

# 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:

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

3 § 612-a. Billionaire mark to market taxation. (a)(1) Notwithstanding  
4 any other provision of law to the contrary, resident individual taxpayers  
5 with net assets worth one billion dollars or more on the date of  
6 July first, two thousand twenty, shall recognize gain or loss as if each  
7 asset owned by the individual taxpayer were sold for its fair market  
8 value on that date. Any resulting net gains from these deemed sales, up  
9 to the phase-in cap amount, shall be included in the taxpayer's income  
10 for the two thousand twenty tax year. Proper adjustment shall be made in  
11 the amount of any gain or loss subsequently realized for gain or loss  
12 taken into account under the preceding sentence. At the taxpayer's  
13 option, any additional tax payable as a result of this subsection shall  
14 either be payable along with any other tax owed for the two thousand  
15 twenty tax year or else shall be payable annually in ten equal install-  
16 ments beginning in the year of the effective date of this section and  
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18

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

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

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

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

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

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

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

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

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

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

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

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

1     (xv) other assets;  
2     (xvi) debts and liabilities; and  
3     (xvii) assets not owned by the taxpayer but which count toward the one  
4 billion dollar threshold pursuant to subsection (d) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

16 § 591-b. Worker bailout program. 1. The department is hereby author-  
17 ized and empowered to establish and operate a worker bailout program as  
18 authorized pursuant to section six hundred forty-four of this article.

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

22 (a) Primary proof of identity including, but not limited to, a driv-  
23 er's license, motor vehicle ID card number, valid foreign driver's  
24 license that includes a photo image of the applicant and which is unex-  
25 pired or expired for less than twenty-four months of its date of expira-  
26 tion, New York State ID, IDNYC or other New York municipal or county  
27 identification card, student ID card, valid unexpired foreign passport  
28 issued by the applicant's country of citizenship, or valid unexpired  
29 consular identification document issued by a consulate from the appli-  
30 cant's country of citizenship. Nothing contained in this subdivision  
31 shall be deemed to preclude the commissioner from approving additional  
32 proofs of identity; or

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

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

39 (d) Mailing address and zip code.

40 3. Application forms for such program shall not state: (a) the docu-  
41 ments an applicant used to prove identity; or (b) an applicant's inel-  
42 igibility for a social security number where applicable; or (c) an  
43 applicant's citizenship or immigration status.

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

55 (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

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

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

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

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

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

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

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

36 § 6. This act shall take effect immediately.