



In New York, Gov. Andrew Cuomo's office estimates the new federal tax law will cost 1.7 million taxpayers an estimated \$14.3 billion. | Office of Governor Andrew Cuomo

New York closes in on workaround to Trump's new tax law

A fifth of New Yorkers are set to pay more under the president's tax law.

By **JIMMY VIELKIND** | 03/30/2018 04:47 PM EDT

ALBANY — New York is set to create an optional payroll tax and new charitable funds that will allow its residents to skirt new federal limits on the deductability of state and local taxes, officials said, becoming the first state to enact workarounds to the Trump administration's new tax law.

It's a win for Gov. Andrew Cuomo, a Democrat positioning himself for a possible presidential bid, who along with other blue state governors has blasted Republicans in Congress for targeting their high-tax, high-wealth precincts through certain provisions of the \$1.5 trillion Tax Cuts and Jobs Act.

The legality of the workarounds is in question, and New York lawmakers could prompt a court challenge. New York is among a handful of states that have considered enacting ways to help residents find ways to avoid losing the tax benefits they've enjoyed from deducting state and local taxes on federal returns.

The new tax law caps at \$10,000 the amount of state and local taxes that individual taxpayers can deduct. In New York, Cuomo's office estimates that will cost 1.7 million taxpayers an estimated \$14.3 billion. That's just under a fifth of the state's taxpayers, and primarily affects New York City and its tony suburbs.

"Whether these provide relief depends on how the IRS rules on them," said Kathy Wylde, president of Partnership for New York City, which represents businesses in New York. "But it is certainly important that both the city and state are trying to neutralize the penalties New Yorkers are going to suffer under the new federal law."

Cuomo, who has presidential ambitions, is among state officials who have slammed Trump's new tax law.

"It puts us at a structural disadvantage going forward ad infinitum because every other state is just getting the tax cut. We're getting the tax cut and the loss of deduction," Cuomo said last month in a speech at Marist College. "These are all ways to dodge the missile that Washington has launched at us."

Final bill language in New York has yet to be printed and publicly released and is expected to be included in a state budget of approximately \$168 billion that lawmakers here are still working to fully complete. But a half-dozen lawmakers, lobbyists and officials tracking the budget progress said Cuomo's plan will be included — and barring some unforeseen event will be enacted — largely as proposed.

While there's still a last-minute dispute over school curricula, top lawmakers expect the budget will be passed before the state fiscal year ends on Saturday. That would put New York first in line among states considering similar tax code workarounds.

A similar bill in California has passed one house of the legislature but is pending in the other. A New Jersey bill that would permit towns and cities to give homeowners tax credits in exchange for counting property tax payments as charitable contributions is poised for a final vote in the Legislature next month. Democratic Gov. Phil Murphy has pledged to sign the bill.

Business leaders in New York praised Cuomo for pushing the issue.

“Residents will get every possible deduction that is still available under the new federal tax law, including some that result in lower revenues for state and city government,” Wyldé said. “The governor and leaders are to be congratulated for that.”

The asterisk she mentioned is a big one and has prompted howls from some Republicans. New York is proposing to create two trust funds jointly administered by its comptroller, a separately elected official and its tax commissioner, a gubernatorial appointee.

The money in the funds would be used to support elementary and secondary education as well as health care, on which New York spends roughly \$50 billion a year. Under Cuomo’s initial proposal, donors would be able to deduct those donations against their federal income and receive an 85 percent credit against their state income tax liability. School districts and local governments could set up similar funds, for which Cuomo initially proposed a 95 percent credit.

Officials at the Internal Revenue Service have not said whether such donations would be considered legitimate deductions for federal purposes. Rep. John J. Faso (R-N.Y.) asked Treasury Department officials for their opinion, but told POLITICO this week he hasn’t gotten a response.

“You don’t want to send people down a path which ultimately will not lead to the result they’re trying to accomplish,” said Faso, who was one of five Republicans from New York to vote against H.R. 1. “That’s the choice of the executive and the Legislature, but I do think a more thorough airing of the proposal would be advisable.”

Some tax law experts have blessed the donation-and-credit arrangements and note they exist in other states for a variety of causes. Jared Walczak, a senior policy analyst at the Tax Foundation, has argued that they do not pass muster and said New York was “most likely to form a test case.”

“Existing statutes, case law, regulations are all fairly clear on this point: these are not legitimate charitable contributions and would not count, but certainly the water’s been muddied on this by various legislative proposals, and the state could be gearing up for a legal battle,” Walczyk said.

Cuomo said in his January State of the State address that he was planning to sue the federal government over the tax bill, but no challenge has materialized. The governor’s office did not respond to a Friday request for comment, and he did not take questions from reporters amid the ongoing negotiations and budget debate.

In addition to the new charitable funds, New York is decoupling provisions in its tax law from the federal revenue code — moves that have broad, bipartisan support and would have resulted in a “stealth tax” to New Yorkers.

And the state will also create an optional payroll tax — still fully deductible under federal law — for businesses to pay for their employees. Wylde and Long Island Association President Kevin Law said they were happy this provision was optional and could provide relief for some sophisticated firms with highly-compensated employees.

Deputy state Senate Majority Leader John DeFrancisco (R-Syracuse), who is running against Cuomo this year in the gubernatorial election, repeated this week that the SALT workarounds are misleading, foolish and “an administrative nightmare.”

“It just doesn’t make any sense and it will be proven as such,” he said.

Ryan Hutchins and David Siders contributed to this report.
