



2016 Joint Legislative Budget Hearings

Testimony from Joseph M. Falbo Jr.

President – The New York State Society of Certified Public Accountants

Good morning members of the Senate and Assembly. My name is Joseph Falbo, and I am the President of the New York State Society of Certified Public Accountants. The NYSSCPA is one of the largest accounting organizations in the country, representing more than 28,000 professionals that live and work in New York State.

CPAs have the strongest connection to this state's vast and diverse economy among all of the regulated professions. There is not a sector of industry in this state that does not engage with a member of the accounting profession at some point in their typical operations. At the Society, we foster that widespread connection by engaging our 15 regional chapters and our more than 60 technical committees.

Our committees act as a gathering place for thought leaders in a variety of fields from the obvious areas such as tax and audit, to industry specific specialty skillsets including sports, arts, entertainment, fashion and real estate.

In our professional capacity, CPAs see themselves as partners in their client's progress, and strive to help them navigate the difficult road that is doing business in New York State. At the NYSSCPA, we strive to make that navigation easier, by working with folks like you to ensure that our members and their clients are treated in a reasonable and equitable fashion.

The NYSSCPA is directly, and actively, engaged with more than a dozen regulatory agencies throughout the country and the world in providing real time technical feedback to their proposals. Ironically enough, where we have not been historically as engaged with is this group in the state legislature, which many in our profession believe has the largest impact on our day-to-day professional lives. This is a gap we have made great strides to close in recent years, and I speak on behalf of our organization and the profession when I say that CPAs are ready, willing and able to become a partner in your progress as you lead the state of New York.

I greatly appreciate the opportunity to have been afforded time during this, the tax portion of the hearings, I have come prepared to speak on a number of specific items, but I'd like to start a little more broadly.

CPAs have firsthand experience on how changes to the tax code changes business outcomes. In a recent survey of New York State CPAs conducted by the NYSSCPA, more than 85 percent of respondents stated that the tax code was hindering the growth of small businesses.

When tax changes are made or proposed, it is up to the CPA to interpret what is done here in Albany is actually put into action by the businesses you intend to collect from. In the most obvious sense, we are the ones who must apply and explain the ever changing rules and regulations to our clients. Additionally, when the business climate itself changes as a result of these codes, the actual business of running an accounting firm changes as well.

It is heartening to see attempts being made to simplify and unify the New York State tax code as outlined in Governor Cuomo's executive budget.

To state the obvious, simplification of taxes is a very complex phenomenon. The paradox in this statement is the battle to be fought and won when redesigning the tax code. Simplification is a word that means different things to different people. The differences are often significant, not subtle. Simplification takes on completely different meanings based on each constituency's perspective.

Simplification can lead to lower taxes through higher compliance rates. Taxes collected are equal to taxes imposed multiplied by tax compliance rates. It follows that the higher the compliance rate, the lower the tax rate required producing the same funding for government.

It stands to reason, that simplifying the process for taxpayers can help to increase compliance. When there are delays in processing delinquent and amended state income tax returns it hinders effective settlement of collections and audit cases. In most cases, the taxpayer will hear nothing during this period. Processing time should be improved and communication of any delays to the taxpayer should be made promptly. An engaged regulatory agency, often motivates and engaged taxpayer. I have personally seen this within my practice over the last 25 years.

There are also areas where double taxation issues can be eliminated for dual-state residents. As you may know, residents who conduct business in more than one state currently face a myriad of tax regulations and rules to follow. We believe improvements in this area can increase compliance. For example, we believe the state should fully implement the North Eastern States Tax Officials Association (NESTOA) agreement, which was signed in 1996 by New York State but never fully implemented by legislative action.

The agreement provides a taxpayer the ability to receive credit for taxes paid on all their income which might be subject to tax in multiple complying states (such as New York and Connecticut). Currently, investment income as an example could be subject to tax in both states with any

offsetting credits. Additionally, we feel that the creation of a safe-harbor rule for domicile cases – say that for the prior three years, the taxpayer averaged more than 200 nights a year in another state, they would be considered to be domiciled in that state, not New York - can greatly streamline filing, payment and audit efforts. If I may, I would like to draw a parallel to my U.S.-Canada cross-border practice. I can assure you that it is much easier for me to discuss the income tax filing requirements with my clients in 2 Countries, than it is for me to discuss filing in 2 States, when New York State is one of them. The reason being, the federal tax treaty we have with Canada, in its most fundamental sense is rooted in the most basic of concepts. Simply said, no taxpayer will pay tax on the same dollar of income, to more than one taxing authority. Ladies and gentlemen, with the utmost respect to this governing body, pursuit of THIS very basic concept, is tax simplification all taxpayers seem to understand, appreciate and are willing to actively comply with.

We believe the state could improve their ability to collect delinquent liabilities by making the process for requesting and approving Installment Payment Agreements more streamlined and transparent. The IRS, through their recent Fresh Start initiatives have shown that providing a fair and simple way to establish a monthly payment plan improves collection of outstanding liabilities and brings those taxpayers into future compliance. These changes should include creating specific forms and/or on-line application procedures, as well as establishing and regularly updating clear standards on “allowable” expenses. Preferably those standards should be reflective of the differences in cost of living between the New York City metro area, major upstate urban areas and the more rural parts of our state.

In reviewing Governor Cuomo’s proposed executive budget, we would like to extend our support to the changes outlined in Part Q, which seek to unify tax due dates, and encourage the legislature to follow suit in their budget proposals. The NYSSCPA began to advocate for these changes in 2011. The spirit in which these recommendations are made is that taxpayers and tax preparers want to prepare and file complete and accurate tax and information returns. The prior due date structure made it difficult and, in some cases, impossible to do so. The resulting inadvertent and sometimes unavoidable lack of compliance does NOT encourage engagement in the tax filing process. The business environment in which we live and operate is significantly different from, and more complicated than, what it was even a decade ago, and considerably different from when most of the due dates for returns were established. The interconnectedness of entities, as well as individuals, combined with the complexity of the tax code necessitate revisiting and revising the due dates of tax and information returns to provide a more rational ordering of filings. We recognize that there will be no perfect solution; however, we believe that a more logical ordering will facilitate the ultimate goal of preparing and filing complete and accurate tax and information returns.

I would also like to take this opportunity to talk about the Society's position on the recent estate tax reform New York State undertook, and how it can be further enhanced to truly provide improved equitability to all New Yorkers.

We applauded the 2014-2015 Budget's efforts to enhance New York's competitiveness compared to other states by increasing the New York estate tax exemption. The overall objective of this move was noted by Governor Cuomo in his January 2014 State of the State address when he stated "Let's eliminate the "move to die tax" where people literally leave our state, move to another state to do estate planning."

While the changes made that year have been tremendously beneficial, the way in which it was ultimately implemented has left us with a few serious flaws that need to be corrected.

Chief among those concerns is the estate tax cliff that has been created, which applies to estates that are slightly above the New York State estate tax exemption. Put simply, assuming a basic exclusion amount of \$ 5,250,000, a decedent with a New York taxable estate of \$ 5,512,500 -- which is 105% of the basic exclusion amount of \$ 5,250,000 -- would pay New York estate tax of \$ 430,050. In effect, there is a New York estate tax of \$ 430,050 -- a marginal New York estate tax rate of nearly 164% -- on the additional New York taxable estate of \$ 262,500 in excess of the basic exclusion amount of \$ 5,250,000.

This marginal estate tax rate gets even higher in subsequent years due to the arithmetic involved, as the basic exclusion amount increases from year to year, traversing into higher marginal tax rates that would otherwise be soaked up by the applicable credit amount.

This tax cliff goes against any rational hope of making New York State a more favorable environment for its residents planning the later stages of their life. Not to mention, on the surface, flies in the face of the goal of eliminating the "move to die" concept.

As CPAs, when clients come to us for estate planning advice, we are professionally and ethically bound to inform those who find themselves in this situation to consider leaving New York State to protect their estate's assets. As you can imagine, the types of individuals who are at the most risk of this type of tax are also those who can most easily afford to relocate. As an aside, as a lifelong NYS resident who loves all this State has to offer, it is personally disappointing to have to advise my clients that moving out of NY is a viable wealth preservation strategy.

If an outright elimination of this cliff is not tenable, then we proposed it be smoothed out by extending the runway over which the phase out of the applicable credit amount occurs -- say from 100% to 150% of the basic exclusion amount, instead of between 100% and 105% of the basic exclusion amount as the law currently provides. A proposal to slightly extend the phase-out runway from 100% to 110% of the basic exclusion amount was contained within the Senate's "one-house proposal" on the 2015- 2016 New York State fiscal year budget, but this provision was not enacted into law.

The Society also believes the estate tax law should be reformed to allow portability of the applicable exclusion amount between spouses for New York estate tax purposes so that it matches the corresponding federal estate tax portability rules.

In order to better integrate the federal and New York State estate tax systems, we recommend that portability of the estate tax exemption between spouses be allowed for New York estate tax purposes, to match the corresponding federal estate tax portability rules. Portability of the deceased spouse's entire unused exclusion amount for New York estate tax purposes, as opposed to partial portability, is necessary to avoid creating a significant federal/state mismatch that would undermine the objective of attaining a comprehensive integration of the federal and New York estate tax systems.

We have two other estate tax reform proposals that in the interests of time I will keep brief. First, we propose reforming the estate tax law to prevent New Yorkers who make taxable gifts subject to addback to their New York State gross estate from being penalized for federal estate tax purposes due to deduction limitations. Second, we propose permitting a separate state qualified terminable interest property election to be made in circumstances where a federal estate tax return is filed to elect portability of the deceased spouse's unused exclusion amount.

We have a series of technical corrections to both of these issues that we have already begun discussing with the New York State Department of Taxation and Finance, and the Society would be happy to meet with any of you to provide further details.

In closing, I would like to say on behalf of the New York State Society of Certified Public Accountants that it is a privilege and an honor to be speaking before you today and we would welcome any opportunity to engage further on tax issues like these or in any other way you feel we can be helpful.