February 23, 2004

Dear Colleagues:

I am pleased to provide you with the NYS Assembly Ways and Means Committee's *Revenue Report* for State Fiscal Years (SFYs) 2003-04 and 2004-05. This report is part of our commitment to providing clear and accurate information to the public. It provides an overview of the national and State economies, as well as an analysis of the Committee staff's revenue forecasts for SFY 2003-04 and SFY 2004-05.

The Committee staff projects that tax receipts will total $42.128 billion in SFY 2003-04, which represents an increase of $1.452 billion, or 3.6 percent, over SFY 2002-03. This will result in an All Funds total of $99.025 billion

The Committee staff projects that tax receipts will total $47.240 billion in SFY 2004-05, an increase of $5.112 billion, or 12.1 percent, over SFY 2003-04. This will result in an All Funds total of $100.171 billion. The Committee staff's forecast is $656 million higher than the Executive's forecast for SFY 2004-05.

The Committee staff's projections are reviewed by an independent panel of professional economists drawn from major financial corporations, prestigious universities, and private forecasters from across the State. Assembly Speaker Sheldon Silver and I would like to express our appreciation to all of the members of our Board of Economic Advisors. Their dedication and expert judgement have been invaluable in helping the Ways and Means Committee staff refine and improve this forecast. While they have served to make the work of the staff the best in the State, they are not responsible for either the numbers or the views expressed in this document.

I wish to acknowledge the fine work done by the talented staff of the Ways and Means Committee. Their forecasts are integral to our State's budget process.

As we continue our efforts toward enacting a budget that is fair and equitable for all New Yorkers, I look forward to working with each of you.

Sincerely,

Herman D. Farrell, Jr.
Chairman

# NEW YORK STATE

# REVENUE REPORT

# 2003-04 & 2004-05

**FEBRUARY 2004**


**SHELDON SILVER**
**Speaker**
New York State Assembly

**HERMAN D. FARRELL, JR.**
**Chairman**
Assembly Ways and Means Committee

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# REVENUE REPORT
# 2003-04 & 2004-05

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# OVERVIEW

## All Governmental Funds Receipts

All Governmental Funds receipts consist of all sources of revenue used to support the operations of the State budget and include state taxes, miscellaneous receipts and Federal grants.

In State Fiscal Year (SFY) 2003-04 New York's All Governmental Funds Receipts are estimated at nearly $99.065 billion, an increase of $10.991 billion from State Fiscal Year (SFY) 2002-03. The increase reflects modest underlying growth in tax receipts of 2.4 percent, an influx of $4.2 billion in tobacco securitization receipts and revenue actions taken in the 2003-04 Enacted Budget.

All Governmental Funds receipts are forecasted to increase to $100.171 billion in SFY 2004-05. The modest increase is the result of a loss of over $4.8 billion in tobacco securitization receipts and one-time Federal revenue sharing grants, offset by forecasted growth in tax revenues of 12.1 percent. The increase in tax revenues is the result of expected improvements in the New York State economy coupled with the second year impact of the 2003 revenue program. The following table shows All Governmental Funds receipts by major category.

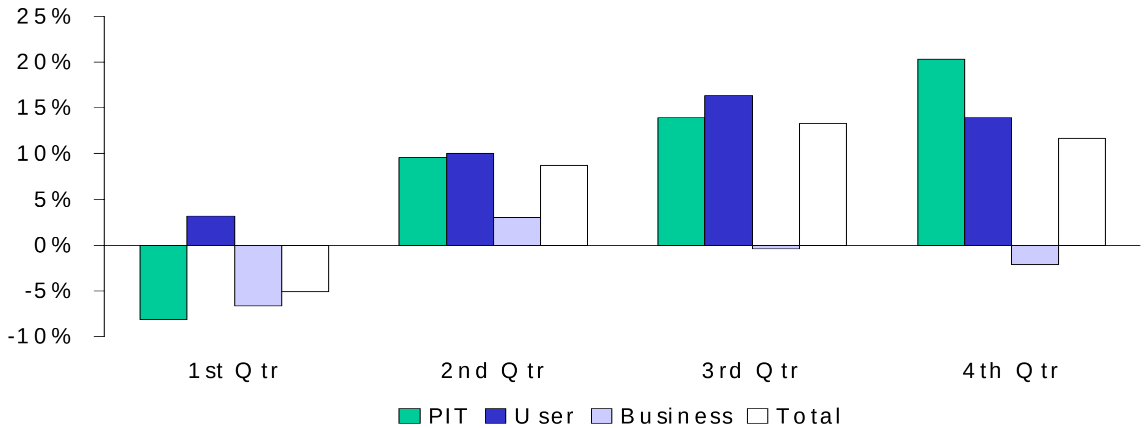
**Table 1**

| SUMMARY OF ALL FUND COLLECTIONS (Dollar Amounts in Millions) | | | | | |
|---|---|---|---|---|---|
| | 2002-03 Actual | 2003-04 Estimate | Percent Growth | 2004-05 Forecast | Percent Growth |
| Personal Income Tax | $23,698 | $23,990 | 1.2% | $27,829 | 16.0% |
| User Taxes | 10,804 | 11,905 | 10.2% | 12,620 | 6.0% |
| Business Taxes | 4,983 | 4,939 | -0.9% | 5,516 | 11.7% |
| Other | 1,190 | 1,294 | 8.7% | 1,274 | -1.5% |
| Total Taxes | 40,676 | 42,128 | 3.6% | 47,239 | 12.1% |
| Miscellaneous Receipts | 14,150 | 19,750 | 39.6% | 16,666 | -15.6% |
| Federal Grants | 33,247 | 37,187 | 11.9% | 36,265 | -2.5% |
| **Total** | **$88,074** | **$99,065** | **12.5%** | **$100,170** | **1.1%** |

**SFY 2003-04 Tax Revenue Estimate**

Collections began to rebound in the second quarter of the fiscal year, due to the temporary increase in the State sales tax rate and the increase in the personal income tax withholding tables, which were effective June 1st and July 1st respectively. After declining by 5.1 percent in the first quarter, second quarter collections rose by 8.7 percent, followed by growth of 13.3 percent in the third quarter. Consequently, year-to-date collections by the end of the third quarter of the fiscal year have increased by 5.4 percent over the previous fiscal year. The Committee staff estimates, thanks to a strong bonus season on Wall Street, that growth in the 4th quarter will be 13.9 percent..

Revenue Growth by Quarter SFY 2003-04




*Source: NYS Department of Taxation and Finance, Ways and Means Staff Estimates*

**Figure 1**

All Funds tax collections are estimated to total $42.705 billion. Of this amount, $577 million is transferred to the refund reserve fund resulting in reported All Funds tax receipts of $42.128 billion. This represents an increase of $1.452 billion, or 3.6 percent from SFY 2002-03. The bulk of the increase is contained in the personal income tax, which is expected to grow by 8.5 percent and sales and use tax, which are expected to grow by 12.5 percent. The Committee estimate for All Funds tax receipts is $1 million above the Executive estimate.

Apart from revenue actions, personal income tax receipts have been bolstered by a recovery in Wall Street profitability, which is expected to increase bonuses in the securities industry by 25.1 percent, boosting growth in total variable compensation by 15 percent in calendar year 2004. The recovery in the sales and use tax is due almost entirely to revenue actions taken in 2003. After adjusting for tax law changes, the Committee staff estimates growth in the underlying sales tax base of approximately 2 percent. This is due in part to the sluggish pace of the economic recovery in New York State. Employment is not expected to reverse its downward trend until the first quarter of 2004. Base wage growth, excluding bonuses, is only expected to increase by 2.4 percent in SFY 2003-04.

**SFY 2004-05 Tax Revenue Forecast**

The momentum gained in the latter part of SFY 2003-04 is expected to continue through the upcoming fiscal year, driving above average growth in tax collections. The Committee staff is forecasting a substantial rebound in wages, personal income and corporate profitability in 2004. In addition, New York State employment is finally expected to reverse the downward trend of the last three years, though growth is still expected to be only a modest 0.7 percent in 2004.

The improvement in the overall economy will drive underlying growth in receipts of 7.3 percent. When combined with the impact of the multi-year revenue actions taken in 2003 and the rollover of $693 million of surplus revenue from the prior fiscal year, All Funds tax collections are expected to increase by $5.1 billion, or 12.1 percent, to a total of $47.240 billion in SFY 2004-05.

If you exclude the surplus from the prior year, All Funds tax collections are forecasted to total $46.547 in SFY 2004-05, an increase of $3.8 billion from SFY 2003-04, representing growth of 9.0 percent. This estimate is $633 million above the Executive forecast. The Committee forecast includes the Executive's estimated revenue impact from the Article VII proposals in order to provide comparability with the Executive forecast.

Revenue growth is expected in most major taxes in SFY 2004-05. Personal income taxes are forecasted to increase by 16.0 percent (10.5 percent excluding refund reserve transactions). Personal income tax collections are bolstered by a strong settlement on Tax Year 2003 liability, reflecting the impact of the temporary personal income tax increase, as well as the second year impact of the revenue program. Sales and use tax receipts are expected to increase by 7.2 percent, reflecting the full year impact of the temporary increase in the State sales tax rate to 4.25 percent. In addition, sales tax collections are bolstered by the Executive's proposal to permanently suspend the clothing exemption, which the Executive estimates will increase revenue by $400 million in SFY 2004-05. Business tax collections are expected to rebound thanks to a forecasted recovery of corporate profits, and liability is expected to increase as corporations exhaust credits on prior year liabilities.

**Increasing Reliance on Reserves and One-Shots**

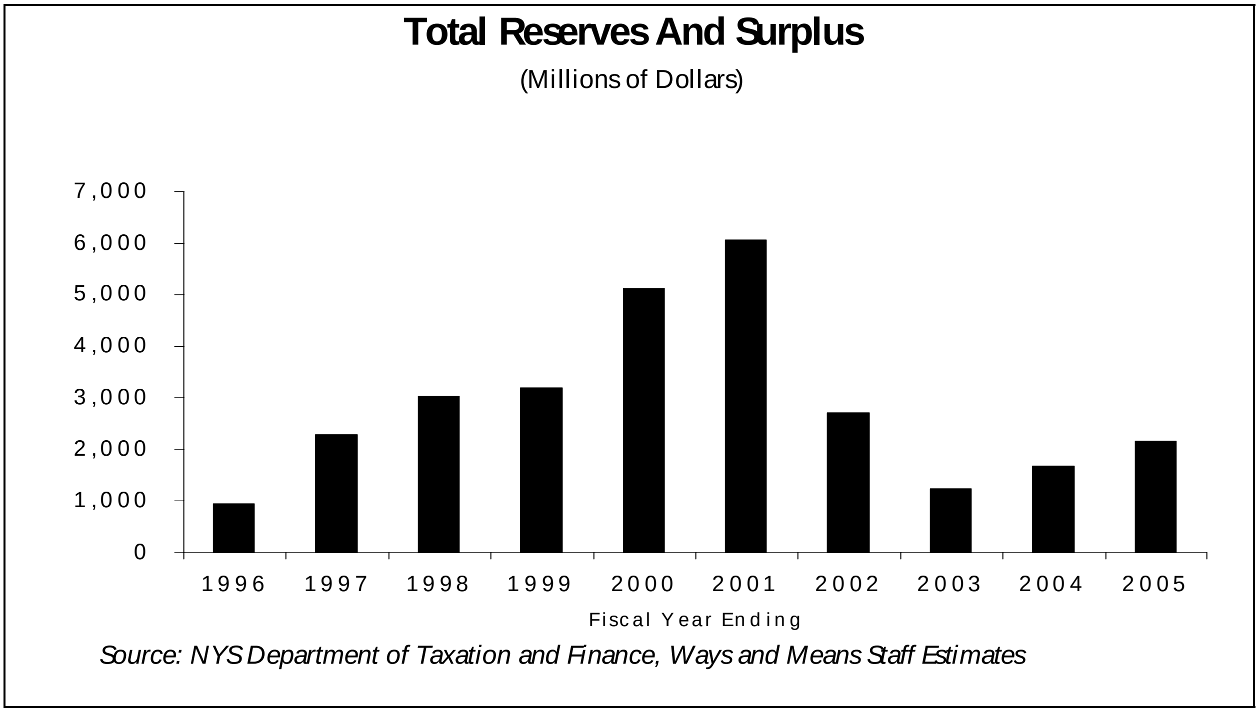



**Figure 2**

As can be seen in Figure 2, the economic boom of the late 90's provided the State with budget surplus funds, resulting in total reserves of over $5 billion. However, the dramatic revenue declines resulting from the economic consequences of September 11 and the subsequent national recession, prompted the use of the reserves over a short two-year period. Lacking additional reserves that could be used to balance the SFY 2003-04 budget, the State securitized its tobacco assets to generate an additional $4.2 billion.

As can be seen in Figure 2 and Figure 3, reserves accumulated through 2001 were used as one shot revenue actions in State Fiscal Year 2003 and 2004. Once those reserves were depleted, temporary increases in taxes were imposed until economic growth could fuel sufficient revenues to balance the budget.

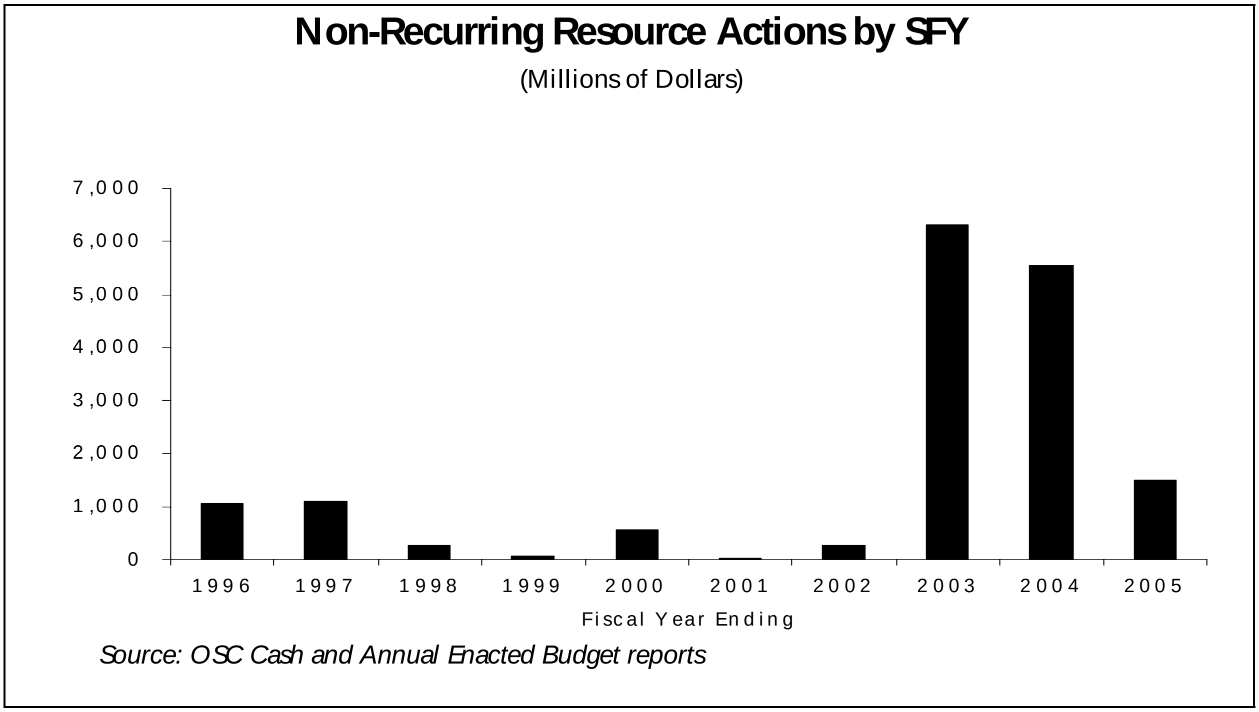



**Figure 3**

**One-Time Actions in SFY 2004-05**

The Executive proposes to use $1.5 billion in non-recurring actions. Of note, the Executive proposes to retain $181 million of tobacco receipts in SFY 2003-04 from the tobacco bond sale in SFY 2003-04, and proposes to transfer $181 million to the General Fund from existing HCRA programs to close the projected gap in SFY 2004-05.

The following list is illustrative of additional one-time General Fund actions encompassed in the Executive's SFY 2004-05 Financial Plan.

**Table 2**

| EXECUTIVE PROPOSED ONE-TIME GENERAL FUND ACTIONS FOR STATE FISCAL YEAR 2004-05 (Dollar Amounts in Millions) | |
|---|---|
| Capital Projects Bond Financing | $283 |
| Use of 2003-04 Surplus | 261 |
| Continued Delay of Medicaid Cycle | 190 |
| Additional Tobacco Benefit | 181 |
| LGAC Payment Restructuring | 170 |
| Federal Welfare Funds | 115 |
| Reverse Meyers Tax Decision | 50 |
| All Other | 260 |
| **Total One-Time Actions** | **$1,510** |

## Impact of 2003 Multi-year Revenue Program

The State Fiscal Year 2003-04 Enacted Budget contained a series of revenue actions intended to help restore cuts in vital services and close projected out-year budget gaps. These actions are expected to increase revenue by $2.6 billion in SFY 2003-04 and an additional $2.87 billion in SFY 2004-05. The major components of the revenue program include:

- A temporary increase in the top personal income tax rates;
- A temporary increase in the State sales tax rate;
- A temporary suspension of the sales tax exemption on purchases of articles of clothing and footwear priced under $110; and
- Restructuring of the Insurance Tax and the closure of corporate loopholes.

### *Personal Income Tax*

The SFY 2003-04 Budget established a temporary rate increase of 7.5 percent in Tax Year 2003 for income of $100,000 or more for single taxpayers, $125,000 for head of household, and $150,000 for taxpayers whose filing status is married filing jointly. The temporary rate is reduced to 7.375 percent for those taxpayers in the 2004 Tax Year and to 7.25 percent in Tax Year 2005. The increase is phased out altogether in Tax Year 2006.

The temporary rate increase is expected to generate an additional $1.280 billion in SFY 2003-04 and an $1.552 billion in SFY 2004-05. The difference in the revenue impact across the two fiscal years is due to the timing of changes in the withholding tables, as well as taxpayer behavior relating to these changes. The

Committee staff estimate is based on the assumption that changes in the withholding tables did not achieve the intended effect of capturing the full year increase in liability. Therefore, it is estimated that high-income taxpayers will make up that difference in the April settlement, which will increase revenue in the upcoming fiscal year.

***Sales and Use Tax***

Temporary Rate Increase

The SFY 2003-04 Enacted Budget temporarily increased the statewide sales and use tax rate from 4 percent to 4.25 percent. The increase went into effect on June 1, 2003 and is scheduled to sunset on May 31, 2005. The increase will be fully annualized in SFY 2004-05 and is therefore expected to generate an additional $127 million in upcoming fiscal year.

Temporary Suspension of Clothing Exemption

The SFY 2003-04 Enacted Budget temporarily suspended the sales and use tax exemption on purchases of articles of clothing under $110 for a period of one year. The exemption was replaced with two one-week sales tax holidays in August 2003 and January 2004. The exemption is scheduled to be reinstated beginning June 1, 2004 and is expected to reduce SFY 2004-05 revenues by approximately $341 million on a year over year basis. However, the Executive has proposed a permanent repeal of the clothing exemption effective on June 1, 2004, which would increase revenue by approximately $400 million in SFY 2004-05.

***Business Taxes***

Restructuring of the Insurance Tax

The Enacted Budget also contained provisions that changed the insurance tax from a tax based on a combination of premiums and net income to one based on premiums only. Non-life insurance companies will pay a 1.75 percent on premiums received from accident and health insurance policies, and 2.0 percent on all other premiums. Life Insurance companies will pay the higher of the former tax (capped at 2.0 percent of premiums) or 1.5 percent of life insurance premiums. This change will increase revenue from the Insurance Tax by approximately $160 million in the current and upcoming fiscal year.

Closure of Corporate Loopholes

Provisions in the Enacted Budget disallowed certain deductions for royalty and interest expenses related to intangible holding companies. Such payments are now disallowed in cases where the payments are made to companies where the payee has at least a 30 percent interest in the intangible holding company.

**Table 3**

**ESTIMATES OF REVENUE PROGRAM ENACTED IN 2003**
**Values are total revenue over SFY 2002-03**
**(Dollar Amounts in Millions)**

| | SFY 2003-04 | SFY 2004-05 |
|---|---|---|
| **Personal Income Tax** | **$1,330** | **1,609** |
| Temporary Personal Income Tax Increase | 1,280 | 1,552 |
| Misc Provisions | 50 | 57 |
| **Sales Tax** | **905** | **689** |
| Sales tax increase .25 | 445 | 572 |
| Reinstate Sales Tax on Clothing* | 449 | 103 |
| Other | 11 | 14 |
| **Collection of Excise Tax on Indian Reservations** | **-** | **60** |
| **Alcohol Bev tax** | **3** | **3** |
| **Restructure the Insurance Tax** | **158** | **160** |
| **Corporate Loopholes** | **133** | **190** |
| Passive Investment Company Loophole | 38 | 95 |
| Federal Decoupling | 95 | 95 |
| **Other** | **90** | **232** |
| Video Lottery Terminals | 15 | 232 |
| Abandoned Property | 75 | - |
| **Total Revenue Enhancements** | **2,619** | **2,943** |

* The Ways and Means Staff forecast, for comparibility purposes, includes an additional $400 million to reflect the Executive's sales tax proposals.

# PERSONAL INCOME TAX

New York imposes a tax on individuals, estates, and trusts on income earned within the state. New York's definition of income closely follows Federal rules, which include wages and salaries, capital gains, unemployment compensation, and interest and dividend income. The New York standard deduction or itemized deductions, and exemptions claimed on Federal taxes are subtracted from this figure to arrive at New York taxable income. Certain credits are then subtracted from the calculated tax to determine total tax liability.

## Personal Income Tax Collections

The Committee staff estimates that All Funds personal income tax collections will total $24.567 billion in SFY 2003-04, representing an increase of $1.919 billion, or 8.5 percent over SFY 2002-03. However, the Executive's financial plan includes depositing $577 million into a separate refund reserve outside of the All Funds budget. This will reduce personal income tax receipts to $23.990 billion for the fiscal year.

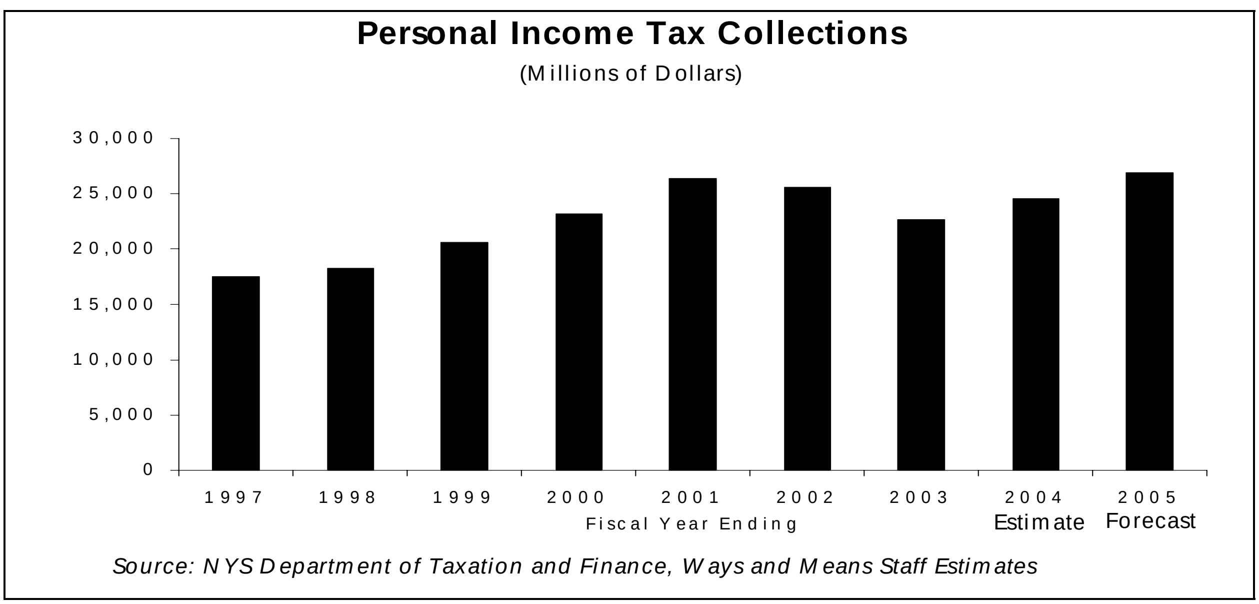



Figure 4

Through January 2004, personal income tax collections have increased by $1.1 billion, or 5.6 percent over the same period in SFY 2002-03. This is the result of a very weak first quarter attributable to the April "settlement" of Tax Year 2002 liability. The weak first quarter was followed by strong second and third quarter collections due to a rebounding economy coupled with collections resulting from the temporary rate increase on high-income taxpayers. Personal income tax collections in the first quarter declined by $469 million, or 8.1 percent over the comparable period in the prior year, while collections in the second quarter increased by $491 million, or 9.5 percent. Third quarter collections were $716 million higher, or 13.9 percent above the same period for the prior fiscal year.

**Table 4**

**PERSONAL INCOME TAX COLLECTIONS**
**SFY 2003-04**
**(Dollar Amounts in Millions)**

| | 2002-03 Actual | 2003-04 WAM Estimate | Percent Growth | 2003-04 Executive Estimate | Diff. Exec. |
|---|---|---|---|---|---|
| **Personal Income Tax** | **$22,648** | **$24,567** | **8.5%** | **$24,605** | **($38)** |
| Gross Receipts | 26,945 | 28,987 | 7.6% | 29,030 | (43) |
| Withholding | 19,959 | 21,981 | 10.1% | 22,010 | (29) |
| Estimated Payments | 4,855 | 5,139 | 5.8% | 5,150 | (11) |
| Final Payments | 1,334 | 1,270 | -4.8% | 1,275 | (5) |
| Delinquencies | 797 | 597 | -25.1% | 595 | 2 |
| **Total Refunds** | **4,296** | **4,420** | **2.9%** | **4,425** | **(5)** |
| **Collections** | **22,648** | **24,567** | **8.5%** | **24,605** | **(38)** |
| Refund Reserve | 1,050 | (577) | -155.0% | (577) | - |
| **All Funds PIT Collections** | **23,698** | **23,990** | **1.2%** | **24,028** | **(38)** |
| Transfers to STAR | (2,664) | (2,835) | 6.4% | (2,835) | - |
| Transfers to DRRF/RBTF | (4,243) | (5,433) | 28.0% | (5,443) | 10 |
| **General Fund PIT Collections** | **$16,791** | **$15,722** | **-6.4%** | **$15,750** | **($28)** |

General Fund personal income tax collections are expected to total $15.722 billion in SFY 2003-04, representing a decline of $1.069 billion, or 6.4 percent over SFY 2002-03. This estimate includes funds deposited into the Refund Reserve account totaling $577 million, and reflects transfers of $2.835 billion to the Special Revenue Fund to pay for the School Tax Relief (STAR) Program and of $5.433 billion deposited into Debt Service Fund for the recently created Revenue Bond Tax Fund (RBTF).[1] This estimate is $28 million lower than that of the Executive estimate.

[1] As of May 2002, 25 percent of Personal Income Tax receipts, excluding reserve transactions, are deposited into the Revenue Bond Tax Fund (RBTF), which is used for debt service.

For SFY 2004-05, the Committee staff forecasts personal income tax collections will total $27.136 billion, an increase of $2.569 billion, or 10.5 percent over SFY 2003-04. This forecast reflects continued strengthening of the economy, coupled with receipts resulting from the revenue actions taken in the 2003-04 budget. The addition of $693 million in surplus revenue from the prior fiscal year will push reported collections to $27.829 billion, an increase of $3.8 billion or 16 percent.

General Fund personal income tax collections are forecast to total $18.797 billion in SFY 2004-05, representing an increase of $3.075 billion, or 19.6 percent over SFY 2003-04. This forecast includes estimated transfers to STAR of $2.998 billion and deposits to RBTF of $6.035 billion.

**Table 5**

**PERSONAL INCOME TAX COLLECTIONS**
**SFY 2004-05**
**(Dollar Amounts in Millions)**

| | 2003-04 WAM Estimate | 2004-05 WAM Forecast | Percent Growth | 2004-05 Executive Forecast | Diff. Exec. |
|---|---|---|---|---|---|
| **Personal Income Tax** | **$24,567** | **$27,136** | **10.5%** | **$26,744** | **$392** |
| Gross Receipts | 28,987 | 31,640 | 9.2% | 31,169 | 471 |
| Withholding | 21,981 | 23,228 | 5.7% | 23,059 | 169 |
| Estimated Payments | 5,139 | 5,966 | 16.1% | 5,805 | 161 |
| Final Payments | 1,270 | 1,781 | 40.2% | 1,645 | 136 |
| Delinquencies | 597 | 665 | 11.4% | 660 | 5 |
| **Total Refunds** | **4,420** | **4,504** | **1.9%** | **4,425** | **79** |
| **Collections** | **24,567** | **27,136** | **10.5%** | **26,744** | **392** |
| Refund Reserve | (577) | 693 | -220.1% | 693 | - |
| **All Funds PIT Collections** | **23,990** | **27,829** | **16.0%** | **27,437** | **392** |
| Transfers to STAR | (2,835) | (2,998) | 5.7% | (2,998) | - |
| Transfers to DRRF/RBTF | (5,433) | (6,035) | 11.1% | (5,938) | (97) |
| **General Fund PIT Collections** | **$15,722** | **$18,797** | **19.6%** | **$18,501** | **$296** |

There are several components that make up the personal income tax, ranging from withholding, which is forwarded by employers to the Tax Department on behalf of their employees, to payments or refunds made by or to individuals upon settling up tax liability by the traditional April 15 deadline. All of the personal income tax components are included in the tables, and some of the more important ones are also discussed below.

Withholding

Through January 2004, withholding collections have increased by $1.063 million, or 6.5 percent over the comparable period in the prior year. Withholding collections are expected to total $21.981 billion in SFY 2003-04, representing an increase of $2.022 billion, or 10.1 percent. This estimate is based on collections through January 2004, coupled with expected increases in variable wages of 22.8 percent, and in base wages of 3.2 percent in the last quarter of the fiscal year. This estimate is $29 million lower than that of the Executive.

The Committee staff forecasts withholding receipts will total $23.228 billion in SFY 2004-05, an increase of $1.247 billion, or 5.7 percent over SFY 2003-04. This forecast reflects expected wage growth of 4.7 percent in SFY 2004-05.

Estimated Payments

Estimated payments consist of quarterly estimated tax payments, or installments, made by taxpayers if their final tax liability is expected to be significantly higher than the amount of tax being withheld from their wages. In addition, estimated payments also include requests for extensions (called IT-370s) which are discussed later in this section as part of the settlement. Estimated payments have increased by $470 million, or 12.4 percent, through January 2004. The Committee staff estimates that installment payments will total $4.310 billion in SFY 2003-04, representing an increase of $479 million, or 12.5 percent for the full fiscal year. This estimate is $5 million lower than that of the Executive estimate.

In SFY 2004-05, estimated payments are forecast to total $4.798 billion, an increase of $488 million, or 11.3 percent. This increase in installment payments is based on an expected increase in capital gains of 6.6 percent for calendar year 2004, coupled with expectations of additional receipts resulting from the temporary rate increase for high-income taxpayers.

Settlements

In April, taxpayers must file either an extension or final return to settle up their tax liability for the prior calendar year. These returns are accompanied by a corresponding payment, if the taxpayer owes money, or by a claim for a refund, if the taxpayer has paid too much over the course of the year. As a result, the month of April is usually large in terms of personal income tax collections. The April 2003 "settlement" declined compared to the prior year, with Final Payments and extensions declining by a total of 13 percent. In addition, refunds increased by 29 percent in April.

Final payments, which result from the timely filing of tax returns due each April 15, have declined by $51 million, or 4.2 percent, through January 2004. The Committee staff estimates that final payments will total $1.270 billion in SFY 2003-04. This estimate is $5 million lower than that of the Executive.

In SFY 2004-05, final payments are forecast to total $1.781 billion, an increase of $511 million, or 40.2 percent. This increase is largely due to the temporary personal income tax rate increase enacted in 2003. Due to the timing of the increase and to the adjustment of the withholding tables in July, it is likely that many taxpayers have underwithheld on their 2003 Tax Year liability, and will, therefore, increase their level of final payments considerably when filing their April 15th returns.

Taxpayers are allowed an automatic four-month extension for final payment on tax liability from the previous calendar year. However, they are still required to accurately estimate liability and submit any corresponding payment with the extension. Generally, more than 90 percent of these extension deposits are made in April.

In April 2003, extension deposits fell by $180 million, or 18.2 percent, over April 2002. The Committee staff estimates that extension deposits will total $829 million in SFY 2003-04, representing a decline of $195 million, or 19.0 percent over last fiscal year. This estimate is $6 million lower than that of the Executive. In SFY 2004-05, extension deposits are forecast to total $1.168 billion, an increase of $339 million, or 40.9 percent. The large growth in extensions is also due to increased taxpayer 2003 liability.

Refunds are issued to taxpayers that have paid too much based on their tax liabilities. The dollar amount of refunds paid out between January and March of each year is administratively determined by the Executive. The amount paid during this three-month period over the past few years has been $960 million. Beginning in April, the rest of these refunds, known as prior year refunds, are paid to taxpayers as they are processed. Roughly two-thirds of prior year refunds are paid out in April and May of each year.

The Committee staff estimates that prior year refunds will total $2.940 billion in SFY 2003-04, representing an increase of $160 million, or 5.7 percent over last fiscal year. This estimate is $5 million lower than that of the Executive. In SFY 2004-05, prior year refunds are forecast to total $3.040 billion, an increase of $100 million, or 3.4 percent. The growth in refunds is expected to moderate as the number of refunds should decrease from previous years.

Capital Gains

One of the main drivers of installment payments is capital gains, which are expected to increase by 10.5 percent in calendar year 2003. Since 2000, taxable capital gains reported by New York taxpayers are estimated to have declined by more than two-thirds to a level of approximately $25 billion from a high of $62.3 billion in 2000.

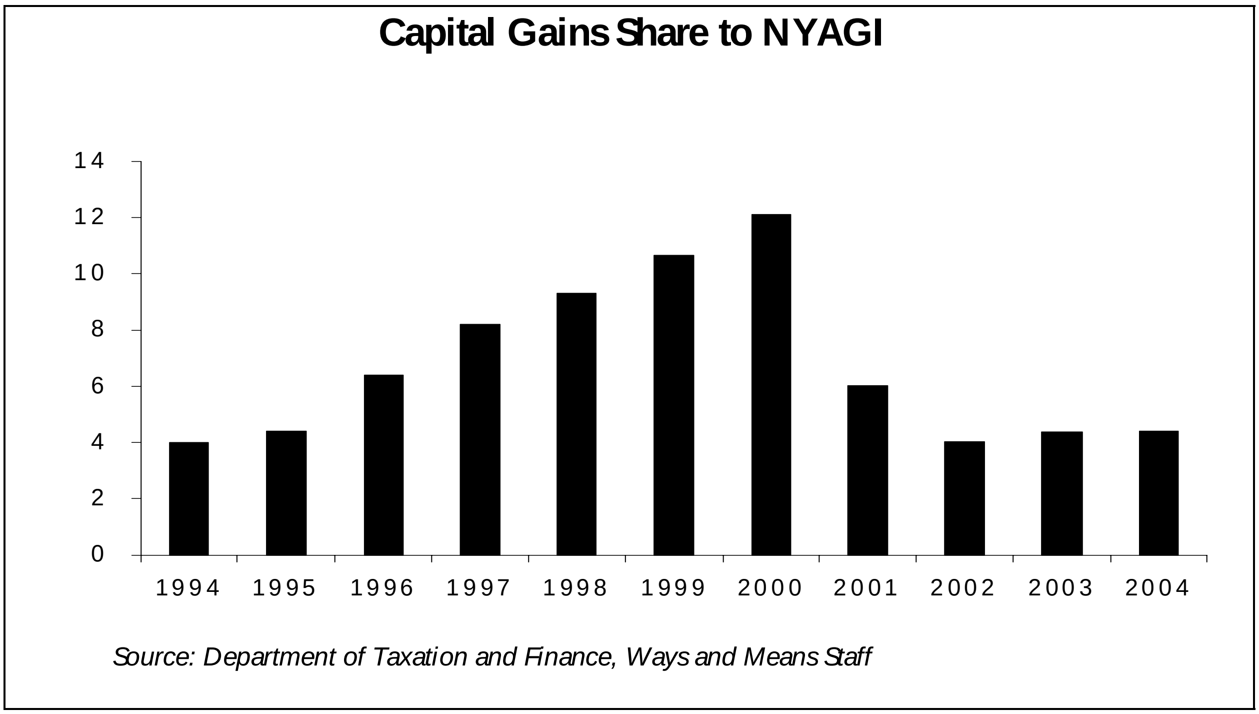



**Figure 5**

In previous years, taxable capital gains accounted for as much as 12 percent of NYAGI. Since a disproportionate amount of taxable capital gains are realized by higher income individuals, the effective tax rate on these gains was also high. The boom of the late 1990's, therefore, translated into significant increases in receipts.

The most recent recession, in conjunction with the stock market correction of approximately the same time, resulted in a decline in capital gains. Figure 5 shows that taxable capital gains as a percentage of NYAGI declined by about half from calendar year 2000 to 2001. Although capital gains have shown improvement since 2001, tax provisions that allow the carry-forward of realized capital losses to offset current gains continue to have a dampening effect on the amount of net capital gains reported for tax purposes. In turn, the importance of capital gains to NYAGI continues to play a diminished role.

Capital Gains Loss Carryforward Provisions

Capital gains occur when an asset, is worth more than its cost basis. Capital losses occur when the asset in question is worth less than its cost basis. Gains and losses are not considered to be taxable until they are realized, which occurs when the asset is sold or otherwise disposed of in a manner equivalent to a sale.

Net capital gains represent the amount of gains less any losses realized in the tax year in question. Federal tax law generally limits a taxpayer to using only $1,500 in net losses in any tax year to offset other income. For married taxpayers filing jointly, this amount is $3,000. Any realized losses that exceed these amounts for the tax year may be used in future years until exhausted.

Analysis of Adjusted Gross Income

New York Adjusted Gross Income (NYAGI) consists of New York source wages, capital gains, interest, dividends and other income such as rental and sole proprietorship income. Wages make up the largest share of NYAGI, an estimated 77 percent, in Tax Year 2001.

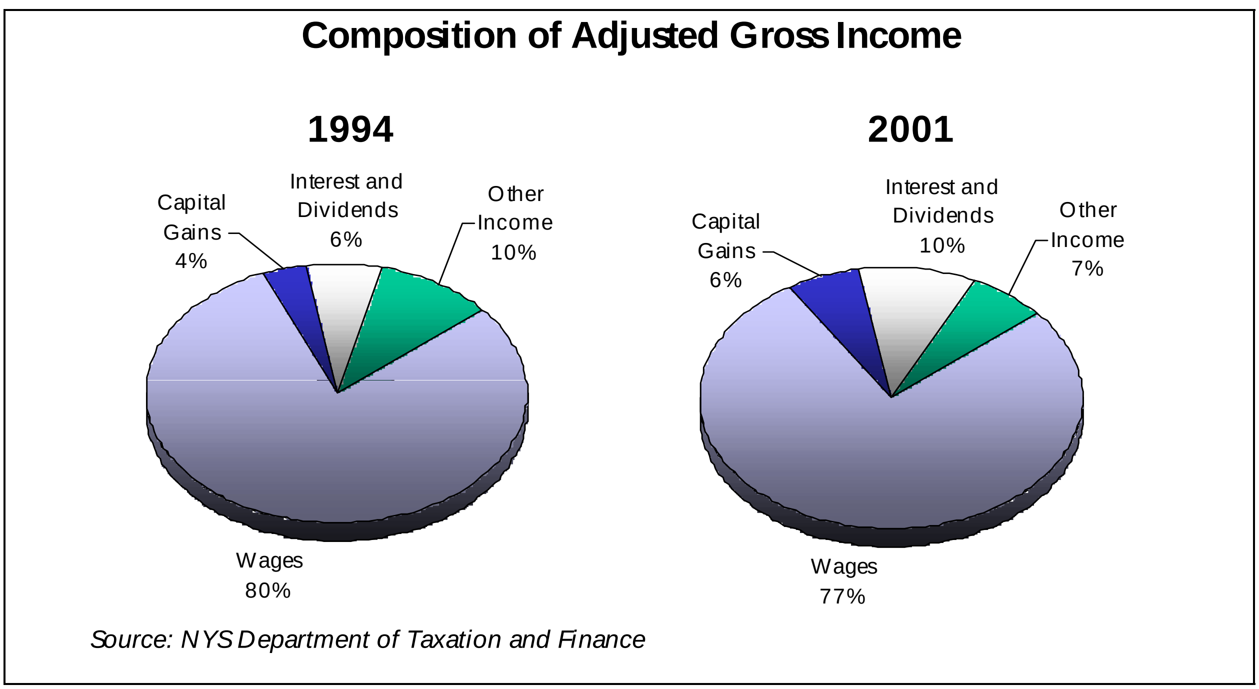



**Figure 6**

Taxpayer Liability

The graph below illustrates how the personal income tax is progressive in nature. In 2001 for example, the number of filers with NYAGI over $500,000 was approximately 0.7 percent of the number of total filers, while the tax liability of that same group of individuals represented approximately 32.6 percent of total 2001 tax liability.

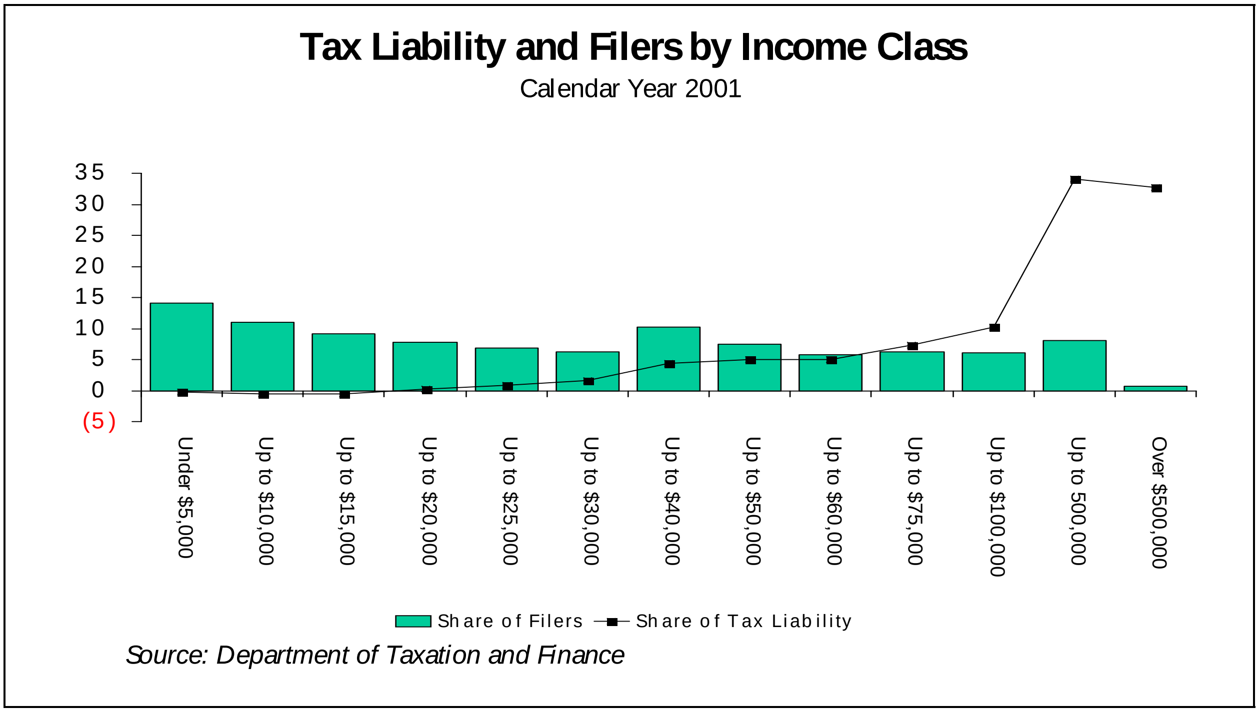



**Figure 7**

Figure 8 illustrates the share of personal income tax liability by region. Residents of the Metropolitan Commuter Transportation District (MCTD), which consists of Dutchess, Putnam, Rockland, Orange, Westchester, Nassau, and Suffolk Counties and New York City, contribute 78 percent of all liability.

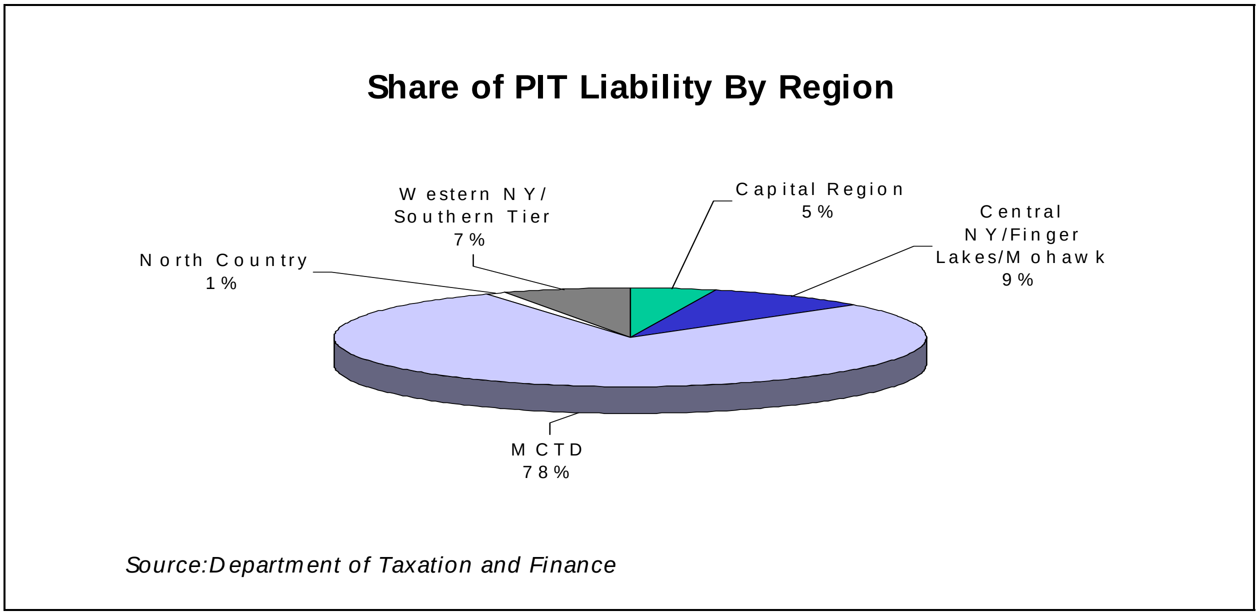

Share of PIT Liability By Region
Western NY/ Southern Tier 7%
Capital Region 5%
Central NY/Finger Lakes/Mohawk 9%
North Country 1%
MCTD 78%
Source:Department of Taxation and Finance

**Figure 8**

# SALES AND USER TAXES

### User Taxes and Fees

User taxes and fees include sales and compensating use, cigarette and tobacco, highway use, motor fuel, auto rental and alcohol beverage taxes, as well as, motor vehicle and alcohol beverage fees. For SFY 2003-04, the Committee staff estimates that All Funds user taxes and fees will total $11.905 billion, an increase of $1.101 billion or 10.2 percent from SFY 2002-03. The Committee staff estimate is $34 million higher than the Executive estimate. The year over year increase in revenues can largely be explained by revenue actions taken in the 2003 Enacted Budget that increased revenues by $908 million on an All Funds basis. On a General Fund basis, user taxes are expected to total $7.960 billion in SFY 2003-04, an increase of $898 million, or 12.7 percent over the prior fiscal year.

**Table 6**

**USER TAXES AND FEES SFY 2003-04**
**(Dollar Amounts in Millions)**

| | 2002-03 Actual | 2003-04 Estimate | Change | Percent Growth | Diff. Exec. |
|---|---|---|---|---|---|
| **User Taxes and Fees** | **10,804** | **11,905** | **1,101** | **10.2%** | **34** |
| Sales and Use Tax | 8,796 | 9,899 | 1,103 | 12.5% | 21 |
| Motor Fuel Tax | 544 | 512 | (32) | -5.9% | 4 |
| Cigarette Tax | 447 | 423 | (24) | -5.4% | 4 |
| Motor Vehicle Fees | 612 | 651 | 39 | 6.4% | 2 |
| Highway Use | 147 | 148 | 1 | 0.7% | 1 |
| Alcoholic Beverage Tax | 180 | 186 | 6 | 3.3% | 2 |
| Alcoholic Beverage Fees | 42 | 48 | 6 | 14.3% | 0 |
| Auto Rental Tax | 37 | 38 | 1 | 2.7% | 0 |

In SFY 2004-05, All Funds user taxes and fees are expected to total $12.62 billion, an increase of $715 million, or 6.0 percent from the Committee staff estimate for the prior year. Legislation included in the Executive Budget proposes to replace the year-round clothing and footwear exemption, which is scheduled to come back into effect June 1, 2004, with three one-week exemptions in SFY 2004-05 and four one-week exemptions thereafter. The Executive estimates $400 million in additional collections from this proposal. On a General Fund basis, SFY 2004-05 collections from user taxes and fees are expected to generate $8.446 billion, an increase of $486 million, or 6.1 percent from the SFY 2003-04 estimate.

**Table 7**

**USER TAXES AND FEES SFY 2004-05**
**(Dollar Amounts in Millions)**

| | 2003-04 Estimate | 2004-05 Forecast | Change | Percent Growth | Diff. Exec. |
|---|---|---|---|---|---|
| **User Taxes and Fees** | **11,905** | **12,620** | **715** | **6.0%** | **82** |
| Sales and Use Tax | 9,899 | 10,611 | 712 | 7.2% | 72 |
| Motor Fuel Tax | 512 | 514 | 2 | 0.4% | (4) |
| Cigarette Tax | 423 | 427 | 4 | 0.9% | 3 |
| Motor Vehicle Fees | 651 | 656 | 5 | 0.8% | 15 |
| Highway Use | 148 | 147 | (1) | -0.7% | (5) |
| Alcoholic Beverage Tax | 186 | 183 | (3) | -1.6% | 0 |
| Alcoholic Beverage Fees | 48 | 42 | (6) | -12.5% | 0 |
| Auto Rental Tax | 38 | 40 | 2 | 5.3% | 0 |

## Sales Tax

The largest component of the user taxes, the sales tax, is imposed at a rate of 4.25 percent (4.0 percent after June 1, 2005) on purchases of all tangible personal property, unless specifically exempt. All services are exempt from the sales tax unless specifically enumerated.

The Committee staff estimates that sales tax collections will total $9.899 billion on an All Funds basis in SFY 2003-04, an increase of $1.103 billion, or 12.5 percent from the prior year. This estimate is $21 million above the Executive estimate. Growth in sales tax collections is primarily attributable to substantial tax actions taken in the Enacted Budget. After adjusting for legislative actions, the Committee staff estimates that growth in the sales tax base will be a modest 2.0 percent for SFY 2003-04.

Temporary tax actions enacted in 2003 include temporary replacement of the year-round sales tax exemption on clothing and footwear with two one-week sales tax holidays. This action is expected to increase collections in SFY 2003-04 by $449 million. Also enacted in 2003 was legislation temporarily increasing the State sales tax rate from 4.0 percent to 4.25 percent. This action is expected to generate $445 million in additional tax collections in SFY 2003-04.

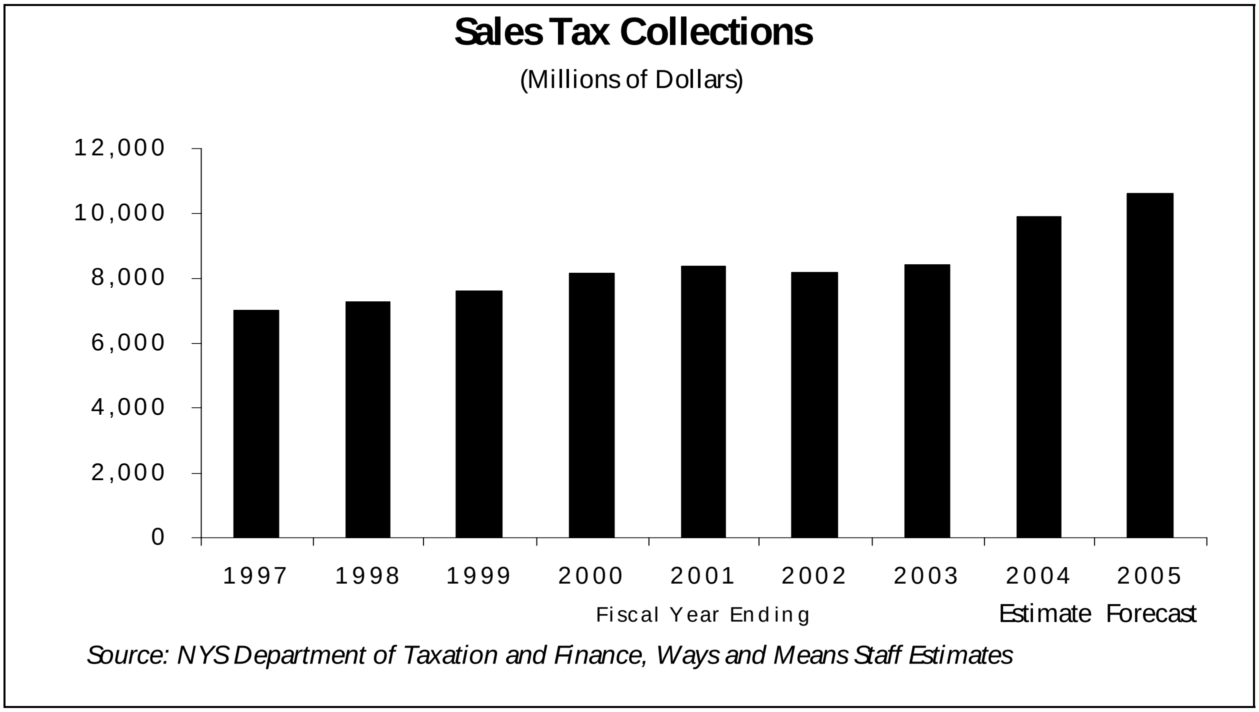



**Figure 9**

Despite signs of a national economic recovery, the State's economy continued to suffer from the effects of the recent recession in SFY 2003-04. Employment growth was negative or zero throughout the year. However, consumer spending and consumer confidence were considerably higher than had previously been expected in the fourth quarter of the year. As a result, sales tax collections for the fourth quarter of 2003 grew by 20 percent over the comparable period in the prior year. While some of this growth is due to legislative changes, at least a portion of the growth is the result of increased retail sales.

Nationwide consumer spending on retail and food services grew by 4.3 percent, 6.4 percent and 6.9 percent respectively for the second, third and fourth quarter. New York State's sales tax receipts lagged national figures for retail and food sales, and only in the fourth quarter of Calendar Year 2003 did the State's receipts begin to show some positive growth in the base. The temporal lag could be the result of New York's economy recovering more slowly than the national economy, which should lead to strong growth in 2004-05. The higher than anticipated fourth quarter collections has resulted in a $46 million increase in the Committee staff estimate for SFY 2003-04 sales tax collections from the staff mid-year estimate.

The Consumer Confidence Index is considered to be an important economic indicator because it is a way to measure consumers willingness to spend. The index hit its highest point in 18 months in January 2004, which is indicative of consumers' continued optimism about the future and bodes well for sales tax receipts in the coming fiscal year.

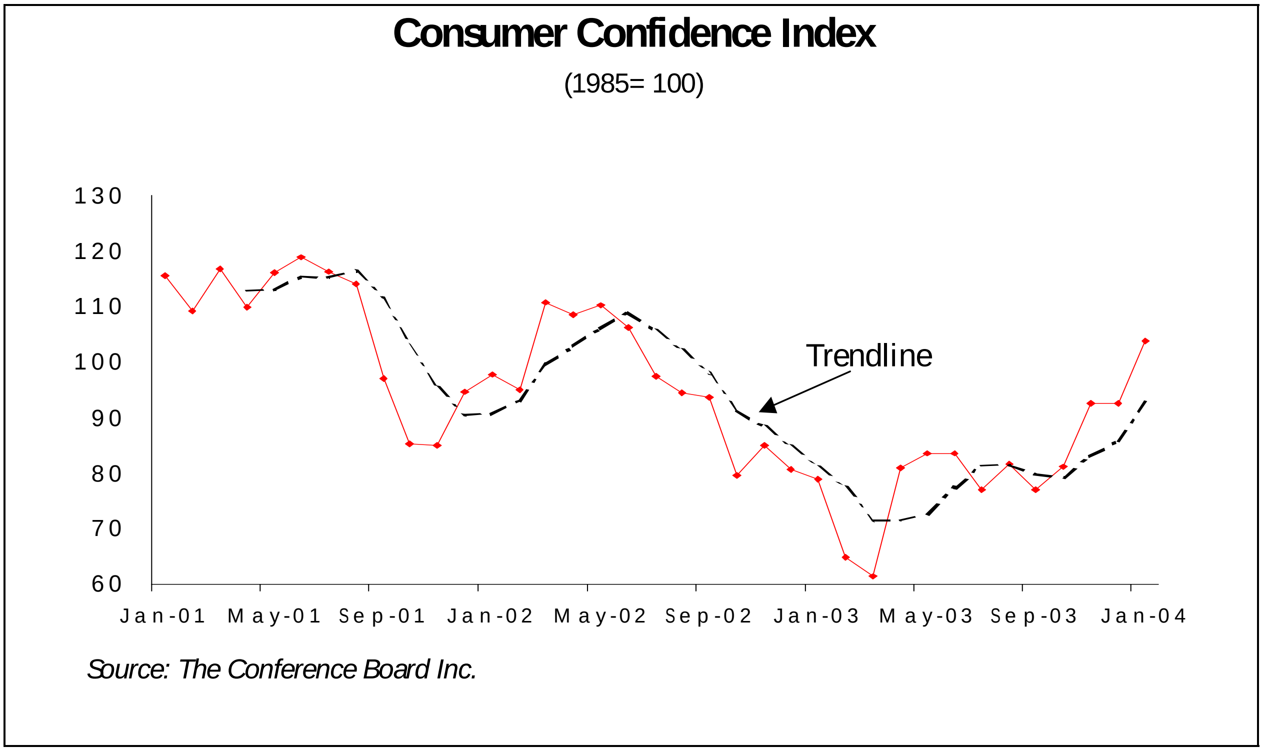



**Figure 10**

### *Fund Analysis and Transfers*

Revenues from one percentage point of the 4.25 percent state sales tax is dedicated to paying debt service incurred by the Local Government Assistance Corporation (LGAC). The amount dedicated to LGAC is expected to total $2.253 billion in SFY 2003-04. However, only $304 million will actually be used to pay LGAC debt service, the remaining $1.949 billion will be deposited into the General Fund. In addition to the 4.25 percent statewide sales tax, total collections include receipts from the additional 0.25 percent tax imposed in the Metropolitan Transportation Commuter District (MCTD). Receipts from the MCTD sales tax are expected to total $400 million and are dedicated to Mass

Transportation Operating Assistance Fund (MTOAF). All other sales tax receipts, which are estimated at $7.246 billion, are deposited into the General Fund. The growth in General Fund sales tax collections is expected to be 14.5 percent. Growth in General Fund collections is higher than All Funds growth because LGAC and MTOAF, which are component parts of All Funds, are not affected by the additional 0.25 percentage point tax.

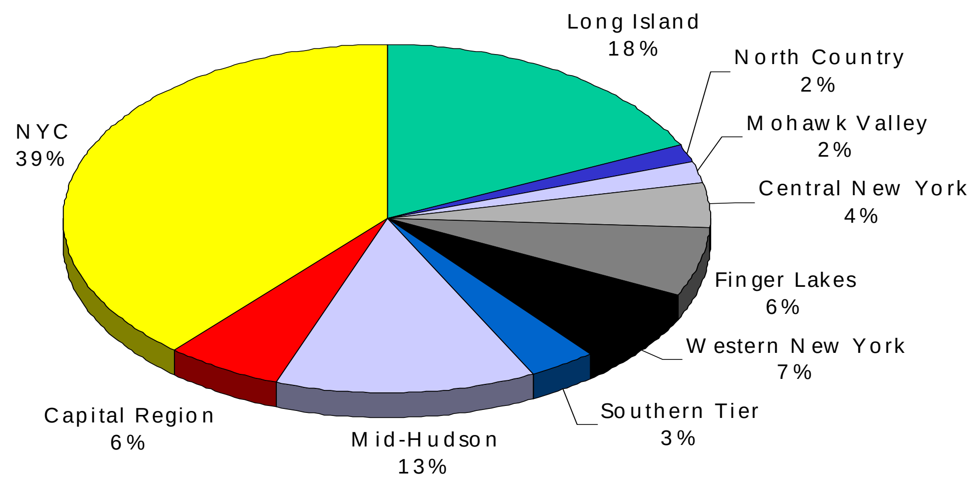
In SFY 2004-05, the Committee staff forecasts All Funds sales tax collections will total $10.611 billion, an increase of $712 million, or 7.2 percent from the Committee staff estimate for SFY 2003-04. General Fund collections are expected to total $7.768 billion, an increase of $522 million, or 7.2 percent from SFY 2003-04. Sales tax collections dedicated to LGAC are expected to total $2.390 billion, while dedications to the MTOAF are forecasted at $414 million.

The SFY 2004-05 forecast for total collections includes an estimated $572 million from the increase in the State's sales tax rate to 4.25 percent. Authorization for the additional 0.25 percentage point sales tax will expire on May 31, 2005. The Committee staff forecast also includes the Executive's estimate of $400 million in additional collections from the Article VII proposal to permanently repeal the clothing exemption. Absent the proposed Article VII legislation, growth in revenues would be only 2.8 percent in SFY 2004-05.

The growth in the sales tax base in SFY 2004-05 is dependent, in part, on the expectation that three years of declines in New York employment will reverse in SFY 2004-05, growing by 1.1 percent during the fiscal year. Growth in personal income, another factor in forecasting sales tax collections, is forecast to grow at an annual rate of 4.9 percent in SFY 2004-05.

The majority of sales tax revenue is generated in the New York City, Long Island and Mid-Hudson region. Approximately 70 percent all taxable sales and purchases occurs in these regions.

**Taxable Sales by Region SFY1999-2000**




*Source: NYS Department of Taxation and Finance*

**Figure 11**

The State's sales tax base consists primarily of tangible personal property and specifically enumerated services. Figure 12 shows that 50 percent of the sales tax base consists of sales from retail establishments. Services, including accommodations and food service, make up about 13 percent of the base. This percentage has been remarkably stable over time. In 1994, for example, retail trade made up 54 percent of the tax base, and services accounted for 13 percent.

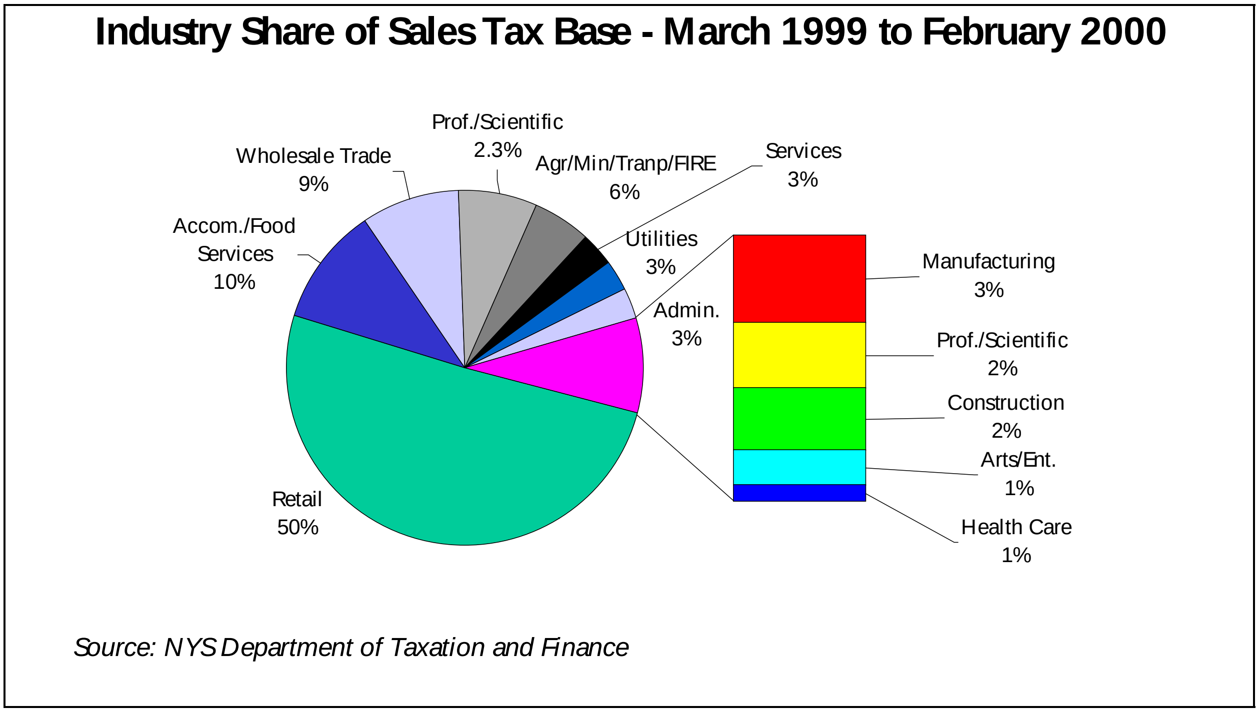



**Figure 12**

***"Line 56"***

The use tax has existed in New York State since the inception of the sales tax in 1965, and all states imposing a sales tax also impose a use tax. Individuals owe use tax when they purchase goods or services from outside of the State of New York by catalog, over the Internet or otherwise and New York Sales Tax is not collected by the vendor. The use tax compliments the sales tax by ensuring that merchants within New York State are not placed at a competitive disadvantage with merchants who do not collect New York State sales tax. The amount of use tax due is the amount of New York Sales Tax reduced by a credit for sales tax paid to other state.

Prior to this year, individuals were able to file a form (NYS ST-130, renamed ST-140 in 2003) with the Department of Taxation and Finance declaring their use tax liability. However, very few individuals were aware of their obligation to pay use tax and therefore did not remit their liability.

Currently, 20 other states and the District of Columbia collect use tax via the personal income tax form or include forms with personal income tax mailings to collect use tax. The New York State Fiscal Year 2003-04 Enacted Budget directed The Department of Taxation and Finance to add a line or lines to collect use tax via the personal income tax form for income years beginning on or after January 1, 2003.

In January of 2004, individual taxpayers began receiving their income tax forms and instructions for the 2003 tax year. Unfortunately, there was more than an additional line on the tax form providing for the remittance of sales and use tax liability. In addition, Taxation and Finance included several pages of instructions for calculating combined state and local sales and use tax liability through an estimated table.

The instructions give individuals a choice to either itemize receipts for items under $1,000 or to use an income-based chart. For individual purchases over $1,000, the forms require the taxpayer to list each item and manually calculate liability and then subtract any sales tax paid to other states to arrive at the use tax owed.

***Streamlined Sales Tax Project - Progress***

The Streamlined Sales Tax Project (SSTP) is an ambitious, multi-state project that hopes to simplify the sales and use tax system by adopting uniform rules, definitions and technologies for sales tax systems nationwide. The sales tax is complex and burdensome, especially to businesses that operate in more than one state because each state and local taxing jurisdictions, over 7,600 nationwide, has its own rules, definitions, and tax rates. The states involved in the SSTP hope that a simplified sales tax system will reduce the administrative burden of collecting and remitting sales taxes and halt the erosion of the sales tax base due to Internet and mail order sales. In addition, some states hope that if states simplify and standardize their sales tax systems, Congress might consider granting states the power to require remote sellers who do not have nexus with their state to collect sales tax, something currently banned under the Commerce Clause.

To participate in the SSTP and have voting rights, states must pass model legislation indicating a willingness to enter multi-state discussions on the SSTP. As of October 2003, 41 states and the District of Columbia have enacted simplification legislation entitling them to be a participating state. New York became a participating state in 2003 after it enacted simplification legislation as part of its 2003 enacted budget.

One of the first tasks for the SSTP was to develop a uniform set of rules, definitions and procedures known as the SSTP agreement, that states must comply with to qualify to become a SSTP governing state. On November 12, 2002, the SSTP participating states approved a tentative version of the SSTP Agreement. The SSTP agreement takes effect when at least 10 states, accounting for at least 20 percent of the population of states that impose a sales tax, have enacted the provisions of the agreement. Once this occurs, authority to administer the agreement is transferred from the SSTP participating states to a governing board comprised of representatives of each of the governing states.

The governing board will be responsible for the administration and operation of the SSTP agreement. Voting rights will be limited to one vote per governing state. Under current rules, which are subject to change, participating states will no longer be entitled to a vote, however, they may continue to act on advisory boards.

As of July 2003, 20 states had passed legislation conforming their laws to the SSTP agreement. The three most populous states, New York, California, and Texas are not among these 20 states. The next phase in the project will be the certification of each of the 20 states laws and regulations to assess if they are in compliance with the agreement.

### *Federal Internet Tax Freedom Act - Impact on sales and use taxes*

The Internet Tax Freedom Act (Act), enacted by Congress on October 1, 1998, provided a three year moratorium on state and local taxes on Internet access charges, with the exception that any such tax that was enacted and enforced prior to October 1, 1998 would be grand-fathered in. The moratorium also prohibited multiple or discriminatory taxes on e-commerce, thus limiting a taxing jurisdiction's authority to impose a tax on a good or service purchased through the Internet, if a comparable good or service purchased through other means is not taxed. In addition, if a comparable good or service is subject to tax, then the Act prohibited the taxing jurisdiction from imposing a higher tax on the Internet purchase. Finally, the Act prohibited taxing jurisdictions from imposing a tax on the same or essentially the same electronic commerce that is also subject to another tax imposed by another taxing jurisdiction without a credit for taxes paid in the other jurisdictions.

The Act, however, preserved the rights of state and local taxing authorities to impose sales and use taxes on purchases made via the Internet, provided they meet the aforementioned requirements. The burden to collect and remit the tax on Internet purchases are the same as those for cross border purchases or purchases through the mail. The burden falls on the Web company if the Web company has a physical presence (nexus) in the purchaser's place of residency. Where no nexus exists, the purchaser is liable for the tax and must pay the tax directly to their state's taxing authority under use tax laws.

In 2001, the ITFA was extended for an additional two years until November 1, 2003, and has since expired. Expiration of the Act means that taxing jurisdiction may now impose a tax on Internet access charges. While Congress is currently working toward an extension of the Act, negotiations over an extension have stalled. The primary obstacles to extending the Act are the tax treatment of voice over Internet protocol (VoIP) and digital subscriber services (DSL). VoIP allows individuals to make telephone calls using a computer network such as the Internet. DSL uses a phone line, with the exception that data is transmitted in a digital form instead of analog form, to provide Internet access. Cable, the use of cable TV lines and dial up, the use of the traditional phone lines, are other means of providing Internet access. The dispute surrounds whether VoIP and DSL are considered to be Internet services or telecommunication services.

The Act does not affect interstate commerce laws, which under the Commerce Clause, would continue to ban states from requiring a vendor who does not have a physical presence within the state from collecting and remitting tax to that state. Only an act of Congress could overturn this nexus requirement.

**Motor Fuel Taxes**

The motor fuel tax is imposed on each gallon of gasoline and diesel motor fuel imported or sold in this state at a rate of 8 cents per gallon.

The Committee staff estimates that motor fuel taxes will total $512 million in SFY 2003-04 on an All Funds basis, a decrease of 5.8 percent. The Committee staff estimate is $4 million higher than the Executive estimate on an All Funds basis. Revenues collected from motor fuel taxes are not deposited into the General Fund, but instead are statutorily dedicated in the following manner:

- $101 million deposited in the Dedicated Mass Transportation Trust Fund (DMTTH); and,
- $411 million to the Dedicated Highway and Bridge Trust Fund (DHBTF).

The Committee staff forecast for motor fuel taxes in SFY 2004-05 is $514 million, a 0.4 percent increase. The increase is largely due to a forecast of moderating fuel prices in the coming year, which should provide a modest increase in fuel consumption. Motor fuel taxes will be distributed as follows:

- $108 million to the Dedicated Mass Transportation Trust Fund; and,
- $406 million to the Dedicated Highway and Bridge Trust Fund.

**Motor Vehicle Fees**

Revenue from motor vehicle fees comes from over 50 different license, registration, service, and penalty receipts. Passenger and commercial vehicle registrations, and licensing fees are the largest components.

The Committee staff estimates that total collections from motor vehicle fees will total $651 million on an All Funds basis, an increase of 6.4 percent from SFY 2002-03. This estimate is $1 million higher than the Executive estimate. Of this amount, $495 million is dedicated to the Dedicated Highway and Bridge Trust Fund, which is classified as a Capital Projects Fund. Another $99 million is dedicated to the Dedicated Mass Transportation Trust Fund and the remaining $57 million will be deposited into the General Fund. Much of the increase in motor vehicle fees are attributed to increases in fees contained in the Enacted Budget.

In SFY 2004-05, motor vehicle fees are forecasted at $656 million, an increase of 0.8 percent from SFY 2003-04. Motor vehicle fees deposited into the General Fund are expected to decrease to $26 million, a decrease of $31 million. The General Fund decline is due to actions taken in the SFY 2003-04 Enacted Budget which boosted the level of motor vehicle fees dedicated to the DMTTF in SFY 2004-05. Consequently, deposits to the DHBTF are expected to total $495 million. Dedications to the Dedicated Mass Transportation Trust Fund are expected to total $135 million.

### Cigarette and Tobacco Taxes

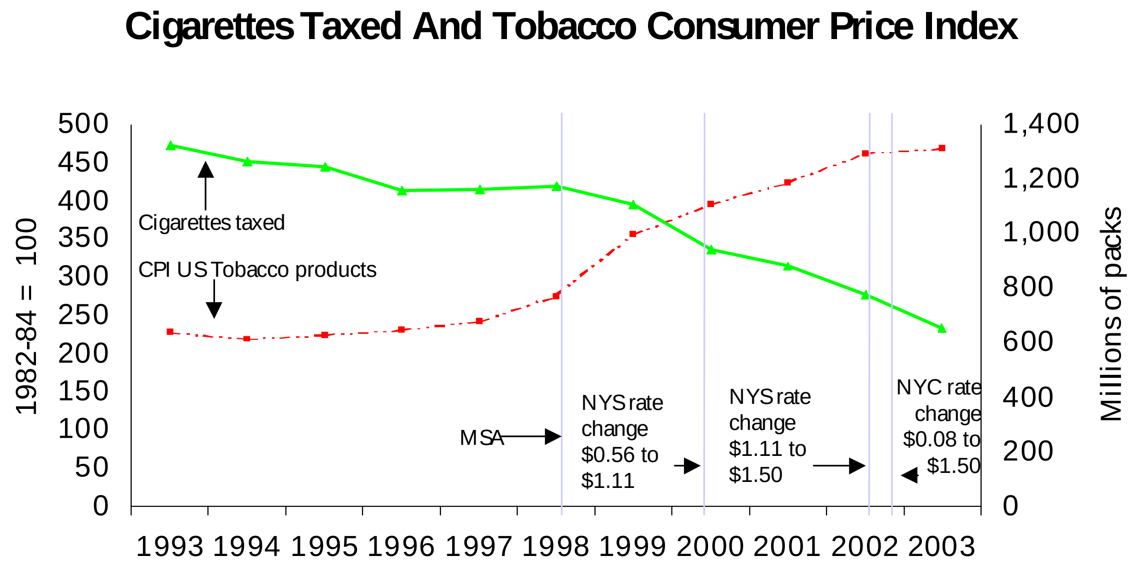
Article 20 of the Tax Law imposes a cigarette excise tax at the rate of $1.50 per package of 20 cigarettes sold within the State. Of the total cigarette tax levied, 58.2 cents of the receipts are deposited into the General Fund and the remaining 91.8 cents are dedicated to fund the HCRA program.

The State also levies a tax on distributors of all other tobacco products equal to 37 percent of the wholesale price of such products. In addition, there is an annual license fee of $100 for all retail establishments and $25 for every vending machine that sells cigarette and/or tobacco products.

The Committee staff estimates that General Fund cigarette and tobacco tax receipts will total $423 million in SFY 2003-04, a decline of 5.3 percent over SFY 2002-03 and $4 million above the Executive's estimate. Of this total, General Fund cigarette tax receipts represent $380 million.

In SFY 2004-05, the Committee staff forecasts General Fund collections will total $427 million, representing an increase of 0.9 percent from the SFY 2003-04 estimate. This forecast is $3 million above the Executive's forecast.

After accounting for tax increases, cigarette tax receipts have consistently exhibited flat or negative growth for the last decade due in large part to tax avoidance and declines in cigarette consumption. Tax avoidance occurs when consumers purchase their cigarettes through the Internet, by mail, from Indian reservations or from neighboring states, and do not report these purchases to the Department of Taxation and Finance. Legislation enacted in 2000 aims to reduce tax avoidance and underage smoking by creating civil and criminal penalties for persons who sell or carriers who transport cigarettes to unlicensed persons within New York State.




*Source: U.S. Department of Labor, Department of Taxation and Finance, Ways and Means Staff.*

**Figure 13**

Declines in cigarette consumption are the result of increases in cigarette prices when compared to the consumer price index for all other commodities and greater awareness of the health risks associated with tobacco consumption. Two factors causing cigarette prices to rise are increases in the New York State and New York City cigarette excise taxes, and manufacturers raising their prices in order to recoup some of their losses from the Tobacco Master Settlement Agreement (MSA). Declines in cigarette consumption may also be the result of reduced advertising of tobacco products due to restrictions negotiated as part of the MSA, and health concerns.

In response to state fiscal pressures and increases in health care costs, over twenty-two states have raised their excise tax on cigarettes since 2002. As of July 2003, New Jersey has the highest state cigarette excise tax in the nation at $2.05, followed by Rhode Island at $1.71, and Connecticut and Massachusetts at $1.51.

**Table 8**

| CIGARETTE EXCISE TAXES BY SELECTED STATES | |
|---|---|
| **State** | **Per pack** |
| New Jersey | $2.05 |
| Rhode Island | $1.71 |
| Connecticut | $1.51 |
| Massachusetts | $1.51 |
| New York State* | $1.50 |
| Vermont | $1.19 |
| Maine | $1.00 |
| Pennsylvania | $1.00 |
| New Hampshire | $0.52 |
| U. S. Median | $0.60 |

*Source: Federation of Tax Administrators.*

* In addition to the State tax, NYC imposes a $1.50 per pack tax.

New York has raised its excise tax on cigarettes several times since 1999. Beginning in 1999 with the enactment of the Health Care Reform Act (HCRA) of 2000, the tax rate on cigarettes in New York State has risen from 56 cents per pack of twenty cigarettes in 1999 to today's rate of $1.50 per pack. All together, New York collects over $1 billion annually from taxes on cigarettes and tobacco products. In addition to the State's tax rate increase, New York City also increased their excise tax rate on cigarettes from eight cents to $1.50 per pack, effective July 2, 2002. This tax is in addition to the State's $1.50 rate and the Federal rate of 39 cents per pack. Cigarettes sold in New York City are typically over $7 per pack.

### *Collection of Excise Taxes on Native American Lands*

On September 10, 2003, the Department of Taxation and Finance issued proposed regulations to implement the collection of excise taxes and state and local sales and compensating use taxes on retail sales made to non-Native

Americans on New York State tribal lands. The proposed regulations were issued pursuant to legislative mandates in the 2003 Enacted Budget.

The regulations provide a mechanism to ensure that non-Native Americans who purchase taxable goods and services on Native American lands pay excise taxes and sales taxes. The regulations anticipate that the Native American nations will distribute tax-exemption coupons to reservation cigarette, motor fuel and diesel motor fuel dealers. The retailers would, in turn, give coupons to licensed wholesale dealers to obtain like quantities of tax exempt cigarettes, motor fuel and diesel motor fuel. The Department of Taxation and Finance anticipates distributing an amount of tax exempt coupons to each nation/tribe which corresponds to the amount of cigarettes, motor fuel and diesel motor fuel that would be consumed by their own members. Any amount purchased beyond the tax-exempt level would be considered for sale to non-Native Americans, and therefore taxable.

These regulations were initially scheduled to go into effect December 1, 2003, however, events subsequent to the issuance of the proposed rules, including the threat of lawsuits, and the potential for price parity agreements between the tribes and the State has caused the Executive to postpone their implementation by three months. The Executive's 2004 Budget proposes to postpone implementation of these regulations, yet again, until March 1, 2005. In addition, the Executive Budget proposes to authorize the State to enter into price parity agreements with Native American nations with regards to the sale of cigarettes, tobacco products, automotive fuel, alcoholic beverages, and other tangible personal property or services to non-Native Americans. Native American nations which enter into these agreements would not be required to collect excise taxes or State and local sales taxes, while all other Native American nations would be required to conform to the aforementioned regulations.

The Executive estimates that in SFY 2004-05, these regulations and price parity agreements would generate $40 million in cigarette and tobacco taxes, and $20 million in motor fuel taxes. At first glance, this estimate appears to be at odds with data released by the Tax Department as the result of a Freedom of Information Act request filed by the Syracuse Post Standard.

According to several newspaper articles, the data released by the Department of Taxation and Finance in 2003, shows that cigarette sales by Native American stores totaled 28 million cartons in 2002. In addition, the articles state that cigarette sales by Native American stores in the first nine months of 2003 totaled 26.2 million cartons, putting them on pace to sell 35 million cartons in 2003. If NYS cigarette excise taxes had been collected on these sales, NYS would have benefited from an estimated $525 million in additional revenues in 2003. In response to these inquiries, the Department of Taxation and Finance cautioned against relying on this estimate, stating that they believe that most of Internet sites that sell cigarettes are operated by New York Indian tribes. Therefore, a large majority of the reported sales can be attributed to Internet sales to individuals who reside outside of NYS, and therefore, are not subject to the NYS cigarette excise taxes.

***Health Care Reform Act (HCRA)***

Over 60 percent of State cigarette tax collections are statutorily dedicated to the Tobacco Control and Insurance Initiatives Pool, which was created pursuant to the Health Care Reform Act of 2000. Although tax collections dedicated to the Tobacco Control and Insurance Initiatives Pool are used to support a variety of State health care initiatives, they are considered "off-budget" and, therefore, are not included in the reporting of the State's All Governmental Funds Budget. The Committee estimates that $599 million in cigarette tax collections will be dedicated to the pool in SFY 2003-04, and $603 million in SFY 2004-05.

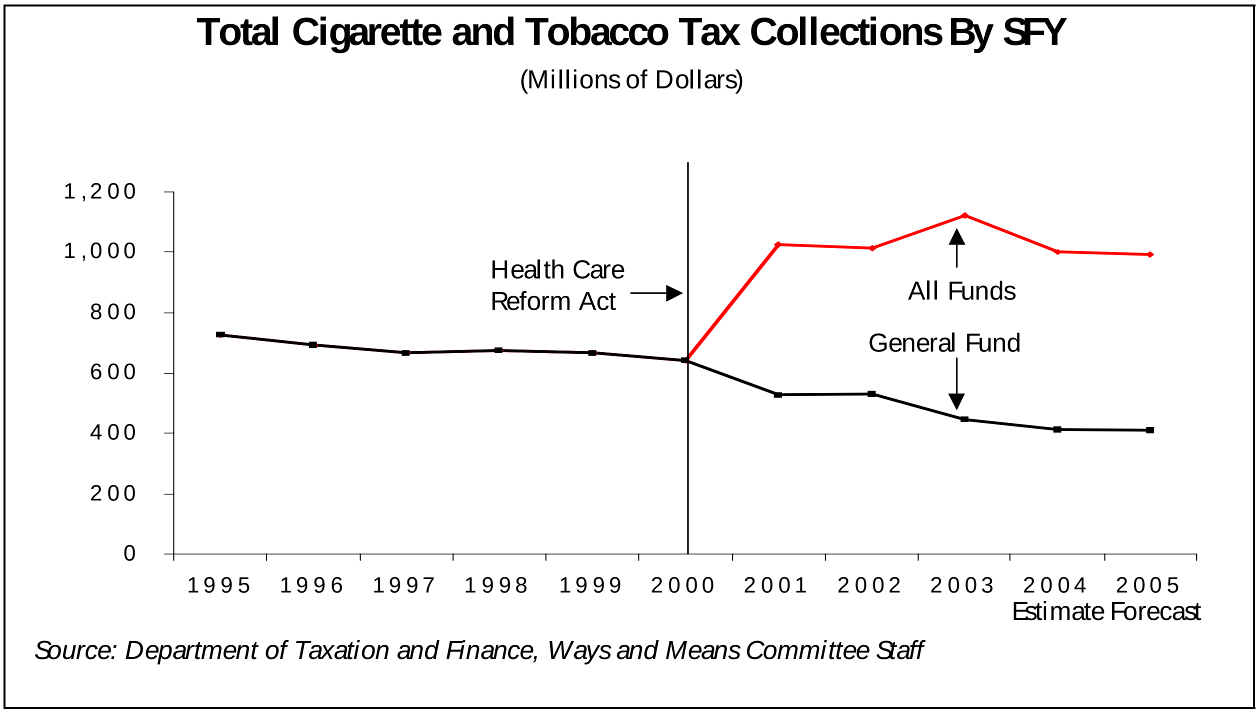



**Figure 14**

**Table 9**

| DISTRIBUTION OF CIGARETTE COLLECTIONS | | |
|---|---|---|
| | HCRA | General Fund |
| Effective on and after 3/1/00 | 49.55% | 50.45% |
| Effective on and after 4/1/02 | 43.70% | 56.30% |
| Effective on and after 5/1/02 | 64.55% | 35.45% |
| Effective on and after 4/1/03 | 61.22% | 38.78% |

# BUSINESS TAXES

Business taxes include the corporate franchise, utility, insurance, bank and petroleum business taxes. The Committee staff estimates that business tax collections will total $4.939 billion in SFY 2003-04, representing a decline of $44 million, or 0.9 percent, over SFY 2002-03. This estimate is $14 million lower than that of the Executive estimate. All Funds business tax collections have declined by $50 million, or 1.4 percent, through January 2004. The corporate franchise tax and petroleum business taxes have been relatively flat thus far. Bank tax and utility tax collections have declined sharply so far this fiscal year, while insurance tax collections have increased by 36 percent year-to-date due to the restructuring of the tax in last year's enacted budget.

**Table 10**

**BUSINESS TAX COLLECTIONS SFY 2003-04**
**(Dollar Amounts in Millions)**

| | 2002-03 Actual | 2003-04 Estimate | Change | Percent Growth | Diff. Exec. |
|---|---|---|---|---|---|
| **Business Taxes** | **4,983** | **4,939** | **(44)** | **-0.9%** | **(14)** |
| Corporate Franchise | 1,612 | 1,573 | (39) | -2.4% | 3 |
| Utility Tax | 1,091 | 887 | (204) | -18.7% | (73) |
| Insurance Tax | 776 | 1,016 | 240 | 30.9% | 39 |
| Bank Tax | 481 | 415 | (66) | -13.7% | (6) |
| Petroleum Business Tax | 1,023 | 1,048 | 25 | 2.4% | 23 |

All Funds collections for the business taxes are deposited into both the General Fund and several dedicated funds. Taxpayers with business activity in the Metropolitan Commuter Transportation District (MCTD), which includes the City of New York, and seven surrounding counties (Dutchess, Orange, Putnam, Rockland, Westchester, Nassau and Suffolk), are required to pay a 17 percent Metropolitan Transportation Authority Surcharge. Collections from the surcharge are deposited into the Mass Transportation Operating Assistance Fund (MTOAF). These provisions do not apply to the petroleum business tax.

In addition, 80 percent of utility tax receipts resulting from the franchise tax on transportation and transmission corporations and associations are deposited into MTOAF, and all collections resulting from the imposition of the petroleum business tax are dedicated either to the Highway Bridge and Trust Fund or MTOAF. Legislation enacted in 2003 dedicated the remaining 20 percent of the collections from the franchise tax on transportation and transmission corporations and associations to the Dedicated Highway and Bridge Trust Fund beginning April 1, 2004. Dedicated business tax receipts are estimated to total $1.571 billion in SFY 2003-04, while the remaining $3.368 billion will remain in the General Fund.

The Committee staff forecast for All Funds business tax collections is $5.517 billion in SFY 2004-05, an increase of $578 million, or 11.7 percent, over SFY 2003-04. This increase is based on both an expected increase in corporate profits of 19.4 percent in calendar year 2004, and an estimated $190 million increase in tax liability due to legislation enacted in 2003 to close certain tax loopholes.

**Table 11**

**BUSINESS TAX COLLECTIONS SFY 2004-05**
**(Dollar Amounts in Millions)**

| | 2003-04 Estimate | 2004-05 Forecast | Change | Percent Growth | Diff. Exec. |
|---|---|---|---|---|---|
| **Business Taxes** | **4,939** | **5,516** | **577** | **11.7%** | **108** |
| Corporate Franchise | 1,573 | 1,912 | 339 | 21.6% | (72) |
| Utility Tax | 887 | 865 | (22) | -2.5% | (1) |
| Insurance Tax | 1,016 | 1,116 | 100 | 9.8% | 95 |
| Bank Tax | 415 | 545 | 130 | 31.3% | 80 |
| Petroleum Business Tax | 1,048 | 1,078 | 30 | 2.9% | 6 |

### Corporate Franchise Tax

Article 9-A corporate franchise taxes are imposed on every domestic or foreign corporation for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in New York.

Corporations generally pay the higher of:

1. entire net income allocated to New York;
2. allocated capital;

3. minimum taxable income allocated to New York; or
4. a fixed dollar minimum tax.

The largest component of business taxes, the corporate franchise tax, continues to exhibit slower than anticipated growth in collections. Corporate franchise tax collections have significantly declined over the past couple of years from the collection levels of the 1990s. In SFY 2000-01, corporate franchise tax collections totaled more than $2.6 billion, and generated only about $1.7 billion just one year later (See Figure 15).

In the current State Fiscal Year, corporate franchise tax collections have declined by $38 million, or 3.4 percent, through January 2004. The Committee staff estimates that corporate franchise tax collections will total $1.573 billion in SFY 2003-04, representing a decrease of $39 million, or 2.4 percent over SFY 2002-03. This estimate is $3 million higher than that of the Executive.

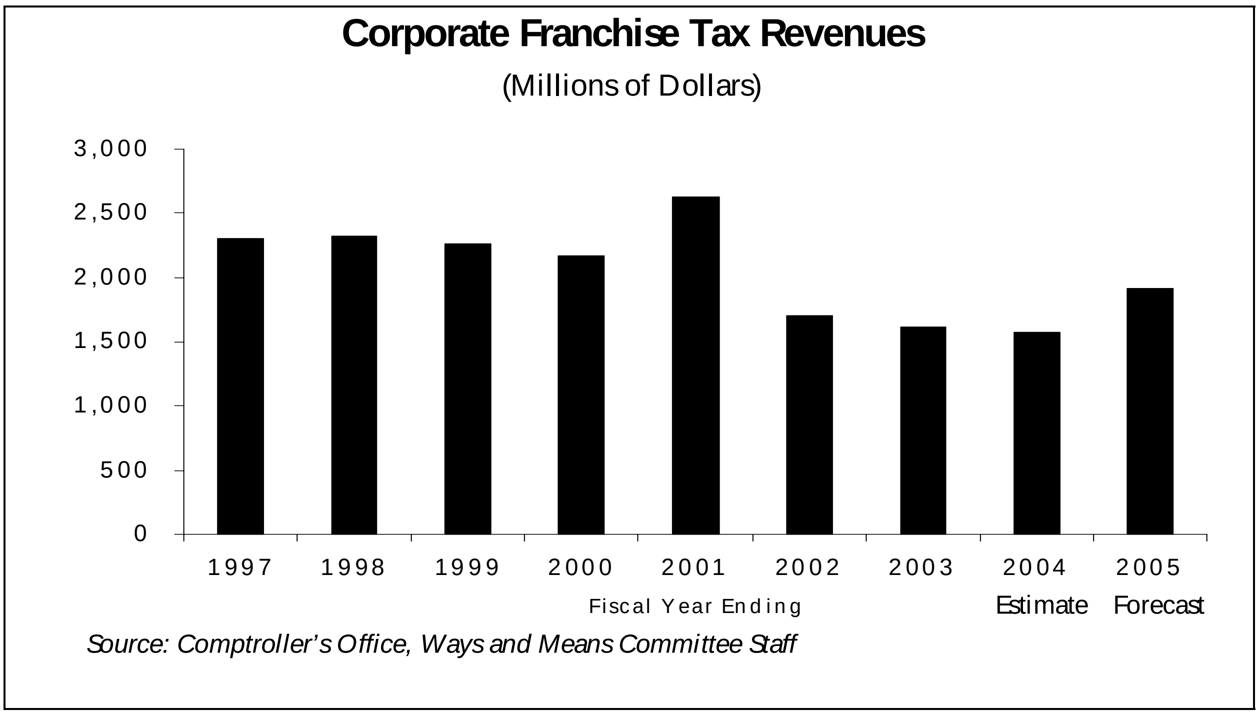



**Figure 15**

The SFY 2003-04 estimate includes collections from legislation passed in 2003 that requires the addition to taxable income of royalty and interest payments made to related entities, such as wholly-owned subsidiaries, for the purpose of tax avoidance. Often these entities are located in jurisdictions where either the rate of tax is lower, or where royalty payments related to intangible assets such as trademarks are not taxed at all. These entities are commonly referred to as Passive Investment Companies (PICs). Certain statutorily defined exemptions to the add-back are made for companies that use PICs for purposes other than tax avoidance. Examples include transactions between non-related members that result in increased market share in an area, or royalty payments that are made to another county where the rate of tax on income is at least as high as that in New York State.

Additional 2003 legislation disallows at the State level, the 30 percent bonus depreciation write-off provided to businesses as a part of the Federal Job Creation and Worker Assistance Act of 2002. Any additional depreciation amounts claimed on Federal returns for property placed in service after June 30, 2003 must be added back to taxable income for state purposes. An exception to the State add-back requirement applies to property placed in service in the Liberty Zone and Resurgence Zone in Lower Manhattan.

These revenue-preserving measures were initially expected to generate $115 million and $95 million respectively in SFY 2003-04. However, it is unclear at this time whether or not taxpayers have conformed to the royalty add-back requirements.

In SFY 2004-05, corporate franchise tax receipts are expected to total $1.912 billion, an increase of $339 million, or 21.6 percent over SFY 2003-04. This estimate includes $190 million from the legislation described above, and takes into account two consecutive calendar years of expected corporate profits growth. In 2003, corporate profits are estimated to have grown by 13.0 percent, while in calendar year 2004 they are expected to grow by 19.4 percent over the 2003 amount.

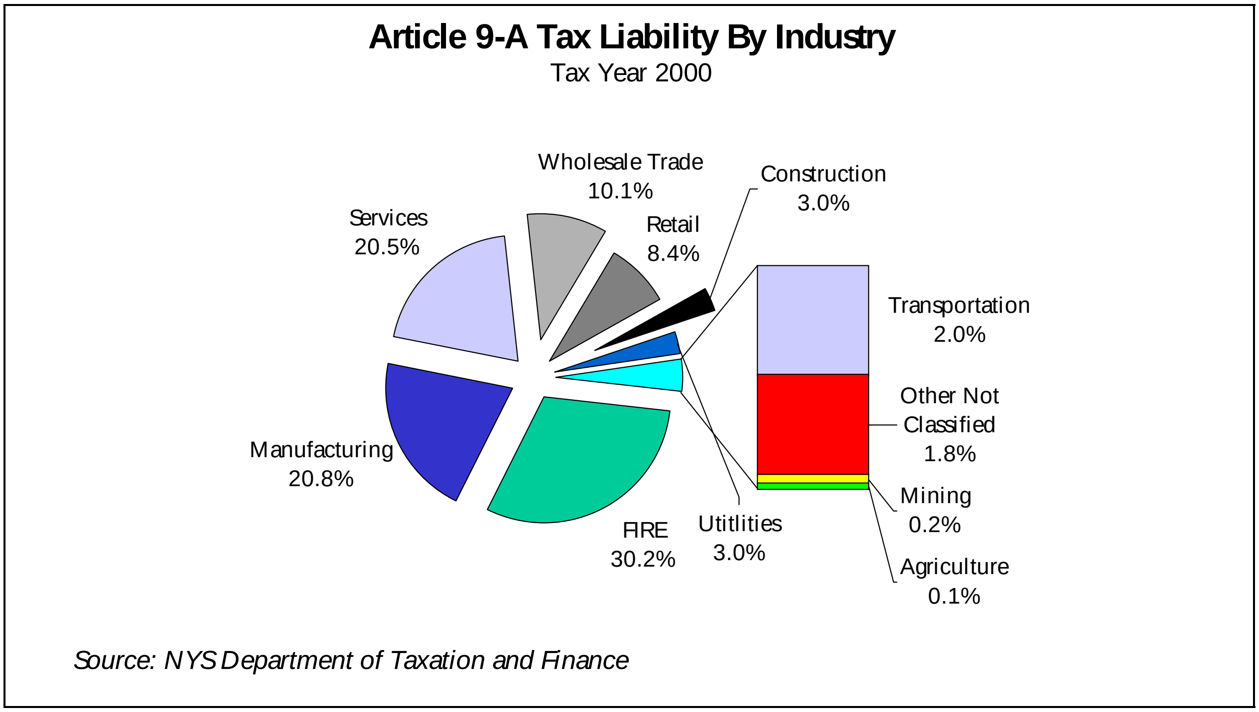



**Figure 16**

### *Corporate Profits and Corporate Franchise Tax Receipts*

It should be noted, however, that while corporate profits figures are generally used as a starting point in predicting certain business tax receipts, expectations of corporate book profits growth or decline might differ from expectations of taxable income for the same period. Additionally, the actual cash flow of business tax receipts can be altered by taxpayers amending previous year returns, or by filing for extensions on their current year liabilities. This can further erode the relationship between corporate profits and business tax collections. Figure 17 illustrates the recent relationship between the two.

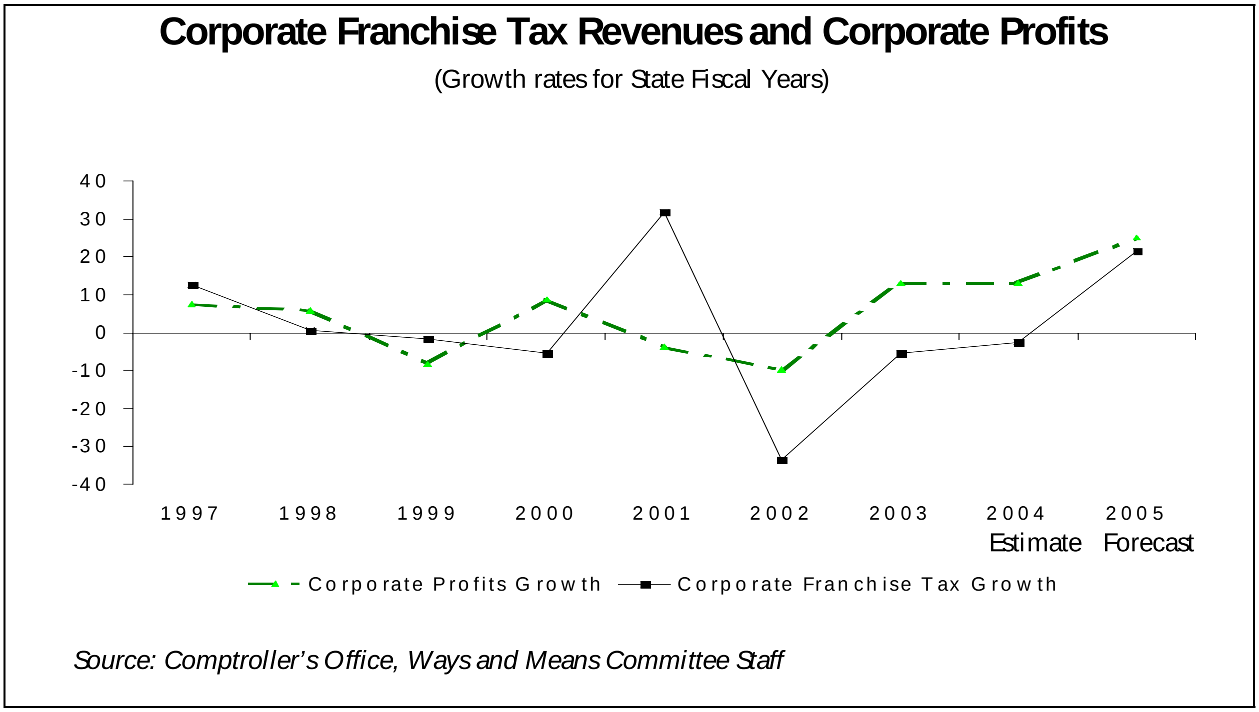



**Figure 17**

In 2000, corporate profits growth turned negative, as the economy started to slow. Partially as a result and the impact of September 11, tax collections fell off dramatically, declining by over 30 percent in SFY 2001-02. While corporate profits growth is expected to have turned positive in SFY 2002-03, tax collections growth is expected to remain negative until SFY 2004-05.

Figure 17 shows that in SFY 2004-05, corporate franchise tax revenues are expected to grow by approximately 20 percent, just slightly below the forecasted level of profits. Adjusting for an estimated $190 million in revenue enhancements, however, expectations for corporate franchise tax collections growth would be less than half at 8.9 percent instead.

### *The Relationship between Corporate Profits and Taxable Income*

Taxpayers subject to the corporate franchise and bank taxes, as well as certain life insurers subject to the insurance tax calculate several alternative measures of taxable income for a given tax year. Generally, the measure most often discussed when talking about taxable income is Entire Net Income (ENI). ENI uses Federal taxable income as a starting point, which itself is based on a taxpayer's book income. This means that, in spite of ENI being loosely based on book profits, significant differences can occur.

Differences between book income and tax income are the result of several sources. Timing differences occur when book and tax income both count the identical amount of income or expense, but do so in different periods of time or in different methods over the same time. Tax expenditures are intended differences, for the purpose of accomplishing an aim through the tax code, such as economic development for example. Other unintended differences, sometimes referred to as "tax loopholes", can arise when aggressive tax-planning measures make use of differences in tax laws and rates between taxing jurisdictions. Each source is described in more detail below.

***Timing Differences***

Accounting, both financial and tax, is an attempt to measure flows of income and expense within the context of a defined period commonly known as a fiscal year. Accounts of book income for companies that issue publicly traded stocks or bonds are obligated to follow Generally Accepted Accounting Principles (GAAP), which are altered by decisions of the Financial Accounting Decisions Board (FASB). These guidelines allow for a small amount of discretion as to the timing of certain amounts of income or expenses.

Tax accounting, by comparison, has a much greater interest in providing a uniform set of accounting principles to be used by all taxpayers obligated to make payments to the taxing jurisdiction. This uniformity is important for such reasons as tax equity, and ease of compliance by taxpayers and administration by the jurisdiction's tax authorities.

Temporary differences can occur between the two standards, creating deferred tax liabilities and deferred tax assets. A deferred tax liability, for example, occurs when a business depreciates plant and equipment by a standard amount over the life of the asset for book purposes, but on an accelerated schedule such as the Modified Accelerated Cost Recovery System (MACRS) for tax purposes. Since MACRS allows a company to claim a larger deduction up-front, it defers the tax liability to when the MACRS depreciation amount for a given year results in less of a deduction than standard depreciation would. By contrast, a deferred tax asset is created when a business counts net income in the current tax year that it chooses not to count on its book income in the same time period. For example, if a business uses the calendar year as its fiscal year, then pre-paid rent received in December for January would be a tax deferred asset since the income would be included in the current year for tax purposes but need not be counted until the next year for book purposes.

### *Tax Expenditures*

Tax expenditures are composed both of tax credits and intended differences between book income and taxable income. Tax credits are used after the calculation of ENI to lessen tax liability, and therefore do not result in further differences between book income and ENI. The tax expenditures responsible for such differences most commonly involve the partial or entire exemption of certain items from taxable income. In general, it can be said that tax expenditures have an underlying policy goal in mind. Exempting certain forms of subsidiary income, for example, was intended to maintain New York's status as the preferred location of corporate headquarters.

Each year, the New York State Department of Taxation and Finance publishes the *New York State Tax Expenditure Report*, which details the various tax expenditures and their estimated impact on receipts for each applicable tax. The table below outlines a sample of the tax expenditures found in the report covering SFY 2003-04.

**Table 12**

**SELECTED 2003 TAX EXPENDITURE ESTIMATES**
**(Dollar Amounts in Millions)**

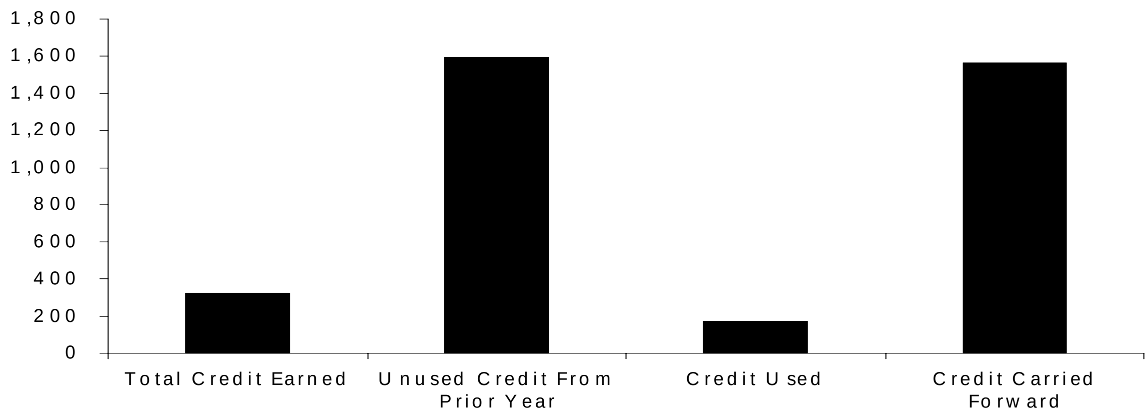
| Tax | Item | Amount |
|---|---|---|
| Corporate Franchise Tax | Exclusion of Interest, Dividends and Capital Gains from Subsidiary Capital | $ 1,298 |
| Corporations and Utilities Tax | Exclusion of Cable Television Service | 90 |
| Bank Tax | Deduction of 60 Percent of Dividend Income and Excess Gains from Subsidiary Capital | 115 |
| Bank Tax | Deduction of 22.5 Percent of Interest Income from Government Obligations | 22 |
| Insurance Tax | Exclusion of Annuities from the Tax on Premiums | 11 |

*Source: New York State Tax Expenditure Report for SFY 2003-04*

While State tax expenditures can help to explain a portion of the ENI differences from book income, it is also important to consider Federal tax expenditures as well since the calculation of ENI begins with Federal taxable income. In some cases, Federal tax expenditures are required to be added-back for purposes of calculating ENI, thereby restoring some of the relationship between book income and ENI. For example, state and local bond interest amounts that may be deducted for Federal tax purposes are included in ENI, with the exception of interest amounts derived from bonds issued by the State of New York, or any of its instruments.

**2000 Article 9-A Tax Credits**

(Millions of Dollars)




*Source: New York State Tax Expenditure Report*

**Figure 18**

***Tax Planning***

Tax planning is a term commonly used to describe the deliberate effort on the part of a taxpayer to reduce its overall tax burden. Tax planning can make use of differences in tax rates between the various jurisdictions that the taxpayer operates in, or even involve unintended uses of tax expenditures. Often, tax planning involves the use of different taxpaying entities within the same corporate structure, such as parent companies and their subsidiaries. As tax law continues to evolve in response to such measures, tax planning in turn continues to increase in its complexity.

All of the above elements of tax planning are demonstrated through the example of a highly publicized measure, commonly referred to as a Passive Investment Company (PIC). PICs often involve setting-up an entity charged with holding and protecting intangible assets, such as copyrights and trademarks. Delaware is a typical location chosen, since income derived from royalty payments and certain other intangibles is exempt from Delaware's definition of taxable net income (i.e. – a tax expenditure in that state). A separate entity, although with very similar stock ownership and business interests, might be set-up in New York. Since the Delaware entity holds all of the combined intangible assets, and on face value they are charged with managing them, the New York entity is charged a royalty payment for their use. The royalty payment would have the end result of moving income to a jurisdiction where it will not be taxed.

Chapter 62 of the Laws of 2003 contains provisions, proposed by the Assembly, to counteract the effects of PICs on State tax collections by requiring such royalty payments and any interest items related to the payments to be added back to ENI. In spite of this, other tax-planning measures that reduce a taxpayers' overall amount of taxable income continue to further widen the gap between book and taxable income.

**Utility Tax**

Article 9 of the Tax Law imposes gross receipts taxes and fees on public utilities, telecommunications companies regulated by the Public Service Commission, transportation and transmission companies, and agricultural cooperatives.

Chapter 63 of the Laws of 2000 contained provisions that restructured the Utility Tax by changing the method of taxation for certain utility companies from a gross receipts base to a net income base. Under these provisions, certain portions of the gross receipts tax were eliminated, while others are still being phased-down through 2005. As a result, many of the businesses now pay under the corporate franchise tax, reducing utility tax collections significantly.

Utility tax receipts have declined by approximately $140 million, or 18.3 percent, through January 2004. The Committee staff estimates that utility tax receipts will total $887 million in SFY 2003-04, representing a decline of $204 million, or 18.7 percent, from SFY 2002-03. This estimate includes incremental tax reductions of approximately $114 million from the continued phase-in of utility tax reform, which effectively reduces the rates applicable to different portions of the tax. This estimate is $73 million lower than that of the Executive.

Utility tax receipts are forecast to total $865 million in SFY 2004-05, representing a decrease of $22 million, or 2.5 percent, over SFY 2003-04. The forecast includes the continued phase-in of utility tax reform, which will reduce revenues by an estimated $110 million in SFY 2004-05.

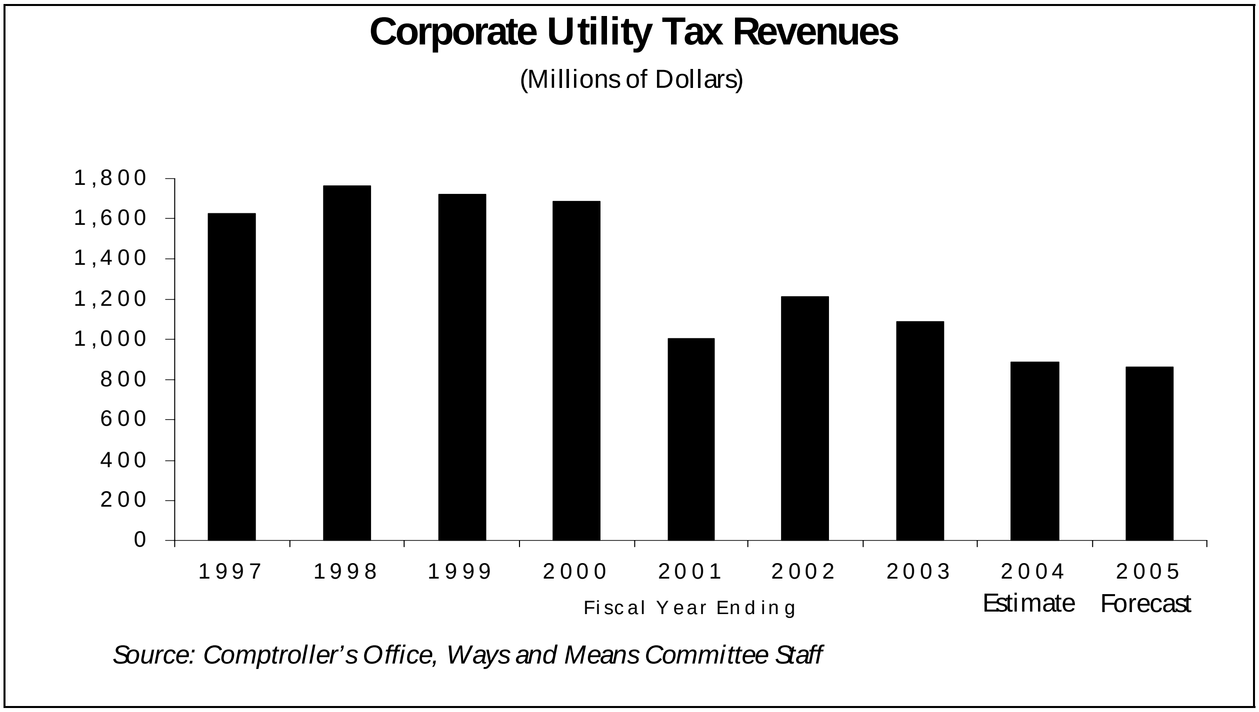



**Figure 19**

### Insurance Tax

Article 33 of the Tax Law imposes a premium ranging from 1.5 to 2.2 percent on certain insurance companies for the privilege of operating in a corporate form in New York State.

Insurance tax collections have increased by $190 million, or 36 percent, through January 2004. The Committee staff estimates that insurance tax receipts will total $1.016 billion in SFY 2003-04, representing an increase of $240 million, or 30.9 percent over SFY 2002-03. This estimate is $39 million higher than that of the Executive.

The increase is attributable to legislation restructuring the insurance tax in 2003. The tax was previously based both on taxable income, at 7.5 percent, and taxable premiums at rates of between 0.7 percent and 1.3 percent. The amount calculated was capped at 2.0 percent of taxable premiums. For tax years starting on or after January 1, 2003, however, the calculation is based solely on taxable premiums at rates of 2.0 percent and 1.75 percent respectively for Property/Casualty insurers and Accident/Health insurers. Life insurers now pay the higher of the ENI and premiums tax, subject to a cap of 2.0 percent of taxable premiums, or a straight premiums tax at a rate of 1.5 percent.

Insurance tax receipts are forecast to total $1.116 billion in SFY 2004-05, representing an increase of $100 million, or 9.8 percent over SFY 2003-04. This forecast reflects expectations of modest increase in taxable insurance premiums as some industry analysts have predicted that underwriting results will likely show improvement. Also, investment results for insurers should improve and provide additional income.[2] As a result, the need for premium increases could be more modest.

Additionally, part of the large year-to-date increase in the current fiscal year may have resulted from the fact that the legislation implementing the tax law change was passed in June, but made retroactive to January 1, 2003. This may have led to taxpayers being in a situation of needing to make large estimated payments in order to avoid under payment penalties. It is unlikely that such large growth in collections resulting from the tax law changes will continue in the near future.

**Bank Tax**

In general, the bank tax is imposed on all corporations doing a banking business in New York. Corporations subject to the bank tax will pay the highest of the following four alternative bases:

1. entire net income allocated to New York;
2. alternative entire net income allocated to New York;
3. a tax on taxable assets allocated to New York;
4. or a minimum of $250.

Bank tax collections have declined by $67 million, or 19 percent, through January 2004. The Committee staff estimates that bank tax receipts will total $415 million in SFY 2003-04, representing a decline of $66 million, or 13.7 percent over SFY 2002-03. This estimate is $6 million lower than that of the Executive.

In spite of positive reports on the book income of banks resulting mainly from strong mortgage results,[3] the Entire Net Income (ENI) of some banks has been reduced by large bad debt write-offs.[4] Additionally, legislation enacted in 1997 allows banks to write off certain amounts of Net Operating Losses (NOLs) occurring in 2001 and after. Finally, net interest margins, or the difference between the interest rates banks receive on loans and what they pay on deposits, remain lower than usual.[5] This is due to the overall low interest rate

[2] www.iii.org – Industry Financials and Outlook - 2003 First-Half Results.
[3] www.valueline.com
[4] www.fdic.gov – Statistics on Depository Institutions – New York Commercial Banks
[5] www.fdic.gov - State Profile, Fall 2003 - New York.

climate pushing loan rates down, while deposit rates tend to have limitations on just how low they can dip before customers will no longer hold sums in these accounts. This too, has served to decrease profitability.

In SFY 2004-05, bank tax collections are forecast to total $545 million, representing an increase of $130 million or, 31.3 percent over SFY 2003-04. This forecast reflects a turnaround in liability, as financial profits are estimated to have grown by 13.1 percent and 6.0 percent for calendar years 2002 and 2003 respectively. In addition, financial profits are expected to grow by 13.1 percent in calendar year 2004. Therefore, this forecast reflects expected increases in current year liabilities, coupled with the expectation that much of the NOLs and bad-debts have been written off and will have less of a dampening effect on collections.

**Petroleum Business Tax**

Article 13-A of the Tax Law imposes a tax on petroleum business for the privilege of extracting, producing, refining, manufacturing or importing petroleum in New York State. Imposition of the petroleum business tax (PBT) occurs at different points in the distribution chain depending upon the type of petroleum product.

The Committee staff anticipates receipts of $1.048 billion for SFY 2003-04, representing a 2.4 percent growth over SFY 2002-03. Revenues from this tax are divided between various dedicated funds. Of the total expected in SFY 2003-04, $337 million will be deposited in the Dedicated Mass Transportation Trust Fund, and $139 million will be deposited into the Mass Transportation Operating Assistance Fund. The remaining $576 million is deposited into the Dedicated Highway and Bridge Trust Fund. The Committee estimate is $23 million above the Executive.

In State Fiscal Year 2004-05, total petroleum business tax collections are estimated to total $1.078 billion, a 3.0 percent increase from SFY 2003-04. Of the total expected in SFY 2004-05, $347 million will be deposited in the Dedicated Mass Transportation Trust Fund, and $139 million will be deposited into the Mass Transportation Operating Assistance Fund. The remaining $592 million is deposited into the Dedicated Highway and Bridge Trust Fund. The Committee estimate is $5 million above the Executive.

Petroleum business tax receipts are based on the volume of fuel imported or produced, refined, manufactured or compounded in the state. On January 1st of each year, the tax rates are indexed based on the producer price index for refined petroleum products published by the Bureau of Labor Statistics. Annual changes in petroleum business tax rates are statutorily limited to plus or minus five-percent. In 2003, petroleum business tax rates were increased by 5 percent. The Committee staff expects tax rates to increase by the maximum of 5 percent in 2004.

# OTHER TAXES

Collections in the Other tax category are expected to total $1.294 billion in SFY 2003-04, representing an increase of $104 million, or 8.7 percent over SFY 2002-03. This estimate is $19 million higher than the Executive's estimate. Much of that increase reflects more optimistic estimates of estate and gift and real estate transfer tax collections. In SFY 2004-05, other tax receipts are forecast to total $1.274 billion, a decrease of $20 million, or 1.5 percent. Other taxes include the estate tax, real estate transfer tax, pari-mutuel, and the real property gains tax (repealed in 1996).

**Table 13**

**OTHER TAX COLLECTIONS SFY 2003-04**
**(Dollar Amounts in Millions)**

| | 2002-03 Actual | 2003-04 Estimate | Change | Percent Growth | Diff. Exec. |
|---|---|---|---|---|---|
| **Other** | **1,190** | **1,294** | **104** | **8.7%** | **19** |
| Real Property Gains | 5 | 4 | (1) | -20.0% | (0) |
| Estate and Gift | 708 | 773 | 65 | 9.2% | 21 |
| Real Estate Transfer | 448 | 488 | 40 | 8.9% | (3) |
| Pari Mutuel | 29 | 28 | (1) | -3.4% | 1 |
| Other | 1 | 1 | 0 | 0.0% | 0 |

## Estate Tax

The New York estate tax is imposed by Article 26 of the Tax Law which is based on estate tax provisions of the Federal Internal Revenue Code. It is an excise tax levied upon the transfer of a person's property at his/her death on and after April 1, 1963.

The Committee staff estimates that SFY 2003-04 receipts will total $773 million, an increase of 9.2 percent. The increase is attributable to stronger than expected year to date collections and an expected increase in household net worth commensurate with recent increases in the bond and equity markets. The Committee staff estimate is $21 million higher than that of the Executive.

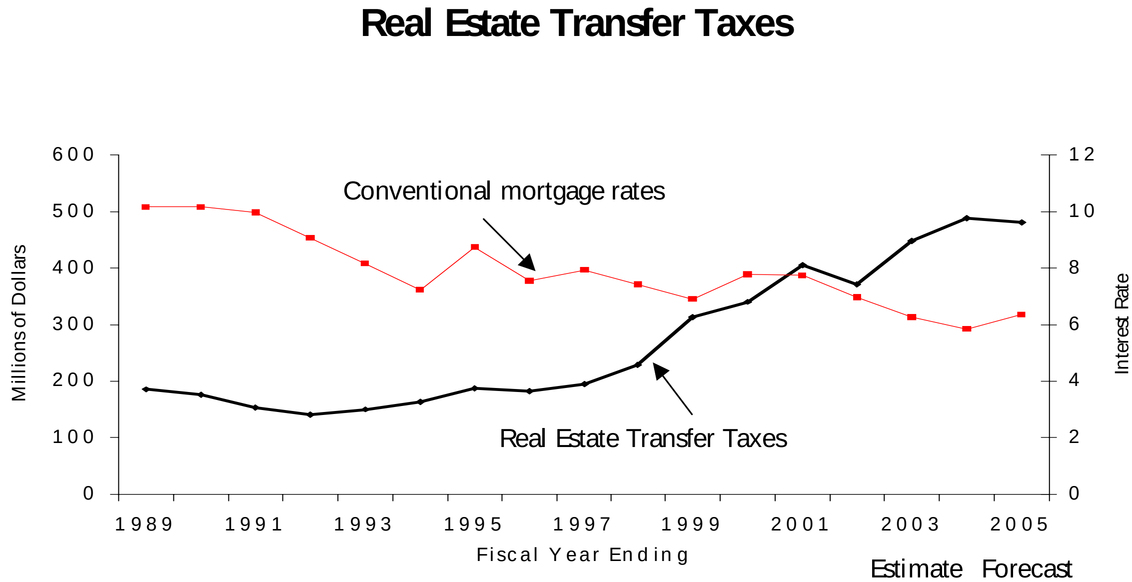
The Committee staff forecast for SFY 2004-05 is $760 million, which represents a decrease of 1.7 percent in overall estate tax receipts.

**Real Estate Transfer Tax**

Article 31 of the Tax Law levies a tax on real property transfers where the value of the interest in the property exceeds $500. The rate is $2 for each $500, or a fraction thereof, of net consideration. The tax also applies to transfers of economic interest such as shares in cooperatively owned apartments. An additional tax of one percent is levied on the transfer of one, two or three family residences where the consideration is over $1 million.

The Committee staff's estimate for total real estate transfer tax collections in SFY 2003-04 is $488 million, representing an increase of $40 million, or 8.9 percent from the prior fiscal year. This estimate is $3 million below the Executive's estimate. Each year $112 million of real estate transfer tax receipts is statutorily dedicated to the Environmental Protection Fund (EPF), while the remainder is dedicated to the Clean Water Bond Act. Revenues that are not needed to pay debt service on the Clean Water Bond Act are transferred back to the General Fund. The Committee staff estimates that $285 million will be transferred back to the General Fund in SFY 2003-04.

The strong growth in real estate transfer tax receipts in SFY 2003-04 is due to the continued rise in property values, especially in the New York City metropolitan area, and a robust residential housing market. Fueling the housing market in 2003 were historically low mortgage rates and a volatile stock market, both of which shifted investment away from equity markets to real estate. Real estate transfer tax receipts would have been even higher in SFY 2003-04 if it was not for commercial vacancy rates in Manhattan, which rose for ten consecutive quarters as of the third quarter of 2003. The Manhattan commercial market may be showing signs of recovery and therefore may pose less of a risk to SFY 2004-05 receipts. The vacancy rate in the third quarter of 2003 was an estimated 12.5 percent, which is approximately the same as the second quarter of 2003, even though it is still roughly 0.7 percentage points higher than the rate in the third quarter of 2002.




*Source: Department of Taxation and Finance, Ways and Means Staff, Global Insight*

**Figure 20**

Rising long term mortgage rate are expected to reduce future demand for residential real estate, placing downward pressure on real estate transfer taxes in SFY 2004-05. The Committee staff's forecast for SFY 2004-05 is $480 million, a decline of $8 million, or 1.6 percent from the prior fiscal year. This closeout is $19 million higher than the Executive's forecast. Of this total, the Committee staff forecasts $265 million will be transferred back to the General Fund.

**Table 14**

**OTHER TAX COLLECTIONS SFY 2004-05**
**(Dollar Amounts in Millions)**

| | 2003-04 Estimate | 2004-05 Forecast | Change | Percent Growth | Diff. Exec. |
|---|---|---|---|---|---|
| **Other** | **1,294** | **1,274** | **(20)** | **-1.5%** | **51** |
| Real Property Gains | 4 | 2 | (2) | -50.0% | (1) |
| Estate and Gift | 773 | 760 | (13) | -1.7% | 29 |
| Real Estate Transfer | 488 | 480 | (8) | -1.6% | 19 |
| Pari Mutuel | 28 | 31 | 3 | 10.7% | 3 |
| Other | 1 | 1 | 0 | 0 | 0 |

## MISCELLANEOUS RECEIPTS

The Committee staff estimates that total General Fund miscellaneous receipts will total $6.615 billion in SFY 2003-04. This estimate includes $4.2 billion in proceeds from Tobacco Securitization Bonds, $1.9 billion of which were previously scheduled to be issued in SFY 2002-03 and were pushed into SFY 2003-04 and an additional $2.3 billion that is expected in SFY 2003-04. In addition, this estimate includes $645 million in Federal funds intended to provide state fiscal relief. Absent these transactions, total miscellaneous receipts were expected to total $1.770 billion, a decrease of $321 million from SFY 2002-03 collections.

Year-to-date collections total $6.124 billion, including $4.2 billion from the initial issuance of Tobacco Securitization Bonds and $645 million in Federal grants. Provisions in the 2003 Enacted Budget relating to unclaimed State checks, which is expected to generate $38 million.

The Committee staff forecast for SFY 2004-05 is $2.110 billion, a decline of $4.505 billion from the prior fiscal year. The decline in receipts is due primarily to the absence of Tobacco Bond proceeds and Federal fiscal relief that boosted receipts by $4.845 billion in SFY 2003-04. The Executive is proposing new fees, fines and assessments totaling $126 million in the upcoming year.

**Table 15**

| GENERAL FUND MISCELLANEOUS RECEIPTS<br>SFY 2003-04 AND 2004-05<br>(Dollar Amounts in Millions) | | | | | |
|---|---|---|---|---|---|
| Category | 2002-03 Actual | 2003-04 Estimate | Change | 2004-05 Forecast | Change |
| Licenses, Fees, Etc. | $519 | $546 | $27 | $772 | $227 |
| Federal Grants | 6 | 7 | 1 | 5 | (2) |
| Abandoned Property | 767 | 551 | (217) | 547 | (4) |
| Reimbursements | 143 | 146 | 4 | 161 | 15 |
| Investment Income | 23 | 15 | (8) | 33 | 18 |
| Other Transactions: | 633 | 466 | (167) | 592 | 126 |
| **Miscellaneous Receipts** | **2,090** | **1,731** | **(359)** | **2,110** | **379** |
| Federal Grants | | 645 | 645 | | (645) |
| Tobacco Securitization | | 4,200 | 4,200 | | (4,200) |
| **Total Miscellaneous Receipts** | **$2,090** | **$6,576** | **$4,486** | **$2,110** | **($4,466)** |

### Securitization of Tobacco Settlement Payments

The Enacted Budget contained authorization for the State to securitize revenues from the 1998 Master Settlement Agreement, which is an agreement between tobacco companies and 46 States, the District of Columbia and five U.S. territories. The remaining four states (Florida, Minnesota, Mississippi and Texas) had settled in earlier agreements.

The State's share of revenues from the tobacco companies has been securitized through the issuance of bonds from the Tobacco Settlement Financing Corporation, a new subsidiary of the Municipal Bond Bank Agency. The Corporation will issue bonds amounting to $4.2 billion to reimburse the State's General Fund for any of the following purposes: any capital purpose or programs; payment of debt service for any of the State's obligations; grants to local governments, school districts or public benefit corporations; or as a revenue source for other State expenditures. In June, the State issued $2.2 billion worth of tobacco bonds, and an additional $2.0 billion was issued in December.

### Lottery

The Committee staff expects State Fiscal Year 2003-04 lottery revenues to total $1.895 billion, which includes $15 million dollars from the Video Lottery Terminals (VLTs) at Saratoga, Buffalo, and Finger Lakes racetracks. Since the current Lottery Aid Guarantee is set at $1.835 billion, there is a predicted $59.5 million carryover into next year's fund. The Executive SFY 2003-04 closeout of $1.869 billion, includes zero revenue from VLTs and lists a carryover of $33.6 million. Excluding revenue transfers, the Committee staff estimates that lottery revenues grew by 6.0 percent in SFY 2003-04 over SFY 2002-03.

As of January 2004, year to date lottery receipts have increased by $59 million, or 4.7 percent. Much of this increase is due to Texas joining Mega Millions in December of 2003, and this state fiscal year being the game's first full year of implementation. Excluding Mega Millions, lottery revenues have increased by 4.0 percent through January 2004. Instant Game and Quick Draw receipts have experienced very healthy growth through January 2004, growing by 13.8 percent and 5.4 percent respectively.

The Committee staff estimates that the Lottery will collect $2.211 billion for education in SFY 2004-05, representing an increase of $376 million, or 20.5 percent over SFY 2003-04. This includes approximately $232 million in VLT revenues as well as a $59.5 million carry-in from SFY 03-04.

Included in the Executive Budget are provisions that would allow the Lottery to continue the Quick Draw game indefinitely; the current authorization is set to expire on May 31, 2004. The Executive proposed permanent authorization instead of another temporary authorization based on the claim that the possibility of the game expiring has decreased retailers' interest in procuring Quick Draw for their establishments. In addition, the Executive submitted legislation that would remove restrictions related to Quick Draw. The current restrictions require that in order for a bar or tavern to operate Quick Draw, 25 percent of gross receipts must come from the sale of food. If a commercial establishment does not offer alcohol for on-premises consumption, current law requires that the establishment must be at least 2,500 square feet in size. The Executive budget proposes to eliminate these restrictions and restrictions that limit the total daily and consecutive number of operation hours permitted.

***Video Lottery Terminals (VLTs)***

Legislation enacted in 2001 authorized the Division of Lottery to license eight race tracks to operate video lottery terminals (VLT's). The eight tracks authorized to operate VLTs vary considerably in the number of VLTs and their respective opening dates. For instance, VLT's debuted in New York State at Saratoga Gaming and Racetrack in January 2004, whereas Aqueduct is tentatively expected to open their VLT facility in October of 2005. The table below lists the authorized horse tracks, the estimated number of VLTs at each facility and tentative opening dates.

### Table 16

| Authorized VLT Gaming Facilties and Approximate Opening Dates | | |
|---|---|---|
| **Racetrack** | **Number of VLT's** | **Tentative Opening Date** |
| Saratoga | 1,324 | January 28, 2004 (actual) |
| Finger Lakes | 1,010 | February 18, 2004(actual) |
| Buffalo | 989 | April 1, 2004 |
| Monticello | 1,778 | July 1, 2004 |
| Batavia | 750 | September 1, 2004 |
| Vernon Downs | 1,081 | April 1, 2005 |
| Yonkers | 2,500 | May 1, 2005 |
| Aqueduct | 4,500 | October 1, 2005 |
| **Total** | **13,923** | |

The enabling legislation requires that at least 90 percent of VLT wagers are awarded in prizes. All currently authorized VLT facilities will likely pay above the statutory minimum, approximately 92 percent of wagers. The net revenues, wagers less prizes, are distributed as follows: education receives 61 percent; 10 percent is set aside for administrative costs; and the remaining 29 percent is split amongst the track, track purses and the track-appropriate breeders association. The distribution of the 29 percent share among the tracks, breeders and purse enhancements will change over time. The following table illustrates the schedule for sharing of net revenue.

### Table 17

| Distribution of Net VLT Gaming Revenues | | | | | |
|---|---|---|---|---|---|
| **Disbursement of Net Revenues** | **Education** | **Administration** | **Track Retains** | **Purse Enhancement** | **Breeders Fund** |
| Years 1-3 | 61% | 10% | 20.24% | 7.51% | 1.25% |
| Years 4-5 | 61% | 10% | 20.01% | 7.74% | 1.25% |
| Years 6+ | 61% | 10% | 17.48% | 10.01% | 1.51% |

The Executive forecasts VLT revenues of $240 million in SFY 2004-05, growing to $1.371 billion in SFY 2009-10.

Article VII Proposal

Included in the Executive Budget is legislation to expand the Video Lottery Terminal Program. The proposal would authorize the Lottery Division to license eight new VLT facilities, with no requirement that the facilities be race tracks. The proposal contains provisions preventing new VLT facilities from locating within 15-miles of existing video lottery terminal facilities. The maximum number of VLT facilities that could be placed in the City of New York is five. Within the City of New York, VLT facilities would only be permitted south of 59th Street in Manhattan and in Richmond and Kings Counties.

The proposed VLT facilities would be required to pay at least 90 percent of sales in prizes. The remaining 10 percent would be split among education, the host facility, and an administrative set-aside. The proposed facilities would yield at least 70 percent of net revenues to education. The administrative allowance would be 10 percent of net revenues, and a maximum of 20 percent of net revenues would be retained by the host facility.

The Executive estimates revenues that the new proposal would generate and additional $673 million in revenues for education when fully implemented.

# ECONOMY AND RECEIPTS

## Economic Outlook

While the national recession that began in March 2001 was relatively short lived, with GDP declining for three consecutive quarters, the employment recession that followed has only recently reversed course. When employment is measured from peak to trough, the employment recession lasted 10 straight quarters. The loss of approximately 2.6 million jobs since the start of the recession is the largest since World War II. The disparate growth rates in GDP and employment indicate a disconnect between output growth and employment growth, more commonly referred to as the "jobless recovery".

The State is certainly not immune to the economic misfortunes of the nation. In fact, the State economy is very responsive to both upturns and downturns in the national economy. This will certainly have an impact on the State's overall revenue performance. For example, revenue collections far exceeded projections during the latest expansion and fell further than expected during the recession.

This section will discuss the economic outlook and basis for the revenue forecast as well as discuss the stability and responsiveness of receipts to the economy.

## Gross Domestic Product

A dramatic acceleration in the rate of GDP growth occurred in 2003. After experiencing slow to moderate growth of 2.0 percent in the first quarter of the year, growth accelerated to 8.2 percent in the third quarter followed by a more moderate 4.0 percent growth in the fourth quarter. According to the Bureau of Economic Analysis, personal consumption expenditures, exports, equipment and software, inventory investment, and residential fixed investment were the main drivers of growth during the fourth quarter of 2003.

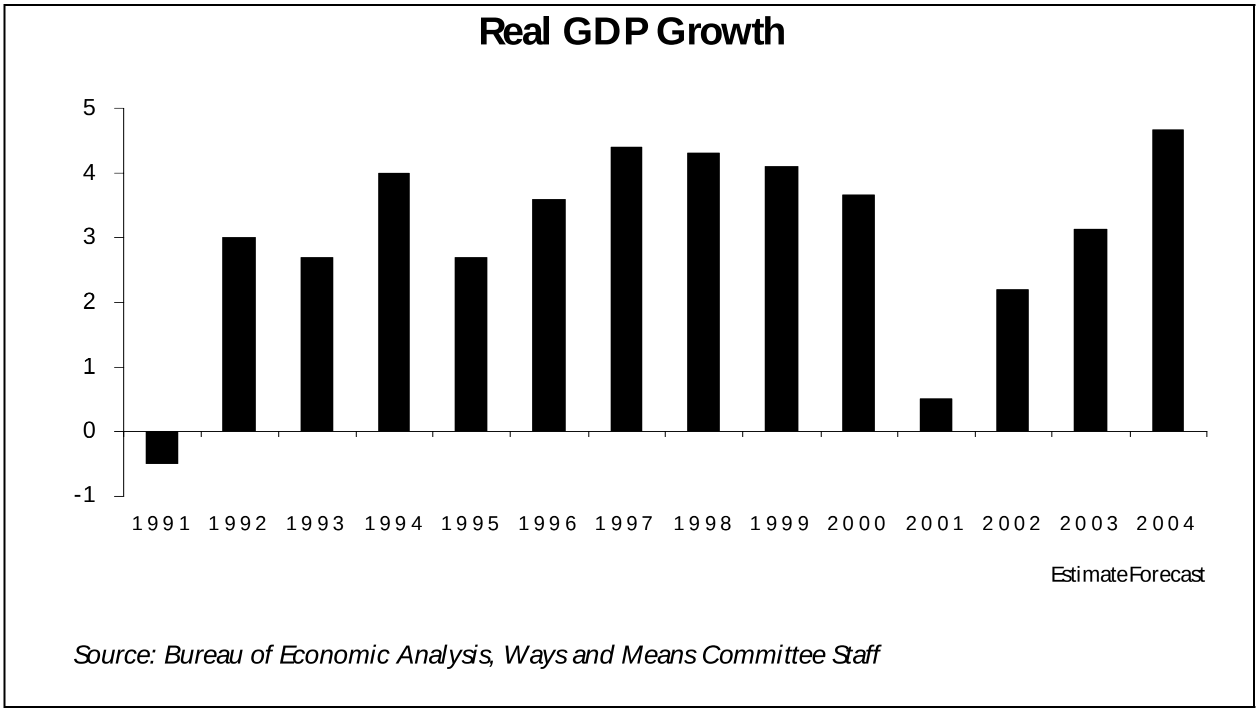



**Figure 21**

The Committee staff estimates that GDP finished 2003 with growth of 3.1 percent. In 2004, the Committee staff estimates that growth in GDP will be 4.7 percent because New York is home to many multi-jurisdictional and global businesses, a substantial national recovery should improve the State's revenue productivity.

## Employment

The nation's manufacturing sector has been the hardest hit by the recession, losing 15.0 percent of its total U.S. employment between the first quarter 2001 and the third quarter of 2003. This trend is expected to continue into the foreseeable future, though at a more moderate pace than previously experienced.

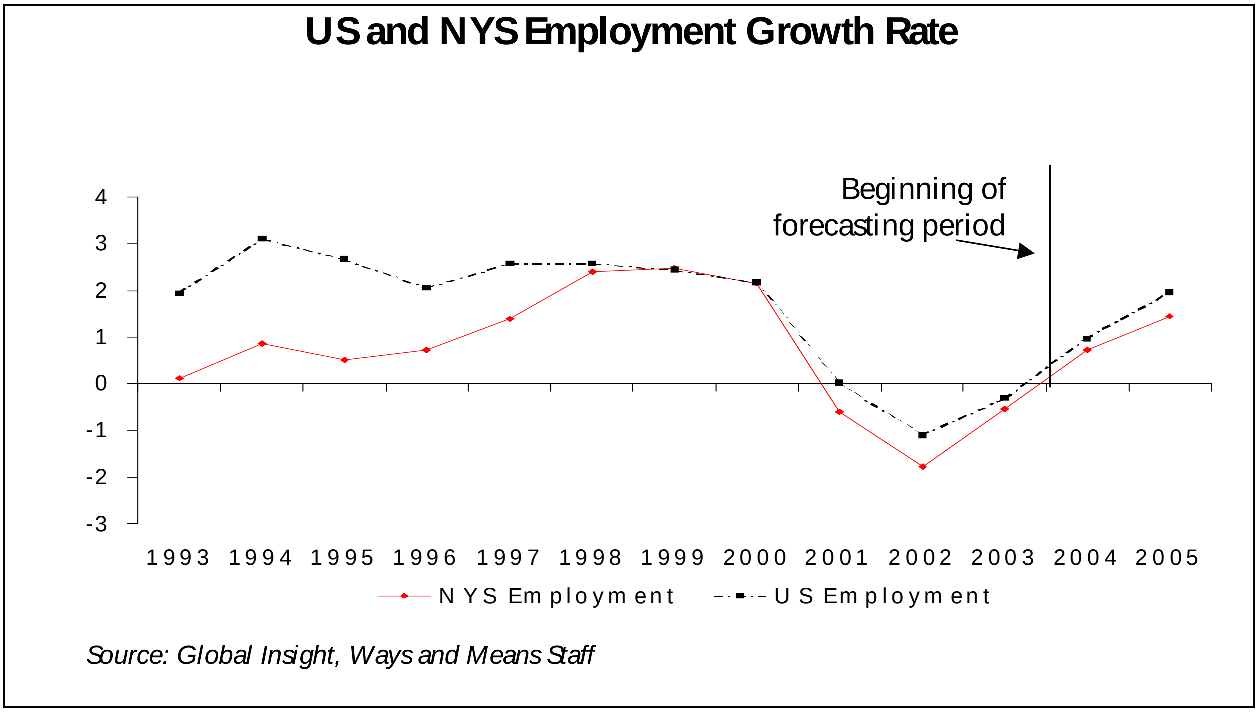



**Figure 22**

The Committee staff estimates that national employment declines will finally begin to reverse in 2004, with projected growth of 1.0 percent in 2004, improving to 2.0 percent in 2005.

New York State continues to lag the national average in terms of employment growth. New York State lost 148,800 jobs in 2002, a decline of 1.8 percent and is expected to have lost another 44,800 jobs, or 0.5 percent, in 2003. Employment growth is finally projected to turnaround in 2004 and 2005 with growth of 0.7 percent and 1.4 percent respectively. However, the weak employment turn around has dampened growth in receipts.

**Personal Income**

Personal income is comprised of wages, salaries and other labor income, proprietors' income, rental income, interest and dividends, and transfer income.

Following anemic growth over the last two fiscal years, personal income in New York is expected to grow by 4.2 percent in SFY 2003-04, followed by 5.1 growth in SFY 2004-05.

### *Wages*

Wages and salaries income is the largest component of New York personal income. It accounts for almost 57 percent of personal income as of SFY 2002-03. Following six consecutive quarterly declines, wage growth turned positive during the second quarter of 2003 over the same quarter a year ago. Wage growth is expected to have accelerated towards the end of 2003 and is forecast to maintain a robust pace through 2004. The Ways and Means Committee staff expects wages to grow by 3.6 percent in SFY 2003-04, followed by 4.7 percent growth in SFY 2004-05.

### *Variable Compensation*

As documented in the Ways and Means Committee's *Economic Report*, while variable compensation accounts for a small fraction of total wages -- 8.6 percent as of SFY 2003-04 - - its volatility and close relationship to the condition of financial sector contribute to its significant role in predicting overall wage trends. In addition, because variable compensation is usually earned by high-income taxpayers, it has a particular importance in understanding collection trends in the PIT.

The securities industry variable compensation averaged nearly half of total New York State variable compensation in 2000 and 2001. Following double-digit quarterly declines in late 2002 and early 2003, variable compensation is expected to have registered strong growth during the fourth quarter of 2003 and the first quarter of 2004 due to rising industry profits.

The Ways and Means Committee staff expects total variable compensation growth of 18.1 percent in SFY 2003-04, followed by 8.5 percent growth in SFY 2004-05. Securities industry variable compensation is expected to grow by 24.7 percent in SFY 2003-04, followed by 10.2 percent growth in SFY 2004-05.

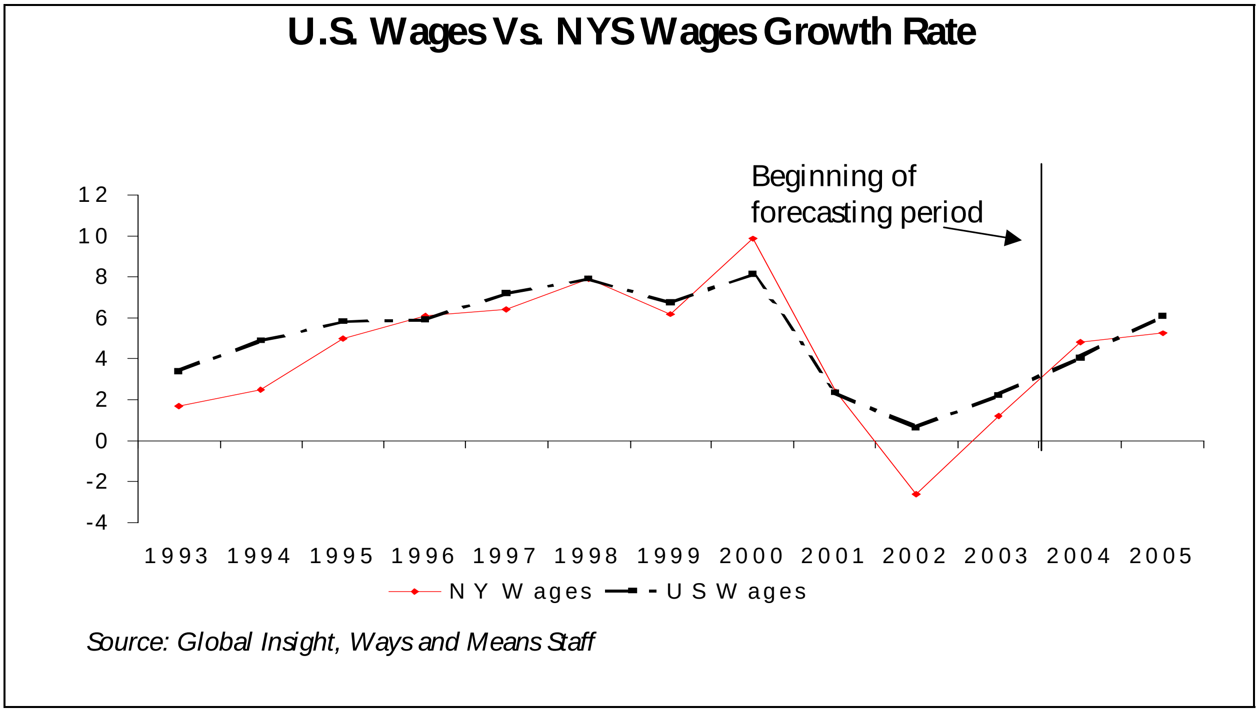



**Figure 23**

### *Tax Receipts as a Share of Personal Income*

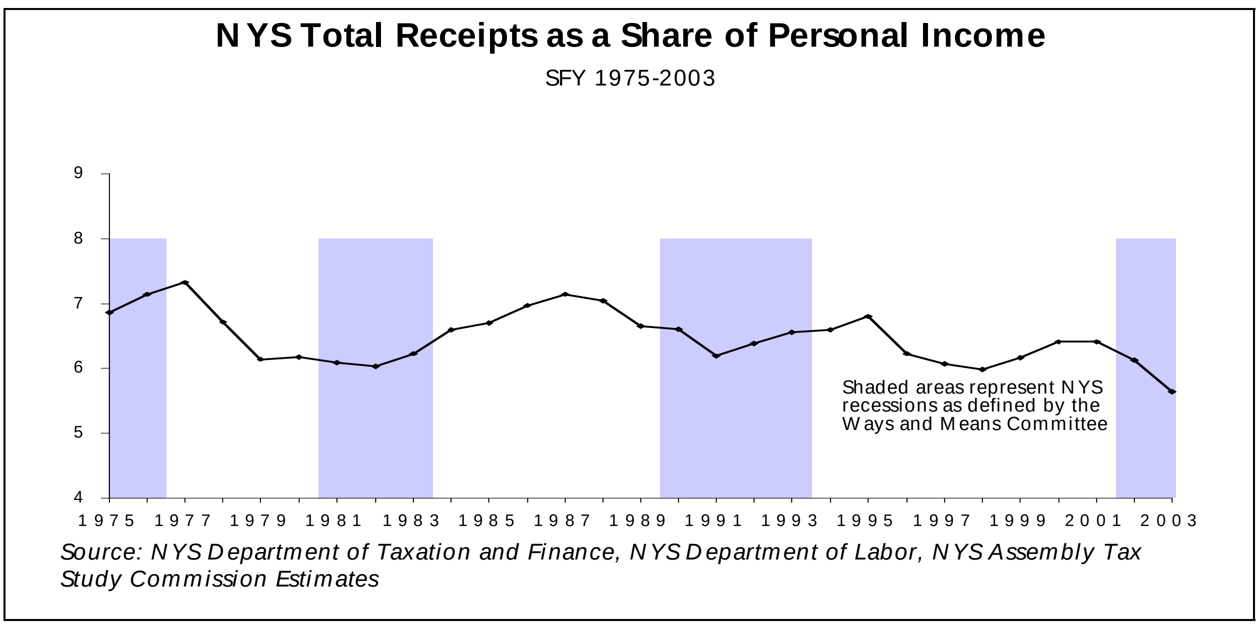



**Figure 24**

Figure 24 shows that total receipts reached 7.3 percent of personal income in SFY 1976-77, 0.8 percentage points higher than the 6.5 percent average share for the period 1975 through 2003. Since then, the share of total receipts to personal income has been fluctuating around 6.5 percent, with peaks in the mid-1980s and 1990s, reaching a minimum of 5.6 percent in SFY 2002-03.

Figure 25 shows that sales tax receipts and business tax receipts have been slowly declining as a share of personal income. These declines are consistent with trends in other states and are the result of increases in exemptions and the narrowing of the sales tax base, as well as tax rate reductions and State tax planning. For example, while sales tax receipts accounted for almost 2.0 percent of personal income in SFY 1974-75, their share had declined to 1.3 percent by SFY 2002-03. PIT's share of personal income reached 3.3 percent in SFY 1997-98, the lowest since SFY 1979-80, following a trend of consistent declines. Despite the tax cuts implemented in the late 1990s, the booming national economy led to an increasing share of PIT receipts to personal income. As expected, the growth rate in PIT receipts far exceeded that of personal income, confirming the relatively high responsiveness of PIT receipts to changes in personal income (where wages are the largest component). (See Figure 26.)

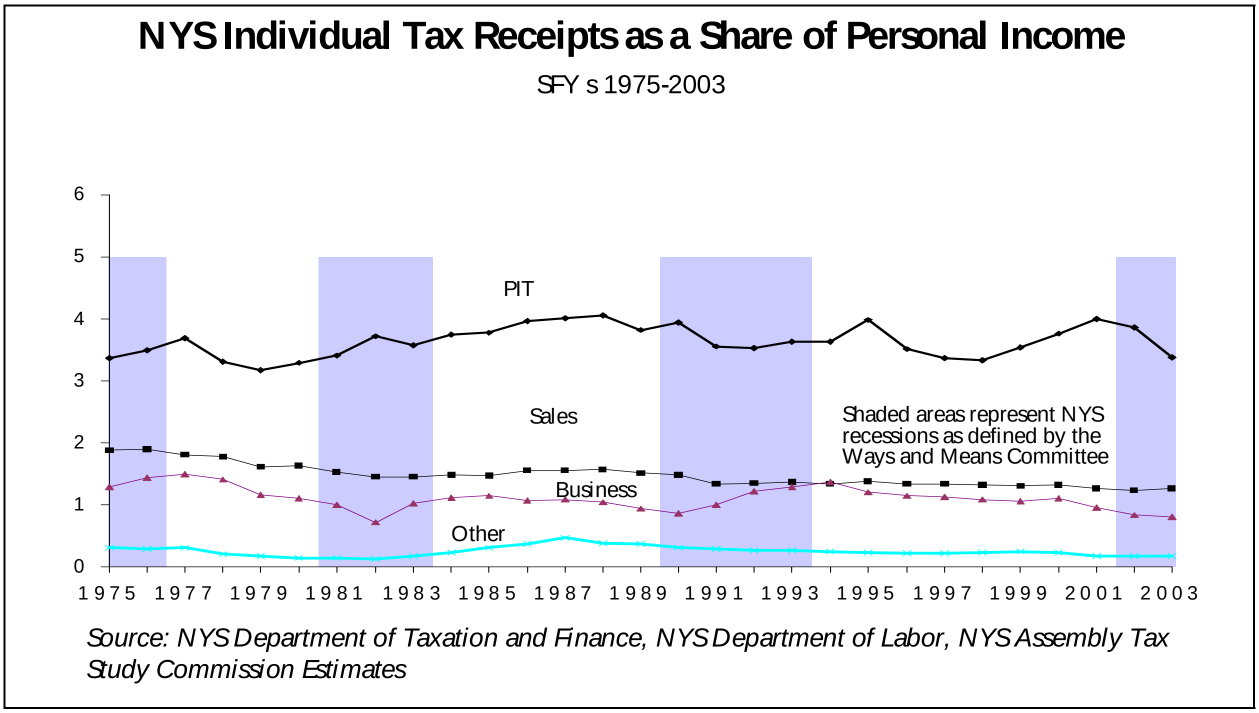
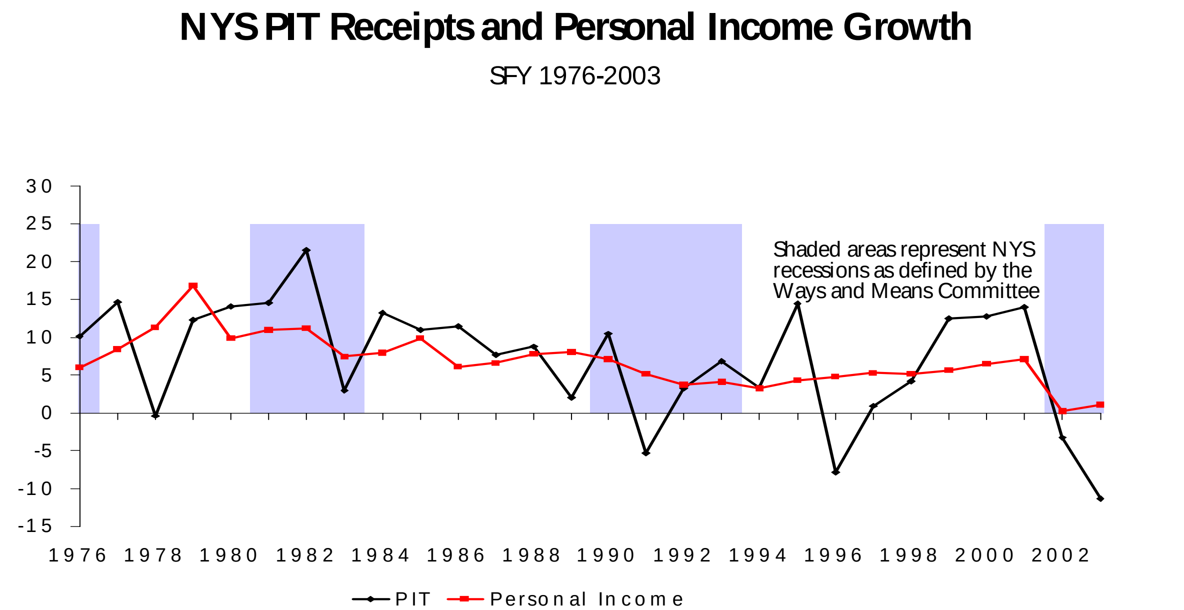



**Figure 25**



*Source: NYS Department of Taxation and Finance, NYS Department of Labor, NYS Assembly Tax Study Commission Estimates*

**Figure 26**

### Tax Receipts and the Economy

A state's ability to maintain an adequate tax receipts stream during different phases of the business cycle is dependent upon the specific tax instruments utilized. There is a close relationship between a state's tax structure, receipts variability, and overall fiscal health. Knowledge of a tax structure's sensitivity to the business cycle can enhance the ability for long-term financial planning.

In this section, we present information regarding the State's tax receipts variability and responsiveness to the business cycle. We first examine variability based on standard statistical tools. We then estimate long-term elasticities between receipts growth and changes in appropriate macroeconomic indicators for New York. In addition, we present an analysis of the State's actual PIT receipts trend versus a measure of the long-term underlying trend of PIT receipts.

### Revenue Variability

To pursue the analysis of receipts' variability, we divided the data into four time periods: 1975 to the present, 1987 to the present, 1992 to the present, and 1997 to the present. Adjusting the series for tax law changes, we calculated the variability of the various tax sources. Variability is measured by the *coefficient of* *variation* (the ratio of the standard deviation over the mean) of the relevant series growth rates.

The sales tax, together with withholding receipts, exhibit the least variability when considering the average of all recessions and expansions. In contrast, the PIT and business taxes exhibit a much larger variation. Similar patterns are seen when one examines the individual time period estimates. The high variability seen in the estimated payments component is better understood if one considers their dependence on volatile components of income, such as capital gains from real estate and the stock market.

**Table 18**

| Receipts Variability | | | | | |
|---|---|---|---|---|---|
| | | Coefficients of variation | | | |
| | PIT | Withholding | Estimated Payments | Sales | Business |
| All NYS Expansions | 1.19 | 0.54 | 1.36 | 0.71 | 3.27 |
| All NYS Recessions | 3.33 | 1.49 | 3.95 | 2.04 | 3.42 |
| 1975-03 | 1.55 | 0.76 | 3.34 | 1.00 | 4.01 |
| 1987-03 | 2.33 | 1.09 | 3.87 | 1.29 | 3.81 |
| 1992-03 | 2.16 | 1.01 | 3.65 | 0.89 | 10.40 |
| 1997-03 | 2.12 | 1.32 | 4.09 | 0.88 | 16.54 |

*Source: Ways and Means Committee Staff*

In order to relate the variability found in taxes alone with the economy, we investigate the responsiveness of taxes to economic factors, mainly personal income tax and wages.

## Revenue Elasticity to Changes in the Economy

As mentioned earlier, the responsiveness of tax receipts to changes in the economy is crucial in the design of an optimal tax structure. Therefore, we constructed estimates of the responsiveness, or elasticity, of tax receipts to changes in macroeconomic variables. The following summarizes our main findings.

**Table 19**

**Estimates of Tax Receipts Responsiveness to the Economy**

Elasticity Estimates

| | Receipts Responsiveness to Personal Income | | Receipts Responsiveness to Wages |
|---|---|---|---|
| | PIT | Sales | Withholding |
| All NYS Expansions | 1.26 | 0.89 | 1.08 |
| All NYS Recessions | 0.67 | 0.74 | 1.15 |
| 1975-03 | 1.11 | 0.85 | 1.09 |
| 1987-03 | 1.02 | 0.87 | 1.13 |
| 1992-03 | 1.13 | 1.00 | 1.33 |
| 1997-03 | 1.27 | 1.08 | 1.24 |

*Source: Ways and Means Committee Staff*

1) a 10 percent increase in personal income for New York leads to a 12.6 percent increase in PIT receipts during an expansion, compared to a 6.7 percent increase during a recession;
2) a 10 percent increase in personal income for New York leads to an 8.9 percent increase in Sales Tax receipts during an expansion, compared to a 7.4 percent increase during a recession; and
3) withholding receipts have become more responsive to wages growth since the early 1990s.

Clearly, receipts behave differently during different phases of the business cycle. Personal Income Tax receipts exhibit a strong responsiveness to changes in income during expansionary periods in the economy and fall even more dramatically during a recession. Sales tax receipts do not exhibit such a degree of sensitivity. The estimated elasticities for sales tax receipts during an expansion and a recession are much closer.

### Potential versus Actual Receipts

Throughout the nation, deteriorating state and local finances have prompted a number of researchers to investigate the reasons behind the state's deficits. Most researchers agree on the following reasons behind the present fiscal difficulties:

1) business cycle and financial market developments have impeded the ability of states, especially those that depend on the personal income tax, to raise revenue;

2) a series of tax reductions in the second half of the 1990s have further reduced the ability of states to raise revenues; and,
3) economic and demographic changes that have led to significant increases in spending.

A comprehensive analysis of New York's deficit will need to examine the behavior of both tax receipts and outlays. Researchers usually try to decompose the fiscal deficit into a component attributed to the business cycle, a capital gains component, and a "residual" that is usually attributed to state policy actions. The latter is considered a rough indicator of the state's underlying budgetary stance (for example, tax cuts, changes in provisions of spending programs, increases in health costs, etc.).

In this section we focus on understanding how to investigate the component that is attributed to the business cycle, or the cyclical component. The methodology followed borrows from the high-employment budget framework developed by Kusko and Rubin.[6] In this study they utilize the concept of potential GDP, or the level of GDP assuming that the economy operates at its full-employment level, as developed by the Congressional Budget Office (CBO).

We focus on the estimation of potential personal income tax (PIT) receipts. We estimate the level of PIT receipts assuming that the NYS economy operates at its potential level, therefore there is no difference between the actual and potential Gross State Product (GSP)[7]. Having generated a potential PIT series, we can then compare it with actual receipts over time and investigate the current gap versus that of other recessionary periods.

Figure 27 displays the discrepancy between potential and actual PIT receipts and personal income. It is clear that the business cycle has a fundamental impact on PIT receipts above that on personal income. During an expansion or recession, the discrepancy between actual and potential PIT receipts exceeds that of income, as PIT receipts are highly responsive to changes in personal income.

In addition, one notices that the difference between actual and potential receipts during the current recession far exceeded those of the early 1980s and 1990s. Similarly, the expansion of the late 1990s witnessed an unprecedented increase in actual personal income receipts over potential PIT receipts, as documented in other sections of this revenue report.

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6 "Measuring the Aggregate High-Employment Budget for State and Local Governments", Andrea L. Kusko & Laura S. Rubin, National Tax Journal, Vol. 46, No. 4, December 1993.
7 The Term potential receipts, related to the concept of potential GSP, refers to the estimated long-term trend in the series.

For SFY 2003-04 we are still projecting that actual receipts will lag behind potential receipts while by SFY 2004-05 actual receipts will exceed potential for the first time since SFY 2000-01.

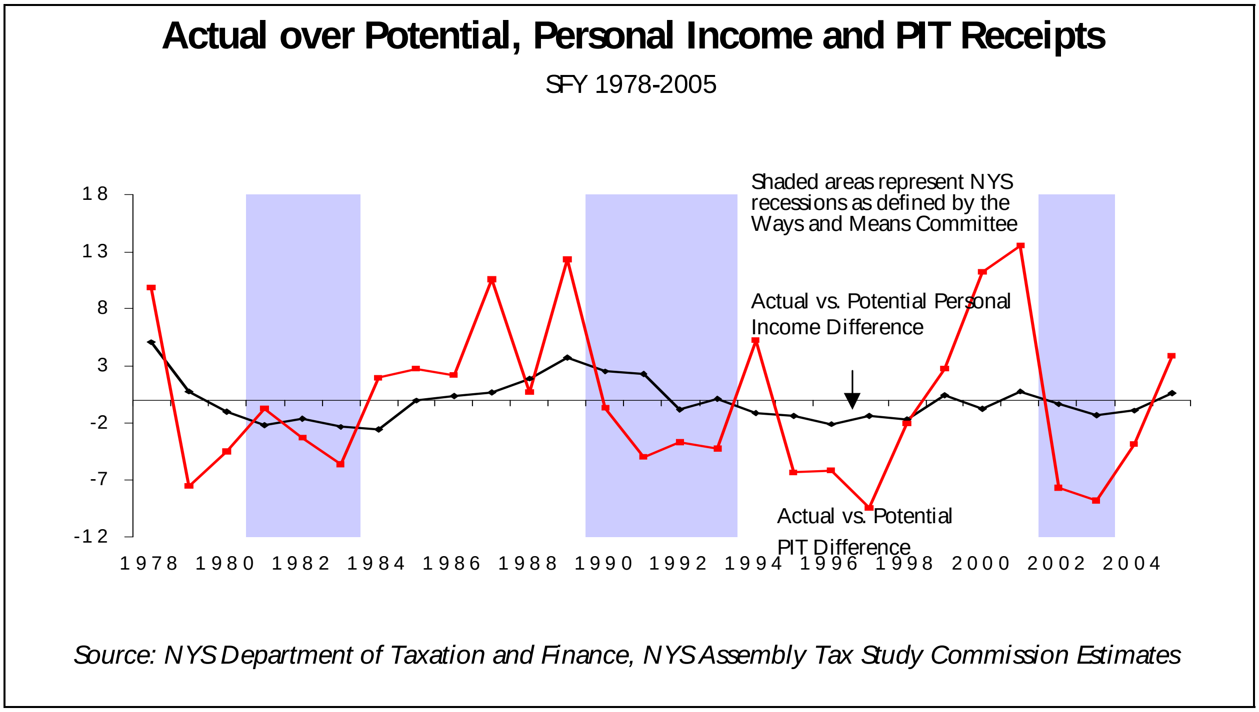



**Figure 27**

## Risks to The Forecast

As noted earlier in the report, much of the year-to-date growth in tax receipts is due to the revenue enhancement measures taken in the Enacted Budget rather than growth in the underlying economic variables that drive revenues. Since releasing its economic forecast in March, the Committee staff has since lowered its estimate of a few key State and national economic variables. Much of the underlying weakness in revenue collections to date is, therefore, reflective of a slower turnaround in the economy than had originally been anticipated. It is also likely that some of the weakness in receipts is the result of administrative actions necessary to implement the revenue enhancement measures.

### *Downside Risk*

The Committee staff estimates that growth in New York State employment is finally expected to turn positive by the first quarter of 2004. Wages, especially in the form of variable compensation, are expected to gain strength in the last quarter of 2003, and rise sharply in the first quarter of 2004. However, if these economic expectations are not met, the revenue outlook could be significantly diminished from current estimates.

Another downside risk concerns the timing and accuracy of the estimates associated with some of the revenue enhancement measures in the Enacted Budget. An earlier section of the report describes staff re-estimates of certain provisions, in addition to other provisions for which the current estimates that may be at risk. For example, the original estimates associated with enforcement of certain taxes on Indian reservations are no longer being reflected in the current Committee staff estimates, and the estimates associated with Video Lottery Terminals have been significantly reduced. It is also possible that businesses affected by the disallowance of certain intercompany transactions will not come through with the necessary payments until they are audited.

In addition to the accuracy of the estimates, the timing of the receipts associated with the temporary personal income tax rate increase for high-income taxpayers is vulnerable because of the necessary changes in the withholding tables that must occur to ensure an accurate reflection of increased tax liability. Revenues that result from this increased 2003 tax liability may or may not be collected in April. This causes additional uncertainty in revenue collections for SFY 2004-05.

***Upside Risk***

Recent economic reports are beginning to show signs that the economic recovery has finally taken hold and that new jobs are being created. In fact, the pace of the economic recovery in terms of Gross Domestic Product (GDP) appears to be greater than had been previously expected. Continuation of this trend could translate into higher levels of employment, wages and corporate profits, which would mean a higher level of tax receipts.

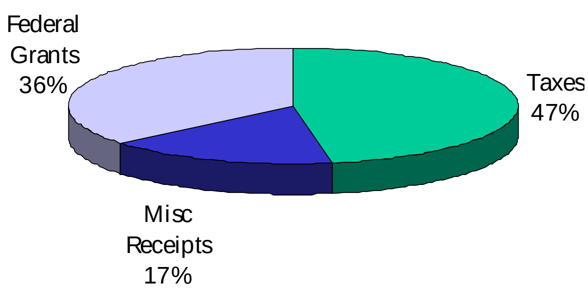
Furthermore, according to the Securities Industry Association, the profitability in the securities industry is expected to have reached record levels in 2003. The extent to which these profits translate into higher year-end bonuses will be a determining factor in whether revenues meet or exceed projections in the current and upcoming fiscal year.

# FUND ANALYSIS AND DEDICATED RECEIPTS

New York State accounts for its tax and fee revenue in four major fund types -- the General Fund, Special Revenue Fund, Debt Service Fund, and the Capital Project Fund. All Governmental Funds revenues are also segregated into three main categories, taxes, fees and Federal revenues. Taxes account for 47 percent of all revenues, miscellaneous receipts account for 17 percent, and 36 percent come from Federal revenue.

**Sources of Governmental Funds**

(State Fiscal Year 2004-05)




| | ($ Millions) |
|---|---|
| Total Taxes | 47,240 |
| Miscellaneous Receipts | 16,666 |
| Federal Grants | 36,265 |
| **Total** | **$100,171** |

*Source: Ways and Means Committee Staff*

**Figure 28**

The General Fund is the fund into which most State taxes are deposited and from which State Operations and the State share of local grants are disbursed. The General Fund provides for funding to programs that are not supported by dedicated fees and revenues.

Significant amounts of All Governmental Funds revenue collections are dedicated to a particular program or purpose. For example, a substantial amount of State Funds, far more than is necessary to pay debt service, are statutorily restricted to debt service in order to reduce the cost of borrowing. Funds greater than those needed to pay debt service are transferred to other funds, largely to the General Fund. In addition to funds set aside for debt service, money received from the Federal Government, for the most part, has limited spending flexibility.

Programs that are supported by dedicated fees and revenues are funded from Special Revenue Funds. These funds are used to insure that monies are used solely for the purpose for which they are raised, or to insure that individual programs are self-supporting. Examples of such dedicated funding streams include the Environmental Protection Fund and the Dedicated Highway and Bridge Trust Fund. When these funds and non-federal capital and debt service funds are combined with the General Fund, the total is known as State Funds.

Special Revenue Funds also contain Federal Funds. State Funds plus federal funds combine to produce an All Governmental Funds figure. The All Governmental Funds amount is the figure that is usually reported as the State Budget total.

Certain spending of public authorities and Health Care Reform Act (HCRA) funds are supported by State receipts but are not included in the State's All Governmental Funds.

**Table 20**

**ALL GOVERNMENTAL FUNDS**
**SFY 2003-04**
**(Dollar Amounts in Millions)**

| | General Fund | Special Revenue | Capital Projects | Debt Service | All Funds |
|---|---|---|---|---|---|
| Personal Income Tax | 15,722 | 2,835 | | 5,433 | 23,990 |
| User Taxes | 7,960 | 601 | 1,091 | 2,253 | 11,905 |
| Business Taxes | 3,368 | 1,002 | 569 | | 4,939 |
| Other | 806 | | 112 | 376 | 1,294 |
| Taxes | 27,856 | 4,438 | 1,772 | 8,062 | 42,128 |
| Miscellaneous Receipts | 5,930 | 10,396 | 2,690 | 694 | 19,710 |
| Federal Grants | 645 | 34,921 | 1,621 | | 37,187 |
| **Total** | **$34,431** | **$49,755** | **$6,083** | **$8,756** | **$99,025** |

Tables 20 and 21 list All Governmental Funds receipts by fund type. Of note is the fact that Special Revenues, including Federal grants comprise over 50 percent of all Governmental Funds receipts.

**Table 21**

| ALL GOVERNMENTAL FUNDS<br>SFY 2004-05<br>(Dollar Amounts in Millions) | General Fund | Special Revenue | Capital Projects | Debt Service | All Funds |
|---|---|---|---|---|---|
| Personal Income Tax | 18,797 | 2,998 | | 6,035 | 27,829 |
| User Taxes | 8,446 | 697 | 1,087 | 2,390 | 12,620 |
| Business Taxes | 3,805 | 1,101 | 610 | | 5,516 |
| Other | 794 | | 112 | 368 | 1,274 |
| Taxes | 31,842 | 4,796 | 1,809 | 8,793 | 47,239 |
| Miscellaneous Receipts | 2,110 | 11,478 | 2,431 | 647 | 16,666 |
| Federal Grants | | 34,425 | 1,840 | | 36,265 |
| **Total** | **$33,952** | **$50,699** | **$6,080** | **$9,440** | **$100,170** |

## General Fund Receipts

Special attention is given to the General Fund, since it is used to pay for most of the State's operations and local assistance. General Fund Receipts include all tax collections and Miscellaneous Receipts not dedicated to other funds, as well as transfers from other funds. The Committee staff also estimates Lottery receipts, since proceeds from the Lottery are dedicated to fund education.

### SFY 2003-04

The Committee staff estimates that General Fund Receipts and Lottery will total $43.102 billion in SFY 2003-04, an increase of $4.880 billion, or 12.4 percent, over SFY 2002-03. This estimate is $9 million above the Executive's estimate. General Fund Receipts are boosted by approximately $4.2 billion in Tobacco Securitization proceeds and $645 million in one-time federal grants in the current fiscal year.

Tax collections deposited into the General Fund are estimated to total $27.856 billion in SFY 2003-04, representing a decrease of 0.4 percent from SFY 2002-03. Through January 2004, General Fund tax collections have declined by $340 million, or 1.4 percent from the same period in SFY 2002-03. Much of this is the result of a full-year dedication of a portion of personal income tax receipts to the Revenue Bond Tax Fund this fiscal year and smaller level of funds received from the Refund Reserve.

**Table 22**

| SUMMARY OF GENERAL FUND ESTIMATES (Dollar Amounts in Millions) | 2002-03 Actual | 2003-04 Estimate | Percent Growth | 2004-05 Forecast | Percent Growth |
|---|---|---|---|---|---|
| Personal Income Tax | $16,791 | $15,722 | -6.4% | $18,797 | 19.6% |
| User Taxes | 7,063 | 7,960 | 12.7% | 8,446 | 6.1% |
| Business Taxes | 3,380 | 3,368 | -0.4% | 3,805 | 13.0% |
| Other | 743 | 806 | 8.5% | 794 | -1.5% |
| General Fund Taxes | 27,977 | 27,856 | -0.4% | 31,842 | 14.3% |
| Miscellaneous Receipts | 2,090 | 6,615 | 216.5% | 2,110 | -68.1% |
| Transfers From Other Funds | 7,328 | 7,796 | 6.4% | 8,532 | 9.4% |
| General Fund Receipts | 37,395 | 42,267 | 13.0% | 42,483 | 0.5% |
| Lottery | 1,826 | 1,835 | 0.5% | 2,211 | 20.5% |
| **General Fund Receipts & Lottery** | **$39,221** | **$44,102** | **12.4%** | **$44,694** | **1.3%** |

## SFY 2004-05

The Committee forecast for General Fund Receipts and Lottery is $44.675 billion in SFY 2004-05, representing an increase of $573 million or 1.3 percent from SFY 2003-04. Significantly, non-recurring revenue actions that boosted revenues in SFY 2003-04 will not take place to the same degree in SFY 2004-05, offsetting strong growth in tax collections.

The Committee staff forecast for General Fund tax collections is $31.842 billion in SFY 2004-05, an increase of $3.986 billion, or 14.3 percent, from SFY 2003-04. This increase reflects the second year of the revenue program enacted in SFY 2003-04 as well as improvement in the State's economy.

## Transfers From Other Funds to the General Fund

Over $8 billion in the General Fund is accounted for as taxes transferred from other funds. The majority of those taxes are initially dedicated to other funds to meet debt service requirements or other spending of various spending programs. Any revenues in excess of debt service requirements are then transferred back to the General Fund and are reported in the Executive's Financial Plan as "Transfers from Other Funds".

**Table 23**

| TRANSFERS FROM OTHER FUNDS (Dollar Amounts in Millions) | | | | |
|---|---|---|---|---|
| | 2003-04 Estimte | Diff. Exec. | 2004-05 Forecast | Diff. Exec. |
| Revenue Bond Fund | $5,218 | (24) | $5,719 | 97 |
| Local Govt Assistance Corp. | 1,949 | 26 | 2,072 | 12 |
| Real EstateTransfer Tax | 285 | 38 | 265 | 19 |
| All Other Transfers | 344 | 0 | 476 | 0 |
| **Total Transfers** | **$7,796** | **40** | **$8,532** | **128** |

The Committee staff estimates that total transfers back to the General Fund will total $7.796 billion in SFY 2003-04. This represents an increase of 6.4 percent from SFY 2002-03. The increase can be attributed to higher personal income tax and sales tax receipts transferred back to the General Fund. For SFY 2004-05, the Committee staff forecasts total transfers to the General Fund will total $8.532 billion, an increase of 9.4 percent from SFY 2003-04.

Three funds make up the majority of transfers to the General Fund: 1) The Revenue Bond Tax Fund; 2) Transfers in Excess of Local Government Assistance Corporation requirements; and 3) real estate transfer tax revenues in excess of the Clean Water Bond Act debt service requirements.

### *Revenue Bond Tax Fund (RBTF)*

Chapter 383 of the Laws of 2001 created the Revenue Bond Tax Fund (RBTF), which is used for debt service. As of May 2002, 25 percent of personal income tax receipts, excluding reserve transactions and the cost of the STAR program, are deposited into the RBTF. In SFY 2003-04 it is estimated that $215 million of personal income tax receipts will be used to pay debt service on State personal income tax revenue bonds. After payment of debt service, the Committee staff estimates that $5.218 million will be transferred back to the General Fund this fiscal year.

### *Local Government Assistance Tax Fund (LGATF)*

The Local Government Assistance Corporation (LGAC) was created in 1990 to help the State eliminate the need for spring borrowing. Collections from one percentage point of the 4.25 percent sales and use tax are dedicated to LGATF to pay debt service on the bonds issued by LGAC. In 2003-04, LGATF is expected to receive $2.253 billion. Of this amount, $304 million is used for debt service, while $1.949 billion is transferred back to the General Fund. In SFY 2004-05, the Committee staff estimates that $2.390 billion will be dedicated to the LGTAF. Of this total, $318 million will be used for debt service and $2.072 billion will be transferred back to the General Fund.

***Clean Water/Clean Air Bond Act***

Real estate transfer taxes are fully dedicated to the Environmental Protection Fund (EPF) and to debt service on the Clean Water/Clean Air Bond Act (CW/CA). Each year $112 million is statutorily dedicated to the EPF, while the remainder is dedicated to CW/CA. Revenues that are not needed to pay debt service on the CW/CA Bond Act are transferred back to the General Fund.

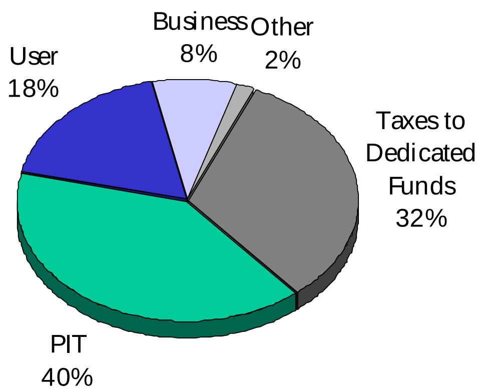
The Committee estimates that $285 million in excess real estate transfer tax revenues will be transferred back to the General Fund in SFY 2003-04. An amount of $265 million will be transferred back to the General Fund in SFY 2004-05. Most of the decline can be explained by an expected decline in overall real estate transfer tax collections in the upcoming fiscal year.

**Dedicated Receipts**

Taxes not deposited into the General Fund but dedicated for other purposes have tripled since SFY 1994-95. As the following chart illustrates, the portion of State tax collections that was dedicated to funds other than the General Fund was roughly 10 percent in SFY 1994-95. That share has now increased to approximately 34 percent in SFY 2003-04. The actual size of the dedication, however, is somewhat misleading. Approximately 57.5 percent of all dedicated taxes flow back to the General Fund in the form of transfers. After adjusting for transfers back to the General Fund, the share of All Funds Taxes that end up in the General Fund Receipts is approximately 84 percent.

The rationale for these accounting maneuvers is to allow a larger share of revenue flow through the State Debt Service and Capital Project Funds in order to meet the required coverage ratios mandated by agreed to bond covenants. By dedicating a tax revenue stream, the State is also able to provide an increased level of confidence to creditors, thereby lowering the interest rates the State pays on debt issuances.

**Dedicated Taxes as a Percentage of All Funds Taxes SFY 2005**




| | |
|---|---|
| PIT | 18,656 |
| User | 8,446 |
| Business | 3,805 |
| Other | 794 |
| Taxes to Dedicated Funds | 15,243 |

*Source: Ways and Means Committee Staff Estimates*

**Figure 29**

Figure 32 summarizes, by State Fund, the total amount of State taxes that are dedicated for special purposes.

Education, health care, and transportation are critical services provided by the State that receive priority attention in the budget. In New York, various revenue sources are earmarked for one of these spending priorities. In SFY 2002-03, dedicated fees and other Miscellaneous Receipts will total over $12 billion and account for nearly 22 percent of the State Funds Budget (excluding Federal Funds). This percentage would increase to 23.4 percent of the State Funds Budget in SFY 2003-04 should the Legislature were to adopt the proposed Executive Budget. This section of the report will review the growing level of dedicated taxes fees and other miscellaneous receipts, are categorized as Special Revenue Funds, that support priority spending programs.

**Dedicated Education Revenues**

Elementary and secondary education receives the largest amount of funds derived from State sources. The majority of the State's funding for education comes from unrestricted funds in the General Fund. However, the table below shows that Federal Government grants and gaming receipts also make up a sizeable portion of the education funds.

**Table 24**

| DEDICATED EDUCATION REVENUES (Dollar Amounts in Millions) | SFY 2003-04 | SFY 2004-05 |
|---|---|---|
| Lottery | $1,767 | $1,945 |
| VLT | | 257 |
| Federal Grants | 3,205 | 3,514 |
| STAR Fund | 2,836 | 3,000 |
| **Total Education Revenues** | $7,808 | $8,716 |

Receipts for Education from Lottery proceeds are projected to be just short of $2 billion. Lottery revenues have been supported by the introduction of new games over the past few years, including Quick Draw which is set to expire May 31, 2004. In 2002 the State entered the multi-state Mega Millions game, which provides a 50 percent prize payout compared to Lotto which carries a 40 percent prize payout.

In 2001 the State passed legislation to allow for video lottery terminals (VLT) at certain race tracks to support the thoroughbred and harness tracks. The first VLT facility has finally come on line in January 2004. The Committee staff projects this will provide $257 million for SFY 2004-05.

Legislation submitted with the Executive budget will significantly change the number of allowed VLT facilities and their potential locations.

Local school aid revenues are dependent on tax receipts. They are funded by approximately 27 percent of All Funds taxes collected. General Fund receipts will directly provide $13.9 billion of the $22.9 billion in SFY 2004-05, which will pay for All Funds spending. The majority of the funding goes to local school districts. In addition, approximately $3 billion will be transferred to a Special Revenue Fund to pay for the School Tax Relief (STAR) Program. General Fund taxes needed to make school aid payments and pay for STAR are a little more than a third of the taxes collected.

The STAR Fund was created to receive funds from the personal income tax that were set aside to pay for the cost of the State's School Tax Relief Program. The money deposited into this fund is used to reimburse school districts for revenues foregone due to the STAR basic and enhanced real property tax exemptions.

The amount of revenue dedicated to pay for the cost of the STAR program in SFY 2003-04 is expected to total $2.836 billion. Under the Executive's proposal in SFY 2004-05, the cost of the STAR program is expected to total $3.0 billion, an increase of 5 percent.

## Dedicated Transportation Taxes

Earmarked or dedicated revenues are a more appropriate means of transportation financing. The long term nature of construction projects and the constant need for maintenance and safety repair require a long term commitment of funds. As such, the State dedicates over $3.2 billion in State taxes in SFY 2003-04 and over $3.4 billion in SFY 2004-05 to various special revenue and capital project funds. (See Tables 30 and 31 in Appendix I). These taxes are dedicated to three main funds described below.

### *Mass Transit Operating Assistance Fund*

The Mass Transit Operating Assistance Fund (MTOAF) was created by the Legislature in SFY 1981-82 to help finance State mass transportation operating systems, which at that time were experiencing operating deficits. Pursuant to §88-a of the State Finance Law, the fund is subdivided into upstate and downstate dedicated tax fund accounts. The downstate account provides funding for the transit systems in the Metropolitan Transportation Commuter District (MCTD) and consists of revenues from the following taxes: the petroleum business tax (PBT); the MTA corporate tax surcharge; a 0.25 percent sales tax imposed in the counties that comprise the MCTD, and surcharges on companies subject to tax under Article 9. A portion of the PBT is also dedicated to the upstate account and is the sole source of dedicated funding for that account.

In SFY 2003-04, the Committee staff estimates that $1.054 billion will be dedicated to support the activities funded through the MTOAF, a decrease of 1 percent. In SFY 2004-05, the Committee staff forecasts a total of $1.203 billion will be dedicated from the various taxes to support MTOAF, an increase of 14.1 percent from SFY 2003-04.

### *Dedicated Mass Transportation Trust Fund*

The Dedicated Mass Transportation Trust Fund receives dedicated revenues from the PBT, motor fuel tax, and motor vehicle fees. Dedicated tax revenues deposited into the DMTTF are expected to total $540 million in SFY 2003-04. Fund dedications are expected to total $593 million in SFY 2004-05.

### *Dedicated Highway and Bridge Trust Funds (DHBTF)*

The DHBTF is the largest component of the State's Transportation Capital Program. The fund receives dedicated revenues from the PBT, motor fuel tax, highway use tax, motor vehicle fees, and the auto rental tax. In SFY 2003-04, the fund is expected to receive $1.669 billion in dedicated tax revenues, an increase of 5.8 percent from the prior year. In SFY 2004-05, the fund is expected to receive $1.682 billion, an increase of 0.8 percent over SFY 2003-04.

A major reason for the increased dedication to the DMTTF and DHBTF of former General Fund tax revenues is that the amount of debt incurred through this fund has required an ever increasing share of revenue to enable the State to maintain coverage ratio on the bonds issued.

## Dedicated Health Care Revenues

Health care funding is the largest spending category in the All Funds budget. Almost $40 billion is spent on a variety of health care programs supporting State and local funding. A complex set of revenue programs support the health care budget. Funds are provided through the General Fund, Special Revenue, or Transfers From Agency funds outside the All Funds accounting system.

### *Medicaid*

Medicaid is a means-tested entitlement program. As such, its benefits are limited to individuals whose income and resources fall below certain thresholds. Federal funds are dependent on the level of Medicaid caseloads. As caseloads increase, Federal receipts increase as well to assist in offsetting increasing state and local expenditures. Additional Federal funds can be derived if efforts to change the Federal/state funding ratios can be successfully altered such as the change in the ratio of the Federal Medicaid Assistance Percentage (FMAP) received last year.

The State receives over $27 billion in Federal revenue for health care purposes, the majority of which support reimbursement for Medicaid services and administration of the program.

**Table 25**

| DEDICATED HEALTH CARE REVENUES (Dollar Amounts in Millions) | |
|---|---|
| | SFY 2004-05 |
| Special Revenue - Federal | $27.800 |
| Indigent Care | 0.876 |
| HCRA | 2.756 |
| Provider Assessments | 0.629 |
| Off Budget HCRA - Other | 1.678 |
| **Total Health Care Revenues** | $32.061 |

### *Health Care Reform Act*

The Health Care Reform Act (HCRA) of 1996 was a major restructuring of the health care financing system in New York State. Subsequent revisions to and extensions of HCRA have been made, including the establishment of Family Health Plus, which is a comprehensive plan for providing access to health insurance for adults, and the enhancement and extension of Child Health Plus for working families.

HCRA consists of three major pools –-- the Tobacco Control and Insurance Initiatives pool, the Public Goods Pool (Health Care Initiatives Pool), and the Professional Education Pool. These accounts are under the administration of the Department of Health.

# EXECUTIVE REVENUE PROPOSALS

## FOR STATE FISCAL YEAR 2004-2005

The Executive tax proposals would result in a net increase of approximately $469.0 million in SFY 2004-05 and $442.0 million when fully implemented.

## REVENUE ENHANCEMENT PROPOSALS

The Executive has proposed various tax increases that total approximately $498.0 million in SFY 2004-05 and $562.0 million when fully implemented. These proposals include:

<u>Modify Fixed Dollar Minimum Base</u> $40.0 million

This proposal would modify the Corporate Franchise Tax by changing the calculation of the Fixed Dollar Minimum Base. Two new brackets would be added so that taxpayers with a gross payroll of $6.25 million to $25.0 million would calculate their Fixed Dollar Minimum Base amount as $5,000 and taxpayers with a gross payroll of $25.0 million or more would calculate the base as $10,000. Additionally, all taxpayers with a gross payroll of $500,000 or less would calculate their Fixed Dollar Minimum amount as $100. These amounts would be the amount of tax due if the Fixed Dollar Minimum results in the highest liability of the alternative bases.

<u>Direct Wine Shipments</u> $2.0 million

This proposal would allow out-of-state wineries that obtain an out-of-state winery shipper's license from the New York State Liquor Authority, to ship up to two cases (18 liters) of wine per month to New York residents who are at least twenty one years of age. To be eligible for the out-of-state shipper's license, a winery must belong to a state which has a reciprocity agreement with New York, must pay an annual fee of $125 and must collect and remit all New York State and local sales and excise taxes.

Reform Empire Zones Program   $0.0 million

The Executive is proposing changes to the Empire Zones program that will impact the administration of the program and the benefit structure for Qualified Empire Zone Enterprises. Among the tax law changes are:

- Changes the business tax benefit period, for businesses certified on or after April 1, 2004. The proposed period would eliminate the five year phase-out of benefits, reducing the benefit period from 15 years to 10 years.

- Changes the employment test used in the determination of a taxpayer's Qualified Empire Zone Enterprise (QEZE) status for certain businesses certified after April 1, 2004. The proposed new test would not count any employees previously employed in New York State by an entity related to the taxpayer.

- The employment increase factor used in the calculation of certain tax credits would be changed for all but certain businesses certified before April 1, 2004. These businesses would calculate the factor as the number of new jobs in Empire Zones divided by 100.

- The definition of eligible real property taxes, used in the calculation of the Empire Zone Real Property Tax Credit, would be amended so that QEZEs that make direct payments of certified eligible Real Property Taxes or PILOTs as part of a lease agreement may receive benefits. The definition would be further amended so that the full amount of any PILOTs paid in excess of the estimated effective full value tax rate would be deemed ineligible.

- Zone Equivalent Areas (ZEAs), or census tracts that met the criteria for designation as an Empire Zone but were not selected, will be eliminated on June 13, 2004. Taxpayers that qualify for ZEA Wage Tax Credits will be allowed to continue claiming such credits for a period of five tax years.

- The Empire Zones Capital Tax Credit will no longer be applicable for investments made in Zone Capital Corporations in taxable years beginning on or after January 1, 2005. Qualified investments made in Zone Capital Corporations established prior to July 31, 2004 will continue to be eligible for the credit.

Low Income Filings   $1.0 million

Eliminates the requirement that residents must file New York Personal Income Tax returns even if they do not have sufficient income to incur New York tax liability. Current law requires that an individual must file a New York personal income tax return if they are required to file a Federal return, or have more than $4,000 of taxable income.

Replace Permanent Clothing Exemption $400.0 million

This proposal would change the year-round State and local Sales Tax exemption on clothing and footwear, which is scheduled to be reinstated on June 1, 2004, to an exemption during four seven-day periods each year, effective June 1, 2004. Additionally, this proposal places a $500 limit for exemptions during sales tax holidays and provides localities with the option to exempt clothing and footwear from the local Sales and Use Taxes during the same four periods that apply to the State Sales Tax.

Reverse Meyers' Decision $50.0 million

This proposal restores former State practice and eliminates hearings prior to payment in regard to taxes owed due to mathematical or clerical errors, federal changes or failures to pay the tax shown on the return. After payment, the taxpayer will be able to apply for a refund and, if the refund is denied, a conference and hearing process is available to the taxpayer to contest the denial. The $50 million estimate is an acceleration of revenue as eventual payment was made in most such cases under the current system where hearings are made available to the taxpayer pursuant to Meyers v. Tax Tribunal, 201 A.D.2d 810 (1994).

Sales Tax Surcharge to Fund Public Safety $39.0 million

This proposal would impose an additional three percent State Sales and Use Tax surcharge on safety and security services and an additional four percent State Sales and Use Tax surcharge on admissions to sporting events and amusement parks. Under this law, revenue from the new surcharges will be deposited in the Public Safety and Security Account, previously called the New York State wireless telephone emergency services account.

Tax Non-Residents on Gains From Sales Of Co-op Stock $5.0 million

This proposal would tax non-residents on the sale of shares in a cooperative housing association where the property represented by such shares is in the State. Under current law, non-residents are taxed on the sale of real property or condominium property in the State but not on the sale of cooperative shares. This proposal also authorizes New York City, Yonkers and counties to enact a tax on the filing a financing statement in regard to shares in a cooperative housing association to perfect a securing interest in such shares under the Uniform Commercial Code (UCC). Generally, the rate of tax would be seventy-five cents for each $100 of principal debt or obligation, of which fifty cents would be distributed to the cities and towns in the county. The rate in New York, Yonkers, Rockland County and Broome County would be higher to equal the sum of the 75 cent rate and the current Mortgage Recording Tax rates in those localities. The proposal also provides that the security interest may not be enforced unless the tax is paid and that the financing statement may not be filed until the tax is paid.

Native American Price Parity Agreements $0.0 million

This proposal allows the Governor to enter into agreements with Native American Nations or Tribes regarding the imposition of parity agreements for the collection of state sales and excise taxes on Native American Reservations. The Executive expects no additional revenue to be generated from this change in current law.

Video Lottery Terminal Expansion

The Executive is proposing an expansion of the Video Lottery Terminal (VLT) program. The proposal would authorize the Division of the Lottery to award up to eight licenses to operate video lottery gaming facilities. Any entity, including, but not limited to Off Track Betting Corporations, which demonstrates to the satisfaction of the Division that it possesses the qualifications and expertise to operate the video lottery franchise would be eligible to competitively bid for a license.

The licenses to operate the new facilities may not be granted for locations within 15 miles of an existing racetrack licensed to operate a VLT gaming facility. The operation of VLT gaming facilities in New York City is limited to Manhattan, South of 59th Street, Brooklyn, and Staten Island, with no more than five locations. Furthermore, licenses will not be granted for locations within Westchester, Rockland and Putnam Counties. Such restrictions may be waived if a racetrack licensed to operate a VLT facility is not operational or scheduled to begin operations by April 1, 2005.

Net revenues (after cash payouts and administrative costs) generated at the new facilities would be deposited into a new fund, to be called the Sound Basic Education Account, and would not be co-mingled with existing Lottery revenues. The new program is not projected to increase revenue in the 2004-05 fiscal year, but the Executive estimates that the program could generate an additional $673 million annually when fully implemented.

Quick Draw Extender and Removal of Certain Operational Restrictions $43 million

The Executive is proposing to permanently extend the Quick Draw Lottery game, which is scheduled to sunset on May 31, 2004. In addition the Executive is proposing to remove the restrictions on the hours of operation, the minimum size of premises and the food sales requirement. Current law limits the hours of operation to 13 hours per day, no more than eight of which may be consecutive. In addition, Quick Draw may only be offered at premises licensed for the sale of alcoholic beverages for on-premises consumption where at least 25 percent of gross sales are from, the sale of food and premises that are greater than 2,500 square feet in size.

## REVENUE REDUCTION PROPOSALS

In addition, the Executive has proposed the following measures, that would reduce revenues by a total of approximately $29.0 million in SFY 2004-05 and $120 million when fully implemented.

Extend Alternative Fuels Vehicle Credit ($10.0) million

The Executive proposal extends the Alternative Fuels Vehicle Tax Credits under the Personal Income Tax and Corporate Franchise Tax for a period of one year. The proposal also amends the Sales Tax exemptions by clarifying certain differences between hybrid and clean-fuel vehicles, and by statutorily setting the incremental cost used in determining the exemption amount for hybrid vehicles at $3,000. The Sales Tax Exemptions are also extended for a one-year period.

Bio-Technology Investment Credit ($5.0) million

Creates a new program that is intended to provide biotechnology companies with a source of capital by allowing them to transfer their net operating loss carry forwards to other general business corporations. The biotechnology company would be able to receive 90 percent of the product of (1) its net operating loss carry forward, (2) its business allocation percentage and, (3) the tax rate for the year in which the transfer occurs.

Exempt Federal Military Pay ($1.0) million

The Executive proposes to exempt from the Personal Income Tax military pay received by members of the New York State National Guard who are deployed full-time to combat terror in New York State. In addition, Astronauts who have perished in the line of duty after December 31, 2002 will be allowed the same exemptions currently allowed to victims of terrorist attacks, including exemptions related to the Estate Tax. The proposal would also revoke, for New York State purposes, the tax-exempt status of organizations that have had such status revoked by the IRS in relation to terrorist activities.

Expand Low-Income Housing Credit ($2.0) million

The Executive proposes expanding the amount of Low-Income Housing tax credits by $2.0 million annually, for a period of ten years. This would result in a total annual Low-Income Housing Credit amount of $6.0 million.

Single Sales Factor Apportionment for Manufacturers $0.0 million

This proposal would change the income apportionment formula for manufacturers and certain other taxpayers subject to the Corporate Franchise Tax. The current formula is the average of the ratio of New York State amounts of property, payroll and sales to those amounts everywhere, with the sales ratio is double-weighted. The proposed formula would be the ratio of the taxpayer's New York State sales to sales everywhere, and would be phased-in over a period of five years.

## SCHOOL TAX RELIEF PROGRAM (STAR)

STAR Adjustment for Inflation ($11.0) million

The Executive Proposes to provide certain taxpayers a Personal Income Tax credit equal to the product of their STAR tax savings and the Consumer Price Index adjustment for that year. The taxpayer must reside in a school district that meets annual school budget caps proposed by the Executive.

## EXECUTIVE REVENUE PROPOSALS
## FOR STATE FISCAL YEAR 2004-2005
## ($ amounts in millions)

| REVENUE SOURCE | 2004-2005 REVENUE IMPACT |
|---|---|
| **Revenue Enhancement Proposals** | **$537.0** |
| Add New Fixed Dollar Minimum | 40.0 |
| Direct Wine Shipments | 2.0 |
| Empire Zones Program | 0.0 |
| Low Income Filings | 1.0 |
| Replace Permanent Clothing Exemption | 400.0 |
| Reverse Meyers' Decision | 50.0 |
| Sales Tax Surcharge to Fund Public Safety | 39.0 |
| Tax Nonresidents Gain from Sales of Co-op Stock | 5.0 |
| | |
| **Fee Increases** | **$628.9** |
| | |
| Department of Agriculture and Markets | |
| Retail Food Stores Inspection Fee | 0.4 |
| | |
| Division of Alcoholic Beverage Control | |
| Increase Filing Fees | 0.2 |
| | |
| Banking Department | |
| Fee Increase | 2.0 |
| | |
| Department of Civil Service | |
| Increase Exam Fees | 0.8 |
| | |
| Consumer Protection Board | |
| Increase Fine | 0.1 |
| | |
| Department of Correctional Services | |
| Cook Chill Revenue | 1.0 |
| Federal Bed Capacity Contracts | 15.0 |
| | |
| Crime Victims Board | |
| Mandatory Fees for Youthful Offenders | 0.5 |
| Crime Victim Assistance Fee & Surcharge | 0.03 |
| Sex Offender Fee | 0.6 |

| REVENUE SOURCE | 2004-2005 REVENUE IMPACT |
|---|---|
| Division of Criminal Justice Services | |
| Increase Record Review Fee | 0.1 |
| Expand Parking Ticket Surcharge | 7.5 |
| Vehicle & Traffic Local Prosecution Program | 17.8 |
| Work Zone Automated Speed Enforcement | 15.0 |
| Vehicle & Traffic Local Prosecution Program | 5.0 |
| Department of Environmental Conservation | |
| Extend Waste Tire Fee | 0.3 |
| Increase Storm Water Fees | 7.0 |
| Increase Air Regulation Fee | 1.8 |
| Department of Health | |
| Establish Early Intervention Provider Registration Fee | 1.0 |
| Home Care Assessment | 15.0 |
| Hospital Assessment | 183.3 |
| Nursing Home Assessment | 230.4 |
| Division of Housing and Community Renewal | |
| Increase Tax Credit Application Fee | 0.5 |
| Increase Low Income Housing Credit Monitoring Fee | 0.5 |
| Department of Law | |
| Increase Deceptive Trade Practices Penalty | 0.5 |
| Division of Lottery | |
| Eliminate Restrictions on Quick Draw | 43.0 |
| VLT Expansion | 0.0 |
| Division of Military and Naval Affairs | |
| Increase REP Fee | 2.4 |
| Department of Motor Vehicles | |
| Driver Responsibility Program | 17.5 |
| Increase ATV Registration Fee | 5.8 |
| Parks and Historic Preservation | |
| Increase Snowmobile Fee | 3.6 |

| REVENUE SOURCE | 2004-2005 REVENUE IMPACT |
|---|---|
| Public and Private Employment Relations Board | |
| Impasse/Improper Practice Filing Fee | 0.2 |
| Office of Real Property Services | |
| Real Property Transfer Filing Fee | 14.2 |
| Department of State | |
| Campus Fire Safety | 1.1 |
| Division of State Police | |
| Handgun License Fee | 32.5 |
| Department of Transportation | |
| Increase Divisible Loan Permits & Fines | 1.5 |
| Increase Divisible Loan Permits & Fines | 0.8 |

## EXECUTIVE REVENUE PROPOSALS
## FOR STATE FISCAL YEAR 2004-2005
## ($ amounts in millions)

| REVENUE SOURCE | 2004-2005 REVENUE IMPACT | FULLY IMPLEMENTED |
|---|---|---|
| **Revenue Reduction Proposals** | **(29.0)** | **(120.0)** |
| Extend Alternative Fuels Vehicle Credit | (10.0) | (10.0) |
| Biotechnology Investment Credit | (5.0) | (10.0) |
| Exempt Federal Military Pay | (1.0) | (1.0) |
| Low-Income Housing | (2.0) | (2.0) |
| Single Sales Factor for Manufacturers | 0.0 | (40.0) |
| STAR Adjustment for Inflation | (11.0) | (57.0) |
| **TOTAL PROPOSED FEE/REVENUE REDUCTIONS** | **$1,136.9** | |

## Prior Year Tax Law Changes Effective in SFY 2004-05

The Assembly has two main tax policy goals -- job creation and the reduction of tax burdens on the State's working families. The previously enacted tax cuts that are still in the process of being phased in are in line with those goals, and include the following:

### *Working Families*

The Legislature has enacted numerous tax reductions aimed at alleviating the tax burdens felt by middle class families.

#### College Tuition Deduction/Credit

To help make college more affordable for working families, legislation enacted in 2000 provides taxpayers with a choice of an itemized deduction or a refundable credit for qualified tuition expenses. When fully implemented, the itemized deduction will be 100 percent of qualified tuition expenses up to $10,000. For qualified tuition expenses of up to $5,000, the credit will be the lesser of $200 or tuition paid. For qualified tuition expenses between $5,000 and $10,000, the credit will be equal to four percent of tuition paid. The credit and deduction are currently being phased in over a four-year period, and will be fully effective in Tax Year 2004.

#### Earned Income Tax Credit

The Earned Income Tax Credit (EITC) benefits working families earning less than $34,692 annually. Taxpayers with no children may qualify for the credit, but must be between the ages of 24 and 65. Legislation enacted in 2000 increased the EITC from 25 percent to 30 percent of the Federal credit over a two-year period. As of Tax Year 2003 and thereafter, the State credit is equal to 30 percent of the Federal credit.

#### Marriage Penalty

Legislation enacted in 2000 largely eliminated the marriage penalty by increasing the standard deduction over a three-year period. As of the 2003 Tax Year, the standard deduction is now equal to $14,600.

### *Job Creation*

Over the past several years, the Legislature has enacted several tax reductions to promote a better business climate in New York State. Some of these reductions are still being phased in, and include the following:

Utility Tax Reform

In 2000, legislation was enacted to change the method of taxation for utility companies from a gross receipts base to a net income base, and the Gas Import Tax was eliminated. These changes were phased-in over a four-year period, and will be fully effective in Tax Year 2005.

Sales Tax on Energy

Beginning September 1, 2000, a four-year phase-out of the Sales Tax on the transportation, transmission or distribution of gas or electricity became effective.

Brownfields Remediation Tax Credits

Three new tax credits were enacted in the 2003 Legislative session to encourage the clean-up and remediation of Brownfields. The credits are refundable, and apply to tax years beginning on or after April 1, 2005.

## Table 26

| TOTAL TAX COLLECTIONS SFY 2003-04 (Dollar Amounts in Millions) | 2002-03 Actual | 2003-04 Estimate | Change | Percent Growth | Diff. Exec. |
|---|---|---|---|---|---|
| **Personal Income Tax** | **$22,648** | **$24,567** | **$1,919** | **8.5%** | **($38)** |
| **Gross Receipts** | **26,945** | **28,987** | **2,042** | **7.6%** | **(43)** |
| Withholding | 19,959 | 21,981 | 2,022 | 10.1% | (29) |
| Estimated Payments | 4,855 | 5,139 | 284 | 5.8% | (11) |
| Vouchers | 3,831 | 4,310 | 479 | 12.5% | (5) |
| IT 370s | 1,024 | 829 | (195) | -19.0% | (6) |
| Final Payments | 1,334 | 1,270 | (64) | -4.8% | (5) |
| Delinquencies | 797 | 597 | (200) | -25.1% | 2 |
| **Total Refunds** | **4,296** | **4,420** | **124** | **2.9%** | **(5)** |
| Prior Year Refunds | 2,780 | 2,940 | 160 | 5.8% | (5) |
| Current Refunds | 960 | 960 | - | | - |
| Previous Refunds | 268 | 250 | (18) | -6.7% | - |
| State/City Offsets | 288 | 270 | (18) | -6.3% | - |
| **Collections** | **22,648** | **24,567** | **1,919** | **8.5%** | **(38)** |
| Refund Reserve | 1,050 | (577) | (1,627) | -155.0% | - |
| **All Funds PIT Collections** | **23,698** | **23,990** | **292** | **1.2%** | **(38)** |
| **User Taxes and Fees** | **10,804** | **11,905** | **1,101** | **10.2%** | **34** |
| Sales and Use Tax | 8,796 | 9,899 | 1,103 | 12.5% | 21 |
| Motor Fuel Tax | 544 | 512 | (32) | -5.9% | 4 |
| Cigarette Tax | 447 | 423 | (24) | -5.4% | 4 |
| Motor Vehicle Fees | 612 | 651 | 39 | 6.4% | 2 |
| Highway Use | 147 | 148 | 1 | 0.7% | 1 |
| Alcoholic Beverage Tax | 180 | 186 | 6 | 3.3% | 2 |
| Alcoholic Beverage Fees | 42 | 48 | 6 | 14.3% | - |
| Auto Rental Tax | 37 | 38 | 1 | 2.7% | - |
| **Business Taxes** | **4,983** | **4,939** | **(44)** | **-0.9%** | **(14)** |
| Corporate Franchise | 1,612 | 1,573 | (39) | -2.4% | 3 |
| Utility Tax | 1,091 | 887 | (204) | -18.7% | (73) |
| Insurance Tax | 776 | 1,016 | 240 | 30.9% | 39 |
| Bank Tax | 481 | 415 | (66) | -13.7% | (6) |
| Petroleum Business Tax | 1,023 | 1,048 | 25 | 2.4% | 23 |
| **Other** | **1,190** | **1,294** | **104** | **8.7%** | **19** |
| Real Property Gains | 5 | 4 | (1) | -20.0% | (0) |
| Estate and Gift | 708 | 773 | 65 | 9.2% | 21 |
| Real Estate Transfer | 448 | 488 | 40 | 8.9% | (3) |
| Pari Mutuel | 29 | 28 | (1) | -3.4% | 1 |
| Other | 1 | 1 | - | | 1 |
| **Total Taxes** | **$40,676** | **$42,128** | **$1,452** | **3.6%** | **$1** |

**Table 27**

| TOTAL TAX COLLECTIONS SFY 2004-05 (Dollar Amounts in Millions) | 2003-04 Estimate | 2004-05 Forecast | Change | Percent Growth | Diff. Exec. |
|---|---|---|---|---|---|
| **Personal Income Tax** | **$24,567** | **$27,136** | **$2,569** | **10.5%** | **$392** |
| **Gross Receipts** | **28,987** | **31,640** | **2,653** | **9.2%** | **471** |
| Withholding | 21,981 | 23,228 | 1,247 | 5.7% | 169 |
| Estimated Payments | 5,139 | 5,966 | 827 | 16.1% | 161 |
| Vouchers | 4,310 | 4,798 | 488 | 11.3% | 103 |
| IT 370s | 829 | 1,168 | 339 | 40.9% | 58 |
| Final Payments | 1,270 | 1,781 | 511 | 40.2% | 136 |
| Delinquencies | 597 | 665 | 68 | 11.4% | 5 |
| **Total Refunds** | **4,420** | **4,504** | **84** | **1.9%** | **79** |
| Prior Year Refunds | 2,940 | 3,040 | 100 | 3.4% | 55 |
| Current Refunds | 960 | 960 | - | | - |
| Previous Refunds | 250 | 254 | 4 | 1.6% | 24 |
| State/City Offsets | 270 | 250 | (20) | -7.4% | - |
| **Collections** | **24,567** | **27,136** | **2,569** | **10.5%** | **392** |
| Refund Reserve | (577) | 693 | 1,270 | -220.1% | - |
| **All Funds PIT Collections** | **23,990** | **27,829** | **3,839** | **16.0%** | **392** |
| **User Taxes and Fees** | **11,905** | **12,620** | **715** | **6.0%** | **82** |
| Sales and Use Tax | 9,899 | 10,611 | 712 | 7.2% | 72 |
| Motor Fuel Tax | 512 | 514 | 2 | 0.4% | (4) |
| Cigarette Tax | 423 | 427 | 4 | 0.9% | 3 |
| Motor Vehicle Fees | 651 | 656 | 5 | 0.8% | 15 |
| Highway Use | 148 | 147 | (1) | -0.7% | (5) |
| Alcoholic Beverage Tax | 186 | 183 | (3) | -1.6% | 0 |
| Alcoholic Beverage Fees | 48 | 42 | (6) | -12.5% | - |
| Auto Rental Tax | 38 | 40 | 2 | 5.3% | 0 |
| **Business Taxes** | **4,939** | **5,516** | **577** | **11.7%** | **108** |
| Corporate Franchise | 1,573 | 1,912 | 339 | 21.6% | (72) |
| Utility Tax | 887 | 865 | (22) | -2.5% | (1) |
| Insurance Tax | 1,016 | 1,116 | 100 | 9.8% | 95 |
| Bank Tax | 415 | 545 | 130 | 31.3% | 80 |
| Petroleum Business Tax | 1,048 | 1,078 | 30 | 2.9% | 6 |
| **Other** | **1,294** | **1,274** | **(20)** | **-1.5%** | **51** |
| Real Property Gains | 4 | 2 | (2) | -50.0% | (1) |
| Estate and Gift | 773 | 760 | (13) | -1.7% | 29 |
| Real Estate Transfer | 488 | 480 | (8) | -1.6% | 19 |
| Pari Mutuel | 28 | 31 | 3 | 10.7% | 3 |
| Other | 1 | 1 | - | | 0 |
| **Total Taxes** | **$42,128** | **$47,239** | **$5,111** | **12.1%** | **$632** |

## Table 28

| TOTAL TAX COLLECTIONS BY FUND TYPE<br>SFY 2003-04<br>(Dollar Amounts in Millions) | General Fund | Special Revenue | Capital Projects | Debt Service | All Funds |
|---|---|---|---|---|---|
| **Personal Income Tax** | **$15,722** | **$2,835** | | **$5,433** | **$23,990** |
| **User Taxes and Fees** | **7,960** | **601** | **1,091** | **2,253** | **11,905** |
| Sales and Use Tax | 7,246 | 400 | | 2,253 | 9,899 |
| Motor Fuel Tax | | 102 | 410 | | 512 |
| Cigarette Tax | 423 | | | | 423 |
| Motor Vehicle Fees | 57 | 99 | 495 | | 651 |
| Highway Use | | | 148 | | 148 |
| Alcoholic Beverage Tax | 186 | | | | 186 |
| Alcoholic Beverage Fees | 48 | | | | 48 |
| Auto Rental Tax | | | 38 | | 38 |
| **Business Taxes** | **3,368** | **1,002** | **569** | | **4,939** |
| Corporate Franchise | 1,376 | 197 | | | 1,573 |
| Utility Tax | 737 | 150 | | | 887 |
| Insurance Tax | 907 | 109 | | | 1,016 |
| Bank Tax | 348 | 67 | | | 415 |
| Petroleum Business Tax | | 479 | 569 | | 1,048 |
| **Other** | **806** | | **112** | **376** | **1,294** |
| Real Property Gains | 4 | | | | 4 |
| Estate and Gift | 773 | | | | 773 |
| Real Estate Transfer | | | 112 | 376 | 488 |
| Pari Mutuel | 28 | | | | 28 |
| Other | 1 | | | | 1 |
| **Total Taxes** | **$27,856** | **$4,438** | **$1,772** | **$8,062** | **$42,128** |

* These estimates include a Refund Reserve Transaction of $84 million

Table 29

| TOTAL TAX COLLECTIONS BY FUND TYPE<br>SFY 2004-05<br>(Dollar Amounts in Millions) | General Fund | Special Revenue | Capital Projects | Debt Service | All Funds |
|---|---|---|---|---|---|
| **Personal Income Tax** | **$18,797** | **$2,998** | | **$6,035** | **$27,829** |
| **User Taxes and Fees** | **8,446** | **697** | **1,087** | **2,390** | **12,620** |
| Sales and Use Tax | 7,768 | 453 | | 2,390 | 10,611 |
| Motor Fuel Tax | | 109 | 405 | | 514 |
| Cigarette Tax | 427 | | | | 427 |
| Motor Vehicle Fees | 26 | 135 | 495 | | 656 |
| Highway Use | | | 147 | | 147 |
| Alcoholic Beverage Tax | 183 | | | | 183 |
| Alcoholic Beverage Fees | 42 | | | | 42 |
| Auto Rental Tax | | | 40 | | 40 |
| **Business Taxes** | **3,805** | **1,101** | **610** | | **5,516** |
| Corporate Franchise | 1,682 | 230 | | | 1,912 |
| Utility Tax | 656 | 191 | 18 | | 865 |
| Insurance Tax | 997 | 119 | | | 1,116 |
| Bank Tax | 470 | 75 | | | 545 |
| Petroleum Business Tax | | 486 | 592 | | 1,078 |
| **Other** | **794** | | **112** | **368** | **1,274** |
| Real Property Gains | 2 | | | | 2 |
| Estate and Gift | 760 | | | | 760 |
| Real Estate Transfer | | | 112 | 368 | 480 |
| Pari Mutuel | 31 | | | | 31 |
| Other | 1 | | | | 1 |
| **Total Taxes** | **$31,842** | **$4,796** | **$1,809** | **$8,793** | **$47,239** |

## Table 30

| GENERAL FUND RECEIPTS SFY 2003-04 (Dollar Amounts in Millions) | 2002-03 Actual | 2003-04 Estimate | Change | Percent Growth | Diff. Exec. |
|---|---|---|---|---|---|
| **Personal Income Tax** | **$16,791** | **$15,722** | **($1,069)** | **-6.4%** | **($28)** |
| Refund Reserve | 1,050 | (577) | (1,627) | -155.0% | - |
| Net STAR | (2,664) | (2,835) | (171) | 6.4% | - |
| Revenue Bond Tax Fund | (4,243) | (5,433) | (1,190) | 28.0% | 10 |
| **Personal Income Tax Collections** | **22,648** | **24,567** | **1,919** | **8.5%** | **(38)** |
| **User Taxes and Fees** | **7,063** | **7,960** | **898** | **12.7%** | **21** |
| Sales and Use Tax | 6,328 | 7,246 | 918 | 14.5% | 26 |
| Cigarette Tax | 447 | 423 | (24) | -5.3% | 4 |
| Motor Vehicle Fees | 67 | 57 | (10) | -14.5% | (11) |
| Alcoholic Beverage Tax | 180 | 186 | 6 | 3.4% | 2 |
| Alcoholic Beverage Fees | 42 | 48 | 6 | 14.6% | - |
| **Business Taxes** | **3,380** | **3,368** | **(12)** | **-0.4%** | **3** |
| Corporate Franchise | 1,407 | 1,376 | (31) | -2.2% | (6) |
| Utility Tax | 860 | 737 | (123) | -14.3% | (18) |
| Insurance Tax | 704 | 907 | 203 | 28.8% | 35 |
| Bank Tax | 409 | 348 | (61) | -14.9% | (8) |
| **Other** | **743** | **806** | **63** | **8.5%** | **22** |
| Real Property Gains | 5 | 4 | (1) | -16.7% | (0) |
| Estate and Gift | 708 | 773 | 65 | 9.2% | 21 |
| Pari Mutuel | 30 | 28 | (2) | -5.1% | 1 |
| **Other** | **1** | **1** | **0** | **66.7%** | **1** |
| **General Fund Taxes** | **27,977** | **27,856** | **(121)** | **-0.4%** | **19** |
| **Transfers From Other Funds** | **7,328** | **7,796** | **468** | **6.4%** | **(22)** |
| Local Govt Assitance Corporation | 1,919 | 1,949 | 30 | 1.6% | (8) |
| Real Estate Transfer Tax | 263 | 285 | 22 | 8.4% | (3) |
| All Other Transfers | 931 | 344 | (587) | -63.1% | - |
| Revenue Bond Tax Fund | 4,215 | 5,218 | 1,003 | 23.8% | (11) |
| **Total Miscellaneous Receipts** | **2,090** | **6,615** | **4,525** | **216.5%** | **-** |
| Miscellaneous Receipts | 2,090 | 1,770 | (320) | -15.3% | - |
| Federal Grants | - | 645 | 645 | | - |
| Tobacco Securitization | - | 4,200 | 4,200 | | - |
| **General Fund Receipts** | **37,395** | **42,267** | **4,872** | **13.0%** | **(3)** |
| Lottery | 1,826 | 1,835 | 9 | 0.5% | - |
| **Total Receipts & Lottery** | **$39,221** | **$44,102** | **$4,881** | **12.4%** | **($3)** |

## Table 31

| GENERAL FUND RECEIPTS SFY 2004-05 (Dollar Amounts in Millions) | 2003-04 Estimate | 2004-05 Forecast | Change | Percent Growth | Diff. Exec. |
|---|---|---|---|---|---|
| **Personal Income Tax** | **$15,722** | **$18,797** | **$3,075** | **19.6%** | **$296** |
| Refund Reserve | (577) | 693 | 1,270 | -220.1% | - |
| Net STAR | (2,835) | (2,998) | (163) | 5.7% | - |
| Revenue Bond Tax Fund | (5,433) | (6,035) | (602) | 11.1% | (97) |
| **Personal Income Tax Collections** | **24,567** | **27,136** | **2,569** | **10.5%** | **392** |
| **User Taxes and Fees** | **7,960** | **8,446** | **486** | **6.1%** | **65** |
| Sales and Use Tax | 7,246 | 7,768 | 522 | 7.2% | 61 |
| Cigarette Tax | 423 | 427 | 4 | 0.9% | 3 |
| Motor Vehicle Fees | 57 | 26 | (31) | -54.4% | 0 |
| Alcoholic Beverage Tax | 186 | 183 | (3) | -1.6% | 0 |
| Alcoholic Beverage Fees | 48 | 42 | (6) | -12.5% | - |
| **Business Taxes** | **3,368** | **3,805** | **437** | **13.0%** | **97** |
| Corporate Franchise | 1,376 | 1,682 | 306 | 22.2% | (64) |
| Utility Tax | 737 | 656 | (81) | -11.0% | (1) |
| Insurance Tax | 907 | 997 | 90 | 9.9% | 85 |
| Bank Tax | 348 | 470 | 122 | 35.1% | 77 |
| **Other** | **806** | **794** | **(12)** | **-1.5%** | **32** |
| Real Property Gains | 4 | 2 | (2) | -50.0% | (1) |
| Estate and Gift | 773 | 760 | (13) | -1.7% | 29 |
| Pari Mutuel | 28 | 31 | 3 | 10.7% | 3 |
| **Other** | **1** | **1** | **-** | | **0** |
| **General Fund Taxes** | **27,856** | **31,842** | **3,986** | **14.3%** | **488** |
| **Transfers From Other Funds** | **7,796** | **8,532** | **736** | **9.4%** | **127** |
| Local Govt Assitance Corporation | 1,949 | 2,072 | 123 | 6.3% | 12 |
| Real Estate Transfer Tax | 285 | 265 | (20) | -7.0% | 19 |
| All Other Transfers | 344 | 476 | 132 | 38.4% | (1) |
| Revenue Bond Tax Fund | 5,218 | 5,719 | 501 | 9.6% | 97 |
| **Total Miscellaneous Receipts** | **6,615** | **2,110** | **(4,505)** | **-68.1%** | **23** |
| Miscellaneous Receipts | 1,770 | 2,110 | 340 | 19.2% | 23 |
| Federal Grants | 645 | - | (645) | | |
| Tobacco Securitization | 4,200 | - | (4,200) | | |
| **General Fund Receipts** | **42,267** | **42,483** | **216** | **0.5%** | **638** |
| Lottery | 1,835 | 2,211 | 376 | 20.5% | 26 |
| **Total Receipts & Lottery** | **$44,102** | **$44,694** | **$592** | **1.3%** | **$663** |

## Table 32

| DISTRIBUTION OF DEDICATED TAXES SFY 2003-04<br>(Dollar Amounts in Millions) | | | | | |
|---|---|---|---|---|---|
| **FUND TYPE** | 2002-03 Actual | 2003-04 Estimate | Change | Percent Growth | Diff. Exec. |
| **SPECIAL REVENUE FUNDS** | **$4,206** | **$4,438** | **$232** | **5.5%** | **-$20** |
| **School Tax Relief Fund(STAR)** | | | | | |
| Personal Income Tax | 2,664 | 2,835 | 171 | 6.4% | - |
| **Dedicated Mass Transportation Trust Fund** | 478 | 549 | 71 | 14.8% | 16 |
| Petroleum Business Tax | 333 | 348 | 15 | 4.5% | 16 |
| Motor Fuel Tax | 69 | 102 | 33 | 47.8% | (3) |
| Motor Vehicle Fees | 76 | 99 | 23 | 30.3% | 3 |
| **Mass Transportation Operating Assistance Fund (MTOAF)** | 1,064 | 1,054 | (10) | -1.0% | (36) |
| **Business Taxes** | | | | | |
| Corporate Franchise Tax | 205 | 197 | (8) | -4.0% | 9 |
| Corporation and Utilities Tax | 231 | 150 | (81) | -35.1% | (55) |
| Insurance Tax | 72 | 109 | 37 | 51.4% | 4 |
| Bank Tax | 72 | 67 | (5) | -7.2% | 2 |
| Petroleum Business Tax | 122 | 131 | 9 | 7.4% | 4 |
| **User Taxes** | | | | | |
| Sales and Use Tax | 362 | 400 | 38 | 10.5% | - |
| **DEBT SERVICE FUNDS** | **6,804** | **8,062** | **1,258** | **18.5%** | **(18)** |
| **Revenue Bond Tax Fund (RBTF)** | | | | | |
| Personal Income Tax | 4,243 | 5,433 | 1,190 | 28.0% | (10) |
| **Emergency Highway Reconditioning and Preservation Fund** | | | | | |
| Motor Fuel Tax | 59 | - | (59) | -100.0% | |
| **Emergency Highway Construction and Reconstruction Fund** | | | | | |
| Motor Fuel Tax | 59 | - | (59) | -100.0% | |
| **Clean Water/Clean Air Fund** | | | | | |
| Real Estate Transfer Tax | 336 | 376 | 40 | 12.0% | (3) |
| **Local Government Assistance Tax Fund** | | | | | |
| Sales Tax | 2,107 | 2,253 | 147 | 7.0% | (5) |
| **CAPITAL PROJECTS FUNDS** | **1,615** | **1,698** | **83** | **5.1%** | **20** |
| **Dedicated Highway and Bridge Trust Fund** | 1,578 | 1,660 | 82 | 5.2% | 20 |
| Petroleum Business Tax | 568 | 569 | 1 | 0.2% | 3 |
| Motor Fuel Tax | 356 | 410 | 54 | 15.1% | 7 |
| Motor Vehicle Fees | 470 | 495 | 25 | 5.3% | 9 |
| Highway Use Tax | 147 | 148 | 1 | 0.8% | 1 |
| Auto Rental Tax | 37 | 38 | 1 | 2.2% | - |
| **Environmental Protection Fund** | | | | | |
| Real Estate Transfer Tax | 112 | 112 | - | 0.0% | - |
| **TOTAL DEDICATED TAX RECEIPTS** | **$12,626** | **$14,198** | **$1,572** | **12.4%** | **-$18** |

## Table 33

| DISTRIBUTION OF DEDICATED TAXES SFY 2004-05 (Dollar Amounts in Millions) | | | | | |
|---|---|---|---|---|---|
| FUND TYPE | 2003-04 Estimate | 2004-05 Forecast | Change | Percent Growth | Diff. Exec. |
| **SPECIAL REVENUE FUNDS** | **$4,438** | **$4,796** | **$358** | **8.1%** | **$19** |
| **School Tax Relief Fund(STAR)** | | | | | |
| Personal Income Tax | 2,835 | 2,998 | 163 | 5.7% | - |
| **Dedicated Mass Transportation Trust Fund** | 549 | 595 | 46 | 8.4% | 7 |
| Petroleum Business Tax | 348 | 351 | 3 | 0.9% | 4 |
| Motor Fuel Tax | 102 | 109 | 7 | 6.9% | 2 |
| Motor Vehicle Fees | 99 | 135 | 36 | 36.4% | 1 |
| **Mass Transportation Operating Assistance Fund (MTOAF)** | 1,054 | 1,203 | 149 | 14.1% | 12 |
| **Business Taxes** | | | | | |
| Corporate Franchise Tax | 197 | 230 | 33 | 16.8% | (8) |
| Corporation and Utilities Tax | 150 | 191 | 41 | 27.3% | (0) |
| Insurance Tax | 109 | 119 | 10 | 9.2% | 10 |
| Bank Tax | 67 | 75 | 8 | 11.9% | 3 |
| Petroleum Business Tax | 131 | 135 | 4 | 3.1% | 8 |
| **User Taxes** | | | | | |
| Sales and Use Tax | 400 | 453 | 53 | 13.3% | (1) |
| **DEBT SERVICE FUNDS** | **8,062** | **8,793** | **731** | **9.1%** | **128** |
| **Revenue Bond Tax Fund (RBTF)** | | | | | |
| Personal Income Tax | 5,433 | 6,035 | 602 | 11.1% | 97 |
| **Emergency Highway Reconditioning and Preservation Fund** | | | | | |
| Motor Fuel Tax | - | - | - | | |
| **Emergency Highway Construction and Reconstruction Fund** | | | | | |
| Motor Fuel Tax | - | - | - | | |
| **Clean Water/Clean Air Fund** | | | | | |
| Real Estate Transfer Tax | 376 | 368 | (8) | -2.1% | 19 |
| **Local Government Assistance Tax Fund** | | | | | |
| Sales Tax | 2,253 | 2,390 | 137 | 6.1% | 12 |
| **CAPITAL PROJECTS FUNDS** | **1,698** | **1,719** | **21** | **1.2%** | **4** |
| **Dedicated Highway and Bridge Trust Fund** | 1,660 | 1,679 | 19 | 1.1% | 4 |
| Petroleum Business Tax | 569 | 592 | 23 | 4.0% | 0 |
| Motor Fuel Tax | 410 | 405 | (5) | -1.2% | (6) |
| Motor Vehicle Fees | 495 | 495 | - | 0.0% | 14 |
| Highway Use Tax | 148 | 147 | (1) | -0.7% | (5) |
| Auto Rental Tax | 38 | 40 | 2 | 5.3% | 0 |
| **Environmental Protection Fund** | | | | | |
| Real Estate Transfer Tax | 112 | 112 | - | 0.0% | - |
| **TOTAL DEDICATED TAX RECEIPTS** | **$14,198** | **$15,308** | **$1,110** | **7.8%** | **$150** |

# TAX ANALYSIS

### Alcoholic Beverage Fees

| | *Ways and Means* | | *Executive* | |
|---|---|---|---|---|
| | General Fund | Percent Change | General Fund | Percent Change |
| **2002-2003 Actual** | 42 | 22.4% | 42 | 22.4% |
| **2003-2004 Estimate** | 48 | 14.6% | 48 | 14.6% |
| **2004-2005 Forecast** | 42 | -12.5% | 42 | -12.5% |

Distillers, brewers, retailers, wholesalers, and others who sell alcoholic beverages in New York State are required by Articles 4, 4-A, 5, and 6 of the Alcoholic Beverage Control Law to be licensed by the State Liquor Authority. Approximately, 2,500 retail outlets, 19,000 grocery stores, and 27,500 bars and restaurants are licensed.

### General Fund

The Committee staff estimates that receipts from alcoholic beverage fees will total $48 million in SFY 2003-04, a $6 million or 14.6 percent increase over SFY 2002-03. This estimate is the same as the Executive's estimate. Year-to-date receipts are up 18 percent above prior year. Receipts must grow by negative 4 percent during the rest of the fiscal year to achieve this estimate. Receipts are particularly strong in SFY 2003-04 due to the passage of legislation that increased alcoholic beverage control license and permit fees for various proprietors.

The Committee staff forecasts receipts will total $42 million in SFY 2004-05, representing a $6 million or 12.5 percent decrease over the SFY 2003-04 estimate. This forecast is the same as the Executive's forecast.

### Recent Legislative History

Legislation submitted with the Executive's 2004 Budget proposes to amend the Alcoholic Beverage Control Law by doubling the filing fee for various license applications and permits. The Executive estimates that this proposal will generate $0.2 million in SFY 2004-05.

Legislation enacted in 2002 increased various alcoholic beverage control license and permit fees by approximately 10 percent for grocery stores and approximately 28 percent for all other fees except for cider produces, fraternal organizations and one day charitable permits, which were held harmless. This legislation, which became effective August 1, 2002, is estimated to have increased receipts by $8 million in SFY 2002-03 and $10.3 million in SFY 2003-04.

In 1997, the credit period offered to beer and wine retailers was decreased from 30 days to 15 days. Also, the payment period for license renewal relating to liquor licenses for on-premise consumption, special on-premise consumption, and bottle club liquor licenses was changed from a mandatory 3-year license to an optional annual, biennial, or triennial license, effective December 1, 1998. These actions lowered collections by $14 million in SFY 1999-00, and $4 million in SFY 2000-01.

## Alcoholic Beverage Tax

| | Ways and Means | | Executive | |
|---|---|---|---|---|
| | General Fund | Percent Change | General Fund | Percent Change |
| **2002-2003 Actual** | 180 | 0.9% | 180 | 0.9% |
| **2003-2004 Estimate** | 186 | 3.4% | 184 | 2.3% |
| **2004-2005 Forecast** | 183 | -1.6% | 183 | -0.5% |

Article 18 of the Tax Law imposes a tax on various alcoholic beverages, including beer, wine, and other spirits. The tax rate varies depending on the alcohol content. All of the receipts are deposited in the General Fund.

| New York State Alcoholic Beverage Tax Rates | |
|---|---|
| **Alcoholic Beverages** | **Rate per volume** |
| Liquors (Over 24% Alcohol) | $1.70 per liter |
| Liquors (2% - 24% Alcohol) | 67 cents per liter |
| Beer | 11 cents per galon |
| Still Wine and Wine Coolers | 18.93 cents per galon |
| Sparkling Wine (Carbonated) | 18.93 cents per galon |
| Sparkling Wine (Natural) | 18.93 cents per galon |
| Cider Over 3.2% Alcohol (Still or Carbonate | 3.79 cents galon |

Source: New York State OTPA 2002 NYS Sourcebook

### General Fund

The Committee staff estimate for SFY 2003-04 is $186 million, which represents a $6 million or 3.4 percent increase over SFY 2002-03. Year-to-date receipts are up 3.6 percent over the comparable period in the prior fiscal year. To achieve the Committee staff estimate, receipts must grow by 1.7 percent for the rest of the year. This estimate is $2 million higher than that of the Executive. Legislation reducing the tax rate on beer from 12.5 cents per gallon to 11 cents per gallon, effective September 1, 2003, is estimated to reduce receipts by $2.5 million in SFY 2003-04 and by $4.9 million in SFY 2004-05.

The Committee staff forecast for SFY 2004-05 is $183 million, a decrease of 1.6 percent over the Committee staff estimate for SFY 2003-04. This decrease can be attributed to a decrease in the alcoholic beverage (ABT) tax on beer.

### Recent Legislative History

Legislation submitted with the Executive's 2004 Budget proposes to amend the Alcoholic Beverage Control Law to allow out-of-state wineries to ship wine to New York State residents for their personal use. The out-of-state winery would be required to obtain a New York State direct-shippers license, pay an annual fee, and collect all New York State and local sales and excise taxes. The Executive estimates that this proposal will not generate any excise tax receipts for the State.

Legislation enacted in 2002 extended certain alcoholic beverage tax enforcement provisions. Specifically, it removed the expiration date of the enforcement tools that were set to expire on October 31, 2002, thus making these provisions permanent. In addition, it authorizes any peace officer acting pursuant to his/her duties, or police officer or any duly authorized representatives of the State Liquor Authority to inspect premises licensed under various sections of the Alcoholic Beverage Control Law. This legislation is estimated to have protected $1 million in receipts in SFY 2002-03, and approximately $3 million each year thereafter.

Legislation enacted in 2000 accelerated the effective date of the expansion of the small brewers exemption under the beer tax retroactively to January 1, 2000 from the original effective date of April 1, 2001. In addition, the alcoholic beverage tax (ABT) on beer was reduced from 12.5 cents to 11 cents per gallon. This change became effective September 1, 2003, and will build upon the one cent reduction that was passed with the SFY 1999-00 Budget.

In 1999, the small brewers exemption was increased to the first 200,000 barrels of beer (31 gallons/barrel) from the first 100,000 barrels effective March 1, 2001. In addition, the ABT was reduced by one-cent from 13.5 cents to 12.5 cents effective April 1, 2001.

In 1998, legislation was enacted which reduced the tax rate on beer from 16 cents-per-gallon to 13.5 cents-per-gallon effective January 1, 1999.

In 1997, legislation was enacted that repealed 1996 legislation requiring payment by Electronic Funds Transfer (EFT). The alcoholic beverage enforcement provisions, which were due to expire on October 31, 1997, were extended until October 1, 2002.

In 1996, legislation was enacted to require alcohol distributors with an annual tax liability of more than $5 million to remit payment by means of EFT.

On January 1, 1996, the State excise tax on beer was reduced from 21 cents to 16 cents-per-gallon.

**Auto Rental Tax**

| | Ways and Means | | Executive | |
|---|---|---|---|---|
| | All Funds | Percent Change | All Funds | Percent Change |
| **2002-2003 Actual** | 37 | -1.9% | 37 | -1.9% |
| **2003-2004 Estimate** | 38 | 2.2% | 38 | 2.2% |
| **2004-2005 Forecast** | 40 | 5.3% | 40 | 5.3% |

The auto rental tax, imposed by Article 28-A of the Tax Law, applies to the rental of any passenger car with a gross vehicle weight of 9,000 pounds or less that can seat a maximum of nine passengers. The auto rental tax is imposed at a rate of five percent on auto rental charges incurred for use in New York State. The tax does not apply to leases of one year or more.

**All Funds**

Legislation enacted in 2002 dedicated all auto rental tax receipts to the Highway and Bridge Trust Fund, effective April 1, 2002.

Based on historical collection patterns, the Committee staff estimates that SFY 2003-04 receipts will total $38 million, representing a 2.2 percent increase from SFY 2002-03.

The Committee staff forecast for SFY 2004-05 is $40 million. This represents an increase of $2 million, or 5.3 percent from SFY 2003-04.

**Bank Tax**

| | Ways and Means | | | Executive | | |
|---|---|---|---|---|---|---|
| | All Funds | General Fund | General Fund Percent Change | All Funds | General Fund | General Fund Percent Change |
| **2002-2003 Actual** | 481 | 409 | -17.5% | 481 | 409 | -17.5% |
| **2003-2004 Estimate** | 415 | 348 | -14.9% | 421 | 356 | -13.1% |
| **2004-2005 Forecast** | 545 | 470 | 35.1% | 466 | 394 | 10.9% |

Article 32 of the Tax Law, imposes a tax on banking corporations for the privilege of operating a banking business in a corporate manner, employing capital, owning or leasing property, or maintaining an office in New York State. The tax had been assessed at a rate of nine percent of Entire Net Income, but was recently phased down to 7.5 percent over a three-year period. One of the three alternative bases, allocated assets, alternative minimum income, or fixed dollar minimum, must be used if it results in a greater amount of tax owed.

**General Fund**

The Committee staff estimates that SFY 2003-04 receipts will total $348 million, a decrease of 14.9 percent when compared to SFY 2002-03. Year-to-date collections are down 20.8 percent, primarily due to large refund amounts in May and September. At least some portion of the decline is attributable to the continuing effect of bad loan write-offs and Net Operating Losses (NOLs) from the recent recession. Also, net interest margins, or the difference between the interest rates banks receive on loans and what they pay on deposits, remain lower than usual and have served to decrease profitability[8]. This estimate is $8 million lower than that of the Executive.

The Committee staff forecast for SFY 2004-05 is $470 million, representing growth of 35.1 percent. This forecast is in part based on anticipated improvement in financial profits of 13.1 percent in calendar year 2004. The allowance of Net Operating Losses, first available for losses occurring in taxable years starting in 2001, has served as a mitigating effect on otherwise stronger growth driven by profits. However, it is expected that much of these NOLs have been utilized, lending to a prediction of payments on current year liabilities outpacing refunds resulting from prior year adjustments. The Committee staff forecast is $76 million higher than the Executive forecast.

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[8] www.fdic.org – State Profile, Fall 2003 – New York.

## All Funds

Article 32 taxpayers also pay a Regional Business Tax Surcharge, which is levied at the rate of 17 percent on business activity carried on within the Metropolitan Commuter Transportation District (MCTD). The district includes the City of New York and seven surrounding counties (Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester).

Collections from the surcharge are deposited into the Mass Transportation Operating Assistance Fund, associated with the Metropolitan Transportation Authority.

All Funds receipts for SFY 2003-04 are expected to be $415 million, which is the sum of the General Fund estimate and the estimate of the Article 32 portion of the Regional Business Tax Surcharge. This estimate represents a decline of 13.8 percent over SFY 2002-03. The Committee staff estimate is $6 million lower than the Executive estimate.

The Committee staff All Funds forecast for SFY 2004-05 is $545 million, representing growth of 31.3 percent. The All Funds forecast is the aggregate of the Article 32 General Funds forecast and the forecast of the Article 32 portion of the Regional Business Tax Surcharge. The Committee staff forecast is $79 million higher than the Executive forecast.

## Legislative Proposals

The Executive proposes to extend for one year the provisions of the 1985 Bank Tax Reforms and of 1987 and 1988 Bad Debt Decoupling legislation applicable to both the State and New York City. This proposal also extends transitional provisions related to the Federal Gramm-Leach-Bliley Act for the State and New York City, which eliminated many of the prohibitions against the affiliation of banks, insurance companies and securities firms, for a period of two years.

## Recent Legislative History

Legislation enacted in 2003 extended Article 32 of the Tax Law (franchise tax on banking corporations) for two years, and extends transitional provisions related to the Federal Gramm-Leach-Bliley Act for one additional year.

Legislation enacted in 2002 changed the types of assets qualifying for the 60 percent asset test used in determining thrift bad debt deduction eligibility.

Assets now eligible for purposes of the test include interests in Financial Asset Securitization Investment Trusts (FASITs), and community development loans.

- Changed the order in which tax credits are applied so that non-carryover credits that are not refundable are used first, followed by limited duration carryover credits, then by unlimited duration carryover credits, and finally by refundable credits.

- Increased the mandatory first installment of estimated tax to 30 percent for taxpayers whose preceding year's tax paid exceeds $100,000. For taxable years beginning on or after January 1, 2006, the first installment amount reverts to 25 percent of the previous year's tax paid.

- Extended the qualifying period of the Investment Tax Credit (ITC) for financial services, making property placed in service before October 1, 2008 eligible. The previous cut-off for eligibility was October 1, 2003.

- Amended provisions pertaining to ITC recapture. Taxpayers who owned property that was destroyed or ceased to be in qualified use due to events directly related to September 11 were provided an election to:

  - Not face recapture provisions if they maintained 75 percent of their base employment number.

  - Follow the normal recapture rules, but not reduce the cost basis of ITC awarded for replacement property.

Legislation enacted in 2001 extended until December 31, 2002 the provision of the 1985 Bank Tax Reforms and of the 1987 and 1988 Bad Debt Decoupling Legislation.

Legislation enacted in 2000 changed the allocation rules for bank mutual funds to match the corresponding rules for mutual funds operated by non-banking corporations. This method sources receipts to the location of the customer. In addition, financial services companies may elect to be held under their current article of taxation while the State studies the implications of the 1999 Federal Financial Services Modernization Act.

Legislation enacted in 1999 reduced the Entire Net Income (ENI) tax rate on banks from nine percent to 7.5 percent over three years.

In 1998, the ITC, which had been available to manufacturing corporations, was extended to banks that are brokers or dealers in securities. The credit can be taken for equipment used in broker/dealer activity. To be eligible for the credit, employees using the eligible equipment must be located within New York.

In 1997, legislation was enacted allowing banks, beginning in the year 2001, a Net Operating Loss deduction similar to that afforded to other corporations.

**Cigarette and Tobacco Taxes**

| | Ways and Means | | Executive | |
|---|---|---|---|---|
| | General Fund | Percent Change | General Fund | Percent Change |
| **2002-2003 Actual** | 447 | -16% | 447 | -16% |
| **2003-2004 Estimate** | 423 | -5.3% | 420 | -6.0% |
| **2004-2005 Forecast** | 427 | 0.9% | 424 | 1.0% |

Article 20 of the Tax Law levies a cigarette excise tax at a rate of $1.50 per package of 20 cigarettes on the sale of cigarettes within the State. Of the total cigarette tax levied, 58.2 cents of the receipts are deposited into the General Fund and the remaining 91.8 cents are dedicated to fund the HCRA program.

The State levies a tax on all other tobacco products equal to 37 percent of the wholesale price of such products. In addition, there is an annual license fee of $100 for all retail establishments and $25 for every vending machine that sells cigarette and/or tobacco products.

**General Fund**

The Committee staff estimates that cigarette and tobacco tax collections will total $423 million in SFY 2003-04, a decline of $24 million or 5.3 percent over the prior fiscal year. Through January 2004, total tax collections are down 9.8 percent over the comparable period in the prior year. To achieve the Committee staff's estimate, total cigarette and tobacco tax collections must grow by negative 2.7 percent for the rest of the year. This decline in receipts is attributable to decreased cigarette sales as a result of the New York State and New York City cigarette tax increases in 2002, and increasing health concerns related to the use of tobacco products. This estimate is $3 million above the Executive's estimate.

The Committee staff forecasts cigarette and tobacco collections shall total $427 million in SFY 2004-05, an increase of 0.9 percent from the prior years estimate. This forecast is $3 million above the Executive's forecast. Included in the forecast is the Executive’s estimate of $40 million in collections from cigarette and tobacco sales by Native American stores.

After accounting for tax increases, cigarette tax collections have consistently exhibited flat or negative growth for the last decade due in large part to tax avoidance and declines in cigarette consumption. Declines in cigarette consumption are the result of increases in cigarette prices when compared to the consumer price index for all other commodities. The Committee staff estimates that the U.S. consumer price index for cigarette and tobacco products grew by 0.4 percent in SFY 2003-04, and by 3.7 percent in SFY 2004-05. Other factors affecting consumption of cigarettes and tobacco products are greater awareness of the health risks associated with smoking, greater restrictions on tobacco usage in public places and an increase in enforcement efforts by the Department of Taxation and Finance.

**FEDERAL, STATE AND NEW YORK CITY**
**Cigarette Excise Tax Rates Per Pack Of 20 Cigarettes**

| New York State | Tax | Federal | Tax | New York City | Tax |
|---|---|---|---|---|---|
| Before April 1, 195 | $0.02 | Before November 1, 1951 | $0.07 | Before May 1, 1959 | $0.01 |
| 1-Apr-59 | 0.05 | 1-Nov-51 | 0.08 | 1-May-59 | 0.02 |
| 1-Apr-65 | 0.10 | 1-Jan-83 | 0.16 | 1-Jun-63 | 0.04 |
| 1-Jun-68 | 0.12 | 1-Jan-91 | 0.20 | 1-Jan-76 | 0.08 |
| 1-Feb-72 | 0.15 | 1-Jan-93 | 0.24 | 2-Jul-02 | 1.50 |
| 1-Apr-83 | 0.21 | 1-Jan-00 | 0.34 | | |
| 1-May-89 | 0.33 | 1-Jan-02 | 0.39 | | |
| 1-Jun-90 | 0.39 | | | | |
| 1-Jun-93 | 0.56 | | | | |
| 1-Mar-00 | 1.11 | | | | |
| 3-Apr-02 | 1.50 | | | | |

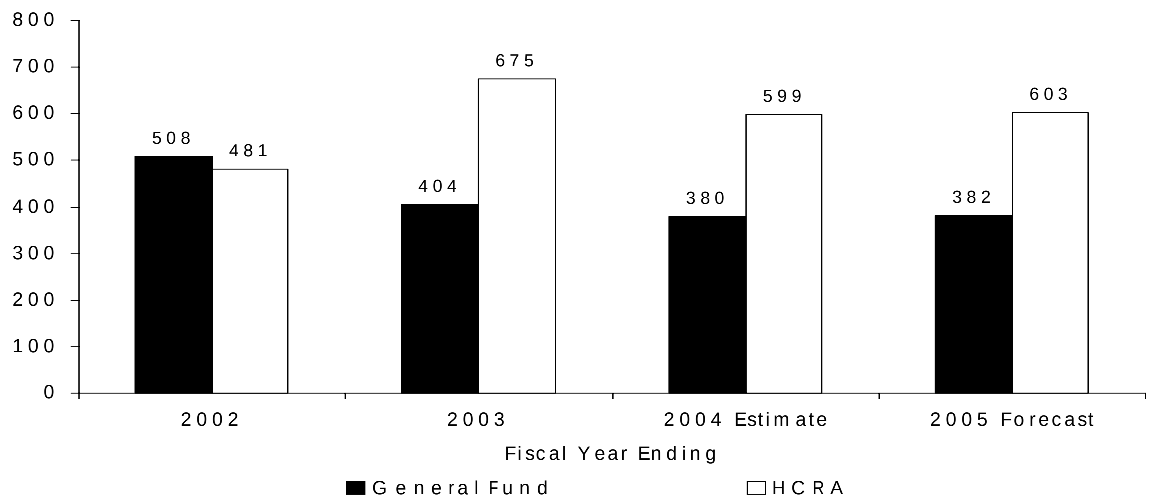
*Source: New York State Executive (2004). 2004-05 Executive Budget.*

### Health Care Reform Act (HCRA)

Over 60 percent of State cigarette tax collections are statutorily dedicated to the Tobacco Control and Insurance Initiatives Pool, which was created pursuant to the Health Care Reform Act of 2000. Although tax collections dedicated to the Tobacco Control and Insurance Initiatives Pool are used to support a variety of State health care initiatives, they are considered "off-budget" and, therefore, are not included in the reporting of the State's All Governmental Funds Budget. The Committee estimates that $599 million in cigarette tax collections will be dedicated to the pool in SFY 2003-04, and $603 million in SFY 2004-05. The following graph shows the distribution of cigarette receipts between the General Fund and HCRA.

**Distribution of Cigarette Tax Receipts**

(Millions of Dollars)




*Source: NYS Department of Taxation and Finance, Ways and Means Staff Estimates*

## Recent Legislative History

The Executive's 2004 proposed Budget includes a provision which authorizes the State to enter into price parity agreements with Native American nations with regards to the sale of cigarettes, tobacco products, automotive fuel, alcoholic beverages, and other tangible personal property or services to non-Native Americans. In addition, it proposes to extend until March 1, 2005 implementation of existing regulations governing collecting of taxes by Native American nations, who by such date, have not entered into a price parity agreement with the State.

Legislation enacted in 2003 requires the Department of Taxation and Finance to establish rules and regulations for collecting cigarette excise taxes from sales of tobacco products by Native American stores to non-Native Americans.

Legislation enacted in the 2002 legislative session changed the distribution rates used to fund the HCRA programs. Effective on and after April 1, 2002, the HCRA dedication rate was changed from 49.55 percent to 43.7 percent. Effective on and after May 1, 2002, the HCRA dedication rate was changed to 64.55 percent and then to 61.22 percent effective on and after April 1, 2003. As a result of this legislation, General Fund distribution rates will change respectively.

In addition, the SFY 2002-03 Executive Budget increased the excise rate on tobacco products from 20 percent to 37 percent of the wholesale price effective July 2, 2002. This legislation also provides for a floor tax on all tobacco products possessed on or before such effective date.

Chapter 1 of the Laws of 2002 increased the cigarette tax rate from $1.11 to $1.50 per package of 20 cigarettes effective April 3, 2002. The additional 39 cents per pack increase was intended to be used to help fund the shift of various health care programs into the HCRA pool.

In addition to the State cigarette excise tax, New York City also levies a cigarette excise tax. Legislation enacted in 2002 increased the NYC cigarette excise tax from $0.08 to $1.50 per package of 20 cigarettes, effective July 2, 2002.

Legislation enacted in 2000 requires all cigarette and rolled tobacco products sold in New York to meet certain fire-safety standard. Implementation of these regulations, which were scheduled to go into effect in 2003, have been delayed until June 28, 2004.

Chapter 262 of the Laws of 2000 contained various enforcement provisions in an effort to reduce cigarette bootlegging and reduce youth and adult smoking by banning Internet sales. A portion of this legislation, which prohibited carriers from delivering cigarettes to persons who are not licensed or registered cigarette dealers or agents, was ruled unconstitutional by the U.S. District Court of the Southern District of New York and was enjoined from going into effect. However, the Executive filed an appeal to this ruling, and the 2nd U.S. Circuit Court of Appeals overturned the ruling of the lower court. The Appeals Court concluded that this legislation did not discriminate against interstate commerce and New York consumer's access to cigarettes.

Chapter 1 of the Laws for 1999 enacted broad health care legislation known as HCRA 2000. A key component was a 55 cents per pack of cigarettes tax increase, with all proceeds of the increase devoted to health care programs.

Chapter 629 of the Laws of 1996 enacted strict cigarette and tobacco tax enforcement measures, which were aimed at curbing the sale of bootlegged cigarettes in New York State. The increased enforcement provisions were estimated to increase SFY 1997-98 revenues by $13 million.

**Corporate Franchise Tax**

| | Ways and Means | | | Executive | | |
|---|---|---|---|---|---|---|
| | All Funds | General Fund | General Fund Percent Change | All Funds | General Fund | General Fund Percent Change |
| **2002-2003 Actual** | 1,612 | 1,407 | -7.1% | 1,612 | 1,407 | -7.1% |
| **2003-2004 Estimate** | 1,573 | 1,376 | -2.2% | 1,570 | 1,382 | -1.8% |
| **2004-2005 Forecast** | 1,912 | 1,682 | 22.2% | 1,984 | 1,746 | 26.3% |

The corporate franchise tax is comprised of Articles 9-A and 13 of the Tax Law. Article 9-A imposes a tax on corporations for the privilege of operating a business in a corporate form in New York State. The tax had been assessed at a rate of nine percent of Entire Net Income (ENI), but was recently phased-down over a three-year period to the current rate of 7.5 percent. One of the three alternative bases (allocated capital, alternative minimum income, or fixed dollar minimum) must be used if any of the three results in a greater amount of tax owed. Article 13 authorizes the tax on unrelated business income (UBT). The UBT is a tax on the unrelated business income of not-for-profit corporations and other organizations whose activities are otherwise tax-exempt.

**General Fund**

The Committee staff estimates that receipts for SFY 2003-04 will total $1.376 billion, which is a decrease of 2.2 percent from SFY 2002-03. Corporate profits are expected to have grown by an estimated 13.0 percent in calendar year 2003, with other factors such as NOLs and refundable credits contributing to the overall decrease in collections. This estimate includes an expected $115 million in receipts resulting from 2003 legislation that closed certain tax loopholes. An additional $95 million is also expected from separate legislation in 2003 which requires the addition to ENI for state purposes any Federal bonus depreciation amounts claimed for property placed in service after June 30, 2003. This estimate is $6 million lower than that of the Executive.

The Committee staff forecast for SFY 2004-05 is $1.682 billion, representing growth of 22.2 percent over the prior fiscal year. Corporate profits are expected to again see strong growth in calendar year 2004, growing by an estimated 19.4 percent over the 2003 calendar year. Additional receipts resulting from the 2003 legislation mentioned above are expected to amount to $190 million in SFY 2004-05.

## All Funds

Corporate franchise taxpayers pay an additional Regional Business Tax Surcharge, which is levied at the rate of 17 percent on business activity conducted within the Metropolitan Commuter Transportation District (MCTD). This district includes the City of New York and seven surrounding counties (Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester).

Collections from the surcharge are deposited into the Mass Transportation Operating Assistance Fund, associated with the Metropolitan Transportation Authority.

All Funds receipts for SFY 2003-04 are expected to be $1.573 billion, which is the sum of the General Fund estimate and the estimate of the Article 9-A portion of the Regional Business Tax Surcharge. This estimate represents a decrease of 2.4 percent over SFY 2002-03. The Committee staff estimate is $3 million lower than the Executive estimate.

The Committee staff All Funds forecast for SFY 2004-05 is $1.912 billion, representing an increase of 22.2 percent. The All Funds forecast is the aggregate of the Article 9-A General Funds forecast and the forecast of the Article 9-A portion of the Regional Business Tax Surcharge. The Committee staff forecast is $72 million lower than the Executive forecast.

## Legislative Proposals

The Executive has proposed a substantial revision to the Empire Zones (EZ) Program, that would amend the General Municipal Law and the Tax Law and extend the program through 2009. The proposed Tax Law provisions are as follows:

- Change the business tax benefit period, used in the calculation of certain Qualified Empire Zone Enterprise (QEZE) tax credits, for businesses certified on or after April 1, 2004. The current business tax benefit period is 15 years and is phased-out over the final five years. The proposed period would be a 10-year period with no phase-out.

- Change the employment test used in the determination of a taxpayer's QEZE status for certain businesses certified after April 1, 2004. The test would be met if the taxpayer's employment within Empire Zones and within the State both exceed base year levels for each measure.

- The proposed base period for the test would be the four taxable years preceding the certification date instead of the five taxable years preceding the test year, which is the year preceding the certification date.

- The proposed new test would not count any employees previously employed in New York State by an entity related to the taxpayer. The definition of a related entity would be expanded to include entities that would have otherwise been related in the absence of dissolution, liquidation or merger.

- The employment increase factor used in the calculation of certain tax credits would be changed for all but certain businesses certified before April 1, 2004. These businesses would calculate the factor as the number of new jobs in Empire Zones divided by 100. New jobs would be calculated subject to the same new criteria applied to the employment test.

- In addition, the Commissioner of the Department of Economic Development (DED) would have the authority to deem that businesses making significant certified investments in distressed census tracts have an employment increase factor of 1.0, regardless of actual employment increases.

- The definition of eligible real property taxes, used in the calculation of the EZ real property tax credit, would be amended so that QEZEs that make direct payments of certified eligible real property taxes or PILOTs as part of a lease agreement may receive benefits.

- The definition would be further amended so that the full amount of any PILOTs paid in excess of the estimated effective full value tax rate would be deemed ineligible.

- Except for certain businesses certified before April 1, 2004, the proposed calculation of the cap on the EZ real property tax credit would be the employment increase limitation using the number of new employees in Empires Zones according to the definition of new employees proposed for the employment test.

- Additionally, QEZEs making PILOT payments that would now qualify for the EZ real property tax credit would calculate their tax cap using only the employment increase limitation, and not the capital investment limitation.

- Zone Equivalent Areas (ZEAs), or census tracts that met the criteria for designation as an Empire Zone but were not selected, will be eliminated on June 13, 2004. Taxpayers that qualify for ZEA wage tax credits will be allowed to continue claiming such credits for a period of five tax years.

- The Empire Zones capital tax credit will no longer be applicable for investments made in zone capital corporations in taxable years beginning on or after January 1, 2005. Furthermore, only qualified investments made in zone capital corporations established prior to July 31, 2004, will be eligible for the credit until that date.

- Businesses certified before April 1, 2004, would be able to request permission from the Commissioner of DED to continue calculating benefits according to the law in effect prior to the enactment of these proposed changes (the law in effect for taxable years beginning in 2003).

**Estate & Gift Tax**

| | Ways and Means | | Executive | |
|---|---|---|---|---|
| | General Fund | Percent Change | General Fund | Percent Change |
| **2002-2003 Actual** | 708 | -7.8% | 708 | -7.8% |
| **2003-2004 Estimate** | 773 | 9.2% | 752 | 6.2% |
| **2004-2005 Forecast** | 760 | -1.7% | 730 | -2.9 |

Articles 26 and 26-A of the Tax Law impose taxes on the transfer of property among individuals. Transfers of property upon death are taxed under the Estate Tax Law (Article 26). All of the receipts are deposited into the General Fund.

## General Fund

The Committee staff estimates that SFY 2003-04 receipts will total $773 million, an increase of 9.2 percent. Year-to-date are up 10.9 percent over the same period a year ago, and have steadily improved after showing weakness earlier in the year. The Committee staff estimate is $21 million above that of the Executive.

The Committee staff forecast for SFY 2004-05 is $760 million, which represents a decrease of 1.7 percent in overall estate tax receipts. The forecast assumes no receipts from the Gift Tax since it was repealed as of January 2000.

### Recent Legislative History

In 1999, legislation was enacted that conforms the New York State Estate and Gift Tax Law to Federal Law providing a qualified family-owned business interest deduction. This allows heirs to exempt a total of $1.3 million from the New York State Estate Tax. This change was expected to reduce revenues by $8.0 million when fully implemented.

In 1998, legislation was enacted that conforms the Estate Tax to the effective Federal exemption of $1.3 million if the value of a family-owned farm or business constitutes 50 percent of the gross value of the estate.

In 1997, legislation was enacted which phased-in a reduction of the Estate Tax making the tax liability equal to the Federal credit for state estate taxes paid. New York automatically conformed State law to the unified credit provisions specified in Federal Law, but capped the maximum credit at $1 million. In addition, as of January 1, 2000, the Gift Tax was repealed.

## Impact of Federal Legislation

Federal legislation enacted in 2001 effectively exempts the first $1 million of the value of an estate in 2002. In addition the legislation phases out the Federal credit for state death taxes over four years, by 25 percent per year. However, since the New York Estate Tax Law conformed with the Federal Law as it existed on July 22, 1998, this phase out of the unified credit will have no impact on New York estate tax liability.

**Highway Use Tax**

| | *Ways and Means* | | *Executive* | |
|---|---|---|---|---|
| | All Fund | Percent Change | All Fund | Percent Change |
| **2002-2003 Actual** | 147 | 0.0% | 147 | 0.0% |
| **2003-2004 Estimate** | 148 | 0.8% | 147 | 0.0% |
| **2004-2005 Forecast** | 147 | -0.7% | 152 | 3.4% |

Article 21 of the Tax Law imposes a highway use tax for the privilege of operating a motor vehicle on the highways of New York State. This tax exempts mail trucks, government, farmers, volunteer fire department, and vehicles transporting household goods.

Three component taxes (truck mileage tax, permits and fuel use tax) are imposed upon the operation of trucks, tractors, trailers and semi-trailers for their use of the highways.

The truck mileage tax is a weight-distance tax generally imposed on commercial vehicles having a loaded gross weight of more than 18,000 pounds. The tax is imposed at rates graduated according to the gross vehicle weight and miles traveled on public highways. In addition to the truck mileage tax, a supplemental tax is imposed at a rate equal to 40 percent of the truck mileage tax. However, the supplemental tax is not imposed on any mileage on the Thruway when payment has been made to the Thruway Authority.

In addition, the supplemental tax does not apply to any vehicular unit used almost exclusively to transport boltwood, logs, pulpwood or woodchips. In addition, it does not apply to any vehicular unit used almost exclusively to transport raw, unprocessed milk in bulk. However, these exclusions do not apply to any carrier or owner that operates more than three such vehicular units.

Monthly returns and payment are required where a carrier's total tax liability under highway use tax for the preceding calendar year exceeded $4,000, otherwise returns and payments are due quarterly.

Permits are issued for no more than three years, the initial permit is $15 and renewals are $4.

The fuel use tax (Article 21-A) applies to fuel bought outside New York State, but used while traveling on New York highways. It has two components: the motor fuel component and the sales tax component. These tax provisions conform to the International Fuel Tax Agreement (IFTA).

## General Fund

All highway use tax receipts are earmarked to the Dedicated Highway and Bridge Trust Fund (DHBTF).

## All Funds

The Committee staff estimates that receipts in SFY 2003-04 would total $148 million, an increase of $1 million. This estimate is $1 million higher than that of the Executive. Highway use tax receipts through January 2004 are $125 million, representing a year to date decline of 0.2 percent over the comparable period in the prior year. Tax receipts for the remainder of the fiscal year must grow by 6.8 percent to achieve the Committee staff's estimate.

Year-to-date receipts by component show different behavior; truck mileage tax receipts decreased by 0.8 percent, fuel use tax grew 14.9 percent and permits decrease by 25.8 percent. The first tax reveals that demand for trucking is sluggish at best, the second tax responds basically to higher fuel prices and the third tax was expected to show negative growth since permits are issued triannually and last year was a peak year.

The Committee staff forecast for highway use tax receipts is $147 million for SFY 2004-05, representing a decrease of $1 million or 0.7 percent over the prior fiscal year. This forecast assumes employment, a factor driving demand for trucking, will grow by 1.1 percent, while prices for fuel will decline 0.5 percent in SFY 2004-05. This forecast is $5 million lower than that of the Executive.

## Recent Legislative History

In 2000, the supplemental highway use tax was reduced by 20 percent. This rate reduction was effective April 1, 2001.

In 1998, the supplemental portion of the truck mileage tax was reduced by 50 percent, effective January 1, 1999. This resulted in a 25 percent overall rate reduction in the truck mileage tax. This legislation also dedicated a portion of motor vehicle fees that would normally be deposited into the General Fund, to the DHBTF in order to hold the fund harmless.

In 1996, the legislature extended the time period to claim a fuel use tax or carrier tax refund for fuel purchased within the State but consumed outside the State, and to claim a refund for erroneous payments under the highway use tax from two to four years

**Insurance Tax**

| | *Ways and Means* | | | *Executive* | | |
|---|---|---|---|---|---|---|
| | All Funds | General Fund | General Fund Percent Change | All Funds | General Fund | General Fund Percent Change |
| **2002-2003 Actual** | 776 | 704 | 11.2% | 776 | 704 | 11.2% |
| **2003-2004 Estimate** | 1,016 | 907 | 28.8% | 977 | 872 | 23.9% |
| **2004-2005 Forecast** | 1,116 | 997 | 9.9% | 1,021 | 912 | 4.6% |

Insurance taxes are authorized by Articles 33 and 33-a of the Tax Law, and Articles 11 and 12 of the Insurance Law. Article 33 of the Tax Law imposes a premium tax on insurance companies. Article 33-a imposes a tax on independently procured insurance. Articles 11 and 12 impose retaliatory taxes and a tax on excess line brokers (brokers authorized to procure insurance from out-of-state carriers not authorized to do business in New York). The franchise tax on insurance corporations has generally changed from one based on allocated Entire Net Income and an additional amount based on gross allocated premiums to one based on allocated premiums. This change is discussed in further detail below.

**General Fund**

The Committee staff estimates that SFY 2003-04 receipts will total $907 million, an increase of 28.8 percent. Most of the increase in receipts is thought to be the result of major restructuring of the insurance tax in 2003, which generally moves to a tax on allocated premiums. Premium growth continues to be strong as a result of the increased risk climate following the events of September 11, 2001. Also, low interest rates and poor returns on equity investments have led insurers to raise premiums since investment income can not currently be relied upon to cover claims and expenses. This estimate is $35 million higher than that of the Executive.

The Committee staff forecast for SFY 2004-05 is $.997 billion, representing an increase of 9.9 percent. This forecast takes into consideration a more modest expected growth in insurance premiums. Also, it is assumed that collections growth will be more modest in SFY 2004-05 since the tax restructuring will by then be fully phased in. This forecast is $85 million higher than that of the Executive.

## All Funds

Article 33 taxpayers also pay a Regional Business Tax Surcharge, which is levied at the rate of 17.0 percent on business activity carried on within the Metropolitan Commuter Transportation District (MCTD). The district includes the City of New York and seven surrounding counties (Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester).

Collections from the surcharge are deposited into the Mass Transportation Operating Assistance Fund, associated with the Metropolitan Transportation Authority.

All Funds receipts for SFY 2003-04 are expected to total $1.016 billion, which is the sum of the General Fund estimate and the estimate of the Article 33 portion of the Regional Business Tax Surcharge. This estimate represents growth of 30.9 percent over SFY 2002-03. The Committee staff estimate is $39 million higher than the Executive estimate.

The Committee staff All Funds forecast for SFY 2004-05 is $1.116 billion, representing growth of 9.8 percent. The All Funds forecast is the aggregate of the Article 33 General Funds forecast and the forecast of the Article 33 portion of the Regional Business Tax Surcharge. The Committee staff forecast is $95 million higher than the Executive forecast.

## Legislative Proposals

The Executive proposes a four year extension of the MTA surcharge.

## Recent Legislative History

In 2003, the Insurance Tax underwent a major restructuring:

- Non-life insurance companies moved to a premiums only tax, imposed at a rate of 1.75 percent on accident and health premiums and 2.0 percent on all other non-life premiums.

- Life insurers now pay the greater of 1.5 percent of premiums, or the old calculation of 7.5 percent on ENI plus 0.7 percent of premiums limited to a total liability of no more than 2.0 percent of premiums.

- The following provisions were also part of the restructuring:

    - Conforming amendments related to the calculation of the MTA surcharge and to estimated tax liability.

- Exemption of premiums received for the reinsurance of excess lines policies from taxation.
- Reduction of the minimum forfeiture rate on annuity contracts from 3.0 percent to 1.5 percent for contracts entered into for a period of two years from enactment.

In 2002, legislation was enacted to:

➢ Provide a tax credit for attorneys-in-fact operating with reciprocal insurance groups in New York State. The credit reduces the income that an attorney-in-fact receives above their cost of doing business, with the intent of the law being to tax reciprocal groups the same as stock or mutual insurers.

➢ Change the order in which tax credits are applied so that non-carryover credits that are not refundable are used first, followed by limited duration carryover credits, then by unlimited duration carryover credits, and finally by refundable credits.

➢ Extend the qualifying period of the Investment Tax Credit for financial services, making property placed in service before October 1, 2008 eligible. The previous cut-off for eligibility was October 1, 2003.

➢ Amend provisions pertaining to ITC recapture. Taxpayers who owned property that was destroyed or ceased to be in qualified use due to events directly related to September 11 were provided an election to:

- Not face recapture provisions if they maintained 75 percent of their base employment number.

- Follow the normal recapture rules, but not reduce the cost basis of ITC awarded for replacement property.

In 2000, legislation authorizing an additional $150 million in tax credits for the Certified Capital Corporations (CAPCO) program was enacted. CAPCOs are venture capital companies that are certified by the Insurance Department as meeting certain investment requirements and are required to invest in small New York based companies. Insurance companies that invest in CAPCOs will be able to claim a credit for 100 percent of their investments. In addition, the Investment Tax Credit (ITC) was extended to insurance companies engaged in securities trading.

In 1999, legislation was enacted to reduce the Entire Net Income (ENI) rate from 9 percent to 7.5 percent over a three-year period. In addition, the cap of the tax as a percentage of premiums was reduced from 2.6 percent to

2.0 percent for property and casualty insurers. These changes will reduce insurance tax revenues by $50 million and $30 million when fully implemented.

In 1997, three insurance tax measures were instituted to help maintain the competitiveness of this industry in New York State. First, beginning in 1998, life insurance companies received a reduction in their premiums tax rate from 0.8 percent to 0.7 percent, and an increase in their March estimated payment from 25 percent to 40 percent. In addition, two other enacted provisions allowed for the formation of captive insurance companies and allow for investment in CAPCOs. The CAPCO program was established with $100 million in credits. A captive insurance company is a company that primarily insures the risks of a parent or its parents' affiliated companies. Captive insurers will be subject to a special premium tax in lieu of the premiums and "income-base" tax that applies to other insurance companies.

**Lottery**

| | *Ways and Means* | | *Executive* | |
|---|---|---|---|---|
| | Net Revenues (in millions) | Percent Change | Net Revenues fin millions) | Percent Change |
| **2002-2003 Actual** | 1,826 | 14.2% | 1,826 | 14.2% |
| **2003-2004 Estimate** | 1,835 | 0.5% | 1,835 | 0.5% |
| **2004-2005 Forecast** | 2,211 | 20.0% | 2,186 | 19.1% |

The Committee staff expects SFY 2003-04 Lottery revenues to total $1.895 billion, which includes $15 million dollars from the Video Lottery Terminals (VLTs) at Saratoga, and Finger Lakes racetracks. Since the current Lottery Aid Guarantee is set at $1.835 billion, there is a predicted $59.5 million carryover into next year's fund. The Executive SFY 2003-04 estimate is $1.869 billion, but includes no revenue from VLTs and lists a carryover of $33.6 million. The Committee staff estimates that Lottery revenues will grow by 6.0 percent in SFY 2003-04 over SFY 2002-03.

As of January 2004, year-to-date Lottery receipts have increased by $59 million, or 4.7 percent. Much of this increase is due to Texas joining Mega Millions in December of 2003 and the game's first full year of implementation. Excluding Mega Millions, lottery revenues have increased by 4.0 percent through January 2004. Instant Game and Quick Draw receipts have experienced very healthy growth through January 2004, growing by 13.8 percent and 5.4 percent respectively.

The Committee staff estimates that the Lottery will collect $2.2 billion for education in SFY 2004-05, representing an increase of $375 million, or 20 percent over SFY 2003-04. This includes approximately $232 million in VLT revenues as well as a $59.5 million carry-in from SFY03-04.

Legislation enacted in 2001 authorizes the Lottery Division to license the operation of video lottery gaming at Aqueduct, Monticello, Yonkers, Finger Lakes and Vernon Downs horse tracks. An additional three other horse tracks may also be licensed pursuant to local law. In both 2002 and 2003, several legislative enhancements were made to address concerns that were raised by tracks regarding VLTs. However, it has still taken longer than anticipated for the tracks to make the VLTs operational.

As a result of the delay in VLT facilities opening, the Committee staff estimate for VLT revenues in SFY 2003-04 is $15.0 million. The Executive did not provide an estimate for VLT revenues for SFY 2003-04. The SFY 2004-05

Committee staff forecast for VLT revenues is $232.0 million. The Executive forecasts $240.1 million in VLT revenues for SFY 2004-05, a difference of $8 million.

With his Budget Proposal, the Executive proposed legislation that would expand the Video Lottery Terminal Program, authorizing the Lottery Division to license as many as eight new VLT facilities. The proposal also alludes to the creation of a new account, entitled the Standard Basic Education (SBE) Fund, which would be the sole beneficiary of VLT receipts.

The Executive also submitted Article VII legislation with his 2004-05 Executive Budget that would allow the Lottery to continue the Quick Draw game indefinitely; the current authorization is set to expire on May 31, 2004. The Executive proposed permanent authorization, instead of another temporary authorization, based on the claim that the possibility of the game expiring has decreased retailers' interest in procuring Quick Draw for their establishments. In addition to ridding Quick Draw of any legislative expiration, the Executive submitted legislation that would remove restrictions related to Quick Draw. The current restrictions require that in order for a bar or tavern to operate Quick Draw, 25 percent of gross receipts must come from the sale of food. Also, a commercial establishment that does not offer alcohol for on-premises consumption must currently be at least 2,500 square feet in size. This proposal would eliminate these restrictions and would also eliminate the restrictions that limit the total daily and consecutive number of operation hours permitted.

The New York State Lottery is currently comprised of Instant Games, Daily Numbers, Win 4, Pick 10, Take 5, Quick Draw, Lotto, Mega-Millions and Video Lottery Terminals (VLTs). A percentage of sales from each game, ranging from 4.9 to 45 percent, is dedicated to fund education. Like the education dedications, payouts for each game also vary considerably – from 40 percent of Lotto sales to 92 percent of VLT sales. In addition, 15 percent of all Lottery sales, with the exception of VLTs, are placed into a special revenue account to cover the administrative expenses of the Lottery. For VLT's, 3.1 percent of sales are kept for administration, which includes commissions paid to the host facility and other distributions designed to assist the ailing horse racing industry. The Division's administrative expenses are appropriated by the Legislature each year as part of the State Operating Budget. In instances where administrative allowances exceed administrative costs, the remaining funds are transferred to the general Lottery account and dedicated to education. For each game, administrative allowances, prizes and education dedications account for the entirety of revenues raised.

**General Fund**

The Committee staff expects SFY 2003-04 revenues to total $1.895 billion, which equates to a 6 percent growth over last year and exceeds the current Lottery Aid Guarantee of $1.835 billion by $60 million. When revenues exceed the Lottery Aid Guarantee, they are applied to revenues in the following fiscal year – termed a carry-out. Since this year's revenues are estimated by the Committee staff and the Executive to exceed the Lottery Aid Guarantee, there is agreement that net revenues to education will equal the Lottery Aid Guarantee. The Committee staff estimates the carryout to be $60 million for SFY 2003-04, whereas the Executive's carryout is $33.6 million. Part of the difference between the Committee staff's estimate and the Executive estimate is the result of the Executive's omission of revenues from Video Lottery Terminals in SFY 2003-04. The Saratoga VLT facility opened on January 28, 2003 and one other VLT facility is set to open before the close of the fiscal year, but the Executive Budget does not account for any revenues from these sources.

The Committee staff's Lottery receipts forecast for SFY 2004-05 is $2.211 billion, representing growth of 20 percent from the Committee staff's SFY 2003-04 estimate. The Executive's estimate is $2.186 billion in lottery receipts, a difference of 25 million dollars.

The Committee staff's SFY2004-05 Quick Draw forecast differs from that of the Executive because the Executive assumes that particular restrictions currently placed on Quick Draw will be removed, whereas the Committee staff does not. For both the Committee staff's forecast and the Executive's forecast, strong growth in Lottery receipts is mainly attributable to revenues produced by Video Lottery Terminals.

**Video Lottery Terminals**

| | *Ways and Means* | *Executive* |
|---|---|---|
| | VLT receipts (in millions) | VLT receipts (in millions) |
| **2003-2004 Estimate** | 15 | 0 |
| **2004-2005 Forecast** | 232 | 240 |

Legislation enacted in 2001 authorized the Lottery Division to license the operation of Video Lottery Terminals (VLTs) at eight racetracks throughout the State. Dubbed 'racinos,' these horse tracks with VLT's have yet to produce the revenues predicted when they were originally authorized. As a result, the Committee staff estimate for VLT revenues in SFY 2003-04 is only $15 million. In contrast, the Executive has forecast no VLT revenues in SFY 2003-04, even though Saratoga Racetrack opened its VLT operation on January 28, 2004 and Finger Lakes is expected to open by the end of February 2004. The Committee staff forecasts SFY 2004-05 VLT revenues of $232 million, the Executive predicts VLT revenues of $240 million in SFY 2004-05.

With the 2004-2005 Budget Proposal, the Executive also submitted legislation authorizing the Lottery Division to competitively bid as many as eight new licenses to operate video lottery franchise gaming facilities. The proposal contains provisions mandating 15-mile geographical bubbles around current and prospective video lottery terminal facilities and limits the maximum number of VLT facilities that can be placed in New York City at five. The proposed facilities, like previously authorized facilities, would be required to payout at least 90 percent of sales in prizes. However, unlike VLT facilities at racetracks, the net revenues would be split among administration, education and the facilities. No other entities such as breeders or horse race purses would benefit from proceeds produced at new VLT facilities. However, because the new VLT facilities would not be required to locate at a racetrack, there is considerably less predictability as to where the VLT facilities would be established. The existing VLT facilities allocate 61 percent of net revenues to education, 70 percent of revenues from the newly proposed VLT facilities would be allocated to education.

The Executive's proposal also eludes to a new education account entitled the Standard Basic Education (SBE) account. All revenues from VLT's, including those generated from previously authorized facilities would be deposited into the SBE account. This account would exclusively fund New York City schools, in an attempt to fulfill the mandate passed down by the Appellate Court in 'Campaign for Fiscal Equity versus the State of New York.' However, possible revenues associated with expanding the VLT program are not expected to accumulate during SFY 2004-05.

**Recent Legislative History**

Legislation enacted in 2003 changed many of the Video Lottery provisions in order to address some of the concerns of the tracks.

- Extended the current sunset provisions authorizing the operation of Video Lottery Terminals (VLTs) at certain racetracks to ten years from first date of operation. The previous sunset was December 31, 2007.

- Increased the education dedication to 61 percent of net revenues. Reduces the administrative set aside from 15 percent to 10 percent. Provides the tracks with 29 percent to be shared with the breeders and to enhance purses. Provides that a sharing agreement may be negotiated with the horsemen, but sets a statutory structure if an agreement cannot be reached.

- Increased the hours of operation to 16 consecutive hours per day, provided that tracks cannot operate past 2:00 AM on any given day.

- Provided that temporary facilities may be used for no longer than an 18-month period.

- Provided for an extension of the New York Racing Association (NYRA) franchise through December 31, 2013, contingent upon certification by the Lottery Division that VLTs are operational at Aqueduct racetrack as of March 1, 2004.

- Establishes a problem and compulsive gambling education prevention fund with revenues.

Legislation enacted in 2002 extended authorization to the Division of the Lottery to operate the Quick Draw game through May 31, 2004, and to offer up to three instant games per fiscal year with a prize payout equal to 75 percent of sales. In addition, several provisions were enacted with regards to the operation of Video Lottery Terminals (VLTs), including the following:

- The sunset provisions authorizing the operation of VLTs at certain racetracks was changed to December 31, 2007. The previous sunset had been three years from the first date of VLT operation.

- Provisions for the subordination of debt were made for the New York Racing Association (NYRA) based on certain capital improvements at the Aqueduct racetrack for the purpose of installing VLTs, and for capital improvements at certain other NYRA racetracks.

- An extension of the NYRA franchise was provided, which is currently set to expire December 31, 2007, for a period of five years, contingent upon certification by the Lottery Division that VLTs are operational at the Aqueduct racetrack as of April 1, 2003.

- Temporary authorization was extended to racetracks to negotiate with horsemen's organizations regarding the shares of profits from VLTs to be allocated to purses.

Legislation enacted in 2001 authorizes the Lottery Division to license the operation of video lottery gaming at Aqueduct, Monticello, Yonkers, Finger Lakes and Vernon Downs. Certain other racetracks may also be licensed pursuant to local law.

Legislation enacted in 2001 also authorizes the Division of Lottery to enter into a multi-state lottery game. The Lottery Division introduced Mega Millions on May 15, 2002, which was based on a multi-State game previously known as the Big Game.

**Recent Administrative History**

In March 2003 the Lottery Division reduced the time between Quick Draw Games from five minutes to four.

In December 2001, the Lottery Division began a second drawing at noon for Daily Numbers and Win 4.

In September 2000, the Lottery added two Take Five drawings per week to the existing five drawing per week in order to boost sales. This has resulted in a large increase in sales since implementation.

In addition to the recent legislative authorization to increase the prize payout for Instant Games to 65 percent, sales for these games have increased due to the implementation of a Retailer Management Plan. Under the plan, the Lottery sends representatives every two weeks to most retailers that sell Instant Games tickets in order to help them manage their inventory of tickets.

Because the necessary legislation authorizing a multi-state lottery game was not enacted in 2000, the Lottery announced the re-introduction of a promotional Millennium Millions game, tickets for which were sold starting in October 2000. The jackpot for this game rolled twice, producing revenues of $54.4 million, excluding the unused administrative surplus.

In March 1999, the Lottery offered a new Regional Lotto game to combat the perception that winners are always from another part of the State. This game ended in November 1999, and was replaced by a special Millenium Millions Lotto game. Excluding the administrative surplus, the Regional Lotto game produced $17.6 million in revenues dedicated to education, and the Millenium Millions game contributed $29.2 million for SFY 1999-00.

**Miscellaneous Receipts**

| | Ways and Means | | Executive | |
|---|---|---|---|---|
| | General Fund | Percent Change | General Fund | Percent Change |
| **2002-2003 Actual** | 2,091 | 28.6% | 2,091 | 28.6% |
| **2003-2004 Estimate** | 6,615 | 216.3% | 6,615 | 216.3% |
| **2004-2005 Forecast** | 2,110 | -67.9% | 2,087 | -68.5% |

Miscellaneous receipts consist of a wide variety of non-tax receipts that are deposited into the General Fund. There are currently six categories of collections that encompass General Fund miscellaneous receipts:

- Abandoned Property;
- Federal Grants;
- General Fund Refunds and Reimbursements;
- Investment Income;
- Licenses and Fees; and
- Other Transactions.

Other Transactions has become the catch-all category for non-recurring revenue transactions (aside from those that can be categorized elsewhere). Though not covered in this report, the State Funds budget also includes approximately $10 billion in Miscellaneous Special Revenue Funds (mainly from fees, agency offsets, etc) that are used to support State Agency appropriations.

***SFY 2003-04***

The Committee staff estimates that total General Fund miscellaneous receipts will total $6.615 billion in SFY 2003-04. This estimate includes $4.2 billion proceeds from Tobacco Securitization Bonds, $1.9 billion of which were previously scheduled to be issued in SFY 2002-03 and were pushed into SFY 2003-04 and an additional $2.3 billion issued in SFY 2003-04. In addition, this estimate includes $645 million in Federal funds intended to provide state fiscal relief. Absent these transactions, total miscellaneous receipts were expected to total $1.770 billion, a decrease of $321 million from SFY 2002-03 collections.

Year-to-date collections total $6.124 billion, including $4.2 billion from the issuance of Tobacco Securitization Bonds and $645 million in Federal Grants.

***SFY 2004-05***

The Committee staff forecast for SFY 2004-05 is $2.110 billion, a decline of $4.505 billion from the prior fiscal year. The decline in receipts is due primarily to the absence of Tobacco Bond proceeds and Federal fiscal relief that boosted receipts by $4.845 billion in SFY 2003-04.

**Motor Fuel Tax**

| | Ways and Means | | Executive | |
|---|---|---|---|---|
| | All Fund | Percent Change | All Fund | Percent Change |
| **2002-2003 Actual** | 544 | 11.2% | 544 | 11.2% |
| **2003-2004 Estimate** | 512 | -5.8% | 508 | -6.5% |
| **2004-2005 Forecast** | 514 | 0.4% | 518 | 2.0% |

Article 12-A imposes an 8 cents per gallon tax on diesel motor fuel at the point of first taxable sale or use in New York. The tax also applies to gasoline, upon first import into or production within New York. The tax has three components: regular tax (4 cents per gallon), additional tax (3 cents per gallon) and supplemental tax (1 cent per gallon). The law requires the pass-through of these taxes to consumers.

Sales of aviation gasoline used by aircraft receive an up-front exemption from the motor fuel excise tax.

The motor fuel tax does not apply to fuel used for non-highway purposes. Fuel used in farming or commercial marine purposes, is eligible for a refund.

Payment by electronic funds transfer is required for distributors if a taxpayer was liable for more than $5 million of total motor fuel and petroleum business taxes during the June 1 through May 31 period that immediately precedes.

The entire gasoline tax and diesel fuel taxes are deposited into dedicated funds established to help finance highway, bridge, and mass transportation construction and maintenance efforts.

**General Fund**

Since 1993, motor fuel tax collections have been dedicated to the Emergency Highway Reconditioning and Preservation Fund and the Emergency Highway Construction and Reconstruction Fund. Also, beginning April 1, 2001, a portion of motor fuel taxes have been earmarked to the Dedicated Highway and Bridge Trust Fund and beginning April 1, 2001, to the Dedicated Mass Transportation Trust Fund.

Legislation has dedicated the motor fuel tax to the aforementioned dedicated transportation funds based on the following schedule:

| | General Fund | | DHBTF[1] | | EHF[2] | | DMTTF[3] | |
|---|---|---|---|---|---|---|---|---|
| **Effective Date** | Gasoline | Diesel | Gasoline | Diesel | Gasoline | Diesel | Gasoline | Diesel |
| **Prior to April 1, 1993** | 78.10% | 78.10% | 0.00% | 0.00% | 21.90% | 21.90% | 0.00% | 0.00% |
| **Prior to April 1, 2000** | 28.10% | 78.10% | 50.00% | 0.00% | 21.90% | 21.90% | 0.00% | 0.00% |
| **Prior to April 1, 2001** | 0.00% | 28.10% | 67.70% | 31.50% | 21.90% | 21.90% | 10.40% | 18.50% |
| **Prior to April 1, 2003** | 0.00% | 0.00% | 67.70% | 49.20% | 21.90% | 21.90% | 10.40% | 28.90% |
| **After April 1, 2003** | 0.00% | 0.00% | 81.50% | 63.00% | 0.00% | 0.00% | 18.50% | 37.00% |

[1] Dedicated Highway and Bridge Trust Fund.

[2] Emergency Highway Reconditioning and Preservation Fund and the Emergency Highway Construction and Reconstruction Fund.

[3] Dedicated Mass Transportation Trust Fund.

**All Funds**

Motor fuel receipts are earmarked to the Dedicated Highway and Bridge Trust Fund (81.5 percent) and the Dedicated Mass Transportation Trust Fund (18.5 percent).

Diesel motor fuel receipts are earmarked to the Dedicated Highway and Bridge Trust Fund (63 percent) and the Dedicated Mass Transportation Trust Fund (37 percent).

Through January 2004 motor fuel collections are $434.9 million, a decrease of $26 million, or 5.6 percent below the comparable period in the prior fiscal year. Gasoline net receipts are down 2.8 percent while diesel net receipts are down 44.9 percent. These large declines is explained by:

- a carry-in of $2.6 million of SFY 2001-02 receipts into 2002-03;
- and petroleum business tax (PBT) receipts recorded under motor fuel receipts.

According to the Department of the Budget motor fuel tax receipts were inflated by $18.4 million.

In addition, during SFY 2003-04 measures were taken to correct misallocation of receipts made in the months of May and July of 2003. Diesel receipts are lower than expected while gasoline receipts are higher than expected.

The Committee staff estimates that in SFY 2003-04 Motor Fuel Taxes will total $512 million. This amount would be distributed as follows: Special Revenue Fund: $101 million, and Capital Projects: $411 million. Tax receipts for the remainder of the fiscal year must decrease by 7 percent to achieve the Committee staff's estimate.

This estimate is $4 million above that of the Executive on an All Funds basis.

The Committee staff estimates that in SFY 2004-05 motor fuel taxes will total $514 million, a 0.4 percent increase. This amount would be distributed as follows: Special Revenue Fund: $108 million and Capital Projects: $406 million. This forecast assumes employment, a factor driving demand for motor fuels, to grow by 1.1 percent while prices for fuel will decline 0.5 percent in SFY 2004-05. This estimate is $4 million lower than that of the Executive.

**Recent Legislative History**

Legislation Enacted in 2003 required the Commissioner of Taxation and Finance to promulgate regulations requiring the taxation of motor fuel sold to non-Native Americans on Native American lands, effective March 1, 2004. Legislation included in the Executive's 2004 Budget proposed delaying implementation of these regulations until March 1, 2005.

Beginning April 1, 2001, the last portion of General Fund receipts from these taxes was dedicated to the Emergency Highway Fund Accounts.

The Dedicated Funds will receive 100 percent of Article 12-A (gasoline) taxes beginning April 1, 2003. The new distribution: 82 percent to the Dedicated Highway and Bridge Trust Fund and, 18 percent to the Dedicated Mass Transportation Trust Fund. Receipts from the tax on diesel would be dedicated as follows: 63 percent to the Dedicated Highway and Bridge Trust Fund, and 37 percent to the Dedicated Mass Transportation Trust Fund.

Diesel motor fuel excise tax was reduced by 2 cents per gallon, effective January 1, 1996. The combined diesel motor fuel excise tax is 8 cents per gallon.

**Motor Vehicle Fees**

| | Ways and Means | | | Executive | | |
|---|---|---|---|---|---|---|
| | All Funds | General Fund | General Fund Percent Change | All Funds | General Fund | General Fund Percent Change |
| **2002-2003 Actual** | 612 | 67 | -63.9% | 612 | 67 | -63.9% |
| **2003-2004 Estimate** | 651 | 57 | -14.5% | 650 | 68 | 1.2% |
| **2004-2005 Forecast** | 656 | 26 | -54.4% | 640 | 26 | -62.1% |

Revenue from Motor Vehicle Fees comes from over 50 different license, registration, service, and penalty receipts. Passenger and commercial vehicle registrations and licensing fees are the largest components.

Registration fees are weight-based for passenger vehicles, commercial vehicles, trailers, and ambulances. Buses, taxis, livery vehicles, and rental cars are charged registration fees based upon their seating capacity. Other vehicles such as semi-trailers, motorcycles, MOPEDS, farm vehicles, snowmobiles, and all-terrain vehicles are charged a flat fee. Motorboat registration is based upon the length of the boat.

Other fees include in-transit permits, certificates of title, manufacturers, dealers and repairmen also paid fees for miscellaneous licenses and permits.

Resident drivers are required to obtain a New York driver license within 90 days of becoming a resident. This license is issued by the Department of Motor Vehicles with fees based on various classifications.

Other items included in motor vehicle receipts are business permits for driving schools, repair shops, and car dealerships, special plate fees, penalty fees for driving without insurance or refusing a chemical test, and various sticker fees.

### General Fund

The Committee staff projects receipts in SFY 2003-04 will total $57 million. This estimate is $11 million lower than that of the Executive. Motor vehicle receipts through January 2004 are $40 million, representing a year to date decline of 17.3 percent over the comparable period in the prior year. Receipts for the remainder of the fiscal year must grow by -7.5 percent to achieve the Committee staff estimate.

All revenues from motor vehicle registrations are earmarked to dedicated funds (Dedicated Mass Transportation Trust Fund and Dedicated Highway and Bridge Trust Fund). The former receives 20.2 percent and the latter 79.8 percent. In addition Chapter 63 of the Laws of 2000 dedicated $170.1 million during SFY 2003-04, and thereafter to the dedicated funds from motor vehicle fees other than registration fees and Chapter 62 of the Laws of 2003 dedicated an additional $59.9 million during SFY 2004-05 to the Dedicated Highway and Bridge Trust Fund from motor vehicle fees other than registration fees.

The Committee staff SFY 2004-05 General Fund forecast for Motor Vehicle Fees is $26 million, a decrease of 54.4 percent from the prior year. Increased dedication of General Fund receipts explain this decline. This estimate is the same as that of the Executive.

### All Funds

The Committee staff anticipates receipts of $651 million for SFY 2003-04, representing a decrease of 14.5 percent over SFY 2002-03. Through January 2004, motor vehicle collections are $545 million, an increase of $39 million, or 7.7 percent over the comparable period in the prior fiscal year. The growth in receipts may be explained by the extension of a driver’s license renewal period to eight years. Motor vehicle fees for the remainder of the fiscal year must decline by 0.3 percent to achieve the Committee staff's estimate.

The Committee estimates that the Dedicated Mass Transportation Trust Fund would receive $99 million dollars, while the Dedicated Highway and Bridge Trust Fund would receive $495 million dollars.

The Dedicated Mass Transportation Trust Fund is a Special Revenue Fund while the Dedicated Highway and Bridge Trust Fund is a Capital Projects account.

In SFY 2004-05, All Funds receipts are estimated to total $656 million, a 0.8 percent increase. This estimate is $16 million above the Executive's estimate.

The Committee estimates that for SFY 2004-05 the Dedicated Mass Transportation Trust Fund would receive $135 million dollars, while the Dedicated Highway and Bridge Trust Fund would receive $495 million dollars.

### Recent Legislative Changes

#### *SFY 2003-04*

Fees for obtaining a certificate of vehicle sale, conducting data searches, obtaining a title application and emissions sticker were increased. In addition, boat registration fees and charges for license plates were also increased. Most of the increase was in receipts dedicated to the Dedicated Highway and Bridge Trust Fund. Finally, $59.9 million from non-registration fees were also earmarked from the General Fund to the Dedicated Highway and Bridge Trust Fund in SFY 2004-05.

***SFY 2000-01***

The first reissuance of license plates since 1986 began January 2001. The cost remained at $5.50 per set and motorist paid an additional $20 to retain their current plate number. This change can be made by administrative authorization. Fiscal estimate: $18.2 million.

The duration of a driver's license renewal was increased from five years to eight years. The annual rate ($5 dollars for most drivers) remained the same; an eye test is required at each renewal. This change can be made by administrative authorization. Fiscal estimate: $5.0 million.

***SFY 1998-99***

The passenger auto registration fees were reduced by 25 percent. County clerks were held harmless. The earmarked percentage going to the dedicated transportation funds was increased to hold these funds harmless from the fee reduction. Fiscal estimate: ($49.0) million in SFY 1998-99, ($66.0) million when fully implemented. Effective July 1, 1998.

Repealed last year's provision, which disallowed second-year refunds of registration fees. Provided for a retroactive refund to any individual who had a refund of the registration fee withheld. Required the Department of Motor Vehicles to notify individuals who would be eligible for a refund. ($17.0) million in SFY 1998-99, ($9.0) million in future years. Effective September 1, 1997.

**Other Taxes**

| | Ways and Means | | Executive | |
|---|---|---|---|---|
| | General Fund | Percent Change | General Fund | Percent Change |
| **2002-2003 Actual** | 1 | 0.0% | 1 | 0.0% |
| **2003-2004 Estimate** | 1 | 0.0% | 1 | 0.0% |
| **2004-2005 Forecast** | 1 | 0.0% | 1 | 0.0% |

Article 19 of the Tax Law imposes a three percent tax on gross receipts from boxing and wrestling exhibitions, including receipts from broadcasting rights. Article 2 of the Racing, Pari-Mutuel Wagering and Breeding Law levies a State tax of four percent on admissions charges to racetracks and simulcast theaters. All of the receipts are deposited in the General Fund.

## General Fund

The Committee staff estimates that receipts from Other Taxes in SFY 2003-04 will total $1 million. This estimate is the same as that of the Executive.

The Committee staff forecast for SFY 2004-05 is also $1 million.

## Recent Legislative History

Legislation enacted in 2001 extended the time from 48 hours to 10 days within which a promoter of a boxing or wrestling match or exhibition has to file a return or remit the gross receipts tax from ticket sales, effective December 1, 2001.

Legislation enacted in the 1999 reduced the rate of the gross receipts tax for boxing and wrestling exhibitions to 3 percent from 5.5 percent effective October 1, 1999. This legislation also imposed a cap on the total tax at $50,000 per match for gross receipts from ticket sales, and $50,000 per match for gross receipts from broadcasting rights.

**Pari-Mutuel**

| | *Ways and Means* | | *Executive* | |
|---|---|---|---|---|
| | General Fund | Percent Change | General Fund | Percent Change |
| **2002-2003 Actual** | 30 | 0.0% | 30 | 0.0% |
| **2003-2004 Estimate** | 28 | -5.1% | 27 | -7.1% |
| **2004-2005 Forecast** | 31 | 10.7% | 28 | 3.7% |

The Racing, Pari-mutuel Wagering and Breeding Law imposes a pari-mutuel tax on bets placed at racetracks, simulcast theaters and Off-Track Betting (OTB) facilities. For-profit and not-for-profit racing associations, as well as OTB Corporations, are taxed a percentage of their total betting pools for the privilege of conducting pari-mutuel wagering. All of the receipts are deposited in the General Fund.

The tax is to be paid on the last business day of each month for the period from the 16th day of the preceding month through the 15th day of the current month. Payments required to be made on March 31 must include all taxes due and accruing through the last full week of racing in March.

**General Fund**

The Committee staff estimates that receipts will total $28 million in SFY 2003-04, a 5.1 percent decrease from SFY 2002-03. This estimate is the $1 million higher than the Executive.

The Committee staff forecast for SFY 2004-05 is $31 million, representing a $3 million increase over SFY 2003-04.

**Recent Legislative History**

In 2003, tracks were authorized to set the takeout rate within a range of total deposits in pools. Unlimited simulcasting was allowed, fund balances for telephone wagering were eliminated. The racing industry began to directly fund the State's regulation of its activities, while tracks and OTB's pay a fee of their handle.

In 2001, the following changes were enacted that impact on pari-mutuel receipts:

- the takeout on New York Racing Association (NYRA) was lowered;
- the percentage of takeout going to purses was decreased;
- a "pick six" wager was allowed;

- two out-of-state simulcasts on those days that NYRA is conducting racing at Saratoga Race Course were authorized;
- an additional thoroughbred simulcast from out-of-state during the winter months from January 15 through April 15 was authorized; and
- and tax rates for the additional simulcasting racing were lowered.

In 2000, the Pari-mutuel Tax was eliminated on races taking place at NYRA racetracks for 3 days surrounding the Breeder's Cup event. This provision sunsets in December 31, 2002.

In 1999, the budget legislation reduced the tax on "on track" wagering at NYRA facilities from 3.7 to 2.6 percent effective September 10, 1999, and provided for a further reduction to 1.6 percent effective April 1, 2001. These rate reductions expire on December 31, 2007. The provisions also direct money to NYRA purses and the NYS Thoroughbred Breeding and Development Fund.

In 1998, the Legislature extended for four years through June 30, 2002, provisions affecting various statutes relating to takeouts, tax rates, and the purse payments of non-profit racing, as well as authorizations for on-track and off-track simulcast wagering.

In 1997, NYRA was authorized to conduct racing at Belmont, Aqueduct, and Saratoga through December 31, 2007. Furthermore, various simulcasting provisions were extended for an additional one-year, including in-home experiment, telephone wagering and out-of-state harness simulcasting.

NYRA was also required to use the first $2 million in annual profits for increasing purses. Any additional profits are to be used to reduce debt obligations.

**Personal Income Tax**[9]

| | *Ways and Means* | | | *Executive* | | |
|---|---|---|---|---|---|---|
| | All Funds | General Fund | General Fund Percent Change | All Funds | General Fund | General Fund Percent Change |
| **2002-2003 Actual** | 23,698 | 16,791 | -35.1% | 23,698 | 16,791 | -35.1% |
| **2003-2004 Estimate** | 23,990 | 15,722 | -6.4% | 24,028 | 15,750 | -6.2% |
| **2004-2005 Forecast** | 27,829 | 18,797 | 19.6% | 27,437 | 18,501 | 17.5% |

Article 22 of the Tax Law imposes a personal income tax on the income of New York State individuals, estates, and trusts. Tax collections are received through employee withholding, estimated tax payments, payments accompanying tax returns, late payments, and assessments.

**Personal Income Tax Revenue Profile**

Personal income tax collections are based on Adjusted Gross Income (AGI), which consists of four main components. The first component, wages, includes salaries, which are fixed, and bonus payments, stock options and other forms of compensation that vary based on individual performance and economic conditions. The other three components are capital gains, interest or dividends, and other income, which includes business and partnership income and taxable pensions.

The following table details the actual components of AGI through 2001, and estimates of those components through 2004. Wages, for example, consist of more than two-thirds of AGI, and fluctuate the least in terms of growth from year to year. The other components, most notably capital gains, are more volatile from one year to the next, and their contribution to AGI as a whole can vary quite dramatically based on economic conditions. For example, in the mid-1990s, capital gains represented roughly 4.0 percent of AGI. When the economy grew faster in the late 1990s, capital gains represented a larger share, comprising 10.2 percent of AGI in 1999 and 12.1 percent in 2000. In 2001, capital gains represented only 6.0 percent of AGI, and are not expected to rise above that level during the next three tax years.

[9] These estimates include a Refund Reserve Transaction of $84 million in SFY 2003-04; a STAR Transfer of $2.835 billion in SFY 2003-04, and $2.935 billion in SFY 2004-05; and a RBTF Transfer of $5.388 billion in SFY 2003-04, and $5.724 billion in SFY 2004-05.

| COMPOSITION OF ADJUSTED GROSS INCOME (Dollars Amounts In Millions) | 1998 | 1999 | 2000 | 2001 | 2002 Est. | 2003 Est. | 2004 Est. |
|---|---|---|---|---|---|---|---|
| **AGI** | $417,996 | $453,130 | $514,501 | $487,532 | $472,707 | $482,339 | $507,538 |
| Wages | 309,614 | 328,851 | 368,177 | 376,158 | 366,365 | 370,746 | 388,532 |
| Capital Gains | 38,929 | 48,330 | 62,302 | 29,451 | 19,084 | 21,087 | 22,479 |
| Int./Div./Pen. | 43,698 | 46,153 | 52,411 | 49,672 | 49,749 | 49,750 | 51,494 |
| Other Income | 25,755 | 29,796 | 31,611 | 32,251 | 37,509 | 40,756 | 45,033 |
| **Shares** | | | | | | | |
| Wages | 74.1% | 69.7% | 71.6% | 77.2% | 77.5% | 76.9% | 76.6% |
| Capital Gains | 9.3% | 10.2% | 12.1% | 6.0% | 4.0% | 4.4% | 4.4% |
| Int./Div./Pen. | 10.5% | 5.3% | 10.2% | 10.2% | 10.5% | 10.3% | 10.1% |
| Other Income | 6.2% | 14.8% | 6.1% | 6.6% | 7.9% | 8.4% | 8.9% |
| **Growth** | | | | | | | |
| Wages | 8.3% | 6.2% | 12.0% | 2.2% | -2.6% | 1.2% | 4.8% |
| Capital Gains | 23.3% | 24.1% | 28.9% | -52.7% | -35.2% | 10.5% | 6.6% |
| Interest/Dividends | 0.6% | 2.0% | 13.6% | -5.2% | 0.2% | 0.0% | 3.5% |
| Other Income | 4.4% | 12.6% | 6.1% | 2.0% | 16.3% | 8.7% | 10.5% |

*Source: 2004-05 Executive Budget, Ways and Means Committee Staff*

## General Description

Personal Income Tax receipts make up more than half of all tax receipts, making it the most important tax revenue source for the State. Withholding is the single largest component, comprising roughly 90 percent of Personal Income Tax receipts, excluding reserve transactions and transfers.

New York State's definition of income closely mirrors federal rules, which include wages, salaries, capital gains, certain business and partnership income, and interest and dividend income. The sum of these sources is Federal Adjusted Gross Income. New York Adjusted Gross Income is calculated starting with Federal Adjusted Gross Income, from which certain income is added or subtracted to arrive at New York Adjusted Gross Income.

The New York standard deduction or itemized deductions, and a dependent exemption are subtracted from New York Adjusted Gross Income, which yields New York State Taxable Income. Taxes are calculated based on this amount. Certain credits are then subtracted from the calculated tax to determine total Personal Income Tax liability.

## General Fund

For accounting purposes, General Fund Personal Income Tax collections include certain reserve transactions and transfers to other funds. The amount of Personal Income Tax collections that have been dedicated for specific purposes, and moved out of the General Fund as a result, has grown significantly over the past few years.

Each year, refund reserve transactions to and from the Personal Income Tax Refund Reserve Account are used as administrative adjustments to transfer General Fund surpluses from one fiscal year to the next. In addition, revenues from the Personal Income Tax are diverted to the School Tax Relief (STAR) Fund to help finance school tax reductions under the STAR program, and to the recently created Revenue Bond Tax Fund (RBTF), which is used for debt service. As of May 2002, 25 percent of Personal Income Tax receipts, excluding reserve transactions, are deposited into the RBTF. In total, these reserve transactions and transfers will effectively reduce General Fund Personal Income Tax collections by $8.845 billion in State Fiscal Year (SFY) 2003-04, and by $8.340 billion in SFY 2004-05.

The Committee staff estimates that SFY 2003-04 receipts will total $15.722 billion, which reflects a decline of $1.069 billion, or 7.9 percent, from SFY 2002-03. This includes a Refund Reserve adjustment of $577 million, a STAR transfer of $2.835 billion, and a RBTF transfer of $5.433 billion. This estimate is $28 million lower than that of the Executive. Excluding the reserve transactions and transfers, Personal Income Tax collections are estimated to total $24.567 billion, an increase of $1.919 billion, or 8.5 percent over SFY 2002-03.

Most of this additional revenue is the result of a temporary increase in the Personal Income Tax rate for high-income taxpayers. This estimate is also offset by incremental tax cuts resulting from the continued phase-in of the enhanced Earned Income Tax Credit (EITC), College Tuition Deduction/Credit, and Marriage Penalty reduction.

Withholding receipts are expected to total $21.981 billion for the fiscal year, representing an increase of $2.022 billion, or 10.1 percent. This estimate is based on collections through January 2004, coupled with an expected increase in variable wages of 15 percent and expected growth in base wages of 3.2 percent in the first quarter of 2004. The estimate also accounts for revenues expected to be received as a result of the temporary rate increase on high-income taxpayers. This estimate is $29 million lower than that of the Executive.

Quarterly estimated payments are projected to total $4.310 billion, representing an increase of $479 million, or 12.5 percent from last fiscal year. Quarterly estimated payments are typically made by taxpayers that have high income or realize significant capital gains. A rebound in the financial markets in 2003 is expected to have resulted in an increase in capital gains realizations of 10.5 percent, following an estimated decline of 35.2 percent in 2002. This rebound in capital gains realizations, coupled with revenues from the temporary rate increase will lead to the expected 12.5 percent growth in quarterly estimated payments over last fiscal year. This estimate is $5 million lower than that of the Executive.

The Committee staff forecast for Personal Income Tax collections is $18.797 billion in SFY 2004-05, representing an increase of $3.075 million, or 19.6 percent, over SFY 2003-04. This forecast includes a STAR transfer of $2.998 billion, and a RBTF transfer of $6.035 billion. Excluding the reserve transactions and transfers, Personal Income Tax collections are expected to total $27.136 billion, an increase of $2.569 billion, or 10.5 percent over SFY 2003-04.

Again, most of this additional revenue is the result of the temporary increase in the Personal Income Tax rate for high-income taxpayers. The forecast also includes incremental tax cuts resulting from the continued phase-in of the enhanced Earned Income Tax Credit (EITC), College Tuition Deduction/Credit, and Marriage Penalty reduction.

Withholding receipts are forecast to total $23.228 billion in SFY 2004-05, an increase of $1.247 billion, or 5.7 percent over SFY 2003-04. This forecast is based on expected wage growth of 4.7 percent in SFY 2004-05, and accounts for an expected downward revision in the withholding tables beginning in January 2004 as a result of the recent rate changes for high-income taxpayers.

Quarterly estimated payments are expected to total $4.798 billion in SFY 2004-05, representing an increase of $488 million, or 11.3 percent over SFY 2003-04. The Committee staff forecasts that capital gains will increase by 6.6 percent in 2004, after an estimated increase of 10.5 percent in 2003.

**All Funds**

All Funds Personal Income Tax collections include Personal Income Tax receipts and refund reserve adjustments, but do not include transfers to STAR or RBTF. The Committee staff estimates that All Funds Personal Income Tax collections will total $23.990 billion in SFY 2003-04, representing an increase of $292 million, or 1.2 percent over SFY 2002-03. This estimate is $38 million lower than that of the Executive. In SFY 2004-05, All Funds Personal Income Tax collections are forecast to total $27.829 billion, an increase of $3.839 billion, or 17.7 percent over SFY 2003-04.

**Recent Legislative History**

In 2003, the Legislature enacted Personal Income tax provisions which:

- Imposes a new rate of 7.5 percent in Tax Year 2003 for income of $100,000 or more for single taxpayers, $125,000 for head of household taxpayers, and $150,000 for married filing joint taxpayers. The new rate imposed drops to 7.375 percent in Tax Year 2004 and to 7.25 percent in Tax Year 2005. Suspends the S-corporation differential paid under Article 9-A of the Tax Law for Tax Years 2003, 2004 and 2005.

- Also imposes a new rate of 7.7 percent on income of $500,000 or more for all taxpayers for Tax Years 2003, 2004 and 2005. The new rates are completely phased out beginning in Tax Year 2006.

- Directs the Commissioner of Taxation and Finance to make the necessary adjustments in the withholding tables, and to take steps necessary to publicize to taxpayers the necessary adjustments to estimated tax payments.

- Increases the filing fee required by certain Limited Liability Companies (LLCs) and Limited Liability Partnerships (LLPs) to $100 per member, with a minimum fee of $500 and a maximum fee of $25,000. Also imposes the minimum filing fee of $100 on single member LLCs.

- Requires certain Partnerships, Limited Liability Companies (LLCs), S-Corporations and C-Corporations to withhold and pay estimated tax on income derived from New York sources on behalf of non-resident partners, members or shareholders. No estimated payment is required for member, partner or shareholder tax liabilities of $300 or less, but a $50 penalty is imposed for each member, partner or shareholder for which the entity does not remit the appropriate estimated tax unless it is due to reasonable cause.

- Requires non-residents to remit an estimated payment equal to the amount of tax liability attributable to the gain from a sale of real property in New York. No payment is required in cases where the property sold is the principal residence of the seller.

In 2002, the Legislature enacted Personal Income tax provisions which:

- Clarified that the petroleum storage tank income tax credit applies to only those taxpayers that remove or permanently close a fuel oil storage tank and replace it with another one, and extended the credit for an additional year through 2003.

- Reduced to $100,000 from $400,000 the aggregate annual withholding tax liability that triggers required participation in the Electronic Funds Transfer (EFT) program.

- Exempted income for tax years 2000 and 2001 of the victims who perished in the terrorist attack of September 11, 2001.

- Established a broad-based tax amnesty program for taxpayers with outstanding liabilities through December 31, 2000.

In 2001, the Legislature enacted Personal Income Tax provisions which created the Revenue Bond Tax Fund (RBTF) to be used for debt service. This legislation requires a deposit of 25 percent of Personal Income Tax receipts, excluding reserve transactions, into the RBTF.

In 2000, the Legislature enacted Personal Income Tax provisions which:

- Increased the amount of the State Earned Income Tax Credit (EITC) from the current 25 percent of the federal credit to 30 percent, phased-in over a two-year period. Beginning in Tax Year 2002, the State credit will be 27.5 percent of the federal credit. Beginning in 2003, the State credit will be 30.0 percent of the federal credit;

- Enhanced the current Child and Dependent Care Credit to 110 percent of the federal credit for taxpayers with income of less than $25,000 beginning in Tax Year 2000. The credit will be phased-down from 110 percent to 100 percent of the federal credit for taxpayers with income between $25,000 and $40,000. The credit will equal 100 percent of the federal credit for incomes between $40,000 and $50,000. The credit will be phased-down to 20 percent of the federal credit at $65,000;

- Provided taxpayers with a choice of an itemized deduction or a refundable credit for qualified college tuition expenses. The itemized deduction will be 100 percent of qualified tuition expenses up to $10,000. For qualified tuition expenses of up to $5,000, the credit will be the lesser of $200 or tuition paid. For qualified tuition expenses between $5,000 and $10,000, the credit will be equal to four percent of tuition paid. This proposal will be phased-in over a four-year period beginning in Tax Year 2001;

- Increased the standard deduction for married taxpayers filing joint returns and widowers from $13,000 to $14,600 over a three-year period. Beginning in Tax Year 2001, the standard deduction will be raised to $13,400. Beginning in Tax Year 2002, the standard deduction will be increased to $14,200. Beginning in Tax Year 2003 and thereafter, the standard deduction will be increased to $14,600;

- Provided taxpayers with an income tax credit equal to 10 percent of their long-term care insurance premiums beginning in Tax Year 2002. Both individuals and businesses that purchase this insurance for their employees will qualify for the credit;

- Provided taxpayers with an income tax credit equal to 20 percent of the cost of purchasing and installing a fuel cell to supply power to their homes, up to a maximum of $1,500; and,

- Provided homeowners who replace a residential fuel oil storage tank with a $500 income tax credit. The credit will be available for only two years beginning in Tax Year 2001, and homeowner will be eligible to receive this credit only once.

In 1999, the Legislature enacted Personal Income Tax provisions which:

- Increased the EITC from 20 percent of the federal credit to 22.5 percent in Tax Year 2000, and to 25 percent in tax years beginning in 2001;

- Extended the emerging technology tax credits to businesses who pay tax under the Personal Income Tax;

- Enhanced the farmer school tax credit to expand the definition of qualified agricultural property to include land set aside or retired under a federal supply management or soil conservation program; and

- Amended the State's innocent spouse relief measures to conform to that provided by the federal government.

In 1998, the Legislature enacted Personal Income Tax provisions, which:

- Enhanced the Child and Dependent Care Credit to 100 percent of the federal credit for taxpayers with incomes of $35,000 or less. The credit will be phased-down to 20 percent of the federal credit for taxpayers with incomes between $35,000 and $50,000;

- Accelerated the date for which the base acreage amount used when determining the Agricultural School Tax Credit increases from 175 to 250 acres from Tax Year 1999 to Tax Year 1998;

- Created an exclusion from the Personal Income Tax for income and assets derived from assets stolen from, hidden from, or otherwise lost to Holocaust victims and their families; and

- Allowed for the one-time deferral of capital gains taxation if the gain is reinvested in an emerging technology company.

In 1997, the Legislature enacted Personal Income Tax provisions which:

- Increased the Child and Dependent Care Credit to 100 percent of the federal credit for taxpayers with adjusted gross income of $17,000 or less;

- Created the New York State College Choice Tuition Savings Program. New York State residents and non-residents can establish savings accounts to pay for qualified higher education expenses;

- Enhanced the Farm School Property Tax credit by exempting up to the first $30,000 of non-farm federal gross income in the determination of eligibility for the credit. It also provides for subtracting principal payments on farm debt when calculating the income limit for the phase-out of the credit;

- Extended the Employment Incentive Credit and Economic Development Zone Employment Incentive Credit to businesses whose owners are taxable under the Personal Income Tax; and,

- Established a new solar credit for residential investment in solar electric generating equipment.

In 1996, the Legislature enacted Personal Income Tax provisions which:

- Enhanced the Child and Dependent Care Credit by increasing the credit to 30 percent of the federal credit in 1996, and to 60 percent in 1997, for taxpayers with incomes less than $10,000. The credit is phased down to 20 percent for taxpayers with income greater than $14,000. The credit was also made refundable; and,

- Established a tax amnesty program in 1996, which was provided to taxpayers with outstanding liability for tax years up to and including 1994. Penalties, but not interest, were waived. Gross Personal Income Tax revenues collected exceeded $130 million under the program.

In 1995, the Legislature enacted a three-year Personal Income Tax reduction plan which:

- Reduced the top rate from 7.875 percent in 1994 to 6.85 percent in 1997;

- Accelerated the increase in the EITC for 1996 to a fully phased in level of 20 percent of the federal credit;

- Reduced the EITC in 1996, and every year thereafter, by the amount of the Household Credit used by the taxpayer;

- Introduced an Excess Deductions Credit for 1995 only, to ensure that middle income itemizers will not experience a tax increase due to the change from the 5-bracket to the 4-bracket structure; and

- Maintained the scheduled increases in the standard deduction from $9,500 for married couples filing jointly in 1994 to $13,000 in 1997.

**Petroleum Business Taxes**

| | *Ways and Means* | | *Executive* | |
|---|---|---|---|---|
| | All Fund | Percent Change | All Fund | Percent Change |
| **2002-2003 Actual** | $1,023 | 0.0% | $1,023 | 0.0% |
| **2003-2004 Estimate** | 1,048 | 2.5% | 1,025 | 0.2% |
| **2004-2005 Forecast** | 1,079 | 3.0% | 1,072 | 4.7% |

Article 13-A of the Tax Law imposes the petroleum businesses tax (PBT) on every petroleum business for the privilege of engaging in business, employing capital, owning or leasing property, or maintaining an office in this state. It is based on the volume of fuel imported or produced, refined, manufactured or compounded in the state. Imposition of the tax occurs at different points in the distribution chain, depending upon the type of petroleum product. Gasoline is subject to tax at the time it is imported, while diesel is taxable upon the first sale.

The Article 13-A tax also applies to motor carriers on the fuel they purchase outside New York State, but consumed within the State. It is paid with the fuel use tax, at a rate equal to the rate for motor fuel or diesel.

The tax is determined monthly and is the sum of a motor fuel component, an automotive-type diesel motor fuel component, a nonautomotive-type diesel motor fuel component, and a residual petroleum product component. On each January 1st the tax rates are indexed based on the producer price index for refined petroleum products published by the Bureau of Labor Statistics, rounded to the nearest 1/10 of one cent.

Returns are due on or before the 20th day of each month. Filing of returns from distributors on a quarterly basis by persons registered as distributors of kero-jet fuel is permitted. Larger taxpayers are required to make monthly payments by electronic funds transfer or certified check.

### General Fund

All revenues from the basic tax are earmarked to the dedicated funds (Dedicated Mass Transportation Trust Fund and Dedicated Highway and Bridge Trust Fund) and to the Mass Transportation Operating Assistance Fund. The dedication is as follows: 19.7 percent to the Mass Transportation Operating Assistance Fund[10] and 80.3 percent to the Dedicated Mass Transportation Trust

[10] This fund is comprised of the Public Transportation System Operating Assistance Account and the Metropolitan Mass Transportation Operating Assistance Account.

Fund and the Dedicated Highway and Bridge Trust Fund[11]. The supplemental tax is also totally earmarked to the dedicated funds.

### All Funds

The Committee staff anticipates receipts of $1.048 billion for SFY 2003-04, representing a 2.5 percent growth over SFY 2002-03.

Through January 2004 petroleum business tax collections are $878 million, an increase of $5 million, or 0.6 percent above the comparable period in the prior fiscal year.

Revenues from this tax are split between various dedicated funds. Of the total expected in SFY 2003-04, $348 million will be deposited in the Dedicated Mass Transportation Trust Fund, and $131 million will be deposited into the Mass Transportation Operating Assistance Fund. The remaining $569 million is deposited into the Dedicated Highway and Bridge Trust Funds. The petroleum business tax rates were increased by 5 percent last January 2004 as scheduled.

In State Fiscal Year 2004-05, All Funds receipts are estimated to total $1,079 million, a 3.0 percent increase from SFY 2003-04.

Of the total expected in SFY 2004-05, $352 million will be deposited in the Dedicated Mass Transportation Trust Fund, and $135 million will be deposited into the Mass Transportation Operating Assistance Fund. The remaining amount $592 million is deposited into the Dedicated Highway and Bridge Trust Fund.

### Recent Legislative History

In 2000, legislation reduced by 33 percent the tax rate for commercial heating oil, effective September 1, 2002. Also, the PBT minimum tax was repealed effective March 1, 2001.

In 1997, additional refunds and credits were created for the Petroleum Business Tax and Motor Fuel Taxes for commercial vessels where the purchases of fuel exceed consumption of fuel in the State.

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[11] The money is split 37 percent and 63 percent respectively between the two funds.

**Real Estate Gains Tax**

| | *Ways and Means* | | *Executive* | |
|---|---|---|---|---|
| | General Fund | Percent Change | General Fund | Percent Change |
| **2002-2003 Actual** | 5 | 2% | 5 | 2% |
| **2003-2004 Estimate** | 4 | -20% | 4 | -20% |
| **2004-2005 Forecast** | 2 | -50% | 3 | -25% |

The real estate gains tax, enacted in 1983, pursuant to Article 31-B of the Tax Law and then repealed on July 13, 1996, imposed a tax of 10 percent on the gains from certain realty transfers. The real estate gains tax is imposed on gains from certain commercial realty transfers, where the consideration is $1 million or more and the transfer took place prior to June 16, 1996. All of the receipts are deposited into the General Fund.

**General Fund**

The Committee staff estimates that real estate gains tax collections will exceed refunds by $4 million in SFY 2003-04. Receipts primarily reflect collections from transactions that occurred prior to June 15, 1996.

The Committee staff forecasts net receipts of $2 million for SFY 2004-05. Revenues from this tax will continue to diminish as taxpayers begin to complete payments on existing installment agreements.

**Recent Legislative History**

Chapter 309 of the Laws of 1996 repealed the Gains Tax, retroactive to all conveyances of property that took place after June 15, 1996.

**Real Estate Transfer Tax (RETT)**

| | Ways and Means | | Executive | |
|---|---|---|---|---|
| | All Funds | Percent Change | All Funds | Percent Change |
| **2002-2003 Actual** | 448 | 20.8% | 448 | 20.8% |
| **2003-2004 Estimate** | 488 | 9.0% | 491 | 9.7% |
| **2004-2005 Forecast** | 480 | -1.6% | 461 | -6.1% |

Article 31 of the Tax Law levies a tax on real property transfers where the value of the interest in the property exceeds $500. The rate is $2 for each $500, or a fraction thereof, of net consideration. An additional tax of one percent is levied on residential transfers where the consideration is over $1 million. Typically, the party conveying the property (grantor) pays the tax. However, if the grantor fails to pay the tax by the required time, or the grantor is exempt from the tax, the person who obtains the property (grantee) is required to pay the tax. For deeded transfers, the tax is paid to a recording agent, typically the county clerk, and for non-deeded transactions, which includes conveyances of cooperative apartments, the tax is paid directly to the Commissioner of Taxation and Finance.

**General Fund**

Under current law, $112 million in real estate transfer tax collections are dedicated to the Environmental Protection Fund, and all remaining collections are dedicated to paying debt service on the Clean Air/Clean Water Bond Act. Any remaining collections after paying debt service are transferred back to the General Fund. The Committee staff estimates that $285 million will be transferred back to the General Fund in SFY 2003-04 and $265 million in SFY 2004-05.

**All Funds**

The Committee staff estimates that real estate transfer tax receipts will total $488 million in SFY 2003-04, a $40 million or 9.0 percent increase over the prior fiscal year. This is $3 million lower than the Executive's estimate. Cumulative tax receipts through January 2004 are $427 million, representing a year-to-date growth of 11.2 percent. Tax receipts must grow by –3.8 percent during the rest of the year to achieve the Committee staff's estimate.

Real estate transfer taxes are a function of the number of conveyances of real property and the consideration (price) for each conveyance. Much of the growth in SFY 2003-04 receipts can be attributed to an active real estate market driven by historically low mortgage interest rates. Low interest rates reduce borrowing costs and expand the pool of people who can afford to purchase a home. Rising house prices especially in counties adjacent to New York City, also helped to drive receipts upwards. The median house values in 2002 rose by 20 percent in Suffolk county, 17 percent in Nassau county and 19 percent in Dutchess county, from 2001[12].

Real estate transfer tax receipts would have been even higher in SFY 2003-04 if it was not for commercial vacancy rates in Manhattan, which rose for ten consecutive quarters as of the third quarter of 2003[13]. The Manhattan commercial market may be showing signs of recovery, as the vacancy rate in the third quarter of 2003 was 12.5 percent, which is the same as the second quarter of 2003, and therefore may pose less of a risk to SFY 2004-05 receipts.

The Committee staff's forecast for SFY 2004-05 is $480 million, a decrease of $8 million or 1.6 percent over the Committee staff's estimate for SFY 2003-04. This forecast is $19 million above the Executive's forecast.

**Recent Legislative History**

Legislation enacted in 2003 amends the personal income tax law to require nonresidents to pay estimated personal income tax on the gain, if any, from sales or transfers of real property located in New York State. The new law applies to transfers of real property occurring on or after September 1, 2003.

Legislation enacted in 2002 extended the tax rate reductions for the State and New York City transfer taxes for conveyances of real property to existing real estate investment trusts (REITs) for three years, until September 1, 2005. These rate reductions were originally scheduled to expire on August 31, 2002. Tax rates are reduced by fifty percent, from $2 to $1 per $500 of conveyance for qualifying transfers. This legislation is estimated to reduce State revenues in SFY 2003-04 by $0.8 million.

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[12] New York State Office of Real Property Services.

[13] New York City Office of the Comptroller. Economic Notes. Vol. XI, No. 4 December 2003.

**Sales Tax**

| | *Ways and Means* | | | *Executive* | | |
|---|---|---|---|---|---|---|
| | All Funds | General Fund | General Fund Percent Change | All Funds | General Fund | General Fund Percent Change |
| **2002-2003 Actual** | 8,796 | 6,328 | 3.0% | 8,796 | 6,328 | 3.0% |
| **2003-2004 Estimate** | 9,899 | 7,246 | 14.5% | 9,877 | 7,220 | 14.1% |
| **2004-2005 Forecast** | 10,611 | 7,768 | 7.2% | 10,539 | 7,708 | 6.8% |

The sales and compensating use tax, imposed by Article 28 of the Tax Law, is a four and one-quarter percent broad-based consumption tax levied on the sale of tangible personal property, excluding items such as food, products used in manufacturing and items purchased for resale. A limited number of services such as trash removal and interior design are also subject to this tax.

**General Funds**

The Committee staff estimates General Fund sales tax receipts in State Fiscal Year 2003-04 will total $7.246 billion, representing a growth rate of 14.5 percent over the prior fiscal year. This estimate is $26 million above the Executive's estimate. General Fund sales tax receipts through January 2004 are $6.030 billion, representing a year to date growth of 14 percent over the comparable period in the prior year. After accounting for increases from Legislative actions in 2003, year-to-date receipts have increased by 2.1 percent. General Fund sales tax receipts for the remainder of the fiscal year must grow by 14.6 percent over the prior fiscal year to achieve the Committee staff's estimate.

Much of the sales tax growth in SFY 2003-04 may be attributed to tax actions enacted as part of the 2003 budget. These tax actions include replacing the year-round sales tax exemption on clothing and footwear under $110, with two one-week exemption periods. This action is estimated to increase total sales tax receipts in SFY 2003-04 by $449 million. Also included in the 2003 enacted budget is an increase in the State sales tax rate from 4.0 percent to 4.25 percent. This action is estimated to increase sales tax receipts in SFY 2003-04 by $450 million.

The Committee staff forecasts General Fund sales tax receipts will total $7.768 billion in SFY 2004-05, representing an increase of $522 million or 7.2 percent over the prior fiscal year. Included in this forecast is an estimated $572 million from the increase in the State sales tax rate and $103 million from the imposition of the sales tax on clothing and footwear under $110 in the months of April and May. The year-round sales tax exemption on clothing and footwear under $110, which was in effect between March 1, 2000 and May 31, 2003 is scheduled to be reinstated June 1, 2004. The Executive's 2004 Budget proposes to replace the year-round clothing and footwear exemption with three, one-week periods in the first year and four, one-week periods thereafter. For comparative purposes, the Committee staff's forecast included an additional $400 million in collections from this proposal.

After accounting for tax actions enacted in 2003, the sales tax base is forecast to grow by 5.1 percent in SFY 2004-05. This forecast assumes employment and personal income, two of the primary factors driving consumer spending, will also grow in SFY 2004-05. New York State employment is expected to grow by 1 percent in SFY 2004-05 and New York State personal income by 5.1 percent.

**All Funds**

The All Funds category is comprised of the General Fund, the Local Government Assistance Tax Fund (LGAC), and the Mass Transportation Operating Assistance Fund (MTOAF). The Committee staff estimates that All Funds receipts in State Fiscal Year 2003-04 will total $9.899 billion, representing 12.5 percent growth from SFY 2002-03. This estimate is $22 million above the Executive's estimate. All Funds receipts in SFY 2004-05 are projected to total $10.611 billion, a $712 million or 7.2 percent increase above the Committee staff's estimate for SFY 2003-04.

Receipts from one percentage point of the 4.25 percent state sales tax is dedicated to the Local Government Assistance Corporation, which was created in 1990 to eliminate annual Spring borrowing by local governments. Once the LGAC debt service obligations are paid, excess revenues are transferred back to the General Fund along with certain other transfers. Excluding personal income tax transfers in-excess of revenue bond debt service, $2.578 billion is expected to be transferred back to the General Fund in SFY 2003-04. This estimate is $11 million lower than the Executive's estimate. Excluding personal income tax transfers in excess of debt service, a total of $2.794 billion is forecasted to be transferred to the General Fund in SFY 2004-05. This forecast includes a transfer of $170 million from LGAC to pay debt service on the NYC Municipal Assistance Bonds.

In 1981, MTOAF was created to help finance the State's public transportation system. A portion of the MTOAF revenue is derived from a 0.25 percent sales tax imposed in the Metropolitan Commuter Transportation District. The Committee staff estimates that $400 million will be deposited into the MTOAF in SFY 2003-04 and $414 million in SFY 2004-05. These estimates are comparable to the Executive's.

**Recent Legislative History**

In 2003, the following provisions were enacted:

- Effective during the period of June 1, 2003 to May 31, 2004, all clothing and footwear under $110 per item and certain items used to make or repair clothing will be subject to state and local sales tax. However, there are two week-long sales tax holidays;

- Effective during the period of June 1, 2003 to May 31, 2005, the State sales tax is set at a rate of 4.25 percent, an increase of 0.25 percentage points;

- Effective June 4, 2003, the local sales tax imposed in New York City increased by 0.125 percent, bringing the combined state and local sales tax rate in New York City to 8.625 percentage point;

- Effective September 1, 2003, the New York City cigarette excise tax will be added to the sales price used to compute state and local sales tax on the sale of cigarettes;

- For income years beginning on or after January 1, 2003, the New York State personal income tax returns will include lines enabling taxpayers to report and pay unpaid State and local sales and use taxes via their income tax returns.

In 2002, the following provisions were enacted:

- A tax amnesty on sales and use tax liabilities for periods ending on or before February 28, 2001;

- The sourcing requirements for charges from mobile telecommunication services was changed to the taxing jurisdiction where the customer's home or place of business is located, effective August 2, 2002;

- Taxing jurisdictions that impose segmented sales and use taxes on consumer utility services are no longer permitted to apply these taxes to prepaid telephone calling services, deemed to have been in effect on and after March 1, 2000;

- Temporary sales and use tax holiday periods were enacted in June, July and August of 2002 in lower Manhattan's Liberty and Resurgence Zones;

- The interest rate applied to underpayments of sales tax increased by two percentage points, from 12 percent per annum to 14 percent per annum, effective April 1, 2003;

- For the purpose of calculating the prepaid sales tax on cigarettes, a new index was introduced adjusting the base retail price of cigarettes for inflation, effective September 1, 2002. This tax amendment also requires that the tax be rounded to the nearest whole cent per package;

- The threshold for requiring vendors to make sales tax payments via certified check or electronic fund transfer (EFT) was lowered from $1 million of annual sales tax liability to $500,000, effective September 1, 2002;

- Energy service companies that operate in an area where use of a single retailer model has been approved by the Public Service Commission were granted a reduced sales tax rate on certain charges for the transmission and distribution of gas and electricity, deemed to have been in effect on and after September 1, 2000;

- The sales and use tax exemption for alternative fuel vehicles and alternative fuel vehicle refueling property was extended by one year and applies to property purchased on or before February 29, 2004.

In 2001, the following provisions were enacted:

- The sourcing requirement for sales and use tax on vessels was changed from the place of delivery to purchaser's place of residence, effective March 1, 2001;

- Sales of certain foods and drinks by a senior citizen independent housing community became exempt from sales and use tax, effective December 1, 2000;

- Limited Liability Companies that are formed for a qualifying exempt purpose became exempt from the sales and use tax, effective September 5, 2001;

- All tangible personal property and services used or consumed by qualified businesses within an Empire Zone became exempt from sales and use tax, effective March 1, 2001.

In 2000, the following provisions were enacted:

- Machinery and equipment utilized by the cable industry to upgrade to digital television and applicable services became exempt from the sales and use tax for the period September 1, 2000 through September 1, 2003;

- Sales and use tax on the unbundled transmission and distribution of energy will be phased-out over a three-year period, fully effective September 1, 2003;

- Certain types of pollution control equipment became exempt from the sales and use tax, effective September 1, 2002;

- The sales and use tax exemption for farmers was expanded to include plumbing and electrical systems and became applicable to commercial horse boarding operations, effective September 1, 2000;

- A broad-based exemption from the sales and use tax was granted to web hosting facilities, effective September 1, 2000;

- All sales of food and drink via vending machine costing seventy-five cents or less became exempt from sales and use tax, effective September 1, 2000;

- Sales and use tax exemptions provided to the telecommunications industry were enhanced and modernized, effective September 1, 2000;

- Machinery and equipment used in television broadcasting of live and recorded programs became exempt from sales and use tax, effective September 1, 2000.

**Utility Tax**

| | Ways and Means | | | Executive | | |
|---|---|---|---|---|---|---|
| | All Funds | General Fund | General Fund Percent Change | All Funds | General Fund | General Fund Percent Change |
| **2002-2003 Actual** | 1,091 | 860 | -11.6% | 1,091 | 860 | -11.6% |
| **2003-2004 Estimate** | 887 | 737 | -14.3% | 960 | 755 | -12.2% |
| **2004-2005 Forecast** | 865 | 656 | -11.0% | 866 | 657 | -13.0% |

The Corporations and Utilities Tax, Article 9 of the Tax Law, imposes a gross receipts and franchise tax on regulated utilities and industries. The major industries subject to this tax are utilities (gas, electric, water and steam), telecommunications (telephone and telegraph), and transportation industries (trucking and railroad). The majority of revenue from Article 9 is deposited into the General Fund. However, a portion of the tax imposed on the capital stock of telecommunications and transportation companies is dedicated to the Mass Transportation Operating Assistance Fund (MTOAF). Starting in SFY 2004-05, 20 percent of collections from Sections 183 and 184 of the Tax Law will be deposited into the Dedicated Highway and Bridge Trust Fund.

**General Fund**

The Committee staff estimates receipts for SFY 2003-04 to total $737 million, a decrease of 14.3 percent. Year-to-date collections through January are down by 18.3 percent. A portion of the revenue decline is explained by the continued phase-in of tax cuts, which, including deregulation, amount to approximately $114 million incrementally. This estimate is $18 million lower than that of the Executive.

The Committee staff forecast for SFY 2004-05 is $656 million, representing a decrease of 11.0 percent. Incremental tax cuts are expected to reduce collections by approximately an additional $110 million in SFY 2004-05.

**All Funds**

Through a Special Revenue Fund, the Metropolitan Transportation Operation Assistance Fund (MTOAF) receives 80 percent of collections from Sections 183 and 184 of the Tax Law. In addition, businesses operating in the Metropolitan Commuter Transportation District (MCTD) are subject to a 17 percent surcharge on their liability attributable to the MCTD to be deposited in the MTOAF. The total amount deposited to the dedicated fund is estimated to total $150 million in SFY 2003-04 and $191 million in SFY 2004-05.

The remaining 20 percent of collections from Sections 183 and 184 of the Tax Law, which are currently deposited in the General Fund, will instead be deposited in the Dedicated Highway and Bridge Trust Fund (DHBTF) beginning in SFY 2004-05 or a period of three years. The amount to be deposited in that year is estimated at $18 million.

The sum of the General Fund amount, the MTOAF deposits, and beginning in SFY 2004-05 the DHBTF deposits constitute the All Funds amount. In SFY 2003-04 this amount is estimated to be $887 million, representing a decrease of 18.7 percent. This estimate is $93 million lower than that of the Executive.

The All Funds forecast for SFY 2004-05 is $865 million, a decrease of 18.7 percent. This forecast is $1 million lower than that of the Executive.

**Recent Legislative History**

Legislation enacted in 2003 rededicated General Fund collections resulting from Sections 183 and 184 of the Tax Law, to the Dedicated Highway and Bridge Trust Fund.

In 2002, Legislation was enacted that:

- Changed the order in which tax credits are applied so that non-carryover credits that are not refundable are used first, followed by limited duration carryover credits, then by unlimited duration carryover credits, and finally by refundable credits.

- Increased the mandatory first installment of estimated tax to 30 percent for taxpayers whose preceding year's tax paid exceeds $100,000. For taxable years beginning on or after January 1, 2006, the first installment amount reverts to 25 percent of the previous year's tax paid.

- Amended the Section 186-e Excise Tax on Telecommunication Services to conform to the sourcing rules of the Federal Mobile Telecommunications Sourcing Act relating to sales occurring on or after August 2, 2002. The tax is imposed on gross receipts of services provided by a home service provider if the customer's primary use is within New York State. This is true irrespective of where the service originates, terminates or passes through.

In 2001, Section 189 was amended to create credits for taxes paid to other states where natural gas is purchased.

During 2000, the Gross Receipts Taxes (GRT) on utility companies was eliminated. Such companies will now be subject to the Corporate Franchise Tax instead. The GRT on energy used in manufacturing was eliminated and other portions of the tax were phased down. Additionally, 300 more megawatts were made available under the Power for Jobs Program.

In 1999, two measures were enacted. First, independent power producers who import natural gas for the production of electricity will be exempt from the gas import tax, effective January 1, 2001

In addition, local telecommunications companies with fewer than one million access lines will be exempt from the excess dividends base under Section 183 of the Tax Law effective January 1, 2002. This exemption is expected to reduce revenues by $2 million when fully implemented.

In 1997, legislation that was enacted included:

- A rate reduction for Section 186-a and 186-e of Article 9 from 3.5 percent to 3.25 percent on October 1, 1998. A further reduction of the rate to 2.5 percent occurred on January 1, 2000;

- A rate reduction for the Gross Earnings Tax in Section 184 from 0.75 percent to 0.375 percent. For transportation companies the rate reduction is from 0.6 percent to 0.375 percent, effective July 1, 2000;

- For the purpose of computing the MTA Surcharge on the above, Sections 184, 186-a and 186-c, the tax shall be computed as if the rate reduction had not occurred; and,

- The formula for the distribution of revenues from Sections 183 and 184 will be changed to maintain the required funding level for the MTOAF.

In 1996, the tax rate on trucking and railroad industries, under Section 184 of Article 9, was reduced from 0.75 percent to 0.6 percent of gross receipts starting in Tax Year 1997. Further, these industries have the option of converting from taxation under Article 9 to Article 9-A beginning in Tax Year 1998 and thereafter. There was no fiscal impact for SFY 1996-97, and a reduction of $6 million was estimated for SFY 1997-98.

In 1995, Telecommunications Tax reform was enacted in response to a Court of Appeals decision. The major implications involved the moving of the access charge deduction from long distance companies to local telephone companies, updating the computation of the tax (Goldberg methodology) for providing telecommunication services, and the agreement that long distance companies will forgo refunds due to them.