

1 JOINT HEARING BEFORE THE NEW YORK STATE  
2 SENATE STANDING COMMITTEE ON FINANCE  
3 AND  
4 SENATE STANDING COMMITTEE ON INVESTIGATIONS AND  
5 GOVERNMENT OPERATIONS  
6 -----

7 PUBLIC HEARING:

8 REVIEW EXISTING TAX POLICY AND DISCUSS REFORM  
9 INITIATIVES  
10 -----

11 Legislative Office Building  
12 181 State Street  
13 Van Buren Hearing Room A, 2nd Floor  
14 Albany, New York 12247

15 September 4, 2013  
16 10:00 a.m. to 1:00 p.m.

17 PRESIDING:

18 Senator John A. DeFrancisco  
19 Chairman  
20 NYS Senate Standing Committee on Finance

21 Senator Carl L. Marcellino  
22 Chairman  
23 NYS Senate Standing Committee on  
24 Investigations and Government Operations

25 PRESENT:

Senator Liz Krueger (RM)  
Senate Finance Committee

Senator Kathleen A. Marchione

Senator David J. Valesky

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Jessica Crawford  
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1           SENATOR DeFRANCISCO: This is the  
2 Finance Committee, and the Investigations and  
3 Government Operations Committee, and Carl Marcellino  
4 and I will be chairing these hearings.

5           These hearings include today's in Albany;  
6 tomorrow in Syracuse; September 12th in Buffalo;  
7 October 3rd in Long Island, in Mineola; and  
8 New York City on October 4th.

9           And the purpose is to get comments concerning  
10 how the tax structure can be reformed in the state  
11 of New York.

12           Now, we've made some strides in improving the  
13 tax climate in the state of New York, with tax  
14 reductions for manufacturers; small businesses,  
15 paying under the personal income tax; and for  
16 middle-class taxpayers; as well as the property-tax  
17 cap.

18           The cap is estimated to have saved  
19 1.26 billion in school taxes alone, just in the  
20 first two years. As the cap goes forward, the  
21 savings will grow substantially greater.

22           However, we still have work to be done to  
23 make our system competitive with other states.

24           The purpose of these hearings is to develop  
25 recommendations for the upcoming budget cycle, since

1 that's the most likely place that any of these  
2 changes could ever happen, to provide the taxpayers  
3 of New York with tax reform.

4 The need for tax reform cries out when you  
5 consider the following:

6 Our tax codes is far too complex.

7 The personal income tax is 15 different  
8 modifications to federal adjusted gross income, and  
9 45 different credits.

10 The corporate franchise tax is  
11 5 modifications to the federal "AGI," and 35 --  
12 that's adjusted gross income -- and 35 different  
13 credits.

14 Most of these credits and modifications are  
15 designed to benefit a limited number of taxpayers.

16 The average taxpayer cannot fill out his own  
17 taxes without the assistance of a tax professional  
18 or tax software.

19 Corporate franchise tax filings are sent to  
20 the tax department in boxes, not envelopes.

21 New York has been determined to be the least  
22 business-friendly of the 50 states by the  
23 Tax Foundation, a member of which will be testifying  
24 today.

25 The most important factor in attaining this

1 50th ranking was that New York is number one in  
2 state and local tax burden, and that's where the tax  
3 cap also was helpful.

4 New York has gained 110,500 private-sector  
5 jobs in the last year -- that's June '12 to  
6 June '13 -- however, that equals a rate of growth of  
7 just 1.49 percent, which ranks 31st in the nation,  
8 over one-half of 1 percent below the national  
9 average.

10 In August 5th "Gannett News" article, it was  
11 reported that New York had about 59,200 layoffs  
12 between January and July, 60 percent more than the  
13 same period last year.

14 According to Challenger, Gray & Christmas, a  
15 Chicago-based placement firm, these heavy cuts are,  
16 in part, due to New York's core industries,  
17 including the financial sector, cutting more than  
18 26,500 jobs.

19 This is a sobering thought when one considers  
20 the heavy reliance New York has on tax revenues from  
21 the financial sector.

22 And I've got all other different types of  
23 indications as to why these tax hearings are  
24 necessary, and, it's not only upstate, it's all  
25 throughout the state of New York.

1           However, there is some glimmer of hope,  
2 nationwide. Many states are cutting taxes.

3           North Carolina just enacted a major  
4 restructuring of both personal income taxes,  
5 corporate taxes, and sales taxes;

6           Indiana cut personal income taxes, business  
7 taxes, and repealed the inheritance tax;

8           Oklahoma cut personal income taxes;

9           Virginia cut fuel taxes;

10          And Idaho cut business and personal-property  
11 taxes;

12          North Dakota cut personal income taxes by  
13 20 percent, fueled by an oil boom in that state;

14          Kansas cut personal income taxes by up to  
15 24 percent, and eliminated taxes on small businesses  
16 paying under the personal income tax.

17          So it can be done, but by other states doing  
18 it, it puts us further and further behind.

19          So what we're going to do today, we have a  
20 list of speakers, and I'm going to call on  
21 Carl Marcellino also to speak, but I just wanted to  
22 mention, procedurally:

23          The way we've got it, is each speaker is  
24 15 minutes for their remarks, plus comments. It's  
25 kind of tight, so, obviously, if we need additional

1 time, but, please -- we'll provide it.

2 But, please, don't just read a single-spaced  
3 8-page report, because it just doesn't -- it --  
4 well, we've got the reports, the statements, that  
5 you gave us.

6 I'd really appreciate a more  
7 conversational-type discussion here, so that we can  
8 really get something out of these hearings for a  
9 productive result.

10 So, with that said, I'm going to ask Carl if  
11 he has any -- Carl Marcellino has any additional  
12 comments.

13 SENATOR MARCELLINO: Thank you, John.

14 A pleasure to be here.

15 It seems like everywhere you look, every time  
16 you turn around, New York is taxing something.  
17 Everything in New York is taxed, including our  
18 patience, and the limitation, and what my colleague  
19 John DeFrancisco was saying in his opening  
20 remarks, is that we are in competition with the rest  
21 of the states, especially the ones around us.

22 We are in competition with our friends to the  
23 north in Canada, we are in competition with our  
24 friends to the south, in Puerto Rico and the  
25 Virgin Islands and other places, where businesses

1 are looking to go, people are looking to take their  
2 wealth, and move it so that it doesn't get taxed.

3 Now, it's difficult to avoid the federal  
4 income tax wherever you go, but it's not that  
5 difficult to avoid local taxes -- state and local  
6 taxes.

7 So if you go to a place that isn't taxed, it  
8 doesn't have a state income tax, or they've cut  
9 their taxes, we are no longer competitive.

10 We're creating jobs, that's true, but many of  
11 those jobs are part time, they're not up to what  
12 they once were, salaries are not the equivalent of  
13 what they once were.

14 So in a sense, we're falling behind, and  
15 we've got to find a way to make and keep New York  
16 competitive so we don't lose populations, so we  
17 don't lose our young people. They come here, they  
18 go to our colleges, they get a first-class great  
19 educational background, and then leave; take their  
20 brains, take their ingenuity, and take their  
21 discoveries and creations, and move to other places  
22 where the climate is more friendly, and perhaps even  
23 the weather is a little more friendly.

24 But, we want to keep them here in New York.

25 We want to keep New York number one, the

1 Empire State.

2 That's the purpose of this -- of these  
3 hearings that John and I are holding throughout the  
4 state, and a report will be issued at the end so  
5 that we'll move ahead with recommendations, so that  
6 we can -- so our colleagues can have it and share it  
7 and see it.

8 This is being videoed, and if anyone would  
9 like to watch this again, you've got to be sick,  
10 but, if you want to watch this again, it will be  
11 there, it will be provided for you, on the State  
12 website, so you can see that, and hear it, in case  
13 you missed something that is important.

14 I anticipate from the look of the speakers,  
15 that we're going to have some interesting comments  
16 and some very valuable comments, that will be made  
17 here, and some good ideas will come forward.

18 I'm looking, and I'm hoping to hear, creative  
19 ideas. Not just, this is bad, this is bad, this is  
20 bad, this is bad.

21 I'm looking for some positive thought; some  
22 ideas that we can bring back to our colleagues, and  
23 the Governor, so that we can work together, and as  
24 John said, probably through the budget process, but  
25 legislatively if necessary, to do it that way if we

1 have to.

2 But the budget process, I think, is probably  
3 the more appropriate location for stuff that we're  
4 looking at in creating a new tax platform.

5 So, with that, I'll turn it back to John, and  
6 we can introduce our fellows.

7 SENATOR DeFRANCISCO: Okay, first we have  
8 Senator Liz Krueger, the ranking member on the  
9 Senate Finance Committee;

10 To my far right, Dave Valesky, a fellow  
11 Syracusan;

12 And Senator Marchione from the North Country.

13 And barring anyone who really needs to make  
14 an opening statement, I would like to get into the  
15 testimony at this point.

16 I, in advance, thank all the speakers. We've  
17 got some great speakers with a lot of great  
18 knowledge in this area, the first of which being,  
19 E.J. McMahon, executive director of the  
20 Empire Center for New York policy.

21 E.J. McMAHON: Good morning, and thank you  
22 very much, Senators DeFrancisco, Marcellino,  
23 Krueger, Valesky, and Marchione.

24 Thank you very much for this opportunity.

25 I don't know if you'd call this the best -- a

1 better time than any other to start --

2 SENATOR MARCELLINO: E.J., can you bring that  
3 mic closer, and make sure it's on?

4 E.J. McMAHON: Okay.

5 Is that any better?

6 SENATOR MARCELLINO: Yes.

7 E.J. McMAHON: Okay.

8 Senators, thank you for this opportunity.

9 I don't know if I'd say there's never been a  
10 better time for you to start looking at tax reform,  
11 but I think it's an opportune moment, and I think  
12 it's actually overdue, if you really get into the  
13 sweeping structural issues associated with tax  
14 reform.

15 There's macroeconomic factors that also lend  
16 themselves to this.

17 And while I don't have an 8-page  
18 single-spaced statement from which I'll read  
19 verbatim, I do have a two-and-three-quarter-page  
20 statement to which I will refer, to make sure  
21 I don't miss some points that I want to make.

22 I've also given you an article I wrote for  
23 the "Albany Government Law Review," that went into  
24 some detail on the history of our personal income  
25 tax in particular, and on aspects of the tax changes

1 enacted in 2011, for your reference.

2 As you know, Wall Street, which really has  
3 been our cash cow for 20 years, in terms of marginal  
4 revenue growth, is retrenching in an era of slower  
5 economic growth in the new economy that we're faced  
6 with.

7 Businesses are less willing to shoulder costs  
8 they can avoid by moving elsewhere or investing  
9 elsewhere.

10 And I don't think I need to point out that  
11 most states can offer, in different ways, a  
12 lower-cost business environment than New York,  
13 especially when we're talking about the downstate  
14 region where the bulk of our economy is focused.

15 And while we have certain competitive  
16 advantages, as an -- that we offer economically, as  
17 a state, we can't simply rely on those advantage and  
18 ignore the high tax toll we impose, on entrepreneurs  
19 in particular.

20 Unfortunately, the State's enacted a series  
21 of major tax increases since 2009, including, what  
22 I think is important to point out, is the largest  
23 single income tax increase since the 1960s.

24 Only a portion of that supposedly temporary  
25 increase was rolled back by the temporary changes

1 you enacted in 2011.

2 And the net effect of the budget you just  
3 enacted was to extend a net \$5 billion in,  
4 supposedly, temporary tax increases over the next  
5 four fiscal years, up to 2 billion-plus a year, on  
6 an annual basis.

7 Meanwhile, despite last December's  
8 fiscal-cliff deal in Washington, tax policy on the  
9 federal level is unsettled. I think we all need to  
10 recognize that.

11 And when it is settled, it could be settled  
12 in a direction that would be unsettling for  
13 New York.

14 I can't point out strongly enough that  
15 President Obama wants to strict -- to pretty  
16 severely curtail the deductibility of state and  
17 local income taxes for high-income payers, and that,  
18 actually, most congressional Republicans are  
19 inclined to go along with that idea. Many would  
20 like to tightly cap itemized deductions, and there  
21 is quite a bit of support for eliminating the  
22 deduction for state and local income taxes.

23 That would hit New York harder, and  
24 especially our tax base, in general, than any other  
25 state -- any other single state.

1           And in terms of total income, it would --  
2           only California would rival us.

3           I think we also should recognize that our  
4           last true structural tax reform dates back to 1987.

5           And that since the enactment of the 1995 Tax  
6           Relief Act, which was -- would be George Pataki tax  
7           cut, and our last significant broad-based tax cut.

8           The general drift of state tax policy has  
9           been to toward targeted tax breaks.

10          The result is a tax code increasingly  
11          cluttered with credits, deductions, and other  
12          loopholes driven more by short-term policy goals and  
13          political considerations than by the basic  
14          principles of tax fairness, efficiency, simplicity,  
15          visibility, and last, but not least,  
16          competitiveness.

17          The epitome of this tendency is the newly  
18          enacted program known "as Start-Up NY," also known  
19          as "Tax-Free NY."

20          The tax breaks offered through this program  
21          will be microtargeted to college campuses and sites  
22          near campuses, necessarily entailing -- and let me  
23          stress, "necessarily," under its own terms, it's  
24          difficult to do it any other way -- a complex  
25          multi-step planning and application process,

1 ultimately controlled out of the Executive Chamber.

2 If there's one positive thing that can be  
3 said about Start-Up NY, is that it is so extreme in  
4 its targeting, and the tax benefits offered in those  
5 microtargeted areas are so large, that it really  
6 calls attention to how far we've gone, in fact, gone  
7 too far, in our efforts to very narrowly offer tax  
8 benefits to some and not to all.

9 I'd respectfully suggest it's time to turn  
10 away from targeting, and to place a renewed emphasis  
11 on developing a tax code designed to encourage all  
12 businesses to come to New York or to stay in  
13 New York, encouraging them to invest, hire, and grow  
14 anywhere in New York that suits their purposes, and  
15 as part of this change to reverse policies and  
16 encourage some economically successful New Yorkers  
17 to take their capital elsewhere.

18 Now, I have some recommendations in three  
19 areas. This is no means meant -- by no mean meant  
20 to be all-inclusive. It's simply touching across  
21 the surface of some major themes that I would like  
22 to lay out for you, and then we can discuss.

23 Starting with the personal income tax:

24 So as I alluded to earlier, in 2009, the  
25 legislature and governor temporarily raised our top

1 rate from 6.85 percent to 8.97 on rates as low -- on  
2 income then as low as \$200,000.

3 And I should point out that, in a case of  
4 that increase, and in your subsequent extension of  
5 the increase, the tax increases apply to all taxable  
6 income. It was, essentially, a flat tax on all  
7 income, not just a marginal rate.

8 That makes it, for most of the taxpayers  
9 affected, a higher tax than you'll find in some  
10 states with higher rates, such as New Jersey.

11 In December of 2011, a temporary higher rate  
12 of 8.82 percent was extended for three more years on  
13 income starting at a million for individuals and  
14 2 million for couples, but it's continued to apply  
15 as a flat tax on all taxable income.

16 As part of the current budget, this increase,  
17 which is a not-insignificant 29 percent tax  
18 increase, which is nearly \$40,000 for couples  
19 affected by it, was pushed out to 2017.

20 The temporary changes of the past several  
21 years were added to a PIT code that's become more  
22 complex and opaque since the enactment of the  
23 Tax Relief Act of 1995.

24 For example: Our tax form is now four-pages  
25 long. It's twice as long as the Federal 1040 form.

1           And that doesn't include the extra paperwork  
2 necessary to claim all of the income, tax credits,  
3 that you cited in your opening statement, Senator.

4           We need to move in the opposite direction,  
5 back to a simpler, flatter tax structure.

6           And I would suggest three ways to go to  
7 accomplish that:

8           First, immediately begin a phase out of the  
9 so-called "millionaire bracket" of 8.82 percent.

10           Commencing with the next budget, the rate  
11 should drop by a half a percentage point a year,  
12 culminating in a sunset at the end of tax year 2017.

13           A tax increase that's supposedly temporary,  
14 but is actually very significant, that,  
15 theoretically, is going to expire all at once at the  
16 end of some period of time, is something that is  
17 built to be extended indefinitely.

18           You're creating a fiscal cliff for yourself  
19 by doing that.

20           Two, permanently enact the temporary  
21 provision indexing to inflation, all tax brackets,  
22 personal exemptions, and standards deductions.

23           The federal government, as you know, did that  
24 over 30 years ago.

25           It's high time we did it permanently.

1           Third, aim to achieve a simpler, more  
2           efficient, and competitive tax structure by  
3           broadening the tax based to the extent possible,  
4           reducing allowable deductions while expanding  
5           personal exemptions, and pulling down the marginal  
6           rate to the extent that you can.

7           I'd like to now turn to a second subject that  
8           I think has not gotten as much discussion as it  
9           deserves, and that's our estate tax.

10           We're now one of only 19 states, a number  
11           that's been dwindling, that continue to impose  
12           either an inheritance tax or an estate tax, or both,  
13           and this is leaving us at a significant competitive  
14           disadvantage.

15           However you may feel about the estate tax,  
16           sometimes referred to by as the so-called  
17           "death tax," regardless of how you feel about that  
18           as a tax policy, in general, or on the federal  
19           level, the fact of the matter is now, that we are  
20           part of a dwindling -- one of a dwindling number of  
21           states that still impose it, and that's a  
22           disadvantage.

23           It's imposed at a rate of 16 percent on  
24           estates valued at over \$1 million. It's  
25           particularly harmful to owners of family businesses

1 and farms.

2 Remember, that includes primary residences,  
3 and even life insurance, so it's not that hard to  
4 reach a million dollars.

5 Senator DeFrancisco's proposed taking an  
6 important first step in the right direction, by  
7 raising the taxable threshold, from 1 million, to  
8 the federal level of 5 million.

9 And the revenue impact of that would be  
10 negligible, and so I think it's an obvious step, but  
11 I think we also need to go further.

12 The goal should be nothing less than a  
13 phased-in elimination of the estate tax, which, of  
14 course, because it raises a billion dollars a year,  
15 would have to be phased in.

16 Keep in mind, however, that the revenue from  
17 this tax is offset to a degree as yet unknown, by  
18 ongoing economic and revenue losses resulting from  
19 encouraging some high-net-worth households to move  
20 elsewhere, taking their incomes, their philanthropy,  
21 and other economic activity with them.

22 With a maximum rate of 7.1 percent, our  
23 corporation franchise tax, on a statewide level, is  
24 lower than those of neighboring states.

25 However, it should be noted that that

1 30-year-old Metropolitan Transit District surcharge  
2 in the New York City region actually boosts this tax  
3 to 8.3 percent throughout that region.

4 And in New York City, with the corporate tax  
5 rate there, it's over -- a combined federal, state,  
6 and local rate of over 16 percent.

7 As you know, many businesses have a choice of  
8 organizing in ways that subject them to one tax or  
9 the other.

10 You've taken steps to allow small businesses  
11 to file under the personal rate.

12 But I think that, to achieve true neutrality,  
13 you want to align all of your rates, personal and  
14 corporate, at the same level to avoid economic  
15 distortions, with the goal of reducing the statewide  
16 tax to an absolute minimum.

17 When county and New York City rates are  
18 included, turning to another subject, we also have  
19 one of the nation's highest sales and use taxes.

20 By broadening the taxable base for the sales  
21 and use tax to include, for example, personal and  
22 professional services now exempt from the tax, you  
23 could raise enough revenue to put a dent in the  
24 current rate, which, typically, is at least  
25 8 percent in most parts of the state.

1           In addition, if you assume enactment of the  
2 proposed federal "Main Street" legislation, which  
3 would clear the way for uniform taxation of online  
4 sales, if that happens, there's two things I would  
5 suggest that need to be done:

6           First, is to direct the tax department to  
7 report within the year on the amount of revenue --  
8 added revenue this tax is generating.

9           Based on that finding, secondly, commit  
10 yourself to reducing the sales-tax rate by a like  
11 amount; that is, if it raises \$600 million in  
12 revenue, or, about 5 percent of current tax  
13 collections, you could reduce the rate by 20 basis  
14 points on the state level, and encourage local cuts  
15 as well.

16           Now, again, these recommendations are just a  
17 start. I've just cut across the surface of some  
18 major tax themes, but, in the time left, I'd be  
19 happy to engage in a discussion of what some of the  
20 implications of these things are, and other ideas.

21           Thank you.

22           SENATOR DeFRANCISCO: Thank you.

23           Any questions?

24           SENATOR VALESKY: Yes, just one.

25           SENATOR DeFRANCISCO: Senator Valesky.

1           SENATOR VALESKY: E.J., thanks for your  
2 testimony.

3           I'm familiar with, certainly, most of these  
4 proposals and thoughts that you've shared with us  
5 this morning.

6           I'm less familiar with the -- your last  
7 point, in regard to enactment of the proposed  
8 federal "Main Street" legislation.

9           Are you -- when you say "assuming enactment,"  
10 how confident are you that the federal government is  
11 going to do that?

12           I'm just not that familiar with it.

13           E.J. McMAHON: I'm not how confident to be at  
14 this stage.

15           For a while it was moving, and now it seems  
16 unclear whether it is moving.

17           Your next speaker might have more light to  
18 shed on that.

19           SENATOR VALESKY: Okay.

20           E.J. McMAHON: But, since it's definitely a  
21 possibility, and a stronger possibility than it has  
22 been at any point in the Internet Era, it is  
23 something to be aware of.

24           And I think that we -- the State should  
25 commit itself now, especially given our very high

1 rates, to not simply glomming onto the added revenue  
2 and doing nothing.

3 It's an opportunity, if you have a one-time  
4 bump-up, but a permanent bump-up, in revenue  
5 resulting from this.

6 It may not be quite as large as some people  
7 have implied, but whatever it is, I think it's an  
8 opportunity to begin whittling away at the rate,  
9 which is quite high.

10 SENATOR VALESKY: Okay, thank you.

11 E.J. McMAHON: You're welcome.

12 SENATOR DeFRANCISCO: Senator Krueger.

13 SENATOR KRUEGER: Good morning, how are you?

14 E.J. McMAHON: Good morning.

15 SENATOR KRUEGER: As we have discussed on any  
16 number of times, while we may have different  
17 political ideologies, we come full circle when it  
18 comes to tax policy, very often.

19 And I appreciate your analysis, and I find  
20 myself in great agreement with much of what you  
21 proposed.

22 I wanted to jump back to your discussion of  
23 two different ways to file taxes as a business in  
24 New York, and the -- I forgot the term you used,  
25 I don't think you have it written down, but the real

1 differentiations we see in how much taxes are being  
2 paid by whom, and the -- I share your agreement, the  
3 problems when two businesses may, in fact be very  
4 parallel in everything, except the taxes they pay.

5           Could you give us a couple of examples?

6           E.J. McMAHON: To oversimplify -- at the risk  
7 of greatly oversimplifying:

8           Two businesses, and it could be a service  
9 business or a manufacturing business, not tiny, but  
10 call them "smallish," okay, employing a couple of  
11 hundred people. Gross revenues of a few  
12 million dollars a year.

13           For one reason or another, one of those  
14 companies may be organized as a C corporation, fully  
15 incorporated. It is Service Corporation, Inc.;

16           And the other may be a Subchapter S  
17 corporation, organized as some sort of partnership  
18 with some multiple personal owners.

19           And depending on, especially their -- and  
20 also their location in the state, they could be  
21 subject to two different -- one would be subject to  
22 Article 9-A, and the other could be subject to  
23 personal income tax.

24           Now, we've taken strides to kind of reduce  
25 the differential -- any differential in the way we

1 tax them, but the ideal for tax reform is to simply  
2 treat them as alike as possible.

3 We do offer credits.

4 For instance, if they're a manufacturing  
5 business, and you're eligible for an investment tax  
6 credit, I believe you can claim the tax credit  
7 against income, both, as partners in a Sub S, and  
8 as -- or as -- an Article 9-A C corp can use that  
9 credit to reduce its tax burden.

10 So, there is a -- there are parallels there,  
11 but to the extent there are any distortions, it's  
12 just something to be aware of.

13 Like, when we talk about reducing one rate or  
14 the other rate, we need to be more aware, up front,  
15 of any differential we're opening or creating  
16 between the two different rates.

17 So, for instance, right now, if we go  
18 permanently to -- if we ever went permanently to an  
19 income tax of close to 9 percent, we would have  
20 reopened the differential, and, you never know,  
21 perhaps created an incentive for somebody to think  
22 harder about organizing as a C corp.

23 One of the benefits of thinking and talking  
24 about tax reform, is to think harder about, sort of,  
25 general principles.

1           And one general principle that you alluded to  
2           is that, people engaged in the same sort of economic  
3           activity should be taxed to the -- to the greatest  
4           extent possible, it's difficult to be perfect, at  
5           the same rate.

6           If you and I are doing the same thing and  
7           making the same income from that thing, tax policy  
8           should be taxing us at the same rate.

9           And that was the point of that allusion.

10          I think, in the past, when we made great  
11          strides in reducing our income tax, we didn't take  
12          account of what impact that would have on how people  
13          would organize.

14          And so, to a certain degree, we've kind of  
15          caught up with it again. We're offering smaller  
16          businesses the ability to file at a personal  
17          income-tax rate, for instance.

18          But, I'm just saying that there will be a lot  
19          of talk today about ways to reduce the corporate  
20          income tax, for instance, and restructure it.

21          That, in doing that, or in reducing the  
22          personal income tax, we should be conscious of that  
23          goal of horizontal equity of treating all of the  
24          people involved in the same activity the same way.

25          SENATOR KRUEGER: A follow-up on another

1 statement you made, where you shifted a bit to the  
2 local tax issues.

3 There are proposals, I think from later  
4 testifiers, about actually having different tax  
5 rates depending on what county you're in in the  
6 state, and reducing significantly sales tax, which  
7 is, obviously, a significant income source for our  
8 counties and our cities.

9 Given the economic problems our cities and  
10 many of our counties find themselves in, and I would  
11 even argue on the verge of crisis, how do you see  
12 dealing with the concerns about equity and balance  
13 and tax policy with the demands that we are seeing  
14 at the local level all over the state?

15 E.J. McMAHON: Well, if you're alluding --  
16 are you alluding to the proposals for local income  
17 tax -- for special local income taxes, or --  
18 variations?

19 SENATOR KRUEGER: No, I think a couple of the  
20 of the other testifiers had already put out  
21 statements to the press, calling for reduced taxes  
22 in certain counties.

23 E.J. McMAHON: Okay.

24 SENATOR KRUEGER: And also in reducing,  
25 specifically, sales taxes.

1           E.J. McMAHON: Well, I mean, I haven't seen  
2 all of those proposals in detail. I think I'm aware  
3 of some of them, but, I think that, to the extent  
4 they're end -- at end of promoting -- aimed at  
5 promoting greater tax competitiveness in troubled  
6 localities, then, obviously, it would create some  
7 benefits.

8           I mean, if you could -- if we're able to --  
9 for instance, the idea behind reducing the rate at  
10 least a smidgen, if, for instance, more revenue is  
11 generated by the so-called "Main Street" tax, or the  
12 revenue generated by broadening the base, if you  
13 could, for instance, theoretically, generate a net  
14 billion dollars more in revenue by broadening the  
15 sales-tax base to some things that are not now  
16 taxed, which would allow you to reduce the rate by a  
17 certain amount, say, up to a half a percentage  
18 point, you would be creating a similar benefit,  
19 although, not completely evenly for localities  
20 across the state, and giving them the opportunity to  
21 become more competitive by reducing their rates;  
22 and, so, it would actually ease the way for those  
23 types of proposals.

24           If I understand those proposals correctly.

25           SENATOR KRUEGER: Thank you.

1 E.J. McMAHON: You're welcome.

2 SENATOR MARCELLINO: Thank you for coming,  
3 and thank you for your testimony. It's very  
4 interesting to see.

5 Just a broad question.

6 Senator DeFrancisco mentioned earlier that  
7 certain -- some states have gone to a flat tax.

8 Should New York?

9 E.J. McMAHON: I'm sorry, I didn't hear the  
10 whole question.

11 SENATOR MARCELLINO: Some states, as was  
12 mentioned in Senator DeFrancisco's opening  
13 statement, have already gone to a flat tax.

14 Should New York?

15 E.J. McMAHON: Well, I think a flatter tax  
16 structure -- I'm in the school of thought that  
17 believes a flatter tax structure is a better tax  
18 structure.

19 We had gone to a -- we had, post 1997, gone  
20 to a flattish tax structure, or, less steeply  
21 graduated than it used to be, but, nonetheless, with  
22 a progress result.

23 By the way, I'd like to point out here that,  
24 in 1987, there was a very overwhelming bipartisan  
25 consensus in favor of a flat tax in New York.

1           In fact, the Assembly Democrats proposed a  
2 purer flat tax, and the Republicans in the Senate  
3 proposed a modified one.

4           So, this is -- this is something that has  
5 been raised before in New York.

6           When we collapsed our bracket structure down  
7 to few -- many fewer brackets than there had been  
8 before, we were moving in that direction.

9           I think that you can create a tax structure  
10 that is flat, or almost flat, in terms of its rates,  
11 while still having a progressive result in terms of  
12 the distribution of the tax burden through the use  
13 of larger standard deductions and personal  
14 exemptions.

15           I think we did that in New York.

16           And, in fact, under our permanent code, as  
17 was in effect with one brief -- one three-year  
18 interruption before 2009, we already had a  
19 progressive distribution of the tax burden, with a  
20 relatively flat structure. Not necessarily purely  
21 flat, but pretty flat.

22           And I do think it's a desirable thing to have  
23 as broad a base and as flat a rate as possible.

24           I think that's the consensus of many, not  
25 all, people in the tax field, that steeply --

1 steeper marginal rates are a disincentive to  
2 investment, and to income earning, in the  
3 jurisdiction that imposes it.

4 SENATOR MARCELLINO: You mentioned expanding  
5 the state sales tax to cover personal and  
6 professional services.

7 Would that mean a greater burden on the  
8 business community, in the fact there's more  
9 companies are required to navigate the state  
10 sales-tax system?

11 E.J. McMAHON: Well, it would -- it would if  
12 you -- it would redistribute the tax burden to more  
13 businesses, and that's why it needs to be  
14 considered, but, also, studied in more detail.  
15 There's a lot here that would require further study.

16 Certainly, one of the problems with -- one of  
17 the problems with the sales tax, in general, that's  
18 frequently overlooked, is that the sales tax is  
19 administered by the people who collect it, in  
20 effect.

21 And it is always, to a certain extent, a  
22 burden.

23 But a consumption tax is, arguably,  
24 especially if it's broader, is, in some ways, less  
25 of a burden, or creates less of a distortion, than a

1 heavier reliance on income taxes, and that's why  
2 they've always been part of the mix.

3 So the question is: If we could lower the  
4 rate significantly, or at least noticeably, on other  
5 types of sales and business activities, would it be  
6 worth the added impact of having more businesses  
7 collect the tax on other things?

8 I think it's a question that you need to  
9 examine.

10 There's so many myriad aspects to this, that  
11 it's hard to give a blanket answer, but there's no  
12 question about it, if you have more types of sales  
13 subject to a sales and use tax, you have more  
14 businesses involved in collecting the sales tax.

15 SENATOR MARCELLINO: Some have said that a  
16 flat tax, you have to eliminate deductions that are  
17 very popular right now. Charitable deductions, the  
18 property-tax deductions, things like that.

19 I gather from your testimony, that you would  
20 favor retaining some deductions in the system if we  
21 go flatter?

22 E.J. McMAHON: It depends.

23 This would require further study -- I have  
24 not done, like, a detailed, thorough study of the  
25 alternatives.

1            Depending on, also, what your revenue target  
2            is, and if you're willing to forgo, and how quickly  
3            you're willing to forgo, the revenue you have raised  
4            through your temporary tax increase.

5            But, I, certainly -- there's an argument to  
6            be made from curtailing a lot of deductions, and how  
7            that affects individuals depends on what you do with  
8            other aspects of the tax code.

9            If you do enough of a reduction in the rate,  
10           a lot of people could realize no net increase, even  
11           a small net savings, from a tax code that eliminated  
12           many of the deductions they might be eligible to  
13           take.

14           In fact, one of the most revolutionary  
15           changes of the 1995 tax cut, following up on the  
16           earlier tax cut of 1987, and fulfilling it, and  
17           going a little beyond it, was the expansion of the  
18           standard deduction, which has resulted in a large --  
19           much larger number of New Yorkers taking the  
20           standard -- finding it to their advantage to take  
21           the standard deduction, and not even having to use  
22           those itemized deduction.

23           At the moment, you're not allowing your  
24           highest income taxpayers to claim most of their  
25           itemized deductions in some categories, in any

1 event.

2           So, I think that you need to think about how  
3 many items -- you know, those are some of the items  
4 that you need to think about.

5           In other words:

6           How many people actually are itemizing now?

7           What deductions are they claiming?

8           And, how would they do if you completely  
9 restructured the tax code?

10           For instance, if you could figure a way to  
11 eliminate or phase out the so-called  
12 "benefit recapture"; that is, the aspect of the tax  
13 code that makes the code -- that makes the tax  
14 rate -- the top rate a flat tax in several  
15 categories.

16           In fact, as I should have responded to you  
17 earlier, we have a flat tax for some people.

18           Everybody who earns over \$150,000 pays a flat  
19 tax; and people who earn over a million, starting  
20 for individuals, pay another higher flat tax.

21           So you have -- you have, kind of, the worst  
22 of all worlds: you have a graduated flat-tax rate  
23 system, starting for certain people in certain  
24 income levels.

25           You need to back away from that approach, in

1 general, I think, and if you had a true flat tax,  
2 all the other things you could mix and match into  
3 that could result in no net-tax increase for the  
4 vast majority of taxpayers. They wouldn't be so --  
5 they're wouldn't be, quote/unquote, losing something  
6 even if the deduction was taken away.

7 SENATOR MARCELLINO: Thank you very much.

8 SENATOR DeFRANCISCO: I just have a few.

9 First of all, the thing I hear most, and have  
10 heard most, since we indicated that we're going to  
11 have these hearings, is, you know: We've been  
12 cutting. We've been -- put up a -- we passed a tax  
13 cap for property taxes. We can't afford to do any  
14 more tax cuts. We just can't afford to do it.

15 What would your response be to that?

16 E.J. McMAHON: Well, first of all, the  
17 problem, one reason you might -- some people might  
18 feel you can't, quote/unquote, afford to do more tax  
19 cuts, is that, actually, in the sense of what that  
20 phrase "tax expenditures," you've already spent a  
21 lot of money on targeted tax cuts.

22 You're committing over \$400 million a year in  
23 outright subsidies to the motion picture and  
24 TV industry, including what you're paying, and let  
25 me use that word advisedly, "paying" NBC to build a

1 studio for the "Tonight Show."

2 I mean, that's why -- that's one reason why  
3 you don't have the money to, quote/unquote, afford  
4 broad-based tax relief.

5 The problem now is, that you've got so many  
6 targeted tax cuts soaking up so much capacity, in  
7 terms of resources, that you may feel that, on the  
8 margins, there's -- you can't, quote/unquote, afford  
9 it, but I think you could afford more if you undid a  
10 lot of the targeted tax credits you've enacted.

11 And, also, in addition to the exercising  
12 spending restraint necessary to do broad -- and  
13 devote yourself to broad-based tax cuts.

14 I think targeted tax cuts become an excuse  
15 and a distraction from doing broad-based tax relief.

16 SENATOR DeFRANCISCO: And I remember that  
17 same refrain during the Pataki Administration, when  
18 the last major tax cut in 1995 that you were -- in  
19 1995, or '7, that you were talking about -- I can't  
20 remember which year -- but, somehow, the books still  
21 balanced after the major cut in rates.

22 You just spend less, I guess, is part of the  
23 answer.

24 The second part of the answer is, what you  
25 just mentioned: You can't have the best -- you

1 can't have everything.

2           So, we've got to think of a methodology as to  
3 how we can approach this subject as a true  
4 broad-based tax cut.

5           And I want your thoughts on this methodology.

6           Should -- right now we're, according to the  
7 Tax Foundation, we're, like, 50th, and most of the  
8 problem is our tax structure, or a good part of it.

9           Let's suppose that we wanted to aim to be  
10 midway. Obviously, we're not going to be competing  
11 with Texas next year, with no income taxes.

12           But, say we wanted to go midway.

13           Would a methodology that makes sense, figure  
14 out what the number is you need, look at all the  
15 different categories, including deductions, like  
16 Senator Marcellino talked about; look at whether  
17 this "Main Street" tax comes in as a potential  
18 source to fill that number; and, in addition,  
19 credits, like you just referred to, that you  
20 can't -- and, presumably, if you have a fairer tax  
21 structure, everybody benefits rather than the  
22 favored few?

23           So is the methodology of finding the  
24 number -- does it make sense to find the number that  
25 you want to reach, and figure out how you arrive at

1 that number?

2 Or do you have a better methodology?

3 E.J. McMAHON: Well, in general, if you  
4 wanted to even move halfway toward the national norm  
5 for combined state and local taxes, you would have  
6 to reduce taxes by billions of dollars.

7 I don't know the exact figure right now.

8 I think at one point I calculated it. It was  
9 three or four billion dollars a few years ago.

10 Some big strides were made in that direction  
11 in the mid-1990s, and then we retreated partway  
12 from some of those strides.

13 I think that it's a combination of things.

14 I do think that there needs to be -- using  
15 the old cliché, that the journey begins with a  
16 single step, or at least a few steps, there needs to  
17 be a commitment to broad-based tax relief, and to  
18 doing it every year; to setting aside a certain  
19 amount of money in your financial plan, every year,  
20 for broad-based tax relief, and only for broad-based  
21 tax relief, and to start doing it.

22 And, again, for example: When you structure  
23 a temporary higher tax rate, so that it stays fully  
24 in effect up to midnight on December 31st of a given  
25 year, that is almost -- there's almost a

1 self-fulfilling prophecy built into that.

2           You're going to find it very difficult to  
3 just yank away a \$2 billion tax cut all at once,  
4 once you've spent up to that amount.

5           And that -- there is a weaning process that  
6 needs to occur here; weaning yourself off that  
7 revenue and rededicating that revenue, in a  
8 multi-year sense, to tax relief.

9           So, I think the goal of looking at the  
10 financial plan, and through a combination of  
11 reclaiming revenue dedicated to targeted tax  
12 credits, as you mentioned, the reclamation project,  
13 and, also, of suppressing spending, to the extent  
14 necessary, to dedicate a few hundred million dollars  
15 a year.

16           I suggested in -- at one point, it's a  
17 half -- at least \$500 million a year.

18           Two-fifty to five hundred, just to start  
19 with, to phasing out, or a move toward broad-based  
20 tax cuts, would be a start.

21           Just phasing out the higher income tax rate,  
22 basically, would require at least \$500 million a  
23 year to accomplish.

24           And, I think you need to do that; you need to  
25 start moving in that direction, and continue moving

1 in that direction, and to complete.

2 When you were talking about the '95 tax cut,  
3 I was involved in that. And that was, literally,  
4 one of those things about which they said it  
5 couldn't be done.

6 "Couldn't be done, it was preposterous. How  
7 can you propose a tax cut like that?"

8 Well, it was done.

9 In fact, it was, quote/unquote, paid for by  
10 spending restraint at that time, because, while the  
11 economy ended up booming nationally, in the state  
12 level, that was by no means -- it was by no means  
13 clear that that was going to occur.

14 In fact, we weren't out of the woods well  
15 into the second year, when there were calls to  
16 repeal the tax cut.

17 So, that, I think shows the way.

18 That was a \$4 1/2 billion tax cut.

19 And I think it shows how these things are  
20 possible, if, once you've built it into the  
21 financial plan, it's part of what you have to do and  
22 what you have to deal with.

23 SENATOR DeFRANCISCO: Thank you very much.

24 SENATOR KRUEGER: A follow-up question?

25 SENATOR DeFRANCISCO: A follow-up question by

1 Senator Krueger.

2 SENATOR KRUEGER: Thank you.

3 You were talking about the history in the  
4 '90s, with the changes in tax policy, and you were  
5 also highlighting the tax expenditures that we  
6 distributed in the state.

7 And so I want to just say on the record:  
8 It's \$7 billion a year in business tax expenditures  
9 and deductions.

10 Did we have anywhere near that level in the  
11 '90s?

12 E.J. McMAHON: I don't know what the level  
13 was exactly in the '90s. We've certainly done a  
14 lot since then.

15 I can think, offhand, of a half billion that  
16 we did. It's a lot.

17 Some of that is -- a lot of that are tax  
18 credits that were enacted before the '90s, though.

19 However, also, investment tax credits, for  
20 instance, date back to the late '70s,  
21 early '80s.

22 SENATOR KRUEGER: And they've just grown at  
23 enormous rates.

24 E.J. McMAHON: Right.

25 I mean -- but the point is, if you simply

1       reclaim, however they're valued -- 7 billion,  
2       5 billion, 4 billion -- however much you value --  
3       however you attach a value to the so-called  
4       "tax expenditures," if you simply take that money  
5       and plow it back into the budget and spend it, and  
6       do nothing with broad-based rates, you're not  
7       accomplishing anything, other than making us even  
8       less competitive.

9               And if you were to, for instance, given all  
10       of the business taxes we raise, if you took  
11       \$7 billion on -- and on a revenue-neutral basis,  
12       said, We're going to, you know, cut state  
13       business -- all state business taxes by \$7 billion,  
14       you would have a significant tax cut, obviously, on  
15       the rate side.

16              And at least thinking in that direction, and  
17       then beginning to think about the implications of  
18       some of the things involved in doing away with all  
19       tax credits and exceptions, is at least a  
20       conversation that you ought to be having.

21              And I think the thing that needs to stop, is  
22       that we've come down a road now, where every  
23       discussion of tax policy and of the -- and of,  
24       quote/unquote, tax cuts focuses solely on targeted  
25       tax cuts.

1           How can we give a break to this group of  
2 people that we want to give a break to, or this  
3 group of businesses?

4           We've ceased having any discussion of  
5 broad-based tax policy in Albany.

6           There's a lot of reasons to that. There's no  
7 need to finger-point, but I think nobody will deny  
8 that that's the case.

9           And it would be good to take stock, and stand  
10 back, and start going in the opposite direction.

11           SENATOR KRUEGER: And what I was trying to  
12 get the answer, and you gave it to me, was, that,  
13 yes, we could do an enormous amount in impacting  
14 broad-based tax policy, equity, and also decrease  
15 many burdens on businesses, if we dealt with  
16 \$7 billion, I hear you, not simply taking it out of  
17 the tax code and spending it --

18           E.J. McMAHON: Right.

19           SENATOR KRUEGER: -- but taking it out of the  
20 tax code as is, and moving forward with a  
21 broad-based -- a broader-based, equitable, even tax  
22 model, we could turn around tax policy in the state?

23           E.J. McMAHON: Well, for example: There is  
24 talk now, and that one interesting idea that's been  
25 talked about is, taking steps.

1           There's a -- now we're in the middle of  
2           phasing down and reducing the rate on manufacturers.

3           You can argue both sides of that in terms of  
4           tax policy, but it's -- there's a -- a strong case  
5           could be made for it on some grounds.

6           One thing to point out is, there's a lot of  
7           tax credits and tax exemptions available to  
8           manufacturers.

9           The beauty of eliminating the corporate tax  
10          on manufacturers, is that you also eliminate all the  
11          tax credits and exceptions, because who needs to  
12          reduce their tax bill with an ITC if they're not  
13          paying taxes on their net income to begin with?

14          So, that is something worth considering.

15          SENATOR KRUEGER: Thank you.

16          SENATOR DeFRANCISCO: Thank you, very much.

17          We really appreciate it.

18          The next speaker is, Joe Henschman,  
19          vice president of legal and state projects for the  
20          Tax Foundation.

21          Thank you for appearing.

22          JOE HENCHMAN: Good morning.

23          Thank you, Senators.

24          Thank you for the opportunity to speak to you  
25          today.

1 I believe you've been provided with my full  
2 statement, which goes through 20 states, on what  
3 they've done this year.

4 I'm not going to do that here for you, but,  
5 certainly, if you have questions about any of them,  
6 we can go into it, but, I just want to hit some of  
7 the highlights and the broader themes of what we see  
8 going on out in the states.

9 For those of you not familiar with the  
10 Tax Foundation, we're a 76-year-old non-profit  
11 organization based in Washington, D.C., and our  
12 purpose is to educate Americans about tax policies.

13 So, we put out a number of different studies  
14 and reports and rankings on all matters of state tax  
15 issues throughout the year.

16 So, we have reports on many of the subjects  
17 that's already been raised so far this morning:  
18 local sales tax, local income tax, the Internet  
19 sales-tax issue in Washington D.C.

20 And on any of that stuff, I'm happy to answer  
21 any questions, or provide you with supplementary  
22 materials, now or in the future.

23 And, of course, all of it's on our website,  
24 available for free, for download, at  
25 [taxfoundation.org](http://taxfoundation.org).

1           One of the reports we put out every year is  
2           our "State Business Tax Climate Index," which  
3           Senator DeFrancisco referenced in his opening  
4           statement.

5           This is a look at 112 different aspects of  
6           state tax policy, evaluating them for whether they  
7           comport with the principles of good tax policy; that  
8           is, the idea that taxes should be simple, neutral,  
9           transparent, and stable.

10           And as was mentioned, New York is 50th out of  
11           the 50 states on that "State Business Tax Climate  
12           Index."

13           So there's -- you know, although it's  
14           disheartening to convey this news, it's also a --  
15           represents a blueprint or a road map for  
16           possibilities, because every item on the list where  
17           New York scores more poorly than its regional  
18           competitors, and competitors across the nation, it's  
19           also an opportunity for the State to look at.

20           And so, I believe, Senator Marcellino, you  
21           had a question of, you know, "What would it take for  
22           New York to get from 50th to the middle of the  
23           pack?" for instance.

24           And, you know, we're happy to have that  
25           discussion, and provide ideas and suggestions.

1           I would also pause it, that it may not be  
2           necessary for New York to be 50th -- to be middle of  
3           the pack, because states compete about all number of  
4           things, taxes just being one of those.

5           And, you know, I'm from the Tax Foundation,  
6           but I freely concede that there are other things  
7           that matter for individuals and entrepreneurs when  
8           they make business- and individual-location  
9           decisions, and investment decisions.

10          New York has all number of strengths compared  
11          to its other states, so, although the tax system is  
12          a weakness, and in some cases, an albatross, it's --  
13          there's still a lot of people doing business here,  
14          and still a lot of people living here, because, for  
15          many of them, the virtues of being in New York  
16          outweigh those limitations and those restrictions.

17          So, it's finding that right balance for what  
18          works for New York.

19          If you had Texas's tax code, I don't think  
20          New York could be stopped, but you don't need to  
21          have Texas's tax code to be a successful state.

22          So with that said, let's talk about some of  
23          the issues going on across the country, and some of  
24          the reforms done so far this year.

25          I want to highlight three states in

1 particular: Nebraska, North Carolina, and Michigan.

2 And then, as I said, in your folders, and in  
3 my testimony, I go through about another dozen and a  
4 half states. And if you want to highlight any of  
5 those, in questions, I can certainly do that.

6 Starting with Nebraska:

7 Nebraska has done what I would term an  
8 "incremental approach."

9 And every year, over the past five or  
10 six years or so, they've honed in on what they've  
11 considered one of the weakest, more esoteric aspects  
12 of their tax system, and fixed it.

13 And, they've now done this every year, for  
14 several years; and, so, at this point, the  
15 ten weakest aspects of their tax system, they fixed.

16 So, for instance, they've not allowed net  
17 operating loss carry-forwards, which is one of these  
18 esoteric subjects that make a lot of people's eyes  
19 glaze over when you talk about it, but, it was a  
20 significant limitation on business activity and  
21 business investment.

22 So just to speak very briefly on it, of  
23 course, we collect taxes on a calendar-year basis,  
24 and this isn't any rocket science involved in it.  
25 It's just a matter of convenience, so people can

1 know, when the tax year starts, and when the tax  
2 year ends, and we just go based on that.

3 But, of course, business activity and, in  
4 many cases, individual income, don't always comport  
5 to the tax year. Some businesses have good years  
6 and bad years. In some years they pay a lot of tax,  
7 and some years they don't pay any tax at all,  
8 because they didn't earn any profits.

9 Net operating losses helps smooth that out,  
10 and make sure that you're not overly penalized in  
11 the good years right after you've had bad years, and  
12 so forth.

13 Nebraska didn't recognize that, and now they  
14 do, and that's a great strength for their tax  
15 system.

16 And I can give you -- you know, I can go  
17 through all of the other different things that  
18 Nebraska did over the past several years, but, it  
19 was a very effective incremental approach that's  
20 been noticed by a lot of the business community.

21 Nebraska is a small state, less than  
22 2 million people. They've got five Fortune 500  
23 companies located there. They've got big  
24 investment. The unemployment rate is probably the  
25 most jealous of the country -- in the country, for

1 unemployment rates.

2           And it's -- their big weakness is a cultural  
3 bias against living and working in the midwest, in  
4 Omaha. People certainly don't think of Omaha the  
5 way they think of New York City, but, that's what  
6 they're struggling against, and having a better tax  
7 system is helping them overcome that.

8           They're not resting on their laurels either.

9           Earlier this year, the governor proposed a  
10 very ambitious tax reform, looking at taking out  
11 some of the deductions in the sales tax, and using  
12 that revenue to lower individual and corporate  
13 income-tax rates.

14           It wasn't structured ideally, so the plan  
15 didn't go far in the legislature, but what the  
16 legislature did do, is set up a new commission that  
17 will be looking at what they can implement, and some  
18 more well-thought-out solutions for tax reform.

19           And we're preparing a book, similar to the  
20 book with did in North Carolina, which I'll  
21 reference shortly, which will be helpful -- help  
22 advise legislators on options they can take to  
23 improve their tax system.

24           Skipping North Carolina for a minute, I just  
25 want to speak about Michigan.

1 Michigan is -- I bring up Michigan, because  
2 their economic-development policies in the past have  
3 been very similar to what New York is pursuing in  
4 economic development today; that is, the idea, if  
5 you have a very high tax system, you have a very  
6 burdensome tax system, you have a very problematic  
7 regulatory environment.

8 And, in order to help businesses get around  
9 to that, you offer a lot of targeted credits, and a  
10 lot of specific, either by geographic or by industry  
11 type, favorable treatment, to encourage a particular  
12 industry to grow.

13 And that's what Michigan did for many years,  
14 and it led to a decaying state, because, if you  
15 weren't one of those favored, politically connected  
16 industries or individuals, you were stuck paying  
17 very high tax rates.

18 And I sometimes give the example, I live in  
19 Washington, D.C., and just north of us is Baltimore,  
20 which has a very nice neighborhood called the  
21 "Inner Harbor."

22 I don't know whether any of you have ever  
23 been there, a lot of good restaurants and aquariums,  
24 and so forth.

25 What the Inner Harbor is, is this tax policy

1 in action.

2 The Inner Harbor is very nice, and part of  
3 the reason it's very nice, is because nobody there  
4 pays any property taxes. Property tax is completely  
5 waived for everybody in the Inner Harbor.

6 And the rest of Baltimore, you pay 3 percent,  
7 which, as far as property tax goes, is a very high  
8 property tax.

9 So what you've seen is, the rest of Baltimore  
10 decay, and developments on the Inner Harbor and the  
11 neighborhoods surrounding it really start to grow.

12 And, you know, people focus on the  
13 Inner Harbor, and how great and how fun and how nice  
14 it is, but they don't see the cost happening  
15 elsewhere.

16 And that's what you see with this kind of  
17 distorted tax policy.

18 Michigan is that happening on a statewide  
19 level, at least until the current governor and the  
20 current legislature took office, and they resolved  
21 to stop a lot of that.

22 And it was more of a meat-cleaver approach  
23 than the scalpel that Nebraska took.

24 Michigan used to be one of the New York's  
25 chief competitors for film tax credits, for

1 instance.

2 Michigan ended its program.

3 And while they're not getting as many film  
4 productions as they used to, they also have hundreds  
5 of millions of dollars that used to be paid out to  
6 these transient out-of-state industries that weren't  
7 creating a lot of jobs or economic activity, and,  
8 instead, used that for either tax reductions or for  
9 other public priorities, which I think everybody in  
10 Michigan is now of the view that that's a better  
11 approach.

12 They also had a lot of scandal and missed  
13 allocation in the film office, which is something  
14 we've seen in other states with extensive  
15 film-tax-credits programs.

16 So, it was kind of a long overdue move.

17 And they did that, not just for film credits,  
18 but for a lot of their economic-development  
19 incentives across the board.

20 Michigan also had a very destructive type of  
21 business tax known as a "gross-receipts tax." They  
22 modified it a couple of ways.

23 It's, kind of, the worst aspects of a  
24 gross-receipts tax, coupled with the worst aspects  
25 of a corporate income tax, together, and then you

1 had to calculate it a whole bunch of different  
2 number ways in order -- and then pay it.

3 Every economic researcher, left or right,  
4 views gross-receipts taxes destructive to the  
5 economy.

6 And we've got a lot of papers on this.

7 I sometimes describe it as "the tax that  
8 brought down the Spanish Empire," because it did.

9 It's -- and it was doing a lot of damage to  
10 the state of Michigan, and to its economy, and to  
11 its future.

12 And, again, to the credit of the current  
13 governor and the current legislature, they got rid  
14 of it, and they replaced it with a good  
15 old-fashioned corporate income tax, like the kind  
16 that most states have, which raises about the same  
17 amount of money, but does it in an incredibly less  
18 economically costing manner.

19 And that's really what it comes down to,  
20 because, I mean, we -- the two main reports that we  
21 put out, are the "State and Local Tax Burden's  
22 Report" and the "State Business Tax Climate Index,"  
23 of which New York has the enviable position of being  
24 worst on both.

25 The burdens is the "how much?" question.

1           How much are you raising, how much are you  
2           collecting, and how much are your residents paying  
3           in state and local taxes?

4           So, for instance, New Yorkers are paying, if  
5           you just divide it out of, the total payments,  
6           divided by people, \$6,375 per capita in state and  
7           local taxes.

8           And that's the third highest in the country.

9           As a percent of income, it's the first  
10          highest in the country, at 12.8 percent, and that's  
11          a lot of payment. That's a lot of money.

12          And that's just one aspect of it.

13          The other aspect of it is how you raise it.

14          Because you can raise that money in a way  
15          that is intended to minimize the economic cost,  
16          minimize the distortions, minimize the harm that it  
17          does to growth and to economic opportunity; or, you  
18          can do it in a way that really damages the economy.

19          And, the Organization for Economic  
20          Cooperation and Development in Europe, which is a  
21          multi-national entity, kind of a think-tank, but  
22          government-sponsored in -- and it's based in Paris,  
23          they've surveyed the economic research, and kind of  
24          given a thumbnail sketch.

25          In terms of destructiveness to economic

1 growth, it goes: gross-receipts taxes, corporate  
2 income taxes, individual income taxes, sales taxes,  
3 and property taxes.

4 And even scholars on the left, if you really  
5 hold them down, they'll admit, that, yes, corporate  
6 income taxes and individual income taxes, they do  
7 more harm for economic growth -- long-term economic  
8 growth, broadly speaking, than sales taxes and  
9 property taxes.

10 Now, sometimes they'll say, that, you know,  
11 it's maybe the wrong kind of economic growth.

12 And, certainly, questions of fairness and  
13 distribution are important to continue to consider  
14 in these questions, but, that said, there is a trade  
15 off there, between complexity of your tax system,  
16 and the distortions it causes in the economy, and  
17 bad structures, and, economic growth and  
18 opportunity.

19 North Carolina did maybe the -- what I would  
20 call the "Go-Big approach"; and that was driven, in  
21 part, by significant changes in their legislative  
22 makeup.

23 The Republican Party in North Carolina gained  
24 the governorship and both houses of the legislature  
25 for the first time since Reconstruction.

1           So, they had a big long list of things that  
2 they wanted to do, and one of them was tax reform.

3           And like many tax bills, like many pieces of  
4 legislation, it changed quite a bit over the  
5 legislative process. It got better, and then it got  
6 worse, and then it got great, and then it got  
7 terrible, and then what they passed, ultimately, was  
8 not so bad.

9           So, just to give you a thumbnail sketch of  
10 it:

11           The -- prior to the reform, Nebraska had a  
12 number of different tax rates.

13           The top one was 7.75 percent on income over  
14 \$60,000, which was the highest in the region, and,  
15 actually, fairly high nationally;

16           They had a corporate tax rate in excess of,  
17 I think it was like 6.9 percent. Very high sales  
18 tax;

19           And heavy dependence on incentives. They  
20 offered a lot of incentives to try to get the tech  
21 industry there, to try to get banking there, but  
22 were running into a lot of problems of retaining  
23 talent, because of the high income taxes. Running  
24 into problems of growing beyond those sectors,  
25 because of the high tax rates.

1           And, so, they looked to resolve all of that,  
2           and -- instead, and do their best to clear out a lot  
3           of the credits and deductions, and use that to pay  
4           down lower rates -- pay down the rates.

5           So their top individual tax rate is coming  
6           down. Their top corporate tax rate is going to come  
7           down.

8           And if -- they have a trigger, so if revenue  
9           exceeds the estimates that they have, then the  
10          corporate rate drops even further.

11          And that's been an approach that I think  
12          Nebraska is considering doing too, just because it's  
13          kind of one of these new innovative things.

14          Sometimes they say there's nothing new in tax  
15          policy, but, I'm usually proven wrong on that every  
16          year.

17          They're also studying, looking at reforming  
18          their franchise tax and sales tax.

19          And this is maybe a good place to transition  
20          into the overall trends that we're seeing at the  
21          state level, one of which being sales-tax reform.

22          Sales taxes, for the most part, came about as  
23          an emergency measure in the Great Depression.

24          And so there -- most states, essentially,  
25          model their sales tax off of Mississippi, which was

1 the first state to adopt a sales tax.

2 And sales tax is, for the most part, tax-only  
3 goods, because that's what our economy was in the  
4 1930s. 70 percent of our economy at the time was  
5 the sale of goods. Sale of services was very  
6 modest.

7 Today, that's flipped.

8 We're increasingly a -- we're certainly a  
9 service-based economy now, and increasingly becoming  
10 an almost-exclusively serviced economy.

11 Services now make up about 70 percent of  
12 consumption in the United States. Goods, less than  
13 30 percent.

14 But, our sales taxes, for the most part, have  
15 not kept up.

16 So, as late as the 1970s, sales taxes applied  
17 to 60 or 70 percent of what people bought and sold.

18 Today it's less; today it's about a third.

19 And in New York, it's less than 30 percent.

20 So, of everything that New Yorkers buy and  
21 sell, and, of course, the visitors, like me, to  
22 New York, buy and sell -- and I'm doing my best to  
23 buy what I can on my brief visit here -- they --  
24 only 30 percent of it, less than that, is subject to  
25 the sales tax, which means that which you do tax, to

1 raise same amount of revenue, has to be three times  
2 as high.

3 And, you know, it's not that hard to go into  
4 a list of some of these things. It's not all, you  
5 know, sweetheart deals negotiated by powerful  
6 plutocrats. It's things like groceries, and things  
7 like clothing, which we all view as necessities, and  
8 we all view as important, that everybody be able to  
9 buy, but, they also make up a huge percentage of  
10 what people buy and sell.

11 And it's also one of the more stable items of  
12 what people buy and sell.

13 So when you take that out of the sales-tax  
14 base, it means the rate on everything else that you  
15 do tax has to go up, and it also means your sales  
16 tax is that much less volatile.

17 Now, as that example suggests, reforming your  
18 sales tax, although, you can probably get most  
19 public-finance scholars to -- you know, if you got  
20 five public-finance scholars of all across the  
21 political spectrum, and you said, "Design me a sales  
22 tax," what they're gonna come up with is pretty  
23 similar: You tax all final sales of goods and  
24 services, once, and only once, and you don't tax any  
25 business inputs.

1           Not because businesses are special treatment,  
2           but because, when you tax business inputs, that  
3           means you're double taxing and triple taxing and  
4           quadruple taxing some items, based on how frequently  
5           they go through the production chain.

6           But, it's a political problem, because,  
7           people like having no tax on groceries, people like  
8           having no tax on sales of their home, people like  
9           having no tax on the sale of clothing.

10          And I could run down the list of all  
11          politically powerful, and all majoritarian views,  
12          but, the sum total of it means that you're  
13          collecting a third as much in sales-tax revenue than  
14          you would be if you had a properly structured sales  
15          tax base; revenue that could be used for public  
16          priorities, or, for reducing taxes in other areas,  
17          such as income tax or corporate income tax.

18          [Unintelligible] the corporate income tax,  
19          I will -- I have started making the prediction that  
20          this is a tax on the way to extinction.

21          SENATOR KRUEGER: Sir, you can repeat that?

22          JOE HENCHMAN: "The corporate income tax is a  
23          tax on the way to extinction," and let me give you a  
24          couple of reasons why I think that is.

25          One, a lot of states have moved -- back in

1 the day, in order to -- you have the problem of  
2 multi-state businesses, where a company is doing  
3 business all over the country.

4 And, so, when they have their aggregate  
5 profit for the year, how do you divvy that up  
6 amongst the states to -- subject to corporate income  
7 tax?

8 And back in the 1950s and 1960s, all the  
9 states agreed on a standard formula to use to divvy  
10 up that income so that everybody got their share.

11 Now we don't have that, you know, formula.

12 Iowa was the first to break off from the  
13 pack, and as soon as they did, now everybody else  
14 wants to, kind of a prisoner's-dilemma thing.

15 And, so, every state is moving towards  
16 double-weighting their sales factor, exclusively  
17 weighting their sales factor, on their corporate  
18 income tax, as every state's trying to grab more  
19 than their fair share.

20 Well, we'll soon get to the point where  
21 everybody -- every state has adopted this, so every  
22 state has grabbed more than their fair share, and  
23 then we're just back to where we started, except,  
24 businesses -- homegrown businesses that employ a lot  
25 of people, that sell a lot of things, but do it

1 outside the state, are, essentially, not paying  
2 corporate income tax within the state anymore.

3 And so the net result will be, every state  
4 will be back to uniform, but collecting a lot less  
5 in corporate income tax because they've adopted  
6 single-sales factor.

7 And, so, you'll still have the tax, and  
8 everybody will still be going through all of the  
9 rigmarole of calculating it and estimating it, but  
10 states won't be getting that much.

11 You also have the rise of non-C business  
12 forms, so states have allowed businesses to set up  
13 as S corps or as LLCs or as partnerships, businesses  
14 that, in the past, would have been C corporations,  
15 but, today, are in these alternate business forms,  
16 where they get the benefit of perpetual life and  
17 limited liability, and being able to sue and be sued  
18 as an entity, but without having to pay corporate  
19 income tax.

20 Now, mind you these, businesses are still  
21 paying tax. They're paying it under the individual  
22 code rather than the corporate code, but, that also  
23 means that the corporate code looks a lot less  
24 successful than it did in the past. It's raising  
25 less revenue under that.

1           And then, finally, there's also incentives.

2           The corporate code is usually the place where  
3 businesses are handing out incentives, and that  
4 does -- that reduces the take from that tax that  
5 states -- states are doing that.

6           So, for instance, we just ran the number for  
7 Nebraska, and for every dollar they're collecting in  
8 corporate income tax, they're giving somewhere  
9 between 40 and 70 cents away in incentives.

10           And, you kind of reach the point of, why even  
11 bother with this tax anymore if that's what you're  
12 doing with it?

13           And so the approach that I think most  
14 public-finance scholars would recommend is, move  
15 away from that, by industry, by business approach,  
16 and aim for creating a business climate favorable  
17 for all that all can take on even terms.

18           And that, I think, has been some of the  
19 trends we've been seeing in some of the more  
20 successful reforms so far this year, especially on  
21 the individual income-tax and corporate income-tax  
22 side.

23           North Carolina's reform on the individual  
24 income tax, although it lowered rates across the  
25 board, it also took away a lot of the deductions,

1 and some of these were very controversial. People  
2 like their home mortgage-interest deduction, because  
3 they think they benefit from it more than they  
4 actually do, which, you know, it's hard to convince  
5 with a table of information about, Well, actually,  
6 you only get, like, a -- you know, a \$500 tax break  
7 off of this deduction, and you'd get way more from  
8 the individual income-tax cut.

9 SENATOR DeFRANCISCO: Excuse me.

10 Could you leave some time for questions?

11 JOE HENCHMAN: Certainly. I apologize.

12 SENATOR DeFRANCISCO: Okay, but, if there's  
13 some -- I don't want you to -- cut you off at a  
14 specific point, but if you're at close to that  
15 point, keep the questions in mind. Okay?

16 JOE HENCHMAN: Certainly.

17 SENATOR DeFRANCISCO: Thanks.

18 JOE HENCHMAN: Thank you, Senator.

19 I apologize for that.

20 And, North Carolina, it was certainly  
21 politically difficult to take that away in  
22 North Carolina, but legislators and the general  
23 public were convinced that they would be better off  
24 under the reform system, with reduced rates across  
25 the board, even if it meant giving up some of the

1 deductions.

2 And that's kind of the overarching themes of  
3 tax reform that we've seen elsewhere.

4 So with that, Senator, thank you.

5 SENATOR DeFRANCISCO: Senator Valesky.

6 SENATOR VALESKY: Thank you, Mr. Chairman.

7 Thank you, Mr. Henschman, for being here.

8 You've certainly provided a great deal of  
9 information that you didn't even touch on, and we  
10 appreciate that; and, so, I think it's always  
11 instructive and helpful to look at what other states  
12 are doing; and, certainly, tax policy is no  
13 different.

14 I just want to ask, just one question, and  
15 it's similar, if not the same question that  
16 Senator DeFrancisco asked of E.J. McMahon, although,  
17 from a different perspective.

18 Your tax fact and comparison sheet, which  
19 you've published, I think, for a number of years,  
20 50th state in terms of state business-tax climate,  
21 first in terms of state and local tax burdens.

22 The third item, "Tax Freedom Day," May 6th  
23 here in New York State, New York taxpayers worked  
24 126 days into the year, until May 6th, to pay their  
25 total tax bill.

1           Incidentally, this is always on the news at  
2 tax time. It's something I think that New Yorkers,  
3 they're easy to understand that they've paid their  
4 local, state, and federal burden, and for the rest  
5 of the year, they're earning their income and salary  
6 for themselves.

7           So my question is, you indicated that it is  
8 18 days after National Tax Freedom Day, April 18th.

9           So, similar to Senator DeFrancisco's  
10 question, from the 50th burden, to somewhere in the  
11 middle of the pack, what would it take -- and you  
12 may not have this, but if you could get it to us,  
13 what would it take, in terms of a cost or economic  
14 or fiscal impact, to move New York State, and  
15 May 6th, to the National Tax Freedom Day of  
16 April 18th?

17           What are we talking about?

18           JOE HENCHMAN: Sure.

19           So as you mentioned, "Tax Freedom Day" is the  
20 combination of your federal tax burden, and what  
21 New Yorkers are paying in federal income tax and all  
22 other federal taxes, as well as the state and local  
23 tax burden.

24           So, state and local tax burden, New York's  
25 the highest in the country. I've already given you

1 the numbers on that, so, is kind of -- you know,  
2 you're highest in the country on that, so, it  
3 depends on where you want to be, and, you know, we  
4 can work out the number on how far down you want to  
5 go on that.

6 With respect to the federal income tax,  
7 that's primarily a feature of the high incomes that  
8 New Yorkers earn.

9 Our federal income tax is highly progressive.  
10 It -- it's -- a lot of it is paid by very  
11 high-income people, so when a state has a lot of  
12 high-income people, it's paying a lot in federal  
13 income tax.

14 And, so, that's a feature we see of a lot of  
15 the northeastern states, higher incomes than  
16 average, that they're paying a lot of income tax.

17 And, you know, I don't think this is news to  
18 New Yorkers. I mean, it's -- New Yorker -- New York  
19 is a -- what some call a "donor state." It's  
20 sending more money to Washington than it's getting  
21 back.

22 And that's not because the New York  
23 delegation isn't getting enough pork for New York;  
24 it's because New Yorkers have high incomes and we  
25 have a progressive income tax at the federal level.

1           SENATOR DeFRANCISCO: Can you actually  
2 compute what fiscal amount we would need to find  
3 either tax credits or additional revenue, or  
4 whatever, to get to the -- like David asked for, the  
5 average date?

6           JOE HENCHMAN: For Federal, I don't have that  
7 at my fingertips, but I can certainly provide that.

8           For the state level, as I mentioned,  
9 New Yorkers paying 6,375 per capita.

10          The U.S. average is 4,112.

11          So, the difference between those numbers,  
12 times the population, would bring you to average on  
13 that.

14          SENATOR DeFRANCISCO: Okay, thank you.

15          Anyone else?

16          Senator Marchione.

17          SENATOR MARCHIONE: Mr. Henchman, thank you  
18 for being here.

19          JOE HENCHMAN: Sure.

20          SENATOR MARCHIONE: You provided a great deal  
21 of information to all of us.

22          But, I listened to your, you know, statement  
23 on how some states take incremental changes, and --  
24 to make their state better.

25          JOE HENCHMAN: Yes.

1           SENATOR MACHIONE: Do you have suggestions on  
2 what would be New York State's incremental?

3           If we looked at, incrementally, trying to get  
4 better, where would you focus on?

5           JOE HENCHMAN: That is a great question.

6           And, if that's something the Committee would  
7 be interested in, we can certainly put together some  
8 options.

9           We -- in the "State Business Tax Climate  
10 Index," of which New York is 50th, again, that's the  
11 evaluation of state tax structure, as I mentioned,  
12 there's 112 different variables. And this would  
13 involve us, kind of, going through each one and  
14 seeing what New York could improve.

15           We broadly categorized them by the type of  
16 tax, so, New York has scores on the corporate income  
17 tax, the individual income tax, the sales tax, the  
18 unemployment-insurance tax, and property tax.

19           And, New York is 50th on individual income  
20 tax;

21           45th on unemployment-insurance tax;

22           And 45th on property tax;

23           And then, corporate income tax, 23rd, so,  
24 maybe one of the better ones;

25           And, then, 38th on the sales tax.

1           So, my suggestion would be, since you're  
2 bottom five, bottom six, on the individual income  
3 tax, unemployment tax, property tax, those might be  
4 key areas to focus on.

5           And we can certainly provide more specifics  
6 if that's something the Committee is interested in.

7           And then, sales tax, not too far behind.

8           SENATOR MACHIONE: Thank you.

9           SENATOR DeFRANCISCO: Senator Krueger.

10          SENATOR KRUEGER: Thank you very much.

11          So just to repeat in, I guess, layman's terms  
12 for me, as I heard you testify:

13          Based on the research you've done around the  
14 country, the targeted tax versus across-the-board,  
15 sort of, more fair, equitable tax policies, you're  
16 finding are not working in other states, and  
17 New York is also suffering from falling heavily into  
18 that category?

19          JOE HENCHMAN: That would be my contention.

20          I'm certainly -- you can certainly find  
21 people that disagree with that; certainly, at least  
22 the beneficiaries of those industries.

23          So, you know, if I was a representative of a  
24 film company that's the recipient of the New York  
25 program, I'd probably say it was a success, and a

1 stellar success, and that you should continue it,  
2 and expand it, and increase the credit amounts, and  
3 everything.

4 But I think, on the whole, looking at both  
5 the seen benefits as well as the unseen costs, that  
6 this is not an effective manner for economic  
7 development and long-term economic growth.

8 And, you know, I don't want to belabor the  
9 point of some of the states out there, but, you  
10 know, some of Plain states that people think very  
11 lowly of, like South Dakota or Wyoming, or even  
12 Texas, you know, Who would want to live there? Who  
13 would want to work there? the gains that these  
14 states have made in employment and in economic  
15 growth over the past ten years have been  
16 considerable, and haven't yet really been documented  
17 and evaluated beyond just the statistics and the  
18 numbers.

19 And even a state like -- well, I'll just  
20 leave it right there.

21 SENATOR KRUEGER: And I appreciate that  
22 you -- you said this up front, because you are the  
23 Tax Foundation, and I read your materials, and you  
24 pointed out that you measure, you know, the business  
25 climate based on the tax numbers.

1           JOE HENCHMAN: Yes.

2           SENATOR KRUEGER: But we know that taxes  
3 aren't the only determination, either in business  
4 success or business -- or reasons for businesses to  
5 be there or grow.

6           I mean, I know that many of the states who  
7 fall much lower on your tax numbers, would,  
8 literally, kill to have the business activity that  
9 we have here in New York.

10           So, knowing that, do you have an ability to,  
11 I don't know, estimate, of all the different  
12 determinations that impact businesses, coming  
13 somewhere, staying somewhere, growing, how big a  
14 determination is marginal tax rates?

15           JOE HENCHMAN: It's a very good question.

16           And there is kind of anecdotal evidence, and  
17 there is academic evidence, and then there's  
18 statistical evidence, which is kind of uncertain as  
19 to correlation and causation.

20           But, your point is certainly a very important  
21 one.

22           So, you know, for instance, what would it  
23 take to -- how bad would have it to get for the  
24 New York Stock Exchange to move out of New York?

25           It would have to, probably, get pretty bad.

1           But, that -- for the -- not New York, but the  
2 Chicago Mercantile Exchange, it -- they did reach  
3 that point, with Illinois's recent tax increases.  
4 They were looking on moving out of the state, until  
5 Illinois came through with a targeted incentive  
6 package to keep them in the state, but -- just to  
7 avoid the negative publicity of the  
8 Chicago Mercantile Exchange leaving Illinois.

9           But that is to say, that taxes do affect  
10 things.

11           Incentives matter and taxes matter; precisely  
12 to what extent I think is where the debate occurs.

13           There's very few people who say that, you  
14 know, you can -- it doesn't matter, New York could  
15 have a 50 percent income tax, and you'll still have  
16 all of the same business activity you have here.

17           And then there's also some people who say,  
18 you know, if you raise the tax by one dollar,  
19 everyone's going to leave.

20           And the real truth is somewhere in the  
21 middle.

22           We've put out a survey piece looking at all  
23 of the academic research on the question of taxes --  
24 the relationship between taxes and economic growth,  
25 some 30 studies, "the study of studies," so to

1 speak. And there's significant evidence in there  
2 that marginal tax rates, particularly on the  
3 corporate and individual income tax, have a strong  
4 effect on economic decisions, and on economic  
5 growth.

6 And, indeed, even the Center on Budget and  
7 Policy Priorities, which is a -- left on the  
8 political spectrum, they conceded that the debates  
9 at least mixed; that there's valid research on both  
10 sides arguing the point.

11 So, I think that it's pretty strong evidence  
12 that there is a relationship.

13 Part of it's a limitation of data.

14 So, for instance, if you were to move from  
15 one city to another, or one state to another, and  
16 somebody asked you, "Did you do it for tax reasons?"  
17 well, maybe you did it because you had a better job  
18 opportunity; or maybe you did it because of the cost  
19 of living; or maybe you did it because of housing  
20 prices.

21 And all of those things are not taxes, but  
22 they can be influenced by taxes, and maybe directly  
23 influenced by taxes.

24 So, it's a bit difficult to answer the  
25 question with any certainty.

1           And that's -- I enjoy engaging in the debate  
2           and in the discussion.

3           I think there's strong -- as I said, strong  
4           evidence that the taxes do affect economic behavior.

5           Precisely at what point, I think, varies by  
6           person, and by company.

7           SENATOR KRUEGER: Changing question: I'm of  
8           the belief that we in the state underfund our  
9           localities: our towns, our cities, our counties.

10          And, they tell us that all the time, and they  
11          seem to be struggling very badly; although, there  
12          are other cities around the country who also face  
13          these problems.

14          In New York, the only tax they control for  
15          themselves is the property tax.

16          Every other tax there is, through approval of  
17          us, or moves to us, and then whether we send it back  
18          to them, is a separate question.

19          Have you looked, from your state-to-state  
20          surveys, on other states' models, of helping to make  
21          sure that their -- that their tax policies aren't  
22          strangling their localities?

23          And what are the successful models?

24          JOE HENCHMAN: Sure.

25          Well, we've put out studies on, not just

1 property taxes, but also local income taxes and  
2 local sales taxes.

3 And, somewhat counterintuitively -- and  
4 I don't think we've ever put this to -- pen-to-paper  
5 on this, but, somewhat counterintuitively, I think  
6 the more struggling localities are the ones with  
7 more access to a diverse array of tax-revenue  
8 sources.

9 The locality is -- they, essentially, depend  
10 entirely on the property tax. They usually are the  
11 ones that are able to provide services, and do so  
12 cost-effectively and efficiently, and, have high --  
13 you know, high marks from their residents as doing a  
14 good job.

15 And the localities that have a, you know,  
16 share of the state sales tax or the local sales tax,  
17 and have share of the income tax, and have a bunch  
18 of state aid and a bunch of federal aid, those are  
19 the ones that usually always seem to be on the ropes  
20 and struggling to provide services.

21 And I'm not sure why that is.

22 We've always -- and I'm going to say  
23 something that's very unpopular for the state of  
24 New York.

25 We've always been fans and defenders of the

1 property tax as a revenue source, because, one of  
2 the reasons we give, is that it helps to keep the  
3 decisions local; that, if your local government is  
4 going on a spending spree, and all they have is the  
5 property tax they collect from you, it's very easy  
6 to stop them from doing that.

7 But when you start mixing in state revenue  
8 sources and state mandates, and, the local  
9 government has to do this, even though it doesn't  
10 make sense, and they have to pay this wage scale  
11 because the State Capitol tells them to, and,  
12 they're going to get this revenue whether the  
13 citizens revolt or not, you get a disconnect between  
14 local decisions and what the local government is  
15 doing -- what the local government is doing, and  
16 what the local citizens want them to do.

17 And I think that's what causes the broader  
18 problem.

19 So, what I might look at for local  
20 governments in New York is, look at what you and  
21 Albany require the local governments to do, and  
22 whether you require them to do it a particular way.

23 Certainly, that's the complaint that local  
24 leaders, that I've spoken to in New York, are  
25 saying; that, you know, Albany makes us to do this,

1 and they make us do it this way.

2 And that's the real problem, when they're not  
3 complaining about funding.

4 But, I wouldn't just look at, you know,  
5 "How do we get more State aid to local governments?"  
6 because that doesn't necessarily solve a broader  
7 problem of, if they're providing the wrong services,  
8 the wrong way, for people.

9 SENATOR KRUEGER: But we capped their  
10 property-tax ability in the state, so that --

11 JOE HENCHMAN: The growth, yeah.

12 SENATOR KRUEGER: -- yeah, so that limits  
13 their ability to do what you were just describing.

14 JOE HENCHMAN: I think you can -- does it  
15 have a voter-override option?

16 So there's that, at least.

17 SENATOR KRUEGER: Thank you.

18 SENATOR DeFRANCISCO: Thank you.

19 What -- I just want to get back to the  
20 "methodology" issue, because this is difficult  
21 stuff, to figure out what policies you want to  
22 change, and how you want to effect things.

23 The methodology, for example, in  
24 North Carolina, to determine what they're going to  
25 do, was there a goal of where they -- the dollars

1 they -- did they have to first determine the dollars  
2 they would need, and then once -- to do an effective  
3 tax cut, and then, look at the credits, look at the  
4 deductions, look at other sources of revenue?

5 What was the methodology that was used?

6 Or, what's the methodology that's most  
7 effective for a legislature to use?

8 JOE HENCHMAN: I would like to say yes to  
9 that question, but that wouldn't be truthful.

10 The answer was, that I think the legislators  
11 and the governor came in, knowing the current system  
12 wasn't working, and not really sure why; so, kind of  
13 being open to changing things, but not really having  
14 a firm idea on what they wanted to do beyond making  
15 it lower.

16 And, you know, some state senators and  
17 state representatives are experts on the topic, and  
18 they knew the tax code frontwards and backwards, but  
19 I think, for the most part, a lot of the  
20 legislatures [sic], that was their knowledge going  
21 into the debate, and going into the discussion.

22 So, a lot of input was gathered. We wrote a  
23 book on the subject of North Carolina's tax system,  
24 and options to reform everything, from incremental,  
25 to broad-reform approaches.

1           Other think-tanks put out similar material,  
2           other organizations put out position papers, and  
3           I think that I that did a lot to kind of inform  
4           things.

5           North Carolina also had a body of previous  
6           studies. They had, I think, seven previous  
7           tax-reform commission reports that were on shelves  
8           gathering dust.

9           And I would say they agreed on about  
10          70 percent of the recommendations, between them,  
11          and, so, I think that also provided a good corpus of  
12          background of, Well, you know, we don't need another  
13          study on this necessarily. Maybe we should just do  
14          what the studies in the past have said.

15          And the general approach was: We need to do  
16          something about the declining sales-tax base, we  
17          need to do something about our high income-tax  
18          rates, our franchise tax system is broken, and the  
19          corporate income tax is not productive.

20          And those eventually transformed into  
21          concrete policy ideas, that, as I mentioned, changed  
22          along the way considerably, but, I think the overall  
23          goal was to broaden the base, lower the rate, and  
24          provide a net-revenue reduction, but not a shocking  
25          one. One that people would feel, but one that

1       wasn't necessarily -- it wasn't just about cutting  
2       rates and getting money out; it was also coming up  
3       with a better-structured tax system.

4                SENATOR DeFRANCISCO:  Okay, and, lastly,  
5       I know the revenues, you have to find the money  
6       someplace.  Okay?

7                Hopefully, there will be a boom in the  
8       economy, because of the national economics is going  
9       much better.

10               And, hopefully --

11               JOE HENCHMAN:  California is in its 12th year  
12       of budgeting, hoping for that.

13                       [Laughter.]

14               SENATOR DeFRANCISCO:  Yes, yes.

15               But if it happened -- and if it happened,  
16       hopefully, the boom would go directly to some of  
17       these cuts we've been talking about.

18               But, the biggest rub, I would think, assuming  
19       that there is no such economic boom, and all of a  
20       sudden, we're flush with cash, then, the only way to  
21       adjust these things, it seems, is to deal with the  
22       deductions, the credits, and, change, and make it  
23       broader-based, so that there's not just haves and  
24       have-nots.  There's, everybody is participating in  
25       a fair, equitable way.

1           These cuts -- these states that have done  
2           some of these changes, I assume there was an outcry,  
3           at least at the beginning, that, we're losing this  
4           deduction, we're losing this credit, we're losing  
5           this or we're losing that.

6           You gave Michigan as an example.

7           I -- what was the reaction of some of --  
8           whether it's -- I know what the reaction of the film  
9           industry would be, but what about the average  
10          Joe Citizen, and some of these deductions that they  
11          relied on, and they're not getting anymore?

12          JOE HENCHMAN: Well, the key was, to make the  
13          case to them that, that, the whole picture, at the  
14          end of the day, was going to be more beneficial to  
15          them, and to the economy as a whole, and to their  
16          children, and so forth, than the current system,  
17          where, they got it -- you know, they got all of  
18          these different deductions and credits, but everyone  
19          else had to pay very high rates.

20          And, beneficiaries -- some of the  
21          beneficiaries did not like that, of course, and,  
22          opposed it, and resisted it.

23          But, for the most part, I the case -- the  
24          reason these were successful, and this is the  
25          difference between successful tax reforms and

1       unsuccessful ones, is successfully making that case  
2       to most people.

3               And -- I mean, you're not going to get there  
4       offering, you know, a credit for this industry and a  
5       credit for that industry. That's not going to get  
6       you to the [unintelligible].

7               The way you do it is, by making the case for  
8       what the state will look like afterwards; what the  
9       revenue picture will look like.

10              This is how the entire package -- not just  
11       you lose your mortgage interest deduction, but, the  
12       whole package, where, your sales tax rate goes down  
13       and your income tax rate goes down, and this  
14       economic growth is generated, what it looks like at  
15       the end of the day for you.

16              And so, North Carolina, for instance, had  
17       a -- I mean, it was just something as simple as  
18       this:

19              They had a tax calculator on the caucus  
20       website, where you could put in your income, and you  
21       see how your income will be changed under the  
22       entirety of the tax provision.

23              Because, of course, people were getting  
24       flyers, and saying, You're going to lose your  
25       mortgage-interest deduction if this passes;

1           Whereas, they were making the case, Well,  
2           that's true, but, you're also getting these other  
3           benefits from this tax reform, and you need to look  
4           at it holistically.

5           And it can be a tough case to make.

6           And, certainly, there's a lot of special  
7           interests interested in preventing legislators from  
8           making that case.

9           But I think, on the whole, not only it  
10          worked, but it's beneficial for everybody, on the  
11          whole.

12          SENATOR DeFRANCISCO: Thank you very much,  
13          and thank you for coming up from Washington.

14          We really appreciate it.

15          JOE HENCHMAN: Thank you for the opportunity.

16          SENATOR DeFRANCISCO: You may be getting some  
17          calls for more information.

18          JOE HENCHMAN: Happy to take them.

19          SENATOR KRUEGER: Thank you.

20          SENATOR DeFRANCISCO: The next speaker is  
21          from the Business Council of New York State,  
22          Ken Pokalsky. He's the vice president of government  
23          affairs.

24          KEN POKALSKY: Good morning.

25          SENATOR DeFRANCISCO: Good morning.

1           KEN POKALSKY: We appreciate this  
2 opportunity.

3           The Senate's been -- had a longstanding  
4 leadership on tax and budget reforms in  
5 New York State, so we appreciate you asking, and  
6 appreciate the opportunity to be here today.

7           We did submit long testimony. You have it.  
8 I'm not going -- I'm certainly not going to read it.  
9 I'm going to touch on a handful of key issues,  
10 though.

11           But, first, I just wanted to, in response to  
12 some of the things already said today, I think, if  
13 you haven't noticed yet, tax law is very complex,  
14 and getting more complex every day, because of --  
15 the types of transactions are becoming more complex.

16           Just one example: Talking about extending  
17 sales tax to services, think of the example of  
18 cloud-based -- a cloud-based computer program that's  
19 used in multiple states from a company based in  
20 Michigan.

21           Where is the sale -- "Where does the sales  
22 happen?" would be the basis of where it gets taxed.

23           So it's very complex, and a lot of the stuff  
24 is interrelated.

25           In response to a comment -- when E.J. McMahon

1 was talking about, or comparing, treatment of C corp  
2 income versus S corp, the flip side of that is, the  
3 monies paid from -- to the shareholders of a C corp  
4 as a dividend, comes out of the taxable profits of  
5 the business. It's taxed at the corporate  
6 franchise-tax level, and taxed at the PIT level when  
7 it's received, in New York State, as ordinary  
8 income.

9 Compare that to a Sub S, it has a very  
10 nominal tax payment as the corporate entity, under  
11 Article 90 of the franchise tax, but it's taxed  
12 at -- it's mostly taxed at the PIT.

13 So just equalizing the rates that the income  
14 is subject to doesn't mean that the same dollar of  
15 income is treated the same way under -- as a C corp  
16 and S corp.

17 My only point is, that these are -- there's a  
18 lot of interconnections here, and when you move one  
19 piece, you have to look at how it compares to the --  
20 make sure you're comparing apples to apples when  
21 you're making -- or, trying to make reforms that are  
22 intended to treat income or an activity equitably or  
23 similarly under the tax law.

24 With that preamble, state business climates  
25 obviously matter. They're influenced by a lot of

1 factors, including taxes, so an argue, taxes  
2 definitely do matter.

3 When we talk to our members, things that come  
4 up most often:

5 Cost of employer-provided health care, which,  
6 in New York, is driven by state-coverage mandates;

7 Cost of energy, which, actually, prices have  
8 come down a little bit, due to factors beyond our  
9 control;

10 And, taxes; in particular, property taxes.

11 And when a business, particularly a  
12 multi-state business, looks at where to make its  
13 next capital investment, the return on investment is  
14 important, and it's influenced by these types of  
15 factors.

16 So you definitely tax -- taxes on the margin  
17 definitely matter in terms of economic development.

18 You already heard about the high level of  
19 combined state and local tax burden in  
20 New York State.

21 Analysis that we've done is, if you look at  
22 that overall burden, about 25 percent of all  
23 State-imposed taxes, and about 40 percent of  
24 local-imposed taxes, primarily property and sales  
25 tax, are born by the business community, for a

1 combined share, by our projections, about  
2 34 percent.

3 And, by the way, if you did an  
4 across-the-board expansion of sales tax to services,  
5 that number would go up because of the significant  
6 use of services by business.

7 And, we would concur with the comment by the  
8 Tax Foundation, that if there is a broadening of a  
9 sales tax to services, it should be done at the  
10 final sales, and not be a tax on business inputs,  
11 because then you have a pyramiding of the impact of  
12 the tax.

13 And last thing, on the impact issue, you  
14 know, New York State's economic performance,  
15 particularly upstate, has been a great concern to  
16 us.

17 Looking at just the recent history, from the  
18 beginning of the most current economic slowdown, to  
19 now, June 2013 is the last date I looked at,  
20 New York State has done a fairly good job of  
21 recovering. It's above its prerecession peak, but,  
22 virtually, all that net job growth happened north  
23 and west of the Tappan Zee Bridge.

24 If you look at the 52 upstate counties, from  
25 2008 to today, we're still below prerecession

1 levels.

2           Moreover, over the last -- since 1990, so,  
3 the last 33 years, job creation in New York State  
4 has been one-third the national rate: 7.2 percent  
5 versus 22 percent.

6           If all New York State did was kept up with  
7 national trends, we'd have produced more than a  
8 million new jobs. And that has tax-revenue  
9 consequences as well.

10           The point being, we have a -- we think, an  
11 economic-climate issue.

12           We see it in our job performance, both, in  
13 recent terms, particularly upstate, and for last  
14 two generations, that New York State has been  
15 lagging behind the national.

16           And when, and if, national economic growth  
17 comes, New York State cannot influence that.

18           What we can influence is the share of  
19 national economic growth that comes to  
20 New York State and stays in New York State.

21           So we do think, business policy, that  
22 business climate-factors matter, taxes are an  
23 important part of business -- of business climate.

24           So, a couple of specifics of tax reform:

25           We do support broad-based reforms, both, in

1 terms of how taxes are collected, how returns are  
2 filed, as well as tax rates.

3 The Business Council generally supports a  
4 modernization of the state's basic business taxes  
5 that was drafted by the tax department a couple  
6 years ago.

7 It blends the bank tax into the Article 9-A  
8 corporate franchise tax, modernizes the tax. It  
9 would reduce the entire net-income base tax rate,  
10 from 7.1 to 6.5.

11 We would support further reductions to,  
12 perhaps, the 4 percent range.

13 It would simplify compliance for taxpayers  
14 that currently have part of their business in two  
15 very different parts of the tax code, which requires  
16 four returns: state, and local -- or, state; bank;  
17 and corporate franchise tax; New York City multiple  
18 taxes, because of the two articles.

19 Simplified rules for doing combined reports.

20 When you're a multi-party corporate entity,  
21 you have to -- you bring different entities, perhaps  
22 unrelated entities, into a single report.

23 New York State, right now, has an incredibly  
24 complex nine-step process to define -- to require  
25 combination based on a term known as

1 "significant intercorporate transactions."

2 This bill simplifies the criteria for  
3 combined reports, to figure out what the taxpayer  
4 is, to be subject to New York State corporate  
5 franchise tax.

6 We -- that bill would continue the  
7 "single-sales factor" portion in the business  
8 income, a provision that gives a more competitive  
9 tax treatment to businesses that are subject to  
10 New York State tax, that have significant employment  
11 and capital in New York State.

12 We support the elimination of the alternative  
13 minimum tax, which is in that bill, which, frankly,  
14 erodes -- well, one hand, we give tax credits; on  
15 the other hand, we take away the value of those tax  
16 credits by imposing the AMT.

17 The bill's not perfect.

18 There's some provisions in there that have,  
19 what we think, are unintended tax -- adverse-tax  
20 impacts, including, in some cases, subjecting a  
21 business to same amount of business income to  
22 taxation in multiple states.

23 But, in any case, it's a step forward; it's a  
24 simplification of our basic business taxes.

25 And we can provide the two Committees with

1 our detailed discussion of its components, because  
2 it's about a hundred-piece under -- part -- piece of  
3 legislation.

4 Turning, for a minute, to the manufacturing  
5 sector:

6 The important thing about manufacturing, and  
7 this, for us, is particularly important upstate, you  
8 hear a lot of commentary from business and from  
9 labor, and from others, about the erosion of the  
10 middle class.

11 And in New York State, and particularly  
12 upstate, you know, from our view, what you're really  
13 talking about is manufacturing.

14 New York State has lost manufacturing -- the  
15 manufacturing employment nationwide, it's been on  
16 a -- in a decline.

17 New York State, for the last 40 years, has  
18 lost manufacturing jobs at more than double the  
19 national rate.

20 In Upstate New York, the average  
21 manufacturing job, compared to the average  
22 non-manufacturing private-sector job, pays, in  
23 salary alone, about \$16,000 more a year.

24 These are incredibly valuable jobs.

25 And I would argue, in a lot of locations in

1 Upstate New York, once gone, they're, virtually,  
2 irreplaceable, and certainly irreplaceable at that  
3 income level.

4 These are important -- this is an important  
5 component, particularly in the upstate economy.

6 And we do support some of the existing  
7 franchise-tax components that benefits this -- this  
8 vital sector.

9 We supported this year, the reduction of the  
10 marginal rate for manufacturers, ultimately, down to  
11 just under 5 percent.

12 In 2019, we think that could be brought down  
13 further.

14 We think there are some slight modifications  
15 necessary to what -- what a "manufacturing" is.

16 With diversification of companies, you see  
17 businesses with significant manufacturing activity  
18 in New York State, but it's not a majority of their  
19 income.

20 We think they should continue to be  
21 considered manufacturing.

22 And, again, to this issue of taxation of  
23 business income, as a C corp versus an S corp, we  
24 would recommend making corresponding reductions for  
25 manufacturing businesses taxable under the personal

1 income tax for Sub S, partnerships, and LLCs.

2           Importantly, not everything we do that feels  
3 like a tax is called a tax.

4           We definitely support an expedited phase out  
5 of the so-called "18-A assessment" on electric  
6 power, which is a particular issue for  
7 energy-intensive manufacturing.

8           And I'll point out, while we have done some  
9 tax reform over the years, since New York State  
10 repealed the gross-receipts tax on utilities, which,  
11 at the time, was about a \$150 million tax reduction.  
12 It took 5 years to get done in the legislature.  
13 It's hailed as a great step forward.

14           New York State has imposed more than  
15 a billion dollars a year, in different assessments,  
16 on the energy sector.

17           So we cut a million -- 150 million in GRT.  
18 We added a billion in 18-A, in SBC, RPS, et cetera.

19           It feels like a tax, we pay it like a tax;  
20 it's not called "a tax."

21           So, we have to look at these other things the  
22 State does that adds to the costs as well.

23           Moving away from the tax code, we have a  
24 couple -- there's a number of things the State can  
25 do in the way taxes are administered, that,

1 generally speaking, don't cost money, they don't  
2 reduce taxes, but they make our lives easier, and  
3 they would make the department's life easier as  
4 well, eliminating some of the friction costs in  
5 taxation.

6 A couple of examples:

7 The corporate franchise tax, right now,  
8 requires a first-quarter estimated payment of  
9 40 percent of, basically, last year's -- last year's  
10 tax liability.

11 If you had a significant non-recurring event,  
12 you sold a subsidiary, you pay -- in effect, pay  
13 estimated taxes on that in the first quarter of  
14 every year, and wait a year, basically, to get it  
15 back, when you true-up your actual tax liability,  
16 and when you the file returns that go through audit.

17 Allowing for that estimated payment to be  
18 based on projected revenues, rather than last year's  
19 revenues, is useful to the business; ultimately, it  
20 provides the same amount of revenues to the State.

21 The second example, cities and villages are  
22 authorized to impose gross-receipts taxes on  
23 utilities.

24 And by my count, it was about 420 entities  
25 that do so. These are all separately administered.

1           It would be useful to the affected businesses  
2           if this was a centrally administered, centrally paid  
3           tax, like we do for sales taxes collected, through  
4           the tax department, not through 420 separate taxing  
5           entities.

6           And there's others; things that are  
7           administrative, that produce the same revenues, but  
8           they reduce costs.

9           And, quite frankly, some of the reforms in  
10          that Article 9-A bill I talked about, tend to  
11          eliminate issues that we spend a lot of time on  
12          audit.

13          Not having to fight as much about the  
14          combination of rules, for example, saves time.

15          The last thing I want to talk about, and then  
16          I'd be happy to take any questions you have, is the  
17          issue of tax credits.

18          I want to make a couple of general points.

19          There are a lot -- yes, there are a lot of --  
20          a number of tax credits in Article 9-A and  
21          Article 22, et cetera.

22          Only a handful of those have significant  
23          costs attached to them, so we're really talking,  
24          I think, about the major ones:

25          Empire Zones, which is fading away; the film

1 credit; the brownfield credit; the -- Excelsior is  
2 now growing; and then the ITC.

3 Beyond that, I don't know that there's an  
4 Article 9-A tax credit that costs more than  
5 \$10 million a year, pointing, after first handful,  
6 they really fade away.

7 So any focus should be limited to the --  
8 I think, to the -- I think the real debate's on the  
9 major ones.

10 Second, some acts -- some types of business  
11 activities are far less influenced by tax factors  
12 than others.

13 Businesses that are there exclusively serving  
14 the local community probably aren't that influenced  
15 by marginal tax rates.

16 Certainly, not location in the state.  
17 They're going to be located around where their  
18 businesses are.

19 On the other hand, some other types of  
20 activities, like brownfield redevelopment, are  
21 heavily influenced; particularly in New York State,  
22 the way our brownfield law is structured, are  
23 heavily influenced by the financial incentives that  
24 go along with that.

25 I would make the same case for things like

1 the investment tax credit, where manufacturers  
2 serving a national -- a regional and national, and  
3 even a worldwide market, certainly has locational  
4 decisions.

5 And, thirdly, one thing that tax credits do  
6 that tax reform usually can't do, is you have a more  
7 immediate impact.

8 Generally, when we have done broad-based tax  
9 reform, it's come in multiple-year steps.

10 Sometimes, those steps are disruptive.

11 You do a tax -- a new tax -- targeted tax  
12 credit today, you see some immediate results.

13 And the final comment is, I think the  
14 question that has to be asked of tax credits is,  
15 Do they have a real effect?

16 Is it influencing something?

17 Are you giving a credit for something that  
18 would happen anyway?

19 And even if there is an effect, is it  
20 cost-effective?

21 Again, I'll just use the film credit as an  
22 example.

23 It's an expensive program, no doubt.

24 If you look at employment, New York City  
25 employment in the film industry, it's up about

1 20,000 jobs since the beginning of the recession.

2 And, right now, it's about 50 percent of its  
3 historic rate, if you look at what that industry  
4 had, in terms of jobs, over the last 20 years,

5 So you could argue it's had an effect.

6 And the second question is, What's the  
7 payback?

8 I think, if you gave enough tax credits to  
9 almost anything you, could make it happen in  
10 New York State.

11 Is there a balance between the benefit and  
12 the tax expenditure?

13 I think we need -- if we're gonna to take a  
14 serious look at tax cuts, I think you have to  
15 have -- look at both of those issues: Is it having  
16 an effect? Is it worth it?

17 Senator Krueger brought up a recent study  
18 that said there's a -- you know, \$7 billion in  
19 combined economic-development incentives.

20 What that report didn't say, is they were  
21 looking at state, New York City, county-level, and  
22 some city-level incentives.

23 That's \$7 billion on a combined, by my count,  
24 expenditure of about 225 billion, so it's a little  
25 bit less than 3 percent of total expenditures.

1           And that's just -- that's through a quick  
2 analysis.

3           So you've got to put it in the context.

4           Is it -- is it a large -- it's a large  
5 number, but it's a large number on almost a  
6 quarter of a trillion dollars worth of budget.

7           And, second, it really -- it questioned  
8 whether some of these were impactful and efficient.

9           It didn't answer the question.

10          I think some are doc -- are argued -- are  
11 demonstrably effective and cost-effective.

12          You know, I think the brownfield program is  
13 both.

14          If you look at it, it's at least -- it's  
15 almost a 9-to-1 payback, just looking at the capital  
16 expenditures versus the tax credits, not counting,  
17 you know, the benefits of jobs and secondary  
18 impacts.

19          So we do think there is a role for targeted  
20 tax credits, including an investment tax credit,  
21 R&D credit, continuation of the brownfield credits.

22          You know, everything can be looked at,  
23 everything can be made better, but we do think there  
24 is a role for those in the state's tax policy.

25          And I'm going to just briefly make some

1 comments on the personal income tax.

2 There's a lot of issues on how the income tax  
3 impacts business activity, both in terms of taxation  
4 of business income and how it impacts employees,  
5 particularly multi-state employees.

6 That, we're going to save for another day.

7 We're going to submit written comments on  
8 that to you before your hearing process is over.

9 But, two quick questions on the PIT.

10 First, you know, contrary to some of the  
11 conversation, when we're -- did the last, sort of,  
12 three rounds of millionaire's tax, New York State  
13 has, continues to have, a fairly progressive  
14 personal income tax.

15 Probably among one of the more progressive  
16 taxes in New York State, through a number of  
17 measures, including our earned-income tax credit,  
18 the lowest percent -- the lowest 40 percent of  
19 taxpayers, measured by New York adjusted gross  
20 income, pay no income tax in New York State.

21 And as you go through every tranche of income  
22 classification, the next highest income tranche pays  
23 a higher effective tax rate than the lower one,  
24 based on our running of the number.

25 So we have an effective tax rate, and we

1 had -- I'm sorry, a progressive tax rate, and we had  
2 one prior to the adoption of the millionaire's tax.

3 Second, the income tax does tax a significant  
4 amount of business and business income.

5 There's about 100,000 more S corps in  
6 New York State than C corps, and that doesn't count  
7 LLCs and partnerships.

8 There's a fair amount of businesses, and  
9 business income, that is -- that pays its primary  
10 taxes, or, its income taxes, to the State under the  
11 PIT rather than the corporate franchise tax.

12 So we'll be following up with the Committees  
13 on some specific comments and analysis on the PIT.

14 So with that, I'll stop.

15 We've touched on some other issues,  
16 property-tax administration, sales-tax issues, in  
17 our testimony.

18 But, with that, I'd just like to stop, and  
19 take whatever questions and comments you have.

20 SENATOR DeFRANCISCO: Senator Valesky.

21 SENATOR VALESKY: Thank you, Mr. Chairman.

22 Actually, not a question, but just an  
23 announcement, Ken, and I'm pretty sure you're  
24 already aware of this, but, certainly, for others  
25 who are here:

1           We here, my colleagues on this panel, and,  
2           certainly, all of us as legislators, hear from you  
3           and the businesses you represent, about tax burdens,  
4           certainly, but also about regulatory burden.

5           So I just want to remind everyone that I will  
6           be, in my role as Chair of the Commerce, Economic  
7           Development, and Small Business Committee,  
8           co-hosting a series of public hearings across the  
9           state with Senator Marchione, Senator Gallivan, and  
10          Senator Carlucci, on business regulations, and will  
11          be -- and the hearings will be industry-specific.

12          So I would just encourage, and invite you,  
13          and others, to participate.

14                 We've made this, the schedule public --

15                 I'm looking at Scott up here.

16                 We've made that schedule public, and we'll be  
17          looking to you for your feedback and input, on the  
18          regulatory side, in addition to what you've provided  
19          today in regard to the tax structure.

20                 KEN POKALSKY: We plan on doing so.

21                 SENATOR VALESKY: Okay.

22                 KEN POKALSKY: Look forward to it.

23                 SENATOR VALESKY: Thank you.

24                 SENATOR DeFRANCISCO: Carl, any questions?

25                 SENATOR MARCELLINO: Ken, I'm glad to hear

1 that you favor the extension of the brownfields  
2 credits.

3 A lot of people have complained that these  
4 credits are too expensive and somewhat unwieldy.

5 Do you agree?

6 KEN POKALSKY: Some have. I don't know if a  
7 lot have.

8 I know some have -- it's one of those things,  
9 someone says it, and it gets repeated multiple  
10 times, it seems like it's being said often.

11 We had some sharp criticisms of the  
12 State Comptroller's report, that -- you know, when  
13 they did their report, they said, Well, here's this  
14 environmental remediation program of municipal  
15 sites, paid for out of this pot; and here's the  
16 brownfield program, paid through tax credits; and  
17 the first is a lot cheaper than the second.

18 But they really were comparing apples to  
19 oranges.

20 In the ERP -- or, the EER-ERP averaging, they  
21 left out the high outliers.

22 If you took out the three largest brownfield  
23 projects, the average cost, you know, drops by under  
24 a million dollars worth of tax credits.

25 And the median tax credit for a brownfield

1 site is \$200,000.

2 You could certainly -- most of the larger  
3 projects, in terms of consuming the tax credits,  
4 were what are called "commercial residential  
5 development."

6 So there are adjustments you could make.

7 We've already gone through at least  
8 two rounds of adjustments on the tax-credit side, to  
9 bring the redevelopment credits more in line with  
10 the cost of the cleanup.

11 So we think it wasn't -- it's not that  
12 expensive, at least the average project is not that  
13 expensive, compared to other remedial projects in  
14 the state.

15 The other thing that the -- that particular  
16 report really gave little consideration to, is what  
17 the economic benefit was.

18 Is it creating jobs?

19 Is it adding -- is it producing tax revenues  
20 because of the project, et cetera?

21 We -- in looking just at the capital  
22 expenditures at these projects, the payback to the  
23 State is 8 to 1, without looking at these secondary  
24 effects --

25 SENATOR MARCELLINO: Say that again?

1           What was the payback rate again?

2           KEN POKALSKY: I'm sorry?

3           SENATOR MARCELLINO: You mentioned a payback  
4 rate. I couldn't hear it.

5           KEN POKALSKY: Oh, the -- if you look at the  
6 value of the capital spent, both in cleanup and the  
7 redevelopment, versus the value of the tax credit,  
8 that ratio is, I think, 8.5 to 1, give or take.

9           So it's -- and that's not counting any of the  
10 secondary effects.

11           Thirdly, I think, in most of these projects,  
12 the ones that I'm familiar with, these are sites  
13 that maybe would have been redeveloped, someday, but  
14 most hadn't been touched in 20 years.

15           In part, they were doable, because of some of  
16 the liability protections, some of the certainty as  
17 to what the cleanup requirements are, but also the  
18 tax credits.

19           I will point out, you know, and it was one of  
20 the interesting things, you see something presented  
21 and lack of follow-up.

22           New York State, I think, has completed a  
23 couple hundred brownfield projects.

24           Over the same period of time, where,  
25 Pennsylvania's completed a couple of thousand, and

1 they offer, virtually, no tax credits.

2 So it's not just the tax-credit side of a  
3 brownfield program that determines whether it's  
4 successful or not.

5 It's, what's the process, what's the  
6 certainty of the process, both in terms of the  
7 outcome and the timetable?

8 You know, what is the -- what are the  
9 environmental standards applicable?

10 What are the liability protections  
11 applicable?

12 So, you might able to make -- I would argue,  
13 you could make the program more effective by looking  
14 at both sides; not just the tax-credit side, but the  
15 substantive side of the program as well.

16 SENATOR MARCELLINO: As you may know -- well,  
17 you know, of course, brownfields was my baby many  
18 years ago, and we kept doing it.

19 It's coming to a point where it's got to be  
20 renewed; that we're looking through to that again.

21 I'd be happy to get some recommendations from  
22 you and your people, as to what modifications you  
23 think might work, how they might be done better, how  
24 the program might be modified.

25 Like, you can -- you know, you can talk to

1 Debbie in my office, and we'll be happy to take your  
2 recommendations, because, that program, I think, is  
3 an effective one, and can be made much more  
4 effective, as you point out.

5 KEN POKALSKY: Sure.

6 SENATOR MARCELLINO: Question: The MTA tax,  
7 I'm going to go out on a limb, I'm guessing you  
8 favor the repeal? A total appeal?

9 KEN POKALSKY: I am -- I'm assuming you're  
10 talking to the payroll tax, not the preexisting  
11 surcharges?

12 SENATOR MARCELLINO: Yeah.

13 KEN POKALSKY: It's a tax on jobs, it's a tax  
14 on payroll; and as such, it strikes me as a -- as  
15 a -- it's not a great tax policy, as far as economic  
16 development is concerned.

17 We -- the one -- we opposed it.

18 We believe, and I think others believe, there  
19 are efficiencies to be achieved within the MTA  
20 structure, to offset some of the necessary -- the  
21 revenues that were otherwise necessary in the  
22 payroll tax.

23 I, my own, have an equation for you today  
24 that says, repeal it --

25 SENATOR DeFRANCISCO: Your answer is "yes";

1 right?

2 KEN POKALSKY: I'm sorry?

3 SENATOR DeFRANCISCO: Your answer is, yes,  
4 you're opposed to the payroll tax?

5 KEN POKALSKY: The question, though, is,  
6 Should we just repeal it?

7 SENATOR DeFRANCISCO: Oh --

8 KEN POKALSKY: My only answer is --

9 SENATOR DeFRANCISCO: -- you don't know?

10 KEN POKALSKY: We do.

11 We didn't like it. We think it's a bad  
12 policy.

13 We think, to repeal it, you'd have to come up  
14 with, you know, some cost-savings, and other --  
15 I assume some other revenues.

16 We have not, you know, filled out the other  
17 pieces of that equation.

18 But, yes, we oppose the payroll tax.

19 We've gotten rid of -- we've eliminated some  
20 of the worst aspects of it, by taking out, you know,  
21 some sole proprietors and small business, but, it's  
22 a tax on -- it's a tax on having jobs in the region.

23 Sorry, sir.

24 SENATOR MARCELLINO: Thanks a lot.

25 SENATOR DeFRANCISCO: Thank you very much.

1           Next speaker, Fiscal Policy Institute,  
2           Frank Mauro, executive director.

3           I see by our clock, it's only 9:20, and he  
4           was supposed to be on at 10:45, so we're way ahead  
5           of schedule.

6                           [Laughter.]

7           FRANK MAURO:  It's still morning; so, good  
8           morning.

9           Should I start?

10          SENATOR DeFRANCISCO:  Yes, please.

11          FRANK MAURO:  Okay, thank you.

12          Thank you very much for the opportunity to  
13          speak to you this morning.

14          A thorough review of the tax system is  
15          certainly in order from a number of perspectives.

16          Back in December of 2011, the Governor and  
17          the legislative leaders joined in calling for a  
18          thorough review of the fairness of the tax system.

19          And that's certainly one important basis for  
20          evaluating the workings of any tax system, including  
21          New York's, but two other criteria, adequacy and  
22          stability, are also important.

23          It is difficult to say that one of these  
24          criteria -- fairness, adequacy, stability -- is more  
25          important than the other two.

1           Governors and legislators have to try to  
2 achieve all three objectives simultaneously, so  
3 that's not easy.

4           The result is, that making state tax policy  
5 is a difficult balancing act.

6           In addition to these three traditional values  
7 of high-equality tax systems, policymakers also  
8 yearn for a tax system that will encourage the  
9 creation and retention of jobs and broadly shared  
10 prosperity.

11           Simply put, this is easier said than done.

12           Just because a policymaker's heart is in the  
13 right place doesn't mean that the policies that he  
14 or she advances, sometimes successfully, will work  
15 as intended.

16           Just think of the legacy costs that  
17 New York State was left with when it moved to  
18 correct, and later when it moved to end, failed  
19 programs, like the Job Incentive Award Program,  
20 which was eliminated in 1982, or the  
21 Empire Zones Program which was more recently  
22 eliminated.

23           Hopefully, we have learned from these  
24 experiences and we will be careful before launching  
25 new programs that can incur significant obligations

1 with little to show for it.

2 We are on the verge of doing that right now,  
3 unless we take a deep a breath and rethink the  
4 Start-Up New York Program before launching it.

5 Once you start making commitments under these  
6 programs, you can't unwind them, as you can see from  
7 what's happening with the Empire Zones Program now.

8 The same goes for the minimum-wage  
9 reimbursement credit that was enacted as part of the  
10 2013-14 budget agreement, and which is scheduled to  
11 take effect in January of 2014.

12 We have citations at the end of the paper of  
13 this testimony, to our more in-depth papers on both  
14 of those tax credits, so I won't go into that now.

15 From the perspective of family tax burdens,  
16 policymakers also need to rethink the \$350 family  
17 rebates before these checks are put in the mail.

18 If we have 410 million to spend on family tax  
19 relief in each of the next three years, wouldn't it  
20 be better to focus on an effective form of relief  
21 for those homeowners and renters who are most  
22 overburdened by residential property taxes?

23 There are also just numerous inequities in  
24 the program.

25 If your income is under \$40,000 a year, even

1 if you have income-tax liability, you get no tax  
2 break, based on the reasoning, I guess, that most  
3 people with incomes below \$40,000 don't have  
4 income-tax liability.

5 But, if your income is between, forty, or as  
6 high as three hundred thousand, and you have  
7 zero tax liability, you get the \$350 credit.

8 So, it just doesn't make sense.

9 There are better ways to provide family tax  
10 relief.

11 It is good that you are having public  
12 hearings in which organizations, like ours, and  
13 others that are speaking to you today, have a chance  
14 to share ideas with your two Committees.

15 One of the things I realized, when the fellow  
16 from the Tax Foundation was talking, and talked  
17 about the North Carolina debate, and mentioned the  
18 Center on Budget and Policy Priorities, which is a  
19 Washington think-tank we work with a lot and is very  
20 well-respected on tax policy, that they were part of  
21 the discussion and input in North Carolina, as was  
22 the Tax Foundation, but, we seem to have a much more  
23 one-sided line-up here.

24 So, we think it's important to reach out to  
25 all the experts.

1           It's also important to hear from the public,  
2           because I think if these hearings were more open to  
3           the public, the one thing you would learn, which I'm  
4           sure that most of you, in effect, know, is that the  
5           tax that most New Yorkers care about is the property  
6           tax, and the need for property-tax relief.

7           And there are people throughout the state,  
8           they're more concentrated in the New York City  
9           suburbs, who pay outrageous portions of their income  
10          in property taxes.

11          But if you compare -- let's compare  
12          Long Island and Syracuse.

13          In Long Island, a higher percentage of  
14          families are paying an inordinate share of their  
15          property tax in income;

16          But, in Syracuse, just because the average  
17          isn't that high doesn't mean there aren't also lots  
18          of families in Syracuse who are paying an inordinate  
19          share of their income and property taxes.

20          The property tax is not a tax that applies to  
21          people equally on the basis of their ability to pay.

22          Because of losing a job or becoming disabled,  
23          there are people who continue to have property-tax  
24          bills but don't have income available to it.

25          And we think the most targeted way to do this

1 is a real-property circuit-break tax -- tax  
2 circuit-breaker that provides relief based on the  
3 individual, and the individual family and its  
4 property taxes relative to its income.

5 So I think it's important that you have  
6 forums or hearings or town halls where it's open to  
7 the public, because there are people throughout this  
8 state who have worked on the property-tax issue, and  
9 who know what's going on at the grassroots.

10 It's also important to remember two  
11 additional points:

12 First, both sides of government budgets, the  
13 revenue side and the expenditure side, have an  
14 impact on the economy, and we sometimes forget that.

15 Basics such as education, infrastructure, the  
16 legal system, fire protection, crime control, clean  
17 water, the list goes on and on, those are things  
18 that the free market can't provide for itself, that  
19 government does, but they allow for the free-market  
20 economy to flourish. Without them, we don't have an  
21 operating economy.

22 So you have to keep both sides of the budget  
23 in mind when you're thinking about tax policy.

24 Second, and very related to that first point,  
25 the state and local system is one system, not two

1 separate and independent systems.

2 And what do we mean by that?

3 Each state decides for itself what it's going  
4 to do directly, and what government responsibilities  
5 it's going to delegate to local governments. And it  
6 also gives local governments certain tax sources,  
7 and doesn't give them others, and gives them aid.

8 So the State is really determining the  
9 overall structure.

10 And what's important, is the overall state  
11 and local tax system, not an individual tax here or  
12 there.

13 New York State's tax system, like every  
14 state's tax system, is a combination of some state  
15 taxes and some local taxes, with some of those taxes  
16 being regressive, and others being progressive.

17 The speaker for the Tax Foundation talked  
18 about why they supported the property tax.

19 It brings stability to the mix, but it also  
20 brings some inequities, so you have that balancing  
21 act you have to engage in, and you have to think  
22 about the system as a whole.

23 While it is interesting to examine the  
24 distributional impact or fairness of individual  
25 taxes, the much more important question is the

1 fairness or distributional impact of the state and  
2 local tax system as a whole.

3 In New York, local governments are  
4 responsible for raising a large share of the revenue  
5 necessary to support needed public services, and  
6 this places great pressure on the property-tax base.

7 In New York, the one local government that  
8 has a very broad revenue base is New York City.

9 It has a diverse revenue system.

10 It has a progressive income tax; it's got a  
11 corporate income tax; a bank tax; it's got almost an  
12 endless list of taxes, but it's a much more diverse  
13 system, so there's much less pressure on the  
14 property tax in New York City.

15 So, one point that comes to mind on this,  
16 that I would disagree with the Tax Foundation  
17 speaker on, is, in New York, I don't think we have  
18 the experience that he has observed nationally, that  
19 local governments that rely only on the property tax  
20 have the least fiscal problems.

21 I think if we looked at the situation that  
22 our cities face in New York, that New York City has  
23 a much easier time of balancing its budget than do  
24 the upstate cities, which have, as their only  
25 free-and-clear revenue source of any magnitude, the

1 property tax, in which there's great pressure on the  
2 property tax.

3 With the imposition by the State in 2011 of a  
4 cap on local property-tax levies, it is more  
5 important than ever for the state government to  
6 honor its commitments, to cover a reasonable share  
7 of the cost of the central public services through  
8 adequate funding of revenue sharing with  
9 general-purpose local governments and adequate State  
10 aid to school districts.

11 New York State, and every state, divides  
12 responsibility for different services between itself  
13 and its local governments.

14 So New York State gives certain service  
15 responsibilities to local governments, like running  
16 public schools and teaching math.

17 Now, that costs an amount per pupil, and  
18 there are certain increments for English-language  
19 learning that goes on, and poverty, and other  
20 things, but the big mismatch, is that the primary  
21 revenue source, the property tax, taxable values,  
22 aren't by some magic distributed in the same  
23 proportion among school districts as children.

24 Same thing with counties: some counties, like  
25 Fulton and Montgomery county, have larger

1 concentrations of poor people than they have of  
2 taxable value.

3 And, so, you have tremendous variety in  
4 New York State in the effective property-tax rate  
5 that's necessary to pay for the local share of  
6 Medicaid costs.

7 So there are endless fiscal disparities.

8 The reason I mention this is because, one of  
9 the responsibilities the State has, and it should  
10 recognize and it should work on, is that, because of  
11 the service responsibilities and revenue sources it  
12 gives to local governments, there are disparities  
13 that exist that put many local governments in a  
14 bind.

15 And in some of the local governments that  
16 have the most difficult situation, have the least  
17 fiscal problems. Because they're very conscious of  
18 their situation, they just simply don't provide the  
19 amenities that other places provide.

20 Just because somebody doesn't have a fiscal  
21 problem doesn't mean they aren't being treated  
22 unfairly.

23 The focus has to be on the fact that the --  
24 what is the tax base that a locality has relative to  
25 its service responsibilities?

1           Discussions about state -- and because of  
2           this, discussions about state tax rates and tax  
3           credits indirectly determine how much pressure is  
4           placed on the property-tax base and whether or not  
5           local governments will be to able meet their service  
6           responsibilities.

7           Why is that?

8           Because the rates and credits, and everything  
9           else you said, at the state level, determines how  
10          much state revenue there is; and how much state  
11          revenue there is determines how much you're going to  
12          be able to honor the traditional legal commitments  
13          in revenue sharing and school aid; and that  
14          determines what the pressure that remains on the  
15          local elected officials and the local tax base.

16          So, you have to think about this as a state  
17          and local challenge.

18          New York State has a progressive income tax.  
19          Not as progressive as it used to be.

20          When Nelson Rockefeller left office,  
21          New York State had 14 brackets, going from 2 percent  
22          to 15 percent.

23          And, for several of the years, at the end of  
24          the, Rockefeller, Wilson, Administrations, and the  
25          early carriers, there was 2 1/2 percent surcharge,

1 so the top marginal rate was 15.3 -- effectively,  
2 15.375 percent.

3 Over time, there was a flattening out of the  
4 bracket structure.

5 So between the beginning of the  
6 Kerry Administration and the mid-'90s, brackets were  
7 eliminated from the bottom and the top.

8 The 2 and 3 percent brackets were eliminated,  
9 so it started with 4 percent, and the top bracket  
10 was 6.85 percent.

11 So there were four brackets, all in a very  
12 narrow range, from 4 to 6.85 percent.

13 And you reached the top bracket in terms of  
14 taxable income, for married couples at \$40,000 of  
15 taxable income, and, for single people, \$20,000.

16 Now, it's not as bad as it sounds, because  
17 that's -- it's bad, but not that bad, because that's  
18 taxable income that's after deductions and  
19 exemptions.

20 So that means, a family with about \$60,000 of  
21 total income has about 40,000 of taxable income, so  
22 they're just beginning to get in that area where  
23 they're paying taxes at the top marginal rate.

24 It wasn't until 2003 that the legislature  
25 reached an agreement on a temporary three-year

1 increase in the top rate. It did a temporary  
2 three-year increase again in 2009. And that's -- it  
3 extended that now, through 2017.

4 So the temporary top rates that have been in  
5 place since 2009, for 3 years, it was 8.97 percent,  
6 and it's currently 8.82 percent.

7 You are -- given the mix of witnesses you  
8 have at the hearings, you'll obviously hear a lot  
9 about how that personal income-tax rate should be  
10 less.

11 And what's the implication?

12 The implication is that, somehow, because of  
13 us having a high income-tax rate, and having  
14 increased the high -- the top marginal income-tax  
15 rate in 2009, that we lost high-income people.

16 And, so, there are various statistics that  
17 are thrown around about migration studies, whatever,  
18 from the IRS.

19 But what you can look at, is the bottom-line  
20 information published by the IRS on the distribution  
21 of taxpayers, by state, for years.

22 From 1997 through 2001, they have data on  
23 their website, breaking it down to increments up to  
24 a million;

25 From 2002 until 2009, only up to 200,000;

1           But starting in 2010, 2010 and '11, the IRS  
2           has published data again, showing the distribution  
3           of taxpayers, by state, in income brackets, up to  
4           and including a bracket of a million and above.

5           What does that show about New York State?

6           Over this 10-year period, from 2000 to 2010,  
7           the number of federal taxpayers with adjusted gross  
8           income above \$1 million increased 17.1 percent  
9           nationally; but, nationally, that increase was  
10          38.9 percent.

11          In New York State, the amount of these  
12          taxpayers' adjusted gross income increased  
13          20.8 percent nationally, but 57.4 percent for  
14          federal taxpayers from New York.

15          In the "500,000 to a million" category, the  
16          number of taxpayers grew 37 percent nationally;  
17          41 percent in New York.

18          In the "100,000 to 200,000" category, it grew  
19          faster at the national level.

20          But at those very high income levels, which  
21          were the income levels that business groups warned  
22          us would be depleted if New York increased its high  
23          marginal income-tax rate, New York grew faster than  
24          the nation, not slower;

25          And for the middle income brackets, New York

1 grew just a little bit slower than the nation,  
2 commensurate with its slower population growth;

3 And in no way provides any evidence of the  
4 implication, because it's only an implication, not a  
5 conclusion, that the migration data indicates that  
6 New York is losing income-generating taxpayers who  
7 can also generate jobs.

8 Why do I mention this?

9 Because I think, from both a fairness and an  
10 economic perspective, the best way to provide the  
11 revenue, both for adequate services and for  
12 property-tax relief, is through a progressive income  
13 tax. And I think you have to weigh that.

14 And I think the progressive income tax is  
15 good for the economy, not bad for it.

16 So I take issue with some of the earlier  
17 speakers on that.

18 Let me just go quickly through the remaining  
19 portions of the testimony, just focusing on the  
20 topics.

21 "New York State should not provide tax  
22 subsidies."

23 Well, I tend to agree with some of the  
24 earlier speakers who argue that we should try to  
25 reduce tax subsidies, generally, so I agree with

1 that.

2 But at the very least, we shouldn't provide  
3 tax subsidies for companies that outsource jobs, or  
4 otherwise reduce employment in the state.

5 "Economic-development tax breaks should only  
6 go to businesses that create and maintain  
7 good-paying jobs for the state."

8 Take the state's investment tax credit, for  
9 example, it's pushed as something that's going to  
10 increase employment, but there's no employment  
11 tests.

12 So you could very easily, and I won't go into  
13 the details now, modify the investment tax credit to  
14 increase the number of years for which the  
15 employment incentive credit is based, so that firms  
16 that reduce employment get less of a benefit, and  
17 firms that increase employment get more of a  
18 benefit.

19 Next major category:

20 "Loopholes and tax breaks that allow large  
21 multi-state and multi-national corporations to pay  
22 proportionately less in state income taxes than  
23 small businesses, should be fixed or eliminated, and  
24 the integrity of the corporate alternate minimum tax  
25 should be restored so that large profitable

1 corporations are not able to reduce their tax  
2 liability below a reasonable percentage of net  
3 income."

4 This is on pages 5 through -- 5 and 6.

5 And I go into detail about two things that  
6 were touched on by earlier speakers.

7 The speaker from the Tax Foundation talked  
8 about the move away from a uniform method of  
9 apportionment called the "three-factor formula."

10 In the early 1950s, many businesses and  
11 government officials got a model law adopted, the  
12 "Uniform Division of Income for Tax Purposes Act,"  
13 that recommended that all states use the same  
14 apportionment formula.

15 And, starting -- the speaker from the  
16 Tax Foundation mentioned Iowa, but New York really  
17 began the march of more -- of larger states doing  
18 this, when in a special session in December of 1975,  
19 New York State broke away from the traditional  
20 three-factor formula and double-weighted sales, on  
21 the theory that it would reward firms that brought  
22 wealth into the state by reducing their taxes; and  
23 firms that benefited from the state, but didn't have  
24 as much property and payroll here, would pay more.

25 Several years later, there was a tax-study

1 commission that had access to the tax data for doing  
2 an analysis.

3 And what it found out is, the deal in  
4 December of 1975, was that the State would increase  
5 the corporate income tax rate by a percent.

6 I think it was, from 9 to 10 percent.

7 And -- but to temper that for the companies  
8 that brought wealth into the state, it would adopt  
9 double-weighting of sales.

10 The study by the tax-study commission in the  
11 early '80s found that the benefit to the firms  
12 that benefited from the double-weighting of sales  
13 wiped out all of the revenue increase from the firms  
14 that paid the higher rate.

15 So the double-weighting of sales gave a  
16 revenue benefit to a small number of firms that was  
17 greater than the tax increase that all the other  
18 firms paid by the rate increase.

19 The -- it -- I couldn't tell if the  
20 Tax Foundation supports the move to single-sales  
21 factor, or not.

22 Given their integrity on some tax-subsidy  
23 issues, I wouldn't be surprised if they did not  
24 favor this, but, they might.

25 But, a lot of business groups, business

1 organizations, like the Business Council, adamantly  
2 support the move to weighting on only sales.

3 The trick is, that there's a federal law,  
4 Public Law 86-272, which says that a state can only  
5 tax the -- a portion of the income of a firm that  
6 sells goods if that firm has a physical presence in  
7 the state, has property or payroll in the state.  
8 That, if it has only sales, it's not taxable at all.

9 So as business groups have been lobbying  
10 state legislatures around the country, getting more  
11 and more state legislatures to move to  
12 single-weighting of sales, or, at the very least,  
13 higher weighting of sales, it reduces the amount of  
14 the income of multi-national corporations that's  
15 taxable by any state.

16 But to show what creative and effective  
17 lobbyists they are, they're simultaneously pushing  
18 for something in Washington called "BATSA," the  
19 Business Activity Tax-Simplification Act, which  
20 would say, that, Well, you could have a little bit  
21 of property and payroll in the state, and still not  
22 be subject to taxation. -- creating a de minimis  
23 standard, and, there are proposals to extend that  
24 exemption to the sale of services as well as goods.

25 So it's a double-squeeze that's going on:

1 Getting the states to allocate income for corporate  
2 income-tax purposes more on the basis of sales, and,  
3 trying to get the federal law changed to make it  
4 harder for states to tax income based only on sales  
5 apportionment.

6 So, the states aren't taking action in the  
7 interim, and some of them are doing the things which  
8 you'll -- is a little hard to argue, on a fairness  
9 perspective, but you can understand the frustration  
10 of the states that, in recent times, have moved to  
11 gross-receipts taxes as opposed to a corporate  
12 income tax.

13 The other thing that Ken Pokalsky, from the  
14 Business Council, mentioned, that I touch on in my  
15 testimony, he said that the alternate minimum tax  
16 for corporations should be eliminated.

17 So why do we have an alternate minimum tax?

18 It dates to 1987, when there was final action  
19 in the legislature in 1987, on a corporate tax  
20 reform, based on six years of study of the type  
21 you're proposing, to look at an overall review of  
22 the tax system; to look at the idea of broadening  
23 the base, by eliminating credits and deductions, and  
24 lowering the rate.

25 The original proposal was to lower the rate,

1 from 10 to 7 percent, and to eliminate a large  
2 number of preferences.

3 What finally made it through the legislature  
4 in 1987, was a proposal that didn't go as far, but  
5 it did some rate reduction. But the way it did some  
6 rate reduction, was by imposing the alternate  
7 minimum tax.

8 And to oversimplify, this is on page 6:

9 "The intended purpose of this set of changes  
10 was to provide that a firm would pay state taxes on  
11 its income at 9 percent, with preferences; or  
12 3.5 percent, without preferences."

13 So the alternate minimum tax is actually a  
14 form of broadening the base and lowering the rate.

15 It's providing a safety net under the  
16 corporate income-tax system.

17 In 1987, when this was enacted, the  
18 Business Council strongly supported the proposal.

19 Since then, as times have created the opening  
20 to go further, they now ask for repealing the  
21 alternate minimum tax, which was an essential part  
22 of the compromise that allowed for the overall rate  
23 reduction and simplification that they supported in  
24 1987.

25 Page 7:

1           "Provisions of the law that allow  
2 investment-management income to be taxed less than  
3 wages or other business income should be  
4 eliminated."

5           This is primarily an issue with the  
6 New York City unincorporated business tax.

7           New York State should reduce the pressure  
8 that it places on the local property tax, by  
9 increasing revenue-sharing, and by increasing the  
10 State's share of the cost of both education and  
11 Medicaid.

12           And our final point, on page 8:

13           "New York State should provide targeted tax  
14 relief."

15           Technically, the way to do this is called a  
16 "real-property tax circuit-breaker."

17           New York State should provide targeted tax  
18 relief to longtime residents for whom, through no  
19 fault of their own, property taxes on their primary  
20 residences have become an inordinate share of their  
21 income.

22           Thank you.  
23  
24  
25

1           SENATOR DeFRANCISCO:  Senator Krueger.

2           SENATOR KRUEGER:  Thank you, Frank.

3           You, as usual, are offering us a dissertation  
4           on what we should think about in tax policy, so  
5           I want to thank you.

6           You were here, I believe, when I was asking,  
7           I think, one or two of the previous testifiers about  
8           the impact of New York State having different models  
9           for corporations who pay taxes -- the S, the C, the  
10          LLC -- and the potential skew in the outcomes of our  
11          having that policy.

12          What's your opinion about whether we ought to  
13          be reforming and going to a, you know, one-size  
14          model?

15          FRANK MAURO:  I think you should think about  
16          it, and try.

17          I think there's an additional problem that  
18          you would be able to address in doing this.

19          We frequently talk about the personal  
20          income-tax system in terms of adjusted gross-income  
21          categories.

22          And the reason I know why I do that, is  
23          'cause all the data from the state and federal  
24          government is published based on adjusted  
25          gross-income categories.

1           In some years, and this is also the same for  
2           the federal data, the same time period I mentioned,  
3           that, for '97 through 2001 this data is available,  
4           and, again, for 2010 and '11, it's available, but  
5           it's not available for 2002 through 2009.

6           In its breakdown of tax returns, by state, by  
7           adjusted gross-income categories, for the two most  
8           recent years, and for those earlier years, but not  
9           for the previous eight, the IRS and the State Tax  
10          Department doesn't do this for any years. It just  
11          does adjusted gross-income categories, and it does  
12          adjusted gross-income categories, primarily, in any  
13          detail, for only returns with tax liability.

14          What the IRS has available for some years, is  
15          a category of AGI of a dollar or less, or, break  
16          even or less.

17          And, so, you have loads of taxpayers who have  
18          negative AGI because of paper losses; not real  
19          losses, but paper losses, from depreciation, from  
20          creative partnership investments, from a whole  
21          variety of things.

22          So, I don't remember the numbers in detail,  
23          but they are impressive.

24          When you look at 2010 and 2011, and you look  
25          at that category of a dollar or less of AGI,

1 including people with negative AGI, you find, for  
2 New York State, for example, the -- and I don't  
3 remember this number exactly, it's something in the  
4 hundred and sixty to a hundred and eighty thousand  
5 dollar range, that the average AGI of New York  
6 taxpayers in the one-dollar-or-less AGI is a hundred  
7 and six -- a negative a hundred sixty to a negative  
8 a hundred and eighty thousand.

9 Now, there's not many poor people who are  
10 making up that average, but because there are some  
11 poor people who probably have zero income, but file  
12 for certain benefits, but, you can't really have  
13 zero income and get the earned income tax credit.

14 SENATOR KRUEGER: You have to have wages.

15 FRANK MAURO: You need that earnings.

16 So it's probably -- it's probably even very  
17 few poor people who are in the AGI category of a  
18 dollar or less, or for some years called "break even  
19 or less."

20 So, I think that -- and then there's a  
21 breakdown.

22 And, so, in those categories where you see  
23 the big negatives, are business or farm income are  
24 big negatives, and partnership and S-corporation  
25 distributions are big negatives.

1           So I think that one of the problems that the  
2 existing system of taxing unincorporated businesses  
3 have, is, while a business owner can pay him or  
4 herself a salary, and that salary is taxable like  
5 anybody else's wages, it gets combined with the  
6 Schedule C bottom line, which can be negative, and  
7 negative enough to make the entire return negative  
8 in terms of AGI.

9           So I think there are -- you know, while the  
10 Business Council has called for looking into this,  
11 I think there are some things that -- some business  
12 people, maybe not their members, benefit from  
13 greatly, that could be exposed.

14           So I think that there are a lot of ways that  
15 we haven't really scratched the surface of, and --  
16 by which really high-income people have no or  
17 negative tax liability.

18           SENATOR KRUEGER: Thank you.

19           I'm very interested in anything more anyone  
20 can share with me about that.

21           SENATOR MARCELLINO: Frank, the question that  
22 I asked of somebody else before, it was E.J., the  
23 progressive tax we have now, should we replace it  
24 with a flat tax, as some states seem to be moving in  
25 that direction?

1           KEN POKALSKY:  What would be the reason for  
2           doing it?

3           SENATOR MARCELLINO:  Spread it out.  
4           Fairness.

5           FRANK MAURO:  Okay.

6           Well, I would say no, if the argument is on  
7           fairness, because I would say, not all income is  
8           equally capable of paying taxes.

9           "Not all income is equally capable of paying  
10          taxes," what does that mean?

11          Thinking back to macro -- basic introduction  
12          to macroeconomics, the consumption function, the  
13          marginal propensity to consume, that out of your  
14          first -- I'm going to simplify -- out of your first  
15          \$30,000 of income, you probably have to spend,  
16          virtually, all of it to live.

17          Out of your [unintelligible] \$30,000 of  
18          income, you probably don't have to spend any of  
19          it -- out of it to live.  You can either invest it  
20          or save it.

21          So what we have in the tax system are  
22          methods, both, of shielding subsistence income from  
23          taxation, and taxing earlier increments of income at  
24          a lower rate than higher incomes.

25          So I believe in a progressive income tax.

1           I think you have enough taxes that are  
2 already, not just a flat tax, but worse than a flat  
3 tax, that you need to ameliorate.

4           It gets back to the argument of, Do you care  
5 about the fairness of the tax system as a whole, or  
6 an individual tax?

7           The tax that people want to make flat is the  
8 personal income tax, which is the one most  
9 progressive element of the tax system.

10          But, the tax system is made up of progressive  
11 taxes and regressive taxes.

12          So, while the income tax taxes a higher  
13 portion of the income of a millionaire than it --  
14 well, a millionaire who's paying taxes on their  
15 income -- than of a lower-income person, the  
16 property tax, while the high-income person might be  
17 paying more in property tax, they're almost  
18 certainly paying a smaller percentage of their  
19 income in property taxes than the middle-income  
20 family.

21          So, there's property tax, sales tax, excise  
22 taxes; there are many elements of the tax system  
23 that are already regressive, that hit lower-income  
24 people and middle-income people at a  
25 higher percentage of income basis than high-income

1 people.

2           So if you took and made the personal income  
3 tax flat, made it a flat rate, that would make the  
4 tax system, as a whole, more regressive.

5           You know, I would think an interim -- if  
6 you're interested in a flat tax, an interim goal  
7 might be, to try to make the tax system, as a whole,  
8 flat. Try to make the state and local system, as a  
9 whole, flat, where you're taking into consideration  
10 the overall workings of the federal, state, and  
11 local tax system, and looking at what people pay in  
12 state and local taxes, as a whole, of all kinds of  
13 state and local taxes, not just the income tax.

14           Because if you made the personal income tax  
15 flat, you would be making the tax system, as a  
16 whole, less fair.

17           SENATOR MARCELLINO: So a circuit-breaker --

18           FRANK MAURO: Is one way to do that.

19           SENATOR MARCELLINO: -- placed exactly?

20           The circuit-breaker, if you eliminated  
21 everything, lowered the rates, all deductions --  
22 take out the deductions, lower the rates, everybody  
23 pays --

24           FRANK MAURO: Well, a circuit-breaker is a  
25 way to use revenue from the income tax to reduce the

1 property-tax burden on taxpayers that are  
2 overburdened.

3           So, if you don't have a progressive income --  
4 I mean, one of the things I said several times in my  
5 testimony, one of the reasons for a progressive  
6 income tax, is it gives you the revenue necessary to  
7 provide relief to the property tax.

8           Now, somebody will say, but there's no  
9 guarantee you're going to do that.

10           And, so, I can't speak for you, but I would  
11 like to see you use it for that purpose; that, use a  
12 progressive income tax to honor the commitments on  
13 revenue sharing and school aid, and to fund a  
14 realistic middle-class circuit-breaker.

15           SENATOR MARCELLINO: So if -- well, in line  
16 with this, but, if we increase -- state level, we  
17 increase aid to localities, we increase school aid,  
18 we increase, whatever, are we not just spreading the  
19 tax burden around?

20           Aren't we shifting the burden?

21           If the state takes on more responsibility,  
22 and then pays it back with increased aid, are we  
23 shifting the burden on the statewide taxpayer?

24           Or --

25           FRANK MAURO: Yes, yes, you are.

1 In other words -- I mean, there's an irony.

2 You know, take Long Island, because  
3 Long Island is higher, on average, in income, but it  
4 also -- you know, we've done analysis, which I sent  
5 to you, which divides the state into four areas:  
6 Long Island, New York City, the metro north suburbs,  
7 and the rest of the state.

8 And on average -- because, remember I said in  
9 my testimony, that while, on average, people on  
10 Long Island pay a higher percentage of their income  
11 in property taxes than people in Syracuse, it  
12 doesn't mean that there aren't people in Syracuse;  
13 they're just fewer and far -- further between, but  
14 there's still a good number of them that are paying  
15 ridiculous shares of their income in property taxes.

16 So when we break the state into four regions,  
17 using the microdata from the American Community  
18 survey, what we find is that, on average, on  
19 Long Island is the highest property taxes, or, the  
20 highest percentage of income;

21 Second highest in metro north;

22 Then very low in both upstate and in  
23 New York City.

24 Property taxes in Upstate New York are, on  
25 average, low, relative to income, because home

1 values are very low.

2 So property taxes in Upstate New York, the  
3 Governor frequently says: Well, 16 of the counties  
4 in the United States with the highest property taxes  
5 relative to home value are in Upstate New York.

6 Well, what about if you looked at the overall  
7 cost of housing, both your mortgage and your  
8 property taxes, and it would be among the greatest  
9 bargains in the country.

10 So one of the reasons why property taxes are  
11 very high relative to home value in  
12 Upstate New York, is that home values are relatively  
13 low.

14 So I think the real test of property-tax  
15 burden is property tax relative to income; the  
16 residential property tax paid by the household  
17 compared to the income of the household.

18 And, it can't be done on an average basis.

19 While I'm saying that, on average,  
20 Long Island is higher, that's not a reason to have a  
21 tax policy that says we're going to provide a  
22 special tax break for Long Island.

23 It's because there's a high concentration of  
24 people on Long Island, and we should treat people in  
25 the whole state the same.

1           And if we did provide this circuit-breaker,  
2           and we increased the income-tax rate to pay for it,  
3           yes, on average, Long Island is going to contribute  
4           more than Western New York is going to contribute,  
5           but Long Island is also going to benefit more from  
6           the circuit-breaker.

7           SENATOR MARCELLINO: I would appreciate that  
8           analysis you were talking about --

9           FRANK MAURO: Yes.

10          SENATOR MARCELLINO: -- if you could send it  
11          to us, please.

12          FRANK MAURO: Yeah.

13          Yeah, I'd like to talk to you about it.

14          SENATOR MARCELLINO: That would be great.

15          FRANK MAURO: Okay, thank you.

16          SENATOR DeFRANCISCO: Thank you very much.

17          FRANK MAURO: Okay, thank you,  
18          Senator DeFrancisco.

19          SENATOR DeFRANCISCO: Next speaker,  
20          Brian McMahan, executive director of New York State  
21          Economic Development Council.

22          BRIAN McMAHON: Good afternoon, Senators.

23          SENATOR DeFRANCISCO: Good afternoon.

24          BRIAN McMAHON: Thank you for the opportunity  
25          to testify.

1 I will be brief. A number of the issues that  
2 I cover in my testimony have been covered, and  
3 I will certainly refer to that.

4 Our members represent local  
5 economic-development agencies throughout the state,  
6 as well as private-sector service providers to local  
7 projects.

8 Taxes matter in economic development, and  
9 New York's tax system is too expensive, it's too  
10 complex, it's too unpredictable, and, it's too  
11 uncompetitive.

12 And, because of our tax environment, as well  
13 as other factors, they have had an impact on job  
14 growth in New York State over the past several  
15 decades.

16 And I have provided a chart which shows  
17 private-sector job growth in New York compared to  
18 the U.S., by decade, beginning in 1940, and,  
19 obviously, the state is lagging the rest of the  
20 country by a lot.

21 But if this chart compared just upstate to  
22 the rest of the country, the disparities would be  
23 much greater.

24 In surveys of company executives, and site  
25 location, consultants have identified the most

1 important factors that influence where companies  
2 will invest and build new facilities.

3 A safe business tax environment is a top-five  
4 factor.

5 In the -- in its 2012 survey,  
6 "Area Development Magazine" ranked taxes as the  
7 fourth most important consideration for businesses  
8 when deciding where to locate new facilities, and  
9 80 percent of those surveyed said that taxes were  
10 either very important or important.

11 I can tell you, anecdotally, that tax burden  
12 is a door-closer for economic-development purposes.

13 It often prevents our members and our  
14 partners at ESD from even getting the opportunity to  
15 talk to company executives about the advantages of  
16 building projects and doing business in New York.

17 This year, the Governor and the Legislature  
18 created Start-Up NY Program, which implicitly  
19 recognizes the harmful impact that New York high-tax  
20 burden has on private-sector investment and job  
21 creation.

22 The program creates a tax-free environment in  
23 which to operate a business, while, we believe,  
24 leveraging one of the state's most important  
25 economic assets, its colleges and universities.

1           But while programs like Start-Up NY are  
2           important, New York will never shed its reputation  
3           as a high-tax state until it commits to implementing  
4           broad-based business tax cuts.

5           The key is to begin, and the goal should be  
6           to become tax-competitive, especially for New York's  
7           manufacturing sector.

8           And, Ken Pokalsky, from the Business Council,  
9           referenced a number of statistics which shows, kind  
10          of the multiplier effect that manufacturers have  
11          compared to other sectors.

12          There's a \$16,000 wage premium for  
13          manufacturing jobs. There is a 35 percent  
14          multiplier effect.

15          So, for every dollar invested by a  
16          manufacture, another \$1.35 cents is invested in  
17          the -- in the economy.

18          So, to maintain and grow this high-wage,  
19          high value-added sector, we would urge the  
20          Legislature to consider phasing out the corporate  
21          income tax for manufacturers.

22          Research conducted by the  
23          Edward Lowe Foundation shows that 80 percent of job  
24          growth comes from existing businesses that expand.

25          Consequently, manufacturers that are already

1 here will account for most of the future growth that  
2 will occur in this sector.

3           However, most of the state's  
4 economic-development and tax-incentive programs are  
5 geared toward attracting new businesses to New York  
6 and apply to new jobs or investment.

7           Elimination of the corporate income tax would  
8 help retain New York's existing manufacturing base,  
9 give these employers justification to expand here,  
10 allow them to invest more in technologically  
11 advanced equipment and worker training, and  
12 eliminate an important obstacle that prevents many  
13 manufacturers from investing in New York State.

14           For non-manufacturers, the State should  
15 commit to significantly lowering tax rates over the  
16 next five years, possibly by half; and at the same  
17 time, we think that a systematic review of the  
18 efficiency of New York's lengthy list of tax  
19 exemptions and tax credits for people and businesses  
20 should be conducted, with the goal of allocating  
21 savings toward broad-based tax cuts.

22           And one thing that I just want to emphasize,  
23 I mean, economic-development programs that we use to  
24 try to attract investment by companies, either,  
25 they're already here, or, they're coming in and

1 we're trying to attract into the state, they're  
2 important because of how high our taxes are.

3 So, to the extent that we can reduce our tax  
4 burden, these tax credits and tax incentives become  
5 less important.

6 And I would urge, that if such a review of  
7 tax exemptions and tax credits is undertaken,  
8 I would also look at the real-property tax  
9 exemptions that exist in the real-property tax law.

10 If you look at real-property -- or,  
11 Section 400 through, I think, 800, in the  
12 real-property tax law, there are  
13 some-165 real-property exemptions.

14 And I think those should be looked at as  
15 well, and I think that that would add to revenue  
16 that could be generated by local governments also.

17 E.J. McMahon mentioned the estate tax.

18 We support either eliminating the estate tax  
19 or pegging it to the federal threshold.

20 Carl Schramm, who's the former president and  
21 CEO of the Kauffman Foundation, current university  
22 professor at Syracuse University, proposed  
23 eliminating the estate tax as part of a plan to  
24 revitalize upstate.

25 We believe that eliminating the estate tax,

1 or, as I said, pegging it to the federal threshold,  
2 would be an incentive for older New Yorkers to stay  
3 here with their families and grandchildren, friends,  
4 and, with their money.

5 They would buy cars here, shop here, go to  
6 restaurants here, and, generally, add wealth back  
7 into the communities they otherwise would likely  
8 depart for more tax-friendly states.

9 It's time to re-shore the wealth that leaves  
10 the state because of our unfriendly estate taxes.

11 The 2 percent real-property tax cap, which  
12 was enacted three years ago, was intended to slow  
13 the growth rate of New York's most uncompetitive tax  
14 by requiring local taxing jurisdiction to hold the  
15 line on spending, by holding the line on their  
16 revenue, or seeking permission from voters to go  
17 beyond the 2 percent threshold.

18 But the cap has also allowed -- intended to  
19 allow tax levies to rise, based on quantity change,  
20 or new growth or significant additions or  
21 improvements to existing properties, due to economic  
22 development.

23 The additional new growth is to be factored  
24 into the tax-levy growth factor to determine the  
25 amount of increase from the prior year that taxing

1 jurisdictions can increase their tax levy.

2 Unfortunately, the new growth that is subject  
3 to a payment in lieu of tax agreement or pilot is  
4 excluded from the calculation for determining a  
5 jurisdiction's tax-levy growth factor.

6 As a result, communities that are successful  
7 in attracting new economic growth, through  
8 incentives provided by IDAs, for example, are  
9 penalized.

10 Senator O'Mara has introduced legislation,  
11 S3591, that would allow changes in assessed value  
12 for each property, under a pilot contract, to be  
13 factored into the tax-levy growth factor.

14 And we would urge your consideration of that  
15 legislation.

16 Let me close by making one recommendation  
17 related to New York's innovation economy.

18 Two years ago, New York allowed its primary  
19 startup tax-incentive program to expire.

20 The Qualified Emerging Technology tax-credit  
21 program provided incentives to both startup  
22 businesses and investors.

23 And since then, New York has adopted a number  
24 of new programs aimed at facilitating tech-based  
25 startups.

1           One important gap remains in New York's  
2 startup toolkit: a tax credit to encourage angel  
3 investors to fund startups.

4           We support, and would recommend, adoption of  
5 a significant credit that could be taken over  
6 three years for seed equity investments.

7           There are a number of ways you could cap it.

8           You could cap it at a maximum amount per  
9 investor. You could also cap it on a total  
10 statewide basis.

11          We think that should be considered.

12          With that, there's another -- there are other  
13 statistical background information, but, I'd be  
14 happy to answer your questions.

15          SENATOR DeFRANCISCO: Thank you, but just one  
16 point you made, that, if you start lowering the  
17 corporate tax rates, start lowering the manufacture  
18 rates, there's less and less a reason for some of  
19 these credits.

20          BRIAN McMAHON: Correct.

21          SENATOR DeFRANCISCO: So, in other words,  
22 there is a give-and-take, and the business community  
23 would, obviously, if their taxes are going down,  
24 along the -- in a fair way among all corporations,  
25 there'd be some people complaining, the ones that

1 had the big tax credits, because for a practical --  
2 as a practical matter, it will benefit more people,  
3 more companies.

4 Is that fair to say?

5 BRIAN McMAHON: Yeah, I mean, I think that,  
6 you know, eliminating a number of our tax credits,  
7 I think, can be looked at.

8 We compete every day, Senator, with states  
9 that have much lower tax -- business tax rates and  
10 tax burdens than we do, but that still offer  
11 significant tax incentives.

12 To me, I think the key is to look those that  
13 are the most efficient, that are producing the  
14 economic outcomes that we all want, and keep those,  
15 and make decisions on the others.

16 And I think if we look at all of them,  
17 I think we will find considerable savings, and we  
18 will be able to apply them to broad-based tax  
19 reduction.

20 But, I mean, the other thing that I would say  
21 too, is that there's an impact.

22 I mean, we're not recommending this simply to  
23 lower taxes for businesses; we're recommending this  
24 to increase economic development for the state.

25 And we think that revenues will actually

1 increase for the state if you lower taxes across the  
2 board and make New York more tax-competitive.

3 That happened in the '90s when we lowered the  
4 personal income tax. Revenues went up, and they  
5 went up, by the way, as a percentage of overall  
6 taxes paid.

7 SENATOR MARCELLINO: The tax credit on  
8 brownfields?

9 BRIAN McMAHON: Strongly support it.

10 I agree with comments that Kent Pokalsky  
11 made; when you look at the cost of the program on  
12 the development credits, most of the cost is  
13 associated with a very small number of projects.

14 I think that if you look at the formula for  
15 development tax credits, and modify them in a fair  
16 way, but still make those credits meaningful, we  
17 would support that.

18 But, I don't support, or we don't support,  
19 making brownfield cleanup credits as a right, but  
20 not the development credits, or allocating the  
21 responsibility for determining whether there will be  
22 development credits throughout the Empire State  
23 development, as the Comptroller has recommended.

24 We think, let's -- if there's a cost issue we  
25 have to address, and we think there is, we can

1 address it, but, you will have fewer cleanups if  
2 there's not a development at the other end.

3 SENATOR MARCELLINO: Thank you.

4 SENATOR DeFRANCISCO: Thank you very much.

5 BRIAN McMAHON: Thank you.

6 SENATOR DeFRANCISCO: Mike Durant,  
7 New York State director of the National Federation  
8 of Independent Businesses.

9 MIKE DURANT: Good afternoon.

10 Thank you, Senators, for the timely, and  
11 I think pertinent topic of today's hearing, and for  
12 inviting us to participate today.

13 I'll follow up Brian McMahon's methodology of  
14 doing this, and try to keep the lightning round  
15 moving a little bit for all of you.

16 NFIB represents nearly 11,000 small  
17 businesses in every corner of the state, from sole  
18 proprietors, to farmers, and manufacturers, and  
19 retailers.

20 We represent a broad spectrum of businesses,  
21 and the importance of small business in the state's  
22 economy cannot be understated.

23 At most recent count, there are approximately  
24 1.5 million small businesses in New York which  
25 employ more than 60 percent of New York's

1 private-sector workforce.

2 I'm not going to go through the stats, but  
3 we've heard them before: We're 50th in business-tax  
4 climate. Our state and local tax burden is  
5 significant.

6 And I think our tax burden has been  
7 adequately described as linked to numerous fiscal  
8 problems we're seeing at both the state and local  
9 level.

10 It has also led to a significant  
11 out-migration population in New York which has a  
12 direct impact on our state's revenue.

13 We have lost political clout in D.C., and  
14 we're suffering from a, quote/unquote, "brain-drain"  
15 that has put our current and future workforce in  
16 peril.

17 Tax policy has a powerful ability to impact  
18 the trajectory of the economy.

19 Simply, when you tax more of something,  
20 you're going to receive less of it.

21 There is a reward/punishment or risk/reward  
22 balance with tax policy.

23 The higher or more you tax individuals,  
24 statistics show there will be gradually fewer of  
25 them to tax.

1           The same holds true for goods and services,  
2           with the effect the more amplified when the effect  
3           of being taxed is mobile.

4           The Governor, when he took office, stated  
5           that, quote, "New York has no future as the tax  
6           capital of the nation."

7           This recognition of the problem is the first  
8           step in any rehabilitation exercise; however,  
9           there's been little done that has fully and  
10          comprehensively addressed the problem.

11          Political simplicity has been trumping  
12          public-policy necessity.

13          The decades-long theme of addressing  
14          low-hanging fruit or implementing quick fixes have  
15          not worked.

16          Initiatives, such as the recently enacted  
17          Start-Up NY, are an acknowledgment of New York's  
18          high-tax reputation, yet are used as a strategic  
19          means to acquire new economic investment.

20          The signature shortcoming of this policy  
21          initiative is that it fails to address the  
22          considerable weight of our tax burden on existing  
23          taxpayers and small business owners, which is why,  
24          hopefully, we're here today.

25          As part of our testimony, NFIB has submitted

1 a 10-point comprehensive tax-reform agenda.

2 While the cost-savings of this plan for small  
3 business is still being calculated, our hope is that  
4 these ideas are a starting point of a significant  
5 dialogue, from now through the budget season in the  
6 next legislative session.

7 The focus of the majority of our agenda is on  
8 those small businesses with net incomes of less than  
9 \$500,000 annually.

10 This is done because the prototypical, or  
11 normal, quote/unquote, NFIB member has 7 to  
12 10 employees, with an annual net income of around  
13 \$500,000.

14 It's imperative for lawmakers and the  
15 Administration also to include personal income-tax  
16 reductions with any corporate income-tax reductions.

17 A majority of small businesses are set up as  
18 pass-through entities. This means that many small  
19 business owners pay their business tax through  
20 personal income tax.

21 A corporate-only approach, or a  
22 personal-income-tax-only approach, will not fully  
23 capture the small business community of the state of  
24 New York, and that tax reform would fall flat.

25 Also included in our reform is:

1           The use of regional and local economic  
2 factors in the sales-tax assessment process;

3           A three-tiered corporate tax cut for small  
4 businesses with a net income of less than 500,000  
5 annually;

6           A personal income-tax cut for small  
7 businesses with ENI of less than  
8 three hundred thousand dollars a year, with a more  
9 modest cut to those between three hundred and  
10 four hundred and fifty thousand per year.

11           As a slight change from what was submitted at  
12 the end of last week, we recommend an immediate  
13 repeal of 18-A assessment.

14           We also have tax cuts for small  
15 manufacturers, and another reform, if not full  
16 repeal of the MTA payroll tax.

17           Addressing our current tax issues is equally  
18 as important as putting forth best legislative and  
19 administrative practices, moving forward.

20           To that end, we are pushing for two  
21 initiatives which would help promote a more balanced  
22 tax policy, moving forward.

23           This proposal would require fiscal notes on  
24 any legislation which would financially impact small  
25 business and taxpayers, and we recommend a super

1 majority to improve any future tax increases.

2 We must also acknowledge the integral role  
3 our family farms play in New York's present and  
4 future economy, and address the threats they face.

5 Agriculture contributes billions to the  
6 state's economy, and, currently, 23 percent of the  
7 state's land area is used by farmers.

8 Without a cap on the annual-percent increase  
9 for agriculture assessments, many family farms will  
10 be forced to sell their land, permanently altering  
11 this valuable and necessary component of New York's  
12 economy.

13 Currently, legislation capping the ag  
14 assessment is pending the Governor's signature, and  
15 NFIB strong urges him to do so.

16 Absent the Governor's approval, there must  
17 continue to be productive dialogue in an effort to  
18 reduce the fiscal property-tax burden on our family  
19 farms.

20 And, lastly, any discussion on comprehensive  
21 tax reform must include mandate relief in our  
22 property taxes.

23 NFIB strongly supported and advocated for the  
24 property-tax cap, and thank you all for your  
25 leadership on that issue, but we must continue the

1 dialogue by pushing for mandate relief.

2 Our position, always, was that reducing the  
3 property-tax burden was a multi-faceted approach to  
4 tax-cap plus mandate relief.

5 We've seen some with Tier 6, but we need to  
6 see more.

7 Our state will never be truly open for  
8 business if we have schools in our communities  
9 suffering fiscal peril heightened, even where they  
10 are now, or going bankrupt.

11 New York will never be a truly receptive for  
12 new economic investment if our tax policy is not  
13 broadly and dramatically overhauled.

14 New York will never be truly an attractive  
15 destination to invest or live unless our tax burden  
16 decreases.

17 Our proposal submitted today is somewhat  
18 narrow and focused, yet comprehensive in impact.

19 This exercise, we hope, leads to more  
20 discussions; we hope that these discussions turn  
21 into action.

22 The Governor has, and continues to  
23 acknowledge, taxes are a deterrent to the -- to a  
24 revitalization of our economy.

25 Lawmakers on both sides of the aisle in both

1 Houses of the Legislature have continued to  
2 highlight the importance of small business in both  
3 the current and future state economy.

4 There's not anything that we have submitted  
5 to you today that is easy.

6 I'm sure that there is not a reform idea  
7 submitted by any organization today that is  
8 politically simplistic, but the stats are there, the  
9 facts are there, and the acknowledgment is now  
10 there, so let's, together, work to dramatically  
11 reform our tax system.

12 Thank you.

13 SENATOR DeFRANCISCO: Questions?

14 SENATOR MARCELLINO: What's the NFIB position  
15 on brownfields, tax credits?

16 MIKE DURANT: Well, I'll do this:

17 One, we're neutral on that.

18 We believe that, you know, our members are --  
19 care about the environment.

20 We believe that there's a lot of land that's  
21 been negatively impacted, that if receiving these  
22 benefits could produce new economic activity.

23 We also look at the SECRA, the whole process,  
24 and we strongly encourage significant SECRA reform,  
25 so, our focus has been more there than on the

1 brownfield, but we've been neutral, and we take a  
2 look at it each year.

3 SENATOR MARCELLINO: You talk about SECRA  
4 reform.

5 Do you have thoughts on this?

6 Or -- well, you don't have to do it right  
7 now, but, can you give us information on that --

8 MIKE DURANT: I think if I was going to push  
9 lawmakers to look in a certain direction on this,  
10 I would look at the timeliness, the length of time  
11 through the process, and the cost that the business  
12 has to pay going through that.

13 It is a -- it inhibits activity, on the  
14 outset, and seems to take, as we hear with a lot of  
15 regulatory-type things, a significant amount of  
16 time.

17 So I would look at doing what's best for the  
18 environment, what's best for economic activity, but  
19 doing so in a streamlined fashion.

20 SENATOR MARCELLINO: What's your thought on  
21 repealing the MTA tax for counties outside of  
22 New York City?

23 MIKE DURANT: Well, our position has always  
24 been to look at repealing it throughout the MTA  
25 service area, so, we're fine with that.

1 SENATOR MARCELLINO: Thank you.

2 SENATOR DeFRANCISCO: Thank you very much.

3 The lack of questions does not indicate a  
4 lack of interest.

5 MIKE DURANT: Well, that's why I tried to  
6 speak fast.

7 SENATOR DeFRANCISCO: But having presided  
8 over many, many, many hearings, this happens in  
9 every hearing.

10 MIKE DURANT: No problem.

11 SENATOR DeFRANCISCO: So, I appreciate the  
12 information.

13 We've got your written material, and it's  
14 very important.

15 Thank you.

16 MIKE DURANT: Thank you.

17 SENATOR DeFRANCISCO: Julie Suarez, director  
18 of public policy, New York State Farm Bureau.

19 JULIE SUAREZ: Thank you, good afternoon.

20 SENATOR DeFRANCISCO: Good afternoon.

21 JULIE SUAREZ: Again, my name is  
22 Julie Suarez. I work for New York Farm Bureau.

23 And as you all know, New York Farm Bureau is  
24 the state's largest general agricultural advocacy  
25 organization for our family farms in New York State.

1           I wanted to thank you very much for including  
2           our farm families in this hearing today on tax  
3           policy, because it is a topic that's of vital  
4           importance to our members.

5           Of course, our members, as Mike Durant  
6           alluded to, tend to be land-rich and cash-poor, as  
7           the saying goes; and so, by far, the biggest issue  
8           that our family farms face in New York, from a tax  
9           perspective, is, in fact, the real-property taxes.

10          And to that end, I really wanted to thank the  
11          Legislature, the Senate's Leadership, the Assembly's  
12          Leadership, in passing the agricultural-assessment  
13          valuation change, which will really help us correct  
14          a systemic flaw in how the State's been valuing  
15          farmland over the years.

16          So we just wanted to thank you for your work  
17          this past session on that important topic.

18          New York Farm Bureau, as I said, has a very  
19          long history in the state of New York, having just  
20          recent celebrated our 100th anniversary.

21          As such, we are perhaps uniquely concerned  
22          about the viability of our state's agricultural  
23          land, but almost even more importantly, the  
24          viability of our state's farmers themselves as  
25          people who are able to maintain the land which we

1 need to grow local food for all New Yorkers.

2           USDA statistics, in 2011, are painting some  
3 very interesting trends in New York State, and we're  
4 quite concerned about them.

5           While over the past 40 or 50 decades, you can  
6 look at agricultural statistics and very easily say  
7 numbers of farmers declined through time as we've  
8 gotten more efficient. Ever since World War II,  
9 every year, we seem to lose numbers of farmers.

10           What's new in the 2011 statistics, however,  
11 is that, for the first time, we're seeing a loss in  
12 the actual farmland used in New York State  
13 specifically for food production.

14           We've seen losses in every category of farms,  
15 both small, medium, and large, but, again, most  
16 significantly, is the fact that we're actually  
17 starting to lose farmland.

18           While statistics don't tell us the cause,  
19 given our organization's long involvement in  
20 agriculture in New York, we can point to:

21           New York State's high cost of farming, what  
22 I would refer to as a very robust regulatory  
23 structure in New York State;

24           Trends in land investment that started with  
25 the event of 9/11, and continued with the global

1 financial meltdown, when we saw a lot of people in  
2 the city try to park their money, particularly in  
3 Long Island and Hudson Valley farmland, and take  
4 that land out of production;

5 Global market forces;

6 And, of course, what we would point to as a  
7 primary concern of ours, and the topic that I wanted  
8 to talk about today, is the average age of the  
9 New York State farmer.

10 And what we've seen through the statistics,  
11 is that the increase in the age of farmer, from  
12 about 55 to, now, 57, is having a dramatic impact,  
13 and we would say probably influencing some of the  
14 gloomier news that we've seen in 2011.

15 While it may seem strange to say we're going  
16 to talk about tax policies that relates to the  
17 average age of our farmers, tax policy is vitally  
18 important if we're going to echo, and what  
19 Senator Marcellino had said earlier, if we're going  
20 to make sure that we're capturing the next  
21 generation and having them stay in New York.

22 As you alluded to earlier, Senator, we have,  
23 you know, excellent colleges in agriculture in  
24 New York State, from Morrisville, Cobleskill, and  
25 our Cornell land grant, but we have to make sure

1 that we capture those educated farmers, and give  
2 them the tools to actually stay on their land and  
3 take over that family farm.

4 To that end, in going to my testimony, we  
5 wanted to again make four points:

6 The first point we wanted to make is that, of  
7 course, nothing is certain in this life but death  
8 and taxes, as the saying goes.

9 And in New York, what's different about our  
10 family farms, is that we have the \$1 million  
11 exemption from the state level. At the federal  
12 level, the exemption from the estate taxes is  
13 5 million.

14 But at the state level, when you're counting  
15 the value of a farm estate, it's not just the land  
16 and your buildings; it's also the value of your  
17 livestock. It's the value of your dairy cow. It's  
18 the value of your actual bees, if you're a honeybee  
19 or an agriculturist farmer.

20 So when we assess, and try to figure out what  
21 the impact is of the estate tax in New York on our  
22 family farms' ability to transition to the next  
23 generation, we're talking about valuing a lot of  
24 assets, when our farmers frequently don't have the  
25 actual ability to pay those estate taxes.

1 To give you a snapshot:

2 Farm Credit, which is the largest lending  
3 institution to New York farmers, recently released a  
4 report that indicated that, of farmers with an  
5 estate valued at 2 million or more, about half of  
6 them would actually have to sell the family farm in  
7 order to afford the tax liability at a \$1 million  
8 threshold.

9 So that's a very strong concern to us in  
10 New York agriculture.

11 One of the points that we wanted to make, is  
12 that we certainly agree with E.J., and his point  
13 about completely eliminating the estate tax would be  
14 great, from a farm perspective, but from a realistic  
15 perspective we also, Senator DeFrancisco, strongly  
16 support your legislation which would make  
17 New York State's estate tax threshold, from  
18 1 million, to 5 million, again, consistent with the  
19 federal level.

20 Senator Ritchie as well has legislation which  
21 would do the same thing, but for farms only.

22 So those are two pieces of legislation that  
23 we, as an organization, strongly feel should be  
24 adopted and acted upon as we go forward with our  
25 concerns about tax policy.

1           We've seen our neighboring competitors in the  
2           states of Pennsylvania and Illinois recently acting  
3           to address inheritance-tax issues on farms, and  
4           other businesses.

5           So, again, we'd urge the State of New York to  
6           follow suit.

7           The second point I wanted to make, that also  
8           impacts -- or, gets at the transitional issues that  
9           our farmers are facing right now, and that average  
10          age of New York's farmers, is that the fees that  
11          New York State assesses on farmers and businesses  
12          can be quite extensive.

13          And while it may seem like a small thing, one  
14          of the issues that our members are very strongly  
15          concerned with is the LLC filing fee.

16          For our members, while a lot of people in the  
17          media, and others, don't like to think about the  
18          term "corporate farm," it has a very negative  
19          connotation in the media, but from our perspective,  
20          encouraging our members to form corporations is  
21          probably going to be one of the best ways to  
22          actually make sure that that farm is able to  
23          transition to the next generation of either family  
24          or non-family in ownership.

25          So many of our farms are using an LLC or a

1 C corp form of ownership.

2 The fee schedule for that can be anywhere  
3 between 15,000 -- excuse me, 1,500 a year or 3,000 a  
4 year, depending upon the gross income of the LLC.

5 What's very difficult, from a farm  
6 perspective, is that, frequently, farmers' income  
7 fluctuates dramatically from year to year.

8 So in one year, if you're an apple farmer,  
9 and you had the disastrous apple year we had last  
10 year, you may have to pay that fee, based -- in  
11 large part, when the fee is calculated, based on  
12 your income level of the previous year.

13 So those fees become very difficult for our  
14 members, and we don't often know or have a true  
15 sense of whether or not you're going to be paying a  
16 \$1,500 fee or a \$3,000 fee, from year to year.

17 And that is a barrier to business planning,  
18 and a barrier to our members actually forming that  
19 incorporation.

20 The other point about the LLC fees that  
21 I would like to make, is that many of our farms are  
22 very diversified. This is a great point about  
23 New York agriculture, and it sets us aside from some  
24 of the traditional crop farms out in the midwest.

25 And, so, if you have an apple farm -- I don't

1 know why I keep picking on apple farms today -- but  
2 if you have an apple farm, with the father and the  
3 mother owning the bulk of the apple orchard, then  
4 you have a daughter running a farm distillery, you  
5 have a son-in-law who's doing the farm-market part  
6 of the operation, all those entities would have  
7 different LLCs.

8 So from a farm perspective, we're talking,  
9 not just about paying one fee of either 1,500 or  
10 3,000 a year, but multiple fees, depending upon the  
11 structure of the farm.

12 So when you add those together, that LLC fee  
13 really places a significant burden on our members.

14 What we would recommend is that, from a farm  
15 perspective, you base that LLC fee on the net income  
16 from farming, or, what they have to file federally,  
17 their Schedule F.

18 That would be a far fairer way, in our  
19 opinion, of addressing that issue, and helping to  
20 encourage our members to form those LLCs, because,  
21 again, when we look at the average age of the  
22 farmer, we need to make sure our farmers have all  
23 the tools that they need in order to better plan,  
24 for transitional purposes.

25 The third point that I wanted to make, and

1 it's not necessarily correlated to retirement issues  
2 faced by many of our farms, but as our members see,  
3 and this is probably unique to agriculture, an  
4 ongoing -- we would like to see an ongoing and  
5 conscious effort for tax-policy tools to recognize  
6 today's means and methods of farming.

7 New York Farm Bureau has found it necessary,  
8 and we really appreciate the Legislature and the  
9 Governor's support for this over the years, but we  
10 found it necessary to request legislation to  
11 redirect tax-policy interpretation of statute, or  
12 internal guidance of the Department of Tax and  
13 Finance, as to what actually constitutes a  
14 "family farm" today.

15 An example of this would be the legislation  
16 in 2011 that recognized commercial equine  
17 operations, and maple production, as legitimate  
18 farming businesses; and, therefore, eligible to  
19 receive the agricultural assessment.

20 Right now, we're going through an issue in  
21 the Southern Tier of New York State, where we have  
22 farmers who would like to do a practice called  
23 "silvopasturing," which may sound, again, this is  
24 probably a little bit obscure, when other speakers  
25 have been talking about flat tax, but it's very

1 important to our members, which is, we have farmers  
2 who want to adopt a different practice of pasturing  
3 animals in a wooded or marginal-land area.

4 Tax Department decided, in an opinion of  
5 counsel a few years ago, that that was not a valid  
6 agricultural practice; and, therefore, that land  
7 would not be eligible -- fully eligible for  
8 agricultural assessment.

9 Again, that's an example of something that  
10 we're trying to correct through legislation, but  
11 it's something that, quite frankly, we think that  
12 the Department of Agricultural Markets would  
13 probably be better suited today to make those types  
14 of determinations, because they're more up to date  
15 about what constitutes "modern farming operations"  
16 today.

17 The fourth point that I wanted to make, is  
18 that the more time that our farms spend filling out  
19 our paperwork, the less time they spend in their  
20 fields producing food.

21 And, again, this may seem like a small point,  
22 but simple actions, as it relates to tax policy,  
23 like streamlining and consolidating our tax forms  
24 and deadlines, can really translate into thousands  
25 of dollars saved at the farm level, in terms of the

1 farmer's time, the accountant's time, and  
2 recordkeeping requirements.

3 Just as a concrete example: Farmers utilize  
4 three separate forms to receive the allowable tax  
5 refund for the purchase of diesel fuel used in farm  
6 production.

7 Those three forms are the FT-946, the AU-630  
8 and the FT-500.

9 So if you can imagine, you're trying to run  
10 your business, and take advantage of a tax exemption  
11 which you're allowed to have, and have been allowed  
12 to have since the 1950s, you have to fill out  
13 three separate pieces of paperwork in order to  
14 achieve that goal.

15 So this is a point that we would like to see  
16 addressed, and would really encourage the Committee  
17 to consider, some of these very simple streamlining  
18 effects that would be important for our members, and  
19 for our other businesses across the state as well.

20 And just in conclusion, I wanted to thank you  
21 again for giving us the opportunity to offer some  
22 remarks.

23 And, again, thank you for all your work this  
24 year in regard to the agricultural-assessment issue.

25

1           SENATOR DeFRANCISCO: Senator Krueger.

2           SENATOR KRUEGER: Thank you, Julie,  
3 appreciate your testimony.

4           In the past, we've talked about the farm  
5 property-tax assessments being an issue, but you  
6 didn't testify about that today.

7           JULIE SUAREZ: Actually, that was my  
8 beginning of my remarks, when I talked about the  
9 passage of the agricultural-assessment valuation cap  
10 today: very important.

11           And I thank you for your support.

12           SENATOR KRUEGER: Okay.

13           JULIE SUAREZ: That formula is set at the  
14 state level, so we needed to adjust it, and we hope  
15 the Governor signs it.

16           SENATOR KRUEGER: And you think that will  
17 then, in fact, address the concerns that the farmers  
18 have had?

19           JULIE SUAREZ: Our tax rates will still be  
20 significantly higher than those in other states, but  
21 it will help slow the escalation.

22           To give you an example: In New York State,  
23 our farmers, in 2012, I believe it is, I'll have to  
24 double-check the year, paid an average of \$26 per  
25 acre for farmland.

1           In property taxes, our neighboring state of  
2 Ohio paid \$11 in real-property taxes for their  
3 farmland.

4           So while we believe that this legislation  
5 will help slow that increase, because it does cap  
6 the assessment valuation, certainly, we still have  
7 very high property taxes in New York State.

8           SENATOR KRUEGER: Thank you.

9           JULIE SUAREZ: Thank you.

10          SENATOR DeFRANCISCO: As far as the estate  
11 tax, you mentioned various things.

12          The estate consists of the high value of the  
13 property, the cows, the machinery, everything else  
14 you have.

15          That also applies to small businesses in  
16 other areas too, whether it's farming, or anything  
17 else.

18          So, with that said, you definitely prefer my  
19 bill over Senator Ritchie's bill, because it applies  
20 to everybody?

21                   [Laughter.]

22          JULIE SUAREZ: I would never answer that  
23 question, Senator.

24          SENATOR DeFRANCISCO: Okay.

25                   All right, okay.

1 JULIE SUAREZ: We prefer any relief.

2 SENATOR DeFRANCISCO: I didn't think you  
3 would, but thank you very much.

4 Thank you.

5 JULIE SUAREZ: Thank you.

6 SENATOR DeFRANCISCO: Josh Reap, Empire State  
7 director of government affairs, Associated Builders  
8 and Contractors.

9 JOSH REAP: Good afternoon, and thank you,  
10 Senators, for the opportunity to come down today and  
11 talk about the construction industry.

12 I'll try to keep my -- my remarks are on  
13 paper, I know you already have those, so I'll try to  
14 keep it brief today in the interest of time.

15 But, the Associated Builders and Contractors  
16 is a trade association representing hundreds of  
17 construction companies and related --  
18 industry-related firms across New York State.  
19 There's several hundred members.

20 And I talked to many of our contractors, to  
21 kind of get a general feeling from the ABC  
22 membership about the taxes we pay, and where we can  
23 look at reforms to, perhaps, spend our tax dollars  
24 more wisely, and, perhaps, streamline things on the  
25 front end of it in terms of tax collection.

1           Chief among our concerns for the state tax  
2 structure is the taxes we pay on diesel and  
3 gasoline.

4           Their original purpose was to supply funds to  
5 build and maintain the state's safe infrastructure;  
6 however, now they are absorbed into the General Fund  
7 to pay for many other programs.

8           Without a properly funded plan to repair and  
9 replace New York's aging road network, it's going to be  
10 very difficult to support growing sectors of the  
11 economy, such as the expanding nanotechnology  
12 manufacturing here in New York State, as well as our  
13 blossoming agritourism and wine and beer industries.

14           So, really, in short, a lot of the tax  
15 policies I'm going to talk about today are  
16 applicable in such a way that they're going to  
17 affect all other sectors of the economy.

18           I suspect, in relation to the diesel and  
19 gasoline tax, many motorists probably already feel  
20 like they're paying that money and it's going toward  
21 our infrastructure system.

22           So what I'm encouraging you today, is to look  
23 at, let's align reality with perception.

24           As the Empire State, we need infrastructure  
25 systems to be in a position to support growth.

1           For a perfect example of how much of a  
2 challenge this is, I point to Route 28 in the  
3 North Country, in the Adirondacks, that connects  
4 Long Lake with Newcomb, New York.

5           This road is in such disrepair, it hasn't  
6 been refilled since 1973.

7           I haven't been on this earth that long, I'll  
8 admit.

9           So, to go that long is very, very much  
10 something that -- that I was brought together -- it  
11 wasn't brought to light until, really, there's a  
12 viral YouTube video campaign that brought attention  
13 to this problem.

14           And I point this out, because it's the sort  
15 of problem that's growing and becoming more  
16 commonplace across New York State.

17           The longer we defer the proper repair work,  
18 the more expensive it's going to become to fix the  
19 roads and bridges that we travel over today.

20           If this thoroughfare, and many others like it  
21 in the state, do not receive the adequate attention  
22 they need, our economy simply can't grow.

23           So, again, the current practice of raiding  
24 this infrastructure fund has left little of the  
25 financial resources for the people of the

1 Department of Transportation and some of the other  
2 infrastructure authorities to work with.

3 I applaud them for the work that they're  
4 doing, but what we really need is a dedicated fund.

5 Incidentally, a lot of this problem is  
6 exacerbated by the all-too-frequent use of  
7 government-mandated project labor agreements, which  
8 have been, study after study, proven that the costs  
9 drive up costs on public-work jobs and decrease  
10 competition.

11 So I'm asking you to really look at  
12 redirecting 100 percent of these field taxes back  
13 into a general fund.

14 I realize doing that overnight is probably  
15 very impractical, and we have to look in reality,  
16 but looking at a way to perhaps roll that back into  
17 the -- that dedicated lockbox, for lack of better  
18 term, is something that I would highly recommend  
19 that we do.

20 Another tax I would like to bring to your  
21 attention also relates to highway again: the highway  
22 use tax here in New York State.

23 Basically, it's dedicated for vehicles over a  
24 certain weight and size.

25 The idea is, that they do more impact to our

1 highway system, so they're taxed to help offset that  
2 additional costs.

3 New York is only one of four states, that I'm  
4 aware of, in this country that actually charges this  
5 tax.

6 For many years, the contractors and trucking  
7 firms have been paying for the highway-use tax, with  
8 the revenue pledged for paying for past borrowing.

9 New York, again, with this tax, it's very  
10 burdensome recordkeeping for many of the  
11 contractors. You're talking countless hours for  
12 accountants, accountability with guys in the shop to  
13 maintain their records and their logs. This adds up  
14 in terms of manhours, lost wages, going into simple  
15 compliance;

16 Whereas, if you looked at alternatives here,  
17 to maybe increasing certain assessments elsewhere to  
18 offset that revenue loss, that might be something to  
19 consider.

20 But, in general, this tax has not been  
21 studied since it's been implemented, so I would  
22 encourage you today to, perhaps, look at that tax in  
23 more detail, and try to find a way to, perhaps,  
24 phase that out or look for alternative sources of  
25 revenue.

1           There are additional tax reforms that could  
2 provide relief, I feel, for a lot of our  
3 construction companies.

4           Specifically, I would suggest that you look  
5 at the income-tax system.

6           A vast majority of our construction companies  
7 today are structured as limited-liability  
8 corporations or S corporations.

9           I know we've heard a lot about these today,  
10 so I'll just keep it brief.

11           But, basically, what I would suggest, is you  
12 look at the way that these are structured.

13           A lot of these people who run these  
14 construction companies, they're paying an extra on  
15 their personal income-tax return because of the  
16 structure of the company today as an LLC or S corp;  
17 but, yet, they don't -- they may not take anything  
18 directly out of the business.

19           So when you look at that, along with our  
20 progressive tax bracket, and the big jump,  
21 specifically, from Tier 5 to Tier 6, it takes a big  
22 hit on the taxing liability of these companies,  
23 which is a disincentive for a lot of our  
24 construction companies to hire more employees, to  
25 reinvestment in the company, which is what affords

1 the opportunity and potential for job creation in  
2 the state.

3 So, those are the three biggest things that  
4 my contractors have relayed to me, and I hope that  
5 they will provide some starting point for you in  
6 your endeavor here to look for reforming tax policy.

7 And I, again, would like to thank every one  
8 of you, Senators, for taking the time, and inviting  
9 us to speak today.

10 SENATOR DeFRANCISCO: Thank you.

11 One question.

12 SENATOR MARCELLINO: In your written  
13 statement, you point out the fact that most  
14 construction companies are structured as LLCs or  
15 S corporations.

16 Why, if they can get a better return?

17 JOSH REAP: Sure.

18 I know some people might think that they're,  
19 perhaps, sole proprietors, but that's an old system.

20 LLCs have provided the best affordable tax  
21 structure in New York State to capitalize upon to be  
22 an effective business for our construction  
23 companies.

24 When I'm talking about LLCs or S corps,  
25 we're talking very small operations; primarily, a

1 handful of owners, or perhaps just a handful of  
2 employees, right up to your companies that employ  
3 several dozen people across the state.

4 SENATOR DeFRANCISCO: Okay, thank you.

5 JOSH REAP: Thank you.

6 SENATOR DeFRANCISCO: For those who are  
7 keeping score, the last speaker, on behalf of  
8 Manufacturers Alliance, had another appointment.

9 He had submitted -- he has submitted written  
10 testimony, that we all have, at least everybody here  
11 at the front desk.

12 The next speaker is, Deb Warner,  
13 vice president of public policy and governmental --  
14 government relations for the CenterState of -- for  
15 CenterState.

16 DEB WARNER: Thank you, Senator.

17 SENATOR DeFRANCISCO: You're welcome.

18 DEB WARNER: Thank you for the opportunity to  
19 be here, and I'm glad -- we're very glad that you're  
20 holding the hearings, so we get the chance to have  
21 input into what may be some important tax policy in  
22 the year ahead.

23 CenterState CEO is a regional business and  
24 economic-development organization, with  
25 2,000 members in an area of 12 counties, from -- in

1 central and northern New York, almost to the  
2 Pennsylvania border.

3 New York has made important strides in the  
4 last few years to improve our business climate.

5 And, we give credit to the Governor, to you,  
6 Senators, for work that you have done,  
7 legislatively, to help with this.

8 We've seen some pension reform come through  
9 that's going to help relieve the burden on local  
10 governments and property owners.

11 We've seen reforms coming on workers' comp  
12 and unemployment insurance, and we've seen the  
13 success of the regional economic development council  
14 investments taking root throughout the state.

15 We also saw, in 2012, that the vast majority  
16 of taxpayers, middle-income households, in New York  
17 are seeing lower personal income-tax rates than  
18 they've seen in decades.

19 The property-tax cap is helping too.

20 And, we've actually seen now that New York  
21 has the highest level of private-sector employment  
22 it's had in a long time.

23 On our future, and more immediately, the  
24 progress on Innovation Hot-Spots and the  
25 opportunities that Start-Up NY may bring are

1 promising, and unprecedented new initiatives.

2 And, on-time budgets, with budget restraints,  
3 thank you again, Senators, has certainly made room  
4 for some of these tax reductions.

5 Recently, you probably saw last week, that  
6 Moody's raised its outlook to "positive" for  
7 New York State, and, clearly, all of these things  
8 have contributed to that.

9 But the reason we're here today is because we  
10 need to do more, and more can be done, and we need  
11 to make changes so that we can legitimately change  
12 our reputation away from being the highest-taxed  
13 state.

14 We know that we have been successful in doing  
15 that, together, when we've changed the minds of site  
16 selectors and corporate real-estate executives and  
17 business owners who know us all too well as the  
18 highest-taxed state.

19 In my testimony -- in our testimony, you'll  
20 see that there -- some of the problems that are  
21 still lingering with our high property-tax rates.

22 And one of the initiatives that we need to  
23 take a look at, is keeping our promises.

24 We've seen some things happen with policy,  
25 where things that were to be sunset, things that

1 were short-term gap-fillers, or one-shots, have not  
2 met their natural demise, and have been continued.

3 So, those things only hurt our credibility;  
4 they increase the business communities and business  
5 owners uncertainty. And when business owners are  
6 uncertain, they hesitate to make capital  
7 investments, and what happens, the worst-case  
8 scenario, is they hang on to that revenue, they  
9 don't make investments, they don't expand their  
10 businesses, and they may even, potentially, shut  
11 down their businesses in New York.

12 So, we know what -- New York State will never  
13 be the lowest-taxed nation -- or, state in the  
14 nation, and we don't want to be. It's not about a  
15 race to the bottom.

16 We have great assets, and in order to really  
17 capitalize on those assets, we need to improve our  
18 policies.

19 So, we need to be more competitive; it's  
20 about being competitive, particularly with the other  
21 states in the northeast that are near us.

22 So, what would we ask you to do?

23 We'd ask you to think of some basic ground  
24 rules as you form policy on taxes.

25 "Simplicity."

1           Businesses need to be able to understand tax  
2 policy and regulation, and they need to calculate  
3 their taxes.

4           As I talked to our members, and I talked to  
5 accountants and attorneys who represent them in  
6 their tax works, it's amazing how much that they  
7 have to spend just trying to comply with  
8 New York State laws.

9           And that lack of clarity costs the taxpayers;  
10 it costs the businesses the time and the effort that  
11 they have to put in, and the consultants that they  
12 have to hire; and it costs the State, because it's  
13 more complicated to administer.

14           So a more simplified, straightforward tax  
15 policy is a lot easier, and it's better savings for  
16 the businesses in the state.

17           Transparency is important too.

18           Tax legislation should make sense, it should  
19 be open, it should be based on real data, on  
20 verified information, with reasonable assumptions.

21           "A more open process."

22           Perhaps more hearings, such as this, would  
23 find a way to clarify, and make more transparency  
24 come to the system.

25           Also, predictability.

1           This is sort of referring back to some of the  
2 issues with things that have not sunset.

3           But, again, that uncertainty really  
4 undermines our opportunities for economic growth.

5           It makes it hard for businesses to plan from  
6 year to year, it's hard for the State to plan, and,  
7 it also makes it difficult for businesses looking at  
8 New York State, to calculate what their tax exposure  
9 would be in New York State, or what the value of  
10 economic incentives would be, because they keep  
11 changing.

12           So, a broad-based tax, that we would ask you  
13 to take a look at, again.

14           And I know that there was something that was  
15 under consideration earlier this year, is,  
16 eliminating the 18-A assessment on energy.

17           That was one of those things that was due to  
18 sunset, has got a three-year extension.

19           We would urge you, when you return to session  
20 at the beginning of the year, to take a look at  
21 that, and make it sunset, so that it's gone on  
22 April 1st of 2014.

23           That will leave \$3 billion more circulating  
24 in our economy over the next three years.

25           And since it affects energy costs, and we

1 still have some of the highest energy costs in the  
2 nation, so, I think we'd get a double value for  
3 getting rid of that.

4 So we would ask you to really champion  
5 eliminating that assessment.

6 You've heard a lot about small businesses  
7 today.

8 And, most of our members are small  
9 businesses. You know that they're the net-job  
10 generators.

11 There's statistics in the written testimony,  
12 I won't go over.

13 And you did, earlier this year, produce a  
14 package of proposals really targeting small  
15 businesses.

16 And we applaud you for that, and hope that  
17 you will take a look at that again in 2014.

18 Echoing, again, this issue of personal income  
19 tax and unincorporated businesses.

20 Our top rate of 8.82 percent is a problem for  
21 unincorporated businesses. They hit that higher tax  
22 rate because the business profits are treated as if  
23 they are wages, so they are then subject to that  
24 higher rate.

25 So we would urge you to find a way for them

1 to escape that; to look at that income, separate  
2 from wages, treat it differently, so it doesn't bump  
3 businesses into that higher tax rate and it's not  
4 removing more revenue from the businesses.

5 Investing in our innovation economy, we  
6 believe, is incredibly important to the future of  
7 New York State, and to our region.

8 And we believe that there's much more the  
9 State can do to reward innovation and invest in our  
10 entrepreneurial ecosystem.

11 We need effective programs that provide us  
12 with a pipeline of good companies, smart  
13 entrepreneurs, but we have to have an appropriate  
14 support system for them, and access to capital is an  
15 important part of that.

16 We know, Senator DeFrancisco, that you well  
17 understand that.

18 We appreciate your support for Grants For  
19 Growth, which is one of CenterState's programs to  
20 support innovative-applied research projects that  
21 are between universities and industries.

22 Just to recap a little bit of how effective  
23 that program has been:

24 Grants For Growth has awarded 41 grants and  
25 investments of over more than \$2 million, which has

1 leveraged matching funds of over 5 million in  
2 follow-on funding of over 38 million.

3 Industry partners expect that to generate  
4 679 jobs, with the potential to generate over  
5 46 million in new revenue for our region.

6 The Technology Garden is another asset that  
7 we have in the CenterState. It's a physical place  
8 and a programmatic place, and we believe that our  
9 experience running that for the last few years has  
10 given us some experience, where we can suggest some  
11 further successful programs and policies that you  
12 might think about.

13 That -- it's a building, it has  
14 33,000 square feet. There's 35 early-stage  
15 businesses there, with 150 employees and a payroll  
16 of about 5 million, but it's a lot more than a  
17 physical space.

18 We have assisted more than 500 entrepreneurs,  
19 and more than 9,000 people have attended the  
20 Technology Garden, to participate in a very broad  
21 range of programs that we've had.

22 So, our experience is leading us to make some  
23 suggestions to you today.

24 Angel tax credit, which you have heard  
25 mentioned earlier, and we would again ask you to

1 take a look at that. We think it's such a important  
2 step that New York State can take to help our  
3 innovation economy.

4 And thank you, Senator DeFrancisco, for  
5 your leadership in sponsoring that bill in the  
6 Senate.

7 This is really based on a program that exists  
8 in many other states. It's been very successful in  
9 other states, and it has really been critical in  
10 those states, in helping businesses through that  
11 very dangerous time, from when you've got an idea  
12 and you're trying to launch a business, to the point  
13 of where you're actually commercial and generating  
14 revenue.

15 And many businesses fail because they don't  
16 have support throughout that system.

17 So, in our testimony, we're suggesting how  
18 that program might be structured, based on the  
19 success and best practices we've seen in other  
20 states, of a \$7 million cap for the year.

21 Investments, ranging from \$100,000 to a  
22 million per investor, with a 35 percent refundable  
23 tax credit.

24 Wisconsin, in particular, has had great  
25 success with that. And when they put -- since their

1 program has been put in place in 2005, they have  
2 increased their investments fourfold, and have  
3 actually tripled the number of deals within their  
4 state.

5 So we know this is a program that really  
6 works.

7 Venture funding is another issue that is  
8 critical for early-stage and startup businesses.

9 In our region, and across upstate, venture  
10 and early-stage funding is very, very scarce, and  
11 very inadequate.

12 A startling number that we would share with  
13 you today, is that the national average, per capita,  
14 for venture funding and investment is \$933 per  
15 person, per capita.

16 In upstate, that number is only \$27. It is  
17 just shockingly -- a shockingly desperate number.

18 So startups need this funding, but startups  
19 also follow the funding.

20 So what happens is, when a startup company  
21 gets investment, they get venture capital. The  
22 venture capitalists want to keep an eye on the  
23 company, they want a hand on the board, they want to  
24 be involved in managing the company.

25 So, frequently, they then require the

1 company, in exchange for that investment, they go to  
2 wherever the investment is made, and it's usually  
3 not coming from Upstate New York, so, we lose them  
4 to New York City or California.

5 So, we've got lots of startups in our state,  
6 and we've got a lot of startups in our region.

7 We've been able to build a pipeline, build  
8 bridges with our universities, and take advantage of  
9 the research capacity we have, but we really need  
10 this fund in place.

11 So, we're actually working with a group of  
12 investors in our region to launch a \$30 million  
13 fund, and the goal of this fund is to attract  
14 private investment, develop early-stage companies,  
15 and create the next generation of industries in our  
16 region.

17 In looking at economic-development  
18 incentives, there are also some things that we would  
19 like to mention to you today.

20 Some of that is based on work that we're  
21 doing with the Brookings Institute. We have two  
22 major projects:

23 One is a metropolitan export initiative, to  
24 double the number of exports in our region, from  
25 3.3 billion, to 6.6 billion, which should grow us

1 18,000 new jobs;

2 And, also, a metropolitan business plan,  
3 we've been working with them for three years on this  
4 very intensive collaboration.

5 So, I'd like to pass along some suggestions  
6 based on that.

7 New York State can do more to encourage  
8 strategic risk promotion. We could make special tax  
9 benefits available for people who are leaving  
10 existing jobs to start businesses.

11 Economic incentives reshaped to embrace that  
12 operational intellectual capital and marketing needs  
13 of high-tech companies could bring significant  
14 economic activity to our state.

15 Some quick bullets:

16 Create a tax credit for venture capital  
17 investment.

18 Allow for bond and public venture capital.

19 Grow an export-directed culture. This is  
20 based on our Metropolitan Export Initiative.

21 Reduce obstacles and barriers to entry for  
22 all companies.

23 Support globally-oriented companies that are  
24 making strides to enter new markets or grow within  
25 their existing international markets.

1           Please note, that statistics show that  
2           export-based jobs, actually, are higher-paying jobs  
3           than non-export jobs.

4           And we believe New York needs a tax code to  
5           incentivize companies to be more globally engaged.

6           And perhaps the way to do that would be to  
7           have some stipulation or connection to Excelsior tax  
8           credits.

9           Extending or expanding currently productive  
10          and viable programs makes a lot of sense.

11          For example, one of the things that was  
12          allowed to sunset, was the facilities operations and  
13          training credit for the Qualified Emerging  
14          Technology Companies.

15          We would hope that you could take a look at  
16          that, and bring that back next year.

17          IDAs in our region are very effective.  
18          We've got a great track record.

19          And we would ask that you reconsider bringing  
20          back the ability to finance civic-facilities  
21          projects to the IDAs.

22          We'd also ask that you take a look at the  
23          Excelsior tax credit program, so that we can  
24          prioritize some of those credits to go to more  
25          urbanized areas, to central cores, and disinvested

1 cities and villages.

2 Also, another echo, you're going to hear  
3 about wealth and people leaving New York.

4 And in the 2000s, New York State had one of  
5 the largest exoduses of people with wealth, second  
6 only to California, so, this is a real need that  
7 needs to be addressed.

8 Estate-tax reductions, I know others, you  
9 heard -- have heard -- have spoken to you today  
10 about estate-tax reduction.

11 And, I took a look at what the policies were  
12 in other states.

13 30 states have no estate tax at all, and only  
14 8 states begin to tax at a million dollars.

15 So, we would ask you to raise that threshold  
16 to reflect the federal level of 5.25 million.

17 And there's two reasons for doing that:

18 Family-owned businesses are a major  
19 constituent of estates that might be subject to that  
20 tax, And, in order to keep those businesses alive,  
21 from generation to generation, we need them to have  
22 a lesser tax reduction, and not be forced to have to  
23 liquidate the business to comply with estate-tax  
24 law.

25 So, it does drive wealth away.

1           We know that we have more and more retirees  
2           in New York, and we don't want to hear their  
3           accountants telling them that they need to do estate  
4           planning outside of New York.

5           This also applies to the top tier income-tax  
6           level that we have, of 8.82 percent.

7           I think, if the State might take a look at  
8           lowering that, but -- because, again, we're  
9           uncompetitive, and it is driving people and their  
10          funds out of New York State.

11          So, bringing down that top rate would be a  
12          good thing for New York State to do.

13          Thank you again for your efforts to improve  
14          our business environment, through taxes and tax  
15          policy.

16          And, we look forward to working with you in  
17          2014.

18          SENATOR MARCELLINO: In your testimony --  
19          thank you for coming, by the way.

20          In your testimony, written, you talk about  
21          the fact that most of the small businesses have  
22          the -- they're Chapter S corporations, LLCs.

23          DEB WARNER: Partnerships.

24          Yeah.

25          SENATOR MARCELLINO: I asked the same

1 question of the person before you:

2 Do you want us to find a way to treat their  
3 income separately, or differently, than just mere  
4 wages?

5 They should be given a special --

6 DEB WARNER: Right, don't treat the business  
7 income as if it was wages, because now it's treated  
8 as wages.

9 SENATOR MARCELLINO: Why not just  
10 incorporate?

11 Isn't that a way of avoiding --

12 DEB WARNER: I'm not an accountant or a tax  
13 attorney, but I'm sure that there are reasons why,  
14 when they formed their businesses, and they went to  
15 their attorneys and they went to their accountants,  
16 and said, "Tell me what to do," that was what they  
17 were told to do.

18 I can get back -- that's a good question, and  
19 I can -- I don't know a clear technical answer --

20 SENATOR MARCELLINO: Just a curiosity.

21 DEB WARNER: No, it's a good answer -- that's  
22 a good question.

23 SENATOR MARCELLINO: Okay.

24 Brownfield tax credits, what's your position  
25 on that?

1           DEB WARNER: I'm sorry?

2           SENATOR MARCELLINO: Brownfield tax credits,  
3 the extension thereof, what's your position?

4           DEB WARNER: I believe that the tax -- the  
5 brownfield tax credits should be expanded and  
6 continued.

7           We have so many brownfields in upstate,  
8 especially in our metro areas. You know, they're a  
9 heritage of our industrial history, and the credits  
10 need to make sense so the developers will address  
11 the projects.

12           SENATOR MARCELLINO: Thank you.

13           SENATOR DeFRANCISCO: Thank you, Deb.  
14 I appreciate it.

15           DEB WARNER: Thank you, Senator.

16           SENATOR DeFRANCISCO: Safe trip back to the  
17 promised land.

18           Next speaker, Brian Sampson,  
19 Unshackle Upstate.

20           BRIAN SAMPSON: Good afternoon, Senators, and  
21 thank you for the opportunity to sit here before you  
22 today.

23           As you heard, my name is Brian Sampson. I'm  
24 the executive director of Unshackle Upstate.

25           We're a pro-business, pro-taxpayer, education

1       advocacy organization dedicated to the  
2       revitalization of the upstate economy.

3                You have our testimony before you, and  
4       I certainly won't go through that. I think it  
5       explains itself, so I'll just go through some of the  
6       highlights.

7                But as you've heard here today,  
8       New York State has a long reputation of being the  
9       nation's highest-taxed state; and, unfortunately,  
10      it's a reputation that is well deserved.

11              New York residents pay some of the highest  
12      property, income, and sales taxes in the  
13      United States.

14              The State also imposes a host of other taxes  
15      and fees that other states do not, one of which  
16      you've heard today is the 18-A energy assessment.

17              Because these taxes also impact businesses,  
18      whether directly or indirectly, New York is  
19      regularly identified as having one of the worst  
20      business-tax climates in the nation.

21              Despite our high tax burden, many companies,  
22      especially large ones, are attracted to the  
23      New York City metropolitan area, due to such factors  
24      as its large population and its proximity to  
25      Wall Street.

1           But while the wealth-creating activities in  
2           New York City's financial, business services, media,  
3           and entertainment industries appear to bear the  
4           burden of that high tax structure, the less  
5           profitable manufacturing, agricultural, industries  
6           that have long been the economic lifeblood of  
7           Upstate New York, cannot.

8           In contrast, many large companies located in  
9           Upstate New York have simply been unable to compete  
10          in the global economy, and as such, have left the  
11          state altogether.

12          The good news is that, this summer, there's  
13          been a great deal of attention paid to the upstate  
14          economy. Everyone agrees to -- seems to agree on  
15          one fundamental point: The upstate economy is  
16          lagging, and it continues to struggle.

17          We appreciate Governor Cuomo and the  
18          Legislature's attention to the problem, and your  
19          commitment to making it one of the highest  
20          priorities.

21          We're also supportive of the initiatives that  
22          many of you have put into place.

23          The State's regional approach to economic  
24          development has benefited upstate, so has the focus  
25          on upstate tourism, as well as initiatives to help

1 the yogurt, beer, and wine industries, and we're  
2 optimistic that the Start-Up NY program will also  
3 bear fruit in the future.

4 But what upstate really needs is to thrive --  
5 to thrive is simply more fundamental: we need to be  
6 economically competitive once again.

7 We need to acknowledge from all -- an  
8 acknowledgment from Albany that upstate is different  
9 than the New York City metropolitan area.

10 We have two economies in the state of  
11 New York. It's a reality.

12 Upstate New York needs broad-based tax  
13 relief, and we need it today, not at some point in  
14 the future, whether that be 12, 24, or 36 months.

15 We need it today.

16 That's why we are proposing the "New Era For  
17 Upstate" plan.

18 The heart of the New Era program is  
19 broad-based tax relief that will directly address  
20 the problems of high taxes in Upstate New York.

21 We're calling for four simple points:

22 A 25 percent reduction in the income tax for  
23 upstate residents making less than \$50,000 a year;

24 The elimination of the corporate franchise  
25 tax in upstate communities, to be phased in over

1 four years;

2 A 50 percent reduction in the State's share  
3 of the sales tax for certain counties, and those  
4 counties are based on the 2010 census, that shows  
5 the greatest population loss, as well as the  
6 May 2013 unemployment-insurance rankings;

7 And, finally, the elimination of the  
8 18-A energy assessment for our manufacturers in  
9 upstate.

10 This is not about providing tax relief for  
11 the wealthy; it's about providing tax relief for  
12 working New Yorkers in those parts of the state that  
13 have not been able to grow and create jobs.

14 This is not about tax breaks that are  
15 designed to lure a particular company, such as a  
16 chip-fab company, to a site -- or, to a sited  
17 facility in the state of New York;

18 Nor does this plan offer industry-specific  
19 tax breaks that are designed to grow a particular  
20 segment of the economy, such as the film tax  
21 credits.

22 It offers broad-based tax relief for current  
23 employers and current taxpayers.

24 Our proposal is multi-faceted, comprehensive,  
25 and a bold tax-relief plan.

1           New Era For Upstate includes nearly a  
2 billion dollars a year in targeted tax relief for  
3 upstate taxpayers and businesses that desperately  
4 need it.

5           It is our hope that throughout this next  
6 year's budget process, both the Governor and the  
7 Legislature will give serious consideration to the  
8 New Era plan.

9           I want to thank you for the opportunity to  
10 speak with you today, and I would be happy to answer  
11 any questions.

12           SENATOR DeFRANCISCO: Any questions?

13           SENATOR MARCELLINO: No.

14           SENATOR KRUEGER: Yes.

15           SENATOR DeFRANCISCO: Oh, you've got one.

16           SENATOR KRUEGER: Good afternoon.

17           BRIAN SAMPSON: Good afternoon.

18           SENATOR KRUEGER: Thank you for your  
19 testimony.

20           Define "upstate" for your tax proposals.

21           BRIAN SAMPSON: Everything outside the MTA;  
22 so, it's 48 counties, about 40,000 square miles.

23           SENATOR KRUEGER: Since you're proposing a  
24 phase out of the corporate franchise tax, and we've  
25 heard quite a bit during the day from other people

1 who testified, about the complications between  
2 whether you're an S corp, a C corp, an LLC; whether  
3 you're paying your corporate taxes through your PIT,  
4 or not --

5 BRIAN SAMPSON: Sure.

6 SENATOR KRUEGER: -- what do you think would  
7 be the impact of phasing out taxes for businesses  
8 outside of the 12-county region that are  
9 incorporated under a 9-A, but, you would be applying  
10 the same current tax rate to all the other  
11 businesses?

12 BRIAN SAMPSON: Right, we're looking at it  
13 from the 9-A perspective, and I think it's  
14 encapsulated in a pretty simple approach.

15 Wall Street is [unintelligible] thriving,  
16 main street is not.

17 Upstate New York is "main street."

18 And you look at our businesses in  
19 Upstate New York, they tend to be on the smaller  
20 side; 10-, 15-, 25-employee firms. They need the  
21 help. Those companies are basically, as you heard  
22 today, driven by entrepreneurs; people who want to  
23 grow a business. They're there to make profit,  
24 they're there to employ people, and help their  
25 communities.

1           If we could roll back their corporate  
2           franchise tax, we'll be able to give them more  
3           assets that they can invest in more jobs, maybe  
4           increase wages and benefits for their employees, or,  
5           go out and compete with a new piece of technology  
6           that will draw in more work for them, and creating  
7           more jobs.

8           SENATOR KRUEGER:   So you -- so I do  
9           understand, you're right, your proposal is to phase  
10          out the tax for the larger companies who tend to be  
11          the corporate 9-A franchises; not the smaller  
12          businesses --

13          BRIAN SAMPSON:   It can --

14          SENATOR KRUEGER:   -- that tend to be the  
15          other categories?

16          BRIAN SAMPSON:   It can also be those smaller  
17          ones.

18                 It depends on how they were incorporated.

19                 And, again, as you heard from Deb Warner, it  
20          depends on what they were told --

21          SENATOR KRUEGER:   So, again, just to make  
22          sure I understand:

23                 At least in this proposal, for the phasing  
24          out of the tax, we have 62 counties in the state.

25                 So fifty would, within a few years, have no

1 corporate franchise tax, and the remaining twelve  
2 would have whatever their current tax rate is.

3 How are you replacing the state revenue?

4 BRIAN SAMPSON: Well, one of the things we  
5 think the State should do is develop the  
6 Marcellus Shale. We do believe that New York State  
7 can do a safe development of hydraulic fracturing.  
8 That will bring immense amounts of tax revenue to an  
9 area of the state that desperately needs it, that  
10 being the Southern Tier, but it will also bring  
11 incredible amounts of revenue to the State as well.

12 That would be one of the things we think the  
13 State should do.

14 SENATOR KRUEGER: And your -- it's the same  
15 scenario for the income tax, that it's the  
16 50 counties that are not the 12 counties?

17 BRIAN SAMPSON: Correct.

18 SENATOR KRUEGER: So you're -- if you have  
19 income below 50,000 and you live in one of the  
20 12 counties, you are somehow less deserving of a tax  
21 cut as a under-50,000-a-year New Yorker?

22 BRIAN SAMPSON: No, I don't think it's you're  
23 less deserving.

24 I think it's a -- it's understanding the  
25 realty that, when you look at medium income in the

1 state of New York, upstate has some of the lowest  
2 rates.

3 Consider, you know, when you look at  
4 Manhattan, Manhattan's median income is 67,000.  
5 Nassau County is 92,000.

6 When you look at Chautauqua County, it's  
7 forty-two.

8 When you look at St. Lawrence, it's 42,000.

9 We have a different economy. We have less  
10 income to pay a high tax burden.

11 It's giving those people that need it, a  
12 break, until they can get on their feet.

13 And at some point in the future, we may come  
14 back and say, This plan can be phased out. We've  
15 recovered, we've created more jobs, we're keeping  
16 our population, our young people are coming back.

17 But right now, Upstate New York is not  
18 thriving.

19 SENATOR KRUEGER: But if your income is below  
20 50,000, because that's the number you used as your  
21 cutoff, you're not less -- hmm, let me try to make  
22 sure I say it right, because I'm not going to define  
23 50,000 and below as poor.

24 But, if your income is below 50,000, you are,  
25 actually, probably poorer if you're in

1 New York City, because of the housing costs, than  
2 you are in Chautauqua County.

3 So what would be the State's justification  
4 for saying, people with X income are not treated  
5 equally under our income-tax law; it's a geographic  
6 question, not an income question, on an income tax?

7 BRIAN SAMPSON: Yeah, and, Senator, I'll be  
8 honest with you.

9 When we -- we didn't enter into this plan  
10 lightly. We struggled with, how do you balance that  
11 argument?

12 But, I think this is an instance where it  
13 will benefit the New York City metropolitan area to  
14 have a vibrant Upstate New York. Less of the money  
15 from New York City will be spent in Upstate New York  
16 to balance budgets.

17 When that happens, the money can stay in  
18 New York City to benefit those residents there.

19 Right now, they're subsidizing the upstate  
20 economy, and I think if you ask them if they'd like  
21 that, they'd say, no, they wouldn't.

22 A good upstate is healthy for a vibrant  
23 New York City.

24 SENATOR KRUEGER: I completely agree, a good  
25 upstate is healthy for the whole state, and for the

1 New York 12-county region.

2 But, I can't agree with a concept of having a  
3 different set of tax policies for different counties  
4 in the state, under state law, just for the record.

5 BRIAN SAMPSON: Well, under state law, we  
6 currently have different thresholds, even when you  
7 look at it from the perspective of the WIC's law.

8 The WIC's law has three different levels, of  
9 500,000, 1 1/2 million, and 3 million.

10 So the State, in some instances, already has  
11 a policy where it is tiered.

12 SENATOR KRUEGER: Do you have any precedent  
13 for tax policy, at the state level, varying based on  
14 the county?

15 BRIAN SAMPSON: No, but the Start-Up NY  
16 program just, in essence, created that, by having no  
17 income tax for the people that are credited with  
18 being in a startup zone.

19 SENATOR KRUEGER: And does Unshackle New York  
20 support the special tax-incentive programs, such as  
21 that new one, as a model that you support?

22 BRIAN SAMPSON: Yeah, we did support the  
23 Start-Up program. We do believe it will be helpful.

24 One of the points we did argue, though, is we  
25 didn't think having a disparity in the income tax

1 was appropriate at the time; but it's passed now,  
2 so, it exists.

3 SENATOR KRUEGER: Well, I actually didn't  
4 support that one either, just for the record.

5 If you're reducing the sales-tax collection,  
6 again, only in certain counties, are you also  
7 proposing the counties match that with a reduction  
8 in their own sales tax?

9 BRIAN SAMPSON: No.

10 No, the counties are [unintelligible], held  
11 completely harmless in this approach.

12 This would be the State forgoing its  
13 sales-tax collections, not the counties.

14 SENATOR KRUEGER: And have you done an  
15 estimate on what the revenue and total loss to the  
16 State would be if your plan was implemented?

17 BRIAN SAMPSON: It's about -- for 2014-2015,  
18 it would be about \$860 million.

19 But, again, we believe some of that could be  
20 offset by the development of the Marcellus Shale,  
21 and the revenues that would bring.

22 SENATOR KRUEGER: And I see you have a  
23 Marcellus Shale revenue proposal.

24 Is that a new tax you're proposing?

25 BRIAN SAMPSON: No, it would just based on

1 the jobs that are created, and the sales tax that  
2 are collected on the development of the shale area.

3 SENATOR KRUEGER: Sales tax on the gas?

4 BRIAN SAMPSON: No, sales tax on hotel rooms,  
5 different things -- food -- as the workers would be  
6 there, investing in those communities.

7 SENATOR KRUEGER: So you're proposing a plan  
8 that reduces state revenue by, you said,  
9 approximately 800 million? Did I hear you right?

10 BRIAN SAMPSON: 860 million, yes.

11 SENATOR KRUEGER: 860 million?

12 BRIAN SAMPSON: Yes.

13 SENATOR KRUEGER: Okay, so -- so it would  
14 reduce state revenue by 860 million, but you're  
15 proposing that opening up fracking in the entire  
16 Marcellus Shale area would generate \$78 million in  
17 new economic activity, not that that would actually  
18 be money to the State?

19 BRIAN SAMPSON: It would just in this year;  
20 just in 2014-2015.

21 But, if you look at the Manhattan Institute  
22 and study that they did on the development of the  
23 Marcellus Shale, if you fully implemented it, it  
24 would be somewhere between 15,000 and 18,000 jobs.

25 Those are people that are now paying higher

1 income taxes, because they're earning more revenue.  
2 They would be people frequenting the grocery stores,  
3 the restaurants, the hardware stores; reinvesting  
4 that money back into the community.

5 That's the economic boom that we think can  
6 exist with the Marcellus Shale.

7 SENATOR KRUEGER: We might need another  
8 hearing on fracking --

9 BRIAN SAMPSON: I'm sure we do.

10 SENATOR KRUEGER: -- although, we've got  
11 several, to actually disagree on the economic  
12 analysis of the Manhattan Institute report.

13 BRIAN SAMPSON: Sure.

14 SENATOR KRUEGER: I thank you for your  
15 testimony.

16 BRIAN SAMPSON: Thank you.

17 SENATOR DeFRANCISCO: Senator Valesky.

18 SENATOR VALESKY: Thank you,  
19 Senator DeFrancisco.

20 Thank you, Brian, for your presentation  
21 today. It certainly gives us some ideas to consider  
22 as we head into the budget process on the 2014  
23 legislative session.

24 One thing, I did want to follow up to a point  
25 that Senator Krueger was making.

1           And I look at that chart, and it relates  
2 specifically to your proposal in regard to sales-tax  
3 relief?

4           BRIAN SAMPSON: Yes.

5           SENATOR VALESKY: And, I'll just take the  
6 area of the state that I represent. I represent  
7 parts of three counties.

8           One county is in both columns,  
9 Madison County; the other two counties are not,  
10 Onondaga and Oneida county.

11           And my concern, I guess would be, that, are  
12 we not pitting counties in competition with each  
13 other, at a time when the general trend, both in  
14 government, in terms of the decisions that we've  
15 been making over the last several years?

16           You look at the economic development  
17 councils, under the Governor's leadership, have been  
18 formed regionally.

19           I think if you look at the things that  
20 private organizations, Center State CEO, for  
21 example, based in Syracuse, covers, I don't know,  
22 17, 18 counties.

23           BRIAN SAMPSON: Sure.

24           SENATOR VALESKY: -- and I think that concept  
25 has been to develop, and to do economic development

1 on a regional basis. Tourism, for example, we  
2 talk -- as opposed to county offices of tourism,  
3 we're now talking, the Adirondack, North Country,  
4 and some of the things the Governor has taken  
5 leadership there.

6 So, maybe it's not so much a question, but  
7 just a concern, that, by focusing on a county level,  
8 is that -- I'm not sure that competition is  
9 necessarily what you want to see, is it?

10 BRIAN SAMPSON: Well, first of all, I don't  
11 think it's competition.

12 Second point is, I would love to have put all  
13 48 counties up there, in Upstate New York -- what we  
14 consider "Upstate New York."

15 That's just -- that's too expensive.

16 So we went to an approach that looked at  
17 population loss and unemployment, and those are the  
18 counties that, arguably, need the most support right  
19 now.

20 And, again, we're not proposing that this be  
21 a plan that's done forever. It's the shot in the  
22 arm, it's the tax relief, that Upstate New York  
23 needs now, while we continue to get on our feet.

24 And once we're there, then it's a different  
25 approach.

1           SENATOR VALESKY: Yeah, and I agree with you,  
2 I think all counties, to one degree or another,  
3 certainly need assistance.

4           I'm just concerned that we not, in effect,  
5 penalize the counties that are doing better than the  
6 ones that are on that -- on that chart.

7           That's my only concern.

8           BRIAN SAMPSON: Well, I can -- my home  
9 county's not on the chart, so I'm sure I'm not going  
10 make a lot of people back home all that happy.

11           But, I understand your point, and we --  
12 again, as I shared with Senator Krueger, we didn't  
13 enter into this plan lightly. We put a lot of  
14 thought behind it.

15           You don't want to pit counties against each  
16 other, you don't even want to pit an upstate region  
17 against a downstate region, because we are all  
18 New Yorkers, but, the economic realities are, some  
19 of our counties are struggling more than others.

20           SENATOR VALESKY: Okay, thank you.

21           SENATOR MARCELLINO: I have just one  
22 question.

23           The --

24           BRIAN SAMPSON: To answer your question, I do  
25 like the brownfield tax credits.

1 [Laughter.]

2 SENATOR MARCELLINO: I'm getting predictable.  
3 That's not a good thing.

4 [Laughter.]

5 SENATOR MARCELLINO: Okay, that is my  
6 question, so I appreciate your answer.

7 BRIAN SAMPSON: Back, when we originally  
8 formed in 2006, one of first things we took on was  
9 brownfield redevelopment.

10 You know, as Deb Warner, from CenterState,  
11 acknowledged, we have a number of brownfields in  
12 Upstate New York, based on our manufacturing  
13 legacies.

14 So, the more that we can do to help develop  
15 those brownfields, the better it will be for  
16 everybody.

17 SENATOR MARCELLINO: Thank you.

18 SENATOR DeFRANCISCO: Have you gotten any  
19 legal opinion as to whether or not the state of  
20 New York Legislature could actually do this  
21 proposal, about different taxes for different  
22 regions?

23 I'm talking about sales tax.

24 BRIAN SAMPSON: No, we haven't.

25 I mean, it's certainly a point that we can

1 research.

2 SENATOR DeFRANCISCO: Well, all I'm  
3 suggesting is, I know you gave some examples, where  
4 different regions have different rules.

5 And, I'm not so sure I agree with those cases  
6 either.

7 But, I just think, if to enhance this, my  
8 first -- enhance your proposal, my first question  
9 is: Can we legally do it?

10 I kind of doubt it, but I would think that  
11 you might want to check that out, because that's a  
12 question that's gonna come up.

13 All right?

14 BRIAN SAMPSON: Sure, happy to do so.

15 SENATOR DeFRANCISCO: And, good.

16 Thank you very much. I appreciate it.

17 BRIAN SAMPSON: Thank you.

18 SENATOR DeFRANCISCO: The last speaker,  
19 Jessica Crawford, president of MedTech.

20 As I mentioned before, Manufacturers Alliance  
21 of New York State has another meeting. He'll  
22 submit -- he has submitted already.

23 Thank you for waiting patiently.

24 JESSICA CRAWFORD: Thank you.

25 SENATOR DeFRANCISCO: We saved the featured

1 speaker to the end.

2 JESSICA CRAWFORD: I'm know I'm last, so I  
3 will try to be brief and efficient here.

4 SENATOR MARCELLINO: You can save time by  
5 answering the "brownfields" question.

6 [Laughter.]

7 SENATOR DeFRANCISCO: Yes, this is a -- this  
8 has become a brownfield hearing.

9 JESSICA CRAWFORD: So I -- I just, first,  
10 want to thank you for the opportunity to speak to  
11 you on behalf of MedTech Association.

12 For those of you who do not -- or are not  
13 familiar with MedTech Association, it's a biomedical  
14 trade association in New York State.

15 My name is Jessica Crawford, and I am the  
16 president of MedTech Association.

17 We were initially established as an  
18 Upstate New York industry resource for the  
19 biomedical community, founded by Welch Allyn,  
20 Bristol-Meyers Squibb, ConMed Corporation.

21 I think Senators DeFrancisco and Valesky  
22 are very familiar with those companies.

23 And, we are now in our 10th year of  
24 operation, and a statewide association with member  
25 companies -- nearly 100 member companies all over

1 New York State.

2           So, I think the key thing to note here,  
3 though, is that our industry is growing, and it is  
4 one of the few industries growing in New York State,  
5 and I think it has the potential to really return  
6 economic relevance to Upstate New York, as well as  
7 providing a strong boost to the statewide economy.

8           While not immune from the recession, our  
9 industry has certainly fared much better than the  
10 overall economy, growing jobs over the past decade  
11 at a pace well above the national average.

12           And in a snapshot, for New York State, the  
13 biomed industry employs nearly 75,000 New York State  
14 residents. These are knowledge-based jobs with an  
15 average salary of over \$72,000. That's well above  
16 the state and national average.

17           Our member companies spend, annually, about  
18 \$2.7 billion a year; invest more than \$1 billion a  
19 year in research and development; and we export  
20 products and services in excess of \$1.1 billion a  
21 year.

22           While we are unique, we have our own unique  
23 set of challenges, our startup companies require  
24 multi-million-dollar investments with long  
25 maturation periods.

1           And, also, this dynamic regulatory  
2           environment, nationally, globally, this, combined  
3           with a new device tax, is really stifling innovation  
4           and forcing job cuts in many parts of the state.

5           The difficult business climate is really only  
6           amplified here in New York State, as we've been  
7           coined, and it's been found, that we're the worst --  
8           has the worst tax climate in the country.

9           So, I do have a couple of policy  
10          recommendations that I wanted to highlight, but  
11          before I get to that, I think it's really important  
12          to make you aware of what New York State --  
13          New York State's competition is, what we're up  
14          against.

15          Within the last year alone, one of our member  
16          companies, a large member company, more than  
17          500 jobs, they relocated their corporate function,  
18          corporate headquarters, to Texas.

19          Another member company, currently, is looking  
20          to expand and grow 170 jobs; average salary, \$60,000  
21          a year; full benefits. And, they're looking --  
22          they're being courted heavily by Massachusetts.

23          So, other companies, they're looking at  
24          expanding their operations in Ireland and-the U.K.

25          So, like I said, our companies are growing,

1 and the companies that I just mentioned are all  
2 Upstate New York companies.

3 So they're growing, but they're all looking  
4 at growing outside of New York, and outside of  
5 Upstate New York.

6 So the bad news is, the competition is  
7 fierce. It's national, it's global.

8 The good news, though, is that New York State  
9 has all of necessary assets to continue to grow  
10 innovation and help support these companies.

11 We have world-class academic institutions, A  
12 significant amount of academic R&D. I think most of  
13 you know, second in -- second to California, in the  
14 country;

15 A considerable patents per capital;

16 And a significant number of Ph.D.s.

17 So, we have all of those assets.

18 Unfortunately, traditional tax incentives  
19 that have been put in place to mitigate this  
20 difficult business climate, like the Excelsior Jobs  
21 Program, or the new Innovation Hot-Spots Initiative,  
22 they're misaligned with our industry and they're  
23 tethered to job growth.

24 And like I mentioned before, some of our  
25 companies, they have very large -- very long

1 maturation periods.

2 And to give you two examples, and they're two  
3 extremes, but:

4 SmartPill, a company that was based in  
5 Buffalo, New York, medical-device company,  
6 \$60 million of investment over 9 years. They only  
7 grew to 14 jobs.

8 They came across some reimbursement hurdles,  
9 couldn't raise more money. They were acquired by an  
10 Israeli company, and those jobs moved, and those  
11 potential jobs that could have happened, if it were  
12 to stay in New York, were moved to Israel.

13 The other extreme, but another good example,  
14 is Regeneron, which is very -- you'll probably hear  
15 more about Regeneron than SmartPill -- it took them  
16 20 years, but after two decades, kind of hit a home  
17 run with a drug therapy, an eye-drug therapy. They  
18 went from 600 jobs to over 2100 jobs in  
19 New York State.

20 So, that's the potential, and you'd like to  
21 see companies like SmartPill get to that potential  
22 and keep those jobs here in New York.

23 Tax incentives that would help spur  
24 innovation and help our companies in New York State  
25 include a refundable R&D tax credit available to

1 companies operating at a loss;

2 As well as an angel tax credit, to support  
3 seed funding, and help some of our promising biomed  
4 startups attract more venture capital.

5 With respect to the refundable  
6 research-and-development tax credit, this would  
7 specifically target the biomedical industry.

8 Potential models for a credit like this,  
9 something similar to the federal model that's being  
10 used today, a refundable R&D tax credit;

11 Or, there's a unique model in Massachusetts  
12 that ties tax credits to the FDA user fees, and  
13 that's been very successful in Massachusetts.

14 An angel tax credit is a really smart  
15 investment -- a smart state investment, since more  
16 than 10 percent of private-sector jobs come from  
17 venture-backed companies, and venture-backed revenue  
18 accounts for 20 percent -- 21 percent of U.S. GDP.

19 So, Arizona has a really great program. It's  
20 a state-backed program. It covers 35 percent of  
21 investment for 3 years in companies with fewer than  
22 \$10 million in assets.

23 So the key here is, our industry is growing;  
24 however, I think true success will be measured by  
25 whether we can keep that growth here in

1 New York State and avoid some of those jobs leaving,  
2 whether it's to Massachusetts or Texas or Arizona,  
3 or another country. And that's happening today.

4 That growth is real, and the growth is --  
5 it's -- you know, the growth is at our fingertips in  
6 New York State, and I feel like this industry is  
7 really the key -- key to that.

8 So if you can support that, we would  
9 appreciate it.

10 I look forward to working with you on any of  
11 those policy recommendations, or others. I'm open  
12 to continuing that dialogue.

13 SENATOR DeFRANCISCO: Questions?

14 SENATOR KRUEGER: One.

15 SENATOR DeFRANCISCO: Senator Krueger.

16 SENATOR KRUEGER: Thank you.

17 Thanks for your testimony.

18 I will start off by saying, I actually don't  
19 think we should take taxpayers' money and do  
20 venture-fund or angel-fund investing, the  
21 private-sector model.

22 But, in the private-sector, if somebody  
23 invests, either in a venture fund or in an  
24 angel-type fund, they get a return, if, and when,  
25 there's success.

1           In the proposals you're making, would the  
2 state's taxpayers be shareholders in the business  
3 and get the return?

4           JESSICA CRAWFORD: You know, that's an  
5 interesting model.

6           That's not the model I'm proposing, but I  
7 would be interested in looking at something like  
8 that. But, I haven't -- that wasn't what I was  
9 initially proposing, but that's an interesting way  
10 to look at it, and it's something I would look more  
11 into.

12          SENATOR KRUEGER: So in your proposal, we tax  
13 people, and then we invest, in some percent, some  
14 small percentage of companies who are out there on  
15 the -- looking for investors?

16          JESSICA CRAWFORD: It would be a tax credit  
17 for, you know, an investor who's looking at, you  
18 know, investing in a small biomedical company.

19          And what happens is, right now, because of a  
20 lot of economic uncertainties, the regulatory  
21 environment, it's really stifling invest- -- it's  
22 cutting back on investments in the biomedical  
23 community.

24          The life-science industry itself, because of  
25 the amount of money it takes to invest -- like I

1 said, \$60 million over 9 years, and the company  
2 still didn't survive -- it takes a lot of money to  
3 bring, you know, whether it's a drug therapy or a  
4 device to market, and it could take, 20, 20-plus  
5 years.

6 So, that's -- the goal is to provide an  
7 incentive for more people to invest in that startup,  
8 those startup technologies.

9 And in doing so, what we've seen in our other  
10 states across the country, those types of credits,  
11 those incentives, that helps attract more capital,  
12 more investment, into companies, and to the state.

13 Our companies, typically, the monies appear  
14 to dry up somewhat in New York State, they go to  
15 California, they go to Massachusetts, to look for  
16 investments.

17 And then what happens is, those investors are  
18 in Massachusetts and California, and those jobs go  
19 to Massachusetts, California, other states.

20 So you'd like to see those companies grow  
21 here. You'd like to see the investments happen  
22 here.

23 SENATOR KRUEGER: And is there any research  
24 that shows they go to California and Massachusetts  
25 because of tax incentives for the investors?

1 JESSICA CRAWFORD: Investors? Yeah, there  
2 are -- I mean, there's certainly some data I can  
3 share with you, to back that up.

4 SENATOR KRUEGER: I would appreciate that.  
5 Thank you.

6 Thank you.

7 SENATOR DeFRANCISCO: Thank you.

8 And, again, the lack of questions has nothing  
9 to do with the lack of interest in what you had to  
10 say. It's just that everyone is, pretty much, wiped  
11 out at this point in time.

12 JESSICA CRAWFORD: It's a long day.

13 No, I appreciate your time.

14 SENATOR DeFRANCISCO: But, thank you very  
15 much for appearing.

16 JESSICA CRAWFORD: Thank you.

17 SENATOR DeFRANCISCO: And this now closes the  
18 first of five of our hearings.

19 Thank you all.

20 (Whereupon, at approximately 2:01 p.m.,  
21 the public hearing held before the New York State  
22 Senate Standing Committee on Finance and the  
23 New York State Senate Standing Committee on  
24 Investigations and Government Operations  
25 concluded, and adjourned.)