

S T A T E   O F   N E W   Y O R K

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S. 2811--C

A. 4011--C

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

February 1, 2011

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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:

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

12 PART A

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

20 (a) Any amounts due on deposits or any amounts to which a shareholder  
21 of a savings and loan association or a credit union is entitled, held or  
22 owing by a banking organization, which shall have remained unclaimed for  
23 [five] THREE years by the person or persons appearing to be entitled  
24 thereto, including any interest or dividends credited thereon, excepting  
25 (i) any such amount which has been reduced or increased, exclusive of  
26 dividend or interest payment, within [five] THREE years, or

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

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

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

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

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

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

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

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

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

39 S 2. Paragraphs (a) and (c) of subdivision 1 of section 600 of the  
40 abandoned property law, paragraph (a) as amended by chapter 655 of the  
41 laws of 1978 and paragraph (c) as amended by chapter 281 of the laws of  
42 1980, are amended to read as follows:

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

50 (c) Any moneys paid to a support bureau of a family court, for the  
51 support of a spouse or child, which shall have remained in the custody  
52 of a county treasurer, or the commissioner of finance of the city of New  
53 York, for [five] THREE years, together with any interest due thereon,  
54 less such legal fees as he may be entitled to. For purposes of this  
55 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 (B) WITH RESPECT TO AMOUNTS SPECIFIED IN PARAGRAPH (B) OF SUBDIVISION  
49 ONE OF SECTION THREE HUNDRED OF THIS ARTICLE WHICH ARE ABANDONED PROPER-  
50 TY:

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

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

56 (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

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

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

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

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

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

15 (III) THE AMOUNT OF SUCH DEPOSIT OR PAYMENT;

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

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

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

24 (VII) THE AMOUNT OF SUCH ABANDONED PROPERTY; AND

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

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

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

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

33 (III) THE DATE PAYMENT BECAME DUE; AND

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

36 3. SUCH REPORT SHALL BE IN SUCH FORM AND THE ABANDONED PROPERTY LISTED  
37 SHALL BE CLASSIFIED IN SUCH MANNER AS THE STATE COMPTROLLER MAY  
38 PRESCRIBE. NAMES OF PERSONS ENTITLED TO SUCH ABANDONED PROPERTY APPEAR-  
39 ING IN SUCH REPORT SHALL BE LISTED IN ALPHABETICAL ORDER WITHIN EACH  
40 SUCH CLASSIFICATION.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

37 (D) THE DATE SUCH ABANDONED PROPERTY WAS PAYABLE;

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

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

42 3. SUCH REPORT SHALL BE IN SUCH FORM AND THE ABANDONED PROPERTY LISTED  
43 SHALL BE CLASSIFIED IN SUCH MANNER AS THE STATE COMPTROLLER MAY  
44 PRESCRIBE. NAMES OF PERSONS APPEARING TO BE ENTITLED TO SUCH PROPERTY OR  
45 OF BENEFICIARIES APPEARING IN SUCH REPORT SHALL BE LISTED IN ALPHABET-  
46 ICAL ORDER WITHIN EACH SUCH CLASSIFICATION.

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

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

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

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

12 [Within thirty days after making a report of abandoned property pursu-  
13 ant to the provisions of section ten hundred one,] EVERY such corpo-  
14 ration shall cause to be published, ON OR BEFORE THE FIRST DAY OF NOVEM-  
15 BER IN EACH YEAR, once in a newspaper of general circulation in each  
16 county where a damaged parcel included in such report is located a  
17 notice, approved as to form by the state comptroller, stating:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 4. In case any broker or dealer determines the property which shall be  
31 deemed abandoned property pursuant to subdivisions one and three of  
32 section five hundred eleven by the method provided in subdivision six of  
33 that section, the payment of such abandoned property shall be accompa-  
34 nied by a [verified] written report, AFFIRMED AS TRUE AND ACCURATE UNDER  
35 PENALTY OF PERJURY, in such form as the state comptroller may prescribe,  
36 which, among other things, shall set forth the computation of the aver-  
37 age factor of such broker or dealer pursuant to subdivision six of  
38 section five hundred eleven. Each [verified] written report accompanying  
39 the payment of abandoned property determined pursuant to subdivision six  
40 of section five hundred eleven shall contain an undertaking by the  
41 broker or dealer making such payment to honor all claims to the extent  
42 herein provided whenever made against such broker or dealer by any  
43 person determined by him or proved to be entitled to receive from him a  
44 stock or cash dividend received in this state during the calendar year  
45 covered by such report as the holder of record of a security or an  
46 interest payment on a security received in this state during such year.  
47 Such undertaking shall obligate the broker or dealer to honor any such  
48 claim provided that the payment of abandoned property relating to the  
49 year in question determined pursuant to subdivision six of section five  
50 hundred eleven made by such broker or dealer to the state comptroller  
51 has been exhausted as a result of reimbursements by the state comp-  
52 troller to the broker or dealer or to other persons claiming such aban-  
53 doned property as provided in subdivision two of section five hundred  
54 fourteen. To the extent related to any stock dividend, any such claim  
55 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (2) BUSINESS ADDRESS AND MAILING ADDRESS;

9 (3) FEDERAL EMPLOYER IDENTIFICATION NUMBER;

10 (4) DATE ENTERED INTO BUSINESS.

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

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

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

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

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

36 2. Annually, the comptroller shall file with the director of the budg-  
37 et an itemized estimate of the expenses for the administration of the  
38 abandoned property fund for the ensuing year. The director of the budget  
39 may revise and amend such estimate. After such revision and amendment,  
40 if any, such director shall approve the same for inclusion in the execu-  
41 tive budget. No moneys shall be paid out of the abandoned property fund  
42 for [such] expenses unless expenditures therefor shall have been author-  
43 ized by law; provided, however, that the expenses [of any audits  
44 conducted by the state comptroller to assure compliance by holders of  
45 unclaimed property with the provisions of the abandoned property law]  
46 FOR THE ADMINISTRATION OF THE PROVISIONS OF THE ABANDONED PROPERTY LAW  
47 paid by the state comptroller pursuant to an appropriation, shall be  
48 reimbursed by a transfer of funds no more frequently than monthly, from  
49 any balance remaining in the abandoned property fund prior to any  
50 payment made pursuant to the provisions of subdivision three of this  
51 section.

52 S 38. This act shall take effect immediately.

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

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

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

27 (iii) provided, further, that the provisions of this act, except  
28 section five of this act, shall expire and be deemed repealed July 1,  
29 [2011. The commissioner of taxation and finance shall cause to be  
30 prepared a written report on the tax shelter law. Notwithstanding any  
31 other provision of law to the contrary, such report shall include, but  
32 not be limited to, statistical information regarding the listed and  
33 reportable transactions and avoidance transactions under this act. A  
34 copy of such report shall be delivered to the governor, the temporary  
35 president of the senate, and the speaker of the assembly no later than  
36 April 1, 2007;] 2015; provided, that, such expiration and repeal shall  
37 not affect any requirement imposed pursuant to this act.

38 S 2. This act shall take effect immediately.

39 PART C

40 Intentionally omitted.

41 PART D

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

44 S 1613-C. CREDITING OF LOTTERY PRIZES AGAINST LIABILITIES FOR TAXES  
45 ADMINISTERED BY THE COMMISSIONER. (1) THE DIRECTOR, ON BEHALF OF THE  
46 DIVISION, SHALL ENTER INTO A WRITTEN AGREEMENT WITH THE COMMISSIONER, ON  
47 BEHALF OF THE DEPARTMENT, WITHIN SIXTY DAYS OF THE EFFECTIVE DATE OF  
48 THIS SECTION, WHICH WILL SET FORTH PROCEDURES FOR CREDITING LOTTERY  
49 PRIZES OF MORE THAN SIX HUNDRED DOLLARS AWARDED TO HOLDERS OF WINNING  
50 LOTTERY TICKETS, WHETHER INDIVIDUALS, CORPORATIONS, ASSOCIATIONS, COMPA-  
51 NIES, PARTNERSHIPS, LIMITED LIABILITY PARTNERSHIPS OR COMPANIES, PART-  
52 NERS, 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 AWARDED 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



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

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

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

#### 23 PART E

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

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

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

38 S 2. This act shall take effect immediately and shall apply to proper-  
39 ty placed in service on or after January 1, 2002 and before October 1,  
40 [2011] 2015.

41 S 3. This act shall take effect immediately.

#### 42 PART F

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

46 4. Statewide limitation. The aggregate dollar amount of credit which  
47 the commissioner may allocate to eligible low-income buildings under  
48 this article shall be [twenty-eight] THIRTY-TWO million dollars. The  
49 limitation provided by this subdivision applies only to allocation of  
50 the aggregate dollar amount of credit by the commissioner, and does not  
51 apply to allowance to a taxpayer of the credit with respect to an eligi-  
52 ble 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 predominantly 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

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

10 2. Excelsior investment tax credit component. A participant in the  
11 excelsior jobs program shall be eligible to claim a credit on qualified  
12 investments. The credit shall be equal to two percent of the cost or  
13 other basis for federal income tax purposes of the qualified investment.  
14 A participant may not claim both the excelsior investment tax credit  
15 component and the investment tax credit set forth in subdivision twelve  
16 of section two hundred ten, subsection (a) of section six hundred six,  
17 [or] subsection (i) of section fourteen hundred fifty-six, OR SUBDIVI-  
18 SION (Q) OF SECTION FIFTEEN HUNDRED ELEVEN of the tax law for the same  
19 property in any taxable year, EXCEPT THAT A PARTICIPANT MAY CLAIM BOTH  
20 THE EXCELSIOR INVESTMENT TAX CREDIT COMPONENT AND THE INVESTMENT TAX  
21 CREDIT FOR RESEARCH AND DEVELOPMENT PROPERTY. In addition, a taxpayer  
22 who or which is qualified to claim the excelsior investment tax credit  
23 component and is also qualified to claim the brownfield tangible proper-  
24 ty credit component under section twenty-one of the tax law may claim  
25 either the excelsior investment tax credit component or such tangible  
26 property credit component, but not both with regard to a particular  
27 piece of property. A credit may not be claimed until a business enter-  
28 prise has received a certificate of tax credit, provided that qualified  
29 investments made on or after the issuance of the certificate of eligi-  
30 bility but before the issuance of the certificate of tax credit to the  
31 business enterprise, may be claimed in the first taxable year for which  
32 the business enterprise is allowed to claim the credit. Expenses  
33 incurred prior to the date the certificate of eligibility is issued are  
34 not eligible to be included in the calculation of the credit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (D) IN CALCULATING THE EXCELSIOR REAL PROPERTY TAX CREDIT AND DETER-  
46 MINING THE MAXIMUM AGGREGATE AMOUNT OF SUCH CREDIT COMPONENT IN THE  
47 PRELIMINARY SCHEDULE OF BENEFITS, THE COMMISSIONER SHALL INCLUDE ANY  
48 IMPROVEMENTS PROJECTED TO BE MADE BY THE TAXPAYER TO THE PROPERTY  
49 COMPRISING THE REGIONALLY SIGNIFICANT PROJECT OR LOCATED IN THE INVEST-  
50 MENT ZONE AS LISTED IN ITS APPLICATION FOR PARTICIPATION IN THE EXCELS-  
51 IOR JOBS PROGRAM.

52 5. Refundability of credits. The tax credit components established in  
53 this section shall be refundable as provided in the tax law. If a  
54 participant fails to satisfy the eligibility criteria in any one year,  
55 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

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

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

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

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

- 21 (1) the excelsior jobs tax credit COMPONENT;
- 22 (2) the excelsior investment tax credit COMPONENT;
- 23 (3) the excelsior research and development tax credit COMPONENT; and
- 24 (4) the excelsior real property tax credit COMPONENT.

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

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

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

- 51 (1) ARTICLE 9: SECTION 187-Q.
- 52 (2) article 9-A: section 210: subdivision 41.
- 53 [(2)] (3) article 22: section 606: subsection (qq).
- 54 [(3)] (4) article 32: section 1456: subsection (u).
- 55 [(4)] (5) article 33: section 1511: subdivision (y).



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

3 12-D. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, UPON APPLICATION OF  
4 A GAS OR ELECTRIC CORPORATION, THE COMMISSION SHALL AUTHORIZE SUCH  
5 CORPORATION TO CHARGE A SPECIAL EXCELSIOR JOBS PROGRAM RATE EQUAL TO THE  
6 INCREMENTAL COST OF PROVIDING SERVICE TO PARTICIPANTS IN THE EXCELSIOR  
7 JOBS PROGRAM AS DEFINED IN ARTICLE SEVENTEEN OF THE ECONOMIC DEVELOPMENT  
8 LAW.

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

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

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

25 S 10. This act shall take effect immediately.

26 PART H

27 Intentionally omitted.

28 PART I

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (II) CONTROLS IN ANY MANNER THE ELECTION OF A MAJORITY OF THE DIREC-  
16 TORS OR TRUSTEES OF THE OTHER ENTITY;

17 (2) "EXEMPT COMMERCIAL PURCHASER" MEANS ANY PERSON PURCHASING COMMER-  
18 CIAL INSURANCE THAT, AT THE TIME OF PLACEMENT, MEETS THE FOLLOWING  
19 REQUIREMENTS:

20 (A) THE PERSON EMPLOYS OR RETAINS A QUALIFIED RISK MANAGER TO NEGOTI-  
21 ATE INSURANCE COVERAGE;

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

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

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

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

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

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

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

41 (II) EFFECTIVE ON THE FIFTH JANUARY FIRST OCCURRING AFTER JULY TWEN-  
42 TY-FIRST, TWO THOUSAND TEN AND EACH FIFTH JANUARY FIRST OCCURRING THERE-  
43 AFTER, THE AMOUNTS IN CLAUSES (I), (II), AND (IV) OF ITEM (I) OF THIS  
44 SUBPARAGRAPH SHALL BE ADJUSTED TO REFLECT THE PERCENTAGE CHANGE FOR SUCH  
45 FIVE-YEAR PERIOD IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS  
46 PUBLISHED BY THE BUREAU OF LABOR STATISTICS OF THE UNITED STATES DEPART-  
47 MENT OF LABOR;

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

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

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

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

6 (D) IN THE CASE OF A GROUP POLICY:

7 (I) WHEN THE GROUP POLICYHOLDER PAYS ONE HUNDRED PERCENT OF THE PREMI-  
8 UM FROM ITS OWN FUNDS, THEN THE INSURED'S HOME STATE, AS DETERMINED  
9 PURSUANT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH, OF THE GROUP POLICYHOLD-  
10 ER; OR

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

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

16 (A) THE INSURED MAINTAINS ITS HEADQUARTERS AND WHERE THE INSURED'S  
17 HIGH-LEVEL OFFICERS DIRECT, CONTROL, AND COORDINATE THE BUSINESS ACTIV-  
18 ITIES; OR

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

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

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

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

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

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

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

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

45 (C) THE PERSON:

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

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

53 (BB) HAS:

54 (AAA) A DESIGNATION AS A CHARTERED PROPERTY AND CASUALTY UNDERWRITER  
55 (IN THIS CLAUSE REFERRED TO AS A "CPCU") ISSUED BY THE AMERICAN INSTI-  
56 TUTE 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

1 the subsidiaries or business affiliates of the employer, provided that  
2 the employee does not sell or solicit insurance or receive a commis-  
3 sion[.]; OR

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

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

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

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

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

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

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

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

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

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

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

11 S 12. Subparagraph (A) of paragraph 3 of subsection (b) of section  
12 2118 of the insurance law, as amended by chapter 498 of the laws of  
13 1996, is amended and a new subparagraph (F) is added to read as follows:

14 (A) [The] EXCEPT AS PROVIDED IN SUBPARAGRAPH (F) OF THIS PARAGRAPH,  
15 submission of insurance documents to the excess line association shall  
16 be accompanied by a statement subscribed to, and affirmed by, the licen-  
17 see or sublicensee as true under the penalties of perjury that, after  
18 diligent effort, the full amount of insurance required could not be  
19 procured, from authorized insurers, each of which is authorized to write  
20 insurance of the kind requested and which the licensee has reason to  
21 believe might consider writing the type of coverage or class of insur-  
22 ance involved, and further showing that the amount of insurance procured  
23 from an unauthorized insurer is only the excess over the amount procura-  
24 ble from an authorized insurer. The licensee, however, shall be excused  
25 from affirming that a diligent effort, as defined above, was made to  
26 procure the coverage from authorized insurers if the licensee's affida-  
27 vit is accompanied by the affidavit of another broker involved in the  
28 placement affirming as true under the penalties of perjury that, after  
29 diligent effort by the affirming broker, the required insurance could  
30 not be procured from an authorized insurer which the affirming broker  
31 had reason to believe might consider writing the type of coverage or  
32 class of insurance involved. The licensee and the affirming broker shall  
33 be excused from affirming that a diligent effort was made if the super-  
34 intendent determines, pursuant to paragraph four of this subsection,  
35 that no declinations are required.

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

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

45 (II) THE EXEMPT COMMERCIAL PURCHASER HAS SUBSEQUENTLY REQUESTED IN  
46 WRITING THAT THE LICENSEE PROCURE OR PLACE THE INSURANCE FROM AN UNAU-  
47 THORIZED INSURER.

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

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

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

7 S 14. Section 9102 of the insurance law, as amended by chapter 190 of  
8 the laws of 1990, subsection (c) as amended by chapter 73 of the laws of  
9 1991, is amended to read as follows:

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

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

24 (2) If the allocation schedule does not identify a classification  
25 appropriate to the property or risk being insured, an alternative method  
26 of equitable allocation shall be used for such coverage. In that circum-  
27 stance, documented evidence of the underwriting bases and other criteria  
28 used by the insurer shall be given significant weight by the superinten-  
29 dent.

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

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

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

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

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

55 S 15. Subdivision (c) of section 1550 of the tax law, as added by  
56 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 there-with;

(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.

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

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

15 (e) section twenty-eight, and the addition of new section 11-643.5 of  
16 the administrative code of the city of New York made by section forty-  
17 four shall not apply to corporations other than savings banks and  
18 savings and loan associations for taxable years beginning on or after  
19 January 1, 2011, provided, however, that the provisions of such sections  
20 which relate to the alternative minimum taxes measured by assets, issued  
21 capital stock and one hundred twenty-five dollars shall continue to  
22 apply to all taxpayers for taxable years beginning on or after January  
23 1, 2011].

24 S 2. Subdivisions (d) and (f) of section 110 of chapter 817 of the  
25 laws of 1987, amending the tax law and the environmental conservation  
26 law, constituting the business tax reform and rate reduction act of  
27 1987, as amended by chapter 67 of the laws of 2010, are amended to read  
28 as follows:

29 (d) The provisions of section sixty-seven of this act except insofar  
30 as it amends paragraph 10 of subsection (b) of section 1453 of the tax  
31 law, seventy-one and seventy-four shall apply to taxable years beginning  
32 after December 31, 1986[, provided, however, that new paragraphs 11 and  
33 12 of subsection (b) of section 1453 of the tax law as added by section  
34 sixty-seven of this act, the amendments made by section seventy-one of  
35 this act, and new subsection (i) of section 1453 of the tax law as added  
36 by section seventy-four of this act shall not apply to taxable years  
37 beginning on or after January 1, 2011];

38 (f) The provisions of section one hundred four of this act shall apply  
39 to taxable years beginning after December 31, 1986[, and shall not apply  
40 to corporations other than savings banks and savings and loan associ-  
41 ations for taxable years beginning on or after January 1, 2011,  
42 provided, however, that the provisions of such section which relate to  
43 the alternative minimum tax measured by taxable assets shall continue to  
44 apply to all taxpayers for taxable years beginning on or after January  
45 1, 2011].

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

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

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

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

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

13 (1) Notwithstanding anything to the contrary contained in this section  
14 other than subsection (n) of this section, a corporation that was in  
15 existence before January first, two thousand [ten] ELEVEN and was  
16 subject to tax under article nine-A of this chapter for its last taxable  
17 year beginning before January first, two thousand [ten] ELEVEN, shall  
18 continue to be taxable under such article for all taxable years begin-  
19 ning on or after January first, two thousand [ten] ELEVEN and before  
20 January first, two thousand [eleven] THIRTEEN. The preceding sentence  
21 shall not apply to any taxable year during which such corporation is a  
22 banking corporation described in paragraphs one through eight of  
23 subsection (a) of this section. Notwithstanding anything to the contrary  
24 contained in this section other than subsection (n) of this section, a  
25 banking corporation or corporation that was in existence before January  
26 first, two thousand [ten] ELEVEN and was subject to tax under this arti-  
27 cle for its last taxable year beginning before January first, two thou-  
28 sand [ten] ELEVEN, shall continue to be taxable under this article for  
29 all taxable years beginning on or after January first, two thousand  
30 [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN or  
31 in which the corporation satisfies the requirements for a corporation to  
32 elect to be taxable under this article. Provided further, that nothing  
33 in this subsection shall prohibit a corporation that elected pursuant to  
34 subsection (d) of this section to be taxable under article nine-A of  
35 this chapter from revoking that election in accordance with such  
36 subsection (d).

37 For purposes of this paragraph, a corporation shall be considered to  
38 be subject to tax under article nine-A of this chapter for a taxable  
39 year if such corporation was not a taxpayer but was properly included in  
40 a combined report filed pursuant to section two hundred eleven of this  
41 chapter for such taxable year and a corporation shall be considered to  
42 be subject to tax under this article for a taxable year if such corpo-  
43 ration was not a taxpayer but was properly included in a combined return  
44 filed pursuant to subsection (f) or (g) of section fourteen hundred  
45 sixty-two of this article for such taxable year. A corporation that was  
46 in existence before January first, two thousand [ten] ELEVEN but first  
47 becomes a taxpayer in a taxable year beginning on or after January  
48 first, two thousand [ten] ELEVEN and before January first, two thousand  
49 [eleven] THIRTEEN, shall be considered for purposes of this paragraph to  
50 have been subject to tax under article nine-A of this chapter for its  
51 last taxable year beginning before January first, two thousand [ten]  
52 ELEVEN if such corporation would have been subject to tax under such  
53 article for such taxable year if it had been a taxpayer during such  
54 taxable year. A corporation that was in existence before January first,  
55 two thousand [ten] ELEVEN but first becomes a taxpayer in a taxable year  
56 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-

1 ration is a banking corporation described in paragraphs one through  
2 eight of subdivision (a) of this section. Notwithstanding anything to  
3 the contrary contained in this section other than subdivision (m) of  
4 this section, a banking corporation or corporation that was in existence  
5 before January first, two thousand [ten] ELEVEN and was subject to tax  
6 under this subchapter for its last taxable year beginning before January  
7 first, two thousand [ten] ELEVEN, shall continue to be taxable under  
8 this subchapter for all taxable years beginning on or after January  
9 first, two thousand [ten] ELEVEN and before January first, two thousand  
10 [eleven] THIRTEEN or in which the corporation satisfies the requirements  
11 for a corporation to elect to be taxable under this subchapter. Provided  
12 further, that nothing in this subdivision shall prohibit a corporation  
13 that elected pursuant to subdivision (d) of this section to be taxable  
14 under subchapter two of this chapter from revoking that election in  
15 accordance with subdivision (d) of this section. For purposes of this  
16 paragraph, a corporation shall be considered to be subject to tax under  
17 subchapter two of this chapter for a taxable year if such corporation  
18 was not a taxpayer but was properly included in a combined report filed  
19 pursuant to subdivision four of section 11-605 of this chapter for such  
20 taxable year and a corporation shall be considered to be subject to tax  
21 under this subchapter for a taxable year if such corporation was not a  
22 taxpayer but was properly included in a combined report filed pursuant  
23 to subdivision (f) or (g) of section 11-646 of this part for such taxa-  
24 ble year. A corporation that was in existence before January first, two  
25 thousand [ten] ELEVEN but first becomes a taxpayer in a taxable year  
26 beginning on or after January first, two thousand [ten] ELEVEN and  
27 before January first, two thousand [eleven] THIRTEEN, shall be consid-  
28 ered for purposes of this paragraph to have been subject to tax under  
29 subchapter two of this chapter for its last taxable year beginning  
30 before January first, two thousand [ten] ELEVEN if such corporation  
31 would have been subject to tax under such subchapter for such taxable  
32 year if it had been a taxpayer during such taxable year. A corporation  
33 that was in existence before January first, two thousand [ten] ELEVEN  
34 but first becomes a taxpayer in a taxable year beginning on or after  
35 January first, two thousand [ten] ELEVEN and before January first, two  
36 thousand [eleven] THIRTEEN, shall be considered for purposes of this  
37 paragraph to have been subject to tax under this subchapter for its last  
38 taxable year beginning before January first, two thousand [ten] ELEVEN  
39 if such corporation would have been subject to tax under this subchapter  
40 for such taxable year if it had been a taxpayer during such taxable  
41 year.

42 (2) Notwithstanding anything to the contrary contained in this section  
43 other than subdivision (m) of this section, a corporation formed on or  
44 after January first, two thousand [ten] ELEVEN and before January first,  
45 two thousand [eleven] THIRTEEN may elect to be subject to tax under this  
46 subchapter or under subchapter two of this chapter for its first taxable  
47 year beginning on or after January first, two thousand [ten] ELEVEN and  
48 before January first, two thousand [eleven] THIRTEEN in which either (i)  
49 sixty-five percent or more of its voting stock is owned or controlled,  
50 directly or indirectly by a financial holding company, provided the  
51 corporation whose voting stock is so owned or controlled is principally  
52 engaged in activities that are described in section 4(k)(4) or 4(k)(5)  
53 of the federal bank holding company act of nineteen hundred fifty-six,  
54 as amended and the regulations promulgated pursuant to the authority of  
55 such section or (ii) it is a financial subsidiary. An election under  
56 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

1 such subsequent taxable year, continues to exercise its corporate fran-  
2 chise or do business in the state in a corporate or organized capacity  
3 and sixty-five percent or more of such banking corporation's voting  
4 stock continues to be owned or controlled, directly or indirectly, by  
5 such bank holding company, unless the permission of the commissioner has  
6 been obtained to file on a separate basis for such subsequent taxable  
7 year. Provided further, however, for each subsequent taxable year begin-  
8 ning after January first, two thousand and before January first, two  
9 thousand [eleven] THIRTEEN, a banking corporation described in either of  
10 the first two sentences of this clause which did not file on a combined  
11 basis with any such bank holding company in a previous taxable year, may  
12 not file on a combined basis with such bank holding company during any  
13 such subsequent taxable year unless the permission of the commissioner  
14 has been obtained to file on a combined basis for such subsequent taxa-  
15 ble year.

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

27 S 7. Subparagraph (iv) of paragraph 2 of subdivision (f) of section  
28 11-646 of the administrative code of the city of New York, as amended by  
29 chapter 24 of the laws of 2010, is amended to read as follows:

30 (iv) (A) Notwithstanding any provision of this paragraph, any bank  
31 holding company exercising its corporate franchise or doing business in  
32 the city may make a return on a combined basis without seeking the  
33 permission of the commissioner with any banking corporation exercising  
34 its corporate franchise or doing business in the city in a corporate or  
35 organized capacity sixty-five percent or more of whose voting stock is  
36 owned or controlled, directly or indirectly, by such bank holding compa-  
37 ny, for the first taxable year beginning on or after January first, two  
38 thousand and before January first, two thousand [eleven] THIRTEEN during  
39 which such bank holding company registers for the first time under the  
40 federal bank holding company act, as amended, and also elects to be a  
41 financial holding company. In addition, for each subsequent taxable year  
42 beginning after January first, two thousand and before January first,  
43 two thousand [eleven] THIRTEEN, any such bank holding company may file  
44 on a combined basis without seeking the permission of the commissioner  
45 with any banking corporation that is exercising its corporate franchise  
46 or doing business in the city and sixty-five percent or more of whose  
47 voting stock is owned or controlled, directly or indirectly, by such  
48 bank holding company if either such banking corporation is exercising  
49 its corporate franchise or doing business in the city in a corporate or  
50 organized capacity for the first time during such subsequent taxable  
51 year, or sixty-five percent or more of the voting stock of such banking  
52 corporation is owned or controlled, directly or indirectly, by such bank  
53 holding company for the first time during such subsequent taxable year.  
54 Provided however, for each subsequent taxable year beginning after Janu-  
55 ary first, two thousand and before January first, two thousand [eleven]  
56 THIRTEEN, a banking corporation described in either of the two preceding

1 sentences which filed on a combined basis with any such bank holding  
2 company in a previous taxable year, must continue to file on a combined  
3 basis with such bank holding company if such banking corporation, during  
4 such subsequent taxable year, continues to exercise its corporate fran-  
5 chise or do business in the city in a corporate or organized capacity  
6 and sixty-five percent or more of such banking corporation's voting  
7 stock continues to be owned or controlled, directly or indirectly, by  
8 such bank holding company, unless the permission of the commissioner has  
9 been obtained to file on a separate basis for such subsequent taxable  
10 year. Provided further, however, for each subsequent taxable year begin-  
11 ning after January first, two thousand and before January first, two  
12 thousand [eleven] THIRTEEN, a banking corporation described in either of  
13 the first two sentences of this clause which did not file on a combined  
14 basis with any such bank holding company in a previous taxable year, may  
15 not file on a combined basis with such bank holding company during any  
16 such subsequent taxable year unless the permission of the commissioner  
17 has been obtained to file on a combined basis for such subsequent taxa-  
18 ble year.

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

30 S 8. This act shall take effect immediately.

31

## PART K

32 Section 1. Paragraph b of subdivision 1, subdivisions 2, 6, 14, 22 and  
33 23 of section 282 of the tax law, paragraph b of subdivision 1 and  
34 subdivision 14 as amended by chapter 245 of the laws of 1989, subdivi-  
35 sion 2 as amended by chapter 509 of the laws of 1937, subdivision 6 as  
36 amended by chapter 261 of the laws of 1988 and subdivisions 22 and 23 as  
37 added by section 1 of part W-1 of chapter 109 of the laws of 2006, are  
38 amended to read as follows:

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



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

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

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

23 14. "Diesel motor fuel" shall mean NO. 1 DIESEL FUEL, NO. 2 DIESEL  
24 FUEL, BIODIESEL, kerosene, crude oil, fuel oil or other middle distil-  
25 late and also motor fuel suitable for use in the operation of an engine  
26 of the diesel type, excluding, however, any product specifically desig-  
27 nated "No. 4 Diesel fuel" and not suitable as a fuel used in the opera-  
28 tion of a motor vehicle engine.

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

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

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

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

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

54 16-A. "HIGHWAY DIESEL MOTOR FUEL" MEANS ANY DIESEL MOTOR FUEL WHICH IS  
55 NOT NON-HIGHWAY DIESEL MOTOR FUEL.

1 S 3. Subdivision 18 of section 282 of the tax law, as added by chapter  
2 302 of the laws of 2006, is renumbered subdivision 18-a and is amended  
3 to read as follows:

4 18-a. "Dyed Diesel motor fuel" means Diesel motor fuel which [is  
5 enhanced Diesel motor fuel and which] has been dyed in accordance with  
6 and for the purpose of complying with the provisions of 26 USC S4082(a)  
7 and the regulations thereunder, as may be amended from time to time.

8 S 4. Section 282 of the tax law is amended by adding a new subdivision  
9 26 to read as follows:

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

12 S 5. Subdivisions 2, 3, 4 and 5 of section 282-a of the tax law,  
13 subdivision 2 and paragraph (b) of subdivision 3 as amended by chapter  
14 245 of the laws of 1989, subdivisions 3, 4 and 5 as added by chapter 261  
15 of the laws of 1988 and paragraph (c) of subdivision 3 as added by chap-  
16 ter 302 of the laws of 2006, are amended to read as follows:

17 2. No person shall [engage] SELL OR USE DIESEL MOTOR FUEL within this  
18 state [in the enhancement of Diesel motor fuel, make a sale or use of  
19 Diesel motor fuel] (other than a retail sale not in bulk or self-use of  
20 Diesel motor fuel which has been the subject of a retail sale), import  
21 or cause the importation of Diesel motor fuel into the state or produce,  
22 refine, manufacture or compound Diesel motor fuel within the state  
23 unless such person shall be registered by the department [of taxation  
24 and finance] as a distributor of Diesel motor fuel. Provided, the  
25 commissioner [of taxation and finance] shall not register as a distribu-  
26 tor of Diesel motor fuel any person who is engaged solely in one or both  
27 of the following: (i) any person who makes or offers to make a retail  
28 sale not in bulk of such fuel or (ii) any person who purchases Diesel  
29 motor fuel in bulk in this state for the sole purpose of self-use. The  
30 commissioner may, however, register as a distributor of kero-jet fuel  
31 only a fixed base operator who makes no sales of kero-jet fuel other  
32 than retail sales not in bulk delivered directly into the fuel tank of  
33 an airplane for use in the operation of such airplane and who makes no  
34 other sales of diesel motor fuel. Such registration shall apply only to  
35 the wholesale purchase of kero-jet fuel and the retail sale of such fuel  
36 not in bulk for delivery directly into the fuel tank of an airplane for  
37 use in the operation thereof. Provided, further, that if the commission-  
38 er is satisfied that full registration is not necessary in order to  
39 protect tax revenues, the commissioner may limit or modify the require-  
40 ment of registration as a distributor with respect to any person other-  
41 wise required to register solely because such person engages in the sale  
42 of NON-HIGHWAY Diesel motor fuel where such person makes sales of  
43 NON-HIGHWAY Diesel motor fuel to the consumer solely for the purposes  
44 described in subparagraph (i) of paragraph (b) of subdivision three of  
45 this section, provided that if the commissioner so limits or modifies  
46 such registration requirement with respect to such person, then such  
47 registration shall apply only to the importation, sale and distribution  
48 of SUCH NON-HIGHWAY Diesel motor fuel [for the purposes described in  
49 such subparagraph (i)]. The commissioner [of taxation and finance] may  
50 also waive any other requirement imposed by this article on such a  
51 distributor. All the provisions of section two hundred eighty-three of  
52 this article shall apply to applicants for registration and registrants  
53 with respect to Diesel motor fuel, and, in addition, distributors with  
54 respect to Diesel motor fuel shall be subject to all other provisions of  
55 this article relating to distributors of motor fuel, including but not  
56 limited to, the keeping of records, the fixing, determination and

1 payment of tax and filing of returns. PROVIDED, FURTHER, THE COMMISSION-  
2 ER MAY LIMIT OR MODIFY THE REQUIREMENT OF REGISTRATION AS A DISTRIBUTOR  
3 WITH RESPECT TO ANY PERSON WHO PRODUCES FOR SELF USE "UNQUALIFIED BIOD-  
4 IESEL."

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

10 (b) The tax on the [incident] INCIDENCE of sale or use imposed by  
11 subdivision one of this section shall not apply to: (i) the sale [to] or  
12 use [by the consumer of previously untaxed Diesel motor fuel which is  
13 not enhanced Diesel motor fuel and which is used exclusively for heating  
14 purposes or for the purpose of use or consumption directly and exclu-  
15 sively in the production of tangible personal property, gas, electric-  
16 ity, refrigeration or steam, for sale,] OF NON-HIGHWAY DIESEL MOTOR  
17 FUEL, but only if all of such fuel is consumed other than on the PUBLIC  
18 highways of this state (EXCEPT FOR THE USE OF THE PUBLIC HIGHWAY BY  
19 FARMERS TO REACH ADJACENT FARMLANDS); provided, however, this exemption  
20 shall in no event apply to a sale of NON-HIGHWAY Diesel motor fuel which  
21 involves a delivery at a filling station or into a repository which is  
22 equipped with a hose or other apparatus by which such fuel can be  
23 dispensed into the fuel tank of a motor vehicle (EXCEPT FOR DELIVERY AT  
24 A FARM SITE WHICH QUALIFIES FOR THE EXEMPTION UNDER SUBDIVISION (G) OF  
25 SECTION THREE HUNDRED ONE-B OF THIS CHAPTER); or (ii) [the sale of  
26 previously untaxed Diesel motor fuel which is not enhanced Diesel motor  
27 fuel to a person registered under this article as a distributor of  
28 Diesel motor fuel other than (A) a retail sale to such person or (B) a  
29 sale to such person which involves a delivery at a filling station or  
30 into a repository which is equipped with a hose or other apparatus by  
31 which such fuel can be dispensed into the fuel tank of a motor vehicle;  
32 or (iii) a sale or use of enhanced Diesel motor fuel to or by a consumer  
33 exclusively for the purposes of heating specified in subparagraph (i) of  
34 this paragraph but only if such enhanced Diesel motor fuel is delivered  
35 into a storage tank which is not equipped with a hose or other apparatus  
36 by which such fuel can be dispensed into the fuel tank of a motor vehi-  
37 cle and such storage tank is attached to the heating unit burning such  
38 fuel, provided that each delivery of such fuel of over four thousand  
39 five hundred gallons shall be evidenced by a certificate signed by the  
40 purchaser stating that the product will be used exclusively for heating  
41 purposes; or (iv) a sale or use consisting of no more than four thousand  
42 five hundred gallons of Diesel motor fuel in a thirty-day period to or  
43 by a consumer who purchases or uses such fuel for use or consumption  
44 directly and exclusively in the production for sale of tangible personal  
45 property by farming but only if all of such fuel is delivered on the  
46 farm site and is consumed other than on the highways of this state  
47 (except for the use of the highway to reach adjacent farmlands)  
48 provided, however, a farmer may purchase more than four thousand five  
49 hundred gallons of Diesel motor fuel in a thirty-day period for such use  
50 or consumption exempt from the tax in accordance with prior clearance  
51 given by the commissioner of taxation and finance; or (v)] a sale to the  
52 consumer consisting of not more than twenty gallons of water-white kero-  
53 sene to be used and consumed exclusively for heating purposes; or [(vi)]  
54 (III) the sale to or delivery at a filling station or other retail  
55 vendor of water-white kerosene provided such filling station or other  
56 retail vendor only sells such water-white kerosene exclusively for heat-

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

13 (c) [Limited exemptions for dyed Diesel motor fuel. (i) The tax  
14 imposed by this section shall not apply to: (A) the sale of dyed Diesel  
15 motor fuel by the importer to a purchaser under the circumstances and  
16 subject to the terms and conditions as follows: (1) the importer and  
17 purchaser are each registered under this article as a full Diesel motor  
18 fuel distributor; (2) such importer has imported the enhanced Diesel  
19 motor fuel, which is the subject of the sale, into the state and has  
20 dyed such fuel to comply with the provisions of 26 USC S 4082(a) and the  
21 regulations thereunder, as may be amended from time to time; (3) the  
22 purchaser is a holder of a currently valid direct payment permit issued  
23 pursuant to section two hundred eighty-three-d of this article; and (4)  
24 such purchaser is primarily engaged in the retail heating oil business  
25 and such dyed Diesel motor fuel will be sold by such purchaser in a  
26 retail sale to a consumer for use solely as residential or commercial  
27 heating oil; (B) a first sale of the dyed Diesel motor fuel, which as  
28 the subject of an exempt sale described in clause (A) of this subpara-  
29 graph, by the purchaser described therein to a purchaser likewise hold-  
30 ing a currently valid direct pay permit under the circumstances and  
31 subject to the terms and conditions as follows: (1) the sale of such  
32 second purchaser by such first purchaser is the first and only sale of  
33 such dyed Diesel motor fuel by such first purchaser; (2) such second  
34 purchaser is primarily engaged in the retail heating oil business and  
35 such dyed Diesel motor fuel will be sold by such second purchaser in a  
36 retail sale to a consumer for use solely as residential or commercial  
37 heating oil; (3) on the sale to the second purchaser, such first  
38 purchaser described in such clause (A) attaches to the invoice a copy of  
39 the invoice given by the importer on the exempt sale described in such  
40 clause (A), so as to identify the origin of the dyed Diesel fuel which  
41 is the subject of the sale to such second purchaser; and (4) such second  
42 purchaser certifies that such dyed Diesel motor fuel is to be sold by it  
43 only to a consumer for use solely as residential or commercial heating  
44 oil. (ii) Prior to, or at the time of, such sale of such dyed Diesel  
45 motor fuel described in clause (A) or (B) of subparagraph (i) of this  
46 paragraph, the purchaser shall give a certificate to the seller setting  
47 forth the intended use of the dyed Diesel motor fuel which is sought to  
48 be qualified for exemption under this paragraph, that the purchaser has  
49 been issued a direct payment permit which is currently valid, that such  
50 permit has not been suspended or revoked and that the purchaser other-  
51 wise meets the qualifications of this paragraph. (iii) The limited  
52 exemptions allowed under this paragraph shall in no event apply to any  
53 dyed Diesel motor fuel which is delivered into a repository equipped  
54 with hose or other apparatus capable of being used to dispense fuel into  
55 the fuel tank of a motor vehicle, or where the purchaser's direct  
56 payment permit has been suspended or revoked and the commissioner has

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

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

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

1 current assets and liabilities, and tax reporting and payment history,  
2 and the department shall not provide for a minimum bond of every appli-  
3 cant.

4 S 6. Subdivision 7 of section 283 of the tax law, as amended by chap-  
5 ter 261 of the laws of 1988, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

1 the exemption and shall be signed by such purchaser and by the seller.  
2 Such certificate shall be in such form and contain such other informa-  
3 tion as the commissioner [of taxation and finance] shall require. Where  
4 a proper and complete exempt transaction certificate has been furnished  
5 and accepted by the seller in good faith, such certificate under such  
6 circumstance shall relieve the seller of the burden of proving that the  
7 Diesel motor fuel covered by such certificate is exempt from tax by  
8 reason of subparagraph (i), (II), (iii), (iv), [(v),] OR (vi)[, (vii) or  
9 (ix)] of paragraph (b) of subdivision three of such section two hundred  
10 eighty-two-a. Any purchaser who furnishes to his seller a false or frau-  
11 dulent exempt transaction certificate for the purpose of establishing an  
12 exemption from the tax imposed by section two hundred eighty-two-a of  
13 this article shall be jointly and severally liable for the tax imposed  
14 by such section. In lieu of an exempt transaction certificate, the  
15 commissioner [of taxation and finance] may provide for the establishment  
16 of such exemption by means of a procedure or other document which he OR  
17 SHE deems appropriate so as to secure the revenues from the excise tax  
18 on Diesel motor fuel. Provided, further, in the case of the exemption  
19 provided by subparagraph (i) of paragraph (b) of subdivision three of  
20 section two hundred eighty-two-a of this article, the commissioner shall  
21 provide for an alternative procedure or other document signed only by  
22 the seller, such as a metered delivery ticket, for the establishment of  
23 such exemption in those cases where such commissioner is satisfied that  
24 the use of such alternative procedure or other document will not jeop-  
25 ardize the revenues from the excise tax on Diesel motor fuel.

26 (b) A claim for the exemption from tax provided for in subparagraph  
27 [(ii) or (viii)] (V) of paragraph (b) of subdivision three of section  
28 two hundred eighty-two-a of this article shall be established by means  
29 of an interdistributor sale certificate. If such exemption is applica-  
30 ble, such certificate shall be provided by the purchaser to the seller  
31 at the time of or prior to delivery of the Diesel motor fuel. Such  
32 certificate shall set forth the name and address of the purchaser, the  
33 purchaser's registration number, an affirmation by such purchaser that  
34 the purchaser is registered as a distributor and that such registration  
35 has not been suspended or cancelled and shall be signed by such purchas-  
36 er and by the seller. Such certificate shall be in such form and contain  
37 such other information as the commissioner [of taxation and finance]  
38 shall require. Where a proper and complete interdistributor sale certif-  
39 icate has been furnished and accepted by the seller in good faith, such  
40 certificate under such circumstance shall relieve the seller of the  
41 burden of proving that the Diesel motor fuel covered by such certificate  
42 is exempt from tax by reason of subparagraph [(ii) or (viii)] (V) of  
43 paragraph (b) of subdivision three of such section two hundred eighty-  
44 two-a. For purposes of this paragraph, a seller shall not have accepted  
45 such certificate in good faith if the purchaser's registration is inval-  
46 id because it has been suspended or cancelled, or if the purchaser is  
47 not registered, and the commissioner [of taxation and finance] has  
48 furnished registered distributors with information identifying all those  
49 persons then validly registered as distributors of Diesel motor fuel and  
50 those persons whose registrations have been suspended or cancelled. Any  
51 purchaser who furnishes to his seller a false or fraudulent interdis-  
52 tributor sale certificate for the purpose of establishing an exemption  
53 from the tax imposed by section two hundred eighty-two-a of this article  
54 shall be jointly and severally liable for the tax imposed by such  
55 section.



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

3 1. Every person who imports or causes to be imported into this state,  
4 or who produces, refines, manufactures or compounds within this state,  
5 or who purchases or sells in this state motor fuel or diesel motor fuel  
6 or ingredients which may be manufactured or compounded into motor fuel  
7 or diesel motor fuel, [or engages in the enhancement of diesel motor  
8 fuel,] shall keep a complete and accurate record of all purchases and  
9 sales, uses or other dispositions thereof and a complete and accurate  
10 record of the number of gallons of motor fuel or diesel motor fuel or  
11 such ingredients so imported, produced, refined, manufactured[, ] OR  
12 compounded [or enhanced]. Every person who stores motor fuel or diesel  
13 motor fuel shall keep a complete and accurate record of the identity of  
14 the person for whom such fuel is stored, the quantity and type of fuel  
15 so stored, the identity of the person to whom such fuel is released from  
16 storage and the quantity and type of fuel so released. Such records  
17 shall be in such form and contain such other information as the commis-  
18 sioner shall prescribe. Said commissioner, by rule or regulation, also  
19 may require the delivery of statements to purchasers with consignments  
20 of motor fuel or diesel motor fuel or such ingredients, and prescribe  
21 the matters to be contained therein. Such records and statements, unless  
22 required by the commissioner to be preserved for a longer period, shall  
23 be preserved for a period of three years and shall be offered for  
24 inspection at any time upon oral or written demand by such commissioner  
25 or the commissioner's duly authorized agents. The commissioner is hereby  
26 further authorized to examine the equipment of any such person pertain-  
27 ing to the storage, sale or delivery of such fuels, as well as the stock  
28 of such fuels in the possession or control of such person. To verify the  
29 amount of tax due under this article, each such person is hereby  
30 directed and required to give to the commissioner or the commissioner's  
31 duly authorized representatives, the means, facilities and opportunity  
32 for such examinations as are herein provided for and required. Nothing  
33 CONTAINED in this section [contained] shall be construed to require the  
34 keeping for purposes of this article of a record of purchases or sales  
35 of motor fuel or diesel motor fuel or such ingredients at retail in  
36 small quantities (less than thirty gallons) or of motor fuel or diesel  
37 motor fuel imported into this state in the tank of a motor vehicle which  
38 supplies the fuel for its operation.

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

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

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

1 S 286-b. Transportation of [automotive] MOTOR FUEL OR DIESEL MOTOR  
2 fuel; manifest required. 1. The master or other person in charge of any  
3 barge, tanker or other vessel in which [automotive] MOTOR FUEL OR DIESEL  
4 MOTOR fuel is being transported over any of the navigable waters of this  
5 state, the operator of a motor vehicle in which [automotive] MOTOR FUEL  
6 OR DIESEL MOTOR fuel is being transported in this state, or the operator  
7 of a pipeline through which [automotive] MOTOR FUEL OR DIESEL MOTOR fuel  
8 is being transported in this state, other than [automotive] MOTOR FUEL  
9 OR DIESEL MOTOR fuel being transported for use in operating the engine  
10 which propels such vessel or motor vehicle, as the case may be, must  
11 have in his OR HER possession a manifest which shows the name and  
12 address of the person from whom such [automotive] fuel was received by  
13 him OR HER and the place of receipt of such fuel and the name and  
14 address of every person to whom he OR SHE is to make delivery of the  
15 same and the place of delivery, together with the number of gallons to  
16 be delivered to each such person, and, if such [automotive] fuel is  
17 being imported into the state in such vessel, motor vehicle or pipeline  
18 for use, storage, distribution or sale in the state, the name of the  
19 distributor importing or causing such fuel to be imported into the state  
20 and such other information as the [tax commission] COMMISSIONER may  
21 require pursuant to rule or regulation, and shall at the request of a  
22 peace officer, acting pursuant to his OR HER special duties, a police  
23 officer, any representative of the department [of taxation and finance]  
24 or any other person authorized by law to inquire into or investigate the  
25 transportation of such [automotive] fuel, produce such manifest for  
26 inspection. The person causing the operation of such vessel, motor vehi-  
27 cle or pipeline shall be responsible to cause the operator of such  
28 vessel, motor vehicle or pipeline to keep in his OR HER possession on  
29 such vessel, in such motor vehicle or in the main control building of  
30 such pipeline in this state the manifest required by this section. The  
31 absence of the manifest required by this section shall give rise to a  
32 presumption that the [automotive] MOTOR FUEL OR DIESEL MOTOR fuel being  
33 transported is intended for sale, use, distribution or storage in this  
34 state and is being imported or caused to be imported by other than a  
35 registered distributor. Moreover, the absence of (1) the place of deliv-  
36 ery of motor fuel OR DIESEL MOTOR FUEL on the manifest with respect to  
37 [automotive] MOTOR FUEL OR DIESEL MOTOR fuel being imported into the  
38 state shall give rise to a presumption that such fuel is being imported  
39 into the state for use, distribution, storage or sale in the state and  
40 (2) the name of a registered distributor on the manifest with respect to  
41 [automotive] MOTOR FUEL OR DIESEL MOTOR fuel being imported into the  
42 state for use, distribution, storage or sale in the state shall give  
43 rise to a presumption that such fuel is being so imported or caused to  
44 be imported by other than a registered distributor. Every barge, tanker  
45 or other vessel so used for the transportation of motor fuel must be  
46 plainly and visibly marked on both sides thereof and above the water  
47 line with the word "Gasoline," or other name of the motor fuel being  
48 transported, in letters at least eight inches high and of corresponding  
49 appropriate width, or must be identified as prescribed by the [tax  
50 commission] COMMISSIONER pursuant to rule or regulation. The master or  
51 person in charge of such barge, tanker or other vessel, as well as the  
52 owners thereof, shall be guilty of a violation of this section if such  
53 barge, tanker or other vessel is not so marked.

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

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

6 S 12. Subdivision 1 of section 287 of the tax law, as amended by chap-  
7 ter 261 of the laws of 1988, is amended to read as follows:

8 1. Every distributor shall, on or before the twentieth day of each  
9 month, file with the department [of taxation and finance] a return, on  
10 forms to be prescribed by the commissioner and furnished by such depart-  
11 ment, stating the number of gallons of motor fuel imported, manufactured  
12 or sold by such distributor in the state during the preceding calendar  
13 month and in the case of Diesel motor fuel, the number of gallons of  
14 [enhanced] Diesel motor fuel imported[, the number of gallons enhanced]  
15 and the number of gallons which have been sold or used. Provided, howev-  
16 er, the commissioner may, if he OR SHE deems it necessary in order to  
17 [insure] ENSURE the payment of the taxes imposed by this article,  
18 require returns to be made at such times and covering such periods as he  
19 OR SHE may deem necessary, and, by regulation, may permit the filing of  
20 returns by distributors of Diesel motor fuel on a quarterly, semi-annual  
21 or annual basis, or may waive the filing of returns by a distributor of  
22 Diesel motor fuel for such time and upon such terms as he OR SHE may  
23 deem proper if satisfied that no tax imposed by this article with  
24 respect to Diesel motor fuel is or will be payable by him OR HER during  
25 the time for which returns are waived. Such returns shall contain such  
26 further information as the commissioner shall require. The fact that a  
27 distributor's name is signed to a filed return shall be prima facie  
28 evidence for all purposes that the return was actually signed by such  
29 distributor. Each such distributor shall, with respect to motor fuel,  
30 pay to the department with the filing of such return, the taxes imposed  
31 by this article on each gallon of motor fuel imported, manufactured or  
32 sold by such distributor in the state, and so reported, during the peri-  
33 od covered by such return. Each distributor shall, with respect to  
34 Diesel motor fuel, pay to the department with the filing of the return  
35 the taxes imposed by this article on the number of gallons of Diesel  
36 motor fuel sold or used or delivered to a filling station or delivered  
37 into the fuel tank of a motor vehicle during the period covered by the  
38 return. Provided, however, that where a distributor has purchased [auto-  
39 motive] MOTOR FUEL OR DIESEL MOTOR fuel upon which the taxes imposed by  
40 this article have been paid or paid over and in each instance the tax is  
41 included in the price, a credit shall be allowed for the amount of such  
42 taxes upon the subsequent sale of such fuel to the extent that such  
43 taxes are so paid and included in the price.

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

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

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

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

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

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

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

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

1 S 289-f. Joint administration of taxes. In addition to the powers  
2 granted to the [tax commission] COMMISSIONER in this chapter, the  
3 [commission] COMMISSIONER is hereby authorized to make provisions pursu-  
4 ant to rules and regulations for the joint administration, in whole or  
5 in part, of the state and local taxes imposed by article twenty-eight  
6 and authorized to be imposed by article twenty-nine of this chapter upon  
7 the sale of [automotive] MOTOR FUEL OR DIESEL MOTOR fuel and the taxes  
8 imposed and authorized to be imposed by this article, including the  
9 joint reporting, assessment, collection, determination and refund of  
10 such taxes, and for that purpose to prescribe that any of the [commis-  
11 sion's] COMMISSIONER'S functions under such articles, and any returns,  
12 forms, statements, documents or information to be submitted to the  
13 [commission] COMMISSIONER under such articles, any books and records to  
14 be kept for purposes of the taxes imposed or authorized to be imposed by  
15 such articles, any schedules of amounts to be collected under such arti-  
16 cles, any registration required under such articles, and the payment of  
17 taxes under such articles shall be on a joint basis with respect to the  
18 taxes imposed by such articles.

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

26 (2) With respect to diesel motor fuel, every corporation and unincor-  
27 porated business (i) importing diesel motor fuel or causing diesel motor  
28 fuel to be imported into the state for use, distribution, storage or  
29 sale in the state, (ii) producing, refining, manufacturing or compound-  
30 ing diesel motor fuel within the state, (iii) [engaging in the enhance-  
31 ment of diesel motor fuel within the state, (iv)] making a sale or use  
32 of diesel motor fuel in the state, other than a retail sale not in bulk  
33 or self-use of diesel motor fuel which has been the subject of a retail  
34 sale to such corporation or unincorporated business, or [(v)] (IV)  
35 registered by the department [of taxation and finance] as a "distributor  
36 of kero-jet fuel only" pursuant to the provisions of subdivision two of  
37 section two hundred eighty-two-a of this chapter. Diesel motor fuel  
38 brought into this state in the ordinary fuel tank connecting with the  
39 engine of a motor vehicle, airplane or other conveyance, but not a  
40 vessel (other than a recreational motor boat or a commercial fishing  
41 vessel as defined in subdivision (j) of this section if the diesel motor  
42 fuel imported into and consumed in this state is used to operate such  
43 vessel while it is engaged in the harvesting of fish for sale),  
44 propelled by the use of such diesel motor fuel and to be used only in  
45 the operation thereof, shall not be deemed imported within the meaning  
46 of this article, if not removed from such tank except as used in the  
47 propulsion of such engine.

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

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

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

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

14 [(2)] (4) As used in this article, references to persons or petroleum  
15 businesses registered under article twelve-A of this chapter as distrib-  
16 utors of diesel motor fuel shall include all such persons or petroleum  
17 businesses registered under such article as distributors of diesel motor  
18 fuel and persons or petroleum businesses operating under valid limited  
19 registrations relating to persons or petroleum businesses making retail  
20 sales of diesel motor fuel to consumers solely for the purposes  
21 described in subparagraph (i) of paragraph (b) of subdivision three of  
22 section two hundred eighty-two-a of this chapter, but such references  
23 shall not include persons and petroleum businesses registered as  
24 "distributors of kero-jet fuel only" pursuant to the provisions of  
25 subdivision two of section two hundred eighty-two-a of this chapter.

26 (k) "Commercial gallonage" means gallonage (1) which is [nonautomo-  
27 tive-type] NON-HIGHWAY diesel motor fuel [(which is not enhanced diesel  
28 motor fuel)] or residual petroleum product, (2) which is included in the  
29 full measure of the [nonautomotive-type] NON-HIGHWAY diesel motor fuel  
30 component or the residual petroleum product component of the tax imposed  
31 under section three hundred one-a of this article, [and] (3) which does  
32 not (and will not) qualify (A) for the utility credit or reimbursement  
33 provided for in section three hundred one-d of this article, (B) as  
34 "manufacturing gallonage", as such term is defined in subdivision (m) of  
35 this section, (C) for the not-for-profit organization exemption provided  
36 for in subdivision (h) of section three hundred one-b of this article,  
37 or (D) for the heating exemption provided for in paragraph two of subdi-  
38 vision (d) of section three hundred one-b of this article or the heating  
39 reimbursement provided for in paragraph two of subdivision (a) of  
40 section three hundred one-c of this article, AND (4) WHICH WILL NOT BE  
41 USED NOR HAS BEEN USED IN THE FUEL TANK CONNECTING WITH THE ENGINE OF A  
42 VESSEL. No gallonage shall qualify as "commercial gallonage" where such  
43 gallonage is eligible for the (i) utility credit or reimbursement under  
44 such section three hundred one-d of this article, (ii) [if before Janu-  
45 ary first, nineteen hundred ninety-eight, the manufacturing exemption or  
46 reimbursement under paragraph one of subdivision (b) of section three  
47 hundred one-j of this article and, if on or after January first, nine-  
48 teen hundred ninety-eight, the] "manufacturing exemption" under para-  
49 graph [four] THREE of subdivision (f) of section three hundred one-a of  
50 this article, (iii) [the] not-for-profit organization exemption under  
51 subdivision (h) of section three hundred one-b of this article, or (iv)  
52 heating exemption provided for in paragraph two of subdivision (d) of  
53 section three hundred one-b of this article or the heating reimbursement  
54 provided for in paragraph two of subdivision (a) of section three  
55 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 (1) The motor fuel component shall be determined by multiplying the  
2 motor fuel and [automotive-type] HIGHWAY diesel motor fuel rate times  
3 the number of gallons of (1) motor fuel imported or caused to be  
4 imported into this state by the petroleum business for use, distrib-  
5 ution, storage or sale in the state or (2) produced, refined, manufac-  
6 tured or compounded in the state by the petroleum business during the  
7 month covered by the return under this article. Provided, however, that  
8 no motor fuel shall be included in the measure of the tax unless it  
9 shall have previously come to rest within the meaning of federal deci-  
10 sional law interpreting the United States constitution, nor shall any  
11 motor fuel be included in the measure of the tax imposed by this article  
12 more than once.

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

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

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



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

6 (e) Motor fuel and [automotive-type] HIGHWAY diesel motor fuel rate.

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

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

22 (3) Commencing on the first day of January, nineteen hundred ninety-  
23 two, the motor fuel and automotive-type diesel motor fuel rate then in  
24 effect on the immediately preceding December thirty-first shall be  
25 adjusted as follows: such rate shall be multiplied by a fraction the  
26 numerator of which is the sum of the monthly producer price index (unad-  
27 justed) published by the bureau of labor statistics of the United States  
28 department of labor for the category of commodities designated "refined  
29 petroleum products" for the twelve consecutive months ending with the  
30 month of August, nineteen hundred ninety-one and the denominator of  
31 which is the sum of the monthly producer price index (unadjusted)  
32 published by the bureau of labor statistics of the United States depart-  
33 ment of labor for the category of commodities designated "refined petro-  
34 leum products" for the twelve consecutive months ending with the month  
35 of August, nineteen hundred ninety. Commencing on the first day of Janu-  
36 ary of nineteen hundred ninety-six and every] EVERY year [thereafter] AS  
37 OF JANUARY FIRST, the motor fuel and [automotive-type] HIGHWAY diesel  
38 motor fuel rate then in effect on the immediately preceding December  
39 thirty-first shall be adjusted as follows: such rate shall be multiplied  
40 by a fraction the numerator of which is the sum of the monthly producer  
41 price index (unadjusted) published by the bureau of labor statistics of  
42 the United States department of labor for the category of commodities  
43 designated "refined petroleum products" for the twelve consecutive  
44 months ending with the month of August of the immediately preceding year  
45 and the denominator of which is the sum of the monthly producer price  
46 index (unadjusted) published by the bureau of labor statistics of the  
47 United States department of labor for the category of commodities desig-  
48 nated "refined petroleum products" for the twelve consecutive months  
49 ending with the month of August in the year prior to such immediately  
50 preceding year, provided, however, that the adjusted rate [to take  
51 effect on January first, nineteen hundred ninety-six and each January  
52 first thereafter] shall not increase above or decrease below the rate in  
53 effect on the immediately preceding December thirty-first by more than  
54 five percent.

55 [(4)] (3) Notwithstanding any other provision of this article,  
56 [commencing January first, nineteen hundred ninety-seven,] the per

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

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

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

14 (2) [Commencing April first, nineteen hundred ninety-one, the nonauto-  
15 motive-type diesel motor fuel rate shall be the product of the basic  
16 rate set forth in paragraph one of this subdivision multiplied by a  
17 fraction the numerator of which is the sum of the monthly producer price  
18 index (unadjusted) published by the bureau of labor statistics of the  
19 United States department of labor for the category of commodities desig-  
20 nated "refined petroleum products" for the twelve consecutive months  
21 ending with the month of November, nineteen hundred ninety, and the  
22 denominator of which is the sum of the monthly producer price index  
23 (unadjusted) published by the bureau of the labor statistics of the  
24 United States department of labor for the category of commodities desig-  
25 nated "refined petroleum products" for the twelve consecutive months  
26 ending with the month of November, nineteen hundred eighty-nine.

27 (3) Commencing on the first day of January, nineteen hundred ninety-  
28 two, the nonautomotive-type diesel motor fuel rate then in effect on the  
29 immediately preceding December thirty-first shall be adjusted as  
30 follows: Such rate shall be multiplied by a fraction the numerator of  
31 which is the sum of the monthly producer price index (unadjusted)  
32 published by the bureau of labor statistics of the United States depart-  
33 ment of labor for the category of commodities designated "refined petro-  
34 leum products" for the twelve consecutive months ending with the month  
35 of August, nineteen hundred ninety-one and the denominator of which is  
36 the sum of the monthly producer price index (unadjusted) published by  
37 the bureau of labor statistics of the United States department of labor  
38 for the category of commodities designated "refined petroleum products"  
39 for the twelve consecutive months ending with the month of August, nine-  
40 teen hundred ninety. Commencing on the first day of January of nineteen  
41 hundred ninety-six and every] EVERY year [thereafter,] AS OF JANUARY  
42 FIRST the [nonautomotive-type] NON-HIGHWAY diesel motor fuel rate then  
43 in effect on the immediately preceding December thirty-first shall be  
44 adjusted as follows: Such rate shall be multiplied by a fraction the  
45 numerator of which is the sum of the monthly producer price index (unad-  
46 justed) published by the bureau of labor statistics of the United States  
47 department of labor for the category of commodities designated "refined  
48 petroleum products" for the twelve consecutive months ending with the  
49 month of August of the immediately preceding year and the denominator of  
50 which is the sum of the monthly producer price index (unadjusted)  
51 published by the bureau of labor statistics of the United States depart-  
52 ment of labor for the category of commodities designated "refined petro-  
53 leum products" for the twelve consecutive months ending with the month  
54 of August in the year prior to such immediately preceding year,  
55 provided, however, that the adjusted rate [to take effect on January  
56 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:

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

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

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

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

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

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

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

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

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

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

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

11 (C)] (B) Calculation of partial exemption. [Notwithstanding any other  
12 provision of this article, commencing April first, two thousand one and  
13 ending August thirty-first, two thousand two, the amount of the partial  
14 exemption under this paragraph shall be determined by multiplying the  
15 quantity of diesel motor fuel and residual petroleum product eligible  
16 for the exemption times the sum of the then current rate of the supple-  
17 mental tax imposed by section three hundred one-j of this article and  
18 twenty percent of the then current rate of the tax imposed by section  
19 three hundred one-a of this article, with respect to the specific diesel  
20 motor fuel or residual petroleum product rate, as the case may be, and  
21 commencing September first, two thousand two, the amount of the] THE  
22 partial exemption under this paragraph shall be determined by multiply-  
23 ing the quantity of NON-HIGHWAY diesel motor fuel and residual petroleum  
24 product eligible for the exemption times the sum of the then current  
25 rate of the supplemental tax imposed by section three hundred one-j of  
26 this article and forty-six percent of the then current rate of the tax  
27 imposed by section three hundred one-a of this article, with respect to  
28 the specific NON-HIGHWAY diesel motor fuel or residual petroleum product  
29 rate, as the case may be.

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

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

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

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

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

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

25 (h) Exemption for certain not-for-profit organizations. There shall be  
26 exempt from the measure of the petroleum business tax imposed by section  
27 three hundred one-a of this article a sale or use of residual petroleum  
28 product, OR NON-HIGHWAY diesel motor fuel [(which is not enhanced diesel  
29 motor fuel) or dyed diesel motor fuel,] to or by an organization which  
30 has qualified under paragraph four or five of subdivision (a) of section  
31 eleven hundred sixteen of this chapter where such NON-HIGHWAY diesel  
32 motor fuel or residual petroleum product is exclusively for use and  
33 consumption by such organization, but only if all of such NON-HIGHWAY  
34 diesel motor fuel or product is consumed other than on the PUBLIC high-  
35 ways of this state. Provided, however, this exemption shall in no event  
36 apply to a sale of NON-HIGHWAY diesel motor fuel which involves a deliv-  
37 ery at a filling station or into a repository which is equipped with a  
38 hose or other apparatus by which such NON-HIGHWAY DIESEL MOTOR fuel can  
39 be dispensed into the fuel tank of a motor vehicle and all deliveries  
40 hereunder shall be made to the premises occupied by the qualifying  
41 organization and used by such organization in furtherance of the exempt  
42 purposes of such organization. Provided, however, that the commissioner  
43 shall require such documentary proof to qualify for any exemption  
44 provided herein as the commissioner deems appropriate. Provided,  
45 further, the distributor selling such NON-HIGHWAY DIESEL MOTOR fuel and  
46 product shall separately report on its return the gallonage sold during  
47 the reporting period exempt from tax under the provisions of this subdi-  
48 vision and provide such other information with respect to such sales as  
49 the commissioner deems appropriate to prevent evasion. [The term "dyed  
50 diesel motor fuel" as used in this subdivision shall have the same mean-  
51 ing it has in subdivision eighteen of section two hundred eighty-two of  
52 this chapter.]

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

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

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

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

15 (a) NON-HIGHWAY Diesel motor fuel used for heating purposes. (1) Total  
16 residential heating reimbursement. NON-HIGHWAY Diesel motor fuel  
17 purchased in this state and sold by such purchaser to a consumer for use  
18 exclusively for residential heating purposes but only where (i) such  
19 NON-HIGHWAY diesel motor fuel is delivered into a storage tank which is  
20 not equipped with a hose or other apparatus by which such NON-HIGHWAY  
21 DIESEL MOTOR fuel can be dispensed into the fuel tank of a motor vehicle  
22 and such storage tank is attached to the heating unit burning such NON-  
23 HIGHWAY DIESEL MOTOR fuel, (ii) the tax imposed pursuant to this article  
24 has been paid with respect to such NON-HIGHWAY diesel motor fuel and the  
25 entire amount of such tax has been absorbed by such purchaser, and (iii)  
26 such purchaser possesses documentary proof satisfactory to the commis-  
27 sioner evidencing the absorption by it of the entire amount of the tax  
28 imposed pursuant to this article. Provided, however, that the commis-  
29 sioner is authorized, in the event that the commissioner determines that  
30 it would not threaten the integrity of the administration and enforce-  
31 ment of the tax imposed by this article, to provide a reimbursement with  
32 respect to a retail sale to a consumer for residential heating purposes  
33 of less than ten gallons of NON-HIGHWAY diesel motor fuel provided such  
34 fuel is not dispensed into the tank of a motor vehicle. [Provided,  
35 further, that with respect to each delivery of enhanced diesel motor  
36 fuel of over four thousand five hundred gallons, to obtain this  
37 reimbursement there shall be required a certificate signed by the  
38 consumer stating that the product will be used exclusively for residen-  
39 tial heating purposes.]

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

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

3 (B) Calculation of partial reimbursement. Notwithstanding any other  
4 provision of this article, [commencing April first, two thousand one and  
5 ending August thirty-first, two thousand two, the amount of the  
6 reimbursement under this paragraph shall be determined by multiplying  
7 the quantity of diesel motor fuel eligible for the reimbursement times  
8 the sum of the then current rate of the supplemental tax imposed by  
9 section three hundred one-j of this article and twenty percent of the  
10 then current rate of the tax imposed by section three hundred one-a of  
11 this article, with respect to the specific diesel motor fuel rate, as  
12 the case may be, and commencing September first, two thousand two,] the  
13 amount of the reimbursement under this paragraph shall be determined by  
14 multiplying the quantity of NON-HIGHWAY diesel motor fuel eligible for  
15 the reimbursement times the sum of the then current rate of the supple-  
16 mental tax imposed by section three hundred one-j of this article and  
17 forty-six percent of the then current rate of the tax imposed by section  
18 three hundred one-a of this article, with respect to the [specific]  
19 NON-HIGHWAY diesel motor fuel rate, as the case may be.

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

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



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

9 (h) A subsequent purchaser which is registered as a distributor of  
10 diesel motor fuel shall be eligible for reimbursement of the tax imposed  
11 by section three hundred one-a of this article with respect to gallonage  
12 of residual petroleum product[,] AND NON-HIGHWAY diesel motor fuel  
13 [(which is not enhanced diesel motor fuel) and dyed diesel motor fuel,]  
14 subsequently sold by such purchaser to an organization which has quali-  
15 fied under paragraph four or five of subdivision (a) of section eleven  
16 hundred sixteen of this chapter for the exclusive use and consumption by  
17 such organization. Provided, however, this exemption shall in no event  
18 apply to a sale of NON-HIGHWAY diesel motor fuel which involves a deliv-  
19 ery at a filling station or into a repository which is equipped with a  
20 hose or other apparatus by which such NON-HIGHWAY DIESEL MOTOR fuel can  
21 be dispensed into the fuel tank of a motor vehicle and all deliveries  
22 hereunder shall be made to the premises occupied by the qualifying  
23 organization and used by such organization in furtherance of the exempt  
24 purposes of such organization. This reimbursement may be claimed only  
25 where (i) the tax imposed pursuant to this article has been paid with  
26 respect to such NON-HIGHWAY diesel motor fuel or residual petroleum  
27 product and the entire amount of such tax has been absorbed by such  
28 purchaser, and (ii) such purchaser possesses documentary proof satisfac-  
29 tory to the commissioner evidencing the absorption by it of the entire  
30 amount of the tax imposed pursuant to this article. Provided, further,  
31 that the commissioner shall require such other documentary proof to  
32 qualify for any reimbursement of tax provided by this section as the  
33 commissioner deems appropriate. [The term "dyed diesel motor fuel" as  
34 used in this subdivision shall have the same meaning it has in subdivi-  
35 sion eighteen of section two hundred eighty-two of this chapter.]

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (c) Kero-jet fuel component. The kero-jet fuel component shall be  
37 determined by multiplying the kero-jet fuel rate times the number of  
38 gallons of (1) kero-jet fuel imported or caused to be imported into this  
39 state by an aviation fuel business and consumed in this state by such  
40 business in the operation of its aircraft; and (2) kero-jet fuel, which  
41 has not been previously included in the measure of the tax imposed by  
42 this section, (i) which is sold in this state by an aviation fuel busi-  
43 ness to persons other than those registered under this article as  
44 aviation fuel businesses or (ii) which is consumed in this state by an  
45 aviation fuel business in the operation of its aircraft. Provided that  
46 importation of kero-jet fuel in the fuel tanks of aircraft shall be  
47 importation for the purposes of this section. The basic kero-jet fuel  
48 rate shall be [one and nine-tenths] SIX AND EIGHT-TENTHS cents per  
49 gallon. The rate shall be adjusted at the same time as the rates of the  
50 components of the petroleum business tax imposed by section three  
51 hundred one-a of this article, and the method of making adjustments to  
52 the kero-jet fuel rate shall be the same as the method used for such  
53 rates. [Provided, however, that commencing July first, nineteen hundred  
54 ninety-one, the kero-jet fuel rate shall be equal to the motor fuel and  
55 automotive-type diesel motor fuel rate set by subdivision (e) of section  
56 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

1 paragraph one of this subdivision, as adjusted in accordance with para-  
2 graph five of this subdivision which commences on such date and  
3 subtracting therefrom three-quarters of one cent. On April first, nine-  
4 teen hundred ninety-nine, there shall be a new rate applicable to such  
5 fuel which shall be such adjusted rate of tax per gallon under such  
6 paragraph one of this subdivision, as adjusted in accordance with para-  
7 graph five of this subdivision then in effect, minus] one and three-  
8 quarters cents. Commencing January first, two thousand TWELVE, and each  
9 January thereafter, the per gallon rate applicable to [automotive-type]  
10 HIGHWAY diesel motor fuel shall be the adjusted rate under paragraph one  
11 of this subdivision as adjusted in accordance with paragraph five of  
12 this subdivision which commences on such date minus one and three-quar-  
13 ters cents. The resulting rate under this paragraph shall be expressed  
14 in hundredths of a cent.

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

22 S 30. The opening paragraph and subdivisions (a) and (c) of section  
23 301-1 of the tax law, as added by chapter 170 of the laws of 1994, are  
24 amended to read as follows:

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

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

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

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

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

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

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

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

1 deposited in such mass transportation operating assistance fund pursuant  
2 to this section during the twelve-month period from April first, nine-  
3 teen hundred eighty-four to and including March thirty-first, nineteen  
4 hundred eighty-five shall not be less than an amount which, when added  
5 to the actual amount that is deposited in such fund during such twelve-  
6 month period and that is attributable to the taxes, interest and penal-  
7 ties collected and received under section one hundred eighty-two-a of  
8 this chapter, yields the sum of seventy-nine million five hundred thou-  
9 sand dollars and provided further that of such actual amounts deposited  
10 in such fund pursuant to this section and to section one hundred eight-  
11 y-two-a of this chapter during the twelve-month period from April first,  
12 nineteen hundred eighty-five to March thirty-first, nineteen hundred  
13 eighty-six and during the twelve-month period from April first, nineteen  
14 hundred eighty-six to March thirty-first, nineteen hundred eighty-seven,  
15 the amount which shall be deposited to the credit of the public trans-  
16 portation systems operating assistance account thereof during each such  
17 period shall be not less than thirty-six million dollars. Provided  
18 further that if the total amount deposited in the mass transportation  
19 operating assistance fund during the twelve month period commencing  
20 April first, nineteen hundred eighty-five pursuant to this section and  
21 to section one hundred eighty-two-a of this chapter is less than eighty  
22 million dollars, the comptroller shall deposit to the credit of the  
23 metropolitan mass transportation operating assistance account on or  
24 after April first, nineteen hundred eighty-six and on or before June  
25 thirtieth, nineteen hundred eighty-six from any taxes, interest, and  
26 penalties collected or received by the commissioner of taxation and  
27 finance under this article in addition to amounts which would otherwise  
28 be deposited to the credit of the mass transportation operating assist-  
29 ance fund, an amount equal to the difference between eighty million  
30 dollars and the amounts actually deposited in the mass transportation  
31 operating assistance fund during such twelve-month period pursuant to  
32 this section and to section one hundred eighty-two-a of this chapter.  
33 Provided further that if the total amount deposited in the mass trans-  
34 portation operating assistance fund during the twelve month period  
35 commencing April first, nineteen hundred eighty-six pursuant to this  
36 section and to section one hundred eighty-two-a of this chapter, exclu-  
37 sive of the amount deposited in such fund to the credit of the metropol-  
38 itan mass transportation operating assistance account on or after April  
39 first, nineteen hundred eighty-six and on or before June thirtieth,  
40 nineteen hundred eighty-six pursuant to the preceding sentence, is less  
41 than eighty million dollars, the comptroller shall deposit to the credit  
42 of the metropolitan mass transportation operating assistance account on  
43 or after April first, nineteen hundred eighty-seven and on or before  
44 June thirtieth, nineteen hundred eighty-seven from any taxes, interest,  
45 and penalties collected or received by the commissioner of taxation and  
46 finance under this article in addition to amounts which would otherwise  
47 be deposited to the credit of the mass transportation operating assist-  
48 ance fund, an amount equal to the difference between eighty million  
49 dollars and the amounts actually deposited in the mass transportation  
50 operating assistance fund during such twelve-month period pursuant to  
51 this section and to section one hundred eighty-two-a of this chapter,  
52 exclusive of the amount deposited in such fund to the credit of the  
53 metropolitan mass transportation operating assistance account on or  
54 after April first, nineteen hundred eighty-six and on or before June  
55 thirtieth, nineteen hundred eighty-six pursuant to the preceding  
56 sentence. Provided, further, however, with respect to all taxes, and

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

15 (b) Of all of the taxes collected or received by the commissioner on  
16 or before March thirty-first, nineteen hundred ninety-one under the  
17 taxes imposed by sections three hundred one-a and three hundred one-e of  
18 this article, and all interest and penalties relating thereto, eighty-  
19 seven and five-hundredths percent of such collections shall be deposited  
20 and disposed of pursuant to the provisions of section one hundred seven-  
21 ty-one-a of this chapter and the balance thereof shall be deposited in  
22 the mass transportation operating assistance fund to the credit of the  
23 metropolitan mass transportation operating assistance account and the  
24 public transportation systems operating assistance account thereof in  
25 the manner provided by subdivision eleven of section one hundred eight-  
26 y-two-a of this chapter. Of all taxes, interest and penalties collected  
27 or received after March thirty-first, nineteen hundred ninety-one, and  
28 before April first, nineteen hundred ninety-three, from the taxes  
29 imposed by sections three hundred one-a and three hundred one-e of this  
30 article, initially thirty-five percent shall be deposited and disposed  
31 of pursuant to such section one hundred seventy-one-a. The balance ther-  
32 eof shall then be disposed of as follows: seventy-two and seven-tenths  
33 percent shall be deposited and disposed of pursuant to such section one  
34 hundred seventy-one-a and twenty-seven and three-tenths percent shall be  
35 deposited in such mass transportation operating assistance fund as  
36 prescribed in the aforestated manner. Except as otherwise provided, of  
37 all taxes, interest and penalties collected or received after March  
38 thirty-first, nineteen hundred ninety-three, and before April first,  
39 nineteen hundred ninety-four, from the taxes imposed by sections three  
40 hundred one-a and three hundred one-e of this article, (i) initially  
41 fifty-four percent shall be deposited, as prescribed by subdivision (d)  
42 of section three hundred one-j of this chapter, (ii) twenty-eight and  
43 three-tenths percent shall be deposited and disposed of pursuant to such  
44 section one hundred seventy-one-a of this chapter in the general fund  
45 and (iii) seventeen and seven-tenths percent shall be deposited in such  
46 mass transportation operating assistance fund as prescribed in the  
47 aforestated manner. Provided, however, that, prior to such deposit, from  
48 the amounts so collected or received during the period commencing on  
49 January first, nineteen hundred ninety-four and ending on March thirty-  
50 first, nineteen hundred ninety-four, an amount equal to the portion of  
51 the taxes, interest and penalties so received or collected resulting  
52 from the amendments made by sections forty-two, forty-three and forty-  
53 four of chapter fifty-seven of the laws of nineteen hundred ninety-three  
54 shall be deposited and disposed of pursuant to the provisions of subdi-  
55 vision one of section one hundred seventy-one-a of this chapter. Except  
56 as otherwise provided, of all taxes, interest and penalties collected or



1 received on or after April first, nineteen hundred ninety-four, from the  
2 taxes imposed by sections three hundred one-a and three hundred one-e of  
3 this article, (i) initially fifty-four percent shall be deposited, as  
4 prescribed by subdivision (d) of section three hundred one-j of this  
5 article, (ii) twenty-eight and three-tenths percent shall be deposited  
6 and disposed of pursuant to such section one hundred seventy-one-a of  
7 this chapter in the general fund, (iii) seven and nine hundred sixty-  
8 five thousandths percent shall be deposited in such mass transportation  
9 operating assistance fund as prescribed in the aforestated manner and  
10 (iv) nine and seven hundred thirty-five thousandths percent shall be  
11 deposited in the revenue accumulation fund. Except as otherwise  
12 provided, of all taxes, interest and penalties collected or received on  
13 or after September first, nineteen hundred ninety-four and before  
14 September first, nineteen hundred ninety-five, from the taxes imposed by  
15 sections three hundred one-a and three hundred one-e of this article,  
16 (i) initially fifty-nine percent shall be deposited, as prescribed by  
17 subdivision (d) of section three hundred one-j of this article, (ii)  
18 twenty-two and four-tenths percent shall be deposited and disposed of  
19 pursuant to such section one hundred seventy-one-a of this chapter in  
20 the general fund, (iii) eight and three hundred seventy thousandths  
21 percent shall be deposited in such mass transportation operating assist-  
22 ance fund as prescribed in the aforestated manner and (iv) ten and two  
23 hundred thirty thousandths percent shall be deposited in the revenue  
24 accumulation fund. Except as otherwise provided, of all taxes, interest  
25 and penalties, collected or received on or after September first, nine-  
26 teen hundred ninety-five and before April first, nineteen hundred nine-  
27 ty-six from the taxes imposed by sections three hundred one-a and three  
28 hundred one-e of this article, (i) initially sixty-two and eight-tenths  
29 percent shall be deposited as prescribed by subdivision (d) of section  
30 three hundred one-j of this article, (ii) eighteen percent shall be  
31 deposited and disposed of pursuant to section one hundred seventy-one-a  
32 of this chapter in the general fund, (iii) eight and six hundred forty  
33 thousandths percent shall be deposited in such mass transportation oper-  
34 ating assistance fund as prescribed in the aforestated manner and (iv)  
35 ten and five hundred sixty thousandths percent shall be deposited in the  
36 revenue accumulation fund. Except as otherwise provided, of all taxes,  
37 interest and penalties collected or received on or after April first,  
38 nineteen hundred ninety-six, and before January first, nineteen hundred  
39 ninety-seven from the taxes imposed by sections three hundred one-a and  
40 three hundred one-e of this article, (i) initially sixty-three and  
41 three-tenths percent shall be deposited, as prescribed by subdivision  
42 (d) of section three hundred one-j of this article, (ii) seventeen and  
43 four-tenths percent shall be deposited and disposed of pursuant to such  
44 section one hundred seventy-one-a of this chapter in the general fund  
45 and (iii) nineteen and three-tenths percent shall be deposited in such  
46 mass transportation operating assistance fund as prescribed in the  
47 aforestated manner. Except as otherwise provided, of all taxes, inter-  
48 est and penalties collected or received on or after January first, nine-  
49 teen hundred ninety-seven and before January first, nineteen hundred  
50 ninety-eight from the taxes imposed by sections three hundred one-a and  
51 three hundred one-e of this article, (i) initially sixty-six and two-  
52 tenths percent shall be deposited, as prescribed by subdivision (d) of  
53 section three hundred one-j of this article, (ii) fourteen and one-half  
54 percent shall be deposited and disposed of pursuant to such section one  
55 hundred seventy-one-a of this chapter in the general fund and (iii)  
56 nineteen and three-tenths percent shall be deposited in such mass trans-

1 portation operating assistance fund as prescribed in the aforesated  
2 manner. Except as otherwise provided, of all taxes, interest and penal-  
3 ties collected or received on or after January first, nineteen hundred  
4 ninety-eight and before April first, nineteen hundred ninety-nine from  
5 the taxes imposed by sections three hundred one-a and three hundred  
6 one-e of this article, (i) initially sixty-eight and one-tenth percent  
7 shall be deposited, as prescribed by subdivision (d) of section three  
8 hundred one-j of this article, (ii) twelve and four-tenths percent shall  
9 be deposited and disposed of pursuant to such section one hundred seven-  
10 ty-one-a of this chapter in the general fund and (iii) nineteen and  
11 one-half percent shall be deposited in such mass transportation operat-  
12 ing assistance fund as prescribed in the aforesated manner. Except as  
13 otherwise provided, of all taxes, interest and penalties collected or  
14 received on or after April first, nineteen hundred ninety-nine, from the  
15 taxes imposed by sections three hundred one-a and three hundred one-e of  
16 this article, (i) initially sixty-nine and eight-tenths percent shall be  
17 deposited, as prescribed by subdivision (d) of section three hundred  
18 one-j of this article, (ii) ten and seven-tenths percent shall be depos-  
19 ited and disposed of pursuant to such section one hundred seventy-one-a  
20 of this chapter in the general fund and (iii) nineteen and one-half  
21 percent shall be deposited in such mass transportation operating assist-  
22 ance fund as prescribed in the aforesated manner.] Except as otherwise  
23 provided, of all taxes, interest and penalties collected or received on  
24 or after April first, two thousand one, from the taxes imposed by  
25 sections three hundred one-a and three hundred one-e of this article,  
26 (i) initially eighty and three-tenths percent shall be deposited, as  
27 prescribed by subdivision (d) of section three hundred one-j of this  
28 article and (ii) nineteen and seven-tenths percent shall be deposited in  
29 such mass transportation operating assistance fund [as prescribed in the  
30 aforesated manner] TO THE CREDIT OF THE METROPOLITAN MASS TRANSPORTA-  
31 TION OPERATING ASSISTANCE ACCOUNT AND THE PUBLIC TRANSPORTATION SYSTEMS  
32 OPERATING ASSISTANCE ACCOUNT THEREOF IN THE MANNER PROVIDED BY SUBDIVI-  
33 SION ELEVEN OF SECTION ONE HUNDRED EIGHTY-TWO-A OF THIS CHAPTER.  
34 [Provided, further, that on or before the twenty-fifth day of each month  
35 commencing with October, nineteen hundred ninety and terminating with  
36 the month of March, two thousand one, the comptroller shall deduct the  
37 amount of six hundred twenty-five thousand dollars prior to any deposit  
38 or disposition of the taxes, interest and penalties collected or  
39 received pursuant to such sections three hundred one-a and three hundred  
40 one-e and shall pay such amount to the state treasury to the credit of  
41 the general fund.] Provided, further that on or before the twenty-fifth  
42 day of each month commencing with April, two thousand one, the comp-  
43 troller shall deduct the amount of six hundred twenty-five thousand  
44 dollars prior to any deposit or disposition of the taxes, interest, and  
45 penalties collected or received pursuant to such sections three hundred  
46 one-a and three hundred one-e and shall deposit such amount in the dedi-  
47 cated fund accounts pursuant to subdivision (d) of section three hundred  
48 one-j of this article. Provided, further, that commencing January  
49 fifteenth, nineteen hundred ninety-one, and on or before the tenth day  
50 of March and the fifteenth day of June and September of such year, the  
51 commissioner shall, based on information supplied by taxpayers and other  
52 appropriate sources, estimate the amount of the utility credit author-  
53 ized by section three hundred one-d of this article which has been  
54 accrued to reduce tax liability under section one hundred eighty-six-a  
55 of this chapter during the period covered by such estimate and certify  
56 to the state comptroller such estimated amount. The comptroller shall

1 forthwith, after receiving such certificate, deduct the amount of such  
2 credit so certified by the commissioner prior to any deposit or disposi-  
3 tion of the taxes, interest and penalties collected or received pursuant  
4 to such sections three hundred one-a and three hundred one-e and shall  
5 pay such amount so certified and deducted into the state treasury to the  
6 credit of the general fund. [As soon as practicable after April first,  
7 nineteen hundred ninety-one, nineteen hundred ninety-two and nineteen  
8 hundred ninety-three, but before June fifteenth of each such year, the  
9 commissioner shall determine the amount of the utility tax credit which  
10 has been actually used to reduce tax liability under such section one  
11 hundred eighty-six-a and shall certify the difference between such actu-  
12 al amount and the earlier estimated amount.] Also, subsequently, during  
13 the fiscal year when the commissioner becomes aware of changes or  
14 modifications with respect to actual credit usage, the commissioner  
15 shall, as soon as practicable, issue a certification setting forth the  
16 amount of any required adjustment to the amount of actual credit usage  
17 previously certified. After receiving the certificate of the commission-  
18 er with respect to actual credit usage or modification of the same, the  
19 comptroller shall forthwith adjust general fund receipts and the reven-  
20 ues to be deposited or disposed of under this article to reflect the  
21 difference so certified by the commissioner. The commissioner shall not  
22 be liable for any overestimate or underestimate of the amount of the  
23 utility credit which has been accrued to reduce tax liability under such  
24 section one hundred eighty-six-a. Nor shall the commissioner be liable  
25 for any inaccuracy in any certificate with respect to the amount of such  
26 credit actually used or any required adjustment with respect to actual  
27 credit usage, but the commissioner shall as soon as practicable after  
28 discovery of any error adjust the next certification under this section  
29 to reflect any such error.

30 [On or before July thirty-first, nineteen hundred ninety-two and on or  
31 before July thirty-first, nineteen hundred ninety-three, the commission-  
32 er shall conduct the following reconciliation with respect to the  
33 preceding fiscal year: he shall multiply the total of all taxes, penal-  
34 ties and interest, after refunds and reimbursements, which are derived  
35 from the motor fuel component, the automotive-type diesel motor fuel  
36 component and the aviation gasoline component by twenty fifty-fifths;  
37 the total of all taxes, penalties and interest, after refunds and  
38 reimbursements, which are derived from the nonautomotive-type diesel  
39 motor fuel component (excluding taxes, penalties and interest which are  
40 derived from product with respect to which the credit or reimbursement  
41 provided by section three hundred one-d is taken) by twenty-fiftieths;  
42 and all taxes, penalties and interest, after refunds and reimbursements,  
43 which are derived from the residual petroleum product component (exclud-  
44 ing taxes, penalties and interest which are derived from product with  
45 respect to which the credit or reimbursement provided by section three  
46 hundred one-d is taken) by twenty-fortieths. The products of the forego-  
47 ing multiplications shall be added together and the resulting sum of  
48 such products shall be compared with the total of the amounts initially  
49 distributed during such fiscal year with respect to such components  
50 (excluding receipts derived from product with respect to which the cred-  
51 it or reimbursement provided by section three hundred one-d is taken and  
52 excluding any amount which represents a reconciliation adjustment pursu-  
53 ant to this paragraph) pursuant to section one hundred seventy-one-a of  
54 this chapter which represented thirty-five percent of the total, after  
55 refunds and reimbursements, of all taxes, penalties and interest  
56 collected or received during such fiscal year under sections three

1 hundred one-a and three hundred one-e during the months of such fiscal  
2 year with respect to such components. The commissioner shall then certi-  
3 fy the amount of such difference to the comptroller. If the amounts  
4 initially distributed in such fiscal year are greater than the sum of  
5 such products, the comptroller shall withhold an amount equal to twen-  
6 ty-seven and three-tenths percent of such difference from the first  
7 moneys otherwise payable to the general fund pursuant to this subdivi-  
8 sion and shall pay such amount to the mass transportation operating  
9 assistance fund to the credit of the metropolitan mass transportation  
10 operating assistance account and the public transportation systems oper-  
11 ating assistance account thereof in the aforestated manner. If the  
12 amounts initially distributed in such fiscal year are less than the sum  
13 of such products, the comptroller shall withhold an amount equal to  
14 twenty-seven and three-tenths percent of such difference from the first  
15 moneys otherwise payable to the mass transportation operating assistance  
16 fund pursuant to this subdivision and shall pay such amount to the  
17 general fund.

18 When the commissioner becomes aware of changes or modifications with  
19 respect to the distribution of revenue under this article, the commis-  
20 sioner shall, as soon as practicable, issue a certification setting  
21 forth the amount of any required adjustment. After receiving the certif-  
22 icate of the commissioner with respect to any adjustments, the comp-  
23 troller shall forthwith adjust general fund receipts and the revenues to  
24 be deposited or disposed of under this article to reflect the difference  
25 so certified by the commissioner. The commissioner shall not be liable  
26 for any overestimate or underestimate of the amount of the distribution.  
27 Nor shall the commissioner be liable for any inaccuracy in any certif-  
28 icate with respect to the amount of the distribution or any required  
29 adjustment with respect to the distribution, but the commissioner shall  
30 as soon as practicable after discovery of any error adjust the next  
31 certification under this section to reflect any such error.] Prior to  
32 making deposits as provided in this [subdivision] SECTION, the comp-  
33 troller shall retain such amount as the commissioner may determine to be  
34 necessary, subject to the approval of the director of the budget, for  
35 reasonable costs of the department in administering and collecting the  
36 taxes deposited pursuant to this [subdivision] SECTION and for refunds  
37 and reimbursements with respect to such taxes, out of which the comp-  
38 troller shall pay any refunds or reimbursements of such taxes to which  
39 taxpayers shall be entitled.

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

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

1 of taxes under such articles, shall be on a joint basis with respect to  
2 the taxes imposed by or pursuant to such articles. Provided, notwith-  
3 standing any provision of this article to the contrary, in the further-  
4 ance of joint administration, the provisions of subdivision one of  
5 section two hundred eighty-five-a and subdivision one of section two  
6 hundred eighty-nine-c of this chapter shall apply to the taxes imposed  
7 under this article with the same force and effect as if those provisions  
8 specifically referred to the taxes imposed hereunder and all the  
9 products with respect to which the taxes are imposed under this article.  
10 Provided, further, a reimbursement (or credit) of taxes imposed under  
11 this article shall be available to subsequent purchasers of motor fuel,  
12 diesel motor fuel or residual petroleum product under the circumstances  
13 specified in subdivision eight of section two hundred eighty-nine-c of  
14 this chapter with respect to the export of such products. In addition,  
15 all the provisions of subdivision one of section two hundred eighty-six  
16 of this chapter shall be applicable to all of the products included in  
17 the measure of the tax imposed by this article and the powers of the  
18 commissioner in administering the tax imposed by this article shall  
19 include these set forth in such subdivision. Moreover, the commis-  
20 sioner, in order to preserve the revenue from the tax imposed by this arti-  
21 cle, shall, by regulation, require that the movement of residual petro-  
22 leum product into or in this state be accompanied by a tracking  
23 document. [Such manifest or other tracking document shall be prescribed  
24 only after consultation with the state motor fuels taxation advisory  
25 council (created by section forty-one of chapter forty-four of the laws  
26 of nineteen hundred eighty-five) as to its form and content and as to  
27 whether an existing industry document (or a modified version thereof)  
28 may adequately serve the tracking purpose so that such existing industry  
29 document may be prescribed as the tracking document.] Also, the commis-  
30 sioner may require (i) that any returns, forms, statements or other  
31 document with respect to motor fuel or diesel motor fuel required of  
32 transporters or terminal operators under such article twelve-A of this  
33 chapter apply with the same force and effect to persons transporting or  
34 storing residual petroleum product, (ii) a certification that particular  
35 gallonage of motor fuel, diesel motor fuel or residual petroleum product  
36 has been included in the measure of the tax imposed by this article and  
37 such tax has been paid, and (iii) that the certification required pursu-  
38 ant to section two hundred eighty-five-a or two hundred eighty-five-b of  
39 this chapter be expanded to include the tax imposed by this article.

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

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

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

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

1 requirements, audit procedures, exchange of information, persons eligi-  
2 ble for tax licensing, defining qualified motor vehicles, determining if  
3 bonding is required and requiring bonds to secure the tax imposed by  
4 this article and similar taxes imposed by other member jurisdictions,  
5 specifying reporting requirements and periods including defining uniform  
6 penalty and interest rates for late reporting, determining methods for  
7 collecting and forwarding of taxes, interest and penalties to another  
8 jurisdiction, notice and timing of hearings and other provisions as will  
9 facilitate the administration of the agreement. The commissioner may,  
10 pursuant to the terms of the agreement, forward to the proper officers  
11 of another member jurisdiction any information in the commissioner's  
12 possession relating to the manufacture, receipt, sale, use, transporta-  
13 tion or shipment of [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL by  
14 any person and may share any information relating to the administration  
15 of taxes pursuant to the agreement with such officers. The commissioner  
16 may disclose to the proper officers of another member jurisdiction the  
17 location of offices, motor vehicles and other real and personal property  
18 of carriers. The agreement may provide for each member jurisdiction to  
19 audit the records of persons based in the member jurisdiction and deter-  
20 mine taxes due each member jurisdiction. The commissioner may adopt  
21 rules and regulations for the administration and enforcement of the  
22 agreement. In connection with the administration of taxes under such a  
23 cooperative agreement, the commissioner may enter into an agreement with  
24 other member jurisdictions and any banks, banking houses, trust compa-  
25 nies or other similar institutions with respect to the payment of any  
26 tax, fees, penalty or interest to such banks, banking houses, trust  
27 companies or similar institutions and the filing of returns and reports  
28 with such banks, banking houses, trust companies or similar institutions  
29 as agent of the commissioner and such other member jurisdictions. Pursu-  
30 ant to a written agreement made with one or more of the appropriate  
31 departments, agencies, officers or instrumentalities of other jurisdic-  
32 tions, the commissioner may let contracts for provision of such services  
33 to the department and to one or more of such entities of other jurisdic-  
34 tions; provided, that provisions shall be made in all such agreements  
35 with the participating governmental entities and in all such contracts  
36 let by the commissioner for the assumption by each of the participating  
37 governmental entities of sole responsibility for its proportionate share  
38 of the costs under the terms of such contract. The commissioner may  
39 contract for such services jointly with and pursuant to a contract let  
40 by the appropriate department, agency, officer or instrumentality of  
41 another jurisdiction; provided that (1) the commissioner shall approve  
42 the proposed terms and conditions of all such joint governmental  
43 contracts, (2) the letting of such joint governmental contract shall be  
44 based on invitation of competitive bids or proposals, and (3) the  
45 participation by the department in any such joint contract shall be  
46 preceded by an evaluation and finding in writing by the commissioner  
47 that a reasonable potential exists for the saving of costs by the state,  
48 by means of such joint governmental contract.

49 S 36. The opening paragraph of subparagraph (ii) of paragraph 4 of  
50 subdivision (b) of section 1101 of the tax law, as amended by chapter  
51 261 of the laws of 1988, is amended to read as follows:

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

1 of this article relating to motor fuel or diesel motor fuel specifically  
2 provides otherwise and except in the case of a sale or use subject to  
3 tax under section eleven hundred five or eleven hundred ten, respective-  
4 ly, of this article. Provided, however, except for such requirement of  
5 prepayment of tax required by section eleven hundred two of this arti-  
6 cle, the provisions of this subparagraph shall not otherwise modify the  
7 meaning of the term "retail sale" as used in this article. For purposes  
8 of this subparagraph and sections eleven hundred two, eleven hundred  
9 eleven, eleven hundred twenty, eleven hundred thirty-two, eleven hundred  
10 thirty-four, eleven hundred thirty-five, eleven hundred thirty-six,  
11 ELEVEN HUNDRED FORTY-TWO, ELEVEN HUNDRED FORTY-FIVE and eighteen hundred  
12 seventeen of this chapter, the following terms shall have the following  
13 meanings:

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

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

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

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

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

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

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

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

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

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

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



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

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

9 (j) The exemptions provided in this section shall not apply to the tax  
10 required to be prepaid pursuant to the provisions of section eleven  
11 hundred two of this article nor to the taxes imposed by sections eleven  
12 hundred five and eleven hundred ten of this article with respect to  
13 receipts from sales and uses of motor fuel or diesel motor fuel, except  
14 that the exemptions provided in paragraphs nine and forty-two of subdi-  
15 vision (a) of this section shall apply to the tax required to be prepaid  
16 pursuant to the provisions of section eleven hundred two of this article  
17 and to the taxes imposed by sections eleven hundred five and eleven  
18 hundred ten of this article with respect to sales and uses of kero-jet  
19 fuel, CNG, hydrogen and E85, provided, however, the exemption allowed  
20 for E85 shall be subject to the additional requirements provided in  
21 section eleven hundred two of this article with respect to E85. The  
22 exemption provided in subdivision (c) of this section shall apply to  
23 sales and uses of NON-HIGHWAY diesel motor fuel [which is not enhanced  
24 diesel motor fuel] but only if all of such fuel is consumed other than  
25 on the PUBLIC highways of this state[, provided, however, this exemption  
26 shall in no event apply to a sale of diesel motor fuel which involves a  
27 delivery at a filling station or into a repository which is equipped  
28 with a hose or other apparatus by which such fuel can be dispensed into  
29 the fuel tank of a motor vehicle]. The exemption provided in subdivision  
30 (c) of this section shall apply to sales and uses of [no more than four  
31 thousand five hundred gallons of] NON-HIGHWAY diesel motor fuel [in a  
32 thirty-day period] for use or consumption either in the production for  
33 sale of tangible personal property by farming or in a commercial horse  
34 boarding operation, or in both but only if all of such fuel is consumed  
35 other than on the PUBLIC highways of this state (except for the use of  
36 the PUBLIC highways to reach adjacent farmlands or adjacent lands used  
37 in a commercial horse boarding operation, or both)[, provided, however,  
38 such exemption shall be applicable to the sale or use of more than four  
39 thousand five hundred gallons of diesel motor fuel in a thirty-day peri-  
40 od for such use or consumption in accordance with a prior clearance  
41 given by the commissioner].

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

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

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

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

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

36 S 43. Subparagraph (i) of paragraph 3 of subdivision (h) of section  
37 1132 of the tax law, as amended by chapter 261 of the laws of 1988, is  
38 amended to read as follows:

39 (i) For the purpose of the proper administration of this article and  
40 to prevent evasion of the tax hereby imposed, it shall be presumed that  
41 all retail sales of motor fuel or diesel motor fuel are subject to the  
42 tax required to be collected by subdivision (a) of section eleven  
43 hundred five of this article or paid by the provisions of section eleven  
44 hundred ten of this article until the contrary is established, and it  
45 shall be presumed that all motor fuel or diesel motor fuel imported,  
46 manufactured, [subjected to enhancement,] sold, received or possessed by  
47 any person in this state, which such person cannot otherwise account for  
48 as having been sold subject to the tax required to be collected by  
49 subdivision (a) of section eleven hundred five or paid by the provisions  
50 of section eleven hundred ten of this article, has been sold subject to  
51 the tax required to be collected by subdivision (a) of section eleven  
52 hundred five or paid by the provisions of section eleven hundred ten  
53 except that no such presumption shall apply with respect to motor fuel  
54 or diesel motor fuel in the fuel tank of a motor vehicle used to propel  
55 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-

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

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

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

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

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

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

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

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

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

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

20 S 48. Subparagraph (i) of paragraph 3 of subdivision (a) of section  
21 1145 of the tax law, as amended by chapter 2 of the laws of 1995, is  
22 amended to read as follows:

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

35 S 49. Subparagraph (i) of paragraph 3 of subdivision (a) of section  
36 1210 of the tax law, as amended by section 2 of part B of chapter 35 of  
37 the laws of 2006, is amended to read as follows:

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

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

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

16 (c) Any owner of a filling station who shall willfully and knowingly  
17 have in his OR HER custody, possession or under his OR HER control any  
18 motor fuel or Diesel motor fuel [on which] (1) ON WHICH the taxes  
19 imposed by or pursuant to the authority of such article have not been  
20 assumed or paid by a distributor registered as such under such article  
21 [or], (2) ON WHICH the taxes imposed by or pursuant to the authority of  
22 such article have not been included in the cost to him OR HER of such  
23 fuel where such taxes were required to have been passed through to him  
24 OR HER and included in the cost to him OR HER of such fuel, OR (3)  
25 WHICH IS DYED DIESEL MOTOR FUEL AS DEFINED BY SUBDIVISION EIGHTEEN-A OF  
26 SECTION TWO HUNDRED EIGHTY-TWO OF THIS CHAPTER (EXCEPT FOR WATER-WHITE  
27 KEROSENE), shall [in either case,] be guilty of a class E felony. For  
28 purposes of this subdivision, such owner shall willfully and knowingly  
29 have in his OR HER custody, possession or under his OR HER control any  
30 motor fuel or Diesel motor fuel on which such taxes have not been  
31 assumed or paid by a distributor registered as such where such owner has  
32 knowledge of the requirement that such taxes be paid and where, to his  
33 OR HER knowledge, such taxes have not been assumed or paid by a regis-  
34 tered distributor on such motor fuel or Diesel motor fuel. Such owner  
35 shall willfully and knowingly have in his OR HER custody, possession or  
36 under his OR HER control any motor fuel or Diesel motor fuel on which  
37 such taxes are required to have been passed through to him OR HER and  
38 have not been included in his OR HER cost where such owner has knowledge  
39 of the requirement that such taxes be passed through and where to his  
40 knowledge such taxes have not been so included. SUCH OWNER SHALL WILL-  
41 FULLY AND KNOWINGLY HAVE IN HIS OR HER CUSTODY, POSSESSION OR UNDER HIS  
42 OR HER CONTROL ANY DYED DIESEL MOTOR FUEL (EXCEPT WATER-WHITE KEROSENE)  
43 WHERE SUCH OWNER HAS KNOWLEDGE OF THE REQUIREMENT THAT DYED DIESEL MOTOR  
44 FUEL (EXCEPT WATER-WHITE KEROSENE) MAY NOT BE IN HIS OR HER CUSTODY,  
45 POSSESSION OR UNDER HIS OR HER CONTROL.

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

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

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

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

9 (b) Any person whose registration under article twelve-A of this chap-  
10 ter applies only to the importation, sale and distribution of Diesel  
11 motor fuel for [the purposes] USE OTHER THAN ON A PUBLIC HIGHWAY AS  
12 described in subparagraph (i) of paragraph (b) of subdivision three of  
13 section two hundred eighty-two-a of this chapter who delivers NON-HIGH-  
14 WAY Diesel motor fuel at a filling station [other than for the sole  
15 purpose of heating such station] or into a repository equipped with a  
16 hose or other apparatus by which NON-HIGHWAY Diesel motor fuel can be  
17 dispensed into the fuel tank of a motor vehicle, other than such a  
18 repository which is located on the premises of such registrant where the  
19 Diesel motor fuel delivered therein is used exclusively for the purpose  
20 of fueling motor vehicles operated by registrant for the purpose of  
21 distributing Diesel motor fuel for the purposes described in such  
22 subparagraph (i), shall be guilty of a misdemeanor. If, within any nine-  
23 ty day period, any such person whose registration under article twelve-A  
24 of this chapter applies only to the importation, sale and distribution  
25 of NON-HIGHWAY Diesel motor fuel for the purposes described in subpara-  
26 graph (i) of paragraph (b) of subdivision three of section two hundred  
27 eighty-two-a of this chapter so unlawfully delivers a total of one thou-  
28 sand gallons or more of Diesel motor fuel at such filling station or  
29 stations or into such repository or repositories (or a combination of  
30 both such filling stations and repositories), then, such person shall be  
31 guilty of a class E felony.

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

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

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

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

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

9 S 54. The section heading, subdivisions (a), (b) and (c), paragraph 3,  
10 subparagraph (D) of paragraph 4 and paragraph 6 of subdivision (d) and  
11 subdivisions (e) and (g) of section 1848 of the tax law, as added by  
12 chapter 276 of the laws of 1986 and subparagraph (D) of paragraph 4 and  
13 paragraph 6 of subdivision (d) as amended by chapter 190 of the laws of  
14 1990, are amended to read as follows:

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

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

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

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



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

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

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

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

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

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

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

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

25 (a) to the enforcement of any of the criminal or seizure and forfei-  
26 ture provisions of the tax law relating to (i) taxes imposed under or  
27 pursuant to the authority of article twelve-A of the tax law and admin-  
28 istered by the commissioner, (ii) taxes imposed under or pursuant to the  
29 authority of article eighteen of the tax law and administered by the  
30 commissioner, (iii) taxes imposed under article twenty of the tax law,  
31 or (iv) sales or compensating use taxes relating to [automotive fuel]  
32 PETROLEUM PRODUCTS or cigarettes imposed under article twenty-eight or  
33 pursuant to the authority of article twenty-nine of the tax law and  
34 administered by the commissioner or

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

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

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

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

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

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

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

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

12 S 19. This act shall take effect immediately; provided, however, that  
13 sections one through thirteen of this act shall take effect September 1,  
14 2006 and shall be deemed repealed on September 1, [2011] 2012 and such  
15 repeal shall apply in accordance with the applicable transitional  
16 provisions of sections 1106 and 1217 of the tax law, and shall apply to  
17 sales made, fuel compounded or manufactured, and uses occurring on or  
18 after such date, and with respect to sections seven through eleven of  
19 this act, in accordance with applicable transitional provisions of  
20 sections 1106 and 1217 of the tax law; provided, however, that the  
21 commissioner of taxation and finance shall be authorized on and after  
22 the date this act shall have become a law to adopt and amend any rules  
23 or regulations and to take any steps necessary to implement the  
24 provisions of this act; provided further that sections fourteen through  
25 sixteen of this act shall take effect immediately and shall apply to  
26 taxable years beginning on or after January 1, 2006.

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

31 PART M

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

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

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

## 1 PART N

2 Intentionally omitted.

## 3 PART O

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

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

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

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

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

30 (3) FOR EACH VIDEO LOTTERY FACILITY, THE ANNUAL VALUE OF THE FREE PLAY  
31 ALLOWANCE CREDITS AUTHORIZED FOR USE BY THE OPERATOR PURSUANT TO THIS  
32 SUBDIVISION SHALL NOT EXCEED AN AMOUNT EQUAL TO TEN PERCENT OF THE TOTAL  
33 AMOUNT WAGERED ON VIDEO LOTTERY GAMES AFTER PAYOUT OF PRIZES. THE DIVI-  
34 SION SHALL ESTABLISH PROCEDURES TO ASSURE THAT FREE PLAY ALLOWANCE CRED-  
35 ITS DO NOT EXCEED SUCH AMOUNT.

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

46 (5) NOTHING IN THIS SUBDIVISION SHALL BE DEEMED TO PROHIBIT THE OPERA-  
47 TOR OF A VIDEO LOTTERY FACILITY FROM OFFERING FREE PLAY CREDITS TO PLAY-  
48 ERS OR PROSPECTIVE PLAYERS OF VIDEO LOTTERY GAMES WHEN THE VALUE OF SUCH  
49 FREE PLAY CREDITS IS INCLUDED IN THE CALCULATION OF THE TOTAL AMOUNT  
50 WAGERED ON VIDEO LOTTERY GAMES AND THE TOTAL AMOUNT WAGERED AFTER PAYOUT  
51 OF PRIZES, AND THE OPERATOR OF SUCH FACILITY PAYS THE DIVISION THE FULL  
52 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:

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

51 S 2. Subparagraph (iii) of paragraph d of subdivision 3 of section  
52 1007 of the racing, pari-mutuel wagering and breeding law, as amended by  
53 section 2 of part C of chapter 134 of the laws of 2010, is amended to  
54 read as follows:

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

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

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

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

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

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

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

45 The provisions of this section shall govern the simulcasting of races  
46 conducted at thoroughbred tracks located in another state or country on  
47 any day during which a franchised corporation is not conducting a race  
48 meeting in Saratoga county at Saratoga thoroughbred racetrack until June  
49 thirtieth, two thousand [eleven] TWELVE. Every off-track betting corpo-  
50 ration branch office and every simulcasting facility licensed in accord-  
51 ance with section one thousand seven that have entered into a written  
52 agreement with such facility's representative horsemen's organization as  
53 approved by the board, one thousand eight or one thousand nine of this  
54 article shall be authorized to accept wagers and display the live full-  
55 card simulcast signal of thoroughbred tracks (which may include quarter  
56 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

1 winning tickets therein, provided such tickets be presented for payment  
2 before April first of the year following the year of their purchase,  
3 less an amount which shall be established and retained by such fran-  
4 chised corporation of between twelve to seventeen per centum of the  
5 total deposits in pools resulting from on-track regular bets, and four-  
6 teen to twenty-one per centum of the total deposits in pools resulting  
7 from on-track multiple bets and fifteen to twenty-five per centum of the  
8 total deposits in pools resulting from on-track exotic bets and fifteen  
9 to thirty-six per centum of the total deposits in pools resulting from  
10 on-track super exotic bets, plus the breaks. The retention rate to be  
11 established is subject to the prior approval of the racing and wagering  
12 board. Such rate may not be changed more than once per calendar quarter  
13 to be effective on the first day of the calendar quarter. "Exotic bets"  
14 and "multiple bets" shall have the meanings set forth in section five  
15 hundred nineteen of this chapter. "Super exotic bets" shall have the  
16 meaning set forth in section three hundred one of this chapter. For  
17 purposes of this section, a "pick six bet" shall mean a single bet or  
18 wager on the outcomes of six races. The breaks are hereby defined as the  
19 odd cents over any multiple of five for payoffs greater than one dollar  
20 five cents but less than five dollars, over any multiple of ten for  
21 payoffs greater than five dollars but less than twenty-five dollars,  
22 over any multiple of twenty-five for payoffs greater than twenty-five  
23 dollars but less than two hundred fifty dollars, or over any multiple of  
24 fifty for payoffs over two hundred fifty dollars. Out of the amount so  
25 retained there shall be paid by such franchised corporation to the  
26 commissioner of taxation and finance, as a reasonable tax by the state  
27 for the privilege of conducting pari-mutuel betting on the races run at  
28 the race meetings held by such franchised corporation, the following  
29 percentages of the total pool for regular and multiple bets five per  
30 centum of regular bets and four per centum of multiple bets plus twenty  
31 per centum of the breaks; for exotic wagers seven and one-half per  
32 centum plus twenty per centum of the breaks, and for super exotic bets  
33 seven and one-half per centum plus fifty per centum of the breaks. For  
34 the period June first, nineteen hundred ninety-five through September  
35 ninth, nineteen hundred ninety-nine, such tax on regular wagers shall be  
36 three per centum and such tax on multiple wagers shall be two and one-  
37 half per centum, plus twenty per centum of the breaks. For the period  
38 September tenth, nineteen hundred ninety-nine through March thirty-  
39 first, two thousand one, such tax on all wagers shall be two and six-  
40 tenths per centum and for the period April first, two thousand one  
41 through December thirty-first, two thousand [eleven] TWELVE, such tax on  
42 all wagers shall be one and six-tenths per centum, plus, in each such  
43 period, twenty per centum of the breaks. Payment to the New York state  
44 thoroughbred breeding and development fund by such franchised corpo-  
45 ration shall be one-half of one per centum of total daily on-track pari-  
46 mutuel pools resulting from regular, multiple and exotic bets and three  
47 per centum of super exotic bets provided, however, that for the period  
48 September tenth, nineteen hundred ninety-nine through March thirty-  
49 first, two thousand one, such payment shall be six-tenths of one per  
50 centum of regular, multiple and exotic pools and for the period April  
51 first, two thousand one through December thirty-first, two thousand  
52 [eleven] TWELVE, such payment shall be seven-tenths of one per centum of  
53 such pools.

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

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

3 S 11. This act shall take effect immediately.

4 PART T

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

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

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

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

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

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

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

17 S 482. Deposit and disposition of revenue. (a) All taxes, fees, inter-  
18 est and penalties collected or received by the commissioner under this  
19 article and article twenty-A of this chapter shall be deposited and  
20 disposed of pursuant to the provisions of section one hundred seventy-  
21 one-a of this chapter. (b) From the taxes, interest and penalties  
22 collected or received by the commissioner under sections four hundred  
23 seventy-one and four hundred seventy-one-a of this article, effective on  
24 and after March first, two thousand, forty-nine and fifty-five  
25 hundredths, and effective on and after February first, two thousand two,  
26 forty-three and seventy hundredths; and effective on and after May  
27 first, two thousand two, sixty-four and fifty-five hundredths; and  
28 effective on and after April first, two thousand three, sixty-one and  
29 twenty-two hundredths percent; and effective on and after June third,  
30 two thousand eight, seventy and sixty-three hundredths percent; and  
31 effective on and after July first, two thousand ten, seventy-six percent  
32 collected or received under those sections must be deposited to the  
33 credit of the tobacco control and insurance initiatives pool to be  
34 established and distributed by the commissioner of health in accordance  
35 with section twenty-eight hundred seven-v of the public health law. [(c)  
36 From the fees collected or received by the commissioner under subdivi-  
37 sion two of section four hundred eighty-a of this article, effective on  
38 or after September first, two thousand nine, any monies collected or  
39 received under that section in excess of three million dollars must be  
40 deposited to the credit of the tobacco control and insurance initiatives  
41 pool to be distributed by the commissioner of health in accordance with  
42 section twenty-eight hundred seven-v of the public health law.]

43 S 3. Subdivisions (a) and (b) of section 92-dd of the state finance  
44 law, as amended by section 125-c of part C of chapter 58 of the laws of  
45 2009, are amended to read as follows:

46 (a) On and after April first, two thousand five, such fund shall  
47 consist of the revenues heretofore and hereafter collected or required  
48 to be deposited pursuant to paragraph (a) of subdivision eighteen of  
49 section twenty-eight hundred seven-c, and sections twenty-eight hundred  
50 seven-j, twenty-eight hundred seven-s and twenty-eight hundred seven-t  
51 of the public health law, [subdivisions] SUBDIVISION (b) [and (c)] of  
52 section four hundred eighty-two of the tax law and required to be cred-  
53 ited to the tobacco control and insurance initiatives pool, subparagraph  
54 (O) of paragraph four of subsection (j) of section four thousand three  
55 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:

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

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

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

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

27 S 5. Section 925-c of the real property tax law, as added by section  
28 11 of part X of chapter 62 of the laws of 2003, is amended to read as  
29 follows:

30 S 925-c. Payment of real property taxes via the internet. [1.]  
31 Notwithstanding any contrary provision of this chapter, or of any gener-  
32 al, special or local law, code or charter, [if payment for the amount of  
33 any taxes on real property, accompanied by sufficient language to iden-  
34 tify the property and tax levy, is received via the internet, such  
35 payment is considered received by the appropriate officer and paid by  
36 the taxpayer at the time the internet transaction is completed and sent  
37 by the taxpayer.

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

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

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

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

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

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

8 [3-a. (a) The collecting officer shall deliver or mail the receipt  
9 required under subdivision three of this section unless a taxpayer  
10 requests to receive such receipt electronically, in which case the  
11 collecting officer shall make an electronic receipt available to the  
12 taxpayer. The collecting officer shall notify all taxpayers that any  
13 availability of electronic receipts does not preclude a taxpayer from  
14 electing to receive a copy of his or her tax receipt in the mail or in  
15 person.

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

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

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

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

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



(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.

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

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

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

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

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

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

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

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

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

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

41 v. disclosure of information of a personal nature reported in confi-  
42 dence to an agency and not relevant to the ordinary work of such agency;  
43 [or]

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

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

50 (c) Unless otherwise provided by this article, disclosure shall not be  
51 construed to constitute an unwarranted invasion of personal privacy  
52 pursuant to paragraphs (a) and (b) of this subdivision:

53 i. when identifying details are deleted;

54 ii. when the person to whom a record pertains consents in writing to  
55 disclosure;

1     iii. when upon presenting reasonable proof of identity, a person seeks  
2 access to records pertaining to him or her; or

3     iv. when a record or group of records relates to the right, title or  
4 interest in real property, or relates to the inventory, status or char-  
5 acteristics of real property, in which case disclosure and providing  
6 copies of such record or group of records shall not be deemed an unwar-  
7 ranted invasion of personal privacy, PROVIDED THAT NOTHING HEREIN SHALL  
8 BE CONSTRUED TO AUTHORIZE THE DISCLOSURE OF ELECTRONIC CONTACT INFORMA-  
9 TION, SUCH AS AN E-MAIL ADDRESS OR A SOCIAL NETWORK USERNAME, THAT HAS  
10 BEEN COLLECTED FROM A TAXPAYER UNDER SECTION ONE HUNDRED FOUR OF THE  
11 REAL PROPERTY TAX LAW.

12     S 12. The tax law is amended by adding a new section 35 to read as  
13 follows:

14     S 35. USE OF ELECTRONIC MEANS OF COMMUNICATION. NOTWITHSTANDING ANY  
15 OTHER PROVISION OF NEW YORK STATE LAW, WHERE THE DEPARTMENT HAS OBTAINED  
16 AUTHORIZATION OF AN ONLINE SERVICES ACCOUNT HOLDER, IN SUCH FORM AS MAY  
17 BE PRESCRIBED BY THE COMMISSIONER, THE DEPARTMENT MAY USE ELECTRONIC  
18 MEANS OF COMMUNICATION TO FURNISH ANY DOCUMENT IT IS REQUIRED TO MAIL  
19 PER LAW OR REGULATION. IF THE DEPARTMENT FURNISHES SUCH DOCUMENT IN  
20 ACCORDANCE WITH THIS SECTION, DEPARTMENT RECORDS OF SUCH TRANSACTION  
21 SHALL CONSTITUTE APPROPRIATE AND SUFFICIENT PROOF OF DELIVERY THEREOF  
22 AND BE ADMISSIBLE IN ANY ACTION OR PROCEEDING.

23     S 13. Section 29 of the tax law, as added by section 1 of part UU-1 of  
24 chapter 57 of the laws of 2008 and paragraph (1) of subdivision (e) as  
25 amended by section 1 of part G of chapter 57 of the laws of 2010, is  
26 amended to read as follows:

27     S 29. Mandatory electronic filing and payment. (a) For purposes of  
28 this section, the following terms have the specified meanings:

29     (1) "Authorized tax document" means a tax document which the commis-  
30 sioner has authorized to be filed electronically.

31     (2) "Electronic" means computer technology.

32     (3) "Original tax document" means a tax document that is filed during  
33 the calendar year for which that tax document is required or permitted  
34 to be filed.

35     (4) "Tax" means any tax or other matter administered by the commis-  
36 sioner pursuant to this chapter or any other provision of law[;   
37 provided, however, that the term "tax" does not include the taxes  
38 imposed by, or pursuant to the authority of, articles twenty-two, thir-  
39 ty, thirty-A or thirty-B of this chapter].

40     (5) "Tax document" means a return, report or any other document relat-  
41 ing to a tax or other matter administered by the commissioner.

42     (6) "Tax return preparer" means any person who prepares for compen-  
43 sation, or who employs or engages one or more persons to prepare for  
44 compensation, any authorized tax document. For purposes of this section,  
45 the term "tax return preparer" also includes a payroll service.

46     (7) "Tax software" means any computer software program intended for  
47 tax return preparation purposes. For purposes of this section, the term  
48 "tax software" includes, but is not limited to, an off-the-shelf soft-  
49 ware program loaded onto a tax return preparer's or taxpayer's computer,  
50 an online tax preparation application, or a tax preparation application  
51 hosted by the department.

52     (b) (1) If a tax return preparer prepared more than one hundred  
53 original tax documents during any calendar year beginning on or after  
54 January first, two thousand seven, and if, in any succeeding calendar  
55 year that tax return preparer prepares one or more authorized tax docu-  
56 ments using tax software, then, for that succeeding calendar year and

1 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 (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.

3 (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.

4 (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.

5 (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.

6 (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.

7 (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,

1 if the electronic transaction relates to another matter administered by  
2 the commissioner, then the [penally] PENALTY will be assessed, collected  
3 and paid in the same manner as prescribed by article twenty-seven of  
4 this chapter.

5 (4) IF A TAXPAYER OR TAX RETURN PREPARER FAILS TO ELECTRONICALLY FILE  
6 AN AUTHORIZED TAX DOCUMENT WHEN REQUIRED TO DO SO PURSUANT TO SUBDIVI-  
7 SION (B) OR (C) OF THIS SECTION, THE TAXPAYER SHALL NOT BE ELIGIBLE TO  
8 RECEIVE INTEREST ON ANY OVERPAYMENT IN ACCORDANCE WITH THE OVERPAYMENT  
9 PROVISIONS OF THIS CHAPTER UNTIL SUCH DOCUMENT IS FILED ELECTRONICALLY.

10 (f) The provisions of sections nine and ten of this chapter are not  
11 affected by this section and will remain in full force and effect.

12 (g) The commissioner is authorized to promulgate any regulations  
13 necessary to implement this section.

14 S 14. Paragraph 10 of subsection (g) of section 658 of the tax law is  
15 REPEALED.

16 S 14-a. Subparagraph (A) of paragraph 10 of subsection (g) of section  
17 658 of the tax law is amended by adding a new clause (iii) to read as  
18 follows:

19 (III) IF A TAX RETURN PREPARER PREPARED MORE THAN FIVE ORIGINAL TAX  
20 DOCUMENTS DURING ANY CALENDAR YEAR BEGINNING ON OR AFTER JANUARY FIRST,  
21 TWO THOUSAND ELEVEN, AND IF IN ANY SUCCEEDING CALENDAR YEAR THAT TAX  
22 RETURN PREPARER PREPARES ONE OR MORE AUTHORIZED RETURNS USING TAX SOFT-  
23 WARE, THEN, FOR SUCH SUCCEEDING CALENDAR YEAR AND FOR EACH SUBSEQUENT  
24 CALENDAR YEAR THEREAFTER, ALL AUTHORIZED TAX DOCUMENTS PREPARED BY THAT  
25 TAX RETURN PREPARER MUST BE FILED ELECTRONICALLY, IN ACCORDANCE WITH  
26 INSTRUCTIONS PRESCRIBED BY THE COMMISSIONER.

27 S 14-b. Subsection (g) of section 658 of the tax law is amended by  
28 adding a new paragraph 10 to read as follows:

29 (10) MANDATORY ELECTRONIC FILING BY CERTAIN TAX RETURN PREPARERS.

30 (A)(I) IF A TAX RETURN PREPARER PREPARED MORE THAN TWO HUNDRED ORIGINAL  
31 RETURNS DURING THE CALENDAR YEAR BEGINNING ON JANUARY FIRST, TWO THOU-  
32 SAND FIVE, AND IF, IN THE CALENDAR YEAR BEGINNING ON JANUARY FIRST, TWO  
33 THOUSAND SIX, SUCH TAX RETURN PREPARER PREPARES ONE OR MORE AUTHORIZED  
34 RETURNS USING TAX SOFTWARE, THEN, FOR SUCH CALENDAR YEAR TWO THOUSAND  
35 SIX AND FOR EACH SUBSEQUENT CALENDAR YEAR THEREAFTER, ALL AUTHORIZED  
36 RETURNS PREPARED BY SUCH TAX RETURN PREPARER SHALL BE FILED ELECTRON-  
37 ICALLY, IN ACCORDANCE WITH INSTRUCTIONS PRESCRIBED BY THE COMMISSIONER.

38 (II) IF A TAX RETURN PREPARER PREPARED MORE THAN ONE HUNDRED ORIGINAL  
39 RETURNS DURING ANY CALENDAR YEAR BEGINNING ON OR AFTER JANUARY FIRST,  
40 TWO THOUSAND SIX, AND IF, IN ANY SUCCEEDING CALENDAR YEAR SUCH TAX  
41 RETURN PREPARER PREPARES ONE OR MORE AUTHORIZED RETURNS USING TAX SOFT-  
42 WARE, THEN, FOR SUCH SUCCEEDING CALENDAR YEAR AND FOR EACH SUBSEQUENT  
43 CALENDAR YEAR THEREAFTER, ALL AUTHORIZED RETURNS PREPARED BY SUCH TAX  
44 RETURN PREPARER SHALL BE FILED ELECTRONICALLY, IN ACCORDANCE WITH  
45 INSTRUCTIONS PRESCRIBED BY THE COMMISSIONER.

46 (B) FOR PURPOSES OF THIS PARAGRAPH:

47 (I) "ELECTRONIC" MEANS COMPUTER TECHNOLOGY; PROVIDED, HOWEVER, THAT  
48 THE COMMISSIONER MAY, IN INSTRUCTIONS, PROVIDE THAT USE OF BARCODE TECH-  
49 NOLOGY WILL ALSO SATISFY THE MANDATORY ELECTRONIC FILING REQUIREMENTS OF  
50 THIS SECTION.

51 (II) "AUTHORIZED RETURN" MEANS ANY RETURN REQUIRED UNDER THIS ARTICLE  
52 WHICH THE COMMISSIONER HAS AUTHORIZED TO BE FILED ELECTRONICALLY.

53 (III) "ORIGINAL RETURN" MEANS A RETURN REQUIRED UNDER THIS ARTICLE  
54 THAT IS FILED, WITHOUT REGARD TO EXTENSIONS, DURING THE CALENDAR YEAR  
55 FOR WHICH THAT RETURN IS REQUIRED TO BE FILED.

1 (IV) "TAX SOFTWARE" MEANS ANY COMPUTER SOFTWARE PROGRAM INTENDED FOR  
2 TAX RETURN PREPARATION PURPOSES.

3 S 15. Paragraph 10 of subdivision (g) of section 11-1758 of the admin-  
4 istrative code of the city of New York is REPEALED.

5 S 15-a. Subparagraph (A) of paragraph 10 of subdivision (g) of section  
6 11-1758 of the administrative code of the city of New York is amended by  
7 adding a new clause (iii) to read as follows:

8 (III) IF A TAX RETURN PREPARER PREPARED MORE THAN FIVE ORIGINAL TAX  
9 DOCUMENTS DURING ANY CALENDAR YEAR BEGINNING ON OR AFTER JANUARY FIRST,  
10 TWO THOUSAND ELEVEN, AND IF IN ANY SUCCEEDING CALENDAR YEAR THAT TAX  
11 RETURN PREPARER PREPARES ONE OR MORE AUTHORIZED RETURNS USING TAX SOFT-  
12 WARE, THEN, FOR SUCH SUCCEEDING CALENDAR YEAR AND FOR EACH SUBSEQUENT  
13 CALENDAR YEAR THEREAFTER, ALL AUTHORIZED TAX DOCUMENTS PREPARED BY THAT  
14 TAX RETURN PREPARER MUST BE FILED ELECTRONICALLY, IN ACCORDANCE WITH  
15 INSTRUCTIONS PRESCRIBED BY THE COMMISSIONER OF TAXATION AND FINANCE.

16 S 15-b. Subdivision (g) of section 11-1758 of the administrative code  
17 of the city of New York is amended by adding a new paragraph 10 to read  
18 as follows:

19 (10) MANDATORY ELECTRONIC FILING BY CERTAIN TAX RETURN PREPARERS.

20 (A)(I) IF A TAX RETURN PREPARER PREPARED MORE THAN TWO HUNDRED ORIGINAL  
21 RETURNS DURING THE CALENDAR YEAR BEGINNING ON JANUARY FIRST, TWO THOU-  
22 SAND FIVE, AND IF, IN THE CALENDAR YEAR BEGINNING ON JANUARY FIRST, TWO  
23 THOUSAND SIX, SUCH TAX RETURN PREPARER PREPARES ONE OR MORE AUTHORIZED  
24 RETURNS USING TAX SOFTWARE, THEN, FOR SUCH CALENDAR YEAR TWO THOUSAND  
25 SIX AND FOR EACH SUBSEQUENT CALENDAR YEAR THEREAFTER, ALL AUTHORIZED  
26 RETURNS PREPARED BY SUCH TAX RETURN PREPARER SHALL BE FILED ELECTRON-  
27 ICALLY, IN ACCORDANCE WITH INSTRUCTIONS PRESCRIBED BY THE COMMISSIONER  
28 OF TAXATION AND FINANCE.

29 (II) IF A TAX RETURN PREPARER PREPARED MORE THAN ONE HUNDRED ORIGINAL  
30 RETURNS DURING ANY CALENDAR YEAR BEGINNING ON OR AFTER JANUARY FIRST,  
31 TWO THOUSAND SIX, AND IF, IN ANY SUCCEEDING CALENDAR YEAR SUCH TAX  
32 RETURN PREPARER PREPARES ONE OR MORE AUTHORIZED RETURNS USING TAX SOFT-  
33 WARE, THEN, FOR SUCH SUCCEEDING CALENDAR YEAR AND FOR EACH SUBSEQUENT  
34 CALENDAR YEAR THEREAFTER, ALL AUTHORIZED RETURNS PREPARED BY SUCH TAX  
35 RETURN PREPARER SHALL BE FILED ELECTRONICALLY, IN ACCORDANCE WITH  
36 INSTRUCTIONS PRESCRIBED BY THE COMMISSIONER OF TAXATION AND FINANCE.

37 (B) FOR PURPOSES OF THIS PARAGRAPH:

38 (I) "ELECTRONIC" MEANS COMPUTER TECHNOLOGY; PROVIDED, HOWEVER, THAT  
39 THE COMMISSIONER OF TAXATION AND FINANCE MAY, IN INSTRUCTIONS, PROVIDE  
40 THAT USE OF BARCODE TECHNOLOGY WILL ALSO SATISFY THE MANDATORY ELECTRON-  
41 IC FILING REQUIREMENTS OF THIS SECTION.

42 (II) "AUTHORIZED RETURN" MEANS ANY RETURN REQUIRED UNDER THIS ARTICLE  
43 WHICH THE COMMISSIONER OF TAXATION AND FINANCE HAS AUTHORIZED TO BE  
44 FILED ELECTRONICALLY.

45 (III) "ORIGINAL RETURN" MEANS A RETURN REQUIRED UNDER THIS ARTICLE  
46 THAT IS FILED, WITHOUT REGARD TO EXTENSIONS, DURING THE CALENDAR YEAR  
47 FOR WHICH THAT RETURN IS REQUIRED TO BE FILED.

48 (IV) "TAX SOFTWARE" MEANS ANY COMPUTER SOFTWARE PROGRAM INTENDED FOR  
49 TAX RETURN PREPARATION PURPOSES.

50 S 16. Paragraph 5 of subsection (u) of section 685 of the tax law is  
51 REPEALED.

52 S 16-a. Subsection (u) of section 685 of the tax law is amended by  
53 adding a new paragraph 5 to read as follows:

54 (5) FAILURE TO ELECTRONICALLY FILE. IF A TAX RETURN PREPARER IS  
55 REQUIRED TO FILE RETURNS ELECTRONICALLY PURSUANT TO PARAGRAPH TEN OF  
56 SUBSECTION (G) OF SECTION SIX HUNDRED FIFTY-EIGHT OF THIS ARTICLE, AND

1 SUCH PREPARER FAILS TO FILE ONE OR MORE OF SUCH RETURNS ELECTRONICALLY,  
2 THEN SUCH PREPARER SHALL BE SUBJECT TO A PENALTY OF FIFTY DOLLARS FOR  
3 EACH SUCH FAILURE TO ELECTRONICALLY FILE A RETURN, UNLESS IT IS SHOWN  
4 THAT SUCH FAILURE IS DUE TO REASONABLE CAUSE AND NOT DUE TO WILLFUL  
5 NEGLECT.

6 S 17. Paragraph 5 of subdivision (t) of section 11-1785 of the admin-  
7 istrative code of the city of New York is REPEALED.

8 S 17-a. Subdivision (t) of section 11-1785 of the administrative code  
9 of the city of New York is amended by adding a new paragraph 5 to read  
10 as follows:

11 (5) FAILURE TO ELECTRONICALLY FILE. IF A TAX RETURN PREPARER IS  
12 REQUIRED TO FILE RETURNS ELECTRONICALLY PURSUANT TO PARAGRAPH TEN OF  
13 SUBDIVISION (G) OF SECTION 11-1758, AND SUCH PREPARER FAILS TO FILE ONE  
14 OR MORE OF SUCH RETURNS ELECTRONICALLY, THEN SUCH PREPARER SHALL BE  
15 SUBJECT TO A PENALTY OF FIFTY DOLLARS FOR EACH SUCH FAILURE TO ELECTRON-  
16 ICALLY FILE A RETURN, UNLESS IT IS SHOWN THAT SUCH FAILURE IS DUE TO  
17 REASONABLE CAUSE AND NOT DUE TO WILLFUL NEGLECT.

18 S 17-b. By September 15, 2011, the commissioner of taxation and  
19 finance shall report to the governor, the director of the budget, the  
20 speaker and minority leader of the assembly, and the majority and minor-  
21 ity leaders of the senate, the number and percentage of individual  
22 taxpayers that, by August 31, 2011, electronically filed their 2010  
23 income tax returns. Provided, however, if such commissioner fails to  
24 report such percentage by September 15, 2011, then the percentage shall  
25 be presumed to be eighty-five percent or higher, and the report shall be  
26 presumed to be reported.

27 S 18. Subparagraph (A) of paragraph 3 of subsection (c) of section 658  
28 of the tax law, as amended by section 1 of part H-1 of chapter 57 of the  
29 laws of 2009, is amended to read as follows:

30 (A) Every subchapter K limited liability company, every limited  
31 liability company that is a disregarded entity for federal income tax  
32 purposes, and every partnership which has any income derived from New  
33 York sources, determined in accordance with the applicable rules of  
34 section six hundred thirty-one of this article as in the case of a  
35 nonresident individual, shall, within [thirty] SIXTY days after the last  
36 day of the taxable year, make a payment of a filing fee. The amount of  
37 the filing fee is the amount set forth in subparagraph (B) of this para-  
38 graph. The minimum filing fee is twenty-five dollars for taxable years  
39 beginning in two thousand eight and thereafter. Limited liability compa-  
40 nies that are disregarded entities for federal income tax purposes must  
41 pay a filing fee of twenty-five dollars for taxable years beginning on  
42 or after January first, two thousand eight.

43 S 19. Subdivision 4 of section 1315 of the abandoned property law, as  
44 amended by section 2 of part II of chapter 57 of the laws of 2010, is  
45 amended to read as follows:

46 4. Any amount representing an unpaid check or draft issued by the  
47 state of New York which shall have remained unpaid after one year from  
48 the date of issuance OR A DEBIT CARD ISSUED ON BEHALF OF THE STATE OF  
49 NEW YORK FOR THE PURPOSE OF PAYING A TAX REFUND WHICH SHALL NOT HAVE  
50 BEEN ACTIVATED FOR ONE YEAR FROM THE DATE OF ISSUANCE in accordance with  
51 section one hundred two of the state finance law shall be deemed aban-  
52 doned property and shall be paid to the state comptroller.

53 S 20. Section 102 of the state finance law, as amended by section 7 of  
54 part P of chapter 62 of the laws of 2003, is amended to read as follows:

55 S 102. Amounts of unpaid checks, DRAFTS OR DEBIT CARDS to be paid into  
56 abandoned property fund. Upon audit and statement of the comptroller,

1 the amounts of all checks or drafts on bank accounts of any funds of the  
2 state, AND THE AMOUNTS OF ALL DEBIT CARDS ISSUED ON BEHALF OF THE STATE  
3 FOR THE PURPOSE OF PAYING A TAX REFUND which checks or drafts have not  
4 been paid OR WHICH DEBIT CARDS HAVE NOT BEEN ACTIVATED and which shall  
5 have been outstanding for more than one year from the respective dates  
6 thereof, shall be paid into the abandoned property fund pursuant to  
7 subdivision four of section one thousand three hundred fifteen of the  
8 abandoned property law. The proper disbursing officers or agents of such  
9 funds shall notify the bank or banks on which such checks [or], drafts  
10 OR DEBIT CARDS were drawn not to pay OR PERMIT THE ACTIVATION OF the  
11 same. The comptroller shall keep a record of all such checks [or],  
12 drafts OR DEBIT CARDS and upon presentation to him by the lawful holder  
13 of any such check [or], draft OR DEBIT CARD at any time, the amount of  
14 which shall thus have been paid into the state treasury to the credit of  
15 the general fund, the comptroller, to the extent appropriations are  
16 available, shall issue a new check [or], draft OR ELECTRONIC PAYMENT to  
17 the payee upon submission of proof satisfactory to the comptroller as to  
18 the legitimacy of the claim and, if insufficient appropriations are  
19 available, shall include in his next request for appropriations by the  
20 legislature the amount or amounts of any such checks [or], drafts OR  
21 DEBIT CARDS so presented to him, for the purpose of payment without  
22 interest to the lawful holder or holders thereof.

23 S 21. Paragraph 3 of subdivision (e) of section 1137 of the tax law,  
24 as amended by chapter 65 of the laws of 1985, is amended to read as  
25 follows:

26 (3) As an additional or alternate requirement, whenever any person  
27 fails to collect, truthfully account for, pay over the tax, or file  
28 returns of the tax as required in this article, the [tax commission]  
29 COMMISSIONER, in [its] HIS OR HER discretion where [it] HE OR SHE deems  
30 necessary to protect the revenues to be obtained under this article, may  
31 give notice requiring such person to collect the taxes which become  
32 collectible after the giving of such notice, to deposit such taxes AT  
33 LEAST ONE TIME PER WEEK IN A SEPARATE ACCOUNT in any banking institution  
34 approved by the [tax commission] COMMISSIONER and located in this state  
35 the deposits in which are insured by any agency of the federal govern-  
36 ment[, in a separate account,]. SUCH NOTICE MAY REQUIRE EITHER (I) THAT  
37 SUCH ACCOUNT BE HELD in trust for and payable to the [tax commission]  
38 COMMISSIONER, and [to keep] THAT the amount of such tax SHALL BE KEPT in  
39 such account until payment over to the [tax commission] COMMISSIONER; OR  
40 (II) THAT SUCH PERSON AUTHORIZE THE COMMISSIONER TO DEBIT SUCH ACCOUNT.  
41 [Such notice] ANY NOTICE GIVEN BY THE COMMISSIONER UNDER THIS PARAGRAPH  
42 shall remain in effect until a notice of cancellation is given by the  
43 [tax commission] COMMISSIONER. ANY SUCH PERSON WHO FAILS TO COMPLY WITH  
44 A NOTICE ISSUED UNDER THIS PARAGRAPH SHALL BE REQUIRED TO FILE A BOND  
45 PURSUANT TO PARAGRAPH TWO OF THIS SUBDIVISION.

46 S 21-a. Subparagraph (A) of paragraph 4 of subdivision (a) of section  
47 1134 of the tax law, as amended by chapter 2 of the laws of 1995, is  
48 amended to read as follows:

49 (A) Where a person who holds a certificate of authority (i) willfully  
50 fails to file a report or return required by this article, (ii) willful-  
51 ly files, causes to be filed, gives or causes to be given a report,  
52 return, certificate or affidavit required under this article which is  
53 false, (iii) willfully fails to comply with the provisions of paragraph  
54 two or three of subdivision (e) of section eleven hundred thirty-seven  
55 of this article, (iv) willfully fails to prepay, collect, truthfully  
56 account for or pay over any tax imposed under this article or pursuant



1 to the authority of article twenty-nine of this chapter, [or] (v) FAILS  
2 TO OBTAIN A BOND PURSUANT TO PARAGRAPH TWO OF SUBDIVISION (E) OF SECTION  
3 ELEVEN HUNDRED THIRTY-SEVEN OF THIS PART, OR FAILS TO COMPLY WITH A  
4 NOTICE ISSUED BY THE COMMISSIONER PURSUANT TO PARAGRAPH THREE OF SUCH  
5 SUBDIVISION, OR (VI) has been convicted of a crime provided for in this  
6 chapter, the commissioner may revoke or suspend such certificate of  
7 authority and all duplicates thereof. Provided, however, that the  
8 commissioner may revoke or suspend a certificate of authority based on  
9 the grounds set forth in clause [(v)] (VI) of this subparagraph only  
10 where the conviction referred to occurred not more than one year prior  
11 to the date of revocation or suspension.

12 S 22. Paragraph 1 of subdivision (a) of section 1136 of the tax law,  
13 as amended by chapter 2 of the laws of 1995, is amended to read as  
14 follows:

15 (1) Every person required to register with the commissioner as  
16 provided in section eleven hundred thirty-four OF THIS PART whose taxa-  
17 ble receipts, amusement charges and rents total less than three hundred  
18 thousand dollars, or in the case of any such person who is a distributor  
19 whose sales of automotive fuel total less than one hundred thousand  
20 gallons, in every quarter of the preceding four quarters, shall only  
21 file a return quarterly with the commissioner. PROVIDED, HOWEVER, THAT  
22 IF THE COMMISSIONER IN THE EXERCISE OF HIS OR HER DISCRETION DEEMS IT  
23 NECESSARY TO PROTECT THE REVENUES TO BE OBTAINED UNDER THIS ARTICLE, HE  
24 OR SHE MAY GIVE NOTICE REQUIRING SUCH PERSON, IN ADDITION TO FILING A  
25 QUARTERLY RETURN, TO FILE EITHER SHORT-FORM OR LONG-FORM PART QUARTERLY  
26 RETURNS, AS SPECIFIED IN SUCH NOTICE.

27 S 23. This act shall take effect immediately; provided, however, that:

28 (a) the amendments to section 29 of the tax law made by section thir-  
29 teen of this act shall apply to tax documents filed or required to be  
30 filed on or after the sixtieth day after which this act shall have  
31 become a law and shall expire and be deemed repealed December 31, 2012,  
32 provided however that the amendments to paragraph 4 of subdivision (a)  
33 of section 29 of the tax law and paragraph 2 of subdivision (e) of  
34 section 29 of the tax law made by section thirteen of this act with  
35 regard to individual taxpayers shall take effect September 15, 2011 but  
36 only if the commissioner of taxation and finance has reported in the  
37 report required by section seventeen-b of this act that the percentage  
38 of individual taxpayers electronically filing their 2010 income tax  
39 returns is less than eighty-five percent; provided that the commissioner  
40 of taxation and finance shall notify the legislative bill drafting  
41 commission of the date of the issuance of such report in order that the  
42 commission may maintain an accurate and timely effective data base of  
43 the official text of the laws of the state of New York in furtherance of  
44 effectuating the provisions of section 44 of the legislative law and  
45 section 70-b of the public officers law;

46 (b) sections fourteen, fifteen, sixteen and seventeen of this act  
47 shall take effect September 15, 2011 but only if the commissioner of  
48 taxation and finance has reported in the report required by section  
49 seventeen-b of this act that the percentage of individual taxpayers  
50 electronically filing their 2010 income tax returns is less than eight-  
51 y-five percent;

52 (c) sections fourteen-a and fifteen-a of this act shall take effect  
53 September 15, 2011 and expire and be deemed repealed December 31, 2012  
54 but shall take effect only if the commissioner of taxation and finance  
55 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

1 THE INCOME OR LOSSES OF WHICH IS OR WAS INCLUDABLE UNDER ARTICLE TWEN-  
2 TY-TWO OF THE TAX LAW;

3 (D) THE BUSINESS ENTITY MUST NOT HAVE CAUSED INDIVIDUALS TO TRANSFER  
4 FROM EXISTING EMPLOYMENT WITH A RELATED PERSON AND LOCATED IN NEW YORK  
5 STATE TO SIMILAR EMPLOYMENT WITH THE BUSINESS ENTITY;

6 (E) THE BUSINESS ENTITY MUST NOT HAVE ACQUIRED, PURCHASED, LEASED, OR  
7 HAD TRANSFERRED TO IT REAL PROPERTY LOCATED IN THE ECONOMIC TRANSFORMA-  
8 TION AREA IN WHICH IT IS APPLYING FOR CERTIFICATION IF THAT REAL PROPER-  
9 TY WAS PREVIOUSLY OWNED BY AN ENTITY WITH SIMILAR OWNERSHIP, REGARDLESS  
10 OF FORM OF INCORPORATION OR ORGANIZATION; AND

11 (F) THE BUSINESS ENTITY MUST NOT BE SUBSTANTIALLY SIMILAR IN OPERATION  
12 TO A BUSINESS ENTITY FROM WHICH IT HAS ACQUIRED REAL OR TANGIBLE  
13 PERSONAL PROPERTY THAT IS LOCATED IN THE ECONOMIC TRANSFORMATION AREA IN  
14 WHICH IT IS APPLYING FOR CERTIFICATION.

15 10. "ECONOMIC TRANSFORMATION AREA" MEANS:

16 (A) IN THE REGION OF THE STATE OUTSIDE OF THE METROPOLITAN COMMUTER  
17 TRANSPORTATION DISTRICT (AS DEFINED IN SECTION TWELVE HUNDRED SIXTY-TWO  
18 OF THE PUBLIC AUTHORITIES LAW) AND THE PORT AUTHORITY DISTRICT (AS  
19 DEFINED BY ARTICLE TWO OF CHAPTER ONE HUNDRED FIFTY-FOUR OF THE LAWS OF  
20 NINETEEN HUNDRED TWENTY-ONE), AN AREA WITHIN A FIVE MILE RADIUS IN THIS  
21 STATE OF A CLOSED FACILITY. IF MORE THAN SIXTY PERSONS WERE EMPLOYED IN  
22 FULL-TIME POSITIONS AT A CLOSED FACILITY ON APRIL FIRST, TWO THOUSAND  
23 ELEVEN, THEN IT IS THE AREA WITHIN A TEN MILE RADIUS IN THIS STATE OF  
24 THAT CLOSED FACILITY. THE COMMISSIONER MAY INCREASE THE RADIUS OF THE  
25 AREA FROM TEN MILES TO UP TO FIFTEEN MILES IN THIS STATE BASED ON  
26 FACTORS INCLUDING BUT NOT LIMITED TO POPULATION DENSITY, THE POVERTY  
27 RATE, THE UNEMPLOYMENT RATE AND THE LOSS OF JOBS IN THE REGION. HOWEV-  
28 ER, THE INCREASED RADIUS MAY NOT EXTEND INTO THE METROPOLITAN COMMUTER  
29 TRANSPORTATION DISTRICT. THE COMMISSIONER MAY ALSO DECREASE THE RADIUS  
30 OF THE TEN MILE AREA BUT TO NO LESS THAN A FIVE MILE RADIUS BASED ON  
31 FACTORS INCLUDING BUT NOT LIMITED TO POPULATION DENSITY, THE POVERTY  
32 RATE, THE UNEMPLOYMENT RATE AND THE LOSS OF JOBS IN THE REGION. UPON  
33 NOTIFICATION OF THE COMMISSIONER, PURSUANT TO SUBDIVISION ELEVEN OF THIS  
34 SECTION, THE COMMISSIONER SHALL ESTABLISH THE SIZE OF THE TRANSFORMATION  
35 AREA PRIOR TO THE ACCEPTANCE OF ANY APPLICATIONS INTO THE PROGRAM.

36 (B) IN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT OUTSIDE THE  
37 PORT AUTHORITY DISTRICT, AN AREA WITHIN A ONE MILE RADIUS IN THIS STATE  
38 OF A CLOSED FACILITY. IF MORE THAN SIXTY PERSONS WERE EMPLOYED IN FULL-  
39 TIME POSITIONS AT A CLOSED FACILITY ON APRIL FIRST, TWO THOUSAND ELEVEN,  
40 THEN IT IS THE AREA WITHIN A FIVE MILE RADIUS IN THIS STATE OF THAT  
41 CLOSED FACILITY, PROVIDED THAT THE COMMISSIONER MAY DECREASE THE RADIUS  
42 OF THE EXPANDED AREA BUT TO NO LESS THAN A ONE MILE RADIUS BASED ON  
43 FACTORS INCLUDING BUT NOT LIMITED TO POPULATION DENSITY, THE POVERTY  
44 RATE, THE UNEMPLOYMENT RATE, AND THE LOSS OF JOBS IN THE AREA AND WHETH-  
45 ER THE RADIUS WOULD EXTEND OUTSIDE OF THE METROPOLITAN COMMUTER TRANS-  
46 PORTATION DISTRICT. UPON NOTIFICATION OF THE COMMISSIONER PURSUANT TO  
47 SUBDIVISION ELEVEN OF THIS SECTION, THE COMMISSIONER SHALL ESTABLISH THE  
48 SIZE OF THE TRANSFORMATION AREA PRIOR TO THE ACCEPTANCE OF ANY APPLICA-  
49 TIONS INTO THE PROGRAM.

50 (C) IN THE PORT AUTHORITY DISTRICT, AN AREA LIMITED TO THE SITE OF THE  
51 CLOSED FACILITY.

52 11. "CLOSED FACILITY" MEANS:

53 (A) A CORRECTIONAL FACILITY, AS DEFINED IN PARAGRAPH (A) OF SUBDIVI-  
54 SION FOUR OF SECTION TWO OF THE CORRECTION LAW, THAT HAS BEEN SELECTED  
55 BY THE GOVERNOR OF THE STATE OF NEW YORK FOR CLOSURE AFTER APRIL FIRST,

1 TWO THOUSAND ELEVEN BUT NO LATER THAN MARCH THIRTY-FIRST, TWO THOUSAND  
2 TWELVE; OR

3 (B) A FACILITY OPERATED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES  
4 UNDER ARTICLE NINETEEN-G OF THE EXECUTIVE LAW THAT IS CLOSED PURSUANT TO  
5 AUTHORITY GRANTED TO SUCH OFFICE IN A CHAPTER OF THE LAWS OF TWO THOU-  
6 SAND ELEVEN; AND

7 (C) WHICH HAS BEEN CLOSED PROVIDED THAT THE COMMISSIONER OF CORREC-  
8 TIONAL SERVICES OR THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY  
9 SERVICES HAS NOTIFIED THE COMMISSIONER OF SUCH CLOSURE.

10 S 401. ELIGIBILITY CRITERIA. 1. IN ORDER TO BE ELIGIBLE FOR BENEFITS  
11 IN THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM, A  
12 PARTICIPANT MUST SATISFY THE FOLLOWING CRITERIA:

13 (A) MUST CREATE AND MAINTAIN AT LEAST FIVE NET NEW JOBS IN AN ECONOMIC  
14 TRANSFORMATION AREA, AND MUST DEMONSTRATE THAT ITS BENEFIT-COST RATIO IS  
15 AT LEAST TEN TO ONE; AND

16 (B) MUST BE IN COMPLIANCE WITH ALL WORKER PROTECTION AND ENVIRONMENTAL  
17 LAWS AND REGULATIONS; AND

18 (C) MUST NOT OWE PAST DUE FEDERAL OR STATE TAXES OR LOCAL PROPERTY  
19 TAXES, UNLESS THOSE TAXES ARE BEING PAID PURSUANT TO AN EXECUTED PAYMENT  
20 PLAN; AND

21 (D) THE LOCATION OF THE PARTICIPANT'S OPERATIONS FOR WHICH IT SEEKS  
22 TAX BENEFITS MUST BE WHOLLY LOCATED WITHIN THE ECONOMIC TRANSFORMATION  
23 AREA.

24 2. A BUSINESS ENTITY THAT IS PRIMARILY OPERATED AS A RETAIL BUSINESS  
25 IS NOT ELIGIBLE TO PARTICIPATE IN THE ECONOMIC TRANSFORMATION AND FACIL-  
26 ITY REDEVELOPMENT PROGRAM IF THEIR APPLICATION IS FOR ANY FACILITY OR  
27 BUSINESS LOCATION THAT WILL BE PRIMARILY USED IN MAKING RETAIL SALES TO  
28 CUSTOMERS WHO PERSONALLY VISIT SUCH FACILITIES. A BUSINESS ENTITY THAT  
29 IS ENGAGED IN OFFERING PROFESSIONAL SERVICES LICENSED BY THE STATE OR BY  
30 THE COURTS OF THIS STATE IS NOT ELIGIBLE TO PARTICIPATE IN THE ECONOMIC  
31 TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM. IN ADDITION, A BUSI-  
32 NESS ENTITY THAT IS OR WILL BE PRINCIPALLY OPERATED AS A REAL ESTATE  
33 HOLDING COMPANY OR LANDLORD FOR RETAIL BUSINESSES OR ENTITIES OFFERING  
34 PROFESSIONAL SERVICES LICENSED BY THE STATE OR BY THE COURTS OF THIS  
35 STATE SHALL NOT BE ELIGIBLE TO PARTICIPATE IN THE ECONOMIC TRANSFORMA-  
36 TION AND FACILITY REDEVELOPMENT PROGRAM. PROVIDED HOWEVER THAT THE  
37 COMMISSIONER MAY DETERMINE THAT SUCH A BUSINESS ENTITY DESCRIBED IN THE  
38 PRECEDING THREE SENTENCES MAY BE ELIGIBLE TO PARTICIPATE AT THE SITE OF  
39 A CLOSED FACILITY IF IT IS PURSUANT TO AN ADAPTIVE REUSE PLAN FOR A  
40 SUBSTANTIAL PORTION OF SUCH FACILITY.

41 3. ADDITIONAL ELIGIBILITY CRITERIA MAY BE DEVELOPED PURSUANT TO REGU-  
42 LATIONS PROMULGATED BY THE COMMISSIONER. THE ADDITIONAL ELIGIBILITY  
43 CRITERIA MAY INCLUDE, BUT NOT BE LIMITED TO, ALIGNMENT WITH ANY ADAPTIVE  
44 REUSE PLAN FOR A CLOSED FACILITY DEVELOPED BY THE DEPARTMENT.

45 4. A BUSINESS ENTITY MUST CONTINUE TO SATISFY THE EMPLOYMENT REQUIRE-  
46 MENTS IN SUBDIVISION ONE OF THIS SECTION IN EACH YEAR IN WHICH IT CLAIMS  
47 THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT TAX CREDITS.  
48 PRIOR TO CLAIMING THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT  
49 TAX CREDITS IN THE FINAL YEAR OF ITS FIVE YEAR BENEFIT PERIOD, A BUSI-  
50 NESS ENTITY MUST DEMONSTRATE TO THE COMMISSIONER THAT IT HAS CREATED THE  
51 JOBS AND MADE THE QUALIFIED INVESTMENTS NECESSARY TO MEET A BENEFIT-COST  
52 RATIO OF AT LEAST TEN TO ONE.

53 S 402. APPLICATION AND APPROVAL PROCESS. 1. A BUSINESS ENTITY MUST  
54 SUBMIT A COMPLETED APPLICATION AS PRESCRIBED BY THE COMMISSIONER BY THE  
55 LATER OF (A) THE DATE THAT IS THREE YEARS AFTER THE DATE OF THE CLOSURE  
56 OF THE CLOSED FACILITY LOCATED IN THE ECONOMIC TRANSFORMATION AREA IN

1 WHICH THE BUSINESS ENTITY WOULD OPERATE OR (B) JANUARY FIRST, TWO THOU-  
2 SAND FIFTEEN.

3 2. AS PART OF SUCH APPLICATION, EACH BUSINESS ENTITY MUST:

4 (A) AGREE TO ALLOW THE DEPARTMENT OF TAXATION AND FINANCE TO SHARE ITS  
5 TAX INFORMATION WITH THE DEPARTMENT. HOWEVER, ANY INFORMATION SHARED AS  
6 A RESULT OF THIS AGREEMENT SHALL NOT BE AVAILABLE FOR DISCLOSURE OR  
7 INSPECTION UNDER THE STATE FREEDOM OF INFORMATION LAW.

8 (B) AGREE TO ALLOW THE DEPARTMENT OF LABOR TO SHARE ITS TAX AND  
9 EMPLOYER INFORMATION WITH THE DEPARTMENT. HOWEVER, ANY INFORMATION  
10 SHARED AS A RESULT OF THIS AGREEMENT SHALL NOT BE AVAILABLE FOR DISCLO-  
11 SURE OR INSPECTION UNDER THE STATE FREEDOM OF INFORMATION LAW.

12 (C) AGREE TO NOT PARTICIPATE IN THE EXCELSIOR JOBS PROGRAM, THE NEW  
13 YORK STATE EMPIRE ZONES PROGRAM, OR CLAIM ANY TAX CREDITS UNDER THE  
14 BROWNFIELD CLEANUP PROGRAM IF ADMITTED INTO THE ECONOMIC TRANSFORMATION  
15 AND FACILITY REDEVELOPMENT PROGRAM WITH REGARD TO THE FACILITY (OR  
16 FACILITIES) LOCATED IN THE ECONOMIC TRANSFORMATION AREA.

17 (D) PROVIDE THE FOLLOWING INFORMATION TO THE DEPARTMENT UPON REQUEST:

18 (I) A PLAN OUTLINING THE SCHEDULE FOR MEETING THE JOB AND INVESTMENT  
19 REQUIREMENTS SET FORTH IN SECTION FOUR HUNDRED ONE OF THIS ARTICLE,  
20 INCLUDING DETAILS ON JOB TITLES AND EXPECTED SALARIES;

21 (II) THE PRIOR THREE YEARS OF FEDERAL AND STATE INCOME OR FRANCHISE  
22 TAX RETURNS, UNEMPLOYMENT INSURANCE QUARTERLY RETURNS, REAL PROPERTY TAX  
23 BILLS AND AUDITED FINANCIAL STATEMENTS;

24 (III) THE AMOUNT AND DESCRIPTION OF PROJECTED QUALIFIED INVESTMENTS  
25 FOR WHICH IT PLANS TO CLAIM THE ECONOMIC TRANSFORMATION AND FACILITY  
26 REDEVELOPMENT INVESTMENT TAX CREDIT;

27 (IV) THE EMPLOYER IDENTIFICATION NUMBERS OR SOCIAL SECURITY NUMBERS  
28 FOR ALL RELATED PERSONS TO THE APPLICANT, INCLUDING THOSE OF ANY MEMBERS  
29 OF A LIMITED LIABILITY COMPANY OR PARTNERS IN A PARTNERSHIP.

30 (E) PROVIDE A CLEAR AND DETAILED PRESENTATION OF ALL RELATED PERSONS  
31 TO THE APPLICANT TO ASSURE THE DEPARTMENT THAT JOBS ARE NOT BEING SHIFT-  
32 ED WITHIN THE STATE.

33 (F) CERTIFY, UNDER PENALTY OF PERJURY, THAT IT IS IN SUBSTANTIAL  
34 COMPLIANCE WITH ALL ENVIRONMENTAL, WORKER PROTECTION, AND LOCAL, STATE,  
35 AND FEDERAL TAX LAWS.

36 (G) AGREE, TO THE EXTENT PRACTICABLE, TO CONSIDER FOR EMPLOYMENT  
37 PERSONS DISPLACED BY A FACILITY CLOSURE.

38 3. AFTER REVIEWING A BUSINESS ENTITY'S COMPLETED APPLICATION AND  
39 DETERMINING THAT THE BUSINESS ENTITY SATISFIES THE REQUIREMENTS IN  
40 SUBDIVISION FOUR OF SECTION FOUR HUNDRED OF THIS ARTICLE AND WILL MEET  
41 ELIGIBILITY REQUIREMENTS SET FORTH IN SECTION FOUR HUNDRED ONE OF THIS  
42 ARTICLE, THE DEPARTMENT MAY, AT THE DISCRETION OF THE COMMISSIONER,  
43 ADMIT THE APPLICANT INTO THE PROGRAM AND PROVIDE THE APPLICANT WITH A  
44 CERTIFICATE OF ELIGIBILITY. IF A PARTICIPANT DOES NOT START CONSTRUCTION  
45 ON OR ACQUIRE A QUALIFIED INVESTMENT OR CREATE AT LEAST ONE NET NEW JOB  
46 WITHIN ONE YEAR OF THE ISSUANCE OF ITS CERTIFICATE OF ELIGIBILITY, THE  
47 PARTICIPANT WILL NOT BE ELIGIBLE FOR ANY OF THE ECONOMIC TRANSFORMATION  
48 AND FACILITY REDEVELOPMENT PROGRAM TAX CREDITS.

49 4. A PARTICIPANT MAY CLAIM TAX CREDITS PURSUANT TO SECTION THIRTY-FIVE  
50 OF THE TAX LAW COMMENCING IN THE FIRST TAXABLE YEAR IN WHICH THE PARTIC-  
51 IPANT CREATES FIVE NET NEW JOBS. A PARTICIPANT MAY CLAIM SUCH BENEFITS  
52 FOR THE NEXT FOUR CONSECUTIVE TAXABLE YEARS, PROVIDED THAT THE PARTIC-  
53 IPANT DEMONSTRATES TO THE COMMISSIONER OF TAXATION AND FINANCE THAT IT  
54 CONTINUES TO MAINTAIN FIVE NET NEW JOBS. HOWEVER, IN NO EVENT MAY THAT  
55 BENEFIT PERIOD START LATER THAN TWO YEARS AFTER THE CERTIFICATE OF

1 ELIGIBILITY IS ISSUED. THE PARTICIPANT MAY ALSO BE ELIGIBLE FOR THE  
2 ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT SALES TAX REFUND.

3 S 403. POWERS AND DUTIES OF THE COMMISSIONER. 1. THE COMMISSIONER  
4 SHALL PROMULGATE REGULATIONS ESTABLISHING AN APPLICATION PROCESS AND  
5 ELIGIBILITY CRITERIA SET FORTH IN SECTION FOUR HUNDRED ONE OF THIS ARTI-  
6 CLE WHICH, NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THE STATE  
7 ADMINISTRATIVE PROCEDURE ACT, MAY BE ADOPTED ON AN EMERGENCY BASIS.

8 2. WHEN CONSIDERING AN APPLICATION, THE COMMISSIONER SHALL CONSIDER  
9 FACTORS INCLUDING, BUT NOT LIMITED TO, THE OVERALL COST AND EFFECTIVE-  
10 NESS OF THE PROJECT, AND WHETHER THE PROJECT IS CONSISTENT WITH THE  
11 INTENT OF THE PROGRAM.

12 3. THE COMMISSIONER SHALL, IN CONSULTATION WITH THE DEPARTMENT OF  
13 TAXATION AND FINANCE, DEVELOP A CERTIFICATE OF ELIGIBILITY THAT SHALL BE  
14 ISSUED BY THE COMMISSIONER TO PARTICIPANTS. PARTICIPANTS MUST INCLUDE A  
15 COPY OF THE CERTIFICATE OF ELIGIBILITY WITH THEIR TAX RETURN TO RECEIVE  
16 ANY TAX BENEFITS UNDER SECTION THIRTY-FIVE OF THE TAX LAW. PARTICIPANTS  
17 MUST ALSO INCLUDE A COPY OF THE CERTIFICATE OF ELIGIBILITY WITH THEIR  
18 APPLICATION FOR THE REAL PROPERTY TAX EXEMPTION AUTHORIZED BY SECTION  
19 FOUR HUNDRED EIGHTY-FIVE-P OF THE REAL PROPERTY TAX LAW, IF SUCH  
20 EXEMPTION IS AVAILABLE WHERE THE PROPERTY IS LOCATED.

21 S 404. REPORTING. THE COMMISSIONER SHALL PREPARE ON A QUARTERLY BASIS  
22 A PROGRAM REPORT FOR POSTING ON THE DEPARTMENT'S WEBSITE. THE FIRST  
23 REPORT WILL BE DUE JUNE THIRTIETH, TWO THOUSAND TWELVE, AND EVERY THREE  
24 MONTHS THEREAFTER. SUCH REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE  
25 FOLLOWING: NUMBER OF APPLICANTS; NUMBER OF PARTICIPANTS APPROVED; NAMES  
26 OF PARTICIPANTS; TOTAL AMOUNT OF PROJECTED BENEFITS CERTIFIED BY TYPE OF  
27 BENEFIT; TOTAL NUMBER OF PROJECTED NEW JOBS TO BE CREATED; NUMBER OF  
28 PROJECTED NET NEW JOBS CREATED PER PARTICIPANT; AGGREGATE PROJECTED NEW  
29 INVESTMENT IN THE STATE; PROJECTED NEW INVESTMENT PER PARTICIPANT; AND  
30 SUCH OTHER INFORMATION AS THE COMMISSIONER DETERMINES.

31 S 3. The tax law is amended by adding a new section 35 to read as  
32 follows:

33 S 35. ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM TAX  
34 CREDIT. (A) GENERAL. (1) A TAXPAYER WHICH IS A PARTICIPANT OR THE OWNER  
35 OF A PARTICIPANT IN THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOP-  
36 MENT PROGRAM UNDER ARTICLE EIGHTEEN OF THE ECONOMIC DEVELOPMENT LAW THAT  
37 IS SUBJECT TO TAX UNDER SECTION ONE HUNDRED EIGHTY-FIVE OF ARTICLE NINE,  
38 OR ARTICLE NINE-A, TWENTY-TWO, THIRTY-TWO OR THIRTY-THREE OF THIS CHAP-  
39 TER SHALL BE ALLOWED THE SUM OF FOLLOWING COMPONENTS AGAINST SUCH TAX,  
40 PURSUANT TO THE PROVISIONS REFERENCED IN SUBDIVISION (F) OF THIS  
41 SECTION.

42 (A) THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM  
43 JOBS TAX CREDIT COMPONENT;

44 (B) THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM  
45 INVESTMENT TAX CREDIT COMPONENT;

46 (C) THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM JOB  
47 TRAINING CREDIT COMPONENT; AND

48 (D) THE ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM  
49 REAL PROPERTY TAX CREDIT COMPONENT.

50 (2) A TAXPAYER WHICH IS A PARTICIPANT IN THE ECONOMIC TRANSFORMATION  
51 AND FACILITY REDEVELOPMENT PROGRAM UNDER ARTICLE EIGHTEEN OF THE ECONOM-  
52 IC DEVELOPMENT LAW, OR SUCH PARTICIPANT'S CONTRACTOR, SHALL BE ALLOWED A  
53 SALES TAX REFUND AS PROVIDED IN SUBDIVISION (F) OF SECTION ONE THOUSAND  
54 ONE HUNDRED NINETEEN OF THIS CHAPTER.

1 (3) TO BE ELIGIBLE FOR THE ECONOMIC TRANSFORMATION AND FACILITY REDE-  
2 VELOPMENT PROGRAM TAX CREDIT, THE TAXPAYER MUST MEET ALL THE FOLLOWING  
3 REQUIREMENTS.

4 (A) THE TAXPAYER MUST BE A PARTICIPANT OR THE OWNER OF A PARTICIPANT  
5 IN THE ECONOMIC TRANSFORMATION AND FACILITY DEVELOPMENT PROGRAM. THE  
6 COMMISSIONER OF ECONOMIC DEVELOPMENT MUST HAVE ISSUED A CERTIFICATE OF  
7 ELIGIBILITY PURSUANT TO SECTION FOUR HUNDRED TWO OF THE ECONOMIC DEVEL-  
8 OPMENT LAW TO THE TAXPAYER OR TO AN ENTITY IN WHICH THE TAXPAYER IS AN  
9 OWNER. A COPY OF THE CERTIFICATE SHALL BE ATTACHED TO THE TAXPAYER'S  
10 REPORT OR RETURN.

11 (B) THE TAXPAYER OR THE ENTITY IN WHICH THE TAXPAYER IS AN OWNER MUST  
12 BE A QUALIFIED NEW BUSINESS AS DEFINED IN SUBDIVISION (E) OF THIS  
13 SECTION.

14 (C) THE TAXPAYER OR THE ENTITY IN WHICH THE TAXPAYER IS AN OWNER MUST  
15 CREATE AND MAINTAIN AT LEAST FIVE NET NEW JOBS IN THE ECONOMIC TRANSFOR-  
16 MATION AREA.

17 (4) THE BENEFIT PERIOD FOR THE TAX CREDITS UNDER ARTICLES NINE,  
18 NINE-A, TWENTY-TWO, THIRTY-TWO AND THIRTY-THREE OF THIS CHAPTER IS FIVE  
19 CONSECUTIVE TAXABLE YEARS, BEGINNING WITH THE FIRST TAXABLE YEAR IN  
20 WHICH THE FIVE NET NEW JOBS ARE CREATED. HOWEVER, IN NO EVENT MAY THAT  
21 BENEFIT PERIOD START LATER THAN TWO YEARS AFTER THE CERTIFICATE OF  
22 ELIGIBILITY IS ISSUED. IF, IN ANY YEAR OF THE BENEFIT PERIOD, THE  
23 TAXPAYER FAILS TO MAINTAIN THE REQUIRED LEVEL OF FIVE NET NEW JOBS  
24 (MEASURED QUARTERLY), THE TAXPAYER WILL NOT BE ALLOWED A CREDIT FOR THAT  
25 YEAR. SUCH FAILURE TO BE ALLOWED A CREDIT WILL NOT EXTEND THE TAXPAYER'S  
26 BENEFIT PERIOD.

27 (B) ELECTION OF CREDIT. NO COST OR EXPENSE PAID OR INCURRED BY THE  
28 TAXPAYER OR THE ENTITY IN WHICH THE TAXPAYER IS AN OWNER THAT IS THE  
29 BASIS FOR ANY OF THE ABOVE NAMED CREDITS SHALL BE THE BASIS FOR ANY  
30 OTHER TAX CREDIT UNDER THIS CHAPTER. IF A TAXPAYER ELECTS TO CLAIM AN  
31 ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM TAX CREDIT,  
32 THE ELECTION IS IRREVOCABLE.

33 (C) INFORMATION SHARING. (1) NOTWITHSTANDING ANY PROVISION OF THIS  
34 CHAPTER, EMPLOYEES AND OFFICERS OF THE DEPARTMENT OF ECONOMIC DEVELOP-  
35 MENT AND THE DEPARTMENT SHALL BE ALLOWED AND ARE DIRECTED TO SHARE AND  
36 EXCHANGE:

37 (A) INFORMATION DERIVED FROM TAX RETURNS OR REPORTS THAT IS RELEVANT  
38 TO A TAXPAYER'S ELIGIBILITY TO PARTICIPATE IN THE ECONOMIC TRANSFORMA-  
39 TION AND FACILITY REDEVELOPMENT PROGRAM;

40 (B) INFORMATION REGARDING THE CREDITS APPLIED FOR, ALLOWED, OR CLAIMED  
41 PURSUANT TO THIS SECTION AND TAXPAYERS WHO ARE APPLYING FOR THE CREDITS  
42 OR WHO ARE CLAIMING THE CREDITS; AND

43 (C) INFORMATION CONTAINED IN OR DERIVED FROM CREDIT CLAIM FORMS  
44 SUBMITTED TO THE DEPARTMENT AND APPLICATIONS FOR ADMISSION INTO THE  
45 ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM.

46 (2) OTHER THAN THE INFORMATION REQUIRED TO BE CONTAINED IN THE REPORT  
47 ISSUED PURSUANT TO SUBDIVISION (D) OF THIS SECTION, ALL INFORMATION  
48 EXCHANGED BETWEEN THE DEPARTMENT OF ECONOMIC DEVELOPMENT AND THE DEPART-  
49 MENT SHALL NOT BE SUBJECT TO DISCLOSURE OR INSPECTION UNDER THE STATE'S  
50 FREEDOM OF INFORMATION LAW.

51 (D) ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM TAX  
52 CREDITS REPORT. (1) THE COMMISSIONER MUST PUBLISH AN ECONOMIC TRANSFOR-  
53 MATION AND FACILITY REDEVELOPMENT PROGRAM TAX CREDITS REPORT ANNUALLY BY  
54 JULY THIRTY-FIRST. THE FIRST REPORT SHALL BE DUE JULY THIRTY-FIRST, TWO  
55 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

1 WHICH IT IS APPLYING FOR CERTIFICATION UNDER ARTICLE EIGHTEEN OF THE  
2 ECONOMIC DEVELOPMENT LAW.

3 (3) THE TERM "ENTITY IN WHICH THE TAXPAYER IS AN OWNER" SHALL MEAN A  
4 LIMITED LIABILITY COMPANY IN WHICH THE TAXPAYER IS A MEMBER, A PARTNER-  
5 SHIP IN WHICH THE TAXPAYER IS A PARTNER AND A NEW YORK SUBCHAPTER S  
6 CORPORATION IN WHICH THE TAXPAYER IS A SHAREHOLDER.

7 (F) CROSS-REFERENCES. FOR APPLICATION OF THE CREDITS PROVIDED FOR IN  
8 THIS SECTION, SEE THE FOLLOWING PROVISIONS OF THIS CHAPTER:

9 (1) SECTION 185: SECTION 187-R

10 (2) ARTICLE 9-A: SECTION 210(43).

11 (3) ARTICLE 22: SECTION 606 (SS).

12 (4) ARTICLE 32: SECTION 1456(X).

13 (5) ARTICLE 33: SECTION 1511 (AA).

14 (G) ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM JOBS  
15 TAX CREDIT. A TAXPAYER WHICH MEETS THE REQUIREMENTS IN THIS SECTION  
16 SHALL BE ELIGIBLE TO CLAIM A CREDIT FOR EACH NET NEW JOB THAT THE  
17 TAXPAYER CREATES IN THE ECONOMIC TRANSFORMATION AREA WITH RESPECT TO THE  
18 PROJECT FOR WHICH THE CERTIFICATE OF ELIGIBILITY IS ISSUED. THE AMOUNT  
19 OF SUCH CREDIT PER JOB SHALL BE EQUAL TO THE PRODUCT OF THE GROSS WAGES  
20 PAID AND 6.85 PERCENT.

21 (H) ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM INVEST-  
22 MENT TAX CREDIT. (1) A TAXPAYER WHICH MEETS THE REQUIREMENTS IN THIS  
23 SECTION SHALL BE ELIGIBLE TO CLAIM A CREDIT ON QUALIFIED INVESTMENTS  
24 WITH RESPECT TO THE PROJECT FOR WHICH THE CERTIFICATE OF ELIGIBILITY IS  
25 ISSUED. THE CREDIT SHALL BE EQUAL TO TEN PERCENT OF THE COST OR OTHER  
26 BASIS FOR FEDERAL INCOME TAX PURPOSES OF THE QUALIFIED INVESTMENT AT A  
27 CLOSED FACILITY. THE TOTAL AMOUNT OF INVESTMENT TAX CREDIT ALLOWED FOR  
28 ALL ELIGIBLE PARTICIPANTS UNDER THIS SUBDIVISION FOR QUALIFIED INVEST-  
29 MENTS LOCATED AT EACH CLOSED FACILITY SHALL NOT EXCEED EIGHT MILLION  
30 DOLLARS. THE CREDIT SHALL BE EQUAL TO SIX PERCENT OF THE COST OR OTHER  
31 BASIS FOR FEDERAL INCOME TAX PURPOSES FOR ALL OTHER QUALIFIED INVEST-  
32 MENTS, BUT THE CREDIT ALLOWED TO A TAXPAYER MAY NOT EXCEED FOUR MILLION  
33 DOLLARS.

34 (2) COSTS INCURRED PRIOR TO THE DATE THE CERTIFICATE OF ELIGIBILITY IS  
35 ISSUED ARE NOT ELIGIBLE TO BE INCLUDED IN THE CALCULATION OF THE CREDIT.  
36 A TAXPAYER WHICH IS A PARTICIPANT IN THE ECONOMIC TRANSFORMATION AND  
37 REDEVELOPMENT PROGRAM OR IS AN OWNER OF AN ENTITY THAT IS A PARTICIPANT  
38 IS NOT ELIGIBLE FOR ANY OTHER INVESTMENT TAX CREDIT PROVIDED UNDER THIS  
39 CHAPTER.

40 (3) IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP, MEMBER OF A LIMITED  
41 LIABILITY COMPANY OR SHAREHOLDER OF A NEW YORK S CORPORATION, THEN THE  
42 FOUR MILLION DOLLAR LIMIT IMPOSED ABOVE BY THE PRECEDING SENTENCES SHALL  
43 BE APPLIED AT THE ENTITY LEVEL, SO THAT THE AGGREGATE CREDIT ALLOWED TO  
44 ALL THE PARTNERS, MEMBERS OR SHAREHOLDERS OF EACH SUCH ENTITY IN THE  
45 TAXABLE YEAR DOES NOT EXCEED THE FOUR MILLION DOLLAR LIMITATION.  
46 FURTHER, IN ORDER TO PROPERLY ADMINISTER THE LIMITATION OF INVESTMENT  
47 TAX CREDIT AT A CLOSED FACILITY, THE DEPARTMENT MAY DISCLOSE INFORMATION  
48 ABOUT THE CALCULATION AND THE AMOUNTS OF THE CREDITS CLAIMED UNDER THIS  
49 SUBDIVISION FOR QUALIFIED INVESTMENTS AT A PARTICULAR CLOSED FACILITY TO  
50 OTHER TAXPAYERS CLAIMING INVESTMENT TAX CREDITS UNDER THIS SUBDIVISION  
51 AT THAT SAME CLOSED FACILITY.

52 (I) ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM TRAIN-  
53 ING TAX CREDIT. (1) A TAXPAYER WHICH MEETS THE REQUIREMENTS OF THIS  
54 SECTION SHALL BE ALLOWED A CREDIT FOR QUALIFIED TRAINING EXPENDITURES  
55 PAID BY THE TAXPAYER WITH RESPECT TO THE PROJECT FOR WHICH THE CERTIF-  
56 ICATE OF ELIGIBILITY IS ISSUED. THE AMOUNT OF THE CREDIT SHALL BE FIFTY

1 PERCENT OF THE QUALIFIED TRAINING EXPENSES PAID DURING THE TAXABLE YEAR,  
2 SUBJECT TO A LIMITATION OF NO MORE THAN FOUR THOUSAND DOLLARS PER  
3 EMPLOYEE PER YEAR FOR SUCH TRAINING EXPENSES. THIS CREDIT APPLIES ONLY  
4 TO QUALIFIED TRAINING PROVIDED TO EMPLOYEES WHO WERE HIRED AFTER THEY  
5 LOST THEIR JOBS AT A CLOSED FACILITY AS A RESULT OF THE CLOSURE OF THAT  
6 FACILITY AS DESCRIBED IN SUBDIVISION ELEVEN OF SECTION FOUR HUNDRED OF  
7 THE ECONOMIC DEVELOPMENT LAW.

8 (2) QUALIFIED TRAINING SHALL INCLUDE A COURSE OR COURSES TAKEN AND  
9 SATISFACTORILY COMPLETED BY AN EMPLOYEE OF THE TAXPAYER AT AN ACCRED-  
10 ITED, DEGREE GRANTING, POST-SECONDARY COLLEGE OR UNIVERSITY IN NEW YORK  
11 STATE THAT (A) DIRECTLY RELATES TO THE DUTIES THAT THE EMPLOYEE PERFORMS  
12 FOR THE TAXPAYER WITHIN THE ECONOMIC TRANSFORMATION AREA; AND (B) IS  
13 INTENDED TO UPGRADE, RETRAIN OR IMPROVE THE PRODUCTIVITY OR THEORETICAL  
14 AWARENESS OF THE EMPLOYEE. SUCH COURSE OR COURSES SHALL NOT INCLUDE  
15 CLASSES IN THE DISCIPLINES OF MANAGEMENT, ACCOUNTING OR THE LAW OR ANY  
16 CLASS DESIGNED TO FULFILL THE DISCIPLINE SPECIFIC REQUIREMENTS OF A  
17 DEGREE PROGRAM AT THE ASSOCIATE, BACCALAUREATE, GRADUATE OR PROFESSIONAL  
18 LEVEL OF THESE DISCIPLINES. SATISFACTORY COMPLETION OF A COURSE OR  
19 COURSES SHALL MEAN THE EARNING AND GRANTING OF CREDIT OR EQUIVALENT  
20 UNIT, WITH THE ATTAINMENT OF A GRADE OF "B" OR HIGHER IN A GRADUATE  
21 LEVEL COURSE OR COURSES, A GRADE OF "C" OR HIGHER IN AN UNDERGRADUATE  
22 LEVEL COURSE OR COURSES, OR A SIMILAR MEASURE OF COMPETENCY FOR A COURSE  
23 THAT IS NOT MEASURED ACCORDING TO A STANDARD GRADE FORMULA.

24 (3) QUALIFIED TRAINING EXPENDITURES SHALL INCLUDE EXPENSES FOR TUITION  
25 AND MANDATORY FEES, SOFTWARE REQUIRED BY THE INSTITUTION, FEES FOR TEXT-  
26 BOOKS OR OTHER LITERATURE REQUIRED BY THE INSTITUTION OFFERING THE  
27 COURSE OR COURSES, MINUS APPLICABLE SCHOLARSHIPS AND TUITION OR FEE  
28 WAIVERS NOT GRANTED BY THE TAXPAYER OR ANY RELATED PERSON, THAT ARE PAID  
29 OR REIMBURSED BY THE TAXPAYER. QUALIFIED TRAINING EXPENDITURES DO NOT  
30 INCLUDE ROOM AND BOARD, COMPUTER HARDWARE OR SOFTWARE NOT SPECIFICALLY  
31 ASSIGNED FOR SUCH COURSE OR COURSES, LATE-CHARGES, FINES OR MEMBERSHIP  
32 DUES AND SIMILAR EXPENSES. SUCH QUALIFIED TRAINING EXPENDITURES SHALL  
33 NOT BE ELIGIBLE FOR THE CREDIT PROVIDED BY THIS SECTION UNLESS THE  
34 EMPLOYEE FOR WHOM THE EXPENDITURES ARE DISBURSED IS CONTINUOUSLY  
35 EMPLOYED BY THE TAXPAYER IN A FULL-TIME, FULL-YEAR POSITION PRIMARILY  
36 LOCATED AT A SITE IN AN ECONOMIC TRANSFORMATION AREA DURING THE PERIOD  
37 OF SUCH COURSEWORK AND LASTING THROUGH AT LEAST ONE HUNDRED EIGHTY DAYS  
38 AFTER THE SATISFACTORY COMPLETION OF THE QUALIFYING COURSE-WORK. QUALI-  
39 FIED TRAINING EXPENDITURES SHALL NOT INCLUDE EXPENSES FOR IN-HOUSE OR  
40 SHARED TRAINING OUTSIDE OF A NEW YORK STATE HIGHER EDUCATION INSTITUTION  
41 OR THE USE OF CONSULTANTS OUTSIDE OF CREDIT GRANTING COURSES, WHETHER  
42 SUCH CONSULTANTS FUNCTION INSIDE OF SUCH HIGHER EDUCATION INSTITUTION OR  
43 NOT.

44 (J) ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM REAL  
45 PROPERTY TAX CREDIT. (1) A TAXPAYER WHICH MEETS THE REQUIREMENTS OF THIS  
46 SECTION SHALL BE ALLOWED A CREDIT MEASURED BY THE REAL PROPERTY TAXES ON  
47 THE REAL PROPERTY LOCATED IN THE ECONOMIC TRANSFORMATION AREA WITH  
48 RESPECT TO THE PROJECT FOR WHICH THE CERTIFICATE OF ELIGIBILITY IS  
49 ISSUED. IN THE FIRST TAXABLE YEAR THAT THE TAXPAYER MAY CLAIM THIS CRED-  
50 IT, THE CREDIT SHALL BE EQUAL TO TWENTY-FIVE PERCENT OF THE REAL PROPER-  
51 TY TAXES ASSESSED AND PAID DURING THAT YEAR BY THE PARTICIPANT ON THE  
52 REAL PROPERTY LOCATED IN THE ECONOMIC TRANSFORMATION AREA OUTSIDE OF THE  
53 CLOSED FACILITY. IF THE REAL PROPERTY IS LOCATED ENTIRELY WITHIN THE  
54 GROUNDS OF A CLOSED FACILITY, THE CREDIT IN THE FIRST YEAR OF THE BENE-  
55 FIT PERIOD SHALL BE EQUAL TO FIFTY PERCENT OF THE REAL PROPERTY TAXES  
56 ASSESSED AND PAID BY THE PARTICIPANT DURING THAT YEAR ON THAT PROPERTY.

1 IN THE FOLLOWING YEARS OF THE BENEFIT PERIOD, THE PERCENTAGE DECREASES  
2 BY FIVE PERCENTAGE POINTS EACH YEAR FOR REAL PROPERTY LOCATED IN THE  
3 ECONOMIC TRANSFORMATION AREA OUTSIDE OF THE CLOSED FACILITY, AND TEN  
4 PERCENTAGE POINTS FOR REAL PROPERTY LOCATED AT THE CLOSED FACILITY.

5 (2) (A) FOR PURPOSES OF THIS CREDIT, "REAL PROPERTY TAXES" MEANS A  
6 CHARGE IMPOSED UPON REAL PROPERTY BY OR ON BEHALF OF A COUNTY, CITY,  
7 TOWN, VILLAGE OR SCHOOL DISTRICT FOR MUNICIPAL OR SCHOOL DISTRICT  
8 PURPOSES, PROVIDED THAT THE CHARGE IS LEVIED FOR THE GENERAL PUBLIC  
9 WELFARE BY THE PROPER TAXING AUTHORITIES AT A LIKE RATE AGAINST ALL  
10 PROPERTY IN THE TERRITORY OVER WHICH SUCH AUTHORITIES HAVE JURISDICTION,  
11 AND PROVIDED THAT WHERE TAXES ARE LEVIED PURSUANT TO ARTICLE EIGHTEEN OR  
12 ARTICLE NINETEEN OF THE REAL PROPERTY TAX LAW, THE PROPERTY MUST HAVE  
13 BEEN TAXED AT THE RATE DETERMINED FOR THE CLASS IN WHICH IT IS  
14 CONTAINED, AS PROVIDED BY SUCH ARTICLE EIGHTEEN OR NINETEEN, WHICHEVER  
15 IS APPLICABLE.

16 (B) THE TERM "REAL PROPERTY TAXES" DOES NOT INCLUDE A CHARGE FOR LOCAL  
17 BENEFITS, INCLUDING ANY PORTION OF THAT CHARGE THAT IS PROPERLY ALLO-  
18 CATED TO THE COSTS ATTRIBUTABLE TO MAINTENANCE OR INTEREST, WHEN (I) THE  
19 PROPERTY SUBJECT TO THE CHARGE IS LIMITED TO THE PROPERTY THAT BENEFITS  
20 FROM THE CHARGE, OR (II) THE AMOUNT OF THE CHARGE IS DETERMINED BY THE  
21 BENEFIT TO THE PROPERTY ASSESSED, OR (III) THE IMPROVEMENT FOR WHICH THE  
22 CHARGE IS ASSESSED TENDS TO INCREASE THE PROPERTY VALUE.

23 (C) THE TERM "REAL PROPERTY TAXES" INCLUDES PAYMENTS IN LIEU OF TAXES  
24 MADE BY THE PARTICIPANT WHICH IS THE BENEFICIAL OWNER OF THE REAL PROP-  
25 erty TO THE STATE, A MUNICIPAL CORPORATION OR A PUBLIC BENEFIT CORPO-  
26 RATION PURSUANT TO A WRITTEN AGREEMENT ENTERED INTO BETWEEN THE PARTIC-  
27 IPANT AND THE STATE, MUNICIPAL CORPORATION, OR PUBLIC BENEFIT  
28 CORPORATION. PROVIDED, HOWEVER, A PAYMENT IN LIEU OF TAXES MADE BY THE  
29 PARTICIPANT PURSUANT TO A WRITTEN AGREEMENT SHALL NOT CONSTITUTE REAL  
30 PROPERTY TAXES IN ANY TAXABLE YEAR TO THE EXTENT THAT SUCH PAYMENT  
31 EXCEEDS THE PRODUCT OF (I) THE BASIS FOR FEDERAL INCOME TAX PURPOSES OF  
32 THE REAL PROPERTY LOCATED IN THE ECONOMIC TRANSFORMATION AREA AND  
33 SUBJECT TO THAT AGREEMENT, CALCULATED WITHOUT REGARD TO DEPRECIATION, ON  
34 THE LAST DAY OF THE TAXABLE YEAR, AND (II) THE ESTIMATED EFFECTIVE FULL  
35 VALUE TAX RATE WITHIN THE COUNTY IN WHICH SUCH PROPERTY IS LOCATED, AS  
36 MOST RECENTLY CALCULATED BY THE COMMISSIONER. THE COMMISSIONER SHALL  
37 ANNUALLY CALCULATE ESTIMATED EFFECTIVE FULL VALUE TAX RATES WITHIN EACH  
38 COUNTY FOR THIS PURPOSE BASED UPON THE MOST CURRENT INFORMATION AVAIL-  
39 ABLE TO HIM OR HER IN RELATION TO COUNTY, CITY, TOWN, VILLAGE AND SCHOOL  
40 DISTRICT TAXES.

41 (K) RECAPTURE OF CREDITS. IF THE PARTICIPANT AT THE END OF ITS BENEFIT  
42 PERIOD HAS NOT CREATED SUFFICIENT NET NEW JOBS AND MADE SUFFICIENT QUAL-  
43 IFIED INVESTMENTS TO ACHIEVE A BENEFIT-COST RATIO OF AT LEAST TEN TO  
44 ONE, THE TAXPAYER SHALL BE REQUIRED TO ADD BACK AS TAX IN THE LAST YEAR  
45 OF ITS BENEFIT PERIOD THE PORTION OF THE ECONOMIC TRANSFORMATION AND  
46 FACILITY REDEVELOPMENT TAX CREDITS CLAIMED IN THE YEARS OF ITS BENEFIT  
47 PERIOD NECESSARY TO ACHIEVE A COST BENEFIT RATIO OF TEN TO ONE.

48 S 4. The tax law is amended by adding a new section 187-r to read as  
49 follows:

50 S 187-R. ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT TAX CRED-  
51 IT. (A) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO  
52 BE COMPUTED AS PROVIDED IN SECTION THIRTY-FIVE OF THIS CHAPTER, AGAINST  
53 THE TAX IMPOSED BY SECTION ONE HUNDRED EIGHTY-FIVE OF THIS ARTICLE.

54 (B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION  
55 FOR ANY TAXABLE YEAR MAY NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS  
56 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	AMOUNT OF CREDIT UNDER SUBDIVISION
AND FACILITY REDEVELOPMENT CREDIT	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

1 APPLICATION. SUCH TANGIBLE PERSONAL PROPERTY MUST BE IN THE CONTRACTOR'S  
2 INVENTORY ON OR AFTER THE DAY THE PARTICIPANT RECEIVES ITS CERTIFICATE  
3 OF ELIGIBILITY, OR BE PURCHASED OR CONTRACTED TO BE PURCHASED AFTER THE  
4 PARTICIPANT RECEIVES ITS CERTIFICATE OF ELIGIBILITY, BUT SUCH PROPERTY  
5 MUST MEET THE CONDITIONS OF THE PRECEDING SENTENCE AND BE USED BEFORE  
6 THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR SUCH CONSTRUCTED,  
7 EXPANDED, OR REHABILITATED REAL PROPERTY.

8 (3) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE REFUND PROVIDED  
9 FOR IN THIS SUBDIVISION SHALL NOT APPLY TO THE TAXES IMPOSED BY SECTION  
10 ELEVEN HUNDRED SEVEN OR ELEVEN HUNDRED NINE OF THIS ARTICLE OR TO ANY  
11 TAX IMPOSED PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS  
12 CHAPTER.

13 (4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHERE THE TAX ON THE  
14 SALE OR USE OF SUCH TANGIBLE PERSONAL PROPERTY HAS BEEN PAID TO THE  
15 VENDOR, TO QUALIFY FOR SUCH REFUND, SUCH TANGIBLE PERSONAL PROPERTY MUST  
16 BE INCORPORATED INTO REAL PROPERTY AND USED AS REQUIRED IN PARAGRAPHS  
17 ONE AND TWO OF THIS SUBDIVISION WITHIN THREE YEARS AFTER THE DATE SUCH  
18 TAX WAS PAYABLE TO THE COMMISSIONER BY THE VENDOR PURSUANT TO SECTION  
19 ELEVEN HUNDRED THIRTY-SEVEN OF THIS ARTICLE. WHERE THE TAX ON THE SALE  
20 OR USE OF SUCH TANGIBLE PERSONAL PROPERTY WAS PAID BY THE APPLICANT FOR  
21 THE REFUND DIRECTLY TO THE COMMISSIONER, TO QUALIFY FOR SUCH REFUND,  
22 SUCH TANGIBLE PERSONAL PROPERTY MUST BE INCORPORATED INTO REAL PROPERTY  
23 AND USED IN THE MANNER DESCRIBED IN PARAGRAPHS ONE AND TWO OF THIS  
24 SUBDIVISION WITHIN THREE YEARS AFTER THE DATE SUCH TAX WAS PAYABLE TO  
25 THE COMMISSIONER BY SUCH APPLICANT PURSUANT TO THIS ARTICLE. AN APPLICA-  
26 TION FOR A REFUND PURSUANT TO THIS SECTION MUST BE FILED WITH THE  
27 COMMISSIONER WITHIN THE TIME PROVIDED BY SUBDIVISION (A) OF SECTION  
28 ELEVEN HUNDRED THIRTY-NINE OF THIS ARTICLE. SUCH APPLICATION SHALL BE IN  
29 SUCH FORM AS THE COMMISSIONER MAY PRESCRIBE. THIS APPLICATION WILL BE  
30 THE ONLY MEANS OF APPLYING FOR THE REFUND ALLOWED BY THIS SECTION; THE  
31 APPLICANT MAY NOT TAKE THIS REFUND IN ANY OTHER MANNER, INCLUDING THE  
32 TAKING OF A CREDIT ON ANY RETURN DUE PURSUANT TO SECTION ELEVEN HUNDRED  
33 THIRTY-SIX OF THIS ARTICLE. A TAXPAYER MAY NOT APPLY FOR A REFUND UNDER  
34 THIS SUBDIVISION MORE FREQUENTLY THAN ONCE A SALES TAX QUARTERLY PERIOD  
35 AS DESCRIBED IN SUBDIVISION (B) OF SECTION ELEVEN HUNDRED THIRTY-SIX OF  
36 THIS ARTICLE.

37 (5) THE TERMS "PARTICIPANT", "ECONOMIC TRANSFORMATION AREA", AND  
38 "CERTIFICATE OF ELIGIBILITY" SHALL HAVE THE SAME MEANING AS THOSE TERMS  
39 HAVE IN SECTION FOUR HUNDRED OF THE ECONOMIC DEVELOPMENT LAW.

40 S 11. The real property tax law is amended by adding a new section  
41 485-p to read as follows:

42 S 485-P. ECONOMIC TRANSFORMATION AREA EXEMPTION. 1. (A) REAL PROPERTY  
43 CONSTRUCTED, ALTERED, INSTALLED OR IMPROVED IN AN ECONOMIC TRANSFORMA-  
44 TION AREA AS DEFINED IN SUBDIVISION TEN OF SECTION FOUR HUNDRED OF THE  
45 ECONOMIC DEVELOPMENT LAW WHICH IS USED FOR BUSINESS, COMMERCIAL OR  
46 INDUSTRIAL PURPOSES AND WHICH IS OWNED BY A BUSINESS ENTITY THAT HAS  
47 BEEN ISSUED A CERTIFICATE OF ELIGIBILITY PURSUANT TO SUBDIVISION THREE  
48 OF SECTION FOUR HUNDRED TWO OF THE ECONOMIC DEVELOPMENT LAW SHALL BE  
49 EXEMPT FROM TAXATION AND SPECIAL AD VALOREM LEVIES BY ANY MUNICIPAL  
50 CORPORATION IN WHICH LOCATED, FOR THE PERIOD AND TO THE EXTENT HEREIN  
51 PROVIDED, PROVIDED THAT THE GOVERNING BOARD OF SUCH MUNICIPAL CORPO-  
52 RATION, AFTER PUBLIC HEARING, ADOPTS A LOCAL LAW, ORDINANCE OR RESOL-  
53 UTION PROVIDING THEREFORE. SUCH LOCAL LAW, ORDINANCE OR RESOLUTION MUST  
54 BE ADOPTED WITHIN THREE YEARS OF THE DATE OF THE CLOSURE OF A CLOSED  
55 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



1 SECTION LESS THE NUMBER OF YEARS THE PROPERTY WOULD HAVE BEEN PREVIOUSLY  
2 EXEMPT FROM REAL PROPERTY TAXES.

3 3. SUCH EXEMPTION SHALL BE GRANTED ONLY UPON APPLICATION BY THE OWNER  
4 OF SUCH REAL PROPERTY ON A FORM PRESCRIBED BY THE COMMISSIONER. THE  
5 ORIGINAL OF SUCH APPLICATION SHALL BE FILED WITH THE ASSESSOR OF THE  
6 ASSESSING UNIT. SUCH ORIGINAL APPLICATION SHALL BE FILED ON OR BEFORE  
7 THE APPROPRIATE TAXABLE STATUS DATE OF SUCH ASSESSING UNIT AND NO LATER  
8 THAN ONE YEAR FROM THE DATE OF COMPLETION OF SUCH CONSTRUCTION, ALTER-  
9 ATION, INSTALLATION OR IMPROVEMENT.

10 4. IF THE ASSESSOR RECEIVES AN APPLICATION BY THE OWNER OF THE REAL  
11 PROPERTY, HE OR SHE SHALL APPROVE THE APPLICATION AND SUCH REAL PROPERTY  
12 SHALL THEREAFTER BE EXEMPT FROM TAXATION AS HEREIN PROVIDED COMMENCING  
13 WITH THE ASSESSMENT ROLL PREPARED AFTER THE TAXABLE STATUS DATE REFERRED  
14 TO IN SUBDIVISION THREE OF THIS SECTION. THE ASSESSED VALUE OF ANY  
15 EXEMPTION GRANTED PURSUANT TO THIS SECTION SHALL BE ENTERED BY THE  
16 ASSESSOR ON THE ASSESSMENT ROLL WITH THE TAXABLE PROPERTY, WITH THE  
17 AMOUNT OF THE EXEMPTION ENTERED IN A SEPARATE COLUMN.

18 S 12. This act shall take effect immediately and shall expire and be  
19 deemed repealed December 31, 2021.

20 S 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
21 sion, section or part of this act shall be adjudged by any court of  
22 competent jurisdiction to be invalid, such judgment shall not affect,  
23 impair, or invalidate the remainder thereof, but shall be confined in  
24 its operation to the clause, sentence, paragraph, subdivision, section  
25 or part thereof directly involved in the controversy in which such judg-  
26 ment shall have been rendered. It is hereby declared to be the intent of  
27 the legislature that this act would have been enacted even if such  
28 invalid provisions had not been included herein.

29 S 3. This act shall take effect immediately provided, however, that  
30 the applicable effective date of Parts A through V of this act shall be  
31 as specifically set forth in the last section of such Parts.