S T A T E O F N E W Y O R K

S. 2811--C A. 4011--C

S E N A T E - A S S E M B L Y

February 1, 2011

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the abandoned property law, in relation to the dormancy period of miscellaneous unclaimed property, payment of abandoned property, publication of notices of abandoned property, and written reports pertaining to payment of abandoned property; to amend the tax law, in relation to reports by the commissioner regarding abandoned property; to amend the state finance law, in relation to payments from the abandoned property fund; and to repeal certain provisions of the abandoned property law and the tax law relating thereto (Part A); to amend part N of chapter 61 of the laws of 2005 amending the tax law relating to certain transactions and related information and relating to the voluntary compliance initiative; in relation to extending the disclosure and penalty provisions for transactions that present the potential for tax avoidance (Part B); Intentionally omitted (Part C); to amend the tax law, in relation to directing the crediting of lottery prizes of more than six hundred dollars against liability for any tax administered by the commissioner of taxation and finance (Part D); to amend chapter 56 of the laws of 1998, amending the tax law and other laws relating to extending the dates of application of the investment tax credit under articles 9-A, 22 and 32 of the tax law and to amend chapter 63 of the laws of 2000, amending the tax law and

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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other laws relating to extending the dates of application of the investment tax credit under article 33 of the tax law, in relation to extending the effectiveness thereof (Part E); to amend the public housing law, in relation to providing a credit against income tax for persons or entities investing in low-income housing (Part F); to amend the economic development law, the tax law and the public service law, in relation to the excelsior jobs program (Part G); Intentionally omitted (Part H); to amend the insurance law and the tax law, in relation to conforming to the federal Dodd-Frank Wall Street Reform and Consumer Protection Act; and to repeal paragraphs 8 and 9 of subsection (b) of section 2118 of the insurance law, relating thereto (Part I); to amend chapter 298 of the laws of 1985, amending the tax law relating to the franchise tax on banking corporations imposed by the tax law, authorized to be imposed by any city having a population of one million or more by chapter 772 of the laws of 1966 and imposed by the administrative code of the city of New York and relating to other provisions of the tax law, chapter 883 of the laws of 1975 and the administrative code of the city of New York which relates to such franchise tax, to amend chapter 817 of the laws of 1987, amending the tax law and the environmental conservation law, constituting the business tax reform and rate reduction act of 1987, and to amend chapter 525 of the laws of 1988, amending the tax law and the administrative code of the city of New York relating to the imposition of taxes in the city of New York, in relation to the effectiveness of certain provisions of such chapters; and to amend the tax law and the administrative code of the city of New York, in relation to extending transitional provisions relating to the federal Gramm-Leach-Bliley act (Part J); to amend the tax law and the criminal procedure law, in relation to updating the tax classification of diesel motor fuel to be consistent with federal laws and make the diesel tax structure consistent with this new tax treatment; and to repeal certain provisions of the tax law and the administrative code of the city of New York relating thereto (Part K); to amend the tax law, in relation to making a technical correction to the E85 definition; and to amend chapter 109 of the laws of 2006, amending the tax law relating to providing exemptions, reimbursements and credits from various taxes for certain alternative fuels, in relation to extending the alternative fuels tax exemptions for one year (Part L); to amend section 11 of part EE of chapter 63 of the laws of 2000, amending the tax law and other laws relating to modifying the distribution of funds from the motor vehicle fuel excise tax, in relation to the distribution of motor vehicle fees (Part M); Intentionally omitted (Part N); to amend the tax law, in relation to video lottery free play allowance program (Part O); to amend the tax law, in relation to prize payout of certain instant lottery games (Part P); to amend the tax law, in relation to prize payout for certain multi-jurisdictional lottery games (Part Q); to amend the tax law, in relation to multi-jurisdictional video lottery gaming (Part R); and to amend the racing, pari-mutuel wagering and breeding law, in relation to licenses for simulcast facilities, sums relating to track simulcast, simulcast of out-of-state thoroughbred races, simulcasting of races run by out-of-state harness tracks and distributions of wagers; to amend chapter 281 of the laws of 1994 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and chapter 346 of the laws of 1990 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and the imposition of certain taxes, in

relation to extending certain provisions thereof; to amend the racing, pari-mutuel wagering and breeding law, in relation to extending certain provisions thereof (Part S); to amend the tax law and the state finance law, in relation to application fees owed by retail dealers of businesses that sell tobacco products and owners of cigarette vending machines (Part T); to amend the real property tax law, the general municipal law, the public officers law, the tax law, the abandoned property law, the state finance law and the administrative code of the city of New York, in relation to establishing standards for electronic real property tax administration, allowing the department of taxation and finance to use electronic communication means to furnish tax notices and other documents, mandatory electronic filing of tax documents, debit cards issued for tax refunds, improving sales tax compliance and to repeal certain provisions of the tax law and the administrative code of the city of New York relating thereto; and providing for the repeal of certain provisions upon expiration thereof (Part U); and to amend the economic development law, the tax law and the real property tax law, in relation to establishing the economic transformation and facility redevelopment program and providing tax benefits under that program; and providing for the repeal of such provisions upon expiration thereof (Part V)

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act enacts into law major components of legislation which are necessary to implement the state fiscal plan for the 2011-2012 state fiscal year. Each component is wholly contained within a Part identified as Parts A through V. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

Section 1. Paragraphs (a), (b) and (k) of subdivision 1 of section 300 of the abandoned property law, paragraph (a) as amended and paragraph (k) as relettered by chapter 15 of the laws of 1983, subparagraph (iv) of paragraph (a) as amended and subparagraph (v) of paragraph (a) as added by chapter 409 of the laws of 1994, paragraphs (b) and (k) as amended by chapter 78 of the laws of 1976, are amended to read as follows:

(a) Any amounts due on deposits or any amounts to which a shareholder of a savings and loan association or a credit union is entitled, held or owing by a banking organization, which shall have remained unclaimed for [five] THREE years by the person or persons appearing to be entitled thereto, including any interest or dividends credited thereon, excepting

(i) any such amount which has been reduced or increased, exclusive of dividend or interest payment, within [five] THREE years, or

(ii) any such amount which is represented by a passbook not in the possession of the banking organization, which has been presented for entry of dividend or interest credit within [five] THREE years, or

(iii) any such amount with respect to which the banking organization has on file written evidence received within [five] THREE years that the person or persons appearing to be entitled to such amounts had knowledge thereof, or

(iv) any such amount payable only at or by a branch office located in a foreign country, or payable in currency other than United States currency, or

(v) any such amount that is separately identifiable and has been set aside to meet the burial and related expenses of an individual, provided however that said amount shall be deemed abandoned property where it remains unclaimed for [five] THREE years subsequent to the death of the individual for whom the amount was deposited.

(b) Any amounts, together with all accumulations of interest or other increment thereon, held or owing by a banking organization for the payment of an interest in a bond and mortgage apportioned or transferred by it pursuant to subdivision seven of former section one hundred eight-y-eight of the banking law as it existed prior to July first, nineteen hundred thirty-seven, which shall have remained unclaimed by the person or persons appearing to be entitled thereto for [five] THREE years after the full and final liquidation of such mortgage, excepting

(i) any such amount which has been reduced by payment to the person or persons appearing to be entitled thereto within [five] THREE years, or

(ii) any such amount which is represented by a certificate of share ownership not in the possession of the banking organization, which certificate has been presented for transfer within [five] THREE years, or

(iii) any such amount with respect to which the banking organization has on file written evidence received within [five] THREE years that the person or persons appearing to be entitled to such amount had knowledge thereof.

(k) Lost property or instruments as defined in section two hundred fifty-one of the personal property law which shall have been held by a safe deposit company or bank for [five] THREE years pursuant to the provisions of section two hundred fifty-six of the personal property law.

S 2. Paragraphs (a) and (c) of subdivision 1 of section 600 of the abandoned property law, paragraph (a) as amended by chapter 655 of the laws of 1978 and paragraph (c) as amended by chapter 281 of the laws of 1980, are amended to read as follows:

(a) Any moneys including the monetary proceeds from the sale of tangi-ble personal property and securities or other intangible property paid into court, which, except as provided in section ten hundred OF THIS CHAPTER, shall have remained in the hands of any county treasurer, or the commissioner of finance of the city of New York, for [five] THREE years, together with all accumulations of interest or other increment thereon, less such legal fees as he may be entitled to.

(c) Any moneys paid to a support bureau of a family court, for the support of a spouse or child, which shall have remained in the custody of a county treasurer, or the commissioner of finance of the city of New York, for [five] THREE years, together with any interest due thereon, less such legal fees as he may be entitled to. For purposes of this section, "family court" includes the domestic relations court of the

city of New York prior to the first day of September, nineteen hundred sixty-two.

S 3. Subdivision 1 of section 1000 of the abandoned property law, as amended by chapter 670 of the laws of 1989, is amended to read as follows:

1. (a) Any moneys held or owing for the payment of an award made by a court in any condemnation proceeding and payable by a public corporation or other corporation possessing powers of condemnation, which shall have remained unclaimed by the person or persons appearing to be entitled thereto for [five] THREE years after confirmation by the court, together with any interest due thereon, less, when an award is payable by a public corporation, any amount due such public corporation at the time of title vesting for tax, water or any other liens on the same parcel the award was for, with any interest due thereon, and any amount due such public corporation at the time of title vesting or at the time of confirmation, whichever is later, for an assessment on the same parcel the award was for, with any interest due thereon, shall be deemed abandoned property. In any condemnation proceedings in which the court shall have not made an award, any moneys paid into court, including interest thereon, shall be subject to the provisions of article six of this chapter and this section shall have no application thereto.

(b) The issuance of a warrant for such an award shall not prevent an award from being deemed abandoned property if such warrant is unclaimed [five] THREE years after confirmation of such award by the court.

S 4. Subdivision 1 of section 1300 of the abandoned property law is amended to read as follows:

1. Any unclaimed moneys arising from the sale of any personal property which shall have been pledged or mortgaged as security for the loan of money with a corporation, except a banking organization or a licensed lender, heretofore or hereafter organized by or pursuant to a special statute for the purpose of, and principally engaged in, giving aid to individuals by loans of money at interest upon the pledge or mortgage of personal property, and which has subjected itself to special provisions of the banking law, after deducting the amount of the loan, the interest then due on the same and any other lawful charges, which shall have remained in its possession for [six] THREE years from the date of such sale, shall be deemed abandoned property.

S 5. Subdivision 2 of section 1315 of the abandoned property law, as amended by section 2 of part II of chapter 57 of the laws of 2010, is amended to read as follows:

2. Except as otherwise provided by law, any amount representing unclaimed money or securities and held in escrow or otherwise by any corporation (other than a public corporation), joint stock company, individual, association of two or more individuals, committee or business trust, to ensure the performance of any duty or obligation, shall be deemed abandoned property when:

a. such amount is held or owing in this state, and

b. such amount has remained unclaimed by the person or persons entitled thereto for [five] THREE years, except

c. where the duty or obligation for which such amount was deposited has not been performed and such performance is still required, such amounts shall not be deemed abandoned property.

S 6. Paragraph (a) of subdivision 1 of section 1002 of the abandoned property law is amended to read as follows:

(a) That a report of all awards in condemnation proceedings unclaimed for more than [five] THREE years has been made to the state comptroller

and that a copy thereof is on file and open to public inspection, if a public corporation at the office of the chief fiscal officer thereof; or if not a public corporation at the principal office or place of business of such corporation;

S 7. Sections 301, 401, 701 and 1001 of the abandoned property law are REPEALED.

S 8. Subdivision 1 of section 302 of the abandoned property law is amended to read as follows:

1. [Within thirty days after making a report of abandoned property pursuant to the provisions of section three hundred one, such banking] EVERY BANKING organization shall cause to be published, ON OR BEFORE THE FIRST DAY OF SEPTEMBER IN EACH YEAR, a notice entitled: "NOTICE OF NAMES OF PERSONS APPEARING AS OWNERS OF CERTAIN UNCLAIMED PROPERTY HELD BY (name of banking organization)."

S 9. The opening paragraph of subdivision 3 of section 302 of the abandoned property law, as amended by chapter 315 of the laws of 1954, is amended to read as follows:

Such notice shall[, in accordance with the classification prescribed by the state comptroller for the report pursuant to the provisions of section three hundred one,] set forth:

S 10. Section 303 of the abandoned property law is amended to read as follows:

S 303. Payment of abandoned property. 1. In such succeeding month of November, and on or before the tenth day thereof, every banking organization shall pay or deliver to the state comptroller all [abandoned] property [specified in such report, excepting such abandoned property as since the date of such report shall have ceased to be abandoned] WHICH, AS OF THE THIRTIETH DAY OF JUNE NEXT PRECEDING, WAS DEEMED ABANDONED PURSUANT TO SECTION THREE HUNDRED OF THIS ARTICLE, HELD OR OWING BY SUCH BANKING ORGANIZATION.

2. Such payment shall be accompanied by a [statement] TRUE AND ACCURATE REPORT setting forth such information as the state comptroller may require relative to such abandoned property [as shall have ceased to be abandoned]. SUCH REPORT SHALL INCLUDE:

(A) WITH RESPECT TO AMOUNTS SPECIFIED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION THREE HUNDRED WHICH ARE ABANDONED PROPERTY:

(I) THE NAME AND LAST KNOWN ADDRESS OF THE PERSON OR PERSONS APPEARING FROM THE RECORDS OF SUCH BANKING ORGANIZATION TO BE THE OWNER OF ANY SUCH ABANDONED PROPERTY;

(II) THE AMOUNT APPEARING FROM SUCH RECORDS TO BE DUE SUCH PERSON OR PERSONS;

(III) THE DATE OF THE LAST TRANSACTION WITH RESPECT TO SUCH ABANDONED PROPERTY;

(IV) THE NATURE AND IDENTIFYING NUMBER, IF ANY, OF SUCH ABANDONED PROPERTY; AND

(V) SUCH OTHER IDENTIFYING INFORMATION AS THE STATE COMPTROLLER MAY REQUIRE.

(B) WITH RESPECT TO AMOUNTS SPECIFIED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION THREE HUNDRED OF THIS ARTICLE WHICH ARE ABANDONED PROPERTY:

(I) THE NAME AND LAST KNOWN ADDRESS, IF ANY, OF THE PERSON OR PERSONS APPEARING FROM THE RECORDS OF SUCH BANKING ORGANIZATION TO BE ENTITLED TO RECEIVE SUCH ABANDONED PROPERTY;

(II) THE AMOUNT APPEARING FROM SUCH RECORDS TO BE DUE SUCH PERSON OR PERSONS;

(III) THE AMOUNT OF ANY INTEREST OR OTHER INCREMENT DUE THEREON;

(IV) THE DATE OF THE LAST TRANSACTION WITH RESPECT TO SUCH ABANDONED PROPERTY; AND

(V) SUCH OTHER IDENTIFYING INFORMATION AS THE STATE COMPTROLLER MAY REQUIRE.

(C) WITH RESPECT TO AMOUNTS SPECIFIED IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION THREE HUNDRED OF THIS ARTICLE WHICH ARE ABANDONED PROPERTY:

(I) THE NAME AND LAST KNOWN ADDRESS, IF ANY, OF THE PERSON OR PERSONS APPEARING FROM THE RECORDS OF SUCH BANKING ORGANIZATION TO BE ENTITLED TO RECEIVE SUCH ABANDONED PROPERTY;

(II) A DESCRIPTION OF SUCH ABANDONED PROPERTY INCLUDING IDENTIFYING NUMBERS, IF ANY, AND THE AMOUNT APPEARING FROM SUCH RECORDS TO BE DUE OR PAYABLE;

(III) THE AMOUNT OF ANY INTEREST OR OTHER INCREMENT DUE THEREON;

(IV) THE DATE SUCH ABANDONED PROPERTY WAS PAYABLE OR DEMANDABLE;

(V) THE AMOUNT AND IDENTIFYING NUMBER OF ANY SUCH INSTRUMENT WHERE THE PAYEE THEREOF IS UNKNOWN TO THE BANKING ORGANIZATION; AND

(VI) SUCH OTHER IDENTIFYING INFORMATION AS THE STATE COMPTROLLER MAY REQUIRE.

(D) WITH RESPECT TO AMOUNTS SPECIFIED IN PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION THREE HUNDRED OF THIS ARTICLE WHICH ARE ABANDONED PROPERTY:

(I) THE NAME AND LAST KNOWN ADDRESS, IF ANY, OF THE PERSON OR PERSONS APPEARING FROM THE RECORDS OF SUCH BANKING ORGANIZATION TO BE THE OWNER OF ANY SUCH ABANDONED PROPERTY; AND

(II) SUCH OTHER INFORMATION AS THE STATE COMPTROLLER MAY REASONABLY REQUIRE.

3. SUCH REPORT SHALL BE IN SUCH FORM AS THE STATE COMPTROLLER MAY PRESCRIBE. ALL NAMES OF PERSONS APPEARING IN THE SECTION OF SUCH REPORT RELATING TO DEPOSITS, APPEARING TO BE THE OWNERS THEREOF, SHALL BE LISTED IN ALPHABETICAL ORDER. ABANDONED PROPERTY OTHER THAN DEPOSITS LISTED IN SUCH REPORT SHALL BE CLASSIFIED IN SUCH MANNER AS THE STATE COMPTROLLER MAY PRESCRIBE, AND NAMES OF PERSONS APPEARING TO BE ENTITLED TO SUCH ABANDONED PROPERTY APPEARING IN SUCH REPORT SHALL BE LISTED ALPHABETICALLY WITHIN EACH SUCH CLASSIFICATION.

4. NO BANKING ORGANIZATION IN THIS STATE, ORGANIZED UNDER OR SUBJECT TO THE PROVISIONS OF SECTION SIX HUNDRED ELEVEN OF TITLE TWELVE OF THE UNITED STATES CODE, SHALL BE REQUIRED TO FILE REPORTS OF ABANDONED PROPERTY RELATING TO ANY AMOUNTS RECEIVED ON OR BEFORE THE THIRTIETH DAY OF JUNE, NINETEEN HUNDRED SEVENTY-SEVEN, UNLESS, AS OF THE EFFECTIVE DATE OF THIS SUBDIVISION, SUCH AMOUNTS REMAIN RECORDED AND SHOWN IN THE BOOKS AND RECORDS OF SUCH BANKING ORGANIZATION AS AN OUTSTANDING OBLIGATION THEREOF.

S 11. Subdivision 1 of section 402 of the abandoned property law is amended to read as follows:

1. [Within thirty days after making a report of abandoned property pursuant to the provisions of section four hundred one,] EVERY such corporation shall cause to be published, ON OR BEFORE THE FIRST DAY OF SEPTEMBER IN EACH YEAR, a notice entitled: "NOTICE OF CERTAIN UNCLAIMED PROPERTY HELD BY (name of corporation)."

S 12. Section 403 of the abandoned property law is amended to read as follows:

S 403. Payment of abandoned property. 1. In such succeeding month of October, and on or before the tenth day thereof, every such corporation shall pay to the state comptroller all [abandoned] property [specified in the last preceding report made to the state comptroller pursuant to

section four hundred one, excepting such abandoned property as since the date of such report shall have ceased to be abandoned] WHICH, AS OF THE FIRST DAY OF JULY NEXT PRECEDING, WAS DEEMED ABANDONED PURSUANT TO SECTION FOUR HUNDRED OF THIS ARTICLE, HELD OR OWING BY SUCH CORPORATION.

2. Such payment shall be accompanied by a [statement] TRUE AND ACCURATE REPORT setting forth such information as the state comptroller may require relating to such abandoned property [as shall have ceased to be abandoned] INCLUDING:

(A) AS TO ABANDONED PROPERTY SPECIFIED IN PARAGRAPHS (A) AND (B) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED OF THIS ARTICLE:

(I) THE NAME AND LAST KNOWN ADDRESS OF EACH DEPOSITOR OR SUBSCRIBER APPEARING FROM THE RECORDS OF SUCH CORPORATION TO BE ENTITLED TO RECEIVE ANY SUCH ABANDONED PROPERTY;

(II) THE DATE WHEN THE DEPOSIT WAS MADE OR AMOUNT PAID;

(III) THE AMOUNT OF SUCH DEPOSIT OR PAYMENT;

(IV) THE DATE WHEN UTILITY SERVICES FURNISHED TO SUCH CONSUMER OR SUBSCRIBER CEASED;

(V) ANY SUMS DUE AND UNPAID TO THE CORPORATION BY SUCH CONSUMER OR SUBSCRIBER, WITH INTEREST THEREON FROM THE DATE OF TERMINATION OF SERVICE;

(VI) THE AMOUNT OF INTEREST DUE UPON SUCH DEPOSIT OR PAYMENT ON ANY BALANCE THEREOF THAT HAS REMAINED WITH SUCH CORPORATION AND NOT BEEN CREDITED TO SUCH CONSUMER'S OR SUBSCRIBER'S ACCOUNT;

(VII) THE AMOUNT OF SUCH ABANDONED PROPERTY; AND

(VIII) SUCH OTHER IDENTIFYING INFORMATION AS THE STATE COMPTROLLER MAY REQUIRE.

(B) AS TO ABANDONED PROPERTY SPECIFIED IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED OF THIS ARTICLE:

(I) THE NAME AND LAST KNOWN ADDRESS OF EACH PERSON APPEARING FROM THE RECORDS OF SUCH CORPORATION TO BE ENTITLED TO RECEIVE THE SAME;

(II) THE AMOUNT APPEARING FROM SUCH RECORDS TO BE DUE EACH SUCH PERSON;

(III) THE DATE PAYMENT BECAME DUE; AND

(IV) SUCH OTHER IDENTIFYING INFORMATION AS THE STATE COMPTROLLER MAY REQUIRE.

3. SUCH REPORT SHALL BE IN SUCH FORM AND THE ABANDONED PROPERTY LISTED SHALL BE CLASSIFIED IN SUCH MANNER AS THE STATE COMPTROLLER MAY PRESCRIBE. NAMES OF PERSONS ENTITLED TO SUCH ABANDONED PROPERTY APPEARING IN SUCH REPORT SHALL BE LISTED IN ALPHABETICAL ORDER WITHIN EACH SUCH CLASSIFICATION.

S 13. Paragraph (b) of subdivision 1 of section 700 of the abandoned property law, as amended by chapter 78 of the laws of 1976, is amended to read as follows:

(b) Any moneys held or owing by any life insurance corporation which are payable under other kinds of life insurance policies to any person whose last-known address, according to the records of the corporation, is within this state, where the insured, if living, would[, prior to the thirty-first day of December next preceding the report required by section seven hundred one,] have attained the limiting age under the mortality table on which the reserves are based, exclusive of

(i) any policy which has within three years been assigned, readjusted, kept in force by payment of premium, reinstated or subjected to loan, or

(ii) any policy with respect to which such corporation has on file written evidence received within three years that the person or persons apparently entitled to claim thereunder have knowledge thereof.

S 14. Subdivision 1 of section 702 of the abandoned property law, as amended by chapter 497 of the laws of 1944, is amended to read as follows:

1. [Within thirty days after making a report of abandoned property pursuant to the provisions of section seven hundred one,] EVERY such life insurance corporation shall cause to be published, ON OR BEFORE THE FIRST DAY OF MAY IN EACH YEAR, a notice entitled: "NOTICE OF NAMES OF PERSONS APPEARING AS OWNERS OF CERTAIN UNCLAIMED PROPERTY HELD BY (name of life insurance corporation)."

S 15. The opening paragraph of subdivision 3 of section 702 of the abandoned property law, as amended by chapter 315 of the laws of 1954, is amended to read as follows:

Such notice shall[, in accordance with the classification prescribed by the state comptroller for the report pursuant to the provisions of section seven hundred one,] set forth:

S 16. Section 703 of the abandoned property law, subdivision 1 as amended by chapter 497 of the laws of 1944, is amended to read as follows:

S 703. Payment of abandoned property. 1. In such succeeding month of September, and on or before the succeeding tenth day thereof, every such life insurance corporation shall pay to the state comptroller all [abandoned] property [specified in such report, excepting such abandoned property as since the date of such report shall have ceased to be abandoned] WHICH, AS OF THE FIRST DAY OF JANUARY NEXT PRECEDING, WAS DEEMED ABANDONED PURSUANT TO SECTION SEVEN HUNDRED OF THIS ARTICLE, HELD OR OWING BY SUCH LIFE INSURANCE CORPORATION.

2. Such payment shall be accompanied by a [statement] TRUE AND ACCURATE REPORT setting forth such information as the state comptroller may require relative to such abandoned property [as shall have ceased to be abandoned] INCLUDING:

(A) THE NAME AND LAST KNOWN ADDRESS OF ANY PERSON OR PERSONS APPEARING FROM THE RECORDS OF SUCH LIFE INSURANCE CORPORATION TO BE ENTITLED TO RECEIVE ANY SUCH ABANDONED PROPERTY;

(B) THE AMOUNT APPEARING FROM THE RECORDS OF SUCH CORPORATION TO BE DUE;

(C) THE POLICY NUMBER AND POLICY AGE OF THE INSURED;

(D) THE DATE SUCH ABANDONED PROPERTY WAS PAYABLE;

(E) THE NAMES AND LAST KNOWN ADDRESSES OF EACH BENEFICIARY APPEARING IN THE RECORDS OF THE INSURER; AND

(F) SUCH OTHER IDENTIFYING INFORMATION AS THE STATE COMPTROLLER MAY REQUIRE.

3. SUCH REPORT SHALL BE IN SUCH FORM AND THE ABANDONED PROPERTY LISTED SHALL BE CLASSIFIED IN SUCH MANNER AS THE STATE COMPTROLLER MAY PRESCRIBE. NAMES OF PERSONS APPEARING TO BE ENTITLED TO SUCH PROPERTY OR OF BENEFICIARIES APPEARING IN SUCH REPORT SHALL BE LISTED IN ALPHABETICAL ORDER WITHIN EACH SUCH CLASSIFICATION.

S 17. Section 1003 of the abandoned property law is amended to read as follows:

S 1003. Payment of abandoned property. 1. In such succeeding month of February, and on or before the tenth day thereof, every such public and other corporation shall pay to the state comptroller all [abandoned] property [specified in such report, excepting such abandoned property as since the date of such report shall have ceased to be abandoned] WHICH, AS OF THE FIRST DAY OF JULY NEXT PRECEDING, WAS DEEMED ABANDONED PURSUANT TO SECTION ONE THOUSAND OF THIS ARTICLE, HELD OR OWING BY SUCH CORPORATION.

2. Such payment shall be accompanied by a [statement] TRUE AND ACCURATE REPORT setting forth such information as the state comptroller may require in relation to such abandoned property [as shall have ceased to be abandoned] INCLUDING THE TITLE OF THE PROCEEDING, THE NAME AND LAST KNOWN ADDRESS OF THE AWARDEE IF SUCH AWARD IS MADE TO A KNOWN OWNER, THE DATE OF CONFIRMATION, THE DAMAGE PARCEL NUMBER, THE AMOUNT OF THE AWARD, AND THE AMOUNT OF ANY INTEREST DUE THEREON AND, IF A DEDUCTION IS CLAIMED FOR LIENS BY A PUBLIC CORPORATION, THE NATURE AND AMOUNT OF SUCH LIENS AND ANY INTEREST CLAIMED THEREON.

S 18. The opening paragraph of subdivision 1 of section 1002 of the abandoned property law is amended to read as follows:

[Within thirty days after making a report of abandoned property pursuant to the provisions of section ten hundred one,] EVERY such corporation shall cause to be published, ON OR BEFORE THE FIRST DAY OF NOVEMBER IN EACH YEAR, once in a newspaper of general circulation in each county where a damaged parcel included in such report is located a notice, approved as to form by the state comptroller, stating:

S 19. Paragraph (b) of subdivision 6 of section 1406 of the abandoned property law, as amended by chapter 643 of the laws of 1989, is amended to read as follows:

(b) Notwithstanding any other provision of law, payment for any abandoned condemnation award heretofore or hereafter paid to the state comptroller pursuant to sections ten hundred and ten hundred three of this chapter for the benefit of known persons may be made by the state comptroller on sworn application, where the name and last known address of the person or persons entitled to payment and any other identifying information as appearing on the records of the court into which payment was made is included in the report required to be filed pursuant to section ten hundred [one] THREE of this chapter and when the identity of the claimant as the person entitled to payment is established to the satisfaction of the state comptroller. When, in the determination of the state comptroller, the identifying information included in the report is insufficient to enable the state comptroller to make a determination of entitlement, such claim must be established only on order of the court as set forth in paragraph (a) of this subdivision.

S 20. Subdivision 3 of section 1311 of the abandoned property law is REPEALED.

S 21. Subdivision 4 of section 1311 of the abandoned property law, as added by chapter 778 of the laws of 1956, is renumbered subdivision 3 and amended to read as follows:

3. On or before the tenth day of October in each year, every such corporation shall pay to the state comptroller all [abandoned] property [specified in the last preceding report made to the state comptroller pursuant to this section, excepting such abandoned property as since the date of the report shall have ceased to be abandoned] WHICH, AS OF THE FIRST DAY OF JULY NEXT PRECEDING, WAS DEEMED ABANDONED PURSUANT TO THIS SECTION, HELD OR OWING BY SUCH CORPORATION. SUCH PAYMENT SHALL BE ACCOMPANIED BY A TRUE AND ACCURATE REPORT CONTAINING SUCH IDENTIFYING INFORMATION AS THE STATE COMPTROLLER MAY REQUIRE.

S 22. Subdivision 2 of section 1316 of the abandoned property law is REPEALED.

S 23. Subdivisions 3 and 4 of section 1316 of the abandoned property law, as amended by chapter 166 of the laws of 1991, are renumbered subdivisions 2 and 3 and amended to read as follows:

2. [Within thirty days following the filing of the report of abandoned property with the comptroller pursuant to subdivision two of this

section, the] EVERY insurer shall cause to be published, ON OR BEFORE THE FIRST DAY OF MAY IN EACH YEAR, a list of such abandoned property in the same manner as that prescribed for life insurance companies by section seven hundred two of this chapter.

3. Such [abandoned] property WHICH WAS DEEMED ABANDONED PURSUANT TO SUBDIVISION ONE OF THIS SECTION shall be paid or delivered to the comptroller within the first ten days of September of each year. SUCH PAYMENT SHALL BE ACCOMPANIED BY A TRUE AND ACCURATE REPORT THAT SHALL BE IN SUCH FORM AND MANNER AS THE STATE COMPTROLLER MAY PRESCRIBE.

S 24. Section 1408 of the abandoned property law is REPEALED.

S 25. The opening paragraph of section 503 of the abandoned property law, as amended by chapter 815 of the laws of 1963, is amended to read as follows:

Each payment or delivery of abandoned property pursuant to section five hundred two shall be accompanied by a [verified] written report, AFFIRMED AS TRUE AND ACCURATE UNDER PENALTY OF PERJURY, in such form as the state comptroller shall prescribe, setting forth:

S 26. The opening paragraph of section 513 of the abandoned property law, as amended by chapter 815 of the laws of 1963, is amended to read as follows:

A payment or delivery pursuant to section five hundred twelve shall be accompanied by a [verified] written report, AFFIRMED AS TRUE AND ACCURATE UNDER PENALTY OF PERJURY, in such form as the state comptroller may prescribe, setting forth:

S 27. Subdivision 4 of section 513 of the abandoned property law is REPEALED.

S 28. Subdivision 5 of section 513 of the abandoned property law, as added by chapter 617 of the laws of 1973, is renumbered subdivision 4 and amended to read as follows:

4. In case any broker or dealer determines the property which shall be deemed abandoned property pursuant to subdivisions one and three of section five hundred eleven by the method provided in subdivision six of that section, the payment of such abandoned property shall be accompanied by a [verified] written report, AFFIRMED AS TRUE AND ACCURATE UNDER PENALTY OF PERJURY, in such form as the state comptroller may prescribe, which, among other things, shall set forth the computation of the average factor of such broker or dealer pursuant to subdivision six of section five hundred eleven. Each [verified] written report accompanying the payment of abandoned property determined pursuant to subdivision six of section five hundred eleven shall contain an undertaking by the broker or dealer making such payment to honor all claims to the extent herein provided whenever made against such broker or dealer by any person determined by him or proved to be entitled to receive from him a stock or cash dividend received in this state during the calendar year covered by such report as the holder of record of a security or an interest payment on a security received in this state during such year. Such undertaking shall obligate the broker or dealer to honor any such claim provided that the payment of abandoned property relating to the year in question determined pursuant to subdivision six of section five hundred eleven made by such broker or dealer to the state comptroller has been exhausted as a result of reimbursements by the state comptroller to the broker or dealer or to other persons claiming such abandoned property as provided in subdivision two of section five hundred fourteen. To the extent related to any stock dividend, any such claim shall not exceed the fair market value of such stock dividend on the

thirty-first day of December of the year in which such stock dividend was deemed abandoned property.

S 29. The opening paragraph of section 603 of the abandoned property law is amended to read as follows:

Each such payment of abandoned property pursuant to section six hundred two shall be accompanied by a [verified] written report, AFFIRMED AS TRUE AND ACCURATE UNDER PENALTY OF PERJURY, classified as the state comptroller shall prescribe, setting forth:

S 30. Subdivision 2 of section 1304 of the abandoned property law, as added by chapter 698 of the laws of 1943, is amended to read as follows:

2. Any such abandoned property shall be paid or delivered forthwith to the state comptroller. Such payment shall be accompanied by a [verified] written report, AFFIRMED AS TRUE AND ACCURATE UNDER PENALTY OF PERJURY, setting forth such identifying information as the state comptroller may require.

S 31. Section 1305 of the abandoned property law, as amended by chapter 149 of the laws of 1977, is amended to read as follows:

S 1305. Unclaimed surplus moneys after recovery of cost of public assistance and care.

Any amount comprising a balance credited to an estate or person pursuant to sections one hundred fifty-two-b or three hundred sixty of the social services law which, on June thirtieth in any year, has for four years from the date of such credit remained unclaimed by the estate or person entitled thereto shall be deemed abandoned property.

On or before the tenth day of September in each year every public welfare official shall pay such abandoned property to the state comptroller. Such payment shall be accompanied by a [verified] written report, AFFIRMED AS TRUE AND ACCURATE UNDER PENALTY OF PERJURY, in such form as the state comptroller may prescribe.

S 32. Subdivision 3 of section 1307 of the abandoned property law, as added by chapter 700 of the laws of 1943, is amended to read as follows:

3. Any sheriff or county treasurer holding any such abandoned property, shall pay the same to the state comptroller immediately after such property shall have been deemed abandoned. Each such payment shall be accompanied by a [verified] written report, AFFIRMED AS TRUE AND ACCURATE UNDER PENALTY OF PERJURY, which shall set forth such information as the state comptroller may require.

S 33. Subdivision 5 of section 1313 of the abandoned property law is REPEALED.

S 34. Subdivision 2 of section 1314 of the abandoned property law, as added by chapter 228 of the laws of 1977, is amended to read as follows:

2. Such transfer of moneys shall be accompanied by a [verified] written report, AFFIRMED AS TRUE AND ACCURATE UNDER PENALTY OF PERJURY, in such form as the state comptroller may prescribe.

S 34-a. Section 1401 of the abandoned property law is amended to read as follows:

S 1401. Comptroller to maintain public record. The state comptroller shall maintain a public record of all names and last known addresses of the person or persons appearing to be entitled to abandoned property, heretofore paid to the state or hereafter paid or delivered to the state comptroller pursuant to this chapter. IN ADDITION, THE STATE COMPTROLLER SHALL MAINTAIN A SEARCHABLE DATABASE ON THE STATE COMPTROLLER'S WEBSITE IN SUCH FORM AND MANNER AS THE STATE COMPTROLLER DEEMS REASONABLE AND APPROPRIATE, SUBJECT TO THE REQUIREMENTS SET FORTH IN SECTION FOURTEEN HUNDRED TWO OF THIS ARTICLE. THE STATE COMPTROLLER SHALL PLACE A DISCLAIMER PROMINENTLY ON HIS OR HER WEBSITE ADVISING THAT THIS

SEARCHABLE DATABASE DOES NOT CONTAIN COMPLETE INFORMATION WITH RESPECT TO ABANDONED PROPERTY PAID TO THE STATE OR PAID OR DELIVERED TO THE STATE COMPTROLLER, AND PROVIDE CONTACT INFORMATION PROMINENTLY ON THE WEBSITE TO ENABLE INTERESTED PARTIES TO INQUIRE WHETHER THEY APPEAR ON AN ABANDONED PROPERTY LISTING. Other identifying information set forth in any report or record made or delivered to the state comptroller shall be retained by him but shall be considered confidential and may be disclosed only in the discretion of the state comptroller. The state comptroller shall not reveal the amount of any abandoned property, except to a person who has presented satisfactory proof of an interest in or title to such property.

S 35. Section 1402 of the abandoned property law is REPEALED and a new section 1402 is added to read as follows:

S 1402. PUBLICATION OF ABANDONED PROPERTY BY STATE COMPTROLLER. 1. (A) NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN SECTION FOURTEEN HUNDRED ONE OF THIS ARTICLE, THE COMPTROLLER SHALL MAINTAIN ON HIS OR HER WEBSITE IN A READILY SEARCHABLE FORMAT, A LIST OF SUCH ABANDONED PROPERTY AS HAS BEEN PAID OR DELIVERED TO THE COMPTROLLER THAT HAS A VALUE OF OVER TWENTY DOLLARS, FOR A PERIOD OF TWELVE MONTHS PRIOR TO APRIL FIRST, TWO THOUSAND ELEVEN, AND ANY SUCH ABANDONED PROPERTY AS HAS BEEN PAID OR DELIVERED TO THE COMPTROLLER THEREAFTER THAT HAS A VALUE OF OVER TWENTY DOLLARS, PROVIDED THAT WHEN SIXTY OR MORE MONTHS HAS PASSED AFTER SUCH PROPERTY HAS BEEN PAID OR DELIVERED TO THE COMPTROLLER, THE COMPTROLLER SHALL NOT BE REQUIRED TO POST SUCH PROPERTY ON HIS OR HER WEBSITE IF HE OR SHE DOES NOT DEEM IT REASONABLE AND APPROPRIATE TO DO SO.

(B) THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO ABANDONED PROPERTY PAID PURSUANT TO SECTION ONE THOUSAND THREE HUNDRED OF THIS CHAPTER OR SECTION FOUR HUNDRED TWENTY-FOUR OF THE VEHICLE AND TRAFFIC LAW.

2. SUCH LIST SHALL BE IN SUCH FORM AND CLASSIFIED IN SUCH MANNER AS THE STATE COMPTROLLER SHALL DETERMINE AND SHALL INCLUDE:

(A) THE NAMES AND LAST KNOWN ADDRESSES OF ALL PERSONS APPEARING FROM THE RECORDS IN THE COMPTROLLER'S OFFICE, AS SET FORTH IN THE REPORT FILED BY THE HOLDER, TO BE ENTITLED TO RECEIVE SUCH ABANDONED PROPERTY EXCEEDING TWENTY DOLLARS IN VALUE; AND

(B) SUCH OTHER INFORMATION AS THE STATE COMPTROLLER MAY DETERMINE.

3. SUCH LISTING SHALL INCLUDE A STATEMENT THAT: (A) INFORMATION ABOUT THE PROPERTY AND ITS RETURN TO THE OWNER MAY BE AVAILABLE TO A PERSON HAVING A LEGAL OR BENEFICIAL INTEREST IN THE PROPERTY, UPON REQUEST TO THE COMPTROLLER; AND

(B) A PUBLIC RECORD IS MAINTAINED IN THE OFFICE OF THE STATE COMPTROLLER OF ALL ABANDONED PROPERTY IN ACCORDANCE WITH SECTION FOURTEEN HUNDRED ONE OF THIS ARTICLE; AND THAT A CLAIM FOR ANY SUCH ABANDONED PROPERTY SHOULD BE FILED WITH THE STATE COMPTROLLER AT HIS OR HER OFFICE IN THE CITY OF ALBANY.

4. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION, THE STATE COMPTROLLER MAY OMIT FROM SUCH LIST THE NAME AND LAST KNOWN ADDRESS OF ANY PERSON WHERE SPECIAL CIRCUMSTANCES MAKE IT DESIRABLE THAT SUCH INFORMATION BE WITHHELD.

S 36. Subdivision 12 of section 211 of the tax law is REPEALED and a new subdivision 12 is added to read as follows:

12. (A) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION EIGHT OF THIS SECTION, THE COMMISSIONER AND THE COMPTROLLER SHALL ENTER INTO AN AGREEMENT PURSUANT TO WHICH THE COMMISSIONER SHALL, UPON REQUEST, PROVIDE THE COMPTROLLER WITH A REPORT, NOT MORE FREQUENTLY THAN ANNUALLY, WITH

RESPECT TO CORPORATIONS OR OTHER ENTITIES WHICH HAVE FILED A BUSINESS CORPORATION FRANCHISE TAX REPORT UNDER THIS ARTICLE FOR ANY TAXABLE YEAR WITHIN TEN CALENDAR YEARS PRIOR TO THE REPORT TO THE COMPTROLLER MADE PURSUANT TO THIS SUBDIVISION, PROVIDING THE FOLLOWING INFORMATION, TO THE EXTENT THAT SUCH INFORMATION IS READILY AVAILABLE FROM THE DEPARTMENT'S SYSTEM FOR IDENTIFYING TAXPAYER INDICATIVE DATA:

(1) BUSINESS NAME AND LEGAL NAME, IF DIFFERENT;

(2) BUSINESS ADDRESS AND MAILING ADDRESS;

(3) FEDERAL EMPLOYER IDENTIFICATION NUMBER;

(4) DATE ENTERED INTO BUSINESS.

(B) EACH REPORT TO THE COMPTROLLER MADE PURSUANT TO THIS SUBDIVISION SHALL LIST EACH CORPORATION OR OTHER ENTITY WITH RESPECT TO WHICH SUCH REPORT IS MADE ACCORDING TO THE TOTAL ASSETS REPORTED FOR THE END OF THE YEAR ON ITS MOST RECENT AVAILABLE BUSINESS CORPORATION FRANCHISE TAX REPORT, IN DESCENDING ORDER. SUCH REPORTS TO THE COMPTROLLER SHALL NOT DISCLOSE THE ACTUAL AMOUNT OF TOTAL ASSETS REPORTED ON SUCH BUSINESS CORPORATION FRANCHISE TAX REPORTS.

(C) THE INFORMATION PROVIDED TO THE COMPTROLLER PURSUANT TO THIS SUBDIVISION SHALL BE USED ONLY FOR ADMINISTRATION AND ENFORCEMENT OF THE ABANDONED PROPERTY LAW. THE COMPTROLLER MAY REDISCLOSE THE INFORMATION PROVIDED UNDER THIS SUBDIVISION ONLY TO THE EXTENT NECESSARY FOR ENFORCEMENT OR ADMINISTRATION OF THE ABANDONED PROPERTY LAW.

(D) THE REPORTS TO THE COMPTROLLER REQUIRED UNDER THIS SUBDIVISION SHALL BE SUBMITTED BY ELECTRONIC MEANS OR IN SOME OTHER FORMAT WHICH IS MUTUALLY ACCEPTABLE TO THE COMPTROLLER AND THE COMMISSIONER. THE WRITTEN AGREEMENT WITH THE COMPTROLLER SHALL SET FORTH THE PROCEDURES FOR PROVIDING THE INFORMATION THE COMMISSIONER IS ALLOWED TO DISCLOSE PURSUANT TO THIS SUBDIVISION.

(E) NOTWITHSTANDING ARTICLE SIX OF THE PUBLIC OFFICERS LAW OR ANY OTHER PROVISION OF LAW, THE REPORTS TO BE FURNISHED TO THE COMPTROLLER PURSUANT TO THIS SUBDIVISION SHALL NOT BE OPEN TO THE PUBLIC FOR INSPECTION.

S 37. Subdivision 2 of section 95 of the state finance law, as amended by section 10-a of part RR of chapter 57 of the laws of 2008, is amended to read as follows:

2. Annually, the comptroller shall file with the director of the budget an itemized estimate of the expenses for the administration of the abandoned property fund for the ensuing year. The director of the budget may revise and amend such estimate. After such revision and amendment, if any, such director shall approve the same for inclusion in the executive budget. No moneys shall be paid out of the abandoned property fund for [such] expenses unless expenditures therefor shall have been authorized by law; provided, however, that the expenses [of any audits conducted by the state comptroller to assure compliance by holders of unclaimed property with the provisions of the abandoned property law] FOR THE ADMINISTRATION OF THE PROVISIONS OF THE ABANDONED PROPERTY LAW paid by the state comptroller pursuant to an appropriation, shall be reimbursed by a transfer of funds no more frequently than monthly, from any balance remaining in the abandoned property fund prior to any payment made pursuant to the provisions of subdivision three of this section.

S 38. This act shall take effect immediately.

PART B

Section 1. Section 12 of part N of chapter 61 of the laws of 2005, amending the tax law relating to certain transactions and related information and relating to the voluntary compliance initiative, subdivision (iii) as amended by section 16 of subpart J of part V-1 of chapter 57 of the laws of 2009, is amended to read as follows:

S 12. This act shall take effect immediately; provided, however, that (i) section one of this act shall apply to all disclosure statements described in paragraph 1 of subdivision (a) of section 25 of the tax law, as added by section one of this act, that were required to be filed with the internal revenue service at any time with respect to "listed transactions" as described in such paragraph 1, and shall apply to all disclosure statements described in paragraph 1 of subdivision (a) of section 25 of the tax law, as added by section one of this act, that were required to be filed with the internal revenue service with respect to "reportable transactions" as described in such paragraph 1, other than "listed transactions", in which a taxpayer participated during any taxable year for which the statute of limitations for assessment has not expired as of the date this act shall take effect, and shall apply to returns or statements described in such paragraph 1 required to be filed by taxpayers (or persons as described in such paragraph) with the commissioner of taxation and finance on or after the sixtieth day after this act shall have become a law; AND

(ii) sections two through four and seven through nine of this act shall apply to any tax liability for which the statute of limitations on assessment has not expired as of the date this act shall take effect; and

(iii) provided, further, that the provisions of this act, except section five of this act, shall expire and be deemed repealed July 1, [2011. The commissioner of taxation and finance shall cause to be prepared a written report on the tax shelter law. Notwithstanding any other provision of law to the contrary, such report shall include, but not be limited to, statistical information regarding the listed and reportable transactions and avoidance transactions under this act. A copy of such report shall be delivered to the governor, the temporary president of the senate, and the speaker of the assembly no later than April 1, 2007;] 2015; provided, that, such expiration and repeal shall not affect any requirement imposed pursuant to this act.

S 2. This act shall take effect immediately.

PART C

Intentionally omitted.

PART D

Section 1. The tax law is amended by adding a new section 1613-c to read as follows:

S 1613-C. CREDITING OF LOTTERY PRIZES AGAINST LIABILITIES FOR TAXES ADMINISTERED BY THE COMMISSIONER. (1) THE DIRECTOR, ON BEHALF OF THE DIVISION, SHALL ENTER INTO A WRITTEN AGREEMENT WITH THE COMMISSIONER, ON BEHALF OF THE DEPARTMENT, WITHIN SIXTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, WHICH WILL SET FORTH PROCEDURES FOR CREDITING LOTTERY PRIZES OF MORE THAN SIX HUNDRED DOLLARS AWARDED TO HOLDERS OF WINNING LOTTERY TICKETS, WHETHER INDIVIDUALS, CORPORATIONS, ASSOCIATIONS, COMPANIES, PARTNERSHIPS, LIMITED LIABILITY PARTNERSHIPS OR COMPANIES, PARTNERS, MEMBERS, MANAGERS, ESTATES, TRUST FIDUCIARIES OR ENTITIES, AGAINST

PAST DUE TAX LIABILITIES OWED BY SUCH HOLDERS FOR ANY TAX ADMINISTERED BY THE COMMISSIONER, ABOUT WHICH THE DIRECTOR HAS BEEN NOTIFIED BY THE COMMISSIONER PURSUANT TO THE PROVISIONS OF SUCH AGREEMENT.

(2) SUCH AGREEMENT SHALL APPLY TO ANY PAST DUE TAX LIABILITY WHICH ARISES FROM (I) AN ENFORCEABLE WARRANT OR JUDGMENT, (II) AN ENFORCEABLE DETERMINATION OF AN ADMINISTRATIVE BODY WHICH IS NO LONGER SUBJECT TO ADMINISTRATIVE OR JUDICIAL REVIEW, OR (III) AN ASSESSMENT OR DETERMINATION (INCLUDING SELF-ASSESSMENT OR SELF-ASSESSED DETERMINATION) WHICH HAS BECOME FINAL OR FINALLY AND IRREVOCABLY FIXED AND NO LONGER SUBJECT TO ADMINISTRATIVE OR JUDICIAL REVIEW.

(3) SUCH AGREEMENT SHALL INCLUDE:

(A) THE PROCEDURE UNDER WHICH THE DEPARTMENT WILL NOTIFY THE DIVISION OF TAX LIABILITIES, INCLUDING WHEN THE DIVISION WILL BE NOTIFIED AND THE CONTENT OF THAT NOTIFICATION;

(B) THE PROCEDURE FOR REIMBURSEMENT OF THE DIVISION BY THE DEPARTMENT FOR THE COST OF CARRYING OUT THE PROCEDURES AUTHORIZED BY THIS SECTION; AND

(C) ANY OTHER MATTERS THE PARTIES TO THE AGREEMENT DEEM NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION.

(4) PRIOR TO AWARDING LOTTERY PRIZES OF MORE THAN SIX HUNDRED DOLLARS, THE DIVISION SHALL REVIEW THE MOST RECENT NOTICE OF TAX LIABILITIES PROVIDED BY THE COMMISSIONER. FOR HOLDERS OF WINNING LOTTERY TICKETS IDENTIFIED ON THAT NOTICE, THE DIVISION SHALL CREDIT TO THE DEPARTMENT THE AMOUNT OF EACH HOLDER'S PRIZE NECESSARY TO SATISFY THAT HOLDER'S TAX LIABILITY, AND THE REMAINDER OF THE PRIZE SHALL BE AWARDED TO THE HOLDER OF THE WINNING TICKET.

(5) IF THE DIVISION HAS ALSO RECEIVED A NOTICE OF LIABILITY OF A PRIZE WINNER FOR PAST-DUE SUPPORT OR PUBLIC ASSISTANCE BENEFITS PURSUANT TO SECTION SIXTEEN HUNDRED THIRTEEN-A OR SIXTEEN HUNDRED THIRTEEN-B OF THIS ARTICLE, THEN THE AMOUNT OF ANY PRIZE SHALL BE FIRST CREDITED OR APPLIED TO THE INCOME TAX REQUIRED TO BE WITHHELD BY LAW, THEN AS REQUIRED BY SECTION SIXTEEN HUNDRED THIRTEEN-A OR SIXTEEN HUNDRED THIRTEEN-B OF THIS ARTICLE, THEN TO THE PAST DUE TAX LIABILITY AS REQUIRED BY THIS SECTION. THE BALANCE WILL THEN BE PAID TO THE HOLDER OF THE WINNING LOTTERY TICKET.

(6) THE DIVISION SHALL CERTIFY TO THE COMPTROLLER THE TOTAL AMOUNT OF THE LOTTERY PRIZE TO BE CREDITED AGAINST PAST DUE TAX LIABILITIES AND THE REMAINDER OF THE PRIZE TO BE AWARDED TO THE HOLDER OF THE WINNING LOTTERY TICKET.

(7) THE DIVISION SHALL NOTIFY THE HOLDER OF THE WINNING LOTTERY TICKET, IN WRITING, OF THE TOTAL AMOUNT OF THE LOTTERY PRIZE CREDITED AGAINST PAST DUE TAX LIABILITIES AND THE REMAINDER OF THE PRIZE TO BE AWARDED TO THE HOLDER. THAT NOTICE MUST ALSO ADVISE THE HOLDER THAT THE DEPARTMENT WILL PROVIDE SEPARATE NOTICE, IN WRITING, OF THE PROCEDURE FOR AND TIME FRAME BY WHICH THE HOLDER MAY CONTEST SUCH CREDITING.

(8) THE DEPARTMENT SHALL NOTIFY THE HOLDER OF THE WINNING LOTTERY TICKET, IN WRITING, OF THE AMOUNT OF A PRIZE TO BE CREDITED AGAINST PAST DUE TAX LIABILITIES AND THE PROCEDURE FOR AND TIME FRAME BY WHICH THE HOLDER MAY CONTEST THE CREDITING OF THE PRIZE.

(9) FROM THE TIME THE DIVISION IS NOTIFIED BY THE DEPARTMENT OF A PAST DUE TAX LIABILITY OF A HOLDER OF A WINNING LOTTERY TICKET, THE DIVISION SHALL BE RELIEVED FROM ALL LIABILITY TO THE HOLDER, AND THE HOLDER'S HEIRS, REPRESENTATIVES, ESTATE, SUCCESSORS OR ASSIGNS FOR THE AMOUNT OF A PRIZE CERTIFIED TO THE COMPTROLLER TO BE CREDITED AGAINST PAST DUE TAX LIABILITIES AND THE HOLDER AND THE HOLDER'S HEIRS, REPRESENTATIVES, ESTATE, SUCCESSOR OR ASSIGNS SHALL HAVE NO RIGHT TO COMMENCE A COURT

ACTION OR PROCEEDING OR TO ANY OTHER LEGAL RECOURSE AGAINST THE DIVISION TO RECOVER ANY AMOUNT CERTIFIED TO THE COMPTROLLER TO BE CREDITED AGAINST PAST DUE TAX LIABILITIES. PROVIDED HOWEVER, NOTHING HEREIN SHALL BE CONSTRUED TO PROHIBIT A HOLDER OF A WINNING LOTTERY TICKET AND THE HOLDER'S HEIRS, REPRESENTATIVES, ESTATE, SUCCESSORS OR ASSIGNS FROM PROCEEDING AGAINST THE DEPARTMENT TO RECOVER THE PART OF THE PRIZE CERTIFIED TO THE COMPTROLLER AND CREDITED TO PAST DUE TAX LIABILITIES WHICH IS GREATER THAN THE AMOUNT OF PAST DUE TAX LIABILITIES OWED BY THAT HOLDER ON THE DATE OF CERTIFICATION.

(10) NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE DEPARTMENT AND ITS OFFICERS AND EMPLOYEES MAY FURNISH TO THE DIVISION ANY ABSTRACT OF ANY TAX RETURN OR REPORT, OR ANY INFORMATION CONCERNING AN ITEM CONTAINED IN ANY SUCH RETURN OR REPORT OR DISCLOSED BY ANY INVESTIGATION OF TAX LIABILITY UNDER THIS CHAPTER, BUT ONLY FOR THE PURPOSE OF CREDITING LOTTERY PRIZES AGAINST PAST DUE TAX LIABILITIES DESCRIBED IN SUBDIVISION TWO OF THIS SECTION.

S 2. This act shall take effect on the first of August next succeeding the date on which it shall have become a law, provided that the department of taxation and finance and the division of the lottery may take steps to effectuate the written agreement between the director of the division of the lottery and the commissioner of taxation and finance prior to such effective date.

PART E

Section 1. Paragraph c of subdivision 2 of section 124 of part A of chapter 56 of the laws of 1998, amending the tax law and other laws relating to extending the dates of application of the investment tax credit under articles 9-A, 22 and 32 of the tax law, as amended by section 1 of part YY-1 of chapter 57 of the laws of 2008, is amended to read as follows:

c. Sections fifteen through twenty-seven of this act shall apply to property placed in service on or after October 1, 1998 and before October 1, [2011] 2015.

S 2. Section 2 of part L of chapter 63 of the laws of 2000, amending the tax law and other laws relating to extending the dates of application of the investment tax credit under article 33 of the tax law, as amended by section 2 of part YY-1 of chapter 57 of the laws of 2008, is amended to read as follows:

S 2. This act shall take effect immediately and shall apply to property placed in service on or after January 1, 2002 and before October 1, [2011] 2015.

S 3. This act shall take effect immediately.

PART F

Section 1. Subdivision 4 of section 22 of the public housing law, as amended by section 1 of part P of chapter 57 of the laws of 2010, is amended to read as follows:

4. Statewide limitation. The aggregate dollar amount of credit which the commissioner may allocate to eligible low-income buildings under this article shall be [twenty-eight] THIRTY-TWO million dollars. The limitation provided by this subdivision applies only to allocation of the aggregate dollar amount of credit by the commissioner, and does not apply to allowance to a taxpayer of the credit with respect to an eligible low-income building for each year of the credit period.

S 2. This act shall take effect immediately.

PART G

Section 1. Subdivision 12 of section 352 of the economic development law, as added by section 1 of part MM of chapter 59 of the laws of 2010, is amended to read as follows:

12. "Preliminary schedule of benefits" means the maximum aggregate amount of each component of the tax credit that a participant in the excelsior jobs program is eligible to receive pursuant to this article. The schedule shall indicate the annual amount of each component of the credit a participant may claim in each of its [five] TEN years of eligibility. The preliminary schedule of benefits shall be issued by the department when the department approves the application for admission into the program. The commissioner may amend that schedule, provided that the commissioner complies with the credit caps in section three hundred fifty-nine of this article.

S 2. Section 353 of the economic development law, as added by section 1 of part MM of chapter 59 of the laws of 2010, is amended to read as follows:

S 353. Eligibility criteria. 1. To be a participant in the excelsior jobs program, a business entity shall operate in New York state predominantly:

(a) as a financial services data center or a financial services back office operation;

(b) in manufacturing;

(c) in software development and new media;

(d) in scientific research and development;

(e) in agriculture;

(f) in the creation or expansion of back office operations in the state;

(g) in a distribution center; or

(h) in an industry with significant potential for private-sector economic growth and development in this state as established by the commissioner in regulations promulgated pursuant to this article. In promulgating such regulations the commissioner shall include job and investment criteria.

2. WHEN DETERMINING WHETHER AN APPLICANT IS OPERATING PREDOMINATELY IN ONE OF THE INDUSTRIES LISTED IN SUBDIVISION ONE OF THIS SECTION, THE COMMISSIONER WILL EXAMINE THE NATURE OF THE BUSINESS ACTIVITY AT THE LOCATION FOR THE PROPOSED PROJECT AND WILL MAKE ELIGIBILITY DETERMINATIONS BASED ON SUCH ACTIVITY.

3. For the purposes of this article, in order to participate in the excelsior jobs program, a business entity operating predominantly in manufacturing must create at least twenty-five net new jobs; a business entity operating predominately in agriculture must create at least ten net new jobs; a business entity operating predominantly as a financial service data center or financial services customer back office operation must create at least one hundred net new jobs; a business entity operating predominantly in scientific research and development must create at least ten net new jobs; a business entity operating predominantly in software development must create at least ten net new jobs; a business entity creating or expanding back office operations or a distribution center in the state must create at least one hundred fifty net new jobs, notwithstanding subdivision [four] FIVE of this section; or a business

entity must be a regionally significant project as defined in this article; or

[3.] 4. A business entity operating predominantly in one of the industries referenced in paragraphs (a) through (h) of subdivision one of this section but which does not meet the job requirements of subdivision [two] THREE of this section must have at least fifty full-time job equivalents and must demonstrate that its benefit-cost ratio is at least ten to one.

[4.] 5. A not-for-profit business entity, a business entity whose primary function is the provision of services including personal services, business services, or the provision of utilities, and a business entity engaged predominantly in the retail or entertainment industry, and a company engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity are not eligible to receive the tax credit described in this article.

[5.] 6. A business entity must be in compliance with all worker protection and environmental laws and regulations. In addition, a business entity may not owe past due state taxes or local property taxes.

S 3. Section 354 of the economic development law, as added by section 1 of part MM of chapter 59 of the laws of 2010, is amended to read as follows:

S 354. Application and approval process. 1. A business enterprise must submit a completed application as prescribed by the commissioner. An application may be recommended by entities, including but not limited to, those created pursuant to subdivision (e) of section nine hundred fifty-seven of the general municipal law.

2. As part of such application, each business enterprise must:

(a) Agree to allow the department of taxation and finance to share its tax information with the department. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law.

(b) Agree to allow the department of labor to share its tax and employer information with the department. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law.

(c) Allow the department and its agents access to any and all books and records the department may require to monitor compliance.

(d) Agree to be permanently [decertified from the empire zones program if admitted into the excelsior jobs program, effective for the first taxable year that the business enterprise may claim the excelsior jobs program credit and for all subsequent taxable years] DISQUALIFIED FOR EMPIRE ZONE BENEFITS AT ANY LOCATION OR LOCATIONS THAT QUALIFY FOR EXCELSIOR JOBS PROGRAM BENEFITS IF ADMITTED INTO THE EXCELSIOR JOBS PROGRAM.

(e) Provide the following information to the department upon request:

(i) a plan outlining the schedule for meeting the job and investment requirements as set forth in subdivisions [two] THREE and [three] FOUR of section three hundred fifty-three of this article. Such plan must include details on job titles and expected salaries;

(ii) the prior three years of federal and state income or franchise tax returns, unemployment insurance quarterly returns, real property tax bills and audited financial statements;

(iii) the amount and description of projected qualified investments for which it plans to claim the excelsior investment tax credit;

(iv) an estimate of the portion of any federal research and development tax credits, attributable to research and development activities conducted in New York state, that it anticipates claiming for the years it expects to claim the excelsior research and development credit; and

(v) the employer identification or social security numbers for all related persons to the applicant, including those of any members of a limited liability company or partners in a partnership.

(f) Provide a clear and detailed presentation of all related persons to the applicant to assure the department that jobs are not being shifted within the state.

(g) Certify, under penalty of perjury, that it is in substantial compliance with all environmental, worker protection, and local, state, and federal tax laws.

3. After reviewing a business enterprise's completed application and determining that the business enterprise will meet the conditions set forth in subdivisions [two] THREE and [three] FOUR of section three hundred fifty-three of this article, the department may admit the applicant into the program and provide the applicant with a certificate of eligibility and a preliminary schedule of benefits by year based on the applicant's projections as set forth in its application. This preliminary schedule of benefits delineates the maximum possible benefits an applicant may receive.

4. In order to become a participant in the program, an applicant must submit evidence [of achieving job and investment requirements] THAT IT SATISFIES THE ELIGIBILITY CRITERIA SPECIFIED IN SECTION THREE HUNDRED FIFTY-THREE OF THIS ARTICLE AND SUBDIVISION TWO OF THIS SECTION in such form as the commissioner may prescribe. After reviewing such evidence and finding it sufficient, the department shall certify the applicant as a participant and issue to that participant a certificate of tax credit for one taxable year. To receive a certificate of tax credit for subsequent taxable years, the participant must submit to the department a performance report DEMONSTRATING THAT THE PARTICIPANT CONTINUES TO SATISFY THE ELIGIBILITY CRITERIA SPECIFIED IN SECTION THREE HUNDRED FIFTY-THREE OF THIS ARTICLE AND SUBDIVISION TWO OF THIS SECTION. IF SUCH ELIGIBILITY CRITERIA IS MET, A PARTICIPANT CAN RECEIVE TAX CREDITS BASED ON INTERIM JOB, INVESTMENT OR RESEARCH AND DEVELOPMENT MILESTONES. A participant's increase in employment, qualified investment, or federal research and development tax credit attributable to research and development activities in New York state above its projections listed in its application shall not result in an increase in tax benefits under this article. However, if the participant's expenditures are less than the estimated amounts, the credit shall be less than the estimate.

5. A participant may claim tax benefits commencing in the first taxable year that the business enterprise receives a certificate of tax credit or the first taxable year listed on its preliminary schedule of benefits, whichever is later. A participant may claim such benefits for the next [four] NINE consecutive taxable years, provided that the participant demonstrates to the department that it continues to satisfy the eligibility criteria specified in section three hundred fifty-three of this article and subdivision two of this section in each of those taxable years.

S 4. Section 355 of the economic development law, as added by section 1 of part MM of chapter 59 of the laws of 2010, is amended to read as follows:

S 355. Excelsior jobs program credit. 1. Excelsior jobs tax credit component. A participant in the excelsior jobs program shall be eligible

to claim a credit for each net new job it creates in New York state. The amount of such credit per job shall be equal to the [sum of the following: five percent of the amount of remuneration equal to or less than fifty thousand dollars; four percent of the amount of remuneration in excess of fifty thousand dollars and equal to or less than seventy-five thousand dollars; and 1.33 percent of the amount of remuneration in excess of seventy-five thousand dollars. However, the amount of the credit for each net new job shall not exceed five thousand dollars] PRODUCT OF THE GROSS WAGES PAID AND 6.85 PERCENT.

2. Excelsior investment tax credit component. A participant in the excelsior jobs program shall be eligible to claim a credit on qualified investments. The credit shall be equal to two percent of the cost or other basis for federal income tax purposes of the qualified investment. A participant may not claim both the excelsior investment tax credit component and the investment tax credit set forth in subdivision twelve of section two hundred ten, subsection (a) of section six hundred six, [or] subsection (i) of section fourteen hundred fifty-six, OR SUBDIVISION (Q) OF SECTION FIFTEEN HUNDRED ELEVEN of the tax law for the same property in any taxable year, EXCEPT THAT A PARTICIPANT MAY CLAIM BOTH THE EXCELSIOR INVESTMENT TAX CREDIT COMPONENT AND THE INVESTMENT TAX CREDIT FOR RESEARCH AND DEVELOPMENT PROPERTY. In addition, a taxpayer who or which is qualified to claim the excelsior investment tax credit component and is also qualified to claim the brownfield tangible property credit component under section twenty-one of the tax law may claim either the excelsior investment tax credit component or such tangible property credit component, but not both with regard to a particular piece of property. A credit may not be claimed until a business enterprise has received a certificate of tax credit, provided that qualified investments made on or after the issuance of the certificate of eligibility but before the issuance of the certificate of tax credit to the business enterprise, may be claimed in the first taxable year for which the business enterprise is allowed to claim the credit. Expenses incurred prior to the date the certificate of eligibility is issued are not eligible to be included in the calculation of the credit.

3. Excelsior research and development tax credit component. A participant in the excelsior jobs program shall be eligible to claim a credit equal to [ten] FIFTY percent of the portion of the participant's federal research and development tax credit that relates to the participant's research and development expenditures in New York state during the taxable year; PROVIDED HOWEVER, THE EXCELSIOR RESEARCH AND DEVELOPMENT TAX CREDIT SHALL NOT EXCEED THREE PERCENT OF THE QUALIFIED RESEARCH AND DEVELOPMENT EXPENDITURES ATTRIBUTABLE TO ACTIVITIES CONDUCTED IN NEW YORK STATE. If the federal research and development credit has expired, then the research and development expenditures relating to the federal research and development credit shall be calculated as if the federal research and development credit structure and definition in effect in two thousand nine were still in effect. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER TO THE CONTRARY, RESEARCH AND DEVELOPMENT EXPENDITURES IN THIS STATE, INCLUDING SALARY OR WAGE EXPENSES FOR JOBS RELATED TO RESEARCH AND DEVELOPMENT ACTIVITIES IN THIS STATE, MAY BE USED AS THE BASIS FOR THE EXCELSIOR RESEARCH AND DEVELOPMENT TAX CREDIT COMPONENT AND THE QUALIFIED EMERGING TECHNOLOGY COMPANY FACILITIES, OPERATIONS AND TRAINING CREDIT UNDER THE TAX LAW.

4. Excelsior real property tax credit COMPONENT. (A) A participant in the excelsior jobs program who either qualified as a regionally signif-

icant project or is located in an investment zone shall be eligible to claim a credit for a period of [five] TEN years.

(B) The credit IN YEAR ONE shall be equal to fifty percent of the eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone [that were assessed and paid in the year immediately prior to application]. In the remaining years the credit shall be computed according to the following schedule:

Year two: [forty] FORTY-FIVE percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone [that were assessed and paid in the year immediately prior to application];

Year three: [thirty] FORTY percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone [that were assessed and paid in the year immediately prior to application];

Year four: [twenty] THIRTY-FIVE percent of eligible real property taxes on real property comprising the regionally significant project or located in the investment zone [that were assessed and paid in the year immediately prior to application]; [and]

Year five: [ten] THIRTY percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone [that were assessed and paid in the year immediately prior to application];

YEAR SIX: TWENTY-FIVE PERCENT OF ELIGIBLE REAL PROPERTY TAXES ON THE REAL PROPERTY COMPRISING THE REGIONALLY SIGNIFICANT PROJECT OR LOCATED IN THE INVESTMENT ZONE;

YEAR SEVEN: TWENTY PERCENT OF ELIGIBLE REAL PROPERTY TAXES ON THE REAL PROPERTY COMPRISING THE REGIONALLY SIGNIFICANT PROJECT OR LOCATED IN THE INVESTMENT ZONE;

YEAR EIGHT: FIFTEEN PERCENT OF ELIGIBLE REAL PROPERTY TAXES ON THE REAL PROPERTY COMPRISING THE REGIONALLY SIGNIFICANT PROJECT OR LOCATED IN THE INVESTMENT ZONE;

YEAR NINE: TEN PERCENT OF ELIGIBLE REAL PROPERTY TAXES ON THE REAL PROPERTY COMPRISING THE REGIONALLY SIGNIFICANT PROJECT OR LOCATED IN THE INVESTMENT ZONE; AND

YEAR TEN: FIVE PERCENT OF ELIGIBLE REAL PROPERTY TAXES ON THE REAL PROPERTY COMPRISING THE REGIONALLY SIGNIFICANT PROJECT OR LOCATED IN THE INVESTMENT ZONE.

(C) For purposes of this credit, the term "eligible real property taxes" shall have the same meaning as in subdivision (e) of section fifteen of the tax law, provided that such subdivision (e) shall be read as if it specifically referenced the excelsior jobs program and participants in that program.

(D) IN CALCULATING THE EXCELSIOR REAL PROPERTY TAX CREDIT AND DETERMINING THE MAXIMUM AGGREGATE AMOUNT OF SUCH CREDIT COMPONENT IN THE PRELIMINARY SCHEDULE OF BENEFITS, THE COMMISSIONER SHALL INCLUDE ANY IMPROVEMENTS PROJECTED TO BE MADE BY THE TAXPAYER TO THE PROPERTY COMPRISING THE REGIONALLY SIGNIFICANT PROJECT OR LOCATED IN THE INVESTMENT ZONE AS LISTED IN ITS APPLICATION FOR PARTICIPATION IN THE EXCELSIOR JOBS PROGRAM.

5. Refundability of credits. The tax credit components established in this section shall be refundable as provided in the tax law. If a participant fails to satisfy the eligibility criteria in any one year, it will lose the ability to claim credit for that year. The event of

such failure shall not extend the original [five-year] TEN-YEAR eligibility period.

6. Claim of tax credit. The business enterprise shall be allowed to claim the credit as prescribed in section thirty-one of the tax law.

7. FOR AVAILABILITY OF SPECIAL EXCELSIOR JOBS PROGRAM RATES GOVERNING THE PROVISION OF GAS OR ELECTRIC SERVICE, SEE SUBDIVISION TWELVE-D OF SECTION SIXTY-SIX OF THE PUBLIC SERVICE LAW. SUCH SPECIAL EXCELSIOR JOBS PROGRAM RATES MAY REMAIN AVAILABLE TO PARTICIPANTS AS DEFINED IN THIS ARTICLE FOR A PERIOD OF UP TO TEN YEARS COMMENCING IN THE FIRST TAXABLE YEAR THAT THE PARTICIPANT RECEIVES A CERTIFICATE OF TAX CREDIT, OR THE FIRST TAXABLE YEAR LISTED ON ITS PRELIMINARY SCHEDULE OF BENEFITS, WHICHEVER IS LATER. PROVIDED HOWEVER, IF A PARTICIPANT IS REMOVED FROM THE EXCELSIOR JOBS PROGRAM PURSUANT TO THIS ARTICLE, THE EXCELSIOR JOBS PROGRAM RATES MAY BE DENIED.

S 5. Subdivision 3 of section 356 of the economic development law, as added by section 1 of part MM of chapter 59 of the laws of 2010, is amended to read as follows:

3. The commissioner shall solely determine the eligibility of any applicant applying for entry into the program and shall remove any participant from the program for failing to meet any of the requirements set forth in subdivision two of section three hundred fifty-four of this article, or for failing to meet the minimum job or investment requirements set forth in subdivisions [two] THREE and [three] FOUR of section three hundred fifty-three of this article.

S 6. Section 359 of the economic development law, as added by section 1 of part MM of chapter 59 of the laws of 2010, is amended to read as follows:

S 359. Cap on tax credit. The total amount of tax credits listed on certificates of tax credit issued by the commissioner for any taxable year may not exceed the limitations set forth in this section. Any amount of tax credits not awarded for a particular taxable year may not be used by the commissioner to award tax credits in another taxable year.

Credit components in the aggregate shall not exceed:	With respect to taxable years beginning in:
$ 50 million	2011
$ 100 million	2012
$ 150 million	2013
$ 200 million	2014
$ 250 million	2015
$ 200 million	2016
$ [150] 200 million	2017
$ [100] 200 million	2018
$ [50] 200 million	2019
$ 200 MILLION	2020
$ 200 MILLION	2021
$ 150 MILLION	2022
$ 100 MILLION	2023
$ 50 MILLION	2024

Twenty-five percent of tax credits shall be allocated to businesses accepted into the program under subdivision [three] FOUR of section three hundred fifty-three of this article and seventy-five percent of tax credits shall be allocated to businesses accepted into the program

under subdivision [two] THREE of section three hundred fifty-three of this article.

Provided, however, if by September thirtieth of a calendar year, the department has not allocated the full amount of credits available in that year to either: (i) businesses accepted into the program under subdivision [three] FOUR of section three hundred fifty-three of this article or (ii) businesses accepted into the program under subdivision [two] THREE of section three hundred fifty-three of this article, the commissioner may allocate any remaining tax credits to businesses referenced in paragraphs (i) and (ii) of this section as needed; provided, however, that under no circumstances may the statutory cap be exceeded.

S 7. Subdivisions (a), (b), (f), and (g) of section 31 of the tax law, as added by section 2 of part MM of chapter 59 of the laws of 2010, are amended to read as follows:

(a) General. A taxpayer subject to tax under SECTION ONE HUNDRED EIGHTY-FIVE, article nine-A, twenty-two, thirty-two or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (g) of this section. The amount of the credit, allowable for up to [five] TEN consecutive taxable years, is the sum of the following four credit components:

(1) the excelsior jobs tax credit COMPONENT;

(2) the excelsior investment tax credit COMPONENT;

(3) the excelsior research and development tax credit COMPONENT; and

(4) the excelsior real property tax credit COMPONENT.

(b) To be eligible for the excelsior jobs program credit, the taxpayer shall have been issued a "certificate of tax credit" by the department of economic development pursuant to subdivision four of section three hundred fifty-four of the economic development law, which certificate shall set forth the amount of each credit component that may be claimed for the taxable year. A taxpayer may claim such credit for [five] TEN consecutive taxable years commencing in the first taxable year that the taxpayer receives a certificate of tax credit or the first taxable year listed on its preliminary schedule of benefits, whichever is later. The taxpayer shall be allowed to claim only the amount listed on the certificate of tax credit for that taxable year. Such certificate [should] MUST be attached to the taxpayer's return. No cost or expense paid or incurred by the taxpayer shall be the basis for more than one component of this credit or any other tax credit, EXCEPT AS PROVIDED IN SECTION THREE HUNDRED FIFTY-FIVE OF THE ECONOMIC DEVELOPMENT LAW.

(f) Credit recapture. If a certificate of eligibility or a certificate of tax credit issued by the department of economic development under article seventeen of the economic development law is revoked by such department BECAUSE THE TAXPAYER DOES NOT MEET THE ELIGIBILITY REQUIREMENT SET FORTH IN SUBDIVISION SIX OF SECTION THREE HUNDRED FIFTY-THREE OF THE ECONOMIC DEVELOPMENT LAW, the amount of credit described in this section and claimed by the taxpayer prior to that revocation shall be added back to [income] TAX in the taxable year in which any such revocation becomes final.

(g) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) ARTICLE 9: SECTION 187-Q.

(2) article 9-A: section 210: subdivision 41.

[(2)] (3) article 22: section 606: subsection (qq).

[(3)] (4) article 32: section 1456: subsection (u).

[(4)] (5) article 33: section 1511: subdivision (y).

S 8. Section 66 of the public service law is amended by adding a new subdivision 12-d to read as follows:

12-D. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, UPON APPLICATION OF A GAS OR ELECTRIC CORPORATION, THE COMMISSION SHALL AUTHORIZE SUCH CORPORATION TO CHARGE A SPECIAL EXCELSIOR JOBS PROGRAM RATE EQUAL TO THE INCREMENTAL COST OF PROVIDING SERVICE TO PARTICIPANTS IN THE EXCELSIOR JOBS PROGRAM AS DEFINED IN ARTICLE SEVENTEEN OF THE ECONOMIC DEVELOPMENT LAW.

S 9. The tax law is amended by adding a new section 187-q to read as follows:

S 187-Q. EXCELSIOR JOBS PROGRAM CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER WILL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-ONE OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY SECTION ONE HUNDRED EIGHTY-FIVE OF THIS ARTICLE.

(B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SECTION FOR ANY TAXABLE YEAR MAY NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM TAX FIXED IN THIS ARTICLE. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST WILL BE PAID THEREON.

S 10. This act shall take effect immediately.

PART H

Intentionally omitted.

PART I

Section 1. The opening paragraph of paragraph 1 of subsection (b) of section 1101 of the insurance law, as amended by chapter 614 of the laws of 1997, is amended to read as follows:

Except as provided in paragraph two, three [or], three-a, OR SEVEN of this subsection, any of the following acts in this state, effected by mail from outside this state or otherwise, by any person, firm, association, corporation or joint-stock company shall constitute doing an insurance business in this state and shall constitute doing business in the state within the meaning of section three hundred two of the civil practice law and rules:

S 2. Subparagraph (H) of paragraph 2 of subsection (b) of section 1101 of the insurance law is amended to read as follows:

(H) transactions with respect to insurance contracts negotiated or placed pursuant to subsection (b) [or], (c), OR (J) of section two thousand one hundred seventeen of this chapter;

S 3. Subsection (b) of section 1101 of the insurance law is amended by adding a new paragraph 7 to read as follows:

(7)(A) NOTWITHSTANDING THE FOREGOING, THE MAKING OF A SWAP SHALL NOT CONSTITUTE DOING AN INSURANCE BUSINESS IN THIS STATE.

(B) FOR THE PURPOSES OF THIS PARAGRAPH, "SWAP" SHALL HAVE THE MEANING SET FORTH IN 7 U.S.C. S 1A.

S 4. Section 2101 of the insurance law is amended by adding two new subsections (w) and (x) to read as follows:

(W) IN THIS ARTICLE, "STATE" MEANS THE DISTRICT OF COLUMBIA OR ANY STATE OR TERRITORY OF THE UNITED STATES.

(X) IN THIS ARTICLE, WITH RESPECT TO EXCESS LINE INSURANCE AND EXCESS LINE BROKERS:

(1) WITH RESPECT TO AN INSURED'S HOME STATE, "AFFILIATED GROUP" MEANS ANY GROUP OF ENTITIES THAT ARE ALL AFFILIATED. FOR THE PURPOSES OF THIS PARAGRAPH:

(A) "AFFILIATE" MEANS, WITH RESPECT TO AN INSURED, ANY ENTITY THAT CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH THE INSURED; AND

(B) AN ENTITY HAS CONTROL OVER ANOTHER ENTITY IF THE ENTITY:

(I) DIRECTLY OR INDIRECTLY OR ACTING THROUGH ONE OR MORE OTHER PERSONS OWNS, CONTROLS, OR HAS THE POWER TO VOTE TWENTY-FIVE PERCENT OR MORE OF ANY CLASS OF VOTING SECURITIES OF THE OTHER ENTITY; OR

(II) CONTROLS IN ANY MANNER THE ELECTION OF A MAJORITY OF THE DIRECTORS OR TRUSTEES OF THE OTHER ENTITY;

(2) "EXEMPT COMMERCIAL PURCHASER" MEANS ANY PERSON PURCHASING COMMERCIAL INSURANCE THAT, AT THE TIME OF PLACEMENT, MEETS THE FOLLOWING REQUIREMENTS:

(A) THE PERSON EMPLOYS OR RETAINS A QUALIFIED RISK MANAGER TO NEGOTIATE INSURANCE COVERAGE;

(B) THE PERSON HAS PAID AGGREGATE NATIONWIDE COMMERCIAL PROPERTY/CASUALTY INSURANCE PREMIUMS IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS IN THE IMMEDIATELY PRECEDING TWELVE MONTHS; AND

(C) (I) THE PERSON MEETS AT LEAST ONE OF THE FOLLOWING CRITERIA:

(I) THE PERSON POSSESSES A NET WORTH IN EXCESS OF TWENTY MILLION DOLLARS, AS SUCH AMOUNT IS ADJUSTED PURSUANT TO ITEM (II) OF THIS SUBPARAGRAPH;

(II) THE PERSON GENERATES ANNUAL REVENUES IN EXCESS OF FIFTY MILLION DOLLARS, AS SUCH AMOUNT IS ADJUSTED PURSUANT TO ITEM (II) OF THIS SUBPARAGRAPH;

(III) THE PERSON EMPLOYS MORE THAN FIVE HUNDRED FULL-TIME OR FULL-TIME EQUIVALENT EMPLOYEES PER INDIVIDUAL INSURED OR IS A MEMBER OF AN AFFILIATED GROUP EMPLOYING MORE THAN ONE THOUSAND EMPLOYEES IN THE AGGREGATE;

(IV) THE PERSON IS A NOT-FOR-PROFIT ORGANIZATION OR PUBLIC ENTITY GENERATING ANNUAL BUDGETED EXPENDITURES OF AT LEAST THIRTY MILLION DOLLARS, AS SUCH AMOUNT IS ADJUSTED PURSUANT TO ITEM (II) OF THIS SUBPARAGRAPH; OR

(V) THE PERSON IS A MUNICIPALITY WITH A POPULATION IN EXCESS OF FIFTY THOUSAND PERSONS;

(II) EFFECTIVE ON THE FIFTH JANUARY FIRST OCCURRING AFTER JULY TWENTY-FIRST, TWO THOUSAND TEN AND EACH FIFTH JANUARY FIRST OCCURRING THEREAFTER, THE AMOUNTS IN CLAUSES (I), (II), AND (IV) OF ITEM (I) OF THIS SUBPARAGRAPH SHALL BE ADJUSTED TO REFLECT THE PERCENTAGE CHANGE FOR SUCH FIVE-YEAR PERIOD IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS PUBLISHED BY THE BUREAU OF LABOR STATISTICS OF THE UNITES STATES DEPARTMENT OF LABOR;

(3) "INSURED'S HOME STATE" MEANS:

(A) THE STATE IN WHICH AN INSURED MAINTAINS ITS PRINCIPAL PLACE OF BUSINESS OR, IN THE CASE OF AN INDIVIDUAL, THE INDIVIDUAL'S PRINCIPAL RESIDENCE;

(B) IF ONE HUNDRED PERCENT OF THE INSURED RISK IS LOCATED OUTSIDE OF THE STATE REFERRED TO IN SUBPARAGRAPH (A) OF THIS PARAGRAPH, THEN THE STATE TO WHICH THE GREATEST PERCENTAGE OF THE INSURED'S TAXABLE PREMIUM FOR THAT INSURANCE CONTRACT IS ALLOCATED;

(C) IF MORE THAN ONE INSURED FROM AN AFFILIATED GROUP ARE NAMED INSUREDS ON A SINGLE INSURANCE CONTRACT, THEN THE INSURED'S HOME STATE, AS DETERMINED PURSUANT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH, OF THE MEMBER OF THE AFFILIATED GROUP THAT HAS THE LARGEST PERCENTAGE OF PREMIUM ATTRIBUTED TO IT UNDER SUCH INSURANCE CONTRACT; OR

(D) IN THE CASE OF A GROUP POLICY:

(I) WHEN THE GROUP POLICYHOLDER PAYS ONE HUNDRED PERCENT OF THE PREMIUM FROM ITS OWN FUNDS, THEN THE INSURED'S HOME STATE, AS DETERMINED PURSUANT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH, OF THE GROUP POLICYHOLDER; OR

(II) WHEN THE GROUP POLICYHOLDER DOES NOT PAY ONE HUNDRED PERCENT OF THE PREMIUM FROM ITS OWN FUNDS, THEN THE HOME STATE, AS DETERMINED PURSUANT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH, OF THE GROUP MEMBER;

(4) WITH RESPECT TO DETERMINING AN INSURED'S HOME STATE, "PRINCIPAL PLACE OF BUSINESS" MEANS THE STATE WHERE:

(A) THE INSURED MAINTAINS ITS HEADQUARTERS AND WHERE THE INSURED'S HIGH-LEVEL OFFICERS DIRECT, CONTROL, AND COORDINATE THE BUSINESS ACTIVITIES; OR

(B) IF THE INSURED'S HIGH-LEVEL OFFICERS DIRECT, CONTROL, AND COORDINATE THE BUSINESS ACTIVITIES IN MORE THAN ONE STATE, OR IF THE INSURED'S PRINCIPAL PLACE OF BUSINESS IS LOCATED OUTSIDE ANY STATE, THEN THE STATE TO WHICH THE GREATEST PERCENTAGE OF THE INSURED'S TAXABLE PREMIUM FOR THAT INSURANCE CONTRACT IS ALLOCATED;

(5) WITH RESPECT TO DETERMINING AN INSURED'S HOME STATE, "PRINCIPAL RESIDENCE" MEANS THE STATE:

(A) WHERE THE INDIVIDUAL RESIDES FOR THE GREATEST NUMBER OF DAYS DURING A CALENDAR YEAR; OR

(B) IF THE INSURED'S PRINCIPAL RESIDENCE IS LOCATED OUTSIDE ANY STATE, THE STATE TO WHICH THE GREATEST PERCENTAGE OF THE INSURED'S TAXABLE PREMIUM FOR THAT INSURANCE CONTRACT IS ALLOCATED;

(6) "PROPERTY/CASUALTY INSURANCE" MEANS ANY KIND OF INSURANCE AS SPECIFIED IN SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER, EXCEPT INSURANCE ISSUED PURSUANT TO PARAGRAPH ONE, TWO, THREE, FIFTEEN, EIGHTEEN OR THIRTY-ONE OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER OR INSURANCE SUBSTANTIALLY SIMILAR THERETO; AND

(7) WITH RESPECT TO AN EXEMPT COMMERCIAL PURCHASER, "QUALIFIED RISK MANAGER" MEANS, WITH RESPECT TO A POLICYHOLDER OF COMMERCIAL INSURANCE, A PERSON WHO MEETS ALL OF THE FOLLOWING REQUIREMENTS:

(A) THE PERSON IS AN EMPLOYEE OF, OR THIRD-PARTY CONSULTANT RETAINED BY, THE COMMERCIAL POLICYHOLDER;

(B) THE PERSON PROVIDES SKILLED SERVICES IN LOSS PREVENTION, LOSS REDUCTION, OR RISK AND INSURANCE COVERAGE ANALYSIS, AND PURCHASE OF INSURANCE;

(C) THE PERSON:

(I)(I) HAS A BACHELOR'S DEGREE OR HIGHER FROM AN ACCREDITED COLLEGE OR UNIVERSITY IN RISK MANAGEMENT, BUSINESS ADMINISTRATION, FINANCE, ECONOMICS, OR ANY OTHER FIELD DETERMINED BY THE SUPERINTENDENT TO DEMONSTRATE MINIMUM COMPETENCE IN RISK MANAGEMENT; AND

(II)(AA) HAS THREE YEARS OF EXPERIENCE IN RISK FINANCING, CLAIMS ADMINISTRATION, LOSS PREVENTION, RISK AND INSURANCE ANALYSIS, OR PURCHASING COMMERCIAL LINES OF INSURANCE; OR

(BB) HAS:

(AAA) A DESIGNATION AS A CHARTERED PROPERTY AND CASUALTY UNDERWRITER (IN THIS CLAUSE REFERRED TO AS A "CPCU") ISSUED BY THE AMERICAN INSTITUTE FOR CPCU/INSURANCE INSTITUTE OF AMERICA;

(BBB) A DESIGNATION AS AN ASSOCIATE IN RISK MANAGEMENT (ARM) ISSUED BY THE AMERICAN INSTITUTE FOR CPCU/INSURANCE INSTITUTE OF AMERICA;

(CCC) A DESIGNATION AS CERTIFIED RISK MANAGER (CRM) ISSUED BY THE NATIONAL ALLIANCE FOR INSURANCE EDUCATION & RESEARCH;

(DDD) A DESIGNATION AS A RISK AND INSURANCE MANAGEMENT SOCIETY (RIMS) FELLOW (RF) ISSUED BY THE GLOBAL RISK MANAGEMENT INSTITUTE; OR

(EEE) ANY OTHER DESIGNATION, CERTIFICATION, OR LICENSE DETERMINED BY THE SUPERINTENDENT TO DEMONSTRATE MINIMUM COMPETENCY IN RISK MANAGEMENT;

(II) (I) HAS AT LEAST SEVEN YEARS OF EXPERIENCE IN RISK FINANCING, CLAIMS ADMINISTRATION, LOSS PREVENTION, RISK AND INSURANCE COVERAGE ANALYSIS, OR PURCHASING COMMERCIAL LINES OF INSURANCE; AND

(II) HAS ANY ONE OF THE DESIGNATIONS SPECIFIED IN SUBCLAUSES (AAA) THROUGH (EEE) OF SUBITEM (BB) OF CLAUSE (II) OF ITEM (I) OF THIS SUBPARAGRAPH;

(III) HAS AT LEAST TEN YEARS OF EXPERIENCE IN RISK FINANCING, CLAIMS ADMINISTRATION, LOSS PREVENTION, RISK AND INSURANCE COVERAGE ANALYSIS, OR PURCHASING COMMERCIAL LINES OF INSURANCE; OR

(IV) HAS A GRADUATE DEGREE FROM AN ACCREDITED COLLEGE OR UNIVERSITY IN RISK MANAGEMENT, BUSINESS ADMINISTRATION, FINANCE, ECONOMICS, OR ANY OTHER FIELD DETERMINED BY THE SUPERINTENDENT TO DEMONSTRATE MINIMUM COMPETENCE IN RISK MANAGEMENT.

S 5. Paragraphs 7 and 8 of subsection (c) of section 2101 of the insurance law, as added by chapter 687 of the laws of 2003, are amended and a new paragraph 9 is added to read as follows:

(7) a person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state; [or]

(8) a person who is not a resident of this state who sells, solicits or negotiates a contract for commercial property/casualty risks to an insured with risks located in more than one state insured under that contract, provided that such person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state[.]; OR

(9) A PERSON WHO IS NOT A RESIDENT OF THIS STATE WHO SELLS, SOLICITS OR NEGOTIATES A CONTRACT OF PROPERTY/CASUALTY INSURANCE, AS DEFINED IN PARAGRAPH SIX OF SUBSECTION (X) OF THIS SECTION, OF AN INSURER NOT AUTHORIZED TO DO BUSINESS IN THIS STATE, PROVIDED THAT: (A) THE INSURED'S HOME STATE IS A STATE OTHER THAN THIS STATE; AND (B) SUCH PERSON IS OTHERWISE LICENSED TO SELL, SOLICIT OR NEGOTIATE EXCESS LINE INSURANCE IN THE INSURED'S HOME STATE.

S 6. Paragraphs 9 and 10 of subsection (k) of section 2101 of the insurance law, as added by chapter 687 of the laws of 2003, are amended and a new paragraph 11 is added to read as follows:

(9) a person who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property/casualty risks to an insured with risks located in more than one state insured under that contract, provided that such person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state; [or]

(10) any salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of

the subsidiaries or business affiliates of the employer, provided that the employee does not sell or solicit insurance or receive a commission[.]; OR

(11) A PERSON WHO IS NOT A RESIDENT OF THIS STATE WHO SELLS, SOLICITS OR NEGOTIATES A CONTRACT OF PROPERTY/CASUALTY INSURANCE, AS DEFINED IN PARAGRAPH SIX OF SUBSECTION (X) OF THIS SECTION, OF AN INSURER NOT AUTHORIZED TO DO BUSINESS IN THIS STATE, PROVIDED THAT: (A) THE INSURED'S HOME STATE IS A STATE OTHER THAN THIS STATE; AND (B) SUCH PERSON IS OTHERWISE LICENSED TO SELL, SOLICIT OR NEGOTIATE EXCESS LINE INSURANCE IN THE INSURED'S HOME STATE.

S 7. Section 2105 of the insurance law is amended by adding a new subsection (i) to read as follows:

(I) PURSUANT TO SUBSECTION (A) OF THIS SECTION, AN EXCESS LINE BROKER MAY PROCURE POLICIES OF SALARY PROTECTION INSURANCE FROM INSURERS THAT ARE NOT AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE.

S 8. Paragraph 1 of subsection (a) of section 2102 of the insurance law, as amended by chapter 499 of the laws of 2009, is amended to read as follows:

(1) (A) No person, firm, association or corporation shall act as an insurance producer, insurance adjuster or life settlement broker in this state without having authority to do so by virtue of a license issued and in force pursuant to the provisions of this chapter.

(B) NO PERSON, FIRM, ASSOCIATION OR CORPORATION SHALL ACT AS AN EXCESS LINE BROKER IN THIS STATE WITHOUT HAVING AUTHORITY TO DO SO BY VIRTUE OF A LICENSE ISSUED AND IN FORCE PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FIVE OF THIS ARTICLE, PROVIDED, HOWEVER, THAT SUCH PERSON, FIRM, ASSOCIATION OR CORPORATION SHALL NOT BE REQUIRED TO BE LICENSED AS AN EXCESS LINE BROKER WHERE THE INSURED'S HOME STATE IS A STATE OTHER THAN THIS STATE AND SUCH PERSON, FIRM, ASSOCIATION OR CORPORATION IS OTHERWISE LICENSED TO SELL, SOLICIT OR NEGOTIATE EXCESS LINE INSURANCE IN THE INSURED'S HOME STATE.

S 9. Subsection (a) of section 2105 of the insurance law, as amended by chapter 626 of the laws of 2006, is amended to read as follows:

(a) The superintendent may issue an excess line broker's license to any person, firm, association or corporation who or which [is domiciled or maintains an office in this state and] is licensed as an insurance broker under section two thousand one hundred four of this article, or who or which is licensed as an excess line broker in the licensee's home state, provided, however, that the applicant's home state grants non-resident licenses to residents of this state on the same basis, except that reciprocity is not required in regard to the placement of liability insurance on behalf of a purchasing group or any of its members; authorizing such person, firm, association or corporation to procure, subject to the restrictions herein provided, policies of insurance from insurers which are not authorized to transact business in this state of the kind or kinds of insurance specified in paragraphs four through fourteen, sixteen, seventeen, nineteen, twenty, twenty-two, twenty-seven, twenty-eight and thirty-one of subsection (a) of section one thousand one hundred thirteen of this chapter and in subsection (h) of this section, provided, however, that the provisions of this section and section two thousand one hundred eighteen of this article shall not apply to ocean marine insurance and other contracts of insurance enumerated in subsections (b) and (c) of section two thousand one hundred seventeen of this article. Such license may be suspended or revoked by the superintendent whenever in his OR HER judgment such suspension or revocation will best promote the interests of the people of this state.

S 10. Section 2117 of the insurance law is amended by adding a new subsection (j) to read as follows:

(J) NOTHING IN THIS SECTION SHALL PROHIBIT A PERSON WHO IS NOT A RESIDENT OF THIS STATE FROM SELLING, SOLICITING OR NEGOTIATING A PROPERTY/CASUALTY INSURANCE CONTRACT OF AN INSURER NOT AUTHORIZED TO DO BUSINESS IN THIS STATE, PROVIDED THAT: (1) THE INSURED'S HOME STATE IS A STATE OTHER THAN THIS STATE; AND (2) THE PERSON IS LICENSED TO SELL, SOLICIT OR NEGOTIATE EXCESS LINE INSURANCE IN THE INSURED'S HOME STATE.

S 11. Paragraphs 8 and 9 of subsection (b) of section 2118 of the insurance law are REPEALED.

S 12. Subparagraph (A) of paragraph 3 of subsection (b) of section 2118 of the insurance law, as amended by chapter 498 of the laws of 1996, is amended and a new subparagraph (F) is added to read as follows:

(A) [The] EXCEPT AS PROVIDED IN SUBPARAGRAPH (F) OF THIS PARAGRAPH, submission of insurance documents to the excess line association shall be accompanied by a statement subscribed to, and affirmed by, the licensee or sublicensee as true under the penalties of perjury that, after diligent effort, the full amount of insurance required could not be procured, from authorized insurers, each of which is authorized to write insurance of the kind requested and which the licensee has reason to believe might consider writing the type of coverage or class of insurance involved, and further showing that the amount of insurance procured from an unauthorized insurer is only the excess over the amount procurable from an authorized insurer. The licensee, however, shall be excused from affirming that a diligent effort, as defined above, was made to procure the coverage from authorized insurers if the licensee's affidavit is accompanied by the affidavit of another broker involved in the placement affirming as true under the penalties of perjury that, after diligent effort by the affirming broker, the required insurance could not be procured from an authorized insurer which the affirming broker had reason to believe might consider writing the type of coverage or class of insurance involved. The licensee and the affirming broker shall be excused from affirming that a diligent effort was made if the superintendent determines, pursuant to paragraph four of this subsection, that no declinations are required.

(F) A LICENSEE SEEKING TO PROCURE OR PLACE INSURANCE IN THIS STATE FOR AN EXEMPT COMMERCIAL PURCHASER SHALL NOT BE REQUIRED TO SATISFY ANY REQUIREMENT OF THIS STATE TO MAKE A DUE DILIGENCE SEARCH TO DETERMINE WHETHER THE FULL AMOUNT OR TYPE OF INSURANCE SOUGHT BY THE EXEMPT COMMERCIAL PURCHASER CAN BE OBTAINED FROM AUTHORIZED INSURERS IF:

(I) THE LICENSEE PROCURING OR PLACING THE EXCESS LINE INSURANCE HAS DISCLOSED TO THE EXEMPT COMMERCIAL PURCHASER THAT THE INSURANCE MAY OR MAY NOT BE AVAILABLE FROM THE AUTHORIZED MARKET THAT MAY PROVIDE GREATER PROTECTION WITH MORE REGULATORY OVERSIGHT; AND

(II) THE EXEMPT COMMERCIAL PURCHASER HAS SUBSEQUENTLY REQUESTED IN WRITING THAT THE LICENSEE PROCURE OR PLACE THE INSURANCE FROM AN UNAUTHORIZED INSURER.

S 13. Paragraph 1 of subsection (d) of section 2118 of the insurance law, as amended by chapter 190 of the laws of 1990, is amended to read as follows:

(1) [Every] WHERE THIS STATE IS THE INSURED'S HOME STATE, A person, firm, association or corporation licensed pursuant to the provisions of section two thousand one hundred five of this article shall pay to the superintendent a sum equal to three and six-tenths percent of the gross premiums charged the insureds by the insurers for insurance procured by such licensee pursuant to such license, less the amount of such premiums

returned to such insureds. [Where the insurance covers property or risks located or resident both in and out of this state, the sum payable shall be computed on that portion of the gross premiums allocated to this state pursuant to subsection (b) of section nine thousand one hundred two of this chapter less the amount of gross premiums allocated to this state and returned to the insured.]

S 14. Section 9102 of the insurance law, as amended by chapter 190 of the laws of 1990, subsection (c) as amended by chapter 73 of the laws of 1991, is amended to read as follows:

S 9102. Allocation of premiums. [(a)] In determining the amount of direct premiums taxable in this state, all such premiums written, procured, or received in this state shall be deemed written on property or risks located or resident in this state except such premiums properly allocated and reported as taxable premiums of any other state or states.

[(b) (1) In determining the amount of gross premiums taxable in this state pursuant to paragraph one of subsection (d) of section two thousand one hundred eighteen of this chapter, where a placement of excess line insurance covers property or risks located or resident both in and out of this state, the sum paid to the superintendent shall be computed on that portion of the policy premium that is attributable to property or risks located or resident in this state, as determined by reference to an allocation schedule prescribed by the superintendent in a regulation.

(2) If the allocation schedule does not identify a classification appropriate to the property or risk being insured, an alternative method of equitable allocation shall be used for such coverage. In that circumstance, documented evidence of the underwriting bases and other criteria used by the insurer shall be given significant weight by the superintendent.

(3) The licensee shall report the method of allocation utilized in a form and in a manner prescribed by the superintendent in a regulation. Where the licensee bases the allocation on an alternative method of equitable allocation, such licensee shall provide additional information in support of the allocation as the superintendent may require.

(4) If the superintendent reasonably determines that the information provided is insufficient to substantiate the method of allocation or that the method used is incorrect, the superintendent shall determine the sum to be paid in accordance with the method prescribed by the superintendent in the regulation. The superintendent's determination of the sum to be paid shall finally and irrevocably fix the tax unless, within thirty days of notification of the superintendent's determination, the licensee requests a hearing to dispute such determination.

(c) (1) Any licensee who allocated the premium tax for any of the six years prior to the effective date of this subsection shall not be liable for the payment of any additional premium tax that would have been due had the licensee not allocated, unless the superintendent determines that the method of allocation was inequitable.

(2) The superintendent's determination under this subsection shall be in accordance with the procedures in paragraph four of subsection (b) of this section. Documented evidence of the underwriting bases and other criteria used by the insurer shall be given significant weight by the superintendent.

(3) Nothing in this subsection shall entitle a licensee to a refund of taxes previously paid.]

S 15. Subdivision (c) of section 1550 of the tax law, as added by chapter 190 of the laws of 1990, is amended to read as follows:

(c) The term "taxable insurance contract" means a contract of insurance of the [type] KIND described in [paragraphs four through fourteen, sixteen, seventeen, nineteen, twenty and twenty-two of] subsection (a) of section [one thousand one hundred thirteen] TWO THOUSAND ONE HUNDRED FIVE of the insurance law [that covers risks located or resident within this state].

S 16. Section 1550 of the tax law is amended by adding a new subdivision (d) to read as follows:

(D) THE TERM "HOME STATE" MEANS:

(1) IN GENERAL. EXCEPT AS PROVIDED IN PARAGRAPHS TWO AND THREE OF THIS SUBDIVISION, THE TERM "HOME STATE" MEANS, WITH RESPECT TO AN INSURED:

(A) THE STATE IN WHICH AN INSURED MAINTAINS ITS PRINCIPAL PLACE OF BUSINESS OR, IN THE CASE OF AN INDIVIDUAL, THE INDIVIDUAL'S PRINCIPAL RESIDENCE;

(B) IF ONE HUNDRED PERCENT OF THE INSURED RISK IS LOCATED OUT OF THE STATE REFERRED TO IN SUBPARAGRAPH (A) OF THIS PARAGRAPH, THE STATE TO WHICH THE GREATEST PERCENTAGE OF THE INSURED'S TAXABLE PREMIUM FOR THAT INSURANCE CONTRACT IS ALLOCATED;

(C) IF MORE THAN ONE INSURED FROM AN AFFILIATED GROUP, AS DEFINED IN SECTION TWO THOUSAND ONE HUNDRED ONE OF THE INSURANCE LAW, ARE NAMED INSUREDS ON A SINGLE INSURANCE CONTRACT, THE HOME STATE OF THE MEMBER OF THE AFFILIATED GROUP THAT HAS THE LARGEST PERCENTAGE OF PREMIUM ATTRIBUTED TO IT UNDER SUCH INSURANCE CONTRACT; OR

(D) IN THE CASE OF A GROUP POLICY:

(I) IF THE GROUP POLICYHOLDER PAYS ONE HUNDRED PERCENT OF THE PREMIUM FROM ITS OWN FUNDS, THE HOME STATE, AS DETERMINED PURSUANT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH, OF THE GROUP POLICYHOLDER; OR

(II) IF THE GROUP POLICYHOLDER DOES NOT PAY ONE HUNDRED PERCENT OF THE PREMIUM FROM ITS OWN FUNDS, THE HOME STATE, AS DETERMINED PURSUANT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH, OF THE GROUP MEMBER;

(2) "PRINCIPAL PLACE OF BUSINESS" MEANS, WITH RESPECT TO DETERMINING THE HOME STATE OF THE INSURED, THE STATE WHERE:

(A) THE INSURED MAINTAINS ITS HEADQUARTERS AND WHERE THE INSURED'S HIGH-LEVEL OFFICERS DIRECT, CONTROL AND COORDINATE THE BUSINESS ACTIVITIES; OR

(B) IF THE INSURED'S HIGH-LEVEL OFFICERS DIRECT, CONTROL AND COORDINATE THE BUSINESS ACTIVITIES IN MORE THAN ONE STATE, OR IF THE INSURED'S PRINCIPAL PLACE OF BUSINESS IS LOCATED OUTSIDE ANY STATE, THE STATE TO WHICH THE GREATEST PERCENTAGE OF THE INSURED'S TAXABLE PREMIUM FOR THAT INSURANCE CONTRACT IS ALLOCATED.

(3) "PRINCIPAL RESIDENCE" MEANS, WITH RESPECT TO DETERMINING THE HOME STATE OF THE INSURED, THE STATE WHERE:

(A) THE INSURED RESIDES FOR THE GREATEST NUMBER OF DAYS DURING A CALENDAR YEAR; OR

(B) IF THE INSURED'S PRINCIPAL RESIDENCE IS LOCATED OUTSIDE ANY STATE, THE STATE TO WHICH THE GREATEST PERCENTAGE OF THE INSURED'S TAXABLE PREMIUM FOR THAT INSURANCE CONTRACT IS ALLOCATED.

S 17. Section 1551 of the tax law, as amended by chapter 73 of the laws of 1991, is amended to read as follows:

S 1551. Imposition of tax. There is hereby imposed on any person WHOSE HOME STATE IS NEW YORK AND who purchases or renews a taxable insurance contract from an insurer not authorized to transact business in this state under a certificate of authority from the superintendent of insurance a tax at the rate of three and six-tenths percent of the premiums paid or to be paid, less returns thereon, for such insurance.

Nothing in this article modifies or abrogates any provision of the insurance law.

S 18. Section 1552 of the tax law, as added by chapter 190 of the laws of 1990, is amended to read as follows:

S 1552. Allocation. Where the taxable insurance contract covers risks located or resident both within and without this state[, the amount of premiums allocable to risks resident or located within this state shall be determined pursuant to rules and regulations of the commissioner of taxation and finance. In promulgating such rules and regulations, the commissioner of taxation and finance shall give due consideration to the rules and regulations promulgated by the superintendent of insurance pursuant to subsection (b) of section nine thousand one hundred two of the insurance law] AND THE TAXPAYER'S HOME STATE IS NEW YORK, ONE HUNDRED PERCENT OF PREMIUMS SHALL BE ALLOCABLE TO THIS STATE.

S 19. This act shall take effect July 21, 2011; provided, however, that:

(1) sections one and three of this act shall take effect July 16, 2011;

(2) the amendments to subsection (b) of section 2118 of the insurance law made by section twelve of this act shall not affect the expiration and reversion of such subsection and shall be deemed to expire therewith;

(3) sections thirteen and fourteen of this act shall apply to insurance contracts that have an effective date on or after July 21, 2011 and sections fifteen through eighteen of this act shall apply to taxable insurance contracts that have an effective date on or after July 21, 2011; and

(4) effective immediately, the addition, amendment, or repeal of any rules and regulations necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.

PART J

Section 1. Section 51 of chapter 298 of the laws of 1985, amending the tax law relating to the franchise tax on banking corporations imposed by the tax law, authorized to be imposed by any city having a population of one million or more by chapter 772 of the laws of 1966 and imposed by the administrative code of the city of New York and relating to other provisions of the tax law, chapter 883 of the laws of 1975 and the administrative code of the city of New York which relates to such franchise tax, as amended by chapter 67 of the laws of 2010, is amended to read as follows:

S 51. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 1985[, except that:

(a) sections one through eight shall not apply to taxable years beginning on or after January 1, 2011;

(b) sections nine, twelve, the amendment made to paragraph 9 of subsection (a) of section 1452 of the tax law by section thirteen, sections fifteen, sixteen, eighteen, nineteen, twenty, twenty-three, twenty-seven, thirty and thirty-two, the amendment made to paragraph 9 of subdivision (a) of section 11-640 of the administrative code of the city of New York by section thirty-three, sections thirty-five, thirty-six, thirty-eight, thirty-nine, forty, and forty-five shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after January 1, 2011.

(c) sections twenty-one, twenty-two, twenty-four, forty-one and forty-two shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after January 1, 2011, provided, however, that the provisions of such sections which relate to the alternative minimum tax measured by taxable assets shall continue to apply to all taxpayers for taxable years beginning on or after January 1, 2011;

(d) the amendment to the section heading and the opening paragraph of section 11-643.3 of the administrative code of the city of New York made by section forty-three shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after January 1, 2011 with respect to those provisions of such section 11-643.3 which relate to the basic tax measured by entire net income; and

(e) section twenty-eight, and the addition of new section 11-643.5 of the administrative code of the city of New York made by section forty-four shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after January 1, 2011, provided, however, that the provisions of such sections which relate to the alternative minimum taxes measured by assets, issued capital stock and one hundred twenty-five dollars shall continue to apply to all taxpayers for taxable years beginning on or after January 1, 2011].

S 2. Subdivisions (d) and (f) of section 110 of chapter 817 of the laws of 1987, amending the tax law and the environmental conservation law, constituting the business tax reform and rate reduction act of 1987, as amended by chapter 67 of the laws of 2010, are amended to read as follows:

(d) The provisions of section sixty-seven of this act except insofar as it amends paragraph 10 of subsection (b) of section 1453 of the tax law, seventy-one and seventy-four shall apply to taxable years beginning after December 31, 1986[, provided, however, that new paragraphs 11 and 12 of subsection (b) of section 1453 of the tax law as added by section sixty-seven of this act, the amendments made by section seventy-one of this act, and new subsection (i) of section 1453 of the tax law as added by section seventy-four of this act shall not apply to taxable years beginning on or after January 1, 2011];

(f) The provisions of section one hundred four of this act shall apply to taxable years beginning after December 31, 1986[, and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after January 1, 2011, provided, however, that the provisions of such section which relate to the alternative minimum tax measured by taxable assets shall continue to apply to all taxpayers for taxable years beginning on or after January 1, 2011].

S 3. Subdivisions (c) and (d) of section 68 of chapter 525 of the laws of 1988, amending the tax law and the administrative code of the city of New York relating to the imposition of taxes in the city of New York, as amended by chapter 67 of the laws of 2010, are amended to read as follows:

(c) The provisions of sections one, thirty-one, thirty-two, thirty-three, thirty-six, thirty-seven, forty through forty-five, forty-seven and forty-eight of this act shall apply to taxable years beginning after December 31, 1986[, provided, however, that the amendments made by sections thirty-six and forty-one of this act, and new subdivision (i) of section 11-641 of the administrative code of the city of New York as

added by section forty-four of this act shall not apply to taxable years beginning on or after January 1, 2011];

(d) The provisions of section forty-six of this act shall apply to taxable years beginning after December 31, 1986[, and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after January 1, 2011, provided, however, that the provisions of such section which relate to the alternative minimum tax measured by taxable assets shall continue to apply to all taxpayers for taxable years beginning on or after January 1, 2011];

S 4. Paragraphs 1 and 2 of subsection (m) of section 1452 of the tax law, as amended by chapter 24 of the laws of 2010, are amended to read as follows:

(1) Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a corporation that was in existence before January first, two thousand [ten] ELEVEN and was subject to tax under article nine-A of this chapter for its last taxable year beginning before January first, two thousand [ten] ELEVEN, shall continue to be taxable under such article for all taxable years beginning on or after January first, two thousand [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN. The preceding sentence shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subsection (a) of this section. Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a banking corporation or corporation that was in existence before January first, two thousand [ten] ELEVEN and was subject to tax under this article for its last taxable year beginning before January first, two thousand [ten] ELEVEN, shall continue to be taxable under this article for all taxable years beginning on or after January first, two thousand [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN or in which the corporation satisfies the requirements for a corporation to elect to be taxable under this article. Provided further, that nothing in this subsection shall prohibit a corporation that elected pursuant to subsection (d) of this section to be taxable under article nine-A of this chapter from revoking that election in accordance with such subsection (d).

For purposes of this paragraph, a corporation shall be considered to be subject to tax under article nine-A of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to section two hundred eleven of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this article for a taxable year if such corporation was not a taxpayer but was properly included in a combined return filed pursuant to subsection (f) or (g) of section fourteen hundred sixty-two of this article for such taxable year. A corporation that was in existence before January first, two thousand [ten] ELEVEN but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN, shall be considered for purposes of this paragraph to have been subject to tax under article nine-A of this chapter for its last taxable year beginning before January first, two thousand [ten] ELEVEN if such corporation would have been subject to tax under such article for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand [ten] ELEVEN but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand [ten] ELEVEN and

before January first, two thousand [eleven] THIRTEEN, shall be considered for purposes of this paragraph to have been subject to tax under this article for its last taxable year beginning before January first, two thousand [ten] ELEVEN if such corporation would have been subject to tax under this article for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a corporation formed on or after January first, two thousand [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN may elect to be subject to tax under this article or under article nine-A of this chapter for its first taxable year beginning on or after January first, two thousand [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section, or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subsection (a) of this section or in subsection (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section 368 of the internal revenue code of 1986, as amended, of a corporation described in paragraph one of this subsection if both corporations were sixty-five percent or more owned or controlled, directly or indirectly, by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return (determined with regard to extensions of time for filing) for the applicable taxable year. The election to be taxed under article nine-A of this chapter shall be made by the taxpayer by filing the report required pursuant to section two hundred eleven of this chapter and the election to be taxed under this article shall be made by the taxpayer by filing the return required pursuant to section fourteen hundred sixty-two of this article. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN, provided that the stock ownership and activities requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

S 5. Paragraphs 1 and 2 of subdivision (l) of section 11-640 of the administrative code of the city of New York, as amended by chapter 24 of the laws of 2010, are amended to read as follows:

(1) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation that was in existence before January first, two thousand [ten] ELEVEN and was subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand [ten] ELEVEN, shall continue to be taxable under such subchapter for all taxable years beginning on or after January first, two thousand [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN. The preceding sentence shall not apply to any taxable year during which such corpo-

ration is a banking corporation described in paragraphs one through eight of subdivision (a) of this section. Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a banking corporation or corporation that was in existence before January first, two thousand [ten] ELEVEN and was subject to tax under this subchapter for its last taxable year beginning before January first, two thousand [ten] ELEVEN, shall continue to be taxable under this subchapter for all taxable years beginning on or after January first, two thousand [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN or in which the corporation satisfies the requirements for a corporation to elect to be taxable under this subchapter. Provided further, that nothing in this subdivision shall prohibit a corporation that elected pursuant to subdivision (d) of this section to be taxable under subchapter two of this chapter from revoking that election in accordance with subdivision (d) of this section. For purposes of this paragraph, a corporation shall be considered to be subject to tax under subchapter two of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision four of section 11-605 of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this subchapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision (f) or (g) of section 11-646 of this part for such taxable year. A corporation that was in existence before January first, two thousand [ten] ELEVEN but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN, shall be considered for purposes of this paragraph to have been subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand [ten] ELEVEN if such corporation would have been subject to tax under such subchapter for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand [ten] ELEVEN but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN, shall be considered for purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year beginning before January first, two thousand [ten] ELEVEN if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation formed on or after January first, two thousand [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN may elect to be subject to tax under this subchapter or under subchapter two of this chapter for its first taxable year beginning on or after January first, two thousand [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs

one through eight of subdivision (a) of this section or in subdivision (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section 368 of the internal revenue code of 1986, as amended, of a corporation described in paragraph one of this subdivision if both corporations were sixty-five percent or more owned or controlled, directly or indirectly by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return (determined with regard to extensions of time for filing) for the applicable taxable year. The election to be taxed under subchapter two of this chapter shall be made by the taxpayer by filing the return required pursuant to subdivision one of section 11-605 of this chapter and the election to be taxed under this subchapter shall be made by the taxpayer by filing the return required pursuant to subdivision (a) of section 11-646 of this part. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN, provided that the stock ownership and activities requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

S 6. Subparagraph (iv) of paragraph 2 of subdivision (f) of section 1462 of the tax law, as amended by chapter 24 of the laws of 2010, is amended to read as follows:

(iv) (A) Notwithstanding any provision of this paragraph, any bank holding company exercising its corporate franchise or doing business in the state may make a return on a combined basis without seeking the permission of the commissioner with any banking corporation exercising its corporate franchise or doing business in the state in a corporate or organized capacity sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company, for the first taxable year beginning on or after January first, two thousand and before January first, two thousand [eleven] THIRTEEN during which such bank holding company registers for the first time under the federal bank holding company act, as amended, and also elects to be a financial holding company. In addition, for each subsequent taxable year beginning after January first, two thousand and before January first, two thousand [eleven] THIRTEEN, any such bank holding company may file on a combined basis without seeking the permission of the commissioner with any banking corporation that is exercising its corporate franchise or doing business in the state and sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company if either such banking corporation is exercising its corporate franchise or doing business in the state in a corporate or organized capacity for the first time during such subsequent taxable year, or sixty-five percent or more of the voting stock of such banking corporation is owned or controlled, directly or indirectly, by such bank holding company for the first time during such subsequent taxable year. Provided however, for each subsequent taxable year beginning after January first, two thousand and before January first, two thousand [eleven] THIRTEEN, a banking corporation described in either of the two preceding sentences which filed on a combined basis with any such bank holding company in a previous taxable year, must continue to file on a combined basis with such bank holding company if such banking corporation, during

such subsequent taxable year, continues to exercise its corporate franchise or do business in the state in a corporate or organized capacity and sixty-five percent or more of such banking corporation's voting stock continues to be owned or controlled, directly or indirectly, by such bank holding company, unless the permission of the commissioner has been obtained to file on a separate basis for such subsequent taxable year. Provided further, however, for each subsequent taxable year beginning after January first, two thousand and before January first, two thousand [eleven] THIRTEEN, a banking corporation described in either of the first two sentences of this clause which did not file on a combined basis with any such bank holding company in a previous taxable year, may not file on a combined basis with such bank holding company during any such subsequent taxable year unless the permission of the commissioner has been obtained to file on a combined basis for such subsequent taxable year.

(B) Notwithstanding any provision of this paragraph other than clause (A) of this subparagraph, the commissioner may not require a bank holding company which, during a taxable year beginning on or after January first, two thousand and before January first, two thousand [eleven] THIRTEEN, registers for the first time during such taxable year under the federal bank holding company act, as amended, and also elects to be a financial holding company, to make a return on a combined basis for any taxable year beginning on or after January first, two thousand and before January first, two thousand [eleven] THIRTEEN with a banking corporation sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company.

S 7. Subparagraph (iv) of paragraph 2 of subdivision (f) of section 11-646 of the administrative code of the city of New York, as amended by chapter 24 of the laws of 2010, is amended to read as follows:

(iv) (A) Notwithstanding any provision of this paragraph, any bank holding company exercising its corporate franchise or doing business in the city may make a return on a combined basis without seeking the permission of the commissioner with any banking corporation exercising its corporate franchise or doing business in the city in a corporate or organized capacity sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company, for the first taxable year beginning on or after January first, two thousand and before January first, two thousand [eleven] THIRTEEN during which such bank holding company registers for the first time under the federal bank holding company act, as amended, and also elects to be a financial holding company. In addition, for each subsequent taxable year beginning after January first, two thousand and before January first, two thousand [eleven] THIRTEEN, any such bank holding company may file on a combined basis without seeking the permission of the commissioner with any banking corporation that is exercising its corporate franchise or doing business in the city and sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company if either such banking corporation is exercising its corporate franchise or doing business in the city in a corporate or organized capacity for the first time during such subsequent taxable year, or sixty-five percent or more of the voting stock of such banking corporation is owned or controlled, directly or indirectly, by such bank holding company for the first time during such subsequent taxable year. Provided however, for each subsequent taxable year beginning after January first, two thousand and before January first, two thousand [eleven] THIRTEEN, a banking corporation described in either of the two preceding

sentences which filed on a combined basis with any such bank holding company in a previous taxable year, must continue to file on a combined basis with such bank holding company if such banking corporation, during such subsequent taxable year, continues to exercise its corporate franchise or do business in the city in a corporate or organized capacity and sixty-five percent or more of such banking corporation's voting stock continues to be owned or controlled, directly or indirectly, by such bank holding company, unless the permission of the commissioner has been obtained to file on a separate basis for such subsequent taxable year. Provided further, however, for each subsequent taxable year beginning after January first, two thousand and before January first, two thousand [eleven] THIRTEEN, a banking corporation described in either of the first two sentences of this clause which did not file on a combined basis with any such bank holding company in a previous taxable year, may not file on a combined basis with such bank holding company during any such subsequent taxable year unless the permission of the commissioner has been obtained to file on a combined basis for such subsequent taxable year.

(B) Notwithstanding any provision of this paragraph other than clause (A) of this subparagraph, the commissioner may not require a bank holding company which, during a taxable year beginning on or after January first, two thousand and before January first, two thousand [eleven] THIRTEEN, registers for the first time during such taxable year under the federal bank holding company act, as amended, and also elects to be a financial holding company, to make a return on a combined basis for any taxable year beginning on or after January first, two thousand and before January first, two thousand [eleven] THIRTEEN with a banking corporation sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company.

S 8. This act shall take effect immediately.

PART K

Section 1. Paragraph b of subdivision 1, subdivisions 2, 6, 14, 22 and 23 of section 282 of the tax law, paragraph b of subdivision 1 and subdivision 14 as amended by chapter 245 of the laws of 1989, subdivision 2 as amended by chapter 509 of the laws of 1937, subdivision 6 as amended by chapter 261 of the laws of 1988 and subdivisions 22 and 23 as added by section 1 of part W-1 of chapter 109 of the laws of 2006, are amended to read as follows:

b. With respect to Diesel motor fuel, "distributor" means any person, firm, association or corporation (i) who or which imports or causes to be imported into the state, for use, distribution, storage or sale within the state, any Diesel motor fuel; (ii) who or which produces, refines, manufactures or compounds Diesel motor fuel within the state; (iii) [who or which engages in the enhancement of Diesel motor fuel in this state; (iv)] who or which makes a sale or use of Diesel motor fuel in this state other than: (A) a retail sale not in bulk or (B) the self-use of Diesel motor fuel which has been the subject of a retail sale to such person; [(v)] (IV) who or which is registered by the department [of taxation and finance] as a distributor of kero-jet fuel pursuant to the provisions of subdivision two of section two hundred eighty-two-a of this article. For the purposes of this article when used with respect to Diesel motor fuel, a "retail sale not in bulk" means the making or offering to make any sale of Diesel motor fuel to a consumer of such fuel which is delivered directly into a motor vehicle for use in the

operation of such vehicle. A "retail sale in bulk" means the making or offering to make any sale of Diesel motor fuel to a consumer which is other than a "retail sale not in bulk". Motor fuel or Diesel motor fuel brought into the state in the ordinary fuel tank connecting with the engine of a motor vehicle, aeroplane, motor boat or other conveyance propelled by the use of such motor fuel or Diesel motor fuel, and to be used only in the operation thereof, shall not be deemed imported within the meaning of this article, if not removed from such tank except as used in the propulsion of such engine.

2. "Motor fuel" means gasoline, benzol, REFORMULATED BLEND STOCK FOR OXYGENATE BLENDING, CONVENTIONAL BLEND STOCK FOR OXYGENATE BLENDING, E85, FUEL GRADE ETHANOL THAT MEETS THE ASTM INTERNATIONAL ACTIVE STANDARDS SPECIFICATIONS D4806 OR D4814 or other product[, except kerosene and crude oil,] which is suitable for use in operation of a motor vehicle engine[, but if kerosene or crude oil is compounded or mixed with any other product or products, and the resulting compound or mixture is suitable for use in the operation of any such motor vehicle engine, such resulting compound or mixture in its entirety shall be a "motor fuel."].

6. "Filling station" shall include any place, location or station where motor fuel [or], HIGHWAY Diesel motor fuel OR WATER-WHITE KEROSENE (EXCLUSIVELY FOR HEATING PURPOSES IN CONTAINERS OF NO MORE THAN TWENTY GALLONS), is offered for sale at retail.

14. "Diesel motor fuel" shall mean NO. 1 DIESEL FUEL, NO. 2 DIESEL FUEL, BIODIESEL, kerosene, crude oil, fuel oil or other middle distillate and also motor fuel suitable for use in the operation of an engine of the diesel type, excluding, however, any product specifically designated "No. 4 Diesel fuel" and not suitable as a fuel used in the operation of a motor vehicle engine.

22. "E85" means a [mixture consisting by volume of eighty-five percent] FUEL BLEND CONSISTING OF ethanol and [the remainder of which is] motor fuel, WHICH MEETS THE ASTM INTERNATIONAL ACTIVE STANDARD D5798 FOR FUEL ETHANOL.

23. "B20" means a mixture consisting by volume of twenty percent biodiesel and the remainder of which is diesel motor fuel. [For purposes of this subdivision "biodiesel"] "BIODIESEL" shall mean EITHER "QUALIFIED BIODIESEL" OR "UNQUALIFIED BIODIESEL." "QUALIFIED BIODIESEL" MEANS a diesel motor fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545) and that meets the [American Society for Testing and Materials D6751-02a Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels] ASTM INTERNATIONAL ACTIVE STANDARD D6751 FOR BIODIESEL FUEL. "UNQUALIFIED BIODIESEL" MEANS A DIESEL MOTOR FUEL SUBSTITUTE PRODUCED FROM NONPETROLEUM RENEWABLE RESOURCES THAT DOES NOT MEET THE ASTM INTERNATIONAL ACTIVE STANDARD D6751 FOR BIODIESEL FUEL.

S 1-a. Subdivision 15 of section 282 of the tax law is REPEALED.

S 2. Subdivision 16 of section 282 of the tax law is REPEALED and two new subdivisions 16 and 16-a are added to read as follows:

16. "NON-HIGHWAY DIESEL MOTOR FUEL" MEANS ANY DIESEL MOTOR FUEL THAT IS DESIGNATED FOR USE OTHER THAN ON A PUBLIC HIGHWAY (EXCEPT FOR THE USE OF THE PUBLIC HIGHWAY BY FARMERS TO REACH ADJACENT LANDS), AND IS DYED DIESEL MOTOR FUEL AS DEFINED IN SUBDIVISION EIGHTEEN-A OF THIS SECTION.

16-A. "HIGHWAY DIESEL MOTOR FUEL" MEANS ANY DIESEL MOTOR FUEL WHICH IS NOT NON-HIGHWAY DIESEL MOTOR FUEL.

S 3. Subdivision 18 of section 282 of the tax law, as added by chapter 302 of the laws of 2006, is renumbered subdivision 18-a and is amended to read as follows:

18-a. "Dyed Diesel motor fuel" means Diesel motor fuel which [is enhanced Diesel motor fuel and which] has been dyed in accordance with and for the purpose of complying with the provisions of 26 USC S4082(a) and the regulations thereunder, as may be amended from time to time.

S 4. Section 282 of the tax law is amended by adding a new subdivision 26 to read as follows:

26. "PUBLIC HIGHWAY" MEANS PUBLIC HIGHWAY AS DEFINED IN SUBDIVISION SIX OF SECTION FIVE HUNDRED ONE OF THIS CHAPTER.

S 5. Subdivisions 2, 3, 4 and 5 of section 282-a of the tax law, subdivision 2 and paragraph (b) of subdivision 3 as amended by chapter 245 of the laws of 1989, subdivisions 3, 4 and 5 as added by chapter 261 of the laws of 1988 and paragraph (c) of subdivision 3 as added by chapter 302 of the laws of 2006, are amended to read as follows:

2. No person shall [engage] SELL OR USE DIESEL MOTOR FUEL within this state [in the enhancement of Diesel motor fuel, make a sale or use of Diesel motor fuel] (other than a retail sale not in bulk or self-use of Diesel motor fuel which has been the subject of a retail sale), import or cause the importation of Diesel motor fuel into the state or produce, refine, manufacture or compound Diesel motor fuel within the state unless such person shall be registered by the department [of taxation and finance] as a distributor of Diesel motor fuel. Provided, the commissioner [of taxation and finance] shall not register as a distributor of Diesel motor fuel any person who is engaged solely in one or both of the following: (i) any person who makes or offers to make a retail sale not in bulk of such fuel or (ii) any person who purchases Diesel motor fuel in bulk in this state for the sole purpose of self-use. The commissioner may, however, register as a distributor of kero-jet fuel only a fixed base operator who makes no sales of kero-jet fuel other than retail sales not in bulk delivered directly into the fuel tank of an airplane for use in the operation of such airplane and who makes no other sales of diesel motor fuel. Such registration shall apply only to the wholesale purchase of kero-jet fuel and the retail sale of such fuel not in bulk for delivery directly into the fuel tank of an airplane for use in the operation thereof. Provided, further, that if the commissioner is satisfied that full registration is not necessary in order to protect tax revenues, the commissioner may limit or modify the requirement of registration as a distributor with respect to any person otherwise required to register solely because such person engages in the sale of NON-HIGHWAY Diesel motor fuel where such person makes sales of NON-HIGHWAY Diesel motor fuel to the consumer solely for the purposes described in subparagraph (i) of paragraph (b) of subdivision three of this section, provided that if the commissioner so limits or modifies such registration requirement with respect to such person, then such registration shall apply only to the importation, sale and distribution of SUCH NON-HIGHWAY Diesel motor fuel [for the purposes described in such subparagraph (i)]. The commissioner [of taxation and finance] may also waive any other requirement imposed by this article on such a distributor. All the provisions of section two hundred eighty-three of this article shall apply to applicants for registration and registrants with respect to Diesel motor fuel, and, in addition, distributors with respect to Diesel motor fuel shall be subject to all other provisions of this article relating to distributors of motor fuel, including but not limited to, the keeping of records, the fixing, determination and

payment of tax and filing of returns. PROVIDED, FURTHER, THE COMMISSIONER MAY LIMIT OR MODIFY THE REQUIREMENT OF REGISTRATION AS A DISTRIBUTOR WITH RESPECT TO ANY PERSON WHO PRODUCES FOR SELF USE "UNQUALIFIED BIODIESEL."

3. (a) The tax imposed by this section shall not apply to the sale of untaxed Diesel motor fuel to or the use of such fuel by an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where such Diesel motor fuel is used by such organization for its own use or consumption.

(b) The tax on the [incident] INCIDENCE of sale or use imposed by subdivision one of this section shall not apply to: (i) the sale [to] or use [by the consumer of previously untaxed Diesel motor fuel which is not enhanced Diesel motor fuel and which is used exclusively for heating purposes or for the purpose of use or consumption directly and exclusively in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale,] OF NON-HIGHWAY DIESEL MOTOR FUEL, but only if all of such fuel is consumed other than on the PUBLIC highways of this state (EXCEPT FOR THE USE OF THE PUBLIC HIGHWAY BY FARMERS TO REACH ADJACENT FARMLANDS); provided, however, this exemption shall in no event apply to a sale of NON-HIGHWAY Diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle (EXCEPT FOR DELIVERY AT A FARM SITE WHICH QUALIFIES FOR THE EXEMPTION UNDER SUBDIVISION (G) OF SECTION THREE HUNDRED ONE-B OF THIS CHAPTER); or (ii) [the sale of previously untaxed Diesel motor fuel which is not enhanced Diesel motor fuel to a person registered under this article as a distributor of Diesel motor fuel other than (A) a retail sale to such person or (B) a sale to such person which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle; or (iii) a sale or use of enhanced Diesel motor fuel to or by a consumer exclusively for the purposes of heating specified in subparagraph (i) of this paragraph but only if such enhanced Diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel, provided that each delivery of such fuel of over four thousand five hundred gallons shall be evidenced by a certificate signed by the purchaser stating that the product will be used exclusively for heating purposes; or (iv) a sale or use consisting of no more than four thousand five hundred gallons of Diesel motor fuel in a thirty-day period to or by a consumer who purchases or uses such fuel for use or consumption directly and exclusively in the production for sale of tangible personal property by farming but only if all of such fuel is delivered on the farm site and is consumed other than on the highways of this state (except for the use of the highway to reach adjacent farmlands) provided, however, a farmer may purchase more than four thousand five hundred gallons of Diesel motor fuel in a thirty-day period for such use or consumption exempt from the tax in accordance with prior clearance given by the commissioner of taxation and finance; or (v)] a sale to the consumer consisting of not more than twenty gallons of water-white kerosene to be used and consumed exclusively for heating purposes; or [(vi)] (III) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for heat-

ing purposes in containers of no more than twenty gallons; or [(vii)] (IV) a sale of kero-jet fuel to an airline for use in its airplanes or a use of kero-jet fuel by an airline in its airplanes; or [(viii)] (V) a sale of kero-jet fuel by a registered distributor of Diesel motor fuel to a fixed base operator registered under this article as a distributor of kero-jet fuel only where such fixed base operator is engaged solely in making or offering to make retail sales not in bulk of kero-jet fuel directly into the fuel tank of an airplane for the purpose of operating such airplane; or [(ix)] (VI) a retail sale not in bulk of kero-jet fuel by a fixed base operator registered under this article as a distributor of kero-jet fuel only where such fuel is delivered directly into the fuel tank of an airplane for use in the operation of such airplane.

(c) [Limited exemptions for dyed Diesel motor fuel. (i) The tax imposed by this section shall not apply to: (A) the sale of dyed Diesel motor fuel by the importer to a purchaser under the circumstances and subject to the terms and conditions as follows: (1) the importer and purchaser are each registered under this article as a full Diesel motor fuel distributor; (2) such importer has imported the enhanced Diesel motor fuel, which is the subject of the sale, into the state and has dyed such fuel to comply with the provisions of 26 USC S 4082(a) and the regulations thereunder, as may be amended from time to time; (3) the purchaser is a holder of a currently valid direct payment permit issued pursuant to section two hundred eighty-three-d of this article; and (4) such purchaser is primarily engaged in the retail heating oil business and such dyed Diesel motor fuel will be sold by such purchaser in a retail sale to a consumer for use solely as residential or commercial heating oil; (B) a first sale of the dyed Diesel motor fuel, which as the subject of an exempt sale described in clause (A) of this subparagraph, by the purchaser described therein to a purchaser likewise holding a currently valid direct pay permit under the circumstances and subject to the terms and conditions as follows: (1) the sale of such second purchaser by such first purchaser is the first and only sale of such dyed Diesel motor fuel by such first purchaser; (2) such second purchaser is primarily engaged in the retail heating oil business and such dyed Diesel motor fuel will be sold by such second purchaser in a retail sale to a consumer for use solely as residential or commercial heating oil; (3) on the sale to the second purchaser, such first purchaser described in such clause (A) attaches to the invoice a copy of the invoice given by the importer on the exempt sale described in such clause (A), so as to identify the origin of the dyed Diesel fuel which is the subject of the sale to such second purchaser; and (4) such second purchaser certifies that such dyed Diesel motor fuel is to be sold by it only to a consumer for use solely as residential or commercial heating oil. (ii) Prior to, or at the time of, such sale of such dyed Diesel motor fuel described in clause (A) or (B) of subparagraph (i) of this paragraph, the purchaser shall give a certificate to the seller setting forth the intended use of the dyed Diesel motor fuel which is sought to be qualified for exemption under this paragraph, that the purchaser has been issued a direct payment permit which is currently valid, that such permit has not been suspended or revoked and that the purchaser otherwise meets the qualifications of this paragraph. (iii) The limited exemptions allowed under this paragraph shall in no event apply to any dyed Diesel motor fuel which is delivered into a repository equipped with hose or other apparatus capable of being used to dispense fuel into the fuel tank of a motor vehicle, or where the purchaser's direct payment permit has been suspended or revoked and the commissioner has

made generally available the identity of those persons whose direct payment permits have been suspended or revoked.] NOTHING IN THIS ARTICLE SHALL EXEMPT NON-HIGHWAY DIESEL MOTOR FUEL FROM THE IMPOSITION OF THE TAX UNDER THIS SECTION, IF SUCH NON-HIGHWAY DIESEL MOTOR FUEL IS INTENDED FOR USE ON THE WATERWAYS OF THE STATE INCLUDING ANY OTHER WATERWAYS BORDERING ON THE STATE, FOR OPERATING PLEASURE OR RECREATIONAL MOTOR BOATS THEREON.

4. The tax imposed by this section on Diesel motor fuel shall be passed through by the seller and included as part of the selling price to each purchaser of such fuel. Provided, however, the amount of the tax imposed by this section may be excluded from the selling price of Diesel motor fuel where (i) a sale of Diesel motor fuel is made to an organization described in paragraph (a) of subdivision three of this section solely for the purpose stated therein; (ii) a sale of [enhanced] NON-HIGHWAY Diesel motor fuel is made to a consumer [exclusively for the purposes of heating specified in subparagraph (i) of paragraph (b) of subdivision three of this section] but only if such [enhanced] NON-HIGHWAY Diesel motor fuel is NOT DELIVERED TO A FILLING STATION, NOR delivered into a storage tank which is [not] equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle [and such storage tank is attached to the heating unit burning such fuel, provided that each delivery of such fuel of over four thousand five hundred gallons shall be evidenced by a certificate signed by the purchaser stating that the product will be used exclusively for heating purposes; (iii) a sale is made consisting of no more than four thousand five hundred gallons (or a greater amount which has been given prior clearance by the commissioner of taxation and finance) of Diesel motor fuel in a thirty-day period to a consumer who purchases such fuel for use or consumption directly and exclusively in the production for sale of tangible personal property by farming but only if all of such fuel is consumed other than on the highways or waterways of this state]; or [(iv)] (III) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for heating purposes in containers of no more than twenty gallons; or [(v)] (IV) a sale of kero-jet fuel is made to an airline for use in its airplanes.

5. All the provisions of this article relating to the administration and collection of the taxes on motor fuel, except sections two hundred eighty-three-a and two hundred eighty-three-b of this article, shall be applicable to the tax imposed by this section with such limitation as specifically provided for in this article with respect to Diesel motor fuel and with such modification as may be necessary to adapt the language of such provisions to the tax imposed by this section. With respect to the bond or other security required by subdivision three of section two hundred eighty-three of this article, the commissioner [of taxation and finance], in determining the amount of bond or other security required for the purpose of securing tax payments, shall take into account the volume of [heating fuel] NON-HIGHWAY DIESEL MOTOR FUEL and other Diesel motor fuel sold for exempt purposes by a distributor of Diesel motor fuel during prior periods as a factor reducing potential tax liability along with any other relevant factors in determining the amount of security required. With respect to the bond required to be filed prior to registration as a Diesel motor fuel distributor, no bond shall be required of an applicant upon a finding of the applicant's fiscal responsibility, as reflected by such factors as net worth,

current assets and liabilities, and tax reporting and payment history, and the department shall not provide for a minimum bond of every applicant.

S 6. Subdivision 7 of section 283 of the tax law, as amended by chapter 261 of the laws of 1988, is amended to read as follows:

7. Temporary restraining order and permanent [injuction] INJUNCTION against unlawful importation and forfeiture of unlawfully imported or produced [automotive] MOTOR FUEL OR DIESEL MOTOR fuel. (a) Whenever evidence is furnished by the commissioner [of taxation and finance] to any justice of the supreme court, in court or at chambers, showing that any person not registered as a distributor as required by this article has imported [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL into this state or caused [automotive] MOTOR FUEL OR DIESEL MOTOR fuel to be imported into this state or has produced, refined, manufactured or compounded [automotive fuel or has subjected diesel motor fuel to the process of enhancement within this state] MOTOR FUEL OR DIESEL MOTOR FUEL, such justice may make a temporary order without notice prohibiting such person and his agents from selling, transferring or otherwise disposing of any such fuel or any fuel and also prohibiting all other persons in possession of or having control over the same from selling, releasing, transferring or otherwise disposing of any [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL imported, produced, refined, manufactured, compounded, [enhanced,] sold or transferred by such person not so registered pending a hearing for a preliminary injunction.

(b) Upon granting a temporary order, the court shall direct that a hearing be held at the earliest possible time upon such notice and service as the court shall direct and at the same time, if such action has not yet been commenced, the commissioner [of taxation and finance] shall commence an action in supreme court for a permanent injunction and forfeiture of [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL pursuant to paragraph (c) of this subdivision. Where, after such opportunity for a hearing, the court determines that there is a substantial probability that the commissioner will prevail in such action, the court shall grant a preliminary injunction restraining the sale, release, transfer or other disposition of fuel subject to the temporary order.

(c) (1) If it is established by clear and convincing evidence that [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL was imported, caused to be imported, produced, refined, manufactured or compounded [or diesel motor fuel was subjected to the process of enhancement] by any person not registered as a distributor as required by this article, the court shall grant a judgment (i) permanently enjoining such person and his agents from selling, transferring or otherwise disposing of any such fuel or any fuel within this state and (ii) declaring the forfeiture of any fuel that was so imported, caused to be imported, produced, refined, manufactured, OR compounded [or enhanced] by such person.

(2) With respect to [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL that was imported, caused to be imported, produced, refined, manufactured or compounded, [or diesel motor fuel that was subjected to the process of enhancement] by a person not registered as a distributor as required by this article or that was unlawfully sold or transferred by such person, if it is established by clear and convincing evidence that any other person in possession of or having control over such fuel was not a purchaser or transferee in good faith of such fuel with respect to the fact that such fuel was so imported, caused to be imported, produced, refined, manufactured, OR compounded [or enhanced] by a person not registered as a distributor as required by this article or that such

fuel was so unlawfully sold or transferred by such person, the court shall grant a judgment (i) permanently enjoining such other person and his OR HER agents from selling, releasing, transferring or otherwise disposing of any such fuel and (ii) declaring the forfeiture of such fuel in the possession or under the control of such other person.

(d) The commissioner may, at any time subsequent to the granting of the temporary order pursuant to paragraph (a) of this subdivision, in his OR HER sole discretion consent to a sale of [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL subject to such temporary order which is in the possession or under the control of a person other than the person or the agent of the person who imported, caused to be imported, produced, refined, manufactured, compounded [or enhanced] or unlawfully sold or transferred such fuel. As a condition of granting permission to a sale of [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL pursuant to this subdivision, the commissioner shall require the payment of all taxes, penalties and interest imposed by and pursuant to the authority of this chapter with respect to such fuel.

(e) (1) At any time during the pendency of an action under this section, the [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL subject to a temporary, preliminary or permanent order hereunder may be released from the scope of such order if there is given an undertaking, in an amount equal to the market value of such fuel plus state excise and sales taxes and federal excise taxes, to the effect that there will be paid to the commissioner the amount of the market value of such fuel and such taxes in the event that such fuel is adjudged forfeited.

(2) Any person enjoined by a temporary order or a preliminary injunction issued pursuant to this subdivision may move at any time, on notice, to vacate or modify it.

(f) The procedures of the civil practice law and rules applicable to temporary restraining orders, preliminary injunctions and permanent injunctions not inconsistent with this subdivision shall apply to temporary orders, preliminary injunctions and permanent injunctions issued under this subdivision and any provision of this subdivision which is not in accord with the constitutional mandate of such procedures of the civil practice law and rules shall be deemed to be modified as necessary to accord with such a mandate. The procedural provisions set forth in paragraph three of subdivision (d) and in subdivision (j) of section eighteen hundred forty-eight of this chapter shall apply to the forfeiture proceedings under this subdivision and, in respect to a declaration of forfeiture under this subdivision, the court shall direct the commissioner to sell or otherwise dispose of such forfeited [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL on such conditions the commissioner deems most advantageous and just under the circumstances. The commissioner shall not be required to file any undertaking in connection with an action pursuant to this subdivision.

S 7. Sections 283-d and 284-b of the tax law are REPEALED.

S 8. Subdivision 3 of section 285-b of the tax law, as amended by chapter 245 of the laws of 1989, is amended to read as follows:

3. (a) The claim for or exemption from tax provided for in subparagraphs (i), (II), (iii), (iv), [(v),] AND (vi)[, (vii) and (ix)] of paragraph (b) of subdivision three of section two hundred eighty-two-a of this article shall be established by means of an exempt transaction certificate. If any such exemption is applicable, such certificate shall be provided by the purchaser to the seller at the time of or prior to delivery of the Diesel motor fuel. Such exempt transaction certificate shall set forth the name and address of the purchaser and the basis of

the exemption and shall be signed by such purchaser and by the seller. Such certificate shall be in such form and contain such other information as the commissioner [of taxation and finance] shall require. Where a proper and complete exempt transaction certificate has been furnished and accepted by the seller in good faith, such certificate under such circumstance shall relieve the seller of the burden of proving that the Diesel motor fuel covered by such certificate is exempt from tax by reason of subparagraph (i), (II), (iii), (iv), [(v),] OR (vi)[, (vii) or (ix)] of paragraph (b) of subdivision three of such section two hundred eighty-two-a. Any purchaser who furnishes to his seller a false or fraudulent exempt transaction certificate for the purpose of establishing an exemption from the tax imposed by section two hundred eighty-two-a of this article shall be jointly and severally liable for the tax imposed by such section. In lieu of an exempt transaction certificate, the commissioner [of taxation and finance] may provide for the establishment of such exemption by means of a procedure or other document which he OR SHE deems appropriate so as to secure the revenues from the excise tax on Diesel motor fuel. Provided, further, in the case of the exemption provided by subparagraph (i) of paragraph (b) of subdivision three of section two hundred eighty-two-a of this article, the commissioner shall provide for an alternative procedure or other document signed only by the seller, such as a metered delivery ticket, for the establishment of such exemption in those cases where such commissioner is satisfied that the use of such alternative procedure or other document will not jeopardize the revenues from the excise tax on Diesel motor fuel.

(b) A claim for the exemption from tax provided for in subparagraph [(ii) or (viii)] (V) of paragraph (b) of subdivision three of section two hundred eighty-two-a of this article shall be established by means of an interdistributor sale certificate. If such exemption is applicable, such certificate shall be provided by the purchaser to the seller at the time of or prior to delivery of the Diesel motor fuel. Such certificate shall set forth the name and address of the purchaser, the purchaser's registration number, an affirmation by such purchaser that the purchaser is registered as a distributor and that such registration has not been suspended or cancelled and shall be signed by such purchaser and by the seller. Such certificate shall be in such form and contain such other information as the commissioner [of taxation and finance] shall require. Where a proper and complete interdistributor sale certificate has been furnished and accepted by the seller in good faith, such certificate under such circumstance shall relieve the seller of the burden of proving that the Diesel motor fuel covered by such certificate is exempt from tax by reason of subparagraph [(ii) or (viii)] (V) of paragraph (b) of subdivision three of such section two hundred eighty-two-a. For purposes of this paragraph, a seller shall not have accepted such certificate in good faith if the purchaser's registration is invalid because it has been suspended or cancelled, or if the purchaser is not registered, and the commissioner [of taxation and finance] has furnished registered distributors with information identifying all those persons then validly registered as distributors of Diesel motor fuel and those persons whose registrations have been suspended or cancelled. Any purchaser who furnishes to his seller a false or fraudulent interdistributor sale certificate for the purpose of establishing an exemption from the tax imposed by section two hundred eighty-two-a of this article shall be jointly and severally liable for the tax imposed by such section.

S 9. Subdivision 1 of section 286 of the tax law, as amended by chapter 302 of the laws of 2006, is amended to read as follows:

1. Every person who imports or causes to be imported into this state, or who produces, refines, manufactures or compounds within this state, or who purchases or sells in this state motor fuel or diesel motor fuel or ingredients which may be manufactured or compounded into motor fuel or diesel motor fuel, [or engages in the enhancement of diesel motor fuel,] shall keep a complete and accurate record of all purchases and sales, uses or other dispositions thereof and a complete and accurate record of the number of gallons of motor fuel or diesel motor fuel or such ingredients so imported, produced, refined, manufactured[,] OR compounded [or enhanced]. Every person who stores motor fuel or diesel motor fuel shall keep a complete and accurate record of the identity of the person for whom such fuel is stored, the quantity and type of fuel so stored, the identity of the person to whom such fuel is released from storage and the quantity and type of fuel so released. Such records shall be in such form and contain such other information as the commissioner shall prescribe. Said commissioner, by rule or regulation, also may require the delivery of statements to purchasers with consignments of motor fuel or diesel motor fuel or such ingredients, and prescribe the matters to be contained therein. Such records and statements, unless required by the commissioner to be preserved for a longer period, shall be preserved for a period of three years and shall be offered for inspection at any time upon oral or written demand by such commissioner or the commissioner's duly authorized agents. The commissioner is hereby further authorized to examine the equipment of any such person pertaining to the storage, sale or delivery of such fuels, as well as the stock of such fuels in the possession or control of such person. To verify the amount of tax due under this article, each such person is hereby directed and required to give to the commissioner or the commissioner's duly authorized representatives, the means, facilities and opportunity for such examinations as are herein provided for and required. Nothing CONTAINED in this section [contained] shall be construed to require the keeping for purposes of this article of a record of purchases or sales of motor fuel or diesel motor fuel or such ingredients at retail in small quantities (less than thirty gallons) or of motor fuel or diesel motor fuel imported into this state in the tank of a motor vehicle which supplies the fuel for its operation.

S 10. Section 286-a of the tax law, as amended by chapter 261 of the laws of 1988, is amended to read as follows:

S 286-a. Records and reports of transportation of [automotive] MOTOR FUEL AND DIESEL MOTOR fuel. Every person transporting [automotive] MOTOR FUEL OR DIESEL MOTOR fuel within this state, whether such transportation originates within or without this state, when required by the [tax commission] COMMISSIONER, shall keep a true and accurate record of all [automotive] MOTOR FUEL AND DIESEL MOTOR fuel so transported, including ingredients which may be manufactured or compounded into [automotive] MOTOR FUEL OR DIESEL MOTOR fuel, showing such facts with relation to such [automotive] fuel and ingredients and their transportation as the [tax commission] COMMISSIONER may require. Such record shall be open to inspection by the representatives of the department [of taxation and finance] at any time and the [tax commission] COMMISSIONER may require from any such person sworn returns of all or any part of the information shown by such records.

S 11. Section 286-b of the tax law, as amended by chapter 261 of the laws of 1988, is amended to read as follows:

S 286-b. Transportation of [automotive] MOTOR FUEL OR DIESEL MOTOR fuel; manifest required. 1. The master or other person in charge of any barge, tanker or other vessel in which [automotive] MOTOR FUEL OR DIESEL MOTOR fuel is being transported over any of the navigable waters of this state, the operator of a motor vehicle in which [automotive] MOTOR FUEL OR DIESEL MOTOR fuel is being transported in this state, or the operator of a pipeline through which [automotive] MOTOR FUEL OR DIESEL MOTOR fuel is being transported in this state, other than [automotive] MOTOR FUEL OR DIESEL MOTOR fuel being transported for use in operating the engine which propels such vessel or motor vehicle, as the case may be, must have in his OR HER possession a manifest which shows the name and address of the person from whom such [automotive] fuel was received by him OR HER and the place of receipt of such fuel and the name and address of every person to whom he OR SHE is to make delivery of the same and the place of delivery, together with the number of gallons to be delivered to each such person, and, if such [automotive] fuel is being imported into the state in such vessel, motor vehicle or pipeline for use, storage, distribution or sale in the state, the name of the distributor importing or causing such fuel to be imported into the state and such other information as the [tax commission] COMMISSIONER may require pursuant to rule or regulation, and shall at the request of a peace officer, acting pursuant to his OR HER special duties, a police officer, any representative of the department [of taxation and finance] or any other person authorized by law to inquire into or investigate the transportation of such [automotive] fuel, produce such manifest for inspection. The person causing the operation of such vessel, motor vehicle or pipeline shall be responsible to cause the operator of such vessel, motor vehicle or pipeline to keep in his OR HER possession on such vessel, in such motor vehicle or in the main control building of such pipeline in this state the manifest required by this section. The absence of the manifest required by this section shall give rise to a presumption that the [automotive] MOTOR FUEL OR DIESEL MOTOR fuel being transported is intended for sale, use, distribution or storage in this state and is being imported or caused to be imported by other than a registered distributor. Moreover, the absence of (1) the place of delivery of motor fuel OR DIESEL MOTOR FUEL on the manifest with respect to [automotive] MOTOR FUEL OR DIESEL MOTOR fuel being imported into the state shall give rise to a presumption that such fuel is being imported into the state for use, distribution, storage or sale in the state and (2) the name of a registered distributor on the manifest with respect to [automotive] MOTOR FUEL OR DIESEL MOTOR fuel being imported into the state for use, distribution, storage or sale in the state shall give rise to a presumption that such fuel is being so imported or caused to be imported by other than a registered distributor. Every barge, tanker or other vessel so used for the transportation of motor fuel must be plainly and visibly marked on both sides thereof and above the water line with the word "Gasoline," or other name of the motor fuel being transported, in letters at least eight inches high and of corresponding appropriate width, or must be identified as prescribed by the [tax commission] COMMISSIONER pursuant to rule or regulation. The master or person in charge of such barge, tanker or other vessel, as well as the owners thereof, shall be guilty of a violation of this section if such barge, tanker or other vessel is not so marked.

2. The commissioner may, by regulation provide for the form and content of the manifest required for [automotive] MOTOR AND DIESEL MOTOR fuel and for the filing of monthly information returns by every person

required to maintain records, described in subdivision one of this section, which shall in all material respects reflect the information required to be contained in such records. Such returns shall be in such form and contain such other information as the commissioner shall require.

S 12. Subdivision 1 of section 287 of the tax law, as amended by chapter 261 of the laws of 1988, is amended to read as follows:

1. Every distributor shall, on or before the twentieth day of each month, file with the department [of taxation and finance] a return, on forms to be prescribed by the commissioner and furnished by such department, stating the number of gallons of motor fuel imported, manufactured or sold by such distributor in the state during the preceding calendar month and in the case of Diesel motor fuel, the number of gallons of [enhanced] Diesel motor fuel imported[, the number of gallons enhanced] and the number of gallons which have been sold or used. Provided, however, the commissioner may, if he OR SHE deems it necessary in order to [insure] ENSURE the payment of the taxes imposed by this article, require returns to be made at such times and covering such periods as he OR SHE may deem necessary, and, by regulation, may permit the filing of returns by distributors of Diesel motor fuel on a quarterly, semi-annual or annual basis, or may waive the filing of returns by a distributor of Diesel motor fuel for such time and upon such terms as he OR SHE may deem proper if satisfied that no tax imposed by this article with respect to Diesel motor fuel is or will be payable by him OR HER during the time for which returns are waived. Such returns shall contain such further information as the commissioner shall require. The fact that a distributor's name is signed to a filed return shall be prima facie evidence for all purposes that the return was actually signed by such distributor. Each such distributor shall, with respect to motor fuel, pay to the department with the filing of such return, the taxes imposed by this article on each gallon of motor fuel imported, manufactured or sold by such distributor in the state, and so reported, during the period covered by such return. Each distributor shall, with respect to Diesel motor fuel, pay to the department with the filing of the return the taxes imposed by this article on the number of gallons of Diesel motor fuel sold or used or delivered to a filling station or delivered into the fuel tank of a motor vehicle during the period covered by the return. Provided, however, that where a distributor has purchased [automotive] MOTOR FUEL OR DIESEL MOTOR fuel upon which the taxes imposed by this article have been paid or paid over and in each instance the tax is included in the price, a credit shall be allowed for the amount of such taxes upon the subsequent sale of such fuel to the extent that such taxes are so paid and included in the price.

S 13. Paragraphs (a) and (c) of subdivision 3 of section 289-c of the tax law, paragraph (a) as amended by chapter 558 of the laws of 1965 and paragraph (c) as amended by chapter 302 of the laws of 2006, are amended to read as follows:

(a) Except as otherwise provided in paragraph (b) of this section, any person who shall buy any motor fuel or diesel motor fuel, on which the tax imposed by this article shall have been paid, and shall consume the same in any manner except in the operation of a motor vehicle upon or over the PUBLIC highways of this state, or in the operation of a pleasure or recreational motor boat upon or over the waterways of the state including waterways bordering on the state, shall be reimbursed the amount of such tax in the manner and subject to the conditions herein provided except that there shall be no reimbursement of tax paid on

motor fuel or diesel motor fuel taken out of this state in a fuel tank connected with the engine of a motor vehicle and consumed outside of this state.

(c) All claims for reimbursement shall be in such form and contain such information as the commissioner shall prescribe and shall be filed within three years from (i) the date of the purchase, in the case of the purchaser; or (ii) the date of the sale, in the case of the seller, of the motor fuel so subject to reimbursement. Every such claim shall include a certificate by or on behalf of the party presenting the same to the effect that it is just, true and correct, that no part thereof has been paid, except as stated therein, and that the balance therein stated is actually due and owing. The claimant shall satisfy the department that the claimant has borne the tax and that the motor fuel has been consumed by the claimant in a manner other than the operation of a motor vehicle upon or over the PUBLIC highways of this state, the operation of a pleasure or recreational motorboat upon or over the waterways of the state including waterways bordering on the state or, in the case of an omnibus carrier, taxicab licensee, nonpublic school operator or volunteer ambulance service, that the claimant has borne the tax and that the amount claimed is the amount of such tax reimbursable under paragraph (b), (d), (e) or (f) of THIS subdivision [three of this section]. The department may require such further information or proof as it shall deem necessary for the administration of such claim. Claims for reimbursement approved by the department shall be paid from revenues collected under this article and deposited to the credit of the comptroller as hereinafter provided; but no such claims shall be paid unless the department is satisfied that the amount of the tax for which the reimbursement is claimed has actually been collected by the state. The amount of any erroneous or excessive payment to a claimant for reimbursement may be determined by the department and may be recovered from such claimant in the same manner as a tax imposed by this article, provided, however, that any such determination shall be made within three years after the date of such erroneous or excessive payment.

S 14. Subdivision 4 of sections 289-c of the tax law is REPEALED.

S 15. Subdivision 1 of section 289-e of the tax law, as amended by section 5 of part EE of chapter 63 of the laws of 2000, is amended to read as follows:

1. All taxes, interest, penalties and fees collected or received by the commissioner under the taxes imposed by this article, except as provided otherwise in subdivision two and subdivision three of this section and sections two hundred eighty-two-b, two hundred eighty-two-c, two hundred eighty-four-a and two hundred eighty-four-c, other than [those imposed by section two hundred eighty-four-b and] the fee imposed by section two hundred eighty-four-d and penalties and interest on such fee, shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter; provided that an amount equal to thirty-seven and one-half per centum of the moneys collected under section two hundred eighty-four of this chapter shall be appropriated and used for the acquisition of property necessary for the construction and reconstruction of highways and bridges or culverts on the state highway system, and for the construction, maintenance and repair of such highways and bridges or culverts, all under the direction of the commissioner of transportation.

S 16. Section 289-f of the tax law, as added by chapter 44 of the laws of 1985, is amended to read as follows:

S 289-f. Joint administration of taxes. In addition to the powers granted to the [tax commission] COMMISSIONER in this chapter, the [commission] COMMISSIONER is hereby authorized to make provisions pursuant to rules and regulations for the joint administration, in whole or in part, of the state and local taxes imposed by article twenty-eight and authorized to be imposed by article twenty-nine of this chapter upon the sale of [automotive] MOTOR FUEL OR DIESEL MOTOR fuel and the taxes imposed and authorized to be imposed by this article, including the joint reporting, assessment, collection, determination and refund of such taxes, and for that purpose to prescribe that any of the [commission's] COMMISSIONER'S functions under such articles, and any returns, forms, statements, documents or information to be submitted to the [commission] COMMISSIONER under such articles, any books and records to be kept for purposes of the taxes imposed or authorized to be imposed by such articles, any schedules of amounts to be collected under such articles, any registration required under such articles, and the payment of taxes under such articles shall be on a joint basis with respect to the taxes imposed by such articles.

S 17. Paragraph 2 of subdivision (b) and subdivisions (c), (k), (l) and (m) of section 300 of the tax law, paragraph 2 of subdivision (b) as amended by chapter 170 of the laws of 1994, subdivision (c) as added by chapter 190 of the laws of 1990, subdivision (k) as amended by section 1 of part H of chapter 407 of the laws of 1999 and subdivisions (l) and (m) as added by chapter 309 of the laws of 1996, are amended to read as follows:

(2) With respect to diesel motor fuel, every corporation and unincorporated business (i) importing diesel motor fuel or causing diesel motor fuel to be imported into the state for use, distribution, storage or sale in the state, (ii) producing, refining, manufacturing or compounding diesel motor fuel within the state, (iii) [engaging in the enhancement of diesel motor fuel within the state, (iv)] making a sale or use of diesel motor fuel in the state, other than a retail sale not in bulk or self-use of diesel motor fuel which has been the subject of a retail sale to such corporation or unincorporated business, or [(v)] (IV) registered by the department [of taxation and finance] as a "distributor of kero-jet fuel only" pursuant to the provisions of subdivision two of section two hundred eighty-two-a of this chapter. Diesel motor fuel brought into this state in the ordinary fuel tank connecting with the engine of a motor vehicle, airplane or other conveyance, but not a vessel (other than a recreational motor boat or a commercial fishing vessel as defined in subdivision (j) of this section if the diesel motor fuel imported into and consumed in this state is used to operate such vessel while it is engaged in the harvesting of fish for sale), propelled by the use of such diesel motor fuel and to be used only in the operation thereof, shall not be deemed imported within the meaning of this article, if not removed from such tank except as used in the propulsion of such engine.

(c) [(1)] The [term (A)] TERMS (1) "diesel motor fuel" means such term as defined in subdivision fourteen of section two hundred eighty-two of this chapter [and regulations thereunder including any regulations relating to product specifically designated "No. 4 diesel fuel" and not suitable as a fuel used in the operation of a motor vehicle engine], and

[(B) "enhanced] (2) "HIGHWAY diesel motor fuel" means such term as defined in subdivision [sixteen] SIXTEEN-A of section two hundred eighty-two of this chapter, and

[(C)(i) "nonautomotive type diesel motor fuel" as used in relation to the rates of the tax imposed by section three hundred one-a of this article means any diesel motor fuel, as described in subparagraph (A) of this paragraph, which would be excluded from the diesel motor fuel excise tax imposed by section two hundred eighty-two-a of this chapter solely by reason of the enumerated exclusions based on ultimate use of the product set forth in paragraph (b) of subdivision three of such section, and (ii) "automotive-type diesel motor fuel" as used in relation to the rates of tax imposed by such section three hundred one-a means diesel motor fuel which is not nonautomotive-type diesel motor fuel.]

(3) "NON-HIGHWAY DIESEL MOTOR FUEL" MEANS SUCH TERM AS DEFINED IN SUBDIVISION SIXTEEN OF SECTION TWO HUNDRED EIGHTY-TWO OF THIS CHAPTER.

[(2)] (4) As used in this article, references to persons or petroleum businesses registered under article twelve-A of this chapter as distributors of diesel motor fuel shall include all such persons or petroleum businesses registered under such article as distributors of diesel motor fuel and persons or petroleum businesses operating under valid limited registrations relating to persons or petroleum businesses making retail sales of diesel motor fuel to consumers solely for the purposes described in subparagraph (i) of paragraph (b) of subdivision three of section two hundred eighty-two-a of this chapter, but such references shall not include persons and petroleum businesses registered as "distributors of kero-jet fuel only" pursuant to the provisions of subdivision two of section two hundred eighty-two-a of this chapter.

(k) "Commercial gallonage" means gallonage (1) which is [nonautomotive-type] NON-HIGHWAY diesel motor fuel [(which is not enhanced diesel motor fuel)] or residual petroleum product, (2) which is included in the full measure of the [nonautomotive-type] NON-HIGHWAY diesel motor fuel component or the residual petroleum product component of the tax imposed under section three hundred one-a of this article, [and] (3) which does not (and will not) qualify (A) for the utility credit or reimbursement provided for in section three hundred one-d of this article, (B) as "manufacturing gallonage", as such term is defined in subdivision (m) of this section, (C) for the not-for-profit organization exemption provided for in subdivision (h) of section three hundred one-b of this article, or (D) for the heating exemption provided for in paragraph two of subdivision (d) of section three hundred one-b of this article or the heating reimbursement provided for in paragraph two of subdivision (a) of section three hundred one-c of this article, AND (4) WHICH WILL NOT BE USED NOR HAS BEEN USED IN THE FUEL TANK CONNECTING WITH THE ENGINE OF A VESSEL. No gallonage shall qualify as "commercial gallonage" where such gallonage is eligible for the (i) utility credit or reimbursement under such section three hundred one-d of this article, (ii) [if before January first, nineteen hundred ninety-eight, the manufacturing exemption or reimbursement under paragraph one of subdivision (b) of section three hundred one-j of this article and, if on or after January first, nineteen hundred ninety-eight, the] "manufacturing exemption" under paragraph [four] THREE of subdivision (f) of section three hundred one-a of this article, (iii) [the] not-for-profit organization exemption under subdivision (h) of section three hundred one-b of this article, or (iv) heating exemption provided for in paragraph two of subdivision (d) of section three hundred one-b of this article or the heating reimbursement provided for in paragraph two of subdivision (a) of section three hundred one-c of this article. The commissioner shall require such docu-

mentary proof to substantiate the classification of product as "commercial gallonage" as the commissioner deems appropriate.

(l) "Railroad diesel" means NON-HIGHWAY diesel motor fuel for use and consumption directly and exclusively in the operation of a locomotive or a self-propelled vehicle run only on rails or tracks, but only if either (1) all such fuel is delivered into a storage facility which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such facility is used only to fuel such locomotives or such self-propelled vehicles, or (2) in accordance with the terms of sale, all such fuel is delivered directly into the tank of a locomotive or self-propelled vehicle. Provided, however, that a sale to a purchaser who will use such NON-HIGHWAY diesel motor fuel as "railroad diesel" shall be evidenced by a certificate signed by the purchaser stating that such diesel motor fuel will be used and consumed as prescribed in this subdivision and the commissioner may require such other information as the commissioner deems appropriate.

(m) "Manufacturing gallonage" means residual petroleum product or NON-HIGHWAY diesel motor fuel [(which is not enhanced diesel motor fuel)] used and consumed directly and exclusively in the production of tangible personal property for sale by manufacturing, processing or assembly, but only if (I) all of such fuel or product is delivered on the manufacturing site [and is consumed other than on the highways of this state], OR (II) THE PURCHASER CAUSES SUCH FUEL OR PRODUCT TO BE DELIVERED TO ITS MANUFACTURING SITE. "Manufacturing gallonage" shall in no event [include diesel motor fuel] BE CONSUMED ON THE PUBLIC HIGHWAYS OF THIS STATE OR delivered at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle. The commissioner shall require such documentary proof to substantiate the classification of product as "manufacturing gallonage" as the commissioner deems appropriate.

S 18. Section 301 of the tax law is REPEALED.

S 19. Subdivision (a), paragraph 1 of subdivision (b) and subdivisions (c), (e), (f) and (h) of section 301-a of the tax law, subdivision (a) as amended by section 1 of part U of chapter 63 of the laws of 2000, paragraph 1 of subdivision (b) and paragraph 1 of subdivision (c) as amended by section 154 of part A of chapter 389 of the laws of 1997, subdivisions (c), (e), (f) and (h) as added by chapter 190 of the laws of 1990, paragraph 3 of subdivision (e) and paragraph 3 of subdivision (f) as amended by chapter 170 of the laws of 1994 and paragraph 4 of subdivision (e) and paragraph 4 of subdivision (f) as added by chapter 309 of the laws of 1996, are amended to read as follows:

(a) General. Notwithstanding any other provision of this chapter, or of any other law, [for taxable months commencing on or after the first day of September, nineteen hundred ninety,] there is hereby imposed upon every petroleum business for the privilege of engaging in business, doing business, employing capital, owning or leasing property, or maintaining an office in this state, a monthly tax for each or any part of a taxable month equal to the sum of the motor fuel component determined pursuant to subdivision (b) of this section, the [automotive-type] HIGHWAY diesel motor fuel component determined pursuant to paragraph one of subdivision (c) of this section, the [nonautomotive-type] NON-HIGHWAY diesel motor fuel component determined pursuant to paragraph two of subdivision (c) of this section and the residual petroleum product component determined pursuant to subdivision (d) of this section.

(1) The motor fuel component shall be determined by multiplying the motor fuel and [automotive-type] HIGHWAY diesel motor fuel rate times the number of gallons of (1) motor fuel imported or caused to be imported into this state by the petroleum business for use, distribution, storage or sale in the state or (2) produced, refined, manufactured or compounded in the state by the petroleum business during the month covered by the return under this article. Provided, however, that no motor fuel shall be included in the measure of the tax unless it shall have previously come to rest within the meaning of federal decisional law interpreting the United States constitution, nor shall any motor fuel be included in the measure of the tax imposed by this article more than once.

(c) (1) [Automotive-type] HIGHWAY Diesel motor fuel component. (A) The [automotive-type] HIGHWAY diesel motor fuel component shall be determined by multiplying the motor fuel and [automotive-type] HIGHWAY diesel motor fuel rate times (1) the number of gallons of [automotive-type] HIGHWAY diesel motor fuel sold or used by a petroleum business in this state during the month covered by the return under this article and (2) with respect to any gallonage which prior thereto has not been included in the measure of the tax imposed by this article, times the number of gallons of HIGHWAY diesel motor fuel delivered (i) to a filling station or (ii) into the fuel tank connecting with the engine of a motor vehicle for use in the operation thereof, whichever of the latter two events shall be the first to occur. Provided, however, that no HIGHWAY diesel motor fuel shall be included in the measure of the tax unless it shall have previously come to rest within the meaning of federal decisional law interpreting the United States constitution, nor decisional law, nor shall any HIGHWAY diesel motor fuel be included in the measure of the tax imposed by this article more than once.

(B) [Diesel] HIGHWAY DIESEL motor fuel brought into this state in the fuel tank connecting with the engine of a vessel propelled by the use of such diesel motor fuel shall be deemed to constitute a taxable use of diesel motor fuel for the purpose of this paragraph to the extent of the fuel that is consumed in the operation of the vessel in this state. Provided, however, this paragraph shall not apply to (i) a recreational motor boat or (ii) [subsequent to August thirty-first, nineteen hundred ninety-four,] a commercial fishing vessel (as defined in subdivision (j) of section three hundred of this article) if the HIGHWAY diesel motor fuel imported into and consumed in this state is used to operate such commercial fishing vessel while it is engaged in the harvesting of fish for sale. Provided, further, that tax liability for gallonage that a vessel consumes in this state shall be the tax liability with respect to the positive difference between the gallonage consumed in this state during the reporting period and the gallonage purchased in this state (upon which the tax imposed by this section has been paid) during such period. A credit or refund shall be available for any excess of tax liability for gallonage purchased in this state during the period over tax liability on gallonage so consumed in this state during such period, which excess shall be presumed to have been used outside this state.

(2) [Nonautomotive-type] NON-HIGHWAY diesel motor fuel component. The [nonautomotive-type] NON-HIGHWAY diesel fuel component shall be determined by multiplying the [nonautomotive-type] NON-HIGHWAY diesel motor fuel rate times the number of gallons of [nonautomotive-type] NON-HIGHWAY diesel motor fuel sold or used by a petroleum business in this state during the month covered by the return under this section. Provided, however, that no NON-HIGHWAY diesel motor fuel shall be included in the

measure of the tax unless it shall have previously come to rest within the meaning of federal decisional law interpreting the United States constitution, nor shall any [nonautomotive-type] NON-HIGHWAY diesel motor fuel be included in the measure of the tax imposed by this article more than once.

(e) Motor fuel and [automotive-type] HIGHWAY diesel motor fuel rate. (1) The basic motor fuel and HIGHWAY diesel [automotive-type] motor fuel rate shall be [five and one-half] TEN AND TWO-TENTHS cents per gallon.

(2) [Commencing April first, nineteen hundred ninety-one, the motor fuel and automotive-type diesel motor fuel rate shall be the product of the basic rate set forth in paragraph one of this subdivision multiplied by a fraction, the numerator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of November, nineteen hundred ninety, and the denominator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of November, nineteen hundred eighty-nine.

(3) Commencing on the first day of January, nineteen hundred ninety-two, the motor fuel and automotive-type diesel motor fuel rate then in effect on the immediately preceding December thirty-first shall be adjusted as follows: such rate shall be multiplied by a fraction the numerator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of August, nineteen hundred ninety-one and the denominator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of August, nineteen hundred ninety. Commencing on the first day of January of nineteen hundred ninety-six and every] EVERY year [thereafter] AS OF JANUARY FIRST, the motor fuel and [automotive-type] HIGHWAY diesel motor fuel rate then in effect on the immediately preceding December thirty-first shall be adjusted as follows: such rate shall be multiplied by a fraction the numerator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of August of the immediately preceding year and the denominator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of August in the year prior to such immediately preceding year, provided, however, that the adjusted rate [to take effect on January first, nineteen hundred ninety-six and each January first thereafter] shall not increase above or decrease below the rate in effect on the immediately preceding December thirty-first by more than five percent.

[(4)] (3) Notwithstanding any other provision of this article, [commencing January first, nineteen hundred ninety-seven,] the per

gallon rate with respect to "railroad diesel" shall be the adjusted motor fuel and [automotive-type] HIGHWAY diesel motor fuel rate under paragraphs one [through three] AND TWO of this subdivision [for the period commencing such January first, nineteen hundred ninety-seven,] minus one and three tenths cents per gallon. [Commencing on the first day of January each year thereafter, the per gallon rate with respect to "railroad diesel" shall be determined by taking the then motor fuel and automotive-type diesel motor fuel rate under paragraphs one through three of this subdivision which commences on such first day of January and subtracting one and three tenths cents per gallon.]

(f) [Nonautomotive-type] NON-HIGHWAY diesel motor fuel rate.

(1) The basic [nonautomotive-type] NON-HIGHWAY diesel motor fuel rate shall be [five] NINE AND THREE-TENTHS cents per gallon.

(2) [Commencing April first, nineteen hundred ninety-one, the nonautomotive-type diesel motor fuel rate shall be the product of the basic rate set forth in paragraph one of this subdivision multiplied by a fraction the numerator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of November, nineteen hundred ninety, and the denominator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of the labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of November, nineteen hundred eighty-nine.

(3) Commencing on the first day of January, nineteen hundred ninety-two, the nonautomotive-type diesel motor fuel rate then in effect on the immediately preceding December thirty-first shall be adjusted as follows: Such rate shall be multiplied by a fraction the numerator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of August, nineteen hundred ninety-one and the denominator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of August, nineteen hundred ninety. Commencing on the first day of January of nineteen hundred ninety-six and every] EVERY year [thereafter,] AS OF JANUARY FIRST the [nonautomotive-type] NON-HIGHWAY diesel motor fuel rate then in effect on the immediately preceding December thirty-first shall be adjusted as follows: Such rate shall be multiplied by a fraction the numerator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of August of the immediately preceding year and the denominator of which is the sum of the monthly producer price index (unadjusted) published by the bureau of labor statistics of the United States department of labor for the category of commodities designated "refined petroleum products" for the twelve consecutive months ending with the month of August in the year prior to such immediately preceding year, provided, however, that the adjusted rate [to take effect on January first, nineteen hundred ninety-six and each January first thereafter]

shall not increase above or decrease below the rate in effect on the immediately preceding December thirty-first by more than five percent.

[(4)] (3) Notwithstanding any other provision of this article, [commencing January first, nineteen hundred ninety-eight, nonautomotive-type] NON-HIGHWAY diesel motor fuel which is "manufacturing gallonage," as such term is defined in subdivision (m) of section three hundred of this article, shall be exempt from the measure of the [nonautomotive-type] NON-HIGHWAY diesel motor fuel component of the tax imposed under this section.

(h) Publication and rounding of rate. (1) The commissioner [of taxation and finance] shall cause to be published in the section for miscellaneous notices in the state register, and give other appropriate general notice of, the rate adjustment calculation and the resulting motor fuel and [automotive-type] HIGHWAY diesel motor fuel rate, [nonautomotive-type] NON-HIGHWAY diesel motor fuel rate and residual petroleum product rate fixed by this section for the period commencing on [April first, nineteen hundred ninety-one, no later than the immediately preceding first day of March] JANUARY FIRST, TWO THOUSAND TWELVE, and for each calendar year thereafter, no later than the immediately preceding first day of December. The calculation and publication of the rates of tax so fixed by provisions of this section shall not be included within paragraph (a) of subdivision two of section one hundred two of the state administrative procedure act relating to the definition of a rule.

(2) The rates determined pursuant to this section shall be rounded to the nearest one-tenth of one cent.

S 19-a. Subdivision (k) of section 301-a of the tax law is REPEALED.

S 20. Section 301-a of the tax law is amended by adding a new subdivision (m) to read as follows:

(M) SPECIAL RATE ADJUSTMENT FOR CERTAIN VESSELS. NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, THE USE OF NON-HIGHWAY DIESEL MOTOR FUEL IN THE ENGINE OF A VESSEL TO PROPEL SUCH VESSEL SHALL BE SUBJECT TO TAX AT THE MOTOR FUEL AND HIGHWAY DIESEL MOTOR FUEL RATE PROVIDED FOR IN THIS SECTION, AND SHALL BE SUBJECT TO THE PROVISIONS OF SECTION THREE HUNDRED ONE-J OF THIS ARTICLE, INCLUDING THE ADJUSTMENT SET FORTH IN PARAGRAPH FOUR OF SUBDIVISION (A) OF SUCH SECTION THREE HUNDRED ONE-J. A CREDIT OR REFUND SHALL BE AVAILABLE TO THE EXTENT TAX PAID ON GALLONAGE USED TO PROPEL ANY SUCH VESSEL EXCEEDS THE AMOUNT OF TAX DUE BASED ON THE TAX RATE SET FORTH HEREIN. PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL REQUIRE SUCH DOCUMENTARY PROOF TO QUALIFY FOR ANY CREDIT OR REIMBURSEMENT PROVIDED HEREUNDER AS THE COMMISSIONER DEEMS APPROPRIATE.

S 21. Paragraph 2 of subdivision (b), paragraphs 2 and 3 of subdivision (c), subdivisions (d) and (e), paragraph 1 of subdivision (f) and subdivisions (g), (h) and (i) of section 301-b of the tax law, paragraph 2 of subdivision (b) and paragraphs 2 and 3 of subdivision (c) and subdivision (e) as added by chapter 190 of the laws of 1990, the opening paragraph of paragraph 2 of subdivision (b) as amended by section 155 of part A of chapter 389 of the laws of 1997, subdivision (d) as amended by section 2 of part H of chapter 407 of the laws of 1999 and subparagraph (C) of paragraph 2 of subdivision (d) as amended by section 1 of part X of chapter 63 of the laws of 2000, paragraph 1 of subdivision (f) as added by chapter 166 of the laws of 1991, subdivision (g) as added by chapter 170 of the laws of 1994, subdivision (h) as amended by chapter 302 of the laws of 2006 and subdivision (i) as added by chapter 468 of the laws of 2000, are amended to read as follows:

(2) [Enhanced] HIGHWAY diesel motor fuel imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article twelve-A of this chapter, as a distributor of diesel motor fuel, which is sold by such petroleum business to a purchaser who then exports such HIGHWAY diesel motor fuel from this state for sale or use outside the state where

(A) such purchaser exporting such fuel is duly registered with or licensed by the taxing authorities of the state to which such fuel is exported as a distributor or a dealer in the product being so exported,

(B) in connection with the exportation, such fuel was immediately shipped to an identified facility in the state to which such fuel is exported, and

(C) the rules and regulations of the commissioner [of taxation and finance] relating to evidentiary requirements are complied with.

(2) [Enhanced] HIGHWAY diesel motor fuel imported or caused to be imported into this state or produced, refined, manufactured or compounded by a petroleum business registered under article twelve-A of this chapter, as a distributor of diesel motor fuel, and then sold by such petroleum business to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where such HIGHWAY DIESEL motor fuel is used by such organization for its own use or consumption.

(3) NON-HIGHWAY Diesel motor fuel[, which is not enhanced diesel motor fuel,] sold by a petroleum business registered under article twelve-A of this chapter as a distributor of diesel motor fuel to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where such NON-HIGHWAY diesel motor fuel is used by such organization for its own use or consumption.

(d) Sales to consumers for heating purposes. (1) Total residential heating exemption. [(A) Unenhanced] NON-HIGHWAY diesel motor fuel sold by a petroleum business registered under article twelve-A of this chapter as a distributor of diesel motor fuel or residual petroleum product sold by a petroleum business registered under this article as a residual petroleum product business to the consumer exclusively for residential heating purposes[.

(B) Enhanced diesel motor fuel sold by a petroleum business registered under article twelve-A of this chapter as a distributor of diesel motor fuel to the consumer exclusively for residential heating purposes but] only if such [enhanced] NON-HIGHWAY diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel[, provided, that with respect to each delivery of such fuel over four thousand five hundred gallons, to obtain this exemption there shall be required a certificate signed by the purchaser stating that the product will be used exclusively for residential heating purposes].

(2) Partial non-residential heating exemption. (A) [Unenhanced] NON-HIGHWAY diesel motor fuel sold by a petroleum business registered under article twelve-A of this chapter as a distributor of diesel motor fuel or residual petroleum product sold by a petroleum business registered under this article as a residual petroleum product business to the consumer exclusively for heating, other than residential heating purposes[.

(B) Enhanced diesel motor fuel sold by a petroleum business registered under article twelve-A of this chapter as a distributor of diesel motor

fuel to the consumer exclusively for heating, other than residential heating purposes, but] only if such [enhanced] NON-HIGHWAY diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel[, provided, that with respect to each delivery of such fuel over four thousand five hundred gallons, to obtain this exemption there shall be required a certificate signed by the purchaser stating that the product will be used exclusively for heating, other than residential heating purposes.

(C)] (B) Calculation of partial exemption. [Notwithstanding any other provision of this article, commencing April first, two thousand one and ending August thirty-first, two thousand two, the amount of the partial exemption under this paragraph shall be determined by multiplying the quantity of diesel motor fuel and residual petroleum product eligible for the exemption times the sum of the then current rate of the supplemental tax imposed by section three hundred one-j of this article and twenty percent of the then current rate of the tax imposed by section three hundred one-a of this article, with respect to the specific diesel motor fuel or residual petroleum product rate, as the case may be, and commencing September first, two thousand two, the amount of the] THE partial exemption under this paragraph shall be determined by multiplying the quantity of NON-HIGHWAY diesel motor fuel and residual petroleum product eligible for the exemption times the sum of the then current rate of the supplemental tax imposed by section three hundred one-j of this article and forty-six percent of the then current rate of the tax imposed by section three hundred one-a of this article, with respect to the specific NON-HIGHWAY diesel motor fuel or residual petroleum product rate, as the case may be.

(e) Sales of NON-HIGHWAY diesel motor fuel and residual petroleum product to registered distributors of diesel motor fuel and registered residual petroleum product businesses.

(1) NON-HIGHWAY Diesel motor fuel[, which is not enhanced diesel motor fuel,] sold by a person registered under article twelve-A of this chapter as a distributor of diesel motor fuel to a person registered under such article twelve-A as a distributor of diesel motor fuel where such sale is not a retail sale or a sale that involves a delivery at a filling station or into a repository equipped with a hose or other apparatus by which such NON-HIGHWAY DIESEL MOTOR fuel can be dispensed into the fuel tank of a motor vehicle.

(2) Residual petroleum product sold by a person registered under this article as a residual petroleum product business to a person registered under this article as a residual petroleum product business where such sale is not a retail sale. Provided, however, that the commissioner [of taxation and finance] may require such documentary proof to qualify for any exemption provided in this section as the commissioner deems appropriate, including the expansion of any certifications required pursuant to section two hundred eighty-five-a or two hundred eighty-five-b of this chapter to cover the taxes imposed by this article.

(1) Residual petroleum product and NON-HIGHWAY diesel motor fuel [(which is not enhanced diesel motor fuel)] sold to an electric corporation, as described in subdivision (a) of section three hundred one-d of this article, which is registered with the department [of taxation and finance] as a petroleum business tax direct pay permittee, and used by such electric corporation to fuel generators for the purpose of manufacturing or producing electricity where such electric corporation

provides a copy of a direct pay permit authorized and issued by the commissioner [of taxation and finance], to the petroleum business making such sale. If so registered, such corporation shall be a taxpayer under this article and (i) such electric corporation shall file a return monthly and pay the applicable tax under this article, after the application of allowable credits, on all such purchases directly to the commissioner, (ii) such electric corporation shall be subject to all of the provisions of this article relating to the responsibilities and liabilities of taxpayers under this article with respect to such residual petroleum product and NON-HIGHWAY diesel motor fuel.

(g) Sales or uses of NON-HIGHWAY diesel motor fuel and residual petroleum product for farm production. NON-HIGHWAY Diesel motor fuel or residual petroleum product sold to or used by a consumer who purchases or uses such NON-HIGHWAY DIESEL MOTOR fuel or product for use or consumption directly and exclusively in the production for sale of tangible personal property by farming, but only if all such NON-HIGHWAY DIESEL MOTOR fuel or product is delivered on the farm site and is consumed other than on the PUBLIC highways of this state (except for the use of the PUBLIC highway to reach adjacent farmlands)[; provided, however, that a farmer may purchase no more than four thousand five hundred gallons of diesel motor fuel in a thirty-day period for such use or consumption exempt from the measure of the tax imposed by section three hundred one-a of this article, except in accordance with prior clearance given by the commissioner].

(h) Exemption for certain not-for-profit organizations. There shall be exempt from the measure of the petroleum business tax imposed by section three hundred one-a of this article a sale or use of residual petroleum product, OR NON-HIGHWAY diesel motor fuel [(which is not enhanced diesel motor fuel) or dyed diesel motor fuel,] to or by an organization which has qualified under paragraph four or five of subdivision (a) of section eleven hundred sixteen of this chapter where such NON-HIGHWAY diesel motor fuel or residual petroleum product is exclusively for use and consumption by such organization, but only if all of such NON-HIGHWAY diesel motor fuel or product is consumed other than on the PUBLIC highways of this state. Provided, however, this exemption shall in no event apply to a sale of NON-HIGHWAY diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such NON-HIGHWAY DIESEL MOTOR fuel can be dispensed into the fuel tank of a motor vehicle and all deliveries hereunder shall be made to the premises occupied by the qualifying organization and used by such organization in furtherance of the exempt purposes of such organization. Provided, however, that the commissioner shall require such documentary proof to qualify for any exemption provided herein as the commissioner deems appropriate. Provided, further, the distributor selling such NON-HIGHWAY DIESEL MOTOR fuel and product shall separately report on its return the gallonage sold during the reporting period exempt from tax under the provisions of this subdivision and provide such other information with respect to such sales as the commissioner deems appropriate to prevent evasion. [The term "dyed diesel motor fuel" as used in this subdivision shall have the same meaning it has in subdivision eighteen of section two hundred eighty-two of this chapter.]

(i) Exemption for passenger commuter ferries. A use by a passenger commuter ferry of NON-HIGHWAY diesel motor fuel or residual petroleum product where such NON-HIGHWAY diesel motor fuel or residual petroleum product was used and consumed by a passenger commuter ferry exclusively

in providing mass transportation service. Provided, that the commissioner shall require such documentary proof to qualify for any exemption provided hereunder as the commissioner deems appropriate.

S 22. Subdivision (j) of section 301-b of the tax law is REPEALED.

S 23. Subdivisions (a), (e), (f), (h), (i), (j), (k), (l) and (m) of section 301-c of the tax law, subdivision (a) as amended by section 4 and subdivision (l) as added by section 5 of part H of chapter 407 of the laws of 1999, subparagraph (B) of paragraph 2 of subdivision (a) as amended by section 2 of part X of chapter 63 of the laws of 2000, subdivisions (e) and (f) as added by chapter 170 of the laws of 1994, subdivision (h) as amended by chapter 302 of the laws of 2006, subdivisions (i), (j) and (k) as added by chapter 309 of the laws of 1996, and subdivision (m) as added by chapter 468 of the laws of 2000, are amended to read as follows:

(a) NON-HIGHWAY Diesel motor fuel used for heating purposes. (1) Total residential heating reimbursement. NON-HIGHWAY Diesel motor fuel purchased in this state and sold by such purchaser to a consumer for use exclusively for residential heating purposes but only where (i) such NON-HIGHWAY diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such NON-HIGHWAY DIESEL MOTOR fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such NON-HIGHWAY DIESEL MOTOR fuel, (ii) the tax imposed pursuant to this article has been paid with respect to such NON-HIGHWAY diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser, and (iii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner is authorized, in the event that the commissioner determines that it would not threaten the integrity of the administration and enforcement of the tax imposed by this article, to provide a reimbursement with respect to a retail sale to a consumer for residential heating purposes of less than ten gallons of NON-HIGHWAY diesel motor fuel provided such fuel is not dispensed into the tank of a motor vehicle. [Provided, further, that with respect to each delivery of enhanced diesel motor fuel of over four thousand five hundred gallons, to obtain this reimbursement there shall be required a certificate signed by the consumer stating that the product will be used exclusively for residential heating purposes.]

(2) Partial non-residential heating reimbursement. (A) NON-HIGHWAY Diesel motor fuel purchased in this state and sold by such purchaser to a consumer for use exclusively for heating, other than for residential heating purposes, but only where (i) such NON-HIGHWAY diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such NON-HIGHWAY DIESEL MOTOR fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such NON-HIGHWAY DIESEL MOTOR fuel, (ii) the tax imposed pursuant to this article has been paid with respect to such NON-HIGHWAY diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser, and (iii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. [Provided, however, that with respect to each delivery of enhanced diesel motor fuel of over four thousand five hundred gallons, to obtain this reimbursement there shall be required a certificate

signed by the consumer stating that the product will be used exclusively for heating, other than for residential heating purposes.]

(B) Calculation of partial reimbursement. Notwithstanding any other provision of this article, [commencing April first, two thousand one and ending August thirty-first, two thousand two, the amount of the reimbursement under this paragraph shall be determined by multiplying the quantity of diesel motor fuel eligible for the reimbursement times the sum of the then current rate of the supplemental tax imposed by section three hundred one-j of this article and twenty percent of the then current rate of the tax imposed by section three hundred one-a of this article, with respect to the specific diesel motor fuel rate, as the case may be, and commencing September first, two thousand two,] the amount of the reimbursement under this paragraph shall be determined by multiplying the quantity of NON-HIGHWAY diesel motor fuel eligible for the reimbursement times the sum of the then current rate of the supplemental tax imposed by section three hundred one-j of this article and forty-six percent of the then current rate of the tax imposed by section three hundred one-a of this article, with respect to the [specific] NON-HIGHWAY diesel motor fuel rate, as the case may be.

(e) NON-HIGHWAY Diesel motor fuel and residual petroleum product used for farm production. NON-HIGHWAY Diesel motor fuel or residual petroleum product purchased in this state and sold by such purchaser to a consumer for use or consumption directly and exclusively in the production for sale of tangible personal property by farming, but only if all of such NON-HIGHWAY DIESEL MOTOR fuel or product is delivered on the farm site and is consumed other than on the PUBLIC highways of this state (except for the use of the PUBLIC highway to reach adjacent farmlands)[; provided, however, that a subsequent purchaser shall be eligible for this reimbursement with respect to no more than four thousand five hundred gallons of diesel motor fuel sold to a consumer in a thirty-day period for such use or consumption, except in accordance with prior clearance given by the commissioner]. This reimbursement may be claimed only where (i) the tax imposed pursuant to this article has been paid with respect to such NON-HIGHWAY diesel motor fuel or residual petroleum product and the entire amount of such tax has been absorbed by such purchaser, and (ii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner shall require such documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate[, including any certification required pursuant to section two hundred eighty-five-b of this chapter and any such prior clearance described in the first sentence of this subdivision].

(f) Motor fuel used for farm production. No more than one thousand five hundred gallons of motor fuel purchased in this state in a thirty-day period or a greater amount which has been given prior clearance by the commissioner, by a consumer for use or consumption directly and exclusively in the production for sale of tangible personal property by farming, but only if all of such fuel is delivered on the farm site and is consumed other than on the PUBLIC highways of this state (except for the use of the PUBLIC highway to reach adjacent farmlands). This reimbursement to such purchaser who used such motor fuel in the manner specified in this subdivision may be claimed only where, (i) the tax imposed pursuant to this article has been paid with respect to such motor fuel and the entire amount of such tax has been absorbed by such purchaser, and (ii) such purchaser possesses documentary proof satisfac-

tory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner shall require such documentary proof to qualify for any reimbursement of tax provided by this subdivision as the commissioner deems appropriate. The commissioner is hereby empowered to make such provisions as deemed necessary to define the procedures for granting prior clearance for purchases of more than one thousand five hundred gallons in a thirty-day period.

(h) A subsequent purchaser which is registered as a distributor of diesel motor fuel shall be eligible for reimbursement of the tax imposed by section three hundred one-a of this article with respect to gallonage of residual petroleum product[,] AND NON-HIGHWAY diesel motor fuel [(which is not enhanced diesel motor fuel) and dyed diesel motor fuel,] subsequently sold by such purchaser to an organization which has qualified under paragraph four or five of subdivision (a) of section eleven hundred sixteen of this chapter for the exclusive use and consumption by such organization. Provided, however, this exemption shall in no event apply to a sale of NON-HIGHWAY diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such NON-HIGHWAY DIESEL MOTOR fuel can be dispensed into the fuel tank of a motor vehicle and all deliveries hereunder shall be made to the premises occupied by the qualifying organization and used by such organization in furtherance of the exempt purposes of such organization. This reimbursement may be claimed only where (i) the tax imposed pursuant to this article has been paid with respect to such NON-HIGHWAY diesel motor fuel or residual petroleum product and the entire amount of such tax has been absorbed by such purchaser, and (ii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, further, that the commissioner shall require such other documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate. [The term "dyed diesel motor fuel" as used in this subdivision shall have the same meaning it has in subdivision eighteen of section two hundred eighty-two of this chapter.]

(i) Reimbursement for commercial gallonage. (1) [Commencing March first, nineteen hundred ninety-seven, a] A reimbursement shall be allowed to a consumer with respect to gallonage of [nonautomotive-type] NON-HIGHWAY diesel motor fuel [(which is not enhanced diesel motor fuel)] or residual petroleum product (i) which was purchased by such consumer and where the supplemental tax imposed by section three hundred one-j of this article with respect to such gallonage was paid by a petroleum business and passed through to such consumer, (ii) such consumer absorbed the entirety of such tax in the purchase price of such gallonage, and (iii) such gallonage was used and consumed by such consumer exclusively as "commercial gallonage". Provided, however, that the commissioner shall require such documentary proof to qualify for any reimbursement of tax provided by this subdivision as the commissioner deems appropriate, including a certification by the consumer that the product was used and consumed exclusively as "commercial gallonage" by such consumer.

(2) Calculation. The amount of the reimbursement shall be determined by multiplying the quantity of "commercial gallonage" eligible for reimbursement times the then current rate of the supplemental tax imposed by section three hundred one-j of this article with respect to [nonautomotive-type] NON-HIGHWAY diesel motor fuel or residual petroleum

product, as the case may be. Any reimbursement of tax may be applied for not more often than monthly.

(j) Reimbursement for manufacturing gallonage. [Commencing January first, nineteen hundred ninety-eight, a] A subsequent purchaser shall be eligible for reimbursement of any taxes imposed under this article with respect to gallonage of residual petroleum product and NON-HIGHWAY diesel motor fuel [(which is not enhanced diesel motor fuel),] subsequently sold by such purchaser to a consumer as "manufacturing gallonage." This reimbursement may be claimed only where (1) any tax imposed pursuant to this article has been paid with respect to such gallonage and the entire amount of such tax has been absorbed by such purchaser, and (2) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of such tax. Provided, however, that the commissioner shall require such documentary proof to qualify for any reimbursement of tax provided by this subdivision as the commissioner deems appropriate including a certificate by the consumer that such product is to be used and consumed exclusively as "manufacturing gallonage".

(k) Reimbursement for railroad gallonage. (1) [Commencing January first, nineteen hundred ninety-seven, a] A subsequent purchaser, which is registered as a distributor of diesel motor fuel, shall be eligible for a reimbursement in accordance with this subdivision with respect to NON-HIGHWAY diesel motor fuel subsequently sold by such purchaser to a consumer as "railroad diesel".

(2) The amount of the reimbursement with respect to such product shall be equal to the difference between (i) the tax actually paid under this article by a petroleum business with respect to such product and subsequently passed through to and absorbed by such purchaser, and (ii) the tax under this article that would have been paid with respect to such product had an importing distributor sold such product directly to a purchaser as "railroad diesel". Provided that the commissioner shall require such documentary proof as the commissioner deems necessary to substantiate a reimbursement claim under this subdivision. Any reimbursement of tax may be applied for not more often than monthly.

(l) Reimbursement for mining and extraction. A purchaser shall be eligible for reimbursement of the tax imposed by section three hundred one-a of this article with respect to gallonage of residual petroleum product and NON-HIGHWAY diesel motor fuel, purchased for use and consumption directly and exclusively in the production of tangible personal property for sale by mining or extracting, but only if all of such fuel or product is delivered at the mining or extracting site and is consumed other than on the PUBLIC highways of this state; provided, however, this reimbursement shall in no event apply to a sale of NON-HIGHWAY diesel motor fuel which involves a delivery at a filling station. This reimbursement may be claimed only where (i) the tax imposed pursuant to this article has been paid with respect to such NON-HIGHWAY diesel motor fuel or residual petroleum product and the entire amount of such tax has been absorbed by such purchaser, and (ii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner shall require such documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate.

(m) Reimbursement for passenger commuter ferries. A use by a passenger commuter ferry of NON-HIGHWAY diesel motor fuel or residual petroleum

product where such NON-HIGHWAY diesel motor fuel or residual petroleum product was used and consumed by a passenger commuter ferry exclusively in providing mass transportation service. This reimbursement may be claimed only where (1) any tax imposed pursuant to this article has been paid with respect to such gallonage and the entire amount of such tax has been absorbed by such purchaser, and (2) such ferry possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of such tax. Provided, that the commissioner shall require such documentary proof to qualify for any reimbursement provided hereunder as the commissioner deems appropriate.

S 24. Paragraphs 1 and 2 of subdivision (a) of section 301-d of the tax law, as amended by chapter 410 of the laws of 1991, are amended to read as follows:

(1) Credit. Residual petroleum product and NON-HIGHWAY diesel motor fuel [(which is not enhanced diesel motor fuel)] (i) imported into this state by such electric corporation which is a petroleum business where the tax liability under section three hundred one-a of this article is imposed on such electric corporation and where the residual petroleum or NON-HIGHWAY diesel product so imported is used by such electric corporation to fuel generators for the purpose of manufacturing or producing electricity or (ii) purchased in this state by such electric corporation by the use of a valid direct payment permit whereby such electric corporation assumed full liability for tax with respect to such product where such product so purchased is used by such electric corporation to fuel generators for the purpose of manufacturing or producing electricity.

(2) Reimbursement. Residual petroleum product and NON-HIGHWAY diesel motor fuel [(which is not enhanced diesel motor fuel)] purchased in this state by such electric corporation where the tax imposed by section three hundred one-a of this article with respect to such residual petroleum or diesel product was paid and the utility absorbed such tax in the purchase price of such fuel and where such product is used by such electric corporation to fuel generators for the purpose of manufacturing or producing electricity.

S 25. Subdivision (c) of section 301-e of the tax law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

(c) Kero-jet fuel component. The kero-jet fuel component shall be determined by multiplying the kero-jet fuel rate times the number of gallons of (1) kero-jet fuel imported or caused to be imported into this state by an aviation fuel business and consumed in this state by such business in the operation of its aircraft; and (2) kero-jet fuel, which has not been previously included in the measure of the tax imposed by this section, (i) which is sold in this state by an aviation fuel business to persons other than those registered under this article as aviation fuel businesses or (ii) which is consumed in this state by an aviation fuel business in the operation of its aircraft. Provided that importation of kero-jet fuel in the fuel tanks of aircraft shall be importation for the purposes of this section. The basic kero-jet fuel rate shall be [one and nine-tenths] SIX AND EIGHT-TENTHS cents per gallon. The rate shall be adjusted at the same time as the rates of the components of the petroleum business tax imposed by section three hundred one-a of this article, and the method of making adjustments to the kero-jet fuel rate shall be the same as the method used for such rates. [Provided, however, that commencing July first, nineteen hundred ninety-one, the kero-jet fuel rate shall be equal to the motor fuel and automotive-type diesel motor fuel rate set by subdivision (e) of section three hundred one-a of this article as such rate may be adjusted as

provided in such subdivision. Provided, further, that commencing September first, nineteen hundred ninety-five, the kero-jet fuel rate shall be five and two-tenths cents per gallon. The rate shall be adjusted at the same time as the rates of the components of the petroleum business tax imposed by section three hundred one-a of this article, and the method of making adjustments to the kero-jet fuel rate shall be the same as the method used for such rates.]

S 26. Sections 301-f and 301-g of the tax law are REPEALED.

S 27. Paragraph 2 of subdivision (a) of section 301-h of the tax law, as amended by chapter 170 of the laws of 1994, is amended to read as follows:

(2) The rate of the tax imposed by this section shall be equal to the motor fuel and [automotive-type] HIGHWAY diesel motor fuel rate set by subdivision (e) of section three hundred one-a plus the rate of the supplemental tax imposed by section three hundred one-j of this article as such rates are specified therein and as they may be adjusted as provided in such provisions. [In addition, the tax surcharge imposed by section three hundred-one-g of this article shall be imposed with respect to the tax imposed by this section as if the tax imposed hereunder were imposed by section three hundred-one-a of this article.]

S 28. Section 301-i of the tax law is REPEALED.

S 29. Paragraphs 1, 2, 3 and 4 of subdivision (a) and subdivision (c) of section 301-j of the tax law, paragraph 1 of subdivision (a) as amended and paragraphs 2, 3 and 4 of subdivision (a) as added by chapter 309 of the laws of 1996 and subdivision (c) as amended by chapter 410 of the laws of 1991, are amended to read as follows:

(1) In addition to the taxes imposed by sections three hundred one-a and three hundred one-e of this article, [for taxable months commencing on or after July first, nineteen hundred ninety-one] there is hereby imposed upon every petroleum business subject to tax imposed under section three hundred one-a of this article and every aviation fuel business subject to the aviation gasoline component of the tax imposed under section three hundred one-e of this article, a supplemental monthly tax for each or any part of a taxable month at a rate of [four and one-half] SIX AND EIGHT-TENTHS cents per gallon with respect to the products included in each component of the taxes imposed by such [sections] SECTION three hundred one-a and the aviation gasoline component of the tax imposed by such section three hundred one-e of this article.

(2) Provided, however, [commencing March first, nineteen hundred ninety-seven,] "commercial gallonage," as such term is defined in subdivision (k) of section three hundred of this article, shall be exempt from the measure of the tax imposed under this section.

(3) Provided, further, [commencing January first, nineteen hundred ninety-seven,] "railroad diesel," as such term is defined in subdivision (l) of section three hundred of this article, shall be exempt from the measure of the tax imposed under this section.

(4) Provided, further, [commencing January first, nineteen hundred ninety-eight,] a separate per gallon rate shall apply with respect to [automotive-type] HIGHWAY diesel motor fuel. Such rate shall be determined by taking the adjusted rate per gallon of tax imposed under paragraph one of this subdivision as adjusted in accordance with paragraph five of this subdivision [which commences on such date] and subtracting therefrom [three-quarters of one cent. On January first, nineteen hundred ninety-nine, the automotive-type diesel motor fuel rate shall be determined by taking the adjusted rate per gallon of tax imposed under

paragraph one of this subdivision, as adjusted in accordance with paragraph five of this subdivision which commences on such date and subtracting therefrom three-quarters of one cent. On April first, nineteen hundred ninety-nine, there shall be a new rate applicable to such fuel which shall be such adjusted rate of tax per gallon under such paragraph one of this subdivision, as adjusted in accordance with paragraph five of this subdivision then in effect, minus] one and three-quarters cents. Commencing January first, two thousand TWELVE, and each January thereafter, the per gallon rate applicable to [automotive-type] HIGHWAY diesel motor fuel shall be the adjusted rate under paragraph one of this subdivision as adjusted in accordance with paragraph five of this subdivision which commences on such date minus one and three-quarters cents. The resulting rate under this paragraph shall be expressed in hundredths of a cent.

(c) Rate adjustment [and surcharge]. [Commencing January first, nineteen hundred ninety-two and on the first day of January every year thereafter, the] THE rate of the supplemental tax shall be adjusted at the same time as the rates of the components of the taxes imposed by sections three hundred one-a and three hundred one-e of this article, and the method of making adjustments to the rate of the supplemental tax shall be the same as the method used for such rates.

S 30. The opening paragraph and subdivisions (a) and (c) of section 301-1 of the tax law, as added by chapter 170 of the laws of 1994, are amended to read as follows:

There shall be allowed to a registered petroleum business or aviation fuel business a refund under this section for the taxes [and tax surcharge] imposed by sections three hundred one-a, three hundred one-e, [three hundred one-g] and three hundred one-j of this article for the tax paid under such sections with respect to gallonage which is represented by a worthless debt as follows:

(a) The refund shall be allowed to a registered petroleum business or aviation fuel business for gallonage with respect to which tax liability for the taxes under this article is imposed on such petroleum business or aviation fuel business where (i) such gallonage has been included in the reports filed by such petroleum business or aviation fuel business and all the taxes under this article with respect to such gallonage have been paid by such business, (ii) such gallonage was sold in-bulk by such petroleum or aviation fuel business to a purchaser for such purchaser's own use and consumption and (iii) such sale gave rise to a debt which became worthless, as that term is used for federal income tax purposes, and where such debt is deducted as a worthless debt for federal income tax purposes for the taxable year covering the month in which such refund claim relating to such debt is filed. Provided, however, for the purposes of this section, a sale of motor fuel and [enhanced] HIGHWAY diesel motor fuel to a filling station shall be deemed to be a sale in-bulk for such filling station's own use and consumption and, provided, further, in no event shall a worthless debt qualify with respect to the refund hereunder where such debt arises from a retail sale at a filling station or sale wherein product is delivered directly into the fuel tank of a motor vehicle, airplane or other conveyance.

(c) Upon receipt of a claim for refund in processible form, interest shall be allowed and paid at the overpayment rate set by the commissioner pursuant to subdivision twenty-sixth of section one hundred seventy-one of this chapter from the date of the receipt of the refund claim to the date immediately preceding the date of the refund check except no such interest shall be allowed or paid if the refund check is mailed

within ninety days of such receipt and except no interest shall be allowed or paid if the amount thereof would be less than one dollar. Provided, further, the refund shall be granted pro rata against sections three hundred one-a, three hundred one-e, [three hundred one-g] and three hundred one-j of this article, as the case may be, to the same extent as represented by the remittance of the petroleum business or aviation fuel business with respect to the gallonage represented by the worthless debt.

S 31. Subdivision (b) of section 302 of the tax law, as added by chapter 190 of the laws of 1990, is amended to read as follows:

(b) Residual petroleum product business. The department [of taxation and finance], upon the application of a corporation or unincorporated business, shall register such corporation or unincorporated business as a residual petroleum product business except that the commissioner [of taxation and finance] may refuse to register an applicant for any of the grounds specified in subdivision two or five of section two hundred eighty-three of this chapter or in subdivision (d) of this section. The application shall be in such form and contain such information as the commissioner shall prescribe. All of the provisions of subdivisions two, four, five, six, seven, eight, nine and ten of section two hundred eighty-three of this chapter relating to registration of distributors shall be applicable to the registration of residual petroleum product businesses under this section with the same force and effect as if the language of those subdivisions had been incorporated in full in this section and had expressly referred to the registration of residual petroleum product businesses and the tax imposed by this article, with such modification as may be necessary in order to adapt the language of such provisions to the provisions of this article, provided, specifically, that the term "distributor" shall be read as "residual petroleum product business" and the [terms] TERM "motor fuel" [and "automotive fuel"] shall be read as "residual petroleum product". Provided, however, that if the commissioner is satisfied that the requirements of such provisions for registration are not necessary in order to protect tax revenues, the commissioner may limit or modify such requirements with respect to corporations or unincorporated businesses not required to be registered as distributors of motor fuel or diesel motor fuel.

S 32. Section 312 of the tax law, as amended by chapter 166 of the laws of 1991 and subdivision (b) as amended by section 8 of part EE of chapter 63 of the laws of 2000, is amended to read as follows:

S 312. Deposit and disposition of revenue.--[(a) Except as provided in sections three hundred one-f and three hundred one-g of this chapter, of all of the taxes, interest and penalties collected or received by the commissioner of taxation and finance under section three hundred one of this article with respect to any taxable year commencing on or after April first, nineteen hundred eighty-four and to that portion of any taxable year commencing prior thereto to the extent of that portion of such year which includes the period which commences with April first, nineteen hundred eighty-four, seventy-two and seven-tenths percent shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter and the balance thereof shall be deposited in the mass transportation operating assistance fund to the credit of the metropolitan mass transportation operating assistance account and the public transportation systems operating assistance account thereof in the manner provided by subdivision eleven of section one hundred eighty-two-a of this chapter. Provided, however, that the actual amount of such taxes, interest and penalties which shall be

deposited in such mass transportation operating assistance fund pursuant to this section during the twelve-month period from April first, nineteen hundred eighty-four to and including March thirty-first, nineteen hundred eighty-five shall not be less than an amount which, when added to the actual amount that is deposited in such fund during such twelve-month period and that is attributable to the taxes, interest and penalties collected and received under section one hundred eighty-two-a of this chapter, yields the sum of seventy-nine million five hundred thousand dollars and provided further that of such actual amounts deposited in such fund pursuant to this section and to section one hundred eighty-two-a of this chapter during the twelve-month period from April first, nineteen hundred eighty-five to March thirty-first, nineteen hundred eighty-six and during the twelve-month period from April first, nineteen hundred eighty-six to March thirty-first, nineteen hundred eighty-seven, the amount which shall be deposited to the credit of the public transportation systems operating assistance account thereof during each such period shall be not less than thirty-six million dollars. Provided further that if the total amount deposited in the mass transportation operating assistance fund during the twelve month period commencing April first, nineteen hundred eighty-five pursuant to this section and to section one hundred eighty-two-a of this chapter is less than eighty million dollars, the comptroller shall deposit to the credit of the metropolitan mass transportation operating assistance account on or after April first, nineteen hundred eighty-six and on or before June thirtieth, nineteen hundred eighty-six from any taxes, interest, and penalties collected or received by the commissioner of taxation and finance under this article in addition to amounts which would otherwise be deposited to the credit of the mass transportation operating assistance fund, an amount equal to the difference between eighty million dollars and the amounts actually deposited in the mass transportation operating assistance fund during such twelve-month period pursuant to this section and to section one hundred eighty-two-a of this chapter. Provided further that if the total amount deposited in the mass transportation operating assistance fund during the twelve month period commencing April first, nineteen hundred eighty-six pursuant to this section and to section one hundred eighty-two-a of this chapter, exclusive of the amount deposited in such fund to the credit of the metropolitan mass transportation operating assistance account on or after April first, nineteen hundred eighty-six and on or before June thirtieth, nineteen hundred eighty-six pursuant to the preceding sentence, is less than eighty million dollars, the comptroller shall deposit to the credit of the metropolitan mass transportation operating assistance account on or after April first, nineteen hundred eighty-seven and on or before June thirtieth, nineteen hundred eighty-seven from any taxes, interest, and penalties collected or received by the commissioner of taxation and finance under this article in addition to amounts which would otherwise be deposited to the credit of the mass transportation operating assistance fund, an amount equal to the difference between eighty million dollars and the amounts actually deposited in the mass transportation operating assistance fund during such twelve-month period pursuant to this section and to section one hundred eighty-two-a of this chapter, exclusive of the amount deposited in such fund to the credit of the metropolitan mass transportation operating assistance account on or after April first, nineteen hundred eighty-six and on or before June thirtieth, nineteen hundred eighty-six pursuant to the preceding sentence. Provided, further, however, with respect to all taxes, and

interest and penalties relating thereto, collected or received by the commissioner of taxation and finance under the tax imposed by section three hundred one of this article with respect to any taxable year commencing on and after June first, nineteen hundred ninety and to that portion of any taxable year commencing prior thereto to the extent of that portion of such year which includes the period which commences June first, nineteen hundred ninety, eighty-nine and one-half percent of such collections shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter and the balance thereof shall be deposited in the mass transportation operating assistance fund to the credit of the metropolitan mass transportation operating assistance account and the public transportation systems operating assistance account thereof in the manner provided by subdivision eleven of section one hundred eighty-two-a of this chapter.

(b) Of all of the taxes collected or received by the commissioner on or before March thirty-first, nineteen hundred ninety-one under the taxes imposed by sections three hundred one-a and three hundred one-e of this article, and all interest and penalties relating thereto, eighty-seven and five-hundredths percent of such collections shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter and the balance thereof shall be deposited in the mass transportation operating assistance fund to the credit of the metropolitan mass transportation operating assistance account and the public transportation systems operating assistance account thereof in the manner provided by subdivision eleven of section one hundred eighty-two-a of this chapter. Of all taxes, interest and penalties collected or received after March thirty-first, nineteen hundred ninety-one, and before April first, nineteen hundred ninety-three, from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, initially thirty-five percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a. The balance thereof shall then be disposed of as follows: seventy-two and seven-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a and twenty-seven and three-tenths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner. Except as otherwise provided, of all taxes, interest and penalties collected or received after March thirty-first, nineteen hundred ninety-three, and before April first, nineteen hundred ninety-four, from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially fifty-four percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this chapter, (ii) twenty-eight and three-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund and (iii) seventeen and seven-tenths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner. Provided, however, that, prior to such deposit, from the amounts so collected or received during the period commencing on January first, nineteen hundred ninety-four and ending on March thirty-first, nineteen hundred ninety-four, an amount equal to the portion of the taxes, interest and penalties so received or collected resulting from the amendments made by sections forty-two, forty-three and forty-four of chapter fifty-seven of the laws of nineteen hundred ninety-three shall be deposited and disposed of pursuant to the provisions of subdivision one of section one hundred seventy-one-a of this chapter. Except as otherwise provided, of all taxes, interest and penalties collected or

received on or after April first, nineteen hundred ninety-four, from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially fifty-four percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) twenty-eight and three-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund, (iii) seven and nine hundred sixty-five thousandths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner and (iv) nine and seven hundred thirty-five thousandths percent shall be deposited in the revenue accumulation fund. Except as otherwise provided, of all taxes, interest and penalties collected or received on or after September first, nineteen hundred ninety-four and before September first, nineteen hundred ninety-five, from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially fifty-nine percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) twenty-two and four-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund, (iii) eight and three hundred seventy thousandths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner and (iv) ten and two hundred thirty thousandths percent shall be deposited in the revenue accumulation fund. Except as otherwise provided, of all taxes, interest and penalties, collected or received on or after September first, nineteen hundred ninety-five and before April first, nineteen hundred ninety-six from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially sixty-two and eight-tenths percent shall be deposited as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) eighteen percent shall be deposited and disposed of pursuant to section one hundred seventy-one-a of this chapter in the general fund, (iii) eight and six hundred forty thousandths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner and (iv) ten and five hundred sixty thousandths percent shall be deposited in the revenue accumulation fund. Except as otherwise provided, of all taxes, interest and penalties collected or received on or after April first, nineteen hundred ninety-six, and before January first, nineteen hundred ninety-seven from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially sixty-three and three-tenths percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) seventeen and four-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund and (iii) nineteen and three-tenths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner. Except as otherwise provided, of all taxes, interest and penalties collected or received on or after January first, nineteen hundred ninety-seven and before January first, nineteen hundred ninety-eight from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially sixty-six and two-tenths percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) fourteen and one-half percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund and (iii) nineteen and three-tenths percent shall be deposited in such mass trans-

portation operating assistance fund as prescribed in the aforestated manner. Except as otherwise provided, of all taxes, interest and penalties collected or received on or after January first, nineteen hundred ninety-eight and before April first, nineteen hundred ninety-nine from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially sixty-eight and one-tenth percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) twelve and four-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund and (iii) nineteen and one-half percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner. Except as otherwise provided, of all taxes, interest and penalties collected or received on or after April first, nineteen hundred ninety-nine, from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially sixty-nine and eight-tenths percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) ten and seven-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund and (iii) nineteen and one-half percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner.] Except as otherwise provided, of all taxes, interest and penalties collected or received on or after April first, two thousand one, from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially eighty and three-tenths percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article and (ii) nineteen and seven-tenths percent shall be deposited in such mass transportation operating assistance fund [as prescribed in the aforestated manner] TO THE CREDIT OF THE METROPOLITAN MASS TRANSPORTATION OPERATING ASSISTANCE ACCOUNT AND THE PUBLIC TRANSPORTATION SYSTEMS OPERATING ASSISTANCE ACCOUNT THEREOF IN THE MANNER PROVIDED BY SUBDIVISION ELEVEN OF SECTION ONE HUNDRED EIGHTY-TWO-A OF THIS CHAPTER. [Provided, further, that on or before the twenty-fifth day of each month commencing with October, nineteen hundred ninety and terminating with the month of March, two thousand one, the comptroller shall deduct the amount of six hundred twenty-five thousand dollars prior to any deposit or disposition of the taxes, interest and penalties collected or received pursuant to such sections three hundred one-a and three hundred one-e and shall pay such amount to the state treasury to the credit of the general fund.] Provided, further that on or before the twenty-fifth day of each month commencing with April, two thousand one, the comptroller shall deduct the amount of six hundred twenty-five thousand dollars prior to any deposit or disposition of the taxes, interest, and penalties collected or received pursuant to such sections three hundred one-a and three hundred one-e and shall deposit such amount in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this article. Provided, further, that commencing January fifteenth, nineteen hundred ninety-one, and on or before the tenth day of March and the fifteenth day of June and September of such year, the commissioner shall, based on information supplied by taxpayers and other appropriate sources, estimate the amount of the utility credit authorized by section three hundred one-d of this article which has been accrued to reduce tax liability under section one hundred eighty-six-a of this chapter during the period covered by such estimate and certify to the state comptroller such estimated amount. The comptroller shall

forthwith, after receiving such certificate, deduct the amount of such credit so certified by the commissioner prior to any deposit or disposition of the taxes, interest and penalties collected or received pursuant to such sections three hundred one-a and three hundred one-e and shall pay such amount so certified and deducted into the state treasury to the credit of the general fund. [As soon as practicable after April first, nineteen hundred ninety-one, nineteen hundred ninety-two and nineteen hundred ninety-three, but before June fifteenth of each such year, the commissioner shall determine the amount of the utility tax credit which has been actually used to reduce tax liability under such section one hundred eighty-six-a and shall certify the difference between such actual amount and the earlier estimated amount.] Also, subsequently, during the fiscal year when the commissioner becomes aware of changes or modifications with respect to actual credit usage, the commissioner shall, as soon as practicable, issue a certification setting forth the amount of any required adjustment to the amount of actual credit usage previously certified. After receiving the certificate of the commissioner with respect to actual credit usage or modification of the same, the comptroller shall forthwith adjust general fund receipts and the revenues to be deposited or disposed of under this article to reflect the difference so certified by the commissioner. The commissioner shall not be liable for any overestimate or underestimate of the amount of the utility credit which has been accrued to reduce tax liability under such section one hundred eighty-six-a. Nor shall the commissioner be liable for any inaccuracy in any certificate with respect to the amount of such credit actually used or any required adjustment with respect to actual credit usage, but the commissioner shall as soon as practicable after discovery of any error adjust the next certification under this section to reflect any such error.

[On or before July thirty-first, nineteen hundred ninety-two and on or before July thirty-first, nineteen hundred ninety-three, the commissioner shall conduct the following reconciliation with respect to the preceding fiscal year: he shall multiply the total of all taxes, penalties and interest, after refunds and reimbursements, which are derived from the motor fuel component, the automotive-type diesel motor fuel component and the aviation gasoline component by twenty fifty-fifths; the total of all taxes, penalties and interest, after refunds and reimbursements, which are derived from the nonautomotive-type diesel motor fuel component (excluding taxes, penalties and interest which are derived from product with respect to which the credit or reimbursement provided by section three hundred one-d is taken) by twenty-fiftieths; and all taxes, penalties and interest, after refunds and reimbursements, which are derived from the residual petroleum product component (excluding taxes, penalties and interest which are derived from product with respect to which the credit or reimbursement provided by section three hundred one-d is taken) by twenty-fortieths. The products of the foregoing multiplications shall be added together and the resulting sum of such products shall be compared with the total of the amounts initially distributed during such fiscal year with respect to such components (excluding receipts derived from product with respect to which the credit or reimbursement provided by section three hundred one-d is taken and excluding any amount which represents a reconciliation adjustment pursuant to this paragraph) pursuant to section one hundred seventy-one-a of this chapter which represented thirty-five percent of the total, after refunds and reimbursements, of all taxes, penalties and interest collected or received during such fiscal year under sections three

hundred one-a and three hundred one-e during the months of such fiscal year with respect to such components. The commissioner shall then certify the amount of such difference to the comptroller. If the amounts initially distributed in such fiscal year are greater than the sum of such products, the comptroller shall withhold an amount equal to twenty-seven and three-tenths percent of such difference from the first moneys otherwise payable to the general fund pursuant to this subdivision and shall pay such amount to the mass transportation operating assistance fund to the credit of the metropolitan mass transportation operating assistance account and the public transportation systems operating assistance account thereof in the aforestated manner. If the amounts initially distributed in such fiscal year are less than the sum of such products, the comptroller shall withhold an amount equal to twenty-seven and three-tenths percent of such difference from the first moneys otherwise payable to the mass transportation operating assistance fund pursuant to this subdivision and shall pay such amount to the general fund.

When the commissioner becomes aware of changes or modifications with respect to the distribution of revenue under this article, the commissioner shall, as soon as practicable, issue a certification setting forth the amount of any required adjustment. After receiving the certificate of the commissioner with respect to any adjustments, the comptroller shall forthwith adjust general fund receipts and the revenues to be deposited or disposed of under this article to reflect the difference so certified by the commissioner. The commissioner shall not be liable for any overestimate or underestimate of the amount of the distribution. Nor shall the commissioner be liable for any inaccuracy in any certificate with respect to the amount of the distribution or any required adjustment with respect to the distribution, but the commissioner shall as soon as practicable after discovery of any error adjust the next certification under this section to reflect any such error.] Prior to making deposits as provided in this [subdivision] SECTION, the comptroller shall retain such amount as the commissioner may determine to be necessary, subject to the approval of the director of the budget, for reasonable costs of the department in administering and collecting the taxes deposited pursuant to this [subdivision] SECTION and for refunds and reimbursements with respect to such taxes, out of which the comptroller shall pay any refunds or reimbursements of such taxes to which taxpayers shall be entitled.

S 33. Subdivision (b) of section 315 of the tax law, as amended by section 156 of part A of chapter 389 of the laws of 1997, is amended to read as follows:

(b) Joint administration of taxes. In addition to the powers granted to the commissioner in this chapter, the commissioner is hereby authorized to make provisions for the joint administration, in whole or in part, of the taxes imposed by articles twelve-A and twenty-eight and pursuant to the authority of article twenty-nine of this chapter upon [automotive fuel] MOTOR FUEL AND DIESEL MOTOR FUEL and the taxes imposed by this article, including the joint reporting, assessment, collection, determination and refund of such taxes, and for that purpose to prescribe that any of the commissioner's functions under such articles, and any returns, forms, statements, documents or information to be submitted to the commissioner under such articles, any books and records to be kept for purposes of the taxes imposed or authorized to be imposed by such articles, any schedules of amounts to be collected under such articles, any registration required under such articles, and the payment

of taxes under such articles, shall be on a joint basis with respect to the taxes imposed by or pursuant to such articles. Provided, notwithstanding any provision of this article to the contrary, in the furtherance of joint administration, the provisions of subdivision one of section two hundred eighty-five-a and subdivision one of section two hundred eighty-nine-c of this chapter shall apply to the taxes imposed under this article with the same force and effect as if those provisions specifically referred to the taxes imposed hereunder and all the products with respect to which the taxes are imposed under this article. Provided, further, a reimbursement (or credit) of taxes imposed under this article shall be available to subsequent purchasers of motor fuel, diesel motor fuel or residual petroleum product under the circumstances specified in subdivision eight of section two hundred eighty-nine-c of this chapter with respect to the export of such products. In addition, all the provisions of subdivision one of section two hundred eighty-six of this chapter shall be applicable to all of the products included in the measure of the tax imposed by this article and the powers of the commissioner in administering the tax imposed by this article shall include these set forth in such subdivision. Moreover, the commissioner, in order to preserve the revenue from the tax imposed by this article, shall, by regulation, require that the movement of residual petroleum product into or in this state be accompanied by a tracking document. [Such manifest or other tracking document shall be prescribed only after consultation with the state motor fuels taxation advisory council (created by section forty-one of chapter forty-four of the laws of nineteen hundred eighty-five) as to its form and content and as to whether an existing industry document (or a modified version thereof) may adequately serve the tracking purpose so that such existing industry document may be prescribed as the tracking document.] Also, the commissioner may require (i) that any returns, forms, statements or other document with respect to motor fuel or diesel motor fuel required of transporters or terminal operators under such article twelve-A of this chapter apply with the same force and effect to persons transporting or storing residual petroleum product, (ii) a certification that particular gallonage of motor fuel, diesel motor fuel or residual petroleum product has been included in the measure of the tax imposed by this article and such tax has been paid, and (iii) that the certification required pursuant to section two hundred eighty-five-a or two hundred eighty-five-b of this chapter be expanded to include the tax imposed by this article.

S 34. Subdivision 10 of section 501 of the tax law, as amended by chapter 407 of the laws of 1990, is amended to read as follows:

10. "Automotive fuel" shall mean, SOLELY FOR PURPOSES OF THIS ARTICLE, diesel motor fuel as defined in subdivision fourteen of section two hundred eighty-two of this chapter and motor fuel as defined in subdivision two of section two hundred eighty-two of this chapter.

S 35. Subdivision (b) of section 528 of the tax law, as added by chapter 170 of the laws of 1994, is amended to read as follows:

(b) Cooperative agreements. Notwithstanding any inconsistent provision of law, the commissioner is authorized to enter into a cooperative agreement with other states, the District of Columbia or provinces or territories of Canada for the administration of the tax imposed by this article and similar taxes imposed by other member jurisdictions and for the reporting and payment of tax to a single base state and a proportional sharing of revenue of taxes relating to fuel use among the jurisdictions where a qualified motor vehicle is operated. The agreement may provide for determining the base state for carriers, carriers records

requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required and requiring bonds to secure the tax imposed by this article and similar taxes imposed by other member jurisdictions, specifying reporting requirements and periods including defining uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of taxes, interest and penalties to another jurisdiction, notice and timing of hearings and other provisions as will facilitate the administration of the agreement. The commissioner may, pursuant to the terms of the agreement, forward to the proper officers of another member jurisdiction any information in the commissioner's possession relating to the manufacture, receipt, sale, use, transportation or shipment of [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL by any person and may share any information relating to the administration of taxes pursuant to the agreement with such officers. The commissioner may disclose to the proper officers of another member jurisdiction the location of offices, motor vehicles and other real and personal property of carriers. The agreement may provide for each member jurisdiction to audit the records of persons based in the member jurisdiction and determine taxes due each member jurisdiction. The commissioner may adopt rules and regulations for the administration and enforcement of the agreement. In connection with the administration of taxes under such a cooperative agreement, the commissioner may enter into an agreement with other member jurisdictions and any banks, banking houses, trust companies or other similar institutions with respect to the payment of any tax, fees, penalty or interest to such banks, banking houses, trust companies or similar institutions and the filing of returns and reports with such banks, banking houses, trust companies or similar institutions as agent of the commissioner and such other member jurisdictions. Pursuant to a written agreement made with one or more of the appropriate departments, agencies, officers or instrumentalities of other jurisdictions, the commissioner may let contracts for provision of such services to the department and to one or more of such entities of other jurisdictions; provided, that provisions shall be made in all such agreements with the participating governmental entities and in all such contracts let by the commissioner for the assumption by each of the participating governmental entities of sole responsibility for its proportionate share of the costs under the terms of such contract. The commissioner may contract for such services jointly with and pursuant to a contract let by the appropriate department, agency, officer or instrumentality of another jurisdiction; provided that (1) the commissioner shall approve the proposed terms and conditions of all such joint governmental contracts, (2) the letting of such joint governmental contract shall be based on invitation of competitive bids or proposals, and (3) the participation by the department in any such joint contract shall be preceded by an evaluation and finding in writing by the commissioner that a reasonable potential exists for the saving of costs by the state, by means of such joint governmental contract.

S 36. The opening paragraph of subparagraph (ii) of paragraph 4 of subdivision (b) of section 1101 of the tax law, as amended by chapter 261 of the laws of 1988, is amended to read as follows:

Notwithstanding the provisions of subparagraph (i) of this paragraph, no motor fuel or diesel motor fuel shall be sold or used in this state without payment, and inclusion in the sales price of such motor fuel, of the tax on motor fuel required to be prepaid pursuant to the provisions of section eleven hundred two of this article except where a provision

of this article relating to motor fuel or diesel motor fuel specifically provides otherwise and except in the case of a sale or use subject to tax under section eleven hundred five or eleven hundred ten, respectively, of this article. Provided, however, except for such requirement of prepayment of tax required by section eleven hundred two of this article, the provisions of this subparagraph shall not otherwise modify the meaning of the term "retail sale" as used in this article. For purposes of this subparagraph and sections eleven hundred two, eleven hundred eleven, eleven hundred twenty, eleven hundred thirty-two, eleven hundred thirty-four, eleven hundred thirty-five, eleven hundred thirty-six, ELEVEN HUNDRED FORTY-TWO, ELEVEN HUNDRED FORTY-FIVE and eighteen hundred seventeen of this chapter, the following terms shall have the following meanings:

S 37. Clause (A) of subparagraph (ii) of paragraph 4 of subdivision (b) of section 1101 of the tax law, as amended by chapter 261 of the laws of 1988, is amended to read as follows:

(A) "[Automotive fuel"] PETROLEUM PRODUCTS" means diesel motor fuel as defined in subdivision fourteen of section two hundred eighty-two of this chapter, other than kerosene or propane used for residential purposes, or motor fuel as defined in subdivision two of section two hundred eighty-two of this chapter. The phrase "used for residential purposes" shall have the same meaning as it has for purposes of section eleven hundred five-A of this article.

S 38. Clause (F) of subparagraph (ii) of paragraph 4 of subdivision (b) of section 1101 of the tax law is REPEALED and a new clause (F) is added to read as follows:

(F) THE TERMS "HIGHWAY DIESEL MOTOR FUEL" AND "NON-HIGHWAY DIESEL MOTOR FUEL" SHALL HAVE THE SAME MEANING AS THEY HAVE FOR PURPOSES OF ARTICLE TWELVE-A OF THIS CHAPTER.

S 39. Paragraph 2 of subdivision (a) of section 1102 of the tax law, as separately amended by section 9 of part W-1 of chapter 109 and chapter 302 of the laws of 2006, is amended to read as follows:

(2) Every distributor of diesel motor fuel shall pay, as a prepayment on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, a tax upon the sale or use of diesel motor fuel in this state. The tax shall be computed based upon the number of gallons of diesel motor fuel sold or used. Provided, however, if the tax has not been imposed prior thereto, it shall be imposed on the delivery of diesel motor fuel to a retail service station. The collection of such tax shall not be made applicable to the sale or use of diesel motor fuel under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto. The prepaid tax on diesel motor fuel shall not apply to (i) the sale of previously untaxed [diesel motor fuel which is not enhanced] NON-HIGHWAY Diesel motor fuel to a person registered as a distributor of Diesel motor fuel other than a sale to such person which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle, OR (ii) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for heating purposes in containers of no more than twenty gallons or to the sale of CNG or hydrogen [or (iii) the sale of dyed diesel motor fuel as set forth in clause (A) or (B) of subparagraph (i)

of paragraph (c) of subdivision three of section two hundred eighty-two-a of this chapter].

S 39-a. Paragraph 2 of subdivision (a) of section 1102 of the tax law, as amended by chapter 302 of the laws of 2006, is amended to read as follows:

(2) Every distributor of diesel motor fuel shall pay, as a prepayment on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, a tax upon the sale or use of diesel motor fuel in this state. The tax shall be computed based upon the number of gallons of diesel motor fuel sold or used. Provided, however, if the tax has not been imposed prior thereto, it shall be imposed on the delivery of diesel motor fuel to a retail service station. The collection of such tax shall not be made applicable to the sale or use of diesel motor fuel under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto. The prepaid tax on diesel motor fuel shall not apply to (i) the sale of previously untaxed [diesel motor fuel which is not enhanced] NON-HIGHWAY Diesel motor fuel to a person registered as a distributor of Diesel motor fuel other than a sale to such person which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle, OR (ii) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for heating purposes in containers of no more than twenty gallons [or (iii) the sale of dyed diesel motor fuel as set forth in clause (A) or (B) of subparagraph (i) of paragraph (c) of subdivision three of section two hundred eighty-two-a of this chapter].

S 40. Subsection (a) of section 1105-A of the tax law, as amended by section 1 of part B of chapter 35 of the laws of 2006, is amended to read as follows:

(a) Notwithstanding any other provisions of this article, but not for purposes of the taxes imposed by section eleven hundred eight of this part or authorized pursuant to the authority of article twenty-nine of this chapter, the taxes imposed by subdivision (a) or (b) of section eleven hundred five OF THIS PART on the receipts from the retail sale of fuel oil and coal used for residential purposes; the receipts from the retail sale of wood used for residential heating purposes; and the receipts from every sale, other than for resale, of propane (except when sold in containers of less than one hundred pounds), natural gas, electricity, steam and gas, electric and steam services used for residential purposes shall be paid at the rate of three percent for the period commencing January first, nineteen hundred seventy-nine and ending December thirty-first, nineteen hundred seventy-nine; at the rate of two and one-half percent for the period commencing January first, nineteen hundred eighty and ending September thirtieth, nineteen hundred eighty, and at the rate of zero percent on and after October first, nineteen hundred eighty. The provisions of this subsection shall not apply to a sale of [(i)] diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle [and (ii) enhanced diesel motor fuel except in the case of a sale of such enhanced diesel motor fuel used exclusively for residential purposes which is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be

dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel, provided that each delivery of such fuel of over four thousand five hundred gallons shall be evidenced by a certificate signed by the purchaser stating that the product will be used exclusively for residential purposes].

S 41. Subdivision (j) of section 1115 of the tax law, as amended by section 12 of part W-1 of chapter 109 of the laws of 2006, is amended to read as follows:

(j) The exemptions provided in this section shall not apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article nor to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to receipts from sales and uses of motor fuel or diesel motor fuel, except that the exemptions provided in paragraphs nine and forty-two of subdivision (a) of this section shall apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article and to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to sales and uses of kero-jet fuel, CNG, hydrogen and E85, provided, however, the exemption allowed for E85 shall be subject to the additional requirements provided in section eleven hundred two of this article with respect to E85. The exemption provided in subdivision (c) of this section shall apply to sales and uses of NON-HIGHWAY diesel motor fuel [which is not enhanced diesel motor fuel] but only if all of such fuel is consumed other than on the PUBLIC highways of this state[, provided, however, this exemption shall in no event apply to a sale of diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle]. The exemption provided in subdivision (c) of this section shall apply to sales and uses of [no more than four thousand five hundred gallons of] NON-HIGHWAY diesel motor fuel [in a thirty-day period] for use or consumption either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both but only if all of such fuel is consumed other than on the PUBLIC highways of this state (except for the use of the PUBLIC highways to reach adjacent farmlands or adjacent lands used in a commercial horse boarding operation, or both)[, provided, however, such exemption shall be applicable to the sale or use of more than four thousand five hundred gallons of diesel motor fuel in a thirty-day period for such use or consumption in accordance with a prior clearance given by the commissioner].

S 41-a. Subdivision (j) of section 1115 of the tax law, as amended by section 8 of part B of chapter 63 of the laws of 2000, is amended to read as follows:

(j) The exemptions provided in this section shall not apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article nor to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to receipts from sales and uses of motor fuel or diesel motor fuel, except that the exemption provided in paragraph nine of subdivision (a) of this section shall apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article and to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to sales and uses of kero-jet fuel. The exemption provided in subdivision (c) of this section shall apply to sales and uses of NON-HIGHWAY diesel motor fuel [which is not enhanced

diesel motor fuel] but only if all of such fuel is consumed other than on the PUBLIC highways of this state[, provided, however, this exemption shall in no event apply to a sale of diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle]. The exemption provided in subdivision (c) of this section shall apply to sales and uses of [no more than four thousand five hundred gallons of] NON-HIGHWAY diesel motor fuel [in a thirty-day period] for use or consumption either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both but only if all of such fuel is consumed other than on the PUBLIC highways of this state (except for the use of the PUBLIC highways to reach adjacent farmlands or adjacent lands used in a commercial horse boarding operation, or both)[, provided, however, such exemption shall be applicable to the sale or use of more than four thousand five hundred gallons of diesel motor fuel in a thirty-day period for such use or consumption in accordance with a prior clearance given by the commissioner].

S 42. Subdivision (e) of section 1120 of the tax law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

(e) Immediate export. With respect to (i) motor fuel imported, manufactured or sold or purchased in this state, and (ii) [enhanced] HIGHWAY diesel motor fuel, a refund or credit shall be allowed a registered distributor of this state or a purchaser of the tax required to be prepaid pursuant to section eleven hundred two of this article in the amount of such tax paid by or included in the price paid by a distributor or such purchaser if such fuel was exported from this state for sale outside this state, such distributor or such purchaser, as the case may be, exporting such fuel is duly registered with or licensed by the taxing authorities of the state to which such fuel is exported as a distributor or a dealer in the fuel being so exported, and in connection with such exportation such fuel was immediately shipped to an identified facility in the state to which such fuel is exported, and provided the applicant complies with all requirements and rules and regulations of the commissioner, including evidentiary requirements, relating thereto.

S 43. Subparagraph (i) of paragraph 3 of subdivision (h) of section 1132 of the tax law, as amended by chapter 261 of the laws of 1988, is amended to read as follows:

(i) For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all retail sales of motor fuel or diesel motor fuel are subject to the tax required to be collected by subdivision (a) of section eleven hundred five of this article or paid by the provisions of section eleven hundred ten of this article until the contrary is established, and it shall be presumed that all motor fuel or diesel motor fuel imported, manufactured, [subjected to enhancement,] sold, received or possessed by any person in this state, which such person cannot otherwise account for as having been sold subject to the tax required to be collected by subdivision (a) of section eleven hundred five or paid by the provisions of section eleven hundred ten of this article, has been sold subject to the tax required to be collected by subdivision (a) of section eleven hundred five or paid by the provisions of section eleven hundred ten except that no such presumption shall apply with respect to motor fuel or diesel motor fuel in the fuel tank of a motor vehicle used to propel such vehicle or to motor fuel in small drums or similar containers. The

burden of proving that any sale is not so subject shall be upon the person required to collect such tax and the purchaser of such fuel.

S 44. Subparagraph (iii) of paragraph 1 of subdivision (a) of section 1134 of the tax law, as amended by section 160 of part A of chapter 389 of the laws of 1997, is amended to read as follows:

(iii) every person selling [automotive fuel] PETROLEUM PRODUCTS including persons who or which are not distributors,

S 45. Subdivision (d) of section 1135 of the tax law, as amended by chapter 44 of the laws of 1985 and as relettered by chapter 61 of the laws of 1989, is amended to read as follows:

(d) Every person selling or holding large volumes of [automotive fuel] PETROLEUM PRODUCTS shall keep records for such periods and in the manner prescribed by the [tax commission] COMMISSIONER pursuant to rules and regulations. Such records shall show (1) the number of gallons of [automotive fuel] PETROLEUM PRODUCTS purchased, the price paid therefor, the amount of tax paid pursuant to the provisions of section eleven hundred two of this article [and the regional average retail sales price applicable thereto] and (2) the number of gallons sold, and the price paid by the purchaser to whom such person sells the [automotive fuel] PETROLEUM PRODUCTS, and the amount of tax included in such price pursuant to the provisions of section eleven hundred two of this article and the [regional average retail sales price or the] amount of tax collected pursuant to the provisions of subdivision (a) of section eleven hundred five of this article applicable to such sale together with such additional information as the [tax commission] COMMISSIONER shall require. The [regional average retail sales price, and the] amount of tax shall be calculated in the manner set forth in section eleven hundred eleven of this article.

S 46. Subdivision (a) of section 1136 of the tax law, as amended by chapter 89 of the laws of 1976, paragraphs 1, 2, 3 and 5 as amended and paragraph 6 as added by chapter 2 of the laws of 1995 and paragraphs 4 and 7 as amended by section 2-e of part M-1 of chapter 106 of the laws of 2006, is amended to read as follows:

(a) (1) Every person required to register with the commissioner as provided in section eleven hundred thirty-four OF THIS PART whose taxable receipts, amusement charges and rents total less than three hundred thousand dollars, or in the case of any such person who is a distributor whose sales of [automotive fuel] PETROLEUM PRODUCTS total less than one hundred thousand gallons, in every quarter of the preceding four quarters, shall only file a return quarterly with the commissioner.

(2) Every person required to register with the commissioner as provided in section eleven hundred thirty-four OF THIS PART whose taxable receipts, amusement charges and rents total three hundred thousand dollars or more, or in the case of any such person who is a distributor whose sales of [automotive fuel] PETROLEUM PRODUCTS total one hundred thousand gallons or more, in any quarter of the preceding four quarters, shall, in addition to filing a quarterly return described in paragraph one of this subdivision, and except as otherwise provided in section eleven hundred two or eleven hundred three of this article, file either a long-form or short-form part-quarterly return monthly with the commissioner.

(3) However, a person required to register with the commissioner as provided in section eleven hundred thirty-four OF THIS PART only because such person is purchasing or selling tangible personal property for resale, and who is not required to collect any tax or pay any tax directly to the commissioner under this article, shall file an informa-

tion return annually in such form as the commissioner may prescribe. Likewise, a person, who is required to register and who is selling [automotive fuel] PETROLEUM PRODUCTS who is not a distributor of motor fuel, shall file an information return quarterly or, if the commissioner deems necessary, monthly, in such form as the commissioner shall prescribe.

(4) The return of a vendor of tangible personal property or services shall show such vendor's receipts from sales and the number of gallons of any motor fuel or diesel motor fuel sold and also the aggregate value of tangible personal property and services and number of gallons of such fuels sold by the vendor, the use of which is subject to tax under this article, and the amount of tax payable thereon pursuant to the provisions of section eleven hundred thirty-seven of this part. The return of a recipient of amusement charges shall show all such charges and the amount of tax thereon, and the return of an operator required to collect tax on rents shall show all rents received or charged and the amount of tax thereon.

(5) The returns of any seller of [automotive fuel] PETROLEUM PRODUCTS shall show the number of gallons of [automotive fuel] PETROLEUM PRODUCTS sold, together with such additional information as the commissioner shall require in order to certify the amount of taxes, penalties and interest payable to local taxing jurisdictions imposed on the sale or use of [automotive fuel] PETROLEUM PRODUCTS pursuant to the provisions of section twelve hundred sixty-one of this chapter.

(6) The returns of any seller of cigarettes shall show the amount of prepaid tax assumed or paid thereon and passed through, together with such additional information as the commissioner shall require.

(7) Taxable receipts as used in this section shall include taxable receipts from the sale of [automotive fuel] PETROLEUM PRODUCTS and cigarettes and any receipts from the sale of motor fuel or diesel motor fuel or cigarettes in this state whether or not such receipts are subject to the taxes imposed by section eleven hundred two, eleven hundred three, eleven hundred five or eleven hundred ten of this article and regardless of whether the provisions of section eleven hundred twenty or eleven hundred twenty-one of this article are applicable to the taxes imposed in respect of such receipts or numbers of gallons of motor fuel or diesel motor fuel sold.

[(i)] (8) For purposes of this article the term "long-form, part-quarterly return" shall mean a return in a form determined by the [tax commission] COMMISSIONER providing for the calculation of the actual sales and compensating use taxes for the preceding month in the manner set forth in subdivisions (a) and (b) of section eleven hundred thirty-seven OF THIS PART. A person filing a long-form, part-quarterly return for each of the months contained in a quarter shall also be required to file a quarterly return for such quarter.

[(ii)] (9) For purposes of this article the term "short-form, part-quarterly return" shall mean a return which shall be available for use in filing as a return for the first two months of any quarter and only by a person required to file a return monthly who has had at least four successive quarterly tax periods immediately preceding the month for which the return is to be filed and who elects such use, and is in a form determined by the [tax commission] COMMISSIONER and providing for the calculation of one-third of the total state and local sales and compensating use taxes paid by the person to the [tax commission] COMMISSIONER in the comparable quarter of the immediately preceding year under this article and as taxes imposed pursuant to the authority of

article twenty-nine with respect to all receipts, amusement charges and rents.

S 47. Subdivision 11 of section 1142 of the tax law, as added by chapter 930 of the laws of 1982, is amended to read as follows:

11. To make such provision pursuant to rules and regulations for the joint administration, in whole or in part, of the state and local taxes imposed by this article and authorized by article twenty-nine of this chapter upon the sale of [automotive fuel] PETROLEUM PRODUCTS and the taxes imposed by article twelve-A of this chapter and authorized to be imposed by such article, including the joint reporting, assessment, collection, determination and refund of such taxes, and for that purpose to prescribe that any of the [commission's] COMMISSIONER'S functions under said articles, and any returns, forms, statements, documents or information to be submitted to the [commission] COMMISSIONER under said articles, any books and records to be kept for purposes of the taxes imposed or authorized by said articles, any schedules of amounts to be collected under said articles, any registration required under said articles, and the payment of taxes under said articles shall be on a joint basis with respect to the taxes imposed by said articles.

S 48. Subparagraph (i) of paragraph 3 of subdivision (a) of section 1145 of the tax law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

(i) Any person required to obtain a certificate of authority under section eleven hundred thirty-four OF THIS PART who, without possessing a valid certificate of authority, (A) sells tangible personal property or services subject to tax, receives amusement charges or operates a hotel, (B) purchases or sells tangible personal property for resale, (C) sells [automotive fuel] PETROLEUM PRODUCTS, or (D) sells cigarettes shall, in addition to any other penalty imposed by this chapter, be subject to a penalty in an amount not exceeding five hundred dollars for the first day on which such sales or purchases are made, plus an amount not exceeding two hundred dollars for each subsequent day on which such sales or purchases are made, not to exceed ten thousand dollars in the aggregate.

S 49. Subparagraph (i) of paragraph 3 of subdivision (a) of section 1210 of the tax law, as amended by section 2 of part B of chapter 35 of the laws of 2006, is amended to read as follows:

(i) Notwithstanding any other provision of law to the contrary but not with respect to cities subject to the provisions of section eleven hundred eight of this [article] CHAPTER, any city or county, except a county wholly contained within a city, may provide that the taxes imposed, pursuant to this subdivision, by such city or county on the retail sale or use of fuel oil and coal used for residential purposes, the retail sale or use of wood used for residential heating purposes, the sale, other than for resale, of propane (except when sold in containers of less than one hundred pounds), natural gas, electricity, steam and gas, electric and steam services used for residential purposes and the use of gas or electricity used for residential purposes may be imposed at a lower rate than the uniform local rate imposed pursuant to the opening paragraph of this section, as long as such rate is one of the rates authorized by such paragraph or such sale or use may be exempted from such taxes. Provided, however, such lower rate must apply to all such energy sources and services and at the same rate and no such exemption may be enacted unless such exemption applies to all such energy sources and services. The provisions of this subparagraph shall not apply to a sale or use of [(i)] diesel motor fuel which involves a

delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle [and (ii) enhanced diesel motor fuel except in the case of a sale or use of such enhanced diesel motor fuel used exclusively for residential purposes which is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel, provided that each delivery of such fuel of over four thousand five hundred gallons shall be evidenced by a certificate signed by the purchaser stating that the product will be used exclusively for residential purposes].

S 50. Subdivision (c) of section 1812 of the tax law, as amended by section 25 of subpart I of part V-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(c) Any owner of a filling station who shall willfully and knowingly have in his OR HER custody, possession or under his OR HER control any motor fuel or Diesel motor fuel [on which] (1) ON WHICH the taxes imposed by or pursuant to the authority of such article have not been assumed or paid by a distributor registered as such under such article [or], (2) ON WHICH the taxes imposed by or pursuant to the authority of such article have not been included in the cost to him OR HER of such fuel where such taxes were required to have been passed through to him OR HER and included in the cost to him OR HER of such fuel, OR (3) WHICH IS DYED DIESEL MOTOR FUEL AS DEFINED BY SUBDIVISION EIGHTEEN-A OF SECTION TWO HUNDRED EIGHTY-TWO OF THIS CHAPTER (EXCEPT FOR WATER-WHITE KEROSENE), shall [in either case,] be guilty of a class E felony. For purposes of this subdivision, such owner shall willfully and knowingly have in his OR HER custody, possession or under his OR HER control any motor fuel or Diesel motor fuel on which such taxes have not been assumed or paid by a distributor registered as such where such owner has knowledge of the requirement that such taxes be paid and where, to his OR HER knowledge, such taxes have not been assumed or paid by a registered distributor on such motor fuel or Diesel motor fuel. Such owner shall willfully and knowingly have in his OR HER custody, possession or under his OR HER control any motor fuel or Diesel motor fuel on which such taxes are required to have been passed through to him OR HER and have not been included in his OR HER cost where such owner has knowledge of the requirement that such taxes be passed through and where to his knowledge such taxes have not been so included. SUCH OWNER SHALL WILLFULLY AND KNOWINGLY HAVE IN HIS OR HER CUSTODY, POSSESSION OR UNDER HIS OR HER CONTROL ANY DYED DIESEL MOTOR FUEL (EXCEPT WATER-WHITE KEROSENE) WHERE SUCH OWNER HAS KNOWLEDGE OF THE REQUIREMENT THAT DYED DIESEL MOTOR FUEL (EXCEPT WATER-WHITE KEROSENE) MAY NOT BE IN HIS OR HER CUSTODY, POSSESSION OR UNDER HIS OR HER CONTROL.

S 51. Subdivision (e) of section 1812 of the tax law is REPEALED and subdivision (f) is relettered subdivision (e).

S 52. Section 1812-a of the tax law, as added by chapter 261 of the laws of 1988, is amended to read as follows:

S 1812-a. Person not registered as distributor of Diesel motor fuel. (a) Any person who, while not registered as a distributor of Diesel motor fuel pursuant to the provisions of article twelve-A of this chapter, [engages in the enhancement,] makes a sale or use within the state of Diesel motor fuel (other than a retail sale not in bulk or the self-use of Diesel motor fuel which has been the subject of a retail sale), imports or causes Diesel motor fuel to be imported into the state or

produces, refines, manufactures or compounds Diesel motor fuel within the state shall be guilty of a misdemeanor. If, within any ninety day period, two thousand nine hundred gallons or more of Diesel motor fuel are subjected to [enhancement or] sale or use (other than a retail sale not in bulk or the self-use of Diesel motor fuel which has been the subject of a retail sale) within the state or are imported or caused to be imported by any person while not so registered as a distributor of Diesel motor fuel, such person shall be guilty of a class E felony.

(b) Any person whose registration under article twelve-A of this chapter applies only to the importation, sale and distribution of Diesel motor fuel for [the purposes] USE OTHER THAN ON A PUBLIC HIGHWAY AS described in subparagraph (i) of paragraph (b) of subdivision three of section two hundred eighty-two-a of this chapter who delivers NON-HIGHWAY Diesel motor fuel at a filling station [other than for the sole purpose of heating such station] or into a repository equipped with a hose or other apparatus by which NON-HIGHWAY Diesel motor fuel can be dispensed into the fuel tank of a motor vehicle, other than such a repository which is located on the premises of such registrant where the Diesel motor fuel delivered therein is used exclusively for the purpose of fueling motor vehicles operated by registrant for the purpose of distributing Diesel motor fuel for the purposes described in such subparagraph (i), shall be guilty of a misdemeanor. If, within any ninety day period, any such person whose registration under article twelve-A of this chapter applies only to the importation, sale and distribution of NON-HIGHWAY Diesel motor fuel for the purposes described in subparagraph (i) of paragraph (b) of subdivision three of section two hundred eighty-two-a of this chapter so unlawfully delivers a total of one thousand gallons or more of Diesel motor fuel at such filling station or stations or into such repository or repositories (or a combination of both such filling stations and repositories), then, such person shall be guilty of a class E felony.

(c) Any person who has twice been convicted under this section shall be guilty of a class E felony for any subsequent violation of this section, regardless of the amount of Diesel motor fuel involved in such violation. For purposes of this section, the terms ["enhancement"] "NON-HIGHWAY DIESEL MOTOR FUEL" and "retail sale not in bulk" shall have the same meaning they have for purposes of article twelve-A of this chapter.

S 53. Subdivisions (a) and (b) of section 1817 of the tax law, as amended by section 30 of subpart I of part V-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(a) Any person required to obtain a certificate of authority under section eleven hundred thirty-four of this chapter who, without possessing a valid certificate of authority, willfully (1) sells tangible personal property or services subject to tax, receives amusement charges or operates a hotel, (2) purchases or sells tangible personal property for resale, or (3) sells [automotive fuel] PETROLEUM PRODUCTS; and any person who fails to surrender a certificate of authority as required by such article shall be guilty of a misdemeanor.

(b) Any person required to obtain a certificate of authority under section eleven hundred thirty-four of this chapter who within five years after a determination by the [tax commission] COMMISSIONER, pursuant to such section, to suspend, revoke or refuse to issue a certificate of authority has become final, and without possession of a valid certificate of authority (1) sells tangible personal property or services subject to tax, receives amusement charges or operates a hotel, (2)

purchases or sells tangible personal property for resale, or (3) sells [automotive fuel] PETROLEUM PRODUCTS, shall be guilty of a misdemeanor. It shall be an affirmative defense that such person performed the acts described in this subdivision without knowledge of such determination. Any person who violates a provision of this subdivision, upon conviction, shall be subject to a fine in any amount authorized by this article, but not less than five hundred dollars, in addition to any other penalty provided by law.

S 54. The section heading, subdivisions (a), (b) and (c), paragraph 3, subparagraph (D) of paragraph 4 and paragraph 6 of subdivision (d) and subdivisions (e) and (g) of section 1848 of the tax law, as added by chapter 276 of the laws of 1986 and subparagraph (D) of paragraph 4 and paragraph 6 of subdivision (d) as amended by chapter 190 of the laws of 1990, are amended to read as follows:

Forfeiture action with respect to motor fuel and DIESEL MOTOR FUEL AND vehicle carrying such fuel. (a) Temporary seizure. Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four of section 2.10 of such law, acting pursuant to his special duties, shall discover any motor fuel OR DIESEL MOTOR FUEL which is being imported for use, distribution, storage or sale in the state where the person importing or causing such motor fuel OR DIESEL MOTOR FUEL to be imported is not registered as a distributor under section two hundred eighty-three OR SECTION TWO HUNDRED EIGHTY-TWO-A, of this chapter, AS THE CASE MAY BE, such police officer or peace officer is hereby authorized to seize and take possession of such motor fuel OR DIESEL MOTOR FUEL, together with the vehicle or other means of transportation used to transport such motor fuel.

(b) Retention of property. The department [of taxation and finance] shall hold and safely keep such motor fuel, DIESEL MOTOR FUEL, vehicle or other means of transportation seized pursuant to subdivision (a) of this section. Seized motor fuel OR DIESEL MOTOR FUEL may be deposited to the credit of the department [of taxation and finance] at a terminal or other storage facility within the state or may be sold by the department on the open market.

(c) Confirmation of temporary seizure. Within five business days after the temporary seizure of motor fuel, DIESEL MOTOR FUEL, vehicle or other means of transportation pursuant to subdivision (a) of this section, the department [of taxation and finance] shall move in supreme court in any county, on such notice as the court shall direct to the owners of the property, to confirm the temporary seizure. If the department [of taxation and finance] fails to make such motion within the required period, such seized property shall be restored to the owners thereof as provided in subdivision (e) of this section. On a motion for an order confirming the seizure, the department [of taxation and finance] shall show, by affidavit and such other written evidence as may be submitted, that there is a cause of action for forfeiture under subdivision (d) of this section and that there are grounds for confirmation of the seizure. The department shall include, in its motion papers, an inventory of all seized property. The court shall grant an application for an order confirming the seizure when it determines that there is a substantial probability that the department [of taxation and finance] will prevail on the issue of forfeiture.

(3) Forfeiture of motor fuel OR DIESEL MOTOR FUEL together with the vehicle or other means of transportation used to transport such motor fuel OR DIESEL MOTOR FUEL shall be adjudged where the department [of

taxation and finance] proves, by clear and convincing evidence, that the person importing or causing such motor fuel OR DIESEL MOTOR FUEL to be imported was not registered as a distributor under section two hundred eighty-three OR SECTION TWO HUNDRED EIGHTY-TWO-A of this chapter, AS THE CASE MAY BE. All defendants in a forfeiture action brought pursuant to this article shall have the right to trial by jury on any issue of fact.

(D) The court may grant the relief provided in subparagraph (A) [hereof] OF THIS PARAGRAPH if it finds that such relief is warranted by the existence of some compelling factor, consideration or circumstance demonstrating that forfeiture of the property or any part thereof, would not serve the ends of justice. Reporting and payment of the tax imposed pursuant to article twelve-A or article twenty-eight of this chapter with respect to such motor fuel OR DIESEL MOTOR FUEL subsequent to the seizure of such fuel shall not constitute a compelling factor, consideration or circumstance warranting the granting of the relief provided for in subparagraph (A) [hereof] of this paragraph. In determining whether such relief is warranted by the existence of some compelling factor, consideration or circumstances pursuant to this paragraph, the court may, however, take into account the fact that such taxes with respect to the seized fuel have been reported and remitted to the state prior to the temporary seizure of such fuel if the unregistered importation into the state was effected in good faith and without knowledge of the requirement of registration and without intent to evade tax. The court must issue a written decision, stating the basis for an order issued pursuant to this paragraph.

(6) The total that may be recovered shall not exceed the value of the motor fuel OR DIESEL MOTOR FUEL seized and, in addition, either the value of the vehicle or other means of transportation used to transport such fuel or three times the amount of the tax and penalty under articles twelve-A, thirteen-A and twenty-eight and pursuant to the authority of article twenty-nine of this chapter with respect to the motor fuel OR DIESEL MOTOR FUEL, whichever is less.

(e) Return of property. If (1) the department [of taxation and finance] fails to move for confirmation of the seizure pursuant to subdivision (c) of this section or (2) a court denies an application for an order confirming the seizure or (3) judgment is entered against the department in the forfeiture action and that judgment is affirmed after all appeals are exhausted, then the department shall restore such seized motor fuel OR DIESEL MOTOR FUEL, or motor fuel OR DIESEL MOTOR FUEL of a like quantity and type, or such seized vehicle or other means of transportation to the owners thereof. Alternatively, if such seized motor fuel OR DIESEL MOTOR FUEL has been sold as provided in subdivision (b) of this section, the department shall pay to the owners of such motor fuel OR DIESEL MOTOR FUEL the proceeds of such sale or, if greater, an amount of money representing the fair market value of the motor fuel OR DIESEL MOTOR FUEL at the time of the seizure.

(g) Disposal of property. The department [of taxation and finance], after a judicial determination of forfeiture, shall, in its discretion, either retain such seized property for its official use or sell such forfeited property at public sale. The net proceeds of any such sale, or of any sale of seized motor fuel OR DIESEL MOTOR FUEL as provided in subdivision (b) of this section, after deduction of the lawful expenses incurred, shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter with respect to deposit and disposition of revenue.

S 55. Paragraph (q) of subdivision 34 of section 1.20 of the criminal procedure law, as amended by chapter 318 of the laws of 2002, is amended to read as follows:

(q) An employee of the department of taxation and finance (i) assigned to enforcement of the taxes imposed under or pursuant to the authority of article twelve-A of the tax law and administered by the commissioner of taxation and finance, taxes imposed under or pursuant to the authority of article eighteen of the tax law and administered by the commissioner, taxes imposed under article twenty of the tax law, or sales or compensating use taxes relating to [automotive fuel] PETROLEUM PRODUCTS or cigarettes imposed under article twenty-eight or pursuant to the authority of article twenty-nine of the tax law and administered by the commissioner or (ii) designated as a revenue crimes specialist and assigned to the enforcement of the taxes described in paragraph (c) of subdivision four of section 2.10 of this title, for the purpose of applying for and executing search warrants under article six hundred ninety of this chapter, for the purpose of acting as a claiming agent under article thirteen-A of the civil practice law and rules in connection with the enforcement of the taxes referred to above and for the purpose of executing warrants of arrest relating to the respective crimes specified in subdivision four of section 2.10 of this title.

S 56. Paragraph (a) of subdivision 4 of section 2.10 of the criminal procedure law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

(a) to the enforcement of any of the criminal or seizure and forfeiture provisions of the tax law relating to (i) taxes imposed under or pursuant to the authority of article twelve-A of the tax law and administered by the commissioner, (ii) taxes imposed under or pursuant to the authority of article eighteen of the tax law and administered by the commissioner, (iii) taxes imposed under article twenty of the tax law, or (iv) sales or compensating use taxes relating to [automotive fuel] PETROLEUM PRODUCTS or cigarettes imposed under article twenty-eight or pursuant to the authority of article twenty-nine of the tax law and administered by the commissioner or

S 57. Sections 11-2033, 11-2034, 11-2035, 11-2036, 11-2037 and 11-2038 of the administrative code of the city of New York are REPEALED.

S 58. This act shall take effect September 1, 2011 and shall apply to sales or uses occurring on or after such date in accordance with the applicable transitional provisions in sections 1106 and 1217 of the tax law; provided, however, that:

(a) the amendments to subdivisions 22 and 23 of section 282 of the tax law, made by section one of this act shall not affect the repeal of such subdivisions and shall be deemed repealed therewith;

(b) the amendments to paragraph 2 of subdivision (a) of section 1102 of the tax law made by section thirty-nine of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 19 of part W-1 of chapter 109 of the laws of 2006, as amended, when upon such date the provisions of section thirty-nine-a of this act shall take effect; and

(c) the amendments to subdivision (j) of section 1115 of the tax law made by section forty-one of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 19 of part W-1 of chapter 109 of the laws of 2006, as amended, when upon such date the provisions of section forty-one-a of this act shall take effect.

PART L

Section 1. Subdivision 22 of section 282 of the tax law, as added by section 1 of part W-1 of chapter 109 of the laws of 2006, is amended to read as follows:

22. "E85" means a [mixture consisting by volume of eighty-five percent] FUEL BLEND CONSISTING OF ethanol and [the remainder of which is] motor fuel, WHICH MEETS THE ASTM INTERNATIONAL ACTIVE STANDARD D5798 FOR FUEL ETHANOL.

S 2. Section 19 of part W-1 of chapter 109 of the laws of 2006, amending the tax law relating to providing exemptions, reimbursements and credits from various taxes for certain alternative fuels, is amended to read as follows:

S 19. This act shall take effect immediately; provided, however, that sections one through thirteen of this act shall take effect September 1, 2006 and shall be deemed repealed on September 1, [2011] 2012 and such repeal shall apply in accordance with the applicable transitional provisions of sections 1106 and 1217 of the tax law, and shall apply to sales made, fuel compounded or manufactured, and uses occurring on or after such date, and with respect to sections seven through eleven of this act, in accordance with applicable transitional provisions of sections 1106 and 1217 of the tax law; provided, however, that the commissioner of taxation and finance shall be authorized on and after the date this act shall have become a law to adopt and amend any rules or regulations and to take any steps necessary to implement the provisions of this act; provided further that sections fourteen through sixteen of this act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2006.

S 3. This act shall take effect immediately; provided, however, that the amendments made to subdivision 22 of section 282 of the tax law made by section one of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith.

PART M

Section 1. Section 11 of part EE of chapter 63 of the laws of 2000, amending the tax law and other laws relating to modifying the distribution of funds from the motor vehicle fuel excise tax, as amended by section 1-b of part A of chapter 63 of the laws of 2005, is amended to read as follows:

S 11. Notwithstanding any other law, rule or regulation to the contrary, the comptroller is hereby authorized and directed to deposit in equal monthly installments and distribute pursuant to the provisions of subdivision (d) of section 301-j of the tax law amounts listed below to the credit of the dedicated highway and bridge trust fund and the dedicated mass transportation trust fund from [taxes and fees] ALL MOTOR VEHICLE RECEIPTS now deposited into the general fund pursuant to provisions of the vehicle and traffic law: twenty-eight million four hundred thousand dollars from April 1, 2002 through March 31, 2003, sixty-seven million nine hundred thousand dollars from April 1, 2003 through March 31, 2004, one hundred seventy million one hundred thousand dollars from April 1, 2004 through March 31, 2005, and one hundred percent of all [taxes and fees] MOTOR VEHICLE RECEIPTS pursuant to provisions of the vehicle and traffic law that are not otherwise directed to be deposited in a fund other than the general fund from April 1, 2005 through March 31, 2006, and the same amount each year thereafter.

S 2. This act shall take effect April 1, 2011.

PART N

Intentionally omitted.

PART O

Section 1. Subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law is amended by adding a new clause (I) to read as follows:

(I) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, FREE PLAY ALLOWANCE CREDITS AUTHORIZED BY THE DIVISION PURSUANT TO SUBDIVISION F OF SECTION SIXTEEN HUNDRED SEVENTEEN-A OF THIS ARTICLE SHALL NOT BE INCLUDED IN THE CALCULATION OF THE TOTAL AMOUNT WAGERED ON VIDEO LOTTERY GAMES, THE TOTAL AMOUNT WAGERED AFTER PAYOUT OF PRIZES, THE VENDOR FEES PAYABLE TO THE OPERATORS OF VIDEO LOTTERY FACILITIES, VENDOR'S CAPITAL AWARDS, FEES PAYABLE TO THE DIVISION'S VIDEO LOTTERY GAMING EQUIPMENT CONTRACTORS, OR RACING SUPPORT PAYMENTS.

S 2. Section 1617-a of the tax law is amended by adding a new subdivision f to read as follows:

F. (1) THE DIVISION MAY ADMINISTER A FREE PLAY ALLOWANCE PROGRAM TO OFFER PLAYERS OR PROSPECTIVE PLAYERS OF VIDEO LOTTERY GAMES FREE PLAY CREDITS FOR THE PURPOSE OF INCREASING REVENUES EARNED BY THE VIDEO LOTTERY PROGRAM FOR THE SUPPORT OF EDUCATION. FOR THE PURPOSES OF THIS SUBDIVISION, "FREE PLAY ALLOWANCE CREDIT" MEANS A SPECIFIED DOLLAR AMOUNT THAT (I) MAY BE USED BY A PLAYER TO PLAY A VIDEO LOTTERY GAME WITHOUT PAYING ANY OTHER CONSIDERATION, AND (II) IS NOT USED IN THE CALCULATION OF TOTAL REVENUE WAGERED AFTER PAYOUT OF PRIZES.

(2) FOR EACH VIDEO LOTTERY FACILITY, THE DIVISION SHALL AUTHORIZE THE USE OF FREE PLAY ALLOWANCE CREDITS IF THE OPERATOR OF SUCH FACILITY SUBMITS A WRITTEN PLAN FOR THE USE OF THE FREE PLAY ALLOWANCE THAT THE DIVISION DETERMINES IS DESIGNED TO INCREASE THE AMOUNT OF REVENUE EARNED BY VIDEO LOTTERY GAMING AT SUCH FACILITY FOR THE SUPPORT OF EDUCATION.

(3) FOR EACH VIDEO LOTTERY FACILITY, THE ANNUAL VALUE OF THE FREE PLAY ALLOWANCE CREDITS AUTHORIZED FOR USE BY THE OPERATOR PURSUANT TO THIS SUBDIVISION SHALL NOT EXCEED AN AMOUNT EQUAL TO TEN PERCENT OF THE TOTAL AMOUNT WAGERED ON VIDEO LOTTERY GAMES AFTER PAYOUT OF PRIZES. THE DIVISION SHALL ESTABLISH PROCEDURES TO ASSURE THAT FREE PLAY ALLOWANCE CREDITS DO NOT EXCEED SUCH AMOUNT.

(4) THE DIVISION, IN CONJUNCTION WITH THE DIRECTOR OF THE BUDGET, MAY SUSPEND THE USE OF FREE PLAY ALLOWANCE CREDITS AUTHORIZED PURSUANT TO THIS SUBDIVISION WHENEVER THEY JOINTLY DETERMINE THAT THE USE OF FREE PLAY ALLOWANCE CREDITS ARE NOT EFFECTIVE IN INCREASING THE AMOUNT OF REVENUE EARNED FOR THE SUPPORT OF EDUCATION, AND SUCH USE MAY NOT BE RESUMED UNLESS THE OPERATOR OF SUCH FACILITY SUBMITS A NEW OR REVISED WRITTEN PLAN FOR THE USE OF THE FREE PLAY ALLOWANCE THAT THE DIVISION DETERMINES IS DESIGNED MORE EFFECTIVELY TO PRODUCE AN INCREASE IN THE AMOUNT OF REVENUE EARNED BY VIDEO LOTTERY GAMING AT SUCH FACILITY FOR THE SUPPORT OF EDUCATION.

(5) NOTHING IN THIS SUBDIVISION SHALL BE DEEMED TO PROHIBIT THE OPERATOR OF A VIDEO LOTTERY FACILITY FROM OFFERING FREE PLAY CREDITS TO PLAYERS OR PROSPECTIVE PLAYERS OF VIDEO LOTTERY GAMES WHEN THE VALUE OF SUCH FREE PLAY CREDITS IS INCLUDED IN THE CALCULATION OF THE TOTAL AMOUNT WAGERED ON VIDEO LOTTERY GAMES AND THE TOTAL AMOUNT WAGERED AFTER PAYOUT OF PRIZES, AND THE OPERATOR OF SUCH FACILITY PAYS THE DIVISION THE FULL AMOUNT DUE AS THE RESULT OF SUCH CALCULATIONS.

(6) THE DIVISION MAY AMEND THE CONTRACT WITH THE PROVIDER OF THE CENTRAL COMPUTER SYSTEM THAT CONTROLS THE VIDEO LOTTERY NETWORK DURING THE TERM OF SUCH CONTRACT IN EFFECT ON THE EFFECTIVE DATE OF THIS SUBDIVISION TO PROVIDE ADDITIONAL CONSIDERATION TO SUCH PROVIDER IN AN AMOUNT DETERMINED BY THE DIVISION TO BE NECESSARY TO COMPENSATE FOR (I) PROCESSING FREE PLAY ALLOWANCE TRANSACTIONS AND (II) SYSTEM UPDATES AND MODIFICATIONS OTHERWISE NEEDED AS OF SUCH EFFECTIVE DATE.

S 3. This act shall take effect immediately.

PART P

Section 1. Paragraph 2 of subdivision a of section 1612 of the tax law, as amended by section 1 of part P of chapter 85 of the laws of 2002, is amended to read as follows:

(2) sixty-five percent of the total amount for which tickets have been sold for the "Instant Cash" game in which the participant purchases a preprinted ticket on which dollar amounts or symbols are concealed on the face or the back of such ticket, provided however up to [three such] FIVE NEW games may be offered during the fiscal year, seventy-five percent of the total amount for which tickets have been sold for such [three] FIVE games in which the participant purchases a preprinted ticket on which dollar amounts or symbols are concealed on the face or the back of such ticket; or

S 2. This act shall take effect immediately.

PART Q

Section 1. Paragraphs 3 and 4 of subdivision a of section 1612 of the tax law, paragraph 3 as amended by section 2 of part D of chapter 383 of the laws of 2001, paragraph 4 as amended by chapter 2 of the laws of 1995, are amended to read as follows:

(3) FIFTY-FIVE PERCENT OF THE TOTAL AMOUNT FOR WHICH TICKETS HAVE BEEN SOLD FOR ANY JOINT, MULTI-JURISDICTION, AND OUT-OF-STATE LOTTERY EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH ONE OF SUBDIVISION B OF THIS SECTION FOR ANY JOINT, MULTI-JURISDICTION, OUT-OF-STATE VIDEO LOTTERY GAMING; OR

(4) fifty percent of the total amount for which tickets have been sold for games known as: (A) the "Daily Numbers Game" or "Win 4", discrete games in which the participants select no more than three or four of their own numbers to match with three or four numbers drawn by the division for purposes of determining winners of such games, (B) "Pick 10", offered no more than once daily, in which participants select from a specified field of numbers a subset of ten numbers to match against a subset of numbers to be drawn by the division from such field of numbers for the purpose of determining winners of such game, (C) "Take 5", offered no more than once daily, in which participants select from a specified field of numbers a subset of five numbers to match against a subset of five numbers to be drawn by the division from such field of numbers for purposes of determining winners of such game[, and (D) any joint, multi-jurisdiction, and out-of-state lottery]; or

[(4)] (5) forty percent of the total amount for which tickets have been sold for: (A) "Lotto", offered no more than once daily, a discrete game in which all participants select a specific subset of numbers to match a specific subset of numbers, as prescribed by rules and regulations promulgated and adopted by the division, from a larger specific field of numbers, as also prescribed by such rules and regulations and (B) with the exception of the game described in paragraph one of this

subdivision, such other state-operated lottery games which the division may introduce, offered no more than once daily, commencing on or after forty-five days following the official publication of the rules and regulations for such game.

The moneys in the lottery prize account shall be paid out of such account on the audit and warrant of the comptroller on vouchers certified or approved by the director or his or her duly designated official.

Prize money derived from ticket sales receipts of a particular game and deposited in the lottery prize account in accordance with the percentages set forth above may be used to pay prizes in such game. Balances in the lottery prize account identified by individual games may be carried over from one fiscal year to the next to ensure proper payout of games.

S 2. This act shall take effect immediately.

PART R

Section 1. The opening paragraph of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 1 of part O-1 of chapter 57 of the laws of 2009, is amended to read as follows:

Notwithstanding section one hundred twenty-one of the state finance law, on or before the twentieth day of each month, the division shall pay into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law, not less than forty-five percent of the total amount for which tickets have been sold for games defined in paragraph four of subdivision a of this section during the preceding month, not less than thirty-five percent of the total amount for which tickets have been sold for games defined in paragraph three of subdivision a of this section during the preceding month, not less than twenty percent of the total amount for which tickets have been sold for games defined in paragraph two of subdivision a of this section during the preceding month, provided however that for games with a prize payout of seventy-five percent of the total amount for which tickets have been sold, the division shall pay not less than ten percent of sales into the state treasury and not less than twenty-five percent of the total amount for which tickets have been sold for games defined in paragraph one of subdivision a of this section during the preceding month; and the balance of the total revenue after payout for prizes for games known as "video lottery gaming," INCLUDING ANY JOINT, MULTI-JURISDICTION, AND OUT-OF-STATE VIDEO LOTTERY GAMING,

S 2. Paragraph 1 of subdivision c of section 1612 of the tax law, as amended by section 2 of part CC of chapter 61 of the laws of 2005, is amended to read as follows:

1. The specifications for video lottery gaming, INCLUDING ANY JOINT, MULTI-JURISDICTION, AND OUT-OF-STATE VIDEO LOTTERY GAMING, shall be designed in such a manner as to pay prizes that average no less than ninety percent of sales.

S 3. This act shall take effect immediately.

PART S

Section 1. Paragraph (a) of subdivision 1 of section 1003 of the racing, pari-mutuel wagering and breeding law, as amended by section 1 of part C of chapter 134 of the laws of 2010, is amended to read as follows:

(a) Any racing association or corporation or regional off-track betting corporation, authorized to conduct pari-mutuel wagering under this chapter, desiring to display the simulcast of horse races on which pari-mutuel betting shall be permitted in the manner and subject to the conditions provided for in this article may apply to the board for a license so to do. Applications for licenses shall be in such form as may be prescribed by the board and shall contain such information or other material or evidence as the board may require. No license shall be issued by the board authorizing the simulcast transmission of thoroughbred races from a track located in Suffolk county. The fee for such licenses shall be five hundred dollars per simulcast facility per year payable by the licensee to the board for deposit into the general fund. Except as provided herein, the board shall not approve any application to conduct simulcasting into individual or group residences, homes or other areas for the purposes of or in connection with pari-mutuel wagering. The board may approve simulcasting into residences, homes or other areas to be conducted jointly by one or more regional off-track betting corporations and one or more of the following: a franchised corporation, thoroughbred racing corporation or a harness racing corporation or association; provided (i) the simulcasting consists only of those races on which pari-mutuel betting is authorized by this chapter at one or more simulcast facilities for each of the contracting off-track betting corporations which shall include wagers made in accordance with section one thousand fifteen, one thousand sixteen and one thousand seventeen of this article; provided further that the contract provisions or other simulcast arrangements for such simulcast facility shall be no less favorable than those in effect on January first, two thousand five; (ii) that each off-track betting corporation having within its geographic boundaries such residences, homes or other areas technically capable of receiving the simulcast signal shall be a contracting party; (iii) the distribution of revenues shall be subject to contractual agreement of the parties except that statutory payments to non-contracting parties, if any, may not be reduced; provided, however, that nothing herein to the contrary shall prevent a track from televising its races on an irregular basis primarily for promotional or marketing purposes as found by the board. For purposes of this paragraph, the provisions of section one thousand thirteen of this article shall not apply. Any agreement authorizing an in-home simulcasting experiment commencing prior to May fifteenth, nineteen hundred ninety-five, may, and all its terms, be extended until June thirtieth, two thousand [eleven] TWELVE; provided, however, that any party to such agreement may elect to terminate such agreement upon conveying written notice to all other parties of such agreement at least forty-five days prior to the effective date of the termination, via registered mail. Any party to an agreement receiving such notice of an intent to terminate, may request the board to mediate between the parties new terms and conditions in a replacement agreement between the parties as will permit continuation of an in-home experiment until June thirtieth, two thousand [eleven] TWELVE; and (iv) no in-home simulcasting in the thoroughbred special betting district shall occur without the approval of the regional thoroughbred track.

S 2. Subparagraph (iii) of paragraph d of subdivision 3 of section 1007 of the racing, pari-mutuel wagering and breeding law, as amended by section 2 of part C of chapter 134 of the laws of 2010, is amended to read as follows:

(iii) Of the sums retained by a receiving track located in Westchester county on races received from a franchised corporation, for the period

commencing January first, two thousand eight and continuing through June thirtieth, two thousand [eleven] TWELVE, the amount used exclusively for purses to be awarded at races conducted by such receiving track shall be computed as follows: of the sums so retained, two and one-half percent of the total pools. Such amount shall be increased or decreased in the amount of fifty percent of the difference in total commissions determined by comparing the total commissions available after July twenty-first, nineteen hundred ninety-five to the total commissions that would have been available to such track prior to July twenty-first, nineteen hundred ninety-five.

S 3. The opening paragraph of subdivision 1 of section 1014 of the racing, pari-mutuel wagering and breeding law, as amended by section 3 of part C of chapter 134 of the laws of 2010, is amended to read as follows:

The provisions of this section shall govern the simulcasting of races conducted at thoroughbred tracks located in another state or country on any day during which a franchised corporation is conducting a race meeting in Saratoga county at Saratoga thoroughbred racetrack until June thirtieth, two thousand [eleven] TWELVE and on any day regardless of whether or not a franchised corporation is conducting a race meeting in Saratoga county at Saratoga thoroughbred racetrack after June thirtieth, two thousand [eleven] TWELVE. On any day on which a franchised corporation has not scheduled a racing program but a thoroughbred racing corporation located within the state is conducting racing, every off-track betting corporation branch office and every simulcasting facility licensed in accordance with section one thousand seven (that have entered into a written agreement with such facility's representative horsemen's organization, as approved by the board), one thousand eight, or one thousand nine of this article shall be authorized to accept wagers and display the live simulcast signal from thoroughbred tracks located in another state or foreign country subject to the following provisions:

S 4. Subdivision 1 of section 1015 of the racing, pari-mutuel wagering and breeding law, as amended by section 4 of part C of chapter 134 of the laws of 2010, is amended to read as follows:

1. The provisions of this section shall govern the simulcasting of races conducted at harness tracks located in another state or country during the period July first, nineteen hundred ninety-four through June thirtieth, two thousand [eleven] TWELVE. This section shall supersede all inconsistent provisions of this chapter.

S 5. The opening paragraph of subdivision 1 of section 1016 of the racing, pari-mutuel wagering and breeding law, as amended by section 5 of part C of chapter 134 of the laws of 2010, is amended to read as follows:

The provisions of this section shall govern the simulcasting of races conducted at thoroughbred tracks located in another state or country on any day during which a franchised corporation is not conducting a race meeting in Saratoga county at Saratoga thoroughbred racetrack until June thirtieth, two thousand [eleven] TWELVE. Every off-track betting corporation branch office and every simulcasting facility licensed in accordance with section one thousand seven that have entered into a written agreement with such facility's representative horsemen's organization as approved by the board, one thousand eight or one thousand nine of this article shall be authorized to accept wagers and display the live full-card simulcast signal of thoroughbred tracks (which may include quarter horse or mixed meetings provided that all such wagering on such races

shall be construed to be thoroughbred races) located in another state or foreign country, subject to the following provisions; provided, however, no such written agreement shall be required of a franchised corporation licensed in accordance with section one thousand seven of this article:

S 6. The opening paragraph of section 1018 of the racing, pari-mutuel wagering and breeding law, as amended by section 6 of part C of chapter 134 of the laws of 2010, is amended to read as follows:

Notwithstanding any other provision of this chapter, for the period July twenty-fifth, two thousand one through September eighth, two thousand [ten] ELEVEN, when a franchised corporation is conducting a race meeting within the state at Saratoga Race Course, every off-track betting corporation branch office and every simulcasting facility licensed in accordance with section one thousand seven (that has entered into a written agreement with such facility's representative horsemen's organization as approved by the board), one thousand eight or one thousand nine of this article shall be authorized to accept wagers and display the live simulcast signal from thoroughbred tracks located in another state, provided that such facility shall accept wagers on races run at all in-state thoroughbred tracks which are conducting racing programs subject to the following provisions; provided, however, no such written agreement shall be required of a franchised corporation licensed in accordance with section one thousand seven of this article.

S 7. Section 32 of chapter 281 of the laws of 1994, amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting, as amended by section 7 of part C of chapter 134 of the laws of 2010, is amended to read as follows:

S 32. This act shall take effect immediately and the pari-mutuel tax reductions in section six of this act shall expire and be deemed repealed on July 1, [2011] 2012; provided, however, that nothing contained herein shall be deemed to affect the application, qualification, expiration, or repeal of any provision of law amended by any section of this act, and such provisions shall be applied or qualified or shall expire or be deemed repealed in the same manner, to the same extent and on the same date as the case may be as otherwise provided by law; provided further, however, that sections twenty-three and twenty-five of this act shall remain in full force and effect only until May 1, 1997 and at such time shall be deemed to be repealed.

S 8. Section 54 of chapter 346 of the laws of 1990, amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and the imposition of certain taxes, as amended by section 8 of part C of chapter 134 of the laws of 2010, is amended to read as follows:

S 54. This act shall take effect immediately; provided, however, sections three through twelve of this act shall take effect on January 1, 1991, and section 1013 of the racing, pari-mutuel wagering and breeding law, as added by section thirty-eight of this act, shall expire and be deemed repealed on July 1, [2011] 2012; and section eighteen of this act shall take effect on July 1, 2008 and sections fifty-one and fifty-two of this act shall take effect as of the same date as chapter 772 of the laws of 1989 took effect.

S 9. Paragraph (a) of subdivision 1 of section 238 of the racing, pari-mutuel wagering and breeding law, as amended by section 10 of part C of chapter 134 of the laws of 2010, is amended to read as follows:

(a) The franchised corporation authorized under this chapter to conduct pari-mutuel betting at a race meeting or races run thereat shall distribute all sums deposited in any pari-mutuel pool to the holders of

winning tickets therein, provided such tickets be presented for payment before April first of the year following the year of their purchase, less an amount which shall be established and retained by such franchised corporation of between twelve to seventeen per centum of the total deposits in pools resulting from on-track regular bets, and fourteen to twenty-one per centum of the total deposits in pools resulting from on-track multiple bets and fifteen to twenty-five per centum of the total deposits in pools resulting from on-track exotic bets and fifteen to thirty-six per centum of the total deposits in pools resulting from on-track super exotic bets, plus the breaks. The retention rate to be established is subject to the prior approval of the racing and wagering board. Such rate may not be changed more than once per calendar quarter to be effective on the first day of the calendar quarter. "Exotic bets" and "multiple bets" shall have the meanings set forth in section five hundred nineteen of this chapter. "Super exotic bets" shall have the meaning set forth in section three hundred one of this chapter. For purposes of this section, a "pick six bet" shall mean a single bet or wager on the outcomes of six races. The breaks are hereby defined as the odd cents over any multiple of five for payoffs greater than one dollar five cents but less than five dollars, over any multiple of ten for payoffs greater than five dollars but less than twenty-five dollars, over any multiple of twenty-five for payoffs greater than twenty-five dollars but less than two hundred fifty dollars, or over any multiple of fifty for payoffs over two hundred fifty dollars. Out of the amount so retained there shall be paid by such franchised corporation to the commissioner of taxation and finance, as a reasonable tax by the state for the privilege of conducting pari-mutuel betting on the races run at the race meetings held by such franchised corporation, the following percentages of the total pool for regular and multiple bets five per centum of regular bets and four per centum of multiple bets plus twenty per centum of the breaks; for exotic wagers seven and one-half per centum plus twenty per centum of the breaks, and for super exotic bets seven and one-half per centum plus fifty per centum of the breaks. For the period June first, nineteen hundred ninety-five through September ninth, nineteen hundred ninety-nine, such tax on regular wagers shall be three per centum and such tax on multiple wagers shall be two and one-half per centum, plus twenty per centum of the breaks. For the period September tenth, nineteen hundred ninety-nine through March thirty-first, two thousand one, such tax on all wagers shall be two and six-tenths per centum and for the period April first, two thousand one through December thirty-first, two thousand [eleven] TWELVE, such tax on all wagers shall be one and six-tenths per centum, plus, in each such period, twenty per centum of the breaks. Payment to the New York state thoroughbred breeding and development fund by such franchised corporation shall be one-half of one per centum of total daily on-track pari-mutuel pools resulting from regular, multiple and exotic bets and three per centum of super exotic bets provided, however, that for the period September tenth, nineteen hundred ninety-nine through March thirty-first, two thousand one, such payment shall be six-tenths of one per centum of regular, multiple and exotic pools and for the period April first, two thousand one through December thirty-first, two thousand [eleven] TWELVE, such payment shall be seven-tenths of one per centum of such pools.

S 10. Subdivision 5 of section 1012 of the racing, pari-mutuel wagering and breeding law, as amended by section 11 of part C of chapter 134 of the laws of 2010, is amended to read as follows:

5. The provisions of this section shall expire and be of no further force and effect after June thirtieth, two thousand [eleven] TWELVE.

S 11. This act shall take effect immediately.

PART T

Section 1. Paragraphs (a) and (b) of subdivision 2 of section 480-a of the tax law, as amended by section 125 of part C of chapter 58 of the laws of 2009, are amended to read as follows:

(a) (i) Every retail dealer and every person owning or, if the owner is not the operator, then any person operating one or more vending machines through which cigarettes or tobacco products are sold in this state, who is required under section eleven hundred thirty-six of this chapter to file a return for the quarterly period ending on the last day of August, nineteen hundred ninety or for the quarterly period ending on the last day of August in any year thereafter, must file an application for registration under this section with that quarterly return, in such form as shall be prescribed by the commissioner.

(ii) Each retail dealer must pay an application fee with the quarterly return [described by subparagraph (i) of this paragraph] OF THREE HUNDRED DOLLARS for each retail place of business in this state through which it sells cigarettes or tobacco products[, which is based on gross sales of that place of business during the previous calendar year. The application fee is: one thousand dollars for each retail place of business with gross sales totaling less than one million dollars; two thousand five hundred dollars for each retail place of business with gross sales totaling at least one million dollars but less than ten million dollars; and five thousand dollars for each retail place of business with gross sales totaling at least ten million dollars].

(iii) Every person who owns or, if the owner is not the operator, then any person who operates one or more vending machines through which cigarettes or tobacco products are sold in this state, regardless of whether located on the premises of the vending machine owner or, if the owner is not the operator, then the premises of the operator or the premises of any other person, must pay an application fee with the quarterly return [described by subparagraph (i) of this paragraph] OF ONE HUNDRED DOLLARS for each vending machine[, which is based on gross sales of that vending machine during the previous calendar year. The application fee is: two hundred fifty dollars for each vending machine with gross sales totaling less than one hundred thousand dollars; six hundred twenty-five dollars for each vending machine with gross sales totaling at least one hundred thousand dollars but less than one million dollars; and one thousand two hundred fifty dollars for each vending machine with gross sales totaling at least one million dollars]. The department will issue a registration certificate, as prescribed by the commissioner, after receipt of a registration application and the appropriate registration fee, prior to the next succeeding January first.

(b) Every retail dealer and every person who owns or, if the owner is not the operator, then any person who operates one or more vending machines through which cigarettes or tobacco products are sold in this state who commences business after the last day of August, nineteen hundred ninety, or who commences selling cigarettes or tobacco products at retail through a new or different place of business in this state after such date, or who commences selling cigarettes or tobacco products through new or different vending machines after such date, must file with the commissioner an application for registration, in a form

prescribed by him or her, at least thirty days prior to commencing business or commencing sales. Each application must be accompanied by an application fee OF THREE HUNDRED DOLLARS for each retail place of business and ONE HUNDRED DOLLARS FOR each vending machine to be registered. [The amount of the application fee is determined by subparagraphs (ii) and (iii) of paragraph (a) of this subdivision, except that any retail place of business or vending machine with zero dollars in gross sales during the previous calendar year is subject to the lowest application fee required by such subparagraphs.] The department, within ten days after receipt of an application for registration under this paragraph and payment of the proper fee for application for registration, will issue a registration certificate, as prescribed by the commissioner, for each retail place of business or cigarette or tobacco products vending machine registered.

S 2. Section 482 of the tax law, as amended by section 10 of part D of chapter 134 of the laws of 2010, is amended to read as follows:

S 482. Deposit and disposition of revenue. (a) All taxes, fees, interest and penalties collected or received by the commissioner under this article and article twenty-A of this chapter shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter. (b) From the taxes, interest and penalties collected or received by the commissioner under sections four hundred seventy-one and four hundred seventy-one-a of this article, effective on and after March first, two thousand, forty-nine and fifty-five hundredths, and effective on and after February first, two thousand two, forty-three and seventy hundredths; and effective on and after May first, two thousand two, sixty-four and fifty-five hundredths; and effective on and after April first, two thousand three, sixty-one and twenty-two hundredths percent; and effective on and after June third, two thousand eight, seventy and sixty-three hundredths percent; and effective on and after July first, two thousand ten, seventy-six percent collected or received under those sections must be deposited to the credit of the tobacco control and insurance initiatives pool to be established and distributed by the commissioner of health in accordance with section twenty-eight hundred seven-v of the public health law. [(c) From the fees collected or received by the commissioner under subdivision two of section four hundred eighty-a of this article, effective on or after September first, two thousand nine, any monies collected or received under that section in excess of three million dollars must be deposited to the credit of the tobacco control and insurance initiatives pool to be distributed by the commissioner of health in accordance with section twenty-eight hundred seven-v of the public health law.]

S 3. Subdivisions (a) and (b) of section 92-dd of the state finance law, as amended by section 125-c of part C of chapter 58 of the laws of 2009, are amended to read as follows:

(a) On and after April first, two thousand five, such fund shall consist of the revenues heretofore and hereafter collected or required to be deposited pursuant to paragraph (a) of subdivision eighteen of section twenty-eight hundred seven-c, and sections twenty-eight hundred seven-j, twenty-eight hundred seven-s and twenty-eight hundred seven-t of the public health law, [subdivisions] SUBDIVISION (b) [and (c)] of section four hundred eighty-two of the tax law and required to be credited to the tobacco control and insurance initiatives pool, subparagraph (O) of paragraph four of subsection (j) of section four thousand three hundred one of the insurance law, section twenty-seven of part A of

chapter one of the laws of two thousand two and all other moneys credited or transferred thereto from any other fund or source pursuant to law.

(b) The pool administrator under contract with the commissioner of health pursuant to section twenty-eight hundred seven-y of the public health law shall continue to collect moneys required to be collected or deposited pursuant to paragraph (a) of subdivision eighteen of section twenty-eight hundred seven-c, and sections twenty-eight hundred seven-j, twenty-eight hundred seven-s and twenty-eight hundred seven-t of the public health law, and shall deposit such moneys in the HCRA resources fund. The comptroller shall deposit moneys collected or required to be deposited pursuant to [subdivisions] SUBDIVISION (b) [and (c)] of section four hundred eighty-two of the tax law and required to be credited to the tobacco control and insurance initiatives pool, subparagraph (O) of paragraph four of subsection (j) of section four thousand three hundred one of the insurance law, section twenty-seven of part A of chapter one of the laws of two thousand two and all other moneys credited or transferred thereto from any other fund or source pursuant to law in the HCRA resources fund.

S 3-a. Notwithstanding any other provision to the contrary, a notice and demand will be issued for calendar years 2010 and 2011, as relevant, to each retail dealer and vending machine operator for each retail location and/or vending machine for any part of the registration fee which is still owed under section 480-a of the tax law. Any such notice and demand shall not be construed as a notice which gives a person the right to a hearing under article 40 of the tax law. In registering a retail dealer and vending machine operator for any of their retail locations and/or vending machines for calendar year 2012, if any outstanding registration fees are owed for calendar years 2010 and 2011, no registrations will be issued to them for calendar year 2012 until these outstanding registration fees, and any corresponding interest and penalties, are paid in full.

S 3-b. Notwithstanding any other provision to the contrary, the commissioner of taxation and finance shall refund an application fee paid with respect to the registration of a vending machine or a retail place of business in this state through which cigarettes or tobacco products were to be sold if for calendar years 2010 and 2011, the retail dealer or vending machine operator paid a fee in an amount greater than the fees owed under the fee structure established by this act. The refund shall be deemed a refund of tax paid in error provided, however, no interest shall be allowed or paid on any such refund.

S 4. This act shall take effect immediately; provided, however, that section one of this act shall be deemed to have been in full force and effect on and after the date that section 125 of part C of chapter 58 of the laws of 2009 took effect and shall apply only to fees related to applications for registration for the 2010 calendar year and thereafter; and provided further, however, that sections two and three of this act shall be deemed to have been in full force and effect on and after September 1, 2009.

PART U

Section 1. The real property tax law is amended by adding a new section 104 to read as follows:

S 104. ELECTRONIC REAL PROPERTY TAX ADMINISTRATION. 1. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE COMMISSIONER IS HEREBY AUTHORIZED TO ESTABLISH STANDARDS FOR ELECTRONIC REAL PROPERTY TAX

ADMINISTRATION (E-RPT). SUCH STANDARDS SHALL SET FORTH THE TERMS AND CONDITIONS UNDER WHICH THE VARIOUS TASKS ASSOCIATED WITH REAL PROPERTY TAX ADMINISTRATION MAY BE EXECUTED ELECTRONICALLY, DISPENSING WITH THE NEED FOR PAPER DOCUMENTS. SUCH TASKS SHALL INCLUDE:

(A) THE FILING OF EXEMPTION APPLICATIONS;

(B) THE FILING OF PETITIONS FOR ADMINISTRATIVE REVIEW OF ASSESSMENTS;

(C) THE FILING OF PETITIONS FOR JUDICIAL REVIEW OF ASSESSMENTS;

(D) THE FILING OF APPLICATIONS FOR ADMINISTRATIVE CORRECTIONS OF ERRORS;

(E) THE ISSUANCE OF STATEMENTS OF TAXES;

(F) THE PAYMENT OF TAXES, SUBJECT TO THE PROVISIONS OF SECTIONS FIVE AND FIVE-B OF THE GENERAL MUNICIPAL LAW;

(G) THE PROVISION OF RECEIPTS FOR THE PAYMENT OF TAXES;

(H) THE ISSUANCE OF TAXPAYER NOTICES REQUIRED BY LAW, INCLUDING SECTIONS FIVE HUNDRED EIGHT, FIVE HUNDRED TEN, FIVE HUNDRED TEN-A, FIVE HUNDRED ELEVEN, FIVE HUNDRED TWENTY-FIVE AND FIVE HUNDRED FIFTY-ONE-A THROUGH FIVE HUNDRED FIFTY-SIX-B OF THIS CHAPTER; AND

(I) THE FURNISHING OF NOTICES AND CERTIFICATES UNDER THIS CHAPTER RELATING TO STATE EQUALIZATION RATES, RESIDENTIAL ASSESSMENT RATIOS, SPECIAL FRANCHISE ASSESSMENTS, RAILROAD CEILINGS, TAXABLE STATE LANDS, ADVISORY APPRAISALS, AND THE CERTIFICATION OF ASSESSORS AND COUNTY DIRECTORS OR REAL PROPERTY TAX SERVICES.

2. SUCH STANDARDS SHALL BE DEVELOPED AFTER CONSULTATION WITH LOCAL GOVERNMENT OFFICIALS, THE OFFICE OF COURT ADMINISTRATION AND THE OFFICE OF THE STATE COMPTROLLER.

3. (A) TAXPAYERS SHALL NOT BE REQUIRED TO ACCEPT NOTICES, STATEMENTS OF TAXES, RECEIPTS FOR THE PAYMENT OF TAXES, OR OTHER DOCUMENTS ELECTRONICALLY UNLESS THEY HAVE SO ELECTED. TAXPAYERS WHO HAVE NOT SO ELECTED SHALL BE SENT SUCH COMMUNICATIONS IN THE MANNER OTHERWISE PROVIDED BY LAW.

(B) ASSESSORS AND OTHER MUNICIPAL OFFICIALS SHALL NOT BE REQUIRED TO ACCEPT AND RESPOND TO COMMUNICATIONS FROM THE COMMISSIONER ELECTRONICALLY.

(C) THE GOVERNING BOARD OF ANY MUNICIPAL CORPORATION MAY, BY LOCAL LAW, ORDINANCE OR RESOLUTION, DETERMINE THAT IT IS IN THE PUBLIC INTEREST FOR SUCH MUNICIPAL CORPORATION TO PROVIDE ELECTRONIC REAL PROPERTY TAX ADMINISTRATION. UPON ADOPTION OF SUCH LOCAL LAW, ORDINANCE OR RESOLUTION, SUCH MUNICIPAL CORPORATION SHALL COMPLY WITH STANDARDS SET FORTH BY THE COMMISSIONER.

(D) THE STANDARDS PRESCRIBED BY THE COMMISSIONER PURSUANT TO THIS SECTION SHALL PROVIDE FOR THE COLLECTION OF ELECTRONIC CONTACT INFORMATION, SUCH AS E-MAIL ADDRESSES AND/OR SOCIAL NETWORK USERNAMES, FROM TAXPAYERS WHO HAVE ELECTED TO RECEIVE ELECTRONIC COMMUNICATIONS IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. SUCH INFORMATION SHALL BE EXEMPT FROM PUBLIC DISCLOSURE IN ACCORDANCE WITH SECTION EIGHTY-NINE OF THE PUBLIC OFFICERS LAW.

4. WHEN A DOCUMENT HAS BEEN TRANSMITTED ELECTRONICALLY IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION AND THE STANDARDS ADOPTED BY THE COMMISSIONER HEREUNDER, IT SHALL BE DEEMED TO SATISFY THE APPLICABLE LEGAL REQUIREMENTS TO THE SAME EXTENT AS IF IT HAD BEEN MAILED VIA THE UNITED STATES POSTAL SERVICE.

S 2. Intentionally omitted.

S 3. The opening paragraph of paragraph (a) of subdivision 1 of section 922 of the real property tax law, as amended by section 5 of part B of chapter 389 of the laws of 1997, is amended to read as follows:

Upon receipt of the tax roll and warrant, the collecting officer shall mail OR, SUBJECT TO THE PROVISIONS OF SECTION ONE HUNDRED FOUR OF THIS CHAPTER, TRANSMIT ELECTRONICALLY to each owner of real property at the tax billing address listed thereon a statement showing the amount of taxes due on the property. The statement must contain:

S 4. Subdivision 1 of section 925 of the real property tax law, as separately amended by chapters 513 and 568 of the laws of 2002, is amended to read as follows:

1. (A) Notwithstanding any contrary provision of this chapter, or of any general, special or local law, code or charter, if payment for the amount of any taxes on real property, accompanied by the statement of such taxes, is enclosed in a postpaid wrapper properly addressed to the appropriate collecting officer and is deposited in a post office or official depository under the exclusive care and custody of the United States [post office] POSTAL SERVICE, such payment shall, upon delivery, be deemed to have been made to such officer on the date of the United States postmark on such wrapper. If the postmark does not appear on such wrapper or the postmark is illegible such payment shall be deemed to have been made on the date of delivery to such collecting officer. As used in this section, "taxes on real property" includes special ad valorem levies and special assessments.

(B) THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO A PAYMENT THAT HAS BEEN MADE ELECTRONICALLY PURSUANT TO SECTION FIVE-B OF THE GENERAL MUNICIPAL LAW, BUT SHALL APPLY TO A PAYMENT THAT HAS BEEN MAILED VIA THE UNITED STATES POSTAL SERVICE BY A FINANCIAL INSTITUTION ACTING PURSUANT TO INSTRUCTIONS GIVEN TO IT BY A TAXPAYER ELECTRONICALLY.

S 5. Section 925-c of the real property tax law, as added by section 11 of part X of chapter 62 of the laws of 2003, is amended to read as follows:

S 925-c. Payment of real property taxes via the internet. [1.] Notwithstanding any contrary provision of this chapter, or of any general, special or local law, code or charter, [if payment for the amount of any taxes on real property, accompanied by sufficient language to identify the property and tax levy, is received via the internet, such payment is considered received by the appropriate officer and paid by the taxpayer at the time the internet transaction is completed and sent by the taxpayer.

2. Any local government authorizing the payment of taxes via the internet pursuant to section five-b of the general municipal law shall provide a confirmation page to the taxpayer following the completion of the internet transaction. Such confirmation page shall include, at least, the following:

(a) the date the transaction was completed and sent by the taxpayer; and

(b) a notice to the taxpayer to print out and retain the confirmation page as his or her receipt] REAL PROPERTY TAXES MAY BE PAID VIA THE INTERNET UNDER THE TERMS AND CONDITIONS SET FORTH IN SECTION FIVE-B OF THE GENERAL MUNICIPAL LAW.

S 6. Subdivisions 3 and 3-a of section 955 of the real property tax law, subdivision 3 as amended by section 7 of part B of chapter 389 of the laws of 1997 and subdivision 3-a as added by chapter 365 of the laws of 2010, are amended to read as follows:

3. No later than three weeks after a tax has been paid by a mortgage investing institution pursuant to this title, the collecting officer shall deliver [or], mail, OR, SUBJECT TO THE PROVISIONS OF SECTION ONE HUNDRED FOUR OF THIS CHAPTER, TRANSMIT ELECTRONICALLY a receipt to the

mortgagor for whom the real property tax escrow account is maintained. Each such receipt shall be in the same format as a statement of taxes, except that the word "Paid" (or an equivalent word or words) and the date of payment shall be clearly displayed thereon. The receipt may also display, if the collecting officer so elects, the name, title and signature (or initials) of the collecting officer or of the authorized subordinate who received the payment.

[3-a. (a) The collecting officer shall deliver or mail the receipt required under subdivision three of this section unless a taxpayer requests to receive such receipt electronically, in which case the collecting officer shall make an electronic receipt available to the taxpayer. The collecting officer shall notify all taxpayers that any availability of electronic receipts does not preclude a taxpayer from electing to receive a copy of his or her tax receipt in the mail or in person.

(b) The provisions of paragraph (a) of this subdivision shall apply only to a city, town, or village which by local law provides that electronic availability of such receipts shall be an authorized means of delivery.]

S 7. Subdivision 1 of section 986 of the real property tax law, as amended by section 8 of part B of chapter 389 of the laws of 1997, is amended to read as follows:

1. The collecting officer shall upon request or by notice on the tax bill of a person paying a tax, deliver [or], forward by mail, OR, SUBJECT TO THE PROVISIONS OF SECTION ONE HUNDRED FOUR OF THIS CHAPTER, TRANSMIT ELECTRONICALLY a receipt to such person specifying the date of such payment, the name of such person, the description of the property as shown on the tax roll, the name of the person to whom the same is assessed, the amount of such tax and the date of delivery to such officer of the tax roll on account of which such tax was paid, except that the collecting officer of the city of New York shall not be required to give such a receipt unless payment of a tax is made in money or unless the person paying the tax makes a request therefor in writing. Nothing contained in this subdivision shall prevent the collecting officer from delivering [or], forwarding by mail, OR TRANSMITTING ELECTRONICALLY a receipt to any person paying a tax who does not request such a receipt or make a proper notation on the tax bill. Provided, however, if a tax is paid by a mortgage investing institution pursuant to title three-A of this article, a receipt for each paid tax bill shall be delivered [or], mailed, OR TRANSMITTED ELECTRONICALLY to the mortgagor pursuant to the provisions of section nine hundred fifty-five of this article.

S 8. Subdivision 1 of section 1590 of the real property tax law, as amended by section 3 of part X of chapter 56 of the laws of 2010, and as further amended by subdivision (b) of section 1 of part W of chapter 56 of the laws of 2010, is amended to read as follows:

1. (A) A municipal corporation, other than a school district or a village, which prepares assessment rolls by means of electronic data processing, shall annually submit to the commissioner the data files used in the preparation of each tentative and final assessment roll and summaries of the information from the final assessment roll including as a minimum the number of parcels, the total assessed value thereof, and the total taxable assessed value thereof. Such information shall be submitted within ten days of the time of filing the tentative or final assessment roll, as provided for pursuant to section five hundred six or five hundred sixteen of this chapter or such other law as may be applicable.

(B)(I) In addition, if the assessing unit maintains a website, then within ten days of the filing of the tentative assessment roll, it shall post a copy of such roll on its website, with a link thereto prominently displayed on its home page, and shall not remove the same before the final assessment roll has been filed. In lieu of posting a copy of such roll on its website, the assessing unit may cause such copy to be posted on the website of the county in which it is located for the same period of time as otherwise required by this subdivision, provided that a link thereto shall be prominently displayed on the website of the assessing unit.

(II) IF THE ASSESSING UNIT DOES NOT MAINTAIN A WEBSITE, THEN, WITHIN TEN DAYS OF THE FILING OF THE TENTATIVE ASSESSMENT ROLL, IT SHALL CAUSE A COPY OF SUCH ROLL TO BE POSTED ON THE WEBSITE OF THE COUNTY IN WHICH IT IS LOCATED FOR THE SAME PERIOD OF TIME AS OTHERWISE REQUIRED BY THIS SUBDIVISION.

(C) WITHIN TEN DAYS OF THE FILING OF THE FINAL ASSESSMENT ROLL, THE ASSESSING UNIT SHALL CAUSE A COPY OF SUCH FINAL ROLL TO BE POSTED EITHER ON ITS OWN WEBSITE OR ON THE COUNTY'S WEBSITE, IN THE SAME MANNER AND SUBJECT TO THE SAME CONDITIONS AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION.

S 9. Intentionally omitted.

S 10. Section 5-b of the general municipal law, as added by section 10 of part X of chapter 62 of the laws of 2003, subdivision 1 as amended by chapter 741 of the laws of 2005, is amended to read as follows:

S 5-b. Collection of fines, civil penalties, rent, rates, taxes, fees, charges and other amounts via the internet. 1. The governing board of any local government, as that term is defined in section ten of this article, may, by local law, ordinance or resolution, determine that it is in the public interest and authorize such local government to provide for the acceptance of penalties, rents, rates, taxes, fees, charges, revenue, financial obligations or other amounts, including penalties, special assessments or interest via a municipal internet website OR THE WEBSITE OF A THIRD-PARTY VENDOR THAT HAS CONTRACTED WITH THE LOCAL GOVERNMENT TO RECEIVE SUCH PAYMENTS ON ITS BEHALF. Submission via the internet may not, however, be required as the sole method for the collection of fines, civil penalties, rent, rates, taxes, fees, charges and other amounts. Such payments shall be accepted via the internet in a manner and condition defined by such local government. Any method used to receive internet payments shall comply with article three of the state technology law and any rules and regulations promulgated and guidelines developed thereunder and, at a minimum must (a) authenticate the identity of the sender; and (b) ensure the security of the information transmitted.

2. Any local government authorizing the payment of taxes via the internet shall provide OR DIRECT ITS VENDOR TO PROVIDE a confirmation page to the taxpayer following the completion of the internet transaction. Such confirmation page shall include, at least, the following:

(a) the date the internet transaction was completed and sent by the taxpayer; [and]

(b) THE AMOUNT PAID;

(C) A UNIQUE CONFIRMATION NUMBER; AND

(D) a notice [to] ADVISING the taxpayer to print out and retain the confirmation page as his or her receipt.

3. Payments received via the internet shall be considered received by the appropriate officer and paid by the taxpayer at the time the internet transaction is completed and sent by the taxpayer.

4. The underlying debt, lien, obligation, bill, account or other amount owed to the local government for which payment by internet is accepted by the local government shall not be expunged, cancelled, released, discharged or satisfied, and any receipt or other evidence of payment shall be deemed conditional, until the local government has received final and unconditional payment of the full amount due.

5. The governing board, in enacting a local law, ordinance or resolution pursuant to this section, shall designate which of its officers, charged with the duty of collecting or receiving moneys on behalf of the local government, shall be authorized to accept such payments via the internet.

6. THE STATE COMPTROLLER SHALL ISSUE SUCH GUIDELINES AS HE OR SHE DEEMS APPROPRIATE GOVERNING THE USE OF THIRD-PARTY VENDORS FOR THIS PURPOSE. ANY LOCAL GOVERNMENT CONTRACTING WITH A THIRD-PARTY VENDOR FOR THIS PURPOSE SHALL FOLLOW THE GUIDELINES ISSUED BY THE STATE COMPTROLLER.

S 11. Subdivision 2 of section 89 of the public officers law, as added by chapter 933 of the laws of 1977, subparagraph (iii) of paragraph (b) and subparagraph (iii) of paragraph (c) as amended and subparagraph (iv) of paragraph (c) as added by chapter 223 of the laws of 2008, subparagraph (v) of paragraph (b) as amended and subparagraph (vi) of paragraph (b) as added by chapter 545 of the laws of 1998, is amended to read as follows:

2. (a) The committee on public access to records may promulgate guidelines regarding deletion of identifying details or withholding of records otherwise available under this article to prevent unwarranted invasions of personal privacy. In the absence of such guidelines, an agency may delete identifying details when it makes records available.

(b) An unwarranted invasion of personal privacy includes, but shall not be limited to:

i. disclosure of employment, medical or credit histories or personal references of applicants for employment;

ii. disclosure of items involving the medical or personal records of a client or patient in a medical facility;

iii. sale or release of lists of names and addresses if such lists would be used for solicitation or fund-raising purposes;

iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it; [or]

v. disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency; [or]

vi. information of a personal nature contained in a workers' compensation record, except as provided by section one hundred ten-a of the workers' compensation law[.] ; OR

VII. DISCLOSURE OF ELECTRONIC CONTACT INFORMATION, SUCH AS AN E-MAIL ADDRESS OR A SOCIAL NETWORK USERNAME, THAT HAS BEEN COLLECTED FROM A TAXPAYER UNDER SECTION ONE HUNDRED FOUR OF THE REAL PROPERTY TAX LAW.

(c) Unless otherwise provided by this article, disclosure shall not be construed to constitute an unwarranted invasion of personal privacy pursuant to paragraphs (a) and (b) of this subdivision:

i. when identifying details are deleted;

ii. when the person to whom a record pertains consents in writing to disclosure;

iii. when upon presenting reasonable proof of identity, a person seeks access to records pertaining to him or her; or

iv. when a record or group of records relates to the right, title or interest in real property, or relates to the inventory, status or characteristics of real property, in which case disclosure and providing copies of such record or group of records shall not be deemed an unwarranted invasion of personal privacy, PROVIDED THAT NOTHING HEREIN SHALL BE CONSTRUED TO AUTHORIZE THE DISCLOSURE OF ELECTRONIC CONTACT INFORMATION, SUCH AS AN E-MAIL ADDRESS OR A SOCIAL NETWORK USERNAME, THAT HAS BEEN COLLECTED FROM A TAXPAYER UNDER SECTION ONE HUNDRED FOUR OF THE REAL PROPERTY TAX LAW.

S 12. The tax law is amended by adding a new section 35 to read as follows:

S 35. USE OF ELECTRONIC MEANS OF COMMUNICATION. NOTWITHSTANDING ANY OTHER PROVISION OF NEW YORK STATE LAW, WHERE THE DEPARTMENT HAS OBTAINED AUTHORIZATION OF AN ONLINE SERVICES ACCOUNT HOLDER, IN SUCH FORM AS MAY BE PRESCRIBED BY THE COMMISSIONER, THE DEPARTMENT MAY USE ELECTRONIC MEANS OF COMMUNICATION TO FURNISH ANY DOCUMENT IT IS REQUIRED TO MAIL PER LAW OR REGULATION. IF THE DEPARTMENT FURNISHES SUCH DOCUMENT IN ACCORDANCE WITH THIS SECTION, DEPARTMENT RECORDS OF SUCH TRANSACTION SHALL CONSTITUTE APPROPRIATE AND SUFFICIENT PROOF OF DELIVERY THEREOF AND BE ADMISSIBLE IN ANY ACTION OR PROCEEDING.

S 13. Section 29 of the tax law, as added by section 1 of part UU-1 of chapter 57 of the laws of 2008 and paragraph (1) of subdivision (e) as amended by section 1 of part G of chapter 57 of the laws of 2010, is amended to read as follows:

S 29. Mandatory electronic filing and payment. (a) For purposes of this section, the following terms have the specified meanings:

(1) "Authorized tax document" means a tax document which the commissioner has authorized to be filed electronically.

(2) "Electronic" means computer technology.

(3) "Original tax document" means a tax document that is filed during the calendar year for which that tax document is required or permitted to be filed.

(4) "Tax" means any tax or other matter administered by the commissioner pursuant to this chapter or any other provision of law[; provided, however, that the term "tax" does not include the taxes imposed by, or pursuant to the authority of, articles twenty-two, thirty, thirty-A or thirty-B of this chapter].

(5) "Tax document" means a return, report or any other document relating to a tax or other matter administered by the commissioner.

(6) "Tax return preparer" means any person who prepares for compensation, or who employs or engages one or more persons to prepare for compensation, any authorized tax document. For purposes of this section, the term "tax return preparer" also includes a payroll service.

(7) "Tax software" means any computer software program intended for tax return preparation purposes. For purposes of this section, the term "tax software" includes, but is not limited to, an off-the-shelf software program loaded onto a tax return preparer's or taxpayer's computer, an online tax preparation application, or a tax preparation application hosted by the department.

(b) (1) If a tax return preparer prepared more than one hundred original tax documents during any calendar year beginning on or after January first, two thousand seven, and if, in any succeeding calendar year that tax return preparer prepares one or more authorized tax documents using tax software, then, for that succeeding calendar year and

for each subsequent calendar year thereafter, all authorized tax documents prepared by that tax return preparer must be filed electronically, in accordance with instructions prescribed by the commissioner.

(2) IF A TAX RETURN PREPARER PREPARED MORE THAN FIVE ORIGINAL TAX DOCUMENTS DURING ANY CALENDAR YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, AND IF IN ANY SUCCEEDING CALENDAR YEAR THAT TAX RETURN PREPARER PREPARES ONE OR MORE AUTHORIZED RETURNS USING TAX SOFTWARE, THEN, FOR SUCH SUCCEEDING CALENDAR YEAR AND FOR EACH SUBSEQUENT CALENDAR YEAR THEREAFTER, ALL AUTHORIZED TAX DOCUMENTS PREPARED BY THAT TAX RETURN PREPARER MUST BE FILED ELECTRONICALLY, IN ACCORDANCE WITH INSTRUCTIONS PRESCRIBED BY THE COMMISSIONER.

(c) If a taxpayer does not utilize a tax return preparer to prepare an authorized tax document [during any calendar year beginning on or after January first, two thousand eight], but instead prepares that document itself using tax software, then[, for that calendar year and for each subsequent calendar year thereafter,] all authorized tax documents prepared by the taxpayer using tax software must be filed electronically, in accordance with instructions prescribed by the commissioner.

(d) [Any] THE COMMISSIONER MAY REQUIRE tax liability or other amount due shown on, or required to be paid with, an authorized tax document required to be filed electronically pursuant to subdivision (b) or (c) of this section [must] TO be paid by the taxpayer electronically, in accordance with instructions prescribed by the commissioner.

(e) Failure to electronically file or electronically pay. (1) If a tax return preparer is required to file authorized tax documents electronically pursuant to subdivision (b) of this section, and that preparer fails to file one or more of those documents electronically, then that preparer will be subject to a penalty of fifty dollars for each failure to electronically file an authorized tax document, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(2) If a taxpayer is required to ELECTRONICALLY FILE ANY AUTHORIZED TAX DOCUMENTS OR electronically pay any tax liability or other amount due shown on, or required to be paid with, an authorized tax document required to be filed electronically pursuant to subdivision (b) or (c) of this section, and that taxpayer fails to ELECTRONICALLY FILE ONE OR MORE OF THOSE TAX DOCUMENTS OR electronically pay one or more of those liabilities or other amounts due, then that taxpayer will be subject to a penalty of [fifty] TWENTY-FIVE dollars for each INDIVIDUAL TAXPAYER'S failure to ELECTRONICALLY FILE AN AUTHORIZED TAX DOCUMENT REQUIRED BY OR PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-TWO, THIRTY, THIRTY-A OR THIRTY-B OF THIS CHAPTER OR electronically pay ANY PERSONAL INCOME TAX IMPOSED BY OR PURSUANT TO THE AUTHORITY OF ANY OF THOSE ARTICLES, AND FIFTY DOLLARS FOR EACH FAILURE TO ELECTRONICALLY FILE ANY OTHER AUTHORIZED TAX DOCUMENT OR ELECTRONICALLY PAY ANY OTHER TAX, UNLESS IT IS SHOWN THAT THE FAILURE IS DUE TO REASONABLE CAUSE AND NOT DUE TO WILLFUL NEGLECT. IN ADDITION, ANY TAXPAYER THAT FAILS TO ELECTRONICALLY FILE AN AUTHORIZED TAX DOCUMENT FOR ANY TAX OTHER THAN AN INDIVIDUAL TAXPAYER WHO FAILS TO FILE AN AUTHORIZED TAX DOCUMENT FOR ANY PERSONAL INCOME TAX IMPOSED BY OR PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-TWO, THIRTY, THIRTY-A OR THIRTY-B WILL BE SUBJECT TO THE PENALTY IMPOSED UNDER THE APPLICABLE ARTICLE FOR THE FAILURE TO FILE A RETURN OR REPORT, WHETHER A PAPER RETURN OR REPORT HAS BEEN FILED OR NOT.

(3) The penalties provided for by this subdivision must be paid upon notice and demand, and will be assessed, collected and paid in the same manner as the tax to which the electronic transaction relates. However,

if the electronic transaction relates to another matter administered by the commissioner, then the [penally] PENALTY will be assessed, collected and paid in the same manner as prescribed by article twenty-seven of this chapter.

(4) IF A TAXPAYER OR TAX RETURN PREPARER FAILS TO ELECTRONICALLY FILE AN AUTHORIZED TAX DOCUMENT WHEN REQUIRED TO DO SO PURSUANT TO SUBDIVISION (B) OR (C) OF THIS SECTION, THE TAXPAYER SHALL NOT BE ELIGIBLE TO RECEIVE INTEREST ON ANY OVERPAYMENT IN ACCORDANCE WITH THE OVERPAYMENT PROVISIONS OF THIS CHAPTER UNTIL SUCH DOCUMENT IS FILED ELECTRONICALLY.

(f) The provisions of sections nine and ten of this chapter are not affected by this section and will remain in full force and effect.

(g) The commissioner is authorized to promulgate any regulations necessary to implement this section.

S 14. Paragraph 10 of subsection (g) of section 658 of the tax law is REPEALED.

S 14-a. Subparagraph (A) of paragraph 10 of subsection (g) of section 658 of the tax law is amended by adding a new clause (iii) to read as follows:

(III) IF A TAX RETURN PREPARER PREPARED MORE THAN FIVE ORIGINAL TAX DOCUMENTS DURING ANY CALENDAR YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, AND IF IN ANY SUCCEEDING CALENDAR YEAR THAT TAX RETURN PREPARER PREPARES ONE OR MORE AUTHORIZED RETURNS USING TAX SOFTWARE, THEN, FOR SUCH SUCCEEDING CALENDAR YEAR AND FOR EACH SUBSEQUENT CALENDAR YEAR THEREAFTER, ALL AUTHORIZED TAX DOCUMENTS PREPARED BY THAT TAX RETURN PREPARER MUST BE FILED ELECTRONICALLY, IN ACCORDANCE WITH INSTRUCTIONS PRESCRIBED BY THE COMMISSIONER.

S 14-b. Subsection (g) of section 658 of the tax law is amended by adding a new paragraph 10 to read as follows:

(10) MANDATORY ELECTRONIC FILING BY CERTAIN TAX RETURN PREPARERS. (A)(I) IF A TAX RETURN PREPARER PREPARED MORE THAN TWO HUNDRED ORIGINAL RETURNS DURING THE CALENDAR YEAR BEGINNING ON JANUARY FIRST, TWO THOUSAND FIVE, AND IF, IN THE CALENDAR YEAR BEGINNING ON JANUARY FIRST, TWO THOUSAND SIX, SUCH TAX RETURN PREPARER PREPARES ONE OR MORE AUTHORIZED RETURNS USING TAX SOFTWARE, THEN, FOR SUCH CALENDAR YEAR TWO THOUSAND SIX AND FOR EACH SUBSEQUENT CALENDAR YEAR THEREAFTER, ALL AUTHORIZED RETURNS PREPARED BY SUCH TAX RETURN PREPARER SHALL BE FILED ELECTRONICALLY, IN ACCORDANCE WITH INSTRUCTIONS PRESCRIBED BY THE COMMISSIONER.

(II) IF A TAX RETURN PREPARER PREPARED MORE THAN ONE HUNDRED ORIGINAL RETURNS DURING ANY CALENDAR YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND SIX, AND IF, IN ANY SUCCEEDING CALENDAR YEAR SUCH TAX RETURN PREPARER PREPARES ONE OR MORE AUTHORIZED RETURNS USING TAX SOFTWARE, THEN, FOR SUCH SUCCEEDING CALENDAR YEAR AND FOR EACH SUBSEQUENT CALENDAR YEAR THEREAFTER, ALL AUTHORIZED RETURNS PREPARED BY SUCH TAX RETURN PREPARER SHALL BE FILED ELECTRONICALLY, IN ACCORDANCE WITH INSTRUCTIONS PRESCRIBED BY THE COMMISSIONER.

(B) FOR PURPOSES OF THIS PARAGRAPH:

(I) "ELECTRONIC" MEANS COMPUTER TECHNOLOGY; PROVIDED, HOWEVER, THAT THE COMMISSIONER MAY, IN INSTRUCTIONS, PROVIDE THAT USE OF BARCODE TECHNOLOGY WILL ALSO SATISFY THE MANDATORY ELECTRONIC FILING REQUIREMENTS OF THIS SECTION.

(II) "AUTHORIZED RETURN" MEANS ANY RETURN REQUIRED UNDER THIS ARTICLE WHICH THE COMMISSIONER HAS AUTHORIZED TO BE FILED ELECTRONICALLY.

(III) "ORIGINAL RETURN" MEANS A RETURN REQUIRED UNDER THIS ARTICLE THAT IS FILED, WITHOUT REGARD TO EXTENSIONS, DURING THE CALENDAR YEAR FOR WHICH THAT RETURN IS REQUIRED TO BE FILED.

(IV) "TAX SOFTWARE" MEANS ANY COMPUTER SOFTWARE PROGRAM INTENDED FOR TAX RETURN PREPARATION PURPOSES.

S 15. Paragraph 10 of subdivision (g) of section 11-1758 of the administrative code of the city of New York is REPEALED.

S 15-a. Subparagraph (A) of paragraph 10 of subdivision (g) of section 11-1758 of the administrative code of the city of New York is amended by adding a new clause (iii) to read as follows:

(III) IF A TAX RETURN PREPARER PREPARED MORE THAN FIVE ORIGINAL TAX DOCUMENTS DURING ANY CALENDAR YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, AND IF IN ANY SUCCEEDING CALENDAR YEAR THAT TAX RETURN PREPARER PREPARES ONE OR MORE AUTHORIZED RETURNS USING TAX SOFTWARE, THEN, FOR SUCH SUCCEEDING CALENDAR YEAR AND FOR EACH SUBSEQUENT CALENDAR YEAR THEREAFTER, ALL AUTHORIZED TAX DOCUMENTS PREPARED BY THAT TAX RETURN PREPARER MUST BE FILED ELECTRONICALLY, IN ACCORDANCE WITH INSTRUCTIONS PRESCRIBED BY THE COMMISSIONER OF TAXATION AND FINANCE.

S 15-b. Subdivision (g) of section 11-1758 of the administrative code of the city of New York is amended by adding a new paragraph 10 to read as follows:

(10) MANDATORY ELECTRONIC FILING BY CERTAIN TAX RETURN PREPARERS. (A)(I) IF A TAX RETURN PREPARER PREPARED MORE THAN TWO HUNDRED ORIGINAL RETURNS DURING THE CALENDAR YEAR BEGINNING ON JANUARY FIRST, TWO THOUSAND FIVE, AND IF, IN THE CALENDAR YEAR BEGINNING ON JANUARY FIRST, TWO THOUSAND SIX, SUCH TAX RETURN PREPARER PREPARES ONE OR MORE AUTHORIZED RETURNS USING TAX SOFTWARE, THEN, FOR SUCH CALENDAR YEAR TWO THOUSAND SIX AND FOR EACH SUBSEQUENT CALENDAR YEAR THEREAFTER, ALL AUTHORIZED RETURNS PREPARED BY SUCH TAX RETURN PREPARER SHALL BE FILED ELECTRONICALLY, IN ACCORDANCE WITH INSTRUCTIONS PRESCRIBED BY THE COMMISSIONER OF TAXATION AND FINANCE.

(II) IF A TAX RETURN PREPARER PREPARED MORE THAN ONE HUNDRED ORIGINAL RETURNS DURING ANY CALENDAR YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND SIX, AND IF, IN ANY SUCCEEDING CALENDAR YEAR SUCH TAX RETURN PREPARER PREPARES ONE OR MORE AUTHORIZED RETURNS USING TAX SOFTWARE, THEN, FOR SUCH SUCCEEDING CALENDAR YEAR AND FOR EACH SUBSEQUENT CALENDAR YEAR THEREAFTER, ALL AUTHORIZED RETURNS PREPARED BY SUCH TAX RETURN PREPARER SHALL BE FILED ELECTRONICALLY, IN ACCORDANCE WITH INSTRUCTIONS PRESCRIBED BY THE COMMISSIONER OF TAXATION AND FINANCE.

(B) FOR PURPOSES OF THIS PARAGRAPH:

(I) "ELECTRONIC" MEANS COMPUTER TECHNOLOGY; PROVIDED, HOWEVER, THAT THE COMMISSIONER OF TAXATION AND FINANCE MAY, IN INSTRUCTIONS, PROVIDE THAT USE OF BARCODE TECHNOLOGY WILL ALSO SATISFY THE MANDATORY ELECTRONIC FILING REQUIREMENTS OF THIS SECTION.

(II) "AUTHORIZED RETURN" MEANS ANY RETURN REQUIRED UNDER THIS ARTICLE WHICH THE COMMISSIONER OF TAXATION AND FINANCE HAS AUTHORIZED TO BE FILED ELECTRONICALLY.

(III) "ORIGINAL RETURN" MEANS A RETURN REQUIRED UNDER THIS ARTICLE THAT IS FILED, WITHOUT REGARD TO EXTENSIONS, DURING THE CALENDAR YEAR FOR WHICH THAT RETURN IS REQUIRED TO BE FILED.

(IV) "TAX SOFTWARE" MEANS ANY COMPUTER SOFTWARE PROGRAM INTENDED FOR TAX RETURN PREPARATION PURPOSES.

S 16. Paragraph 5 of subsection (u) of section 685 of the tax law is REPEALED.

S 16-a. Subsection (u) of section 685 of the tax law is amended by adding a new paragraph 5 to read as follows:

(5) FAILURE TO ELECTRONICALLY FILE. IF A TAX RETURN PREPARER IS REQUIRED TO FILE RETURNS ELECTRONICALLY PURSUANT TO PARAGRAPH TEN OF SUBSECTION (G) OF SECTION SIX HUNDRED FIFTY-EIGHT OF THIS ARTICLE, AND

SUCH PREPARER FAILS TO FILE ONE OR MORE OF SUCH RETURNS ELECTRONICALLY, THEN SUCH PREPARER SHALL BE SUBJECT TO A PENALTY OF FIFTY DOLLARS FOR EACH SUCH FAILURE TO ELECTRONICALLY FILE A RETURN, UNLESS IT IS SHOWN THAT SUCH FAILURE IS DUE TO REASONABLE CAUSE AND NOT DUE TO WILLFUL NEGLECT.

S 17. Paragraph 5 of subdivision (t) of section 11-1785 of the administrative code of the city of New York is REPEALED.

S 17-a. Subdivision (t) of section 11-1785 of the administrative code of the city of New York is amended by adding a new paragraph 5 to read as follows:

(5) FAILURE TO ELECTRONICALLY FILE. IF A TAX RETURN PREPARER IS REQUIRED TO FILE RETURNS ELECTRONICALLY PURSUANT TO PARAGRAPH TEN OF SUBDIVISION (G) OF SECTION 11-1758, AND SUCH PREPARER FAILS TO FILE ONE OR MORE OF SUCH RETURNS ELECTRONICALLY, THEN SUCH PREPARER SHALL BE SUBJECT TO A PENALTY OF FIFTY DOLLARS FOR EACH SUCH FAILURE TO ELECTRONICALLY FILE A RETURN, UNLESS IT IS SHOWN THAT SUCH FAILURE IS DUE TO REASONABLE CAUSE AND NOT DUE TO WILLFUL NEGLECT.

S 17-b. By September 15, 2011, the commissioner of taxation and finance shall report to the governor, the director of the budget, the speaker and minority leader of the assembly, and the majority and minority leaders of the senate, the number and percentage of individual taxpayers that, by August 31, 2011, electronically filed their 2010 income tax returns. Provided, however, if such commissioner fails to report such percentage by September 15, 2011, then the percentage shall be presumed to be eighty-five percent or higher, and the report shall be presumed to be reported.

S 18. Subparagraph (A) of paragraph 3 of subsection (c) of section 658 of the tax law, as amended by section 1 of part H-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(A) Every subchapter K limited liability company, every limited liability company that is a disregarded entity for federal income tax purposes, and every partnership which has any income derived from New York sources, determined in accordance with the applicable rules of section six hundred thirty-one of this article as in the case of a nonresident individual, shall, within [thirty] SIXTY days after the last day of the taxable year, make a payment of a filing fee. The amount of the filing fee is the amount set forth in subparagraph (B) of this paragraph. The minimum filing fee is twenty-five dollars for taxable years beginning in two thousand eight and thereafter. Limited liability companies that are disregarded entities for federal income tax purposes must pay a filing fee of twenty-five dollars for taxable years beginning on or after January first, two thousand eight.

S 19. Subdivision 4 of section 1315 of the abandoned property law, as amended by section 2 of part II of chapter 57 of the laws of 2010, is amended to read as follows:

4. Any amount representing an unpaid check or draft issued by the state of New York which shall have remained unpaid after one year from the date of issuance OR A DEBIT CARD ISSUED ON BEHALF OF THE STATE OF NEW YORK FOR THE PURPOSE OF PAYING A TAX REFUND WHICH SHALL NOT HAVE BEEN ACTIVATED FOR ONE YEAR FROM THE DATE OF ISSUANCE in accordance with section one hundred two of the state finance law shall be deemed abandoned property and shall be paid to the state comptroller.

S 20. Section 102 of the state finance law, as amended by section 7 of part P of chapter 62 of the laws of 2003, is amended to read as follows:

S 102. Amounts of unpaid checks, DRAFTS OR DEBIT CARDS to be paid into abandoned property fund. Upon audit and statement of the comptroller,

the amounts of all checks or drafts on bank accounts of any funds of the state, AND THE AMOUNTS OF ALL DEBIT CARDS ISSUED ON BEHALF OF THE STATE FOR THE PURPOSE OF PAYING A TAX REFUND which checks or drafts have not been paid OR WHICH DEBIT CARDS HAVE NOT BEEN ACTIVATED and which shall have been outstanding for more than one year from the respective dates thereof, shall be paid into the abandoned property fund pursuant to subdivision four of section one thousand three hundred fifteen of the abandoned property law. The proper disbursing officers or agents of such funds shall notify the bank or banks on which such checks [or], drafts OR DEBIT CARDS were drawn not to pay OR PERMIT THE ACTIVATION OF the same. The comptroller shall keep a record of all such checks [or], drafts OR DEBIT CARDS and upon presentation to him by the lawful holder of any such check [or], draft OR DEBIT CARD at any time, the amount of which shall thus have been paid into the state treasury to the credit of the general fund, the comptroller, to the extent appropriations are available, shall issue a new check [or], draft OR ELECTRONIC PAYMENT to the payee upon submission of proof satisfactory to the comptroller as to the legitimacy of the claim and, if insufficient appropriations are available, shall include in his next request for appropriations by the legislature the amount or amounts of any such checks [or], drafts OR DEBIT CARDS so presented to him, for the purpose of payment without interest to the lawful holder or holders thereof.

S 21. Paragraph 3 of subdivision (e) of section 1137 of the tax law, as amended by chapter 65 of the laws of 1985, is amended to read as follows:

(3) As an additional or alternate requirement, whenever any person fails to collect, truthfully account for, pay over the tax, or file returns of the tax as required in this article, the [tax commission] COMMISSIONER, in [its] HIS OR HER discretion where [it] HE OR SHE deems necessary to protect the revenues to be obtained under this article, may give notice requiring such person to collect the taxes which become collectible after the giving of such notice, to deposit such taxes AT LEAST ONE TIME PER WEEK IN A SEPARATE ACCOUNT in any banking institution approved by the [tax commission] COMMISSIONER and located in this state the deposits in which are insured by any agency of the federal government[, in a separate account,]. SUCH NOTICE MAY REQUIRE EITHER (I) THAT SUCH ACCOUNT BE HELD in trust for and payable to the [tax commission] COMMISSIONER, and [to keep] THAT the amount of such tax SHALL BE KEPT in such account until payment over to the [tax commission] COMMISSIONER; OR (II) THAT SUCH PERSON AUTHORIZE THE COMMISSIONER TO DEBIT SUCH ACCOUNT. [Such notice] ANY NOTICE GIVEN BY THE COMMISSIONER UNDER THIS PARAGRAPH shall remain in effect until a notice of cancellation is given by the [tax commission] COMMISSIONER. ANY SUCH PERSON WHO FAILS TO COMPLY WITH A NOTICE ISSUED UNDER THIS PARAGRAPH SHALL BE REQUIRED TO FILE A BOND PURSUANT TO PARAGRAPH TWO OF THIS SUBDIVISION.

S 21-a. Subparagraph (A) of paragraph 4 of subdivision (a) of section 1134 of the tax law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

(A) Where a person who holds a certificate of authority (i) willfully fails to file a report or return required by this article, (ii) willfully files, causes to be filed, gives or causes to be given a report, return, certificate or affidavit required under this article which is false, (iii) willfully fails to comply with the provisions of paragraph two or three of subdivision (e) of section eleven hundred thirty-seven of this article, (iv) willfully fails to prepay, collect, truthfully account for or pay over any tax imposed under this article or pursuant

to the authority of article twenty-nine of this chapter, [or] (v) FAILS TO OBTAIN A BOND PURSUANT TO PARAGRAPH TWO OF SUBDIVISION (E) OF SECTION ELEVEN HUNDRED THIRTY-SEVEN OF THIS PART, OR FAILS TO COMPLY WITH A NOTICE ISSUED BY THE COMMISSIONER PURSUANT TO PARAGRAPH THREE OF SUCH SUBDIVISION, OR (VI) has been convicted of a crime provided for in this chapter, the commissioner may revoke or suspend such certificate of authority and all duplicates thereof. Provided, however, that the commissioner may revoke or suspend a certificate of authority based on the grounds set forth in clause [(v)] (VI) of this subparagraph only where the conviction referred to occurred not more than one year prior to the date of revocation or suspension.

S 22. Paragraph 1 of subdivision (a) of section 1136 of the tax law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

(1) Every person required to register with the commissioner as provided in section eleven hundred thirty-four OF THIS PART whose taxable receipts, amusement charges and rents total less than three hundred thousand dollars, or in the case of any such person who is a distributor whose sales of automotive fuel total less than one hundred thousand gallons, in every quarter of the preceding four quarters, shall only file a return quarterly with the commissioner. PROVIDED, HOWEVER, THAT IF THE COMMISSIONER IN THE EXERCISE OF HIS OR HER DISCRETION DEEMS IT NECESSARY TO PROTECT THE REVENUES TO BE OBTAINED UNDER THIS ARTICLE, HE OR SHE MAY GIVE NOTICE REQUIRING SUCH PERSON, IN ADDITION TO FILING A QUARTERLY RETURN, TO FILE EITHER SHORT-FORM OR LONG-FORM PART QUARTERLY RETURNS, AS SPECIFIED IN SUCH NOTICE.

S 23. This act shall take effect immediately; provided, however, that:

(a) the amendments to section 29 of the tax law made by section thirteen of this act shall apply to tax documents filed or required to be filed on or after the sixtieth day after which this act shall have become a law and shall expire and be deemed repealed December 31, 2012, provided however that the amendments to paragraph 4 of subdivision (a) of section 29 of the tax law and paragraph 2 of subdivision (e) of section 29 of the tax law made by section thirteen of this act with regard to individual taxpayers shall take effect September 15, 2011 but only if the commissioner of taxation and finance has reported in the report required by section seventeen-b of this act that the percentage of individual taxpayers electronically filing their 2010 income tax returns is less than eighty-five percent; provided that the commissioner of taxation and finance shall notify the legislative bill drafting commission of the date of the issuance of such report in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law;

(b) sections fourteen, fifteen, sixteen and seventeen of this act shall take effect September 15, 2011 but only if the commissioner of taxation and finance has reported in the report required by section seventeen-b of this act that the percentage of individual taxpayers electronically filing their 2010 income tax returns is less than eighty-five percent;

(c) sections fourteen-a and fifteen-a of this act shall take effect September 15, 2011 and expire and be deemed repealed December 31, 2012 but shall take effect only if the commissioner of taxation and finance has reported in the report required by section seventeen-b of this act

that the percentage of individual taxpayers electronically filing their 2010 income tax returns is eighty-five percent or greater;

(d) sections fourteen-b, fifteen-b, sixteen-a and seventeen-a of this act shall take effect January 1, 2013 but only if the commissioner of taxation and finance has reported in the report required by section seventeen-b of this act that the percentage of individual taxpayers electronically filing their 2010 income tax returns is less than eighty-five percent; and

(e) sections twenty-one and twenty-one-a of this act shall expire and be deemed repealed December 31, 2012.

PART V

Section 1. Legislative intent. Recognizing the potential economic impact of the closure of certain correctional and juvenile justice facilities on communities, it is the intent of the legislature to ameliorate this impact and promote economic development in these vulnerable communities. This bill provides tax benefits for the redevelopment of closed facilities and the economic transformation of the surrounding communities by attracting new businesses.

It is the strong public policy of New York state to protect the confidentiality of tax information subject to certain narrow exceptions. Nonetheless, it is and has been the intent of the legislature to allow the use of such information to determine the eligibility of businesses for state economic development grants or tax incentives, provided that the specific tax information contained in such filing is not publicly disclosed unless specifically authorized in law. Use of such information for review is necessary to prevent fraud and ensure compliance with the requirements of these programs.

S 2. The economic development law is amended by adding a new article 18 to read as follows:

ARTICLE 18

ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM

SECTION 400. DEFINITIONS.
401. ELIGIBILITY CRITERIA.
402. APPLICATION AND APPROVAL PROCESS.
403. POWERS AND DUTIES OF THE COMMISSIONER.
404. REPORTING.

S 400. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE:

1. "BENEFIT-COST RATIO" MEANS THE FOLLOWING CALCULATION: THE NUMERATOR IS THE SUM OF (I) THE VALUE OF ALL REMUNERATION PROJECTED TO BE PAID FOR ALL NET NEW JOBS DURING THE PERIOD OF PARTICIPATION IN THE PROGRAM, AND (II) THE COST OF QUALIFIED INVESTMENTS TO BE MADE BY THE BUSINESS ENTITY DURING THE PERIOD OF PARTICIPATION IN THE PROGRAM, AND THE DENOMINATOR IS THE AMOUNT OF TOTAL TAX BENEFITS UNDER THIS ARTICLE THAT IS PROJECTED TO BE USED AND REFUNDED.

2. "CERTIFICATE OF ELIGIBILITY" MEANS THE DOCUMENT ISSUED BY THE DEPARTMENT TO AN APPLICANT THAT DEMONSTRATES THAT THE APPLICANT HAS BEEN ADMITTED AS A PARTICIPANT INTO THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM BY THE DEPARTMENT. POSSESSION OF A CERTIFICATE OF ELIGIBILITY DOES NOT BY ITSELF GUARANTEE THE ELIGIBILITY OF THE PARTICIPANT TO CLAIM THE TAX CREDITS ALLOWED PURSUANT TO SECTION THIRTY-FIVE OF THE TAX LAW.

3. "NET NEW JOBS" MEANS JOBS CREATED IN THE ECONOMIC TRANSFORMATION AREA THAT:

(A) ARE NEW TO THE AREA;

(B) HAVE NOT BEEN TRANSFERRED FROM EMPLOYMENT IN THIS STATE WITH THE PARTICIPANT OR WITH A RELATED PERSON IN THIS STATE, AND ARE NOT REPLACING JOBS WITH SIMILAR TITLES OR JOB RESPONSIBILITIES;

(C) ARE EITHER FULL-TIME WAGE-PAYING JOBS OR EQUIVALENT TO A FULL-TIME WAGE-PAYING JOB REQUIRING AT LEAST THIRTY-FIVE HOURS PER WEEK;

(D) ARE FILLED FOR MORE THAN SIX MONTHS IN A TAXABLE YEAR;

(E) ARE NOT GENERAL EXECUTIVE OFFICERS OF THE PARTICIPANT; AND

(F) MAY NOT BE FILLED WITH INDIVIDUALS HAVING THE FAMILIAL RELATIONSHIP DEFINED IN SECTION 267(C)(4) OF THE INTERNAL REVENUE CODE WITH ANY OWNER OF THE PARTICIPANT.

4. "PARTICIPANT" MEANS A BUSINESS ENTITY THAT:

(A) IS A NEW BUSINESS AS DEFINED IN SUBDIVISION NINE OF THIS SECTION.

(B) HAS COMPLETED AN APPLICATION PRESCRIBED BY THE DEPARTMENT TO BE ADMITTED INTO THE PROGRAM;

(C) HAS DEMONSTRATED HOW IT PLANS TO MEET THE ELIGIBILITY CRITERIA IN SECTION FOUR HUNDRED ONE OF THIS ARTICLE; AND

(D) HAS BEEN ISSUED A CERTIFICATE OF ELIGIBILITY BY THE DEPARTMENT.

5. "PRELIMINARY SCHEDULE OF BENEFITS" MEANS THE ESTIMATED AGGREGATE AMOUNT OF THE TAX CREDITS THAT A PARTICIPANT IN THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM IS ELIGIBLE TO RECEIVE PURSUANT TO SECTION THIRTY-FIVE OF THE TAX LAW. THE SCHEDULE SHALL INDICATE THE ANNUAL AMOUNT OF EACH CREDIT A PARTICIPANT EXPECTS TO CLAIM IN EACH OF ITS FIVE YEARS OF ELIGIBILITY.

6. "QUALIFIED INVESTMENT" MEANS AN INVESTMENT IN TANGIBLE PROPERTY (INCLUDING A BUILDING OR A STRUCTURAL COMPONENT OF A BUILDING) OWNED BY A BUSINESS ENTITY WHICH:

(A) IS DEPRECIABLE PURSUANT TO SECTION ONE HUNDRED SIXTY-SEVEN OF THE INTERNAL REVENUE CODE;

(B) HAS A USEFUL LIFE OF FOUR YEARS OR MORE;

(C) IS ACQUIRED BY PURCHASE AS DEFINED IN SECTION ONE HUNDRED SEVENTY-NINE (D) OF THE INTERNAL REVENUE CODE;

(D) HAS A SITUS IN AN ECONOMIC TRANSFORMATION AREA IN THIS STATE IN WHICH IT IS CERTIFIED; AND

(E) IS PLACED IN SERVICE IN AN ECONOMIC TRANSFORMATION AREA IN THE STATE ON OR AFTER THE DATE THE CERTIFICATE OF ELIGIBILITY IS ISSUED TO THE BUSINESS ENTITY.

7. "RELATED PERSON" MEANS A "RELATED PERSON" PURSUANT TO SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE.

8. "REMUNERATION" MEANS WAGES PAID TO AND BENEFITS RECEIVED BY AN EMPLOYEE BY A PARTICIPANT IN THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM.

9. "NEW BUSINESS" MEANS A BUSINESS ENTITY THAT SATISFIES ALL OF THE FOLLOWING TESTS:

(A) THE BUSINESS ENTITY MUST NOT BE CURRENTLY OPERATING OR LOCATED WITHIN THE ECONOMIC TRANSFORMATION AREA IN WHICH IT IS APPLYING FOR CERTIFICATION;

(B) THE BUSINESS ENTITY MUST NOT BE MOVING EXISTING JOBS INTO THE ECONOMIC TRANSFORMATION AREA IN WHICH IT IS APPLYING FOR CERTIFICATION FROM ANOTHER AREA OF THE STATE;

(C) THE BUSINESS ENTITY MUST NOT BE SUBSTANTIALLY SIMILAR IN OWNERSHIP AND OPERATION TO ANOTHER TAXPAYER TAXABLE OR PREVIOUSLY TAXABLE UNDER SECTION ONE HUNDRED EIGHTY-THREE, ONE HUNDRED EIGHTY-FOUR OR ONE HUNDRED EIGHTY-FIVE OF ARTICLE NINE, FORMER SECTION ONE HUNDRED EIGHTY-SIX OR ARTICLE NINE-A, TWENTY-TWO, THIRTY-TWO OR THIRTY-THREE OF THE TAX LAW OR

THE INCOME OR LOSSES OF WHICH IS OR WAS INCLUDABLE UNDER ARTICLE TWENTY-TWO OF THE TAX LAW;

(D) THE BUSINESS ENTITY MUST NOT HAVE CAUSED INDIVIDUALS TO TRANSFER FROM EXISTING EMPLOYMENT WITH A RELATED PERSON AND LOCATED IN NEW YORK STATE TO SIMILAR EMPLOYMENT WITH THE BUSINESS ENTITY;

(E) THE BUSINESS ENTITY MUST NOT HAVE ACQUIRED, PURCHASED, LEASED, OR HAD TRANSFERRED TO IT REAL PROPERTY LOCATED IN THE ECONOMIC TRANSFORMATION AREA IN WHICH IT IS APPLYING FOR CERTIFICATION IF THAT REAL PROPERTY WAS PREVIOUSLY OWNED BY AN ENTITY WITH SIMILAR OWNERSHIP, REGARDLESS OF FORM OF INCORPORATION OR ORGANIZATION; AND

(F) THE BUSINESS ENTITY MUST NOT BE SUBSTANTIALLY SIMILAR IN OPERATION TO A BUSINESS ENTITY FROM WHICH IT HAS ACQUIRED REAL OR TANGIBLE PERSONAL PROPERTY THAT IS LOCATED IN THE ECONOMIC TRANSFORMATION AREA IN WHICH IT IS APPLYING FOR CERTIFICATION.

10. "ECONOMIC TRANSFORMATION AREA" MEANS:

(A) IN THE REGION OF THE STATE OUTSIDE OF THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT (AS DEFINED IN SECTION TWELVE HUNDRED SIXTY-TWO OF THE PUBLIC AUTHORITIES LAW) AND THE PORT AUTHORITY DISTRICT (AS DEFINED BY ARTICLE TWO OF CHAPTER ONE HUNDRED FIFTY-FOUR OF THE LAWS OF NINETEEN HUNDRED TWENTY-ONE), AN AREA WITHIN A FIVE MILE RADIUS IN THIS STATE OF A CLOSED FACILITY. IF MORE THAN SIXTY PERSONS WERE EMPLOYED IN FULL-TIME POSITIONS AT A CLOSED FACILITY ON APRIL FIRST, TWO THOUSAND ELEVEN, THEN IT IS THE AREA WITHIN A TEN MILE RADIUS IN THIS STATE OF THAT CLOSED FACILITY. THE COMMISSIONER MAY INCREASE THE RADIUS OF THE AREA FROM TEN MILES TO UP TO FIFTEEN MILES IN THIS STATE BASED ON FACTORS INCLUDING BUT NOT LIMITED TO POPULATION DENSITY, THE POVERTY RATE, THE UNEMPLOYMENT RATE AND THE LOSS OF JOBS IN THE REGION. HOWEVER, THE INCREASED RADIUS MAY NOT EXTEND INTO THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT. THE COMMISSIONER MAY ALSO DECREASE THE RADIUS OF THE TEN MILE AREA BUT TO NO LESS THAN A FIVE MILE RADIUS BASED ON FACTORS INCLUDING BUT NOT LIMITED TO POPULATION DENSITY, THE POVERTY RATE, THE UNEMPLOYMENT RATE AND THE LOSS OF JOBS IN THE REGION. UPON NOTIFICATION OF THE COMMISSIONER, PURSUANT TO SUBDIVISION ELEVEN OF THIS SECTION, THE COMMISSIONER SHALL ESTABLISH THE SIZE OF THE TRANSFORMATION AREA PRIOR TO THE ACCEPTANCE OF ANY APPLICATIONS INTO THE PROGRAM.

(B) IN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT OUTSIDE THE PORT AUTHORITY DISTRICT, AN AREA WITHIN A ONE MILE RADIUS IN THIS STATE OF A CLOSED FACILITY. IF MORE THAN SIXTY PERSONS WERE EMPLOYED IN FULL-TIME POSITIONS AT A CLOSED FACILITY ON APRIL FIRST, TWO THOUSAND ELEVEN, THEN IT IS THE AREA WITHIN A FIVE MILE RADIUS IN THIS STATE OF THAT CLOSED FACILITY, PROVIDED THAT THE COMMISSIONER MAY DECREASE THE RADIUS OF THE EXPANDED AREA BUT TO NO LESS THAN A ONE MILE RADIUS BASED ON FACTORS INCLUDING BUT NOT LIMITED TO POPULATION DENSITY, THE POVERTY RATE, THE UNEMPLOYMENT RATE, AND THE LOSS OF JOBS IN THE AREA AND WHETHER THE RADIUS WOULD EXTEND OUTSIDE OF THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT. UPON NOTIFICATION OF THE COMMISSIONER PURSUANT TO SUBDIVISION ELEVEN OF THIS SECTION, THE COMMISSIONER SHALL ESTABLISH THE SIZE OF THE TRANSFORMATION AREA PRIOR TO THE ACCEPTANCE OF ANY APPLICATIONS INTO THE PROGRAM.

(C) IN THE PORT AUTHORITY DISTRICT, AN AREA LIMITED TO THE SITE OF THE CLOSED FACILITY.

11. "CLOSED FACILITY" MEANS:

(A) A CORRECTIONAL FACILITY, AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION FOUR OF SECTION TWO OF THE CORRECTION LAW, THAT HAS BEEN SELECTED BY THE GOVERNOR OF THE STATE OF NEW YORK FOR CLOSURE AFTER APRIL FIRST,

TWO THOUSAND ELEVEN BUT NO LATER THAN MARCH THIRTY-FIRST, TWO THOUSAND TWELVE; OR

(B) A FACILITY OPERATED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES UNDER ARTICLE NINETEEN-G OF THE EXECUTIVE LAW THAT IS CLOSED PURSUANT TO AUTHORITY GRANTED TO SUCH OFFICE IN A CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN; AND

(C) WHICH HAS BEEN CLOSED PROVIDED THAT THE COMMISSIONER OF CORRECTIONAL SERVICES OR THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES HAS NOTIFIED THE COMMISSIONER OF SUCH CLOSURE.

S 401. ELIGIBILITY CRITERIA. 1. IN ORDER TO BE ELIGIBLE FOR BENEFITS IN THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM, A PARTICIPANT MUST SATISFY THE FOLLOWING CRITERIA:

(A) MUST CREATE AND MAINTAIN AT LEAST FIVE NET NEW JOBS IN AN ECONOMIC TRANSFORMATION AREA, AND MUST DEMONSTRATE THAT ITS BENEFIT-COST RATIO IS AT LEAST TEN TO ONE; AND

(B) MUST BE IN COMPLIANCE WITH ALL WORKER PROTECTION AND ENVIRONMENTAL LAWS AND REGULATIONS; AND

(C) MUST NOT OWE PAST DUE FEDERAL OR STATE TAXES OR LOCAL PROPERTY TAXES, UNLESS THOSE TAXES ARE BEING PAID PURSUANT TO AN EXECUTED PAYMENT PLAN; AND

(D) THE LOCATION OF THE PARTICIPANT'S OPERATIONS FOR WHICH IT SEEKS TAX BENEFITS MUST BE WHOLLY LOCATED WITHIN THE ECONOMIC TRANSFORMATION AREA.

2. A BUSINESS ENTITY THAT IS PRIMARILY OPERATED AS A RETAIL BUSINESS IS NOT ELIGIBLE TO PARTICIPATE IN THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM IF THEIR APPLICATION IS FOR ANY FACILITY OR BUSINESS LOCATION THAT WILL BE PRIMARILY USED IN MAKING RETAIL SALES TO CUSTOMERS WHO PERSONALLY VISIT SUCH FACILITIES. A BUSINESS ENTITY THAT IS ENGAGED IN OFFERING PROFESSIONAL SERVICES LICENSED BY THE STATE OR BY THE COURTS OF THIS STATE IS NOT ELIGIBLE TO PARTICIPATE IN THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM. IN ADDITION, A BUSINESS ENTITY THAT IS OR WILL BE PRINCIPALLY OPERATED AS A REAL ESTATE HOLDING COMPANY OR LANDLORD FOR RETAIL BUSINESSES OR ENTITIES OFFERING PROFESSIONAL SERVICES LICENSED BY THE STATE OR BY THE COURTS OF THIS STATE SHALL NOT BE ELIGIBLE TO PARTICIPATE IN THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM. PROVIDED HOWEVER THAT THE COMMISSIONER MAY DETERMINE THAT SUCH A BUSINESS ENTITY DESCRIBED IN THE PRECEDING THREE SENTENCES MAY BE ELIGIBLE TO PARTICIPATE AT THE SITE OF A CLOSED FACILITY IF IT IS PURSUANT TO AN ADAPTIVE REUSE PLAN FOR A SUBSTANTIAL PORTION OF SUCH FACILITY.

3. ADDITIONAL ELIGIBILITY CRITERIA MAY BE DEVELOPED PURSUANT TO REGULATIONS PROMULGATED BY THE COMMISSIONER. THE ADDITIONAL ELIGIBILITY CRITERIA MAY INCLUDE, BUT NOT BE LIMITED TO, ALIGNMENT WITH ANY ADAPTIVE REUSE PLAN FOR A CLOSED FACILITY DEVELOPED BY THE DEPARTMENT.

4. A BUSINESS ENTITY MUST CONTINUE TO SATISFY THE EMPLOYMENT REQUIREMENTS IN SUBDIVISION ONE OF THIS SECTION IN EACH YEAR IN WHICH IT CLAIMS THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT TAX CREDITS. PRIOR TO CLAIMING THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT TAX CREDITS IN THE FINAL YEAR OF ITS FIVE YEAR BENEFIT PERIOD, A BUSINESS ENTITY MUST DEMONSTRATE TO THE COMMISSIONER THAT IT HAS CREATED THE JOBS AND MADE THE QUALIFIED INVESTMENTS NECESSARY TO MEET A BENEFIT-COST RATIO OF AT LEAST TEN TO ONE.

S 402. APPLICATION AND APPROVAL PROCESS. 1. A BUSINESS ENTITY MUST SUBMIT A COMPLETED APPLICATION AS PRESCRIBED BY THE COMMISSIONER BY THE LATER OF (A) THE DATE THAT IS THREE YEARS AFTER THE DATE OF THE CLOSURE OF THE CLOSED FACILITY LOCATED IN THE ECONOMIC TRANSFORMATION AREA IN

WHICH THE BUSINESS ENTITY WOULD OPERATE OR (B) JANUARY FIRST, TWO THOUSAND FIFTEEN.

2. AS PART OF SUCH APPLICATION, EACH BUSINESS ENTITY MUST:

(A) AGREE TO ALLOW THE DEPARTMENT OF TAXATION AND FINANCE TO SHARE ITS TAX INFORMATION WITH THE DEPARTMENT. HOWEVER, ANY INFORMATION SHARED AS A RESULT OF THIS AGREEMENT SHALL NOT BE AVAILABLE FOR DISCLOSURE OR INSPECTION UNDER THE STATE FREEDOM OF INFORMATION LAW.

(B) AGREE TO ALLOW THE DEPARTMENT OF LABOR TO SHARE ITS TAX AND EMPLOYER INFORMATION WITH THE DEPARTMENT. HOWEVER, ANY INFORMATION SHARED AS A RESULT OF THIS AGREEMENT SHALL NOT BE AVAILABLE FOR DISCLOSURE OR INSPECTION UNDER THE STATE FREEDOM OF INFORMATION LAW.

(C) AGREE TO NOT PARTICIPATE IN THE EXCELSIOR JOBS PROGRAM, THE NEW YORK STATE EMPIRE ZONES PROGRAM, OR CLAIM ANY TAX CREDITS UNDER THE BROWNFIELD CLEANUP PROGRAM IF ADMITTED INTO THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM WITH REGARD TO THE FACILITY (OR FACILITIES) LOCATED IN THE ECONOMIC TRANSFORMATION AREA.

(D) PROVIDE THE FOLLOWING INFORMATION TO THE DEPARTMENT UPON REQUEST:

(I) A PLAN OUTLINING THE SCHEDULE FOR MEETING THE JOB AND INVESTMENT REQUIREMENTS SET FORTH IN SECTION FOUR HUNDRED ONE OF THIS ARTICLE, INCLUDING DETAILS ON JOB TITLES AND EXPECTED SALARIES;

(II) THE PRIOR THREE YEARS OF FEDERAL AND STATE INCOME OR FRANCHISE TAX RETURNS, UNEMPLOYMENT INSURANCE QUARTERLY RETURNS, REAL PROPERTY TAX BILLS AND AUDITED FINANCIAL STATEMENTS;

(III) THE AMOUNT AND DESCRIPTION OF PROJECTED QUALIFIED INVESTMENTS FOR WHICH IT PLANS TO CLAIM THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT INVESTMENT TAX CREDIT;

(IV) THE EMPLOYER IDENTIFICATION NUMBERS OR SOCIAL SECURITY NUMBERS FOR ALL RELATED PERSONS TO THE APPLICANT, INCLUDING THOSE OF ANY MEMBERS OF A LIMITED LIABILITY COMPANY OR PARTNERS IN A PARTNERSHIP.

(E) PROVIDE A CLEAR AND DETAILED PRESENTATION OF ALL RELATED PERSONS TO THE APPLICANT TO ASSURE THE DEPARTMENT THAT JOBS ARE NOT BEING SHIFTED WITHIN THE STATE.

(F) CERTIFY, UNDER PENALTY OF PERJURY, THAT IT IS IN SUBSTANTIAL COMPLIANCE WITH ALL ENVIRONMENTAL, WORKER PROTECTION, AND LOCAL, STATE, AND FEDERAL TAX LAWS.

(G) AGREE, TO THE EXTENT PRACTICABLE, TO CONSIDER FOR EMPLOYMENT PERSONS DISPLACED BY A FACILITY CLOSURE.

3. AFTER REVIEWING A BUSINESS ENTITY'S COMPLETED APPLICATION AND DETERMINING THAT THE BUSINESS ENTITY SATISFIES THE REQUIREMENTS IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED OF THIS ARTICLE AND WILL MEET ELIGIBILITY REQUIREMENTS SET FORTH IN SECTION FOUR HUNDRED ONE OF THIS ARTICLE, THE DEPARTMENT MAY, AT THE DISCRETION OF THE COMMISSIONER, ADMIT THE APPLICANT INTO THE PROGRAM AND PROVIDE THE APPLICANT WITH A CERTIFICATE OF ELIGIBILITY. IF A PARTICIPANT DOES NOT START CONSTRUCTION ON OR ACQUIRE A QUALIFIED INVESTMENT OR CREATE AT LEAST ONE NET NEW JOB WITHIN ONE YEAR OF THE ISSUANCE OF ITS CERTIFICATE OF ELIGIBILITY, THE PARTICIPANT WILL NOT BE ELIGIBLE FOR ANY OF THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM TAX CREDITS.

4. A PARTICIPANT MAY CLAIM TAX CREDITS PURSUANT TO SECTION THIRTY-FIVE OF THE TAX LAW COMMENCING IN THE FIRST TAXABLE YEAR IN WHICH THE PARTICIPANT CREATES FIVE NET NEW JOBS. A PARTICIPANT MAY CLAIM SUCH BENEFITS FOR THE NEXT FOUR CONSECUTIVE TAXABLE YEARS, PROVIDED THAT THE PARTICIPANT DEMONSTRATES TO THE COMMISSIONER OF TAXATION AND FINANCE THAT IT CONTINUES TO MAINTAIN FIVE NET NEW JOBS. HOWEVER, IN NO EVENT MAY THAT BENEFIT PERIOD START LATER THAN TWO YEARS AFTER THE CERTIFICATE OF

ELIGIBILITY IS ISSUED. THE PARTICIPANT MAY ALSO BE ELIGIBLE FOR THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT SALES TAX REFUND.

S 403. POWERS AND DUTIES OF THE COMMISSIONER. 1. THE COMMISSIONER SHALL PROMULGATE REGULATIONS ESTABLISHING AN APPLICATION PROCESS AND ELIGIBILITY CRITERIA SET FORTH IN SECTION FOUR HUNDRED ONE OF THIS ARTICLE WHICH, NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THE STATE ADMINISTRATIVE PROCEDURE ACT, MAY BE ADOPTED ON AN EMERGENCY BASIS.

2. WHEN CONSIDERING AN APPLICATION, THE COMMISSIONER SHALL CONSIDER FACTORS INCLUDING, BUT NOT LIMITED TO, THE OVERALL COST AND EFFECTIVENESS OF THE PROJECT, AND WHETHER THE PROJECT IS CONSISTENT WITH THE INTENT OF THE PROGRAM.

3. THE COMMISSIONER SHALL, IN CONSULTATION WITH THE DEPARTMENT OF TAXATION AND FINANCE, DEVELOP A CERTIFICATE OF ELIGIBILITY THAT SHALL BE ISSUED BY THE COMMISSIONER TO PARTICIPANTS. PARTICIPANTS MUST INCLUDE A COPY OF THE CERTIFICATE OF ELIGIBILITY WITH THEIR TAX RETURN TO RECEIVE ANY TAX BENEFITS UNDER SECTION THIRTY-FIVE OF THE TAX LAW. PARTICIPANTS MUST ALSO INCLUDE A COPY OF THE CERTIFICATE OF ELIGIBILITY WITH THEIR APPLICATION FOR THE REAL PROPERTY TAX EXEMPTION AUTHORIZED BY SECTION FOUR HUNDRED EIGHTY-FIVE-P OF THE REAL PROPERTY TAX LAW, IF SUCH EXEMPTION IS AVAILABLE WHERE THE PROPERTY IS LOCATED.

S 404. REPORTING. THE COMMISSIONER SHALL PREPARE ON A QUARTERLY BASIS A PROGRAM REPORT FOR POSTING ON THE DEPARTMENT'S WEBSITE. THE FIRST REPORT WILL BE DUE JUNE THIRTIETH, TWO THOUSAND TWELVE, AND EVERY THREE MONTHS THEREAFTER. SUCH REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING: NUMBER OF APPLICANTS; NUMBER OF PARTICIPANTS APPROVED; NAMES OF PARTICIPANTS; TOTAL AMOUNT OF PROJECTED BENEFITS CERTIFIED BY TYPE OF BENEFIT; TOTAL NUMBER OF PROJECTED NEW JOBS TO BE CREATED; NUMBER OF PROJECTED NET NEW JOBS CREATED PER PARTICIPANT; AGGREGATE PROJECTED NEW INVESTMENT IN THE STATE; PROJECTED NEW INVESTMENT PER PARTICIPANT; AND SUCH OTHER INFORMATION AS THE COMMISSIONER DETERMINES.

S 3. The tax law is amended by adding a new section 35 to read as follows:

S 35. ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM TAX CREDIT. (A) GENERAL. (1) A TAXPAYER WHICH IS A PARTICIPANT OR THE OWNER OF A PARTICIPANT IN THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM UNDER ARTICLE EIGHTEEN OF THE ECONOMIC DEVELOPMENT LAW THAT IS SUBJECT TO TAX UNDER SECTION ONE HUNDRED EIGHTY-FIVE OF ARTICLE NINE, OR ARTICLE NINE-A, TWENTY-TWO, THIRTY-TWO OR THIRTY-THREE OF THIS CHAPTER SHALL BE ALLOWED THE SUM OF FOLLOWING COMPONENTS AGAINST SUCH TAX, PURSUANT TO THE PROVISIONS REFERENCED IN SUBDIVISION (F) OF THIS SECTION.

(A) THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM JOBS TAX CREDIT COMPONENT;

(B) THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM INVESTMENT TAX CREDIT COMPONENT;

(C) THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM JOB TRAINING CREDIT COMPONENT; AND

(D) THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM REAL PROPERTY TAX CREDIT COMPONENT.

(2) A TAXPAYER WHICH IS A PARTICIPANT IN THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM UNDER ARTICLE EIGHTEEN OF THE ECONOMIC DEVELOPMENT LAW, OR SUCH PARTICIPANT'S CONTRACTOR, SHALL BE ALLOWED A SALES TAX REFUND AS PROVIDED IN SUBDIVISION (F) OF SECTION ONE THOUSAND ONE HUNDRED NINETEEN OF THIS CHAPTER.

(3) TO BE ELIGIBLE FOR THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM TAX CREDIT, THE TAXPAYER MUST MEET ALL THE FOLLOWING REQUIREMENTS.

(A) THE TAXPAYER MUST BE A PARTICIPANT OR THE OWNER OF A PARTICIPANT IN THE ECONOMIC TRANSFORMATION AND FACILITY DEVELOPMENT PROGRAM. THE COMMISSIONER OF ECONOMIC DEVELOPMENT MUST HAVE ISSUED A CERTIFICATE OF ELIGIBILITY PURSUANT TO SECTION FOUR HUNDRED TWO OF THE ECONOMIC DEVELOPMENT LAW TO THE TAXPAYER OR TO AN ENTITY IN WHICH THE TAXPAYER IS AN OWNER. A COPY OF THE CERTIFICATE SHALL BE ATTACHED TO THE TAXPAYER'S REPORT OR RETURN.

(B) THE TAXPAYER OR THE ENTITY IN WHICH THE TAXPAYER IS AN OWNER MUST BE A QUALIFIED NEW BUSINESS AS DEFINED IN SUBDIVISION (E) OF THIS SECTION.

(C) THE TAXPAYER OR THE ENTITY IN WHICH THE TAXPAYER IS AN OWNER MUST CREATE AND MAINTAIN AT LEAST FIVE NET NEW JOBS IN THE ECONOMIC TRANSFORMATION AREA.

(4) THE BENEFIT PERIOD FOR THE TAX CREDITS UNDER ARTICLES NINE, NINE-A, TWENTY-TWO, THIRTY-TWO AND THIRTY-THREE OF THIS CHAPTER IS FIVE CONSECUTIVE TAXABLE YEARS, BEGINNING WITH THE FIRST TAXABLE YEAR IN WHICH THE FIVE NET NEW JOBS ARE CREATED. HOWEVER, IN NO EVENT MAY THAT BENEFIT PERIOD START LATER THAN TWO YEARS AFTER THE CERTIFICATE OF ELIGIBILITY IS ISSUED. IF, IN ANY YEAR OF THE BENEFIT PERIOD, THE TAXPAYER FAILS TO MAINTAIN THE REQUIRED LEVEL OF FIVE NET NEW JOBS (MEASURED QUARTERLY), THE TAXPAYER WILL NOT BE ALLOWED A CREDIT FOR THAT YEAR. SUCH FAILURE TO BE ALLOWED A CREDIT WILL NOT EXTEND THE TAXPAYER'S BENEFIT PERIOD.

(B) ELECTION OF CREDIT. NO COST OR EXPENSE PAID OR INCURRED BY THE TAXPAYER OR THE ENTITY IN WHICH THE TAXPAYER IS AN OWNER THAT IS THE BASIS FOR ANY OF THE ABOVE NAMED CREDITS SHALL BE THE BASIS FOR ANY OTHER TAX CREDIT UNDER THIS CHAPTER. IF A TAXPAYER ELECTS TO CLAIM AN ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM TAX CREDIT, THE ELECTION IS IRREVOCABLE.

(C) INFORMATION SHARING. (1) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER, EMPLOYEES AND OFFICERS OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT AND THE DEPARTMENT SHALL BE ALLOWED AND ARE DIRECTED TO SHARE AND EXCHANGE:

(A) INFORMATION DERIVED FROM TAX RETURNS OR REPORTS THAT IS RELEVANT TO A TAXPAYER'S ELIGIBILITY TO PARTICIPATE IN THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM;

(B) INFORMATION REGARDING THE CREDITS APPLIED FOR, ALLOWED, OR CLAIMED PURSUANT TO THIS SECTION AND TAXPAYERS WHO ARE APPLYING FOR THE CREDITS OR WHO ARE CLAIMING THE CREDITS; AND

(C) INFORMATION CONTAINED IN OR DERIVED FROM CREDIT CLAIM FORMS SUBMITTED TO THE DEPARTMENT AND APPLICATIONS FOR ADMISSION INTO THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM.

(2) OTHER THAN THE INFORMATION REQUIRED TO BE CONTAINED IN THE REPORT ISSUED PURSUANT TO SUBDIVISION (D) OF THIS SECTION, ALL INFORMATION EXCHANGED BETWEEN THE DEPARTMENT OF ECONOMIC DEVELOPMENT AND THE DEPARTMENT SHALL NOT BE SUBJECT TO DISCLOSURE OR INSPECTION UNDER THE STATE'S FREEDOM OF INFORMATION LAW.

(D) ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM TAX CREDITS REPORT. (1) THE COMMISSIONER MUST PUBLISH AN ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM TAX CREDITS REPORT ANNUALLY BY JULY THIRTY-FIRST. THE FIRST REPORT SHALL BE DUE JULY THIRTY-FIRST, TWO THOUSAND THIRTEEN.

(2) THE CREDITS REPORT SHALL CONTAIN THE FOLLOWING INFORMATION ABOUT THE ECONOMIC TRANSFORMATION PROGRAM AND FACILITY REDEVELOPMENT TAX CREDITS CLAIMED UNDER THIS CHAPTER DURING THE PREVIOUS CALENDAR YEAR:

(A) THE NAME OF EACH TAXPAYER CLAIMING A CREDIT; PROVIDED HOWEVER, IF THE TAXPAYER CLAIMS A CREDIT BECAUSE THE TAXPAYER IS A MEMBER OF A LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER IN A NEW YORK SUBCHAPTER S CORPORATION, THE NAME OF EACH LIMITED LIABILITY COMPANY, PARTNERSHIP OR NEW YORK SUBCHAPTER S CORPORATION EARNING ANY OF THE CREDIT MUST BE INCLUDED IN THE REPORT INSTEAD OF INFORMATION ABOUT THE TAXPAYER CLAIMING THE CREDIT; AND

(B) THE AMOUNT OF EACH CREDIT EARNED BY EACH TAXPAYER; PROVIDED HOWEVER, IF THE TAXPAYER CLAIMS A CREDIT BECAUSE THE TAXPAYER IS A MEMBER OF A LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER IN A NEW YORK SUBCHAPTER S CORPORATION, THE AMOUNT OF CREDIT EARNED BY EACH ENTITY MUST BE INCLUDED IN THE REPORT INSTEAD OF INFORMATION ABOUT THE TAXPAYER CLAIMING THE CREDIT.

(3) THE CREDIT REPORT MAY ALSO CONTAIN ANY OTHER INFORMATION RECEIVED BY THE COMMISSIONER WITH REGARD TO THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM TAX CREDITS THAT THE COMMISSIONER DEEMS TO BE USEFUL IN EVALUATING THE USE OF THE CREDITS. THE INFORMATION INCLUDED IN THE CREDIT REPORT WILL BE BASED ON THE INFORMATION FILED WITH THE DEPARTMENT DURING THE PREVIOUS CALENDAR YEAR, TO THE EXTENT THAT IT IS PRACTICABLE TO USE THAT INFORMATION.

(E) DEFINITIONS. (1) THE TERMS "PARTICIPANT", "NET NEW JOBS", "ECONOMIC TRANSFORMATION AREA", "RELATED PERSON", "CERTIFICATE OF ELIGIBILITY", "BENEFIT-COST RATIO", AND "QUALIFIED INVESTMENT" SHALL HAVE THE SAME MEANING AS THOSE TERMS HAVE IN SECTION FOUR HUNDRED OF THE ECONOMIC DEVELOPMENT LAW.

(2) THE TERM "QUALIFIED NEW BUSINESS" MEANS A BUSINESS ENTITY THAT SATISFIES ALL OF THE FOLLOWING TESTS:

(A) THE BUSINESS ENTITY MUST NOT BE CURRENTLY OPERATING OR LOCATED WITHIN THE ECONOMIC TRANSFORMATION AREA IN WHICH IT IS APPLYING FOR CERTIFICATION UNDER ARTICLE EIGHTEEN OF THE ECONOMIC DEVELOPMENT LAW;

(B) THE BUSINESS ENTITY MUST NOT BE MOVING EXISTING JOBS INTO THE ECONOMIC TRANSFORMATION AREA IN WHICH IT IS APPLYING FOR CERTIFICATION UNDER ARTICLE EIGHTEEN OF THE ECONOMIC DEVELOPMENT LAW FROM ANOTHER AREA OF THE STATE;

(C) THE BUSINESS ENTITY MUST NOT BE SUBSTANTIALLY SIMILAR IN OWNERSHIP AND OPERATION TO ANOTHER TAXPAYER TAXABLE OR PREVIOUSLY TAXABLE UNDER SECTION ONE HUNDRED EIGHTY-THREE, ONE HUNDRED EIGHTY-FOUR OR ONE HUNDRED EIGHTY-FIVE OF ARTICLE NINE, FORMER SECTION ONE HUNDRED EIGHTY-SIX OF THIS CHAPTER OR ARTICLE NINE-A, TWENTY-TWO, THIRTY-TWO OR THIRTY-THREE OF THIS CHAPTER OR THE INCOME OR LOSSES OF WHICH IS OR WAS INCLUDABLE UNDER ARTICLE TWENTY-TWO OF THIS CHAPTER;

(D) THE BUSINESS ENTITY MUST NOT HAVE CAUSED INDIVIDUALS TO TRANSFER FROM EXISTING EMPLOYMENT IN NEW YORK WITH ANOTHER BUSINESS ENTITY WITH SIMILAR OWNERSHIP TO SIMILAR EMPLOYMENT WITH THE BUSINESS ENTITY;

(E) THE BUSINESS ENTITY MUST NOT HAVE ACQUIRED, PURCHASED, LEASED, OR HAD TRANSFERRED TO IT REAL PROPERTY LOCATED IN THE ECONOMIC TRANSFORMATION AREA IN WHICH IT IS APPLYING FOR CERTIFICATION IF THAT REAL PROPERTY WAS PREVIOUSLY OWNED BY AN ENTITY WITH SIMILAR OWNERSHIP, REGARDLESS OF FORM OF INCORPORATION OR ORGANIZATION; AND

(F) THE BUSINESS ENTITY MUST NOT BE SUBSTANTIALLY SIMILAR IN OPERATION TO A BUSINESS ENTITY FROM WHICH IT HAS ACQUIRED REAL OR TANGIBLE PERSONAL PROPERTY THAT IS LOCATED IN THE ECONOMIC TRANSFORMATION AREA IN

WHICH IT IS APPLYING FOR CERTIFICATION UNDER ARTICLE EIGHTEEN OF THE ECONOMIC DEVELOPMENT LAW.

(3) THE TERM "ENTITY IN WHICH THE TAXPAYER IS AN OWNER" SHALL MEAN A LIMITED LIABILITY COMPANY IN WHICH THE TAXPAYER IS A MEMBER, A PARTNERSHIP IN WHICH THE TAXPAYER IS A PARTNER AND A NEW YORK SUBCHAPTER S CORPORATION IN WHICH THE TAXPAYER IS A SHAREHOLDER.

(F) CROSS-REFERENCES. FOR APPLICATION OF THE CREDITS PROVIDED FOR IN THIS SECTION, SEE THE FOLLOWING PROVISIONS OF THIS CHAPTER:

(1) SECTION 185: SECTION 187-R

(2) ARTICLE 9-A: SECTION 210(43).

(3) ARTICLE 22: SECTION 606 (SS).

(4) ARTICLE 32: SECTION 1456(X).

(5) ARTICLE 33: SECTION 1511 (AA).

(G) ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM JOBS TAX CREDIT. A TAXPAYER WHICH MEETS THE REQUIREMENTS IN THIS SECTION SHALL BE ELIGIBLE TO CLAIM A CREDIT FOR EACH NET NEW JOB THAT THE TAXPAYER CREATES IN THE ECONOMIC TRANSFORMATION AREA WITH RESPECT TO THE PROJECT FOR WHICH THE CERTIFICATE OF ELIGIBILITY IS ISSUED. THE AMOUNT OF SUCH CREDIT PER JOB SHALL BE EQUAL TO THE PRODUCT OF THE GROSS WAGES PAID AND 6.85 PERCENT.

(H) ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM INVESTMENT TAX CREDIT. (1) A TAXPAYER WHICH MEETS THE REQUIREMENTS IN THIS SECTION SHALL BE ELIGIBLE TO CLAIM A CREDIT ON QUALIFIED INVESTMENTS WITH RESPECT TO THE PROJECT FOR WHICH THE CERTIFICATE OF ELIGIBILITY IS ISSUED. THE CREDIT SHALL BE EQUAL TO TEN PERCENT OF THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES OF THE QUALIFIED INVESTMENT AT A CLOSED FACILITY. THE TOTAL AMOUNT OF INVESTMENT TAX CREDIT ALLOWED FOR ALL ELIGIBLE PARTICIPANTS UNDER THIS SUBDIVISION FOR QUALIFIED INVESTMENTS LOCATED AT EACH CLOSED FACILITY SHALL NOT EXCEED EIGHT MILLION DOLLARS. THE CREDIT SHALL BE EQUAL TO SIX PERCENT OF THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES FOR ALL OTHER QUALIFIED INVESTMENTS, BUT THE CREDIT ALLOWED TO A TAXPAYER MAY NOT EXCEED FOUR MILLION DOLLARS.

(2) COSTS INCURRED PRIOR TO THE DATE THE CERTIFICATE OF ELIGIBILITY IS ISSUED ARE NOT ELIGIBLE TO BE INCLUDED IN THE CALCULATION OF THE CREDIT. A TAXPAYER WHICH IS A PARTICIPANT IN THE ECONOMIC TRANSFORMATION AND REDEVELOPMENT PROGRAM OR IS AN OWNER OF AN ENTITY THAT IS A PARTICIPANT IS NOT ELIGIBLE FOR ANY OTHER INVESTMENT TAX CREDIT PROVIDED UNDER THIS CHAPTER.

(3) IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP, MEMBER OF A LIMITED LIABILITY COMPANY OR SHAREHOLDER OF A NEW YORK S CORPORATION, THEN THE FOUR MILLION DOLLAR LIMIT IMPOSED ABOVE BY THE PRECEDING SENTENCES SHALL BE APPLIED AT THE ENTITY LEVEL, SO THAT THE AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS, MEMBERS OR SHAREHOLDERS OF EACH SUCH ENTITY IN THE TAXABLE YEAR DOES NOT EXCEED THE FOUR MILLION DOLLAR LIMITATION. FURTHER, IN ORDER TO PROPERLY ADMINISTER THE LIMITATION OF INVESTMENT TAX CREDIT AT A CLOSED FACILITY, THE DEPARTMENT MAY DISCLOSE INFORMATION ABOUT THE CALCULATION AND THE AMOUNTS OF THE CREDITS CLAIMED UNDER THIS SUBDIVISION FOR QUALIFIED INVESTMENTS AT A PARTICULAR CLOSED FACILITY TO OTHER TAXPAYERS CLAIMING INVESTMENT TAX CREDITS UNDER THIS SUBDIVISION AT THAT SAME CLOSED FACILITY.

(I) ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM TRAINING TAX CREDIT. (1) A TAXPAYER WHICH MEETS THE REQUIREMENTS OF THIS SECTION SHALL BE ALLOWED A CREDIT FOR QUALIFIED TRAINING EXPENDITURES PAID BY THE TAXPAYER WITH RESPECT TO THE PROJECT FOR WHICH THE CERTIFICATE OF ELIGIBILITY IS ISSUED. THE AMOUNT OF THE CREDIT SHALL BE FIFTY

PERCENT OF THE QUALIFIED TRAINING EXPENSES PAID DURING THE TAXABLE YEAR, SUBJECT TO A LIMITATION OF NO MORE THAN FOUR THOUSAND DOLLARS PER EMPLOYEE PER YEAR FOR SUCH TRAINING EXPENSES. THIS CREDIT APPLIES ONLY TO QUALIFIED TRAINING PROVIDED TO EMPLOYEES WHO WERE HIRED AFTER THEY LOST THEIR JOBS AT A CLOSED FACILITY AS A RESULT OF THE CLOSURE OF THAT FACILITY AS DESCRIBED IN SUBDIVISION ELEVEN OF SECTION FOUR HUNDRED OF THE ECONOMIC DEVELOPMENT LAW.

(2) QUALIFIED TRAINING SHALL INCLUDE A COURSE OR COURSES TAKEN AND SATISFACTORILY COMPLETED BY AN EMPLOYEE OF THE TAXPAYER AT AN ACCREDITED, DEGREE GRANTING, POST-SECONDARY COLLEGE OR UNIVERSITY IN NEW YORK STATE THAT (A) DIRECTLY RELATES TO THE DUTIES THAT THE EMPLOYEE PERFORMS FOR THE TAXPAYER WITHIN THE ECONOMIC TRANSFORMATION AREA; AND (B) IS INTENDED TO UPGRADE, RETRAIN OR IMPROVE THE PRODUCTIVITY OR THEORETICAL AWARENESS OF THE EMPLOYEE. SUCH COURSE OR COURSES SHALL NOT INCLUDE CLASSES IN THE DISCIPLINES OF MANAGEMENT, ACCOUNTING OR THE LAW OR ANY CLASS DESIGNED TO FULFILL THE DISCIPLINE SPECIFIC REQUIREMENTS OF A DEGREE PROGRAM AT THE ASSOCIATE, BACCALAUREATE, GRADUATE OR PROFESSIONAL LEVEL OF THESE DISCIPLINES. SATISFACTORY COMPLETION OF A COURSE OR COURSES SHALL MEAN THE EARNING AND GRANTING OF CREDIT OR EQUIVALENT UNIT, WITH THE ATTAINMENT OF A GRADE OF "B" OR HIGHER IN A GRADUATE LEVEL COURSE OR COURSES, A GRADE OF "C" OR HIGHER IN AN UNDERGRADUATE LEVEL COURSE OR COURSES, OR A SIMILAR MEASURE OF COMPETENCY FOR A COURSE THAT IS NOT MEASURED ACCORDING TO A STANDARD GRADE FORMULA.

(3) QUALIFIED TRAINING EXPENDITURES SHALL INCLUDE EXPENSES FOR TUITION AND MANDATORY FEES, SOFTWARE REQUIRED BY THE INSTITUTION, FEES FOR TEXTBOOKS OR OTHER LITERATURE REQUIRED BY THE INSTITUTION OFFERING THE COURSE OR COURSES, MINUS APPLICABLE SCHOLARSHIPS AND TUITION OR FEE WAIVERS NOT GRANTED BY THE TAXPAYER OR ANY RELATED PERSON, THAT ARE PAID OR REIMBURSED BY THE TAXPAYER. QUALIFIED TRAINING EXPENDITURES DO NOT INCLUDE ROOM AND BOARD, COMPUTER HARDWARE OR SOFTWARE NOT SPECIFICALLY ASSIGNED FOR SUCH COURSE OR COURSES, LATE-CHARGES, FINES OR MEMBERSHIP DUES AND SIMILAR EXPENSES. SUCH QUALIFIED TRAINING EXPENDITURES SHALL NOT BE ELIGIBLE FOR THE CREDIT PROVIDED BY THIS SECTION UNLESS THE EMPLOYEE FOR WHOM THE EXPENDITURES ARE DISBURSED IS CONTINUOUSLY EMPLOYED BY THE TAXPAYER IN A FULL-TIME, FULL-YEAR POSITION PRIMARILY LOCATED AT A SITE IN AN ECONOMIC TRANSFORMATION AREA DURING THE PERIOD OF SUCH COURSEWORK AND LASTING THROUGH AT LEAST ONE HUNDRED EIGHTY DAYS AFTER THE SATISFACTORY COMPLETION OF THE QUALIFYING COURSE-WORK. QUALIFIED TRAINING EXPENDITURES SHALL NOT INCLUDE EXPENSES FOR IN-HOUSE OR SHARED TRAINING OUTSIDE OF A NEW YORK STATE HIGHER EDUCATION INSTITUTION OR THE USE OF CONSULTANTS OUTSIDE OF CREDIT GRANTING COURSES, WHETHER SUCH CONSULTANTS FUNCTION INSIDE OF SUCH HIGHER EDUCATION INSTITUTION OR NOT.

(J) ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM REAL PROPERTY TAX CREDIT. (1) A TAXPAYER WHICH MEETS THE REQUIREMENTS OF THIS SECTION SHALL BE ALLOWED A CREDIT MEASURED BY THE REAL PROPERTY TAXES ON THE REAL PROPERTY LOCATED IN THE ECONOMIC TRANSFORMATION AREA WITH RESPECT TO THE PROJECT FOR WHICH THE CERTIFICATE OF ELIGIBILITY IS ISSUED. IN THE FIRST TAXABLE YEAR THAT THE TAXPAYER MAY CLAIM THIS CREDIT, THE CREDIT SHALL BE EQUAL TO TWENTY-FIVE PERCENT OF THE REAL PROPERTY TAXES ASSESSED AND PAID DURING THAT YEAR BY THE PARTICIPANT ON THE REAL PROPERTY LOCATED IN THE ECONOMIC TRANSFORMATION AREA OUTSIDE OF THE CLOSED FACILITY. IF THE REAL PROPERTY IS LOCATED ENTIRELY WITHIN THE GROUNDS OF A CLOSED FACILITY, THE CREDIT IN THE FIRST YEAR OF THE BENEFIT PERIOD SHALL BE EQUAL TO FIFTY PERCENT OF THE REAL PROPERTY TAXES ASSESSED AND PAID BY THE PARTICIPANT DURING THAT YEAR ON THAT PROPERTY.

IN THE FOLLOWING YEARS OF THE BENEFIT PERIOD, THE PERCENTAGE DECREASES BY FIVE PERCENTAGE POINTS EACH YEAR FOR REAL PROPERTY LOCATED IN THE ECONOMIC TRANSFORMATION AREA OUTSIDE OF THE CLOSED FACILITY, AND TEN PERCENTAGE POINTS FOR REAL PROPERTY LOCATED AT THE CLOSED FACILITY.

(2) (A) FOR PURPOSES OF THIS CREDIT, "REAL PROPERTY TAXES" MEANS A CHARGE IMPOSED UPON REAL PROPERTY BY OR ON BEHALF OF A COUNTY, CITY, TOWN, VILLAGE OR SCHOOL DISTRICT FOR MUNICIPAL OR SCHOOL DISTRICT PURPOSES, PROVIDED THAT THE CHARGE IS LEVIED FOR THE GENERAL PUBLIC WELFARE BY THE PROPER TAXING AUTHORITIES AT A LIKE RATE AGAINST ALL PROPERTY IN THE TERRITORY OVER WHICH SUCH AUTHORITIES HAVE JURISDICTION, AND PROVIDED THAT WHERE TAXES ARE LEVIED PURSUANT TO ARTICLE EIGHTEEN OR ARTICLE NINETEEN OF THE REAL PROPERTY TAX LAW, THE PROPERTY MUST HAVE BEEN TAXED AT THE RATE DETERMINED FOR THE CLASS IN WHICH IT IS CONTAINED, AS PROVIDED BY SUCH ARTICLE EIGHTEEN OR NINETEEN, WHICHEVER IS APPLICABLE.

(B) THE TERM "REAL PROPERTY TAXES" DOES NOT INCLUDE A CHARGE FOR LOCAL BENEFITS, INCLUDING ANY PORTION OF THAT CHARGE THAT IS PROPERLY ALLOCATED TO THE COSTS ATTRIBUTABLE TO MAINTENANCE OR INTEREST, WHEN (I) THE PROPERTY SUBJECT TO THE CHARGE IS LIMITED TO THE PROPERTY THAT BENEFITS FROM THE CHARGE, OR (II) THE AMOUNT OF THE CHARGE IS DETERMINED BY THE BENEFIT TO THE PROPERTY ASSESSED, OR (III) THE IMPROVEMENT FOR WHICH THE CHARGE IS ASSESSED TENDS TO INCREASE THE PROPERTY VALUE.

(C) THE TERM "REAL PROPERTY TAXES" INCLUDES PAYMENTS IN LIEU OF TAXES MADE BY THE PARTICIPANT WHICH IS THE BENEFICIAL OWNER OF THE REAL PROPERTY TO THE STATE, A MUNICIPAL CORPORATION OR A PUBLIC BENEFIT CORPORATION PURSUANT TO A WRITTEN AGREEMENT ENTERED INTO BETWEEN THE PARTICIPANT AND THE STATE, MUNICIPAL CORPORATION, OR PUBLIC BENEFIT CORPORATION. PROVIDED, HOWEVER, A PAYMENT IN LIEU OF TAXES MADE BY THE PARTICIPANT PURSUANT TO A WRITTEN AGREEMENT SHALL NOT CONSTITUTE REAL PROPERTY TAXES IN ANY TAXABLE YEAR TO THE EXTENT THAT SUCH PAYMENT EXCEEDS THE PRODUCT OF (I) THE BASIS FOR FEDERAL INCOME TAX PURPOSES OF THE REAL PROPERTY LOCATED IN THE ECONOMIC TRANSFORMATION AREA AND SUBJECT TO THAT AGREEMENT, CALCULATED WITHOUT REGARD TO DEPRECIATION, ON THE LAST DAY OF THE TAXABLE YEAR, AND (II) THE ESTIMATED EFFECTIVE FULL VALUE TAX RATE WITHIN THE COUNTY IN WHICH SUCH PROPERTY IS LOCATED, AS MOST RECENTLY CALCULATED BY THE COMMISSIONER. THE COMMISSIONER SHALL ANNUALLY CALCULATE ESTIMATED EFFECTIVE FULL VALUE TAX RATES WITHIN EACH COUNTY FOR THIS PURPOSE BASED UPON THE MOST CURRENT INFORMATION AVAILABLE TO HIM OR HER IN RELATION TO COUNTY, CITY, TOWN, VILLAGE AND SCHOOL DISTRICT TAXES.

(K) RECAPTURE OF CREDITS. IF THE PARTICIPANT AT THE END OF ITS BENEFIT PERIOD HAS NOT CREATED SUFFICIENT NET NEW JOBS AND MADE SUFFICIENT QUALIFIED INVESTMENTS TO ACHIEVE A BENEFIT-COST RATIO OF AT LEAST TEN TO ONE, THE TAXPAYER SHALL BE REQUIRED TO ADD BACK AS TAX IN THE LAST YEAR OF ITS BENEFIT PERIOD THE PORTION OF THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT TAX CREDITS CLAIMED IN THE YEARS OF ITS BENEFIT PERIOD NECESSARY TO ACHIEVE A COST BENEFIT RATIO OF TEN TO ONE.

S 4. The tax law is amended by adding a new section 187-r to read as follows:

S 187-R. ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT TAX CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-FIVE OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY SECTION ONE HUNDRED EIGHTY-FIVE OF THIS ARTICLE.

(B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR MAY NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM TAX PRESCRIBED IN SUBDIVISION TWO OF SECTION ONE

HUNDRED EIGHTY-FIVE OF THIS ARTICLE. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST WILL BE PAID THEREON.

S 5. Section 210 of the tax law is amended by adding a new subdivision 43 to read as follows:

43. ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM TAX CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-FIVE OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR MAY NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE AMOUNT PRESCRIBED IN PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST WILL BE PAID THEREON.

S 6. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xxxii) to read as follows:

(XXXII) ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT CREDIT	AMOUNT OF CREDIT UNDER SUBDIVISION FORTY-THREE OF SECTION 210 OR UNDER SUBSECTION (X) OF SECTION FOURTEEN HUNDRED FIFTY-SIX

S 7. Section 606 of the tax law is amended by adding a new subsection (ss) to read as follows:

(SS) ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM TAX CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO THE EXTENT ALLOWED UNDER SECTION THIRTY-FIVE OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(2) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR EXCEEDS THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST WILL BE PAID THEREON.

S 8. Section 1456 of the tax law is amended by adding a new subsection (x) to read as follows:

(X) ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM TAX CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-FIVE OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(2) THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR WILL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM TAX FIXED BY PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOURTEEN HUNDRED FIFTY-FIVE OF THIS ARTICLE. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR WILL BE TREAT-

ED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST WILL BE PAID THEREON.

S 9. Section 1511 of the tax law is amended by adding a new subdivision (aa) to read as follows:

(AA) ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM TAX CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER WILL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-FIVE OF THIS CHAPTER, AGAINST THE TAXES IMPOSED BY THIS ARTICLE.

(2) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR WILL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM TAX FIXED BY THIS ARTICLE. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST WILL BE PAID THEREON.

S 10. Section 1119 of the tax law is amended by adding a new subdivision (f) to read as follows:

(F)(1) SUBJECT TO THE CONDITIONS AND LIMITATIONS PROVIDED FOR IN THIS SECTION, A REFUND WILL BE ALLOWED FOR TAX PAID PURSUANT TO SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIVE, OR SECTION ELEVEN HUNDRED TEN OF THIS ARTICLE, ON THE PURCHASE OR USE OF TANGIBLE PERSONAL PROPERTY SOLD TO A PARTICIPANT WHO HAS RECEIVED A CERTIFICATE OF ELIGIBILITY IN THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM; PROVIDED THAT SUCH TANGIBLE PERSONAL PROPERTY HAS BEEN USED IN CONSTRUCTING, EXPANDING OR REHABILITATING INDUSTRIAL OR COMMERCIAL REAL PROPERTY LOCATED IN AN AREA DESIGNATED AS AN ECONOMIC TRANSFORMATION AREA PURSUANT TO ARTICLE EIGHTEEN OF THE ECONOMIC DEVELOPMENT LAW, BUT ONLY TO THE EXTENT THAT SUCH TANGIBLE PERSONAL PROPERTY BECOMES AN INTEGRAL COMPONENT PART OF SUCH REAL PROPERTY. SUCH TANGIBLE PERSONAL PROPERTY MUST BE PURCHASED, OR CONTRACTED TO BE PURCHASED, AFTER THE PARTICIPANT RECEIVES ITS CERTIFICATE OF ELIGIBILITY AND BEFORE THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY AND IT MUST BE USED IN A MANNER CONSISTENT WITH THE PARTICIPANT'S APPLICATION FOR SUCH CONSTRUCTED, EXPANDED, OR REHABILITATED REAL PROPERTY.

(2) SUBJECT TO THE CONDITIONS AND LIMITATIONS PROVIDED FOR IN THIS SECTION, A REFUND WILL BE ALLOWED FOR TAXES IMPOSED ON RECEIPTS FROM THE RETAIL SALE OF, AND CONSIDERATION GIVEN OR CONTRACTED TO BE GIVEN FOR, OR FOR THE USE OF, TANGIBLE PERSONAL PROPERTY SOLD TO A CONTRACTOR, SUBCONTRACTOR OR REPAIRMAN FOR USE IN (A) ERECTING A STRUCTURE OR BUILDING OF A PARTICIPANT WHO HAS RECEIVED A CERTIFICATE OF ELIGIBILITY, OR (B) ADDING TO, ALTERING OR IMPROVING REAL PROPERTY, PROPERTY OR LAND OF SUCH A PARTICIPANT, AS THE TERMS REAL PROPERTY, PROPERTY OR LAND ARE DEFINED IN THE REAL PROPERTY TAX LAW; PROVIDED, HOWEVER, NO REFUND WILL BE ALLOWED UNDER THIS PARAGRAPH UNLESS SUCH TANGIBLE PERSONAL PROPERTY HAS BECOME AN INTEGRAL COMPONENT PART OF SUCH STRUCTURE, BUILDING, REAL PROPERTY, PROPERTY OR LAND LOCATED WITHIN AN ECONOMIC TRANSFORMATION AREA AS DEFINED BY ARTICLE EIGHTEEN OF THE ECONOMIC DEVELOPMENT LAW IN, AND WITH RESPECT TO WHICH SUCH PARTICIPANT HAS BEEN ISSUED A CERTIFICATE OF ELIGIBILITY PURSUANT TO SUCH ARTICLE EIGHTEEN AND ONLY TO THE EXTENT THAT SUCH PROPERTY IS USED IN A MANNER CONSISTENT WITH THE PARTICIPANT'S

APPLICATION. SUCH TANGIBLE PERSONAL PROPERTY MUST BE IN THE CONTRACTOR'S INVENTORY ON OR AFTER THE DAY THE PARTICIPANT RECEIVES ITS CERTIFICATE OF ELIGIBILITY, OR BE PURCHASED OR CONTRACTED TO BE PURCHASED AFTER THE PARTICIPANT RECEIVES ITS CERTIFICATE OF ELIGIBILITY, BUT SUCH PROPERTY MUST MEET THE CONDITIONS OF THE PRECEDING SENTENCE AND BE USED BEFORE THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR SUCH CONSTRUCTED, EXPANDED, OR REHABILITATED REAL PROPERTY.

(3) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE REFUND PROVIDED FOR IN THIS SUBDIVISION SHALL NOT APPLY TO THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN OR ELEVEN HUNDRED NINE OF THIS ARTICLE OR TO ANY TAX IMPOSED PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS CHAPTER.

(4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHERE THE TAX ON THE SALE OR USE OF SUCH TANGIBLE PERSONAL PROPERTY HAS BEEN PAID TO THE VENDOR, TO QUALIFY FOR SUCH REFUND, SUCH TANGIBLE PERSONAL PROPERTY MUST BE INCORPORATED INTO REAL PROPERTY AND USED AS REQUIRED IN PARAGRAPHS ONE AND TWO OF THIS SUBDIVISION WITHIN THREE YEARS AFTER THE DATE SUCH TAX WAS PAYABLE TO THE COMMISSIONER BY THE VENDOR PURSUANT TO SECTION ELEVEN HUNDRED THIRTY-SEVEN OF THIS ARTICLE. WHERE THE TAX ON THE SALE OR USE OF SUCH TANGIBLE PERSONAL PROPERTY WAS PAID BY THE APPLICANT FOR THE REFUND DIRECTLY TO THE COMMISSIONER, TO QUALIFY FOR SUCH REFUND, SUCH TANGIBLE PERSONAL PROPERTY MUST BE INCORPORATED INTO REAL PROPERTY AND USED IN THE MANNER DESCRIBED IN PARAGRAPHS ONE AND TWO OF THIS SUBDIVISION WITHIN THREE YEARS AFTER THE DATE SUCH TAX WAS PAYABLE TO THE COMMISSIONER BY SUCH APPLICANT PURSUANT TO THIS ARTICLE. AN APPLICATION FOR A REFUND PURSUANT TO THIS SECTION MUST BE FILED WITH THE COMMISSIONER WITHIN THE TIME PROVIDED BY SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-NINE OF THIS ARTICLE. SUCH APPLICATION SHALL BE IN SUCH FORM AS THE COMMISSIONER MAY PRESCRIBE. THIS APPLICATION WILL BE THE ONLY MEANS OF APPLYING FOR THE REFUND ALLOWED BY THIS SECTION; THE APPLICANT MAY NOT TAKE THIS REFUND IN ANY OTHER MANNER, INCLUDING THE TAKING OF A CREDIT ON ANY RETURN DUE PURSUANT TO SECTION ELEVEN HUNDRED THIRTY-SIX OF THIS ARTICLE. A TAXPAYER MAY NOT APPLY FOR A REFUND UNDER THIS SUBDIVISION MORE FREQUENTLY THAN ONCE A SALES TAX QUARTERLY PERIOD AS DESCRIBED IN SUBDIVISION (B) OF SECTION ELEVEN HUNDRED THIRTY-SIX OF THIS ARTICLE.

(5) THE TERMS "PARTICIPANT", "ECONOMIC TRANSFORMATION AREA", AND "CERTIFICATE OF ELIGIBILITY" SHALL HAVE THE SAME MEANING AS THOSE TERMS HAVE IN SECTION FOUR HUNDRED OF THE ECONOMIC DEVELOPMENT LAW.

S 11. The real property tax law is amended by adding a new section 485-p to read as follows:

S 485-P. ECONOMIC TRANSFORMATION AREA EXEMPTION. 1. (A) REAL PROPERTY CONSTRUCTED, ALTERED, INSTALLED OR IMPROVED IN AN ECONOMIC TRANSFORMATION AREA AS DEFINED IN SUBDIVISION TEN OF SECTION FOUR HUNDRED OF THE ECONOMIC DEVELOPMENT LAW WHICH IS USED FOR BUSINESS, COMMERCIAL OR INDUSTRIAL PURPOSES AND WHICH IS OWNED BY A BUSINESS ENTITY THAT HAS BEEN ISSUED A CERTIFICATE OF ELIGIBILITY PURSUANT TO SUBDIVISION THREE OF SECTION FOUR HUNDRED TWO OF THE ECONOMIC DEVELOPMENT LAW SHALL BE EXEMPT FROM TAXATION AND SPECIAL AD VALOREM LEVIES BY ANY MUNICIPAL CORPORATION IN WHICH LOCATED, FOR THE PERIOD AND TO THE EXTENT HEREIN PROVIDED, PROVIDED THAT THE GOVERNING BOARD OF SUCH MUNICIPAL CORPORATION, AFTER PUBLIC HEARING, ADOPTS A LOCAL LAW, ORDINANCE OR RESOLUTION PROVIDING THEREFORE. SUCH LOCAL LAW, ORDINANCE OR RESOLUTION MUST BE ADOPTED WITHIN THREE YEARS OF THE DATE OF THE CLOSURE OF A CLOSED FACILITY (AS THAT TERM IS DEFINED IN SUBDIVISION ELEVEN OF SECTION FOUR

HUNDRED OF THE ECONOMIC DEVELOPMENT LAW) LOCATED IN THE ECONOMIC TRANSFORMATION AREA.

(B) THE EXEMPTION SO AUTHORIZED SHALL BE FOR A TERM OF FIVE YEARS. THE AMOUNT OF SUCH EXEMPTION SHALL BE AS FOLLOWS:

(I) IF THE CONSTRUCTION, ALTERATION, INSTALLATION OR IMPROVEMENT OCCURS ON OR AT THE SITE OF THE CLOSED FACILITY IN THE ECONOMIC TRANSFORMATION AREA, THEN THE EXEMPTION IN THE FIRST YEAR OF ITS TERM SHALL BE FIFTY PERCENT OF THE "BASE AMOUNT," DETERMINED PURSUANT TO SUBDIVISION TWO OF THIS SECTION. THE AMOUNT OF THE EXEMPTION IN THE SECOND, THIRD, FOURTH AND FIFTH YEAR OF ITS TERM SHALL BE FORTY PERCENT, THIRTY PERCENT, TWENTY PERCENT AND TEN PERCENT, RESPECTIVELY, OF SUCH BASE AMOUNT.

(II) IF THE CONSTRUCTION, ALTERATION, INSTALLATION OR IMPROVEMENT OCCURS IN THE ECONOMIC TRANSFORMATION AREA OUTSIDE OF THE CLOSED FACILITY, THEN THE EXEMPTION IN THE FIRST YEAR OF ITS TERM SHALL BE TWENTY-FIVE PERCENT OF THE "BASE AMOUNT," DETERMINED PURSUANT TO SUBDIVISION TWO OF THIS SECTION. THE AMOUNT OF THE EXEMPTION IN THE SECOND, THIRD, FOURTH AND FIFTH YEAR OF ITS TERM SHALL BE TWENTY PERCENT, FIFTEEN PERCENT, TEN PERCENT AND FIVE PERCENT, RESPECTIVELY, OF SUCH BASE AMOUNT.

2. (A) THE BASE AMOUNT OF THE EXEMPTION SHALL BE THE EXTENT OF THE INCREASE IN ASSESSED VALUE ATTRIBUTABLE TO SUCH CONSTRUCTION, ALTERATION, INSTALLATION OR IMPROVEMENT AS DETERMINED IN THE INITIAL YEAR FOR WHICH APPLICATION FOR EXEMPTION IS MADE PURSUANT TO THIS SECTION. THE BASE AMOUNT SHALL REMAIN CONSTANT FOR THE AUTHORIZED TERM OF THE EXEMPTION, SUBJECT TO THE FOLLOWING:

(I) IF THERE IS SUBSEQUENT CONSTRUCTION, ALTERATION, INSTALLATION OR IMPROVEMENT DURING THE TERM OF THE EXEMPTION, THE BASE AMOUNT SHALL BE REVISED TO INCLUDE THE INCREASE IN ASSESSED VALUE ATTRIBUTABLE TO SUCH CONSTRUCTION, ALTERATION, INSTALLATION OR IMPROVEMENT.

(II) IF A CHANGE IN LEVEL OF ASSESSMENT OF FIFTEEN PERCENT OR MORE IS CERTIFIED FOR AN ASSESSMENT ROLL PURSUANT TO THE RULES OF THE COMMISSIONER, THE BASE AMOUNT SHALL BE ADJUSTED BY SUCH CHANGE IN LEVEL OF ASSESSMENT. THE EXEMPTION ON THAT ASSESSMENT ROLL SHALL THEREUPON BE RECOMPUTED, NOTWITHSTANDING THE FACT THAT THE ASSESSOR RECEIVES THE CERTIFICATION AFTER THE COMPLETION, VERIFICATION AND FILING OF THE FINAL ASSESSMENT ROLL. IN THE EVENT THE ASSESSOR DOES NOT HAVE CUSTODY OF THE ROLL WHEN SUCH CERTIFICATION IS RECEIVED, THE ASSESSOR SHALL CERTIFY THE RECOMPUTED EXEMPTION TO THE LOCAL OFFICERS HAVING CUSTODY AND CONTROL OF THE ROLL, AND SUCH LOCAL OFFICERS ARE HEREBY DIRECTED AND AUTHORIZED TO ENTER THE RECOMPUTED EXEMPTION CERTIFIED BY THE ASSESSOR ON THE ROLL.

(B) NO SUCH EXEMPTION SHALL BE GRANTED UNLESS THE CONSTRUCTION, ALTERATION, INSTALLATION OR IMPROVEMENT COMMENCED WITHIN ONE YEAR OF THE DATE OF THE ISSUANCE OF THE CERTIFICATE OF ELIGIBILITY TO THE PROPERTY OWNER.

(C) FOR PURPOSES OF THIS SECTION THE TERMS CONSTRUCTION, ALTERATION, INSTALLATION AND IMPROVEMENT SHALL NOT INCLUDE ORDINARY MAINTENANCE AND REPAIRS.

(D) NO SUCH EXEMPTION SHALL BE GRANTED CONCURRENTLY WITH OR SUBSEQUENT TO ANY OTHER REAL PROPERTY TAX EXEMPTION GRANTED TO THE SAME IMPROVEMENTS TO REAL PROPERTY, EXCEPT, WHERE DURING THE PERIOD OF SUCH PREVIOUS EXEMPTION, PAYMENTS IN LIEU OF TAXES OR OTHER PAYMENTS WERE MADE TO THE LOCAL GOVERNMENT IN AN AMOUNT THAT WOULD HAVE BEEN EQUAL TO OR GREATER THAN THE AMOUNT OF REAL PROPERTY TAXES THAT WOULD HAVE BEEN PAID ON SUCH IMPROVEMENTS HAD SUCH PROPERTY BEEN GRANTED AN EXEMPTION PURSUANT TO THIS SECTION. IN SUCH CASE, AN EXEMPTION SHALL BE GRANTED FOR A NUMBER OF YEARS EQUAL TO THE FIVE YEAR EXEMPTION GRANTED PURSUANT TO THIS

SECTION LESS THE NUMBER OF YEARS THE PROPERTY WOULD HAVE BEEN PREVIOUSLY EXEMPT FROM REAL PROPERTY TAXES.

3. SUCH EXEMPTION SHALL BE GRANTED ONLY UPON APPLICATION BY THE OWNER OF SUCH REAL PROPERTY ON A FORM PRESCRIBED BY THE COMMISSIONER. THE ORIGINAL OF SUCH APPLICATION SHALL BE FILED WITH THE ASSESSOR OF THE ASSESSING UNIT. SUCH ORIGINAL APPLICATION SHALL BE FILED ON OR BEFORE THE APPROPRIATE TAXABLE STATUS DATE OF SUCH ASSESSING UNIT AND NO LATER THAN ONE YEAR FROM THE DATE OF COMPLETION OF SUCH CONSTRUCTION, ALTERATION, INSTALLATION OR IMPROVEMENT.

4. IF THE ASSESSOR RECEIVES AN APPLICATION BY THE OWNER OF THE REAL PROPERTY, HE OR SHE SHALL APPROVE THE APPLICATION AND SUCH REAL PROPERTY SHALL THEREAFTER BE EXEMPT FROM TAXATION AS HEREIN PROVIDED COMMENCING WITH THE ASSESSMENT ROLL PREPARED AFTER THE TAXABLE STATUS DATE REFERRED TO IN SUBDIVISION THREE OF THIS SECTION. THE ASSESSED VALUE OF ANY EXEMPTION GRANTED PURSUANT TO THIS SECTION SHALL BE ENTERED BY THE ASSESSOR ON THE ASSESSMENT ROLL WITH THE TAXABLE PROPERTY, WITH THE AMOUNT OF THE EXEMPTION ENTERED IN A SEPARATE COLUMN.

S 12. This act shall take effect immediately and shall expire and be deemed repealed December 31, 2021.

S 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through V of this act shall be as specifically set forth in the last section of such Parts.