

**Summary of Corporate Tax Loophole Closures
in 2008-2009 Executive Budget
Information from Executive Budget Briefing Book
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The Better Choice Budget Campaign has been seeking to close a wide variety of corporate tax loopholes that have resulted in many large, profitable corporations from paying their fair share of state taxes.

To promote fairness, the tax code should not allow certain taxpayers to avoid taxes they would otherwise owe through the use of unintended loopholes. Doing so unfairly shifts that tax liability to others. All businesses and individuals should compete on a level playing field.

The following reforms will help our State achieve that goal and generate over \$434 million on an All Funds Basis in previously uncollected State tax revenue:

- **Amend Definition of Gain from Sales of Real Property for Nonresidents.** This Budget would close a loophole that allows nonresidents to place a property located in New York State in a partnership or LLC for the purpose of avoiding paying personal income tax when their ownership interest is sold. This measure will generate \$10 million annually starting in 2009-10.
- **Definition of “Presence in New York” for Residents Usually Outside the Country.** This Budget proposes to close a loophole by amending the definition of “presence in New York” for determining residency of taxpayers who usually reside outside the country. The spouses and children of these taxpayers would only need to be present in New York for 90 days to be subject to State taxes, not necessarily present at the taxpayers’ permanent place of abode in New York. This measure will generate \$5 million in revenue annually starting in 2009-10.
- **Tax Shelter Reporting.** This Budget would provide the Department of Taxation and Finance with permanent statutory tools to address the increasing use of abusive tax shelters. Tools, which were originally scheduled to sunset July 1, 2009, but would be made permanent, include:
 - Requiring the disclosure of information related to transactions that present the potential for tax abuse;
 - Authorizing New York to promulgate regulations that would require the reporting of New York taxable transactions;
 - Providing substantial penalties for nondisclosure and the underpayment of taxes; and
 - Extending the statute of limitations for assessments relating to these transactions.

This measure will generate \$17 million annually starting in 2009-10.

- **REITs and RICs Reform.** This Budget would make statutory corrections and structural alterations necessary to eliminate remaining tax loopholes with respect to real estate investment trusts (REITs) and regulated investment companies (RICs). It would require all captive REITs and captive RICs to file a combined

return with the closest corporation that directly or indirectly owns or controls the captive. These amendments address the loopholes that remain despite legislation enacted in 2007. These amendments also simplify the approach to controlled REITs and RICs. This measure will generate no additional revenue, but is necessary to preserve revenue anticipated from the 2007 legislation.

- **Require Non-Profit Tax-Exempt Organizations to Collect Sales Tax On Certain Sales, Rentals and Leases.** This Budget would close a current loophole that allows non-profit entities to compete on an unfair basis with other vendors, requiring them to collect tax on activities not directly related to their non-profit status. This measure will generate \$7.5 million in 2008-09 and \$15 million when fully effective.
- **Curtail Certain Tax Avoidance Schemes.** This Budget proposes to narrow both the sales tax exemption for commercial aircrafts and the use tax exemption for motor vehicle, vessel, and aircraft. This will help curtail certain abusive sales and use tax avoidance schemes. This measure will generate \$4 million in 2008-09 and \$6.3 million when fully effective.
- **Qualified Production Activities Income (QPAI) Decoupling.** Conforming New York's tax code to the practices of 18 other states, this Budget proposes to decouple the State from the Federal deduction related to qualified production activities, requiring taxpayers to add back this deduction for State tax purposes.

The deduction was originally intended to provide a tax incentive to manufacturers by preserving and promoting domestic production and manufacturing jobs. However, the deduction is now allowed on a vast array of activities that go beyond the familiar concept of manufacturing. A multi-state firm currently could use the deduction to reduce its New York taxes without having a single production employee in the State. This method of tax avoidance will no longer be available. This measure will generate \$56 million annually starting in 2008-09.

- **Classify Credit Card Companies Doing Significant Business in New York as Taxpayers Under the Bank Tax.** This Budget would subject out-of-State credit card companies to New York taxation on the revenue they collect from New York merchants and consumers ("economic nexus"). This measure will generate \$95 million in 2008-09 and \$75 million when fully effective.
- **Brownfields Tax Credit Reform.** This Budget would refocus State environmental clean-up efforts by expanding potential remediation credits and providing meaningful caps to redevelopment credits available under the Brownfields Program. This measure is revenue neutral during the five-year financial plan period, but will produce significant savings in the years following.
- **Empire Zone Reform.** The Empire State Development Corporation will administratively decertify existing Empire Zone businesses that failed to meet certain performance targets, and enforce more stringent qualification standards for new Empire Zone businesses. These changes are expected to generate \$50 million in savings annually starting in 2008-09.
- **Merge Fuel Taxes into One Petroleum Business Tax.** This Budget recommends combining the petroleum business tax, the motor fuel tax and the State sales tax on motor fuel and diesel motor fuel into one petroleum business tax. This will offer greater transparency and simplify tax forms, making the tax easier to administer. This proposal would increase revenues by \$13.2 million in 2008-09 and \$55.9 million when fully effective.

- **Capital Base Rate Reduction and Cap Elimination.** This Budget would reduce the corporation franchise tax capital base rate, eliminate the tax liability cap on this base for non-manufacturers, and conform the definition of “manufacturer” under the capital base to the definition under the entire net income base.

The tax rate would be reduced from 0.178 percent to 0.15 percent. The conforming amendments would specifically exclude electricity generation from the definition of manufacturing.

This bill would provide further tax relief to corporations with capital base liability below \$1 million doing business in New York State and increase the liability of those who previously benefited from the \$1 million cap. This measure will generate \$98 million in 2008-09 and \$70 million when fully effective. Small businesses that qualify for the reduced rates will receive tax relief totaling \$42 million annually.

- **Restructure Fees and Minimum Taxes Imposed on Limited Liability Companies (LLCs) and Corporations.** This Budget proposes to restructure LLC fees and corporate minimum taxes to impose a similar fee on all partnerships and S corporations. Under the new structure, LLC fees would be based on a measure of New York activity (income) rather than the total number of members in a LLC. This measure will generate \$75 million annually starting in 2008-09.
- **Reclassify Certain Beverages.** The tax treatment of certain flavored malt beverage products would be changed to better reflect alcohol content. These products will be taxed at the low liquor rate rather than the beer rate. This measure will generate \$15 million in 2008-09 and \$18 million when fully effective.
- **Redefine Little Cigars.** Little cigars, which are indistinguishable from cigarettes, would be classified as cigarettes for tax and stamping purposes by both the State and New York City, and made subject to the requirements of the Master Settlement Agreement. This measure will generate \$3.6 million in 2008-09 and \$4.8 million when fully effective.
- **Study Tax Policy Toward Non-residents.** The Department of Taxation and Finance would be directed to conduct a study of current taxation policies on non-residents with a limited work presence in New York. This will be done administratively.

“Amazon Tax.” Establish an evidentiary presumption that certain sellers using New York residents to solicit sales in the State are “vendors” required to collect sales and use tax. For example, many internet retailers enter into agreements with organizations under which the organization receives a commission if it includes a link on its website that connects users to the internet retailer’s website. If the customer makes a purchase, the organization receives a commission from the retailer. When the resident engages in solicitation activities in the State, such as distributing advertising fliers or newsletters in order to refer potential customers to the seller and maximize his or her commission income, the resident is acting as a “representative” and the seller is acting as a “vendor.” Enactment of this bill is necessary to implement the 2008-2009 Executive Budget because it would increase revenues by \$43 million in 2008-09 and \$73 million in 2009-10.

Improving Tax Compliance

The 2008-09 Executive Budget advances several new initiatives that the Department of Taxation and Finance will use to improve taxpayer compliance and reduce fraudulent activities. These measures include:

- **Vendor Registration Program.** This Budget would institute a registration program that would be applicable to new registrations and re-registrations of vendors. This would make it easier for the Department to update taxpayer information, remove obsolete registrations and collect past-due taxes from vendors. The registration fee will be set at \$50.
- **Vendor Classification.** This Budget would establish an evidentiary presumption that certain sellers using New York residents to solicit sales in the State are vendors required to collect sales and use tax.
- **Voluntary Disclosure and Compliance Program.** Delinquent taxpayers will avoid criminal prosecution and civil penalties if they voluntarily disclose their past delinquencies, pay past-due debt, and enter into a tax compliance agreement with the Department.
- **Increased Enforcement Resources.** Taxpayer compliance will be improved through a proposal to increase the Department's fraud and investigative enforcement staff. This effort will be broadcast through a statewide media campaign.
- **Improved Ability to Fight Fraud.** The Executive Budget recommends a shortened tax administration process, requires electronic filing and increases and expands criminal penalties.
- **Increase Access to Data.** As part of this Budget, financial institutions, sales tax vendors and other State agencies would be required to share certain tax information with the Department.

Adjusting Fee Schedules

The Executive Budget recommends increasing certain fees and fines to offset the costs of administering programs: increasing food safety penalties; increasing various insurance related penalties; and increasing the motor vehicle law enforcement and highway safety fee. These measures will generate \$305 million in 2008-09.