

S. 2811--A

A. 4011--A

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

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

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; 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 making permanent the disclosure and penalty provisions for transactions that present the potential for tax avoidance (Part B); to amend the tax law, in relation to the empire zones program (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 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); to amend the tax law, in relation to

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

LBD12574-02-1

the exemption from the franchise tax on insurance corporations under article thirty-three of such law for town or county cooperative insurance corporations (Part H); to amend the insurance law, the general municipal 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); to amend the tax law, in relation to restrictions on certain keno style lottery games (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 in 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; and to amend the racing, pari-mutuel wagering and breeding law, in relation to extending certain provisions thereof (Part S)

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 S. 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 b. such amount has remained unclaimed by the person or persons enti-  
23 tled thereto for [five] THREE years, except

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

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

29 (a) That a report of all awards in condemnation proceedings unclaimed  
30 for more than [five] THREE years has been made to the state comptroller  
31 and that a copy thereof is on file and open to public inspection, if a  
32 public corporation at the office of the chief fiscal officer thereof; or  
33 if not a public corporation at the principal office or place of business  
34 of such corporation;

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

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

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

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

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

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

53 S 303. Payment of abandoned property. 1. In such succeeding month of  
54 November, and on or before the tenth day thereof, every banking organ-  
55 ization shall pay or deliver to the state comptroller all [abandoned]  
56 property [specified in such report, excepting such abandoned property as

1 since the date of such report shall have ceased to be abandoned] WHICH,  
2 AS OF THE THIRTIETH DAY OF JUNE NEXT PRECEDING, WAS DEEMED ABANDONED  
3 PURSUANT TO SECTION THREE HUNDRED OF THIS ARTICLE, HELD OR OWING BY SUCH  
4 BANKING ORGANIZATION.

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 relative to such abandoned property [as shall have ceased to be  
8 abandoned]. SUCH REPORT SHALL INCLUDE:

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

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

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

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

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

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

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

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

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

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

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

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

35 (C) WITH RESPECT TO AMOUNTS SPECIFIED IN PARAGRAPH (C) OF SUBDIVISION  
36 ONE OF SECTION THREE HUNDRED OF THIS ARTICLE WHICH ARE ABANDONED PROPER-  
37 TY:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S 403. Payment of abandoned property. 1. In such succeeding month of October, and on or before the tenth day thereof, every such corporation shall pay to the state comptroller all [abandoned] property [specified in the last preceding report made to the state comptroller pursuant to section four hundred one, excepting such abandoned property as since the date of such report shall have ceased to be abandoned] WHICH, AS OF THE FIRST DAY OF JULY NEXT PRECEDING, WAS DEEMED ABANDONED PURSUANT TO SECTION FOUR HUNDRED OF THIS ARTICLE, HELD OR OWING BY SUCH CORPORATION.

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

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

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

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

(III) THE AMOUNT OF SUCH DEPOSIT OR PAYMENT;

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

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

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

(VII) THE AMOUNT OF SUCH ABANDONED PROPERTY; AND

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

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

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

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

(III) THE DATE PAYMENT BECAME DUE; AND

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

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

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

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

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

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

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

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

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

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

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

S 703. Payment of abandoned property. 1. In such succeeding month of September, and on or before the succeeding tenth day thereof, every such life insurance corporation shall pay to the state comptroller all [abandoned] property [specified in such report, excepting such abandoned property as since the date of such report shall have ceased to be abandoned] WHICH, AS OF THE FIRST DAY OF JANUARY NEXT PRECEDING, WAS DEEMED



1 ABANDONED PURSUANT TO SECTION SEVEN HUNDRED OF THIS ARTICLE, HELD OR  
2 OWING BY SUCH LIFE INSURANCE CORPORATION.

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

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

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

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

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

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

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

18 3. SUCH REPORT SHALL BE IN SUCH FORM AND THE ABANDONED PROPERTY LISTED  
19 SHALL BE CLASSIFIED IN SUCH MANNER AS THE STATE COMPTROLLER MAY  
20 PRESCRIBE. NAMES OF PERSONS APPEARING TO BE ENTITLED TO SUCH PROPERTY OR  
21 OF BENEFICIARIES APPEARING IN SUCH REPORT SHALL BE LISTED IN ALPHABET-  
22 ICAL ORDER WITHIN EACH SUCH CLASSIFICATION.

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

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

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

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

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

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

53 (b) Notwithstanding any other provision of law, payment for any aban-  
54 doned condemnation award heretofore or hereafter paid to the state comp-  
55 troller pursuant to sections ten hundred and ten hundred three of this  
56 chapter for the benefit of known persons may be made by the state comp-

1 troller on sworn application, where the name and last known address of  
2 the person or persons entitled to payment and any other identifying  
3 information as appearing on the records of the court into which payment  
4 was made is included in the report required to be filed pursuant to  
5 section ten hundred [one] THREE of this chapter and when the identity of  
6 the claimant as the person entitled to payment is established to the  
7 satisfaction of the state comptroller. When, in the determination of the  
8 state comptroller, the identifying information included in the report is  
9 insufficient to enable the state comptroller to make a determination of  
10 entitlement, such claim must be established only on order of the court  
11 as set forth in paragraph (a) of this subdivision.

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

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

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

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

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

31 2. [Within thirty days following the filing of the report of abandoned  
32 property with the comptroller pursuant to subdivision two of this  
33 section, the] EVERY insurer shall cause to be published, ON OR BEFORE  
34 THE FIRST DAY OF MAY IN EACH YEAR, a list of such abandoned property in  
35 the same manner as that prescribed for life insurance companies by  
36 section seven hundred two of this chapter.

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

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

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

46 Each payment or delivery of abandoned property pursuant to section  
47 five hundred two shall be accompanied by a [verified] written report, in  
48 such form as the state comptroller shall prescribe, setting forth:

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

52 A payment or delivery pursuant to section five hundred twelve shall be  
53 accompanied by a [verified] written report, in such form as the state  
54 comptroller may prescribe, setting forth:

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

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

4 4. In case any broker or dealer determines the property which shall be  
5 deemed abandoned property pursuant to subdivisions one and three of  
6 section five hundred eleven by the method provided in subdivision six of  
7 that section, the payment of such abandoned property shall be accompa-  
8 nied by a [verified] written report, in such form as the state comp-  
9 troller may prescribe, which, among other things, shall set forth the  
10 computation of the average factor of such broker or dealer pursuant to  
11 subdivision six of section five hundred eleven. Each [verified] written  
12 report accompanying the payment of abandoned property determined pursu-  
13 ant to subdivision six of section five hundred eleven shall contain an  
14 undertaking by the broker or dealer making such payment to honor all  
15 claims to the extent herein provided whenever made against such broker  
16 or dealer by any person determined by him or proved to be entitled to  
17 receive from him a stock or cash dividend received in this state during  
18 the calendar year covered by such report as the holder of record of a  
19 security or an interest payment on a security received in this state  
20 during such year. Such undertaking shall obligate the broker or dealer  
21 to honor any such claim provided that the payment of abandoned property  
22 relating to the year in question determined pursuant to subdivision six  
23 of section five hundred eleven made by such broker or dealer to the  
24 state comptroller has been exhausted as a result of reimbursements by  
25 the state comptroller to the broker or dealer or to other persons claim-  
26 ing such abandoned property as provided in subdivision two of section  
27 five hundred fourteen. To the extent related to any stock dividend, any  
28 such claim shall not exceed the fair market value of such stock dividend  
29 on the thirty-first day of December of the year in which such stock  
30 dividend was deemed abandoned property.

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

33 Each such payment of abandoned property pursuant to section six  
34 hundred two shall be accompanied by a [verified] written report, classi-  
35 fied as the state comptroller shall prescribe, setting forth:

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

38 2. Any such abandoned property shall be paid or delivered forthwith to  
39 the state comptroller. Such payment shall be accompanied by a [verified]  
40 written report setting forth such identifying information as the state  
41 comptroller may require.

42 S 31. Section 1305 of the abandoned property law, as amended by chap-  
43 ter 149 of the laws of 1977, is amended to read as follows:

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

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

51 On or before the tenth day of September in each year every public  
52 welfare official shall pay such abandoned property to the state comp-  
53 troller. Such payment shall be accompanied by a [verified] written  
54 report in such form as the state comptroller may prescribe.

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

1 3. Any sheriff or county treasurer holding any such abandoned proper-  
2 ty, shall pay the same to the state comptroller immediately after such  
3 property shall have been deemed abandoned. Each such payment shall be  
4 accompanied by a [verified] written report which shall set forth such  
5 information as the state comptroller may require.

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

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

10 2. Such transfer of moneys shall be accompanied by a [verified] writ-  
11 ten report, in such form as the state comptroller may prescribe.

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 THE COMPTROLLER SHALL MAINTAIN ON HIS OR HER WEBSITE IN A READILY  
16 SEARCHABLE FORMAT OR IN ANY OTHER MEDIUM AT LEAST EQUALLY ACCESSIBLE TO  
17 THE PUBLIC, A LIST OF SUCH ABANDONED PROPERTY AS HAS BEEN PAID OR DELIV-  
18 ERED TO THE COMPTROLLER IN THE PREVIOUS TWELVE MONTHS THAT HAS A VALUE  
19 EXCEEDING TWENTY DOLLARS.

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

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

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

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

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

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

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

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

46 12. (A) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION EIGHT OF THIS  
47 SECTION, THE COMMISSIONER AND THE COMPTROLLER SHALL ENTER INTO AN AGREE-  
48 MENT PURSUANT TO WHICH THE COMMISSIONER SHALL, UPON REQUEST, PROVIDE THE  
49 COMPTROLLER WITH A REPORT, NOT MORE FREQUENTLY THAN ANNUALLY, WITH  
50 RESPECT TO CORPORATIONS OR OTHER ENTITIES WHICH HAVE FILED A BUSINESS  
51 CORPORATION FRANCHISE TAX REPORT UNDER THIS ARTICLE FOR ANY TAXABLE YEAR  
52 WITHIN TEN CALENDAR YEARS PRIOR TO THE REPORT TO THE COMPTROLLER MADE  
53 PURSUANT TO THIS SUBDIVISION, PROVIDING THE FOLLOWING INFORMATION, TO  
54 THE EXTENT THAT SUCH INFORMATION IS READILY AVAILABLE FROM THE DEPART-  
55 MENT'S SYSTEM FOR IDENTIFYING TAXPAYER INDICATIVE DATA:

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

- 1 (2) BUSINESS ADDRESS AND MAILING ADDRESS;  
2 (3) FEDERAL EMPLOYER IDENTIFICATION NUMBER;  
3 (4) DATE ENTERED INTO BUSINESS.

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

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

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

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

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

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

45 S 38. This act shall take effect immediately.

46 PART B

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

52 S 12. This act shall take effect immediately; provided, however, that  
53 (i) section one of this act shall apply to all disclosure statements  
54 described in paragraph 1 of subdivision (a) of section 25 of the tax

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

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

19 (iii) provided, further, that the provisions of this act, except  
20 section five of this act, shall expire and be deemed repealed July 1,  
21 2011. The commissioner of taxation and finance shall cause to be  
22 prepared a written report on the tax shelter law. Notwithstanding any  
23 other provision of law to the contrary, such report shall include, but  
24 not be limited to, statistical information regarding the listed and  
25 reportable transactions and avoidance transactions under this act. A  
26 copy of such report shall be delivered to the governor, the temporary  
27 president of the senate, and the speaker of the assembly no later than  
28 April 1, 2007; provided, that, such expiration and repeal shall not  
29 affect any requirement imposed pursuant to this act].

30 S 2. This act shall take effect immediately.

31

## PART C

32 Section 1. Paragraphs (g) and (h) of subdivision 12-B of section 210  
33 of the tax law, as added by section 8 of part R of chapter 57 of the  
34 laws of 2010, are amended to read as follows:

35 (g) Notwithstanding the expiration of the empire zones program under  
36 article eighteen-B of the general municipal law, a taxpayer that is  
37 certified as a qualified investment project pursuant to such article  
38 eighteen-B on the day immediately preceding the day the empire zones  
39 program expired, AND HAS NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE  
40 COMMISSIONER OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION NINE HUNDRED  
41 FIFTY-NINE OF THE GENERAL MUNICIPAL LAW AND REGULATIONS PROMULGATED  
42 THEREUNDER, shall continue to be deemed certified under such article  
43 eighteen-B for purposes of this subdivision for the remainder of the  
44 taxable year in which the expiration occurred and for the next succeed-  
45 ing nine taxable years. In addition, the areas designated as empire  
46 zones in which the taxpayer is certified as a qualified investment  
47 project on the day immediately preceding the day the empire zones  
48 program expired shall continue to be deemed empire zones for purposes of  
49 this subdivision for the remainder of the taxable year in which the  
50 expiration occurred and for the next succeeding nine taxable years.

51 (h) Notwithstanding the expiration of the empire zones program under  
52 article eighteen-B of the general municipal law and except as provided  
53 in paragraph (g) of this subdivision, a taxpayer that is certified as an  
54 empire zone business pursuant to such article eighteen-B on the day

1 immediately preceding the day the empire zones program expired, AND HAS  
2 NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE COMMISSIONER OF ECONOMIC DEVEL-  
3 OPMENT PURSUANT TO SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNIC-  
4 IPAL LAW AND REGULATIONS PROMULGATED THEREUNDER, shall continue to be  
5 deemed certified under such article eighteen-B for purposes of this  
6 subdivision until April first, two thousand fourteen. In addition, the  
7 areas designated as empire zones in which the taxpayer is certified as  
8 an empire zone business on the day immediately preceding the day the  
9 empire zones program expired shall continue to be deemed empire zones  
10 for purposes of this subdivision until April first, two thousand four-  
11 teen.

12 S 2. Paragraph 7 of subsection (j) of section 606 of the tax law, as  
13 added by section 9 of part R of chapter 57 of the laws of 2010, is  
14 amended to read as follows:

15 (7) Notwithstanding the expiration of the empire zones program under  
16 article eighteen-B of the general municipal law, a taxpayer that is  
17 certified as an empire zone business pursuant to such article eighteen-B  
18 on the day immediately preceding the day the empire zones program  
19 expired, AND HAS NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE COMMISSIONER  
20 OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION NINE HUNDRED FIFTY-NINE OF  
21 THE GENERAL MUNICIPAL LAW AND REGULATIONS PROMULGATED THEREUNDER, shall  
22 continue to be deemed certified under such article eighteen-B for  
23 purposes of this subdivision until April first, two thousand fourteen.  
24 In addition, the areas designated as empire zones in which the taxpayer  
25 is certified as an empire zone business on the day immediately preceding  
26 the day the empire zones program expired shall continue to be deemed  
27 empire zones for purposes of this subdivision until April first, two  
28 thousand fourteen.

29 S 3. Paragraphs (d) and (e) of subdivision 12-C of section 210 of the  
30 tax law, as added by section 10 of part R of chapter 57 of the laws of  
31 2010, are amended to read as follows:

32 (d) Notwithstanding the expiration of the empire zones program under  
33 article eighteen-B of the general municipal law, a taxpayer that is  
34 certified as a qualified investment project pursuant to such article  
35 eighteen-B on the day immediately preceding the day the empire zones  
36 program expired, AND HAS NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE  
37 COMMISSIONER OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION NINE HUNDRED  
38 FIFTY-NINE OF THE GENERAL MUNICIPAL LAW AND REGULATIONS PROMULGATED  
39 THEREUNDER, shall continue to be deemed certified under such article  
40 eighteen-B for purposes of this subdivision for the remainder of the  
41 taxable year in which the expiration occurred and for the next succeed-  
42 ing nine taxable years. In addition, the areas designated as empire  
43 zones in which the taxpayer is certified as a qualified investment  
44 project on the day immediately preceding the day the empire zones  
45 program expired shall continue to be deemed empire zones for purposes of  
46 this subdivision for the remainder of the taxable year in which the  
47 expiration occurred and for the next succeeding nine taxable years.

48 (e) Notwithstanding the expiration of the empire zones program under  
49 article eighteen-B of the general municipal law and except as provided  
50 in paragraph (d) of this subdivision, a taxpayer that is certified as an  
51 empire zone business pursuant to such article eighteen-B on the day  
52 immediately preceding the day the empire zones program expired, AND HAS  
53 NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE COMMISSIONER OF ECONOMIC DEVEL-  
54 OPMENT PURSUANT TO SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNIC-  
55 IPAL LAW AND REGULATIONS PROMULGATED THEREUNDER, shall continue to be  
56 deemed in the empire zone in which the taxpayer was certified as an

1 empire zone business on the day immediately preceding the day the empire  
2 zones program expired for each of the three years next succeeding the  
3 taxable year for which the credit under subdivision twelve-B OF THIS  
4 SECTION is allowed.

5 S 4. Paragraph 4 of subsection (j-1) of section 606 of the tax law, as  
6 added by section 11 of part R of chapter 57 of the laws of 2010, is  
7 amended to read as follows:

8 (4) Notwithstanding the expiration of the empire zones program under  
9 article eighteen-B of the general municipal law, a taxpayer that is  
10 certified as an empire zone business pursuant to such article eighteen-B  
11 on the day immediately preceding the day the empire zones program  
12 expired, AND HAS NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE COMMISSIONER  
13 OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION NINE HUNDRED FIFTY-NINE OF  
14 THE GENERAL MUNICIPAL LAW AND REGULATIONS PROMULGATED THEREUNDER, shall  
15 continue to be deemed in the empire zone in which the taxpayer was  
16 certified as an empire zone business on the day immediately preceding  
17 the day the empire zones program expired for each of the three years  
18 next succeeding the taxable year for which the credit under [subdivi-  
19 sion] SUBSECTION (j) OF THIS SECTION is allowed.

20 S 5. Subdivision (k) of section 14 of the tax law, as amended by  
21 section 5 of part A of chapter 63 of the laws of 2005, is amended to  
22 read as follows:

23 (k) If the designation of an area as an empire zone is no longer in  
24 effect because section nine hundred sixty-nine of the general municipal  
25 law was not amended to extend the effective date of such designation so  
26 that the designations of all empire zones pursuant to article eighteen-B  
27 of the general municipal law have expired, a business enterprise that  
28 was certified pursuant to article eighteen-B of the general municipal  
29 law on the day immediately preceding the day on which such designation  
30 expired, AND HAS NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE COMMISSIONER  
31 OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION NINE HUNDRED FIFTY-NINE OF  
32 THE GENERAL MUNICIPAL LAW AND REGULATIONS PROMULGATED THEREUNDER, shall  
33 be deemed to continue to be certified under such article eighteen-B for  
34 purposes of this section, and sections fifteen, sixteen, section one  
35 hundred eighty-seven-j, subdivisions twenty-seven and twenty-eight of  
36 section two hundred ten, subsections (bb) and (cc) of section six  
37 hundred six, [subdivision (z) of section eleven hundred fifteen,] SUBDI-  
38 VISION (D) OF SECTION ELEVEN HUNDRED NINETEEN, subsections (o) and (p)  
39 of section fourteen hundred fifty-six, and subdivisions (r) and (s) of  
40 section fifteen hundred eleven of this chapter. In addition, if the  
41 designation of an area as an empire zone is no longer in effect because  
42 section nine hundred sixty-nine of the general municipal law was not  
43 amended to extend the effective date of such designation so that the  
44 designations of all empire zones pursuant to article eighteen-B of the  
45 general municipal law have expired, all references to empire zones in  
46 the provisions of this chapter listed in the previous sentence shall be  
47 read as meaning areas designated as empire zones on the day immediately  
48 preceding the day on which such designation expired.

49 S 6. Paragraph (f) of subdivision 20 of section 210 of the tax law, as  
50 added by section 14 of part R of chapter 57 of the laws of 2010, is  
51 amended to read as follows:

52 (f) If the designation of an area as an empire zone is no longer in  
53 effect because the designations of all empire zones pursuant to article  
54 eighteen-B of the general municipal law have expired, a taxpayer that  
55 has made a contribution of money on or before the day immediately  
56 preceding the day the empire zones expired to a community development



1 project approved by the commissioner of economic development shall be  
2 deemed eligible to claim the empire zone capital credit under subpara-  
3 graph three of paragraph (a) of this subdivision for additional contrib-  
4 utions made prior to April first, two thousand fourteen and certified by  
5 the commissioner of economic development to that community development  
6 project as payment of a commitment made by the taxpayer to that communi-  
7 ty development project before the empire zones expired, PROVIDED THAT  
8 THE TAXPAYER HAS NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE COMMISSIONER  
9 OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION NINE HUNDRED FIFTY-NINE OF  
10 THE GENERAL MUNICIPAL LAW AND REGULATIONS PROMULGATED THEREUNDER.

11 S 7. Paragraph 5 of subsection (l) of section 606 of the tax law, as  
12 added by section 15 of part R of chapter 57 of the laws of 2010, is  
13 amended to read as follows:

14 (5) If the designation of an area as an empire zone is no longer in  
15 effect because the designations of all empire zones pursuant to article  
16 eighteen-B of the general municipal law have expired, a taxpayer that  
17 has made a contribution of money on or before the day immediately  
18 preceding the day the empire zones expired to a community development  
19 project approved by the commissioner of economic development shall be  
20 deemed eligible to claim the empire zone capital credit under subpara-  
21 graph (C) of paragraph one of this subsection for additional contrib-  
22 utions made prior to April first, two thousand fourteen and certified by  
23 the commissioner of economic development to that community development  
24 project as payment of a commitment made by the taxpayer to that communi-  
25 ty development project before the empire zones expired, PROVIDED THAT  
26 THE TAXPAYER HAS NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE COMMISSIONER  
27 OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION NINE HUNDRED FIFTY-NINE OF  
28 THE GENERAL MUNICIPAL LAW AND REGULATIONS PROMULGATED THEREUNDER.

29 S 8. Paragraph 5 of subsection (d) of section 1456 of the tax law, as  
30 added by section 16 of part R of chapter 57 of the laws of 2010, is  
31 amended to read as follows:

32 (5) If the designation of an area as an empire zone is no longer in  
33 effect because the designations of all empire zones pursuant to article  
34 eighteen-B of the general municipal law have expired, a taxpayer that  
35 has made a contribution of money on or before the day immediately  
36 preceding the day the empire zones expired to a community development  
37 project approved by the commissioner of economic development shall be  
38 deemed eligible to claim the empire zone capital credit under subpara-  
39 graph (C) of paragraph one of this subsection for additional contrib-  
40 utions made prior to April first, two thousand fourteen and certified by  
41 the commissioner of economic development to that community development  
42 project as payment of a commitment made by the taxpayer to that communi-  
43 ty development project before the empire zones expired, PROVIDED THAT  
44 THE TAXPAYER HAS NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE COMMISSIONER  
45 OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION NINE HUNDRED FIFTY-NINE OF  
46 THE GENERAL MUNICIPAL LAW AND REGULATIONS PROMULGATED THEREUNDER.

47 S 9. Paragraph 5 of subdivision (h) of section 1511 of the tax law, as  
48 added by section 17 of part R of chapter 57 of the laws of 2010, is  
49 amended to read as follows:

50 (5) If the designation of an area as an empire zone is no longer in  
51 effect because the designations of all empire zones pursuant to article  
52 eighteen-B of the general municipal law have expired, a taxpayer that  
53 has made a contribution of money on or before the day immediately  
54 preceding the day the empire zones expired to a community development  
55 project approved by the commissioner of economic development shall be  
56 deemed eligible to claim the empire zone capital credit under subpara-

graph (C) of paragraph one of this subdivision for additional contributions made prior to April first, two thousand fourteen and certified by the commissioner of economic development to that community development project as payment of a commitment made by the taxpayer to that community development project before the empire zones expired, PROVIDED THAT THE TAXPAYER HAS NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE COMMISSIONER OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW AND REGULATIONS PROMULGATED THEREUNDER.

S 10. This act shall take effect immediately and shall be deemed to be in full force and effect on and after August 11, 2010.

#### PART D

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

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

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

(3) SUCH AGREEMENT SHALL INCLUDE:

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

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

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

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

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

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

#### PART E

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

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

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

9 S 2. This act shall take effect immediately and shall apply to proper-  
10 ty placed in service on or after January 1, 2002 and before October 1,  
11 [2011] 2015.

12 S 3. This act shall take effect immediately.

13 PART F

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

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

24 S 2. This act shall take effect immediately.

25 PART G

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

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

39 S 2. Section 353 of the economic development law, as added by section  
40 1 of part MM of chapter 59 of the laws of 2010, is amended to read as  
41 follows:

42 S 353. Eligibility criteria. 1. To be a participant in the excelsior  
43 jobs program, a business entity shall operate in New York state predomi-  
44 nantly:

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

47 (b) in manufacturing;

48 (c) in software development and new media;

49 (d) in scientific research and development;

50 (e) in agriculture;

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

1 (g) in a distribution center; or

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

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

12 3. For the purposes of this article, in order to participate in the  
13 excelsior jobs program, a business entity operating predominantly in  
14 manufacturing must create at least twenty-five net new jobs; a business  
15 entity operating predominately in agriculture must create at least ten  
16 net new jobs; a business entity operating predominantly as a financial  
17 service data center or financial services customer back office operation  
18 must create at least one hundred net new jobs; a business entity operat-  
19 ing predominantly in scientific research and development must create at  
20 least ten net new jobs; a business entity operating predominantly in  
21 software development must create at least ten net new jobs; a business  
22 entity creating or expanding back office operations or a distribution  
23 center in the state must create at least one hundred fifty net new jobs,  
24 notwithstanding subdivision [four] FIVE of this section; or a business  
25 entity must be a regionally significant project as defined in this arti-  
26 cle; or

27 [3.] 4. A business entity operating predominantly in one of the indus-  
28 tries referenced in paragraphs (a) through (h) of subdivision one of  
29 this section but which does not meet the job requirements of subdivision  
30 [two] THREE of this section must have at least fifty full-time job  
31 equivalents and must demonstrate that its benefit-cost ratio is at least  
32 ten to one.

33 [4.] 5. A not-for-profit business entity, a business entity whose  
34 primary function is the provision of services including personal  
35 services, business services, or the provision of utilities, and a busi-  
36 ness entity engaged predominantly in the retail or entertainment indus-  
37 try, and a company engaged in the generation or distribution of elec-  
38 tricity, the distribution of natural gas, or the production of steam  
39 associated with the generation of electricity are not eligible to  
40 receive the tax credit described in this article.

41 [5.] 6. A business entity must be in compliance with all worker  
42 protection and environmental laws and regulations. In addition, a busi-  
43 ness entity may not owe past due state taxes or local property taxes.

44 S 3. Section 354 of the economic development law, as added by section  
45 1 of part MM of chapter 59 of the laws of 2010, is amended to read as  
46 follows:

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

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

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

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

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

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

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

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

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

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

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

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

31 (f) Provide a clear and detailed presentation of all related persons  
32 to the applicant to assure the department that jobs are not being shift-  
33 ed within the state.

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

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

46 4. In order to become a participant in the program, an applicant must  
47 submit evidence [of achieving job and investment requirements] THAT IT  
48 SATISFIES THE ELIGIBILITY CRITERIA SPECIFIED IN SECTION THREE HUNDRED  
49 FIFTY-THREE OF THIS ARTICLE AND SUBDIVISION TWO OF THIS SECTION in such  
50 form as the commissioner may prescribe. After reviewing such evidence  
51 and finding it sufficient, the department shall certify the applicant as  
52 a participant and issue to that participant a certificate of tax credit  
53 for one taxable year. To receive a certificate of tax credit for subse-  
54 quent taxable years, the participant must submit to the department a  
55 performance report DEMONSTRATING THAT THE PARTICIPANT CONTINUES TO  
56 SATISFY THE ELIGIBILITY CRITERIA SPECIFIED IN SECTION THREE HUNDRED

FIFTY-THREE OF THIS ARTICLE AND SUBDIVISION TWO OF THIS SECTION. IF SUCH ELIGIBILITY CRITERIA IS MET, A PARTICIPANT CAN RECEIVE TAX CREDITS BASED ON INTERIM JOB, INVESTMENT OR RESEARCH AND DEVELOPMENT MILESTONES. A participant's increase in employment, qualified investment, or federal research and development tax credit attributable to research and development activities in New York state above its projections listed in its application shall not result in an increase in tax benefits under this article. However, if the participant's expenditures are less than the estimated amounts, the credit shall be less than the estimate.

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

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

S 355. Excelsior jobs program credit. 1. Excelsior jobs tax credit component. A participant in the excelsior jobs program shall be eligible to claim a credit for each net new job it creates in New York state. The amount of such credit per job shall be equal to the [sum of the following: five percent of the amount of remuneration equal to or less than fifty thousand dollars; four percent of the amount of remuneration in excess of fifty thousand dollars and equal to or less than seventy-five thousand dollars; and 1.33 percent of the amount of remuneration in excess of seventy-five thousand dollars. However, the amount of the credit for each net new job shall not exceed five thousand dollars] PRODUCT OF THE GROSS WAGES PAID AND 6.85 PERCENT.

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

1 incurred prior to the date the certificate of eligibility is issued are  
2 not eligible to be included in the calculation of the credit.

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

22 4. Excelsior real property tax credit COMPONENT. (A) A participant in  
23 the excelsior jobs program who either qualified as a regionally signif-  
24 icant project or is located in an investment zone shall be eligible to  
25 claim a credit for a period of [five] TEN years.

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

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

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

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

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

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

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

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



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

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

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

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

19 5. Refundability of credits. The tax credit components established in  
20 this section shall be refundable as provided in the tax law. If a  
21 participant fails to satisfy the eligibility criteria in any one year,  
22 it will lose the ability to claim credit for that year. The event of  
23 such failure shall not extend the original [five-year] TEN-YEAR eligi-  
24 bility period.

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

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

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

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

47 S 6. Section 359 of the economic development law, as added by section  
48 1 of part MM of chapter 59 of the laws of 2010, is amended to read as  
49 follows:

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

1	Credit components in the aggregate	With respect to
2	shall not exceed:	taxable years
3		beginning in:
4	\$ 50 million	2011
5	\$ 100 million	2012
6	\$ 150 million	2013
7	\$ 200 million	2014
8	\$ 250 million	2015
9	\$ 200 million	2016
10	\$ [150] 200 million	2017
11	\$ [100] 200 million	2018
12	\$ [50] 200 million	2019
13	\$ 200 MILLION	2020
14	\$ 200 MILLION	2021
15	\$ 150 MILLION	2022
16	\$ 100 MILLION	2023
17	\$ 50 MILLION	2024

18 Twenty-five percent of tax credits shall be allocated to businesses  
19 accepted into the program under subdivision [three] FOUR of section  
20 three hundred fifty-three of this article and seventy-five percent of  
21 tax credits shall be allocated to businesses accepted into the program  
22 under subdivision [two] THREE of section three hundred fifty-three of  
23 this article.

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

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

36 (a) General. A taxpayer subject to tax under article nine-A, twenty-  
37 two, thirty-two or thirty-three of this chapter shall be allowed a cred-  
38 it against such tax, pursuant to the provisions referenced in subdivi-  
39 sion (g) of this section. The amount of the credit, allowable for up to  
40 [five] TEN consecutive taxable years, is the sum of the following four  
41 credit components:

42 (1) the excelsior jobs tax credit COMPONENT;

43 (2) the excelsior investment tax credit COMPONENT;

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

45 (4) the excelsior real property tax credit COMPONENT.

46 (b) To be eligible for the excelsior jobs program credit, the taxpayer  
47 shall have been issued a "certificate of tax credit" by the department  
48 of economic development pursuant to subdivision four of section three  
49 hundred fifty-four of the economic development law, which certificate  
50 shall set forth the amount of each credit component that may be claimed  
51 for the taxable year. A taxpayer may claim such credit for [five] TEN  
52 consecutive taxable years commencing in the first taxable year that the  
53 taxpayer receives a certificate of tax credit or the first taxable year  
54 listed on its preliminary schedule of benefits, whichever is later. The  
55 taxpayer shall be allowed to claim only the amount listed on the certif-

icate of tax credit for that taxable year. Such certificate [should] MUST be attached to the taxpayer's return. No cost or expense paid or incurred by the taxpayer shall be the basis for more than one component of this credit or any other tax credit, EXCEPT AS PROVIDED IN SECTION THREE HUNDRED FIFTY-FIVE OF THE ECONOMIC DEVELOPMENT LAW.

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

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

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

S 9. This act shall take effect immediately.

#### PART H

Section 1. Paragraph 7 of subdivision (a) of section 1512 of the tax law, as amended by chapter 817 of the laws of 1987, is amended to read as follows:

(7) a town or county cooperative insurance corporation as heretofore contemplated by section one hundred eighty-seven of this chapter in effect immediately prior to January first, nineteen hundred seventy-four, THAT ACCURATELY AND IN ACCORDANCE WITH LAW REPORTED TO THE SUPERINTENDENT OF INSURANCE TOTAL DIRECT PREMIUMS WRITTEN FOR THE TAXABLE YEAR OF TWENTY-FIVE MILLION DOLLARS OR LESS.

S 2. This act shall take effect immediately and apply to taxable years beginning on or after January 1, 2011.

#### PART I

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 (C) THE PERSON:

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

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

(BB) HAS:

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

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

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

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

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

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

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

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

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

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

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

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

(9) A PERSON WHO IS NOT A RESIDENT OF THIS STATE WHO SELLS, SOLICITS OR NEGOTIATES A CONTRACT OF PROPERTY/CASUALTY INSURANCE, AS DEFINED IN PARAGRAPH SIX OF SUBSECTION (X) OF THIS SECTION, TO OR FOR AN INSURED, WITH REGARD TO AN UNAUTHORIZED INSURER, PROVIDED THAT: (A) THE INSURED'S HOME STATE IS A STATE OTHER THAN THIS STATE; (B) SUCH PERSON IS OTHERWISE LICENSED TO SELL, SOLICIT OR NEGOTIATE EXCESS LINE INSURANCE IN THE INSURED'S HOME STATE; AND (C) THE PERSON DOES NOT PERFORM THE DILIGENT SEARCH REQUIRED BY SECTION TWO THOUSAND ONE HUNDRED EIGHTEEN OF THIS ARTICLE.

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

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

(10) any salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, provided that the employee does not sell or solicit insurance or receive a commission[.]; OR

(11) A PERSON WHO IS NOT A RESIDENT OF THIS STATE WHO SELLS, SOLICITS OR NEGOTIATES A CONTRACT OF PROPERTY/CASUALTY INSURANCE, AS DEFINED IN PARAGRAPH SIX OF SUBSECTION (X) OF THIS SECTION, TO OR FOR AN INSURED, WITH REGARD TO AN UNAUTHORIZED INSURER, PROVIDED THAT: (A) THE INSURED'S HOME STATE IS A STATE OTHER THAN THIS STATE; (B) SUCH PERSON IS OTHERWISE LICENSED TO SELL, SOLICIT OR NEGOTIATE EXCESS LINE INSURANCE IN THE INSURED'S HOME STATE; AND (C) THE PERSON DOES NOT PERFORM THE DILIGENT SEARCH REQUIRED BY SECTION TWO THOUSAND ONE HUNDRED EIGHTEEN OF THIS ARTICLE.

S 7. Paragraph 1 of subsection (a) of section 2102 of the insurance law, as amended by chapter 499 of the laws of 2009, is amended to read as follows:

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

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

S 8. Subsection (a) of section 2105 of the insurance law, as amended by chapter 626 of the laws of 2006, is amended to read as follows:

(a) The superintendent may issue an excess line broker's license to any person, firm, association or corporation who or which [is domiciled or maintains an office in this state and] is licensed as an insurance broker under section two thousand one hundred four of this article, or who or which is licensed as an excess line broker in the licensee's home state, provided, however, that the applicant's home state grants non-resident licenses to residents of this state on the same basis, except that reciprocity is not required in regard to the placement of liability insurance on behalf of a purchasing group or any of its members; authorizing such person, firm, association or corporation to procure, subject to the restrictions herein provided, policies of insurance from insurers which are not authorized to transact business in this state of the kind or kinds of insurance specified in paragraphs four through fourteen, sixteen, seventeen, nineteen, twenty, twenty-two, twenty-seven, twenty-eight and thirty-one of subsection (a) of section one thousand one hundred thirteen of this chapter and in subsection (h) of this section, provided, however, that the provisions of this section and section two

1 thousand one hundred eighteen of this article shall not apply to ocean  
2 marine insurance and other contracts of insurance enumerated in  
3 subsections (b) and (c) of section two thousand one hundred seventeen of  
4 this article. Such license may be suspended or revoked by the super-  
5 intendent whenever in his OR HER judgment such suspension or revocation  
6 will best promote the interests of the people of this state.

7 S 9. Section 2117 of the insurance law is amended by adding a new  
8 subsection (j) to read as follows:

9 (J) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, A PERSON WHO IS  
10 NOT A RESIDENT OF THIS STATE MAY SELL, SOLICIT OR NEGOTIATE A CONTRACT  
11 OF PROPERTY/CASUALTY INSURANCE TO OR FOR AN INSURED, WITH REGARD TO AN  
12 UNAUTHORIZED INSURER, PROVIDED THAT: (1) THE INSURED'S HOME STATE IS A  
13 STATE OTHER THAN THIS STATE; (2) THE PERSON IS LICENSED TO SELL, SOLICIT  
14 OR NEGOTIATE EXCESS LINE INSURANCE IN THE INSURED'S HOME STATE; AND (3)  
15 EITHER THE PERSON IS LICENSED AS AN INSURANCE BROKER IN THIS STATE OR  
16 THE PERSON DOES NOT PERFORM THE DILIGENT SEARCH REQUIRED BY SECTION TWO  
17 THOUSAND ONE HUNDRED EIGHTEEN OF THIS ARTICLE.

18 S 10. Paragraph 1 of subsection (b) of section 2118 of the insurance  
19 law, as amended by chapter 630 of the laws of 1988, is amended to read  
20 as follows:

21 (1) Within [forty-five] THIRTY days after a policy is procured, a  
22 licensee shall submit the declarations page or cover note of every poli-  
23 cy procured under his or her license to the excess line association  
24 established pursuant to section two thousand one hundred thirty of this  
25 article for recording and stamping. In the event that no declarations  
26 page or cover note is available to the licensee, within [forty-five]  
27 THIRTY days after the policy is procured, the licensee shall submit a  
28 binder to the excess line association in lieu of such declarations page  
29 or cover note. In the event that a binder is submitted to the excess  
30 line association, the licensee shall submit the declarations page or  
31 cover note to the excess line association promptly upon receipt. Every  
32 insurance document submitted to the excess line association pursuant to  
33 this subsection shall set forth:

- 34 (A) the name and address of the insured;  
35 (B) the gross premium charged;  
36 (C) the name of the unauthorized insurer; and  
37 (D) the kind of insurance procured.

38 S 10-a. Paragraphs 8 and 9 of subsection (b) of section 2118 of the  
39 insurance law are REPEALED.

40 S 11. Subparagraph (A) of paragraph 3 of subsection (b) of section  
41 2118 of the insurance law, as amended by chapter 498 of the laws of  
42 1996, is amended and a new subparagraph (F) is added to read as follows:

43 (A) [The] EXCEPT AS PROVIDED IN SUBPARAGRAPH (F) OF THIS PARAGRAPH,  
44 submission of insurance documents to the excess line association shall  
45 be accompanied by a statement subscribed to, and affirmed by, the licen-  
46 see or sublicensee as true under the penalties of perjury that, after  
47 diligent effort, the full amount of insurance required could not be  
48 procured, from authorized insurers, each of which is authorized to write  
49 insurance of the kind requested and which the licensee has reason to  
50 believe might consider writing the type of coverage or class of insur-  
51 ance involved, and further showing that the amount of insurance procured  
52 from an unauthorized insurer is only the excess over the amount procura-  
53 ble from an authorized insurer. The licensee, however, shall be excused  
54 from affirming that a diligent effort, as defined above, was made to  
55 procure the coverage from authorized insurers if the licensee's affida-  
56 vit is accompanied by the affidavit of another broker involved in the



1 placement affirming as true under the penalties of perjury that, after  
2 diligent effort by the affirming broker, the required insurance could  
3 not be procured from an authorized insurer which the affirming broker  
4 had reason to believe might consider writing the type of coverage or  
5 class of insurance involved. The licensee and the affirming broker shall  
6 be excused from affirming that a diligent effort was made if the super-  
7 intendent determines, pursuant to paragraph four of this subsection,  
8 that no declinations are required.

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

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

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

21 S 12. Subsection (d) of section 2118 of the insurance law, as amended  
22 by chapter 220 of the laws of 1986, paragraph 1 as amended by chapter  
23 190 of the laws of 1990, is amended to read as follows:

24 (d) (1) [Every] (A) WHERE THIS STATE IS THE INSURED'S HOME STATE, A  
25 person, firm, association or corporation licensed pursuant to the  
26 provisions of section two thousand one hundred five of this article  
27 shall pay to the superintendent a sum equal to three and six-tenths  
28 percent of the gross premiums charged the insureds by the insurers for  
29 insurance procured by such licensee pursuant to such license, less the  
30 amount of such premiums returned to such insureds. [Where the insurance  
31 covers property or risks located or resident both in and out of this  
32 state, the sum payable shall be computed on that portion of the gross  
33 premiums allocated to this state pursuant to subsection (b) of section  
34 nine thousand one hundred two of this chapter less the amount of gross  
35 premiums allocated to this state and returned to the insured.]

36 (B) NOTWITHSTANDING SUBPARAGRAPH (A) OF THIS PARAGRAPH, IF THE SUPER-  
37 INTENDENT ENTERS INTO A NONADMITTED INSURANCE MULTI-STATE AGREEMENT ON  
38 BEHALF OF THIS STATE PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED THIR-  
39 TY-EIGHT OF THIS ARTICLE, THEN, WHERE THIS STATE IS THE INSURED'S HOME  
40 STATE, A PERSON, FIRM, ASSOCIATION OR CORPORATION LICENSED PURSUANT TO  
41 THE PROVISIONS OF SECTION TWO THOUSAND ONE HUNDRED FIVE OF THIS ARTICLE  
42 SHALL PAY TO THE SUPERINTENDENT, OR A CLEARINGHOUSE DESIGNATED BY THE  
43 SUPERINTENDENT, A SUM EQUAL TO:

44 (I) THREE AND SIX-TENTHS PERCENT OF THE GROSS PREMIUMS ALLOCATED TO  
45 THIS STATE BASED ON THE ALLOCATION SCHEDULE SET FORTH IN THE NONADMITTED  
46 INSURANCE MULTI-STATE AGREEMENT AND ADOPTED BY THE SUPERINTENDENT PURSU-  
47 ANT TO A REGULATION;

48 (II) THE PERCENTAGE SPECIFIED BY EACH OTHER STATE, WHICH HAS EXECUTED  
49 THE NONADMITTED INSURANCE MULTI-STATE AGREEMENT AND HAS NOT WITHDRAWN OR  
50 DEFAULTED, ON THE PORTION OF THE PREMIUM ALLOCATED TO THAT OTHER STATE  
51 BASED ON THE ALLOCATION SCHEDULE SET FORTH IN THE NONADMITTED INSURANCE  
52 MULTI-STATE AGREEMENT AND ADOPTED BY THE SUPERINTENDENT PURSUANT TO A  
53 REGULATION; AND

54 (III) THREE AND SIX-TENTHS PERCENT OF THE GROSS PREMIUMS ON ANY  
55 PORTION OF THE PREMIUM NOT ALLOCATED UNDER ITEMS (I) AND (II) OF THIS  
56 SUBPARAGRAPH.

(2) The amount of such payments which represents a sum equal to three percent of fire insurance premiums shall be distributed by the superintendent as prescribed in section nine thousand one hundred five of this chapter, and the balance thereof shall be paid over by the superintendent to the state treasurer.

(3) Such licensee shall be required to make such payments to the superintendent QUARTERLY on the fifteenth day of [March of each year]:

(A) FEBRUARY FOR THE QUARTER ENDING THE PRECEDING THIRTY-FIRST DAY OF DECEMBER; (B) MAY FOR THE QUARTER ENDING THE PRECEDING THIRTY-FIRST DAY OF MARCH; (C) AUGUST FOR THE QUARTER ENDING THE PRECEDING THIRTIETH DAY OF JUNE; AND (D) NOVEMBER FOR THE QUARTER ENDING THE PRECEDING THIRTIETH DAY OF SEPTEMBER, for the taxes on all policies procured by such licensee, pursuant to such license, during the next preceding [calendar year] QUARTER, and on EACH such PAYMENT date such licensee shall also file with the superintendent a return in the form prescribed by the superintendent, showing such information as may be necessary for the proper distribution of such payments.

S 13. Paragraph 5 of subsection (a) of section 2130 of the insurance law, as added by chapter 630 of the laws of 1988, is amended to read as follows:

(5) prepare and deliver to each licensee and to the superintendent [annually] the reports of excess line business ON THE SEVENTH DAY OF:

(A) FEBRUARY FOR THE QUARTER ENDING THE PRECEDING THIRTY-FIRST DAY OF DECEMBER; (B) MAY FOR THE QUARTER ENDING THE PRECEDING THIRTY-FIRST DAY OF MARCH; (C) AUGUST FOR THE QUARTER ENDING THE PRECEDING THIRTIETH DAY OF JUNE; AND (D) NOVEMBER FOR THE QUARTER ENDING THE PRECEDING THIRTIETH DAY OF SEPTEMBER, which reports shall include a delineation of the classes and kinds of business procured during the preceding calendar year in such form as the superintendent may prescribe;

S 14. The insurance law is amended by adding a new section 2138 to read as follows:

S 2138. NONADMITTED INSURANCE MULTI-STATE AGREEMENT. (A) FOR THE PURPOSES OF IMPLEMENTING THE FEDERAL NONADMITTED AND REINSURANCE REFORM ACT OF 2010, THE SUPERINTENDENT, IN CONSULTATION WITH THE COMMISSIONER OF TAXATION AND FINANCE, MAY ENTER INTO A NONADMITTED INSURANCE MULTI-STATE AGREEMENT ON BEHALF OF THIS STATE IN ORDER TO:

(1) FACILITATE THE PAYMENT AND ALLOCATION AMONGST STATES OF EXCESS LINE PREMIUM TAXES AND TAXES ON INDEPENDENTLY PROCURED INSURANCE ATTRIBUTABLE TO THE PLACEMENT OF INSURANCE WITH UNAUTHORIZED INSURERS IN ACCORDANCE WITH THE PREMIUM TAX ALLOCATION SCHEDULE AND ALLOCATION FORMULA SET FORTH IN A NONADMITTED INSURANCE MULTI-STATE AGREEMENT AND BASED ON RATES ESTABLISHED BY EACH STATE;

(2) ADOPT NATIONWIDE UNIFORM REQUIREMENTS, FORMS, AND PROCEDURES THAT FACILITATE THE REPORTING, PAYMENT, COLLECTION, AND ALLOCATION OF EXCESS LINE PREMIUM TAXES AND TAXES ON INDEPENDENTLY PROCURED INSURANCE WITH REGARD TO INSURANCE PLACED WITH AN UNAUTHORIZED INSURER; AND

(3) COORDINATE REPORTING OF EXCESS LINE PREMIUM TAXES AND TAXES ON INDEPENDENTLY PROCURED INSURANCE AND TRANSACTION DATA AMONG STATES.

(B) THE SUPERINTENDENT MAY PARTICIPATE IN THE CLEARINGHOUSE DESIGNATED PURSUANT TO A NONADMITTED INSURANCE MULTI-STATE AGREEMENT THAT THE SUPERINTENDENT HAS ENTERED INTO ON BEHALF OF THIS STATE FOR THE PURPOSE OF COLLECTING AND ALLOCATING TO STATES EXCESS LINE PREMIUM TAXES AND TAXES ON INDEPENDENTLY PROCURED INSURANCE WITH REGARD TO INSURANCE PLACED WITH AN UNAUTHORIZED INSURER.

(C) IF THE SUPERINTENDENT ENTERS INTO A NONADMITTED INSURANCE MULTI-STATE AGREEMENT ON BEHALF OF THIS STATE, THEN THE SUPERINTENDENT

1 SHALL ADOPT BY REGULATION THE PREMIUM TAX ALLOCATION SCHEDULE SET FORTH  
2 IN THE NONADMITTED INSURANCE MULTI-STATE AGREEMENT AND ANY AMENDMENTS  
3 THERETO.

4 (D) THE SUPERINTENDENT MAY WITHDRAW THIS STATE FROM PARTICIPATION IN A  
5 NONADMITTED INSURANCE MULTI-STATE AGREEMENT BY PROVIDING SIXTY DAYS  
6 WRITTEN NOTICE TO THE CLEARINGHOUSE DESIGNATED BY THE NONADMITTED INSUR-  
7 ANCE MULTI-STATE AGREEMENT IF THE SUPERINTENDENT, IN CONSULTATION WITH  
8 THE COMMISSIONER OF TAXATION AND FINANCE, DETERMINES THAT THIS STATE'S  
9 PARTICIPATION IN THE NONADMITTED INSURANCE MULTI-STATE AGREEMENT IS NO  
10 LONGER IN THE BEST INTERESTS OF THE PEOPLE OF THIS STATE.

11 S 15. Section 9102 of the insurance law, as amended by chapter 190 of  
12 the laws of 1990, subsection (c) as amended by chapter 73 of the laws of  
13 1991, is amended to read as follows:

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

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

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

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

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

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

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

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

3 S 16. The general municipal law is amended by adding a new section 25  
4 to read as follows:

5 S 25. PROCUREMENT OF EXCESS LINE INSURANCE. NOTWITHSTANDING SUBPARA-  
6 GRAPH (F) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION TWO THOUSAND  
7 ONE HUNDRED EIGHTEEN OF THE INSURANCE LAW, A MUNICIPALITY WITH A POPU-  
8 LATION OF LESS THAN ONE HUNDRED THOUSAND PERSONS MAY NOT REQUEST THAT AN  
9 EXCESS LINE BROKER PROCURE OR PLACE INSURANCE FROM AN UNAUTHORIZED  
10 INSURER UNLESS THE EXCESS LINE BROKER OBTAINS THE DECLINATIONS REQUIRED  
11 BY SUBSECTION (B) OF SECTION TWO THOUSAND ONE HUNDRED EIGHTEEN OF THE  
12 INSURANCE LAW.

13 S 17. Subdivision 1 of section 171-a of the tax law, as amended by  
14 section 1 of part R of chapter 60 of the laws of 2004, is amended to  
15 read as follows:

16 1. All taxes, interest, penalties and fees collected or received by  
17 the commissioner or the commissioner's duly authorized agent under arti-  
18 cles nine (except section one hundred eighty-two-a thereof and except as  
19 otherwise provided in section two hundred five thereof), nine-A,  
20 twelve-A (except as otherwise provided in section two hundred eighty-  
21 four-d thereof), thirteen, thirteen-A (except as otherwise provided in  
22 section three hundred twelve thereof), eighteen, nineteen, twenty  
23 (except as otherwise provided in section four hundred eighty-two there-  
24 of), twenty-one, twenty-two, twenty-six, twenty-six-B, twenty-eight  
25 (except as otherwise provided in section eleven hundred two or eleven  
26 hundred three thereof), twenty-eight-A, thirty-one (except as otherwise  
27 provided in section fourteen hundred twenty-one thereof), thirty-two,  
28 thirty-three and thirty-three-A (EXCEPT AS OTHERWISE PROVIDED IN SECTION  
29 FIFTEEN HUNDRED FIFTY-SEVEN THEREOF) of this chapter shall be deposited  
30 daily in one account with such responsible banks, banking houses or  
31 trust companies as may be designated by the comptroller, to the credit  
32 of the comptroller. Such an account may be established in one or more of  
33 such depositories. Such deposits shall be kept separate and apart from  
34 all other money in the possession of the comptroller. The comptroller  
35 shall require adequate security from all such depositories. Of the total  
36 revenue collected or received under such articles of this chapter, the  
37 comptroller shall retain in the comptroller's hands such amount as the  
38 commissioner may determine to be necessary for refunds or reimbursements  
39 under such articles of this chapter [and article ten thereof] out of  
40 which amount the comptroller shall pay any refunds or reimbursements to  
41 which taxpayers shall be entitled under the provisions of such articles  
42 of this chapter [and article ten thereof]. The commissioner and the  
43 comptroller shall maintain a system of accounts showing the amount of  
44 revenue collected or received from each of the taxes imposed by such  
45 articles. The comptroller, after reserving the amount to pay such  
46 refunds or reimbursements, shall, on or before the tenth day of each  
47 month, pay into the state treasury to the credit of the general fund all  
48 revenue deposited under this section during the preceding calendar month  
49 and remaining to the comptroller's credit on the last day of such  
50 preceding month, (i) except that the comptroller shall pay to the state  
51 department of social services that amount of overpayments of tax imposed  
52 by article twenty-two of this chapter and the interest on such amount  
53 which is certified to the comptroller by the commissioner as the amount  
54 to be credited against past-due support pursuant to subdivision six of  
55 section one hundred seventy-one-c of this [chapter] ARTICLE, (ii) and  
56 except that the comptroller shall pay to the New York state higher

1 education services corporation and the state university of New York or  
2 the city university of New York respectively that amount of overpayments  
3 of tax imposed by article twenty-two of this chapter and the interest on  
4 such amount which is certified to the comptroller by the commissioner as  
5 the amount to be credited against the amount of defaults in repayment of  
6 guaranteed student loans and state university loans or city university  
7 loans pursuant to subdivision five of section one hundred seventy-one-d  
8 and subdivision six of section one hundred seventy-one-e of this [chap-  
9 ter] ARTICLE, (iii) and except further that, notwithstanding any law,  
10 the comptroller shall credit to the revenue arrearage account, pursuant  
11 to section ninety-one-a of the state finance law, that amount of over-  
12 payment of tax imposed by article nine, nine-A, twenty-two, thirty,  
13 thirty-A, thirty-B, thirty-two or thirty-three of this chapter, and any  
14 interest thereon, which is certified to the comptroller by the commis-  
15 sioner as the amount to be credited against a past-due legally enforcea-  
16 ble debt owed to a state agency pursuant to paragraph (a) of subdivision  
17 six of section one hundred seventy-one-f of this article, provided,  
18 however, he shall credit to the special offset fiduciary account, pursu-  
19 ant to section ninety-one-c of the state finance law, any such amount  
20 creditable as a liability as set forth in paragraph (b) of subdivision  
21 six of section one hundred seventy-one-f of this article, (iv) and  
22 except further that the comptroller shall pay to the city of New York  
23 that amount of overpayment of tax imposed by article nine, nine-A, twen-  
24 ty-two, thirty, thirty-A, thirty-B, thirty-two, or thirty-three of this  
25 chapter and any interest thereon that is certified to the comptroller by  
26 the commissioner as the amount to be credited against city of New York  
27 tax warrant judgment debt pursuant to section one hundred seventy-one-l  
28 of this article, (v) and except further that the comptroller shall pay  
29 to a non-obligated spouse that amount of overpayment of tax imposed by  
30 article twenty-two of this chapter and the interest on such amount which  
31 has been credited pursuant to section one hundred seventy-one-c, one  
32 hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-  
33 one-f or one hundred seventy-one-l of this article and which is certi-  
34 fied to the comptroller by the commissioner as the amount due such non-  
35 obligated spouse pursuant to paragraph six of subsection (b) of section  
36 six hundred fifty-one of this chapter; and (vi) the comptroller shall  
37 deduct a like amount which the comptroller shall pay into the treasury  
38 to the credit of the general fund from amounts subsequently payable to  
39 the department of social services, the state university of New York, the  
40 city university of New York, or the higher education services corpo-  
41 ration, or the revenue arrearage account or special offset fiduciary  
42 account pursuant to section ninety-one-a or ninety-one-c of the state  
43 finance law, as the case may be, whichever had been credited the amount  
44 originally withheld from such overpayment, and (vii) with respect to  
45 amounts originally withheld from such overpayment pursuant to section  
46 one hundred seventy-one-l of this article and paid to the city of New  
47 York, the comptroller shall collect a like amount from the city of New  
48 York.

49 S 18. Subdivision (c) of section 1550 of the tax law, as added by  
50 chapter 190 of the laws of 1990, is amended to read as follows:

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

1 S 19. Section 1550 of the tax law is amended by adding a new subdivi-  
2 sion (d) to read as follows:

3 (D) THE TERM "HOME STATE" MEANS:

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

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

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

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

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

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

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

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

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

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

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

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

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

42 S 20. Section 1551 of the tax law, as amended by chapter 73 of the  
43 laws of 1991, is amended to read as follows:

44 S 1551. Imposition of tax. (A) There is hereby imposed on any person  
45 WHOSE HOME STATE IS NEW YORK AND who purchases or renews a taxable  
46 insurance contract from an insurer not authorized to transact business  
47 in this state under a certificate of authority from the superintendent  
48 of insurance a tax at the rate of three and six-tenths percent of the  
49 premiums paid or to be paid, less returns thereon, for such insurance.  
50 Nothing in this article modifies or abrogates any provision of the  
51 insurance law.

52 (B) NOTWITHSTANDING SUBDIVISION (A) OF THIS SECTION, IF THE SUPER-  
53 INTENDENT OF INSURANCE ENTERS INTO A NONADMITTED INSURANCE MULTI-STATE  
54 AGREEMENT PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED THIRTY-EIGHT OF  
55 THE INSURANCE LAW, THERE IS HEREBY IMPOSED ON ANY PERSON WHOSE HOME  
56 STATE IS NEW YORK AND WHO PURCHASES OR RENEWS A TAXABLE INSURANCE

1 CONTRACT FROM AN INSURER NOT AUTHORIZED TO TRANSACT BUSINESS IN THIS  
2 STATE UNDER A CERTIFICATE OF AUTHORITY FROM THE SUPERINTENDENT OF INSUR-  
3 ANCE A TAX AT A RATE EQUAL TO:

4 (1) THREE AND SIX-TENTHS PERCENT OF THE GROSS PREMIUMS ALLOCATED TO  
5 THIS STATE BASED ON THE ALLOCATION SCHEDULE SET FORTH IN THE NONADMITTED  
6 INSURANCE MULTI-STATE AGREEMENT AND ADOPTED BY THE SUPERINTENDENT OF  
7 INSURANCE PURSUANT TO A REGULATION;

8 (2) THE PERCENTAGE SPECIFIED BY EACH OTHER STATE THAT HAS EXECUTED THE  
9 NONADMITTED INSURANCE MULTI-STATE AGREEMENT AND HAS NOT WITHDRAWN OR  
10 DEFAULTED, ON THE PORTION OF THE PREMIUM ALLOCATED TO THAT OTHER STATE  
11 BASED ON THE ALLOCATION SCHEDULE SET FORTH IN THE NONADMITTED INSURANCE  
12 MULTI-STATE AGREEMENT AND ADOPTED BY THE SUPERINTENDENT OF INSURANCE  
13 PURSUANT TO A REGULATION;

14 (3) THREE AND SIX-TENTHS PERCENT OF THE GROSS PREMIUMS ON ANY PORTION  
15 OF THE PREMIUM NOT ALLOCATED UNDER PARAGRAPHS ONE AND TWO OF THIS SUBDI-  
16 VISION.

17 S 21. Section 1552 of the tax law, as added by chapter 190 of the laws  
18 of 1990, is amended to read as follows:

19 S 1552. Allocation. (A) Where the taxable insurance contract covers  
20 risks located or resident both within and without this state[, the  
21 amount of premiums allocable to risks resident or located within this  
22 state shall be determined pursuant to rules and regulations of the  
23 commissioner of taxation and finance. In promulgating such rules and  
24 regulations, the commissioner of taxation and finance shall give due  
25 consideration to the rules and regulations promulgated by the super-  
26 intendent of insurance pursuant to subsection (b) of section nine thou-  
27 sand one hundred two of the insurance law] AND THE TAXPAYER'S HOME STATE  
28 IS NEW YORK, ONE HUNDRED PERCENT OF PREMIUMS SHALL BE ALLOCABLE TO THIS  
29 STATE.

30 (B) NOTWITHSTANDING SUBDIVISION (A) OF THIS SECTION, IF THE SUPER-  
31 INTENDENT OF INSURANCE ENTERS INTO A NONADMITTED INSURANCE MULTI-STATE  
32 AGREEMENT PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED THIRTY-EIGHT OF  
33 THE INSURANCE LAW, THE COMMISSIONER IS AUTHORIZED TO ADOPT THE ALLO-  
34 CATION SCHEDULE INCLUDED IN SUCH AGREEMENT FOR THE PURPOSE OF ALLOCATING  
35 RISK AND COMPUTING THE TAX DUE ON THE PORTION OF PREMIUM ATTRIBUTABLE TO  
36 EACH RISK CLASSIFICATION AND TO EACH STATE WHERE PROPERTIES, RISKS OR  
37 EXPOSURES ARE LOCATED.

38 (C) IF THE SUPERINTENDENT OF INSURANCE HAS ENTERED INTO THE NONADMIT-  
39 TED INSURANCE MULTI-STATE AGREEMENT, TO THE EXTENT THAT OTHER STATES  
40 WHERE PORTIONS OF THE PROPERTIES, RISKS OR EXPOSURES RESIDE HAVE NOT  
41 ENTERED INTO SUCH A MULTI-STATE AGREEMENT WITH THIS STATE, THE NET  
42 PREMIUM TAX IMPOSED SHALL BE RETAINED BY THIS STATE IF THIS STATE IS THE  
43 HOME STATE OF THE INSURED.

44 S 22. Section 1554 of the tax law is amended by adding a new subdivi-  
45 sion (e) to read as follows:

46 (E) NOTWITHSTANDING ANY PROVISIONS OF THIS SECTION, THE COMMISSIONER,  
47 IN CONSULTATION WITH THE SUPERINTENDENT OF INSURANCE, MAY PERMIT ANY OR  
48 ALL PERSONS LIABLE FOR ANY TAX IMPOSED BY THIS ARTICLE TO FILE A RETURN  
49 WITH A CLEARINGHOUSE OR OTHER ENTITY DESIGNATED BY A NONADMITTED INSUR-  
50 ANCE MULTI-STATE AGREEMENT IN ACCORDANCE WITH ADMINISTRATIVE PROVISIONS  
51 CONTAINED WITHIN SUCH AN AGREEMENT.

52 S 23. Section 1555 of the tax law is amended by adding a new subdivi-  
53 sion (f) to read as follows:

54 (F) NOTWITHSTANDING ANY PROVISIONS OF THIS SECTION, THE COMMISSIONER  
55 MAY PERMIT OTHER PERSONS OR ENTITIES TO INSPECT THE RETURNS FILED UNDER  
56 THIS ARTICLE, OR MAY FURNISH TO SUCH PERSONS OR ENTITIES AN ABSTRACT OF

1 ANY RETURN OR SUPPLY INFORMATION CONCERNING AN ITEM CONTAINED IN ANY  
2 SUCH RETURN, OR DISCLOSED BY AN INVESTIGATION OF TAX LIABILITY UNDER  
3 THIS ARTICLE, IF THE PERSONS OR ENTITIES ARE ENTITLED TO HAVE SUCH  
4 INFORMATION UNDER THE TERMS OF A NONADMITTED INSURANCE MULTI-STATE  
5 AGREEMENT ENTERED INTO BY THE SUPERINTENDENT OF INSURANCE.

6 THE COMMISSIONER MAY, PURSUANT TO THE TERMS OF SUCH AN AGREEMENT,  
7 FORWARD TO THE PROPER OFFICERS OF ANOTHER MEMBER JURISDICTION ANY INFOR-  
8 MATION IN THE COMMISSIONER'S POSSESSION RELATING TO NONADMITTED INSUR-  
9 ANCE PREMIUM TAXES AND MAY SHARE ANY INFORMATION RELATING TO THE ADMIN-  
10 ISTRATION OF TAXES PURSUANT TO THE AGREEMENT WITH SUCH OFFICERS. THE  
11 AGREEMENT MAY PROVIDE FOR EACH MEMBER JURISDICTION TO AUDIT THE RECORDS  
12 OF PERSONS BASED IN THE MEMBER JURISDICTION AND DETERMINE TAXES DUE EACH  
13 MEMBER JURISDICTION.

14 S 24. Section 1556 of the tax law, as added by chapter 190 of the laws  
15 of 1990, is amended to read as follows:

16 S 1556. Procedural provisions. (A) The provisions of article twenty-  
17 seven of this chapter shall apply to the provisions of this article in  
18 the same manner and with the same force and effect as if the language of  
19 such article twenty-seven had been incorporated in full into this arti-  
20 cle and had expressly referred to the tax under this article, except to  
21 the extent that any such provision is either inconsistent with a  
22 provision of this article or is not relevant to this article.

23 (B) NONADMITTED INSURANCE MULTI-STATE AGREEMENT. IF THE SUPERINTEN-  
24 DENT OF INSURANCE HAS ENTERED INTO A NONADMITTED INSURANCE MULTI-STATE  
25 AGREEMENT, THE COMMISSIONER MAY PARTICIPATE IN THE CLEARINGHOUSE DESIG-  
26 NATED PURSUANT TO SUCH AGREEMENT FOR THE PURPOSE OF COLLECTING AND ALLO-  
27 CATING TO STATES EXCESS LINE PREMIUM TAXES AND TAXES ON INDEPENDENTLY  
28 PROCURED INSURANCE, WITH REGARD TO INSURANCE PLACED WITH AN UNAUTHORIZED  
29 INSURER.

30 S 25. Section 1557 of the tax law, as added by chapter 190 of the laws  
31 of 1990, is amended to read as follows:

32 S 1557. Deposit and disposition of revenue. All taxes, interest and  
33 penalties collected or received by the commissioner of taxation and  
34 finance under this article shall be deposited and disposed of pursuant  
35 to the provisions of section one hundred seventy-one-a of this chapter,  
36 EXCEPT AS PROVIDED FOR BY SUBDIVISION (B) OF SECTION FIFTEEN HUNDRED  
37 FIFTY-SIX OF THIS ARTICLE.

38 S 26. This act shall take effect July 21, 2011; provided, however,  
39 that:

40 (1) sections one, two and three of this act shall take effect July 16,  
41 2011;

42 (2) sections fourteen and twenty-four of this act shall take effect  
43 immediately;

44 (3) the amendments to subsection (b) of section 2118 of the insurance  
45 law made by sections ten and eleven of this act shall not affect the  
46 expiration and reversion of such subsection and shall be deemed to  
47 expire therewith;

48 (4) the amendments to paragraph 5 of subsection (a) of section 2130 of  
49 the insurance law made by section thirteen of this act shall not affect  
50 the expiration of such section and shall be deemed to expire therewith;

51 (5) a person, firm, association or corporation licensed pursuant to  
52 the provisions of section 2105 of the insurance law shall make the  
53 payments required by subsection (d) of section 2118 of the insurance law  
54 to the superintendent of insurance on or before September 19, 2011 for  
55 the taxes on the policies procured by such licensee, pursuant to such  
56 license, between January 1, 2011 and July 20, 2011; and



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

## PART J

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

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

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

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

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

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

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

S 2. Subdivisions (d) and (f) of section 110 of chapter 817 of the laws of 1987, amending the tax law and the environmental conservation law, constituting the business tax reform and rate reduction act of

1 1987, as amended by chapter 67 of the laws of 2010, are amended to read  
2 as follows:

3 (d) The provisions of section sixty-seven of this act except insofar  
4 as it amends paragraph 10 of subsection (b) of section 1453 of the tax  
5 law, seventy-one and seventy-four shall apply to taxable years beginning  
6 after December 31, 1986[, provided, however, that new paragraphs 11 and  
7 12 of subsection (b) of section 1453 of the tax law as added by section  
8 sixty-seven of this act, the amendments made by section seventy-one of  
9 this act, and new subsection (i) of section 1453 of the tax law as added  
10 by section seventy-four of this act shall not apply to taxable years  
11 beginning on or after January 1, 2011];

12 (f) The provisions of section one hundred four of this act shall apply  
13 to taxable years beginning after December 31, 1986[, and shall not apply  
14 to corporations other than savings banks and savings and loan associ-  
15 ations for taxable years beginning on or after January 1, 2011,  
16 provided, however, that the provisions of such section which relate to  
17 the alternative minimum tax measured by taxable assets shall continue to  
18 apply to all taxpayers for taxable years beginning on or after January  
19 1, 2011].

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

25 (c) The provisions of sections one, thirty-one, thirty-two, thirty-  
26 three, thirty-six, thirty-seven, forty through forty-five, forty-seven  
27 and forty-eight of this act shall apply to taxable years beginning after  
28 December 31, 1986[, provided, however, that the amendments made by  
29 sections thirty-six and forty-one of this act, and new subdivision (i)  
30 of section 11-641 of the administrative code of the city of New York as  
31 added by section forty-four of this act shall not apply to taxable years  
32 beginning on or after January 1, 2011];

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

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

43 (1) Notwithstanding anything to the contrary contained in this section  
44 other than subsection (n) of this section, a corporation that was in  
45 existence before January first, two thousand [ten] ELEVEN and was  
46 subject to tax under article nine-A of this chapter for its last taxable  
47 year beginning before January first, two thousand [ten] ELEVEN, shall  
48 continue to be taxable under such article for all taxable years begin-  
49 ning on or after January first, two thousand [ten] ELEVEN and before  
50 January first, two thousand [eleven] THIRTEEN. The preceding sentence  
51 shall not apply to any taxable year during which such corporation is a  
52 banking corporation described in paragraphs one through eight of  
53 subsection (a) of this section. Notwithstanding anything to the contrary  
54 contained in this section other than subsection (n) of this section, a  
55 banking corporation or corporation that was in existence before January  
56 first, two thousand [ten] ELEVEN and was subject to tax under this arti-

1 cle for its last taxable year beginning before January first, two thou-  
2 sand [ten] ELEVEN, shall continue to be taxable under this article for  
3 all taxable years beginning on or after January first, two thousand  
4 [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN or  
5 in which the corporation satisfies the requirements for a corporation to  
6 elect to be taxable under this article. Provided further, that nothing  
7 in this subsection shall prohibit a corporation that elected pursuant to  
8 subsection (d) of this section to be taxable under article nine-A of  
9 this chapter from revoking that election in accordance with such  
10 subsection (d).

11 For purposes of this paragraph, a corporation shall be considered to  
12 be subject to tax under article nine-A of this chapter for a taxable  
13 year if such corporation was not a taxpayer but was properly included in  
14 a combined report filed pursuant to section two hundred eleven of this  
15 chapter for such taxable year and a corporation shall be considered to  
16 be subject to tax under this article for a taxable year if such corpo-  
17 ration was not a taxpayer but was properly included in a combined return  
18 filed pursuant to subsection (f) or (g) of section fourteen hundred  
19 sixty-two of this article for such taxable year. A corporation that was  
20 in existence before January first, two thousand [ten] ELEVEN but first  
21 becomes a taxpayer in a taxable year beginning on or after January  
22 first, two thousand [ten] ELEVEN and before January first, two thousand  
23 [eleven] THIRTEEN, shall be considered for purposes of this paragraph to  
24 have been subject to tax under article nine-A of this chapter for its  
25 last taxable year beginning before January first, two thousand [ten]  
26 ELEVEN if such corporation would have been subject to tax under such  
27 article for such taxable year if it had been a taxpayer during such  
28 taxable year. A corporation that was in existence before January first,  
29 two thousand [ten] ELEVEN but first becomes a taxpayer in a taxable year  
30 beginning on or after January first, two thousand [ten] ELEVEN and  
31 before January first, two thousand [eleven] THIRTEEN, shall be consid-  
32 ered for purposes of this paragraph to have been subject to tax under  
33 this article for its last taxable year beginning before January first,  
34 two thousand [ten] ELEVEN if such corporation would have been subject to  
35 tax under this article for such taxable year if it had been a taxpayer  
36 during such taxable year.

37 (2) Notwithstanding anything to the contrary contained in this section  
38 other than subsection (n) of this section, a corporation formed on or  
39 after January first, two thousand [ten] ELEVEN and before January first,  
40 two thousand [eleven] THIRTEEN may elect to be subject to tax under this  
41 article or under article nine-A of this chapter for its first taxable  
42 year beginning on or after January first, two thousand [ten] ELEVEN and  
43 before January first, two thousand [eleven] THIRTEEN in which either (i)  
44 sixty-five percent or more of its voting stock is owned or controlled,  
45 directly or indirectly by a financial holding company, provided the  
46 corporation whose voting stock is so owned or controlled is principally  
47 engaged in activities that are described in section 4(k)(4) or 4(k)(5)  
48 of the federal bank holding company act of nineteen hundred fifty-six,  
49 as amended and the regulations promulgated pursuant to the authority of  
50 such section, or (ii) it is a financial subsidiary. An election under  
51 this paragraph may not be made by a corporation described in paragraphs  
52 one through eight of subsection (a) of this section or in subsection (e)  
53 of this section. In addition, an election under this paragraph may not  
54 be made by a corporation that is a party to a reorganization, as defined  
55 in subsection (a) of section 368 of the internal revenue code of 1986,  
56 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 (1) 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 corporation is a banking corporation described in paragraphs one through eight of subdivision (a) of this section. Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a banking corporation or corporation that was in existence before January first, two thousand [ten] ELEVEN and was subject to tax under this subchapter for its last taxable year beginning before January first, two thousand [ten] ELEVEN, shall continue to be taxable under this subchapter for all taxable years beginning on or after January first, two thousand [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN or in which the corporation satisfies the requirements for a corporation to elect to be taxable under this subchapter. Provided further, that nothing in this subdivision shall prohibit a corporation that elected pursuant to subdivision (d) of this section to be taxable under subchapter two of this chapter from revoking that election in accordance with subdivision (d) of this section. For purposes of this paragraph, a corporation shall be considered to be subject to tax under subchapter two of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision four of section 11-605 of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this subchapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision (f) or (g) of section 11-646 of this part for such taxable year. A corporation that was in existence before January first, two thousand [ten] ELEVEN but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand [ten] ELEVEN and

1 before January first, two thousand [eleven] THIRTEEN, shall be consid-  
2 ered for purposes of this paragraph to have been subject to tax under  
3 subchapter two of this chapter for its last taxable year beginning  
4 before January first, two thousand [ten] ELEVEN if such corporation  
5 would have been subject to tax under such subchapter for such taxable  
6 year if it had been a taxpayer during such taxable year. A corporation  
7 that was in existence before January first, two thousand [ten] ELEVEN  
8 but first becomes a taxpayer in a taxable year beginning on or after  
9 January first, two thousand [ten] ELEVEN and before January first, two  
10 thousand [eleven] THIRTEEN, shall be considered for purposes of this  
11 paragraph to have been subject to tax under this subchapter for its last  
12 taxable year beginning before January first, two thousand [ten] ELEVEN  
13 if such corporation would have been subject to tax under this subchapter  
14 for such taxable year if it had been a taxpayer during such taxable  
15 year.

16 (2) Notwithstanding anything to the contrary contained in this section  
17 other than subdivision (m) of this section, a corporation formed on or  
18 after January first, two thousand [ten] ELEVEN and before January first,  
19 two thousand [eleven] THIRTEEN may elect to be subject to tax under this  
20 subchapter or under subchapter two of this chapter for its first taxable  
21 year beginning on or after January first, two thousand [ten] ELEVEN and  
22 before January first, two thousand [eleven] THIRTEEN in which either (i)  
23 sixty-five percent or more of its voting stock is owned or controlled,  
24 directly or indirectly by a financial holding company, provided the  
25 corporation whose voting stock is so owned or controlled is principally  
26 engaged in activities that are described in section 4(k)(4) or 4(k)(5)  
27 of the federal bank holding company act of nineteen hundred fifty-six,  
28 as amended and the regulations promulgated pursuant to the authority of  
29 such section or (ii) it is a financial subsidiary. An election under  
30 this paragraph may not be made by a corporation described in paragraphs  
31 one through eight of subdivision (a) of this section or in subdivision  
32 (e) of this section. In addition, an election under this paragraph may  
33 not be made by a corporation that is a party to a reorganization, as  
34 defined in subsection (a) of section 368 of the internal revenue code of  
35 1986, as amended, of a corporation described in paragraph one of this  
36 subdivision if both corporations were sixty-five percent or more owned  
37 or controlled, directly or indirectly by the same interests at the time  
38 of the reorganization.

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

54 S 6. Subparagraph (iv) of paragraph 2 of subdivision (f) of section  
55 1462 of the tax law, as amended by chapter 24 of the laws of 2010, is  
56 amended to read as follows:

1 (iv) (A) Notwithstanding any provision of this paragraph, any bank  
2 holding company exercising its corporate franchise or doing business in  
3 the state may make a return on a combined basis without seeking the  
4 permission of the commissioner with any banking corporation exercising  
5 its corporate franchise or doing business in the state in a corporate or  
6 organized capacity sixty-five percent or more of whose voting stock is  
7 owned or controlled, directly or indirectly, by such bank holding compa-  
8 ny, for the first taxable year beginning on or after January first, two  
9 thousand and before January first, two thousand [eleven] THIRTEEN during  
10 which such bank holding company registers for the first time under the  
11 federal bank holding company act, as amended, and also elects to be a  
12 financial holding company. In addition, for each subsequent taxable year  
13 beginning after January first, two thousand and before January first,  
14 two thousand [eleven] THIRTEEN, any such bank holding company may file  
15 on a combined basis without seeking the permission of the commissioner  
16 with any banking corporation that is exercising its corporate franchise  
17 or doing business in the state and sixty-five percent or more of whose  
18 voting stock is owned or controlled, directly or indirectly, by such  
19 bank holding company if either such banking corporation is exercising  
20 its corporate franchise or doing business in the state in a corporate or  
21 organized capacity for the first time during such subsequent taxable  
22 year, or sixty-five percent or more of the voting stock of such banking  
23 corporation is owned or controlled, directly or indirectly, by such bank  
24 holding company for the first time during such subsequent taxable year.  
25 Provided however, for each subsequent taxable year beginning after Janu-  
26 ary first, two thousand and before January first, two thousand [eleven]  
27 THIRTEEN, a banking corporation described in either of the two preceding  
28 sentences which filed on a combined basis with any such bank holding  
29 company in a previous taxable year, must continue to file on a combined  
30 basis with such bank holding company if such banking corporation, during  
31 such subsequent taxable year, continues to exercise its corporate fran-  
32 chise or do business in the state in a corporate or organized capacity  
33 and sixty-five percent or more of such banking corporation's voting  
34 stock continues to be owned or controlled, directly or indirectly, by  
35 such bank holding company, unless the permission of the commissioner has  
36 been obtained to file on a separate basis for such subsequent taxable  
37 year. Provided further, however, for each subsequent taxable year begin-  
38 ning after January first, two thousand and before January first, two  
39 thousand [eleven] THIRTEEN, a banking corporation described in either of  
40 the first two sentences of this clause which did not file on a combined  
41 basis with any such bank holding company in a previous taxable year, may  
42 not file on a combined basis with such bank holding company during any  
43 such subsequent taxable year unless the permission of the commissioner  
44 has been obtained to file on a combined basis for such subsequent taxa-  
45 ble year.

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

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

4 (iv) (A) Notwithstanding any provision of this paragraph, any bank  
5 holding company exercising its corporate franchise or doing business in  
6 the city may make a return on a combined basis without seeking the  
7 permission of the commissioner with any banking corporation exercising  
8 its corporate franchise or doing business in the city in a corporate or  
9 organized capacity sixty-five percent or more of whose voting stock is  
10 owned or controlled, directly or indirectly, by such bank holding compa-  
11 ny, for the first taxable year beginning on or after January first, two  
12 thousand and before January first, two thousand [eleven] THIRTEEN during  
13 which such bank holding company registers for the first time under the  
14 federal bank holding company act, as amended, and also elects to be a  
15 financial holding company. In addition, for each subsequent taxable year  
16 beginning after January first, two thousand and before January first,  
17 two thousand [eleven] THIRTEEN, any such bank holding company may file  
18 on a combined basis without seeking the permission of the commissioner  
19 with any banking corporation that is exercising its corporate franchise  
20 or doing business in the city and sixty-five percent or more of whose  
21 voting stock is owned or controlled, directly or indirectly, by such  
22 bank holding company if either such banking corporation is exercising  
23 its corporate franchise or doing business in the city in a corporate or  
24 organized capacity for the first time during such subsequent taxable  
25 year, or sixty-five percent or more of the voting stock of such banking  
26 corporation is owned or controlled, directly or indirectly, by such bank  
27 holding company for the first time during such subsequent taxable year.  
28 Provided however, for each subsequent taxable year beginning after Janu-  
29 ary first, two thousand and before January first, two thousand [eleven]  
30 THIRTEEN, a banking corporation described in either of the two preceding  
31 sentences which filed on a combined basis with any such bank holding  
32 company in a previous taxable year, must continue to file on a combined  
33 basis with such bank holding company if such banking corporation, during  
34 such subsequent taxable year, continues to exercise its corporate fran-  
35 chise or do business in the city in a corporate or organized capacity  
36 and sixty-five percent or more of such banking corporation's voting  
37 stock continues to be owned or controlled, directly or indirectly, by  
38 such bank holding company, unless the permission of the commissioner has  
39 been obtained to file on a separate basis for such subsequent taxable  
40 year. Provided further, however, for each subsequent taxable year begin-  
41 ning after January first, two thousand and before January first, two  
42 thousand [eleven] THIRTEEN, a banking corporation described in either of  
43 the first two sentences of this clause which did not file on a combined  
44 basis with any such bank holding company in a previous taxable year, may  
45 not file on a combined basis with such bank holding company during any  
46 such subsequent taxable year unless the permission of the commissioner  
47 has been obtained to file on a combined basis for such subsequent taxa-  
48 ble year.

49 (B) Notwithstanding any provision of this paragraph other than clause  
50 (A) of this subparagraph, the commissioner may not require a bank hold-  
51 ing company which, during a taxable year beginning on or after January  
52 first, two thousand and before January first, two thousand [eleven]  
53 THIRTEEN, registers for the first time during such taxable year under  
54 the federal bank holding company act, as amended, and also elects to be  
55 a financial holding company, to make a return on a combined basis for  
56 any taxable year beginning on or after January first, two thousand and

1 before January first, two thousand [eleven] THIRTEEN with a banking  
2 corporation sixty-five percent or more of whose voting stock is owned or  
3 controlled, directly or indirectly, by such bank holding company.  
4 S 8. This act shall take effect immediately.

## PART K

6 Section 1. Paragraph b of subdivision 1, subdivisions 2, 6, 14, 22 and  
7 23 of section 282 of the tax law, paragraph b of subdivision 1 and  
8 subdivision 14 as amended by chapter 245 of the laws of 1989, subdivi-  
9 sion 2 as amended by chapter 509 of the laws of 1937, subdivision 6 as  
10 amended by chapter 261 of the laws of 1988 and subdivisions 22 and 23 as  
11 added by section 1 of part W-1 of chapter 109 of the laws of 2006, are  
12 amended to read as follows:

13 b. With respect to Diesel motor fuel, "distributor" means any person,  
14 firm, association or corporation (i) who or which imports or causes to  
15 be imported into the state, for use, distribution, storage or sale with-  
16 in the state, any Diesel motor fuel; (ii) who or which produces,  
17 refines, manufactures or compounds Diesel motor fuel within the state;  
18 (iii) [who or which engages in the enhancement of Diesel motor fuel in  
19 this state; (iv)] who or which makes a sale or use of Diesel motor fuel  
20 in this state other than: (A) a retail sale not in bulk or (B) the self-  
21 use of Diesel motor fuel which has been the subject of a retail sale to  
22 such person; [(v)] (IV) who or which is registered by the department [of  
23 taxation and finance] as a distributor of kero-jet fuel pursuant to the  
24 provisions of subdivision two of section two hundred eighty-two-a of  
25 this article. For the purposes of this article when used with respect to  
26 Diesel motor fuel, a "retail sale not in bulk" means the making or  
27 offering to make any sale of Diesel motor fuel to a consumer of such  
28 fuel which is delivered directly into a motor vehicle for use in the  
29 operation of such vehicle. A "retail sale in bulk" means the making or  
30 offering to make any sale of Diesel motor fuel to a consumer which is  
31 other than a "retail sale not in bulk". Motor fuel or Diesel motor fuel  
32 brought into the state in the ordinary fuel tank connecting with the  
33 engine of a motor vehicle, aeroplane, motor boat or other conveyance  
34 propelled by the use of such motor fuel or Diesel motor fuel, and to be  
35 used only in the operation thereof, shall not be deemed imported within  
36 the meaning of this article, if not removed from such tank except as  
37 used in the propulsion of such engine.

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

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

51 14. "Diesel motor fuel" shall mean NO. 1 DIESEL FUEL, NO. 2 DIESEL  
52 FUEL, BIODIESEL, kerosene, crude oil, fuel oil or other middle distil-  
53 late and also motor fuel suitable for use in the operation of an engine  
54 of the diesel type, excluding, however, any product specifically desig-



1 nated "No. 4 Diesel fuel" and not suitable as a fuel used in the opera-  
2 tion of a motor vehicle engine.

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

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

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

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

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

28 16-A. "HIGHWAY DIESEL MOTOR FUEL" MEANS ANY DIESEL MOTOR FUEL WHICH IS  
29 NOT NON-HIGHWAY DIESEL MOTOR FUEL.

30 S 3. Subdivision 18 of section 282 of the tax law, as added by chapter  
31 302 of the laws of 2006, is renumbered subdivision 18-a and is amended  
32 to read as follows:

33 18-a. "Dyed Diesel motor fuel" means Diesel motor fuel which [is  
34 enhanced Diesel motor fuel and which] has been dyed in accordance with  
35 and for the purpose of complying with the provisions of 26 USC S4082(a)  
36 and the regulations thereunder, as may be amended from time to time.

37 S 4. Section 282 of the tax law is amended by adding a new subdivision  
38 26 to read as follows:

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

41 S 5. Subdivisions 2, 3, 4 and 5 of section 282-a of the tax law,  
42 subdivision 2 and paragraph (b) of subdivision 3 as amended by chapter  
43 245 of the laws of 1989, subdivisions 3, 4 and 5 as added by chapter 261  
44 of the laws of 1988 and paragraph (c) of subdivision 3 as added by chap-  
45 ter 302 of the laws of 2006, are amended to read as follows:

46 2. No person shall [engage] SELL OR USE DIESEL MOTOR FUEL within this  
47 state [in the enhancement of Diesel motor fuel, make a sale or use of  
48 Diesel motor fuel] (other than a retail sale not in bulk or self-use of  
49 Diesel motor fuel which has been the subject of a retail sale), import  
50 or cause the importation of Diesel motor fuel into the state or produce,  
51 refine, manufacture or compound Diesel motor fuel within the state  
52 unless such person shall be registered by the department [of taxation  
53 and finance] as a distributor of Diesel motor fuel. Provided, the  
54 commissioner [of taxation and finance] shall not register as a distribu-  
55 tor of Diesel motor fuel any person who is engaged solely in one or both  
56 of the following: (i) any person who makes or offers to make a retail

1 sale not in bulk of such fuel or (ii) any person who purchases Diesel  
2 motor fuel in bulk in this state for the sole purpose of self-use. The  
3 commissioner may, however, register as a distributor of kero-jet fuel  
4 only a fixed base operator who makes no sales of kero-jet fuel other  
5 than retail sales not in bulk delivered directly into the fuel tank of  
6 an airplane for use in the operation of such airplane and who makes no  
7 other sales of diesel motor fuel. Such registration shall apply only to  
8 the wholesale purchase of kero-jet fuel and the retail sale of such fuel  
9 not in bulk for delivery directly into the fuel tank of an airplane for  
10 use in the operation thereof. Provided, further, that if the commission-  
11 er is satisfied that full registration is not necessary in order to  
12 protect tax revenues, the commissioner may limit or modify the require-  
13 ment of registration as a distributor with respect to any person other-  
14 wise required to register solely because such person engages in the sale  
15 of NON-HIGHWAY Diesel motor fuel where such person makes sales of  
16 NON-HIGHWAY Diesel motor fuel to the consumer solely for the purposes  
17 described in subparagraph (i) of paragraph (b) of subdivision three of  
18 this section, provided that if the commissioner so limits or modifies  
19 such registration requirement with respect to such person, then such  
20 registration shall apply only to the importation, sale and distribution  
21 of SUCH NON-HIGHWAY Diesel motor fuel [for the purposes described in  
22 such subparagraph (i)]. The commissioner [of taxation and finance] may  
23 also waive any other requirement imposed by this article on such a  
24 distributor. All the provisions of section two hundred eighty-three of  
25 this article shall apply to applicants for registration and registrants  
26 with respect to Diesel motor fuel, and, in addition, distributors with  
27 respect to Diesel motor fuel shall be subject to all other provisions of  
28 this article relating to distributors of motor fuel, including but not  
29 limited to, the keeping of records, the fixing, determination and  
30 payment of tax and filing of returns. PROVIDED, FURTHER, THE COMMISSION-  
31 ER MAY LIMIT OR MODIFY THE REQUIREMENT OF REGISTRATION AS A DISTRIBUTOR  
32 WITH RESPECT TO ANY PERSON WHO PRODUCES FOR SELF USE "UNQUALIFIED BIOD-  
33 IESEL."

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

39 (b) The tax on the [incident] INCIDENCE of sale or use imposed by  
40 subdivision one of this section shall not apply to: (i) the sale [to] or  
41 use [by the consumer of previously untaxed Diesel motor fuel which is  
42 not enhanced Diesel motor fuel and which is used exclusively for heating  
43 purposes or for the purpose of use or consumption directly and exclu-  
44 sively in the production of tangible personal property, gas, electric-  
45 ity, refrigeration or steam, for sale,] OF NON-HIGHWAY DIESEL MOTOR  
46 FUEL, but only if all of such fuel is consumed other than on the PUBLIC  
47 highways of this state (EXCEPT FOR THE USE OF THE PUBLIC HIGHWAY BY  
48 FARMERS TO REACH ADJACENT FARMLANDS); provided, however, this exemption  
49 shall in no event apply to a sale of NON-HIGHWAY Diesel motor fuel which  
50 involves a delivery at a filling station or into a repository which is  
51 equipped with a hose or other apparatus by which such fuel can be  
52 dispensed into the fuel tank of a motor vehicle (EXCEPT FOR DELIVERY AT  
53 A FARM SITE WHICH QUALIFIES FOR THE EXEMPTION UNDER SUBDIVISION (G) OF  
54 SECTION THREE HUNDRED ONE-B OF THIS CHAPTER); or (ii) [the sale of  
55 previously untaxed Diesel motor fuel which is not enhanced Diesel motor  
56 fuel to a person registered under this article as a distributor of

1 Diesel motor fuel other than (A) a retail sale to such person or (B) a  
2 sale to such person which involves a delivery at a filling station or  
3 into a repository which is equipped with a hose or other apparatus by  
4 which such fuel can be dispensed into the fuel tank of a motor vehicle;  
5 or (iii) a sale or use of enhanced Diesel motor fuel to or by a consumer  
6 exclusively for the purposes of heating specified in subparagraph (i) of  
7 this paragraph but only if such enhanced Diesel motor fuel is delivered  
8 into a storage tank which is not equipped with a hose or other apparatus  
9 by which such fuel can be dispensed into the fuel tank of a motor vehi-  
10 cle and such storage tank is attached to the heating unit burning such  
11 fuel, provided that each delivery of such fuel of over four thousand  
12 five hundred gallons shall be evidenced by a certificate signed by the  
13 purchaser stating that the product will be used exclusively for heating  
14 purposes; or (iv) a sale or use consisting of no more than four thousand  
15 five hundred gallons of Diesel motor fuel in a thirty-day period to or  
16 by a consumer who purchases or uses such fuel for use or consumption  
17 directly and exclusively in the production for sale of tangible personal  
18 property by farming but only if all of such fuel is delivered on the  
19 farm site and is consumed other than on the highways of this state  
20 (except for the use of the highway to reach adjacent farmlands)  
21 provided, however, a farmer may purchase more than four thousand five  
22 hundred gallons of Diesel motor fuel in a thirty-day period for such use  
23 or consumption exempt from the tax in accordance with prior clearance  
24 given by the commissioner of taxation and finance; or (v)] a sale to the  
25 consumer consisting of not more than twenty gallons of water-white kero-  
26 sene to be used and consumed exclusively for heating purposes; or [(vi)]  
27 (III) the sale to or delivery at a filling station or other retail  
28 vendor of water-white kerosene provided such filling station or other  
29 retail vendor only sells such water-white kerosene exclusively for heat-  
30 ing purposes in containers of no more than twenty gallons; or [(vii)]  
31 (IV) a sale of kero-jet fuel to an airline for use in its airplanes or a  
32 use of kero-jet fuel by an airline in its airplanes; or [(viii)] (V) a  
33 sale of kero-jet fuel by a registered distributor of Diesel motor fuel  
34 to a fixed base operator registered under this article as a distributor  
35 of kero-jet fuel only where such fixed base operator is engaged solely  
36 in making or offering to make retail sales not in bulk of kero-jet fuel  
37 directly into the fuel tank of an airplane for the purpose of operating  
38 such airplane; or [(ix)] (VI) a retail sale not in bulk of kero-jet fuel  
39 by a fixed base operator registered under this article as a distributor  
40 of kero-jet fuel only where such fuel is delivered directly into the  
41 fuel tank of an airplane for use in the operation of such airplane.

42 (c) [Limited exemptions for dyed Diesel motor fuel. (i) The tax  
43 imposed by this section shall not apply to: (A) the sale of dyed Diesel  
44 motor fuel by the importer to a purchaser under the circumstances and  
45 subject to the terms and conditions as follows: (1) the importer and  
46 purchaser are each registered under this article as a full Diesel motor  
47 fuel distributor; (2) such importer has imported the enhanced Diesel  
48 motor fuel, which is the subject of the sale, into the state and has  
49 dyed such fuel to comply with the provisions of 26 USC S 4082(a) and the  
50 regulations thereunder, as may be amended from time to time; (3) the  
51 purchaser is a holder of a currently valid direct payment permit issued  
52 pursuant to section two hundred eighty-three-d of this article; and (4)  
53 such purchaser is primarily engaged in the retail heating oil business  
54 and such dyed Diesel motor fuel will be sold by such purchaser in a  
55 retail sale to a consumer for use solely as residential or commercial  
56 heating oil; (B) a first sale of the dyed Diesel motor fuel, which as

1 the subject of an exempt sale described in clause (A) of this subpara-  
2 graph, by the purchaser described therein to a purchaser likewise hold-  
3 ing a currently valid direct pay permit under the circumstances and  
4 subject to the terms and conditions as follows: (1) the sale of such  
5 second purchaser by such first purchaser is the first and only sale of  
6 such dyed Diesel motor fuel by such first purchaser; (2) such second  
7 purchaser is primarily engaged in the retail heating oil business and  
8 such dyed Diesel motor fuel will be sold by such second purchaser in a  
9 retail sale to a consumer for use solely as residential or commercial  
10 heating oil; (3) on the sale to the second purchaser, such first  
11 purchaser described in such clause (A) attaches to the invoice a copy of  
12 the invoice given by the importer on the exempt sale described in such  
13 clause (A), so as to identify the origin of the dyed Diesel fuel which  
14 is the subject of the sale to such second purchaser; and (4) such second  
15 purchaser certifies that such dyed Diesel motor fuel is to be sold by it  
16 only to a consumer for use solely as residential or commercial heating  
17 oil. (ii) Prior to, or at the time of, such sale of such dyed Diesel  
18 motor fuel described in clause (A) or (B) of subparagraph (i) of this  
19 paragraph, the purchaser shall give a certificate to the seller setting  
20 forth the intended use of the dyed Diesel motor fuel which is sought to  
21 be qualified for exemption under this paragraph, that the purchaser has  
22 been issued a direct payment permit which is currently valid, that such  
23 permit has not been suspended or revoked and that the purchaser other-  
24 wise meets the qualifications of this paragraph. (iii) The limited  
25 exemptions allowed under this paragraph shall in no event apply to any  
26 dyed Diesel motor fuel which is delivered into a repository equipped  
27 with hose or other apparatus capable of being used to dispense fuel into  
28 the fuel tank of a motor vehicle, or where the purchaser's direct  
29 payment permit has been suspended or revoked and the commissioner has  
30 made generally available the identity of those persons whose direct  
31 payment permits have been suspended or revoked.] NOTHING IN THIS ARTICLE  
32 SHALL EXEMPT NON-HIGHWAY DIESEL MOTOR FUEL FROM THE IMPOSITION OF THE  
33 TAX UNDER THIS SECTION, IF SUCH NON-HIGHWAY DIESEL MOTOR FUEL IS  
34 INTENDED FOR USE ON THE WATERWAYS OF THE STATE INCLUDING ANY OTHER  
35 WATERWAYS BORDERING ON THE STATE, FOR OPERATING PLEASURE OR RECREATIONAL  
36 MOTOR BOATS THEREON.

37 4. The tax imposed by this section on Diesel motor fuel shall be  
38 passed through by the seller and included as part of the selling price  
39 to each purchaser of such fuel. Provided, however, the amount of the tax  
40 imposed by this section may be excluded from the selling price of Diesel  
41 motor fuel where (i) a sale of Diesel motor fuel is made to an organiza-  
42 tion described in paragraph (a) of subdivision three of this section  
43 solely for the purpose stated therein; (ii) a sale of [enhanced]  
44 NON-HIGHWAY Diesel motor fuel is made to a consumer [exclusively for the  
45 purposes of heating specified in subparagraph (i) of paragraph (b) of  
46 subdivision three of this section] but only if such [enhanced] NON-HIGH-  
47 WAY Diesel motor fuel is NOT DELIVERED TO A FILLING STATION, NOR deliv-  
48 ered into a storage tank which is [not] equipped with a hose or other  
49 apparatus by which such fuel can be dispensed into the fuel tank of a  
50 motor vehicle [and such storage tank is attached to the heating unit  
51 burning such fuel, provided that each delivery of such fuel of over four  
52 thousand five hundred gallons shall be evidenced by a certificate signed  
53 by the purchaser stating that the product will be used exclusively for  
54 heating purposes; (iii) a sale is made consisting of no more than four  
55 thousand five hundred gallons (or a greater amount which has been given  
56 prior clearance by the commissioner of taxation and finance) of Diesel

1 motor fuel in a thirty-day period to a consumer who purchases such fuel  
2 for use or consumption directly and exclusively in the production for  
3 sale of tangible personal property by farming but only if all of such  
4 fuel is consumed other than on the highways or waterways of this state];  
5 or [(iv)] (III) the sale to or delivery at a filling station or other  
6 retail vendor of water-white kerosene provided such filling station or  
7 other retail vendor only sells such water-white kerosene exclusively for  
8 heating purposes in containers of no more than twenty gallons; or [(v)]  
9 (IV) a sale of kero-jet fuel is made to an airline for use in its  
10 airplanes.

11 5. All the provisions of this article relating to the administration  
12 and collection of the taxes on motor fuel, except sections two hundred  
13 eighty-three-a and two hundred eighty-three-b of this article, shall be  
14 applicable to the tax imposed by this section with such limitation as  
15 specifically provided for in this article with respect to Diesel motor  
16 fuel and with such modification as may be necessary to adapt the  
17 language of such provisions to the tax imposed by this section. With  
18 respect to the bond or other security required by subdivision three of  
19 section two hundred eighty-three of this article, the commissioner [of  
20 taxation and finance], in determining the amount of bond or other secu-  
21 rity required for the purpose of securing tax payments, shall take into  
22 account the volume of [heating fuel] NON-HIGHWAY DIESEL MOTOR FUEL and  
23 other Diesel motor fuel sold for exempt purposes by a distributor of  
24 Diesel motor fuel during prior periods as a factor reducing potential  
25 tax liability along with any other relevant factors in determining the  
26 amount of security required. With respect to the bond required to be  
27 filed prior to registration as a Diesel motor fuel distributor, no bond  
28 shall be required of an applicant upon a finding of the applicant's  
29 fiscal responsibility, as reflected by such factors as net worth,  
30 current assets and liabilities, and tax reporting and payment history,  
31 and the department shall not provide for a minimum bond of every appli-  
32 cant.

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

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

54 (b) Upon granting a temporary order, the court shall direct that a  
55 hearing be held at the earliest possible time upon such notice and  
56 service as the court shall direct and at the same time, if such action

1 has not yet been commenced, the commissioner [of taxation and finance]  
2 shall commence an action in supreme court for a permanent injunction and  
3 forfeiture of [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL pursuant  
4 to paragraph (c) of this subdivision. Where, after such opportunity for  
5 a hearing, the court determines that there is a substantial probability  
6 that the commissioner will prevail in such action, the court shall grant  
7 a preliminary injunction restraining the sale, release, transfer or  
8 other disposition of fuel subject to the temporary order.

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

19 (2) With respect to [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL  
20 that was imported, caused to be imported, produced, refined, manufac-  
21 tured or compounded, [or diesel motor fuel that was subjected to the  
22 process of enhancement] by a person not registered as a distributor as  
23 required by this article or that was unlawfully sold or transferred by  
24 such person, if it is established by clear and convincing evidence that  
25 any other person in possession of or having control over such fuel was  
26 not a purchaser or transferee in good faith of such fuel with respect to  
27 the fact that such fuel was so imported, caused to be imported,  
28 produced, refined, manufactured, OR compounded [or enhanced] by a person  
29 not registered as a distributor as required by this article or that such  
30 fuel was so unlawfully sold or transferred by such person, the court  
31 shall grant a judgment (i) permanently enjoining such other person and  
32 his OR HER agents from selling, releasing, transferring or otherwise  
33 disposing of any such fuel and (ii) declaring the forfeiture of such  
34 fuel in the possession or under the control of such other person.

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

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

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

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

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

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

24 3. (a) The claim for or exemption from tax provided for in subpara-  
25 graphs (i), (II), (iii), (iv), [(v),] AND (vi)[, (vii) and (ix)] of  
26 paragraph (b) of subdivision three of section two hundred eighty-two-a  
27 of this article shall be established by means of an exempt transaction  
28 certificate. If any such exemption is applicable, such certificate shall  
29 be provided by the purchaser to the seller at the time of or prior to  
30 delivery of the Diesel motor fuel. Such exempt transaction certificate  
31 shall set forth the name and address of the purchaser and the basis of  
32 the exemption and shall be signed by such purchaser and by the seller.  
33 Such certificate shall be in such form and contain such other informa-  
34 tion as the commissioner [of taxation and finance] shall require. Where  
35 a proper and complete exempt transaction certificate has been furnished  
36 and accepted by the seller in good faith, such certificate under such  
37 circumstance shall relieve the seller of the burden of proving that the  
38 Diesel motor fuel covered by such certificate is exempt from tax by  
39 reason of subparagraph (i), (II), (iii), (iv), [(v),] OR (vi)[, (vii) or  
40 (ix)] of paragraph (b) of subdivision three of such section two hundred  
41 eighty-two-a. Any purchaser who furnishes to his seller a false or frau-  
42 dulent exempt transaction certificate for the purpose of establishing an  
43 exemption from the tax imposed by section two hundred eighty-two-a of  
44 this article shall be jointly and severally liable for the tax imposed  
45 by such section. In lieu of an exempt transaction certificate, the  
46 commissioner [of taxation and finance] may provide for the establishment  
47 of such exemption by means of a procedure or other document which he OR  
48 SHE deems appropriate so as to secure the revenues from the excise tax  
49 on Diesel motor fuel. Provided, further, in the case of the exemption  
50 provided by subparagraph (i) of paragraph (b) of subdivision three of  
51 section two hundred eighty-two-a of this article, the commissioner shall  
52 provide for an alternative procedure or other document signed only by  
53 the seller, such as a metered delivery ticket, for the establishment of  
54 such exemption in those cases where such commissioner is satisfied that  
55 the use of such alternative procedure or other document will not jeop-  
56 ardize the revenues from the excise tax on Diesel motor fuel.

1 (b) A claim for the exemption from tax provided for in subparagraph  
2 [(ii) or (viii)] (V) of paragraph (b) of subdivision three of section  
3 two hundred eighty-two-a of this article shall be established by means  
4 of an interdistributor sale certificate. If such exemption is applica-  
5 ble, such certificate shall be provided by the purchaser to the seller  
6 at the time of or prior to delivery of the Diesel motor fuel. Such  
7 certificate shall set forth the name and address of the purchaser, the  
8 purchaser's registration number, an affirmation by such purchaser that  
9 the purchaser is registered as a distributor and that such registration  
10 has not been suspended or cancelled and shall be signed by such purchas-  
11 er and by the seller. Such certificate shall be in such form and contain  
12 such other information as the commissioner [of taxation and finance]  
13 shall require. Where a proper and complete interdistributor sale certif-  
14 icate has been furnished and accepted by the seller in good faith, such  
15 certificate under such circumstance shall relieve the seller of the  
16 burden of proving that the Diesel motor fuel covered by such certificate  
17 is exempt from tax by reason of subparagraph [(ii) or (viii)] (V) of  
18 paragraph (b) of subdivision three of such section two hundred eighty-  
19 two-a. For purposes of this paragraph, a seller shall not have accepted  
20 such certificate in good faith if the purchaser's registration is inval-  
21 id because it has been suspended or cancelled, or if the purchaser is  
22 not registered, and the commissioner [of taxation and finance] has  
23 furnished registered distributors with information identifying all those  
24 persons then validly registered as distributors of Diesel motor fuel and  
25 those persons whose registrations have been suspended or cancelled. Any  
26 purchaser who furnishes to his seller a false or fraudulent interdis-  
27 tributor sale certificate for the purpose of establishing an exemption  
28 from the tax imposed by section two hundred eighty-two-a of this article  
29 shall be jointly and severally liable for the tax imposed by such  
30 section.

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

33 1. Every person who imports or causes to be imported into this state,  
34 or who produces, refines, manufactures or compounds within this state,  
35 or who purchases or sells in this state motor fuel or diesel motor fuel  
36 or ingredients which may be manufactured or compounded into motor fuel  
37 or diesel motor fuel, [or engages in the enhancement of diesel motor  
38 fuel,] shall keep a complete and accurate record of all purchases and  
39 sales, uses or other dispositions thereof and a complete and accurate  
40 record of the number of gallons of motor fuel or diesel motor fuel or  
41 such ingredients so imported, produced, refined, manufactured[, OR  
42 compounded [or enhanced]. Every person who stores motor fuel or diesel  
43 motor fuel shall keep a complete and accurate record of the identity of  
44 the person for whom such fuel is stored, the quantity and type of fuel  
45 so stored, the identity of the person to whom such fuel is released from  
46 storage and the quantity and type of fuel so released. Such records  
47 shall be in such form and contain such other information as the commis-  
48 sioner shall prescribe. Said commissioner, by rule or regulation, also  
49 may require the delivery of statements to purchasers with consignments  
50 of motor fuel or diesel motor fuel or such ingredients, and prescribe  
51 the matters to be contained therein. Such records and statements, unless  
52 required by the commissioner to be preserved for a longer period, shall  
53 be preserved for a period of three years and shall be offered for  
54 inspection at any time upon oral or written demand by such commissioner  
55 or the commissioner's duly authorized agents. The commissioner is hereby  
56 further authorized to examine the equipment of any such person pertain-



1 ing to the storage, sale or delivery of such fuels, as well as the stock  
2 of such fuels in the possession or control of such person. To verify the  
3 amount of tax due under this article, each such person is hereby  
4 directed and required to give to the commissioner or the commissioner's  
5 duly authorized representatives, the means, facilities and opportunity  
6 for such examinations as are herein provided for and required. Nothing  
7 CONTAINED in this section [contained] shall be construed to require the  
8 keeping for purposes of this article of a record of purchases or sales  
9 of motor fuel or diesel motor fuel or such ingredients at retail in  
10 small quantities (less than thirty gallons) or of motor fuel or diesel  
11 motor fuel imported into this state in the tank of a motor vehicle which  
12 supplies the fuel for its operation.

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

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

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

31 S 286-b. Transportation of [automotive] MOTOR FUEL OR DIESEL MOTOR  
32 fuel; manifest required. 1. The master or other person in charge of any  
33 barge, tanker or other vessel in which [automotive] MOTOR FUEL OR DIESEL  
34 MOTOR fuel is being transported over any of the navigable waters of this  
35 state, the operator of a motor vehicle in which [automotive] MOTOR FUEL  
36 OR DIESEL MOTOR fuel is being transported in this state, or the operator  
37 of a pipeline through which [automotive] MOTOR FUEL OR DIESEL MOTOR fuel  
38 is being transported in this state, other than [automotive] MOTOR FUEL  
39 OR DIESEL MOTOR fuel being transported for use in operating the engine  
40 which propels such vessel or motor vehicle, as the case may be, must  
41 have in his OR HER possession a manifest which shows the name and  
42 address of the person from whom such [automotive] fuel was received by  
43 him OR HER and the place of receipt of such fuel and the name and  
44 address of every person to whom he OR SHE is to make delivery of the  
45 same and the place of delivery, together with the number of gallons to  
46 be delivered to each such person, and, if such [automotive] fuel is  
47 being imported into the state in such vessel, motor vehicle or pipeline  
48 for use, storage, distribution or sale in the state, the name of the  
49 distributor importing or causing such fuel to be imported into the state  
50 and such other information as the [tax commission] COMMISSIONER may  
51 require pursuant to rule or regulation, and shall at the request of a  
52 peace officer, acting pursuant to his OR HER special duties, a police  
53 officer, any representative of the department [of taxation and finance]  
54 or any other person authorized by law to inquire into or investigate the  
55 transportation of such [automotive] fuel, produce such manifest for  
56 inspection. The person causing the operation of such vessel, motor vehi-

1 cle or pipeline shall be responsible to cause the operator of such  
2 vessel, motor vehicle or pipeline to keep in his OR HER possession on  
3 such vessel, in such motor vehicle or in the main control building of  
4 such pipeline in this state the manifest required by this section. The  
5 absence of the manifest required by this section shall give rise to a  
6 presumption that the [automotive] MOTOR FUEL OR DIESEL MOTOR fuel being  
7 transported is intended for sale, use, distribution or storage in this  
8 state and is being imported or caused to be imported by other than a  
9 registered distributor. Moreover, the absence of (1) the place of deliv-  
10 ery of motor fuel OR DIESEL MOTOR FUEL on the manifest with respect to  
11 [automotive] MOTOR FUEL OR DIESEL MOTOR fuel being imported into the  
12 state shall give rise to a presumption that such fuel is being imported  
13 into the state for use, distribution, storage or sale in the state and  
14 (2) the name of a registered distributor on the manifest with respect to  
15 [automotive] MOTOR FUEL OR DIESEL MOTOR fuel being imported into the  
16 state for use, distribution, storage or sale in the state shall give  
17 rise to a presumption that such fuel is being so imported or caused to  
18 be imported by other than a registered distributor. Every barge, tanker  
19 or other vessel so used for the transportation of motor fuel must be  
20 plainly and visibly marked on both sides thereof and above the water  
21 line with the word "Gasoline," or other name of the motor fuel being  
22 transported, in letters at least eight inches high and of corresponding  
23 appropriate width, or must be identified as prescribed by the [tax  
24 commission] COMMISSIONER pursuant to rule or regulation. The master or  
25 person in charge of such barge, tanker or other vessel, as well as the  
26 owners thereof, shall be guilty of a violation of this section if such  
27 barge, tanker or other vessel is not so marked.

28 2. The commissioner may, by regulation provide for the form and  
29 content of the manifest required for [automotive] MOTOR AND DIESEL MOTOR  
30 fuel and for the filing of monthly information returns by every person  
31 required to maintain records, described in subdivision one of this  
32 section, which shall in all material respects reflect the information  
33 required to be contained in such records. Such returns shall be in such  
34 form and contain such other information as the commissioner shall  
35 require.

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

38 1. Every distributor shall, on or before the twentieth day of each  
39 month, file with the department [of taxation and finance] a return, on  
40 forms to be prescribed by the commissioner and furnished by such depart-  
41 ment, stating the number of gallons of motor fuel imported, manufactured  
42 or sold by such distributor in the state during the preceding calendar  
43 month and in the case of Diesel motor fuel, the number of gallons of  
44 [enhanced] Diesel motor fuel imported[, the number of gallons enhanced]  
45 and the number of gallons which have been sold or used. Provided, howev-  
46 er, the commissioner may, if he OR SHE deems it necessary in order to  
47 [insure] ENSURE the payment of the taxes imposed by this article,  
48 require returns to be made at such times and covering such periods as he  
49 OR SHE may deem necessary, and, by regulation, may permit the filing of  
50 returns by distributors of Diesel motor fuel on a quarterly, semi-annual  
51 or annual basis, or may waive the filing of returns by a distributor of  
52 Diesel motor fuel for such time and upon such terms as he OR SHE may  
53 deem proper if satisfied that no tax imposed by this article with  
54 respect to Diesel motor fuel is or will be payable by him OR HER during  
55 the time for which returns are waived. Such returns shall contain such  
56 further information as the commissioner shall require. The fact that a

1 distributor's name is signed to a filed return shall be prima facie  
2 evidence for all purposes that the return was actually signed by such  
3 distributor. Each such distributor shall, with respect to motor fuel,  
4 pay to the department with the filing of such return, the taxes imposed  
5 by this article on each gallon of motor fuel imported, manufactured or  
6 sold by such distributor in the state, and so reported, during the peri-  
7 od covered by such return. Each distributor shall, with respect to  
8 Diesel motor fuel, pay to the department with the filing of the return  
9 the taxes imposed by this article on the number of gallons of Diesel  
10 motor fuel sold or used or delivered to a filling station or delivered  
11 into the fuel tank of a motor vehicle during the period covered by the  
12 return. Provided, however, that where a distributor has purchased [auto-  
13 motive] MOTOR FUEL OR DIESEL MOTOR fuel upon which the taxes imposed by  
14 this article have been paid or paid over and in each instance the tax is  
15 included in the price, a credit shall be allowed for the amount of such  
16 taxes upon the subsequent sale of such fuel to the extent that such  
17 taxes are so paid and included in the price.

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

22 (a) Except as otherwise provided in paragraph (b) of this section, any  
23 person who shall buy any motor fuel or diesel motor fuel, on which the  
24 tax imposed by this article shall have been paid, and shall consume the  
25 same in any manner except in the operation of a motor vehicle upon or  
26 over the PUBLIC highways of this state, or in the operation of a pleas-  
27 ure or recreational motor boat upon or over the waterways of the state  
28 including waterways bordering on the state, shall be reimbursed the  
29 amount of such tax in the manner and subject to the conditions herein  
30 provided except that there shall be no reimbursement of tax paid on  
31 motor fuel or diesel motor fuel taken out of this state in a fuel tank  
32 connected with the engine of a motor vehicle and consumed outside of  
33 this state.

34 (c) All claims for reimbursement shall be in such form and contain  
35 such information as the commissioner shall prescribe and shall be filed  
36 within three years from (i) the date of the purchase, in the case of the  
37 purchaser; or (ii) the date of the sale, in the case of the seller, of  
38 the motor fuel so subject to reimbursement. Every such claim shall  
39 include a certificate by or on behalf of the party presenting the same  
40 to the effect that it is just, true and correct, that no part thereof  
41 has been paid, except as stated therein, and that the balance therein  
42 stated is actually due and owing. The claimant shall satisfy the depart-  
43 ment that the claimant has borne the tax and that the motor fuel has  
44 been consumed by the claimant in a manner other than the operation of a  
45 motor vehicle upon or over the PUBLIC highways of this state, the opera-  
46 tion of a pleasure or recreational motorboat upon or over the waterways  
47 of the state including waterways bordering on the state or, in the case  
48 of an omnibus carrier, taxicab licensee, nonpublic school operator or  
49 volunteer ambulance service, that the claimant has borne the tax and  
50 that the amount claimed is the amount of such tax reimbursable under  
51 paragraph (b), (d), (e) or (f) of THIS subdivision [three of this  
52 section]. The department may require such further information or proof  
53 as it shall deem necessary for the administration of such claim. Claims  
54 for reimbursement approved by the department shall be paid from revenues  
55 collected under this article and deposited to the credit of the comp-  
56 troller as hereinafter provided; but no such claims shall be paid unless

1 the department is satisfied that the amount of the tax for which the  
2 reimbursement is claimed has actually been collected by the state. The  
3 amount of any erroneous or excessive payment to a claimant for  
4 reimbursement may be determined by the department and may be recovered  
5 from such claimant in the same manner as a tax imposed by this article,  
6 provided, however, that any such determination shall be made within  
7 three years after the date of such erroneous or excessive payment.

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

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

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

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

30 S 289-f. Joint administration of taxes. In addition to the powers  
31 granted to the [tax commission] COMMISSIONER in this chapter, the  
32 [commission] COMMISSIONER is hereby authorized to make provisions pursu-  
33 ant to rules and regulations for the joint administration, in whole or  
34 in part, of the state and local taxes imposed by article twenty-eight  
35 and authorized to be imposed by article twenty-nine of this chapter upon  
36 the sale of [automotive] MOTOR FUEL OR DIESEL MOTOR fuel and the taxes  
37 imposed and authorized to be imposed by this article, including the  
38 joint reporting, assessment, collection, determination and refund of  
39 such taxes, and for that purpose to prescribe that any of the [commis-  
40 sion's] COMMISSIONER'S functions under such articles, and any returns,  
41 forms, statements, documents or information to be submitted to the  
42 [commission] COMMISSIONER under such articles, any books and records to  
43 be kept for purposes of the taxes imposed or authorized to be imposed by  
44 such articles, any schedules of amounts to be collected under such arti-  
45 cles, any registration required under such articles, and the payment of  
46 taxes under such articles shall be on a joint basis with respect to the  
47 taxes imposed by such articles.

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

55 (2) With respect to diesel motor fuel, every corporation and unincor-  
56 porated business (i) importing diesel motor fuel or causing diesel motor

1 fuel to be imported into the state for use, distribution, storage or  
2 sale in the state, (ii) producing, refining, manufacturing or compound-  
3 ing diesel motor fuel within the state, (iii) [engaging in the enhance-  
4 ment of diesel motor fuel within the state, (iv)] making a sale or use  
5 of diesel motor fuel in the state, other than a retail sale not in bulk  
6 or self-use of diesel motor fuel which has been the subject of a retail  
7 sale to such corporation or unincorporated business, or [(v)] (IV)  
8 registered by the department [of taxation and finance] as a "distributor  
9 of kero-jet fuel only" pursuant to the provisions of subdivision two of  
10 section two hundred eighty-two-a of this chapter. Diesel motor fuel  
11 brought into this state in the ordinary fuel tank connecting with the  
12 engine of a motor vehicle, airplane or other conveyance, but not a  
13 vessel (other than a recreational motor boat or a commercial fishing  
14 vessel as defined in subdivision (j) of this section if the diesel motor  
15 fuel imported into and consumed in this state is used to operate such  
16 vessel while it is engaged in the harvesting of fish for sale),  
17 propelled by the use of such diesel motor fuel and to be used only in  
18 the operation thereof, shall not be deemed imported within the meaning  
19 of this article, if not removed from such tank except as used in the  
20 propulsion of such engine.

21 (c) [(1)] The [term (A)] TERMS (1) "diesel motor fuel" means such term  
22 as defined in subdivision fourteen of section two hundred eighty-two of  
23 this chapter [and regulations thereunder including any regulations  
24 relating to product specifically designated "No. 4 diesel fuel" and not  
25 suitable as a fuel used in the operation of a motor vehicle engine], and  
26 [(B) "enhanced"] (2) "HIGHWAY diesel motor fuel" means such term as  
27 defined in subdivision [sixteen] SIXTEEN-A of section two hundred eight-  
28 y-two of this chapter, and

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

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

42 [(2)] (4) As used in this article, references to persons or petroleum  
43 businesses registered under article twelve-A of this chapter as distrib-  
44 utors of diesel motor fuel shall include all such persons or petroleum  
45 businesses registered under such article as distributors of diesel motor  
46 fuel and persons or petroleum businesses operating under valid limited  
47 registrations relating to persons or petroleum businesses making retail  
48 sales of diesel motor fuel to consumers solely for the purposes  
49 described in subparagraph (i) of paragraph (b) of subdivision three of  
50 section two hundred eighty-two-a of this chapter, but such references  
51 shall not include persons and petroleum businesses registered as  
52 "distributors of kero-jet fuel only" pursuant to the provisions of  
53 subdivision two of section two hundred eighty-two-a of this chapter.

54 (k) "Commercial gallonage" means gallonage (1) which is [nonautomo-  
55 tive-type] NON-HIGHWAY diesel motor fuel [(which is not enhanced diesel  
56 motor fuel)] or residual petroleum product, (2) which is included in the

1 full measure of the [nonautomotive-type] NON-HIGHWAY diesel motor fuel  
2 component or the residual petroleum product component of the tax imposed  
3 under section three hundred one-a of this article, [and] (3) which does  
4 not (and will not) qualify (A) for the utility credit or reimbursement  
5 provided for in section three hundred one-d of this article, (B) as  
6 "manufacturing gallonage", as such term is defined in subdivision (m) of  
7 this section, (C) for the not-for-profit organization exemption provided  
8 for in subdivision (h) of section three hundred one-b of this article,  
9 or (D) for the heating exemption provided for in paragraph two of subdivi-  
10 sion (d) of section three hundred one-b of this article or the heating  
11 reimbursement provided for in paragraph two of subdivision (a) of  
12 section three hundred one-c of this article, AND (4) WHICH WILL NOT BE  
13 USED NOR HAS BEEN USED IN THE FUEL TANK CONNECTING WITH THE ENGINE OF A  
14 VESSEL. No gallonage shall qualify as "commercial gallonage" where such  
15 gallonage is eligible for the (i) utility credit or reimbursement under  
16 such section three hundred one-d of this article, (ii) [if before Janu-  
17 ary first, nineteen hundred ninety-eight, the manufacturing exemption or  
18 reimbursement under paragraph one of subdivision (b) of section three  
19 hundred one-j of this article and, if on or after January first, nine-  
20 teen hundred ninety-eight, the] "manufacturing exemption" under para-  
21 graph [four] THREE of subdivision (f) of section three hundred one-a of  
22 this article, (iii) [the] not-for-profit organization exemption under  
23 subdivision (h) of section three hundred one-b of this article, or (iv)  
24 heating exemption provided for in paragraph two of subdivision (d) of  
25 section three hundred one-b of this article or the heating reimbursement  
26 provided for in paragraph two of subdivision (a) of section three  
27 hundred one-c of this article. The commissioner shall require such docu-  
28 mentary proof to substantiate the classification of product as "commer-  
29 cial gallonage" as the commissioner deems appropriate.

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

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

1 shall require such documentary proof to substantiate the classification  
2 of product as "manufacturing gallonage" as the commissioner deems appro-  
3 priate.

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

5 S 19. Subdivision (a), paragraph 1 of subdivision (b) and subdivisions  
6 (c), (e), (f) and (h) of section 301-a of the tax law, subdivision (a)  
7 as amended by section 1 of part U of chapter 63 of the laws of 2000,  
8 paragraph 1 of subdivision (b) and paragraph 1 of subdivision (c) as  
9 amended by section 154 of part A of chapter 389 of the laws of 1997,  
10 subdivisions (c), (e), (f) and (h) as added by chapter 190 of the laws  
11 of 1990, paragraph 3 of subdivision (e) and paragraph 3 of subdivision  
12 (f) as amended by chapter 170 of the laws of 1994 and paragraph 4 of  
13 subdivision (e) and paragraph 4 of subdivision (f) as added by chapter  
14 309 of the laws of 1996, are amended to read as follows:

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

28 (1) The motor fuel component shall be determined by multiplying the  
29 motor fuel and [automotive-type] HIGHWAY diesel motor fuel rate times  
30 the number of gallons of (1) motor fuel imported or caused to be  
31 imported into this state by the petroleum business for use, distrib-  
32 ution, storage or sale in the state or (2) produced, refined, manufac-  
33 tured or compounded in the state by the petroleum business during the  
34 month covered by the return under this article. Provided, however, that  
35 no motor fuel shall be included in the measure of the tax unless it  
36 shall have previously come to rest within the meaning of federal deci-  
37 sional law interpreting the United States constitution, nor shall any  
38 motor fuel be included in the measure of the tax imposed by this article  
39 more than once.

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

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

21 (2) [Nonautomotive-type] NON-HIGHWAY diesel motor fuel component. The  
22 [nonautomotive-type] NON-HIGHWAY diesel fuel component shall be deter-  
23 mined by multiplying the [nonautomotive-type] NON-HIGHWAY diesel motor  
24 fuel rate times the number of gallons of [nonautomotive-type] NON-HIGH-  
25 WAY diesel motor fuel sold or used by a petroleum business in this state  
26 during the month covered by the return under this section. Provided,  
27 however, that no NON-HIGHWAY diesel motor fuel shall be included in the  
28 measure of the tax unless it shall have previously come to rest within  
29 the meaning of federal decisional law interpreting the United States  
30 constitution, nor shall any [nonautomotive-type] NON-HIGHWAY diesel  
31 motor fuel be included in the measure of the tax imposed by this article  
32 more than once.

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

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

49 (3) Commencing on the first day of January, nineteen hundred ninety-  
50 two, the motor fuel and automotive-type diesel motor fuel rate then in  
51 effect on the immediately preceding December thirty-first shall be  
52 adjusted as follows: such rate shall be multiplied by a fraction the  
53 numerator of which is the sum of the monthly producer price index (unad-  
54 justed) published by the bureau of labor statistics of the United States  
55 department of labor for the category of commodities designated "refined  
56 petroleum products" for the twelve consecutive months ending with the



1 month of August, nineteen hundred ninety-one and the denominator of  
2 which is the sum of the monthly producer price index (unadjusted)  
3 published by the bureau of labor statistics of the United States depart-  
4 ment of labor for the category of commodities designated "refined petro-  
5 leum products" for the twelve consecutive months ending with the month  
6 of August, nineteen hundred ninety. Commencing on the first day of Janu-  
7 ary of nineteen hundred ninety-six and every] EVERY year [thereafter] AS  
8 OF JANUARY FIRST, the motor fuel and [automotive-type] HIGHWAY diesel  
9 motor fuel rate then in effect on the immediately preceding December  
10 thirty-first shall be adjusted as follows: such rate shall be multiplied  
11 by a fraction the numerator of which is the sum of the monthly producer  
12 price index (unadjusted) published by the bureau of labor statistics of  
13 the United States department of labor for the category of commodities  
14 designated "refined petroleum products" for the twelve consecutive  
15 months ending with the month of August of the immediately preceding year  
16 and the denominator of which is the sum of the monthly producer price  
17 index (unadjusted) published by the bureau of labor statistics of the  
18 United States department of labor for the category of commodities desig-  
19 nated "refined petroleum products" for the twelve consecutive months  
20 ending with the month of August in the year prior to such immediately  
21 preceding year, provided, however, that the adjusted rate [to take  
22 effect on January first, nineteen hundred ninety-six and each January  
23 first thereafter] shall not increase above or decrease below the rate in  
24 effect on the immediately preceding December thirty-first by more than  
25 five percent.

26 [(4)] (3) Notwithstanding any other provision of this article,  
27 [commencing January first, nineteen hundred ninety-seven,] the per  
28 gallon rate with respect to "railroad diesel" shall be the adjusted  
29 motor fuel and [automotive-type] HIGHWAY diesel motor fuel rate under  
30 paragraphs one [through three] AND TWO of this subdivision [for the  
31 period commencing such January first, nineteen hundred ninety-seven,]  
32 minus one and three tenths cents per gallon. [Commencing on the first  
33 day of January each year thereafter, the per gallon rate with respect to  
34 "railroad diesel" shall be determined by taking the then motor fuel and  
35 automotive-type diesel motor fuel rate under paragraphs one through  
36 three of this subdivision which commences on such first day of January  
37 and subtracting one and three tenths cents per gallon.]

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

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

41 (2) [Commencing April first, nineteen hundred ninety-one, the nonauto-  
42 motive-type diesel motor fuel rate shall be the product of the basic  
43 rate set forth in paragraph one of this subdivision multiplied by a  
44 fraction the numerator of which is the sum of the monthly producer price  
45 index (unadjusted) published by the bureau of labor statistics of the  
46 United States department of labor for the category of commodities desig-  
47 nated "refined petroleum products" for the twelve consecutive months  
48 ending with the month of November, nineteen hundred ninety, and the  
49 denominator of which is the sum of the monthly producer price index  
50 (unadjusted) published by the bureau of the labor statistics of the  
51 United States department of labor for the category of commodities desig-  
52 nated "refined petroleum products" for the twelve consecutive months  
53 ending with the month of November, nineteen hundred eighty-nine.

54 (3) Commencing on the first day of January, nineteen hundred ninety-  
55 two, the nonautomotive-type diesel motor fuel rate then in effect on the  
56 immediately preceding December thirty-first shall be adjusted as

1 follows: Such rate shall be multiplied by a fraction the numerator of  
2 which is the sum of the monthly producer price index (unadjusted)  
3 published by the bureau of labor statistics of the United States depart-  
4 ment of labor for the category of commodities designated "refined petro-  
5 leum products" for the twelve consecutive months ending with the month  
6 of August, nineteen hundred ninety-one and the denominator of which is  
7 the sum of the monthly producer price index (unadjusted) published by  
8 the bureau of labor statistics of the United States department of labor  
9 for the category of commodities designated "refined petroleum products"  
10 for the twelve consecutive months ending with the month of August, nine-  
11 teen hundred ninety. Commencing on the first day of January of nineteen  
12 hundred ninety-six and every] EVERY year [thereafter,] AS OF JANUARY  
13 FIRST the [nonautomotive-type] NON-HIGHWAY diesel motor fuel rate then  
14 in effect on the immediately preceding December thirty-first shall be  
15 adjusted as follows: Such rate shall be multiplied by a fraction the  
16 numerator of which is the sum of the monthly producer price index (unad-  
17 justed) published by the bureau of labor statistics of the United States  
18 department of labor for the category of commodities designated "refined  
19 petroleum products" for the twelve consecutive months ending with the  
20 month of August of the immediately preceding year and the denominator of  
21 which is the sum of the monthly producer price index (unadjusted)  
22 published by the bureau of labor statistics of the United States depart-  
23 ment of labor for the category of commodities designated "refined petro-  
24 leum products" for the twelve consecutive months ending with the month  
25 of August in the year prior to such immediately preceding year,  
26 provided, however, that the adjusted rate [to take effect on January  
27 first, nineteen hundred ninety-six and each January first thereafter]  
28 shall not increase above or decrease below the rate in effect on the  
29 immediately preceding December thirty-first by more than five percent.

30 [(4)] (3) Notwithstanding any other provision of this article,  
31 [commencing January first, nineteen hundred ninety-eight, nonautomo-  
32 tive-type] NON-HIGHWAY diesel motor fuel which is "manufacturing gallo-  
33 nage," as such term is defined in subdivision (m) of section three  
34 hundred of this article, shall be exempt from the measure of the [nonau-  
35 tomotive-type] NON-HIGHWAY diesel motor fuel component of the tax  
36 imposed under this section.

37 (h) Publication and rounding of rate. (1) The commissioner [of taxa-  
38 tion and finance] shall cause to be published in the section for miscel-  
39 laneous notices in the state register, and give other appropriate gener-  
40 al notice of, the rate adjustment calculation and the resulting motor  
41 fuel and [automotive-type] HIGHWAY diesel motor fuel rate, [nonautomo-  
42 tive-type] NON-HIGHWAY diesel motor fuel rate and residual petroleum  
43 product rate fixed by this section for the period commencing on [April  
44 first, nineteen hundred ninety-one, no later than the immediately  
45 preceding first day of March] JANUARY FIRST, TWO THOUSAND TWELVE, and  
46 for each calendar year thereafter, no later than the immediately preced-  
47 ing first day of December. The calculation and publication of the rates  
48 of tax so fixed by provisions of this section shall not be included  
49 within paragraph (a) of subdivision two of section one hundred two of  
50 the state administrative procedure act relating to the definition of a  
51 rule.

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

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

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

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

14 S 21. Paragraph 2 of subdivision (b), paragraphs 2 and 3 of subdivi-  
15 sion (c), subdivisions (d) and (e), paragraph 1 of subdivision (f) and  
16 subdivisions (g), (h) and (i) of section 301-b of the tax law, paragraph  
17 2 of subdivision (b) and paragraphs 2 and 3 of subdivision (c) and  
18 subdivision (e) as added by chapter 190 of the laws of 1990, the opening  
19 paragraph of paragraph 2 of subdivision (b) as amended by section 155 of  
20 part A of chapter 389 of the laws of 1997, subdivision (d) as amended by  
21 section 2 of part H of chapter 407 of the laws of 1999 and subparagraph  
22 (C) of paragraph 2 of subdivision (d) as amended by section 1 of part X  
23 of chapter 63 of the laws of 2000, paragraph 1 of subdivision (f) as  
24 added by chapter 166 of the laws of 1991, subdivision (g) as added by  
25 chapter 170 of the laws of 1994, subdivision (h) as amended by chapter  
26 302 of the laws of 2006 and subdivision (i) as added by chapter 468 of  
27 the laws of 2000, are amended to read as follows:

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

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

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

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

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

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

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

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

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

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

38 (C)] (B) Calculation of partial exemption. [Notwithstanding any other  
39 provision of this article, commencing April first, two thousand one and  
40 ending August thirty-first, two thousand two, the amount of the partial  
41 exemption under this paragraph shall be determined by multiplying the  
42 quantity of diesel motor fuel and residual petroleum product eligible  
43 for the exemption times the sum of the then current rate of the supple-  
44 mental tax imposed by section three hundred one-j of this article and  
45 twenty percent of the then current rate of the tax imposed by section  
46 three hundred one-a of this article, with respect to the specific diesel  
47 motor fuel or residual petroleum product rate, as the case may be, and  
48 commencing September first, two thousand two, the amount of the] THE  
49 partial exemption under this paragraph shall be determined by multiply-  
50 ing the quantity of NON-HIGHWAY diesel motor fuel and residual petroleum  
51 product eligible for the exemption times the sum of the then current  
52 rate of the supplemental tax imposed by section three hundred one-j of  
53 this article and forty-six percent of the then current rate of the tax  
54 imposed by section three hundred one-a of this article, with respect to  
55 the specific NON-HIGHWAY diesel motor fuel or residual petroleum product  
56 rate, as the case may be.

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

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

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

21 (1) Residual petroleum product and NON-HIGHWAY diesel motor fuel  
22 [(which is not enhanced diesel motor fuel)] sold to an electric corpo-  
23 ration, as described in subdivision (a) of section three hundred one-d  
24 of this article, which is registered with the department [of taxation  
25 and finance] as a petroleum business tax direct pay permittee, and used  
26 by such electric corporation to fuel generators for the purpose of manu-  
27 facturing or producing electricity where such electric corporation  
28 provides a copy of a direct pay permit authorized and issued by the  
29 commissioner [of taxation and finance], to the petroleum business making  
30 such sale. If so registered, such corporation shall be a taxpayer under  
31 this article and (i) such electric corporation shall file a return  
32 monthly and pay the applicable tax under this article, after the appli-  
33 cation of allowable credits, on all such purchases directly to the  
34 commissioner, (ii) such electric corporation shall be subject to all of  
35 the provisions of this article relating to the responsibilities and  
36 liabilities of taxpayers under this article with respect to such resi-  
37 dual petroleum product and NON-HIGHWAY diesel motor fuel.

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

52 (h) Exemption for certain not-for-profit organizations. There shall be  
53 exempt from the measure of the petroleum business tax imposed by section  
54 three hundred one-a of this article a sale or use of residual petroleum  
55 product, OR NON-HIGHWAY diesel motor fuel [(which is not enhanced diesel  
56 motor fuel) or dyed diesel motor fuel,] to or by an organization which

1 has qualified under paragraph four or five of subdivision (a) of section  
2 eleven hundred sixteen of this chapter where such NON-HIGHWAY diesel  
3 motor fuel or residual petroleum product is exclusively for use and  
4 consumption by such organization, but only if all of such NON-HIGHWAY  
5 diesel motor fuel or product is consumed other than on the PUBLIC high-  
6 ways of this state. Provided, however, this exemption shall in no event  
7 apply to a sale of NON-HIGHWAY diesel motor fuel which involves a deliv-  
8 ery at a filling station or into a repository which is equipped with a  
9 hose or other apparatus by which such NON-HIGHWAY DIESEL MOTOR fuel can  
10 be dispensed into the fuel tank of a motor vehicle and all deliveries  
11 hereunder shall be made to the premises occupied by the qualifying  
12 organization and used by such organization in furtherance of the exempt  
13 purposes of such organization. Provided, however, that the commissioner  
14 shall require such documentary proof to qualify for any exemption  
15 provided herein as the commissioner deems appropriate. Provided,  
16 further, the distributor selling such NON-HIGHWAY DIESEL MOTOR fuel and  
17 product shall separately report on its return the gallonage sold during  
18 the reporting period exempt from tax under the provisions of this subdi-  
19 vision and provide such other information with respect to such sales as  
20 the commissioner deems appropriate to prevent evasion. [The term "dye-  
21 diesel motor fuel" as used in this subdivision shall have the same mean-  
22 ing it has in subdivision eighteen of section two hundred eighty-two of  
23 this chapter.]

24 (i) Exemption for passenger commuter ferries. A use by a passenger  
25 commuter ferry of NON-HIGHWAY diesel motor fuel or residual petroleum  
26 product where such NON-HIGHWAY diesel motor fuel or residual petroleum  
27 product was used and consumed by a passenger commuter ferry exclusively  
28 in providing mass transportation service. Provided, that the commission-  
29 er shall require such documentary proof to qualify for any exemption  
30 provided hereunder as the commissioner deems appropriate.

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

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

42 (a) NON-HIGHWAY Diesel motor fuel used for heating purposes. (1) Total  
43 residential heating reimbursement. NON-HIGHWAY Diesel motor fuel  
44 purchased in this state and sold by such purchaser to a consumer for use  
45 exclusively for residential heating purposes but only where (i) such  
46 NON-HIGHWAY diesel motor fuel is delivered into a storage tank which is  
47 not equipped with a hose or other apparatus by which such NON-HIGHWAY  
48 DIESEL MOTOR fuel can be dispensed into the fuel tank of a motor vehicle  
49 and such storage tank is attached to the heating unit burning such NON-  
50 HIGHWAY DIESEL MOTOR fuel, (ii) the tax imposed pursuant to this article  
51 has been paid with respect to such NON-HIGHWAY diesel motor fuel and the  
52 entire amount of such tax has been absorbed by such purchaser, and (iii)  
53 such purchaser possesses documentary proof satisfactory to the commis-  
54 sioner evidencing the absorption by it of the entire amount of the tax  
55 imposed pursuant to this article. Provided, however, that the commis-  
56 sioner is authorized, in the event that the commissioner determines that

1 it would not threaten the integrity of the administration and enforce-  
2 ment of the tax imposed by this article, to provide a reimbursement with  
3 respect to a retail sale to a consumer for residential heating purposes  
4 of less than ten gallons of NON-HIGHWAY diesel motor fuel provided such  
5 fuel is not dispensed into the tank of a motor vehicle. [Provided,  
6 further, that with respect to each delivery of enhanced diesel motor  
7 fuel of over four thousand five hundred gallons, to obtain this  
8 reimbursement there shall be required a certificate signed by the  
9 consumer stating that the product will be used exclusively for residen-  
10 tial heating purposes.]

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

29 (B) Calculation of partial reimbursement. Notwithstanding any other  
30 provision of this article, [commencing April first, two thousand one and  
31 ending August thirty-first, two thousand two, the amount of the  
32 reimbursement under this paragraph shall be determined by multiplying  
33 the quantity of diesel motor fuel eligible for the reimbursement times  
34 the sum of the then current rate of the supplemental tax imposed by  
35 section three hundred one-j of this article and twenty percent of the  
36 then current rate of the tax imposed by section three hundred one-a of  
37 this article, with respect to the specific diesel motor fuel rate, as  
38 the case may be, and commencing September first, two thousand two,] the  
39 amount of the reimbursement under this paragraph shall be determined by  
40 multiplying the quantity of NON-HIGHWAY diesel motor fuel eligible for  
41 the reimbursement times the sum of the then current rate of the supple-  
42 mental tax imposed by section three hundred one-j of this article and  
43 forty-six percent of the then current rate of the tax imposed by section  
44 three hundred one-a of this article, with respect to the [specific]  
45 NON-HIGHWAY diesel motor fuel rate, as the case may be.

46 (e) NON-HIGHWAY Diesel motor fuel and residual petroleum product used  
47 for farm production. NON-HIGHWAY Diesel motor fuel or residual petroleum  
48 product purchased in this state and sold by such purchaser to a consumer  
49 for use or consumption directly and exclusively in the production for  
50 sale of tangible personal property by farming, but only if all of such  
51 NON-HIGHWAY DIESEL MOTOR fuel or product is delivered on the farm site  
52 and is consumed other than on the PUBLIC highways of this state (except  
53 for the use of the PUBLIC highway to reach adjacent farmlands)[;  
54 provided, however, that a subsequent purchaser shall be eligible for  
55 this reimbursement with respect to no more than four thousand five  
56 hundred gallons of diesel motor fuel sold to a consumer in a thirty-day

1 period for such use or consumption, except in accordance with prior  
2 clearance given by the commissioner]. This reimbursement may be claimed  
3 only where (i) the tax imposed pursuant to this article has been paid  
4 with respect to such NON-HIGHWAY diesel motor fuel or residual petroleum  
5 product and the entire amount of such tax has been absorbed by such  
6 purchaser, and (ii) such purchaser possesses documentary proof satisfac-  
7 tory to the commissioner evidencing the absorption by it of the entire  
8 amount of the tax imposed pursuant to this article. Provided, however,  
9 that the commissioner shall require such documentary proof to qualify  
10 for any reimbursement of tax provided by this section as the commis-  
11 sioner deems appropriate[, including any certification required pursuant to  
12 section two hundred eighty-five-b of this chapter and any such prior  
13 clearance described in the first sentence of this subdivision].

14 (f) Motor fuel used for farm production. No more than one thousand  
15 five hundred gallons of motor fuel purchased in this state in a thirty-  
16 day period or a greater amount which has been given prior clearance by  
17 the commissioner, by a consumer for use or consumption directly and  
18 exclusively in the production for sale of tangible personal property by  
19 farming, but only if all of such fuel is delivered on the farm site and  
20 is consumed other than on the PUBLIC highways of this state (except for  
21 the use of the PUBLIC highway to reach adjacent farmlands). This  
22 reimbursement to such purchaser who used such motor fuel in the manner  
23 specified in this subdivision may be claimed only where, (i) the tax  
24 imposed pursuant to this article has been paid with respect to such  
25 motor fuel and the entire amount of such tax has been absorbed by such  
26 purchaser, and (ii) such purchaser possesses documentary proof satisfac-  
27 tory to the commissioner evidencing the absorption by it of the entire  
28 amount of the tax imposed pursuant to this article. Provided, however,  
29 that the commissioner shall require such documentary proof to qualify  
30 for any reimbursement of tax provided by this subdivision as the commis-  
31 sioner deems appropriate. The commissioner is hereby empowered to make  
32 such provisions as deemed necessary to define the procedures for grant-  
33 ing prior clearance for purchases of more than one thousand five hundred  
34 gallons in a thirty-day period.

35 (h) A subsequent purchaser which is registered as a distributor of  
36 diesel motor fuel shall be eligible for reimbursement of the tax imposed  
37 by section three hundred one-a of this article with respect to gallonage  
38 of residual petroleum product[, AND NON-HIGHWAY diesel motor fuel  
39 [(which is not enhanced diesel motor fuel) and dyed diesel motor fuel,]  
40 subsequently sold by such purchaser to an organization which has quali-  
41 fied under paragraph four or five of subdivision (a) of section eleven  
42 hundred sixteen of this chapter for the exclusive use and consumption by  
43 such organization. Provided, however, this exemption shall in no event  
44 apply to a sale of NON-HIGHWAY diesel motor fuel which involves a deliv-  
45 ery at a filling station or into a repository which is equipped with a  
46 hose or other apparatus by which such NON-HIGHWAY DIESEL MOTOR fuel can  
47 be dispensed into the fuel tank of a motor vehicle and all deliveries  
48 hereunder shall be made to the premises occupied by the qualifying  
49 organization and used by such organization in furtherance of the exempt  
50 purposes of such organization. This reimbursement may be claimed only  
51 where (i) the tax imposed pursuant to this article has been paid with  
52 respect to such NON-HIGHWAY diesel motor fuel or residual petroleum  
53 product and the entire amount of such tax has been absorbed by such  
54 purchaser, and (ii) such purchaser possesses documentary proof satisfac-  
55 tory to the commissioner evidencing the absorption by it of the entire  
56 amount of the tax imposed pursuant to this article. Provided, further,



1 that the commissioner shall require such other documentary proof to  
2 qualify for any reimbursement of tax provided by this section as the  
3 commissioner deems appropriate. [The term "dyed diesel motor fuel" as  
4 used in this subdivision shall have the same meaning it has in subdivi-  
5 sion eighteen of section two hundred eighty-two of this chapter.]

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

22 (2) Calculation. The amount of the reimbursement shall be determined  
23 by multiplying the quantity of "commercial gallonage" eligible for  
24 reimbursement times the then current rate of the supplemental tax  
25 imposed by section three hundred one-j of this article with respect to  
26 [nonautomotive-type] NON-HIGHWAY diesel motor fuel or residual petroleum  
27 product, as the case may be. Any reimbursement of tax may be applied for  
28 not more often than monthly.

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

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

51 (2) The amount of the reimbursement with respect to such product shall  
52 be equal to the difference between (i) the tax actually paid under this  
53 article by a petroleum business with respect to such product and subse-  
54 quently passed through to and absorbed by such purchaser, and (ii) the  
55 tax under this article that would have been paid with respect to such  
56 product had an importing distributor sold such product directly to a

1 purchaser as "railroad diesel". Provided that the commissioner shall  
2 require such documentary proof as the commissioner deems necessary to  
3 substantiate a reimbursement claim under this subdivision. Any  
4 reimbursement of tax may be applied for not more often than monthly.

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

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

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

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

52 (2) Reimbursement. Residual petroleum product and NON-HIGHWAY diesel  
53 motor fuel [(which is not enhanced diesel motor fuel)] purchased in this  
54 state by such electric corporation where the tax imposed by section  
55 three hundred one-a of this article with respect to such residual petro-  
56 leum or diesel product was paid and the utility absorbed such tax in the

1 purchase price of such fuel and where such product is used by such elec-  
2 tric corporation to fuel generators for the purpose of manufacturing or  
3 producing electricity.

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

6 (c) Kero-jet fuel component. The kero-jet fuel component shall be  
7 determined by multiplying the kero-jet fuel rate times the number of  
8 gallons of (1) kero-jet fuel imported or caused to be imported into this  
9 state by an aviation fuel business and consumed in this state by such  
10 business in the operation of its aircraft; and (2) kero-jet fuel, which  
11 has not been previously included in the measure of the tax imposed by  
12 this section, (i) which is sold in this state by an aviation fuel busi-  
13 ness to persons other than those registered under this article as  
14 aviation fuel businesses or (ii) which is consumed in this state by an  
15 aviation fuel business in the operation of its aircraft. Provided that  
16 importation of kero-jet fuel in the fuel tanks of aircraft shall be  
17 importation for the purposes of this section. The basic kero-jet fuel  
18 rate shall be [one and nine-tenths] SIX AND EIGHT-TENTHS cents per  
19 gallon. The rate shall be adjusted at the same time as the rates of the  
20 components of the petroleum business tax imposed by section three  
21 hundred one-a of this article, and the method of making adjustments to  
22 the kero-jet fuel rate shall be the same as the method used for such  
23 rates. [Provided, however, that commencing July first, nineteen hundred  
24 ninety-one, the kero-jet fuel rate shall be equal to the motor fuel and  
25 automotive-type diesel motor fuel rate set by subdivision (e) of section  
26 three hundred one-a of this article as such rate may be adjusted as  
27 provided in such subdivision. Provided, further, that commencing Septem-  
28 ber first, nineteen hundred ninety-five, the kero-jet fuel rate shall be  
29 five and two-tenths cents per gallon. The rate shall be adjusted at the  
30 same time as the rates of the components of the petroleum business tax  
31 imposed by section three hundred one-a of this article, and the method  
32 of making adjustments to the kero-jet fuel rate shall be the same as the  
33 method used for such rates.]

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

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

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

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

48 S 29. Paragraphs 1, 2, 3 and 4 of subdivision (a) and subdivision (c)  
49 of section 301-j of the tax law, paragraph 1 of subdivision (a) as  
50 amended and paragraphs 2, 3 and 4 of subdivision (a) as added by chapter  
51 309 of the laws of 1996 and subdivision (c) as amended by chapter 410 of  
52 the laws of 1991, are amended to read as follows:

53 (1) In addition to the taxes imposed by sections three hundred one-a  
54 and three hundred one-e of this article, [for taxable months commencing  
55 on or after July first, nineteen hundred ninety-one] there is hereby  
56 imposed upon every petroleum business subject to tax imposed under

1 section three hundred one-a of this article and every aviation fuel  
2 business subject to the aviation gasoline component of the tax imposed  
3 under section three hundred one-e of this article, a supplemental month-  
4 ly tax for each or any part of a taxable month at a rate of [four and  
5 one-half] SIX AND EIGHT-TENTHS cents per gallon with respect to the  
6 products included in each component of the taxes imposed by such  
7 [sections] SECTION three hundred one-a and the aviation gasoline compo-  
8 nent of the tax imposed by such section three hundred one-e of this  
9 article.

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

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

18 (4) Provided, further, [commencing January first, nineteen hundred  
19 ninety-eight,] a separate per gallon rate shall apply with respect to  
20 [automotive-type] HIGHWAY diesel motor fuel. Such rate shall be deter-  
21 mined by taking the adjusted rate per gallon of tax imposed under para-  
22 graph one of this subdivision as adjusted in accordance with paragraph  
23 five of this subdivision [which commences on such date] and subtracting  
24 therefrom [three-quarters of one cent. On January first, nineteen  
25 hundred ninety-nine, the automotive-type diesel motor fuel rate shall be  
26 determined by taking the adjusted rate per gallon of tax imposed under  
27 paragraph one of this subdivision, as adjusted in accordance with para-  
28 graph five of this subdivision which commences on such date and  
29 subtracting therefrom three-quarters of one cent. On April first, nine-  
30 teen hundred ninety-nine, there shall be a new rate applicable to such  
31 fuel which shall be such adjusted rate of tax per gallon under such  
32 paragraph one of this subdivision, as adjusted in accordance with para-  
33 graph five of this subdivision then in effect, minus] one and three-  
34 quarters cents. Commencing January first, two thousand TWELVE, and each  
35 January thereafter, the per gallon rate applicable to [automotive-type]  
36 HIGHWAY diesel motor fuel shall be the adjusted rate under paragraph one  
37 of this subdivision as adjusted in accordance with paragraph five of  
38 this subdivision which commences on such date minus one and three-quar-  
39 ters cents. The resulting rate under this paragraph shall be expressed  
40 in hundredths of a cent.

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

48 S 30. The opening paragraph and subdivisions (a) and (c) of section  
49 301-1 of the tax law, as added by chapter 170 of the laws of 1994, are  
50 amended to read as follows:

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

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

21 (c) Upon receipt of a claim for refund in processible form, interest  
22 shall be allowed and paid at the overpayment rate set by the commission-  
23 er pursuant to subdivision twenty-sixth of section one hundred seventy-  
24 one of this chapter from the date of the receipt of the refund claim to  
25 the date immediately preceding the date of the refund check except no  
26 such interest shall be allowed or paid if the refund check is mailed  
27 within ninety days of such receipt and except no interest shall be  
28 allowed or paid if the amount thereof would be less than one dollar.  
29 Provided, further, the refund shall be granted pro rata against sections  
30 three hundred one-a, three hundred one-e, [three hundred one-g] and  
31 three hundred one-j of this article, as the case may be, to the same  
32 extent as represented by the remittance of the petroleum business or  
33 aviation fuel business with respect to the gallonage represented by the  
34 worthless debt.

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

37 (b) Residual petroleum product business. The department [of taxation  
38 and finance], upon the application of a corporation or unincorporated  
39 business, shall register such corporation or unincorporated business as  
40 a residual petroleum product business except that the commissioner [of  
41 taxation and finance] may refuse to register an applicant for any of the  
42 grounds specified in subdivision two or five of section two hundred  
43 eighty-three of this chapter or in subdivision (d) of this section. The  
44 application shall be in such form and contain such information as the  
45 commissioner shall prescribe. All of the provisions of subdivisions two,  
46 four, five, six, seven, eight, nine and ten of section two hundred  
47 eighty-three of this chapter relating to registration of distributors  
48 shall be applicable to the registration of residual petroleum product  
49 businesses under this section with the same force and effect as if the  
50 language of those subdivisions had been incorporated in full in this  
51 section and had expressly referred to the registration of residual  
52 petroleum product businesses and the tax imposed by this article, with  
53 such modification as may be necessary in order to adapt the language of  
54 such provisions to the provisions of this article, provided, specif-  
55 ically, that the term "distributor" shall be read as "residual petroleum  
56 product business" and the [terms] TERM "motor fuel" [and "automotive

fuel"] shall be read as "residual petroleum product". Provided, however, that if the commissioner is satisfied that the requirements of such provisions for registration are not necessary in order to protect tax revenues, the commissioner may limit or modify such requirements with respect to corporations or unincorporated businesses not required to be registered as distributors of motor fuel or diesel motor fuel.

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

S 312. Deposit and disposition of revenue.--[(a) Except as provided in sections three hundred one-f and three hundred one-g of this chapter, of all of the taxes, interest and penalties collected or received by the commissioner of taxation and finance under section three hundred one of this article with respect to any taxable year commencing on or after April first, nineteen hundred eighty-four and to that portion of any taxable year commencing prior thereto to the extent of that portion of such year which includes the period which commences with April first, nineteen hundred eighty-four, seventy-two and seven-tenths percent shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter and the balance thereof shall be deposited in the mass transportation operating assistance fund to the credit of the metropolitan mass transportation operating assistance account and the public transportation systems operating assistance account thereof in the manner provided by subdivision eleven of section one hundred eighty-two-a of this chapter. Provided, however, that the actual amount of such taxes, interest and penalties which shall be deposited in such mass transportation operating assistance fund pursuant to this section during the twelve-month period from April first, nineteen hundred eighty-four to and including March thirty-first, nineteen hundred eighty-five shall not be less than an amount which, when added to the actual amount that is deposited in such fund during such twelve-month period and that is attributable to the taxes, interest and penalties collected and received under section one hundred eighty-two-a of this chapter, yields the sum of seventy-nine million five hundred thousand dollars and provided further that of such actual amounts deposited in such fund pursuant to this section and to section one hundred eighty-two-a of this chapter during the twelve-month period from April first, nineteen hundred eighty-five to March thirty-first, nineteen hundred eighty-six and during the twelve-month period from April first, nineteen hundred eighty-six to March thirty-first, nineteen hundred eighty-seven, the amount which shall be deposited to the credit of the public transportation systems operating assistance account thereof during each such period shall be not less than thirty-six million dollars. Provided further that if the total amount deposited in the mass transportation operating assistance fund during the twelve month period commencing April first, nineteen hundred eighty-five pursuant to this section and to section one hundred eighty-two-a of this chapter is less than eighty million dollars, the comptroller shall deposit to the credit of the metropolitan mass transportation operating assistance account on or after April first, nineteen hundred eighty-six and on or before June thirtieth, nineteen hundred eighty-six from any taxes, interest, and penalties collected or received by the commissioner of taxation and finance under this article in addition to amounts which would otherwise be deposited to the credit of the mass transportation operating assistance fund, an amount equal to the difference between eighty million dollars and the amounts actually deposited in the mass transportation

1 operating assistance fund during such twelve-month period pursuant to  
2 this section and to section one hundred eighty-two-a of this chapter.  
3 Provided further that if the total amount deposited in the mass trans-  
4 portation operating assistance fund during the twelve month period  
5 commencing April first, nineteen hundred eighty-six pursuant to this  
6 section and to section one hundred eighty-two-a of this chapter, exclu-  
7 sive of the amount deposited in such fund to the credit of the metropol-  
8 itan mass transportation operating assistance account on or after April  
9 first, nineteen hundred eighty-six and on or before June thirtieth,  
10 nineteen hundred eighty-six pursuant to the preceding sentence, is less  
11 than eighty million dollars, the comptroller shall deposit to the credit  
12 of the metropolitan mass transportation operating assistance account on  
13 or after April first, nineteen hundred eighty-seven and on or before  
14 June thirtieth, nineteen hundred eighty-seven from any taxes, interest,  
15 and penalties collected or received by the commissioner of taxation and  
16 finance under this article in addition to amounts which would otherwise  
17 be deposited to the credit of the mass transportation operating assist-  
18 ance fund, an amount equal to the difference between eighty million  
19 dollars and the amounts actually deposited in the mass transportation  
20 operating assistance fund during such twelve-month period pursuant to  
21 this section and to section one hundred eighty-two-a of this chapter,  
22 exclusive of the amount deposited in such fund 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 pursuant to the preceding  
26 sentence. Provided, further, however, with respect to all taxes, and  
27 interest and penalties relating thereto, collected or received by the  
28 commissioner of taxation and finance under the tax imposed by section  
29 three hundred one of this article with respect to any taxable year  
30 commencing on and after June first, nineteen hundred ninety and to that  
31 portion of any taxable year commencing prior thereto to the extent of  
32 that portion of such year which includes the period which commences June  
33 first, nineteen hundred ninety, eighty-nine and one-half percent of such  
34 collections shall be deposited and disposed of pursuant to the  
35 provisions of section one hundred seventy-one-a of this chapter and the  
36 balance thereof shall be deposited in the mass transportation operating  
37 assistance fund to the credit of the metropolitan mass transportation  
38 operating assistance account and the public transportation systems oper-  
39 ating assistance account thereof in the manner provided by subdivision  
40 eleven of section one hundred eighty-two-a of this chapter.

41 (b) Of all of the taxes collected or received by the commissioner on  
42 or before March thirty-first, nineteen hundred ninety-one under the  
43 taxes imposed by sections three hundred one-a and three hundred one-e of  
44 this article, and all interest and penalties relating thereto, eighty-  
45 seven and five-hundredths percent of such collections shall be deposited  
46 and disposed of pursuant to the provisions of section one hundred seven-  
47 ty-one-a of this chapter and the balance thereof shall be deposited in  
48 the mass transportation operating assistance fund to the credit of the  
49 metropolitan mass transportation operating assistance account and the  
50 public transportation systems operating assistance account thereof in  
51 the manner provided by subdivision eleven of section one hundred eight-  
52 y-two-a of this chapter. Of all taxes, interest and penalties collected  
53 or received after March thirty-first, nineteen hundred ninety-one, and  
54 before April first, nineteen hundred ninety-three, from the taxes  
55 imposed by sections three hundred one-a and three hundred one-e of this  
56 article, initially thirty-five percent shall be deposited and disposed

1 of pursuant to such section one hundred seventy-one-a. The balance ther-  
2 eof shall then be disposed of as follows: seventy-two and seven-tenths  
3 percent shall be deposited and disposed of pursuant to such section one  
4 hundred seventy-one-a and twenty-seven and three-tenths percent shall be  
5 deposited in such mass transportation operating assistance fund as  
6 prescribed in the aforestated manner. Except as otherwise provided, of  
7 all taxes, interest and penalties collected or received after March  
8 thirty-first, nineteen hundred ninety-three, and before April first,  
9 nineteen hundred ninety-four, from the taxes imposed by sections three  
10 hundred one-a and three hundred one-e of this article, (i) initially  
11 fifty-four percent shall be deposited, as prescribed by subdivision (d)  
12 of section three hundred one-j of this chapter, (ii) twenty-eight and  
13 three-tenths percent shall be deposited and disposed of pursuant to such  
14 section one hundred seventy-one-a of this chapter in the general fund  
15 and (iii) seventeen and seven-tenths percent shall be deposited in such  
16 mass transportation operating assistance fund as prescribed in the  
17 aforestated manner. Provided, however, that, prior to such deposit, from  
18 the amounts so collected or received during the period commencing on  
19 January first, nineteen hundred ninety-four and ending on March thirty-  
20 first, nineteen hundred ninety-four, an amount equal to the portion of  
21 the taxes, interest and penalties so received or collected resulting  
22 from the amendments made by sections forty-two, forty-three and forty-  
23 four of chapter fifty-seven of the laws of nineteen hundred ninety-three  
24 shall be deposited and disposed of pursuant to the provisions of subdi-  
25 vision one of section one hundred seventy-one-a of this chapter. Except  
26 as otherwise provided, of all taxes, interest and penalties collected or  
27 received on or after April first, nineteen hundred ninety-four, from the  
28 taxes imposed by sections three hundred one-a and three hundred one-e of  
29 this article, (i) initially fifty-four percent shall be deposited, as  
30 prescribed by subdivision (d) of section three hundred one-j of this  
31 article, (ii) twenty-eight and three-tenths percent shall be deposited  
32 and disposed of pursuant to such section one hundred seventy-one-a of  
33 this chapter in the general fund, (iii) seven and nine hundred sixty-  
34 five thousandths percent shall be deposited in such mass transportation  
35 operating assistance fund as prescribed in the aforestated manner and  
36 (iv) nine and seven hundred thirty-five thousandths percent shall be  
37 deposited in the revenue accumulation fund. Except as otherwise  
38 provided, of all taxes, interest and penalties collected or received on  
39 or after September first, nineteen hundred ninety-four and before  
40 September first, nineteen hundred ninety-five, from the taxes imposed by  
41 sections three hundred one-a and three hundred one-e of this article,  
42 (i) initially fifty-nine percent shall be deposited, as prescribed by  
43 subdivision (d) of section three hundred one-j of this article, (ii)  
44 twenty-two and four-tenths percent shall be deposited and disposed of  
45 pursuant to such section one hundred seventy-one-a of this chapter in  
46 the general fund, (iii) eight and three hundred seventy thousandths  
47 percent shall be deposited in such mass transportation operating assist-  
48 ance fund as prescribed in the aforestated manner and (iv) ten and two  
49 hundred thirty thousandths percent shall be deposited in the revenue  
50 accumulation fund. Except as otherwise provided, of all taxes, interest  
51 and penalties, collected or received on or after September first, nine-  
52 teen hundred ninety-five and before April first, nineteen hundred nine-  
53 ty-six from the taxes imposed by sections three hundred one-a and three  
54 hundred one-e of this article, (i) initially sixty-two and eight-tenths  
55 percent shall be deposited as prescribed by subdivision (d) of section  
56 three hundred one-j of this article, (ii) eighteen percent shall be



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

1 TION OPERATING ASSISTANCE ACCOUNT AND THE PUBLIC TRANSPORTATION SYSTEMS  
2 OPERATING ASSISTANCE ACCOUNT THEREOF IN THE MANNER PROVIDED BY SUBDIVI-  
3 SION ELEVEN OF SECTION ONE HUNDRED EIGHTY-TWO-A OF THIS CHAPTER.  
4 [Provided, further, that on or before the twenty-fifth day of each month  
5 commencing with October, nineteen hundred ninety and terminating with  
6 the month of March, two thousand one, the comptroller shall deduct the  
7 amount of six hundred twenty-five thousand dollars prior to any deposit  
8 or disposition of the taxes, interest and penalties collected or  
9 received pursuant to such sections three hundred one-a and three hundred  
10 one-e and shall pay such amount to the state treasury to the credit of  
11 the general fund.] Provided, further that on or before the twenty-fifth  
12 day of each month commencing with April, two thousand one, the comp-  
13 troller shall deduct the amount of six hundred twenty-five thousand  
14 dollars prior to any deposit or disposition of the taxes, interest, and  
15 penalties collected or received pursuant to such sections three hundred  
16 one-a and three hundred one-e and shall deposit such amount in the dedi-  
17 cated fund accounts pursuant to subdivision (d) of section three hundred  
18 one-j of this article. Provided, further, that commencing January  
19 fifteenth, nineteen hundred ninety-one, and on or before the tenth day  
20 of March and the fifteenth day of June and September of such year, the  
21 commissioner shall, based on information supplied by taxpayers and other  
22 appropriate sources, estimate the amount of the utility credit author-  
23 ized by section three hundred one-d of this article which has been  
24 accrued to reduce tax liability under section one hundred eighty-six-a  
25 of this chapter during the period covered by such estimate and certify  
26 to the state comptroller such estimated amount. The comptroller shall  
27 forthwith, after receiving such certificate, deduct the amount of such  
28 credit so certified by the commissioner prior to any deposit or disposi-  
29 tion of the taxes, interest and penalties collected or received pursuant  
30 to such sections three hundred one-a and three hundred one-e and shall  
31 pay such amount so certified and deducted into the state treasury to the  
32 credit of the general fund. [As soon as practicable after April first,  
33 nineteen hundred ninety-one, nineteen hundred ninety-two and nineteen  
34 hundred ninety-three, but before June fifteenth of each such year, the  
35 commissioner shall determine the amount of the utility tax credit which  
36 has been actually used to reduce tax liability under such section one  
37 hundred eighty-six-a and shall certify the difference between such actu-  
38 al amount and the earlier estimated amount.] Also, subsequently, during  
39 the fiscal year when the commissioner becomes aware of changes or  
40 modifications with respect to actual credit usage, the commissioner  
41 shall, as soon as practicable, issue a certification setting forth the  
42 amount of any required adjustment to the amount of actual credit usage  
43 previously certified. After receiving the certificate of the commission-  
44 er with respect to actual credit usage or modification of the same, the  
45 comptroller shall forthwith adjust general fund receipts and the reven-  
46 ues to be deposited or disposed of under this article to reflect the  
47 difference so certified by the commissioner. The commissioner shall not  
48 be liable for any overestimate or underestimate of the amount of the  
49 utility credit which has been accrued to reduce tax liability under such  
50 section one hundred eighty-six-a. Nor shall the commissioner be liable  
51 for any inaccuracy in any certificate with respect to the amount of such  
52 credit actually used or any required adjustment with respect to actual  
53 credit usage, but the commissioner shall as soon as practicable after  
54 discovery of any error adjust the next certification under this section  
55 to reflect any such error.

1 [On or before July thirty-first, nineteen hundred ninety-two and on or  
2 before July thirty-first, nineteen hundred ninety-three, the commission-  
3 er shall conduct the following reconciliation with respect to the  
4 preceding fiscal year: he shall multiply the total of all taxes, penal-  
5 ties and interest, after refunds and reimbursements, which are derived  
6 from the motor fuel component, the automotive-type diesel motor fuel  
7 component and the aviation gasoline component by twenty fifty-fifths;  
8 the total of all taxes, penalties and interest, after refunds and  
9 reimbursements, which are derived from the nonautomotive-type diesel  
10 motor fuel component (excluding taxes, penalties and interest which are  
11 derived from product with respect to which the credit or reimbursement  
12 provided by section three hundred one-d is taken) by twenty-fiftieths;  
13 and all taxes, penalties and interest, after refunds and reimbursements,  
14 which are derived from the residual petroleum product component (exclud-  
15 ing taxes, penalties and interest which are derived from product with  
16 respect to which the credit or reimbursement provided by section three  
17 hundred one-d is taken) by twenty-fortieths. The products of the forego-  
18 ing multiplications shall be added together and the resulting sum of  
19 such products shall be compared with the total of the amounts initially  
20 distributed during such fiscal year with respect to such components  
21 (excluding receipts derived from product with respect to which the cred-  
22 it or reimbursement provided by section three hundred one-d is taken and  
23 excluding any amount which represents a reconciliation adjustment pursu-  
24 ant to this paragraph) pursuant to section one hundred seventy-one-a of  
25 this chapter which represented thirty-five percent of the total, after  
26 refunds and reimbursements, of all taxes, penalties and interest  
27 collected or received during such fiscal year under sections three  
28 hundred one-a and three hundred one-e during the months of such fiscal  
29 year with respect to such components. The commissioner shall then certi-  
30 fy the amount of such difference to the comptroller. If the amounts  
31 initially distributed in such fiscal year are greater than the sum of  
32 such products, the comptroller shall withhold an amount equal to twen-  
33 ty-seven and three-tenths percent of such difference from the first  
34 moneys otherwise payable to the general fund pursuant to this subdivi-  
35 sion and shall pay such amount to the mass transportation operating  
36 assistance fund to the credit of the metropolitan mass transportation  
37 operating assistance account and the public transportation systems oper-  
38 ating assistance account thereof in the aforestated manner. If the  
39 amounts initially distributed in such fiscal year are less than the sum  
40 of such products, the comptroller shall withhold an amount equal to  
41 twenty-seven and three-tenths percent of such difference from the first  
42 moneys otherwise payable to the mass transportation operating assistance  
43 fund pursuant to this subdivision and shall pay such amount to the  
44 general fund.

45 When the commissioner becomes aware of changes or modifications with  
46 respect to the distribution of revenue under this article, the commis-  
47 sioner shall, as soon as practicable, issue a certification setting  
48 forth the amount of any required adjustment. After receiving the certif-  
49 icate of the commissioner with respect to any adjustments, the comp-  
50 troller shall forthwith adjust general fund receipts and the revenues to  
51 be deposited or disposed of under this article to reflect the difference  
52 so certified by the commissioner. The commissioner shall not be liable  
53 for any overestimate or underestimate of the amount of the distribution.  
54 Nor shall the commissioner be liable for any inaccuracy in any certif-  
55 icate with respect to the amount of the distribution or any required  
56 adjustment with respect to the distribution, but the commissioner shall

1 as soon as practicable after discovery of any error adjust the next  
2 certification under this section to reflect any such error.] Prior to  
3 making deposits as provided in this [subdivision] SECTION, the comp-  
4 troller shall retain such amount as the commissioner may determine to be  
5 necessary, subject to the approval of the director of the budget, for  
6 reasonable costs of the department in administering and collecting the  
7 taxes deposited pursuant to this [subdivision] SECTION and for refunds  
8 and reimbursements with respect to such taxes, out of which the comp-  
9 troller shall pay any refunds or reimbursements of such taxes to which  
10 taxpayers shall be entitled.

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

14 (b) Joint administration of taxes. In addition to the powers granted  
15 to the commissioner in this chapter, the commissioner is hereby author-  
16 ized to make provisions for the joint administration, in whole or in  
17 part, of the taxes imposed by articles twelve-A and twenty-eight and  
18 pursuant to the authority of article twenty-nine of this chapter upon  
19 [automotive fuel] MOTOR FUEL AND DIESEL MOTOR FUEL and the taxes imposed  
20 by this article, including the joint reporting, assessment, collection,  
21 determination and refund of such taxes, and for that purpose to  
22 prescribe that any of the commissioner's functions under such articles,  
23 and any returns, forms, statements, documents or information to be  
24 submitted to the commissioner under such articles, any books and records  
25 to be kept for purposes of the taxes imposed or authorized to be imposed  
26 by such articles, any schedules of amounts to be collected under such  
27 articles, any registration required under such articles, and the payment  
28 of taxes under such articles, shall be on a joint basis with respect to  
29 the taxes imposed by or pursuant to such articles. Provided, notwith-  
30 standing any provision of this article to the contrary, in the further-  
31 ance of joint administration, the provisions of subdivision one of  
32 section two hundred eighty-five-a and subdivision one of section two  
33 hundred eighty-nine-c of this chapter shall apply to the taxes imposed  
34 under this article with the same force and effect as if those provisions  
35 specifically referred to the taxes imposed hereunder and all the  
36 products with respect to which the taxes are imposed under this article.  
37 Provided, further, a reimbursement (or credit) of taxes imposed under  
38 this article shall be available to subsequent purchasers of motor fuel,  
39 diesel motor fuel or residual petroleum product under the circumstances  
40 specified in subdivision eight of section two hundred eighty-nine-c of  
41 this chapter with respect to the export of such products. In addition,  
42 all the provisions of subdivision one of section two hundred eighty-six  
43 of this chapter shall be applicable to all of the products included in  
44 the measure of the tax imposed by this article and the powers of the  
45 commissioner in administering the tax imposed by this article shall  
46 include these set forth in such subdivision. Moreover, the commission-  
47 er, in order to preserve the revenue from the tax imposed by this arti-  
48 cle, shall, by regulation, require that the movement of residual petro-  
49 leum product into or in this state be accompanied by a tracking  
50 document. [Such manifest or other tracking document shall be prescribed  
51 only after consultation with the state motor fuels taxation advisory  
52 council (created by section forty-one of chapter forty-four of the laws  
53 of nineteen hundred eighty-five) as to its form and content and as to  
54 whether an existing industry document (or a modified version thereof)  
55 may adequately serve the tracking purpose so that such existing industry  
56 document may be prescribed as the tracking document.] Also, the commis-

1 sioner may require (i) that any returns, forms, statements or other  
2 document with respect to motor fuel or diesel motor fuel required of  
3 transporters or terminal operators under such article twelve-A of this  
4 chapter apply with the same force and effect to persons transporting or  
5 storing residual petroleum product, (ii) a certification that particular  
6 gallonage of motor fuel, diesel motor fuel or residual petroleum product  
7 has been included in the measure of the tax imposed by this article and  
8 such tax has been paid, and (iii) that the certification required pursu-  
9 ant to section two hundred eighty-five-a or two hundred eighty-five-b of  
10 this chapter be expanded to include the tax imposed by this article.

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

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

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

19 (b) Cooperative agreements. Notwithstanding any inconsistent provision  
20 of law, the commissioner is authorized to enter into a cooperative  
21 agreement with other states, the District of Columbia or provinces or  
22 territories of Canada for the administration of the tax imposed by this  
23 article and similar taxes imposed by other member jurisdictions and for  
24 the reporting and payment of tax to a single base state and a propor-  
25 tional sharing of revenue of taxes relating to fuel use among the juris-  
26 dictions where a qualified motor vehicle is operated. The agreement may  
27 provide for determining the base state for carriers, carriers records  
28 requirements, audit procedures, exchange of information, persons eligi-  
29 ble for tax licensing, defining qualified motor vehicles, determining if  
30 bonding is required and requiring bonds to secure the tax imposed by  
31 this article and similar taxes imposed by other member jurisdictions,  
32 specifying reporting requirements and periods including defining uniform  
33 penalty and interest rates for late reporting, determining methods for  
34 collecting and forwarding of taxes, interest and penalties to another  
35 jurisdiction, notice and timing of hearings and other provisions as will  
36 facilitate the administration of the agreement. The commissioner may,  
37 pursuant to the terms of the agreement, forward to the proper officers  
38 of another member jurisdiction any information in the commissioner's  
39 possession relating to the manufacture, receipt, sale, use, transporta-  
40 tion or shipment of [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL by  
41 any person and may share any information relating to the administration  
42 of taxes pursuant to the agreement with such officers. The commissioner  
43 may disclose to the proper officers of another member jurisdiction the  
44 location of offices, motor vehicles and other real and personal property  
45 of carriers. The agreement may provide for each member jurisdiction to  
46 audit the records of persons based in the member jurisdiction and deter-  
47 mine taxes due each member jurisdiction. The commissioner may adopt  
48 rules and regulations for the administration and enforcement of the  
49 agreement. In connection with the administration of taxes under such a  
50 cooperative agreement, the commissioner may enter into an agreement with  
51 other member jurisdictions and any banks, banking houses, trust compa-  
52 nies or other similar institutions with respect to the payment of any  
53 tax, fees, penalty or interest to such banks, banking houses, trust  
54 companies or similar institutions and the filing of returns and reports  
55 with such banks, banking houses, trust companies or similar institutions  
56 as agent of the commissioner and such other member jurisdictions. Pursu-

1 ant to a written agreement made with one or more of the appropriate  
2 departments, agencies, officers or instrumentalities of other jurisdic-  
3 tions, the commissioner may let contracts for provision of such services  
4 to the department and to one or more of such entities of other jurisdic-  
5 tions; provided, that provisions shall be made in all such agreements  
6 with the participating governmental entities and in all such contracts  
7 let by the commissioner for the assumption by each of the participating  
8 governmental entities of sole responsibility for its proportionate share  
9 of the costs under the terms of such contract. The commissioner may  
10 contract for such services jointly with and pursuant to a contract let  
11 by the appropriate department, agency, officer or instrumentality of  
12 another jurisdiction; provided that (1) the commissioner shall approve  
13 the proposed terms and conditions of all such joint governmental  
14 contracts, (2) the letting of such joint governmental contract shall be  
15 based on invitation of competitive bids or proposals, and (3) the  
16 participation by the department in any such joint contract shall be  
17 preceded by an evaluation and finding in writing by the commissioner  
18 that a reasonable potential exists for the saving of costs by the state,  
19 by means of such joint governmental contract.

20 S 36. The opening paragraph of subparagraph (ii) of paragraph 4 of  
21 subdivision (b) of section 1101 of the tax law, as amended by chapter  
22 261 of the laws of 1988, is amended to read as follows:

23 Notwithstanding the provisions of subparagraph (i) of this paragraph,  
24 no motor fuel or diesel motor fuel shall be sold or used in this state  
25 without payment, and inclusion in the sales price of such motor fuel, of  
26 the tax on motor fuel required to be prepaid pursuant to the provisions  
27 of section eleven hundred two of this article except where a provision  
28 of this article relating to motor fuel or diesel motor fuel specifically  
29 provides otherwise and except in the case of a sale or use subject to  
30 tax under section eleven hundred five or eleven hundred ten, respective-  
31 ly, of this article. Provided, however, except for such requirement of  
32 prepayment of tax required by section eleven hundred two of this arti-  
33 cle, the provisions of this subparagraph shall not otherwise modify the  
34 meaning of the term "retail sale" as used in this article. For purposes  
35 of this subparagraph and sections eleven hundred two, eleven hundred  
36 eleven, eleven hundred twenty, eleven hundred thirty-two, eleven hundred  
37 thirty-four, eleven hundred thirty-five, eleven hundred thirty-six,  
38 ELEVEN HUNDRED FORTY-TWO, ELEVEN HUNDRED FORTY-FIVE and eighteen hundred  
39 seventeen of this chapter, the following terms shall have the following  
40 meanings:

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

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

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

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

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

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

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

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

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

4 (a) Notwithstanding any other provisions of this article, but not for  
5 purposes of the taxes imposed by section eleven hundred eight of this  
6 part or authorized pursuant to the authority of article twenty-nine of  
7 this chapter, the taxes imposed by subdivision (a) or (b) of section  
8 eleven hundred five OF THIS PART on the receipts from the retail sale of  
9 fuel oil and coal used for residential purposes; the receipts from the  
10 retail sale of wood used for residential heating purposes; and the  
11 receipts from every sale, other than for resale, of propane (except when  
12 sold in containers of less than one hundred pounds), natural gas, elec-  
13 tricity, steam and gas, electric and steam services used for residential  
14 purposes shall be paid at the rate of three percent for the period  
15 commencing January first, nineteen hundred seventy-nine and ending  
16 December thirty-first, nineteen hundred seventy-nine; at the rate of two  
17 and one-half percent for the period commencing January first, nineteen  
18 hundred eighty and ending September thirtieth, nineteen hundred eighty,  
19 and at the rate of zero percent on and after October first, nineteen  
20 hundred eighty. The provisions of this subsection shall not apply to a  
21 sale of [(i)] diesel motor fuel which involves a delivery at a filling  
22 station or into a repository which is equipped with a hose or other  
23 apparatus by which such fuel can be dispensed into the fuel tank of a  
24 motor vehicle [and (ii) enhanced diesel motor fuel except in the case of  
25 a sale of such enhanced diesel motor fuel used exclusively for residen-  
26 tial purposes which is delivered into a storage tank which is not  
27 equipped with a hose or other apparatus by which such fuel can be  
28 dispensed into the fuel tank of a motor vehicle and such storage tank is  
29 attached to the heating unit burning such fuel, provided that each  
30 delivery of such fuel of over four thousand five hundred gallons shall  
31 be evidenced by a certificate signed by the purchaser stating that the  
32 product will be used exclusively for residential purposes].

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

36 (j) The exemptions provided in this section shall not apply to the tax  
37 required to be prepaid pursuant to the provisions of section eleven  
38 hundred two of this article nor to the taxes imposed by sections eleven  
39 hundred five and eleven hundred ten of this article with respect to  
40 receipts from sales and uses of motor fuel or diesel motor fuel, except  
41 that the exemptions provided in paragraphs nine and forty-two of subdi-  
42 vision (a) of this section shall apply to the tax required to be prepaid  
43 pursuant to the provisions of section eleven hundred two of this article  
44 and to the taxes imposed by sections eleven hundred five and eleven  
45 hundred ten of this article with respect to sales and uses of kero-jet  
46 fuel, CNG, hydrogen and E85, provided, however, the exemption allowed  
47 for E85 shall be subject to the additional requirements provided in  
48 section eleven hundred two of this article with respect to E85. The  
49 exemption provided in subdivision (c) of this section shall apply to  
50 sales and uses of NON-HIGHWAY diesel motor fuel [which is not enhanced  
51 diesel motor fuel] but only if all of such fuel is consumed other than  
52 on the PUBLIC highways of this state[, provided, however, this exemption  
53 shall in no event apply to a sale of diesel motor fuel which involves a  
54 delivery at a filling station or into a repository which is equipped  
55 with a hose or other apparatus by which such fuel can be dispensed into  
56 the fuel tank of a motor vehicle]. The exemption provided in subdivision



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

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

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

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

48 (e) Immediate export. With respect to (i) motor fuel imported, manu-  
49 factured or sold or purchased in this state, and (ii) [enhanced] HIGHWAY  
50 diesel motor fuel, a refund or credit shall be allowed a registered  
51 distributor of this state or a purchaser of the tax required to be  
52 prepaid pursuant to section eleven hundred two of this article in the  
53 amount of such tax paid by or included in the price paid by a distribu-  
54 tor or such purchaser if such fuel was exported from this state for sale  
55 outside this state, such distributor or such purchaser, as the case may  
56 be, exporting such fuel is duly registered with or licensed by the

1 taxing authorities of the state to which such fuel is exported as a  
2 distributor or a dealer in the fuel being so exported, and in connection  
3 with such exportation such fuel was immediately shipped to an identified  
4 facility in the state to which such fuel is exported, and provided the  
5 applicant complies with all requirements and rules and regulations of  
6 the commissioner, including evidentiary requirements, relating thereto.

7 S 43. Subparagraph (i) of paragraph 3 of subdivision (h) of section  
8 1132 of the tax law, as amended by chapter 261 of the laws of 1988, is  
9 amended to read as follows:

10 (i) For the purpose of the proper administration of this article and  
11 to prevent evasion of the tax hereby imposed, it shall be presumed that  
12 all retail sales of motor fuel or diesel motor fuel are subject to the  
13 tax required to be collected by subdivision (a) of section eleven  
14 hundred five of this article or paid by the provisions of section eleven  
15 hundred ten of this article until the contrary is established, and it  
16 shall be presumed that all motor fuel or diesel motor fuel imported,  
17 manufactured, [subjected to enhancement,] sold, received or possessed by  
18 any person in this state, which such person cannot otherwise account for  
19 as having been sold subject to the tax required to be collected by  
20 subdivision (a) of section eleven hundred five or paid by the provisions  
21 of section eleven hundred ten of this article, has been sold subject to  
22 the tax required to be collected by subdivision (a) of section eleven  
23 hundred five or paid by the provisions of section eleven hundred ten  
24 except that no such presumption shall apply with respect to motor fuel  
25 or diesel motor fuel in the fuel tank of a motor vehicle used to propel  
26 such vehicle or to motor fuel in small drums or similar containers. The  
27 burden of proving that any sale is not so subject shall be upon the  
28 person required to collect such tax and the purchaser of such fuel.

29 S 44. Subparagraph (iii) of paragraph 1 of subdivision (a) of section  
30 1134 of the tax law, as amended by section 160 of part A of chapter 389  
31 of the laws of 1997, is amended to read as follows:

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

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

37 (d) Every person selling or holding large volumes of [automotive fuel]  
38 PETROLEUM PRODUCTS shall keep records for such periods and in the manner  
39 prescribed by the [tax commission] COMMISSIONER pursuant to rules and  
40 regulations. Such records shall show (1) the number of gallons of [auto-  
41 motive fuel] PETROLEUM PRODUCTS purchased, the price paid therefor, the  
42 amount of tax paid pursuant to the provisions of section eleven hundred  
43 two of this article [and the regional average retail sales price appli-  
44 cable thereto] and (2) the number of gallons sold, and the price paid by  
45 the purchaser to whom such person sells the [automotive fuel] PETROLEUM  
46 PRODUCTS, and the amount of tax included in such price pursuant to the  
47 provisions of section eleven hundred two of this article and the  
48 [regional average retail sales price or the] amount of tax collected  
49 pursuant to the provisions of subdivision (a) of section eleven hundred  
50 five of this article applicable to such sale together with such addi-  
51 tional information as the [tax commission] COMMISSIONER shall require.  
52 The [regional average retail sales price, and the] amount of tax shall  
53 be calculated in the manner set forth in section eleven hundred eleven  
54 of this article.

55 S 46. Subdivision (a) of section 1136 of the tax law, as amended by  
56 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 information return annually in such form as the commissioner may prescribe. Likewise, a person, who is required to register and who is selling [automotive fuel] PETROLEUM PRODUCTS who is not a distributor of motor fuel, shall file an information return quarterly or, if the commissioner deems necessary, monthly, in such form as the commissioner shall prescribe.

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

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

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

(7) Taxable receipts as used in this section shall include taxable receipts from the sale of [automotive fuel] PETROLEUM PRODUCTS and cigarettes and any receipts from the sale of motor fuel or diesel motor fuel

1 or cigarettes in this state whether or not such receipts are subject to  
2 the taxes imposed by section eleven hundred two, eleven hundred three,  
3 eleven hundred five or eleven hundred ten of this article and regardless  
4 of whether the provisions of section eleven hundred twenty or eleven  
5 hundred twenty-one of this article are applicable to the taxes imposed  
6 in respect of such receipts or numbers of gallons of motor fuel or  
7 diesel motor fuel sold.

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

16 [(ii)] (9) For purposes of this article the term "short-form, part-  
17 quarterly return" shall mean a return which shall be available for use  
18 in filing as a return for the first two months of any quarter and only  
19 by a person required to file a return monthly who has had at least four  
20 successive quarterly tax periods immediately preceding the month for  
21 which the return is to be filed and who elects such use, and is in a  
22 form determined by the [tax commission] COMMISSIONER and providing for  
23 the calculation of one-third of the total state and local sales and  
24 compensating use taxes paid by the person to the [tax commission]  
25 COMMISSIONER in the comparable quarter of the immediately preceding year  
26 under this article and as taxes imposed pursuant to the authority of  
27 article twenty-nine with respect to all receipts, amusement charges and  
28 rents.

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

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

46 S 48. Subparagraph (i) of paragraph 3 of subdivision (a) of section  
47 1145 of the tax law, as amended by chapter 2 of the laws of 1995, is  
48 amended to read as follows:

49 (i) Any person required to obtain a certificate of authority under  
50 section eleven hundred thirty-four OF THIS PART who, without possessing  
51 a valid certificate of authority, (A) sells tangible personal property  
52 or services subject to tax, receives amusement charges or operates a  
53 hotel, (B) purchases or sells tangible personal property for resale, (C)  
54 sells [automotive fuel] PETROLEUM PRODUCTS, or (D) sells cigarettes  
55 shall, in addition to any other penalty imposed by this chapter, be  
56 subject to a penalty in an amount not exceeding five hundred dollars for

1 the first day on which such sales or purchases are made, plus an amount  
2 not exceeding two hundred dollars for each subsequent day on which such  
3 sales or purchases are made, not to exceed ten thousand dollars in the  
4 aggregate.

5 S 49. Subparagraph (i) of paragraph 3 of subdivision (a) of section  
6 1210 of the tax law, as amended by section 2 of part B of chapter 35 of  
7 the laws of 2006, is amended to read as follows:

8 (i) Notwithstanding any other provision of law to the contrary but not  
9 with respect to cities subject to the provisions of section eleven  
10 hundred eight of this [article] CHAPTER, any city or county, except a  
11 county wholly contained within a city, may provide that the taxes  
12 imposed, pursuant to this subdivision, by such city or county on the  
13 retail sale or use of fuel oil and coal used for residential purposes,  
14 the retail sale or use of wood used for residential heating purposes,  
15 the sale, other than for resale, of propane (except when sold in  
16 containers of less than one hundred pounds), natural gas, electricity,  
17 steam and gas, electric and steam services used for residential purposes  
18 and the use of gas or electricity used for residential purposes may be  
19 imposed at a lower rate than the uniform local rate imposed pursuant to  
20 the opening paragraph of this section, as long as such rate is one of  
21 the rates authorized by such paragraph or such sale or use may be  
22 exempted from such taxes. Provided, however, such lower rate must apply  
23 to all such energy sources and services and at the same rate and no such  
24 exemption may be enacted unless such exemption applies to all such ener-  
25 gy sources and services. The provisions of this subparagraph shall not  
26 apply to a sale or use of [(i)] 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 [and (ii) enhanced diesel motor fuel  
30 except in the case of a sale or use of such enhanced diesel motor fuel  
31 used exclusively for residential purposes which is delivered into a  
32 storage tank which is not equipped with a hose or other apparatus by  
33 which such fuel can be dispensed into the fuel tank of a motor vehicle  
34 and such storage tank is attached to the heating unit burning such fuel,  
35 provided that each delivery of such fuel of over four thousand five  
36 hundred gallons shall be evidenced by a certificate signed by the  
37 purchaser stating that the product will be used exclusively for residen-  
38 tial purposes].

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

42 (c) Any owner of a filling station who shall willfully and knowingly  
43 have in his OR HER custody, possession or under his OR HER control any  
44 motor fuel or Diesel motor fuel [on which] (1) ON WHICH the taxes  
45 imposed by or pursuant to the authority of such article have not been  
46 assumed or paid by a distributor registered as such under such article  
47 [or], (2) ON WHICH the taxes imposed by or pursuant to the authority of  
48 such article have not been included in the cost to him OR HER of such  
49 fuel where such taxes were required to have been passed through to him  
50 OR HER and included in the cost to him OR HER of such fuel, OR (3)  
51 WHICH IS DYED DIESEL MOTOR FUEL AS DEFINED BY SUBDIVISION EIGHTEEN-A OF  
52 SECTION TWO HUNDRED EIGHTY-TWO OF THIS CHAPTER (EXCEPT FOR WATER-WHITE  
53 KEROSENE), shall [in either case,] be guilty of a class E felony. For  
54 purposes of this subdivision, such owner shall willfully and knowingly  
55 have in his OR HER custody, possession or under his OR HER control any  
56 motor fuel or Diesel motor fuel on which such taxes have not been

1 assumed or paid by a distributor registered as such where such owner has  
2 knowledge of the requirement that such taxes be paid and where, to his  
3 OR HER knowledge, such taxes have not been assumed or paid by a regis-  
4 tered distributor on such motor fuel or Diesel motor fuel. Such owner  
5 shall willfully and knowingly have in his OR HER custody, possession or  
6 under his OR HER control any motor fuel or Diesel motor fuel on which  
7 such taxes are required to have been passed through to him OR HER and  
8 have not been included in his OR HER cost where such owner has knowledge  
9 of the requirement that such taxes be passed through and where to his  
10 knowledge such taxes have not been so included. SUCH OWNER SHALL WILL-  
11 FULLY AND KNOWINGLY HAVE IN HIS OR HER CUSTODY, POSSESSION OR UNDER HIS  
12 OR HER CONTROL ANY DYED DIESEL MOTOR FUEL (EXCEPT WATER-WHITE KEROSENE)  
13 WHERE SUCH OWNER HAS KNOWLEDGE OF THE REQUIREMENT THAT DYED DIESEL MOTOR  
14 FUEL (EXCEPT WATER-WHITE KEROSENE) MAY NOT BE IN HIS OR HER CUSTODY,  
15 POSSESSION OR UNDER HIS OR HER CONTROL.

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

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

20 S 1812-a. Person not registered as distributor of Diesel motor fuel.  
21 (a) Any person who, while not registered as a distributor of Diesel  
22 motor fuel pursuant to the provisions of article twelve-A of this chap-  
23 ter, [engages in the enhancement,] makes a sale or use within the state  
24 of Diesel motor fuel (other than a retail sale not in bulk or the self-  
25 use of Diesel motor fuel which has been the subject of a retail sale),  
26 imports or causes Diesel motor fuel to be imported into the state or  
27 produces, refines, manufactures or compounds Diesel motor fuel within  
28 the state shall be guilty of a misdemeanor. If, within any ninety day  
29 period, two thousand nine hundred gallons or more of Diesel motor fuel  
30 are subjected to [enhancement or] sale or use (other than a retail sale  
31 not in bulk or the self-use of Diesel motor fuel which has been the  
32 subject of a retail sale) within the state or are imported or caused to  
33 be imported by any person while not so registered as a distributor of  
34 Diesel motor fuel, such person shall be guilty of a class E felony.

35 (b) Any person whose registration under article twelve-A of this chap-  
36 ter applies only to the importation, sale and distribution of Diesel  
37 motor fuel for [the purposes] USE OTHER THAN ON A PUBLIC HIGHWAY AS  
38 described in subparagraph (i) of paragraph (b) of subdivision three of  
39 section two hundred eighty-two-a of this chapter who delivers NON-HIGH-  
40 WAY Diesel motor fuel at a filling station [other than for the sole  
41 purpose of heating such station] or into a repository equipped with a  
42 hose or other apparatus by which NON-HIGHWAY Diesel motor fuel can be  
43 dispensed into the fuel tank of a motor vehicle, other than such a  
44 repository which is located on the premises of such registrant where the  
45 Diesel motor fuel delivered therein is used exclusively for the purpose  
46 of fueling motor vehicles operated by registrant for the purpose of  
47 distributing Diesel motor fuel for the purposes described in such  
48 subparagraph (i), shall be guilty of a misdemeanor. If, within any nine-  
49 ty day period, any such person whose registration under article twelve-A  
50 of this chapter applies only to the importation, sale and distribution  
51 of NON-HIGHWAY Diesel motor fuel for the purposes described in subpara-  
52 graph (i) of paragraph (b) of subdivision three of section two hundred  
53 eighty-two-a of this chapter so unlawfully delivers a total of one thou-  
54 sand gallons or more of Diesel motor fuel at such filling station or  
55 stations or into such repository or repositories (or a combination of

1 both such filling stations and repositories), then, such person shall be  
2 guilty of a class E felony.

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

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

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

21 (b) Any person required to obtain a certificate of authority under  
22 section eleven hundred thirty-four of this chapter who within five years  
23 after a determination by the [tax commission] COMMISSIONER, pursuant to  
24 such section, to suspend, revoke or refuse to issue a certificate of  
25 authority has become final, and without possession of a valid certif-  
26 icate of authority (1) sells tangible personal property or services  
27 subject to tax, receives amusement charges or operates a hotel, (2)  
28 purchases or sells tangible personal property for resale, or (3) sells  
29 [automotive fuel] PETROLEUM PRODUCTS, shall be guilty of a misdemeanor.  
30 It shall be an affirmative defense that such person performed the acts  
31 described in this subdivision without knowledge of such determination.  
32 Any person who violates a provision of this subdivision, upon  
33 conviction, shall be subject to a fine in any amount authorized by this  
34 article, but not less than five hundred dollars, in addition to any  
35 other penalty provided by law.

36 S 54. The section heading, subdivisions (a), (b) and (c), paragraph 3,  
37 subparagraph (D) of paragraph 4 and paragraph 6 of subdivision (d) and  
38 subdivisions (e) and (g) of section 1848 of the tax law, as added by  
39 chapter 276 of the laws of 1986 and subparagraph (D) of paragraph 4 and  
40 paragraph 6 of subdivision (d) as amended by chapter 190 of the laws of  
41 1990, are amended to read as follows:

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

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

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

26 (3) Forfeiture of motor fuel OR DIESEL MOTOR FUEL together with the  
27 vehicle or other means of transportation used to transport such motor  
28 fuel OR DIESEL MOTOR FUEL shall be adjudged where the department [of  
29 taxation and finance] proves, by clear and convincing evidence, that the  
30 person importing or causing such motor fuel OR DIESEL MOTOR FUEL to be  
31 imported was not registered as a distributor under section two hundred  
32 eighty-three OR SECTION TWO HUNDRED EIGHTY-TWO-A of this chapter, AS THE  
33 CASE MAY BE. All defendants in a forfeiture action brought pursuant to  
34 this article shall have the right to trial by jury on any issue of fact.

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

54 (6) The total that may be recovered shall not exceed the value of the  
55 motor fuel OR DIESEL MOTOR FUEL seized and, in addition, either the  
56 value of the vehicle or other means of transportation used to transport



1 such fuel or three times the amount of the tax and penalty under arti-  
2 cles twelve-A, thirteen-A and twenty-eight and pursuant to the authority  
3 of article twenty-nine of this chapter with respect to the motor fuel OR  
4 DIESEL MOTOR FUEL, whichever is less.

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

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

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

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

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

52 (a) to the enforcement of any of the criminal or seizure and forfei-  
53 ture provisions of the tax law relating to (i) taxes imposed under or  
54 pursuant to the authority of article twelve-A of the tax law and admin-  
55 istered by the commissioner, (ii) taxes imposed under or pursuant to the  
56 authority of article eighteen of the tax law and administered by the

1 commissioner, (iii) taxes imposed under article twenty of the tax law,  
2 or (iv) sales or compensating use taxes relating to [automotive fuel]  
3 PETROLEUM PRODUCTS or cigarettes imposed under article twenty-eight or  
4 pursuant to the authority of article twenty-nine of the tax law and  
5 administered by the commissioner or

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

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

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

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

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

26

## PART L

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

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

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

38 S 19. This act shall take effect immediately; provided, however, that  
39 sections one through thirteen of this act shall take effect September 1,  
40 2006 and shall be deemed repealed on September 1, [2011] 2012 and such  
41 repeal shall apply in accordance with the applicable transitional  
42 provisions of sections 1106 and 1217 of the tax law, and shall apply to  
43 sales made, fuel compounded or manufactured, and uses occurring on or  
44 after such date, and with respect to sections seven through eleven of  
45 this act, in accordance with applicable transitional provisions of  
46 sections 1106 and 1217 of the tax law; provided, however, that the  
47 commissioner of taxation and finance shall be authorized on and after  
48 the date this act shall have become a law to adopt and amend any rules  
49 or regulations and to take any steps necessary to implement the  
50 provisions of this act; provided further that sections fourteen through  
51 sixteen of this act shall take effect immediately and shall apply to  
52 taxable years beginning on or after January 1, 2006.

53 S 3. This act shall take effect immediately; provided, however, that  
54 the amendments made to subdivision 22 of section 282 of the tax law made

1 by section one of this act shall not affect the repeal of such subdivi-  
2 sion and shall be deemed repealed therewith.

3 PART M

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

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

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

27 PART N

28 Section 1. Paragraph 1 of subdivision a of section 1612 of the tax  
29 law, as amended by chapter 147 of the laws of 2010, is amended to read  
30 as follows:

31 (1) sixty percent of the total amount for which tickets have been sold  
32 for a lawful KENO OR SIMILAR STYLE lottery game [introduced on or after  
33 the effective date of this paragraph, subject to the following  
34 provisions:

35 (A) such game shall be available only on premises occupied by licensed  
36 lottery sales agents, subject to the following provisions:

37 (i) if the licensee holds a license issued pursuant to the alcoholic  
38 beverage control law to sell alcoholic beverages for consumption on the  
39 premises, then not less than twenty-five percent of the gross sales must  
40 result from sales of food;

41 (ii) if the licensee does not hold a license issued pursuant to the  
42 alcoholic beverage control law to sell alcoholic beverages for consump-  
43 tion on the premises, then the premises must have a minimum square  
44 footage greater than two thousand five hundred square feet;

45 (iii) notwithstanding the foregoing provisions, television equipment  
46 that automatically displays the results of such drawings may be  
47 installed and used without regard to the percentage of food sales or the  
48 square footage if such premises are used as:

49 (I) a commercial bowling establishment, or

50 (II) a facility authorized under the racing, pari-mutuel wagering and  
51 breeding law to accept pari-mutuel wagers;

1 (B) the rules for the operation of such game shall be as prescribed by  
2 regulations promulgated and adopted by the division, provided however,  
3 that such rules shall provide that no person under the age of twenty-one  
4 may participate in such games on the premises of a licensee who holds a  
5 license issued pursuant to the alcoholic beverage control law to sell  
6 alcoholic beverages for consumption on the premises; and, provided,  
7 further, that such regulations may be revised on an emergency basis not  
8 later than ninety days after the enactment of this paragraph in order to  
9 conform such regulations to the requirements of this paragraph]; or  
10 S 2. This act shall take effect immediately.

11 PART O

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

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

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

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

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

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

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

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

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

S 3. This act shall take effect immediately.

#### PART P

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

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

S 2. This act shall take effect immediately.

#### PART Q

Section 1. Paragraph 3 of subdivision a of section 1612 of the tax law, as amended by section 2 of part D of chapter 383 of the laws of 2001, is amended to read as follows:

(3) 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, EXCEPT SUCH PERCENT MAY EXCEED FIFTY PERCENT OF THE TOTAL AMOUNT FOR WHICH TICKETS HAVE BEEN SOLD FOR ANY JOINT, MULTI-JURISDICTION, AND OUT-OF-STATE LOTTERY IF AT LEAST TWO-THIRDS OF THE LOTTERY JURISDICTIONS PARTICIPATING IN SUCH LOTTERY AGREE TO A PERCENTAGE THAT EXCEEDS FIFTY PERCENT AND EXCEPT AS

1 OTHERWISE PROVIDED IN PARAGRAPH ONE OF SUBDIVISION B OF THIS SECTION FOR  
2 ANY JOINT, MULTI-JURISDICTION, OUT-OF-STATE VIDEO LOTTERY GAMING; or  
3 S 2. This act shall take effect immediately.

4 PART R

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

8 Notwithstanding section one hundred twenty-one of the state finance  
9 law, on or before the twentieth day of each month, the division shall  
10 pay into the state treasury, to the credit of the state lottery fund  
11 created by section ninety-two-c of the state finance law, not less than  
12 forty-five percent of the total amount for which tickets have been sold  
13 for games defined in paragraph four of subdivision a of this section  
14 during the preceding month, not less than thirty-five percent of the  
15 total amount for which tickets have been sold for games defined in para-  
16 graph three of subdivision a of this section during the preceding month,  
17 not less than twenty percent of the total amount for which tickets have  
18 been sold for games defined in paragraph two of subdivision a of this  
19 section during the preceding month, provided however that for games with  
20 a prize payout of seventy-five percent of the total amount for which  
21 tickets have been sold, the division shall pay not less than ten percent  
22 of sales into the state treasury and not less than twenty-five percent  
23 of the total amount for which tickets have been sold for games defined  
24 in paragraph one of subdivision a of this section during the preceding  
25 month; and the balance of the total revenue after payout for prizes for  
26 games known as "video lottery gaming," INCLUDING ANY JOINT, MULTI-JURIS-  
27 DICTION, AND OUT-OF-STATE VIDEO LOTTERY GAMING,

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

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

35 S 3. This act shall take effect immediately.

36 PART S

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

41 (a) Any racing association or corporation or regional off-track  
42 betting corporation, authorized to conduct pari-mutuel wagering under  
43 this chapter, desiring to display the simulcast of horse races on which  
44 pari-mutuel betting shall be permitted in the manner and subject to the  
45 conditions provided for in this article may apply to the board for a  
46 license so to do. Applications for licenses shall be in such form as may  
47 be prescribed by the board and shall contain such information or other  
48 material or evidence as the board may require. No license shall be  
49 issued by the board authorizing the simulcast transmission of thorough-  
50 bred races from a track located in Suffolk county. The fee for such  
51 licenses shall be five hundred dollars per simulcast facility per year  
52 payable by the licensee to the board for deposit into the general fund.

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

39 S 2. Subparagraph (iii) of paragraph d of subdivision 3 of section  
40 1007 of the racing, pari-mutuel wagering and breeding law, as amended by  
41 section 2 of part C of chapter 134 of the laws of 2010, is amended to  
42 read as follows:

43 (iii) Of the sums retained by a receiving track located in Westchester  
44 county on races received from a franchised corporation, for the period  
45 commencing January first, two thousand eight and continuing through June  
46 thirtieth, two thousand [eleven] TWELVE, the amount used exclusively for  
47 purses to be awarded at races conducted by such receiving track shall be  
48 computed as follows: of the sums so retained, two and one-half percent  
49 of the total pools. Such amount shall be increased or decreased in the  
50 amount of fifty percent of the difference in total commissions deter-  
51 mined by comparing the total commissions available after July twenty-  
52 first, nineteen hundred ninety-five to the total commissions that would  
53 have been available to such track prior to July twenty-first, nineteen  
54 hundred ninety-five.

55 S 3. The opening paragraph of subdivision 1 of section 1014 of the  
56 racing, pari-mutuel wagering and breeding law, as amended by section 3

1 of part C of chapter 134 of the laws of 2010, is amended to read as  
2 follows:

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

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

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

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

33 The provisions of this section shall govern the simulcasting of races  
34 conducted at thoroughbred tracks located in another state or country on  
35 any day during which a franchised corporation is not conducting a race  
36 meeting in Saratoga county at Saratoga thoroughbred racetrack until June  
37 thirtieth, two thousand [eleven] TWELVE. Every off-track betting corpo-  
38 ration branch office and every simulcasting facility licensed in accord-  
39 ance with section one thousand seven that have entered into a written  
40 agreement with such facility's representative horsemen's organization as  
41 approved by the board, one thousand eight or one thousand nine of this  
42 article shall be authorized to accept wagers and display the live full-  
43 card simulcast signal of thoroughbred tracks (which may include quarter  
44 horse or mixed meetings provided that all such wagering on such races  
45 shall be construed to be thoroughbred races) located in another state or  
46 foreign country, subject to the following provisions; provided, however,  
47 no such written agreement shall be required of a franchised corporation  
48 licensed in accordance with section one thousand seven of this article:

49 S 6. The opening paragraph of section 1018 of the racing, pari-mutuel  
50 wagering and breeding law, as amended by section 6 of part C of chapter  
51 134 of the laws of 2010, is amended to read as follows:

52 Notwithstanding any other provision of this chapter, for the period  
53 July twenty-fifth, two thousand one through September eighth, two thou-  
54 sand [ten] ELEVEN, when a franchised corporation is conducting a race  
55 meeting within the state at Saratoga Race Course, every off-track  
56 betting corporation branch office and every simulcasting facility



1 licensed in accordance with section one thousand seven (that has entered  
2 into a written agreement with such facility's representative horsemen's  
3 organization as approved by the board), one thousand eight or one thou-  
4 sand nine of this article shall be authorized to accept wagers and  
5 display the live simulcast signal from thoroughbred tracks located in  
6 another state, provided that such facility shall accept wagers on races  
7 run at all in-state thoroughbred tracks which are conducting racing  
8 programs subject to the following provisions; provided, however, no such  
9 written agreement shall be required of a franchised corporation licensed  
10 in accordance with section one thousand seven of this article.

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

15 S 32. This act shall take effect immediately and the pari-mutuel tax  
16 reductions in section six of this act shall expire and be deemed  
17 repealed on July 1, [2011] 2012; provided, however, that nothing  
18 contained herein shall be deemed to affect the application, qualifica-  
19 tion, expiration, or repeal of any provision of law amended by any  
20 section of this act, and such provisions shall be applied or qualified  
21 or shall expire or be deemed repealed in the same manner, to the same  
22 extent and on the same date as the case may be as otherwise provided by  
23 law; provided further, however, that sections twenty-three and twenty-  
24 five of this act shall remain in full force and effect only until May 1,  
25 1997 and at such time shall be deemed to be repealed.

26 S 8. Section 54 of chapter 346 of the laws of 1990, amending the  
27 racing, pari-mutuel wagering and breeding law and other laws relating to  
28 simulcasting and the imposition of certain taxes, as amended by section  
29 8 of part C of chapter 134 of the laws of 2010, is amended to read as  
30 follows:

31 S 54. This act shall take effect immediately; provided, however,  
32 sections three through twelve of this act shall take effect on January  
33 1, 1991, and section 1013 of the racing, pari-mutuel wagering and breed-  
34 ing law, as added by section thirty-eight of this act, shall expire and  
35 be deemed repealed on July 1, [2011] 2012; and section eighteen of this  
36 act shall take effect on July 1, 2008 and sections fifty-one and fifty-  
37 two of this act shall take effect as of the same date as chapter 772 of  
38 the laws of 1989 took effect.

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

42 (a) The franchised corporation authorized under this chapter to  
43 conduct pari-mutuel betting at a race meeting or races run thereat shall  
44 distribute all sums deposited in any pari-mutuel pool to the holders of  
45 winning tickets therein, provided such tickets be presented for payment  
46 before April first of the year following the year of their purchase,  
47 less an amount which shall be established and retained by such fran-  
48 chised corporation of between twelve to seventeen per centum of the  
49 total deposits in pools resulting from on-track regular bets, and four-  
50 teen to twenty-one per centum of the total deposits in pools resulting  
51 from on-track multiple bets and fifteen to twenty-five per centum of the  
52 total deposits in pools resulting from on-track exotic bets and fifteen  
53 to thirty-six per centum of the total deposits in pools resulting from  
54 on-track super exotic bets, plus the breaks. The retention rate to be  
55 established is subject to the prior approval of the racing and wagering  
56 board. Such rate may not be changed more than once per calendar quarter

1 to be effective on the first day of the calendar quarter. "Exotic bets"  
2 and "multiple bets" shall have the meanings set forth in section five  
3 hundred nineteen of this chapter. "Super exotic bets" shall have the  
4 meaning set forth in section three hundred one of this chapter. For  
5 purposes of this section, a "pick six bet" shall mean a single bet or  
6 wager on the outcomes of six races. The breaks are hereby defined as the  
7 odd cents over any multiple of five for payoffs greater than one dollar  
8 five cents but less than five dollars, over any multiple of ten for  
9 payoffs greater than five dollars but less than twenty-five dollars,  
10 over any multiple of twenty-five for payoffs greater than twenty-five  
11 dollars but less than two hundred fifty dollars, or over any multiple of  
12 fifty for payoffs over two hundred fifty dollars. Out of the amount so  
13 retained there shall be paid by such franchised corporation to the  
14 commissioner of taxation and finance, as a reasonable tax by the state  
15 for the privilege of conducting pari-mutuel betting on the races run at  
16 the race meetings held by such franchised corporation, the following  
17 percentages of the total pool for regular and multiple bets five per  
18 centum of regular bets and four per centum of multiple bets plus twenty  
19 per centum of the breaks; for exotic wagers seven and one-half per  
20 centum plus twenty per centum of the breaks, and for super exotic bets  
21 seven and one-half per centum plus fifty per centum of the breaks. For  
22 the period June first, nineteen hundred ninety-five through September  
23 ninth, nineteen hundred ninety-nine, such tax on regular wagers shall be  
24 three per centum and such tax on multiple wagers shall be two and one-  
25 half per centum, plus twenty per centum of the breaks. For the period  
26 September tenth, nineteen hundred ninety-nine through March thirty-  
27 first, two thousand one, such tax on all wagers shall be two and six-  
28 tenths per centum and for the period April first, two thousand one  
29 through December thirty-first, two thousand [eleven] TWELVE, such tax on  
30 all wagers shall be one and six-tenths per centum, plus, in each such  
31 period, twenty per centum of the breaks. Payment to the New York state  
32 thoroughbred breeding and development fund by such franchised corpo-  
33 ration shall be one-half of one per centum of total daily on-track pari-  
34 mutuel pools resulting from regular, multiple and exotic bets and three  
35 per centum of super exotic bets provided, however, that for the period  
36 September tenth, nineteen hundred ninety-nine through March thirty-  
37 first, two thousand one, such payment shall be six-tenths of one per  
38 centum of regular, multiple and exotic pools and for the period April  
39 first, two thousand one through December thirty-first, two thousand  
40 [eleven] TWELVE, such payment shall be seven-tenths of one per centum of  
41 such pools.

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

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

47 S 11. This act shall take effect immediately.

48 S 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
49 sion, section or part of this act shall be adjudged by any court of  
50 competent jurisdiction to be invalid, such judgment shall not affect,  
51 impair, or invalidate the remainder thereof, but shall be confined in  
52 its operation to the clause, sentence, paragraph, subdivision, section  
53 or part thereof directly involved in the controversy in which such judg-  
54 ment shall have been rendered. It is hereby declared to be the intent of  
55 the legislature that this act would have been enacted even if such  
56 invalid provisions had not been included herein.

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