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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 2019-20 EXECUTIVE BUDGET PROPOSAL: TAXES

Testimony of
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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. With me is Charles Khan, the Organizing Director. 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.

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Strong for All was established to fight for policies and programs that will address New York's worst-in-the-nation income inequality, and we'd like to say clearly and directly that fair-share tax policies are essential to addressing economic inequality in New York, properly funding needed investments in our future, and assuring broader prosperity for all New Yorkers.

This year we urge the Legislature to respond to New York's inequality crisis and new federal tax laws with a progressive revenue package for New York that will

- Extend and expand our current Millionaires Tax
- Close loopholes Congress wouldn't close
- Ask New York City billionaire real estate developers and absentee owners of luxury condominiums to pay their fair share for transit and infrastructure statewide
- Fight the opioid epidemic with a new windfall profits tax
- Revive the stock transfer tax after Trump gave Wall Street huge tax breaks

All New Yorkers want great public schools, solid healthcare, meaningful work, good public transportation, clean water and air and a viable climate future. We want a good future for our families. We want our state to lead the nation on economic, social, racial, immigrant and environmental justice.

We want a strong economy that delivers prosperity to all of us -- white, Black, Latinx and Asian --- and that will benefit all of us: consumers, workers, business people, investors, and retirees.

But right now, we've got the worst economic inequality in the nation. It's time for bold action to reduce inequality, tax the rich and invest in our communities.

Right now, in this year's state budget, we can raise money for schools, housing, green jobs and essential community services by making Wall Street and the wealthy pay their fair share.

MULTI-MILLIONAIRES TAX

The top 1% has captured the vast majority of income and wealth gains over the last decade, with gains to corporate profits and investments accelerating far faster than wages.

The Trump tax plan gave New York millionaires and billionaires massive tax cuts on income, estates, pass-through business income and corporate profits — while actually raising federal taxes on middle-class households in New York.

Working and middle-class New Yorkers can't pay more. And they don't have to.

Assembly Speaker Carl Heastie and the Assembly Majority Conference have proposed new state income tax brackets at the high end to capture the explosion of income and wealth among multi-millionaires and billionaires: additional brackets for marginal income over $5 million, $10 million and $100 million would raise over $2.1 billion per year.

CARRIED INTEREST FAIRNESS FEE

Right now, private equity and hedge fund managers often pay a lower tax rate than teachers and truck drivers -- the "carried interest" loophole lets them pay the lower capital gains tax rate on the fees they charge investors. Trump and the GOP didn't close this loophole, despite their campaign promises.

Governor Andrew Cuomo has included a state-level "carried interest fairness fee" in his budget proposal for the second year in a row; it's previously been supported by the Assembly Majority and would raise over $3.5 billion per year.

Senator Brad Hoylman and Assembly Member Jeffrion Aubry also sponsor this measure as a stand-alone piece of legislation (S. 303/A. 3976).

NEW YORK CITY PIED-À-TERRE TAX

Right now, over 75,000 apartments in New York City are owned by individuals who don't live there full time – including the apartment recently purchased by Chicago hedge fund billionaire Ken Griffin for $238 million, the highest price ever paid for a house or apartment in the United States.

Senator Brad Hoylman and Assembly Member Deborah Glick now sponsor legislation (S. 44/A. 4540) to create a sliding tax surcharge on luxury condos and apartments that are second or third or fourth or fifth homes.

For properties valued between $5 million and $6 million, a 0.5 percent surcharge would be added on the value over $5 million. Fees and a higher surcharge would apply to homes that sold for more than $6 million, topping out at a $370,000 fee and a 4 percent surcharge for homes valued at more than $25 million.

The office of the city comptroller, Scott M. Stringer, estimated that a pied-à-terre tax would bring in a minimum of $650 million annually if enacted today. “For us, $650 million a year is a lot of money to deal with things such as our subway crisis,” Mr. Stringer said, “but it's a rounding error for the people who own these expensive part-time apartments.”[1]

IT'S TIME FOR ACTION

New York has more multi-millionaires and billionaires than any other state. We have 63% more millionaires now than before we started our current Millionaires Tax. in 2017 New York City enjoyed a 15% one-year increase in residents with over $30 million in assets -- it's now home to 103 billionaires.

We can tax the rich to invest in our communities in this year's state budget. We encourage all lawmakers to move forward for fairness.

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[1] https://www.nytimes.com/2019/02/09/nyregion/pied-a-terre-tax-ny.html?action=click&module=Well&pgtype=Homepage&section=New%20York

Working-class, middle-class and low-income New Yorkers won't pay a dime in new taxes. But multi-millionaires and billionaires can and should.

CARRIED INTEREST "FAIRNESS FEE"

In response to the new federal tax law, states can and should close loopholes that Congress refused to close.

A perfect example is the carried-interest loophole, which allows hedge fund billionaires and private equity titans to pay lower tax rates than teacher and truck drivers. Campaign cash and furious lobbying kept the loophole alive, despite Trump's promises to kill it.

State legislation[2] has been introduced in nine states and the District of Columbia[3] to tax carried interest at the state level until Congress takes action – Governor Cuomo[4] and New Jersey Governor Phil Murphy[5], for example, previously introduced the measure, and lawmakers in states from California to Illinois to Connecticut are pushing bills forward.

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[2] https://www.theguardian.com/us-news/2017/mar/27/connecticut-debt-tax-loophole-greenwich-rich-residents

[3] https://www.thenation.com/article/this-loophole-will-let-hedge-fund-managers-dodge-18-billion-in-taxes-this-year/

[4] https://www.nytimes.com/2018/01/03/nyregion/albany-cuomo-state-of-the-state.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=second-column-region&region=top-news&WT.nav=top-news&_r=0

[5] http://www.nj.com/politics/index.ssf/2017/12/murphy_says_his_administration_will_end_fiscal_sle.html

The Strong Economy for All Coalition urges the Legislature to take action to repatriate revenue lost to the federal-level carried interest loophole and bring it to New York for new investments in schools, jobs, housing, clean energy infrastructure and essential government services.

Governor Cuomo's executive budget proposal incorporates language in the Revenue bill on this issue based on legislation introduced by Assembly Member Jeffrion Aubry and Senator Brad Hoylman to close the loophole, and we encourage the Legislature to include this language in the final state budget bill, with amendments to limit the regional compact states to New York, Connecticut and New Jersey.

Elected officials on both sides of the aisle have called for closing something known as the "carried interest loophole," a legal fiction used by wealthy financiers to lower their federal tax rates below those paid by many working Americans.[6]

According to the New York Times,

[6] http://www.usatoday.com/story/opinion/2015/09/15/hedge-fund-carried-interest-donald-trump-jeb-bush-editorials-debates/72268922/

> Partners at private-equity firms and hedge funds typically treat a big portion of the fees they charge their clients as a capital gain — that is, as profit on the sale of an investment — so they can pay tax at the capital-gains rate of 20 percent (plus a surtax of 3.8 percent typically). Ordinary income is taxed at a rate of up to 39.6 percent. But labeling fees as capital gains is a stretch, in part because the partners generally earn their fees by managing other people's money, not by investing their own.[7]

Closing the loophole would save the federal government an estimated $18 billion per year, according to an analysis by law professor Victor Fleischer.[8]

State legislatures could pass legislation to tax the carried interest income of hedge fund and private equity partnerships headquartered in their respective states at the rate of ordinary income.

New York's private equity and hedge funds are conservatively estimated to be earning $35.7 billion per year in under-taxed carried interest. A state bill to recapture this revenue at the ordinary income

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[7] http://mobile.nytimes.com/2016/03/11/opinion/new-york-challenges-a-tax-privilege-of-the-rich.html?_r=0
[8] http://www.nytimes.com/2015/06/06/business/dealbook/how-a-carried-interest-tax-could-raise-180-billion.html?_r=0

level would add an estimated $3.5 billion additional dollars to New York's coffers.

What is the carried interest loophole?

Simply stated, the carried interest loophole is the mistreatment of hedge fund and private equity fees as capital gains, rather than ordinary income.

Hedge fund and private equity funds are usually structured as partnerships. The fund manager is the general partner of the funds, and the investors are limited partners.

Investors often supply the majority of the capital, and the fund manager is supposed to supply investment expertise. For the services the investment manager provides, they charge certain fees.

In both hedge funds and private equity funds, the standard fee structure is "2 and 20"—two percent of the fund assets per year are taken as the management fee, which covers operating costs. Twenty percent of all gains over a certain benchmark rate are taken by the fund manager as the performance fee.[9]

[9] https://www.fas.org/sgp/crs/misc/RS22689.pdf

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The problem comes from how that twenty percent performance fee is treated for tax purposes. To an outsider, it may seem that this twenty percent fee is compensation for services. According to the Tax Policy Center, a joint project of the Brookings and Urban Institutes, the vast majority of tax analysts share this view.[10]

If we treated the performance fee as a fee for services, it would be federally taxed at the ordinary income level, where the highest marginal tax rate is now 37%. Instead, many fund managers treat this fee as an investment profit.

Profits on investments held longer than one year receive preferential treatment in the tax code, with the highest marginal rate on long-term capital gains set at 20%.[11]

That difference of 19.6% may not sound like a lot of money, but the academics estimate the tax revenue loss from the carried interest loophole to be $18 billion per year nationwide – and $3.5 billion for New York.

The Strong Economy for All Coalition urges the Legislature to impose a 19% carried interest "fairness fee" for new investments in schools, jobs, housing, clean energy infrastructure and essential governments services.

[10] http://www.taxpolicycenter.org/briefing-book/key-elements/business/carried-interest.cfm
[11] Plus a 3.8% Medicare surtax

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PASS AN UPDATED MULTI-MILLIONAIRES TAX

We worked hard in 2011 to build broad public support for the Millionaires Tax, and that public support has only grown stronger in the years since. As you know, the incomes of the highest-earning filers in New York have soared in the past decade, while our tax brackets remain linked to income distributions of the 1970s and 1980s.

And our current Millionaires Tax hasn't led high-earning New Yorkers to run away to other states: our state has gained 63% MORE millionaires since we instituted the tax in 2009.[12]

Now it's time to update New York's Personal Income Tax structure to require more from those most able to pay: the multi-millionaires and billionaires at the very top.

We strongly support a "multimillionaires' tax" that would set new Personal Income Tax brackets at income levels of \$5 million, \$10 million and \$100 million per year, raising over \$2.1 billion per year for New York needs, including public schools, lifesaving health care, affordable housing and a 21st-century clean-energy transportation and power infrastructure.

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12 https://www.democratandchronicle.com/story/news/politics/albany/2017/03/17/number-ny-millionaires-rose-63-since-2009/99311558/

New York's super-rich choose to live here because of business, investment and cultural opportunities not offered anywhere else in the world.

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 2018 Wealth Report ranks New York number one in the world overall, number one for wealth, number one for investment, number one for lifestyle and number one for future prospects.[13]

Last year's report predicts a 30% increase for UHNWIs in New York City (those with $30 million in investible assets not counting their primary residence).

New York has 6,570 UHNWIs – it's the number-one city worldwide, ahead of London, Hong Kong, Singapore and Shanghai.[14]

The Wealth Report includes detail on millionaires and multi-millionaires living just in New York City:

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13 https://content.knightfrank.com/resources/knightfrank.com/wealthreport2018/the-wealth-report-2018.pdf

14 https://content.knightfrank.com/research/83/documents/en/the-wealth-report-2017-4482.pdf

- 339,200 Millionaires (over $1 million in wealth not including primary residence) – up six points over 2016.
- 15,180 Multi-Millionaires (over $10 million) – also up six points.
- 6,570 UHNWIs (over $30 million) – up seventeen percent in a single year[15].

The number has grown since New York instituted our Millionaires Tax, and Knight-Frank predicts it will grow by 30% by 2028.

Knight-Frank also predicted a dramatic increase in the number of wealthy individuals living in New York and working in the Technology and Information sector – while they see employment in finance and real estate increasing 5.4% here over the next five years, they predict a 21% increase in high-income tech jobs.[16]

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.[17]

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[15] http://content.knightfrank.com/research/83/documents/en/the-wealth-report-2017-4482.pdf
[16] http://www.knightfrank.com/globalcities/2017/new-york-real-estate
[17] http://www.knightfrank.com/wealthreport

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.[18]

18 https://web.stanford.edu/group/scspi/_media/pdf/pathways/summer_2014/Pathways_Summer_2014_YoungVarner.pdf

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IMPOSE A NEW YORK CITY LAND VALUE TAX ON LUXURY CONDOS AND DEVELOPMENT TO FUND TRANSIT, JOBS & CLIMATE ADAPTATION STATEWIDE

- New York City real estate has soared in value, while the transportation, infrastructure, housing and energy systems that make it so valuable have suffered
- The NYC subways were built with a land tax on speculative real estate – now that they need to be rebuilt, it's time for billionaire real estate moguls and huge Real Estate Investment Trusts to contribute to the rebuilding
- Governor Cuomo's "value capture" proposal would only target areas where new transit expansions create new value – it wouldn't capture the explosive increase in Manhattan land and condo prices over the last decade
- We can create thousands of jobs all over New York and the with funding from a reasonable land tax on just the most valuable Manhattan office buildings and speculative luxury housing that could raise **several billion dollars** per year.
- We're talking luxury real estate and high-end development, not working or middle-class homes

- For example, “in the area immediately south of Central Park in Manhattan now known as Billionaire’s Row, condos at a half-dozen towers for the super-rich list for an average of $14.5 million. Buyers from abroad are common.”
- “The penthouse at 432 Park Avenue—the tallest residential building in the Western Hemisphere—went for $95 million to a Saudi. At One57, a residential skyscraper on 57th Street, the luxury penthouse was sold for $100.4 million, the buyer reported to be the prime minister of Qatar. About one-third of Manhattan condo sales since the 2008–2009 recession have been to foreign buyers or to a limited liability corporation (LLC) often used to shield the identity of the ultimate owner.”[19]
- These owners can and should pay their fair share of the cost of keeping New York safe and productive – and it’s not fair that billionaires’ condos in New York City are taxed less than working-class housing in Buffalo or Brentwood
- Similarly, the highest-end new speculative office and luxury condo developments in Manhattan should be required to pay towards strengthening and improving the infrastructure, transit and clean energy infrastructure that’s part of a statewide system for all New Yorkers

[19] http://prospect.org/article/heights-privilege

- It's not fair for the residents of "Billionaires' Row" to pay lower property taxes than residents of Buffalo or the Bronx[20] – they should pay their fair share, through targeted land value taxes, luxury condo assessments and non-resident "pied-a-terre" fees

[20] http://fiscalpolicy.org/policy-brief-property-tax-relief-circuit-breaker; https://www.empirecenter.org/publications/benchmarking2016/

ASSESS A FEE ON OPIOID PAINKILLER PRESCRIPTIONS & A WINDFALL PROFITS TAX ON OPIOID WEALTH

- New York is facing a deadly public health crisis of addition and overdose, driven by prescription painkillers and other narcotics
- Pharmaceutical companies and pharmacy benefits managers have abused the prescribing system to explode sales and distribution of dangerous painkillers beyond their proper use
- A state surtax on prescription painkillers <u>and</u> an assessment on big Pharma and family fortunes built on opioids will raise billions for treatment, public health and overdose prevention.

What A Windfall Profits Tax Should Look Like

- While excise taxes like those proposed by Governor Cuomo are useful for funding treatment services, they do not get at an important issue. Profiting off of addiction is wrong. A windfall profits tax would be a direct way to limit profiting from tragedy and deter future malfeasance.
- The classic example of a windfall profits is the 1980's federal Crude Oil Windfall Profit Tax Act (P.L. 96-223). CRS notes that the tax

"purpose of the tax was to recoup for the federal government much of the revenue that would have otherwise gone to the oil industry as a result of the decontrol of oil prices. Supporters of the tax viewed this revenue as an unearned and unanticipated windfall caused by high oil prices, which were determined by the OPEC (Organization of Petroleum Exporting Countries) cartel."

- A windfall profits tax is in order when corporations are able to generate excessively high profits due to abnormal market conditions or manipulation. We believe that the impact of addiction is generating such conditions.
- Legislation could be written to direct the New York Department of Health, using its trove of Opioid-related data and health policy expertise, to set a baseline for opioid consumption in 1999 or a prior year, and measure the volume of sales against the population growth in the state.
- Sales above a level determined by the New York Department of Health as normal should be taxed at a much higher rate than the current excise tax proposals. The federal windfall profit tax used a variety of rates depending on the type of oil, ranging from 22.5% to 70%.

The determination of what is and is not an opioid is already defined in New York law and used in the opioid surtax in the budget:

> Opioid" shall mean an "opiate" as defined by subdivision twenty three of section thirty-three hundred two of the public health law, and Any natural, synthetic, or semisynthetic "narcotic drug" as defined by Subdivision twenty-two of such section, that has agonist, partial agonist, or agonist/antagonist morphine-like activities or effects similar to natural opium alkaloids and any derivative, congener, or combination thereof, listed in schedules II-IV of section thirty-three hundred six of the public health law.

Distributors and manufacturers are already defined and required to register in New York State under Education Law Section 6808(4):

> 4. Wholesaler's or manufacturer's registration.
>
> a. Obtaining a registration. A wholesaler or manufacturer shall be registered as follows:
>
> (1) The application shall be made on a form prescribed by the department.
>
> (2) The application shall be accompanied by a fee of eight hundred twenty-five dollars.
>
> b. Renewal of registration. All wholesalers' and manufacturers' registrations shall be renewed on dates set by

the department. The triennial registration fee shall be five hundred twenty dollars or a pro-rated portion thereof as determined by the department.

c. Display of registration. The registration shall be displayed conspicuously at all times in the place of business.

d. Change of location. In the event that the location of such place of business shall be changed, the owner shall apply to the department for inspection of the new location and endorsement of the registration for the new location. The fee for inspection and endorsement shall be one hundred seventy dollars, unless it appears to the satisfaction of the department that the change in location is of a temporary nature due to fire, flood or other disaster.

- The tax should be applied equally to all taxable distributors and manufacturers in the state once the "normal" amount of opioids have been sold for the year.

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BRING BACK THE STOCK TRANSFER TAX

- Big banks and Wall Street traders get the biggest benefits from the GOP Tax Scam
- New York still collects a .25% sales tax on securities trades through our Stock Transfer Tax that is rebated back to the banks to the tune of over $14 billion per year
- We support the legislation to be re-introduced this year by Senator Julia Salazar to stop the rebate and invest the money through a new Economic Justice Authority, and we encourage the Legislature to move forward with this measure as part of the final budget package.