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Rules

Black, Puerto Rican, Hispanic and Asian
Legislative Caucus

February 29, 2012

Dear Colleagues:

I am providing you with the NYS Assembly Ways and Means Committee *Revenue Report* for State Fiscal Year (SFY) 2011-12 and 2012-13. This report is part of our commitment to presenting clear and accurate information to the public. It provides an overview of the national and State economies, as well as an analysis of the Committee staff revenue forecast for SFY 2011-12 and 2012-13.

The Committee staff projects that total All Funds receipts will reach $132.165 billion in SFY 2011-12, which represents a decrease of $1.153 billion, or 0.9 percent, from SFY 2010-11. The Committee staff estimate is $142 million lower than the Executive's estimate for SFY 2011-12.

The Committee staff projects that All Funds receipts will total $132.919 billion in SFY 2012-13, an increase of $754 million, or 0.6 percent, over SFY 2011-12. The Committee staff forecast is $195 million higher than the Executive's forecast for SFY 2012-13. This difference is largely attributable to differences in economic projections and how this translates into receipts.

The Committee staff projections are reviewed by an independent panel of professional economists drawn from major financial corporations, prestigious universities, and private forecasters from across the State. Assembly Speaker Sheldon Silver and I would like to express our appreciation to all of the members of our Board of Economic Advisors. Their dedication and expert judgment have been invaluable in helping the Ways and Means Committee staff refine and improve this forecast. They have served to make the work of the staff the best in the State. Of course, they are not responsible for either the numbers or any of the views expressed in this document.

I wish to acknowledge the fine work done by the talented Ways and Means Committee staff. Their forecasts are integral to the budget process. The Speaker and I look forward to working with each of you to achieve our goal of crafting a fair budget for all New York families during this challenging time.

Sincerely

Herman D. Farrell, Jr.
Chairman

NEW YORK STATE REVENUE REPORT

FISCAL YEAR 2011-12 AND 2012-13

February 2012

SHELDON SILVER
Speaker
New York State Assembly

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Assembly Ways and Means Committee

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OVERVIEW

The national and state economies are showing signs of sustained growth. With the national economy recovering, albeit at a slow pace, the State's fiscal condition is also improving with modest growth in State revenues.

The growth in revenues comes mainly from State taxes. The New York State Assembly Ways and Means Committee staff projects All Funds tax revenue for State Fiscal Year (SFY) 2011-12 to be $64.340 billion, representing an increase of 5.7 percent or $3.469 billion above the prior year. Adding miscellaneous receipts and Federal grants, the total is $132.165 billion, a decrease of $1.153 billion or 0.9 percent from the prior year. The enactment of tax reforms in December of 2011 is projected to add $375 million to SFY 2011-12 collections.

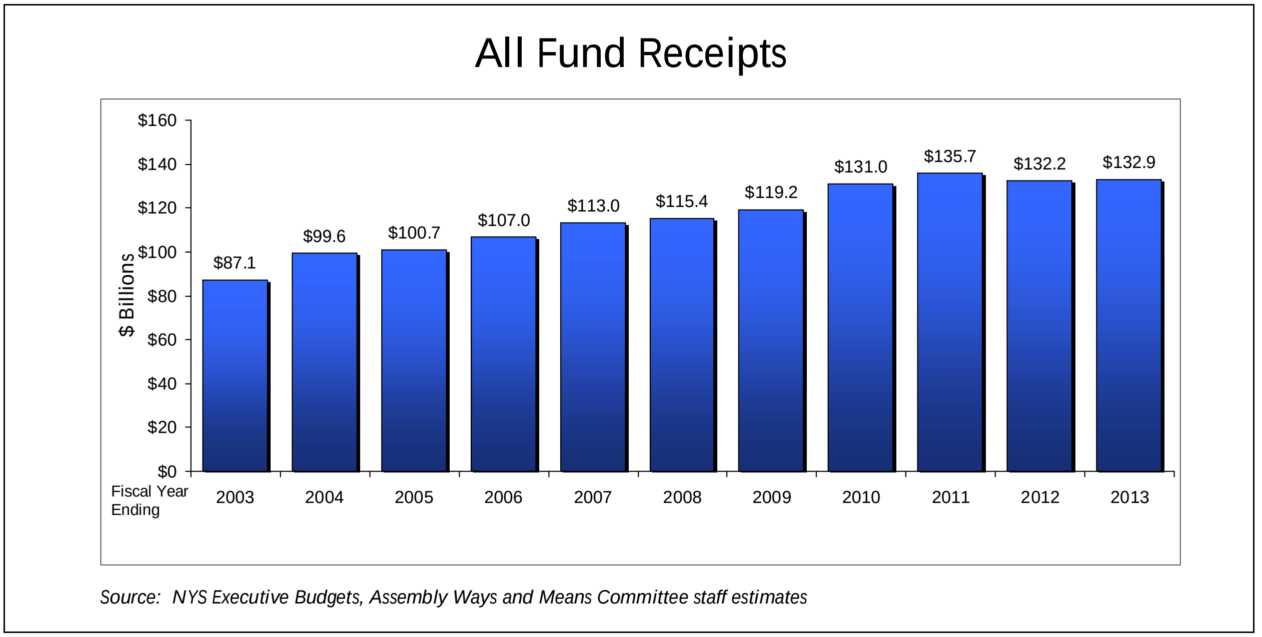

Figure 1

All major categories of taxes are estimated to increase in SFY 2011-12. The vast majority of the increase in tax receipts is attributable to the Personal Income Tax (PIT), which is estimated to increase by $2.469 billion or 6.8 percent. User Taxes are estimated to increase 2.9 percent or $409 million, business taxes by 8.0 percent or $579 million and other taxes are expected to grow by $12 million or 0.4 percent.

Table 1

State Fiscal Year 2011-12 Summary ($ in Millions)					
	2010-11 Actual	2011-12 Estimate	Change	Percent Growth	Diff. Exec.
Personal Income Tax	$36,210	$38,679	$2,469	6.8%	$15
User Taxes	14,206	14,615	409	2.9%	(104)
Business Taxes	7,279	7,858	579	8.0%	(64)
Other	3,176	3,188	12	0.4%	(40)
Total All Funds Taxes	**60,871**	**64,340**	**3,469**	**5.7%**	**(193)**
All Funds Misc. Receipts	23,144	23,883	739	3.2%	51
Federal Grants	49,303	43,942	(5,361)	-10.9%	-
Total All Funds Receipts	**$133,318**	**$132,165**	**($1,153)**	**-0.9%**	**($142)**

Table 2

State Fiscal Year 2012-13 Summary ($ in Millions)					
	2011-12 Estimate	2012-13 Forecast	Change	Percent Growth	Diff. Exec.
Personal Income Tax	$38,679	40,440	$1,761	4.6%	129
User Taxes	14,615	15,070	455	3.1%	(6)
Business Taxes	7,858	8,179	321	4.1%	27
Other	3,188	3,019	(169)	-5.3%	25
Total Taxes	**64,340**	**66,708**	**2,368**	**3.7%**	**175**
All Funds Misc Receipts	23,883	24,275	392	1.6%	20
Federal Grants	43,942	41,936	(2,006)	-4.6%	-
Total All Funds	**$132,165**	**$132,919**	**$754**	**0.6%**	**$195**

The Assembly Ways and Means Committee staff's All Funds tax revenue estimate for SFY 2011-12 is $193 million below the Executive Budget Financial Plan. Committee staff estimates are $142 million below the Executive's when estimates for Miscellaneous receipts and Federal grants are included. The largest difference between the Committee staff estimate and the Division of Budget estimate is in User tax receipts—the Committee staff estimate is $104 million below the Executive.

As a result of the slow economic recovery in combination with tax law changes, the Committee staff is expecting growth of $2.368 billion to $66.708 billion, or 3.7 percent in tax revenue for fiscal year 2012-13. The growth is due largely to 4.6 percent growth in personal income taxes. Stronger growth in consumer spending offset by the incremental impact of reinstating the clothing sales tax exemption is expected to keep growth in user taxes low at 3.1 percent. After growing eight percent in SFY 2011-12, businesses taxes growth is expected to slow to 4.1 percent as the marginal impact of the credit deferral wanes.

The Committee staff forecast of All Funds taxes is $175 million above the 2012-13 Executive Budget forecast and $195 million above the Executive when including estimates for Miscellaneous receipts and Federal grants.

STATE FISCAL YEAR 2011-12

Recent Trends

Through the first ten months of the fiscal year, All Funds tax revenues are 6.9 percent or $3.476 billion above last year. This increase is largely attributable to a $2.712 billion or 8.7 percent increase in PIT—the majority of which was in estimated payments. Absent the increase in estimated payments received in April, the year-to-date growth in all taxes combined would decline from 6.9 percent to 4.5 percent. Lower refunds increased year-to-date net collections by approximately $500 million as well. Also contributing to the year-to-date increase, User and Business taxes grew by approximately $330 million and $450 million, respectively. Other taxes decreased by $22 million, or 0.8 percent. While collection growth has remained positive all year, the overall rate of growth has continually declined as the fiscal year has progressed (see Figure 2).

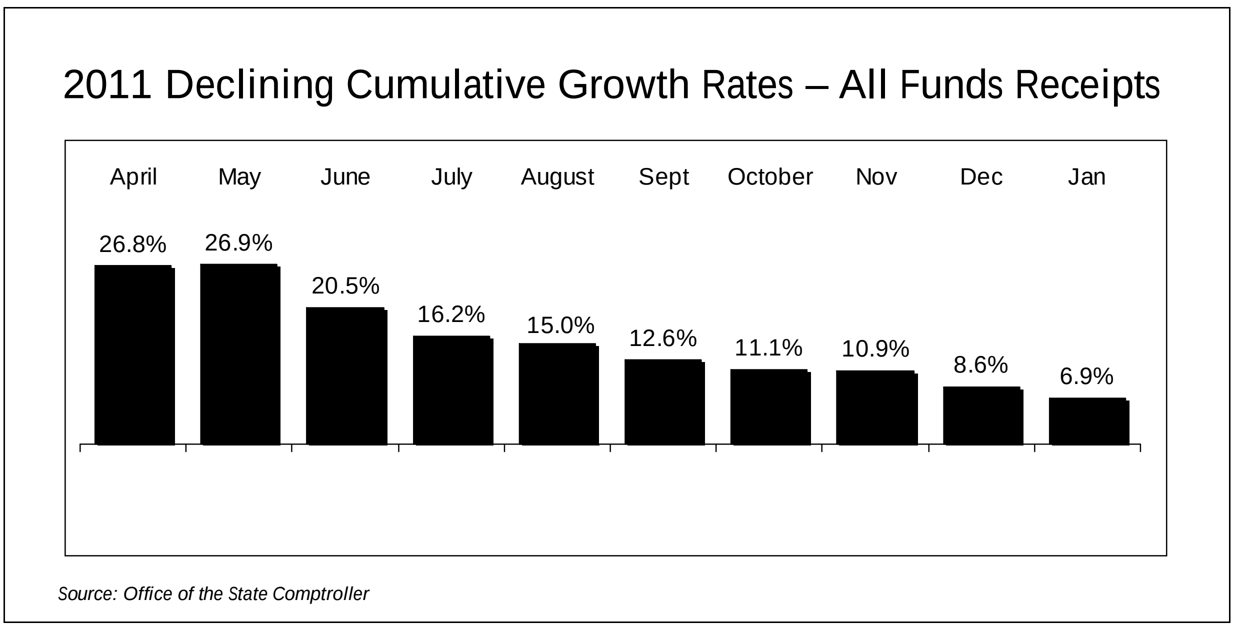

Figure 2

Tax collections are expected to decrease by 0.1 percent over the last two months of the fiscal year, as the impact of the Personal Income Tax reform yields less revenue than the surcharge that was in effect in the prior year.

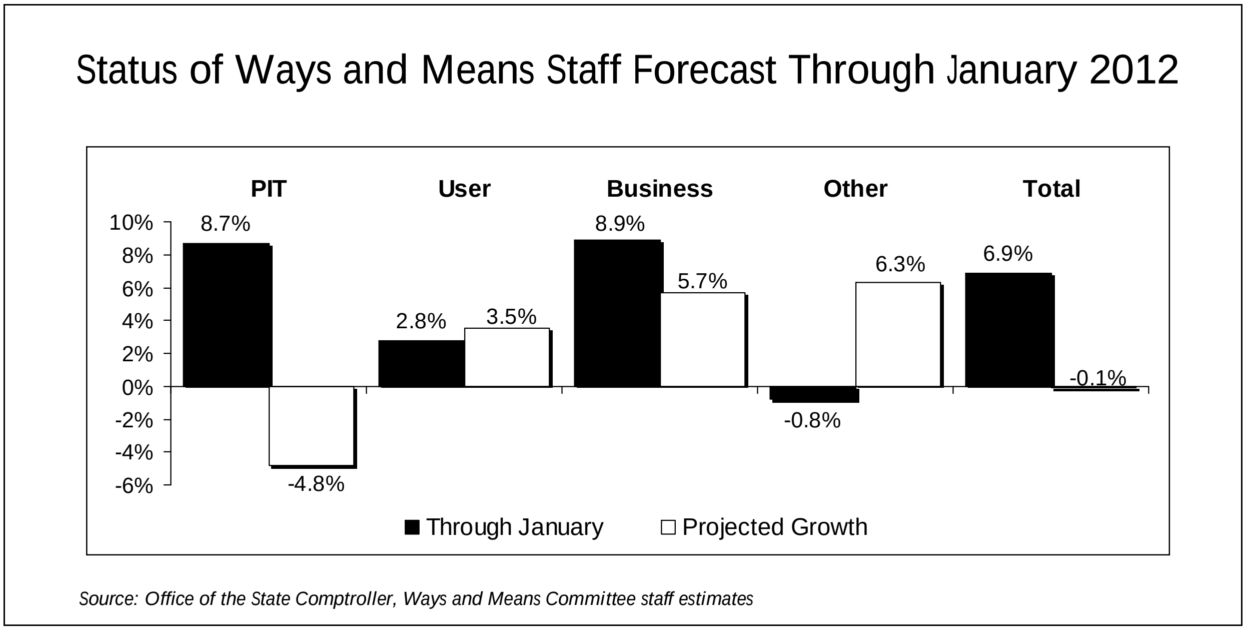

Figure 3

It is important to note the significant impact of tax law changes enacted since the beginning of the economic crisis. Absent these tax law changes, SFY 2011-12 tax revenues would have been more than $6.5 billion lower (see Table 3). The most significant of these actions were the 2009 to 2011 PIT surcharge ($3.7 billion), PIT reforms enacted in December of 2011 ($372 million), MTA payroll tax ($1.402 billion), tobacco and cigarette tax rate increases ($361 million), business tax credit deferral ($562 million), and the temporary suspension of the clothing exemption ($210 million). While other changes were also enacted, including a large number of actions with smaller revenue increases, this table highlights the major tax actions. Going forward, if these provisions were not enacted, revenues would be $5.1 billion lower in SFY 2012-13.

Table 3

Highlighting Major Revenue Actions ($ in Millions)				
Revenue Action	SFY 2009-10	SFY 2010-11	SFY 2011-12	SFY 2012-13
PIT Surcharge	$3,555	$4,705	$3,684	$879
PIT Reform			372	1,976
Temporary Suspension of Clothing Exemption	0	330	210	0
Tobacco Tax Increases and Enforcement	36	320	361	446
Business Tax Credit Deferral	0	100	562	637
MTA Payroll Tax	1,228	1,359	1,402	1,182
Total	**$4,819**	**$6,814**	**$6,591**	**$5,120**

Source: Division of the Budget, Ways and Means Staff Estimates

Tax Forecast

Table 4

All Governmental Funds SFY 2011-12 ($ in Millions)	2010-11 Actual	2011-12 Estimate	Change	Percent Growth	Diff. Exec.
Personal Income Tax	**$36,210**	**$38,679**	**$2,469**	**6.8%**	**$15**
Gross Receipts	**44,002**	**45,910**	**1,908**	**4.3%**	**19**
Withholding	31,240	31,086	(154)	-0.5%	19
Estimated Payments	9,735	11,646	1,911	19.6%	(14)
Vouchers	7,386	8,108	722	9.8%	(7)
IT 370s	2,349	3,538	1,189	50.6%	(7)
Final Payments	1,964	2,099	135	6.9%	(26)
Delinquencies	1,063	1,079	16	1.5%	40
Total Refunds	**7,792**	**7,231**	**(561)**	**-7.2%**	**4**
Collections	**36,210**	**38,679**	**2,469**	**6.8%**	**$15**
User Taxes and Fees	**14,206**	**14,615**	**409**	**2.9%**	**(104)**
Sales and Use Tax	11,538	11,906	368	3.2%	(91)
Motor Fuel Tax	517	497	(20)	-3.9%	(4)
Cigarette Tax	1,616	1,654	38	2.4%	(11)
Highway Use	129	132	3	2.3%	(2)
Alcoholic Beverage Tax	230	237	7	3.0%	4
Auto Rental Tax	95	104	9	9.5%	-
Taxi Surcharge	81	85	4	4.9%	-
Business Taxes	**7,279**	**7,858**	**579**	**8.0%**	**(64)**
Corporate Franchise	2,846	3,185	339	11.9%	(46)
Utility Tax	813	801	(12)	-1.5%	(14)
Insurance Tax	1,351	1,421	70	5.2%	8
Bank Tax	1,179	1,354	175	14.8%	(20)
Petroleum Business Tax	1,090	1,097	7	0.6%	8
Other	**3,176**	**3,188**	**12**	**0.4%**	**(40)**
Estate and Gift	1,219	1,135	(84)	-6.9%	(60)
Real Estate Transfer	580	634	54	9.3%	14
Pari Mutuel	17	17	-	0.0%	1
Payroll Tax	1,359	1,402	43	3.2%	6
Total All Funds Taxes	**60,871**	**64,340**	**3,469**	**5.7%**	**(193)**
All Funds Misc Receipts	23,144	23,883	739	3.2%	51
Federal Grants	49,303	43,942	(5,361)	-10.9%	-
Total All Funds Receipts	**$133,318**	**$132,165**	**($1,153)**	**-0.9%**	**(142)**

Personal Income Taxes

The NYS Assembly Ways and Means Committee staff estimates that personal income tax receipts will total $38.679 billion in SFY 2011-12, representing growth of 6.8 percent or $2.469 billion over the prior year. Gross receipts are expected to increase by 4.3 percent or $1.908 billion over SFY 2010-11, driven by increased estimated payments of nearly $2 billion, and by a decrease in total refunds of $561 million. A decrease in withholding of 0.5 percent or $154 million will temper other gains. Final payments and delinquencies are expected to conclude with increases of 6.9 percent or $135 million and 1.5 percent or $16 million, respectively.

The decrease in prior year refunds is directly attributable to an administrative shift in refund allocation between fiscal years, as $500 million in what would have otherwise been SFY 2009-10 current year refunds were distributed as SFY 2010-11 prior year refunds for cash flow savings. The state-city offset, which accounts for errors in allocating personal income tax payments between the State and the City of New York, shows growth of $258 million because of errors in payments arising out of changes to the NYC PIT STAR benefit that were enacted in the 2010-11 budget.

Through January 2012, net personal income taxes have totaled $33.784 billion, an increase of 8.7 percent, and are projected to decline by 4.8 percent in the last two months of the fiscal year to reach SFY 2011-12 estimates. The decline in the last quarter of the fiscal year is almost completely attributable to the reduction in taxes from legislation enacted in December of 2011 compared to the surcharge in effect last year combined with expectations for a tepid Wall Street bonus season.

User Taxes

User taxes are estimated to total $14.615 billion in SFY 2011-12, an increase of 2.9 percent or $409 million. Sales tax revenue, the largest tax in this category, is estimated to increase by $368 million or 3.2 percent—reflecting the general recovery of the economy. In particular, the increase in user taxes is also reflective of increased consumer spending after years of frugality. The partial restoration of the clothing tax exemption on April 1, 2011 will decrease revenues by $120 million on an annual basis compared to SFY 2010-11.

Through the first ten months of the fiscal year, sales tax revenues are up 2.8 percent and have grown in every quarter since the first quarter of 2010. Collections in the last two months of the year are projected to grow by 5.0 percent as the economic recovery continues.

Business Taxes

Business taxes are estimated to increase 8.0 percent or $579 million above SFY 2010-11. Corporate franchise taxes are expected to increase 11.9 percent or $339 million. Bank tax collections are estimated to increase by $175 million or 14.8 percent and Insurance taxes are estimated to increase by $70 million or 5.2 percent. In contrast, utility taxes are expected to decrease by $12 million or 1.5 percent. Petroleum business taxes are estimated to finish the year essentially flat, with growth of $7 million or 0.6 percent.

Through the first ten months of the fiscal year, business taxes are 8.9 percent above last year, and growth of 5.7 percent is expected in the last two months of the fiscal year. Bank tax collections are currently up 19.6 percent above last year, and are expected to increase 3.4 percent in the final two months of the fiscal year. After growing 13.3 percent in SFY 2010-11, corporate franchise tax receipts have grown 12.9 percent through the first ten months of the fiscal year and are estimated to grow an additional 9.6 percent in the final two months of the year. The Committee staff estimate accepts the Executive's assumptions with regard to significant audit collections in the remaining part of the fiscal year.

Other Taxes

Other tax collections are estimated to increase 0.4 percent or $12 million from SFY 2010-11. Estate and gift taxes have decreased by 9.1 percent or $94 million year-to-date through January, although this reflects the unpredictability of the estate tax more so than any underlying economic trends. With an expected 5.6 percent increase in the next two months, estate and gift tax revenues are expected to decrease 6.9 percent or $84 million for the full fiscal year.

Through January, real estate transfer tax (RETT) receipts are up 10.9 percent or $53 million over the same year-to-date period in SFY 2010-11. In general, New York was less affected by the housing crisis than much of the country, and the commercial market in New York City has continued to improve throughout the year. Thus, the overall RETT growth for SFY 2011-12 is expected to be 9.3 percent or $54 million over SFY 2010-11. Even after growth in 2010-11 of 18 percent and 9.3 percent in SFY 2011-12, current year collections are still estimated to be less than 65 percent of the peak collections of SFY 2006-07.

Miscellaneous Receipts

All Funds miscellaneous receipts are estimated to total $23.883 billion, an increase of $739 million over the prior year. The Committee staff estimate is $51 million above the Executive.

Lottery

Through the first ten months of SFY 2011-12 sales of traditional lottery games (Lotto, Numbers, Win 4, Pick 10, etc.) have decreased by 0.7 percent. As of January, traditional lottery receipts are down $10 million from the same period in SFY 2010-11. The Assembly Ways and Means Committee staff estimates a decline in traditional lottery of 0.9 percent or $18 million from SFY 2010-11 as there will be one less week of collections in this fiscal year. Receipts from video lottery terminal (VLT) gaming are estimated to decrease by $210 million. However, this decline actually reflects the receipt of the one-time $380 million payment for Aqueduct licensing in SFY 2010-11 offset by approximately $91 million in revenues from VLT gaming at Aqueduct, which opened in October of 2011. The Committee staff estimates combined revenue of $2.800 billion for SFY 2011-12, a decline of 7.1 percent or $215 million from SFY 2010-11. This estimate is $44 million above the Executive estimate.

General Fund

The Ways and Means Committee staff estimates that General Fund taxes, before transfers, will be $41.714 billion, reflecting growth of 6.4 percent or $2.509 billion over SFY 2010-11. This estimate is $205 million below the Executive Budget estimate. When including transfers, miscellaneous receipts and Federal grants, General Fund receipts are estimated to be $57.015 billion, representing growth of $2.572 billion or 4.7 percent. This estimate is $198 million below the Executive Budget estimate.

STATE FISCAL YEAR 2012-13

Key economic indicators point to an ongoing but slow recovery. The Assembly Ways and Means Committee staff is now predicting that Gross Domestic Product (GDP) will accelerate slightly from 1.7 percent in calendar year 2011 to 2.2 percent in 2012. In addition, New York employment is forecast to grow 1.0 percent, while total wages are forecast to grow 2.6 percent. As a result of the slow economic recovery in combination with tax law changes, the Committee staff is expecting growth of $2.368 billion to $66.708 billion, or 3.7 percent in tax revenue for the upcoming fiscal year. The growth is due largely to 4.6 percent growth in personal income taxes. Stronger growth in consumer spending, offset by the incremental impact of completely reinstating the clothing sales tax exemption, is expected to keep growth in user taxes at 3.1 percent. After growing eight percent in SFY 2011-12, businesses taxes growth is expected to slow to 4.1 percent as the marginal impact of the credit deferral wanes. The Committee staff forecast of All Funds taxes is $175 million above the Executive Budget forecast and $195 million above the Executive when including estimates for Miscellaneous receipts and Federal grants.

Tax Forecast

Table 5

All Governmental Funds SFY 2012-13 ($ in Millions)					
	2011-12 Estimate	**2012-13 Forecast**	**Change**	**Percent Growth**	**Diff. Exec.**
Personal Income Tax	**$38,679**	**$40,440**	**$1,761**	**4.6%**	**$129**
Gross Receipts	**45,910**	**48,091**	**2,181**	**4.8%**	**334**
Withholding	31,086	32,246	1,160	3.7%	(352)
Estimated Payments	11,646	12,432	786	6.7%	580
Vouchers	8,108	8,818	710	8.8%	(61)
IT 370s	3,538	3,614	76	2.1%	641
Final Payments	2,099	2,202	103	4.9%	(1)
Delinquencies	1,079	1,211	132	12.2%	107
Total Refunds	**7,231**	**7,651**	**420**	**5.8%**	**205**
Collections	**38,679**	**40,440**	**1,761**	**4.6%**	**$129**
User Taxes and Fees	**14,615**	**15,070**	**455**	**3.1%**	**(6)**
Sales and Use Tax	11,906	12,195	289	2.4%	(51)
Motor Fuel Tax	497	510	13	2.6%	(5)
Cigarette Tax	1,654	1,781	127	7.7%	48
Highway Use	132	144	12	9.1%	(3)
Alcoholic Beverage Tax	237	242	5	2.1%	4
Auto Rental Tax	104	110	6	5.8%	1
Taxi Surcharge	85	88	3	3.5%	-
Business Taxes	**7,858**	**8,179**	**321**	**4.1%**	**27**
Corporate Franchise	3,185	3,338	153	4.8%	39
Utility Tax	801	877	76	9.5%	-
Insurance Tax	1,421	1,429	8	0.6%	(34)
Bank Tax	1,354	1,376	22	1.6%	25
Petroleum Business Tax	1,097	1,159	62	5.7%	(3)
Other	**3,188**	**3,019**	**(169)**	**-5.3%**	**25**
Estate and Gift	1,135	1,126	(9)	-0.8%	(1)
Real Estate Transfer	634	694	60	9.5%	4
Pari Mutuel	17	17	0	0.0%	1
Payroll Tax	1,402	1,182	(220)	-15.7%	22
Total All Funds Taxes	**64,340**	**66,708**	**2,368**	**3.7%**	**175**
All Funds Misc Receipts	23,883	24,275	392	1.6%	20
Federal Grants	43,942	41,936	(2,006)	-4.6%	-
Total All Funds Receipts	**$132,165**	**$132,919**	**$754**	**0.6%**	**195**

Personal Income Taxes

Overall, personal income taxes, the largest component of tax collections, are forecast to total $40.440 billion, which is $1.761 billion or 4.6 percent above the SFY 2011-12 estimate. Calendar year 2012 wage growth is expected to be 2.6 percent, and capital gains are expected to increase by 47.8 percent.[1] As a result, New York adjusted gross income (AGI) is forecast to increase by 6.4 percent, resulting in a liability increase of 0.8 percent. However, growth in collections is tempered by the impact of the tax reforms enacted in December of 2011 compared to the rates in effect in tax year 2011.

User Taxes

All Funds user taxes are forecast to be $15.070 billion, which is 3.1 percent above the current year estimate. This forecast reflects the expectation that the economic recovery will be relatively slow and consumer spending growth will continue to be positive but constrained by the slow pace of recovery in employment and the housing market. In addition, sales tax collections will be negatively impacted by the complete reinstatement of the exemption on clothing and footwear, which will expand from purchases less than $55 to purchases less than $110 per item on April 1, 2012.

Business Taxes

Business taxes are forecast to total $8.179 billion in SFY 2012-13, which is an increase of 4.1 percent from the current year closeout on an All Funds basis.

The Committee staff is forecasting growth in all business taxes, with utility taxes and the petroleum business tax showing the strongest growth at 9.5 percent and 5.7 percent, respectively. Corporate franchise taxes are forecast to grow by 4.8 percent, while insurance and bank tax collections are forecast to be essentially flat.

Other Taxes

Other taxes, which consist primarily of the estate tax, real estate transfer taxes, and the MTA payroll tax, are forecast to decrease by 5.3 percent or $169 million in SFY 2012-13,

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[1] This growth reflects a shift in capital gains from the first quarter of 2013 into the fourth quarter of 2012 in response to federal tax law changes and will have no effect on SFY 2012-13 collections.

to a level of $3.019 billion. However, approximately $310 million in revenue will not be collected as a result of exemptions and rate decreases in the MTA payroll tax that will take effect on April 1, 2012. Real estate transfer tax collections are expected to continue their recovery, growing at 9.5 percent. Estate and gift tax collections are forecasted to decrease by $9 million.

Miscellaneous Receipts

All Funds miscellaneous receipts, including lottery, are forecast to total $24.275 billion, which represents an increase of 1.6 percent. The Committee staff forecast for All Funds miscellaneous receipts is $20 million above the Executive forecast, reflecting slightly higher forecasts for lottery and alcohol beverage fees.

Lottery

Lottery receipts are forecast to increase 8.0 percent or $223 million in SFY 2012-13. The vast majority of this increase reflects the first full year of VLT gaming at Aqueduct. Absent this revenue, lottery receipts would be expected to increase by only $48 million or 1.7 percent.

General Fund

The Ways and Means Committee staff forecasts that General Fund taxes will be $43.469 billion, reflecting growth of $1.754 billion or 4.2 percent. This estimate is $97 million above the Executive Budget forecast. When including transfers, miscellaneous receipts and federal grants, General Fund receipts are forecast to be $58.852 billion, representing growth of $1.839 billion or 3.2 percent over the SFY 2011-12 estimate. This forecast is $139 million above the Executive forecast.

RISKS TO THE REVENUE FORECAST

Despite strong year-to-date growth in revenues, total tax collections through January are below the Enacted Budget Financial Plan. Although growth over the remaining months of the fiscal year is expected to be slightly lower because of tax law changes, there is still downside risk that a slowdown in the economic recovery could further suppress collections in SFY 2011-12 and undermine revenue growth in SFY 2012-13. With economic uncertainty and potential weakness manifesting on a series of fronts, from the ongoing European debt crisis to instability in the Middle East and federal budgetary and debt conflicts, the National and State recoveries continue to face considerable headwinds.

While revenues from all tax types could suffer if the economic recovery decelerates, personal income tax receipts tied to the Wall Street bonus season are particularly vulnerable. Although the Ways and Means Committee staff estimates that variable wages will decrease by 13.5 percent in SFY 2011-12, the actual rate of decline could be even more pronounced based on initial reports. Likewise, this forecast assumes growth in variable wages in SFY 2012-13 of 8.4 percent, which may prove overly optimistic if international financial volatility intensifies.

The pace of economic recovery is the largest risk to achieving the Committee staff revenue forecast. The recovery has been slow and historical growth rates are not expected to return during the current forecast period. Consequently, revenue growth is expected to be slow and, depending on the pace of economic recovery, could fall short of current expectations. Finally, the economic forecast assumes that the scheduled increase in federal tax rates effective January 1, 2013 will accelerate capital gains realizations and bonus payments from the first quarter of 2013 to the last quarter of 2012. While this shift will not create a substantial change in total collections, it will have an impact on revenue collection patterns and introduces an additional element of risk to the State financial plan.

ECONOMIC BASIS FOR REVENUE FORECAST

Economic Basis for Revenue Forecast

KEY ECONOMIC INDICATORS

Importance of New York State's Economy

According to the U.S. Bureau of Economic Analysis New York's real Gross Domestic Product totaled slightly over $1.0 trillion in 2010, registering the second highest growth rate among all states at 5.1 percent, following a 3.0 percent decline in 2009 and a 0.4 percent decline in 2008. New York's economy is the third largest in the nation following California and Texas.[2] If New York was an independent nation its economy would be the 14th largest in the world.

Table 6

Key Economic Forecast Variables (Percent Change)				
	Actual 2010	Estimate 2011	Forecast 2012	Forecast 2013
US Variables				
Real GDP	3.0	1.7	2.2	2.6
Personal Income	3.7	4.7	3.5	3.8
Corporate Profits (Before tax)	25.0	3.6	0.8	1.7
Employment	(0.7)	1.2	1.4	1.5
S&P 500	20.3	11.4	5.7	6.7
Treasury Bill Rate (3 month)*	0.1	0.1	0.1	0.1
Treasury Note Rate (10-year)*	3.2	2.8	2.2	2.8
NYS Variables				
Employment	0.1	1.2	1.0	1.2
Wages	4.3	4.7	2.6	4.4

*Annual Average Rate

Source: NYS Assembly Ways and Means Committee staff

The importance of the economy to tax receipts growth and underlying forecasting risks should not be underestimated. For example, the financial services industry is one of the key drivers of wage and employment growth, as explained in the following sections. In State Fiscal Year (SFY) 2009-10 net PIT receipts declined by $2.1 billion, or six percent while during SFY 2002-03 PIT receipts declined by $2.9 billion. In both years, large losses in

[2] U.S. Bureau of Economic Analysis.

variable compensation in Wall Street was a major factor in the substantial decline in receipts.

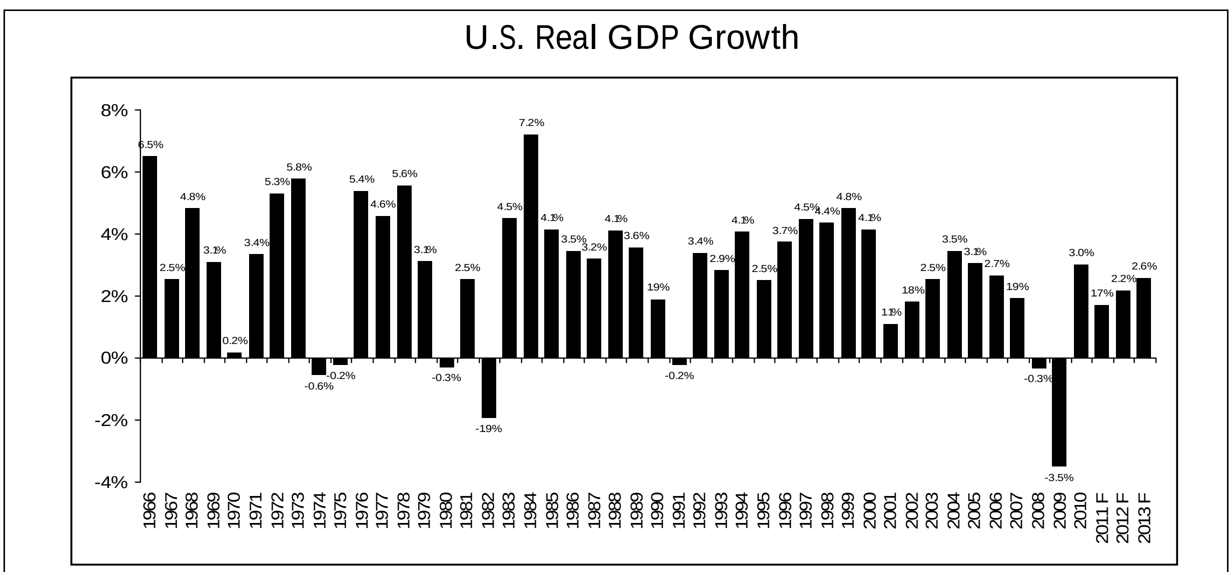
Key Revenue Drivers

The U.S. economy, as measured by real GDP, increased by 2.7 percent during the fourth quarter of 2011, following anemic growth of 1.8 percent in the third quarter and 1.3 percent growth in the second quarter. The 2.7 growth was the strongest since the second quarter of 2010, but it is still below levels considered necessary for a robust recovery.

Combined with relatively weak net job additions, the economic recovery continues to remain vulnerable, with several long-term structural and cyclical constraints promising to continue to impede a return to high and sustainable rates of growth. Absent a robust economic expansion, given the depth of the last recession, long term revenues could be insufficient to cover existing expenditures.

A fragile labor market will constrain any recovery in revenues. The forecast does not project for employment to reach pre-recession levels until at least 2014. Therefore, growth in income and sales taxes is likely to be lower than historical averages.

U.S. Gross Domestic Product



Source: US Bureau of Economic Analysis; NYS Assembly Ways and Means Committee staff estimates.

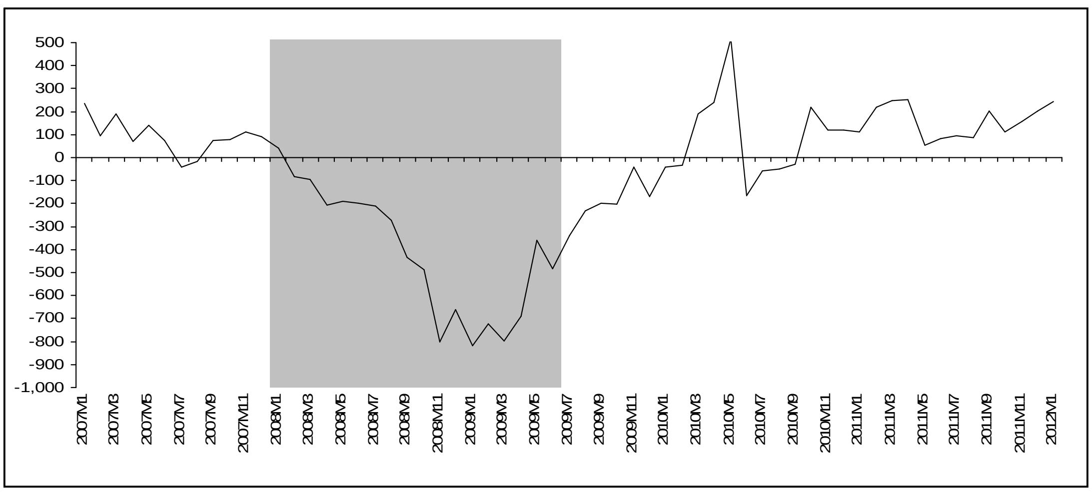
Figure 4

GDP is the primary aggregate indicator of the nation's economic health. Sustainable trend growth is the critical driver of overall State tax receipts. Despite certain leads and lags in the State's business cycle, New York's economy is highly correlated to national fortunes.

U.S. GDP declined by 3.5 percent in 2009, the worst annual decline since the end of World War II. As the chart above shows the current Ways and Means forecast through 2013 does not anticipate a return to the stronger rates experienced in the 1980s and 1990s. **Real GDP is forecast to grow by 2.2 percent in 2012 and 2.6 percent in 2013.**

U.S. and NYS Employment Trends

U.S. Job Gains and Losses (In thousands)



Source: U.S. Department of Labor; (Shaded areas represent U.S. recessions.)

Figure 5

Robust employment gains and a healthy labor market are signs of a mature economic recovery and are key to underlying receipts growth, especially for the sales and other user taxes that depend on overall consumer sentiment and spending.

Following unprecedented job losses during the recession that ended in June 2009, job gains averaged 86,000 in 2010 and 152,000 in 2011, a positive trend but still well below the levels needed to absorb many of the unemployed and newcomers into the labor market. Figure 6 shows several periods of historically high unemployment. For New York the recession of 1980, 1990 and 2001 showed peak unemployment of around eight percent.

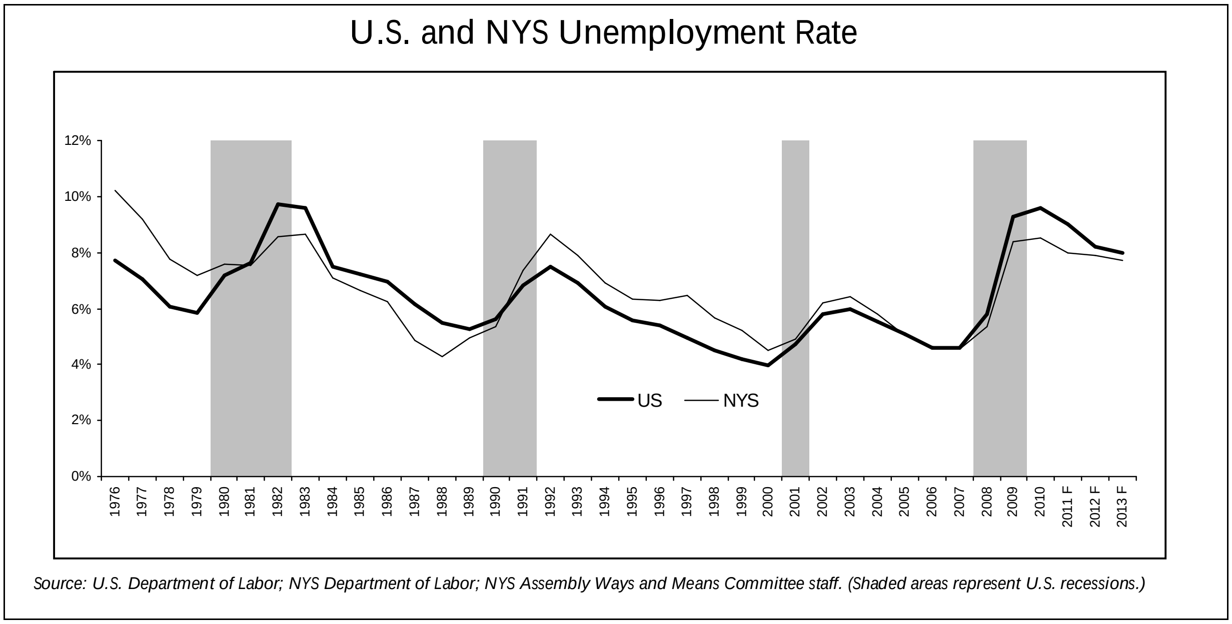
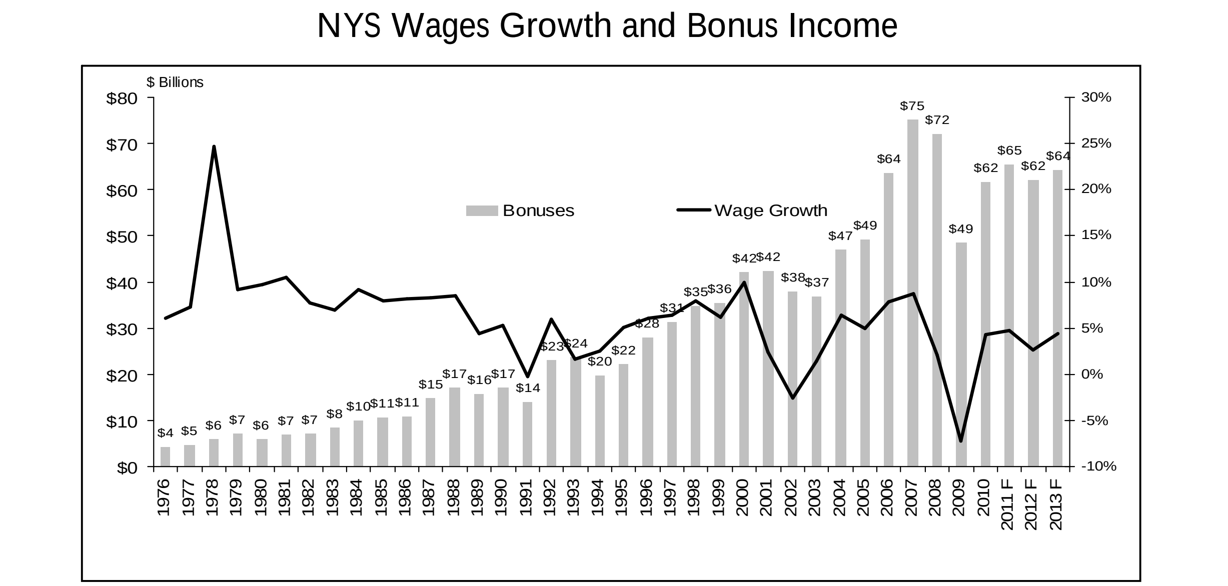


Figure 6

On the positive side, the U.S. unemployment rate has started to trend downward reaching 8.3 percent in January 2012, having fallen by 0.8 percentage points since August of 2011. However, the number of long-term unemployed, those unemployed for more than 27 weeks, remained virtually unchanged at 5.5 million. This accounts for 42.9 percent of all unemployed, almost twice the previous high registered in the early 1980s, underlying the complicated structural dynamics of the labor market following the deterioration of the financial markets.

Unlike the recessions of 1980 and 2001, New York's unemployment rate has been consistently lower than the national rate through the recession and economic recovery. This advantage in the labor market should help bolster receipts if the economic recovery accelerates. **The Ways and Means Committee staff forecast projects NYS unemployment in 2012 at 7.9 percent compared to 8.2 percent for the nation.**

NYS Wages and Bonuses



Source: NYS Department of Labor; NYS Assembly Ways and Means Committee staff estimates.

Figure 7

New York wages, the primary driver of the withholding component of the personal income tax (PIT), are estimated to have grown by 4.7 percent in 2011 and are forecast to grow at a slower 2.6 percent in 2012 and 4.4 percent in 2013. Wall Street bonuses are a key component of NYS wages and the outlook for the critical first quarter of 2012 is not very optimistic at the time of this writing. Bonuses are forecast to decline by 24.4 percent in the first quarter of 2012, reflecting lower profitability on Wall Street in 2011.

Bonus income flowing through to withholding taxes is critical to funding the expenses of the fourth quarter of the state fiscal year. With the projection for lower bonus income, a heightened risk exists for a shortfall in the closing quarter of the fiscal year.

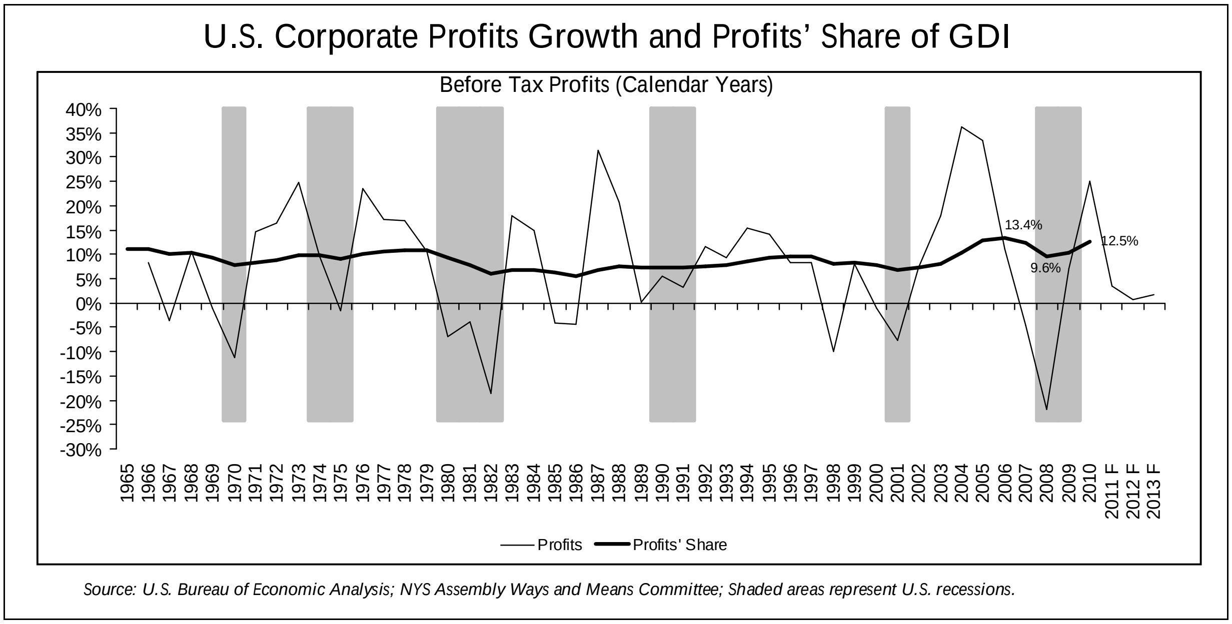


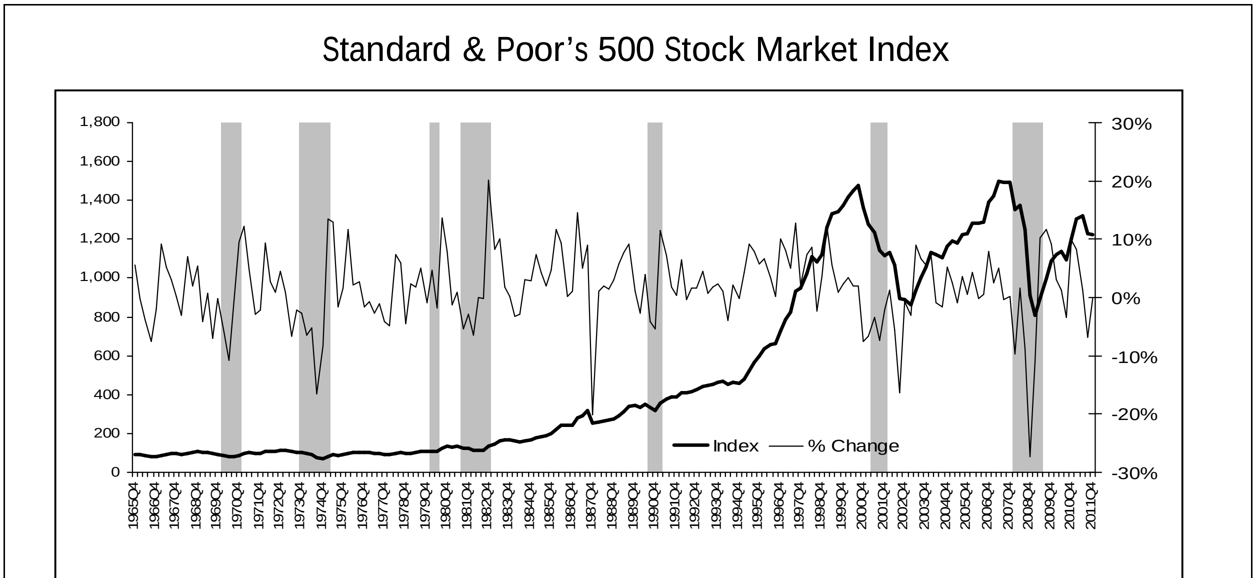
Figure 8

Business taxes ultimately depend on the profitability of financial and non-financial institutions.

<u>Corporate Profits</u>

Following two consecutive annual declines, before-tax corporate profits registered positive growth in 2009 followed by more robust gains in 2010. **Corporate profits before tax are estimated to have increased by 3.6 percent in 2011 and are forecast to increase by 0.8 percent in 2012 followed by growth of 1.7 percent in 2013.** The volatility of corporate profits, combined with corporate behavior in terms of audits, adjustments, corporate structure and time of filing adds more uncertainty to forecasts of corporate tax receipts.

As a percentage of Gross Domestic Income (GDI), corporate profits reached a historic high of 13.4 percent in 2006. While the ratio trended down during the recession it is again up to a robust 12.5 percent, partially reflective of strong corporate returns from overseas operations and not necessarily strong U.S. growth.



Source: Standard & Poor's; Shaded areas represent U.S. recessions.

Figure 9

S&P 500

The chart above provides an overview of the recent volatility in the S&P 500, a broad index of market performance. The solid line provides a clear insight as to the consistent upward trend in the stock market from the early 1980s through the late 1990s. Since then the market has experienced two consecutive boom cycles followed by the rapid collapses related to the technology and housing market bubbles. The rapid increases in stock market wealth help to explain significant transformations in the make-up of employment dynamics over the last 30 years.

Analysts use the Chicago Board Options Exchange Market Volatility Index (VIX) to measure the S&P 500 volatility. The index measures the volatility of options prices for the next 30 days. The index reached a historic high of 80.86 percent on November 10, 2008 and following consistent declines was up to 48 percent on August 8, 2011. Since then the index has declined again and as of mid-February stood at around 20 percent.

The stock market can provide an abundant amount of anecdotal information on the direction and magnitude of tax collections. A heightened volatility as measured by the VIX index, indicates increased uncertainty over the future path of the economy. This can have a dampening effect on business investment as well as the "wealth effect" on consumption spending. With the consumer on the sidelines, sales taxes at the state and local level can underperform.

During 2012 the S&P 500 is forecast to increase on average by 5.7 percent on an annual average basis, down from 11.4 percent growth in 2011.

Securities and Bond Issuance

Securities issuance totaled $1.4 trillion in the fourth quarter of 2011, a 2.1 percent decline from 2011 Q3, or 29.1 percent decline from the same quarter in 2010. According to the Securities Industry and Financial Markets Association (SIFMA) the decline is primarily attributed to declines in Federal agency and Treasury debt issuance. Helped by low interest rates, total corporate bond issuance totaled $190.3 billion in the fourth quarter of 2011, a 6.1 percent increase over the previous quarter, but down 25.8 percent from the same quarter a year ago. Equity issuance also increased to $31.1 billion, or 43.5 percent in 2011 Q4.

M&A and IPO Activity

Mergers and Acquisitions (M&A) as well as Initial Public Offerings (IPOs) provide a substantial stream of revenues for Wall Street firms and are usually a bellwether of overall confidence in the underlying strength of the economy. Following a substantial decline in M&A deals during the Great Recession, activity picked up in 2010 with a 22.9 percent increase in global announced deals totaling $2.4 trillion. For the first half of 2011, U.S.-based M&A deals increased by 70 percent over the prior year period with sharp declines in the second half of the year as the Euro crisis fears constrained the overall market. However, even with the declines registered in the second half, total U.S. M&A volume totaled $1.0 trillion, an increase of 28.9 percent over 2010.[3]

Global IPO activity recovered in 2009 registering growth of 20 percent over 2008, followed by a doubling of activity in 2010 with a volume of $269.4 billion. During the first half of 2011 global IPO activities increased by 17.6 percent, followed by a slowdown in the second half of the year. Overall, global IPO volume decreased 39.5 percent in 2011 over 2010.[4]

[3] Thomson Reuters: “Mergers & Acquisitions Review,” Financial Advisors, 2011 Q4
[4] Thomson Reuters: “Equity Capital Markets Review,” Managing Underwriters, 2011 Q4.

Key Forecasting Risks

The economic recovery sputtered during the fall of 2011 with many analysts predicting a return to negative growth. However, since then a variety of positive economic releases have renewed optimism that the recovery is sustainable. However, as always, significant forecasting risks remain. As explained in other parts of this report as well as in the *Economic Report* of the Committee, risks from volatility in energy prices, the housing market, bonus activity, geopolitical and natural events that can disrupt the supply chain, among other risks, always add significant elements of uncertainty in our forecasts.

U.S. and NYS Housing Markets

As has been well documented, the boom in the housing market during the early to mid-2000s was fueled by easy credit and low interest rates, lax lending standards, and a complex web of derivative debt instruments that pushed bank leverage to historic highs. This series of element was the catalyst in the Great Recession that ensued with a collapse in housing prices that spread throughout the economy via the financial markets.

As the chart below shows U.S. housing starts reached a low of 554,000 units in 2009, following four consecutive double-digit growth declines. Since then new housing construction activity has been subdued as the underlying economic fundamentals have remained uncertain. While the current forecast calls for a slow recovery, the 2013 expected level is well below the highs reached in prior recoveries.

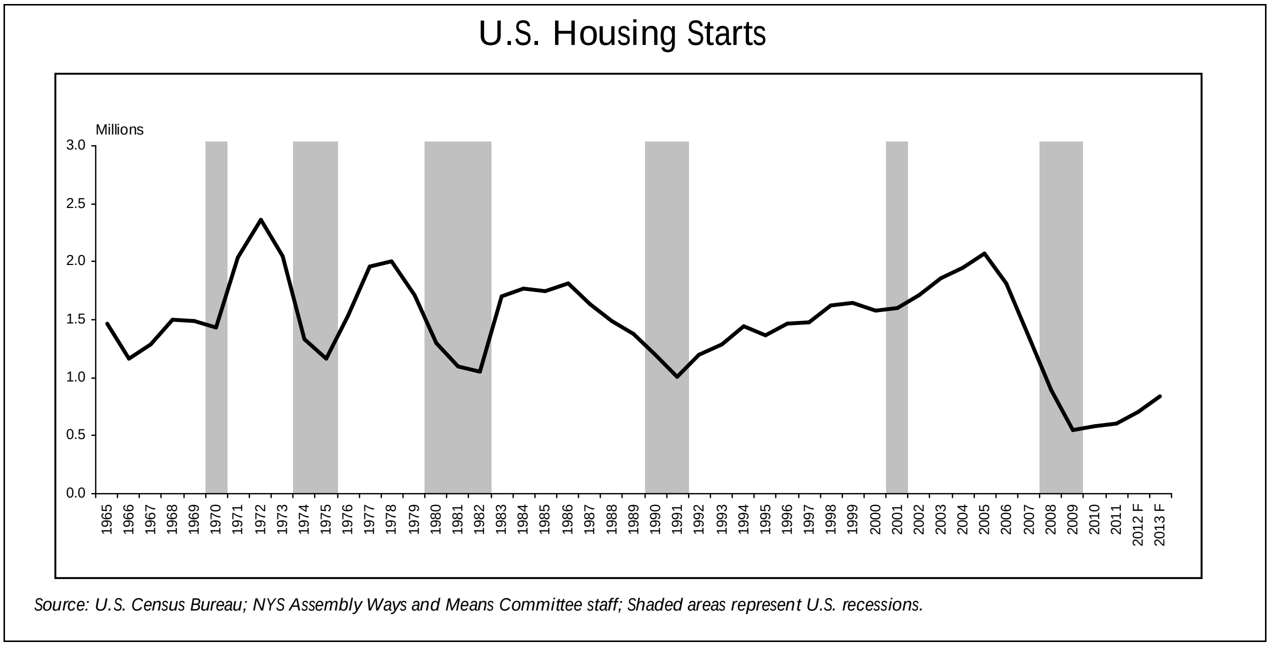


Figure 10

The NYS housing market did not experience the housing boom of other states and, thus, the market correction that followed did not affect the State to the same extent. For example, from the third quarter of 2007 to the third quarter of 2010, home prices in the State fell 7.0 percent, compared to 11.1 percent for the nation. New York City and the Nassau-Suffolk areas experienced the strongest pricing gains during the boom and, subsequently, also suffered the heaviest declines since 2007. Accordingly, the State's housing market is one of the healthiest in the nation based on foreclosures as well as the percentage of mortgage holders who owe more than their house is worth. For more details on both the U.S. and NYS housing markets please consult the *Economic Report* of the NYS Assembly's Ways and Means Committee.

To the extent that the economic recovery does not gain a firm footing with robust employment gains that would translate into positive demand and supply fundamentals for the housing market, the recovery in the residential real estate market may not materialize. The expected wave of foreclosures following the settling of lending disputes with major mortgage services could threaten the more vulnerable markets putting further downward pressure on housing prices and consumer and business confidence.

Oil Prices

As the chart below shows refiners acquisition cost of crude oil reached unprecedented nominal highs in 2008 and while it retreated during the recession it has regained momentum with the average monthly price at almost $110 per barrel as of December 2011.

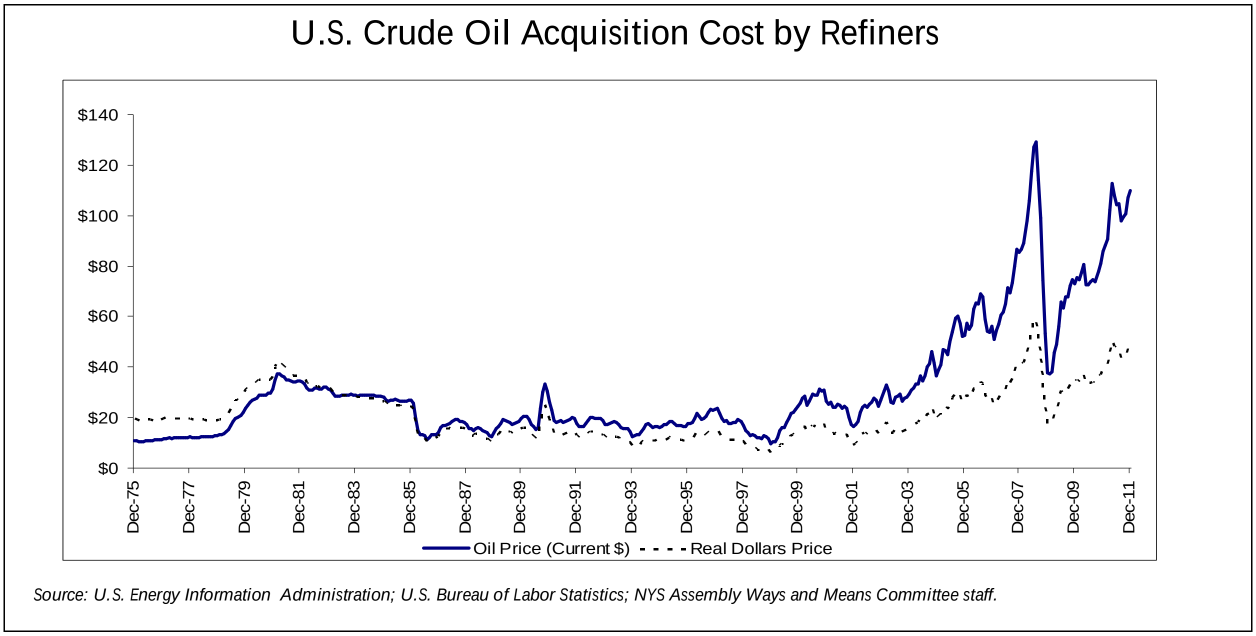


Figure 11

As energy prices have a direct effect on disposable income, further increases in the price of oil and the price at the gas pump will have adverse consequences on consumer demand and overall sentiments.

The downside risk of high energy prices becomes greater if one considers the current geopolitical uncertainties in the Middle East, especially regarding Iran and the potential of significant supply chain disruptions.

Wall Street – Financial Services Sector Regulations & Profitability

Signed into law on July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act together with the provisions of the Basel III guidelines, have added new layers of regulation and capital requirements and will affect every aspect of the financial services industry. Therefore, as the full set of regulations has not been enunciated yet and the implementation stages are set for the near future, considerable uncertainty on the potential profitability implications adds another layer of uncertainty to our revenue forecasts. The following provides a brief overview of key provisions of the Dodd-Frank legislation and the Basel III provisions:

Dodd Frank

- Caps debit interchange fees (the price banks charge to merchants for their customers use of debit cards), reducing average swipe fees by almost 50 percent;
- Bans banks from making trades for their own accounts, while allowing them to make short-term trades for hedging or market-making purposes. Involves restrictions on proprietary trading, restricts to up to three percent the amount of Tier 1 capital that can be invested in hedge funds and private equity funds. This particular rule could have large implications for companies such as JP Morgan Chase, which is one for the largest hedge fund and private equity managers;
- Establishes the Consumer Protection Bureau as an agency of the Federal Reserve Board to supervise and regulate consumer financial laws and products;
- Establishes new regulatory agencies (Financial Stability Oversight Council and Office of Financial Research) to monitor risks in the financial system and provide roadmaps for orderly liquidation of distressed financial firms;
- Regulation of over-the-counter derivatives, including swaps, creation of market clearinghouses;
- Provides the rights, liabilities, and responsibilities of parties involved in the Electronic Fund Transfers (EFTs).

According to the Standard & Poor's analysis most of the above rules are expected to increase banking fees and expenses, and limit profit margins while some will achieve some long-term efficiency gains (e.g. creation of clearinghouses for over-the-counter derivatives).

The investment services industry will be more exposed to the restrictions of the Dodd-Frank legislation under the Volcker rule. Prohibitions on proprietary trading and limits on institutions ability to invest in hedge funds and private equity funds are expected to have the most impact on major financial institutions.

Basel III

Basel III refers to a global framework of standards for banks agreed to by the Basel Committee on Banking Supervision. The third round (following Basel I and Basel II in the 1980s and 1990s) of standards calls for raising to seven percent the core capital to risk-weighted assets, comprised of 4.5 percent minimum Tier 1, plus a 2.5 percent cushion. The phase-in of the implementation is expected to last through 2018.

The new guidelines could lead to increased costs for banking institutions affecting their returns. However, the goal is to ensure a more well-capitalized system less vulnerable to shocks and unexpected losses.

Sovereign Debt Crisis in Europe and the U.S.

The ongoing sovereign debt crisis in Europe and the credible threat of an unraveling of the Euro will continue to rattle U.S. financial markets in 2012. The Euro-debt crisis that engulfed Euro-zone nations such as Greece, Italy, etc. where U.S. and European banks have a much larger exposure. As investors become uncertain as to the credit-worthiness of major European nations the yields on sovereign debt have become higher, thus, making it even more expensive to borrow. As of mid-January 2012, while the yield on 10-year U.S. bonds stood at 1.963 percent, Portugal was 12.7 percent, Italy 7.125 percent, Spain 5.5 percent, France 3.3 percent, and Germany's 1.8 percent, the latter reflecting the dominant position of Germany in Europe as a safe haven for investors. For Greece, the annual yield for 10-year bonds exceeded 35 percent, signaling investor belief in the unsustainability of the country's debt obligations.

As public debt to GDP ratios rise in Europe, the ripple effects from a Euro collapse on the financial system cannot be ignored. Efforts by the European Central Bank (ECB) to contain the crisis by implementing Federal Reserve type measures of quantitative easing have already complicated the political and economic picture.

The incapacity of some EU nations to borrow from the private credit markets, and the penalizing rates paid by several others, have placed the ECB in the precarious position of, in effect, monetizing sovereign debt and directly purchase government bonds in the secondary markets. These policies, similar to the ones pursued in the U.S. by the Federal Reserve, have put downward pressure on the yields of long-term debt. In turn, low yields have spurred a boom in the fixed-income markets with many corporations seeking access to the bond markets instead of equity.

Beyond the financial implications of the accumulation of sovereign debt, ever increasing debt levels in both Europe and the U.S. will have implications for the financing of critical non-discretionary expenditures. In addition, a higher level of debt implies higher interest payments, slower growth as resources are diverted for the payment of such debt, as well as restricting policy makers ability to react to catastrophic events, unexpected challenges and economic downturns.

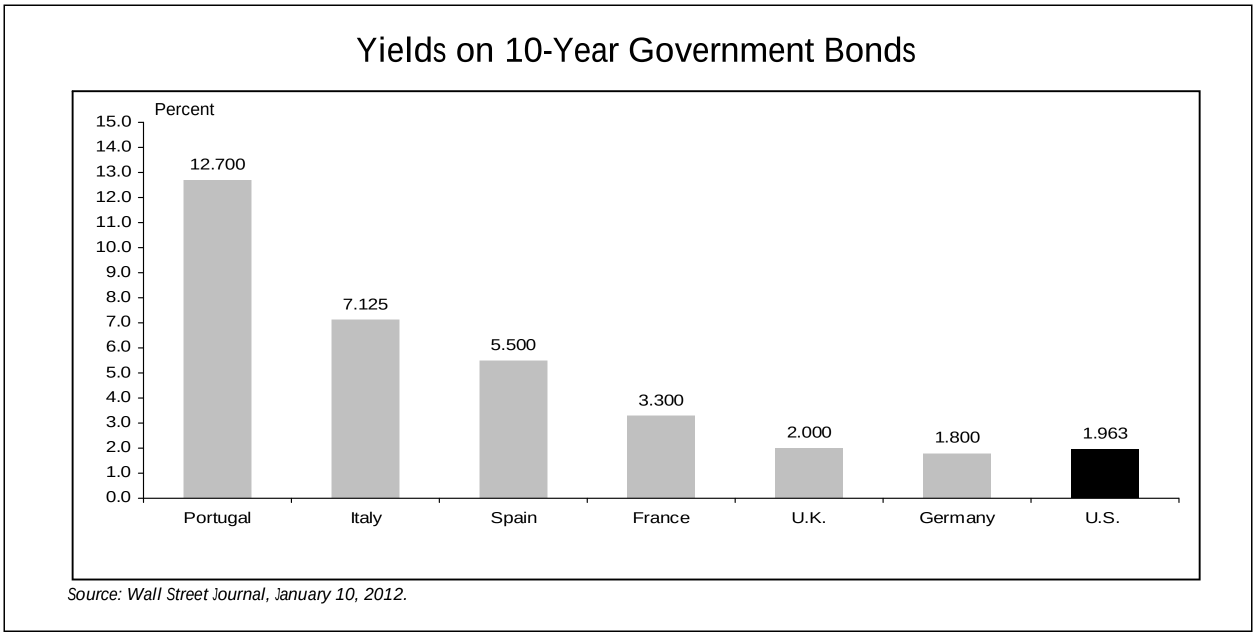


Figure 12

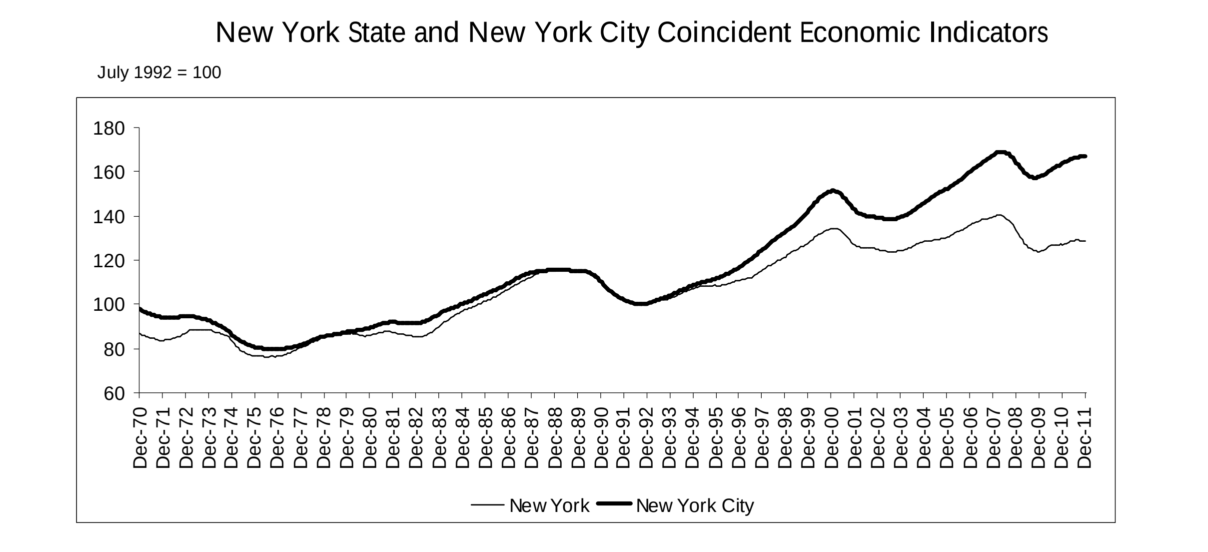
According to the Congressional Budget Office (CBO), from a projected 2012 debt to GDP ratio of 71.2 percent, under CBO's baseline assumptions (i.e. assuming that current law is not changed) the ratio will decline to 61.0 percent in 2021.[5] Obviously, any deviations from current law (e.g. extension of current tax rates, changes to Medicare reimbursement rates, etc.) will have significant effects on the debt level. In addition, such ratios are based on trend growth assumptions for critical economic drivers such as productivity, capital accumulation and labor force. Projections cannot and do not account for fluctuations resulting from the business cycle or unforeseen circumstances.

[5] "The Budget and Economic Outlook: An Update", Congressional Budget Office, August 2011.

New York City Economy

New York City, together with Long-Island and Northern New Jersey, account for the largest metro area economy in the nation, with the Financial Activities industry the main driver to growth. "Of the ten largest metropolitan areas, the three with the fastest real GDP growth in 2010 were Boston-Cambridge-Quincy, at 4.8 percent, New York-Northern New Jersey-Long Island, at 4.7 percent, and Washington-Arlington-Alexandria, at 3.6 percent."[6]

As of December 2011, the latest data available, the New York City Index of Coincident Economic Indicators (CEI) decreased at an annual rate of 0.1 percent following an unchanged reading in November. The City index has risen 1.8 percent over the past year. In comparison, the State index decreased at an annual rate of 1.2 percent in December following an increase of 1.6 percent in November. The State index has increased 1.3 percent over the past year.[7]



Source: Federal Reserve Bank of New York.

Figure 13

Profitability for NYSE member firms declined in the third quarter of 2011, a loss of $3 billion, the first quarterly loss since 2008. Losses were driven by a $5.7 billion decline in the trading and investment business lines due to high volatility.

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[6] "GDP By Metropolitan Area", September 2011, U.S. Bureau of Economic Analysis.

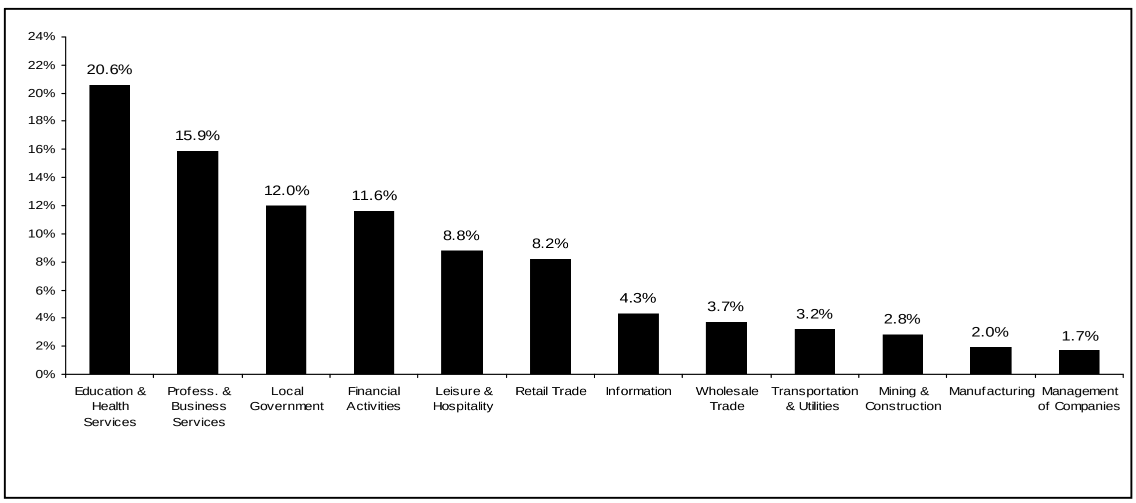
[7] Federal Reserve Bank of New York, Index of Coincident Economic Indicators, January 2012 Release.

Employment Trends

New York City's unemployment rate stood at 9.0 percent in December 2011, the highest among all regions in the State, up from 8.9 percent in November 2011 and 8.8 percent as of December 2010. In comparison, the average unemployment rate in the rest of the State was 7.3 percent, down from 7.8 percent as of December 2010, but still up from 7.2 percent in November 2011.

The following chart provides an overview of the City's employment breakdown by major industry through December 2011.

New York City's Employment Shares



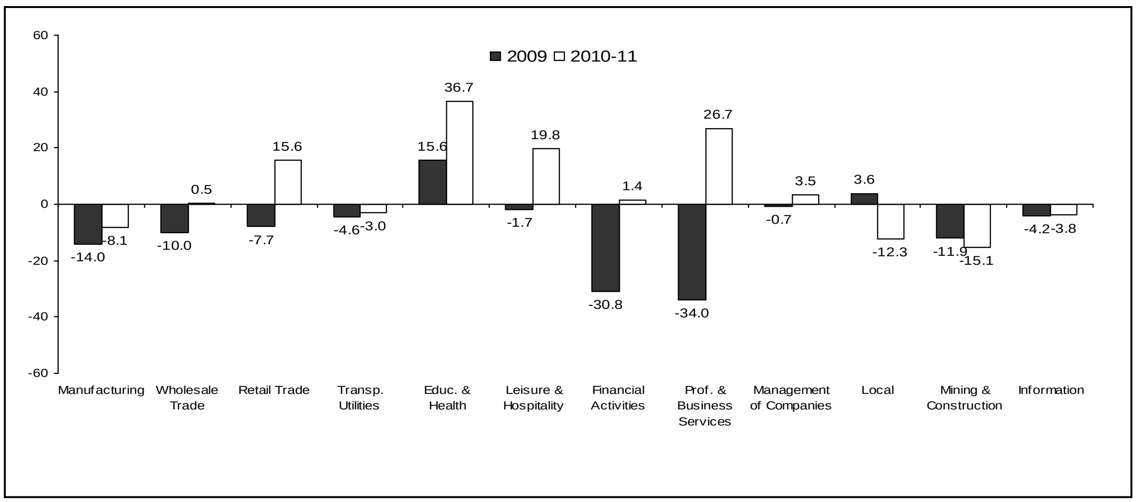
Source: NYS Department of Labor; NYS Assembly Ways and Means Committee.

Figure 14

The Education and Health services sector dominates the labor picture in NYC with a 20.6 percent share, followed by Professional and Business Services at 15.9 percent and Local Government at 12 percent. Financial services, a key revenue generator for the City economy, accounts for 11.6 percent of employment. However, in terms of total wages the financial services sector accounts for almost 29 percent of all City wages. In contrast, the Education and Health services sector accounts for 12.3 percent of all wages, despite its larger employment share, underlying the importance of financial sector bonuses for total wage income and personal income tax receipts. The Professional and Business Services sector accounts for 12.2 percent of wages while Local Government accounts for 8.8 percent of total wages in New York City.[8]

New York City lost on average over 101,000 jobs in 2009. During the 2010-11 economic recovery a total of almost 48,000 were created for a net loss of 53,000 over the three year period. The following chart provides an overview of the losses registered across key NYC industries in 2009 and the cumulative gains or losses during the 2010 to 2011 period.

New York City's Net Job Gains (In Thousands)



Source: NYS Department of Labor; NYS Assembly Ways and Means Committee.

Figure 15

Only the Education and Health Services and Local Government sectors experienced net job gains in 2009. The Financial Activities and Professional and Business Services sectors experienced the largest losses. Since 2010, the Education and Health Services continues to lead in terms of job gains, followed by the Professional and Business Services and the Leisure and Hospitality industry, while Retail Trade has also recovered its 2009 losses. The City's Financial Activities sector has not been able to recover from the deep losses experienced in 2009 reflecting a leaner financial sector in Wall Street.

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[8] The importance of the financial sector becomes evident when we also look at the distribution of corporate tax receipts by industry. The combined Finance Insurance and Real Estate sector accounts for 34.4 percent of total liability of C-Corporation taxpayers as of 2007, compared to 16.8 percent for the Manufacturing sector and 12.2 percent for Retail Trade.

Securities Industry employment trends have been volatile. While as of August 2011 industry employment across the U.S. had peaked at 811,500, the gains were erased over the next five months with employment at 799,700 as of January 2012, a 0.3 percent decline from the third quarter of 2011. Securities industry U.S. employment still remains 8.0 percent below the historic high of 874,500 in June 2008.[9]

Securities industry employment in NYS declined by 1.2 percent in the fourth quarter of 2011 over the previous quarter to a total of 188,900. New York City shed 2,400 securities industry jobs in the fourth quarter of 2011.

NYC Tourism & Travel

NYC is the top U.S. destination for international travelers, attracting a third of all foreign visitors.[10]

According to the NYC Economic Development Corporation (NYC EDC), hotel occupancy has remained strong through 2011 with room occupancy at an average of 88.2 percent in November 2011, up from 85.0 percent in November 2010.[11] Equally important, average daily room rates increased by 2.5 percent in November 2011 over November 2010.

NYC continues to benefit from a weaker U.S. dollar especially compared to the Euro. However, as the European debt crisis continues the dollar has regained some of its strength versus the Euro as investors opt for safer U.S. asset investments. Therefore, the City may see a softening in the recent arrival trends from Europe.

Office Market, Real Estate and Construction

NYC's office market continued on its path of recovery in 2011. According to the City Office of Management and Budget, through November 2011 leasing activity in the primary and secondary markets averaged 2.4 million square feet (msf) per month, stronger than the 1.9 msf registered during the same period in 2010.[12]

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[9] SIFMA, Securities Industry Employment Report, 4Q 2011.
[10] "Monthly Report on Economic Conditions", NYC Office of Management and Budget, January 2012.
[11] "Economic Snapshot", NYC EDC, January 2012.
[12] "Monthly Report on Economic Conditions", NYC Office of Management and Budget, January 2012.

According to the NYC EDC, Manhattan Class A direct vacancy rate rose to 7.9 percent in December 2011 from 7.8 percent in November, with the average rental rate up by $1 to $68 per square foot. The midtown vacancy rate remained unchanged at 8.3 percent.[13]

For the 12-months ending November 2011, building starts (including new, additions and alterations) increased by 34.1 percent, while planned space for future building project starts increased by 7.2 percent over the same period in 2010.[14] In addition, as of December 2011, there were 26 commercial transactions exceeding $100 million in value compared to 18 in all of 2010.[15]

[13] "Economic Snapshot", NYC EDC, December 2011.
[14] Ibid.
[15] "Monthly Report on Economic Conditions", NYC Office of Management and Budget, January 2012.

FISCAL OUTLOOK

Fiscal Outlook

All Funds Spending for State Fiscal Year 2012-13 Remains Virtually Flat

The Executive All Government Funds budget for the upcoming fiscal year totals $132.5 billion, a slight decrease over this year's projected spending of $132.7 billion, a difference of $225 million. Although the size of the budget remains the same the State's effort in meeting its needs has increased due to the continuing decline in federal dollars, mainly the ARRA stimulus funds. The Executive proposes spending from the State funds, which consist of all money in funds generated by the state, of $94.8 billion an increase of 1.6 percent.

Table 7

Spending at a Glance
($ in Millions)

	2009-10 Actual	2011-12 Enacted	2011-12 Close-Out**	2012-13 Proposed Budget**
State Operating Funds Budget				
Size of Budget	84,417	86,879	87,048	88,734
Annual Growth	4.7%	2.9%	3.1%	1.9%
General Fund (with transfers)				
Size of Budget	55,373	56,932	56,915	58,592
Annual Growth	6.1%	2.8%	2.8%	2.9%
State Funds (Including Capital)	90,118	92,804	93,288	94,795
	4.7%	3.0%	3.5%	1.6%
Capital Budget (Federal and State)	7,844	7,888	8,078	7,844
	10.3%	0.6%	3.0%	-3%
Federal Operating	42,564	36,931	37,609	35,932
	8.8%	-13.2%	-11.6%	-4.5%
All Governmental Funds	**134,825**	**131,698**	**132,735**	**132,510**
	6.3%	**-2.3%**	**-1.6%**	**-0.2%**
All Funds (including "Off-Budget" Capital)	136,261	133,395	134,383.23	134,201
	6.0%	-2.1%	-1.4%	-0.1%

**Source: Executive 2011-12 Enacted Budget*
***Executive 2012-2013 Financial Plan*

Balanced General Fund Budget

The General Fund accounts for all spending of the State that is not funded through dedicated revenues. Like most states, New York has to prepare a budget that is balanced. However, in New York the General Fund is the only Fund required by State law to be balanced.

The Executive's proposed General Fund spending for SFY 2012-13 totals $58.6 billion, an increase of 2.9 percent. General Fund receipts are projected to increase by $1.5 billion for growth of 2.6 percent, with total collections of $58.7 billion. Growth in the General Fund is due to below trend growth in taxes offset by a slight decline in miscellaneous receipts.

Table 8

General Fund

($ in Millions)

	SFY 2011-12	SFY 2012-13	Difference	Percent
Opening Balance	$1,376	$1,675	$299	22.0%
Receipts	57,214	58,715	1,501	2.6%
Disbursements	56,915	58,592	1,677	2.9%
Closing Balance	$1,675	$1,798	$123	7.0%

The General Fund is balanced using a combination of revenue measures and spending reductions to close a projected $3.5 billion gap. Revenues were enhanced by the $1.9 billion increase from tax reform offset by revenue reductions of $400 million for a net reduction in the gap of $1.5 billion. Spending reductions are mostly administrative targets established in the plan for the agencies to achieve.

New Gap Closing Initiatives to Produce Balanced Budget

The State faced chronic deficits for years prior to the collapse in revenues due to the recession. As can be seen in Figure 16 the State has confronted years of budget gaps which closely parallel the economic cycle of the past decade. As the State cannot expect robust economic trends in the near future, structural changes will continue to be required. Last year the Legislature enacted several fiscal rules for this current year and the upcoming year, to ensure a sound and sustainable spending plan.

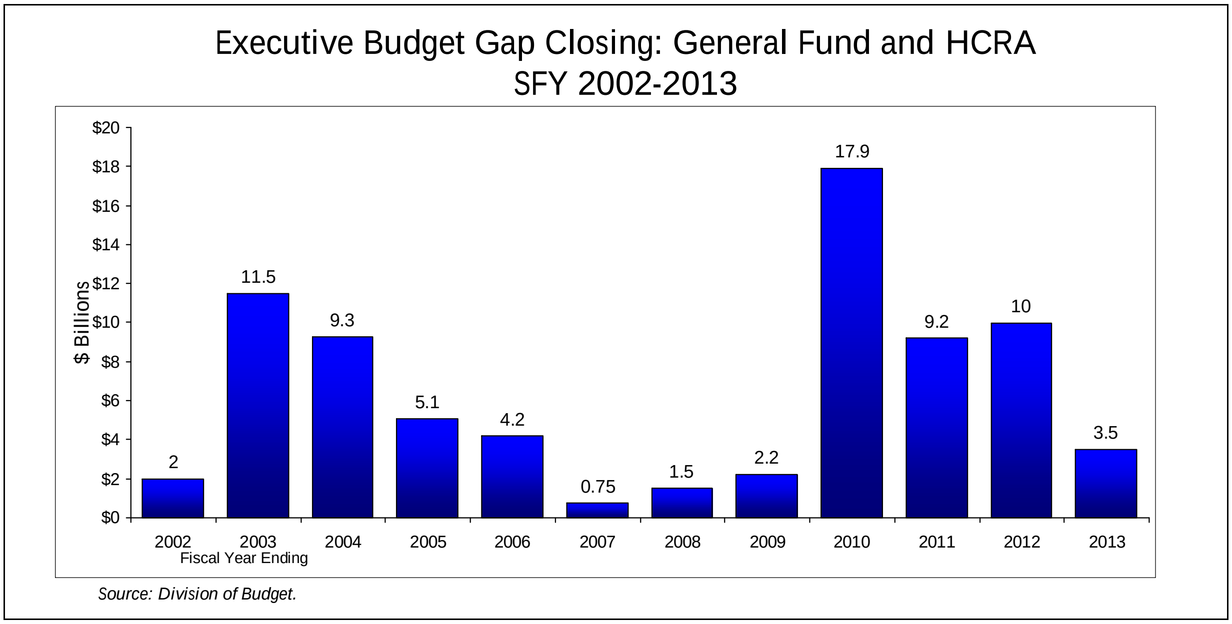


Figure 16

In SFY 2011-12 the State took several critical steps to curtail the growth in two of the largest programs, namely the Aid to Localities budget for Education and Medicaid. In Education, annual spending was limited to the five year average growth in personal income. Medicaid spending growth is limited to the ten year average of the Medicaid Consumer Price Index.

Cost control measures for SFY 2012-13 focus on continued administrative savings through consolidation of office functions, attrition and other workforce management initiatives, as well as operational efficiencies. This is to account for $1.1 billion in savings

Table 9

General Fund Gap-Closing Plan for Proposed Budget 2012-13 ($ in Millions)	2012-2013	2013-2014	2014-2015	2015-16
Current-Services GAP Estimates (Before Any Actions)	**(3,500)**	**(3,624)**	**(5,044)**	**(4,246)**
Total Executive Budget-Gap-Closing Actions	**0**	**(715)**	**(2,974)**	**(3,721)**
Spending Control	**1,964**	**1,506**	**1,435**	**1,250**
Agency Operations	1,141	1,089	842	861
Local Assistance	756	580	779	660
Debt Management	140	0	0	0
New Initiatives/Investments	(73)	(163)	(186)	(271)
Tax Reform	**1,536**	**1,702**	**1,033**	**(178)**
New Costs/Other	**0**	**(299)**	**(398)**	**(547)**
Enacted Budget Surplus/(Gap) Estimate	**0**	**(715)**	**(2,974)**	**(3,721)**

**Source: 2012-2013 Proposed Executive Budget*

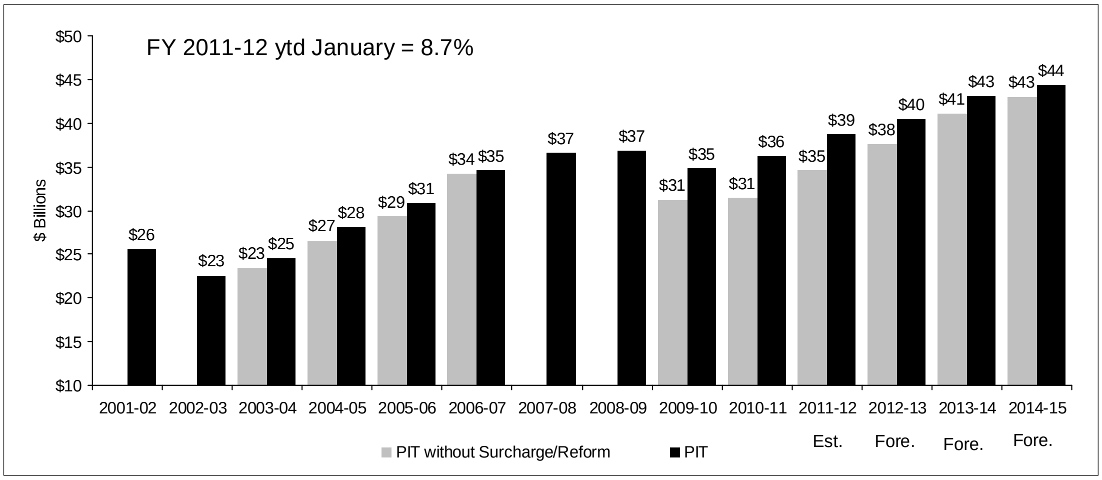
Tax Reform Reduces Operating Shortfall

The Great Recession caused substantial reductions in revenues which were made up by Federal stimulus funds and temporary tax and fee increases. In December 2011, the State reformed the personal income tax by reducing rates at lower brackets while adopting a higher rate on the wealthiest taxpayers compared to current law.

The December 2011 tax reform came as the temporary surcharge of 2009 was expiring. In 2009 with the State facing a $10 billion shortfall, a temporary personal income tax surcharge was imposed for three years to support the budget through the fiscal crisis. Additional rates of 7.85 and a top rate of 8.97 percent provided the State with an average of $4.5 billion per year in additional revenues.

Revenue enhancements were necessary as revenues were only seeing modest gains, much like the economy. Sluggish gains in employment, Wall Street facing economic and structural changes, and governments having to reduce the size of their budgets all dampened the traditional path to recovery.

Personal Income Tax Receipts, FY 2002 to 2015
Impact of Surcharges and Tax Reform



Source: NYS Department of Taxation and Finance; NYS Assembly Ways and Means Committee staff estimates for 2011-12 and 2012-13, DOB estimates for 2013-14 and 2014-15.

Figure 17

The past ten years have experienced a series of extraordinary economic events, most of them in the form of catastrophic shocks. With the economy going into a tail spin, revenue in New York fell precipitously. As revenues were needed to decrease large fiscal gaps the State took temporary revenue actions to support the budget. Additional tax revenues are seen as temporary with the expectation that the nascent economic recovery will be followed by a robust expansion. The latest surcharge enacted in 2009 offered the most revenue support

Federal Funds Continue to Decline

At the height of the economic and financial crises, the Federal Government enacted “The American Recovery and Reinvestment Act of 2009” (ARRA), as a counter-cyclical measure to reverse the dramatic decline in jobs and output. New York, over four fiscal years, has received over $33 billion in stimulus funds from the ARRA (see Table 10). Approximately $14 billion were funds used to replace those lost from the revenue shortfall. Other funds went to local governments and individuals as income enhancements. A large part of the State’s fiscal challenges is now caused by the unwinding of the federal stimulus program.

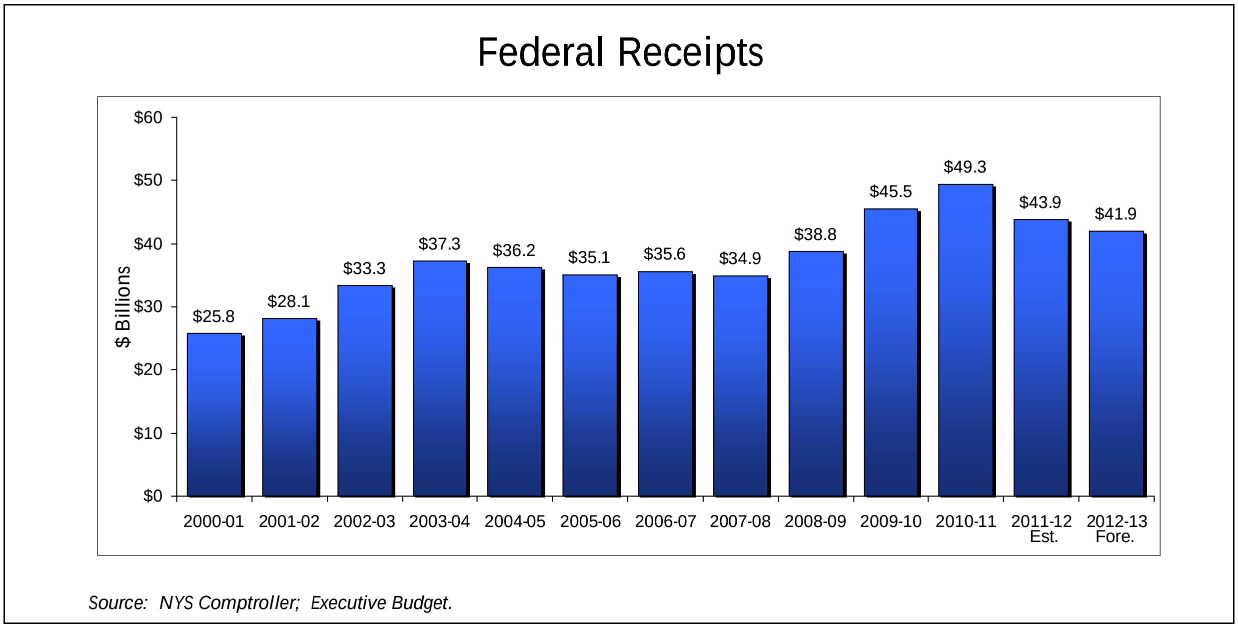


Figure 18

Even though revenues are growing, they are insufficient to cover the loss of federal aid and growing spending. The current fiscal year experienced a loss of $5 billion in federal funds and the upcoming year is projected to have an additional loss of $2 billion. The loss of funds for the State budget is primarily in health care, labor and education programs.

Table 10

American Recovery and Reinvestment Act of 2009 ($ in Millions)					
	SFY 2009	SFY 2010	SFY 2011	Year-To-Date Disbursements SFY 2012	Life-To-Date Disbursements
Education		$1,080	$2,869	$1,336	$5,286
Energy and Environment		129.6	318.6	260.2	708.4
Food and Nutrition Service		8.6	2.5	0.0	11.1
Health and Social Service	1,739.1	5,487.5	5,535.2	1,557.2	14,318.9
Housing		27.5	59.9	19.9	107.3
Labor	58.5	4,742.1	4,301.2	2,666.7	11,768.5
Public Protection		8.6	29.8	20.2	58.5
Transportation		227.0	455.1	153.2	835.3
Total	**$1,797.6**	**$11,711.0**	**$13,571.3**	**$6,013.8**	**$33,093.7**

Out Year Trends Remain Challenging

The Executive Budget projects that the State will continue to incur budget deficits throughout the five-year financial plan. Although the out-year deficits are relatively small compared to past deficits, they continue to show growth rather than converge.

Out-year numbers depend on the enactment of various spending initiatives in the Executive Budget. The initiatives are target based, which require deft management after budget enactment to achieve required savings. The out-year numbers are also increased by the State takeover of certain local Medicaid costs.

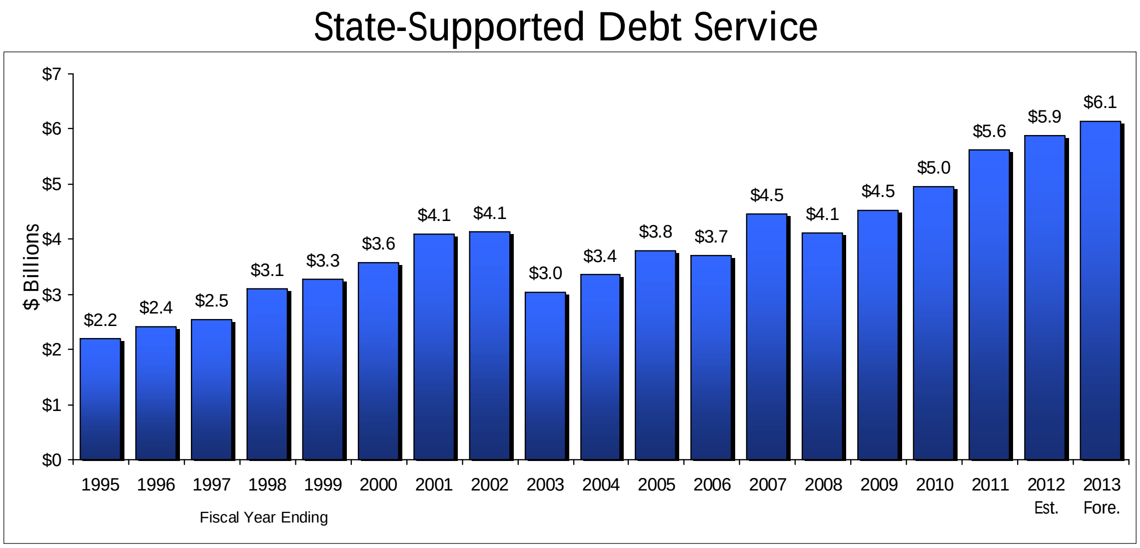
Table 11

Out Year General Fund GAPS ($ in Millions)			
	Executive Mid-Year	Before Action	Executive Proposal
2011-12	(350)	0	0
2012-13	(3,250)	(3,500)	0
2013-14	(3,274)	(3,624)	(715)
2014-15	(4,798)	(5,044)	(2,974)
2015-16	N/A	(4,246)	(3,721)

Revenue growth in the out years is expected to expand at an average growth of 4.2 percent which is consistent with the long-term trend but significantly short of the expansion growth rate of 5.7 percent. Without an expanding economy and revenues, budget shortfalls are likely. The expiration of the tax reform legislation in 2014 and the shift of Medicaid costs from the locals to the State, will also put a fiscal drag on the balancing of the State budget.

Favorable Bond Market Aids Debt Management

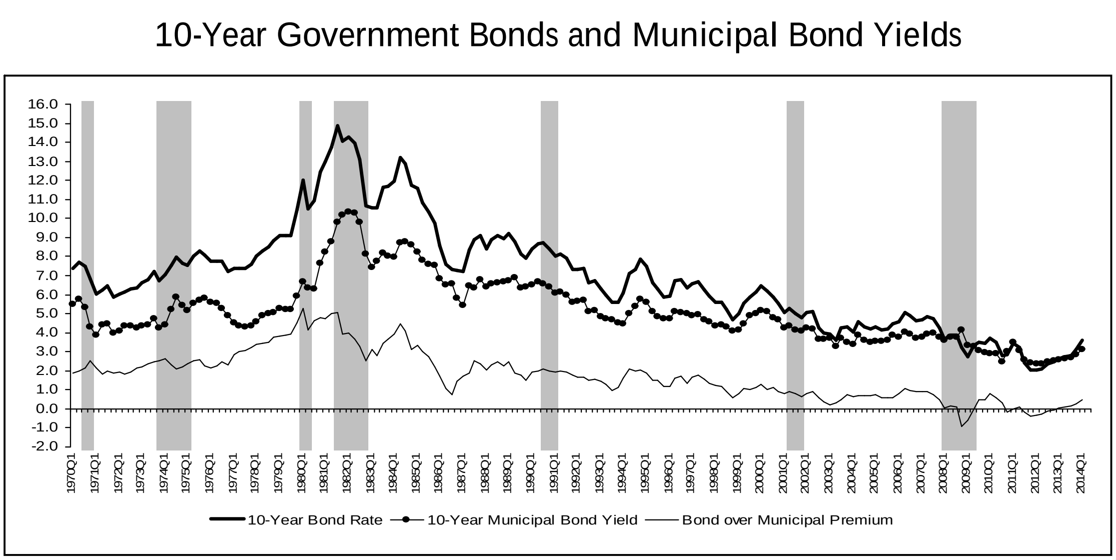
Over the past few years debt service has been increasing substantially due to bond market related issues during the financial crisis. During the fiscal crisis in 2003 debt service savings were taken by the State on a significant amount of bonds through debt restructuring. However as the savings were exhausted the State's debt service payments increased. On average debt service grew by over seven percent from 2003 to 2011. The Executive Budget projects that State-supported debt service will total $6.1 billion in SFY 2012-13, an increase of $274 million or 4.7 percent.



Source: NYS Comptroller

Figure 19

As can be seen in Figure 20, the accommodative monetary policy pursued by the Federal Reserve is keeping long-term bond interest rates at record lows. In addition, the demand for municipal bonds increases as investors flight to security narrows the spread between treasury and municipal bonds.



Source: Federal Reserve Board, Moody's Analytics, Ways and Means Committee staff estimates, Shaded areas represent U.S. recessions.

Figure 20

Capital Plan Addresses Economic Investment

The Executive Budget proposes a $43.4 billion five year capital plan which is $138 million higher than the current plan. As can be seen in Table 12, spending in the upcoming fiscal year is projected to be $9.5 billion which is $192 million less than the projections for this year. Nevertheless, the plan includes a program of new and accelerated projects to increase the level of economic activity. It is important to note that though some priority projects may be accelerated the level of capital spending is reduced each year.

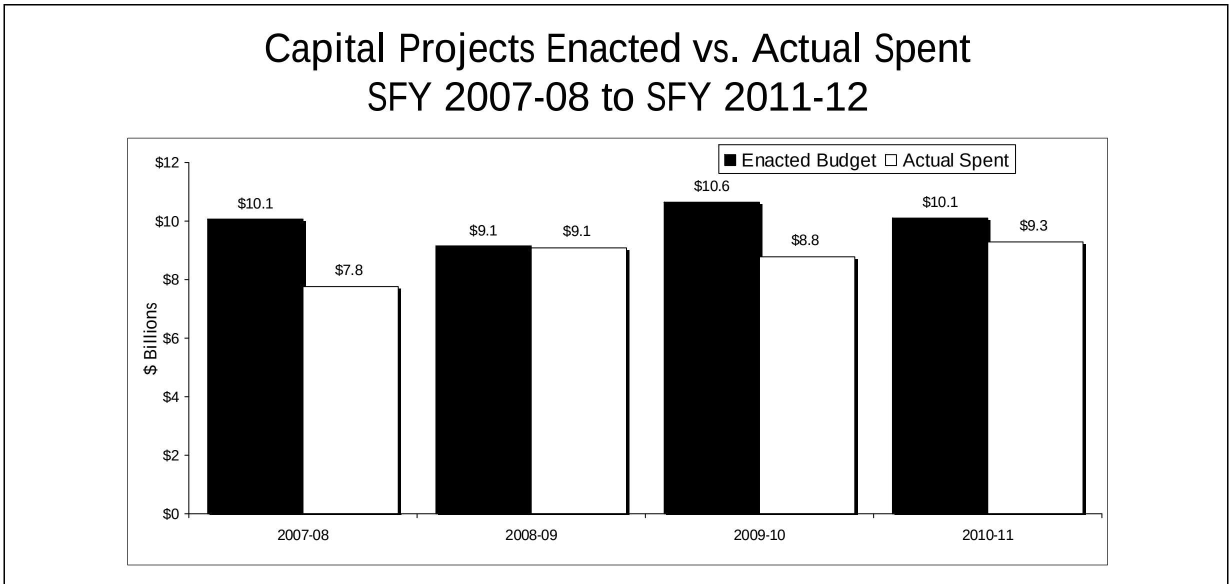
Table 12

New Capital Obligations
2012-13 to 2016-17 Executive Budget
($ in Thousands)

		Capital Spend Out [1]				
	New Obligations	2012-13	2013-14	2014-15	2015-16	2016-17
Existing Capital Plan (Mid-Year FY 2012)		**$9,074,825**	**$8,539,517**	**$8,168,478**	**$7,754,844**	**$7,330,696**
New Capital Spending - Increases	**$3,031,813**	**$627,419**	**$695,746**	**$598,968**	**$377,643**	**$265,162**
Accelerations: Primarily Transportation & Economic Development	$1,639,813	$457,419	$644,904	$372,810	($109,344)	($169,851)
MTA Capital Plan for 2010-2014 - State Contribution	$770,000	$150,000	$0	$0	$310,000	$310,000
SUNY 2020 Competitive Grants	$110,000	$5,000	$18,842	$46,158	$6,987	$33,013
SUNY 2020 Buffalo Plan	$215,000	$0	$0	$107,000	$76,000	$32,000
SUNY 2020 PAYGO Capital Commitments	$184,000	$0	$0	$41,000	$76,000	$46,000
SUNY Community Colleges w/ Sponsor Approval	$87,000	$10,500	$24,000	$24,000	$13,500	$13,000
CUNY Community Colleges w/ Sponsor Approval	$26,000	$4,500	$8,000	$8,000	$4,500	$1,000
Reestimated Spending Since Mid-Year - Changes		**($167,617)**	**($70,575)**	**$163,814**	**$105,180**	**($68,415)**
Mental Hygiene Bonding - Timing Adjustments		($168,678)	($114,075)	$75,000	$25,000	
Other Miscellaneous Adjustments		$1,061	$43,500	$88,814	$80,180	($68,415)
Total - New Spending Adds		**$459,802**	**$625,171**	**$762,782**	**$482,823**	**$196,747**
Executive Budget Recommendation		**$9,534,627**	**$9,164,688**	**$8,931,260**	**$8,237,667**	**$7,527,443**
Annual Growth		**-2.0%**	**-3.9%**	**-2.5%**	**-7.8%**	**-8.6%**

(1) Accelerations will result in appropriations and spending increasing in the early years and declining in later years

As can be seen in Figure 21 actual capital plan spending was under budget for three out of the last four years. The aggregate difference in spending is close to $5 billion. The fiscal crisis and the drain on revenue it produced weakened our capital plan spending. The Executive's proposed spending plan is lower than prior year's enacted budgets but is greater than the last four years of actual spending. The Executive proposes to achieve this increased level of spending by using the new design build statute.



Source: NYS Executive Enacted Budgets and NYS Executive Proposed Budget for SFY 2012-13

Figure 21

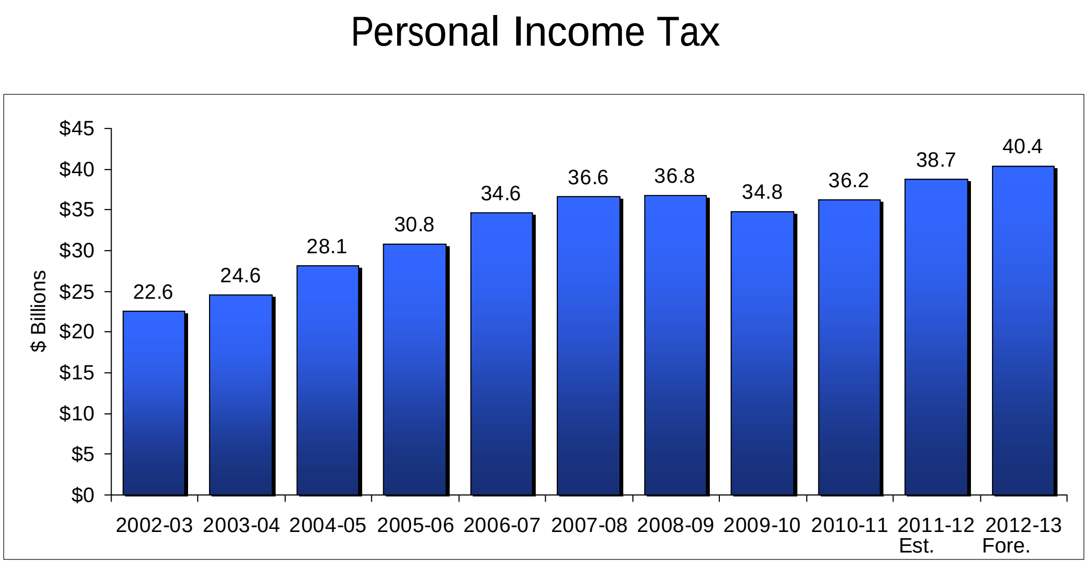
TAX ANALYSIS

Personal Income Tax

Table 13

Personal Income Tax Collections Forecasts by State Fiscal Year ($ in Millions)						
	SFY 2011-12			SFY 2012-13		
	WAM Estimate	Percent Growth	Diff. Exec.	WAM Forecast	Percent Growth	Diff. Exec.
Personal Income Tax	**$38,679**	**6.8%**	**$15**	**$40,440**	**4.6%**	**$129**
Gross Receipts	**45,910**	**4.3%**	**19**	**48,091**	**4.8%**	**334**
Withholding	31,086	-0.5%	19	32,246	3.7%	(352)
Estimated Payments	11,646	19.6%	(14)	12,432	6.7%	580
Vouchers	8,108	9.8%	(7)	8,818	8.8%	(61)
IT 370s	3,538	50.6%	(7)	3,614	2.1%	641
Final Payments	2,099	6.9%	(26)	2,202	4.9%	(1)
Delinquencies	1,079	1.5%	40	1,211	12.2%	107
Total Refunds	**7,231**	**-7.2%**	**4**	**7,651**	**5.8%**	**205**
Prior Year Refunds	4,707	-9.0%	(8)	5,048	7.2%	147
Current Refunds	1,750	0.0%	-	1,750	0.0%	-
Previous Refunds	416	-46.0%	12	555	33.4%	58
State/City Offsets	358	258.0%	-	298	-16.8%	-
Collections	**38,679**	**6.8%**	**15**	**40,440**	**4.6%**	**129**
Transfers to STAR	(3,293)	0.9%	-	(3,322)	0.9%	-
Transfers to DRRF/RBTF	(9,670)	6.8%	(4)	(10,110)	4.6%	(32)
General Fund PIT Collections	**25,716**	**7.6%**	**11**	**27,008**	**5.0%**	**97**

PERSONAL INCOME TAX



Source: NYS Department of Taxation and Finance; Ways and Means Committee Staff estimates

Figure 22

Table 14

Personal Income Tax ($ in Millions)						
	Year To Date	YTD Growth	Closeout/ Forecast	Growth	Executive	Difference
2011-12	$33,784	8.7%	$38,679	6.8%	$38,664	$15
2012-13			$40,440	4.6%	$40,311	$129

New York imposes a tax on income earned within the State by individuals, estates and trusts. New York's definition of income closely follows federal rules, which includes wages and salaries, capital gains, unemployment compensation, and interest and dividend compensation. The New York standard deduction or itemized deductions, in addition to exemptions claimed on New York taxes, are subtracted from the federal definition of income to arrive at New York taxable income. Certain credits are then subtracted from the calculated tax to arrive at total tax liability.

Personal income tax (PIT) receipts contribute more than one-half of all tax collections. PIT receipts are received through employee withholdings, estimated tax payments, payments accompanying tax returns, late payments, audits and assessments.

SFY 2011-12

Net Collections

The Committee staff estimates that All Funds personal income tax collections will total $38.679 billion in SFY 2011-12. This represents an increase of $2.469 billion or 6.8 percent above All Funds collections in SFY 2010-11. The current year-to-date growth in net collections is partially attributable to the delay of $500 million in refunds from SFY 2009-10 into SFY 2010-11. Had the refund delay not taken place, year-to-date growth would currently stand at 7.0 percent. A significant portion of the growth in net collections has been due to strong growth in extension payments, which are up $1.178 billion or 50.3 percent through January.

The growth in April 2011 settlement payments was robust, increasing by a total of $1.264 million between final and extension payments. This reflects an estimated growth rate of 49.3 percent in capital gains for calendar year 2010. A share of the growth in capital gains likely relates to increased economic activity in response to uncertainty with regard to the extension of the tax cuts that originally took effect under former President George W. Bush, resulting in increases in tax liability that were accounted for in settlement payments.

Without the combined benefit of the temporary personal income tax surcharge and the reform that took place in December 2011, the Committee staff estimates that SFY 2011-12 would finish with $34.623 billion in net collections. The Committee staff estimates that SFY 2010-11 net collections would have been $31.505 billion without the benefit of the surcharge or reform, placing the underlying growth in net collections at 9.9 percent.

Withholding

Through January 2012, withholding collections have increased by $216 million or 0.9 percent above the comparable period in SFY 2010-11. The Committee staff estimates that by the end of the fiscal year withholding collections will total $31.086 billion. This represents a decline of $154 million or 0.5 percent compared to total collections during

SFY 2010-11. The Committee staff's estimate is $19 million above the Executive Budget estimate, as presented in the 30-day amended Financial Plan.

The Committee staff estimates that $1.410 billion of SFY 2011-12 withholding collections will be the direct result of the combined surcharge and reform effects, and that $2.119 billion in surcharge-related withholding was collected during SFY 2010-11. It follows that the Committee staff estimates underlying withholding growth of $555 million or 1.9 percent. While total wage growth is estimated to be 1.6 percent for SFY 2011-12, variable wages are expected to decline by 13.5 percent, resulting in weak underlying growth.

Vouchers

Vouchers are quarterly estimated tax payments made by taxpayers who expect that the amount of tax being withheld from their wages will fall short of their final tax liability. In general, estimated payments are paid by taxpayers whose income is derived from non-wage sources, such as capital gains, interest or dividends.

The Committee staff projects that voucher collections for SFY 2011-12 will be $8.108 billion, which represents an increase of $722 million or 9.8 percent versus collections from SFY 2010-11. The Committee staff estimate is $7 million below the Executive's estimate released with the 30-day amendments.

Vouchers finished January with 9.4 percent cumulative year-to-date growth. Voucher payments were extremely stable over the first six months of the year, with monthly growth ranging between 15.3 and 21.0 percent for all but one of the months. The one exception, May, is of little consequence to the overall total. However, October and November grew by a combined 66.0 percent, which was likely the result of Tropical Storm Irene-related delayed payments. December, typically the fourth-most important month for voucher collections, declined by 12.4 percent. The most significant month for voucher payments each year, January, grew by 3.3 percent.

Extensions (IT-370s)

Similar to final payments, extensions paid are a function of the previous calendar year's liability. In April 2011, extensions (IT-370s) increased by $1.171 billion or 51.4 percent above April 2010. The Committee staff estimates that extensions will total $3.538 billion in SFY 2011-12, representing a growth of $1.189 billion or 50.6 percent above the previous fiscal year. This estimate is $7 million below the Executive's estimate.

Final Payments

Final payments, which result from the timely filing of tax returns each April 15th, increased by $118 million or 6.6 percent through January 2012. The Committee staff estimates that final payments will total $2.099 billion in SFY 2011-12. Since final payments are based on previous year's liability, this is a reflection of increased liability from non-wage income for calendar year 2010, primarily due to growth in capital gains realizations. This estimate is $26 million below the Executive estimate.

Refunds

Refunds are issued to taxpayers who have paid more than their tax liability. The dollar amount of refunds paid out between January and March of each year is administratively determined by the Executive. The amount set to be paid during this SFY 2011-12 three month period is currently $1.750 billion, which is equivalent to the amount of refund distributions last year between January and March. The remaining refunds, known as prior year refunds, are paid to taxpayers as they are processed. Approximately 70 percent of prior year refunds are paid out in April and May of each year. The Committee staff's estimate of total refunds is $4 million above the Executive.

The Committee staff estimates that total refunds will decline by $562 million or 7.2 percent, to total $7.231 billion. However, $500 million of this decline in total refunds is attributable to the shift of $500 million, in what would have otherwise been SFY 2009-10 current year refunds, to SFY 2010-11 prior year refunds. The Committee staff estimates that prior year refunds will total $4.707 billion in SFY 2011-12, representing a decline of $464 million or 9.0 percent with respect to the previous fiscal year. This estimate is $8 million below the Executive's estimate. Had the shift in refunds not taken place, SFY 2011-12 prior year refunds would be expected to increase by $36 million or 0.8 percent above the previous fiscal year.

Delinquencies

Delinquency collections arise from taxpayer audits. Delinquency payments are estimated to total $1.079 billion in SFY 2011-12, which is $16 million or 1.5 percent above collections from SFY 2010-11. The Committee staff estimate is $40 million above the Executive Budget estimate.

SFY 2012-13

The Committee staff's forecast for personal income tax collections during SFY 2012-13 reflects growth across all major components of income, offset by tax rate cuts between calendar years 2011 and 2012. All Funds collections are forecast to be $40.440 billion, which is $1.761 billion or 4.6 percent higher than the Committee staff's SFY 2011-12 estimate.

Withholding

Withholding collections are forecast to total $32.246 billion in SFY 2012-13. This represents $1.160 billion or 3.7 percent growth over the SFY 2011-12 withholding estimate. The Committee staff's forecast is $352 million below the Executive's forecast. The growth in withholding is based on a wage forecast of 4.5 percent growth in SFY 2012-13. This forecast includes the loss of revenue that will take place as a result of the expiration of the personal income tax surcharge, partially offset by the gain in revenue from the personal income tax reform in December 2011, and additional loss in revenue in 2013 due to tax bracket and deduction adjustments for inflation.

Vouchers

The Committee staff forecasts that voucher payments will total $8.818 billion. This represents an increase of $710 million or 8.8 percent over SFY 2011-12 collections. The forecast is $61 million below the Executive's forecast. Strong underlying growth in vouchers of 19.5 percent is expected, primarily due to expectations for 47.8 percent growth in capital gains in calendar year 2012. However, loses resulting from the expiration of the surcharge will serve to limit what would otherwise be much larger voucher growth.

Extensions (IT 370s)

The Committee staff forecasts extensions (IT-370s) to total $3.614 billion in SFY 2012-13. This represents an increase of $76 million or 2.1 percent from the SFY 2011-12 estimate, resulting from growth in 2011 in all major non-wage components of income. This forecast is $641 million above the Executive forecast released with the 30-day amendments.

Final Payments

Final payments are forecast to total $2.202 billion in SFY 2012-13. This represents growth of $103 million or 4.9 percent above the Committee staff's SFY 2011-12 estimate. The Committee staff's forecast is $1 million below the Executive's forecast.

Refunds

The Committee staff forecasts that total refunds will be $7.651 billion, representing a 5.8 percent increase over SFY 2011-12. This forecast is $205 million above the Executive's forecast. Prior year refunds are projected to total $5.048 billion in SFY 2012-13, representing growth of $341 million or 7.2 percent above estimated prior year refunds during SFY 2011-12. The Committee staff's forecast is $147 million above the Executive.

Delinquencies

Delinquency payments are forecast to total $1.211 billion in SFY 2012-13, which is $132 million or 12.2 percent above estimated collections from SFY 2011-12. The Committee staff's forecast is $107 million above the Executive's forecast.

Adjusted Gross Income

Components of the Adjusted Gross Income (AGI) are broken out in Table 15. The shares for each component highlight the importance of non-wage income. Capital gains have become increasingly significant, but other non-wage components such as business income have also grown in importance. The non-wage components are typically earned by wealthier taxpayers.

Table 15

Components of AGI ($ in Millions)	Actual 2008	Actual 2009	Estimate 2010	Estimate 2011	Forecast 2012	Forecast 2013
NYSAGI						
Amount	$662,053	$596,471	$638,055	$676,387	$719,803	$729,358
Percent Change	-8.6%	-9.9%	7.0%	6.0%	6.4%	1.3%
Wages						
Amount	$492,900	$463,939	$483,595	$506,283	$519,812	$542,715
Percent Change	1.6%	-5.9%	4.2%	4.7%	2.7%	4.4%
Capital Gains						
Amount	$53,401	$29,689	$44,279	$53,215	$78,701	$58,870
Percent Change	-54.1%	-44.4%	49.1%	20.2%	47.9%	-25.2%
Interest, Dividends and Pensions						
Amount	$70,275	$61,524	$62,574	$64,999	$67,149	$69,657
Percent Change	-11.4%	-12.5%	1.7%	3.9%	3.3%	3.7%
Business and Partnership Income						
Amount	$73,560	$71,447	$78,442	$83,082	$86,580	$92,199
Percent Change	-0.9%	-2.9%	9.8%	5.9%	4.2%	6.5%
Other Income						
Amount	($28,083)	($30,128)	($30,834)	($31,193)	($32,439)	($34,083)
Percent Change	-8.1%	7.3%	2.3%	1.2%	4.0%	5.1%

Fund Distribution

Table 16

Fund Distribution ($ in Millions)	General Fund	Special Revenue	Debt Service	Capital Projects	All Funds
2011-12	$25,716	$3,293	$9,670	-	$38,679
2012-13	$27,008	$3,322	$10,110	-	$40,440

The Committee staff estimates General Fund personal income tax receipts of $25.716 billion in SFY 2011-12, representing growth of 7.6 percent over the prior year.

This estimate is $11 million above the Executive's estimate. In 2012-13, General Fund collections are forecast to equal $27.008 billion.

A statutory amount of 25 percent of net personal income tax collections is allocated toward the Revenue Bond Tax Fund (RBTF). Therefore, the rate of growth in the RBTF is equivalent to that of personal income tax-related contributions to All Funds collections, which are estimated to grow by 6.8 percent in SFY 2011-12 over the prior year. The estimated contribution of $9.670 billion is $4 million above the Executive's SFY 2011-12 estimate. The Committee staff's SFY 2012-13 RBTF forecast of $10.110 billion reflects growth of 4.6 percent.

The STAR Fund consists of revenue that is used to reimburse school districts for state-provided school property tax exemptions, as well as New York City personal income tax rate reductions, resulting from the School Tax Relief program. The Executive estimates, and the Committee staff accepts, a SFY 2011-12 STAR fund total of $3.293 billion, reflecting growth of 0.9 percent compared to SFY 2010-11. The Executive forecasts a SFY 2012-13 STAR Fund amount of $3.322 billion, representing growth of 0.9 percent.

ANALYSIS

Underlying Economic Conditions

The Committee staff's SFY 2011-12 withholding estimate reflects estimated wage growth of 1.6 percent over the previous period. Growth in withholding has varied significantly over the course of the fiscal year, declining by as much as 8.0 percent in April and growing by as much as 10.4 percent in August. Fluctuation in monthly growth rates can often be attributed to the varying number of business days in any given month from year to year. April 2010, however, is believed to have benefited from delayed bonus payments from earlier in the year, translating into weak growth in April 2011 due to this one-time delay. January 2012 marked the first month in which the withholding table rates were adjusted to accommodate the December 2011 personal income tax reform, meaning that the elasticity of wages with respect to withholding will likely vary significantly from what it would be under constant-law for the remainder of the year.

Variable wage growth over the second half of the year is estimated to be negative 14.2 percent. Over the period spanning between SFY 2001-02 and SFY 2010-11, the Committee staff estimates that approximately 85.3 percent of all variable wage collections took place in the second half of the fiscal year. Due to the combined effects of stable base wage growth throughout the State Fiscal Year, a significant decline in variable wages, the expiration of the three-year income tax surcharge and the new tax tables stemming from the December 2011 reform, withholding collections will decline relative to SFY 2010-11. The Committee staff estimates that $1.410 billion of the SFY 2011-12 total withholding estimate will be attributable to the surcharge that expired on December 31.

The Committee staff's withholding model uses quarterly withholding collections as the dependent variable with New York State wages as the explanatory variable. The basis for this model is that wages are the driving mechanism behind withholding collections. As mentioned earlier, the Committee staff forecasts SFY 2012-13 wage growth of 4.5 percent over the prior year.

Variable Wages

Variable wages, which are withheld at a higher average rate than base wages and are therefore more important for collections on a dollar-to-dollar basis, are forecast to increase in SFY 2012-13 by 8.4 percent over the prior year. While variable wages are typically withheld at a higher rate than base wages since they are largely earned by high income taxpayers, tax liability for all taxpayers with taxable income in excess of $40,000 will decline between 2011 and 2012, holding income constant, due to the December 2011 reform. This tax law change will result in relatively weak withholding growth in SFY 2012-13 given the predicted wage growth.

Similar to all tax revenue collections, the forecast for withholding involves a high degree of uncertainty, stemming from a variety of variable factors. The dominant factor is the historically volatile level of bonus compensation.

The ratio of cash payments to stocks awarded in bonus compensation plays a critical role to both when and how much revenue is received by New York State. Holding tax law constant, the issue is a matter of timing for resident taxpayers, which is a significant risk to the forecast since realizations may not occur until after SFY 2012-13. However, for nonresidents the distinction can alter both the timing and the amount of revenue received by New York. Specifically, the point in time at which a stock option is exercised determines the amount of compensation that is deemed to be New York source income and therefore taxable.

For example, if a nonresident is awarded a stock option in 2012, exercises the option three years later, and sells the stock in 2017, the nonresident must pay New York taxes on the growth in the value between 2012 and 2015. Any value growth after the exercise date in 2015 is considered a capital gain and is therefore not subject to New York personal income tax. Similarly, if the option is exercised in 2013, taxes will be paid on the difference in value between 2012 and 2013. The value of the stock may be the same in both situations at the time the individual opts to sell in 2017, but the date of exercise will determine what portion of the gain is New York source as well as when the taxes need to be paid.

The share of variable wages, relative to total wages, in New York has been trending upward since the mid-1970s. Even in 2009, after massive declines in financial sector bonus payments, the ratio of variable wages to total wages exceeded that of all years prior to 2001. This increased share of variable wages or “bonuses” has made wages, and therefore revenue, more difficult to forecast. Compounded by the particularly elastic response of withholding to variable wages, holding tax law constant, this trend presents significant risks for the forecast.

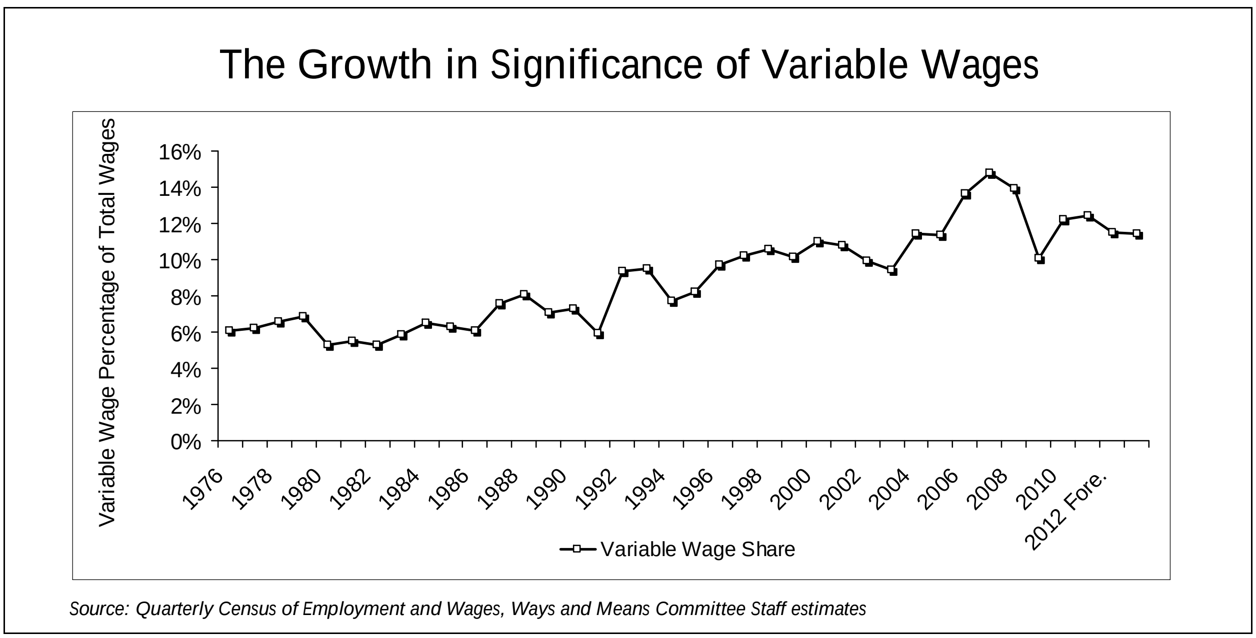


Figure 23

Analysis of the fourth quarter of the state fiscal year, which has historically accounted for the majority of variable wage income, reveals the influence of this increasing trend. Not only has the share of “bonus quarter” withholding to the overall total increased over the past three decades, the volatility has increased significantly over the course of the last ten years, as evidenced by the standard deviation of the growth rate.

Table 17

Withholding in the Last Quarter of the SFY (Months of January, February, and March)			
SFY Range	Average Fourth Quarter Share of Total	Average Growth	Standard Deviation of Average Growth
1982-1991	27.9%	7.3%	6.0%
1992-2001	30.0%	7.7%	6.9%
2002-2011	32.8%	4.8%	12.1%

Source: NYS Department of Taxation and Finance, Ways and Means Committee staff

Forecasting PIT Receipts

An additional element of uncertainty stems from the influence of tax law changes on withholding collections. Withholding is forecast using data that are adjusted for tax law changes. The Committee staff has estimated what withholding would have been each year if the tax law had remained unchanged. This allows for a more accurate measurement of the relationship between the growth in wages and withholding. However, since the Committee staff must approximate the value of tax law changes, an unknown level of error is inserted into the forecast. This issue is of particular concern to the estimate and forecast years in this report, since the tax rates have changed between calendar years 2011 and 2012, thereby affecting both SFY 2011-12 and SFY 2012-13. Furthermore, the tax tables will be subject to inflation adjustment in 2013, meaning that the forecast for withholding in the first quarter of 2013 contains additional error with regard to the forecast in the consumer price index for all urban consumers (CPIU).

The current fiscal year growth in voucher collections, which have increased 9.4 percent through January, marks what will result in the second consecutive year of voucher growth following two years in which collections dropped from a peak of $8.592 billion in SFY 2007-08 to $6.938 billion in SFY 2010-11, a $1.654 billion decline. The decline would have been steeper had the income tax surcharge not been in effect for the 2009 tax year. The primary driver behind the fluctuation in voucher collections has been capital gains, which dropped from a peak level of $116.4 billion in 2007 to $53.4 billion in 2008, a 54.1 percent decline, and then dropped again to $29.7 billion in 2009, a 44.4 percent decline. The Committee staff estimates that capital gains increased by 49.3 percent in 2010, to a level of $44.3 billion, followed by growth of 20.2 percent in 2011, reaching $53.3 billion.

Figure 24 highlights the relationship between voucher collections realized in a given fiscal year and capital gains in a given calendar year, with fiscal years identified by the calendar year of which they are primarily composed. For example, SFY 2000-01 voucher collections were attributable to net capital gains during the 2000 tax year. Figure 24 demonstrates that voucher collections have grown in the same direction as capital gains in every year displayed. The elasticity, however, varies significantly due to the influence of tax law changes, the highly-variable levels of capital gains from year to year, and the effect of other non-wage components of income.[16]

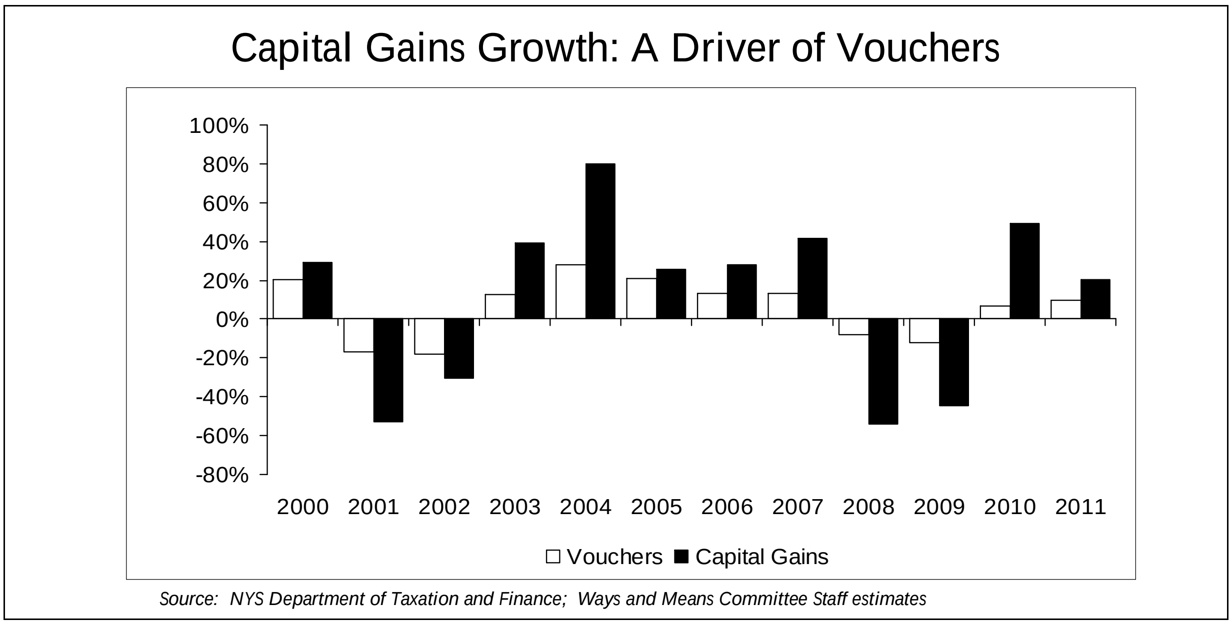


Figure 24

During calendar year 2012, the Committee staff forecasts capital gains of $78.7 billion, reflecting growth of 47.8 percent. Capital gains serve as one of the two key exogenous variables of the voucher equation within the voucher and settlement forecast model, along with property income. Property income, which is defined by rental, interest, and dividend income, is forecast to increase by 4.7 percent in 2012. Property income growth contributes to the model's predicted growth in voucher collections of 8.8 percent after accounting for the expiration of the surcharge and the application of the December 2011 reform.

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[16] Elasticity is defined as the percentage change in one variable divided by the percentage change in another. For example, if vouchers grow by five percent and capital gains grow by 20 percent, the elasticity of vouchers with respect to capital gains is 0.25 for that period.

New York State Reliance on Personal Income Tax

The volatility that can be observed in PIT collections naturally carries over into total State tax collections. While the volatility of PIT receipts may present budgeting concerns for any state with an income tax, it is of particular interest for New York, where the PIT accounts for the largest percentage share of total tax collections for any state other than Oregon. In 2010, Oregon was one of five states without a sales tax, which consequently inflates the percentage attributable to PIT compared to states with sales taxes.

Table 18

New York State Ranked Second Nationally in Income Tax Reliance in 2010 (Income Tax Percentage of Total State Tax Collection)		
State	Rank	PIT Share
Oregon	1	66.2%
New York	**2**	**54.7%**
Connecticut	7	47.0%
California	9	43.5%
New Jersey	16	39.8%
Pennsylvania	31	31.0%
Texas	44	0.0%
Florida	44	0.0%

Source: Federation of Tax Administrators

Seven states, including Texas and Florida, do not have an income tax. These states, on average, have received over half of their tax revenue from sales taxes, which, in New York, tends to be more stable compared to income tax revenue.[17] This is demonstrated by Table 19, which shows that the growth in PIT tends to deviate from the mean much more than the sales tax, particularly when tax law adjustments are taken into account.

[17] Federation of Tax Administrators. 2010 State Tax Collection by Source. http://www.taxadmin.org/fta/rate/10taxdis.html.

Table 19

Volatility of PIT vs. Sales Tax Receipts Growth Statistics for SFY 1987-88 through SFY 2010-11				
	Average Growth	Standard Deviation	Tax Law Adjusted (SFY 1993-94) Constant Law	Standard Deviation (Tax Law Adjusted)
PIT	4.8%	6.7%	5.7%	7.7%
Sales	3.5%	4.8%	3.6%	3.9%

Source: NYS Department of Taxation and Finance, NYS Comptroller, NYS Division of the Budget, Ways and Means Committee staff

Recessions' Influence on Income and Liability

The effects of the previous three recessions have varied significantly in how income and PIT liability have responded. Major tax law changes were implemented during the late 1980s and early 1990s recession, including reductions in the top rates of both earned and investment income.[18] Additionally, standard deduction amounts were increased, thereby reducing liability.[19] Significant growth in both adjusted gross income and tax liability took place in 1992, even though the State economy was still in recession.

Table 20

Liability During Recessions ($ in Millions)					
Peak Year	Peak Year Liability	Trough Year	Trough Year Liability	Peak-to-Trough Liability Decline	Peak-to-Trough Liability Growth
1988	$13,476	1991	$13,327	$149	-1.1%
2000	$24,733	2002	$20,731	$4,002	-16.2%
2007	$35,173	2009	$31,168	$4,005	-11.4%
2007	W/O surcharge	2009	$27,536	$7,637	-21.7%

Note: Peak and trough years are defined by the maximum and minimum liability totals between years that encompass recessionary periods as defined by NYS Department of Labor.

Compared to the 1988 recession, both personal income and liability declined dramatically during the recession of the early 2000s, which was primarily attributable to losses in capital gains, dividends, and investment income. Business income continued to grow, with rates

[18] Fiscal Policy Institute. *New York State Top Personal Income Tax Rate: 1976-2007.* http://www.fiscalpolicy.org/SOWNY2006AppendixFigures/Appendix%20chart13.pdf.
[19] *New York State Division of the Budget Economic and Revenue Outlook, 2010.*

of 2.7 percent and 3.5 percent during 2001 and 2002, respectively. Wages, as reported for tax purposes, declined just 1.2 percent between 2000 and 2002.

"The Great Recession" was the most damaging of the three recent recessions, leading to historic drops in liability and all major components of income. The depth of the decline in liability was a function of the historic loss of income, particularly among the top decile of income earners, and New York State's increased reliance on its wealthiest taxpayers.

The Expansion of Refundable Credits

New York State offers a wide variety of mechanisms to reduce personal income tax liability, such as credits, which serve to directly reduce what would otherwise be the final liability for a taxpayer. While both nonrefundable and refundable credits limit tax revenue, refundable credits can reduce tax liability below zero, thus it becomes a direct cash expenditure not accounted for in State spending.

While the total amount of refundable credits actually declined between 2007 and 2008, growth in refundable credits has expanded rapidly since 1998. (See Figure 25.) Between 1998 and 2009, refundable credits increased by nearly 450 percent, largely due to the additions of the Empire State Child credit in 2006 and the College Tuition credit in 2001, as well as due to the robust growth of the Child and Dependent Care credit. The value of the Earned Income Tax credit increased by 193.3 percent, outpacing growth in both New York State Adjusted Gross Income (44.4 percent) and tax liability (64.2 percent). Overall, there was a $1.886 billion increase in the amount of refundable credits awarded by the State.

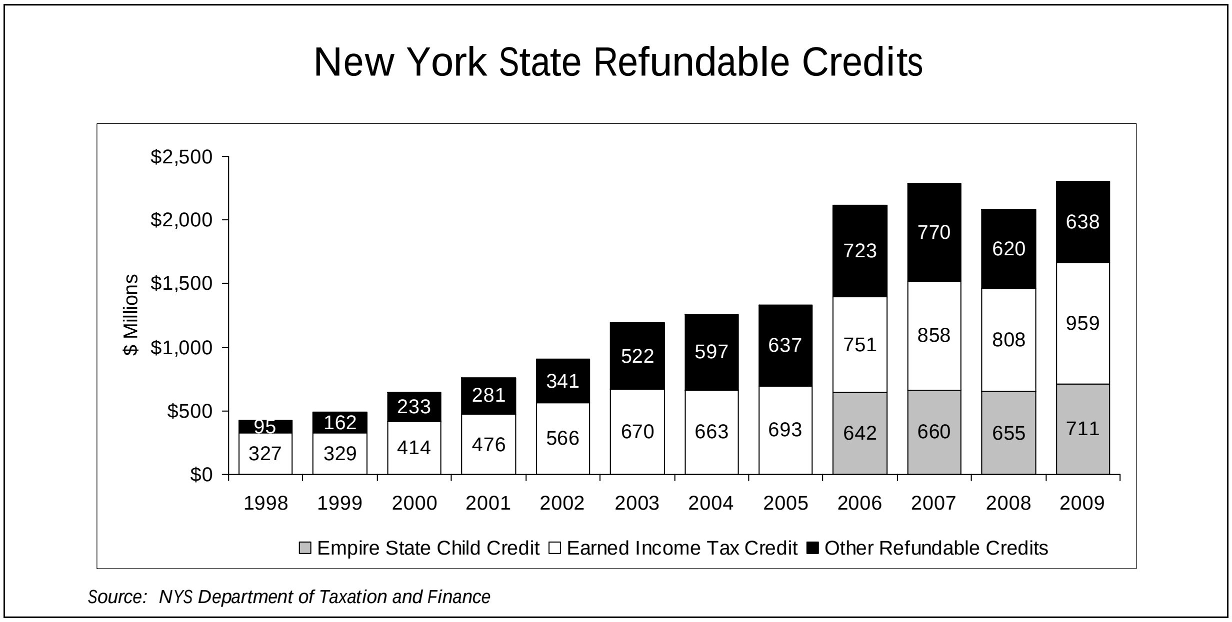


Figure 25

Analyzing the December 2011 Personal Income Tax Reform

Current Law

The December 2011 personal income tax (PIT) reform, enacted as part of a special session legislation package (A. 40002 Part A), modified the tax bracket structure such that several additional marginal tax rates were added. (See Table 21.) In 2012, for non-head of household filers, there will be no changes to the previously existing brackets with rates below 6.85 percent. For head of household filers, the brackets below the 6.85 have been modified to have a more direct relationship with the single and married filing jointly brackets, resulting in tax cuts relative to prior law. The previous range to which the 6.85 percent rate applied has been expanded to include a total of four different marginal rates.

Had the reform not been enacted, personal income tax rates would have reverted to the rates that existed during the 2008 tax year. For New York State resident filers making over $2 million, such rates would have resulted in an estimated average tax cut of $181,167 relative to 2011 rates. Additionally, income tax liability would be higher for a large portion of middle class filers with an estimated 45.6 percent of all filers paying less tax as a result of the reform in 2012.

The recapture that existed under pre-reform law, which phased-in between $100,000 and $150,000 in New York State Adjusted Gross Income (NYSAGI), eventually taxing all taxable income at a flat rate of 6.85 percent, has been replaced by multiple recaptures. The first recapture for each filing status begins at $100,000 in NYSAGI, applying a rate of 6.45 or 6.65 percent, depending on filing status. Each additional recapture begins at a NYSAGI level that matches the starting point of the next highest taxable income bracket. All recaptures, similar to pre-reform law, utilize $50,000 phase-in ranges.

In addition to the aforementioned tax bracket adjustments for 2012, the reform legislation will result in tax bracket, standard deduction, and recapture threshold adjustments in 2013. Each of these components of the income tax will be indexed to the growth in the Consumer Price Index for All Urban Consumers. This same indexing will take place in 2014 as well.

Table 21

Income Ranges Affected by December 2011 Reform **Unchanged Brackets are Italicized*					
Married Filing Jointly and Widow(er)					
2012 Taxable Income Range Before Reform		2012 Tax Rate Before Reform	2012 Taxable Income Range After Reform		2012 Tax Rate After Reform
0	*16,000*	*4.00%*	*0*	*16,000*	*4.00%*
16,000	*22,000*	*4.50%*	*16,000*	*22,000*	*4.50%*
22,000	*26,000*	*5.25%*	*22,000*	*26,000*	*5.25%*
26,000	*40,000*	*5.90%*	*26,000*	*40,000*	*5.90%*
40,000 +		6.85%	40,000	150,000	6.45%
			150,000	300,000	6.65%
			300,000	2,000,000	6.85%
			2,000,000 +		8.82%
Single and Married Filing Separately					
2012 Taxable Income Range Before Reform		2012 Tax Rate Before Reform	2012 Taxable Income Range After Reform		2012 Tax Rate After Reform
0	*8,000*	*4.00%*	*0*	*8,000*	*4.00%*
8,000	*11,000*	*4.50%*	*8,000*	*11,000*	*4.50%*
11,000	*13,000*	*5.25%*	*11,000*	*13,000*	*5.25%*
13,000	*20,000*	*5.90%*	*13,000*	*20,000*	*5.90%*
20,000 +		6.85%	20,000	75,000	6.45%
			75,000	200,000	6.65%
			200,000	1,000,000	6.85%
			1,000,000 +		8.82%
Head of Household					
2012 Taxable Income Range Before Reform		2012 Tax Rate Before Reform	2012 Taxable Income Range After Reform		2012 Tax Rate After Reform
0	11,000	4.00%	0	12,000	4.00%
11,000	15,000	4.50%	12,000	16,500	4.50%
15,000	17,000	5.25%	16,500	19,500	5.25%
17,000	30,000	5.90%	19,500	30,000	5.90%
30,000 +		6.85%	30,000	100,000	6.45%
			100,000	250,000	6.65%
			250,000	1,500,000	6.85%
			1,500,000 +		8.82%

Determining the Value of the Reform

New York State personal income tax liability is based on calendar year income. However, because the State fiscal year does not align with the calendar year and certain tax payments are made when filing final tax returns in the following calendar year, tax payments related to one calendar year are actually spread across three State fiscal years. To determine the value of the reform on a fiscal year basis the value of the reform must be estimated on a calendar year liability basis, and then the anticipated revenue is spread over the course of the relevant time span based on historical shares.

The December 2011 PIT reform served to both generate revenue from high income taxpayers and provide tax cuts for middle income filers. The current rates for tax year 2012 apply a top rate of 8.82 percent, compared to 8.97 percent with the surcharge, and affect a smaller number of high income taxpayers. As a result, the WAM Committee staff expects revenue, ignoring the effect of the tax cuts, of $2.277 billion less than what the surcharge rates would have generated.

Nearly half (45.6 percent) of all taxpayers are predicted to receive a tax cut in 2012, relative to pre-reform law. These filers are expected to receive a collective benefit of $649 million, reducing their percentage of total liability from 48.5 percent to 43.4 percent, and bringing the net revenue value of the reform to $2.618 billion. Taxpayers with increased liability as a result of the reform are forecast to be responsible for 37.1 percent of the liability, up from 30.5 percent. This group will represent an anticipated 0.4 percent of New York State's income tax filing population while accruing 23.5 percent of NYSAGI, earning an average of 75.7 times as much income as the average earned by all other tax filers.

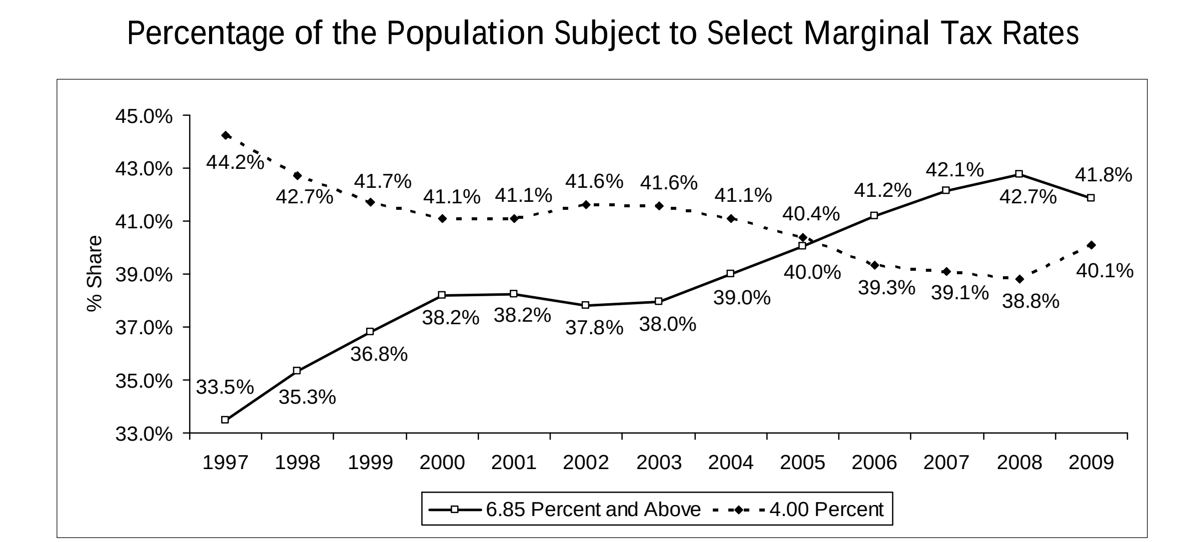
The majority of taxpayers (54.0 percent) will not be affected by the reform legislation in 2012. However, among the taxpayers with positive taxable income, the vast majority of the population will benefit in 2013 from the inflation adjustment to both the tax brackets and the standard deduction. Filers with zero taxable income do not pay income taxes and would therefore not benefit from any tax bracket manipulation.

Addressing Bracket Creep

Unlike federal law, which has required that federal tax brackets be inflation-adjusted on an annual basis since the late 1980s, New York State income tax law had no such stipulation until recent legislation.[20] The exact structure of the pre-reform tax brackets can be traced back to 1997. The constant tax bracket levels allowed inflation to have the effect of

[20] "Little Help for Taxpayers Next Year from Inflation Adjustments, CCH Says." CCH Inc. 31 Jan. 2010. < http://www.cch.com/press/news/2009/20090917t.asp >.

increasing the percentage of the population that was subject to higher marginal tax rates. The value of the standard deduction was also not tied to any indexing factor and, like the tax brackets, was unchanged since 1997, aside from steps taken to equalize deduction treatment between married and single filers.



Source: NYS Department of Taxation and Finance

Figure 26

The December 2011 reform legislation has addressed the issue of bracket creep by indexing the tax brackets, as well as the standard deduction values, to the Consumer Price Index for All Urban Consumers. The indexing component of the legislation will not take effect until 2013, but the reduced tax rates for most taxpayers in the pre-reform 6.85 percent bracket will counteract, for many filers, the effects of over a decade of bracket creep. In 2012, the tax cuts alone will reduce the amount of taxpayers who pay a marginal rate of 6.85 percent or higher to an estimated 2.6 percent of the population. With the introduction of indexing in 2013, WAM Committee staff estimates that this percentage will decline to 2.5, a decrease of 6,436 taxpayers.

Volatility in Reform-Revenue Generating Incomes

A major contributor to the 2007-09 collapse in income was capital gains, which declined by 74.4 percent. Between 2010 and 2013, capital gains are expected to continue to be the primary cause in income fluctuation for these taxpayers, especially given the expected one-time spike in 2012 capital gains due to the scheduled expiration of the Bush-era tax cuts.

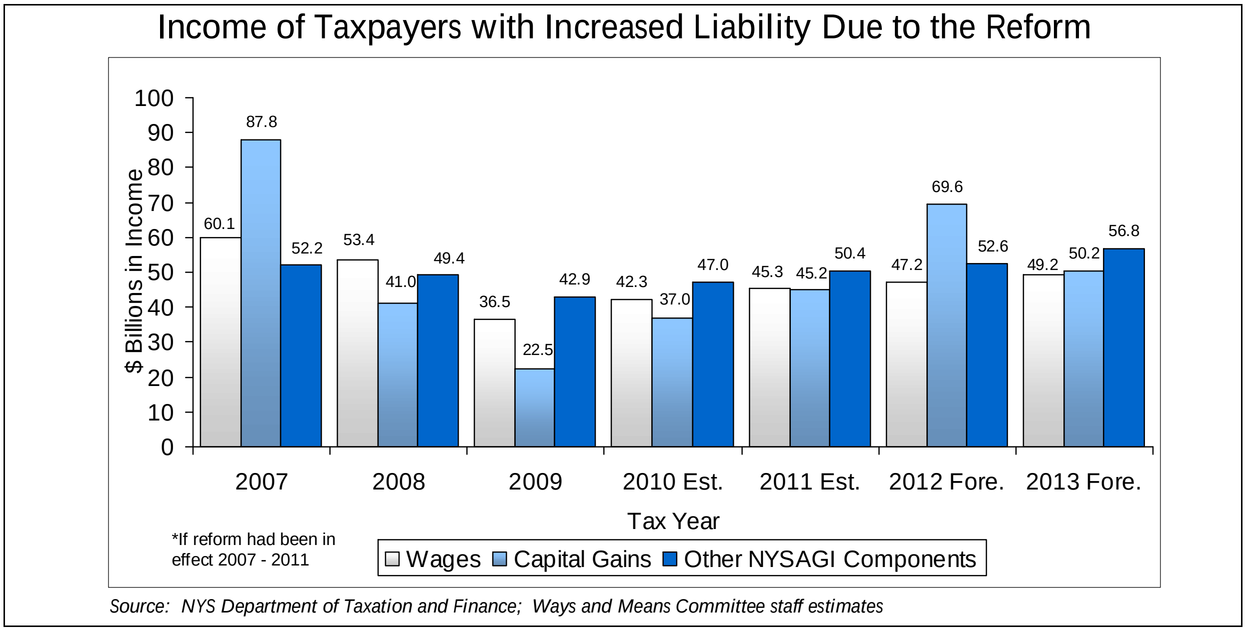


Figure 27

Since tax year 2001, with just one exception, the majority of the year over year change in aggregate NYSAGI has been explained by tax filers with income levels that are currently subject to the top rate of 8.82 percent. Between 2001 and 2009, an average of 64.9 percent of yearly fluctuation in NYSAGI was attributable to this group, which averaged less than one-third of one percent of the filing population. The WAM Committee staff forecasts significant deviation from the recent historical average share of change in 2013, due to the scheduled expiration of the Bush-era tax cuts. Capital gains, more than any other major component of income, are concentrated among New York's top income earners, and the anticipated shift of capital gains from 2013 to 2012 is expected to result in a decline in income for this population while NYSAGI grows for the remainder of the population.

The SFY 2012-13 personal income tax forecast is derived largely from historical trends and anticipated economic conditions. As a result, significant risk to the revenue forecast is inherited from the unknown error contained within the economic forecast. Given that well over half of the recent historical year-over-year variation in income has been among the income groups that pay the highest marginal tax rate, economic forecast errors presumably pertain largely to this group and are magnified as they translate into the revenue forecast.

History of Personal Income Tax Reforms in New York

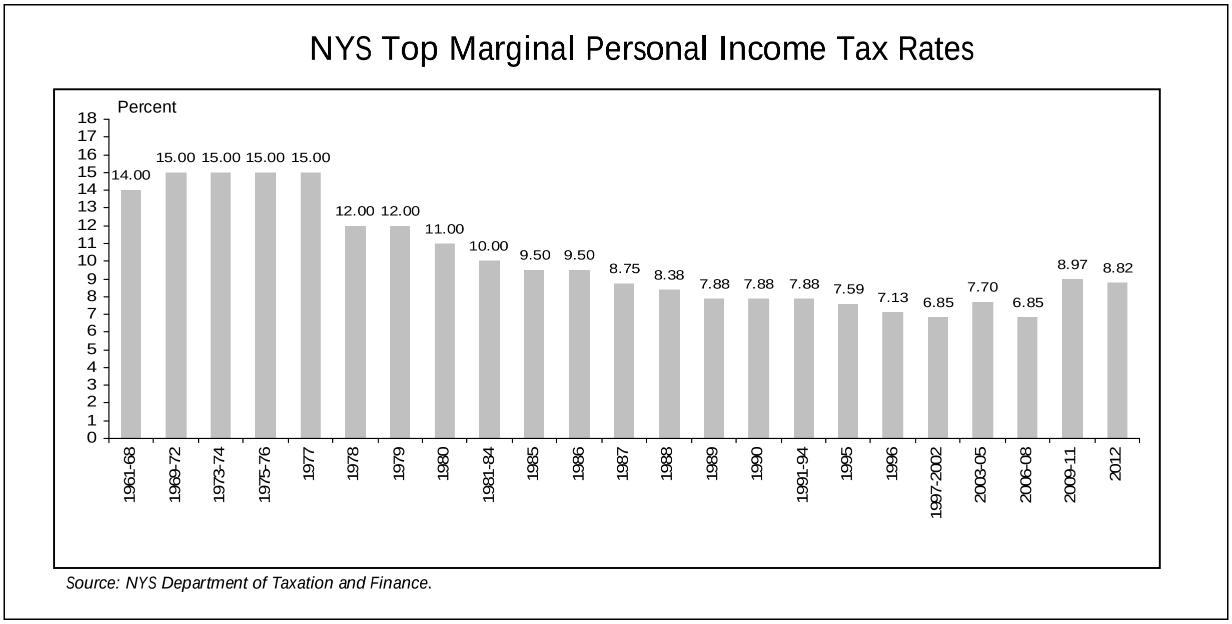


Figure 28

1919 to 1985

In 1919, New York became the eighth state to introduce an income tax, imposing a three percent rate on taxable income greater than $50,000 (almost $653,000 in 2011 adjusting for inflation). The above chart provides an overview of the top marginal PIT rates through 2012.

Since its inception, the State's PIT evolved parallel to the Federal income tax with the trend being for higher top rates and lower thresholds on which the top rate is applied. The State top rate peaked at 15 percent and applied to income over $25,000.[21] Since the mid to late 1970s, the State reduced the top rate significantly, reaching 9.5 percent in 1985.

Tax Reform and Reduction Act of 1987

In 1986, Congress enacted a comprehensive tax reform significantly broadening the tax base, reducing tax rates, eliminating loopholes, and repealing certain itemized deductions. As New York automatically conforms to the Federal definition of income, taxpayers would have witnessed a dramatic increase in liability. The State reacted by implementing a

[21] The rate was 15.375 percent inclusive a 2.5 percent surcharge which was repealed in 1977.

substantial restructuring of the tax code with the Tax Reform and Reduction Act (TRARA) of 1987. Some of the key components:

- fewer exclusions and deductions
- increasing the progressivity of the tax structure;
- eliminated differential rates between earned and unearned income;
- intended to reduce the top rate to seven percent by 1991;
- introduced a joint tax rate schedule for married taxpayers. Thus, beginning in 1988, tax brackets for married couple reflected full income splitting.

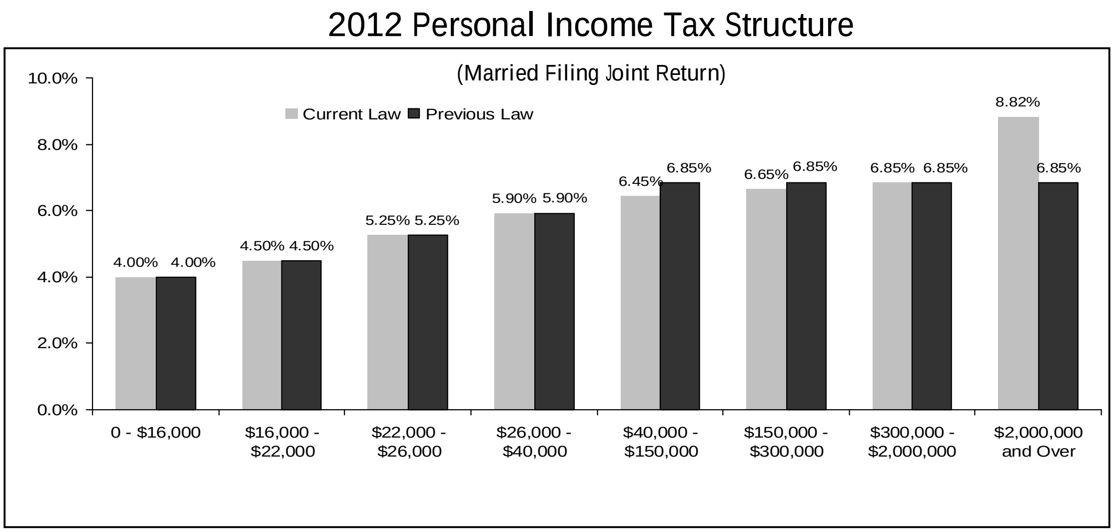
While the scheduled tax reductions were to be fully phased in by 1991, the 1989 rates were frozen through 1994 in an effort to confront fiscal deficits.

1994 - 2012

In 1995, the State enacted a scheduled three-year tax reduction, with the top rate reaching 6.85 percent by 1997 from 7.875 in 1994. That rate structure remained effective through 2002, when the State enacted a temporary top-rate increase to confront the anticipated deficits due to the 2001 recession and Wall Street losses. The top rate was set at 7.7 percent and was reduced to the original 6.85 percent in 2006.

In 2009, in response to the global financial crisis and significant losses in PIT receipts, the State again enacted a temporary three-year increase in top rates with the highest set at 8.97 percent for income over $500,000.

2012 Tax Reform



Source: NYS Assembly Ways and Means Committee.

Figure 29

As of January 2012, the following reforms in the PIT structure took effect:

- -- as the chart above shows, the tax reform reduced rates for those with taxable incomes between $40,000 and $300,000 compared to the rates that would have prevailed at the expiration of the three-year temporary surcharge on December 31, 2011;[22]
- -- Raised the top rate to 8.82 percent from 6.85 percent, although it was a decrease from the 2011 top rate of 8.97 percent;
- -- Indexed, for a period of three years, all brackets to inflation.

Other Major Changes in the PIT

- -- 1994 Enactment of the Earned Income Tax Credit: in 1994 the State enacted a new credit equal to a percentage of the Federal earned income tax credit. The first rate was set at 7.5 percent of the Federal credit and it currently stands at 30 percent;
- -- 1998 Enactment of the School Tax Relief Program (STAR) and began depositing a portion of PIT receipts into the STAR fund;

[22] The brackets assume a Married Filing Jointly taxpaying unit.

-- In addition, a variety of credits have been introduced or enhanced (such as the Empire State Child Credit), introducing additional progressivity in the tax system.

EXECUTIVE BUDGET PROPOSALS

- **Tax Modernization Program Extension**
  The SFY 2011-12 Enacted Budget included one-year tax modernization initiatives that would increase the number of electronic filers by requiring all individual filers who use software to file electronically, and increasing fines for professional preparers who do not e-file. The Executive has proposed making these provision permanent, which will lead to an estimated revenue increase of $4 million in SFY 2012-13 and $16 million annually thereafter.

- **Prohibit Fees on Levied Bank Accounts**
  The Executive has proposed prohibiting banks from charging fees on accounts that the state has placed a levy on for past due taxes or child support payments. Enacting this proposal would increase revenue by an estimated $5 million in SFY 2012-13 and $7 million annually beginning SFY 2013-14.

- **Empire State Commercial Production Credit**
  The five-year extension of the Empire State commercial production credit, as proposed in the Executive Budget, would reduce collections by an estimated $7 million annually beginning SFY 2013-14.

- **Solar Equipment Credit Expansion**
  The Executive Budget includes language to expand the solar equipment credit to include equipment leases and power purchase agreements. Such legislation would reduce net personal income tax collections by an estimated $2 million annually beginning SFY 2013-14.

- **Bio-fuel Production Credit Extension**
  The Executive has proposed extending the bio-fuel production credit for an additional seven years, expiring after 2019. Extending this credit will reduce net personal income tax collections by an estimated $10 million each year beginning in SFY 2014-15.

- **Low Income Housing Credit**

  Legislation included as part of the SFY 2012-13 Executive Budget would allow for the allocation of an additional $8 million in low income housing tax credits each year for an additional five years. This proposal would reduce tax receipts by an estimated $8 million in SFY 2013-14 and $16 million in SFY 2014-15.

- **Permanently Extend the Noncustodial EITC**

  Certain noncustodial parents who pay child support are currently eligible for the enhanced Earned Income Tax Credit (EITC), eligibility for these taxpayers is set to expire with the conclusion of tax year 2012. The Executive has proposed making this credit permanent, which would reduce net personal income tax receipts by an estimated $4 million annually, beginning SFY 2014-15.

- **Denial of STAR exemptions**

  The Executive proposes denying STAR exemption benefits to individuals who are delinquent on tax liability. Such legislation would increase income tax revenue by an estimated $1 million annually beginning in SFY 2014-15.

Sales and User Taxes

Table 22

User Tax Collections Forecasts by State Fiscal Year ($ in Millions)						
	SFY 2011-12	Growth	Diff. Exec.	SFY 2012-13	Growth	Diff. Exec.
User Taxes and Fees	**$14,615**	**2.9%**	**($104)**	**$15,070**	**3.1%**	**($6)**
Sales and Use Tax	11,906	3.2%	(91)	12,195	2.4%	(51)
Motor Fuel Tax	497	-3.9%	(4)	510	2.6%	(5)
Cigarette Tax	1,654	2.4%	(11)	1,781	7.7%	48
Highway Use	132	2.3%	(2)	144	9.1%	(3)
Alcoholic Beverage Tax	237	3.0%	4	242	2.1%	4
Auto Rental Tax	104	9.5%	0	110	5.8%	1
Taxi Surcharge	85	4.9%	0	88	3.5%	0

SALES TAX

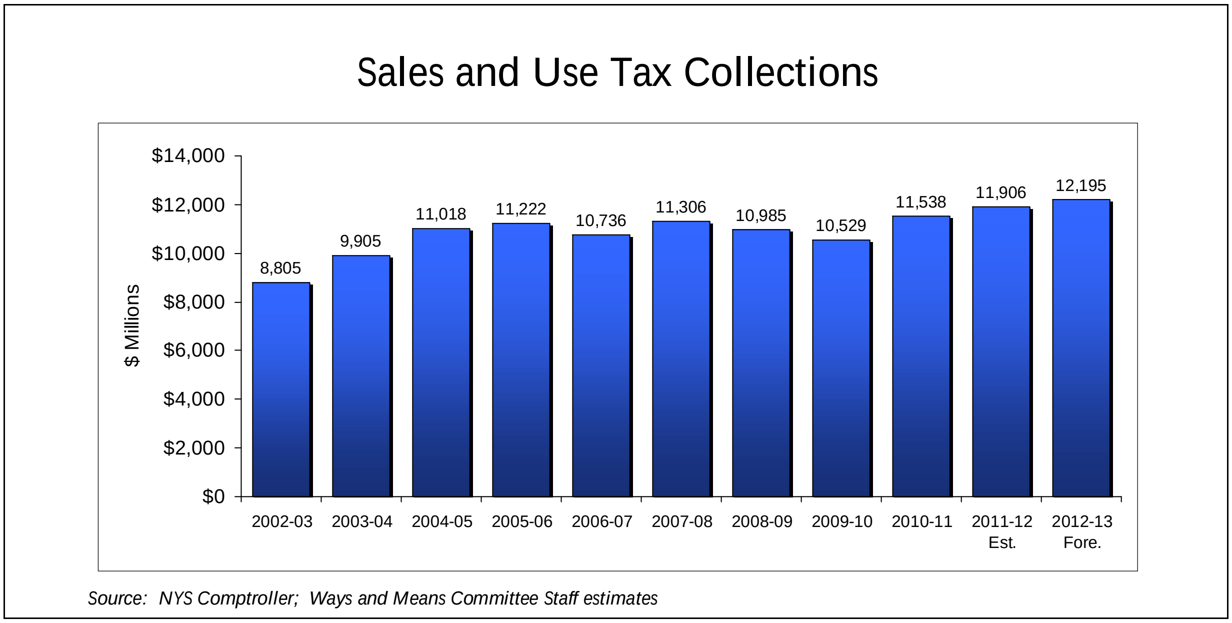


Figure 30

Table 23

Sales Tax ($ in Millions)						
	Year To Date	YTD Growth	Closeout/ Forecast	Growth	Executive	Difference
2011-12	$9,917	2.8%	$11,906	3.2%	$11,997	($91)
2012-13			$12,195	2.4%	$12,246	($51)

The Sales and Compensating Use Tax, imposed by Article 28 of the Tax Law, is a four percent broad-based consumption tax levied on the sale of tangible personal property, excluding items such as food, medicine, products used in manufacturing, and items purchased for resale. A limited number of services such as cleaning, parking and interior design are also subject to this tax. Certain non-profit and charitable organizations are exempt from paying sales tax on purchases. Sales tax is generally paid to and collected by the vendor at the time of purchase. Vendors remit sales tax collections annually, quarterly or monthly, depending on their level of taxable sales. Depending on the amount of taxable sales, some vendors are also required to remit their sales tax liability electronically. Sales tax collections are deposited into the General Fund, the Local Government Assistance Tax Fund (LGAC), and the Mass Transportation Operating Assistance Fund (MTOAF).

SFY 2011-12

The Ways and Means Committee staff estimates sales tax revenues to be $11.906 billion in SFY 2011-12, a 3.2 percent increase over SFY 2010-11. Year-to-date, collections have increased 2.8 percent over the first ten months of the prior year. Monthly increases seem to indicate that consumers have been releasing much of the pent up demand attributed to the last recession. Revenues generated through tax law adjustments are expected to be $55 million less compared to prior fiscal year. This is largely attributed to the temporary suspension of the sales tax on clothing and footwear offset by a series of other changes. Effective October 1, 2010, the State clothing tax exemption on items less than $110 was temporarily suspended, generating approximately $330 million in SFY 2010-11. As of April 1, 2011, the sales tax exemption was partially restored for clothing items valued at less than $55; this is expected to increase SFY 2011-12 revenues by $210 million. Absent these tax law adjustments, baseline sales tax collections are expected to increase 3.8 percent. The Executive estimates SFY 2011-12 Sales Tax receipts to be $11.997 billion, a 4.0 percent increase over the previous year.

SFY 2012-13

Ways and Means Committee staff forecasts that SFY 2012-13 sales tax collections will total $12.195 billion, a 2.4 percent increase over SFY 2011-12 estimates. Effective April 1, 2012, the exemption for clothing and footwear items valued at $110 or less will be fully reinstated, resulting in $210 million in foregone revenues compared to the prior year. Effective calendar year 2011, the IRS, along with the New York State Department of Taxation and Finance, requires information returns from any payment settlement entity making payment to a vendor that accepts card payments. The State information returns are expected to be filed in 2012, generating an additional $35 million in SFY 2012-13 sales tax revenues. The Executive Budget forecasts SFY 2012-13 collections to be $12.246 billion for growth of 2.1 percent over SFY 2011-12 estimates.

Fund Distribution

Table 24

Fund Distribution ($ in Millions)					
	General Fund	Special Revenue	Debt Service	Capital Projects	All Funds
2011-12	8,365	750	2,791	-	11,906
2012-13	8,571	765	2,859	-	12,195

The Committee staff estimates General Fund sales tax receipts of $8.365 billion in SFY 2011-12, representing growth of 3.5 percent from the prior year. This estimate is $61 million below the Executive Budget estimate. In 2012-13, General Fund collections are forecast to be $8.571 billion, an increase of 2.5 percent over the prior year estimates. This number is $20 million below the Executive Budget forecast.

Receipts from one percentage point of the four percent State sales tax rate is dedicated to the Local Government Assistance Corporation (LGAC), which was created in 1990 to eliminate annual Spring borrowing. Once the LGAC debt service obligations are paid, excess revenues are transferred back to the General Fund along with certain other transactions. LGAC receipts are projected to be $2.791 billion in SFY 2011-12, representing growth of 3.5 percent from the prior year. In SFY 2012-13, LGAC collections are forecast to be $2.859 billion.

In 1981, the Metropolitan Transportation Operating Assistance Fund (MTOAF) was created to help finance the State's public transportation system. A portion of the revenue is derived from a separate sales tax rate that is imposed in the Metropolitan Commuter Transportation District. Effective June 1, 2005, the rate was increased to 0.375 percent from 0.25 percent. The forecast for collections in the MTOAF for SFY 2011-12 is $750 million, representing a decrease of 0.8 percent over SFY 2010-11. The year over year decline is due to a change in the cash flow adjustments made by the State Comptroller. In past years, the Comptroller has engaged in a cash flow adjustment that pushes approximately 90 percent of March MTA collections into April. In March, 2011, only 44 percent of sales collections were pushed into April, 2011. As a result, April MTA receipts were down 24.5 percent compared to the prior year. The Committee staff's SFY 2011-12 estimate assumes that the same 44 percent adjustment will be made in March, 2012. In 2012-13 MTA collections are forecast to be $765 million. This is $26 million below the Executive Budget forecast of $791 million.

ANALYSIS

Underlying Economic Conditions

Changes in New York State personal income are found to be related to changes in sales tax collections. Declining personal income weakens consumer confidence and, subsequently, willingness to make discretionary purchases. Through SFY 2008-09 and SFY 2009-10, personal income declined at an average annual rate of 1.0 percent. Over the same period, sales tax collections declined 3.5 percent on average. In SFY 2010-11, state personal income rebounded by 5.2 percent as employment growth recovered with robust gains in bonus payments. In that same fiscal year, sales tax collections increased 9.6 percent. When accounting for the additional $330 million in revenues generated by the temporary suspension of the clothing tax exemption, SFY 2010-11 baseline collections increased by approximately 6.5 percent. In SFY 2011-12, New York State personal income is estimated to increase 2.8 percent.

Historically, growth in the S&P 500 index has been highly correlated to changes in sales tax receipts. Both collections and the S&P 500 index grew strongly from SFY 2002-03 to SFY 2003-04. Collections growth began to decline in SFY 2003-04, when the stock market also began to experience declines. After the financial market crash in the fall of 2008, the S&P 500 index declined by 26 percent, and tax revenues declined as well. The index is estimated to increase 7.5 percent in SFY 2011-12.

A likely reason for the correlation between the S&P 500 index and sales tax collections is the "wealth effect" on households. When the value of real estate equity and stock portfolios grow, households experience an increase in total financial wealth which leads to increases in consumer expenditures.[23] The wealth effect in the United States is generally calculated between two and seven cents—that is, for every extra dollar in housing or stock wealth, discretionary spending is increased by anywhere from two to seven cents.[24]

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[23] Smith, Charles Hugh, "Consumer Spending is Up: Is the 'Wealth Effect' Back?" Daily Finance, 8 April 2010, http://www.dailyfinance.com/story/real-estate/consumer-spending-is-up-is-the-wealth-effect-back/19430947/.

[24] Congressional Budget Office, "Housing Wealth and Consumer Spending," Background Paper, Pub. No. 2834, January 2007. http://www.cbo.gov/ftpdocs/77xx/doc7719/01-05-Housing.pdf.

Also strongly correlated with sales tax collections is the interest rate on used car loans, which tends to be lower during times of a weakening economy as monetary policy becomes accommodative. Sales tax collections have shown to be correlated with interest rates. Used car interest rates increased briefly in SFY 2009-10 to 9.1 percent, a year that saw the Cash for Clunkers Program—where a large increase in automobile purchases did not necessitate low interest rates to attract customers. During SFY 2010-11 interest rates declined to 7.7 percent and are estimated to average 6.8 percent through SFY 2011-12.

In SFY 2012-13, State personal income is forecast to experience stronger growth of 4.1 percent over the prior year. On the other hand, the S&P 500 index is forecast to increase by 6.6 percent and interest rates are projected to average 6.8 percent in the next fiscal year. These factors contribute to the Committee staff's forecast of slightly higher baseline sales tax growth of 3.9 percent in SFY 2012-13.

2011 Holiday Season

Retailers posted record sales through the 2011 Thanksgiving weekend, as consumers spent $52.4 billion.[25] A wide array of shopping bargains and earlier opening hours offered on "Black Friday" enticed consumers enough to release much of their pent-up demand. Retail sales through the holiday weekend increased 16 percent compared to the prior year. However, the slowdown in consumer spending in December indicates that consumers shifted their shopping habits to earlier in the season in order to capitalize on holiday deals; sales increased by 0.1 percent in December, falling short of a Bloomberg News Survey forecast.[26] Despite the shift in volume, sales performed better than expected overall throughout the holiday season, increasing 4.1 percent compared to the 2010 holiday season.[27]

New York State sales tax collections totaled $1.203 billion in December 2011. While this total is 2.6 percent less than the prior year, it is important to note that clothing items under $55 were exempt from sales tax, whereas through the 2010 holiday season sales tax was charged to all clothing items. After adjusting for the temporary suspension of the clothing

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[25] Lauren Coleman-Lochner & Matt Townsend, *Thanksgiving Sales Set Record as Shoppers with Jobs Chase Bargains: Retail,* Bloomberg, http://www.bloomberg.com/news/2011-11-27/u-s-thanksgiving-weekend-sales-increase-16-to-52-4-billion-nrf-says.html, (retrieved December 6, 2012).

[26] Bob Willis, *Retail Sales in U.S. Increase Less Than Forecast: Economy,* Bloomberg, http://www.bloomberg.com/news/2012-01-12/retail-sales-in-u-s-rose-0-1-in-december-less-than-forecast.html, (retrieved January 12, 2012).

[27] National Retail Federation, *Beating Expectations, Holiday Retail Sales Rise 4.1 Percent, According to NRF,* http://www.nrf.com/modules.php?name=News&op=viewlive&sp_id=1288, (retrieved January 12, 2012).

tax exemption, December baseline sales tax revenues are shown to have increased by approximately 2.2 percent over the prior year.

Tourism

Despite the most recent economic recession and subsequent weak recovery, the State's tourism industry has continued to perform strongly, thanks in large part to a weak U.S. dollar. In 2010, the number of international visitors to New York City increased 12.8 percent, for a total of 9.7 million visitors. Over the same period, employment in the leisure and hospitality sector increased by 3.3 percent. According to the NYC Office of Management and Budget, New York City continues to be the top U.S. destination for international tourists, attracting approximately 10.3 million foreign visitors in 2011. This 6.2 percent increase contributed to a record total of 50.5 million visitors to the City through the 2011 calendar year.[28] The value of the dollar has remained low compared to the Euro, while unseasonably warm weather late in the year coincided with the industry's peak holiday season to help attract more visitors. As a result, MTA sales tax revenues for the month of January (reflecting December sales) increased 5.5 percent compared to the prior year. The Committee staff estimates that leisure and hospitality employment increased by 4.0 percent in 2011. Over the last two years, the tourism industry has experienced the highest rate of employment growth over any other industry in the State.

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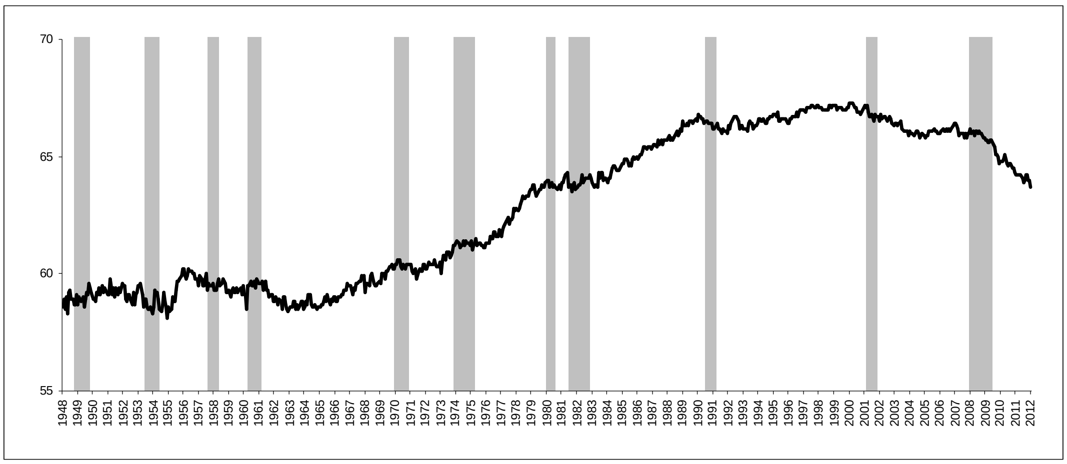
[28] NYC & Company, *Mayor Bloomberg Announces Revised 2011 Tourism Figure – Record 50.5 Million Visitors,* http://www.nycandcompany.org/press/mayor-bloomberg-announces-revised-2011-new-york-city-tourism-figure-record

Employment Trends – Employment Participation Rates and Ratio of Employment to Population

The underlying strength of sales tax receipts depends on the strength of employment gains. This sub-section provides an overview of key trends in the national labor market with implications for the level of future tax receipts from the sales tax.

U.S. Labor Force Participation Rate at 63.7 Percent
Through January 2012 (16 Years Old and Over)



Source: U.S. Bureau of Labor Statistics; Shaded areas represent U.S. recessions.

Figure 31

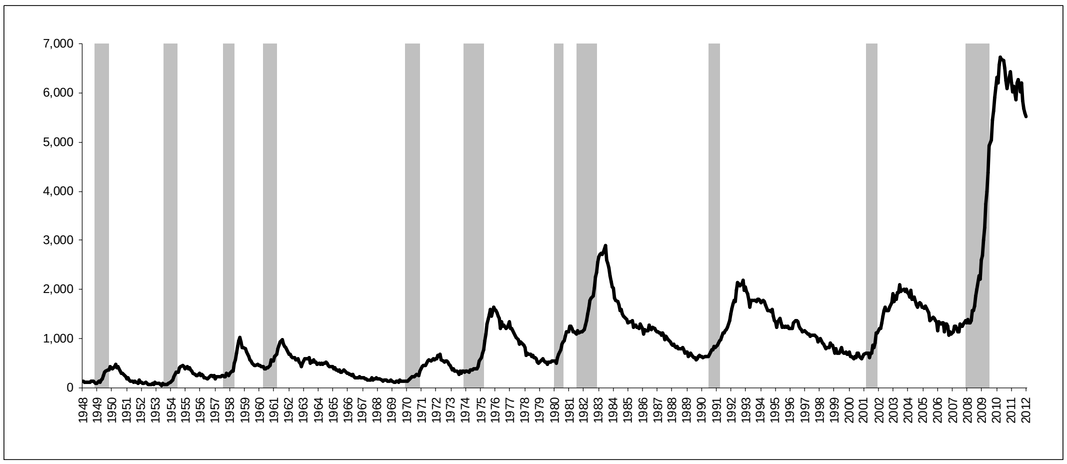
Employment participation remains at its lowest levels since 1983. As of January 2012 the rate stood at 63.7 percent. Since the latter part of the 20th century labor force dynamics have been changing. According to the U.S. Department of Labor three major changes are underway: slowing growth in the labor force, aging of the existing labor force, and a changing composition in the ethnic diversity of the workforce.[29] Projections call for the overall participation rate to continue inching downward as the working population ages – and thus its participation rate falls – especially considering that the baby-boom generation outnumbers subsequent generations, average years in school continue to remain high, while retirement and health insurance changes provide incentives for responses that may reduce participation in the labor force.

The decline in the labor force participation rate has critical implications for the nation as well as for fiscal health of the State. On the one hand, and to the extent that productivity

[29] "Employment Outlook: 2008-18", Monthly Labor Review, U.S. Department of Labor, November 2009.

changes do not accelerate to compensate for lower participation, the productive capacity of the nation declines, while on the other hand non-discretionary spending programs will continue being stretched to the limit in terms of the ability to cover promised benefits based on a shrinking working population.

Civilians Unemployed for 27 Weeks or More,
Long-Term Unemployed, (Thousands)



Source: U.S. Bureau of Labor Statistics; Shaded areas represent U.S. recessions.

Figure 32

The chart above provides additional evidence on the precarious nature of the current recovery. As of January 2012 the number of long-term unemployed has barely moved at around 5.5 million, almost twice the number of the long-term unemployed in the early 1980s peak. Labor economics research has well documented that the longer a worker remains unemployed the lower the chances of finding employment, and if the individual does find a job their compensation could decline, as skills erosion – true or perceived – sends negative signals to employers.

E-Commerce Retail Sales

Over the last ten years, the e-commerce industry has experienced considerable growth, driven by technological innovations such as laptop computers, Wi-Fi internet connections and smart phones to the increasing popularity of "Cyber Monday" sales every Thanksgiving weekend. During the 2011 holiday season, online sales increased 20 percent on Cyber Monday, with 10.8 percent of consumers using mobile devices to conduct their shopping, compared to 3.9 percent in 2010.[30] The chart below plots quarterly national e-commerce retail sales as measured by the U.S. Census Bureau.

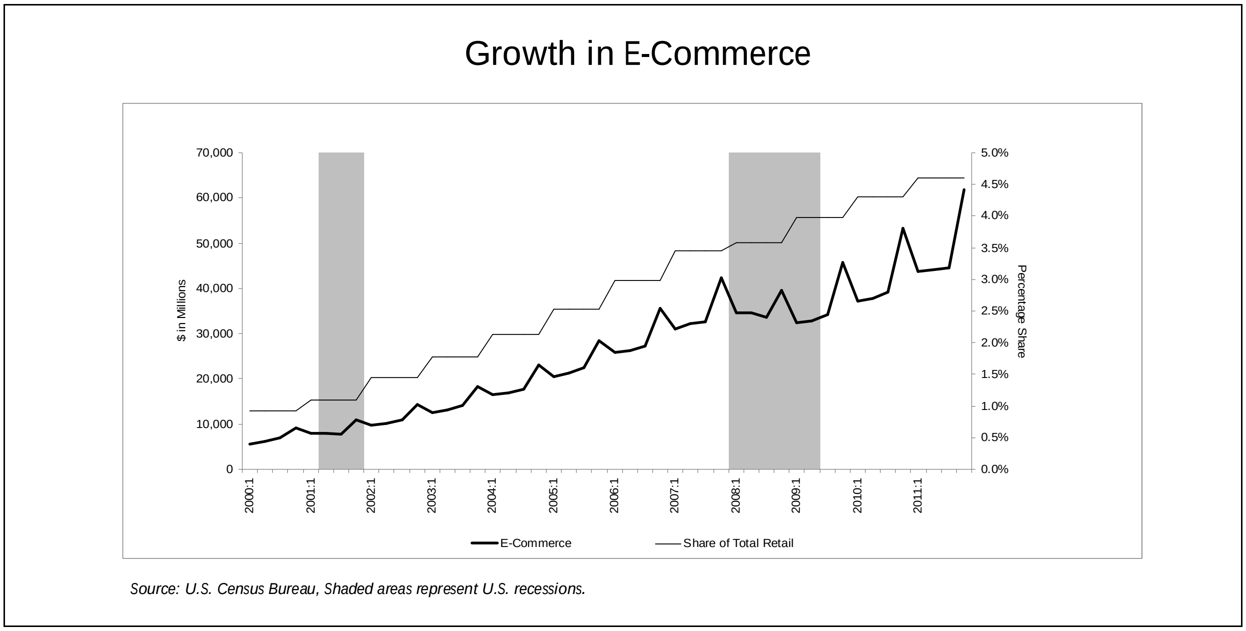


Figure 33

U.S. e-commerce retail sales increased 38.7 percent in the fourth quarter of 2011 over the prior quarter. Compared to the same quarter of the prior year, e-commerce sales had increased 16.1 percent. Since 2000, online retail sales have increased from an annual average of 0.9 percent of total retail sales to an estimated 4.6 percent of total sales in 2011.

This increasing preference for online retail shopping poses a significant tax collection issue for state and local governments. In 1992, in the case of Quill vs. North Dakota, the Supreme Court ruled that remote retailers do not have to collect state sales tax if the retailers have no physical presence, or nexus, in that state. The court argued that this would have put an onerous burden on the retailer because state sales taxes and taxable goods definitions are varied and complex. As a result, remote and online retailers were able to sell their items tax free so long as they did not have a physical presence within the State. This loophole could encourage firms to relocate offices, stores and warehouse facilities to avoid falling under the nexus requirement as defined under federal law.

[30] Tom Giles & Nick Turner, *Cyber Monday Sales Jump as More Holiday Shoppers Head Online,* Bloomberg News, http://www.bloomberg.com/news/2011-11-29/cyber-monday-online-spending-increases-33-over-2010-ibm-says.html, (retrieved December 6, 2012).

Traditional retailers who collect sales tax through their own online divisions, such as Wal-Mart and Target, have argued that the current law places them at a price disadvantage because online retailers who have limited physical nexus are able to sell their items in many jurisdictions tax-free. On the other hand, e-commerce businesses such as Amazon.com argue that collecting sales taxes from their customers is a burdensome process due to the complexities of state and local sales tax law, with over 7,600 state and local taxing jurisdictions nationwide each with its own rules, definitions, and tax rates. Researchers have agreed that without a practical solution to enforcing sales tax collection for online purchases, state and local governments will continue to risk needed tax revenues.[31]

Streamlined Sales Tax Project

In 2002, representatives from state and local governments and businesses implemented the Streamlined Sales Tax Project (SSTP) agreement. The agreement provides states the ability to opt into a system that would enable local jurisdictions to tax online sales through a uniform tax code. The purpose of the agreement is to substantially reduce the burden of sales tax compliance on the part of the online retailer. In order to achieve this, member states must enforce uniform tax base definitions for all jurisdictions, develop simplified audit and administration procedures, and adopt new technologies.

To date, 24 states have opted into the SSTP. If New York were to participate in this agreement, it would require adopting legislation that would substantially overhaul the State's current sales tax system. For instance, all of New York State's counties and twenty of its cities charge their own local sales tax in addition to the four percent State sales tax rate. Subject to certain limitations, cities and counties may charge sales tax rates up to three percent and many are authorized to charge additional rates ranging from 0.5 percent to 1.75 percent beyond the three percent limit. These additional rates generally require state legislative reauthorization every two years. Of the 57 counties in the State outside New York City, 38 currently charge a four percent sales tax rate; six counties have been authorized to impose rates above four percent, and 13 have rates below four percent. Conforming to the SSTP agreement would require sales tax rates to be associated with ZIP codes as opposed to county or city boundaries. Under the State Law, local jurisdictions are also given the option to authorize certain sales tax exemptions. Many purchases that are

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[31] Donald Bruce, William F. Fox, William B. Stokely, & LeAnn Luna, *State and Local Government Sales Tax Revenue Losses from Electronic Commerce,* University of Tennessee, http://cber.utk.edu/ecomm/ecom0409.pdf, (retrieved January 20, 2012).

exempt from the State's four percent sales tax rate may or may not necessarily be tax exempt at the local level. These exemptions (or conversely what is defined as taxable goods) at both the State and local level would need to be amended to conform to the SSTP agreement.

As an alternative to the Streamlined Sales Tax Project, a number of states have amended their tax laws to target nexus definitions. In 2008, New York State enacted legislation amending the sales tax law so that out-of-state sellers using an in-state independent contractor to refer customers to its website were considered to have established nexus in the State. The law effectively allowed the State to require companies such as Amazon.com to collect tax on sales made to New York consumers when purchases are made via "click-through" advertisements. When the so called "Amazon Law" was challenged, the courts ruled that Amazon did not provide enough evidence that the law violated the commerce, due process, or equal protection clause. For any other online purchase for which sales tax is not collected, Line 59 on the State personal income tax form (IT201) provides an opportunity for New York taxpayers who owe sales taxes to submit their liability. Other states have since enacted similar "Amazon laws," however in a number of instances Amazon has opted to move offices out of the state rather then collecting and paying sales tax[32].

Marketplace Fairness Act

In November 2011, legislators in Congress proposed a new bill that would enable states to collect sales tax from most online and remote sellers. The Marketplace Fairness Act will allow member states of the Streamlined Sales Tax Project to begin collecting sales tax on remote sales sourced to that member state. The proposal also includes a small sellers exemption; a remote seller whose annual gross receipts in total remote sales in the U.S. in the preceding calendar year do not exceed $500,000 will be exempt from collecting sales tax.

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[32] Eric Torbenson & Maria Halkias, *Amazon.com Shutting Irving Office Due to Tax Dispute*, DallasNews.com, http://www.dallasnews.com/business/headlines/20110210-amazon.com-shutting-irving-office-over-tax-dispute.ece , (retrieved February 15, 2012).

EXECUTIVE BUDGET PROPOSALS

- **Expand Sales Tax Registration Clearance**
  The proposed law would allow the Department of Taxation and Finance to refuse to issue a Certificate of Authority for any type of unpaid tax determined to be due from a person that is required to collect sales tax for the entity applying for the Certificate. The re-registration project authorized by the Legislature as part LL-1 of Chapter 57 of the Laws of 2008 enabled the Department of Taxation and Finance to successfully check for and collect any outstanding tax liabilities for all registered sales tax vendors. This bill would broaden the scope of these liability checks and allow the Department to more efficiently collect on any past due tax liabilities, particularly for partnerships and corporations. This is expected to generate an additional $1 million in SFY 2012-13.

- **Extend Fuel Exemptions**
  This measure would extend the full exemptions on E85, CNG and hydrogen fuels, and the partial exemption on B20 fuel for five years. This would cost the State approximately $2.0 million in SFY 2012-13.

- **Make Tax Modernization Provisions Permanent**
  The tax modernization provisions enacted in 2011 that require certain sales tax vendors to file electronically and authorize the Department of Taxation and Finance to require certain vendors to create segregated sales tax accounts are scheduled to expire on December 31, 2012. The Executive proposes to make these provisions permanent. This would generate an additional $1 million in SFY 2012-13 sales tax revenues.

- **Expand Solar Equipment Exemption**
  The Executive proposes to expand the solar equipment exemption to include purchases of solar energy system equipment for non-residential installation. It would also provide that the capacity rating of equipment does not exceed two megawatts or the thermal equivalent, and is not equipment used to heat residential swimming pools. The two megawatt limitation applies to both residential and non-residential uses of solar equipment.

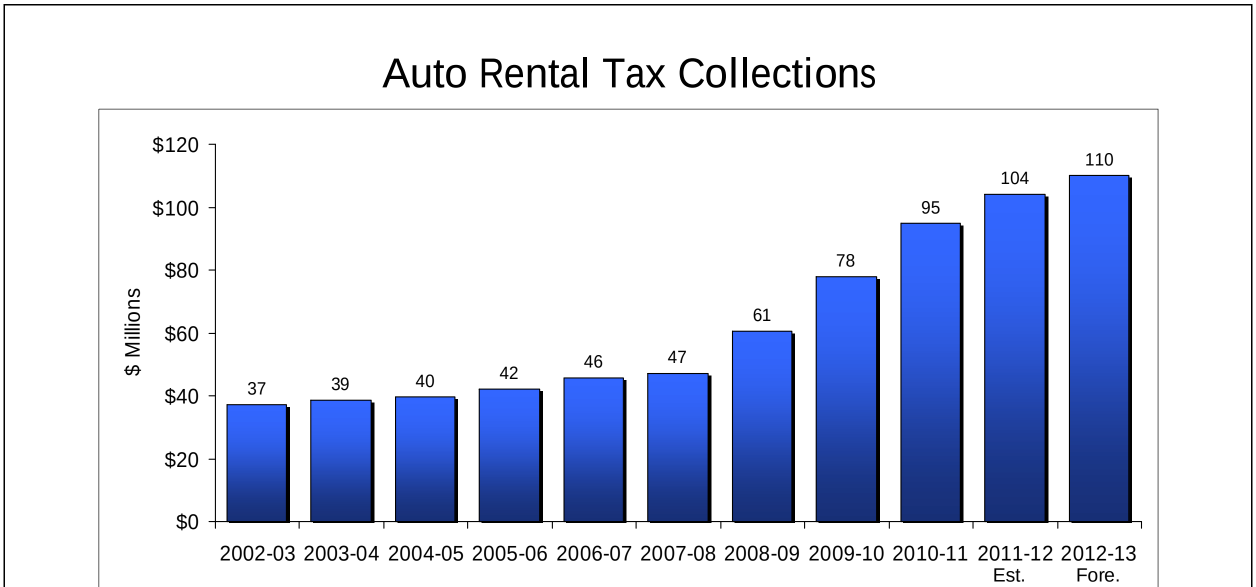
- **Fuel Definitions Technical Amendments**

  The Executive proposes to make technical amendments to the classification of diesel motor fuel. This would have no fiscal impact to the State.

- **Hotel Room Remarketers**

  The Executive proposes to allow online hotel booking agencies to only charge sales tax on the amount paid for the room without separately stating any other fees being charged to the customer and would allow tax payments to be filed once the occupancy has ended. The proposal would also provide that upon filing for a credit on sales tax paid, the room remarketer may provide the hotel operator's name, business address, telephone number, and the address of the hotel in the event that the operator's certificate of authority number is not obtainable. These proposed changes would also apply to the New York City hotel occupancy tax. This would have no fiscal impact to the State.

AUTO RENTAL TAX



Source: NYS Comptroller; Ways and Means Committee Staff estimates

Figure 34

Table 25

Auto Rental Tax ($ in Millions)						
	Year To Date	YTD Growth	Closeout/ Forecast	Growth	Executive	Difference
2011-12	$84	13.1%	$104	9.5%	$104	$0
2012-13			$110	5.8%	$109	$1

The auto rental tax, imposed by Article 28-A of the Tax Law, applies to the rental of any passenger car with a gross vehicle weight of 9,000 pounds or less that can seat a maximum of nine passengers. The auto rental tax was imposed at a rate of five percent on auto rental charges incurred for use in New York State, until June 1, 2009 when the rate increased to six percent statewide. Additionally, on June 1, 2009 a five percent tax went into effect on auto rentals in the Metropolitan Commuter Transportation District (MCTD). The tax does not apply to leases of one year or more. Since SFY 2002-03 all statewide auto rental receipts are dedicated to the Highway and Bridge Trust Fund. Revenue from the additional five percent MTA auto rental tax is dedicated to the Mass Transportation Operating Assistance Fund (MTOAF).

SFY 2011-12

Collections through January total $84 million, for growth of 13.1 percent over the same period in SFY 2010-11. The Committee staff estimates that collections in SFY 2011-12 will total $104 million. This estimate is even with the Executive estimate, and represents growth of 9.5 percent from last year.

SFY 2012-13

The Committee staff forecast for SFY 2012-13 is $110 million. This represents an increase of 5.8 percent over SFY 2011-12 estimates. The forecast is $1 million more than the Executive Budget projection.

Fund Distribution

Table 26

Fund Distribution ($ in Millions)

	General Fund	Special Revenue	Debt Service	Capital Projects	All Funds
2011-12	-	39	-	65	104
2012-13	-	41	-	69	110

EXECUTIVE BUDGET PROPOSALS

The Executive has proposed no actions impacting the auto rental tax.

ANALYSIS

Auto Rental Tax collections follow patterns of general consumption, which has been growing slowly, and tourism, which has shown strong growth in recent years. These trends account for the double-digit year-to-date growth in Auto Rental Tax collections.

MOTOR FUEL TAXES

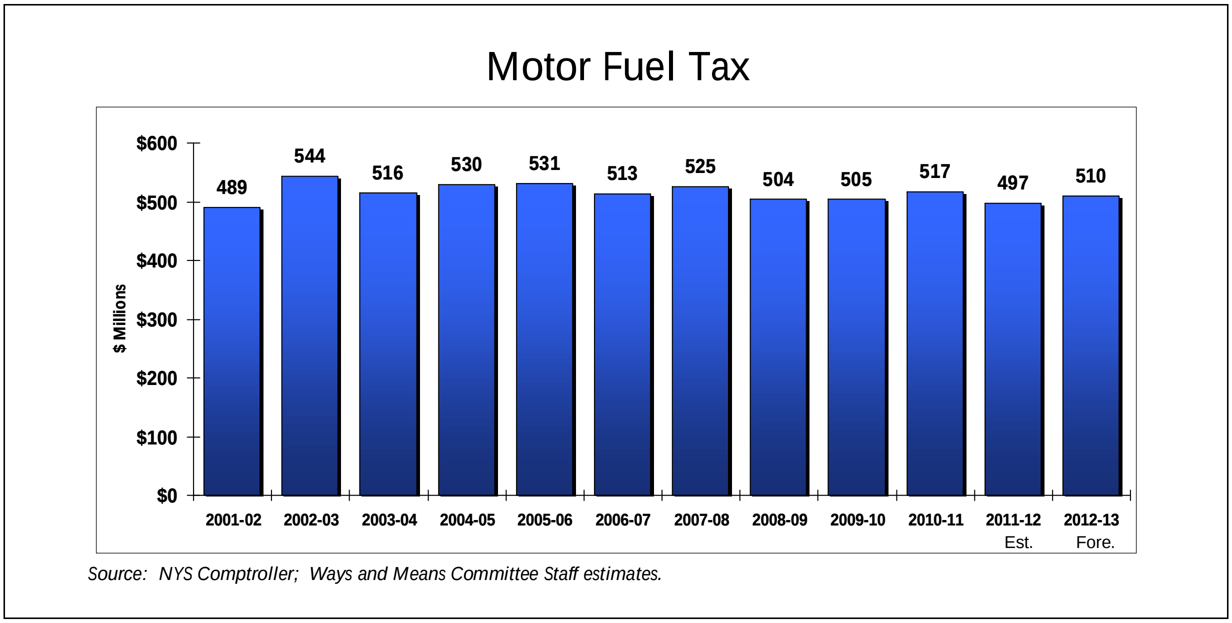


Figure 35

Table 27

Motor Fuel Tax ($ in Millions)						
	Year To Date	YTD Growth	Closeout/ Forecast	Growth	Executive	Difference
2011-12	$422	-2.1%	$497	-3.9%	$501	($4)
2012-13			$510	2.6%	$515	($5)

Article 12-A of the Tax Law imposes an eight cents per gallon tax on diesel motor fuel upon the first non-exempt sale in New York. The tax also applies to gasoline, upon first import into or production within New York. The tax has three components: regular tax (four cents per gallon), additional tax (three cents per gallon) and supplemental tax (one cent per gallon). Motor fuel tax collections are dedicated based on the following schedule: Gasoline receipts are split between the Highway and Bridge Trust Fund (81.5 percent) and the Dedicated Mass Transportation Trust Fund (18.5 percent). Diesel receipts are split between the Dedicated Highway and Bridge Trust Fund (63 percent) and the Dedicated Mass Transportation Trust Fund (37 percent).

SFY 2011-12

The Committee staff estimates that motor fuel tax receipts will total $497 million in SFY 2011-12; this estimate is 3.9 percent lower than the previous fiscal year. The Committee staff estimate is $4 million below the Executive estimate.

Through January 2012, motor fuel collections are $422 million, a decrease of 2.1 percent from the comparable period in the prior fiscal year.

SFY 2012-13

The Committee staff forecast for motor fuel taxes in SFY 2012-13 is $510 million, a 2.6 percent or $13 million increase over SFY 2011-12 estimates. The Committee staff forecast is $5 million below the Executive forecast.

Funding Distribution

Table 28

Fund Distribution ($ in Millions)

	General Fund	Special Revenue	Debt Service	Capital Projects	All Funds
2011-12	-	104	-	393	497
2012-13	-	107	-	403	510

Revenues collected from motor fuel taxes are not deposited into the General Fund, but instead are statutorily dedicated in the following manner:

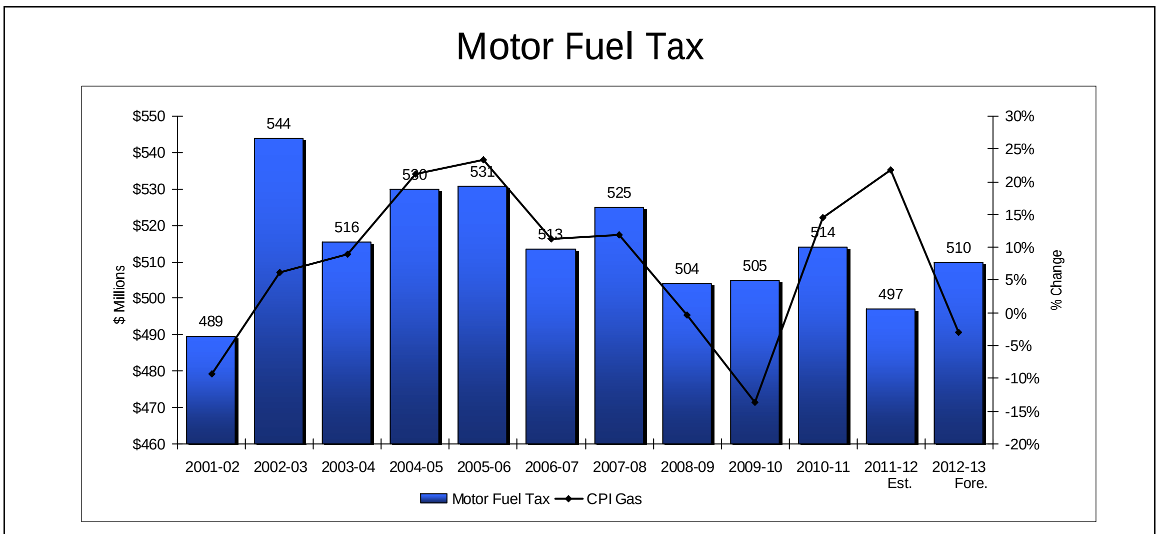
- $104 million deposited in the Dedicated Mass Transportation Trust in SFY 2011-12 and $107 million in SFY 2012-13;
- $393 million to the Dedicated Highway and Bridge Trust Fund in SFY 2011-12 and $403 million in SFY 2012-13.

ANALYSIS

Underlying Economic Conditions

Motor Fuel taxes are generally very stable. After falling by 4.0 percent in SFY 2008-09, revenues exhibited modest growth of 0.6 percent in SFY 2009-10 and 1.8 percent in SFY 2010-11. Much of the fluctuation can be explained by changes in consumption in both gasoline and diesel fuel. Consumption of diesel fuel is largely a function of economic activity. As the economy expands the demand for shipping expands, thus, the consumption of diesel fuel increases.

The decline in motor fuel taxes is largely driven by a decrease in consumption due to higher gasoline prices and a sluggish economy through SFY 2011-12. While prices have been steadily declining from a peak price of $4.15 in May to $3.48 in December, the start of 2012 has seen renewed pressures on oil and gasoline prices. As of the week of February 13, 2012, gasoline prices were estimated at an average of $3.81 per gallon statewide, an increase of 13.4 percent over the prior year.[33] National gasoline CPI is estimated to increase 21.8 percent through the current fiscal year, resulting in weakened demand for motor fuels, with gasoline and diesel consumption expected to decline 4.0 percent and 1.9 percent, respectively.



Source: NYS Comptroller; Ways and Means Committee Staff estimates; Bureau of Labor Statistics

Figure 36

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[33]http://www.nyserda.ny.gov/Page-Sections/Energy-Prices-Supplies-and-Weather-Data/Motor-Gasoline/Weekly-Average-Motor-Gasoline-Prices.aspx#Statewide

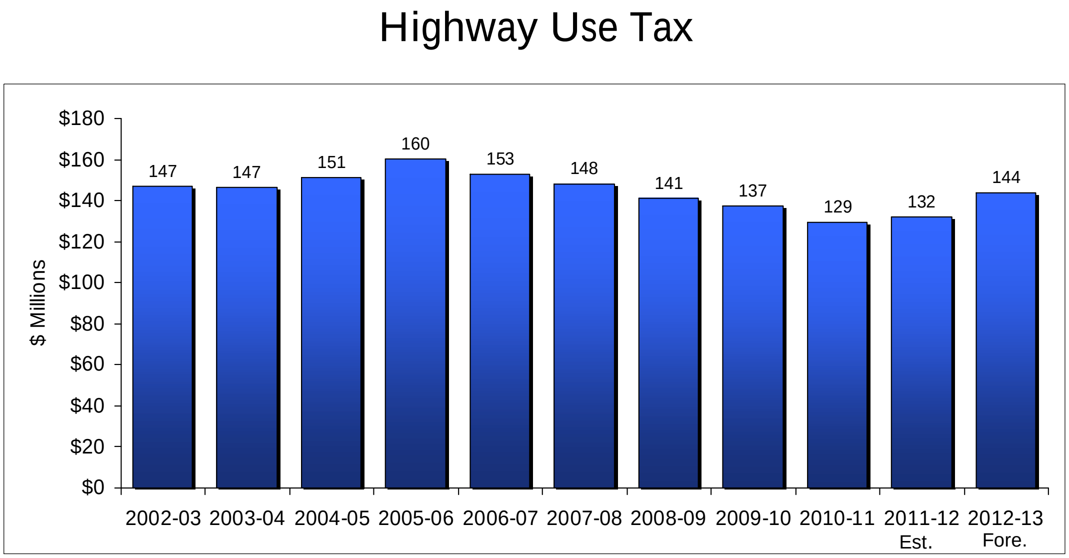
Gasoline CPI is projected to decline 2.9 percent in SFY 2012-13. This coupled with a 1.8 percent increase in State disposable income is expected to strengthen fuel demand; gasoline and diesel fuel consumption are expected to increase by 1.8 percent and 4.9 percent, respectively, in the coming fiscal year.

However, the recent trend of increasing fuel prices is not expected to erode fuel tax revenues, as the rebounding economy will stimulate demand. Also, because motor fuel taxes are a fixed amount per gallon, an increase in prices will not yield additional revenues.

EXECUTIVE BUDGET PROPOSALS

- The Executive proposed making technical amendments to the tax classification of diesel motor fuel (No fiscal impact).
- The Executive has also proposed extending the partial and full tax exemptions for alternative fuels for five years. This will reduce total tax revenues by $2 million per year.

HIGHWAY USE TAX



Source: NYS Comptroller; Ways and Means Committee staff estimates

Figure 37

Table 29

Highway Use Tax ($ in Millions)						
	Year To Date	YTD Growth	Closeout/ Forecast	Growth	Executive	Difference
2011-12	$115	3.6%	$132	2.3%	$134	($2)
2012-13			$144	9.1%	$147	($3)

Highway use tax (HUT) revenues are derived from three sources: the truck mileage tax (TMT), highway use permit fees, and the fuel use tax. The truck mileage tax is a weight-distance tax generally imposed on commercial vehicles having a loaded gross weight of more than 18,000 pounds. The tax is imposed at rates graduated according to the gross vehicle weight and miles traveled on public highways. In addition, a supplemental tax equal to the base truck mileage tax was imposed prior to January 1, 1999. Effective January 1, 1999, the supplemental tax was reduced by 50 percent, and effective April 1, 2001, the remaining supplemental tax was reduced by an additional 20 percent.

Highway use permits are mandatory to owners of vehicles subject to the highway use tax. The permits are triennial at a cost of $15 for an initial permit. The fuel use tax applies to commercial vehicles that purchase fuel outside New York State, but is consumed while traveling on New York highways. It has two components: the motor fuel component and the sales tax component. The aggregate fuel use tax rate is the sum of the motor fuel tax rate and the sales tax rate. The sales tax rate has two components, the state sales tax rate which is four percent and the lowest county sales tax rate at the time, which is currently three percent. The sales tax rates are applied to the capped price of $2 per gallon. All Highway Use Tax receipts are earmarked to the Dedicated Highway and Bridge Trust Fund. Effective September 1, 2009, highway use tax renewal fees were increased from $4 to $15.

SFY 2011-12

The Committee staff estimates that receipts in SFY 2011-12 will total $132 million, an increase of $3 million, or 2.3 percent above the prior year. This estimate is $2 million below the Executive estimate. The increase in highway use taxes can be partially attributed to increased enforcement and higher registration fees as revenues from registration fees are up 20.6 percent year-to-date.

SFY 2012-13

The Committee staff's forecast for highway use tax receipts is $144 million for SFY 2012-13, which represents a 9.1 percent increase from SFY 2011-12 estimates. This forecast is $3 million below the Executive's. The increase is attributed to $12.2 million in tax law adjustments of which $4.6 million are expected to be collected through registration renewal fees as 2012-13 is a triennial year, and $2.6 million is anticipated in fees for decal permits that the Department of Taxation and Finance will be required to mail out over the next fiscal year. The decals are also expected to generate an additional $5 million in TMT collections through increased enforcement. Without these additional revenues, HUT collections would remain relatively flat in the next fiscal year.

Fund Distribution

Table 30

Fund Distribution ($ in Millions)					
	General Fund	Special Revenue	Debt Service	Capital Projects	All Funds
2011-12	-	-	-	132	132
2012-13	-	-	-	144	144

All Highway Use Tax receipts are earmarked to the Dedicated Highway and Bridge Trust Fund.

ANALYSIS

Underlying Economic Conditions

The Committee Staff's forecast reflects recent trends in highway use tax collections. Variations in HUT collections are largely driven by dynamics in trend and seasonal patterns. However, quarterly fluctuations are also partly affected by the strength of the national economy. Economic growth is expected to result in increased manufacturing and trade which will result in increased trucking and shipping. As TMT collections are a function of miles driven by trucks on State highways, the increased economic activity is expected to have a positive correlation with tax revenues. Gross Domestic Product is forecast to increase by only 2.2 percent in 2012, which aligns with the Committee staff's flat underlying growth rate.

EXECUTIVE BUDGET PROPOSALS

- The Executive Budget includes no new proposals for the Highway Use tax.

CIGARETTE AND TOBACCO EXCISE TAX

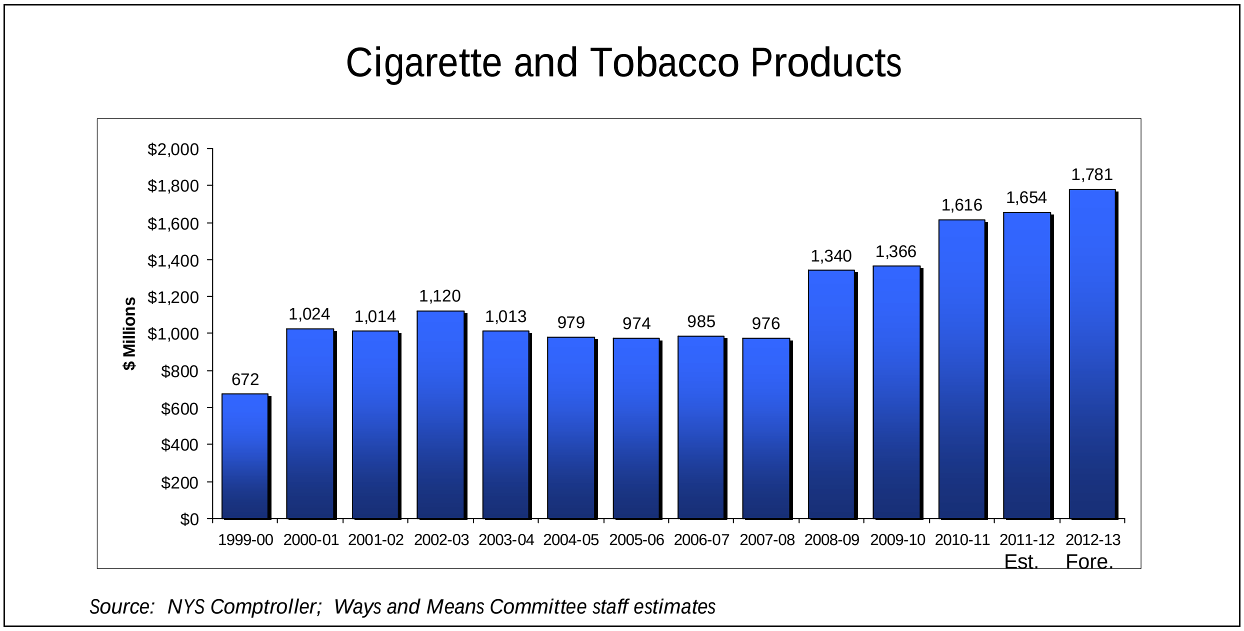


Figure 38

Table 31

Cigarette and Tobacco Tax ($ in Millions)						
	Year To Date	YTD Growth	Closeout/ Forecast	Growth	Executive	Difference
2011-12	$1,424	2.9%	$1,654	2.4%	$1,665	($11)
2012-13			$1,781	7.7%	$1,733	$48

The cigarette tax and cigarette use tax of New York State is administered through the provisions of Article 20 of the Tax Law. Article 20 was signed into law in 1939. The cigarette tax is an excise tax on the sale of cigarettes in New York State and is complimented by an identical use tax on the use of cigarettes in New York.

The Commissioner of Taxation and Finance is authorized to make provisions for the sale of stamps and may license agents to sell stamps for the payment of tax on cigarettes. The licensed agents may retain some of the revenues from the sale as commission according to guidelines established by the Tax Commissioner.

Pursuant to Section 472 of Article 20, the Tax Commissioner is authorized to prescribe a schedule of commissions, not exceeding five percent, to agents for buying and affixing stamps. Such schedule shall be uniform with respect to the different types of stamps used, and may be on a graduated scale with respect to the number of stamps purchased. The commissioner may permit an agent to pay for such stamps within thirty days after the date of purchase. The Commissioner may also require any such agent to file with the Department a bond issued by a surety company approved by the Superintendent of Insurance as to solvency and responsibility.

New York State also imposes a tax on tobacco products. The tobacco products tax is imposed at a rate of two dollars per ounce on snuff and seventy-five percent of the wholesale price on all other tobacco products (e.g. cigars, chewing tobacco, pipe tobacco, roll-your-own cigarette tobacco) for sale or use in New York State. As of July 1, 2010 little cigars are taxed at the same rate as cigarettes, currently $4.35 per pack of twenty. New York City also imposes a local tax of $1.50 – bringing the total state and local tax to $5.85 in the five boroughs of New York City.

SFY 2011-12

The Committee Staff estimates SFY 2011-12 collections of cigarette and tobacco taxes to be $1.654 billion. This estimate is based on year-to-date collections and historical collection patterns, and an adjustment for enforcement of cigarettes taxes on sales of cigarettes to non-Native Americans on Native American territory. Cigarette and Tobacco excise taxes, on an All Funds basis, have a year-to-date growth of 2.9 percent or $40 million. The Executive estimates SFY 2011-12 collections will total $1.665 billion, for growth of 3.0 percent over SFY 2010-11.

SFY 2012-13

The Committee staff's SFY 2012-13 forecast for cigarette and tobacco taxes is $1.781 billion, a growth of 7.7 percent over SFY 2011-12 estimates. The Committee staff's forecast is $48 million higher than the Executive's SFY 2012-13 Executive Budget projections. Both the Executive's and the Committee staff's forecasts include $100 million in revenue from the collection of taxes on Native American reservations, and $18 million for an Executive proposal to change the taxation of cigars and tobacco products.

Fund Distribution

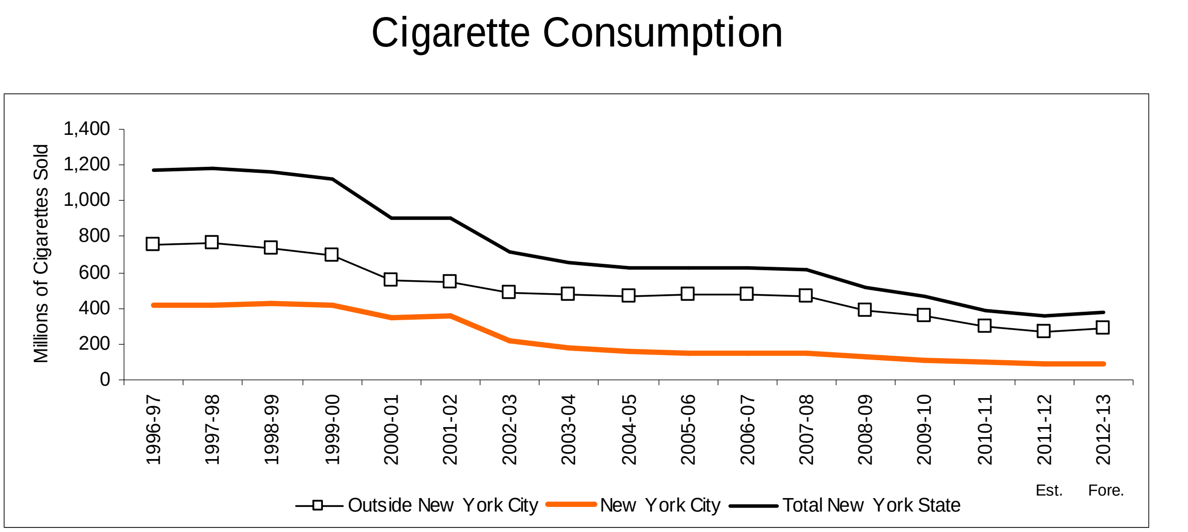
Table 32

Fund Distribution ($ in Millions)					
	General Fund	Special Revenue	Debt Service	Capital Projects	All Funds
2011-12	473	1,181	-	-	1,654
2012-13	516	1,265	-	-	1,781

In addition to the increases on cigarette and tobacco excise taxes, the 2010-11 Enacted Budget modified the distribution of cigarette tax revenues. The Health Care Reform Act (HCRA) share of the excise tax on cigarettes increased from 70.6 percent to 76.0 percent, effective July 1, 2010. HCRA is a major component of New York State's health care financing structure. Specifically, HCRA governs hospital reimbursement methodologies; supports expenditures of the State's Medical Assistance (Medicaid) program; and provides targeted support for a variety of health care initiatives, including the Tobacco Use Prevention and Control Program.

ANALYSIS

Historical Cigarette Tax Stamps (Consumption)



Source: NYS Department of Taxation and Finance, Ways and Means Committee staff estimates

Figure 39

Cigarette sales in New York State have decreased significantly over the last ten years. In SFY 2000-01, approximately 901 million cigarette tax stamps were issued; a decade later in SFY 2010-11, only 389 million cigarette tax stamps were issued. This represents a decline of 56.8 percent over ten years.

Historically, increases in cigarette excise tax rates have been accompanied by a sudden decline in consumption of taxed cigarettes, followed by approximately four to six quarters in which the decline levels off. For example, in March of 2000, the tax rate on a pack of cigarettes went from $0.56 to $1.11, which resulted in a year-over-year decline of 19.4 percent or 218 million cigarette tax stamps. The next significant tax increase became effective April 3, 2002, when the tax rate on a pack of cigarettes increased from $1.11 to $1.50. The result was similar—a year-over-year decline of 21.0 percent or 190 million tax stamps, followed by a second year decline of 8.2 percent. From SFY 2004-05 through SFY 2006-07 the number of cigarette tax stamps issued hovered around 625 million. The next significant tax increase, which took effect on June 3, 2008 and increased the rate from $1.50 to $2.75 per pack, was followed by a year-over-year decline of 24.0 percent or 151 million cigarette tax stamps, followed by a 2.8 percent decline in the following year.

The most recent tax increase went into effect on July 1, 2010, increasing the rates from \$2.75 to \$4.35 per pack. This increase was followed by a 12 month period with consumption 24.8 percent below consumption in the 12 months before the tax increase was effective. The second and third quarters of SFY 2011-12 saw slight consumption growth of 2.3 percent over Q2 and Q3 of 2010-11, the first six months of the rate increase, demonstrating the weakening effect of the tax increase on consumption over time.

The Committee staff estimates that cigarette tax stamps will grow more strongly in SFY 2012-13, forecasting cigarette tax stamps of 379 million packs or 6.4 percent growth. Much of this growth is due to anticipated increased enforcement of cigarette taxes on Native American reservations, which assumes that 16.8 million stamps will be purchased as a result of increased enforcement. Without this impact, consumption would be expected to be 362 million in SFY 2012-13, for growth of only 1.7 percent over SFY 2011-12 estimates. This moderate growth is more in line with the slow erosion of the base that has been demonstrated in cigarette and tobacco taxes over time.

The Distribution Chain and Tobacco Taxation

The chain of distribution for tobacco products (cigars, chewing tobacco, pipe tobacco, roll-your-own tobacco) is complex and has many implications for its taxation.[34] The chain begins at the level of the product manufacturer, who sells the product to the distributor or wholesaler. The distributor or wholesaler then sells the product to the retailer, and it is upon this sale that the Tax Department has argued that the 75 percent excise tax on the "wholesale price" of tobacco products should be imposed. The retailer then sells the product to the ultimate consumer, who pays the sales tax, and the excise tax as it is built into the retail price.

Section 470(6) of the Tax Law defines "wholesale price" as the established price that a manufacturer charges the distributor for the product. However, if there is no such established price, or it cannot be evidenced, the manufacturer's invoice price is taken as the wholesale price. Without such an invoice, the wholesale price is presumed to be the price at which the tobacco products were purchased. The law allows the tax to be paid on a lower wholesale price or on any industry standard of markups if either can be proven.

[34] Note that the distribution and taxation of cigarettes differs greatly from that of other tobacco products discussed here.

In 2010, an issue arose regarding which price is considered to be the "wholesale price" for the purposes of taxation. In that year, the Tax Department conducted an audit of a cigar retailer, and directed it to use the invoice price as the wholesale price upon which to impose the tax. The Tax Department argued that the price that the retailer's invoices showed as the wholesale price was not an "arms length" price, as it was a price between affiliated companies, and was therefore invalid. The company was required to use the price that the branded merchandiser charged the distributor, which was further down the distribution chain and therefore higher.

The retailer eventually brought the case to the Division of Tax Appeals, arguing its established wholesale price on two points. First, it argued that publications by the Cigar Association of America prove that the demonstrated manufacturer's selling price is standard for the industry. Second, it argued that the Tax Law clearly states that an invoice can be used as proof of the wholesale price where it is available, and such invoices were available for the retailer. This case was decided in favor of the retailer, requiring the Tax Department to impose the 75 percent tobacco products tax on the manufacturer's selling price.

Related to this issue, the 2012-13 Executive Budget contains a proposal to reform the cigar and tobacco tax system. This reform, in addition to other actions classified as loophole closures, proposes to change the cigar tax from an excise tax at 75 percent of the "wholesale price" to a retail tax at 50 percent of the receipts from retail sales.

Native American Cigarette Sales

The taxation of sales of cigarettes on Native American lands has been an issue in New York State going back several decades. In 1989, the State imposed regulations on the quantity of tax-exempt cigarettes that wholesalers could deliver to reservations, and the wholesaler would be responsible for the payment of the tax on any amount above the established quantity. This resulted in a lawsuit by a cigarette wholesaler, who argued that such taxation was pre-empted by the Federal Indian trader law. Ultimately in 1994, the U.S. Supreme Court ruled that New York State had the legal authority to tax sales of cigarettes to non-Native Americans conducted on Native American reservations; however then Governor Pataki suspended the order in May 1997, resuming tax-free cigarettes to non-Native Americans purchased on Native lands.[35]

[35] Lazore, Danielle, "Update Native North American Taxation and NY State Reservations," Cultural Survival Quarterly issue 23.1 (Fall 1997).

The SFY 2003-04 Enacted Budget included a provision requiring the Tax Department to devise regulations for the collection of cigarette taxes on Indian Reservations, and was estimated to yield $186 million. This was passed by the Legislature, but the Executive did not include it in the financial plan as it argued that the revenue estimate was “speculative.” These provisions were not enforced.

The SFY 2005-06 Enacted Budget (Part K of Ch. 61 of 2005, later amended by Ch. 63 of 2005) included a provision requiring the Department to implement a system to collect cigarette excise taxes, among other taxes, on sales to non-Native Americans on recognized reservations. This bill established a tax-exempt coupon system whereby sales of cigarettes to members of such tribes and nations would be tax exempt. Finally, the bill provided that any agreement between a tribe and the State would take precedence over any such tax enforcement system devised by the Department, assuming the agreement was ratified by the Legislature. As with the earlier regulatory scheme, this tax collection system was never enforced, and no agreement was reached between Native American nations or tribes and the State.

Most recently, the SFY 2010-11 Enacted Budget (Part D of Ch. 134 of 2010) implemented a dual system of cigarette tax collection on Native American reservations. This system provided for a certain quantity of tax-free cigarettes to be used by tribe or nation members. Both systems require a tax stamp for packs of cigarettes sold by agents and wholesalers to cigarette sellers on reservations. As with the system devised in the 2005-06 budget, this system included the provision that an agreement between a tribe and the State would take precedence over the tax enforcement system devised by the Department if it was ratified by the Legislature. These provisions were scheduled to become effective September 1, 2010, however an injunction was shortly thereafter imposed, and was not lifted until June 22, 2011. Enforcement of cigarette sales on reservations therefore did not resume until that time. Since then, stamping agents are no longer selling brand name cigarettes to reservations. Native American tribes and nations continue to manufacture and sell their own brands of cigarettes tax free, but the State has declined to pursue such sales.

Cigarette Tax Evasion and Avoidance

With each cigarette tax rate increase, consumers find more ways of evading the tax. Five common forms of cigarette tax evasion or avoidance are Native American reservations, mail order/Internet, surrounding states, counterfeit cigarettes, and roll-your-own machines.

Some of the decline in consumption seen over the last several years is likely due to these effects in addition to declines in cigarette smoking rates.

Native American Sales

Until recently, the State had failed to enforce the 1994 Supreme Court ruling allowing it to collect excise taxes on sales of cigarettes to non-Native Americans on Native American reservations. This failure of enforcement left open a gap in the taxation of cigarettes, and allowed anyone with access to a Native American reservation to purchase cigarettes tax free. This was a very common form of tax evasion until the enforcement of the provisions enacted in the 2010-11 Budget, a now viable threat of tax collections from agents who deliver cigarettes to reservations starting on June 22, 2011. As a result, stamping agents are no longer selling brand name cigarettes to reservations. Native American tribes and nations continue to manufacture and sell their own brands of cigarettes tax free, as the State has declined to pursue such sales. However, Native American-manufactured cigarettes are not as popular among cigarette consumers, who tend to be brand-loyal. The combination of enforcement on reservations and brand loyalty among consumers has substantially reduced this channel as a source of cigarette tax evasion.

Mail Order/Internet

Another major source of tax-free cigarettes has been mail order and Internet sales. In addition to the lower prices due to the exclusion of the excise tax in the retail price, mail order and Internet sales are popular due to their convenience. The product is delivered directly to the consumer's door, eliminating the need to travel to a Native American reservation or even the need to go to the corner shop to purchase cigarettes. In addition, mail order and Internet vendors are unable to positively verify a purchaser's age, making such sources attractive for underage consumers.[36]

However, on June 29, 2010, the Federal Prevent All Cigarette Trafficking (PACT) Act made it illegal for mail order or Internet sellers to mail cigarettes to a consumer without first collecting any applicable federal, state and local taxes and verifying the age of the consumer at the time of delivery. These requirements effectively stopped the U.S. Postal Service from delivering cigarettes, since they do not have the requisite abilities to verify

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[36] Ribisi, Kurt M., Rebecca S. Williams, and Annice E. Kim, "Policy Brief on: Internet Cigarette Sales," Substance Abuse Policy Research Program, The Robert Wood Johnson Foundation.

age. Private delivery services are already banned in New York State from delivering cigarettes.

Surrounding States

A significant portion of New York State residents live within short driving distance of either Vermont, Massachusetts, Connecticut, New Jersey, or Pennsylvania. Every state that borders New York has a lower tax rate than New York, making opportunities and incentives abundant for consumers to purchase cigarettes across state lines. Section 471-a of the Tax Law imposes the use tax on purchases of cigarettes for which no tax has been paid to New York State. This is designed to capture, among other activities, purchases of cigarettes that occur outside of New York State borders. However the use tax is not imposed on any quantity of cigarettes 400 or less that are brought into the State, so while effective for catching distributors obtaining product from other states, it is less so for detecting the casual consumer who purchases outside of New York.

Counterfeit Cigarettes

There is evidence of a recent increase in counterfeit cigarettes entering the State, particularly from China. These cigarettes are often indistinguishable from popular brands, and often run at a fraction of the price of taxed cigarettes, but lack the health and safety inspections required for certified cigarettes. Cigarette manufacturers argue that such cigarettes make up as much as two percent of the market in New York. Raids of sales of counterfeit cigarettes are primarily conducted by Federal law enforcement agencies. This is the most dangerous form of tax avoidance, as the lack of testing procedure could mean that these cigarettes entering the state illegally contain ingredients that would not be present in regulated cigarettes.[37]

Roll-your-Own Machines

In recent months, cigarette and tobacco retail shops that offer the use of roll-your-own cigarette machines have been targeted by the City of New York as a form of cigarette tax evasion. These machines use loose tobacco to roll a pack of cigarettes in as little as a few minutes, and the retail shop owners are taxing the product as loose tobacco instead of as cigarettes. This creates a large tax incentive for consumers to use the machine, as the

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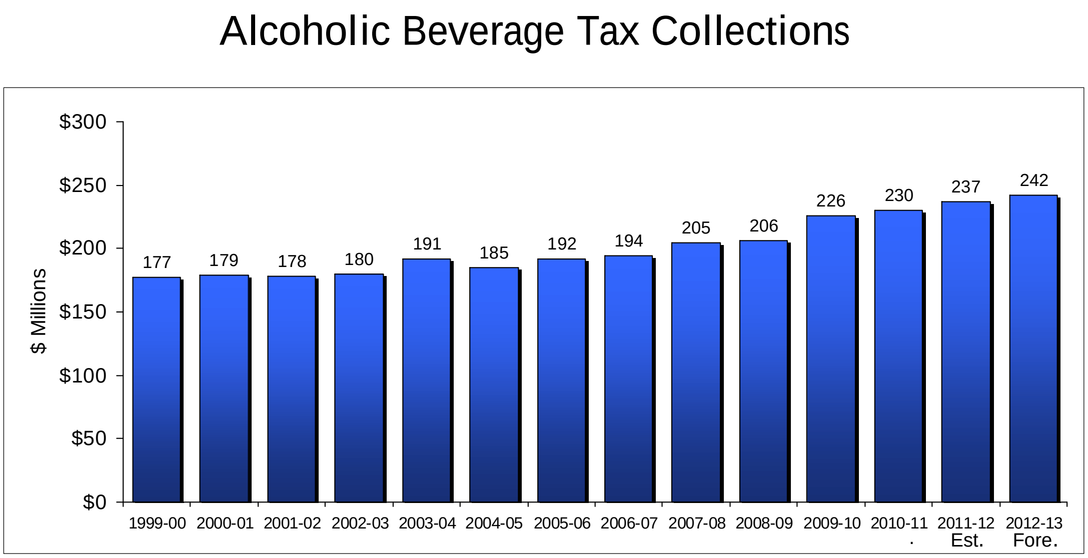
[37] Cnidele, John, “Counterfeit Smokes, Unchecked, Growing in NY,” New York Post 28 July 2010.

75 percent wholesale tax on the tobacco is significantly less than the $4.35 per pack tax on cigarettes, while the product is essentially the same.[38] Related to this issue, the Executive recommended in the 2012-13 Proposed Budget to change the taxation of loose tobacco, from 75 percent of the wholesale price to $4.53 per ounce of loose tobacco. This essentially equates the product of the roll-your-own machines to that of cigarettes for taxation purposes, and eliminates the tax benefit currently available for using the machines.

[38] Caruso, David B., "NYC Sues Roll-your-own Cigarette Shops Over Taxes," USA Today. 22 November 2011.

ALCOHOLIC BEVERAGE TAX



Source: NYS Comptroller; Ways and Means Committee staff estimates

Figure 40

Table 33

Alcoholic Beverage Tax ($ in Millions)						
	Year To Date	YTD Growth	Closeout/ Forecast	Growth	Executive	Difference
2011-12	$207	3.5%	$237	3.0%	$233	$4
2012-13			$242	2.1%	$238	$4

Article 18 of the Tax Law imposes a tax on various alcoholic beverages, including beer, wine and other spirits. The tax rate varies depending on the alcohol content of the beverage. All of the receipts are deposited into the General Fund.

SFY 2011-12

The Ways and Means Committee staff estimates Alcoholic Beverage Tax revenues to be $237 million in SFY 2011-12, a 3.0 percent increase over SFY 2010-11 collections. Growth of 0.4 percent is expected in the remaining two months of the fiscal year. The 2012-13

Executive Budget Report estimates SFY 2011-12 Alcoholic Beverage Tax receipts to be $233 million, for annual growth of 1.4 percent. This estimate would require a decline of 12.5 percent over the rest of the fiscal year.

SFY 2012-13

Ways and Means Committee staff forecasts that SFY 2012-13 Alcoholic Beverage Tax collections will be $242 million, a 2.1 percent increase from SFY 2011-12 estimates. The 2012-13 Executive Budget Report forecasts collections of $238 million, for growth of 2.1 percent.

ANALYSIS

Underlying Economic Conditions

Year-to-date through January, the majority of Alcoholic Beverage Tax collections have been from sales of liquor (69.6 percent), followed by beer (18.8 percent), and then wine (7.7 percent). As a share of total consumption in New York State, beer was consumed the most, at 1,051.6 liters year-to-date, followed by wine at 207.4 liters, and liquor at 85.1 liters.

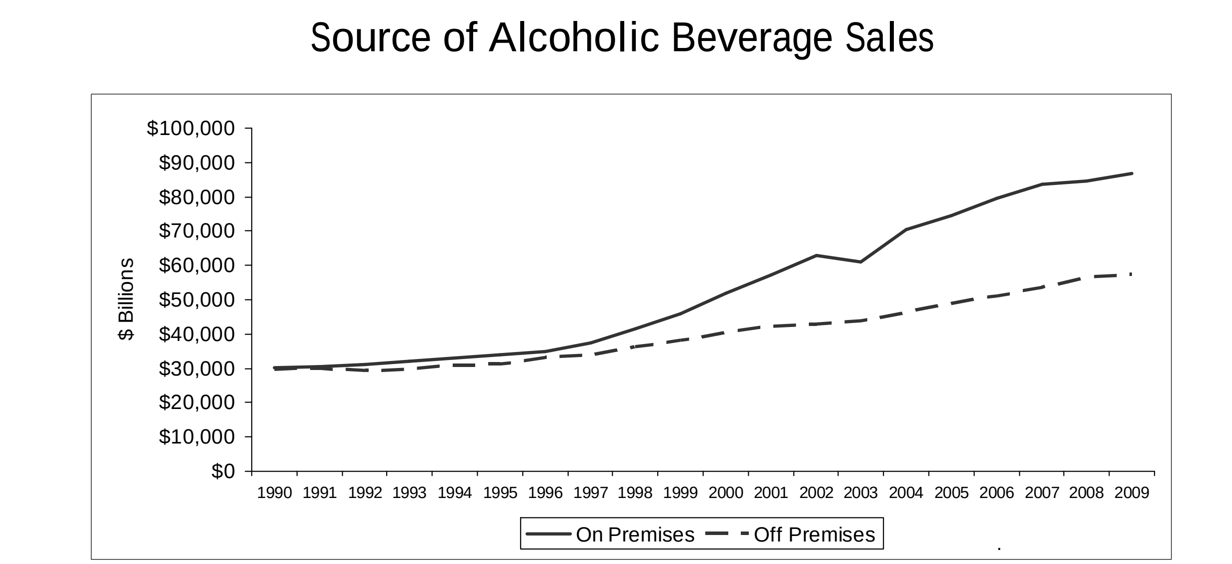
Table 34

New York State Alcoholic Beverage Tax

	Volume Sold Year-to-Date	Tax Rate	Collection Year-to-Date	% of Total Collections
Liquors > 24%	85.1m liters	$1.70	$144	69.6%
Liquors < 24%	11.4m liters	$0.67	$8	3.9%
Wine	207.4 liters	$0.0792	$16	7.7%
Beer	277.8m gallons	$0.14	$39	18.8%
Total			**$207**	**100.0%**

A recent analysis studied the benefits of the alcoholic beverage tax, and examined the relationship between alcoholic beverage tax rates and decreased consumption, which itself is found to be related to declines in rates of vehicular deaths, violent crimes, and property crimes. Specifically, the study noted that the 1991 increase in the Federal excise tax rates on alcoholic beverages reduced injury deaths by nearly 7,000 deaths or 4.7 percent in that year alone.[39]

The Executive and the Committee staff are both forecasting slow growth in Alcoholic Beverage Tax collections for SFY 2011-12 and SFY 2012-13. Nationally, sales of alcoholic beverages, which saw significant growth in the late 1990s, have begun to taper off since the beginning of the recession in 2008. The gap between alcohol sales made at restaurants and bars, and those made at liquor and food stores for home consumption, widened as the economy expanded; however the growth in this gap has slowed as consumers seek lower-priced options for alcohol consumption, which often results in more off-premises consumption.[40] While there is evidence that overall consumption of alcoholic beverages is generally unrelated to economic conditions, the type of alcohol consumed and the outlet at which the alcohol is purchased is clearly impacted by the economy.[41]



Source: U.S. Census, Ways and Means Committee staff

Figure 41

[39] Cook, Philip J. and Christine Piette Durrance, "The Virtuous Tax: Lifesaving and Crime Prevention Effects of the 1991 Federal Alcohol Tax Rate Increase" NBER Working Paper 17709, December 2011.

[40] U.S. Census, Table 1062, "Food and Alcoholic Beverage Sales by Outlet," 30 September 2011.

[41] Smitih, Aaron, "Alcohol sales thrive in hard times, CNN Money, 9 June 2011, http://money.cnn.com/2011/06/08/news/companies/alcohol_sales/index.htm.

Recent Law Changes

No law changes have been enacted related to Alcoholic Beverage Taxes. Beer and wine tax rates were last increased in the 2009-10 Budget, and liquor tax rates have not increased since 1989.

Table 35

New York State Alcoholic Beverage Tax Rates History							
Beverage	Liquor > 24% Alc/liter	Liquor - All other/liter	Natural Spklg./liter	Art. Spklg Wine/liter	Still Wine/liter	Beer/ Gallon	Cider/ Gallon
4/1/2009	$1.70	$0.67	$0.0792	$0.0792	$0.0792	$0.1400	$0.0379
1/1/2003	1.70	0.67	0.05	0.05	0.05	0.11	0.0379
1/1/2001	1.70	0.67	0.05	0.05	0.05	0.125	0.0379
1/1/1999	1.70	0.67	0.05	0.05	0.05	0.135	0.0379
1/1/1996	1.70	0.67	0.05	0.05	0.05	0.16	0.0379
1/1/1995	1.70	0.67	0.05	0.05	0.05	0.21	0.0379
7/1/1994	1.70	0.67	0.05	0.05	0.05	0.21	0.01
6/1/1990	1.70	0.67	0.25	0.15	0.05	0.21	0.01
5/1/1989	1.40	0.55	0.25	0.15	0.05	0.11	0.01
5/1/1983	1.08	0.264	0.175	0.088	0.032	0.055	0.004
Before	0.86	0.21	0.14	0.07	0.03	0.04	0.00

EXECUTIVE BUDGET PROPOSALS

The executive has proposed no actions in the 2012-13 Executive Budget that impact Alcoholic Beverage Tax collections.

Business Taxes

Table 36

Business Taxes Forecasts by State Fiscal Year ($ in Millions)						
	SFY 2011-12	Growth	Diff. Exec.	SFY 2012-13	Growth	Diff. Exec.
Business Taxes	**$7,858**	**8.0%**	**($64)**	**$8,179**	**4.1%**	**$27**
Corporate Franchise	3,185	11.9%	(46)	3,338	4.8%	39
Utility Tax	801	-1.5%	(14)	877	9.5%	0
Insurance Tax	1,421	5.2%	8	1,429	0.6%	(34)
Bank Tax	1,354	14.8%	(20)	1,376	1.6%	25
Petroleum Business Tax	1,097	0.6%	8	1,159	5.7%	(3)

CORPORATE FRANCHISE TAX

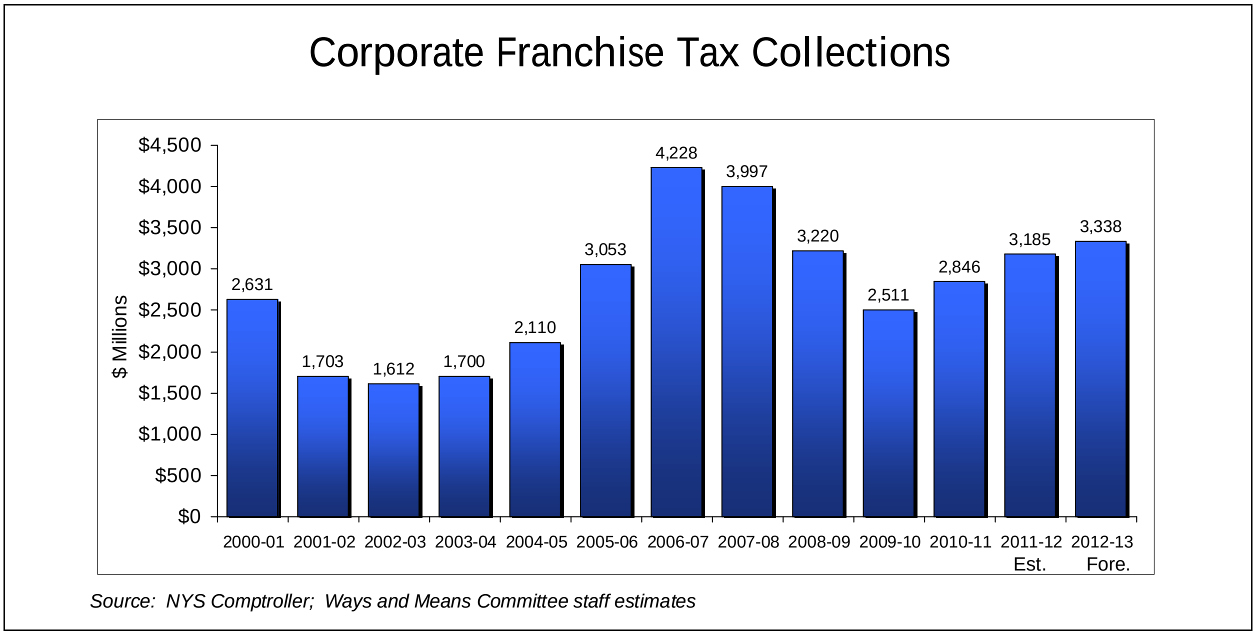


Figure 42

Table 37

Corporate Franchise Tax ($ in Millions)						
	Year To Date	YTD Growth	Closeout/ Forecast	Growth	Executive	Difference
2011-12	$2,265	12.9%	$3,185	11.9%	$3,231	($46)
2012-13			$3,338	4.8%	$3,299	$39

Article 9-A franchise taxes are imposed on every domestic or foreign corporation "for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property ... in a corporate or organized capacity, or of maintaining an office in this state..." (Tax Law §209.1).

The corporate franchise tax is composed of three parts:

1. All corporations will pay the highest of the following four alternative bases:
   - 7.1 percent of entire net income allocated to New York;
   - 0.15 percent of allocated capital, subject to a maximum of $1 million;
   - an alternative minimum tax of 1.5 percent of entire net income;
   - A fixed dollar minimum tax, which ranges from $25 to $5,000, and is based upon the amount of New York receipts.

2. For corporations that own more than 50 percent of the voting stock of another corporation, a tax of 0.09 percent of allocated subsidiary capital is to be paid.

3. If a corporation has business attributable to the Metropolitan Commuter Transportation District, they pay a 17 percent surcharge on their liability inside the MCTD, which is distributed to the Metropolitan Transportation Authority.

SFY 2011-12

The Ways and Means Committee staff expects 2011-12 corporate franchise tax collections to reach $3.185 billion, an increase of 11.9 percent over the previous fiscal year. To reach this level of collections, corporate franchise collections will have to increase by 9.7 percent in the remaining months of the year. Excluding changes in law and audit collections, corporate filers are expected to decrease payments by $43 million or 5.9 percent from the final quarter last fiscal year.

The Ways and Means Committee staff expects U.S. corporate profits to grow 3.3 percent this fiscal year, and 1.6 percent in the remaining fiscal quarter.

The Executive estimate for SFY 2011-12 corporate franchise tax collections is $3.231 billion, a 13.5 percent growth over the prior year. Collections would have to increase by 15.1 percent over the remainder of the fiscal year to meet Executive estimates.

SFY 2012-13

In fiscal year 2012-13, Ways and Means Committee staff expects corporate tax receipts to increase by 4.8 percent or $153 million to $3.338 billion. Several law changes will have an impact on next year's collections, and without these, as well as the expected decline in audits, corporate tax collections would increase by $581 million or 19 percent. The Ways and Means Committee staff SFY 2012-13 forecast is $39 million above the Executive's forecast of $3.229 billion.

The Ways and Means Committee staff expects U.S. corporate profits, one of the driving variables in the econometric tax forecast model, to increase by 0.3 percent in SFY 2012-13.

Fund Distribution

Table 38

Fund Distribution ($ in Millions)					
	General Fund	Special Revenue	Debt Service	Capital Projects	All Funds
2011-12	2,737	448	-	-	3,185
2012-13	2,869	469	-	-	3,338

All corporate franchise tax receipts are deposited into the General Fund except for the MCTD surcharge, which is deposited into the MTOAF Special Revenue Fund.

In SFY 2011-12, the Committee expects General Fund receipts to increase 10.7 percent or $265 million over last fiscal year. Special Revenue receipts are expected to increase 19.7 percent or $74 million.

In SFY 2012-13, the Committee staff expects growth rates of 4.8 percent for both funds. The General Fund is expected to rise by $132 million to $2.869 billion and Special Revenue Fund by $21 million to $469 million.

ANALYSIS

All Fund collections through January are up 12.9 percent or $258 million above prior year collections. Current year payments for calendar year filers, which comprise the largest portion of payments, are down $38 million or 2.1 percent over last year. At the end of the first quarter, the rate of growth in collections from these taxpayers was 8.9 percent, but there has been a continual erosion of payment growth since then. Total current year payments, which include fiscal year payers as well, have also demonstrated a declining growth rate since the first quarter, and through January cumulative growth is down 10.6 percent or $226 million.

Collection patterns from the 2001 recession shows that prior year adjustments and refunds continue to be a large portion of collections even while overall collection growth increases. Corporations use prior year overpayments to reduce liabilities for up to three years after the end of the tax year.

The refund to collections ratio for the first ten months of this fiscal year was 28.9 percent, however, once audits are excluded the ratio is higher, but it is essentially the same as the ratio for the past two years. This signals that businesses are still experiencing economic difficulties.

Total prior year adjustments have grown by $12 million or 0.8 percent to total negative $1.404 billion this fiscal year. This is equivalent to 66.1 percent of All Fund corporate tax collections. If this level persists through the end of the fiscal year, the prior year adjustment to All Funds ratio will rank among the highest since the middle of the 1990s. This is another indicator that businesses are having difficultly recovering from the recession, but it also suggests that future payments may not be as inhibited by such a severe level of negative adjustments.

The Executive is projecting a high level of audit collections for this fiscal year, $1.085 billion, an increase of $277 million over the previous fiscal year. Through the first ten months of the fiscal year, the State has collected $866 million in corporate franchise tax audits, 80 percent of the Executive's estimate.

SFY 2011-12 and 2012-13 Corporate Franchise Tax Law Changes

Table 39

Enacted Tax Law Changes ($ in Millions) Change in Fiscal Impact Shown		
	2011-12	2012-13
Excelsior Jobs Program	0	(25)
Administrative Refund Delay	(124)	(100)
Empire Zone Tax Credits	16	17
Credits in Excess of $2 million Deferred	212	75
Film Production Credit	(150)	(68)
Brownfield Remediation Credits	275	(150)
Expiration of Capitol Base	(103)	-
REITs and RITs	10	-
Combined Returns	(60)	-
Manufacturing Rate Reductions	-	(25)
NY Works Tax Credit	-	(20)
Total	**76**	**(296)**

A Review of Net Operating Losses

The IRS Code in section 172(c) defines net operating losses as "the excess of the deductions allowed by this chapter over the gross income". This means that if companies have accounting losses they can use these losses to reduce taxable profits in previous or following years. At the federal level, businesses can use Net Operating Losses (NOLs) to reduce the gross income they reported in the previous two years by filing an amended return. Additionally, businesses can use their current net operating losses to reduce their gross income up to twenty years in the future.

New York conforms to the federal provisions for net operating losses, except businesses are only allowed to carryback $10,000 in losses a year. These net operating loss deductions are used to calculate their pre-allocated or national earned net income (ENI).

The State requires businesses to allocate business income and investment income separately. New York statute allocates business income based on the ratio of New York receipts to U.S. receipts, and investment income allocation is dependent upon the allocation percentage of the investment's issuer. NOLs are divided between business and investment income based on the ratio of pre-NOL ENI to investment income. After this split, the separate allocation formulas generate the amount of income that is taxable in New York State under the earned net income base.

Which Types of Companies Use Net Operating Losses?

The surges of the business cycle do not influence all sectors of the economy with the same intensity. Sectors like education, health care, services and agriculture do not generally experience intense spikes in consumer demand.

Durable goods manufacturers experience some of the largest supply chain swings during the business cycle due to capital intensity and sensitivity to the cost of capital and consumer demand. While downward swings in demand reduce profits, manufacturers incur losses for fixed costs like buildings and machinery that cannot be adjusted in the short run.

In addition to businesses that are more sensitive to the business cycle, new or expanding business often experience losses in the first few years of operations. The use of NOLs enables young tenuous start-ups to average their earnings over a few years for tax purposes and this assists them in maintaining their viability.

If companies with high initial fixed costs and negative profits had to pay taxes on only their current year profits they would face extreme increases in tax payments, and this would not necessarily reflect their true multi-year profit, as the following table demonstrates.

Table 40

Impact of Taxes Without Net Operating Losses

		Year 1	Year 2	Year 3	Year 4	Year 5	Total
Business A	Net Profit	-100	-100	100	100	100	**100**
	10% Tax	0	0	10	10	10	**30**
Business B	Net Profit	20	20	20	20	20	**100**
	10% Tax	2	2	2	2	2	**10**

In Table 40, business A paid three times as much tax as business B even though their 5-year profits are identical. However, if business A carried its losses forward they would be paying the same amount of tax as a business with more consistent profits.

Tax policy allows businesses to use net operating losses to foster tax equity across industries. Many businesses have the option to classify themselves as corporations or flow-through entities and the tax treatment of losses varies differently in the taxation of C-corps and S-corps. When losses flow through to a S-corp investor, instead of accruing to the corporation, investors can offset income from other sources and lower their tax liability. However, federal tax policy forbids the use of loss flow throughs to qualify for tax credits designed for poverty alleviation, like the Earned Income Tax Credit, if they are not actively engaged in the business. A similar benefit for corporations is created by the use of NOLs in past and future years.

How Have Companies Used Net Operating Losses in New York State?

The New York State Department of Taxation and Finance compiles a corporate franchise tax study file for government researchers that contains detailed information on C-corporation taxpayers that do not pay one of the minimum taxes. Therefore, the Department eliminates S-corporations, C-corporations that file under the minimum taxable income base and C-corporation fixed dollar minimum filers. These exclusions reduce the total number of observations significantly. For example, in 2008, there were 640,482 corporations that filed Article 9-A corporate franchise taxes, but only 17.2 percent or 110,271 were included in the study file. These data exclusions likely insert bias into the sample because of the characteristics that excluded companies have in common, as opposed to companies included in the data set. The data used for the analysis below comes from the 1999 to 2008 study files. Because taxpayers have up to three years to finalize their returns, the 2008 file is the most recent one available. The 2008 study file is an interesting addition to the series because it provides detailed information about how corporate liabilities were impacted by the Great Recession, but the impact of NOLs will not be fully seen until 2012 and beyond.

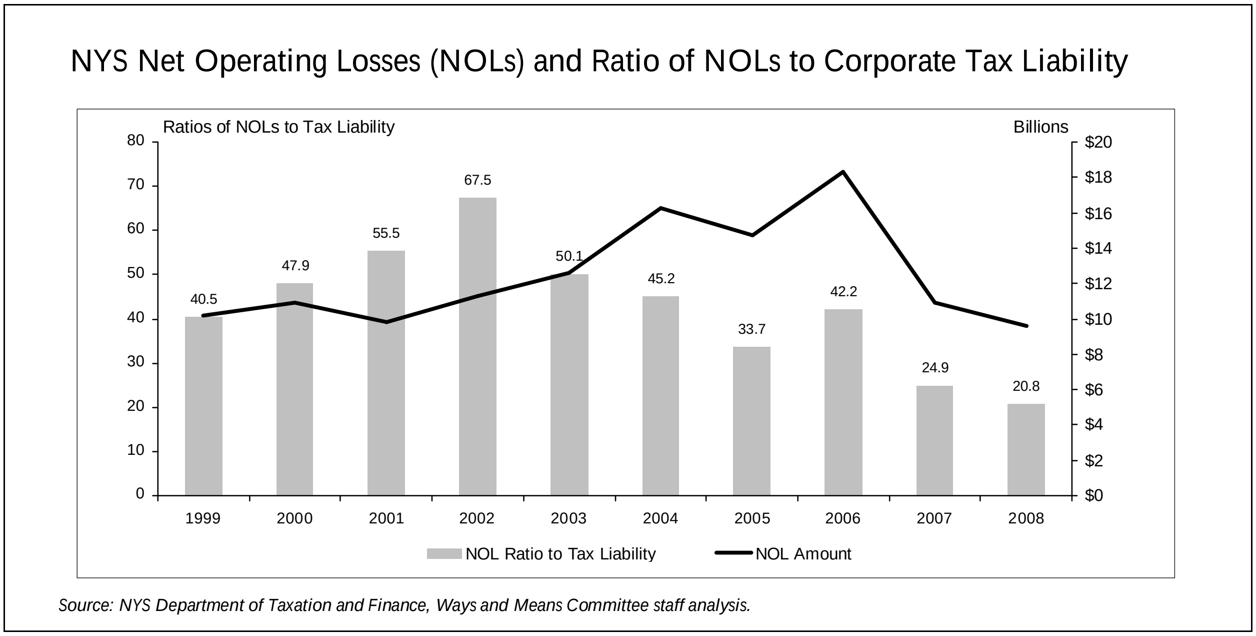


Figure 43

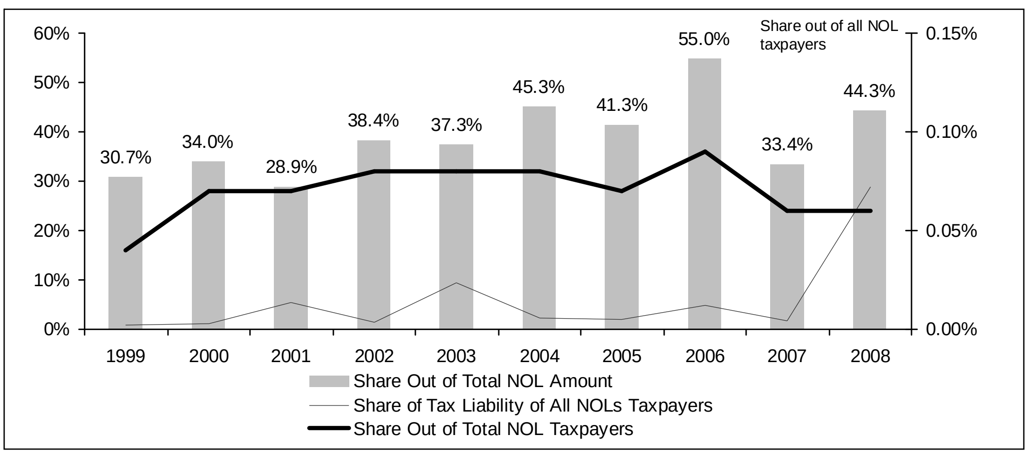
The 2001 recession, which began in March, created exceptionally large losses for New York companies, compounded by the events of September 11, 2001. In 2002, companies began using losses from 2001 to reduce revenue subject to taxation, and in aggregate, they claimed 67.5 times more NOLs than they paid in taxes. This ratio declines through 2008 as firms become more profitable and incur greater tax liabilities. However, the level at which companies claimed NOLs continued to increase until 2006, five years after the recession. In 2008, the level of NOLs claimed and the ratio of NOLs to final tax liability are both at their lowest points in the series which suggests that little of the NOLs incurred in 2001 were still being utilized. If New York had not decoupled from the Federal statute that allows an unlimited amount of net operating loss deductions to be carried backwards for two years, 2008 would reflect considerable recessionary losses experienced in 2009, but New York State caps NOL carrybacks to $10,000, so loss carrybacks are not a significant factor in reducing tax liability in aggregate or for large companies.

One method of determining how different types of companies utilize net operating losses is to sort the companies based upon the size of allocated NOL claims. By far the greatest proportion of taxpayers that claim NOLs claim less than $100,000 a year. Between 82 and 85 percent of companies making NOL claims came from taxpayers with small losses.

The percentage of all taxpayers claiming NOLs slightly decreased in 2008, just when the Great Recession began to take hold. This result is partially explained by the interplay between declining receipts and the highest of the four bases a company files. A greater share of companies use the minimum bases in recessions and these companies are not reported in the study file, so the number of companies not reported grows in recessions even if they are using NOLs to minimize their taxes. Because of this data limitation, small variations in the series are not fully explainable by economic conditions and may be due to how businesses adjust their filing statuses.

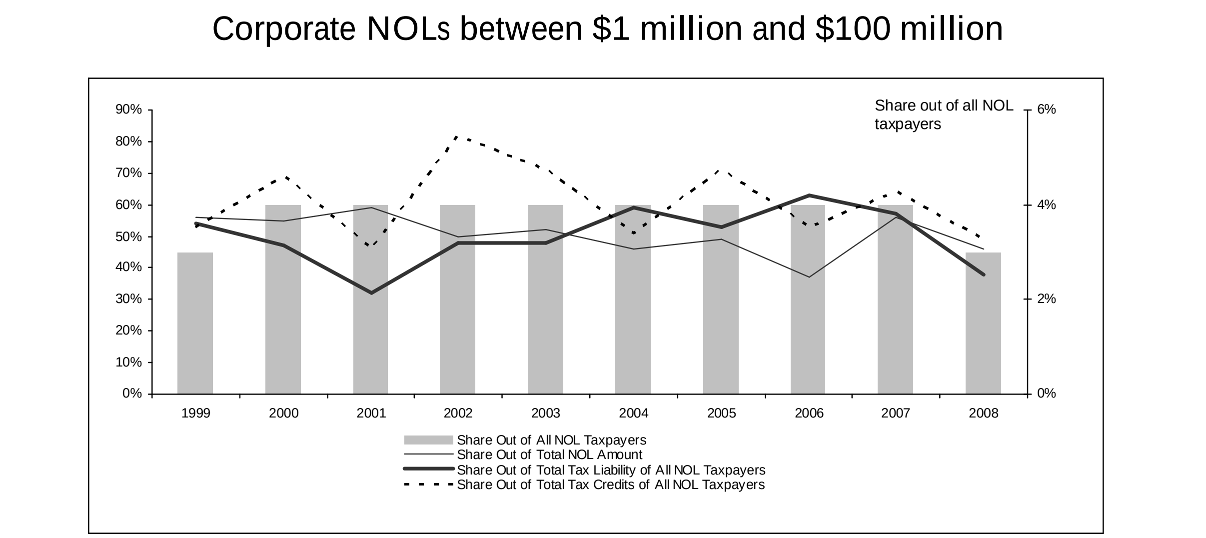
There are only between 10 and 20 companies that claim over $100 million in losses against their revenue in any one year, this is less than one-tenth of one percent of all companies that have net operating loss deductions. However, they claimed the greatest share of NOLs in 2006, and consistently use over 30 percent of aggregate NOLs every year. The share of tax credits used by these companies, either non-refundable or refundable, or both, can rise to close to 30 percent. For example, in 2006, 23 companies that claimed over $100 million in deductions, also used over $12 million in tax credits.

Corporate Taxpayers' Net Operating Losses over $100 million



Source: NYS Department of Taxation and Finance, Ways and Means Committee staff analysis

Figure 44



Source: NYS Department of Taxation and Finance, Ways and Means Committee staff analysis

Figure 45

Companies claiming between $1 million and $100 million in net operating loss deductions every year between 1999 and 2008 accounted for most four percent of companies claiming NOLs and paid more than 30 percent of tax paid by all NOL filers in the study period. They also used up to $24.5 million or 82 percent of the tax credits, and from 37 to 59 percent of the loss deductions.

In contrast to the companies taking large net operating loss deductions are the companies which claimed less than $1 million annually in NOLs. The group that claims more than $0.1 million and less than $1 million ranges in size from 2,200 to 3,500 companies a year, which is about 13 percent of the companies that take NOLs a year. In 2001, this group paid $62 million in corporate franchise tax, which was 35 percent of the total paid by the study group. In that year, they also claimed 40 percent of the tax credits in the NOL cohort.

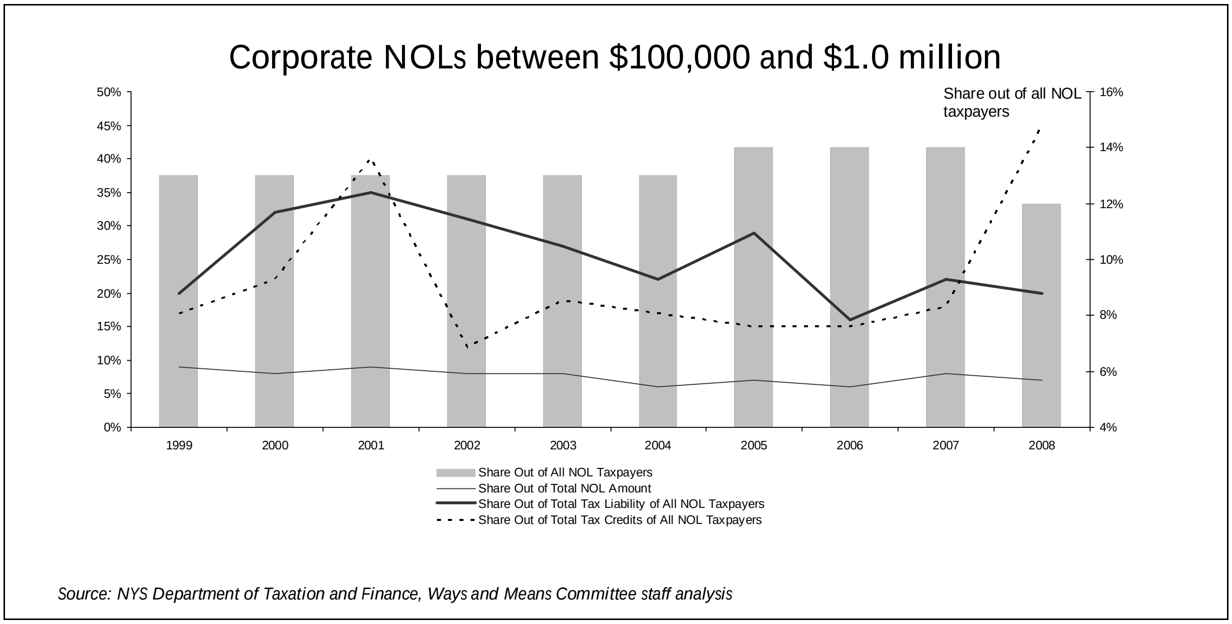


Figure 46

The large number of claims in the category between 100,000 and 1.0 million come from relatively small companies. Between 16,000 to 20,000, companies or 82 to 85 percent of all loss claims come from firms using less than $100,000 in NOLs a year. This cohort share of loss claimed never rises above five percent of the total. The tax paid by this NOL cohort never rises above 30 percent.

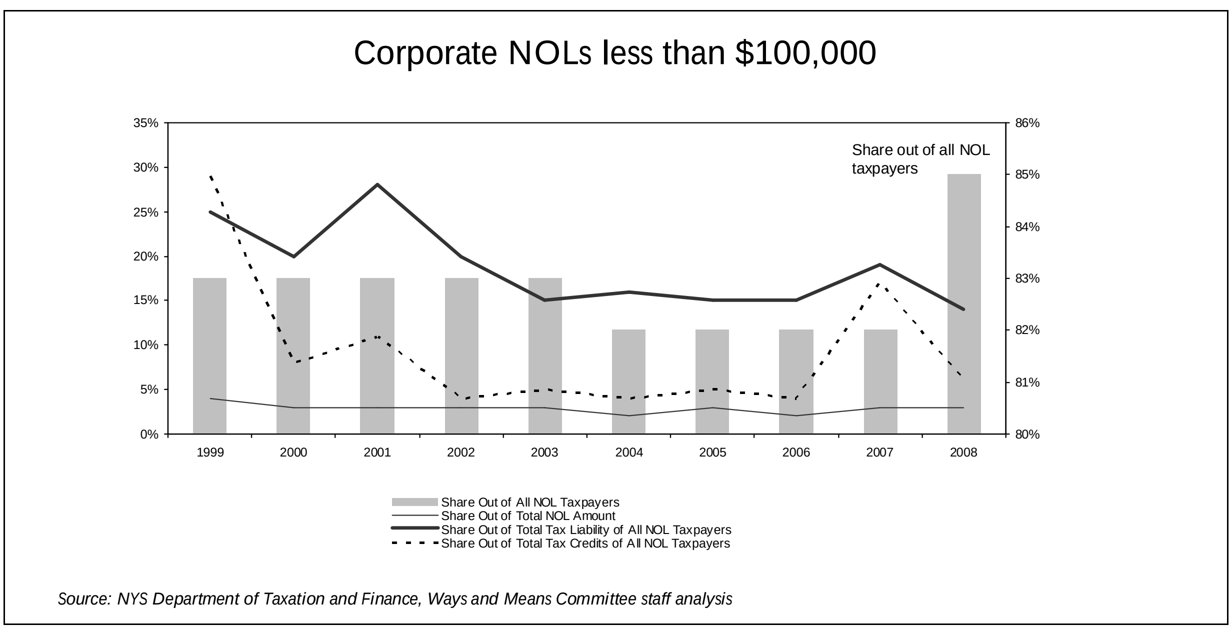
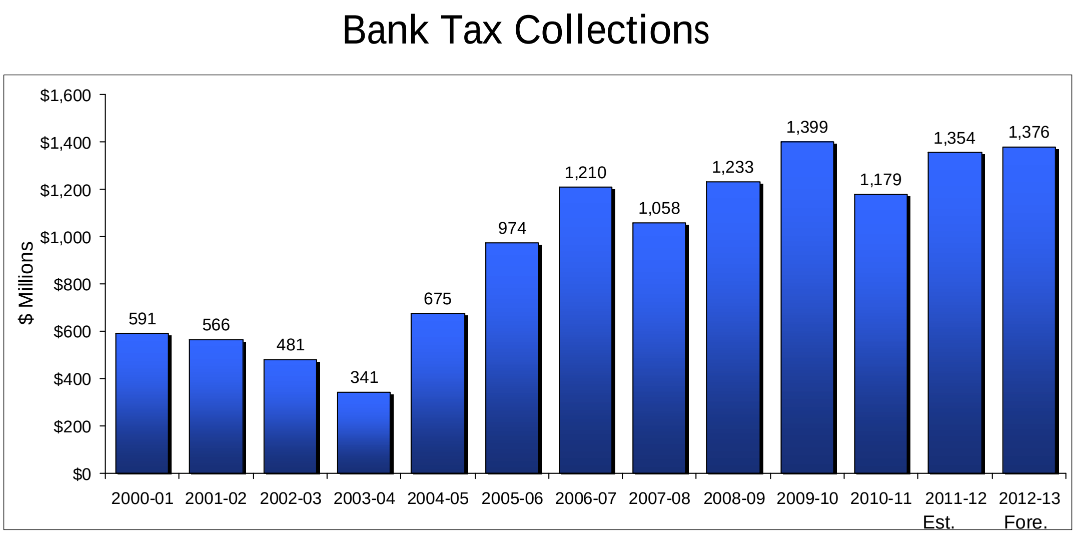


Figure 47

EXECUTIVE BUDGET PROPOSALS

- Enhance the Low-Income Housing Credit by increasing the credit available by $8 million a year for the following five fiscal years.
- Extend the Empire State Commercial Production tax credit for five years.
- Extend the Biofuel Production Tax Credit through the 2019 taxable year.

BANK TAX



Source: NYS Comptroller; Ways and Means Committee Staff estimates

Figure 48

Table 41

Bank Tax ($ in Millions)						
	Year To Date	YTD Growth	Closeout/ Forecast	Growth	Executive	Difference
2011-12	$998	19.6%	$1,354	14.8%	$1,374	($20)
2012-13			$1,376	1.6%	$1,351	$25

In general, the bank tax is imposed on all corporations performing banking business in New York. Corporations subject to the bank tax will pay the highest of the following four alternative bases:

- 7.1 percent of entire net income allocated to New York; or,
- 3 percent of alternative entire net income allocated to New York; or,
- an alternative minimum tax on assets that ranges from 0.002 percent to 0.01 percent; or,
- a fixed minimum of $250.

If a corporation has business attributable to the Metropolitan Commuter Transportation District, they pay a 17 percent surcharge on their liability inside the MCTD, which is distributed to the Metropolitan Transportation Authority.

SFY 2011-12

Ways and Means staff estimates bank tax collections to be $1.354 billion this fiscal year, an increase of $175 million or 14.8 percent from last year. This is $20 million less than the Executive estimate for this year. To meet the Ways and Means Committee staff closeout, bank tax collections will have to increase 3.4 percent over the remainder of the year.

The 3-month Treasury Bill rate is expected to be 0.05 percent for the remaining quarter of SFY 2011-12, while the 10-year bond rate is expected to be 2.05 percent. Therefore, the interest rate spread is expected to be 2.0 percent in the first quarter of 2012.

The Executive estimate is $1.374 billion for SFY 2011-12, or a 16.6 percent increase from the prior year. Collections would have to increase by 9.2 percent over the remainder of the fiscal year to meet Executive estimates.

SFY 2012-13

The Ways and Means Committee staff expects bank tax collections to be $1.376 billion in SFY 2012-13, an increase of $22 million or 1.6 percent. Without the impact of audits and recently enacted law changes, worth $161 million, bank tax collections are expected to decrease by 10.3 percent. Ways and Means staff is forecasting $25 million more in receipts than the Executive.

The 3-month Treasury Bill rate is forecast to rise to 0.12 percent by the end of SFY 2012-13, and the 10-year bond rate is expected to be 2.62 percent. Therefore, the interest rate spread that the Ways and Means Committee staff uses in there econometric tax forecast model is forecast to rise to 2.5 percent by the end of next fiscal year.

Fund Distribution

Table 42

Fund Distribution ($ in Millions)	General Fund	Special Revenue	Debt Service	Capital Projects	All Funds
2011-12	1,146	208		-	1,354
2012-13	1,165	211	-	-	1,376

All bank tax receipts are deposited into the General Fund except for the MCTD surcharge, which is deposited into the Metropolitan Transportation Operating Assistance Fund.

In SFY 2011-12, the Committee staff expects General Fund receipts to increase 17.8 percent or $173 million over last fiscal year. Special Revenue receipts are expected to increase 1.4 percent.

In SFY 2012-13, the Committee expects growth rates of 1.6 percent for the General Fund and the Special Revenue Fund. The General Fund receipts are expected to increase by $19 million to $1.165 billion and Special Revenue Fund receipts are expected to increase by $3 million to total $211 million.

ANALYSIS

Through January, bank tax collections are up $163 million or 19.6 percent from last year. There has not been a consistent trend bank tax collections this year. Quarterly growth rates have varied from positive 43 percent to negative 31 percent, while cumulative growth has decreased from 88 percent to 20 percent. This volatility indicates uncertainty in the industry. Through January, total current year payments, from fiscal and calendar year payers, have increased $88 million or 17 percent over the previous year.

Prior year adjustments are downward changes a taxpayer makes to its prior year liabilities due to losses or shortfalls. Through January 2012, prior year adjustments totaled negative $523 million, which is 52 percent of All Funds collections. If this ratio holds for the remaining quarter, this will be the highest prior year adjustments since 2003.

The Federal Reserve stated in January 2012 that economic conditions “are likely to warrant exceptionally low levels for the federal funds rate at least through late 2014.”[42] This outlook has multiple implications for banks. Primarily, the Fed expects the national economy to expand slowly and below potential. This means fewer lending opportunities for banks, which will reduce profitability in their most traditional sector of business. Currently, expectations for inflation remain low for an extended period and this reduces the returns investors require for investing in long-term Treasury bonds, which combined with economic uncertainty increases demand for these investments reducing the long term interest rate. With low rates expected through late 2014, unless inflation expectations increase and the overall economic outlook improves, the yield curve will remain flatter than banks would prefer. Although a high interest rate spread has become less important for banks as the industry has transformed in the past two decades, it remains a key indicator of profitability.

Uncertainty about the future course of the global economy and financial regulation contribute to banks unwillingness to accept additional lending risk. Thus, tax payments to New York State will be subdued in the face of financial uncertainties.

Sources of Bank Revenues During the Last Decade

Banks' income is classified for State tax purposes among a variety of different sources, including interest, loans and rents, credit cards, services, fees and trading. Interest income is generated by banks when they loan money or finance leases. Income from loans and rents includes items like arrangement fees and management fees, as well as receipts from real property or tangible personal property leased or rented from the bank. Credit card receipts include interest charges, penalties, as well as service charges and fees associated with bank, credit, travel, entertainment and other cards. Service receipts are derived from services performed by bank employees located in New York, and they can include activities related to investment companies for management, administration, or distribution services. Receipts from fees come from charges for the issuance of letters of credit, traveler’s checks and money orders. Receipts from trading and investment activities include, but are not limited to, trading assets, foreign exchange transactions, and the purchase and sale of options and financial futures. Other receipts arise from securities income used to maintain reserves against deposits to meet federal and state reserve

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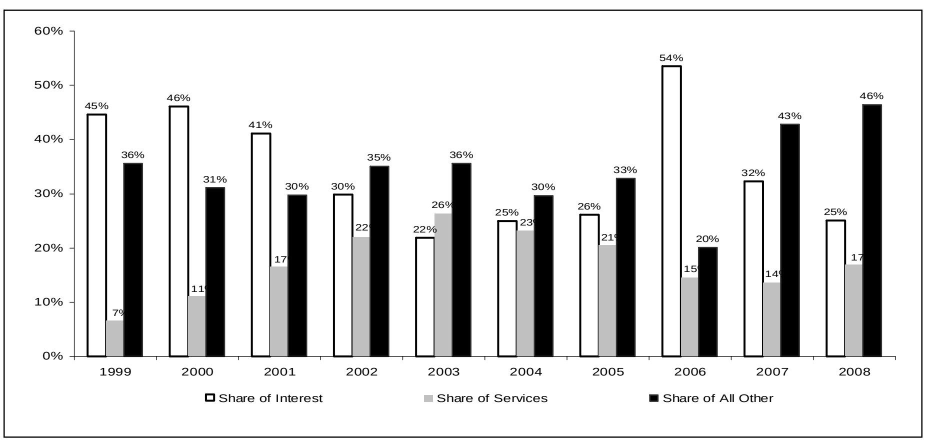
42 http://www.federalreserve.gov/newsevents/press/monetary/20120125a.htm

requirements, as well as all other business receipts earned by the taxpayer in New York State.

Banks allocate receipts to New York State if they conduct business inside of New York as well as outside of New York. Some small banks do not operate outside of New York and are not required to provide geographic or income source allocation information on their tax returns. Therefore, their composition of receipts cannot be analyzed. For this review, banks that allocate their receipts to NYS have been divided into two categories based on the size of their assets. Banks with more than $1 billion were classified as large asset banks, while those banks with less than $1 billion in assets were classified as small asset banks. The number of banks that allocate their receipts varies from year to year, and this examination includes the entire sample, so some variations in the series might be explained by the differences in the sources of receipts from banks that move in and out of the data set.

The largest sources of receipts for both groups are interest, services and other receipts. According to Tax Department study file, the small banks receive a greater share of their revenue from services compared to large asset banks. Both groups earned a smaller percentage of their income from interest in recent years compared to1999. The declining share of interest income has implications for the Committee staff's bank revenue forecast because the interest rate spread is one of the explanatory variables in the forecasting model. When banks rely less upon interest income, forecasting risk increases.

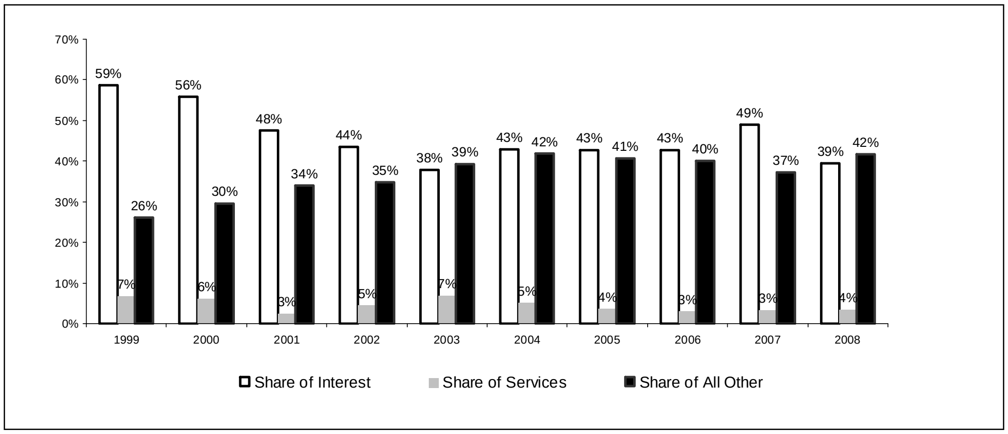
Small Asset Banks - Composition of NYS Receipts



Source: NYS Department of Taxation and Finance, Ways and Means Committee staff analysis

Figure 49

Large Asset Banks - Composition of NYS Receipts



Source: NYS Department of Taxation and Finance, Ways and Means Committee staff analysis

Figure 50

Smaller components of revenue for banks include credit card income, fees, trading and non-interest income from loans and rents. These components of income vary between the two asset classes. Both asset classes of banks have experienced an increase in the share of revenue that is coming from credit cards in 2008 as the more profitable areas of banks income suffered from the Great Recession. Large asset banks derive a much larger share of their income from trading. In 2001, they derived 10.4 percent of their receipts from trading, while small asset banks received only 4.1 percent of their income from trading. Another notable trend is that small asset banks are deriving a smaller share of their income from trading and investment in recent years, while large asset banks show no discernable trend in the study sample.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 contained guidance for the Treasury Department to place restrictions on banks' ability to conduct proprietary trading of financial instruments. This is commonly known as the Volcker Rule, which is named after the former Federal Reserve Chairman who advocated for this restriction.

To the extent that final implementation of the Volcker Rule severely limits banks proprietary trading, it may limit banking profits and therefore have a negative impact upon New York State bank tax receipts.

EXECUTIVE'S BUDGET PROPOSALS

- The Executive proposes to increase in the Low-Income Housing Credit by $8 million annually for each of the following five fiscal years.

INSURANCE TAX

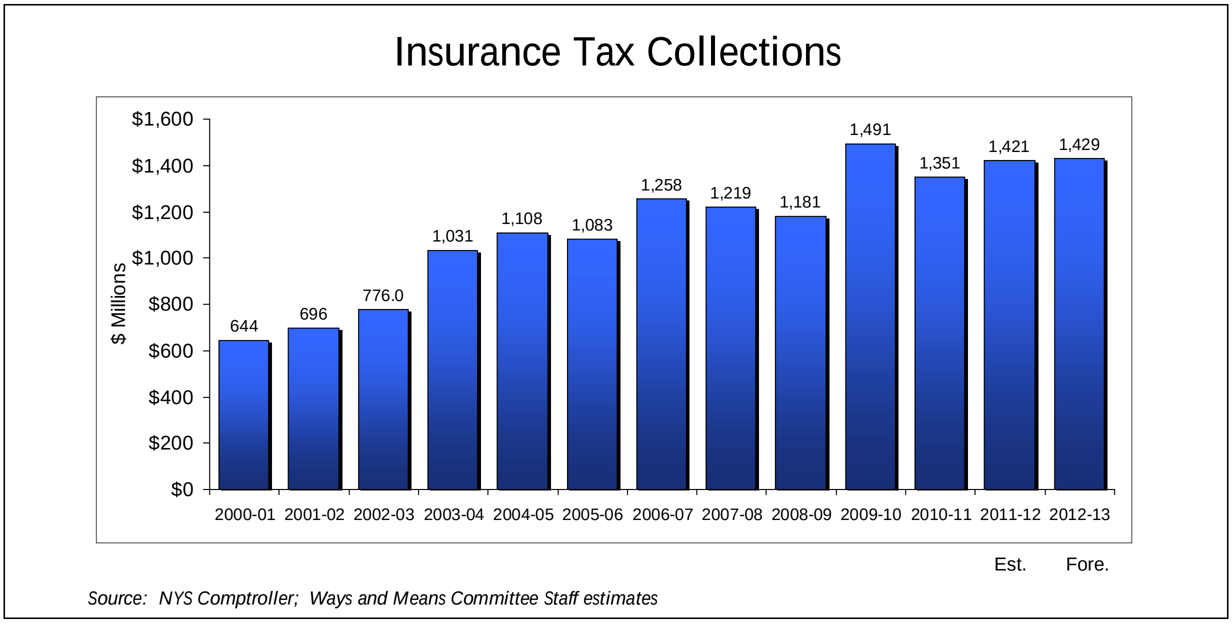


Figure 51

Table 43

Insurance Tax ($ in Millions)						
	Year To Date	YTD Growth	Closeout/ Forecast	Growth	Executive	Difference
2011-12	$863	5.4%	$1,421	5.2%	$1,413	$8
2012-13			$1,429	0.6%	$1,463	($34)

Insurance companies in New York State are taxed by two separate taxing bodies, the Tax Department and the Insurance Department. Pursuant to Article 33 of the Tax Law, the Tax Department imposes an income and/or a premium tax on insurance companies. The Insurance Department imposes taxes on insurance companies pursuant to Articles 11 and 21 of the Insurance Law.

Article 33 of the Tax Law imposes a tax on insurance companies for the privilege of operating in a corporate form in New York State. The calculation of tax liability and rates vary by type of insurer as illustrated below:

Life Insurers

The greater of:

1. The highest of four alternative bases listed below, *plus* 0.7 percent of premiums written on risks assigned to New York State; or,
2. 1.5 percent of premiums written on risks assigned to New York State.

Four Alternative Bases of Tax for Life – Insurance Calculation

1. 7.1 percent on allocated entire net income;
2. 0.16 percent on allocated business and investment capital;
3. 9 percent on statutory allocated income and salaries; or,
4. $250.
5. Plus 0.08 million for each dollar of allocated subsidiary capital.

The total amount of tax cannot exceed 2.0 percent of taxable premiums and cannot be lower than 1.5 percent of net premiums.

Non–Life Insurers

1. 1.75 percent of premiums written on risks assigned to New York State for Accident and Health (A/H) insurers; or,
2. 2.0 percent of premiums written on risks assigned to New York State for Property and Casualty (P/C) insurers.

If a corporation has business attributable to the Metropolitan Commuter Transportation District, they pay a 17 percent surcharge on their liability inside the MCTD, which is distributed to the Metropolitan Transportation Authority.

SFY 2011-12

The Ways and Means Committee staff expects collections to equal $1.421 billion in SFY 2011-12, $8 million more than the Executive's estimate. Collections would have to increase 4.8 percent over the next two months to reach the Committee staff closeout.

The Executive estimate for 2011-12 is $1.413 billion, or a 4.6 percent increase from the prior year. Collections would have to increase by 3.3 percent over the remainder of the fiscal year to meet Executive estimates.

SFY 2012-13

Ways and Means Committee staff expects insurance collections to be $1.429 billion in 2012-13, an increase of $8 million or 0.6 percent from the previous fiscal year. The Executive is expecting collections to be $1.463 billion in 2012-13, $34 million more than Ways and Means staff.

Fund Distribution

Table 44

Fund Distribution ($ in Millions)					
	General Fund	Special Revenue	Debt Service	Capital Projects	All Funds
2011-12	1,277	144	-	-	1,421
2012-13	1,285	144	-	-	1,429

All insurance tax receipts are deposited into the General Fund except for the MCTD surcharge, which is deposited into the Metropolitan Transportation Operating Assistance Fund.

In SFY 2011-12, the Committee projects General Fund receipts to increase 4.9 percent or $60 million over last fiscal year. Special Revenue receipts are expected to increase 7.2 percent or $9.7 million.

In SFY 2012-13 the Committee staff projects growth rates of 0.6 percent for both funds. The General Fund is expected to rise by $7 million to $1.285 billion and the Special Revenue Fund is expected to remain flat.

ANALYSIS

Year to date collections are $863 million, an increase of $44 million or 5.4 percent above the prior year. On a quarterly basis, insurance collections have demonstrated volatility similar to the other business taxes. The first quarter of the State Fiscal Year was 15 percent lower than the previous year's first quarter, but the second quarter experienced growth of 6.7 percent, while collections in the last quarter of the 2011 calendar year were 6.8 percent less than the previous year.

Total prior year adjustments were negative $66 million through January, which is equivalent to 8.0 percent of All Funds collections, a low ratio from a historical perspective.

Refunds have a marginal impact on collections, totaling $2.7 million or 3.2 percent of All Funds collections through January. The historical ratio of refunds to All Funds collections indicates that this fiscal year is not as difficult as the ones following the 2001 recession for the insurance industry.

The property and casualty sector of the insurance industry, which accounts for roughly two-thirds of the premium tax collected by New York State, had a difficult 2011. Nationally it was the fifth highest year on record for insured losses from catastrophic events. There were $72.8 billion in economic losses and 49 percent or $35.9 billion of those catastrophic losses were insured losses. Hurricane Irene was the 11th most expensive hurricane in US history and it caused $4.3 billion in insured losses.[43]

New York is not known for catastrophic natural events, but from 1953 to 2011 New York had the fourth highest number of Federal disaster declarations, with 65, two more than Florida. New York experienced four major FEMA disaster declarations in 2011: in February, a severe winter storm struck; in June there were severe storms, tornados, straight-line winds and flooding; in August, Hurricane Irene created massive floods; and in

[43] http://www.iii.org/presentations/an-industry-and-economy-in-transition-overview-and-outlook-for-p/c-insurance-markets-for-2012-and-beyond.html

September, Tropical Storm Lee created additional flooding.[44] These events have decreased profitability of the insurance industry.

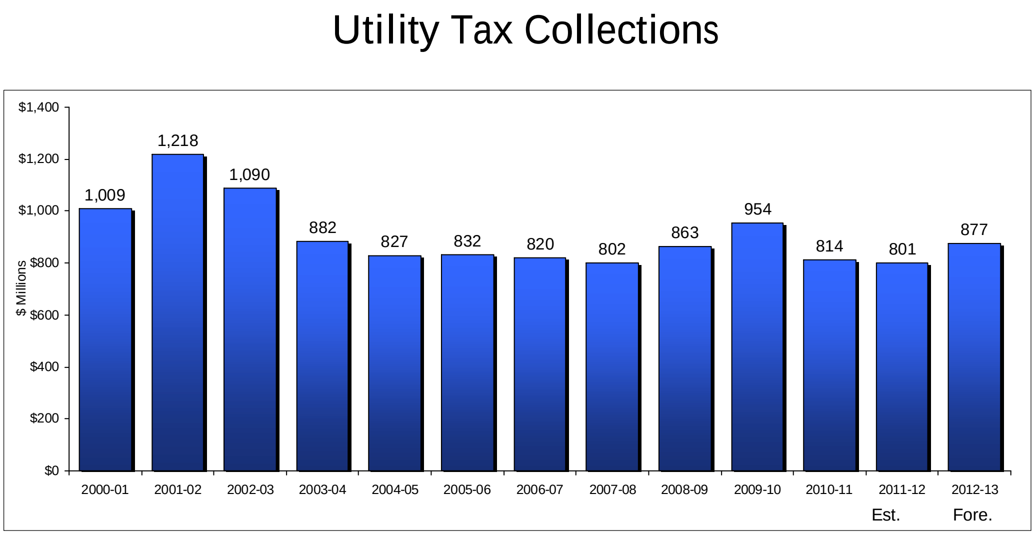
Nationally, the insurance industry expects premiums in 2011 to grow 3.5 percent, and 3.8 percent in 2012. Auto insurance premiums, which are only expected to grow 2.8 percent, are more profitable for the industry than home insurance, which is expected to grow 6.0 percent in 2012.[45]

EXECUTIVE BUDGET PROPOSALS

- The Executive is not proposing any reforms to the insurance tax.

[44] http://www.fema.gov/news/disasters_state.fema?id=36
[45] www.iii.org

UTILITIES TAX



Source: NYS Comptroller; Ways and Means Committee Staff estimates

Figure 52

Table 45

Utility Tax ($ in Millions)						
	Year To Date	YTD Growth	Closeout/ Forecast	Growth	Executive	Difference
2011-12	$496	-3.5%	$801	-1.5%	$815	($14)
2012-13			$877	9.5%	$877	$0

All transportation and transmission companies exercising their corporate franchise, doing business, employing capital, owning or leasing property in the state in a corporate or organized capacity, or maintaining an office in New York are subject to the utility tax.

Section 183 imposes tax on transportation and transmission companies. They pay the highest tax after determining their liability under these 3 methods:

1. $75;
2. a tax of 0.15 percent of net value of issued capital stock; or,
3. if dividends paid on the par value of any stock during any calendar year amount to six percent or more, a tax of 0.0375 percent, computed at par value of the stock.

Section 184 taxes the same companies taxed under section 183, with a 0.375 percent tax on gross receipts within New York State.

Section 186-a imposes a 2.5 percent tax on gross income from the sale of the transportation, transmission, distribution, or delivery of electric and gas utility service.

Section 186-e imposes a 2.5 percent excise tax on the gross receipts from the sale of interstate and intrastate telecommunication services allocated to New York State.

Companies subject to the supervision of the Public Service Commission are required to pay Section 186-e, the telecommunication services tax and section 186-a, a tax on their non-telecommunications receipts.

Additionally, companies with business attributable to the Metropolitan Commuter Transportation District (MCTD) pay a 17 percent surcharge on a company's liability attributable to the MCTD.

SFY 2011-12

Ways and Means Committee staff expects collections for 2011-12 to be $801 million, a decrease of 1.5 percent or $12 million from the previous fiscal year. This is $14 million below the Executive. Ways and Means Committee staff expects collections for the remainder of the year to be 1.9 percent higher than last fiscal year.

This tax heavily relies on the consumption of telecommunications services, and this variable is expected to increase by 2.5 percent in the quarter of 2012 and 3.1 percent in SFY 2011-12.

The Ways and Means Committee staff expects U.S. consumption in telecommunications to increase by 2.8 percent in 2012-13.

The Executive estimate is $815 million, or a 0.1 percent increase from the prior year. Collections would have to increase by 6.7 percent over the last two months of the fiscal year to meet Executive estimates.

Last fiscal year audit collections for Article 9 taxes were $13.3 million, in 2011-12 Executive expects audit collections to be $54 million, $41 million more than last year. Through January, the State has collected $26 million in audits, so the Executive is expecting $28 million in audits in the last quarter.

SFY 2012-13

The Ways and Means Committee staff expects utility tax collections to increase by $76 million or 9.5 percent to a level of $877 million in SFY 2012-13. This is the same amount that the Executive is forecasting.

The Ways and Means Committee staff expects US consumption in telecommunications to increase by 3.1 percent in 2012-13.

Fund Distribution

Table 46

Fund Distribution ($ in Millions)

	General Fund	Special Revenue	Debt Service	Capital Projects	All Funds
2011-12	612	174	-	15	801
2012-13	670	192	-	15	877

Eighty percent of tax receipts from tax law sections 183 and 184 are deposited into the Mass Transportation Operating Assistance Fund (MTOAF) and the remainder is deposited into the Dedicated Highway Bridge and Trust Fund (DHBTF).

The Metropolitan Commuter Transportation District (MCTD) surcharge of 17 percent on a company's liability attributable to the MCTD is deposited into the MTOAF.

ANALYSIS

Through January 2012, cumulative Utility tax collections have decreased $18 million or 3.5 percent. However, the quarterly growth rates have varied considerably since the beginning of the fiscal year. In the first quarter, collections were down $19.7 million or 15.0 percent; in the second quarter, collections were up $12.5 million or 6.7 percent, but in the third quarter, collections were again down 6.8 percent or $13.6 million.

Collections for the gross income tax on transportation and telecommunication transmission companies, section 184, were $44 million through January, a decrease of $3 million or 8.2 percent from the same time period last fiscal year.

Utility tax refunds through January total $34 million, which is $1 million more than the annual total for the previous two fiscal years. The Executive is also expecting a $40 million refund to be claimed by a company before the end of the fiscal year, but unlike regular refunds, which generally indicate the taxpayer's declining liability connected to the business cycle or structural changes, this one is related to prior over collection of tax based on a misinterpretation of Federal statute. Even excluding the large expected refund, the relatively high volume and ratio of refunds is a reflection of the stress in the sectors of the telecommunications industry that are currently taxable by New York's telecommunications tax.

The tax on telecommunications services, the largest component of the Article 9 corporation and utilities tax, has collected $284 million through January, a decrease of 16.4 percent or $56 million since last fiscal year. This decline can be partially attributed not to lower expenditures on telecommunications by consumers, but the convergence of the State's traditional taxing structure and structural shift towards internet based communication.

In 1998, the Federal government passed the Internet Tax Freedom Act (ITFA), and Congress subsequently extended its provisions until 2014. This legislation exempts 'internet access' from taxation by the federal, state and local governments, regardless of whether it is imposed upon the consumer or provider of internet access. ITFA does not prohibit states and localities from imposing fees or taxes upon net income, capital stock, net worth, or property value of internet access providing companies. However, since New York State's Article 9 Corporate and Utilities tax imposes a gross receipts tax, revenue generated by companies from providing internet access is not taxable under this article.

EXECUTIVE'S BUDGET PROPOSALS

- The Executive proposes to amend the distribution of revenues collected from the tax on utility transportation and transmission services to be split between upstate and downstate transit accounts, removing the requirement for an annual transfer among accounts.

PETROLEUM BUSINESS TAX

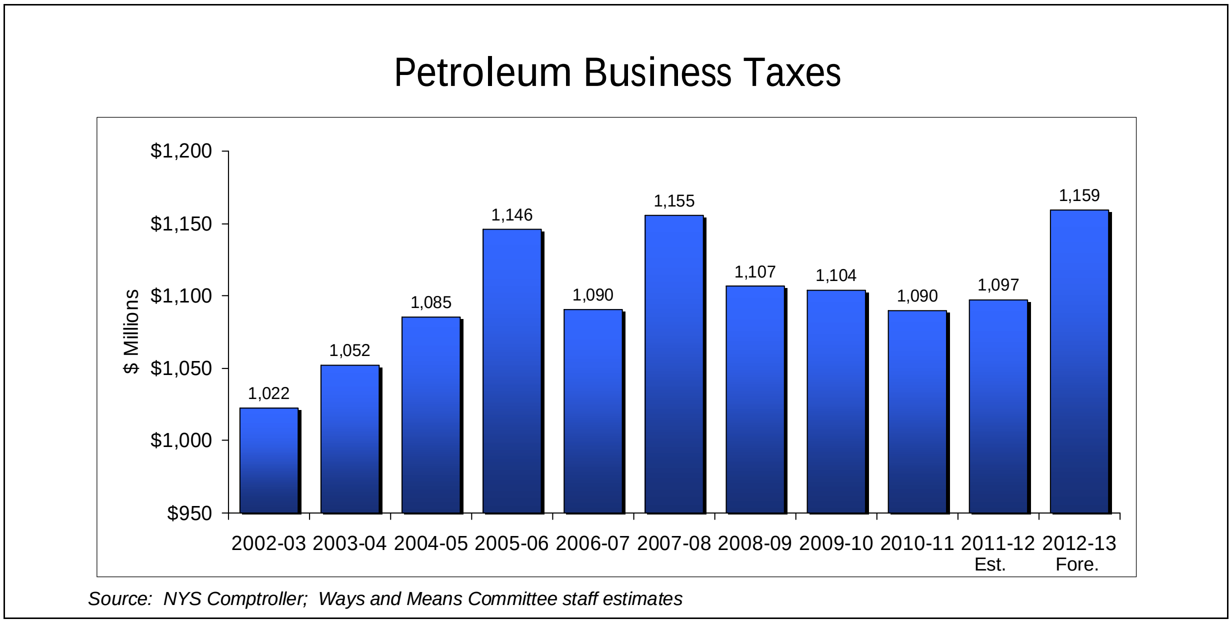


Figure 53

Table 47

Petroleum Business Tax ($ in Millions)						
	Year To Date	YTD Growth	Closeout/ Forecast	Growth	Executive	Difference
2011-12	$915	0.7%	$1,097	0.6%	$1,089	$8
2012-13			$1,159	5.7%	$1,162	($3)

Article 13-A of the Tax Law imposes the Petroleum Business Tax (PBT) on every petroleum business for the privilege of engaging in business, employing capital, owning or leasing property, or maintaining an office in the State. Gasoline is subject to tax at the time it is imported, while diesel is taxable upon the first sale. The petroleum business tax also applies to the fuel that motor carriers purchase outside New York State, but consume within the State.

PBT rates are subject to annual adjustments on January 1st of each year to reflect the change in the producer price index (PPI) for refined petroleum products for the 12 months ending

August 31 of the immediately preceding year. The Petroleum PPI is published by the Bureau of Labor Statistics. The rates of tax are rounded to the nearest 1/10 of one cent and limited to a five percent annual change.

All revenues from the basic tax are earmarked to dedicated funds, namely the Dedicated Mass Transportation Trust Fund, Dedicated Highway and Bridge Trust Fund and the Metropolitan Transportation Operating Assistance Fund. The dedication is as follows: 19.7 percent to the Mass Transportation Operating Assistance Fund and 80.3 percent to the Dedicated Mass Transportation Trust Fund and the Dedicated Highway and Bridge Trust Fund. The supplemental tax as well as the tax on Carriers (section 301-h of the tax law) is fully earmarked to the dedicated funds. This fund is comprised of the Public Transportation System Operating Assistance Account and the Metropolitan Transportation Operating Assistance Account. Receipts from the dedicated funds are split 37 percent and 63 percent respectively between the two funds.

SFY 2011-12

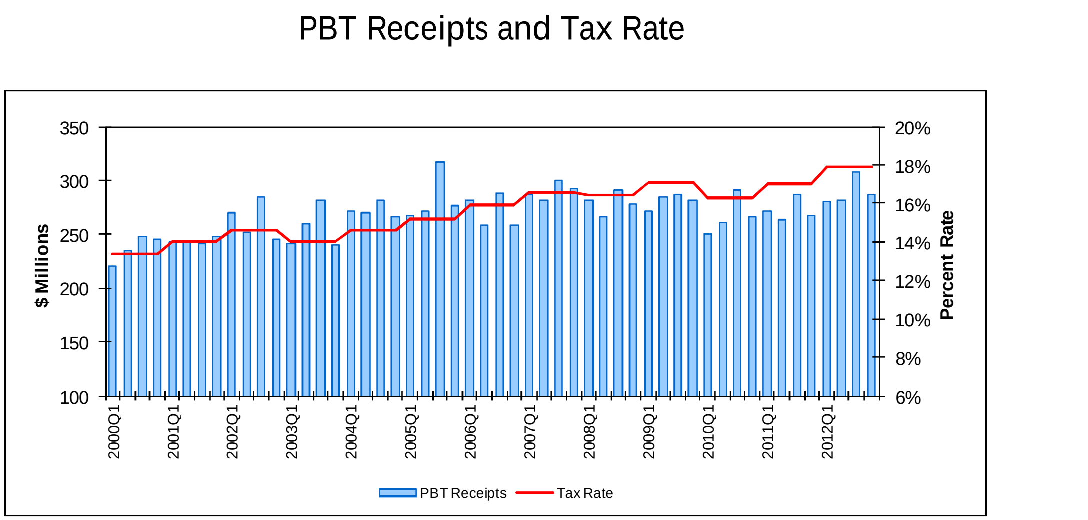
The Committee staff anticipates All Funds receipts of $1.097 billion for SFY 2011-12, representing a 0.6 percent increase from SFY 2010-11. This estimate is $8 million above the Executive's. Through January 2012, petroleum business tax collections are $915 million, slightly higher when compared to the same period in the prior fiscal year. Revenues from this tax are split between various dedicated funds.

SFY 2012-13

In SFY 2012-13, All Funds receipts are forecast to total $1.159 billion, a 5.7 percent increase over the SFY 2011-12 estimate. This forecast is $3 million below the Executive forecast. The increase in PBT revenues is directly tied to the increase in fuel tax rates and are expected to be compounded by increased demand for motor fuels over the next fiscal year. The forecast also assumes a 4.3 percent increase in tax rates effective January 1, 2013.

Revenue Trends

Underlying growth in Petroleum Business Tax revenues are driven by changes in fuel consumption. However, final collections are significantly distorted by the annual tax rate adjustments. The chart below plots quarterly PBT collections with the annual changes to the tax rate.



Source: NYS Department of Taxation and Finance; Ways and Means Committee staff estimates.

Figure 54

As of August 31, 2011, the Petroleum PPI had increased 35 percent over the prior year. Therefore, effective January 1, 2012, the PBT rate increased 5 percent, the maximum allowable by law. This is expected to generate revenue growth of 2.5 percent over the remaining fiscal quarter.

The Committee staff's forecast for SFY 2012-13 also assumes that PBT rates will increase by 4.3 percent effective January 1, 2013.

It should be noted that PBT collections have been extremely steady over time. PBT revenues have varied by less than $100 million or 10 percent from the average over the last 11 years. Likewise, annual collections have not grown by more than six percent or declined by more than five percent over this period.

Fund Distribution

Table 48

Fund Distribution ($ in Millions)					
	General Fund	Special Revenue	Debt Service	Capital Projects	All Funds
2011-12	-	487	-	610	1,097
2012-13	-	514	-	645	1,159

Revenues collected from petroleum business tax are not deposited into the General Fund, but instead are statutorily dedicated in the following manner:

- Of the total expected in SFY 2011-12, $487 million is estimated to be deposited into Special Revenue Funds – with $354 million deposited in the Dedicated Mass Transportation Trust Fund, and $132 million deposited into the Mass Transportation Operating Assistance Fund. The remaining $610 million is deposited into the Dedicated Highway and Bridge Trust Funds.

- Of the total expected in SFY 2012-13, $514 million is forecast to be deposited into the Special Revenue fund, with $376 million deposited in the Dedicated Mass Transportation Trust Fund and $138 million deposited into the Mass Transportation Operating Assistance Fund. The remaining $645 million will be deposited into the Dedicated Highway and Bridge Trust Fund, held within the capital projects fund.

ANALYSIS

Underlying Economic Conditions

Petroleum Business Tax collections are driven primarily by gasoline and diesel receipts, which comprise approximately 96 percent of total PBT receipts. While prices have been steadily declining from a peak price of $4.15 in May to $3.48 in December, the start of 2012 has seen renewed pressures on oil and gasoline prices. As of the week of February 13, 2012, gasoline prices were estimated at an average of $3.81 per gallon statewide, an increase of 13.4 percent over the prior year.[46] National gasoline CPI, a significant explanatory variable for changes in consumption, is estimated to increase 21.8 percent through the current fiscal year. This has resulted in weakened demand for motor fuels, with gasoline and diesel consumption expected to decline 4.0 percent and 1.9 percent respectively.

Gasoline CPI is projected to decline 2.9 percent in SFY 2012-13. This coupled with a 1.8 percent increase in State disposable income is expected to strengthen fuel demand; gasoline and diesel fuel consumption are expected to increase by 1.8 percent and 4.9 percent respectively in the coming fiscal year.

EXECUTIVE BUDGET PROPOSALS

- The Executive proposed making technical amendments to the tax classification of diesel motor fuel.
- The Executive has also proposed extending the partial and full tax exemptions for alternative fuels for the next five years. This will cost the State $1.6 million per year.

[46]http://www.nyserda.ny.gov/Page-Sections/Energy-Prices-Supplies-and-Weather-Data/Motor-Gasoline/Weekly-Average-Motor-Gasoline-Prices.aspx#Statewide

Other Taxes

Table 49

Other Taxes Forecasts by State Fiscal Year ($ in Millions)						
	SFY 2011-12	Growth	Diff. Exec.	SFY 2012-13	Growth	Diff. Exec.
Other	**$3,188**	**0.4%**	**($40)**	**$3,019**	**-5.3%**	**$25**
Estate and Gift	1,135	-6.9%	(60)	1,126	-0.8%	(1)
Real Estate Transfer	634	9.3%	14	694	9.5%	4
Pari Mutuel	17	0.0%	1	17	0.0%	1
Payroll Tax	1,402	3.2%	6	1,182	-15.7%	22

ESTATE TAX

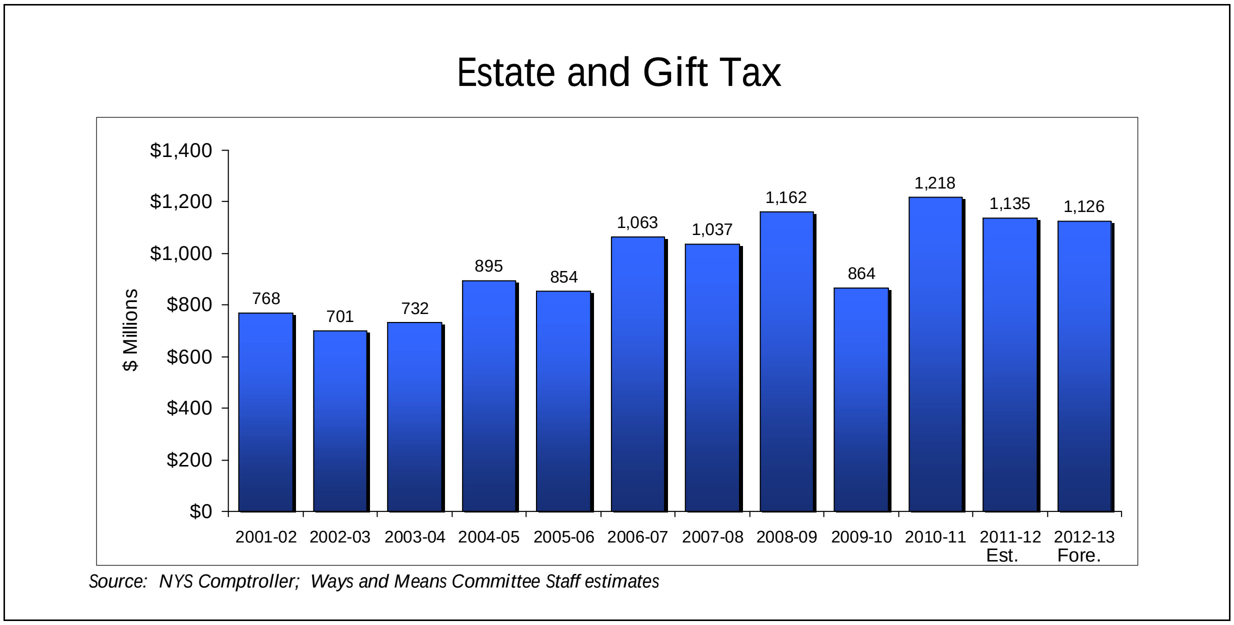


Figure 55

Table 50

Estate and Gift Tax ($ in Millions)						
	Year To Date	YTD Growth	Closeout/ Forecast	Growth	Executive	Difference
2011-12	$934	-23.3%	$1,135	-6.9%	$1,195	($60)
2012-13			$1,126	-0.8%	$1,127	($1)

Article 26 of the Tax Law imposes a tax on the transfer of property upon death. Commonly known as the estate tax, article 26 imposes a graduated rate structure on the value of estates in excess of one million dollars. All of the receipts from this tax are deposited into the General Fund. In 1997, legislation was enacted which phased-in a reduction of New York's Estate Tax, making the tax liability equal to the Federal credit for state estate taxes paid. New York automatically conformed State law to the unified credit provisions specified in Federal Law, but capped the maximum credit at $1 million. However, the Federal "Economic Growth and Tax Relief Reconciliation Act of 2001" repealed the credit for state estate taxes over four years.[47] In order to avoid a massive loss of revenues at a time of fiscal pressure, New York amended State law such that New York's estate tax is equal to the Federal estate tax credit as it existed in 1998. Subject to extensions, estate taxes must be filed and payments made within nine months of the decedent's death.

SFY 2011-12

The Committee staff estimates that estate tax collections will total $1.135 billion in SFY 2011-12, which represents a decrease of 6.9 percent or $84 million from the previous fiscal year. The SFY 2011-12 revenue collections estimate assumes that a super-large estate totaling approximately $78 million will be received in the current fiscal year. To date, the State has not received revenue from any super-large estate of $25 million or more, in SFY 2010-11 there were four. This Committee staff's estimate is $60 million below the Executive's Budget estimate.

SFY 2012-13

Estate Tax collections are projected to total $1.126 billion in the upcoming fiscal year, a decrease of 0.8 percent or $9 million from the prior year estimated collections. The forecast reflects expected growth in the S&P, household net worth, as well as modest growth in equities and the housing market.

ANALYSIS

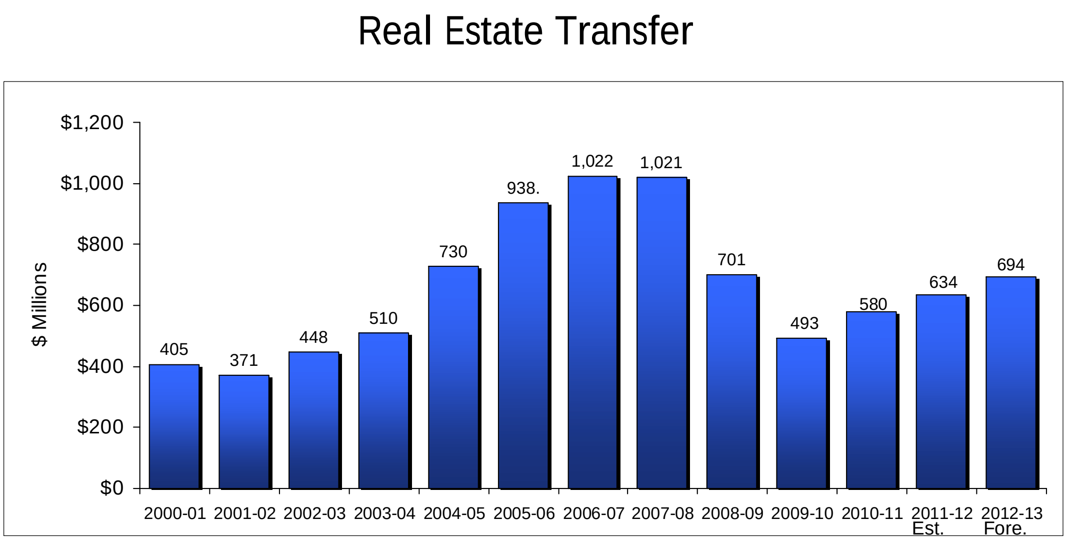
Underlying Economic Conditions

The Ways and Means Committee staff model for forecasting estate tax revenues depends on the value of the S&P 500. Since most taxable estates have significant stock holdings, this variable serves as a proxy for the value of estates. As the value of the stock market fell in SFY 2008-09, estate tax collections followed suit. Likewise, as the market began to recover so did estate tax collections. The S&P 500 finished calendar year 2011 with growth of 11.4 percent. The Committee staff forecast assumes that the S&P 500 will continue to grow in 2012 at the more moderate pace of 5.7 percent. However, because estate tax collections are dependent on the passing of very wealthy individuals, tax collections are

[47] "By the time the 2001 Act was passed, every one of the 50 states and the District of Columbia had in place a state death tax that reflected, largely or entirely, the federal credit." Lee, Carolyn Joy. "The Unfortunate State Tax Side Effects of Federal Death Tax 'Repeal.'" *State Tax Notes.* December 17, 2001. P. 935 – P. 949.

not expected to be directly related to any economic trends. Therefore, our model utilizes qualitative variables to account for collections stemming from the settlement of abnormally large estates.

REAL ESTATE TRANSFER TAX (RETT)



Source: NYS Comptroller; Ways and Means Committee Staff estimates

Figure 56

Table 51

Real Estate Transfer Tax ($ in Millions)						
	Year To Date	YTD Growth	Closeout/ Forecast	Growth	Executive	Difference
2011-12	$533	11.0%	$634	9.3%	$620	$14
2012-13			$694	9.5%	$690	$4

Article 31 of the New York State Tax Law levies a two dollar per $500 or 0.4 percent tax on real property transfers in excess of $500. The tax also applies to transfers of economic interest such as shares in cooperatively owned apartments. An additional tax of one percent, referred to as the "mansion tax" is levied on the transfer of one, two, or three-family residences over one million dollars. Typically, the party conveying the property (grantor) is liable for the additional one percent mansion tax, where applicable. The tax is collected at the local level. All payments are due to the recording agent within 15 days of transfer. The transfer of funds to the State Tax Commissioner is dependant upon the liability; counties with more than $1.2 million in liability during the previous calendar year must submit payment twice a month (10th and 25th), all other counties must remit receipts by the 10th of following month following the receipt of the RETT payment.

SFY 2011-12

The Committee staff estimates Real Estate Transfer Tax (RETT) collections will be $634 million in SFY 2011-12. This is an increase of 9.3 percent or $54 million over SFY 2010-11. The Committee staff's closeout estimate is $14 million above the Executive's estimate.

The RETT closeout estimate is based on year-to-date collections and collection patterns over the past three fiscal years.

RETT receipts have been inconsistent throughout the first three quarters of SFY 2011-12; in June RETT receipts unexpectedly decreased by 23.3 percent offset by significant rebounds in August and December of 57.8 percent and 46.7 percent, respectively. Nonetheless, two out of the three quarters of SFY 2011-12 have seen growth; the Committee staff estimates that the fourth quarter will remain steady with only the typical seasonal decline.

There were no tax law changes that would affect the overall tax collections. However, legislation was enacted in the 2010-11 Budget that altered the distribution of funds; the revenue dedicated to the Environmental Protection Fund was reduced from $199.3 million to $119.1 million. All remaining funds are deposited into the Clean Water/Clear Air Bond Debt Service fund (CWCA).

SFY 2012-13

The Committee staff projects Real Estate Transfer Tax (RETT) collections will be $694 million in SFY 2012-13. This is an increase of 9.5 percent or $60 million over SFY 2011-12. The Committee staff's SFY 2012-13 estimates is $4 million above the Executive's SFY 2012-13 Budget estimate.

Economists are still uncertain about the future of the housing market; it would appear that even though the economy is showing signs of improvement, the public at large is suspect of the strength in recovery. The forecast reflects this sentiment, estimating only modest gains in RETT receipts in SFY 2012-13.

Fund Distribution

Table 52

Fund Distribution ($ in Millions)	General Fund	Special Revenue	Debt Service	Capital Projects	All Funds
2011-12	-	-	515	119	634
2012-13	-	-	575	119	694

The 2010-11Budget decreased the share of RETT revenue that is to be deposited into the Environmental Protection Fund from $199.3 million to $119.1 million. The remaining share is to be deposited into the Clean Water/Clean Air Fund (CW/CA) for Debt Service. When the CW/CA obligation is paid, the excess revenue is transferred to the General Fund. The Executive's SFY 2012-13 Budget estimates $397 million and $474 million will be transferred from the CW/CA Debt Service account to the General Fund in SFY 2011-12 and 2012-13 respectively.

ANALYSIS

Underlying Economic Conditions

New York City and Long Island's real estate markets play heavily into the recovery of New York's real estate transfer tax receipts. Historically, New York City accounts for over 50 percent while Long Island accounts for around 15 percent of all real estate transfer tax receipts. Thus, any true recovery in RETT revenue receipts will rely heavily on these two geographical areas.

Key components of New York City's real estate transfer tax receipts are commercial properties and high-end co-op and condominiums in Manhattan. New York City's commercial realty market is showing signs of strength as commercial rents are up and vacancy rates are down.[48] This is believed to have generated the nexus for increased activity in large commercial properties (properties valued at over $100 million) as there were 26 large commercial sales through December of 2011 compared to 18 in 2010. As for the luxury market, the number of luxury housing units (average price over four million) grew

[48]Federal Reserve Board, Beige, (11 Jan. 2012) Summary Second District, Book, http://www.federalreserve.gov/fomc/beigebook/2012/20120111/2.htm, (retrieved 28 Jan. 2012)

9.1 percent over the prior calendar year, from 931 sales to 1006 sales. A partial explanation for the increased sales – both commercial and housing – can be attributed to the weak US dollar which appears to have resulted in renewed international interest in New York City's real estate market.[49]

Long Island's real estate market remains in flux, home prices are generally down from the prior year, although sales were up in some areas. Notably, the luxury market moved faster than they have in the past several years.[50]

Data from Moody's economic forecast suggests New York State housing prices will have positive quarter over quarter growth of just less than one percent throughout SFY 2012-13 with significant increases in housing starts/building permits in SFY 2012-13. The greatest growth will come in the third quarter of SFY 2012-13. Plus, mortgage interest rates are expected to remain at low levels throughout SFY 2012-13 and lenders are expected to ease on credit restrictions. Although this is positive news, there is still significant risk. Effective April 1, 2012, even with low interest rates, it will generally cost more to finance a home if it is being financed with the assistance of Freddie Mac or Fannie Mae as the "guarantee fees" will increase by 10 basis points.[51] Another concern is that housing prices have yet to hit bottom.

Much of the optimistic outlook relies on continued gains in employment, that consumer confidence remains positive, as well as stability in the financial markets. Economic indicators point to a slow but positive view of the housing market in the coming months.

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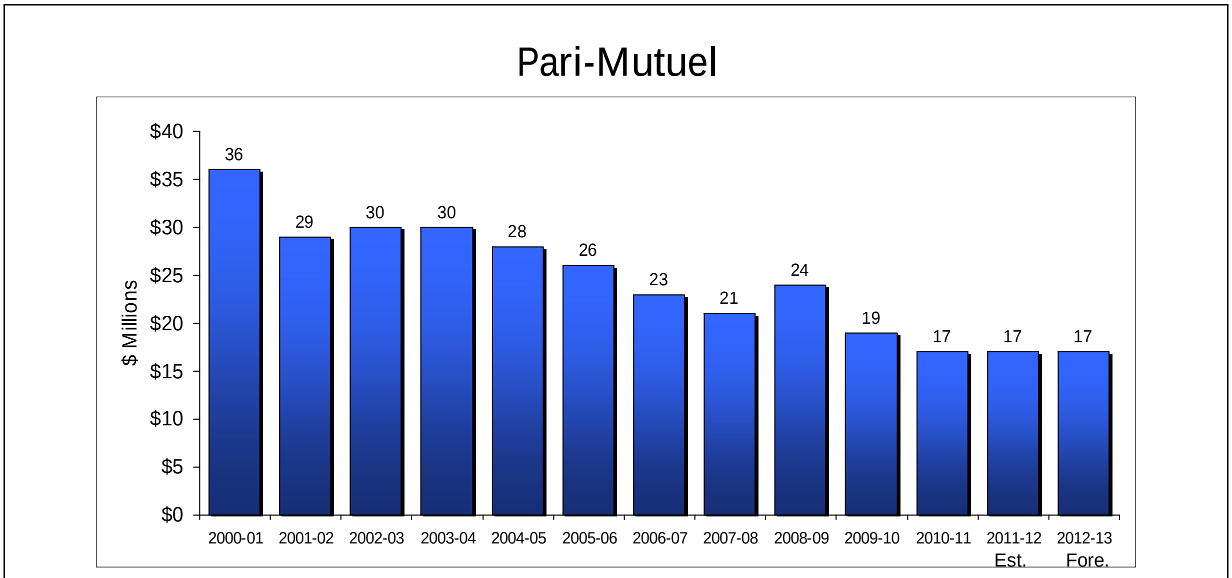
[49] Prudential Douglas Elliman Real Estate, (2011), Quarterly Survey of Manhattan Co-op and Condo Sales, http://assets.prudentialelliman.com/NYCPhotos/retail_reports/Manhattan q4_2011.pdf, (retrieved 24 Jan. 2012)

[50] Prudential Douglas Elliman Real Estate, (2011), Quarterly Survey of Long Island, http://assets.prudentialelliman.com/NYCPhotos/retail_reports/LongIsland_q4_2011.pdf, (retrieved 28 Jan. 2012)

[51] Hartman, Dean, SIBOREALTORS online, (6 Jan. 2012), "What Will Mortgages Look Like in 2012?", http:www//siborrealtors.com/2012-01-06/, (retrieved 26 Jan. 2012)

PARI-MUTUEL TAXES



Source: NYS Comptroller; Ways and Means Committee Staff estimates

Figure 57

Table 53

Pari-Mutuel Tax ($ in Millions)						
	Year To Date	YTD Growth	Closeout/ Forecast	Growth	Executive	Difference
2011-12	$15	-1.4%	$17	0.0%	$16	$1
2012-13			$17	0.0%	$16	$1

The Racing, Pari-mutuel Wagering and Breeding Law imposes a pari-mutuel tax on bets placed at racetracks, simulcast theaters and Off-Track Betting (OTB) facilities. For-profit and not-for-profit racing associations, as well as OTB Corporations, are taxed a percentage of their total betting pools for the privilege of conducting pari-mutuel wagering. All of the receipts are deposited into the General Fund.

The tax is paid on the last business day of each month for the period from the 16th day of the preceding month through the 15th day of the current month. Payments that are required to be made on March 31 must include all taxes due and accruing through the last full week of racing in March.

SFY 2011-12

The Committee staff estimates Pari-Mutuel revenues will total $17 million in SFY 2010-11, for flat growth over SFY 2010-11. The Committee staff's estimate is $1 million above the Executive's SFY 2012-13 Budget estimate.

Pari-mutuel receipts through January of 2012 are down 1.4 percent or $200 thousand compared to the same period in SFY 2010-11.

SFY 2012-13

The Committee staff forecasts the Pari-mutuel revenue for SFY 2012-13 of $17 million, representing no growth over the SFY 2011-12 estimate. The Committee staff's forecast is $1 million above the Executive's SFY 2012-13 Budget estimate.

Fund Distribution

Table 54

Fund Distribution ($ in Millions)

	General Fund	Special Revenue	Debt Service	Capital Projects	All Funds
2011-12	17	-	-	-	17
2012-13	17	-	-	-	17

The revenue received from Pari-mutuel taxes is deposited into the State's General Fund. The New York State Racing and Wagering Board has jurisdiction over all pari-mutuel betting activities; the racetracks and Off-Track Betting (OTB) establishments calculate the pari-mutuel tax owed to the State based upon wagers placed (handle) and remit the appropriate amount to the Department of Taxation and Finance.

ANALYSIS

Pari-mutuel receipts have steadily decreased over the past 20 years. Through January 2012, pari-mutuel receipts are down by 1.4 percent over the same period in SFY 2010-11. The overall decline in pari-mutuel gambling is believed to be related to increased competition from other forms of gambling (e.g. traditional lottery, video lottery, casinos). Originally there was concern that the closure of NYC's OTB in December of 2010 would negatively impact pari-mutuel receipts. This did not occur as NYRA was successful in marketing other venues; notably Aqueduct was able to assume many of New York City's OTB patrons.[52]

In September 2010, the Ghenting Corporation acquired the rights to operate VLTs at Aqueduct Raceway. VLT operations at Resort World became operational in October of 2011; there is some concern that VLT operators at Aqueduct Raceway will lure horse racing enthusiasts and their dollars to the VLTs instead of wagering on horses. However, others are optimistic that VLTs at Aqueduct may actually increase interest in horse racing.

EXECUTIVE BUDGET PROPOSAL

- The Executive's SFY 2012-13 Budget proposes to extend the authorization for simulcasting of "in-home", OTB and tracks outside New York horse racing venues as well as the continuation of the reduced tax rates for various forms of horse betting (e.g. multiple, exotic and super exotic bets) through 2013. Enacting this proposal has no fiscal impact for SFY 2012-13.

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[52] Coglianese, Adam, Thoroughbred Times (28 April 2011), http://www.thoroughbredtimes.com/national-news/2011/04/28/aqueduct-handle.aspx, (retrieved 28 Jan. 2012)

METROPOLITAN COMMUTER TRANSPORTATION MOBILITY TAX

Table 55

Metropolitan Commuter Transportation Mobility Tax ($ in Millions)						
	Year To Date	YTD Growth	Closeout/ Forecast	Growth	Executive	Difference
2011-12	$1,121	1.9%	$1,402	3.2%	$1,396	$6
2012-13			$1,182	-15.7%	$1,160	$22

Chapter 25 of the Laws of 2009 levied a payroll tax of 0.34 percent on all employers, including the self-employed, within the Metropolitan Commuter Transportation District (MCTD). The MCTD includes New York City as well as Nassau, Suffolk, Westchester, Rockland, Orange, Dutchess and Putnam counties. The revenues from this tax are deposited into the Mass Transportation Operating Assistance Fund (MTOAF) for the benefit of the Metropolitan Transportation Authority (MTA).

Liability for the tax began on payrolls as of March 1, 2009, however the first payment was not due until October 31, 2009. Those taxpayers who are required to remit withholding taxes electronically must also remit their portion of the payroll tax electronically. Taxpayers who are not required to remit withholding taxes electronically will remit the payroll tax quarterly following the wage reporting schedule of: October 31, January 31, April 31 and July 31.

Employers that are an agency or instrumentality of the United States, an interstate or inter-country agency or public corporation, and the United Nations are not subject to this tax. Effective January 1, 2012, self-employed individuals earning $50,000 or less, formerly $10,000 or less, are not subject to this tax. In addition, effective April 1, 2012, all elementary and secondary schools are exempt from this tax.

In December 2011, a progressive rate structure was enacted for employers with small quarterly payrolls. Employers with quarterly payrolls under $312,500 or $1.25 million annually are exempt from the tax. As of April 1, 2012 the tax rate is reduced from 0.34 percent to 0.11 percent for employers with a quarterly payroll expense of $375,000 or less and more than $312,500, which is equivalent to an annual payroll of more than

$1.25 million and equal to or less than $1.5 million. The tax rate is reduced from 0.34 percent to 0.23 percent for employers with a quarterly payroll expense of $437,500 or less, which is equivalent to an annual payroll of $1.75 million or less. Employers with quarterly payrolls of more than $437,500, the equivalent to an annual payroll of more than $1.75 million, will not be impacted by the reforms and they will still pay a tax of 0.34 percent on their payroll

SFY 2011-12

The Committee staff estimates that the Metropolitan Commuter Transportation Mobility tax will yield $1.402 billion in SFY 2011-12 for the Metropolitan Commuter Transportation District, representing growth of 3.2 percent over the prior year. This estimate is $6 million above the Executive's estimate. Through January, payroll tax collections have been $1,121 million, reflecting growth of 1.9 percent.

SFY 2012-13

The Committee staff forecasts that the MTA payroll tax will yield $1.182 billion in SFY 2012-13, representing a decline of 15.7 percent. The MTA payroll tax reform enacted in December 2011, will be fully implemented for the entire state fiscal year, and this will decrease collections by $310 million. Without the reform, it is expected that collections would grow 4.3 percent. This growth rate reflects the Committee staff's assumptions regarding growth in wages. The Committee staff forecast is $22 million above the Executive.

ANALYSIS

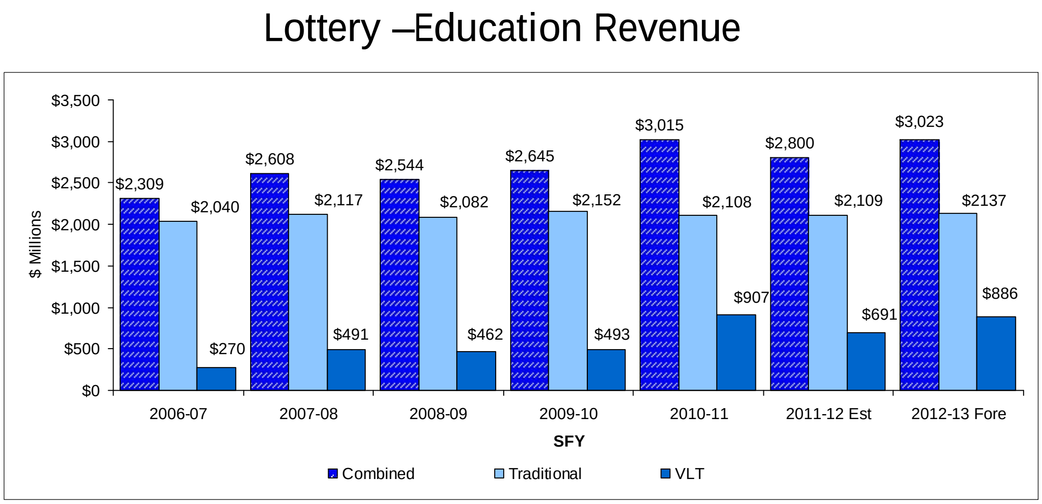
Underlying Economic Conditions

The Committee staff forecasts that New York State non-farm wages will grow by 1.6 percent in SFY 2011-12 over SFY 2010-11. In SFY 2012-13, non-farm wages are forecast to grow an additional 4.5 percent. Likewise, proprietor's income is estimated to grow 4.4 percent in SFY 2011-12 and 4.8 percent in SFY 2012-13. As income grows within the MTA region, collections from the MTA payroll tax are also expected to experience strong growth.

EXECUTIVE BUDGET PROPOSALS

- The Executive proposes a technical amendment that would extend the December 2011 reforms to professional employer organizations

Lottery



Source: NYS Comptroller; Ways and Means Committee Staff estimates

Note: 2010-11 VLT includes One-time licensing fee of $380 million

Figure 58

Table 56

Lottery ($ in Millions)						
	Year To Date	YTD Growth	Closeout/ Forecast	Growth	Executive	Difference
2011-12	$1,927	-13.6%	$2,800	-7.1%	$2,756	$44
2012-13			$3,023	8.0%	$3,012	$11

Traditional lottery games are sold by approximately 16,700 licensed retailers throughout the State. A percentage of sales from each game are dedicated to fund education. Traditional lottery games dedicate between 15 and 45 percent of sales to education while Video Lottery Terminals (VLTs) dedicate on average between eight and nine percent of the VLT credits played (wagers) to education. The prize payouts for traditional lottery vary as well, from 40 percent of Lotto sales to as much as 75 percent for certain “instant” games. The prize payout for VLTs ranges between 91 and 93 percent.

The Division of Lottery (DOL) administrative expenses are appropriated by the Legislature each year as part of the State Operating Budget, but are funded completely with revenues from Lottery sales. DOL is required to set aside 15 percent of lottery sales for administrative expenses; expenses include retailer commissions, contract fees, telecommunication lines, and miscellaneous administrative costs. DOL has control over the administrative expenditures, which are generally limited to 10 percent of sales, thus they end the year with a surplus.

When there is an administrative surplus, the remaining funds are transferred to the general Lottery account and dedicated to education. The Lottery Aid Guarantee (LAG), which is the amount of revenue that will be dedicated to education from lottery sales, is established in the State Budget and is based on expected revenues; the LAG includes anticipated unused administrative surpluses. If Lottery proceeds exceed the LAG, any surplus will be dedicated to education in the next fiscal year (termed a carry-out). In SFY 2011-12 and SFY 2012-13 the Committee staff estimates approximately $407 million in unused lottery administration aid; the flat growth is based on anticipated growth in VLT aid of 33.3 percent or $15 million with an offsetting decline in Traditional Lottery aid of 3.8 percent or $16 million. The unused administration aid is included in the SFY 2011-12 closeout and 2012-13 lottery forecast.

SFY 2011-12

The Committee staff's estimates for lottery receipts in SFY 2011-12 is $2.800 billion, representing a decrease of 7.1 percent or a loss of $215 from SFY 2010-11. However, when adjusting for the one-time payment of $380 million that was received in SFY 2010-11 for Aqueduct VLT licensing fees, the year-over-year receipts would reflect a growth of 6.3 percent or $165 million.

The Committee staff's estimate is 1.6 percent or $44 million above the Executive's 2012-13 Budget projections. The Executive's 2012-13 Budget estimates Lottery receipts to be $2.756 billion, for a decrease of 8.6 percent or $259 million less than SFY 2010-11. When adjusting for the one-time payment of $380 million, the Executive's year-over-year receipt estimate would reflect a growth of 4.6 percent or an increase of $121 million in revenue over the prior year.

In SFY 2010-11, the appropriation associated with Lottery receipts to fund Education was $2.884 billion. As required by statute, the failure to meet the SFY revenue appropriation requires the Lottery Fund to be back-filled with General Funds, thus if the Executive's revenue estimates are accepted for SFY 2011-12, $138 million must be transferred from the General Fund to the Lottery Education Fund.

SFY 2012-13

The Committee staff projects Lottery revenue in SFY 2012-13 will be approximately $3.023 billion, representing growth of 8.0 percent for an increase of $223 million over the SFY 2011-12 projections. The Committee staff's SFY 2012-13 forecast is $11 million above the Executive's SFY 2012-13 proposed budget projections. In the Executive's SFY 2012-13 Budget proposal Lottery receipts are projected to be $3.012 billion, for a growth of 9.3 percent or $256 million over the Executive's SFY 2011-12 projections.

The Committee staff anticipates Traditional Lottery receipts will remain flat (growth of approximately 1.3 percent) while Video Lottery receipts will continue to increase. The majority of the increase will come from Video Lottery Terminals (VLTs) at Resort World Casino (Aqueduct). Resort World opened up in October 2011; however, it did not become fully operational until January 2012 (from 2486 VLTs to 5000 VLTs). VLT proceeds at Aqueduct are expected to reach $300 million in SFY 2012-13; a growth of over 229.7 percent over SFY 2011-12. Meanwhile, seven of the other eight VLT facilities are expected to continue to have modest growth of 5.9 percent for an increase of $15 million over SFY 2011-12, Empire City Casino (Yonkers) is the only exception. The Committee staff anticipates Yonkers will experience a modest decline in patronage as a result of the competition from Resort World, which will result in a year-over-year decline of 10 percent or $32 million from SFY 2011-12.

In the proposed SFY 2012-13 Executive Budget, there is an appropriation for Education Funding from Lottery receipts of $3.053 billion. However, the Executive estimates that Lottery receipts will fall short of the appropriation by $56 million. If the Executive's SFY 2012-13 projections is accepted, $56 million will have to be transferred from General Funds to meet the Lottery Aid Guarantee.

Fund Distribution

Table 57

Fund Distribution ($ in Millions)	General Fund	Special Revenue	Debt Service	Capital Projects	All Funds
2011-12	-	2,800	-	-	2,800
2012-13	-	3,023	-	-	3,023

All monies received from Traditional Lottery games and Video Lottery games after payout of prizes and expenses (e.g. administrative costs, racetrack commissions, marketing, and capital expenditures) are considered special revenue and is deposited into the general lottery account to fund education. In addition, any surplus in administrative aid is annually transferred to the General Lottery account and used for education aid.

ANALYSIS

As of the week ending February 21 (week 46) the Division of Lottery's weekly report shows a combined Lottery (Traditional and VLTs) revenue increase of $128 million or 6.5 percent over the same time period in SFY 2010-11 (does not include the $380 million Aqueduct payment).

Traditional Lottery year-to-date proceeds, as of week 46, are up by 1.5 percent or $22 million over the same period in SFY 2010-11. The year-over-year growth in Traditional Lottery proceeds is a product of mixed results; Powerball and Quick-Draw revenues are up 55.1 and 19.7 percent respectively, for a total of $51 million with offsetting reductions in Mega-Millions and scratch-off proceeds which have declined 23.1 and 2.3 percent respectively, for a reduction in proceeds of approximately $43 million over the same time period in SFY 2010-11.

A reduction in Mega Millions was expected with the introduction of Powerball; however, it was presumed that Powerball would offset and exceed Mega Millions reductions. At this time, it would appear that Powerball has simply reduced interest in Mega Millions, thereby dropping the size of the jackpots which in turn keeps the occasional Lottery player from taking part in the games, resulting in a decline in revenues. Notably, as of week 46, there have only been seven Mega Million jackpots in the $100-$200 million range and only one over $200 million; in 2010-11 as of week 46 there were 15 jackpots in the $100-$200 million range and four in the $200-$300 million range and one for $355 million. Collectively, the SFY year-over-year decline in "high jackpots" for Mega Millions is 60.0 percent. Meanwhile, Powerball is realizing a SFY year-over-year growth in high jackpots of 68.8 percent with 19 jackpots in the $100-$200 million range, seven in the $200 -- $300 million range and one for $336 million. In same time period in SFY 2010-11, there were only 16 high jackpots and none of them were over $300 million.

To address the loss of revenue in multi-state lotteries, participating multi-state lotteries have authorized an increase in Powerball ticket price, from one dollar to two dollars. The increase became effective January 15, 2012. The increase in the ticket price should reduce the time it takes to reach the high jackpot level which in-turn should increase interest and sales. The Executive's SFY 2012-13 Budget estimates Powerball receipts will increase by 38.2 percent or $34 million in SFY 2012-13.

The increase in Quick Draw activity is likely a result of legislative changes that were enacted in SFY 2010-11 which made the authorization to operate Quick Draw permanent and removed the restrictions related to hours of operation. The Executive estimated in the SFY 2010-11 Budget that these changes would increase Quick Draw revenue by $33 millions in SFY 2010-11 and $54 million thereafter. In 2010-11 Quick Draw ended the year flat, at $105 million; however, revenue collections for Quick Draw as of week 46 are strong with a growth rate of 19.7 percent or $18 million over the same time period in SFY 2010-11. Nonetheless, it is still far short of the original projected revenue estimates. The Executive's SFY 2012-13 Budget estimates that Quick Draw will remain flat in SFY 2012-13.

Interestingly, scratch-off ticket sales continue to decline. In SFY 2008-09 scratch-off ticket proceeds peaked at just over $690 million; the Executive's SFY 2012-13 Budget estimates that scratch-off ticket proceeds will only reach $615 million in SFY 2011-12 for a decline of 10.9 percent. However, the Division of Lottery is working on introducing new games and focusing on marketing in hopes of increasing proceeds in SFY 2012-13 to $639 million for a year-over-year growth of 3.9 percent.

Unlike traditional Lottery games, video lottery gaming has consistently had positive growth throughout SFY 2011-12. As of week 46, the year over year revenue growth for education aid from VLTs is 23.6 percent or $106 million over the same time period in SFY 2010-11. The majority of the increase (67 percent) is attributed to revenue from Resort World which opened in October 2011. However, $35 million is from increased activity at the other eight VLT facilities; the increase at the other VLT facilities can be attributed to legislation authorizing the use of "free play credits" (see L. 2011, c. 61). The credits are used to promote and draw participants into the VLT facilities; this is similar to marketing techniques used at traditional casinos. The Executive projected VLT receipts would increase by $38 million; it appears that the revenue receipts for SFY 2011-12 will meet and exceed that expectation.

Future growth in Lottery revenue could be at risk as surrounding states such as Massachusetts and Ohio are in the midst of expanding or opening up new casinos. The Federal Government has essentially given permission to the states to authorize on-line gambling, and the Governor will be introducing legislation (see Program Bill 26; LDB 89143-02-2) to start the process for a State Constitutional Amendment to authorize casino gambling. All of these factors will put pressure on the Division of Lottery to market Lottery more effectively and efficiently.[53]

EXECUTIVE BUDGET PROPOSALS

The Executive proposes to create the New York State Gaming Commission by merging the Racing and Wagering Board with the New York State Division of Lottery. Currently, the Racing and Wagering Board regulates all gambling activities that are not regulated by Lottery. The Division of Lottery has full authority over the administration of New York State's traditional lottery games (e.g. lotto, quick-draw, scratch offs, etc.) and video lottery gaming.

The New York State Gaming Commission (NYSGC) would consist of five members who would be selected by the Governor with the consent of the Senate; they would serve a term of five years, provided the Governor has the discretion to remove any member of the commission. There would be five divisions, (1) Lottery, (2) Charitable Gaming, (3) Gaming (VLTs would be included), (4) Horse Racing, and (5) Law Enforcement. Each division would have a director who serves at the pleasure of the Governor (except Law Enforcement which serves at the pleasure of the Superintendent of State Police).

Estimated Savings: None

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[53] Wyatt, Edward, New York Times on-line, "Ruling by Justice Department Opens a Door on Online Gambling", 24 Dec. 2011, http://www.nytimes.com/2011/12/25/us/online-gaming-loses-obstacle-at-justice-department.html, (retrieved 26 Jan. 2012)

Miscellaneous Receipts

Miscellaneous Receipts – All Funds

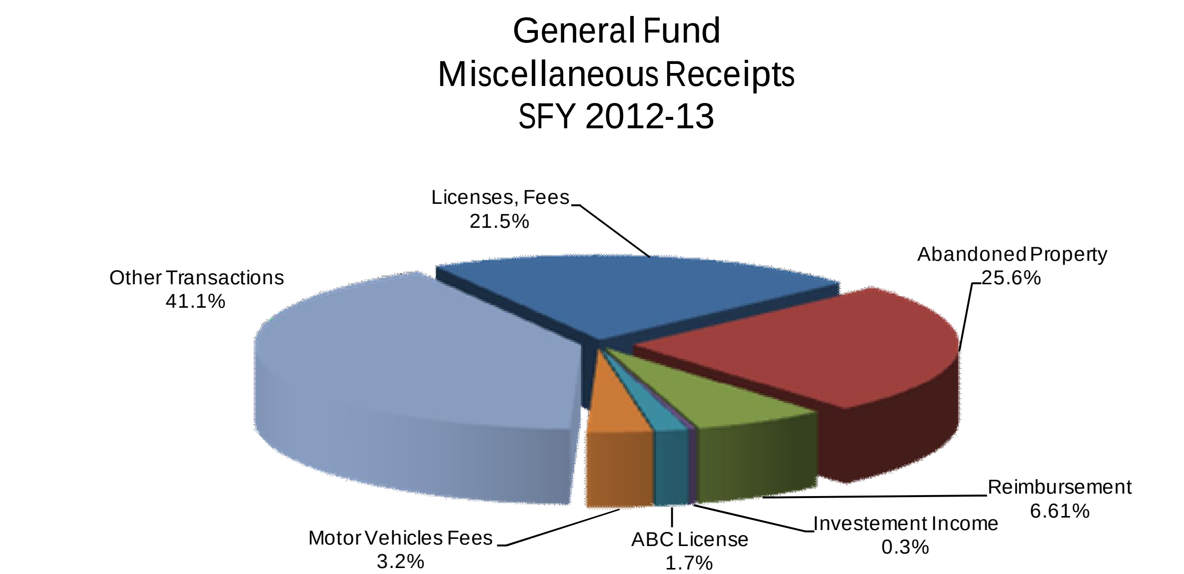
In the Executive's SFY 2012-13 Budget, All Funds Special Revenue receipts for SFY 2011-12 are estimated to total $23.8 billion, the distribution is as follows: General Fund - $3.2 billion, Special Revenue Fund - $15.3 billion, Debt Service - $4.4 billion, and Capital Projects $949 million. The Executive's estimated miscellaneous receipts for SFY 2011-12 represents a growth of 3.0 percent or an additional $684 million in revenue over SFY 2010-11; the Committee Staff's estimate for SFY 2011-12 All Funds mirrors the Executive Budget estimate.

Miscellaneous receipts cover a breadth of unrelated revenue sources; ranging from fines, fees, licensing, tuition, medical services, investments, reimbursements, Lottery, and various non-recurring transactions. Miscellaneous receipts are divided into four different Fund groups: (1) General (GF), (2) Special Revenue (Special), (3) Debt Service (Debt), and (4) Capital Projects (Capital) – collectively referred to as All Funds Miscellaneous Receipts.

Table 58

Miscellaneous Receipts - General Fund ($ in Millions)					
	2010-11 Actual	2011-12 Estimated	2012-13 Projected	Change	Percent Change
Licenses, Fees	$677	$620	$661	$41	6.6%
Abandoned Property	645	755	785	30	4.0%
Reimbursements	270	222	202	-20	(9.0%)
Investement Income	6	10	10	0	-
ABC License	48	55	51	-4	(7.3%)
Motor Vehicles Fees	34	112	99	-13	(11.6%)
Other Transactions	1,415	1,470	1,262	-209	(14.2%)
Total	**$3,095**	**$3,244**	**$3,069**	**($175)**	**(5.4%)**

Source: Executive Budget.



Source: Executive Budget.

Figure 59

Miscellaneous Receipts – General Fund

General Fund Miscellaneous Receipts consist of income derived annually from abandoned property, investment earnings, fees, licenses, fines, surcharges, patient income, motor vehicles fees and reimbursement income. In addition, Miscellaneous Receipts typically include certain non-recurring revenue actions.

Executive Budget General Fund Miscellaneous Receipts are estimated to total $3.2 billion in SFY 2012-13, a $174.5 million decrease from SFY 2011-12, a result of the following decreases: $20 million in reimbursement income, $13 million in Motor Vehicles Fees, $4 million in ABC License, and $209 million in other transactions; offset by $30 million and $41 million increases in abandoned property and licenses and fee collections. There was no change in investment income.

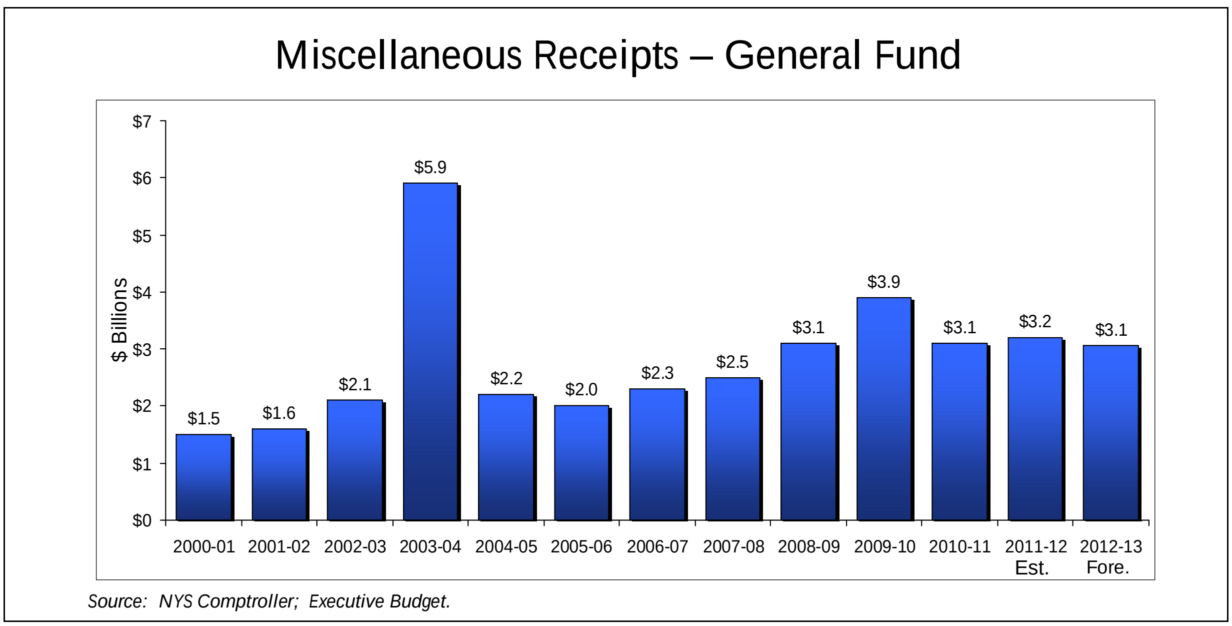


Figure 60

Miscellaneous receipts have been a steady source of revenue for the General Fund. The sizeable increase in 2004 receipts reflects the one time deposit of tobacco bond proceeds to fund the shortfall in the Health Care Fund.

Table 59

Miscellaneous Receipts - State Funds ($ in Millions)	2010-2011 Actual	2011-2012 Estimated	2012-2013 Projected	Change	Percent Change
HCRA	$4,150	$4,170	$4,807	$637	15.3%
State University Income	3,275	3,768	4,059	291	7.7%
Lottery	3,206	2,934	3,185	251	8.6%
Medicaid	739	870	831	(39)	(4.5%)
Industry Assessment	890	753	766	13	1.7%
Motor Vehicle Fees	415	486	482	(4)	(0.8%)
Capital Projects	3,845	4,360	4,105	(255)	(5.8%)
Debt Service	900	949	996	47	5.0%
All Other	2,631	2,298	1,955	(343)	(14.9%)
Total	**$20,051**	**$20,588**	**$21,186**	**$598**	**2.9%**

Source: Executive Budget.

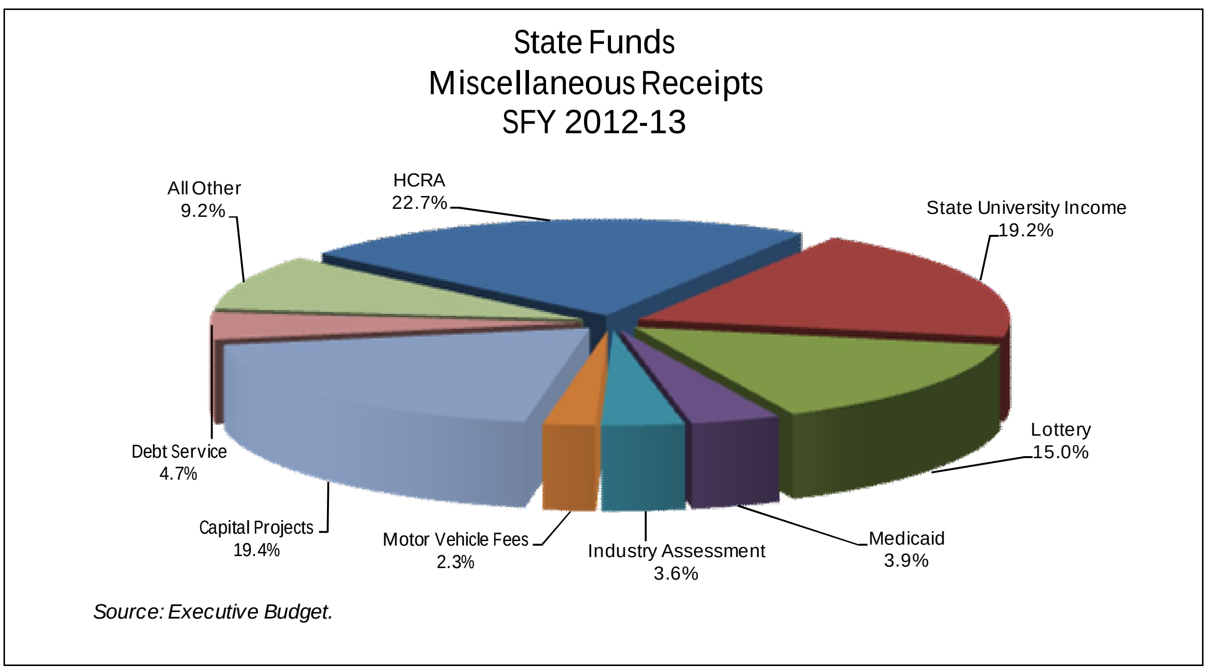


Figure 61

Miscellaneous Receipts – State Funds

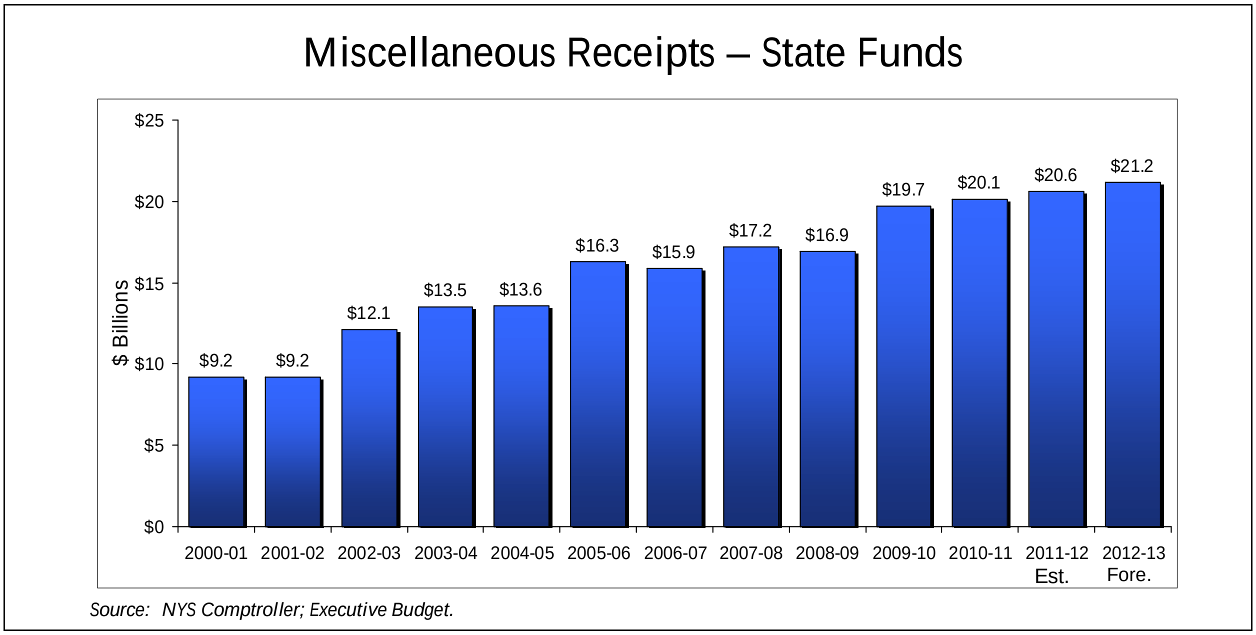


Figure 62

State Funds Miscellaneous Receipts consist of moneys received from HCRA financing sources, SUNY tuition and patient income, lottery receipts for education, assessments on regulated industries, motor vehicles fees and a variety of fees and licenses.

The Executive estimates miscellaneous receipts in State Funds of $21.2 billion in SFY 2012-13, an increase of $598 million or 2.9 percent from SFY 2011-12. The change in miscellaneous receipts is primarily related to increases in HCRA of $637 million, State University Income of $291 million, Lottery of $251 million, Debt Services revenues of $47 million, and Industry Assessment of $13 million. Revenue decreases are projected for Capital Projects of $255 million, Medicaid of $39 million, Motor Vehicle fees of $4 million, and All Other Revenue of $343 million.

HCRA (Health Care Reform Act)

HCRA is estimated to receive $4.8 billion, an increase of $637 million or 15.3 percent over SFY 2011-12. HCRA receipts are comprised of surcharges, assessments on hospitals and certain insurance providers, conversion proceeds and other taxes. Receipts to HCRA in

SFY 2012-13 are as follows: $3.1 billion in Surcharges, an increase of $37 million; $1 billion in Covered Lives assessments, an increase of $5,000; $394 million in Hospital Assessments, an increase of $21 million; $250 million in Conversion Proceeds; and $54 million in Other receipts, a decrease of $1 million.

State University Income

Receipts in the State University Income fund are projected at $4.1 billion, an increase of $291 million over SFY 2011-12. Receipts into the State University Income fund are from the operation of SUNY from tuition, patient revenue and user fees. Tuition is estimated at $1.4 billion, a $53.2 million increase from previous year. Patient revenues from SUNY's teaching hospitals at Brooklyn, Stony Brook and Syracuse and from the Long Island Veterans' Home contribute receipts estimated at $1.9 billion, an increase of $224.7 million from SFY 2011-12. User fees from a variety of sources at SUNY, interest earnings and fringe benefits are estimated to be $713.6 million, an increase of $12.8 million in SFY 2012-13.

Lottery

Ways and Means Committee staff estimates Lottery receipts of $3.023 billion, an increase of $223 million in SFY 2012-13. Lottery revenues come from the sale of lottery tickets and proceeds from Video Lottery Terminals. The Lottery revenues are used to support public education and Lottery administrative operating expenses.

Medicaid

Provider Assessments on nursing homes, hospital and home care providers contribute revenues to support Medicaid. The Provider Assessments are estimated to total $831 million, a decrease of $39 million from SFY 2011-12. Receipts are supported from a partially reimbursable 5.5 percent assessment, nine percent assessment on nursing homes revenues and a 0.75 percent assessment on hospital and home care revenues.

Motor Vehicles Fees

Motor vehicles fees are fees, licenses, and registration revenues from motor vehicles, motorcycles, trailers, semi-trailers, buses, and other types of vehicles operating and registered with the Department of Motor Vehicles. Motor Vehicles Fees deposited into Special Revenue Funds are estimated to be $482 million in SFY 2012-13, a slight decrease of $4 million from SFY 2011-12.

Capital Projects

Capital Projects spending is funded from two sources: authority bond proceeds which support spending financed through Public Authority Bonds, and miscellaneous receipts (Parks, Environmental, and other receipts) which finance State pay-as-you-go spending to support the State Capital Plan.

The Executive estimates $4.1 billion in capital projects receipts, including receipts from public authority bond proceeds, a decrease of $255 million.

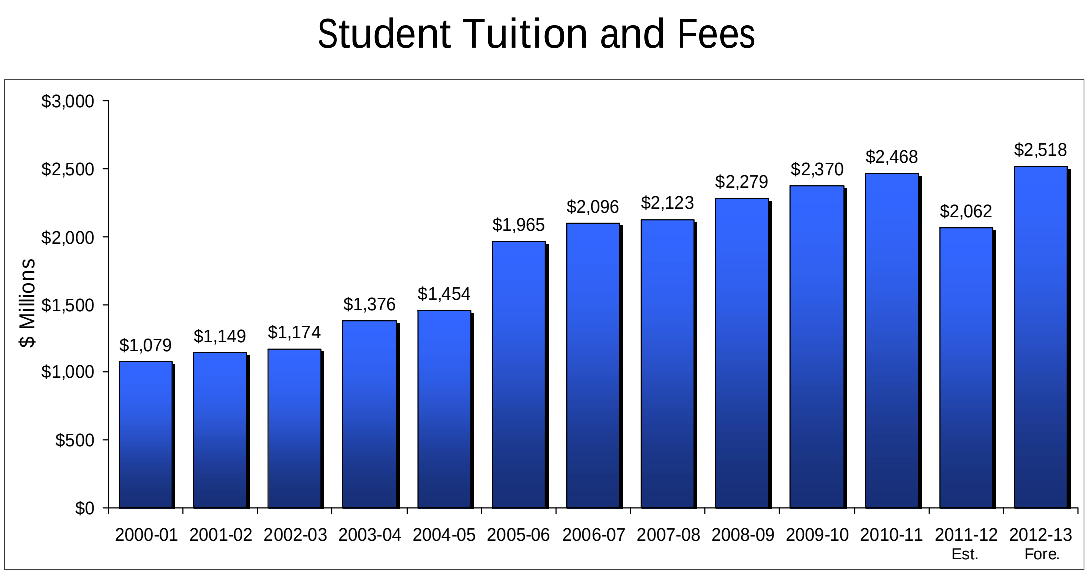
Debt Service

Miscellaneous receipts are one of the sources of receipts that support the Debt Service fund. Miscellaneous receipts in the Debt Service fund are comprised of Mental Hygiene service providers that receive payments from Medicare and insurance companies; dormitory room rental fees and associated fees from SUNY students; and from patient care revenues of hospitals and certain veteran's homes from payments of Medicaid, Medicare, insurance and individuals. Miscellaneous receipts in Debt Service is $996 million, an increase of $47 million from SFY 2011-12.

Industry Assessment and All Other

Receipts comprising Industry Assessments and All Other are from reimbursements of regulated industries to fund the administrative costs of the State agencies. Receipts may consist of fees, licenses and assessments.

Student Tuition and Fees



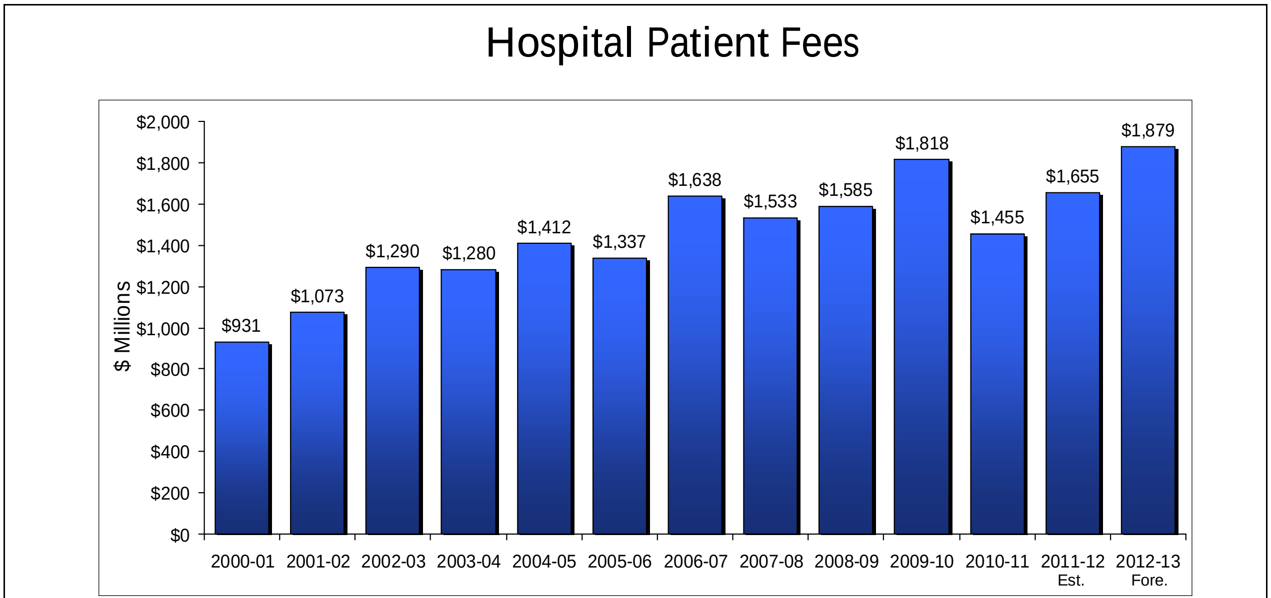
Source: NYS Comptroller.

Figure 63

The special revenue receipts of Students Tuition and Fees are supported from the tuition and user fees operations of SUNY. User fees, which include fees for food, parking, career placement and recreation, are generated from service users including students, faculty, staff, and the public. Other receipts primarily include interest earnings and a fringe benefit recovery from SUNY's other special revenue accounts.

Student tuitions and fees are estimated to increase to $2.5 billion in SFY 2012-13 from $1.1 billion in SFY 2000-01.

Hospital Patient Fees



Source: NYS Comptroller.

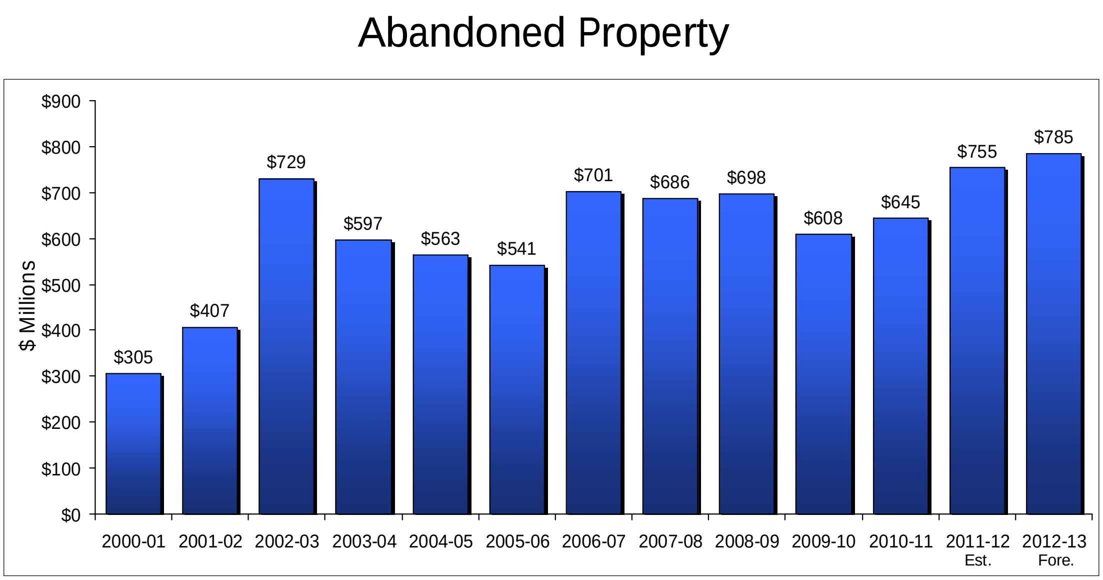
Figure 64

Hospital Patient Fees are generated from SUNY's three teaching hospitals at Brooklyn, Stony Brook and Syracuse, as well as the Long Island Veterans' Home. The State receives patient revenue from third-party payers including Medicare, Medicaid, insurance companies, and individuals.

Legislation enacted in 1997 provided for the phase-out on private health facilities, which were further accelerated in 1998 and 1999. In 2000 legislation was passed to provide amnesty on interest and penalties for private health facilities.

The Hospital Patient fees are estimated to be $1.9 billion, an increase of $948 million or 102 percent in SFY 2012-13 from SFY 2000-01.

Abandoned Property



Source: NYS Comptroller.

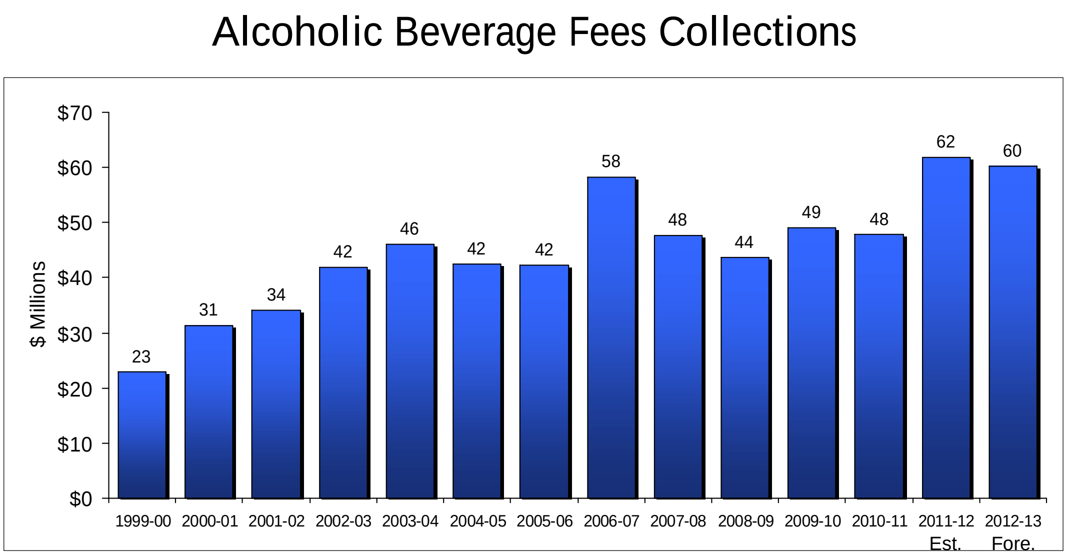
Figure 65

Abandoned property receipts are inactive accounts transferred to the State from banks, utilities, investment companies, and insurance companies.

Legislation was enacted in 2003 that reduced the time period for collecting abandoned property related to the demutualization of insurance companies, from five years to two years. In 2006, legislation was enacted to reduce the dormancy period on uncashed checks from five years to three years and added foreign securities as abandoned property. In 2010, legislation was enacted to reduce dormancy periods on undelivered goods from five to three years and on money orders from seven to five years. In 2011, Legislation was enacted to reduce dormancy periods on various abandoned property items from five or six years to three years.

The Executive estimates Abandoned Property receipts to be $785 million in SFY 2012-13.

Alcoholic Beverage Fees



Source: NYS Comptroller; Ways and Means Committee staff estimates

Figure 66

Table 60

Alcoholic Beverage Control License Fees Tax ($ in Millions)						
	Year To Date	YTD Growth	Closeout/ Forecast	Growth	Executive	Difference
2011-12	$49	29.4%	$62	29.2%	$55	$7
2012-13			$60	-3.2%	$51	$9

Distillers, brewers, retailers, wholesalers and others who sell alcoholic beverages in New York State are required by Articles 4, 4-A, 5 and 6 of the Alcoholic Beverage Control Law to be licensed by the State Liquor Authority (SLA). Approximately 2,500 retail outlets, 18,500 grocery stores and 26,400 bars and restaurants are licensed. Licenses are issued triennially, biannually and annually, and fees are paid directly to the SLA.

SFY 2011-12 ESTIMATE

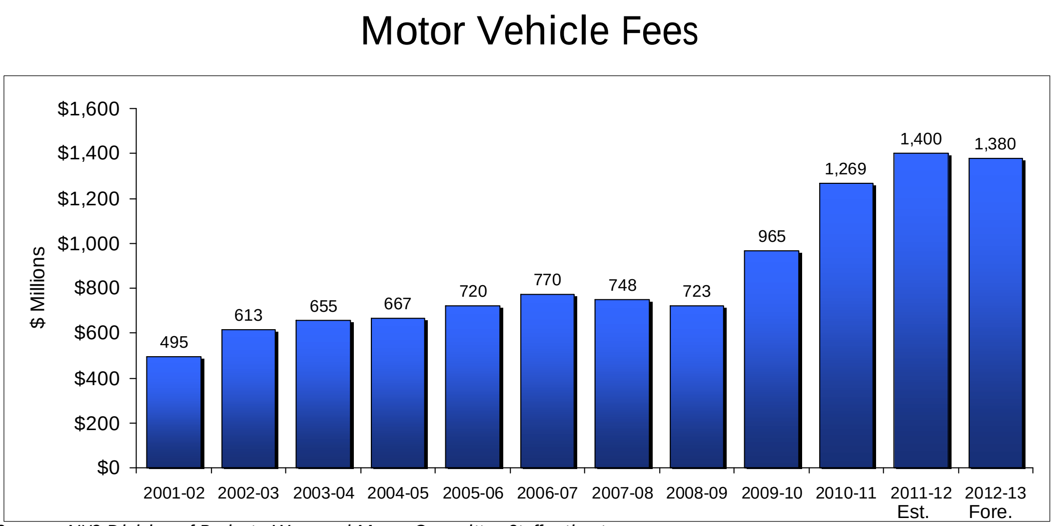
The Committee staff estimates that receipts from Alcoholic Beverage Control License Fees will total $62 million in SFY 2011-12, a 29.2 percent increase over SFY 2010-11 collections. This estimate is $7 million above the Executive's estimate in the SFY 2012-13 Budget Report. To reach the Executive's estimate, collections would need to decline 48.2 percent in the remaining two months of the fiscal year, which is unlikely considering the 29.4 percent growth year-to-date. The Committee staff is estimating growth of 21.8 percent over SFY 2010-11 in the rest of the year to meet its estimate.

This growth is primarily due to two main factors—first, 2011 was a year in which the renewal of 2-year licenses coincided with that of 3-year licenses; therefore the growth is not necessarily due to licenses being issued to newly-established bars, restaurants, or liquor stores, but rather due to existing premises renewing their licenses. The second factor is newly implemented policies at the State Liquor Authority designed to expedite the approval process for approving license applications. This process cleared a multi-year backlog of applications, resulting in many more licenses being approved this year than in previous years.

SFY 2012-13 FORECAST

The Committee staff forecasts that receipts will total $60 million in SFY 2012-13, a decrease of $2 million or 3.2 percent from SFY 2011-12 estimates. This is $9 million above the SFY 2012-13 Executive Budget Report forecast, which predicts a decline of 7.3 percent over its SFY 2011-12 estimate. Collections of license fees are expected to decline in the next fiscal year as the impacts of the expedited application process and the confluence of 2- and 3-year license renewals dissipates.

Motor Vehicle Fees



Source: NYS Division of Budget; Ways and Means Committee Staff estimates

Motor Vehicle Fees ($ in Millions)						
	Year To Date	YTD Growth	Closeout/ Forecast	Growth	Executive	Difference
2011-12	$893	1.60%	$1,400	10.30%	$1,400	$0
2012-13			$1,380	-1.40%	$1,380	$0

Revenue from Motor Vehicle Fees comes from over 50 different license, registration, service, and penalty receipts. Passenger and commercial vehicle registrations and licensing fees are the largest components. Registration fees are weight based for passenger vehicles, commercial vehicles, trailers, and ambulances. Buses, taxis, livery vehicles, and rental cars are charged registration fees based upon their seating capacity. Other vehicles such as semi trailers, motorcycles, MOPEDS, farm vehicles, snowmobiles, and all terrain vehicles are charged a flat fee. Motorboat registration is based upon the length of the boat. Other fees include in-transit permits and certificates of title; manufacturers, dealers and repairmen also pay fees for miscellaneous licenses and permits. Resident drivers are required to obtain a

New York driver license within 90 days of becoming a resident. This license is issued by the Department of Motor Vehicles with fees based on various classifications. Other items included in motor vehicle receipts are: business permits for driving schools, repair shops and car dealerships; special plate fees, penalty fees for driving without insurance or refusing a chemical test; and various sticker fees.

SFY 2011-12

Motor Vehicle receipts for SFY 2011-12 are expected to reach $1.4 billion, a growth of 10.3 percent or $131 million over SFY 2010-11. Of the anticipated $131 million increase, approximately $70 million can be attributed to the manner in which the New York State Comptroller is reporting “non-dedicated” (General Fund) motor vehicle revenue as well as the Division of Budget’s decision to classify all motor vehicle receipts (e.g. certain penalties) that the Comptroller includes in other miscellaneous receipts. The Division of Budget estimates another $78 million is due to the peak of the license renewal cycle (licenses are renewed every eight years).

SFY 2012-13

As with the closeout the Committee staff is accepting the Executive’s SFY 2012-13 forecast for MV fee revenue; the Executive estimates SFY 2012-13 MV fees will be $1.380 billion, this is a decrease of 1.4 percent or $20 million less than SFY 2011-12.

Motor Vehicle Fees Collections:

Table 61

Fund Distribution ($ in Millions)					
	General Fund	Special Revenue	Debt Service	Capital Projects	All Funds
2011-12	112	486	-	802	1,400
2012-13	104	482	-	799	1,380

Historically, revenue collections from motor vehicle fees are stable; they do not generally fluctuate as a result of economic conditions. Substantial year-over-year swings in the collection of motor vehicle fees are generally a result of law changes that modify the fees, the fee schedules (which occurred in 2009) or the manner in which the revenue is classified (as is the case with SFY 2011-12). As noted earlier, starting in SFY 2011-12 the New York State Comptroller is classifying "non-dedicated" motor vehicle fees as motor vehicle fees with an offsetting reduction in miscellaneous fees and licenses while Division of the Budget is classifying all revenue from motor vehicles within the Motor Vehicle Fees category.

EXECUTIVE PROPOSED TAX LEGISLATION

The Executive Budget contains a series of provisions that would improve tax compliance, extend certain tax credits, reform the taxation of cigars and loose tobacco products, and expand solar energy tax benefits. There are also a few technical amendments included in the Executive Budget Revenue Article VII.

REVENUE

PART	DESCRIPTION	SUMMARY
A	Oil and Gas Fee Extender	This part would extend the current fees paid by oil and gas producers to the Office of Real Property Tax Services (ORPTS) within the Department of Taxation and Finance. These fees offset the costs incurred by ORPTS in establishing the "unit of production values" utilized for local assessors for the assessment of oil and gas producing properties (minimal fiscal impact).
B	STAR Benefit Offset	This part would authorize the Department of Taxation and Finance to suspend a taxpayer's STAR exemption if they have any past-due state or local tax liabilities. This proposal would also apply to the New York City Personal Income Tax STAR benefits (no fiscal impact in SFY 2012-13; $6 million in SFY 2013-14).
C	Tobacco/Cigar Tax Reform	This part would reform the taxation of loose tobacco and cigars. Currently, loose tobacco and cigars are taxed as "tobacco products" and therefore subject to the tobacco products tax rate of 75 percent of wholesale price. This part would subject loose tobacco to a tax of $4.53 per ounce – commensurate with the tax on a pack of cigarettes. It would subject cigars to a tax of 50% of the retail price as well as extend taxation to cigars that are brought into the state by individuals, so long as 50 or more cigars are imported ($18 million in SFY 2012-13; $24 million in SFY 2013-14)

PART	DESCRIPTION	SUMMARY
D	Alternative Fuels Extender	This part would extend the tax exemptions for alternative fuels, including E85, compressed natural gas (CNG), hydrogen, and B20 from September 1, 2012 to September 1, 2017 ($2 million in SFY 2012-13, $3 million in SFY 2013-14).
E	Fuel Technical	This part would amend the classification of certain types of diesel motor fuel for tax purposes and would explicitly exempt certain sales of previously untaxed qualified biodiesel from motor fuel taxes, petroleum business taxes, fuel use taxes and sales and use taxes (no fiscal impact).
F	Expand Sales Tax Registration Clearance	This part would authorize the Department of Taxation and Finance to refuse to issue a Certificate of Authority for sales and use tax purposes if any persons required to collect the tax has any outstanding tax liabilities, not just sales tax liabilities. It would also authorize the Department to disclose to the applying entity the names and outstanding liabilities that caused the denial ($1 million in SFY 2012-13; $1 million in SFY 2013-14).
G	Permanent Tax Modernization	This part would make permanent certain electronic filing requirements and segregated sales tax account provisions which are currently set to expire on December 31, 2012 ($5 million in SFY 2012-13; $20 million in SFY 2013-14).
H	Solar Equipment Bill	This part would extend the personal income tax credit and sales tax exemptions for the purchase of solar energy equipment to the lease of such equipment. It would also extend the sales tax exemption to purchases of solar equipment by non-residential consumers, provided the energy capacity of the installed components does not exceed two megawatts ($2 million in SFY 2012-13; $5 million in SFY 2013-14).

PART	DESCRIPTION	SUMMARY
I	TV Commercial Credit Extender	This part would extend the commercial production tax credit for an additional five years. The credit expired on December 31, 2011(no fiscal impact in SFY 2012-13; $7 million in SFY 2013-14).
J	Low Income Housing Credit	This part would increase the aggregate amount of low-income housing tax credits that the Commissioner of Housing and Community Renewal may allocate by $8 million a year for the next five years (no fiscal in SFY 2012-13; $8 million in SFY 2013-14).
K	Bio-Fuel Extender	This part would extend the bio-fuel tax credit for an additional seven years – from December 31, 2012 to December 31, 2019 (no fiscal impact in SFY 2012-13 or SFY 2013-14; $10 million in SFY 2014-15).
L	Non-Custodial EITC extender	The part would make the Non-Custodial Parent Earned Income Tax Credit permanent. The current credit expires on December 31, 2012 (no fiscal impact in SFY 2012-13 or SFY 2013-14; $4 million in SFY 2014-15).
M	Prohibit Bank Levy Fees	This part would prohibit banks from levying additional fees on bank accounts that are being subjected to levies for the purpose of retrieving back state taxes or child support ($5 million in SFY 2012-13; $7 million in SFY 2013-14).
N	MTA Technical Fix	This part would authorize professional employer organizations that provide payments to workers for small businesses who would be eligible for the lower rates to utilize the lower MTA Payroll Tax rates (no fiscal impact).
O	Pari-Mutuel Extender	This part would extend, for a period of one year, various provisions of the Racing, Pari-Mutuel Wagering and Breeding Law, which expire during the 2012-13 fiscal Year (no fiscal impact).

PART	DESCRIPTION	SUMMARY
P	Transmission Tax Split	This part would amend the distribution of revenues collected from the tax on utility transportation and transmission services to be split between upstate and downstate transit accounts, removing the requirement for an annual transfer among accounts (no fiscal impact).
Q	Hotel Room Remarketers	This part would amend the method by which room remarketers report, collect and transmit sales tax liability to the Department (no fiscal impact).