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Partnership for New York City

TESTIMONY SUBMITTED BEFORE THE SENATE SELECT COMMITTEE ON BUDGET AND TAX REFORM

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CHAIRMAN, TAX COMMITTEE

PARTNERSHIP FOR NEW YORK CITY

Good afternoon Senator Krueger and members of the Committee. Thank you for the opportunity to testify today about the State's business and banking tax structures.

The Partnership is an organization of business leaders dedicated to working with government, labor, and the not-for-profit sectors to strengthen the economy of New York City and State. I chair the Partnership's Tax Committee and have chaired the Tax Sections of the American and New York State Bar Associations. I practice law in New York City with McDermott Will & Emery LLP.

It is no secret that the business climate in New York is increasingly regarded as less competitive than other states and countries. Business and personal income tax policies are one important reason why New York is growing less attractive to business, especially during a period where every company is focused on reducing marginal costs and increasing efficiency. Texas, noted for one of the most favorable tax environments, is estimated to have captured 70% of the nation's new job creation last year. New York's economy depends on jobs and revenues provided by companies that are increasingly mobile and global, so we cannot take their commitment to the City and State for granted.

Conforming City and State policies is a first step in creating a uniform business tax code that reduces the costs of filing, compliance and tax audits for business and government. Reforming this tax code for the purpose of reinforcing New York's economic development objectives is a more difficult process, but necessary. New York City has recently agreed to begin to conform City business taxes to New York State Law. The most important item proposed for conformity is the single sales factor apportionment of taxable business income that New

York State enacted in 2005. California and other competitor states have established a competitive advantage through the adoption of Single Sales Factor. This approach has the impact of reducing tax revenues in the short term, while stimulating economic growth that will yield medium and long term increases in overall tax revenues generated by new jobs and new business investment. The sooner New York City adopts the single sales factor approach, the more likely that the five boroughs will enjoy a robust recovery from the recession.

The Partnership is also part of an advisory committee put together by Tax and Finance Commissioner Robert Megna to undertake comprehensive business tax reform that would simplify and rationalize the tax laws. The State's Tax Law is much too complicated. It contains a single sentence that is almost three times as long as the Gettysburg Address (section 210.3). We welcome the opportunity today to discuss particular business and banking taxes that we see as having an important role to play in the future economic growth of the State.

As you know the combined New York State and City tax rates are significantly higher than those in any state in the nation. As we begin to examine tax reform, it is important to consider what makes a state tax policy competitive and attractive to investment. While low rates are a key indicator, New York has favorably taxed corporate investment income, allowing us to maintain our competitiveness with other states. This has been a key part of our economic development policy for over 60 years. Reform of the system should not negatively impact one industry over another but should be fair and broad based and promote economic development and job growth.

The financial services industry, which was able to tolerate high taxes because of the high profits it generated over the past two decades, will be very different going forward. The industry and its profitability are projected to shrink by at least twenty-five percent and significantly more when it comes to the securities sector. New York's tax policies took advantage of the highly leveraged boom years of Wall Street, which generated at least 20 percent of the state's tax revenues. Unfortunately, the tolerance for that level of taxes is severely diminished and our future as a financial center depends on state and local government working with industry to come up with a new tax regime that reflects how the industry will be reinvented.

Securities firms and banking firms currently are taxed under different Articles of New York State law—even though they conduct businesses with related operations. The securities/banking industry is concentrated in New York City and, therefore, New York State should view tax reform for the industry based on the combined State and City tax. It is important that changes adopted by the State also be adopted by the City.

Both the current Article 9-A business corporation tax and the Article 32 bank tax encourage the location of corporate headquarters in New York State. This policy of favorably taxing income from subsidiary capital should be continued in any new tax on the financial services industry. Maintaining New York's status as the "Headquarters State" is important to continue the location of high paying management jobs and supporting back office operations in New York. This policy also supports the commercial real estate market and provides other direct economic benefits from corporate headquarters in the State.

Several securities firms have established investment partnerships that include many individual investors. Based on the recent increase in New York State personal income tax rates and the reduction or elimination of the deduction of investment interest expense, it is not attractive to market these funds to New York residents.

Asset management is one of the fastest growing sectors of the financial service industry. Any new tax policy should include incentives to locate and maintain such businesses in New York State and City. Customer sourcing of receipts from asset management services would encourage such growth in the State and remove the current disincentive to locating such jobs here.

The investment tax credit provided by New York State has been a factor in companies retaining their presence in New York State. However, the experience of the securities/banking industry is that much of the investment tax credit is disallowed when audited by the New York State Department of Taxation and Finance, thereby reducing its effectiveness in encouraging economic development. The New Jersey "Business Employment Incentive Program" (BEIP) program has been much more beneficial to the banking industry, and thus to New Jersey.

In consultation with corporate location and real estate experts, the Partnership for New York City has proposed a model that we call the Growth and Relocation Incentive Program (GRIP). It provides a clear and predictable package of incentives for certain industries (comparable to New Jersey's BEIP). The idea is to provide a corporate income tax credit to employers that create new jobs in target industries equal to as much as 80% of the state personal income taxes generated by the new jobs. The size of the credit would depend on the region of the state and the value of the job created, with the greatest incentive going to employers locating in the most economically depressed Upstate communities. The GRIP program addresses critical needs of prospective employers - and its concepts have already proven successful in New Jersey. If executed in a timely and transparent manner, GRIP will help retain and grow innovation economy businesses across the State.

One example of a successful economic development measure in New York State is the Film Tax Credit. This incentive is one of the most effective in the history of the State, providing a $3 billion return since its inception. Expansion of this credit will support continued growth of the film production industry in New York.

In closing, any new tax regime for the financial services industry must include the following basic policies to encourage economic growth in the State & City:

- Apportionment of income based solely on sales.
- Customer / market sourcing of all receipts.
- Elimination of the alternative tax on gross assets.
- The carry forward of existing net operating losses from both Articles 9-A and 32.
- A fair and reasonable alternative minimum tax base such as net worth and a reduction of the current $10 million minimum tax cap and / or a credit for such minimum taxes against future income tax liabilities.

These policies must work in tandem with reform of the State's economic development programs, which in many cases have proven to be ineffective and inefficient. The Partnership looks forward to working together with you to both reform our system of taxation and establish new and innovative economic development policies that position New York for future economic growth.

Thank you for the opportunity to testify today.