New York: NYC the latest to pursue a tax on the wealthiest

David M. Kall | Friday, August 25, 2017

In its new fiscal year 2018 budget, New York included an extension of its millionaire's tax, which was set to expire at the end of 2017, but now will bring in an extra $2.2 billion each year. This incremental levy is the culmination of the 1% Plan for New York Tax Fairness put forth by the Fiscal Policy Institute and the Responsible Wealth project.

Now New York City wants a bite at the apple. In an Aug. 9, 2017 press release, Mayor Bill de Blasio, announced his plan for a "fair fix" tax on the "on [the] wealthiest New Yorkers to modernize subways and buses, [and] fund half-priced metrocards for low-income riders." The mayor characterized the revenue stream from such a tax as new and dependable, estimating an additional $800 million in annual funding for the transit system. He reasoned that "[t]he proposed tax adjustment – levied on fewer than 1% of the city's wealthiest tax filers – would also allow the City to cut in half subway and bus fares paid by 800,000 low-income New Yorkers."

It is no secret that the city is in dire need of transportation infrastructure upgrades. In July, Gov. Andrew Cuomo declared a state of emergency at the Metropolitan Transit Authority (MTA), reported CNN, in a piece titled "New York commuters' 'summer of hell.'" As part of his disaster declaration, the governor committed $1 billion to the MTA capital plan. The MTA is North America's largest transportation network, and serves 15.3 million people in the 5,000-square-mile area from New York City through Long Island, southeastern New York State, and Connecticut.

Gov. Cuomo believes that addressing Penn Station in a comprehensive manner is the first step to resolving New York's transportation challenges, because Amtrak service cuts "exacerbate the already overcrowded conditions of the New York City subways." To this end, in May, Gov. Cuomo announced the MTA Transit Genius Challenge, to focus on the following:

- Developing an immediate plan for the Penn Station summer crisis, pursuant to which derailments and cancellations delay millions of travelers.
- Recommending viable long-term management solution for Penn Station and turning it into a 21st Century transit hub.
- Challenging the MTA to modernize the New York City subway system and increase the number of trains at peak periods to relieve crowding and reduce delays.

Mayor de Blasio's fair fix tax would increase the city's highest income tax rate, from 3.876 percent to 4.41 percent, on taxable incomes above $500,000 for individuals, and above $1 million for couples. Approximately 0.8 percent, or 32,000 New York City tax filers, would actually pay it.

The new tax is projected to raise $700 million in 2018, and by 2022, $820 million yearly, in addition to an annual $1.6 billion in city operational support for subways and buses, and a $2.5 billion commitment, made in 2015, to the long-term needs of the MTA.

Mayor de Blasio's press release states that the $500 million in revenue dedicated to modernizing the city's aging subways and buses could support borrowing up to $8 billion for capital upgrades. He "believes this funding should be immediately directed toward core infrastructure improvements like signal improvements, new cars and track maintenance key to reducing delays and disruptions that have paralyzed the system in recent months."

Washington

New York's fair fix tax is different from other so called "wealth taxes" because it is not designed to address economic inequality, unlike, for example, Seattle's. Barely a month ago, we described that city's ordinance, passed on July 14, 2017, imposing a 2.25 percent tax on the income of joint tax filers with income over $500,000, and the same rate on single tax filers with over $250,000 in total annual income.

Article VII of the Washington Constitution requires all taxes to be "uniform upon the same class of property." Property includes "everything, whether tangible or intangible, subject to ownership."

In addition, Washington state law prohibits counties, cities, and city-counties from levying an income tax. Even the state itself does not currently impose an income tax, which makes it one of only seven without one.

Three lawsuits that have been filed since we addressed the ordinance in our blog assert these legal provisions to challenge the Seattle tax. The first, filed on the same day council passed the law, by Seattle resident S. Michael Kunath against the city, seeks a court declaration on the grounds of prohibitions by Washington's Constitution and state law.

The next two, both filed on Aug, 9, 2017, by the Freedom Foundation and the Opportunity for All Coalition, represent the interests of various Seattle residents who pay Seattle taxes. The coalition's complaint asserts biographical and employment information about its five plaintiffs, each of which "has an interest in invalidating the [tax] and preserving substantial reliance interests in Washington's long-standing prohibition on graduated personal income taxes."

As we observed in our piece describing the ordinance, the city is likely facing a difficult battle. For example, in a post describing the lawsuits, OpportunityWashington quoted a former chief justice of the Washington Supreme Court, who opined that "[c]ities only have taxing authority that's given to them by the state Legislature, and cities have not been authorized to impose an income tax. In fact, there's a statute that says they can't impose a net income tax." Additionally, "[t]he state constitution says property has to be taxed at the same rate, and income is considered property in Washington."

A Bloomberg article asserts that the ordinance is intended to challenge these constraints: "[m]embers of Seattle's politically progressive city council have hoped the tax would provoke a test case leading to the state Supreme Court overturning precedent that has long been a stumbling block to a state income tax." The article quotes the lawyer for the Freedom Foundation, who worries that the ordinance "represents politicians entirely out of control pursuing whatever policy objectives they want regardless of what the laws and the Constitution require…We think that's really, really dangerous."

Massachusetts

The Bay State has already dealt with a millionaire's tax. The Fair Share Amendment will hit the ballot in 2018, seeking voter approval for a new 4 percent tax on income over $1 million, for all tax years beginning on or after Jan. 1, 2019, and annual adjustments to reflect increases to the cost of living. If approved by voters, the Massachusetts Department of Revenue estimates that the tax would bring in $1.9 billion in new annual revenue.

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Team member bio