



January 4, 2018

Jacques Jiha, Ph.D.
Commissioner
New York City Department of Finance
One Center Street, Suite 500
New York, NY 10007

RE: Tax Cuts and Jobs Act; Implication for New York City Income Taxes; Requested Clarification

Dear Commissioner Jiha:

As you are aware, the federal Tax Cuts and Jobs Act adopted into law in late December has enormous implications for federal taxation, and many implications for state taxation as well. While new caps on the state and local tax deductions appear to be of the utmost concern for New York taxpayers, I am writing to request that the New York City Finance Commissioner provide clarification on one issue that has gotten little attention in New York. Namely, the Tax Cut and Jobs Act has ambiguous implications for exemptions for New York City taxpayers in 2018 and beyond. I have issued a similar letter to Acting Commissioner Manion at the State Department of Taxation and Finance, expressing similar concerns for exemptions in state income taxes.

One Interpretation: Large Hidden New York City Income Tax Increase

One interpretation of federal and state statute, a version of which was recently asserted by Michigan's Treasury department based on similar statutory language, is the following:¹

1. The new federal law eliminates the personal exemption for individual filers and their dependents.
2. Section 11-716 of New York City Administrative Code states that resident taxpayers are entitled to the same number of exemptions on city taxes as they are entitled to on federal taxes.
3. Therefore, all of New York City's income taxpayers lost their exemptions January 1, 2018.
4. Without taking any state legislative or administrative action, New York City's income taxes will increase by over \$50 million in 2018, based on AEG estimates using data from the New York City "FY 2017 Annual Report on Tax Expenditures."

1. Our letter to the Michigan Treasurer on this matter and his response are attached.

Anderson Economic Group Interpretation

Anderson Economic Group analysts are experts in public policy and economics. Our annual business tax burden rankings are used and cited nationally by governments and research organizations, and we have performed studies on the impact of complex tax reforms in states across the country.² Our interpretation of the statute is different:

1. The new federal law, in section 11041, does not eliminate the exemptions for individual filers or their dependents. It sets the “exemption amount” to zero for years 2018 through 2025 for the purposes of federal individual income taxes.
2. The new federal law is explicit that, for other purposes, “the reduction of the exemption amount to zero...shall not be taken into account in determining...whether a taxpayer is entitled to a deduction under this section.”
3. The same federal law provides for the exemption amount to not only remain in place, but continue to be indexed for inflation, for the purposes of the estate tax.
4. Section 11-716 of New York City Administrative Code entitles residents to exemptions. These exemptions remain in place because no change in state law has taken place, and because federal law continues to establish and allow exemptions as before.
5. Without any legislative or administrative action, New York City’s income tax payers should not lose their exemptions in 2018, and should not be subjected to an income tax hike due to a loss of those exemptions.

Requested Administrative Statement

While I believe the interpretation above is correct and consistent with the spirit and language of the federal law, it is based on our first review of only part of the long and confusing recently adopted federal law, as well as Section 11-716 of New York City Administrative Code. I acknowledge that there remains ambiguity in the state and federal laws on this issue.

You may determine, after further study, that a clarifying amendment to New York City’s tax code at a later date would be warranted to address this and other issues. While that would be welcome, this law is already affecting New York taxpayers. Businesses will need to make changes in their income tax withholding soon. Given the ambiguity and importance of this issue, in order to provide New York taxpayers and businesses with certainty, I request that you make an administrative statement on your interpretation of the law in the absence of any change in state law as soon as possible.

Sincerely,



Jason Horwitz
Director, Public Policy & Economic Analysis

2. You can find our Annual Business Tax Burden rankings report at <http://www.andersoneconomicgroup.com/Publications/StateBusinessTaxRankings.aspx>. Studies on tax reforms and many other topics are also available in the “Reports” section at <http://www.andersoneconomicgroup.com>.

CC: Mayor Bill de Blasio

Attachments: Excerpt, New York City Administrative Code, Sec. 11-1716
Excerpt, Tax Cut and Jobs Act, Section 11041
Patrick Anderson Letter to Michigan Treasurer Nick Khouri, December 29, 2017
Response Letter to Patrick Anderson from Michigan Treasurer Nick Khouri,
January 3, 2018

New York Law

New York City Administrative Code

Sec. 11-1716

(a) General. For taxable years beginning after nineteen hundred eighty-seven, a city resident individual shall be allowed a city exemption of one thousand dollars for each exemption for which such resident individual is entitled to a deduction for the taxable year under subsection (c) of section one hundred fifty-one of the internal revenue code; and for taxable years beginning in nineteen hundred eighty-seven, a city resident individual other than a taxpayer whose federal exemption amount is zero shall be allowed a city exemption of nine hundred dollars for each exemption for which he is entitled to a deduction for the taxable year for federal income tax purposes.

(b) Husband and wife. If the city income taxes of a husband and wife are required to be separately determined but their federal income tax is determined on a joint return, each of them shall be separately entitled to the city exemptions under subdivision (a) of this section to which each would be separately entitled for the taxable year if their federal income taxes had been determined on separate returns.

Tax Cuts and Jobs Act

Enrolled Bill HR 1

ART V—Deductions and exclusions

SEC. 11041. Suspension of deduction for personal exemptions.

(a) In general.—Subsection (d) of section 151 is amended—

(1) by striking “In the case of” in paragraph (4) and inserting “Except as provided in paragraph (5), in the case of”, and

(2) by adding at the end the following new paragraph:

“(5) SPECIAL RULES FOR TAXABLE YEARS 2018 THROUGH 2025.—In the case of a taxable year beginning after December 31, 2017, and before January 1, 2026—

“(A) EXEMPTION AMOUNT.—The term ‘exemption amount’ means zero.

“(B) REFERENCES.—For purposes of any other provision of this title, the reduction of the exemption amount to zero under subparagraph (A) shall not be taken into account in determining whether a deduction is allowed or allowable, or whether a taxpayer is entitled to a deduction, under this section.”

Reference link:

<https://www.congress.gov/115/bills/hr1/BILLS-115hr1enr.xml>



December 29, 2017

Mr. Nick Khouri
Treasurer, State of Michigan
Executive Office, Treasury Building
Lansing Michigan 48922

RE: Tax Cut and Jobs Act; Implication for Michigan Income Taxes; Suggested Clarification

Dear Treasurer Khouri:

As you are undoubtedly aware, the federal Tax Cut and Jobs Act adopted into the law several days ago has enormous implications for federal taxation, and many implications for state taxation as well. The conference committee report adopted on December 22 is long and confusing, even by the standards of tax law. I am writing to suggest that the Treasury provide clarification on one issue that has generated significant confusion in the few days since the President signed the Act into law, and which affects Michigan income tax payers starting January 1, 2018.

One Interpretation: Large Hidden Michigan Income Tax Increase

One interpretation, based on a December 22 statement by the governor and the common description of the federal law, is the following:

1. The new federal law eliminates the federal exemption for individual filers;
2. Michigan's income tax act, in section 30, grants exemptions only to the extent that they are granted under federal law; therefore
3. All of Michigan's income tax payers lose their exemptions January 1, 2018; and
4. Without taking any state legislative or administrative action, Michigan's state income taxes will increase by over a hundred million dollars in the year 2018 alone, estimated by taking all exemption amounts and multiplying the aggregate by the Michigan income tax rate.

Recommended Interpretation

My interpretation is different:

1. The new federal law, in section 11041, does not eliminate the federal exemption for individual filers. It sets the "exemption amount" to zero for years 2018 through 2025, for the purposes of federal individual income taxes.
2. The new federal law is explicit that, for other purposes, "the reduction of the exemption amount to zero under subparagraph (A) shall not be taken into account..."

3. As further evidence of that, the same federal law provides for the exemption amount to not only remain in place, but continue to be indexed for inflation, for the purposes of the estate tax.
4. Michigan's income tax act, in Section 30, allows exemptions. These exemptions remain in place because no change in state law has taken place, and because federal law continues to recognize and establish exemptions.
5. Without any legislative or administrative action, Michigan's income tax payers will not lose their state income tax exemptions January 1, 2018, and will not be subjected to a large income tax hike due to a loss of their exemptions under state tax law.

Suggested Administrative Statement

While I believe the interpretation listed above is correct, it is based on my first review of only part of the (very long and confusing) recently adopted federal law, as well as section 30 of Michigan's Income Tax Act. I acknowledge that there remains ambiguity in the state and federal laws, and there are undoubtedly other considerations that you will take into account in applying Michigan's income tax given the new federal law, and after further study.

Given the public's interest and concern about this issue, I believe it would be worthwhile for the Treasury department to state its interpretation of the law in the absence of any change in the state law. Unless there is a clear reason otherwise, I recommend to you the interpretation listed above, which I think is consistent with the spirit of the federal law, the principles of federalism, and the most reasonable way to read a very long and confusing federal tax law. Furthermore, the Governor has stated his intention, which I believe is shared by the majority of the legislature, that changes in federal law not cause state taxes to increase.

You may later determine, after further study, that a clarifying amendment to the Michigan income tax act would be welcome to address this and other issues. There may also be conflicts or ambiguities that require other state actions or interpretations of law. However, given the importance of addressing this issue immediately, I recommend that you make an administrative statement on this matter as soon as possible.

Sincerely,



Patrick L. Anderson
Principal & CEO

CC: Governor Rick Snyder
Attorney General Bill Schuette

Attachments: Excerpt, Michigan Income Tax Act, section 30
Excerpt, Tax Cut and Jobs Act, section 11041

Michigan Law

Michigan Income Tax Act

Sec. 30.

(1) "Taxable income" means, for a person other than a corporation, estate, or trust, adjusted gross income as defined in the internal revenue code subject to the following adjustments under this section:

...

...

...

(2) Except as otherwise provided in subsection (7), a personal exemption of \$3,700.00 multiplied by the number of personal or dependency exemptions allowable on the taxpayer's federal income tax return pursuant to the internal revenue code shall be subtracted in the calculation that determines taxable income.

...

...

(7) For each tax year beginning on and after January 1, 2013, the personal exemption allowed under subsection (2) shall be adjusted by multiplying the exemption for the tax year beginning in 2012 by a fraction, the numerator of which is the United States consumer price index for the state fiscal year ending...

Tax Cuts and Jobs Act

Enrolled Bill HR 1

ART V—Deductions and exclusions

SEC. 11041. Suspension of deduction for personal exemptions.

(a) In general.—Subsection (d) of section 151 is amended—

(1) by striking "In the case of" in paragraph (4) and inserting "Except as provided in paragraph (5), in the case of", and

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"(5) SPECIAL RULES FOR TAXABLE YEARS 2018 THROUGH 2025.—In the case of a taxable year beginning after December 31, 2017, and before January 1, 2026—

"(A) EXEMPTION AMOUNT.—The term 'exemption amount' means zero.

"(B) REFERENCES.—For purposes of any other provision of this title, the reduction of the exemption amount to zero under subparagraph (A) shall not be taken into account in determining whether a deduction is allowed or allowable, or whether a taxpayer is entitled to a deduction, under this section."

Reference link:

<https://www.congress.gov/115/bills/hr1/BILLS-115hr1enr.xml>



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

NICK A. KHOURI
STATE TREASURER

January 3, 2018

Mr. Patrick L. Anderson, Principal & CEO
Anderson Economic Group LLC
1555 Watertower Place, Suite 100
East Lansing, MI 48823

Dear Patrick:

Thank you for your December 29, 2017 letter addressing the impact of federal tax reform on Michigan income tax collections.

I agree it's an issue that should be addressed immediately. We can both agree that Congressional action to change the federal personal exemption should not lead to an unintended increase in Michigan's individual income taxes.

But I don't agree with your recommended interpretation of the implication if state law isn't changed.

You are right about the facts. Federal tax reform did not explicitly eliminate personal exemptions, instead setting the value of each exemption at zero.

But state law is clear, the number of exemptions for state taxation is determined by "*the number of exemptions or dependency exemptions allowable on the taxpayer's federal income tax return*". Since the federal 1040 will not require taxpayers to calculate personal exemptions that have zero value, Michigan residents would not be able to claim personal exemptions on their state tax returns under current state law.

More generally, and more important, we do not want to leave an ambiguous tax situation open for interpretation by individual state officials or the courts. Addressing uncertainty for taxpayers is a key responsibility of the state Legislature. That is why I believe it is incumbent upon the Legislature to clarify the treatment of personal exemptions for state tax purposes in-light-of recent changes at the federal level.

We've known each other almost 30 years. Agree or disagree (and we've done both) I always welcome your views on state fiscal issues.

Sincerely,

A handwritten signature in black ink, appearing to read "N.A. Khouri", with a long horizontal stroke extending to the right.

N.A. Khouri
State Treasurer

Cc: Governor Rick Snyder
Attorney General Bill Schuette