

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

2 -----

3 JOINT LEGISLATIVE HEARING

4 In the Matter of the
5 2019-2020 EXECUTIVE BUDGET
ON TAXES

6 -----

7 Hearing Room B
8 Legislative Office Building
Albany, New York

9 February 12, 2019
2:15 p.m.

10

11 PRESIDING:

12 Senator Liz Krueger
Chair, Senate Finance Committee

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

15 PRESENT:

16 Senator James L. Seward
Senate Finance Committee (RM)

17 Assemblyman Clifford Crouch
18 Assembly Ways & Means Committee (Acting RM)

19 Assemblywoman Sandy Galef
Chair, Committee on Real Property Taxation

20 Senator Brian A. Benjamin
21 Chair, Senate Committee on Revenue and Budget

22 Assemblyman Robin Schimminger

23 Senator Diane J. Savino

24 Assemblyman John T. McDonald III

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3 PRESENT: (Continued)

4 Senator Robert E. Antonacci

5 Assemblywoman Inez Dickens

6 Senator Michael H. Ranzenhofer

7 Assemblyman Edward C. Braunstein

8 Senator John Liu

9 Assemblyman Charles D. Lavine

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1 CHAIRWOMAN WEINSTEIN: So for those
2 who haven't been here earlier in the day, I'm
3 Helene Weinstein, chair of the New York State
4 Assembly's Ways and Means Committee, cochair
5 of this afternoon's hearing.

6 Today we begin the 13th in a series of
7 hearings conducted by the joint fiscal
8 committees of the Legislature regarding the
9 Governor's proposed budget for fiscal year
10 2019-2020. The hearings are conducted
11 pursuant to the New York State Constitution
12 and the Legislative Law.

13 And we will be hearing, our committees
14 will be hearing testimony regarding the
15 Governor's proposal for Taxation. I should
16 at this point mention that the Taxation
17 hearing will continue tomorrow at 1:30 p.m.
18 in Hearing Room A, where we'll be hearing
19 some testimony from the Governor's office
20 regarding their cannabis proposal that's
21 included in the budget.

22 Now I'll introduce the members from
23 the Assembly who are here, and then Liz
24 Krueger will introduce her members, and Will

1 Barclay, our ranker, will introduce his
2 members.

3 So we have, sitting on the lower dais,
4 our chair of the Real Property Taxation,
5 Sandy Galef -- we have a seat up here if you
6 want -- John McDonald, Robin -- everybody's
7 moving their seats. Assemblyman Robin
8 Schimminger, chair of Economic Development;
9 Inez Dickens, Ed Braunstein and Charles
10 Lavine. And as I mentioned, Will Barclay is
11 the ranker -- I'm sorry, Cliff.

12 ASSEMBLYMAN CROUCH: I know we look
13 alike.

14 (Laughter.)

15 CHAIRWOMAN WEINSTEIN: No, I didn't
16 even look.

17 (Laughter.)

18 CHAIRWOMAN WEINSTEIN: It's been a
19 long 13 days. Cliff Crouch is here on behalf
20 of the Assembly minority.

21 Liz Krueger.

22 SENATOR KRUEGER: Thank you. Hi, I'm
23 Liz Krueger, and I'm joined by Diane Savino
24 on the lower level and Jim Seward, the ranker

1 on Finance. I think we're the tough souls
2 left for the Senate right now.

3 CHAIRWOMAN WEINSTEIN: And just a
4 reminder, there's a countdown clock. Ten
5 minutes -- you'll have 10 minutes,
6 commissioner. And then the chairs of the
7 committee, if here, will have 10 minutes to
8 ask questions and the answers, and the
9 members will have five minutes to ask both
10 questions and answers.

11 So we have as our first witness at
12 this hearing Nonie Manion, executive deputy
13 commissioner, New York State Department of
14 Tax and Finance.

15 So please proceed.

16 EX. DEP. COMMISSIONER MANION: Good
17 afternoon, Chairs Krueger and Weinstein, and
18 to all the members of the fiscal committees
19 who have joined us today. My name is Nonie
20 Manion, and I'm the executive deputy
21 commissioner at the Department of Taxation
22 and Finance. Thank you for inviting me to
23 testify regarding Governor Cuomo's 2020
24 Executive Budget.

1 Our mission at the Tax Department is
2 to efficiently collect tax revenues in
3 support of state services and programs while
4 acting with integrity and fairness in the
5 administration of the tax laws of New York.
6 We administer over 45 state and local taxes
7 and process over 26 million tax returns
8 annually.

9 As a career tax administrator, I am
10 acutely aware of the cascading impacts a
11 seemingly small ripple in the tax code can
12 have on businesses and families. The federal
13 tax changes last year wreaked havoc across
14 the nation. Nowhere has the impact been felt
15 more strongly than here in New York, where
16 the cap on state and local tax deductibility
17 alone has effectively raised taxes for many
18 New Yorkers.

19 The SALT cap, combined with market
20 volatility and the uncertainty created by the
21 federal economic policies, has left New York
22 with a \$2.3 billion shortfall as we approach
23 the close of this fiscal year.

24 Fortunately, last year the Governor

1 advanced comprehensive legislation to
2 decouple from the new federal tax laws,
3 acting quickly to avoid more than 1.5 billion
4 in state tax increases due to the federal tax
5 changes, and to ensure that our residents
6 could continue to rely on the state tax rules
7 they have come to expect.

8 In this regard, New York is better
9 positioned than many other states, some of
10 which are only now seeing the devastating
11 impact of the federal changes on their
12 residents that have begun filing tax returns
13 under the new regime.

14 The Governor also advanced innovative
15 new programs to help New Yorkers weather the
16 impacts of the SALT cap, including a new
17 employer compensation expense program that
18 has attracted hundreds of employers in its
19 first year.

20 The fiscal discipline of the past
21 eight years has positioned the state well to
22 navigate the turmoil coming from Washington.
23 The 2020 budget continues to exercise fiscal
24 restraint for the ninth straight year,

1 allowing the state to close a \$3.1 billion
2 deficit, limit state spending growth to
3 2 percent, eliminate structural deficits, and
4 offer much-needed tax relief.

5 This budget proposes making permanent
6 the 2 percent property tax cap that has
7 already saved the typical taxpayer \$3,200.
8 The budget also includes measures that would
9 reinforce the progressivity of the state's
10 tax code. It extends the top personal income
11 tax rate for another five years, while
12 continuing the phase-in of the middle-class
13 tax cut that will save taxpayers over
14 \$4 billion when fully effective. These cuts
15 will result in an average tax cut of \$700 for
16 approximately 6 million New Yorkers, and
17 middle-class tax rates that will be at their
18 lowest in more than 70 years.

19 While the Executive Budget builds on
20 the state's efforts to promote fairness for
21 taxpayers, it is also important that we
22 recognize the need for the Tax Law to evolve
23 with changing times. The 2020 budget would
24 modernize our tax code by requiring

1 marketplaces that facilitate sales to collect
2 the tax on those sales, implementing a tax on
3 e-cigarettes and other vapor products, and
4 legalizing and taxing adult use of cannabis.

5 The Governor remains committed to
6 protecting New Yorkers from the negative
7 impacts of the federal tax law. The 2020
8 budget advances additional reforms to help
9 protect taxpayers from the federal tax law
10 changes, including decoupling from the
11 federal tax treatment of state incentives and
12 ensuring that manufacturers continue to
13 qualify for certain state tax preferences.

14 Thank you again for the opportunity to
15 speak with you this afternoon and for your
16 ongoing partnership on these critical issues.
17 I'm happy to answer any questions that you
18 might have.

19 CHAIRWOMAN WEINSTEIN: Yes, we're
20 going to start with Sandy Galef, our -- as I
21 mentioned -- chair of Real Property Taxation.

22 ASSEMBLYWOMAN GALEF: Thanks.

23 Welcome, and thank you very much for
24 being here.

1 I'd like to ask a number of questions
2 about the issues that we deal with in the
3 real property area. With the STAR, you're
4 recommending now that -- I can't figure out
5 the logic with having different benefits and
6 eligibility criteria for the STAR exemption
7 and the STAR credit check programs. And what
8 you're doing is you're promoting more people
9 to be in a check credit program between the
10 income of 250,000 to 500,000.

11 We've been here before about the check
12 program. I know it's better now than it had
13 been. But why are we doing this? What is
14 the rationale?

15 EX. DEP. COMMISSIONER MANION: What we
16 found with the check program is we are
17 well-positioned to be able to verify the
18 individual's income and to make sure that
19 they qualify for the benefits under the STAR
20 credit program. By bringing them into this
21 program, we can check not only their income
22 but we could also see if they might have
23 another property that they might be asking
24 for the STAR benefit on. So that's something

1 that the locals are not able to do because
2 they don't have access to all the
3 information.

4 So I think we're well-positioned to
5 make the program better to ensure that people
6 are getting the benefit that they're entitled
7 to and no more.

8 ASSEMBLYWOMAN GALEF: Do you
9 anticipate that in the next year, if we go
10 forward with this program, that you're going
11 to include other income levels into this
12 program and have everybody into a check
13 return program?

14 EX. DEP. COMMISSIONER MANION: I can
15 really only speak to what's in the budget
16 this year. We have seen that -- for
17 instance, in moving the seniors towards the
18 IVP program, it's the same type of thing
19 where we're uniquely positioned where we can
20 check that income and we can check for the
21 property. So we've seen some incremental
22 areas where we've moved to be able to do this
23 verification. I can't really speak to what
24 might be in the budget for next year.

1 ASSEMBLYWOMAN GALEF: Let me ask you
2 something. You mentioned SALT before. Now
3 you're saying to people paying their tax
4 bills that they're going to have a higher
5 payment with their bill, they'll get the
6 check later. But when they're dealing with
7 their income tax issue and SALT and \$10,000,
8 you may be pushing people in a different
9 category for federal tax purposes.

10 Have you thought about that as a side
11 effect of this program?

12 EX. DEP. COMMISSIONER MANION: Well, I
13 think what we were able to do this year was
14 we were actually able to give them that check
15 prior to their tax bill being paid. So
16 they're not necessarily paying the tax bill
17 up-front and then getting the check
18 afterwards. We were able to get it to them
19 ahead of time.

20 As for it having an impact on their
21 income tax, it really shouldn't, because they
22 really get the benefit of whatever school tax
23 they pay, whether it's a check or through the
24 exemption.

1 ASSEMBLYWOMAN GALEF: So there won't
2 be any problem with the federal government
3 then saying that I paid \$7,000 in school
4 taxes, I got a check back for a thousand, so
5 I really paid 6,000? Does that work with the
6 federal government?

7 EX. DEP. COMMISSIONER MANION: The
8 instruction is if you get the credit check,
9 you net it from the \$7,000 that you paid for
10 the school tax.

11 ASSEMBLYWOMAN GALEF: The other
12 questions I have, with the Enhanced STAR
13 benefits, are there people that have not
14 given their right age for Enhanced STAR?
15 Because that's one of your programs.

16 EX. DEP. COMMISSIONER MANION: Right
17 now our eligibility check is for the income,
18 and we are looking to see if we can extend
19 that eligibility to be checking on the age.

20 ASSEMBLYWOMAN GALEF: But have you had
21 problems to date?

22 EX. DEP. COMMISSIONER MANION: We
23 haven't been able to check it yet. We don't
24 have the authority to do that. But we do

1 have some information in our systems that
2 would identify whether they would be of the
3 right age.

4 ASSEMBLYWOMAN GALEF: Okay. Can I
5 talk about the Nassau County assessment
6 phase-in exemption? Your department is
7 requesting that as they do reassessments in
8 Nassau, that they phase it in over five
9 years. Now, in the last number of years we
10 have passed legislation to phase it in over
11 two years. Are you recommending that there
12 should be a state policy for five years for
13 reassessment purposes? Or is Nassau very
14 unique?

15 EX. DEP. COMMISSIONER MANION: I
16 believe the bill is to allow the locals to
17 choose as to whether they want to phase it in
18 over two or five years. So the bill that's
19 in the budget allows for the flexibility for
20 the municipalities, not just for Nassau.

21 ASSEMBLYWOMAN GALEF: You're saying
22 that in the budget we're not just dealing
23 with Nassau, we're saying to all communities
24 that they can have a five-year phase-in.

1 EX. DEP. COMMISSIONER MANION: I
2 believe that's correct. I'll verify it,
3 though.

4 ASSEMBLYWOMAN GALEF: Okay. And then
5 just on the electric generating facilities on
6 state-owned land, would the new exemption
7 apply to all local municipalities and school
8 districts without regard to whether they've
9 opted out of the Section 487?

10 EX. DEP. COMMISSIONER MANION: I'm
11 sorry, can you --

12 ASSEMBLYWOMAN GALEF: With the new
13 exemption -- this is the whole exemption for
14 electric generating facilities on
15 state-owned, controlled land. First of all,
16 what do you mean by "controlled by the
17 state"? Is there a definition for
18 "controlled by the state"?

19 EX. DEP. COMMISSIONER MANION: I'm
20 going to have to get back to you on it
21 because I don't want to misspeak on it.

22 ASSEMBLYWOMAN GALEF: Okay. Do we
23 have a permanent exemption? Can
24 municipalities opt out of this in the

1 regulation? We don't understand -- I think
2 the bottom line is we really don't know what
3 you're asking for. There don't seem to be
4 enough specifics on this program, and to go
5 forward with it, it could be very detrimental
6 to our local communities because they will
7 lose taxes.

8 EX. DEP. COMMISSIONER MANION: And I
9 apologize for not having that information,
10 but we'll get back to you on it.

11 ASSEMBLYWOMAN GALEF: Somebody can get
12 back to me and that?

13 EX. DEP. COMMISSIONER MANION: Yes.

14 ASSEMBLYWOMAN GALEF: Okay. That
15 would be great. I thank you very much. I
16 know there are other issues, but thank you.

17 EX. DEP. COMMISSIONER MANION: Thank
18 you.

19 CHAIRWOMAN WEINSTEIN: Senate?

20 CHAIRWOMAN KRUEGER: Senator Brian
21 Benjamin, chair of the Revenue and Budget
22 Committee.

23 SENATOR BENJAMIN: Thank you, Madam
24 Chair.

1 Thank you for being here.

2 A quick question. I want to talk
3 about SALT for a little bit. Can you give us
4 a sense of what do you believe led to the
5 \$2.3 billion revenue shortfall that we're
6 hearing? Do you believe it's the SALT cap,
7 is it the market volatility? Has there been
8 any analysis to figure out where exactly this
9 \$2.3 billion shortfall is coming from?

10 EX. DEP. COMMISSIONER MANION: Okay.
11 At the end of the last calendar year, so at
12 the end of 2018 and the beginning of 2019, we
13 saw that the estimated tax and the
14 withholding tax was much lower than usual at
15 the end of the year. We do believe that the
16 SALT has an impact on it. And the reason
17 that we feel that's true is because we've
18 seen taxpayers actually change their
19 behavior, paying the tax at the end of the
20 2017. We had a number of taxpayers that
21 prepaid some of their taxes in 2017 so they
22 wouldn't be negatively impacted by the tax
23 changes in 2018.

24 Then we also saw -- there was a short

1 period in the summer of 2018 where we opened
2 up for the charitable contributions. And we
3 had \$100 million paid in for the charitable
4 contributions.

5 So those two things indicate to me
6 that taxpayers are definitely -- they're very
7 sensitive to this, and they're willing to
8 make very large payments at different times.
9 What happened at the end of the year could be
10 again associated with the SALT payments, but
11 it's also associated with the volatility in
12 the stock market. A lot of the estimated
13 taxes that come in at the end of the year are
14 associated with capital gains. And if you
15 remember at the end of the calendar year, the
16 stock market was low. And that could also
17 have an impact on the Wall Street bonuses.

18 So there are a number of different
19 factors that come into play there. We don't
20 have the tax returns associated with any of
21 that right now. And most of our tax returns
22 will come in by April 15th, but a lot of the
23 high-dollar tax returns, the high earners,
24 they're out on extension so we won't see them

1 until October.

2 SENATOR BENJAMIN: Gotcha. So I know
3 the Governor is meeting with the President
4 today, I believe, to talk about this very
5 issue. Do you have any sense of, if the
6 President was to side with New York State on
7 this, what kind of impact that could have to
8 future revenue, either shortfalls or the lack
9 thereof?

10 EX. DEP. COMMISSIONER MANION: I think
11 that -- you know, we've seen where it's had a
12 negative impact on our taxpayers.

13 New York State -- the Governor and the
14 Legislature -- reacted very well at the end
15 of last year to enact a number of changes
16 that lessened the impact of the federal tax
17 changes by decoupling on a lot of the
18 federal. So we now have a lot of our own
19 itemized deductions, the Employer
20 Compensation Expense Program. Those programs
21 were put in place, and I think that we've
22 done what we can to stabilize it.

23 There are many other states that are
24 not in the same situation as us. For

1 instance, Virginia actually had to stop
2 processing their tax returns this season
3 because they didn't make those changes. And
4 when their citizens started filing their tax
5 returns, they were finding they owed a lot
6 more Virginia tax. So they stopped
7 processing the tax returns and now they have
8 some bills waiting to be signed, and they're
9 making changes right now during their
10 processing season.

11 SENATOR BENJAMIN: You mentioned the
12 Employer Compensation Expense Program. I
13 have a couple of questions on that.
14 According to the financial plan, there was
15 about 262 employers who have decided to
16 participate in the program thus far, bringing
17 in about \$2 million, to my understanding. Do
18 you consider that to be a high level of
19 employer participation or a low level of
20 employer participation?

21 EX. DEP. COMMISSIONER MANION:
22 Actually, I think it's pretty good. because
23 it's a new program. It requires the
24 businesses to take a look at it to see if it

1 works for them.

2 It's also, if you think about it, the
3 program -- it phases in over three years. So
4 the benefit is really only for 1.5 percent in
5 this first year, 3 percent in the second, and
6 5 percent in the years afterwards.

7 So, you know, the 262 businesses that
8 are taking advantage of it, I think that
9 they're going to find it to be a benefit and
10 it's going to be greater benefit for them in
11 the future. And then it's a small number of
12 tax practitioners that do this type of advice
13 for businesses. So when they see it work for
14 some businesses, they're going to be
15 advocating for it with some of their other
16 clients. So I think it's going to take off.

17 SENATOR BENJAMIN: So you believe it
18 will naturally grow and there's no reason to
19 be alarmed at this point and to consider
20 changes or incentives to increase the amount
21 of employers who are participating in the
22 program?

23 EX. DEP. COMMISSIONER MANION: I think
24 there will be natural growth with the

1 existing program, yes.

2 SENATOR BENJAMIN: Okay. Are you
3 aware of any localities that created their
4 own charitable funds, state charitable trust
5 funds, as allowed under last year's budget?
6 Are you familiar with any?

7 EX. DEP. COMMISSIONER MANION: I don't
8 have it now. I know there was a lot of
9 discussion, but I don't know who actually
10 created it.

11 SENATOR BENJAMIN: Okay. Well, if you
12 can try to find that out --

13 EX. DEP. COMMISSIONER MANION: We can
14 get back to you.

15 SENATOR BENJAMIN: Because one of the
16 things it would be interesting to know is if
17 there were -- those were created, how much
18 money, if any, were received.

19 Okay, moving on. In regards -- one of
20 the concerns that I have is regarding the
21 IRS's response to some of our ideas here. To
22 my attention, the IRS has been working on
23 rules to stop the charitable deductions made
24 to any funds in this kind of program. Are

1 you familiar with any rules from the IRS at
2 all?

3 EX. DEP. COMMISSIONER MANION: They
4 have not formalized those rules. And as you
5 know, New York State is suing the IRS over
6 that. So we think we're in a pretty good
7 position, and I think their delay in
8 formalizing those rules kind of gives the
9 indication that they're not on as firm ground
10 as they thought they were.

11 SENATOR BENJAMIN: Okay. Moving on to
12 the internet tax advantage that we're looking
13 to eliminate -- or at least that you are
14 looking at, I should say that -- do you know
15 how many marketplace providers already
16 collect and remit sales taxes in the State of
17 New York?

18 EX. DEP. COMMISSIONER MANION: The
19 vast majority of the large marketplace
20 providers do collect and remit sales taxes.

21 SENATOR BENJAMIN: So how many
22 transactions will be impacted by these
23 provisions, in your estimation?

24 EX. DEP. COMMISSIONER MANION: So how

1 many more marketplaces would --

2 SENATOR BENJAMIN: Yes.

3 EX. DEP. COMMISSIONER MANION: Again,
4 since the vast majority have already signed
5 up, there will be few that will come online
6 with it.

7 A difference here is the marketplace
8 requires that they collect and remit for all
9 of their third-party vendors that they have.
10 So right now they could be registered,
11 collecting and remitting, but they're not
12 collecting for their third-party business,
13 which could be a small business in Wisconsin.

14 So you buy from a small business in
15 Wisconsin, you run it through a major
16 marketplace, they're not doing that
17 collection and remittance. The bill in the
18 budget would require that they do that. The
19 marketplace is the one that actually does the
20 transaction of the money. You don't even
21 realize that you're working with a small
22 business in Wisconsin.

23 And we have to keep in mind that any
24 small business in New York is required to

1 register, collect and remit from the time
2 they open the door. So this is about
3 fairness and a level playing field.

4 So it's not necessarily more of these
5 marketplaces will be registering, it's more
6 about the hundreds and thousands of the small
7 businesses behind them that they'll then be
8 collecting and remitting for.

9 SENATOR BENJAMIN: And how will they
10 do that? I mean, is that an easy process? I
11 mean, because right now all these third-party
12 providers are not providing information or
13 not being managed in this way. Is that going
14 to -- talk to me about that a little bit. Is
15 that going to be easy to do?

16 EX. DEP. COMMISSIONER MANION: This
17 actually makes it very easy for those small
18 businesses. Because the large
19 marketplaces are doing it. If you're
20 purchasing on a large marketplace, they're
21 collecting tax. So any New York-based
22 business, they're collecting and remitting
23 that tax. They're just not doing it for the
24 small businesses.

1 When the small businesses contract
2 with the marketplace, what they're doing is
3 they're paying them for the service of
4 posting to their marketplace, and also for
5 that monetary transaction. So now what this
6 would be is it would just be like an add-on
7 to that monetary transaction, and the
8 marketplace actually does the work for them
9 and does the remittance for them.

10 SENATOR BENJAMIN: So if I am a
11 consumer in New York City, the fiscal benefit
12 will be to New York City. Or if I'm a
13 consumer in XYZ County, is that how -- it's
14 based on where the consumer is located and
15 that's where the tax benefit will go?

16 EX. DEP. COMMISSIONER MANION:
17 Correct. Because just -- with just about all
18 of these, it's delivered to your home. So
19 it's where it's delivered to, that's the
20 locality that's going to get the benefit.

21 SENATOR BENJAMIN: So the marketplace
22 provider will pay the tax to the state, the
23 state will then provide the resources to the
24 city, county or municipality?

1 EX. DEP. COMMISSIONER MANION:

2 Correct. Through our regular -- our ongoing
3 sales tax administration that we do for all
4 the localities.

5 SENATOR BENJAMIN: Okay. Thank you.

6 CHAIRWOMAN KRUEGER: Thank you.

7 Assembly.

8 CHAIRWOMAN WEINSTEIN: We're going to
9 go to Cliff Crouch for some questions.

10 ASSEMBLYMAN CROUCH: Good afternoon,
11 Commissioner. Thanks for being here.

12 EX. DEP. COMMISSIONER MANION: My
13 pleasure.

14 ASSEMBLYMAN CROUCH: And hope you get
15 home safe.

16 The personal income tax, you've talked
17 about the decline in contributions coming at
18 the end of the year. Do you see that as a
19 long-term problem, the estimated payments, or
20 a short-term problem?

21 EX. DEP. COMMISSIONER MANION: I think
22 there -- I don't think it will stay the same.
23 I think it probably will decline some as the
24 returns come in. But it's something that

1 we're just going to have to watch. Because
2 with all the different variables that came
3 with filing of the income tax returns this
4 year from the federal end and the state end,
5 there are so many differences that we're --
6 we're watching a lot of different things.

7 For instance, on the federal end the
8 increased itemized deduction -- even though
9 we did our own itemized deduction in New
10 York, we're watching to see how many people
11 are not doing the itemized deduction in New
12 York anymore because they don't have to do it
13 on the federal end.

14 So there are a lot of different things
15 that we're looking at, because it's taxpayer
16 behavior. And the estimated tax payments,
17 again, is taxpayer behavior. Do they think
18 they have to pay more? Do they want to hold
19 back and pay it later? There are too many
20 variables. We're just going to have to
21 watch.

22 ASSEMBLYMAN CROUCH: On the sales tax
23 side, last year the Supreme Court decided
24 that the states may require collection of

1 sales tax by out-of-state internet retailers.
2 The Court suggested that the law follow and
3 satisfy a checklist by adopting a de minimis
4 threshold explicitly rejecting retroactive
5 enforcement. It had a laundry list of
6 things.

7 And my understanding is that the state
8 does not necessarily adhere to that. The
9 state provides central collection of the tax
10 from localities that adhere to the sales tax
11 base, and the state does not adhere to the
12 common definitions, to my understanding, or
13 provide base-rate lookup software. Are you
14 concerned that there's a possibility of a
15 future lawsuit from an out-of-state internet
16 retailer on the basis that New York's current
17 sales tax model does not adhere to all the
18 requirements?

19 EX. DEP. COMMISSIONER MANION: The
20 Wayfair decision was a Supreme Court
21 decision, and probably one of the biggest
22 decisions on sales tax since the 1960s.

23 New York State actually had a law on
24 the books that required -- it required

1 collection and remittance if their sales were
2 over \$300,000 and over 100 transactions. So
3 that was on the books. When the Wayfair
4 decision came through, it enabled us to
5 enforce that.

6 So the other issues that were brought
7 forth there, such as making it easier for
8 businesses to comply, I think the
9 marketplace, the bill that we have for the
10 marketplace really touches on that a lot.
11 Because the vast majority of the out-of-state
12 vendors are working through marketplaces,
13 especially the volumes, the number of
14 businesses. So that takes care of a lot of
15 it in essence too.

16 I don't think we're out of compliance.
17 I think our sales tax laws are very complex
18 and there's always room for improvement on
19 them.

20 ASSEMBLYMAN CROUCH: Okay.

21 EX. DEP. COMMISSIONER MANION: And we
22 do have a lookup. One of the things you
23 mentioned is we didn't have a lookup. On our
24 website there is a lookup. You can put in an

1 address and it will give you the lookup. And
2 we actually can provide that information to
3 vendors so that they can build it into their
4 system for the lookup.

5 ASSEMBLYMAN CROUCH: Is it an easy
6 access to this lookup that other businesses
7 out of the state could readily find, or do
8 they know about it?

9 EX. DEP. COMMISSIONER MANION: It is
10 easy to do. I don't know how many of them
11 know about it. I think there are a number of
12 vendors that -- most businesses deal with
13 vendors through their point-of-sale system.
14 And the vendors have their own. But I do
15 know of some businesses that use this, yes.

16 ASSEMBLYMAN CROUCH: Okay. In regard
17 to the STAR program, if it's enacted, several
18 thousand STAR recipients who have no
19 intention of moving into a new home will be
20 placed into the program that from our end,
21 it's going to cause some confusion. Who will
22 have to convert to the STAR credit
23 immediately?

24 EX. DEP. COMMISSIONER MANION: Who

1 will have to --

2 ASSEMBLYMAN CROUCH: What are the
3 profiles of the homeowners that they're going
4 to have to convert to the STAR credit
5 immediately?

6 EX. DEP. COMMISSIONER MANION: It's
7 the homeowners with income between 250,000
8 and 500,000. And what they would do is they
9 would register with us and we would use the
10 information we have to do that income
11 verification. We think there are about
12 130,000 homeowners that fall into that.

13 We would do an outreach where we would
14 mail to these people. And we would also put
15 something up on our web and we would work
16 with our local assessors to make sure that
17 the word got out.

18 ASSEMBLYMAN CROUCH: Okay. Thank you
19 very much. I see my time's up. I'll be
20 back.

21 CHAIRWOMAN WEINSTEIN: Thank you.
22 Senate?

23 CHAIRWOMAN KRUEGER: Senator Jim
24 Seward.

1 SENATOR SEWARD: Thank you, Madam
2 Chair.

3 And Commissioner, good to see you.

4 I had a question regarding the -- I
5 call it the increasingly inaccurate name of
6 the temporary high-income surcharge, commonly
7 known as the millionaire's tax, for another
8 five years. That's in the Governor's
9 proposal, of reupping that.

10 You know, at the same time the
11 Governor has stated that individuals -- these
12 individuals pay roughly 45 percent of
13 New York's total personal income tax. And
14 when he announced the looming deficit, he
15 said that it was because many of these
16 individuals are leaving New York for a
17 variety of reasons that have been discussed
18 already.

19 So my question to you is, why then are
20 we continuing to make New York state less
21 competitive than other states for these
22 high-income individuals? And how many of
23 them, additionally, would have to leave
24 before we face some real major fiscal

1 repercussions here in New York?

2 EX. DEP. COMMISSIONER MANION: Okay.

3 So the extension of the tax -- New York State
4 is a progressive tax state. You know, that's
5 what it's built on. Over the last eight
6 years, the Governor has done a lot in fiscal
7 restraint by cutting back on spending. And
8 there has been a lot of tax relief through
9 the property tax cap. The budget includes
10 making that permanent.

11 So there's been a lot that's been
12 done, but it's -- New York is a progressive
13 tax state. So the millionaire's tax, the
14 extension of the highest level, goes along
15 with the payment of the services that are
16 required in New York.

17 SENATOR SEWARD: So you don't feel
18 that with SALT -- that there are no changes
19 in SALT and, you know, by maintaining this
20 millionaire's tax that further of these
21 individuals won't be leaving?

22 EX. DEP. COMMISSIONER MANION: You
23 know, it is a balance. It is a balance.
24 They've been paying this tax all along. So I

1 don't see it as it's anything that is a major
2 change for them. But it's a balance.

3 SENATOR SEWARD: Shifting gears a bit,
4 the Executive Budget's financial plan
5 includes \$12 million in revenue from
6 increased audits this year. And that would
7 grow in the outyears to \$120 million in new
8 revenues as a result of these audits and
9 hiring more auditors.

10 Can you share with us what taxes that
11 these auditors will be working on? And where
12 is that much available?

13 EX. DEP. COMMISSIONER MANION: Sure.
14 There's a lot of room. Our tax laws are
15 complex, and the world is changing all the
16 time. So how businesses and individuals can
17 apply their life to the tax laws that were
18 written 20 and 30 years ago sometimes causes
19 areas where they don't get it right.

20 We have advanced data analytics that
21 we use. Every return that we bring into the
22 department runs through certain analytics to
23 identify where there might be a compliance
24 issue. And if we feel there's a compliance

1 issue, we will then either generate what we
2 call a desk audit, which is a correspondence
3 audit, or we will identify whether we need to
4 send our auditors out to do an audit.

5 We do expect that we will be doing
6 more residency audits. You know, with the
7 changes in the tax law, there is a chance
8 that people will be saying that they're not
9 living in New York and they don't owe
10 residence tax. But they may, and we're going
11 to have to audit it to check it to make sure
12 that people aren't just taking advantage of
13 that.

14 So there will be more residency
15 audits. There will be more correspondence
16 audits. It's about making sure that people
17 are paying the right amount of tax and we're
18 protecting the revenue for New York State.

19 SENATOR SEWARD: One final quick
20 question. You know, back in January I
21 noticed that the State of Connecticut
22 announced that they're projecting tax
23 receipts to increase by something like close
24 to \$500 million. And this is a --

1 Connecticut's a state much like New York.
2 The Governor has even said that Connecticut
3 is one of the targeted states, along with
4 New York and others, from the federal tax
5 changes.

6 Do you have any sense why New York is
7 seeing a revenue shortfall and a bordering
8 state much like New York is actually seeing
9 their receipts go up?

10 EX. DEP. COMMISSIONER MANION: As I
11 mentioned before, our quick action in
12 decoupling from the federal program so that
13 we ensure that the programs that you put in
14 place gets -- continues to give the benefit
15 to New York State taxpayers.

16 So where Connecticut may not have done
17 that decoupling from the federal, because
18 their tax starts with the federal -- like our
19 tax starts with the federal -- they may be
20 ending up collecting more, where their tax
21 laws might have been expecting them to be
22 giving benefit to some taxpayers, yet with
23 the changes at the federal level those have
24 been negated.

1 SENATOR SEWARD: Thank you.

2 CHAIRWOMAN KRUEGER: Thank you.

3 Assembly.

4 CHAIRWOMAN WEINSTEIN: Assemblywoman
5 Dickens had a few questions.

6 ASSEMBLYWOMAN DICKENS: Thank you so
7 much, Madam Chair. And thank you,
8 Commissioner, for being here to give your
9 testimony.

10 I want to change gears a little bit.
11 I want to go to the legalization and taxing
12 of adult use of cannabis. What is the policy
13 that you're thinking of? Or what is the
14 rate? Because that's a cash business. And
15 so it's not like something you can follow
16 through, like we do on sales tax. So what is
17 the policy that you're setting forth for
18 taxation of cannabis? And the fact that
19 if -- even if we pass it in New York State,
20 what is the ramification, since we would not
21 be filing those that are in that business of
22 cultivation and into the sales for IRS?

23 EX. DEP. COMMISSIONER MANION: The --
24 I totally hear you about a cash-based

1 business. I've spent my career at the Tax
2 Department, and I know it's very difficult
3 for us to audit and be able to track when
4 things are paid for in cash.

5 So the design of the tax for the
6 cannabis is from the cultivator to pay a
7 dollar a gram for the flower and 25 cents a
8 gram for the trim. They pay that to the
9 wholesaler.

10 The wholesaler then charges the people
11 that are selling at retail 20 percent for the
12 state and 2 percent for the county where the
13 retailer is going to be. That all goes to
14 the wholesaler. The wholesaler is who is
15 collecting and remitting the tax to New York
16 State. So therefore we're not going out to
17 all of those retails and checking on the
18 cash.

19 This is very similar to our audit
20 program that we do for just about any
21 cash-based business. But because this is a
22 new program, we're able to bring the tax to
23 the wholesale level. When we go to, let's
24 say, a restaurant, we will go to their

1 suppliers, so we'll see who are they buying
2 their food from. And we identify how much
3 food they're buying and then we look at how
4 much food they're reporting as sales.

5 So in essence we're looking at the
6 wholesaler to figure out what's going on at
7 the retailer. But because this is a new
8 program, we're designing it so that the
9 wholesaler is the one that's doing the
10 collection and the remittance of the tax.

11 ASSEMBLYWOMAN DICKENS: So actually
12 it's the cultivator and the wholesaler who
13 will be paying into the state taxes, is that
14 what you're telling me?

15 EX. DEP. COMMISSIONER MANION: The
16 wholesaler does the remittance. The
17 cultivator will pay the wholesaler.

18 ASSEMBLYWOMAN DICKENS: Now, that
19 brings me back to the retailer. Because the
20 retailer is the one that's going to have to
21 have the additional security that's needed --
22 that actually is required, because it is a
23 cash business, and because it's cannabis.

24 How is that going to be where the

1 retailer can use that as a tax deduction if
2 the wholesaler is responsible for the
3 remittance?

4 EX. DEP. COMMISSIONER MANION: I think
5 that's something that's going to have to be
6 looked at. Because what you're talking about
7 is how it's going to be handled at the
8 federal end, I believe, for the retailer.
9 And it's something that's going to have to be
10 looked at as we get into it more.

11 ASSEMBLYWOMAN DICKENS: So no policy
12 has really started to be written up on that
13 point.

14 EX. DEP. COMMISSIONER MANION:
15 Correct.

16 ASSEMBLYWOMAN DICKENS: And now just
17 quickly, I want to go to the SALT cap and
18 the -- two things. I want to ask a question
19 about the new employer compensation expense
20 program with the SALT, the impacts of the
21 SALT cap. How does that program actually
22 work for employers in New York City in
23 particular?

24 EX. DEP. COMMISSIONER MANION: So the

1 program in New York City -- so are you
2 talking New York City because they have
3 employees from other states?

4 ASSEMBLYWOMAN DICKENS: Yes.

5 EX. DEP. COMMISSIONER MANION: Okay.
6 It does get more complicated when you have
7 employees from other states. And it's a
8 choice. It's a choice that employers opt
9 into. There are some that it's going to work
10 for and others where the complications of
11 having employees in different states will
12 make it not as beneficial.

13 Again, this is an option that they
14 could choose to help mitigate the impact of
15 the SALT.

16 ASSEMBLYWOMAN DICKENS: All right.
17 Thank you so much.

18 Thank you, Madam Chair.

19 CHAIRWOMAN WEINSTEIN: Thank you.
20 Senate?

21 CHAIRWOMAN KRUEGER: Thank you.

22 Let's see. Next is Senator John Liu.

23 But I just want to remind everyone
24 this hearing continues tomorrow afternoon

1 specifically to ask questions about the
2 Governor's proposed cannabis program in his
3 budget, which is for adult use, legalized
4 expansion of medical and the hemp
5 cannaboid -- cannabinoid, thank you so much.
6 I always have trouble with that word,
7 Diane -- sort of three-tiered program.

8 So there will -- for any legislators
9 here or listening, or people listening, the
10 Governor is sending a group of
11 representatives to simply answer any and all
12 questions people have. So Inez, they may be
13 able to better lay out the tax vision that
14 has grown in their offices. So if you can
15 come back tomorrow afternoon, you might be
16 able to ask more questions. I know we all
17 will.

18 Now I'll turn it over to John Liu.

19 SENATOR LIU: Thank you, Madam Chair.

20 Thank you, Commissioner, for joining
21 us.

22 I have one simple question, which is
23 how often does your department project tax
24 revenues for, say, the coming year?

1 EX. DEP. COMMISSIONER MANION: The Tax
2 Department provides information to the
3 Division of Budget to project the tax
4 revenues.

5 On a daily basis, we're providing
6 information as to what's been received.

7 SENATOR LIU: Okay. So, I mean, I'm
8 just still trying to grapple with the
9 Governor's announcement last week,
10 \$2.3 billion less revenue. I mean, it's less
11 than three weeks after he announced his new
12 budget for the new fiscal year. And I just
13 find it shocking that in less than three
14 weeks, the hole could be \$2.3 billion that
15 much bigger.

16 EX. DEP. COMMISSIONER MANION: But if
17 you think about the timing with the -- when
18 the estimated taxes are due and when the
19 withholding is due on the Wall Street
20 bonuses, which is a large part of our
21 revenue, it is in that time that it comes in
22 and then it balances out. You know, it comes
23 in in the beginning of the year and then
24 we've got, you know, like a week for it to

1 balance out for the payments to come into
2 play.

3 SENATOR LIU: Well, I mean Wall Street
4 bonuses go up and down. And so we have a
5 huge history, many, many years worth of
6 history. And by December 31st we should
7 generally get an idea of how much it's going
8 to affect tax revenues.

9 Say the stock market goes down, I
10 don't know 10 percent for the month of
11 December. We have so many years of history,
12 we know exactly -- we can project very
13 closely how much that's going to reduce
14 income tax revenues and withholding thereof.

15 But that's not even being put out as
16 the main cause of this unexpected dip in
17 revenues. The main cause is still put out to
18 be the Trump tax plan. And we knew about
19 that well a year -- well over a year
20 beforehand.

21 And so didn't we have some kinds of
22 projections as to what the impact would be,
23 not just on the final amounts of withholding
24 but throughout the entire year of 2019?

1 EX. DEP. COMMISSIONER MANION: I
2 believe the Governor has also mentioned that
3 the stock market volatility was a contributor
4 to it also.

5 The big difference here is -- you're
6 right. Like in 2008 when the stock market
7 went down, we knew that we were going to have
8 an decrease in the payments at the end of the
9 year. But what happened here this year is it
10 was literally in the last week of the year
11 where we had things change. So that happened
12 quick.

13 But also the changes in tax at the
14 federal end and the taxpayers' behavior with
15 that and what they're doing with that,
16 there's so many variables, again, it's really
17 very difficult to say.

18 And if you think about the estimated
19 tax payments and even the withholding
20 payments, all of those are like money on
21 account. And it gets reconciled at the time
22 that a person files a tax return. And the
23 tax return is what takes all of the facts
24 associated with what happened with that

1 person's finances during the year. And it
2 starts with the federal tax.

3 So we've got changes with the federal
4 tax, then we have changes of behavior during
5 the year for what's going on, and we really
6 won't know until we get those tax returns in
7 and we're able to look at that data. And
8 that will be later in the year.

9 So we're just going to have to watch
10 this. You know, we've got a course in
11 New York where the Governor has been
12 decreasing tax rates and saving taxes and
13 putting constraints on spending. He's been
14 doing that for eight years. And that's a
15 course that we've been doing in New York.
16 And we have had an issue that's happening,
17 but we've got to watch it and see how it
18 plays out.

19 SENATOR LIU: All right, Commissioner.
20 Thank you.

21 EX. DEP. COMMISSIONER MANION: Thank
22 you.

23 SENATOR LIU: Thank you, Madam Chair.

24 CHAIRWOMAN KRUEGER: Thank you.

1 Assembly.

2 CHAIRWOMAN WEINSTEIN: So I have a few
3 questions really to piggyback on what some of
4 my colleagues have asked.

5 In relation to the high-income
6 taxpayers, have we seen an actual decrease in
7 the number of high-income taxpayers since the
8 federal tax law was passed?

9 EX. DEP. COMMISSIONER MANION: It
10 passed at the end of last year, so we don't
11 have all of the tax returns yet, so we can't
12 really say for sure.

13 We've heard some anecdotal information
14 that people are leaving. But we've had --
15 have a lot of anecdotal information, you
16 know, about a lot of different issues around
17 the federal tax changes. So what we're
18 seeing is they are making decisions to either
19 pay into the charitable fund or change what
20 they're paying with estimated taxes. We
21 won't know what actually is going to happen
22 until the return comes in.

23 And then as I mentioned before, there
24 are some people that may file that they're

1 not residents of New York, that they're
2 moving out of New York, but they're still
3 keeping, you know, their residence here. So
4 we're going to have to be checking on it at
5 audit.

6 CHAIRWOMAN WEINSTEIN: Right. But
7 since it is such a small group of people --
8 we're talking about really high earners --
9 you would be knowing already whether you've
10 been getting estimated payments from those
11 individuals, I assume.

12 EX. DEP. COMMISSIONER MANION: I
13 haven't done the match-up to -- I mean, even
14 if they do move out of New York, they could
15 still have New York-sourced income which they
16 would have to make the estimated tax payments
17 on. So it wouldn't be that the payments
18 would just totally drop off.

19 CHAIRWOMAN WEINSTEIN: Thank you on
20 that.

21 So I know that we've had discussion
22 here on the SALT deduction limits. Is there
23 any -- are there any other actions that we
24 could take? Obviously you mentioned the

1 lawsuit is proceeding. But any other actions
2 that we could take to lessen the impact of
3 the federal SALT deduction limits?

4 EX. DEP. COMMISSIONER MANION: I think
5 we have to see how the program is going now.
6 There are a few -- a couple of other things
7 that we didn't anticipate, such as the
8 changes at the federal end on the
9 manufacturing expenses of equipment. The
10 changes there actually made some of the
11 manufacturers in New York not eligible for
12 our credit anymore, so we had to make some
13 changes there.

14 We're going to have to continue to
15 watch and see what actually happens and see
16 if any additional changes are required.

17 CHAIRWOMAN WEINSTEIN: And you had
18 mentioned -- I forget the numbers -- but
19 several hundred employers have elected to
20 participate in the employer compensation
21 expense program. I think even though the
22 number -- it's a relatively small number that
23 have. Are there ways to improve the program
24 to increase employer participation?

1 EX. DEP. COMMISSIONER MANION: It was
2 262. And I think that now that we know who's
3 registered and how they're working with it,
4 we might be able to do some outreach and see
5 how it's going and see if any changes are
6 required.

7 CHAIRWOMAN WEINSTEIN: And then
8 lastly, I know there was also discussion on
9 the sales tax on the marketplace providers,
10 and it sounds like obviously with the Supreme
11 Court decision that we will be moving ahead
12 on that.

13 But I know that the department also
14 recently issued guidance requiring
15 out-of-state businesses to collect and remit
16 sales tax. I was wondering if those
17 businesses have responded to the state's
18 guidance and registered with the department.
19 And are there any additional legislative
20 changes necessary to collect these taxes?
21 Because clearly there's some significant
22 dollars attached to that.

23 EX. DEP. COMMISSIONER MANION: Yeah,
24 the guidance that we put out was really just

1 letting people know that we have this law on
2 the books. And with the Wayfair decision,
3 it's more enforceable.

4 So we did have some very large
5 businesses right after the Wayfair decision,
6 they knew of the law on our books and they
7 did come in and register and start
8 collecting.

9 So the guidance was to do additional
10 outreach to see if there might be other
11 businesses that are out there that didn't
12 know about it.

13 CHAIRWOMAN WEINSTEIN: Okay. I think
14 for the moment, that's it. So we'll turn
15 back to the Senate.

16 CHAIRWOMAN KRUEGER: Thank you.
17 Senator Savino.

18 SENATOR SAVINO: Thank you, Senator
19 Krueger.

20 Good afternoon, Commissioner.

21 So while the bulk of the issue with
22 respect to the Cannabis Regulation and
23 Taxation Act -- it's written into the revenue
24 bill -- the majority of the issue is going to

1 be dealt with tomorrow. But there is
2 something that's going to affect your
3 department. And I'm just wondering if you've
4 had the opportunity to consult with other tax
5 and finance commissioners across the country.
6 Because while we haven't generated this huge
7 amount of revenue in the medical program,
8 even though it's ticking up, when you have a
9 fully grown-out, for want of a better word,
10 adult-use program, it generates tremendous
11 amounts of cash, and that cash gets delivered
12 to those tax departments in cash. And it can
13 create a tremendous burden on the tax
14 department.

15 I visited Nevada and witnessed what
16 happens when they come in and they bring
17 large amounts of cash -- the staff has to sit
18 there and count all the money. And it sets
19 all the other business of the department
20 aside for the day. And that includes the
21 collection of sales tax from retailers and
22 the collection of income tax and the
23 calculation of it.

24 Are you prepared for this type of

1 onerous accounting of actual cash?

2 EX. DEP. COMMISSIONER MANION: We're
3 preparing to not have to do that. And a big
4 part of that is by having the wholesaler pay
5 it. So by having the wholesaler pay that
6 tax, similar to what we do with the medical,
7 we'll be able to receive that from a smaller
8 number of people, and we believe that there
9 might be a way that we can do it without
10 cash.

11 SENATOR SAVINO: Where would the
12 wholesalers -- so they'll -- it's similar, I
13 guess, to the liquor industry. Right?
14 They'll prepay the tax to you. What will
15 they do with the cash? Has anybody thought
16 about that?

17 EX. DEP. COMMISSIONER MANION: It's --
18 they're going to be collecting the tax from
19 the retailers. If the retailers can pay them
20 not in cash, you know, if they can pay them
21 through different means, that could be worked
22 out.

23 But for us at the Tax Department,
24 we're looking to collect from the wholesalers

1 and we're looking to work it so we don't have
2 to collect the cash. Because we have talked
3 to our tax commissioners in other states --
4 in fact, spoke to the Massachusetts
5 commissioner just a couple of weeks ago, and
6 he said that they were set up for the cash,
7 you know, all the security and everything,
8 but some of the retailers have found some
9 banks or credit unions that will work with
10 them, and they're able to --

11 SENATOR SAVINO: Hopefully the feds
12 won't interfere with that.

13 There is right now some hope in the
14 Congress, there's the Marijuana States Act
15 that is moving through both houses now. For
16 the first time they actually have Republican
17 sponsorship in the Senate. My suggestion is
18 to those of you who are tax commissioners
19 across the country, you should join together
20 and lobby the Congress to pass it. While it
21 would not legalize marijuana or cannabis on
22 the federal level, it would de-schedule it
23 for purposes of allowing states that have
24 adopted legal programs to essentially take

1 the foot of the federal government off those
2 states so it would address the issues of tax
3 and banking and finance and a whole host of
4 issues, and make life a lot easier for the
5 industry and improved circumstances for
6 everyone.

7 So good luck on it. And again, we'll
8 have a much bigger conversation tomorrow
9 about the cannabis expansion act.

10 EX. DEP. COMMISSIONER MANION: There
11 is an organization, the federation of tax
12 administrators, and we do band together and
13 make our pitch to Congress. And it has been
14 discussed because other states are ahead of
15 us. So I think that is well on its way.

16 SENATOR SAVINO: Thanks.

17 (Off the record.)

18 CHAIRWOMAN KRUEGER: We continue?
19 Okay, Bob Antonacci.

20 SENATOR ANTONACCI: Thank you.

21 My question is this. If the world
22 were righted, if you want to call it that,
23 and all of a sudden the SALT was deductible
24 at the federal level, that wouldn't add any

1 revenue to the New York State bottom line,
2 would it?

3 EX. DEP. COMMISSIONER MANION: No, it
4 shouldn't, because of the changes we made
5 last year to make it not have an impact on
6 New York State.

7 SENATOR ANTONACCI: Well, that was the
8 decoupling. I'm talking about if property
9 taxes are fully deductible at the federal
10 level, arguably I lower my federal income
11 tax. I don't lower my state income tax any
12 lower. My state income tax is deductible at
13 the federal level, not deductible at the
14 state level, it's added back.

15 I guess what I'm getting at is this
16 nonsense of blaming SALT for everything. If
17 you don't like the federal law, I get that.
18 But I don't see how it's adversely affecting
19 the coffers of New York State -- certainly
20 maybe somebody's spending less, although
21 there are individuals that are getting
22 refunds that are spending more.

23 The bottom line is that law doesn't
24 affect the liability on the New York State

1 income tax, to the best of my knowledge.

2 EX. DEP. COMMISSIONER MANION: It has
3 some indirect impact. And when you're
4 looking at tax rates -- so you're paying
5 more -- so the basis that you're paying your
6 federal tax on is greater than it used to be.
7 And your federal tax rate is about three
8 times what your state tax rate is.

9 SENATOR ANTONACCI: Sure.

10 EX. DEP. COMMISSIONER MANION: So --
11 and to many citizens, to many New Yorkers,
12 they don't really look to see whether they're
13 paying the IRS or they're paying New York
14 State, they're paying their taxes, and they
15 look at their taxes as a whole.

16 So it isn't -- it is not a direct but
17 it's an indirect --

18 SENATOR ANTONACCI: I appreciate that.
19 And I understand you work for the Governor,
20 and his plan of attack is to attack
21 Washington on every opportunity. By the way,
22 has he called? How did the meeting go with
23 Trump? Is that over yet, do you know?

24 EX. DEP. COMMISSIONER MANION: I

1 haven't heard.

2 SENATOR ANTONACCI: I think they're
3 meeting now.

4 You know, the bottom line is I think
5 we -- you know, facts matter. And whether
6 you like the new tax law or not, there are
7 some that are benefiting and there's some
8 that are paying more, I would concede that.
9 But the effect to the New York State bottom
10 line, I don't believe it's in large part the
11 \$2.3 billion reduction in income taxes.
12 That's my personal opinion. I think it has a
13 lot to do with our economy, maybe jobs
14 leaving, and I think mainly probably
15 Wall Street, as you were asked earlier.

16 Are we educating taxpayers on how to
17 analyze whether or not their federal tax
18 liability from one year to the next actually
19 saved them money? Is there any interest from
20 the New York State Tax Department in those
21 kinds of operations?

22 EX. DEP. COMMISSIONER MANION: We
23 don't do anything as far as their federal
24 tax. We did put out some messaging this past

1 year to say make sure you check your
2 withholding. Because one of the things that
3 we noticed, you know, I looked at my own and
4 my check was a lot larger, and I said, whoa,
5 I'm afraid they didn't withhold enough.

6 SENATOR ANTONACCI: That's right. And
7 that's what I'm getting at. I mean, I think
8 that was great service and a great idea.
9 When the withholding tables got a little more
10 accurate because there were less deductions,
11 there was more money in your pocket on a
12 weekly basis, and now you've got potentially
13 taxpayers coming in: Wait a minute, I used
14 to get back two grand, now I'm only getting
15 back a grand. But you had it in your check
16 during the year. Okay, thank you.

17 Let me ask you this. Are there any
18 taxes that are prohibited from being
19 disclosed to the end consumer? You mentioned
20 that marijuana might be taxed at the
21 wholesale level. I'm thinking of medical,
22 also utilities. Is there a list of taxes
23 where the payer -- the company, the
24 wholesaler -- can't disclose that in a bill

1 or recapture that from the end-user? And you
2 can get back to me offline if that's easier
3 to do.

4 EX. DEP. COMMISSIONER MANION: I think
5 I'd have to, because I'd have to think it
6 through.

7 SENATOR ANTONACCI: Okay, thank you.

8 And we had testimony earlier today
9 from the Manufacturers Association of Central
10 New York that the C-corps get this
11 manufacturing tax-free, you know, incentive,
12 but not pass-throughs. Do you have any
13 opinion on that program?

14 EX. DEP. COMMISSIONER MANION: I think
15 something that was missing from that
16 conversation is the C-corps then pay
17 dividends to the individuals and the
18 individuals have to pay tax on that dividend.

19 SENATOR ANTONACCI: Okay. Thank you.

20 CHAIRWOMAN KRUEGER: Thank you.

21 CHAIRWOMAN WEINSTEIN: Assemblyman
22 Lavine.

23 ASSEMBLYMAN LAVINE: Thank you.

24 Thank you, Commissioner.

1 Of all the taxpayers in New York, can
2 you give us an estimate percentagewise how
3 many file by extension?

4 EX. DEP. COMMISSIONER MANION: Okay,
5 I've got to think through the numbers.

6 ASSEMBLYMAN LAVINE: It may not be
7 easy to quantify.

8 EX. DEP. COMMISSIONER MANION: We
9 probably get like 9 million tax returns in by
10 April, and in total it's probably 10.5, 11.

11 So it's 15 to 20 percent.

12 ASSEMBLYMAN LAVINE: So would you say
13 those 15 to 20 percent who file by extension
14 are people who are relatively better off?

15 EX. DEP. COMMISSIONER MANION: Yes.

16 ASSEMBLYMAN LAVINE: And that's why
17 they file by extension.

18 EX. DEP. COMMISSIONER MANION: They
19 still have to pay up-front. They still have
20 to pay up-front.

21 ASSEMBLYMAN LAVINE: They pay
22 up-front, but they pay by estimates, correct?

23 EX. DEP. COMMISSIONER MANION: They
24 pay by estimates.

1 ASSEMBLYMAN LAVINE: And until their
2 1040s are finally prepared, they really don't
3 know exactly what they are going to owe --

4 EX. DEP. COMMISSIONER MANION:
5 Correct.

6 ASSEMBLYMAN LAVINE: -- or what they
7 will get back, in the event that they
8 overpaid.

9 EX. DEP. COMMISSIONER MANION:
10 Correct.

11 ASSEMBLYMAN LAVINE: So is it your
12 sense that the fear surrounding the inability
13 to fully deduct -- or deduct to the extent
14 previously permissible -- state and local
15 taxes is an inhibitive factor, it's
16 frightening people?

17 EX. DEP. COMMISSIONER MANION: It is
18 frightening people. And we've seen that
19 through their behavior.

20 ASSEMBLYMAN LAVINE: And it's not only
21 New York, but I understand Ohio and West
22 Virginia and Kentucky and I'm sure other
23 states are seeing a lowering of the amount of
24 estimated payments made.

1 EX. DEP. COMMISSIONER MANION: Oh,
2 definitely. Definitely. My colleagues in
3 other states are definitely seeing it.

4 ASSEMBLYMAN LAVINE: And the filing
5 period occurred at the same time as the
6 shutdown of the federal government.

7 EX. DEP. COMMISSIONER MANION:
8 Correct.

9 ASSEMBLYMAN LAVINE: Is there reason
10 to suspect that the shutdown of the federal
11 government inhibited people's spending money
12 and frightened them to maintain as many
13 dollars as they could until the last minute
14 in terms of filing taxes?

15 EX. DEP. COMMISSIONER MANION: I'm not
16 sure I can make that stretch because the
17 federal government was receiving all their
18 estimated taxes, and we receive our estimated
19 taxes separate from the IRS, yeah.

20 ASSEMBLYMAN LAVINE: Yes. But as
21 someone who files estimated taxes and someone
22 who doesn't know until my 1040 is prepared
23 exactly what I owe, do you think I am a
24 little more likely to hold back a little on

1 what I send to the State of New York so I can
2 send more to the federal government?

3 EX. DEP. COMMISSIONER MANION: Could
4 be.

5 ASSEMBLYMAN LAVINE: Could be.

6 EX. DEP. COMMISSIONER MANION: Could
7 be.

8 ASSEMBLYMAN LAVINE: So let me switch
9 gears for just one quick second. As far as
10 collection of internet sales taxes, what's
11 the mechanism for policing how that works?
12 How does that mechanism work? Is it the
13 State Tax Department, is it the Attorney
14 General, Division of Budget? Who does that?
15 Who monitors this?

16 EX. DEP. COMMISSIONER MANION: The
17 State Tax Department would do the initial
18 audit. And a few years ago we did get a
19 sample of like the third-party vendors for
20 like some of the marketplace, and we found
21 that for those third-party vendors there were
22 some that were collecting and remitting, we
23 found some that were not registered or
24 collecting, and we found some that were

1 collecting and not remitting.

2 So we do have the authority to go in
3 and to do the audits. And it is a lot of
4 data. We do computer-assist audits, so we'll
5 work with their computer data to do the audit
6 to ensure that New York is getting the right
7 amount of tax.

8 ASSEMBLYMAN LAVINE: Thank you,
9 Commissioner.

10 EX. DEP. COMMISSIONER MANION: Thank
11 you.

12 CHAIRWOMAN WEINSTEIN: Senate?

13 CHAIRWOMAN KRUEGER: Hi. I think I'm
14 up next.

15 So we spent -- the first half of this
16 day was the economic development hearing, and
17 lots of people had lots of questions of
18 Howard Zemsky. But certainly my theme for
19 that was I really believe in even playing
20 fields for all businesses. And I also think
21 when you're making an exception and giving
22 somebody lower taxes or abatements, there
23 should be some public good reason.

24 So we have endless tax expenditures

1 within our tax code at this point. The
2 Legislature or the Governor put them in, they
3 stay forever. You do a tax expenditure
4 report, it adds up to billions and billions
5 of dollars. And you do a tracking where you
6 just show what amount it was over, I think, a
7 five-year period, that's the scale.

8 I really want us to look at these tax
9 expenditures for an evaluation of the public
10 good and justification for them, with sunset
11 requirements. Because something that maybe
12 made sense in 1986 is very unlikely to make
13 sense now.

14 Do you think your department is
15 actually capable of helping do evaluations of
16 the value to the State of New York from a
17 specific tax expenditure? And I'll use two
18 easy ones. Or not so easy ones.

19 While I'm not big on anybody using
20 petroleum or gas products at all, home
21 heating oil, which has significant
22 deductions, is a hard one to argue against at
23 a time where it will take a long time for
24 people, particularly lower-income people, to

1 figure out how to shift how they can heat
2 their homes, for they are very likely renting
3 and don't have those choices.

4 But we have this endless list of
5 petroleum taxes where we give tax
6 expenditures for using petroleum products.
7 So don't you think you would be able to do an
8 analysis that shows that that's a
9 questionable tax expenditure, why are we
10 continuing it? And can we build that into
11 what you're supposed to do over there at Tax
12 & Finance? Or are you actually doing it and
13 I just don't know it?

14 EX. DEP. COMMISSIONER MANION: We're
15 not doing it in the way that you would like
16 it to be. And a big reason for that is we
17 don't have a lot of the information that
18 would be required to determine the value of
19 it.

20 What we do is we receive information
21 from our sister agencies as to whether this
22 qualifies for it, whether they've met the
23 objectives, the program objectives of it.
24 And then we pay the credit, and we'll audit

1 the credit.

2 So for a lot of these large credits
3 like -- I'll use brownfields for an example.
4 Brownfields, we're paying a lot of money, the
5 credit is a lot of money. We audit just
6 about every single one of those brownfields.
7 And we ask for all of their books and
8 records, and we make sure that what they're
9 claiming, the expenses they're claiming --
10 because the other agency will say yes, it's a
11 brownfield cleanup. What we're saying is the
12 expenses that they're claiming for this
13 credit, is it during that time period, does
14 it apply to that property.

15 So we'll do the audit on the mechanics
16 of it but not necessarily the objective of
17 it.

18 CHAIRWOMAN KRUEGER: Right. So then
19 you can see whether what they're doing
20 matches the language of the law --

21 EX. DEP. COMMISSIONER MANION:
22 Correct.

23 CHAIRWOMAN KRUEGER: -- but not
24 whether there's any reason to have that law.

1 So one of my pet peeves, a retroactive
2 tax incentive. If you've already done it,
3 why the hell would we give you a tax
4 incentive after the fact? It makes no sense.
5 But we have a number of those on our books.

6 Moving on --

7 EX. DEP. COMMISSIONER MANION: And we
8 administer them. You pass them, we
9 administer them.

10 CHAIRWOMAN KRUEGER: Yup. So we
11 talked about internet tax, and it seems to me
12 that, you know, this is a no-brainer that we
13 have to do this, we have to do it across the
14 board to everyone. And as I understand it,
15 it's really not complicated at all, because
16 after all, you're going online, you're
17 ordering, you're giving them your credit
18 card. As you pointed out, you simply have a
19 look-up table to see what the tax rate is for
20 that zip code, and that has to be
21 automatically added to the credit card cost
22 for the consumer.

23 And it's a fairness issue, because
24 bricks-and-mortar stores that sell things

1 have to collect and remit the tax --

2 EX. DEP. COMMISSIONER MANION:

3 Exactly.

4 CHAIRWOMAN KRUEGER: -- and internet
5 should have to do the same.

6 Would it be very complicated to add a
7 supplemental fee in addition to a tax to that
8 activity collected by Tax and Finance? And
9 here's the example. At the hearing that
10 dealt with how to pay for public
11 transportation costs, there was a proposal --
12 this all ties into congestion pricing, at
13 least in some people's minds -- that one of
14 the reasons there's such congestion in
15 New York City at this point, not necessarily
16 everywhere, is because there are so many
17 trucks delivering so many packages from
18 internet companies every day. I mean,
19 buildings are talking about crises because
20 they don't know what to do with it appearing
21 to be Christmas Day 365 days a year.

22 So there was a proposal to actually
23 charge a fee for every box delivered through
24 an internet sale, so that it would both

1 perhaps discourage people from ordering a
2 million boxes -- maybe they could combine
3 them all into one box when they make the
4 order -- and also to discourage or at least
5 get people to rethink how they're doing this.

6 But a question came up, well, how
7 would anybody collect it? And it seems to me
8 it would be pretty easy for you to collect
9 that fee and then move that to MTA or
10 Department of Transportation or wherever the
11 Governor said it should go.

12 Do you agree with me that this would
13 actually be, process-wise, quite simple?

14 EX. DEP. COMMISSIONER MANION:
15 Mechanically, I think it's feasible.

16 CHAIRWOMAN KRUEGER: Okay. And
17 there's nothing that stops Tax and Finance
18 from collecting a fee for some purpose if
19 it's --

20 EX. DEP. COMMISSIONER MANION: We
21 collect a lot of fees.

22 CHAIRWOMAN KRUEGER: All right, thank
23 you.

24 Okay, so now that we're done dealing

1 with internet taxes, years ago I did a forum
2 I think with one of your predecessors on the
3 fact that Dish TV doesn't pay the same taxes
4 as cable TV, because they claim not to have a
5 nexus here.

6 Now that we're all learning you
7 actually tax things when they're in the
8 ether, like on the internet, can we do
9 anything about that?

10 EX. DEP. COMMISSIONER MANION: We'll
11 have to look at it. As I mentioned before,
12 there's a lot of room for improvement
13 opportunities in sales tax.

14 CHAIRWOMAN KRUEGER: You're requesting
15 funds to expand the people to do audits. And
16 you did reference using computer data
17 analysis to help with audits. But so for
18 years I've wondered why New York State
19 doesn't go down the road that many other
20 states and countries are going down for
21 tracking sales tax collection at retail
22 establishments, particularly restaurants,
23 where you have a very high rate of having to
24 do audits. But since -- at least in New York

1 City, I believe, 90 percent of restaurant
2 sales are now by credit card. And so you
3 could actually track the sales and the taxes
4 collected and owed through computer ongoing
5 tracking. It would require the assistance of
6 those companies, between the credit card
7 company and the retailer -- I forgot what
8 they call themselves. They're usually owned
9 by the same people as the credit card
10 companies.

11 So this state has always had reasons
12 it didn't want to go down this road, and yet
13 there are academics who continue to say we're
14 losing billions of dollars that's being
15 collected but not remitted to the state.

16 Are you looking at these new modern
17 changes that are going on? I mean, even
18 Third World countries that don't even have
19 hard-line phones are doing this for their
20 sales tax collection.

21 EX. DEP. COMMISSIONER MANION: I've
22 been involved in looking at that for many
23 years now. And I believe what you're talking
24 about, like the Third World countries, as

1 they're starting their systems, they have
2 like a VAT tax, most of them have a VAT tax.
3 And they have the VAT machine within the
4 retail. And every sale is supposed to be
5 rung through that VAT machine. It's supposed
6 to be rung through that VAT machine. If they
7 don't put it through that machine, the
8 government never knows about it. So there's
9 that way about it. Which is kind of one of
10 the reasons like why we like to go to who is
11 the supplier. You know, how much of this was
12 sold here and then how much did they sell.
13 Because that's where you can identify what
14 the gap is.

15 The other part where you're talking
16 about with the credit card information, we've
17 looked at that pretty extensively. We do get
18 credit card sales information. It gets
19 reported -- it gets reported to the feds, and
20 it also gets reported to New York State Tax.
21 And we use that in our model for selecting
22 businesses as to who we're going to audit.
23 And we'll look at, you know, what is the norm
24 for a restaurant in this area with this type

1 of sales. So we'll look at that to find the
2 deviations from it.

3 As far as using the credit card
4 information to have them pay from that, the
5 problem is -- I don't think it's
6 insurmountable, but the issue that people
7 will raise is not everything is taxable.
8 Even in a restaurant you could have
9 nontaxable sales -- you know, if they're
10 doing an event for a nonprofit. Or a number
11 of different things could come into play.

12 And businesses change over time, too.
13 They could be a restaurant today, but then
14 they could be opening up a store that has
15 nontaxable sales. So it's determining what
16 is taxable and not. And again, because our
17 sales tax laws are quite complicated as to
18 what's taxable and what's not, it's -- there
19 are very few businesses that are 100 percent
20 taxable.

21 So it would pretty much have to be 100
22 percent taxable for people to agree to have
23 it taken out of their credit card proceeds.

24 CHAIRWOMAN KRUEGER: All right, my

1 time is up. Thank you very much.

2 I think that is it for the Senate.

3 CHAIRWOMAN WEINSTEIN: So for --

4 CHAIRWOMAN KRUEGER: Oh, excuse me, I
5 missed one. I apologize.

6 SENATOR RANZENHOFER: Thank you.

7 Commissioner, thank you for being
8 here.

9 We keep on hearing every year that we
10 keep track of the number of people that come
11 into the state and the number of people that
12 come out of the state. Is there any
13 calculation for the people that come into the
14 state and the people that come out of the
15 state how much money we either lose or gain
16 by the people that we add or that leave the
17 area?

18 EX. DEP. COMMISSIONER MANION: I don't
19 have that number. And just thinking through
20 it, it would be difficult to track, too. You
21 know, because it is -- and, you know, we've
22 been very transient. You know, if you look
23 at the younger people, they're coming and
24 they're going. So it's not real clear as to

1 how to collect it.

2 But it's something that we can look
3 at. You know, we've got some good data
4 analysts in the department; we could take a
5 look to see.

6 SENATOR RANZENHOFER: Based on your
7 experience of where you sit, do you have an
8 opinion in terms of people coming in and
9 people coming out whether we are losing tax
10 revenue or gaining tax revenue as a result of
11 in-migration or outmigration?

12 EX. DEP. COMMISSIONER MANION: I can't
13 really say if it's net or up or down.

14 I do think that when we have -- when
15 we're bringing like the new technology into
16 like the Albany area, and with Amazon going
17 into New York, those are high-paying jobs.
18 So when you've got a high-paying job and
19 you're bringing in two people but you might
20 be losing five people that were low-paying,
21 you're going to net up. You know, it's going
22 to be a net up.

23 So again, there's a lot of balancing
24 factors that would have to be taken into

1 place.

2 SENATOR RANZENHOFER: Okay. And how
3 often -- obviously, there's been a lot of
4 talk here today about the shortfall that the
5 Governor announced in revenues, and that was
6 based on the latest monthly report.

7 Is there going to be another report at
8 the end of February which will then update
9 that number? Or when is the next report
10 going to be to give us a more accurate
11 number?

12 EX. DEP. COMMISSIONER MANION: I know
13 it's being tracked on a regular basis. I
14 don't know when it's going to be reported on.

15 The end of the calendar year -- you
16 know, what we saw at the end of the calendar
17 year, those are the numbers that are the most
18 volatile. So I think that we've seen, you
19 know, the biggest swing. It's most likely
20 going to be some recovery from that.

21 SENATOR RANZENHOFER: Okay. Well,
22 there has been a lot of chatter about the --
23 and a lot of questions here today about the
24 loss being due to the loss of income tax

1 collections. So obviously people are going
2 to continue to file as we move further into
3 February and March. Are there going to be
4 any updated numbers on that prior to the
5 enactment of the budget by April 1st?

6 EX. DEP. COMMISSIONER MANION: We'll
7 have information in the February, March,
8 April. But as we discussed before, a lot of
9 the high-income people are filing it in
10 October. So we won't really have that
11 information there.

12 And it's not only the high-income
13 people, it's the people that might have
14 income coming from investments where they may
15 not have all their tax documents prior to
16 April 15th.

17 SENATOR RANZENHOFER: I thought you
18 had said earlier that even though they file
19 later, they pay on time. So will those
20 numbers be available?

21 EX. DEP. COMMISSIONER MANION: The
22 payment numbers will be available. But then
23 we actually won't know how close they were to
24 actual until they file their return. And

1 that might be in October.

2 And with all the variables that we
3 have on the federal end, because we do start
4 with the federal AGI, you know, they could --
5 the estimates, the historical information of
6 what their estimates were for what they had
7 to pay, it's not really applicable this year
8 because there are so many different changes.
9 So we can't really be measuring last year
10 against this year.

11 SENATOR RANZENHOFER: Okay, just one
12 final question. Because I've seen a number
13 of budget years where numbers fluctuate after
14 the Governor announces his budget or from the
15 time he does his State of the State until the
16 time he does the budget address until the
17 time that the budget is actually enacted.
18 This doesn't really seem that unusual to me
19 in terms of there being a change. Was this a
20 particular unusual year? Or have there been
21 other years where there have been these type
22 of fluxes?

23 EX. DEP. COMMISSIONER MANION: I would
24 call this a very usual year. The money just

1 did not come in at the end of the year, you
2 know, \$2.3 billion. We had expected some
3 decrease, because at the end of last year we
4 did have people that were paying in ahead of
5 time. There was also something on the
6 federal end, the repatriation of some
7 international tax. So we had expected that,
8 and I know that was taken into consideration.
9 But even with all of that taken into
10 consideration, it was much lower than
11 expected.

12 SENATOR RANZENHOFER: And one final
13 question. My recollection is back, I think
14 it was '08 or '09, there was a \$10 billion
15 shortfall. And I think that was the time of
16 the -- you know, when the stock market went
17 down. How does that year compare to this
18 year?

19 EX. DEP. COMMISSIONER MANION: That's
20 something that we looked at. And I think the
21 difference here is the stock market
22 volatility was at the very end of the
23 calendar year, where in 2008 it happened I
24 think in the fall. So there was a little bit

1 of time to -- for people to do their
2 estimates.

3 SENATOR RANZENHOFER: I see my time
4 has expired. Thank you very much.

5 EX. DEP. COMMISSIONER MANION: Thank
6 you.

7 CHAIRWOMAN WEINSTEIN: Thank you.

8 We're going to go to Assemblyman
9 McDonald.

10 ASSEMBLYMAN McDONALD: Good afternoon.
11 How are you?

12 EX. DEP. COMMISSIONER MANION: Good
13 afternoon. Good.

14 ASSEMBLYMAN McDONALD: So -- and I
15 think we've talked about this in the past a
16 little bit. You know, I'm not a big fan of
17 these rebate checks. I just think there's a
18 lot of work. I recall I think a couple of
19 years ago when we started having these
20 discussions, it was about, you know,
21 validating that, you know, we had some
22 problems with people collecting the STAR
23 exemption in two different spots.

24 And I will tell you, we must have done

1 a great job with STAR years ago when it
2 started, because my residents read their tax
3 bills and look for those STAR rebates, and
4 they like to see that amount taken off on
5 their school tax bill. And for some now
6 we're in this rebate check mode, which I
7 don't understand.

8 When this was being put together, I
9 understand the income validation is critical.
10 And also, at least going back to my local
11 government days, I know that assessors are
12 sworn officials. I remember actually
13 administering the oath that they have to
14 follow, the rules, the laws. And I've not
15 checked this out with the assessors
16 community, and they may not like this
17 suggestion, but was there any thought about
18 since they engage with these residents --
19 they literally, in smaller communities, will
20 chase residents through the income
21 verification -- providing them access, a way
22 to validate this?

23 Because it just seems like at the end
24 of the day, with the tax challenges that we

1 have in this state for residents -- and for
2 business too, but for residents right now --
3 it just seems like we're delaying them from
4 receiving the net benefit. It just seems
5 like it's a process. And I'm sure there's a
6 cost associated with this, which is not
7 helping state operations, I would think.

8 So was there any thought about, you
9 know, trying to include the assessors more,
10 or was there push-back?

11 EX. DEP. COMMISSIONER MANION: Things
12 have definitely improved from a few years
13 ago.

14 ASSEMBLYMAN McDONALD: Absolutely. No
15 doubt about it.

16 EX. DEP. COMMISSIONER MANION: And
17 what we've seen is the assessors do a heck of
18 a job. You know, they've got people coming
19 in and they've got people providing them with
20 information. And, you know, they take the
21 oath and they're doing to the best of their
22 ability.

23 But they don't have the tax return
24 information. And we can't really provide

1 that tax return information because of tax
2 secrecy. So what we've actually seen -- so
3 this year is the first year that we're
4 requiring the IVP. And some of the results
5 that we've seen is there's been about \$8
6 million that was not paid out because people
7 came in and said that they were entitled to
8 the enhanced and they might have only been
9 entitled to the basic. So they said that
10 they made under 86,300, and they made more
11 than that. And we actually had some people
12 that said they made under \$86,300 and they're
13 not entitled to anything, which means that
14 their income is 500,000 or more.

15 So I'm not saying that the assessors
16 wouldn't have caught that. They probably
17 would have caught it. And I think for some
18 people they don't necessarily think of all of
19 their income when they're saying my income
20 for this year. Some people think, you know,
21 I didn't get a paycheck so I don't have
22 income this year. But they took from their
23 retirement account, so they actually did.

24 So the consistency of using the tax

1 return I think is definitely a benefit.

2 ASSEMBLYMAN MCDONALD: Okay. Very
3 good.

4 EX. DEP. COMMISSIONER MANION: There
5 are a number of things that we are doing to
6 help the assessors. Because one of the
7 things the assessors have said is if you're
8 doing the IVP, we don't know what people's
9 income is and we can't help people in
10 applying for the senior benefit. So in the
11 budget this year we've asked to be able to
12 tell the assessors these are the people that
13 have the income that would make them qualify
14 for the senior.

15 ASSEMBLYMAN MCDONALD: The other
16 question -- completely different area --
17 deals with the gross receipts tax in regards
18 to ESCOs. And I'm talking mostly about the
19 fact that there -- this goes back -- I was
20 president of the Conference of Mayors when we
21 asked for this opinion back in 2009. There
22 seems to be an inconsistency amongst the
23 ESCOs of who is going to collect the GRT or
24 not. And I understand it's not a very

1 popular thing, because that means it goes on
2 the residents in most situations, or the
3 businesses.

4 But has there ever been discussion in
5 the department about at least having some
6 consistency amongst all the ESCOs? Because
7 it seems like there is inconsistency. And
8 your department did opine on the fact that
9 they are supposed to collect the GRT.

10 EX. DEP. COMMISSIONER MANION: So this
11 is the ESCOs, the --

12 ASSEMBLYMAN McDONALD: Yeah, the
13 energy services corporations.

14 EX. DEP. COMMISSIONER MANION: -- the
15 energy --

16 ASSEMBLYMAN McDONALD: Yeah. The
17 Conference of Mayors has been pushing this
18 issue for a very long period of time, because
19 obviously they're looking for revenue for
20 the --

21 EX. DEP. COMMISSIONER MANION: And in
22 the budget this year it eliminates the tax
23 benefit for the ESCOs.

24 ASSEMBLYMAN McDONALD: It eliminates

1 it, I think, for nonresidential. Which is
2 going to be an impact on businesses, I think,
3 which is a whole other discussion.

4 But I think it's -- you know, at one
5 point either we do it or we don't, across the
6 board, be consistent, just from a public
7 policy perspective.

8 That's my time. Thank you.

9 CHAIRWOMAN KRUEGER: Senator Seward,
10 round two.

11 SENATOR SEWARD: Yes, just a quick
12 question on the taxation of marijuana should
13 it become legalized. I don't personally
14 favor that, but should it happen.

15 I wanted to -- you outlined the
16 22 percent tax: 20 percent for the state,
17 2 percent for the counties.

18 EX. DEP. COMMISSIONER MANION:
19 Correct.

20 SENATOR SEWARD: And why is it that we
21 would not have these sales be subject to the
22 sales tax that would generate 4 percent for
23 the counties who are looking for additional
24 revenues? Can't these transactions be

1 susceptible to the sales and use tax?

2 EX. DEP. COMMISSIONER MANION: It's
3 the model of having all of the tax collected
4 at the wholesale level. If it was -- if the
5 sales tax had to be collected, it would have
6 to be from the dispenser.

7 SENATOR SEWARD: Point of sale, yeah.

8 EX. DEP. COMMISSIONER MANION: And so
9 by keeping it at the wholesale level, we just
10 think it would be much better controlled.

11 SENATOR SEWARD: Well, you may not be
12 making this decision, but, you know, if
13 that's the way it's going to be, it would
14 seem that we should make the counties whole
15 as if it was a sales tax transaction.

16 EX. DEP. COMMISSIONER MANION: As far
17 as the percentage goes, you know, we'll
18 administer it. You tell us what it is.

19 SENATOR SEWARD: Right. Thank you.

20 CHAIRWOMAN WEINSTEIN: Thank you.

21 Assemblyman Crouch.

22 ASSEMBLYMAN CROUCH: Yes, hello again.

23 The Governor's proposed a tax on
24 e-cigarettes, which is an ad valorem tax the

1 way he's proposed it.

2 Since gas, beer and regular cigarettes
3 are subject to a unit-based tax, why not tax
4 e-cigarettes the same way?

5 EX. DEP. COMMISSIONER MANION: The
6 cigarette tax is quite complicated. You
7 know, with the cigarette stamps -- you pay
8 the tax with the cigarette stamps. And then
9 there's a matter of going to the retail place
10 to make sure the stamps are there.

11 By putting the 20 percent on the
12 e-cigarettes, again, we can track from the
13 supplier how much did that retailer get and
14 then how much are they remitting, without it
15 having to be separated along. We just think
16 it's much easier for us with compliance.

17 ASSEMBLYMAN CROUCH: But if you're
18 collecting the tax on marijuana at the
19 wholesale level, why wouldn't you collect the
20 tax on e-cigarettes at the wholesale level?
21 You've got about 25 cigarette wholesalers in
22 the state. That would seem to be a much
23 simpler process, as opposed to putting an
24 extra burden on the retail businesspeople.

1 EX. DEP. COMMISSIONER MANION: As a
2 tax administrator, I would like that to
3 happen. The current laws don't allow it.

4 ASSEMBLYMAN CROUCH: Okay.

5 The Governor's proposal to require
6 retail registration of e-cigarette retailers
7 is a good idea. But on the other hand,
8 you've already got people licensed to sell
9 tobacco. This would be another license that
10 they would have to obtain, so it's another
11 cost of doing business? Why don't you just
12 fold it under the same license that they
13 already have?

14 EX. DEP. COMMISSIONER MANION: Because
15 back to I want to know who's supplying it,
16 from the supplier, getting the information
17 from the supplier on the e-cigarettes so that
18 I can then check to the retailer to see if
19 they're collecting that 20 percent. If it
20 all gets rolled in together, it gets more
21 complicated in the compliance check.

22 ASSEMBLYMAN CROUCH: I would think
23 there'd be a way that they could separate
24 those sales and you still could track that

1 rather than, again, you've got the
2 business -- I'm looking out for small
3 business, if you will. Now they've got to
4 get a separate license, they've got to
5 collect the tax, they've got another form to
6 fill out for the tax submission, all of that
7 stuff.

8 And we've got a system that works very
9 well as we speak. I would just encourage you
10 to look at that.

11 And I think I -- I don't have time for
12 another question, but thank you very much.

13 EX. DEP. COMMISSIONER MANION: Thank
14 you.

15 CHAIRWOMAN WEINSTEIN: Thank you.
16 Thank you very much for being here and
17 adjusting your schedule a little bit to be
18 here.

19 EX. DEP. COMMISSIONER MANION: Thank
20 you.

21 CHAIRWOMAN WEINSTEIN: So next we
22 begin the public portion of the Tax hearing.

23 Just a reminder, we have all of your
24 testimonies in advance. So to the extent you

1 can summarize testimony, that would be great,
2 leave time for questions.

3 The witnesses -- starting with the
4 Business Council of New York State, Ken
5 Pokalsky, vice president -- will have five
6 minutes to make their presentations, and
7 members will have three minutes to ask
8 questions. Three minutes other than the
9 chairs. But there's no requirement to take
10 all of your time.

11 MR. POKALSKY: Good afternoon. My
12 name is Ken Pokalsky. I'm with the Business
13 Council of New York State. For those of you
14 not familiar with our organization, we're the
15 statewide chamber of commerce and
16 manufacturers association, and we represent
17 about 2400 private-sector businesses across
18 New York State. We appreciate the
19 opportunity to be here today.

20 We're going to focus on the taxation
21 issues in the Executive Budget, although we
22 support and have concerns about many other
23 provisions that we're reaching out to the
24 Legislature in separate venues.

1 We greatly appreciate the
2 administration's concern about the impact of
3 tax policy and tax changes on taxpayer
4 behavior. We certainly agree. And we do
5 share the administration's concern about the
6 impact of the SALT deduction cap on New York
7 State taxpayers, as well as other provisions
8 of the federal Tax Cut and Jobs Act.

9 The Business Council did oppose the
10 SALT cap when it was going through Congress.
11 We do believe it amplifies the effect of the
12 underlying state and local tax burdens. And
13 to an earlier question, what else the state
14 can do to mitigate the adverse impact of the
15 SALT cap, reducing those underlying taxes at
16 the state and local level is certainly
17 something that should be considered.

18 You know, we also looked at the
19 announcements last week on the drop in
20 revenues. We think it's an important caution
21 sign, as the Legislature works on the 2020
22 Executive Budget, to be cautious in spending,
23 but also to be cautious in imposing new taxes
24 on an economy at the state and national level

1 that's showing reduced rates of growth.

2 A lot of conversation earlier today
3 about how the federal tax reform flows
4 through to state taxpayers and has unintended
5 adverse impacts on the state level. In
6 general, the federal reform broadened the tax
7 base but gave tax-rate reductions and various
8 credits to reduce your federal tax liability
9 for many taxpayers. New York, like a lot of
10 states, starts with your federal income as a
11 starting point for calculating state,
12 personal and business income taxes. Those
13 base broadeners automatically flow into your
14 tax base, but we don't get the benefit of the
15 federal cuts.

16 In consequence, left alone, you see an
17 increase in state tax liability for
18 individuals and businesses. And yes, last
19 year the Governor proposed and the
20 Legislature approved a number of decoupling
21 bills. It was not comprehensive, and we
22 think there's more work to be done to avoid
23 unintended adverse impacts on New York State
24 business taxpayers. We detail those in our

1 written testimony.

2 But in general, let me say the issues
3 that we're looking at, you know, address no
4 particular New York State tax policy
5 objective. They've never been previously
6 proposed at the state level. In some cases
7 they result in taxation at the state level of
8 income that the New York State taxpayer never
9 actually receives. The administration has
10 proposed to apportion some of that income to
11 New York in ways that it treats no other
12 income category, we think leaving it open to
13 legal challenge.

14 And particularly with regard to the
15 treatment of overseas income, we think the
16 state's proposed treatment is going to leave
17 New York State as an outlier among the
18 states.

19 So we're supporting some additional
20 business tax decoupling measures, including
21 the two that Commissioner Manion mentioned
22 earlier today.

23 Just to touch on a couple of issues
24 very quickly, we strongly support the

1 permanent extension of the real property tax
2 cap which has already passed the Senate with
3 broad bipartisan support. We appreciate the
4 concern about the impact of tax changes on
5 upper income earners that New York State
6 depends so heavily on. We note there's three
7 provisions in the Executive Budget that
8 specifically targets those upper-income
9 earners for increased tax liability -- the
10 extension of the personal income tax rate, a
11 17 percent surcharge on so-called carried
12 interest, and then the extension of the cap
13 on charitable contributions.

14 Of those, we're particularly concerned
15 about the so-called carried interest
16 assessment, which we do think will have the
17 effect of pushing those types of investment
18 management services outside of New York
19 State.

20 This year we've -- we're recognizing
21 what the Supreme Court decision -- how it
22 addressed the issue of economic nexus. We
23 think the marketplace provider bill in the
24 budget provides an efficient way to address

1 collection of non-New York State -- sales tax
2 from non-New York State vendors. We do
3 believe, though, there's an inconsistency
4 between that legislation and the guidance
5 that the department issued regarding sales
6 tax vendor registration requirements. We
7 think those should be addressed.

8 In my last 10 seconds I'll point out
9 two other tax-raisers in the Executive Budget
10 of great concern to our members. That's the
11 repeal of the sales tax exemption for ESCO
12 sales that would add 125 to 250 million
13 dollars a year to energy consumers. And a
14 proposal for up to \$200 million in
15 right-of-way fees for fiber optic cable
16 installers we think runs counter to the
17 state's interest in promoting expanded
18 broadband.

19 Happy to answer any questions on those
20 topics or any of the federal tax reform,
21 including the workarounds that were discussed
22 with the commissioner.

23 CHAIRWOMAN KRUEGER: Senator Brian
24 Benjamin.

1 SENATOR BENJAMIN: Thank you for
2 coming.

3 I want to ask you a question about the
4 carried interest loophole. Do you believe
5 that private equity funds, hedge funds,
6 et cetera, that the income that they're
7 presently getting at a capital gains tax rate
8 is not ordinary income? Do you believe
9 that's capital gains? And if so, why?

10 MR. POKALSKY: I think because of the
11 nature of --

12 SENATOR BENJAMIN: Well, what do you
13 believe, first. I didn't hear you say that.

14 MR. POKALSKY: What's that?

15 SENATOR BENJAMIN: No, what do you --

16 MR. POKALSKY: Yeah, I think there is
17 a strong tax policy argument to treat it as
18 capital gains. I can share that in writing
19 with you.

20 The one thing we note is that one of
21 the provisions of the federal tax reform last
22 year extended the carry period from one to
23 three years. It didn't repeal it, but it
24 also reduced its -- I'll say usability.

1 But the other thing I'll add is there
2 is no carried-interest loophole at the state
3 level, that income is taxed at a single rate
4 whether it's ordinary income -- you know,
5 wage income -- or short-term or long-term
6 capital gains. All subject to the same
7 marginal rate --

8 SENATOR BENJAMIN: Right. I believe
9 the reason why the Executive is proposing the
10 17 percent tax is because they're saying
11 because the federal government is not
12 treating it as ordinary income, then we need
13 to capture that at the state level. So
14 therefore that's under the premise that it
15 is -- it should be treated as ordinary
16 income.

17 So I guess my question comes back to
18 should it be treated as ordinary income or
19 not? And if it should not be treated as
20 income, why do you believe that's the case?

21 MR. POKALSKY: Well, I think it's a --
22 I think it's a --

23 SENATOR BENJAMIN: Particularly in the
24 case -- let me add, particularly in the

1 scenario where a private equity firm, for
2 example, that -- you know, the -- let's call
3 it -- they get a 1 percent management fee and
4 then 20 percent carried interest, if you
5 will. That's not part of their capital,
6 right? That is -- that is -- it's sort of
7 like almost like a fee for doing a good job.
8 So you get 1 percent, and then if you do a
9 good job, you get this 20 percent. That
10 sounds like performed-based.

11 So if it's not the case, I just want
12 to get a sense from you why do you --

13 MR. POKALSKY: Well, I understand the
14 question. I think there's good arguments
15 made as to why it could be treated as a
16 capital investment.

17 But my point would be that's an issue
18 of federal tax law. I think it's -- I have a
19 problem with New York State in effect
20 imposing a tax penalty on New York State
21 taxpayers because of disagreements we might
22 have with the federal tax code.

23 And I do think -- because in the
24 personal income tax world, if this

1 carried-interest penalty is applied both in
2 Article 9A and Article 22, in 9A it's twice
3 the underlying tax rate. And in -- under
4 PIT, it's three times the underlying tax
5 rate.

6 I think -- and again, it's effectuated
7 if multiple states adopted it, which only one
8 has so far. But I think if you talk about
9 where marginal tax rates can affect location
10 of business activity, this is a fairly mobile
11 business. I think the real revenue
12 expectation of this is probably zero.

13 Because if the multiple states enact this, I
14 think you'll see a significant reduction in
15 that type of investment and activity in the
16 state.

17 SENATOR BENJAMIN: So you believe if
18 this was to pass, and also Pennsylvania,
19 Connecticut and others do it as well, that
20 private equity firms, hedge firms, et cetera,
21 will just move to the other side of the
22 country, they'll go to Florida, they'll go
23 someplace else.

24 MR. POKALSKY: I think you'd see a

1 significant reduction in activity.

2 And we know there's already been a
3 significant -- you know, post-2008, a
4 significant reduction of a lot of that type
5 of financial activity in New York City.

6 SENATOR BENJAMIN: So let me go to one
7 of your other points here. In your testimony
8 you mentioned the MWBE extension and you said
9 you strongly recommend the reauthorization as
10 long as there are meaningful reforms that
11 make the program flexible and workable. What
12 are your definitions -- can you expound upon
13 that?

14 MR. POKALSKY: Sure. And the greatest
15 concern that we and others have about the way
16 the MWBE program is being implemented in this
17 state, it's being driven by a statewide
18 capacity assessment of the MWBE community of
19 over 50 percent, which experience in the
20 field is -- in most parts of the state it
21 isn't even close to that.

22 So you force vendors into, you know,
23 either seeking variances or, you know,
24 replacing their own workforce with categories

1 of MWBEs that are available to them. We
2 think the disparity study sets an unrealistic
3 statewide standard.

4 Earlier today Commissioner Destito,
5 you know, cited that the general purchase of
6 commodities -- to which the MWBE program does
7 apply -- you know, their target is 30
8 percent. We think just the underlying target
9 is unrealistic. It needs to be more
10 flexible, particularly when you move, you
11 know, outside of the New York City metro
12 area.

13 SENATOR BENJAMIN: Thank you.

14 CHAIRWOMAN KRUEGER: Thank you.

15 Assembly.

16 CHAIRWOMAN WEINSTEIN: We don't have
17 any questions here in the Assembly. Any more
18 in the Senate?

19 CHAIRWOMAN KRUEGER: I do. But I'll
20 just double-check here -- oh, Bob Antonacci.
21 You're here, so you must have questions.

22 SENATOR ANTONACCI: Thank you.

23 I like the word "amplify." And isn't
24 that our problem? The reason that the SALT

1 deduction is -- had this effect on New York
2 politicians is because we don't want to be
3 honest with our problem, and that is that we
4 have a tax problem. Florida is not having
5 hearings right now and talking about the SALT
6 deduction, that would be my guess. We
7 overtax, we're losing residents. And this
8 has amplified the New York State tax
9 liability because it's no longer deductible
10 over the extent of \$10,000. Do you agree?

11 MR. POKALSKY: I agree. And I think
12 if you look at the universe -- as we get more
13 data, if you look at the universe of
14 taxpayers who are adversely affected by the
15 federal reforms, what you see is really two
16 classes. You're going to see, you know, very
17 high earners and you're going to see suburban
18 middle class, upper middle class with
19 enormous real property tax payments. And
20 their total state and local will exceed the
21 new increased standard deduction.

22 SENATOR ANTONACCI: Yeah. And
23 ironically, the Governor did admit that this
24 affects high earners probably adversely, and

1 that's what I'm seeing. But I think the word
2 "amplify" is appropriate.

3 And I think we should be looking at
4 what I call the disease, not the symptoms.
5 And the disease is our high taxes. I think,
6 you know, the Governor today admitted in an
7 economic development tweet that I saw, that
8 the reason we offer economic development
9 incentives is because our taxes are too high.

10 Another topic. I'm interested in some
11 of the other decoupling provisions. I guess
12 I got a microscope on individual taxes and
13 maybe smaller businesses. Certainly if
14 there's any other decoupling provisions you
15 think are important, please let me know
16 personally. But that's been going on since
17 the dawn of time. I mean, New York has had
18 add-backs of depreciation, amongst other
19 things. So, you know, if you've got a list
20 that you think would help make us a better
21 business climate, I'd love to hear what those
22 are.

23 MR. POKALSKY: So I counted them
24 today. We made 42 adjustments from federal

1 taxable income in Article 9A.

2 SENATOR ANTONACCI: There's sheets of
3 it, right?

4 MR. POKALSKY: We do it quite often.
5 Oftentimes to our disadvantage. One of the
6 major --

7 SENATOR ANTONACCI: Whose
8 disadvantage? The taxpayer or the --

9 MR. POKALSKY: The business -- one of
10 the major incentives for business in the
11 federal reform was bonus depreciation,
12 building expense, capital investments, which
13 New York State -- and by the way most
14 states -- do not allow at the state level.

15 SENATOR ANTONACCI: Thank you.

16 CHAIRWOMAN KRUEGER: Thank you. I
17 have two questions.

18 CHAIRWOMAN WEINSTEIN: Go ahead,
19 Senator.

20 CHAIRWOMAN KRUEGER: Hi. Thank you
21 for being here today.

22 So I feel like I had covered every
23 imaginable issue in cannabis over the last
24 four and a half years, but in your testimony

1 you're actually talking about workplace
2 impairment.

3 So my question to you is, what do
4 workplaces do now if they think their
5 employees are drunk?

6 MR. POKALSKY: They -- well, the most
7 responsible ones -- I was going to say they
8 send them home. They take them home. We've
9 talked to our members, and they do that. If
10 you're believed to be impaired on the job,
11 they will have someone take you home or
12 take -- have a third party take you home.

13 It is actionable. And depending on
14 the company's policy -- some have a
15 zero-tolerance policy. If you're impaired in
16 the workplace, that's affecting -- I mean it
17 affects your job performance, it could affect
18 the safety of you, fellow workers, customers.
19 Even things that are not job-related.
20 Slips-and-falls in the workplace, I'm liable
21 for.

22 So employers take -- and in some cases
23 there's federal compliance issues as well.
24 So employers take workplace safety and

1 workplace impairment pretty seriously.

2 CHAIRWOMAN KRUEGER: They should. And
3 certainly we don't want anybody using
4 equipment or driving impaired.

5 So my gut is if you were an employer,
6 you would simply expand your workplace
7 policies to be pretty parallel between being
8 determined to be drunk on the job and
9 determined to be impaired from using cannabis
10 on the job, as the solution.

11 MR. POKALSKY: Yes. That's why we
12 raise concerns about the legislative
13 proposal.

14 I'm more familiar with what's in the
15 Executive Budget, which speaks to having
16 to -- having the employer have to identify
17 specific work -- job performance metrics that
18 are affected by your impairment. I'm not
19 sure how we do that.

20 And our underlying concern is it
21 doesn't matter what the substance is; if
22 you're impaired in the workplace, the
23 employer ought to be able to take action.

24 And I don't know if you've seen it

1 yet, we've been -- and other people in my
2 staff are working on this far more closely
3 than I am. We do have, you know, alternative
4 language on how to address that component of
5 the Governor's cannabis legislation.

6 CHAIRWOMAN KRUEGER: I'd be interested
7 if you could get that to me.

8 MR. POKALSKY: Certainly.

9 CHAIRWOMAN KRUEGER: I'd appreciate
10 that. Because I do have a bill with Crystal
11 Peoples-Stokes in the Assembly, and we've
12 been developing this endless chart of how
13 ours differs from the Governor's. So it
14 sounds like this would be an area that we
15 would want to make sure we're covering, and
16 I'm not sure we did.

17 MR. POKALSKY: Absolutely. I think it
18 would fit well into your legislation as well.

19 CHAIRWOMAN KRUEGER: Okay. Thank you.

20 And I had one follow-up question on
21 another one of your points. Let me see if I
22 can actually remember. Oh, you oppose the
23 Bottle Bill expansion. And you actually --

24 MR. POKALSKY: I'm sorry?

1 CHAIRWOMAN KRUEGER: You oppose
2 expansion of the Bottle Bill, and you argue
3 that it duplicates curbside collection and is
4 costly. But some of us sat through budget
5 hearings with local governments and EnCon
6 where the towns and villages and cities were
7 talking about because there's actually no
8 secondary market for so many of the
9 recyclables because of the changes in China
10 policy, that they're desperate for an
11 expansion of glass in their recycling
12 systems.

13 So I'm not sure that -- you may still
14 object, but I actually don't think at least
15 one of your arguments does hold up at this
16 point in time, because the localities are
17 actually sort of begging for more glass in
18 the recyclables system.

19 MR. POKALSKY: Well, by -- I'm having
20 a hard time hearing you. But they're arguing
21 for more glass? I mean, what we're hearing
22 and seeing is that's one of the least
23 marketable products right now.

24 I mean, the things that are being

1 diverted from the municipal waste stream of
2 greatest value are aluminum and PET --

3 CHAIRWOMAN KRUEGER: So, I'm sorry, I
4 said it wrong. They're begging not to have
5 as much glass in the waste stream.

6 MR. POKALSKY: I agree.

7 CHAIRWOMAN KRUEGER: Right? So a
8 Bottle Bill expansion encourages people to
9 return the bottles, which is a good thing for
10 the municipalities. That's the argument that
11 they're making.

12 MR. POKALSKY: The vast majority of
13 that material is not glass. It's going to be
14 PET and it's going to be aluminum. Which is
15 by far the most valuable materials in the
16 waste stream, far more than mixed paper or
17 glass. That's the concern.

18 And then the other concern, and it's
19 more of an acute concern in the five
20 boroughs, a lot of smaller markets just don't
21 have the on-site capacity to take in the
22 additional material.

23 CHAIRWOMAN KRUEGER: Thank you.
24 Thanks for your testimony.

1 MR. POKALSKY: You're welcome.

2 Appreciate it.

3 CHAIRWOMAN KRUEGER: Oh, excuse me.

4 Hello. You know, I don't see -- even though
5 you're very tall, you're not when you're
6 sitting down there.

7 So Senator Ranzenhofer.

8 SENATOR RANZENHOFER: Good afternoon.

9 One tax question and one nontax question, and
10 the tax question is two parts.

11 Has the Business Council done its own
12 analysis in terms of how much the proposed
13 Executive Budget raises taxes? Number one.

14 And the second part of that is what
15 has been your members' response to the tax
16 part of the proposed budget?

17 MR. POKALSKY: I could -- I don't have
18 the net number in my head. And it -- I mean,
19 by far the biggest tax number in the budget
20 is the extension of the top-end PIT rates,
21 which starts for this fiscal year is only
22 700 million, because we already get it for
23 three-quarters. But that's projected to grow
24 to I believe close to 6 billion in four

1 fiscal years, and actually starts producing a
2 state operating fund surplus.

3 The parts that have been of greatest
4 interest to our members have been several.
5 It's been finishing the state's response to
6 the federal tax reform and eliminating these
7 unintended state-level increases in tax
8 liability that I mentioned. And it's the
9 proposals that will have a direct impact on
10 business -- increase in energy taxes, on
11 energy-intensive business -- and impacts on,
12 you know, activities that on the one hand the
13 state is trying to promote, e.g., fiber
14 bailout, and on the other hand imposing new
15 taxes on their ability to do so.

16 So this year I would say there's far
17 fewer issues like that of concern in this
18 budget. But the ones that are in there are
19 of great interest to us.

20 SENATOR RANZENHOFER: Okay. Can you
21 comment on the -- from your members'
22 perspective on the prevailing wage issue
23 that, although it's not in the budget, has
24 been talked about by the Executive and

1 others?

2 MR. POKALSKY: Sure. The Business
3 Council is now part of a new coalition with
4 31 -- and growing -- organizations. And the
5 real concern here is that -- for those not
6 familiar -- the proposal that any project
7 receiving any level of state or local
8 economic development assistance, including as
9 of right tax credits or REDC grants, the
10 construction component of that project would
11 be subject to public works prevailing wage.

12 And again, it's one of those issues of
13 the further you move away from the New York
14 metro area, the greater the difference is
15 between public works prevailing wage and the
16 actual, typical wages in construction
17 occupations in upstate New York.

18 We think it will add significantly --
19 and again, it's an area where the state is
20 incentivizing on the one hand and making
21 investment projects more expensive with the
22 other. We think it's especially detrimental
23 for upstate.

24 SENATOR RANZENHOFER: Thank you.

1 CHAIRWOMAN KRUEGER: Thank you.

2 CHAIRWOMAN WEINSTEIN: Thank you. So
3 no questions on our side. Thank you for
4 being here.

5 MR. POKALSKY: Great. Thank you.

6 CHAIRWOMAN WEINSTEIN: Next, Edmund
7 Mahoney -- Mahone -- McMahon. McMahon, I'm
8 sorry. Let me adjust my glasses there --
9 Empire Center for Public Policy.

10 CHAIRWOMAN KRUEGER: You don't
11 remember him from the Johnny Carson Show?

12 CHAIRWOMAN WEINSTEIN: No.

13 (Laughter.)

14 MR. McMAHON: There's increasingly
15 fewer of us to whom that's relevant.

16 (Laughter.)

17 CHAIRWOMAN KRUEGER: Yes, you're
18 absolutely right.

19 MR. McMAHON: It doesn't work anymore.

20 (Laughter.)

21 MR. McMAHON: Thank you very much, and
22 good afternoon.

23 You have my testimony, as you noted.

24 I'll just go over a few high points, Senator

1 Krueger, Assemblywoman Weinstein, Senator
2 Seward and Assemblyman Crouch and other
3 members of the joint committees. I'll touch
4 on a few high points; I'm going to
5 concentrate on the personal income tax, which
6 has been the subject of most of your
7 discussion and questioning. And in the
8 context of the new federal tax law in
9 particular and what it means to the decisions
10 you have to make on the budget proposals
11 before you this year.

12 Several points I'd like to make
13 up-front. One, which I think has been lost
14 in a burst of heat more than light in some
15 discussions of this issue, despite the higher
16 average state and local tax or SALT deduction
17 that prevailed in New York before the new
18 federal tax law, most New Yorkers are going
19 to realize a net tax savings from the tax
20 plan.

21 I'd like to say right up front I am
22 not a fan of the Tax Cut and Jobs Act. I
23 think it was poorly designed. It's got a lot
24 of loose ends and rough edges on the business

1 side, especially the closely held business
2 side, including the individual side. I think
3 that the state and local tax cap runs counter
4 to principles of federalism, localism and
5 subsidiarity which should have been embraced
6 most fervently by small government
7 conservatives, who in fact are the people
8 behind the attempted repeal of the state and
9 local tax deductions. So I just wanted to
10 give you an idea of where I stand in
11 principle.

12 However, I think there's been a great
13 deal of misunderstanding about what the tax
14 cut does and how it works. For instance,
15 it's assumed or you might assume, listening
16 to the Governor, for instance, that anybody
17 who had a SALT deduction over \$10,000 is
18 looking at a tax increase. That's not true.

19 And let me give you an example for one
20 of your members: Assemblyman Lavine, Glen
21 Cove. Now, there's not a good set of federal
22 sample data on the return level. The data
23 are not great on all of this. However, you
24 can use some for illustrative purposes.

1 We looked at the zip code level data
2 and income ranges for every zip code in the
3 state. If you look in Glen Cove, the average
4 income in Glen Cove in 2015, which was the
5 year we took the data from: \$139,741. The
6 average SALT deduction claimed by people in
7 Glen Cove was \$18,497. Now, there your
8 buzzer goes off and you assume, well, that's
9 a big problem, right?

10 If this is a family of four, two
11 children under 17 and a married couple, that
12 family is saving \$175. That's because --
13 now, if there's one child or no children or a
14 paid-off mortgage, it's probably a tax
15 increase of several hundred dollars. And we
16 don't have the data on filer types in there.
17 But what I'm showing you is you can have a
18 state and local tax deduction and live in
19 New York of close to \$20,000 and not be
20 paying higher federal taxes. It depends on
21 family size -- it depends on the makeup and
22 size of the family as much as anything,
23 because of the nature of the federal tax
24 reform. I can get into that more.

1 But it's important to understand that
2 this is not a general, broad problem. The
3 biggest group of people affected negatively,
4 the biggest category of people affected
5 negatively, to the extent of paying higher
6 federal taxes as a result of the SALT cap,
7 are within the highest-earning 1 percent of
8 New Yorkers. That is the class that is
9 paying the most. The Tax Policy Center
10 estimated that 30 percent of the top
11 1 percent in New York are paying more.

12 The calculations I've given you with
13 my testimony show you people making more than
14 a million dollars a year who live in New York
15 City -- people who are in the top bracket,
16 rather, the top state, federal and local
17 bracket in New York City, they are paying a
18 higher combined rate now than they were
19 paying before the federal tax act. A higher
20 rate. That's also true in Yonkers, by the
21 way.

22 That is the problem. Because you are
23 exceptionally dependent, New York as a state
24 is exceptionally dependent on the

1 highest-earning 1 percent. That's the
2 problem.

3 Look, throughout history, the New York
4 State personal income tax, which turns 100
5 this year -- it was enacted 100 years ago --
6 through the first 99 years, the net marginal
7 cost of the tax was offset very significantly
8 by deductibility. That's now ended. You
9 have a tax increase effectively at the margin
10 for top bracket payers that is almost an
11 order of magnitude greater than any we've
12 ever seen before in any single year or set of
13 years. That's the issue you need to
14 confront.

15 And I have an illustration in here.
16 If you go not to the top 1 percent but to the
17 top 5 percent of the top 1 percent, to people
18 making more than \$10 million, assume a median
19 income, unswelled by the very top, of
20 \$15 million -- take 200 of those people,
21 which is enough to feel a medium-sized movie
22 theater, or maybe this room -- and if they
23 leave the state with their incomes, you have
24 lost \$265 million, which is the whole budget

1 of the DEC. So that's that issue.

2 Now, the Governor has expressed these
3 same concerns. Unfortunately, there's two
4 very important ways -- three, actually, as
5 Ken just mentioned, in the budget that are
6 inconsistent with that. One is the five-year
7 extension of the millionaire tax. We'll see
8 after we see the budget update on Thursday
9 what the outyears now look like. But
10 according to the original financial plan, if
11 the spending was held to 2 percent a year
12 across the next four years, you could afford
13 to phase out more than half of the
14 millionaire tax by Year 3.

15 Now, I don't know what this is going
16 to look like now when he puts it out. But
17 there's no talk and no suggestion from the
18 Governor of a willingness to begin phasing
19 out that tax even while he expresses concern
20 about the issues I just discussed.

21 The second is another issue -- and
22 I'll put in my 2 cents on this -- is the
23 so-called carried interest issue. You
24 basically are targeting, through Part Y of

1 the revenue bill, a subset of taxpayers who
2 are very high earners and pay a lot of tax
3 for an increase that for non-New York
4 residents will be 300 percent. It would be
5 200 percent for New York residents, because
6 of the so-called fairness fee.

7 CHAIRWOMAN KRUEGER: (Inaudible.)

8 MR. McMAHON: So basically I'm just
9 expressing concern about the sensitivity of
10 the tax code. I'll be happy to answer any
11 questions you have.

12 CHAIRWOMAN KRUEGER: Thank you.

13 Assembly?

14 CHAIRWOMAN WEINSTEIN: Charles Lavine.

15 ASSEMBLYMAN LAVINE: Mr. McMahon,
16 thank you. You know, I have a tremendous
17 amount of respect for you because I believe
18 that you are a classical conservative in the
19 best sense of that expression.

20 MR. McMAHON: Well, thank you.

21 ASSEMBLYMAN LAVINE: But I do want to
22 take -- and you're welcome.

23 MR. McMAHON: But you're about to
24 disagree with me.

1 ASSEMBLYMAN LAVINE: No, I'm just a --
2 I'm a little concerned. Not about the
3 content of -- your philosophical thrust, but
4 I am a little concerned because I live in the
5 City of Glen Cove, and my understanding has
6 been that the average median income in the
7 City of Glen Cove is somewhere around
8 \$70,000. Now, I have the feeling that the
9 figures you are quoting refer to the incomes
10 of a couple of dozen people who live in the
11 City of Glen Cove who happen to be
12 extraordinarily wealthy. But just so the
13 record reflects the actual condition of my
14 hometown, more than 50 percent of our
15 students in our public school qualify for
16 free or reduced lunch. And I don't want to
17 just sit idly by while the picture is painted
18 of this Gold Coast city with streets of gold.
19 Because that's not the case.

20 MR. McMAHON: Right. I was rushing in
21 an attempt to meet the time deadline.

22 What I did for each zip code was if
23 you make under \$100,000, especially in most
24 of the state, there's almost no question that

1 you're not paying more taxes. So that's
2 actually the actual federal data for the Glen
3 Cove zip code of people with average incomes
4 between 100 and 200. I'm sorry I didn't
5 clarify, okay. Of whom there are several
6 hundred, according to the --

7 ASSEMBLYMAN LAVINE: Yes, there are
8 people who have the 11542 zip code whose
9 address is not the City of Glen Cove.

10 MR. McMAHON: Understood.

11 ASSEMBLYMAN LAVINE: It is neighboring
12 classical suburban communities, not an urban
13 environment.

14 MR. McMAHON: Understood. It's an
15 illustration. The illustration, the main
16 point of it was not so much about Glen Cove.
17 I just knew you were from Glen Cove, so I
18 mentioned that. It's about the fact that you
19 can have SALT of almost \$19,000 and still be
20 saving money, depending on the configuration
21 of your family. That's -- it's not meant to
22 be a portrait of all of Glen Cove. Because
23 as I noted, I'm not defensive of the tax cut
24 in general -- or the tax act.

1 ASSEMBLYMAN LAVINE: So Mr. McMahon,
2 quick question for you. I bet you are a fan
3 of Winston Churchill. I just have that
4 feeling.

5 MR. McMAHON: Well, I agree, yeah.

6 ASSEMBLYMAN LAVINE: And when
7 Churchill was head of the Board of Trade more
8 than a hundred years ago, he was concerned
9 about the growing disparity between those who
10 had wealth and those who lacked wealth. What
11 do you think our condition is today?

12 MR. McMAHON: Well --

13 ASSEMBLYMAN LAVINE: And how do we
14 address it?

15 MR. McMAHON: We're talking -- first
16 of all, we're talking about income, not
17 wealth. There are hundreds of thousands of
18 millionaires in New York based on wealth,
19 including many, many more on Long Island that
20 we're talking about in terms of income
21 earners.

22 The job of the tax code and the way
23 the tax code is constructed and has been for
24 a long time is it redistributes income. It

1 doesn't redistribute wealth, it redistributes
2 income. It actually does that to a very
3 extensive degree.

4 The problem is at what point do you
5 reach a point where you're counterproductive,
6 where you are risking your ability to fund
7 crucial programs because you're actually
8 having an effect that drives -- that either
9 suppresses the growth in income people report
10 or you're causing them not to be here, not to
11 invest here or to leave here.

12 That's the crucial issue you face now,
13 I think because -- under the federal tax law.
14 To that degree I agree with the Governor.
15 Not with much of other things he's said, but
16 that I would agree with.

17 ASSEMBLYMAN LAVINE: Mr. McMahon,
18 thank you. And it's always a pleasure to
19 speak with you, sir.

20 MR. McMAHON: You're welcome. Thank
21 you.

22 CHAIRWOMAN WEINSTEIN: Thank you.

23 Senate?

24 CHAIRWOMAN KRUEGER: Thank you.

1 Senator Brian Benjamin.

2 SENATOR BENJAMIN: Thank you for your
3 testimony.

4 I want to jump right to the carried
5 interest. Can you first explain where the
6 300 percent tax number comes from?

7 MR. McMAHON: Well, that's if you're a
8 New York resident and you're not -- if you're
9 not a New York resident and you're not paying
10 any tax to New York now on carried interest,
11 you'd pay 8.82 percent, up to 8.82 percent
12 top rate, plus you'd pay 17 percent. As I
13 read the bill, you'd pay the 17 percent
14 carried interest fees on top of the tax you
15 pay. And the intent of the 17 percent
16 carried interest fee -- so it would be
17 200 percent if you're a New York resident.

18 SENATOR BENJAMIN: I see.

19 MR. McMAHON: And the carried
20 interest -- so 200 percent does not sound
21 much better than 300. But the carried
22 interest fee, as I understand, according to
23 the drafters' intent of this, is that
24 New York is taking it into own hands to tax

1 this income at the rate that is felt
2 appropriate to be the federal rate that the
3 federal government is not doing.

4 Now, that's an unprecedented approach.
5 It doesn't matter what you think about
6 carried interest treatment on the federal
7 level. Which by the way, it's really more
8 private equity than hedge funds, although I
9 mentioned both. And it's a sweat equity
10 concept, not just a performance concept.
11 There are arguments on both sides. But --

12 SENATOR BENJAMIN: Let me ask you a
13 question. Do you believe that -- let's use
14 the primarily -- I'll accept that for now.
15 Do you believe that the individuals working
16 at private equity firms that are getting the
17 20 percent carried interest, that they're
18 passive investors?

19 MR. McMAHON: Right.

20 SENATOR BENJAMIN: I mean, capital
21 gains are typically associated with
22 investors, correct?

23 MR. McMAHON: Well, they would argue
24 they're active. But here's the point. I

1 don't have to think much about that. I'm
2 looking at New York State tax policy now.
3 They would argue that they're active. Some
4 people would argue they're too active in some
5 cases. This is not -- the point of this is
6 this policy is in fact clearly motivated by a
7 political value judgment about the way hedge
8 funds and private equity firms do business.

9 SENATOR BENJAMIN: Correct.

10 MR. McMAHON: You're entitled to your
11 opinion on that. Everybody is entitled to
12 their opinion on that.

13 What I would say you should be
14 concerned about is about jeopardizing a very
15 significant revenue stream. You're talking
16 about a relatively small group of people who,
17 based on an estimate the Governor put out
18 last year based on I don't know what, would
19 suggest they pay \$500 million or more in
20 New York State income tax. And you're
21 talking about a really, really enormous tax
22 increase.

23 In fact, the premise of the bill
24 acknowledges the behavioral change that would

1 occur if you did this, because it would not
2 go into effect unless four neighboring states
3 did it all at once. That's an
4 acknowledgement -- by the way, this was
5 something that was attempted here on a
6 smaller scale 10 years ago and Governor
7 Paterson and the Assembly backed away from it
8 as soon as the then-governor of Connecticut
9 invited New York hedge fund and private
10 equity fund managers to come and have dinner
11 with her to talk about relocating to
12 Connecticut.

13 This bill is a multistate bill that
14 says five states have to do this.

15 SENATOR BENJAMIN: Right.

16 MR. McMAHON: I just point out there's
17 45 states left. This is not a good idea.
18 And you don't have to have any given
19 philosophy about carried interest to
20 understand that. Donald Trump ran saying he
21 wanted to change carried interest treatment.
22 By the way, the new tax law does, to some
23 extent. It requires a three-year holding
24 period, which I think has further limited the

1 extent to which hedge funds are a major
2 factor in this consideration.

3 SENATOR BENJAMIN: Gotcha. Okay,
4 that's all I have. Thank you.

5 (Off the record.)

6 CHAIRWOMAN KRUEGER: Senator John Liu
7 first.

8 SENATOR LIU: Mr. McMahon, thank you
9 very much for pointing out how well off
10 Assemblyman Lavine is. We all need to hear
11 that.

12 (Laughter.)

13 MR. McMAHON: I was hesitant to expose
14 that, but it had to come out.

15 SENATOR LIU: Okay. Well, we always
16 suspected.

17 ASSEMBLYMAN LAVINE: Thank you, John.

18 SENATOR LIU: Mr. McMahon, so what
19 about the alternative minimum tax? Obviously
20 a lot of people who were subject to the AMT
21 have actually not been victimized by the
22 limitation on SALT.

23 MR. McMAHON: Right. I agree with
24 you. In fact, the rollback of the AMT is

1 another reason why many affluent households,
2 especially downstate, are not being hit with
3 a tax increase. One of them is the Governor
4 himself, based on his tax return last year,
5 which showed income of like \$210,000 or so.
6 And based on what was reported publicly, he'd
7 be saving almost \$10,000 under the new
8 federal tax law.

9 Again, let me say again, I'm not
10 endorsing the federal tax law in every
11 respect. I'm just pointing that out.

12 The problem is concentrated at the top
13 of the income scale. And the 2 -- for
14 instance, the \$2.3 billion revenue drop, what
15 that really tells you is about the
16 sensitivity and responsiveness of income
17 among high earners. That actually is a
18 lesson in itself. That's a very significant
19 response.

20 I think -- we don't know enough detail
21 to know actually what caused that. We can
22 speculate two things. There was volatility
23 in the stock market in the last quarter of
24 2018. There was a plunge. A lot of people

1 ended up with capital losses who thought
2 they'd have capital gains. The Executive
3 Budget assumes capital gains income would
4 increase slightly in 2018. Perhaps that's
5 wrong.

6 Secondly, I think there's a great
7 possibility that in a unique situation that
8 they can't be faulted for, that the
9 Governor's budget analysts actually
10 underestimated the behavioral changes in
11 2017, the acceleration of income. Again,
12 though, that acceleration of income was
13 principally by people who have very high
14 incomes and control their incomes.

15 SENATOR LIU: I mean, the Governor
16 actively encouraged people to accelerate the
17 tax payments into 2017.

18 MR. McMAHON: Right. But those people
19 are not part of the \$2.3 billion drop. Those
20 were homeowners, principally -- if you look
21 at the photos -- senior citizens and
22 homeowners on Long Island and in various
23 towns of upstate New York who were told
24 they'd better go to town hall and prepay

1 their property tax.

2 SENATOR LIU: So you think the \$2.3
3 billion drop in tax revenue is a real
4 number --

5 MR. McMAHON: Yes. Yes.

6 SENATOR LIU: -- and it's not just a
7 timing issue?

8 MR. McMAHON: No, it's a real -- well,
9 it's a real number. They collected
10 \$2.3 billion less than they projected. I
11 think that's real.

12 SENATOR LIU: Well, that was the
13 withholding and also the estimated tax
14 payments.

15 But you're saying that that is a real
16 number as opposed to, you know, maybe some of
17 the tax payments were delayed and will be
18 caught up in the first quarter.

19 MR. McMAHON: Without knowing nearly
20 enough detail about this, I'm very doubtful
21 that this is ephemeral or passing or that
22 you're going to recapture all of that or it's
23 just simply going to simply reappear.

24 To the extent it was a capital gains

1 decrease which was not anticipated or
2 reflected in the budget, that's -- you're not
3 going to -- that's not coming back anytime
4 soon. The market may recover, it's already
5 recovering partially, but you're not going to
6 recover.

7 CHAIRWOMAN KRUEGER: Senator Seward.

8 SENATOR SEWARD: Thank you.

9 Good to see you again.

10 MR. McMAHON: Hi.

11 SENATOR SEWARD: Just following up on
12 your previous discussion, is there any data
13 that shows that these high-income individuals
14 are actually leaving New York State as a
15 result of the high taxes? And what financial
16 risks does that present to the state?

17 MR. McMAHON: Well, as I said -- and
18 in my testimony I referred to a chart I have
19 that tracks -- if you look at the difference
20 between the nonresident and resident
21 proportion of the millionaire earner category
22 of taxpayers in New York's tax base, there's
23 been a steady increase in the nonresident
24 share and a steady decrease in the resident

1 share. And it's been concentrated, the
2 greatest decrease has been at, again, the
3 tippy-top, the \$10 million and more. That
4 would strike me as indirect evidence.

5 There's not good data on a so-called
6 millionaire migration. If you went down
7 lower on the income scale, the IRS migration
8 data, for instance, has some income slices in
9 it and if you look at income -- if you look
10 at migration of taxpayers between and among
11 states between '15 and '16, in the \$200,000
12 and up category, which is kind of a grosser
13 category than we're talking about here, but
14 just by illustration, there's more than twice
15 as many people moving out as moving into
16 New York, and New York has the very lowest
17 ratio of in to out in that income class of
18 any state. And there are -- and even
19 California has got a higher ratio.

20 So I think that the one thing I would
21 point out is that whatever -- if we could get
22 better data on income migration even in the
23 past, we're now in uncharted territory. This
24 tax increase effectively is -- for residents

1 of New York City is a 5 percentage point
2 increase in what was effectively a
3 7.6 percent net of deductibility top tax
4 rate. You've never had anything like that
5 before.

6 And I have a chart in my
7 presentation -- this is the highest net of
8 deductibility effective marginal tax rate by
9 far in the history of the combined New York
10 State and City income tax in the city, for
11 starters. So it's something to be very
12 cautious about when we are so reliant on high
13 earners.

14 One final point. In California -- the
15 only other state that's more consistently
16 progressive than us and reliant on high
17 earners is California. Before he left
18 office, Governor Brown, who's been a
19 consistent proponent of steeply progressive
20 taxes -- and California has a very steeply
21 progressive tax -- he said if we're going to
22 be reliant on steeply progressive taxes, we'd
23 better have an enormous reserve fund, because
24 steeply progressive taxes are extremely

1 volatile. Which, by the way, is something
2 the Assembly Ways and Means Majority Staff
3 Report pointed out year after year until
4 recently.

5 They now are on their way to having a
6 \$16 billion reserve fund, which by our
7 standards would be eight. Our statutory
8 rainy day reserve is less than 1.8 right now.

9 SENATOR SEWARD: It's not frequent
10 that you and I would agree with Jerry Brown.

11 MR. McMAHON: Well, I think he's
12 being -- if you favor steeply progressive tax
13 rates -- you'd be shocked to hear I don't --
14 but if you do, you have to understand that
15 they're extremely volatile. And if you live
16 with them, you'll die by them, very quickly
17 and without warning.

18 SENATOR SEWARD: Thank you.

19 CHAIRWOMAN KRUEGER: Senator
20 Antonacci.

21 SENATOR ANTONACCI: Thank you.

22 Mr. McMahon, does the Governor's
23 proposed budget comply with the tax cap as we
24 would judge it?

1 MR. McMAHON: Tax cap or -- you mean
2 the self-imposed spending cap?

3 SENATOR ANTONACCI: Yeah. Well, no.
4 I mean, does it stay within the 2 percent?
5 What is the actual rate of growth in this
6 budget?

7 MR. McMAHON: Well, I -- at the
8 beginning, I guess, it was 3 percent or more,
9 I think. And I respect the work of the
10 Citizens Budget Commission, who did a
11 thorough look, and he thought it was 3.4. I
12 don't find anything to differ with in that.
13 It's more like 3-plus percent than 2 percent.

14 I would say, by the way, if you take
15 the real measure, not the -- including
16 bookkeeping changes, if you compared it on an
17 inflation-adjusted basis across eight years,
18 the Governor is still comparatively
19 restrained compared to predecessors. Now,
20 whether his approach and the way he has
21 squeezed the number has created more problems
22 down the road is another question. And a lot
23 of that question is going to be -- is
24 unanswered in an important way now because we

1 haven't seen the 30-day update to this
2 financial plan, which I think is probably
3 going to have some significant changes in it.

4 SENATOR ANTONACCI: Thank you.

5 CHAIRWOMAN KRUEGER: Thank you.

6 Senator Ranzenhofer.

7 SENATOR RANZENHOFER: Thank you,
8 Mr. McMahon.

9 I had asked a couple of other speakers
10 whether or not they or their organization had
11 an estimate for the dollar number of tax
12 increase in this budget, and I was wondering
13 if you did.

14 MR. McMAHON: I think in the coming
15 fiscal year it's around a billion. And then
16 grows -- mostly because of the extender of
17 the millionaire tax, it grows to 4 or
18 5 billion a year in the outyears.

19 SENATOR RANZENHOFER: Do you have a
20 breakdown between PIT and other taxes in
21 terms of --

22 MR. McMAHON: It's almost -- it's
23 overwhelmingly PIT. Because I think the
24 internet vendor tax or the internet

1 marketplace tax I think starts at 125 and
2 ends up at 250, if I'm remembering. I think
3 that the ESCO tax is much smaller, twentyish.
4 But you look at the millionaire tax, it's 771
5 in fiscal '20, grows to four to five to
6 almost six in the outyears, including, by the
7 way, the continuing cap on charitable
8 contribution deductions for \$10 million and
9 up earners.

10 SENATOR RANZENHOFER: Okay. Another
11 question I had asked, and you started to
12 touch on it, is outmigration and
13 in-migration. We hear about the numbers of
14 people coming in and out. Do you have an
15 estimate -- and one of the examples that was
16 given is you really couldn't tell because
17 somebody moving in from another state, from
18 New York City and getting a job is going to
19 produce income.

20 Do you have any data on amount of
21 money generated by people moving in and money
22 lost by people moving out?

23 MR. McMAHON: No. I would say to you
24 that any number you've ever seen on that

1 needs to be taken with caution, because
2 income doesn't move, people move. Income can
3 move, but it doesn't always move.

4 And if somebody takes an entire
5 private equity fund with them to Naples,
6 Florida, or Jackson Hole, Wyoming, that money
7 has moved. But if a person retires to
8 Florida, the income may be different.

9 So the IRS data you see is income the
10 year before the -- in the first year. It's
11 not the income in the second year.

12 SENATOR RANZENHOFER: Okay. Several
13 years ago there was an increase in the PIT
14 and there was a lot of publicity about people
15 moving. Do you have any data on the amount
16 of money lost as a result of the initial
17 increase in the PIT?

18 MR. McMAHON: No. No.

19 SENATOR RANZENHOFER: Thank you.

20 CHAIRWOMAN KRUEGER: Thank you.

21 I just have, I think, one or two
22 questions, following back with Senator
23 Benjamin's questions. And so perhaps it's
24 not fair, but I'll say it -- so you don't

1 like the federal tax cut. I agree with you.
2 But you're also -- we're living in a world
3 where income is being so maldistributed so
4 that 5 percent of the people end up with
5 statistically, you know, the money that used
6 to be distributed through 100 percent of the
7 people.

8 So if you don't think any of the
9 proposals that have been made here or you've
10 been asked about tonight will work to help
11 New York State get the revenue it thinks it
12 needs to operate as a state, tell me what you
13 think -- what taxation you think works. For
14 example, the business tax changes in the
15 Trump administration have translated into
16 billions of dollars in new money for large
17 corporations. I think the banks alone got a
18 \$21 billion windfall. They're not increasing
19 wages for people. They're not increasing the
20 number of people they're hiring. They're
21 just sitting with billions of dollars.

22 The State of New York needs to figure
23 out, in a world with bad federal tax policy
24 and with a true maldistribution of income --

1 so that we can meet the needs of everyone, we
2 have to figure out a tax structure that will
3 get us the revenue we need. What do you
4 recommend?

5 MR. McMAHON: Well, you already have a
6 tax structure that raises more revenue by
7 most measures than almost any tax structure
8 in the country.

9 Again, I think it's very important to
10 stress what you shouldn't do, because you're
11 on a tipping point now because of -- or a
12 very important inflection point in our
13 approach to taxation. Because throughout our
14 history we've gone through periods with very
15 high marginal tax rates at times when the
16 federal government had very high marginal tax
17 rates, and thus the effective rate was much,
18 much lower.

19 We're now going into just -- like I
20 said, uncharted territory. The very first
21 thing, to use the quasi-mythical Hippocratic
22 oath words, is to first do no harm. And
23 failing to recognize what the implications of
24 these tax changes are for our tax base would

1 be a grave mistake. I would assume that the
2 priorities shared by everybody across the
3 political spectrum on this panel and the
4 Legislature is not to jeopardize funding for
5 important public programs. You're going to
6 do so if you assume that you can tax with
7 impunity.

8 Whatever you think of income
9 inequality, if you think the State of New
10 York alone through its tax policy can right
11 all wrongs in accord with however the
12 legislative majority sees it, without having
13 fiscal and economic consequences, I just
14 would disagree. I don't think -- there are
15 things that may frustrate you about federal
16 fiscal and economic policy, but there's not
17 much you can -- you have to roll with the
18 punches, I would suggest.

19 The punch of this tax plan in
20 particular to New York is the SALT cap. I
21 wish more attention had been paid to the
22 actual reality of the SALT cap's impact,
23 which is that it falls -- that the negative
24 impact falls squarely, to the greatest

1 extent, on the part of your tax base that has
2 the relatively smallest number of taxpayers.

3 Who have just shown, I think in part,
4 through that \$2.3 billion revenue drop in
5 estimated payments -- that's like a
6 sensitivity analysis of how much people's
7 incomes can swing based on their reactions to
8 tax policy. Not moves, necessarily, yet, but
9 just to the extent to which people don't want
10 to be exposed to the full brunt of this.

11 And I think that there's -- there's a
12 whole other discussion about income
13 inequality, what causes it, how inevitable it
14 is or isn't in a place like New York and how
15 the new federal policy will work. But
16 frustrate you as it might -- I mean
17 collectively, not you personally -- you're
18 not going to fix all of these issues or
19 address them effectively with state tax
20 policy. That it's important to preserve what
21 you have, even though we may disagree about
22 whether you have too much or are spending it
23 correctly.

24 CHAIRWOMAN KRUEGER: Thank you. Thank

1 you for your testimony tonight.

2 MR. McMAHON: Thank you.

3 CHAIRWOMAN WEINSTEIN: Wait. Just to
4 follow up what Senator Krueger said, I think
5 your answer is a little simplistic in that
6 the loss of the SALT deduction for so many
7 homeowners in New York State has a much more
8 dramatic impact in terms of the -- a lot of
9 local economies' housing, the deflation of
10 housing prices, preventing sales of homes,
11 people's potential loss down the line of a
12 reduction of their capital gains on those
13 homes -- not just the state personal income
14 tax and whatever arrangements individuals
15 have made.

16 So I think it's a much broader -- you
17 focus on a very narrow aspect of the loss of
18 SALT deductibility, but clearly there is a
19 much broader effect when you start taking it
20 down to a more local level, property --
21 eventually affecting the property base in
22 many communities around the state.

23 MR. McMAHON: Well, I would -- I
24 understand -- first, I'm focusing the way I

1 am because we're talking about the state tax
2 code, the state tax structure and the state
3 budget, particularly in the year ahead.

4 Yes, anything that raises --
5 effectively raises the cost of owning and
6 living in a house is going to affect the
7 value of the house. So far -- now, there has
8 been softness reported in the luxury market
9 in the suburbs and in New York City going
10 back to before the federal tax bill.
11 Softness meaning the way realtors talk about
12 prices that aren't going high enough or
13 aren't staying up enough and maybe are
14 decreasing.

15 If you look at the Board of Realtors
16 and Association of Realtors data for suburban
17 New York and suburban New Jersey, for
18 instance, what you see is a continuing tight
19 inventory. There's not enough houses for
20 sale. And you see prices staying stable or
21 up. That's what the official reports say.

22 So -- now, I don't question you on the
23 long-term view, although in terms of
24 long-term we're already -- this tax law

1 expires after 2024. Now, we can all imagine
2 the future. The whole thing expires and goes
3 back to the way it was in 2025, including the
4 SALT deduction.

5 Now, I don't think, if I could add one
6 thing in reaction to your -- I do think it's
7 a long-term concern in that way that you
8 said. Because I don't believe that whoever
9 controls Congress, including if Congress is
10 controlled completely in both houses by
11 Democrats and there's a Democratic president
12 in the next cycle, I don't think a full
13 uncapped SALT deduction for all income
14 classes is coming back. I'd be shocked. I
15 think that -- and I would point out to you
16 that President Obama proposed almost every
17 year capping the SALT deduction in the top
18 two brackets in a way that would have reduced
19 its value by approximately 30 percent. He
20 had a deal to do it with John Boehner in I
21 think 2011, and it didn't go through because
22 the Senate, at that time under Democratic
23 control, made that go away. I think we can
24 guess how and why that happened.

1 So in other words, this has been a
2 Democratic priority as well as a Republican
3 priority. People in other states know whose
4 ox is gored when they do this, and party ID
5 is less important than where the money comes
6 from. And I think now that this cap has gone
7 on, it's going to be -- I doubt we'll ever
8 see it come off completely again, especially
9 in the high-income brackets.

10 CHAIRWOMAN WEINSTEIN: Thank you.

11 CHAIRWOMAN KRUEGER: Thank you.

12 CHAIRWOMAN WEINSTEIN: So next we have
13 Erin Tobin, vice president for policy and
14 preservation, Preservation League of New York
15 State.

16 MS. TOBIN: Good afternoon, everybody.

17 CHAIRWOMAN KRUEGER: Good evening.

18 MS. TOBIN: I'm here to report the
19 roads are not great.

20 So thank you so much, Chairwoman
21 Krueger, Chairwoman Weinstein, and
22 distinguished members of the Senate and
23 Assembly for giving me the opportunity to
24 talk today about the New York State Historic

1 Tax Credit.

2 I'm here representing the Preservation
3 League of New York State, which is New York
4 State's only statewide preservation
5 nonprofit. We work all throughout New York
6 State with local preservation organizations,
7 municipalities, and others to lead advocacy,
8 economic development and education programs,
9 talking about how important historic
10 preservation is for community revitalization
11 and sustainable economic growth as well as
12 the protection of our historic buildings and
13 landscapes.

14 So this is my second time testifying
15 before this committee, and this testimony is
16 to really focus on the State Historic Tax
17 Credit.

18 We really are so thankful to the
19 Legislature and the Governor for
20 reauthorizing the New York State Historic Tax
21 Credit last year and for the improvements you
22 made protecting it from the changes to the
23 federal Historic Tax Credit. The program has
24 continued to work throughout New York State.

1 But this year we're looking to have some
2 improvements made to the program which will
3 further encourage investment and make a
4 better use of the state's tax dollar.

5 To further these goals, we're focusing
6 on three key pieces of advocacy to improve
7 the State Historic Tax Credit -- and I'll
8 note that Senator Kennedy and Assemblywoman
9 Woerner have introduced a bill with these
10 three items in it. Senator Kennedy's bill
11 has a number, which is 3675, and
12 Assemblywoman Woerner's is waiting on a bill
13 number but introduced.

14 The first piece that we're looking for
15 in improvements to the State Historic Tax
16 Credit is the ability to directly transfer
17 state historic tax credits. This is
18 something that was achieved last year for the
19 State Low-Income Housing Tax Credit, and
20 we're looking for parity with the State
21 Historic Tax Credit. We believe that as the
22 state recognized the value of this mechanism
23 for the State Low-Income Housing Tax Credit,
24 it will bring similar value to our State

1 Historic Tax Credit.

2 There's 34 states with state historic
3 tax credits; 18 of them allow this
4 transferability component, including our
5 neighbors in Pennsylvania, Massachusetts, and
6 Connecticut. The additional equity provided
7 to a project through this transferability
8 will enable more historic rehabilitation,
9 reduce the need for local subsidies, and
10 allow greater efficiencies to our already
11 extended state resources at no cost to the
12 State Treasury.

13 And I want to underscore that point,
14 that being able to directly transfer the
15 state historic tax credits will not have --
16 that the state does not spend any more money
17 on its tax credits. This is just providing a
18 greater return on the dollar that the state's
19 already spending for these historic tax
20 credits. It's going to put more investment
21 into the local economic development
22 rehabilitation projects.

23 The second is to increase our state's
24 Historic Tax Credit from 20 percent to

1 30 percent for small projects, which we're
2 defining as under \$5 million. That's because
3 the owners of these smaller historic
4 buildings, which are typically found in Main
5 Street corridors, have real challenge to make
6 their projects work when they're under
7 5 million. A lot of the investors won't
8 engage with projects at or before this level
9 because they don't earn enough return to
10 justify the project entry cost, and there's a
11 floor on the cost of consultants that
12 developers have to hire in order to get
13 through a rehabilitation project.

14 So we believe that this boost, which
15 we think could have just over an \$8 million
16 fiscal impact, will be a real benefit to the
17 state, and that's going to affect upwards of
18 50 projects throughout the state, looking at
19 the data from last year.

20 The final piece is qualifying every
21 city under a million with a poverty threshold
22 of at least 15 percent for the State Historic
23 Tax Credit. This removes qualification
24 ambiguity. Again, we think this is a very

1 minor fiscal impact. What it does is it
2 allows certainty in the market so that a
3 developer in downtown Syracuse knows that
4 when they're planning for projects that their
5 census tract will remain qualifying in the
6 next five years.

7 We believe that these improvements
8 will help small business and Main Street
9 owners and keep ensuring that the state's
10 Historic Tax Credit serves as an incentive
11 throughout our upstate urban centers.

12 So thank you very much for your time
13 today. I want to let you know we also
14 support the Governor's proposal under Part U
15 to make all of the New York State parks -- of
16 his budget revenue bill that make all state
17 parks qualify for the State Historic Tax
18 Credit.

19 Thank you.

20 CHAIRWOMAN WEINSTEIN: Thank you.

21 CHAIRWOMAN KRUEGER: Thank you.

22 CHAIRWOMAN WEINSTEIN: Thank you. We
23 have your testimony and your written
24 testimony. Thank you.

1 Next, the New York State Assessors
2 Association, Warren J. Wheeler, executive
3 director. And someone else who will identify
4 himself.

5 MR. WHEELER: Good afternoon. Thank
6 you very much. Yes, my name is Warren
7 Wheeler, and I am the New York State
8 executive director of the state association.
9 To my left here is Scott Shedler, the first
10 vice president of the association.

11 I'm also the assessor for a couple of
12 towns in Oswego County, which is about 15 to
13 20 minutes north of the City of Syracuse.

14 I just wanted to tell you, again,
15 thank you for this opportunity. I'm going to
16 be very brief; I know you guys have had a
17 long day. You've got our testimony, and
18 there's several items in there.

19 I just want to focus on two of them at
20 the moment, the first item being the Part J
21 of the revenue bill. Our association is
22 always in favor of making the real property
23 tax administration much more effective and
24 efficient. We only would say that we would

1 support that with the local option.

2 The final item that I want to discuss
3 is the STAR -- I've heard a lot of questions
4 about the STAR this afternoon, both in Deputy
5 Manion's testimony and of course some
6 questions from the Assembly and the Senate.
7 This is not a time, in our opinion, to go
8 ahead and put a cap on the STAR limit, nor is
9 it a time to play around and try to force
10 people to enter into the STAR check program.

11 There's a lot of confusion amongst
12 taxpayers right now that we're dealing with.
13 They're really not sure if they have the STAR
14 check or the STAR exemption. It's been a
15 challenge that -- and yes, it has gotten
16 better over time, but we see no reason for
17 the Governor to change and make everybody go
18 into the STAR check. This program will run
19 its course on its own in due time, and we see
20 no reason to do it otherwise.

21 At this point I would like to let
22 Scott talk briefly about senior citizens.

23 MR. SHEDLER: There are many proposals
24 in the tentative budget that impact STAR

1 programs. Before the Legislature should
2 consider a change, we need to look to protect
3 our senior property owners. Over 50 years
4 ago, a law was enacted -- what was known as
5 RP467 -- and that's what's a senior citizen
6 limited income exemption. This exemption
7 helps seniors afford their homes and stay in
8 New York State.

9 This exemption has been more
10 complicated since -- how income is calculated
11 throughout on their income tax returns. In
12 fact, most of the time the income tax return
13 itself isn't used in calculating how one
14 receives this exemption. In fact, we
15 conducted a survey: 80 percent of all
16 seniors surveyed indicated they are
17 frustrated and they support a change that
18 will make this process simpler.

19 Since this was adopted, there were
20 close to 100 technical opinions of counsel on
21 how one's income should be calculated. Think
22 about that as a senior citizen who looks
23 there, trying to figure out whether they
24 qualify.

1 And then put in the mix now that
2 whether they have to apply with the state,
3 get a check from the state, whether their
4 income is different for the Enhanced STAR
5 versus the limited income -- it's totally
6 confusing.

7 Our association's legislative
8 committee was tasked with looking at this,
9 and the committee came up with proposals to
10 simplify the definition of income that would
11 make it easier for seniors to file and to
12 document their income, and also make it
13 easier to administer this exemption for
14 assessors.

15 Before this Legislature should
16 consider any STAR changes, we hope to protect
17 our seniors with making changes to the RP467
18 law. Thank you very much.

19 MR. WHEELER: In conclusion, I'd just
20 like to add one more thing. As we are the
21 local assessor, the local government -- for
22 the last 10 years you'll notice that Gallup
23 has polled Americans, and Americans trust
24 their local government first and foremost.

1 And believe me when I tell you that the local
2 assessor is at the forefront of all these
3 changes that get implemented. And -- so
4 we're right there. So that's it.

5 CHAIRWOMAN WEINSTEIN: Thank you. We
6 call on Sandy Galef, our chair of Real
7 Property Taxation.

8 ASSEMBLYWOMAN GALEF: Thank you so
9 much for being here.

10 And I think it is very confusing too,
11 to make all those changes. And this isn't a
12 year when we've got SALT and everything else
13 to make all these changes, but -- so we'll
14 try to address it.

15 Let me just ask you about the
16 Nassau County exemption that's in the budget
17 that allows, with reassessment, that there be
18 a five-year phase in. We've had some bills
19 with a two-year phase-in. What is your
20 recommendation? Should we go forward with
21 the Nassau issue, or is that going to put
22 into perspective for five years some of the
23 overcharges that they made in assessment in
24 Nassau County over the years in some of the

1 lower-income areas?

2 MR. WHEELER: So we have not -- we
3 have not discussed that at length as of right
4 now. It is in our legislative committee, and
5 I would be more than happy to give you a
6 formal position after this hearing.

7 ASSEMBLYWOMAN GALEF: Okay. Maybe
8 when you -- you're going to come to our
9 committee meeting --

10 MR. WHEELER: Yes.

11 ASSEMBLYWOMAN GALEF: Maybe you'll
12 have a position on that.

13 MR. WHEELER: Yup.

14 ASSEMBLYWOMAN GALEF: The other is
15 with the -- wait one second -- with the
16 three, there's also a proposal for a
17 three-to-five-year average for full value
18 apportionment in -- when there's a split
19 apportionment, such as in county, that they
20 would go back and do an average, it could be
21 with school districts and so on. Have you
22 thought about that concept?

23 MR. SHEDLER: Yes, the problem with
24 this proposed bill is if you have a school

1 district that has a majority of its board
2 members in one area, they could shift the tax
3 burden onto the other side of, let's say, the
4 line. It actually makes it very political,
5 and that's what we're very concerned with
6 with that change.

7 ASSEMBLYWOMAN GALEF: Okay. Do you
8 think your organization will not support
9 that, or is that your opinion, Scott?

10 MR. SHEDLER: Actually, our
11 association is mixed on that. We actually
12 had a meeting this morning in Guilderland and
13 we were talking about this issue, and we want
14 to have a more formal position at your
15 meeting.

16 ASSEMBLYWOMAN GALEF: Okay. And then
17 the other recommendation in the budget, I
18 guess some of the boards of assessment and
19 review have been having a difficult time
20 finding people to serve on BAR. And the
21 proposal is to be able to have a
22 county-appointed board of assessment and
23 review member.

24 Is that a good direction to go? And

1 when we limit the number of different boards
2 that that member could serve on, would they
3 just become a permanent substitute?

4 MR. WHEELER: So that issue is kind of
5 more in your rural areas, where I'm from, and
6 I would say that we would probably be in
7 support of -- to have the local option.

8 Because it's one of those things that
9 we're split on, I think, as an association.
10 As you get closer to the capital and
11 downstate, it's not an issue; they have
12 plenty of people from which to draw from for
13 the BAR members. But when you get north of
14 Syracuse, your population drops and your
15 people willing to volunteer also drops
16 exponentially, and it's sometimes a challenge
17 to fill those seats.

18 So depending on who you ask -- I think
19 if you ask people from the northern region, I
20 think you'll find that they support that.
21 And I think if you poll people from Albany
22 and south, that they don't -- they won't
23 support it because they don't see a need for
24 it.

1 ASSEMBLYWOMAN GALEF: Okay. And the
2 last -- you had spoken about the STAR
3 program. Why do you think the Governor is
4 making these changes? Have you seen that
5 people in the STAR program have been getting
6 money that they shouldn't have been getting?

7 The age qualification is wrong, the
8 background information for, you know, what
9 their income is wrong -- what do you think
10 the motivation is?

11 MR. WHEELER: So I think a lot of the
12 motivation simply is the taxpayers aren't
13 really paying attention now. That's not to
14 say that there aren't a few out there trying
15 to stretch the rules.

16 Deputy Manion talked about it earlier.
17 If the individual doesn't provide us with the
18 necessary income or if they provide us with
19 the income that we feel is all that they
20 have, we have no way of knowing if there's
21 any additional income. We don't have those
22 sources.

23 As far as the age goes, unless they're
24 providing falsified documents, I don't think

1 the age is really a problem. There may be
2 some issues out there where a husband and
3 wife -- one was of age and that person passes
4 on and then the surviving spouse may not meet
5 the minimum age, and that could be a problem.
6 You know, if the -- it's supposed to be up to
7 the property owner at that point to tell us
8 if there's been any changes. And so I don't
9 see where the age is really a big issue.

10 And as far as the money goes, if
11 they're not providing us everything, the DTF
12 definitely has more resources for checking
13 revenue.

14 ASSEMBLYWOMAN GALEF: Thank you.

15 CHAIRWOMAN WEINSTEIN: Senate?

16 So thank you. I think that's all our
17 questions for now.

18 CHAIRWOMAN KRUEGER: Thank you very
19 much.

20 CHAIRWOMAN WEINSTEIN: Next we have
21 the Fiscal Policy Institute, Ronald Deutsch,
22 executive director.

23 And if you could just introduce your
24 colleague for the record.

1 MR. DEUTSCH: Yes. Joining me today
2 is Dr. Jonas Shaende, our chief economist at
3 the Fiscal Policy Institute.

4 I thank the chairs for the opportunity
5 to speak here today, and all the members of
6 the committee as well. I thank you for your
7 time. Obviously you have our lengthy
8 testimony in front of you, I won't be reading
9 it -- which you can thank me for later. But
10 please do take a look at it, there's a lot of
11 very good information in there.

12 I'd like to start off by talking about
13 the fact that New York does have the greatest
14 income inequality of any state in the nation,
15 and it's long past time that we start to
16 address that. And unlike my friend E.J., I
17 think that we can do such things through
18 state tax policy as well.

19 So I think we need to keep in mind a
20 number of things: That since the 1970s, the
21 top 1 percent have captured about 80 percent
22 of all the income gains in New York State,
23 and historically the share of income going to
24 the top 1 percent has been increasing

1 dramatically since the 1980s. Right now the
2 top 1 percent in New York City get about
3 41 percent of all the income, and in New York
4 State the top 1 percent get about a third of
5 all the income.

6 So when we talk about the fact that
7 the top 1 percent are paying somewhere around
8 50 percent of the income tax in New York
9 State, well, that's because that's where the
10 money is. So there's a very good reason for
11 that.

12 So I would also say that since the
13 inception of the millionaire's tax in 2009,
14 we've seen about a 72 percent increase in the
15 number of millionaire tax returns in New York
16 State. And the total income of millionaire
17 tax returns has grown by about 54 percent
18 during that time period as well. So that's
19 why we're supporting not only -- you know,
20 the Governor's proposing the extension of the
21 millionaire's tax, but we're supporting an
22 expansion of the millionaire's tax.

23 We think that there should be
24 additional brackets at 5 million, 10 million,

1 and 100 million as well. And the rates for 5
2 million should be at 9.32, the rate for
3 10 million should be at 9.82, and the rate
4 for over 100 million should be at 10.32. So
5 we think that there's plenty of room for
6 expansion around the millionaire's tax.

7 We're not buying the fact that
8 millionaires are fleeing New York in droves,
9 and I think that's evidenced by the expansion
10 of the number of millionaire tax returns that
11 we've seen over the years.

12 I would also suggest that we should be
13 looking at other taxes and expanding those as
14 well, which would actually help grow the
15 economy from the bottom up -- people who
16 really need tax cuts. So I think we should
17 be looking at expanding the Earned Income Tax
18 Credit in New York from 30 to 40 percent of
19 the federal tax EITC, and also adding
20 childless adults between the ages of 18 and
21 24 to that as well. Those are folks that are
22 just starting out, and they could really use
23 an income bump.

24 Also, the Empire State Child Tax

1 Credit. New York State should expand the
2 credit as well, and it should cover children
3 under the age of 4. Inexplicably, it does
4 not cover children under the age of 4 right
5 now, and it absolutely should.

6 A couple of other things I want to
7 note before I turn it over to my colleague.
8 We should not be looking at making the
9 property tax cap permanent. The real
10 solution, I think, is for the state to pick
11 up more of the cost that it continues to push
12 down to the local level.

13 We have a great imbalance between the
14 state and local fiscal situation, and I would
15 also suggest that we get rid of the 2 percent
16 state spending cap. I think it's very
17 popular with the Governor, but I'm not sure
18 that the Legislature is as crazy about it as
19 he is. I think the fact that he has to use
20 fiscal gimmickry every year to get around the
21 2 percent cap speaks to the fact that it's
22 not effective and it's really pushing harm on
23 social welfare agencies in particular.

24 Jonas.

1 DR. SHAENDE: Yes, thank you, Ron.

2 Now, our view -- we'll look at the new
3 Executive Budget proposal -- is that it's
4 very much a lot of the same, the same policy
5 of fiscal austerity. And austerity is very
6 easy to do during the upswing of the economic
7 business cycle. On the downturn, you cannot
8 continue doing that, and it's -- you cannot
9 cut taxes and you cannot really cut spending
10 and get out of the recession. And the
11 recession is coming. So the budget shows
12 itself as a missed opportunity to really
13 raise taxes.

14 There are some good proposals, but
15 it's missing a really pro-growth, pro-revenue
16 agenda.

17 Thank you.

18 CHAIRWOMAN WEINSTEIN: Thank you.

19 Any questions on the Assembly? No?
20 Senate?

21 CHAIRWOMAN KRUEGER: Senator Brian
22 Benjamin.

23 SENATOR BENJAMIN: Thank you for your
24 testimony.

1 I want to start with your assessment
2 of closing the carried-interest loophole. Do
3 you believe that private equity individuals,
4 et cetera, would leave the state, thereby not
5 allowing us to capture this tax? Do you
6 believe it's a good tax? What do you think
7 about that?

8 MR. DEUTSCH: I personally feel that
9 it's a good tax. We like the multistate
10 compact, but if we can't get a multistate
11 compact I think that we should be looking at
12 going it alone, if necessary. I think it's
13 absolutely absurd that private equity
14 managers, hedge fund managers get this --
15 basically a loophole where you're basically
16 calling profit something else to tax it at a
17 lower rate.

18 So I think it should be viewed as
19 income. It is income, and it should be taxed
20 as such.

21 SENATOR BENJAMIN: And so you
22 mentioned going it alone. So you're not of
23 the opinion that these hedge fund or private
24 equity managers wouldn't just move to

1 Connecticut or move to another state?

2 MR. DEUTSCH: You know, I think that
3 was alluded to earlier where 10 years ago
4 Governor Paterson was talking about including
5 carried interest under the unincorporated
6 business tax and sat down with a few hedge
7 fund managers, private equity managers, and
8 the next thing you know he changed his mind.

9 People may threaten or suggest that
10 they'll leave but, you know, that's certainly
11 not necessarily the case.

12 SENATOR BENJAMIN: Got it. Okay.

13 Moving on to the pied-à-terre tax, I
14 don't know how --

15 MR. DEUTSCH: Pied-à-terre?

16 SENATOR BENJAMIN: Pied-à-terre tax.
17 Could you explain how this tax would actually
18 work? And is it actually working -- do we --
19 is it implemented anyplace else in the
20 country, this tax?

21 DR. SHAENDE: No, it's not. But it is
22 a tax on, I think -- the pied-à-terre tax is
23 a shorthand for a non-primary residence tax,
24 right? So it does exist in Singapore, in

1 Hong Kong and other international cities --
2 Paris, other large cities of international
3 importance. There are really big
4 destinations for the secondary homes and
5 where local residents are even buying two or
6 three houses and homes.

7 SENATOR BENJAMIN: Do you believe that
8 this -- do you have a sense of how much
9 revenue this tax would generate for the State
10 of New York on a yearly basis?

11 DR. SHAENDE: If we look at the City
12 of New York --

13 SENATOR BENJAMIN: I'm sorry, the
14 State of New York. But this is a New York
15 City tax.

16 DR. SHAENDE: For the most part.
17 That's because it's the largest market.

18 SENATOR BENJAMIN: But you wouldn't
19 be -- if you lived in upstate New York, you
20 still would have -- if you have a secondary
21 home --

22 DR. SHAENDE: Yes, to be
23 constitutional.

24 SENATOR BENJAMIN: Okay, okay. All

1 right. Just checking.

2 DR. SHAENDE: Well, this tax, in our
3 last estimation, would generate about half a
4 billion -- more than half a billion dollars a
5 year.

6 SENATOR BENJAMIN: Gotcha.

7 It was mentioned earlier that with the
8 Trump tax plan a number of corporations have
9 now received a lot of -- a big windfall. I
10 think someone mentioned a big number, I've
11 got -- maybe it was 21 billion, I can't
12 remember the number that was mentioned -- and
13 now, to my understanding, some of that
14 windfall has gone into buying back stock that
15 these companies have used.

16 Would you be in favor of a
17 stock-buyback tax of some kind that would
18 basically say if you as a corporation took
19 these tax cuts and instead of investing it in
20 the economy and investing it in higher wages
21 or helping to build capital or create more
22 jobs you took it and bought back stock, that
23 we should have some kind of a tax or fee on
24 that behavior?

1 MR. DEUTSCH: Yes, I would
2 wholeheartedly support that. I think that
3 makes a lot of sense, and I think there's
4 precedent for it. There's certainly the
5 stock transfer tax that was in existence in
6 New York from 1908 to about 1980.

7 But I think the reality is that
8 corporations in New York State effectively
9 are getting a federal tax cut of around
10 40 percent as their corporate tax rate went
11 from 35 to 21 percent. So I think that if
12 those corporations are going to use all of
13 that windfall to simply do stock buybacks to
14 enrich themselves and their CEOs, I think we
15 should be looking at a very small tax on
16 those buybacks as a way to help spread that
17 income more appropriately across New York
18 State.

19 SENATOR BENJAMIN: Thank you.

20 CHAIRWOMAN WEINSTEIN:
21 Assemblywoman -- Assemblyman Braunstein
22 first.

23 ASSEMBLYMAN BRAUNSTEIN: Just a real
24 quick question. With the pied-à-terre tax,

1 with your proposal is there a market price
2 where it would start? Like the home is over
3 2 million, 5 million --

4 DR. SHAENDE: Five million.

5 ASSEMBLYMAN BRAUNSTEIN: And you think
6 you would raise half a billion dollars just
7 taxing over-\$5 million homes?

8 DR. SHAENDE: Yes, sir.

9 ASSEMBLYMAN BRAUNSTEIN: Okay. Thank
10 you.

11 CHAIRWOMAN WEINSTEIN: Assemblywoman
12 Dickens.

13 ASSEMBLYWOMAN DICKENS: Thank you so
14 much, Madam Chair.

15 Did you say a half a billion dollars
16 would be generated by taxing luxury homes
17 over -- how much?

18 DR. SHAENDE: Five million dollars.

19 ASSEMBLYWOMAN DICKENS: Five million
20 dollars. And this would be -- these are
21 homes across the entire state, is that what I
22 was made to understand?

23 DR. SHAENDE: Of course.

24 ASSEMBLYWOMAN DICKENS: And what would

1 be the impact on -- are these just luxury
2 homes, or luxury homes where they're not used
3 as a primary residence? Because I'm looking
4 at your testimony.

5 DR. SHAENDE: Yes, those are the
6 luxury homes that are not used as a primary
7 residence.

8 ASSEMBLYWOMAN DICKENS: So if a
9 homeowner, a luxury homeowner was to
10 determine -- and file it as their primary
11 residence by being registered to vote from
12 that home, that's all that they would have to
13 do, then, that would be excluded from this
14 pied-à-terre tax? Is that correct?

15 DR. SHAENDE: That's correct. But
16 then they would pay their income tax here as
17 residents.

18 MR. DEUTSCH: Right.

19 ASSEMBLYWOMAN DICKENS: I understand
20 that. I understand that.

21 MR. DEUTSCH: A lot of folks that own
22 these homes obviously are -- can be foreign
23 investors, and they are not paying taxes in
24 New York but they're deriving the benefits of

1 the services in New York by the ownership of
2 that second home.

3 ASSEMBLYWOMAN DICKENS: All right.

4 Thank you.

5 CHAIRWOMAN WEINSTEIN: Assemblyman
6 Braunstein.

7 ASSEMBLYMAN BRAUNSTEIN: I just have
8 one more question on that.

9 What would be the rate -- I mean, how
10 would you assess the rate of getting to that
11 half a billion dollars?

12 DR. SHAENDE: We have a detailed
13 analysis, and I can forward that to you right
14 after this.

15 ASSEMBLYMAN BRAUNSTEIN: All right.

16 MR. DEUTSCH: Yeah, the rate structure
17 would be progressive and staggered as the
18 price of the homes go up.

19 ASSEMBLYMAN BRAUNSTEIN: Okay. Okay,
20 thank you.

21 CHAIRWOMAN KRUEGER: We want to thank
22 you for your testimony tonight. It's a lot
23 to absorb.

24 DR. SHAENDE: Thank you.

1 MR. DEUTSCH: Thank you.

2 CHAIRWOMAN WEINSTEIN: Next we have
3 the New York Retail Choice Coalition, Natara
4 Feller, general counsel.

5 So after this will be the New York
6 State Vapor Association, Cheryl Richter,
7 followed by the New York Association of
8 Convenience Stores, followed by New York
9 State Council of Churches.

10 MS. FELLER: Do I just begin?

11 CHAIRWOMAN WEINSTEIN: Yes.

12 MS. FELLER: Okay. Thank you very
13 much for providing the New York Retail Choice
14 Coalition the opportunity to testify here
15 today. My name is Natara Feller, and I serve
16 as the general counsel to the group. The
17 New York Retail Choice Coalition is a group
18 that consists of ESCOs, energy service
19 companies, as well as DER providers, which
20 are distributed energy resource providers.

21 We represent primarily small local
22 and medium-sized companies that are working
23 very closely with the local community, Main
24 Street USA, serving that group of commercial

1 customers. Our members supply power and
2 natural gas to these companies. In addition,
3 they offer a personalized concierge type of
4 service in terms of helping companies
5 identify ways of maximizing their dollars to
6 use energy efficiently.

7 Retail choice providers provide
8 options for a variety of energy products that
9 are not offered through a traditional utility
10 service, such as fixed rate, green products,
11 and other types of value-added services.
12 These types of products are often the
13 foundation of business relationships between
14 energy service companies and other local
15 entities such as home heating repair
16 companies that offer solar installation and
17 other types of weatherization services.

18 We're testifying today to express our
19 concern over the Governor's proposal to
20 eliminate the sales tax exemption for the
21 delivery of natural gas and electric supplies
22 purchased from an ESCO. So at present
23 customers who purchase their commodities,
24 their electric and natural gas supply from an

1 ESCO, don't pay taxes on the transmission
2 portion of the bill. This exemption was
3 originally put in place to provide an
4 incentive for commercial customers to use and
5 consider ESCO service providers instead of
6 the utility, and it's still needed today to
7 provide for an even playing field among
8 providers of power and natural gas.

9 Since New York first opened its retail
10 energy markets to offer energy consumers the
11 choice to purchase power from entities beside
12 the public utilities, the state tax sales
13 exemption for commercial customers has been
14 an incredibly important policy tool used to
15 even the playing field between small
16 businesses and the public utilities such as
17 ConEd, National Grid -- that holds a monopoly
18 on transmission service and actually
19 providing the power and the natural gas
20 directly to the consumer's door.

21 That relationship extends beyond just
22 providing the power. That's who the customer
23 specifically is in communication with in
24 terms of who they receive their bill from and

1 who they gain information from about energy
2 usage.

3 The tax exemption has successfully
4 spurred more competition within the energy
5 market. In addition to spurring more
6 competition, it's building relationships at
7 the local level. It's keeping money in the
8 local community.

9 By spurring relationships at the local
10 level, these companies are able to enter into
11 entrepreneurial ventures together, explore
12 different types of partnerships, and take
13 advantage of a variety of other incentives
14 offered through government programs to make
15 New York a clean energy capital for the
16 region.

17 It's very important for our members to
18 distinguish the fact that there are some
19 larger companies, larger ESCOs, that are in
20 New York State and have not -- let me take
21 that back -- most of our members are local
22 and have transformed their companies from
23 what used to be maybe a company that provided
24 oil or petroleum and they've turned into

1 providing and moving with the technology
2 available to bring these options to
3 consumers.

4 Thank you, and I'm happy to answer
5 questions.

6 CHAIRWOMAN WEINSTEIN: Any Assembly
7 questions? Senate? Nope.

8 Thank you. And I know you have some
9 additional information in your prepared
10 remarks, and that has been circulated to all
11 the members. Thank you for being here.

12 MS. FELLER: Thank you.

13 CHAIRWOMAN WEINSTEIN: Next we have
14 the New York State Vapor Association, Cheryl
15 Richter and Spike Babaian -- I'm sorry, I
16 probably -- maybe you could correct my
17 pronunciation of the name.

18 MS. RICHTER: Thank you. I'm Cheryl
19 Richter. I'm the executive director of the
20 New York State Vapor Association. We
21 represent the 700 independent vape shops.
22 There are 2600 employees and over hundreds of
23 thousands of customers who mostly used to
24 smoke, and the rest of the customers want to

1 quit.

2 We are a \$539 million industry in
3 New York, and e-liquid flavors are about a
4 \$384 million market. We have about the same
5 number of vape shops in New York as
6 McDonald's. We receive no funding whatsoever
7 from big tobacco or any other large
8 corporations. We are purely for the
9 independent vape shops.

10 We support almost all of the vapor
11 regulations in the Governor's budget bill
12 this year. We sincerely want to work with
13 you to prevent minors from purchasing vapor
14 products. We got hooked as kids, and we
15 don't want another generation to grow up
16 hooked on nicotine.

17 But we must oppose a 20 percent tax
18 and the Board of Health's ability to ban any
19 or all flavors. Both would lead to most vape
20 shops closing and smoking rates rising again.

21 MS. BABAIAN: My name is Spike
22 Babaian. I am a technical analysis director
23 for New York State Vapor Association,
24 sometimes affectionately known as the

1 resident nerd, so I have all the numbers and
2 statistics.

3 I just wanted to review a quick quote
4 from Dr. David Abrams, professor at NYU
5 College of Global Health. He said in a paper
6 he put out recently that vapor products have
7 the potential to disrupt the 120-year
8 dominance of tobacco cigarettes, and
9 challenged the field on how the tobacco
10 pandemic could be reversed if nicotine is
11 decoupled from lethal inhaled tobacco smoke.

12 I don't think we need to spend a whole
13 lot of time discussing the health aspects of
14 vapor products. I'm pretty sure that most of
15 us understand that vapor products are safer
16 than inhaling burning cigarette smoke.

17 So vapor products have been shown to
18 be effective for smoking cessation. People
19 use them instead of cigarettes. Many, many
20 dozens of studies show this. A study was put
21 out a couple of weeks ago that showed that
22 vapor products are almost twice as effective
23 as NRT products that are approved by the FDA.

24 These products are not FDA approved

1 because there is no pathway for vapor
2 products to become FDA approved. So they are
3 not currently FDA approved, but the FDA is
4 working on a pathway for us to do that.

5 At this point if you don't think that
6 e-cigarettes help people quit smoking, you
7 can think about the fact that 10 years ago
8 almost everybody in this room had never heard
9 of a vapor product or e-cigarette, and there
10 are now many, many laws being made to try and
11 regulate them. We're also close to a
12 billion-dollar industry, maybe more than a
13 billion-dollar industry in New York State
14 alone.

15 Understanding that in 10 years an
16 industry grew out of a product that no one
17 had ever heard of before should say enough to
18 let you know that this product is being used
19 by a lot of New Yorkers. Eighty-six percent
20 of the people who use this product are using
21 flavors that are not tobacco and not menthol.
22 Ninety-three percent of people are using
23 flavors that are not tobacco.

24 The reason why 93 percent of people

1 who smoked cigarettes for 10 -- and like
2 myself, 20 -- and 30 years are using
3 strawberry flavors or flavors that are not
4 tobacco is because they do not want to be
5 reminded of cigarettes. They don't want to
6 be reminded of smoking. Former smokers don't
7 want to be triggered by tobacco flavors
8 because it makes them want to smoke a
9 cigarette. It doesn't work.

10 While my colleague said that we do
11 support a lot of the things in the budget, we
12 strongly oppose this 20 percent tax. We also
13 don't think that it's fair to set the
14 responsibility of regulating flavors to the
15 New York State Health Department. The
16 federal government is intending to do that.

17 The FDA put out a statement, in the
18 next 30 days they will put out regulations to
19 regulate where flavors can be sold and to
20 make sure that they're sold only in places
21 that are adult-restricted locations.

22 I think that should be left to the
23 federal government to do. I think that they
24 can take a handle on that. I think that

1 picking and choosing within the Health
2 Department which flavors can and cannot be
3 sold doesn't really work. I don't think that
4 that's going to be a feasible option.

5 The tax consequences are our biggest
6 concern right now. I should mention that one
7 of the other consequences of flavor
8 restrictions are going to be people making
9 their own flavors, in their bathrooms, using
10 high-nicotine concentrate around their
11 children. And we don't want the children
12 around high-concentration nicotine that's
13 being mixed in an undiluted form. It's
14 dangerous, it's risky, and it's not fair.

15 Putting flavor bans and taxes on
16 e-cigarettes and vapor products is going to
17 raise online sales, it's going to raise
18 out-of-state sales, and it's going to send
19 the sales to other places and shut down our
20 small businesses and our association that
21 have worked very hard to build an industry
22 and a life here in New York. Over
23 2,000 people could be instantly unemployed.
24 It's not fair to them and it's not fair to

1 the people that they're helping to quit
2 smoking.

3 Five hundred empty storefronts, 70 or
4 80 of them in New York City alone -- which
5 already has plenty of empty storefronts, as
6 we all know. Marginalized communities have
7 been in a situation where they are at higher
8 rates for smoking, higher rates of risk for
9 smoking. We know LGBTQ and mentally ill
10 people have higher rates of smoking,
11 minorities have higher rates of smoking.
12 Taking a tax and putting it on a product that
13 helps these people to quit smoking doesn't
14 make any sense. You're ending up putting
15 these people in a situation where they have
16 to buy cigarettes.

17 If you think about, briefly, what
18 would happen to the rate of HIV in the State
19 of New York if we taxed condoms at the same
20 rate you want to tax vapor products that help
21 people quit smoking, you'd have to think
22 about that for a minute. You're taxing a
23 product that's saving lives. Please
24 reconsider that.

1 We're not saying that there shouldn't
2 be restrictions. We agree that there needs
3 to be a budget to allow regulation of the
4 product and restriction of youth sales. But
5 we think that should be done by licensing
6 fees in a separate vapor products license.

7 You'll notice in our packet that we
8 have a list of all of our suggestions,
9 including stricter fines and potentially
10 higher licensing fees. So we do have our
11 suggestions, and we did agree with a lot of
12 what was in the budget.

13 So thank you so much for your time and
14 the opportunity to speak.

15 CHAIRWOMAN WEINSTEIN: Thank you.

16 Assemblywoman Galef.

17 ASSEMBLYWOMAN GALEF: I just have a
18 quick comment.

19 First of all, I didn't know that the
20 smoking rate for teenagers has gone up, which
21 I think you have in your statement that it
22 did. I was not aware of that.

23 I certainly am aware of the huge
24 increase in vapor smoking in our schools, and

1 I heard yesterday about somebody that was in
2 4th grade. It is a tremendous problem -- I'm
3 in Westchester -- a tremendous problem with
4 our children. And I am a believer that you
5 can actually -- then go into the smoking as
6 the next prong of all of this.

7 But it's a real problem for our
8 teachers in our schools. So what are you
9 going to do with our minors? I mean, it
10 seems to me if we put taxes on things, fewer
11 people smoke. So what is your recommendation
12 for us with our minors?

13 MS. BABAIAN: So we did have a lot of
14 recommendations on that. The youth are not
15 purchasing -- most of them are not purchasing
16 their e-cigarettes in a store in New York.
17 And that was shown by a number of studies.
18 They're getting them from friends, they're
19 getting them from family members, they're
20 buying them online, on eBay, on things like
21 that. And they're not going to be paying the
22 taxes, because they're not going to be
23 purchasing the product in a store. Which I
24 don't think will affect very much the abuse.

1 I do agree that it's a problem. We
2 have a list of suggestions. Just to
3 correct -- it's not that the smoking rate of
4 youth has increased, it's that e-cigarette
5 use has increased. So the vaping rate has
6 increased. Youth smoking has continually
7 dropped over quite some time, and we believe
8 that that could be in part due to vapor
9 products, because they are increasing in use.
10 You can see on a graph chart that the vapor
11 product use goes up as the tobacco use goes
12 down.

13 So there is, you know -- it's not fair
14 to say that it has nothing to do with each
15 other. It's happened over the same exact
16 period of time where you see the graph
17 change.

18 MS. RICHTER: And also I just wanted
19 to say that some of the suggestions that we
20 have had that were included in the budget
21 bill which we're happy to see are things like
22 the ID scanners at the point of sale to catch
23 the fake IDs, mandatory employee training.

24 We had wanted a little bit stricter

1 licensing where if you are caught selling to
2 minors three times you lose your license.
3 But one thing we absolutely do agree with is
4 this arms-length sale. After a store loses
5 its license, they can't just transfer it to
6 their brother-in-law and continue going along
7 selling to minors.

8 So there's a lot in the bill that we
9 really do agree with and a lot of principles
10 that our members have that I think we should
11 also think about, like, you know, the
12 cartoons on bottles and that kind of thing.
13 Our members don't sell that.

14 MS. BABAIAN: Restricting marketing is
15 not something that we're opposed to. We've
16 actually supported that before in
17 legislation.

18 But if it's restricted to
19 age-restricted locations, if the flavor sales
20 are restricted to age-restricted locations,
21 youth shouldn't be exposed to that unless
22 they're in their home. Still, marketing
23 practices could be regulated to prevent some
24 youth sales.

1 We also had a big problem with the
2 fact that the fine for selling vapor products
3 without a license or with a revoked license
4 was only \$2,500, and that seems a little bit
5 too low. If you're selling products, whether
6 it's to a minor or an adult, and you don't
7 have a license to sell those products so you
8 can't be regulated and checked whether you're
9 selling to minors, 2,500 seems a little bit
10 low, and we didn't think that that was
11 acceptable.

12 CHAIRWOMAN WEINSTEIN: Thank you.

13 ASSEMBLYWOMAN GALEF: Thank you.

14 CHAIRWOMAN WEINSTEIN: That's it.

15 Thank you for your testimony.

16 CHAIRWOMAN KRUEGER: Thank you.

17 MS. RICHTER: Thank you.

18 MS. BABAIAN: Thank you.

19 CHAIRWOMAN WEINSTEIN: Next, New York
20 Association of Convenience Stores, Jim
21 Calvin, president. To be followed by Peter
22 Cook, New York State Council of Churches, to
23 be followed by Hillary Peckham, Etain Health.

24 If there are people who are going to

1 be testifying later, you might want to move
2 down a little bit. We only have a few -- we
3 have about five or six -- oh, I guess about
4 eight people left.

5 Thank you. You can begin.

6 MR. CALVIN: Chair Krueger, Chair
7 Weinstein, honorable members of the
8 committee, good afternoon.

9 More than 3 million New Yorkers began
10 their day this morning with a visit to a
11 convenience store for gas, a sandwich to take
12 to work, a newspaper, a lottery ticket, a cup
13 of coffee. My association, the New York
14 Association of Convenience Stores, is the
15 statewide trade organization representing all
16 8,500 of these neighborhood minimarts, many
17 of them independent, family-run enterprises.

18 Tobacco is part of their business, and
19 some of them also sell e-cigarettes and
20 vaping products. They are registered with
21 New York State as retail tobacco dealers.
22 They would be severely harmed by the tobacco
23 and vape product retailing provisions of
24 Part UU of the Article VII revenue bill. It

1 proposes a supplemental sales tax on
2 e-cigarettes and vaping products at the
3 retail level at 20 percent of the price.

4 Two problems. First, every other
5 tobacco-specific tax in New York State is
6 prepaid at the wholesale level and then
7 passed through to the retailer and passed
8 through ultimately to the consumer. No
9 rationale is given for making an exception
10 here.

11 Second, 20 percent would be steep
12 enough to trigger e-cigarette tax avoidance
13 that's as pervasive and detrimental as that
14 for combustible cigarettes. New Yorkers
15 would defeat the tax by getting them online,
16 from border states, native American smoke
17 shops and bootleggers, at prices one-fifth
18 cheaper.

19 If there must be a tax, the one the
20 Governor proposed last year is the wiser
21 choice, an excise tax of 10 cents per fluid
22 milliliter of liquid nicotine content. This
23 modest tax prepaid at the wholesale level
24 would be fairer, simpler to administer, and

1 less likely to spark self-defeating illegal
2 trade.

3 Part UU also would require standalone
4 vape shops which exclusively sell vaping
5 products to register with Tax and Finance as
6 vaping product dealers at a fee of \$300 per
7 year. That's long overdue. But it goes on
8 to say that if your convenience store sells
9 both tobacco and vaping products, you now
10 need two registrations: A tobacco dealer
11 license at \$300, a vaping license at \$300.

12 Instead of creating a redundant
13 license, we urge you to just close the
14 vape-shop loophole. In 2017, the Senate and
15 the Assembly overwhelmingly passed bipartisan
16 legislation to do so. That bill was vetoed,
17 regrettably, leaving such establishments
18 unregistered and largely unmonitored to this
19 day. To achieve parity, closing this
20 loophole is all that's needed.

21 The budget calls for penalties for
22 underage sales of vaping products that are
23 excessively punitive, with fines ranging from
24 \$5,000 to \$35,000. These penalties should

1 remain the same as for tobacco -- a \$300 to
2 \$1500 fine per occurrence, plus a tobacco and
3 lottery license suspension for repeat
4 offenses. These penalties have proven enough
5 of a deterrent to cut the rate of underage
6 tobacco sales across New York from 19 percent
7 in 1988 to just 4.2 percent in 2016.

8 Part UU would also authorize the
9 health commissioner to ban the sale of
10 flavored e-cigarettes and liquid nicotine.
11 We urge you to reject this proposal. The FDA
12 is exercising its congressional authority to
13 regulate these products. Its October 2018
14 ultimatum to manufacturers has already
15 resulted in the removal of some flavored
16 e-cigarettes from store shelves in New York,
17 and more FDA restrictions are on the way.

18 A state-level ban on selling flavored
19 e-cigarettes wouldn't make them go away. The
20 product would remain readily accessible from
21 border states, tribal smoke shops, online
22 vendors and street dealers, all beyond the
23 reach of New York State restrictions designed
24 to protect public health.

1 Consequently, the choice with flavored
2 e-cigarettes is not between having them
3 available or not having them available, it's
4 between having them sold in a regulated,
5 taxed, age-verified environment like our
6 stores or sold in an arena that resembles the
7 Wild West.

8 Part UU would prohibit convenience
9 stores from displaying the legal tobacco
10 products they are licensed to sell to
11 age-verified customers. They'd have to hide
12 them from view, instead providing customers
13 with a tobacco menu. This has far-reaching
14 implications for licensed convenience stores
15 and illegal trade. If it's designed to
16 prevent underage sales, then it's not
17 necessary. Statewide, our industry has
18 achieved a nearly 96 percent compliance rate
19 on inspections with undercover youths trying
20 to buy tobacco, and we are striving to
21 further improve that score.

22 It will backfire. Adult smokers who
23 no longer see their product in our stores
24 would easily find it beyond the reach of

1 New York State licensing, regulation, and
2 taxation -- border states, tribal
3 enterprises, online vendors, and bootleggers.
4 Combined, these alternative sources already
5 account for 57 percent of New York's
6 cigarette trade, according to the
7 Tax Foundation. Our customer counts, adult
8 tobacco sales and nontobacco sales would
9 suffer.

10 So-called adult-only stores would be
11 exempt from the display ban based on a myth
12 that they never let minors enter the
13 premises. In reality, their tobacco
14 enforcement record is no better than ours.

15 I thank you for the opportunity to
16 comment.

17 CHAIRWOMAN WEINSTEIN: Any -- Sandy
18 Galef for a question?

19 ASSEMBLYWOMAN GALEF: I'm sorry, I
20 can't resist.

21 On the higher purchase age, so you
22 don't agree with the 21. Do you also
23 think -- you're saying that tobacco and vapor
24 products are sold anyway. What about

1 marijuana? That would happen too, if we said
2 21, that people are going to be able to get
3 marijuana. Your philosophy is that younger
4 people always get all these smoking products.

5 MR. CALVIN: Yeah. Your localities
6 that have already adopted their own local law
7 to elevate the tobacco purchase age to 21 --
8 young people are still getting tobacco and
9 vapor products.

10 There's a study that I reference in my
11 written testimony that was published in the
12 Journal of Public Health that takes a look at
13 New York City's law. And not only did it not
14 reduce youth access, but youth access to
15 vaping products exploded. And so it shows --
16 it illustrates that an elevated purchase age
17 does not in itself reduce youth access to
18 tobacco products.

19 I wish that was the case, but the
20 reality is, as our previous speaker
21 indicated, kids get tobacco products and
22 vaping products predominantly not from retail
23 stores but from older relatives and
24 acquaintances.

1 ASSEMBLYWOMAN GALEF: So that would
2 extend to marijuana?

3 MR. CALVIN: Yes.

4 ASSEMBLYWOMAN GALEF: And the pharmacy
5 ban, do you believe that pharmacies are there
6 to make us healthier as individuals, as
7 people?

8 MR. CALVIN: All I wanted to point out
9 in referencing the pharmacy ban is that when
10 tobacco customers are displaced from their
11 usual location where they purchase tobacco
12 products, not all of them go to another
13 licensed, regulated, tax-collecting retail
14 store to purchase them. Many of them seek
15 out unregulated, unlicensed, untaxed sources,
16 and it makes the situation worse.

17 ASSEMBLYWOMAN GALEF: Wouldn't it --
18 wouldn't they -- it would seem to me that
19 they would go to your convenience store, and
20 that would be an advantage to you --

21 MR. CALVIN: Our members would like --

22 ASSEMBLYWOMAN GALEF: -- because you
23 could sell more --

24 MR. CALVIN: -- like to think that

1 they would, but the reality is that a
2 percentage of them are going to seek out
3 untaxed -- either black market or native
4 American or border state sales.

5 CHAIRWOMAN WEINSTEIN: Okay. Thank
6 you.

7 MR. CALVIN: Thank you.

8 CHAIRWOMAN WEINSTEIN: New York State
9 Council of Churches, Reverend Peter Cook,
10 executive director.

11 REVEREND COOK: Thank you for this
12 opportunity to offer our perspective on the
13 state budget. My name is Peter Cook. I am
14 the executive director of the New York State
15 Council of Churches. The council, since the
16 late 1800s, has represented eight Protestant
17 denominations and approximately 7,000
18 congregations in every part of New York.

19 For our 7,000 churches, which are on
20 the front lines providing care for the poor
21 and disenfranchised in rural, suburban, and
22 urban communities all over the state, our
23 experience with past state budgets and the
24 current proposed budget leaves us with very

1 grave concerns that the state has been
2 chronically underfunding programs in the
3 New York State budget which help people who
4 are poor and middle-class.

5 According to an analysis by the Fiscal
6 Policy Institute, the state operating fund
7 support for social welfare agencies proposed
8 in the Executive Budget remains \$1.62 billion
9 below the level when Governor Cuomo took
10 office, a 32 percent decrease since fiscal
11 year 2011. It's frustrating that every year
12 we say there's not enough money to meet these
13 needs because of the imposition of the
14 2 percent spending cap and the state's
15 reluctance to ask people at the very top to
16 pay more.

17 This year's explanation for why the
18 rich can't pay more is that we have a
19 \$2.5 billion revenue shortfall because we're
20 told that millionaires and billionaires are
21 leaving the state because of the SALT cap.
22 Therefore, we can't ask the richest
23 New Yorkers to pay more. We wish to strongly
24 challenge this assertion.

1 While the richest New Yorkers perhaps
2 saw a net increase in their property taxes
3 because of the SALT cap, this increase was
4 more than offset by a massive financial
5 windfall from the 2017 federal Tax Cut and
6 Jobs Act, which largely -- with the benefits
7 largely flowing to the very wealthiest.

8 The people truly struggling with high
9 property taxes in our state are the
10 middle-class and even the upper-middle-class
11 homeowners, and we need to ask the wealthiest
12 to pay more to provide some real property tax
13 relief in every part of this state while
14 funding the programs that we need,
15 particularly for the most vulnerable.

16 To address the wealth imbalance in the
17 state, we ask that we add tiers to the
18 millionaire's tax, impose a mansion tax, close
19 the carried-interest loophole, and keep the
20 stock transfer tax we already collect, to
21 name a few, and also to collect a tax on
22 stock buybacks.

23 If we had the additional revenue for
24 the state, we could and should lift the

1 2 percent spending cap, which is arbitrarily
2 applied and unevenly applied, and invest in
3 programs which lift people up who are poor
4 and middle-class. And so, for example, the
5 state could finally pay workers at the
6 state-contracted facilities at least the
7 minimum wage and give them cost of living
8 increases which have consistently been
9 removed from state budgets.

10 While we are witnessing an
11 unprecedented investment in larger
12 infrastructure projects, which to be sure add
13 some benefit to our economy, that investment
14 unfortunately comes at the expense of
15 tax-burdened communities which need state aid
16 to supplement their strained budgets to fix
17 roads, build housing, and cover basic
18 expenses.

19 We also need for the state to pick up
20 its share of Medicaid costs, if not all
21 Medicaid costs -- which is what all other
22 states do -- which the counties now bear by
23 themselves and which keeps property taxes
24 higher than they should be.

1 We should also fund the proposal by
2 Senator Zellnor Myrie to raise the wage to at
3 least \$3 an hour for people in our prisons
4 who have been making an average of 62 cents
5 an hour for a quarter-century, and whose hard
6 labor contributes to the prosperity of the
7 state and for-profit contractors for whom
8 they work.

9 We'll be profiling these spending and
10 revenue issues as we prepare the state budget
11 for the New Hope New York Budget Principle
12 teach-in and press conference tour starting
13 for the next two weeks, and we wish to thank
14 you for your work to build a just and moral
15 economy for the State of New York.

16 Thank you very much.

17 CHAIRWOMAN WEINSTEIN: Thank you.

18 CHAIRWOMAN KRUEGER: Senator Brian
19 Benjamin.

20 SENATOR BENJAMIN: I have a question
21 for you. Because morally I hear a lot of
22 your arguments, but the issue I'm grappling
23 with, which I hope you can help me with, is
24 the following. There are those who say that

1 the top 1 percent pays about 45 to 46 percent
2 of our total expenditures, and so therefore
3 if you look to tax them more, for example,
4 whether it's an extra millionaire's tax or
5 the carried-interest loophole being closed,
6 that they will just move to someplace else.

7 So my question to you is, let's assume
8 if we were to increase taxes on the top
9 1 percent, as you're referring to, and half
10 of them move or a quarter of them move, is
11 there someplace where you say, You know what,
12 I'd rather not increase the taxes if that
13 means we lose, you know, some percentage of
14 the top 1 percent who help to pay for the
15 majority -- 45 percent or so of our
16 expenditures at the state?

17 REVEREND COOK: I think that that is a
18 question you ask around any kind of tax that
19 you impose, in all sectors.

20 But the point here is that you have to
21 make a good-faith evaluation of what the
22 effect is going to be of imposing these
23 taxes. And what we're trying to say, which I
24 think the Fiscal Policy Institute is saying,

1 and a number of other analysts, is that it's
2 just not that simple that people are moving
3 out because of the property tax cap. In
4 fact, there's quite a bit of data to suggest
5 otherwise.

6 So we need to look at the data and
7 really have a conversation -- let's not use
8 data to try to scare people into doing things
9 with the budget which hurt the most
10 vulnerable.

11 SENATOR BENJAMIN: So let me ask you a
12 follow-up question to that. So let's assume
13 that we do the analysis on the \$2.3 billion
14 revenue shortfall that we've received and it
15 comes back that some -- you know, at least
16 half of that is due to the top 1 percent sort
17 of changing their -- where they live because
18 they don't want to pay the SALT -- the SALT
19 deduction is not a problem for them.

20 Would that have any impact on how you
21 think about this? Or is the argument
22 regardless of whether people move or stay,
23 these are the right things to do, let's do
24 them, this is the fair rate to tax people at

1 regardless of whether individuals will stay
2 or not as a result of the policy?

3 REVEREND COOK: I guess I just really
4 wish for a good, healthy public conversation
5 about this. And I've heard some other
6 revenue proposals here today that I had not
7 heard before -- from Chairwoman Krueger --
8 which I found rather intriguing.

9 So I think that we need to have a
10 certain zeal to ask, you know, in what is
11 arguably the wealthiest state in the
12 United States, where we have 101
13 billionaires, are we really doing the best we
14 can to address wealth inequality in a state
15 where we have people living in many of our
16 cities and rural communities, by the way,
17 with extraordinarily high poverty rates?

18 And we just have to give that --
19 address those needs with, I think, the same
20 intensity that we do to looking at these
21 questions around revenue from the top.

22 SENATOR BENJAMIN: Thank you for your
23 answers.

24 CHAIRWOMAN WEINSTEIN: Thank you for

1 being here today with us. There's no further
2 questions.

3 REVEREND COOK: Okay. Thank you very
4 much.

5 CHAIRWOMAN WEINSTEIN: Hillary
6 Peckham, owner and COO, Etain Health. To be
7 followed by Lincoln Square Legal Services,
8 and then Empire State Indivisible.

9 MS. PECKHAM: Good afternoon,
10 Chairpersons Weinstein, Krueger, and members
11 of the Legislature. Thank you for the
12 opportunity to testify regarding the Cannabis
13 Regulation and Taxation Act proposed in the
14 Executive Budget.

15 My name is Hillary Peckham, and I am a
16 proud owner and founder of Etain, LLC, which
17 is New York's only women-, family-, and
18 resident-owned medical marijuana company. I
19 additionally have the honor of serving as
20 chief operating officer. And I offer this
21 speech in order to assist with the important
22 considerations the Legislature must weigh as
23 New York moves toward establishing a viable
24 and expanded cannabis industry.

1 As one of the first five registered
2 organizations in New York State, I know
3 firsthand the difficulties involved in
4 gaining access to capital to get up and
5 running while continuing to stay a
6 woman-owned business. Most major banks will
7 not accept cannabis money and do not offer
8 traditional lines of credit or debt
9 financing. Those that do, do so at much
10 higher interest rates and charge steep
11 monthly compliance fees just for maintaining
12 bank accounts.

13 Overall, Etain has consistently been
14 put in positions making it immensely
15 difficult to continue to support our business
16 while staying true to our mission of being
17 women-owned. Only 14.6 percent of medical
18 marijuana owners and founders nationwide are
19 women. As the only women-owned cannabis
20 business in New York State, Etain applauds
21 the Legislature and the Governor for making
22 it a priority to set forth a regulatory
23 framework that will empower and encourage a
24 diverse adult-use cannabis industry.

1 Acknowledging this proposed support,
2 we would also like to call attention to the
3 existing barriers to funding as evidenced by
4 the recent denial of our application for a
5 Job Development Authority Direct Loan through
6 the New York State Economic Development
7 Authority for being a cannabis company, and
8 we hope that any new financing program takes
9 into account the complications that arise
10 when accepting money from cannabis companies.

11 In line with our support for the
12 state's initiative to include MWBE and social
13 equity participants in the adult-use cannabis
14 program, we also strongly disagree with the
15 proposal for an auction to determine which of
16 the existing registered organizations can
17 participate in adult use sales. As the only
18 women-owned medical marijuana company in
19 New York, we don't have access to the
20 resources required to participate in an
21 auction competing against publicly owned
22 companies, and under that circumstance we
23 would either cease to exist or have to
24 sacrifice our ownership structure as a WBE to

1 gain access to the resources required to
2 participate.

3 A program where only a few of the
4 existing registered organizations are able to
5 participate will also create shortages in
6 supply to our patients and likely collapse
7 for businesses that are not granted access to
8 the adult-use program.

9 A second concern of ours is that the
10 current proposal structures its taxation in a
11 way that it effectively means products must
12 be designated for either medical program or
13 adult-use program at the point of
14 manufacture. It should be a priority of the
15 Legislature to ensure that high-quality
16 products are available in both the medical
17 and adult-use programs, so we believe that
18 medical and adult-use products should only be
19 differentiated at point of sale through
20 differing sales tax rates.

21 Further, existing tax structures
22 result in penalties that place an undue
23 burden on medical and adult-use operators.
24 Section 280E of the federal tax code forbids

1 tax deductions or credits related to
2 Schedule 1 substances, including cannabis.
3 This law, adopted after a convicted cocaine
4 trafficker litigated his right to deduct
5 ordinary business expenses, was created to
6 deny illegal drug traffickers the rights of
7 legal businesses.

8 Although Section 280E is a provision
9 in the federal Internal Revenue Code, many
10 states conform to the provisions of the
11 Internal Revenue Code for personal income
12 taxes, corporate income taxes, or both.
13 Consequently, Section 280E applies in
14 determining state-taxable income for cannabis
15 businesses in New York. Other states,
16 including Colorado and Oregon, have
17 acknowledged this disparate impact on
18 legitimate cannabis businesses and have
19 eliminated the 280E tax penalty at the state
20 level.

21 I hope that New York will consider
22 following suit to allow cannabis businesses
23 in the state to operate under normal tax
24 assumptions, which will improve our ability

1 to reinvest in our employees, communities,
2 and reduce cost to patients.

3 Finally, we believe that the
4 Legislature could take more action than is
5 currently proposed to strengthen the medical
6 program to ensure patient access.
7 Participation in the medical program should
8 be at the physician's discretion and not
9 dictated by a legislated list of qualifying
10 conditions.

11 Additionally, all physicians in
12 New York should qualify to prescribe cannabis
13 without a mandatory course that has led to a
14 lack of access to patients and increased the
15 lead times and cost of those appointments.

16 In conclusion, as a native New Yorker,
17 I am excited to see these proposed changes to
18 state law, and I am hopeful that we will
19 create a program that encourages and promotes
20 a sustainable and diverse industry for
21 New York's residents.

22 Thank you again for your time and
23 consideration. I am happy to answer any
24 questions you have.

1 CHAIRWOMAN WEINSTEIN: Thank you.

2 Senate?

3 CHAIRWOMAN KRUEGER: Thank you very
4 much for your testimony, Hillary.

5 CHAIRWOMAN WEINSTEIN: Thank you.

6 Next, Lincoln Square Legal Services,
7 Daria Schieferstein. And somebody else.

8 MS. SCHIEFERSTEIN: Good evening,
9 Senator Krueger, Assemblywoman Weinstein, and
10 distinguished members of the committee. My
11 name is Daria Schieferstein, and it is my
12 privilege to testify before you this evening.

13 I am a law student with the Poverty,
14 Tax, and Justice Clinic at Fordham Law
15 School, and with me is Professor Elizabeth
16 Maresca of our Low-Income Tax Clinic. And we
17 are here to urge you to amend New York State
18 Tax Law 171-V, which is also known as the
19 driver's license suspension law.

20 I would like to tell you about Sarah,
21 a grandmother living on a fixed income whose
22 driver's license was suspended because she
23 owed more than \$10,000 in back taxes. Before
24 the suspension, Sarah cared for her

1 grandchildren while her daughter worked. She
2 drove them to and from school, to the
3 doctor's and to after-school activities.
4 Once her license was suspended, she was not
5 able to care for her grandchildren in the
6 same capacity, which forced her daughter to
7 significantly reduce her work schedule. This
8 left an already struggling family with even
9 less money to live on.

10 New York Tax Law 171-V allows the Tax
11 Department to suspend the driver's license of
12 any person who owes \$10,000 or more in back
13 taxes. We support adding a poverty exemption
14 which will eliminate the hardships suffered
15 by people like Sarah and will allow the
16 department to focus its resources on people
17 who have the ability to pay.

18 The amendments exempt from driver's
19 license suspension New Yorkers who live below
20 250 percent of the federal poverty line, or
21 who receive public assistance or supplemental
22 security income. The amendment protects
23 people who are exempt from federal tax
24 collection under IRS hardship guidelines.

1 Enacted in 2013, the law has helped
2 the Tax Department to collect over
3 \$750 million in back taxes, and we recognize
4 the important state interest in tax
5 collection and support fair and equitable
6 consequences for deliberate failures to pay.
7 However, the lack of a poverty exemption in
8 the law unfairly punishes low-income
9 New Yorkers who are willing but currently
10 unable to pay their past-due taxes.

11 Suspending the driver's licenses of
12 low-income New Yorkers in no way improves
13 their ability to pay. Not only does it cause
14 severe hardship, it also prevents them from
15 performing essential daily activities.
16 Without a driver's license, it is close to
17 impossible to commute to work, bring your
18 children to school, attend religious
19 services, bring groceries home from the
20 supermarket, or attend to your loved ones.

21 To be clear, the amendments to 171-V
22 do not forgive the tax debt of low-income
23 individuals. They simply allow them to keep
24 their driver's license, making it more likely

1 that they will one day have the resources to
2 pay their debt.

3 Like Sarah, low-income individuals
4 throughout the state have had their lives
5 turned upside down as a result of the law.
6 Consider the experiences of Michelle and
7 Stan. Michelle was a highly accomplished
8 technology executive whose mental health
9 deteriorated after witnessing the events of
10 9/11 at Ground Zero. She is now completely
11 reliant on her Social Security benefits.

12 When the department threatened to
13 suspend her license, Michelle had no choice
14 but to use her limited Social Security income
15 to make monthly tax payments. While this
16 income is statutorily exempt from collection,
17 using it to pay her tax debt was the only way
18 that she was able to keep her license.

19 Stan is another low-income New Yorker
20 whose livelihood has been threatened by
21 license suspension. He worked as a taxi
22 driver until his Class E driver's license was
23 suspended. The available restricted license
24 only permits individuals to drive to work on

1 pre-approved routes. Therefore, restricted
2 licenses are not a viable solution for taxi
3 drivers and individuals working for companies
4 such as Uber or Lyft.

5 Many of our clients who hold Class E
6 licenses have had to lose their jobs because
7 of this law. While a restricted license may
8 be available, its \$75 fee is cost-prohibitive
9 for many of our clients. It does not allow
10 you to look for a job if you are unemployed
11 or to drive your elderly parents to medical
12 appointments if they don't live in your
13 household. A restricted license was created
14 to allow DWI offenders to go to work while
15 maintaining public safety. This policy has
16 nothing to do with back taxes and is clearly
17 inapplicable to people like Sarah, Michelle,
18 and Stan.

19 The Tax Department does have one
20 alternative collection program, an offer in
21 compromise whereby tax debtors can pay less
22 than their total debt. However, information
23 about the program is not readily available,
24 and the documentation required to qualify is

1 burdensome and highly complicated. In our
2 experience, our clients are unable to
3 navigate this program without legal
4 representation.

5 As the amendment only protects
6 low-income New Yorkers who are unable to pay
7 their tax debts, they will have little or no
8 effect on the state budget. It will,
9 however, make a huge difference to the
10 thousands of New Yorkers who are currently
11 struggling to live without a driver's
12 license, which is a necessity of modern life.

13 We thank you for your time and hope
14 that you will protect low-income New Yorkers
15 by including these amendments to Tax Law
16 171-V in the joint legislative budget.

17 Thank you.

18 CHAIRWOMAN WEINSTEIN: Thank you.

19 The Senate does have a question for
20 you.

21 CHAIRWOMAN KRUEGER: Senator
22 Antonacci.

23 SENATOR ANTONACCI: Thank you.

24 Professor and student, I just want to

1 say it's great that you're working together.
2 I have fond affection for a professor of mine
3 in crim clinic that actually -- we actually
4 were in court and I was able to examine a
5 witness. And he just passed away. So I
6 think it's great that you're working
7 together.

8 My question is this: Is the law a
9 "may" -- it's not a mandatory, right? If you
10 go over the \$10,000 in tax liability for
11 state income tax, which by the way is a
12 pretty large debt, is it an automatic
13 revocation of the driver's license?

14 PROFESSOR MARESCA: You can answer.
15 Either way.

16 SENATOR ANTONACCI: I'm not trying to
17 trick you, I really don't know the answer.

18 MS. SCHIEFERSTEIN: No, no, no, the
19 current law is that the department has --
20 will suspend the license of any person who
21 owes 10,000 or over. So they receive a
22 notice, and if they don't pay their tax debt,
23 their license is suspended.

24 SENATOR ANTONACCI: Okay. And so you

1 then bring up the offer in compromise
2 program, which I'm familiar with, and I
3 realize it can be an arduous process.

4 My worry is if we're trying to help
5 somebody avoid it, they still have to make
6 contact -- and I know we're all afraid of the
7 tax man, we don't want to go down to the big
8 building and have to go through the metal
9 detectors. But are we looking for raising
10 the limits?

11 Or if you're asking for more process,
12 and we're not following the processes that
13 are there now, I just get worried that
14 somebody that's of low income, maybe a little
15 afraid, might not take advantage of either
16 process.

17 MS. SCHIEFERSTEIN: Well, firstly,
18 we're not advocating to raise any limits.
19 Our amendments would be that the department
20 would be immediately and initially able to
21 figure out what someone's income is and where
22 they fall in terms of the --

23 SENATOR ANTONACCI: So the department
24 would make its own, I guess, ex parte

1 decision that because someone is below a
2 certain income level that they would not
3 suspend that license?

4 MS. SCHIEFERSTEIN: That is -- that's
5 what the amendment will -- in the notice it
6 would say that. And so again, we're
7 advocating for it to, where at or below
8 250 percent of the federal poverty line you
9 would be exempt from license suspension.

10 And again, you'd still owe your tax
11 debt, and the department would still have the
12 other resources that they've always had
13 available to collect taxes. But really we're
14 just trying to protect the people who need to
15 drive to work.

16 SENATOR ANTONACCI: I think your
17 intentions are very noble. I just worry
18 about it being effective.

19 I would be willing to commit to work
20 with you and the State Tax Department -- I
21 think it is noble, and I find it ironic that
22 we're going to remove the means of
23 transportation of someone who owes money and
24 now can't get to their job to pay the money

1 they owe.

2 So good luck with it. If you'd like
3 to contact my office, I'd be happy to -- you
4 know, advise or be part of things.

5 MS. SCHIEFERSTEIN: Thank you so much.
6 I really appreciate it.

7 CHAIRWOMAN WEINSTEIN: So thank you
8 for being here and spending the whole day
9 with us. And I just want you, when you head
10 back to New York or when you're back in
11 New York, just to thank the other students,
12 part of the clinic at Fordham, for all of
13 their work on this issue and sending us all
14 the -- meeting with me over the past year and
15 sending information so that we can be
16 educated on this topic. And being here today
17 is very helpful.

18 MS. SCHIEFERSTEIN: Thank you so much.

19 CHAIRWOMAN KRUEGER: I also agree.
20 Because I think we didn't know this, but
21 we've each been meeting with you.

22 MS. SCHIEFERSTEIN: Yeah.

23 (Laughter.)

24 CHAIRWOMAN KRUEGER: And agree

1 completely. And I think I've been trying to
2 do some work on this legislatively, but
3 you're right, maybe getting it snuck into the
4 budget is a very good idea.

5 MS. SCHIEFERSTEIN: Thank you so much.

6 CHAIRWOMAN KRUEGER: Thank you.

7 CHAIRWOMAN WEINSTEIN: So now I think
8 it'll be difficult to sneak it in.

9 (Laughter.)

10 CHAIRWOMAN KRUEGER: Well, all right.
11 Fine. How many people are listening?
12 Seriously. There's a snowstorm, it's late.

13 CHAIRWOMAN WEINSTEIN: So next we have
14 Empire State Indivisible, Ricky Silver,
15 co-lead organizer.

16 CHAIRWOMAN KRUEGER: No.

17 CHAIRWOMAN WEINSTEIN: No? Okay.
18 Morris Pearl. Is Morris -- oh, okay.
19 Patriotic Millionaires.

20 MR. PEARL: Yeah, thank you for the
21 opportunity to appear before you today.

22 First I'd like to address briefly some
23 of the comments by the previous speakers
24 about carried interest. The way we see

1 that -- and it's an issue we've been working
2 on for years with some of your members -- is
3 that a small group of people are being --
4 taking advantage of a tax loophole meant for
5 investors who aren't investors at all, who
6 are merely advising people to invest other
7 people's money.

8 So we think it's ironic that
9 investment managers investing other people's
10 money, not their own money, are taking
11 advantage of a lower tax rate meant for
12 investors that's not available for even other
13 people who help investing -- your real estate
14 broker, your lawyers, your accountants. They
15 all pay tax at the full rate.

16 And we think that this bill, not that
17 it would increase their taxes by 200 or
18 300 percent, it will make their total state
19 tax burden of state and local together equal
20 to what it would be for every other person
21 who earns a living at that level here in the
22 State of New York.

23 So that's why we're in favor of
24 closing the carried-interest tax loophole as

1 the Governor has suggested.

2 Secondly, addressing the executive
3 deputy commissioner's remarks about taxpayers
4 changing their behavior, sure. Taxpayers
5 have changed their behavior. A lot of people
6 used to pay their fourth-quarter estimates
7 every year in December and are now paying
8 them in April. Lo and behold, for one year a
9 lot less money is paid if you count the
10 calendar year. And that's true.

11 Those of us, including me, who have
12 higher income than most people, who make all
13 of our income from investments, have a great
14 deal of discretion over when we receive our
15 income, how we receive our income, and when
16 we make our estimated payments. That's a
17 privilege not available to most of your
18 constituents. But that does not mean that
19 people have a great deal of discretion over
20 moving or what state they will live in, even
21 though their income varies greatly.

22 And yes, if you tax at a high rate,
23 they will be very volatile. Just as
24 New Yorkers are used to having volatile

1 income and some of your constituents have
2 income that varies greatly from year to year,
3 yes, so does the state have income that
4 various greatly year to year.

5 So I will say I've retired from the
6 financial service industry some years ago. I
7 do this work full-time now, advocacy for my
8 group, the Patriotic Millionaires, which is a
9 group of investors and businesspeople,
10 hundreds of people around the country,
11 supported by our staff, some here with me,
12 mostly based in Washington, D.C., who are
13 advocating for policies to arrest this
14 growing inequality that is destabilizing our
15 society and scaring us, frankly.

16 I'm a person of some means. I could
17 live wherever I want. I could live in Kansas
18 if I wanted to live in a state with low taxes
19 and low services. But I don't. I live in
20 Liz Krueger's district on the Upper East Side
21 of Manhattan, exactly where I want to live.
22 And there's a reason for that. We have
23 schools for our children starting at the age
24 of 3. We have mental health services for

1 people who need it. We have public
2 transportation for people who want to get to
3 work. We have the best hospitals anywhere.

4 That's why our city, our state, is
5 drawing people from all over the world, from
6 every corner, who are moving to New York to
7 start their businesses, to create new things.
8 Our city is the magnet for everyone who wants
9 to be innovative. People are moving to
10 New York, not out of New York.

11 Just walk down Fifth Avenue or Park
12 Avenue and look at the skyscrapers rising, of
13 new residential apartments, and you'll know
14 millionaires and billionaires are moving in,
15 not moving out.

16 It means something that we are
17 New York. Those people who move based
18 closely on taxes, they don't live in
19 New York. They moved to Kansas a generation
20 ago, and they're not coming back.

21 So it's a colossal mistake to say that
22 we want to lower their taxes to try to
23 encourage people to live in New York who
24 wouldn't otherwise. There's no threat of

1 people moving out of New York. People live
2 where they want to live. And they're not
3 going to move because their tax rate changes
4 a little bit more or less.

5 That's my thoughts. Thank you.

6 CHAIRWOMAN WEINSTEIN: Senate.

7 CHAIRWOMAN KRUEGER: Senator Seward.

8 SENATOR SEWARD: Good evening,
9 Mr. Pearl.

10 MR. PEARL: Thank you.

11 SENATOR SEWARD: You know, after
12 hearing your advocacy on this issue last
13 year, you know, where you stated that many
14 millionaires want their taxes increased to
15 help cover expenses and so on of the state
16 government, and services, the Senate proposed
17 in our one-house bill the creation of a
18 check-off box to allow individuals to pay
19 additional taxes if they so chose.

20 And that did not make the final budget
21 that was enacted last year. The Governor
22 said, Well, people can do that now if they
23 choose to.

24 My question to you is, were you aware

1 of that process where people of means can pay
2 additional taxes voluntarily? And if so, how
3 many of your members have taken advantage of
4 that?

5 MR. PEARL: I'm certainly aware that
6 people can donate money voluntarily. I was
7 not aware of the checkoff process.

8 SENATOR SEWARD: Well, that was a
9 proposal that we included last year in the
10 Senate-only budget after hearing your
11 testimony.

12 MR. PEARL: Thank you. But I'm not
13 suggesting that people should be more
14 altruistic and give money, donate money based
15 on a voluntary basis. I don't think we can
16 run the government of the State of New York
17 based on people voluntarily paying whatever
18 they choose to pay.

19 We have to have rules where every
20 person pays according to the same rules and
21 we all make the same contributions. Because
22 everybody thinks they're special. Whether
23 you're a convenience store owner or a
24 cigarette dealer or you sell natural gas or

1 you're a lawyer, everybody has some good
2 reason for thinking they're a little bit
3 special and they should pay a little bit
4 less.

5 And then we're all going to pay a
6 little bit less, just because everybody
7 thinks that they should be able to walk on
8 the grass on the commons or pick the flowers.
9 And if everyone does, we'll have no flowers.

10 We have to have common rules that
11 apply to everyone and make everyone
12 contribute according to the same set of
13 rules. You can't run the state on a
14 voluntary pay-whatever-you-want-to basis.

15 SENATOR SEWARD: Well, thank you for
16 your perspective.

17 CHAIRWOMAN KRUEGER: Senator Brian
18 Benjamin.

19 SENATOR BENJAMIN: So you mentioned
20 the carried interest loophole.

21 MR. PEARL: I did.

22 SENATOR BENJAMIN: So I wanted to ask
23 you a question on that.

24 So do you believe New Yorkers should

1 go it alone if other states are unwilling to
2 also have a similar approach to this kind of
3 fairness tax, if you will, or fairness fee?

4 MR. PEARL: Yes, I do.

5 SENATOR BENJAMIN: Okay. So if you
6 believe that, so you then believe that maybe
7 hedge funds, private equity funds, primarily,
8 wouldn't just move to Connecticut? I mean,
9 you know, if you can just move your hedge
10 fund to Connecticut and live in New York,
11 right, or --

12 MR. PEARL: Well, yes. Some people
13 may move to Connecticut. They're not going
14 to move to Kansas, but I'll believe
15 Connecticut. That's why we were supporting
16 last year this five-state multistate compact
17 with Connecticut, Pennsylvania, I think Rhode
18 Island and another state someplace.

19 So, I mean, will people move from
20 Westchester to Stamford, a 20-minute drive?
21 Somebody might. But I believe that the
22 principle of fairness is still paramount and
23 that people have to be treated fairly. And
24 it's simply unfair that a tiny group of the

1 wealthiest among us pay much lower taxes than
2 all of your constituents who work for a
3 living.

4 People talk about sweat equity.
5 There's a lot more people who work in the
6 restaurants in your district who are actually
7 sweating, but they don't get to take
8 advantage of these loopholes. And so I just
9 believe that all people who make high incomes
10 should be paying taxes at the same kind of
11 rates as other people with high incomes,
12 Senator.

13 SENATOR BENJAMIN: So let's just -- no
14 one's asked this question all day, and I just
15 hoped someone could try to. So do you
16 believe that if I am an investment manager at
17 a hedge fund -- I'm sorry, a private equity
18 fund, that the work I do that generates the
19 20 percent carried interest, do you believe
20 that is a performance fee or do you believe
21 that could be considered, given however long
22 you hold the investment, that could be
23 considered at a capital gains treatment?

24 MR. PEARL: It should not be capital

1 gains treatment. It should not be considered
2 capital gains.

3 SENATOR BENJAMIN: Why not? Why
4 should it not be considered capital gains?

5 MR. PEARL: Because it's the manager's
6 pay for his work. He didn't invest money.
7 He may have been sweating, but he doesn't
8 sweat any more than a chef in a restaurant
9 sweats. A lot of people work hard for their
10 income. But the special benefit, the
11 preferred rates for long-term capital gains
12 are meant for people who actually invest
13 cash.

14 You can make the sweat equity argument
15 about almost any job. Sure, you know, the
16 interns in the hospital, they work very hard
17 for low pay because they want to make more
18 money years later. They're investing. But
19 they pay income tax at the same rate everyone
20 else who makes a salary does.

21 SENATOR BENJAMIN: So the argument --
22 okay, you finish.

23 MR. PEARL: There's no special reason
24 that just this small group of private equity

1 or hedge fund managers get a special deal any
2 more than their lawyers do, their
3 accountants, or anyone else does.

4 SENATOR BENJAMIN: So the argument
5 that I have heard, and maybe you -- you
6 worked at BlackRock, so I'm assuming you're
7 familiar with this. So the argument that I
8 heard was that, Well, we only took a 1
9 percent management fee or whatever. We would
10 have taken more income, but we didn't take it
11 as income, we basically said that we're going
12 to take 1 percent in income, if you will, and
13 the rest will be equity because instead of us
14 getting paid the cash, we are contributing
15 our services, so therefore that is -- we're
16 getting paid in equity.

17 So my question for you, is that a
18 faulty argument?

19 MR. PEARL: Well, it applies to a lot
20 of people. You know, the people who make the
21 coffee at that Dunkin' Donuts downstairs,
22 they get a variable amount of money depending
23 on how good of service they provide and what
24 tips they get. But they don't get to pay

1 special income tax rates at a preferential
2 rate.

3 A lot of people have the same sort of
4 equity-at-risk thing with their jobs,
5 particularly waiters and waitresses who get
6 tips.

7 SENATOR BENJAMIN: Right. But the
8 waiter or waitress, when they sign up, agree
9 to a certain income. And I believe that it's
10 low. But regardless of whatever that is, I
11 mean that's an agreement that's made between
12 the employer and the employee.

13 And so the question is, if an
14 agreement is made between an investor and an
15 investment manager that says, Listen, I will
16 take less income up-front because I'd rather
17 be -- I want to be your equity partner --

18 MR. PEARL: Well, that's fine.

19 SENATOR BENJAMIN: -- doesn't that
20 apply?

21 MR. PEARL: I'm not against carried
22 interest. I think carried interest is great.
23 I'm just for people who get the carried
24 interest paying taxes at the same rate as

1 everyone else.

2 SENATOR BENJAMIN: Right, but they're
3 going to say that's a capital gains. But I
4 guess -- I see where you're going with
5 your -- you understand what I'm saying?

6 MR. PEARL: That people who get
7 carried interest through their work should
8 pay tax at the same rate as anyone else who
9 gets paid for their work.

10 SENATOR BENJAMIN: I see. Thank you.

11 CHAIRWOMAN KRUEGER: Senator Bob
12 Antonacci.

13 SENATOR ANTONACCI: I actually thought
14 you were going to say that you moved into
15 Senator Krueger's district because she was
16 your Senator, but I guess there were other
17 reasons.

18 I appreciate your passion, but the
19 bottom line --

20 CHAIRWOMAN KRUEGER: That was part of
21 it.

22 SENATOR ANTONACCI: Oh, that was.
23 Okay, good. Good. I must have missed that.

24 I appreciate your passion, but, you

1 know, we have to look at the facts. The
2 State of New York has lost a million people
3 since 2010. In upstate New York we are
4 predicted, on the latest estimate of the
5 Census, to lose two Congressional seats.
6 That's real power in Washington.

7 I note that, you know, a small
8 company -- and I don't mean to parse through
9 all your words -- could invest and start a
10 company with no cash, build up that company
11 and many years later sell that for a large
12 capital gain. Now, I understand that's not
13 the same as a hedge fund provider. But at
14 what point do we worry about that hedge
15 fund -- and I don't have anybody in the
16 family that's a hedge fund, I don't even know
17 what it looks like, right? But couldn't we
18 start trading from a phone booth in Idaho
19 with all the technology that's out there?
20 What's keeping somebody on Wall Street? As
21 the technology advances, we have taxpayers
22 voting with their feet.

23 And I guess what I would say, I'd like
24 to see more of a discussion on value for the

1 money that's being paid in. I mean, don't
2 take my word for it. Last week my Senate
3 colleagues beat the heck out of the MTA. The
4 New York City Housing Authority is a mess.
5 What you want to get for value in New York
6 City, that's your business. But I think, as
7 a New York resident overall, I don't want to
8 lose anybody. And I just don't see our tax
9 policy bringing back people.

10 I start with roads and sewers -- I
11 used to think public safety, and we don't
12 even have an agreement on what's public
13 safety anymore. But after that, we've got
14 choices. And I guess we all can make them,
15 but -- I guess I appreciate your passion, but
16 I think you've got to pay attention to the
17 fact that we're losing population.

18 MR. PEARL: Well, sure, we're losing
19 population in upstate New York. I used to
20 live in Franklin County. I don't live there
21 anymore. I don't want to live there. People
22 there have --

23 SENATOR ANTONACCI: The state is
24 losing population, sir. We're going to lose

1 two Congressional seats in the next Census.

2 I mean, I know you might have moved to
3 New York City, but people are leaving the
4 state.

5 MR. PEARL: Yes. And we should
6 provide services to draw people into the
7 state, not lower our services. That's my
8 opinion. Thank you, Senator.

9 CHAIRWOMAN KRUEGER: Well, also, I
10 think -- I shouldn't get involved, but --

11 (Laughter.)

12 CHAIRWOMAN KRUEGER: -- to defend my
13 constituent, I think what Morris is proposing
14 is a tax increase on the wealthiest
15 New Yorkers. The million people we're losing
16 from upstate New York, Bob, aren't people in
17 Morris's economic cohort. And it would not
18 be the people hit by the proposed new taxes
19 that Patriotic Millionaires -- in fact, in
20 theory they would be the people who would
21 have more money in the State Budget to
22 provide the services they need and the roads
23 and the education and the infrastructure to
24 try to help make sure that upstate New York

1 had the things it needed to not have people
2 leave.

3 MR. PEARL: If people like
4 Mr. Griffin, who bought a \$200 million-plus
5 apartment in Manhattan, paid more taxes, some
6 of those millions of dollars could do a lot
7 for the schools upstate and the services
8 upstate to make that a more desirable place
9 for people to live.

10 CHAIRWOMAN KRUEGER: Well, I'm very
11 happy that you live in my district now. I
12 think you were Franklin County's loss.

13 And I appreciate very much your coming
14 and testifying and, more important, that
15 people understand that you radically changed
16 your life to do this work on behalf of
17 New Yorkers even if they don't always know
18 what it is you're doing or trying to explain.
19 So I appreciate very much what you and the
20 members of your organization do.

21 MR. PEARL: Thank you, Senator.

22 CHAIRWOMAN WEINSTEIN: Thank you.

23 And just for the record, according to
24 the Census Bureau estimates, we've -- from

1 2010 to 2017, we've increased population in
2 New York State by just under 500,000
3 residents. The relationship to congressional
4 districts is how New York State's population
5 relates to other states, not loss of our own
6 population.

7 Thank you, sir, for being here.

8 MR. PEARL: Thank you.

9 CHAIRWOMAN WEINSTEIN: Is there
10 someone here from the Children's Agenda? I
11 believe they may have left.

12 So Dorothy Hill, Schuyler Center for
13 Analysis and Advocacy, and to be followed by
14 Strong Economy for All Coalition.

15 MS. HILL: Good evening, chairs and
16 members of the respective committees. Thank
17 you for this opportunity to testify, and
18 thank you for your fortitude.

19 For more than 145 years the Schuyler
20 Center for Analysis and Advocacy has been
21 advancing state policies that strengthen
22 New York families and improve child
23 well-being. Every chance we get this budget
24 season, we are talking about New York's

1 persistent high rates of child poverty. And
2 we're doing that because it's not a subject
3 that gets a lot of airtime.

4 More than one in five New York
5 children live in poverty, and that rate rises
6 to nearly one in three among children of
7 color. This means that more than 800,000
8 New York children are living lives defined by
9 deprivation. And these numbers are not new.
10 New York's child poverty rate has hovered
11 between 19 and 23 percent since 2008.

12 And another group that experiences
13 poverty at high rates is young adults ages 18
14 through 24. Twenty percent, or about 326,000
15 of these young adults, live below the poverty
16 level.

17 And yet this Executive Budget, like
18 nearly every Executive Budget and enacted
19 budget in the last 10 years, contains no bold
20 investments in policies proven to reduce
21 child and family and young adult poverty.

22 And so we are looking to this
23 Legislature to change this trend and pass a
24 final budget that puts New York children and

1 families and young adults first. And we
2 propose that you begin by strengthening
3 New York's refundable working family tax
4 credits; namely, the Empire State Child
5 Credit and the Earned Income Tax Credit.

6 And Ron Deutsch from the FPI talked
7 about this, you know, so I'll be brief. But
8 reforming these credits could really play a
9 central role in fighting child and young
10 adult poverty. And they're critical right
11 now because the way that our economy is
12 structured right now, low wages without
13 benefits keep many workers, no matter how
14 hard they work, from ever moving out of
15 poverty. And working family tax credits,
16 they can make low-wage paychecks stretch a
17 little bit longer.

18 So -- and also strengthening
19 New York's working family tax credits is
20 particularly critical for New York's
21 hardworking immigrant families, because
22 refundable state tax credits do not appear to
23 be covered by the proposed federal public
24 charge rule. And if this rule, which is

1 still pending -- but if it's adopted, it's
2 estimated that as many as 2.1 million New
3 Yorkers would draw from essential public
4 supports like food stamps and WIC, and this
5 could impact households of more than
6 one-third of all New York children.
7 One-third of all New York children live in
8 households with at least one immigrant
9 parent.

10 So turning first to the Empire State
11 Child Credit, as was alluded to earlier --
12 and I've spoken to you about this before --
13 this credit is designed to offset the high
14 cost of raising children, and yet it omits
15 children under the age of 4. And any of you
16 who have raised children know that children
17 under age 4 are incredibly expensive. This
18 makes no sense.

19 And so we ask again that this credit
20 be fixed, that children under age 4 be
21 covered, and that we double the credit for
22 our youngest children, because young children
23 are not only very expensive but they also
24 tend to live in poverty at higher rates and

1 are impacted by even short bouts of poverty
2 for longer periods of time. The impacts, the
3 trauma stay with them for a lifetime.

4 And then just a few words about the
5 state's Earned Income Tax Credit. This
6 credit also has an important omission, an
7 illogical omission. It omits youth, young
8 adults ages 18 through 24. And as I stated
9 earlier, this is a group that experiences
10 poverty at higher rates than other adults.
11 It's also a group that's trying to get into
12 the workforce, and they tend to be very
13 disconnected from the workforce. And so
14 we're asking that you extend New York's EITC
15 to cover this group.

16 And I will end. If you have
17 questions?

18 CHAIRWOMAN WEINSTEIN: Thank you very
19 much. Any questions?

20 CHAIRWOMAN KRUEGER: No, thank you.

21 CHAIRWOMAN WEINSTEIN: No, thank you.
22 And we have the additional information in
23 your written testimony.

24 Okay, Michael Kink, missing -- I guess

1 Charles Khan is not here.

2 MR. KINK: Yeah, he went back on the
3 train in the snowstorm.

4 CHAIRWOMAN WEINSTEIN: Okay. I think
5 you got the better deal.

6 So proceed when you're ready.

7 MR. KINK: Thank you to the chairs.
8 Thanks to the members. Thanks for the
9 opportunity to speak. And thank you for your
10 service to this state. Last witness, last
11 hearing, last day and --

12 CHAIRWOMAN WEINSTEIN: Well, tomorrow
13 we have a --

14 MR. KINK: Marijuana tomorrow. How
15 could I forget.

16 CHAIRWOMAN KRUEGER: Somehow that
17 doesn't sound right.

18 (Laughter.)

19 MR. KINK: You know, I know there's
20 going to be things that we'll need to do over
21 the next month and a half towards the
22 April 1st budget deadline, but I know that
23 there's a lot of issues that we've heard
24 today that were just scratching the surface.

1 And I'm heartened about Senator
2 Benjamin's new Subcommittee on Revenue and
3 the Budget. I hope that potentially he'll be
4 working with the Ways and Means Committee and
5 the Real Property Taxation Committee in the
6 Assembly to really unpack some of those
7 issues.

8 You know, we've heard a lot today
9 about the SALT tax breaks and the SALT tax
10 provisions of last year's tax law. We've
11 heard very little about the significant new
12 tax breaks that wealthy New Yorkers have
13 gotten in cuts in their personal income tax
14 at the federal level, in cuts in the estate
15 tax, in cuts to the pass-through, the
16 corporate taxes, the impact of stock buybacks
17 on the heirs and heiresses of the wealthiest
18 New Yorkers.

19 Our basic perspective is that
20 working-class and middle-class New Yorkers
21 are taxed too much and that the ultra-rich
22 New Yorkers in the city are taxed too little.
23 That we have been seeing more and more
24 multimillionaires and billionaires in

1 New York. We in fact have 72 percent more
2 multimillionaires and billionaires now than
3 we did when we started the millionaire's tax.
4 New York City alone has 103 billionaires,
5 more than any other city in the country. And
6 that as Morris said, we're growing
7 millionaires and billionaires. We're losing
8 working people and middle-class people.

9 And I think part of this is a
10 complicated system where Governor Pataki and
11 Senator Bruno and Speaker Silver back in the
12 '90s cut taxes on the very rich in Manhattan,
13 increased the cost of government, continued
14 government services, pushed more of those
15 costs down to the county level so that we
16 have a legitimate property tax crisis in many
17 parts of our state, claimed credit for
18 cutting taxes, and left counties and working
19 people with the bag. Undoing that is going
20 to take a lot of effort.

21 The good news is that we've seen an
22 explosion of income and wealth at the very
23 top end. We've seen this massive new tax
24 benefits that the federal government has

1 bestowed on the wealthiest New Yorkers. And
2 if we modernize and update our tax system to
3 adjust it to the current level of income and
4 wealth we have in our state, we can do things
5 to properly fund our public schools, properly
6 fund public services around the state, adjust
7 property taxes so that working people and
8 seniors, retirees on limited incomes, can
9 survive in New York, and we could actually
10 have more economic fairness statewide.

11 I wanted to address three quick
12 things. We strongly support the expanded
13 millionaire's tax the Assembly has proposed
14 in their recent budgets.

15 We support the carried-interest
16 measure that the Governor included in his
17 budget, and I'm happy to take some of those
18 questions if you're interested in our
19 perspective.

20 We support the pied-à-terre tax that
21 Senator Hoylman and Ms. Glick have introduced
22 that would raise \$650 million a year. We
23 think those three things are meaningful
24 things that can make a difference in this

1 year's budget. They would not ask any
2 working New Yorkers or any middle-class
3 New Yorkers to pay more. They would only ask
4 the ultra-wealthy to pay their fair share.
5 All of the individuals who would pay those
6 taxes have received massive new tax breaks
7 from the federal government. And none of
8 them are hard-pressed for money.

9 I also want to address that myth of
10 the moving millionaires. My testimony
11 includes an addendum, sort of a one-sheet. I
12 would direct you to the work of Cristobal
13 Young, who's a sociologist at Stanford
14 University who worked with the U.S. Treasury
15 in a landmark 2016 study to look at
16 millionaire filing and migration around the
17 country. He has a whole book, "The Myth of
18 Millionaire Tax Flight."

19 And they showed that multimillionaires
20 are people in late stages of their careers,
21 they move very rarely. People move a lot
22 around when they're early in their careers.
23 But most people that live in New York are
24 here because New York is a great place to do

1 business, a great place to make money, a
2 great place to get really rich and stay
3 really rich. People want to live on the
4 Upper East Side, people want to live in
5 TriBeCa, people want to go to the Met Gala,
6 they want to be on boards and charities with
7 their friends.

8 New York is different than really
9 anywhere else in the country. And it's also
10 a place where investors from all over the
11 world come to invest their money. There are
12 benefits to being on Wall Street. That,
13 frankly, the people that work in Greenwich
14 want to be in Greenwich, the people that work
15 in New York want to be in New York, and there
16 are very few places in the rest of the
17 United States or in the world where you can
18 have the kind of success that people have in
19 New York.

20 So we think that they can pay their
21 fair share. We think the Legislature should
22 adjust the Governor's budget. I'm happy to
23 take questions on any of these other issues,
24 and hope to work with all of you in the weeks

1 and the months to come.

2 CHAIRWOMAN KRUEGER: Senator Benjamin.

3 SENATOR BENJAMIN: Thank you for your
4 testimony.

5 I just wanted to have you just
6 elaborate for a second on the
7 carried-interest fairness fee. Do you
8 believe that if other states would not join
9 on with this fairness fee -- like, say,
10 Connecticut -- that New York should go it
11 alone?

12 MR. KINK: I think right now,
13 Senator Benjamin, that we're in a place where
14 we could adjust the compact to include
15 New York, Connecticut, and New Jersey. And
16 if those three states did it together, we
17 could do it effectively.

18 I think if we were in a revenue
19 crisis -- you know, 10 years ago there were
20 \$32 billion of budget gaps in two years --
21 you might have to look to them for that
22 revenue.

23 I agree with Morris, it's wrong for a
24 hedge fund manager or a private equity

1 manager to pay a lower tax rate than a
2 teacher or a truck driver. The basic
3 fairness proposition is unquestionable. But
4 we constructed this as a compact because we
5 believe that these funds are basically where
6 they want to do business, but it makes sense
7 for lawmakers in all of these states to do it
8 together.

9 The Governor of New Jersey, Phil
10 Murphy, included it in his budget last year
11 and is going to propose it again this year.
12 Governor Lamont in Connecticut and the
13 Connecticut legislature are considering it.
14 It's been introduced there in the last two
15 years.

16 I think a regional approach is
17 probably the best. And I think I would leave
18 it up to you about the need for the cash. I
19 don't think that there's a real risk of
20 flight. Right now they're making their
21 decisions and based on being in different
22 places, there is a concentration of
23 accountants, lawyers, quantitative
24 analysis -- people that want to live in

1 New York can do this business that are
2 slightly flexible. They are not going to
3 move to other places in the country. This is
4 where they want to do their business.

5 And the question about capital gains
6 and capital losses and the carry, the most --
7 when I had it explained to me, the fact that
8 these guys cannot take a capital loss on this
9 made it very clear. Right? It can only be a
10 capital gain. They can't take a capital
11 loss. It's income. They're not like an
12 investor. It's not like you giving me some
13 of your money to invest. Right? They can't
14 take a capital loss.

15 Massachusetts and Illinois both have
16 unitary tax requirements, they can't have
17 progressive taxes under their constitutions.
18 In both of those states, the lawyers for the
19 fiscal committees determined that carried
20 interest was a unique type of income
21 particularly because of that. They define it
22 as a capital gain, but it can't take a
23 capital loss. It is income from fees.
24 That's basically what it is.

1 And the argument that, you know, it's
2 some sort of investment I think is just
3 specious.

4 SENATOR BENJAMIN: So -- I agree with
5 that, that last point you made.

6 Now let me ask you a question. While
7 that being the case, you know, one of the
8 things that typically happens, we introduce
9 new proposals, say they get passed, then
10 accountants and lawyers can figure out some
11 workaround.

12 I mean, I guess the question is -- I
13 mean, you know, I saw -- I think the Governor
14 had about 1.1 billion that he was expecting.
15 I'm seeing here you have 3.5 billion. From
16 the Assembly -- I'm a little new, so I don't
17 know the analysis on this. But I guess the
18 question is, you know, couldn't they just
19 figure out a way, even if we passed this, to
20 figure out some workaround solution, create
21 some new entities and, you know -- I guess
22 that's a conspiracy kind of a question,
23 but --

24 MR. KINK: We introduced this here

1 with Leo Hindery, who's a prominent fund
2 manager who was part of the crew that worked
3 together to get the Clinton White House to
4 formalize this loophole in 1996. And, you
5 know, he said, you know, it's recognized that
6 the drafting of the bill -- it was originally
7 done by Assemblymember Aubry on the Assembly
8 side -- it was done accurately, it was tight,
9 it was something that would clearly apply to
10 this type of income, and it would hold.

11 I expect that there will be lawsuits,
12 but I expect that the Legislature has done
13 its due diligence to get the right drafting
14 done in a way that it would be solid and it
15 could pass muster.

16 SENATOR BENJAMIN: Now, the present
17 President campaigned on this. Do you have
18 any analysis or thoughts as to why this
19 hasn't moved forward on a federal level?

20 MR. KINK: Well --

21 SENATOR BENJAMIN: Or a better
22 question, should this move forward on a
23 federal level so that therefore no state has
24 to be playing this game about regional versus

1 this or that?

2 MR. KINK: It would be best if it were
3 done at the federal level. And the law I
4 believe as it's currently drafted has a
5 sunset provision so if the federal government
6 takes action to tax this, then the loophole
7 would close at the federal level.

8 Both Bloomberg and the New York Times
9 published tick-tock articles about how
10 exactly how lobbying power and campaign
11 contributions kept the loophole open. And so
12 I can provide you those directly. I'll get
13 them to your office if you want to see how it
14 happened.

15 SENATOR BENJAMIN: One quick last
16 question. Is former Mayor Bloomberg in favor
17 of -- I don't know if you were making news
18 with that.

19 MR. KINK: No, I believe -- I don't
20 know about Mayor Bloomberg. I know that
21 Trump campaigned on it, as you mentioned.
22 Jeb Bush said Mitt Romney said it should be
23 closed. I don't know about Mayor Bloomberg.

24 But it was Bloomberg the news service

1 that published the article.

2 (Laughter.)

3 SENATOR BENJAMIN: I see. Okay, thank
4 you. Thank you.

5 CHAIRWOMAN WEINSTEIN: So thank you
6 all who have stayed through the -- as well as
7 to our colleagues who stayed through the
8 hearing.

9 This ends the first part of the
10 Tax hearing for today. We will reconvene --
11 the joint committees will reconvene tomorrow,
12 February 13th, at 1:30 p.m. in Hearing
13 Room A, to hear from several witnesses from
14 the Executive regarding cannabis.

15 (Whereupon, the budget hearing concluded
16 at 6:31 p.m.)

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

2 -----

3 JOINT LEGISLATIVE HEARING

4 In the Matter of the
5 2019-2020 EXECUTIVE BUDGET ON TAXES:
6 PROPOSAL FOR CANNABIS REGULATION

6 -----

7 Hearing Room A
8 Legislative Office Building
9 Albany, New York

9 February 13, 2019
10 1:35 p.m.

11 PRESIDING:

12 Senator Liz Krueger
13 Chair, Senate Finance Committee

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

16 PRESENT:

17 Assemblywoman Crystal Peoples-Stokes

18 Assemblyman Clifford Crouch

19 Senator Diane Savino

20 Assemblyman Richard N. Gottfried

21 Senator Gustavo Rivera

22 Assemblyman Harvey Epstein

23 Senator Jen Metzger

24 Assemblyman Walter T. Mosley

25 Senator John Liu

1 2019-2020 Executive Budget
 Taxes: Cannabis Regulation
 2 2-13-19

3 PRESENT: (Continued)

4 Assemblywoman Inez Dickens

5 Senator Robert Antonacci

6 Assemblywoman Nathalia Fernandez

7 Senator Zellnor Myrie

8 Assemblywoman Judy Griffin

9 Senator Jessica Ramos

10

11

12 SPEAKER PANEL

13 STATEMENT QUESTIONS

14 Alphonso David
 Counsel to Governor Andrew Cuomo

15 Axel Bernabe
 Assistant Counsel to the
 16 Governor for Health
 Jason Starr

17 Assistant Counsel to the
 Governor

18 Jen McCormick
 1st Deputy Commissioner
 19 Department of Agriculture
 and Markets

20 -and-

Dr. Chinazo Cunningham
 21 Albert Einstein College of Medicine
 Member, Governor's Workgroup on

22 Cannabis Regulation 5 13

23

24

1 CHAIRWOMAN WEINSTEIN: Good afternoon,
2 everyone. And for people here and those who
3 may be watching online, this is Part 2 of our
4 Joint Assembly-Senate Budget Hearing on
5 Taxes.

6 Today's witness will be Alphonso
7 David, counsel to the Governor, discussing --
8 presenting the cannabis proposals in the
9 budget.

10 And obviously as we go on with
11 questions, you'll -- the people who are going
12 to be responding will answer questions.
13 Maybe you'll want to just actually introduce
14 whoever is at the table with you.

15 I want to just introduce the members
16 of the Assembly who are here, and
17 Senator Krueger will introduce the Senators
18 who are here.

19 First, to my left, representing the
20 minority in the Assembly, Assemblyman Cliff
21 Crouch. Our Majority Leader, Crystal
22 Peoples-Stokes. Assemblyman Walter Mosley.
23 And I believe that's it for the Assembly.

24 Liz?

1 CHAIRWOMAN KRUEGER: Hi, everyone.

2 And representing the Senate today we
3 have Senator Jen Metzger, Senator Myrie
4 Zellnor -- Zellnor Myrie.

5 (Laughter.)

6 CHAIRWOMAN KRUEGER: I'm so sorry. It
7 works either way. But it is Senator Zellnor
8 Myrie.

9 Senator Savino Diane --

10 (Laughter.)

11 CHAIRWOMAN KRUEGER: -- Senator Rivera
12 Gustavo, and representing the minority, down
13 in front, Senator Antonacci Robert.

14 CHAIRWOMAN WEINSTEIN: We've been
15 joined by Assemblyman Harvey Epstein.

16 Just a reminder, since we -- it's
17 really for the members, not for our witnesses
18 as much, but we do have our time clocks. The
19 members will have -- all the members present
20 will have five minutes to ask questions, and
21 that five minutes also hopefully includes the
22 answer to the question. So we're not looking
23 for five-minute statements from people and
24 then "Do you agree."

1 CHAIRWOMAN KRUEGER: But we'll have
2 multiple rounds.

3 CHAIRWOMAN WEINSTEIN: But we will
4 have multiple rounds, so everybody will have
5 opportunities.

6 And in case you haven't been to any of
7 our budget hearings, we have this nice clock,
8 green, yellow, red. The yellow goes on when
9 there's one minute, the red light goes on
10 when the time is up.

11 So we can begin when you're ready.

12 GOVERNOR'S COUNSEL DAVID: Thank you.

13 Good afternoon, members of the Senate
14 and the Assembly. I'm Alphonso David,
15 counsel to Governor Andrew M. Cuomo. I'm
16 joined this afternoon by the following
17 members of the Governor's administration:
18 Axel Bernabe, assistant counsel to the
19 Governor for health; Jason Starr, assistant
20 counsel to the Governor; and Jennifer
21 McCormick, the first deputy commissioner of
22 the Department of Agriculture and Markets.

23 I'm also joined by Dr. Chinazo
24 Cunningham, a member of the faculty at the

1 Albert Einstein College of Medicine and a
2 member of the Governor's Workgroup on
3 Cannabis Regulation. Dr. Cunningham is a
4 specialist and a researcher in the area of
5 drug treatment and addiction.

6 We're pleased to testify before you
7 today regarding the Cannabis Regulation and
8 Taxation Act, a proposal in the Executive
9 Budget on comprehensive cannabis regulation.

10 This legislation is the product of
11 extensive analysis and sets out a
12 comprehensive framework to eliminate the
13 existing illicit cannabis market. It also
14 works to rectify the racial, ethnic and
15 geographic disparities in the enforcement of
16 current laws relating to cannabis.

17 The legislation incorporates the
18 lessons learned from the 10 states that have
19 already legalized adult-use cannabis and
20 incorporates feedback from several members of
21 this legislative body who have advanced
22 proposals on this issue.

23 In short, this bill creates a national
24 model for legalization that preserves public

1 health and public safety while supporting the
2 kind of innovation that has consistently
3 positioned New York as a national leader in
4 social and economic policy.

5 There are four key interrelated
6 realities that informed our approach in
7 drafting this proposal.

8 First, the dramatic relaxation of
9 cannabis prohibition that has occurred
10 nationally and internationally over the past
11 two decades. To date, 10 states and the
12 District of Columbia have legalized cannabis
13 for recreational use by adults, and several
14 other states and the federal government are
15 actively considering proposed legislation.

16 In addition, more than 30 states have
17 legalized medicinal cannabis, and more than
18 30 states and the federal government allow
19 the legal cultivation and distribution of
20 hemp cannabis.

21 The policy landscape continues to
22 evolve rapidly and, significantly for
23 New York, all of our neighboring
24 jurisdictions have now either adopted or are

1 actively considering proposals to legalize
2 cannabis.

3 Second, like most states, New York
4 itself has already taken important steps
5 towards relaxing cannabis prohibition. In
6 2014, the Governor signed the Compassionate
7 Care Act legalizing medical cannabis and
8 providing relief to tens of thousands of
9 New Yorkers suffering with serious health
10 conditions. In 2015, the Governor signed the
11 Industrial Hemp Farming Act legalizing hemp
12 cannabis and committing \$10 million to expand
13 this highly profitable agriculture market.

14 While these programs have been hugely
15 successful in advancing important state
16 policy, they operate under wholly separate
17 frameworks, creating untenable legal and
18 regulatory inconsistencies that can only be
19 remedied by bringing all of these programs
20 under a single regulatory framework.

21 Third, despite significant investments
22 in enforcement, prohibition has had a
23 negligible deterrent effect on access and
24 consumption. For decades, states and

1 localities have expended significant
2 resources to build and maintain an
3 infrastructure to sustain prohibition,
4 including law enforcement, public defense,
5 and incarceration-related costs. Yet during
6 this same period, the average rates of
7 cannabis use across all demographics,
8 including youth, have remained steady,
9 consistent with national trends.

10 Finally, despite the lack of attention
11 in the public discourse, there is a
12 longstanding, well-developed and increasingly
13 sophisticated illicit cannabis market in
14 New York that makes cannabis easily
15 accessible, including to youth. The scope
16 and value of this market, and the risks of
17 harm associated with the lack of regulation
18 of the conduct of illicit suppliers and
19 products sold to consumers calls for a shift
20 in policy.

21 Accounting for these four realities,
22 the Executive's proposal establishes an
23 evidence-based regulatory approach that has
24 been successful in reducing the harms

1 associated with intoxicating substances, such
2 as alcohol and tobacco.

3 The proposal was based on more than a
4 year of deliberation and consultation,
5 starting with the Governor's 2018 budget that
6 commissioned a multi-agency study to assess
7 the impact of a regulated cannabis program.

8 Following months of deliberation, a
9 review of academic literature, and analysis
10 of data from other jurisdictions, the study
11 concluded that the positive impacts of a
12 regulated cannabis market outweigh the
13 potential negative impacts. Importantly, it
14 also found that areas that may be a cause for
15 concern can be mitigated with regulation and
16 the proper use of public education that is
17 tailored to address key vulnerable
18 populations.

19 Following the study, the Governor
20 created a workgroup to advise on the drafting
21 of legislation and conducted a statewide
22 listening tour, hosting 17 listening sessions
23 across the state, from Long Island to
24 Buffalo, from Binghamton to Watertown.

1 Members of the administration also
2 regularly engaged with regulators from
3 several states, including Alaska, California,
4 Colorado, Massachusetts, Michigan,
5 New Jersey, Oregon, Rhode Island, Vermont and
6 Washington, as well as the federal and
7 provincial governments of Canada.

8 The overarching lesson gleaned from
9 this extensive process is that the most
10 effective way to achieve the desired policy
11 objectives is to have a single, comprehensive
12 regulatory framework. The Cannabis
13 Regulation and Taxation Act is that
14 framework.

15 The bill is a best-in-class integrated
16 approach to comprehensively regulate cannabis
17 in its three markets -- medicinal, adult use,
18 and hemp. The framework is administered by a
19 newly created State Office of Cannabis
20 Management that ensures that all aspects of
21 the cannabis program protect and advance
22 public health and preserve public safety.

23 In the adult use market, the office
24 will implement a three-tier model of

1 distribution, similar to the alcohol model,
2 limiting the number of growers and
3 dispensaries in order to effectively manage
4 the supply of cannabis. The office will
5 encourage equity through small growers and
6 cooperatives, and provide access to training
7 and capital to members of communities that
8 have been disproportionately harmed by
9 disparate drug law enforcement.

10 In the hemp market, the office will
11 administer the licensing and testing of
12 wellness and pharmaceutical-grade cannabis
13 products and facilitate partnerships between
14 hemp growers and academic research centers to
15 bring wellness products to market.

16 And in the medical market, the office
17 will supervise the expansion of the medical
18 cannabis program to ensure that patients have
19 access in hard-to-reach geographic areas.

20 The office will accomplish these goals
21 within a robust social justice and economic
22 justice framework, ensuring the broadest
23 possible inclusion in all aspects of this new
24 industry. In fact, the proposal requires

1 that the office administer a comprehensive
2 social equity program to guarantee that
3 disadvantaged communities have opportunities
4 to participate.

5 With this legislation we have an
6 opportunity to establish a strong framework
7 that addresses the significant social
8 justice, economic justice, public safety and
9 public health concerns that confront us
10 today -- concerns that will only increase in
11 scope and complexity with the expansion of
12 the illicit in-state market and legal markets
13 in neighboring jurisdictions. Taking no
14 action and maintaining the status quo is
15 simply no longer sustainable.

16 Thank you, and I'll be more than happy
17 to answer any questions you may have.

18 CHAIRWOMAN WEINSTEIN: Thank you. And
19 we're going to go first to our Majority
20 Leader, Crystal Peoples-Stokes, for some
21 questions.

22 ASSEMBLYWOMAN PEOPLES-STOKES: Thank
23 you. Thank you very much. Okay, I think
24 this one works.

1 Thank you very much, Madam Chair, for
2 the opportunity to just raise a couple of
3 questions to Mr. David's presentation. And
4 let me first of all thank him for making a
5 presentation.

6 And I do want to, as the sponsor of
7 the Assembly legislation that deals with this
8 issue, applaud the Governor for coming
9 forward with a proposal. And actually thank
10 you very much for changing the name. I think
11 it really should be the Cannabis Tax and
12 Regulation Act, as opposed to marijuana.

13 Having done some historical research
14 on the topic, you know, I note that from
15 1906, it actually was called cannabis, which
16 it is. And for reasons of mostly the economy
17 and people wanted to make sure they were able
18 to maintain the roles that they had in our
19 economy, be it with lumber or whatever
20 product, it was criminalized, intentionally
21 criminalized for the purpose of somebody
22 else's capital benefit.

23 And through the course of that
24 criminalization process, by 1970 it was just

1 absolutely totally banned from use in
2 America. It was illegal. It couldn't even
3 be used for medical purposes, which previous
4 to that it had been.

5 So I think it's time, one, to give it
6 back its rightful name, cannabis; and two,
7 it's certainly time to put it back into
8 society in a way that has the interests of
9 all people at heart and does not necessarily
10 cause negative issues that most people
11 presume that it would. So again, I want to
12 thank you.

13 For me and I believe my colleague
14 Senator Krueger in crafting the legislation
15 that we put together, social equity was at
16 the top of it. Social justice is clearly at
17 the top of it as well. And I think -- you
18 know, how do you invest in those communities
19 that have been impacted?

20 Because if you look over the span of
21 time from say 1970, when the country
22 literally said, you know, cannabis is
23 illegal, we don't want it here anywhere and
24 we can't even use it for medical purposes,

1 the amount of money that government has spent
2 incarcerating people, putting people's
3 children in foster care systems, having
4 people's children go through adoption
5 systems -- all of the social services that
6 surround the negative impacts when families
7 are destroyed, is money that really could
8 have been invested in communities. But as
9 opposed to that, it was taken from
10 communities.

11 And you can literally go, you know,
12 across the State of New York and see those
13 communities where that happened. Because
14 they generally all kind of sort of look the
15 same. It doesn't matter whether you're in
16 Utica or Buffalo or New York City or Yonkers,
17 they kind of all look the same.

18 And so for the thought process of
19 putting together legislation that would again
20 make a product -- take it back to its
21 scientific purpose for which it was created
22 by the creator of the world, and away from
23 man's decision to make it criminal, as an
24 opportunity for some people to make more

1 money than others, I am grateful for this
2 opportunity.

3 So let me start by asking you a little
4 bit about your position on why the criminal
5 penalties for underage cannabis possession
6 seem to be much harsher than they are for
7 alcohol, when there are actually already
8 statutes in the DWI legislation that covers
9 this issue.

10 GOVERNOR'S COUNSEL DAVID: Sure. Two
11 responses. One, I think that the Governor's
12 proposal recognizes that we need to ensure
13 that penalties exist to prevent purchasers
14 from attacking or recruiting young people.
15 But if you look at the penalties, they're
16 relatively similar to the ABC Law, which is
17 the alcohol law.

18 In our proposal, it's in the Penal Law
19 as opposed to the ABC Law. But effectively,
20 those penalties are similar in terms of
21 they're treated as violations.

22 We're open to looking at a variety of
23 ways to reconciling that, potentially, with
24 your bill. But I think if you take a step

1 back and look at the effect that it would
2 have, it's relatively the same.

3 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
4 Well, I will mention this, that in your look
5 back at, I hope that it includes an
6 opportunity for us to really provide young
7 people with the kind of education that they
8 need on this product and other products, how
9 they may have some impact on their lives.

10 And hopefully that we will come up
11 with some way to educate our young people
12 without criminalizing them. Because I think
13 when we keep doing the criminal method, we're
14 just making new criminals as opposed to
15 really making responsible adults. And so I
16 would encourage you to look that way.

17 GOVERNOR'S COUNSEL DAVID: I couldn't
18 agree with you more. The legislation in fact
19 anticipates a significant amount of
20 investment in education and -- public
21 education, as well as ensuring that the
22 products are appropriately labeled so that
23 they're not targeting youth. And we intend
24 that to be a huge part of the proposal.

1 With respect to looking at the
2 penalties, we of course can look at that.
3 But again, I think if you look at the
4 ultimate impact, it's relatively the same.

5 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
6 And could you tell us a little bit about what
7 the plans are to seal the records of folks
8 who have been already criminalized for low
9 levels of marijuana crimes?

10 GOVERNOR'S COUNSEL DAVID: Sure. The
11 proposal anticipates that we would
12 automatically seal the record of individuals
13 that have been impacted by marijuana
14 possession and/or distribution. We
15 anticipate there may be 800,000 people that
16 have convictions and arrest records that may
17 be subject to sealing.

18 The proposal also anticipates that
19 individuals that may have marijuana
20 convictions will have an opportunity to have
21 their cases reheard after this law is passed,
22 because we of course want to make sure that
23 in some cases those that are still
24 impacted -- meaning they may be incarcerated.

1 We think that number is very, very small.
2 But to the extent that they do exist, they
3 would have an opportunity to go through and
4 have their cases reheard.

5 ASSEMBLYWOMAN PEOPLES-STOKES: Okay,
6 so you are offering some restrictions on the
7 quantities sold per customer per day. How
8 did you plan on tracking that?

9 GOVERNOR'S COUNSEL DAVID: Well, part
10 of the value and I think the impetus of going
11 through the regulatory route is that we will
12 have the ability to issue licenses to growers
13 as well as distributors, and we will be in a
14 position to actually track how they're
15 selling those products. Similar to alcohol,
16 similar to tobacco.

17 We have to remember that there was a
18 time where tobacco was prohibited and alcohol
19 was prohibited. And when we went through the
20 regulatory and the legal and the legislative
21 processes of making sure that we had some
22 amount of oversight, that changed. And we
23 now have the ability to regulate alcohol
24 consumption, we have the ability to regulate

1 tobacco use, and we will be able to do the
2 same here with this regulatory construct that
3 we're advancing.

4 ASSEMBLYWOMAN PEOPLES-STOKES: And so
5 are you -- do you have any concerns about a
6 person's ability to use the product being --
7 or their constitutional rights to use it once
8 it becomes legal? Do you have any concerns
9 about that at all? I mean, how do you say
10 that you can only go to -- well, if you were
11 buying wine, how do you say you can only go
12 to the wine store three times a day? I mean,
13 is that what you're looking to regulate, how
14 often people have access to the product?

15 GOVERNOR'S COUNSEL DAVID: Well, we
16 certainly do that now with a variety of
17 different drugs. We regulate how much people
18 can consume. There is no constitutional
19 issue there. And I don't think we envision
20 that we would face that here.

21 Our goal is to ensure that we have the
22 ability to provide recreational adult use and
23 at the same time protect public safety and
24 public health. And we can do that without

1 infringing on anyone's constitutional rights.

2 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.

3 Well, the next question I guess I wanted you
4 to talk a little bit about is why your bill
5 doesn't explicitly state that there's some
6 opportunity for dedicated community
7 reinvestment through tax revenue.

8 GOVERNOR'S COUNSEL DAVID: So we've
9 talked about that, and I think the Executive
10 is open to having additional discussions with
11 the Legislature on that point.

12 We've been driven by ensuring that we
13 can create a sustainable infrastructure
14 first. We have to create a new agency. We
15 have to hire investigators. We have to
16 create a licensing scheme. We have to do all
17 of those things to make sure we have a
18 sustainable system. And we have to be
19 careful that we're not overprojecting how
20 much we're going to receive in revenues.

21 But I think we're open to having that
22 conversation about where those revenues go,
23 because there are a variety of competing
24 interests, as I'm sure you know, and many

1 members of the Legislature have different
2 views as to where those revenues should go
3 and how those revenues should be used.

4 Now, the tax structure and the scheme
5 that we've advanced would allow counties that
6 opt in or remain a part of the program to
7 receive 2 percent of those revenues. The
8 remaining revenues would go to the state
9 after we cover the operational costs, and
10 then we can have a conversation about the
11 appropriate distribution scheme.

12 ASSEMBLYWOMAN PEOPLES-STOKES: Well,
13 I'm glad you mentioned counties opting in,
14 because I think, you know, there are a lot of
15 municipalities within some counties that
16 could be disenfranchised because their county
17 decides to make a decision that wouldn't
18 allow them to have their rights.

19 And so I would think that the
20 legislation that Senator Krueger and I have
21 introduced would be a better look at how to
22 deal with that as an issue. And I hope that
23 you would take a look at giving that some
24 consideration.

1 GOVERNOR'S COUNSEL DAVID: We will
2 certainly consider that.

3 ASSEMBLYWOMAN PEOPLES-STOKES: In
4 terms of equity, what's your strategy for
5 ensuring that there's an equitable
6 opportunity for people to be in business with
7 this one?

8 You know, I live in Buffalo because I
9 represent that district, and literally for
10 the entire year of '19, I would say that
11 there's been at least maybe two or three
12 meetings a week with potential investors from
13 California who come to my office. And I
14 understand, you know, what they see. There's
15 an opportunity here, a big opportunity. But
16 at the same time, I need to make sure that
17 we're protecting New Yorkers' interest to be
18 in business.

19 And how do you propose to do that? I
20 know my time is up, but I think you can
21 answer that question pretty quickly and it
22 will satisfy many of us here.

23 GOVERNOR'S COUNSEL DAVID: Sure.
24 We're doing that in two ways.

1 One, we are rejecting the vertical
2 integration construct. What that means is we
3 are rejecting the concept that you would
4 allow one company to grow or manufacture,
5 distribute and sell. We've broken up that
6 structure in order to ensure that more people
7 can participate in this new industry.
8 Washington State has that construct, and I
9 think it allows for minorities and people
10 that have been disproportionately impacted to
11 participate in that framework.

12 Second, what we're doing is
13 potentially giving an opportunity to
14 registered organizations that currently
15 participate in the medical cannabis program
16 to invest in this program. And that provides
17 us the capital, additional capital that would
18 be helpful to provide support to minorities,
19 again, and disadvantaged community members
20 that may be interested in participating in
21 this program.

22 The licensing scheme is structured in
23 such a way that if you are receiving a
24 certain amount of income that's below a

1 certain threshold or you're living in a
2 community that's disproportionately impacted,
3 you are provided with a preference for a
4 license. But we of course need to ensure,
5 through the regulatory process, that people
6 have capital, that they have the expertise,
7 that they have the ability to participate.

8 ASSEMBLYWOMAN PEOPLES-STOKES: So is
9 there a percentage of these registered
10 operators that you would allow to be those
11 investors in that equity piece?

12 GOVERNOR'S COUNSEL DAVID: No, I don't
13 think we want to in legislation identify a
14 specific percentage. Because we would want
15 to address that through the regulatory
16 construct, similar to what we did in the
17 medical program. And the reason why is
18 because we first have to think about the
19 scope and the breadth of this program.

20 Once we legalize recreational
21 cannabis, we can anticipate how successful it
22 will be or how economically feasible it will
23 be. But until we actually launch the program
24 and understand how many people would be

1 interested in licenses, we want to be careful
2 that we're not being overly restrictive or
3 overly expansive.

4 CHAIRWOMAN WEINSTEIN: Thank you.

5 We'll go to the Senate.

6 CHAIRWOMAN KRUEGER: Hi, I'm going to
7 start out, since Crystal and I have worked on
8 our version of this bill for -- I don't know.
9 I didn't have gray hair then, actually, when
10 we started.

11 (Laughter.)

12 UNIDENTIFIED SPEAKER: You don't have
13 gray hair now.

14 (Laughter.)

15 CHAIRWOMAN KRUEGER: So thank you for
16 being here.

17 And so I've also sat through all the
18 other budget hearings, where people raised
19 different questions at different hearings.
20 So I wanted to follow up on some of those
21 issues that I think that this table is
22 qualified to answer that perhaps other people
23 weren't prepared to answer.

24 So just -- but starting with Crystal's

1 last point about counties or towns opting out
2 and --

3 (Musical interruption from Assemblyman
4 Gottfried's electronic device.)

5 (Laughter.)

6 SENATOR RIVERA: Of course it would be
7 Dick.

8 (Laughter.)

9 CHAIRWOMAN KRUEGER: Dick Gottfried
10 goes rock and roll.

11 (Laughter.)

12 CHAIRWOMAN KRUEGER: Excuse us. All
13 right. Yes, will you start the 10 minutes
14 again? Thank you. All right, you be quiet,
15 Gustavo, too.

16 So starting off where Crystal ended
17 about the concerns if counties opt out, or
18 the model you have. So the model that she
19 and I have in our bill, it actually requires
20 a referendum vote by counties or towns to opt
21 out.

22 But I just want to tie that back into
23 her point about the tax formula of them only
24 getting 2 percent sales tax at the local

1 level. From what I heard from many people --
2 towns associations, county associations,
3 others -- not necessarily opposed to
4 cannabis, but wanting to understand their
5 revenue opportunities.

6 And so can you talk a little bit about
7 not just sales tax revenue, but the job
8 opportunities in so many different license
9 categories that a community would be cutting
10 themselves off from if they opted out, and
11 why perhaps they wouldn't want to opt out of
12 this program, because it would actually be a
13 real loss of revenue to them at the local
14 level.

15 GOVERNOR'S COUNSEL DAVID: Absolutely.
16 I'll have Axel Bernabe, who's an assistant
17 counsel for health who's been focusing on
18 this issue, talk a little bit about it.

19 But before I do, I think what we've
20 done is provide additional revenues to
21 counties that remain a part of the program.
22 But you're exactly right, it also provides
23 employment opportunities in those districts
24 in a variety of different fields.

1 We're talking about individuals who
2 may have an opportunity to own their
3 businesses for the first time, individuals
4 who would participate in the sales market or
5 the manufacturing market or the distribution
6 market. And those industries don't exist in
7 New York, and they certainly don't exist in
8 those counties and those towns. So it does
9 provide opportunities outside of the
10 2 percent revenue that those counties would
11 be receiving.

12 But I'll ask Axel to elaborate on that
13 point.

14 ASST. COUNSEL BERNABE: Happy to.
15 Thank you. Thank you, Senator.

16 So it's interesting to come back --
17 when you look at the economic potential of
18 the cannabis plan, it's important to, as the
19 testimony pointed out, to recognize that
20 there are three separate markets that we're
21 talking about here. So two of them are
22 already in full bloom. The medical market
23 already has 10 players, of which there are a
24 number of manufacturing and growing

1 facilities. These represent, often, \$5 to
2 \$10 million facilities that are pretty
3 high-tech as growing and as extracting.
4 They're often at good manufacturing practices
5 levels -- so quasi-pharmaceutical-level grade
6 manufacturing process. So you actually have
7 a significant investment in the medical side.

8 On the hemp side, surprisingly as
9 well, hemp has very diverse applications. So
10 you actually have a lot of people that are
11 investing similarly in wellness products,
12 dietary-supplement-like products. The
13 Southern Tier has been the recipient of a lot
14 of investment, in recent announcements, in
15 economic development following the Governor's
16 announcement of making that an area which
17 would be particularly a focus for the hemp
18 program.

19 And so that leaves the third tier, but
20 these are already economic benefits. And we
21 have them ranging from Suffolk County, with
22 growers that are hemp growers there, to
23 upstate, Watertown, you name it. There are
24 industries that are being born there of the

1 cannabis plan.

2 The adult use model, going back to the
3 comment related to the three-tier model, the
4 liquor store owners are fond of saying that
5 they're the last store on Main Street. And
6 there's a reason for which we have 3300
7 independent liquor stores that still dot our
8 state, and that's in large part because we
9 don't allow large suppliers of alcohol to own
10 the distribution network and the retail
11 stores.

12 So our belief -- and this proposal
13 advances the theory that having three-tier
14 models with independent retailers would
15 permit each community that so chooses to have
16 retail stores and the economic benefits that
17 come with that. Small stores that are
18 located independently that can be on
19 Main Street.

20 So you have a full gamut from large
21 sophisticated grow operations, manufacturing
22 extraction plants, distribution networks, and
23 retail outlets. So it's quite the industry.
24 Just the hemp industry alone is estimated to

1 be approximately \$22 billion by 2020 by
2 Forbes magazine. So real investments in that
3 space.

4 CHAIRWOMAN KRUEGER: Thank you.

5 And the other topic that kept coming
6 up in hearings were people's concerns about
7 the facts versus the fiction of the health
8 risks that might be involved with a legalized
9 recreational cannabis program. So I know you
10 have the doctor here who represented you on
11 your working group, if I'm saying that right.

12 And so would you help address the
13 concerns that people have that cannabis
14 recreationally would be a gateway drug and
15 would actually increase the -- I guess really
16 the addiction problems that people are seeing
17 throughout the state, not to cannabis but to
18 opioid use? Because I keep believing -- my
19 reading is that if there's a cannabis option,
20 actually many people who are wrongly
21 self-medicating with opioids might in fact
22 switch, even though perhaps they really ought
23 to be going to medical marijuana. But there
24 are other people who are convinced somehow

1 this will trigger a worse problem for them at
2 home.

3 DR. CUNNINGHAM: Right. So in terms
4 of the gateway theory, really the evidence
5 does not support the gateway theory.

6 What we do know is that people who go
7 on and use substances later in their life
8 will use substances that are available early
9 on in their life, and that may be tobacco,
10 alcohol or cannabis. So it's really about
11 the availability.

12 In addition, the literature that's out
13 there really shows, you know, associations
14 between use and not causation. So there's
15 nothing out there that shows that cannabis
16 use causes additional drug use down the line.

17 But I think you're absolutely right
18 about the opioids. And this is an area that
19 I'm very involved in in my work. And so
20 there are data that are conflicting about
21 whether cannabis use is associated with
22 increased or decreased opioid use.

23 And so my colleagues and I published a
24 study that looked at states that had medical

1 cannabis laws and saw that those that did
2 have regulation of medical cannabis had a
3 25 percent reduction in opioid overdose
4 deaths than expected, as compared to states
5 without these laws.

6 Similar findings have also been
7 published around prescribing opioids. So
8 that states that have regulated cannabis laws
9 have less prescribed opioids.

10 So we -- you know, there are data to
11 support that there is in fact a reduction or
12 less opioid use when cannabis is available.

13 So, you know, we talk about the
14 gateway theory, but in fact we also discuss
15 that this could be an off-ramp to opioid use.
16 And so we're actively continuing to
17 investigate that. But really the body of the
18 literature supports more of less opioid use
19 with cannabis than more.

20 CHAIRWOMAN KRUEGER: And I know in the
21 bill that Crystal and I sponsor, we make a
22 commitment to investing a certain amount of
23 the revenue in research into cannabis
24 products. Is that also part of the

1 Governor's proposal?

2 GOVERNOR'S COUNSEL DAVID: The short
3 answer is yes. We are anticipating using the
4 revenues for a variety of different purposes,
5 and research will be one of them. Because we
6 think, to the doctor's point, that it's
7 important for us to continue to solidify the
8 research to make sure that we can rebut some
9 of the concerns that have been raised and
10 actually get to the science, which as you
11 know demonstrates -- as she just said,
12 demonstrates that there really is not --
13 there's not a correlation, as we've always
14 assumed.

15 CHAIRWOMAN KRUEGER: And I only have
16 30 seconds left, but just going back. So you
17 mentioned the states that have medical
18 marijuana have done research about reduced
19 opioid overdoses. Have you seen any research
20 showing that states that have recreational
21 have also seen a reduction?

22 DR. CUNNINGHAM: So I have not seen
23 published data in terms of the states with
24 the recreational cannabis use. I think part

1 of the issue too is, you know, time and the
2 number of states are just fewer.

3 CHAIRWOMAN KRUEGER: Right.

4 DR. CUNNINGHAM: I mean, I think that
5 that is something that we need to look into.

6 And I agree with Alphonso, conducting
7 research with cannabis is very difficult
8 because of the federal limitations. And so
9 having this as part of the bill is incredibly
10 important to advance science.

11 CHAIRWOMAN KRUEGER: Thank you. I'll
12 come back later. Thank you.

13 CHAIRWOMAN WEINSTEIN: Thank you.
14 Well, we've been joined by Assemblywoman
15 Fernandez.

16 And we're going to go to
17 Assemblymember Mosley for some questions.

18 CHAIRWOMAN KRUEGER: And we've also
19 been joined by Senator John Liu and by
20 Senator Ramos.

21 ASSEMBLYMAN MOSLEY: Thank you, Madam
22 Cochair. Thank you, Mr. David and your
23 staff, for your testimony.

24 And I want to first personally thank

1 you for the Governor's listening tour. I
2 know I had one in my district at the LIU
3 Brooklyn campus. So that was greatly
4 appreciated by my constituents who I serve in
5 the 57th Assembly District.

6 My question is -- I just have three
7 questions. They're all kind of distinct and
8 separate: One dealing with agriculture, one
9 dealing with banking, and then the other one
10 dealing with a real-time situation that we're
11 dealing with right now with an existing
12 medical license holder.

13 In regards to cheap and reliable
14 power, whether it's in urban or rural
15 communities, that there's an issue for new
16 businesses in New York State if they're
17 looking to start a marijuana growth or hemp
18 farm. We anticipate utility bills could
19 fluctuate greatly, given what location you're
20 in in the state, which could be a big
21 deciding factor in terms of where you are
22 located.

23 Has that particular issue been thought
24 out, given everything that you know and

1 everything that you've heard in your
2 listening tours and so forth?

3 GOVERNOR'S COUNSEL DAVID: Well, I'll
4 speak briefly about what we've learned. In
5 the medical cannabis program, we have not
6 seen that become an issue. I'll ask Jen
7 McCormick whether or not there's any issue in
8 the hemp industry and whether or not you've
9 seen that.

10 DEPUTY COMMISSIONER McCORMICK: In the
11 hemp industry, all of the fields so far are
12 grown outside, so we don't have energy usage
13 the way you have.

14 CHAIRWOMAN KRUEGER: Your microphone's
15 not on.

16 DEPUTY COMMISSIONER McCORMICK: Is it
17 on now? Okay.

18 All of the hemp acreage so far has
19 been outside. We don't do indoor growth for
20 the industrial hemp so far, so we have not
21 seen energy problems.

22 ASSEMBLYWOMAN PEOPLES-STOKES: It's
23 still not on.

24 (Discussion off the record.)

1 DEPUTY COMMISSIONER McCORMICK: Now
2 the red light is on.

3 (General acclaim; laughter.)

4 DEPUTY COMMISSIONER McCORMICK: So the
5 answer is all of the industrial hemp acres
6 have been outside, so we don't have energy
7 issues.

8 ASSEMBLYMAN MOSLEY: So you've never
9 seen any fluctuation in terms of the ability
10 to grow, whether it's in the city or in rural
11 areas? There's no great disparity?

12 DEPUTY COMMISSIONER McCORMICK: No.

13 ASSEMBLYMAN MOSLEY: The second
14 question, in terms of banking and financing
15 constraints. As you know, it's still a
16 Schedule I substance under the federal law.
17 We know we have outstanding federal
18 legislation that's to be decided on in terms
19 of the STATES Act and others.

20 Has the state given any consideration
21 as to -- I know you're talking about tracking
22 the money and being able to regulate tracking
23 and making sure that we maximize taxable
24 revenue for the state. Has the state taken

1 into consideration any alternatives,
2 particularly as relates to possibly setting
3 up CDCUs or CDFIs, in an effort to better
4 regulate from a banking industry, from a
5 banking perspective, the new CRTA law?

6 GOVERNOR'S COUNSEL DAVID: Yes. We
7 have engaged with the regulators in all
8 10 states and obtained a lot of information
9 and helpful data to determine how we would
10 address that issue. We're looking at
11 financial cooperatives as an alternative to
12 provide the financial support and the
13 infrastructure that these companies will
14 need.

15 Because you're exactly right, it's
16 going to be very difficult for them to engage
17 with federally regulated banks, as well as
18 the state-regulated institutions as well. So
19 we've been working on the issue of financial
20 cooperatives to see if we can give them that
21 kind of infrastructure.

22 ASSEMBLYMAN MOSLEY: Okay. Thank you.

23 And the last question I have I guess
24 is a real-time issue. In a news article that

1 I saw -- there was a couple of them, at least
2 that I know of -- we had MedMen, who was
3 removed from the New York Medical Cannabis
4 Industry Association in lieu of an ongoing
5 lawsuit in California. And I know that
6 MedMen is in the process of merging with
7 another medical license holder in New York
8 State. What type of impact is that going to
9 have with that merger? And going forward,
10 how will MedMen play in terms of their
11 ability to be a part of this going forward,
12 or will they not be a part of this from a
13 medical side as well as from an adult-use
14 side?

15 GOVERNOR'S COUNSEL DAVID: Right, two
16 responses to that.

17 One, I would not conclude at this
18 point that the merger has been approved. The
19 merger is still under review by the state.

20 Second, the state is also aware of
21 those allegations from California and is
22 reviewing those allegations to determine what
23 impact, if any, it would have on their
24 continued ability to function in the state.

1 ASSEMBLYMAN MOSLEY: So the removal
2 from the Cannabis Industry Association, was
3 that solely because of this particular issue?
4 Or was there other things that led up to that
5 decision being made?

6 GOVERNOR'S COUNSEL DAVID: Based on
7 the facts that we have so far, we believe it
8 was a factor. I don't know at this point if
9 it was the only factor. So we're conducting
10 our review at this point to determine what
11 the basis was for their removal and the
12 impact that it could have here in New York.

13 ASSEMBLYMAN MOSLEY: All right, thank
14 you. Thank you, Madam Cochair.

15 CHAIRWOMAN WEINSTEIN: Senate.

16 CHAIRWOMAN KRUEGER: Thank you.
17 Senator Zellnor Myrie.

18 SENATOR MYRIE: Thank you, Madam
19 Chair.

20 And I want to take this opportunity to
21 thank the Governor for this effort. I think
22 it is a massive undertaking, one that we are
23 conducting together with the Legislature, and
24 one that's very important. So I really want

1 to thank the Governor for the efforts through
2 this proposal.

3 I think both the Legislature and the
4 Governor have the goal of not only legalizing
5 this industry, but of restorative justice.
6 And I think there are a number of proposals
7 within this that seek to get that. But I
8 wanted to ask a number of questions and just
9 voice some concerns about some particular
10 issues that I think would further that
11 purpose.

12 On the issue of the sealing of
13 previous records, I think that there should
14 be an automatic sealing of the records. You
15 know, it is unfortunate that in this state we
16 don't have a true expungement law. But I
17 think that as it pertains to sealing people
18 who have been previously convicted of
19 marijuana infractions, I think that this
20 should be automatic.

21 I think what we've seen in other
22 instances with like Raise the Age, where this
23 is not automatic and it requires an
24 individual to apply, I think we've seen very

1 few people take advantage of this because of
2 that additional hurdle. And so I think if we
3 really are about restoring the injustices
4 that have been levied against our
5 communities, I think that this should be
6 something that is automatic.

7 My question -- and I think we'll get
8 back on the second round -- as far as how we
9 are going to treat the legalization of
10 marijuana to the usage of alcohol, is it the
11 administration's position that legalized
12 cannabis, someone who uses that, is the same
13 as someone who uses alcohol?

14 GOVERNOR'S COUNSEL DAVID: Okay, with
15 respect to the first question, the
16 legislation does allow for automatic sealing.
17 There is a separate application process for
18 combined offenses, because we need to look to
19 see, for some of those claims, if someone is
20 arrested for cannabis possession but also
21 arrested for another crime, how do we
22 effectively seal those records.

23 But there is an automatic sealing
24 provision in the statute. And Jason Starr

1 has been working very closely on some of
2 these issues, so I'll just ask him to
3 elaborate.

4 ASST. COUNSEL STARR: It really is the
5 mic.

6 (Laughter.)

7 ASST. COUNSEL STARR: Can you hear me?

8 So just building on what was said, the
9 construct that we intended to create here for
10 sealing sort of looks retrospectively,
11 obviously, at, you know, sealing
12 automatically certain convictions either in
13 the section of the Penal Law related to
14 offenses related to marijuana or, prior to
15 1977 when those offenses were pulled out of
16 the Controlled Substances Act, those
17 controlled substance offenses that were
18 related to marijuana possession.

19 And then moving forward, sealing
20 violation and marijuana -- misdemeanor
21 convictions, excuse me, automatically. So
22 removing the three-year provision that is
23 currently in the Criminal Procedure Law.

24 So that construct is what we have

1 advanced in this proposal, and certainly
2 would look to continue to engage with the
3 Legislature in other ways to get at both
4 direct and collateral consequences of
5 marijuana convictions.

6 GOVERNOR'S COUNSEL DAVID: With
7 respect to your second question on the
8 tiering of penalties, we strategically
9 decided to tier the penalties for two
10 reasons. One, we want to make sure that
11 although the legislation says that anyone
12 under the age of 21 is prohibited from using
13 cannabis, that we actually have a regulatory
14 construct to prevent people from actually
15 reaching out and recruiting those minors.

16 And second, we have to be mindful of
17 the fact that there is a well-established
18 illicit market and that we need to think
19 about if we don't have a regulatory scheme
20 that potentially penalizes people from
21 engaging in that illicit market, we might be
22 indirectly supporting it.

23 So that's why we decided to create a
24 tiered penalty approach in order to achieve

1 these two objectives.

2 SENATOR MYRIE: And hopefully I'll get
3 to ask this on the second round. The reason
4 that I asked about this distinction, because
5 I think that it not only in the criminal
6 penal component of this, but also when you
7 look at home cultivation, I know that there
8 is a distinction between people who can, you
9 know, make beer at home and people who can
10 grow marijuana.

11 And so I think that this is a theme
12 throughout this proposal that substantively
13 the usage of both of these are different.
14 And I'd hate for us to legalize an industry
15 and create some secondary consequences for
16 folks who are going to be using it anyways.

17 GOVERNOR'S COUNSEL DAVID: I'll just
18 briefly respond to that. I think we share
19 that concern as well.

20 And what we're trying to do here with
21 this proposal is be deliberate. And that we
22 can project, based on what we've seen in the
23 10 other states where the mistakes were in
24 terms of their drafting of policy and the

1 enforcement and implementation of that
2 policy.

3 So what we've done here is try to
4 develop a scheme that we think is fairly
5 comprehensive and also very safe, so that we
6 can legalize a market, not support the
7 illicit market, protect minors, and also
8 create a regulatory scheme that we can modify
9 over time.

10 As you can see in the legislation, we
11 didn't put all of the provisions in the law.
12 Because as we learned from the medical
13 program, you want flexibility over time to
14 modify, to add more. As you know in the
15 medical program, we've added more conditions
16 to protect those conditions. But when we
17 started, there were very few that were
18 actually covered, and then we ended up
19 expanding over time.

20 But we're more than happy to sort of
21 engage in that conversation and think
22 strategically on if there are things we need
23 to refine.

24 SENATOR MYRIE: Thank you.

1 CHAIRWOMAN WEINSTEIN: Thank you.

2 We've been by Assemblywoman Judy
3 Griffin.

4 And we go to Assemblyman Epstein for
5 questions.

6 ASSEMBLYMAN EPSTEIN: Thank you,
7 Mr. David, for being here and telling us
8 about this program.

9 Just some quick questions. So a
10 25-year-old living in my neighborhood who
11 might be selling in the illicit market right
12 now, they're not going to be able to open up
13 a storefront. What's their pathway to be
14 able to legally sell cannabis and get out of
15 the illegal market?

16 GOVERNOR'S COUNSEL DAVID: Well, in
17 fact they would be able to participate.
18 We've structured this program in such a way
19 that individuals who may have been engaged in
20 the illicit market are not prohibited from
21 participating in the regulatory market.
22 Because that, from a strategic perspective,
23 actually helps us address the growing illicit
24 market. So they wouldn't be precluded.

1 ASSEMBLYMAN EPSTEIN: So they could do
2 a home-based business, you're saying?
3 They're allowed to do a home-based business,
4 get a license to do that?

5 GOVERNOR'S COUNSEL DAVID: The
6 home-based cultivation is only limited to the
7 medical program at this point.

8 ASSEMBLYMAN EPSTEIN: Right. So this
9 25-year-old who doesn't have the resources to
10 open up a storefront, how are they going to
11 participate in the legal market?

12 GOVERNOR'S COUNSEL DAVID: So we
13 addressed this a little before you joined us.
14 So the way --

15 ASSEMBLYMAN EPSTEIN: I've been here
16 from the beginning, by the way.

17 GOVERNOR'S COUNSEL DAVID: Yeah, the
18 way we're looking to do this is to -- the
19 registered organizations would actually
20 contribute to this program and create a
21 capital fund. And that fund would be used to
22 assist those that don't have the capital,
23 that don't have the expertise, but want to
24 participate in the program.

1 I don't know if there's more that you
2 would like to add to that.

3 ASST. COUNSEL BERNABE: If I may.

4 I'm sorry, I think you may also be
5 speaking to a proposal that's in the MRTA, in
6 the legislative proposal and in ours as well,
7 with respect to micro-licenses.

8 So the thinking is in other states
9 they've experimented with having licenses
10 that are significantly smaller, so maybe a
11 thousand or 2,000 square feet of grow, where
12 an individual would be able to sell -- grow
13 cannabis and sell it to larger growers or
14 have relationships with retailers for them to
15 buy a very specialized product.

16 So that person, if they wanted to get
17 into growing -- so in your example, if they
18 thought that they had a particular knack for
19 growing cannabis or had a particular recipe
20 that they thought would be popular, they
21 could apply for a micro-license. And those
22 type of licenses would be more freely
23 available because they're smaller and the
24 supply could be better controlled. So that

1 would be an avenue for that.

2 ASSEMBLYMAN EPSTEIN: And a
3 microdistribute -- as a license to distribute
4 it too, or --

5 ASST. COUNSEL BERNABE: Yes. As
6 currently drafted, the micro-license would
7 enable someone to grow, do some basic
8 processing, and distribute to retail
9 locations. That's how it's currently
10 defined.

11 ASSEMBLYMAN EPSTEIN: And can I just
12 turn your attention back to the personal use
13 in the -- we've been talking about like in
14 the MRTA, around people being able to use --
15 grow up to six plants. I'm wondering why
16 there's no provision in your bill around
17 that, understanding that there might be some
18 personal use issues for -- especially people
19 who have health issues who might do it in a
20 way as a restorative justice piece for
21 themselves.

22 GOVERNOR'S COUNSEL DAVID: Sure. The
23 proposal actually I think is limited to four.
24 And we're open to having a conversation with

1 the Legislature about modifying that if
2 appropriate.

3 But again, I think the goal there is
4 to make sure that we maintain access for
5 people in the medical program that have
6 difficulty obtaining the product. And also
7 ensure that to the extent they need to --
8 they're not going to be purchasing from the
9 illicit market or it's going to be difficult
10 for them in terms of maintaining cost.
11 They're able to grow personally, but we've
12 limited it to four.

13 And we've surveyed other states, and
14 the states are all over the map on this
15 issue. There's some states that are more,
16 some states that are less. We thought that
17 it made sense in this case to do four.

18 ASSEMBLYMAN EPSTEIN: And so just
19 around the issues around state banks, I'm
20 wondering where you are on the state banking
21 issues, to be able to have cash flow for
22 anyone who's involved in this industry.
23 We've seen in other jurisdictions that being
24 an option. I'm wondering how far along you

1 are in that conversation.

2 GOVERNOR'S COUNSEL DAVID: We started
3 conversations with financial cooperatives
4 last year. Those conversations have been
5 fruitful. We are still walking through some
6 of the technical, I think, limitations that
7 they may have, or concerns. But I'm
8 optimistic that I think we'll be able to
9 identify financial cooperatives that may be
10 interested in participating.

11 ASSEMBLYMAN EPSTEIN: And just another
12 question, in my last minute, just around
13 having this be a market-based solution
14 instead of a market/government-based
15 solution. Why do we seem to be -- why not
16 have more government oversight of sales so we
17 can control through the entire chain to
18 ensure that it's a restorative justice
19 approach? If we had more government
20 oversight even over the location, we could
21 bring in our social justice values, where the
22 market might not be able to infuse those
23 social justice lenses that we might have.

24 GOVERNOR'S COUNSEL DAVID: Well, I

1 think where we've infused both the social
2 justice initiatives within the market
3 structure -- so with respect to licensing, as
4 an example -- you will get a preference if
5 you're coming from a community that has been
6 historically disadvantaged.

7 So yes, it's a market structure, but
8 we've infused our social justice principles
9 within it. That's just one example.

10 ASSEMBLYMAN EPSTEIN: Yeah.

11 GOVERNOR'S COUNSEL DAVID: And we're
12 looking at the alcohol model as one model to
13 use here, but of course there are other ways
14 to approach it. We thought that this was the
15 most effective way to achieve that goal.

16 CHAIRWOMAN WEINSTEIN: Senate?

17 CHAIRWOMAN KRUEGER: Thank you.

18 Senator Diane Savino.

19 SENATOR SAVINO: Thank you, Senator
20 Krueger.

21 Good afternoon. Thank you for your
22 work on this. It's been a pleasure to work
23 with all of you over the years on it.

24 And I just want to say that I think

1 what gets lost in this whole discussion about
2 why we treat cannabis different than alcohol,
3 and the difference between when we first
4 worked on the Compassionate Care Act and now,
5 is a couple of things have happened. One,
6 marijuana is still a Schedule I substance;
7 alcohol is not. And since we did the
8 Compassionate Care Act together here in the
9 Legislature, when we worked with an
10 administration in Washington that extended
11 the Cole amendment to us, which essentially
12 said marijuana is a Schedule I substance but
13 here's some guidelines to follow, and we'll
14 leave you alone, that has been withdrawn.

15 And we still don't know what
16 Washington is going to do to states that have
17 adopted adult-use markets. And so we have to
18 proceed a little bit more carefully.

19 But I want to go through some of the
20 changes to the medical program. And by the
21 way, I plan on doing a few rounds, so bear
22 with me, guys.

23 I'm very pleased to see that we are
24 really expanding the medical program with

1 respect to adding conditions that were
2 originally in the bill that Assemblyman
3 Gottfried and I talked about: Alzheimer's
4 and autism. And I'm hoping that they survive
5 no matter what happens with this bill,
6 because parents around the state have asked
7 for that.

8 There's a question I have, though,
9 because I know we're adding the idea of
10 flower product for the first time, we're
11 going to allow people to purchase flower
12 product. Would we then allow them to smoke
13 it? Because it's kind of silent in the bill.

14 GOVERNOR'S COUNSEL DAVID: The bill
15 expressly does not permit smoking. But the
16 agency would be authorized to regulate
17 smoking if allowed in the future.

18 SENATOR SAVINO: So do you not see a
19 conflict? So if I'm an adult -- if I'm an
20 adult-use purchaser, assuming we pass adult
21 use, I can purchase flower product for
22 smoking, but if I'm a medical patient I can't
23 smoke the product?

24 GOVERNOR'S COUNSEL DAVID: Well, I

1 think we're looking closely at that issue.

2 You're correct, I think there's some -- a
3 little bit of a conflict.

4 But I think we also want to make sure
5 that we're not -- we're promoting public
6 health as well. So that's why --

7 SENATOR SAVINO: I agree. But I just
8 wanted to point out that there seems to be a
9 conflict in that.

10 I want to talk a bit about something
11 that came up yesterday at the Tax hearing.
12 So the commissioner of Tax & Finance, I asked
13 her how we were going to collect the taxes.
14 And she'd said they had been in some contact
15 with tax commissioners across the state,
16 because I shared with her when I was in
17 Nevada in November, one of the concerns they
18 have is that they have their registered
19 organizations come in bringing large amounts
20 of cash, which requires them to stop
21 everything and sit and count the money.

22 So she said that they're -- you're
23 laughing, but it's true. She said that
24 they're going to -- the model you guys have

1 put together is to have the wholesalers
2 collect the tax.

3 GOVERNOR'S COUNSEL DAVID: Correct.

4 SENATOR SAVINO: So can you explain
5 that to me?

6 GOVERNOR'S COUNSEL DAVID: Sure. I'll
7 have Axel explain that in more detail.

8 SENATOR SAVINO: Thank you.

9 ASST. COUNSEL BERNABE: So we're not
10 the only one that does that. California has
11 opted for a wholesale collection of tax
12 revenue.

13 The primary reason for collecting tax
14 is that Tax & Finance has told us that
15 collection and auditing functions at a retail
16 level for sales tax purposes in an all-cash
17 business is exceptionally difficult. So we
18 would risk losing revenue for failure to be
19 able to collect.

20 So what you really do here is you're
21 precollecting sales tax. It also allows you
22 not to have a sales tax at the point of sale
23 that consumers would bear and it gets built
24 into the price. But effectively, it is a

1 sales tax, it's just precollected at the
2 wholesale level to ensure maximum
3 collections. And that also allows us to
4 share the revenue with counties that are
5 going to be incurring some of the costs
6 related to driving and health enforcement.
7 So we thought that that would be an effective
8 model to follow.

9 SENATOR SAVINO: It sounds like a lot
10 easier than counting the money at the
11 Department of Tax & Finance.

12 In the bill also is the creation of a
13 Cannabis State Board. Who will be on that
14 board? Who will appoint that board?

15 By the way, I think we recommended
16 that in the first round, and it was roundly
17 rejected. So I'm happy to see it's back in
18 there because I think you're right, coming
19 back to the Legislature over and over to make
20 improvements to a program is not the best way
21 to do it.

22 So what would this board be comprised
23 of?

24 GOVERNOR'S COUNSEL DAVID: So the

1 Office of Cannabis Management is currently
2 operating within the SLA the way we've
3 structured it, with an executive director.
4 And we would either create a new board or
5 modify the existing board with people that
6 have the appropriate expertise.

7 And we think that's important not only
8 in terms of advancing appropriate regulations
9 but also monitoring the program over time.
10 So that's our thought at this point.

11 SENATOR SAVINO: So do we anticipate
12 legislative appointments to this board?

13 GOVERNOR'S COUNSEL DAVID: We are
14 certainly open to having conversations with
15 the Legislature about that issue.

16 (Laughter.)

17 SENATOR SAVINO: So are we.

18 When we get back to my second round, I
19 would really like you to explain the
20 licenses, because there are multiple
21 licenses. And the one thing I would say in
22 my reading of the license structure is it
23 really does eliminate the barriers to entry,
24 from my reading, that has existed in other

1 states to allow people to get into this
2 business at different levels.

3 So when I come back for my second
4 round. Thank you.

5 CHAIRWOMAN KRUEGER: Thank you.
6 Assembly.

7 CHAIRWOMAN WEINSTEIN: So we've been
8 joined by Inez Dickens, and we go to
9 Assemblyman Gottfried for questions.

10 ASSEMBLYMAN GOTTFRIED: Thank you.

11 I have a couple of questions about
12 market structure. The first is in the
13 current medical program, while I don't
14 believe the statute requires each registered
15 organization to be vertically integrated --
16 thanks in part to a department interpretation
17 of the current statute -- my understanding is
18 that the department is not prepared to issue
19 registered organization licenses to entities
20 that want to act in just one segment of the
21 business, like just retailing or just
22 growing.

23 And related to that is the question of
24 whether a registered organization, like

1 virtually every other business, can contract
2 with another entity to provide services or
3 conduct part of its business.

4 Is there anything relating to that in
5 the Governor's proposal? Or is there
6 consideration within the administration to
7 making regulatory decisions to allow that in
8 the current program?

9 GOVERNOR'S COUNSEL DAVID: So the
10 current medical program is structured in such
11 a way that registered organizations are
12 effectively vertically integrated. And
13 that's been the application over the past
14 several years. We did that to ensure that
15 there was appropriate monitoring and
16 enforcement and quality control when we first
17 started the program.

18 For the recreational cannabis program,
19 there is no vertical integration. So those
20 companies have an ability to actually
21 function in the three tiers that we talked
22 about.

23 We would allow registered
24 organizations to participate in the

1 recreational program with the appropriate
2 investments, as we talked about, and also
3 allow them to maintain the vertical
4 integrated structure.

5 The question you're posing, whether or
6 not we would also be interested in
7 deconstructing vertical integration in the
8 medical program to a regulatory construct, is
9 something that we're open to having
10 conversations about. We have to be careful
11 that we don't indirectly affect the economy
12 as it relates to the medical program.
13 Because we now have a very successful
14 infrastructure that it took us years to
15 build, and if we're going to deconstruct
16 that, we need to sort of appreciate the
17 potential collateral consequences.

18 ASSEMBLYMAN GOTTFRIED: Thank you.

19 And my other question is I know next
20 to nothing about the laws regulating retail
21 alcohol sales for off-premises consumption --
22 essentially, liquor stores. What I do know
23 is that I don't know that I've ever seen a
24 chain liquor store. Although there are chain

1 everything else kind of stores, pretty much.

2 Is there something in the ABC Law that
3 you're aware of -- because I know you've been
4 looking very carefully at that -- is there
5 something in the ABC Law that results in us
6 not having chain liquor stores? And if so,
7 might we put that in the cannabis law?

8 GOVERNOR'S COUNSEL DAVID: Yes. I
9 think, in short, the practical economic
10 realities avoid us from -- or prevent those
11 major chain stores from occupying the field
12 in New York because they're not vertically
13 integrated.

14 But you do have stores that may have
15 more than one location in New York. That
16 does exist now. But I think we don't have
17 the problem in some other states where
18 they're vertically integrated in order to
19 avoid that problem.

20 ASSEMBLYMAN GOTTFRIED: Right.

21 GOVERNOR'S COUNSEL DAVID: Axel, want
22 to elaborate?

23 ASST. COUNSEL BERNABE: Yeah, just one
24 fact on the law. You're correct that the

1 Alcohol Beverage Control Act does limit the
2 number of retail stores that may be owned by
3 one individual to three. And that's what the
4 MRTA, the Marijuana Regulation and Taxation
5 Act, also put in, and that's what the CRTA,
6 our proposed bill, would do as well.

7 So that's how we maintain -- we
8 prevent concentration of economic power. And
9 we have smaller dispensaries.

10 ASSEMBLYMAN GOTTFRIED: Thank you.

11 CHAIRWOMAN KRUEGER: Thank you.

12 Senator Jessica Ramos.

13 SENATOR RAMOS: Hi, good afternoon.

14 It's clear that whatever the final
15 product of legalizing marijuana ends up
16 being, farming in New York State is going to
17 increase. Yes? Can we have a commitment
18 from the administration to ensure farmworkers
19 get, at the very least, a day off?

20 GOVERNOR'S COUNSEL DAVID: We -- the
21 Governor actually supports legislation and
22 has sponsored legislation for the past eight
23 years that would provide, we believe,
24 constitutionally protected interests to

1 farmworkers. We in fact took a position two
2 years ago that we would not defend the law,
3 to allow farmworkers to collectively bargain
4 without fear of retaliation.

5 So I know there's a variety of
6 proposals that are circulating this year.
7 Our position is that we certainly support
8 farmworkers and want to make sure that they
9 have the protections they should have,
10 because unfortunately they are treated
11 differently than other workers.

12 SENATOR RAMOS: Thank you.

13 In Oakland, California, there is an
14 equity permit program that allows applicants
15 who make less than 80 percent of the median
16 income or have a previous marijuana
17 conviction or live in areas where marijuana
18 arrests used to be high, for them to actually
19 have some way to enter the licensing
20 mechanism.

21 Is there any similar or -- similar
22 programs as a point of entry for people?

23 GOVERNOR'S COUNSEL DAVID: Yes. The
24 Governor's proposal in fact adopts that exact

1 framework and allows people to participate in
2 the industry and in fact sets preferences to
3 incentivize people to participate and
4 requires us to evaluate those applications
5 applying that preference.

6 SENATOR RAMOS: Okay. They also have
7 an incubator program where applicants
8 regularly work with equity investors to boost
9 their chance of getting a license. And it
10 would essentially create a network between
11 former convicts and potential investors.

12 Is there any other way that we here in
13 New York are proposing to do away with
14 barriers for communities of color to access
15 these opportunities? And obviously accessing
16 the capital being a major issue for MWBEs in
17 general. But how is the state planning to
18 address that?

19 GOVERNOR'S COUNSEL DAVID: So the
20 Governor's proposal in fact does allow for
21 and incentivizes incubation programs and
22 access to capital programs. So everything
23 that you've just cited is in fact reflected
24 in the Governor's proposal.

1 One of our main objectives here is to
2 ensure that the social justice and economic
3 justice concerns are addressed. Which is
4 why, again, we rejected the vertical
5 integration construct. We would create a
6 framework for access to capital as well as
7 incubators.

8 SENATOR RAMOS: Okay. In communities
9 of color as diverse as mine, as my district,
10 law enforcement often uses the odor of
11 marijuana as a pretext to stop and search.
12 Would you be redefining just cause? And how
13 would that affect the way our state troopers
14 interact with primarily people of color?

15 GOVERNOR'S COUNSEL DAVID: The
16 legislation does not redefine just cause.
17 Instead, what we've done is -- and just a
18 little bit of background. As I'm sure most
19 people know, in 1977 we legalized possession
20 of small amounts of marijuana. So
21 effectively what we'd be doing here is
22 further refining the statute to allow
23 recreational use of cannabis for people over
24 the age of 21.

1 We're not technically redefining just
2 cause, because that gets fairly complicated
3 in terms of looking at jurisprudence over the
4 past several decades. But what we've done is
5 to allow for this current conduct, which is
6 illegal, to legalize it, which would make it
7 very difficult for, say, law enforcement to
8 enforce against someone who has a specific
9 amount and is purchasing it from a regulated
10 entity.

11 SENATOR RAMOS: Okay. Thank you.

12 CHAIRWOMAN KRUEGER: Thank you.

13 Assembly.

14 CHAIRWOMAN WEINSTEIN: Assemblyman
15 Crouch.

16 ASSEMBLYMAN CROUCH: Good afternoon.

17 The Governor's proposal says that
18 cannabis cultivation must not be visible from
19 a public place. I would assume that would be
20 a road, most likely.

21 GOVERNOR'S COUNSEL DAVID: I'm sorry,
22 sir, I couldn't hear you.

23 ASSEMBLYMAN CROUCH: It says that
24 cannabis cultivation cannot be visible from a

1 public place without unaided vision or
2 anything like that. Would a road qualify as
3 a public place? Would the farmer have to
4 build a fence along the road, an 8-foot-high
5 fence or whatever? What's going to be the
6 regulation on that?

7 GOVERNOR'S COUNSEL DAVID: Well, we're
8 going to have to spend some time drafting the
9 regulation to make sure that we are taking
10 into account considerations for urban areas
11 and rural areas.

12 I think what we're getting at
13 specifically there is looking at sites where
14 individuals can potentially partake in
15 cannabis, possession and/or use. You could
16 imagine individuals that are living in public
17 housing, which are federally regulated, and
18 they wouldn't be allowed to consume in their
19 apartments. So we would have to create safe
20 spaces for them to partake. And that's
21 essentially what we're getting at.

22 ASSEMBLYMAN CROUCH: Well, again,
23 going back to just the cultivators, they may
24 have to build a greenhouse -- or even if they

1 have to put up a fence, is there financial
2 assistance? Because we are talking about
3 disadvantaged farmers.

4 GOVERNOR'S COUNSEL DAVID: Yes. Yes.
5 So similar to what we did with the medical
6 program and with the hemp program, we allow
7 for financial assistance -- loans, grants --
8 to provide assistance to those that are
9 participating in the program and are in need
10 of support.

11 ASSEMBLYMAN CROUCH: Okay. The
12 proposal requires all licensees with 25 or
13 more employees to enter into a collective
14 bargaining agreement. Is it legal that you
15 require a collective bargaining agreement to
16 a business, they would have to unionize?

17 GOVERNOR'S COUNSEL DAVID: Yes. So
18 other states have actually implemented this
19 construct as well, where there's a labor
20 piece agreement that would be required for
21 employers with a certain amount of employees.
22 Here, it would be 25 or more.

23 And that's certainly legal and has
24 been defended in many states.

1 ASSEMBLYMAN CROUCH: What constitutes
2 that 25 or more? Is that 25 full-time
3 employees? Or if he has 10 full-time
4 employees and 15 part-time employees, does
5 that still get them over the threshold where
6 they'd have to have an agreement?

7 GOVERNOR'S COUNSEL DAVID: Yes. At
8 this point we're looking both at full-time
9 and part-time employees.

10 ASSEMBLYMAN CROUCH: Okay. How about
11 guest workers? If you had 25 or 30 guest
12 workers, you would have to have a collective
13 bargaining agreement with them, even if
14 they're there for 90 days?

15 GOVERNOR'S COUNSEL DAVID: At this
16 point how we're defining employees are based
17 on the Department of Labor's regulations. So
18 yes.

19 But of course in our proposal and
20 through regulations, we will allow for
21 appropriate waivers. So if an employer
22 thought that there was extenuating
23 circumstances that would make it so that the
24 state would provide them a waiver, we would

1 consider that.

2 But at this point, yes, we're looking
3 at 25 as the cap.

4 ASSEMBLYMAN CROUCH: Okay. Is there
5 any appropriations in the Executive Budget
6 that would assist state and local law
7 enforcement with -- if they have to increase
8 their number for field sobriety experts?

9 GOVERNOR'S COUNSEL DAVID: We are
10 going to be providing technical assistance
11 and training to local law enforcement
12 officers.

13 But also remember that the localities
14 are going to be receiving a portion of the
15 revenues. The legislation does not dictate
16 how those revenues can be used. We
17 anticipate that municipalities may use it for
18 a variety of reasons. But we are going to be
19 providing technical assistance and support to
20 localities.

21 ASSEMBLYMAN CROUCH: Okay, I had one
22 more here. Just a minute.

23 In deciding -- the executive director
24 of the new office, OCM, would they have to --

1 would he have to consult with the Department
2 of Health to determine if there's a condition
3 in which a person can be given a medical
4 cannabis prescription or new use of medical
5 cannabis?

6 GOVERNOR'S COUNSEL DAVID: Yes. So
7 the legislation anticipates that the
8 executive order would be required to engage
9 with the relevant state agencies that have
10 been monitoring and overseeing both the hemp
11 and the medical program.

12 ASSEMBLYMAN CROUCH: How about what
13 impact are you anticipating the legalization
14 would have on municipalities from a safety
15 and enforcement perspective? And have you
16 determined if the 2 percent cap would come
17 into play here with these costs?

18 GOVERNOR'S COUNSEL DAVID: Well, what
19 we've done is studied other states and looked
20 at the percentages that are allocated to
21 localities. And 2 percent is consistent with
22 what many other states have done.

23 In terms of public safety, we believe
24 that the recreational -- legalizing

1 recreational use actually promotes public
2 safety, because it directly address the
3 illicit market.

4 ASSEMBLYMAN CROUCH: Okay. Thanks,
5 Mr. David. Thank you very much.

6 CHAIRWOMAN WEINSTEIN: Thank you.
7 Senate?

8 CHAIRWOMAN KRUEGER: Thank you.
9 Senator Metzger.

10 SENATOR METZGER: Thank you, Senator
11 Krueger.

12 I'm putting on my Agriculture
13 Committee chair hat for a moment. And I'd
14 like you to please just walk through the
15 steps you're taking to make sure that our
16 small farmers in New York will be able to
17 benefit from the opportunities of these new
18 markets, both for adult-use marijuana and for
19 hemp. They face -- there are different
20 issues involved for these two different
21 commodities.

22 And just on the vertical integration
23 piece, I'm glad to see that you're taking
24 steps to prohibit that. But I just want to

1 clarify. It's just -- somebody who has a
2 license to cultivate could still have -- they
3 could have multiple licenses as long as it's
4 not a license to dispense; is that correct?
5 So you can still -- you still have a lot of
6 vertical integration, just not --

7 GOVERNOR'S COUNSEL DAVID: Well, yes
8 and no. I mean, that's a very good question.
9 And we'll answer that and then get to the
10 farming question.

11 The question Axel was referencing had
12 to do with microbusinesses, which is a very
13 small subset of licenses. But when we're
14 talking about not permitting vertical
15 integration, we're not going to permit
16 someone to manufacture, distribute and sell.
17 That it would be very different than those
18 very small subset of micro-licenses.

19 SENATOR METZGER: Okay.

20 GOVERNOR'S COUNSEL DAVID: And on the
21 agriculture issue, yes, we have crafted a
22 program that would provide support both to
23 rural communities and urban communities that
24 are interested in participating in the

1 program.

2 And I'll ask Jen McCormick to talk a
3 little bit more about what we've done in that
4 space.

5 DEPUTY COMMISSIONER MCCORMICK: Is
6 this on? Okay.

7 What's one of the really interesting
8 things about the Cannabis Act is that the
9 social equity aspects of it apply throughout
10 the entire system, from growing through the
11 retailers. And there's a section in the law,
12 which I have bookmarked. Section 84 is
13 giving preference to farmers from
14 disadvantaged areas who are suffering from
15 commodity price reductions in the past years.

16 So what we're seeing is that the small
17 farmers are the ones who have the leg up in
18 the system. As we've talked through licenses
19 or going through -- they do have a
20 preference.

21 SENATOR METZGER: We're talking about
22 like dairy farmers?

23 DEPUTY COMMISSIONER MCCORMICK: I'm
24 sorry?

1 equity construct throughout the entire
2 program. So rural communities, urban
3 communities, disadvantaged communities.
4 That's why we rejected the vertical
5 integration construct. Because if we did
6 not, we would have only large companies
7 participating in this industry.

8 So -- and of course as I'm sure you
9 can appreciate, many of the farms would have
10 the resources to grow the product in a way
11 that you may not be able to grow in, say,
12 New York City. So they are appropriately
13 advantaged in participating in the program as
14 it relates to manufacturing. Maybe not so
15 much as distribution, where most of the
16 population may be in New York City.

17 So we've looked at that and opened up
18 this -- the framework to allow social equity
19 principles to be infused in almost all of the
20 pieces in this legislation.

21 Anything else?

22 ASST. COUNSEL BERNABE: Yeah, just to
23 add -- I'm sorry, you asked about
24 representation.

1 SENATOR METZGER: Yes.

2 ASST. COUNSEL BERNABE: In the
3 industrial hemp program there is
4 representation by farmers on the Industrial
5 Hemp Committee. The advisory board at the
6 level of the Office of Cannabis Management
7 would contemplate industry participants,
8 which would include farmers, which would
9 participate there.

10 The industrial hemp program was
11 designed to focus on the Southern Tier,
12 provided \$10 million worth of funding which
13 was aimed primarily at the agricultural
14 community level.

15 But just to your point and to
16 Alphonso's point related to the grow
17 opportunities, the grows will most likely be
18 in agricultural areas. They will be
19 greenhouses of a certain size -- 20, 25,000
20 square feet, which are really designed to
21 allow farmers that may need to diversify
22 their production to participate in the
23 program.

24 And as was also pointed out in the

1 testimony, the incubators and the grants
2 programs are across the state. So there are
3 going to be incubators in rural areas that
4 are going to allow farmers to participate,
5 learn about the industry, and apply for
6 licenses.

7 SENATOR METZGER: That's great. Okay,
8 thank you.

9 CHAIRWOMAN KRUEGER: Thank you.
10 Assembly.

11 CHAIRWOMAN WEINSTEIN: Assemblywoman
12 Fernandez.

13 ASSEMBLYWOMAN FERNANDEZ: Good
14 afternoon. Following up with Senator Savino
15 and Assemblyman Epstein's question regarding
16 micro-licenses, what -- or how easily
17 accessible is it to obtain a micro-license?

18 GOVERNOR'S COUNSEL DAVID: Axel, you
19 want to take that?

20 ASST. COUNSEL BERNABE: Yeah, sure.

21 As was mentioned, the licensing
22 structure is going to be developed primarily
23 through regulations. So the exact number of
24 licenses is something that has to be studied,

1 depending on the speed with which the legal
2 market comes up.

3 But the thinking behind micro-licenses
4 in other states is that those would be the
5 most available types of licenses, the most
6 numerous, just because they're smaller and
7 that's what they're designed to do. But I
8 don't know that anybody's put a specific
9 number on that. I don't believe any state
10 that has legalized cannabis has identified
11 specific numbers of dispensaries or growers
12 in statute.

13 ASSEMBLYWOMAN FERNANDEZ: Are there
14 any harsh restrictions to getting a license?

15 ASST. COUNSEL BERNABE: I don't
16 believe there are any harsh restrictions on
17 any license type.

18 ASSEMBLYWOMAN FERNANDEZ: Just
19 checking.

20 And then a quick question about your
21 traffic law amendments. For alcohol we have
22 Breathalyzers to see who's driving under the
23 influence. What do we have to see who's
24 driving under the influence of cannabis?

1 GOVERNOR'S COUNSEL DAVID: Well, the
2 data that we've looked at in other states
3 shows that the Breathalyzer test in fact --
4 and other mechanisms that we can use -- can
5 assist us in identifying whether or not
6 people are under the influence of cannabis.

7 We've studied this throughout, and
8 we've seen that the mechanisms that are
9 currently in place can indeed help us.

10 And Jason can talk for a little bit
11 about what we've done on that front.

12 ASST. COUNSEL STARR: Sure. I mean,
13 we already have impairment detection outside
14 of a Breathalyzer, because we need to be able
15 to determine -- law enforcement needs to be
16 able to determine who's impaired and have a
17 mechanism that provides evidentiary standards
18 that can pass in court.

19 And so we're not changing that
20 construct. Every police officer goes through
21 training and gets field sobriety test
22 training at the academy level. And then
23 there is a next-level training, advanced
24 roadside impairment detection. And then

1 ultimately some officers go through highly
2 specialized drug recognition expert training.

3 And so that framework exists right
4 now. It's utilized to get DUI convictions
5 where no breathalyzer is available or where
6 there is some impairment or intoxication by
7 drugs other than alcohol. So we don't -- we
8 have a structure to do that.

9 What we do in our bill is based on
10 data that we do have. And in reporting, when
11 you drive after you consume alcohol combined
12 with some other drug, then that generally
13 significantly increases the risk of crashes
14 and fatalities as a result of crashes. So we
15 do make some changes to the Vehicle and
16 Traffic Law to stiffen penalties related to
17 driving while ability-impaired by a
18 combination of drugs and alcohol. They did
19 this in Canada as well. We think that's the
20 right way to go to significantly deter that
21 conduct. But we also have all of the other
22 DWI offenses that exist in law right now, and
23 all of the mechanisms that law enforcement
24 uses to collect evidence to effectuate those

1 prosecutions.

2 ASSEMBLYWOMAN FERNANDEZ: Okay. Thank
3 you.

4 CHAIRWOMAN WEINSTEIN: Senate.

5 CHAIRWOMAN KRUEGER: Thank you.

6 Senator Bob Antonacci.

7 (Comments off the record.)

8 SENATOR ANTONACCI: Thank you.

9 This question might be first for the
10 doctor. Are there any benefits or any reason
11 to take a toke of a joint other than to get
12 stoned?

13 And let me give you my example. I can
14 have a glass of wine with my macaroni and not
15 get a buzz. I can have a beer with my slice
16 of pizza. But I actually had someone tell me
17 that you could smoke marijuana, cannabis,
18 without getting high, and there's some
19 benefits to it. Are there?

20 DR. CUNNINGHAM: So I think that --
21 that's a good question. Sort of taking a
22 step back. So cannabis is not one thing.
23 Right? And so the two main components that
24 we talk about are THC and CBD. So THC is

1 psychoactive, but CBD is not.

2 So part of the issue here is knowing
3 what you're taking. And right now in the
4 illegal market, nobody knows what they're
5 getting or taking.

6 But knowing that, then you can titrate
7 how much THC or how CBD you want, and then
8 the effects, you know --

9 SENATOR ANTONACCI: So will the
10 agricultural market be specifically told what
11 they can grow and what kind of quantities?

12 GOVERNOR'S COUNSEL DAVID: Yes. Short
13 answer, we will create a construct to do
14 that.

15 DR. CUNNINGHAM: And so, I mean, I
16 think -- so this is -- as a physician it's
17 very difficult to counsel people specifically
18 about what they should and shouldn't be doing
19 when they don't know what they're taking,
20 right, and we don't know what they're taking.
21 But this definitely gives us the opportunity
22 to test and to label what exactly is in the
23 product.

24 SENATOR ANTONACCI: Yeah, but -- so

1 real quick, because I want to get to a couple
2 of other questions, is there a reason to
3 smoke marijuana other than to get stoned?
4 And not medical.

5 DR. CUNNINGHAM: Yes. So there are
6 other effects. So it's been well-studied
7 that pain relief improves with cannabis. And
8 then, anecdotally, anxiety and insomnia as
9 well.

10 SENATOR ANTONACCI: Okay, thank you.

11 Counsel, earlier in your testimony --
12 and I don't want to trip up over anything
13 here, but you said 2 percent of revenue, and
14 then you said after expenses. Is it going to
15 be 2 percent of the gross, or will there be a
16 state carve-out of some expenses or
17 administrative fees and then the
18 municipalities will share in 2 percent?

19 GOVERNOR'S COUNSEL DAVID: Two percent
20 gross.

21 SENATOR ANTONACCI: Two percent gross,
22 okay, good.

23 And that's -- and the only gross will
24 be sales tax? Or will there be other fees

1 that will be -- you know, other taxes
2 collected, or will it only be sales tax?

3 GOVERNOR'S COUNSEL DAVID: Sales tax.

4 SENATOR ANTONACCI: Only sales tax,
5 okay.

6 And I understand your motto, and I
7 think if there was a way to do it, I think
8 you guys are on the right track. So a small
9 business owner decides, instead of selling,
10 you know, sandwiches at a deli, redoes his
11 business model and wants to sell, you know,
12 legalized marijuana. He files with this
13 department and gets a sales tax
14 identification number and can begin selling
15 marijuana?

16 GOVERNOR'S COUNSEL DAVID: They would
17 go through a regulatory process. File an
18 application, it would be reviewed, we would
19 cross-check to make sure there's no concerns.
20 Receive the application, make sure they have
21 the appropriate capital and the expertise,
22 then yes.

23 SENATOR ANTONACCI: Okay, good. Good.
24 Because I'm obviously concerned about the

1 medical marijuana. In my town of Syracuse,
2 we had a large profile flip of a medical
3 marijuana license. Millions were made. And
4 I think the grading process was less than
5 transparent. I would urge the Governor to
6 talk to the Health Department and make
7 available -- I know there's been numerous
8 FOIL requests of that grading process. But
9 it seems that this process and the
10 commercial -- or recreational, is taking away
11 some of that problem. That you really, if
12 you want to be in business and you're willing
13 to make that commitment like any other
14 business owner, you can sell recreational
15 marijuana. That's right?

16 GOVERNOR'S COUNSEL DAVID: Correct.

17 SENATOR ANTONACCI: Okay. Is this
18 going to hurt the medical marijuana program
19 that's already in existence? If I have a
20 license -- its' kind of like the taxicab
21 drivers with Uber. Am I going to get hurt by
22 owning a medical marijuana license?

23 GOVERNOR'S COUNSEL DAVID: Actually, I
24 think it's going to have the opposite effect.

1 I think it's actually going to benefit the
2 registered organizations that are
3 participating in the medical market.

4 SENATOR ANTONACCI: Okay, good.

5 And then my last question, I
6 understand there's a lot of talk about
7 farmworkers' rights. I happen to be from an
8 agricultural area. Is there a uniqueness to
9 growing marijuana that -- you know, one of
10 the problems that the farmers come back with
11 is the uniqueness of their business and the
12 fact that crops have to be -- you can't take
13 a weekend off if you've got to -- you know,
14 you've got to make hay when the sun shines.

15 Is there a uniqueness to a marijuana
16 plant that it has to be harvested at a
17 certain point? Or can you, you know, come
18 back on Monday morning?

19 DEPUTY COMMISSIONER McCORMICK: That
20 will come to me. Is this on?

21 The cannabis plant is difficult to
22 grow. It's picky. And the industrial hemp
23 side of the cannabis, so the cannabis plant
24 that's grown not for the THC content, is

1 grown often for its fibrous content. And so
2 the fiber gets wrapped up in the -- as you're
3 harvesting. It's difficult.

4 And the other thing that we found in
5 the industrial hemp program -- we've got
6 about 3500 acres of growth registered in
7 2018, in the past summer -- is that as the
8 plant matures, its chemical composition
9 changes and the THC levels may increase.
10 Which is why our industrial hemp growers will
11 often themselves test throughout the season.
12 And if they find that we're edging toward
13 that .3 percent THC level, at which point
14 it's no longer compliant, it's no longer
15 industrial hemp and we will come in and
16 destroy the plant, then they'll harvest
17 early.

18 SENATOR ANTONACCI: So the answer is
19 there could be some anomalies where a plant
20 has to be harvested and we do need some extra
21 hours on the farm to get the product off the
22 land.

23 DEPUTY COMMISSIONER McCORMICK: I --
24 sure, yeah. That could be.

1 SENATOR ANTONACCI: All right. Thank
2 you. Thank you very much, all of you.

3 CHAIRWOMAN KRUEGER: Thank you.
4 Assembly.

5 CHAIRWOMAN WEINSTEIN: So I am going
6 to ask a few questions before we get to some
7 other members.

8 I know you spoke a little bit about
9 the tax structure, but can you just expand
10 upon how you arrived at the tax structure, in
11 particular the rates in the proposed bill and
12 how it compares to other states?

13 GOVERNOR'S COUNSEL DAVID: Sure. So
14 we looked at a number of different factors in
15 informing the potential revenue projections
16 for the first year. We anticipate a \$35
17 million investment in creating the new
18 agency, hiring the appropriate FTEs, hiring
19 the investigators, going through the
20 appropriate training, not only for the state
21 but also the municipalities.

22 And we projected, based on how many
23 people we think could participate in the
24 program, both in New York City and the rest

1 of the state, that it would be roughly
2 \$300 million. That number could of course
3 change, depending on the participation. But
4 it was really based on an actuarial analysis
5 to determine how we could get there.

6 And we wanted to be conservative,
7 because one of the concerns we have here is
8 we don't want to project that the revenues
9 will be more than we think they will be and
10 then rely on a number that's inflated. So it
11 was a conservative number, but we think that
12 we can certainly appreciate \$300 million in
13 the first year. And that could change, of
14 course, over time.

15 CHAIRWOMAN WEINSTEIN: In the first
16 year, or in the outyear?

17 GOVERNOR'S COUNSEL DAVID: In the
18 outyear.

19 CHAIRWOMAN WEINSTEIN: In the outyear.

20 GOVERNOR'S COUNSEL DAVID: In the
21 outyear, sorry.

22 CHAIRWOMAN WEINSTEIN: Okay. Right,
23 that's what I thought.

24 And do you think that the -- I mean,

1 obviously you're also considering price when
2 you get to that.

3 GOVERNOR'S COUNSEL DAVID: Yes.

4 CHAIRWOMAN WEINSTEIN: So do you think
5 that adult-use cannabis would be
6 price-competitive with the existing illegal
7 market?

8 GOVERNOR'S COUNSEL DAVID: It has to
9 be.

10 (Laughter.)

11 GOVERNOR'S COUNSEL DAVID: It has to
12 be to be successful. And we've studied other
13 states, and we looked not only at their tax
14 rates but we also looked at the capacity,
15 meaning how much can be sold and at what
16 price. And some states are doing better than
17 others, based on all of these factors and how
18 well they're able to predict success.

19 So based on all of the analyses that
20 we've done, we think we came up with the
21 right construct. It's not a clean answer,
22 because you have to look at so many different
23 factors to get to these numbers.

24 CHAIRWOMAN WEINSTEIN: And the -- sort

1 of the -- when you get to that 300 million
2 number, you're talking about a five-year
3 phase-in before we're fully -- it's a fully
4 mature program. Is there anything else that
5 we could be doing during that time to advance
6 it, or do you think that we need the full
7 five years to get to a -- sort of the end of
8 the program being fully functional?

9 GOVERNOR'S COUNSEL DAVID: Yeah, I
10 mean our conclusions are driven by two
11 factors. One is our experience with the
12 medical cannabis program, just understanding
13 how it's matured and the different factors
14 that influenced the numbers, and then looking
15 at other states. Our terrain is very
16 different from California from Colorado.

17 But there's certain factors and
18 certain principles that I think are common,
19 and we've used that. And we think the five
20 years is reasonable. It could change. But I
21 think we wanted to be conservative so that we
22 could rely on these numbers in formulating
23 policy.

24 CHAIRWOMAN WEINSTEIN: And I know

1 you've addressed some of the funding issues,
2 but -- in terms of going into that, the
3 New York State cannabis revenue fund. But
4 the legislation doesn't really outline how
5 the funds would be spent. Is there a plan
6 for distribution of revenue when we get to
7 that -- actually, in the beginning years and
8 when we get to that fully five-year phase-in?
9 Are we looking at supporting new programmatic
10 spending to offset gaps? I know we've talked
11 about social and economic equity funding
12 programming. But just how do you see that
13 split of that 300 million revenue being
14 distributed?

15 GOVERNOR'S COUNSEL DAVID: I think the
16 distribution will be informed by our
17 experience in the first -- in the outyear as
18 well as the first full year. And the
19 legislation does identify key categories of
20 investment, such as community investment,
21 making sure public education -- we also
22 wanted to make sure we provided public health
23 support.

24 And the money will go to those general

1 categories, but I think it's premature for us
2 to provide a level of granularity with
3 respect to percentages. That may be
4 counterintuitive at this point, because we
5 have to be careful that we're not predicting
6 where these monies should go before we
7 actually appreciate the market, the market
8 both in scope as well as in application.

9 CHAIRWOMAN WEINSTEIN: So I would
10 assume, then, in future budgets we'd see more
11 of a -- assuming this were to be enacted,
12 we'd see more of a breakdown of how funding
13 would be spent?

14 GOVERNOR'S COUNSEL DAVID: Absolutely.
15 Absolutely.

16 CHAIRWOMAN WEINSTEIN: And I know you
17 addressed the question of the -- sort of the
18 cash nature of this business. And I know
19 Senator Savino talked about some of the
20 federal -- the existing federal impediment.
21 But I was just wondering, is there any other
22 federal impediments beyond the banking and
23 what's happening, what may happen, that could
24 impact our implementing an adult-use cannabis

1 program here in New York?

2 GOVERNOR'S COUNSEL DAVID: I think
3 there are two things. One, of course, is it
4 is still listed as a controlled substance
5 under the federal law. They determine their
6 policy and how and whether to enforce. So
7 that certainly has informed our thinking.

8 And I think the banking issue is
9 something that we have to address. Because
10 many of these companies and individuals that
11 are participating in the industries across
12 the country have to come up with a
13 sustainable construct to operate in. And if
14 they don't have a cooperative, a financial
15 cooperative that provides sufficient support,
16 it becomes difficult.

17 In the medical program you have large
18 companies that have sufficient investments
19 and are able to sustain themselves over time.
20 But I think for a smaller corporation or a
21 smaller company or individual operating on
22 their own, we need to make sure that they
23 have the capital and they have the
24 infrastructure to operate. And I think those

1 would be the two things.

2 CHAIRWOMAN WEINSTEIN: Great. Thank
3 you.

4 To the Senate now.

5 CHAIRWOMAN KRUEGER: Thank you. So
6 since we're on second round in the Senate,
7 I'd like to give the Assembly the opportunity
8 to finish their first round.

9 CHAIRWOMAN WEINSTEIN: So we're going
10 to go to Assemblywoman Dickens first.

11 ASSEMBLYWOMAN DICKENS: Thank you,
12 Madam Chair.

13 And good afternoon and thank you for
14 being here for your testimony. Good seeing
15 you, Mr. David.

16 I met -- about two weeks ago, I met
17 with a couple of entities that in New Jersey
18 were able to get the licensing for
19 distribution. They told myself as well as
20 others that were in attendance at this
21 meeting that the cost is approximately --
22 between what you have to -- for fees,
23 et cetera, what you have to put -- have
24 equity showing is about 20 million. Is that

1 about correct? And is that what it's going
2 to be here in New York?

3 GOVERNOR'S COUNSEL DAVID: Twenty
4 million?

5 ASSEMBLYWOMAN DICKENS: That's what
6 they indicated to all of us. And these were
7 minorities --

8 GOVERNOR'S COUNSEL DAVID: No.

9 ASSEMBLYWOMAN DICKENS: -- that had to
10 go into partnership with others.

11 GOVERNOR'S COUNSEL DAVID: No. No.
12 That's not even close to I think what we
13 would anticipate the investments being.

14 And of course it depends on what type
15 of business -- manufacturing, distribution,
16 or sales. You could pick a sales construct
17 where the pricing could be very different
18 than a manufacturing construct.

19 But we're not seeing those numbers
20 anywhere close to what we anticipate being
21 the costs of operating here in the state.

22 ASSEMBLYWOMAN DICKENS: Now, the MWBEs
23 that are obviously in disadvantaged areas
24 that have been predetermined federally,

1 because they operate in disadvantaged areas
2 that have been adversely impacted by the drug
3 war, in California there is a mechanism that
4 allows MBEs to be subsidized in order to have
5 sales in that community. Is something set up
6 like this, or going to be set up like this?

7 GOVERNOR'S COUNSEL DAVID: A similar
8 construct that we're approaching here in the
9 state in our proposal, which is to provide
10 access to capital for minority and
11 women-owned businesses, as well as businesses
12 coming out of disproportionately impacted
13 communities.

14 So yes, there will be access to
15 capital, loans, grants, financial assistance,
16 technical support for those companies to
17 succeed. Because otherwise the construct
18 we've adopted, which is to reject the
19 vertical integration framework, wouldn't
20 work, because these companies wouldn't be
21 able to succeed without that support.

22 ASSEMBLYWOMAN DICKENS: All right.
23 Now, industrial hemp, I understand that --
24 and I'm not sure, because I'd asked yesterday

1 and the commissioner was unable to really
2 give me a formula on the taxation. But on
3 industrial hemp, I understand that other than
4 in clothing, et cetera, that there is now use
5 of putting it in the manufacture of bricks.
6 Is that so?

7 DEPUTY COMMISSIONER McCORMICK: I have
8 not heard bricks. I have heard building
9 materials. There's a researcher I think in
10 Clarkson who's working on using industrial
11 hemp for car batteries. There are
12 extraordinary uses for industrial hemp, back
13 to that fibrous content. So building
14 materials, yes. Bricks, absolutely. I'm not
15 surprised at all.

16 ASSEMBLYWOMAN DICKENS: All right.
17 Because I understand from a business entity,
18 though, in Canada, just across the border
19 from New York, that they are working with
20 putting industrial hemp in bricks and that it
21 helps in the resiliency and not so porous.

22 So I wanted to know if that was
23 something that the State of New York would
24 entertain, and if so, how would that be --

1 would that be a similar regulation and setup?

2 DEPUTY COMMISSIONER MCCORMICK:

3 Nothing would prohibit anybody right now,
4 today, from taking industrial hemp,
5 researching how to do it, putting it into
6 bricks and selling it. Because the
7 industrial hemp is not controlled the same
8 way the cannabis is that we're talking about,
9 it's like using wheat. It's like using
10 trees. They can build and manufacture and
11 create with it right now.

12 And we're seeing extraordinary
13 innovation among our industrial hemp research
14 partners that we do have over the past couple
15 of years.

16 ASSEMBLYWOMAN DICKENS: All right.
17 Thank you so much.

18 CHAIRWOMAN WEINSTEIN: And we're going
19 to go to Assemblywoman Griffin.

20 ASSEMBLYWOMAN GRIFFIN: Thank you.
21 Good afternoon. Just a couple of questions;
22 I don't know how many I'll get to ask. With
23 the -- I just don't see which category is
24 roadway safety, training lab testing. Where

1 is that in the -- I know -- I wasn't here
2 earlier, so you may have mentioned it.

3 GOVERNOR'S COUNSEL DAVID: Are you
4 asking about the specific legislation, where
5 it's listed?

6 ASSEMBLYWOMAN GRIFFIN: I just want to
7 know if that's a -- real big costs are
8 associated with police force, lab testing,
9 training. And I just don't know where that
10 is or how that's been accounted for.

11 GOVERNOR'S COUNSEL DAVID: So in the
12 legislation itself it talks about revenues,
13 and the revenues will be invested in a
14 variety of spaces. It's listed there; I
15 believe public safety is one of the
16 categories. It does not provide excruciating
17 detail.

18 Separately, the municipalities that
19 participate in the program receive 2 percent
20 of the revenues that they can invest any way
21 they deem appropriate.

22 ASSEMBLYWOMAN GRIFFIN: Okay. And I
23 recently was in a roundtable which included
24 law enforcement, other elected officials, and

1 included people from states where cannabis
2 has been legalized. And one really important
3 factor that they mentioned is their
4 anticipated revenues that they were going to
5 receive was much lower than they thought
6 because of these rising costs of educational
7 awareness, of health programs, of lab
8 testing, of police.

9 So it kind of makes me concerned
10 over -- we're anticipating all this revenue,
11 but then -- and I know you said you were
12 conservative with your projections, but I
13 wonder how conservative you're being.
14 Because they still -- Colorado five years
15 later still is being challenging, they said
16 this is challenging to them.

17 GOVERNOR'S COUNSEL DAVID: Well, our
18 program is very different than the Colorado
19 program, and that's one of the benefits of
20 advancing a program after other states have
21 advanced theirs. And we've learned from
22 their mistakes.

23 But I think with respect to the
24 investments, again, it's important to

1 appreciate the state itself -- not the
2 localities, but the state itself will be
3 engaging in the public education programs,
4 the police training statewide. So those
5 costs that the localities may be anticipating
6 will be supplemented by the state.

7 Now, to the extent those localities
8 want to use the 2 percent revenue for those
9 purposes, they certainly could. But the
10 state expects to provide that support
11 statewide.

12 ASSEMBLYWOMAN GRIFFIN: Okay. Now,
13 with data gathering, included in that is
14 there a plan to include statistics on is
15 there an increase in people driving under the
16 influence of marijuana and has that led to
17 more accidents and deaths?

18 GOVERNOR'S COUNSEL DAVID: The short
19 answer is yes.

20 ASSEMBLYWOMAN GRIFFIN: Okay. Because
21 a couple of states didn't think of that, and
22 then some did. And I think that's a real big
23 issue.

24 CHAIRWOMAN WEINSTEIN: Assemblywoman,

1 can you just check if your microphone is
2 working correctly?

3 ASSEMBLYWOMAN GRIFFIN: Yes, I think.
4 Can you hear me? Yeah. Yes. I believe it's
5 working.

6 So that is a big issue and a concern
7 of myself and many others, because I feel
8 like the -- especially the population 21 to
9 30, they are really well-versed on not
10 drinking and driving. They learned that
11 since they've been very young. But when
12 asked informally, a lot of those -- a lot of
13 people from that group, they don't really
14 realize what the impact of being under the
15 influence of marijuana is. They don't know
16 that as well.

17 GOVERNOR'S COUNSEL DAVID: We agree.
18 Which is why we think it's so important to
19 have a comprehensive public health education
20 program statewide to educate the young
21 people, not only about the risk but also
22 about the prohibition. Because if you're
23 only educating about the risk and not the
24 prohibition, you still have support of the

1 illicit market. So our intention is to
2 address both.

3 ASSEMBLYWOMAN GRIFFIN: Right, okay.
4 And then one more question. I know that
5 towns can opt out of this if they choose to,
6 but they have to be obviously 100,000. So
7 what do you say to municipalities that are
8 lower than 100,000? What options do they
9 have, if any?

10 GOVERNOR'S COUNSEL DAVID: So that's
11 an issue that has been raised by several
12 members of the Legislature, and we're looking
13 at that.

14 We initially proposed a construct
15 where the counties could opt out, or large
16 cities. There are now discussions about do
17 you want to alter that to include potentially
18 towns. You could do that, but you would want
19 to potentially change the framework.

20 In many other states they would allow
21 for a two-thirds vote by the public if you're
22 opting out at that level. And you would need
23 to do that in order to manage, I think, the
24 expectations with respect to revenues.

1 ASSEMBLYWOMAN GRIFFIN: Okay. And if
2 you do opt out, do you not receive any -- so
3 if a town opts out, do they not receive any
4 revenue then?

5 GOVERNOR'S COUNSEL DAVID: No revenue
6 is received by localities that opt out.

7 ASSEMBLYWOMAN GRIFFIN: Okay. Okay,
8 thank you.

9 CHAIRWOMAN WEINSTEIN: Senate, second
10 round?

11 CHAIRWOMAN KRUEGER: Well, actually we
12 have a new first round. Gustavo Rivera.

13 SENATOR RIVERA: How you doing, folks.
14 I just wanted to -- there was a couple of
15 things I wanted to ask about that have not
16 been asked about, so I'll get right to it. I
17 only have five minutes.

18 First of all, could you tell us the
19 position of the administration on the issue
20 of expungement?

21 GOVERNOR'S COUNSEL DAVID: So we are
22 sealing records automatically. We have to
23 address expungement potentially
24 constitutionally. Some have argued you would

1 have to --

2 SENATOR RIVERA: That's my question.
3 Because since you talked about sealing of
4 records -- I'm not an attorney, nor do I play
5 one on TV, but there is a difference between
6 a sealing and expungement, is that correct?

7 GOVERNOR'S COUNSEL DAVID: Yeah,
8 there's a legal distinction. But as a
9 practical matter, we can, through
10 legislation, effectuate sealing. Some have
11 argued that if you are going to advance
12 expungement, you would have to advance a
13 constitutional amendment.

14 SENATOR RIVERA: And when you say some
15 have argued, you're saying that this is what
16 you believe as an administration, that that's
17 the case?

18 GOVERNOR'S COUNSEL DAVID: I don't
19 think that we've taken an official position.

20 SENATOR RIVERA: It seems you have, if
21 you've put this in the proposal --

22 GOVERNOR'S COUNSEL DAVID: We've taken
23 a position that sealing is actually something
24 we can do statutorily.

1 There are still questions about
2 whether or not you could advance an
3 expungement proposal legislatively. Rather
4 than debate that and expose this legislation
5 to a legal challenge, we advanced a proposal
6 based on sealing.

7 SENATOR RIVERA: All right. Second,
8 the issue of the organization -- the entity
9 that's going to be created, the governmental
10 entity to actually regulate it. You are
11 creating a czar, for lack of a better term?
12 Like just a single individual?

13 GOVERNOR'S COUNSEL DAVID: An
14 executive director?

15 SENATOR RIVERA: An executive
16 director? See, just --

17 GOVERNOR'S COUNSEL DAVID: Just say a
18 director.

19 SENATOR RIVERA: But this person,
20 however you choose to call him, her or they,
21 as opposed to a structure that has any sort
22 of potential appointments by the Legislature.
23 Is that correct? Would that executive
24 director be -- come to the Legislature to be

1 confirmed, or would they just be appointed?

2 GOVERNOR'S COUNSEL DAVID: Well, two
3 things. The proposal actually anticipates
4 that the executive is operating within the
5 construct of a board. And the Executive is
6 certainly open to having that executive
7 director be subject to Senate confirmation if
8 that's --

9 SENATOR RIVERA: Not currently in the
10 proposal, though.

11 GOVERNOR'S COUNSEL DAVID: It doesn't
12 reference Senate confirmation, I don't
13 believe, but we don't have any opposition to
14 making that person subject to Senate
15 confirmation.

16 SENATOR RIVERA: All right. As far as
17 the growing, so there is a distinction that
18 you made between growing in the medical
19 program and for personal use. Or for -- I'd
20 want to establish that distinction. So if a
21 person wants to grow -- like currently I am
22 sure there are people who are growing plants,
23 at this point illegally in their home, for
24 personal use, not for medical purposes but

1 just for whatever.

2 So the change in this proposal
3 would -- what would happen to that
4 individual? Would that still be an illegal
5 activity?

6 GOVERNOR'S COUNSEL DAVID: So outside
7 of the context of micro-licenses, which Axel
8 talked about, in the medical context we would
9 allow individuals to grow up to four, if they
10 need to for medical purposes only.

11 SENATOR RIVERA: Right.

12 GOVERNOR'S COUNSEL DAVID: We could,
13 moving forward, decide to change that
14 framework regulatorily, but we made the
15 decision not to do that through the statute.

16 SENATOR RIVERA: So you're not willing
17 at this point -- at least in the current
18 proposal you did not include in there growing
19 for personal use.

20 GOVERNOR'S COUNSEL DAVID: We did not,
21 for a number of different reasons. I think
22 we need to be careful about youth use, and we
23 also want to make sure we're not furthering
24 supporting the illicit market. Because you

1 can imagine, if you allow it for personal use
2 and it's completely unregulated, we are
3 essentially legalizing the illicit market.

4 SENATOR RIVERA: One more, related to
5 micro-licenses. So if I read the proposal
6 correctly, what it does is it creates-- it
7 allows the -- it clarifies the authority of
8 the executive director, or the board in this
9 case, to issue micro-licenses, but it does
10 not create the category of micro-licenses as
11 a given. Is that correct?

12 GOVERNOR'S COUNSEL DAVID: Axel, you
13 want to take that?

14 SENATOR RIVERA: You understand my
15 distinction?

16 ASST. COUNSEL BERNABE: That's a good
17 technical question. I'd have to look at the
18 language again. It contemplates the creation
19 of a micro-license. But you're --

20 SENATOR RIVERA: Would it be
21 possible -- and she's tapping the thing
22 because you've read every single page, which
23 is fine. I have not, so this is why I'm
24 asking.

1 So there is a creation of a series of
2 licenses, correct?

3 ASST. COUNSEL BERNABE: Yes.

4 SENATOR RIVERA: But among those
5 licenses is a micro-license explicitly
6 created as a category.

7 ASST. COUNSEL BERNABE: No. No. So
8 there are a limited -- yeah, that's right. I
9 mean, there are a limited number of licenses
10 that are permits, and then there's a
11 micro-license category.

12 SENATOR RIVERA: So -- but that --
13 there's not -- there's nothing that would
14 preclude you from including in a proposal the
15 express -- a micro-license from inception,
16 correct?

17 ASST. COUNSEL BERNABE: No.

18 SENATOR RIVERA: You've chosen not to
19 do that why?

20 GOVERNOR'S COUNSEL DAVID: Well, what
21 we tried to do is make sure we didn't have an
22 unlimited list of licenses. And we looked at
23 the ABC Law, we looked at other regulatory
24 schemes, and we wanted to cabin the number of

1 licenses that we actually put in statute.

2 Remember, this legislation is 197
3 pages. We could have --

4 SENATOR RIVERA: She's read every one,
5 too.

6 GOVERNOR'S COUNSEL DAVID: We could
7 have included a lot more text, but we thought
8 it was actually more judicious to include
9 some of the provisions through regulations as
10 opposed to putting everything in statute.

11 SENATOR RIVERA: Thank you.

12 CHAIRWOMAN KRUEGER: Assembly.

13 CHAIRWOMAN WEINSTEIN: We're going to
14 begin our second round, to Assemblywoman
15 Crystal Peoples-Stokes.

16 ASSEMBLYWOMAN PEOPLES-STOKES: Thanks.
17 I'll be a lot quicker this time.

18 Under the new State Office of Cannabis
19 Management, there must be some employees
20 coming from the Health Department, Ag &
21 Markets. Or if not, what will happen to
22 those employees that are in those departments
23 now?

24 GOVERNOR'S COUNSEL DAVID: Our goal is

1 to leverage the existing workforce, the
2 workforce that has the appropriate expertise,
3 and have them work within this new office.
4 We of course want to make sure that the
5 appropriate employment protections and
6 rights are advanced.

7 But the short answer is yes, we're
8 looking to leverage that existing expertise.

9 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
10 So next question, how much do you anticipate
11 it will cost the state to use the wholesale
12 collection agency, collecting taxes? I mean,
13 what do they charge you to do that? Or is it
14 a free service?

15 ASST. COUNSEL BERNABE: The taxes are
16 collected by the wholesaler itself. So it's
17 a private entity. And the Department of
18 Tax --

19 ASSEMBLYWOMAN PEOPLES-STOKES: I
20 realize that. So if it's a private entity,
21 they must be in the business of making a
22 profit. So how do they get a profit by
23 collecting these taxes for the State of
24 New York? Or do they?

1 ASST. COUNSEL BERNABE: I don't -- I
2 don't believe they do. Well, certainly
3 nothing in the statute would provide for any
4 kind of profit for distributors for
5 collecting that tax. It's an obligation that
6 they have under the Tax Law. And they would
7 have to remit the taxes they collect.

8 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
9 On the issue of parent protections, does your
10 bill speak to that at all?

11 GOVERNOR'S COUNSEL DAVID: Well, we
12 know that there have been some concerns about
13 cannabis being used as a tool --

14 ASSEMBLYWOMAN PEOPLES-STOKES: To take
15 people's children.

16 GOVERNOR'S COUNSEL DAVID: -- to
17 potentially interfere with parents and their
18 children and their relationships.

19 Under existing law, you could not
20 remove a child simply because the parent is
21 engaged in cannabis use. So we are looking
22 closely at that issue to determine whether or
23 not there are additional factors we should
24 include.

1 Children can of course be moved for
2 neglect or abuse or any other factor. But
3 the use of cannabis alone, in and of itself,
4 is not being used as a factor.

5 ASSEMBLYWOMAN PEOPLES-STOKES: Is
6 there a section in your proposal that speaks
7 directly to that?

8 GOVERNOR'S COUNSEL DAVID: No. We
9 didn't think we needed to. We certainly are
10 open, if necessary, to restate that. It is
11 existing law and practice.

12 ASSEMBLYWOMAN PEOPLES-STOKES: Okay,
13 thank you. I think we do need to think
14 through that.

15 On the existing hemp law, in the
16 county that I live in, Erie County, there are
17 a couple of hemp farmers. Are they going to
18 be eligible to apply for adult-use licenses,
19 growing?

20 DEPUTY COMMISSIONER McCORMICK: They
21 will be eligible to apply for adult use the
22 same way any other farmer would be.

23 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
24 If the legislation stays the way you've

1 proposed it, that counties have an
2 opportunity to opt out, and Erie County
3 decides to opt out, they would no longer be
4 eligible to apply, because they're not in the
5 City of Buffalo, they're outside of the City
6 of Buffalo, but they are farms.

7 So if Erie County opts out, those
8 farms will not be eligible to apply for
9 adult-use growth, am I correct?

10 GOVERNOR'S COUNSEL DAVID: Yes.

11 ASSEMBLYWOMAN PEOPLES-STOKES: Thank
12 you.

13 CHAIRWOMAN WEINSTEIN: Senate?

14 CHAIRWOMAN KRUEGER: Thank you.

15 Just a little fact, going back to Inez
16 Dickens. They actually used cannabis in the
17 bricks for the Pyramids in ancient Egypt, and
18 apparently they held up pretty well. Just
19 saying.

20 (Laughter.)

21 CHAIRWOMAN KRUEGER: There you go.

22 Senator Zellnor Myrie.

23 SENATOR MYRIE: Thank you, Madam
24 Chair.

1 So the -- both proposals have some
2 mechanism by which we will dedicate the
3 revenue from legalization. I appreciate what
4 you said earlier, that there are some reasons
5 why you have not included details on where
6 exactly the funds -- you would dedicate those
7 funds. But I think that there is a material
8 difference in the language that I think is
9 important for us to clarify today, and that
10 is in the MRTA the dedication and what it
11 will be dedicated to -- the revenue, that
12 is -- it says that it "shall be." And I
13 believe in the CRTA that that language is
14 permissive.

15 And so that difference to me I think
16 is a significant one, because if the revenues
17 are permissive, then that means that it is
18 subject to change and that there are some
19 restorative things that our communities
20 deserve that will only be permissive and not
21 mandatory, as in the MRTA.

22 So I'd like to know whether the
23 administration would be open to making the
24 revenue dedication, however that's ultimately

1 going to look, that that is mandatory and not
2 permissive.

3 GOVERNOR'S COUNSEL DAVID: Yeah, I'm
4 not sure which part of the bill you're
5 referring to. But the bill itself does have
6 a "shall." It provides that monies of the
7 fund shall be expended for the following
8 purposes, and it walks through the different
9 provisions.

10 But if there's a section that has a
11 "may," I'm more than happy to take a look at
12 it. But I think our expectation is that it
13 would be used because we use "shall," not
14 "may."

15 SENATOR MYRIE: Okay, thank you.

16 CHAIRWOMAN KRUEGER: Thank you.
17 Assembly.

18 CHAIRWOMAN WEINSTEIN: Assemblyman
19 Mosley.

20 ASSEMBLYMAN MOSLEY. Thank you, Madam
21 Cochair.

22 Just two quick questions, Mr. David.
23 In a recent Capital Room press conference the
24 Governor had, he was talking about those who

1 have prior convictions and who will be
2 eligible, who would not be eligible. In his
3 last I guess sentence he said, "That's going
4 to be a question we have to deal with."

5 And my particular question, one of the
6 just two short ones, has to do with those who
7 have prior convictions and who will be
8 eligible to be a part of this program. And
9 whether or not we are just going to relegate
10 it to those who have prior marijuana
11 convictions, or what was the rationale for
12 that. And then why aren't we opening it up
13 to others who have other prior convictions
14 that are not marijuana-related?

15 GOVERNOR'S COUNSEL DAVID: So the
16 thinking and the rationale is if we're going
17 to legalize recreational cannabis, we need to
18 remove the collateral criminal consequences
19 associated with it.

20 We understand that there may be an
21 interest to expand that. But for both legal
22 and practical purposes, we thought it was
23 appropriate to only limit it to cannabis use.

24 We automatically seal those

1 convictions that are related to cannabis and
2 then provide an application process for those
3 that may have combined offenses. So it's
4 possible in those cases where someone is
5 convicted of multiple crimes, they could have
6 a cannabis-related conviction sealed. But we
7 think it's important from a public safety
8 perspective that those convictions are not
9 automatically sealed, because we need to
10 appreciate the facts.

11 But as it relates to cannabis-related
12 offenses, those would be automatically
13 sealed.

14 ASSEMBLYMAN MOSLEY: Will the onus be
15 on the actual applicant to prove that they
16 are not, I guess, enemies of the state or are
17 not as dangerous as they're perceived to be
18 because they have multiple convictions based
19 upon prior --

20 GOVERNOR'S COUNSEL DAVID: No, not
21 necessarily. I think the objective there is
22 why are we sealing this conviction, we're
23 sealing this conviction because this person
24 is suffering from the collateral consequences

1 of a conviction for engaging in activity
2 that's no longer criminalized.

3 To the extent there are ancillary or
4 additional convictions, we need to look at
5 that and determine what impact, if any, that
6 would have by sealing one specific
7 conviction.

8 ASSEMBLYMAN MOSLEY: And will the
9 director, will he or she be in charge or have
10 like an office that will be making those
11 decisions on a case-by-case basis, or will
12 these be just opinions they'll be issuing out
13 that will be kind of -- that will regulate
14 that analysis?

15 GOVERNOR'S COUNSEL DAVID: The latter.
16 We're looking to make sure that the agency
17 works with DCJS and the other appropriate
18 public safety agencies to evaluate those
19 cases.

20 But again, I think the majority of
21 those cases -- we're talking about 800,000
22 people, I believe -- have marijuana or -- I'm
23 sorry, cannabis-related convictions. Those
24 would be automatically sealed. The rest we

1 would have to evaluate.

2 ASSEMBLYMAN MOSLEY: Okay. And in
3 regards to what Senator Gustavo Rivera talked
4 about in regards to the directorship being
5 kind of exposed in terms of they answer to
6 the pleasure of the Governor, right now there
7 is no confirmation. If -- is there an
8 anticipation of this being transitioned into
9 a commissionership so that it is not exposed
10 to whomever will be our next governor and his
11 or her position on this particular industry
12 going forward, and their being able to
13 replace that director with another director
14 of similar, you know, opinions and
15 interpretations?

16 GOVERNOR'S COUNSEL DAVID: Well,
17 again, I think within the existing proposal
18 the executive director is operating within a
19 framework where he or she is working directly
20 and reporting to a board. And again, the
21 Executive is not opposed at all to having
22 that executive director be subject to Senate
23 confirmation.

24 Part of the reason why I'm not as

1 concerned is because the key tenets of this
2 proposal are going to be enshrined in
3 statute. And then some of the additional
4 issues we have to address will be dealt with
5 in regulations, similar to the medical
6 cannabis program.

7 So we're open to having that person be
8 subject to Senate confirmation, but in fact
9 they will be working with a board.

10 ASSEMBLYMAN MOSLEY: Okay, and my last
11 question is the sale directly to consumers is
12 not allowed by microbusinesses or
13 cooperatives, correct?

14 GOVERNOR'S COUNSEL DAVID: I'm sorry,
15 say again?

16 ASSEMBLYMAN MOSLEY: The sale directly
17 to consumers is not allowed by
18 microbusinesses or cooperatives.

19 GOVERNOR'S COUNSEL DAVID: Correct.

20 ASSEMBLYMAN MOSLEY: Especially if
21 those licenses are intended for people
22 transitioning from the illicit market who
23 already sell directly to clients, correct?

24 GOVERNOR'S COUNSEL DAVID: Correct.

1 ASSEMBLYMAN MOSLEY: Is that something
2 that we can look at in terms of -- because
3 we're trying to have people who already are
4 selling to these individuals who are going to
5 be the ones who are going to be looking to
6 have those cooperatives and those
7 microbusinesses. Would that be an inherent
8 enabler of them not being able to really
9 maximize the relationship they have with the
10 customers that they've already been serving
11 on the illicit market?

12 GOVERNOR'S COUNSEL DAVID: Oh, I
13 misunderstood your question. If you are
14 operating in the illicit market, there's
15 nothing that bars you from applying for a
16 license to participate in the regulated
17 market.

18 ASSEMBLYMAN MOSLEY: Okay.

19 CHAIRWOMAN WEINSTEIN: Senate?

20 CHAIRWOMAN KRUEGER: Senator Diane
21 Savino.

22 SENATOR SAVINO: Thank you, Senator
23 Krueger.

24 So let me go back to the complicated

1 licenses. It's actually not complicated. I
2 think there -- so there's three or four
3 different types of licenses. So you have the
4 adult-use processor license -- the
5 cultivator, processor, distributor.

6 GOVERNOR'S COUNSEL DAVID: Correct.

7 SENATOR SAVINO: And then there's the
8 retail license.

9 GOVERNOR'S COUNSEL DAVID: Correct.

10 SENATOR SAVINO: And you can have a
11 processor, cultivator and distributor, but
12 not a retailer. And if you're in the retail
13 license business, you can only be in the
14 retail license business.

15 So I think I heard you say earlier you
16 can only have one retail license. But no, I
17 thought I saw in the statute three.

18 GOVERNOR'S COUNSEL DAVID: Three,
19 right.

20 SENATOR SAVINO: Is it three
21 freestanding retail dispensaries, or is it --
22 is there a number of dispensaries under a
23 license? Or has it not been determined yet?

24 GOVERNOR'S COUNSEL DAVID: Three.

1 SENATOR SAVINO: There's three. So
2 it's like -- so it's literally one store --
3 one license is one dispensary?

4 GOVERNOR'S COUNSEL DAVID: Correct.

5 SENATOR SAVINO: And in the medical
6 program, we're allowing them to be considered
7 for adult use in the onset. And I know
8 there's something in the proposal about
9 auctioning the licenses for those who are
10 already in the program. What would that look
11 like, and what are we talking about? Because
12 I think the money that you're looking to
13 auction the licenses to them for is to create
14 this low-interest loan program or no-interest
15 loan program for the startups for some of the
16 people who want to get into the business.
17 Can you explain that a bit?

18 GOVERNOR'S COUNSEL DAVID: Sure. So
19 as of today, we've issued 10 licenses to
20 registered organizations to cultivate,
21 distribute and sell medical cannabis.

22 To the extent one of those 10
23 companies are also interested in
24 participating in the recreational program, we

1 would allow them to participate in that
2 program with certain caveats.

3 Those registered organizations would
4 submit an application with an appropriate
5 investment -- and that number will be
6 determined in the future -- to participate in
7 the program while remaining vertically
8 integrated. And then we would determine how
9 we would integrate them in the recreational
10 program while continuing to support their
11 investment in the medical program.

12 So all of that will be determined
13 through regulation.

14 SENATOR SAVINO: Also somewhere
15 there's some language that says that
16 adult-use license holders have to contribute
17 to communities and people who have been
18 disproportionately harmed by enforcement, but
19 it doesn't describe what that means. Is
20 there a standard that will be established to
21 decide that they're in compliance with that
22 requirement? And what would that look like?

23 GOVERNOR'S COUNSEL DAVID: Yes, there
24 will be a standard that we'll set through

1 regulation to make sure that they are
2 appropriately investing and supporting those
3 communities. But all of those principles
4 will be outlined in regulation.

5 SENATOR SAVINO: There's also some
6 language in here about public consumption
7 sites. Because now we're going to legalize
8 adult-use marijuana -- you can't smoke it in
9 public, you can't smoke it in a park, you
10 can't smoke it in public housing, you can't
11 smoke it in a hotel, you can't smoke it in a
12 bar -- you can't smoke it here, you can't
13 smoke it there, you can't smoke it anywhere.
14 So where do people smoke it? What do we do?

15 GOVERNOR'S COUNSEL DAVID: So that's
16 the idea of having safe consumption sites.
17 But importantly, we should recognize that
18 many people are not going to be necessarily
19 smoking.

20 SENATOR SAVINO: Right.

21 GOVERNOR'S COUNSEL DAVID: They may be
22 taking certain products, using oils. And
23 they may not have the venue to take advantage
24 of this opportunity, so we want to make sure

1 through regulations we can identify these
2 safe sites where people can go. It could be
3 the equivalent of a hookah bar, where someone
4 could go and actually participate in using
5 cannabis without being exposed.

6 SENATOR SAVINO: Would that be an
7 additional license, like another type of
8 license?

9 GOVERNOR'S COUNSEL DAVID: Yes. Yes.

10 SENATOR SAVINO: So we could have
11 licenses for growing, for cultivating, for
12 processing, for distributing, for retail, for
13 medical, for -- I think there's some language
14 in here about delivery, permitting for
15 delivery --

16 GOVERNOR'S COUNSEL DAVID: Yes, for
17 delivery as well.

18 SENATOR SAVINO: -- for ancillary
19 businesses.

20 So we're really expanding all sorts of
21 opportunities into the cannabis industry that
22 doesn't just relate to the people who grow it
23 and process it.

24 GOVERNOR'S COUNSEL DAVID: That's

1 exactly right. And we did this in the
2 medical program.

3 One of the concerns we heard from
4 patients was if you're living in certain
5 parts of the North Country and you're
6 suffering from a serious health condition and
7 there is no dispensary in your neighborhood,
8 you need to have the product delivered to
9 your house. And so we changed the
10 regulations to allow for delivery in the
11 medical program. We would do the same here.

12 SENATOR SAVINO: And finally, in the
13 few minutes -- the seconds I have left, I
14 know that one of the requirements we have
15 under the medical program we'll extend here
16 is laboratory testing. Up until now, we've
17 only had one laboratory, Wadsworth, which is
18 the state lab. Are we looking to expand
19 opportunities for laboratories because we
20 want to make sure that as the product is
21 cultivated, that it's tested and gets to
22 market as quickly as possible?

23 GOVERNOR'S COUNSEL DAVID: Yes, we
24 are. And that's part of the \$35 million that

1 we're looking to use to create this
2 infrastructure.

3 SENATOR SAVINO: Oh, see, there -- I
4 got 9 seconds left. Thank you.

5 CHAIRWOMAN KRUEGER: Thank you.
6 Assembly.

7 CHAIRWOMAN WEINSTEIN: Assemblyman
8 Crouch.

9 ASSEMBLYMAN CROUCH: Yes, just a few.
10 I originally had one, but I've got two or
11 three now. Sorry.

12 But I assume that we're not -- as a
13 grower or a processor, you're not able to
14 ship out of state to a friendly state that
15 has similar regulations, and they can't ship
16 into our state.

17 GOVERNOR'S COUNSEL DAVID: That's
18 correct. Federal law prohibits the
19 cross-border sale of cannabis.

20 ASSEMBLYMAN CROUCH: Okay. Right,
21 good. How did you determine the 2 percent
22 tax to go back to the county? Is that 2
23 percent of the sales tax or that -- or is it
24 an additional tax, or the county can

1 charge -- will they get the benefit of
2 4 percent of the sales tax, as most of them
3 do now, plus the 2 percent? Or is it just
4 this is 2 percent of the sales tax?

5 GOVERNOR'S COUNSEL DAVID: It's a flat
6 2 percent of the sales tax.

7 ASSEMBLYMAN CROUCH: Okay. So --

8 GOVERNOR'S COUNSEL DAVID: And that
9 was informed in large part based on our
10 review of the laws and the practices in other
11 states.

12 ASSEMBLYMAN CROUCH: Last question,
13 how are you regulating medical cannabis
14 that's grown at home? You're allowing it up
15 to four plants or eight plants total, or
16 something like that. Will you have routine
17 inspections? Or, you know, how do you
18 regulate that?

19 GOVERNOR'S COUNSEL DAVID: So we
20 anticipate that there will be routine
21 inspections.

22 And also individuals who are allowed
23 to engage in home growing would have to
24 report and potentially provide appropriate

1 sampling over time. They would be regulated
2 because we want to make sure that to the
3 extent someone is allowed to engage in home
4 grow, we have some amount of oversight.

5 ASSEMBLYMAN CROUCH: I said last
6 question, but just one quick one. If you've
7 got a farmer that's got a cultivator license
8 and they've got some financial assistance to
9 get established, is there any problem with
10 them getting another grant or assistance,
11 like for energy efficiency for the lights or
12 anything like that that's -- there's no
13 holdup there?

14 GOVERNOR'S COUNSEL DAVID: There's no
15 holdup. And so through the economic
16 development agency, through our energy
17 agencies, there are additional loans and
18 grants that are available to businesses.
19 They would not be precluded from taking
20 advantage of those opportunities.

21 ASSEMBLYMAN CROUCH: Okay. Thank you.

22 CHAIRWOMAN WEINSTEIN: Thank you.

23 Senate?

24 CHAIRWOMAN KRUEGER: Thank you. I

1 have a second round of questions.

2 So Senator Savino was talking about
3 all the different kinds of licenses. And
4 actually the bill that Crystal and I carry
5 also allows for all kinds of different
6 licenses, because we really do think that
7 that opens up the opportunities for small
8 businesses, both in poor communities of color
9 and in the most rural areas of New York, to
10 participate in this.

11 But I was curious, one of the
12 complaints about the current medical program
13 is that there aren't dispensaries in poor
14 communities of color where there are health
15 disparities already and people really need to
16 get access to medical marijuana. So we hear
17 about, you know, the North Country having
18 difficulty with getting access to medical
19 marijuana dispensaries.

20 What in our -- and we've talked mostly
21 about expansion to adult use today, but your
22 proposal also has expansion of medical
23 marijuana. So help me understand how we can
24 commit to making sure that poor communities

1 of color have more access to medical
2 marijuana in this new world that we're trying
3 to create. Because I think that was a
4 mistake in the first model for medical
5 marijuana.

6 GOVERNOR'S COUNSEL DAVID: Sure. I
7 think there are a number of factors that
8 inform where these dispensaries go, not the
9 least of which whether or not there's
10 community opposition or concerns.

11 So when the Department of Health
12 started siting the dispensaries, they were
13 informed by how many people were actually
14 interested in purchasing medical cannabis,
15 and in other instances what levels of
16 opposition they were getting from the local
17 communities.

18 So you're right that in some cases
19 that meant that those dispensaries are not in
20 certain parts of the state. But we also
21 wanted to be careful we didn't oversaturate.

22 One key point here, though, is even if
23 you do not have a dispensary in your
24 locality, you can indeed receive it, have

1 someone deliver it to you. So that was one
2 of the ways that we addressed that concern,
3 which we heard from many communities.

4 As we think about where the
5 dispensaries should be moving forward, I
6 think those factors will still be germane and
7 we have to think about where should they be
8 placed, how many people are actually going to
9 be interested, and how do we achieve the
10 social justice concern or the equity concerns
11 that have been raised.

12 That will I think inform this process
13 more so than it did in the medical program,
14 because in the medical program we didn't have
15 the same social justice objectives. Here we
16 have a very different construct where we're
17 looking to make sure we provide resources,
18 investment opportunities to communities of
19 color and disadvantaged communities. And
20 that was very different than the medical
21 program.

22 CHAIRWOMAN KRUEGER: Well, I guess I
23 would then just urge us to think about that
24 some more. Because as you know, I support

1 medical marijuana. And I have one Senate
2 district out of 63; I have three medical
3 dispensaries in my district. I'm not
4 complaining, I'm just saying that there's a
5 real shortage of them in many parts of the
6 state, and yet one Senate district that is
7 disproportionately higher-income has three of
8 them. So I don't think we're thinking it
9 through correctly yet.

10 What? Well, and where the patients
11 are. Because we also are intending to expand
12 ease of access for doctors to participate in
13 becoming -- I guess it's not licensed,
14 they're already licensed as medical doctors,
15 but be able to write scrips for medical
16 marijuana. Which we believe also will expand
17 access to the program. Is that correct?

18 GOVERNOR'S COUNSEL DAVID: Correct.

19 CHAIRWOMAN KRUEGER: Okay, I just
20 wanted to have that on the record.

21 There's different estimates, but
22 estimates I've looked at have been that if we
23 do the legalization and decriminalization
24 correctly, the State of New York at the local

1 through state level can expect to see an
2 estimated 400 to \$600 million in savings in
3 law enforcement and court costs.

4 Has the administration done any
5 analysis for yourself?

6 GOVERNOR'S COUNSEL DAVID: We've
7 looked at that issue. I don't know that
8 we've come to a concrete conclusion as to
9 what those savings could be, but I think we
10 agree that there will be significant savings.
11 How we calculate and quantify that is still
12 up for debate.

13 But I think you're exactly right,
14 there will be savings across the board if we
15 make the appropriate investments. And if we
16 implement the program in the way that we've
17 proposed it to be implemented.

18 CHAIRWOMAN KRUEGER: I would agree.
19 But amend that if we look at the language in
20 Crystal Peoples-Stokes and my bill for not
21 continuing criminal penalties on these
22 low-level issues in any way, you'll see
23 greater savings.

24 And I will use -- cite Dan McCoy, the

1 Albany County exec, who when he testified at
2 Local Government the other day told us that
3 these people pile up in his jail for 10 days,
4 he pays all these costs to have them in his
5 jail for no reason, and then he lets them
6 out -- where the only thing that has happened
7 is the county has to pick up the cost for
8 police to bring them to his jails, file cases
9 against them, his having to have
10 responsibility for them, and then having them
11 let go.

12 So I'd just highlight that people
13 should understand the double win, in my
14 opinion, of not having all those costs
15 associated with the current prohibition
16 model.

17 And then I know the clock went out,
18 but I'm going to just take one more quick
19 question.

20 There were several questions here
21 about when police believe you're inebriated
22 from marijuana, but we don't yet have perhaps
23 a parallel set of tests with alcohol. But we
24 think that there really are ways with

7 GOVERNOR'S COUNSEL DAVID: Well, I
8 think we are anticipating investing quite
9 heavily both in public health and public
10 safety. We have to, once we start the
11 implementation of this program, really study
12 where we think the needs might be, and that
13 will inform the appropriate investments.

20 We have done some projections and we
21 think we know where the needs might be, but
22 we want to make sure they're actually
23 informed by the reality.

24 CHAIRWOMAN KRUEGER: Okay. My time is

1 up. Thank you.

2 CHAIRWOMAN WEINSTEIN: Thank you.

3 Before we go to Assemblywoman Dickens
4 for a second, I just wanted to amplify or
5 clarify what the Senator just said, that what
6 happens when the individuals, after being in
7 county jail, go to court, they get sentenced
8 to time served. So that they're not just let
9 go at the end of their time in county jail,
10 but the county's absorbing all the costs and
11 then their sentence is just the time that
12 they spent in the county jails.

13 CHAIRWOMAN KRUEGER: Right.

14 CHAIRWOMAN WEINSTEIN: Now to
15 Assemblywoman Dickens.

16 ASSEMBLYWOMAN DICKENS: Thank you,
17 Madam Chair.

18 Now, the -- I want to ask about these
19 sites, these smoking sites. New Jersey has
20 legislation that created sites where you can
21 safely go in and smoke. Would we be
22 thinking -- and I don't know what the Jersey
23 legislation does. But would this be for
24 recreational as well as medical marijuana?

1 Would these sites be part of a dispensary, or
2 would you bring your own product?

3 GOVERNOR'S COUNSEL DAVID: That's a
4 very good question. All of the above.

5 And what we're looking at -- again,
6 the legislation allows and authorizes the
7 creation of these safe sites, because we want
8 to make sure that individuals, for example,
9 that are living in public housing actually
10 have an opportunity to engage if they so
11 choose.

12 There are different models, and we're
13 not opposed to any of those. I think we're
14 open to creating a construct that allows for
15 a dispensary to also be a safe site or to
16 have a safe site but not be a dispensary. We
17 want to make sure that there's access, and
18 that's really our goal, so we're open to all
19 of those options. And it would also be open,
20 again, to medicinal as well as recreational.

21 ASSEMBLYWOMAN DICKENS: Thank you.
22 But I also want to -- you mentioned persons
23 residing in NYCHA. It's also important that
24 these sites be available where there is a

1 large working population, such as around the
2 Capitol.

3 (Laughter.)

4 GOVERNOR'S COUNSEL DAVID:

5 Acknowledged.

6 CHAIRWOMAN WEINSTEIN: And with that,
7 we'll go to Crystal Peoples-Stokes for a
8 quick question.

9 ASSEMBLYWOMAN PEOPLES-STOKES: Thank
10 you.

11 Just on a previous question that I
12 asked you regarding the farmers in
13 Erie County who are actually farming hemp
14 right now, and what should happen should Erie
15 County decide to opt out. Which hopefully
16 that won't stay in the language. We would
17 like for the governments to be a little
18 smaller before they decide that they should
19 opt out, because they'll exclude people.

20 But I wanted to just be clear that
21 that would also include a person who had a
22 catering business where they were using the
23 product of hemp, CBD oil, to cook with, which
24 people do. There are a number of restaurants

1 that operate right now in the State of
2 New York where people are making food with
3 this product already.

4 So if a county opted out, would people
5 be able to have a catering business using CBD
6 oil?

7 GOVERNOR'S COUNSEL DAVID: Yes, they
8 would be. So --

9 ASSEMBLYWOMAN PEOPLES-STOKES: If a
10 county opted out.

11 GOVERNOR'S COUNSEL DAVID: Yes.

12 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.

13 GOVERNOR'S COUNSEL DAVID: Remember,
14 if a county opts out, it doesn't prevent
15 those that live in that county from actually
16 using the product, because the product would
17 be legalized throughout the state.

18 But I understand your concern about
19 having it be a county opt out as opposed to a
20 town opt out. And we're certainly open to
21 having a conversation with the Legislature
22 about that.

23 ASSEMBLYWOMAN PEOPLES-STOKES: So if a
24 county opts out, even though New York State

1 residents live in that county, they will
2 still have access to a legal product, period.

3 GOVERNOR'S COUNSEL DAVID: Correct.
4 Correct.

5 ASSEMBLYWOMAN PEOPLES-STOKES: But you
6 said earlier that a hemp farmer would not be
7 able to apply for a legal license.

8 GOVERNOR'S COUNSEL DAVID: That's very
9 different. What we're talking about is
10 someone having the ability to manufacture the
11 product or distribute the product or have a
12 dispensary. That's very different than
13 having someone receive the product in that
14 county for their use.

15 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
16 Well, I'm sure the farmers won't feel the
17 same way about that answer.

18 GOVERNOR'S COUNSEL DAVID: And Axel
19 wanted to add more.

20 ASST. COUNSEL BERNABE: Assemblywoman,
21 just one clarification. The opt out
22 provision only applies to adult use.

23 ASSEMBLYWOMAN PEOPLES-STOKES: Only
24 adult use.

1 ASST. COUNSEL BERNABE: Yes. So CBD
2 manufacturers, processors, distributors would
3 be allowed to retain their business.

4 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.

5 Second, just to add into Senator
6 Savino's point about laboratories and the
7 lack of them, does this legislation call for
8 any conversations with, say, our SUNY school
9 systems to work on getting more people
10 educated in the process of becoming
11 laboratory -- either employees and/or
12 business owners?

13 GOVERNOR'S COUNSEL DAVID: Yes. And
14 Axel can also elaborate on that.

15 ASST. COUNSEL BERNABE: I'm sorry.
16 Just because we've been working with the
17 medical program on that, there are a number
18 of labs that are interested in entering the
19 space. They are currently finalizing their
20 protocols. Our state lab is verifying their
21 methodologies to ensure that they're up to
22 speed and up to code. But we fully
23 anticipate that there will be labs coming
24 into the market.

1 In particular, if an adult bill is
2 passed which creates demand for lab services,
3 the private sector will step up and the state
4 will have Wadsworth, the very internationally
5 recognized lab, supervise those
6 private-sector labs. We think that that's
7 probably the best solution.

8 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
9 And lastly, a couple of months ago the AAA
10 said that there was no testing in place that
11 would test for impairment if a person was
12 driving. Is that still true, the science of
13 it all? Or is there something that's come up
14 that will help law enforcement determine
15 whether or not a person is impaired,
16 driving --

17 GOVERNOR'S COUNSEL DAVID: We have
18 several tools --

19 ASSEMBLYWOMAN PEOPLES-STOKES: -- from
20 adult use?

21 GOVERNOR'S COUNSEL DAVID: We have
22 several tools now -- my apologies for cutting
23 you off. We have several tools now that we
24 use to test for impaired driving, putting

1 aside the Breathalyzer.

2 Those tools are in existence, they are
3 used now, they would be used moving forward,
4 in addition to using research to try to find
5 additional tools that we might want to
6 implement. But we have these tools that
7 exist.

8 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
9 Well, can I just ask you what those are?
10 Because the young lady from AAA said there
11 was no such thing. So I'd like to know what
12 they are.

13 GOVERNOR'S COUNSEL DAVID: There are
14 three, at least. But --

15 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.

16 ASST. COUNSEL BERNABE: I think the
17 distinction is between the current law
18 enforcement tools that we have to recognize
19 impaired driving. So the field sobriety
20 tests, the ARIDEs and the DRE protocols. So
21 those are all tools, technically, that
22 identify when people are impaired and allow
23 to get arrested and to get fined for driving
24 under the influence.

1 I don't know if you're speaking about
2 specific technologies that can identify THC
3 levels. You can do blood tests, that's a
4 tool. Some states have opted to do that. So
5 if you have a certain amount of THC in your
6 blood --

7 ASSEMBLYWOMAN PEOPLES-STOKES: Okay,
8 so can I just stop right here.

9 ASST. COUNSEL BERNABE: Of course.

10 ASSEMBLYWOMAN PEOPLES-STOKES: So
11 you're driving on the street, you're -- you
12 didn't turn your turn light on when you made
13 a right turn, they pulled you over and they
14 say, Oh, we think you're impaired by
15 marijuana. They're not going to give you a
16 blood test right there.

17 ASST. COUNSEL BERNABE: Correct.

18 ASSEMBLYWOMAN PEOPLES-STOKES: They
19 can arrest you for having your red light --
20 you didn't have your turn signal on. So
21 what's the enforcement procedure there?

22 ASST. COUNSEL BERNABE: So the
23 enforcement procedure is first you would
24 start with the traditional enforcement

1 procedure for driving impaired. So you have
2 field sobriety tests where someone is pulled
3 over and they start the -- you know, touch
4 your nose, walk the line, and they start to
5 have assessments of whether someone looks
6 like they're impaired. Are there any indicia
7 that the person may have been consuming in
8 the car? Does it smell like cannabis in the
9 car?

10 If you have sufficient probable cause
11 to then proceed to a second-stage analysis,
12 then you follow the protocols until you can
13 have a DRE come in, a drug recognition
14 expert, that is trained and can have you come
15 to the station to have your blood tested.
16 That's how it works right now with other
17 drugs other than cannabis, so opioids or
18 other drugs that don't have a Breathalyzer as
19 technology.

20 But the good news is because of the
21 demand for technologies related to
22 impairment, there are a couple of companies
23 that actually have and are in the process of
24 beta testing products that can recognize THC

1 levels on the breath. So those have not yet
2 been approved, but my understanding is that
3 there are several products in the pipeline,
4 and in fairly short order -- and certainly,
5 you know, it would take us a couple of years
6 to get this program up and running, so in
7 fairly short order there could be
8 technologies that would allow us to assess
9 that impairment.

10 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
11 Well, that's actually a better response.
12 Because, you know, I do think it's going to
13 take some time for that to be figured out. I
14 do not think odor should be probable cause.
15 And, you know, as the -- one of the young
16 ladies said that's with you, sometimes
17 there's not even an odor at all because it's
18 not being smoked or it's not even being
19 vaped.

20 And so I'm glad to hear that we're,
21 through this process, willing to come to
22 where we need to be in order to decide that
23 we should detain somebody because they are
24 impaired on adult-use cannabis. I think

1 that's -- quite frankly it's gotten us to
2 where we are now in terms of being a society
3 that's way overcharging our taxpayers for a
4 criminal justice system when in many cases it
5 wasn't necessary.

6 I do want to thank you all for your
7 time here today. And I apologize that I have
8 to run out, but I've been putting somebody
9 off in my office -- they keep texting me, and
10 I've just been ignoring it. I don't think I
11 can do that any longer, Madam Chairperson.

12 CHAIRWOMAN WEINSTEIN: Thank you.

13 Senate?

14 CHAIRWOMAN KRUEGER: Senator Diane
15 Savino, one more question.

16 SENATOR SAVINO: Final. Finally.
17 Actually, more of a couple of points.

18 So on opt out, let me just stress
19 again, on the county level I really think we
20 should rethink that. I have no issue with
21 opting out on the local level or the
22 municipal level. But for the reasons that
23 have already been stated by Assemblywoman
24 Crystal Peoples-Stokes and others, I'm

1 just -- I think we should be very concerned
2 about opting out on the county level.

3 On the dispensary issue that Senator
4 Krueger raised, it is a concern that we don't
5 have as many dispensaries. And I understand
6 the issues of siting or locating the medical
7 dispensaries and the complications of the
8 medical marijuana industry. But one of the
9 other issues that we have is just siting
10 dispensaries in general are complicated,
11 particularly in our municipalities.

12 As you know, we're about to open I
13 think the first one in Brooklyn. And when
14 you look at the language in the bill, the
15 same restrictions on siting dispensaries are
16 in the adult-use program that are in the
17 medical program, and a lot of them are
18 dictated by local opposition and restrictions
19 on where you can place, you know, programs.

20 So we're going to have that anyway,
21 which is why home delivery I think becomes
22 even more important.

23 On medical, though, one of the ways we
24 can expand access to patients is to seriously

1 consider finding ways to require insurance
2 coverage for the product. It is a real
3 problem for patients who have found cannabis
4 to be a game-changer for them, but they can't
5 afford it.

6 On CBD, the City of New York just
7 recently -- the Department of Health issued
8 regulations to restaurants and bars to stop
9 using CBD in food products until it's been
10 determined. So I think the sooner we get
11 this done on our level and we have a good
12 solid product from New York State, the
13 better.

14 On employment opportunities. We have
15 a unique opportunity to create an entire new
16 industry, not just for people who want to run
17 the industry, but people who want to work in
18 it. You know, it's not just about bud
19 tenders, it's about the professionalism of
20 this industry.

21 And finally, you know, I chair a new
22 committee on internet and technology, and one
23 of the concerns is always about how do we
24 capture the revenue. Well, I think maybe we

1 should explore using blockchain technology to
2 capture the tax revenue all the way through
3 so that New York State not only grows it,
4 sells it, taxes it and collects it.

5 And now I'm done. Thank you.

6 CHAIRWOMAN KRUEGER: Thank you.

7 CHAIRWOMAN WEINSTEIN: Thank you.

8 So that concludes the questions from
9 the members. And I just -- I know there were
10 a lot of questions, I just wanted to give the
11 opportunity, in case we missed something that
12 you'd like to let us know for the record,
13 we'd be happy to --

14 CHAIRWOMAN KRUEGER: What didn't we
15 ask we should have asked.

16 CHAIRWOMAN WEINSTEIN: Right.

17 -- happy to give you a few moments to
18 respond if you wanted to.

19 GOVERNOR'S COUNSEL DAVID: I think you
20 asked all the questions that we anticipated
21 you would ask, and more.

22 We appreciate you thinking about this
23 issue critically, and we think it's important
24 that we advance this program. Because if we

1 don't, we're going to be faced with some
2 significant collateral consequences --
3 economic, social justice, and otherwise.

4 So thank you for your time, and we
5 appreciate your consideration.

6 CHAIRWOMAN WEINSTEIN: Thank you.

7 So this now concludes all of the joint
8 budget -- 13 budget hearings.

9 (Applause.)

10 CHAIRWOMAN WEINSTEIN: Thank you.

11 Thank you all.

12 CHAIRWOMAN KRUEGER: Thank you.

13 (Whereupon, the budget hearing concluded
14 at 4:00 p.m.)

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