STATE OF NEW YORK

10414--A

IN ASSEMBLY

May 11, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. De La Rosa, Reyes, Simotas, Simon, Epstein, Ortiz, Hevesi, Davila, Lentol, Seawright, Frontus, Gottfried, Carroll, Nolan, Niou, Mosley, Glick, L. Rosenthal, Hunter, Blake, Cruz, Bronson, Rozic, Kim, Jean-Pierre, Jaffee, Rodriguez, Pichardo, Cahill, Thiele, Ramos, Fernandez, Taylor, Richardson, Perry, Solages, O'Donnell, Dinowitz, Walker, Weprin, Quart, Bichotte) -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to establish the "billionaire mark to market tax and the worker bailout fund act"; to amend the tax law, in relation to establishing a mark to market tax; to amend the state finance law, in relation to establishing the worker bailout fund; and to amend the labor law, in relation to establishing the worker bailout program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "billionaire mark to market tax and the worker bailout fund act".

§ 2. The tax law is amended by adding a new section 612-a to read as follows:

§ 612-a. Billionaire mark to market taxation. (a)(1) Notwithstanding any other provision of law to the contrary, resident individual taxpayers with net assets worth one billion dollars or more on the date of July first, two thousand twenty, shall recognize gain or loss as if each asset owned by the individual taxpayer were sold for its fair market value on that date. Any resulting net gains from these deemed sales, up to the phase-in cap amount, shall be included in the taxpayer's income for the two thousand twenty tax year. Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. At the taxpayer's option, any additional tax payable as a result of this subsection shall either be payable along with any other tax owed for the two thousand twenty tax year or else shall be payable annually in ten equal installments beginning in the year of the effective date of this section and

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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with all such installment payments commencing after the initial installment payment also being subject to an annual nondeductible deferral charge of seven and one-half percent annually. For resident individual taxpayers who would recognize net gains as a result of this subsection except for the operation of this sentence, if the taxpayer can show that any portion of such gains was accumulated prior to the taxpayer becoming a resident individual of New York, and if the taxpayer can also show that such portion of such gains was previously taxed by any prior state or jurisdiction in which the taxpayer was a resident prior to becoming a resident individual of New York, then credit shall be provided in the amount of any such tax on such gains paid to any such prior states or jurisdictions in which the taxpayer was a resident prior to becoming a resident individual of New York. Any credits so provided by this subsection, however, shall not exceed the lesser of the total tax owed under this subsection on such gains and the tax imposed on such gains by such other prior states or jurisdictions in which the taxpayer was a resident prior to becoming a resident individual of New York.

(2) For the two thousand twenty tax year, whether an individual is a resident individual for purposes of this section shall be determined using the tests provided pursuant to paragraph one of subsection (b) of section six hundred five of this article.

(b) Subsequent to two thousand twenty, resident individual taxpayers with net assets that are worth one billion dollars or more at the end of the last day of any tax year shall recognize gain or loss as if each asset owned by such taxpayer on such date were sold for its fair market value on such date, but with adjustment made for tax paid on gain in previous years. Any resulting net gains from these deemed sales, up to the phase-in cap amount, shall be included in the taxpayer's income for such taxable year. Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. To the extent that the losses of a taxpayer exceed such taxpayer's gains, such net losses shall not be recognized in such taxable year and shall instead carry forward indefinitely. For resident individual taxpayers who would recognize net gains as a result of this subsection except for the operation of this sentence, but who were not resident individuals for all of the preceding five tax years, solely for purposes of deemed sales pursuant to this subsection, the tax basis of each asset owned on the last day of the last tax year before the resident individual became a New York resident shall be the fair market value of the asset as of that day.

(c) For each date on which gains or losses are recognized as a result of this section, the phase-in cap amount shall be equal to a quarter of the worth of a taxpayer's net assets in excess of one billion dollars on such date.

(d) For the purposes of determining whether a resident individual taxpayer has net assets worth one billion dollars or more, the term "assets" shall include all of the following, but only to the extent allowable under the New York Constitution, the United States Constitution, and any other governing federal law: all owned real or personal, tangible or intangible, property, wherever situated, (1) owned by the taxpayer, (2) owned by the taxpayer's spouse, minor children, or any trust or estate of which the taxpayer is a beneficiary, (3) contributed by the taxpayer or any person or entity described in paragraph two of this subsection to any private foundation, donor advised fund, and any other entity described in section 501(c) or section 527 of the Internal Revenue Code of which the taxpayer and/or any person or entity described

in paragraph two of this subsection is a substantial contributor (as such term is defined in Section 4958(c)(3)(B)(i) of the Internal Revenue Code), and (4) without duplication, all gifts and donations made within the past five years by the taxpayer or any person or entity described in paragraph two of this subsection as if such gifts and donations were still owned by the taxpayer. For the purpose of this section, "net assets" shall include the fair market value of assets less the fair market value of liabilities of the taxpayer and, in appropriate cases as determined by the commissioner, liabilities of such other persons described in the definition of assets.

(e) (1) The fair market value of each asset owned by the taxpayer shall be the price at which such asset would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of relevant facts. The value of a particular asset shall not be the price that a forced sale of the property would produce. Further, the fair market value of an asset shall not be the sale price in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item wherever appropriate. In the case of an asset which is generally obtained by the public in the retail market, the fair market value of such an asset shall be the price at which such item or a comparable item would be sold at retail.

(2) For purposes of this section, any feature of an asset, such as a poison pill, that was added with the intent, and has the effect, of reducing the value of the asset shall be disregarded, and no valuation or other discount shall be taken into account if it would have the effect of reducing the value of a pro rata economic interest in an asset below the pro rata portion of the value of the entire asset.

(f) (1) (A) The commissioner shall amend the New York personal income tax forms and amend or create any other forms as necessary for the reporting of gains by assets. Assets shall be listed with (i) a description of the asset, (ii) the asset category, (iii) the year the asset was acquired, (iv) the adjusted New York basis of the asset as of December thirty-first of the tax year, (v) the fair market value of the asset as of December thirty-first of the tax year, and (vi) the amount of gain that would be New York taxable income, unless the commissioner shall determine that one or more categories is not appropriate for a particular type of asset.

(B) Asset categories shall include, but not be limited to, the following:

(i) stock held in any publicly traded corporation;

(ii) stock held in any private traded C corporation;

(iii) stock held in any S corporation;

(iv) interests in any private equity or hedge fund organized as a partnership;

(v) interests in any other partnerships;

(vi) interests in any other noncorporate businesses;

(vii) bonds and interest bearing savings accounts, cash and deposits;

(viii) interests in mutual funds or index funds;

(ix) put and call options;

(x) futures contracts;

(xi) financial assets held offshore reported on IRS tax form eight thousand nine hundred thirty-eight;

(xii) real property;

(xiii) art and collectibles;

(xiv) pension funds;

(xv) other assets;

(xvi) debts and liabilities; and

(xvii) assets not owned by the taxpayer but which count toward the one billion dollar threshold pursuant to subsection (d) of this section.

(2) The commissioner shall specifically request the filing of such forms by any resident individual expected to have net assets in excess of one billion dollars. Such taxpayers shall include, but not be limited to, (A) taxpayers listed as billionaires on published lists, and (B) taxpayers with an adjusted gross income summed over the previous ten years in excess of six hundred million dollars.

(g) In the event that any resident individual taxpayer becomes a New York resident subsequent to paying tax to another state as a result of recognizing gain or loss pursuant to any mark-to-market or deemed-realization regime of that other state, proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under such mark-to-market or deemed-realization regime of that other state for purposes of computing gain or loss under subsection (a) or (b) of this section or under section six hundred twelve of this article.

(h) In the event that any provision of this section is found to be invalid, unconstitutional, or otherwise unenforceable, that finding shall not affect any other provision in this section which can be enforced without the use of the offending provision.

(i) The moneys received from any additional taxes paid as a result of this section, after deducting the amount the commissioner shall determine to be necessary for reasonable costs of the state tax commission in administering, enforcing, collecting and distributing such tax, shall be distributed to the worker bailout fund established pursuant to section ninety-five-j of the state finance law.

(j) The commissioner shall promulgate such rules and regulations necessary or appropriate to carry out the purposes of this section, including rules to prevent the use of year-end transfers, related parties, or other arrangements to avoid the provisions of this section.

§ 3. The state finance law is amended by adding a new section 95-j to read as follows:

§ 95-j. Worker bailout fund. 1. There is hereby established in the joint custody of the commissioner of taxation and finance and the state comptroller a fund to be known as the "worker bailout fund".

2. The worker bailout fund shall consist of all moneys collected and received by the commissioner pursuant to section six hundred twelve-a of the tax law, including any interest and penalties associated with such collection.

3. All moneys collected as contributions and interest relating to wage replacement to workers and families unable to access traditional worker wage insurance or assistance programs shall be deposited in a bank, trust company or industrial bank designated by the state comptroller. Moneys so deposited shall be credited immediately to the account of the worker bailout fund and shall be used for the purposes set forth in section six hundred forty-four of this article. Moneys in such fund may be invested by the state comptroller in accordance with the provisions of section ninety-eight of this article, and shall be used for the purposes specified herein.

4. Moneys of the fund shall be used exclusively for the purpose of providing emergency wage replacement to workers that do not qualify for unemployment insurance or other worker wage assistance programs and to households who have lost a major source of income due to the death or

disability of a close household member who could not access unemployment insurance or other worker wage assistance programs. The moneys shall be paid out of the fund on the audit and warrant of the state comptroller on vouchers certified or approved by such commissioner the duly designated officer. Any balance in such fund shall not lapse at any time but shall remain continuously available for such purposes.

5. Moneys of the fund shall not be used in whole or in part for any purpose or in any manner which (a) would permit its substitution for, or a corresponding reduction in, federal funds that would be available in its absence to finance expenditures for the administration of this article; or (b) would cause the appropriate agency of the United States government to withhold any part of an administrative grant which would otherwise be made.

§ 4. The labor law is amended by adding a new section 591-b to read as follows:

§ 591-b. Worker bailout program. 1. The department is hereby authorized and empowered to establish and operate a worker bailout program as authorized pursuant to section six hundred forty-four of this article.

2. Each worker bailout program applicant shall provide, in such form and at such time as the commissioner may prescribe, at least two of the following:

(a) Primary proof of identity including, but not limited to, a driver's license, motor vehicle ID card number, valid foreign driver's license that includes a photo image of the applicant and which is unexpired or expired for less than twenty-four months of its date of expiration, New York State ID, IDNYC or other New York municipal or county identification card, student ID card, valid unexpired foreign passport issued by the applicant's country of citizenship, or valid unexpired consular identification document issued by a consulate from the applicant's country of citizenship. Nothing contained in this subdivision shall be deemed to preclude the commissioner from approving additional proofs of identity; or

(b) Social security number or, in lieu thereof, an individual taxpayer identification number or a United States citizenship and immigration services number; or

(c) Names and addresses of all employers and/or hiring parties, in and out of the state, for the last eighteen months to the extent that such information is available to the applicant; or

(d) Mailing address and zip code.

3. Application forms for such program shall not state: (a) the documents an applicant used to prove identity; or (b) an applicant's ineligibility for a social security number where applicable; or (c) an applicant's citizenship or immigration status.

4. Any portion of any original documents or copies of documents retained or collected by the department in relation to the worker bailout program application to prove identity, age or fitness or any record that contains the photo image or identifies the social security number, telephone number, place of birth, country of origin, place of employment, school or educational institution attended, source of income, status as a recipient of public benefits, the customer identification number associated with a public utilities account, medical information or disability information of the holder of, or applicant for, such program is not a public record and shall not be disclosed or otherwise made accessible in response to any request for records except:

(a) to the person who is the subject of such records; or

(b) where necessary to comply with a lawful court order, judicial warrant signed by a judge appointed pursuant to article III of the United States constitution, or subpoena for individual records issued pursuant to the criminal procedure law or the civil practice law and rules.

5. For the purposes of this section, whenever a lawful court order, judicial warrant, or subpoena for individual records properly issued pursuant to the criminal procedure law or the civil practice law and rules is presented to the commissioner, only those records, documents, and information specifically sought by such court order, warrant, or subpoena may be disclosed.

6. Notwithstanding the disclosure of records pursuant to subdivisions four and five of this section, the commissioner shall require any person or entity that receives or has access to records or information from the department to certify to the commissioner, before such receipt or access, that such person or entity shall not:

(a) use such records or information for purposes other than for the administration of the worker bailout program or worker bailout fund; or

(b) disclose such records or information to any other agency or to any employee or agent of any such agency unless such disclosure is pursuant to a cooperative arrangement between city, state and federal agencies and which arrangement disclosure is limited to the specific records or information being sought pursuant to such arrangement and used solely for the administration of the worker bailout program or the worker bailout fund.

§ 5. The labor law is amended by adding a new section 644 to read as follows:

§ 644. Eligibility for worker bailout program. 1. For the purpose of section five hundred ninety-one-b of this article, the term "worker bailout program" means a program under which assistance is available to individuals who reside in the state and:

(a) do not meet the eligibility requirements:

(i) for unemployment insurance benefits as described in this article, including benefits payable to federal civilian employees and to ex-servicemen and servicewomen pursuant to Chapter 85 of the United States Code, and benefits authorized to be used for the self-employment assistance program pursuant to the Federal-State Extended Unemployment Compensation Act of 1970; or

(ii) to receive insurance or assistance payments under any programs provided for under subtitle a of Title II of the federal CARES Act; and

(b) suffered a loss:

(i) of work-related earnings; or

(ii) of one or more major sources of household income due to the death or disability of a close household member on whose income the family depended, during a state of emergency declared by the governor and provided further that no other individual in the household is receiving an allowance under the worker bailout program for the same month for the same reason. Such an allowance shall only be accessed: (A) during a state of emergency as declared by the governor and up to eight months after the state of emergency has been declared; (B) during a time in which the government of the United States has authorized renewal or extension beyond the date of the Pandemic Unemployment Assistance outline in Title II of the CARES Act; (C) up to the last day of the calendar quarter of the emergency period defined in paragraph (1)(B) of section 1135(g) of the federal Social Security Act (42 U.S.C. 1320b-5(g)) and ending on the last day of the calendar quarter in which

the last day of such an emergency period occurs; or (D) up to the last day of any calendar quarter during which the U.S. Bureau of Labor Statistics reports a seasonally adjusted unemployment rate of six percent or more in the state; or

(c) were released from post-arraignment incarceration or detention or from immigration detention on or after October first, two thousand nineteen.

2. No individual shall be eligible to receive assistance under the worker bailout program in any month if the gross work related earnings they received in the previous calendar month exceeds two thousand one hundred eighty-two dollars.

3. Proof of eligibility may be established by documentation or, in the absence of documentation, by self-attestation.

(a) The allowance payable to individuals shall be payable in the amount of thirty-three hundred dollars per month, payable monthly from April two thousand twenty through December thirty-first, two thousand twenty. Payments shall be retroactive to the latter of the first date of earnings loss during the state of emergency or April first, two thousand twenty. The total amount paid for any benefit year shall not exceed the maximum amount of benefits payable under this article and Title II of the CARES Act.

(b) Payments shall continue until the later of: (i) December thirty-first, two thousand twenty; (ii) the last day of the calendar quarter during which the government of the United States has authorized renewal or extension beyond the date of Pandemic Unemployment Assistance; (iii) the last day of the calendar quarter of the emergency period defined in paragraph (1)(B) of section 1135(g) of the federal Social Security Act (42 U.S.C. 1320b-5(g)) and ending on the last day of the calendar quarter in which the last day of such an emergency period occurs; or (iv) the last day of any calendar quarter during which the U.S. Bureau of Labor Statistics reports a seasonally adjusted unemployment rate of six percent or more in the state.

4. No individual shall be required to apply for assistance under the worker bailout program as a condition of eligibility for any state or local program.

§ 6. This act shall take effect immediately.