

# NY payroll tax plan has uncertain future

Workaround on federal taxes may help few earners

BY MICHAEL GORMLEY  
michael.gormley@newsday.com

ALBANY — New York's first-in-the-nation response to the new federal tax package and its cap on the deductibility of state and local taxes is now law, but the impact of the measure remains uncertain, experts say.

The state budget adopted Saturday includes Gov. Andrew M. Cuomo's proposal for a voluntary state payroll tax and the creation of charitable entities aimed at preserving the deductibility of state and local taxes on federal income tax returns.

But how many businesses will voluntarily move to a payroll tax is unclear. "The corporate payroll tax will have extremely limited appeal," said E.J. McMahon of the fiscally conservative Empire Center think tank. "Very few firms, if any, will opt into it. . . . The governor has grossly exaggerated the scope of that impact, implying that it affects all or most New Yorkers."

Companies and small firms with high-salaried employees — most earning \$200,000 to more than \$1 million a year — and paying high property taxes would benefit most from the state action, McMahon said. That would include those who work in law firms and other professional offices.

Lower-paid employees who do not itemize deductions may benefit under the federal law because the standard deduction has been doubled.

The federal tax law caps the deductibility of state income taxes and local property taxes — known as SALT — at \$10,000.

Payroll taxes remain fully deductible under the new federal



Cuomo's plan aims to preserve deductibility of state and local taxes on federal income tax returns.

tax law. Similarly, Cuomo's charitable entities would allow taxpayers to pay taxes to local governments and school districts as charitable donations, which remain fully deductible.

"We will maintain our wait-and-see approach to the state's SALT-mitigation plan," said Heather C. Briccetti, president and CEO of The Business Council of New York State. "In our own discussions with employers, we did not receive positive feedback on the payroll tax proposal, although we do appreciate that the final language made it optional.

"The effect of the charitable giving gambit is ultimately dependent on IRS determination as to its deductibility," Briccetti said.

The New Yorkers who may benefit most from the state's plan are big earners who are important to state finances.

"The state needed to respond to the SALT cap in order to help preserve the state's competitiveness," said David J. Friedfel, director of state studies for the independent Citizens Budget Commission. "Given that the top 1 percent of taxpayers pay 40 per-

cent of state personal income taxes, flight of wealthy New Yorkers would damage state's overall finances."

But the impact of the quickly crafted state law is hard to predict.

"With suburbanites having the highest levels of homeownership and property taxes, any successful effort to mitigate the impact of losing federal deductibility is likely to be greeted with applause and be of political benefit," said Lawrence Levy, executive dean of Hofstra University's National Center for Suburban

Studies. "But the mechanisms are complicated and could be challenged by the Trump administration, so the financial benefit to suburban homeowners won't be clear until at least next year."

Another unknown quantity in the state's workaround of the federal tax law is: Will the federal Internal Revenue Service accept it and will New Yorkers be willing to take a chance on the state method without a clear signal from the IRS?

The fiscally conservative Tax Foundation on Monday called the state plan "legally dubious."

Not everyone agrees.

"The IRS has for decades considered employer-side payroll taxes to be deductible to the employer and excluded from the income of the employee, and I think it would be very difficult and unadvisable for the IRS to change the status quo through administrative action," said Professor Daniel Hemel of the University of Chicago Law School.

The labor-backed Fiscal Policy Institute credits the governor and legislature for taking action, "Unfortunately, the plan of the tax reform has not been adequately vetted. At this point, we urge the governor and the legislature to hold hearings on the plan to assess its consequences."

Opposition to Cuomo's proposal melted in the legislature when he offered it as an option, but skepticism remained.

"It's just something the public is going to be fooled by," said Deputy Senate Majority Leader John DeFrancisco (R-Syracuse), who is running for governor.

Even Cuomo appeared to downplay the scope of the law as the state budget was being passed.

"Some employers will do it, some local governments will do it, but it's our best attempt to avoid the federal assault," Cuomo said. "The real answer is to repeal SALT."

MARISOL DIAZ-GORDON