

STATE OF NEW YORK

8277--B

IN SENATE

May 1, 2020

Introduced by Sens. RAMOS, BAILEY, BENJAMIN, BIAGGI, COMRIE, GIANARIS, GOUNARDES, HOYLMAN, JACKSON, KAVANAGH, LIU, MAY, MYRIE, PARKER, RIVERA, SALAZAR, SANDERS, SEPULVEDA, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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 with all such installment payments commencing after the initial install-

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

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1 ment payment also being subject to an annual nondeductible deferral
2 charge of seven and one-half percent annually. For resident individual
3 taxpayers who would recognize net gains as a result of this subsection
4 except for the operation of this sentence, if the taxpayer can show that
5 any portion of such gains was accumulated prior to the taxpayer becoming
6 a resident individual of New York, and if the taxpayer can also show
7 that such portion of such gains was previously taxed by any prior state
8 or jurisdiction in which the taxpayer was a resident prior to becoming a
9 resident individual of New York, then credit shall be provided in the
10 amount of any such tax on such gains paid to any such prior states or
11 jurisdictions in which the taxpayer was a resident prior to becoming a
12 resident individual of New York. Any credits so provided by this
13 subsection, however, shall not exceed the lesser of the total tax owed
14 under this subsection on such gains and the tax imposed on such gains by
15 such other prior states or jurisdictions in which the taxpayer was a
16 resident prior to becoming a resident individual of New York.

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

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

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

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

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

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

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

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

38 (B) Asset categories shall include, but not be limited to, the follow-
39 ing:

40 (i) stock held in any publicly traded corporation;
41 (ii) stock held in any private traded C corporation;
42 (iii) stock held in any S corporation;
43 (iv) interests in any private equity or hedge fund organized as a
44 partnership;
45 (v) interests in any other partnerships;
46 (vi) interests in any other noncorporate businesses;
47 (vii) bonds and interest bearing savings accounts, cash and deposits;
48 (viii) interests in mutual funds or index funds;
49 (ix) put and call options;
50 (x) futures contracts;
51 (xi) financial assets held offshore reported on IRS tax form eight
52 thousand nine hundred thirty-eight;
53 (xii) real property;
54 (xiii) art and collectibles;
55 (xiv) pension funds;
56 (xv) other assets;

1 (xvi) debts and liabilities; and

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

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

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

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

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

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

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

35 § 95-j. Worker bailout fund. 1. There is hereby established in the
36 joint custody of the commissioner of taxation and finance and the state
37 comptroller a fund to be known as the "worker bailout fund".

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

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

52 4. Moneys of the fund shall be used exclusively for the purpose of
53 providing emergency wage replacement to workers that do not qualify for
54 unemployment insurance or other worker wage assistance programs and to
55 households who have lost a major source of income due to the death or
56 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

1 United States constitution, or subpoena for individual records issued
2 pursuant to the criminal procedure law or the civil practice law and
3 rules.

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

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

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

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

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

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

30 (a) do not meet the eligibility requirements:

31 (i) for unemployment insurance benefits as described in this article,
32 including benefits payable to federal civilian employees and to ex-ser-
33 vicemen and servicewomen pursuant to Chapter 85 of the United States
34 Code, and benefits authorized to be used for the self-employment assist-
35 ance program pursuant to the Federal-State Extended Unemployment Compen-
36 sation Act of 1970; or

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

39 (b) suffered a loss:

40 (i) of work-related earnings; or

41 (ii) of one or more major sources of household income due to the death
42 or disability of a close household member on whose income the family
43 depended, during a state of emergency declared by the governor and
44 provided further that no other individual in the household is receiving
45 an allowance under the worker bailout program for the same month for the
46 same reason. Such an allowance shall only be accessed: (A) during a
47 state of emergency as declared by the governor and up to eight months
48 after the state of emergency has been declared; (B) during a time in
49 which the government of the United States has authorized renewal or
50 extension beyond the date of the Pandemic Unemployment Assistance
51 outline in Title II of the CARES Act; (C) up to the last day of the
52 calendar quarter of the emergency period defined in paragraph (1)(B) of
53 section 1135(g) of the federal Social Security Act (42 U.S.C.
54 1320b-5(g)) and ending on the last day of the calendar quarter in which
55 the last day of such an emergency period occurs; or (D) up to the last
56 day of any calendar quarter during which the U.S. Bureau of Labor

1 Statistics reports a seasonally adjusted unemployment rate of six
2 percent or more in the state; or

3 (c) were released from post-arraignment incarceration or detention or
4 from immigration detention on or after October first, two thousand nine-
5 teen.

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

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

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

20 (b) Payments shall continue until the later of: (i) December thirty-
21 first, two thousand twenty; (ii) the last day of the calendar quarter
22 during which the government of the United States has authorized renewal
23 or extension beyond the date of Pandemic Unemployment Assistance; (iii)
24 the last day of the calendar quarter of the emergency period defined in
25 paragraph (1)(B) of section 1135(g) of the federal Social Security Act
26 (42 U.S.C. 1320b-5(g)) and ending on the last day of the calendar quar-
27 ter in which the last day of such an emergency period occurs; or (iv)
28 the last day of any calendar quarter during which the U.S. Bureau of
29 Labor Statistics reports a seasonally adjusted unemployment rate of six
30 percent or more in the state.

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

34 § 6. This act shall take effect immediately.