

FAQ on New Hoylman Tax Return Bill

Background on Federal Law

- A federal law dating back to 1924 gives certain Congressional committees the power to obtain, inspect, and disclose the otherwise confidential federal tax information of any taxpayer from the U.S. Department of Treasury. (See 26 U.S.C. 6103(f)).
- The Committees empowered to do so under this law are the House Ways & Means Committee (currently chaired by Rep. Richard Neal), the Senate Finance Committee (currently chaired by Sen. Charles Grassley), and the Joint Committee on Taxation (also currently chaired by Rep. Neal).
- It is rare for the tax committees to use their authority to release tax information they have obtained to the full House and Senate (and therefore effectively make it public).

Background on State Law

- A number of provisions in New York's tax laws prohibit the NYS Department of Taxation and Finance from "divulging or making known in any manner" state tax returns or tax information, except in accordance with proper judicial order or as otherwise provided by law.
- The exceptions to these general tax privacy laws are codified throughout the Tax Law.
 - EXAMPLE: Section 697(e) of the Tax Law governs the secrecy requirements for state personal income tax returns. There is an exception in subsection (f) of section 697 of Tax Law authorizing the NYS Department to permit the U.S. Department of Treasury or other states' tax offices to inspect New York State personal income tax returns as long as there is a reciprocal sharing agreement and the information is used "for tax purposes only."
- There do not appear to be any existing exceptions to section 697(e) or the other tax privacy laws, including the catchall "proper judicial order" clause, that would allow the NYS Department of Taxation & Finance to cooperate with a request for state tax return information from an inquiring Congressional committee.

Our Proposal

- Create a new exception to 697(e) and the other tax privacy laws to authorize the NYS Department of Taxation and Finance to share state tax return information with a requesting Congressional committee.

- The request must be written and made by the chairperson of one of the three Congressional tax committees.
- The request must also certify that the requested information is for a specified and legitimate legislative purpose, that the requesting committee has also made a request to the U.S. Treasury Secretary or his or her designee for related federal return or return information, and that the information will be treated consistent with the federal requirements pertaining to inspection and disclosure of federal tax returns.
- As with the existing exceptions to New York’s tax privacy laws, the Commissioner of Taxation & Finance ultimately has the discretion whether or not to comply with the Congressional request.
- The types of tax returns and return information that our bill would cover include, but are not limited to:
 - Personal Income Tax
 - NYC Personal Income Tax
 - Corporation Tax
 - Business Franchise Tax
 - Estate Tax
 - Real Estate Transfer Tax

Anticipated Concerns

- Won’t this open the door to abuse by Congress and invite political fishing expeditions?
 - The specified Congressional tax committees already have the clear legal authority to access and disclose federal tax returns of any taxpayer.
 - History has shown that public disclosure of tax information accessed by Congressional tax committees is rare.
 - Requesting committees need to certify that there’s a specific and legitimate legislative purpose to their request.
 - Requesting committees also need to certify that they’ve made a request to the U.S. Treasury Secretary or his or her designee for related federal return or return information.
 - The NYS Commissioner of Taxation & Finance retains the discretion whether or not to honor a request.
- Why is this necessary if Congress can access federal tax returns?
 - There could be a value for a Congressional inquiry in comparing federal and state tax information for a particular taxpayer.
 - This is a potential parallel track for accessing a subset of tax information if, for some reason, the U.S. Treasury defied federal law and withheld requested tax information from Congress.
- What is a “legitimate legislative purpose?”
 - This is a standard discussed in federal case law exploring the appropriate usage of Congressional investigatory power. Generally speaking, there’s

an implicit requirement that Congressional inquiries be done in furtherance of a legitimate legislative purpose to be valid.

- The term is undefined in our bill, but the intent is to require a request by a Congressional committee to clearly explain how the request is related to a legitimate legislative purpose.
- Is this an unprecedented exception to New York State tax privacy laws?
 - No. There are existing exceptions to the tax privacy law that allow the State to share state tax return information with the IRS and other states' tax departments for the purposes of tax-related investigations. (See, e.g. Section 697(f) of the Tax Law).
 - This proposal would add certain specified Congressional committees conducting tax-related inquiries related to a legitimate legislative purpose.