Summary of Tax Reforms

FY 2019 Enacted Budget

Andrew M. Cuomo, Governor
Robert F. Mujica, Jr., Budget Director

April 2018

The FY 2019 Budget enacts a series of reforms to the New York State tax code designed to protect New York residents from the adverse impacts of the recently enacted Federal Tax Cuts and Jobs Act. These changes follow a report issued by the Department of Taxation and Finance in January 2018 that outlined several measures for the State to consider in order to mitigate these negative impacts, and the introduction of legislation in February. Specifically, the FY 2019 Budget takes the following steps:

- **Authorizes State Charitable Contributions to Benefit New Yorkers.** The FY 2019 Budget creates a new State-operated Charitable Gifts Trust Fund to accept donations for the purposes of improving health care and public education in New York State. Taxpayers who itemize deductions may claim these charitable contributions as deductions on their Federal and State tax returns. Any donating taxpayer may also claim a State tax credit equal to 85 percent of the donation amount for the tax year after the donation is made. Taxpayers may also make qualified contributions to certain not-for-profit organizations for specified purposes.

- **Authorizes Local Governments to Establish Local Charitable Funds.** The FY 2019 Budget authorizes local governments to establish charitable gift reserve funds and to offer real property tax credits to incentivize contributions. Under the law, such funds may receive unrestricted charitable contributions for the purposes of addressing education, health care, and other charitable purposes. This is an optional program available to counties, cities, towns, villages and school districts.

- **Establishes the Alternative Employer Compensation Expense Program.** While Federal tax reform eliminated full State and local tax deductibility for individuals, businesses were spared from these limitations. Under the FY 2019 Budget, employers will be able to opt-in to a new Employer Compensation Expense Program (ECEP). Employers that opt-in will be subject to a 5 percent tax on all annual payroll expenses in excess of $40,000 per employee, phased in over three years beginning on January 1, 2019. The progressive personal income tax system will remain in place, and a new tax credit corresponding in value to the ECEP will cut the personal income tax on wages and ensure that State filers subject to the ECEP will not experience a decline in take-home pay.

Expand Options for Charitable Contributions to Benefit New Yorkers

Taxpayers have traditionally been able to reduce their income tax liability by taking deductions for contributions to certain organizations, including charities and Federal, state, local, and Indian tribal governments, and the new Federal tax law reaffirmed this ability. The FY 2019 Budget builds on this precedent by allowing for additional charitable giving to the State.

The Budget establishes a charitable gift trust fund in the joint custody of the New York State Commissioner of Taxation and Finance and the State Comptroller. The fund includes two separate accounts:

- The "Health Charitable Account" will receive charitable contributions for services relating to primary, preventive, and inpatient health care, dental and vision care, hunger prevention and nutritional assistance, and other services for New York State residents with the overall goal of ensuring that residents have access to quality health care and other related services.

- The “Elementary and Secondary Education Account” will receive charitable contributions to support the elementary and secondary education of students enrolled in public school districts in the State.

Under the law, taxpayers may also make qualified contributions to certain not-for-profit organizations for specified purposes. Those organizations are as follows:

- Health Research, Inc. (HRI) for the purpose of supporting laboratory facilities and programs, bioinformatics programs, and other public health activities;
- The State University of New York Impact Foundation (SUNYIF) for the purpose of supporting programs benefiting students enrolled at the State University of New York; and
- The Research Foundation of the City of New York (RFCUNY) for the purpose of supporting programs benefiting students enrolled at the City University of New York.

The law sets an annual cap of $10 million for all qualified contributions to each of these three organizations.

Any taxpayer who makes a contribution to the charitable gifts trust fund or who makes qualified contributions to HRI, SUNYIF, and SUNRF can claim a state income tax credit equal to 85 percent of the donation amount for the tax year after the donation is made. The State will provide additional information for individuals interested in making contributions.

Authorize Local Governments to Establish Local Charitable Funds

The FY 2019 Budget authorizes local governments to establish charitable gift reserve funds and to offer real property tax credits to incentivize contributions to these new local charitable funds. Under the law, such funds may receive unrestricted contributions to support charitable purposes. This is an optional program available to counties, cities, towns, villages and school districts.

- Any locality that opts to participate is required to adopt a local law or resolution.
- The participating locality may also adopt a local law or resolution authorizing a real property tax credit of up to 95 percent of the value of the contribution, to be applied against the real property taxes of the contributor. The locality may choose to establish a limit on the amount or percentage of such credit to be allowed in any given fiscal year.
- The governing board or the chief fiscal officer of the locality must establish a procedure for contributions to the fund. That procedure must include the provision of written acknowledgment of any contribution, which will be issued by the fund to any contributor using a form that will be established by the Department of Taxation and Finance (“the Department”). The form will include the following required fields: the amount of the contribution, the name and address of the donor, the date the contribution was received, the authorized signature of the administrator or agent, and other information that the Department may require.
- The governing board is also responsible for the administration of the real property tax credit. The Department will issue a credit claim form, which will contain the following fields, among others: the name of the property owner(s), the date and amount of the contributions made during the associated credit year, and the address of the property to which the credit claim relates. Property owners are required to furnish this form as well as the acknowledgment form from the fund to the appropriate local tax collecting officer on or

before the relevant locality's annual deadline for tax filing. Upon receiving the form, the collecting officer is required to furnish a real property tax credit at the level prescribed by local law. If property owners do not file such paperwork before the local tax filing deadline, the locality is directed to provide a refund in property taxes of the same value as the credit.

The State will make additional guidance available on the local administration of the program.

Establish the Alternative Employer Compensation Expense Program

While the Federal Tax Cuts and Jobs Act (TCJA) denies full state and local tax deductibility to individuals, employer-side payroll taxes remain deductible. An optional Employer Compensation Expense Program (ECEP) therefore serves as a vehicle to preserve deductibility for New York State taxpayers.

Under the FY 2019 Budget, employers will be able to opt-in to a new Employer Compensation Expense Program (ECEP) structure. Employers that opt-in will be subject to a 5 percent tax on all annual payroll expenses in excess of $40,000 per employee. The tax will be phased in over three years beginning on January 1, 2019 according to the following schedule: 1.5 percent in 2019, 3 percent in 2020, and 5 percent in 2021.

The progressive personal income tax system will remain in place for the employees of participating employers, and a new tax credit corresponding in value to the ECEP will cut the personal income tax on wages and ensure that State filers subject to the ECEP will not experience a decline in take-home pay.

To opt-in, employers would make an annual election to participate in this alternative system. In order to be effective, the annual election must be made as follows:

(1) if the employer is not a corporation, by any member, owners, or other individual with authority to bind the entity or sign returns required pursuant to specified law;
(2) if the employer is a for-profit or not-for-profit corporation, by any officer or manager of the employer who is authorized under the law of the State where the corporation is incorporated or under the employer's organizational documents to make the election and who represents to having such authorization under penalty of perjury;
(3) if the employer is a trust, by the unanimous consent of all trustees; or
(4) if the employer is a governmental entity, by the chief executive officer of such governmental entity.

The election must be made by December 1 of any calendar year and will take effect for the immediately succeeding calendar year. The first election deadline will be December 1, 2018 for the 2019 calendar year. If an election is made after December 1 of a calendar year, it will first take effect in the second succeeding calendar year.

The Department of Taxation and Finance will be issuing guidance for employers seeking to participate in the program.