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## MEMORANDUM

TO: New York State Professional Fire Fighters Association (NYSPFFA)

FROM: Hinman Straub Advisors, LLC

RE: 2019-20 New York State Budget

DATE: April 3, 2019

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Early on Sunday, March 31, Governor Cuomo and the Legislature reached an agreement on a new state budget, just prior to the April 1 budget deadline. Legislators completed voting on budget legislation later in the day.

The 2019-20 state budget totals \$175.5 billion, maintains a 2% spending cap for the ninth year, and eliminates a \$2.3 billion projected deficit. The plan increases education aid by nearly \$1 billion, includes several measures intended to increase access to voting and raise major capital assistance for the Metropolitan Transportation Authority.

Significant provisions of the SFY 2019-20 state budget include the following:

### Major Actions:

- Extends Binding Arbitration to July 1, 2024.
- Protects the privacy of public employees (addresses, phone numbers, and emails).
- Ensures the collection of agency shop fees prior to Janus decision.
- Makes the 2% property tax cap permanent.
- Creates a commission to implement public campaign financing for legislative and statewide offices, authorizing up to \$100 million annually.
- \$10 million appropriated to implement early voting, and the budget requires the State Board of Elections to establish an online voter registration system, and to transmit voter registration applications to local boards of election. Voting hours would be expanded

upstate to begin at 6:00 A.M. Additionally, the budget increases from 2 hours to 3 hours the amount of time an employee make take off to vote.

- Eliminates cash bail for misdemeanors and non-violent felonies, and a new requirement that police officers must issue desk appearance tickets to most people charged with misdemeanors and Class E felonies, rather than making a custodial arrest.
- The enacted budget provides new safeguards for public sector unions and extending Janus protections to local governments and guarantees the right to organize and collectively bargain.

### Revenue Actions

The new budget a number of provisions to impose new taxes and increase revenue, including:

- In addition to administrative reforms of the Metropolitan Transportation Authority, the new budget includes new revenue to support MTA operations and improvements, including:
  - “Central Business District Tolling” of vehicles south of 60th Street in Manhattan, projected to raise \$15 billion.
  - A 4.15% tax on mansions on the sale of properties valued at \$25 million, estimated to yield \$365 million annually.
  - A six-member Traffic Mobility Review Board will be established by the TBTA (MTA) to advise on tolls, exemptions, and credits to ultimately be determined by the TBTA based on recommendations from the Board. Tolls will be variable and passenger vehicles will only be charged once per day. The implementation day will not be before December 31, 2020.
- Establishes a conditional tax on carried interest, the share of profits that the general partners of private equity and hedge funds receive as compensation.
- Enacts an excise tax on opioids.
- Imposes a special tax on passenger car rentals outside of the metropolitan commuter transportation district.
- Enacts a supplemental tax on vapor products, with the revenue deposited into the health care reform act resource fund.
- The Enacted Budget exempts some beverages (including bottled water) from sales tax in vending machines. This provision sunsets May 31, 2021.
- Authorizes Westchester County to impose an additional rate of sales and compensating use tax.

- The Enacted Budget includes the authorization of DOT to enter into agreements with fiber optic utilities related to the use and occupancy of state right of ways. Such “agreement” may include a fee for the use and occupancy of such right of ways.
- The budget includes a framework for the collection of required sales taxes by internet marketplace providers, which is expected to annually generate \$160 million in new revenue for local governments and \$320 million for the MTA capital plan lockbox. According to the Governor, “this proposal ensures that out-of-state merchants do not have a price advantage over our State’s retail community.”

See Appendix A for additional Revenue items contained in the Enacted Budget.

### **Environment**

- The new budget includes \$300 million for the Environmental Protection Fund (EPF), level funding over SFY 2018-2019. The EPF provides funding for environmental programs such as land acquisition, farmland protection, invasive species prevention and eradication, enhanced recreational access, water quality improvement, and environmental justice.
- Lawmakers reached agreement to ban plastic carryout bags and authorize a local fee on paper carryout bags, effective March 1, 2020. Various types of plastic bags would be exempt; including bags used to contain uncooked meat or fish, bulk food items, carry prescription drugs and used to deliver newspapers. Trash bags and plastic carryout bags used by a restaurant are also exempt, as well as food storage and garment bags. A county or city may opt-in to impose a five-cent fee on each paper carryout bag used at retail, with three cents going to the state’s Environmental Protection Fund, and the other two cents going to the locality.
- The budget requires the state’s largest generators of food waste to begin recycling their food scraps and to donate food to those in need.

### **Economic Development**

- Extends the Empire State Film Production Credit and Empire State Film Post Production Credit for two years.
- \$750 million for Round Nine of the Regional Economic Development Councils. The Enacted Budget includes core capital and tax-credit funding that will be combined with existing agency programs.
- The Enacted Budget includes \$100 million for a fourth round of the Downtown Revitalization Initiative. Each winning community is awarded \$10 million to develop a downtown strategic investment plan and implement key catalytic projects that advance the community’s vision for revitalization.

### **Criminal Justice**

- Enacts a new requirement that every entity that employs police or peace officers adopt a model law enforcement “use of force” policy. These policies would include information on current law regarding use of force by police officers, and guidelines regarding excessive use of force, conflict prevention and resolution. The head of a law enforcement agency would be required to report instances of the excessive use of force to the State Division of Criminal Justice Services.
- Reforms the State’s discovery process to require that both prosecutors and defendants share all information in their possession well in advance of trial. Defendants will also be allowed the opportunity to review whatever evidence is in the prosecution's possession prior to pleading guilty to a crime.

We continue to review the 2019-20 New York State budget in its entirety. Should you have any questions, please do not hesitate to contact us.

## APPENDIX A – Additional Revenue Items

### **Make the e-File Mandate Permanent (Part A)**

The Enacted Budget extends current electronic filing and payment mandates through December 31, 2024. These provisions are currently set to expire on December 31, 2019.

### **Expand the Employee Training Incentive Program (ETIP) Credit (Part B)**

The Enacted Budget amends the Employee Training Investment Program (“ETIP”) to allow business entities to receive the tax credit associated with ETIP if they conduct training and are otherwise eligible. It also would expand the definition of eligible training to include an internship program in software development or the development of renewable or clean energy.

### **Provide a Sourcing Rule for GILTI Apportionment (Part C)**

The Enacted Budget codifies receipts factor rule for the net amount of global intangible low taxed income (“GILTI”) included in business income. This legislation would codify the Commissioner’s discretionary adjustment to establish a permanent statutory sourcing rule for GILTI by adding a new subdivision 5-a to Tax Law § 210-A, and to New York City Administrative Code § 11-654.2, to define “net global intangible low-taxed income” and require that the net amount be added to the denominator of the apportionment fraction, with zero added to the numerator.

### **Decouple from IRC Federal Basis for NYS Manufacturing Test (Part D)**

The Enacted Budget decouples New York State from the federal adjusted basis for property used to determine whether a manufacturer is a qualified New York manufacturer.

### **Extend the Workers with Disabilities Tax Credit for Three Years (Part E)**

The Enacted Budget extends the sunset dates for the corporate and personal income tax credits for qualified employers that employ individuals with developmental disabilities until January 1, 2023.

### **Extend Three-Year Gift Addback Rule & Require Binding NYS QTIP Election (Part F)**

The Enacted Budget amends the estate tax to require an executor to make a qualified terminable interest property (QTIP) election on a decedent’s New York State estate tax return in order to claim a marital deduction for such property passing to the decedent’s spouse, whether or not a federal estate tax return was required to be filed. The bill would expressly require inclusion of the value of QTIP property remaining in the surviving spouse’s New York estate if a previous marital deduction was allowed on a New York return with respect to the transfer of such property to the spouse.

The bill would also extend to January 1, 2026, the expiration of the requirement that gifts that are taxable for federal gift tax purposes and that are made within three years of death are to be added back when calculating the decedent’s New York gross estate.

### **Discontinue the Energy Services Sales Tax Exemption (Part H)**

The Enacted Budget removes this disparity by repealing the exemption for transportation, transmission and distribution charges associated with gas and electricity purchased from an ESCO. As a result, sales tax would apply to charges for transporting, transmitting, or

distributing taxable gas or electricity, whether the commodity is purchased from an ESCO or a utility company. The bill would also clarify that transportation, transmission and distribution charges are taxable even if sold separately from gas or electricity.

### **Avoidance of Tax Shifts Due to Equalization Rate Changes (Part I)**

The Enacted Budget makes a technical correction to the recent law that requires assessors to provide notice to various local officials when the equalization rate differs from the locally stated level of assessment (LOA) by “five percentage points” or more (Real Property Tax Law §1204(3), as amended by L.2018, c.115). In addition, this provision would provide that when the Commissioner of Taxation and Finance has confirmed the locally stated level of assessment, he or she shall establish it as the final State equalization rate for the city, town or village as soon thereafter as is practice able.

### **Real Property Tax Efficiencies (Part J)**

The Enacted Budget:

- Allows a county and an assessing unit to agree that the local legislative body of a county shall appoint the members of the Board of Assessment Review that will hear and resolve assessment complaints within that assessing unit.
- Allows the Tax Department to approve assessor and county director training courses for credit without obliging the State to pay for the expenses of attendees, when the provider so requests.
- Allows the Tax Department to send certain statutory notices by email and/or by a website posting, rather than by postal mail.
- Changes the valuation date and taxable status date for special franchise property to eliminate the need for mid-year reporting.
- Requires electric generating facilities to annually report inventory, revenue, and expense data to the Tax Department to assist the Department in valuing these highly complex properties.

### **Amendments Related to Repeal of Tax Freeze Credit Program (Part K)**

The Enacted Budget repeals certain tax cap compliance reporting requirements that were left in place when the obsolete tax freeze credit statutes were repealed in 2018.

### **Create the NYS Employer-Provided Child Care Credit (Part L)**

The Enacted Budget creates the NYS Employer-Provided Child Care Credit to assist employers in providing quality childcare services to their employees. The IRS currently provides employers a credit for qualifying expenditures paid or incurred in providing child care alternatives for their employees. This would provide a similar state tax credit for New York employers to provide childcare for their employees located in New York. The credit would be equal to 25% of qualified childcare expenditures related to a childcare facility located in New York, plus 10% of qualified childcare resources and referral expenditures, attributable to employees working in New York, and, like the federal credit, would be capped at \$150,000 per taxable year.

Qualified child care expenditures include operating costs of a qualified child care facility of the taxpayer or under contract with another taxpayer, as well as amounts paid or incurred to acquire, construct, rehabilitate, or expand property used as part of a care facility of the taxpayer.

### **Include Certain NYS Gambling Winnings in Nonresident NYS Income (Part M)**

The Enacted Budget includes gambling winnings in excess of \$5,000 from wagering transactions within New York State in the definition of nonresident New York Source income, and add a requirement that withholding occur on gambling winnings when such withholding is required at the federal level.

### **Make Technical Changes to the Farm Workforce Retention Credit (Part N)**

The Enacted Budget amends to the farm workforce retention credit to allow the credit for the same farming activities eligible for the farmers school tax credit.

### **Permanently Extend the Tax Shelter Provisions and Update Tax Preparer (Part O)**

The Enacted Budget extends through July 1, 2024, the current tax shelter reporting and penalty provisions and would update the tax preparer penalties for preparers to:

- clarify the penalties against preparers who take positions on returns or claims that are not properly supported by the Tax Law
- ensure that the penalties for failing to sign a return and for failing to provide a required identification number on a return apply to all tax preparers, regardless of whether they are required to be registered with Tax and Finance.

### **Extend Higher PIT Rates for Five Years (Part P)**

The Enacted Budget extends for five years the top tax bracket under the personal income tax. Currently the top tax bracket, with a rate of 8.82%, is scheduled to expire for taxable years beginning after 2019. This bill would extend the higher bracket for taxable years 2020, 2021, 2022, 2023 and 2024.

### **Extend PIT Limitation on Charitable Contributions for Five Years (Part Q)**

The Enacted Budget extends, for five years, the charitable deduction limitation under the NYS and NYC personal income tax for individuals with adjusted gross income of more than \$10 million.

### **Extend the Clean Heating Fuel Credit for Three Years (Part R)**

The Enacted Budget extends the sunset dates for the corporate and personal income tax credits for purchasing bioheating fuel for residential purposes until January 1, 2023.

### **Extend Authorization to Manage Delinquent Sales Tax Vendors Permanently (Part S)**

The Enacted Budget extends through December 31, 2024, certain provisions concerning the segregated sales tax account program to allow the current provisions to remain in place and ensure the state may continue to safeguard sales tax revenues collected by noncompliant vendors.

### **Repeal License Fees on Certain Co-Ops (Part T)**

The Enacted Budget amends the cooperative corporations law and the rural electric cooperative law to eliminate a ten-dollar annual fee paid by cooperative corporations and rural electric cooperatives beginning on January 1, 2020.

### **Expand the Current Historic Rehabilitation Credit (Part U)**

The Enacted Budget allows the credit for rehabilitation of historic properties to be claimed for qualified rehabilitation projects undertaken within a state park, state historic site, or other land owned by the state, that is under the jurisdiction of and leased to private entities by the Office of Parks, Recreation and Historic Preservation (OPRHP), regardless of the census tract location of the rehabilitation project.

#### **Sales Tax Exemption Related to the Dodd-Frank Protection Act (Part V)**

The Enacted Budget extends for two years the exemption from sales and use tax certain sales or services transacted between certain financial institutions and their subsidiaries.

#### **Employer Recovery Hiring Tax Credit (Part W)**

The Enacted Budget establishes the Recovery Tax Credit program to provide tax incentives to certified employers for employing eligible individuals in recovery from a substance use disorder in part-time and full-time positions in New York State. The proposal would authorize the allocation of \$2 million in refundable tax credits computed on a 1 dollar per hour worked per eligible employee basis, with a minimum requirement for each employee of 500 creditable hours worked and a cap for each employee of 2000 creditable hours worked.

Qualifying employers must have a formal working relationship with a local recovery community organization and eligible employees must demonstrate they have completed a course of treatment for a substance use disorder and are in a state of wellness. The credit may be claimed only one time for each eligible employee.

#### **Exclude from Entire Net Income Certain Contributions to the Capital of a Corporation (Part X)**

The Enacted Budget amends the Tax Law and the New York City Administrative Code to exclude from entire net income certain contributions to the capital of a corporation.

#### **Technical Corrections to the Tax Law and the New York City Administrative Code (Part Z)**

The Enacted Budget makes technical corrections to various provisions of the Tax Law and the New York City Administrative Code including:

- Section 1 would amend Tax Law § 43(a)(3) to clarify that if a taxpayer is a partner in a partnership that is a life sciences company or a shareholder of a New York S corporation that is a life sciences company, then the life sciences research and development tax credit is applied at the level of the entity. This bill would also correct two erroneous references in Tax Law § 43(c)(2) and (5).
- Section 2 would amend Tax Law § 209(5) to remove an outdated reference to the Internal Revenue Code (“IRC”). As part of the Tax Cuts and Jobs Act (TCJA), IRC § 857(b)(3) was amended to remove subparagraph (A), the *alternative tax on capital gains*, for real estate investment trusts (“REITs”). This bill would remove a reference to this now non-existent amount from the Tax Law § 209(5) definition of entire net income for REITs.

- Section 3 would amend Tax Law § 211(8)(a) to remove a reference to a provision of law, in Tax Law § 210, that was repealed by New York’s corporate tax reform, effective 1/1/15, and also a reference to the *issuer’s allocation percentage*, which is no longer used.
- Sections 4 and 5 would amend Tax Law § 213-b to remove an unnecessary provision related to estimated payments of the tax imposed under Tax Law § 209-B (the “MTA surcharge”) that refers to S corporations, since the MTA surcharge does not apply to S corporations; to correct a reference to *New York S corporations*; and to correct *third month* to *fourth month* for the end date for interest paid to taxpayers on estimated tax overpayments, consistent with the change in return due dates enacted by Chapter 60 of the Laws of 2016.
- Section 6 would amend Tax Law § 1503 to revise the treatment of *policyholders surplus accounts*, reflecting changes to federal law, under TCJA, for taxable years 2018-2025.

#### **Exemption from Real Property Taxation for Qualified Energy Systems (Part AA)**

The Enacted Budget exempts specified energy systems – specifically, a solar or wind energy system, farm waste energy system, microhydroelectric energy system, fuel cell electric generating system, microcombined heat and power generating equipment system, and electric energy storage system – from local taxation, and any requirement that the owner of property that comprises or includes an energy system enter into a PILOT agreement, if:

- the energy system is installed on real property that is owned or controlled by the State or a State Entity
- the State or a State Entity has agreed to purchase the energy produced by such energy system, or the environmental credits or attributes created by virtue of such energy system’s operation, in accordance with a written agreement with the owner or operator of such energy system.

#### **Cap Annual Growth in STAR Exemption Benefits (Part LL)**

The Enacted Budget impose a zero percent cap upon the growth in Basic and Enhanced STAR benefits for purposes of the STAR exemption, beginning with the 2019-20 school year. For purposes of the STAR credit, the existing 2% cap would remain intact.

#### **Allow Disclosure of Certain Information on Cooperative Housing Corporation Information Returns (Part MM)**

The Enacted Budget allows the state to share certain information reported by cooperative housing corporations with local assessors for real property tax administration purposes.

#### **Clarify Calculation of New York City Enhanced Real Property Tax Circuit Breaker Credit (Part NN)**

The Enacted Budget makes a technical amendment to the Tax Law to clarify the calculation of the Enhanced Real Property Tax Circuit Breaker Credit applicable to New York City.

#### **Require Mobile Home Park Reporting to Tax Department (Part OO)**

The Enacted Budget improves the administration of the STAR Credit program by requiring information about manufactured home parks to be reported to the Department of Taxation and Finance.

**Prevent STAR fraud and abuse (Part PP)**

The Enacted Budget expands the STAR Income Verification Program by providing that effective with 2020 assessment rolls, the Commissioner of the Department of Taxation and Finance would be required to annually verify that Enhanced STAR exemption recipients meet the residency and age requirements, thus requiring the same eligibility verification for the Enhanced STAR exemption that it has done for the basic STAR exemption.

**Disclosure of STAR-Related Information to Assessors (Part QQ)**

The Enacted Budget authorizes the Commissioner of Taxation and Finance to disclose certain STAR-related information to assessors, in order to facilitate the administration of STAR and other property tax exemptions.

**Lower Basic STAR income limit to \$250,000 (Part RR)**

The Enacted Budget lowers the income limit for the Basic STAR exemption to \$250,000, beginning with the 2019-20 school year. For purposes of the STAR credit, the existing \$500,000 income limit would remain intact.

**Clarify STAR Check Tax Bill Notices (Part SS)**

The Enacted Budget clarifies the notice that appears on the school tax bills of recipients of STAR credit checks. This proposal clarifies the tax bill notice by rewording it to say that a “STAR check has been or will be mailed” to them.

**Improve the STAR Administrative Process (Part TT)**

The Enacted Budget improves the STAR administrative provisions to be more responsive to taxpayer needs, as to (1) dispensations for “good cause” and (2) the “renunciation process.”

**Employer Compensation Expense Tax (Part YY)**

The Enacted Budget amends the tax law to utilize statewide wage reporting system related to determining covered employees.

**NYC Tax on Estates and Trusts (Part BBB)**

The Enacted Budget amends the tax law related to estates and trusts claimed limited to \$10,000.

**Statement of Price on Bills and Receipts (Part DDD)**

The Enacted Budget includes provisions related to additional notifications regarding the payment of certain sales taxes.

**Suspension of Licenses to Operate Motor Vehicles (Part EEE)**

The Enacted Budget includes changes related to individuals that lose their drivers license related to past-due tax liabilities.

**Exempts Tangible Personal Property as Part of a Monument (Part FFF)**

The Enacted Budget includes “tangible personal property” that will become physical components of monuments for tax purposes.

**Correctional Facility Closures (Part HHH)**

The Enacted Budget authorizes the Governor to close up to three correctional facilities. This language amends earlier budget language that authorized the closure of two facilities.

**Limousine Safety (Part III)**

The Enacted Budget makes several changes related to commercial vehicle safety rules, including increased fines and criminal penalties associated with operating a vehicle that is under suspension.

**Voting Members of the PACB (Part AAA)**

The Enacted Budget requires members of the Public Authorities Control Board to “vote within the scope of his or her legal authority.” The Governor has the ability to remove members of the board for violations.