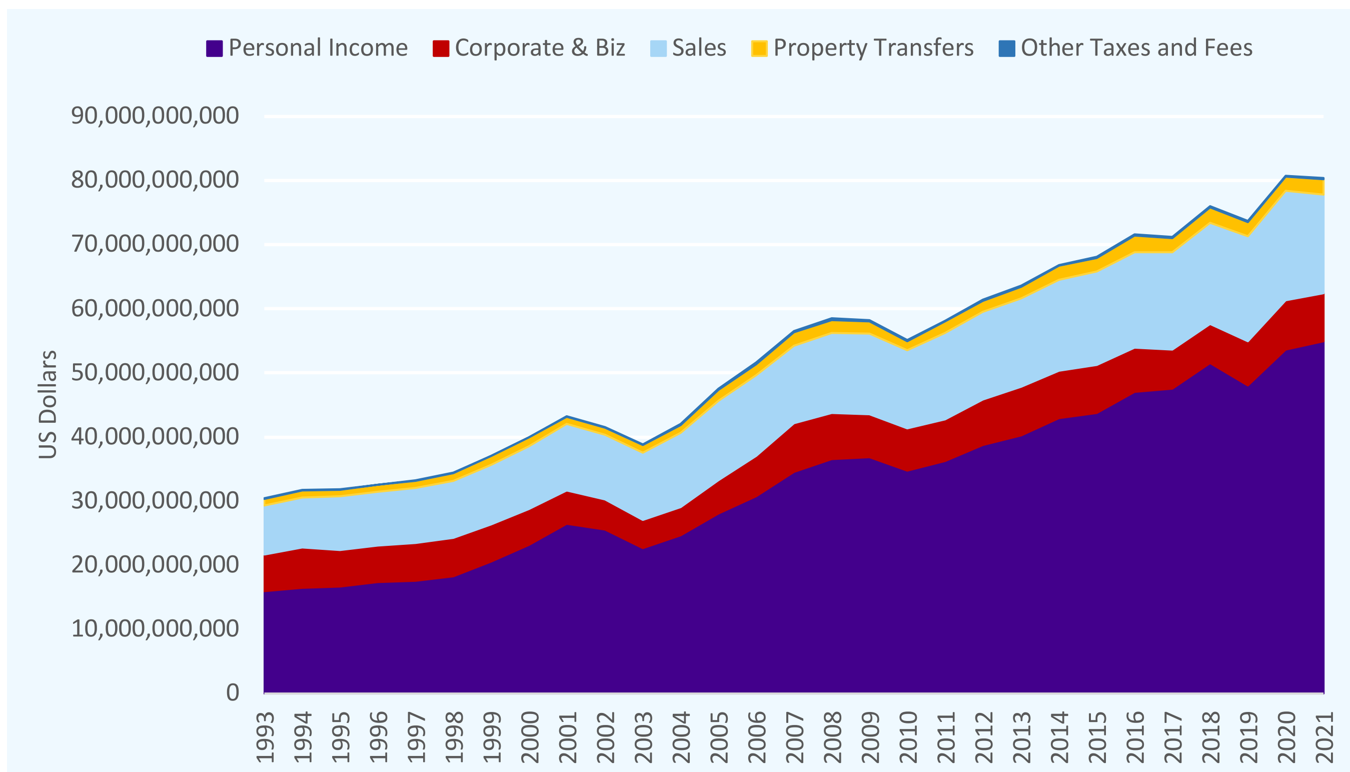
V. New York's Tax Base

Introduction

New York's tax revenue overwhelmingly depends on three sources: the Personal Income Tax (PIT), the Corporate Franchise Tax (CFT), and the sales tax. Each tax is defined by its "tax base": the PIT is imposed on personal income, the CFT is imposed on corporate profits, and the Sales Tax is imposed upon consumer purchases of goods and a very small number of services. The State's fiscal future depends upon the strength of its tax base, which is determined by general economic conditions. Examining the specific types of economic activity that are subject to tax provides a clearer sense of the State's ability to sustain its spending patterns.

Figure 5.1. Tax revenue by type



The Personal Income Tax

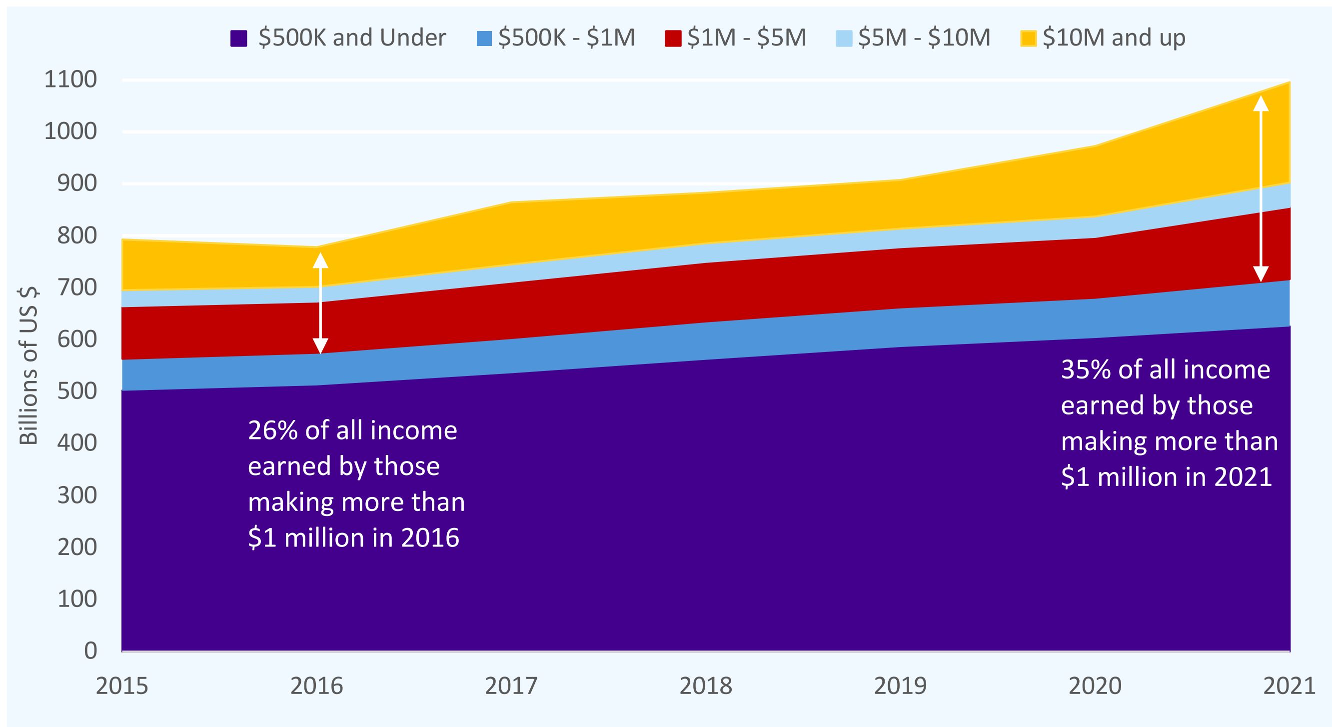
As shown above, the PIT has always been the State's primary source of revenue, but its importance has grown in recent decades compared to the CFT and the Sales Tax.

Total personal income measures all income earned by individuals in New York State, including wage or salary income as well as non-wage income such as business profits, capital gains and dividends, and rents and royalties. Personal income in the state has grown steadily since the recovery from the Global Financial Crisis, providing a strong and stable source of tax revenue for the State.

Because of the large number of high earners in New York, much of the total personal income in New York is earned by those earning over $1 million annually. Data from the New York Department of Taxation and Finance show the breakdown of reported personal income by income group. In 2016, individuals earning more than $1 million annually earned (collectively) 26 percent of total personal income and those earning less than $1 million annually collectively earned 74 percent. By 2021, the share of total personal income earned by those making over $1 million annually had risen to 35 percent and the share earned by those making less than $1 million annually had dropped to 65 percent, reflecting a widening inequality gap in New York.

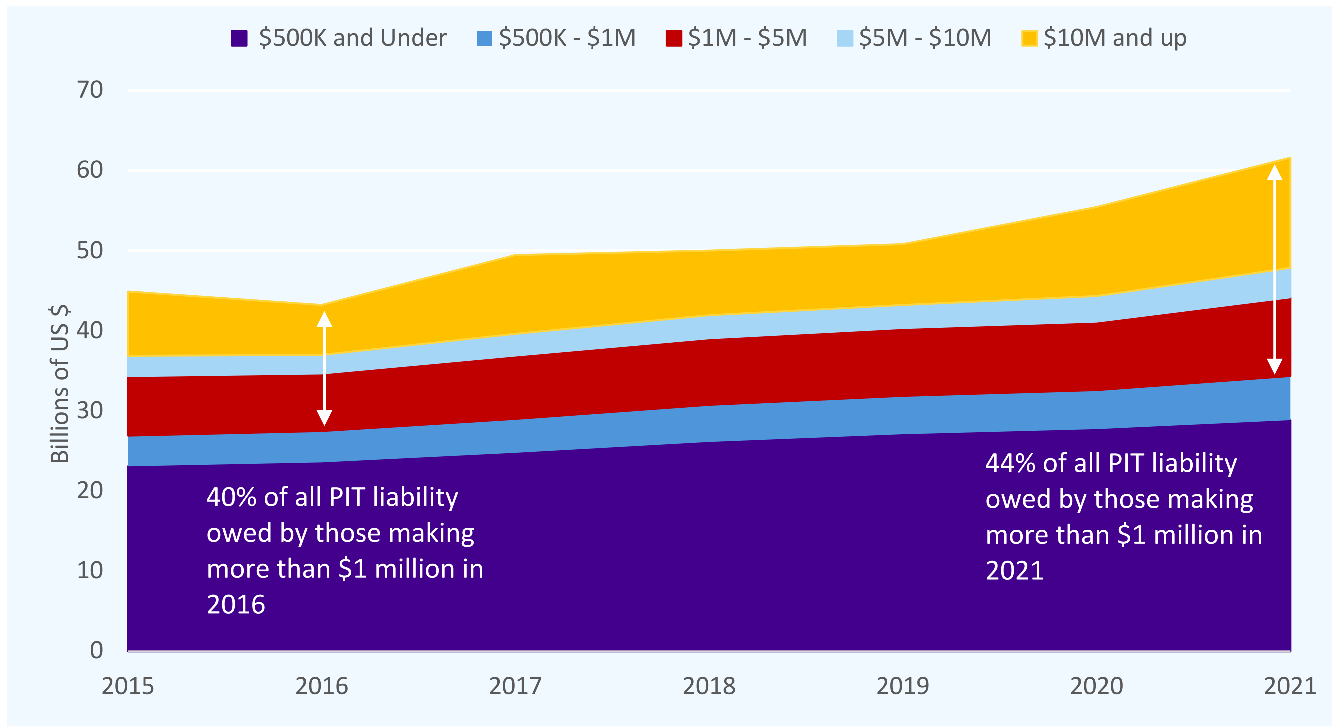
Figure 5.2. Personal income earned by New Yorkers, by income group.

Growing percentage of taxes paid by top earners reflects New York's widening inequality gap



Due to the moderately progressive PIT structure, high earners pay a large proportion of total PIT liabilities, though this share is comparable to their share of total personal income. In 2016, those making less than $1 million annually paid 60 percent of total personal income tax liability in NY while those making over $1 million that year paid 40 percent. In 2021, those earning less than $1 million paid 56 percent of total personal income tax liability while those making over $1 million paid 44 percent.

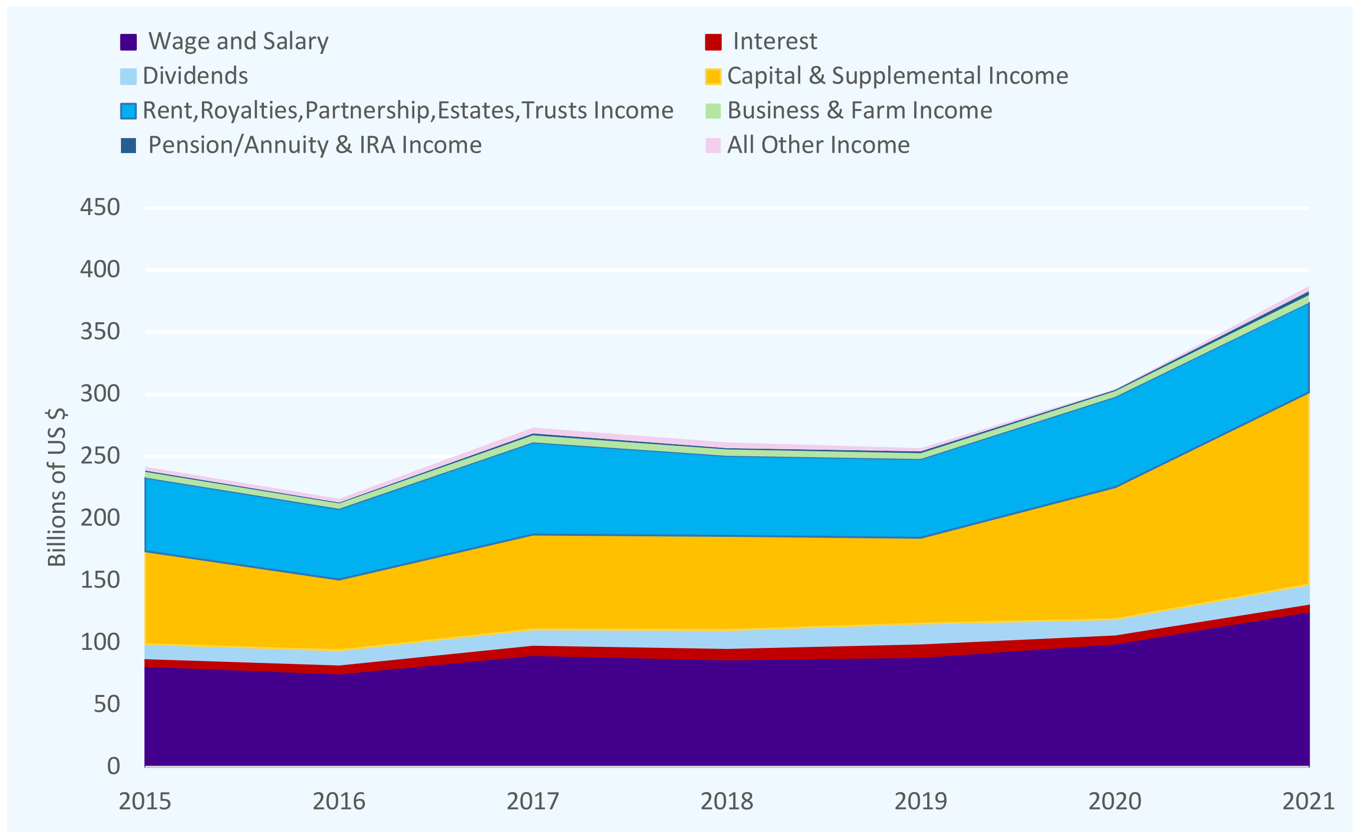
Figure 5.3. Personal income tax liability, by income group.



Another important dimension of the personal income tax base in New York is the variation in type of income. The PIT taxes all types of income under the same rate schedule. However, different types of income vary in their growth and volatility, often creating concern for policymakers. For example, income from capital gains has high volatility relative to wage and salary income. Data reported to the NY Department of Taxation and Finance show how important capital gains are to the state's income base. In 2021, capital gains and supplemental income made up 40 percent of earnings for those making over $1 million that year, whereas wages and salary income made up only 32 percent. Volatility in capital markets creates fluctuation in the personal income tax base, but those fluctuations are manageable for the state given reasonable expectations about the long run performance of financial markets.

Figure 5.4. Total personal income for those earning over $1 million each year, by income type.

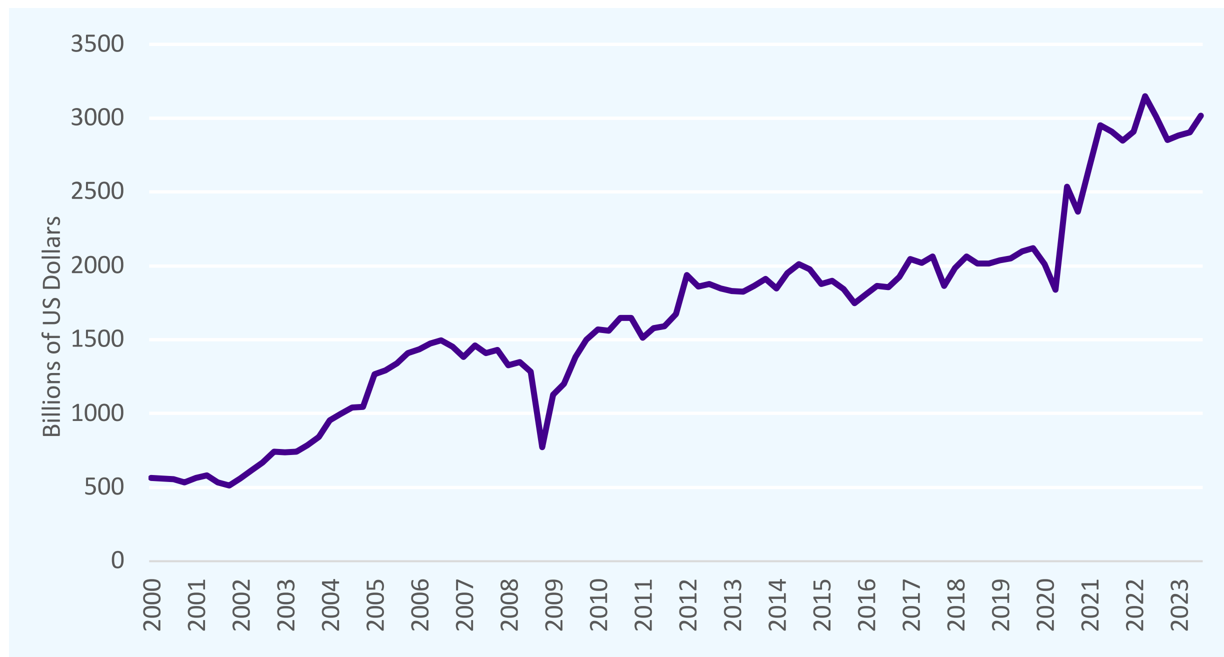
Recent high-earner personal income trends reflect growth in capital gains income



Corporate and business taxes

Corporate tax revenue makes up about 10 percent of the State's total revenue. Corporate profits in the US rose significantly in during the Covid-19 pandemic, due to high demand and suppressed supply in the aggregate economy, as well as likely the impact of fiscal and monetary policy that created an accommodative environment for US businesses.[12] In the last year, corporate profits have stabilized as interest rates have increased the cost of investment and borrowing.

Figure 5.5. Total corporate profits in the US.



New York's Corporate Franchise Tax (CFT) is imposed on the profits of corporations doing business in New York. As with all state corporate income taxes, the tax is "apportioned" based on the share of the corporation's profits that are attributable to their business activities in the state. That is, a corporation doing business in both New York and New Jersey is not subject to tax by both states on *all* of its profits. Instead, each state is only entitled to tax its fair share of the corporation's profits, determined under a scheme that approximates the profit attributable to business activities within that state. In New York, the formula is based exclusively on a corporation's sales into the state. This is known as the single sales factor apportionment. This formula is used to account for a corporation's payroll and property within the state as well, but it was changed in 2015 in order to avoid creating an incentive for corporations to move to other states.

Contrary to the common belief that corporations are taxed based on the location of their headquarters, the location of a corporation's offices or employees has no direct effect on its CFT liability. In order to reduce its CFT liability, a corporation would have to decrease its sales in New York State and therefore reduce its profits by *more* than it would save on taxes.

Sales, excise, and use taxes

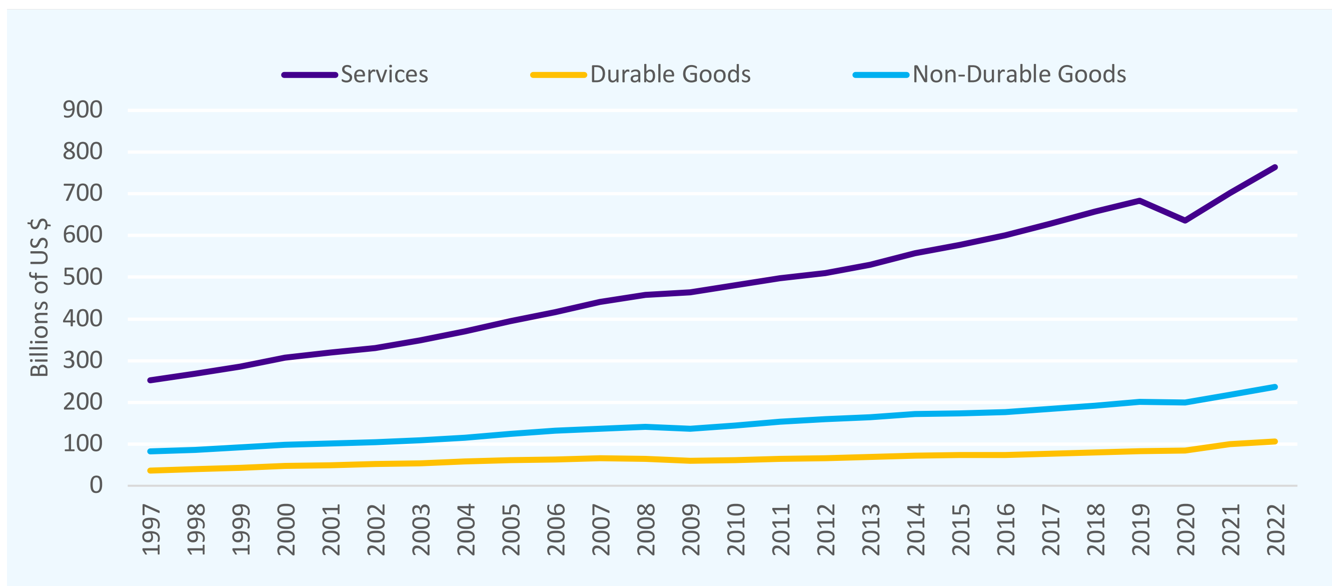
The third significant source of revenue is the sales tax. The sales tax is almost exclusively imposed upon consumer purchases of goods, with only a few services being subject to sales tax. New York City, for instance, imposes sales tax on massage services, tanning salons, barbershops, and a few other services.

As shown below, services are a much larger component of total consumer expenditures in New York. Many countries impose a sales tax (in the form of a Value Added Tax) on both goods and services, as this broader tax base can finance expansive social spending programs.

Consumer expenditures on both goods and services have grown at a healthy rate over recent years. Even with high interest rates intended to slow price growth, which could have easily dampened consumption, sales tax receipts have remained strong.[13]

Consumer expenditures on goods and services are a better indicator of the economic health of working- and middle-class New Yorkers than total personal income, which is dominated by high earners. After a small dip in 2020 due to the Covid-19 pandemic, New York total consumer expenditures have recovered and grown by about 20 percent between 2020 and 2022.

Figure 5.6. New York consumer expenditures, billions of US dollars.



VI. Tax Policy & Revenue Options

The State faces numerous policy challenges that require new revenue. Chief among them is managing the affordability crisis for working families through deeper investments in healthcare, education, and housing, as well as tackling both rising poverty and rising inequality. The State's ability to face these challenges depends on its willingness to continue raising revenue through the tax code.

Fortunately, New York has a strong tax base that can sustain higher taxes on the highest earners. This section reviews the following tax policy options to increase revenue:

- Make the income tax more progressive
- Raise the tax rate on capital gains
- Raise the corporate tax rate
- Combat global tax avoidance
- Tax the profits of pass-through businesses
- Tax inherited wealth

Raising the Personal Income Tax

The personal income tax (PIT) is the largest source of State tax revenue, and small changes to the top brackets yield substantial increases in revenue. For New York in particular, which has a large concentration of ultra-high earners as well as growing demands on public investment and social spending, the PIT should be prioritized as a source of stable new revenue.

Opponents of income tax increases point to the risk of high-earner tax flight from New York, as well as the State's top tax rate (which is relatively high by national standards), as reasons to avoid further tax increases. These arguments are mistaken and misleading. As recent FPI analysis shows, the top earners in New York move out of the state far less frequently than low- and middle-income New Yorkers, and when they do move, it is typically to other states with high income tax rates such as New Jersey and California.[1]

Moreover, while the State's top income tax rate is relatively high among U.S. states (although much lower than California's top tax rate), it only applies to a uniquely high $25 million income bracket. By contrast, other high tax states impose their top rates on incomes ranging from $200,000 to $1.4 million.

[1] For an extensive analysis of these issues, see FPI's report "Who Is Leaving New York" at fiscalpolicy.org/migration as well as a fact sheet summarizing the report's conclusions.

Table 6.1. Top state tax rates for married filers

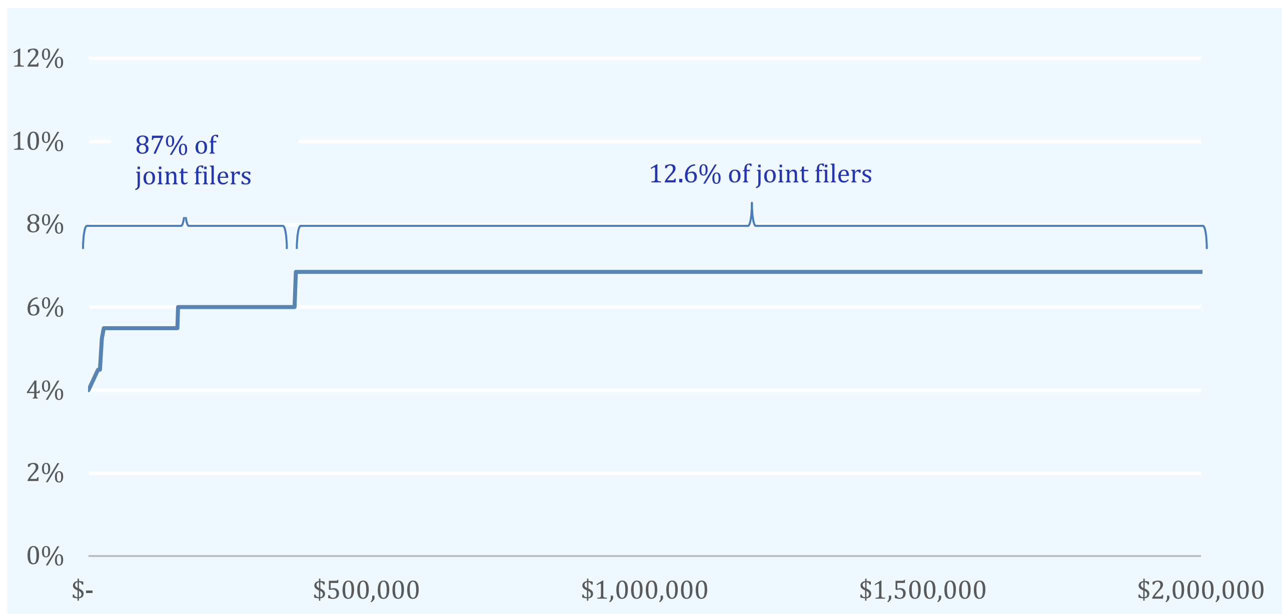
State	Top Tax Bracket	Top Tax Rate
New York	$ 25M	10.9%
California	$ 1.4M	13.3%
New Jersey	$ 1M	10.75%
Hawaii	$ 200,000	11.0%

Note that New York City residents also pay a city income tax of up to 3.9 percent, such that a small population of ultra-high earners located in New York City pay a combined state and local tax rate of 14.8 percent. Ultra-high earners who live in the wealthy New York suburbs pay no City income tax, however, even if they work in New York City (the City income tax only applies to New York City residents). By contrast, the State income tax applies to all income earned from working in New York. A millionaire resident of Greenwich, CT who works for a hedge fund based in New York City pays State income tax on their hedge fund compensation (because the compensation is from doing business within the state), but they pay no City income tax (because the individual is not a New York City resident).

Flatness of the State income tax

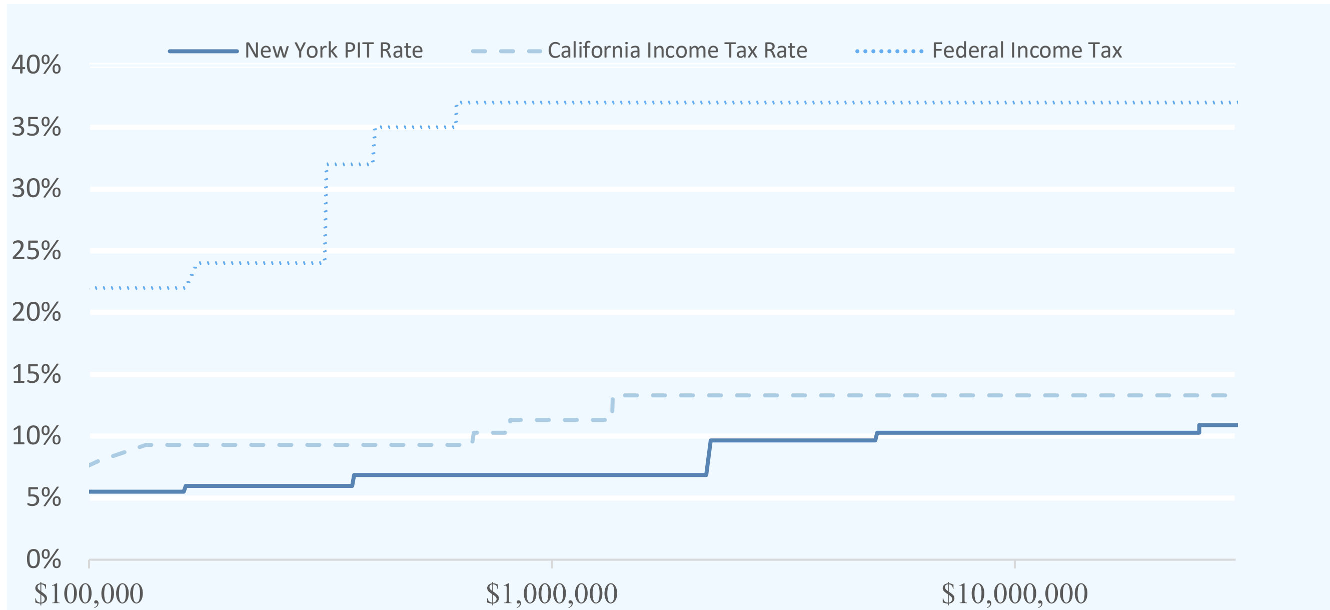
While the State imposes higher tax rates on those who earn millions of dollars annually, it imposes a relatively flat tax rate on all other earners. Even a married couple earning $2 million annually pays the same tax rate as a married couple earning $350,000 annually. When opponents of tax increases point to the State's high tax rates, they ignore the relatively lower tax rates imposed on over 99.5 percent of all taxpayers.

Figure 6.1. Personal Income Tax Rates for Joint Filers earning less than $2 million:



The flatness of New York's PIT contrasts markedly with the progressivity of the federal income tax as well as California's state income tax. While federal income tax rates are naturally higher than state tax rates, it is important to note that both the federal and California income taxes increase tax rates at lower levels of income, in contrast to the New York PIT.

Figure 6.2. New York PIT rates versus federal and California income tax rates



Revenue Estimates

FPI estimates the revenue yield from the tax increases modeled below, which would increase the progressivity of the State's income tax, thereby distributing the tax burden more fairly.

The simplest change to the current tax structure would be to consolidate the millionaire tax brackets, bringing New York's tax structure in line with other states that have progressive income taxes.

Table 6.2. Combine millionaire tax brackets

Additional Revenue: $2.2 billion

Current Schedule				Proposed Schedule			
Single Filer		Joint Filer		Single Filer		Joint Filer	
Income	Tax Rate	Income	Tax Rate	Income	Tax Rate	Income	Tax Rate
$1.08M	9.65%	$2.15M	9.65%	$1.08M	10.9%	$2.15M	10.9%
$5M	10.3%	$5M	10.3%	$5M	10.9%	$5M	10.9%
$25M	10.9%	$25M	10.9%	$25M	10.9%	$25M	10.9%

Beyond consolidating the millionaire tax brackets, the State's tax structure should aim for a higher degree of progressivity among taxpayers in the wide bracket that covers. In particular, the PIT should be more progressive with respect to married couple earning between $750,000 and $2 million.

Table 6.3. Combine millionaire tax brackets & increase progressivity in middle of income distribution

Revenue: $3.9 billion

Current Schedule				Proposed Schedule			
Single Filer		Joint Filer		Single Filer		Joint Filer	
Income	Tax Rate	Income	Tax Rate	Income	Tax Rate	Income	Tax Rate
$215,400	6.85%	$323,200	6.85%	$215,400	6.85%	$323,200	6.85%
				$500,000	8.85%	$750,000	8.85%
$1.08M	9.65%	$2.15M	9.65%	$1.08M	10.9%	$2.15M	10.9%
$5M	10.3%	$5M	10.3%	$5M	10.9%	$5M	10.9%
$25M	10.9%	$25M	10.9%	$25M	10.9%	$25M	10.9%

The changes above would modestly improve the fairness of the overall State tax structure while yielding enough additional revenue to address current concerns about projected future budget gaps. In order to meaningfully pursue new social policy initiatives such as building social housing or effecting a climate transition (as discussed later in this book), the State will need to pursue a bolder revenue agenda.

The brackets below build on the changes described in Tables 6.2 and 6.3, but they maintain the top brackets for the ultra-high earns and impose moderately higher tax rates.

Table 6.4. Raise top tax rates & increase progressivity throughout income distribution

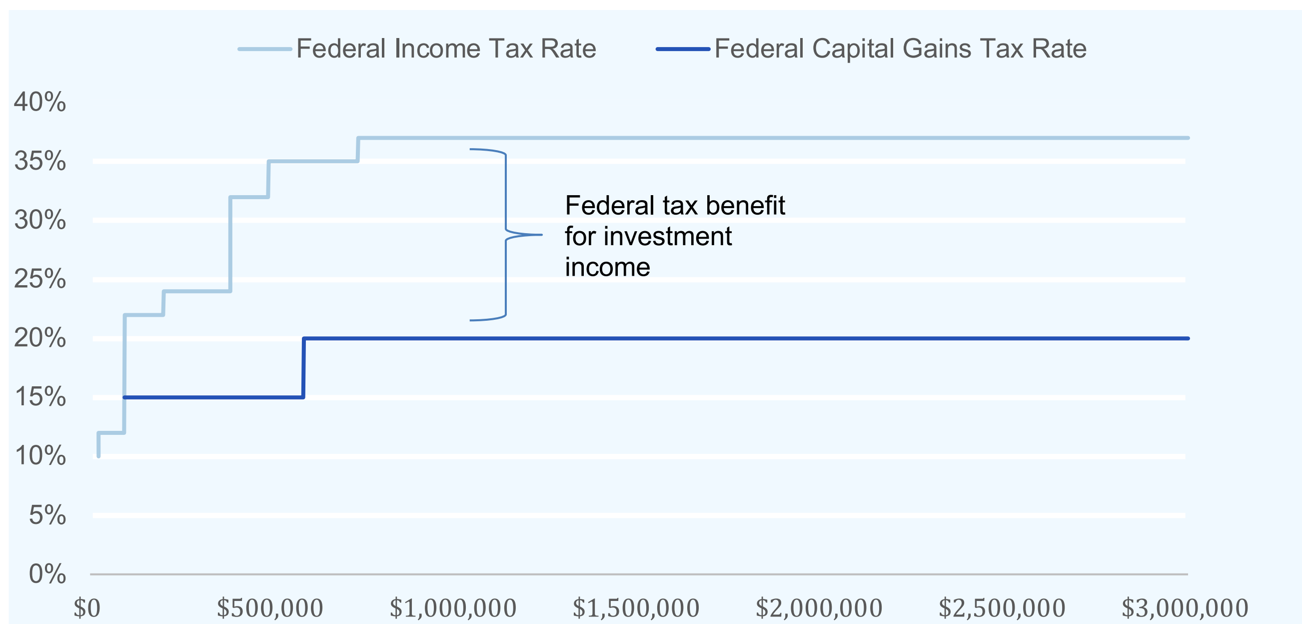
Revenue: $12.3 billion

Current Schedule				Proposed Schedule			
Single Filer		Joint Filer		Single Filer		Joint Filer	
Income	Tax Rate	Income	Tax Rate	Income	Tax Rate	Income	Tax Rate
$215,400	6.85%	$323,200	6.85%	$215,400	6.85%	$323,200	6.85%
				$500,000	8.85%	$750,000	8.85%
$1.08M	9.65%	$2.15M	9.65%	$1.08M	11%	$1.5M	11%
				$2M	12.0%	$3M	12.0%
$5M	10.3%	$5M	10.3%	$5M	13.0%	$5M	13.0%
$25M	10.9%	$25M	10.9%	$25M	14.0%	$25M	14.0%

Taxing Capital Gains

The tax law treats individual income as falling into one of two categories: (i) ordinary income, which includes salaries, wages, and bonuses (among others) and (ii) capital gains, which generally includes income from investments. Individuals who earn capital gains benefit from lower federal income tax rates.[2] While the top U.S. federal income tax rate is 37 percent for a married couple filing jointly with earnings over $730,000, the top long-term capital gains rate is 20 percent for a married couple earning over $583,000.[14]

Figure 6.3. Capital gains tax benefit (federal)



Capital gains are currently taxed in New York at the same rates as ordinary income (in other words, the rate schedules above apply equally to all types of income). The federal tax benefit for capital gains has long been controversial, particularly among progressive policymakers. The value of the tax benefit overwhelmingly accrues to the very wealthy who disproportionately own assets that produce investment income (e.g., corporate stocks and bonds, commodities, works of art, sophisticated financial products).[15]

Since 2020, New York State legislators have proposed a higher state income tax rate on capital gains in recognition of the fundamental unfairness of the federal tax benefit for capital gains.[16]

FPI estimated the revenue yield from three different options for imposing a higher New York State capital gains tax rate on the highest earners. These include: (1) a low surtax rate of 1 percent and 2 percent, (2) moderate surtaxes of 2 percent and 4 percent, and (3) surtaxes of 7.5 percent and 15 percent, as proposed in currently pending legislation.

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[2] The preferential federal income tax rates apply to long-term capital gains and qualified dividends. For the sake of simplicity, this chapter refers to these types of income simply as "capital gains".

Table 6.5. Revenue estimates for capital gains surtaxes

Proposal	Income			Total Revenue[17]
	< $500,000	$500,000-$1,000,000	> $1,000,000	
Low Surtax	0%	1%	2%	$1.66 billion
Moderate Surtax	0%	2%	4%	$3.33 billion
Highest Surtax	0%	7.5%	15%	$12.47 billion

Only 1.3 percent of tax filers in New York would be affected by these proposals, and only 0.83 percent of tax filers would be subject to the highest surtax rate under these proposals (the $1M bracket). This incidence breakdown applies to all three proposals since they have the same income brackets guiding the rate increases. Under any of these three proposals, about 99 percent of tax filers in New York would see zero change in their tax rates.

Corporate & Business Taxes

As part of the 2021 tax increases, the state's corporate franchise tax rate was increased for corporations with over $5 million in profits, from 6.5 percent to 7.25 percent. This rate increase lasts through tax year 2026.[18]

Both the federal corporate income tax rate and New York State's corporate tax rate have fallen steadily since the 1960s. The 2017 tax law known as the "Tax Cuts and Jobs Act" cut the U.S. federal corporate tax rate from 35 percent to 21 percent, bringing it to its lowest level since 1942.[19] New York State's corporate tax rate gradually fell from 8.5 percent in 2000 to a low of 6.5 percent in 2016 (under then-Governor Andrew Cuomo), the lowest rate since 1967. The corporate tax rate remained at its historic low of 6.5 percent until the 2021 tax increase.[20]

The corporate tax is New York's third largest source of tax revenue, behind the personal income tax and sales taxes. Due to the falling corporate tax rate over time, corporations now contribute a smaller percentage of the state's total tax collections than they did in prior decades. New York State's corporate tax rate is also low by regional standards — New Jersey's rate is 11.5 percent; Pennsylvania's rate is 8.99 percent; and Massachusetts' rate is 8.0 percent.

Fig 6.4. New York's Falling Corporate Tax Rate: 1990 - 2024

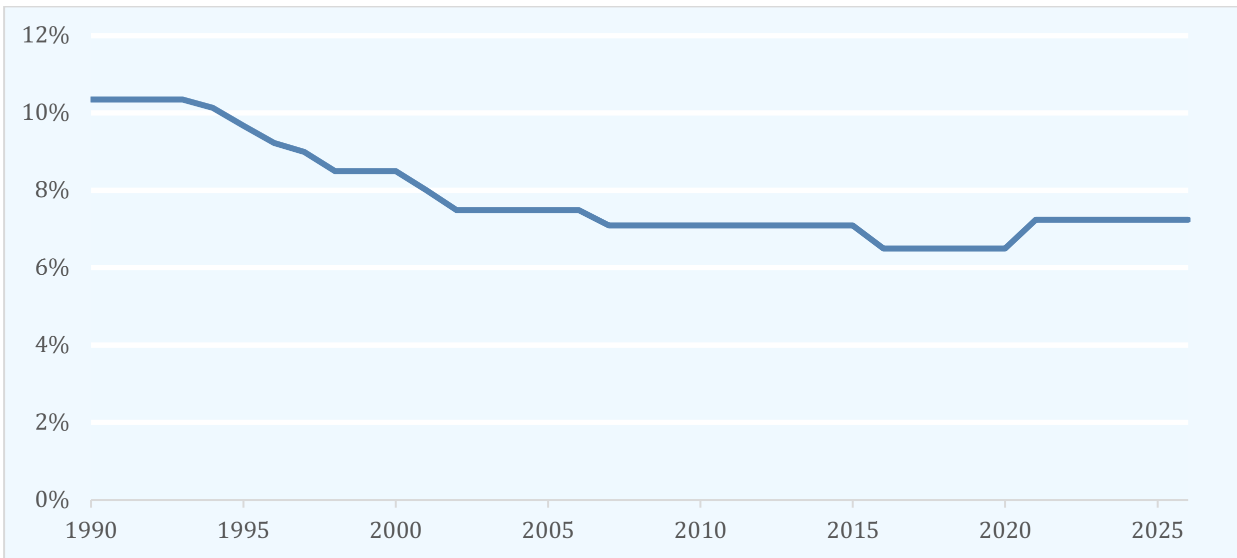
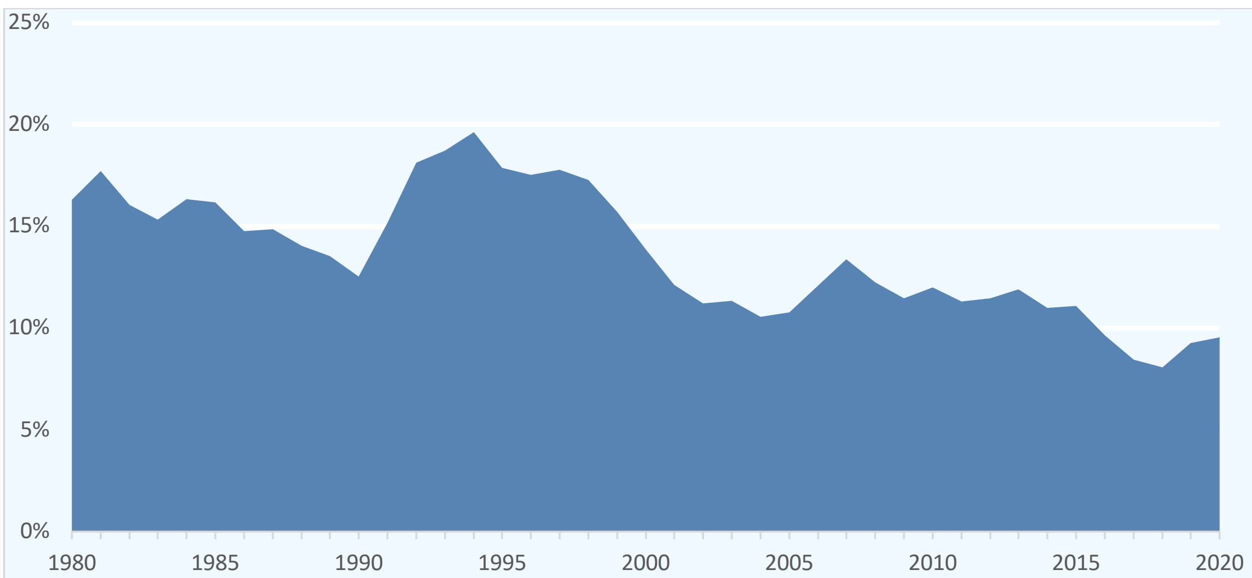


Fig 6.5. New York's Corporate and Business Tax Revenues as Share of Total Collections: 1980-2020



Combat global corporate tax avoidance

Tax policy scholarship in recent decades has focused on the techniques used by multinational corporations to shift profits into low-tax foreign countries, thereby avoiding federal corporate income tax in the U.S.[21] These strategies have likewise stripped corporate profits from state corporate taxes, which generally follow U.S. federal corporate income tax treatment.

Tax avoidance techniques by multinational corporations have a common theme: They concoct transactions on paper (which are said to have no "economic substance") that move profits out of U.S. corporate entities and into related corporations located in foreign countries with lower tax rates.

New York has multiple avenues for following recapturing some of those lost revenues:

- Worldwide Combined Reporting: The most straightforward policy solution is to require a corporation to treat related foreign corporations as part of a single business for tax purposes (thus the name "combined reporting"). In this manner the trick described above is rendered ineffective, as the corporation is treated as one entity for tax purposes.

- Global Intangible Low-Taxed Income: The 2017 federal tax law known as the "Tax Cuts and Jobs Act" imposes an additional tax on a corporation's foreign subsidiaries that are extraordinarily profitable relative to the value of their tangible property. Policymakers infer that such foreign subsidiaries likely hold valuable intellectual property that was moved out of the U.S.

Tax non-corporate businesses

The vast majority of businesses today are not organized as corporations, but rather as "pass-through" businesses that are not subject to the corporate tax.[22] These businesses include partnerships, LLCs (which are typically taxed as partnerships), and S-Corporations, all of which are treated as pass-through entities for federal and most state and local income tax purposes.[23] To equalize the tax treatment of business profits, the State could impose a business profits tax on businesses that do not pay the corporate tax.

Two existing mechanisms could be adapted to this purpose. The first option is the state's small filing fee on LLCs and partnerships based on gross income. The fee tops out at $4,500 annually for businesses with over $25 million in gross income. This filing fee could be redesigned as either a tax on a percent of gross receipts or as a tax on entity net income.

The second mechanism is New York's Pass-Through Entity Tax (PTET). This tax is an optional tax paid by pass-through businesses to circumvent the $10,000 limitation of the federal deduction for state and local taxes. Currently, the tax is paid and fully rebated to business owners. The State could reduce the rebate to generate additional revenue (a 10 percent reduction in the rebate would yield around $1 billion annually). The PTET could also be changed into a permanent business income tax.

Taxing Inherited Wealth

In principle, the estate tax should function as a tax on accumulated wealth at the end of an individual's life. However, it has largely ceased to perform this role due to a few unfortunate features of current estate tax law. Chief among them are that (i) the step up in basis rules eliminate taxable gain upon death, (ii) the estate tax exemption has continued to rise (currently, the first $26 million of a married couple's estate is exempt from federal estate tax, and the New York State estate tax exemption is over $13 million for a married couple), (iii) the wealthy can contribute their assets to a private foundation, thereby avoiding estate tax, and (iv) the estate tax planning industry has developed sophisticated tax avoidance techniques.

New York could reform any of the above features of its estate tax in order to more effectively tax accumulated wealth at death. The easiest strategy would be to end step-up in basis at death for state tax

purposes. Or, it could shift to a new, simpler inheritance tax scheme whereby inherited income is included in the recipient's income, putting it on par with wage income and investment income.[24]