

STRONG ECONOMY = FOR ALL COALITION

**NEW YORK STATE LEGISLATURE
Senate Finance Committee
Assembly Ways & Means Committee**

Senator Liz Krueger, Chair
Assembly Member Helene Weinstein, Chair

HEARINGS ON THE 2021-22 EXECUTIVE BUDGET PROPOSAL: TAXES

Testimony of
Michael Kink, Esq. * Executive Director

February 23, 2021
Testimony by video

Fair-share tax policies are essential to address extreme economic inequality in New York, to properly fund needed investments in our future, and to assure that New York is a place where all New Yorkers can live and thrive.

In the past year, New York has experienced three historic crises: a public health crisis, a racial justice crisis, and a deepened and continuing economic crisis.

This year we urge the Legislature to respond to these crises forcefully and directly, with a progressive revenue package in this year's budget.

Short-term aid from the federal government won't be enough to fund the needed investments, particularly in communities of color and low-income communities, that will allow our state to move forward fairly, equitably and successfully.

Our testimony includes strong support for the Invest in Our New York Act, a six-bill package to tax high incomes, wealth, corporations and Wall Street that would raise over \$50 billion to fund needed investments in public education, housing, health care, public transit, social services and a Green New Deal for our climate and our environment.

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

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

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

Tax High Incomes:

1. Progressive Income Tax ([S2622/A4604](#), Sen. Jackson/AM Meeks): Creates a tax system where New Yorkers pay a significantly higher rate if they earn significantly more money. Raises: ~15 billion
2. Capital Gains Tax ([S2522/A3352](#), Sen. Rivera/AM Kim): Taxes income from investments like stocks the same as wages. Raises: \$7 Billion

Tax Wealth:

3. Heirs' Tax ([S3462/A4643](#), Sen. Brisport/AM Solages): A progressive tax on large sums of inherited wealth. Raises: \$8 billion
4. Billionaires' Tax ([S4482/A05092](#), Sen. Ramos/AM De La Rosa): An additional tax on billionaires, and constitutional amendment to allow a wealth tax. Raises: \$23 billion in the first year, \$1.3 billion per year thereafter

Tax Corporations & Financial Sector:

5. Wall Street Tax ([S3980/A5215](#) Sen. Salazar/AM Niou): A small tax on Wall St. financial transactions. Raises: ~\$12-29 billion
6. Corporate Tax ([S2833/A4595](#), Sen. Hoylman/AM Kelles): A bill to repeal the Trump tax cuts, by restoring taxes on the profit a corporation makes each year. Raises: \$9 billion

New York has the highest level of inequality of any American state — our state is home to [118 billionaires with over \\$612 billion in wealth, and that wealth has grown by \\$88 billion during the COVID pandemic](#). We are also home to 92,000 New Yorkers who sleep in shelters or in the streets.

The top 1% has taken all the wealth and income gains of the last 30 years. Regular New Yorkers have seen their income and their wealth either stagnant or moving backwards.

New York has the wealth and the resources to fund quality education, housing for all, universal healthcare, great public transportation, rebuild our infrastructure and a Green New Deal. We just need to enact the taxes necessary to fund them.

Fundamental tax reform is at the heart of the democratic effort to combat extreme inequality and give New Yorkers, some for the first time, the opportunity to thrive.

An equitable and sustainable tax system should serve three related functions: it raises revenue to fund our needs, distributes resources to promote healthy, thriving, and safe communities, and regulates our economy to align it with democratic values.

We recommend progressive tax reforms with three simple elements: meaningful new or increased taxes on

- High Incomes
- Extreme Wealth
- Big Corporations and Wall Street

Tax High Incomes

High-income New Yorkers can afford to pay higher income taxes, particularly given our state's urgent needs.

Our current Millionaires Tax hasn't pushed out the super-rich: we have double the number of millionaires than when we instituted the tax. Those leaving are primarily poor, working and middle-class people and retirees.

Income tax rates for the ultrarich here are not the highest in the nation -- New Jersey has higher brackets on multi-million-dollar incomes, as does California.

Most of the income enjoyed by the wealthy comes from investments they have inherited or extracted, often in predatory enterprises like private equity and hedge funds.

Earnings from these investments receive a huge tax benefit under federal law: They are taxed at half of the normal tax rate . Tax benefits for the wealthy have only increased under Trump's "Tax Scam" law passed in 2017.

We are not powerless in the face of these grotesque hand-outs. New York should impose a surcharge on long-term capital gains to offset federal tax subsidies to the rich.

- Progressive Income Tax ([S2622/A4604](#), Sen. Jackson/AM Meeks): Creates a tax system where New Yorkers pay a significantly higher rate if they earn significantly more money. Raises: ~15 billion
- Capital Gains Tax ([S2522/A3352](#), Sen. Rivera/AM Kim): Taxes income from investments like stocks the same as wages. Raises: \$7 Billion

Tax Extreme Wealth

We strongly support wealth taxation, as has been popularized by Senators Bernie Sanders and Elizabeth Warren. It is important to realize, however, that New York already has a wealth tax in the form of the real property tax.

As currently configured, local property taxes are unfair, unequal and exacerbate New York's growing affordability crisis. Many homeowners in New York struggle to pay high property taxes on their homes -- their main or only source of wealth.

Meanwhile, billionaires pay little or no taxes on their vast holdings of publicly-traded securities, corporations, yachts, jets, art and other luxury goods.

We support comprehensive reform to implement a truly progressive tax on multigenerational transfers of large wealth, and we support a mark-to-market tax on the investment gains of billionaires.

- Heirs' Tax ([S3462/A4643](#), Sen. Brisport/AM Solages): A progressive tax on large sums of inherited wealth. Raises: \$8 billion
- Billionaires' Tax ([S4482/A05092](#), Sen. Ramos/AM De La Rosa): An additional tax on billionaires, and constitutional amendment to allow a wealth tax. Raises: \$23 billion in the first year, \$1.3 billion per year thereafter

Tax Big Corporations and Wall Street

Historically, state government granted corporate status to companies set up to build critical infrastructure like canals, bridges and railroads. Corporate status was a reward for companies with a credible commitment to advancing the public interest.

Today's corporations are multinational giants with no moral allegiance to the communities they occupy. While some add real value, many others rely on monopoly power and information asymmetries to exploit both their employees and consumers.

Instead of investing in workers and wages, corporations translate their economic power into political power to build rigged legal systems that they use to multiply their profits.

Finally, many simultaneously pollute our world with plastic, waste and carbon dioxide, refusing to pay the price for their unsustainable practices.

Instead of working to bring corporations to heel, New York recently cut corporate tax rates and eliminated the special tax on banks.

It's time to reverse this trend, targeting the largest corporations and extractive financial firms. New York's financial sector is overgrown, raising the cost of living for the many while enriching a small sliver at the top. Excessive trading activity can be destabilizing, and speculation and greed routinely lead to devastating financial crises.

The mainstream economics literature increasingly shows that an overgrown financial sector can harm the non-financial economy, and many modern economies, including Hong Kong, France, Germany and the United Kingdom have enacted financial transactions taxes that haven't resulted in mass flight of financial companies.

- Wall Street Tax ([S3980/A5215](#) Sen. Salazar/AM Niou): A small tax on Wall St. financial transactions. Raises: ~\$12-29 billion
- Corporate Tax ([S2833/A4595](#), Sen. Hoyer/AM Kellie): A bill to repeal the Trump tax cuts, by restoring taxes on the profit a corporation makes each year. Raises: \$9 billion

Billionaires and Millionaires -- We've got the most and we're getting more

The [Wealth-X 2020 Billionaire Census](#) reports that "New York remained the dominant billionaire city" in the world, "with a solid rise in billionaires" in the latest study. According to the report,

The New York metropolitan area is the largest regional economy in the US and home to the largest billionaire population of any city globally...Indeed, there are more billionaires in New York than in almost every country in the world, with the exception of China and Germany.

The [Wealth-X 2020 World Ultra-Wealth Report](#) states that "New York remains the pre-eminent city of the wealthy, reflecting its status as a global financial center, the largest regional economy in the US and a global center of luxury consumption and prime real estate."

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

The [2020 Knight-Frank Wealth Report](#) looked at 100 cities across the globe, assessing them against a number of different metrics that demonstrate each city's global appeal as a place to invest, live and spend time.

Each year, New York and London battle it out for top spot – unsurprising as, according to the Globalization and World Cities Research Network's city classification, they are the only two cities with "Alpha++" status. Our latest results

show New York recapturing the top spot from its old rival, pushing London back into second place based on metrics across our three main categories – wealth, investment and lifestyle. Paris, Hong Kong and Los Angeles round out the top five cities.

Knight-Frank ranks New York number one in the world overall, number one for wealth, number one for investment, number three for lifestyle and number one for future prospects.

Knight-Frank predicts a 15% increase for UHNWIs in New York City (those with \$30 million in investable assets not counting their primary residence) in the next five years.

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

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

There's no reason to hold back for fear of fleeing millionaires and billionaires, particularly when academic studies repeatedly demonstrate that UHNWIs and HNWIs don't make decisions based on incremental changes in state tax policy.

Millionaire migration is a myth

Millionaires are the least likely to move of anyone in New York. Cornell University professor Cristobal Young, in cooperation with the Department of Treasury, reviewed all tax returns of all individuals who earned over \$1 million per year from 1999 to 2011. This dataset included 45 million records and enabled Young to track each individual tax filer's year-to-year returns.

Young found that only 2.4% of millionaires move in a given year - less than the regular population. Further, there was no meaningful difference in the tax rates of the states the millionaires moved to. Millionaires are as likely to move to a state with higher or equal tax rates, as they are to move to one with lower tax rates.

In 2009, New York raised taxes on millionaires. It did not lead to a mass migration of New York millionaires to Florida. Instead New York State saw its number of millionaires more than double in the ten years following the tax increase: from [~28,000 in 2009](#) to [~57,000 in 2018](#).

New York needs a tax on the fortunes of billionaires

New York is home to at least [118 billionaires with over \\$612 billion in net worth -- their wealth has grown by \\$88 billion during the COVID pandemic](#).

We worked with Senator Jessica Ramos and Assembly Member Carmen De La Rosa to develop the New York Billionaire Mark-to-Market Tax Act to tax unrealized capital gains which almost never get taxed under current federal and state law. This targeted proposal is a yearly assessment on the speculative wealth of 112 billionaires -- no one else would pay.

And just so it's clear, the New York Billionaire Mark-to-Market Tax Act is constitutional.

- Taxing gains on a mark-to-market basis is not an “ad valorem” tax.

Article XVI, section 3, of the New York Constitution prohibits an ad valorem tax on intangible personal property. A wealth tax is a type of “ad valorem” tax because it taxes the ownership of property based on the value of that property.

The NY billionaire mark-to-market tax is not an ad valorem (or wealth) tax; it is an income tax.

Assume the value of a billionaire's assets doesn't increase or even decrease during the year. Under an “ad valorem” or wealth tax, the billionaire would pay tax. By contrast, the NY billionaire mark-to-market tax does not tax such a billionaire because the billionaire's income has not increased in value.

Consistent with this common sense understanding of what constitutes an “ad valorem” tax, the Court of Appeals of New York has consistently refused to apply Article XVI, section 3 beyond its obvious limited scope of prohibiting ad valorem intangible property taxes. The Court has never extended the prohibition to provisions of the state's income tax.

- New York has used mark-to-market taxation for decades.

New York has had mark-to-market taxation as part of its income tax for nearly 40 years.

In 1981, Congress imposed mark-to-market taxation as part of the federal income tax (IRC Sec. 1256) on certain futures contracts and options. At the same time, New York adopted the same rule for its income tax.

In 1993, Congress imposed mark-to-market taxation on “dealers in securities” (IRC Sec. 475). At the same time, New York adopted the same rule for its income tax.

- Mark-to-market taxation ensures fair and equal treatment.

The deemed realization rule that applies in the first year of enactment is fair and constitutional.

Consider two New York billionaires. One is a famous hip hop artist. She has earned all of her money from performing and receiving royalties from her songs. She has paid income tax on every penny, and now holds \$1 billion cash.

The second billionaire is a founder. His stock is worth a billion dollars, but he hasn't paid a penny of tax because he never sells a share; he just borrows against his stock and spends the borrowed funds.

The deemed realization rule that applies in the first year of enactment simply ends the founder's deferral and treats both billionaires in the same way. The deemed realization rule is generous because, while the hip hop artist had to pay tax in the year her income was earned, the deemed realization rule allows the founder to spread his tax over ten years.

As a matter of law, the deemed realization rule is properly analyzed as either not retroactive at all or retroactive in a manner that has been found constitutional under both the state and federal constitutions.

Going forward, the founder and the hip-hop artist will pay tax on their increase in economic income each year. Neither may defer tax anymore. Thus, mark-to-market taxes founders like hip hop artists.

Nine in 10 New York voters favor raising taxes on the rich to prevent cuts and invest in communities

An extraordinary 87% of New York voters favor passing legislation that would address the state budget shortfall by raising taxes on wealth over \$1 billion and on incomes over \$500,000, according to a poll by Hart Research Associates.

Democrats (92%), Republicans (82%), and unaffiliated voters (80%) all embrace higher income tax rates starting at \$500,000. Voters in New York City (87%), the New York suburbs (88%), and upstate (86%) all voice equal support for the proposal.

Four in five (81%) voice support for taxing any increase in the value of a person's financial assets each year, if they have a net worth above \$1 billion, regardless of whether they sell the asset.

As one of the wealthiest states in America, New York has the financial resources to fully fund ALL of our basic needs.

The tax dollars are available; we just need to know where to look for them. We can fully fund public education, housing, transit and health care for all, a New York Green New Deal to bring climate justice to all New Yorkers, and a real recovery from the COVID crisis.

In this 2021-22 budget cycle, we must reject austerity and begin to create a budget and tax system that reflects our values of a just society for all.