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# First, Do No Harm: Competitive City Tax Policies in the Post- COVID Era

By Andrew Sidamon-Eristoff

B2GNY Group LLC

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## SUMMARY

**QUESTION: HOW CAN NEW YORK'S MUNICIPAL LEADERS ADJUST TAX POLICY TO MAKE THE CITY MORE COMPETITIVE?**

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### WHY IMPORTANT:

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1. Tax policy has an impact on the economy in terms of businesses retaining existing workers, creating new job opportunities, and generating more revenue.
  2. Through tax policy, there are opportunities to improve equality by building a more competitive and equitable tax system.
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### RECOMMENDATIONS:

1. **Pursue a *modest and defensive* approach to modifying New York City's current tax system**
  - Limit the extent to which New York City's taxes are "negative outliers" compared to other cities (do not raise, and instead, potentially pair back the following seven rates: commercial rent tax, corporate income tax, personal income tax, real property transfer tax, sales and use tax, unincorporated business tax, utility tax).
  - If New York City must add revenue, increase specific taxes that do not excessively harm city's competitive position (potential targets include the alcoholic beverages tax, hotel room occupancy tax, and mortgage recording tax).
2. **Consider administrative changes to alleviate anti-competitive compliance burdens**
  - Improve coordination between the city and state on corporate tax audits.
  - Temporarily allow taxpayers to rely on the state's draft corporate tax reform regulations (while waiting on the state to finalize regulations and the city to issue rules).
  - Push the state to administer the city's corporate tax as a surcharge to the State's corporate tax (mirroring approach to personal income taxation)
  - Allow New York City's S corporations to be taxed under the Unincorporated Business Tax.
  - Convert New York City's per-room charge in the Hotel Room Occupancy Tax to a percentage-based equivalent (and add that to the base rate).
  - Collect taxes on both tiers of non-passenger commercial motor vehicles registered within the city: those weighing more than 10,000 pounds and those weighing 10,000 pounds or less.
  - Put the State Liquor Authority in charge of collecting the Retail Beer, Wine and Liquor Tax.
  - Require that landlords inform prospective tenants of their Commercial Rent Tax obligation.



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## CONSTRAINTS:

1. Requires state action and coordination (state law restricts New York City's revenue-raising authority, so the New York State Legislature must approve changes to city tax policy).
2. Legislators could be hesitant to raise taxes of any kind in the short-term, given the pandemic's heavy economic toll on city residents and businesses (particularly those in services industry).
3. Significant lobbying is expected from the hospitality, liquor, and landlord associations over proposed changes that raise taxes or create new regulations within their industries.

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## INTRODUCTION

Next January 1, New York City's newly elected leaders will assume responsibility for managing one of the world's most complex, most ambitious, and - not coincidentally - most expensive municipal governments. As they seek to rebuild the city's economy and ease the COVID-19 pandemic's legacy of human devastation, they will face familiar questions: Should the City raise taxes? Will raising taxes make the city's economy less competitive, diminishing its capacity to sustain jobs and generate needed revenue? What tax policy changes would make the city more competitive?

This paper advances a framework for managing city tax competitiveness in a post-pandemic era characterized by fiscal stress, social dislocation, and technology-enabled economic diffusion. First, the City should avoid policy choices that would accentuate the extent to which city taxes are harmful competitive outliers. Second, if additional revenue is needed, the City should focus on options that would least harm its competitive position. Finally, the City should consider administrative changes to reduce anti-competitive compliance burdens.

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## CITY TAX POLICY IN CONTEXT

Examining City tax policy requires context:

- The City raises a lot in taxes. The City expects to raise \$61.1 billion in taxes during Fiscal Year 2021.<sup>1</sup> For comparison, that's almost 50 percent more than the State of New Jersey expects to collect in fiscal

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<sup>1</sup> "January 2021 Financial Plan Detail, Fiscal Years 2021 – 2025," *New York City Office of Management and Budget*, January 2021, 4/271, <https://www1.nyc.gov/assets/omb/downloads/pdf/tech1-21.pdf>.



2021.<sup>2</sup> Indeed, by fiscal metrics, it is appropriate to think of City government as akin to a U.S. state government.

- Taxes are the City's largest single source of budget support, providing 67 percent toward the Mayor's \$92.8 billion Fiscal 2022 Preliminary Budget.<sup>3</sup> Total City funds, which include \$6.8 billion in miscellaneous revenues, account for 73 percent. Federal and state grants provide most of the rest.
- The City's Finance Department exceeds in size, and rivals in sophistication, many state revenue agencies. In addition to administering city taxes, Finance audits compliance with the State-administered personal income tax and sales taxes.
- Depending on the tax type, City taxes may or may not constitute a significant independent financial consideration in relation to federal, state, and regional taxes. For example, whereas a single resident taxpayer earning \$150,000 a year will pay almost 60 percent more in State income tax than city income tax,<sup>4</sup> incorporated businesses pay a higher effective tax rate to the City (8.85 percent) than in state (5.92 percent) and regional taxes (1.71 percent).<sup>5</sup>
- It is often difficult to isolate the impact of City taxes from that of State and regional taxes, especially those that share a base, such as personal income and business franchise taxes. Current and prospective taxpayers may be forgiven for conflating city taxes with state taxes, and vice versa.
- The City has limited formal control over its own tax policy. State law restricts the City's revenue-raising authority to little more than fixing property tax rates and adjusting some fines. The vagaries of obtaining state legislative approval for most other changes elevates the relative importance of non-tax revenues and tax administration.

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## DEFINING TAX COMPETITION

Evaluating specific tax policies for “competitiveness” begs several questions:

First, when it comes to taxes, what is the City competing for? Is it competing for corporate headquarters, taxable investment or commercial transactions in specific industries, a taxable resident wage base, or tourist revenues? Each will have its own competitive dynamic and metrics of success.

Second, who is the competition? Is New York City competing against global financial centers? Other major cities in the U.S.? Suburban counties in southern New York State and northern New Jersey? Condo communities in Florida? Again, each will have its own competitive dynamic. Moreover, to what extent is

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<sup>2</sup> 2021 Budget in Brief, Office of Management and Budget, *State of New Jersey*, February 2020, 14/100, <https://www.nj.gov/treasury/omb/publications/21bib/BIB.pdf>.

<sup>3</sup> Ibid.

<sup>4</sup> New York Income Tax Calculator, *SmartAsset*, <https://smartasset.com/taxes/new-york-tax-calculator#6L5KOTyqJ6>, (accessed March 2021).

<sup>5</sup> New York Taxes: Layers of Liability, *Citizens Budget Commission*, June 25, 2020, <https://cbcny.org/research/new-york-taxes-layers-liability>.



it realistic or even possible for the City to “compete” on taxes against other jurisdictions that receive proportionally more intergovernmental budgetary assistance?

Third, how do considerations of “equity” factor into the notion of tax competitiveness? Can a tax system be both competitive and equitable? Is municipal tax policy an appropriate tool for advancing equity? Or is equity better pursued through competitive tax policy that permits redistributive social welfare policies instead? For the sake of brevity, this analysis can only acknowledge these important issues while noting that City policymakers do not have the luxury of ignoring tax incidence and distributional impacts.

Finally, has COVID-19 changed the rules of the competition? The pandemic-related recession has placed fiscal stress on every level of government, constraining tax policy choices and upending the competitive playing field. Beyond disparate short-term impacts on specific sectors of the economy — e.g., digital goods and services up, tourism and commercial real estate down — the growth of remote work will challenge traditional cross-border analyses with respect to the taxation of firms and employees. If the pandemic hasn’t changed the rules, it has almost certainly made the scoring much more complex.

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## IS THE CITY’S TAX SYSTEM COMPETITIVE?

How do we know whether a tax system is “competitive”? If it is simply a function of comparing tax rates and aggregate tax burdens, New York City is clearly not competitive, particularly when factoring in state and regional taxes:

- According to the Citizens Budget Commission, city residents pay the second highest combined personal income tax rate (12.696 percent), and corporate businesses pay the highest combined corporate franchise rate in the country (16.49 percent).<sup>6</sup>
- According to a 2012 Tax Foundation survey, New York State residents bore the highest state-local tax burden in the country.<sup>7</sup> Similarly, the Tax Foundation found that New York’s state-local tax collections per capita in 2017 were the highest in the nation.<sup>8</sup>
- A District of Columbia survey of 2017 tax burdens for major taxes across the largest cities in each state plus the District ranked New York City #5 with respect to a hypothetical family of four earning \$150,000 a year, behind Bridgeport, Newark, Baltimore, and Detroit and ahead of competitor cities such as Los Angeles (#10), Philadelphia (#11), Chicago (#17), Boston (#20), Atlanta (#22), Charlotte NC (#28), Denver (#39), Houston (#46) and Nashville (#49).<sup>9</sup>

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<sup>6</sup> New York Taxes: Layers of Liability, *Supra*.

<sup>7</sup> “State-local tax burden rankings FY 2012,” *The Tax Foundation*, 12, [https://files.taxfoundation.org/legacy/docs/State-Local\\_Tax\\_Burden\\_FY2012.pdf](https://files.taxfoundation.org/legacy/docs/State-Local_Tax_Burden_FY2012.pdf) (accessed February 9, 2021).

<sup>8</sup> “How High Are State and Local Tax Collections in Your State?,” *The Tax Foundation*, <https://files.taxfoundation.org/20200219102447/SL-Tax-Collections.png> (accessed March 2021).

<sup>9</sup> Office of the Chief Financial Officer, “Tax Rates and Tax Burdens In The District of Columbia - A Nationwide Comparison, 2017” *Government of the District of Columbia*, March 2019, <https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/Tax%20Rates%20and%20Tax%20Bur>



- A 2007 New York City Independent Budget Office study of state and local taxes in large U.S. cities found that “[i]n 2003-2004 state and local taxes absorbed \$9.02 of every \$100 of taxable resources in New York City, more than in any of the other cities examined and 47 percent more than the \$6.16 average tax effort in those cities.”<sup>10</sup> There is no reason to assume that an updated analysis would yield substantially dissimilar results.

These figures are informative but lack important nuance. Comparing nominal tax rates is straightforward but overlooks the impact of graduated (or progressive) rates, differences in tax bases, and tax preferences such as credits, exemptions, and deductions. Similarly, comparing aggregate burdens, either as an absolute or in relation to taxable resources (tax effort), obscures important differences between individual taxes that make up a tax base. For example, despite an #5 overall ranking, the District of Columbia analysis ranked the City’s residential property taxes at #47 out of 51 large U.S. cities.

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## REVISITING COMPETITIVENESS

If traditional comparisons of tax rates and aggregate tax burdens are insufficient or unsatisfactory in evaluating competitiveness, a more ambitious approach might focus on the tax system’s impact on the economy and tax base. Specifically, do high tax rates and tax burdens negatively impact the tax base, as a function of either out-migration or foregone economic activity? Further, do the benefits of living or operating in New York City justify the costs of taxation? Has the global pandemic changed this cost-benefit analysis at all?

The debate over “tax-induced migration” is fierce and ongoing.<sup>11</sup> We will not relitigate the issue here. Instead, for our purposes the best current answer to the question above is a carefully qualified,

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[dens%202017 A%20Nationwide%20Comparison.pdf](#). Interestingly, New York’s ranking was slightly more favorable at lower income levels: #17 at \$25,000, #16 at \$50,000, #9 at \$75,000, and #8 at \$100,000. Although there are many factors at play, this suggests that New York’s tax system is more progressive than some of its rivals.

<sup>10</sup> “Comparing State and Local Taxes in Large U.S. Cities,” *New York City Independent Budget Office*, February 2007, 1 <https://ibo.nyc.ny.us/iboreports/CSALTFINAL.pdf>.

<sup>11</sup> See Donald Boyd, *Tax Policy Choices and New York City’s Competitive Position*, *Citizens Budget Commission*, 2013, <https://cbcny.org/sites/default/files/media/files/Tax%20Policy%20Choices%20and%20New%20York%20City%27s%20Competitive%20Position.pdf> referencing Cristobal Young, Charles Varner, and Douglas S. Massey, *Trends in New Jersey Migration: Housing, Employment, and Taxation* (Policy Research Institute for the Region, Princeton University, September 2008), Andrew Lai, Roger Cohen, and Charles Steindel, *The Effects of Marginal Tax Rates on Interstate Migration in the US* (New Jersey Department of the Treasury, October 2011), Cristobal Young and Charles Varner, “Millionaire Migration and State Taxation of Top Incomes: Evidence from a Natural Experiment,” *National Tax Journal* 64, no. 2 (2011), and Charles Varner and Cristobal Young, “Millionaire Migration in California: The Impact of Top Tax Rates” (2012), [https://inequality.stanford.edu/sites/default/files/media/media/working\\_papers/Varner-Young\\_Millionaire\\_Migration\\_in\\_CA.pdf](https://inequality.stanford.edu/sites/default/files/media/media/working_papers/Varner-Young_Millionaire_Migration_in_CA.pdf).



unsurprising, and thus wholly unsatisfactory “yes, but it depends.” Stated simply, the research suggests that taxes, among many factors, can have an impact over time at the margins of economic decision-making, in this case myriad distinct taxpayer decisions to invest or maintain an office or residence in New York City. Although the degree of marginal impact is disputed, the pandemic has clearly revealed a greater acceptance of, and capacity for, remote work (telecommuting) and distributed business operations. As non-tax barriers to migration diminish, the margin has arguably shifted against a city that is already on the defensive.

What does this recommend for City tax policy? Given the current fiscal stress and the complex competitive context noted above, City policymakers should abandon ambitious notions of using tax policy to manage the city’s competitive position affirmatively through the post-pandemic recovery. Instead, the City should pursue a modest, realistic, and essentially defensive approach: avoid doing harm.

Since we are most concerned with the margins of economic decision-making, a logical approach to avoiding harm would be to mitigate or reduce the extent to which City taxes are “negative outliers” in any routine comparative analysis. What’s a negative outlier? With apologies to those who expect an objective and quantifiable definition, the list below identifies seven City taxes that, in the author’s subjective opinion, are negative outliers because they are unique/unusual or because they are applied at a rate (including state counterparts) that is significantly greater than that of competitor jurisdictions. We use Fiscal 2019 figures to discount the impact of the COVID-19 pandemic.

NEW YORK CITY’S NEGATIVE OUTLIERS			
Tax	General Rates/Base	FY19 Revenue (MM) <sup>12</sup>	Why Outlier
Commercial Rent Tax (CRT)	3.9% on annual base rents ≥ \$250,000 in Manhattan south of 96th St. <sup>13</sup>	887	Unusual. Search found only a few examples of similar taxes in other major cities: Philadelphia (1.21% monthly on assessed value) <sup>14</sup> and San Francisco (3.5% on commercial rents) <sup>15</sup>
Corporate Income Taxes (BCT, GTC, BCT)	8.85% on all corporations (including S). Major	4,026	High. With MTA and State CFT, highest combined rate in the nation.

<sup>12</sup> “Revenue Financial Plan Detail Fiscal Years 2019-2023,” *New York City Office of Management and Budget*, June 19, 2020, <https://www1.nyc.gov/assets/omb/downloads/pdf/adopt19-rfpd.pdf>.

<sup>13</sup> Amendments effective 2018 created a sliding scale credit for rents of \$500,000. See Changes to the New York City Commercial Rent Tax, Corey L. Rosenthal, JD, Peter Rabinowitz, JD and Caterina Li, *The CPA Journal*, April 2018, <https://www.cpajournal.com/2018/04/03/changes-new-york-city-commercial-rent-tax/>.

<sup>14</sup> See Payments, Assistance and Taxes, City of Philadelphia, <https://www.phila.gov/services/payments-assistance-taxes/business-taxes/use-occupancy-tax//> re: Philadelphia Use and Occupancy Tax.

<sup>15</sup> Stephen J. Jasper, Mitchell A. Newmark, Carley A. Roberts, and Breen M. Schiller, “Navigating Local Labyrinths: Practitioners’ Guide to Local Taxes,” *State Tax Notes* (Fall 2019), <https://media2.mofo.com/documents/190900-hartman-hits-notes.pdf>.



	financial institutions pay 9%. <sup>16</sup>		
Personal Income Tax (PIT)	3.876%	13,232	High. Combined City-State 12.696% second-highest rate in the nation
Real Property Transfer Tax (RPTT) applied to office buildings	2.625% > \$1 million	1,498	High. With the State’s 0.65%, 3.275% is higher than total transfer taxes in NJ (2.21%), CT (1.75%), and PA outside Philadelphia (2%).
Sales and Use	4.875%	7,837	High. Local rate ranked 18th in the nation. <sup>17</sup> Combined 8.875% state-local rate ranked 22nd of 114 cities with populations >200,000. <sup>18</sup>
Unincorporated Business Tax (UBT)	4% on allocable taxable income	1,997	Unusual. Search found few examples of comparable city taxes. <sup>19</sup>
Utility Tax (UTX)	2.35% on electric, gas, steam, and local phone services	378	High. Major contributor to relatively high cost of electricity and gas in NYC. <sup>20</sup> NYS electricity prices 36% higher than national average. <sup>21</sup>

Why doesn’t this list include the Cigarette Tax and the Property Tax on commercial properties?

Although the combined city-state tax on cigarettes is among the nation’s highest, the City’s component (\$1.50 per pack) is a relatively small. Moreover, the City’s tax is largely an expression of public health policy and as such is unlikely to impact economic decision-making at the margin.

<sup>16</sup> N.Y.C. Admin. Code Section 11-654(1)(e)(1)(i)

<sup>17</sup> “How High Are Sales Taxes in Your State? Combined State and Local Sales Tax Rates,” *The Tax Foundation*, January 2020, <https://files.taxfoundation.org/20200115132211/2020-State-and-Local-Sales-Tax-Rates1.png> (accessed February 2021).

<sup>18</sup> “Sales Tax Rates in Major Cities, Midyear 2019,” *The Tax Foundation*, August 2019, <https://taxfoundation.org/sales-tax-rates-major-cities-2019/>.

<sup>19</sup> See, e.g. “Payments, Assistance and Taxes,” *City of Philadelphia*, <https://www.phila.gov/services/payments-assistance-taxes/business-taxes/net-profits-tax/> (unincorporated businesses are required to file and pay both the Net Profits Tax and the Business Income & Receipts Tax; offsetting credits apply) and <https://www.phila.gov/services/payments-assistance-taxes/business-taxes/use-occupancy-tax/> (District of Columbia Unincorporated Business Franchise Tax).

<sup>20</sup> “Average energy prices for the United States, regions, census divisions, and selected metropolitan areas,” *U.S. Bureau of Labor Statistics*, [https://www.bls.gov/regions/midwest/data/averageenergyprices\\_selectedareas\\_table.htm](https://www.bls.gov/regions/midwest/data/averageenergyprices_selectedareas_table.htm) (accessed February 2021).

<sup>21</sup> Taxes and Fees, *NYAREA*, <http://nyarea.org/issues/taxes-fees/> (accessed February 2021). See also David Belkin, Eliminating New York City’s Utility Excise Tax: Economic and Fiscal Impacts, *New York City Independent Budget Office*, April 1999, <https://ibo.nyc.ny.us/iboreports/repuxtisc.html>.





Whether the Property Tax on commercial properties qualifies as an outlier is the subject of some debate. The traditional view was that the City’s effective rate was among the highest in the country.<sup>22</sup> However, recent studies that adjust for differences in assessment practices<sup>23</sup> suggest that the City’s effective tax rates on commercial properties are much more competitive.<sup>24</sup>

The takeaway? Everything else being equal, City policymakers should avoid looking to these taxes to raise additional revenue. Indeed, if one wanted options for making the City’s tax system more competitive (or, rather, less uncompetitive), pairing them back would be a logical place to start.

## TARGETS OF OPPORTUNITY

Having advised policymakers to avoid accentuating negative outliers, a fair analysis should also identify those taxes which arguably might be increased or extended without doing excessive harm to the City’s competitive position. The table below identifies several opportunities, all of which require State legislation:

TARGETS OF OPPORTUNITY				
Tax	General Rates/Base	FY19 Revenue (MM) <sup>25</sup>	Why Not an Outlier	Opportunity
Alcoholic Beverages Tax (ABT) <sup>26</sup>	\$0.12/gallon for beer, \$0.264/liter for liquor and wine containing more than 24% alcohol	25	With state taxes, liquor tax ranked 5th highest in nation while tax on beer was 38th. State administered.	Increase tax on beer. <sup>27</sup> Impose tax on wine.
Hotel Room Occupancy Tax (HROT)	5.875% (with State sales taxes, amounts to	627	A 2019 survey of 150 U.S. urban centers ranked NYC 58th in	Increase tax

<sup>22</sup> “50-State Property Tax Comparison Study: For Taxes Paid in 2016,” *Lincoln Institute of Land Policy and Minnesota Center for Fiscal Excellence*, June 2017, <https://www.lincolinst.edu/sites/default/files/pubfiles/50-state-property-tax-comparison-for-2016-full.pdf> (ranking New York City’s effective tax rate on commercial properties valued at \$1 million at #2 among the largest cities of each state).

<sup>23</sup> New York City uses an income capitalization approach; other cities use comparable sales.

<sup>24</sup> “50-State Property Tax Comparison Study: For Taxes Paid in 2019,” *Lincoln Institute of Land Policy and Minnesota Center for Fiscal Excellence*, June 2020, [https://www.lincolinst.edu/sites/default/files/pubfiles/50-state-property-tax-comparison-for-2019\\_full.pdf](https://www.lincolinst.edu/sites/default/files/pubfiles/50-state-property-tax-comparison-for-2019_full.pdf) (placing New York City at #38).

<sup>25</sup> Revenue Financial Plan Detail Fiscal Years 2019-2023, *New York City Office of Management and Budget*, June 19, 2020, <https://www1.nyc.gov/assets/omb/downloads/pdf/adopt19-rfpd.pdf>.

<sup>26</sup> Revenue is for Fiscal 2021.

<sup>27</sup> See, e.g., Don Cazentree, “New York’s beer tax is relatively low. Some lawmakers want to double it,” *NYUP.com*, January 10, 2020, <https://www.newyorkupstate.com/breweries/2020/01/new-yorks-beer-tax-is-relatively-low-some-lawmakers-want-to-double-it.html>.



	14.75% plus \$3.50 per room/day) <sup>28</sup>		total lodging taxes, behind New Orleans (17.75%) and Chicago (17.39%).	
Mortgage Recording Tax (MRT)	1.125% on mortgages for condos & 1-3 family homes over \$500,000; 1.75% for other property types	1,073	Does not apply to purchases of shares in cooperative corporations.	Apply MRT to mortgages involving cooperative corporations.
NYC Sales Tax Exemption for Interior Decorating and Design Services	N/A	\$21m tax expenditure <sup>29</sup>	City-only exemption	Repeal exemption <sup>30</sup>

Some will question the absence of a recommendation to reimpose the nonresident income (commuter) tax repealed in 1999. Although raising revenue from those who regularly access but do not pay for city services might seem “fair,” it would be difficult to argue that reinstating a commuter tax, by itself, would make working or investing in Gotham more competitive.

Similarly, the tourism industry will strongly resist any increase in occupancy taxes, noting the pandemic’s disproportionate impact on this critical component of the city’s economy. Nonetheless, on a relative basis, the tax burden on city occupancies is not extraordinary.

Finally, policymakers could combine an increase or extension of the ABT or MRT above with a rebalancing of the applicable tax base. For example, the City could combine an extension of the MRT to cooperatives with a slight reduction in the general MRT rate. To achieve a measure of progressivity, it could also adjust taxable thresholds to reduce the relative burden on smaller loan amounts.

<sup>28</sup> 2019 HVS LODGING TAX REPORT – USA, Thomas Hazinski and Joseph Hansel, HVS Convention, Sports, & Entertainment (September 2019), downloaded from <https://www.hvs.com/article/8607-hvs-us-lodging-tax-report-2019>.

<sup>29</sup> Annual Report of Tax Expenditures, Fiscal Year 2021, *City of New York Department of Finance, Tax Policy and Data Analytics Division*, February 2021, 123, [https://www1.nyc.gov/assets/finance/downloads/pdf/reports/reports-tax-expenditure/ter\\_2021\\_final.pdf](https://www1.nyc.gov/assets/finance/downloads/pdf/reports/reports-tax-expenditure/ter_2021_final.pdf).

<sup>30</sup> Repeal the New York City Sales Tax Exemption On Interior Decorating and Design Services, Budget Options 2017, *New York City Independent Budget Office*, 2017, <https://ibo.nyc.ny.us/iboreports/broadening-the-tax-on-sales-and-services-options-march-2017.pdf>.



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## REDUCING COMPLIANCE BURDENS

City tax administration can impose non-trivial compliance burdens on taxpayers; reducing these burdens could marginally improve the city's competitive position. Ranging from incremental to relatively radical, the ideas below would require State legislation and/or cooperation:

Improve City-State coordination of corporation tax audits. Tax practitioners routinely express frustration over inconsistencies between the City and State in auditing corporations, notwithstanding substantially similar laws since major reforms took effect in 2015. Complaints allege that city auditors do not feel bound by State auditors' decisions or legal interpretations on key issues, and vice versa. Although the City and State have some history of conducting joint audits, the benefits have reportedly been more procedural (e.g., fewer meetings) than substantive (fewer inconsistent audit issues). One possible improvement would be to limit city auditors' authority to examine only those issues that are unique to City law, such as the treatment of S corporations and corporate tax nexus.

Provide a temporary safe harbor under the State's draft corporate tax reform regulations. The City has stated that it intends to issue rules that generally correspond to the regulations New York State will issue to implement the corporate tax reforms that took effective in 2015 "in so far as the underlying statutes themselves correspond."<sup>31</sup> However, to the growing frustration of taxpayers and practitioners, the State has not yet finalized its draft regulations.<sup>32</sup> The delay has left many complex issues unresolved and invites inconsistent audit administration. As an interim measure, the City could temporarily allow taxpayers to rely on the State's draft regulations (even though the State has not done so).<sup>33</sup>

Consolidate the City's Business Corporation Tax into the State's Business Corporation Franchise Tax. If separate administration is problematic, why not consolidate? Mirroring the current approach to personal income taxation, the State could administer the city corporate tax as a surcharge to its corporate tax, applicable to corporations doing business in the city at rates calculated to hold city revenue harmless. Although this change would necessarily impose conformity with respect to apportionment and nexus, the City could continue administering its legacy General Corporation Tax vis-à-vis federal S corporations. The City might continue to audit for corporate residency.

Allow S corporations to elect taxation under the Unincorporated Business Tax. The City does not recognize federal S corporations and taxes them under its legacy General Corporation Tax. If the City cannot countenance recognizing S corporations and eliminating the GCT, one alternative might be to give S corporations the option of being taxed under the Unincorporated Business Tax in the same way as other entities that treated as partnerships for federal tax purposes. Although a complicated undertaking, the

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<sup>31</sup> Business Corporation Tax FAQs, *New York City Department of Finance*, <https://www1.nyc.gov/site/finance/taxes/business-corporation-tax-faq.page> (accessed February 2021).

<sup>32</sup> See Corporate tax reform draft regulations, *New York State Department of Taxation and Finance*, [https://www.tax.ny.gov/bus/ct/corp\\_tax\\_reform\\_draft\\_regs.htm](https://www.tax.ny.gov/bus/ct/corp_tax_reform_draft_regs.htm) (accessed February 2021).

<sup>33</sup> Ibid.



UBT's tax rate as applied to S corporations and current exemptions for qualifying investment activities and engaging in holding, leasing, or managing real property could be modified to hold City revenue harmless. Yes, this change would preserve a much-despised tax but, short of UBT repeal, taxpayers and practitioners might welcome the option.

Convert the Hotel Room Occupancy Tax per room charge to a percentage-based equivalent. Five state and city taxes apply to occupancies in the city, including a base 5.875% City tax and a separate \$3.50 per room charge. One simplification would be to convert the per room charge to a percent equivalent and add that to the base rate.

Rationalize the Commercial Motor Vehicle Tax. To the uninitiated, the current bifurcated administration of the city and state taxes on various classes of commercial vehicles is bewildering. One possible simplification would be to have the City, which collects the tax with respect to non-passenger commercial motor vehicles weighing more than 10,000 pounds also collect the tax on such vehicles weighing 10,000 pounds or less and registered within the city.

Have the State Liquor Authority collect the Retail Beer, Wine and Liquor Tax. Currently, the City's Finance Department issues bills for this tax, which is assessed at 25% of annual State Liquor Authority license fees. Why not have the SLA collect and remit the tax?

Require landlords to inform prospective tenants of their potential Commercial Rent Tax obligation. There is anecdotal evidence to suggest that some tenants, particularly those based outside the city, enter leases without being aware of their CRT obligations, which can lead to time-consuming and costly audits. Although the CRT is a tenant responsibility, the City should consider requiring some form of notice to lessees.<sup>34</sup>

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<sup>34</sup> Idea from Debra S. Herman and Elizabeth Pascal, "New York City Taxes: A Quick Primer for Business, Tax Stringer," *New York State Society of CPAs*, February 2020, <https://www.nysscpa.org/news/publications/the-tax-stringer/article/new-york-city-taxes-a-quick-primer-for-businesses>

