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New York's December 2011 Tax Law Changes

by Joseph N. Endres

Some New York taxpayers received an early Christmas present last month. Others probably feel like they received a lump of coal. On December 7, 2011, an extraordinary session of the New York State Legislature, called by Gov. Andrew Cuomo (D), enacted a bill amending various sections of the tax law, including important changes to tax rates for New York taxpayers. Because the governor issued a "message of necessity," the normal three-day review period was canceled and the legislation passed the Legislature in one day. That angered some legislators because of the lack of time to review and debate the legislation.[1] In fact, this bill was created in the typical New York "three men in a room" fashion, when the governor, Senate Majority Leader Dean Skelos (R), and Assembly Speaker Sheldon Silver (D) met to negotiate the terms. Still, the measure passed with overwhelming support: 55-0 in the Senate and 130-8 in the Assembly.

The bill was delivered to the governor on December 8, and he signed it on December 9.[2] The bill is intended to help close a $3.5 billion projected deficit in next year's budget. However, because the legislation is expected to generate approximately only $1.9 billion in revenue, additional cuts in spending or new taxes will be necessary to balance the next budget. In a press conference at 10 p.m. on December 7, the governor alluded to that when he said, "we just did 50 percent of the budget." This article outlines the budget highlights.

2012-2014 Tax Rate Adjustments

As a result of these amended rates, all single taxpayers making more than $20,000 and all married filing jointly taxpayers making more than $40,000 will be taxed at lower rates in 2012 than they were in 2011. According to the Governor's Office and several legislators, 4.4 million middle-income taxpayers will see a tax reduction.[3] However, because the top rate (that is, the "millionaire surcharge") was scheduled to expire at the end 2011, high-income taxpayers are arguably facing a tax increase. Most Republican legislators were able to support the measure despite the renewed millionaire surcharge because, when taken as a whole, the legislation can be viewed as a tax reduction measure. Skelos said:

> Closing out this year, $350 million, will be handled by spending cuts and next year there will still be, probably a $2 billion deficit that will be handled by spending cuts. . . . You have 4.4 million people receiving a tax cut, and all people will be below the level that the Democrats imposed upon the people of the state when they controlled the entire state, and the MTA payroll tax will see an elimination for 80 percent of the people who pay it. . . . I just see it as a reduction.[4]

Deputy Majority Leader Tom Libous (R) added, "probably 99.9 percent of the people in my district are going to see a tax cut."[5] Thus, in true compromise fashion, neither party got exactly what it wanted, yet both sides could claim a victory. The

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[1]Also, some news stories said the governor had strong-armed legislators, allegedly indicating that if the bill wasn't passed unanimously, he would campaign against any legislator who opposed the measure. *See* http://blog.timesunion.com/capitol/archives/94757/cuomotu-story-inaccurate-reilich-its-accurate/.

[2]It is important to note that a ceremonial signing was held on December 12. The legal signing, however, occurred on December 9. This is important because some disaster relief programs in the law require applicants to make a request for relief within 90 days of the date the governor approves the law.

[3]*See* http://www.governor.ny.gov/120711letter.

[4]*See* http://blog.timesunion.com/capitol/archives/94140/senate-gop-leaders-explain-their-support/.

[5]*Id.*

Democrats were able to renew the millionaire tax, and Republicans were able to reduce taxes for most of their constituents.

1. Married Filing Jointly (2011 Rates in Parenthesis)

Income	Tax Rate
0 - $16,000	4% (4%)
$16,001 - $22,000	4.5% (4.5%)
$22,001 - $26,000	5.25% (5.25%)
$26,001 - $40,000	5.9% (5.9%)
$40,001 - $150,000	6.45% (6.85%)
$150,001 - $300,000	6.65% (6.85%)
$300,001 - $500,000	6.85% (7.85%)
$500,001 - $2 million	6.85% (8.97%)
Over $2 million	8.82% (8.97%)

2. Single (2011 Rates in Parenthesis)

Income	Tax Rate
0 - $8,000	4% (4%)
$8,001 - $11,000	4.5% (4.5%)
$11,001 - $13,000	5.25% (5.25%)
$13,001 - $20,000	5.9% (5.9%)
$20,001 - $75,000	6.45% (6.85%)
$75,001 - $200,000	6.65% (6.85%)
$200,001 - $1 million	6.85% (7.85% up to $500,000, then 8.97%)
Over $1 million	8.82% (8.97%)

3. Cost of Living Adjustment

The bill added a new section (section 601-a) to the Tax Law. This section subjects the personal income tax brackets, the tax table bracket benefit recapture, and the standard deduction for resident individuals to COLAs.

4. New York City

Since New York's tax rates were increased in 2009, high-income New York City residents have been paying taxes at rates approaching 13 percent. As a result, the state and city taxing authorities have embarked on aggressive residency audit programs to take advantage of these higher rates.[6] Though the revived millionaire tax is imposed at a slightly lower rate and kicks in at a higher income level, it is likely that the taxing authorities will continue their aggressive approach to increase revenue. This is especially true considering that there is still a sizable deficit in next year's budget. Moreover, before the legislative deal, both Republican legislators and the governor voiced concerns that New York's high income tax rate could drive wealthy New Yorkers from the state. Although the tax was slightly reduced from 2011 levels, it appears that those concerns remain valid.

Metropolitan Commuter Transportation Mobility Tax (MCTMT)

As mentioned by Senate Leader Skelos, the new law greatly reduces the scope of the MCTMT. The term employer was amended to include only those employers with payroll expenses in excess of $312,500 in any calendar quarter. That amount was raised from $2,500, so it will result in many taxpayers no longer having a filing obligation. Also, the bill excluded "eligible educational institutions" (which include public school districts, public elementary and secondary schools, and nonpublic elementary and secondary schools) from the definition of an employer required to withhold. Finally, the MCTMT is now imposed at the following graduated rates, depending on the size of the employer's payroll expense:

Rate	Payroll Expense
0.11%	$375,000 or less per quarter
0.23%	$375,000.01 to $437,500 per quarter
0.34%	$437,500.01 and higher per quarter

Previously, the tax was imposed at a single rate of 0.34 percent of an employer's payroll expense. The tax imposed on the net earnings from self-employment of individuals that are attributable to the Metropolitan Commuter Transportation District remains at 0.34 percent, though the base at which the tax kicks in has been increased from $10,000 to $50,000. Thus, this should eliminate the filing obligation of many self-employed individuals.

Article 9-A Franchise Tax on New York Manufacturers

There is a reduction in rates: For tax years 2012 through 2014, taxpayers that are eligible New York manufacturers must pay tax at a rate of 3.25 percent of their entire net income. The rate for previous years was set at 6.25 percent. The bill also established a new minimum taxable income base for eligible qualified New York manufacturers. The new base is 75 percent of the taxpayer's minimum taxable income base. Finally, the new law cuts the fixed dollar minimum tax in half for eligible qualified New York manufacturers.

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[6]*See* Timothy P. Noonan and Joshua K. Lawrence, "Residency Ruling Raises Stakes for Owning an 'Abode' in New York," *State Tax Notes*, July 18, 2011, p. 187, *Doc 2011-14620*, or *2011 STT 137-4*; Noonan, "An Easier Fix to New York's Statutory Residency Problem?" *State Tax Notes*, May 9, 2011, p. 425, *Doc 2011-8930*, or *2011 STT 98-6*.

New York Youth Works Tax Credit Program

The legislation established a new tax credit program for employers who employ at-risk youth in part-time and full-time positions in 2012 and 2013. The program is capped at $25 million. Employers must be certified to participate in the program. Certified employers are eligible to receive a tax credit equal to $500 per month for up to six months for each qualified employee the employer employs in a full-time job or $250 per month for up to six months for each qualified employee the employer employs in a part-time job of at least 20 hours per week. The employer can also claim $1,000 for each qualified employee who is employed for at least an additional six months by the qualified employer in a full-time job or $500 for each qualified employee who is employed for at least an additional six months by the qualified employer in a part-time job of at least 20 hours per week. The employees must begin by July 1, 2012.

The term "qualified employee" is defined to mean an individual:

- who is between the age of 16 and 24;
- who resides in a city with a population of 62,000 or more or a town with a population of $480,000 or more;
- who is low-income or at-risk, as those terms are defined by the commissioner of tax;
- who is unemployed before being hired by the qualified employer; and
- who will be working for the qualified employer in a full-time or part-time position that pays wages that are equivalent to the wages paid for similar jobs, with appropriate adjustments for experience and training, and for which no other employee has been terminated, or where the employer has not otherwise reduced its workforce by involuntary terminations with the intention of filling the vacancy by creating a new hire.

Empire State Jobs Retention Program

The legislation created a new refundable tax credit program aimed at retaining jobs that could be at risk for leaving the state following an emergency. To participate, the taxpayer must operate in New York:

- as a financial services data center or financial service back office operations;
- in manufacturing;
- in software development and new media;
- in scientific R&D;
- in agriculture;
- in the creation of expansion of back office operations in New York; or
- in a distribution center as these terms are defined by statute.

Moreover, the taxpayer must be located in a county in which an emergency has been declared by the governor on or after January 1, 2011; must demonstrate substantial physical damage and economic harm resulting from the event leading to the emergency declaration by the governor; and must have had at least 100 full-time equivalent jobs in the county in which an emergency was declared just before the emergency and must retain or exceed that number of jobs in New York state.

The amount of that credit is equal to the product of the gross wages paid for the affected jobs and 6.85 percent. It is available for tax years beginning on or after January 1, 2012.

Infrastructure Investment Act

This act allows some state entities to enter into contracts to repair, modernize or otherwise improve the state's infrastructure. The act appears to alter the way contractors bid for and are awarded capital infrastructure projects. The act allows the Thruway Authority; the Department of Transportation; the Office of Parks, Recreation and Historic Preservation; the Department of Environmental Conservation; and the New York State Bridge Authority to enter into "design-build contracts" totaling at least $1.2 million, "cost-plus" contracts, or "lump sum" contracts. A design-build contract is a contract for the design and construction of a capital project with a single entity. A cost-plus contract is a contract that compensates a contractor for the cost to complete a contract by reimbursing actual costs for labor, equipment, and materials plus an additional amount for overhead and profit. The state is permitted to maintain a list of prequalified contractors eligible to make contract bids.

Hurricane Irene and Tropical Storm Lee Assessment Relief Act

This act is designed to provide property tax assessment relief to properties affected by Hurricane Irene or Tropical Storm Lee. If a property was "catastrophically impacted" (that is, more than 50 percent of its value was lost) by either Hurricane Irene or Tropical Storm Lee or both and is located within a participating municipality, assessment relief will be granted based on the property value chart.

To receive relief under this legislation, a property must have lost at least 50 percent of its value and be located in one of the counties that had been included in the federal disaster declarations for either Hurricane Irene or Tropical Storm Lee or both. Property owners must submit a written request to the assessor within 90 days following the date on which the act was approved by the governor. Since the governor signed the legislation on December 9, property owners seemingly have until March 8, 2012 to submit a request.

Hurrincane Irene-Tropical Storm Lee Flood Recovery Grant Program

Small businesses, farms, multiple dwellings, and not-for-profit organizations that sustained direct physical flood-related damage as a result of Hurricane Irene or Tropical Storm Lee are eligible to apply for a grant from the state. The grants are capped at $20,000 and the money must be used for storm-related repairs and restoration to structures, and for other storm-related costs that are not covered by any other federal, state, or local recovery program or any third-party payers. The grant program cannot exceed $21 million and will be administered by Empire State Development. A separate grant program capped at $9 million is available to counties included in the federal disaster declarations for Hurricane Irene or Tropical Storm Lee. ✰

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