

# STATE OF NEW YORK

9500

## IN SENATE

July 11, 2022

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the tax law and the state finance law, in relation to enacting the "Empire State Windfall Profits Tax Act of 2023"

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 "Empire  
2 State Windfall Profits Tax Act of 2023".

3 § 2. The tax law is amended by adding a new section 1105-c to read as  
4 follows:

5 § 1105-c. Windfall profits tax. (a) Imposition of tax. Notwithstand-  
6 ing any other provision of law, rule or regulation to the contrary, in  
7 addition to any other tax imposed under this article, in each calendar  
8 quarter there is hereby imposed on any covered taxpayer an excise tax at  
9 the rate determined under subdivision (b) of this section on the  
10 receipts from each retail sale of tangible personal property, service,  
11 production and manufacturing by the covered taxpayer for which the  
12 taxpayer routinely engages in business within the state during the  
13 calendar quarter.

14 (b) Rate of tax. The rate of tax imposed by this section on the total  
15 receipts from the retail sale of tangible personal property, service,  
16 production and manufacturing for any calendar quarter is the product of:

17 (1) twenty-five percent, and

18 (2) the excess, if any, of:

19 (A) the company value, which is the average annual profits at the  
20 quarter, over

21 (B) the average annual profits over a period beginning on January  
22 first, two thousand fifteen, and ending on December thirty-first, two  
23 thousand nineteen.

24 (c) Withholding and deposit of tax. The commissioner shall provide  
25 such rules as are necessary for the withholding and deposit of the tax  
26 imposed under this section.

27 (d) Records and information. Each taxpayer liable for tax under this  
28 section shall keep such records, make such returns, and furnish such

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

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1 information to the commissioner and to such other persons having an  
2 interest in the taxable tangible personal property, service, production  
3 and manufacturing as the commissioner may by regulations prescribe.

4 (e) Return of windfall profit tax. The commissioner shall provide for  
5 the filing and the time of such filing of the return of the tax imposed  
6 under this section.

7 (f) Regulations. The commissioner shall prescribe such rules and regu-  
8 lations as may be necessary or appropriate to carry out the purposes of  
9 this section.

10 (g) Inflation adjustment. (1) In general. In the case of a calendar  
11 quarter in any taxable year beginning after two thousand twenty-two, the  
12 amount determined under subdivision (b) of this section shall be  
13 increased by an amount equal to: (A) such dollar amount, multiplied by  
14 (B) the cost-of-living adjustment determined under subsection (f) of  
15 section one of the internal revenue code for the calendar year in which  
16 the taxable year begins, determined by substituting two thousand twen-  
17 ty-one for "2016" in section 1 (f)(3)(a)(ii) of the internal revenue  
18 code.

19 (2) Rounding. If any dollar amount after being increased under para-  
20 graph one of this subdivision, is not a multiple of fifty cents, such  
21 dollar amount shall be rounded to the next lowest multiple of one cent.

22 (h) Definitions and special rules. As used in this section, the  
23 following terms shall have the following meanings:

24 (1) "Applicable period" shall mean from the first of the month next  
25 succeeding the effective date of this section until December thirty-  
26 first, two thousand twenty-four.

27 (2) "Covered taxpayer" shall mean:

28 (A) any taxpayer if, with respect to any calendar quarter:

29 (B) every business incorporated in the state and subject to the tax  
30 imposed pursuant to article nine, nine-a or thirteen-A of this chapter  
31 for the privilege of engaging in business, doing business, employing  
32 capital, owning or leasing property, or maintaining an office in the  
33 state.

34 (3) "Sale" shall have the same meaning as such term is defined in  
35 section two hundred eighty-two of this chapter.

36 (i) Rebates and credits. (1) Income tax credit. In the case of an  
37 eligible individual, there shall be allowed an income tax credit for  
38 each taxable year beginning after the date of the enactment of this  
39 section, an amount equal to the sum of the windfall rebate amount for  
40 calendar quarters beginning in such taxable year.

41 (2) Rebate amount. For the purposes of this subdivision, "windfall  
42 rebate amount" shall mean, with respect to any taxpayer for any calendar  
43 quarter beginning in a taxable year, an amount determined by the commis-  
44 sioner not later than thirty days after the end of such calendar quarter  
45 taking into account the number of eligible individuals and the amount of  
46 revenue in the "protect New Yorkers from surges fund" established pursu-  
47 ant to section ninety-nine-qq of the state finance law and resulting  
48 from the tax imposed by this section for the preceding calendar quarter.

49 (3) Identification requirements. Notwithstanding any contrary  
50 provision of this subdivision, the rebate amount authorized hereunder  
51 shall be treated as being zero unless the taxpayer includes such taxpay-  
52 er's full valid identification number on the return filed for the taxa-  
53 ble year.

54 (4) Filing. Solely for the purposes of this subdivision, a return of  
55 tax shall not be treated as filed until such return has been processed  
56 by the internal revenue service.

1 (5) Special rule for joint returns. In the case of an eligible indi-  
2 vidual filing a joint return, the windfall rebate amount shall be one  
3 hundred fifty percent of the amount determined under paragraph two of  
4 this subdivision with respect to other taxpayers.

5 (6) Application to certain individuals. In the case of any individual  
6 who, at the time of any determination made pursuant to paragraph three  
7 of this subdivision, has not filed a tax return for the applicable taxa-  
8 ble year or for the year following the applicable taxable year the  
9 commissioner shall determine the rebate amount on the basis of informa-  
10 tion available to the commissioner, and shall, on the basis of such  
11 information, determine the advance refund amount with respect to such  
12 individual without regard to paragraph two of subdivision (b) of this  
13 section, unless the commissioner has reason to know that such amount  
14 would otherwise be reduced by reason of such subdivision.

15 (7) Limitation based on adjusted gross income. The amount of the cred-  
16 it allowed by this subdivision shall be reduced, but not below zero, by  
17 five percent of so much of the eligible individual's adjusted gross  
18 income as exceeds:

19 (A) \$160,000 in the case of a joint return;

20 (B) \$115,000 in the case of a head of household; and

21 (C) \$80,000 in any other case.

22 (8) Eligible individuals. (A) For the purposes of this section, the  
23 term "eligible individual" shall mean any individual state resident  
24 other than: (i) a nonresident alien individual, (ii) an individual who  
25 is a dependent of another taxpayer for a taxable year beginning in the  
26 calendar year in which the individual's taxable year begins, and (iii)  
27 an estate or trust.

28 (B) The term "dependent" shall have the same meaning as such term is  
29 defined in section one hundred fifty-two of the internal revenue code.

30 (j) Special rules; credit treated as refundable. The credit allowed by  
31 subdivision (l) of this section shall be treated as refundable pursuant  
32 to the applicable provisions of subpart c of part iv of subchapter a of  
33 chapter 1 of subtitle a of title twenty-six of the internal revenue  
34 code.

35 (k) Joint returns. Except as provided by the commissioner, in the case  
36 of a refund or credit made or allowed pursuant to subdivision (l) of  
37 this section with respect to a joint return, half of such refund or  
38 credit shall be treated as having been made or allowed to each individ-  
39 ual filing such return.

40 (l) Advance refunds and credits. (1) In general. Subject to paragraph  
41 four of this subdivision, for any rebate taxable year, each individual  
42 who was an eligible individual for the applicable taxable year shall be  
43 treated as having made a payment against the tax imposed by article  
44 twenty-two of this chapter for such applicable taxable year in an amount  
45 equal to the advance refund amount for such rebate taxable year.

46 (2) Advance refund amount. For purposes of paragraph one of this  
47 subdivision, the advance refund amount for any rebate taxable year is  
48 the amount that would be allowed as a credit under this section for the  
49 applicable taxable year if this section were applied to such applicable  
50 taxable year, without regard to any effective date, using the gasoline  
51 price rebate amount for the refund taxable year.

52 (3) Timing and manner of payments. The commissioner shall, subject to  
53 the provisions of this section, refund or credit any overpayment attrib-  
54 utable to this section and determined with respect to any calendar quar-  
55 ter not later than ninety days after the end of such calendar quarter,  
56 no refund or credit shall be made or allowed under this subdivision with

1 respect to any applicable taxable year after the last day of the rebate  
2 taxable year.

3 (4) Application to individuals who have filed a return of tax for the  
4 year after the applicable taxable year. (A) Returns filed at time of  
5 initial determination. If, at the time of any determination made pursu-  
6 ant to paragraph three of this subdivision, the individual referred to  
7 in paragraph one of this subdivision has filed a return of tax for the  
8 individual's first taxable year beginning after the applicable taxable  
9 year, the provisions of paragraph one of this subdivision shall be  
10 applied with respect to such individual by substituting "taxable year  
11 following the applicable taxable year" for "applicable taxable year".

12 (B) Additional payment. (i) In general. In the case of any individual  
13 who files, before the additional payment determination date, a return of  
14 tax for such individual's first taxable year beginning after the appli-  
15 cable taxable year, the commissioner shall make a payment, in addition  
16 to any payment made under paragraph one of this subdivision, to such  
17 individual equal to the excess, if any, of:

18 a. The amount which would be determined under paragraph one of this  
19 subdivision, after the application of subparagraph (A) of this paragraph  
20 by applying paragraph one of this subdivision as of the additional  
21 payment determination date, or

22 b. The amount of any payment made with respect to such individual  
23 under paragraph one of this subdivision.

24 (ii) Determination date. The term additional payment determination  
25 date means the earlier of:

26 a. The date which is ninety days after the date specified in section  
27 6072 (a) of the internal revenue code with respect to returns for the  
28 taxable year following the applicable taxable year, or

29 b. September first of the calendar year following the applicable taxa-  
30 ble year as defined in subdivision (m) of this section.

31 (m) Applicable taxable year. For the purposes of this section:

32 (1) The term "rebate taxable year" shall mean the taxable year for  
33 which a credit is allowed under this section.

34 (2) The term "applicable taxable year" shall mean the second taxable  
35 year preceding the rebate taxable year.

36 (n) Regulations. The commissioner shall prescribe such regulations or  
37 other guidance as may be necessary or appropriate to carry out the  
38 purposes of this section, including, but not limited to:

39 (1) Regulations or other guidance providing taxpayers the opportunity  
40 to provide the commissioner information sufficient to allow the commis-  
41 sioner to make payments to such taxpayers under subdivision (l) of this  
42 section, including the determination of the amount of such payment, if  
43 such information is not otherwise available to the commissioner; and

44 (2) Regulations or other guidance to ensure to the maximum extent  
45 administratively practicable that, in determining the amount of any  
46 credit under subdivision (i) of this section and any credit or refund  
47 under subdivision (l) of this section, an individual is not taken into  
48 account more than once, including by different taxpayers and including  
49 by reason of a change in joint return status or dependent status between  
50 the taxable year for which an advance refund amount is determined and  
51 the taxable year for which a credit under this section is determined.

52 (o) Outreach. The commissioner shall carry out a robust and comprehen-  
53 sive outreach program to ensure that all covered taxpayers, as defined  
54 in subdivision (h) of this section, learn of their eligibility for the  
55 advance refunds and credits under subdivision (l) of this section, are  
56 advised of the opportunity to receive such advance refunds and credits

1 as provided under subdivision (n) of this section, and are provided  
2 assistance in applying for such advance refunds and credits.

3 (p) Protect New Yorkers from surges fund. All taxes, and any interest  
4 and penalties relating thereto, collected or received with respect to  
5 the windfall profits tax imposed by this section shall be deposited into  
6 the "protect New Yorkers from surges fund" established pursuant to  
7 section ninety-nine-qq of the state finance law and shall be adminis-  
8 tered in accordance with the applicable provisions thereof.

9 (q) Local option. Notwithstanding any contrary provision of law, a  
10 municipality may make the election to impose an excise tax on any  
11 covered taxpayer, for the applicable period, at the rate as determined  
12 under subdivision (b) of this section by local law, ordinance or resol-  
13 ution, if such municipality mails, by certified or registered mail, a  
14 certified copy of such local law, ordinance or resolution to the commis-  
15 sioner at his or her office in Albany no later than the Wednesday imme-  
16 diately preceding the first day of the applicable period.

17 § 3. The state finance law is amended by adding a new section 99-qq to  
18 read as follows:

19 § 99-qq. Protect New Yorkers from surges fund. 1. There is hereby  
20 established in the joint custody of the commissioner of taxation and  
21 finance and the comptroller, a special fund to be known as the "protect  
22 New Yorkers from surges fund".

23 2. Such fund shall consist of all revenues received by the department  
24 of taxation and finance, pursuant to the provisions of section one thou-  
25 sand one hundred five-c of the tax law, and all other moneys appropri-  
26 ated, credited, or transferred thereto from any other fund or source  
27 pursuant to law. For each state fiscal year, there shall be appropriated  
28 to the fund by the state, in addition to all other moneys required to be  
29 deposited into such fund, an amount equal to the amounts of moneys  
30 collected and deposited into the fund pursuant to section one thousand  
31 one hundred five-c of the tax law, and the amounts of moneys received  
32 and deposited into the fund from grants, gifts and bequests during the  
33 preceding calendar year, as certified by the comptroller. Nothing in  
34 this section shall prevent the state from soliciting and receiving  
35 grants, gifts or bequests for the purposes of the fund as defined in  
36 this section and depositing them into the fund according to law.

37 3. Moneys shall be paid out of the fund on the audit and warrant of  
38 the comptroller on vouchers approved and certified by the commissioner  
39 of taxation and finance. Any interest received by the comptroller on  
40 moneys on deposit in the "protect New Yorkers from surges fund" shall be  
41 retained in and become part of such fund.

42 4. Notwithstanding any contrary provision of this section, the commis-  
43 sioner of taxation and finance shall pay from time to time moneys of the  
44 fund to the dedicated highway and bridge trust fund established pursuant  
45 to section eighty-nine-b of this article in an amount equal to the  
46 amount of refunds provided under section one thousand one hundred five-c  
47 of the tax law.

48 § 4. This act shall take effect immediately and shall apply to calen-  
49 dar quarters commencing on and after such date.