# EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| STATE OF NEW YORK,<br>STATE OF CONNECTICUT,<br>STATE OF MARYLAND, and STATE OF NEW JERSEY,<br><br>Plaintiffs,<br><br>v.<br><br>STEVEN MNUCHIN, in his official capacity as Secretary of the United States Department of Treasury; the UNITED STATES DEPARTMENT OF TREASURY; DAVID J. KAUTTER, in his official capacity as Acting Commissioner of the United States Internal Revenue Service; the UNITED STATES INTERNAL REVENUE SERVICE; and the UNITED STATES OF AMERICA,<br><br>Defendants. |

# DECLARATION OF SCOTT PALLADINO

SCOTT PALLADINO, declares under penalty of perjury pursuant to 28 U.S.C. § 1746, that the following is true and correct:

## I. Education and Background

1. I am the Deputy Commissioner of the New York State Department of Taxation and Finance ("DTF"). I was appointed to this position in February 2018.
2. As Deputy Commissioner, I oversee the Office of Tax Policy Analysis ("OTPA"), which operates within DTF and is responsible for developing and evaluating tax policy, revenue forecasting and estimation, and related matters.
3. I previously served as Assistant Deputy Commissioner in the Office of Tax Policy Analysis. I was appointed to that position in January of 2011.

4. I previously served for nearly ten years as Deputy Fiscal Director for the Committee on Ways and Means of the New York State Assembly, which has jurisdiction over tax legislation in the New York State Legislature, and as a Senior Policy Analyst at the National Governors Association for nearly three years.
5. I hold a Bachelor's Degree in Business Administration from Baruch College and a Master's Degree in Economics from the State University of New York, Albany.
6. DTF receives sample files from the Statistics of Income ("SOI") program operated by the Internal Revenue Service ("IRS") that enable DTF to reliably estimate the impact of federal tax law changes on New Yorkers' federal tax liability.
7. The OTPA has been approved by the IRS to use these statistical files for preparing tax models or other statistical compilations for state tax administration purposes.
8. The most recent SOI modeling data provided by the IRS is a weighted sample file of approximately 28,000 anonymized federal taxpayer records filed by New York residents for the 2015 tax year. Each record contains taxpayer specific information pertaining to over 3,500 federal personal income tax variables. These variables include detailed filing information about various factors, such as filing status, number of exemptions, age, wages earned, and dividends and capital gains received, as well as itemized deductions, credits, and final tax liability. DTF's agreement with the IRS allows OTPA staff to analyze this data through a microsimulation model of federal income tax liability.[1] In addition, DTF uses the data to analyze summary statistics on various tax items that directly or indirectly impact New York State personal income tax revenue collections.
9. I have substantial experience preparing and analyzing such DTF estimates.
10. I was asked to analyze the impact of the Public Law No. 115-97 (the "2017 Tax Act") on New York, including the impact of changes to federal exemptions, deductions and credits on New York tax revenues and the federal tax burdens of New York taxpayers.

[1] The model essentially calculates federal adjusted gross income and tax liability by recreating a taxpayer's federal income tax return. The output is presented as a weighted sum of each observation and may be stratified by income or filing status. The microsimulation model is used to estimate the impact of hypothetical tax law changes.

11. My analysis of the impact of the 2017 Tax Act included an analysis of the impact of the new cap on the federal deduction for state and local taxes (the "SALT Deduction Cap") as enacted in § 11042 of the 2017 Tax Act. When used herein, the term "SALT" refers to the state and local taxes, the deduction of which is capped by the SALT Deduction Cap.

12. My analysis of the SALT Deduction Cap addresses several issues, including the impact of the SALT Deduction Cap on New York State and the relative impact of the SALT Deduction Cap across different States.

13. My opinions are based on analyses conducted by myself and others at DTF under my direction and supervision, my review of analyses conducted on behalf of other States, my review of analyses conducted by third parties, my review of publicly available documents, and the totality of my professional experience. The following statements are true and accurate to the best of my knowledge.

14. In sum, based on the data and assumptions stated below, my conclusions are:

    a. The SALT Deduction Cap raises New Yorkers' federal tax liability by $14.3 billion in 2018, and by $121 billion from 2018 to 2025, when compared to federal tax law under the 2017 Tax Act without that cap. These increases will occur for upstate and downstate taxpayers, including those in middle-income tax brackets. *See infra* Section II.

    b. New York, Maryland, New Jersey, California, and Connecticut have the highest percentages of taxpayers who will see a federal tax increase under the 2017 Tax Act; New York has the highest such percentage. *See infra* Paragraph 29.

    c. When compared to their baseline shares of the federal tax base, the 2017 Tax Act disfavors States such as New York and New Jersey, and favors States such as Alaska, Florida, Texas, and Wyoming. *See infra* Paragraphs 32–41.

## II. Impacts on New York State

15. In this section, I analyze the impact of the SALT Deduction Cap on the State of New York by using the results of a micro-simulation model to compare the effects of the 2017 Tax Act to what 2018 Federal law would have been absent the 2017 Tax Act. In addition,

the model estimated the effects of the 2017 Tax Act with and without the SALT Deduction Cap.

16. Under the 2017 Tax Act, the SALT Deduction Cap applies for eight taxable years. It goes into effect for tax year 2018, and it expires after tax year 2025.

17. I conclude that the SALT Deduction Cap raises federal tax liability for New York taxpayers by $12.8 billion relative to what they would have paid absent the cap, assuming all other provisions of the 2017 Tax Act remain unchanged. This estimate is based on 2015 income using 2018 federal parameters. Trending incomes forward from 2015 to 2018 yields an increase in federal liability of $14.3 billion by federal tax year 2018.

18. Over the course of the eight years the SALT Deduction Cap will be in effect, I expect that New York taxpayers will collectively pay an additional $121 billion in federal taxes relative to what they would have paid under the 2017 Tax Act without the SALT Deduction Cap. This conclusion is based on estimates performed by the New York State Division of the Budget (DOB) of the growth in the cost of the SALT Deduction Cap to New York resident taxpayers who itemize at the state level for each year through 2025.[2] This is reflected in the table below:

| **Increased Tax Liability for New York Taxpayers Due To SALT Deduction Cap (2018-2025)** | |
|---|---|
| 2018 | $14.3 billion |
| 2019 | $14.5 billion |
| 2020 | $14.8 billion |
| 2021 | $15.0 billion |
| 2022 | $15.3 billion |
| 2023 | $15.5 billion |
| 2024 | $15.7 billion |
| 2025 | $15.9 billion |
| **Total**: $121 billion | |

[2] DOB obtains growth factors based on detailed tax return data for those New York State resident taxpayers that itemized at the State level for the 2015 tax year. A detailed description of how DOB trends the components of taxable income forward appears in *New York State Division of the Budget, Economic, Revenue, and Spending Methodologies*, November 2017, pp. 62-73, https://www.budget.ny.gov/pubs/supporting/MethodologyBook.pdf

19. For tax year 2018, taxpayers in downstate New York, including low- and middle-income taxpayers,[3] will pay an additional $12.8 billion per year in federal taxes because of the SALT Deduction Cap, relative to 2018 federal tax law absent the SALT Deduction Cap. Specifically, I estimate that the SALT Deduction Cap will increase federal taxes paid by the following amounts:

   a. $165 million from taxpayers with adjusted gross incomes ("AGI")[4] between $25,000 and $99,999 per year;
   b. $800 million from taxpayers with AGIs between $100,000 and $199,999 per year;
   c. $2 billion from taxpayers with AGIs between $200,000 and $499,999 per year;
   d. $1.6 billion from taxpayers with AGIs between $500,000 and $999,999 per year;
   e. $3.2 billion from taxpayers with AGIs between $1 million and $4,999,999 per year;
   f. $1.2 billion from taxpayers with AGIs between $5 million and $9,999,999 per year; and
   g. $3.8 billion from taxpayers with AGIs above $10 million per year;

20. Similarly, I estimate that the SALT Deduction Cap will result in upstate taxpayers paying $1.5 billion more per year in federal taxes relative to 2018 federal tax law absent the SALT Deduction Cap, including:

   a. $25.8 million from taxpayers with AGIs between $25,000 and $99,999 per year;
   b. $195 million from taxpayers with AGIs between $100,000 and $199,999 per year;
   c. $425 million from taxpayers with AGIs between $200,000 and $499,999 per year;

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[3] For purposes of this declaration, the term "downstate" refers to the following counties: Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, and Westchester. The term "upstate" refers to all other counties in New York State.

[4] "Adjusted gross income" refers to a taxpayer's total gross income minus specific deductions.

d. $220 million from taxpayers with AGIs between $500,000 and $999,999 per year; and

e. $286 million from taxpayers with AGIs between $1 million and $4,999,999 per year.

21. Though many New Yorkers will see a federal tax reduction because the 2017 Tax Act reduces tax rates and makes other changes to the tax code, more than one million New York taxpayers will see a net tax increase in 2018, primarily due to the SALT Deduction Cap.

22. In particular, for tax year 2018, more than 823,000 New Yorkers downstate will see an average federal tax increase of approximately $6,250, and more than 221,000 New Yorkers upstate will see an average federal tax increase of more than $2,300.

## III. Comparative Impact of 2017 Tax Act Across States

23. In this section, I analyze the comparative impact of the 2017 Tax Act across States.

24. I find that, as described below, the 2017 Tax Act has the effect of disadvantaging New York, New Jersey, and other similarly situated States relative to many other States.

25. The Institute for Taxation and Economic Policy ("ITEP") has published estimates of the impact of the 2017 Tax Act across States. ITEP is a non-profit, nonpartisan research organization that provides in-depth analyses on the effects of federal, state, and local tax policies. ITEP researchers use a tax incidence model to produce distributional and revenue analyses of current tax systems and proposed changes at the federal, state, and local level.

26. In my experience, ITEP produces reliable estimates of the likely impacts of tax policy changes.

27. According to ITEP data that I have reviewed, New York and other similarly situated States have the highest percentage of taxpayers who will experience a net tax increase because of the 2017 Tax Act. Based on my observation of publicly available data, I believe this is due primarily to the SALT Deduction Cap.

28. As reflected in the table below, New York has the highest percentage of taxpayers who will experience a net tax increase under the 2017 Tax Act.

| Percentage of the Population That Will Experience a Tax Increase in Tax Year 2019 Because of the 2017 Tax Act | | |
|---|---|---|
| **State** | **Percentage** | **Rank[5]** |
| New York | 13 percent | 1 |
| Maryland | 12 percent | 2 (tied) |
| District of Columbia | 12 percent | 2 (tied) |
| New Jersey | 11 percent | 4 |
| California | 11 percent | 5 |
| Connecticut | 9 percent | 6 |
| Texas | 6 percent | 33 |
| Florida | 5 percent | 37 |
| Kansas | 4 percent | 46 |
| South Dakota | 3 percent | 49 |
| North Dakota | 2 percent | 51 |
| **Source**: ITEP Data https://itep.org/finalgop-trumpbill-ny/ | | |

29. In New York, thirteen percent of taxpayers will see a federal tax increase.[6] For New Jersey this figure is eleven percent; for Maryland, it is twelve percent; for California, it is eleven percent; and for Connecticut, it is 9 percent. In contrast, only six percent of Texans and only five percent of Floridians will see a tax increase in tax year 2019 because of the 2017 Tax Act. Thus, on a relative basis, more than twice as many New Yorkers as Texans or Floridians will see a net tax increase because of the 2017 Tax Act. I estimate that this difference is primarily due to the SALT Deduction Cap.

30. The relative impact of the 2017 Tax Act on the States can also be assessed by comparing each State's share of the federal tax base to each State's share of the 2017 tax cuts.

31. As used herein, herein, "federal tax base" refers to the total amount of federal individual, corporate income, and estate taxes received by the federal government under the law

[5] In this table, States (including the District of Columbia) are ranked based on the percentage of taxpayers who will experience a net tax increase because of the 2017 Tax Act. If one State has a higher rank than another State in the table, that means a greater percentage of taxpayers in the higher-ranked State will see a tax increase than in the lower-ranked State.

[6] ITEP's estimate on this point is relatively consistent with DTF's own internal estimate based on 2015 tax return data, which is that approximately 11% of New York taxpayers will experience a tax increase under the 2017 Tax Act.

prior to the enactment of the 2017 Tax Act. "State share of the federal tax base" means the percentage of all federal taxes contributed by each State's taxpayers. A "State's share of the 2017 tax cuts," or similar phrasing used below, refers to the share of the 2017 tax cuts taxpayers in a State are estimated to receive. As used below, the term "tax cuts in the 2017 Tax Act" refers to reductions in federal individual income taxes, corporate taxes, and estate taxes, as well as changes in treatment for pass-through business income, that were enacted in the 2017 Tax Act. These tax cuts are described in state-by-state data released by ITEP in December 2017.[7]

32. ITEP data enabled me to estimate each State's share of the federal tax base. To determine a State's share of the tax base, I divided the Total Tax Change – which represents ITEP's estimate of the absolute dollar amount of tax cuts provided by the 2017 Tax Act for 2019 to taxpayers in each State – by the Tax Change as a Percentage of Pre-Tax Income – which represents the Total Tax Change framed as a percentage of the State's total tax base prior to the 2017 Tax Act. In simple terms, if a State's tax change was $100 in absolute terms, and that $100 represented 2% of the State's pre-tax income prior to the 2017 Tax Act, then the State's tax base in this formula would be $5,000 ($100/.02). That method yielded the following raw figures for certain States' amount of the federal tax base in 2019:

| **Federal Tax Base (Raw Estimates By State)** | |
|---|---|
| California | $2.03 trillion |
| Texas | $1.13 trillion |
| New York | $1.10 trillion |
| Florida | $1.06 trillion |
| New Jersey | $546 billion |
| Maryland | $314 billion |
| Connecticut | $235 billion |
| **Source:** ITEP data analyzed by New York State Department of Taxation and Finance | |

[7] ITEP's state-by-state estimates of the impact of the 2017 Tax Act provided columns categorizing the Act's tax cuts as "Families & Individuals", "Estate Tax", "Pass-Through Businesses", and "Corporations". ITEP's state-by-state estimates are available here: https://itep.org/finalgop-trumpbill/.

33. The following table compares those raw figures to the overall federal tax base, imputed from ITEP data.[8]

| **State Share of Federal Tax Base (By State)** | |
|---|---|
| California | 13.5% |
| Texas | 7.6% |
| New York | 7.3% |
| Florida | 7.1% |
| New Jersey | 3.6% |
| Maryland | 2.1% |
| Connecticut | 1.6% |
| **Source:** ITEP data analyzed by New York State Department of Taxation and Finance | |

34. ITEP data also enabled me to estimate what percentage of the tax cuts in the 2017 Tax Act goes to taxpayers in each State. For example, according to ITEP data, Florida taxpayers will receive 8.6 percent of the tax cuts in the 2017 Tax Act, and Texas taxpayers will receive 9.6 percent. These estimates are reflected in the table below:

| **States (including D.C.)** | **Percentage of 2017 Tax Cuts** |
|---|---|
| Alaska | 0.3% |
| South Dakota | 0.3% |
| Wyoming | 0.2% |
| Texas | 9.6% |
| Florida | 8.6% |
| Connecticut | 1.5% |
| Maryland | 1.9% |
| Minnesota | 1.7% |
| Oregon | 1.2% |
| California | 10.8% |
| New Jersey | 2.9% |
| New York | 5.1% |

35. Using the figures described in paragraphs 33 (share of tax base by State) and 34 (share of tax cuts in 2017 Tax Act, by State), I was able to compare each State's share of the federal tax base to the distribution of tax cuts under the 2017 Tax Act.

[8] DTF's calculations based on ITEP data yield an overall federal tax base of $14.99 trillion.

36. This comparison is a method of assessing whether the 2017 Tax Act is skewed in favor of or against certain States. For example, a bill reducing taxes proportionally across the board would provide tax cuts in percentages matching (or very similar to) a State's baseline share of the federal tax base. In contrast, a bill favoring or disfavoring[9] certain States would not do so. Instead, as to favored States, such a bill would provide tax cuts greater than those States' baseline shares of the federal tax base. As to disfavored States, such a bill would provide tax cuts less than those States' baseline shares of the federal tax base.

37. This comparison is done in the table below. A figure below 100 percent in the middle column of the table below means a State's taxpayers received relatively less from the 2017 Tax Act than the State's share of the tax base. For example, if a State had ten percent of the federal tax base, but the State's taxpayers received only five percent of the tax cuts in the 2017 Tax Act, then the middle column of the table would show 50 percent (derived from dividing .05 by .10 and then converting the result to percentage form)—suggesting the State's taxpayers received only half as much as the State's share of the tax base would suggest they should receive. The impact of the bill will skew against that State.

38. In contrast, a figure above 100 percent in the middle column of the table below means a State's taxpayers received relatively more from the 2017 Tax Act than the State's share of the tax base. For example, if a State had five percent of the federal tax base, but the State's taxpayers received ten percent of the tax cuts in the 2017 Tax Act, then the table would show 200 percent (derived from dividing .10 by .05 and then converting the result to percentage form)—suggesting the State's taxpayers received twice as much as the State's share of the tax base would suggest they should receive. The impact of the bill will skew in favor of that State.

[9] By "favoring or disfavoring" I am referring solely to the mathematical impact of the bill, and not to legislative intent.

| Comparison of Each State's Share of the 2017 Tax Cuts to Baseline Share of Federal Tax Base | | |
|---|---|---|
| **States (including D.C.)** | **Percentage of Tax Cut / Percentage of Tax Base** | **Rank[10]** |
| Alaska | 137 percent | 1 |
| South Dakota | 134.1 percent | 2 |
| Wyoming | 132.1 percent | 3 |
| Texas | 127.2 percent | 5 |
| Florida | 122.0 percent | 7 |
| Connecticut | 93.1 percent | 40 |
| Maryland | 88.6 percent | 46 |
| Minnesota | 87.1 percent | 47 (tied) |
| Oregon | 87.1 percent | 47 (tied) |
| California | 79.8 percent | 49 |
| New Jersey | 79.4 percent | 50 |
| New York | 70.1 percent | 51 |
| **Source:** ITEP data analyzed by New York State Department of Taxation and Finance | | |

39. As reflected in the table above, taxpayers in States such as Alaska, Wyoming, Texas and Florida receive between 22 and 37 percent more in tax cuts from the 2017 Tax Act than their respective baseline shares of the federal tax base. Those States are in the top ten on this metric.

40. In contrast, New York and New Jersey received between 20 and 30 percent less in tax cuts from the 2017 Tax Act than their respective baseline shares of the federal tax base. These States rank in the bottom three out of all States and the District of Columbia, and New York ranks last.

41. Based on this data, I find that the 2017 Tax Act favors States such as Alaska, Wyoming, Texas, and Florida and disfavors States such as New York and New Jersey.[11]

[10] A higher rank in this table correlates with a State receiving relatively more from the 2017 Tax Act than the State's share of the tax base.

[11] By "favoring or disfavoring" I am referring solely to the mathematical impact of the bill, and not to legislative intent.

Respectfully submitted,

Dated: June 16, 2018

SCOTT PALLADINO