STATE OF NEW YORK

4474--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 16, 2023

Introduced by M. of A. O'DONNELL -- read once and referred to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public authorities law, the tax law and the administrative code of the city of New York, in relation to authorizing and imposing a tax surcharge on the personal income of certain high-income residents of such city in order to fund transit infrastructure improvements

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

Section 1. The public authorities law is amended by adding a new section 1270-k to read as follows:

§ 1270-k. New York city dedicated personal income tax surcharge fund. 1. The authority shall establish a fund to be known as the "New York city dedicated personal income tax surcharge fund" which shall be kept separate from and shall not be commingled with any other moneys of the authority.

2. There shall be deposited into the New York city dedicated personal income tax surcharge fund the moneys transferred to the metropolitan transportation authority from the New York city transitional finance authority pursuant to subsection (e) of section thirteen hundred four-E of the tax law, and any other provision of law directing or permitting the deposit of moneys in such fund, to be used exclusively for the financing of transit infrastructure improvements.

3. Moneys in the New York city dedicated personal income tax surcharge fund (a) shall be used to fund capital projects that satisfy the following criteria: (i) defined as state of good repair, normal replacement, or an Americans with Disabilities Act related system improvement within the capital program of the authority; and (ii) included in any of the following categories within the capital program of the authority: New

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

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York city transit authority buses, subway cars, track, line equipment, line structures, signals and communications, traction power, shops and yards, depots, service vehicles, passenger station projects, as needed to comply with the Americans with Disabilities Act, Staten Island railway and authority bus company projects; and (b) may be (i) pledged by the authority as security for the payment of principal and interest on bonds issued after July first, two thousand twenty-four to finance capital projects that meet the criteria identified in paragraph (a) of this subdivision, including bonds issued to refund such bonds and (ii) used for payment of principal and interest on such bonds, funding of reserves required in connection with such bonds, and the payment of costs of issuance related to such bonds. To the extent moneys in the New York city dedicated personal income tax surcharge fund have been pledged by the authority to secure the payment of principal and interest on bonds as herein provided, moneys deposited into the New York city dedicated personal income tax surcharge fund shall first be deposited into the New York city dedicated personal income tax surcharge fund to the extent necessary to make payments pursuant to paragraph (b) of this subdivision. After making such payments, moneys deposited in the New York city dedicated personal income tax surcharge fund shall be used to fund projects that meet the criteria identified in paragraph (a) of this subdivision.

4. The state does hereby pledge and agree with the holders of any issue of bonds secured by pledge described in paragraph (b) of subdivision three of this section that the state will not limit or alter the rights hereby vested in the metropolitan transportation authority to fulfill the terms of any agreements made with bondholders pursuant to this title, or in any way impair the rights and remedies of such holders or the security for such bonds until such bonds are fully paid and discharged. Nothing contained in this section shall be deemed to restrict the right of the state to amend, modify, repeal or otherwise alter statutes imposing or relating to the taxes payable to the New York city transitional finance authority pursuant to section thirteen hundred thirteen of the tax law, but such taxes shall in all events continue to be so payable so long as any such taxes are imposed. Nothing in this section shall be deemed to obligate the state to make any additional payments or impose any taxes to satisfy the debt service obligations of the metropolitan transportation authority.

5. Twice each calendar year, the mayor of the city of New York shall conduct a review of the amount of moneys deposited in the New York city dedicated personal income tax surcharge fund. To the extent such review indicates that the moneys in the New York city dedicated personal income tax surcharge fund are sufficient to satisfy the requirements of any debt service incurred in such calendar year as a result of obligations issued and secured pursuant to paragraph (b) of subdivision three of this section.

§ 2. Subdivision 5 of section 2799-hh of the public authorities law, as amended by section 6 of subpart B of part MM of chapter 59 of the laws of 2022, is amended to read as follows:

5. Tax revenues received by the authority pursuant to subsection (d) of section eight hundred seventy-three, or section thirteen hundred thirteen, of the tax law, together with any alternative revenues received by the authority, shall be applied in the following order of priority: first pursuant to the authority's contracts with bondholders, then to pay the authority's operating expenses not otherwise provided for, then to a dedicated personal income tax surcharge fund pursuant to

subsection (d) of section thirteen hundred four-E of the tax law in the amount provided for in such section, and then pursuant to the authority's agreements with the city, which agreements shall require the authority to transfer the balance of such taxes not required to meet contractual or other obligations of the authority to the city as frequently as practicable.

§ 3. The tax law is amended by adding a new section 1304-E to read as follows:

§ 1304-E. Tax surcharge for transit infrastructure improvements. (a) In addition to the taxes authorized by subsection (a) of section thirteen hundred one of this article, any city imposing such taxes is hereby authorized and empowered to adopt and amend local laws imposing in any such city for each taxable year beginning after two thousand twenty-four, a tax surcharge on the city taxable income of certain city resident individuals, estates and trusts.

(b) A tax surcharge imposed pursuant to the authority of this section shall be determined as follows:

(1) Resident married individuals filing joint returns and resident surviving spouses. The tax surcharge under this section on the city taxable income of certain city resident married individuals who make a single return jointly with his or her spouse under subsection (b) of section thirteen hundred six of this article and on the city taxable income of certain city resident surviving spouses shall be determined in accordance with the following table:

For taxable years beginning after two thousand twenty:

If the city taxable income is:	The tax surcharge is:
Over $1,000,000	.534% of excess over $1,000,000

(2) Resident heads of households. The tax surcharge under this section on the city taxable income of certain city resident heads of households shall be determined in accordance with the following table:

For taxable years beginning after two thousand twenty:

If the city taxable income is:	The tax surcharge is:
Over $750,000	.534% of excess over $750,000

(3) Resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. The tax surcharge under this section on the city taxable income of certain city resident individuals who are not city resident married individuals who make a single return jointly with his or her spouse under subsection (b) of section thirteen hundred six of this article or city resident heads of households or city resident surviving spouses, and on the city taxable income of certain city resident estates and trusts shall be determined in accordance with the following table:

For taxable years beginning after two thousand twenty:

If the city taxable income is:	The tax surcharge is:
Over $500,000	.534% of excess over $500,000

(c) A tax surcharge imposed pursuant to the authority of this section shall be administered and collected in the same manner as the taxes imposed pursuant to the authority of this article, and all of the provisions of this article, including section thirteen hundred ten, shall apply to the tax surcharge imposed pursuant to the authority of this section.

(d) Subject to the priority of payments identified in section twenty-seven hundred ninety-nine-hh of the public authorities law, the New York city transitional finance authority shall transfer to the metropolitan transportation authority the amount estimated by the mayor of the city of New York to be the amount received by the New York city transitional

finance authority from the tax surcharge imposed pursuant to the authority of this section, up to the total amount available after deducting from revenues received by the New York city transitional finance authority pursuant to this section and subsection (c) of section thirteen hundred thirteen of this article amounts to be paid pursuant to the New York city transitional finance authority's contracts with bondholders and the New York city transitional finance authority's operating expenses not otherwise provided for. After the mayor of the city of New York has received data from the department allowing such mayor to determine the actual amount of revenues received by the New York city transitional finance authority that are attributable to the tax surcharge imposed pursuant to the authority of this section, such mayor shall inform the New York city transitional finance authority of such actual amount.

(e) Any revenues transferred to the metropolitan transportation authority pursuant to subsection (d) of this section shall be paid into a dedicated personal income tax surcharge fund to be used exclusively for the financing of transit infrastructure improvements in accordance with the provisions of section twelve hundred seventy-k of the public authorities law. Such revenues shall only supplement and shall not supplant any federal, state, or local funds expended by the metropolitan transportation authority for New York city transit authority, the metropolitan transportation authority bus company or Staten Island rapid transit operating authority projects, and shall not affect any payment by the city of New York pursuant to agreements relating to the metropolitan transportation authority bus company and Staten Island rapid transit operating authority.

§ 4. Paragraphs 1 and 2 of subsection (e) of section 1310 of the tax law, as added by chapter 481 of the laws of 1997, are amended to read as follows:

(1) Notwithstanding any other provision of law to the contrary, any city imposing a tax under this article is hereby authorized and empowered to adopt and amend local laws for any taxable year beginning after nineteen hundred ninety-seven, as specified in such local laws, providing for a credit as provided in paragraph two of this subsection against the taxes imposed pursuant to the authority granted by section thirteen hundred one of this article on the city taxable income determined pursuant to sections thirteen hundred four, thirteen hundred four-A [~~and~~], thirteen hundred four-B and thirteen hundred four-E of this article and on the ordinary income portion of a lump sum distribution determined pursuant to section thirteen hundred one-B of this article, to any city resident individual, estate or trust whose city adjusted gross income includes income, gain, loss or deductions from one or more unincorporated businesses conducted by such city resident individual, estate or trust on which a tax is imposed by chapter five of title eleven of the administrative code of the city of New York, or a distributive share of income, gain, loss and deductions of, or guaranteed payments from, one or more partnerships on which a tax is imposed by such chapter. Any such local laws may contain provisions to ensure that such credit shall not reduce the tax paid by a city resident below that which would be paid by such city resident if such city resident were a city nonresident.

(2) (A) Subject to the limitation set forth in subparagraph (B) of this paragraph, the credit allowed to a taxpayer for a taxable year shall be equal to all or a portion of the amount determined in paragraph

three of this subsection, provided, however, such portion shall not be less than:

(i) If the city taxable income is forty-two thousand dollars or less, sixty-five percent of the amount determined in paragraph three of this subsection.

(ii) If the city taxable income is greater than forty-two thousand dollars but not greater than one hundred forty-two thousand dollars, a percentage of the amount determined in paragraph three of this subsection to be determined by subtracting from sixty-five percent, one tenth of a percentage point (.001) for every increment of two hundred dollars, or fractional part thereof, of city taxable income in excess of forty-two thousand dollars.

(iii) If the city taxable income is greater than one hundred forty-two thousand dollars, fifteen percent of the amount determined in paragraph three of this subsection.

(B) Notwithstanding anything to the contrary in subparagraph (A) of this paragraph, the credit allowed to a taxpayer for a taxable year under this subsection shall not exceed the sum of the taxes that would otherwise be imposed on such taxpayer for such taxable year pursuant to the authority granted by section thirteen hundred one of this article on the city taxable income determined pursuant to sections thirteen hundred four, thirteen hundred four-A [~~and~~], thirteen hundred four-B **and thirteen hundred four-E** of this article and on the ordinary income portion of a lump sum distribution determined pursuant to section thirteen hundred one-B of this article, reduced by the credits allowed to such taxpayer pursuant to subsections (a), (c) and (d) of this section.

§ 5. The opening paragraph of subsection (c) of section 1313 of the tax law, as amended by section 8 of part C of chapter 58 of the laws of 2005, is amended to read as follows:

Subject to the provisions of subsection (g) of this section, the comptroller, after reserving such refund fund and such costs shall, commencing on or before the fifteenth day of each month, pay to the New York city transitional finance authority on a daily basis the balance of taxes imposed pursuant to the authority of this article or former article two-E of the general city law to be applied by the authority, in the following order of priority: first pursuant to the authority's contracts with bondholders, then to pay the authority's operating expenses not otherwise provided for, **then to a dedicated personal income tax surcharge fund pursuant to subsection (d) of section thirteen hundred four-E of this article** and then pursuant to the authority's agreements with the city, which agreements shall require the authority to transfer the balance of such taxes not required to meet contractual or other obligations of the authority to the city as frequently as practicable; except that the comptroller shall:

§ 6. The administrative code of the city of New York is amended by adding a new section 11-1704.2 to read as follows:

§ 11-1704.2 Tax surcharge for transit infrastructure improvements. (a) In addition to the taxes imposed by sections 11-1701, 11-1703, 11-1704 and 11-1704.1 of this subchapter, there is hereby imposed for each taxable year beginning after two thousand twenty-four, a tax surcharge on the city taxable income of certain city resident individuals, estates and trusts.

(b) The tax surcharge imposed pursuant to this section shall be determined as follows:

(1) Resident married individuals filing joint returns and resident surviving spouses. The tax surcharge under this section on the city

taxable income of certain city resident married individuals who make a single return jointly with his or her spouse under subdivision (b) of section 11-1751 of this chapter and on the city taxable income of certain city resident surviving spouses shall be determined in accordance with the following table:

For taxable years beginning after two thousand twenty:

If the city taxable income is:	The tax surcharge is:
Over $1,000,000	.534% of excess over $1,000,000

(2) Resident heads of households. The tax surcharge under this section on the city taxable income of certain city resident heads of households shall be determined in accordance with the following table:

For taxable years beginning after two thousand twenty:

If the city taxable income is:	The tax surcharge is:
Over $750,000	.534% of excess over $750,000

(3) Resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. The tax surcharge under this section on the city taxable income of certain city resident individuals who are not city resident married individuals who make a single return jointly with his or her spouse under subdivision (b) of section 11-1751 of this chapter or city resident heads of households or city resident surviving spouses, and on the city taxable income of certain city resident estates and trusts shall be determined in accordance with the following table:

For taxable years beginning after two thousand twenty:

If the city taxable income is:	The tax surcharge is:
Over $500,000	.534% of excess over $500,000

(c) The tax surcharge imposed pursuant to this section shall be administered and collected in the same manner as the taxes imposed pursuant to sections 11-1701, 11-1703, 11-1704 and 11-1704.1, and shall be distributed in accordance with subsection (d) of section 1304-E of the tax law, and all of the provisions of this chapter, including section 11-1706 of this subchapter, and sections 11-1721 and 11-1773 of this chapter, shall apply to the tax surcharge imposed pursuant to this section.

§ 7. Paragraphs 1 and 2 of subdivision (c) of section 11-1706 of the administrative code of the city of New York, as added by chapter 481 of the laws of 1997, subparagraph (A) of paragraph 2 as amended by local law number 35 of the city of New York for the year 2007, are amended to read as follows:

(1) A city resident individual, estate or trust whose city adjusted gross income includes income, gain, loss or deductions from one or more unincorporated businesses conducted by such city resident individual, estate or trust that are subject to the tax imposed by chapter five of this title, or a distributive share of income, gain, loss and deductions of, or guaranteed payments from, one or more partnerships that are subject to the tax imposed by such chapter, shall be allowed a credit as provided in paragraph two of this subdivision against the tax otherwise due under sections 11-1701, 11-1703, 11-1704 [~~and~~], 11-1704.1 and 11-1704.2 of this [~~chapter~~] subchapter.

(2) (A) Subject to the limitation set forth in subparagraph (B) of this paragraph, the credit allowed to a taxpayer for a taxable year under this subdivision shall be determined as follows:

(i) For taxable years beginning on or after January first, nineteen hundred ninety-seven and before January first, two thousand seven:

(I) If the city taxable income is forty-two thousand dollars or less, the credit shall be sixty-five percent of the amount determined in paragraph three of this subdivision.

(II) If the city taxable income is greater than forty-two thousand dollars but not greater than one hundred forty-two thousand dollars, the amount of the credit shall be a percentage of the amount determined in paragraph three of this subdivision, such percentage to be determined by subtracting from sixty-five percent, one-tenth of a percentage point (.001) for every increment of two hundred dollars, or fractional part thereof, of city taxable income in excess of forty-two thousand dollars.

(III) If the city taxable income is greater than one hundred forty-two thousand dollars, the credit shall be fifteen percent of the amount determined in paragraph three of this subdivision.

(ii) For taxable years beginning on or after January first, two thousand seven:

(I) If the city taxable income is forty-two thousand dollars or less, the credit shall be one hundred percent of the amount determined in paragraph three of this subdivision.

(II) If the city taxable income is greater than forty-two thousand dollars but less than one hundred forty-two thousand dollars, the amount of the credit shall be a percentage of the amount determined in paragraph three of this subdivision, such percentage to be determined by subtracting from one hundred percent, a percentage determined by subtracting forty-two thousand dollars from city taxable income, dividing the result by one hundred thousand dollars and multiplying by seventy-seven percent.

(III) If the city taxable income is one hundred forty-two thousand dollars or greater, the credit shall be twenty-three percent of the amount determined in paragraph three of this subdivision.

(B) Notwithstanding anything to the contrary in subparagraph (A) of this paragraph, the credit allowed to a taxpayer for a taxable year under this subdivision shall not exceed the sum of the taxes that would otherwise be imposed by sections 11-1701, 11-1703, 11-1704 [~~and~~], 11-1704.1 **and 11-1704.2** of this [~~chapter~~] **subchapter** on such taxpayer for such taxable year after the allowance of any other credits allowed by this section or section 11-1721 of this chapter.

§ 8. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after January 1, 2024.