BEFORE THE NEW YORK STATE SENATE FINANCE
AND ASSEMBLY WAYS AND MEANS COMMITTEES

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JOINT LEGISLATIVE HEARING

In the Matter of the
2023-2024 EXECUTIVE BUDGET
ON TAXES

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Hearing Room B
Legislative Office Building
Albany, New York

February 9, 2023
3:16 p.m.

PRESIDING:

Senator Liz Krueger
Chair, Senate Finance Committee

Assemblywoman Helene E. Weinstein
Chair, Assembly Ways & Means Committee

PRESENT:

Senator Thomas F. O'Mara
Senate Finance Committee (RM)

Assemblyman Edward P. Ra
Assembly Ways & Means Committee (RM)

Assemblywoman Jaime R. Williams
Chair, Committee on Real Property Taxation

Senator Andrew Gounardes
Chair, Senate Committee on Revenue and Budget

Assemblyman Brian D. Miller

Senator Dean Murray

2023-2024 Executive Budget
Taxes
2-9-23

PRESENT: (Continued)

Assemblywoman Inez E. Dickens

Assemblyman Erik M. Dilan

Assemblywoman MaryJane Shimsky

Assemblyman Brian Manktelow

Assemblyman Zohran K. Mamdani

Assemblyman John T. McDonald III

Senator Peter Oberacker

Assemblyman Kenneth Zebrowski

2023-2024 Executive Budget
Taxes
2-9-23

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CHAIRWOMAN WEINSTEIN: Good afternoon.

We are about to start the second hearing of today, so good afternoon. I am Helene Weinstein, chair of the New York State Assembly's Ways and Means Committee and cochair of today's hearing.

Today we begin the fifth in a series of hearings conducted by the joint fiscal committees of the Legislature regarding the Governor's proposed budget for fiscal year 2023-'24.

The hearings are conducted pursuant to the New York State Constitution and the Legislative Law.

Today our joint committees will hear testimony regarding the Governor's proposed budget for Taxation.

Let me take a moment now to introduce the members from the Assembly, and then Senator Krueger, the chair of Senate Finance, will introduce the members from her conference.

So we have with us the chair of our Real Property Tax Committee, Assemblywoman

Williams, and then Committee Members Dickens, Shimsky, Dilan, Zebrowski, and Mamdani. And Mr. McDonald, who was with us at the prior hearing, is also here.

Senator Krueger?

CHAIRWOMAN KRUEGER: Thank you so much.

I'm joined by Senator Gounardes, our chair of Taxation and Budget.

And I'll ask my colleague, Senator Tom O'Mara, the ranker on Finance, to introduce his team.

SENATOR O'MARA: Thank you, Chairwoman.

We have Senator Dean Murray and Senator Peter Oberacker.

CHAIRWOMAN WEINSTEIN: Assemblyman Ra?

ASSEMBLYMAN RA: Thank you.

We have Assemblyman Brian Miller, our ranker on the Real Property Tax Committee, and Assemblyman Manktelow, a member of the Ways and Means Committee.

CHAIRWOMAN WEINSTEIN: Thank you.

So just for those of us who -- those

people who have -- both witnesses and members who haven't attended prior hearings, just a reminder about ground rules. Witnesses, the governmental witness, our tax commissioner, has 10 minutes. Nongovernmental witnesses, who will be in a panel later, have three minutes each.

Then the time limits for questions and answers after the presentations: The chairs of the relevant committees will have 10 minutes and a second round of three minutes, if needed. The ranking members of these committees will get five minutes each. And all other members who are a member of the relevant committees will get three minutes each.

Just a reminder to all the witnesses that your written testimony has been submitted to the legislators in advance, so we ask that you do not read your written testimony to us or you will find out that three minutes -- or 10 minutes -- goes awfully fast when you read, and you never get to your end.

And then just to the legislators who are here, again, as we've said before, let either myself or Senator Krueger know, or your ranker know, if you wish to question a witness or a panel of witnesses. After the opening remarks of each witness or panel, we will be closing the list.

And just for everyone, keep an eye on the time clock, either the one that's just the count-down clock or the one that has the red -- we'll have the green light on when the time starts. The yellow light will come on when there's a minute left, and you'll hear a beep. And then the red light will be several beeps, and we will cut you off if you keep going.

So with that, I'm pleased to welcome -- oh, and just in addition, for both witnesses and the participants and any audience members, there are no PowerPoint presentations, placards, or signs permitted in the hearing room by either witnesses or our colleagues.

So now, with that, I'm happy to invite

the commissioner of Tax to -- the New York State Department of Tax and Finance -- actually you're still acting commissioner, right?

ACTING COMMISSIONER HILLER: Yes.

CHAIRWOMAN WEINSTEIN: -- so Acting Commissioner Amanda Hiller, who's the acting commissioner and general counsel, to present her testimony.

And you have 10 minutes, and then I'm sure there will be some questions.

ACTING COMMISSIONER HILLER: Absolutely.

Can everyone hear me? Is this okay? Yes? Good.

Good afternoon, Senator Krueger --

CHAIRWOMAN WEINSTEIN: Just hold it -- we've been having some issues with the mics. Just hold it --

ACTING COMMISSIONER HILLER: Closer?

CHAIRWOMAN WEINSTEIN: You got it.

ACTING COMMISSIONER HILLER: Closer closer? Okay?

Good afternoon, Senator Krueger,

Assemblymember Weinstein, and members of the fiscal and tax committees. I'm Amanda Hiller, acting commissioner and general counsel at the Department of Taxation and Finance. Thank you for this opportunity to discuss the department and Governor Hochul's 2024 Executive Budget.

As we move forward to fiscal year '24, there are plenty of risks on the horizon. U.S. real GDP fell two consecutive quarters in the first half of 2022, prompting concerns that the U.S. economy might already be in a recession. Real GDP rebounded by 3.2 percent in the third quarter, but the recession fears persisted throughout the year.

To address inflation, the Federal Reserve tightened monetary policy at the fastest pace on record. And the Division of Budget now expects the national economy to enter a downturn in 2023, constraining U.S. Real GDP growth to 0.5 percent this year.

Fortunately, Governor Hochul has positioned the state well. We have an

$8.7 billion surplus, which is primarily due to continued strength in tax receipts. In October 2021, the Governor committed to building the state's reserves to ensure that it could honor current commitments through good times and bad. The extraordinary gains in tax receipts have been directed to accomplish that goal. By the end of fiscal year '23, the state will have boosted its reserves by over $20 billion since fiscal year '20.

Even as tax receipts continue to show strength in the current year, DOB has downgraded its expectations for the economic outlook twice since the fiscal year '23 Enacted Budget Financial Plan was published just nine months ago. DOB is now forecasting a mild national recession in the first half of calendar year '23, with U.S. real output projected to decline, followed by a recovery in the latter half of the year.

At the state level, key economic drivers of tax receipts have been revised sharply downward. Total wage growth is now

expected to slow to 2.4 percent through fiscal year '23 and 2.3 percent in fiscal year '24, significantly lower than the May 2022 forecast. In particular, bonus income is expected to decline by 27 percent from the fiscal year '22 peak.

Governor Hochul recognizes these economic trends and has proposed a responsible budget that makes targeted investments in housing, crime prevention, and energy affordability, while also addressing the MTA "fiscal cliff" and maintaining other crucial funding and support for New Yorkers. The Governor's $24 billion commitment to education remains intact: The budget fully phases in Foundation Aid and includes $125 million for pre-K and $250 million for learning loss tutoring programs. There is also a $1 billion investment to provide healthcare, shelter, and other critical services to asylum seekers, and $1.3 billion in economic development incentives to grow our economy and provide opportunities for New Yorkers.

Importantly, the Executive Budget accomplishes all of this while remaining true to Governor Hochul's pledge to not increase income taxes on New Yorkers. Many of the tax proposals in this budget address issues of equity and fairness, including ensuring that homeowners receive any excess proceeds from tax foreclosure auctions.

This budget will also incentivize employers to help reduce the costs of daycare for working parents, and it will improve the effectiveness of tax credits for working farmers, who often struggle with liquidity due to the capital-intensive nature of farming.

We will also continue the current tax rate on those corporations making the most money, which even at this level remains competitive relative to rates in other states and, in particular, to our neighbors.

Other proposals in the budget conform us to federal law or clarify the intent of initiatives that the Governor and Legislature previously enacted together.

This time last year I spoke of the scale of Tax Department operations, a scale that never ceases to impress me. Last year the 3,800 members of Team Tax processed 29 million tax filings and closed 825,000 audits, as we worked to collect nearly $160 billion in state and local revenue.

These volumes are only possible because we have sophisticated information technology platforms. These systems were world-class when they came online, but that was over 30 years ago. Worse, the underlying technology is closer to 40 years old.

That's why I'm grateful to the Governor and the Legislature for continuing to support the state's efforts to stabilize and modernize the Tax Department's information technology. This critical IT modernization effort will also significantly improve the flexibility and interoperability of our systems, helping to ensure tax revenues are effectively collected and processed with fair and equitable outcomes

for all of the department's current and future customers.

We're working closely with our Office of Information Technology Services partners to fully leverage this opportunity and ensure its success. As we enter the second year of our five-year implementation plan, I'm pleased to report that we are on-track and on-budget.

We are also pursuing parallel projects that leverage technology to improve the taxpayer experience. Although we are a technology-driven agency, many of our day-to-day operations are surprisingly old-school. For example, each year we ask hundreds of thousands of taxpayers to mail us documents confirming their eligibility for various tax benefits, which is why I'm excited that we are currently testing a new tool that will allow taxpayers to upload documents to us using their phones.

This year we also expect to begin to pilot a project to deliver STAR credits by direct deposit, which will shave several days

off the time it takes to deliver this crucial property tax relief to homeowners -- and it will also avoid costly check production and mailing costs. It's just a great efficiency if we can make it work.

And we will continue to keep the taxpayer experience front of mind as we explore other opportunities to bring our operations further into the digital age.

To conclude, I'm incredibly proud of the work that we're doing at the department, and I'm excited about Governor Hochul's Executive Budget, which will make a real difference in the lives of New Yorkers. I look forward to working with all of you to move these initiatives forward, and I'm happy to take any questions.

CHAIRWOMAN WEINSTEIN: Thank you.

We'll go first to Assemblymember Williams, chair of our Real Property Tax Committee.

ASSEMBLYWOMAN WILLIAMS: Thank you so much. I have a few questions.

First, we will start -- does the

department know the approximate percentage of eligible homeowners that have not received their rebate credit check?

ACTING COMMISSIONER HILLER: Have not received the homeowner tax rebate check?

ASSEMBLYWOMAN WILLIAMS: Yes.

ACTING COMMISSIONER HILLER: I don't know that number offhand, but I know it's a very small number. And I can explain how that works.

We've delivered about 2.4 million checks to homeowners. There is a provision in these laws that relates to the federal taxability of the benefits, and it requires us to ensure that the check that we send does not exceed the tax liability of the property owner. So there are -- we have confidence in most of the checks and can mail them well in advance of tax bills and that final part of the tax cycle. But sometimes we have to wait until we actually get the final tax bills from a local government. And so we've cleared that for most of the year, but in Long Island, in Nassau and then in Suffolk,

their tax schedule is later in the calendar year. So we're still clearing some of those ones that are right on the edge.

But I think it's in -- a hand -- it's a couple of thousand out of the 2.4 million we've sent.

ASSEMBLYWOMAN WILLIAMS: Okay. Also, how are the ADUs assessed for real property taxation purposes at the local level? For example, are they assessed like other residential properties?

ACTING COMMISSIONER HILLER: How are -- the accessory dwelling units, ADUs?

ASSEMBLYWOMAN WILLIAMS: Yes.

ACTING COMMISSIONER HILLER: okay. They're assessed just like any other property. They're assessed based on the value of that property in the marketplace. So a property that has one dwelling unit on the property is going to be assessed based on its value, presumably its value in the marketplace if you put up a for-sale sign up today.

And then if there is another dwelling

unit on that property, that dwelling unit is going to be assessed as part of the package of that property. You're buying that house, you get an extra unit when you buy that property.

ASSEMBLYWOMAN WILLIAMS: Okay. Also, allowing the sales tax exemption for vending machines to expire will put hundreds of vendors out of business. Has Tax and Finance done an analysis of the impact to sales tax revenue for the state if those small businesses cease to exist? And more so, the same challenges that exist for visually impaired vendors, which affect vendors across the board. So why wouldn't you extend the exemption for the whole industry?

ACTING COMMISSIONER HILLER: So first, I don't think that the Tax Department has done that specific analysis.

I know that historically part of the reason there was an exemption for vending machines is because it was very difficult to program the machine to have an odd amount. You wanted that candy bar for a dollar, and

adding another seven cents onto it made it difficult to handle with the cash in vending machines.

I believe that the conversation has evolved over the years as many more vending machines move to be cashless, because there's a different opportunity to set the price of the product. And that -- I think that that's part of the ongoing dialogue around the vending machine exemption.

I think Governor Hochul is cognizant that the blind and visually handicapped, who are part of OCFS's business program and often are operating the little convenience shops in state office buildings, for example, they are offering -- as the foot traffic in those buildings has gone down, the vending business is increasingly important. And that's why this would extend the vending exemption for that population.

ASSEMBLYWOMAN WILLIAMS: Okay. And lastly, does the department have an idea on the number of new seniors who would qualify for the senior citizen's exemption if the

definition was to be amended?

ACTING COMMISSIONER HILLER: We think that slightly more senior citizens would likely qualify for the exemption. But more importantly, we think that more senior citizens who already qualify for the exemption would be able to successfully apply for the exemption and get that real property tax benefit.

The current definition of income in the senior citizen exemption is incredibly complicated, and it does not correspond to lines on your tax return. So senior citizens have to bring extensive documentation to their assessor's office in order to qualify for that exemption. And assessors have been telling us for years that they're concerned that senior citizens aren't claiming the exemption because that lift is really difficult and they have to do it each year.

So the proposal to simplify the income definition for the senior citizen exemption is really to align it with lines on the tax return while retaining the core principles

that were part of the original definition of income, so that we can help make sure that it's easy for senior citizens to claim.

ASSEMBLYWOMAN WILLIAMS: Okay. Thank you, Commissioner.

CHAIRWOMAN WEINSTEIN: Senate?

CHAIRWOMAN KRUEGER: Thank you.

We're starting out with Senator Gounardes for 10 minutes as chair.

SENATOR GOUNARDES: Good afternoon, Commissioner. Before I start my questions, I just want to -- in my previous role I was the chairman of the Civil Service Committee and I had the chance to visit the Department of Taxation and Finance. We had a whole tour, got to meet lots of the employees there. And just want to echo your compliments for the hard work they do. It was incredible, the scale and the size and the efficiency of that operation, and it's a testament to those workers. So thank you for acknowledging that.

ACTING COMMISSIONER HILLER: Thank you.

SENATOR GOUNARDES: I want to -- I have a bunch of questions here.

Can you -- a couple of years ago we made changes to the personal income tax rate and the corporate tax rate. Can you speak to the impact of those changes on the budget since those times?

ACTING COMMISSIONER HILLER: You know, I don't know offhand what we thought the top corporate tax rate would bring in in revenue. I know that Governor Hochul has proposed to extend it and that we anticipate that it would bring in about $800 million this year and 1.2 billion next year and 880 the year after. So I would guess that it was probably somewhere around that.

Our tax data is -- we have more recent tax data for personal income tax than for corporate tax for a variety of reasons related to when corporations file their taxes. So we have preliminary income tax data through 2021, but we're still working with 2020 and 2019 data for corporate taxes.

On the income tax side --

SENATOR GOUNARDES: And why is that?

ACTING COMMISSIONER HILLER: I think there are a couple of reasons. First, we always each year prioritize finalizing the filing -- what we call the study file for personal income tax. We prioritize that in order to do forecasting for the year.

And so we just closed tax year '21. Those were the returns that were filed in '22 for tax year '21. We just closed that processing. And we have a preliminary file of that data, and that will evolve over the year as taxpayers that are under audit, when those audits complete, then they'll move into the study file and then we'll get a final study file later this year.

But a corporation might have a tax filing year that starts in December, so in December of 2021. Their year ends in December of 2022. They'll be required to file that return for 2021 sometime in 2023. There are multiple extensions that are available. And before you know it, we're in 2024.

SENATOR GOUNARDES: Gotcha.

ACTING COMMISSIONER HILLER: So there's just a little bit of difference of scale.

But certainly we're anticipating on the corporate side about 800 million in the first year of the extension. And so I would say we're probably around there in terms of what we brought in under that rate in the first years.

SENATOR GOUNARDES: Sure. Thank you. I just want to move on.

And can you speak to, you know, the Governor's proposal to extend the corporate tax rate? We're not touching PIT, I understand that. The corporate tax rate proposal, to just extend it for an additional three years. Why three years? Can you speak to how that number was derived? Why not longer, why not shorter? What was the thinking behind that? Especially when we're projecting shortfalls starting next year in the outyears moving forward as we're looking at the entire fiscal financial plan.

ACTING COMMISSIONER HILLER: You know, I can't speak to the specific reason to choose three years. I mean, I can speak generally that the notion of having sunsets on legislation, including perhaps tax rates, is to ensure that we have the opportunity to revisit them.

There's nothing about extending it for three years that would prevent the Governor and the Legislature from extending it again for an additional three years or making it permanent at that time.

I also -- you know, I'm certainly conscious that although we had a strong stock market in 2021 and 2022, the forecasts suggest that we won't see those same trends in 2023 and 2024. So it might be that we are going to be revisiting a number of our tax choices as we -- in the years ahead.

SENATOR GOUNARDES: Sure. And I think -- you know, we recognize that there might be some uncertainty ahead. The data is really mixed. You know, there's -- on one hand it says we're going down and then we

have the hottest, you know, labor market, you know, in 70 years. Right? So there's a lot of conflicting data out there.

I'm concerned, though, when we maybe are a little short-sighted in identifying these things, because this -- we're obviously projecting shortfalls in the outyears based on what we're proposing now. And that determines the frame by which this whole budget is being presented.

And if you're presenting it with a doom-and-gloom perspective, well, that limits the choices or perceives to limit the choices that we might have to make or can make. And so I'm concerned about we are self-selecting to narrow our scope and our view here.

You mentioned some of the incentives and some of the credits and investments through tax policy the Governor is proposing. Can you tell me what in this budget and through tax policy the Governor is proposing to address childhood poverty?

ACTING COMMISSIONER HILLER: I think maintaining our current income tax structure

and not increasing taxes on New York families is certainly going to be helping New York families, and that's a central part of Governor Hochul's proposal.

But I'm also aware that there currently is a Child Poverty Reduction Task Force that is deliberating about how best to address child poverty going forward. And that's a collaborative effort involving representatives of different state agencies and representatives of organizations that serve families in poverty.

And, you know, they haven't made specific recommendations yet out of that task force, and I would anticipate that when that happens, that there will be an effort to ensure that we're moving forward to implement those proposals.

SENATOR GOUNARDES: You know, under existing state law we have to halve the rate of childhood poverty by 2030. We're already in 2023. And any expert who studies tax policy and children will tell you that you're not going to get anywhere near that reduction

without significantly increasing the size of the child tax credit, providing families assistance.

Is there anything in this Governor's proposal that does -- makes any adjustments or increases to the state's child tax credit?

ACTING COMMISSIONER HILLER: No. The current -- Governor Hochul's Executive Budget maintains New York's generous Earned Income Tax Credit, Empire State Child Credit, Child and Dependent Care Credit programs. We provide those refundable credits to millions of families. And those are critical income supports. They represent a policy choice to deliver those income supports through the tax code. But certainly the tax code isn't the only way that the state is providing income supports to low-income families.

SENATOR GOUNARDES: Sure. Thank you. I think we can, you know, disagree a little bit there in that we still have -- New York is still ranked one of the highest states in terms of the levels of childhood poverty. We're at 19 percent. The Comptroller put out

a report on this in December. Stubbornly high rate of childhood poverty.

And even the Child Poverty Task Force is going to come out with a recommendation to increase the child tax credit. So I think it's a missed opportunity for us here in this budget. We have to get to 50 percent in seven years. This is Year 1 of that seven. If we don't do anything, we are going to be way behind in doing that.

The existing state child tax credit is linked to the pre-2017 federal child tax credit, is that correct?

ACTING COMMISSIONER HILLER: Yes.

SENATOR GOUNARDES: Can you speak to why that is, or how that --

ACTING COMMISSIONER HILLER: We -- right at the end of 2017 the Trump administration advanced significant comprehensive tax changes, the Tax Cuts and Jobs Act. And New York had to respond to those changes essentially immediately as part of that budget cycle. And, you know, for the most part the policy decision that was made

at the time by the Governor and the Legislature was to maintain the status quo for New York as compared to federal law before the Trump tax cuts took effect, and then go essentially one at a time to re -- what we call recouple to the federal law, where we thought that the policy change that was made as part of the Trump tax cuts made sense for New York.

And so there was essentially a blanket decoupling from the changes that were being made by the Tax Cuts and Jobs Act in order to make sure that the -- that many of the changes that were being driven by that federal tax legislation didn't disturb the policy choices that New York had already made.

SENATOR GOUNARDES: You will find no disagreement from me in questioning the wisdom of some of the Trump tax cuts.

However, the 2017 law also increased the maximum amount of the credit from $1,000 to $2,000 per child, yet lowered the refundability threshold from 3,000 to 2500

and essentially doubled the phaseout thresholds. Which the totality of all those choices in the 2017 law was a more generous federal tax credit, but the state is not matching or meeting that moment. And the state tax credit right now is capped out at $500 per child.

So I'm concerned that we have not taken advantage of our own tool in our toolkit through state tax policy to match the more generous -- or come near or nearer the generosity of the federal government, especially when we know that New York ranks so persistently high on the scale of children who live in poverty.

Do we have an estimate or can you ballpark or has any analysis been done what it would cost to -- if we bring the state tax code up and we kind of recouple back to the federal child tax credit standards, what that would cost us?

ACTING COMMISSIONER HILLER: You know, I don't know that offhand. I can certainly go back and ask my staff to look at that

question and get back to you.

SENATOR GOUNARDES: Okay, great. I'll have some more questions on the second round. Thank you.

ACTING COMMISSIONER HILLER: Sure. Of course.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Zebrowski, three minutes.

ASSEMBLYMAN ZEBROWSKI: Thank you.

Commissioner, appreciate it. I chair the Corporations, Authorities and Commissions, so with only three minutes I'm going to have to talk about the MTA Payroll Mobility Tax.

I don't know if you're going to have all the answers to this, but I would appreciate if your department could supply myself and the committee with some additional information that we probably won't get to in the three minutes of a discussion today.

We're interested in sort of the overall rationale of choosing the payroll tax

as the way of raising the money for the MTA.

We're interested in how granular sort of the data you have is on who these businesses are, where they are. We're interested in -- so I've heard the estimate of 5 percent, this is only going to deal with 5 percent of businesses. My understanding is this increase will apply to those that have an annual payroll of over 1.736 million, right? The number is given in the quarterly number; for some reason my brain does it in an annual number.

ACTING COMMISSIONER HILLER: Somewhere around there.

ASSEMBLYMAN ZEBROWSKI: It doesn't seem very high to me. So I guess we would consider small businesses to be under that. I would think it would be a medium-sized business to have about a $2 million annual payroll. So just interested in sort of, you know, being given that data.

Be interested in if there were other alternatives you considered to fill this gap for the MTA, why or why not you -- why you

chose this one and why you didn't choose those.

Interested as to, with that data of the businesses, right, these level of New York businesses, in this category of 5 percent, assuming that's correct, what's the mean, what's the median? We have some very large businesses, some medium-sized business in the MTA district.

And lastly, whether philosophically you consider all the businesses in the MTA district to be similarly situated. You obviously have, I think, 12 counties that make up the MTA district, various levels of service, some that have customers and employees that utilize MTA services, and some like West of Hudson businesses that have no customers or employees that are able to utilize MTA services.

So those are the type of questions the committee has. There's no way you could answer that in three minutes. So instead, I decided to list them, and maybe you could get back to the committee on them.

Thank you.

ACTING COMMISSIONER HILLER: Sure. I don't think I have time to answer any of the questions.

(Laughter.)

ASSEMBLYMAN ZEBROWSKI: No, I don't think you do either.

CHAIRWOMAN KRUEGER: Sorry. She didn't have time to answer.

CHAIRWOMAN WEINSTEIN: That's okay. We'll -- not now, but I'll follow up with that when it's my turn.

ACTING COMMISSIONER HILLER: Okay. I mean, I can answer some of those questions, but we'll come back to it? Okay.

CHAIRWOMAN WEINSTEIN: Yeah, we'll come back to that, then.

ACTING COMMISSIONER HILLER: That's great.

CHAIRWOMAN WEINSTEIN: Senate?

CHAIRWOMAN KRUEGER: Senator Murray.

SENATOR MURRAY: Thank you very much.

I think we could have a whole hearing on the MTA payroll tax, to be honest.

But first let me start, Commissioner Hiller, with a statement. In looking at this, I'm looking at us prohibiting the sale of all flavored tobacco products, and I'm looking at what that's going to cost us: 116 million in fiscal year '24, 222 million estimated in fiscal year '25. The Nanny State rears its head again. And we're so concerned about health or something, and yet we're fine with sugar-coated candied THC edibles in all sorts of flavors. We're fine with all sorts of flavored alcohol. We now have alcohol seltzers that we're selling and generating revenue.

The reason I bring this up is we're perfectly willing to watch over $100 million go out the door in tax revenue, yet I look at the creation of the tax credit for childcare creation and expansion. The amount allocated this year is zero. I understand we're creating it, it's new. But we're giving away 116 million, an estimated 116 million in revenue. Why couldn't we have kicked that in quicker?

I also see when it does kick in, there's a cap, in fiscal year '25 and fiscal year '26, of 25 million. For childcare credits. I mean, we should -- that should be tripled, quadrupled. And we can't say it's because of revenue when we're watching a couple of hundred million go out the door by banning flavored tobacco.

Can you speak to that?

ACTING COMMISSIONER HILLER: You know, I want to be careful about talking about health policy, because that's definitively not my -- not my bailiwick.

But I do believe that the proposal to ban flavored tobacco is part of a broader effort to curb youth smoking, the costs of which are incalculable over the lifetimes of those children who begin smoking.

So I think that that's first something that has to be balanced over time, and I believe that my health policy colleagues have been thoughtful about that.

In terms of the tax revenue impact of that ban, New York has some of the highest

tobacco taxes in the country. And that's also part of a calculated effort to try to curb youth smoking by making the -- making cigarettes that much further out of reach for young people.

SENATOR MURRAY: I'm sorry, I have to -- you know, only because I have one more question.

ACTING COMMISSIONER HILLER: Of course.

SENATOR MURRAY: And by the way, we upped the tax last time and lost revenue because -- but not because people quit. They went other places. But really quickly --

ACTING COMMISSIONER HILLER: But children don't. That's part of the challenge.

SENATOR MURRAY: Real quickly, and to localize, Suffolk County had a ransomware attack on its website. I want to know, is there going to be any kind of an impact because of that in regards to rebates or STAR rebates or anything like this. Will there be any impact, or are we okay?

ACTING COMMISSIONER HILLER: We don't anticipate any impacts.

Staff at the department have worked with staff in Suffolk County about -- there are a number of places where we interact with county government. That includes property tax issues. It also relates to like real estate transfer tax issues and recording tax issues.

And we've been working with them to sort of smooth through the impacts of the ransomware attack.

SENATOR MURRAY: Okay, thank you so much.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: Yes, we go to Assemblyman Dilan.

ASSEMBLYMAN DILAN: Thank you, Madam Chair. And thank you, Commissioner. I'll get right to my questions.

In the budget proposal -- we covered some of this at the first hearing on Monday as it relates to the MTA and its potential

local share of revenue from the three downstate casinos. Can you give me more background on how that revenue is going to be split? Are they going to get a hundred percent of the revenue or are they going to split with the state and the General Fund in some form? Could you give me more detail?

ACTING COMMISSIONER HILLER: I wish I could answer that question, but it is definitely not in my lane. I'm not part of that part of the budget where we're talking about a new casino and how that revenue is going to split out, because the Tax Department doesn't have any role in that process.

I can certainly bring it back to my colleagues and ask them to --

ASSEMBLYMAN DILAN: Maybe that was probably more appropriate for Monday. But the question list --

ACTING COMMISSIONER HILLER: Sure, of course. I wish I knew, but I just don't.

ASSEMBLYMAN DILAN: The question list for Monday was extensive, so I figured it

might be faster here.

ACTING COMMISSIONER HILLER: It's worth a shot.

ASSEMBLYMAN DILAN: Also have a question on some of the changes you're making to the collection of local sales tax in terms of making the laws permanent. What's the rationale for doing that?

And how is New York City included in that? According to my documents, it's 57 counties outside of New York City. How is New York City treated with respect to that in either the existing law or some other -- something else that's not here?

ACTING COMMISSIONER HILLER: So first, with regard to New York City, New York has permanent authority to -- sorry. With regard to New York City, New York City has permanent authority to collect its sales tax. It doesn't come up for renewal every two years or every three years like the sales taxes in other counties do.

The Executive has long proposed to make the state authorization for local sales

taxes permanent at their current rates. That certainly would never preclude the Legislature from considering and enacting changes to the existing rates.

But the -- sales tax has increasingly become a central revenue stream for counties, and so there's uncertainty about that.

ASSEMBLYMAN DILAN: I get the answer. I want to try to squeeze in -- because, you know, it would be great for us because it saves us a lot of time at the end of session.

But would New York City then, under this proposal, get the right to be autonomous in the 1 percent increase that the other counties would have local authority to do?

ACTING COMMISSIONER HILLER: So right now New York City already has the authority, without coming back to the state, to do it. And that would be continued under this proposal.

ASSEMBLYMAN DILAN: I get that part. But the new law is going to allow the 57 other counties the autonomy to increase by 1 percent above the state rate. Will New York

City get that same right?

ACTING COMMISSIONER HILLER: So New York City's already above that rate. So the state-based rate is 3 percent. Most counties in the state are already at 4 percent or over 4 percent, and New York City already is as well.

ASSEMBLYMAN DILAN: Got it. Thank you.

CHAIRWOMAN WEINSTEIN: Senate.

CHAIRWOMAN KRUEGER: Thank you.

Senator Tom O'Mara.

SENATOR O'MARA: Thank you.

Good afternoon.

ACTING COMMISSIONER HILLER: Good afternoon, Senator.

SENATOR O'MARA: Last year we accelerated the middle-class tax cut, income tax cut. With inflation last year, this year, you know, bracket creep is becoming a significant issue in that.

Are you supportive of indexing our income tax brackets for inflation to limit the impact of this bracket creep?

ACTING COMMISSIONER HILLER: You know, one of the great things about being the Tax Commissioner is that we administer the policy choices of the Governor and the Legislature.

And, you know, I certainly understand an argument for indexing for inflation. I can also say that, you know, New York's tax brackets are very, very concentrated in the low income. In the low income there are several very, very, very low-income brackets. And then we start having very, very, very wide brackets. So, you know, one could also contemplate adding additional brackets to add additional progressivity into the tax, for example.

I think there are lots of ways that we could consider changing the current income tax rate structure to address that kind of creep. And it might include indexing, but it might include other ways of adjusting the brackets.

SENATOR O'MARA: Thank you.

I would I guess request that you have some discussions along that line --

ACTING COMMISSIONER HILLER: Sure. Of course.

SENATOR O'MARA: -- with the administration and try to get something moving on that.

One issue that's been a nuisance lately is these marijuana sticker shops across the state, cash businesses gifting marijuana. What is the department doing with regards to assuring they're paying taxes on this, both income and sales taxes?

You know, we've had law enforcement raid these entities that are operating in a gray market. Law enforcement, district attorneys are kind of in a quandary of how to deal with these. I know one DA at least is looking at enforcement of tax -- of not paying taxes.

But, you know, we've got one in Elmira that gave away three cars as incentives for people to shop in their business. Three brand-new automobiles. Another one went up to the rooftop of their store and threw $10,000 in cash out to their customers in the

parking lot.

What is the state doing -- first of all, they're not doing anything to shut these things down other than sending a cease-and-desist letter, which is useless. But what are we doing to at least collect tax revenues on these businesses that are operating this way?

ACTING COMMISSIONER HILLER: So, one, you know, I certainly understand your frustration around cannabis tax enforcement.

One of the things that -- I think there are a lot of assumptions about what the Tax Department can do around the enforcement of cannabis taxes. But the original legislation that was enacted didn't really give the Tax Department the kind of authority we would need to undertake cannabis enforcement the same way we undertake tobacco tax enforcement, for example.

And that discussion began -- I think towards the end of last session there was legislation kicking around that would expand our authority and make clearer when the

Tax Department can walk into a store and begin to search it and try to find illicit cannabis and the like.

And I would anticipate that those discussions are going to continue in this session, because at the end of the day the Tax Department has robust -- deep experience in enforcing tobacco taxes, and we understand that the consensus seems to be that the Tax Department will be playing a significant role in the future. But --

SENATOR O'MARA: Well, you could go into a convenience store and -- with enforcement actions on their failure to pay sales taxes. All sorts of things.

So regardless of them giving marijuana out, they're selling stickers for whatever price. And they're not paying taxes on that. Shouldn't there at least be enforcement actions taking place to make sure that they're at least paying taxes on the sales of these stickers?

ACTING COMMISSIONER HILLER: So first, you know, I can't speak to any specific audit

or enforcement activity around that. But I would say we would definitely have an expectation that a convenience store that is selling stickers, whether for a dollar or for $10 or for $100, is collecting sales tax from its customers on that sale.

And that -- that's definitely -- but there's a -- that doesn't happen. We don't get that information immediately. Those convenience stores are going to file their tax returns quarterly, it's going to be lumped into their larger return. And so we can go out and take enforcement action about individual ones, but there's a civil structure for that enforcement action where we send them a notice and we tell them that they owe more taxes. And then, you know, it goes through a process that sometimes takes many years on the civil side.

We don't have tax crimes around cannabis yet. We have had tobacco enforcement actions where we have happened to find cannabis in the course of tobacco inspections, and that has led to cannabis

arrests. And we're working closely with our law enforcement partners to make sure that that happens when we -- when we find cannabis in the course of our enforcement activities for other taxes.

CHAIRWOMAN KRUEGER: Thank you.

SENATOR O'MARA: We should be tracking this cash, whether it's cannabis or not. There's boatloads of it when they raid these places. They're doing over $100,000 a week.

CHAIRWOMAN KRUEGER: Thank you, Tom O'Mara.

Assembly.

CHAIRWOMAN WEINSTEIN: Assemblywoman Shimsky.

ASSEMBLYWOMAN SHIMSKY: Thank you very much, Madam Chair.

And thank you for joining us, Commissioner. I salute you for doing more digitization. I think moving into the 21st century is a good idea.

Were there any reductions in any of our budget lines taken from the cost savings we might anticipate from not having to do

mail and things like that?

ACTING COMMISSIONER HILLER: Not yet.

ASSEMBLYWOMAN SHIMSKY: Not yet.

ACTING COMMISSIONER HILLER: You know, I'm -- you know, we're actually focused on helping -- we're trying to -- we are really good at holding taxpayers accountable for having failed to demonstrate their eligibility for benefits, and we're trying to do a better job of helping to make sure that those taxpayers are able to claim the benefits that they're entitled to. Because for better or for worse, the Governor and Legislature have chosen the Tax Department to deliver a broad range of low-income supports to working families.

And so we're trying to help make sure that we can do better with taxpayers and help them comply. It's frustrating to me, as the general counsel of the Tax Department, that we can ask a taxpayer to provide a birth certificate for a child to demonstrate eligibility, and they don't. We go through a remediation process and they don't produce

it. We go to a hearing before an administrative law judge, and suddenly there's the birth certificate.

And I have to assume that that's because that family didn't feel comfortable mailing us the birth certificate. And so we have to try to find other ways to make it possible for taxpayers to answer the questions that are reasonable questions about their eligibility for the benefit, but do so in a way that is easier for them to comply and that will ultimately lead us to spend more money on those credits.

ASSEMBLYWOMAN SHIMSKY: And presumably it will take a lot less money if they could just email you the birth certificate as opposed to calling a hearing.

ACTING COMMISSIONER HILLER: I would certainly hope so, in the long run. But I think that that would be something that would play out over time.

ASSEMBLYWOMAN SHIMSKY: Okay. Okay.

And how many more frontiers do we have to go in terms of digitization?

ACTING COMMISSIONER HILLER: I think that -- you know, I'm really excited about our IT modernization effort because our platforms are on 40-year-old technology. But for example, we would like to be able to issue notices in Spanish. But our notices are currently hard-coded, and that means that every time we change a word, it requires decoders to go in and change that word in every variation of that notice.

And so the possibility of making those kinds of jumps in our engagement and in our service to taxpayers, really sort of depends on us replatforming that technology so that we have a different kind of flexibility around how we work.

ASSEMBLYWOMAN SHIMSKY: Okay. What percentage of our budget are our cash reserves at this point, and what is considered -- what is the range of acceptability?

ACTING COMMISSIONER HILLER: You know, I don't know that answer. I know that we're hoping to be at $20 billion at the end of

this cycle. But I think it's a $227 billion budget. Some of that is federal funds, so I think I would probably separate them out before I went down to the state.

So we're -- we're -- I can't give you that number. But we're making significant progress in making sure that we have a rainy day fund that would help us if we saw a significant economic downturn.

ASSEMBLYWOMAN SHIMSKY: Okay, great. Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

To the Senate?

CHAIRWOMAN KRUEGER: Thank you.

I think it's me at the moment.

So I was very pleased to see in the Governor's budget a modernization of the definitions of SCRIE, Senior Citizen Renting Income Exemption, an incredibly important program in the City of New York and a few other counties for freezing elderly people's -- low incomes -- rent.

The landlord gets it through a property tax deduction, so landlords also

like it, so it's a win/win. And this would, at local option, give the locality the option to no longer count Social Security income towards income, which I think is huge for the City of New York.

Does this include SSD and SSI in addition to Social Security retirement funds? Is it your understanding it would?

ACTING COMMISSIONER HILLER: I don't believe that it does, but I don't believe that the current definition does either.

CHAIRWOMAN KRUEGER: You don't think it does.

ACTING COMMISSIONER HILLER: I will have to get back to you on that. I'm sort of working from memory. But I believe that we were pretty closely tracking what the original definition was, but trying to simplify it by matching it to clear elements on the tax return.

I'm happy to go look at that question. I mean, because we've heard people ask us about whether we should be moving to simplify the income definition for the disabled

exemptions --

CHAIRWOMAN KRUEGER: That was my second question, why not do the same thing?

ACTING COMMISSIONER HILLER: Yeah, which has -- because it -- the definition doesn't exactly match now. And so I'm not sure that we would necessarily want to see it exactly match the senior citizen exemption going forward.

But I'm certain that there are opportunities to simplify that as well, in ways that would make it easier for people who should be getting those exemptions to be able to demonstrate that they're eligible for them.

CHAIRWOMAN KRUEGER: So I would love your help to do that to -- and I think I can probably get New York City to support it as well, because we see this as both programs an incredibly effective tool to help keep the elderly and disabled in their homes. Because, guess what, we don't have anywhere else for them to go. We want to keep them in their homes.

So I appreciate your follow-up on that.

Then there's a section that extends the property tax exemption or reduced rates for REITs, real estate investment trusts. Why? I mean, we actually have problems nationally with REITs purchasing up the housing stock, both single-family houses and multifamily dwellings. With all due respect, not necessarily knowing what they're doing in real estate, so they cause all kinds of problems for people. And now why are we giving them a reduced tax rate?

ACTING COMMISSIONER HILLER: I believe that that reduced tax rate -- so normally you pay $2 per $500. And the reduced tax rate for REITs is $1 per $500. I believe that that's tied to some of the formation and initial acquisition of properties where the seller of the property is becoming an owner of the REIT. And so it's part of -- it's part of -- you know, there's a structure there where the grantor is getting an ownership interest in the REIT that's at

least 50 percent of the value of the property that comes in.

It's a complicated formula. It's been in place since 1999. I think that the proposal to extend it is because it has become part of the baseline for the financial operations of those REITs, especially -- and this isn't just that they're acquiring an investment property. There's an ownership transaction that's part of the transaction.

CHAIRWOMAN KRUEGER: So do you think there are private owners who are moving it into a REIT model so they can reduce their taxes? Because you said it's sometimes transferring to themselves within a REIT.

ACTING COMMISSIONER HILLER: No, I think that the -- it's the grantor, the seller of the property, is becoming an owner of the REIT as part of it. I -- I can't imagine that there's that much tax advantage to -- that would drive somebody to enter into the REIT when there are so many other tax avoidance opportunities available.

CHAIRWOMAN KRUEGER: Well, apparently

it cuts their rate in half, so there probably is a significant saving to them.

ACTING COMMISSIONER HILLER: Right, but we're -- but we're -- you know, so I think, depending on the scale of the building, that could make a difference. And certainly this is a policy choice that the Governor and -- that past governors and past legislatures have been making for decades.

I think that Governor Hochul is proposing to maintain the status quo for the industry, and ...

CHAIRWOMAN KRUEGER: So will you be able to tell me how much money in REIT taxes we are collecting so that I can calculate how much we would be collecting if they paid the same rate as everybody else owning property?

ACTING COMMISSIONER HILLER: You know, I'm not sure that I can. I mean, we can certainly look at that question. I'm not sure, though, that we'd be able to do that because I -- we'd have to go through real estate transfer tax filings in a different way than we normally do.

But we can certainly look at that question and get back to you with what we do know and what we don't know.

CHAIRWOMAN KRUEGER: I would appreciate that. Thank you.

So there's a proposal, and I think it's been made in previous years and rejected by the Legislature, to allow the Department of Taxation and Finance the right to appeal a tax appeal tribunal decision.

ACTING COMMISSIONER HILLER: Yes.

CHAIRWOMAN KRUEGER: We have a tax appeal tribunal so that when taxpayers believe that the wrong decision has been made by the department, they can go to someone for appeal.

That someone is a group of people that the Governor has actually appointed, I guess with confirmation by the Senate. So these are government appointees who are supposedly independent but knowledgeable about Tax Law, saying, Sorry, the department was right, you can try to go to court, that's your right. Or no, you're right, the department made a

mistake.

So now you want the power as the department to go to court if the tribunal rules against you. I just think that's a dangerous policy road to go down. Do you lose a lot of these fights with the tribunal?

ACTING COMMISSIONER HILLER: No, actually we win most cases that come before the tribunal. But that's because in most of the cases that come before the tribunal --

CHAIRWOMAN KRUEGER: Can you hold the microphone closer?

ACTING COMMISSIONER HILLER: Oh, I'm sorry. Sure.

We actually win most of the cases that come before the tribunal, but that's because in most of the -- you know, taxpayers can appeal as of right, but in most cases the tax treatment was actually pretty clear.

And although taxpayers have the right to protest that they should get that credit even though the Tax Department denied it, the -- often the -- there are really bright lines and the taxpayers advancing an appeal,

often pro se, and it's just part of the business of the tribunal.

But at the same time, there are certainly other issues that come before the tribunal that are much more complex, that involve different kinds of questions about the Tax Law or about the Constitution, the state Constitution or the federal Constitution, about whether or not the state is appropriately exercising its taxing power under the Constitution.

And in those cases, people in good faith can have a different opinion about what the right answer can be. So an administrative law judge may have ruled for the department, and the Tax Appeals Tribunal may have not ruled for the department. In that case, the tax law judge ruled for the department and the tribunal did not.

And I think the question that we're facing as we go forward is whether -- if the question is, for example, whether the state is appropriately exercising its taxing power vis-a-vis other states, whether or not that

decision should be a decision that rests with the Tax Appeals Tribunal or whether it should properly be heard by state and federal courts as a question of constitutional law for the country.

CHAIRWOMAN KRUEGER: I still think it's a little bit of a slippery slope for us to have an agency that challenges its own tribunal on appeals.

ACTING COMMISSIONER HILLER: I think the -- you know, one thing I would say is that there are 32 states that have an equivalent independent administrative tax court. In all but two of them, the tax agency has a right to appeal. The model ABA legislation for a tax appeals tribunal has an agency right to appeal.

In the two states that don't have a right to appeal: Delaware, the tax agency can remove a case to its trial courts, in the first instance; and in California, there are constitutional limits on the authority of a tax agency to render decisions on constitutional questions.

CHAIRWOMAN KRUEGER: Thank you.

Following up on my colleague Senator O'Mara's concerns about the illegal cannabis stores -- and I am share his frustration, trust me. And we have been working with the Governor's office and your department on getting a stronger law out there to give more tools to your agency, OCM, police, sheriffs, et cetera. And hopefully that will happen soon.

But I also just want to point out that there are tools that not every county knows they could be using. New York City just this week started sending out letters to landlords who rent to illegal cannabis stores, pointing out that they're violating the law and that we're going to force eviction of those facilities. So that's one option.

There's also something called the Public Nuisance Law that's been on the books forever and actually was used very effectively to close down illegal liquor locations throughout our New York State history. That's also on the books that could

be used. And sheriffs have come up with some very creative ideas -- I'm going to stop.

But for Senator O'Mara and your counties, I'd be happy to sort of suggest all of those for now.

Thank you. Thank you. Assembly?

CHAIRWOMAN WEINSTEIN: So we go to Assemblyman McDonald.

ASSEMBLYMAN McDONALD: Thank you, Madam Chair.

Amanda, good to see you.

ACTING COMMISSIONER HILLER: Nice to see you.

ASSEMBLYMAN McDONALD: You know, tax policy is just so interesting. Although the crowd here doesn't demonstrate that. It's a little light in attendance. And, you know, it's actually interesting because obviously we need revenue to support our operations, but it's always an exercise in human behavior too, because every change has an impact somewhere along the line.

You know, there's been a lot of conversation going on about the policies we

put in place and people are going to leave New York State. And even though our population's over 20 million people, so it's grown over the last decade, there have been conversations about people leaving. And some people are fearful that our policies cause that problem. I'm not saying I agree or disagree.

I guess my question -- and I loved your comment earlier about, you know, the Legislature and the Executive make the policies. But does the department have a mechanism in place to actually measure if our policies are causing people to leave? You know, particularly gets into the wealthy.

Do we -- I know it's not simple, by any stretch of the imagination. But are we able to track how many millionaires and billionaires are leaving? Is that something the department has the ability to do?

I don't think it's a candid report, to be honest with you.

ACTING COMMISSIONER HILLER: Certainly it's not a candid report. You know, we are

absolutely aware of the conversation at large about migration out of New York. There are media reports all the time about the U-Haul vans going to Florida and the like. And we are certainly looking at migration as part of our general analysis of other tax trends.

I can say that, you know, we have access to IRS data that runs through 2020, we have access to state tax filing data that runs through tax year '21, and we see people leaving New York at a greater pace. We saw the -- during 2020, the height of the COVID pandemic, we saw a higher level of outmigration than we had seen in previous years. We saw that modulate in 2021. We also saw some of the highest-income New Yorkers leaving at a greater rate in 2021.

But we don't know yet what that's going to look like in 2022. One year doesn't make a trend. We know that people were responding to COVID in 2020, and we don't know yet whether people are going to be -- whether those trends are going to revert back

to historic levels in 2022. We'll know that better this time next year.

But what I will say is that there's a ton of data on our website. We have tax facts on our website that include income tax and migration data and the like, that -- where you see the trends that we're seeing.

ASSEMBLYMAN McDONALD: I thank you for that. Only because from my perspective, there's a lot of good things we want to do for everybody throughout New York State, but we need all hands on deck. And we need everybody doing their fair share.

Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

To the Senate.

CHAIRWOMAN KRUEGER: Senator Gounardes, second round, three minutes. Thank you.

SENATOR GOUNARDES: Thank you.

Thank you again, Commissioner.

Going back to my -- our favorite subject, you know, I just want to point out the state's tax credit for children exempts

children age zero to four, the neediest children, children who are at the time when they need it the most.

It also does not allow for those with the lowest incomes to receive the highest value of the credit, which right now is only capped at $500, which is very low. The cap itself is low, and it also excludes hundreds of thousands if not millions of children because of their parents' immigration status.

So earlier there was an assertion made that New York State is overly generous with the child tax credit, or that we do a lot already. And I think we can -- we do some. We can certainly do a lot more on that.

I want to ask a technical question. You talked about the technological changes in the agency and how you're able to be more efficient and be able to do a lot more direct deposit and a lot more without having to mail checks back and forth.

Does the agency right now have the ability -- or can the agency issue credits or refunds electronically at any time throughout

the year? Or do they have to do it around certain periods of time?

ACTING COMMISSIONER HILLER: We don't have that ability right now. And I -- and I'm not sure that we're -- if we're talking about those same low-income family income supports, like the child credit or the Earned Income Tax Credit, I'm not sure whether we will ever get to that place. I think there are a range of challenges around that.

And first I want to clarify, I don't think our benefits are overly generous by any means. But I do know that we are providing significant -- we spend significantly in those areas of our budget.

But one of the challenges that we have is that first there's a general problem of many of these families are being unbanked. And there's a -- there's I think a lot of bright people are thinking about how to address the challenges around families that are unbanked. But we can't send an electronic direct deposit to somebody who doesn't have a bank account to receive it.

SENATOR GOUNARDES: But we can send someone a check in April, we can mail someone a check in September, we can mail someone a check in December, October. We can also mail a check, right? We have the ability to send out credits to people either via paper or electronically at any point. Or you're saying maybe not for certain populations.

But we don't lack for the ability to date a check in September and mail it out September 30th, right?

ACTING COMMISSIONER HILLER: We actually -- we mail checks out all through the year. I think the -- there, the challenge is the structure that we're using to determine the eligibility for that credit.

SENATOR GOUNARDES: Sure. And in my last 10 seconds, I appreciate your answer and I have to follow up with you on that.

ACTING COMMISSIONER HILLER: Okay.

SENATOR GOUNARDES: The childcare tax credit being proposed is based on what we enacted last year in New York City. Do we have any data to show how that's worked in

New York City before we expand it statewide?

ACTING COMMISSIONER HILLER: No. Because the tax cycle just -- we're getting those returns now. It's going to be a year or more before we know.

SENATOR GOUNARDES: Thank you.

CHAIRWOMAN WEINSTEIN: We go next to Assemblyman Mamdani.

ASSEMBLYMAN MAMDANI: Thank you.

In your testimony you write, quote: Many of the tax proposals in this budget address issues of equity and fairness.

In that same budget, the Governor has effectively proposed a fare hike for the MTA to $3. Do you think a $3 fare is equal or fair?

ACTING COMMISSIONER HILLER: I can't speak to that. I really can't speak to that.

ASSEMBLYMAN MAMDANI: That's okay. I'll move on to the next question, in the interests of time.

A $3 fare places a disproportionate burden on lower- and middle-income New Yorkers to fund the MTA. In economic

terms, would you characterize that as a regressive policy?

ACTING COMMISSIONER HILLER: I also don't think I can speak to that. I really don't feel like I have enough information to even begin to comment on that.

ASSEMBLYMAN MAMDANI: On whether or not a tax of service is a regressive policy?

ACTING COMMISSIONER HILLER: I think it depends on the service. I think it depends on a lot of factors. And I really don't feel like I can speak to that.

ASSEMBLYMAN MAMDANI: Okay. So I'll move on to taxes, then.

ACTING COMMISSIONER HILLER: Thank you.

ASSEMBLYMAN MAMDANI: In your testimony you justified the extension of the current corporate tax rates by saying that it keeps us, quote, competitive relative to rates in other states, and in particular to our neighbors.

The current tax rate you're referring to in New York is 7.25 percent. But

New Jersey's corporate tax rate is at 11.5 percent. The corporate tax rates proposed by Senator Hoylman-Sigal and Assemblymembers Kelles and Shrestha would bring us closer to New Jersey's and raise $9 billion in additional revenue, which would be enough to freeze the fare at $2.75, fund six-minute train service, make buses free across New York City, and still have billions left over for other critical needs.

Would this not be appropriate policy?

ACTING COMMISSIONER HILLER: Again, my role is to administer the policy choices that you and your colleagues make with the Governor. And if ultimately the policy choice is to change that tax rate, we will absolutely administer it.

ASSEMBLYMAN MAMDANI: You have no preference or ability to comment upon whether something is regressive or whether a certain amount of tax rate would then be able to be fund certain essential services?

ACTING COMMISSIONER HILLER: Look, certainly, if you have more revenue, you can

fund more services. But you can also take the same revenue and divide it differently to fund different services.

I think the State Budget is a large budget; there are a lot of policy choices represented in the budget every year.

ASSEMBLYMAN MAMDANI: Thank you.

As we close, I'd just like to point to the five active proposals to tax the rich, which are all progressive policies, those that acknowledge that individual and corporate tax burdens should increase with your wealth. We have a healthy, stable tax base that can expand through these proposals, especially, to quote you, as we face risks on the horizon.

Thank you very much.

CHAIRWOMAN WEINSTEIN: Thank you.

Senate?

CHAIRWOMAN KRUEGER: I believe we're done.

CHAIRWOMAN WEINSTEIN: We still have a few.

Assemblyman Manktelow.

ASSEMBLYMAN MANKTELOW: Thank you, Madam Chair.

Commissioner, just a question back on cannabis.

ACTING COMMISSIONER HILLER: Sure.

ASSEMBLYMAN MANKTELOW: So I was looking through the budget, or the proposed budget. I see no revenue side for the sale of cannabis. Why is that? Or am I just missing it?

ACTING COMMISSIONER HILLER: You know, I don't know what the number is offhand, but I believe that the financial plan anticipates revenue from cannabis. I don't know that number offhand, but I believe it's there.

It's not in our part of the budget, so I don't know that number offhand. But I believe it's part of the financial plan that we will be receiving tax revenue from the cannabis taxes.

ASSEMBLYMAN MANKTELOW: Okay. So I guess my second question is, as both Senators had made mention, you know, we have people that are expanding their businesses in our

districts selling cannabis, in any way they possibly can. What's going to happen with that amount of sales? Will we ever be able to tax that?

ACTING COMMISSIONER HILLER: You know, I think that -- you know, so first, I would say it's the early days of legal cannabis sales in New York. We've just had the first couple of licensed cannabis shops opening up just in the last several weeks or the last couple of months.

And, you know, certainly there is clearly a demand for those stores. The -- that hopefully, over time, will help move folks away from the illegal cannabis market that grew up before those legal stores were open.

The Tax Department -- if we ultimately receive the statutory authority to do so, the Tax Department will pursue cannabis enforcement the same way we pursue tobacco enforcement now.

We don't have that authority now. But, you know, assuming we get that

authority, we will take that work on.

ASSEMBLYMAN MANKTELOW: And if you do receive that authority, how far back can you go?

ACTING COMMISSIONER HILLER: You know, I think it's hard to go -- I mean, in terms of the tax liability for the sales, folks are finding clever ways to sell cannabis like selling stickers and giving cannabis away with the stickers. That sticker sale is subject to sales tax today. And there's enforcement action around that that we can be taking, but it has to be taken in the course of ordinary sales tax enforcement actions.

There are -- those kinds of opportunities we have, we can go back several years.

ASSEMBLYMAN MANKTELOW: So we can go back for the stickers, but we can't go back for the cannabis.

ACTING COMMISSIONER HILLER: I think it's going to be harder to go back for the cannabis because we don't have the same kinds of information we might have about a

particular store's cannabis sales.

The tax structure for cannabis is one that is based on the amount of THC in a product. And that, I think, becomes more challenging if what we're trying to do is collect tax on the untaxed cannabis, unless we actually have that untaxed cannabis in our hands.

ASSEMBLYMAN MANKTELOW: All right. I appreciate your time. Thank you.

Thank you, Madam Chair.

CHAIRWOMAN WEINSTEIN: Thank you.

We go to Assemblyman Ra.

ASSEMBLYMAN RA: Thank you.

Thank you, Acting Commissioner.

Mr. McDonald actually covered the first thing I wanted to ask about, because I think we did talk about last year whether the department had any data about the increases in high-earner tax rates we had done back in 2021. And, you know, you said probably around the time this year, so I think you already detailed that, so I won't go back into that.

ACTING COMMISSIONER HILLER: There's a ton of information on our website.

ASSEMBLYMAN RA: Yup, this is great.

And I do want to say, by the way, always -- your staff is always responsive to constituent requests. Obviously I know a lot of us had to reach out in the fall with rebate checks and all of that type of stuff, so I do want to thank you for that.

ACTING COMMISSIONER HILLER: Thank you.

ASSEMBLYMAN RA: One of my colleagues actually asked if I could ask you a question regarding his proposal to extend the application deadline for the COVID-19 capital costs tax credit.

So I know there's still money out there for this program. And the question he had was whether there's been any conversations or could be any conversations about maybe having some flexibility in that program where perhaps a -- I know it's meant for, you know, something a business had to do specifically to respond to COVID -- but for a

business that, say, planned some capital not knowing what was coming and then all of a sudden got hit with COVID and might be needing assistance because of that.

ACTING COMMISSIONER HILLER: Yeah, so that credit -- first, you're right, there is money left in that program. And the proposal is to extend the deadline out through September.

You know, I'm not aware that there have been conversations along those lines, but I certainly -- I can't imagine that our economic development -- my economic development colleagues wouldn't be amenable to having conversations about whether or not that would be an appropriate extension or expansion of the credit.

I think certainly the intention here was to help businesses that experienced unexpected costs around their COVID response.

ASSEMBLYMAN RA: Okay. And one of the I would say main tax-increase proposals in this budget is the cigarette tax increase. I mean, look, I think anybody smoking

cigarettes at this point in 2023 -- I mean, we're very well aware of all the risks. But I think these do tend to be regressive. And I know that our state has a huge problem with black market sale of tobacco.

So I'm just wondering what resources -- and really, does the department think you have enough resources if there was to be even more black market sale of tobacco going on that you would have to try to crack down on so that the state's not losing that revenue.

ACTING COMMISSIONER HILLER: You know, so, one, I think that, you know, the problem of untaxed cigarettes in New York is a very real one, both cigarettes that are brought in from other states where the tax rates are lower -- and we also see some of our Native populations engaging in robust sales from their Nation lands.

And that's -- and that has been an important revenue source. I think in Buffalo, you know, there were some tax studies that most of the cigarettes that were

being found were Native-brand cigarettes.

I think those challenges are very real, and certainly we are -- they are front of mind at the Tax Department because we have responsibility for enforcing the tobacco taxes. And it is -- there's never a shortage of work in that area.

I think that the proposal to increase the tax is really about keeping cigarettes out of reach for young people, and that -- that that is an important but different policy goal. And to some extent the revenue loss from the increase in the taxes is maybe I think a little beside the point, because the point of our tax structure right now is to keep cigarettes out of reach of young people. And by increasing it, we're intending to do that.

I don't -- in that regard, I'm not sure that there's always an expectation that we're going to have all the revenue that would be associated with tobacco sales. But there's a different policy goal at work.

ASSEMBLYMAN RA: Sure. And certainly

that's a goal I share, and I think -- actually, I think the state could do a lot more in showing that goal is a priority when you look at what we spend in tobacco cessation as opposed to what -- a lot of other states, and where many advocates believe we should be.

So thank you, Commissioner.

ACTING COMMISSIONER HILLER: Sure.

CHAIRWOMAN WEINSTEIN: So I believe I'm the last one. And some of the questions I was going to ask have already been asked, so that's why I go last.

But just to follow up on what Assemblyman Zebrowski was asking, we would like to have real granular data as to the number of businesses that the mobility tax, the increase, the .16 percent mobility tax would impact. And if that information could be broken down by the number of businesses in each county, each of the counties of the metropolitan commuter transportation mobility tax region.

ACTING COMMISSIONER HILLER: So I'm

not sure that I can break it down as granularly as by county. And that's because, you know, these are payroll taxes, and an employer that may be based in New York City may have employees that are working in different parts of the MTA region. And so just being able to pinpoint the location of that business may not tell us where each of those employees is working.

Unless -- so unless we're actually undertaking an audit of that particular employer, we aren't going to be able to determine whether they've gotten that right, how many of those employees were in each particular -- each particular county.

But we can ballpark it.

CHAIRWOMAN WEINSTEIN: The businesses that are within those various counties, that you have.

ACTING COMMISSIONER HILLER: Sure. But they're paying based on -- so a business that is based in Buffalo that has employees in the MTA region is paying tax on the employees that are working in that region,

even though if on paper that's a Buffalo business.

So it's a little hard to get that granular. We -- we can -- we can get kind of window close, though. We know that there are about 450,000 businesses operating in the MTA zone. We believe about twenty of -- I think 20,000 of them would pay the top rate. That top rate would apply to businesses that have a weekly payroll of about $33,000 or higher in a weekly payroll.

And that that -- for a business at that level, which is the start of that tax bracket, that's about an additional $53 in tax on a $33,000 payroll.

CHAIRWOMAN WEINSTEIN: Okay. Thank you.

And to follow up on -- I guess Senator Gounardes was talking about the corporate -- we've had a couple of people talking about the corporate tax. Have you -- do you anticipate any behavioral changes in New York's corporate franchise taxpayers going forward if we continue the increased

rate?

ACTING COMMISSIONER HILLER: You know, I don't. I don't think we anticipate that. We're continuing a rate that is, as I said, competitive with those of our neighbors. We are -- our tax rate is not as high as some of our neighbors.

And so I think that that -- we don't expect that we would see changes in behavior as a result of that.

CHAIRWOMAN WEINSTEIN: And speaking of behavior, has the department seen any data that suggest that the high-income earners are leaving the state, based on the increase we did in the '21-'22 enacted budget?

ACTING COMMISSIONER HILLER: We've seen preliminary data that suggested that there was an immediate react -- that there was an uptick in outmigration of millionaires in what was the new highest tax bracket.

But I want to be clear: One, we don't know whether that's a trend or whether that was a one-time spike. And we don't know whether that has anything to do with taxes.

You know, my own life experience says that the decision to move is a really complicated one. You move for family, for jobs, for affordability, for climate, for all kinds of reasons. And tax may be one of those reasons, but we at the Tax Department can't know that taxes were the reason that that taxpayer left.

So I can't say that there's -- that there's causality, but we do see that there was a spike in the highest income -- the taxpayers reporting the highest incomes in New York.

CHAIRWOMAN WEINSTEIN: And moving on to the pass-through-entity tax, which also was in the '21-'22 enacted budget, the concept was that it would be revenue-neutral over a two-year period of time.

So now that we've had the full year collections, have you learned any more information about the effects that it's had on other tax collections and taxpayer behavior?

ACTING COMMISSIONER HILLER: So I

would -- I would say that the pass-through-entity tax continues to surprise me every day. You know, it's a construct that allows certain taxpayers to -- certain business entities to pay their taxes up-front, and then we reimburse the owners of those businesses through an income tax credit.

I think everybody was surprised by the scale with which entities enrolled and paid taxes in that first year, and that was right at the end of 2021. And it was like 11.8 billion, somewhere around there.

And then we would expect to see the credits going out to the owners of those businesses in tax year '22.

The -- one of the things that I think we found surprising is that, you know, about 20-something percent of the credits are being carried forward to outyears. So they're still -- we're still on the hook to pay these credits, but we haven't paid them yet. And that's two-point-something billion dollars just in those carry-forward credits, because

we're talking about an $11 billion swing from the payments coming in from the entities and then the credits going out to their taxpayers.

I think overall the main thing it speaks to is the impact of the SALT deduction cap, because this is all about the SALT deduction cap. And we had estimated what that might mean for New Yorkers, and it turns out that it really means a lot for New Yorkers.

CHAIRWOMAN WEINSTEIN: Thank you.

And I misspoke; I am not the last person to -- to speak. I skipped over my colleague Assemblywoman Dickens, and she will be the last member of our panel to ask a question.

ACTING COMMISSIONER HILLER: Saved the best for last.

ASSEMBLYWOMAN DICKENS: Thank you so much, Chair.

Thank you, Commissioner, for your testimony.

ACTING COMMISSIONER HILLER: Of

course.

ASSEMBLYWOMAN DICKENS: I want to commend you and thank you for the -- hopefully you will roll out the STAR credits by direct deposit, which will be a great help.

The other thing is on the SCRIE and the DRIE. I think that it's great that it would be automatic, but it means sufficient notice must be given to the residents and the building owners in advance so that the credits can be applied. That's the first thing.

Has cannabis -- anticipated cannabis tax revenue been calculated at all in your projections?

ACTING COMMISSIONER HILLER: I believe that there is a line for cannabis revenue in the financial plan. I have to say I can't speak to that specifically.

And, you know -- but I think that the financial plan documents show anticipated cannabis revenue in the financial plan.

ASSEMBLYWOMAN DICKENS: Thank you.

Well, with the fall of the GDP continually, even though there was a rebounding for a short time in the third quarter; with the fact that in New York City small businesses have closed up, the brick-and-mortar stores are leaving and closing down, retailers, including the small and some of the larger stores have closed up; with the fact that in New York City there's at least a billion dollars in taxes annually lost because of the shopping that goes across the bridge -- even with the increase in the bridge cost, they go across the bridge and shop in New Jersey instead of New York -- we're aggressively talking about the 125 for pre-K, 250 for learning loss, et cetera, the 24 billion commitment for education, health, et cetera.

But with the small businesses that are closing up that are losing -- that you will not this year be able to collect on audit cases because these businesses have paid and some -- many have gone out of business, what is the impact ongoing on this budget?

Because we're putting through numbers that I think or it seems like to me that in outgoing years is -- is going to be changed and reduced rather than increased and enhanced.

ACTING COMMISSIONER HILLER: Well, I mean, I certainly think that, you know, the Division of Budget is --

ASSEMBLYWOMAN DICKENS: Can you speak into the mic, please? I'm sorry.

ACTING COMMISSIONER HILLER: Oh, I'm sorry.

I believe the Division of Budget is forecasting an economic downturn, and I think there's ongoing concerns that New York's recovery has not been as robust as the national economy as a whole coming out of COVID.

So I think that all of those things are concerns that should make us cautious as we go forward.

ASSEMBLYWOMAN DICKENS: You know, with the -- you know, there's an increase in unemployment and it's projected to be an ongoing increase in unemployment. And even

though they talk about in 2024 there being a rebounding, history has shown that it is doubtful that a rebounding will occur in full or even partially in 2024.

With that, I'm seriously concerned about the budget that's being put through for taxation that may not be realistic to the people.

Thank you.

CHAIRWOMAN WEINSTEIN: So I think we'll leave the -- we'll leave it on that note. How does that sound?

ACTING COMMISSIONER HILLER: That's fine.

CHAIRWOMAN WEINSTEIN: So, Commissioner Hiller, thank you so much for being here. There may be a little bit of follow-up --

ACTING COMMISSIONER HILLER: Of course.

CHAIRWOMAN WEINSTEIN: But we are -- there are no further questions from the legislators.

So we actually have just one panel

this year on taxes, and I'd like to call them down: New York City Democratic Socialists of America; Center for Popular Democracy; and Fiscal Policy Institute.

And just as the three of you come to the table, a reminder that all of your testimony was received in advance, was distributed to the legislators. Don't read your testimony, because you'll never get to the end of it.

And then there'll be like -- there may be some questions from members of the panel.

Yes, if you can begin.

MS. EISNER: Oh, so I just begin, okay.

Hi, everyone. Thank you for having me here. My name is Emily Eisner. I'm a Ph.D. economist educated at the University of California at Berkeley, with a focus on public finance and macroeconomics.

I was advised and have worked closely with Christina Romer, who was the chair of the White House Council of Economic Advisors under Barack Obama, and Emi Nakamura, who was

a 2019 Clark Medal winner, and that's an annual award celebrating economic researchers, many of whom go on to win Nobel Prizes in economics.

Before getting a Ph.D., I worked at the Federal Reserve Bank of New York in the financial research group on issues of macroprudential financial regulation and monetary policy implementation.

Today I'd like to emphasize a few points from my written testimony that are worthy of your consideration.

First, two recent polls have shown that between 75 and 85 percent of New Yorkers believe that the rich should pay higher taxes. That is to say that 75 to 85 percent of your constituents want to raise taxes on the wealthy to pay for public goods and services that make their lives better.

These polling data match the national and global movement to increase taxation on top earners by reforming tax laws and closing tax loopholes that allow the wealthy to pay less in taxes proportional to their income.

New York has a strong, healthy tax base that can sustain higher tax rates on top earners and corporations. The state is home to one of the most beloved cities in the world, with incomparable amenities, making it a state that could truly lead a movement of fair taxation.

Not only that, by raising taxes that would afford the state the ability to improve upon public amenities like the MTA and childcare, New York would strengthen its desirability as a place to reside, thus strengthening the tax base and the welfare of all New Yorkers.

Okay. Number two, income inequality in New York has grown by between 10 and 30 percent since the year 2010 in all of the top 10 largest counties in the state. Income inequality is associated with lower life expectancies, worse health and well-being, and heightened social ills like violence.

As the most unequal state in the country, New York has the second-highest homelessness rate, is 29th in terms of child

well-being, 39th in terms of public hospital safety, 49th in state and local education funding equity, and nearly half of all New Yorkers report trouble paying their regular expenses on any given week.

At the same time, if New York were a country, it would be the 10th richest country in the world. On a per-capita basis, New York is wealthier than the countries of Norway, Denmark and Sweden, countries that have demonstrated the capacity for robust social services.

Thus there is no reason, given New York's economic standing, that the state should settle for less than number-one in most economically just and robust in the country.

Number three, in the past three years, New York families have had to manage their way through a global pandemic while New York's millionaires and billionaires -- okay, cool. Look forward to answering questions.

CHAIRWOMAN WEINSTEIN: So as we said,

we do have your written testimony. As I said before. Three minutes goes fast, so just get into the meat of the points you want to make.

Yes, please go.

MR. KHAN: Good afternoon, and good to see you all. My name is Charles Khan. I am the campaign coordinator for the Center for Popular Democracy. I coordinate our state and local tax campaigns. And it's very good to be here with you today.

As you all have my testimony, I just want to point to a couple of different things in looking at the Governor's proposal for a budget.

First, I did want to reiterate what the other panelist had to say, is that taxes on wealthy people in New York are very, very popular. When the Legislature moved and did that in 2021, we saw that eight out of 10 New Yorkers supported that. There was a poll that was released to say that still says eight of out 10 New Yorkers do that.

And I know that there's going to be a lot of debate around who's moving where and

for what reason. But I do want to point to I think a figure that's really, really important when we think about state tax policy. Right? Because the purpose of state tax policy is to generate public money that we can invest to make people's lives easier.

And since we increased the income tax in New York State on folks that make more than $5 million a year and corporations that make more than $5 million in profits a year, we have beaten tax estimates every single quarter. Just last year New York State tax receipts were 37 percent above estimates. That's billions and billions of dollars.

And the Legislature, because of that, has been able to make record investments in public education, make record investments in childcare, and do sort of the job that New Yorkers want us to do.

And so that is really I think where the focus is. And also it's a path for how we can move forward. I think what we've seen in this budget and what we've seen covered in the media and the press is that affordability

is a deep, deeply felt issue for New Yorkers across the board.

And so the question is, what are we going to do to make New York more affordable for working-class people? Because what we're seeing at the very, very top of the income scales is that those folks are making more money than ever. Across the country, corporate profits are at an all-time high.

And so when we ask about what are we doing about affordability, and I look at the Governor's budget, I would say that raising fares on the MTA is not, is not making New York more affordable. I notice that she's not raising taxes on working -- income taxes. But by raising MTA fares, that means everyone that takes public transit in New York City is paying more.

By raising the tuition at public universities in New York, that means every college student is paying more. And by raising a payroll tax, that is going to be a tax on workers.

Payroll taxes by far are the easiest

taxes for a business to pass on to the worker, and that is what history has shown us.

And so all of these methods are raising costs on New Yorkers. But we have a job to do, and so the question is how do we do that job. And I think the clear answer from the population is that raising taxes on the wealthy is the way to go, particularly corporations. The Governor's extension of the corporate tax is -- for three years is nice, but it should be permanent. And because folks are bringing record profits at the corporate level, there's a lot of room to add there and really invest at the scale that New Yorkers are asking us to do.

CHAIRWOMAN WEINSTEIN: Thank you.

Yes?

MR. GUSDORF: All right, thank you.

My name is Nathan Gusdorf. I'm the executive director of the Fiscal Policy Institute. Prior to coming to FPI, I was a tax attorney and worked in the tax department of Weil, Gotshal & Manges in New York City.

So let's start with a little bit of context. It's possible that we're headed into a mild recession. In the alternative, we'll see what they call a soft landing. Either way, it would be particularly important that we focus on social spending at this time.

At a national level we've seen two recessions in the past decade -- the recession after the Great Financial Crisis and the recession caused by COVID. Constrained spending at the federal level forced the national economy to take about 10 years to recover after the financial crisis.

Conversely, you saw that the Biden Administration stimulus during COVID really shortened the recovery period and put us into a much better economic position.

How's our population doing? Well, as we just heard from the commissioner, we have seen significant outmigration from the -- basically during the pandemic period and in the immediate post-pandemic period.

Recently FPI did an analysis of those migration patterns, and we compared the savings on housing and rental costs to the savings on taxes. And we found that on average, the savings from housing and rental costs were about 15 times greater than any savings on taxes. You'll see that people routinely move out of New York into Connecticut and New Jersey, which are basically states with comparable tax structures.

Meanwhile, there's significant poverty in the state and significant inequality. I'm going to -- be happy to take questions on that, but I want to move into talking about what I think the Legislature and the Governor should be thinking about in terms of new revenue options.

So first of all, the personal income tax, even though we recently had rate increases on the highest earners, is still pretty flat for the majority of taxpayers. It's pretty flat from about $200,000 to a million dollars.

And the rates on the highest earners could be considerably more progressive. That's where about 60 percent of our revenue comes from. It's the best source if we need to pay for more stuff, and it really should be the go-to tax policy option for funding social spending.

At the same time, there are a number of specific proposals that we could think about, such as a state surtax on long-term capital gains, which get a significant federal benefit. We've done some revenue estimates on options there which I'm happy to talk about.

We also need to think about business taxes in the suite of tax policy options that are available to the state. Despite the corporate rate extension, there's still a lot of room to grow the corporate tax base and our corporate tax revenue, including by conforming to the GILTI provisions of the 2017 federal tax law that tax multinational profit shifting. And we can also, on the non-corporate business side, reduce the

rebate amount for the pass-through-entity tax, just enough that people still elect into the tax but the state could pick up a billion, billion and a half dollars.

Finally, we should discuss wealth taxation, particularly the taxation of unrealized capital gains.

CHAIRWOMAN WEINSTEIN: Thank you.

Members, any questions?

Assemblyman Mamdamni -- sorry, Mamdani.

ASSEMBLYMAN MAMDANI: Thank you.

And Chair, just to confirm, is it three minutes for the entire panel or three minutes per panelist? My question.

CHAIRWOMAN WEINSTEIN: Three total. Three minutes.

ASSEMBLYMAN MAMDANI: Okay.

Thank you very much. My first question is for Dr. Eisner.

Just connecting a little bit to your testimony, is there any significant risk that higher earners will leave the state if we raise taxes on them?

MS. EISNER: I believe this came up in the last panel. But the evidence that I've looked at is that the most recent sort of working paper on this subject looks really closely at tax migration looking at the SALT cap that was invoked in I guess 2018, and basically shows that there is almost no tax migration in response to the change -- the relative change in state tax burdens around that policy change.

To the extent that we've seen changes since 2020, a lot of that is being explained by the 2020 COVID-19 pandemic. And we would expect to see sort of return to some normalcy.

ASSEMBLYMAN MAMDANI: So you're saying as a result of the pandemic, we can't really isolate the factors of tax revenue, but prior to the pandemic we have the evidence of the SALT cap and we didn't see any impact on the migration of high earners.

MS. EISNER: Correct.

ASSEMBLYMAN MAMDANI: Thank you.

To Mr. Gusdorf, a quick question. The

Fiscal Policy Institute recently released a report stating that New York is losing working-class New Yorkers as a result of astronomical housing costs, not as a result of changes to the tax code.

Can you describe the findings related to this report?

MR. GUSDORF: Sure, thank you. That's the report that I mentioned briefly about comparing housing savings and tax savings.

So a few of the highlights would be that, on average, mortgage costs went down just over $18,000 for people who moved out of the state, whereas their tax savings were about $1200. Rental costs went down, I believe over about $5,000 for families that moved out that were renters.

The other important dynamic to think about in the context of that report is that the New York City metro area is the kind of relevant economic sphere, but that includes suburbs in New Jersey and Connecticut. So a significant number of the people moving out of state were moving to those suburbs, not

moving to low-tax jurisdictions.

ASSEMBLYMAN MAMDANI: Thank you very much.

And just a follow-up on different reports specific to capital gains taxes in New York. So in New York State currently capital gains are taxed at the same rate as income. Why should taxpayers who earn capital gains income be made to pay at a higher rate?

MR. GUSDORF: The basic theory of this policy is that there's a very significant federal tax benefit for capital gains that overwhelmingly flows to the wealthy and the ultrawealthy. And it's actually rational for states to respond to bad federal tax policy with reasonable surtaxes that offset that benefit to the benefit of state revenues.

ASSEMBLYMAN MAMDANI: Thank you very much.

CHAIRWOMAN KRUEGER: Thank you.

Senator Gounardes.

SENATOR GOUNARDES: Thank you.

Earlier there was a discussion made

about how -- I think a helpful point -- in every quarter since we raised revenue, taxes a few years ago, New York saw their tax receipts grow. Some would say that's because of the way New York's economy is able to capitalize on the highs of the wave, but sometimes on the way down we might hit the lows of the low.

I'd love to hear your comment or response to that.

MR. KHAN: So I think that's true of any tax code, and it's reflective of how unequal New York is. Right? New York has the highest concentration of wealth in the country. It has the worst inequality in the country.

So any tax that we build that's progressive -- and that means that, say, the people and the corporations that reap the most from New York should put the most back in. Any tax that's built that way, which I would say is the smart way, is going to reap the most benefit when the highs are high, and we're going to see some drop-off when the

lows are low.

SENATOR GOUNARDES: Thank you.

There was also mention made about the relative flatness of the personal income tax over $200,000. What would you -- I'm sure all three of you have, you know, studied this. What do you project, either collectively or individually, New York could raise or could earn if we created more progressivity in the personal income tax rates at higher levels?

MR. GUSDORF: So the Fiscal Policy Institute will be releasing a report on this relatively soon; we're still conducting the analysis. But we looked at restoring a $500,000 bracket from about 10 to 12 years ago. And I'll follow up on the details.

I think that that could produce about another $500 million.

SENATOR GOUNARDES: Okay, thank you.

And there are lots of areas that this budget invests in, lots of areas that it doesn't invest in. In your opinions, where do you see the home run for investment and

where do you see the swing and the miss for no investment or disinvestment?

MR. KHAN: So I would say -- I was here for the Economic Development conversation, and I think childcare, public education, that's where we're going to get the biggest return on our dollar. And so that's a great place to invest.

And I think as Nathan pointed to, housing costs are really, really, really high. And so as much as we can actually invest to create affordable housing -- and I don't mean that in the form of tax breaks for wealthy developers; we've seen how 421-a did not work.

But as much as we can invest in actually building affordable housing, deeply affordable housing that stays affordable, I think all of those things are things that are going to help the economy by our being able to keep workers here because they can afford to live here, and we're going to see sort of -- in some cases 12-fold return on the investment.

MS. EISNER: And to the extent that 421-a is a tax break, it will -- it is a swing and a miss. It is giving handouts to wealthy developers and producing inequality further.

SENATOR GOUNARDES: Thank you.

CHAIRWOMAN KRUEGER: Assembly.

CHAIRWOMAN WEINSTEIN: Assemblyman Ra.

ASSEMBLYMAN RA: Thank you.

Mr. Gusdorf, you mentioned, you know, that there are 60 percent of our PIT revenues coming from that kind of class of taxpayers in that window.

I guess my question is, one of the arguments that's been made over the years is that that leads it to be somewhat unsteady, especially when you get into more difficult times because you're reliant on a small set. And, you know, we've seen in the past -- you know, back in 2008 -- our revenues plummeting.

So why is that not a concern to perhaps increase the share that that small window of taxpayers would be paying?

MR. GUSDORF: Yeah, thank you. I mean, this is an important thing to think about, and I think there are a few different tax policy principles and purposes that we have to keep in mind.

So the fundamental one -- maybe the fundamental two -- are really stability and progressivity. It's important that the burden be distributed fairly, and it's also important that we have sustainable revenues.

I think in a way the short answer is just that the rich in New York are so rich that they're going to end up bearing a lot of the tax burden. And the only way to change that would be to seriously undertax them.

And so we have to have other ways to ensure fiscal stability, and one of them is think about how we deal with reserves, particularly around, say, income streams that tend to fluctuate more, such as capital gains. So while we think it would be rational to have a capital gains tax policy that composes a state surtax, that would also be a revenue stream that you'd want to make

sure, you know, does not jack up recurring spending only in the years when you have high capital gains receipts.

But it would be a great revenue stream to try to spread over multiple years. Some years you have really high bonuses due to really high transactional activity. There's no reason to artificially reduce the tax rates on that income just because you're worried about the fickleness of it. But you can still have a pro-stability policy.

ASSEMBLYMAN RA: Well, I'm not necessarily saying reduce it, but I am saying that increasing that share that they make up is what concerns me.

MS. EISNER: May I interject a moment?

ASSEMBLYMAN RA: Oh, sure.

MS. EISNER: Another reason why this is -- your question is important is that raising taxes on the rich -- currently in New York inequality has created a massive misallocation problem in economic terms. We're not investing in the right people and the right infrastructure.

By raising taxes on the rich we will increase education, which ultimately will provide a better tax base and more robust tax base over the long run.

ASSEMBLYMAN RA: So I was going to ask another question; I don't have time. But I would just state one of my --

CHAIRWOMAN WEINSTEIN: (Mic off; Inaudible.)

ASSEMBLYMAN RA: I'm not sure. Well, no, it's a nongovernmental -- but just in terms of, you know -- you know, I completely lost my train of thought as you were asking it, so --

(Laughter.)

ASSEMBLYMAN RA: So I -- it was a ploy to make me lose my train of thought.

Oh, what I was going to say, just, you know, one of the numbers we look at -- obviously we've seen, right, there's a lot of people doing really well right now. But in terms of our share of millionaires, it's been going down and we've seeing more of it in some of those other, you know, states that

people tend to talk about, the Floridas and the Texases.

But I thank you guys for being here today, and your patience.

CHAIRWOMAN WEINSTEIN: Thank you. Sorry. Assemblyman Zebrowski --

CHAIRWOMAN KRUEGER: No, we go back to Senators.

CHAIRWOMAN WEINSTEIN: Oh, okay.

CHAIRWOMAN KRUEGER: You're getting tired, it's okay.

CHAIRWOMAN WEINSTEIN: Thirty, almost 40 hours of hearings. Its sort of grinds at you.

CHAIRWOMAN KRUEGER: I know.

Senator Murray.

SENATOR MURRAY: Thank you. And thank you, Chairwoman.

And thank you for being here.

I'm going to kind of piggyback on where Assemblyman Ra just left off when he talked about the wealthy leaving.

So I guess it depends on where we're getting our information. I'm looking at an

article on "Moneywise" from Yahoo News from just about two weeks ago that says: "Between 2019 and 2020 the number of New Yorkers earning between $150,000 and $750,000 fell by nearly 6 percent. Moreover, the number of real high earners, those making over $750 million, dropped by nearly 10 percent during that same period. Some speculate the wealthy elites are leaving because of the state's high tax rates."

But it goes, for perspective: "The 41,000 filers in the city's top 1 percent pay more than 40 percent of all the income taxes. The 450,000 filers in the top 10 percent pay about two-thirds of all the income taxes."

In other words, the remaining 90 percent of taxpayers contribute about one-third of the city's income tax revenue.

And I had heard you mention that a lot of them are leaving for New Jersey or Connecticut. Again, according to this report, the wealthy are going to -- the top two states -- Florida and Texas.

But I also want to point this out.

Have you calculated in your figures and your statistics the philanthropic aspect of it? Because while the federal government's taken a lot of incentives away as far as giving tax breaks for donating, there are still donations being made by the wealthy to libraries and hospitals and not-for-profits. When they leave the state, they're taking those donations with them too.

Have you figured into your figures how that affects the -- you know, those that aren't wealthy or well-to-do?

MR. GUSDORF: So at least from FPI's perspective, I don't think that we -- we haven't looked at that data. I don't know if we have access to that data. On the top of the report, is that -- that sounds like it's city data, like it's IBO data.

SENATOR MURRAY: That one was from the city, yes.

MR. GUSDORF: Yeah, because we looked at those numbers and a lot of the people -- a lot of the -- we don't have state data on who earns on the $750,000 bracket, but the city

data showed that a lot of those people were moving upstate. So that was really movement out of the city during the pandemic, the sort of movement that doesn't affect the state's tax base, and that we would also expect to change --

SENATOR MURRAY: These figures said out of state, the 10 percent were out of state. That they went to Florida and -- well, they didn't say all of them went to Florida and Texas. They said the top two states were Florida and Texas. But the 10 percent moved out of New York.

MR. GUSDORF: Yeah, they also say that that's -- that the Florida and -- I mean, I don't know what that article is, but I know that we looked at IBO data on highest earners and we also have looked at the migration patterns, and it's -- I think that's not consistent with the other sources that we've seen, to say that the top two states are Texas and Florida.

SENATOR MURRAY: I've heard different as well.

MS. EISNER: And I would say that the -- you know, like the top line of economic research on this suggests that tax migration out of the state in 2020 made up 0.75 percent of the population earning $500,000 or more. So it's a tiny percent. And each additional percent of raise in taxes is causing on the order of 10 individuals to leave, at most. So --

SENATOR MURRAY: I think that was during the pandemic too, when they --

MS. EISNER: That's at the max, yeah, that's --

CHAIRWOMAN KRUEGER: Thank you. Sorry.

Assembly?

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Zebrowski.

ASSEMBLYMAN ZEBROWSKI: Thank you.

This is a balance, right? To try to balance the right amount of taxation with the right amount of services to foster the most robust economy we can.

I'm interested whether your position

is that there is no point of diminished return in your data or that we just haven't reached it yet.

MS. EISNER: The evidence would suggest that we most certainly have not reached the point of diminishing returns yet. Absolutely, we have not. In fact, when states have lowered taxes to try to bring in wealthy people, that has diminished state revenues. So if anything, the mistake that could be made is to lower taxes.

And to the question about is there a point of diminishing returns, I think -- if you're talking about state policy, I think unfortunately we live in a world where there is a race to the bottom on state taxes. That is why multiple states currently are collaborating to try to create a wealth tax on unrealized capital gains so that there is a sort of nationwide agreement and not this like race to the bottom that hurts everyone.

But I don't think that that's even really a relevant question, because we're so far from the point of diminishing return.

ASSEMBLYMAN ZEBROWSKI: Well, that was sort of my second question, is like do you -- when you testify, you know, before the Legislature and talk to legislators, do you attempt to try to identify what you think is the appropriate level of taxation? Because certainly New York isn't at the bottom or even at the middle in terms of taxes, right? We're towards the high.

So, you know, what do you try -- sure, go ahead. What do you try in terms of setting what the right number is?

MR. KHAN: Yeah, so I don't necessarily think we try and set the right member. But Dr. Cristobal Young, a Cornell professor -- he also worked in the Biden administration -- he studied all of the federal tax data from 1960 until about the year 2000. And he's a sociologist by trade, so he looked at why, if millionaires do move, like what does the millionaire migration look like.

And ultimately he said that millionaire migration due to taxation is

very, very little. And that in order -- and because the majority of high-income earners stay, you would have to raise the tax rate in any particular state almost 25 percent to get to a level of diminishing returns.

ASSEMBLYMAN ZEBROWSKI: I've only got 20 seconds left. That would be interesting. You know, maybe you could send me that study.

MR. KHAN: Absolutely.

ASSEMBLYMAN ZEBROWSKI: My question is, you know, when we look at some of the proposed taxes and you talk about a wealth tax, I mean, that would be a significant tax that's never been tried before or studied before. Right? No other state has done that. So how would we know?

MR. GUSDORF: It's a cliff-hanger.

MS. EISNER: We can follow up with information.

ASSEMBLYMAN ZEBROWSKI: Okay. Thank you.

MR. GUSDORF: Well, it's hard to know with the wealth tax. But the estimates are really about income taxes. And it's a lot

higher than anybody thinks, basically.

CHAIRWOMAN WEINSTEIN: Thank you.

We're going to go to the Senate.

CHAIRWOMAN KRUEGER: Thank you.

And I think I'm closing for the Senate.

So we've had lots of discussion, both in Economic Development and here, about tax rates and who are they affecting and who's doing what.

My question is, do we really need to just evaluate a new approach to how we tax? Because the world has changed so much, the models of business have changed so much.

Just three quick examples. Helene and I have been trying to get a bill signed by the Governor that would go after basically out-of-state corporations and wealthy individuals who just don't pay their taxes in New York even though they're making their money here in New York. And we're having trouble just getting that simple concept of tax cheaters ought to have to pay their taxes. And that does so much harm to

everyone's belief in the tax system being fair.

We have a world where these -- excuse me, these new kinds of companies, Uber, Lyft, others, they don't pay taxes, they don't pay into unemployment for their workers, they owe government, in my opinion, unbelievable amounts of money. When I was here today Britain was declaring they're going after Uber for the VAT they owe them -- the exact same issues, different country.

And then a few of us actually have bills recognizing that the whole world is now taking our personal data, selling it, making a fortune, but we don't tax that. And of course we don't have brick-and-mortar stores; everybody buys online. So don't we need to just completely reevaluate what we fail to tax? Because there's a whole lot of money there on the table I believe we should be getting. We're not. And then we fight over who's paying what rate when there's all this money out there that we should be getting that we don't even have a model to get.

What do you think?

MR. GUSDORF: So I'm happy to speak to this. And I would say it's a hearty yes and a hearty no.

The most famous tax policy adage is "An old tax is a good tax." The idea being kind of build -- taxes are very hard to administer and they're very complex, so build within the system you have that you know works.

And we do still have really strong receipts from our personal income tax. And we currently have very strong business tax receipts. But I think you've identified a lot of major issues that can be addressed within those frameworks.

So one big issue that's in the news a lot: Billionaires pay very little income tax because they don't realize their gains and they use a lot of debt to finance their lifestyle. You could use a mark-to-market mechanism to -- like this is the Biden minimum income tax for billionaires proposal.

Uber, it's really an employment law

issue.

There's another one I that wanted to bring up that I've forgotten about --

MS. EISNER: Multinational?

CHAIRWOMAN KRUEGER: You sign up for anything, they sell your data --

MR. GUSDORF: Oh, pass-throughs. One of the biggest trends in taxation is the shift to the use of pass-through entities.

So we should really be looking at entity-level taxes for pass-through businesses.

CHAIRWOMAN KRUEGER: Thank you. Thank you.

CHAIRWOMAN WEINSTEIN: Thank you. There are no further questions. Thank you all for being mere.

And this is going to conclude our fifth hearing, budget hearing, the Taxes hearing.

The next joint committees will convene on Monday for the Human Services budget hearing, starting at 11:30 a.m.

CHAIRWOMAN KRUEGER: Thank you,

everyone.

MR. GUSDORF: Thank you.

MS. EISNER: Thank you.

MR. KHAN: Thanks.

(Whereupon, at 5:13 p.m., the budget hearing concluded.)