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THE LEAGUE OF WOMEN VOTERS *of New York State*

# *JOINT LEGISLATIVE PUBLIC HEARING ON 2016-2017 EXECUTIVE BUDGET PROPOSAL: TAXATION TESTIMONY SUBMITTED TO THE ASSEMBLY WAYS AND MEANS AND SENATE FINANCE COMMITTEES FEBRUARY 2, 2016*

Good morning. I am Marian Bott, Education Finance Issue Specialist for the League of Women Voters of New York State. Our State Finances position[1] encompasses the operation and impact of 1) property tax assessment and collection reforms, 2) the State's School Tax Relief (STAR) program, and 3) other initiatives such as education income tax credits (EITC), this year re-branded as the Parental Choice in Education Act. The League is a nonpartisan organization devoted to promoting active and informed involvement of individuals in government. We thank the Legislature for this opportunity to provide recommendations about the 2016-2017 proposed statewide fiscal plan.[2] We will focus on $3.3 billion STAR program and the EITC, estimated to be launched at the $150 million level, but in time there will be pressure to expand it, much as there was with STAR. Both programs share the characteristic of being touted as panaceas. We object to both programs and wish to explain why.

## *STAR*

**Historical Perspective:**

In 2006 the League updated its position statements on state taxation because, among other things, of the STAR program which had been implemented in 1998. STAR offered suburban and upstate property tax relief, to be implemented simultaneously with an urban education initiative known as

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[1] See State Finances, Statement of Position at http://lwvny.org/advocacy/impact/2015/State-Finances/STATE-FINANCES-EDUCATION.pdf. The League also holds positions on Election Law, Government, Health Care, Judicial, Natural Resources, Social Policy, Women's Issues at http://lwvny.org/advocacy/impact/SF_Full.pdf.

[2] See Article VII bills S. 6409/A9009 (STAR in Parts A-G and Parental Choice in Education Act in Part S) and FY 2017 Executive Budget Financial Plan at pp. 23,26,76-77, T-59-63, T68-73, T-79, T-125,T-130, T-132, T-150, T-155, T-158, T-170, T-173, T-184 at www.budget.ny.gov/pubs/executive/eBudget1617/ExecutiveBudget.html

LADDER[3]. STAR, according to some researchers, was regressive from the outset because of its disproportionate resource allocation to wealthier regions of the state. Others argued that STAR's design was simply a means of recognizing that different regions of the state are more costly areas in which to purchase and maintain a home. At the time of our study, there were no limits on taxpayer income; everyone received STAR. We predicted an expensive and wasteful growth in the program, which occurred. I attach hereto our position language which resulted from our two-year League formal study, during which we interviewed E.J. McMahon and Frank Mauro, who both opposed STAR. We studied research by the Institute of Taxation and Economic Policy (ITEP), the Citizens' Budget Commission, and surveyed our own membership through a formal questionnaire. Our position favoring a property tax circuit breaker in lieu of STAR stems directly from this study.

**STAR Administrative Changes Proposed:**

The Article VII S. 6409/A9009 proposes a gradual takeover of STAR by shifting administration for New Homeowners (see discussion below) and recipients of the New York City Personal Income Tax (NYCPIT) credit to the State Department of Taxation and Finance, which would process applications for state income tax credits.

**STAR Budget Allocations Proposed:**

The Executive's Five Year Financial Plan reduces STAR benefits from $3.337 billion to $3.228 billion in FY 2017, or a $109 million cost reduction. In the four subsequent state fiscal years it reduces STAR by $312 million (FY 2018), $112 million (FY 2019), and $108 million (FY 2020) such that the program would bear a cost to the state of $2.7 billion rather than $3.3 billion by that year. The freeze on increased benefits (which were previously capped at a 2% increase) contributes to these savings.

**Allocation of STAR Benefits:**

The current percentage distribution of benefits is 54% to homeowners with incomes less than $500,000 (totaling $1.77 billion) and 29% to taxpayers 65 and over whose incomes are under $84,550 (totaling $949 million). The last 17% or $618 million goes to New York City in the form of a reduction of personal income taxes, with a lower household income cap of $250,000. Many New York City taxpayers pay property taxes indirectly through rent or as part of a maintenance fee in a condominium or cooperatively owned apartment building rather than receiving an individual property tax bill. As a so-called "dependent" school district, New York City does not issue school tax bills. The NYCPIT credit of $62.50 (married = $125) was established with the urging of the New York State Assembly to maintain fairness between NYC renters and outright property owners. It never applied to renters outside NYC.

The 54% allocation to non-senior homeowners is too high. Governor Pataki first proposed the senior benefits in 1998 and promised a phase-in for non-seniors. STAR applications increased

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[3] S.B. 5788, Ch. 436, 220th Leg. Reg. Session (N.Y. 1997). LADDER (Learning, Achieving and Developing by Directing Educational Resources) was enacted in 1997. The 1999 state budget provided $913 million for K-3 class size reduction, minor maintenance, computer technology, teacher training, enhanced building aid, universal pre-Kindergarten and Kindergarten programs. It was supposed to be phased in over five years, but never was whereas STAR was fully phased in and other tax relief programs were enacted as well. For additional background about Pre-K and LADDER, see The Challenge of Making Universal Prekindergarten a Reality in New York State at http://www.cbcny.org/sites/default/files/REPORT_UPK10222013.pdf, and "Making Prekindergarten Truly Universal in New York" at http://centerforchildrensinitiatives.org/images/Cheri/new%20york%20prek%20long%20report.pdf. See also Anne Mitchell, "The State with Two Prekindergarten Programs: A Look at Prekindergarten Education in New York State (1928-2003)," June 2004, at http://nieer.org/resources/files/NYCaseStudy.pdf.

dramatically, and there was no income limit initially—great politically but fiscally imprudent. School districts simply increased their school budgets throughout the State, knowing the STAR benefit shielded taxpayers from actual tax increases. These actions were predictable from the flaws in the program's design, and partially led to the property tax cap's implementation.

**Timing Differences vs. Permanent Differences in STAR Benefits:**

The Executive Budget's Five Year Plan estimates that converting the program from a City tax credit to a State tax credit will save $87 million in FY 2017. Thereafter, it details approximately $285 million of annual fiscal year savings in FY's 2018-21. The tables outlining the changes show that costs to the state of granting the tax credit are lagged into the subsequent fiscal year, therefore creating a 2017 budget saving which is a timing difference, not a permanent one.

The conversion of non-New York City STAR benefits for homeowners into a program that gives STAR rebate benefits to Continuing Homeowners and a State personal income tax credit to New Homeowners (denying them the right to apply for STAR) is estimated to save $98 million in 2017. The "out year" savings for this conversion, **coupled with the cap on increased amounts**, for 2018-2021 are listed as $194 million (FY '18), $290 million (FY '19), $385 million (FY '20) and $479 million (FY '21).

The means of calculating and distinguishing the "out year" permanent differences from timing differences are not clear from the budget documents. It would have been helpful to have an explanation of the distinction between a) instances where inappropriate claims have been made b) estimates of savings from taxpayers who elect not to apply for a state income tax credit and c) the impact of the cap in reducing the cost of the existing program.

**Difference between New York City PIT and Other Program Changes:**

Given that this Executive Budget appears to disproportionately reduce the aggregate cost, through timing differences of one fiscal year for the New York City PIT program ($87 million out of $618 million or 14%) as compared with saving $98 million out of $1.77 billion or 5.5% outside of New York City, more New York City renting taxpayers will wait longer for tax credits (and in most cases, a mere $125) from the State. For condominium and coop owners throughout the State, where double claims may have been inappropriately filed in the past, the State will have to verify eligibility. This is probably a good thing, given evidence of inappropriate benefits due to both residence and income level violations that the State Division of Taxation and Finance has undoubtedly accumulated. However, we were not able to obtain any reports containing such data for today's testimony, and thus could not compare inappropriate benefits inside NYC vs. outside.

**New Homeowners vs. Those with Incomes Lower than $500,000:**

One policy question is whether the main target of changing the STAR policy should be "New Homeowners" and NYCPIT credit beneficiaries. They will experience a timing difference in obtaining a state income tax credit (one tax year later than the STAR rebate). The legislature should consider instead whether **all homeowners whose income exceeds a lower threshold than the current $500,000**, should receive reduced benefits. ITEP's income categories for New York State[4] show that taxpayers earning $500,000 are among the top 5% of income earners. In that bracket, the 2% to 5% highest earners' income averages $337,700 (for non-elderly taxpayers) and the range is $214,000 to $604,000. This

[4] http://www.itep.org/whopays/states/new_york.php, Who Pays? New York State & Local Taxes in 2015 (shares of family income for non-elderly taxpayers).

bracket excludes the top 1% above $604,000, whose income averages $2.7 million. In the next lowest percentile grouping (the 81-95th percentile), the average income is $317,400 and the range is from $99,000 to $214,000.

We believe that tax relief should target the 95% of taxpayers who earn $214,000 (high end of the 95%) or under. We also question why New York City taxpayers' benefits would be capped at half the income level of the rest of the state. We suggest that you have Taxation and Finance provide a simulation of STAR program savings if the income limit were to be cut in half as you deliberate tax relief. While doing so, perhaps regional cost adjustments should be applied to income levels, as was attempted in prior property tax circuit breaker legislation.

Capping all benefits to current levels will contain the cost slightly. However, freezing current benefits, now so unevenly distributed even among taxpayers in wealthy counties, still poorly aligns the property tax burden with the **individual** taxpayer's ability to pay.[5] Clearly, we agree with reducing STAR benefits, having never believed that the program was well designed. However, New Homeowner status need not correlate with either income or other indices of wealth. The Legislature should re-design the class of beneficiaries in a more tax-efficient manner.

**Conclusions and Recommendations about STAR:**

At the Education hearings on January 27, 2016, two local school administrators testified that they will continue to bear the brunt of STAR administration if the State administers the income tax credit. Local officials will need to explain the loss of immediate STAR refund and continue to explain the caps. If the State intends to wind down STAR, it might as well convert and consolidate all of the property tax relief programs into one state-administered program, explaining why it is doing so, using a public education campaign. In light of the mixed opinion about the virtues of the property tax cap, it seems only fair to show how the growth in STAR contributed to increases in school spending that in turn spurred a reaction in the form of a cap. While we agree that fiscal discipline has been needed in many wealthy districts, the continuation of STAR as designed will not encourage it. Indeed, there is also a $223 million line item in State Aid to Schools called High Tax Aid (see Attachment 1 for its complex formula and aid distribution) which should be considered property tax relief at the individual level rather than being improperly categorized as an educational expense.[6] The League recommends voluntary sharing of tax bases across counties or regions, and supports means of encouraging efficiencies and consolidations.

## *EDUCATION INVESTMENT TAX CREDITS*

**Unlike the Senate version S. 1976 A, which includes benefits for charter schools and home schooling, this year's Executive Budget proposal provides $50 million in state tax credits for donors to scholarship programs, $20 million to support "public school educational improvement programs," $70**

[5] See Department of Taxation & Finance, "School District's Maximum 2015-2016 STAR Savings by School District" for Westchester County at https://www.tax.ny.gov/pit/property/star/sd55.htm. The variations in maximum STAR savings for both Basic and Enhanced STAR are unrelated to the ability of individual taxpayers to pay property tax. Rather, they appear to be based on assessment practices and aggregate property valuations within the districts.

[6] See our testimony of January 27 for details on High Tax Aid's distribution across school districts.

**million in parent vouchers designed as tax credits, and $10 million for the allowance of tax credits for teachers who buy supplies for their students and classrooms (which they ought not have to do). The new program name in the Budget Briefing Book (Parental Choice in Education Act) is somewhat misleading because more than half of the $150 million represent choices that donors and teachers, not parents, might make. We prefer to refer to the program, in its many versions, as Education Investment Tax Credits, which as stated earlier we strongly oppose.**

**Historical Perspective – back to Blaine Amendment History in New York State**

The League opposes the use of public taxpayer dollars to support private educational institutions. We oppose providing state income tax credits for certain classes of taxpayers while others, with similar philanthropic investments, would instead receive a state income tax deduction. Our position against vouchers dates to 1985, 31 years ago when the state legislature introduced voucher legislation. The League also sent observers to most of the sessions of the New York State Constitutional Convention in 1967, during which there were heated debates about changes to the Blaine Amendment of the State Constitution. We welcome your review of this pamphlet which will be on our website, www.lwvny.org.

**Historical Perspective – more recent events in New York State**

Since 2010, when the U.S. Supreme Court removed the limits on independent expenditures by social welfare 501(c)(4) organizations , the balance of power has shifted in New York State from teachers' union dominance to a completely different landscape. We note that the Coalition for Opportunity in Education (COE) testified last year, and although we are not certain, we would imagine this group will again testify in these hearings. COE, like the League, is paired with a 501(c)(3) entity. Unlike the League, it is also paired with a 527 PAC, the Educational Fund, which gives direct donations to elected officials and House Committees. Various news media such as *Politico* have publicized the increase in lobbying activity by "school choice" related non-profit organizations, to the extent they have been required to report to the Joint Commission on Public Ethics and to the New York State Board of Elections. We understand that last year COE and other school choice groups rose to the top of annual spending by reporting organizations. Religious officials and many paid consultants working for the school choice initiative (including charter schools) needn't register as lobbyists. My colleagues and I, as unpaid volunteers, are registered as lobbyists. We do not have a PAC that donates to legislators.

We have written at least six memoranda in opposition to the EITC, and will continue to do so. Today, let us simply make four points, starting with the fiscal obvious point.

1) **Private Schools Received Generous Treatment ($250 million) last year**. The K-12 state education budget proposed by the Executive provides an incremental $991 million. The EITC initiative, at $150 million, is not a "drop in the bucket" as the bill's proponents would lead you to believe. $60 billion is not the denominator when the state's K-12 education budget is being negotiated. Rather, "available" **new** funds for K-12 education--are the denominator. New programs vie to be in the numerator, and often succeed by showing "no appropriation" in the current year—the pain comes later. Other public school programs will not be funded if this initiative succeeds. The $250 million in reimbursements for prior years to private schools in last year's budget came as mollification for the failure to fund EITC. Yet public schools, particularly in high-needs districts including New York City also had substantial prior year claims, and still do. Funding an EITC will mean that other initiatives such as the Gap Elimination Adjustment or increased Foundation Aid as mandated in the Campaign for Fiscal Equity 2006 settlement

will not be funded for public schools, even if the legislature and the Governor agree to a slightly higher level of new funding.

2) **No other state has a program allowing one individual taxpayer to direct $1 million of state funds to an entity of his or her choice**. Why allow such concentration of power with no knowledge of which students would benefit? Nothing guarantees that a district's neediest constituents will be beneficiaries. Further, doesn't this legislation invite discrimination against students with special needs or English Language learners if private schools are not required to accept them? Measuring increased student segregation is not possible as the details of the bills show—a "county by county" distribution will not tell legislators the income, race, or special needs status of recipients.

3) **EITC ("first come, first served") will be an administrative nightmare with poor transparency**. Given the constraints on staffing at the State Education Department and the requirement in the bills that their selection of tax credit and scholarship recipients must be coordinated with the Department of Taxation and Finance, we are concerned that these Departments are not adequately staffed for this purpose and may be subject to inappropriate requests for favoritism. As the language of the bills reveals, there is no public transparency in stark contrast to that required of public schools' finances. Verifying the (too-high if at $500,000+) family income limit for the "voucher" program in and of itself will create an inappropriate burden on the state. Proponents are already lobbying for increased funding for a private school unit.

4) **Private Schools Do Not Care if they Save Public Taxpayers Money—they simply want More Resources.** Arguments that the initiative will save religious schools from closing and *thus save state taxpayers money* by avoiding students' entrance into the public school system ignore the structure of the bill and political realities of how initiatives tend to grow over time. Moreover, unlike other programs that provide support to non-religious and religious schools by ***encouraging charitable donations*** (costing on average 5% of their value) such as the successful Prep for Prep program, state taxpayers will pay a high percentage of every donated dollar (75%) for these scholarships, through reduction of state income tax revenues (due to the credit). Because the bill does not specify any maximum tuition a scholarship organization could direct, in theory the $50 million could fund less than 1,500 students to attend schools charging $35,000 tuition (more than the state average, but actually below the tuition in New York City top private schools).

The bill's sponsors have made no effort to guarantee a cost saving to the state, but have **assumed that all funds will go to schools charging less than the "state average."** In his written testimony for the January 27 education hearings Bishop Scharfenberger stated that there has been an "increased..cost to taxpayers..of.. more than $2 billion each and every year for the last 20 years." At $20,000 per student, that means 100,000 more students have transferred to the public system because of the tuition cost of private and religious schools. By this line of reasoning, reversing those transfers will solve the fiscal problems the marginally-financially viable schools. To solve those schools' financial problems, the legislation would have to direct funds to specified schools, not students. The schools charging less in tuition than is needed to hire adequate staff and maintain adequate facilities are closing for that reason. **We believe that the legislature will find it impossible to stop these schools' demands for more public funds until parity with salaries and facilities elsewhere has been reached.**[7] The reasoning of cost savings in the long run is false.

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[7] As Florida, having this program for many years has taught us, the cost to the state grows by political pressure from corporations and (in New York's case) individuals because tax credits are so much more valuable than tax

*We urge you to consider these views of a good government organization that stands to gain nothing but a better educated citizenry, capable of participating fully in the civic and economic future of New York State.*

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deductions. Their school finance equity and adequacy rankings are far lower than New York's—see Education Week, *Quality Counts 2016*.

*Attachment 1 to Testimony February 2, 2016*
*High Tax Aid Formula*

## S. HIGH TAX AID

***[Section 3602 (16) of the Education Law]***
***(2008-09 Estimated Total = $202.3 Million)***

*Selected High Tax Aid =*

*a. Greater of Total High Tax Aid or 70% of 2007-08 High Tax Aid for districts with APWR less than 2.0*

*OR*

*b. Greater of Total High Tax Aid or 50% of 2007-08 High Tax Aid for all other districts*

*Total High Tax Aid = Tier 1 High Tax Aid + Tier 2 High Tax Aid + Tier 3 High Tax Aid*

***Tier 1 High Tax Aid =***

*Greater of $100,000 OR ($450 X State Sharing Ratio X base year public school enrollment)*

*Eligible districts:*

*c. Income Wealth Index (IWI) for Foundation Aid < 2.5 and*
*d. 2006-07 AOE/TAPU for Expense greater than the State Average ($10,650) and*
*e. Tax Effort Ratio exceeds .03200 (3.2%).*

*Tax Effort Ratio =*
*Total 2005 Residential Tax Levy w/ Condominiums divided by Total 2005 Adjusted Gross Income*

***Tier 2 High Tax Aid =***

*[2006-07 AOE/TAPU for Expense - $10,660 (min=0)]*
*X*
*[1 – (0.6 X Alternate Pupil Wealth Ratio (APWR)] (min=0 / max=1)*
*X*
*Regional Cost Index (See Section A on Foundation Aid)*
*X*
*Base Year Enrollment X .181*

*Eligible districts are those with a Tax Effort Ratio greater than .0500 or 5%*

***Tier 3 High Tax Aid** = $52 X Regional Cost Index X Base Year Enrollment*

*Eligible districts:*

*a. Combined Wealth Ratio (CWR) less than 6.0 and*
*b. Regional Cost Index greater than 1.300 and*
*c. Quotient of 2005 AV/2006-07 TWPU divided by 2005 AGI /2006-07 TWPU is greater than 4.620*

*Excerpts from New York State League of Women Voters 2015 Impact on Issues*

# State Finances

The State's system of financing education should be progressive, with a higher portion of the cost paid by those having greater ability to pay. The means of raising money should incorporate the principles of simplicity and transparency, stability, insofar as progressivity is not sacrificed, and exportability, either in terms of payment by out-of-state residents or by partially offsetting any increase in State taxes with a decrease in federal taxes. In general, the means of raising money should incorporate principles of horizontal equity, with similar groups of taxpayers being treated equally and similar goods and services being taxed equally, provided that such treatment neither violates other League positions nor renders a tax more regressive. Additional funds necessary to provide the State's children with a sound basic education should be raised through increases in the State personal income tax, implemented in a progressive fashion. Stability of income tax should be increased by creating a substantial reserve dedicated to education, sufficient to maintain uniform stream of State revenues for funding of education in times of economic downturn.

## PROPERTY TAX AND STAR

### PROPERTY TAX

Statement of Position
As announced by the State Board, January 1980
And revised to reflect State Convention action, 1983
And further revised to reflect Financing Education state study 2005-2006

The League of Women Voters of New York State believes that the assessment of real property must be:
1. Equitable in its distribution of the tax burden;
2. Based on uniform standards;
3. State assisted, monitored, and enforced;
4. Easily understandable and accessible to taxpayers.

The League has determined that the assessment system that best meets these criteria is one that is based upon an initial determination of full value and then applies to those full value assessments differential assessment ratios or tax rates according to class of property. The state legislature should define a limited number of such classes of property and establish a permissible range of assessment ratios for each class. Within that range local legislative bodies would then be able to adopt local assessment ratios, which best meet their land use, economic development and social policies.

Property tax bills should contain all relevant information including: the classification, the assessment ratio, the tax rate, the full value assessment and the classified assessment, as well as the procedure for appealing. Taxpayers should have access to all existing appeals procedures as well as an intermediate non-judicial appeal body in order to protest both their assessments and their classification at low cost.

Administration of the property tax should be improved. The state should provide financial and technical assistance to localities, establish qualifications for assessors, provide training and otherwise monitor and enforce local implementation of more uniform assessment practices. Adequate state funding should be provided to carry out these services.

Tax exemptions extended to charitable, religious and educational institutions should be re-examined to insure continuing eligibility. Annually, each taxing jurisdiction should make public a list of all exempt properties, their true value and the amount of tax revenue lost to the locality because of each exemption. Owners of tax-exempt properties should pay appropriate fees for services rendered to the exempt property by local government.

Statutes governing exemptions should be reviewed with the intention of severely limiting new classes of exemption and preventing abuse of existing exemptions. Provisions of law must be clarified and made more stringent so that properties held by nongovernmental tax exempt bodies which are used for profit or for any purpose not directly related to the tax exempt purpose of the organization do not escape taxation.

The State should replace local residential property tax relief programs that grant taxpayers relief regardless of ability to pay with programs in which tax relief is limited to those individuals with a limited ability to pay and made available on a sliding scale according to need. The "circuit breaker" type of relief, in which state funded reimbursement is given to homeowners and renters whose property taxes exceed a certain percentage of income, should be expanded and should be automatically adjusted on an annual basis to reflect cost of living adjustments to the maximum income limit and maximum property value for eligibility.

The option of tax deferral should be made available to senior citizens with the taxes owed constituting a lien against the sale of the property or the liquidation of the owner's estate.

The League of Women Voters would like to see voluntary adoption of tax base sharing by counties or regions of the state.