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New York and Connecticut Introduce Coordinated Tax-the-Rich Legislation

On Thursday, January 19, New York and Connecticut lawmakers, along with legislators from California, Hawaii, Illinois, Maryland and Washington, introduced tax legislation targeting wealthy taxpayers. The pending proposals are similar to those promoted by Massachusetts Senator Elizabeth Warren during her 2020 presidential campaign and were funded by Fund Our Future, a tax policy advocacy group. The New York proposal seeks to increase capital gains rates and adds to existing bills introduced earlier this month and in 2021, which are summarized briefly below.

I. **Senate Bill 2162**, introduced on January 19, proposed an additional tax on long-term capital gains, dividends or any other type of capital gain income of:

i. 7.5% for married individuals filing jointly, surviving spouses and heads of household with taxable income over $500,000;

ii. 15% for married individuals filing jointly, surviving spouses and heads of household with taxable income over $1 million;

iii. 7.5% for single individuals, married individuals filing separately, and estates and trusts with taxable income over $400,000; and

iv. 15% for single individuals, married individuals filing separately, and estates and trusts with taxable income over $800,000.

II. **Senate Bill 1570**, introduced on January 12, proposed a mark-to-market tax on New York residents with net assets worth $1 billion or more at the end of each taxable year beginning in 2023.

i. Gain or loss would be recognized as if each asset owned by an individual were sold for its fair market value on December 31, 2022.

ii. Any net gain from these deemed sales would be included in the taxpayer's income for 2023 up to a "phase-in cap" amount.

iii. At the taxpayer's option, any tax payable may be made for the current taxable year or in 10 equal annual installments along with a "deferral charge."

iv. Each year thereafter there would be a deemed sale of assets of any individual with net assets of at least $1 billion as of December 31 of the preceding year, with credit given for gains previously subject to the tax.

III. **Senate Bill 3462 (Assembly Bill 4643A)**, introduced in January 2021, proposed creating separate taxes on inheritance and gift income, amending the computation of the estate tax, and creating a gift tax. These proposals were referred to the New York legislature's Ways and Means and Budget and Revenue committees in January 2022 without further action.

Two separate Connecticut bills propose increasing marginal tax rates, establishing a capital gains surcharge and restructuring certain taxes as follows:

Bill 774 proposed:

i. increasing the two highest personal income marginal tax rates to 7.49% and 7.20%; and

ii. establishing a 1% and a 0.75% surcharge on net gain from the sale of capital assets of Connecticut taxpayers in the top two income brackets.

Bill 351 proposed:

i. creating a 5% surtax for taxpayers in the highest income bracket on income from net gain from the sale or exchange of a capital asset and dividend and interest income;

ii. implementing a 10% tax on annual gross revenues of any business with annual gross revenues exceeding $10 billion from digital advertising services;

iii. enacting a statewide property tax on commercial and residential real property with an assessed value of over $1.5 million;

iv. extending and increasing the corporate income tax rate to 11.5% from 7.5%;

v. raising the corporation business tax surcharge to 20%;

vi. hiring 50 additional in-house auditors and more wage enforcement agents; and

vii. authorizing additional marginal tax rates for individuals with Connecticut taxable income over $1 million (9.55%), $10 million (10.25%) and $25 million (10.65%).

The Connecticut provisions also include those favorable to less wealthy taxpayers, including a $500 refundable child tax credit (for up to three children), expanded and increased property tax credits, and a reduction in the 5.5% marginal rate to 5%. *The Washington Post* quoted a New York state senator as saying, "The point here is to make sure we do at the state level what is not being done at the federal level." Wealth taxes like the New York mark-to-market tax are an untested form of taxation in the United States, where taxpayers would have to pay annual taxes on asset values rather than on income. Passage of such legislation would almost certainly prompt wealthy taxpayers to consider relocating to lower tax jurisdictions and could raise constitutional challenges as well as practical problems like valuing assets with unrealized gains. Even if taxpayers in New York and Connecticut feel that proposals like these are unlikely to become law now, they would be well advised not to dismiss the possibility that these measures could gain traction over time. As previously discussed here, Massachusetts, another Democratic-leaning state in the Northeast, recently passed a "millionaires tax" after six failed attempts to impose a progressive tax system dating back over 100 years. Thus, even if New York and Connecticut fail to pass the legislation described above, the mere existence of such legislation could be a harbinger of things to come.

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