UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, STATE OF CONNECTICUT, STATE OF MARYLAND, and STATE OF NEW JERSEY,

Plaintiffs,

v.

STEVEN T. MNUCHIN, in his official capacity as Secretary of the United States Department of Treasury; the UNITED STATES DEPARTMENT OF TREASURY; CHARLES P. RETTIG, in his official capacity as Commissioner of the United States Internal Revenue Service; the UNITED STATES INTERNAL REVENUE SERVICE; and the UNITED STATES OF AMERICA,

Defendants.

18 Civ. 6427 (JPO)

THE GOVERNMENT'S RESPONSE TO THE STATES' LOCAL RULE 56.1 STATEMENT

Pursuant to Federal Rule of Civil Procedure 56 and Local Civil Rule 56.1(b), defendants Steven T. Mnuchin, in his official capacity as the Secretary of the Treasury; the United States Department of the Treasury; Charles P. Rettig, in his official capacity as Commissioner of Internal Revenue; the Internal Revenue Service ("IRS"); and the United States of America (collectively, the "United States" or the "Government"), by their attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York, hereby respond to the Local Rule 56.1 Statement (the "Statement") of Plaintiffs the States of New York, Connecticut, Maryland, and New Jersey (together, the "States"), as follows.

The Statement does not comply with Local Rule 56.1. It is not a "short and concise statement . . . of material facts," nor are many of the asserted "facts" "followed by citation to evidence which would be admissible." Local Civ. R. 56.1(a). In many cases, the purported

"facts" are not material, and they are often supported by nothing other than hearsay statements. The Statement also contains numerous legal conclusions, argument, unauthenticated hearsay statements, and other non-factual allegations. *See* Local Civ. R. 56.1(d).

Subject to the foregoing objections and discussion, and in an abundance of caution, the Government's responses to the numbered statements follow in correspondingly numbered paragraphs.

A. Background on the Limits of Federal Tax Power[1]

1. During the debates regarding the framing of the United States Constitution, one topic of concern was the consequence of vesting the federal government with a general power of taxation over all objects of taxation. Plaintiffs' Exhibit 1 (1 James Kent, *Commentaries on American Law* 367 (O. Halsted ed., 1826)).

Response: The Government denies that the statement in paragraph 1 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement purports to summarize a passage in a book of legal and historical commentary, which is inadmissible hearsay and not a proper subject of a Local Rule 56.1 statement; the Government respectfully refers the Court to the book for a true and complete statement of its contents.

2. In part to respond to this concern, the Framers adopted a dual federalist structure and reserved to the States a concurrent tax authority. Plaintiffs' Exhibit 2 (*The Federalist* No. 33 (Hamilton)).

Response: The Government denies that the statement in paragraph 2 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement purports, based on a citation to a historical document, to set forth a characterization of constitutional and political history, which is inadmissible hearsay and is not a proper subject of a

[1] This response reprints the headings in the Statement solely for convenience, and does not admit the truthfulness or materiality of any such headings.

Local Rule 56.1 statement; the Government respectfully refers the Court to the document for a true and complete statement of its contents.

> 3. In the decades following the ratification of the Constitution, the federal government was primarily financed by customs duties and excise taxes, rather than by taxing revenue sources traditionally taxed by the States, such as property and income. Plaintiffs' Exhibit 3 (Roy G. Blakey & Gladys C. Blakey, *The Federal Income Tax* 2 (1940)).

Response: The Government denies that the statement in paragraph 3 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement purports to summarize a passage in a book of legal and historical commentary, which is inadmissible hearsay and is not a proper subject of a Local Rule 56.1 statement; the Government respectfully refers the Court to the book for a true and complete statement of its contents. The Government further notes that states did not begin enacting income taxes until the early 1900's. *See* Edward T. Howe & Donald J. Reeb, *The Historical Evolution of State and Local Tax Systems*, 78 Soc. Sci. Q. 109, 114 (1997).

> 4. When Congress first considered imposing an income tax during the War of 1812, an initial proposal for a federal income tax exempted entirely state and local taxes from federal taxation, providing that the federal income tax would extend "only to such capital or employments as are not taxed by any existing laws." Plaintiffs' Exhibit 4 (28 Annals of Cong. 1079 (Jan. 18, 1815)).

Response: The Government denies that the statement in paragraph 4 is material to the resolution of this case. The statement purports to summarize and quote a portion of a proposed congressional bill that was not enacted into law; the Government admits that the bill contained the quoted language, and respectfully refers the Court to it for a true and complete statement of its contents.

> 5. When Congress adopted the first federal income tax in 1861, it provided a deduction for "all national, state, or local taxes assessed upon the property, from which the income is derived." Plaintiffs' Exhibit 5 (Act of Aug. 5, 1861, ch. 45, § 49, 12 Stat. 292, 309).

Response: The Government denies that the statement in paragraph 5 is material to the resolution of this case. The stated fact purports to summarize and quote a portion of a federal statute; the Government admits that the statute contained the quoted language, and respectfully refers the Court to it for a true and complete statement of its contents.

> 6. During the debate regarding the first federal income tax, House Ways and Means Committee member Justin Smith Morrill stated: "It is a question of vital importance to [the States] that the General Government should not absorb all their taxable resources—that the accustomed objects of State taxation should, in some degree at least, go untouched. The orbit of the United States and the States must be different and not conflicting." Plaintiffs' Exhibit 6 (Cong. Globe, 37th Cong., 2d Sess. 1194 (1862)).

Response: The Government denies that the statement in paragraph 6 is material to the resolution of this case. The statement quotes a portion of a congressional debate; the Government admits that the transcript of the debate contains the quoted language, and respectfully refers the Court to the full transcript for a true and complete statement of its contents.

> 7. Committee Chairman Thaddeus Stevens stated that Congress was concerned with avoiding "double taxation," and stated that the drafters intended to "exclud[e] from this tax the articles and subjects of gain and profit which are taxed in another form." Plaintiffs' Exhibit 7 (Cong. Globe, 37th Cong., 2d Sess. 1577 (1862)).

Response: The Government denies that the statement in paragraph 7 is material to the resolution of this case. The statement purports to summarize and quote a portion of, and characterize, a congressional debate; the Government admits that the transcript of the debate contains the quoted language, and respectfully refers the Court to the full transcript for a true and complete statement of its contents.

> 8. Although the Civil War income tax was modified several times, the deduction for SALT remained in effect until the federal income tax was repealed in 1872. Plaintiffs' Exhibit 8 (Act of July 1, 1862, ch. 119, § 91, 12 Stat. 432, 473-74); Exhibit 9 (Act of June 30, 1864, ch. 173, § 117, 13 Stat. 223, 281); Exhibit 10 (Act of March 3, 1865, ch. 78, 13 Stat. 469, 479); Exhibit 11 (Act of March 2, 1867, ch. 169, § 13, 14 Stat. 471, 478); Exhibit 12 (Act of July 14, 1870, ch. 255, § 9, 16 Stat. 256, 258).

Response: The Government denies that the statement in paragraph 8 is material to the resolution of this case. The statement purports to summarize the provisions of several federal statutes; the Government respectfully refers the Court to those statutes for a true and complete statement of their contents.

> 9. When the federal income tax was briefly revived between 1894 and 1895, legislators provided a deduction for "all national, State, county, school, and municipal taxes, not including those assessed against local benefits, paid within the year." Plaintiffs' Exhibit 13 (Act of August 27, 1894, ch. 349, § 28, 28 Stat. 509, 553).

Response: The Government denies that the statement in paragraph 9 is material to the resolution of this case. The statement purports to summarize and quote a portion of a federal statute; the Government admits that the statute contained the quoted language, and respectfully refers the Court to it for a true and complete statement of its contents.

> 10. During the ratification debates regarding the Sixteenth Amendment, many state legislators raised concerns that the proposed amendment would expand the federal government's power at the expense of the States. Plaintiffs' Exhibit 14 (John D. Buenker, *The Ratification of the Federal Income Tax Amendment*, 1 Cato J. 183, 204 (1981)).

Response: The Government denies that the statement in paragraph 10 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement purports, based on a citation to a book of legal and historical commentary, to set forth a characterization of constitutional history, which is inadmissible hearsay and is not a proper subject of a Local Rule 56.1 statement; the Government respectfully refers the Court to the book for a true and complete statement of its contents.

> 11. In January 1910, then-Governor (and later Chief Justice of the U.S. Supreme Court) Charles Evans Hughes delivered a message to the New York Legislature opposing ratification on federalism grounds and expressing concern that the proposed amendment "would be an impairment of the essential rights of the State," including the States' ability to generate revenue from traditional sources. Plaintiffs' Exhibit 15 (*Hughes is Against Income Amendment*, N.Y. Times, Jan. 6, 1910, at 2).

Response: The Government denies that the statement in paragraph 11 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement quotes and summarizes a portion of a newspaper article, which is inadmissible hearsay and which purports to describe a statement by Charles Evans Hughes; the Government admits that the article contains the quoted language, and respectfully refers the Court to it for a true and complete statement of its contents.

12. Officials in multiple other States cited the Hughes Message and expressed similar concerns. Plaintiffs' Exhibit 16 (John D. Buenker, *The Income Tax and the Progressive Era* 239, 264-65 (1985)).

Response: The Government denies that the statement in paragraph 12 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement purports, based on a citation to a book of legal and historical commentary, to set forth a characterization of constitutional history, which is inadmissible hearsay and is not a proper subject of a Local Rule 56.1 statement; the Government respectfully refers the Court to the book for a true and complete statement of its contents.

13. Georgia initially voted against the amendment, with legislators warning that "it was a grave thing for States to confer such power on the Federal Government," and that "it would probably be better for Georgia to adopt an income tax law for herself and reject the proposition for a National income tax." Plaintiffs' Exhibit 17 (*Georgia Avoids Income Tax*, N.Y. Times, Aug. 6, 1909, at 1).

Response: The Government denies that the statement in paragraph 13 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement quotes and summarizes a portion of a newspaper article, which is inadmissible hearsay and which purports to describe statements made by legislators; the Government admits that the article contains the quoted language, and respectfully refers the Court to it for a true and complete statement of its contents.

14. After the Virginia legislature rejected the amendment, one local newspaper stated: "It will be a long time before Virginia will set her sister States the example of surrendering unnecessarily to the central government any important right now reserved to the States." Plaintiffs' Exhibit 18 (*Decisive Blow at the Income Tax Amendment*, Daily Press (Newport News, V.A.), Mar. 10, 1910, at 4).

Response: The Government denies that the statement in paragraph 14 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement quotes a newspaper article that purports to set forth editorial political commentary, which is inadmissible hearsay and is not a proper subject of a Local Rule 56.1 statement; the Government admits that the article contains the quoted language, and respectfully refers the Court to it for a true and complete statement of its contents.

15. Speaking in support of the 16th Amendment, U.S. Senator William Borah stated: "[t]he taxing power of the United States is subject to an implied restraint arising from the existence of the powers in the State which are obviously intended to be beyond the control of the General Government." Plaintiffs' Exhibit 19 (45 Cong. Rec. 1696 (Feb. 10, 1910)).

Response: The Government denies that the statement in paragraph 15 is material to the resolution of this case. The statement quotes a portion of a congressional debate; the Government admits that the transcript of the debate contains the quoted language, and respectfully refers the Court to the full transcript for a true and complete statement of its contents.

16. U.S. Senator Elihu Root sent a letter to the New York legislature responding to the Hughes Message, stating: "[t]he taxing power of the Federal Government does not . . . extend to the means or agencies through or by the employment of which the States perform their essential functions." Plaintiffs' Exhibit 20 (*Root for Adoption of Tax Amendment*, N.Y. Times, Mar. 1, 1910, at 4).

Response: The Government denies that the statement in paragraph 16 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement quotes a newspaper article, which is inadmissible hearsay and which purports to describe statements made by U.S. Senator Elihu Root; the Government admits that the article contains the

quoted language, and respectfully refers the Court to it for a true and complete statement of its contents.

> 17. U.S. Senator Joseph Bailey stated: "It is not true that such an amendment would abridge the rights of the State. No change but one is proposed, and that is that the income tax should be levied upon wealth rather than population. . . . Everything the State can do or tax now it can do after this amendment is adopted." Plaintiffs' Exhibit 21 (*Bailey Speaks at Columbia*, Watchman and Southron (Sumter, S.C.), Feb. 19, 1910, at 6).

Response: The Government denies that the statement in paragraph 17 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement quotes a newspaper article, which is inadmissible hearsay and which purports to describe a statement made by U.S. Senator Joseph Bailey; the Government admits that the article contains the quoted language, and respectfully refers the Court to it for a true and complete statement of its contents.

> 18. The first federal income tax law after the 16th Amendment was ratified—the Revenue Act of 1913—included a deduction for "all national, State, county, school, and municipal taxes paid within the year." Plaintiffs' Exhibit 22 (Revenue Act of 1913, ch. 16, § II(B), 38 Stat. 114, 167).

Response: The Government denies that the statement in paragraph 18 is material to the resolution of this case. The statement purports to summarize and quote a portion of a federal statute; the Government admits that the statute contained the quoted language, and respectfully refers the Court to it for a true and complete statement of its contents.

> 19. H. Parker Willis, an economist who advised the House Banking and Currency Committee on the 1913 Revenue Act, wrote that Congress "desired that the question of interference with state taxes should very carefully be safeguarded" and "it was believed[] the field ought to be shared with the states." Plaintiffs' Exhibit 23 (H. Parker Willis, *The Tariff of 1913: III*, 22 J. Pol. Econ. 218, 224, 227 (1914)).

Response: The Government denies that the statement in paragraph 19 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement quotes a portion of an article in a historical legal journal setting forth characterizations of

historical constitutional debates, which are inadmissible hearsay and are not a proper subject of a Local Rule 56.1 statement; the Government admits that the article contains the quoted language, and respectfully refers the Court to it for a true and complete statement of its contents.

> 20. When considering reforms to the tax code in 1963, a House Report stated that it was necessary to retain the SALT deduction to preserve federalism when "the State and local governments on one hand and the Federal Government on the other hand tap this same revenue source." Plaintiffs' Exhibit 24 (H.R. Rep. No. 88-749, at 48 (1963)).

Response: The Government denies that the statement in paragraph 20 is material to the resolution of this case. The statement purports to quote and summarize a portion of a congressional report; the Government admits that the report contains the quoted language, and respectfully refers the Court to it for a true and complete statement of its contents.

> 21. During the 1980s, a proposal to eliminate the SALT deduction was defeated after a number of constitutional scholars and elected officials argued that repealing the SALT deduction was unconstitutional. Plaintiffs' Exhibit 25 (Sarah F. Liebschutz & Irene Lurie, *The Deductibility of State and Local Taxes*, 16 Publius 51, 64-70 (1986)).

Response: The Government denies that the statement in paragraph 21 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement purports to summarize a journal article in making an assertion about the history of taxation, which is inadmissible hearsay and is not a proper subject of a Local Rule 56.1 statement; the Government respectfully refers the Court to the article for a true and complete statement of its contents.

> 22. During the debate over the proposal, U.S. Senator Daniel Patrick Moynihan stated that repealing the SALT deduction would disrupt the "constitutional balance in some fundamental way." Plaintiffs' Exhibit 26 (*Tax Reform Proposals—XIX: Hearing Before the S. Finance Comm.*, 99th Cong. 70 (1985)).

Response: The Government denies that the statement in paragraph 22 is material to the resolution of this case. The statement purports to quote and summarize testimony given during a congressional committee hearing; the Government admits that the transcript of the hearing

contains the quoted language, and respectfully refers the Court to the full transcript for a true and complete statement of its contents.

23. The Governor of New York, Mario M. Cuomo, testified before Congress that the SALT deduction is a "fundamental constitutional concept," and that repealing the deduction would violate the "essential predicate" of the compact between the States and the federal government. Plaintiffs' Exhibit 27 (*The Impact of Repeal of the Deductions for State and Local Taxes: Hearings Before the Subcomm. on Monetary and Fiscal Policy of the Joint Economic Committee*, 99th Cong. 87 (1985)).

Response: The Government denies that the statement in paragraph 23 is material to the resolution of this case. The statement purports to quote and summarize testimony given during a congressional committee hearing; the Government admits that the transcript of the hearing contains the quoted language, and respectfully refers the Court to the full transcript for a true and complete statement of its contents.

24. U.S. Senator Dave Durenberger, the Chair of the Senate Subcommittee on Intergovernmental Relations, argued that the SALT deduction "prevent[ed] the national government from capturing all of the tax base," "preserve[d] some portion of the base for state and local revenue sharing," and "cushion[ed] the harmful tax competition among states by reducing the effect of fiscal disparities among them." Plaintiffs' Exhibit 26 (*Tax Reform Proposals—XIX: Hearing Before the S. Finance Comm.* at 7, 99th Cong. 70 (1985)).

Response: The Government denies that the statement in paragraph 24 is material to the resolution of this case. The statement purports to quote and summarize testimony given during a congressional committee hearing; the Government admits that the transcript of the hearing contains the quoted language, and respectfully refers the Court to the full transcript for a true and complete statement of its contents.

25. Although Congress has imposed some incidental limitations on the deduction in the past, until 2017 the core of the deduction for state and local property and income taxes remained intact, across 51 different Congresses and 56 different tax acts. Plaintiffs' Exhibits 28-83 (collecting relevant federal tax statutes).

Response: The Government denies that the statement in paragraph 25 is material to the resolution of this case. The statement sets forth the States' characterizations of the history of

federal taxation, which are not a proper subject of a Local Rule 56.1 statement. The Government respectfully refers the Court to the cited statutes for a true and complete statement of their contents. The Government also denies the truth of the statement asserted, which attempts to draw a baseless distinction between "incidental limitations" on the federal deduction for state and local taxes ("SALT") over time and the "core" of such a deduction. Over the timeframe of the modern federal income tax, Congress has made numerous changes—nearly all of them limitations—to the SALT deduction and imposed other legislative constraints that substantially limited taxpayers' ability to claim a deduction for all the taxes they have paid, including the alternative minimum tax ("AMT") and the Pease limitation. *See* Cong. Budget Office, *The Deductibility of State and Local Taxes*, at 4-5 (Feb. 2008), https://www.cbo.gov/sites/default/files/110th-congress-2007-2008/reports/02-20-state_local_tax.pdf; Tax Reform Act of 1986, Pub. L. No. 99-514, § 701, 100 Stat. 2085, 2320 (1986) (AMT); Omnibus Budget Reconciliation Act, Pub. L. No. 101-508, § 11103(a), 104 Stat. 1388, 1388-406 (1990) (Pease limitation).

B. <u>The Plaintiff States' Taxation and Fiscal Policies</u>

26. The Plaintiff States each levy state taxes and use the tax revenue to offer services to their residents. Plaintiffs' Exhibit 84 (Tax Policy Center, *How Do State and Local Individual Income Taxes Work*).

Response: The Government denies that the statement in paragraph 26 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement purports to summarize a report by a private organization, which is inadmissible hearsay; the Government respectfully refers the Court to the full report for a true and complete statement of its contents.

27. For fiscal year 2017-2018, New York's state personal income tax raised $51.5 billion, and the State's sales, excise, and user taxes generated $15.7 billion. Plaintiffs'

Exhibit 85 (New York State Dep't of Taxation and Finance: *Fiscal Year Tax Collections, 2017-2018*).

Response: The Government denies that the statement in paragraph 27 is material to the resolution of this case. The statement purports to summarize a report by a state agency; the Government respectfully refers the Court to the full report for a true and complete statement of its contents.

28. In the 2018 state fiscal year, New York's tax revenues funded education, hospitals and other health services, transportation, social services, parks, environment, economic development, and other services. Plaintiffs' Exhibit 86 (State of New York FY 2019 Enacted Budget Financial Plan at 66).

Response: The Government denies that the statement in paragraph 28 is material to the resolution of this case. The statement purports to summarize a report by a state agency; the Government respectfully refers the Court to the full report for a true and complete statement of its contents.

29. For fiscal year 2016, New York, Connecticut, and New Jersey all paid more in federal taxes than their residents received in federal spending. Plaintiffs' Exhibit 87 (New York Office of the Comptroller, *New York's Balance of Payments in the Federal Budget, Federal Fiscal Year 2016,* at 3-7 (2017)).

Response: The Government denies that the statement in paragraph 29 is material to the resolution of this case. The statement purports to summarize a report by a state agency; the Government respectfully refers the Court to the full report for a true and complete statement of its contents. The Government further denies the statement because states do not pay any federal taxes.

C. The 2017 Tax Act

30. Prior to Pub. L. No. 115-97, § 11042, 131 Stat. 2054 (2017) ("the 2017 Tax Act"), federal law permitted individuals who itemized their individual income tax deductions to deduct, with only incidental limitations, all of their: (1) state and local real estate taxes, (2) state and local personal property taxes, and (3) either state and local income taxes or state and local sales taxes. Plaintiffs' Exhibit 88 (26 U.S.C. § 164(a)-(b) (as effective December 18, 2015 to December 21, 2017)).

Response: The Government denies the truth of the statement in paragraph 30, in particular the phrase "with only incidental limitations." Before the enactment of the 2017 Tax Act, many taxpayers' ability to take deductions for state and local taxes paid was significantly limited by a number of provisions, including the AMT and the Pease limitation. *See* Cong. Budget Office, *The Deductibility of State and Local Taxes*, at 4-5 (Feb. 2008), https://www.cbo.gov/sites/default/files/110th-congress-2007-2008/reports/02-20-state_local_tax.pdf; Tax Reform Act of 1986, § 701, 100 Stat. at 2320; Omnibus Budget Reconciliation Act, § 11103(a), 104 Stat. at 1388-406. The statement purports to summarize a federal statute; the Government respectfully refers the Court to the statute for a true and complete statement of its contents.

31. Under the 2017 Tax Act, individuals may deduct only up to $10,000 total in (i) state and local real and personal property taxes, and (ii) either state and local income taxes or state and local sales taxes. Plaintiffs' Exhibit 89 (Pub. L. No. 115-97, § 11042).

Response: The statement in paragraph 31 purports to summarize a federal statute; the Government respectfully refers the Court to the statute for a true and complete statement of its contents. The Government admits that 26 U.S.C. § 164 limits the amount that individual taxpayers may deduct in tax years 2018 through 2025, for state and local taxes paid, to $10,000.

32. Married taxpayers filing separately may deduct only up to $5,000 each. Plaintiffs' Exhibit 89 (Pub. L. No. 115-97, § 11042).

Response: The statement in paragraph 32 purports to summarize a federal statute; the Government respectfully refers the Court to the statute for a true and complete statement of its contents. The Government admits that 26 U.S.C. § 164 limits the amount that married taxpayers filing separate returns may deduct in tax years 2018 through 2025, for state and local taxes paid, to $5,000 each.

33. In 2015, the most recent year for which tax data is available, the average SALT deduction claimed by the 3.3 million New York taxpayers who itemized their deductions on their federal tax returns was $21,943. Declaration of Lynn Holland (ECF No. 1-1) ("Holland Decl.") ¶ 13.

Response: The Government denies that the statement in paragraph 33 is material to the resolution of this case. The statement purports to summarize a declaration made by a New York state employee, which in turn purports to summarize a report by the Internal Revenue Service; the Government respectfully refers the Court to the underlying report for a true and complete statement of its contents.

D. Federal Officials Admitted that the 2017 Tax Act Was Intended to Coerce the States to Change Their Taxation and Fiscal Policies

34. On September 7, 2017, Republican House Speaker Paul Ryan appeared at an event hosted by the New York Times and stated that the SALT deduction should be eliminated because: "People in states that have balanced budgets, whose state governments have done their job and kept their books balanced and don't have big massive pension liabilities, they're effectively paying for states that don't." Plaintiffs' Exhibit 90 (Mike DeBonis, *To Make Their Tax Plan Work, Republicans Eye a Favorite Blue-State Break*, Wash. Post, Sept. 16, 2017).

Response: The Government denies that the statement in paragraph 34 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement cites a newspaper article, which is inadmissible hearsay, purporting to quote a statement made by Representative Paul Ryan; the Government admits that the article contains the quoted language, and respectfully refers the Court to the article and any transcript of the underlying statement for true and complete statements of their contents.

35. On October 11, 2017, President Donald Trump appeared on Fox News, where Sean Hannity stated his belief that for taxpayers "in a state like New York or Illinois and New Jersey or California, you won't be able to deduct your local or state income tax" under the 2017 Tax Act, which he understood to be sending a message that "[i]n other words, if you elect politicians that want to raise taxes, you will going to pay [sic] the penalty." Plaintiffs' Exhibit 91 (*Transcript: President Trump Vows Largest Tax Cut in History*, Fox News, Oct. 11, 2017).

Response: The Government denies that the statement in paragraph 35 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement cites and characterizes an interview transcript, which is inadmissible hearsay, purporting to quote

television host Sean Hannity; the Government admits that the transcript of the interview contains the quoted language, and respectfully refers the Court to it for a true and complete statement of what was said during the interview.

> 36. President Trump agreed with Hannity, singling out Florida's Republican-led state government for praise and stating: "And those are the people that frankly should—the people that had the intelligence to elect them should really benefit. And that's what we are doing. We are creating an incentive." Plaintiffs' Exhibit 91 (*Transcript: President Trump Vows Largest Tax Cut in History*, Fox News, Oct. 11, 2017).

Response: The Government denies that the statement in paragraph 36 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement cites and characterizes an interview transcript, which is inadmissible hearsay, purporting to quote President Trump; the Government admits that the transcript of the interview contains the quoted language, and respectfully refers the Court to it for a true and complete statement of what was said during the interview.

> 37. In the same appearance, President Trump also stated: "it's finally time to say, hey, make sure that your politicians do a good job of running your state. Otherwise, you are not going to benefit" from the 2017 Tax Act. Plaintiffs' Exhibit 91 (*Transcript: President Trump Vows Largest Tax Cut in History*, Fox News, Oct. 11, 2017).

Response: The Government denies that the statement in paragraph 37 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement cites an interview transcript, which is inadmissible hearsay, purporting to quote President Trump; the Government admits that the transcript of the interview contains the quoted language, and respectfully refers the Court to it for a true and complete statement of what was said during the interview.

> 38. On October 12, 2017, Defendant Steven Mnuchin, the Secretary of the Treasury, appeared on CNBC and stated: "We don't want this to hurt New York, and California, and New Jersey, and Connecticut, and Illinois too much, but on the other hand we can't have the federal government continue to subsidize the states." Plaintiffs' Exhibit 92 (*First on CNBC: Transcript: Treasury Secretary Steven Mnuchin Speaks with CNBC's "Squawk Box" Today*, CNBC, Oct. 12, 2017)).

Response: The Government denies that the statement in paragraph 38 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement cites an interview transcript, which is inadmissible hearsay, purporting to quote remarks made by Secretary Mnuchin; the Government admits that the transcript of the interview contains the quoted language, and respectfully refers the Court to it for a true and complete statement of what was said during the interview.

> 39. On October 12, 2017, Speaker Ryan appeared at a Heritage Foundation event and argued for the elimination of the SALT deduction by stating: "I would argue we're propping up profligate, big government states and we're having states that actually got their act together pay for states that didn't. I think Wisconsin versus Illinois." Plaintiffs' Exhibit 93 (Lindsey McPherson, *Brady and Ryan Mulling Big Gamble on Key Tax Deduction*, Roll Call, Oct. 16, 2017).

Response: The Government denies that the statement in paragraph 39 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement cites and characterizes an article, which is inadmissible hearsay, purporting to quote Representative Paul Ryan; the Government admits that the article contains the quoted language, and respectfully refers the Court to the article and any transcript of the underlying statement for true and complete statements of their contents.

> 40. On October 27, 2017, Republican House Member Duncan Hunter appeared on radio station KUSI and commented on the SALT deduction as follows: "California, New Jersey, New York, and other states that have horrible governments, yes. It's not as good for those states." Plaintiffs' Exhibit 94 (Joshua Stewart, *Rep. Duncan Hunter said GOP tax bill could cost Californians more than others, but he still supports it*, San Diego Union Tribune, Oct. 30, 2017).

Response: The Government denies that the statement in paragraph 40 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement cites a newspaper article, which is inadmissible hearsay, purporting to quote a radio interview with Representative Duncan Hunter; the Government admits that the article contains the quoted

language, and respectfully refers the Court to the article and any transcript of the underlying interview for true and complete statements of their contents.

41. On October 31, 2017, Republican House Majority Leader Kevin McCarthy attended a conference call with reporters and called the cap on the SALT deduction a "challenge [to] our governors" to lower state taxes. Plaintiffs' Exhibit 95 (*GOP Leaders to Governors: Lower State Taxes*, Wall Street Journal, Oct. 31, 2017).

Response: The Government denies that the statement in paragraph 41 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement cites a newspaper article, which is inadmissible hearsay, purporting to quote Representative Kevin McCarthy; the Government admits that the article contains the quoted language, and respectfully refers the Court to the article and any transcript of the underlying conference call for true and complete statements of their contents.

42. On November 8, 2017, the National Review published a column that stated: "[t]he fact that these tax increases will fall most heavily on 'blue' parts of the country is obviously not an accident." Plaintiffs' Exhibit 96 (Ramesh Ponnuru, *Red States, Blue States, and Taxes*, Nat'l Rev., Nov. 8, 2017).

Response: The Government denies that the statement in paragraph 42 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement quotes an editorial newspaper column, which is inadmissible hearsay; the Government admits that the column contains the quoted language, and respectfully refers the Court to it for a true and complete statement of its contents.

43. On November 9, 2017, Secretary Mnuchin gave a speech at the Economic Club in New York City in which he stated: "I do hope that [the SALT deduction cap] sends a message to the state governments that, perhaps, they should try to get their budgets in line. . . . And the question is: why do you need 13 or 14% state taxes?" Plaintiffs' Exhibit 97 (*Mnuchin Fires Warning Shot to High-Tax States: Get Control of Your Budgets*, Fox Business, Nov. 9, 2017).

Response: The Government denies that the statement in paragraph 43 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement

cites an article on a news website, which is inadmissible hearsay, purporting to quote remarks made by Secretary Mnuchin; the Government admits that the article contains the quoted language, and respectfully refers the Court to the article and any transcript of the underlying public statement for true and complete statements of their contents.

> 44. On November 28, 2017, Senator Rob Portman, a Republican from Ohio, appeared on CNN and stated: "The biggest issue you're pointing to is the state and local tax issue. And you're right, particularly people at the higher end, this goes—it's a—it's a regressive tax in the sense that over 50 percent of the benefit goes to families making over $200,000 a year. And for states like New York and states like California, not having that deduction any longer does kick some of those folks who are upper middle class or high income folks into a situation where they don't get that deduction." Plaintiffs' Exhibit 98 (*Transcript: Moore Back on Campaign Trail*, CNN, Nov. 28, 2017).

Response: The Government denies that the statement in paragraph 44 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement cites a transcript of an interview, which is inadmissible hearsay, purporting to quote Senator Rob Portman; the Government admits that the transcript of the interview contains the quoted language, and respectfully refers the Court to it for a true and complete statement of what was said during the interview.

> 45. On December 5, 2017, Bloomberg News quoted conservative economist Stephen Moore, who advised the Donald Trump campaign on tax policy, as stating that the 2017 Tax Act meant "death to Democrats." Plaintiffs' Exhibit 99 (Sahil Kapur, *'Death to Democrats': How the GOP Tax Bill Whacks Liberal Tenets*, Bloomberg, Dec. 5, 2017).

Response: The Government denies that the statement in paragraph 45 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement cites a news article, which is inadmissible hearsay, purporting to quote economist Stephen Moore; the Government admits that the article contains the quoted language, and respectfully refers the Court to it for a true and complete statement of its contents.

> 46. After the 2017 Tax Act passed, Republican Senator Ted Cruz stated: "One hopefully positive result of this legislation will be that state and local officials will be less eager to jack up the taxes on hard working Americans." Plaintiffs' Exhibit 99 (Sahil

Kapur, *'Death to Democrats': How the GOP Tax Bill Whacks Liberal Tenets*, Bloomberg, Dec. 5, 2017).

Response: The Government denies that the statement in paragraph 46 is material to the resolution of this case. The statement is not supported by admissible evidence. The statement cites a news article, which is inadmissible hearsay, purporting to quote Senator Ted Cruz; the Government admits that the article contains the quoted language, and respectfully refers the Court to it for a true and complete statement of its contents.

E. <u>Harms Inflicted on Plaintiff States by 2017 Tax Act</u>

47. Among the States, New York, Connecticut, Maryland, New Jersey, and California have the highest percentages of taxpayers whose federal tax burden increased under the 2017 Tax Act. Declaration of Scott Palladino (ECF No. 1-2) ("Palladino Decl.") ¶¶ 23-29.

Response: The Government denies that the statement in paragraph 47 is material to the resolution of this case. The statement summarizes portions of a declaration from a New York state employee, which in turn purports to summarize a report by a nonprofit research organization, the Institute for Taxation and Economic Policy ("ITEP"), which is inadmissible hearsay; the Government respectfully refers the Court to the underlying report for a true and complete statement of its contents.

48. Under the 2017 Tax Act, the share of the federal tax cuts received by the Plaintiff States was smaller than their share of the federal tax base. Palladino Decl. ¶¶ 30-41.

Response: The Government denies that the statement in paragraph 48 is material to the resolution of this case. The statement summarizes a portion of a declaration from a New York state employee, which in turn purports to summarize a report by ITEP, which is inadmissible hearsay; the Government respectfully refers the Court to the underlying report for a true and complete statement of its contents.

49. Taxpayers in the Plaintiff States are paying billions of dollars in additional federal income taxes because of the cap on the SALT deduction, relative to what they would

have paid if the 2017 Tax Act had been enacted without the cap. Palladino Decl. ¶¶ 15-22; Affidavit of Ernest Adamo (ECF No. 1-3) ("Adamo Aff.") ¶¶ 10-11; Declaration of Andrew M. Schaufele (ECF No. 1-4) ("Schaufele Decl.") ¶ 3; Declaration of Martin Poethke (ECF No. 1-5) ("Poethke Decl.") ¶¶ 8-14.

Response: The Government denies that the statement in paragraph 49 is material to the resolution of this case. The statement summarizes financial analyses performed by employees of the plaintiff States regarding a counterfactual scenario in which the 2017 Tax Act had been enacted as is, except without including a limitation on the SALT deduction. There is no basis for conducting such analyses, given that Congress never enacted, or even proposed enacting, such a statute. To the extent the cited declarations are expert testimony, the Government further objects on the basis that the States have not complied with Federal Rule of Civil Procedure 26(a)(2).

50. New York expects that the new cap on the SALT deduction will cause New York taxpayers to pay $121 billion more to the federal government between 2018 and 2025, relative to what they would have paid if the 2017 Tax Act had been enacted without the cap. Palladino Decl. ¶ 18.

Response: The Government denies that the statement in paragraph 50 is material to the resolution of this case. The statement summarizes a financial projection performed by a New York state employee regarding a counterfactual scenario in which the 2017 Tax Act had been enacted as is, except without including a limitation on the SALT deduction. There is no basis for conducting such an analysis, given that Congress never enacted, or even proposed enacting, such a statute. To the extent the cited declaration is expert testimony, the Government further objects on the basis that the States have not complied with Federal Rule of Civil Procedure 26(a)(2).

51. Connecticut expects that the new cap on the SALT deduction will raise Connecticut taxpayers' 2018 federal income tax liability by approximately $2.8 billion, relative to what they would have paid if the 2017 Tax Act had been enacted without the cap. Adamo Aff. ¶ 10.

Response: The Government denies that the statement in paragraph 51 is material to the resolution of this case. The statement summarizes a financial projection performed by a

Connecticut state employee regarding a counterfactual scenario in which the 2017 Tax Act had been enacted as is, except without including a limitation on the SALT deduction. There is no basis for conducting such an analysis, given that Congress never enacted, or even proposed enacting, such a statute. To the extent the cited declaration is expert testimony, the Government further objects on the basis that the States have not complied with Federal Rule of Civil Procedure 26(a)(2).

> 52. By assessing the lost deductions and converting those figures into increased tax liability using 2017 rate tables, estimates forecast that the new cap on the SALT deduction may raise Maryland taxpayers' 2018 federal income tax liability by approximately $1.7 billion. Schaufele Decl. ¶ 3.

Response: The Government denies that the statement in paragraph 52 is material to the resolution of this case. The statement summarizes a financial projection performed by a Maryland state employee regarding a counterfactual scenario in which the 2017 Tax Act had been enacted as is, except without including a limitation on the SALT deduction. There is no basis for conducting such an analysis, given that Congress never enacted, or even proposed enacting, such a statute. To the extent the cited declaration is expert testimony, the Government further objects on the basis that the States have not complied with Federal Rule of Civil Procedure 26(a)(2).

> 53. New Jersey expects that the new cap on the SALT deduction will raise New Jersey taxpayers' annual federal income tax liability by approximately $3.136 billion, using 2015 dollars, relative to what they would have paid if the 2017 Tax Act had been enacted without the cap. Poethke Decl. ¶ 11.

Response: The Government denies that the statement in paragraph 53 is material to the resolution of this case. The statement summarizes a financial projection performed by a New Jersey state employee regarding a counterfactual scenario in which the 2017 Tax Act had been enacted as is, except without including a limitation on the SALT deduction. There is no basis for conducting such an analysis, given that Congress never enacted, or even proposed enacting, such

a statute. To the extent the cited declaration is expert testimony, the Government further objects on the basis that the States have not complied with Federal Rule of Civil Procedure 26(a)(2).

> 54. Plaintiff State taxpayers across multiple income brackets will see increases in their federal tax liability, relative to what they would have paid if the 2017 Tax Act had been enacted without the cap. Palladino Decl. ¶¶ 19-20; Adamo Decl. ¶ 11.

Response: The Government denies that the statement in paragraph 54 is material to the resolution of this case. The statement summarizes financial projections performed by state employees regarding a counterfactual scenario in which the 2017 Tax Act had been enacted as is, except without including a limitation on the SALT deduction. There is no basis for conducting such analyses, given that Congress never enacted, or even proposed enacting, such a statute. To the extent the cited declarations are expert testimony, the Government further objects on the basis that the States have not complied with Federal Rule of Civil Procedure 26(a)(2).

> 55. The 2017 Tax Act increased the portion of the federal government's income tax revenues paid by taxpayers in the Plaintiff States. Plaintiffs' Exhibit 100 (Institute on Taxation and Economic Policy, *Final GOP-Trump Bill Still Forces California and New York to Shoulder a Larger Share of Federal Taxes Under Final GOP-Trump Tax Bill; Texas, Florida, and Other States Will Pay Less* (Dec. 17, 2017)).

Response: The Government denies that the statement in paragraph 55 is material to the resolution of this case. The statement purports to summarize a portion of a report by ITEP, which is inadmissible hearsay; the Government respectfully refers the Court to the report for a true and complete statement of its contents.

> 56. The 2017 Tax Act reduced the portion of the federal government's income tax revenues paid by most other States. Plaintiffs' Exhibit 100 (Institute on Taxation and Economic Policy, *Final GOP-Trump Bill Still Forces California and New York to Shoulder a Larger Share of Federal Taxes Under Final GOP-Trump Tax Bill; Texas, Florida, and Other States Will Pay Less* (Dec. 17, 2017)).

Response: The Government denies that the statement in paragraph 56 is material to the resolution of this case. The statement purports to summarize a portion of a report by ITEP,

which is inadmissible hearsay; the Government respectfully refers the Court to the report for a true and complete statement of its contents.

> 57. By capping the deductibility of property taxes that were previously fully deductible, the 2017 Tax Act makes homeownership in the Plaintiff States more expensive and decreases the value of real estate in the Plaintiff States by billions of dollars. Holland Decl. ¶ 7; Poethke Decl. ¶¶ 15-20; Schaufele Decl. ¶¶ 5-7.

Response: The Government denies that the statement in paragraph 57 is material to the resolution of this case. The Government also denies the truth of the assertion in the statement that property taxes "were previously fully deductible," given that prior to the enactment of the 2017 Tax Act, many taxpayers' ability to take deductions for state and local taxes paid was significantly limited by a number of provisions, including the AMT and the Pease limitation. *See* Cong. Budget Office, *The Deductibility of State and Local Taxes*, at 4-5 (Feb. 2008), https://www.cbo.gov/sites/default/files/110th-congress-2007-2008/reports/02-20-state_local_tax.pdf; Tax Reform Act of 1986, § 701, 100 Stat. at 2320; Omnibus Budget Reconciliation Act, § 11103(a), 104 Stat. at 1388-406. The statement summarizes portions of declarations by employees of the plaintiff States, which contain those employees' own unpublished financial forecasts based in part on projections made by Moody's Analytics, a private entity, which is itself inadmissible hearsay; the Government respectfully refers the Court to the declarations and the underlying projections for a true and complete statement of their contents. To the extent the cited declarations are expert testimony, the Government further objects on the basis that the States have not complied with Federal Rule of Civil Procedure 26(a)(2).

> 58. New York expects that the total value of home equity potentially lost due to the SALT deduction cap could be as high as $63.1 billion. Holland Decl. ¶ 16.

Response: The Government denies that the statement in paragraph 58 is material to the resolution of this case. The statement summarizes a portion of a declaration by a New York state employee, which contains that employee's own unpublished financial forecast based in part on

projections made by Moody's Analytics, which is itself inadmissible hearsay; the Government respectfully refers the Court to the declaration and the underlying projections for a true and complete statement of their contents. To the extent the cited declaration is expert testimony, the Government further objects on the basis that the States have not complied with Federal Rule of Civil Procedure 26(a)(2).

59. New York expects the decline in home equity due to the SALT deduction cap to cause an annual reduction in household spending in New York State of between $1.26 billion and $3.15 billion. Holland Decl. ¶ 19.

Response: The Government denies that the statement in paragraph 59 is material to the resolution of this case. The statement summarizes a portion of a declaration by a New York state employee, which contains that employee's own unpublished financial forecast based in part on projections made by Moody's Analytics, which is itself inadmissible hearsay; the Government respectfully refers the Court to the declaration and the underlying projections for a true and complete statement of their contents. To the extent the cited declaration is expert testimony, the Government further objects on the basis that the States have not complied with Federal Rule of Civil Procedure 26(a)(2).

60. New York expects reductions in household spending by New York residents to result in a reduction in sales for businesses within the State. Holland Decl. ¶ 20.

Response: The Government denies that the statement in paragraph 60 is material to the resolution of this case. The statement summarizes a portion of a declaration by a New York state employee, which contains that employee's own unpublished financial forecast based in part on projections made by Moody's Analytics, which is itself inadmissible hearsay; the Government respectfully refers the Court to the declaration and the underlying projections for a true and complete statement of their contents. To the extent the cited declaration is expert testimony, the

Government further objects on the basis that the States have not complied with Federal Rule of Civil Procedure 26(a)(2).

> 61. As a result of lower sales caused by the decline in home equity associated with the imposition of the SALT deduction cap, New York expects to lose between 12,500 and 31,300 jobs. Holland Decl. ¶ 20.

Response: The Government denies that the statement in paragraph 61 is material to the resolution of this case. The statement summarizes a portion of a declaration by a New York state employee, which contains that employee's own unpublished financial forecast based in part on projections made by Moody's Analytics, which is itself inadmissible hearsay; the Government respectfully refers the Court to the declaration and the underlying projections for a true and complete statement of their contents. To the extent the cited declaration is expert testimony, the Government further objects on the basis that the States have not complied with Federal Rule of Civil Procedure 26(a)(2).

> 62. The New York Department of Budget estimates that home price declines could result in a decline in real estate transfer tax collections of $24.5 million for FY 2019, with $15.3 million attributable to the SALT deduction cap, and a decline of $110.4 million for FY 2020, with $69.2 million attributable to the SALT deduction cap. Holland Decl. ¶ 21.

Response: The Government denies that the statement in paragraph 62 is material to the resolution of this case. The statement summarizes a portion of a declaration by a New York state employee, which contains that employee's own unpublished financial forecast based in part on projections made by Moody's Analytics, which is itself inadmissible hearsay; the Government respectfully refers the Court to the declaration and the underlying projections for a true and complete statement of their contents. To the extent the cited declaration is expert testimony, the Government further objects on the basis that the States have not complied with Federal Rule of Civil Procedure 26(a)(2).

63. Estimates of Maryland's housing market forecast a slowdown attributable to the SALT deduction cap, resulting in a reduction of $22.5 billion in property value in 2019 due to lost growth. Schaufele Decl. ¶ 5.

Response: The Government denies that the statement in paragraph 63 is material to the resolution of this case. The statement summarizes a portion of a declaration by a Maryland state employee, which contains that employee's own unpublished financial forecast based in part on projections made by Moody's Analytics, which is itself inadmissible hearsay; the Government respectfully refers the Court to the declaration and the underlying projections for a true and complete statement of their contents. To the extent the cited declaration is expert testimony, the Government further objects on the basis that the States have not complied with Federal Rule of Civil Procedure 26(a)(2).

64. Estimates of Maryland's housing market forecast a slowdown attributable to the SALT deduction cap, which is estimated to cost Maryland a total of $52.3 million in reduced revenue from real estate and transfer taxes in 2018 and 2019. Schaufele Decl. ¶ 7.

Response: The Government denies that the statement in paragraph 64 is material to the resolution of this case. The statement summarizes a portion of a declaration by a Maryland state employee, which contains that employee's own unpublished financial forecast based in part on projections made by Moody's Analytics, which is itself inadmissible hearsay; the Government respectfully refers the Court to the declaration and the underlying projections for a true and complete statement of their contents. To the extent the cited declaration is expert testimony, the Government further objects on the basis that the States have not complied with Federal Rule of Civil Procedure 26(a)(2).

65. New Jersey expects home values to decline by 8.5% from their peak, as a result of the SALT deduction cap. Poethke Decl. ¶ 16.

Response: The Government denies that the statement in paragraph 65 is material to the resolution of this case. The statement summarizes a portion of a declaration by a New Jersey

state employee, which contains that employee's own unpublished financial forecast based in part on projections made by Moody's Analytics, which is itself inadmissible hearsay; the Government respectfully refers the Court to the declaration and the underlying projections for a true and complete statement of their contents. To the extent the cited declaration is expert testimony, the Government further objects on the basis that the States have not complied with Federal Rule of Civil Procedure 26(a)(2).

66. New Jersey expects its realty transfer fee and additional assessment on certain real property value over $1 million to decline by a combined total of $105.1 million from fiscal year 2019 through fiscal year 2020. Poethke Decl. ¶ 20.

Response: The Government denies that the statement in paragraph 66 is material to the resolution of this case. The statement summarizes a portion of a declaration by a New Jersey state employee, which contains that employee's own unpublished financial forecast based in part on projections made by Moody's Analytics, which is itself inadmissible hearsay; the Government respectfully refers the Court to the declaration and the underlying projections for a true and complete statement of their contents. To the extent the cited declaration is expert testimony, the Government further objects on the basis that the States have not complied with Federal Rule of Civil Procedure 26(a)(2).

F. <u>Plaintiff States' Responses to the 2017 Tax Act</u>

67. In the months since the enactment of the 2017 Tax Act, the Plaintiff States have taken, or are considering taking, legislative and other action to alleviate the burden the 2017 Tax Act places on their taxpayers. Plaintiffs' Exhibit 101 (N.J.S.A. § 54:4-66.9 (entitling taxpayers to a property tax credit for certain qualifying local charitable donations)); Exhibit 102 (N.Y. State Fin. Law § 92-gg (same)); Exhibit 103 (2018 Conn. Legis. Serv. P.A. 18-49 (S.B. 11) Stat. § 12-699 (entitling pass through entities tax credits to alleviate the loss of the SALT deduction)); Exhibit 104 (Laura Davison, Lynnley Browning, and Ben Steverman, *New York, Connecticut Taxpayers Have Plan B Options to Beat SALT*, Bloomberg, Aug. 27, 2018).

Response: The Government denies that the statement in paragraph 67 is material to the resolution of this case. The statement purports to summarize and characterize certain state bills

or statutes (or unidentified possible bills or statutes), as well as an article from a news website, which is inadmissible hearsay; the Government admits that the bills or statutes identified in the statement have been introduced or enacted, and respectfully refers the Court to those legislative documents and the news article for a true and complete statement of their contents.

> 68. On August 27, 2018, Defendants Department of the Treasury and Internal Revenue Service issued proposed regulations providing that a taxpayer who makes payments or transfers property to an entity listed in section 170(c) must reduce their charitable contribution deduction by the amount of any state or local tax credit the taxpayer receives or expects to receive. Plaintiffs' Exhibit 105 (Contributions in Exchange for State or Local Tax Credits, 83 Fed. Reg. 43563-01 (proposed August 27, 2018) (to be codified at 26 C.F.R. pt. 1)).

Response: The Government denies that the statement in paragraph 68 is material to the resolution of this case. The Government admits that on August 27, 2018, the IRS issued the cited notice of proposed rulemaking and respectfully refers the Court thereto for a true and complete statement of its contents. The Government further observes that the proposed regulations are not final, and remain subject to ongoing notice-and-comment agency decisionmaking.

> 69. The proposed regulations state that they are intended to respond to "state and local tax credit programs" that "now give taxpayers a potential means to circumvent the" SALT deduction cap. Plaintiffs' Exhibit 105 (Contributions in Exchange for State or Local Tax Credits, 83 Fed. Reg. 43563-01 (proposed August 27, 2018) (to be codified at 26 C.F.R. pt. 1)).

Response: The Government denies that the statement in paragraph 69 is material to the resolution of this case. The statement purports to summarize and quote proposed regulations contained in the cited notice; the Government admits that the proposed regulations contain the quoted language, and respectfully refers the Court to them for a true and complete statement of their contents. The Government further observes that the proposed regulations are not final, and remain subject to ongoing notice-and-comment agency decision making.

Dated: New York, New York
February 28, 2019

Respectfully submitted,

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