

1 BEFORE THE NEW YORK STATE SENATE FINANCE
2 AND ASSEMBLY WAYS AND MEANS COMMITTEES

3 JOINT LEGISLATIVE HEARING
4 In the Matter of the
5 2010-2011 EXECUTIVE BUDGET ON
6 TAXES

6 Hearing Room B
7 Legislative Office Bldg.
8 Albany, New York

8 February 1, 2010
9 5:08 p.m.

9 PRESIDING:

10 Senator Carl Kruger
11 Chair, Senate Finance Committee

12 Assemblyman Herman D. Farrell, Jr.
13 Chair, Assembly Ways & Means Committee

13 PRESENT:

14 Senator Liz Krueger
15 Vice Chair, Senate Finance Committee

16 Senator John A. DeFrancisco
17 Senate Finance Committee (RM)

18 Assemblyman James P. Hayes
19 Assembly Ways & Means Committee (RM)

20 Assemblyman Robin Schimminger
21 Chair, Assembly Committee on Economic
22 Development, Job Creation,
23 Commerce and Industry
24

1 2010-2011 Executive Budget
 Taxes
 2 2-1-10

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1 CHAIRMAN FARRELL: Good afternoon. Now
2 we begin the fifth in the series of hearings
3 conducted by the joint fiscal committees of
4 the Legislature regarding the Governor's
5 proposed budget for fiscal year 2010-2011.
6 The hearings are conducted pursuant to Article
7 7, Section 3 of the New York State
8 Constitution and Article 2, Section 31 and 32A
9 of the Legislative Law.

10 Today the Assembly Ways and Means
11 Committee and the Senate Finance Committee
12 will hear testimony concerning Tax Budget
13 issues.

14 I will now introduce the members from the
15 Assembly, which are Assemblyman Hayes,
16 Assemblyman Schimminger and Assemblyman -- oh,
17 he's gone.

18 (Laughter.)

19 CHAIRMAN FARRELL: Senator Carl Kruger,
20 chairman of the Senate Finance Committee, will
21 introduce members from the Senate.

22 CHAIRMAN KRUGER: Yes, which consist of
23 my vice chair, Senator Liz Krueger, and our
24 ranking member, Senator John DeFrancisco.

1 CHAIRMAN FARRELL: Thank you very much.

2 The first to testify, a slightly late
3 Jamie Woodward, acting commissioner of
4 New York State's Department of Taxation and
5 Finance.

6 ACTING COMMISSIONER WOODWARD: Thank
7 you.

8 CHAIRMAN FARRELL: Good afternoon.

9 ACTING COMMISSIONER WOODWARD: Yes,
10 good afternoon or evening, as it may be.

11 Chairman Kruger, Chairman Farrell, and
12 distinguished members of the committees, I am
13 Jamie Woodward, acting commissioner of the
14 Department of Taxation and Finance. On behalf
15 of Governor Paterson and the department's
16 dedicated employees, I thank you for the
17 opportunity to come before you today.

18 Joining me are members of the
19 department's executive staff: Robert
20 Plattner, deputy commissioner of our Office of
21 Tax Policy Analysis, and Patricia Mitchell,
22 the department's chief financial officer.

23 I would like to bring you up-to-date on
24 many topics and issues that have consumed our

1 days at the Tax Department in recent months.
2 Last year's budget challenged us in many ways.
3 By far our most daunting challenge this past
4 year, and the one that put the most
5 significant strain on department resources, as
6 well as taxpayers and tax practitioners, was
7 the implementation of the Metropolitan
8 Commuter Transportation Mobility Tax.

9 Enacted in early May, the tax required us
10 to be ready to receive retroactive payments on
11 an entirely new tax by the end of October.
12 Unlike some of the smaller new taxes we have
13 successfully implemented in recent years, this
14 major tax was to be collected from hundreds of
15 thousands of employers, partners, and sole
16 proprietors within the MTA region, with
17 estimated revenue of \$1.5 billion for the MTA.
18 As you can imagine, the department had to
19 quickly reallocate resources dedicated to
20 other projects and activities to meet the
21 short time frame for implementation.

22 I am immensely proud of our department's
23 work in this area. Nevertheless, we are
24 mindful of the difficulties this has caused

1 taxpayers and tax practitioners, and we
2 continue to improve the program as issues
3 arise.

4 In another new role for the department,
5 we worked closely with the Departments of
6 Environmental Conservation and Health to
7 develop procedures to implement the Bottle
8 Bill amendments enacted with last year's
9 budget. The legislation required deposit
10 initiators for all applicable beverage
11 containers to register with the Tax Department
12 by June 1. After nearly eight months of legal
13 challenges and court decisions changing
14 implementation and filing due dates, a total
15 of 236 deposit initiators have registered and
16 paid over \$22 million in unclaimed deposits.

17 We were also in the forefront of tax
18 administration as regards tax preparers this
19 year. As you know, Tax Department
20 investigations uncovered a shocking amount of
21 tax fraud perpetrated by tax preparers. Last
22 year you passed a tax preparer registration
23 program that also included the creation of a
24 task force to determine possible educational

1 and other standards for tax preparers.

2 The work of the task force is underway,
3 and we were pleased to see that the IRS
4 recently announced a registration program as
5 well. Our goal is to conform our program to
6 that of the IRS to the greatest extent
7 possible in order to minimize the burden on
8 preparers while protecting the taxpayer.

9 I would like to turn now to our latest
10 legislative program, the PAID program, now in
11 full swing until March 15th. Enacted as part
12 of the Deficit Reduction Plan, this program
13 offers taxpayers with older outstanding
14 liabilities an opportunity to pay
15 significantly reduced penalties and interest
16 that have accrued on tax bills if they act by
17 the March deadline. Under the PAID program,
18 no discount is given on the actual amount of
19 tax due.

20 In mid-January, at the start of the
21 program, the department mailed approximately
22 700,000 letters of invitation to these
23 eligible taxpayers. We have fielded thousands
24 of phone inquiries, seen over 18,000 visits to

1 our PAID website, and accepted applications
2 from approximately 8,000 taxpayers so far.

3 In an attempt to collect revenue already
4 owed to the state rather than raise taxes, we
5 are stirring up some very old matters. While
6 the vast majority of liabilities involved are
7 due and owing, we have become aware that there
8 are some that in fact should be canceled. We
9 will work with any taxpayer to review their
10 matter with a goal of resolving it
11 appropriately and expeditiously.

12 The program will not only produce
13 much-needed revenue, but it will also serve to
14 reduce our old assessment inventory and allow
15 us to better target our resources to pursue
16 taxes owed to the state going forward.

17 As I'm sure you're aware, over the past
18 several years the department has substantially
19 improved its tax enforcement program as part
20 of its strategy to narrow an unacceptable tax
21 collection gap that results from
22 underreporting of income, noncompliance, and
23 even criminal behavior. Our strategic goal is
24 simple. We are striving to create a smarter,

1 more effective and more credible presence that
2 will deter noncompliance and increase
3 voluntary compliance.

4 Our approach involves both increasing the
5 severity of the consequences for tax evasion
6 while directing resources toward programs that
7 encourage taxpayers to comply voluntarily.

8 Our enforcement program is smarter
9 because it is driven by more business
10 intelligence and data analysis than ever
11 before. The more information we have, the
12 more we are able to select appropriate
13 candidates for audit, find assets held by
14 those who owe us legally collectable tax debt,
15 and, where appropriate, build stronger cases
16 for criminal prosecution.

17 The IRS estimates that when government
18 lacks ready access to third-party data and
19 other evidence of income, 54 percent of
20 taxpayers underreport their income. In
21 contrast, when government is provided
22 information, such as W-2 wage information,
23 99 percent of taxpayers correctly report their
24 income. The lesson is clear. More taxpayers

1 will report when they know that underreporting
2 can and will be detected.

3 New laws enacted last year are just one
4 step in giving us third-party information that
5 we need to move more taxpayers in the
6 direction of voluntary compliance.

7 Legislation enacted in 2008 required financial
8 institutions to match their account data with
9 our inventory of warranted tax debt. While
10 all financial institutions are not yet fully
11 compliant, given the results so far, we
12 anticipate that this data match will produce
13 \$25 million in new revenue this current fiscal
14 year.

15 This year's Executive Budget includes an
16 important proposal that seeks to require banks
17 to send us the same aggregate credit card
18 information that they are complying for the
19 IRS to further enhance our compliance efforts
20 and to increase voluntary compliance.

21 Equipped with these new tools, we are
22 sending more bills, conducting more audits,
23 taking more collection actions, and initiating
24 more criminal investigations than ever before.

1 These efforts have returned huge dividends and
2 have been supported through additional
3 personnel resources added during these
4 difficult fiscal times.

5 We anticipate that in fiscal year
6 2009-2010 our activities will produce the
7 highest recoveries in the state's history --
8 approximately \$2.75 billion in cash, including
9 the revenues from the PAID program. In
10 addition, we expect that our fraud detection
11 and pre-refund audits will save the state
12 another \$700 million.

13 As we have increased and improved our
14 enforcement program and collection
15 capabilities in recent years, we have
16 continued to devote resources to our core
17 mission, to promote voluntary compliance. We
18 have sought to improve our outreach and
19 educational programs and to provide more ways
20 for taxpayers to bring disagreements or
21 intractable tax problems to our attention
22 outside of the collection and enforcement
23 arena.

24 To this end, and in consultation with

1 members of the Legislature last year, we
2 installed our first taxpayer rights advocate.
3 The Office of the Taxpayer Rights Advocate was
4 established on October 1, 2009, as an
5 independent bureau within the Department of
6 Tax and Finance reporting directly to me. Its
7 mission is to promote taxpayer rights, assist
8 distressed taxpayers, advocate for the fair
9 and reasonable enforcement of our tax laws,
10 and to promote voluntary compliance by
11 addressing inefficiencies and systemic flaws
12 in our procedures. The taxpayer rights
13 advocate also seeks to help increase voluntary
14 compliance through public outreach and
15 education on key issues.

16 Especially during these difficult
17 economic times, the taxpayer rights advocate
18 plays a crucial role in our strategic plan.
19 By ensuring fair, reasonable and balanced
20 enforcement, both taxpayers and the integrity
21 of our system are preserved and protected.

22 The taxpayer rights advocate has already
23 drafted legislation contained in the Executive
24 Budget proposal to reform our Offers in

1 Compromise program. The proposed legislation
2 will provide the department with the tools
3 needed to assist distressed taxpayers by
4 generating increased revenues from otherwise
5 uncollectable accounts.

6 Last year we assumed responsibility for
7 the Office of Real Property Services' human
8 resources and fiscal matters. Expanding on
9 this successful effort, the Executive Budget
10 include a proposal to consolidate ORPS with
11 the Department of Taxation and Finance. We
12 expect that the merger will result in further
13 administrative savings, particularly in
14 information technology as well as facilities
15 management. We are already working with ORPS
16 to identify savings areas and efficiencies
17 while maintaining our core missions.

18 Also on the subject of cost savings
19 initiatives, last year we notified taxpayers
20 that we would not be mailing income tax forms
21 and instructions automatically, as the
22 majority of taxpayer, nearly 95 percent,
23 access forms electronically, use software, or
24 file taxes using paid preparers. The measure

1 saved \$1.2 million and had no adverse effects
2 on filing behavior or revenue.

3 Similarly, this year we will ask
4 taxpayers who itemized last year to use our
5 website or to call us for their 1099-G state
6 income tax refund information. We anticipate
7 over \$700,000 in printing and mailing savings
8 as a result.

9 In all areas of our contact with
10 taxpayers, we will continue to encourage them
11 to conduct their business with us using
12 efficient technologies, such as our website,
13 email and direct deposit options.
14 Improvements in the way we communicate with
15 taxpayers through clearer communications,
16 streamlining our mail and print process, and
17 using the web, has resulted in approximately a
18 \$5 million in cumulative savings.

19 While we have provided web-based-only
20 filing for many of the new programs we have
21 initiated, due to the breadth and scope of the
22 MTA payroll tax, we offered both web- and
23 paper-based filing options. We will continue
24 to convert taxpayers to online or electronic

1 filing and will keep you informed as we change
2 our business practices.

3 Finally, as you know, Governor Paterson
4 included in his Executive Budget a proposal to
5 raise the cigarette tax one dollar per pack.
6 In conjunction with that, he directed my
7 department to issue regulations with respect
8 to the sales by stamping agents to Indian
9 sellers. I am pleased to report to you today
10 that these regulations will be proposed
11 shortly. We anticipate that the full
12 regulatory process will take approximately six
13 months to complete.

14 And while I am prepared to speak to
15 questions you may have with regard to the
16 regulatory process, I respectfully refer you
17 to Peter Kiernan, counsel to the Governor, for
18 questions you may have on substantive Indian
19 matters.

20 With that caveat, I will be happy to
21 answer any questions you may have. Thank you.

22 CHAIRMAN FARRELL: Thank you very much.

23 Questions? Yes, Senator.

24 SENATOR DeFRANCISCO: I think we first

1 passed the law for the enforcement of the
2 cigarette tax on Indian Nations in 2005. And
3 if I recall correctly, at that time the law
4 basically codified the existing regulations,
5 regulations in effect at that time. Am I
6 correct in that? And if I am, what are we
7 doing for the next six months if there's
8 already regulations that have been constructed
9 on prior legislation?

10 ACTING COMMISSIONER WOODWARD: I think
11 in basic concept you're correct, of what was
12 codified back a few years ago. There are a
13 few more details that it's appropriate to put
14 in regulations that we are in discussions, in
15 final discussions with the Governor's
16 counsel's office as to what should be in the
17 regulation.

18 And just to be a little more expansive,
19 the regulatory process is controlled by the
20 State Administrative Procedure Act, which
21 requires -- and for good reason -- some timing
22 and filings that are required in certain
23 orders. And the proposed regulations will be
24 out very shortly. What takes the time for the

1 six months that we're estimating is a comment
2 period and then time to reflect upon the
3 comments, to make any adjustments to
4 regulations, that the typical time frame for a
5 regulation is approximately six months.

6 So the regulations will be out very
7 shortly in a draft proposal form, and then we
8 will have time for comment and reflection on
9 those comments before they are finally
10 adopted.

11 SENATOR DeFRANCISCO: But are you
12 working off regulations that have previously
13 been created but never adopted?

14 ACTING COMMISSIONER WOODWARD: Yes. We
15 are using those as our basis, yes.

16 SENATOR DeFRANCISCO: All right. I
17 just hope -- and I'm not making any accusation
18 here, but it just seems like every time we get
19 a commitment from a governor -- and I remember
20 Governor Spitzer gave the same commitment, and
21 Governor Pataki, and everyone else. It seemed
22 that there was always a delay for some reason,
23 and then we never get the process started.
24 And I just hope this regulatory process is not

1 another way to delay this thing. And I'm not
2 suggesting from the Tax Department, I'm
3 suggesting from the entire government, because
4 this has been called for for a long time.

5 Tax auditors. There's been a steady
6 increase in the number of auditors that have
7 been authorized in the last three budget
8 cycles. If I counted them correctly, it's
9 almost 600. Have they all been hired? And if
10 so, what has been the result? I mean, is
11 there any kind of results you can show because
12 of the increased auditing capabilities?

13 ACTING COMMISSIONER WOODWARD: I think,
14 as I mentioned in the testimony, that this
15 year we will bring in the most collections
16 ever in our history. So yes, they are a big
17 part of that process.

18 Have they all been hired? That may be --
19 we are still in the hiring process. And we
20 have hired up several times as we get
21 authorization to hire. But as you all know,
22 as you hire, there are different people who
23 leave at different times, they retire or take
24 other positions. So it's a constant process

1 of keeping caught up with our audit staff. We
2 do have quite a few at work, yes.

3 SENATOR DeFRANCISCO: And as far as you
4 understand, the auditors that are being hired,
5 that's not part of the Governor's hiring
6 freeze? Is that exempt from the hiring
7 freeze? Or are you being stopped now from
8 hiring new people?

9 ACTING COMMISSIONER WOODWARD: We have
10 gotten approval from the Division of the
11 Budget to hire the positions of auditors and
12 others that support the collection and the
13 revenue process.

14 SENATOR DeFRANCISCO: And in your
15 prepared remarks, I was kind of fading off --
16 because people who read every remark, I just
17 kind of lose my attention. But I guess my
18 point with that is, did you give an idea of
19 how much the increased revenues have been with
20 these new auditors, or just that it's a record
21 increase?

22 Did you give numbers? Can you give me
23 some idea to show that these auditors have
24 been worth the money? I mean, is there

1 dollars that you can point to that you've been
2 able to collect because of the increases in --

3 ACTING COMMISSIONER WOODWARD: I
4 believe what's in the Executive Budget is that
5 with the addition of 341 positions in the
6 department, an additional \$221 million was
7 added to the revenue stream.

8 SENATOR DeFRANCISCO: And is that
9 supported by when 200 auditors were in the
10 2007-2008 budget, and an additional 195 in
11 2008-2009, were there corresponding increases
12 that are consistent with what the Governor is
13 predicting by adding more auditors?

14 ACTING COMMISSIONER WOODWARD: Yes.

15 SENATOR DeFRANCISCO: Okay. Thank you.

16 CHAIRMAN FARRELL: Thank you.

17 Assemblyman Hayes.

18 ASSEMBLYMAN HAYES: Thank you,

19 Mr. Chairman.

20 And thank you, Commissioner Woodward. I
21 just have two quick questions that I want to
22 ask you.

23 First and foremost, we're beginning the
24 tax filing season for income taxes for most

1 New Yorkers. Can you tell us how the
2 department is set up to process those returns?
3 Given the cash-flow concerns that we've had in
4 other areas of the state at the end of the
5 year, can you categorically tell taxpayers
6 today that they won't be delayed in getting
7 their refund checks due to the state's cash
8 problems?

9 ACTING COMMISSIONER WOODWARD: Well, we
10 are processing the income tax returns as we do
11 every year. Usually just after Martin Luther
12 King weekend is when the federal government
13 turns on their system, and we turn ours on
14 too. And we have been processing, and we are
15 beginning to issue the refunds.

16 I can say that we work closely with the
17 Division of the Budget with the cash
18 management process. And to date we have a
19 plan that will allow us to continue to issue
20 refunds through this March.

21 ASSEMBLYMAN HAYES: On time, as has
22 been the custom in the past? In other words,
23 you know, one of the biggest concerns that
24 people have -- and, you know, I want to make

1 sure I'm clear about asking this question --
2 is that in December the Governor withheld aid
3 payment to school districts and
4 municipalities, citing a cash crunch. He said
5 that in January that would be over because we
6 were going to get tax receipts that are going
7 to come to state. Of course, that's an
8 estimate of what tax receipts will be coming
9 to the state, and people who are looking for
10 their refunds and who file on a timely basis
11 are looking forward to receiving their refund
12 on a timely basis, should they be owed one.

13 The question I have for you is, is the
14 department prepared to send out those refunds
15 on a timely basis?

16 ACTING COMMISSIONER WOODWARD: Well,
17 and I think as you know, every year there is a
18 cap to the amount of refunds that get paid out
19 during the January through March time frame,
20 and then additional refunds are paid out
21 through April. So typically it depends on
22 exactly when you file your return how much of
23 a wait you have.

24 But clearly the statute requires that the

1 timely filed returns receive their refund
2 within a statutory time frame. And we do and
3 do expect always to meet that time frame, yes.

4 ASSEMBLYMAN HAYES: Thank you. The
5 last question really is following up on
6 Senator DeFrancisco's question.

7 I think the issue is really trying to get
8 our arms around the additional appropriation
9 for the personnel in the department, mostly in
10 the audit department. That the money that's
11 being expended is actually not just collecting
12 more than we've ever collected in the past,
13 but how is that actually working in terms of
14 the projections? Because the overall tax
15 collection to the state is down from what the
16 state budget predicted, isn't that right?

17 ACTING COMMISSIONER WOODWARD: Well, I
18 think where we've seen the weakness in the
19 revenue numbers are what's coming in on
20 returns and what's coming in in withholding
21 amounts, what we consider the voluntary side
22 of people making their payments for taxes.

23 The auditors and the other staff that we
24 have that go to collect the money, they are --

1 and we clearly account for it separately --
2 producing more and more revenue. And when we
3 hire an additional auditor or collector, they
4 generate 13 or 14 times their cost in the
5 first year.

6 There are some ramp-up issues of training
7 folks and making sure that they have adequate
8 knowledge of our complex tax laws where
9 they're doing their work. And so that is
10 quite a challenge for us now; approximately
11 20 percent of our staff have one year or less
12 experience at this point in those areas. So
13 we are trying to make sure we target and
14 carefully supervise the work that they do.

15 But that revenue and the money that comes
16 in from that is clearly -- we can sit down and
17 talk to anyone who'd like to see how we
18 account for it. It's a separate -- we call it
19 our CARTS money, but it's our accounts
20 receivable money, and it clearly goes up as we
21 hire the additional staff and put them to
22 work.

23 ASSEMBLYMAN HAYES: And random audits
24 that the department conducts, there always

1 seem to be constituents who call the
2 legislative offices after receiving a random
3 audit letter from the department who, you
4 know, in the back of their minds -- I know
5 there's two sides to every story, and I know
6 that most of that stuff is confidential, we
7 can't even get involved in it, we ask you to
8 take a look at it. We do appreciate the
9 department looking into the matter and making
10 sure the contact is made with the taxpayer.

11 But when we have all of these new
12 auditors who come on board, the public kind of
13 thinks, oh, well, there's going to be all
14 these wild goose chases now, people subjected
15 to random audits who for no reason should be
16 subject to them. Is that the department's
17 policy? Or when they conduct an audit and
18 send out an audit letter there's actually a
19 reason for it?

20 ACTING COMMISSIONER WOODWARD: No, we
21 don't have a policy of goose-chase audits.

22 In fact, the folks who are brought on are
23 given -- they're assigned the cases that
24 they're supposed to work. And we have folks

1 who are looking through a lot of the data that
2 we have to determine where an appropriate use
3 of our resources is.

4 And so we very much do have programs that
5 we target. Some of -- we have, because of the
6 great desire to bring in the revenue and to
7 have more compliance on the amount that folks
8 pay into us, we have started some audit
9 programs in new areas, carefully monitored by
10 the folks in central office, that target items
11 such as the cash-based businesses and sales
12 tax.

13 Whereas before, a lot of our revenue was
14 generated by the big companies and doing
15 audits that last several years, our cycle has
16 quickenened now and we are focusing and
17 diversifying our audit process to make sure
18 that folks know when they're collecting sales
19 tax on behalf of the State of New York, they
20 need to turn that over to us. And that just
21 because they're a small company or a small
22 business does not mean that they will never be
23 looked at by the Tax Department.

24 So we're trying to create and keep the

1 level playing field for everyone by not just
2 targeting, you know, the audit that's the
3 quickest or the easiest for us. Not that we
4 always did that, but we've certainly put more
5 emphasis on using our data and doing some
6 either territorial or business-based kind of
7 sampling of where are some things that look
8 out of whack.

9 And we're using a lot more data and data
10 analysis, as I mentioned, to look for outliers
11 by comparing like businesses and trying to
12 only look at the ones that say, well, this one
13 looks way out here and someone looks way out
14 here. And you have to look at them to see
15 which one may be -- they could be both right,
16 and we go into an audit looking at it like
17 that. But there could be things that either
18 one, on either extreme, indicates something
19 that we need to learn and to help the taxpayer
20 pay the right amount and also maybe to adjust
21 how we're educating the public on what their
22 obligations are.

23 ASSEMBLYMAN HAYES: Thank you very
24 much. Appreciate it.

1 CHAIRMAN FARRELL: Thank you very much.
2 Senator.

3 CHAIRMAN KRUGER: Commissioner, I have
4 actually three questions.

5 Earlier today I received a note that says
6 "I would like to stress" -- I guess that this
7 note was relative to you -- that "I would like
8 to stress that it is vital that we collect all
9 revenues legally owed us and that we enforce
10 all state tax laws that are currently
11 effective, including taxes on
12 Native-American-owned retail establishments."

13 Since our ranker pointed out -- he gave
14 me the year 2005, can you tell me why we
15 haven't been collecting the taxes between now
16 and 2005?

17 ACTING COMMISSIONER WOODWARD: Well, I
18 don't know that we agree that we haven't been
19 collecting the taxes. I think there is
20 agreement that perhaps not all taxes have been
21 collected everyone sees.

22 But as you know, the matter is very
23 complex and there's a long history behind the
24 taxation product that go to Indian

1 reservations and that come off the reservation
2 by other individuals.

3 We have been working, the Governor's
4 office has been working very diligently on
5 addressing this issue. And I do think that we
6 are changing the nature of the discussion at
7 this point and look forward to issuing ourth
8 draft regulations to --

9 CHAIRMAN KRUGER: Well, you say it's
10 complicated. Why is it complicated?

11 ACTING COMMISSIONER WOODWARD: Because
12 there are many viewpoints as to Indian
13 sovereignty and what laws apply and treaties.
14 And frankly, we have always looked to the
15 Governor's office for guidance as to how that
16 matter is to be handled.

17 CHAIRMAN KRUGER: Does the Governor has
18 have to sign a letter of forbearance that
19 would allow the Tax Department to start
20 collecting the taxes?

21 ACTING COMMISSIONER WOODWARD: Pardon
22 me?

23 CHAIRMAN KRUGER: There's a forbearance
24 letter that has to be signed by the Governor

1 that would release the department and allow
2 you to start collecting taxes. Is that
3 correct?

4 ACTING COMMISSIONER WOODWARD: Well,
5 actually, it's an advisory opinion that had
6 been previously issued by the Tax Department
7 that needs to be reversed and that the
8 Governor is coordinating that, as he publicly
9 announced that we would be --

10 CHAIRMAN KRUGER: What was the advisory
11 opinion?

12 ACTING COMMISSIONER WOODWARD: What was
13 it?

14 CHAIRMAN KRUGER: Right.

15 ACTING COMMISSIONER WOODWARD: It was
16 an opinion that dealt with the taxation of
17 product that flowed to Indian sellers.

18 CHAIRMAN KRUGER: So untaxed product?

19 ACTING COMMISSIONER WOODWARD: Yes.

20 CHAIRMAN KRUGER: How much do you
21 estimate a year we are losing by not
22 collecting those taxes?

23 DEPUTY CMR. PLATTNER: I think we've
24 submitted testimony before that the maximum

1 amount we could collect from, you know, sort
2 of a full-blown program of enforcement would
3 be \$200 million a year state and \$20 million
4 locally.

5 CHAIRMAN KRUGER: In other words, it's
6 your estimation that the large manufacturers
7 are supplying the so-called smoke shops with
8 the amount of product that you would only be
9 able to tax at a level of \$200 million a year?

10 DEPUTY CMR. PLATTNER: We think that --
11 yes. First of all, it's --

12 CHAIRMAN KRUGER: Why do you say you
13 think? You either know or you don't know.
14 Because, I mean, they've given you the numbers
15 as to what they're shipping. So how much are
16 they shipping?

17 DEPUTY CMR. PLATTNER: Right now, based
18 on most recent information in 2008, there were
19 27 million cartons of untaxed cigarettes going
20 to the reservations.

21 CHAIRMAN KRUGER: Twenty-seven million
22 cartons.

23 DEPUTY CMR. PLATTNER: Right.

24 CHAIRMAN KRUGER: Twenty-seven million

1 cartons. Let's focus on that number. And how
2 much tax is there per carton?

3 DEPUTY CMR. PLATTNER: Well, the tax
4 per pack of cigarettes is \$2.75.

5 But the situation is such that, you know,
6 there are other sources of untaxed cigarettes.
7 You can purchase untaxed cigarettes through
8 the Internet, you can purchase from other
9 black-market sources.

10 CHAIRMAN KRUGER: Isn't it the case
11 that the manufacturer is not shipping to
12 anyone other than to a middleman, what I call
13 a revenue agent, and it's the revenue agents
14 that ultimately supply this -- hopefully, the
15 stamped product; obviously, a lot of unstamped
16 product -- to the smoke shops? The large
17 manufacturers are not selling to Internet
18 subscribers; isn't that the case?

19 DEPUTY CMR. PLATTNER: That's true.

20 CHAIRMAN KRUGER: So then how much are
21 we talking about in terms of that
22 manufacturing?

23 DEPUTY CMR. PLATTNER: I don't think I
24 understand the question.

1 CHAIRMAN KRUGER: Well, we'll try to
2 break it down a little simpler.

3 If we're talking about the numbers you're
4 talking about, then certainly we're not
5 talking about \$200 million, because that would
6 mean that we were taxing cigarettes at about
7 a dollar a pack. But since we're taxing them
8 at a much higher level than the dollar a pack,
9 let's just blow away the \$200 million before
10 we even get started.

11 Then we can start talking about the
12 handful of revenue agents that are licensed by
13 the department that virtually show little or
14 no product that's being shipped from the
15 manufacturer that they're buying stamps for
16 and it's going directly to the smoke shops.

17 Now, is there any effort being made to
18 deal with those revenue agents to find out why
19 they are getting product from the manufacturer
20 and sending them directly to the smoke shop
21 without buying stamps?

22 DEPUTY CMR. PLATTNER: I think you're
23 misunderstanding that, just because -- the
24 number of cartons of unstamped cigarettes has

1 actually gone down from 47 million, the high,
2 in 2005, to something less than 27 million.
3 And yet the number of New York State tax where
4 there are stamp sales is also going down.
5 There are a number of factors going on.

6 CHAIRMAN KRUGER: That's because we're
7 encouraging people not to smoke.

8 DEPUTY CMR. PLATTNER: Yes. So --

9 CHAIRMAN KRUGER: That's a good thing.
10 Ultimately, we would hope we collect no money
11 at all.

12 But what we want to do is we want to
13 penalize those people that are paying the
14 taxes and add a dollar a pack while at the
15 same time we're now trying to develop
16 regulations that would allow us to in the
17 future -- while we're sitting here today,
18 based on anyone's numbers, today's hearings
19 probably cost the State of New York at least
20 \$3 million worth of cigarettes that have just
21 fallen into the black hole of Calcutta because
22 they haven't been taxed.

23 And my question is, as the tax enforcing
24 agency, I ask you why they haven't been taxed.

1 And I am not getting an answer. And I asked
2 you that in terms of a FOIL request, and we
3 got some numbers but not a lot of numbers.
4 And those numbers do not jibe anywhere near
5 what the manufacturers' numbers are.

6 So I guess the next step is subpoenas
7 both to the manufacturer, to the agencies, to
8 revenue agents as well as the smoke shops, so
9 that the committee can eventually start
10 putting together the pieces to find out which
11 is probably a billion-dollar-a-year, a
12 billion-dollar-a-year -- if not more --
13 criminal enterprise that is going untaxed in
14 this state. And for far, far too long.

15 If we want to assume even 2005, and if we
16 want to take the most outlandish numbers -- as
17 you say, the numbers have been going down --
18 but even at their high point, we've lost
19 billions of dollars, billions of dollars of
20 money that should have gone into education, to
21 healthcare, and to every other program that we
22 have to cut because of the inaction on the
23 collection of these taxes.

24 Beside the health issues -- beside the

1 health issues, the fact that the American
2 Cancer Association and the American Lung
3 Association and the physicians' groups --
4 everybody is weighing in on this issue -- we
5 spend millions of dollars a year in Medicaid
6 funds for smoking cessation programs, yet at
7 the same time this agency is allowing millions
8 of packs of untaxed cigarettes to wind up on
9 the streets of this city, this state.

10 And you know what? It's going to stop.
11 It's going to stop. And it's not going to
12 stop because of your regulations, because it
13 shouldn't take six months to promulgate
14 regulations when the United States Supreme
15 Court has ruled, when the Court of Appeals has
16 ruled, when this Legislature has ruled, and
17 when all the Governor has to do is sign a
18 piece of paper, the Attorney General is
19 prepared to go into court to lift the
20 injunction, the agents are prepared to buy the
21 stamps, and you know the process of all this
22 rigamarole that there's going to be blood in
23 the streets and terror on the highways.

24 There should be no more terror on the

1 highways than someone that lives in
2 Westchester who doesn't want to pay their
3 property tax and they threaten to burn tires
4 on the Sprain Brook, or someone that would
5 threaten tires in Nassau County on the Long
6 Island Expressway.

7 At the end of the day, at the end of the
8 day what we face here is a crisis, a crisis in
9 management. And the buck stops with the State
10 Tax Department. Because if not, then they
11 have to say it's the Governor that's not
12 enforcing it. We don't need more regulations,
13 we don't need to have a comment period. We've
14 gone through all of this. What we need to do
15 is to collect the taxes, and we're not doing
16 it.

17 And six months is a stall. There isn't a
18 dollar of money in revenue stream in this
19 year's budget based upon the uncollection of
20 those taxes. Six months, even by your
21 numbers, is reprehensible. Because even using
22 your number, \$100 million, that means
23 \$100 million of healthcare money that we're
24 taking, \$100 million worth of teachers that

1 we're threatening to rip out of the classroom.
2 It's unconscionable. It's unconscionable.

3 Thank you.

4 CHAIRMAN FARRELL: Senator.

5 SENATOR DeFRANCISCO: Yes, I just --
6 you know, I asked similar questions maybe a
7 little less strenuously, but I just wanted to
8 make sure that I understand what you said:
9 That the Governor's counsel and the Governor
10 makes these decisions, you work for the
11 Governor, and if the Governor tells you to
12 start enforcing, you're going to enforce. Is
13 that a fair statement?

14 ACTING COMMISSIONER WOODWARD: We are
15 following the Governor's directives, yes.

16 SENATOR DeFRANCISCO: Thank you.

17 CHAIRMAN FARRELL: Senator?

18 SENATOR KRUEGER: Thank you. I have
19 many questions, but I know the time is late,
20 so I may just cover some things briefly and
21 follow up with you afterwards.

22 Following up on the earlier questions
23 about getting more auditors and collecting
24 more taxes, in your testimony you actually say

1 approximately \$2.75 billion in cash, including
2 revenue from the PAID program, was generated
3 in 2009-2010 through recovery. So that's not
4 necessarily the outcome of X number of new
5 auditors. But you're saying you had new
6 auditors, and back then you were able to have
7 the greatest amount of recoveries in history,
8 and that was \$2.75 billion. Is that correct?

9 ACTING COMMISSIONER WOODWARD: Yes.

10 SENATOR KRUEGER: So we're growing the
11 number of auditors, finding people who aren't
12 paying their taxes. And I don't know about
13 everybody else, but I get pissed off when
14 people don't pay their taxes. Apparently my
15 colleague, Senator Carl Kruger, also does, on
16 a different theme.

17 Where are we finding the greatest growth
18 in recoveries? What is the lesson to be
19 learned here about who is not paying their
20 taxes proportionally, and perhaps help me
21 think about what more we should be doing in
22 New York State to ensure that everyone pays
23 their taxes? Because as was just said, when
24 some people don't pay their taxes, we in the

1 Legislature end up cutting education,
2 healthcare, and emergency services.

3 ACTING COMMISSIONER WOODWARD: Well, as
4 I mentioned a little in my testimony, where we
5 see the biggest gaps are where we don't have
6 information sources to match up with. Which
7 is why last year we came and received some
8 additional third-party reporting information.

9 Really, the statistics from the IRS are
10 that without any third-party reporting,
11 54 percent tell their right income, and when
12 you have W-2 wage reporting, it goes up to
13 99 percent. It's kind of a sad statement that
14 we can't trust people to say things without
15 them knowing somebody has something that we'll
16 match up with. But that is why we have
17 interest statements that come to us.

18 There's lots of the statements we're used
19 to getting. But we feel that going in the
20 areas where businesses are buying products
21 from their suppliers and the volume of the
22 product that they're buying gives you an
23 indication of what kind of sales might be
24 going on in that business. They wouldn't keep

1 buying whatever product it is to manufacture
2 or to sell without having business going on
3 with that.

4 So those are the things we asked for last
5 year, a couple of initiatives, and it was
6 enacted into law, and we are working on
7 getting that information from those suppliers.

8 So really, to us, it's the cash-based
9 business, it's people's -- you know, there's a
10 lot of self-employed folks. And the more we
11 get information that relate to things that we
12 can tie together to say, okay, this looks
13 about right, that's fine, or here's some
14 information that we have that doesn't appear
15 reflected on a tax return.

16 So those are the areas where, if we can
17 develop other sources of third-party reporting
18 and have the reporting come to us, for us to
19 put into the computers to figure out what is
20 and what isn't matching up, it will allow us
21 to determine a better avenue of where we need
22 to focus our work.

23 SENATOR KRUEGER: And then following up
24 on that, in addition to letting me know at

1 some point -- and my colleague Senator John
2 DeFrancisco is also interested -- other things
3 that we could do to help you, there was a
4 hearing the other day about businesses paying
5 people either off the books or defining people
6 not as employees but rather consultants so
7 that they didn't have to pay certain benefits.
8 But one of the things that came out of the
9 hearing that struck me from looking at the
10 testimony was the fact that New York State
11 loses an enormous amount of tax revenue that
12 way also.

13 And has your department looked into that
14 question about what we could be doing under
15 state law to certify that people are correctly
16 categorized as employees from the perspective
17 of then collecting the right taxes from them?

18 ACTING COMMISSIONER WOODWARD: We have
19 had discussions of how to get our arms around
20 a way to make sure we could shrink that gap.
21 Our focus is always about shrinking the gap
22 from what should be collected to what isn't
23 reported, to keep reducing that.

24 But we have -- there is some reporting

1 required on someone who hires a contractor to
2 do some work for them. But we have not found
3 a perfect solution to get to some of that,
4 where the reporting could be clearly -- where
5 people would understand their
6 responsibilities. But we'd love to work with
7 you or your staffs to see if there's some
8 other avenue we can come up with even to
9 address a slice of that.

10 SENATOR KRUEGER: Because I have some
11 testimony from the hearing talking about up to
12 \$500 million from tax evasion through employee
13 misclassification. I'll happy to get you the
14 materials.

15 Last year the Governor proposed one form
16 of sugared-soda tax, which was a sales tax per
17 unit. And this year he proposed a soda tax
18 that's an excise tax per ounce. I believe I
19 have that right.

20 And some people are saying the flaw with
21 this is that they simply will manufacture
22 across state lines and escape the tax. Am I
23 not understanding excise tax? Even if you
24 manufacture out of state, if you're selling

1 in-state, we still get to collect that tax,
2 don't we?

3 ACTING COMMISSIONER WOODWARD: Exactly.
4 Right. It's really -- it's more on the first
5 import of the syrup into the state. So it
6 would not at all drive that business out of
7 the state. In fact, the mechanisms would be
8 to say that in fact if you go out of state to
9 bring it in, you're still going to owe the
10 tax.

11 SENATOR KRUEGER: So we, the
12 Legislature, might argue pro or con any
13 individual tax or tax rate, but no one is
14 going to physically move their facilities to
15 avoid the tax. They might choose to stop
16 selling their product in New York State to
17 avoid paying the tax, but then they wouldn't
18 be selling their product to some percentage of
19 19 million New Yorkers. I have that logically
20 right?

21 ACTING COMMISSIONER WOODWARD: Yes.

22 DEPUTY CMR. PLATTNER: Yes. I mean, we
23 intend to collect tax whether you make that
24 syrup out of state or you're bottling

1 in-state. One way or the other, we're going
2 to be collecting tax on that.

3 SENATOR KRUEGER: That was my
4 understanding. Since I was being told
5 something different, I just wanted to ask the
6 experts and get that straight.

7 The Governor has proposed a severance tax
8 on the Marcellus Shale natural gas that we
9 might or might not drill ever -- and I'm one
10 of the people who don't think we should be
11 drilling it. But why don't we propose a
12 severance tax on the other natural resources
13 we pull out of our ground as well? We pull
14 oil and coal out of the ground in New York
15 State. Why just one product versus the host
16 of products?

17 DEPUTY CMR. PLATTNER: I actually don't
18 know how much coal and oil we pull out of the
19 ground in New York.

20 I do know that a decision was made --
21 there is some gas that's produced out of
22 existing vertical wells that have been
23 operating for a long time and produce a modest
24 amount of gas. And for policy reasons that,

1 you know, didn't come from the Tax Department,
2 I would say that's the one place where clearly
3 there is a kind of natural resource that's
4 being taken out of the ground that we've
5 chosen not to tax while we're going to be
6 taxing new Marcellus Shale activity.

7 SENATOR KRUEGER: Earlier today -- I
8 think you were sitting here all day, so you
9 might have heard this -- there was a panel
10 advocating for the expanded film tax credit
11 that the Governor proposed. And someone made
12 the statement, I actually think it was my
13 colleague Assemblymember Lentol -- and he's
14 not here, so I don't want to misspeak -- but I
15 believe he said "So finally, a tax credit
16 where we're actually making money and we don't
17 have any other tax credits where we make money
18 for the state."

19 One, is that true, that it's a tax credit
20 that makes us money? And two, is it the only
21 one we've ever come up with? Because we have
22 something like \$40 billion in tax expenditures
23 on our books. So I'm just wondering, that's
24 the one that we actually make money on and not

1 the rest?

2 DEPUTY CMR. PLATTNER: I would say
3 that, you know, those are controversial. And
4 my guess is that for people benefitting from
5 the other credits, they might be able to put
6 together or have put together some kind of
7 report from a consultant indicating that the
8 tax credit more than pays for itself.

9 I think, you know, there is an Ernst &
10 Young study that was commissioned by the
11 industry that does suggest that the tax credit
12 more than pays for itself.

13 I will say that there have been studies
14 done on tax credits in other industries, and
15 it's a pretty mixed bag of results as to
16 whether these credits pay for themselves or
17 not.

18 SENATOR KRUEGER: And in fact, every
19 year you put out a tax expenditure document,
20 and some of us read through it. More people
21 should; you should look at the tax expenditure
22 budget.

23 And you have coding in there I guess
24 ranking the credibility you have in the

1 estimate of what the cost to the state is -- I
2 guess it's like a one through four, is that --

3 DEPUTY CMR. PLATTNER: Yeah, sometimes
4 our information is very good, so we can say
5 pretty clearly that this is what something
6 costs us. You know, we can just add up what's
7 on returns. Other times, we have a less
8 reliable way and so our level of confidence is
9 lower.

10 SENATOR KRUEGER: So the same way that
11 you're improving your agency's ability to
12 collect taxes that previously eluded you
13 through computer matching and other third
14 sources of data, I'm just wondering can
15 New York State get better at evaluating what
16 these tax expenditures are (A) actually
17 costing us and (B) what the economic activity
18 they're generating are?

19 I mean, is the science out there
20 improving for evaluating this so that we in
21 the Legislature can better understand and I
22 hope more closely provide oversight of saying
23 year by year, well, that one's working very
24 well, that one's costing us a lot of money,

1 that one worked very well in 1987 but doesn't
2 make sense in 2010? I'm really wondering
3 whether we have sort of a 21st-century model
4 going forward for how we do the correct
5 analysis and how we do good evaluations on
6 both what our tax policy is bringing in but
7 also what our tax policy is not bringing in.

8 DEPUTY CMR. PLATTNER: Well, we
9 generally are only asked to do the first part
10 of that -- you know, accurately as we can,
11 determine what the size of the tax expenditure
12 is. It's generally not been seen as part of
13 our reporting responsibilities and it would be
14 quite a different exercise to make some
15 attempt to then say "and this is what we get
16 in return."

17 And for the most part, you know, we have
18 not been asked to do that and our tax
19 expenditure report only reports on what it's
20 costing us. And it would require a different
21 kind of study to try to make an attempt to
22 figure out what we're -- or what the size of
23 the benefits are.

24 SENATOR KRUEGER: And just finally, on

1 our tax expenditure report -- that's in
2 statute, right? We must do that every year?

3 DEPUTY CMR. PLATTNER: Yes.

4 SENATOR KRUEGER: So we could in fact
5 change what the statute required?

6 DEPUTY CMR. PLATTNER: Absolutely.

7 SENATOR KRUEGER: Thank you very much.

8 CHAIRMAN FARRELL: Thank you, Senator.
9 Robin Schimminger.

10 ASSEMBLYMAN SCHIMMINGER: Dr. Plattner,
11 you mentioned an Ernst & Young study in regard
12 to the film tax credit.

13 DEPUTY CMR. PLATTNER: Yes.

14 ASSEMBLYMAN SCHIMMINGER: That was
15 about the film tax credit here in New York
16 State?

17 DEPUTY CMR. PLATTNER: Yes.

18 ASSEMBLYMAN SCHIMMINGER: Did you all
19 hire Ernst & Young to do that report?

20 DEPUTY CMR. PLATTNER: I believe the
21 industry hired Ernst & Young to do the report,
22 with some cooperation from the Office of Film.

23 ASSEMBLYMAN SCHIMMINGER: Could the
24 film industry have hired, let's say, the

1 public policy people, the tax policy people at
2 the Federal Reserve Bank? Could they have
3 hired them? Do you hire the Federal Reserve
4 Bank to do studies?

5 DEPUTY CMR. PLATTNER: I don't know
6 whether they'd be interested in a particular
7 study like that.

8 Certainly the industry could have hired
9 any number of people who with econometric
10 skills.

11 ASSEMBLYMAN SCHIMMINGER: Former Ways &
12 Means staff.

13 Yeah, I hold in my hand a Federal Reserve
14 Bank of Boston study on the Connecticut film
15 tax credit. Which my jaw dropped when I read
16 it; it debunks this whole concept that this is
17 a tax break that pays for itself and so on.

18 Are you aware of the Federal Reserve in
19 our region doing a study? Would that be
20 instructive if they did and credible if they
21 did?

22 DEPUTY CMR. PLATTNER: I have no idea
23 about that. I would say that I am aware that
24 there have been other studies done of other

1 film credits in other states, some of which
2 have concluded that they don't pay for
3 themselves. The Ernst & Young study indicates
4 that the credit does more than pay for itself.

5 But would it benefit from having some
6 other study done by an academic organization
7 or -- it's always nice to get another opinion,
8 I guess.

9 ASSEMBLYMAN SCHIMMINGER: Thank you.

10 CHAIRMAN FARRELL: Thank you. Thank
11 you, Commissioner.

12 ACTING COMMISSIONER WOODWARD: Thank
13 you.

14 SENATOR KRUEGER: Thank you very much.

15 CHAIRMAN FARRELL: Again, we apologize
16 for the lateness of the hour.

17 ACTING COMMISSIONER WOODWARD: Thank
18 you.

19 CHAIRMAN FARRELL: Frank Mauro,
20 executive director, Fiscal Policy Institute.
21 Is there a stand-in?

22 David Lamendola, director of government
23 relations, Verizon and New York State
24 Telecommunication Association, and Robert

1 Puckett, president, New York State Telephone
2 Association.

3 SENATOR DeFRANCISCO: Mr. Lamendola
4 waives his testimony -- oh, I'm sorry.

5 (Laughter..)

6 MR. LAMENDOLA: I will be very, very
7 quick. Bob Puckett had to return home;
8 there's a sick infant at home, actually.

9 Hello, everybody. David Lamendola,
10 Verizon government affairs. I'll be brief; I
11 just wanted to highlight one thing.

12 Bob Puckett was going to be here as well
13 to talk on behalf of the industry. I'm here
14 really just to talk about Verizon's perception
15 of the Governor's budget.

16 Last year, I assume everybody will
17 remember it, the Governor had a proposal that
18 would raise the public utility assessments,
19 the infamous 18A tax. You probably heard from
20 a lot of your constituents and hopefully
21 companies that the tax was not very helpful to
22 New York's economy.

23 The Governor has in his budget -- it's
24 not getting a lot of attention, and we're

1 trying to raise this -- the Governor has
2 suggested that localities increase what's
3 called the local gross receipts tax from
4 1 percent to 3 percent. So basically your
5 consumers, constituents, particularly upstate
6 and downstate, will see another tax increase.

7 In communication with the Governor's
8 office, they are inclined to thinking the
9 localities might not avail themselves of such
10 a tax if they could raise it from 1 percent to
11 3 percent. We respectfully disagree with that
12 finding. I think what you'll most likely see
13 is another anywhere from \$100 million to
14 \$200 million of new taxes at the local level.
15 Again, this is from the Division of Budget.
16 We're trying to flesh that out a little more.

17 Senator Krueger, I just wanted to say
18 thank you for your efforts last year with the
19 staff report. We believe in it. We truly
20 recommend that anybody that takes a look at
21 that will understand that New York's
22 telecommunications taxes do need to be fixed.
23 And we applaud the Senate for that effort this
24 year and last year.

1 And again, just in the shortness of time,
2 I wanted to thank everybody today. But if you
3 have any questions, I'm sure I could try to
4 answer them.

5 CHAIRMAN FARRELL: Questions? Thank
6 you very much.

7 MR. LAMENDOLA: Thank you.

8 ASSEMBLYMAN SCHIMMINGER: Enjoy dinner.

9 CHAIRMAN FARRELL: Joel Russell,
10 president, New Yorking Aviation Management
11 Association.

12 Good evening.

13 MR. RUSSELL: Good evening, Chairman
14 Kruger, Chairman Farrell, members of the
15 Legislature. I'm Joel Russell, president of
16 the New York Aviation Management Association,
17 and I'm also airport manager for Albany
18 International Airport.

19 NYAMA represents over 120 airports and
20 aviation organizations across New York. Our
21 diverse membership includes general aviation
22 airports as well as all of the large hub
23 airports and aviation professionals from all
24 walks of life. NYAMA has been the voice for

1 aviation in New York for 34 years.

2 My comments, while addressing the latest
3 aviation tax proposal in the Executive Budget,
4 will also speak to the need for enacting tax
5 reforms that will allow New York's aviation
6 industry to effectively compete with
7 neighboring states for aviation-oriented
8 investment.

9 Part Z, Subpart B of the Governor's
10 revenue bill is entitled "Sales Tax Avoidance
11 Provisions -- Aircraft and Vessels." This
12 subpart makes the retail-sale exclusion for
13 transfer of property between affiliated
14 parties inapplicable to the transfer of
15 aircraft and vessels.

16 What this means, as best we can tell, is
17 that specific assets -- in this case, aircraft
18 or vessels owned by out-of-state companies
19 transferred to a New York-based affiliated
20 entity -- would now be subject to New York
21 State sales tax. There's no estimate as to
22 the potential revenue to the state.

23 NYAMA believes that the true net benefit
24 to New York State from this tax will be

1 negative.

2 You will recall that the current state
3 budget contains a new charter aircraft tax.
4 The provision eliminated the exemption from
5 sales and use tax applicable to certain
6 charter aircraft that were used to transmit
7 affiliated officers and employees. Now
8 Subpart B seeks to preclude similar tax
9 transactions between affiliated parties that
10 would otherwise qualify for exclusions from
11 the definition of retail sale.

12 These tax actions make it more expensive
13 to do business in New York. A number of
14 neighboring states, including Massachusetts,
15 Connecticut, New Hampshire, Rhode Island,
16 New Jersey and Delaware, currently provide
17 sales tax relief or more favorable tax
18 treatment for the purchase of aircraft.
19 Because of this competition, our evidence
20 indicates an immediate negative impact as a
21 result of the charter tax enacted last year.

22 As you would expect, tax actions like
23 this send strong signals to the aviation
24 industry and the region that New York is

1 unfriendly to aviation business. These taxes,
2 unique to New York, discourage aviation
3 businesses from investing in significant
4 transportation efficiencies here that would
5 improve their national and global
6 competitiveness reports.

7 NYAMA reports that immediately upon
8 enactment of the new aircraft asset ownership
9 penalty last year, charter aircraft operators
10 began moving their aircraft and associated
11 jobs to other states. More recently, two
12 New York-based companies have lost or are in
13 the process of losing based aircraft as a
14 direct result of the tax. These companies
15 would have generated nearly \$2 million in
16 charter service revenue and employed eight
17 crew members earning a total of \$600,000 in
18 New York taxable income annually.

19 NYAMA has estimated that the loss of each
20 business accounts for a reduction of
21 approximately \$183,000 to New York State's
22 recurring tax stream on an annual basis. We
23 have thus far been unable to access
24 information from the Tax Department or the

1 Division of the Budget as to what if any tax
2 revenues are generated or expected to be
3 generated by the charter tax.

4 Because of these effects, NYAMA
5 challenges the revenue enhancement assumptions
6 behind these taxes and instead maintains that
7 taxing a highly mobile asset well in excess of
8 what's charged in neighboring states results
9 in the location and relocation of aircraft to
10 other jurisdictions and has a net revenue and
11 job loss to New York.

12 The transfer of aircraft from outside the
13 state to in-state should be a welcomed event.
14 More planes and business aircraft locating
15 here is a sign of economic growth, industry
16 expansion, and job creation. The new tax
17 proposal will stifle this transfer of valuable
18 assets to New York, with little or no fiscal
19 benefit.

20 What should New York be doing? NYAMA
21 believes that the state's fiscal crisis
22 provides opportunity, and that pro-aviation
23 business tax reform should be a priority for
24 the state. The recent study by the New York

1 State Department of Taxation and Finance --
2 titled "A Review of the Sales and Use Tax
3 Exemption for Private Aircraft Parts and
4 Service" -- demonstrates that this type of tax
5 exemption has been a tremendous success,
6 resulting in the expansion of aviation
7 maintenance and repair businesses, the
8 creation of jobs in New York, and an increase
9 in state tax revenue.

10 Armed with this evidence, the Legislature
11 passed and the Governor signed into law a bill
12 that repealed the sunset on this tax exemption
13 and made the exemption permanent. This
14 display of firm commitment to the aviation
15 industry by the New York State Legislature and
16 the real prospect for additional tax reforms
17 directly contributes to positive investment
18 decisions by aviation companies.

19 The recent decision by SheltAir to invest
20 \$20 million in a redevelopment project at Long
21 Island MacArthur Airport, a project that is
22 expected to create 100 additional long-term,
23 sustainable jobs, moved forward after this
24 maintenance tax exemption was made permanent.

1 The risk is now that this type of investment
2 commitment may not be sustainable in the face
3 of more taxes on aircraft ownership.

4 NYAMA now advocates, via the Aviation
5 Jobs Bill championed by Assemblyman Robin
6 Schimminger and Senator William Stachowski,
7 the extension of this proven job-stimulus
8 effort for maintenance and repair to include
9 the purchase of aircraft.

10 This tax law change is critical. New
11 York State is at a significant competitive
12 disadvantage with regard to the attracting of
13 sales and basing of aircraft in New York.
14 This legislation promises to reverse the
15 situation and create long-term, sustainable
16 jobs and enhanced revenues to the state.

17 NYAMA therefore urges the Legislature to
18 reject this new Subpart B provision of the
19 revenue bill, repeal the ill-conceived charter
20 tax, and enact aviation tax relief comparable
21 to that of our neighboring states so that we
22 can nurture and support the growth of our
23 state's vital aviation sector.

24 Thank you.

1 CHAIRMAN FARRELL: Thank you.

2 Questions? Hearing none, have a very
3 good evening.

4 SENATOR KRUEGER: Thank you.

5 MR. RUSSELL: Thank you.

6 CHAIRMAN FARRELL: Pat Purcell,
7 assistant to the president, UFCW Local 1500.

8 MR. PURCELL: Thank you. Good evening.

9 CHAIRMAN FARRELL: Good evening.

10 MR. PURCELL: I will do my very best to
11 shorten this as much as possible.

12 My name is Patrick Purcell, Jr., and I am
13 assistant to the president of United Food and
14 Commercial Workers Local 1500.

15 CHAIRMAN FARRELL: Are you any relation
16 to RSDWU?

17 MR. PURCELL: They are an affiliate of
18 our union, our international, yes.

19 UFCW Local 1500 is New York State's
20 largest local union representing grocery store
21 workers. We represent 23,000 workers employed
22 by Pathmark, Stop and Shop, Shop Rite, King
23 Cullen, Gristedes, Key Food, D'Agostino's,
24 Fairway -- all the folks I'm sure you're

1 familiar with.

2 I want to thank you for allowing me to
3 address the committee today. The president of
4 our union, President Both, does sit on the
5 Governor's Food Policy Council and the
6 New York State Supermarket Commission. He is
7 an advocate for the development of a sound
8 state food policy that fairly balances the
9 needs of workers, consumers and employers.

10 Also, through our Building Blocks
11 Project, the campaign to bring supermarkets to
12 underserved communities, our union has proudly
13 stepped out in front to work with community
14 groups, elected leaders, healthcare advocates
15 and many others to ensure that a sound food
16 policy creates good food, good jobs, and good
17 health for all New Yorkers.

18 Our union opposes a sugar-sweetened tax.
19 I've also heard it called the lifestyle tax,
20 the soda tax, and the obesity tax. This tax
21 should simply be called what it is -- a
22 regressive tax.

23 It is a fact that millions of New Yorkers
24 live in communities where unfortunately

1 aspects of their lifestyle are chosen for
2 them. Lack of access to full-service
3 supermarkets, limited income, and minimal
4 consumer choice is what leads many New Yorkers
5 to choose these products. Many are not
6 purposely choosing the wrong products, they're
7 choosing what is available.

8 This is no different than the debate
9 we've been having for years about why people
10 in lower-income communities are eating so much
11 fast food. All we have to do is walk down the
12 street to these communities and see that
13 fast-food places provide the majority of
14 affordable options. Retailers with healthier
15 menus such as "Salad Works" or "Hale and
16 Hearty Soups" do not open in these
17 communities, unlike their massive expansion
18 into upscale neighborhoods. So should we also
19 propose the "Big Mac and Whopper tax"?

20 No tax is going to change the behavior of
21 people if they have other real barriers.
22 Furthermore, it's penalizing people who have
23 limited ability to make that change even if
24 they could. So I would ask that you please

1 kill this tax on lower-income New Yorkers.

2 Thank you.

3 CHAIRMAN FARRELL: Thank you.

4 Questions?

5 SENATOR KRUEGER: I have one.

6 CHAIRMAN FARRELL: Yes, Senator.

7 SENATOR KRUEGER: Thank you. I don't

8 know if you were here earlier, since it's

9 been --

10 MR. PURCELL: Oh, I was waiting for

11 this one, Senator.

12 SENATOR KRUEGER: Okay, thank you. Do

13 you feel that wine in supermarkets will be a

14 negative for your workers?

15 MR. PURCELL: I'm going to be very,

16 very, very honest with you. In the attempt to

17 attempt to keep my job for 24 more hours, I'm

18 going to reach out to our president and get a

19 clear answer to that question and get back to

20 you.

21 You've known me for a long time. I

22 wouldn't duck any question if I had an answer.

23 But I do feel I need to clarify that answer

24 with him. I know it's been a fairly fluid

1 situation. So if it would be okay with you, I
2 would reach out to you immediately tomorrow.

3 I also left my card already up in your
4 mail thing, with my cellphone, to call me
5 regarding this. I anticipated this.

6 SENATOR KRUEGER: Well, thank you very
7 much for your honesty.

8 MR. PURCELL: I got out of no tickets
9 for giving this testimony. I heard the other
10 ones earlier in the day. I haven't gotten out
11 of any tickets for doing any of this.

12 (Laughter.)

13 MR. PURCELL: So thank you very much.
14 I appreciate it.

15 CHAIRMAN FARRELL: Thank you.

16 New York Association of Convenience
17 Stores, Jim Calvin, executive director; Food
18 Industry Alliance of New York, Michael Rosen,
19 vice president; New York State Business
20 Council, Marcus Ferguson, director of
21 government affairs.

22 Just very quickly; we're two hours behind
23 now.

24 MR. ROSEN: Good evening. My name is

1 Michael Rosen. I'm the vice president with
2 the Food Industry Alliance. We are a
3 statewide trade association of all sizes of
4 food stores. I think you have our testimony,
5 and in the interest of time, I'll summarize
6 our points.

7 We're opposed to the new food tax. It's
8 called by some a sugar tax or a fat tax. The
9 fact of the matter is that it covers a broad
10 array of beverages, including cranberry
11 drinks, iced teas, sports drinks, vitamin
12 water, a number of things that families
13 consume. So we view that as an extremely
14 regressive measure.

15 Secondly, it's been said that the tax
16 is --

17 CHAIRMAN FARRELL: I'm sorry, say that
18 again. You see that as what?

19 MR. ROSEN: As a regressive tax.

20 CHAIRMAN FARRELL: Oh, I thought you
21 said a progressive.

22 MR. ROSEN: No, I'll be more clear.
23 Regressive.

24 Secondly, the tax is imposed at the

1 manufacturer or imported level at one penny
2 per fluid ounce. So that equates to \$1.44 a
3 12-pack. But that's just the beginning,
4 because there's a multiplier effect.

5 And I'll give the example of soda. Soda
6 is a direct-delivery product. Assuming the
7 soda bottlers don't increase that \$1.44 to
8 cover their new expenses, that then goes to
9 the retailer. The retailer will add their
10 margin to the new wholesale price. So our
11 \$1.44 -- retailers typically operate on a
12 20 percent margin. So the \$1.44 to us then
13 becomes \$1.73. Then we'll move the price to
14 the next price point, which might be \$1.75 or
15 higher.

16 The point is that it's not just a penny
17 per fluid ounce that the customer is going to
18 pay and then they'll pay sales tax on top of
19 the new retail. So once again, we find that
20 very troubling.

21 And then the last point I'll make is that
22 the theory behind this tax is that sugar
23 drinks will be priced up high, diet drinks
24 will be priced low, so that will drive

1 purchasing decisions.

2 In looking at this, some of our members
3 are thinking that's going to be very confusing
4 to the public, it's going to make advertising
5 these products very difficult. So what they
6 may do is blend the price, look at their sales
7 of diet and regular and set one price. That
8 way you'll only have one price for unit
9 pricing, one price for item pricing, we can
10 advertise just one price. You won't have two
11 prices within a product like vitamin water or
12 cranberry juice.

13 So once again, we think at the end of the
14 day today that all that will happen is that
15 the public will be paying more for food items.

16 Thank you.

17 CHAIRMAN FARRELL: Thank you.

18 MR. FERGUSON: Good evening.

19 CHAIRMAN FARRELL: Good evening.

20 MR. FERGUSON: Thank you. My name is
21 Marcus Ferguson, and I'm the director of
22 government affairs for the Business Council of
23 New York State. I'm here tonight on behalf of
24 New York's grocers and beverage companies.

1 I promise my remarks will also be brief.
2 We have testimony that we submitted, and also
3 we testified at this morning's Economic
4 Development hearing on this issue as well. So
5 there are just a few points I wanted to make.

6 We oppose this additional 1-cent-an-ounce
7 tax on soft drinks. We feel that ultimately
8 this will amount to a loss in sales and jobs.
9 Anytime we look at, you know -- when price
10 increases on consumer products, we will see
11 ultimately a drop in demand. As consumers pay
12 more, they will purchase less. We think this
13 will ultimately result in a loss of jobs as we
14 see production decrease as well. We think
15 potentially this could be a loss of jobs in
16 the thousands.

17 Secondly, we think that this will present
18 a competitive disadvantage to New York
19 retailers and bottlers as well, particularly
20 those retailers along the New York border.
21 Currently, New York has the highest sales tax
22 of any of the states around its border. When
23 we look at Pennsylvania, Massachusetts, and
24 Vermont, New York currently has a higher sales

1 tax. Adding this tax on top of that will only
2 exacerbate that disadvantage, and we feel that
3 would that will be a real problem.

4 Also, when you factor in consumers who
5 might go shop at Indian reservations, that's
6 just another difficulty for those retailers in
7 places like Oneida County where that is a
8 problem.

9 And finally, we think that ultimately we
10 will see just a drop in state revenue. While
11 this budget proposal is designed to raise
12 close to a billion dollars a year, we think in
13 the long run we will actually lose in total
14 economic activity from lost jobs, from lost
15 sales, what it will mean to local governments,
16 that you will actually see a net loss:

17 And I know we'll be putting a study
18 together on that very shortly. We looked at
19 some of those numbers last year, and the
20 budget numbers were very similar, and we
21 thought that ultimately you'd come out with
22 about \$100 million in net lost revenue as a
23 result of this. So while you're gaining a
24 sizable amount on the front end, long term we

1 think that ultimately it will be a net loss to
2 the state.

3 So with that, thank you. You have our
4 comments, and we'd love to talk to you
5 further.

6 CHAIRMAN FARRELL: Thank you.
7 Senator?

8 CHAIRMAN KRUGER: A quick question.
9 Going back to cranberry juice, under the
10 Governor's proposal, juice would be included?

11 MR. ROSEN: Juices that are less than
12 70 percent juice would be subject to the tax.

13 CHAIRMAN KRUGER: Seventy percent?

14 MR. ROSEN: Seventy percent. So you
15 have a number of products that have to be
16 diluted, like lemonade or cranberry drinks,
17 that are typically below 70 percent.
18 Sometimes they're mixed with other juices,
19 like apple juice or pear juice. But cranberry
20 juice, because it's so sour, is typically
21 diluted and then sweetened.

22 CHAIRMAN KRUGER: Then there are
23 certain drinks that are just, you know, ethnic
24 kind of drinks. Italians like Manhattan

1 Special. You find in Caribbean communities
2 drinks like JO. Those would all be included
3 under this?

4 MR. ROSEN: Yes. If they're sweetened,
5 they all are.

6 CHAIRMAN KRUGER: Okay, thank you.

7 MR. FERGUSON: Thank you.

8 CHAIRMAN FARRELL: Thank you.

9 SENATOR DeFRANCISCO: I have a question
10 of the chairman. I just wanted to tell the
11 chairman that I'm full-blooded Italian and I
12 have no idea what the heck he's talking about.

13 CHAIRMAN KRUGER: I'm bringing you a
14 bottle next week of Manhattan Special, I
15 promise.

16 (Laughter.)

17 CHAIRMAN FARRELL: One more. Kevin
18 Dietly, principal, Northbridge Environmental
19 Management Consultants, and Pepsi New York,
20 Mark Johnson, CFO. To close.

21 MR. DIETLY: Thank you, Chairman
22 Farrell, Chairman Farrell, members of the
23 committee. My name is Kevin Dietly. I'm an
24 economist, a consultant to the beverage

1 industry. I'm here representing the American
2 Beverage Association, which represents the
3 manufacturers of refreshment beverages in the
4 United States.

5 I'd like to speak to you very briefly
6 about the tax and register our opposition to
7 the tax and point out some issues with the way
8 the tax is constructed and point some issues
9 out to you there.

10 First of all, there are only two states
11 in this country that impose excise taxes on
12 beverages specifically. Those are the states
13 of Arkansas and West Virginia. Those taxes
14 have been in place for some time. And no
15 jurisdictions impose taxes that vary based on
16 the sugar or sweetened content of the
17 beverage. So the tax that's been proposed in
18 New York is unique.

19 The tax is also extremely high. The
20 Governor's budget estimates the proceeds of
21 this on a full-year basis at about a billion
22 dollars. The total retail value of all
23 refreshment beverages sold in New York State
24 is somewhere between \$4 billion and \$5 billion

1 a year. So this is a manufacturer-level tax
2 of a billion dollars on a product category
3 that grosses at the retail point, either
4 restaurant or in food stores, \$4 billion and
5 \$5 billion. So we're talking about something
6 that's on the order of a 25 percent gross tax
7 on the industry on average.

8 If you look at the second page of my
9 testimony, I've illustrated some of the price
10 impacts for the tax. Without considering the
11 markup consequences that Mr. Rosen spoke
12 about, if you just take the straight tax and
13 you do it relative to some of the most common
14 products that are purchased, like a 12-pack of
15 soda or a 2-liter bottle of soda, you'll see
16 that the tax represents between a 47 and a
17 57 percent price increase, just based on the
18 tax.

19 If you take that tax and you add on a
20 sales tax and you add on the deposit,
21 government fees and taxes would represent
22 somewhere between 74 and 79 percent of the
23 price of that product as it sits on the shelf
24 in the store. And that's without any markups

1 from the retail customers. So these are
2 profound taxes in the context of an industry
3 this size.

4 Last year when the Governor proposed his
5 18 percent fat tax, we did some economic
6 analysis of the economic impact on the
7 industry. Not surprisingly, it translated
8 into a significant number of lost jobs in the
9 industry through the mechanism of higher
10 prices, lower consumption for the products,
11 and lower output for the companies, therefore
12 lost jobs.

13 This tax is significantly higher than
14 last year's tax. It's on a broader range of
15 products. So we have estimated preliminarily
16 somewhere between 10,000 and 20,000 lost jobs,
17 not just in the beverage industry, but to the
18 customers of the beverage industry and to the
19 suppliers of the beverage industry, up and
20 down the chain.

21 Mr. Johnson will speak a little more to
22 the specific impacts on his company and how it
23 affects business.

24 I'd like to conclude just with a couple

1 of comments about the structure of the tax.

2 . As was pointed out earlier, I think by
3 Senator Kruger, this is a different structure
4 from last year's tax, which was a sales tax.
5 A sales tax obviously is imposed right at the
6 point of sale. The consumer picks up their
7 receipt and they see that they paid 18 percent
8 for the offending product.

9 In this case, the tax is levied on a
10 series of products at the point of
11 manufacture, which gives the manufacturer the
12 flexibility of taking that into account in his
13 pricing structures. So if I'm producing a
14 whole array of beverages -- some of those
15 products are subject to tax, some are not --
16 I'm going to make pricing decisions in my
17 wholesale pricing out to my customers to
18 spread those prices around. There's no
19 guarantee that only the evil-doing products
20 are going to carry a high tax and other
21 products that are supposedly better for people
22 are not going to carry the high tax. It's
23 going to be spread all around the beverage
24 portfolio.

1 Furthermore, the retailers, as Mr. Rosen
2 has already mentioned, are also going to
3 spread those prices around. They're going to
4 make business decisions to optimize their
5 revenue and spread those taxes around as well.

6 So one of the things that the Governor
7 has obviously accomplished by imposing an
8 excise tax is hiding the overt existence of
9 the tax from consumers, because it won't
10 appear on their receipt anymore.

11 What he's also done is probably
12 completely diluted any sort of impact that
13 anyone could claim that this would have an
14 effect on anyone's health or purchasing habits
15 across various categories of beverages,
16 because it's going to be hidden in the price
17 of the product. That achieves political
18 goals; it obviously doesn't achieve any health
19 goals that folks are claiming from this tax.

20 Lastly, it's important to note that when
21 folks talk about increasing the price of
22 certain beverages, I've heard various health
23 advocates talk about how much people will
24 shift from taxed beverages to nontaxed

1 beverages. There's no absolutely no evidence
2 in the economic literature -- and the economic
3 literature is where people study consumer
4 response to taxes -- there's no evidence at
5 all that people are going to shift from taxed
6 products to untaxed products. The substitute
7 for a full-calorie soda to consumers is not a
8 diet soda. The alternative to a full-calorie
9 soda, based on the economic statistics, when
10 the price of full-calorie sodas goes up,
11 people buy more 100-percent juices and full
12 fat milks, not diet soda.

13 What we don't know is, when you increase
14 the price of soda, if people also buy more
15 Ring Dings, Milky Ways, cookies, muffins, and
16 caramel macchiatos at Starbucks. We don't
17 know that. So from an economic perspective,
18 the ability to translate this tax into any
19 sort of specific change in consumption for
20 specific products is far beyond the ability of
21 the taxation agencies.

22 With that, I conclude that we oppose the
23 tax, we think it's unfair, and we don't think
24 it will achieve any of the goals that it's set

1 up to achieve.

2 CHAIRMAN FARRELL: Thank you.

3 A question. You were doing some numbers
4 there. A couple of years ago -- every now and
5 then, there's a hurricane and the sugar fields
6 get wiped out and then there's a story that
7 they're going to increase the cost of sugar
8 and of course it goes up the next day in the
9 supermarket, something that -- we won't go on
10 that one; it's a different story.

11 When that period happens, what happens
12 with those sodas when the price does go up?
13 Do you see -- I mean, some of this stuff
14 already is going on in different forms. What
15 do you see happening then?

16 MR. DIETLY: I can defer maybe a
17 specific answer to that to Mr. Johnson, since
18 he's in the business of pricing this. I can
19 tell you, from my knowledge of the industry,
20 the companies, as we any other input to their
21 production, have long-term contracts for the
22 placement of --

23 CHAIRMAN FARRELL: No, you're going the
24 wrong way. You were saying the outcome of

1 what would happen with the increase in the
2 cost. So we have an increase in the cost in
3 the product. What have you seen in the past?

4 MR. DIETLY: I'm sorry, in terms of
5 reduced consumption.

6 Yeah, there is fairly accomplished
7 literature, in the academic literature about
8 the price sensitivity of beverages to higher
9 prices. You see it at a -- you see it at a
10 brand against brand level every week when you
11 notice that Pepsi is on discount at your store
12 one week and Coke's on discount the next week
13 and Adirondack is on sale the next week.
14 They're doing that because they move a lot of
15 product when they lower the price. There's
16 definitely a consumer response, a
17 long-established consumer response to the
18 change in price.

19 Now, this is a little different because
20 this tax isn't about making Coke more
21 expensive than Pepsi or Good-O's beverages
22 more expensive than somebody else's. This is
23 about raising the tide for everything.
24 Everything gets more expensive.

1 But the literature also shows pretty
2 clearly that consumption does drop when you
3 raise the price of these products. These are
4 price-sensitive products.

5 CHAIRMAN FARRELL: And it doesn't go
6 back down after a length of time?

7 MR. DIETLY: The economic literature
8 shows that there's a long-term quantity change
9 as a result of price, yes.

10 CHAIRMAN FARRELL: I couldn't tell you
11 what the price of a bottle of soda is. It
12 depends on what day you're in the supermarket
13 and what sale is on.

14 MR. DIETLY: It absolutely does.

15 CHAIRMAN FARRELL: It goes anywhere
16 from \$2 to \$1.

17 MR. DIETLY: It varies dramatically.

18 If you look at the second page of my
19 testimony, there's a chart in there. And
20 actually, based on a full year of sampling in
21 supermarkets for those representative
22 products, that's about what the price in the
23 New York market area, the New York
24 metropolitan area averages for 12-ounce and

1 for 2-liter bottles, around \$3 for a 12-pack
2 of cans and around \$1.29, I think, for a
3 2-liter bottle.

4 MR. JOHNSON: If I may add to that, to
5 answer your question directly, it is a very
6 highly elastic industry. Meaning you take
7 price up, volume is going to fall, people are
8 going to look for alternative sourcing,
9 whether they get it illegally, which is one of
10 the big issues on the border states. But it
11 is highly elastic when it comes to price
12 relationship to volume to jobs. They are
13 highly linked together. Volume drops, jobs
14 drop, the price goes up.

15 That's why you see the spiking when you
16 see Coke on sale one week, Pepsi takes the
17 next week. That's the retailer balancing the
18 relationship between the industry, saying you
19 get 2-liter this week, you get cans next week.
20 Everybody is buying 2-liter; next week
21 everybody is buying cans.

22 So it's a very highly elastic market
23 industry, if that helps you.

24 CHAIRMAN FARRELL: Senator?

1 SENATOR DeFRANCISCO: I just had a
2 comment. You know, we started here at 9:30
3 this morning and it's now 6:30. The first
4 three-quarters of what we did today was trying
5 to figure out how we're going to create jobs
6 in the State of New York.

7 And here, in one tax, we're going to put
8 in jeopardy 10,000 to 20,000 people. When the
9 logic behind the tax makes so little sense,
10 that we are going to change people's behavior
11 and the basis is people are overweight. I
12 mean, you can tax every product that has any
13 kind of over calories in it or restaurants
14 that serve too much food. And it just boggles
15 my mind that we could have this difference
16 from morning to evening.

17 And I can assure you that I think the tax
18 is as foolish as the two of you think it is.

19 Thank you.

20 SENATOR KRUEGER: Just -- not a
21 question, I have a comment with respect to my
22 colleague.

23 We don't actually know yet the cause and
24 effect between what the cost would be and

1 people's behavior. You have one set of data,
2 and I'm going to ask staff to look at other
3 economic analyses.

4 What is clear from your testimony is soda
5 and other sugared drinks is a product where
6 pricing has absolutely nothing to do with the
7 cost of making the product. We certainly
8 explained all these different scenarios of
9 what changes the price outcome of different
10 products, whether it's the 12 ounces, whether
11 it's the full liters, whether it's, you know,
12 transferred over -- you know, rolled over to
13 the local level. But there's not an actual
14 price to cost of manufacturer in this product.

15 MR. JOHNSON: No, there actually is a
16 direct correlation between cost inputs and
17 prices that you charge to the retailer. There
18 absolutely is.

19 Because you have to cover your cost to
20 make the product, you have to cover your cost
21 to take the product from your plants to your
22 warehouses, then you have to load it onto the
23 trucks, then you have to take it to the
24 retailer, then you have to merchandise it and

1 sell it.

2 So all of those costs have to be part of
3 your pricing matrix. And the pricing matrix
4 is different for each product depending upon
5 the cost inputs, because the cost inputs are
6 different for each product.

7 You may have certain levels of fructose,
8 certain levels of other additives that go into
9 the product. The pricing of the containers
10 are different. The pricing of the cardboard
11 wrap is different versus not. I mean, every
12 product has its own cost dynamics. And you
13 start from there. That is your starting point
14 from your raw inputs.

15 SENATOR KRUEGER: Okay, I stand
16 corrected. I guess I meant the food product.
17 The only food product in this that we're
18 talking about is fructose syrup; right?

19 MR. JOHNSON: Correct.

20 SENATOR KRUEGER: So it's all the other
21 costs associated with --

22 MR. JOHNSON: Yeah, and fruit juices
23 and concentrates and other flavorings. And
24 there are other things in the product as well.

1 SENATOR KRUEGER: Thank you.

2 CHAIRMAN KRUGER: But what we're also
3 going to find is that in poor neighborhoods
4 this is going -- not only the fact that
5 there's a larger consumption of sugary drinks
6 in poor neighborhoods. But interestingly
7 enough, again, you find the small grocers -- I
8 don't know when they buy the product from
9 you -- you find the shelf life is tomorrow
10 morning.

11 You know, so they're buying cheaper and
12 they're selling it at supermarket prices where
13 you get a fresher product. So you're getting
14 a staler product, you're going to be paying
15 more, and you're being once again penalized.

16 MR. DIETLY: This is very tough on the
17 smaller -- small up and down, the value
18 change.

19 MR. JOHNSON: Very difficult. There is
20 a skewing on the consumer.

21 CHAIRMAN KRUGER: Small grocers,
22 small -- people think they're buying it cheap
23 at the gas station, but they should also look
24 and see the product that they're buying at the

1 gas station: it expires tomorrow.

2 MR. DIETLY: To Senator Stachowski's
3 point, too, I mean as far as impacts on
4 manufacturers --

5 SENATOR KRUEGER: DeFrancisco,
6 actually.

7 MR. DIETLY: I'm sorry.

8 SENATOR DeFRANCISCO: That's all right.
9 He's a good guy.

10 MR. DIETLY: The manufacturing,
11 especially for small manufacturers, whether
12 it's an independent company or a small bottler
13 of Coke or Pepsi in the state, they really
14 are -- they really have a difficult time
15 passing these on.

16 All these operations that the companies
17 run are small local businesses, they all have
18 their own local profit-and-loss
19 responsibilities. So these are all the way
20 down to the small retailer. Those definitely
21 have a disproportionate impact on the smaller
22 players.

23 MR. JOHNSON: And when I get to my
24 testimony, I'll give you some really good

1 numbers that you can really wrap your minds
2 around. Because we're in a post-Bottle Bill
3 environment, which is fresh -- should be fresh
4 in everyone's mind, and I can give you the
5 statistics on the impact of that and then you
6 can relate that to the potential impact of
7 this tax.

8 CHAIRMAN FARRELL: But in the end they
9 go back to it.

10 MR. JOHNSON: I'm sorry?

11 CHAIRMAN FARRELL: In the end, they go
12 back to it, whatever the cost be. I used to
13 speak English.

14 (Laughter.)

15 MR. DIETLY: No, consumption is
16 actually going down.

17 MR. JOHNSON: Consumption is dropping
18 in the CSDs, the LRBs --

19 CHAIRMAN FARRELL: Is that because the
20 doctors are telling you you should drop, or is
21 it dropping because of the money?

22 MR. DIETLY: It's been dropping for
23 years.

24 MR. JOHNSON: Yeah.

1 CHAIRMAN FARRELL: Because again, with
2 the bodegas in my neighborhood, they don't
3 carry the big ones because their prices, the
4 little one is equal to your big one. I mean,
5 the difference -- that's the I'm buying it
6 because I'm going to drink it now versus I'm
7 buying it for the house.

8 MR. JOHNSON: Right. It's the impulse
9 buy.

10 CHAIRMAN FARRELL: Yeah, and the
11 impulse and the numbers and the prices, you
12 know. And then of course if you really want
13 to get into it, a bottle of water. I've
14 always killed my grown children for buying
15 water. But anyway, that's another story.

16 MR. JOHNSON: Shall I proceed with my
17 testimony?

18 CHAIRMAN KRUGER: Testimony?

19 (Laughter.)

20 MR. JOHNSON: Yes. I have the
21 testimony that --

22 CHAIRMAN KRUGER: Why don't you submit
23 it for the record.

24 CHAIRMAN FARRELL: Submit it, yes. I

1 think we've gotten your point across. We have
2 the record. And we can give it and it will be
3 entered right into the record.

4 MR. JOHNSON: Well, could I put it in
5 perspective for you, just a couple of points?
6 A couple, three points?

7 CHAIRMAN FARRELL: All right, I'll give
8 you three points.

9 MR. JOHNSON: Okay, thank you.

10 CHAIRMAN KRUGER: You may sell soda,
11 but you don't sell used cars, because then you
12 would know to walk away from the sale.

13 MR. JOHNSON: No, I'm going to give you
14 some hard facts to sort of lock in and write
15 down.

16 The volume impact -- we just passed the
17 Bottle Bill. You're aware of that.

18 CHAIRMAN FARRELL: Yeah.

19 MR. JOHNSON: The average price
20 increase for -- we sell in cases -- was about
21 80 cents. Okay? We've lost 12 percent volume
22 since the passage of the Bottle Bill. Our
23 jobs are down, our manufacturing jobs are down
24 12 percent, basically.

1 The category is dropping, as he
2 mentioned; what we call the liquid refreshment
3 beverages is dropping. The carbonated soft
4 drinks, which is where we play in, is dropping
5 at a faster rate than the LRBs. And this
6 price increase that you're talking about in
7 terms of a penny an ounce -- and that sounds
8 small, but compared to the bb, it's three
9 times. Three times.

10 So what you can expect -- and we
11 discussed this during the Bottle Bill, that
12 there would be jobs lost, that there would be
13 volume lost. It has passed, and those are the
14 numbers. You can take those numbers and you
15 can multiply them by three, that there will be
16 three times the job loss, three times the
17 volume loss with this increase.

18 Because a penny an ounce on a case of
19 cans -- a case of cans, there's 24 cans,
20 there's 288 ounces. That's \$2.88, which is
21 over three times the 80 cents.

22 So that's what I'm trying to -- I want
23 you to sort of correlate that, that it's a
24 serious --

1 CHAIRMAN FARRELL: Is juices going up?
2 Is water going up? Where's that going --

3 MR. JOHNSON: Water is not in this
4 equation because it doesn't have sugar.

5 CHAIRMAN FARRELL: No, no, no, I'm
6 going a different place. This late, all of a
7 sudden I decide to get --

8 MR. JOHNSON: Take your time.

9 CHAIRMAN FARRELL: In other words, if
10 you're not buying that soda, are they going to
11 the tap and drinking water or are they
12 swinging to something else? Are they picking
13 up on the juices because they feel that's
14 healthier?

15 MR. JOHNSON: What they're going to do
16 is there would be some shifting.

17 But what else is going to happen? And
18 this is where it's very important to
19 understand the industry and not underestimate
20 the contraband activity that goes on in this
21 state.

22 A tractor-trailer load carries 2200 cases
23 of cans. And the delta between just the
24 taxes -- just the delta on taxes -- makes that

1 trailer worth \$12,000. Not the cost of the
2 can, that's the profit on the differential
3 between the New Jersey taxes and the New York
4 State taxes. You go down Route 4, you will
5 see "Buy your soda before you go into
6 New York."

7 So a tractor-trailer load across the
8 bridge, that is so easy. That stuff happens
9 every day. So what's going to happen is that
10 contraband is going to increase -- it exists.
11 You can't police it. We have to police it
12 ourselves.

13 CHAIRMAN KRUGER: We're going to have
14 to do cigarettes.

15 MR. JOHNSON: You can't police this
16 stuff. How are you going to police somebody
17 throwing in -- loading up their van and
18 driving up -- you're going to collect the
19 taxes on that? I don't think so. Nobody's
20 going to tell you.

21 CHAIRMAN FARRELL: That one you won't.
22 The trailer, I'm --

23 MR. JOHNSON: But the trailer, you're
24 not going to catch the trailer. The trailer's

1 going to go to some third party where he's got
2 a couple of routes and he's out just selling
3 it. So you're going to have contraband
4 activity that's going to just blow through the
5 roof.

6 We've already seen double-digit increases
7 in contraband activity, and we track it. We
8 have police people out there. And it's
9 difficult. It is everywhere. And to
10 exacerbate this thing by a multiple of three,
11 it's just going to get rampant.

12 So there will be a little shifting, there
13 will be different sourcing. And you will not
14 collect the tax dollars on this product that
15 comes in. You'll collect the tax dollars on
16 product that if we bought it from New Jersey,
17 yeah, we'll pay the taxes because we'll tell
18 you we sold this and that. But for the rest
19 of the folks who are bringing in the
20 contraband, you're not going to collect that.

21 CHAIRMAN KRUGER: And the extension of
22 that, the bottling companies, your
23 independent -- we also lose the bottling
24 capability here in New York.

1 MR. JOHNSON: We might as well as shut
2 down and go home. You're going to shift the
3 production, you're going to shift it to
4 New Jersey, most likely. We would end up
5 shutting our two plants, we have six
6 distribution centers. We might as well --
7 we're going to have to close the doors.
8 They'll go -- Jersey will start producing the
9 stuff. And all those jobs will go to Jersey.

10 CHAIRMAN KRUGER: And by the way, soda
11 that's made in New York tastes a lot different
12 than soda that's made in other states.

13 MR. DIETLY: Absolutely. We have good
14 water.

15 MR. JOHNSON: We have great water.

16 SENATOR KRUEGER: I'm sorry, I just
17 have to clarify. Moving the jobs to
18 New Jersey, you'll still have to pay the
19 excise tax.

20 MR. JOHNSON: Only to the extent that
21 someone reports it. You have to see the
22 difference.

23 For example, we don't produce everything
24 we sell. Okay? Sometimes the products that

1 we do not produce, we source -- let's say from
2 Jersey. We would buy that product, bring it
3 in from Jersey to our warehouse, we would sell
4 it and pay you the excise tax. That's us.

5 But the contraband activity, they're not
6 telling you they're bringing it in. They're
7 not telling you anything. They're just
8 bringing it across. They're not paying the
9 deposit, you're losing Bottle Bill income,
10 you're losing all the taxes on it. And you
11 just sent all the jobs across the river.

12 That's the scenario that we're talking
13 about here. It's pretty serious. I mean, for
14 us, it's serious dollars. It's twice our
15 payroll, our entire company's payroll. This
16 tax annually is twice our payroll. You
17 essentially put us out of business. We can't
18 lose 36 percent on top of the 12 percent
19 volume that we've already lost as a result of
20 the Bottle Bill.

21 And we don't roll over on this
22 contraband. We fight it every day. And we do
23 our best to go shut it down. We call the --
24 you know, we do what we can. But by the time

1 people get there, these guys, they're
2 professionals. They're gone. They're gone.
3 That product's gone. It's difficult.

4 CHAIRMAN KRUGER: Okay, thank you.

5 CHAIRMAN FARRELL: Thank you very much.

6 I move we adjourn till tomorrow morning
7 at 10:00 o'clock. Thank you very much.

8 (Whereupon, the budget hearing
9 concluded at 6:45 p.m.)

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