'll see the dates we're seeing. If we can get something done for the 2018 tax year, we will try. If not, then it will have to be for the 2019 tax year.

ASSEMBLYMAN OAKS: One of the things is -- my understanding -- and I know we were talking about taking a case to the federal government and challenging in court. My understanding is New York City doesn't -- can't write off their city income tax on the state income tax. By us doing that, are we subjecting us to the city coming and saying, well, if you're not telling them they can't, you know --

DOB DIRECTOR MUJICA: This is an issue of state's rights between -- it's an agreement between the states and the federal government. As I mentioned, the very first time that the federal government attempted to raise money from the states, the requirement was that you had to deduct state and local taxes from your federal taxes, right, 1863.

And then when you created the modern federal income tax, the state said only after you deduct state and local taxes. The principle was that the states tax their citizens first to support local services. The federal government can then tax after that. But you can't double tax. You can't tax on top of the tax. That's what the personal income tax at the federal level was based on going back to its earliest inception.

So it doesn't relate to whether or not what we do with New York City, which is a creature of the state -- that isn't really relevant to the legal arguments. Our arguments relate to this is a state's right issue, it relates to our relationship with the federal government, and it's a foundation of federal income tax that's been around for, you know, like I said, over a hundred years. So we don't think there's an issue there.

ASSEMBLYMAN OAKS: Thank you.

CHAIRWOMAN YOUNG: Senator Krueger.

SENATOR KRUEGER: Good morning. I

think this will be my round one. I have a few rounds, probably.

Following up on these questions about some of the scenarios that you're exploring for the 30-day amendments to again, as you described, and I completely agree, try to assure New Yorkers that under the new federal tax scenario, they're not actually losing deductibility. So you've heard questions about a number of the proposals.

Am I right that many of these proposals can in fact be made at the option of the taxpayer? So that, for example, the charitable deduction instead of school or property taxes as an example. I think there's some concern that you're hearing, are we putting people in a situation that may be too complicated for them or may not fit them or may be defined as a new burden for them? As opposed to what I believe the goal of the state is, to try to protect their income and to not have $14 billion more going to the federal government.

So are there a number of the scenarios

that actually can be at taxpayer option chosen?

DOB DIRECTOR MUJICA: Thank you.

So yes, there are different options. So there are options where some of them could be at the employer opt-in level and at the taxpayer opt-in level as relates to the charitable contribution.

So to your point, we don't want to force anyone, necessarily, into situations. Where we can create optionability, if you will, then we will. So we're looking at that. Within the confines of the law, if we're allowed to do. That's what we're trying to do.

So there will be options, and then there will be some determination as to whether or not we have to say this is necessarily mandatory.

But to your point, there is a level of financial literacy that's necessary. It gets complicated, right? There are individuals who it would be in their best interest to itemize, but they choose the standard deduction every year because it's just easier. So we get that. And that's definitely something that we're considering.

But creating options is something that we're very seriously looking at right now.

SENATOR KRUEGER: And an additional concern that was raised, and I don't think anybody asked it yet this morning, if you go down the path of reducing pay to people -- so shifting the -- to payroll taxes, is there a potential that you're changing the formula of what their eligibility for pensions would be after they finish working, and can we make sure we are not penalizing people's pensions in the future by trying to help with a problem now?

DOB DIRECTOR MUJICA: So the answer is yes. So I think that is we would have to look at those other ancillary impacts and make changes, potentially, to current state law to reflect this. So if there was that change, or if there was a reduction, then you would make those changes to make sure that someone was held harmless. So we're looking at those changes as well.

And I think that's why as you go down the list of things that make this challenging, we think we're addressing each one and will come up with ways to fix it.

Again, we start from the premise that we can't do nothing, so we have to do something. Let's figure out how to do it with the fundamental goal of reducing people's taxes and their burden.

SENATOR KRUEGER: And on that same theme, so the question was already raised about people who get nonwage income -- interest dividends, et cetera -- the payroll versus PIT won't -- that won't solve it for them.

But my understanding is there's also several million New Yorkers who are actually so low-income they don't owe federal taxes. They wouldn't fall into this, you know, paying more, paying $14 billion more because of lack of deductibility, but they might get caught up in a lowering of wages without a tax benefit under a couple of the scenarios.

Is there a way to assure us that we could apply one of these or multiple of these payroll options where we aren't actually penalizing low-wage workers?

DOB DIRECTOR MUJICA: Yes. So one of the options is just creating thresholds, too. So we talked about if you leave some version of a PIT in place, also then whatever we do on the employer side, limiting it to incomes or salaries of a certain level. And that would largely deal with the issue that you described.

And for the nonwage earners, we're looking at that as well. Again, that goes to the premise where before, it didn't matter how you were organized as a business because your state and local -- you could deduct state and local taxes as an individual, you can deduct state and local taxes as a business or a corporation equally.

The federal law changes that by saying you can't deduct state and local taxes as an individual; however, you can still deduct it as a business. So there are business entities that pay taxes through the personal income tax side, no longer deductible. If they had organized a different way, perhaps, then they would be able to deduct those taxes.

So we're looking at ways for those as well to be able have them be taxed instead on the business tax side and then they could maintain their deductibility.

SENATOR KRUEGER: And I'm at zero, but just a quick follow-up on that. And we're also looking at ensuring that people's Earned Income Tax Credit, if eligible, isn't reduced in some way when we explore these options; right?

DOB DIRECTOR MUJICA: That's right.

SENATOR KRUEGER: Thank you. I'll come back. Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

A quick question about the -- one of the -- proposed deferral of certain tax credits. We had this discussion a little bit during the housing hearing. What would be the impact of the deferral of certain key credits such as the low-income housing credit on current and future affordable housing development?

DEPUTY COMMISSIONER HILLER: The budget proposes to defer those credits, but the proposal includes providing for the first 2 million of those credits to flow through immediately. So we're building on a model that the state undertook in 2010. So we did the same credit deferral in 2010. The credits become banked, they are already accrued for the taxpayer, just the payout of those is deferred.

So we believe that the taxpayers can book those credits for their future years.

CHAIRWOMAN WEINSTEIN: Thank you.

Senate?

CHAIRWOMAN YOUNG: Thank you.

I have a lot of follow-up questions. Oh, I'm sorry, we'll let Jim Tedisco, Senator Tedisco go first.

SENATOR TEDISCO: Thank you for your service to our state and for being here to testify and take some questions.

So yesterday, like everybody in this room and in the state, I was waiting for the snow in the morning. I got up, it was very quiet. Got out of bed -- unfortunately, my wife heard me. If she didn't say it once, she said it a dozen times: When are you going to go out in the driveway and clear it out, get the snowblower out? I said -- and I had a good answer -- duplication of services. The snow hasn't stopped yet. Dodged a bullet.

Got to work, she must have called me three or four times. Duplication of services, got to wait till it stops. Unfortunately, I got home about 6:30, 7 o'clock, and of course she said, When are you going to go out? When the snow stops. It stopped in about a half-hour. At 7:30 I put my boots on, went out there, took the snowblower out. About a half hour into it I was really thinking, wouldn't it be great to take a vacation to sunny Florida or to one of those sunny areas? But I also thought to myself, I never want to leave the State of

New York because I love it like you do, like most of people in this room. It's the Empire State.

I think my question in relationship to this and some of the things you've talked about of our situation in New York State and our taxes -- middle-class tax cut, great, $4 billion. We could soon be becoming the empty state, not the Empire State. And I guess my question is over a 10-year period we've lost a million individuals, migration out of the State of New York; 190,000 last year. Four or five states have that situation, of the 50 states in the nation.

If things are so good with our tax structure and it doesn't relate to the situation related to taxes and mandates and regulations, why are they leaving? Why are they leaving?

DOB DIRECTOR MUJICA: So we've said this before and the Governor has highlighted this before. New York State has some of the highest property taxes in the country. Right? We know that. It's been long, many years in the making.

One of the first things he did when he came into office, working with the Legislature, was enacted the property tax cap. And that property tax cap has, over the last seven years, reduced the growth in our taxes to 2 percent a year or less, while the rest of the nation's average growth is about 3.7 percent per year.

So we did that. We reduced income taxes for -- on the middle-class income tax cut, which is actually larger, if you look at it as a percentage of taxes that we collect and -- taxes that we collect compared to the federal government is actually bigger than what the federal government is doing for New Yorkers, as a -- in comparison. He cut middle-class taxes, cut corporate taxes, eliminated taxes on manufacturers. Right? So all of those things we're doing, and we've done them.

How we got to a high-tax state over many, many years when inflation was growing by 4 percent, you had state spending growing in excess of 5 percent per year annually. Since the Governor's been in office, we've been increasing spending at 2 percent a year for the last seven years. So actually, over the seven years, it's actually like 1.4 percent.

Why do you have high taxes? Because you have high spending. When you control spending, you can then lower taxes. That's the promise he made when he came in, and that's exactly what he's done. Control spending, then you have additional revenues. What do you do with those additional revenues? You're lowering taxes. Why do you want to lower taxes? Because of your point: People may be impacted by high taxes.

So the Legislature, working with the Governor, over the last seven years have done all of these things to make it better and continue to control spending. The federal government comes and says, Oh, we think you're a high-tax state, so we're going to raise taxes on you even further. Right? Under the principle that -- they say is that

New York is -- we're subsidizing New York. It's false, right?

SENATOR TEDISCO: I'm going to have to interrupt you, because I've only got a minute left.

DOB DIRECTOR MUJICA: Yeah.

SENATOR TEDISCO: But that tax bill has gone into effect --

DOB DIRECTOR MUJICA: It's a loaded question, right, because --

SENATOR TEDISCO: Well, you're loaded for the rest of my time. Can I just ask another question? Because you're filibustering just a little bit. I appreciate your answer --

DOB DIRECTOR MUJICA: But why are they leaving? They're leaving because there were high taxes for a long time? Perhaps. But we've lowered those taxes. The federal government came in and just raised the taxes on New Yorkers. So that's the answer. And the answer is if we have high taxes, don't raise the taxes on New Yorkers.

SENATOR TEDISCO: But they haven't

raised the taxes yet until next year. We won't feel that till next year. We lost close to 200,000 in the past year.

Very quickly, because my time is limited here, 45 or 44 other states aren't affected by this, apparently, because they're not a part of that lawsuit. What's the chance that we're going to win a lawsuit when 44 or 45 other states don't have the high taxes we have, don't have the exemptions or need the exemptions because they don't have the high taxes?

DOB DIRECTOR MUJICA: Well, I think other states don't sue because they didn't get hurt. So if you're targeting --

SENATOR TEDISCO: Right. But how are you going to win when 80 percent of the nation, or 90 percent, isn't impacted in the way you've said it?

DOB DIRECTOR MUJICA: Well, I think most lawsuits don't have -- every single person are not on them, right? You only need one aggrieved taxpayer, a couple of aggrieved parties to make the case and then win the lawsuit, which affects everyone. So you don't need everyone to join into the lawsuit. And frankly, people who aren't aggrieved are not suing.

Again, we said New York is targeted, 12 other states are targeted. New York gives the federal government more money than anyone else in the country, and the federal government wants to take more from New York, and we want to stop that.

SENATOR TEDISCO: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

Mr. Oaks.

ASSEMBLYMAN OAKS: Yes, thank you.

Just following up a little bit where we were talking before, have we done any study, or have you, related to regional impact, regions of the state? You know, you've done it by saying "in total." But just the impact of the federal tax law, either positively or negatively.

DOB DIRECTOR MUJICA: I think we know where there's higher income taxes or there's higher property taxes, they're impacted less {sic} than other parts of the state. Right? So we know that.

The higher the income taxes, the higher the home values, you're impacted more. So we know that. And you know, you know, if you look at the congressional vote, right, where it came from. So you can see certain regions are impacted more than others. So we know that.

But you have to look at the state in total. Because again, you have the vast majority of the personal income tax revenue comes from New York City, Nassau, Suffolk, Westchester and the Hudson Valley. And to Senator Tedisco's point, if those people leave the state, we lose money. And we need that money to fund education statewide, Medicaid statewide.

So that's the concern. The concern is you can't say, well, it didn't affect one part of the state so it shouldn't matter. It affects the state because the revenues come from the entire state. And if one part of the state is hurt and it impacts -- their home values go down 10 percent, their property taxes go up, their income taxes go up, and we're less competitive to the other states -- some people cite Florida -- the federal law made us that much less competitive than those other states.

So if it impacts any part of the state, it's going to impact us. And if you impact the part of the state that produces a lot of the revenue, then it's really going to impact the whole state. So I think it's not just a matter of how it impacts that individual on their taxes, but it's how it impacts potential state revenues, and that's where we're really at risk.

ASSEMBLYMAN OAKS: One of the things I'd like to jump to is dealing with issues around the opioid crisis in the state. And certainly I agree with efforts to try to respond to that.

Of course one of the proposals in the budget is to raise revenues through a tax that would be created on that. And one of the things I did see, that 12 states tried to do that last year, but it's pretty complex. And looking at the overall structure of how drugs move through the system and then who's using them. And I guess I have a couple of questions. None of those other states actually ended up doing it.

But we have -- it also falls to we're taxing treatment by doing that, because people who are accessing some of those treatment drugs, those drugs are also being taxed in the midst of this.

So I guess just some questions looking at -- and again, it's a complex way -- why the other states didn't end up doing it, it got, you know, very difficult and maybe some unintended consequences came out of it.

So I guess just questions on why would it apply to people or the drugs that are used for people in treatment?

DEPUTY COMMISSIONER HILLER: The opioid surcharge proposal would be applying a surcharge on the first sale into New York State of an opioid. The funds being generated by that surcharge are being dedicated to fund opioid treatment programs that are paying for those drugs, and so those programs will be whole. It's the ultimate goal here to impose a surcharge that will flow to the manufacturers of opioids, and where at the end stream it's being used for drug treatment programs, the surcharge is being dedicated to support exactly those programs.

ASSEMBLYMAN OAKS: So, you know -- and I guess I understand that some -- but, you know, hospice, because they're end users, they're paying for it for treatment.

You're suggesting, though, those dollars -- I mean, in hospice care it wouldn't be for -- you know, they wouldn't be getting money for treatment or, you know, for other uses -- cancer treatment and others where there's legitimate postsurgical pain and whatever, where I think the prescription of those is legitimate. Where we've gotten into problems is certainly in overuse.

But so you were just talking about the structure. So who is the target? Because --

is it the manufacturer? My understanding was the tax would be more -- in most cases, the provider would be paying the tax.

DEPUTY COMMISSIONER HILLER: The tax is structured as a tax on the first sale into New York State. That's the first point where our state tax code can reach the chain of commerce for a drug. So if the manufacturer is selling directly into the state, the manufacturer would be paying the surcharge. If a manufacturer sold to a distributor who's selling into the state, that distributor would be paying the surcharge.

That's as high in the chain of commerce as the state can reach. But the goal is to reach as high into the chain of commerce as we can.

CHAIRWOMAN YOUNG: Thank you.

Quite a few follow-up questions.

First of all, to Director Mujica, you said there are 3 million taxpayers in the state who pay property taxes, and there are 1.7 above the $10,000 per year line, they're paying more than $10,000 a year in property taxes. So the question is, does that mean that 1.3 million taxpayers are getting a tax break?

DOB DIRECTOR MUJICA: Let me clarify. It's 3.3 million taxpayers who presently itemize. 1.7 million of those pay state and local taxes in excess of 10,000.

CHAIRWOMAN YOUNG: Right.

DOB DIRECTOR MUJICA: So some of those will maintain state and local tax deductibility to a certain degree. There's a lot of other factors, but presumably they have below $10,000 they can still claim deductibility. So some of those, right, are still being able to deduct their taxes and presumably the combination of both is below the $10,000 threshold. But we have 1.7 million New Yorkers whose state and local sales taxes are above the $10,000 threshold, and that's the 14 --

CHAIRWOMAN YOUNG: So the remainder from the 1.7 theoretically would be getting a tax break from the federal tax reform.

DOB DIRECTOR MUJICA: There are other

factors, right, so I can't speak to whether or not they're going to get -- and what that dollar value is. It could be dollar one, dollar two.

But the bigger metric that we were just using to come up with that number is just state and local taxes. So presumably some of them fall under the $10,000, so they're still able to maintain state and local tax deductibility -- at least they're maintaining their state and local tax deductibility. But the remainder don't.

CHAIRWOMAN YOUNG: So we're on a tight time schedule now, and the 30-day amendments are set to be due on February 15th. And you're talking about totally restructuring our tax system in New York, and it sounds quite complicated, from what you said; somewhat confusing, potentially. And will all of these proposed changes be included in the 30-day amendments? Because I would hate to get up close to the budget deadline and not have details on what the Governor is proposing and then have to go through all these complicated changes to the tax law and not have enough time to fully vet those changes.

DOB DIRECTOR MUJICA: Yeah, I think the Governor understands that timeline as well, and that's why we've been working hard, the Tax Department has been working harder trying to draft -- have these pieces drafted so we can give you detailed language with the 30-day amendments. Because we recognize that it is -- you will need time to deliberate, we will need time to work through the issues.

So the anticipation is that you will have language for the vast majority of these, if not all, on the 30 days -- for the 30-days.

CHAIRWOMAN YOUNG: Thank you, Director Mujica.

Now I would like to follow up on a line of questioning that Assemblyman Oaks asked about, and it's on the first sale of opioid drugs in the state. And he was getting to this. And I know that there's language included in the Governor's proposal that says it won't be passed along to consumers. But how can you ensure that?

If you're charging more taxes, a new surcharge on the first sale of opioid drugs in the state, isn't it very likely that a drug manufacturer would pass that along to consumers?

DEPUTY COMMISSIONER HILLER: Yeah, I think that there are competitive factors that drive drug pricing now. And to the extent that we're looking at imposing a surcharge fairly high in the chain of commerce, we're certainly -- you know, certainly the intention of the bill is to make the cost of sales into New York a higher cost for those opioid manufacturers.

CHAIRWOMAN YOUNG: Right. But then who pays for that? Just the manufacturer? If it costs more to manufacture a drug, usually it's passed along to the consumers. Am I correct?

DEPUTY COMMISSIONER HILLER: I think in the case of opioids that, you know, as long as we can provide for end-uses that are important such as drug treatment, the notion that we're increasing the cost of opioids is a public policy goal here, I think.

CHAIRWOMAN YOUNG: Yeah, but -- so I have a lot of follow-up on that. Because as you know, in the Senate we have been very, very aggressive in passing a lot of policy to deal with the opioid and heroin crisis. We pushed last year for $227 million to be included in the budget. That was above what the Governor originally proposed by a lot of money. And there's concern about the costs heading downstream on these, such as pharmacies, for example. And I had a hospice come to me yesterday, just this week, and they are scared to death of this change because obviously, all of a sudden, with these high taxes and this surcharge, there's going to be a disincentive for these opioid manufacturers to actually sell in New York.

Obviously, we've had a crisis, people have abused opioids, and that's created a lot of problems that we face now. But if it creates a shortage, how does that affect entities such as hospice that need to have those opioid drugs to make sure that people are comfortable as they are going through the end of life and suffering?

So how can you ensure that manufacturers might say, Okay, New York, you're going to hit us with this huge surcharge, we're just not going to sell our drugs in New York State?

DEPUTY COMMISSIONER HILLER: Number one, I think the market for opioids in New York is a strong one, and I don't believe that any of our health policy experts anticipate that outcome.

I think the goal of this proposal is to impose a modest surcharge that will fund critical opioid treatment programs, and that the cost of those treatment programs should be borne, to the extent that we can achieve it, on the manufacturers of opioids.

CHAIRWOMAN YOUNG: I still have some deep concerns about this particular proposal and a lot of the tax increases. As you know, our conference has been working very hard to make New York more affordable, not less affordable.

Just switching gears, I know you're actually talking about the Brownfield Cleanup Program as having a deferment, and also the Low Income Housing Tax Credit. So I just want to go over a little bit of history here.

As you know, in the 2016 enacted budget, following more than two years of negotiations, the state made a significant commitment to clean up the environment, to provide a mechanism to create affordable housing by extending and amending the Brownfield Cleanup Program. Following two more years of negotiations, the state again made its commitment to affordable housing clear by including $2.5 billion toward a multiyear plan to provide 100,000 units of affordable housing.

However, this year's Executive Budget proposal threatens all of those advances and future development with language to delay payment of Brownfield and state Low Income Housing Tax Credits. You're talking about some actions that were taken in 2010. I would like to remind you that 2009 and 2010 were very bad years for the state, and a lot of people in the communities across the state, people investing in our state felt that the state actually broke its promises.

So what is the rationale behind the deferment, number one? And for example, on the Brownfield Cleanup Program -- and I'll be asking this at the EnCon table too. But how many projects will be affected by this deferment? Will it stop these projects in their tracks? Because all of a sudden you're taking away something that people were counting on to clean up these contaminated sites.

DEPUTY COMMISSIONER HILLER: The proposed business tax credit deferment in the Executive Budget does not change the entitlement to credits. Taxpayers will continue to accrue credits as they are accruing them now. It's changing how the credits get paid out over time. But the entitlement to that credit is unchanged under this proposal.

CHAIRWOMAN YOUNG: Right. But it's deferring, it's delaying it. Do you think people can afford to invest in these projects if it's deferred down the road? They're counting on that investment now, that commitment now from the state.

DEPUTY COMMISSIONER HILLER: I think the proposal contemplates that the first $2 million of each credit will flow in order to, you know, be that -- that will cover most tax credit claims. And the -- because the entitlement to that credit is defined under current law, taxpayers can book that credit that they have earned on their books for future years.

CHAIRWOMAN YOUNG: As I asked, could you give me the number of projects that would be impacted by this proposal?

DEPUTY COMMISSIONER HILLER: I don't have that number in front of me. We can certainly try to get that.

CHAIRWOMAN YOUNG: Just following up on the Low Income Housing Tax Credit, I have a particular interest in this, there's been a disruption in federal pricing, the federal -- there's been a disruption in pricing federal low income housing tax credits due to the comprehensive federal tax reform. And you're aware of that. The industry is reporting that tax reform may devalue the credit since it is tied to the corporate tax rate. The lower the tax burden, the less credits will be worth to investors. And that's of deep concern. And I've had a bill that I've carried in the past that would bifurcate the federal from the state's low income housing tax credits.

The state low income tax credit could be a resource for filling financial gaps with the federal credit. However, the Governor's budget proposes delaying the state credit for two years, as we discussed. This means investors would not be able to remit the credit right away, which could have a detrimental effect on its value. A similar measure passed in 2009-2010, as you pointed out, and had a reverberating effect on the program. Partnerships were broken that caused financial losses for investors and resulted in a lack of faith in the program, which is the wrong way to go.

We are now hearing that many investors now price risk into their operating agreements. Stipulations provide that if the credit is delayed, the developer will pay 10 cents on every dollar, which is extraordinarily problematic. This can create an equity hole for the developer when they move from construction financing to permanent financing. The developer must make up those gaps, which can have an impact on housing affordability. And the Legislature and the Governor have prioritized housing affordability.

So can you provide a list of state low-income-housing tax projects that are in the pipeline so we know how many of these projects are going to be so negatively impacted?

DEPUTY COMMISSIONER HILLER: Again, the Tax Department doesn't have that list.

We can certainly try to get one.

CHAIRWOMAN YOUNG: If you could get it, that would be very helpful.

Just switching gears, the Executive Budget contains a proposal to close the so-called carried interest loophole by adding 17 percent, called a fairness fee, to certain compensation earned by hedge fund managers. The proposal would only go into effect in the event that surrounding states pass substantially similar legislation. Wouldn't substantially similar mean that our neighbors could pass similar legislation with a much lower fairness fee and draw businesses away from New York?

DEPUTY COMMISSIONER HILLER: The proposal would take effect here if our neighboring states enacted substantially similar legislation. The proposal doesn't call for identical legislation because our neighboring state have different structures to their tax code, so it can't just be an exact duplicate.

But I believe that the proposal

contemplates a similar level of a fairness fee. There's nothing to stop our neighboring states from enacting taxes of their own at whatever levels they choose. But our goal here is to address the carried interest loophole but make sure that we're advancing it in a way that doesn't reduce our competitiveness as compared to our neighbors, by ensuring that we work together with our neighbors to address this issue.

CHAIRWOMAN YOUNG: Where are we at with dealing with other states?

DEPUTY COMMISSIONER HILLER: I believe there are conversations happening with other states. I don't know that this individual proposal is moving forward or not moving forward, because frankly those conversations are above my pay grade.

CHAIRWOMAN YOUNG: Switching gears again, the Executive Budget proposes a $25 million retroactive tax increase on two upstate gaming facilities. So the question is, how can the state retroactively impose a tax increase of this magnitude on two upstate facilities just a couple of years after giving them tax parity with commercial casinos that they are forced to compete against?

DEPUTY COMMISSIONER HILLER: I would have to say that that's outside the Tax Department's expertise. Those taxes are managed by the Gaming Commission.

CHAIRWOMAN YOUNG: Okay. So we'll have to follow up on that.

And finally I wanted to ask about -- there's a proposal regarding -- so this year's Executive Budget includes to extend the sales tax to online marketplace providers such as Amazon and Etsy. The Supreme Court recently agreed to hear the case South Dakota vs. Wayfair, which will address this issue on the federal level.

So I think that the arguments are being heard in April of 2018, the court is expected to rule in June of 2018. Wouldn't it make more sense to wait and have this outcome of the case become apparent before the state takes action?

DEPUTY COMMISSIONER HILLER: I mean, we're certainly watching that case closely. That case relates to whether the standard for nexus, at what point a state can impose a sales tax collection obligation on a business that's not necessarily in New York State. There are limitations on when we can and can't impose a sales tax obligation. And we're watching closely that Supreme Court case that has the potential to change the standard and allow states to reach businesses that are outside their borders more easily.

But the proposal in the Executive Budget is a little different. The proposal is looking to the marketplaces that are facilitating sales. We're looking to marketplaces that meet the current nexus standards already, but we're only looking to impose collection obligations on marketplaces that have nexus to New York State.

But the idea is to impose the collection responsibility where the money is handled. When I go to Amazon and I purchase from Amazon, Amazon is collecting sales tax and remitting it to New York State. But in the fine print on my screen, it may that be the sale I feel like I'm purchasing from Amazon is really being fulfilled by some third-party vendor. And Amazon may be collecting tax on that sale and remitting it to the third-party vendor, who then we hope would send it to New York State.

But the idea of the marketplace proposal is to require the marketplace that is facilitating the sale, that is making the sale possible, that is taking in the money, that is processing the transaction, be the entity that is required to collect and remit the sales tax. Because that's where the functionality for that responsibility lies.

CHAIRWOMAN YOUNG: Right. But this Supreme Court decision may have an impact on anything that the state does. So the question is, why not wait? Because we're looking to reverse a '92 decision, Quill vs. North Dakota, and -- which that basically says that the -- you know, it deals with purchases over the internet, and I know South

Dakota is arguing that the 1992 ban on online tax collection is obsolete. I know all that.

But why not wait just a few months and see what the Supreme Court does? Because that could impact what we're doing here in the state.

DEPUTY COMMISSIONER HILLER: Yeah, again, you know, we're watching that case very closely because it creates the potential for us to impose sales tax collection responsibilities on out-of-state vendors that are doing substantial business in New York State and that are competing against New York brick-and-mortar businesses.

Even if that Supreme Court case goes in favor of states' ability to reach out-of-state vendors, we still think that the marketplace proposal is the right proposal for managing the collection of sales tax from these large online marketplaces, because that's where the money is collected. It's Amazon that is taking my credit card, that is billing my credit card for the sale. It's not the third-party vendor whose goods are in an Amazon warehouse waiting for Amazon for ship them to me.

And because the marketplace is the one that's processing the money, we believe that that is the right place to impose the collection responsibility, regardless of whether nexus expands to other vendors. We still think that the vendors who have nexus to New York State should be the ones who have that responsibility.

And with that comes some relief for the small vendors who may be selling goods on that marketplace. Right now those vendors are liable for the sales tax that they may or may not have been collecting or remitting. And when we come across them in our audits, they have to come up with the money and pay us the sales tax that they should have been collecting. When the marketplace is held responsible for that collection and remission responsibility, they can now relieve those small vendors of the obligation to do that themselves.

CHAIRWOMAN YOUNG: Thank you.

I just want to finish up by saying that there are a lot of revenue actions in the Governor's budget that our conference, the Senate Republican Conference, is very concerned about. And as Director Mujica pointed out, we have worked together very successfully over the past few years to reduce the tax burden on New Yorkers. And these revenue actions are actually tax and fee increases.

So it does raise a lot of concerns in our conference, and I just wanted to make that statement.

Thank you.

CHAIRWOMAN WEINSTEIN: Mr. Oaks has a follow-up question.

ASSEMBLYMAN OAKS: Yeah, actually Senator Young, I was thinking, might have covered this one too because she covered most of the tax implications. But one of them that she didn't mention that I'd like to just ask a quick question on, the health insurers' 14 percent surcharge that the Governor discussed and used as his justification of saying, you know, they're going to see a windfall from the federal changes, and so basically we're going to do the surcharge to take those dollars away.

I'm just wondering if in that calculation there was used determination of just how the feds are going to treat them in their deductions and what they do as income -- you know, how they treat that -- so that it may make that different than what -- you know, simply taking a percentage calculation to do that.

So just --

DEPUTY COMMISSIONER HILLER: I mean, I think the issue here is that the rates that these health insurers are allowed to charge were set based on the prior tax code. And so the rate reduction that they're receiving as a result of the federal tax changes is on top of the tax allowance that was built into their rate schedule for the upcoming year. And so the goal here is to recapture that gain, because that's on top of the rate-setting process that has already taken place this year, based on the tax code as it existed before December.

ASSEMBLYMAN OAKS: The issue I guess just is as we go forward and look at that, we just need to make sure we're calculating in a way that's appropriate with trying to meet the goal that you are.

DEPUTY COMMISSIONER HILLER: Of course.

CHAIRWOMAN YOUNG: Senator Krueger.

SENATOR KRUEGER: Thank you.

So actually following up where Senator Young I think ended -- it's interesting, she and I have questions about many of the same things, but we land in different place on the answers. So following up -- or our conferences do.

CHAIRWOMAN YOUNG: That's shocking.

SENATOR KRUEGER: Shocking.

(Laughter.)

SENATOR KRUEGER: So I am actually a big supporter of the internet marketplace tax. And I think what's important -- and Ms. Hiller started to address it -- is for us, in the same way as in the discussion about what the feds just did in tax law and how we need to adjust perhaps the way we've been thinking about taxes for a hundred years because of what the feds did, when it comes to the internet marketplace -- and I would argue that the world we're living in, we need to completely reevaluate how we think about taxes and policy when it comes to internet business.

So in fact when people talk about crime today, they're talking about cyber crime, a completely different set of issues than police and DAs are used to. And when you're talking about business models today, and how to regulate and tax them, you have to ask the questions what makes sense in a world where everything is on the internet.

So the fact is -- and thank you for explaining it the way I understand it -- right now there's a competition going on between bricks-and-mortar stores who are in our communities and hire people from our neighborhoods and pay all kinds of local taxes and sales tax when you go and shop somewhere versus the world of internet shopping, which I do and more and more of the population does, but it actually reduces our taxes to our localities and our counties and our state and creates an uneven playing field.

And that what is so important to understand with the internet tax proposal -- and again, we do need to see where the Supreme Court goes or doesn't go to in fact expand and address this issue in a larger level. But it's not a new tax on people. It's a tax that sometimes is being collected, it's just not being paid.

So it makes it an even more uneven playing field. And I hear from our local governments and our county governments that their sales tax revenues are plummeting, there's fewer stores -- we have all kinds of empty storefronts in Manhattan because nobody is going shopping in stores. And yet we haven't caught up with it with the tax policy.

So I applaud the Governor for that proposal, and I hope we'll go forward. But I want to emphasize it's not a new tax, it's an equal distribution and fair tax policy.

But on that note, I also want to highlight and go further than I think Senator Young went about the concerns around the tax credit deferrals. And she talked specifically about the Low Income Housing Tax Credit, which I completely agree with her on. At a previous hearing it also came up around -- I think she talked about brownfields but also about historic rehabilitation tax credits. And I just want to highlight as well we're even putting tax credits on green energy proposals that the Governor had just implemented.

So for example, it puts a limit on the electric vehicle charging infrastructure, even though the Governor has a commitment of 10,000 EV chargers installed by 2020. And we were supposed to hit the 3,000 mark this year, and I don't think we're going to, but we still have the 10,000 mark we should hit by 2020. But again, deferring the tax credit -- even though it's a deferment, not a taking away, can absolutely impact whether the businesses who have gone in to commit to expand our electronic vehicle infrastructure think that they actually can afford to go forward with this kind of infrastructure change and the sustainable and green energy changes.

So whether it's for Tax & Finance or perhaps for Mr. Mujica, I get what the Governor is proposing, to defer because we have a financial problem. But why did we look -- or how did we look at these? So some of these, which seemed to be so important from a good public policy perspective, are on the list. And yet we've got a tax expenditure budget that totals almost $30 billion, I believe. And we didn't look at most of the tax credits and exemptions that are within that $30 billion tax expenditure report or budget. And some of those things I don't think we've looked at for 10 or 15 years, and I can't see a good justification.

So why did we decide on these when a number of them seem to be critical good public policy tax credits, but we're spending $500 million a year on a golden bullion sales tax exemption. One, why? And two, why not defer some of theirs? Why not defer some of the $1.5 billion we write off in tax exemptions for the petroleum products in this state? There seems to be a disconnect between public policy thinking and revenue thinking. So I'm just wondering.

DOB DIRECTOR MUJICA: I think we -- actually, the vast majority of the business tax credits are the ones that are deferred. We can go through with you, you know, if there are decisions made. But to address your issue, we didn't necessarily pick and choose. There are a few that we took off that were very recent. Otherwise, the vast majority of them are there.

Some of the ones you just mentioned are not really things we can defer at all, just because the implications of them are not, and the tax expenditure report doesn't necessarily accurately reflect them. So we can go through those. The gold bullion thing is not a real tax credit, if you will. Every state has it. It just relates to the sale of gold overall. No one would sell it here in the state.

So we can go through all of those with you. To your point, we didn't -- we tried to be agnostic to these individual programs, and we're not cutting them, which I think was a key distinction that Amanda mentioned, right? We're just deferring them. We're also allowing the first 2 million to flow through. So the first 2 million actually happens. It's above 2 million, so the larger ones are the ones that are deferred, and then those will -- they'll be able to claim those credits in three years.

So when this was done last time, a lot of those we know that they still claim the credits three years later, because three years later they came and they claimed the credits. So they didn't lose them. So businesses can still maintain -- can keep that on their books and claim them later.

So that was the intent. We didn't go through each individual one, we took most of them and said we're going to defer all of them, with the exception of only like a few. A handful.

SENATOR KRUEGER: My time is up, so I'll go a third round.

CHAIRWOMAN YOUNG: Okay, thank you.

Senator Savino.

SENATOR SAVINO: Thank you, Senator Young.

A lot of the areas have been covered by other members, but I want to go back to the opioid surcharge, because I'm confused as to how it would flow. And maybe if we hear it one more time it will sink in.

So right now we'll take Oxycontin, manufactured by Purdue Pharma. So Purdue Pharma could sell it into New York State through either hospices, nursing homes, healthcare institutions. Or, more likely, they're negotiating with pharmacy companies like CVS Caremark.

How would it affect them? Who would pay the surcharge at that point then?

DEPUTY COMMISSIONER HILLER: Again, the surcharge is on the first sale into New York State. And that's really because, for the same constitutional issues, we can only reach that first sale into New York State.

If the manufacturer is selling directly into New York State, then the surcharge would be applied to that manufacturer. If the manufacturer is selling to a distributor like CVS Caremark and then CVS Caremark is selling it into the state, then --

SENATOR SAVINO: Okay, so stop at that point. How do we then prevent CVS Caremark from passing the cost on to the consumers at the counter in the form of an increased copay?

Because I think we all agree we need to do everything possible to reduce the overreliance on opioids and the corresponding effects that it's having on our state. I think everyone agrees with that. It's just what do we do to prevent them from passing it on to the patients, who are already suffering with the addiction issue? And what we do know is if you make a product too expensive for patients, they are going to turn to the tried and the true and the cheap, and that is heroin.

So I think we just have to be careful that as we go down this road, that -- this is more of a comment than a question -- that we prevent them from passing it on to the patient. Anything we can do to prevent people from going into the black market is important.

And on that issue, I want to turn to -- it's a very small proposal in the budget, it only produces $3 million this year and $5 million annually thereafter. It would be the health tax on vapor products. And the Executive proposes to regulate and tax vapor products in a similar manner as cigarettes. Vapor products are defined as any noncombustible liquid or gel regardless of the presence of nicotine.

Fine. But I think we need to exempt the medical marijuana program. The vast majority of patients that don't use sublingual or oils use the vaporizing method of delivery. The cost is already exorbitant for patients in New York State because of the size of the market, and we control the price. I would just ask that we exempt that vaporizing method for medical marijuana patients.

Thank you.

DOB DIRECTOR MUJICA: Senator, just if you could, just on the opioids, because I know a couple have raised the same question.

There's two parts to this. One is, there are some price protections in place for consumers with regard to price, so we are sensitive to that. The other part is there's an alternative policy rationale for it, which is also a deterrent.

So we all know that there's an overuse of opioids, and the amount of prescriptions that are being written are probably far more than need to be. We also know that there are many alternatives that a lot of pharmaceutical manufacturers, hospitals are practicing. They have non-opioid emergency rooms now, they're using alternatives.

So -- also the desire here is also to promote alternatives. So a deterrent, necessarily, for opioids if you have to, but there's an overuse problem. And imposing the tax also might discourage some use and promote some alternative pain relief as well.

Where the line is and what that does, I think we have to work on that. But there's an alternative policy rationale besides just funding the programs.

SENATOR SAVINO: I agree totally with that. I'm just -- from experience and seeing it out there, if you push patients too far too fast, they will not necessarily make the best decisions.

But with respect to having an alternative option out there, we do have one. It's called medical marijuana. Unfortunately it can't be used the same way, and it's incredibly expensive.

So again, let me just reiterate. If we could exempt medical marijuana patients using vaporizing as the method of delivery, I think that would be only fair to people who are already paying a very high cost for a product that's providing the relief that is an alternative to opioids.

DEPUTY COMMISSIONER HILLER: We'll certainly take a look at that.

I would note that the proposal to tax vapor, you know, would put the administration of the tax on vapor in the same section of the Tax Law as the tax on tobacco products. And medical marijuana, the distribution structure for medical marijuana is very tightly controlled and is outside the retail chain that the cigarette taxes generally apply to.

SENATOR SAVINO: I just mention it because the language says "regardless of whether nicotine is present." So I just want to make sure it's the pen itself.

DEPUTY COMMISSIONER HILLER: We'll

take a look at that. But at the same time, to provide some comfort, that tax structure relates to tobacco distributors to tobacco retailers. It's falling into that same tax structure.

SENATOR SAVINO: Okay. Thank you.

CHAIRWOMAN YOUNG: Thank you.

Senator Tedisco, and then I have some more questions.

SENATOR TEDISCO: I keep hearing this over and over again. The last seven years, we've -- everybody in the State of New York pays less taxes. Well, that cannot be possible, because there are some very high-taxed communities in terms of the property tax.

And if you tell me we're not responsible, the state's not responsible for property taxes -- I don't know where you live, but when I get my property tax bill, it has a line that kind of wised up to what's going on: Mandates related to state, in terms of the cost, 75 percent on my bill. So telling me that in a state where we've lost a million people over 10 years in population, 190,000 last year, is like saying you met a man in the desert who's been there for seven years. You take out the water, I'm going to give you some water, and you put it in a thimble and say: Drink and be well.

Clearly, we haven't reached a point where we're reasonable now, or moderate now, or competitive now, in relationship to that. So I think that's a real concern to many of my constituents.

You talk about the 1.7 million individuals who go above that $10,000 threshold for income and property taxes. I'm interested in that 1.7 million who are meaningfully and profoundly impacted and who are to some essence impacted. In that 1.7 million, I'm sure there's people who are $10 above the limit, $5 above the limit, $50 above the limit, $100 above the limit; it has some little impact on them. But that's a pretty large number, 1.7. I'd like to know who are those individuals who can actually move to the other side and do standardized and really come out as even as they were with taking the specifics, itemizing. But if you have any figures on that, where income levels go above, really how they're impacted on that.

And another question I have is this. You said we shouldn't impact the part of the state that provides the most revenues. Were you talking about the individuals the Governor was talking about, about a week or two ago, when he said that the rich and wealthy individuals in downstate are going to leave the State of New York because of what the federal government is doing? Because if you're talking about that and the administration is talking about that, them leaving the state because of too progressive taxes, you know, I see Walmart giving out bonuses. I see a lot of these big businesses and corporations giving out bonuses. If it's going to be so negative for our rich and wealthy and they're going to leave the state, isn't that kind of talking out of both sides of your mouth? Because last year we were told we cannot give or continue that $4.5 billion middle-class tax cut because we need more progressiveness and we've got to keep that so-called millionaire's tax. That millionaire's tax was supposed to sunset last year. We were told we can't live up to that obligation we put forth.

Millionaires is -- some of the small businesses or many of the small businesses of New York State, those are the people who provide, if not most, a tremendous amount of the revenue. You know, on the one hand you're saying we've got to have a progressive tax structure. And I believe in that. People who make the most money in income should pay more than those who are lesser. That's progressive. When you get too progressive, overly progressive, you get regressive.

And to suggest last year those people we got to tax more progressive so we get -- but this year when you suggest the federal government is going to increase on the rich and the wealthy -- because that's what the

Governor said, they're going to leave the State of New York -- now you're talking the trickle-down situation. You're going to tax those rich and wealthy, they'll leave. They won't invest, they won't do research on new products, they won't stay in New York State.

And I'm thinking maybe this quarter might be a pretty good quarter for revenues and bonuses because of what happened at the federal level.

So I'd kind of like your take on some of those things.

DOB DIRECTOR MUJICA: I hope too that it's a good quarter for revenues and bonuses, because it would help with, you know, the budget gap that we have.

The state tax code is very progressive. We have -- personal income taxes have gone down, as a matter of fact, for -- personal income taxes -- for all New Yorkers. And corporate taxes have gone down. The rates have gone down for corporations, the rates have gone down on personal income taxes for all.

When you ask for -- is it meaningful and a profound impact on the 1.7, I turn it the other way also, when we talk about was there benefit for the remaining people, for the other million. Right? Is there a meaningful and profound tax cut for them, or did we take away tax deductibility and give them a $1.50 a week benefit, as was recently claimed? Is that meaningful and profound?

So is the tax cut that the federal government gave to that group meaningful and profound? We think not. The greater -- what they did, we know, is -- 14.3 billion is meaningful and profound overall for New Yorkers. And when we talk about the progressivity of -- you know, are we concerned about the impact on the people who pay the high rate in New York State? We've always been talking about a marginal difference. We're talking about a tenth of a point, a marginal change.

What the federal government does was increase the rate by like 25 percent. That is something we're concerned about. It's one thing to work on the margins and to say this has been the tax that has been in place. The high rate is actually lower than it was when the Governor took office. So we know what that is. But what we have not seen is having people's property taxes go up by 10 percent, having their home values go down by 10 percent and having the -- for the high earners, having their rates go up by 25 percent. None of which accrues to the benefit of New York State. All of which accrues to the betterment of the federal government. It's a cash grab from the federal government to them, to fund their tax cut -- some of which is tiny -- and it hurts the state.

So we've reduced taxes, and I think the Governor will say he worked very well with the Legislature to cap property taxes. Can we do more? Yes. And we have been.

And as far as mandate relief, we've done that too. I know people want to do more. But we've capped Medicaid. Medicaid -- when the Governor took office, Medicaid was -- 25 percent of Medicaid was funded by local governments. Now it's 12 percent, 12 percent. And it's going to go down every year because it's capped. The state's picking up the entire amount of Medicaid.

That's a huge achievement. I mean, some of the counties don't want to acknowledge that. I get it, because they want more --

SENATOR TEDISCO: But that's a differential of most of the states in the United States of America. That's why we're so different.

DOB DIRECTOR MUJICA: Yeah. We also get the lowest FMAP rates in the entire nation. Not only do we give the federal government $48 billion, we get reimbursed at the lowest rate out of any other state for Medicaid, at 50 percent. That's the lowest rate. Some states get 75 percent, some states get a lot more.

So we get less than the federal government. We've agreed to do that because we're a high-income state. But it's not fair to take even more, and take even more under the guise that it's a tax cut for the middle class. It is not. It's a $1.5 trillion tax cut that was paid for with deficit spending and impacts New Yorkers negatively. It impacts the state by $14 billion.

So that's the reality of it. We can help to fix that and mitigate it, but we can't deny that it happened and we can't do nothing.

SENATOR TEDISCO: Thank you.

CHAIRWOMAN YOUNG: Thank you.

Just a couple more questions. Just back to the opioid tax that's proposed. How much revenue is that projected to raise?

DEPUTY COMMISSIONER HILLER: It's projected to raise $127 million in Year 1 and $171 million in Years 2 and outyears.

CHAIRWOMAN YOUNG: So all of that, 100 percent, would be used for opioid prevention, recovery, treatment, all those services?

DEPUTY COMMISSIONER HILLER: The proposal dedicates that surcharge to an opioid prevention treatment fund and opioid treatment.

CHAIRWOMAN YOUNG: A hundred percent? It wouldn't be used for anything else?

DEPUTY COMMISSIONER HILLER: I'm hopeful that some tiny, minuscule fraction of that will allow us to recoup some of our costs in administering it, but I don't remember whether that's a piece of the bill. But even at that, that would be some tiny, tiny fraction of it, and my guess is it probably didn't make it through the process.

CHAIRWOMAN YOUNG: Thank you.

And then just a final question. I know Senator Krueger asked about the credits that are affected by the deferment. And there are several, it's not just the brownfields and the low income housing tax credits, the biofuel production credit, disabled worker credit, farm workforce credit, credit on SONYMA mortgages, green buildings, jobs retention credit -- and that's just a partial list.

I think, according to this sheet that

I have, these are the credits that -- it's hard to see, obviously, but these are the credits that are affected (indicating). These are the credits that are not affected by the deferments, and that's a lot easier to read, because it's much shorter (indicating). It's the Excelsior Program, the film post-production credit, commercial production credit, Youth Works credit, Hire a Vet credit.

Are there any other credits that are not affected by the deferment? Or is that basically it?

DEPUTY COMMISSIONER HILLER: I don't have that list in front of me, but that sounds about right.

CHAIRWOMAN YOUNG: Okay. And just because you're proposing to affect all these other credits by deferment, how did you choose those five credits?

DEPUTY COMMISSIONER HILLER: Some of them, like the Hire a Vet credit, I don't believe we have any taxpayers that are claiming more than $2 million on that credit.

CHAIRWOMAN YOUNG: What about the film production credit?

DOB DIRECTOR MUJICA: We left two credits in place, the film production credit -- the main credits that remained were the film production credit and the Excelsior credit.

And the Excelsior credit we're still using, it's an active credit that is our main economic development tool. So in the interests of being able to still maintain some ability to bring new businesses here and do some economic development incentives, amongst all of that list -- I think, you know, it's a good thing to look at that whole list, because they've been created over time and they still remain -- but the Excelsior credit is one we're actively using as an economic development tool, that ESD uses, and the film production tax credit is one that's actively creating jobs right now, and it's a significant amount.

So those two, in addition to the vets -- and I think there was one other. But that's really the rationale behind that.

CHAIRWOMAN YOUNG: I see Youth Works credit.

So, you know, and I fully agree with you, especially on the Excelsior credit, because we've used that to create jobs all over the state. So I'm glad to see that that's left alone.

And I just want to say thank you for being here today. I know it's been quite a lengthy process, but a lot of good information was shared with us today, and we really appreciate it.

CHAIRWOMAN WEINSTEIN: Likewise, I want to thank you for being here, and I hope once --

CHAIRWOMAN YOUNG: Oh, I'm sorry, Senator Krueger has another round. I apologize.

SENATOR KRUEGER: Sorry. Well, I also appreciate your being here. I'll just keep you a few more minutes.

So for years I've been proposing that the way we could increase revenue -- not with a new tax, but with a fairer structure -- is to go after what is being seen around the world with people collecting sales tax but not paying it to the states. And we are now one of the few states that hasn't gone to some kind of automated system of tracking at the location the actual taxes collected, but then not tracking to see that they get paid.

So we still do a robust audit process, and we hear from people that it's very actually time-consuming, both for the businesses and for the state, to do all of these audits. But more and more around the world, they're actually using automation to actually track. And there are researchers who have projected that New York State could easily collect another $2 billion a year, not in new taxes, but in taxes that actually are getting paid by consumers and never being moved to the state.

So since we haven't gone the automation route, are we collecting that money and I'm just not aware of it? Or, I mean, why are we not doing what other states modernizing are doing?

EX. DEP. COMMISSIONER MANION: I think that we are using automation to collect a lot of tax, because we get third-party information. We get third-party information from the banks as far as like credit card information for the sales of the different businesses.

And as you know, not everything is taxable at the point of sale. So we use our business analytics to use the information we get from the credit card companies, we get information from the third-party sources -- beer, wine and liquor, they report to us on a regular basis. We have information from the cigarette distributors.

So we have a profile of all the different businesses, and like businesses, so that we can use that to identify those that fall out of the norm to apply our audit techniques to.

As far as tracking everything at the site, I know I've seen some of this in place. I've also seen where they just don't enter it. You know, it's as easy as leaving the cash register open and not putting the information into it. So there's a lot of ways of not paying the tax, not recording the tax. I think our audit program and us having that third-party information is fairly efficient. I'm sure it's not picking up everything. But I think we get better at it. We use a lot to identify where there is a compliance issue. And we use third-party information to calculate what the tax would be.

So when we go into a business, a business that normally gets selected, they probably don't have a great point of sale, they probably don't have a lot of good internal controls. And so we do end up doing what we call an indirect audit. And by doing that, what we find from like their suppliers -- you know, how many pizza boxes did you buy, versus how many did you record as sales. And so we use that type of information to get at the accuracy of it.

I think that New York State vendors

would probably be opposed to having everything tracked and monitored by the government. But if that's the way to go, I'm sure we could write a system that could help with compliance.

SENATOR KRUEGER: Well, the reason I keep asking every year, or probably every year, is that more and more parts of the world and more and more states in this country are going that route. And you actually even hear from some vendors that they would prefer that, that they actually find that they get themselves in trouble because they collect the sales tax but then they have cash and they suddenly just start to spend it instead of actually having it available to pay in.

So there are even Third World countries that do it at point of sale where they don't even have wired systems, but they're using, you know, smartphones to actually report into their tax systems.

So are we seeing a significant growth? Because the research shows it's at restaurants, bars, franchise stores, you know, large and small. So are we seeing in your model, that whatever you're using, that we're seeing a growth in the rate of collection?

EX. DEP. COMMISSIONER MANION: I think we're seeing -- we're doing more audits. We're doing them quicker. And we're collecting more money on it.

We've also instituted a number of other compliance type of initiatives where we're identifying taxpayers, similar to what you said, where they're doing the collection but then they tend to pay their payroll with the sales tax money. So what we're doing is we're increasing the number of what we call the segregated bank accounts. We ask them to go into a segregated bank account. So we're assisting them in their compliance. So every day, you know, you've got your system and it says that you collected $420 in sales tax, put it into that account and use that account for it.

We're increasing our education and our

reminders out to taxpayers that are at risk of falling off. So now with our online service accounts, people are web-filing through our system and they come in through the online service accounts. And we send reminders out to them. Like each quarter, we have people that start filing their sales tax return, they start putting the information in, but then they don't hit send for the due date. So we're doing outreach to them through the email to say, you know, you haven't submitted this, is this an error, is this something you want to do? You know, is this something that you should be doing?

So we're doing a lot of that. For the taxpayers that are trying to comply and are trying to get it right, we're doing a lot to help them. And then we're doing a lot to be looking for those that are not complying on the other end.

SENATOR KRUEGER: I guess just finally -- and more, I think, for Mr. Mujica -- so at the Local Governments hearing you had quite a few of the local governments talking about their concern that as the utilities want to move to a 5G system and systems where they no longer wire or cable to provide any utilities to us -- phone, TV, Internet -- that they actually are going to be losing the ability to tax and collect money and control anything at the local level.

I would urge you and the Governor to take a look at the fact that, again, because the world is changing and technology is changing so fast, we are creating a system of an uneven playing field, depending on whether you're a business model that, you know, has a cable that goes somewhere versus a business model where everything is in the ether or in the cloud.

There's an issue of ESCOs not having the same tax system and paying the same taxes as other utilities, which seems to me to be totally unfair.

We still have the fact that DISH TV doesn't pay the same taxes as the TV systems that have cables and wires, although apparently they're all going to a model where they won't have cables and wires.

So it would be the Tax Department collecting the revenue, but it's really a bigger-picture policy question on how does the State of New York ensure, one, that we're getting the revenue we need, but two, that we have an even playing field for business models that continue to evolve? And we want them to evolve and be successful. I just personally think that they ought to all pay the same rate of taxes to the State of New York.

DOB DIRECTOR MUJICA: Yeah. So there's a certain commonality, really, in all the things that you just talked about. And the state tax code sometimes is slow to keep up with technology. I think that's what the Internet Fairness Tax is also about, which we already discussed, right -- go to one site, you pay the sales tax; go to another site, you don't pay the sales tax. It's the exact same product.

On the issue of -- on the ESCOs, we

attempted to address some of that in the budget by imposing the sales tax. I know there's an issue of whether or not localities can impose a gross receipts tax, which we're looking at as well.

On the 5G issue, there's two policy goals here, right? There's one the Governor just announced, 99.9 percent of the state having broadband capability and doing that. On 5G, it's the same thing. What you're seeing in a lot of communities is slower internet service as a result of just capacity issues. So you want the ability to build out. At the same time, you want to have a fair taxing structure in place.

And our law doesn't allow local governments presently, independently, to do all of those things. And in the interest of maybe raising revenue, right, there's a secondary interest on making sure that there's as much access to 5G as possible.

So this is a new thing. This is something we have to talk about. But the proposal here is one about should we have a standardized way of imposing a tax or a fee structure on 5G, as opposed to allowing local governments to independently do different things. Which may be in the interests of local government, but not in the interests, necessarily, of the consumer. So that's something that we can talk about, you know, during our budget discussions.

And on the issue of DISH and internet, again, that just goes to all things that, you know, are now changing. Right? They go onto the internet, they go electronically. You know, just can we maintain our overall tax base while just taxing the same things, just they're in a new form -- not raising anything, but just making sure that we're not losing some compliance that way.

So we're looking at all of those things, and it's -- so we have to keep up, our tax laws have to keep up with technology.

CHAIRWOMAN YOUNG: I just had a couple more questions, just because Senator Krueger raised some questions in my mind.

So the proposal in the Governor's

budget would actually raise taxes on building out providers for 5G internet, that sort of thing. And as you know, in rural areas across the state, such as the one I represent, there's a real shortage of that type of infrastructure, and it's put rural areas at a real economic disadvantage. And it actually impacts people's quality of life.

So if you raise taxes, and it's -- you know, if you heavily tax building out and you put that on the people who would build out, what incentive would there be for them to do so? I know there's language that says that they can't pass it along to the consumer. But what company in their right mind would take on those heavy costs and be incentivized to actually put in the infrastructure?

This is something that is akin to the 1930s when they electrified the state and they put electricity in rural areas. And for my mind, I think the fact that we need that broadband, that kind of infrastructure is crucial to our economic success. And we're way behind a lot of other states in building out that infrastructure.

So I just -- I guess I want to raise there's a concern over this heavy tax that's included, because I think that it actually could backfire and cause fewer buildouts than what we actually need.

DOB DIRECTOR MUJICA: And the intent on the 5G issue is actually not to impose a new tax, but to standardize how local governments do it so it's not different to taxing regimes all across the different municipalities, but there's a commonality to it. So that's --

CHAIRWOMAN YOUNG: But isn't there a proposal to -- you know, if you use the right-of-way, for example, on the Thruway, wouldn't there be a heavy tax imposed to companies for using that right-of-way?

DOB DIRECTOR MUJICA: So there is a proposal separate from the 5G on the use of the right-of-way. There are certain businesses that are technology firms, communications firms, that are currently using the right-of-way and there is no fee for that right-of-way. Other states charge a fee for the use of the right-of-way where they're using that technology in order to, you know, to raise --

CHAIRWOMAN YOUNG: How does the proposal in the budget compare to those other states as far as how heavy the tax is, whether it's annual or not annual, whether it's one time? Have you done an analysis of that?

DOB DIRECTOR MUJICA: We have. We believe it's similar. But we can get back to you on that analysis.

CHAIRWOMAN YOUNG: That actually would be great.

And I do have one final question, I apologize. But this ties into the proposed tax hikes. And as you know, in the Senate we pass legislation every year to impose a permanent 2 percent spending cap. And we've worked successfully with the Governor ever since he became governor to try to adhere to that 2 percent spending cap.

I know the Governor has spoken

extensively about the $4.4 billion budget shortfall that we're facing this year, and obviously that's serious. But what happens when you apply the 2 percent spending cap? Because it's my understanding that that would actually take the deficit down to about $1.7 billion. Is that the case?

DOB DIRECTOR MUJICA: That's right. So if you apply the 2 percent spending cap, it reduces the gap by about $2.7 billion, leaving $1.7 billion.

Now, applying the cap doesn't mean you have to do things, right, it just means that we have to reduce spending by $2.7 billion, which you see all of those actions in the budget. But yeah, you're correct that the 2 percent brings --

CHAIRWOMAN YOUNG: Right. So it limits growth in programs, some of the heavier-cost programs such as Medicaid, for example, right? So instead -- it still would grow, but it limits it to 2 percent. Is my understanding of that --

DOB DIRECTOR MUJICA: That's right.

The biggest factor, the biggest-growth areas, right, are -- because it's 45 percent of the budget -- is school aid and Medicaid. Because they're both growing at much greater than 2 percent.

So in order to stay at the 2 percent, the rest of the budget is mostly at zero, and then you have Medicaid growing by about 3.2 and education growing at 3.

So yes, so the 2 percent is in the in middle of that. It allows us to increase Medicaid and education by more than the 2. And then everything else has to be at zero because you're -- because it's --

CHAIRWOMAN YOUNG: So really, in the context of a $168 billion proposed budget, a $1.7 billion shortfall is much more, manageable than $4.4 billion, right? So --

DOB DIRECTOR MUJICA: Yeah. And prior -- this is the -- in prior years, by applying the 2 percent spending discipline, we were able to almost eliminate the gap. Right? So in prior years after you did the 2 percent, you're at a couple hundred million dollars.

This year, for the first time, even after doing the 2 percent, you're at $1.7 billion, and that's the greatest number since 2011. So it's a significant number. And then you have the federal risks on top.

But yes, it's -- 2 percent doesn't mean, though, you don't have to do cuts; it means you've still got to find, you know, $2.7 billion in savings. But that's the benchmark, and then you try to solve after that.

CHAIRWOMAN YOUNG: Thank you. And I just think that, for example, on the deferments, on the programs that actually stimulate the economy, if the number is much more manageable, then we should probably take a look at that and continue to not have the deferment, for example, on some of the programs, those types of programs, because we need to grow the economy in New York.

But thank you again for all the information that you shared today.

CHAIRWOMAN WEINSTEIN: I again want to thank you for being here. And I assume once we see the 30-day amendments, there will be more discussions on -- there may be some more questions and discussions. We look forward to having those with you.

Thank you again for being here.

DOB DIRECTOR MUJICA: Thank you, Chairwoman Young. Thank you, Chairwoman Weinstein.

EX. DEP. COMMISSIONER MANION: Thank you.

CHAIRWOMAN YOUNG: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

Next we have the Business Council of New York State, Ken Pokalsky, vice chairman {sic}.

MR. POKALSKY: Good morning, Chairwoman Young, Chairwoman Weinstein. And I appreciate the promotion.

I'm Ken Pokalsky. I'm vice president of government affairs for the Business Council of New York State. And on behalf of our membership, I really welcome the opportunity to be here this year, as in previous years.

And importantly, as I think you've heard, we're talking about some new and unique tax policy challenges and issues than in prior years.

In my written testimony today, I focus on three broad topics. I'm really going to spend my time at the microphone on the first two. We talk about general conformity issues, bringing New York State's income and corporate tax into conformance with the amended federal tax code. We're going to spend some time talking specifically about the mitigation measures that you just heard about, such as the payroll tax concepts.

And as always, we focus on the revenue measures and tax policy changes included in the Executive Budget. I'll touch on those if I can, but I think the first two are new and different and I'd like to spend most of my time there.

In his State of the State message, the Governor argued that increasing the cost of state and local taxes makes New York less competitive and helps other states at our expense. We couldn't agree more. And we would emphasize that this is true whether the tax increases come from federal or state legislative actions.

And it's important to recognize that despite some recent improvements, and you've heard about them today -- the cap on property taxes, 2 percent spending control, 2014 corporate franchise tax reform, and others -- New York remains a high-tax state. It's a high-tax state in general, it's a high-tax state for business. And you can quibble with the methodologies, but every major analysis that we're familiar with -- whether it's by the Tax Foundation, Forbes does an annual study of state and local tax burdens, some done by private firms, by Andersen Economic Group and others -- we're ranked within the top one or two, maybe top four or five, in terms of overall tax burden.

I say that because, one, we have specific tax measures in the budget aimed at the private sector, but also there's this growing narrative that says because there's a federal reduction in business tax rates, New York State should raise its taxes on those businesses.

Now, that may make some sense if you are in a fairly low-tax jurisdiction. But as I've just said, New York State's overall tax burden on employers is high, we think it's the wrong way to go.

Importantly, if you look at the details of the Executive Budget economic and revenue projections, they're projecting a billion-dollar increase in fiscal 2019 in corporate franchise tax payments to the state, driven primarily by growth in corporate profits. While that forecast may be somewhat optimistic -- and they're forecasting a 32 percent increase in fiscal '19, 15 in the following year -- to us it illustrates the importance of promoting economic growth, rather than new tax mechanisms, to the state's long-term financial future.

A couple of comments on federal conformancy. The Business Council was a strong supporter of federal business tax reform, and we're on the record and communicated our support to Congress. At the same time, we did oppose the caps on SALT deductibility. We didn't think the statute had to be written that way. And we certainly raised concerns there.

But in terms of the overall changes, we have to remember what the purpose was, the original purpose of the reform effort, and that was to bring the federal taxing mechanisms into line with what other major industrial nations do. And that reform did two basic things. It moved us to what's known as a territorial or waters-edge tax scheme where, going forward, most but not all, most foreign-earned income will be not taxed by the U.S.

It also brought our tax rates into line with what the other OEDC states were imposing. And U.S. corporate tax rates are high on both a statutory and effective tax basis.

It did a lot of other things. And as

you heard earlier about issues in decoupling or staying coupled with federal tax reforms in the personal income tax arena, we think there's also some important reforms that have to be done in the state's corporate franchise tax to again avoid unintended consequences and tax increases due to a new misalignment between federal and state tax laws.

I'll just give you two examples. Under the federal tax reform, certain economic development incentives provided by state and local governments will be considered contributions to capital and therefore recognized in a business's gross income, adding to their federal tax liability. These are, you know, capital grants, as we do with the Regional Economic Development Council process. It would make no sense for New York State to remain coupled to that federal change, as it would erode the value of economic development incentives being handed out by one hand of the state, but then taxed by the other.

Another example is federal tax reform

provides for bonus depreciation, the ability to write off a hundred percent of the cost of capital expenses in the year they were incurred. But as a tradeoff, the federal reform puts a cap on deductibility of interest expenses, arguing that those interest expenses are usually incurred as the price of investing in capital.

New York State has already decoupled from the provisions of federal law that offer federal bonus depreciation, and so far we've seen no proposal from the administration to recouple. But if that stays and we do not get the benefits of bonus depreciation, we should also decouple from the federal caps on interest deductions as well.

In the next several days, we'll be presenting the administration and the Legislature with our complete set of recommendations on business tax conformity issues. But our basic position is this, that for both the corporate franchise tax and the personal income tax, New York State should adopt conformity language that avoids increases in state tax liabilities due to New York's tax law falling out of alignment with the new federal language.

Now I want to spend the rest of my time talking about tax mitigation and payroll tax alternatives.

We appreciate the administration's effort to examine ways to mitigate the adverse impacts of federal tax reforms, principally the cap on SALT deductibility. Of course, one alternative is to actually reduce the state and local taxes subject to the SALT deduction cap. Expiration of the so-called millionaire's tax rate and tax bracket in 2020 will significantly mitigate the impact of the SALT deduction cap on high-income earners. And by the way, the higher the earnings, the more complete the mitigation is.

But we've reviewed the department's January 2018 preliminary report on mitigation measures. We've received considerable input from our membership, businesses of all types and sizes, from practitioners in the legal and accounting world. And while we look forward to reviewing any specific payroll tax options included in the 30-day amendments, I'd like to share with you what our response and concerns are to date.

Any payroll tax mechanism would likely result in immediate cost shifts to the employer. As the department's report recognizes, a payroll tax for income tax swap can only maintain pre-federal-reform levels of after-tax income for both employers and employees if it's accompanied by a wage reduction roughly equivalent to the new payroll tax being paid by the employers. And as you've talked about already, there's a lot of issues and concerns about reducing wages to balance out that equation. As a math equation, in a spreadsheet, I can show you how it works. In the real world, there's a lot of concerns.

Issue Two. As is illustrated in the Executive Budget's fiscal plan, the state will be facing significant budget gaps in each of the next three years, and likely beyond that. And a new payroll tax on employers will be a tempting target for future administrations and legislatures looking for increased taxes revenues but reluctant to impose such taxes directly on employees or consumers.

Third, any payroll tax mechanism can only -- you've heard this $14 billion cost impact to New York taxpayers. Any payroll tax mechanism can only offset a fraction of that, for a couple of reasons. Most of that incurs amongst upper-income taxpayers who a significant portion of their income is nonwage income, so a payroll tax for PIT swap has no effect.

Likewise, somewhere between 15 and 20 percent of all wage income in New York State is for employees who work for either not-for-profits or government. There's no payroll tax/deductibility swap to be had for those taxpayers.

Adopting a new payroll tax mechanism, especially one that tries to replicate the progressivity of the personal income tax, will impose significant new administrative and compliance burdens on the state and employers alike.

And even for an opt-in alternative where you said an employer could choose to be taxed under this regimen or not, we see a lot of concerns. As an example, in the department's option paper, it suggested employers that opt into such programs could be subject to provisions, and I quote, advancing other state policy objectives relating, for example, to labor policies or workforce investments.

At most, we really urge a more thorough review of options, maybe with an expert workgroup comprised of tax policy and tax administration experts, looking at both the alternatives and the practical challenges of implementing those.

As I said, we focus on a lot of issues in the budget in both our testimony -- and other bill memos that we'll be giving to the Legislature address others. If I could make just two very brief comments on some of the specific tax provisions in the Executive Budget.

One is on the deferrals. One thing that needs to be considered, by the Division of Budget's own projections, New York State is going to have a much more challenging financial situation in 2021 than it will this year --

CHAIRWOMAN WEINSTEIN: Can you -- it would just help if you could just conclude, because we've actually given more time than we have in other dates.

MR. POKALSKY: Sure. Sure. So our concern is that when those tax credits become due, New York State is going to have even less ability to make good on the commitments already made to taxpayers who have made investments or hired new workers in New York State.

So I'll stop there, and I welcome any questions or comments you have.

CHAIRWOMAN YOUNG: Thank you. I do have some questions.

You touched on it, but what challenges

would a switch from personal income tax to a
payroll tax pose for employers?

MR. POKALSKY: Sure. Well, first and foremost, if the purpose is to leave both the employer and the employee with the same after-tax income as they would have had pre-federal reform, a major part of the equation is there's going to be a wage adjustment. And the department's white paper, option paper, suggests that.

That's going to be a challenge to do in all circumstances. And if you have an organized workforce, it will certainly have, you know, more challenges. If you have employees at or near the minimum wage, it would -- you probably wouldn't need to do this for them to keep them whole taxwise.

CHAIRWOMAN YOUNG: But this was pointed out -- but also was pointed out. But that could push them into Medicaid programs, which would increase the tax burden, right?

MR. POKALSKY: Sure. That's issue number one.

Issue number two are all the other

things that are based off wages, including pension calculations, 401(k) matches, state benefits, et cetera.

It's a big change. It's the administration of it. If you tried to -- right now an individual, those with -- you know, declares their or proposes their withholdings, based on what they expect their tax liability to be for the year. At the end of the year, you file a return, you may get a refund, you may pay more. If the purpose was to create a payroll tax that replicates what an employee would pay on their income tax, at the end of the year there's going to be a misalignment. And I don't know how you would reconcile at the end of the year.

To not do that, you would -- you know, the option paper talks about just doing a flat tax on all payroll. If that's substituting for, you know, progressive income tax, you've lost an important design of the state's income tax structure.

So a lot of technical challenges of doing it.

CHAIRWOMAN YOUNG: Thank you for that.

We had a discussion, Vice President Pokalsky, with previous witnesses about deferring the tax credits. So what impact, in your estimation, would the deferment of tax credits have on businesses? And especially, what happened in 2010, the last time that this happened?

MR. POKALSKY: Well, we know that -- we've done a number of things on tax credits already awarded. In 2010, they were deferred for three years. We imposed new criteria on businesses that made investments under the old Empire Zone program, but lost the benefits based on the change. In our view, all of these types of measures makes it that much more challenging for New York State to sell itself and its incentive programs to businesses looking to do business in New York State.

We're now -- we're working up a list, looking at the brownfield programs in particular, because the data is out there and readily accessible, to look at projects that will likely be over $2 million in the redevelopment component.

So these are projects where financing is being put together specifically for that project. They're usually done through LLCs. And the credit is an important component of the cost benefit of making an investment on a site where you're going to have to incur unusual costs to do cleanup in the first place.

Our concern is that is going to be a major -- if the purpose of the brownfield program is to cleanup and redevelop already used properties, mostly in urbanized areas, this is going to make it that much more unlikely that investors are willing to do so. You're designing your financing package for today, and to say, well, a major component of it will only be available to you in 2021 -- and by the way, you don't get it in 2021, it gets paid back to you on refundable credits over a three-year period, nonrefundables over -- it could be up to a 10-year period.

That really changes the equation on

how you put a package together. So we do think it will discourage certain types of investments.

And lastly, one of the largest dollar-wise -- two of the largest dollar-wise credits are of particular interest to manufacturing, the investment tax credit and the tax credit for real property taxes paid by manufacturers. One, you know, is a direct support for ongoing capital investments, and the other is trying to offset the high cost of property taxes on capital-intensive businesses.

We think the effect on those businesses would be immediate, would have an immediate impact on their cost of doing business in New York State.

CHAIRWOMAN YOUNG: Did you do an analysis after 2010? Did the Business Council ever really look at what the economic impact was? Because that was a downturn time in the economy, and we knew that -- at least from the companies that I was aware of, who were impacted by this change in the law, that they were very upset at New York, New York had made a promise to them, New York didn't keep the promise.

Did you do an analysis, any kind of economic analysis on what happened after 2010?

MR. POKALSKY: Not specific on reaction to tax credit deferrals.

One thing we do know from 2010, roughly when the recovery from the '08 recession really started to take hold, is that most of upstate has done -- has had very little growth, and most parts of upstate are maybe just about at or not quite at their employment levels pre-'08 or 2008 -- you know, pre-recession.

So we know that much of the geographic area of the state is still struggling to recover from the recession. To the extent to which we have incentives that, you know, are not honored, we see that as, you know, taking away from our efforts.

CHAIRWOMAN YOUNG: Right. And you recall -- probably painfully, as do I --

during those years in '09 and '10, there were 123 new taxes imposed, $14 billion in tax hikes. And that had a very serious economic drag on the economy across the state. And as you pointed out, upstate still suffers from trying to recover from those bad policies.

So I appreciate that input. Thank you.

CHAIRWOMAN WEINSTEIN: Thank you for being here. I think that's it for questions for you.

Next we have Empire Center for Public Policy, Edmund McMahon, research director.

MR. McMAHON: Well, good afternoon, Assemblymember Weinstein, Senator Young, Assemblymember Oaks, Senator Krueger, and other members. Thank you very much for this opportunity to testify here today.

I'll obviously just summarize what's in my testimony, if I may.

To begin with, I think the budget process, especially on the revenue side, has been overshadowed by the issues arising from passage of the Tax Cuts and Jobs Act, which as you know is the most significant federal tax overhaul in 31 years. Unfortunately, I think so far the Executive Budget barely addresses most of the issues arising from those federal tax changes, and I think in some respects it adds to the state's competitive challenges, in some cases with further tax increases.

For example, I refer to the $140 million that's supposed to be raised from what the budget describes as a windfall profit fee on for-profit health insurers, which I point out will add to the $5.7 billion of taxes and fees we already impose on healthcare.

Now, as my Empire Center colleague Bill Hammond has written, the proposal raises fairness issues, since it appears to target only fully insured health plans, which are sold mainly to individuals and small businesses, which are the segments most likely to drop coverage over affordability issues. I'm sure Bill will get into this in more detail when he testifies at the joint hearing on health issues.

But suffice it to say this isn't just, in our opinion, wrong-headed health policy, it's also inequitable and counterproductive tax policy. And I'm referring to the general principle or the notion that you can have a precedent or that the state should claw back the federal tax savings from any business arbitrarily deemed to have collected a so-called windfall from Washington. This undermines a key purpose of the federal corporate tax reform, which is to encourage businesses to increase pay, hire more workers, and expand capital investments.

Now, reasonable people can disagree on the extent to which they think that will actually happen as a result of the tax bill. But the more you do these windfall grabs, the less you will get, for sure.

I won't dwell too much on other issues, although I do want to digress into one other issue, which is all the discussion about the tax credits that have been suspended. If you take those tax credits at face value, which is a whole other subject, really what the policy that the Governor is proposing says is that low-income housing, brownfield redevelopment, historic preservation and some other things are a whole lot less important than motion picture, TV and commercial production.

I can point you to studies pointing out that it's actually questionable whether that generates jobs or subsidizes jobs, that latter credit -- which is far bigger than any of the other credits. And so I think that at the very least it's inconsistent at carving out a special status, for reasons that to me remain unclear.

But putting that aside, rather than focus on the tax changes in the budget, I'd like to use my time available to focus on the state's response to the federal tax law and on the real implications of the law.

I think it's important to really face up to the actual impact of the law, as opposed to the broad statements that have been made in recent months during the political dispute over whether it would be enacted, and that is most New Yorkers will be paying lower federal taxes under the new federal tax law.

I'm not endorsing the law as a whole, or the process that produced it, much less the cap on SALT, but that's a fact. And that includes people who are among the itemizers who had more than $10,000 in state and local property taxes to deduct. A lot of those people -- in fact, probably most of them -- will also see their federal taxes cut.

And if you overstate the problem and are far too broad in the way you think this affects New Yorkers, you're going to be mistaken in your response to it. So I think it's really important to recognize what's actually happening here.

The largest identifiable group of New Yorkers who as a group have a problem -- at least the majority of the members in that group -- or who are losing most from the cap on state and local tax deductions, are your highest earners, the top 1 percent, people who live in New York who earn over a million dollars a year, who generate over 40 percent of the personal income tax, which is the state's largest tax.

They claimed average state and local tax deductions of $500,000 in 2015. Which means, doing the math, that they've lost 98 percent of the tax deduction. They basically are now -- people who live in New York City who don't -- depending on their tax status, but I think the majority, for the most part, are facing a higher effective marginal rate, all in, federal, state and local, than they paid before the tax change. In isolation, the state and local rate, which you can think of as the net tax price of being in New York, is going to be higher than it's ever been in history, considerably higher.

So this is uncharted territory, and this obviously increases the stakes for New York of maintaining its current tax policy without careful consideration of what the federal law has done. We can discuss that more if you'd like to. I would say the recent statistics, building on what I cited to you last year, is that there's been a significant growth in the category of nonresident payers who make multi-million-dollar incomes; that is, people who don't live in New York who have some business tie here, so that they're in our tax base, but who do not pay taxes on the bulk of their income to New York because they have moved elsewhere.

There's a demographic factor here that we can't control with just our tax policy. A lot of people who are wealthy happen to be older, and they're baby boomers. And they're thinking of or planning to retire or are retiring, and naturally a lot of them are going to leave no matter what.

What you've done -- what the current tax policy does and what the federal tax policy does is for anybody who's on the curb, it pushes them into the street and on their way out faster, because there's that much bigger a tax bite on their income.

Especially, remember, if you're dependent on capital gains income, which is one-third of the income of people making over a million dollars who live in New York, and more among nonresidents, one-third of your total tax, if you live in New York City, is state and local tax. You can cut your tax by one-third if you simply leave.

And if that's your retirement income, high as it is by most of our standards, that's something you have to consider. So we need to be aware of that.

Now, we know that there's a big tax cut here for C-corps, although many of them had lower effective rates before certain loopholes were closed. There's also cuts for pass-through entities. But if you've talked -- you already talked to witnesses here, a lot of people in the tax field will tell you that this is very confusing. The federal tax law has got a lot of ambiguities. There's a lot of questions to be answered. It's a work in progress.

And I would make, parenthetically, a

note -- I won't go into it -- there's a technical issue regarding the deductibility of UBT payments to New York City that I think you need to clarify also. That's pretty important. And that's -- I won't get into that here, I can give you some paperwork on that later just for your own information. Assuming that the UBT is still deductible -- that may not be the case -- maybe it will work into the post-budget discussions, I don't know.

In the meantime, your top priority should be to decouple from federal law where necessary to prevent automatic tax hikes. As noted, the Senate has passed a bill on this. The budget director just stated that that's going to be addressed in the 30-day amendments. Okay, that's a good thing.

It's still puzzling to me that this was not included in the budget to begin with, because the budget did decouple from a single portion of the new federal tax law. One and only one provision of the new federal tax law is specifically decoupled from New York law in the budget, and that's Part P of the revenue bill, and that is the child credit. The federal child credit is being doubled and eligibility for the child credit is being expanded to higher income ranges.

With no further change, that would result in a significant increase in the Empire State Child Credit, benefiting many hundreds of thousands of families who now claim it. The Governor's budget goes out of its way to make sure that doesn't happen, by decoupling.

I would point out to you, you may want to reconsider why you should reject out of hand one of the federal tax changes that would clearly reduce state taxes for all New Yorkers who are in this category. You could, for instance, keep linked to the federal law. You could allow the Empire State Child Credit to be doubled, from $333 maximum to $666, and be available at higher income ranges, and you could more than pay for it.

How? You could repeal the sales tax

exemption on clothing purchases under $110, which was initially boosted mainly by the State Assembly as a way to help working families. A good motive, but which is not well-targeted and which presently also serves simply to reduce sales taxes on t-shirts for tourists and other items. A working family, especially a lower-income family, would get a lot more out of a $333 per child boost in the child credit than from the continuation of the sales tax exemption on clothing, under smaller clothing purchases.

We've also decoupled already from federal law on estate tax. That was already written into the law. But the feds have reduced their estate tax by raising the exemption, which further isolates us in a competitive sense, because we're now only one of a dozen states with an estate tax.

And we have a rate cliff in our law that's complicated -- I could explain to you, but it basically makes our tax rate on the smallest estates still subject to the law, subject to a higher state rate than a federal rate.

Now, finally, and most importantly, the Governor said he's looking for ways to thwart the SALT cap, and Budget director Mujica discussed this at length in his testimony. I would suggest to you that the Tax Department report -- the real bottom line, if you read that report, is that going to a payroll tax would be unworkable and undesirable, for a whole raft of reasons. And as I mentioned earlier, the premise behind that is that you need to do a broad switch to a payroll tax because otherwise the federal tax law will have a devastating and massive increase on New York. The problem is, that's not true, and thus you shouldn't do it.

He's also indicated they'll explore the charitable foundation possibility as a way to preserve tax-exempt contributions in lieu of taxes. You're supposed to get some proposals in the 30-day period.

I would make three suggestions. First, don't rush. Don't be rushed into jamming this into the budget process. It's going to be extremely complicated with lots of unintended and unforeseen consequences. There's no need to do this as part of the budget.

Second, don't add to the state's tax burden on any individual or employer.

Third, don't create new platforms or vehicles for higher taxes in the future.

I'll end with some good news. I think the Legislature can pat itself on the back for this. Two steps you've taken in the last seven years could have been done in anticipation of the loss of the SALT deduction. And I'm referring to the property tax cap outside New York City, which is saving property owners billions of dollars a year that they otherwise would have added to the cost, the net cost, of the loss of the SALT cap.

Secondly is that multiyear personal income tax cut, which is beginning to phase in this year. In fact, because of the way it's designed, it will deliver the biggest savings to the people who are most likely to receive a minimal federal tax cut and perhaps a small federal tax increase because of the SALT loss. And I'm referring to the six-figure middle class of the New York suburbs -- and in New York City, but particularly those with high property taxes. They're going to get the biggest tax cuts under that program.

So it's important to make the property tax cap permanent and to follow through and push through on those tax cuts. And those are the two single -- those are the two most important things, the two highest priorities for coping with the impact of federal tax reform.

Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

Senator Young.

CHAIRWOMAN YOUNG: Yes. First of all, E.J., thank you for being here. You're always a fountain of information and we truly appreciate that.

I want to thank you for bringing up a

couple of things. And, you know, usually the Tax hearing can be somewhat of a yawner, but this year there are so many tax policy changes that are proposed that it is a little bit more exciting.

But thank you for bringing up the windfall tax, because I meant to bring that up. And there are a lot of issues that you pointed out -- it's arbitrary, it's just on one segment of the economy, health insurers. Wouldn't it make more sense to have some kind of effort to have health insurance premiums go down instead of collecting this windfall tax? Because people every day are struggling paying for their health insurance. And it's been a real problem, as we know, and premiums have escalated, under Obamacare.

Could you address that a little bit more deeply?

MR. McMAHON: Well, I think -- and I would defer a little bit, more than a little, to Bill on this, who's followed it much more closely; in fact, has written about it within the last day or so, about the very issue you're raising.

But I would point out there is a -- the part of the health insurance marketplace we're talking about is in fact competitive, that the normal process would lead to -- when companies have more breathing room like this, is to make them more aggressive in holding down rates.

We also have a regulatory process which was cited here earlier, including a process in which medical loss ratios are part of the determination in setting premiums.

All of those things are influenced in different ways by what the tax burden is. And I think that if you simply let the process and the marketplace take care of itself, that the result of lower taxes on for-profit health insurers in this segment, this area of the market, is going to tend to bring down premiums naturally.

Now, again, I would prefer to defer to Bill on more of that, because he's really done a lot of thinking about and research in the area. But that would be my inclination or suggestion to you.

CHAIRWOMAN YOUNG: And another issue I wanted to bring up was the historic preservation tax credit. You have a good sense as to how that's had a positive impact on the economy in New York.

MR. McMAHON: Well, I would think, without endorsing all these tax credits -- because there is a school of thought, including in fact a report the Senate itself released a few years ago, as well as the Solomon Commission report, that would suggest that a lot of the credits should go by the wayside and we should seek to have a broader tax base and lower rates. Often -- there's a lot of thought among fiscal economists and tax experts on that issue, of whether tax credits simply proliferate and are not as effective as they're advertised.

However, I would say -- so without necessarily endorsing any of these programs, some of these programs are -- involve incentivizing investments or development that arguably would not occur in parts of the state where there's very little natural market-rate development occurring. And we're talking about largely upstate New York. Whether that's a full justification for the program or not is another issue.

But I would say there are more marginal investments affected by, and perhaps potentially stalled by the delays in the credit, or the growing feeling that the credits are not actually guaranteed, than if you look at the burgeoning, very wealthy motion picture, TV, and commercial production industry in New York City, which is -- where you basically are giving a direct, hefty subsidy to companies for doing something that in a lot of cases they'd be doing anyway.

And all the assumptions about job creation related to that film credit and TV and commercial production credit, all assume that nothing would be happening in the absence of the credit. Which is, in a word, ridiculous.

And if there was ever an argument for that credit, it was before the added infrastructure was built up, and the production capabilities of the entertainment industry in and around New York City early in -- in the early 2000s, at least. And that if there's ever been a time to pause that credit, this is that time.

The argument would be made, Well, people have lined up for this, they've made plans, and they're starting productions based on having the credit. But as you pointed out, there are also people who have made plans for other types of investments based on the availability of the other credits that are now going to be postponed.

So again, without endorsing any of them in particular, I think it's really questionable -- I don't think the case has been made for delaying these credits and not the one that's bigger than almost any of them. I'm not sure whether Excelsior rivals it or not in size, but ...

CHAIRWOMAN YOUNG: Thank you.

I was glad to hear that you brought up the property tax cap and its positive impact on taxpayers and, you know, upstate, Long Island and Westchester, other suburban communities.

I asked Mayor de Blasio when he was in the other day about a property tax cap in New York, and he continues to resist it. What are your thoughts on that?

MR. McMAHON: I think that New York City becomes more complicated because New York City has that four-class system which is rife with increasingly bizarre inequities. There's a lot of criticism of the New York City property tax system. I think that if you simply imposed a cap on that system, and did nothing else, you might actually worsen some of the inequities, because it's so complicated.

I think in the long run it would be good to cap property taxes in New York as well. I would point out that New York City has one element of a property tax cap in place. There's actually a limit on property taxes in New York, I think constitutionally, or in the city charter, or both, I forget which. But the property values in New York are so high, it isn't actually triggered.

So I think that it would be a good thing in the city. However, I think that it requires more careful study than simply going ahead and doing it because there's so much reform needed in the city's property tax system -- and for that matter, as I know Assemblywoman Galef would agree, in the property tax systems of much of the state, especially downstate counties, Nassau and Westchester.

So I think the city is a special case, but I do think ultimately that a tax cap in the city should be worked into discussions of needed other property tax reforms in the city.

CHAIRWOMAN YOUNG: Exactly.

So the Executive Budget -- and I brought this up to Director Mujica -- but it contains a proposal to close a so-called carried interest loophole by adding a 17 percent fairness fee to certain compensation earned by hedge fund managers.

And I know you're aware of this. It depends on other states passing a very similar plan. What are your thoughts on that particular proposal?

MR. McMAHON: Well, that proposal is kind of unique in the sense that I've never seen anything that was so analogous to, I don't know, a hologram or just a pure symbol. That tax proposal, assuming that four other states will do something that at least two of them would never do, is intended for purely political posturing purposes, I daresay. It's not going to happen, and thus it's easy to propose.

But secondly, even if -- in principle, that tax is based on the judgement that the carried interest loophole needs to be addressed by states, when it's actually a federal-state issue, and that we're going to take it into our own hands to impose a 17 percent punitive surcharge as a fee on the incomes of people in certain types of -- certain types of fund managers, mainly, who claim the carried-interest treatment of their income.

Now, I don't -- frankly, the -- I think that there's a strong case to be made for saying that carried interest should be treated as ordinary income. The difficulty in addressing it as a federal matter is in distinguishing between those people for whom it's clearly really a form of compensation and those people in industries for whom it represents money at risk.

But basically we're talking about a federal issue here and a proposal that I think is being mounted mainly in order to spotlight or to stigmatize people in certain industries for other purposes.

I'd point out one irony here. This is repeatedly identified with hedge funds, especially since the enactment of the federal tax reform bill. There's virtually -- very few, if any, hedge fund partners are going to be claiming carried-interest treatment of their income. The carrying period has been increased from one to three years. It's mainly private equity funds and other types of fund managers.

And again, I think a strong case can be made for treating it as ordinary income. The president said he wanted to treat it as ordinary income. His opponents in the Republican presidential primaries wanted to treat it as ordinary income. Many Democrats in Congress, as well as some Republicans, wanted that done. It didn't happen. That's one of those Washington issues.

But it's not an issue we can or should address on a state level, and I think that's another bad precedent. It's akin to the windfall notion, the notion that you saved a lot in federal tax, you got a windfall, we'll take it. This is a different issue. We are basically putting ourselves in the position of saying: The feds don't tax you enough, we think they should tax you at 17 percentage points higher, so we'll do it.

Note, by the way, the reason it requires four other states to act is because the promoters of this idea are aware that if one state did it, you would in fact have that industry essentially vacate the premises. And the assumption that five states doing it won't have an effect on those five states assumes that the people affected don't own maps.

And I would just say that if -- and by the way, in a federal context, the revenue involved is not even that large. Which is not an argument against doing it, but I think that it's kind of a pointless thing for anything other than a political reason.

CHAIRWOMAN YOUNG: But as you point out, so the groups that would be impacted by this carried-interest loophole tax, and you just said it, those are among the groups that have put the accelerator to the floor in leaving New York State. And so this would actually make that problem worse, right?

MR. McMAHON: Well, I wouldn't say that -- look, I wouldn't say that those particular groups are like leaving the state in droves or anything. If they find it beneficial to be in New York now, despite our tax rate even before federal tax reform, even federal tax reform won't necessarily change that. You've seen individual fund managers in some states make headlines by leaving and actually materially affecting taxes --

CHAIRWOMAN YOUNG: Right. Florida especially.

MR. McMAHON: -- like David Tepper and -- and there have been people in New York who you could name who have gone to Florida, extremely wealthy people, without making headlines or announcing their reasons.

There's a lot of that industry still left in New York. There's also a lot of it still left in Connecticut, which would feel their absence more keenly.

But again, I would point out that for now, that is a federal issue. The whole federal tax scene is not settled. This is just the beginning of a new round, a multiyear round of tax reform at the federal level. And this is not something we can or should take into our own hands. This is purely symbolic. The signal it sends I don't think is positive. Why would we want to give another push to anybody who pays, disproportionately, a heavy share of our state taxes? That would be the final question I'd raise about it.

CHAIRWOMAN YOUNG: Thank you.

CHAIRWOMAN WEINSTEIN: Assemblywoman Galef.

ASSEMBLYWOMAN GALEF: Mr. McMahon, I just have a question.

You have come forward and said that you don't think the payroll option is workable. Could you give us more of your opinion on the charitable foundation aspect?

MR. McMAHON: I think if you could get away with it, in the sense of having the IRS sit still for it, you should -- there's no harm in trying. I think the problem would be that there's a real question of whether the IRS, under its long-standing approach to defining what's charitable and not charitable giving, would stand for it.

I'm aware of the precedent. As you probably know, for some reason the IRS has allowed the State of Arizona to run four or five different charitable funds to which they let people -- for which people collect credits for their contributions. And in fact the Times had an article, the New York Times, a few years ago pointing out how under certain circumstances one could even make money by balancing one's contributions with one's credits.

The IRS has allowed that, oddly enough. And the proponents of this idea say, We'll just do it on a bigger scale. Again, and as the -- as described, which would be, for instance, somebody would give money to the New York Education Foundation and they would receive an almost dollar-for-dollar credit on their income tax for what they gave to that foundation, and thus -- and they would be able to deduct that contribution on their federal income tax. That's the theory.

I think the problem is that, again, if this was attempted on any large scale by New York -- for instance, New York and California, where it's being talked about, I think the IRS would almost out of hand reject it on the basis of their doctrine that you can't receive a personal gain from a charitable contribution.

That's why, as all of us know, if we bid in a charity auction or win a prize from a charity drawing, you can't claim the whole cost of what you bid on or bought, you can only claim a deduction for anything you overpaid, in effect. If you get something, you can't claim a deduction for it. That's the theory, that it has to be voluntary and sort of a free-will offering.

So I think it would ultimately make for interesting litigation. If we tried it, it could be structured in a way where the taxpayers involved would be held harmless. In other words, say the IRS strikes it down, there's litigation, and the litigation upholds the IRS. The people who tried to claim the contribution could be kind of held harmless by the state, ultimately. Frankly, the whole thing would probably be enjoined anyway.

But -- so again, my bottom line is I

think it's worth trying. I don't think you want to start at the local level up and encourage school districts around the state to go through the effort and expense of creating private foundations here, there, and everywhere. Creating a private charitable foundation is a lot of work. I think that there will be efforts to test it, and we'll see what happens. So ...

ASSEMBLYWOMAN GALEF: Thank you.

CHAIRWOMAN YOUNG: Senator Krueger.

SENATOR KRUEGER: Thank you.

Thank you very much for your testimony, E.J.

So I think you make a legitimate argument that we're still not clear what the federal tax reform package will mean for us because they haven't even written regulations and it's not clear that anyone who voted for it knew what was in it either.

So I just want to just double-check that I'm hearing you right. You're not necessarily opposed to any number of the proposed responses, you're just making the argument we don't know enough yet and we should have facts before we move? Because your charts in your testimony actually show that New Yorkers could be seeing an increase in their taxes despite the advertising.

MR. McMAHON: Right. Right. It's people mainly in the top bracket who would be seeing it.

And even that would depend on, well, were you paying the AMT -- the wealthiest tend not to pay the AMT, it's the near-wealthy who pay the AMT -- what's your household size, are you in a pass-through.

The big uncertain questions are the pass-through entities. The most lucrative pass-through entities that you can think of -- think of investment partnerships, law. Right? Those two in particular, they are not eligible for the pass-through tax cut.

On the other hand, a whole other provision makes the people who by New York standards are the lower-paid junior partners in those entities eligible for some tax cut, sorta. And then there's all sorts of other questions. So we don't know those questions about -- the answers to those questions about those people. And won't know them, in some cases, for some time to come. And every time -- surely you've talked to people about this. There's many, many questions surrounding the pass-through entity piece in particular.

I'd also point out the value of a federal tax deduction is directly related to the tax rate that applies to what's being deducted. The tax rate that -- the deduction that people are losing basically was the equivalent of a 40 percent discount. The C-corp rate is now going to be 21 percent. That means the deduction you could take as a C-corp on a payroll tax is barely half of the deduction that could be taken in the top bracket. And in other brackets, it's somewhat different.

Last but not least, when we talk about payroll taxes on any kind of broad basis that would affect any more than a handful of New Yorkers on an optional basis -- which I think is probably the way it should be structured, if possible -- that assumes that the vast majority of New Yorkers are somehow losing under the tax plan, when in fact most of them already are seeing some uptick in their weekly withholding -- and not a buck-fifty. Fifty, sixty bucks for somebody in that median category. Now, that's not a king's ransom, obviously. But some people who are in the core median family range for upstate New York are going to get very significant tax cuts.

Why should we overhaul and disrupt -- and the key word is "disrupt" -- disrupt our entire system of taxation on a theory or based on a premise that's just not true? It doesn't broadly affect -- why would we do a broad disruption of our tax system as a response to federal tax changes that do not affect a broad swath of New Yorkers, in fact, in a negative way?

And again, I'm not a fan of the federal tax cut as it's designed. I think that it was a bad process. I think it was a missed opportunity to do better. And I think there were arguments against repealing SALT actually on conservative grounds. But that's -- what's done is done. And for now, what we do should be shaped by reality and not by understandably broad, you know, partisan takes on what happened.

SENATOR KRUEGER: And I think you and I agree that the people who will fall into this category are the higher-income people, the people with high property tax, high deductions that they get capped at $10,000.

MR. McMAHON: Right.

SENATOR KRUEGER: But you in your testimony for many years have talked about concerns that we don't have all these people leave New York.

MR. McMAHON: Right.

SENATOR KRUEGER: Right?

MR. McMAHON: Right.

SENATOR KRUEGER: So we should try to do something so that they stay in New York.

MR. McMAHON: Right. The problem will be -- that's why I -- the idea of the foundation, if you can do it. Because here's your problem. In the highest income ranges, and now we're talking about people making a million -- the income millionaires, which are basically now just about synonymous with the top 1 percent who are that 40 percent of the income tax.

In that income range, one-third, on average, of the income of state residents in that bracket is wages and salaries. Another 19 percent is sort of business income. But one-third -- actually 37 percent, if you count qualified dividends -- is investment income, capital gains and qualified dividends. They're untouched by any scheme for converting the income tax into a payroll tax, or an entity-level tax.

SENATOR KRUEGER: Although as you also, I think, raised, because of the new pass-through options, you may see a whole universe of individual taxpayers shifting to being corporations for their pay.

MR. McMAHON: You could, but except those people, the really -- now we're talking about the rarified, the seven, eight, nine-figure earners, quite a few of whom actually are salary and bonus dependent in mid-career. They're not getting the pass-through cut. Their entity may be getting the pass-through cut.

But as I mentioned earlier, specifically disqualified from the pass-through cut are investment partnerships and law firms, medical partnerships. There's a whole other provision that has the more junior partners or participants in those partnerships, if they've got a share, they get the discount. So some people who make -- if married, joint -- under $310,000 a year.

But by the standards of the most lucrative, you know, big-time New York City partnerships in those businesses, those are the little people, in effect. Not little by most of our standards. But when we're talking about income millionaires, they're not directly benefiting from the direct business tax cut as much. So it's very uneven.

And I do think if we could find a way to create an optional or elective structure that allows entities to kind of opt into a structure under which they find it beneficial to restructure the basis of compensation, and find it beneficial to pay a new state entity-level tax on compensation that is therefore, under existing federal law, clearly going to be deductible, well, that's worth taking a shot at. But that's not the kind of broad thing that has been discussed.

SENATOR KRUEGER: Thank you. Thank you.

CHAIRWOMAN WEINSTEIN: Thank you for being here.

MR. McMAHON: Thank you.

CHAIRWOMAN YOUNG: Thank you.

CHAIRWOMAN WEINSTEIN: Next we have Michael Kink, executive director, Strong Economy for All Coalition.

MR. KINK: Thank you, Senator Young, Madam Chair Weinstein, members of the Legislature.

I'll also rely on submitting my

written testimony and giving an overview and some thoughts. And like other folks who have been testifying, I'm also going to focus on the response to the federal tax plan.

We do know some of the consequences of the federal tax plan. The federal tax plan will make New York's worst-in-the-nation inequality even worse. We have the worst income inequality in the country, the biggest division between the rich and the poor. Right now, working people and low-income people in New York are paying too much in taxes, and extraordinarily wealthy people in New York are paying too little in taxes. And the federal tax bill will make that even worse.

I think it's right for Governor Cuomo and the Legislature to think about responses to the tax bill, and not only in the category of small changes or gimmicks or stunts that will help a few people here and there, but in the big picture.

Families in Ms. Fahy's district will get enough from the federal tax break to buy a couple of pizzas a month. Many folks in Senator Krueger's district will get enough for a luxury car or a yacht or a house, every month. We are talking about trillions of dollars that have been helicopter-dropped in loads across the Upper East Side of Manhattan, areas of TriBeCa and Wall Street -- and the rest of the state is not going to get the benefit.

I share many of the concerns you've raised today, Chair Young, about the upstate economy, about working people.

There are things that you can do in the state response to the federal tax plan that will increase economic fairness, that will ask the wealthy to pay their fair share and that will ensure broader prosperity for all New Yorkers. You can close loopholes that Congress didn't close. You can take steps to make sure that New York has a fair tax system and a more broadly prosperous economy.

I will start with the carried-interest loophole. We were certainly gratified to see

Governor Cuomo include it in his budget proposal for the first time. This measure has been carried in the Senate by IDC Leader Klein, in the Assembly by Mr. Jeffrion Aubry and a number of cosponsors.

Hedge funds and high-net-worth individuals are not leaving our state. We have 63 percent more millionaires right now than we did when we passed the millionaire's tax in 2009. I'd refer you to some of the cites in my testimony about ultra-high-net-worth individuals. We are gaining millionaires and multimillionaires and that rarified category of people that are known as ultra-high-net-worth individuals. We saw a 15 percent increase in ultra-high-net-worth individuals in New York City in just the last year.

Now, I agree working people are leaving New York. Small businesses can often find it a struggle in New York. And the carried-interest loophole is not going to hit any of those people. There is not a single working person that is going to pay a surtax on carried interest.

That loophole was something that President Trump campaigned on. He went all over the country saying he was going to crack down on Wall Street, he was going to close the carried-interest loophole. And the hedge fund managers and private equity managers that benefit from that loophole spent millions of dollars in lobbying and millions of dollars in campaign contributions and somehow managed to escape from a large-scale tax reform with their loophole intact.

This legislation will be introduced in nine states and the District of Columbia this year. It is a response to a glaring inequity at the federal level. Hedge fund billionaires, private equity billionaires are paying lower tax rates than teachers and truck drivers.

These businesses are located in places where they want to be in business. Anyone that wants to move to Florida can move right now. Some hedge fund managers have moved to Florida, but they have kept their businesses in New York City and in Greenwich, Connecticut, where there is that group of skilled professionals, lawyers, investment pros, huge computers and mathematicians, accountants. Folks fly in from all over the country and all over the world to do their business here. And just like Wall Street claimed it would move when the Republican Party tried to impose a stock transfer tax in 1905, and then for the next 75 years did just fine while New York had a tax on Wall Street, the hedge funds will complain, but they will stay here and they will make billions. They're making more and more money, and your constituents are paying a higher tax rate than they are in many cases.

I'd like to speak briefly about the pass-through loophole. E.J. conveniently failed to mention the most lucrative pass-through entities, the real estate pass-through entities, that just got their federal taxes cut in half. Now, if you're building a skyscraper in Manhattan, you cannot threaten to move to Florida. These people, again, while your constituents are struggling with affordability, making rent, making their mortgage, paying taxes, the wealthiest real estate developers in the world, who are developing the most valuable real estate in the world, just got their federal taxes cut in half.

We have had at times in our state a progressive LLC filing fee structure, and we've had a graduated tax on LLCs where a small business structured as an LLC, a dry cleaner or a plumbing contractor, would not get hit with a high tax. You could target a pass-through loophole closure on the highest value, most wealthy individuals, people that are shielding their income, and it would be utterly fair, it would bring in billions of dollars in revenue for the state, and it would not hurt our economy one bit, it would help our economy.

We've spoken before and we'll speak again in favor of a multimillionaire tax, taking some brackets for folks that make two or five or 10 or $100 million a year. There are ways in which our personal income tax brackets reflect an income distribution from the late '70s and early '80s that has not been adjusted to reflect the explosion in wealth at the top end.

One specific other thing that I'll mention is the possibility of, yes, clawing back some of those federal tax breaks. But it's a rare moment where Mike Kink and E.J. McMahon may agree here. You could do it based on some standards. If a company creates jobs or raises wages in a meaningful way, bully for them.

But there are companies that are going to use their entire federal tax break just to buy back stock and make wealthy people even wealthier. In the last week, Pfizer said that they were going to get an $11 billion benefit from this tax bill. Verizon said that they were going to get a $3.5 billion to $4 billion benefit from this tax bill. Amazon said that they were going to get a $3.2 billion a year benefit from this tax bill.

Now, if Pfizer and Verizon and Amazon create jobs, great for them. That's what was promised. But if those companies do what CNN Money says they're going to do and become part of the businesses that are doing $450 billion in stock buy-backs, then state lawmakers might want to look at clawing some of that money back.

Governor Cuomo's proposal targets a specific sector. I would argue that it would be more meaningful to look at companies that don't create jobs, that don't raise pay, that don't give significant bonuses, and ask them to put the money straight back into job creation -- into schools, into housing, into dealing with the opioid epidemic, into things our state needs.

One specific mention on the opioid epidemic. We've been working with community groups and healthcare groups that are struggling with that on a local basis. We support the Governor's proposal for a prescribing tax that would deal with the externalities of pharmaceuticals. I would encourage the Legislature to look at the possibility of a windfall profits tax on the companies that have made billions of dollars over the last decade and a half as this epidemic has gained steam.

If you look at companies like Purdue Pharmaceutical and Insys and you look at some of the things that they've done to do an end run around FDA concerns, if you look at some of the sanctions that have been applied to these companies, you'll see some bad corporate behavior. And just like the federal government put a windfall profits tax on the oil companies after the price spike in the '70s and '80s -- and for several years took in hundreds of billions of dollars to fund the federal government's essential needs, based on profits that were gained explosively -- you're dealing with the consequences of a serious epidemic here. And looking backwards as well as forwards might be a way to do it in terms of tax policy.

Thank you for your time.

CHAIRWOMAN WEINSTEIN: Thank you.

CHAIRWOMAN YOUNG: Thank you, Mr. Kink. I just had a quick question.

So there was a lot of time spent this morning about the possibility of imposing a payroll tax in New York State in response to the federal tax changes, but part of that would have to be that people's pretax wages would have to be reduced. I was wondering -- you know, you represent a large coalition of union members. How do you think the members would feel about such a plan?

MR. KINK: I think the Legislature should work with the Governor to insist that any adjustment that is made for working people is neutral, that it doesn't hurt people, it doesn't take money out of their pocket.

I think it's very clear that this kind of change can be accomplished. You may need a refundable tax credit, an EITC. I've heard folks that are claiming it's too complex and we can't get our heads around it, argue in favor of incredibly complex harebrained schemes to give subsidies to companies. So I disagree with those that say it's too complex to work on.

I've heard Rob Mujica's presentations. I believe that there is an intention to do it fairly and right. There is obviously a role for the Legislature to make sure that gets done right.

CHAIRWOMAN YOUNG: Are the discussions that you're having with the administration exploring, for example, collective bargaining agreements and people's pensions being impacted and Social Security being impacted? You know, are they coming up with fixes? Because I would assume that those would be prime concerns of your members.

MR. KINK: Sure. I know many of the members of the Strong Economy for All Coalition are having those discussions with the Executive's office on a granular basis, on a kind of global basis. They are.

CHAIRWOMAN YOUNG: Okay, thank you.

Senator Savino.

SENATOR SAVINO: Thank you.

Thank you, Michael. I want to thank

you also for the work that you've been doing on closing the carried-interest loophole. As you point out in your testimony, Senator Klein carries the bill in the Senate and Assemblymember Aubry in the Assembly.

And it's complicated. People don't understand what the carried-interest loophole is. So can you just like briefly explain it?

MR. KINK: Sure. The investment managers that benefit from the carried-interest loophole are able to classify their fees for managing other people's money as long-term capital gains. They can't have a long-term capital loss. We're not talking about people that put in some of their own money, we're only talking about the management fee.

And we've worked with, you know, this group called the Patriotic Millionaires. They've submitted testimony today. Leo Hindery, one of the most prominent private equity managers in New York State, has been up here to argue in favor of this. They say it's just unfair. The classification is wrong. If you can't have a long-term capital loss, why would you be able to take a long-term capital gain?

Their "two and 20" business model takes 2 percent off the top of any money you invest, and they keep 20 percent of the profits. And they pay a tax rate on those profits that is the same that you would pay if they made you money.

Now, if you put up the money, right or wrong, we treat long-term capital gains at a lower tax rate than we might the fees for creating an investment that gives you long-term capital gains. They put their money in with you, Morris Pearl says it's like, you know, you get a haircut from your barber and your barber claims that, you know, they're part of your business.

It's a service. It's an investment service. It's not a commingled investment.

And the tax rate on long-term capital gains is 20 percent. The long term -- the income tax rate previously on those levels of income would have been 39.6 percent, it's now

37 percent. So they basically get their tax rate cut in half because they claim that it's carried interest.

SENATOR SAVINO: And why is it that other states -- that it has to be done by a certain number of other states, otherwise we can't --

MR. KINK: Well, our argument, we recognize that the sort of claim that these companies will dance across state lines and go place to place is part of the discussion around any kind of tax policy treatment of businesses and corporations.

As I said before, and as folks have testified in some of these other states where the legislation has been introduced, there are really good business reasons to be in New York City on Wall Street, in Midtown, in Greenwich, Connecticut, in Chicago, where there's a constellation of hedge funds, in San Francisco or Los Angeles. There are a lot of wealthy people. There are a lot of specialized business professionals. And the sort of culture of investment and money-making is centered there in a way that it's -- you know, it's productive to be there.

These folks have not skipped across state lines to flee taxes. And the regional compact was designed to try to encourage all of the states in a region to do it at the same time. This year, the same way that Governor Cuomo has backed the proposal, the new governor of New Jersey, Phil Murphy, made it part of his campaign, he's going to include it in his budget proposal.

In Connecticut -- I testified before the Connecticut legislature last year for half an hour. We have 40 cosponsors. There's a vigorous debate. There's controversy. But people recognize that a lot of folks in Connecticut are struggling or going backwards, and the hedge funds in Greenwich are doing great and just minting money.

And so the question of fairness, you know, is something that could be done on a regional basis. We'll be introducing D.C., Maryland and Virginia bills this year. So I think we're recognizing that's a possibility.

That said, you know, if we get to a serious budget crisis -- I mean, our revenue estimate on this is $3.5 billion a year.

SENATOR SAVINO: Not chump change.

MR. KINK: If you got it, it could close most of the budget gap that you're talking about. If you decided to take a deep breath and say we're going to tax these guys, you know, you don't have to do the compact.

But I think to be responsible from an economic development basis, to recognize the jobs impact and to think about, you know, a state-level response to a federal policy on a regional basis, is a sound way to do the work. Like we have a regional greenhouse gas initiative, we could have a regional carried-interest initiative.

SENATOR SAVINO: I only have a couple of seconds left, but I wanted to ask your opinion and the opinion of the Strong Economy for All Coalition. Because you tend to represent the very people that Senator

Alcantara's bill would help. As you know, she has a bill that would eliminate the personal income tax for New York City residents who earn under a certain income level. Right now, more than half of New York City residents earn under $50,000 a year, and 21 percent of New York City residents are living in poverty.

So she has a proposal that would eliminate the New York City income tax for those individuals who are earning, if they're single, under 32,000; if they're married filing jointly, under $45,000; head of household, $32,500. It would cost the City of New York $352 million in lost income. But as you probably heard the other day, the city does have a surplus. But these are the very people that your organization represents, through the various groups that are part of the coalition. And so again, just wondering, does the Strong Economy for All have an opinion on whether or not we should eliminate city personal income tax for people at those income levels?

MR. KINK: Right. We have not filed a memo on that particular bill, and I'll take a look at it for sure.

We have supported previously that idea of reducing taxes for working people and lower-income people, paired with a reasonable increase on folks who can afford to pay.

I know now-New York City Comptroller Scott Stringer had a proposal like that when he was in the Assembly, where the two of them go together. And I think just from a tax policy purpose, I would be reluctant to create a significant hole in revenue. But where you can cut taxes on people that are overburdened and increase taxes on people that can afford to pay more and that, you know, are about to get a huge federal tax break, I think it's good timing if you match those two together.

SENATOR SAVINO: Thank you.

SENATOR KRUEGER: Thank you.

MR. KINK: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

CHAIRWOMAN YOUNG: Thank you.

CHAIRWOMAN WEINSTEIN: We've been joined at the dais here by Assemblywoman Earlene Hooper.

And our next testifier, Erin Tobin, vice president for policy and preservation, Preservation League of New York State.

MS. TOBIN: Hi, everyone. Chairwoman Young, Chairwoman Weinstein, and distinguished members of the Senate and Assembly, thank you for the opportunity to speak with you today. I'm speaking about the importance of the New York State Historic Tax Credit, specifically extending the credit and decoupling it from the federal historic tax credit.

My name is Erin Tobin. I'm vice president for policy and preservation with the Preservation League of New York State, which is New York's only statewide historic preservation nonprofit. And our advocacy was instrumental in establishment and enhancement of the New York State Historic Tax Credit Program, which was established in 2007.

In 2013, thanks to Governor Cuomo and

the New York State Assembly and Senate, this program was enhanced and extended through 2019.

Since its inception, the New York State Historic Tax Credit has proven to be a cost-effective economic development and historic preservation incentive, and it has served as a national model for state historic tax credits.

Thanks to our New York State credit, New York now leads the country in economic impacts of historic tax credit-related investment. In 2016, federal and state historic tax credit projects created over $45 million in New York State taxes, along with almost $60 million in local taxes and almost $143 million in federal taxes. Historic tax credit projects in New York State generated more local, state, and federal taxes than any other state in the country. In addition, these projects created almost 14,000 jobs in fiscal year 2016 alone.

To maintain the effectiveness of the New York State Historic Tax Credit, and with the understanding that our state faces a $4.4 billion deficit in 2019, the Preservation League of New York State respectfully requests that the Legislature consider extending the program through December 31, 2024, and decoupling the state historic tax credit from the federal historic tax credit program.

The New York State Historic Tax Credit has particularly stimulated economic development in upstate cities, towns and villages. We believe that in order to remain effective and to catalyze economic development and investment in historic urban downtowns and neighborhoods, villages, and rural communities, the program must be extended this year, not next year. Extension in the 2018 budget will ensure that projects currently in the pipeline for investment and rehabilitation continue to move forward, with investor and developer confidence that the program will remain in place. This confidence will allow continued reinvestment in the urban cores, downtowns and main streets of communities in every corner of New York State.

Buffalo has led upstate in historic tax credit investment, thanks to our state program. Other cities and towns such as Syracuse, Albany, Rochester, Binghamton, and Jamestown are following Buffalo's lead.

In recognizing the economic impact of the state Historic Tax Credit, the Preservation League has seen municipalities across New York seek program eligibility through National Register Historic District nominations. These nominations alone can take up to a year for completion and designation.

Among the municipalities currently seeking National Register Historic Districts, so they can take advantage of this credit, currently set to sunset in 2019, are Syracuse, Rochester, Buffalo, the villages of Schoharie, Palatine Bridge and Monticello, and the City of Elmira, as well as the West Harlem neighborhood of New York City.

Without reassurance that the program

will continue beyond 2019, communities will have no incentive to seek program eligibility, derailing economic revitalization efforts throughout upstate New York.

The Federal Tax Cuts and Jobs Act creates new obstacles to historic preservation in New York State. The 20 percent Federal Historic Tax Credit was changed in the tax reform so that instead of taking the credit in a single year, investors must spread out the credit over five years. By requiring this five-year credit period, the federal government diminished the value of this credit to investors.

Because our New York State Historic Tax Credit is linked to the Federal Historic Tax Credit, defined by the federal program, changes on the federal level weaken the state program. Economists currently estimate that by spreading the credit over five years, the Federal Historic Tax Credit will have about a 15 percent reduction in value to historic tax credit investors that contribute the necessary capital for historic preservation projects. Because of the coupling of our state credit to the federal program, we anticipate that the state would similarly see a loss in the investment value of its credit dollar.

The Preservation League recommends that New York decouple the state tax credit from the federal credit so that the state program can maintain its vitality and New York State can continue to see a strong return on its tax credit investment.

Thank you for your time and consideration of my testimony this morning.

CHAIRWOMAN YOUNG: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

CHAIRWOMAN YOUNG: Excellent testimony. And I appreciate you pointing out Jamestown. And it's a very, very valuable asset and economic development tool that we have in New York, so I appreciate your remarks very, very much.

MS. TOBIN: Thank you.

CHAIRWOMAN YOUNG: Oh, Senator Krueger

has a question.

SENATOR KRUEGER: Thank you.

I also appreciate your testimony.

So you're proposing that we extend the existing law and that we recognize that we need to decouple from the federal. But you didn't comment on the Governor's proposal to actually delay the paying of the credit. Do you see that as having an impact on the program as well, or is that not really a concern?

MS. TOBIN: It is a concern. And right now our top priority is to see the program extended and decoupled. But absolutely, it's the deferral; that affects projects that are in the pipeline right now. And we can think of almost a dozen projects around New York State, at least, just off the top of our head, that would be affected by this deferral. And it's certainly --

SENATOR KRUEGER: Because they're over $2 million.

MS. TOBIN: Right. So -- and that's important, again, for investor confidence and investment.

SENATOR KRUEGER: Thank you.

CHAIRWOMAN YOUNG: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you for being here today.

Next we have the New York Health Plan Association, Eric Linzer, president and CEO.

MR. LINZER: This is my first time up here, so I'm new to the area.

SENATOR YOUNG: We're not as mean as we look.

(Laughter.)

MR. LINZER: You all seem very nice.

Chairwoman Young, Chairwoman Weinstein, members of the joint committees, thank you for the opportunity today to testify. For the record, my name is Eric Linzer. I'm the president and CEO of the New York Health Plan Association. I'm here to testify today on the provisions in the Governor's proposed Executive Budget that would impose a 14 percent tax on for-profit health insurers.

We're opposed to this proposal for

three specific reasons. First, as you heard from the Empire Center earlier today, this proposal unfairly targets one specific industry. To us, it makes very little sense to target one specific industry at a time when other corporations are benefiting from the same changes in the federal tax law.

Additionally, the proposal for this 14 percent tax doesn't appear to take into account other changes in federal tax law that may actually reduce the impact of the overall benefit of the changes in the federal tax rate.

Second, health insurance costs -- or taxes on health insurance in this state are already too high. As you're all well aware, state taxes, fees and assessments total roughly $5 billion. This amount of money is comparable -- essentially creates the third-highest revenue generator into the state budget, behind only income taxes and the sales tax.

As you heard from the Business Council earlier, New York is among the states with the highest tax burden in the country. At this time it makes little sense to us to add to that difficulty and the strain that businesses, particularly small businesses, face. And rather than creating a special piggy bank, essentially, to fund healthcare programs, we need to find a better way to utilize the $5 billion that's already paid in health insurance taxes through, you know, greater efficiencies and more effective use of those dollars.

And third, the funding is unnecessary based on the rationale for the tax. The explanation for the tax has been that this money is needed to protect important healthcare programs in New York in the face of potential federal budget cuts. Fortunately, those budget cuts don't appear to be materializing, as the recent congressional continuing resolution that passed in January included extension of the Children's Health Insurance Program funding. Likewise, the current congressional spending bill that is now pending would extend the funding for CHIP as well as funding for Disproportionate Share Hospitals and to community health centers.

It makes the rationale for this tax unnecessary, and it raises the question as to why we would create a new separate healthcare fund at a time when cuts at the federal level aren't materializing.

Finally, I think it's important to recognize that these health plans, our member plans play a very important role in both New York's economy and the communities in which they operate. These entities pay billions in wages to New York residents as well as hundreds of millions of dollars in state and local taxes. Likewise, they employ tens of thousands of individuals throughout the state, particularly in upstate New York, where it's been a particular challenge to generate good-paying jobs.

Further, these entities invest in their local communities, whether it's local organizations or local businesses.

This tax on for-profit health insurers

is only going to make it more difficult for those entities to operate and do business here in New York, making it a challenge to add new jobs and invest in their local communities. And for these reasons, we would urge you to oppose the 14 percent tax that the Governor has proposed.

I appreciate the opportunity to testify today. I'll be happy to take any questions that the committees may have.

Thank you.

CHAIRWOMAN WEINSTEIN: I have a quick question.

I assume you were here from the beginning and heard the testimony when this issue was raised with the tax commissioner and the budget director. And one of the justifications for this tax that we're talking about now was that the current tax rates, before the federal changes, were built into the rate structure of the plans. And that now there is this -- forgetting about other changes, that there's now a lower tax liability. So that their point is to capture what was already anticipated to be paid in taxes.

MR. LINZER: I think the answer to that, Madam Chair, is twofold. If we're talking about next year's rates, the 2019 rates, the changes in the tax rate would certainly be reflected in the rates that the plans would file that would be effective the beginning of next year. And I think the Empire Center had alluded to some of this.

If, however, we're talking about -- and I believe your question goes to this point -- the rates that are currently in the market, I think it's important to remember a couple of things.

First of all, those rates were approved by the state several months ago prior to any changes in the tax law, and we recognize that. However, there's already a mechanism in place under state law that would result in employers and consumers seeing the benefit of the changes, and that's the medical loss ratio rebate process.

State law requires that for individual

and small groups, that at least 82 percent of the premium dollar has to be used to pay for medical services. For large groups, it's 85 percent. So that if we don't meet these thresholds or those targets, either because medical costs don't reach that level or we spend less on admin, we're required to pay a rebate back to employers and consumers.

I think what's important to remember here is that given the current marketplace and that, say, for example, the potential for potentially higher medical costs this year, especially when you consider the bad flu year we're already engaging in and what that may do for medical costs, you know, the expectation is that any benefit that may come from changes in the taxes that a health plan may pay in the context of the MLR rate equation, you know, would be used for either (a) to deal with higher than anticipated medical costs due to unanticipated or higher utilization or (b) if we don't meet those MLR standards, we would have to send back payments to employers and consumers.

So we think that's the appropriate mechanism in place, you know, rather than the proposal that the Governor has put forth in his budget.

CHAIRWOMAN WEINSTEIN: Thank you.

CHAIRWOMAN YOUNG: Thank you for being here.

So we had a good discussion earlier with the administration and also with E.J. McMahon. And one of the questions I have has to do with if this windfall tax goes into place, E.J. and I had talked about whether it would have an impact on premiums. Could you address that?

And if the free market were to be applied, what would the impact on consumers be?

MR. LINZER: Well, I think the impact on premiums, given that the current year rates have been locked in -- I think to my point I had made to Chairwoman Weinstein, for 2018 that would be reflected in the MLR rebate calculation.

For 2019, as plans begin to develop

their rates that we'll have to submit to DFS in just a matter of a few months, the plans will have to take into account what their administrative costs would be. That will include what we pay in taxes, fees, assessments, et cetera.

So that if the taxes that a health plan is paying are lower than what they were from the previous year, that would be reflected in the rates that we submit to DFS.

CHAIRWOMAN YOUNG: So if this windfall tax were not applied and the federal tax reform reductions went ahead, you're saying that there would be a positive impact on consumers as far as the cost of health insurance policies.

MR. LINZER: Keep in mind, Madam Chair, that it would be one factor that goes into how rates get developed. You know, keep in mind that when health plans develop rates, there is the aspect of what you pay in taxes, fees, assessments as part of the administrative aspect.

There's also other aspects that will

have an impact on what goes into the premiums. You know, certainly the cost for medical services. Health insurance premiums are inextricably linked to the cost of healthcare. So as the cost of doctor's visits, hospital stays, pharmaceutical costs increase, that does have an impact on the premium.

In addition to that, given some of the other changes that are being proposed or are in place -- such as the elimination of the individual mandate, the proposed association health plan regulations at the federal level -- those will be factors that health plans will have to take into consideration. Likewise, the suspension of the health insurance tax at the federal level for 2019 would also be something that would be incorporated.

So there's a number of factors here. I couldn't be able to give you a prediction of what reduction in the federal corporate tax rate would mean from a premium standpoint, because there are a number of other factors, most notably in the space of the medical spend, that probably has a bigger impact on what premiums look like than what some of the administrative costs do.

CHAIRWOMAN YOUNG: Thank you. But if there's any way that you could work it out so that costs could be reduced on consumers, I think that would be a great thing.

MR. LINZER: We agree with you completely, Madam Chair. And actually yesterday we had outlined a six-point proposal on measures that we'd be happy to talk with you and other members of the various committees about ways to, one, contain healthcare costs that benefit employers and consumers, but also, secondly, would seek to help reform the Medicaid program and that $5 billion that I had referenced, so that's a much more efficient and effective program that ultimately we don't have to have a conversation next year about new revenues, but rather ways that we're making sure we're getting value for the dollars that the state's paying.

CHAIRWOMAN YOUNG: Thank you.

CHAIRWOMAN WEINSTEIN: Assemblywoman Galef.

ASSEMBLYWOMAN GALEF: Just a quick question. You mentioned the individual mandate, that that's gone. How is that going to impact the rates?

MR. LINZER: It will have some bit of a -- it will have a -- let me start again. It will have an impact.

ASSEMBLYWOMAN GALEF: Positive or negative?

MR. LINZER: I think it would be negative. You know, given -- you know, certainly negative. I think the expectation would be that, you know, individuals -- remember, the point of the individual mandate was to encourage not just individuals who need health insurance and need access to services to participate in the pool, but those who are younger, healthier, maybe less apt to utilize their services. We want to have a balanced pool.

Eliminating the mandate has the

potential to encourage some of those younger, healthier individuals from participating in the market. What that looks like -- you know, again, the plans are just in the process of beginning to develop their rates for 2019. I'd be happy to come back at a later date and talk with you in more detail about what we're seeing from our members. But it certainly will have an impact on rates.

ASSEMBLYWOMAN GALEF: So you wouldn't have supported it on a federal level.

MR. LINZER: You know, again, I'm a month into the new job here. I do come from Massachusetts, which did have and has had an individual mandate for a long time. It has had a benefit.

But remember, I think the other piece to keep in mind is health insurance is expensive because healthcare is expensive. Getting at underlying healthcare costs, dealing with the prices charged by doctors, hospitals, pharmaceutical companies is an important way to get at lowering premium costs and encouraging some of those folks who may choose not to participate, in the absence of the individual mandate, to actually get into the pool.

CHAIRWOMAN WEINSTEIN: Thank you for being here.

MR. LINZER: Thank you.

CHAIRWOMAN YOUNG: Thank you.

SENATOR KRUEGER: Thank you.

CHAIRWOMAN WEINSTEIN: Our final witness for today, Schuyler Center for Analysis and Advocacy, Dede Hill, director of policy.

MS. HILL: Good afternoon, Chairwoman Young, Chairwoman Weinstein. Thank you so much for this opportunity. Thank you to all the members of the respective committees and to everyone for hanging in there.

As you noted, I'm policy director of at the Schuyler Center for Analysis and Advocacy. We are a 146-year-old organization dedicated to advancing policies that improve the lives of New York families and children, with a special focus on low-income families.

I'm here today to talk about child poverty. One of our state's most painful failures is that a quarter of our children live in poverty. And those numbers are higher in communities of color: One-third of Latino and black New York children live in poverty. And compared to the rest of the country, we don't measure well. We're ranked 33rd in terms of child poverty around the country.

And one more important statistic that I want to mention is that of all of our New York children who live in poverty, 65 percent of them have at least one parent who's working.

And at this point you might be wondering if I walked into the wrong hearing. I recognize that Human Services was Tuesday. I will note that the wait time for this hearing is a little better than Human Services, so I appreciate that.

But no, I did not sign up for the wrong hearing. Tax policy can be part of the solution to child poverty. And in particular, working family refundable tax credits are an important way to build family economic security and independence and to enable families to pull themselves and their children out of poverty.

And these credits, they encourage work, because the taxpayer has to earn an income in order to be eligible. The credits increase with income to a point and then gradually phase out.

Also we know that even modest boosts in income for low-income families from tax credits, particularly families with young children, can yield tremendous benefits for children, including improved physical, emotional and behavioral health, higher educational attainment, and increased future earnings.

As has already been mentioned by some presenters earlier, the benefits of the federal tax overhaul are skewed sharply in favor of high-income earners. The tax overhaul is going to provide very few benefits for New York's working families.

And in fact it's going to increase the tax burden for some of our working immigrant families who will no longer be eligible for the federal child tax credit.

And further -- and this is something that Mr. Kink mentioned -- the federal tax overhaul is going to expand the divide between wealthy and poor New Yorkers. And our state already has the dubious distinction as the state with highest income inequality, and this is going to deepen that divide.

So now more than ever, it's up to New York to take the lead and tackle its child poverty problem and put families on a path to economic independence and security. And one way to do that is to strengthen New York's working family tax credits.

And I would like to propose today that we start with the Empire State Child Credit. And this is New York's version of the child tax credit. And of course the child tax credit, both federal and the state, is -- it's designed to offset the high cost of raising kids.

And while New York is a leader in the nation in having a refundable child tax credit, our credit has a very serious flaw: It omits children under age 4. And as any of you who have raised kids know, this defies logic. Raising young kids is super expensive, and young families tend to be the families who are struggling the most, because they're at the beginning of their career ladders. They're struggling already to sort of make ends meet. And yet -- and yet we omit these children from our child tax credit.

And this exclusion is out of step with the growing body of research establishing the critical importance of investments in the early years. And also we know that investments in young children pay dividends later, they save the state money.

This year the state has taken important steps to target investment in our youngest New Yorkers, in implementing its path-breaking First 1,000 Days on Medicaid program. We suggest that the state also take the step and correct this flaw in our Empire State credit. This will complement the efforts of the First 1,000 Days on Medicaid initiative.

And also another reason that this is an important year to fix this flaw is that the Empire State Child Credit is one of the very few income supports available to some of New York's immigrant families. And again, as I noted earlier, the federal child tax credit has just been taken away from those families.

It's -- just an aside about the Governor's proposed budget. Currently our Empire State Child Credit is linked to the federal child tax credit. However, in the proposed Executive Budget it's proposed to keep the two linked but freeze in time the link to how the federal child tax credit existed prior to the tax overhaul.

What that is going to mean is that our Empire State Child Credit is not going to increase in lockstep with the federal child tax credit. That, I would argue, is bad news.

But the good news is that our immigrant families who were eligible under the federal credit prior to the tax overhaul will remain eligible at least for our Empire State Child Credit. So that's good news.

What the Governor's Executive Budget does not do is fill in this gap of children zero to 4. And so we urge you today to consider taking that up, fixing that flaw -- and then go a step further. We suggest that you double the tax credit for young children.

This would put New York State at the forefront in taking care of our youngest New Yorkers. It would put us in line with all of the literature that tells us invest in kids early, it will change the course of their lives for the rest of their lives and will also save the state money down the road.

Thank you very much for your attention, and I'm happy to answer any questions.

CHAIRWOMAN WEINSTEIN: Senate?

CHAIRWOMAN YOUNG: Senator Krueger.

SENATOR KRUEGER: Thank you for your

testimony.

And just double-checking, so E.J. McMahon earlier actually called for decoupling from the federal to double the tax credit for children. You also support that, or you don't support that?

MS. HILL: So it's -- I was here and I was listening, and somehow I missed that. So he proposed decoupling --

SENATOR KRUEGER: Mm-hmm.

MS. HILL: -- and doubling?

CHAIRWOMAN WEINSTEIN: No. Not decoupling.

SENATOR KRUEGER: No, he said that -- I'm sorry. The Governor failed to address the obvious issue, does not go out of its way -- it does go out of its way to decouple New York State law for a single federal tax provision, the doubling of the federal child credit and expansion of the income phaseout for parents. Absent any changes, would automatically double our Empire State Child Credit from 333 to 666.

You support this. I'm just

double-checking.

MS. HILL: So I am not here today asking for necessarily to -- so okay, if we do nothing, if the Governor's proposal is not passed, then yes, our Empire State Child Credit would double in lockstep with the child tax credit. We certainly would not oppose that.

That's not the -- but I would also point out that we would also go in lockstep with the feds, the federal government, as far as excluding some of our immigrant families, and that we would oppose. So -- and then -- but our focus today is really to fill in this gap in coverage of children under age 4.

SENATOR KRUEGER: And is there an estimated cost to the state for doing that?

MS. HILL: We have a very, very rough back of the envelope: 200 million.

SENATOR KRUEGER: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

CHAIRWOMAN YOUNG: Thank you.

CHAIRWOMAN WEINSTEIN: So this concludes the joint budget hearing on Taxes.

We will be back here Monday for the Health joint hearing.

(Whereupon, the budget hearing concluded at 1:38 p.m.)