STATE OF NEW YORK

3215

2021-2022 Regular Sessions

IN SENATE

January 28, 2021

Introduced by Sens. MAYER, STAVISKY, BIAGGI, BRESLIN, GOUNARDES, HOYLMAN, MYRIE, PARKER, RAMOS, SANDERS, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue

AN ACT to amend the tax law, in relation to extending the top state income tax rate; to amend the state finance law, in relation to providing additional funding for the general support of public schools; and to amend the state finance law, in relation to creating the supplemental public higher education fund

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

Section 1. Clauses (iii) and (iv) of subparagraph (B) of paragraph 1 of subsection (a) of section 601 of the tax law, as amended by section 1 of part P of chapter 59 of the laws of 2019, are amended to read as follows:

(iii) For taxable years beginning in two thousand twenty the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over $17,150	4% of the New York taxable income
Over $17,150 but not over $23,600	$686 plus 4.5% of excess over $17,150
Over $23,600 but not over $27,900	$976 plus 5.25% of excess over $23,600
Over $27,900 but not over $43,000	$1,202 plus 5.9% of excess over $27,900
Over $43,000 but not over $161,550	$2,093 plus 6.09% of excess over $43,000
Over $161,550 but not over $323,200	$9,313 plus 6.41% of excess over $161,550
Over $323,200 but not over	$19,674 plus 6.85% of excess

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

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$2,155,350	$323,200 over
Over $2,155,350 **but not over**	$145,177 plus 8.82% of excess over
$5,000,000	$2,155,350
Over $5,000,000	**$396,076 plus 10.9% of excess over $5,000,000**

(iv) For taxable years beginning in two thousand twenty-one the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over $17,150	4% of the New York taxable income
Over $17,150 but not over $23,600	$686 plus 4.5% of excess over $17,150
Over $23,600 but not over $27,900	$976 plus 5.25% of excess over $23,600
Over $27,900 but not over $43,000	$1,202 plus 5.9% of excess over $27,900
Over $43,000 but not over $161,550	$2,093 plus 5.97% of excess over $43,000
Over $161,550 but not over $323,200	$9,170 plus 6.33% of excess over $161,550
Over $323,200 but not over $2,155,350	$19,403 plus 6.85% of excess over $323,200
Over $2,155,350 **but not over**	$144,905 plus 8.82% of excess over
$5,000,000	$2,155,350
Over $5,000,000	**$395,803 plus 10.9% of excess over $5,000,000**

§ 2. Clauses (iii) and (iv) of subparagraph (B) of paragraph 1 of subsection (b) of section 601 of the tax law, as amended by section 2 of part P of chapter 59 of the laws of 2019, are amended to read as follows:

(iii) For taxable years beginning in two thousand twenty the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over $12,800	4% of the New York taxable income
Over $12,800 but not over $17,650	$512 plus 4.5% of excess over $12,800
Over $17,650 but not over $20,900	$730 plus 5.25% of excess over $17,650
Over $20,900 but not over $32,200	$901 plus 5.9% of excess over $20,900
Over $32,200 but not over $107,650	$1,568 plus 6.09% of excess over $32,200
Over $107,650 but not over $269,300	$6,162 plus 6.41% of excess over $107,650
Over $269,300 but not over $1,616,450	$16,524 plus 6.85% of excess over $269,300
Over $1,616,450 **but not over**	$108,804 plus 8.82% of excess over
$5,000,000	$1,616,450
Over $5,000,000	**$407,233 plus 10.9% of excess over $5,000,000**

(iv) For taxable years beginning in two thousand twenty-one the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over $12,800	4% of the New York taxable income
Over $12,800 but not over $17,650	$512 plus 4.5% of excess over $12,800
Over $17,650 but not over $20,900	$730 plus 5.25% of excess over $17,650
Over $20,900 but not over $32,200	$901 plus 5.9% of excess over

	$20,900
Over $32,200 but not over $107,650	$1,568 plus 5.97% of excess over $32,200
Over $107,650 but not over $269,300	$6,072 plus 6.33% of excess over $107,650
Over $269,300 but not over $1,616,450	$16,304 plus 6.85% of excess over $269,300
Over $1,616,450 **but not over $5,000,000**	$108,584 plus 8.82% of excess over $1,616,450
Over $5,000,000	**$407,013 plus 10.9% of excess over $5,000,000**

§ 3. Clauses (iii) and (iv) of subparagraph (B) of paragraph 1 of subsection (c) of section 601 of the tax law, as amended by section 3 of part P of chapter 59 of the laws of 2019, are amended to read as follows:

(iii) For taxable years beginning in two thousand twenty the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over $8,500	4% of the New York taxable income
Over $8,500 but not over $11,700	$340 plus 4.5% of excess over $8,500
Over $11,700 but not over $13,900	$484 plus 5.25% of excess over $11,700
Over $13,900 but not over $21,400	$600 plus 5.9% of excess over $13,900
Over $21,400 but not over $80,650	$1,042 plus 6.09% of excess over $21,400
Over $80,650 but not over $215,400	$4,650 plus 6.41% of excess over $80,650
Over $215,400 but not over $1,077,550	$13,288 plus 6.85% of excess over $215,400
Over $1,077,550 **but not over $5,000,000**	$72,345 plus 8.82% of excess over $1,077,550
Over $5,000,000	**$418,305 plus 10.9% of excess over $5,000,000**

(iv) For taxable years beginning in two thousand twenty-one the following rates shall apply:

If the New York taxable income is:	The tax is:
Not over $8,500	4% of the New York taxable income
Over $8,500 but not over $11,700	$340 plus 4.5% of excess over $8,500
Over $11,700 but not over $13,900	$484 plus 5.25% of excess over $11,700
Over $13,900 but not over $21,400	$600 plus 5.9% of excess over $13,900
Over $21,400 but not over $80,650	$1,042 plus 5.97% of excess over $21,400
Over $80,650 but not over $215,400	$4,579 plus 6.33% of excess over $80,650
Over $215,400 but not over $1,077,550	$13,109 plus 6.85% of excess over $215,400
Over $1,077,550 **but not over $5,000,000**	$72,166 plus 8.82% of excess over $1,077,550
Over $5,000,000	**$418,126 plus 10.9% of excess over $5,000,000**

§ 4. Section 171-a of the tax law is amended by adding a new subdivision 3 to read as follows:

3. Notwithstanding subdivision one of this section or any other provision of law to the contrary, eighty-five percent of any revenue derived from an increase in the taxes imposed on income over five million dollars pursuant to section six hundred one of this chapter attributable to the difference in the rate of such taxes for taxable year two thousand twenty and the rate of such taxes for taxable year two thousand nineteen and the difference in the rate of such taxes for taxable year two thousand twenty-one and the rate of such taxes for taxable year two thousand nineteen shall be deposited in the state lottery fund, created pursuant to section ninety-two-c of the state finance law, as such taxes are received. The remaining fifteen percent of such derived revenue shall be deposited in the supplemental public higher education fund, created pursuant to section seventy-eight-c of the state finance law. The amount for administrative costs shall be determined by the commissioner to represent reasonable costs of the department in administering, collecting, determining and distributing such taxes. Of the total revenue collected or received under such sections of this chapter, the comptroller shall retain in his or her hands such amount as the commissioner may determine to be necessary for refunds or reimbursements under such sections of this chapter out of which amount the comptroller shall pay any refunds or reimbursements to which taxpayers shall be entitled under provisions of such sections. The commissioner and the comptroller shall maintain a system of accounts showing the amount of revenue collected or received from each of the taxes imposed by such sections.

§ 5. Section 601 of the tax law is amended by adding a new subsection (d-2) to read as follows:

(d-2) Alternative tax table benefit recapture. For taxable years two thousand twenty and two thousand twenty-one for a taxpayer whose New York taxable income is over five million dollars, there is hereby imposed a supplemental tax in addition to the tax imposed under subsections (a), (b), (c) and (d-1) of this section for the purpose of recapturing the benefit of the tax tables contained in such subsections. During these taxable years, any reference in this chapter to subsection (d) of this section shall be read as a reference to this subsection.

(1) For resident married individuals filing joint returns and resident surviving spouses, the supplemental tax shall be an amount equal to the sum of the tax table benefit in subparagraph (A) of this paragraph multiplied by the respective fraction in such subparagraph.

(A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (a) of this section not subject to the 10.9 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (a) of this section less the sum of the tax table benefits in subparagraphs (A), (B) and (C) of paragraph one of subsection (d-1) of this section. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over five million dollars and the denominator is fifty thousand dollars. Provided, however, this subparagraph shall not apply to taxpayers who are not subject to the 10.9 percent tax rate.

(B) Provided, however, the total tax prior to the application of any tax credits shall not exceed the highest rate of tax set forth in the

tax tables in subsection (a) of this section multiplied by the taxpayer's taxable income.

(2) For resident heads of households, the supplemental tax shall be an amount equal to the sum of the tax table benefit described in subparagraph (A) of this paragraph multiplied by the respective fraction in such subparagraph.

(A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (b) of this section not subject to the 10.9 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (b) of this section less the sum of the tax table benefits in subparagraphs (A) and (B) of paragraph two of subsection (d-1) of this section. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over five million dollars and the denominator is fifty thousand dollars. Provided, however, this subparagraph shall not apply to taxpayers who are not subject to the 10.9 percent tax rate.

(B) Provided, however, the total tax prior to the application of any tax credits shall not exceed the highest rate of tax set forth in the tax tables in subsection (b) of this section multiplied by the taxpayer's taxable income.

(3) For resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts, the supplemental tax shall be an amount equal to the sum of the tax table benefits described in subparagraph (A) of this paragraph multiplied by the respective fractions in such subparagraph.

(A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (c) of this section not subject to the 10.9 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (c) of this section less the sum of the tax table benefits in subparagraphs (A) and (B) of paragraph three of subsection (d-1) of this section. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over five million dollars and the denominator is fifty thousand dollars. Provided, however, this subparagraph shall not apply to taxpayers who are not subject to the 10.9 percent tax rate.

(B) Provided, however, the total tax prior to the application of any tax credits shall not exceed the highest rate of tax set forth in the tax tables in subsection (c) of this section multiplied by the taxpayer's taxable income.

§ 6. Section 92-c of the state finance law is amended by adding a new subdivision 3-a to read as follows:

3-a. Moneys in such fund deposited pursuant to the provisions of subdivision three of section one hundred seventy-one-a of the tax law shall be appropriated or transferred only for the general support of public schools.

§ 7. The state finance law is amended by adding a new section 78-c to read as follows:

§ 78-c. Supplemental public higher education fund. 1. There is hereby established in the joint custody of the state comptroller and the

commissioner of taxation and finance a fund to be known as the "supplemental public higher education fund".

2. Such fund shall consist of the revenues received by the department of taxation and finance, pursuant to the provisions of subdivision three of section one hundred seventy-one-a of the tax law, and all other moneys appropriated, credited, or transferred thereto from any other fund or source pursuant to law. Nothing in this section shall prevent the state from soliciting and receiving grants, gifts or bequests for the purposes of the fund as defined in this section and depositing them into the fund according to law.

3. Moneys of the fund shall be distributed equally to the state university of New York and the city university of New York for additional operating support, as appropriated by the legislature.

§ 8. Notwithstanding any law, rule or regulation to the contrary, any moneys collected pursuant to subdivision 3 of section 171-a of the tax law and appropriated for the general support of public schools shall not diminish the amount of school aid appropriated for any given school year. Such collected moneys shall be additional funding. For the purposes of this section, "amount of school aid" shall mean the amount appropriated pursuant to the state budget for the previous school year.

§ 9. Notwithstanding any law, rule or regulation to the contrary, any moneys collected pursuant to subdivision 3 of section 171-a of the tax law and appropriated for additional operating support of the state university of New York and the city university of New York shall not diminish the amount of operating support for the state university of New York and the city university of New York appropriated for any given academic year. Such collected moneys shall be additional funding. For the purposes of this section, "operating support" shall mean the amount appropriated pursuant to the state budget for the previous academic year.

§ 10. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after January 1, 2020 and shall apply to taxable years on and after such date.