

STATE OF NEW YORK

5770

2023-2024 Regular Sessions

IN SENATE

March 15, 2023

Introduced by Sen. PARKER -- 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 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. Short title. This act shall be known and may be cited as
2 the "Empire 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 sixteen, and ending on December thirty-first, two
23 thousand twenty.

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

LBD06169-01-3

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

4 (d) Records and information. Each taxpayer liable for tax under this
5 section shall keep such records, make such returns, and furnish such
6 information to the commissioner and to such other persons having an
7 interest in the taxable tangible personal property, service, production
8 and manufacturing as the commissioner may by regulations prescribe.

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

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

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

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

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

29 (1) "Applicable period" shall mean from the first of the month next
30 succeeding the effective date of this section until December thirty-
31 first, two thousand twenty-five.

32 (2) "Covered taxpayer" shall mean:

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

34 (B) every business incorporated in the state and subject to the tax
35 imposed pursuant to article nine, nine-a or thirteen-A of this chapter
36 for the privilege of engaging in business, doing business, employing
37 capital, owning or leasing property, or maintaining an office in the
38 state.

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

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

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

54 (3) Identification requirements. Notwithstanding any contrary
55 provision of this subdivision, the rebate amount authorized hereunder
56 shall be treated as being zero unless the taxpayer includes such taxpay-

1 er's full valid identification number on the return filed for the taxa-
2 ble year.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (3) Timing and manner of payments. The commissioner shall, subject to
2 the provisions of this section, refund or credit any overpayment attrib-
3 utable to this section and determined with respect to any calendar quar-
4 ter not later than ninety days after the end of such calendar quarter,
5 no refund or credit shall be made or allowed under this subdivision with
6 respect to any applicable taxable year after the last day of the rebate
7 taxable year.

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

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

23 a. The amount which would be determined under paragraph one of this
24 subdivision, after the application of subparagraph (A) of this paragraph
25 by applying paragraph one of this subdivision as of the additional
26 payment determination date, or

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

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

31 a. The date which is ninety days after the date specified in section
32 6072 (a) of the internal revenue code with respect to returns for the
33 taxable year following the applicable taxable year, or

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

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

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

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

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

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

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

1 (o) Outreach. The commissioner shall carry out a robust and comprehen-
2 sive outreach program to ensure that all covered taxpayers, as defined
3 in subdivision (h) of this section, learn of their eligibility for the
4 advance refunds and credits under subdivision (l) of this section, are
5 advised of the opportunity to receive such advance refunds and credits
6 as provided under subdivision (n) of this section, and are provided
7 assistance in applying for such advance refunds and credits.

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

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

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

24 § 99-qq. Protect New Yorkers from surges fund. 1. There is hereby
25 established in the joint custody of the commissioner of taxation and
26 finance and the comptroller, a special fund to be known as the "protect
27 New Yorkers from surges fund".

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

42 3. Moneys shall be paid out of the fund on the audit and warrant of
43 the comptroller on vouchers approved and certified by the commissioner
44 of taxation and finance. Any interest received by the comptroller on
45 moneys on deposit in the "protect New Yorkers from surges fund" shall be
46 retained in and become part of such fund.

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

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