A Blueprint for Corporate Tax Fairness: Closing Corporate Tax Loopholes & Reforming the Corporate Income Tax

New York should raise needed revenue and restore fairness to the tax code by reforming our state corporate tax structure and closing a variety of corporate tax loopholes to make sure small business and big business play by the same rules, and that higher profits are taxed at reasonably higher rates.

Last year's effort to make the PIT more progressive and more fair should continue in 2012 by reforming corporate taxes to close loopholes, end costly and ineffective tax subsidies, and fix shortcomings that unnecessarily reduce tax collections and limit resources needed to maintain and invest in the infrastructure, services and educated workforce that foster long-term economic growth.

Reform Principles: Enforcement, fairness and transparency

Targets: Corporate tax evaders, real estate partnership abuses, hedge funds income treatment

Methods: Tough Audits, reasonable minimum tax for big business, eliminate hedge fund subsidies, mandatory tax reporting for public companies

A simple, targeted corporate tax reform effort would provide over $1 billion in revenue for this year's state budget, and provide a start for the Tax Reform and Fairness Commission to continue reforms.

Enforcement: Require Real Estate Partnerships To Pay The Taxes They Owe

New York must undertake a new intensive review of the tax returns of investors in real estate partnerships to ensure compliance with tax laws. In an examination of just one year's tax returns (2005), IRS staff estimated that real estate investors underpaid $5 billion in taxes to the federal government and $385 million to New York State.

Underreporting or misreporting of capital gains from real estate investments is the main cause of tax underpayments. Reuters columnist David Cay Johnston, who reported the 2005 IRS data when he wrote for the New York Times, recently wrote that the annual underpayment of New York State taxes in connection with real estate partnerships ranged from $200 to $700 million annually. Johnston also pointed out that New York City alone could be losing out on $40 million annually.

New York could recover as much as $1 billion from prior-year audits, with annual revenues thereafter well over $100 million. The state of Pennsylvania recently recaptured over $700 million by making sure that the investors in Real Estate Partnerships paid the proper taxes on their overall gains.

Fairness: Reform New York's Corporate Alternate Minimum Tax (AMT)

Several significant loopholes that favor multi-state corporations were added to New York's Corporate AMT beginning in 1994 and the AMT rate was cut from 3.5% to 2.5% in 1999 and then to 1.5% in 2005 for non-manufacturers and most recently .75% for manufacturers (manufacturers rate was recently changed in the tax reform package of December 2011).

These changes should be repealed or the AMT should be replaced with a variation of the Alternative Minimum Assessment (AMA) adopted by New Jersey in 2002. To ensure that such an assessment would not hurt small business, it should only be applied to businesses with annual gross profits of $5 million or more.

We need to level the playing field between large and small businesses by making sure that large multinational corporations pay a minimum corporate income tax in NYS. NYS should increase the Corporate AMT to where it was a decade ago (3.5%) which would generate hundreds of millions in additional revenue.

Tax Nonresident Hedge Fund Management Fees

In his 2010 Executive Budget proposal, Governor Paterson proposed to "expand the nonresident personal income tax to include income received from hedge fund management fees."

As the governor's proposal explained, "Currently, only a small portion of such income is taxed as compensation, with the remainder deemed tax-free capital gains. This proposal would result in equal treatment of this income for residents and nonresidents." This proposal would generate $50 million in additional revenue.

Eliminate the Carried Interest Exemption Under New York City's Unincorporated Business Tax

The State Legislature should eliminate the carried interest exemption loophole in the New York City Unincorporated Business Tax, to put the taxation of private equity and hedge funds on the same footing as that of thousands of smaller businesses.

Right now, the City Unincorporated Business Tax taxes fees received by managing partners in private equity and hedge funds but actually exempts profits from taxation. "Carried interest" is the technical industry term for the profit share received by managing partners (usually 20 percent of pooled investment profits) in hedge funds – anyone else would call it corporate profits.

The New York City Independent Budget Office estimated that eliminating the carried interest exemption for the Unincorporated Business Tax would yield $200 million a year for New York City. This reform was recently supported by Mayor Bloomberg.

Transparency

Crackdown on Schemes that Create "Nowhere Income"

Multi-state corporations pay no taxes on profits attributable to sales made in states in which they do not have a physical presence. To address this situation, 28 of the 45 states with corporate income taxes, including California, Texas and Utah have enacted "throw-back" or "throw-out" rules to limit this drain on state revenues.

In contrast, New York actually went backwards on this issue in 2005, instituting a wasteful "Single Sales Factor" method for apportioning multi-state corporate profits that actually increase "nowhere income" and opportunities to evade taxes. It's time to institute reforms that have worked for other states.

Require Public Disclosure of Corporate Tax Payments for Publicly-Traded Companies

Revenue neutral, but disclosure and transparency measures are a good addition to any corporate tax reform package. We urge the state to adopt corporate tax disclosure for publicly traded firms subject to taxation under 9-A and 32 and any successor taxes.

These and other corporate tax reforms are supported by a broad range of community, labor, student, faith and Occupy groups from across New York – for more information visit 99PercentNY.org.

www.99percentny.org