UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, STATE OF CONNECTICUT, STATE OF MARYLAND, and STATE OF NEW JERSEY, Plaintiffs, v. STEVEN T. MNUCHIN, in his official capacity as Secretary of the United States Department of Treasury; the UNITED STATES DEPARTMENT OF TREASURY; DAVID J. KAUTTER, in his official capacity as Acting Commissioner of the United States Internal Revenue Service; the UNITED STATES INTERNAL REVENUE SERVICE; and the UNITED STATES OF AMERICA, Defendants.	Civil Action No. 18-cv-6427 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF JURY REQUESTED

INTRODUCTION

1. The States of New York, Connecticut, Maryland, and New Jersey (the "Plaintiff States") bring this action seeking declaratory and injunctive relief to invalidate the new $10,000 cap on the federal tax deduction for state and local taxes ("SALT"). Congress has included a deduction for all or a significant portion of state and local taxes in every tax statute since the enactment of the first federal income tax in 1861. The new cap effectively eviscerates the SALT deduction, overturning more than 150 years of precedent by drastically curtailing the deduction's

scope. As the drafters of the Sixteenth Amendment[1] and every subsequent Congress have understood, the SALT deduction is essential to prevent the federal tax power from interfering with the States' sovereign authority to make their own choices about whether and how much to invest in their own residents, businesses, infrastructure, and more—authority that is guaranteed by the Tenth Amendment and foundational principles of federalism. The new cap disregards Congress's hitherto unbroken respect for the States' distinct and inviolable role in our federalist scheme. And, as many members of Congress transparently admitted, it deliberately seeks to compel certain States to reduce their public spending. This Court should invalidate this unconstitutional assault on the States' sovereign choices.

2. As used in this complaint, "SALT deduction" refers to the federal individual income tax deduction for all or a substantial portion of state and local (i) real and personal property taxes, (ii) income taxes, and (iii) sales taxes. Until the 2017 federal tax overhaul, Congress consistently provided a deduction for all or a substantial portion of state and local taxes. In the most recent iteration of the deduction prior to the 2017 tax overhaul, federal tax law permitted federal taxpayers who itemized their tax deductions to deduct, subject to certain incidental limitations, all of their state and local real and personal property taxes, and either state and local income taxes or sales taxes.

3. A SALT deduction has been a part of every federal income tax law since the first federal income tax was enacted in 1861. The deduction is necessary to ensure that the exercise of the federal government's tax power does not unduly interfere with the sovereign authority of the

[1] The Sixteenth Amendment to the United States Constitution was ratified in 1913 and provides: "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

States to determine their own taxation and fiscal policies by crowding the States out of traditional revenue sources, like income, property, and sales taxes. The SALT deduction further ensures that States have the prerogative to determine the appropriate mix and level of public investments to make on behalf of their residents, as well as the authority to choose how to raise revenue to pay for those investments. The new cap on the SALT deduction will raise the federal tax liability of millions of taxpayers within the Plaintiff States. And by increasing the burden of those who pay substantial state and local taxes, the new cap on the SALT deduction will make it more difficult for the Plaintiff States to maintain their taxation and fiscal policies, hobbling their sovereign authority to make policy decisions without federal interference.

4. The necessity of protecting the States' sovereign authority to determine their own taxation and fiscal policies was an explicit concern for the Founders at the time of the ratification of the Constitution. That necessity informed all decisions about imposing the first federal income tax during the Civil War, and it was confirmed in the subsequent enactment history of the Sixteenth Amendment.

5. The longstanding statutory deduction is based on Congress's historic understanding that a deduction for all or a significant portion of state and local taxes is constitutionally required because it reflects structural principles of federalism embedded in the Constitution. The Founders were deeply concerned that the federal government would exercise its tax power to encroach upon the original and sovereign authority of the States to raise revenues through taxes. To avoid this possibility, the Founders reserved to the States concurrent authority to levy taxes. When the Constitution was ratified, it was widely understood that the federal government could not abrogate the States' sovereign tax authority, and that the federalism principles embedded in the Constitution would constrain the federal government's tax power.

6. Since Congress enacted the first federal income tax in 1861, Congress has provided a deduction for all or a significant portion of SALT in every federal income tax law, respecting federalism constraints on its taxing power and the concurrent tax authority of the sovereign States. This uninterrupted practice provides strong evidence that the federal government lacks constitutional authority to drastically curtail the deduction.

7. The ratification history of the Sixteenth Amendment provides further confirmation that Congress's unprecedented curtailment of the deduction cannot be reconciled with the limits on the federal government's tax powers under Article I, Section 8 and the Sixteenth Amendment to the United States Constitution. When the States agreed to ratify the Sixteenth Amendment, they did so on the understanding that the federal government's income tax power was and would remain subject to federalism constraints, and that the federal government was required to accommodate the sovereign tax power of the States when it imposed a federal income tax. Moreover, federal income tax measures considered immediately before and after ratification expressly included a SALT deduction. This history demonstrates that the States approved the federal government's authority to tax income subject to longstanding federalism principles, including the requirement that the federal government could not drastically curtail the scope of the SALT deduction.

8. On December 22, 2017, following a rushed and highly partisan process, the federal government reversed over 150 years of precedent by enacting sweeping tax legislation that, among other things, eviscerated the deduction for state and local taxes. Effective 2018, individual and married taxpayers filing jointly may deduct only up to $10,000 for their combined state and local (i) real and personal property taxes, and (ii) income taxes or sales taxes. For married taxpayers filing separately, each taxpayer is limited to a $5,000 deduction. *See* An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal

Year 2018 (the "2017 Tax Act" or "Act"), Pub. L. No. 115-97, § 11042, 131 Stat. 2054 (2017) (H.R. 1).

9. The new cap on the SALT deduction is unprecedented, unlawful, and will cause significant and disproportionate injury to the Plaintiff States and their residents.

10. The new cap will significantly increase the amount of taxes residents in Plaintiff States will pay to the federal government. For example, when considering the effect of the 2017 Tax Act with and without the new cap on the SALT deduction, the new cap will be responsible for New York taxpayers paying an additional $14.3 billion in federal taxes in tax year 2018, and an additional $121 billion between 2018 and 2025, the year when the new cap is set to expire. The other Plaintiff States will experience similar effects. This revenue is a primary means by which Congress is offsetting the cost of the tax cuts in the 2017 Tax Act.

11. While taxpayers in the Plaintiff States will bear the cost of paying for the new tax cuts, they will receive the least benefit from the 2017 Tax Act. As a percentage of each State's population, more taxpayers in the Plaintiff States will experience a tax increase relative to taxpayers in other States because of the 2017 Tax Act. And relative to the amount of taxes the taxpayers in the Plaintiff States were paying to the federal government before the 2017 Tax Act, they will receive a disproportionately small share of the tax cuts. By unfairly benefiting taxpayers of other States at the expense of the taxpayers of Plaintiff States, the 2017 Tax Act injures the Plaintiff States' sovereign and quasi-sovereign interests.

12. In addition to disproportionately harming the Plaintiff States relative to others, the new cap on the SALT deduction will cause significant and irreparable direct harm to the Plaintiff States and their taxpayers.

13. Among other things, the new cap on the SALT deduction is likely to substantially decrease home values in the Plaintiff States, hurting both in-state homeowners and the Plaintiff States themselves. Under the law before the 2017 Tax Act, homeowners could deduct the full cost of property taxes on their federal income taxes. By capping the deduction, the 2017 Tax Act increases the cost of owning a home, which, in turn, depresses home values.

14. Homes are the most valuable assets many homeowners possess. With depressed home prices, many homeowners will lose the equity on which they depend to finance retirement, school tuition, and other investments. Homeowners will also have less to spend on goods and services, which, in turn, will lead to decreased business sales, lower the Plaintiff States' revenue, and curtail their economic growth.

15. By reducing the wealth of taxpayers in the Plaintiff States and undermining the States' revenue sources, the new cap on the SALT deduction will ultimately make it more difficult for the States to maintain their current taxation and fiscal policies, and deprive the Plaintiff States of the ability to raise revenue in the future. These effects will force the Plaintiff States to choose between their current level of public investments and higher tax rates. By interfering with the States' sovereign authority in this way, the new SALT deduction cap violates bedrock principles of federalism enshrined in the Tenth Amendment, and it exceeds the federal government's tax powers under Article I, Section 8 and the Sixteenth Amendment to the U.S. Constitution.

16. This interference with the States' sovereign authority is particularly egregious because Congress enacted the cap on the SALT deduction with the purpose of coercing a handful of States to change their taxation and fiscal policies. During the debates on the 2017 Tax Act, executive officials and Republican legislators—the legislation received no Democratic votes in either house of Congress—issued press statement after press statement making clear their intention

to injure the Plaintiff States. For example, President Trump stated that the new cap on the SALT deduction was intended to force States like New York and the other Plaintiffs States to change their policies or they were "not going to benefit" from the 2017 Tax Act. In Secretary Mnuchin's words, the new cap on the SALT deduction was intended to "send a message" to the Plaintiff States that they need to alter the choices they have made about publicly investing in their States' residents and businesses. And as a Republican legislator acknowledged, the new cap on the SALT deduction was intended to "kick" Plaintiff States—an assault that proponents hoped would force the Plaintiff States to change their policy choices.

17. Because Congress acted with the purpose and effect of forcing the Plaintiff States to change their taxation and fiscal policies, the new cap also violates principles of equal state sovereignty. The Constitution guarantees each State equal authority to control its sovereign affairs, including the ability to determine state taxation and fiscal policy. Without a compelling purpose, the federal government may not target a few States for unfavorable treatment to coerce those States into changing their sovereign policy choices.

18. The 2017 Tax Act violates this constitutional guarantee. The Plaintiff States have exercised their sovereign authority to adopt taxation and fiscal policies that support vital public investments that benefit their residents. Because a bare congressional majority of one party disagrees with the Plaintiff States' policy choices, Congress enacted the new cap on the SALT deduction with the purpose and effect of coercing the Plaintiff States into reducing taxes and cutting the vital public investments and services those taxes support. The new cap thus constitutes a purposeful invasion of the sovereign authority of a handful of States to determine their own taxation and fiscal policies without a compelling justification.

19. For all of these reasons, the Plaintiff States seek a declaration that the new cap on the SALT deduction violates the U.S. Constitution, and an injunction barring the new cap's enforcement.

JURISDICTION AND VENUE

20. The Court has jurisdiction over the action under the provisions of 28 U.S.C. §§ 1331, 1340, and 2201.

21. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) and § 1391(e)(1)(B).

PARTIES

22. The Plaintiff States are all sovereign States of the United States of America.

23. Attorney General Barbara D. Underwood brings this action on behalf of the State of New York at the request of Governor Andrew M. Cuomo to protect the interests of New York and its residents. The Attorney General is the chief law officer of the State and is authorized to file civil suits directly involving the State's rights and interests. *See* N.Y. Executive Law § 63(1). Among other things, the Attorney General is empowered to protect New York's sovereign tax authority. *See* N.Y. State Const. art. XVI, § 1.

24. Attorney General George Jepsen brings this action on behalf of the State of Connecticut at the request of Governor Dannel P. Malloy to protect the interests of Connecticut and its residents. *See* Conn. Gen. Stat. § 3-5. The Attorney General is Connecticut's chief legal officer with general supervision over all civil legal matters in which the State is an interested party. *Id.* § 3-125.

25. Plaintiff the State of Maryland is represented by and through the Attorney General of Maryland, Brian Frosh, its chief legal officer, with general charge, supervision, and direction of

the State's legal business. The Attorney General's powers and duties include acting on behalf of the State and the people of Maryland in the federal courts on matters of public concern. Under the Constitution of Maryland, and as directed by the Maryland General Assembly, the Attorney General has the authority to file this suit to challenge the actions by the federal government, which threaten the public interest and welfare of Maryland residents. Md. Const. art. V, § 3(a)(2); Joint Resolution 1, 2017 Md. Laws.

26. Plaintiff the State of New Jersey is represented by and through the Attorney General Gurbir S. Grewal, the State's chief legal officer. Attorney General Grewal has the authority to file this suit to protect the sovereign interests of the State. *See* N.J. Stat. Ann. § 52:17A-4(e), (g).

27. As explained below, the Plaintiff States and their residents will suffer legally cognizable harm because of the new cap on the SALT deduction, and an order invalidating the new cap would redress the Plaintiff States' injuries. Accordingly, the Plaintiff States have standing to bring this action.

28. Congress has not provided an alternative procedure for the Plaintiff States to challenge the constitutionality of the new $10,000 cap on the SALT deduction.

29. Defendant Steven Mnuchin is the Secretary of the U.S. Department of Treasury and is responsible for overseeing the Department of Treasury and the Internal Revenue Services (IRS). *See* 26 U.S.C. § 7801; 31 U.S.C. § 301. He is sued in his official capacity.

30. Defendant the U.S. Department of Treasury is an executive department that oversees the IRS. *See* 26 U.S.C. § 7801.

31. Defendant David J. Kautter is the Acting Commissioner of the IRS and is responsible for overseeing the IRS, including its implementation and enforcement of the 2017 Tax Act. *See* 26 U.S.C § 7803. He is sued in his official capacity.

32. Defendant the IRS is a federal tax-collection agency that is responsible for the implementation and enforcement of the internal revenue laws, including the 2017 Tax Act. *See* 26 U.S.C § 7803.

33. Defendant the United States of America includes all government agencies and departments responsible for the passage and implementation of the 2017 Tax Act.

ALLEGATIONS

I. CONGRESS'S CONSTITUTIONAL POWER TO IMPOSE AN INCOME TAX IS LIMITED BY ITS OBLIGATION TO PROVIDE A DEDUCTION FOR ALL OR A SIGNIFICANT PORTION OF STATE AND LOCAL TAXES.

34. The Supreme Court has made clear that Congress's powers vis-à-vis the States must be construed in light of history. *See, e.g.*, *Printz v. United States*, 521 U.S. 898, 905-18 (1997). As the Court recently explained, the "lack of historical precedent" for a new assertion of congressional power is "[p]erhaps the most telling indication" of a "severe constitutional problem." *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 505 (2010) (quotation marks omitted). Measured by history, the new cap and its drastic curtailment of the SALT deduction is unprecedented.

35. The power to tax was an original power of the sovereign States that has never been surrendered. When the States formed the union, they consented to give the federal government a concurrent power to tax, but only to the extent that federal power could not be exercised to abrogate the sovereign authority of the States to establish their own taxation and fiscal policies. At ratification, it was widely understood that the federalism principles enshrined in the Constitution would serve as a check on the federal government's tax power.

36. Recognizing this structural limitation on its power to tax, the federal government has always respected the sovereign tax authority of the States by providing a deduction for all or a

substantial portion of state and local taxes as part of the federal income tax. Indeed, since the federal government first exercised its income tax power in 1861, Congress has included such a deduction in every federal income tax law. Relying on this constitutional guarantee and uninterrupted practice, the States have structured their own state tax regimes around the federal SALT deduction.

37. The ratification history of the Sixteenth Amendment provides further confirmation that a deduction for all or a significant portion of state and local taxes is constitutionally required. When the States ratified the Sixteenth Amendment, they confirmed the historic limitations on the federal government's income tax power. At the time of the amendment's ratification, it was widely understood that, to the extent the federal government taxed income, it would provide a deduction for all or a significant portion of state and local taxes. The States—including the Plaintiff States—relied upon this understanding in making the decision to ratify the Sixteenth Amendment.

38. The longstanding understanding that a deduction for all or a significant portion of state and local taxes is constitutionally required has remained the law until the recent tax overhaul, when Congress not only reversed over 150 years of precedent by imposing the new cap, but did so with the purpose of coercing the Plaintiff States into changing the choices they have made about publicly investing in their residents and businesses. Press statements from President Trump, Secretary Mnuchin, and Republican legislators make clear that the new cap on the SALT deduction was intended to "send a message" to the Plaintiff States that they must change their public policy choices or suffer. As explained below, these statements stand in stark contrast to the last 150 years of federal tax law, which has respected the States' sovereign authority.

A. The Founders understood the federal government's tax power to be limited by the sovereign and co-equal tax sovereignty of the States.

39. The power to tax and spend is a sovereign function of the States that predates the formation of the United States. *See, e.g.*, *Lane County v. Oregon*, 74 U.S. 71, 76 (1868). The States have always retained their sovereign right to determine their own taxation and fiscal policies, and that sovereign authority imposes a structural check on the tax power of the federal government. As explained below, the Founders designed the Constitution to ensure that the federal government could not exercise its tax power to abrogate the States' sovereign tax authority, or to use its own tax power to coerce the States into changing or abandoning their own taxation and fiscal policies.

40. For much of the colonial period, taxes were levied primarily by colonial governments, which raised revenues from a diverse array of property and income taxes, among other sources.[2] When, in the late eighteenth century, the Crown attempted to increase its own taxes, the colonies waged a war to preserve their right to self-government, including the right to determine their own taxation and fiscal policies.[3]

41. Following the failures of the Articles of Confederation, the Founders recognized the necessity of creating a national government with the power to tax, but they were also deeply concerned that giving the federal government an unlimited tax power would encroach on the

[2] The precursor to the modern income tax, known as the faculty tax, was levied by colonial governments as early as the 1630s. *See* Alvin Rabushka, *Taxation in Colonial America* 165, 170-78, 206-07 (2008); Edwin R.A. Seligman, *The Income Tax: A Study of the History, Theory, and Practice of Income Taxation at Home and Abroad* 367-68 (2d ed. 1914). Although the colonies paid some taxes to the British government, external taxes were relatively low until the decades before the Revolutionary War and consisted largely of import duties and royal quitrents—i.e., land taxes imposed in lieu of a service obligation—not income or property taxes. *See* Rabushka, *supra*, at 715, 866.

[3] *See, e.g.*, Rabushka, *supra* note 2, at 1, 144.

States' traditional revenue sources.[4] This concern pervaded the state debates about ratification. As a prominent contemporaneous legal scholar explained, "[w]hen the constitution of the United States was under the consideration of the state conventions, there was much concern expressed on the subject of the general power of taxation over all objects of taxation, vested in the national government."[5]

42. Although the Founders were particularly concerned with the possibility of the federal government's direct interference with the States' tax powers, the ratification debates make clear that the Founders understood that creating a federal tax power could also interfere with state sovereignty.[6]

43. To prevent such encroachment, the Founders adopted a dual federalist structure and reserved to the States a concurrent tax authority. As Alexander Hamilton explained during the ratification debates, "the individual States would, under the proposed Constitution, retain an *independent and uncontrollable authority* to raise revenue to any extent of which they may stand in need, *by every kind of taxation*, except duties on imports and exports."[7] Further protections were afforded to the States in the Guarantee Clause, which ensures, among other things, the power of the States "to set their legislative agendas" and to determine their own "form" and "method" of self-government. *New York v. United States*, 505 U.S. 144, 185 (1992).[8]

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[4] *See, e.g.*, Sarah F. Liebschutz & Irene Lurie, *The Deductibility of State and Local Taxes*, 16 Publius 51, 52 (1986).

[5] 1 James Kent, *Commentaries on American Law* 367 (O. Halsted ed., 1826).

[6] *See, e.g.*, *The Federalist* No. 33 (Hamilton) (Congress.gov) (arguing that the federal government could not use its tax power to abrogate a land tax imposed by a State).

[7] *Id.* (emphasis added).

[8] *See* U.S. Const. art. IV, § 4 ("The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on

44. In 1791, the Founders solidified these protections when they ratified the Tenth Amendment, confirming that because the power to tax was reserved to the States, the federal government could not exercise its own tax power in such a way as to encroach upon the States' sovereign tax authority.[9] By reserving to the states a concurrent power to tax, and thereby imposing structural limits on the federal government's tax power, the Founders ensured that the federal government could not use its new tax power to undermine the sovereign authority of the States to determine how to make public investments and how to tax their residents to support those investments. The right of the States to determine their own taxation and fiscal policies is thus enshrined in the federalist structure of the Constitution, as well as the Guarantee Clause and the Tenth Amendment.

B. Pre-Sixteenth Amendment practice confirms Congress's consistent understanding and practice that its income tax power cannot be exercised without providing a deduction for all or a significant portion of state and local taxes.

45. While the Founders were principally concerned with direct federal interference with state tax authority (such as a federal statute abrogating a state tax), the actions of the early Congresses reflected a broader understanding of the need to refrain from exercising the federal tax power in the domains in which the States had traditionally exercised their tax authority. In the decades following the adoption of the Constitution, most taxes were levied by the States, not the

Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.").

[9] *See* U.S. Const. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."); *see also, e.g.*, *Thomson v. Pacific R.R. Co.*, 76 U.S. 579, 591 (1869) (explaining that "the power to tax all property, business, and persons" was a power "original in the States" and that was never "surrendered" to the federal government); N.Y. State Const. art. XVI, § 1 ("The power of taxation shall never be surrendered, suspended or contracted away, except as to securities issued for public purposes pursuant to law.").

federal government. To the extent the federal government imposed its own taxes, it respected the federalism principles enshrined in the Constitution by levying customs duties and excise taxes, rather than taxing revenue sources traditionally taxed by the States, such as property and income.[10] When the federal government did attempt to tax incomes—a tax power traditionally exercised by the States—it accommodated the sovereign authority of the States by providing a deduction for all or a significant portion of state and local taxes. These accommodations reflected Congress's consistent understanding that the revenue sources traditionally taxed by the States should be largely free from the interference that would result from concurrent federal taxation.

46. Congress first considered imposing an income tax during the War of 1812. At that time, lawmakers reaffirmed the views expressed by the Founders about the dangers of the federal government imposing a tax that would interfere with the States' ability to generate revenue from traditional sources. To guard against such interference, an initial proposal for a federal income tax exempted entirely state and local taxes from federal taxation, providing that the federal income tax would extend "only to such capital or employments *as are not taxed by any existing laws*."[11] Although never adopted, this early proposal makes clear that early Congresses understood that the application of federal taxes to sources already taxed by the States would interfere with the States' own tax authority, and that, in the context of the income tax, the federal government was *required* to accommodate the States by exempting from taxation the income that taxpayers pay towards state and local taxes.

[10] *See* Roy G. Blakey & Gladys C. Blakey, *The Federal Income Tax* 2 (1940); *see also* Seligman, *supra* note 2, at 389, 397-406 (describing the history of the income tax as adopted by the States until the Civil War).

[11] 28 Annals of Cong. 1079 (Jan. 18, 1815) (emphasis added); *see also* U.S. Treasury, State of the Treasury, No. 438, 13th Cong., 3d Sess., in 2 *American State Papers, Finance* 885, 887 (1815) (proposing consideration of an income tax to fund the War of 1812).

47. Congress adhered to this understanding when it eventually adopted the first federal income tax in 1861.[12] Despite the nation's desperate need for revenue during the Civil War, the first federal income tax provided a deduction for "all national, state, or local taxes assessed upon the property, from which the income is derived."[13] As legislators stressed, the deduction was necessary to ensure that the federal tax did not burden the States' own ability to raise tax revenue—a power that had been reserved to the States under the federalism guarantees of the Constitution. For example, House Ways and Means Committee member Justin Smith Morrill explained: "It is a question of vital importance to [the States] that the General Government should not absorb all their taxable resources—that the accustomed objects of State taxation should, in some degree at least, go untouched. The orbit of the United States and the States must be different and not conflicting."[14] Committee Chairman Thaddeus Stevens made similar comments, explaining that Congress was primarily concerned with avoiding "double taxation," and that it was a paramount goal of the drafters to "exclud[e] from this tax the articles and subjects of gain and profit which are taxed in another form."[15] Although the Civil War income tax was modified several times, the deduction for SALT was inviolable and remained in effect until the federal income tax was repealed in 1872.[16]

[12] *See generally* Blakey & Blakey, *supra* note 10, at 4 (discussing the 1861 income tax).

[13] Act of Aug. 5, 1861, ch. 45, § 49, 12 Stat. 292, 309.

[14] Cong. Globe, 37th Cong., 2d Sess. 1194 (1862).

[15] Cong. Globe, 37th Cong., 2d Sess. 1577 (1862).

[16] *See* Act of July 1, 1862, ch. 119, § 91, 12 Stat. 432, 473-74; Act of June 30, 1864, ch. 173, § 117, 13 Stat. 223, 281; Act of March 3, 1865, ch. 78, 13 Stat. 469, 479; Act of March 2, 1867, ch. 169, § 13, 14 Stat. 471, 478; Act of July 14, 1870, ch. 255, § 9, 16 Stat. 256, 258. *See generally* Seligman, *supra* note 2, at 435-68 (discussing the Civil War income tax).

48. The Civil War income tax—and its deduction for state and local taxes—provided "an important precedent" for subsequent federal income-tax regimes.[17] When the federal income tax was briefly revived between 1894 and 1895, legislators modeled the tax on the Civil War precedent,[18] providing a broad deduction for "all national, State, county, school, and municipal taxes, not including those assessed against local benefits, paid within the year."[19] At the time, there was virtually no debate about the SALT deduction; its inclusion was a foregone conclusion. As even an opponent of the bill acknowledged, there was no question that individuals would be "allowed to deduct their taxes."[20]

49. The 1894 federal income tax was ultimately short-lived. In 1895, the Supreme Court held the tax unconstitutional because it was a direct tax that had not been apportioned. *See Pollock v. Farmer's Loan & Trust Co.*, 158 U.S. 601 (1895); *see also* U.S. Const. art. I, § 2. Nonetheless, the 1894 income tax, like its Civil War predecessor, reflected Congress's longstanding constitutional understanding of the type of SALT deduction it was required to provide to avoid interfering with the States' ability to raise tax revenue from the same sources. And as the Supreme Court has recognized, this kind of uninterrupted historical understanding is important evidence of the constitutional limitations on Congress's power. *See, e.g.*, *Free Enterprise Fund*, 561 U.S. at 505.

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[17] Blakey & Blakey, *supra* note 10, at 5.

[18] *See* Seligman, *supra* note 2, at 508.

[19] Act of August 27, 1894, ch. 349, § 28, 28 Stat. 509, 553.

[20] 26 Cong. Rec. 6,888 (1894) (statement of U.S. Senator David B. Hill); *see also* Seligman, *supra* note 2, at 505 (describing Senator Hill's opposition to the income tax on States' rights grounds).

C. When the States ratified the Sixteenth Amendment, they affirmed the structural limits on the federal government's tax power and the constitutional necessity of a deduction for all or a significant portion of state and local taxes.

50. In the years following *Pollock*, the federal government's power to impose an income tax was unsettled. A number of proposals to restore a federal income tax—all of which included a deduction for all or a significant portion of state and local taxes[21]—were introduced in Congress, but none passed until after the ratification of the Sixteenth Amendment.[22] As explained below, the ratification process of the amendment and the legislative enactments immediately following ratification make clear that both Congress and the States understood the federal government's income tax powers to be constrained by federalism, and that the federal government cannot drastically curtail the SALT deduction without running afoul of that constraint.

[21] *See, e.g.*, H.R. 5, 62d Cong. § 2 (1911) (proposing an income tax that included a deduction for "all national, State, county, school, and municipal taxes, not including those assessed against local benefits"); H.R. 110, 61st Cong. § 2 (1909) (same); H.R. 1473, 61st Cong. § 2 (1909) (same); H.R. 2110, 61st Cong. § 2 (1909) (same); H.R. 21216, 60th Cong. § 2 (1908) (same); H.R. 10548, 60th Cong. § 2 (1907) (same); H.R. 345, 60th Cong. § 2 (1907) (same).

In 1909, Congress considered a proposed income tax sponsored by Senator Joseph Bailey as an amendment to the Payne-Aldrich Tariff Act. The proposal, which was modeled on the 1894 income tax, included a deduction for SALT. *See* 44 Cong. Rec. 2444 (May 27, 1909) ("Provided, however, that it be proper to deduct from such gains, profits, and income . . . all national, state, county, town, district, and municipal taxes, not including those assessed against local benefits . . . ."). Although not adopted, the proposal sparked Congress's consideration of the Sixteenth Amendment. Both the constitutional amendment and the tariff bill, *sans* income tax, passed in Congress in the summer of 1909. *See* S.J. Res. 40, 61st Cong., 36 Stat. 184 (1909) (Sixteenth Amendment); Payne-Aldrich Tariff Act, ch. 6., 36 Stat. 11 (1909); *see also Taft Tax Message Fails to Unite Party*, N.Y. Times, June 17, 1909, at 4 (describing a message from President Taft to Congress recommending that Congress pass the tariff bill without an income tax but consider a separate amendment to the Constitution authorizing an income tax).

[22] The Sixteenth Amendment provides that "Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

51. After Congress voted to adopt the Sixteenth Amendment in the summer of 1909, a four-year-long ratification process began in the States. Across the country, state legislators raised concerns about the federalism implications of the proposed amendment, fearing that it would expand the federal government's power at the expense of the States. Indeed, the States' rights argument "was the most frequently voiced reason for opposing the amendment."[23] As explained below, the assurances made by the supporters of the Sixteenth Amendment to overcome these federalism concerns provide critical evidence about the Amendment's original meaning and confirm the constitutional limitations that the 2017 Tax Act transgresses by capping the SALT deduction.

52. A number of States engaged in extended debates concerning the Sixteenth Amendment's impact on state taxation powers. New York played a leading role in these debates.[24] In January 1910, then-Governor (and later Chief Justice of the U.S. Supreme Court) Charles Evans Hughes delivered a widely circulated message (the "Hughes Message") to the New York Legislature opposing ratification on federalism grounds.[25] Although Hughes's primary concern was whether the amendment would enable the taxation of income derived from state and municipal securities, he raised broader concerns about its implications for federalism and the balance of power between the federal government and the States. Hughes feared that the proposed amendment "would be an impairment of the essential rights of the State," including the States' ability to

[23] John D. Buenker, *The Ratification of the Federal Income Tax Amendment*, 1 Cato J. 183, 204 (1981).

[24] *See* John D. Buenker, *The Income Tax and the Progressive Era* 239, 250 (1985).

[25] *See id.* at 255.

generate revenue from traditional sources.[26] As Hughes warned, "we may desire that the Federal Government may be equipped with all necessary National powers in order that it may perform its National function," but "we must be equally solicitous to secure the essential bases of State Government."[27]

53. Governor Hughes's concerns gained traction throughout the United States. The Governor of Connecticut, Frank B. Weeks, based his opposition to the amendment on the sentiments in the Hughes Message, and Massachusetts's legislative committee on federal relations cited Hughes's argument as the reason for its report opposing the amendment. State legislators in Louisiana, South Carolina, and Utah also heavily cited the Hughes Message in their opposition to the amendment.[28]

54. Many other States articulated similar concerns. Georgia initially voted against the amendment, with legislators warning that "it was a grave thing for States to confer such power on the Federal Government," and that "it would probably be better for Georgia to adopt an income tax law for herself and reject the proposition for a National income tax."[29] After the Virginia legislature rejected the amendment, one newspaper summarized the sentiments of many of the state legislators: "It will be a long time before Virginia will set her sister States the example of surrendering unnecessarily to the central government any important right now reserved to the States."[30]

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[26] *Hughes is Against Income Amendment*, N.Y. Times, Jan. 6, 1910, at 2 (reproducing Hughes's message to the legislature).

[27] *Id.*

[28] *See* Buenker, *supra* note 24, at 264-65.

[29] *Georgia Avoids Income Tax*, N.Y. Times, Aug. 6, 1909, at 1.

[30] *Decisive Blow at the Income Tax Amendment*, Daily Press (Newport News, V.A.), Mar. 10, 1910, at 4; *see also Views of the Virginia Editors*, Times Dispatch (Richmond, V.A.), Feb. 16,

55. The various objections to the Sixteenth Amendment demonstrate that the States understood that the primary power the amendment solidified was the concurrent power of Congress to tax incomes. And the objections highlight that the main concern shared by the States was that such concurrent authority would impinge on the States' tax base and undermine a traditional source of tax sovereignty.

56. These vigorous objections to the Sixteenth Amendment posed a serious obstacle to ratification, which required the assent of thirty-six States. In order to overcome these concerns, the champions of the Sixteenth Amendment provided repeated and vigorous assurances that the federal government's income tax power under Article I had been subject to meaningful federalism constraints, and that the same constraints would apply equally to the Sixteenth Amendment's authority to tax income. For example, U.S. Senator William Borah argued in widely publicized statements that the federal tax power, while broad, was limited by the tax sovereignty of the States, and that the federal government could not exercise its powers under the Sixteenth Amendment to encroach on the States' traditional tax authority. Borah stressed that the Sixteenth Amendment must be construed in light of the Founders' understanding of the federal tax power, as well as the Founders' desire to preserve the independent and inviolable tax sovereignty of the States, free from federal intrusion.[31] As Borah explained, "[t]he taxing power of the United States *is subject to an*

1913, at 4 ("The ratification of the sixteenth amendment to the Federal Constitution seems to have been a voluntary surrender upon the part of the States—to the national government, and appears upon its face to relinquish an inherent State right—that of levying a tax upon incomes.").

[31] *See* 45 Cong. Rec. 1696-98 (Feb. 10, 1910).

implied restraint arising from the existence of the powers in the State which are obviously intended to be beyond the control of the General Government."[32]

57. Another U.S. Senator, and a former Secretary of State and Secretary of War, Elihu Root, echoed Borah's arguments in a widely publicized letter sent to the New York legislature responding to the Hughes Message.[33] Like Borah, Root argued that the proposed amendment must "be interpreted in the light of history."[34] In light of the longstanding constitutional understanding, "[t]he taxing power of the Federal Government does not . . . extend to the means or agencies through or by the employment of which the States perform their essential functions."[35] Root further argued that there was a "uniform, long-established, and indisputable rule" of construction that would apply to the Sixteenth Amendment and prohibit the federal taxing power from encroaching on "the powers or instrumentalities of the State."[36]

58. U.S. Senator Joseph Bailey, another prominent defender of the amendment, toured the United States and spoke before a number of state legislatures in defense of the amendment.[37]

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[32] *Id.* at 1696 (emphasis added) (internal citation omitted). Borah reiterated these sentiments in a June 1910 article, arguing that "notwithstanding the unlimited nature of the taxing power of Congress when *standing alone*, it must be construed in the light of the fact that we have a dual Government[,]" and that "[t]he decision was based upon the law of self-preservation—the whole scope and plan of Government as outlined in the Constitution being that there were two separate and distinct sovereignties unembarrassed by each other." William E. Borah, *Income-Tax Amendment*, 191 N. Am. Rev. 755, 758 (1910).

[33] *See Root for Adoption of Tax Amendment*, N.Y. Times, Mar. 1, 1910, at 4 (reproducing letter from Root to New York State Senator Frederick Davenport).

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] Just before Congress proposed the constitutional amendment to the States in July 1909, Senator Bailey was the lead author of legislation to establish an income tax with a deduction for SALT. *See* 44 Cong. Rec. 2444 (May 27, 1909) (text of amendment submitted by Senator Bailey);

Bailey "ridicul[ed] the idea that its passage would alter the positions of the Federal government and the States, or impair the integrity of States' rights."[38] He assured opponents: "It is not true that such an amendment would abridge the rights of the State. No change but one is proposed, and that is that the income tax should be levied upon wealth rather than population. . . . Everything the State can do or tax now it can do after this amendment is adopted."[39]

59. The assurances provided by Senators Borah, Root, Bailey, and others were important in persuading New York and other States to ratify the Sixteenth Amendment. Based on these assurances, the States understood that the new authority they were conferring on the federal government would not empower the federal government to encroach on the States' sovereign tax power, including their ability to impose their own state tax regimes free from federal interference.

60. These public declarations about the meaning of the Sixteenth Amendment also provide insight into how Congress's income tax power under the Sixteenth Amendment should be construed. *See, e.g.*, *New York v. United States*, 505 U.S. 144, 163-66 (1992).

61. The drafters and defenders of the Sixteenth Amendment intended for the federal government's income tax powers to be constrained by the need to accommodate the States' sovereign tax authority.

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see also supra note 21 (describing how Congress opted to propose a constitutional amendment to the States instead of immediately adopting individual income tax legislation).

[38] *Bailey Pleads for Income Tax*, Times Dispatch (Richmond, V.A.), Mar. 2, 1910, at 1.

[39] *Bailey Speaks at Columbia*, Watchman and Southron (Sumter, S.C.), Feb. 19, 1910, at 6.

The constitutional arguments made by the drafters and defenders of the Sixteenth Amendment were grounded in existing Supreme Court precedent and the thinking of contemporary legal scholars on the federalism constraints imposed on the federal tax power. *See, e.g.*, *Veazie Bank v. Fenno*, 75 U.S. 533, 541 (1869); *Lane County v. Oregon*, 74 U.S. 71, 77-78 (1868); Thomas M. Cooley, *The General Principles of Constitutional Law in the United States of America* 61-62 (3d ed. 1898); J.I. Clark Hare, 1 *American Constitutional Law* 265-66 (1889).

62. When Congress first exercised its income tax power after the amendment's ratification in 1913, Congress respected the federalism constraints promised by the amendment's champions. Similar to prior federal income tax statutes, the first post-amendment federal income tax law—the Revenue Act of 1913—included a deduction for "all national, State, county, school, and municipal taxes paid within the year."[40]

63. Under Supreme Court precedent, "[e]arly congressional enactments" of this nature "provide contemporaneous and weighty evidence of the Constitution's meaning." *Printz*, 521 U.S. at 905 (alteration and quotation marks omitted). As relevant here, the 1913 Revenue Act's SALT deduction establishes that Congress understood that its newly minted power to impose a federal tax on incomes was subject to the same federalism limitations that had applied to every federal tax statute since the Founding.[41]

64. H. Parker Willis, an economist who advised the House Banking and Currency Committee on the 1913 Revenue Act, wrote that federalism concerns guided the drafting of the Act. As Willis explained, Congress "desired that the question of interference with state taxes should very carefully be safeguarded."[42] In the context of SALT, Willis explained that the deduction was included to ensure the federal government did not interfere with the States' existing tax powers. Because several States already had income tax regimes, "it was believed[] the field

[40] *See* Revenue Act of 1913, ch. 16, § II(B), 38 Stat. 114, 167.

[41] *See Bowers v. Kerbaugh-Empire Co.*, 271 U.S. 170, 174 (1926) (explaining that "[i]t was not the purpose or effect" of the Sixteenth Amendment "to bring any new subject within the taxing power").

[42] H. Parker Willis, *The Tariff of 1913: III*, 22 J. Pol. Econ. 218, 224, 227 (1914).

ought to be shared with the states."[43] Ultimately, this was accomplished by providing for "the general deduction of state and municipal taxes in computing income."[44]

65. As the Supreme Court has recognized, this early post-amendment history "provide[s] contemporaneous and weighty evidence of the Constitution's meaning." *Printz*, 521 U.S. at 905 (quotation marks omitted). And, here, it provides clear evidence that Congress's income tax power under the Sixteenth Amendment is limited by the requirement that it must provide a deduction for all or a significant portion of SALT.

D. Congress has provided a deduction for all or a significant portion of all state and local taxes in every federal income tax law since the adoption of the Sixteenth Amendment.

66. Since the enactment of the 1913 Revenue Act, Congress has adhered to the same constitutional understanding: that to exercise its income tax power, the federal government must accommodate the States' sovereign tax authority by providing a deduction for all or a significant portion of state and local taxes. Although Congress has imposed some incidental limitations on the deduction in the past, the core of the deduction for state and local property and income taxes has remained intact, across 51 different Congresses and 56 different tax acts.[45]

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[43] *Id.* at 227.

[44] *Id.*

[45] *See* Revenue Act of 1916, ch. 463, § 5(a), 39 Stat. 756, 759 (allowing deduction for "[t]axes paid within the year imposed . . . under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits"); Revenue Act of 1917, ch. 63, § 1201, 40 Stat. 300, 330 (no material changes to SALT deduction); Revenue Act of 1918, ch. 18, § 214(a)(3), 40 Stat. 1057, 1067 (no material changes to SALT deduction); Revenue Act of 1921, ch. 136, § 214(a)(3), 42 Stat. 227, 239 (preserving SALT deduction, but simplifying the statutory language); Revenue Act of 1924, ch. 234, § 214(a)(3), 43 Stat. 253, 270 (no material changes to SALT deduction); Revenue Act of 1926, ch. 27, § 214(a)(3), 44 Stat. 9, 26 (same); Revenue Act of 1928, ch. 852, § 23, 45 Stat. 791, 799 (same); Revenue Act of 1932, ch. 209, § 23, 47 Stat. 169, 179-80 (same); National Industrial Recovery Act of 1933, ch. 90, 48 Stat. 195 (same); Revenue Act of 1934, ch. 277, § 23, 48 Stat. 680, 688 (preserving SALT

deduction, but disallowing deduction of estate and gift taxes); Revenue Act of 1935, ch. 829, 49 Stat. 1014 (no material changes to SALT deduction); Revenue Act of 1936, ch. 690, § 23, 49 Stat. 1648, 1658-59 (preserving SALT deduction and reintroducing deduction for estate and gift taxes); Revenue Act of 1937, ch. 815, § 1, 50 Stat. 813, 816 (no material changes to SALT deduction); Revenue Act of 1938, ch. 289, § 23, 52 Stat. 447, 460-61 (same); Internal Revenue Code of 1939, ch. 2, § 23, 53 Stat. 1, 12 (preserving SALT deduction in Internal Revenue Code); Revenue Act of 1939, ch. 247, 53 Stat. 862 (1939) (no material changes to SALT deduction); Revenue Act of 1940, ch. 419, 54 Stat. 516 (same); Revenue Act of 1941, ch. 412, § 202, 55 Stat. 687, 700 (same); Revenue Act of 1942, ch. 619, 56 Stat. 798 (same); Revenue Act of 1943, ch. 63, 58 Stat. 21 (same); Revenue Act of 1945, ch. 453, 59 Stat. 556 (same); Revenue Act of 1948, ch. 168, 62 Stat. 110 (same); Revenue Act of 1950, ch. 904, 64 Stat. 906 (same); Revenue Act of 1951, ch. 521, 65 Stat. 452 (1951); Internal Revenue Code of 1954, ch. 736, § 164(a), 68A Stat. 3, 47 (reorganizing Internal Revenue Code and preserving SALT deduction); Technical Amendments Act of 1958, Pub. L. No. 85-866, 72 Stat. 1606 (preserving SALT deduction without change); Revenue Act of 1964, Pub. L. No. 88-272, § 207, 78 Stat. 19, 40-42 (restructuring statute but preserving SALT deduction and allowing a SALT deduction for gasoline taxes); Act of Oct. 27, 1972, Pub. L. No. 92-580, 86 Stat. 1276 (1972) (preserving SALT deduction but capping deduction for gasoline taxes for residents of American Samoa); Tax Reform Act of 1976, Pub. L. No. 94-455, § 1951(3), 90 Stat. 1520, 1837 (preserving SALT deduction without change); Revenue Act of 1978, Pub. L. No. 95-600, § 111, 92 Stat. 2763, 2777 (preserving deduction but repealing deduction for a narrow category of taxes); Crude Oil Windfall Profit Tax Act of 1980, Pub. L. No. 96-223, § 101(b), 94 Stat. 229, 250 (preserving SALT deduction without change); Act of Jan. 14, 1983, Pub. L. No. 97-473, § 202, 96 Stat. 2605, 2609 (preserving SALT deduction and adding technical language about the treatment of Indian and tribal governments); Social Security Amendments of 1983, Pub. L. No. 98-21, § 124, 97 Stat. 65, 90-91 (no material change to SALT deduction); Deficit Reduction Act of 1984, Pub. L. No. 98-369, § 474(r), 98 Stat. 494, 844 (preserving the SALT deduction but making technical amendments to the statute); Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, § 516, 100 Stat. 1613, 1771 (no material changes to SALT deduction); Tax Reform Act of 1986, Pub. L. No. 99-514, §§ 134, 1432, 100 Stat. 2085, 2116, 2729 (same); Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 1941(b)(2)(A), 102 Stat. 1107, 1323 (same); Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, § 1018(u)(11), 102 Stat. 3342, 3590 (same); Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 11111(a),104 Stat. 1388, 1388-410 (same); Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (same); Small Business Job Protection Act of 1996, Pub. L. No. 104-188, § 1704(t)(79), 110 Stat. 1755, 1891 (same); Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (same); Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 (same); Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. No. 108-27, 117 Stat. 752 (same); Working Families Tax Relief Act of 2004, Pub. L. No. 108-311, 118 Stat. 1166 (same); American Jobs Creation Act of 2004, Pub. L. No. 108-357, § 501(a), 118 Stat. 1418, 1520 (permitting deduction of state and local sales taxes); Gulf Opportunity Zone Act of 2005, Pub. L. No. 109-135, § 403(r)(1), 119 Stat. 2577, 2628 (no material changes to SALT deduction); Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109-222, 120 Stat. 345 (2006) (same); Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, § 103(a), 120 Stat. 2922, 2934 (extending deduction of state and local sales taxes); Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, § 201(a), 122 Stat. 3765,

67. Congress has not only preserved the deduction over time, but it has repeatedly recognized the deduction's importance as a federalism safeguard. When considering reforms to the tax code in 1963, a House Report stated that it was necessary to retain the SALT deduction to preserve federalism when "the State and local governments on one hand and the Federal Government on the other hand tap this same revenue source."[46] The report concluded that maintaining the deduction prevented federal interference in state and local tax policy, ensuring that States could freely structure their tax systems without undue influence from the federal government.[47]

68. Proposals to repeal the SALT deduction have been repeatedly defeated, due in large part to constitutional concerns. During the 1980s, for example, a proposal to eliminate the SALT deduction was defeated after a number of constitutional scholars and elected officials argued that repealing the SALT deduction was unconstitutional. For example, U.S. Senator Daniel Patrick Moynihan explained to Congress that repealing the SALT deduction would violate deeply embedded federalism principles and disrupt the "constitutional balance in some fundamental

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3864 (extending deduction of state and local sales taxes); American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 1008, 123 Stat. 115, 317 (permitting deduction for state or local taxes imposed on the purchase of certain motor vehicles); Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 9015(b)(2)(A), 124 Stat. 119, 871 (2010) (no material changes to SALT deduction); Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, § 722(a), 124 Stat. 3296, 3316 (extending deduction of state and local sales taxes); American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, § 205(a), 126 Stat. 2313, 2323 (2013) (same); Tax Increase Prevention Act of 2014, Pub. L. No. 113-295, §§ 105(a), 209(c), 221(a)(12)(D), (26), (95)(B)(ii), 128 Stat. 4010, 4013, 4028, 4038, 4040 & 4051 (extending deduction of state and local sales taxes, eliminating deduction for motor vehicle taxes, and other amendments to 26 U.S.C. § 164 not materially changing SALT deduction); Consolidated Appropriations Act of 2016, Pub. L. No. 114-113, § 106(a), 129 Stat. 2242, 3046 (2015) (repealing expiration date for deduction of state and local sales taxes).

[46] H.R. Rep. No. 88-749, at 48 (1963).

[47] *See id.* at 48-50.

way."[48] The Governor of New York, Mario M. Cuomo, testified before Congress that the SALT deduction is a "fundamental constitutional concept," and that repealing the deduction would violate the "essential predicate" of the compact between the States and federal government.[49] Governor Cuomo went on to explain that federalism principles would be violated even if the States benefited from other provisions of the proposed tax reform: "[n]o matter how good a deal you make," repealing the SALT deduction would "change the nature of this Republic."[50] And U.S. Senator Dave Durenberger, the Chair of the Senate Subcommittee on Intergovernmental Relations, argued that the SALT deduction was critical to federalism because it "prevent[ed] the national government from capturing all of the tax base," "preserve[d] some portion of the base for state and local revenue sharing," and "cushion[ed] the harmful tax competition among states by reducing the effect of fiscal disparities among them."[51]

69. In response to these and other concerns, Congress rejected efforts to repeal the SALT deduction for income and property taxes in the 1986 tax reform.[52] And up until the most

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[48] *Tax Reform Proposals—XIX: Hearing Before the S. Finance Comm.*, 99th Cong. 70 (1985); *see also* Daniel Patrick Moynihan, *Constitutional Dimensions of State and Local Tax Deductibility*, 16 Publius 71 (1986) (arguing that a repeal of the SALT deduction would be unconstitutional on federalism grounds).

[49] *The Impact of Repeal of the Deductions for State and Local Taxes: Hearings Before the Subcomm. on Monetary and Fiscal Policy of the Joint Economic Committee*, 99th Cong. 87 (1985).

[50] *Id.*

Others echoed Governor Cuomo's historical and constitutional argument. *See, e.g.*, *Tax Reform Proposals—XIX*, *supra* note 48, at 14 (statement of Jacob Javits, former U.S. Senator from New York) ("When the income tax was passed, the understanding was that the Federal Government had to get its revenue there, leaving the property tax to the States and localities. And if you deny the deductibility, you destroy this balance at one fell swoop."); *id.* at 35 (testimony of Ed Herschler, Governor of Wyoming) ("The proposed elimination of deductibility threatens to weaken our federation of states, which is the foundation of our nation.").

[51] *See id.* at 7.

[52] *See* Liebschutz & Lurie, *supra* note 4, at 64-70.

recent tax overhaul—through over 60 different tax laws over 150 years—Congress has never significantly curtailed the scope of the SALT deduction. *See* 26 U.S.C. § 164 (2012) (SALT deduction in effect prior to the 2017 Tax Act).

70. Congress's consistent respect for the States' sovereign authority to determine their own taxation and fiscal policies stands in stark contrast to the passage of the 2017 Tax Act, and the repeated statements by the President, the Treasury Secretary, and numerous legislators that the new cap on the SALT deduction was intended "kick" and coerce the Plaintiff States into changing their public spending policies.

E. The Plaintiff States have come to rely on the existence of a deduction for all or nearly all state and local taxes.

71. Based on the historical longevity of the SALT deduction, the States have developed substantial reliance interests with respect to the deduction, further solidifying the provision of a deduction for all or a significant portion of state and local taxes as a constitutional requirement. *Cf. National Fed'n of Indep. Bus. v. Sebelius (NFIB)*, 567 U.S. 519, 580-85 (2012) (weighing States' reliance interests when evaluating an assertion of federal power).

72. At the time the Sixteenth Amendment was ratified in 1913, only a handful of States had their own income tax regimes.[53] As noted above, Congress included the SALT deduction in the 1913 Revenue Act in part to avoid interfering with these States' tax laws.

[53] Many colonies imposed faculty taxes, which were a precursor to the modern income tax, and over a dozen States experimented with their own income tax regimes during the nineteenth century. At the time the Sixteenth Amendment was ratified, however, many of these regimes had been allowed to lapse. *See* Seligman, *supra* note 2, at 367-428. Wisconsin is widely considered to have adopted the first modern state income tax regime in 1911. *See* Ajay K. Mehrotra, *Forging Fiscal Reform: Constitutional Change, Public Policy, and the Creation of Administrative Capacity in Wisconsin, 1880–1920*, 20 J. of Policy Hist. 94, 94-95 (2008).

73. In the subsequent century, scores of other States adopted their own income tax regimes, relying on the existence of a deduction for all or a significant portion of SALT. As previous Congresses have recognized, the SALT deduction removes what would otherwise be a substantial barrier to States adopting their own income tax laws. Eliminating or drastically curtailing the deduction now makes those state taxes more expensive because taxpayers will face concurrent taxes on the same income, making it more difficult for States to levy their own taxes and generate revenue.[54]

74. In total, some forty-one States now levy broad-based taxes on individual income.[55] Among these States, there is tremendous diversity in the state income tax regimes. For example, eight States impose a single tax rate on all income, while the remainder vary tax rates by income bracket.[56] Among the latter group, top marginal rates vary from 3.07% in Pennsylvania to 13.3% in California.[57] This diversity in tax policy is "[o]ne of federalism's chief virtues"—the promotion of "States as laboratories." *Gonzales v. Raich*, 545 U.S. 1, 42 (2005) (O'Connor, J., dissenting).

75. The revenues the States generate from state income taxes are vital. For example, New York's income tax alone generates approximately 30% of the State's annual receipts and

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[54] *See, e.g.*, H.R. Rep. No. 88-749, at 48-49 (1963) (explaining that the SALT deduction is a necessary "accommodation" to ensure that the States and federal government can "tap this same revenue source" and to avoid interference with the States' tax policy choices).

[55] *See* Tax Policy Center, *How Do State and Local Individual Income Taxes Work*, *at* http://www.taxpolicycenter.org/briefing-book/how-do-state-and-local-individual-income-taxes-work (last visited July 16, 2018) [https://perma.cc/SJ25-PCPZ].

[56] *See id.*

[57] *See id.*

more than 60% of total tax collections.[58] For fiscal year 2017, the state income tax generated approximately $47.6 billion.[59]

76. The Plaintiff States use this tax revenue to offer essential services and to make vital public investments. For example, in the 2017 state fiscal year (FY), New York alone spent $26.6 billion on direct funding and grants to schools; $26.1 billion for hospitals and other health services; $2.9 billion to build and maintain roads and bridges; and $4.2 billion to support police and public safety services. For the 2015-2016 school year, the last year for which data is available, real property taxes funded approximately 49% of statewide primary education.[60]

77. Many of the programs funded by the States—and state taxes—provide public benefits that extend well beyond the Plaintiff States' borders. For example, in FY 2017, New York spent $58 million to protect airports, ports, and public waterways; $335 million to maintain its state parks; over $700 million to support energy conservation; and $4.9 billion to support higher education.

II. THE NEW CAP ON THE SALT DEDUCTION WILL SIGNIFICANTLY AND DISPROPORTIONATELY HARM THE PLAINTIFF STATES AND THEIR RESIDENTS, IN VIOLATION OF THE U.S. CONSTITUTION.

78. Prior to the 2017 Tax Act, federal law permitted individuals who itemized their individual income tax deductions to deduct, with only incidental limitations, all of their: (1) state

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[58] *See id.*

[59] *See* New York State Dep't of Tax and Finance, *Fiscal Year Tax Collections: 2016-2017*, *at* https://www.tax.ny.gov/research/collections/ fy_collections_stat_report/2016_2017_ annual_statistical_report_of_ny_state_tax_collections.htm (last visited July 16, 2018) [https://perma.cc/YUH9-7T4J].

[60] *See* Annual Financial Report (Form ST-3) for All New York State Public Schools, *at* https://stateaid.nysed.gov/st3/st3data.htm (last visited July 16, 2018).

and local real estate taxes, (2) state and local personal property taxes, and (3) either state and local income taxes or state and local sales taxes. *See* 26 U.S.C. § 164(a)-(b) (2012).

79. The 2017 Tax Act eviscerates the SALT deduction for individual taxpayers.[61] Under the 2017 Tax Act, individuals may deduct only up to $10,000 total in (i) state and local real and personal property taxes, and (ii) either state and local income taxes or state and local sales taxes. Married taxpayers filing separately may deduct up to $5,000 each.[62] *See* Pub. L. No. 115-97, § 11042. Like many of the provisions of the 2017 Tax Act, the new cap on the SALT deduction is effective beginning in tax year 2018, and it will expire after 2025 without further action by Congress. *See id.*

80. Although the federal government has previously enacted incidental limitations on the SALT deduction, the new $10,000 cap on the SALT deduction is unprecedented in several respects. First, while Congress has previously imposed limitations on the types of state and local taxes subject to the deduction, Congress has never before limited the deduction of property and income taxes—taxes that are at the core of the States' revenue-raising efforts.

81. Second, the new cap is the first *direct* limitation on the deduction for state and local income and property taxes. Congress has previously placed general limits on the amount of itemized deductions taxpayers could take based on taxpayers' overall income. But these measures were often intended to maintain the progressive nature of the income tax and to raise revenue, rather than to curtail deductions for taxpayers of all incomes, with the goal of injuring a handful

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[61] The $10,000 cap does not apply to taxes that are "paid or accrued in carrying on a trade or business." Pub. L. No. 115-97, § 11042.

[62] *See* H.R. Rep. No. 115-466, at 679 (2017) (Conf. Rep.) (characterizing the $10,000 cap as an "exception" to the general rule that "State and local income, war profits, and excess profits taxes are not allowable as a deduction").

of States.[63] Moreover, those past limitations were not direct caps on the amount of the SALT deduction a taxpayer could take.

82. Third, the $10,000 limit on the new cap is particularly low, and it is far exceeded by the amount that many taxpayers in the Plaintiff States pay in SALT. For example, in 2015, the most recent year for which tax data is available, the average SALT deduction claimed by the 3.3 million New York taxpayers who itemized their deductions on their federal tax returns was $21,943. Exhibit ("Ex.") 1 (Decl. of Lynn Holand) at 3-4.

83. The cap is not only unprecedented, but it will cause significant injuries to the Plaintiff States and their sovereign and quasi-sovereign interests—precisely the kind of injuries and interference the Framers of the Tenth and Sixteenth Amendments intended to preclude.

84. From a comparative perspective, the new cap on the SALT deduction disproportionately benefits taxpayers of other States at the expense of the Plaintiff States' taxpayers. This unequal treatment not only harms millions of taxpayers, but it also hurts the Plaintiff States themselves.

85. The cap also hurts the Plaintiff States in absolute terms. Among other things, the new cap on the SALT deduction is likely to depress home values and increase the cost of state taxes. This, in turn, would undermine businesses in the Plaintiff States, increase unemployment, and curtail the Plaintiff States' income and economic growth.

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[63] For example, the so-called "Pease provision" reduced the amount of itemized deductions a taxpayer could take if the taxpayer's income exceeded a certain threshold. *See* Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 11103, 104 Stat. 1388, 1388-406 (codified at 26 U.S.C. § 68(a) (2012)). *See also* Cong. Research Serv., *The PEP and Pease Provisions of the Federal Individual Income Tax* 4 (2006), *at* https://www.everycrsreport.com/reports/RS22464.html (explaining that the Pease provision was implemented to raise revenue and designed "so that the resultant tax increases were borne by taxpayers at the upper end of the income spectrum").

86. By decreasing state tax revenue and making state taxes more expensive, the new cap on the SALT deduction will ultimately force the Plaintiff States to choose between maintaining or cutting their public investments and level of services, and the taxes supporting them. As such, the new cap on the SALT deduction directly and unfairly interferes with the Plaintiff States' sovereignty, by depriving them of their authority to determine their own taxation and fiscal policies without federal interference.

87. This is by design. Congress enacted the new cap with the purpose of coercing the Plaintiff States to change their policies. Congress was fully aware that the new cap on the SALT deduction would disproportionately harm the Plaintiff States, and it enacted the cap with the expectation that the harmful effects would compel the Plaintiff States to change their policies. Indeed, prior to the enactment of the 2017 Tax Act, President Trump, Secretary Mnuchin, and numerous Republican legislators repeatedly identified the Plaintiff States by name and suggested that the new cap on the SALT deduction was intended to "kick" them and "send a message" that they needed to alter their taxation and fiscal policies or they were "not going to benefit" from the 2017 Tax Act.

88. By invading the sovereign policy authority of the Plaintiff States in this way, Congress has violated the Tenth Amendment and exceeded the federal government's tax power under Article I, Section 8 and the Sixteenth Amendment to the United States Constitution. It has also violated the constitutional guarantee of equal state sovereignty.

A. The new cap on the SALT deduction disproportionately benefits other States at the expense of the Plaintiff States and their taxpayers.

89. From a comparative perspective, the new cap on the SALT deduction harms the Plaintiff States on a variety of different metrics, all of which leave the Plaintiff States and their taxpayers comparatively worse off.

90. First, higher percentages of taxpayers in the Plaintiff States will experience a tax increase because of the 2017 Tax Act as compared to taxpayers in most other States. These taxpayers will experience a net increase in taxes notwithstanding the Act's general decrease in tax rates, because the Plaintiff States have higher percentages of taxpayers who have historically taken advantage of the SALT deduction and other deductions that were drastically curtailed by the Act, such as the mortgage interest deduction. While 13% of New York taxpayers, 12% of Maryland taxpayers, and 11% of New Jersey taxpayers will experience a net increase in federal taxes because of the 2017 Tax Act, only 5% and 2% of taxpayers in Florida and North Dakota, respectively, will see their net federal taxes increase. This tax increase is primarily driven by the cap on the SALT deduction. *See* Ex. 2 (Decl. of Scott Palladino) at 6-7.

91. Second, the 2017 Tax Act increases the portion of the federal government's income tax revenues paid by taxpayers of the Plaintiff States, even though those taxpayers already pay an outsize portion of federal income taxes.[64] For example, in 2019, New Yorkers will make up approximately 6.3% of all U.S. taxpayers. Even without the 2017 Tax Act, New Yorkers would have paid approximately 9% of all federal income taxes. But because of the 2017 Tax Act, New Yorker taxpayers will now pay approximately 9.8% of all federal income taxes.[65] The States of Connecticut, Maryland, and New Jersey will also see their share of federal personal income taxes

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[64] *See* Institute on Taxation and Economic Policy, *Final GOP-Trump Bill Still Forces California and New York to Shoulder a Larger Share of Federal Taxes Under Final GOP-Trump Tax Bill; Texas, Florida, and Other States Will Pay Less* (Dec. 17, 2017), *at* https://itep.org/final-gop-trump-bill-still-forces-california-and-new-york-to-shoulder-a-larger-share-of-federal-taxes-texas-florida-and-other-states-will-pay-less/ (last visited July 16, 2018) [https://perma.cc/WY3J-ZZD5].

[65] *See id.*

significantly increase.[66] By contrast, the 2017 Tax Act will reduce the total federal income taxes paid by most other States.[67] For example, Florida makes up approximately 7% of all U.S. taxpayers, and under the law in effect before the 2017 Tax Act, its taxpayers would have paid approximately 7.2% of federal income taxes. Under the 2017 Tax Act, the share of federal income taxes paid by Florida taxpayers will decline to approximately 7%.[68] Texas gets an even better deal. Texas will account for approximately 8.2% of the nation's taxpayers in 2019, but, under the prior law, its residents would have paid just approximately 7.6% of federal income taxes. Under the 2017 Tax Act, that number drops to approximately 7.1%.[69]

92. Third, taxpayers in the Plaintiff States get a disproportionately smaller share of the tax cuts overall relative to taxpayers in other States. Under prior law, taxpayers in each State contributed some percentage of all taxes paid to the federal government. For example, under the law in effect prior to the 2017 Tax Act, taxpayers in New York paid 7.3% of all federal taxes.[70] The 2017 Tax Act is a large expenditure of which taxpayers in each State get a percentage. If the 2017 Tax Act treated the States fairly, the expenditure provided to taxpayers in each State—i.e., each State's "share of the tax cut"—would closely reflect the contribution of each State's taxpayers under prior law. In fact, the Plaintiff States receive a much smaller expenditure—or share of the tax cut—relative to their taxpayers' baseline contributions. For example, New York taxpayers' share of the tax cut (or their share of the expenditure) was only 5.1%, even though they paid 7.3%

[66] *See id.*

[67] *See id.*

[68] *See id.*

[69] *See id.*

[70] The 7.3% represents the percentage of all federal taxes paid by New Yorkers, as distinct from the 9%, referenced in paragraph 91, *supra*, which refers to the percentage of all federal *income* taxes paid by New Yorkers.

of all federal income taxes under the prior law. In other words, New York taxpayers only received 70.1% of the State's baseline contribution of federal taxes—i.e., 5.1% of the tax cut divided by 7.3% of all federal tax payments—the lowest such percentage of any State. Similarly, New Jersey only received 79.4% of its baseline share. By contrast, Alaska received 137%, Texas received 127%, and Florida received 122%. Ex. 2 at 9-11.

93. Thus, even though some taxpayers in the Plaintiff States will experience a tax cut because of the 2017 Tax Act, overall, taxpayers in the Plaintiff States get a disproportionately small share of the recent tax cuts relative to taxpayers in most other States.

94. Ultimately, the 2017 Tax Act's inequitable treatment of taxpayers in the Plaintiff States not only hurts those taxpayers, but it hurts the States themselves. Even if some residents in the Plaintiff States benefit from the 2017 Tax Act, the Plaintiff States are still worse off in relative terms because the Act benefits other States to a much greater extent.

B. While residents of the Plaintiff States receive the least benefit from the 2017 Tax Act, they pay for the vast majority of the tax cuts.

95. Not only do taxpayers in the Plaintiff States receive the smallest benefit from the 2017 Tax Act, but they also bear the burden of paying for the tax cuts in the Act. In other words, taxpayers in other States get the biggest benefit from the Act at the expense of the Plaintiff States' taxpayers.

96. Taxpayers in the Plaintiff States will pay a substantial portion of the increase in federal taxes generated by the new cap on the SALT deduction. For example, New York taxpayers will pay an additional $14.3 billion in federal income taxes in tax year 2018 because of the new cap on the SALT deduction, relative to what they would have paid if the 2017 Tax Act had been enacted without the new cap. The New York State Department of Taxation and Finance estimates that, between 2018 and 2025, New Yorkers will pay an additional $121 billion in federal taxes

because of the cap on the SALT deduction, notwithstanding any other provisions of the bill. And although many New Yorkers will see their federal tax liability decline because of the 2017 Tax Act's reduction in tax rates and other changes, more than one million New Yorkers will experience a net tax increase in 2018, primarily due to the new cap on the SALT deduction. Ex. 2 at 4-6. The other Plaintiff States will see similar effects. Ex. 3 (Decl. of Ernest Adamo) at 2-3; Ex. 4 (Decl. of Andrew M. Schaufele) at 2; Ex. 5 (Decl. of Martin Poethke) at 2-5.

97. The federal Joint Committee on Taxation (JCT) estimates that the 2017 Tax Act will increase the federal deficit by $1.4 trillion dollars.[71] Most provisions of the bill, including the changes to the individual tax rates, will increase the federal deficit. To ensure the 2017 Tax Act would not further enlarge the deficit, Congress needed to include certain revenue-generating items. Changes to itemized deductions—including the deduction for SALT—are the single largest revenue-generating mechanism in the Act.[72] Collectively, the most significant changes to itemized deductions in the 2017 Tax Act—including but not limited to the SALT deduction—will generate some $668.4 billion in federal tax revenue over eight years.[73] New York alone will pay for about one-fifth of that figure. And collectively, the Plaintiff States will pay for a substantial portion of the revenue generated by the 2017 Tax Act.

[71] *See* Joint Committee on Taxation, U.S. Congress, *Estimated Budget Effects of the Conference Agreement for H.R. 1,* the *"Tax Cuts and Jobs Act": Fiscal Years 2018-2027*, at 8 (Dec. 18, 2017), *at* https://www.jct.gov/publications.html?func=startdown&id=5053 (last visited July 16, 2018).

[72] According to the JCT, the repeal of personal exemptions will generate $1.2 trillion over ten years, but that figure is offset by $573 billion in outlays that will be required because of the expanded child tax credit. *See id.* at 1.

[73] *See id.* at 2.

C. The new cap on the SALT deduction will depress the real estate market in the Plaintiff States, further harming the States' residents and economies.

98. The new cap on the SALT deduction not only harms the Plaintiff States in comparative terms, but it will also have direct, negative effects on the Plaintiff States and their residents by depressing real estate values, depriving homeowners of essential savings and income, and costing the Plaintiff States hundreds of millions of dollars in revenue, among other things.

99. Under the law before the 2017 Tax Act, homeowners could fully deduct the cost of property taxes assessed on their homes. By capping the deductibility of property taxes, those taxes are no longer fully deductible, which makes homeownership more expensive and decreases the value of real estate. The New York State Division of the Budget projects that, in aggregate, the new cap on the SALT deduction will result in a loss of home equity value of approximately $63.1 billion statewide in 2016 dollars.[74] Although the 2017 Tax Act contains a number of other provisions that are likely to depress home prices in New York, the new cap on the SALT deduction is likely to be the largest contributor to the decline in residential real estate prices. *See* Ex. 1 at 4-5.

100. Declining home values will mean that New Yorkers realize a smaller return when they sell their homes. Even those residents who do not sell their homes will be harmed. For many homeowners, homes are their most important asset. With declining home values, homeowners lose income on which they depend to fund retirement, school tuition, and other investments. Homeowners will also have less income available to spend on goods and services. Based on standard input-output modeling techniques, the New York State Division of the Budget estimates

[74] The 2017 Tax Act overall will depress home equity values in New York by $100.8 billion, with the new cap on the SALT deduction being the primary driver of decreased values. *See* Ex. 1 at 3-4.

household spending will decline by approximately $1.26 billion to $3.15 billion because of the new cap on the SALT deduction. *See* Ex. 1 at 5-6.

101. The decline in home equity value and lower household spending will cause direct injuries to the State. For example, the decline in household spending will mean the State collects less in sales taxes, because residents will have less income to spend on goods and services. The State will also collect less in real estate transfer taxes, because depressed home prices will cause homeowners to delay the sales of their homes. *See* Ex. 1 at 6.

102. The decline in household spending will also result in lower sales for businesses in the State. The decline in household spending, coupled with lower business sales, will ultimately hurt the growth of the State's economy. Based on input-output modeling, the New York State Division of the Budget estimates that New York is likely to lose between 12,500 and 31,300 jobs due to the new cap on the SALT deduction and its corresponding effects on real estate prices, household spending, and business sales, among other things. *See* Ex. 1 at 5-6.

103. Other States are likely to experience similar harms. For example, the New Jersey Office of Revenue and Economic Analysis estimates that home values in New Jersey are likely to decline by an average of 8.5% because of the 2017 Tax Act. This decline will reduce the amount that the State collects in Realty Transfer Fees—a state tax imposed when a home transfers ownership. *See* N.J. Admin Code 46:15-5 *et seq*. Because of the decline in home values, New Jersey will also collect less in real property taxes. New Jersey's Division of Revenue estimates that, between fiscal years 2019 and 2023, the State will lose $325.9 million in revenue because of the 2017 Tax Act. *See* Ex. 5 at 6-8.

104. Based on models presented to it by the State's outside advisors, Maryland's Bureau of Revenue estimates that the 2017 Tax Act will cause housing prices to grow at a decreased rate,

depriving the state of $13.2 to $25.2 million in real estate tax revenue. Based on the same models, the Bureau of Revenue Estimates further estimates that the State will lose approximately $7.5 million in 2019 in revenue from the State's transfer tax on real estate transactions. *See* Ex. 4 at 3-4.

105. These harms are magnified by the fact that many of the Plaintiff States' residents purchased their homes years or even decades ago in reliance on the SALT deduction. The 2017 Tax Act's cap on that deduction will thus impose an immediate and unforeseen additional cost on such residents. This cost will fall particularly hard on residents whose incomes and assets cannot accommodate the additional federal tax liability created by the 2017 Tax Act's severe limitation on the SALT deduction.

D. Congress purposefully capped the SALT deduction to force the Plaintiff States to alter their taxation and fiscal policies.

106. The financial harms that the Plaintiff States and their residents will suffer because of the new cap on the SALT deduction are not merely an incidental effect of the 2017 Tax Act. When Congress enacted the cap, President Trump, Secretary Mnuchin, and numerous Republican legislators made clear their intention was to injure the Plaintiff States and thereby coerce them into changing their tax policies and cutting the vital public investments that tax revenues support, including, for example, safety, schools, infrastructure, and transportation.

107. Shortly before the enactment of the 2017 Tax Act, Republican sponsors' true purpose in imposing the new cap on the SALT deduction became apparent: to coerce a handful of States with relatively high taxpayer-funded public investments—States that are primarily Democratic leaning—to change their tax policies. As one conservative commentator explained, "[t]he fact that these tax increases will fall most heavily on 'blue' parts of the country is obviously

not an accident."[75] An economist who advised President Trump's campaign was more explicit about the purpose of changing the SALT deduction: "'It's death to Democrats.'"[76]

108. Republican legislators and executive-branch officials made clear that one purpose of capping the SALT deduction was to coerce States that have made the sovereign policy choice to invest in services and infrastructure to lower their taxes and thereby cut the services that those taxes support. For example, Secretary Mnuchin declared that altering the SALT deduction was intended to "*send[] a message* to the state governments that, perhaps, they should try to get their budgets in line" and reduce state taxes.[77] While acknowledging that reducing the SALT deduction would hurt the States that have most relied on taxpayer revenue to make important public expenditures, Mnuchin argued that such pressure was necessary: "We can't have the federal government continue to subsidize the states."[78]

109. When asked about the impact of a SALT limitation on States such as New York and New Jersey, President Trump declared that the new cap was designed to force those States to choose between changing their tax policies or foregoing the tax benefits in the 2017 Tax Act:

[75] Ramesh Ponnuru, *Red States, Blue States, and Taxes*, Nat'l Rev., Nov. 8, 2017, *at* http://www.nationalreview.com/corner/453535/red-states-blue-states-and-taxes (last visited July 16, 2018) [https://perma.cc/5TMP-UWNW].

[76] Sahil Kapur, *'Death to Democrats': How the GOP Tax Bill Whacks Liberal Tenets*, Bloomberg, Dec. 5, 2017, *at* https://www.bloomberg.com/news/articles/2017-12-05/-death-to-democrats-how-the-gop-tax-bill-whacks-liberal-tenets (last visited July 16, 2018) [https://perma.cc./H3DM-DC45].

[77] *Mnuchin Fires Warning Shot to High-Tax States: Get Control of Your Budgets*, Fox Business, Nov. 9, 2017 (emphasis added), *at* http://www.foxbusiness.com/politics/2017/11/09/mnuchin-fires-warning-shot-to-high-tax-states-get-control-your-budgets.html (last visited July 16, 2018).

[78] *Mnuchin Backs Key Provision in Trump Tax Plan That Would Hit Democrats Hardest*, (Oct. 12, 2017), *at* https://www.cnbc.com/2017/10/12/mnuchin-backs-key-provision-in-trump-tax-plan-that-would-hit-democrats-hardest.html (last visited July 16, 2018).

"[Y]ou have some really well run states that have very little borrowing. . . . And it's unfair that a state that is well-run is really subsidizing states that have been horribly mismanaged. I won't use names but we understand the names. . . . And so what we are doing is, we're showing that. . . . *[I]t's finally time to say, hey, make sure that your politicians do a good job of running your state. Otherwise, you are not going to benefit.*"[79]

110. Republican legislators echoed Mnuchin's and Trump's views. For example, Senator Rob Portman, a Republican from Ohio, acknowledged that reducing the SALT deduction would "kick" States with higher levels of public spending, and he hoped that such pressure would coerce them into lowering state tax rates.[80] House Majority Leader Kevin McCarthy expressly called on the States to cut their taxes, arguing that the federal government is lowering taxes, and "'[w]e challenge our governors as well to do the same.'"[81] Specifically mentioning New York, California, and New Jersey, Senator Ted Cruz commented that "'[o]ne hopefully positive result of this legislation will be that state and local officials will be less eager to jack up taxes . . . .'"[82]

111. Republican legislators openly acknowledged that the 2017 Tax Act would disproportionately hurt the Plaintiff States. For example, Republican House Member Duncan

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[79] Transcript: President Trump Vows Largest Tax Cut in History, Hannity (Oct. 11, 2017) (emphasis added), *at* http://www.foxnews.com/transcript/2017/10/11/president-trump-vows-largest-tax-cut-in-history-this-country.html (last visited July 16, 2018).

[80] Transcript: Moore Back on Campaign Trail, CNN Transcripts (Nov. 28, 2017), *at* http://transcripts.cnn.com/TRANSCRIPTS/1711/28/cnr.02.html (last visited July 16, 2018).

[81] *GOP Leaders to Governors: Lower State Taxes*, Wall Street Journal, Oct. 31, 2017, *at* https://www.wsj.com/livecoverage/tax-bill-2017/card/1509468748 (last visited July 16, 2018).

[82] Kapur, *supra* note 76.

Hunter stated: "'California, New Jersey, New York, and other states that have horrible governments, yes. It's not as good for those states.'"[83]

112. And House Speaker Paul Ryan explained that he supported cutting the SALT deduction because Republicans disagree with the Plaintiff States' tax policy choices. Ryan argued that the deduction was "'propping up profligate, big government states.'"[84] And he made clear that his view rested on a disagreement with the policy choices of the Plaintiff States, in part, because those States have chosen to invest more in public services.[85]

113. Contrary to these assertions, the Plaintiff States are, in general, net contributors to the federal government. For example, for federal fiscal year 2016, New York sent $40.9 billion more in tax payments to Washington than it received in federal spending. For every federal tax dollar generated in New York, the federal government returned 84 cents to the State. That return

[83] Joshua Stewart, *Rep. Duncan Hunter said GOP tax bill could cost Californians more than others, but he still supports it*, San Diego Union Tribune, Oct. 30, 2017, *at* http://www.sandiegouniontribune.com/news/politics/sd-me-hunter-taxes-20171030-story.html (last visited July 16, 2018) [https://perma.cc/Z4ET-T3B6].

[84] Lindsey McPherson, *Brady and Ryan Mulling Big Gamble on Key Tax Deduction*, Oct. 16, 2017, *at* https://www.rollcall.com/news/politics/brady-ryan-mulling-big-gamble-key-tax-deduction (last visited July 16, 2018) [https://perma.cc./3SEN-83Z6].

[85] *See* Mike DeBonis, *To Make Their Tax Plan Work, Republicans Eye a Favorite Blue-State Break*, Wash. Post, Sept. 16, 2017, *at* https://www.washingtonpost.com/powerpost/to-make-their-tax-plan-work-republicans-eye-a-favorite-blue-state-break/2017/09/16/c726d506-9a26-11e7-b569-3360011663b4_story.html?utm_term=.6d39d5644265 (last visited July 16, 2018) [https://perma.cc/4KBT-7JFQ].

was substantially less than the $1.18 average return for every tax dollar nationwide.[86] New Jersey and Connecticut also pay more in federal taxes than their residents receive in federal spending.[87]

114. The Plaintiff States were not only targeted for unequal treatment, but they were also deprived of a fair opportunity to participate in the lawmaking process to protect their interests. Congress passed the 2017 Tax Act in a highly rushed and partisan process that left little chance for legislators from the Plaintiff States to successfully oppose the bill. Because of the extraordinarily rushed schedule—the bill was passed in less than two months—there was minimal time for debate, and there were any number of last-minute changes.[88] The bill received no Democratic votes, and Republicans from the Plaintiff States who voted against the bill faced retaliation from their Republican colleagues.[89]

115. The Act passed just fifty days after the bill was first proposed in the House. The legislative process was so rushed that the 2017 Tax Act is riddled with errors and typos that generated numerous unintended loopholes, which have turned implementation of the bill into a

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[86] *See* New York Office of the Comptroller, *New York's Balance of Payments in the Federal Budget, Federal Fiscal Year 2016*, at 3 (2017), *at* https://www.osc.state.ny.us/reports/budget/2017/federal-budget-fiscal-year-2016.pdf (last visited July 16, 2018).

[87] *See id.*

[88] *See* Amy B. Wang, *Democrats Fume Over 'Absurd' GOP Tax Bill Full of Last-Minute Handwritten Edits*, Washington Post, Dec. 2, 2017, *at* https://www.washingtonpost.com/news/politics/wp/2017/12/02/democrats-fume-over-absurd-gop-tax-bill-full-of-last-minute-handwritten-edits/?noredirect=on&utm_term=.6450fe45c2f7 (last visited July 16, 2018).

[89] *See* Matthew Rozsa, *Why Paul Ryan Snubbed a Republican Congressman's Fundraiser*, Salon (Dec. 29, 2017), https://www.salon.com/2017/12/29/why-paul-ryan-snubbed-a-republican-congressmans-fundraiser/ (last visited July 16, 2018) [https://perma.cc/Q3EA-Y6ZX]; *No Signs of Punishment for 'No' Votes on Tax Overhaul—Yet*, Roll Call (Dec. 20, 2017), https://www.rollcall.com/news/politics/gop-retaliation-tax-overhaul (last visited July 16, 2018) [https://perma.cc/42W4-GFD5].

quagmire. Congressional Republicans are already discussing the need for new legislation to correct their errors in the 2017 Tax Act.[90]

116. By imposing such inequality on the States, and targeting the Plaintiff States in particular for unfavorable treatment, Congress violated the basic promise of the Constitution: the States have equal sovereignty under the law.

E. The new cap on the SALT deduction deprives the States of their sovereign authority to determine their own taxation and fiscal policies.

117. The Constitution imposes structural constraints on the federal government's ability to use its tax power to interfere with the sovereign authority of the States to determine their own taxation and fiscal policies. See *supra* at ¶¶ 34-69.[91]

118. By drastically capping the SALT deduction at only $10,000, Congress has exceeded those constraints.

119. By design, the new cap on the SALT deduction will make it more difficult for the Plaintiff States to generate revenue, both politically and economically. As a result, the Plaintiff States now face the difficult choice of cutting vital public investments or maintaining the necessary means to generate revenue to finance those investments. By constraining the prerogative of the

[90] *See, e.g.*, Eileen A.J. Connelly, *GOP's Tax Reform Law Is Full of Typos, Errors: Experts*, N.Y. Post, Feb. 24, 2018, *at* https://nypost.com/2018/02/24/gops-tax-reform-law-is-full-of-typos-errors-experts/ (last visited June 12, 2018) [https://perma.cc/LM9Z-728R]; Zoë Henry, *How 40 Ambiguities (and Outright Errors) in the New Tax Law Could Cost You Big Money*, Inc. (Mar. 13, 2018), https://www.inc.com/zoe-henry/gop-tax-bill-errors-could-impact-your-bottom-line.html (last visited June 12, 2018); Brian Faler, *'This Is Not Normal': Glitches Mar New Tax Law*, Politico, Feb. 24, 2018, *at* https://www.politico.com/story/2018/02/24/tax-law-glitches-gop-423434 (last visited June 12, 2018) [https://perma.cc/6T5H-9MNR].

[91] *See also Veazie Bank v. Fenno*, 75 U.S. 533, 541 (1869) (explaining that there are "certain virtual limitations, arising from the principles of the Constitution itself" on the taxing power, and that "[i]t would undoubtedly be an abuse of the power if so exercised as to impair the separate existence and independent self-government of the States"); *Lane County v. State of Oregon*, 74 U.S. 71, 77 (1868) ("There is nothing in the Constitution which contemplates or authorizes any direct abridgment of [the State's tax power] by national legislation.").

Plaintiff States to make these decisions without federal interference, the new cap on the SALT deduction impermissibly impinges on the States' sovereignty in violation of the Tenth and Sixteenth Amendments to the U.S. Constitution.

120. While the Supreme Court has long recognized Congress's power to incentivize States to adopt federal policy priorities through its Spending Power, *see South Dakota v. Dole*, 483 U.S. 203, 206-07 (1987), the 2017 Tax Act is not an exercise of such power, and the coercion here is unprecedented and unlawful. While Congress's tax power is broad, it cannot be used to accomplish unconstitutional ends. *See United States v. Butler*, 297 U.S. 1, 74-75 (1936). As relevant here, it cannot be used to purposefully treat a handful of States unfavorably with the goal of coercing those States into choosing between significant financial harm and abandoning their sovereign authority to determine their own taxation and fiscal policies in favor of federal policy priorities.

121. In the months since the enactment of the 2017 Tax Act, the Plaintiff States have taken, or are considering taking, legislative and other action to combat the most harmful effects of the new cap on the SALT deduction and to restore their sovereign authority over their own taxation and fiscal policies.

122. In response to these efforts, the federal government has signaled that it intends to take additional action, again targeting the Plaintiff States, to further prevent them from exercising their sovereign authority. On May 23, 2018, for example, the IRS released a notice that it intends to issue guidance in direct response to "state efforts to circumvent the new statutory limitation on state and local tax deductions."[92] These further efforts make clear that the federal government is

[92] Internal Revenue Service, *Guidance on Certain Payments Made in Exchange for State and Local Tax Credits*, Notice 2018-54 (May 23, 2018), *at* https://www.irs.gov/pub/irs-drop/n-18-54.pdf; *see also* Alan Rappeport & Jim Tankersley, *I.R.S. Warns States Not to Circumvent State*

not only targeting the Plaintiff States for adverse treatment, but that it intentionally seeks to interfere with the States' sovereign policy authority over taxation and fiscal policy.

123. The new cap on the SALT deduction must be invalidated.

FIRST CAUSE OF ACTION
(Violations of the Tenth Amendment to the United States Constitution)

124. The States reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

125. The Tenth Amendment prohibits the federal government from invading the sovereign tax authority of the States.

126. The Tenth Amendment also requires the federal government to respect the equal sovereignty of the sovereign States.

127. The cap on the SALT deduction has both the purpose and effect of interfering with the Plaintiff States' sovereign authority to determine their own fiscal policies.

128. Without adequate justification, the cap on the SALT deduction also impermissibly targets for unfavorable treatment those States that have exercised their sovereign authority to adopt relatively high taxpayer-funded public investments.

129. The cap on the SALT deduction thereby violates the Tenth Amendment and the constitutional guarantees of federalism.

130. Enforcement of the new cap on the SALT deduction would cause significant and irreparable harm to the Plaintiff States and their residents.

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and Local Tax Cap, N.Y. Times, May 23, 2018, https:// nytimes.com/2018/05/23/us/politics/irs-state-and-local-tax-deductions.html (last visited July 16, 2018).

SECOND CAUSE OF ACTION
(Violations of the Sixteenth Amendment to the United States Constitution)

131. The States reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

132. The federal government's taxation powers are not unlimited. Under the Sixteenth Amendment of the United States Constitution, the federal government may not exercise its power to tax individual incomes without providing a deduction for all or a significant portion of state and local taxes.

133. In imposing a $10,000 cap on the deductibility of state and local taxes, Congress has exceeded its powers under the Sixteenth Amendment.

134. The cap on the SALT deduction causes substantial and ongoing harm to the Plaintiff States.

THIRD CAUSE OF ACTION
(Violations of Article I, Section 8 of the United States Constitution)

135. The States reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

136. Pursuant to Article I, Section 8 of the United States Constitution, Congress has the "Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States."

137. Congress may not use its tax and spending powers to "exert a 'power akin to undue influence'" over the States or coerce the States into adopting policies preferred by the federal government. *NFIB*, 567 U.S. at 578 (op. of Roberts, C.J.) (quoting *Charles C. Steward Mach. Co. v. Davis*, 301 U.S. 548, 590 (1937)).

138. The cap on the SALT deduction will have both the purpose and effect of interfering with the Plaintiff States' sovereign authority to determine their own taxation and fiscal policies by coercing the Plaintiff States into lowering their taxes and cutting the services those taxes support.

139. The cap on the SALT deduction thereby exceeds Congress's powers under Article I, Section 8 of the United States Constitution and violates the constitutional guarantees of federalism.

140. The cap on the SALT deduction causes substantial and ongoing harm to the Plaintiff States.

PRAYER FOR RELIEF

141. Wherefore, the Plaintiff States Pray that the Court:

a. Declare that the provision of the 2017 Tax Act imposing a $10,000 cap on the SALT deduction, Pub. L. No. 115-97, § 11042, is unauthorized by and contrary to the Constitution of the United States;

b. Enjoin Defendants from enforcing the new cap on the SALT deduction;

c. Award such additional relief as the interests of justice may require.

Dated: July 17, 2018

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EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK,
STATE OF CONNECTICUT,
STATE OF MARYLAND, and STATE OF NEW JERSEY,

Plaintiffs,

v.

STEVEN MNUCHIN, in his official capacity as Secretary of the United States Department of Treasury; the UNITED STATES DEPARTMENT OF TREASURY; DAVID J. KAUTTER, in his official capacity as Acting Commissioner of the United States Internal Revenue Service; the UNITED STATES INTERNAL REVENUE SERVICE; and the UNITED STATES OF AMERICA,

Defendants.

DECLARATION OF LYNN HOLAND

LYNN HOLAND, declares under penalty of perjury pursuant to 28 U.S.C. § 1746, that the following is true and correct:

I. Education and Background

1. I am the Director for Economic Studies of the New York State Division of the Budget ("DOB"). I was appointed to this position in March 2014.

2. In the above capacity, my primary responsibility is overseeing the work of the economic side of the Division's Economic and Revenue Unit, which includes economic forecasting for both the revenue and spending sides of the New York State Executive Budget; quarterly Financial Plan updates; construction of computer simulation models for forecasting and policy analysis in the areas of taxes, economic development, and health care; fiscal impact

analysis of proposed and enacted legislation; conducting research identifying economic, demographic, and revenue trends that may have an impact on the State's long-term fiscal condition; and budget negotiation with legislative fiscal committee staffs.

3. I previously served as Assistant Unit Chief, Principal Fiscal Policy Analyst, and Associate Fiscal Policy Analyst within the Economic and Revenue Unit at DOB, and as a Principal Economist with the New York State Assembly Committee on Ways and Means.

4. I hold a Bachelor's Degree in Economics from the University at Albany and was a Ph.D. candidate ("all but dissertation") at the University at Albany.

5. In December 2017, the federal government enacted a new cap on the federal deductibility of state and local taxes ("SALT Deduction Cap") in Public Law No. 115-97 ("2017 Tax Act"), § 11042. When used herein, the term "SALT" refers to state and local income, property, and sales taxes.

6. This Affidavit details some of the likely consequences of the SALT Deduction Cap for the State of New York, including with respect to the projected decline in real estate values in New York.

7. In summary, I find that the SALT Deduction Cap will likely cause a decline in New York's real estate market as homeowners find it relatively more expensive to own a home in New York due to the increase in federal taxation, resulting in up to $63.1 billion in lost equity for New York homeowners. This decline in home equity could result in a corresponding decrease in economic activity in the State of between $1.26 billion - $3.15 billion, and result in the State losing between 12,500 - 31,300 jobs.

8. I have substantial experience with economic modeling and New York State budget estimates, and believe the following statements are true and accurate to the best of my knowledge.

II. Projected Decline in Real Estate Values in New York and Corresponding Effects

9. The 2017 Tax Act contains numerous provisions that could adversely impact residential real estate prices in New York State.

10. In December 2017, Moody's Analytics presented an analysis of the 2017 Tax Act, called "Assessing the Trump Tax Bill," and it published estimates by county of the percentage change in house prices due to the 2017 Tax Act compared with a baseline scenario that assumes no change in tax law.

11. Moody's Analytics identifies five primary ways through which the 2017 Tax Act is likely to reduce New York State home prices. Those mechanisms include the SALT Deduction Cap; the lowering of the maximum qualifying loan amount for the mortgage interest deduction; the doubling of the size of the standard deduction; the projected increase in interest rates that could potentially result from the 2017 Tax Act; and the likely migration of residents to States with relatively lower tax rates.

12. Table E1, attached as Exhibit A to this Affidavit, presents Moody's Analytics' estimates of the decline in New York home prices, by county, as a result of the passage of the 2017 Tax Act.[1] Utilizing data from Moody's Analytics and data on New York homeownership and home prices, we estimate that the 2017 Tax Act could result in a statewide loss of home equity totaling $100.8 billion (in 2016 dollars).[2]

13. Based on Internal Revenue Service ("IRS") Statistics of Income data for the 2015 tax year, the most recent year available, approximately 3.3 million New York State taxpayers itemized their deductions on their federal tax returns. The average federal SALT deduction

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[1] The Moody's Analytics analysis is based on the Federal Housing Finance Agency Home Price Index (HPI), which measures average price changes in repeat sales or refinancing on the same properties and, as such, represents a broad measure of the movement of single-family house prices. The Moody's Analytics HPI models account for the impact of the 2017 Tax Act through the construction of a comprehensive after-tax cost of homeownership that includes the mortgage rate after adjusting for inflation, the number of itemizers, the mortgage interest deduction, and the property tax deduction. *See* Chris Lafakis et al., *Economic Consequences Republican Tax Legislation*, Moody's Analytics (2017), *at* https://www.moodysanalytics.com/webinars-on-demand/2017/economic-consequences-of-republican-tax-legislation (last visited Apr. 3, 2018).

[2] The home price series used for this analysis was the Corelogic Inc.'s average single-family home price series by county, obtained via Moody's Analytics.

for that year for those taxpayers was $21,943. Among the 1.9 million State resident taxpayers that itemized on their New York State tax returns, the majority reported SALT deductions that exceeded the new $10,000 cap. The mean such deduction was $25,092, while the median deduction was $12,522. Indeed, about 724,000 State homeowners pay local property taxes alone in excess of $10,000. Historically, these tax burdens have been one of the reasons why the federal deductibility of state and local taxes has been critical to New Yorkers.

14. Of the various factors identified by Moody's Analytics, the SALT Deduction Cap is likely the most important factor that will cause residential real estate prices to decline in New York State. While New York homeowners have previously been able to fully deduct the cost of the property taxes assessed on their homes, the SALT Deduction Cap severely restricts such deductions and thus increases the federal tax burden on New York homeowners.

15. The total cost of owning a home in New York to an individual is comprised of a number of factors including, but not limited to, the cost of the home, the interest rate on any potential mortgage, local property taxes, and the ability to deduct local property taxes from any federal and state income taxes owed. By removing a long-standing deduction relied upon by millions of New Yorkers, the SALT Deduction Cap is likely to increase the total cost of owning a home in New York. In other words, it will be more expensive to own a home in the State (when taxes are considered). This increase in the cost of owning a home, in turn, would be expected to depress home values in New York as buyers account for the 2017 Tax Act's constraints on full SALT deductibility in their real estate market valuations and bid prices.

16. To isolate the adverse impact of the SALT Deduction Cap, we constructed an estimation model to quantify the effect of various county characteristics on the direction of county home prices, as projected by Moody's Analytics.[3] Regression analysis was used to

[3] These characteristics include the county's average residential property tax bill; average county household income multiplied by the top marginal state personal income tax rate for the state in which the county is located; average county income multiplied by the highest top marginal local personal income tax rate assessed by a municipality within the county; the number of owner-occupied housing units with a mortgage in the county; the county percentage of itemizers based on 2015 IRS Statistics of Income data;

estimate the size of the impact of each of these characteristics. The estimation results indicate that the total value of home equity potentially lost due to the SALT Deduction Cap alone could be as high as $63.1 billion (See Table E1).

17. There are several corresponding economic results of this loss in home equity. Although a loss in home equity value is not realized until homeowners sell their homes, homeowners are likely to feel less wealthy even in the short term as they observe homes in their neighborhoods losing market value based on actual sales. This, in turn, is likely to impede their spending capacity through the wealth effect. The wealth effect is a commonly-accepted economic principle that the value of an asset to an individual, such as a financial security or a home, is evaluated through the prism of the value of a future income stream from that asset. Thus, consumers perceive the rise and fall of the value of an asset as a corresponding increase or decline in income, causing them to alter their spending practices.

18. In this instance, the decline in real estate prices would make New Yorkers feel less secure about their financial position, and, in turn, would be expected to result in less spending and economic activity. Less spending could, in turn, result in lower sales tax collections for the State.

19. The loss of wealth associated with the decline in home prices is expected to have a statistically significant impact on household spending in the State through the wealth effect. Since there is a range of estimates for the magnitude of the wealth effect, we use two alternative values to obtain a low-range estimate and a high-range estimate of the impact of the loss of home equity on the State economy. To construct a low-range estimate, we use a value of 2% derived from the Budget Division's U.S. macroeconomic model,

the county unemployment rate for 2017; and a dummy variable equal to one if county *i* is located in state *j* and zero otherwise. Each of these respective factors is hypothesized to have an independent effect on home prices. Those factors that are related to state and local taxes are hypothesized to capture the impact of the SALT Deduction Cap, which effectively increases the state and local tax burden. Isolating the impact of those factors on Moody's Analytics' home price decline estimates allows us to, in turn, estimate how much of those declines are related to the SALT Deduction Cap alone.

DOB/US.[4] To obtain a high-end estimate, we use a value of 5%.[5] These two estimates suggest that, because of the decline in home equity due to the SALT Deduction Cap, we can expect an annual reduction in household spending in New York State between $1.26 billion and $3.15 billion.

20. Reductions in household spending by New York residents will also result in lower sales for the State's businesses, which, in turn, is likely to cause further reductions in economic activity and employment.[6] Under the low-range estimate of the impact of the wealth effect discussed *supra,* we estimate that the potential reduction in economic activity could result in the loss of approximately 12,500 jobs. Utilizing the high-range estimate relating to the impact of the wealth effect, the State could lose approximately 31,300 jobs as a result of the decline in home equity associated with the imposition of the SALT Deduction Cap.

21. Moreover, falling home prices could result in homeowners delaying the sale of their homes. The combined impact of lower home prices and fewer sales transactions could result in lower real estate transfer tax collections. DOB estimates that home price declines of the magnitude estimated above could result in a decline in real estate transfer tax collections of $24.5 million for FY 2019, with $15.3 million attributable to the SALT Deduction Cap. This estimate climbs to $110.4 million for FY 2020, with $69.2 million attributable to the SALT Deduction Cap alone.

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[4] For a description of the role of the wealth effect in forecasting household spending within DOB/US, please see https://www.budget.ny.gov/pubs/supporting/MethodologyBook.pdf, p 24-25.

[5] *See* Calomiris, Charles W. & Longhofer, Stanley D. & Miles, William, 2013. "The Housing Wealth Effect: The Crucial Roles of Demographics, Wealth Distribution and Wealth Shares," *Critical Finance Review,* vol. 2(1), pp. 49-99, July.

[6] To estimate the total size of the ultimate impact, we use the input-output model developed by Economic Modeling Specialists International ("EMSI").

Respectfully submitted,

Dated: 6/15/18

LYNN HOLAND

EXHIBIT A

Table E1: Estimated Impact of the 2017 Tax Act on New York State Home Prices						
			Total Impact		Impact Due to SALT Cap	
County	Average Single Family Home Prices*	Number of Owner Occupied Homes**	Home Value Declines***	Potential Home Equity Losses (Mil.)	Home Value Declines	Potential Home Equity Losses (Mil.)
Albany	$207,132	71,279	-4.3%	($630.6)	-2.3%	($337.8)
Allegany	$61,269	13,334	-2.3%	($18.8)	-1.4%	($11.6)
Bronx	$379,278	93,569	-2.1%	($733.2)	-1.1%	($391.3)
Broome	$97,581	51,475	-3.2%	($161.3)	-1.8%	($91.2)
Cattaraugus	$85,448	22,606	-2.2%	($43.2)	-1.4%	($26.5)
Cayuga	$112,929	21,993	-3.3%	($83.0)	-1.9%	($48.4)
Chautauqua	$98,729	36,888	-2.0%	($71.3)	-1.2%	($42.7)
Chemung	$107,025	23,815	-2.5%	($62.8)	-1.4%	($35.0)
Chenango	$81,090	14,968	-2.2%	($26.5)	-1.4%	($16.4)
Clinton	$121,186	21,598	-3.7%	($95.7)	-2.0%	($53.1)
Columbia	$236,260	18,331	-2.7%	($115.8)	-1.6%	($70.0)
Cortland	$101,971	11,511	-3.7%	($43.9)	-2.2%	($26.3)
Delaware	$123,759	13,787	-1.9%	($32.8)	-1.1%	($19.4)
Dutchess	$255,845	73,505	-6.2%	($1,173.0)	-3.6%	($680.9)
Erie	$147,657	249,815	-3.6%	($1,336.7)	-1.8%	($673.7)
Essex	$191,573	11,316	-1.9%	($42.1)	-1.1%	($24.8)
Franklin	$111,374	13,956	-1.9%	($30.1)	-1.2%	($18.4)
Fulton	$111,581	15,808	-2.0%	($35.8)	-1.2%	($21.0)
Genesee	$97,703	17,456	-3.4%	($57.1)	-1.9%	($33.2)
Greene	$184,276	12,895	-1.9%	($45.9)	-1.1%	($25.4)
Hamilton	$172,602	1,055	-0.2%	($0.4)	-0.1%	($0.2)
Herkimer	$105,800	18,066	-1.9%	($35.5)	-1.1%	($21.3)
Jefferson	$132,174	24,333	-2.2%	($70.3)	-1.2%	($38.4)
Kings	$844,612	276,447	-3.1%	($7,288.3)	-1.8%	($4,100.6)
Lewis	$88,680	7,849	-2.1%	($14.6)	-1.2%	($8.7)
Livingston	$124,683	17,745	-4.3%	($95.6)	-2.5%	($54.8)
Madison	$130,100	19,703	-4.2%	($107.7)	-2.5%	($63.6)
Monroe	$145,443	191,707	-6.6%	($1,850.3)	-3.5%	($979.9)
Montgomery	$82,796	13,040	-2.4%	($26.1)	-1.4%	($15.4)
Nassau	$574,326	353,420	-9.4%	($19,152.1)	-6.3%	($12,700.1)
New York	$1,356,866	174,361	-10.4%	($24,622.5)	-6.4%	($15,157.5)
Niagara	$106,812	62,309	-3.5%	($235.8)	-2.0%	($134.5)
Oneida	$103,677	60,083	-2.5%	($158.2)	-1.4%	($89.6)
Onondaga	$138,508	120,159	-5.8%	($959.1)	-3.1%	($517.4)
Ontario	$193,999	32,075	-5.5%	($344.4)	-3.2%	($197.1)
Orange	$225,088	85,306	-7.3%	($1,408.6)	-4.5%	($865.2)

(Continued on next page)

Table E1: Estimated Impact of the 2017 Tax Act on New York State Home Prices *(cont'd)*

			Total Impact		Impact Due to SALT Cap	
County	**Average Single Family Home Prices***	**Number of Owner Occupied Homes****	**Home Value Declines*****	**Potential Home Equity Losses (Mil.)**	**Home Value Declines**	**Potential Home Equity Losses (Mil.)**
Orleans	$85,896	12,186	-3.0%	($31.8)	-1.9%	($19.5)
Oswego	$94,114	32,850	-3.9%	($122.0)	-2.2%	($67.6)
Otsego	$128,415	17,350	-1.8%	($41.0)	-1.1%	($24.0)
Putnam	$327,489	27,961	-8.7%	($795.5)	-5.8%	($532.7)
Queens	$544,869	341,363	-2.3%	($4,326.6)	-1.3%	($2,502.6)
Rensselaer	$152,323	40,749	-4.3%	($268.4)	-2.4%	($151.6)
Richmond	$463,444	114,502	-1.9%	($1,012.5)	-1.2%	($616.6)
Rockland	$423,479	68,276	-8.7%	($2,519.2)	-5.9%	($1,714.4)
St. Lawrence	$81,936	29,591	-2.3%	($55.4)	-1.3%	($32.0)
Saratoga	$262,861	65,099	-3.8%	($643.1)	-2.0%	($335.2)
Schenectady	$143,247	36,997	-5.4%	($284.9)	-3.1%	($163.4)
Schoharie	$101,489	9,287	-1.9%	($17.9)	-1.1%	($10.7)
Schuyler	$116,098	5,767	-3.2%	($21.1)	-1.9%	($12.8)
Seneca	$129,648	9,922	-3.0%	($38.8)	-1.9%	($23.8)
Steuben	$107,609	28,545	-4.0%	($122.2)	-2.3%	($71.4)
Suffolk	$457,522	389,182	-6.8%	($12,060.2)	-4.2%	($7,559.4)
Sullivan	$132,530	18,762	-2.3%	($57.6)	-1.4%	($33.7)
Tioga	$103,007	15,415	-3.6%	($58.0)	-2.2%	($34.7)
Tompkins	$215,273	21,175	-5.2%	($238.9)	-3.0%	($134.7)
Ulster	$193,453	48,343	-4.3%	($405.8)	-2.6%	($242.3)
Warren	$230,093	19,037	-2.0%	($87.1)	-1.1%	($49.2)
Washington	$130,067	17,368	-2.0%	($46.3)	-1.2%	($28.2)
Wayne	$115,407	28,037	-4.6%	($149.1)	-2.7%	($87.8)
Westchester	$691,392	210,004	-11.1%	($16,115.5)	-7.6%	($11,038.2)
Wyoming	$91,718	11,936	-2.8%	($30.6)	-1.7%	($18.2)
Yates	$162,224	7,346	-2.0%	($24.1)	-1.3%	($15.6)
Statewide	-	3,894,613	-	($100,782.9)	-	($63,111.4)

Sources: Corelogic via Moody's Analytics (*); 2016 American Community Survey 5-year estimates (**); Moody's Analytics (***); DOB staff estimates.

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK,
STATE OF CONNECTICUT,
STATE OF MARYLAND, and STATE OF NEW JERSEY,

Plaintiffs,

v.

STEVEN MNUCHIN, in his official capacity as Secretary of the United States Department of Treasury; the UNITED STATES DEPARTMENT OF TREASURY; DAVID J. KAUTTER, in his official capacity as Acting Commissioner of the United States Internal Revenue Service; the UNITED STATES INTERNAL REVENUE SERVICE; and the UNITED STATES OF AMERICA,

Defendants.

DECLARATION OF SCOTT PALLADINO

SCOTT PALLADINO, declares under penalty of perjury pursuant to 28 U.S.C. § 1746, that the following is true and correct:

I. Education and Background

1. I am the Deputy Commissioner of the New York State Department of Taxation and Finance ("DTF"). I was appointed to this position in February 2018.
2. As Deputy Commissioner, I oversee the Office of Tax Policy Analysis ("OTPA"), which operates within DTF and is responsible for developing and evaluating tax policy, revenue forecasting and estimation, and related matters.
3. I previously served as Assistant Deputy Commissioner in the Office of Tax Policy Analysis. I was appointed to that position in January of 2011.

4. I previously served for nearly ten years as Deputy Fiscal Director for the Committee on Ways and Means of the New York State Assembly, which has jurisdiction over tax legislation in the New York State Legislature, and as a Senior Policy Analyst at the National Governors Association for nearly three years.

5. I hold a Bachelor's Degree in Business Administration from Baruch College and a Master's Degree in Economics from the State University of New York, Albany.

6. DTF receives sample files from the Statistics of Income ("SOI") program operated by the Internal Revenue Service ("IRS") that enable DTF to reliably estimate the impact of federal tax law changes on New Yorkers' federal tax liability.

7. The OTPA has been approved by the IRS to use these statistical files for preparing tax models or other statistical compilations for state tax administration purposes.

8. The most recent SOI modeling data provided by the IRS is a weighted sample file of approximately 28,000 anonymized federal taxpayer records filed by New York residents for the 2015 tax year. Each record contains taxpayer specific information pertaining to over 3,500 federal personal income tax variables. These variables include detailed filing information about various factors, such as filing status, number of exemptions, age, wages earned, and dividends and capital gains received, as well as itemized deductions, credits, and final tax liability. DTF's agreement with the IRS allows OTPA staff to analyze this data through a microsimulation model of federal income tax liability.[1] In addition, DTF uses the data to analyze summary statistics on various tax items that directly or indirectly impact New York State personal income tax revenue collections.

9. I have substantial experience preparing and analyzing such DTF estimates.

10. I was asked to analyze the impact of the Public Law No. 115-97 (the "2017 Tax Act") on New York, including the impact of changes to federal exemptions, deductions and credits on New York tax revenues and the federal tax burdens of New York taxpayers.

[1] The model essentially calculates federal adjusted gross income and tax liability by recreating a taxpayer's federal income tax return. The output is presented as a weighted sum of each observation and may be stratified by income or filing status. The microsimulation model is used to estimate the impact of hypothetical tax law changes.

11. My analysis of the impact of the 2017 Tax Act included an analysis of the impact of the new cap on the federal deduction for state and local taxes (the "SALT Deduction Cap") as enacted in § 11042 of the 2017 Tax Act. When used herein, the term "SALT" refers to the state and local taxes, the deduction of which is capped by the SALT Deduction Cap.

12. My analysis of the SALT Deduction Cap addresses several issues, including the impact of the SALT Deduction Cap on New York State and the relative impact of the SALT Deduction Cap across different States.

13. My opinions are based on analyses conducted by myself and others at DTF under my direction and supervision, my review of analyses conducted on behalf of other States, my review of analyses conducted by third parties, my review of publicly available documents, and the totality of my professional experience. The following statements are true and accurate to the best of my knowledge.

14. In sum, based on the data and assumptions stated below, my conclusions are:

    a. The SALT Deduction Cap raises New Yorkers' federal tax liability by $14.3 billion in 2018, and by $121 billion from 2018 to 2025, when compared to federal tax law under the 2017 Tax Act without that cap. These increases will occur for upstate and downstate taxpayers, including those in middle-income tax brackets. *See infra* Section II.

    b. New York, Maryland, New Jersey, California, and Connecticut have the highest percentages of taxpayers who will see a federal tax increase under the 2017 Tax Act; New York has the highest such percentage. *See infra* Paragraph 29.

    c. When compared to their baseline shares of the federal tax base, the 2017 Tax Act disfavors States such as New York and New Jersey, and favors States such as Alaska, Florida, Texas, and Wyoming. *See infra* Paragraphs 32–41.

II. <u>Impacts on New York State</u>

15. In this section, I analyze the impact of the SALT Deduction Cap on the State of New York by using the results of a micro-simulation model to compare the effects of the 2017 Tax Act to what 2018 Federal law would have been absent the 2017 Tax Act. In addition,

the model estimated the effects of the 2017 Tax Act with and without the SALT Deduction Cap.

16. Under the 2017 Tax Act, the SALT Deduction Cap applies for eight taxable years. It goes into effect for tax year 2018, and it expires after tax year 2025.

17. I conclude that the SALT Deduction Cap raises federal tax liability for New York taxpayers by $12.8 billion relative to what they would have paid absent the cap, assuming all other provisions of the 2017 Tax Act remain unchanged. This estimate is based on 2015 income using 2018 federal parameters. Trending incomes forward from 2015 to 2018 yields an increase in federal liability of $14.3 billion by federal tax year 2018.

18. Over the course of the eight years the SALT Deduction Cap will be in effect, I expect that New York taxpayers will collectively pay an additional $121 billion in federal taxes relative to what they would have paid under the 2017 Tax Act without the SALT Deduction Cap. This conclusion is based on estimates performed by the New York State Division of the Budget (DOB) of the growth in the cost of the SALT Deduction Cap to New York resident taxpayers who itemize at the state level for each year through 2025.[2] This is reflected in the table below:

Increased Tax Liability for New York Taxpayers Due To SALT Deduction Cap (2018-2025)	
2018	$14.3 billion
2019	$14.5 billion
2020	$14.8 billion
2021	$15.0 billion
2022	$15.3 billion
2023	$15.5 billion
2024	$15.7 billion
2025	$15.9 billion
Total: $121 billion	

[2] DOB obtains growth factors based on detailed tax return data for those New York State resident taxpayers that itemized at the State level for the 2015 tax year. A detailed description of how DOB trends the components of taxable income forward appears in *New York State Division of the Budget, Economic, Revenue, and Spending Methodologies*, November 2017, pp. 62-73, https://www.budget.ny.gov/pubs/supporting/MethodologyBook.pdf

19. For tax year 2018, taxpayers in downstate New York, including low- and middle-income taxpayers,[3] will pay an additional $12.8 billion per year in federal taxes because of the SALT Deduction Cap, relative to 2018 federal tax law absent the SALT Deduction Cap. Specifically, I estimate that the SALT Deduction Cap will increase federal taxes paid by the following amounts:

    a. $165 million from taxpayers with adjusted gross incomes ("AGI")[4] between $25,000 and $99,999 per year;

    b. $800 million from taxpayers with AGIs between $100,000 and $199,999 per year;

    c. $2 billion from taxpayers with AGIs between $200,000 and $499,999 per year;

    d. $1.6 billion from taxpayers with AGIs between $500,000 and $999,999 per year;

    e. $3.2 billion from taxpayers with AGIs between $1 million and $4,999,999 per year;

    f. $1.2 billion from taxpayers with AGIs between $5 million and $9,999,999 per year; and

    g. $3.8 billion from taxpayers with AGIs above $10 million per year;

20. Similarly, I estimate that the SALT Deduction Cap will result in upstate taxpayers paying $1.5 billion more per year in federal taxes relative to 2018 federal tax law absent the SALT Deduction Cap, including:

    a. $25.8 million from taxpayers with AGIs between $25,000 and $99,999 per year;

    b. $195 million from taxpayers with AGIs between $100,000 and $199,999 per year;

    c. $425 million from taxpayers with AGIs between $200,000 and $499,999 per year;

[3] For purposes of this declaration, the term "downstate" refers to the following counties: Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, and Westchester. The term "upstate" refers to all other counties in New York State.

[4] "Adjusted gross income" refers to a taxpayer's total gross income minus specific deductions.

d. $220 million from taxpayers with AGIs between $500,000 and $999,999 per year; and

e. $286 million from taxpayers with AGIs between $1 million and $4,999,999 per year.

21. Though many New Yorkers will see a federal tax reduction because the 2017 Tax Act reduces tax rates and makes other changes to the tax code, more than one million New York taxpayers will see a net tax increase in 2018, primarily due to the SALT Deduction Cap.

22. In particular, for tax year 2018, more than 823,000 New Yorkers downstate will see an average federal tax increase of approximately $6,250, and more than 221,000 New Yorkers upstate will see an average federal tax increase of more than $2,300.

III. <u>Comparative Impact of 2017 Tax Act Across States</u>

23. In this section, I analyze the comparative impact of the 2017 Tax Act across States.

24. I find that, as described below, the 2017 Tax Act has the effect of disadvantaging New York, New Jersey, and other similarly situated States relative to many other States.

25. The Institute for Taxation and Economic Policy ("ITEP") has published estimates of the impact of the 2017 Tax Act across States. ITEP is a non-profit, nonpartisan research organization that provides in-depth analyses on the effects of federal, state, and local tax policies. ITEP researchers use a tax incidence model to produce distributional and revenue analyses of current tax systems and proposed changes at the federal, state, and local level.

26. In my experience, ITEP produces reliable estimates of the likely impacts of tax policy changes.

27. According to ITEP data that I have reviewed, New York and other similarly situated States have the highest percentage of taxpayers who will experience a net tax increase because of the 2017 Tax Act. Based on my observation of publicly available data, I believe this is due primarily to the SALT Deduction Cap.

28. As reflected in the table below, New York has the highest percentage of taxpayers who will experience a net tax increase under the 2017 Tax Act.

Percentage of the Population That Will Experience a Tax Increase in Tax Year 2019 Because of the 2017 Tax Act		
State	**Percentage**	**Rank**[5]
New York	13 percent	1
Maryland	12 percent	2 (tied)
District of Columbia	12 percent	2 (tied)
New Jersey	11 percent	4
California	11 percent	5
Connecticut	9 percent	6
Texas	6 percent	33
Florida	5 percent	37
Kansas	4 percent	46
South Dakota	3 percent	49
North Dakota	2 percent	51
Source: ITEP Data https://itep.org/finalgop-trumpbill-ny/		

29. In New York, thirteen percent of taxpayers will see a federal tax increase.[6] For New Jersey this figure is eleven percent; for Maryland, it is twelve percent; for California, it is eleven percent; and for Connecticut, it is 9 percent. In contrast, only six percent of Texans and only five percent of Floridians will see a tax increase in tax year 2019 because of the 2017 Tax Act. Thus, on a relative basis, more than twice as many New Yorkers as Texans or Floridians will see a net tax increase because of the 2017 Tax Act. I estimate that this difference is primarily due to the SALT Deduction Cap.

30. The relative impact of the 2017 Tax Act on the States can also be assessed by comparing each State's share of the federal tax base to each State's share of the 2017 tax cuts.

31. As used herein, herein, "federal tax base" refers to the total amount of federal individual, corporate income, and estate taxes received by the federal government under the law

[5] In this table, States (including the District of Columbia) are ranked based on the percentage of taxpayers who will experience a net tax increase because of the 2017 Tax Act. If one State has a higher rank than another State in the table, that means a greater percentage of taxpayers in the higher-ranked State will see a tax increase than in the lower-ranked State.

[6] ITEP's estimate on this point is relatively consistent with DTF's own internal estimate based on 2015 tax return data, which is that approximately 11% of New York taxpayers will experience a tax increase under the 2017 Tax Act.

prior to the enactment of the 2017 Tax Act. "State share of the federal tax base" means the percentage of all federal taxes contributed by each State's taxpayers. A "State's share of the 2017 tax cuts," or similar phrasing used below, refers to the share of the 2017 tax cuts taxpayers in a State are estimated to receive. As used below, the term "tax cuts in the 2017 Tax Act" refers to reductions in federal individual income taxes, corporate taxes, and estate taxes, as well as changes in treatment for pass-through business income, that were enacted in the 2017 Tax Act. These tax cuts are described in state-by-state data released by ITEP in December 2017.[7]

32. ITEP data enabled me to estimate each State's share of the federal tax base. To determine a State's share of the tax base, I divided the Total Tax Change – which represents ITEP's estimate of the absolute dollar amount of tax cuts provided by the 2017 Tax Act for 2019 to taxpayers in each State – by the Tax Change as a Percentage of Pre-Tax Income – which represents the Total Tax Change framed as a percentage of the State's total tax base prior to the 2017 Tax Act. In simple terms, if a State's tax change was $100 in absolute terms, and that $100 represented 2% of the State's pre-tax income prior to the 2017 Tax Act, then the State's tax base in this formula would be $5,000 ($100/.02). That method yielded the following raw figures for certain States' amount of the federal tax base in 2019:

Federal Tax Base (Raw Estimates By State)	
California	$2.03 trillion
Texas	$1.13 trillion
New York	$1.10 trillion
Florida	$1.06 trillion
New Jersey	$546 billion
Maryland	$314 billion
Connecticut	$235 billion
Source: ITEP data analyzed by New York State Department of Taxation and Finance	

[7] ITEP's state-by-state estimates of the impact of the 2017 Tax Act provided columns categorizing the Act's tax cuts as "Families & Individuals", "Estate Tax", "Pass-Through Businesses", and "Corporations". ITEP's state-by-state estimates are available here: https://itep.org/finalgop-trumpbill/.

33. The following table compares those raw figures to the overall federal tax base, imputed from ITEP data.[8]

State Share of Federal Tax Base (By State)	
California	13.5%
Texas	7.6%
New York	7.3%
Florida	7.1%
New Jersey	3.6%
Maryland	2.1%
Connecticut	1.6%
Source: ITEP data analyzed by New York State Department of Taxation and Finance	

34. ITEP data also enabled me to estimate what percentage of the tax cuts in the 2017 Tax Act goes to taxpayers in each State. For example, according to ITEP data, Florida taxpayers will receive 8.6 percent of the tax cuts in the 2017 Tax Act, and Texas taxpayers will receive 9.6 percent. These estimates are reflected in the table below:

States (including D.C.)	Percentage of 2017 Tax Cuts
Alaska	0.3%
South Dakota	0.3%
Wyoming	0.2%
Texas	9.6%
Florida	8.6%
Connecticut	1.5%
Maryland	1.9%
Minnesota	1.7%
Oregon	1.2%
California	10.8%
New Jersey	2.9%
New York	5.1%

35. Using the figures described in paragraphs 33 (share of tax base by State) and 34 (share of tax cuts in 2017 Tax Act, by State), I was able to compare each State's share of the federal tax base to the distribution of tax cuts under the 2017 Tax Act.

[8] DTF's calculations based on ITEP data yield an overall federal tax base of $14.99 trillion.

36. This comparison is a method of assessing whether the 2017 Tax Act is skewed in favor of or against certain States. For example, a bill reducing taxes proportionally across the board would provide tax cuts in percentages matching (or very similar to) a State's baseline share of the federal tax base. In contrast, a bill favoring or disfavoring[9] certain States would not do so. Instead, as to favored States, such a bill would provide tax cuts greater than those States' baseline shares of the federal tax base. As to disfavored States, such a bill would provide tax cuts less than those States' baseline shares of the federal tax base.

37. This comparison is done in the table below. A figure below 100 percent in the middle column of the table below means a State's taxpayers received relatively less from the 2017 Tax Act than the State's share of the tax base. For example, if a State had ten percent of the federal tax base, but the State's taxpayers received only five percent of the tax cuts in the 2017 Tax Act, then the middle column of the table would show 50 percent (derived from dividing .05 by .10 and then converting the result to percentage form)—suggesting the State's taxpayers received only half as much as the State's share of the tax base would suggest they should receive. The impact of the bill will skew against that State.

38. In contrast, a figure above 100 percent in the middle column of the table below means a State's taxpayers received relatively more from the 2017 Tax Act than the State's share of the tax base. For example, if a State had five percent of the federal tax base, but the State's taxpayers received ten percent of the tax cuts in the 2017 Tax Act, then the table would show 200 percent (derived from dividing .10 by .05 and then converting the result to percentage form)—suggesting the State's taxpayers received twice as much as the State's share of the tax base would suggest they should receive. The impact of the bill will skew in favor of that State.

[9] By "favoring or disfavoring" I am referring solely to the mathematical impact of the bill, and not to legislative intent.

Comparison of Each State's Share of the 2017 Tax Cuts to Baseline Share of Federal Tax Base		
States (including D.C.)	**Percentage of Tax Cut / Percentage of Tax Base**	**Rank[10]**
Alaska	137 percent	1
South Dakota	134.1 percent	2
Wyoming	132.1 percent	3
Texas	127.2 percent	5
Florida	122.0 percent	7
Connecticut	93.1 percent	40
Maryland	88.6 percent	46
Minnesota	87.1 percent	47 (tied)
Oregon	87.1 percent	47 (tied)
California	79.8 percent	49
New Jersey	79.4 percent	50
New York	70.1 percent	51
Source: ITEP data analyzed by New York State Department of Taxation and Finance		

39. As reflected in the table above, taxpayers in States such as Alaska, Wyoming, Texas and Florida receive between 22 and 37 percent more in tax cuts from the 2017 Tax Act than their respective baseline shares of the federal tax base. Those States are in the top ten on this metric.

40. In contrast, New York and New Jersey received between 20 and 30 percent less in tax cuts from the 2017 Tax Act than their respective baseline shares of the federal tax base. These States rank in the bottom three out of all States and the District of Columbia, and New York ranks last.

41. Based on this data, I find that the 2017 Tax Act favors States such as Alaska, Wyoming, Texas, and Florida and disfavors States such as New York and New Jersey.[11]

[10] A higher rank in this table correlates with a State receiving relatively more from the 2017 Tax Act than the State's share of the tax base.

[11] By "favoring or disfavoring" I am referring solely to the mathematical impact of the bill, and not to legislative intent.

Respectfully submitted,

Dated: June 16, 2018

SCOTT PALLADINO

EXHIBIT 3

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, STATE OF CONNECTICUT, STATE OF MARYLAND, and STATE OF NEW JERSEY, Plaintiffs, v. STEVEN MNUCHIN, in his official capacity as Secretary of the United States Department of Treasury; the UNITED STATES DEPARTMENT OF TREASURY; DAVID J. KAUTTER, in his official capacity as Acting Commissioner of the United States Internal Revenue Service; the UNITED STATES INTERNAL REVENUE SERVICE; and the UNITED STATES OF AMERICA, Defendants.	Civil Action No. __________

AFFIDAVIT OF ERNEST ADAMO

I, Ernest Adamo, having been duly sworn, testify and affirm as follows:

1. I am over eighteen years of age and understand the obligations of an oath.

2. I am a Planning Specialist with the Connecticut Department of Revenue Services ("DRS"). I have been employed at DRS since December 1989 and have held my current position since February 2004.

3. As Planning Specialist, I work in the Research Unit of DRS. Among its duties, the Research Unit is responsible for preparing, analyzing, verifying and disseminating all statistics relating to Connecticut's taxes and credits, with the exception of the property tax.

4. Within the Research Unit, I am the person that is responsible for preparing, analyzing and verifying data and statistics related to state and federal income taxes.

5. I hold a Bachelor's Degree in Economics from the University of Connecticut and a Master's Degree in Public Policy from Trinity College.

6. During the recent legislative session, I was directed by the Commissioner of DRS to analyze the impact of Public Law No. 115-97 (the "2017 Tax Act") on Connecticut taxpayers. Specifically, I was asked to determine the number of Connecticut taxpayers impacted by the new cap on the federal deduction for state and local taxes ("SALT Deduction CAP") as enacted in § 11042 of the 2017 Tax Act. When used herein, the term "SALT" refers to the state and local taxes the deduction of which is capped by the SALT Deduction Cap.

7. In order to determine the impact on Connecticut taxpayers, it was necessary to review federal tax data. The most recent federal tax data that was available to me was from tax year 2015. To this end, I reviewed and ultimately utilized data from Historic Table 2. Individual Income and Tax Data, by State and Size of Adjusted Gross Income, Tax Year 2015 for Connecticut (Source: IRS Federal SOI) to determine total taxable income and total income tax for Connecticut taxpayers.

8. Using the federal tax data for Connecticut described in paragraph 7, I calculated the effective tax rate by dividing the total income tax by total taxable income.

9. I then performed an analysis of 2015 federal Form 1040, Schedule A, *Itemized Deductions*, Line 9, for Connecticut filers[1] to determine the number of taxpayers and the amount of SALT deductions lost due to the SALT Deduction CAP. The amount of SALT deduction lost was based upon analyzing Connecticut taxpayers whose itemized deductions exceeded the new standard deduction prescribed in the 2017 Tax Act. This was estimated to be approximately $10.3 billion.

10. I then performed an analysis to show the impact of the limitation of the SALT deduction on Connecticut taxpayers within certain groupings. Based on that analysis, I determined that the SALT Deduction Cap likely will raise Connecticut taxpayers' federal income tax liability by approximately $2.8 billion in 2018. As set forth herein, this estimate is based on 2015 income using 2018 federal parameters.

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[1] "Connecticut filers" means the Connecticut taxpayers who filed a federal Form 1040 with the IRS in tax year 2015.

11. Broken down by income level, for tax year 2018, I estimate that the SALT Deduction Cap will result in a net increase in federal income taxes paid by Connecticut taxpayers under the 2017 Tax Act by the following amounts:

   a. $12,328,511 from taxpayers with adjusted gross incomes ("AGI")[2] between $0 and $25,000;

   b. $6,504,470 from taxpayers with AGIs between $25,000 and $50,000;

   c. $27,454,045 from taxpayers with AGIs between $50,000 and $75,000;

   d. $26,448,962 from taxpayers with AGIs between $75,000 and $100,000;

   e. $723,303,357 from taxpayers with AGIs between $100,000 and $500,000;

   f. $498,581,353 from taxpayers with AGIs between $500,000 and $1,000,000; and

   g. $1,488,663,880 from taxpayers with AGIs above $1,000,000;

12. I declare under penalty of perjury that the foregoing is true and correct.

13. I have read the foregoing and it is true and accurate to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

ERNEST ADAMO

STATE OF CONNECTICUT)
) ss: Hartford, Connecticut
COUNTY OF HARTFORD)

Subscribed and sworn to before me, this 13th day of July, 2018.

~~Notary Public~~
Commissioner of the Superior Court

[2] "Adjusted gross income" refers to a taxpayer's total gross income minus specific deductions.

EXHIBIT 4

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, STATE OF CONNECTICUT, STATE OF MARYLAND, and STATE OF NEW JERSEY, Plaintiffs, v. STEVEN MNUCHIN, in his official capacity as Secretary of the United States Department of Treasury; the UNITED STATES DEPARTMENT OF TREASURY; DAVID J. KAUTTER, in his official capacity as Acting Commissioner of the United States Internal Revenue Service; the UNITED STATES INTERNAL REVENUE SERVICE; and the UNITED STATES OF AMERICA, Defendants.	Civil Action No. ____________________

1. I, Andrew M. Schaufele, am the Director of the Bureau of Revenue Estimates in the Office of the Comptroller of Maryland, a position I have served in for five years. In that position I routinely develop estimates for the State's economic fundamentals (e.g., income and home sales) and revenues. In order to fulfill that duty, I also produce analyses of federal tax law changes that impact the State's revenues and taxpayers.

2. The Maryland Comptroller's Office prepared, according to State law, an analysis of the state impacts of the Federal Tax Cuts and Jobs Act of 2017 (2017 Tax

Act), which was published on January 25, 2018,[1] and is attached as Exhibit A. As explained in that report, the Bureau of Revenue Estimates conducted an analysis using 2014 as a model year to estimate the impact of various provisions on Maryland citizens and on State and county revenues. The analysis shows that different aspects of the 2017 Tax Act have different effects on taxes paid by taxpayers and revenues collected by Maryland, and, in some cases, these effects are off-setting.

3. Table 4b of the report analyzes the impact to Marylanders of the repeal of the deduction for state and local taxes, or SALT. Using tax year 2014 as the model year, the analysis found that a total of $6,545,905,030.00 in deductions would have exceeded the $10,000.00 cap. Translated into taxes paid using the 2017 rate tables yields a low-end estimate of $1,540,207,549.00 and a high-end estimate of $1,658,025,633.00. Taking the mid-point estimate and normalizing to 2018 dollars, the result is approximately $1.7 billion in increased taxes paid to the federal government by Marylanders as a result of the cap on the SALT deduction.

4. Maryland contracts with Moody's Analytics and IHS Markit to provide economic forecasts. These forecasts are used in developing revenue estimates as part of the State budgeting process. IHS Markit reported no change between their December 2017, pre-FTCJA, forecast and their January 2018, post-FTCJA, forecast for almost every forecast point. Moody's Analytics presented a decline in their market forecasts for

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[1] Maryland Bureau of Revenue Estimates, "The 60-Day Report: Effects of Federal Tax Law Revisions on the State of Maryland" (January 25, 2018), available at http://finances.marylandtaxes.gov/static_files/revenue/federalimpact/60_Day_Report_HR_2018.pdf.

existing home sales and median existing home price due to the passage of the SALT deduction cap.[2] These forecast changes represent decreases relative to their pre-FTCJA 2017 forecasts, not absolute decreases in the housing market. Nevertheless, such forecast changes represent lost revenue for the State.

5. Moody's Analytics downgraded their forecast post-2017 Tax Act for Calendar Year 2018 by 2.2% and for Calendar Year 2019 by 4.2%. While the forecast numbers themselves were not included in the Moody's Analytics presentation, a rough approximation of lost revenue may be obtained by application of these percentages to the 2017 residential real estate tax base. This figure is provided in Table I of the State Department of Assessment and Taxation's annual Ratio Report, which shows that the assessable value of residential real estate in 2017 was $ 536.7 billion.[3] A failure to grow by 2.2% would mean the assessable residential base would grow by $11.8 billion less than expected. Maryland's State tax on real property is $.112 per $100 of assessed value.[4] Applying the rate to the lesser increase in base, the decreased forecast represents $13.2 million in lost State revenue for Calendar Year 2018. Similarly, using the 2017 assessable base as a conservative assumption for the 2018 base, a failure to grow by 4.2%

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[2] *See* Department of Legislative Analysis, Office of Policy Analysis, "Fiscal Briefing" 17 (January 2018), available at http://mgaleg.maryland.gov/Pubs/BudgetFiscal/2018rs-operating-budget-fiscal-briefing.pdf.

[3] Maryland Department of Assessments and Taxation, "2017 Annual Ratio Report" Table I, available at http://dat.maryland.gov/Documents/2017%20Ratio%20Report.pdf.

[4] Maryland State Department of Assessments and Taxation 2017-2018 Tax Rate Table, available at http://dat.maryland.gov/Documents/Tax%20Table%202017%20(3).pdf.

in Calendar Year 2019 would mean the assessable residential base would lose additional growth of $22.5 billion in. Applying the State tax rate yields potential lost revenue of $ 25.2 million.

6. Maryland also collects a transfer tax on real estate transactions of .5% of consideration paid or .25% of consideration paid for first-time homebuyers. Md. Code., Tax Prop. § 13-203. In 2017, there were 64,310 home sales with a median price of $315,000.[5] . Moody's Analytics reported a change from December 2017 to January 2018, after passage of the 2017 Tax Act, in its forecasts of existing home sales. Moody's Analytics reported that home sales would decrease by 7.7% in Calendar Year 2018 and 9.0% in Calendar Year 2019 from its previously forecasted growth rates. Estimating that 35% of homebuyers qualify for the first-time homebuyer rate, the rate I routinely use in forecasting transfer tax revenues, and using the median home price as a modeling simplification, the decrease in forecasted growth represents approximately $6.4 million in lost transfer tax revenue in Calendar Year 2018 and $7.5 million in lost transfer tax revenue in Calendar Year 2019.

7. In sum, for just the two years following repeal of the SALT deduction, a slow-down in the housing market could cost Maryland $52.3 million in reduced revenue from real estate and transfer taxes.

8. I declare under penalty of perjury that the foregoing is true and correct.

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[5] Maryland Department of Assessments and Taxation, "Seventy-Third Annual Report, FY 2017," Table XVI, available at http://dat.maryland.gov/Documents/2017%20Annual%20Report.pdf.

6/14/2018
Date

Andrew M. Schaufele
Director, Maryland Bureau of
Revenue Estimates

EXHIBIT A

THE 60-DAY REPORT

Effects of Federal Tax Law Revisions on the State of Maryland

Prepared by the

MARYLAND BUREAU OF REVENUE ESTIMATES

JANUARY 2018

PETER FRANCHOT
Comptroller of Maryland

ANDREW SCHAUFELE
Director, Bureau of Revenue Estimates

COMPTROLLER of MARYLAND
Serving the People

Peter Franchot
Comptroller

Andrew M. Schaufele
Director
Bureau of Revenue Estimates

January 25, 2018

Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
State House
Annapolis, Maryland 21404

Honorable Thomas V. "Mike" Miller, Jr.
President of the Senate
State House
Annapolis, Maryland 21404

Honorable Michael E. Busch
Speaker of the House
State House
Annapolis, Maryland 21404

Dear Governor, President and Speaker:

I am pleased to present you with *The 60 Day Report – A Review of Tax Cuts and Jobs Act of 2017.*

Section § 10-108 of the Tax General Article of the Annotated Code of Maryland requires that the Comptroller's Office report the impact of changes in federal income tax law. The President signed into law H.R.1 of the 115th Congress; *Tax Cuts and Jobs Act of 2017* on December 22, 2017.

Acknowledgements:

I would like to thank my direct reports in the Bureau of Revenue Estimates for their hard work and dedication. A special word of thanks goes to Natalia Medynets, Kevin Ross, and Ben Uy, Analytika; for all of their time and tireless efforts that they have put in for this critical task.

Sincerely,

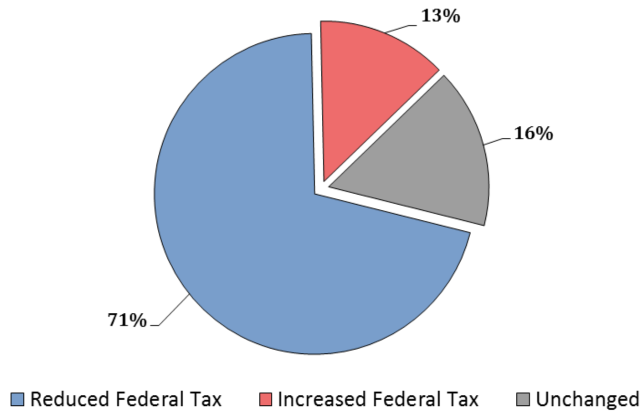
Andrew M. Schaufele
Bureau of Revenue Estimates, Director

Table of Contents

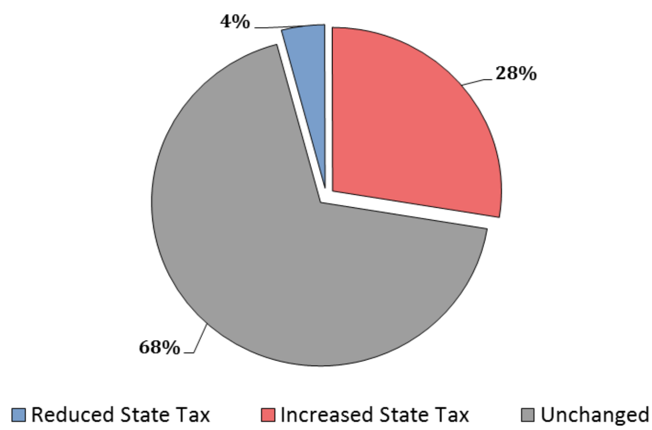
Executive Summary

The Office of the Comptroller presents this *60 Day Report* on the estimated impact on the State of Maryland by the passage and subsequent enactment of H.R.1 of the 115th Congress, otherwise known as the *Tax Cuts and Jobs Act* of 2017 (TCJA).

This report focuses on the changes made by many provisions of TCJA to the personal income tax. Using tax year 2014 to simulate the federal effects of TCJA results in a $2.75 billion net federal tax cut for Maryland taxpayers. In this simulation, assuming taxpayers aim to minimize federal tax, 2.03 million taxpayers, or 71 percent of the Maryland population, saw reduced federal tax for a total reduction of $3.54 billion; 376,000 taxpayers, 13 percent of the State's population, saw increased federal tax of $782 million.



However, because Maryland State and local tax law works in concert with the federal tax code, there will be major impacts to the way the federal income tax is calculated and the manner in which it flows through to the State and local tax. Ultimately, taxpayers should aim to minimize the combined federal-State-local tax owed. In this second simulation, we assumed that 80 percent did just that, while the remaining 20 percent minimized their federal tax. Under these conditions, almost 2 million taxpayers, or 68 percent of the population, saw no change in State and local tax owed.



The major provisions affecting Marylanders federal tax include the suspension of the federal personal exemptions and the $10,000 limitation on the deduction for State and local taxes paid. However, much of the effects of these will be more than offset by the enhanced Child Tax Credit and the increase in the standard deduction.

Notable Impacts	***Fiscal Year 2018***	***Fiscal Year 2019***	***Fiscal Year 2020***
Total State & Local Income Tax Increase	**36,814**	**572,276**	**450,967**
State Income Tax	23,241	361,125	284,383
Local Income Tax	13,573	211,151	166,584
Additional Disposable Income	**572,630**	**3,268,444**	**2,699,119**
State Sales Tax Increase	5,497	31,375	25,910
Education Trust Fund Increase	867	5,095	4,208

The major impact to Maryland income tax revenue comes from the new $10,000 limitation on State and local tax for federal itemized deductions. This will shift many taxpayers into the substantially increased federal standard deduction.

State law is coupled such that a taxpayer taking the federal standard deduction must take the State's much smaller standard deduction. The spread between the two for a married filer is now $20,000 whereas it used to be $8,700. Others that continue to itemize and have more than $10,000 in real estate taxes or any of the other repealed deductions will also see a State tax increase.

Additionally, of particular note is the limitation's effect on charitable contributions. As taxpayers shift to the federal standard deduction, they lose the preferential tax treatment of charitable contributions, which essentially acted as a federal match of a taxpayer's contribution amount at the taxpayer's highest tax rate. If all Maryland taxpayers favored minimizing federal tax, approximately 575,000 who deducted $1.49 billion in income would no longer receive the federal match.

Furthermore, several of TCJA's provisions will create complex dynamic effects in the State's economy, both in terms of macroeconomic impacts as well as on the individual taxpayer level. For example, taxpayers that have a potential source of business income claimed on their individual tax return may find it to their benefit to convert their wages or compensation to qualified business income in order to claim the 20 percent "Qualified Business Income" deduction.

Similarly, because of the reduction in the corporate income tax rates to 21 percent and the elimination of the minimum corporate income tax, businesses may find it beneficial to restructure as a C-corporation. Both of these examples serve to illustrate how TCJA may ultimately have significant ramifications for the State economy.

In general, the legislation as passed is extensive and complex. There is still a considerable level of uncertainty regarding the regulations that will be established by the U.S. Department of the Treasury to ensure clarity of the law. Many business owners will need to await that regulation or possibly even audits or other enforcement efforts from the Treasury Department before they have enough understanding to make structural considerations. In addition, TCJA generates uncertainty at the State level, most notably the State's coupling to federal personal exemptions. Our interpretation is that the State's personal exemptions remain intact. However, clarifying language for such an important aspect of Maryland tax would be preferential.

Disclaimer and General Notes

Tremendous uncertainty remains with regard to administrative procedures that may be undertaken by the U.S. Internal Revenue Service (IRS) or the U.S. Department of the Treasury to implement the laws established under TCJA. The enacted legislation frequently lacks detail or clarity on several complex provisions. There is certain to be a significant number of regulations drafted and applied by the impacted federal agencies, and those regulations may run contrary to our understanding of a certain topic or certain assumptions that we have made in our simulations.

In addition to the uncertainty related to providing estimates for items impacted by certain provisions that have not yet been fully specified by the federal government, the TCJA will certainly create dynamic incentives with regard to the classification of various types of income (i.e., wage and non-wage income), as well as incentives for business restructuring. While the dynamic impact of this bill is extremely difficult to foresee and model, the lack of clarity, particularly for business related issues, further complicates our estimating process.

The intent of this document is to provide a general overview of the provisions impacting Maryland residents. The most significant provisions are included for discussion in this document; certain esoteric items of limited scope are excluded. Furthermore, the descriptions of provisions in this document are not meant to be wholly comprehensive; rather, each is intended to provide an understanding of the provision's broadest impact.

Finally, all estimates within this document are subject to subsequent adjustments. This work is solely the product of the Comptroller of Maryland. Official revenue estimates will be provided by Board of Revenue Estimates through consultation and consensus from the Revenue Monitoring Consensus Group, which is comprised of officials from the Comptroller's Office, the Treasurer's Office, the Department of Budget and Management, the Department of Transportation, and the Department of Legislative Services.

Estimated TCJA Income Tax Impacts on Maryland Tax Revenues

Tables 1 (below) and 2 (next page) show the estimated impact that the TCJA will have on several of Maryland's revenue sources. Maryland's General Fund would increase by $28.7 million and $392.5 million across fiscal years 2018 and 2019, respectively. The Education Trust Fund would realize an additional $867,000 and $5.1 million, respectively. These estimates assume that the State's personal exemptions remain intact.

At times, we include impacts for local income tax; those are cash collections and, when combined with State tax, are representative of the total impact on taxpayers. The local income tax is distributed to local governments using a methodology different than strictly cash-basis; the fiscal year local tax estimates would not be suitable for direct local government use.

With regard to timing, very little impact occurs in the current fiscal year 2018. It is more likely that tax year 2018's impact will occur when the year's tax returns are filed in April 2019, after taxpayers and businesses have begun to react to the new provisions.

Details of the impacts on the amounts of State and local income tax revenues, as well as on sales tax and casino revenues, are also shown below. Supporting documentation for these estimates is contained later in this document.

Table 1. State & Local Personal Income Tax Revenue Impact on Maryland Residents - By Fiscal Year
Dollars in Thousands

Item		Fiscal Year 2018	Fiscal Year 2019	Fiscal Year 2020	Fiscal Year 2021	Fiscal Year 2022	Fiscal Year 2023
State Income Tax - SubTotal		23,241	361,125	284,383	294,339	304,531	314,762
Local Income Tax - SubTotal		13,573	211,151	166,584	172,362	178,281	184,236
Total State & Local Income Tax Impact		36,814	572,276	450,967	466,701	482,812	498,998

Notes:
(1) Fiscal Year 2019 is higher due to the fact that so much uncertainty exists. It is unlikely that estimated taxpayers will greatly affect their payments before the end of fiscal year 2018 for tax year 2018. Much of the impact is likely to occur later in the year as taxapayers possibly change withholding and then "true up" upon filing their taxes. Could be substantial refunds for tax year 2018 in fiscal year 2019.
(2) The fiscal years are a cash basis for State purposes, these are not intended for estimating local cash basis distibutions.

Table 2. Increase in Resident Disposable Income & Share Spent on Taxable Items and Casinos

Dollars in Thousands

Item	Fiscal Year 2018	Fiscal Year 2019	Fiscal Year 2020	Fiscal Year 2021	Fiscal Year 2022	Fiscal Year 2023
Federal Income Tax Changes Impact	609,444	3,840,720	3,150,086	3,222,901	3,297,400	3,373,621
State and Local Income Tax Flow Through Impact	(36,814)	(572,276)	(450,967)	(466,701)	(482,812)	(498,998)
SubTotal - Change in Disposable Income	**572,630**	**3,268,444**	**2,699,119**	**2,756,200**	**2,814,588**	**2,874,623**
Amount Spent on Taxable Goods	91,614	522,911	431,826	440,959	450,300	459,905
Share Spent on Taxable Goods	16.0%	16.0%	16.0%	16.0%	16.0%	16.0%
Total State Sales Tax Impact @ 6%	**5,497**	**31,375**	**25,910**	**26,458**	**27,018**	**27,594**
Gross Terminal Revenue From MD Casinos	2,944	16,805	13,878	14,171	14,471	14,780
Share to GTR from MD Casinos	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%
Total State Education Trust Fund Share	**867**	**5,095**	**4,208**	**4,168**	**4,256**	**4,347**

Notes:
(1) Fiscal Year 2019 is higher due to the fact that so much uncertainty exists. It is unlikely that estimated taxpayers will greatly affect their payments before the end of fiscal year 2018 for tax year 2018. Much of the impact is likely to occur later in the year as taxapayers possibly change withholding and then "true up" upon filing their taxes. Could be substantial refunds for tax year 2018 in fiscal year 2019.
(2) The share spent on taxable goods was determined with a BRE modified version of the Bureau of Labor Statistics' Consumer Expenditure Survey.
(3) Gross terminal revenue (GTR) is net of consumer winnings.

TCJA Impact on Federal Tax for Maryland Residents

We estimate that the TCJA would have resulted in a net federal income tax cut of $2.754 billion for Maryland residents for tax year 2014 (Table 3a, next page). That impact is the result of a simulation of actual taxpayer data for the majority of provisions. Growing those results and including several other items that could not be included in the simulation, and incorporating a dynamic reaction with Maryland's current deduction system yields an estimated net federal tax cut of $2.8 billion for tax year 2018. While the final estimate is modified, we do find the simulation tables for tax year 2014 to be entirely reasonable and representative of the impacts on taxpayers by various income characterizations.

The impact can be described in terms of those positively impacted (pay less federal tax), those negatively impacted (pay more federal tax), and those that are not impacted. On a net basis, 72% of taxpayers will pay less federal tax, 13% will pay more, and 15% will not see their federal taxes changes. By and large, those that are not impacted were untaxable under either regime.

Table 3a (next page) summarizes the net impact by various federal adjusted gross income (AGI) classes. The AGI classes are pre-tax changes to illustrate the estimated impact relative to the prior law.

Table 3a. Federal Income Tax - Net Impact of Tax Changes Tax Year 2014					
Federal Adjusted Gross Income Class		Number of Taxpayers Not Impacted	Number of Taxpayers Impacted		Total Net Tax Impact
0 or less		17,783	1,463		28,309,007
0 to 25,000		429,450	499,659		(82,793,869)
25,000 to 50,000		11,412	611,249		(258,435,035)
50,000 to 75,000		2,237	396,739		(283,962,775)
75,000 to 100,000		900	275,162		(307,195,859)
100,000 to 150,000		600	315,389		(474,889,843)
150,000 to 250,000		200	210,033		(495,464,139)
250,000 to 500,000		61	72,547		(682,793,723)
500,000 to 1,000,000		26	17,198		(160,713,876)
Greater than $1M		28	7,756		(35,995,173)
Total		**462,697**	**2,407,195**		**(2,753,935,285)**

There are 2.031 million taxpayers expected to benefit by a total of $3.54 billion, or $1,741 per taxpayer. As a share of income, the tax cut ranges between 1.6% and 3.3%, with an average of 2.0%. Table 3b tabulates those that benefit.

Table 3b. Federal Income Tax - Taxpayers Positively Impacted By Tax Changes Tax Year 2014									
Federal Adjusted Gross Income Class		Number of Taxpayers	Share of Taxpayers by Class		Average AGI for Group		Total Tax Reduction	Average Tax Reduction	Average Tax Impact Share of Average AGI
0 or less		1,193	6%		#N/A		(4,333,428)	(3,632)	#N/A
0 to 25,000		448,319	48%		15,944		(120,265,588)	(268)	-1.7%
25,000 to 50,000		487,775	78%		36,544		(352,189,414)	(722)	-2.0%
50,000 to 75,000		320,468	80%		61,621		(360,359,713)	(1,124)	-1.8%
75,000 to 100,000		233,228	84%		86,896		(355,205,397)	(1,523)	-1.8%
100,000 to 150,000		267,877	85%		121,660		(537,709,798)	(2,007)	-1.6%
150,000 to 250,000		183,438	87%		188,408		(550,005,224)	(2,998)	-1.6%
250,000 to 500,000		68,553	94%		327,272		(735,649,893)	(10,731)	-3.3%
500,000 to 1,000,000		14,641	85%		663,304		(230,490,851)	(15,743)	-2.4%
Greater than $1M		5,809	75%		2,528,429		(289,648,907)	(49,862)	-2.0%
Total		**2,031,301**	**71%**		**87,939**		**(3,535,858,213)**	**(1,741)**	**-2.0%**

Notes:
(1) Average AGI and average impact for those with negative AGI are generally distortive and meaningless. In general, for those with negative AGI that get a tax reduction, they benefit from the elimination of the alternative minimum tax (AMT).

There are approximately 376,000 taxpayers expected to be negatively impacted by a total of $782 million, or $2,080 per taxpayer. As a share of income, the tax increase ranges between 1.1% and 4.6%, with an average of 2.3%. Table 3c below tabulates those that will see an increase in federal taxes.

Table 3c. Federal Income Tax - Taxpayers Negatively Impacted By Tax Changes Tax Year 2014						
Federal Adjusted Gross Income Class	Number of Taxpayers	Share of Taxpayers by Class	Average AGI for Group	Total Tax Increase	Average Tax Increase	Average Tax Impact Share of Average AGI
0 or less	270	1%	#N/A	32,642,435	120,898	#N/A
0 to 25,000	51,340	6%	15,836	37,471,719	730	4.6%
25,000 to 50,000	123,474	20%	36,861	93,754,379	759	2.1%
50,000 to 75,000	76,271	19%	61,687	76,396,937	1,002	1.6%
75,000 to 100,000	41,934	15%	86,298	48,009,538	1,145	1.3%
100,000 to 150,000	47,512	15%	121,957	62,819,955	1,322	1.1%
150,000 to 250,000	26,595	13%	183,163	54,541,085	2,051	1.1%
250,000 to 500,000	3,994	6%	344,599	52,856,170	13,234	3.8%
500,000 to 1,000,000	2,557	15%	707,643	69,776,976	27,289	3.9%
Greater than $1M	1,947	25%	3,260,343	253,653,734	130,279	4.0%
Total	**375,894**	**13%**	**89,641**	**781,922,928**	**2,080**	**2.3%**

Notes:
(1) Average AGI and average impact for those with negative AGI are generally distortive and meaningless. In general, for those with negative AGI that get a tax increase, they are negatively impacted from the limitation on excessive business losses.

Discussion of Certain Impactful Provisions on Federal Tax

The following broad-based changes made to federal tax law by the TCJA are the principle drivers of the major shift in federal tax owed by Maryland taxpayers. Each of the provisions discussed below accounts for a significant impact when taken in isolation. However, the interaction of the provisions must be accounted for to determine the true impact of the bill. This interaction is especially important with regard to several of the most significant changes to the law: (1) the increase in the standard deduction; (2) the general reduction to itemized deductions; (3) the loss of exemptions; and (4) the increase and expansion of the child tax credit (CTC). Some of the provisions have effects that will reinforce each other, while some have effects that will counter each other.

Repeal of Personal Exemptions

The personal exemptions serve to reduce a taxpayer's adjusted gross income (AGI) to their federal taxable income. This reduction is part of the calculation of the amount of income on which federal tax is owed. If the exemptions cover the taxpayer's AGI, that taxpayer owes no federal taxes.

Under prior law, a personal exemption was generally allowed for each member of the taxpayer's family. Each personal exemption reduced a taxpayer's taxable income by $4,050. Unlike the State's personal exemptions, the federal exemption amounts were indexed for inflation. Personal exemptions included phase-out limitations: for taxpayers filing as married-filing-jointly, the phase-out began at $313,800; for those filing as head-of-household, it began at $287,650; for those filing as married-filing-separately, $156,900; and for all others, $261,500. Those too were indexed for inflation.

Under the TCJA, all deductions for personal exemptions are suspended through tax year 2025, at which point they will be reinstated. It is important to note that the exemption language remains in federal statute; the value of the exemptions is simply set to zero for the applicable years. The 2014 impact is shown below in Table 4a.

Table 4a. Impact of Repeal of Personal Exemptions				
Tax Year 2014				
Federal Adjusted Gross Income Class		Number of Taxpayers	Total Exemption Dollars Lost	Average Amount
0 to 25,000		556,500	2,576,576,370	4,630
25,000 to 50,000		614,458	4,484,195,572	7,298
50,000 to 75,000		396,950	3,075,882,036	7,749
75,000 to 100,000		275,311	2,433,730,014	8,840
100,000 to 150,000		315,481	3,252,605,488	10,310
150,000 to 250,000		209,749	2,430,936,452	11,590
250,000 to 500,000		64,299	635,317,491	9,881
500,000 to 1,000,000		-	-	-
Greater than $1M		-	-	-
Total		**2,432,748**	**18,889,243,423**	**7,765**

Because of the phase-out limitations under the previous law, the impact of the repeal is limited to the taxpayers that fall below the AGI at which the exemption is completely phased out – generally, this means taxpayers with AGI below $385,000. The impact of this repeal lands squarely on those taxpayers who would have taken large numbers of personal exemptions under the prior law; that is, taxpayers with many family members, particularly those with qualifying dependents older than 17 years old.

The doubled Child Tax Credit ("CTC"), discussed in this section on page 11, will help offset the increase in taxable income resulting from the repeal of the personal exemptions. The roughly $4,000 personal exemption that was available for each child under the previous law is generally equal to the $1,000 increase in the new CTC. In all, an additional $18.9 billion in AGI will now be federally taxable as a result of the repeal of the deduction for personal exemptions.

Modifications to Deductions

As with the personal exemptions, the federal standard and itemized deductions serve to reduce a taxpayer's (AGI) to his or her federal taxable income. This reduction is part of the calculation of the amount of income on which federal tax is owed.

The TCJA almost doubles the previous amount of the standard deduction for each filing status. For taxpayers filing as single or as married-filing-separately, the standard deduction is increased from $6,350 to $12,000; for those filing as head-of-household, the deduction is increased from $9,350 to $18,000; and for those married-filing-jointly, it is increased from $12,700 to $24,000. These amounts take effect beginning with tax year 2018 and are in effect through tax year 2025. Assuming no federal tax law changes going forward, the amounts of the deduction will revert to inflation-adjusted tax year 2017 amounts for tax years 2026 and beyond.

Under prior law, individuals were permitted a deduction for, among other things, State and local taxes (SALT) paid, regardless of whether those taxes were incurred in a trade or business. Under the TCJA, deductions for SALT have been generally capped at $10,000. The most common taxes deducted were taxes paid on property and income. A summary of the taxpayers impacted is illustrated in Table 4b below, with the dollar amounts detailed representing the lost deduction amounts.

Table 4b. Impact of Repeal of SALT Deductions				
Tax Year 2014				
Federal Adjusted Gross Income Class		Number of Impacted Taxpayers	Total Deduction Amount Exceeding Cap	Average Deduction Amount Exceeding Cap
0 or less		1,048	25,774,012	24,594
0 to 25,000		1,804	22,563,756	12,508
25,000 to 50,000		4,758	22,862,465	4,805
50,000 to 75,000		15,823	53,578,259	3,386
75,000 to 100,000		49,620	119,153,345	2,401
100,000 to 150,000		197,299	636,646,006	3,227
150,000 to 250,000		191,188	1,622,756,081	8,488
250,000 to 500,000		69,075	1,540,972,621	22,309
500,000 to 1,000,000		16,651	884,306,449	53,108
Greater than $1M		7,480	1,617,292,035	216,216
Total		**554,746**	**6,545,905,030**	**11,800**

Additionally, although each smaller in singular impact relative to SALT, several other aspects of itemized deductions were either eliminated or reduced in value, some with significant impacts. As in the case of the personal exemptions, these changes take effect for tax year 2018 and expire after tax year 2025, at which point the rules regarding itemized deductions revert to those in effect in tax year 2017.

The combination of the changes to itemized deductions will shift many Maryland taxpayers into the federal standard deduction, as itemizing deductions may no longer be financially beneficial to a taxpayer. While a minority of these taxpayers will benefit from this shift, most will be forced to claim a lower deduction. Thus, the limitation and various repeals will likely result in a rise in federal taxable income for these taxpayers. Meanwhile, those taxpayers that were already receiving the standard deduction will see a generous increase in untaxable income at the federal level. Table 4c below summarizes the impacts for Maryland's filing population, excluding those with income below zero.

Table 4c. Impact of Changes to Standard and Itemized Deductions

Tax Year 2014

Federal Adjusted Gross Income Class	Number of MD Taxpayers	Negatively Impacted: Taxpayers	Negatively Impacted: Total Deductions Lost	Positively Impacted: Taxpayers	Positively Impacted: Total Deductions Gained
0 to 25,000	929,109	9,124	28,638,068	602,186	2,904,501,235
25,000 to 50,000	622,661	51,079	249,478,755	546,455	3,660,058,024
50,000 to 75,000	398,976	60,801	320,062,934	289,066	1,903,817,322
75,000 to 100,000	276,062	66,703	324,509,146	169,834	1,156,174,911
100,000 to 150,000	315,989	148,228	768,031,062	150,730	925,879,213
150,000 to 250,000	210,233	165,787	1,530,735,035	42,571	237,451,869
250,000 to 500,000	72,608	67,744	1,441,890,023	4,713	34,127,220
500,000 to 1,000,000	17,224	16,276	747,488,047	945	8,145,415
Greater than $1M	7,784	7,161	1,338,515,346	622	13,097,021
Total	**2,850,646**	**592,903**	**6,749,348,417**	**1,807,122**	**10,843,252,230**

Notes:
(1) Taxpayers in the income class below $0 represent an insignificant share of those taxpayers affected; in addition, their calculation of AGI is so extraordinary as to be misrepresentative of the average taxpayer. Thus, they have been excluded from most tables.
(2) AGI means taxpayer AGI prior to any changes in the tax code.

Child Tax Credit (CTC)

Under prior law, the CTC allowed an individual to claim a credit in the amount of $1,000 for each qualifying child under age 17. The phase-out of the credit was dependent upon filing status: for taxpayers filing as single or head-of-household, the phase-out began at an AGI of $75,000; for those filing as married-filing-separately, the phase-out began at $55,000 and for those married-filing-jointly, and the phase-out began at $110,000. If the credit exceeded the taxpayer's federal tax liability, a refundable CTC capped at $1,000 was made available.

Under the TCJA, beginning in Tax Year 2018, the amount of the credit doubles to $2,000 per qualifying child, and a non-refundable credit is extended to qualifying dependents in an amount of $500. The phase-out limits have also been significantly increased. For those married-filing-jointly, the phase-out now begins at an AGI of $400,000; and for all other filing statuses, it begins at $200,000. The cap on the refundable portion of the credit is raised to $1,400 per qualifying child. The TCJA also requires that a Social Security number be provided for each qualifying child for whom the credit is claimed. If the child does not have a Social Security number, the child may still qualify for the non-refundable $500 credit.

The enhanced CTC will benefit all Maryland taxpayers with qualifying children and/or dependents. *"Negatively Impacted,"* as defined in Tables 5a and 5b, are the result of the effects of other provisions, with the enhanced CTC being more generous in both amount and eligibility requirements. The changes in the phase-out limits will have significant impacts on Maryland's middle class taxpayers. In particular, those living in central Maryland, where the cost-of-living is significantly higher than in other parts of the State and country, will see substantial benefits from the enhanced CTC as the AGI of middle class families settled in the suburbs of the Washington metro area can extend well beyond $150,000.

Previously, credits were phased out completely around $130,000 of AGI. Under the TCJA, the credit only begins to phase-out at $400,000 of AGI and extends up to $440,000 of AGI. This will result in approximately 275,000 newly-eligible taxpayers and a federal tax reduction of almost $900 million for these taxpayers, or approximately $3,250 per newly-eligible family.

Table 5a shows the impact of the changes to the non-refundable CTC.

Table 5a. Impact of Changes to Non-Refundable Child Tax Credit
Tax Year 2014

Federal Adjusted Gross Income Class		Negatively Impacted			Positively Impacted		
		Taxpayers	Credit Reduction		Taxpayers	Credit Increase	Average Increase
0 to 25,000		19,044	3,314,911		37,764	11,120,400	294
25,000 to 50,000		19,879	4,454,437		142,793	103,469,730	725
50,000 to 75,000		1,621	1,245,643		92,742	126,855,100	1,368
75,000 to 100,000		1,445	1,473,683		85,004	167,307,611	1,968
100,000 to 150,000		1,058	1,115,471		132,698	370,932,035	2,795
150,000 to 250,000		114	122,520		108,569	396,618,682	3,653
250,000 to 500,000		47	65,275		33,562	125,223,597	3,731
500,000 to 1,000,000		24	23,439		-	-	-
Greater than $1M		9	10,776		-	-	-
Total		**43,241**	**11,826,153**		**633,132**	**1,301,527,155**	**2,056**

Table 5b (next page) shows the impact of the changes to the refundable CTC.

5b. Impact of Changes to Refundable Child Tax Credit							
Tax Year 2014							
Federal Adjusted Gross Income Class		Negatively Impacted			Positively Impacted		
		Taxpayers	Credit Reduction		Taxpayers	Credit Increase	Average Increase
0 to 25,000		16,784	21,485,513		185,742	61,809,626	333
25,000 to 50,000		18,802	24,659,190		123,296	112,793,841	915
50,000 to 75,000		5,576	5,532,362		24,782	27,338,861	1,103
75,000 to 100,000		1,150	1,139,010		5,383	6,603,812	1,227
100,000 to 150,000		282	304,133		1,751	2,745,134	1,568
150,000 to 250,000		59	83,238		422	808,652	1,916
250,000 to 500,000		30	51,297		201	464,470	2,311
500,000 to 1,000,000		20	33,990		-	-	-
Greater than $1M		14	18,730		-	-	-
Total		**42,717**	**53,307,462**		**341,577**	**212,564,396**	**622**

The approximately 43,000 taxpayers "negatively impacted" in the non-refundable table would generally have zero tax liability under the TCJA, and these taxpayers would "lose" the non-refundable credit and shift to the refundable CTC. Similarly, the 43,000 "negatively impacted" in the refundable table that will be newly-ineligible for the refundable credit would no longer have the entirety of their tax liability wiped out by the non-refundable CTC, as they likely will have moved up in tax brackets as a result of the other provisions.

As a result of TCJA's changes to the CTC, approximately $1.3 billion in additional nonrefundable CTC and $213 million in additional refundable CTC will be awarded to Maryland taxpayers. Following the expiration of this provision at the close of tax year 2025, the rules regarding the CTC revert to those in effect in tax year 2017.

Federal Tax Brackets and Rates

Under the TCJA, the progressive tax rate regime remains. Tax rates will generally be lower for all income brackets. The exceptions are illustrated in Table 6a and Table 6b on the next page, which show each difference in the TCJA versus the prior law. As was the case in prior law, there are seven brackets under the TCJA. There are several ranges of income where the marginal change is substantial. It is worth noting that the reduction in the top bracket generates the largest and broadest based gain for those taxpayers.

6a. Married Joint Rates and Brackets								
Prior Law				Tax Cuts and Jobs Act				TCJA vs Prior Law
Begin	End	Rate		Begin	End	Rate		
$0	$18,650	10.0%		$0	$18,650	10.0%		Same
$18,650	$19,050	15.0%		$18,650	$19,050	10.0%		Decrease
$19,050	$75,900	15.0%		$19,050	$75,900	12.0%		Decrease
$75,900	$77,400	25.0%		$75,900	$77,400	12.0%		Decrease
$77,400	$153,100	25.0%		$77,400	$153,100	22.0%		Decrease
$153,100	$165,000	28.0%		$153,100	$165,000	22.0%		Decrease
$165,000	$233,350	28.0%		$165,000	$233,350	24.0%		Decrease
$233,350	$315,000	33.0%		$233,350	$315,000	24.0%		Decrease
$315,000	$400,000	33.0%		$315,000	$400,000	32.0%		Decrease
$400,000	$416,700	33.0%		$400,000	$416,700	35.0%		Increase
$416,700	$470,700	35.0%		$416,700	$470,700	35.0%		Same
$470,700	$600,000	39.6%		$470,700	$600,000	35.0%		Decrease
Greater than $600,000		39.6%		Greater than $600,000		37.0%		Decrease

6b. Single Rates and Brackets								
Prior Law				Tax Cuts and Jobs Act				TCJA vs Prior Law
Begin	End	Rate		Begin	End	Rate		
$0	$9,325	10.0%		$0	$9,325	10.0%		Same
$9,325	$9,525	15.0%		$9,325	$9,525	10.0%		Decrease
$9,525	$37,950	15.0%		$9,525	$37,950	12.0%		Decrease
$37,950	$38,700	25.0%		$37,950	$38,700	12.0%		Decrease
$38,700	$82,500	25.0%		$38,700	$82,500	22.0%		Decrease
$82,500	$91,900	25.0%		$82,500	$91,900	24.0%		Decrease
$91,900	$157,500	28.0%		$91,900	$157,500	24.0%		Decrease
$157,500	$191,650	28.0%		$157,500	$191,650	32.0%		Increase
$191,650	$200,000	33.0%		$191,650	$200,000	32.0%		Decrease
$200,000	$416,700	33.0%		$200,000	$416,700	35.0%		Increase
$416,700	$418,400	35.0%		$416,700	$418,400	35.0%		Same
$418,400	$500,000	39.6%		$418,400	$500,000	35.0%		Decrease
Greater than $500,000		39.6%		Greater than $500,000		37.0%		Decrease

Deduction for Qualified Business Income

Under the TCJA, an individual taxpayer may, in general, deduct 20% of qualified business income (QBI) from a partnership, S corporation, or sole proprietorship, as well as 20% of other certain business-related income. QBI is allowed to be taken as a loss and carried forward, but only against other QBI. The manner in which these losses will interact with other losses is uncertain; this provision may create extraordinary complexity.

There is a limitation on this deduction for service-related companies. For these companies, the deduction for any business income above the $315,000 threshold (married-filing-jointly) or $157,000 threshold (all other filing statuses) is gradually phased out. At the $415,000 limit (married-filing-jointly) or $207,000 limit (all other filing statuses), the deduction is completely phased out; that is, the business income from these service-related companies above the phase-out limits does not qualify for the QBI deduction.

The Office of the Comptroller has no reliable information regarding the amount of Maryland business income that is service-related. To simulate the impact of this deduction, we took the total amount of Maryland business income and randomly assigned it in a 70% - 30% service - nonservice business income ratio.

The assignment is based on classifications of businesses in Maryland according to various federal reporting sources; however, there are certainly limitations to the existing industry classification reporting and its relation to this tax provision. All business income below the phase-out limits received the appropriate deduction.

Nonservice business income above the phase-out limits continued to receive the deduction; service income above the phase-out limits received no deduction. Table 7 displays the results.

Table 7. Impact of Deduction For Qualified Business Income				
Tax Year 2014				
Federal Adjusted Gross Income Class		Number of Taxpayers	Total Deductions Gained	Average Amount
0 to 25,000		3,237	2,459,248	760
25,000 to 50,000		10,534	18,919,874	1,796
50,000 to 75,000		10,805	31,969,307	2,959
75,000 to 100,000		10,593	39,520,555	3,731
100,000 to 150,000		17,350	86,730,577	4,999
150,000 to 250,000		20,300	164,473,311	8,102
250,000 to 500,000		15,218	224,345,345	14,742
500,000 to 1,000,000		3,105	81,936,586	26,389
Greater than $1M		2,109	253,339,216	120,123
Total		**93,251**	**903,694,020**	**9,691**

Limitation on Business Losses for Individuals (Excess Business Losses)

Under prior law, a taxpayer that is an active participant in a non C-Corp business could utilize all of a current year's business losses to offset other types of income and then turn any additional excess loss amounts into a net operating loss for use in other tax years (carry-back or carry-forward). The effect was to render that taxpayer as untaxable for the current year and generate refunds for prior years and/or reduced tax in future years.

Under the TCJA, excess business losses above the specified limitations ($500,000 for married-filing-jointly, $250,000 for single) will no longer be allowed in a current taxable year, except in the case of corporations. However, these excess business losses will be allowed to be carried forward and treated as part of the taxpayer's net operating loss (NOL) carryforward.

This provision will have the effect of raising the federal taxable income of those taxpayers with excess business losses above the specified limitations. Under the prior law, these taxpayers could have used the full amount of their business loss to reduce their federal taxable income to zero. Under the TCJA, these taxpayers will be forced to spread the amount of losses above the limit over multiple years. For federal tax revenue purposes, assuming average business losses in the aggregate, this provision will serve to immediately increase federal taxable income. In theory, the provision would result in a net-zero effect, as excess business losses would serve to reduce future taxable income. Table 8 shows the first-year, one-year impact.

Table 8. Impact of Deduction For Excess Business Losses				
Tax Year 2014				
Federal Adjusted Gross Income Class		Number of Taxpayers	Total Deductions Lost	Average Amount
0 or less		369	395,385,252	1,071,505
0 to 25,000		21	16,417,613	781,791
25,000 to 50,000		29	22,680,560	782,088
50,000 to 75,000		40	18,008,348	450,209
75,000 to 100,000		32	9,780,027	305,626
100,000 to 150,000		18	9,947,220	552,623
150,000 to 250,000		28	20,657,532	737,769
250,000 to 500,000		61	59,122,368	969,219
500,000 to 1,000,000		58	81,076,736	1,397,875
Greater than $1M		124	332,332,733	2,680,103
Total		**780**	**965,408,389**	**1,237,703**

State Personal Income Tax Impacts

The following tables and sections detail the TCJA's flow-through to Maryland's income taxes. Throughout, we seek to identify the income and tax impacts of singular provisions or items. This is done to support policy analysis; however, it must be stressed that most of the provisions work together and one change can have impacts to other items. Any policy package that seeks to decouple the State from one or several of the federal changes should be run through our simulation to determine the most definitive impacts.

Table 9 (next page) summarizes the impact from our simulation of actual taxpayer data as well as items for significant provisions that we had to estimate outside of our tax database. We simulate the tax base with tax year 2014 records (most recent completed database) and extrapolate forward. Our baseline simulation assumes that all taxpayers prioritize the reduction of their federal tax.

However, approximately 12% of all taxpayers (333,552 taxpayers) would pay relatively more combined tax (federal plus State and local) if they only prioritized their federal tax. This inter-play is dependent on their decision of whether or not to itemize at the federal level. They may pay a little more at the federal level (may still benefit overall at federal level) but will save more in State and local taxes than they lost in federal taxes. The line item in the table below titled "*Adj for State Deduction Favor*" reflects our assumption that 80% of those taxpayers would make the correct decision for their bottom lines.

Table 9. State & Local Personal Income Tax Revenue Impact on Maryland Residents - Bringing It All Together - By Tax Year Dollars in Thousands							
Item		Tax Year 2014	Tax Year 2018	Tax Year 2019	Tax Year 2020	Tax Year 2021	Tax Year 2022
State Income Tax - Simulation		415,945	464,828	480,251	496,186	512,649	529,659
State Income Tax - Adj for State Deduction Favor		(178,090)	(199,020)	(205,623)	(212,446)	(219,495)	(226,777)
State Income Tax - $750k Mortgage Indebt Cap			915	1,739	2,481	3,148	3,749
State Income Tax - HELOC Repeal			11,374	11,374	11,374	11,374	11,374
State Income Tax - Lost NOL Carryback			12,530	12,530	12,530	12,530	12,530
State Income Tax - Expanded 529 Plan Use			(14,069)	(20,322)	(20,322)	(20,322)	(20,322)
State Income Tax - SubTotal			**276,558**	**279,948**	**289,802**	**299,884**	**310,212**
Local Income Tax - Simulation		242,904	271,451	280,457	289,763	299,377	309,311
Local Income Tax - Adj for Local Deduction Favor		(104,001)	(116,224)	(120,080)	(124,064)	(128,181)	(132,434)
Local Income Tax - $750k Mortgage Indebt Cap			487	925	1,320	1,675	1,994
Local Income Tax - HELOC Repeal			6,050	6,050	6,050	6,050	6,050
Local Income Tax - Lost NOL Carryback			7,470	7,470	7,470	7,470	7,470
Local Income Tax - Expanded 529 Plan Use			(7,485)	(10,811)	(10,811)	(10,811)	(10,811)
Local Income Tax - SubTotal			**161,750**	**164,012**	**169,728**	**175,581**	**181,581**
Total State & Local Income Tax Impact			**438,308**	**443,961**	**459,530**	**475,465**	**491,792**

Notes:
(1) Not all items could be simulated with taxpayer data, the other items represent estimates developed with separate data sources
(2) All estimates have documentation in other areas of the paper
(3) The "Adj for State Deduction Favor" is an adjustment after the simulation to account for taxpayers that would pay more in State and local taxes than if they would gain in decreased federal taxes by shifting to the standard deductions. We assume that 80% of those that would benefit under this scenario would exercise that option. There is further description later in the paper.
(4) This estimate excludes any impact from State and local exemptions; it is our opinion that they would be allowed, though clarifying language would be beneficial.

Table 9a is a break down by impact for Maryland residents, assuming all prioritize their federal income tax. Under this scenario, the State would collect $659 million more in combined state and local taxes, $416 million more for the general fund, and $243 million more in local income taxes.

Table 9a. Maryland Resident - State & Local Tax Impact - Assumes 100% Federal Tax Priority Tax Year 2014												
		No Change		Pay More State & Local Tax				Pay Less State & Local Tax				All
Federal Adjusted Gross Income Class		Number of Taxpayers		Number of Taxpayers	Total Change in S&L Tax	Average Change in S&L Tax		Number of Taxpayers	Total Change in S&L Tax	Average Change in S&L Tax		Net Change in S&L Tax
0 or less		18,955		277	9,484,903	34,242		14	(4,428)	(316)		9,480,475
0 to 25,000		733,393		184,385	51,082,217	277		11,331	(913,979)	(81)		50,168,237
25,000 to 50,000		448,362		149,505	92,558,650	619		24,794	(3,150,400)	(127)		89,408,250
50,000 to 75,000		224,013		153,233	98,305,399	642		21,730	(4,402,514)	(203)		93,902,885
75,000 to 100,000		135,756		125,322	83,993,144	670		14,984	(4,348,859)	(290)		79,644,285
100,000 to 150,000		126,917		174,947	122,680,822	701		14,125	(5,524,294)	(391)		117,156,528
150,000 to 250,000		79,572		121,491	96,047,773	791		9,170	(5,482,748)	(598)		90,565,025
250,000 to 500,000		15,830		43,356	51,524,374	1,188		13,422	(4,130,296)	(308)		47,394,078
500,000 to 1,000,000		414		11,093	27,028,736	2,437		5,717	(3,128,571)	(547)		23,900,165
Greater than $1M		182		4,400	68,315,307	15,526		3,202	(11,089,480)	(3,463)		57,225,827
Total		**1,783,394**		**968,009**	**701,021,324**	**724**		**118,489**	**(42,175,570)**	**(356)**		**658,845,754**

Table 9b is a breakdown by impact for Maryland residents, assuming all 333,552 prioritize their combined federal and state and local income taxes. Approximately 219,403 move into the "No Change" category with the others paying more or less for another item. Under this scenario, the State would collect $300 million more in combined State and local taxes, $193 million more for the general fund, and $107 million more in local income taxes.

Table 9b. Maryland Resident - State & Local Tax Impact - Assumes 100% Favor Impact of Fed&State&Local Combined									
Tax Year 2014									
	No Change	Pay More State & Local Tax			Pay Less State & Local Tax			All
Federal Adjusted Gross Income Class	Number of Taxpayers	Number of Taxpayers	Total Change in S&L Tax	Average Change in S&L Tax	Number of Taxpayers	Total Change in S&L Tax	Average Change in S&L Tax	Net Change in S&L Tax
0 or less	18,955	277	9,484,903	34,242	14	(4,428)	(316)	9,480,475
0 to 25,000	737,975	179,803	46,043,215	256	11,331	(913,979)	(81)	45,129,236
25,000 to 50,000	470,657	127,210	62,463,259	491	24,794	(3,150,400)	(127)	59,312,859
50,000 to 75,000	258,683	118,563	47,832,019	403	21,730	(4,402,514)	(203)	43,429,506
75,000 to 100,000	174,528	86,550	23,381,690	270	14,984	(4,348,859)	(290)	19,032,830
100,000 to 150,000	193,213	108,651	11,218,248	103	14,125	(5,524,294)	(391)	5,693,954
150,000 to 250,000	122,043	79,020	20,663,489	261	9,170	(5,482,748)	(598)	15,180,741
250,000 to 500,000	25,086	34,100	31,003,633	909	13,422	(4,130,296)	(308)	26,873,337
500,000 to 1,000,000	1,366	10,141	22,931,977	2,261	5,717	(3,128,571)	(547)	19,803,406
Greater than $1M	291	4,291	67,531,068	15,738	3,202	(11,089,480)	(3,463)	56,441,588
Total	**2,002,797**	**748,606**	**342,553,502**	**458**	**118,489**	**(42,175,570)**	**(356)**	**300,377,932**

Exemptions

The most significant flow-through revenue impact could come from the loss of the federal exemption. Maryland is coupled to federal statute. The uncertainty of the manner in which the existing State coupling language will interact with the TCJA leaves the status of the State exemption ambiguous. Our estimates assumed the State's exemptions remain intact. For such a significant tax impact, it would be beneficial to ensure an explicit interpretation of the State's policy. The State's exemption for fiduciaries is explicit and therefore not impacted by the TCJA.

Maryland Tax General Section 10-211 reads:

> **(a) In general.** -- Except as provided in subsection (b) of this section, whether or not a federal return is filed, to determine Maryland taxable income, an individual other than a fiduciary may deduct as an exemption:
>
> **(1)** $ 3,200 for each exemption that the individual may deduct in the taxable year to determine federal taxable income under § 151 of the Internal Revenue Code;

There are two schools of thought surrounding the federal exemption as enacted in TCJA. First, some believe that the TCJA does not eliminate the federal exemption and instead sets the amount to zero until tax year 2026. This interpretation of TCJA would not conflict with current Maryland statute, which states "the individual may deduct in the taxable year to determine federal taxable income." The second interpretation is that no exemption exists under TCJA because mathematically, while a taxpayer can deduct zero from any number, there would be no actual deduction. This would also impact Maryland's "special" exemptions for filers or dependents that are over the age of 64 or blind.

These conflicting interpretations underscore the need for legislative clarification at the state level. The ambiguous nature surrounding the federal deduction has vast implication on Marylanders. For example, in our simulation, the federal exemption impacted 90% of Maryland resident tax returns and saved taxpayers approximately $490 million in State taxes and $310 million in local taxes. Table 10a below shows exemptions claimed on Maryland resident tax returns from tax year 2014:

Table 10a. Impact - State and Local Personal Exemptions
Tax Year 2014

Federal Adjusted Gross Income Class	Regular Exemptions: Number of Taxpayers	Total Exempted Income	Average Exempted Amount	Total State & Local Tax Savings	Average State & Local Tax Savings (1)	Special Exemptions: Number of Taxpayers	Total Exempted Income	Average Exempted Amount	Total State & Local Tax Savings	Average State & Local Tax Savings (1)
0 or less	16,880	98,978,600	5,864	76,256	465	5,408	7,258,000	1,342	2,453	91
0 to 50,000	1,395,962	7,735,079,864	5,541	230,884,006	301	194,055	240,040,669	1,237	6,336,819	79
50,000 to 100,000	674,394	4,299,154,341	6,375	316,027,707	479	130,398	174,200,939	1,336	11,449,228	96
100,000 to 250,000	442,668	2,882,013,650	6,511	218,604,813	496	93,409	141,202,637	1,512	10,566,325	115
250,000 to 500,000	-	-	-	-	-	6,161	10,035,311	1,629	769,167	125
500,000 to 1,000,000	-	-	-	-	-	1,703	2,674,624	1,571	202,938	119
Greater than $1M	-	-	-	-	-	1,056	1,633,972	1,547	120,185	114
Total	**2,529,904**	**15,015,226,455**	**5,935**	**765,592,783**	**410**	**432,190**	**577,046,151**	**1,335**	**29,447,114**	**98**

Notes:
(1) For many, particularly in the lower brackets, lost exemption amounts would be offset by currently unused earned income credits. After taking unused credits into account, only 1.9 million taxpayers are actually impacted by lost regular State exemptions. Almost 300,000 are impacted by the special exemptions. The average dollar amounts in the table are amended to only account for those that are impacted.

Table 10b shows the State revenue impact by fiscal year if the State's exemptions are eliminated:

Table 10b. Revenue Impact - Lost Personal Exemptions
Dollars in Thousands

Item	Fiscal Year 2018	Fiscal Year 2019	Fiscal Year 2020	Fiscal Year 2021	Fiscal Year 2022	Fiscal Year 2023
Regular State Personal Exemptions	-	699,025	468,736	471,080	473,436	475,803
Special State Personal Exemptions	-	30,479	20,747	21,121	21,501	21,888
Subtotal - State Fiscal Impact	-	729,504	489,483	492,201	494,937	497,691
Regular Local Personal Exemptions	-	469,495	314,823	316,397	317,979	319,569
Special Local Personal Exemptions	-	20,607	14,027	14,280	14,537	14,798
Subtotal - Local Fiscal Impact	-	490,102	328,850	330,677	332,516	334,367
Total - Combined Impact for Taxpayer	-	1,219,606	818,333	822,878	827,453	832,058

Notes:
(1) Majority of exemption dollars are claimed through withholding and are therefore dependent on the State's withholding tables. The withholding tables for tax year 2018 have not been changed; any changes are pending clarification from the 2018 Legislative Session. This impacts timing, and shifts the cost of lost exemptions for tax year 2018 into early 2019 with the filing of tax returns.

Itemized Deductions (Shift to State Standard Deduction)

Prior to the TCJA, the federal standard deduction was $6,350 for taxpayers filing as single and $12,700 for those filing as married-filing jointly. Unlike the Maryland standard deduction, the federal standard deduction is indexed to inflation so as to not annually reduce its value and, in effect, raise taxes. There is also an additional standard deduction permitted for an individual that is blind or elderly.

The TJCA increases the federal standard deduction to $24,000 for married individuals filing a joint return, $18,000 for head-of-household filers, and $12,000 for all other individuals. Those amounts are indexed for inflation. The increased amounts expire after tax year 2025, at which point they will revert to tax year 2017 amounts.

Maryland statute is clear that a taxpayer may only itemize their deductions in Maryland if they did so at the federal level. Maryland Tax General Section 10-218 reads:

(a) In general. -- Only an individual who itemizes deductions on the individual's federal income tax return may elect to itemize deductions on the individual's income tax return.

(b) Limitations. -- An individual who elects to itemize deductions is allowed as a deduction the sum of the individual's federal itemized deductions:

(1) limited and reduced as required under the Internal Revenue Code;

(2) further reduced by any amount deducted under § 170 of the Internal Revenue Code for contributions of a preservation or conservation easement for which a credit is claimed under § 10-723 of this title; and

(3) further reduced by the amount claimed as taxes on income paid to a state or political subdivision of a state, after subtracting a pro rata portion of the reduction to itemized deductions required under § 68 of the Internal Revenue Code.

As the federal standard deduction becomes more valuable and other provisions reduce or eliminate certain components of pre-existing itemized deductions, more Maryland taxpayers will take the federal standard deduction. This will force these taxpayers into the State's standard deduction which is not indexed and is capped at $4,000 for married individuals and $2,000 for individuals.

Table 11a (next page) illustrates the impact to Maryland taxpayers if they were to choose their deduction method solely based on their federal tax. In general, the only major provisions that might increase a Maryland deduction are the temporary increase in medical deductions and the removal of the limitation on overall deductions (Pease limitation).

Table 11a. Impact to Maryland Deductions -- All Changes -- Assumes Preferred Federal Tax Reduction Tax Year 2014										
	Taxpayers Positively Impacted					Taxpayers Negatively Impacted				
Federal Adjusted Gross Income Class	Number of Taxpayers	Total Deduction Impact	Average Deduction Change	Estimated Exclusive State Tax Impact	Estimated Exclusive Local Tax Impact	Number of Taxpayers	Total Deduction Impact	Average Deduction Change	Estimated Exclusive State Tax Impact	Estimated Exclusive Local Tax Impact
0 or less	308	2,204,873	7,159	(7,333)	(1,244)	176	(2,079,066)	(11,813)	6,915	1,173
0 to 25,000	77,567	35,542,193	458	(1,474,630)	(759,103)	109,125	(372,237,847)	(3,411)	15,443,983	7,950,181
25,000 to 50,000	44,497	51,366,029	1,154	(2,285,788)	(1,476,600)	174,333	(1,328,055,490)	(7,618)	59,098,469	38,177,113
50,000 to 75,000	30,486	49,441,279	1,622	(2,339,194)	(1,483,238)	156,226	(1,247,475,851)	(7,985)	59,021,298	37,424,276
75,000 to 100,000	21,616	43,417,327	2,009	(2,062,268)	(1,302,520)	126,665	(1,054,042,167)	(8,321)	50,065,661	31,621,265
100,000 to 150,000	19,356	55,593,140	2,872	(2,731,769)	(1,667,794)	173,939	(1,527,135,599)	(8,780)	75,041,290	45,814,068
150,000 to 250,000	11,273	53,780,746	4,771	(2,804,487)	(1,613,422)	115,325	(1,104,010,204)	(9,573)	57,570,469	33,120,306
250,000 to 500,000	17,268	44,116,717	2,555	(2,425,680)	(1,323,501)	40,589	(469,072,302)	(11,557)	25,791,117	14,072,169
500,000 to 1,000,000	6,239	36,691,514	5,881	(2,086,974)	(1,100,745)	10,596	(185,110,813)	(17,470)	10,528,904	5,553,324
Greater than $1M	3,585	154,396,369	43,067	(8,855,340)	(4,631,891)	4,001	(361,021,309)	(90,233)	20,706,229	10,830,639
Total	**232,195**	**526,550,188**	**2,268**	**(27,073,464)**	**(15,360,059)**	**910,975**	**(7,650,240,647)**	**(8,398)**	**373,274,335**	**224,564,515**
Notes: (1) 1.7 million Marylanders have no change in their deduction										

It is important to note here that we have assumed that, with regard to the $10,000 cap on State and local taxes, taxpayers will prioritize their real estate taxes because they already do not receive a benefit on the Maryland return for income taxes paid.

Assuming all taxpayers prioritize reducing federal tax liability, as opposed to limiting State-local liability or combined federal-State-local liability, 700,198 taxpayers would be forced from Maryland's itemized deduction into Maryland's standard deduction. The shifting between deduction types is sure to create a dynamic impact for charitable contributions. It is worth noting that of those shifting, 574,415 made charitable contributions totaling $1.5 billion.

Table 11b below summarizes that impact:

Table 11b. Impact to Maryland Deductions -- Shifting -- Assumes Preferred Federal Tax Reduction Tax Year 2014								
	Taxpayers Switching From Itemized to Standard					Deducting Charitable Contribution		
Federal Adjusted Gross Income Class	Number of Taxpayers	Total Deduction Impact	Average Deduction Change	Estimated Exclusive State Tax Impact	Estimated Exclusive Local Tax Impact	Number of Taxpayers	Total Deducted Amount	Average Deducted Amount
0 or less	2,088	(1,241,129)	(594)	4,128	700	154	487,512	3,166
0 to 25,000	62,550	(365,658,970)	(5,846)	15,171,028	7,809,671	37,249	77,372,782	2,077
25,000 to 50,000	146,798	(1,261,385,492)	(8,593)	56,131,654	36,260,576	113,881	302,570,221	2,657
50,000 to 75,000	130,334	(1,112,275,958)	(8,534)	52,624,643	33,368,279	107,369	291,222,044	2,712
75,000 to 100,000	102,877	(914,084,921)	(8,885)	43,417,870	27,422,548	86,937	227,106,900	2,612
100,000 to 150,000	139,462	(1,291,046,110)	(9,257)	63,440,185	38,731,383	122,139	298,293,751	2,442
150,000 to 250,000	86,820	(879,381,630)	(10,129)	45,856,834	26,381,449	79,273	213,304,563	2,691
250,000 to 500,000	24,264	(311,717,591)	(12,847)	17,139,245	9,351,528	22,713	71,745,072	3,159
500,000 to 1,000,000	4,047	(74,731,940)	(18,466)	4,250,672	2,241,958	3,807	13,055,854	3,429
Greater than $1M	958	(56,906,590)	(59,401)	3,263,854	1,707,198	893	3,716,463	4,162
Total	**700,198**	**(6,268,430,332)**	**(8,952.37)**	**301,300,114**	**183,275,289**	**574,415**	**1,498,875,162**	**2,609**

However, we cannot assume that all taxpayers will prioritize their federal tax. Table 11c, on the next page, is a summary of the impact if taxpayers were to minimize the combined federal-State-local liability but pay more in federal tax. If all taxpayers were to follow that strategy, they would pay an estimated $143 million more in federal tax in order to pay $358 million less in State and local income taxes ($223 million less in State and $135 million less in local). The amounts in Table 11c would offset amounts in Table 11b. While not all will weigh their net impact, some surely will.

Table 11c. Taxpayers That May Elect to Pay More Federal Taxes to Minimize All Taxes						
Tax Year 2014						
Federal Adjusted Gross Income Class	Number of Taxpayers	Total Deduction Impact	Average Deduction Change	Estimated Exclusive State Tax Impact	Estimated Exclusive Local Tax Impact
0 or less	10	130,656	13,066	-	-
0 to 25,000	9,953	80,178,412	8,056	(3,326,567)	(1,712,434)
25,000 to 50,000	42,936	410,877,511	9,570	(18,284,049)	(11,811,342)
50,000 to 75,000	58,557	652,848,227	11,149	(30,887,933)	(19,585,447)
75,000 to 100,000	57,162	782,096,134	13,682	(37,148,570)	(23,462,884)
100,000 to 150,000	90,704	1,408,447,810	15,528	(69,209,139)	(42,253,434)
150,000 to 250,000	56,266	917,678,987	16,310	(47,853,914)	(27,530,370)
250,000 to 500,000	14,625	241,468,078	16,511	(13,276,698)	(7,244,042)
500,000 to 1,000,000	2,804	47,154,804	16,817	(2,682,115)	(1,414,644)
Greater than $1M	535	8,977,650	16,781	(514,909)	(269,330)
Total	**333,552**	**4,549,858,270**	**13,641**	**(223,183,895)**	**(135,283,927)**

Analyzing which taxes a taxpayer will prioritize presents challenges as the calculations of both federal and State taxes feed into each other. The remainder of the tables that detail isolated impacts from various changes to itemized deductions assume that all taxpayers prioritize their federal tax bills. One method had to be chosen, as the analysis gets circular if certain components are isolated. This approach provides the most information for decision makers. Table 11d details specific deductions that would be increased relative to the tables for individual provisions (following this section) should some share of those 333,552 taxpayers elect to itemize. While not affecting the table below, it is worth noting that 86% of the 333,552 taxpayers had charitable contributions totaling $846 million.

Table 11d. Taxpayers That May Elect to Pay More Federal Taxes to Minimize All Taxes -- Offsets										
Tax Year 2014										
	Total	Real Estate Taxes Over $10k			Personal Casualty & Theft Losses			Misellanous Deductions		
Federal Adjusted Gross Income Class	Number of Taxpayers	Number of Taxpayers	Real Estate Taxes Lost Over $10k	State & Local Tax Impact	Number of Taxpayers	Total C&T Losses	State & Local Tax Impact	Number of Taxpayers	Total Misc Deductions	State & Local Tax Impact
0 or less	10	-	-	-	-	-	-	6	46,025	179
0 to 25,000	9,953	84	469,480	29,506	17	94,457	5,936	2,151	6,765,805	425,213
25,000 to 50,000	42,936	274	1,084,146	79,410	66	470,378	34,454	11,106	59,744,779	4,376,103
50,000 to 75,000	58,557	427	2,002,049	154,784	64	577,387	44,639	14,639	87,136,869	6,736,776
75,000 to 100,000	57,162	517	2,378,655	184,343	43	994,414	77,066	11,744	71,529,554	5,543,449
100,000 to 150,000	90,704	1,171	4,254,268	336,677	70	1,021,490	80,839	17,285	109,122,699	8,635,817
150,000 to 250,000	56,266	2,005	7,594,817	623,889	30	818,113	67,205	9,060	67,671,670	5,559,003
250,000 to 500,000	14,625	2,353	12,998,464	1,104,652	46	2,837,903	241,174	2,170	22,131,925	1,880,843
500,000 to 1,000,000	2,804	1,166	9,294,295	807,478	14	1,873,082	162,731	444	7,509,926	652,454
Greater than $1M	535	258	6,273,018	547,977	14	8,181,853	714,722	80	1,959,509	171,172
Total	**333,552**	**8,255**	**46,349,192**	**3,868,715**	**364**	**16,869,077**	**1,428,768**	**68,685**	**433,618,761**	**33,981,010**

Itemized Deductions ($10,000 Cap on State and Local Taxes)

The TCJA limits the amount of SALT that can be included in itemized deductions to $10,000. For federal purposes, SALT includes income taxes as well as property taxes. Maryland, under Tax General Section 10-218 (b)(3), has always required taxpayers to add back their State and local income taxes, therefore only allowing the deduction for property taxes.

It remains unclear how the federal government will choose to administer this new cap. We assume that they will maintain the pre-existing reporting requirement (taxpayer notes full amounts) and then a summary line that limits the total to $10,000. If that is the case, then a Maryland taxpayer would want to define every dollar possible up to the cap as property taxes which would ensure that they limit the federal tax added back for Maryland tax purposes.

Of those taxpayers that would still itemize their deductions, 56,885 would be limited by the federal cap for Maryland purposes. This would subject $562 million more in income to State and local income taxes, generating approximately $31 million for the State and $17 million for local governments. It is worth noting that these amounts are prior to the property tax rate increase in Montgomery County.

Table 12. Real Estate Taxes Exceeding the $10K Cap

Tax Year 2014

Federal Adjusted Gross Income Class	Number of Taxpayers	Total Amount Over Cap	Average Amount Over Cap	Estimated Exclusive State Tax Impact	Estimated Exclusive Local Tax Impact
0 or less	482	5,625,952	11,672	18,712	3,173
0 to 25,000	711	5,956,922	8,378	247,150	127,227
25,000 to 50,000	1,510	7,904,809	5,235	351,764	227,237
50,000 to 75,000	2,428	14,588,990	6,009	690,243	437,670
75,000 to 100,000	3,071	13,598,305	4,428	645,902	407,949
100,000 to 150,000	6,553	27,545,812	4,204	1,353,562	826,374
150,000 to 250,000	11,813	50,825,270	4,302	2,650,369	1,524,758
250,000 to 500,000	16,314	101,525,132	6,223	5,582,181	3,045,754
500,000 to 1,000,000	9,064	98,584,163	10,876	5,607,361	2,957,525
Greater than $1M	4,939	235,394,297	47,660	13,500,943	7,061,829
Total	**56,885**	**561,549,652**	**9,872**	**30,648,188**	**16,619,495**

Other Technical Considerations: Maryland Tax General Section 10-218 (b)(3) requires taxpayers to addback the State and local taxes “claimed.” This addback only applies to income taxes; it does not include other State and local taxes (i.e., property taxes). We do not know how the IRS will administer the $10,000 cap. We assume that they will require a taxpayer to report all of their State and local taxes and have a subsequent field that limits the amount. For example, a taxpayer is required to report $14,000 in State and local income taxes and $12,000 in property taxes. The federal form limits the deduction to $10,000; that is the only amount of deduction that concerns the federal government. However, the taxpayer has technically claimed $14,000. Under this scenario, it would benefit the taxpayer to describe their $10,000 cap as being fully composed of property taxes; technically, they would not have an addback. Whether or not they would addback the $14,000 seems clearly to violate the intent of the Maryland statute, but the TCJA and possible federal application of that law leave the wording of Maryland statute ambiguous.

Itemized Deductions (Interest for Home Acquisition and Home Equity Debt)

The TCJA reduces the amount of interest that can be deducted for home indebtedness. Prior law permitted taxpayers to deduct interest paid for home acquisition loans up to $1.0 million of indebtedness; that threshold is reduced to $750,000 for indebtedness incurred between tax years 2018 and 2025. After 2025, the threshold is restored to $1.0 million, regardless of date of occurrence. For homes with indebtedness larger than the thresholds, the amount of interest that can be deducted is the total paid multiplied by a factor of the threshold divided by the average indebtedness for that year. All of the above indebtedness provisions exclude related debt incurred prior to October 12, 1987; that debt is grandfathered in with no limitation.

Interest for the indebtedness of a second home is also deductible if that home is not rented out or if the taxpayer uses that home for the larger of the following: 14 days or 10% of the days that the property is rented out at fair-market value. The combined indebtedness for the principal residence and the second home, assuming they meet the prior requirements, are capped by the aforementioned thresholds.

Reduced home related interest deducted will increase State and local income tax revenues. We do not have data to simulate the revenue impact as we have for other provisions. Only total interest is reported on tax returns. Hypothetical taxpayer impact examples are provided below. Under those scenarios, taxpayers that would have already been limited (above $1M) would see a federal tax increase of $4,000 and a State and local tax increase of $1,000. For those between the new and old thresholds, the increases in taxes are smaller. It is worth noting that this does reduce the value of a housing incentive; dynamic impacts to house prices for this provision will likely be minimal, except for those between the thresholds.

Table 13a. Revenue Impact Example - $750k Mortgage Indebtedness Cap						
	Taxpayer A		Taxpayer B		Taxpayer C	
Item	$1M Cap	$750k Cap	$1M Cap	$750k Cap	$1M Cap	$750k Cap
(a) Mortgage Indebtedness	1,332,825	1,332,825	7,000,000	7,000,000	850,000	850,000
(b) Threshold	1,000,000	750,000	1,000,000	750,000	1,000,000	750,000
(c) Interest Paid	62,000	62,000	331,000	331,000	41,000	41,000
(d) Ratio - If above threshold ((b)/(a))	75.0%	56.3%	14.3%	10.7%	100.0%	88.2%
(e) Deductable Interest ((c)*(d))	46,518	34,888	47,286	35,464	41,000	36,176
(f) Federal Cap Tax Increase ((c)-(e))*32%	5,109	8,947	93,626	97,527	-	1,592
(g) S&L Cap Tax Increase ((c)-(e))*8.5%	1,316	2,304	24,116	25,121	-	410

To complement the above and estimate the tax impact, the Maryland Department of Assessments and Taxation provided the quantity and value of home sales over $1 million. The assumption is that taxpayers would put down roughly 20%, especially in this low interest rate environment, therefore subjecting those homes to the cap. We found a relatively stable volume and average price for applicable home sales between 2015 and 2017.

In general, approximately 1,700 home transactions occur annually in Maryland for an average of $1.5 million. We inflated that number by 10% annually to account for homes owned that are outside of Maryland as well as to support the fact that second homes can sum to the total threshold. Each year, the revenue gain gets larger; for example, a new $1 million home purchase is impacted in 2018 and then again in 2019, while new transactions come on board. The tax impact pyramids, though we do have each succeeding year diminishing by 10% as homes are re-sold and principal is reduced. See Tables 13b (below) and 13c (next page) with assumptions and estimated revenue impacts for the federal tax and combined State and local taxes increases.

Table 13b. Federal Tax Revenue Impact - $750 Thousand Mortgage Indebtedness Cap Dollars in Thousands								
Base Assumptions				Cumulative Tax Increase				
Tax Year	Count of Impacted Taxpayers	Average Increase in Tax	Annual Tax Increase	Tax Year 2018 Tax Increase	Tax Year 2019 Tax Increase	Tax Year 2020 Tax Increase	Tax Year 2021 Tax Increase	Tax Year 2022 Tax Increase
2018	1,870	3.500	6,545	6,545	5,891	5,301	4,771	4,294
2019	1,870	3.500	6,545	-	6,545	5,891	5,301	4,771
2020	1,870	3.500	6,545	-	-	6,545	5,891	5,301
2021	1,870	3.500	6,545	-	-	-	6,545	5,891
2022	1,870	3.500	6,545	-	-	-	-	6,545
Total				**6,545**	**12,436**	**17,737**	**22,508**	**26,802**

Table 13c. State & Local Tax Revenue Impact - $750 Thousand Mortgage Indebtedness Cap Dollars in Thousands									
Base Assumptions					Cumulative Tax Increase				
Tax Year	Count of Impacted Taxpayers	Average Increase in Tax	Annual Tax Increase		Tax Year 2018 Tax Increase	Tax Year 2019 Tax Increase	Tax Year 2020 Tax Increase	Tax Year 2021 Tax Increase	Tax Year 2022 Tax Increase
2018	1,870	0.750	1,403		1,403	1,262	1,136	1,022	920
2019	1,870	0.750	1,403		-	1,403	1,262	1,136	1,022
2020	1,870	0.750	1,403		-	-	1,403	1,262	1,136
2021	1,870	0.750	1,403		-	-	-	1,403	1,262
2022	1,870	0.750	1,403		-	-	-	-	1,403
Total					**1,403**	**2,665**	**3,801**	**4,823**	**5,743**

Home equity indebtedness, including home equity lines of credit (HELOC), was limited to $100,000. Under TCJA, that deduction is eliminated. This provision also applies only to tax years 2018 through 2025. A survey of consumer finances by the Federal Reserve Board finds that, nationally, 4.4% of households have an open HELOC for an average balance of approximately $50,000. Applying these statistics to Maryland's households, assuming a 5.5% interest rate and that 90% of those households itemize their deductions, results in $217.8 million in lost itemized deductions. See Tables 13d and 13e for estimated revenue impacts for the federal tax and combined State and local tax increases.

Table 13d. Federal - Eliminate Deduction For HELOC Interest Dollars in Thousands					
	Tax Year 2018 Tax Increase	Tax Year 2019 Tax Increase	Tax Year 2020 Tax Increase	Tax Year 2021 Tax Increase	Tax Year 2022 Tax Increase
Total	**65,340**	**65,340**	**65,340**	**65,340**	**65,340**

Table 13e. State & Local - Eliminate Deduction For HELOC Interest Dollars in Thousands					
	Tax Year 2018 Tax Increase	Tax Year 2019 Tax Increase	Tax Year 2020 Tax Increase	Tax Year 2021 Tax Increase	Tax Year 2022 Tax Increase
Total	**17,424**	**17,424**	**17,424**	**17,424**	**17,424**

The total general fund impact for this section is as follows:

Table 13f. General Fund Revenue Impact $750k Indebtedness Cap & Eliminated HELOC Interest Dollars in Thousands						
	Fiscal Year 2018	Fiscal Year 2019	Fiscal Year 2020	Fiscal Year 2021	Fiscal Year 2022	Fiscal Year 2023
750k	-	1,339	1,908	2,625	3,270	3,894
HELOC	-	12,251	10,890	10,890	10,890	10,890
Total	**-**	**13,590**	**12,798**	**13,515**	**14,160**	**14,784**

Itemized Deductions (Temporary Enhancement for Medical Expenses)

Under prior law, taxpayers could deduct unreimbursed medical expenses to the extent that those expenses exceeded 10% of adjusted gross income. For tax years 2016 and prior, taxpayers with either the primary or secondary filer aged 65 or older could deduct to the extent that those expenses exceeded 7.5% of adjusted gross income.

The TCJA temporarily expands the 7.5% threshold to all taxpayers for tax years 2017 and 2018. The temporarily reduced floor will result in a tax cut for both federal and State and local taxes for those tax years. Table 14 (next page) is a summary of the amount by which those deductions would have increased in tax year 2014.

Table 14. Enhancement of Threshold for Medical Expenses Tax Year 2014					
Federal Adjusted Gross Income Class	Number of Taxpayers	Total Increase in Deductions	Average Deduction Increase	Estimated Exclusive State Tax Impact	Estimated Exclusive Local Tax Impact
0 or less	2,320	(2,504,238)	(1,079)	130,539	75,127
0 to 50,000	91,410	41,455,758	454	(1,802,491)	(1,138,479)
50,000 to 100,000	77,785	73,051,972	939	(3,426,131)	(2,070,795)
100,000 to 250,000	37,183	55,637,010	1,496	(2,960,639)	(1,669,110)
250,000 to 500,000	1,879	13,046,308	6,943	(736,690)	(391,389)
500,000 to 1,000,000	226	3,745,408	16,573	(215,093)	(112,362)
Greater than $1M	61	4,097,322	67,169	(235,596)	(122,920)
Total	**210,864**	**188,529,539**	**894**	**(9,246,102)**	**(5,429,928)**

Itemized Deductions (Increased Limitation for Charitable Contributions)

Under prior law, there were various caps, limitations, and rules regarding different forms of charitable contributions (e.g., cash, capital gain property); those caps differed based on the type of charity or foundation.

In general, under the TCJA, much of that complexity remains, though three substantive changes have been made:

1. The limitation on cash contributions to most charitable organizations is increased from 50% of adjusted gross income to 60%;
2. A donation made in exchange for college athletic seating rights is no longer considered a charitable contribution; and
3. Certain substantiation requirements for the charitable organizations themselves have been simplified.

Items 1 and 2 will directly impact State and local tax revenues, though the impact will be minimal in the aggregate. We do not have data on the amount of contributions that are over the current threshold, nor do we have data on how much is donated for college seating rights.

We know that very few taxpayers are currently bumping up against the current 50% threshold, and we assume that the amount donate for college seating rights is minimal. In tax year 2014, more than 1.1 million Marylanders deducted just over $5.3 billion in charitable contributions. Only 0.3% of those making contributions were at or above the current threshold.

Table 15 illustrates the number of donations by the share of that donation relative to income.

Table 15. 2014 Frequency Distribution of Charitable Deductions

Share of Contribution Relative to Income

Charitable Contribution as a Share of Federal Adjusted Gross Income		Number of Taxpayers	Cumulative Share
Negative AGI		609	0.1%
>0% and <1%		355,742	30.6%
>=1% and <25%		780,755	97.5%
>=25% and <40%		18,264	99.1%
>=40% and <50%		6,926	99.7%
>=50% and <75%		2,412	99.9%
>=75% and <100%		476	99.9%
>=100%		829	100.0%
Total		**1,166,013**	

Itemized Deductions (Personal Casualty and Theft Losses)

Under prior law, a taxpayer could claim a deduction for property lost or stolen for which the taxpayer was not compensated by an insurer. This generally included personal property with a value greater than $100 or property of a pass-through business. The losses were only deductible to the extent that they exceeded 10% of federally adjusted gross income.

The TCJA eliminates the deduction for all losses except for those attributable to a disaster declared by the President. This limitation is in effect for tax years 2018 through 2025. For purposes of our estimate, we have assumed that all losses reported by our taxpayers did not occur in disaster areas. Table 16 is a summary of the amounts that were deducted in tax year 2014:

Table 16. Repeal of Most Personal Casualty & Theft Losses
Tax Year 2014

Federal Adjusted Gross Income Class		Number of Taxpayers	Total Lost Deductions	Average Lost Deduction	Estimated Exclusive State Tax Impact	Estimated Exclusive Local Tax Impact
0 or less		21	367,676	17,508	19,166	11,030
0 to 50,000		700	6,932,164	9,903	301,410	190,375
50,000 to 100,000		583	9,383,630	16,095	440,091	265,997
100,000 to 250,000		439	8,906,741	20,289	473,959	267,202
250,000 to 500,000		257	12,561,985	48,879	709,342	376,860
500,000 to 1,000,000		120	12,935,628	107,797	742,872	388,069
Greater than $1M		96	122,697,505	1,278,099	7,055,107	3,680,925
Total		**2,216**	**173,785,329**	**78,423**	**9,741,946**	**5,180,457**

Itemized Deductions (Miscellaneous Deductions Subject to 2% Floor)

Prior law permitted a deduction for myriad miscellaneous expenses that generally relate to the production or collection of income. Those deductions were permitted to the extent that they exceeded 2% of federally adjusted gross income. Examples of these types of deductions include expenses for: investment fees and expenses; appraisal fees for charitable contributions; tax preparation fees; unreimbursed dues to professional societies; job search expenses.

The TCJA eliminates the deduction for tax years 2018 through 2025. Table 17 (next page) is a summary of the amounts that were deducted in tax year 2014.

Table 17. Repeal of Miscellaneous Deductions Subject to 2% Floor						
Tax Year 2014						
Federal Adjusted Gross Income Class		Number of Taxpayers	Total Lost Deductions	Average Lost Deduction	Estimated Exclusive State Tax Impact	Estimated Exclusive Local Tax Impact
0 or less		2,036	12,722,688	6,249	663,197	381,681
0 to 50,000		122,371	928,590,467	7,588	40,375,004	25,501,416
50,000 to 100,000		121,620	874,091,100	7,187	40,994,800	24,777,751
100,000 to 250,000		97,535	736,790,086	7,554	39,207,171	22,103,703
250,000 to 500,000		11,503	133,134,150	11,574	7,517,729	3,994,025
500,000 to 1,000,000		2,922	61,961,739	21,205	3,558,360	1,858,852
Greater than $1M		1,486	125,853,844	84,693	7,236,596	3,775,615
Total		**359,473**	**2,873,144,074**	**7,993**	**139,552,857**	**82,393,042**

Itemized Deductions (Overall Limitation "Pease Limitation")

Prior law limited the aggregate amount of most itemized deductions allowed to $313,000 (married-filing-joint) and $261,000 (single). Other filing statuses had similar thresholds. While calculations for the limitation did not apply to all components, it did include the most substantive provisions, including: mortgage interest; property taxes; state and local income taxes; and charitable contributions. The forced reduction to itemized deductions was the lesser of 3% of income over the threshold or 80% of the pre-limited applicable deductions.

The TCJA eliminates the limitation for tax years 2018 through 2025. Table 18 is a summary of the amount that those deductions would have increased in tax year 2014.

Table 18. Repeal of Limitation on Itemized Deductions						
Tax Year 2014						
Federal Adjusted Gross Income Class		Number of Taxpayers	Total Increase in Deductions	Average Deduction Increase	Estimated Exclusive State Tax Impact	Estimated Exclusive Local Tax Impact
0 or less		21	452,956	21,569	(23,611)	(13,589)
0 to 50,000		12	120,078	10,006	(5,221)	(3,298)
50,000 to 100,000		16	156,762	9,798	(7,352)	(4,444)
100,000 to 250,000		1,689	2,141,562	1,268	(113,960)	(64,247)
250,000 to 500,000		36,194	81,278,718	2,246	(4,589,591)	(2,438,362)
500,000 to 1,000,000		16,780	181,214,562	10,799	(10,406,853)	(5,436,437)
Greater than $1M		7,568	389,108,576	51,415	(22,373,743)	(11,673,257)
Total		**62,280**	**654,473,213**	**10,509**	**(37,520,332)**	**(19,633,633)**

Adjusted Gross Income (Moving Expenses)

Prior law effectively permitted a taxpayer to exclude most moving expenses related to changing a job. This was accomplished through two mechanisms: (1) an exclusion from income of any reimbursements from a taxpayer's employer for moving expenses paid by the taxpayer; or (2) a deduction from income of any expenses not reimbursed by the employer, providing those expenses met certain conditions.

Except for members of the Armed Forces, the TCJA repeals the exclusion and the deduction for all taxpayers. The repeals are in effect from tax year 2018 through tax year 2025. We do not have data on the amount of income that has been excluded; however, we believe it to be minimal in the aggregate. Table 19 shows the amount of income excluded from taxation through the deduction.

Table 19. Moving Expenses Deduction from Income
Tax Year 2014

Federal Adjusted Gross Income Class		Number of Taxpayers	Total Lost Deductions	Average Lost Deduction	Estimated Exclusive State Tax Impact	Estimated Exclusive Local Tax Impact
0 or less		146	736,454	5,044	7,365	3,682
0 to 25,000		4,726	9,840,638	2,082	344,422	196,813
25,000 to 50,000		7,344	16,200,096	2,206	745,204	453,603
50,000 to 75,000		5,647	15,860,965	2,809	753,396	475,829
75,000 to 100,000		3,798	13,077,694	3,443	620,763	392,331
100,000 to 150,000		3,961	16,211,666	4,093	775,481	486,350
150,000 to 250,000		2,750	14,092,977	5,125	723,646	422,789
250,000 to 500,000		915	5,972,973	6,528	320,223	179,189
500,000 to 1,000,000		162	1,735,232	10,711	95,438	52,057
Greater than $1M		30	523,744	17,458	28,806	15,712
Total		**29,479**	**94,252,439**	**3,197**	**4,414,745**	**2,678,355**

Adjusted Gross Income (Alimony)

Under prior law, alimony payments from the payor were deductible, with the payee including those payments as income. The TCJA flips the relationship, specifying that the income must be included for taxation by the payor, rather than the payee. The new provision applies to divorce or separation instruments executed or modified after 2018. The intent of the provision is to conform to the United States Supreme Court's ruling in *Gould v. Gould*. While not a perfect cancellation because of variable brackets, income thresholds, and residency, there is essentially no revenue effect. In tax year 2014, 10,264 tax returns deducted $220 million in alimony, while 7,302 tax returns added $180 million.

Adjusted Gross Income (Limitation on Business Losses for Individuals)

Under prior law, a taxpayer that is an active participant in a non C-Corp business could utilize all of a current year's business losses to offset other types of income and then turn any additional excess loss amounts into a net operating loss (NOL) for use in other tax years (carry-back or carry-forward). This often reduced that taxpayer's tax to zero for the current year and generated refunds for prior year and/or reduced tax in future years.

The TCJA limits the amount of losses that can be used to offset other income in the current year to $250,000 for individuals and $500,000 for joint filers. The excess amounts can then be translated into NOLs. NOLs are also changed in the TCJA (see section on NOLs on the next page). This provision impacts a small number of taxpayers. However, for those that it does impact, the change is meaningful. In theory, the impact is a net zero over the course of history as it essentially creates additional net operating losses. It will pull money forward. Separately, and likely of little impact, those thresholds are also applied to farm income, which had a lower threshold. Table 20 illustrates the impact. The amounts in the table are income that would be subject to taxation in the current year and then turned to net operating losses for future tax years.

Table 20. Limitation on Excessive Business Losses from Income
Tax Year 2014

Federal Adjusted Gross Income Class		Number of Taxpayers	Total Lost Deductions	Average Lost Deduction	Estimated Exclusive State Tax Impact	Estimated Exclusive Local Tax Impact
0 or less		369	395,385,252	1,071,505	21,069,472	11,861,558
0 to 25,000		21	16,417,613	781,791	878,012	492,528
25,000 to 50,000		29	22,680,560	782,088	1,231,292	680,417
50,000 to 75,000		40	18,008,348	450,209	979,897	540,250
75,000 to 100,000		32	9,780,027	305,626	513,132	293,401
100,000 to 150,000		18	9,947,220	552,623	500,181	298,417
150,000 to 250,000		28	20,657,532	737,769	1,102,038	619,726
250,000 to 500,000		61	59,122,368	969,219	3,347,035	1,773,671
500,000 to 1,000,000		58	81,076,736	1,397,875	4,656,508	2,432,302
Greater than $1M		124	332,332,733	2,680,103	19,109,132	9,969,982
Total		**780**	**965,408,389**	**1,237,703**	**53,386,700**	**28,962,252**

Adjusted Gross Income (Modification of Net Operating Losses)

A NOL occurs when a taxpayer's business deductions exceeds income. Myriad special treatments occur; however, those losses can generally be carried-back two years and carried-forward for twenty years. When carried back, the NOL results in an amended tax return and a refund. When carried forward, the NOL serves to reduce or eliminate taxable income, and therefore tax, in future years. Maryland has effectively decoupled from some of the special NOL provisions, but permits the general circumstances above.

For losses incurred after tax year 2017, the TCJA eliminates the carry-back provision and limits the deduction to 80% of taxable income therefore reducing a taxpayer's ability to fully reduce income in future years. Losses incurred in tax year 2017 and prior can be used to eliminate up to 100% of taxable income until exhausted. For losses incurred after tax year 2017, the carry-forward provision is allowed indefinitely. Certain special treatments are made, particularly for property and casualty insurance companies.

The elimination of the carry-back and the 80% limitation work to pull revenue forward. Similar to the limitation on business losses, this provision in theory is roughly revenue neutral over a long period of time. We estimate that we process between 8,000 and 10,000 NOL carry-back refunds for individual taxpayers, totaling refunds of between $18 million and $30 million. The volume and amounts are volatile, but generally dependent on proximity to recession; the recession triggers losses that enable the taxpayer to go back to a boom year and claim a refund.

To the extent that a taxpayer creates a NOL and has an applicable prior year for which to apply, they would almost certainly do so, meaning that the inventory of existing NOLs for carry-back is likely very small. On the other hand, we have no data on the amount of carry-forwards available from prior years, meaning that the 80% limitation on losses created in 2018 and thereafter are likely to "sit on the shelf" for years before coming into use. Therefore, the near-term revenue gain is almost exclusively the lost carry-backs.

As we are in an expansion, we estimate that NOL carry-backs will be reduced by $20 million per tax year for tax years beginning after 2017. The first decline in carry-backs would generally not occur until after April 2019, when the first return is due for tax year 2018, creating the NOL, and would have then permitted an amended return for tax years 2017 or 2016.

Additionally, as those amended returns are generally complicated and often require dialogue with the taxpayer, processing can take longer than normal. As such, that would push the first year of impact into fiscal year 2020.

The estimate revenue change is outlined in Table 21.

Table 21. Personal Income Tax Revenue Impact - Lost Carry-Back NOLs							
Dollars in Thousands							
Item		Fiscal Year 2018	Fiscal Year 2019	Fiscal Year 2020	Fiscal Year 2021	Fiscal Year 2022	Fiscal Year 2023
Total Carry-Back NOLs Saved		-	-	20,000	20,000	20,000	20,000
State Income Tax Share		-	-	12,530	12,530	12,530	12,530
Local Income Tax Share		-	-	4,680	4,680	4,680	4,680

State Modification (529 Plans for Elementary and Secondary Schools)

In general, a 529 plan functions similar to a Roth IRA, with the contributions to the account not deductible at the federal tax level. However, the gains accumulated in the account are not taxable when withdrawn under qualified conditions. The State allows a subtraction from income for up to $2,500 of contributions made per beneficiary and per account holder to qualified 529 plans. This essentially caps the annual subtraction at $5,000 per child on a joint return. Contributions in excess of the subtraction can be carried-forward to offset future income. The State also excludes the gains when withdrawn for qualified conditions. In the case of a 529, the qualified conditions are generally referred to as "qualified higher education expenses". For 529 accounts established after 2016, the State offers a matching contribution of $250 per beneficiary if the account holder had income less than $112,500 for an individual or $175,000 for a joint filer. In years where a match is received, the tax subtraction is not permitted.

The TCJA expands the definition of "qualified higher education expense" to include expenses for tuition and certain other related school expenditures at an "elementary or secondary public, private, or religious school." The amount of distributions for the new broadened provision cannot exceed $10,000 per beneficiary. This should greatly increase demand for 529 plans, resulting in more demand for the State subtraction, and possibly the match as well. Even if the taxpayer generally funds those expenditures with current cash, they could contribute monthly tuition amounts to a 529 account and then withdraw those amounts almost immediately. It could be the case that the parents max out their tax benefited distributions at $5,000 per child and then a set of grandparents does the same for the same child, enabling $10,000 in subtractions for income and $10,000 in tuition.

We do not know how many beneficiaries that might benefit from the broadened treatment already have an existing account, or of those that do, how many are already maxing out their tax benefit. We do know that in tax year 2016, 52,641 tax returns claimed a subtraction for contributions to the related Maryland Investment Plans. In total, $232 million in income was subtracted for State and local tax savings of $11.1 million and $7.0 million, respectively. Additionally, an annual report from the Maryland 529 detailed that there were investment plan accounts for 169,617 beneficiaries in fiscal year 2016.

A report from the Maryland State Department of Education details that 96,763 children were enrolled in non-public schools grades K-12 in 2016. Table 22 (next page) was created based on various shares of that population that might be incentivized and assumptions about the average amount that would be subtracted from income. It seems highly likely that most families would take advantage and would do so through the subtraction, not only because of the income limitations for the cap, but because a $5,000 income subtraction at a combined State and local tax rate of 8.25% is worth more than $400. For purposes of the initial estimate, we will assume a State revenue decrease of $20 million per year. While there may be investment gains that go untaxed, we assume that most of the impact is current cash and therefore the untaxed investment gains are minimal.

Table 22. Expansion of 529 Subtraction									
Impacted Student Population		% of Incentivized Beneficiaries	Number of Beneficiaries		Average Subtraction Per Beneficiary		Subtracted Income	State Tax Decrease @ 5.25%	Local Tax Decrease @ 3.0%
96,763		10%	9,676		6,000		58,056,000	3,047,940	1,741,680
96,763		20%	19,353		6,000		116,118,000	6,096,195	3,483,540
96,763		30%	29,029		6,000		174,174,000	9,144,135	5,225,220
96,763		40%	38,705		6,000		232,230,000	12,192,075	6,966,900
96,763		50%	48,382		6,000		290,292,000	15,240,330	8,708,760
96,763		60%	58,058		6,000		348,348,000	18,288,270	10,450,440
96,763		70%	67,734		6,000		406,404,000	21,336,210	12,192,120
96,763		80%	77,410		6,000		464,460,000	24,384,150	13,933,800
96,763		90%	87,087		6,000		522,522,000	27,432,405	15,675,660

Dynamic Effects

While we do share the estimated net tax impacts to determine additional taxable spending for sales tax purposes, our results do not include other macroeconomic consequences. Additionally, other than taxpayers shifting between deduction types, we do not make any assumptions regarding shifting taxpayer behavior. Various possible dynamic impacts are itemized below. Surely, as the TCJA is so broad in nature and because taxes have extraordinary impacts on macroeconomic and financial decisions, there are destined to be currently unidentifiable consequences.

1. A component of the preferential rate for qualified business income seeks to limit that treatment to non-wage income. It is highly likely that some taxpayers will find mechanisms to shift currently defined wage income to into business income. To the extent that this occurs, State income tax withholding will decrease, as will unemployment insurance and federal payroll taxes. Some of that withholding would likely be recouped through other tax payments, though redefining that income as business income permits business reductions to it that are not afforded to wage earners.

2. The preferential treatment of qualified business income has a tremendous number of qualifications. Those qualifiers are likely to incentivize reorganization by certain businesses. Before identifying those opportunities, we must note that business reorganization requires the consideration of a multitude of factors in addition to taxation. Furthermore, based on input from highly respected private tax attorneys, we have learned that the proper information does not yet exist for those attorneys to advise their clients on such an important decision. Proper decisions will require forthcoming regulation and rules from the federal government; some fine points may not be known until after completed future audits or litigation. Organization decisions tend to be sticky, meaning that a business cannot restructure each year as they see fit. Possible dynamic impacts include:

    a. Pass through businesses that elect to separate the existing business into multiple businesses. For example, over a certain income threshold, lawyers cannot claim the tax break due to the requirement that service businesses are not applicable. A legal firm was quoted as saying that they would consider separating a side of its business that produces documents and tangible products which might create qualified business income. This would likely have limited effect on State and local revenues, though it is a terribly inefficient use of economic resources.

    b. Due to the complexity and qualifiers surrounding qualified business income, some pass-through businesses may elect to reorganize as C-Corps to benefit from an even lower tax rate and greater certainty. Assuming that the reorganization resulted in comparable amounts of taxable income in Maryland, the result would likely be an increase in State tax revenues, as the corporate tax rate is 8.25% compared to the top personal rate of 5.75%; however, that income would no longer be taxable by local governments.

3. There will be a reduced amount of charitable contributions. The significantly increased federal standard deduction in concert with reductions to other components of itemized deductions incentivizes a tremendous number of taxpayers to take the shift into the standard deduction, effectively eliminating the tax benefit of a charitable contribution. We do not mean to insinuate that taxpayers only make contributions for tax purposes; certainly many taxpayers that do not get any tax benefit make charitable contributions. Rather, the lost tax benefit reduces the marginal benefit of each contributed dollar. That benefit may have functioned in two ways; (1) to incentivize donations all together; or (2) as a sort of match by the federal government, encouraging increased donations relative to what might have been donated otherwise. In effect, if we assume a marginal tax rate of 35%, the taxpayer only has to "pay" for 65% of their contribution. While we cannot estimate the impact that this will have on charitable giving by Marylanders, we can report that, of the 700,000 Marylanders that are expected to shift into the standard deduction, 574,000 claimed contributions totaling $1.5 billion.

4. Similar to charitable deductions, fewer taxpayers will find benefit from deducting mortgage interest, both in terms of no longer itemizing, but also due to the lower indebtedness threshold. While the taxpayer's bottom line may improve, specifically from a larger standard deduction, a benefit is no longer gained from home ownership. This may have an impact on home prices. The United Kingdom phased out a significant mortgage interest deduction beginning in 1988 and concluded the phase out in 2000. Surprisingly, we have not yet found empirical research on the event.

5. It is possible that macroeconomic activity could increase as a result of a large national tax cut. There will be more money in the hands of consumers and investors, which will create positive economic impacts. However, there is no free lunch. For now, this is deficit spending (~$1.5 trillion over 10 years), meaning that the U.S. Treasury will have to borrow funds, driving up the cost of borrowing for all entities. Increased interest rates are a drag on economic growth. Alternatively, the federal government may in the future elect to reduce government spending. Should that reduction come in the form of reduced discretionary spending, Maryland will be disproportionately impacted relative to the nation as a whole, in a manner similar to sequestration.

6. Additionally, it is worth noting that the nation is steamrolling towards extraordinary funding requirements for existing entitlement obligations, most notably Social Security and Medicare. Should the tax cut not actually pay for itself, the federal fiscal situation will be even more dire as decisions to shore up those programs are finally made. To put this in perspective, the Congressional Budget Office expects mandated Medicare expenditures to increase from $692 billion in 2016 to $1.2 trillion in 2025. Assuming steady and reasonable economic growth (i.e., no recession), the share of Medicare

spending relative to gross domestic product will increase form 3.8% to 4.6%. Similarly, Social Security outlays are projected to increase from $916 billion in 2016 to $1.5 trillion in 2025; the account will then have negative current cash flow of $250 billion (drawing from “trust” fund).

Examples of Federal Tax Impact

	Law	Wages, salaries, tips, etc. (a)	Business Income/ Loss (b)	Adjusted Gross Income (c)	Standard/ Itemized Deduction (d)	Personal Exemptions (e)	Taxable Inc (f)	Tax (g)	CTC Credits (h)	Federal Net Tax (i)
Taxable Income < $25,000		Single filer, no qualifying children, AGI $20,000, itemized deductions of $9,000								
		(a)	(b)	(a+b)	(d)	(e)	(c - d - e)	(f * Rates)	(h)	(g - h)
	Prior Law	20,000	-	20,000	9,000	4,050	6,950	695	-	695
	TCJA	20,000	-	20,000	12,000	-	8,000	800	-	800
		Single filer, no qualifying children, AGI $35,000, standard deduction								
		(a)	(b)	(a+b)	(d)	(e)	(c - d - e)	(f * Rates)	(h)	(g - h)
	Prior Law	35,000	-	35,000	6,350	4,050	24,600	3,224	-	3,224
	TCJA	35,000	-	35,000	12,000	-	23,000	2,570	-	2,570
		Single filer, one qualifying child, AGI $25,000, standard deduction								
		(a)	(b)	(a+b)	(d)	(e)	(c - d - e)	(f * Rates)	(h)	(g - h)
	Prior Law	25,000	-	25,000	6,350	8,100	10,550	1,116	1,000	116
	TCJA	25,000	-	25,000	12,000	-	13,000	1,370	2,769	(1,400)
		Married Joint filer, one qualifying child, AGI $33,000, itemized deductions of $21,000								
		(a)	(b)	(a+b)	(d)	(e)	(c - d - e)	(f * Rates)	(h)	(g - h)
	Prior Law	46,000	-	46,000	21,000	16,200	8,800	880	1,400	(520)
	TCJA	46,000	-	46,000	24,000	-	22,000	2,259	2,000	259
		Married Joint filer, one qualifying child, AGI $49,000, standard deduction								
		(a)	(b)	(a+b)	(d)	(e)	(c - d - e)	(f * Rates)	(h)	(g - h)
	Prior Law	49,000	-	49,000	12,700	12,150	24,150	2,690	1,000	1,690
	TCJA	49,000	-	49,000	24,000	-	25,000	2,619	2,000	619
Taxable Income $25,000 - $50,000		Single filer, one qualifying child, AGI $55,000, itemized deductions of $9,000								
		(a)	(b)	(a+b)	(d)	(e)	(c - d - e)	(f * Rates)	(h)	(g - h)
	Prior Law	55,000	-	55,000	9,000	8,100	37,900	5,219	1,000	4,219
	TCJA	55,000	-	55,000	12,000	-	43,000	5,400	2,000	3,400
		Single filer, no qualifying children, AGI $65,000, itemized deductions of $25,000								
		(a)	(b)	(a+b)	(d)	(e)	(c - d - e)	(f * Rates)	(h)	(g - h)
	Prior Law	65,000	-	65,000	25,000	12,150	27,850	3,711	-	3,711
	TCJA	65,000	-	65,000	22,400	-	42,600	5,312	-	5,312
		Married Joint filer, no qualifying children, AGI $70,000, standard deduction								
		(a)	(b)	(a+b)	(d)	(e)	(c - d - e)	(f * Rates)	(h)	(g - h)
	Prior Law	70,000	-	70,000	12,700	8,100	49,200	6,448	-	6,448
	TCJA	70,000	-	70,000	24,000	-	46,000	5,139	-	5,139

	Law	Wages, salaries, tips, etc. (a)	Business Income/ Loss (b)	Adjusted Gross Income (c)	Standard/ Itemized Deduction (d)	Personal Exemptions (e)	Taxable Inc (f)	Tax (g)	CTC Credits (h)	Federal Net Tax (i)
Taxable Income $50,000 - $100,000		Married Joint filer, one qualifying child, AGI $85,000, itemized deductions of $24,500								
		(a)	(b)	(a+b)	(d)	(e)	(c - d - e)	(f * Rates)	(h)	(g - h)
	Prior Law	85,000	-	85,000	27,500	12,150	45,350	5,870	1,000	4,870
	TCJA	85,000	-	85,000	24,000	-	61,000	6,939	2,000	4,939
		Married Joint filer, one qualifying child, AGI $85,000, itemized deductions of $24,500								
		(a)	(b)	(a+b)	(d)	(e)	(c - d - e)	(f * Rates)	(h)	(g - h)
	Prior Law	105,000	-	105,000	15,000	12,150	77,850	10,940	1,000	9,940
	TCJA	105,000	-	105,000	24,000	-	81,000	9,699	2,000	7,699
		Single filer, two qualifying children, AGI $85,000, itemized deductions of $15,000								
		(a)	(b)	(a+b)	(d)	(e)	(c - d - e)	(f * Rates)	(h)	(g - h)
	Prior Law	85,000	-	85,000	15,000	12,150	57,850	10,201	1,000	9,201
	TCJA	85,000	-	85,000	12,000	-	73,000	12,000	4,000	8,000
		Married Joint filer, two qualifying children, AGI $115,000, itemized deductions of $17,000								
		(a)	(b)	(a+b)	(d)	(e)	(c - d - e)	(f * Rates)	(h)	(g - h)
	Prior Law	115,000	-	115,000	17,000	16,200	81,800	11,928	1,500	10,428
	TCJA	115,000	-	115,000	24,000	-	91,000	11,899	4,000	7,899
Taxable Income $100,000 - $350,000		Married Joint filer, two qualifying children, AGI $140,000, itemized deductions of $22,000								
		(a)	(b)	(a+b)	(d)	(e)	(c - d - e)	(f * Rates)	(h)	(g - h)
	Prior Law	140,000	-	140,000	22,000	16,200	101,800	16,928	-	16,928
	TCJA	140,000	-	140,000	24,000	-	116,000	17,399	4,000	13,399
		Married Joint filer, three qualifying children, AGI $195,000, itemized deductions of $33,000								
		(a)	(b)	(a+b)	(d)	(e)	(c - d - e)	(f * Rates)	(h)	(g - h)
	Prior Law	195,000	-	195,000	33,000	16,200	145,800	27,928	-	27,928
	TCJA	195,000	-	195,000	24,000	-	171,000	29,619	6,000	23,619
		Married Joint filer, two qualifying children, AGI $285,000, itemized deductions of $40,000								
		(a)	(b)	(a+b)	(d)	(e)	(c - d - e)	(f * Rates)	(h)	(g - h)
	Prior Law	285,000	-	285,000	40,000	16,200	228,800	50,949	-	50,949
	TCJA	285,000	-	285,000	24,000	-	261,000	51,219	4,000	47,219
		Married Joint filer, three qualifying children, AGI $365,000, itemized deductions of $50,000								
		(a)	(b)	(a+b)	(d)	(e)	(c - d - e)	(f * Rates)	(h)	(g - h)
	Prior Law	365,000	-	365,000	50,000	11,325	303,675	75,430	-	75,430
	TCJA	365,000	-	365,000	24,000	-	341,000	72,499	6,000	66,499
		Married Joint filer, no qualifying children, AGI $750,000, business loss $675,000, itemized deductions of $60,000 (for TCJA sim, taxpayer takes standard deduction plus $11,000 of other deductions still allowed under TCJA)								
		(a)	(b)	(a+b)	(d)	(e)	(c - d - e)	(f * Rates)	(h)	(g - h)
	Prior Law	750,000	(675,000)	75,000	60,000	16,200	-	-	-	-
	TCJA	750,000	(500,000)	250,000	35,000	-	215,000	40,179	-	40,179
TI $1M+		Married Joint filer, two qualifying children, AGI $1,150,000, itemized deductions of $90,000 (for TCJA sim, taxpayer takes standard deduction plus $15,000 of other deductions still allowed under TCJA)								
		(a)	(b)	(a+b)	(d)	(e)	(c - d - e)	(f * Rates)	(h)	(g - h)
	Prior Law	1,150,000	-	1,150,000	90,000	-	1,060,000	364,991	-	364,991
	TCJA	1,150,000	-	1,150,000	39,000	-	1,111,000	350,449	-	350,449

Methodology

These estimates are the result of statistical modeling using the Comptroller's Statistics of Income (SOI) database. The SOI database is a taxpayer level database that is housed within the Bureau of Revenue Estimates (BRE). More detail is available in the annual reports as published on the Comptrollers website, www.marylandtaxes.gov.

In summary, the SOI database consists of actual individual tax returns; it is not the result of sampling. Those records are combined from federal tax records and State tax records. The data is cleansed to ensure that underlying data is reliable for decision making criteria. Sampling is done with the actual data to verify that cleansing is completed properly.

The actual data from the returns is modeled based on the new policy and then compared to the policy in place prior to the bill. The base year for the analysis is tax year 2014. Tax year 2014 is the most recent year for which the SOI is available. The federal data significantly lags the availability of State data; in addition, the preparation of the database elongates the process time. With that said, tax year 2014 provides a sound basis for comparison as recent tax years have been impacted by extraordinary economic and policy items; tax year 2014 may be as close to a "normal" year as we have on record.

MARYLAND BUREAU OF REVENUE ESTIMATES

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EXHIBIT 5

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK,
STATE OF CONNECTICUT,
STATE OF MARYLAND, and STATE OF NEW JERSEY,

Plaintiffs,

v.

STEVEN MNUCHIN, in his official capacity as Secretary of the United States Department of Treasury; the UNITED STATES DEPARTMENT OF TREASURY; DAVID J. KAUTTER, in his official capacity as Acting Commissioner of the United States Internal Revenue Service; the UNITED STATES INTERNAL REVENUE SERVICE; and the UNITED STATES OF AMERICA,

Defendants.

Civil Action No. ____________________

DECLARATION OF MARTIN POETHKE

Declaration of Martin Poethke

I, Martin Poethke, declare as follows:

1. I am the Director of the Office of Revenue and Economic Analysis ("OREA") at the New Jersey Department of the Treasury.

2. As part of the responsibilities of my position, I am involved in reviewing and approving calculations performed by OREA staff regarding revenue projections for the budget process as well as the monitoring of the revenues and the economy throughout the year.

3. In preparing this Declaration, I have relied on my knowledge and experience as Director of OREA, as well as the laws, data, reports, and research from OREA staff that are described in this Declaration.

The Limit on the Deductions for State and Local Taxes in Public Law 115-97 ("2017 Tax Act")

4. On December 22, 2017, President Donald Trump signed into law Public Law 115-97 ("2017 Tax Act"). Among other things, the 2017 Tax Act placed a $10,000 cap on the amount of the deductions allowed for state and local taxes ("SALT") at the federal level.

5. Prior to the enactment of the 2017 Tax Act, taxpayers generally could deduct the full amount of SALT paid.

6. The new SALT deduction cap will result in New Jersey residents paying more in federal taxes than absent the cap.

7. The new SALT deduction cap will also affect revenues of the State of New Jersey ("State") by reducing collections from two taxes based on the value of real property.

Impact of the 2017 Tax Act on New Jersey Residents

8. To estimate the impact of the 2017 Tax Act on New Jersey residents, a senior researcher from OREA compared two different scenarios using data from tax year 2015, which is the most recent year complete New Jersey administrative tax data is available. The first scenario is a hypothetical scenario in which the 2017 Tax Act is implemented without a SALT deduction cap. The second is based on the complete implementation of the 2017 Tax Act. Because the 2017 Tax Act reforms federal tax law and does not change New Jersey tax law, the direct effect is a change in the federal income tax liability of New Jersey residents. The analysis is conducted by matching federal income tax return data with New Jersey residents who filed a New Jersey gross income tax return (NJ-1040). The estimates generated are reported in 2015 dollars.

9. The aggregate federal tax liability for New Jersey residents is estimated to be $59.930 billion under the first scenario, where New Jersey residents were allowed to deduct the full amount of SALT paid while keeping the other provisions of the 2017 Tax Act intact.

10. In the second scenario, under TCJA 2017, the estimated federal tax liability for New Jersey residents is $63.066 billion.

11. Comparing the two scenarios, it is estimated that New Jersey residents will pay $3.136 billion more in federal income taxes as a result of the SALT deduction cap.

12. The table below compares the average federal income tax liability, by adjusted gross income group, under the two different income tax scenarios. The average federal income tax liability is higher for all New Jersey income groups under the 2017 Tax Act. Therefore, based on the research, the SALT deduction cap will result in New Jersey residents paying more in federal income taxes.

		No SALT Cap vs. 2017 Tax Act: Average Federal Income Tax Liability			
Federal AGI Group	Count	No SALT Cap	2017 Tax Act	Difference	Percent Change
below $50,000	2,416,887	$ 1,187	$ 1,191	$ 4	0.3%
$50,000 - $100,000	977,757	7,429	7,511	82	1.1%
$100,000 - $250,000	813,378	21,318	22,166	848	4.0%
$250,000 - $500,000	145,499	66,764	70,075	3,312	5.0%
$500,000 - $1,000,000	41,706	169,181	182,805	13,624	8.1%
$1,000,000 - $2,000,000	17,999	392,833	427,854	35,021	8.9%
$2,000,000 - $5,000,000	5,468	921,523	998,172	76,649	8.3%
$5,000,000 - $10,000,000	830	2,170,407	2,338,671	168,263	7.8%
at least $10,000,000	280	6,348,562	6,770,206	421,644	6.6%
Totals	4,419,804	$ 13,559	$ 14,269	$ 709	5.2%

13. As shown above, the federal income tax bill for households making between $100,000 and $250,000 would be higher by an average of 4.0% as a result of including the SALT deduction cap. Households with earnings between $250,000 and $500,000 would pay 5.0% more on average in federal income taxes. On average, the federal income tax liability for New Jersey residents would be 5.2% higher.

14. The table below reports the difference between the two scenarios on the aggregate federal income tax liability rather than average tax liability.

		No SALT Cap vs. 2017 Tax Act: Federal Income Tax Liability (Millions $)			
Federal AGI Group	Count	No SALT Cap	2017 Tax Act	Difference	Percent Change
below $50,000	2,416,887	$ 2,870.0	$ 2,878.9	$ 8.9	0.3%
$50,000 - $100,000	977,757	7,264.1	7,344.0	79.9	1.1%
$100,000 - $250,000	813,378	17,339.5	18,029.5	689.9	4.0%
$250,000 - $500,000	145,499	9,714.1	10,195.9	481.8	5.0%
$500,000 - $1,000,000	41,706	7,055.8	7,624.0	568.2	8.1%
$1,000,000 - $2,000,000	17,999	7,070.7	7,701.0	630.3	8.9%
$2,000,000 - $5,000,000	5,468	5,038.5	5,457.6	419.1	8.3%
$5,000,000 - $10,000,000	830	1,801.8	1,941.5	139.7	7.8%
at least $10,000,000	280	1,775.4	1,893.3	117.9	6.6%
Totals	4,419,804	$ 59,929.9	$ 63,065.6	$ 3,135.8	5.2%

Impact of 2017 Tax Act on State Revenues

15. To estimate the impact of the 2017 Tax Act on State revenues, I reviewed and approved calculations made by OREA staff estimating the impact of the expected reduction in home values on the revenues collected by the State from the realty transfer fee and the additional assessment on certain real property valued over $1 million. For this estimate, home price data from calendar year 2017 was used to model the impact on tax collections.

16. Home values in New Jersey will be adversely affected by the SALT deduction cap combined with the reduction in the limit on the mortgage interest deduction from $1 million to $750,000. Moody's Analytics modeled the combined effect of these two tax reform provisions on home prices, and provided county-specific estimates. On average, New Jersey home values are estimated to decline by 8.5% from their peak.

17. Generally, the realty transfer fee is imposed upon the recording of deeds evidencing transfers of title to real property in the State. *See* N.J. Stat. Ann. 46:15-5, *et seq.* The realty transfer fee is based on the amount of consideration recited in the deed except when the value is indeterminable, in which case the fee is calculated on the assessed value of the property being conveyed on the date of the transfer adjusted to reflect the true value as determined by the average ratio of assessed to true value established for that municipality for the current year.

18. An additional assessment of one percent (1%) is generally imposed on buyers for an entire consideration recited in the deed in excess of $1 million for the following property (as defined in N.J.A.C. 18:12-2.2): residential (class 2); commercial properties (class 4A); a specified class of farm property (regular) (class 3A); and cooperative units.

19. The reductions in the realty transfer fee and the additional assessment on certain real property valued over $1 million for State fiscal years 2019 through 2020 due to the reduction

in property values forecast by Moody's are shown in the table below. The State fiscal year runs from July 1 to June 30 and is labeled for the calendar year in which the fiscal year ends. Thus, the State is currently in fiscal year 2018, and fiscal year 2019 will begin on July 1, 2018.

Estimate of Revenue Impact	FY 2019 Prior Law	FY 2019 2017 Tax Act
Realty Transfer Fee	$ 408,079,906	$ 378,821,193
Assessment on Real Property > $1.0 M	149,402,734	134,032,392
Total	$ 557,482,640	$ 512,853,585
Difference		*(44,629,055)*
Growth Rate		*-8.0%*

Estimate of Revenue Impact	FY 2020 Prior Law	FY 2020 2017 Tax Act
Realty Transfer Fee	$ 417,721,965	$ 372,932,239
Assessment on Real Property > $1.0 M	152,932,802	137,199,292
Total	$ 570,654,767	$ 510,131,531
Difference		*(60,523,237)*
Growth Rate		*-10.6%*

Estimate of Revenue Impact	Aggregate Impact Prior Law	Aggregate Impact 2017 Tax Act
Realty Transfer Fee	$ 825,801,871	$ 751,753,432
Assessment on Real Property > $1.0 M	302,335,536	271,231,684
Total	$ 1,128,137,407	$ 1,022,985,116
Difference		*(105,152,291)*
Growth Rate		*-9.3%*

20. As shown in the table above, the realty transfer fee and the additional assessment on certain real property value over $1 million are projected to decline by a combined total of $105.1 million, or 9.3%, from fiscal year 2019 through fiscal year 2020.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Respectfully submitted,

Martin Poethke

06/15/2018

Date