TESTIMONY
OF THE
NEW YORK PUBLIC INTEREST RESEARCH GROUP
BEFORE THE
JOINT HEARING OF THE SENATE FINANCE AND ASSEMBLY WAYS & MEANS COMMITTEES REGARDING THE
FISCAL YEAR 2021-2022 EXECUTIVE TAXES BUDGET PROPOSAL
February 23, 2021
Albany, N.Y.

Good afternoon, my name is Blair Horner and I am executive director of the New York Public Interest Research Group (NYPIRG). NYPIRG is a non-partisan, not-for-profit, research and advocacy organization. Consumer protection, environmental preservation, health care, higher education, and governmental reforms are our principal areas of concern. We appreciate the opportunity to testify on the governor's executive budget regarding tax revenues.

In order to put our testimony in context, we are not arguing that raising revenues is without adverse impacts. We know that tax rates can impact individuals' and businesses' decisions. However, these recommendations must be considered within the context of foreseeable adverse impacts of cuts to vital programs, which is the alternative. In balancing those impacts, we believe that generating revenues along the lines described below is superior to across-the-board cuts to programs, or regressive fee and tax hikes.

The resulting economic contraction from the COVID-19 pandemic has severely diminished the revenue generated in New York and the state's budget shortfall is projected to rise over the next few years. To avoid deep cuts to vital public services that the vast majority of New Yorkers rely on like higher education and public transportation, the state must find additional revenues that are borne by those who have the best ability to bear the cost.

New Revenues Are Needed

The budget crisis in New York is massive, but the state does possess the resources to fix it. The State can save its social programs from massive cuts without asking the most vulnerable – and those suffering the most through the pandemic – to pay for it. Solutions such as a Stock Transfer Tax, enhancing progressivity to the state's personal income tax rates on the wealthiest taxpayers, and ending state subsidies to fossil fuel companies, among others, will both improve fairness and also generate new revenues.

Revenue Source: Keeping Revenues Already Generated From The Stock Transfer Tax, estimated worth $8 billion

New York State needs billions of dollars to close a yawning budget deficit. The state should generate revenues from those with the most means to help pay for essential services. New York has a century-old tax on its books, but does not keep the revenue from it. This Stock Transfer Tax would make an enormous difference in state revenues – but only if it is collected.

<u>COVID-19's Economic Impact on New York's Economy</u>

The coronavirus pandemic has proved to be equal parts health crisis and economic crisis, leaving New York State facing an unprecedented fiscal deficit. By Governor Cuomo's estimates, the economic impact of the coronavirus pandemic on the state's economy will be far worse than that of 9/11.[1] The total economic toll still remains to be seen, but the state estimates that it will be left with a combined $15 billion revenue shortfall this fiscal year and next and a cumulative shortfall of nearly $40 billion over four years.[2] The state's financial problem is a recurring one and one that is unlikely to be solved by federal assistance.

New York State policymakers have been grappling with the economic fallout of the pandemic and the state and local governments' growing structural fiscal deficits. As part of the state budget agreement last April, Governor Cuomo and the Legislature agreed to grant the governor vast authority to make cuts to the agreed-to budget if revenues cratered, which they have. Recently, the governor's office released a blueprint for the cuts that are being contemplated, and if implemented will take a dire toll on some of the state's most vital public institutions and services.[3]

The governor's financial plan considers a 5% cut for state agencies. With a budget shortfall in the billions and deficits for additional years, all programs are at risk, including K-12 education, higher education, public transportation, environment, public health and healthcare.

<u>Essential Workers Are Driving New York's Recovery</u>

As New York struggles to deal with the impact of the COVID pandemic, it's clear that essential workers play a critical role in keeping the state safe and moving towards recovery. While the majority of New Yorkers remain at home, there are 2.2 million New Yorkers working tirelessly to provide healthcare, food, public transit service, and deliveries to the rest of the state's population.[4]

The vast majority of these essential workers are not wealthy and often depend on government programs, most notably relying on New York State's public schools, healthcare system, and other vital public services. In New York City, 55% of essential workers depend on the MTA transit service to travel to work.[5]

<u>NYS's Long-Standing Stock Transfer Tax</u>

Enacted in 1905, New York State's stock transfer tax (STT) is an excise tax levied on stock trades. The STT taxes each sale of stock on a sliding scale, with pennies (no more than a nickel) per transaction.[6] While this small fee amounts to a tiny cost on each transaction for investors, the revenue gains for New York State would be tremendous. Revenue estimates of the tax, if fully collected, show that the state could raise billions of dollars annually.

According to the Department of Taxation and Finance, for the period April 1, 2020 through December 31, 2020, the state "collected" $5.7 billion, which was then rebated back to Wall Street.[7]

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[1] "COVID-19's impact on NY economy is 'far' worse than 9/11's, Cuomo says," Pix11 News, https://www.pix11.com/news/coronavirus/covid-19s-impact-on-ny-economy-is-by-far-worse-than-9-11-cuomo-says.

[2] Governor Cuomo, Executive Budget Plan

[3] NYS Division of the Budget, "NY COVID-19 Preliminary Economic Impact Assessment," April 2020, https://www.budget.ny.gov/pubs/archive/fy21/ny-covid19-economic-impact-prelim.pdf.

[4] David Dyssegaard Kallick, "New York's Essential Workers Overlooked, Underpaid, and Indispensable," Fiscal Policy Institute, April 8, 2020, http://fiscalpolicy.org/wp-content/uploads/2020/04/Essential-Workers-Brief-and-Recs.pdf.

[5] Scott Stringer, NYC Comptroller, "New York City's Frontline Workers," March 26, 2020, https://comptroller.nyc.gov/reports/new-york-citys-frontline-workers/.

[6] New York State Department of Taxation and Finance, "Stock Transfer Tax," https://www.tax.ny.gov/bus/stock/stktridx.htm.

[7] New York State Department of Taxation and Finance, "Monthly Tax Collections, December 2020," https://www.tax.ny.gov/research/collections/December2020taxcollections.htm.

For most investors, this is an unseen tax – even if it *was* collected. Most people who have investments generally are not buying and selling stocks with great frequency. Wall Street *speculators*, on the other hand, seek to jump in and out of investments at a rapid pace and those would be the people who would pay the vast bulk of the tax.

Similar Taxes Exist In Stock Markets Around The World

There are already places with sophisticated stock markets that have a stock transfer tax in place as a revenue stream. Countries like the United Kingdom, Switzerland, and Taiwan all have financial transaction taxes on the books. Hong Kong, a city considered to have the freest economy in the world, has a 0.1% tax on financial transactions with no significant impact on its economy aside from a lack of high-frequency trading.[8]

Will Wall Street flee?

Wall Street has argued that they will leave if that tax is kept. While it seems hard to believe that Wall Street would leave the state because a tax that they do not pay – it is paid by those who purchase stocks and the rate is small – if they did, New York would likely still be able to collect the tax.

The Stock Transfer Tax has been challenged in the past by Wall Street but upheld as constitutional. Shortly after it was first enacted, the New York transfer tax was upheld against a challenge under the Fourteenth Amendment. The Tax has been sustained through other legal challenges over the past hundred years. New York can impose the tax.

The question now is whether the state can collect the Stock Transfer Tax IF Wall Street moved its trading activities to another location. I think the answer to that question is clearly yes.

If a firm moved to New Jersey but continued trading on the New York Stock Exchange, New York would likely still have substantial enough connection to impose a tax. Before the rise of online business activity, state authorities imposed sales taxes on businesses with a physical presence in that state.

In the 2018 decision *South Dakota v. Wayfair*, the U.S. Supreme Court relaxed the older "physical presence" requirement, noting that states are "confronting the complexities of defining physical presence in the Cyber Age." Explaining that out-of-state tax exemptions had become "a judicially created tax shelter," the Court expanded states' ability to impose taxes remotely.

As a result of the *Wayfair* decision, states can impose sales tax collection requirements on remote sellers (those who sell through the Internet, for example) that exceed certain sales or transaction thresholds, without regard to physical presence. Thus, even if Wall Street moved much of its computerized activities outside of New York, the state would be able to keep the Stock Transfer Tax revenues.

This view is not mine alone. Attached you will find a letter sent by Bruce Fein, a conservative, constitutional lawyer who has served in the Reagan Administration as an Associate Deputy Attorney General from 1981 to 1982 and as general counsel to the Federal Communications Commission.

Media reports have offered comments from other experts:[9]

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[8] Bloomberg, "The case for a financial transaction tax", Financial Express, June 22, 2019, https://www.financialexpress.com/opinion/the-case-for-a-financial-transaction-tax/1615115/.

[9] Harris, L., "Could a Tax on Stock Trading Help New York Fill Its Massive Budget Hole?" Gotham Gazette, October 13, 2020, https://www.gothamgazette.com/state/9821-could-tax-on-stock-trading-help-new-york-cuomo-fill-budget-hole.

- Timothy Noonan, a partner at Hodgson Russ LLC who specializes in litigation on tax residency in New York City and State, said the *Wayfair* decision of the United States Supreme Court gives New York broad authority to tax trades that are requested in other parts of the country. *"I think the government would point to the Wayfair case—point to the trend indicating that nexus, in 2020, is a lot easier to establish, and that an economic presence, such as trading over the New York Stock Exchange, is enough to create that taxable nexus."*
- Darien Shanske, a tax professor at UC Davis Law School, said: *"If everything is the same, except that instead of yelling into your phone on the New York Stock Exchange [floor], you're yelling into your phone in New Jersey—but all the other machinery is the same—then that still looks like New York has a good claim to tax that transaction."*

Protecting New York's essential workers will be vital to the state's recovery, yet they are disproportionately burdened by the impact of the pandemic. At a time when the risk is not being shared equally, why should those currently bearing the biggest load of keeping society together take the biggest budgetary hit? Instead of placing the burden of New York State's economic recovery on the backs of working New Yorkers, it is only reasonable to ask Wall Street to pay its fair share.

As you grapple with the state's yawning budget gap, the stock transfer tax should be collected and put to use. Don't lose sight of the fact that there is a tax that is already on the books and ready to be collected. A tax that asks for a contribution from those who benefit most in society and are affected least by the state's financial shortfalls and health threats.

The Stock Transfer Tax is essentially a sales tax on the buying and selling of stocks. Every year, New York State collects taxes on the stock trades that occur on Wall St., but the current law simply rebates this money back to Wall St. automatically. The tax on these sales is infinitesimally small but generates billions in revenues from the activities of stock market "day traders" who speculate on the rise and fall of stock prices. By passing legislation to merely keep the revenue already collected from the Stock Transfer Tax, New York would generate billions from wealthy trading companies.

Revenue Source: Add A New Tax Bracket To NY's Personal Income Taxes, worth at least $1.5 billion
New York State has a progressive income tax system with rates ranging from a low of 4% to a maximum rate of 8.82%, depending on taxpayers' income level and filing status. The top tax bracket in New York begins at an income level of $1,077,550 which is why these top tax rates are sometimes known as millionaires' taxes. Compared to other states, New York has one of the highest top tax rates in the country but it is not the highest. California, Hawaii, and New Jersey, which recently raised its top tax rate to 10.75%, all have higher tax rates than New York State.

One of the features of New York's tax brackets is that someone making $5 million pays the same tax rate as someone making $500 million or more. While these are vastly different levels of wealth, the state's tax system treats them the same. Creating new tax rates for the upper income brackets will generate an estimated $1.5 billion.[10]

The governor's plan adds new tax brackets starting at $5 million and escalating rates above that bracket. The governor's plan is temporary and allows a covered taxpayer to voluntarily prepay their tax year 2022 and tax year 2023 surcharge liability through their tax year 2021 estimated tax payments. If a taxpayer chooses this option, they will receive a "repayment" via tax deductions in tax years 2024 and 2025.

[10] New York State Division of the Budget

According to the Budget Briefing Book, the temporary surcharge is “an innovative way to address the State’s short-term fiscal challenges while minimizing the impact on taxpayers over the long-term and to help maintain New York’s ability to compete.”

Revenue Source: End State Subsidies to Fossil Fuel Companies, worth nearly $500 million
There is broad support amongst the public for the "polluter pays" principle. Recent national polling conducted by the Center for Climate Integrity found that 70 percent of Americans support the concept of holding climate polluters financially responsible for efforts to fight climate change, with the number jumping to 82 percent after respondents were informed of the decades of deception perpetuated by the fossil fuel industry.[11] There are a number of ways the fossil fuel industry could be held accountable for their damage, including ending fossil fuel subsidies, or creating a polluter penalty. There are bills in the Legislature to end fossil fuel subsidies and create a polluter penalty. It makes climate sense and fiscal sense to end these subsidies in this budget.

Here are Some of the Fossil Fuel Tax Expenditures New York Could Eliminate:

Sales and Use Tax: Non-Essential Fossil Fuel Tax Expenditures amount to $309 million

- $182 million annually: Fuel, gas, coal, electricity, refrigeration and steam used directly and exclusively in research & development or production of tangible goods for sale are not subject to sales and use tax. We propose eliminating the subsidies for fuel, gas, and coal.
- $8 million annually: Gas and electricity used in operating pipelines and natural gas distribution lines are not subject to sales and use tax. The exemption for gas and electric distribution infrastructure incentivizes the operation of dangerous gas pipelines.
- $118 million annually: Airline fuel is exempt from sales and use tax in New York, and air travel is an enormous contributor to climate change. Eliminating this subsidy is one way to save money and improve the environment without detrimentally affecting low and middle-income New Yorkers.
- $1 million annually: New York State directly subsidizes the fossil fuel industry by exempting certain services used in gas or oil production. The services of installing, maintaining, repairing, or servicing property and land used in the production of oil and gas for sale are not subject to sales and use tax.

Petroleum Business Tax: Non-Essential Fossil Fuel Expenditures amount to $147.6 million

- $77.3 million annually: Certain petroleum products are exempt from the petroleum business tax. These products include kerosene, the highly polluting bunker fuel used for commercial shipping, and liquid petroleum gases.
- $66.1 million annually: Petroleum businesses receive additional exemptions or partial exemptions for the sales of petroleum products to certain groups, including governments, manufacturing, commercial gallonage (used for electricity generation), and non-residential heating.
- $4.2 million annually: While the products and sales described above are exempt or partially exempt from the Petroleum Business Tax, there are also additional credits, refunds, or reimbursements for certain products or consumers: governments, electric utilities, manufacturing, commercial gallonage, mining or extracting, non-residential heating, and bad debts.

Corporation Franchise Tax: Non-Essential Fossil Fuel Expenditures amount to $2.3 million

- $2.3 Million Annually: Public utilities, power producers, and pipeline companies are exempt from the corporation franchise tax. Affordable renewable power production and cheap electricity

[11] Center for Climate Integrity, https://payupclimatepolluters.org/survey-results.

distribution are necessary to reduce greenhouse gas emissions – fossil fuel power producers and pipeline companies should receive no exemption.

Revenue Source: Legalizing Recreational Cannabis Use, worth $20 million[12]
Legalizing cannabis for adult use in New York is an important step to reduce harms that current policies inflict on New York communities. By legalizing and taxing cannabis, New York can raise needed revenue and invest in communities hit hardest by the discriminatory and devastating war on drugs.

Revenue Source: Increase the Tobacco Tax by $1, worth at least $30 million
Despite its successes, New York State has undermined its efforts to curb tobacco use by underfunding public health programs. Moreover, the public health benefits of tobacco taxes have eroded over the past decade. New York must expand public education and treatment efforts and ban the sale of flavored tobacco products.

New York State's cigarette excise tax rate is currently $4.35 for a package of 20 cigarettes. This rate has been in place since 2010. The New York City applies an additional excise tax of $1.50 per package of 20 cigarettes.

The state also imposes a tax on tobacco products at a rate of 75 percent of the wholesale price of cigars and tobacco products other than little cigars and snuff. Little cigars are taxed at the same rate as cigarettes, $4.35 for a package of 20. One package of snuff which weighs an ounce or less is taxed at $2 per container, for packages weighing more than one ounce, a proportional amount is levied on the snuff in excess of one ounce.[13]

In the decade since the cigarette tax was raised, the impact of the tax has steadily declined. **When considering the inflation rate over that period of time, the $4.35 tax is the equivalent of $5.15 today**.[14]

According to the Department of Taxation and Finance, the state has collected over $800 million in the first nine months of the fiscal year.[15] Increasing the cigarette tax should bring at least $30 million according to advocates.[16]

The problem cited most often when considering a tobacco tax increase is its impact on the sales of illegal products. Currently, the state relies on a tax stamp to ensure that tobacco products sold are legal and has its enforcement agents monitor compliance. The Commissioner of Taxation and Finance currently licenses agents to sell stamps for the payment of tax on cigarettes. The agent retains some of the revenues from the sale as commission according to guidelines established by the Tax Commissioner. The Commissioner is also authorized to prescribe a schedule of commissions, not exceeding five percent, to agents for buying and affixing stamps.

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[12] New York State Division of the Budget.
[13] New York State Tax Law, Article 20, see https://www.tax.ny.gov/bus/cig/cigidx.htm.
[14] United States Bureau of Labor Statistics, calculator https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=4.35&year1=201007&year2=202003.
[15] 15 New York State Department of Taxation and Finance, "Monthly Tax Collections, December 2020," https://www.tax.ny.gov/research/collections/December2020taxcollections.htm.
[16] Estimate by the American Heart Association

Currently, the state relies on a tax stamp system that uses four different colored, numbered, heat-transferred stamps. The stamps have security features including taggants, micro-imaging, stamp numbering, variable image and UV watermarking.[17]

The CDC recommends that states embrace cutting-edge technologies to limit illegal tobacco sales.[18] According to the CDC, "[e]vasion of tobacco excise taxes costs states millions of revenue dollars every year. After the switch to the new high-tech tax stamps, California collected an additional $110 million dollars in revenue, without raising the excise tax.[19]

The CDC cited three states (California, Massachusetts, and New Jersey) that require the stamp to have a hologram or encrypted image. Three states (California, Michigan, and New Jersey) require a barcode or other scannable code in the tax stamp. Within two years of passing legislation including encrypted tax stamps, California saw a 37% decline in cigarette tax evasion and increased tax revenue of $110 million.[20]

New York State should embrace these new technologies and use additional tobacco tax revenues to devote more resources to enforcement of its laws.

Thank you for the opportunity to testify.

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[17] Federation of Tax Administrators, Tax Uniformity, "Tobacco Tax Information By State," Updated August 2019, p. 386.
[18] United States Centers for Disease Control and Prevention, "STATE System Tax Stamp Fact Sheet," https://www.cdc.gov/statesystem/factsheets/taxstamp/TaxStamp.html#anchor_1562859962.
[19] From CDC, Boonn A. The Case for High-tech Cigarette Tax Stamp, Campaign for Tobacco Free Kids. January 3, 2013. Accessed March 21, 2013.
[20] From the CDC, 5. McIntosh A. Tobacco tax cheating falls. Sacramento Bee. June 27, 2007.

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Re: New York's Stock Transaction Tax

Dear Blair,

Ralph Nader asked that I send a succinct analysis of the constitutionality of the New York Stock Transfer Tax (STT) as applied to transactions initiated or completed out-of-state but executed over the New York Stock Exchange and to be collected and remitted by out-of-state brokers or dealers. I believe the collection and remittance obligation would be clearly constitutional as applied to such transactions.

The United States Supreme Court abandoned the obsolete "physical presence" test for state imposition of tax collection obligations on of out-of-state businesses under the Commerce Clause in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2019). There, Court declared that a tax collection burden can constitutionally be imposed if the out-of-state tax collector avails himself of the substantial privilege of carrying on business in the taxing jurisdiction. Accordingly, out-of-state brokers or dealers in securities may be compelled by New York to collect and remit the STT on transactions executed on the New York Stock Exchange. It hosts the stock trades in New York. And the Stock Exchange itself thrives because of many municipal and state services that facilitate its operations.

Accordingly, New York should not be deterred from requiring securities firms in New York to collect and remit the STT for fear that they will flee the state to escape the tax. As regards a STT collection and remittance obligation, such flight would be as pointless as jumping out of the frying pan into the fire.

Sincerely,
/s/Bruce Fein
Bruce Fein