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**TO:** Tax Committee Members  
**FROM:** Ken Pokalsky  
**SUBJECT:** Senate and Assembly Budget Resolutions  
**DATE:** 3/13/19

Our overview comparing the Senate and Assembly one-house budget resolutions with the Executive Budget is presented below.

“Highlights” include:

- Both houses “accepted” the Executive Budget on apportioning GILTI. The Business Council continues to push for an exemption, as put forth in [A.5962](#). This remains an open, active issue.
- Despite a recent push on legislation [decoupling from cap on interest deduction](#), neither house included it in their resolutions. It seems unlikely for this budget cycle.
- The Assembly re-introduced its FY2019 proposal for three additional personal income tax brackets topping out at 10.32% over \$100 million, a proposal estimated to add up to \$2 billion in annual revenues.
- The Senate omitted, but the Assembly included, the Executive Budget proposal for a “carried interest fairness tax,” contingent upon adoption by neighboring states.
- The Executive Budget’s marketplace provider proposal is accepted by both houses, with the Assembly including an opt-out provision for vendors who prefer to continue to manage their own direct sales tax collection and remittance.
- Both houses are proposing a “pied-a-terre” tax for properties in New York City, a concept that Governor Cuomo has supported.

**As always, please contact me with any comments or questions on specific issues. I can be reached at (518)- 694-4460 and [ken.pokalsky@bcnys.org](mailto:ken.pokalsky@bcnys.org)**

**TAXATION**

ISSUE	EXECUTIVE BUDGET	SENATE ONE HOUSE	ASSEMBLY ONE HOUSE	FINAL BUDGET
GILTI Apportionment	Adopts apportionment provisions for state and NYC corporation tax, requires inclusion of net GILTI in apportionment denominator; applies tax to net federal GILTI. No revenue projection provided.  Revenue Article VII Part C	Executive Budget provisions included.	Executive Budget provisions included.	
Real Property Tax cap	Permanent extension of the real property tax cap.  PPGG Article VII, Part G	Executive Budget provisions included.	Executive Budget provisions omitted.	
"Millionaires Tax"	Extends the top 8.82% state PIT rate for five years past its current 12/31/19 sunset. Revenue projection is \$771 million in FY 2020, up to \$5.5 billion by FY 2024.  Revenue Article VII Part P	Executive Budget provisions included.	Would adopt permanent upper income tax brackets of 8.82% for incomes \$2.2 to \$5 million, 9.32% for \$5 to \$10 million; 9.82% for income \$10 to \$100 million, and 10.32% on income above \$100 million (brackets for joint filers; for single filers, thresholds are halved); adopts a new "alternative tax table benefit recapture;" makes permanent the CPI adjustments for standard deduction  A.2009-B, Part P	
Marketplace Providers	Requires "marketplace providers" to collect sales tax on sales of tangible personal property it facilitates; marketplace provider defined as providing the sales forum and collects receipts on behalf of a seller,	Executive Budget provisions included.	Executive Budget provisions included.; adds a provision allowing a "marketplace seller" to directly collect and remit sales tax  A.2009-B, Part P	

	regardless of the volume of sales they facilitate.  Revenue Article VII Part G			
Repeal of ESCO Sales Tax Exemption	Repeals the sales tax exemption for energy transmission charges when energy is purchased through an energy service company (ESCO). Revenue Article VII, Part H	Executive Budget provisions included.	Executive Budget provisions included.	
Dodd-Frank Provisions	Extends thru 6/30/21 sales tax exemption for transactions between related entities that are required by Dodd-Frank.  Revenue Article VII Part V	Executive Budget provisions included.	Executive Budget provisions included.	
Carried Interest	Imposes a 17% surcharge on certain newly defined "investment management services;" provisions becomes effective when adopted by Connecticut, New Jersey, Massachusetts and Pennsylvania. No immediate revenue impact projected.  Article VII Revenue Part Y	Executive Budget provisions omitted. Resolution states, "Senate will continue to evaluate . . .; particularly with respect to composition of the interstate compact."	Executive Budget provisions included.	
Fiber Optic Cable Right of Way Assessments	Authorizes the state Transportation Department to impose unspecified fees for fiber optic cables in highway right of ways; prohibits cost being passed thru to customers; exempts projects related to the New NY Broadband Program.  TED Article VII Part S	Executive Budget provisions omitted.	Executive Budget provisions omitted.	
TCJA Decoupling	Includes two minor provisions: allows the use of	Executive Budget provisions included.	Includes Executive Budget Part D; omits Executive	

	<p>state rather than federal capital basis for determining status as a “qualified NY manufacturer”; and decouples from federal tax treatment of state economic development grants and other “contributions to capital.” No revenue impact projected.</p> <p>Revenue Article VII Parts D and X.</p>		Budget Part X regarding contributions to capital.	
Cannabis Regulation and Taxation Act	<p>Among other provisions related to the legalization of recreational marijuana, imposes taxes on the cultivation and wholesale sales of cannabis. Revenue projects increase to \$184 million by FY 2024.</p> <p>Revenue Article VII Part VV</p>	Executive Budget provisions generally included; resolution also recommends that revenue be directed to communities disproportionately impacted by prior enforcement.	Executive Budget provisions omitted.	
Energy System Real Property Tax Exemption	<p>Creates a local real property tax exemption for solar, wind, farm waste and micro-hydro energy systems that are locate on property owned or controlled by a state entity.</p> <p>Revenue Article VII Part AA</p>	Executive Budget provisions included.	Executive Budget provisions omitted.	
“Comprehensive Tobacco Policy”	<p>Among other changes related to tobacco sales, imposes a 20% tax on vapor products. Projects \$19 million in annual revenues when fully implemented.</p> <p>Revenue Article VII Part UU</p>	Executive Budget provisions included.	<p>Omits all of the Executive Budget proposal except the 20 percent “supplemental tax on vapor products.”</p> <p>A.2009-B, Part UU</p>	
Tax Credit Provisions	<p>Creates a new 25% refundable tax credit against employers’ cost of providing</p>	Executive Budget provisions included.	Executive Budget provisions included.	

	<p>employee day care services (capped at \$150,000 per employer) (Part L)</p> <p>Expand eligibility of the “employee training incentive program” (Part B)</p> <p>Extend by three years the credit for employing workers with disabilities (Part E)</p> <p>Modifies the Farm Workforce Retention Credit (Part N)</p> <p>Extends thru 12/31/22 the credit for purchasing bioheating fuels (Part R)</p> <p>Expands eligibility for the historic rehabilitation credit (Part U)</p> <p>Creates a new refundable tax credit under the corporate, income and insurance tax for hiring persons recovery from substance abuse (\$1 per hour worked) (Part W)</p>	<p>For Part U, modifies the proposal to lower the credit cap for certain projects unless they are MWBE certified.</p>	<p>For Part U, adds</p> <ul style="list-style-type: none"> <li>- a credit of 150% of the credit otherwise allowed the taxpayer with respect to a certified historic structure that is a small project (less than \$5 million in rehab expenditures)</li> <li>- allows for tax credits to be transferred to taxpayers unrelated to the project.</li> </ul>	
<p>Administrative Provisions</p>	<p>Makes permanent current e-filing and payment mandates (Part A)</p> <p>Makes permanent tax shelter provisions and tax preparer penalties (Part O)</p> <p>Makes permanent the Tax Department’s authority to require segregated accounts for delinquent sales tax vendors (Part S)</p>	<p>Modifies the Executive Budget with limited extensions as follows:</p> <ul style="list-style-type: none"> <li>- Part A for three years;</li> <li>- Part O for five years;</li> <li>- Part S for three years; and</li> <li>- Part Q for five years.</li> </ul>	<p>Executive Budget provisions included.</p>	

	Five year extension on cap on charitable contributions by upper income taxpayers (Part Q)			
Wireless Surcharge	Extends for two years the existing suspension of the annual transfer of \$1.5 million in Tax Law Section 186-f surcharges on wireless services to the Emergency Services Revolving Loan Fund  PPGG Article VII Part M		Executive Budget provisions omitted.	
Suspension of Drivers Licenses			Amends existing Tax Law provisions for suspension of drivers licenses based on tax delinquencies by” - indexing the \$10,000 threshold to inflation - exempting taxpayers that are on public assistance or with income below 250% of the federal poverty level.  A.2009-B, Part ZZ	
Real Property Transfer Tax			Imposes an additional tax on statewide transfers of real property valued at \$5 million or more; tax rate ranges from 0.3% to 1.5% for transfers of \$1 billion or more.  A.2009-B, Part BBB	
“Pied-a-terre” tax		Proposes unspecified “surcharge for high-end non-primary residences sold in New York City”  S.1509-B, Part BBB	Imposes an additional real property tax on non-primary residences located in New York City with a market value of \$5 million or more; tax rate ranges from 0.5% to 4% for properties valued at \$25 million or more.	

			A.2009-B, Part CCC	
"New York Agricultural and Rural Jobs Credit" Program			Adopts tax credits for insurance corporations to make funds available for investments made in rural business growth funds (Note: similar proposal passed in 2018 but was vetoed.)  A.2009-B, Part DDD	
Film and Commercial Production Credits		Resolution states that Senate is "committed to extending and streamlining the Commercial Production and Film tax credit programs.		