

2811--B

I N S E N A T E

February 1, 2011

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

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 the effectiveness of certain provisions (Part B); Intentionally omitted (Part C); to amend the tax law, in relation to directing the crediting of lottery prizes of more than six hundred dollars against liability for any tax administered by the commissioner of taxation and finance (Part D); to amend chapter 56 of the laws of 1998, amending the tax law and other laws relating to extending the dates of application of the investment tax credit under articles 9-A, 22 and 32 of the tax law and to amend chapter 63 of the laws of 2000, amending the tax law and other laws relating to extending the dates of application of the investment tax credit under article 33 of the tax law, in relation to the effectiveness of certain provisions (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); Intentionally omitted (Part G); Intentionally omitted (Part H); to amend the insurance law and the tax law, in relation to excess line insurance (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

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

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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 making transitional provisions relating to the federal Gramm-Leach-Bliley act permanent (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); 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); to repeal paragraph (h) of subdivision 12-G of section 210 of the tax law relating to the applicability of the qualified emerging technology company facilities, operations and training credit (Part T); to amend the tax law and the state finance law, in relation to application fees owed by retail dealers of businesses that sell tobacco products and owners of cigarette vending machines (Part U); to amend the tax law, in relation to sales tax for transportation service (Part V); to amend the tax law, in relation to the tax on certain tobacco products; and to amend the public health law, in relation to regulation of tobacco products (Part W); to amend the tax law, in relation to temporary deferral payout credits (Part X); to amend part A of chapter 57 of the laws of 2010 amending the tax law relating to the statutory limitation on the biofuel production credit and the qualified emerging technology compa-

ny facilities, operations and training credits, in relation to the effectiveness thereof (Part Y); to amend the tax law, in relation to an investment tax credit (Part Z); to amend the public service law, in relation to a temporary annual assessment and to amend part NN of chapter 59 of the laws of 2009 amending the public service law relating to financing operations of the department of public service, in relation to the effectiveness thereof (Part AA); to amend the tax law, in relation to the metropolitan commuter transportation mobility tax (Part BB); to amend the tax law, in relation to removing the credit for rehabilitation of historic properties from the temporary deferral of certain tax credits (Part CC); to amend chapter 912 of the laws of 1920 relating to the regulation of boxing, sparring and wrestling, in relation to establishing protocols for combative sports and authorizing mixed martial arts events in this state; to amend the tax law, in relation to the imposition of a tax on the gross receipts of any person holding any professional or amateur boxing, sparring or wrestling match or exhibition, or professional combative sports match or exhibition; and providing for the repeal of such provisions upon expiration thereof (Part DD); to amend the insurance law and the tax law, in relation to establishing the surplus lines insurance multi-state compliance compact with respect to surplus lines insurance and premium tax allocation (Part EE); to amend the tax law, in relation to establishing a community transformation program credit (Part FF); and to amend the racing, pari-mutuel wagering and breeding law and the state finance law, in relation to the New York city off-track betting corporation and establishing the New York city off-track betting corporation fund; to amend the racing, pari-mutuel wagering and breeding law, in relation to use and expenditure of funds of the capital acquisition fund; to repeal certain provisions of the racing, pari-mutuel wagering and breeding law relating thereto; and providing for the repeal of certain provisions upon the expiration thereof (Part GG)

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 GG. 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

1 amended by chapter 78 of the laws of 1976, are amended to read as
2 follows:

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

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

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

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

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

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

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

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

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

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

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

48 S. 2. Paragraphs (a) and (c) of subdivision 1 of section 600 of the
49 abandoned property law, paragraph (a) as amended by chapter 655 of the
50 laws of 1978 and paragraph (c) as amended by chapter 281 of the laws of
51 1980, are amended to read as follows:

52 (a) Any moneys including the monetary proceeds from the sale of tangi-
53 ble personal property and securities or other intangible property paid
54 into court, which, except as provided in section ten hundred OF THIS
55 CHAPTER, shall have remained in the hands of any county treasurer, or
56 the commissioner of finance of the city of New York, for [five] THREE

1 years, together with all accumulations of interest or other increment
2 thereon, less such legal fees as he may be entitled to.

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

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

14 1. (a) Any moneys held or owing for the payment of an award made by a
15 court in any condemnation proceeding and payable by a public corporation
16 or other corporation possessing powers of condemnation, which shall have
17 remained unclaimed by the person or persons appearing to be entitled
18 thereto for [five] THREE years after confirmation by the court, together
19 with any interest due thereon, less, when an award is payable by a
20 public corporation, any amount due such public corporation at the time
21 of title vesting for tax, water or any other liens on the same parcel
22 the award was for, with any interest due thereon, and any amount due
23 such public corporation at the time of title vesting or at the time of
24 confirmation, whichever is later, for an assessment on the same parcel
25 the award was for, with any interest due thereon, shall be deemed aban-
26 doned property. In any condemnation proceedings in which the court shall
27 have not made an award, any moneys paid into court, including interest
28 thereon, shall be subject to the provisions of article six of this chap-
29 ter and this section shall have no application thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. [Within thirty days after making a report of abandoned property pursuant to the provisions of section four hundred one,] EVERY such

corporation shall cause to be published, ON OR BEFORE THE FIRST DAY OF SEPTEMBER IN EACH YEAR, a notice entitled: "NOTICE OF CERTAIN UNCLAIMED PROPERTY HELD BY (name of corporation)."

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

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

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

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

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

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

(III) THE AMOUNT OF SUCH DEPOSIT OR PAYMENT;

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

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

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

(VII) THE AMOUNT OF SUCH ABANDONED PROPERTY; AND

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

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

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

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

(III) THE DATE PAYMENT BECAME DUE; AND

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

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

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

(b) Any moneys held or owing by any life insurance corporation which are payable under other kinds of life insurance policies to any person whose last-known address, according to the records of the corporation, is within this state, where the insured, if living, would[, prior to the

thirty-first day of December next preceding the report required by section seven hundred one,] have attained the limiting age under the mortality table on which the reserves are based, exclusive of

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

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

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

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

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

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

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

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

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

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

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

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

(D) THE DATE SUCH ABANDONED PROPERTY WAS PAYABLE;

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

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

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

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

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

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

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

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

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

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

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

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

49 3. On or before the tenth day of October in each year, every such
50 corporation shall pay to the state comptroller all [abandoned] property
51 [specified in the last preceding report made to the state comptroller
52 pursuant to this section, excepting such abandoned property as since the
53 date of the report shall have ceased to be abandoned] WHICH, AS OF THE
54 FIRST DAY OF JULY NEXT PRECEDING, WAS DEEMED ABANDONED PURSUANT TO THIS
55 SECTION, HELD OR OWING BY SUCH CORPORATION. SUCH PAYMENT SHALL BE ACCOM-

PANIED BY A TRUE AND ACCURATE REPORT CONTAINING SUCH IDENTIFYING INFORMATION AS THE STATE COMPTROLLER MAY REQUIRE.

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

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

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

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

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

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

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

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

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

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

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

4. In case any broker or dealer determines the property which shall be deemed abandoned property pursuant to subdivisions one and three of section five hundred eleven by the method provided in subdivision six of that section, the payment of such abandoned property shall be accompanied by a [verified] written report, in such form as the state comptroller may prescribe, which, among other things, shall set forth the computation of the average factor of such broker or dealer pursuant to subdivision six of section five hundred eleven. Each [verified] written report accompanying the payment of abandoned property determined pursuant to subdivision six of section five hundred eleven shall contain an undertaking by the broker or dealer making such payment to honor all claims to the extent herein provided whenever made against such broker or dealer by any person determined by him or proved to be entitled to receive from him a stock or cash dividend received in this state during the calendar year covered by such report as the holder of record of a security or an interest payment on a security received in this state during such year. Such undertaking shall obligate the broker or dealer to honor any such claim provided that the payment of abandoned property relating to the year in question determined pursuant to subdivision six of section five hundred eleven made by such broker or dealer to the

1 state comptroller has been exhausted as a result of reimbursements by
2 the state comptroller to the broker or dealer or to other persons claim-
3 ing such abandoned property as provided in subdivision two of section
4 five hundred fourteen. To the extent related to any stock dividend, any
5 such claim shall not exceed the fair market value of such stock dividend
6 on the thirty-first day of December of the year in which such stock
7 dividend was deemed abandoned property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 S 1402. PUBLICATION OF ABANDONED PROPERTY BY STATE COMPTROLLER. 1. (A)
48 THE COMPTROLLER SHALL MAINTAIN ON HIS OR HER WEBSITE IN A READILY
49 SEARCHABLE FORMAT OR IN ANY OTHER MEDIUM AT LEAST EQUALLY ACCESSIBLE TO
50 THE PUBLIC, A LIST OF SUCH ABANDONED PROPERTY AS HAS BEEN PAID OR DELIV-
51 ERED TO THE COMPTROLLER IN THE PREVIOUS TWELVE MONTHS THAT HAS A VALUE
52 EXCEEDING TWENTY DOLLARS.

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

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

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

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

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

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

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

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

23 12. (A) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION EIGHT OF THIS
24 SECTION, THE COMMISSIONER AND THE COMPTROLLER SHALL ENTER INTO AN AGREE-
25 MENT PURSUANT TO WHICH THE COMMISSIONER SHALL, UPON REQUEST, PROVIDE THE
26 COMPTROLLER WITH A REPORT, NOT MORE FREQUENTLY THAN ANNUALLY, WITH
27 RESPECT TO CORPORATIONS OR OTHER ENTITIES WHICH HAVE FILED A BUSINESS
28 CORPORATION FRANCHISE TAX REPORT UNDER THIS ARTICLE FOR ANY TAXABLE YEAR
29 WITHIN TEN CALENDAR YEARS PRIOR TO THE REPORT TO THE COMPTROLLER MADE
30 PURSUANT TO THIS SUBDIVISION, PROVIDING THE FOLLOWING INFORMATION, TO
31 THE EXTENT THAT SUCH INFORMATION IS READILY AVAILABLE FROM THE DEPART-
32 MENT'S SYSTEM FOR IDENTIFYING TAXPAYER INDICATIVE DATA:

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

34 (2) BUSINESS ADDRESS AND MAILING ADDRESS;

35 (3) FEDERAL EMPLOYER IDENTIFICATION NUMBER;

36 (4) DATE ENTERED INTO BUSINESS.

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

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

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

55 (E) NOTWITHSTANDING ARTICLE SIX OF THE PUBLIC OFFICERS LAW OR ANY
56 OTHER PROVISION OF LAW, THE REPORTS TO BE FURNISHED TO THE COMPTROLLER

1 PURSUANT TO THIS SUBDIVISION SHALL NOT BE OPEN TO THE PUBLIC FOR
2 INSPECTION.

3 S 37. This act shall take effect immediately.

4 PART B

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

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

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

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

42 S 2. This act shall take effect immediately.

43 PART C

44 Intentionally omitted.

45 PART D

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

48 S 1613-C. CREDITING OF LOTTERY PRIZES AGAINST LIABILITIES FOR TAXES
49 ADMINISTERED BY THE COMMISSIONER. (1) THE DIRECTOR, ON BEHALF OF THE
50 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.

1 (9) FROM THE TIME THE DIVISION IS NOTIFIED BY THE DEPARTMENT OF A PAST
2 DUE TAX LIABILITY OF A HOLDER OF A WINNING LOTTERY TICKET, THE DIVISION
3 SHALL BE RELIEVED FROM ALL LIABILITY TO THE HOLDER, AND THE HOLDER'S
4 HEIRS, REPRESENTATIVES, ESTATE, SUCCESSORS OR ASSIGNS FOR THE AMOUNT OF
5 A PRIZE CERTIFIED TO THE COMPTROLLER TO BE CREDITED AGAINST PAST DUE TAX
6 LIABILITIES AND THE HOLDER AND THE HOLDER'S HEIRS, REPRESENTATIVES,
7 ESTATE, SUCCESSOR OR ASSIGNS SHALL HAVE NO RIGHT TO COMMENCE A COURT
8 ACTION OR PROCEEDING OR TO ANY OTHER LEGAL RECOURSE AGAINST THE DIVISION
9 TO RECOVER ANY AMOUNT CERTIFIED TO THE COMPTROLLER TO BE CREDITED
10 AGAINST PAST DUE TAX LIABILITIES. PROVIDED HOWEVER, NOTHING HEREIN SHALL
11 BE CONSTRUED TO PROHIBIT A HOLDER OF A WINNING LOTTERY TICKET AND THE
12 HOLDER'S HEIRS, REPRESENTATIVES, ESTATE, SUCCESSORS OR ASSIGNS FROM
13 PROCEEDING AGAINST THE DEPARTMENT TO RECOVER THE PART OF THE PRIZE
14 CERTIFIED TO THE COMPTROLLER AND CREDITED TO PAST DUE TAX LIABILITIES
15 WHICH IS GREATER THAN THE AMOUNT OF PAST DUE TAX LIABILITIES OWED BY
16 THAT HOLDER ON THE DATE OF CERTIFICATION.

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

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

30 PART E

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

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

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

45 S 2. This act shall take effect immediately and shall apply to proper-
46 ty placed in service on or after January 1, 2002 [and before October 1,
47 2011].

48 S 3. This act shall take effect immediately.

49 PART F

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

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

8 S 2. This act shall take effect immediately.

9 PART G

10 Intentionally omitted.

11 PART H

12 Intentionally omitted.

13 PART I

14 Section 1. Paragraphs 4, 16 and 39 of subsection (a) of section 107 of
15 the insurance law are amended to read as follows:

16 (4) "Affiliate" means a corporation, a majority of whose shares is
17 owned or controlled by shareholders, directors or officers of another
18 corporation, who own or control a majority of the shares of the other
19 corporation EXCEPT FOR PURPOSES OF INSURANCE PROCURED BY EXCESS LINE
20 BROKERS LICENSED PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FIVE OF
21 THIS CHAPTER.

22 (16) "Control". Except for the purposes of article fifteen of this
23 chapter AND INSURANCE PROCURED BY EXCESS LINE BROKERS LICENSED PURSUANT
24 TO SECTION TWO THOUSAND ONE HUNDRED FIVE OF THIS CHAPTER, "control",
25 including the terms "controlling", "controlled by" and "under common
26 control with", means the possession, direct or indirect, of the power to
27 direct or cause the direction of the management and policies of an
28 institution, whether through the ownership of voting securities, by
29 contract or otherwise.

30 (39) "State" means any state of the United States, the commonwealth of
31 Puerto Rico [and], the District of Columbia, GUAM, THE NORTHERN MARIANA
32 ISLANDS, THE VIRGIN ISLANDS AND AMERICAN SAMOA.

33 S 2. Subsection (l) of section 2101 of the insurance law, as added by
34 chapter 687 of the laws of 2003, is amended and five new subsections
35 (w), (x), (y), (z) and (aa) are added to read as follows:

36 (l) In this article, WITH RESPECT TO AN INSURANCE PRODUCER, "[home]
37 RESIDENT state" means the District of Columbia or any state or territory
38 of the United States in which an insurance producer maintains his, her
39 or its principal place of residence or principal place of business and
40 is licensed to act as an insurance producer.

41 (W) IN THIS ARTICLE, FOR PURPOSES OF INSURANCE PROCURED BY EXCESS LINE
42 BROKERS LICENSED PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FIVE OF
43 THIS CHAPTER, THE TERM "AFFILIATE" MEANS, WITH RESPECT TO AN INSURED,
44 ANY ENTITY THAT CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL
45 WITH, THE INSURED. THE TERM "AFFILIATED GROUP" MEANS ANY GROUP OF ENTI-
46 TIES THAT ARE ALL AFFILIATED.

47 (X) IN THIS ARTICLE, FOR PURPOSES OF INSURANCE PROCURED BY EXCESS LINE
48 BROKERS LICENSED PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FIVE OF
49 THIS CHAPTER, AN ENTITY HAS "CONTROL" OVER ANOTHER ENTITY IF:

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

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

(Y)(1) IN THIS ARTICLE, FOR PURPOSES OF INSURANCE PROCURED BY EXCESS LINE BROKERS LICENSED PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FIVE OF THIS CHAPTER, THE TERM "HOME STATE" WITH RESPECT TO AN INSURED MEANS:

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

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

(2) IF MORE THAN ONE INSURED FROM AN AFFILIATED GROUP ARE INSURED BY A SINGLE INSURANCE CONTRACT PROCURED BY AN EXCESS LINE BROKER, THE TERM "HOME STATE" MEANS THE HOME STATE, AS DETERMINED PURSUANT TO PARAGRAPH (1) OF THIS SUBSECTION, OF THE MEMBER OF THE AFFILIATED GROUP THAT HAS THE LARGEST PERCENTAGE OF PREMIUM ATTRIBUTED TO IT UNDER SUCH INSURANCE CONTRACT.

(Z) IN THIS ARTICLE, FOR PURPOSES OF INSURANCE PROCURED BY EXCESS LINE BROKERS LICENSED PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FIVE OF THIS CHAPTER, THE TERM "EXEMPT COMMERCIAL PURCHASER" MEANS ANY PERSON PURCHASING COMMERCIAL INSURANCE THAT, AT THE TIME OF PLACEMENT, MEETS THE FOLLOWING REQUIREMENTS:

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

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

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

(A) THE PERSON POSSESSES A NET WORTH IN EXCESS OF TWENTY MILLION DOLLARS, AS SUCH AMOUNT IS ADJUSTED PURSUANT TO PARAGRAPH (2) OF THIS SUBSECTION;

(B) THE PERSON GENERATES ANNUAL REVENUES IN EXCESS OF FIFTY MILLION DOLLARS, AS SUCH AMOUNT IS ADJUSTED PURSUANT TO PARAGRAPH (2) OF THIS SUBSECTION;

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

(D) THE PERSON IS A NOT-FOR-PROFIT ORGANIZATION OR PUBLIC ENTITY GENERATING ANNUAL BUDGETED EXPENDITURES OF AT LEAST THIRTY MILLION DOLLARS, AS SUCH AMOUNT IS ADJUSTED PURSUANT TO PARAGRAPH (2) OF THIS SUBSECTION;

(E) THE PERSON IS A MUNICIPALITY WITH A POPULATION IN EXCESS OF FIFTY THOUSAND PERSONS.

(4) EFFECTIVE ON THE FIFTH JANUARY FIRST OCCURRING AFTER THE DATE OF THE ENACTMENT OF THIS ARTICLE AND EACH FIFTH JANUARY FIRST OCCURRING THEREAFTER, THE AMOUNTS IN SUBPARAGRAPHS (A), (B), AND (D) OF PARAGRAPH (3) OF THIS SUBSECTION SHALL BE ADJUSTED TO REFLECT THE PERCENTAGE CHANGE FOR SUCH FIVE-YEAR PERIOD IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS PUBLISHED BY THE BUREAU OF LABOR STATISTICS OF THE DEPARTMENT OF LABOR.

(AA) FOR PURPOSES OF INSURANCE PROCURED BY EXCESS LINE BROKERS LICENSED PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FIVE OF THIS CHAPTER, THE TERM "QUALIFIED RISK MANAGER" MEANS, WITH RESPECT TO A POLICYHOLDER OF COMMERCIAL INSURANCE, A PERSON WHO MEETS ALL OF THE FOLLOWING REQUIREMENTS:

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

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

(3) THE PERSON:

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

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

(C) HAS A DESIGNATION AS A CHARTERED PROPERTY AND CASUALTY UNDERWRITER ("CPCU") ISSUED BY THE AMERICAN INSTITUTE FOR CPCU/INSURANCE INSTITUTE OF AMERICA;

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

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

(F) HAS A DESIGNATION AS A RIMS FELLOW ("RF") ISSUED BY THE GLOBAL RISK MANAGEMENT INSTITUTE; OR

(G) HAS ANY OTHER DESIGNATION, CERTIFICATION, OR LICENSE DETERMINED BY THE SUPERINTENDENT OR OTHER STATE INSURANCE REGULATORY OFFICIAL OR ENTITY TO DEMONSTRATE MINIMUM COMPETENCY IN RISK MANAGEMENT;

(4) 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

(A) HAS ANY ONE OF THE DESIGNATIONS SPECIFIED IN SUBPARAGRAPHS (A) THROUGH (G) OF PARAGRAPH (3) OF SUBSECTION (AA) OF THIS SECTION;

(B) 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

(C) 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 OR OTHER STATE REGULATORY OFFICIAL OR ENTITY TO DEMONSTRATE MINIMUM COMPETENCE IN RISK MANAGEMENT.

S 3. Paragraph 11 of subsection (g) of section 2103 of the insurance law, as added by chapter 687 of the laws of 2003, is amended to read as follows:

(11) of any individual who applies for an insurance agent license in this state who was previously licensed for the same line or lines of authority in another state, provided, however, that the applicant's [home] RESIDENT state grants non-resident licenses to residents of this state on the same basis. Such individual shall also not be required to complete any prelicensing education. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety days of the date of cancellation of the applicant's previous license and if the prior state issues a certification

1 that, at the time of cancellation, the applicant was in good standing in
2 that state or the state's producer database records, maintained by the
3 National Association of Insurance Commissioners, its affiliates or
4 subsidiaries, indicate that the producer is or was licensed in good
5 standing for the line of authority requested. An individual or entity
6 licensed in another state who moves to this state shall make an applica-
7 tion within ninety days of establishing legal residence to become a
8 resident licensee. No prelicensing education or examination shall be
9 required of that person to obtain any line of authority previously held
10 in the prior state except where the superintendent determines otherwise
11 by regulation.

12 S 4. Subparagraph (G) of paragraph 3 of subsection (e) of section 2104
13 of the insurance law, as amended by chapter 687 of the laws of 2003, is
14 amended to read as follows:

15 (G) was previously licensed for the same line or lines of authority in
16 another state, provided, however, that the applicant's [home] RESIDENT
17 state grants non-resident licenses to residents of this state on the
18 same basis. Such individual shall also not be required to complete any
19 prelicensing education. This exemption is only available if the person
20 is currently licensed in that state or if the application is received
21 within ninety days of the date of cancellation of the applicant's previ-
22 ous license and if the prior state issues a certification that, at the
23 time of cancellation, the applicant was in good standing in that state
24 or the state's producer database records, maintained by the National
25 Association of Insurance Commissioners, its affiliates or subsidiaries,
26 indicate that the producer is or was licensed in good standing for the
27 line of authority requested. An individual or entity licensed in another
28 state who moves to this state shall make an application within ninety
29 days of establishing legal residence to become a resident licensee. No
30 prelicensing education or examination shall be required of that person
31 to obtain any line of authority previously held in the prior state
32 except where the superintendent determines otherwise by regulation.

33 S 5. Subsections (a) and (b) of section 2105 of the insurance law,
34 subsection (a) as amended by chapter 626 of the laws of 2006 and
35 subsection (b) as amended by chapter 687 of the laws of 2003, are
36 amended and a new subsection (i) is added to read as follows:

37 (a) The superintendent may issue an excess line broker's license to
38 any person, firm, association or corporation who or which is domiciled
39 or maintains an office in this state and is licensed as an insurance
40 broker under section two thousand one hundred four of this article, or
41 who or which is licensed as an excess line broker in the licensee's
42 [home] RESIDENT state, provided, however, that the applicant's [home]
43 RESIDENT state grants non-resident licenses to residents of this state
44 on the same basis, except that reciprocity is not required in regard to
45 the placement of liability insurance on behalf of a purchasing group or
46 any of its members; authorizing such person, firm, association or corpo-
47 ration to procure, subject to the restrictions herein provided, policies
48 of insurance from insurers which are not authorized to transact business
49 in this state of the kind or kinds of insurance specified in paragraphs
50 four through fourteen, sixteen, seventeen, nineteen, twenty, twenty-two,
51 twenty-seven, twenty-eight and thirty-one of subsection (a) of section
52 one thousand one hundred thirteen of this chapter and in subsection (h)
53 of this section, provided, however, that the provisions of this section
54 and section two thousand one hundred eighteen of this article shall not
55 apply to ocean marine insurance and other contracts of insurance enumer-
56 ated in subsections (b) and (c) of section two thousand one hundred

seventeen of this article. Such license may be suspended or revoked by the superintendent whenever in his OR HER judgment such suspension or revocation will best promote the interests of the people of this state. NOTWITHSTANDING ANYTHING IN THIS CHAPTER TO THE CONTRARY, NO PERSON, FIRM, ASSOCIATION OR CORPORATION IS REQUIRED TO OBTAIN AN EXCESS LINE BROKER'S LICENSE TO PROCURE INSURANCE FOR AN INSURED WHOSE HOME STATE IS A STATE OTHER THAN NEW YORK.

(b) Before the superintendent issues any such license or renewal, there shall be filed in the superintendent's office an application by the person, firm, association or corporation desiring such license, in such form or forms, and supplements thereto, and containing information the superintendent prescribes. For each business entity, the sub-licensor or sub-licensees named in the application shall be designated responsible for the business entity's compliance with the insurance laws, rules and regulations of this state. A person or entity licensed as an excess line broker in his, her or its [home] RESIDENT state may receive a non-resident excess line broker license pursuant to subsection (a) of this section with the submission of the application.

(I) ON AND AFTER JULY 21, 2012, NO FEES RELATING TO THE LICENSING OF AN INDIVIDUAL OR ENTITY AS AN EXCESS LINE BROKER ARE PERMITTED TO BE CHARGED UNLESS THE STATE HAS IN EFFECT AT SUCH TIME LAWS OR REGULATIONS THAT PROVIDE FOR PARTICIPATION BY THE STATE IN THE NATIONAL INSURANCE PRODUCER DATABASE OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, OR ANY OTHER EQUIVALENT UNIFORM NATIONAL DATABASE, FOR THE LICENSURE OF EXCESS LINE BROKERS AND THE RENEWAL OF SUCH LICENSES.

S 6. Subparagraph (B) of paragraph 1 of subsection (f) of section 2106 of the insurance law, as amended by chapter 687 of the laws of 2003, is amended to read as follows:

(B) A "non-resident reinsurance intermediary" means a person who is a non-resident of this state and who is licensed to act as a reinsurance intermediary in their [home] RESIDENT state.

S 7. Paragraphs 2 and 4 of subsection (f) of section 2110 of the insurance law, as amended by chapter 687 of the laws of 2003, are amended to read as follows:

(2) A non-resident insurance producer's license or sub-license may be summarily revoked in the event that the licensee's license as an agent, broker, adjuster or in any other capacity under the insurance law of the licensee's [home] RESIDENT state of domicile or such license of the firm or association of which the licensee is a member, employee or sub-licensor, or such license of the corporation of which the licensee is an officer, director, employee or sub-licensee has been suspended or revoked or renewal thereof denied in the licensee's [home] RESIDENT state of domicile by a procedure affording to the licensee or it a statutory right to a hearing, for action or conduct which, if it had been established upon a hearing before the superintendent, would have constituted grounds for revocation of a license under subsection (a) of this section.

(4) Upon submission to the superintendent of satisfactory proof that a suspension or revocation of a license issued by a [home] RESIDENT state to act as an insurance agent, insurance broker, adjuster or in another licensed capacity under the insurance law of such other state or a denial of renewal thereof has been duly withdrawn, set aside, reversed or voided, the superintendent shall thereupon reinstate and restore any and all licenses revoked in accordance with the provisions of this subsection.

1 S 8. Subsection (a) of section 2118 of the insurance law, as amended
2 by chapter 220 of the laws of 1986, and paragraph 2 as amended by chap-
3 ter 663 of the laws of 1993, is amended to read as follows:

4 (a) (1) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY,
5 THE PLACEMENT OF EXCESS LINE INSURANCE SHALL BE EXCLUSIVELY SUBJECT TO
6 THE LAWS OF THE INSURED'S HOME STATE AS DEFINED IN SUBSECTION (Y) OF
7 SECTION TWO THOUSAND ONE HUNDRED ONE OF THIS ARTICLE. ANY LAW, REGU-
8 LATION, PROVISION OR ACTION OF ANY STATE THAT PURPORTS TO APPLY TO
9 EXCESS LINE INSURANCE SOLD TO, SOLICITED BY, OR NEGOTIATED WITH AN
10 INSURED WHOSE HOME STATE IS ANOTHER STATE SHALL BE PREEMPTED WITH
11 RESPECT TO SUCH APPLICATION.

12 (2) Every licensee licensed pursuant to section two thousand one
13 hundred five of this article shall be required to use due care in
14 selecting the unauthorized insurer from whom policies are procured under
15 his OR HER license.

16 [(2) (A) No policy of insurance may be procured by a licensee from any
17 foreign or alien insurer which is controlled, by a foreign government or
18 by a political subdivision thereof, or which is an agency of any such
19 government or subdivision if the superintendent determines that: (i)
20 such insurer receives a subsidy or other competitive advantage, as a
21 result of such control or status, that would enable it to compete
22 unfairly with similarly situated insurers which are not so controlled or
23 constituted; (ii) such insurer is entitled to claim sovereign immunity
24 as a result of such control and the insurer has not waived the sovereign
25 immunity; or (iii) the use of such insurer would be detrimental to the
26 interests of the people of this state.

27 (B) No licensee shall be deemed to be in noncompliance with this
28 subsection unless: (i) the superintendent has made a prior determination
29 that the foreign or alien insurer from which the licensee procured a
30 policy of insurance should not be used as an excess line insurer in this
31 state in accordance with the provisions of this subsection; or (ii) the
32 licensee knew or should have known that such insurer should not be used
33 as an excess line insurer in accordance with the provisions of this
34 subsection. The superintendent may promulgate regulations to provide
35 guidance to the licensee.

36 (C)] (3)(A) THE SUPERINTENDENT MAY NOT PROHIBIT AN UNAUTHORIZED ALIEN
37 INSURER FROM INSURING ANY RISK OF THE KINDS OF INSURANCE SET FORTH IN
38 SUBSECTION (A) OF SECTION TWO THOUSAND ONE HUNDRED FIVE OF THIS CHAPTER
39 PLACED BY EXCESS LINE BROKERS LICENSED UNDER THIS ARTICLE IF SUCH INSUR-
40 ER IS LISTED ON THE MOST CURRENT QUARTERLY LISTING OF ALIEN INSURERS
41 MAINTAINED BY THE INTERNATIONAL INSURERS DEPARTMENT OF THE NATIONAL
42 ASSOCIATION OF INSURANCE COMMISSIONERS.

43 (B) AN UNAUTHORIZED FOREIGN INSURER IS ELIGIBLE TO INSURE RISKS PLACED
44 BY EXCESS LINE BROKERS LICENSED UNDER THIS ARTICLE PROVIDED SUCH INSURER
45 FURNISHES SATISFACTORY PROOF AS DETERMINED BY THE SUPERINTENDENT IN A
46 REGULATION THAT IT IS PERMITTED TO WRITE THE TYPE OF INSURANCE REQUESTED
47 IN ITS DOMICILIARY JURISDICTION, AND HAS CAPITAL AND SURPLUS OR ITS
48 EQUIVALENT UNDER THE LAWS OF ITS DOMICILIARY JURISDICTION EQUAL TO THE
49 GREATER OF FIFTEEN MILLION DOLLARS OR AN AMOUNT SET FORTH AND DETERMINED
50 BY THE SUPERINTENDENT IN A REGULATION.

51 (4) Every such insurer shall otherwise satisfy all applicable require-
52 ments for placement by an excess line broker.

53 S 9. Paragraph 3 of subsection (b) of section 2118 of the insurance
54 law is amended by adding a new subparagraph (F) to read as follows:

55 (F) AN EXCESS LINE BROKER SEEKING TO PROCURE OR PLACE INSURANCE WITH
56 AN UNAUTHORIZED INSURER FOR AN EXEMPT COMMERCIAL PURCHASER SHALL NOT BE

REQUIRED TO SATISFY ANY REQUIREMENT TO MAKE A DILIGENT EFFORT TO DETERMINE WHETHER THE FULL AMOUNT OR TYPE OF INSURANCE SOUGHT BY SUCH EXEMPT COMMERCIAL PURCHASER CAN BE OBTAINED FROM AUTHORIZED INSURERS IF:

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

(II) THE EXEMPT COMMERCIAL PURCHASER HAS SUBSEQUENTLY REQUESTED, IN WRITING, THE BROKER TO PROCURE OR PLACE SUCH INSURANCE FROM AN UNAUTHORIZED INSURER.

S 10. Paragraphs 5, 8 and 9 of subsection (b) of section 2118 of the insurance law, paragraph 5 as amended by chapter 630 of the laws of 1988 and paragraphs 8 and 9 as added by chapter 687 of the laws of 2003, are amended to read as follows:

(5) Before placing business with an unauthorized insurer, each licensee shall ascertain and verify the fact that such insurer is authorized in its domiciliary jurisdiction to write the insurance policy proposed to be procured from it by the licensee. No unauthorized insurer shall be deemed unacceptable for placement of business solely on the ground that it has been so authorized to write such business in its domiciliary jurisdiction for a period of less than three years preceding the placement of such risk by the licensee. [In determining whether business may be placed with such unauthorized insurer, the superintendent shall consider such factors as: the interests of the public and policyholders, the length of time such insurer has been authorized in its domiciliary jurisdiction and elsewhere, its financial condition, and unavailability of particular coverages from authorized insurers.] IF AN UNAUTHORIZED INSURER DOES NOT MEET THE ELIGIBILITY REQUIREMENTS OF PARAGRAPH (2) OF SUBSECTION (A) OF SECTION TWO THOUSAND ONE HUNDRED EIGHTEEN OF THIS CHAPTER, AN EXCESS LINE BROKER MAY NONETHELESS PLACE A RISK WITH SUCH AN INSURER UPON AN AFFIRMATIVE FINDING OF ACCEPTABILITY BY THE SUPERINTENDENT. THE FINDING SHALL BE BASED UPON SUCH FACTORS AS QUALITY OF MANAGEMENT, CAPITAL AND SURPLUS OF ANY PARENT COMPANY, COMPANY UNDERWRITING PROFIT AND INVESTMENT INCOME TRENDS, MARKET AVAILABILITY AND COMPANY RECORD AND REPUTATION WITHIN THE INDUSTRY. IN NO EVENT SHALL THE SUPERINTENDENT MAKE AN AFFIRMATIVE FINDING OF ACCEPTABILITY WHEN THE UNAUTHORIZED INSURER'S CAPITAL AND SURPLUS IS LESS THAN FOUR MILLION FIVE HUNDRED THOUSAND DOLLARS.

(8) For purposes of this article, unless exempt under the provisions of section two thousand one hundred seventeen of this article, a policy of insurance obtained from an insurer not authorized to transact business in this state must be procured pursuant to an excess line license when [the entire property or risk exposure insured or any part thereof, is located in this state and:] THE HOME STATE OF THE INSURED IS NEW YORK.

[(A) the insured negotiated to acquire the coverage from within this state; or

(B) the policy was delivered to the insured in this state.]

(9) Nothing in this article shall prohibit an excess line licensee from placing risks under the excess or surplus line law of another state provided that the excess line licensee[:

(A)] is licensed under the [applicable state law] LAWS OF THE HOME STATE OF THE INSURED as an excess or surplus line broker or places such risk through a licensed excess or surplus line broker in such state[: and

1 (B) either no portion of the property or risk exposure is in this
2 state, or the insured has property or risk exposure both in this state
3 and in another state where the insured maintains a bona fide office from
4 which it negotiated to acquire the coverage and to which the policy is
5 delivered].

6 S 10-a. Paragraph 1 of subsection (d) of section 2118 of the insurance
7 law, as amended by chapter 190 of the laws of 1990, is amended to read
8 as follows:

9 (1) Every person, firm, association or corporation licensed pursuant
10 to the provisions of section two thousand one hundred five of this arti-
11 cle shall pay A PREMIUM TAX to the superintendent IN a sum equal to
12 three and six-tenths percent of the gross premiums charged the insureds
13 by the insurers for insurance procured by such licensee pursuant to such
14 license, less the amount of such premiums returned to such insureds.
15 Where the insurance covers property or risks located or resident both in
16 and out of this state, AND THE COVERAGE INCEPTS ON OR PRIOR TO JULY 20,
17 2011, the sum payable shall be computed on that portion of the gross
18 premiums allocated to this state pursuant to subsection (b) of section
19 nine thousand one hundred two of this chapter less the amount of gross
20 premiums allocated to this state and returned to the insured; PROVIDED,
21 HOWEVER, THAT FOR SUCH POLICIES IN WHICH COVERAGE INCEPTS ON OR AFTER
22 JULY 21, 2011, THIS TAX SHALL ONLY APPLY TO EXCESS LINE TRANSACTIONS IN
23 WHICH THE INSURED'S HOME STATE IS NEW YORK AS THAT TERM IS DEFINED IN
24 SUBSECTION (Y) OF SECTION TWO THOUSAND ONE HUNDRED ONE OF THIS ARTICLE,
25 AND SUCH TAX SHALL NOT BE ALLOCATED PURSUANT TO SUBSECTION (B) OF
26 SECTION NINE THOUSAND ONE HUNDRED TWO OF THIS CHAPTER. FOR PURPOSES OF
27 THIS SECTION, THE TERM "PREMIUM TAX" MEANS, WITH RESPECT TO EXCESS LINE
28 INSURANCE, ANY TAX, FEE, ASSESSMENT OR ANY OTHER CHARGE IMPOSED BY THE
29 STATE DIRECTLY OR INDIRECTLY BASED ON ANY PAYMENT MADE AS CONSIDERATION
30 FOR SUCH POLICY OF INSURANCE, INCLUDING PREMIUM DEPOSITS, ASSESSMENTS,
31 REGISTRATION FEES AND ANY OTHER COMPENSATION GIVEN IN CONSIDERATION FOR
32 SUCH POLICY OF INSURANCE.

33 S 11. Subsection (b) of section 2134 of the insurance law, as added by
34 chapter 687 of the laws of 2003, is amended to read as follows:

35 (b) In addition to the requirements of subsection (a) of this section,
36 a nonresident insurance producer who changes his, her or its [home]
37 RESIDENT state, or a resident insurance producer who changes his, her or
38 its [home] RESIDENT state to another state, within thirty days of the
39 date of change, shall provide certification of such change from the new
40 [home] RESIDENT state. No fee or license application shall be required
41 therefor.

42 S 12. Subsections (a), (b) and (d) of section 2136 of the insurance
43 law, as added by chapter 687 of the laws of 2003, are amended to read as
44 follows:

45 (a) the applicant has a current and valid license in his or her [home]
46 RESIDENT state and is in good standing in his or her [home] RESIDENT
47 state;

48 (b) the applicant has submitted a completed application in the form
49 prescribed by the superintendent or submitted the application for licen-
50 sure submitted to his or her [home] RESIDENT state;

51 (d) the applicant's [home] RESIDENT state awards nonresident insurance
52 producer licenses to residents of this state on the same basis as
53 provided in this subsection.

54 S 13. Subparagraph (E) of paragraph 1 of subsection (f) of section
55 2137 of the insurance law, as added by chapter 499 of the laws of 2009,
56 is amended to read as follows:

(E) any individual seeking to be named a licensee or sub-licensee, who is a nonresident and a life settlement broker or who is licensed as an insurance producer with a life line of authority in the individual's [home] RESIDENT state for at least one year; provided, however, that the individual's [home] RESIDENT state grants nonresident licenses to residents of this state on the same basis.

S 14. Subsection (a) and paragraph 1 of subsection (b) of section 9102 of the insurance law, as amended by chapter 190 of the laws of 1990, are amended to read as follows:

(a) In determining the amount of direct premiums taxable in this state, all such premiums written, procured, or received in this state shall be deemed written on property or risks located or resident in this state except such premiums properly allocated and reported as taxable premiums of any other state or states, PROVIDED THAT FOR PURPOSES OF INSURANCE PROCURED BY EXCESS LINE BROKERS PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FIVE OF THIS CHAPTER, NO SUCH ALLOCATION SHALL BE MADE WHERE THE EXCESS LINE TRANSACTION INVOLVES AN INSURED WHOSE HOME STATE IS NEW YORK AS THAT TERM IS DEFINED IN SUBSECTION (Y) OF SECTION TWO THOUSAND ONE HUNDRED ONE OF THIS CHAPTER WITH RESPECT TO EXCESS LINE PLACEMENTS IN WHICH COVERAGE INCEPTS ON OR AFTER JULY 21, 2011.

(1) In determining the amount of gross premiums taxable in this state pursuant to paragraph one of subsection (d) of section two thousand one hundred eighteen of this chapter, where a placement of excess line insurance INCEPTS ON OR PRIOR TO JULY 20, 2011 AND covers property or risks located or resident both in and out of this state, the sum paid to the superintendent shall be computed on that portion of the policy premium that is attributable to property or risks located or resident in this state, as determined by reference to an allocation schedule prescribed by the superintendent in a regulation. WITH RESPECT TO EXCESS LINE PLACEMENTS IN WHICH COVERAGE INCEPTS ON OR AFTER JULY 21, 2011, ONE HUNDRED PERCENT OF THE PREMIUM CHARGED SHALL BE SUBJECT TO THE TAX WITHOUT ALLOCATION, BUT ONLY TO PLACEMENTS WHERE THE HOME STATE OF THE INSURED, AS THAT TERM IS DEFINED IN SUBSECTION (Y) OF SECTION TWO THOUSAND ONE HUNDRED ONE OF THIS CHAPTER, IS NEW YORK.

S 15. Subsection (b) of section 1550 of the tax law, as added by chapter 190 of the laws of 1990, is amended and two new subsections (d) and (e) are added to read as follows:

(b) The term "premium" includes all amounts paid as consideration for insurance contracts and shall include premium deposits, assessments, policy fees, membership fees, REGISTRATION FEES and every other compensation for such contract. The term "premium" includes all such amounts paid irrespective of whether such amounts are deductible for federal income tax purposes.

(D) THE TERM "INDEPENDENTLY PROCURED INSURANCE" MEANS INSURANCE OBTAINED DIRECTLY BY AN INSURED FROM AN INSURER NOT AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE UNDER A CERTIFICATE OF AUTHORITY FROM THE SUPERINTENDENT OF INSURANCE.

(E) THE TERM "PREMIUM TAX" MEANS, WITH RESPECT TO INDEPENDENTLY PROCURED INSURANCE, ANY TAX, FEE, ASSESSMENT OR OTHER CHARGE IMPOSED BY THIS STATE DIRECTLY OR INDIRECTLY BASED ON ANY PAYMENT MADE AS CONSIDERATION FOR SUCH INSURANCE, INCLUDING PREMIUM DEPOSITS, ASSESSMENTS, REGISTRATION FEES AND ANY OTHER COMPENSATION GIVEN IN CONSIDERATION FOR SUCH A POLICY OF INSURANCE.

S 16. Section 1551 of the tax law, as amended by chapter 73 of the laws of 1991, is amended to read as follows:

1 S 1551. Imposition of tax. There is hereby imposed on any person who
2 [purchases or renews a taxable insurance contract from an insurer not
3 authorized to transact business in this state under a certificate of
4 authority from the superintendent of insurance] INDEPENDENTLY PROCURES
5 INSURANCE, a PREMIUM tax at the rate of three and six-tenths percent of
6 the premiums paid or to be paid, less returns thereon, for such insur-
7 ance. Nothing in this article modifies or abrogates any provision of the
8 insurance law. THIS TAX SHALL ONLY APPLY TO INDEPENDENTLY PROCURED
9 INSURANCE TRANSACTIONS FOR INSURED WHOSE HOME STATE IS NEW YORK AS THAT
10 TERM IS DEFINED IN SUBSECTION (Y) OF SECTION TWO THOUSAND ONE HUNDRED
11 ONE OF THE INSURANCE LAW ON COVERAGE WHICH INCEPTS ON OR AFTER JULY 21,
12 2011.

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

15 S 1552. Allocation. Where the taxable insurance contract covers risks
16 located or resident both within and without this state, WITH RESPECT TO
17 INDEPENDENTLY PROCURED INSURANCE IN WHICH COVERAGE INCEPTS ON OR PRIOR
18 TO JULY TWENTIETH, TWO THOUSAND ELEVEN the amount of premiums allocable
19 to risks resident or located within this state shall be determined
20 pursuant to rules and regulations of the commissioner of taxation and
21 finance. In promulgating such rules and regulations, the commissioner of
22 taxation and finance shall give due consideration to the rules and regu-
23 lations promulgated by the superintendent of insurance pursuant to
24 subsection (b) of section nine thousand one hundred two of the insurance
25 law. INDEPENDENTLY PROCURED INSURANCE POLICIES INCEPTING ON AND AFTER
26 JULY TWENTY-FIRST, TWO THOUSAND ELEVEN SHALL BE SUBJECT TO TAX ON ONE
27 HUNDRED PERCENT OF THE PREMIUM CHARGED WITHOUT ALLOCATION.

28 S 18. This act shall take effect on July 21, 2011 and applies to all
29 insurance policies procured by excess line licensees with an effective
30 date on or after July 21, 2011, provided, however, that the amendments
31 to subsection (b) of section 2118 of the insurance law made by sections
32 nine and ten of this act shall not affect the expiration and reversion
33 of such subsection and shall be deemed to expire therewith.

34 PART J

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

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

46 (a) sections one through eight shall not apply to taxable years begin-
47 ning on or after January 1, 2011;

48 (b) sections nine, twelve, the amendment made to paragraph 9 of
49 subsection (a) of section 1452 of the tax law by section thirteen,
50 sections fifteen, sixteen, eighteen, nineteen, twenty, twenty-three,
51 twenty-seven, thirty and thirty-two, the amendment made to paragraph 9
52 of subdivision (a) of section 11-640 of the administrative code of the
53 city of New York by section thirty-three, sections thirty-five, thirty-
54 six, thirty-eight, thirty-nine, forty, and forty-five shall not apply to

corporations other than savings banks and savings and loan associations for taxable years beginning on or after January 1, 2011.

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

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

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

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

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

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

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

(c) The provisions of sections one, thirty-one, thirty-two, thirty-three, thirty-six, thirty-seven, forty through forty-five, forty-seven and forty-eight of this act shall apply to taxable years beginning after December 31, 1986[, provided, however, that the amendments made by

1 sections thirty-six and forty-one of this act, and new subdivision (i)
2 of section 11-641 of the administrative code of the city of New York as
3 added by section forty-four of this act shall not apply to taxable years
4 beginning on or after January 1, 2011];

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

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

15 (1) Notwithstanding anything to the contrary contained in this section
16 other than subsection (n) of this section, a corporation [that was in
17 existence before January first, two thousand ten and was] subject to tax
18 under article nine-A of this chapter [for its last taxable year begin-
19 ning before January first, two thousand ten], shall continue to be taxa-
20 ble under such article [for all taxable years beginning on or after
21 January first, two thousand ten and before January first, two thousand
22 eleven]. The preceding sentence shall not apply to any taxable year
23 during which such corporation is a banking corporation described in
24 paragraphs one through eight of subsection (a) of this section. Notwith-
25 standing anything to the contrary contained in this section other than
26 subsection (n) of this section, a banking corporation [or corporation]
27 that [was in existence before January first, two thousand ten and] was
28 subject to tax under this article [for its last taxable year beginning
29 before January first, two thousand ten], shall continue to be taxable
30 under this article [for all taxable years beginning on or after January
31 first, two thousand ten and before January first, two thousand eleven or
32 in which the corporation satisfies the requirements for a corporation to
33 elect to be taxable under this article]. ONLY IF THE CORPORATION IS A
34 BANKING CORPORATION AS DEFINED IN SUBSECTION (A) OF THIS SECTION AS OF
35 JANUARY FIRST, TWO THOUSAND ELEVEN. Provided further, that nothing in
36 this subsection shall prohibit a corporation that elected pursuant to
37 subsection (d) of this section to be taxable under article nine-A of
38 this chapter from revoking that election in accordance with such
39 subsection (d).

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

1 existence before January first, two thousand ten but first becomes a
2 taxpayer in a taxable year beginning on or after January first, two
3 thousand ten and before January first, two thousand eleven,] shall be
4 considered, for purposes of this paragraph, to have been subject to tax
5 under this article [for its last taxable year beginning before January
6 first, two thousand ten] if such corporation would have been subject to
7 tax under this article for such taxable year if it had been a taxpayer
8 during such taxable year.

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

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

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

50 (1) Notwithstanding anything to the contrary contained in this section
51 other than subdivision (m) of this section, a corporation [that was in
52 existence before January first, two thousand ten and was] subject to tax
53 under subchapter two of this chapter [for its last taxable year begin-
54 ning before January first, two thousand ten,] shall continue to be taxa-
55 ble under such subchapter for all taxable years [beginning on or after
56 January first, two thousand ten and before January first, two thousand

eleven]. 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 and was subject to tax under this subchapter for its last taxable year beginning before January first, two thousand ten,] shall continue to be taxable under this subchapter for all taxable years [beginning on or after January first, two thousand ten and before January first, two thousand eleven or] ONLY IF THE CORPORATION IS A BANKING CORPORATION AS DEFINED IN SUBDIVISION (A) OF THIS SECTION AS OF JANUARY FIRST, TWO THOUSAND ELEVEN 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 but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand ten and before January first, two thousand eleven,] shall be considered for purposes of this paragraph to have been subject to tax under subchapter two of this chapter for its last taxable year [beginning before January first, two thousand ten] if such corporation would have been subject to tax under such subchapter for such taxable year if it had been a taxpayer during such taxable year. A corporation [that was in existence before January first, two thousand ten but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand ten and before January first, two thousand eleven,] shall be considered for purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year [beginning before January first, two thousand ten] if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year.

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

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

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

25 S 6. Subparagraph (iv) of paragraph 2 of subdivision (f) of section
26 1462 of the tax law, as amended by chapter 24 of the laws of 2010, is
27 amended to read as follows:

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

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

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

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

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

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

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

31 S 8. This act shall take effect immediately.

32

PART K

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (k) "Commercial gallonage" means gallonage (1) which is [nonautomo-
27 tive-type] NON-HIGHWAY diesel motor fuel [(which is not enhanced diesel
28 motor fuel)] or residual petroleum product, (2) which is included in the
29 full measure of the [nonautomotive-type] NON-HIGHWAY diesel motor fuel
30 component or the residual petroleum product component of the tax imposed
31 under section three hundred one-a of this article, [and] (3) which does
32 not (and will not) qualify (A) for the utility credit or reimbursement
33 provided for in section three hundred one-d of this article, (B) as
34 "manufacturing gallonage", as such term is defined in subdivision (m) of
35 this section, (C) for the not-for-profit organization exemption provided
36 for in subdivision (h) of section three hundred one-b of this article,
37 or (D) for the heating exemption provided for in paragraph two of subdivi-
38 sion (d) of section three hundred one-b of this article or the heating
39 reimbursement provided for in paragraph two of subdivision (a) of
40 section three hundred one-c of this article, AND (4) WHICH WILL NOT BE
41 USED NOR HAS BEEN USED IN THE FUEL TANK CONNECTING WITH THE ENGINE OF A
42 VESSEL. No gallonage shall qualify as "commercial gallonage" where such
43 gallonage is eligible for the (i) utility credit or reimbursement under
44 such section three hundred one-d of this article, (ii) [if before Janu-
45 ary first, nineteen hundred ninety-eight, the manufacturing exemption or
46 reimbursement under paragraph one of subdivision (b) of section three
47 hundred one-j of this article and, if on or after January first, nine-
48 teen hundred ninety-eight, the] "manufacturing exemption" under para-
49 graph [four] THREE of subdivision (f) of section three hundred one-a of
50 this article, (iii) [the] not-for-profit organization exemption under
51 subdivision (h) of section three hundred one-b of this article, or (iv)
52 heating exemption provided for in paragraph two of subdivision (d) of
53 section three hundred one-b of this article or the heating reimbursement
54 provided for in paragraph two of subdivision (a) of section three
55 hundred one-c of this article. The commissioner shall require such docu-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 PART M

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

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

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

1

PART N

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

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

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

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

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

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

23 (I) a commercial bowling establishment, or

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

26 (B) the rules for the operation of such game shall be as prescribed by
27 regulations promulgated and adopted by the division, provided however,
28 that such rules shall provide that no person under the age of twenty-one
29 may participate in such games on the premises of a licensee who holds a
30 license issued pursuant to the alcoholic beverage control law to sell
31 alcoholic beverages for consumption on the premises; and, provided,
32 further, that such regulations may be revised on an emergency basis not
33 later than ninety days after the enactment of this paragraph in order to
34 conform such regulations to the requirements of this paragraph]; or

35 S 2. This act shall take effect immediately.

36

PART O

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

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

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

50 F. (1) THE DIVISION MAY ADMINISTER A FREE PLAY ALLOWANCE PROGRAM TO
51 OFFER PLAYERS OR PROSPECTIVE PLAYERS OF VIDEO LOTTERY GAMES FREE PLAY
52 CREDITS FOR THE PURPOSE OF INCREASING REVENUES EARNED BY THE VIDEO
53 LOTTERY PROGRAM FOR THE SUPPORT OF EDUCATION. FOR THE PURPOSES OF THIS

SUBDIVISION, "FREE PLAY ALLOWANCE CREDIT" MEANS A SPECIFIED DOLLAR AMOUNT THAT (I) MAY BE USED BY A PLAYER TO PLAY A VIDEO LOTTERY GAME WITHOUT PAYING ANY OTHER CONSIDERATION, AND (II) IS NOT USED IN THE CALCULATION OF TOTAL REVENUE WAGERED AFTER PAYOUT OF PRIZES.

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

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

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

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

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

S 3. This act shall take effect immediately.

PART P

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

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

S 2. This act shall take effect immediately.

1

PART Q

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

5 (3) fifty percent of the total amount for which tickets have been sold
6 for games known as: (A) the "Daily Numbers Game" or "Win 4", discrete
7 games in which the participants select no more than three or four of
8 their own numbers to match with three or four numbers drawn by the divi-
9 sion for purposes of determining winners of such games, (B) "Pick 10",
10 offered no more than once daily, in which participants select from a
11 specified field of numbers a subset of ten numbers to match against a
12 subset of numbers to be drawn by the division from such field of numbers
13 for the purpose of determining winners of such game, (C) "Take 5",
14 offered no more than once daily, in which participants select from a
15 specified field of numbers a subset of five numbers to match against a
16 subset of five numbers to be drawn by the division from such field of
17 numbers for purposes of determining winners of such game, and (D) any
18 joint, multi-jurisdiction, and out-of-state lottery, EXCEPT SUCH PERCENT
19 MAY EXCEED FIFTY PERCENT OF THE TOTAL AMOUNT FOR WHICH TICKETS HAVE BEEN
20 SOLD FOR ANY JOINT, MULTI-JURISDICTION, AND OUT-OF-STATE LOTTERY IF AT
21 LEAST TWO-THIRDS OF THE LOTTERY JURISDICTIONS PARTICIPATING IN SUCH
22 LOTTERY AGREE TO A PERCENTAGE THAT EXCEEDS FIFTY PERCENT AND EXCEPT AS
23 OTHERWISE PROVIDED IN PARAGRAPH ONE OF SUBDIVISION B OF THIS SECTION FOR
24 ANY JOINT, MULTI-JURISDICTION, OUT-OF-STATE VIDEO LOTTERY GAMING; or
25 S 2. This act shall take effect immediately.

26

PART R

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

30 Notwithstanding section one hundred twenty-one of the state finance
31 law, on or before the twentieth day of each month, the division shall
32 pay into the state treasury, to the credit of the state lottery fund
33 created by section ninety-two-c of the state finance law, not less than
34 forty-five percent of the total amount for which tickets have been sold
35 for games defined in paragraph four of subdivision a of this section
36 during the preceding month, not less than thirty-five percent of the
37 total amount for which tickets have been sold for games defined in para-
38 graph three of subdivision a of this section during the preceding month,
39 not less than twenty percent of the total amount for which tickets have
40 been sold for games defined in paragraph two of subdivision a of this
41 section during the preceding month, provided however that for games with
42 a prize payout of seventy-five percent of the total amount for which
43 tickets have been sold, the division shall pay not less than ten percent
44 of sales into the state treasury and not less than twenty-five percent
45 of the total amount for which tickets have been sold for games defined
46 in paragraph one of subdivision a of this section during the preceding
47 month; and the balance of the total revenue after payout for prizes for
48 games known as "video lottery gaming," INCLUDING ANY JOINT, MULTI-JURIS-
49 DICTION, AND OUT-OF-STATE VIDEO LOTTERY GAMING,

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

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

5 S 3. This act shall take effect immediately.

6 PART S

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

11 (a) Any racing association or corporation or regional off-track
12 betting corporation, authorized to conduct pari-mutuel wagering under
13 this chapter, desiring to display the simulcast of horse races on which
14 pari-mutuel betting shall be permitted in the manner and subject to the
15 conditions provided for in this article may apply to the board for a
16 license so to do. Applications for licenses shall be in such form as may
17 be prescribed by the board and shall contain such information or other
18 material or evidence as the board may require. No license shall be
19 issued by the board authorizing the simulcast transmission of thorough-
20 bred races from a track located in Suffolk county. The fee for such
21 licenses shall be five hundred dollars per simulcast facility per year
22 payable by the licensee to the board for deposit into the general fund.
23 Except as provided herein, the board shall not approve any application
24 to conduct simulcasting into individual or group residences, homes or
25 other areas for the purposes of or in connection with pari-mutuel wager-
26 ing. The board may approve simulcasting into residences, homes or other
27 areas to be conducted jointly by one or more regional off-track betting
28 corporations and one or more of the following: a franchised corporation,
29 thoroughbred racing corporation or a harness racing corporation or asso-
30 ciation; provided (i) the simulcasting consists only of those races on
31 which pari-mutuel betting is authorized by this chapter at one or more
32 simulcast facilities for each of the contracting off-track betting
33 corporations which shall include wagers made in accordance with section
34 one thousand fifteen, one thousand sixteen and one thousand seventeen of
35 this article; provided further that the contract provisions or other
36 simulcast arrangements for such simulcast facility shall be no less
37 favorable than those in effect on January first, two thousand five; (ii)
38 that each off-track betting corporation having within its geographic
39 boundaries such residences, homes or other areas technically capable of
40 receiving the simulcast signal shall be a contracting party; (iii) the
41 distribution of revenues shall be subject to contractual agreement of
42 the parties except that statutory payments to non-contracting parties,
43 if any, may not be reduced; provided, however, that nothing herein to
44 the contrary shall prevent a track from televising its races on an
45 irregular basis primarily for promotional or marketing purposes as found
46 by the board. For purposes of this paragraph, the provisions of section
47 one thousand thirteen of this article shall not apply. Any agreement
48 authorizing an in-home simulcasting experiment commencing prior to May
49 fifteenth, nineteen hundred ninety-five, may, and all its terms, be
50 extended until June thirtieth, two thousand [eleven] TWELVE; provided,
51 however, that any party to such agreement may elect to terminate such
52 agreement upon conveying written notice to all other parties of such
53 agreement at least forty-five days prior to the effective date of the
54 termination, via registered mail. Any party to an agreement receiving

1 such notice of an intent to terminate, may request the board to mediate
2 between the parties new terms and conditions in a replacement agreement
3 between the parties as will permit continuation of an in-home experiment
4 until June thirtieth, two thousand [eleven] TWELVE; and (iv) no in-home
5 simulcasting in the thoroughbred special betting district shall occur
6 without the approval of the regional thoroughbred track.

7 S 2. Subparagraph (iii) of paragraph d of subdivision 3 of section
8 1007 of the racing, pari-mutuel wagering and breeding law, as amended by
9 section 2 of part C of chapter 134 of the laws of 2010, is amended to
10 read as follows:

11 (iii) Of the sums retained by a receiving track located in Westchester
12 county on races received from a franchised corporation, for the period
13 commencing January first, two thousand eight and continuing through June
14 thirtieth, two thousand [eleven] TWELVE, the amount used exclusively for
15 purses to be awarded at races conducted by such receiving track shall be
16 computed as follows: of the sums so retained, two and one-half percent
17 of the total pools. Such amount shall be increased or decreased in the
18 amount of fifty percent of the difference in total commissions deter-
19 mined by comparing the total commissions available after July twenty-
20 first, nineteen hundred ninety-five to the total commissions that would
21 have been available to such track prior to July twenty-first, nineteen
22 hundred ninety-five.

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

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

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

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

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

1 The provisions of this section shall govern the simulcasting of races
2 conducted at thoroughbred tracks located in another state or country on
3 any day during which a franchised corporation is not conducting a race
4 meeting in Saratoga county at Saratoga thoroughbred racetrack until June
5 thirtieth, two thousand [eleven] TWELVE. Every off-track betting corpo-
6 ration branch office and every simulcasting facility licensed in accord-
7 ance with section one thousand seven that have entered into a written
8 agreement with such facility's representative horsemen's organization as
9 approved by the board, one thousand eight or one thousand nine of this
10 article shall be authorized to accept wagers and display the live full-
11 card simulcast signal of thoroughbred tracks (which may include quarter
12 horse or mixed meetings provided that all such wagering on such races
13 shall be construed to be thoroughbred races) located in another state or
14 foreign country, subject to the following provisions; provided, however,
15 no such written agreement shall be required of a franchised corporation
16 licensed in accordance with section one thousand seven of this article:

17 S 6. The opening paragraph of section 1018 of the racing, pari-mutuel
18 wagering and breeding law, as amended by section 6 of part C of chapter
19 134 of the laws of 2010, is amended to read as follows:

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

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

39 S 32. This act shall take effect immediately and the pari-mutuel tax
40 reductions in section six of this act shall expire and be deemed
41 repealed on July 1, [2011] 2012; provided, however, that nothing
42 contained herein shall be deemed to affect the application, qualifica-
43 tion, expiration, or repeal of any provision of law amended by any
44 section of this act, and such provisions shall be applied or qualified
45 or shall expire or be deemed repealed in the same manner, to the same
46 extent and on the same date as the case may be as otherwise provided by
47 law; provided further, however, that sections twenty-three and twenty-
48 five of this act shall remain in full force and effect only until May 1,
49 1997 and at such time shall be deemed to be repealed.

50 S 8. Section 54 of chapter 346 of the laws of 1990, amending the
51 racing, pari-mutuel wagering and breeding law and other laws relating to
52 simulcasting and the imposition of certain taxes, as amended by section
53 8 of part C of chapter 134 of the laws of 2010, is amended to read as
54 follows:

55 S 54. This act shall take effect immediately; provided, however,
56 sections three through twelve of this act shall take effect on January

1 1, 1991, and section 1013 of the racing, pari-mutuel wagering and breed-
2 ing law, as added by section thirty-eight of this act, shall expire and
3 be deemed repealed on July 1, [2011] 2012; and section eighteen of this
4 act shall take effect on July 1, 2008 and sections fifty-one and fifty-
5 two of this act shall take effect as of the same date as chapter 772 of
6 the laws of 1989 took effect.

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

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

ration shall be one-half of one per centum of total daily on-track pari-mutuel pools resulting from regular, multiple and exotic bets and three per centum of super exotic bets provided, however, that for the period September tenth, nineteen hundred ninety-nine through March thirty-first, two thousand one, such payment shall be six-tenths of one per centum of regular, multiple and exotic pools and for the period April first, two thousand one through December thirty-first, two thousand [eleven] TWELVE, such payment shall be seven-tenths of one per centum of such pools.

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

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

S 11. This act shall take effect immediately.

PART T

Section 1. Paragraph (h) of subdivision 12-G of section 210 of the tax law is REPEALED.

S 2. This act shall take effect immediately.

PART U

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

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

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

(iii) Every person who owns or, if the owner is not the operator, then any person who operates one or more vending machines through which cigarettes or tobacco products are sold in this state, regardless of whether located on the premises of the vending machine owner or, if the owner is not the operator, then the premises of the operator or the premises of any other person, must pay an application fee with the quarterly return [described by subparagraph (i) of this paragraph] OF FIFTY DOLLARS for each vending machine[, which is based on gross sales of that vending machine during the previous calendar year. The application fee is: two

1 hundred fifty dollars for each vending machine with gross sales totaling
2 less than one hundred thousand dollars; six hundred twenty-five dollars
3 for each vending machine with gross sales totaling at least one hundred
4 thousand dollars but less than one million dollars; and one thousand two
5 hundred fifty dollars for each vending machine with gross sales totaling
6 at least one million dollars]. The department will issue a registration
7 certificate, as prescribed by the commissioner, after receipt of a
8 registration application and the appropriate registration fee, prior to
9 the next succeeding January first.

10 (b) Every retail dealer and every person who owns or, if the owner is
11 not the operator, then any person who operates one or more vending
12 machines through which cigarettes or tobacco products are sold in this
13 state who commences business after the last day of August, nineteen
14 hundred ninety, or who commences selling cigarettes or tobacco products
15 at retail through a new or different place of business in this state
16 after such date, or who commences selling cigarettes or tobacco products
17 through new or different vending machines after such date, must file
18 with the commissioner an application for registration, in a form
19 prescribed by him or her, at least thirty days prior to commencing busi-
20 ness or commencing sales. Each application must be accompanied by an
21 application fee OF TWO HUNDRED DOLLARS for each retail place of business
22 and FIFTY DOLLARS FOR each vending machine to be registered. [The amount
23 of the application fee is determined by subparagraphs (ii) and (iii) of
24 paragraph (a) of this subdivision, except that any retail place of busi-
25 ness or vending machine with zero dollars in gross sales during the
26 previous calendar year is subject to the lowest application fee required
27 by such subparagraphs.] The department, within ten days after receipt of
28 an application for registration under this paragraph and payment of the
29 proper fee for application for registration, will issue a registration
30 certificate, as prescribed by the commissioner, for each retail place of
31 business or cigarette or tobacco products vending machine registered.

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

34 S 482. Deposit and disposition of revenue. (a) All taxes, fees, inter-
35 est and penalties collected or received by the commissioner under this
36 article and article twenty-A of this chapter shall be deposited and
37 disposed of pursuant to the provisions of section one hundred seventy-
38 one-a of this chapter. (b) From the taxes, interest and penalties
39 collected or received by the commissioner under sections four hundred
40 seventy-one and four hundred seventy-one-a of this article, effective on
41 and after March first, two thousand, forty-nine and fifty-five
42 hundredths, and effective on and after February first, two thousand two,
43 forty-three and seventy hundredths; and effective on and after May
44 first, two thousand two, sixty-four and fifty-five hundredths; and
45 effective on and after April first, two thousand three, sixty-one and
46 twenty-two hundredths percent; and effective on and after June third,
47 two thousand eight, seventy and sixty-three hundredths percent; and
48 effective on and after July first, two thousand ten, seventy-six percent
49 collected or received under those sections must be deposited to the
50 credit of the tobacco control and insurance initiatives pool to be
51 established and distributed by the commissioner of health in accordance
52 with section twenty-eight hundred seven-v of the public health law. [(c)
53 From the fees collected or received by the commissioner under subdivi-
54 sion two of section four hundred eighty-a of this article, effective on
55 or after September first, two thousand nine, any monies collected or
56 received under that section in excess of three million dollars must be

1 deposited to the credit of the tobacco control and insurance initiatives
2 pool to be distributed by the commissioner of health in accordance with
3 section twenty-eight hundred seven-v of the public health law.]

4 S 3. Subdivisions (a) and (b) of section 92-dd of the state finance
5 law, as amended by section 125-c of part C of chapter 58 of the laws of
6 2009, are amended to read as follows:

7 (a) On and after April first, two thousand five, such fund shall
8 consist of the revenues heretofore and hereafter collected or required
9 to be deposited pursuant to paragraph (a) of subdivision eighteen of
10 section twenty-eight hundred seven-c, and sections twenty-eight hundred
11 seven-j, twenty-eight hundred seven-s and twenty-eight hundred seven-t
12 of the public health law, [subdivisions (b) and (c) of] section four
13 hundred eighty-two of the tax law and required to be credited to the
14 tobacco control and insurance initiatives pool, subparagraph (O) of
15 paragraph four of subsection (j) of section four thousand three hundred
16 one of the insurance law, section twenty-seven of part A of chapter one
17 of the laws of two thousand two and all other moneys credited or trans-
18 ferred thereto from any other fund or source pursuant to law.

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

35 S 4. This act shall take effect immediately; provided, however, that
36 section one of this act shall be deemed to have been in full force and
37 effect on and after April 1, 2009 and shall apply only to fees related
38 to applications for registration for the 2010 calendar year and there-
39 after; and provided further, however, that sections two and three of
40 this act shall be deemed to have been in full force and effect on and
41 after September 1, 2009.

42 PART V

43 Section 1. Paragraph 34 of subdivision (b) of section 1101 of the tax
44 law, as amended by section 1 of part WW of chapter 57 of the laws of
45 2010, is amended to read as follows:

46 (34) Transportation service. The service of transporting, carrying or
47 conveying a person or persons by livery service WHERE PAYMENT FOR THE
48 SERVICE IS IN A FORM OTHER THAN CASH; whether to a single destination or
49 to multiple destinations; and whether the compensation paid by or on
50 behalf of the passenger is based on mileage, trip, time consumed or any
51 other basis. A service that begins and ends in this state is deemed
52 intra-state even if it passes outside this state during a portion of the
53 trip. However, transportation service does not include transportation of
54 persons in connection with funerals. Transportation service includes

1 transporting, carrying, or conveying property of the person being trans-
2 ported, whether owned by or in the care of such person. In addition to
3 what is included in the definition of "receipt" in paragraph three of
4 this subdivision, receipts from the sale of transportation service
5 subject to tax include any handling, carrying, baggage, booking service,
6 administrative, mark-up, additional, or other charge, of any nature,
7 made in conjunction with the transportation service. Livery service
8 means service provided by LIVERY, limousine, black car or other [motor]
9 FOR-HIRE vehicle, with a driver, but excluding (i) a taxicab[,] AND (ii)
10 a bus, [and (iii), in a city of one million or more in this state, an
11 affiliated livery vehicle,] and excluding any scheduled public service.
12 LIVERY MEANS A FOR-HIRE VEHICLE WITH A SEATING CAPACITY OF UP TO SIX
13 PERSONS, INCLUDING THE DRIVER, AND CHARGES FOR SERVICE ON THE BASIS OF
14 FLAT RATE, TIME, MILEAGE, OR ZONES. Limousine means a vehicle with a
15 seating capacity of up to fourteen persons, excluding the driver. Black
16 car means a for-hire vehicle dispatched from a central facility.
17 ["Affiliated livery vehicle" means a for-hire motor vehicle with a seat-
18 ing capacity of up to six persons, including the driver, other than a
19 black car or luxury limousine, that is authorized and licensed by the
20 taxi and limousine commission of a city of one million or more to be
21 dispatched by a base station located in such a city and regulated by
22 such taxi and limousine commission; and the charges for service provided
23 by an affiliated livery vehicle are on the basis of flat rate, time,
24 mileage, or zones and not on a garage to garage basis.]

25 S 2. Subparagraph (i) of paragraph 2 of subdivision (o) of section
26 1111 of the tax law, as added by section 4 of part U-1 of chapter 57 of
27 the laws of 2009, is amended to read as follows:

28 (i) Any municipality or public corporation that establishes or regu-
29 lates LIVERY, black car, limousine or other FOR-HIRE vehicle service
30 fares must adjust those fares to include therein the tax imposed by
31 paragraph ten of subdivision (c) of section eleven hundred five of this
32 part and the taxes imposed by other sections of this part and pursuant
33 to the authority of article twenty-nine of this chapter on the services
34 taxed by such paragraph ten and must require that any meters or other
35 devices in the vehicles or otherwise that measure fares be adjusted to
36 include these taxes, as the same are from time to time imposed and as
37 the rates of those taxes may change.

38 S 3. This act shall take effect immediately; provided, however, that
39 the provisions of this act shall first be implemented on the first day
40 of a sales tax quarterly period, as such period is described in subdivi-
41 sion (b) of section 1136 of the tax law, next commencing after this act
42 shall have become a law.

43

PART W

44 Section 1. Subdivision 2 of section 470 of the tax law, as amended by
45 section 15 of part D of chapter 134 of the laws of 2010, is amended to
46 read as follows:

47 2. "Tobacco products." Any cigar, including a little cigar, BLUNT
48 WRAP, or tobacco, other than cigarettes, intended for consumption by
49 smoking, chewing, or as snuff.

50 S 2. Section 470 of the tax law is amended by adding a new subdivision
51 2-c to read as follows:

52 2-C. "BLUNT WRAP." ANY INDIVIDUAL TOBACCO WRAPPER, ALSO KNOWN AS A
53 WRAP OR ROLL-YOUR-OWN CIGAR WRAP, THAT IS MADE WHOLLY OR IN PART FROM
54 TOBACCO, INCLUDING RECONSTITUTED TOBACCO, WHETHER IN THE FORM OF SHEET

1 OR TUBE, IF SUCH A WRAP IS DESIGNED TO BE SOLD TO INDIVIDUALS AND NOT TO
2 INCLUDE TOBACCO LEAF.

3 S 3. Paragraph (a) of subdivision 1 of section 471-b of the tax law,
4 as amended by section 18 of part D of chapter 134 of the laws of 2010,
5 is amended to read as follows:

6 (a) Such tax on tobacco products other than CIGARS, snuff and little
7 cigars shall be at the rate of seventy-five percent of the wholesale
8 price, and is intended to be imposed only once upon the sale of any
9 tobacco products other than snuff and little cigars.

10 S 4. Subdivision 1 of section 471-b of the tax law is amended by
11 adding a new paragraph (d) to read as follows:

12 (D) SUCH TAX ON CIGARS SHALL BE AT THE RATE OF SEVENTY-FIVE PERCENT OF
13 THE WHOLESALE PRICE OR ONE DOLLAR PER CIGAR, WHICHEVER IS LESS.

14 S 5. Paragraph (i) of subdivision (a) of section 471-c of the tax law,
15 as amended by section 20 of part D of chapter 134 of the laws of 2010,
16 is amended to read as follows:

17 (i) Such tax on tobacco products other than CIGARS, snuff and little
18 cigars shall be at the rate of seventy-five percent of the wholesale
19 price.

20 S 6. Subdivision (a) of section 471-c of the tax law is amended by
21 adding a new paragraph (iv) to read as follows:

22 (IV) SUCH TAX ON CIGARS SHALL BE AT THE RATE OF SEVENTY-FIVE PERCENT
23 OF THE WHOLESALE PRICE OR ONE DOLLAR PER CIGAR, WHICHEVER IS LESS.

24 S 7. Section 1399-aa of the public health law is amended by adding a
25 new subdivision 7-a to read as follows:

26 7-A. "BLUNT WRAP" MEANS ANY INDIVIDUAL TOBACCO WRAPPER, ALSO KNOWN AS
27 A WRAP OR ROLL-YOUR-OWN CIGAR WRAP, THAT IS MADE WHOLLY OR IN PART FROM
28 TOBACCO, INCLUDING RECONSTITUTED TOBACCO, WHETHER IN THE FORM OF SHEET
29 OR TUBE, IF SUCH A WRAP IS DESIGNED TO BE SOLD TO INDIVIDUALS AND NOT TO
30 INCLUDE TOBACCO LEAF.

31 S 8. Subdivision 2 of section 1399-gg of the public health law, as
32 added by chapter 513 of the laws of 2004, is amended to read as follows:

33 2. No person engaged in the business of manufacturing, selling or
34 otherwise distributing tobacco products, herbal cigarettes, cigarette
35 wrapping papers, wrapping leaves or tubes, or any agent or employee of
36 such person, shall manufacture or cause to be manufactured for sale in
37 this state, or sell or distribute in this state: (a) any package or
38 other container of cigarettes containing fewer than twenty cigarettes;
39 (b) any package of roll-your-own tobacco containing less than six-tenths
40 of an ounce of tobacco; or (c) any package or other container of ciga-
41 rette wrapping papers, wrapping leaves or tubes OR BLUNT WRAPS AS
42 DEFINED IN SUBDIVISION SEVEN-A OF SECTION THIRTEEN HUNDRED NINETY-NINE-
43 AA OF THIS ARTICLE, that are or are held out to be suitable for use or
44 used as devices to wrap tobacco for smoking, containing fewer than twen-
45 ty sheets, leaves or tubes.

46 S 9. Notwithstanding any provision of law to the contrary, any inven-
47 tory of tobacco products as of 12:01 am on June 1, 2011 that are
48 affected by the provisions of this act shall be eligible for a refund of
49 tax for the difference between the new rate of tax and taxes previously
50 paid on such product pursuant to the provision of section 476 of the tax
51 law.

52 S 10. This act shall take effect June 1, 2011.

1 Section 1. Section 34 of the tax law, as added by section 2 of part Y
2 of chapter 57 of the laws of 2010, is amended to read as follows:

3 S 34. Temporary deferral payout credits. 1. The amounts of nonrefunda-
4 ble credits that are deferred pursuant to section thirty-three of this
5 article, AS ADDED BY PART Y OF CHAPTER FIFTY-SEVEN OF THE LAWS OF TWO
6 THOUSAND TEN, in taxable years beginning on or after January first, two
7 thousand ten and before January first, two thousand thirteen shall be
8 accumulated and constitute the taxpayer's temporary deferral nonrefunda-
9 ble payout credit.

10 2. EARNED NONREFUNDABLE TEMPORARY DEFERRAL PAYOUT CREDIT SHALL MEAN
11 THE AMOUNT OF CREDITS ALLOWABLE IN TAXABLE YEARS BEGINNING ON OR AFTER
12 JANUARY FIRST, TWO THOUSAND TEN AND BEFORE JANUARY FIRST, TWO THOUSAND
13 THIRTEEN, WHICH ARE NOT CARRIED OVER FROM TAX YEARS BEGINNING PRIOR TO
14 JANUARY FIRST, TWO THOUSAND TEN, TO WHICH SUBDIVISION THREE OF SECTION
15 THIRTY-THREE OF THIS ARTICLE WOULD APPLY. The taxpayer may first claim
16 this credit in the taxable year beginning on or after January first, two
17 thousand thirteen and before January first, two thousand fourteen. The
18 taxpayer shall be allowed to claim this credit until the accumulated
19 amounts are exhausted. The credit shall be allowed against the taxpay-
20 er's tax as provided in the provisions referenced in paragraph (a) of
21 subdivision [three] FOUR of this section.

22 [2.] 3. The amounts of refundable credits that are deferred pursuant
23 to section thirty-three of this article, AS ADDED BY PART Y OF CHAPTER
24 FIFTY-SEVEN OF THE LAWS OF TWO THOUSAND TEN, in taxable years beginning
25 on or after January first, two thousand ten and before January first,
26 two thousand thirteen shall be accumulated and constitute the taxpayer's
27 temporary deferral refundable payout credit. In the taxable year begin-
28 ning on or after January first, two thousand thirteen and before January
29 first, two thousand fourteen, the taxpayer shall be allowed to claim a
30 credit equal to fifty percent of the amount accumulated. In the taxable
31 year beginning on or after January first, two thousand fourteen and
32 before January first, two thousand fifteen, the taxpayer shall be
33 allowed to claim a credit equal to seventy-five percent of the balance
34 of the amount accumulated. In the taxable year beginning on or after
35 January first, two thousand fifteen and before January first, two thou-
36 sand sixteen, the taxpayer shall be allowed to claim a credit equal to
37 the remaining balance of the amount accumulated. The credit shall be
38 allowed against the taxpayer's tax as provided in the provisions refer-
39 enced in paragraph (b) of subdivision [three] FOUR of this section.

40 [3.] 4. (a) For application of the temporary deferral nonrefundable
41 payout credit, see the following provisions of this chapter:

42 (1) Article 9: section [187-0] 187-0

43 (2) Article 9-A: section 210(41)

44 (3) Article 22: section 606(qq)

45 (4) Article 32: section 1456(v)

46 (5) Article 33: section 1511(y)

47 (b) For application of the temporary deferral refundable payout cred-
48 it, see the following provisions of this chapter:

49 (1) Article 9: section 187-p

50 (2) Article 9-A: section 210(42)

51 (3) Article 22: section 606(rr)

52 (4) Article 32: section 1456(w)

53 (5) Article 33: section 1511(z)

54 S 2. Subdivision 41 of section 210 of the tax law, as added by section
55 4 of part Y of chapter 57 of the laws of 2010, is amended to read as
56 follows:

41. Temporary deferral nonrefundable payout credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in subdivision one of section thirty-four of this chapter, against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for that year to less than [the amount prescribed in paragraph (d) of subdivision one of this section] ZERO. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to [such amount] ZERO, any amount of credit thus not deductible in such taxable year SHALL BE: (1) IF THE AMOUNT OF EARNED NONREFUNDABLE TEMPORARY DEFERRAL PAYOUT CREDITS IS ZERO THEN THE CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years; OR (2) IF THE AMOUNT OF EARNED NONREFUNDABLE TEMPORARY DEFERRAL PAYOUT CREDITS IS GREATER THAN ZERO THEN THE TAXPAYER MAY TREAT AN AMOUNT EQUAL TO THE LESSER OF THE EARNED NONREFUNDABLE TEMPORARY DEFERRAL PAYOUT CREDITS AND THE AMOUNT OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR AS AN OVERPAYMENT OF TAX.

S 3. This act shall take effect immediately.

PART Y

Section 1. Section 4 of part A of chapter 57 of the laws of 2010 amending the tax law relating to the statutory limitation on the biofuel production credit and the qualified emerging technology company facilities, operations and training credits, is amended to read as follows:

S 4. This act shall take effect immediately and apply to taxable years beginning on or after January 1, 2010; PROVIDED HOWEVER, THAT SECTION ONE OF THIS ACT SHALL APPLY TO TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2011.

S 2. This act shall take effect immediately.

PART Z

Section 1. Subparagraph (i) of paragraph (b) of subdivision 12 of section 210 of the tax law, as amended by chapter 637 of the laws of 2008, is amended to read as follows:

(i) A credit shall be allowed under this subdivision with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable pursuant to section one hundred sixty-seven of the [internal revenue code] INTERNAL REVENUE CODE, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the [internal revenue code] INTERNAL REVENUE CODE, have a situs in this state and are (A) principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing, (B) industrial waste treatment facilities or air pollution control facilities, used in the taxpayer's trade or business, (C) research and development property, (D) principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, or of commodities as defined in section four

1 hundred seventy-five (e) of the Internal Revenue Code, (E) principally
2 used in the ordinary course of the taxpayer's trade or business of
3 providing investment advisory services for a regulated investment compa-
4 ny as defined in section eight hundred fifty-one of the Internal Revenue
5 Code, or lending, loan arrangement or loan origination services to
6 customers in connection with the purchase or sale (which shall include
7 but not be limited to the issuance, entering into, assumption, offset,
8 assignment, termination, or transfer) of securities as defined in
9 section four hundred seventy-five (c)(2) of the Internal Revenue Code,
10 (E-1) PRINCIPALLY USED IN THE ORDINARY COURSE OF THE TAXPAYER'S TRADE OR
11 BUSINESS OF PROVIDING INVESTMENT ADVISORY SERVICES, OR THE SERVICE OF
12 MANAGING INVESTMENT PORTFOLIOS TO ACHIEVE SPECIFIC INVESTMENT OBJECTIVES
13 FOR ACCOUNTS OVER ONE MILLION DOLLARS OF ACCREDITED INVESTORS (AS THAT
14 TERM IS DEFINED IN RULE 501 OF REGULATION D OF THE SECURITIES ACT OF
15 1933), IF THE TAXPAYER SATISFIES THE FOLLOWING CRITERIA: (I) THE TAXPAY-
16 ER IS A REGULATED BROKER OR DEALER OR AN AFFILIATE OF A REGULATED BROKER
17 OR DEALER, (II) THE TAXPAYER IS REGISTERED AS AN INVESTMENT ADVISER
18 UNDER SECTION TWO HUNDRED THREE OF THE INVESTMENT ADVISER ACT OF 1940,
19 AS AMENDED, AND (III) AT LEAST ONE CLIENT OF THE TAXPAYER IS A REGULATED
20 INVESTMENT COMPANY AS DEFINED IN SECTION EIGHT HUNDRED FIFTY-ONE OF THE
21 INTERNAL REVENUE CODE THAT HAS ASSETS IN EXCESS OF ONE HUNDRED MILLION
22 DOLLARS, (F) principally used in the ordinary course of the taxpayer's
23 business as an exchange registered as a national securities exchange
24 within the meaning of sections 3(a)(1) and 6(a) of the Securities
25 Exchange Act of 1934 or a board of trade as defined in section
26 1410(a)(1) of the New York Not-for-Profit Corporation Law or as an enti-
27 ty that is wholly owned by one or more such national securities
28 exchanges or boards of trade and that provides automation or technical
29 services thereto, or (G) principally used as a qualified film production
30 facility including qualified film production facilities having a situs
31 in an empire zone designated as such pursuant to article eighteen-B of
32 the general municipal law, where the taxpayer is providing three or more
33 services to any qualified film production company using the facility,
34 including such services as a studio lighting grid, lighting and grip
35 equipment, multi-line phone service, broadband information technology
36 access, industrial scale electrical capacity, food services, security
37 services, and heating, ventilation and air conditioning. For purposes of
38 clauses (D), (E), (E-1) and (F) of this subparagraph, property purchased
39 by a taxpayer affiliated with a regulated broker, dealer, registered
40 investment adviser, national securities exchange or board of trade, is
41 allowed a credit under this subdivision if the property is used by its
42 affiliated regulated broker, dealer, registered investment adviser,
43 national securities exchange or board of trade in accordance with this
44 subdivision. For purposes of determining if the property is principally
45 used in qualifying uses, the uses by the taxpayer described in clauses
46 (D) [and], (E), AND (E-1) of this subparagraph may be aggregated. In
47 addition, the uses by the taxpayer, its affiliated regulated broker,
48 dealer, and registered investment adviser under [either or both] ANY of
49 those clauses may be aggregated. Provided, however, a taxpayer shall
50 not be allowed the credit provided by clauses (D), (E), (E-1) and (F) of
51 this subparagraph unless (I) eighty percent or more of the employees
52 performing the administrative and support functions resulting from or
53 related to the qualifying uses of such equipment are located in this
54 state or (II) the average number of employees that perform the adminis-
55 trative and support functions resulting from or related to the qualify-
56 ing uses of such equipment and are located in this state during the

1 taxable year for which the credit is claimed is equal to or greater than
2 ninety-five percent of the average number of employees that perform
3 these functions and are located in this state during the thirty-six
4 months immediately preceding the year for which the credit is claimed,
5 or (III) the number of employees located in this state during the taxa-
6 ble year for which the credit is claimed is equal to or greater than
7 ninety percent of the number of employees located in this state on
8 December thirty-first, nineteen hundred ninety-eight or, if the taxpayer
9 was not a calendar year taxpayer in nineteen hundred ninety-eight, the
10 last day of its first taxable year ending after December thirty-first,
11 nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in
12 this state after the taxable year beginning in nineteen hundred ninety-
13 eight, then the taxpayer is not required to satisfy the employment test
14 provided in the preceding sentence of this subparagraph for its first
15 taxable year. For purposes of clause (III) of this subparagraph the
16 employment test will be based on the number of employees located in this
17 state on the last day of the first taxable year the taxpayer is subject
18 to tax in this state. If the uses of the property must be aggregated to
19 determine whether the property is principally used in qualifying uses,
20 then either each affiliate using the property must satisfy this employ-
21 ment test or this employment test must be satisfied through the aggre-
22 gation of the employees of the taxpayer, its affiliated regulated
23 broker, dealer, and registered investment adviser using the property.
24 For purposes of this subdivision, the term "goods" shall not include
25 electricity.

26 S. 2. Subparagraph (A) of paragraph 2 of subsection (a) of section 606
27 of the tax law, as amended by chapter 637 of the laws of 2008, is
28 amended to read as follows:

29 (A) A credit shall be allowed under this subsection with respect to
30 tangible personal property and other tangible property, including build-
31 ings and structural components of buildings, which are: depreciable
32 pursuant to section one hundred sixty-seven of the internal revenue
33 code, have a useful life of four years or more, are acquired by purchase
34 as defined in section one hundred seventy-nine (d) of the internal
35 revenue code, have a situs in this state and are (i) principally used by
36 the taxpayer in the production of goods by manufacturing, processing,
37 assembling, refining, mining, extracting, farming, agriculture, horti-
38 culture, floriculture, viticulture or commercial fishing, (ii) indus-
39 trial waste treatment facilities or air pollution control facilities,
40 used in the taxpayer's trade or business, (iii) research and development
41 property, (iv) principally used in the ordinary course of the taxpayer's
42 trade or business as a broker or dealer in connection with the purchase
43 or sale (which shall include but not be limited to the issuance, enter-
44 ing into, assumption, offset, assignment, termination, or transfer) of
45 stocks, bonds or other securities as defined in section four hundred
46 seventy-five (c)(2) of the Internal Revenue Code, or of commodities as
47 defined in section 475(e) of the Internal Revenue Code, (v) principally
48 used in the ordinary course of the taxpayer's trade or business of
49 providing investment advisory services for a regulated investment compa-
50 ny as defined in section eight hundred fifty-one of the Internal Revenue
51 Code, or lending, loan arrangement or loan origination services to
52 customers in connection with the purchase or sale (which shall include
53 but not be limited to the issuance, entering into, assumption, offset,
54 assignment, termination, or transfer) of securities as defined in
55 section four hundred seventy-five (c)(2) of the Internal Revenue Code,
56 or (vi) PRINCIPALLY USED IN THE ORDINARY COURSE OF THE TAXPAYER'S TRADE

1 OR BUSINESS OF PROVIDING INVESTMENT ADVISORY SERVICES, OR THE SERVICE OF
2 MANAGING INVESTMENT PORTFOLIOS TO ACHIEVE SPECIFIC INVESTMENT OBJECTIVES
3 FOR ACCOUNTS OVER ONE MILLION DOLLARS OF ACCREDITED INVESTORS (AS THAT
4 TERM IS DEFINED IN RULE 501 OF REGULATION D OF THE SECURITIES ACT OF
5 1933), IF THE TAXPAYER SATISFIES THE FOLLOWING CRITERIA: (I) THE TAXPAY-
6 ER IS A REGULATED BROKER OR DEALER OR AN AFFILIATE OF A REGULATED BROKER
7 OR DEALER, (II) THE TAXPAYER IS REGISTERED AS AN INVESTMENT ADVISER
8 UNDER SECTION TWO HUNDRED THREE OF THE INVESTMENT ADVISER ACT OF 1940,
9 AS AMENDED, AND (III) AT LEAST ONE CLIENT OF THE TAXPAYER IS A REGULATED
10 INVESTMENT COMPANY AS DEFINED IN SECTION EIGHT HUNDRED FIFTY-ONE OF THE
11 INTERNAL REVENUE CODE THAT HAS ASSETS IN EXCESS OF ONE HUNDRED MILLION
12 DOLLARS, (VII) principally used as a qualified film production facility
13 including qualified film production facilities having a situs in an
14 empire zone designated as such pursuant to article eighteen-B of the
15 general municipal law, where the taxpayer is providing three or more
16 services to any qualified film production company using the facility,
17 including such services as a studio lighting grid, lighting and grip
18 equipment, multi-line phone service, broadband information technology
19 access, industrial scale electrical capacity, food services, security
20 services, and heating, ventilation and air conditioning. For purposes of
21 clauses (iv) [and], (v) AND (VI) of this subparagraph, property
22 purchased by a taxpayer affiliated with a regulated broker, dealer, or
23 registered investment adviser is allowed a credit under this subsection
24 if the property is used by its affiliated regulated broker, dealer or
25 registered investment adviser in accordance with this subsection. For
26 purposes of determining if the property is principally used in qualify-
27 ing uses, the uses by the taxpayer described in clauses (iv) and (v) of
28 this subparagraph may be aggregated. In addition, the uses by the
29 taxpayer, its affiliated regulated broker, dealer and registered invest-
30 ment adviser under either or both of those clauses may be aggregated.
31 Provided, however, a taxpayer shall not be allowed the credit provided
32 by clauses (iv) [and], (v) AND (VI) of this subparagraph unless (I)
33 eighty percent or more of the employees performing the administrative
34 and support functions resulting from or related to the qualifying uses
35 of such equipment are located in this state, or (II) the average number
36 of employees that perform the administrative and support functions
37 resulting from or related to the qualifying uses of such equipment and
38 are located in this state during the taxable year for which the credit
39 is claimed is equal to or greater than ninety-five percent of the aver-
40 age number of employees that perform these functions and are located in
41 this state during the thirty-six months immediately preceding the year
42 for which the credit is claimed, or (III) the number of employees
43 located in this state during the taxable year for which the credit is
44 claimed is equal to or greater than ninety percent of the number of
45 employees located in this state on December thirty-first, nineteen
46 hundred ninety-eight or, if the taxpayer was not a calendar year taxpay-
47 er in nineteen hundred ninety-eight, the last day of its first taxable
48 year ending after December thirty-first, nineteen hundred ninety-eight.
49 If the taxpayer becomes subject to tax in this state after the taxable
50 year beginning in nineteen hundred ninety-eight, then the taxpayer is
51 not required to satisfy the employment test provided in the preceding
52 sentence of this subparagraph for its first taxable year. For the
53 purposes of clause (III) of this subparagraph the employment test will
54 be based on the number of employees located in this state on the last
55 day of the first taxable year the taxpayer is subject to tax in this
56 state. If the uses of the property must be aggregated to determine

whether the property is principally used in qualifying uses, then either each affiliate using the property must satisfy this employment test or this employment test must be satisfied through the aggregation of the employees of the taxpayer, its affiliated regulated broker, dealer, and registered investment adviser using the property. For purposes of this subsection, the term "goods" shall not include electricity.

S 3. Paragraph 2 of subsection (i) of section 1456 of the tax law, as amended by chapter 637 of the laws of 2008, is amended to read as follows:

(2) A credit shall be allowed under this subsection with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable pursuant to section one hundred sixty-seven of the Internal Revenue Code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the Internal Revenue Code, have a situs in this state and are (A) principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities as defined in section four hundred seventy-five (c) (2) of the Internal Revenue Code, or of commodities as defined in section four hundred seventy-five (e) of the Internal Revenue Code, or (B) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services for a regulated investment company as defined in section eight hundred fifty-one of the Internal Revenue Code, or lending, loan arrangement or loan origination services to customers in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of securities as defined in section four hundred seventy-five (c) (2) of the Internal Revenue Code OR (C) PRINCIPALLY USED IN THE ORDINARY COURSE OF THE TAXPAYER'S TRADE OR BUSINESS OF PROVIDING INVESTMENT ADVISORY SERVICES, OR THE SERVICE OF MANAGING INVESTMENT PORTFOLIOS TO ACHIEVE SPECIFIC INVESTMENT OBJECTIVES FOR ACCOUNTS OVER ONE MILLION DOLLARS OF ACCREDITED INVESTORS (AS THAT TERM IS DEFINED IN RULE 501 OF REGULATION D OF THE SECURITIES ACT OF 1933), IF THE TAXPAYER SATISFIES THE FOLLOWING CRITERIA: (I) THE TAXPAYER IS A REGULATED BROKER OR DEALER OR AN AFFILIATE OF A REGULATED BROKER OR DEALER, (II) THE TAXPAYER IS REGISTERED AS AN INVESTMENT ADVISER UNDER SECTION TWO HUNDRED THREE OF THE INVESTMENT ADVISER ACT OF 1940, AS AMENDED, AND (III) AT LEAST ONE CLIENT OF THE TAXPAYER IS A REGULATED INVESTMENT COMPANY AS DEFINED IN SECTION EIGHT HUNDRED FIFTY-ONE OF THE INTERNAL REVENUE CODE THAT HAS ASSETS IN EXCESS OF ONE HUNDRED MILLION DOLLARS. For purposes of subparagraphs (A) [and], (B) AND (C) of this paragraph, property purchased by a taxpayer affiliated with a regulated broker, dealer, or registered investment adviser is allowed a credit under this subsection if the property is used by its affiliated regulated broker, dealer, or registered investment adviser in accordance with this subsection. For purposes of determining if the property is principally used in qualifying uses, the uses by the taxpayer described in subparagraphs (A) [and], (B) AND (C) of this paragraph may be aggregated. In addition, the uses by the taxpayer, its affiliated regulated broker, dealer and registered investment adviser under either or both of such subparagraphs may be aggregated.

S 4. This act shall take effect immediately.

1

PART AA

2 Section 1. Paragraph (a) of subdivision 6 of section 18-a of the
3 public service law, as added by section 4 of part NN of chapter 59 of
4 the laws of 2009, is amended to read as follows:

5 (a) Notwithstanding any provision of law to the contrary, and subject
6 to the exceptions provided for in paragraph (b) of this subdivision, for
7 the state fiscal year beginning on April first, two thousand nine and
8 [four] TWO state fiscal years thereafter, a temporary annual assessment
9 (hereinafter "temporary state energy and utility service conservation
10 assessment") is hereby imposed on public utility companies (including
11 for the purposes of this subdivision municipalities other than municipi-
12 palities as defined in section eighty-nine-1 of this chapter), corpo-
13 rations (including for purposes of this subdivision the Long Island
14 power authority), and persons subject to the commission's regulation
15 (hereinafter such public utility companies, corporations, and persons
16 are referred to collectively as the "utility entities") to encourage the
17 conservation of energy and other resources provided through utility
18 entities, to be assessed in the manner provided in this subdivision;
19 provided, however, that such assessment shall not be imposed upon tele-
20 phone corporations as defined in subdivision seventeen of section two of
21 this article.

22 S 2. Section 6 of part NN of chapter 59 of the laws of 2009 amending
23 the public service law relating to financing operations of the depart-
24 ment of public service is amended to read as follows:

25 S 6. This act shall take effect immediately; provided, however, that
26 subdivision 6 of section 18-a of the public service law, as added by
27 section four of this act shall take effect April 1, 2009 and shall
28 expire and be deemed repealed March 31, [2014] 2012; and provided,
29 further, that if section four of this act shall become law after April
30 1, 2009, it shall take effect immediately and shall be deemed to have
31 been in full force and effect on and after April 1, 2009.

32 S 3. This act shall take effect immediately and shall be deemed to
33 have been in full force and effect on the same date and in the same
34 manner as part NN of chapter 59 of the laws of 2009 took effect;
35 provided that the amendment to paragraph (a) of subdivision 6 of section
36 18-a of the public service law made by section one of this act shall not
37 affect the expiration and repeal of such subdivision 6 and shall expire
38 and be deemed repealed therewith.

39

PART BB

40 Section 1. Section 800 of the tax law, as added by section 1 of part C
41 of chapter 25 of the laws of 2009, is amended to read as follows:

42 S 800. Definitions. For the purposes of this article:

43 (a) Metropolitan commuter transportation district. The metropolitan
44 commuter transportation district ("MCTD") means the area of the state
45 included in the district created and governed by section twelve hundred
46 sixty-two of the public authorities law.

47 (b) Employer. Employer means an employer required by section six
48 hundred seventy-one of this chapter to deduct and withhold tax from
49 wages, that has a payroll expense in excess of two thousand five hundred
50 dollars in any calendar quarter; other than

51 (1) any agency or instrumentality of the United States;

52 (2) the United Nations; [or]

(3) an interstate agency or public corporation created pursuant to an agreement or compact with another state or the Dominion of Canada; OR

(4) ANY PUBLIC SCHOOL DISTRICT OR NON-PUBLIC SCHOOL, WHICH SHALL NOT INCLUDE A SPECIAL ACT SCHOOL DISTRICT AS DEFINED IN SECTION FOUR THOUSAND ONE OF THE EDUCATION LAW.

(c) Payroll expense. Payroll expense means wages and compensation as defined in sections 3121 and 3231 of the internal revenue code (without regard to section 3121(a)(1) and section 3231(e)(2)(A)(i)), paid to all covered employees.

(d) Covered employee. Covered employee means an employee who is employed within the MCTD.

(e) Net earnings from self-employment. Net earnings from self-employment has the same meaning as in section 1402 of the internal revenue code.

S 2. This act shall take effect immediately.

PART CC

Section 1. Paragraph (a) of subdivision 3 of section 33 of the tax law, as added by section 1 of part Y of chapter 57 of the laws of 2010, is amended to read as follows:

(a) This section shall apply to the credits allowed under the following provisions in article nine-a of this chapter and any applicable counterpart provisions in articles nine, twenty-two, thirty-two and thirty-three of this chapter:

- Section 210(12) investment tax credit
- Section 210(12-B) empire zone investment tax credit
- Section 210(12-C) empire zone employment incentive credit
- Section 210(12-D) employment incentive credit
- Section 210(12-E) QETC employment credit
- Section 210(12-F) QETC capital tax credit
- Section 210(12-G) QETC facilities, operations, and training credit
- Section 210(17) special additional mortgage recording tax credit
- Section 210(19) empire zone wage tax credit
- Section 210(20) empire zone capital tax credit
- Section 210(21-a) credit for servicing certain mortgages
- Section 210(23) credit for employment of persons with disabilities
- Section 210(24) alternative fuels credit
- Section 210(25) credit for purchase of an automated external defibrillator
- Section 210(27) QEZE credit for real property taxes
- Section 210(28) QEZE tax reduction credit
- Section 210(30) low income housing credit
- Section 210(31) green building credit
- Section 210(33) brownfield redevelopment tax credit
- Section 210(34) remediated brownfield credit for real property taxes for qualified sites
- Section 210(35) environmental remediation insurance credit
- Section 210(37) security training tax credit
- Section 210(37) credit for fuel cell electric generating equipment expenditures
- Section 210(38) conservation easement tax credit
- Section 210(38) empire state commercial production credit
- Section 210(38) biofuel production credit
- Section 210(39) clean heating fuel credit
- [Section 210(40) credit for rehabilitation of historic properties]

1 Section 210(40) credit for companies who provide transportation to
2 individuals with disabilities
3 S 2. This act shall take effect immediately and shall apply to taxable
4 years beginning on or after January 1, 2011.

5 PART DD

6 Section 1. Subdivisions 2, 3, 4, 5 and 6 of section 4 of chapter 912
7 of the laws of 1920 relating to the regulation of boxing, sparring and
8 wrestling, subdivisions 2 and 6 as amended by chapter 437 of the laws of
9 2002 and subdivisions 3, 4 and 5 as added by chapter 603 of the laws of
10 1981, are amended to read as follows:

11 2. The advisory board shall have power and it shall be the duty of the
12 board to prepare and submit to the commission for approval regulations
13 and standards for the physical examination of professional boxers AND
14 PROFESSIONAL COMBATIVE SPORTS PARTICIPANTS including, without limita-
15 tion, pre-fight and/or post-fight examinations and periodic comprehen-
16 sive examinations. The board shall continue to serve in an advisory
17 capacity to the commission and from time to time prepare and submit to
18 the commission for approval, such additional regulations and standards
19 of examination as in their judgment will safeguard the physical welfare
20 of professional boxers licensed by the commission. The advisory board
21 shall recommend to the commission from time to time such qualified
22 physicians, for the purpose of conducting physical examinations of
23 professional boxers AND PROFESSIONAL COMBATIVE SPORTS PARTICIPANTS and
24 other services as the rules of the commission shall provide; and shall
25 recommend to the commission a schedule of fees to be paid to physicians
26 for such examinations and other services as required by this act.

27 3. The advisory board shall develop appropriate medical education
28 programs for all commission personnel involved in the conduct of boxing
29 and sparring matches or exhibitions OR PROFESSIONAL COMBATIVE SPORTS
30 MATCHES OR EXHIBITIONS so that such personnel can recognize and act upon
31 evidence of potential or actual adverse medical indications in a partic-
32 ipant prior to or during the course of a match OR EXHIBITION.

33 4. The advisory board shall review the credentials and performance of
34 each commission physician on an annual basis as a condition of reap-
35 pointment of each such physician, including each such physician's
36 comprehension of the medical literature on boxing OR PROFESSIONAL COMBA-
37 TIVE SPORTS referred to in subdivision five of this section.

38 5. The advisory board shall recommend to the commission a compilation
39 of medical publications on the medical aspects of boxing OR PROFESSIONAL
40 COMBATIVE SPORTS which shall be maintained by the commission and be made
41 available for review to all commission personnel involved in the conduct
42 of any boxing or sparring match or exhibition OR PROFESSIONAL COMBATIVE
43 SPORTS MATCH OR EXHIBITION.

44 6. The advisory board shall also advise the commission on any study of
45 equipment, procedures or personnel which will, in their opinion, promote
46 the safety of boxing participants AND PROFESSIONAL COMBATIVE SPORTS
47 PARTICIPANTS.

48 S 2. Section 5-a of chapter 912 of the laws of 1920 relating to the
49 regulation of boxing, sparring and wrestling, as added by chapter 14 of
50 the laws of 1997, is amended to read as follows:

51 S 5-a. Combative sports. 1. DEFINITIONS. AS USED IN THIS SECTION:

52 (A) "BOARD" MEANS MEDICAL ADVISORY BOARD AS ESTABLISHED IN SECTION
53 FOUR OF THIS ACT.

1 (B) A "combative sport" shall mean any professional match or exhibi-
2 tion other than boxing, sparring, wrestling or martial arts wherein the
3 contestants deliver, or are not forbidden by the applicable rules there-
4 of from delivering kicks, punches or blows of any kind to the body of an
5 opponent or opponents. For the purposes of this section, the term
6 "martial arts" shall include any professional match or exhibition OF A
7 SINGLE DISCIPLINE sanctioned by AN ORGANIZATION APPROVED BY THE COMMIS-
8 SION, INCLUDING, BUT NOT LIMITED TO, any of the following organizations:
9 U.S. Judo Association, U.S. Judo, Inc., U.S. Judo Federation, U.S. Tae
10 Kwon Do Union, North American Sport Karate Association, U.S.A. Karate
11 Foundation, U.S. Karate, Inc., World Karate Association, Professional
12 Karate Association, Karate International, International Kenpo Associ-
13 ation, or World Wide Kenpo Association. The commission [is authorized
14 to] SHALL promulgate regulations which would establish a process to
15 allow for the inclusion or removal of martial arts organizations from
16 the above list. Such process shall include but not be limited to consid-
17 eration of the following factors: [(a)] (1) is the organization's
18 primary purpose to provide instruction in self defense techniques; [(b)]
19 (2) does the organization require the use of hand, feet and groin
20 protection during any competition or bout; and [(c)] (3) does the organ-
21 ization have an established set of rules that require the immediate
22 termination of any competition or bout when any participant has received
23 severe punishment or is in danger of suffering serious physical injury.

24 (C) "COMMISSION" MEANS THE STATE ATHLETIC COMMISSION AS PROVIDED FOR
25 IN SECTION ONE OF THIS CHAPTER OR AN AGENT OF THE COMMISSION ACTING ON
26 ITS BEHALF.

27 (D) "MIXED MARTIAL ARTS" MEANS ANY PROFESSIONAL COMBATIVE SPORTS
28 COMPETITION WHEREIN THE RULES OF SUCH COMPETITION SUBJECT TO THE APPLI-
29 CABLE LIMITATIONS AS SET FORTH BY THE COMMISSION AUTHORIZE PROFESSIONAL
30 COMBATIVE SPORTS MATCHES OR EXHIBITIONS BETWEEN VARIOUS FIGHTING DISCI-
31 PLINES, INCLUDING THE UTILIZATION OF PERMITTED MARTIAL ARTS TECHNIQUES,
32 INCLUDING STRIKING, KICKING AND GRAPPLING. NO NON-PROFESSIONAL OR
33 AMATEUR BOUT, EXHIBITION OR PARTICIPANT SHALL BE AUTHORIZED BY THIS
34 SECTION.

35 (E) "PROFESSIONAL COMBATIVE SPORTS PARTICIPANT" OR "PARTICIPANT" SHALL
36 MEAN A COMBATIVE SPORTS FIGHTER WHO COMPETES FOR A MONEY PRIZE OR TEACH-
37 ES OR PURSUES OR ASSISTS IN THE PRACTICE OF MIXED MARTIAL ARTS AS A
38 MEANS OF OBTAINING A LIVELIHOOD OR PECUNIARY GAIN, AND ANY CONTEST
39 CONFORMING TO THE RULES, REGULATIONS AND REQUIREMENTS OF THIS SECTION.

40 (F) "PROFESSIONAL COMBATIVE SPORTS MATCH OR EXHIBITION" SHALL MEAN ANY
41 MATCH OR EXHIBITION THAT MUST BE APPROVED BY THE COMMISSION WHERE
42 PROFESSIONAL COMBATIVE SPORTS PARTICIPANTS RECEIVE CONSIDERATION OF ANY
43 VALUE OR AN ADMISSION IS CHARGED.

44 1-A. COMMISSION REVIEW. THE COMMISSION SHALL REVIEW EACH MARTIAL ARTS
45 SANCTIONING ORGANIZATION, INCLUDING THOSE LISTED IN SUBDIVISION ONE OF
46 THIS SECTION, AT LEAST BIENNIALY, OR SOONER IF DETERMINED NECESSARY
47 BASED UPON THE PERIODIC COMPLIANCE CHECKS OR COMPLAINTS TO THE COMMIS-
48 SION, TO DETERMINE CONTINUATION OF THE COMMISSION'S APPROVAL. THE
49 COMMISSION SHALL CONTINUE APPROVAL OR SHALL SUSPEND OR REVOKE APPROVAL
50 BASED UPON COMPLIANCE OF THE ORGANIZATION WITH THE APPROVED SANCTIONING
51 STANDARDS AND ITS ABILITY TO SUPERVISE MATCHES IN THE STATE. THE
52 COMMISSION SHALL ACT UPON ANY APPLICATION FOR INCLUSION IN THE LIST IN
53 PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION WITHIN SIXTY DAYS OF
54 THE DATE SUCH APPLICATION IS MADE TO THE COMMISSION.

55 1-B. MIXED MARTIAL ARTS COMPETITION. THE COMMISSION SHALL PROMULGATE
56 RULES AND REGULATIONS TO ALLOW FOR MIXED MARTIAL ARTS COMPETITIONS TO BE

1 CONDUCTED, HELD, OR GIVEN WITHIN THE STATE OF NEW YORK AND SHALL ALLOW
2 FOR LICENSES TO BE APPROVED BY THE COMMISSION FOR SUCH MATCHES OR EXHI-
3 BITIONS. THE COMMISSION IS AUTHORIZED TO PROMULGATE RULES AND REGU-
4 LATIONS TO CARRY OUT THE PROVISIONS OF THIS SUBDIVISION. SUCH RULES AND
5 REGULATIONS SHALL INCLUDE, BUT NOT BE LIMITED TO, THE ADOPTION OF
6 UNIFIED RULES OF MIXED MARTIAL ARTS, A LICENSING PROCESS FOR MATCHES AND
7 EXHIBITIONS, A FEE SCHEDULE FOR SUCH LICENSES, PROCEDURES TO ALLOW FOR
8 THE PARTICIPATION, PROMOTION, AND ADVANCEMENT OF SUCH EVENTS, THE HEALTH
9 AND SAFETY OF PARTICIPANTS, AND THE BEST INTERESTS OF MIXED MARTIAL ARTS
10 AND THE ADOPTION OF RULES AND REGULATIONS FOR LICENSING AND REGULATION
11 OF ANY AND ALL GYMS, CLUBS, TRAINING CAMPS AND OTHER ORGANIZATIONS THAT
12 MAINTAIN TRAINING FACILITIES PROVIDING CONTACT SPARRING FOR PERSONS WHO
13 PREPARE FOR PARTICIPATION IN SUCH PROFESSIONAL COMBATIVE SPORTS OR EXHI-
14 BITIONS, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION.

15 (B) THE COMMISSION IS AUTHORIZED AND DIRECTED TO REQUIRE THAT ALL
16 SITES WHEREIN PROFESSIONAL COMBATIVE SPORTS ARE CONDUCTED SHALL COMPLY
17 WITH STATE AND APPLICABLE LOCAL SANITARY CODES APPROPRIATE TO SCHOOL
18 ATHLETIC FACILITIES.

19 2. [No combative sport shall be conducted, held or given within the
20 state of New York, and no licenses may be approved by the commission for
21 such matches or exhibitions.

22 3. (a) A person who knowingly advances or profits from a combative
23 sport activity shall be guilty of a class A misdemeanor, and shall be
24 guilty of a class E felony if he or she has been convicted in the previ-
25 ous five years of violating this subdivision.

26 (b) A person advances a combative sport activity when, acting other
27 than as a spectator, he or she engages in conduct which materially aids
28 any combative sport. Such conduct includes but is not limited to conduct
29 directed toward the creation, establishment or performance of a comba-
30 tive sport, toward the acquisition or maintenance of premises, parapher-
31 nalia, equipment or apparatus therefor, toward the solicitation or
32 inducement of persons to attend or participate therein, toward the actu-
33 al conduct of the performance thereof, toward the arrangement of any of
34 its financial or promotional phases, or toward any other phase of a
35 combative sport. One advances a combative sport activity when, having
36 substantial proprietary or other authoritative control over premises
37 being used with his or her knowledge for purposes of a combative sport
38 activity, he or she permits such to occur or continue or makes no effort
39 to prevent its occurrence or continuation.

40 (c) A person profits from a combative sport activity when he or she
41 accepts or receives money or other property with intent to participate
42 in the proceeds of a combative sport activity, or pursuant to an agree-
43 ment or understanding with any person whereby he or she participates or
44 is to participate in the proceeds of a combative sport activity.

45 (d) Any person who knowingly advances or profits from a combative
46 sport activity shall also be subject to a civil penalty not to exceed
47 for the first violation ten thousand dollars or twice the amount of gain
48 derived therefrom whichever is greater, or for a subsequent violation
49 twenty thousand dollars or twice the amount of gain derived therefrom
50 whichever is greater. The attorney general is hereby empowered to
51 commence judicial proceedings to recover such penalties and to obtain
52 injunctive relief to enforce the provisions of this section.] PROFES-
53 SIONAL COMBATIVE SPORTS MATCHES AND EXHIBITIONS AUTHORIZED. NO COMBATIVE
54 SPORTS MATCH OR EXHIBITION SHALL BE CONDUCTED, HELD OR GIVEN WITHIN THE
55 STATE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION AND THE
56 RULES AND REGULATIONS PROMULGATED BY THE COMMISSION PURSUANT THERETO.

1 THE COMMISSION SHALL DIRECT A REPRESENTATIVE TO BE PRESENT AT EACH PLACE
2 WHERE COMBATIVE SPORTS ARE TO BE HELD PURSUANT TO THE PROVISIONS OF THIS
3 SECTION. SUCH REPRESENTATIVE SHALL ASCERTAIN THE EXACT CONDITIONS
4 SURROUNDING SUCH MATCH OR EXHIBITION AND MAKE A WRITTEN REPORT OF THE
5 SAME IN THE MANNER AND FORM PRESCRIBED BY THE COMMISSION. SUCH COMBATIVE
6 SPORTS MATCHES OR EXHIBITIONS MAY BE HELD IN ANY BUILDING FOR WHICH THE
7 COMMISSION IN ITS DISCRETION MAY ISSUE A LICENSE. WHERE SUCH MATCH OR
8 EXHIBITION IS AUTHORIZED TO BE HELD IN A STATE OR CITY OWNED ARMORY, THE
9 PROVISION OF THE MILITARY LAW IN RESPECT THERETO MUST BE COMPLIED WITH,
10 BUT NO SUCH MATCH OR EXHIBITION SHALL BE HELD IN A BUILDING WHOLLY USED
11 FOR RELIGIOUS SERVICES.

12 3. JURISDICTION OF COMMISSION. (A) THE COMMISSION SHALL HAVE AND HERE-
13 BY IS VESTED WITH THE SOLE DIRECTION, MANAGEMENT, CONTROL AND JURISDIC-
14 TION OVER ALL PROFESSIONAL COMBATIVE SPORTS MATCHES OR EXHIBITIONS TO BE
15 CONDUCTED, HELD OR GIVEN WITHIN THE STATE OF NEW YORK AND OVER ALL
16 LICENSES TO ANY AND ALL PERSONS WHO PARTICIPATE IN SUCH COMBATIVE SPORTS
17 MATCHES OR EXHIBITIONS AND OVER ANY AND ALL GYMS, CLUBS, TRAINING CAMPS
18 AND OTHER ORGANIZATIONS THAT MAINTAIN TRAINING FACILITIES PROVIDING
19 CONTACT SPARRING FOR PERSONS WHO PREPARE FOR PARTICIPATION IN SUCH
20 PROFESSIONAL COMBATIVE SPORTS OR EXHIBITIONS, EXCEPT AS OTHERWISE
21 PROVIDED IN THIS SECTION.

22 (B) THE COMMISSION IS AUTHORIZED AND DIRECTED TO REQUIRE THAT ALL
23 SITES WHEREIN PROFESSIONAL COMBATIVE SPORTS ARE CONDUCTED SHALL COMPLY
24 WITH STATE AND APPLICABLE LOCAL SANITARY CODES APPROPRIATE TO SCHOOL
25 ATHLETIC FACILITIES.

26 4. ENTITIES REQUIRED TO PROCURE LICENSES; PROFESSIONAL COMBATIVE
27 SPORTS PARTICIPANTS DEFINED. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION
28 SIX OF THIS SECTION, ALL CORPORATIONS, PERSONS, LIMITED LIABILITY COMPA-
29 NIES, REFEREES, JUDGES, CORPORATION TREASURERS, PROFESSIONAL COMBATIVE
30 SPORTS PARTICIPANTS, THEIR MANAGERS, PROMOTERS, TRAINERS AND CHIEF
31 SECONDS SHALL BE LICENSED BY THE COMMISSION, AND NO SUCH ENTITY SHALL BE
32 PERMITTED TO PARTICIPATE, EITHER DIRECTLY OR INDIRECTLY, IN ANY PROFES-
33 SIONAL COMBATIVE SPORTS MATCH OR EXHIBITION, OR THE HOLDING THEREOF,
34 UNLESS SUCH ENTITY SHALL HAVE FIRST PROCURED A LICENSE FROM THE COMMIS-
35 SION. THE COMMISSION SHALL ESTABLISH BY RULE AND REGULATION LICENSING
36 STANDARDS FOR REFEREES, JUDGES, MANAGERS, PROMOTERS, TRAINERS AND CHIEF
37 SECONDS. ANY MATCH OR EXHIBITION CONFORMING TO THE RULES, REGULATIONS
38 AND REQUIREMENTS OF THIS SECTION SHALL BE DEEMED TO BE A PROFESSIONAL
39 COMBATIVE SPORTS MATCH OR EXHIBITION.

40 5. LICENSE TO ENTITIES. (A) THE COMMISSION MAY, IN ITS DISCRETION,
41 ISSUE A LICENSE TO CONDUCT OR HOLD PROFESSIONAL COMBATIVE SPORTS MATCHES
42 OR EXHIBITIONS, SUBJECT TO THE PROVISIONS HEREOF, TO ANY PERSON, CORPO-
43 RATION OR LIMITED LIABILITY COMPANY DULY INCORPORATED OR FORMED, HEREIN-
44 AFTER REFERRED TO AS "ENTITY".

45 (B) A PROSPECTIVE LICENSEE MUST SUBMIT TO THE COMMISSION PROOF THAT IT
46 CAN FURNISH SUITABLE PREMISES IN WHICH SUCH MATCH OR EXHIBITION IS TO BE
47 HELD.

48 (C) UPON WRITTEN APPLICATION AND THE PAYMENT OF A FEE OF FIVE HUNDRED
49 DOLLARS WHICH MUST ACCOMPANY THE APPLICATION, THE COMMISSION MAY GRANT
50 TO ANY ENTITY HOLDING A LICENSE ISSUED HEREUNDER, THE PRIVILEGE OF HOLD-
51 ING SUCH A MATCH OR EXHIBITION ON A SPECIFIED DATE IN OTHER PREMISES, OR
52 IN ANOTHER LOCATION, THAN THE PREMISES OF LOCATION PREVIOUSLY APPROVED
53 BY THE COMMISSION, SUBJECT HOWEVER TO APPROVAL OF THE COMMISSION AND THE
54 RULES AND REGULATIONS OF THE COMMISSION.

55 (D) ALL PENALTIES IMPOSED AND COLLECTED BY THE COMMISSION FROM ANY
56 ENTITY LICENSED UNDER THE PROVISIONS OF THIS ACT, WHICH FINES AND PENAL-

1 TIES ARE IMPOSED AND COLLECTED UNDER THE AUTHORITY HEREBY VESTED SHALL
2 WITHIN THIRTY DAYS AFTER THE RECEIPT THEREOF BY THE COMMISSION BE PAID
3 BY THEM INTO THE STATE TREASURY.

4 6. TEMPORARY WORKING PERMITS FOR PROFESSIONAL COMBATIVE SPORTS PARTIC-
5 IPANTS, MANAGERS, TRAINERS AND CHIEF SECONDS. THE COMMISSION MAY ISSUE
6 TEMPORARY WORKING PERMITS TO PROFESSIONAL COMBATIVE SPORTS PARTICIPANTS,
7 THEIR MANAGERS, TRAINERS AND CHIEF SECONDS. A TEMPORARY WORKING PERMIT
8 SHALL AUTHORIZE THE EMPLOYMENT OF THE HOLDER OF SUCH PERMIT TO ENGAGE IN
9 A SINGLE MATCH OR EXHIBITION AT A SPECIFIED TIME AND PLACE. A TEMPORARY
10 WORKING PERMIT MAY BE ISSUED IF IN THE JUDGMENT OF THE COMMISSION THE
11 PARTICIPATION OF THE HOLDER THEREOF IN A PROFESSIONAL COMBATIVE SPORTS
12 MATCH OR EXHIBITION WILL BE CONSISTENT WITH THE PURPOSES AND PROVISIONS
13 OF THIS SECTION, THE BEST INTERESTS OF COMBATIVE SPORTS GENERALLY, AND
14 THE PUBLIC INTEREST, CONVENIENCE OR NECESSITY. THE COMMISSION MAY
15 REQUIRE THAT PROFESSIONAL COMBATIVE SPORTS PARTICIPANTS APPLYING FOR
16 TEMPORARY WORKING PERMITS UNDERGO A PHYSICAL EXAMINATION, NEUROLOGICAL
17 OR NEUROPSYCHOLOGICAL TEST OR PROCEDURE, INCLUDING COMPUTED TOMOGRAPHY
18 OR MEDICALLY EQUIVALENT PROCEDURE. THE FEE FOR SUCH TEMPORARY WORKING
19 PERMIT SHALL BE TWENTY DOLLARS.

20 7. LICENSE FEES; TERM OF LICENSES; RENEWALS. EACH APPLICANT FOR A
21 PROMOTER LICENSE SHALL, BEFORE A LICENSE IS ISSUED BY THE COMMISSION,
22 PAY TO THE COMMISSION, AN ANNUAL LICENSE FEE AS FOLLOWS: WHERE THE
23 SEATING CAPACITY IS NOT MORE THAN TWO THOUSAND FIVE HUNDRED, FIVE
24 HUNDRED DOLLARS; WHERE THE SEATING CAPACITY IS MORE THAN TWO THOUSAND
25 FIVE HUNDRED BUT NOT MORE THAN FIVE THOUSAND, ONE THOUSAND DOLLARS;
26 WHERE THE SEATING CAPACITY IS MORE THAN FIVE THOUSAND BUT NOT MORE THAN
27 FIFTEEN THOUSAND, ONE THOUSAND FIVE HUNDRED DOLLARS; WHERE THE SEATING
28 CAPACITY IS MORE THAN FIFTEEN THOUSAND BUT NOT MORE THAN TWENTY-FIVE
29 THOUSAND, TWO THOUSAND FIVE HUNDRED DOLLARS; WHERE THE SEATING CAPACITY
30 IS MORE THAN TWENTY-FIVE THOUSAND, THREE THOUSAND FIVE HUNDRED DOLLARS;
31 REFEREE, ONE HUNDRED DOLLARS; JUDGES, ONE HUNDRED DOLLARS; PROFESSIONAL
32 COMBATIVE SPORTS PARTICIPANTS, FIFTY DOLLARS; MANAGERS, FIFTY DOLLARS;
33 TRAINERS, FIFTY DOLLARS; AND CHIEF SECONDS, FORTY DOLLARS. EACH LICENSE
34 OR RENEWAL THEREOF ISSUED PURSUANT TO THIS SUBDIVISION ON OR AFTER OCTO-
35 BER FIRST SHALL BE EFFECTIVE FOR A LICENSE YEAR EXPIRING ON THE THIRTI-
36 ETH DAY OF SEPTEMBER FOLLOWING THE DATE OF ITS ISSUANCE. THE ANNUAL
37 LICENSE FEE PRESCRIBED BY THIS SUBDIVISION SHALL BE THE LICENSE FEE DUE
38 AND PAYABLE THEREFOR AND SHALL BE PAID IN ADVANCE AT THE TIME APPLICA-
39 TION IS MADE THEREFOR, AND EACH SUCH LICENSE MAY BE RENEWED FOR PERIODS
40 OF ONE YEAR UPON THE PAYMENT OF THE ANNUAL LICENSE FEE PRESCRIBED BY
41 THIS SUBDIVISION. WITHIN THREE YEARS FROM THE DATE OF PAYMENT AND UPON
42 THE AUDIT OF THE COMPTROLLER, THE COMMISSION MAY REFUND ANY FEE, UNFOR-
43 FEITED POSTED GUARANTEE OR TAX PAID PURSUANT TO THIS SECTION, FOR WHICH
44 NO LICENSE IS ISSUED OR NO SERVICE RENDERED OR REFUND THAT PORTION OF
45 THE PAYMENT THAT IS IN EXCESS OF THE AMOUNT PRESCRIBED BY STATUTE.

46 8. APPLICATION FOR LICENSE; FINGERPRINTS. (A) EVERY APPLICATION FOR A
47 LICENSE SHALL BE IN WRITING, SHALL BE ADDRESSED TO THE COMMISSION, SHALL
48 BE SUBSCRIBED BY THE APPLICANT, AND AFFIRMED BY HIM AS TRUE UNDER THE
49 PENALTIES OF PERJURY, AND SHALL SET FORTH SUCH FACTS AS THE PROVISIONS
50 HEREOF AND THE RULES AND REGULATIONS OF THE COMMISSION MAY REQUIRE.

51 (B) WHEN AN APPLICATION IS MADE FOR A LICENSE UNDER THIS SECTION, THE
52 COMMISSION MAY CAUSE THE FINGERPRINTS OF SUCH APPLICANT, OR IF SUCH
53 APPLICANT BE A CORPORATION, OF THE OFFICERS OF SUCH CORPORATION, OR IF
54 SUCH APPLICANT BE A LIMITED LIABILITY COMPANY, THE MANAGER OF SUCH
55 LIMITED LIABILITY COMPANY TO BE TAKEN IN DUPLICATE. THE APPLICANT SHALL
56 BE RESPONSIBLE FOR THE COST OF HAVING HIS FINGERPRINTS TAKEN. IF SUCH

1 FINGERPRINTS ARE TAKEN, ONE COPY SHALL BE TRANSMITTED TO THE DIVISION OF
2 CRIMINAL JUSTICE SERVICES IN ACCORDANCE WITH THE RULES AND REGULATIONS
3 OF THE DIVISION OF CRIMINAL JUSTICE SERVICES AND ONE SHALL REMAIN ON
4 FILE IN THE OFFICE OF THE COMMISSION. NO SUCH FINGERPRINT MAY BE
5 INSPECTED BY ANY PERSON, OTHER THAN A PEACE OFFICER, EXCEPT ON ORDER OF
6 A JUDGE OR JUSTICE OF A COURT OF RECORD. THE DIVISION IS HEREBY AUTHOR-
7 IZED TO TRANSMIT CRIMINAL HISTORY INFORMATION TO THE COMMISSION FOR THE
8 PURPOSES OF THIS PARAGRAPH. THE INFORMATION OBTAINED BY ANY SUCH FING-
9 ERPRINT EXAMINATION SHALL BE FOR THE GUIDANCE OF THE COMMISSION IN THE
10 EXERCISE OF ITS DISCRETION IN GRANTING OR WITHHOLDING THE LICENSE. THE
11 COMMISSION SHALL PROVIDE SUCH APPLICANT WITH A COPY OF HIS OR HER CRIMI-
12 NAL HISTORY RECORD, IF ANY, TOGETHER WITH A COPY OF ARTICLE
13 TWENTY-THREE-A OF THE CORRECTION LAW, AND INFORM SUCH APPLICANT OF HIS
14 OR HER RIGHT TO SEEK CORRECTION OF ANY INCORRECT INFORMATION CONTAINED
15 IN SUCH RECORD PURSUANT TO REGULATIONS AND PROCEDURES ESTABLISHED BY THE
16 DIVISION OF CRIMINAL JUSTICE SERVICES. ALL DETERMINATIONS TO ISSUE,
17 RENEW, SUSPEND OR REVOKE A LICENSE SHALL BE MADE IN ACCORDANCE WITH
18 SUBDIVISION SIXTEEN OF SECTION TWO HUNDRED NINETY-SIX OF THE EXECUTIVE
19 LAW AND ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW.

20 9. STANDARDS FOR THE ISSUANCE OF LICENSES. (A) IF IN THE JUDGMENT OF
21 THE COMMISSION THE FINANCIAL RESPONSIBILITY, EXPERIENCE, CHARACTER AND
22 GENERAL FITNESS OF AN APPLICANT, INCLUDING IN THE CASE OF CORPORATIONS
23 ITS OFFICERS AND STOCKHOLDERS, ARE SUCH THAT THE PARTICIPATION OF SUCH
24 APPLICANT WILL BE CONSISTENT WITH THE BEST INTERESTS OF COMBATIVE
25 SPORTS, THE PURPOSES OF THIS SECTION INCLUDING THE SAFETY OF PROFES-
26 SIONAL COMBATIVE SPORTS PARTICIPANTS, AND IN THE PUBLIC INTEREST,
27 CONVENIENCE OR NECESSITY, THE COMMISSION SHALL GRANT A LICENSE IN
28 ACCORDANCE WITH THE PROVISIONS CONTAINED IN THIS SUBDIVISION.

29 (B) ANY PROFESSIONAL COMBATIVE SPORTS PARTICIPANT APPLYING FOR A
30 LICENSE OR RENEWAL OF A LICENSE UNDER THIS SUBDIVISION SHALL UNDERGO A
31 COMPREHENSIVE PHYSICAL EXAMINATION INCLUDING CLINICAL NEUROLOGICAL AND
32 NEUROPSYCHOLOGICAL EXAMINATIONS BY A PHYSICIAN APPROVED BY THE COMMIS-
33 SION. IF, AT THE TIME OF SUCH EXAMINATION, THERE IS ANY INDICATION OF
34 BRAIN INJURY, OR FOR ANY OTHER REASON THE PHYSICIAN DEEMS IT APPROPRI-
35 ATE, THE PROFESSIONAL COMBATIVE SPORTS PARTICIPANT SHALL BE REQUIRED TO
36 UNDERGO FURTHER NEUROLOGICAL AND NEUROPSYCHOLOGICAL EXAMINATIONS BY A
37 NEUROLOGIST INCLUDING, BUT NOT LIMITED TO, A COMPUTED TOMOGRAPHY OR
38 MEDICALLY EQUIVALENT PROCEDURE. THE COMMISSION SHALL NOT ISSUE A LICENSE
39 TO A PROFESSIONAL COMBATIVE SPORTS PARTICIPANT UNTIL SUCH EXAMINATIONS
40 ARE COMPLETED AND REVIEWED BY THE COMMISSION. THE RESULTS OF ALL SUCH
41 EXAMINATIONS HEREIN REQUIRED SHALL BECOME A PART OF THE PROFESSIONAL
42 COMBATIVE SPORTS PARTICIPANT'S PERMANENT MEDICAL RECORD AS MAINTAINED BY
43 THE COMMISSION. THE COST OF ALL SUCH EXAMINATIONS CALLED FOR IN THIS
44 SUBDIVISION SHALL BE ASSUMED BY THE STATE IF SUCH EXAMINATIONS ARE
45 PERFORMED BY A PHYSICIAN OR NEUROLOGIST APPROVED BY THE COMMISSION.

46 (C) ANY PROFESSIONAL COMBATIVE SPORTS PARTICIPANT LICENSED UNDER THIS
47 CHAPTER SHALL, AS A CONDITION OF LICENSURE, WAIVE RIGHT OF CONFIDENTIAL-
48 ITY OF MEDICAL RECORDS RELATING TO TREATMENT OF ANY PHYSICAL CONDITION
49 WHICH RELATES TO HIS ABILITY TO FIGHT. ALL MEDICAL REPORTS SUBMITTED TO,
50 AND ALL MEDICAL RECORDS OF THE MEDICAL ADVISORY BOARD OR THE COMMISSION
51 RELATIVE TO THE PHYSICAL EXAMINATION OR CONDITION OF COMBATIVE SPORTS
52 PARTICIPANTS SHALL BE CONSIDERED CONFIDENTIAL, AND SHALL BE OPEN TO
53 EXAMINATION ONLY TO THE COMMISSION OR ITS AUTHORIZED REPRESENTATIVE, TO
54 THE LICENSED PARTICIPANT, MANAGER OR CHIEF SECOND UPON WRITTEN APPLICA-
55 TION TO EXAMINE SAID RECORDS, OR UPON THE ORDER OF A COURT OF COMPETENT
56 JURISDICTION IN AN APPROPRIATE CASE.

10. FINANCIAL INTEREST IN PROFESSIONAL COMBATIVE SPORTS PARTICIPANTS PROHIBITED. NO ENTITY SHALL HAVE, EITHER DIRECTLY OR INDIRECTLY, ANY FINANCIAL INTEREST IN A PROFESSIONAL COMBATIVE SPORTS PARTICIPANT COMPETING ON PREMISES OWNED OR LEASED BY THE ENTITY, OR IN WHICH SUCH ENTITY IS OTHERWISE INTERESTED EXCEPT PURSUANT TO THE SPECIFIC WRITTEN AUTHORIZATION OF THE COMMISSION.

11. PAYMENTS NOT TO BE MADE BEFORE CONTESTS. NO PROFESSIONAL COMBATIVE SPORTS PARTICIPANT SHALL BE PAID FOR SERVICES BEFORE THE CONTEST, AND SHOULD IT BE DETERMINED BY THE COMMISSION THAT SUCH PARTICIPANT DID NOT GIVE AN HONEST EXHIBITION OF HIS SKILL, SUCH SERVICE SHALL NOT BE PAID FOR.

12. SHAM OR COLLUSIVE EVENTS. (A) ANY PERSON, INCLUDING ANY CORPORATION AND THE OFFICERS THEREOF, ANY PHYSICIAN, LIMITED LIABILITY COMPANY, REFEREE, JUDGE, PROFESSIONAL COMBATIVE SPORTS PARTICIPANT, MANAGER, TRAINER OR CHIEF SECOND, WHO SHALL PROMOTE, CONDUCT, GIVE OR PARTICIPATE IN ANY SHAM OR COLLUSIVE PROFESSIONAL COMBATIVE SPORTS MATCH OR EXHIBITION, SHALL BE DEPRIVED OF HIS LICENSE BY THE COMMISSION.

(B) NO LICENSED ENTITY SHALL KNOWINGLY ENGAGE IN A COURSE OF CONDUCT IN WHICH PROFESSIONAL COMBATIVE SPORTS MATCHES OR EXHIBITIONS ARE ARRANGED WHERE ONE PROFESSIONAL COMBATIVE SPORTS PARTICIPANT HAS SKILLS OR EXPERIENCE SIGNIFICANTLY IN EXCESS OF THE OTHER PROFESSIONAL COMBATIVE SPORTS PARTICIPANT SO THAT A MISMATCH RESULTS WITH THE POTENTIAL OF PHYSICAL HARM TO THE PROFESSIONAL COMBATIVE SPORTS PARTICIPANT. IF SUCH ACTION OCCURS, THE COMMISSION MAY EXERCISE ITS POWERS TO DISCIPLINE UNDER SUBDIVISIONS THIRTEEN AND FOURTEEN OF THIS SECTION, PROVIDED THAT NOTHING IN THIS SUBDIVISION SHALL AUTHORIZE THE COMMISSION TO INTERVENE OR PROHIBIT A PROFESSIONAL COMBATIVE SPORTS MATCH OR EXHIBITION SOLELY ON THE BASIS OF THE DIFFERENCE BETWEEN RESPECTIVE PARTICIPANT'S MARTIAL ARTS DISCIPLINES.

13. IMPOSITION OF PENALTIES FOR VIOLATIONS. ANY ENTITY, LICENSED UNDER THE PROVISIONS OF THIS SECTION, THAT SHALL KNOWINGLY VIOLATE ANY RULE OR ORDER OF THE COMMISSION OR ANY PROVISION OF THIS SECTION, IN ADDITION TO ANY OTHER PENALTY BY LAW PRESCRIBED, SHALL BE LIABLE TO A CIVIL PENALTY NOT EXCEEDING FIVE THOUSAND DOLLARS TO BE IMPOSED BY THE COMMISSION, TO BE SUED FOR BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK IF DIRECTED BY THE COMMISSION. THE AMOUNT OF THE PENALTY COLLECTED BY THE COMMISSION OR RECOVERED IN ANY SUCH ACTION, OR PAID TO THE COMMISSION UPON A COMPROMISE AS HEREINAFTER PROVIDED, SHALL BE TRANSMITTED BY THE DEPARTMENT OF STATE INTO THE STATE TREASURY AND CREDITED TO THE GENERAL FUND. THE COMMISSION, FOR CAUSE SHOWN, MAY EXTEND THE TIME FOR THE PAYMENT OF SUCH PENALTY AND, BY COMPROMISE, MAY ACCEPT LESS THAN THE AMOUNT OF SUCH PENALTY AS IMPOSED IN SETTLEMENT THEREOF.

14. REVOCATION OR SUSPENSION OF LICENSES. (A) ANY LICENSE ISSUED UNDER THE PROVISIONS OF THIS SECTION MAY BE REVOKED OR SUSPENDED BY THE COMMISSION FOR THE REASON THEREIN STATED, THAT THE LICENSEE HAS, IN THE JUDGMENT OF THE COMMISSION, BEEN GUILTY OF AN ACT DETRIMENTAL TO THE INTERESTS OF COMBATIVE SPORTS GENERALLY OR TO THE PUBLIC INTEREST, CONVENIENCE OR NECESSITY.

(B) WITHOUT OTHERWISE LIMITING THE DISCRETION OF THE COMMISSION AS PROVIDED IN THIS SECTION, THE COMMISSION MAY SUSPEND OR REVOKE A LICENSE OR REFUSE TO RENEW OR ISSUE A LICENSE, IF IT SHALL FIND THAT THE APPLICANT OR PARTICIPANT: (1) HAS BEEN CONVICTED OF A CRIME IN ANY JURISDICTION; (2) IS ASSOCIATING OR CONSORTING WITH ANY PERSON WHO HAS OR PERSONS WHO HAVE BEEN CONVICTED OF A CRIME OR CRIMES IN ANY JURISDICTION OR JURISDICTIONS; (3) HAS BEEN GUILTY OF OR ATTEMPTED ANY FRAUD OR

1 MISREPRESENTATION IN CONNECTION WITH COMBATIVE SPORTS; (4) HAS VIOLATED
2 OR ATTEMPTED TO VIOLATE ANY LAW WITH RESPECT TO COMBATIVE SPORTS IN ANY
3 JURISDICTION OR ANY RULE, REGULATION OR ORDER OF THE COMMISSION, OR
4 SHALL HAVE VIOLATED ANY RULE OF COMBATIVE SPORTS WHICH SHALL HAVE BEEN
5 APPROVED OR ADOPTED BY THE COMMISSION, OR HAS BEEN GUILTY OF OR ENGAGED
6 IN SIMILAR, RELATED OR LIKE PRACTICES; OR (5) HAS NOT ACTED IN THE BEST
7 INTEREST OF MIXED MARTIAL ARTS. ALL DETERMINATIONS TO ISSUE, RENEW,
8 SUSPEND OR REVOKE A LICENSE SHALL BE MADE IN ACCORDANCE WITH SUBDIVISION
9 SIXTEEN OF SECTION TWO HUNDRED NINETY-SIX OF THE EXECUTIVE LAW AND ARTI-
10 CLE TWENTY-THREE-A OF THE CORRECTION LAW AS APPLICABLE.

11 (C) NO SUCH PARTICIPANT MAY, UNDER ANY CIRCUMSTANCES, COMPETE OR
12 APPEAR IN A PROFESSIONAL COMBATIVE SPORTS MATCH OR EXHIBITION WITHIN
13 NINETY DAYS OF HAVING SUFFERED A KNOCKOUT OR TECHNICAL KNOCKOUT IN ANY
14 SUCH MATCH OR EXHIBITION WITHOUT CLEARANCE BY THE BOARD, OR WITHIN NINE-
15 TY DAYS OF BEING RENDERED UNCONSCIOUS IN ANY SUCH MATCH OR EXHIBITION
16 WHERE THERE IS EVIDENCE OF HEAD TRAUMA AS DETERMINED BY THE ATTENDING
17 COMMISSION PHYSICIAN AND SHALL UNDERGO SUCH EXAMINATIONS AS REQUIRED
18 UNDER PARAGRAPH (B) OF SUBDIVISION TWENTY OF THIS SECTION. THE PROFES-
19 SIONAL COMBATIVE SPORTS PARTICIPANT SHALL BE CONSIDERED SUSPENDED FROM
20 PROFESSIONAL COMBATIVE SPORTS MATCHES OR EXHIBITIONS BY THE COMMISSION
21 AND SHALL FORFEIT HIS LICENSE TO THE COMMISSION DURING SUCH PERIOD AND
22 SUCH LICENSE SHALL NOT BE RETURNED TO THE PARTICIPANT UNTIL THE PARTIC-
23 IPANT HAS MET ALL REQUIREMENTS, MEDICAL AND OTHERWISE, FOR REINSTATEMENT
24 OF SUCH LICENSE. ALL SUCH SUSPENSIONS SHALL BE RECORDED IN THE PARTIC-
25 IPANT'S LICENSE BY A COMMISSION OFFICIAL.

26 (D) THE COMMISSION MAY AT ANY TIME SUSPEND, REVOKE OR DENY A PARTIC-
27 IPANT'S LICENSE OR TEMPORARY WORKING PERMIT FOR MEDICAL REASONS AT THE
28 RECOMMENDATION OF THE BOARD.

29 (E) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF ANY OTHER STATE
30 SHALL REVOKE A LICENSEE'S LICENSE TO COMPETE OR APPEAR IN A PROFESSIONAL
31 COMBATIVE SPORTS MATCH OR EXHIBITION IN THAT STATE BASED ON A KNOWING
32 AND INTENTIONAL ENGAGEMENT IN ANY PROHIBITED PRACTICES OF SUCH STATE,
33 THE COMMISSION MAY ACT TO REVOKE ANY LICENSE TO COMPETE OR APPEAR IN A
34 PROFESSIONAL COMBATIVE SPORTS MATCH OR EXHIBITION ISSUED TO SUCH LICEN-
35 SEE PURSUANT TO THE PROVISIONS OF THIS SECTION.

36 (F) THE COMMISSION MAY SUSPEND ANY LICENSE IT HAS ISSUED BY A DATED
37 NOTICE TO THAT EFFECT TO THE SUSPENDED LICENSEE, MAILED OR DELIVERED TO
38 THE LICENSEE, AND SPECIFYING THE EFFECTIVE DATE AND TERM OF THE SUSPEN-
39 SION, PROVIDED HOWEVER THAT THE COMMISSION REPRESENTATIVE IN CHARGE OF A
40 CONTEST OR EXHIBITION MAY THEN AND THERE TEMPORARILY SUSPEND ANY LICENSE
41 ISSUED BY THE COMMISSION WITHOUT SUCH NOTICE. IN THE EVENT OF A TEMPO-
42 RARY SUSPENSION, THE COMMISSION SHALL MAIL OR DELIVER THE NOTICE TO THE
43 SUSPENDED LICENSEE WITHIN THREE BUSINESS DAYS AFTER THE TEMPORARY
44 SUSPENSION. IN EITHER CASE SUCH SUSPENSION MAY BE WITHOUT ANY ADVANCE
45 HEARING. UPON THE RECEIPT OF SUCH NOTICE OF SUSPENSION, THE SUSPENDED
46 LICENSEE MAY APPLY TO THE COMMISSION FOR A HEARING ON THE MATTER TO
47 DETERMINE WHETHER SUCH SUSPENSION SHOULD BE RESCINDED. SUCH APPLICATION
48 FOR A HEARING MUST BE IN WRITING AND MUST BE RECEIVED BY THE COMMISSION
49 WITHIN THIRTY DAYS AFTER THE DATE OF NOTICE OF SUSPENSION. THE COMMIS-
50 SION SHALL HAVE THE AUTHORITY TO REVOKE ANY LICENSE ISSUED BY IT. BEFORE
51 ANY LICENSE IS SO REVOKED, THE LICENSEE WILL BE OFFERED THE OPPORTUNITY
52 AT A HEARING HELD BY OR ON BEHALF OF THE COMMISSION TO SHOW CAUSE WHY
53 THE LICENSE SHOULD NOT BE REVOKED. THE COMMISSION SHALL OFFER THE OPPOR-
54 TUNITY FOR A HEARING TO AN AFFECTED PERSON BEFORE TAKING ANY FINAL
55 ACTION NEGATIVELY AFFECTING SUCH PERSON'S INDIVIDUAL PRIVILEGES OR PROP-
56 ERTY GRANTED BY A LICENSE DULY ISSUED BY THE COMMISSION OR A CONTRACT

1 APPROVED BY AND FILED WITH THE COMMISSION. IN ALL SUCH HEARINGS, LICEN-
2 SEES AND OTHER WITNESSES SHALL TESTIFY UNDER OATH OR AFFIRMATION, WHICH
3 MAY BE ADMINISTERED BY ANY COMMISSIONER OR AUTHORIZED REPRESENTATIVE OF
4 THE COMMISSION ACTUALLY PRESENT. THE COMMISSION SHALL BE THE SOLE JUDGE
5 OF THE RELEVANCY AND COMPETENCY OF TESTIMONY AND OTHER EVIDENCE, THE
6 CREDIBILITY OF WITNESSES, AND THE SUFFICIENCY OF EVIDENCE. HEARINGS MAY
7 BE CONDUCTED BY REPRESENTATIVES OF THE COMMISSION IN THE DISCRETION OF
8 THE COMMISSION. IN SUCH CASES, THE COMMISSION REPRESENTATIVES CONDUCTING
9 THE HEARING SHALL SUBMIT FINDINGS OF FACT AND RECOMMENDATIONS TO THE
10 COMMISSION, WHICH SHALL NOT BE BINDING ON THE COMMISSION.

11 15. ADVERTISING MATTER TO STATE ADMISSION PRICE. IT SHALL BE THE DUTY
12 OF EVERY ENTITY PROMOTING OR CONDUCTING A PROFESSIONAL COMBATIVE SPORTS
13 MATCH OR EXHIBITION SUBJECT TO THE PROVISIONS OF THIS SECTION TO CAUSE
14 TO BE INSERTED IN EACH SHOW CARD, BILL, POSTER, NEWSPAPER ADVERTISEMENT
15 OF ANY PROFESSIONAL COMBATIVE SPORTS MATCH OR EXHIBITION GIVEN BY IT,
16 THE PRICE OF ADMISSION THERETO. VIOLATION OF THE PROVISIONS OF THIS
17 SUBDIVISION SHALL SUBJECT THE ENTITY TO A FINE OF ONE HUNDRED DOLLARS.

18 16. TICKETS TO INDICATE PURCHASE PRICE. ALL TICKETS OF ADMISSION TO
19 ANY SUCH COMBATIVE SPORTS MATCH OR EXHIBITION SHALL BE CONTROLLED BY THE
20 PROVISIONS OF ARTICLE TWENTY-FIVE OF THE ARTS AND CULTURAL AFFAIRS LAW.
21 IT SHALL BE UNLAWFUL FOR ANY ENTITY TO ADMIT TO SUCH MATCH OR EXHIBITION
22 A NUMBER OF PEOPLE GREATER THAN THE SEATING CAPACITY OF THE PLACE WHERE
23 SUCH MATCH OR EXHIBITION IS HELD. VIOLATION OF THIS SUBDIVISION SHALL BE
24 A MISDEMEANOR AND SHALL BE PUNISHABLE AS SUCH AND IN ADDITION SHALL
25 INCUR FORFEITURE OF LICENSE.

26 17. EQUIPMENT OF BUILDINGS FOR MATCHES OR EXHIBITIONS. ALL BUILDINGS
27 OR STRUCTURES USED OR INTENDED TO BE USED FOR HOLDING OR GIVING SUCH
28 PROFESSIONAL COMBATIVE SPORTS MATCHES OR EXHIBITIONS SHALL BE PROPERLY
29 VENTILATED AND PROVIDED WITH FIRE EXITS AND FIRE ESCAPES, AND IN ALL
30 MANNER CONFORM TO THE LAWS, ORDINANCES AND REGULATIONS PERTAINING TO
31 BUILDINGS IN THE CITY, TOWN OR VILLAGE WHERE SITUATED.

32 18. AGE OF PARTICIPANTS AND SPECTATORS. NO PERSON UNDER THE AGE OF
33 EIGHTEEN YEARS SHALL PARTICIPATE IN ANY PROFESSIONAL COMBATIVE SPORTS
34 MATCH OR EXHIBITION, AND NO PERSON UNDER SIXTEEN YEARS OF AGE SHALL BE
35 PERMITTED TO ATTEND AS A SPECTATOR; PROVIDED, HOWEVER, THAT A PERSON
36 UNDER THE AGE OF SIXTEEN SHALL BE PERMITTED TO ATTEND AS A SPECTATOR IF
37 ACCOMPANIED BY A PARENT OR GUARDIAN.

38 19. REGULATION OF CONDUCT OF MATCHES OR EXHIBITIONS. (A) EXCEPT FOR
39 CHAMPIONSHIP MATCHES, WHICH SHALL NOT BE MORE THAN FIVE ROUNDS, NO
40 COMBATIVE SPORTS MATCH OR EXHIBITION SHALL BE MORE THAN THREE ROUNDS IN
41 LENGTH. NO PARTICIPANT SHALL BE ALLOWED TO PARTICIPATE IN MORE THAN
42 THREE MATCHES OR EXHIBITIONS OR COMPETE FOR MORE THAN SIXTY MINUTES
43 WITHIN SEVENTY-TWO CONSECUTIVE HOURS. NO PARTICIPANT SHALL BE ALLOWED
44 TO COMPETE IN ANY SUCH MATCH OR EXHIBITION WITHOUT WEARING A MOUTHGUARD
45 AND A PROTECTIVE GROIN CUP. AT EACH PROFESSIONAL COMBATIVE SPORTS MATCH
46 OR EXHIBITION, THERE SHALL BE IN ATTENDANCE A DULY LICENSED REFEREE WHO
47 SHALL DIRECT AND CONTROL THE SAME. BEFORE STARTING SUCH CONTEST THE
48 REFEREE SHALL ASCERTAIN FROM EACH PARTICIPANT THE NAME OF HIS MANAGER OR
49 CHIEF SECOND, AND SHALL HOLD SUCH MANAGER OR CHIEF SECOND RESPONSIBLE
50 FOR THE CONDUCT OF HIS ASSISTANT SECONDS DURING THE PROGRESS OF THE
51 MATCH OR EXHIBITION. THE COMMISSION SHALL HAVE THE POWER IN ITS
52 DISCRETION TO DECLARE FORFEITED ANY PRIZE, REMUNERATION OR PURSE, OR ANY
53 PART THEREOF, BELONGING TO THE PARTICIPANTS OR ONE OF THEM, OR THE SHARE
54 THEREOF OF ANY MANAGER OR CHIEF SECOND IF IN ITS JUDGMENT, SUCH PARTIC-
55 IPANT OR PARTICIPANTS ARE NOT HONESTLY COMPETING OR THE PARTICIPANT OR
56 MANAGER OR CHIEF SECOND OF A PARTICIPANT, AS THE CASE MAY BE, HAS

COMMITTED AN ACT IN THE PREMISES IN VIOLATION OF ANY RULE, ORDER OR REGULATION OF THE COMMISSION. THE AMOUNT SO FORFEITED SHALL BE PAID WITHIN FORTY-EIGHT HOURS TO THE COMMISSION. THERE SHALL ALSO BE IN ATTENDANCE, THREE DULY LICENSED JUDGES WHO SHALL AT THE TERMINATION OF EACH SUCH COMBATIVE SPORTS MATCH OR EXHIBITION RENDER THEIR DECISION. THE WINNER OF SUCH MATCH OR EXHIBITION SHALL BE DETERMINED IN ACCORDANCE WITH A SCORING SYSTEM PRESCRIBED BY THE COMMISSION. PROVIDED, HOWEVER, THAT A PARTICIPANT MAY TERMINATE THE CONTEST BY SIGNALLING TO THE REFEREE THAT SUCH PARTICIPANT SUBMITS TO THE OPPONENT.

(B) THE COMMISSION MAY BY RULE, REGULATION OR ORDER, REQUIRE THE PRESENCE OF ANY MEDICAL EQUIPMENT AND PERSONNEL AT EACH PROFESSIONAL COMBATIVE SPORTS MATCH OR EXHIBITION AS IS NECESSARY OR BENEFICIAL FOR THE SAFETY AND PROTECTION OF THE CONTESTANTS; AND MAY ALSO REQUIRE THE PRESENCE OF AN AMBULANCE OR OTHER APPARATUS AT THE SITE OF ANY SUCH MATCH OR EXHIBITION OR THE PROMULGATION OF AN EMERGENCY MEDICAL PLAN IN LIEU THEREOF.

(C) THE COMMISSION SHALL PRESCRIBE BY RULE OR REGULATION THE RESPONSIBILITIES OF MANAGERS, TRAINERS AND CHIEF SECONDS PRIOR TO, DURING AND AFTER A COMBATIVE SPORTS MATCH OR EXHIBITION IN ORDER TO PROMOTE THE SAFETY OF THE PARTICIPANTS AT ALL TIMES.

(D) THE COMMISSION SHALL REQUIRE BY RULE OR REGULATION THAT ANY PROFESSIONAL COMBATIVE SPORTS PARTICIPANT LICENSED UNDER THIS SECTION PRESENT TO A DESIGNATED COMMISSION OFFICIAL, BEFORE EACH MATCH OR EXHIBITION IN WHICH HE FIGHTS IN THIS STATE, A LICENSE WHICH SHALL INCLUDE BUT NOT BE LIMITED TO THE FOLLOWING INFORMATION: (1) THE PARTICIPANT'S NAME, PHOTOGRAPH, SOCIAL SECURITY NUMBER, DATE OF BIRTH, AND OTHER IDENTIFYING INFORMATION; (2) THE PARTICIPANT'S PRIOR MATCH OR EXHIBITION HISTORY INCLUDING THE DATES, LOCATION, AND DECISION OF SUCH MATCHES OR EXHIBITIONS; AND (3) THE PARTICIPANT'S MEDICAL HISTORY, RELATING TO ANY PHYSICAL CONDITION, MEDICAL TEST OR PROCEDURE WHICH RELATES TO HIS ABILITY TO FIGHT, AND A RECORD OF ALL MEDICAL SUSPENSIONS.

20. EXAMINATION BY PHYSICIAN; COST. (A) ALL PARTICIPANTS MUST BE EXAMINED BY A PHYSICIAN DESIGNATED BY THE COMMISSION BEFORE ENTERING THE RING AND EACH SUCH PHYSICIAN SHALL IMMEDIATELY FILE WITH THE COMMISSION A WRITTEN REPORT OF SUCH EXAMINATION. THE COST OF ANY SUCH EXAMINATION, AS PRESCRIBED BY A SCHEDULE OF FEES ESTABLISHED BY THE COMMISSION, SHALL BE PAID BY THE ENTITY CONDUCTING THE MATCH OR EXHIBITION TO THE COMMISSION, WHICH SHALL THEN PAY THE FEE COVERING SUCH COST TO THE EXAMINING PHYSICIAN, IN ACCORDANCE WITH THE RULES OF THE COMMISSION.

(B) ANY PROFESSIONAL COMBATIVE SPORTS PARTICIPANT LICENSED OR PERMITTED UNDER THIS SECTION RENDERED UNCONSCIOUS OR SUFFERING HEAD TRAUMA AS DETERMINED BY THE ATTENDING PHYSICIAN SHALL BE IMMEDIATELY EXAMINED BY THE ATTENDING COMMISSION PHYSICIAN AND SHALL BE REQUIRED TO UNDERGO NEUROLOGICAL AND NEUROPSYCHOLOGICAL EXAMINATIONS BY A NEUROLOGIST INCLUDING BUT NOT LIMITED TO A COMPUTED TOMOGRAPHY OR MEDICALLY EQUIVALENT PROCEDURE. ANY PARTICIPANT SO INJURED SHALL NOT APPEAR IN ANY MATCH OR EXHIBITION UNTIL RESULTS OF SUCH EXAMINATIONS ARE REVIEWED BY THE COMMISSION. THE RESULTS OF ALL SUCH EXAMINATIONS HEREIN REQUIRED SHALL BECOME A PART OF THE PARTICIPANT'S PERMANENT MEDICAL RECORDS AS MAINTAINED BY THE COMMISSION AND SHALL BE USED BY THE COMMISSION TO DETERMINE WHETHER A PARTICIPANT SHALL BE PERMITTED TO APPEAR IN ANY FUTURE PROFESSIONAL COMBATIVE SPORTS MATCH OR EXHIBITION. THE COSTS OF ALL SUCH EXAMINATIONS CALLED FOR IN THIS PARAGRAPH SHALL BE ASSUMED BY THE ENTITY OR PROMOTER IF SUCH EXAMINATIONS ARE PERFORMED BY A PHYSICIAN APPROVED BY THE COMMISSION.

1 (C) THE COMMISSION MAY AT ANY TIME REQUIRE A LICENSED OR PERMITTED
2 PARTICIPANT TO UNDERGO A PHYSICAL EXAMINATION, INCLUDING ANY NEUROLOGI-
3 CAL OR NEUROPSYCHOLOGICAL TEST OR PROCEDURE. THE COST OF SUCH EXAM SHALL
4 BE ASSUMED BY THE STATE.

5 21. PHYSICIAN TO BE IN ATTENDANCE; POWERS OF SUCH PHYSICIAN. (A) IT
6 SHALL BE THE DUTY OF EVERY ENTITY LICENSED TO CONDUCT A COMBATIVE SPORTS
7 MATCH OR EXHIBITION, TO HAVE IN ATTENDANCE AT EVERY MATCH OR EXHIBITION
8 AT LEAST ONE PHYSICIAN DESIGNATED BY THE COMMISSION AS THE RULES SHALL
9 PROVIDE. THE COMMISSION MAY ESTABLISH A SCHEDULE OF FEES TO BE PAID BY
10 THE LICENSEE TO COVER THE COST OF SUCH ATTENDANCE. SUCH FEES SHALL BE
11 PAID TO THE COMMISSION, WHICH SHALL THEN PAY SUCH FEES TO THE PHYSICIANS
12 ENTITLED THERETO, IN ACCORDANCE WITH THE RULES OF THE COMMISSION.

13 (B) THE PHYSICIAN SHALL TERMINATE ANY PROFESSIONAL COMBATIVE SPORTS
14 MATCH OR EXHIBITION IF IN THE OPINION OF SUCH PHYSICIAN ANY PARTICIPANT
15 HAS RECEIVED SEVERE PUNISHMENT OR IS IN DANGER OF SERIOUS PHYSICAL INJU-
16 RY. IN THE EVENT OF ANY SERIOUS PHYSICAL INJURY, SUCH PHYSICIAN SHALL
17 IMMEDIATELY RENDER ANY EMERGENCY TREATMENT NECESSARY, RECOMMEND FURTHER
18 TREATMENT OR HOSPITALIZATION IF REQUIRED, AND FULLY REPORT THE ENTIRE
19 MATTER TO THE COMMISSION WITHIN TWENTY-FOUR HOURS AND IF NECESSARY,
20 SUBSEQUENTLY THEREAFTER. SUCH PHYSICIAN MAY ALSO REQUIRE THAT THE
21 INJURED PARTICIPANT AND HIS MANAGER OR CHIEF SECOND REMAIN IN THE RING
22 OR ON THE PREMISES OR REPORT TO A HOSPITAL AFTER THE CONTEST FOR SUCH
23 PERIOD OF TIME AS SUCH PHYSICIAN DEEMS ADVISABLE.

24 (C) SUCH PHYSICIAN MAY ENTER THE RING AT ANY TIME DURING A PROFES-
25 SIONAL COMBATIVE SPORTS MATCH OR EXHIBITION AND MAY TERMINATE THE MATCH
26 OR EXHIBITION IF IN HIS OPINION THE SAME IS NECESSARY TO PREVENT SEVERE
27 PUNISHMENT OR SERIOUS PHYSICAL INJURY TO A PARTICIPANT.

28 22. BOND. BEFORE A LICENSE SHALL BE GRANTED TO AN ENTITY TO CONDUCT A
29 PROFESSIONAL COMBATIVE SPORTS MATCH OR EXHIBITION, THE APPLICANT SHALL
30 EXECUTE AND FILE WITH THE COMPTROLLER A BOND IN AN AMOUNT TO BE DETER-
31 MINED BY THE COMMISSION, TO BE APPROVED AS TO FORM AND SUFFICIENCY OF
32 SURETIES THEREON BY THE COMPTROLLER, CONDITIONED FOR THE FAITHFUL
33 PERFORMANCE BY SUCH ENTITY OF THE PROVISIONS OF THIS SECTION AND THE
34 RULES AND REGULATIONS OF THE COMMISSION, AND UPON THE FILING AND
35 APPROVAL OF SUCH BOND THE COMPTROLLER SHALL ISSUE TO SUCH APPLICANT A
36 CERTIFICATE OF SUCH FILING AND APPROVAL, WHICH SHALL BE BY SUCH APPLI-
37 CANT FILED IN THE OFFICE OF THE COMMISSION WITH ITS APPLICATION FOR
38 LICENSE, AND NO SUCH LICENSE SHALL BE ISSUED UNTIL SUCH CERTIFICATE
39 SHALL BE FILED. IN CASE OF DEFAULT IN SUCH PERFORMANCE, THE COMMISSION
40 MAY IMPOSE UPON THE DELINQUENT A PENALTY IN THE SUM OF NOT MORE THAN ONE
41 THOUSAND DOLLARS FOR EACH OFFENSE, WHICH MAY BE RECOVERED BY THE ATTOR-
42 NEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK IN THE
43 SAME MANNER AS OTHER PENALTIES ARE RECOVERED BY LAW; ANY AMOUNT SO
44 RECOVERED SHALL BE PAID INTO THE TREASURY.

45 23. BOND FOR PURSES, SALARIES AND OTHER EXPENSES. IN ADDITION TO THE
46 BOND REQUIRED BY SUBDIVISION TWENTY-TWO OF THIS SECTION, EACH APPLICANT
47 FOR A LICENSE TO CONDUCT PROFESSIONAL COMBATIVE SPORTS MATCHES OR EXHI-
48 BITIONS SHALL EXECUTE AND FILE WITH THE COMPTROLLER A BOND IN AN AMOUNT
49 TO BE DETERMINED BY THE COMMISSION TO BE APPROVED AS TO FORM AND SUFFI-
50 CIENCY OF SURETIES THEREON BY THE COMPTROLLER, CONDITIONED FOR AND GUAR-
51 ANTEEING THE PAYMENT OF PROFESSIONAL COMBATIVE SPORTS PARTICIPANTS'
52 PURSES, SALARIES OF CLUB EMPLOYEES LICENSED BY THE COMMISSION, AND THE
53 LEGITIMATE EXPENSES OF PRINTING TICKETS AND ALL ADVERTISING MATERIAL.

54 24. DUTY TO PROVIDE INSURANCE FOR LICENSED PROFESSIONAL COMBATIVE
55 SPORTS PARTICIPANTS. (A) ALL ENTITIES HAVING LICENSES AS PROMOTERS
56 SHALL CONTINUOUSLY PROVIDE INSURANCE FOR THE PROTECTION OF LICENSED

1 PROFESSIONAL COMBATIVE SPORTS PARTICIPANTS, APPEARING IN PROFESSIONAL
2 COMBATIVE SPORTS MATCHES OR EXHIBITIONS. SUCH INSURANCE COVERAGE SHALL
3 PROVIDE FOR REIMBURSEMENT TO THE LICENSED ATHLETE FOR MEDICAL, SURGICAL
4 AND HOSPITAL CARE, WITH A MINIMUM LIMIT OF FIFTY THOUSAND DOLLARS FOR
5 INJURIES SUSTAINED WHILE PARTICIPATING IN ANY PROGRAM OPERATED UNDER THE
6 CONTROL OF SUCH LICENSED PROMOTER AND FOR A PAYMENT OF ONE HUNDRED THOU-
7 SAND DOLLARS TO THE ESTATE OF ANY DECEASED ATHLETE WHERE SUCH DEATH IS
8 OCCASIONED BY INJURIES RECEIVED DURING THE COURSE OF A MATCH OR EXHIBI-
9 TION IN WHICH SUCH LICENSED ATHLETE PARTICIPATED UNDER THE PROMOTION OR
10 CONTROL OF ANY LICENSED PROMOTER. THE COMMISSION MAY FROM TIME TO TIME,
11 IN ITS DISCRETION, INCREASE THE AMOUNT OF SUCH MINIMUM LIMITS.

12 (B) THE FAILURE TO PAY PREMIUMS ON SUCH INSURANCE AS IS REQUIRED BY
13 PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE CAUSE FOR THE SUSPENSION OR
14 THE REVOCATION OF THE LICENSE OF SUCH DEFAULTING PROMOTER.

15 25. NOTICE OF CONTEST; COLLECTION OF TAX. (A) EVERY ENTITY HOLDING ANY
16 PROFESSIONAL COMBATIVE SPORTS MATCH OR EXHIBITION FOR WHICH AN ADMISSION
17 FEE IS CHARGED OR RECEIVED, SHALL NOTIFY THE ATHLETIC COMMISSION TEN
18 DAYS IN ADVANCE OF THE HOLDING OF SUCH CONTEST. ALL TICKETS OF ADMISSION
19 TO ANY SUCH MATCH OR EXHIBITION SHALL BE PROCURED FROM A PRINTER DULY
20 AUTHORIZED BY THE STATE ATHLETIC COMMISSION TO PRINT SUCH TICKETS AND
21 SHALL BEAR CLEARLY UPON THE FACE THEREOF THE PURCHASE PRICE AND LOCATION
22 OF SAME. AN ENTITY FAILING TO FULLY COMPLY WITH THIS SECTION SHALL BE
23 SUBJECT TO A PENALTY OF FIVE HUNDRED DOLLARS TO BE COLLECTED BY AND PAID
24 TO THE DEPARTMENT OF STATE. AN ENTITY IS PROHIBITED FROM OPERATING ANY
25 MATCHES OR EXHIBITIONS UNTIL ALL PENALTIES DUE PURSUANT TO THIS SUBDIVI-
26 SION AND TAXES, INTEREST AND PENALTIES DUE PURSUANT TO ARTICLE NINETEEN
27 OF THE TAX LAW HAVE BEEN PAID.

28 (B) PURSUANT TO DIRECTION BY THE COMMISSIONER OF TAXATION AND FINANCE,
29 EMPLOYEES OR OFFICERS OF THE ATHLETIC COMMISSION SHALL ACT AS AGENTS OF
30 THE COMMISSIONER OF TAXATION AND FINANCE TO COLLECT THE TAX IMPOSED BY
31 ARTICLE NINETEEN OF THE TAX LAW. THE ATHLETIC COMMISSION SHALL PROVIDE
32 THE COMMISSIONER OF TAXATION AND FINANCE WITH SUCH INFORMATION AND TECH-
33 NICAL ASSISTANCE AS MAY BE NECESSARY FOR THE PROPER ADMINISTRATION OF
34 SUCH TAX.

35 26. REGULATION OF JUDGES. (A) JUDGES FOR ANY PROFESSIONAL COMBATIVE
36 SPORTS MATCH OR EXHIBITION UNDER THE JURISDICTION OF THE COMMISSION
37 SHALL BE SELECTED BY THE COMMISSION FROM A LIST OF QUALIFIED LICENSED
38 JUDGES MAINTAINED BY THE COMMISSION.

39 (B) ANY PROFESSIONAL COMBATIVE SPORT PARTICIPANT, MANAGER OR CHIEF
40 SECOND MAY PROTEST THE ASSIGNMENT OF A JUDGE TO A PROFESSIONAL COMBATIVE
41 SPORTS MATCH OR EXHIBITION AND THE PROTESTING PROFESSIONAL COMBATIVE
42 SPORTS PARTICIPANT, MANAGER OR CHIEF SECOND MAY BE HEARD BY THE COMMIS-
43 SION OR ITS DESIGNEE IF SUCH PROTEST IS TIMELY. IF THE PROTEST IS
44 UNTIMELY IT SHALL BE SUMMARILY REJECTED.

45 (C) EACH PERSON SEEKING TO BE LICENSED AS A JUDGE BY THE COMMISSION
46 SHALL BE REQUIRED TO SUBMIT TO OR PROVIDE PROOF OF AN EYE EXAMINATION
47 AND ANNUALLY THEREAFTER ON THE ANNIVERSARY OF THE ISSUANCE OF THE
48 LICENSE. EACH PERSON SEEKING TO BE A PROFESSIONAL COMBATIVE SPORTS JUDGE
49 IN THE STATE SHALL BE CERTIFIED AS HAVING COMPLETED A TRAINING PROGRAM
50 AS APPROVED BY THE COMMISSION AND SHALL HAVE PASSED A WRITTEN EXAMINA-
51 TION APPROVED BY THE COMMISSION COVERING ASPECTS OF PROFESSIONAL COMBA-
52 TIVE SPORTS INCLUDING, BUT NOT LIMITED TO, THE RULES OF THE SPORT, THE
53 LAW OF THE STATE RELATING TO THE COMMISSION, AND BASIC FIRST AID. THE
54 COMMISSION SHALL ESTABLISH CONTINUING EDUCATION PROGRAMS TO KEEP LICEN-
55 SEES CURRENT ON AREAS OF REQUIRED KNOWLEDGE.

1 (D) EACH PERSON SEEKING A LICENSE TO BE A PROFESSIONAL COMBATIVE
2 SPORTS JUDGE IN THIS STATE SHALL BE REQUIRED TO FILL OUT A FINANCIAL
3 QUESTIONNAIRE CERTIFYING UNDER PENALTY OF PERJURY FULL DISCLOSURE OF THE
4 JUDGE'S FINANCIAL SITUATION ON A QUESTIONNAIRE TO BE PROMULGATED BY THE
5 COMMISSION. SUCH QUESTIONNAIRE SHALL BE IN A FORM AND MANNER APPROVED BY
6 THE COMMISSION AND SHALL PROVIDE INFORMATION AS TO AREAS OF ACTUAL OR
7 POTENTIAL CONFLICTS OF INTEREST AS WELL AS APPEARANCES OF SUCH
8 CONFLICTS, INCLUDING FINANCIAL RESPONSIBILITY. WITHIN FORTY-EIGHT HOURS
9 OF ANY PROFESSIONAL COMBATIVE SPORTS MATCH OR EXHIBITION, EACH COMBATIVE
10 SPORTS JUDGE SHALL FILE WITH THE COMMISSION A FINANCIAL DISCLOSURE
11 STATEMENT IN SUCH FORM AND MANNER AS SHALL BE ACCEPTABLE TO THE COMMISS-
12 SION.

13 (E) ONLY A PERSON LICENSED BY THE COMMISSION MAY JUDGE A PROFESSIONAL
14 COMBATIVE SPORTS MATCH OR EXHIBITION.

15 27. TRAINING FACILITIES. (A) THE COMMISSION MAY, IN ITS DISCRETION AND
16 IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE COMMISSION TO PROTECT THE
17 HEALTH AND SAFETY OF PROFESSIONAL COMBATIVE SPORT PARTICIPANTS IN TRAIN-
18 ING, ISSUE A LICENSE TO OPERATE A TRAINING FACILITY PROVIDING CONTACT
19 SPARRING MAINTAINED EITHER EXCLUSIVELY OR IN PART FOR THE USE OF PROFES-
20 SIONAL COMBATIVE SPORT PARTICIPANTS. THE REGULATIONS OF THE COMMISSION
21 SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING SUBJECTS TO PROTECT
22 THE HEALTH AND SAFETY OF PROFESSIONAL COMBATIVE SPORT PARTICIPANTS:

23 (1) REQUIREMENTS FOR FIRST AID MATERIALS TO BE STORED IN AN ACCESSIBLE
24 LOCATION ON THE PREMISES AND FOR THE PRESENCE ON THE PREMISES OF A
25 PERSON TRAINED AND CERTIFIED IN THE USE OF SUCH MATERIALS AND PROCEDURES
26 FOR CARDIO-PULMONARY RESUSCITATION AT ALL TIMES DURING WHICH THE FACILI-
27 TY IS OPEN FOR TRAINING PURPOSES;

28 (2) PROMINENT POSTING ADJACENT TO AN ACCESSIBLE TELEPHONE OF THE TELE-
29 PHONE NUMBER FOR EMERGENCY MEDICAL SERVICES AT THE NEAREST HOSPITAL;

30 (3) CLEAN AND SANITARY BATHROOMS, SHOWER ROOMS, LOCKER ROOMS AND FOOD
31 SERVING AND STORAGE AREAS;

32 (4) ADEQUATE VENTILATION AND LIGHTING OF ACCESSIBLE AREAS OF THE
33 TRAINING FACILITY;

34 (5) ESTABLISHMENT OF A POLICY CONCERNING THE RESTRICTION OF SMOKING IN
35 TRAINING AREAS, INCLUDING PROVISIONS FOR ITS ENFORCEMENT BY THE FACILITY
36 OPERATOR;

37 (6) COMPLIANCE WITH STATE AND LOCAL FIRE ORDINANCES;

38 (7) INSPECTION AND APPROVAL OF RINGS AS REQUIRED BY SUBDIVISION THIRTY
39 OF THIS SECTION; AND

40 (8) ESTABLISHMENT OF A POLICY FOR POSTING ALL COMMISSION LICENSE
41 SUSPENSIONS AND LICENSE REVOCATIONS RECEIVED FROM THE COMMISSION INCLUD-
42 ING PROVISIONS FOR ENFORCEMENT OF SUCH SUSPENSIONS AND REVOCATIONS BY
43 THE FACILITY OPERATOR.

44 (B) A PROSPECTIVE LICENSEE SHALL SUBMIT TO THE COMMISSION PROOF THAT
45 IT CAN FURNISH SUITABLE FACILITIES IN WHICH THE TRAINING IS TO BE
46 CONDUCTED, INCLUDING THE MAKING OF SUCH TRAINING FACILITIES AVAILABLE
47 FOR INSPECTION BY THE COMMISSION AT ANY TIME DURING WHICH TRAINING IS IN
48 PROGRESS.

49 28. TEMPORARY TRAINING FACILITIES. ANY TRAINING FACILITY PROVIDING
50 CONTACT SPARRING ESTABLISHED AND MAINTAINED ON A TEMPORARY BASIS FOR THE
51 PURPOSE OF PREPARING A PROFESSIONAL COMBATIVE SPORT PARTICIPANT FOR A
52 SPECIFIC PROFESSIONAL COMBATIVE SPORTS MATCH OR EXHIBITION TO BE
53 CONDUCTED, HELD OR GIVEN WITHIN THE STATE OF NEW YORK SHALL BE EXEMPT
54 FROM THIS ACT INsofar AS IT CONCERNS THE LICENSING OF SUCH FACILITIES
55 IF, IN THE JUDGMENT OF THE COMMISSION, ESTABLISHMENT AND MAINTENANCE OF
56 SUCH FACILITY WILL BE CONSISTENT WITH THE PURPOSES AND PROVISIONS OF

1 THIS CHAPTER, THE BEST INTERESTS OF PROFESSIONAL COMBATIVE SPORTS GENER-
2 ALLY, AND THE PUBLIC INTEREST, CONVENIENCE OR NECESSITY.

3 29. WEIGHTS; CLASSES AND RULES. THE WEIGHTS AND CLASSES OF COMBATIVE
4 SPORT PARTICIPANTS AND THE RULES AND REGULATIONS OF PROFESSIONAL COMBA-
5 TIVE SPORTS SHALL BE PRESCRIBED BY THE COMMISSION.

6 30. RINGS OR FIGHTING AREAS. NO PROFESSIONAL COMBATIVE SPORTS MATCH
7 OR EXHIBITION OR TRAINING ACTIVITY SHALL BE PERMITTED IN ANY RING OR
8 FIGHTING AREA UNLESS SUCH RING OR FIGHTING AREA HAS BEEN INSPECTED AND
9 APPROVED BY THE COMMISSION. THE COMMISSION SHALL PRESCRIBE STANDARD
10 ACCEPTABLE SIZE AND QUALITY REQUIREMENTS FOR RINGS OR FIGHTING AREAS AND
11 APPURTENANCES THERETO.

12 31. MISDEMEANOR. ANY ENTITY WHO INTENTIONALLY, DIRECTLY OR INDIRECTLY
13 CONDUCTS, HOLDS OR GIVES A PROFESSIONAL COMBATIVE SPORTS MATCH OR EXHI-
14 BITION OR PARTICIPATES EITHER DIRECTLY OR INDIRECTLY IN ANY SUCH MATCH
15 OR EXHIBITION AS A REFEREE, JUDGE, CORPORATION TREASURER, PROFESSIONAL
16 COMBATIVE SPORTS PARTICIPANT, MANAGER, PROMOTER, TRAINER OR CHIEF
17 SECOND, WITHOUT FIRST HAVING PROCURED AN APPROPRIATE LICENSE OR PERMIT
18 AS PRESCRIBED IN THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR.

19 S 3. Section 6 of chapter 912 of the laws of 1920 relating to the
20 regulation of boxing, sparring and wrestling, as amended by chapter 437
21 of the laws of 2002 and subdivision 1 as designated and subdivision 2 as
22 added by chapter 673 of the laws of 2003, is amended to read as follows:

23 S 6. Jurisdiction of commission. 1. The commission shall have and
24 hereby is vested with the sole direction, management, control and juris-
25 diction over all such boxing and sparring matches or exhibitions OR
26 PROFESSIONAL COMBATIVE SPORTS MATCHES OR EXHIBITIONS to be conducted,
27 held or given within the state of New York and over all licenses to any
28 and all persons who participate in such boxing or sparring matches or
29 exhibitions OR PROFESSIONAL COMBATIVE SPORTS MATCHES OR EXHIBITIONS and
30 over any and all gyms, clubs, training camps and other organizations
31 that maintain training facilities providing contact sparring for persons
32 who prepare for participation in such boxing or sparring matches or
33 exhibitions OR PROFESSIONAL COMBATIVE SPORTS MATCHES OR EXHIBITIONS, and
34 over the promotion of professional wrestling exhibitions OR PROFESSIONAL
35 COMBATIVE SPORTS MATCHES OR EXHIBITIONS to the extent provided for in
36 sections 5, 9, 19, 20, 28-a, 28-b and 33 of this act, except as other-
37 wise provided in this act.

38 2. The commission is authorized and directed to require that all sites
39 wherein boxing, sparring and wrestling matches and exhibitions OR
40 PROFESSIONAL COMBATIVE SPORTS MATCHES OR EXHIBITIONS are conducted shall
41 comply with state and applicable local sanitary codes appropriate to
42 school athletic facilities.

43 S 4. Subdivision 1 of section 451 of the tax law, as amended by
44 section 1 of part F of chapter 407 of the laws of 1999, is amended to
45 read as follows:

46 1. "Gross receipts from ticket sales" shall mean the total gross
47 receipts of every person from the sale of tickets to any professional or
48 amateur boxing, sparring or wrestling match or exhibition OR ANY PROFES-
49 SIONAL COMBATIVE SPORTS MATCH OR EXHIBITION held in this state, and
50 without any deduction whatsoever for commissions, brokerage, distrib-
51 ution fees, advertising or any other expenses, charges and recoupments
52 in respect thereto.

53 S 5. Section 452 of the tax law, as amended by section 2 of part F of
54 chapter 407 of the laws of 1999, is amended to read as follows:

55 S 452. Imposition of tax. 1. On and after October first, nineteen
56 hundred ninety-nine, a tax is hereby imposed and shall be paid upon the

gross receipts of every person holding any professional or amateur boxing, sparring or wrestling match or exhibition in this state. Such tax shall be imposed on such gross receipts, exclusive of any federal taxes, as follows:

(a) three percent of gross receipts from ticket sales, except that in no event shall the tax imposed by this [subdivision] PARAGRAPH exceed fifty thousand dollars for any match or exhibition;

(b) three percent of gross receipts from broadcasting rights, except that in no event shall the tax imposed by this [subdivision] PARAGRAPH exceed fifty thousand dollars for any match or exhibition.

2. ON AND AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION, A TAX IS HEREBY IMPOSED AND SHALL BE PAID UPON THE GROSS RECEIPTS OF EVERY PERSON HOLDING ANY PROFESSIONAL COMBATIVE SPORTS MATCH OR EXHIBITION IN THIS STATE. SUCH TAX SHALL BE IMPOSED ON SUCH GROSS RECEIPTS, EXCLUSIVE OF ANY FEDERAL TAXES, AS FOLLOWS:

(A) EIGHT AND ONE-HALF PERCENT OF GROSS RECEIPTS FROM TICKET SALES; AND

(B) THREE PERCENT OF GROSS RECEIPTS FROM BROADCASTING RIGHTS, EXCEPT THAT IN NO EVENT SHALL THE TAX IMPOSED BY THIS PARAGRAPH EXCEED FIFTY THOUSAND DOLLARS FOR ANY MATCH OR EXHIBITION.

S 6. This act shall take effect on the ninetieth day after it shall have become a law, and shall expire and be deemed repealed 3 years after it shall take effect; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.

PART EE

Section 1. Legislative findings. The legislature finds, with regard to non-admitted insurance policies with risk exposures located in multiple states, the 111th United States Congress has stipulated in title V, subtitle B, the Non-Admitted and Reinsurance Reform Act of 2010 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (hereinafter the NRRRA) that:

1. The placement of non-admitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home state, and

2. Any law, regulation, provision or action of any state that applies or purports to apply to non-admitted insurance sold to, solicited by or negotiated with an insured whose home state is another state shall be preempted with respect to such application; except that any state law, rule or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a non-admitted insurer shall not be preempted.

The legislature finds further that in compliance with NRRRA, no state other than the home state of an insured may require any premium tax payment for non-admitted insurance; and no state other than an insured's home state may require a surplus lines broker to be licensed in order to sell, solicit or negotiate non-admitted insurance with respect to such insured.

The legislature finds further that the NRRRA intends that the states may enter into a compact or otherwise establish procedures to allocate among the states the premium taxes paid to an insured's home state; and that each state adopt nationwide uniform requirements, form, and procedures, such as an interstate compact, that provide for the reporting,

1 payment, collection and allocation of premium taxes for non-admitted
2 insurance.

3 The legislature finds further that after the expiration of the two-
4 year period beginning on the effective date of the NRRA, a state may not
5 collect any fees relating to licensing of an individual or entity as a
6 surplus lines licensee in the state unless the state has in effect at
7 such time laws or regulations that provide for participation by the
8 state in the national insurance producer database of the National Asso-
9 ciation of Insurance Commissioners (hereinafter the NAIC) or any other
10 equivalent uniform national database for the licensure of surplus lines
11 licensees and the renewal of such licenses.

12 The legislature recognizes that a need exists for a system of regu-
13 lation that will provide for surplus lines insurance to be placed with
14 reputable and financially sound non-admitted insurers and that will
15 permit orderly access to surplus lines insurance in this state and
16 encourage insurers to make new and innovative types of insurance avail-
17 able to consumers in this state.

18 The legislature finds that protecting the revenue of this state and
19 other compacting states may be accomplished by facilitating the payment
20 and collection of premium tax on non-admitted insurance and providing
21 for allocation of premium tax for non-admitted insurance of multi-state
22 risks among the states in accordance with uniform allocation formulas.

23 The legislature finds that the efficiency of the surplus lines market
24 may be improved by eliminating duplicative and inconsistent tax and
25 regulatory requirements among the states and by promoting and protecting
26 the interests of surplus lines licensees who assist such insureds and
27 non-admitted insurers, thereby ensuring the continued availability of
28 non-admitted insurance to consumers.

29 Regulatory compliance with respect to non-admitted insurance place-
30 ments may be streamlined by providing for exclusive single-state regula-
31 tory compliance for non-admitted insurance of multi-state risks, thereby
32 providing certainty regarding such compliance to all persons who have an
33 interest in such transactions, including but not limited to insureds,
34 regulators, surplus lines licensees, other insurance producers and
35 surplus lines insurers.

36 The legislature finds that coordination of regulatory resources and
37 expertise between state insurance departments and other state agencies,
38 as well as state surplus lines stamping offices, with respect to non-ad-
39 mitted insurance will be improved.

40 S 2. The insurance law is amended by adding a new article 29 to read
41 as follows:

42 ARTICLE 29

43 SURPLUS LINES INSURANCE MULTI-STATE COMPLIANCE COMPACT

44 SECTION 2901. SHORT TITLE.

45 2902. PURPOSES.

46 2903. DEFINITIONS.

47 2904. ESTABLISHMENT OF THE COMMISSION AND VENUE.

48 2905. AUTHORITY TO ESTABLISH MANDATORY RULES.

49 2906. POWERS OF THE COMMISSION.

50 2907. ORGANIZATION OF THE COMMISSION.

51 2908. MEETINGS AND ACTS OF THE COMMISSION.

52 2909. RULEMAKING FUNCTIONS OF THE COMMISSION.

53 2910. COMMISSION RECORDS AND ENFORCEMENT.

54 2911. DISPUTE RESOLUTION.

55 2912. REVIEW OF COMMISSION DECISIONS.

56 2913. FINANCE.

2914. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT.

2915. WITHDRAWAL, DEFAULT AND TERMINATION.

2916. SEVERABILITY AND CONSTRUCTION.

2917. BINDING EFFECT OF COMPACT AND OTHER LAWS.

S 2901. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "SURPLUS LINES INSURANCE MULTI-STATE COMPLIANCE COMPACT".

S 2902. PURPOSES. THE PURPOSES OF THIS COMPACT ARE:

(A) TO IMPLEMENT THE EXPRESS PROVISIONS OF THE NON-ADMITTED AND REINSURANCE REFORM ACT OF 2010 (HEREINAFTER THE NRRA).

(B) TO PROTECT THE PREMIUM TAX REVENUES OF THE COMPACTING STATES THROUGH FACILITATING THE PAYMENT AND COLLECTION OF PREMIUM TAX ON NON-ADMITTED INSURANCE; AND TO PROTECT THE INTERESTS OF THE COMPACTING STATES BY SUPPORTING THE CONTINUED AVAILABILITY OF SUCH INSURANCE TO CONSUMERS; AND TO PROVIDE FOR ALLOCATION OF PREMIUM TAX FOR NON-ADMITTED INSURANCE OF MULTI-STATE RISKS AMONG THE STATES IN ACCORDANCE WITH UNIFORM ALLOCATION FORMULAS TO BE DEVELOPED, ADOPTED, AND IMPLEMENTED BY THE COMMISSION.

(C) TO STREAMLINE AND IMPROVE THE EFFICIENCY OF THE SURPLUS LINES MARKET BY ELIMINATING DUPLICATIVE AND INCONSISTENT TAX AND REGULATORY REQUIREMENTS AMONG THE STATES; AND PROMOTE AND PROTECT THE INTEREST OF SURPLUS LINES LICENSEES WHO ASSIST SUCH INSURED AND SURPLUS LINES INSURERS, THEREBY ENSURING THE CONTINUED AVAILABILITY OF SURPLUS LINES INSURANCE TO CONSUMERS.

(D) TO STREAMLINE REGULATORY COMPLIANCE WITH RESPECT TO NON-ADMITTED INSURANCE PLACEMENTS BY PROVIDING FOR EXCLUSIVE SINGLE-STATE REGULATORY COMPLIANCE FOR NON-ADMITTED INSURANCE OF MULTI-STATE RISKS, IN ACCORDANCE WITH RULES TO BE ADOPTED BY THE COMMISSION, THEREBY PROVIDING CERTAINTY REGARDING SUCH COMPLIANCE TO ALL PERSONS WHO HAVE AN INTEREST IN SUCH TRANSACTIONS, INCLUDING BUT NOT LIMITED TO INSURED, REGULATORS, SURPLUS LINES LICENSEES, OTHER INSURANCE PRODUCERS AND SURPLUS LINES INSURERS.

(E) TO ESTABLISH A CLEARINGHOUSE FOR RECEIPT AND DISSEMINATION OF PREMIUM TAX AND CLEARINGHOUSE TRANSACTION DATA RELATED TO NON-ADMITTED INSURANCE OF MULTI-STATE RISKS, IN ACCORDANCE WITH RULES TO BE ADOPTED BY THE COMMISSION.

(F) TO IMPROVE COORDINATION OF REGULATORY RESOURCES AND EXPERTISE BETWEEN STATE INSURANCE DEPARTMENTS AND OTHER STATE AGENCIES, AS WELL AS STATE SURPLUS LINES STAMPING OFFICES, WITH RESPECT TO NON-ADMITTED INSURANCE.

(G) TO ADOPT UNIFORM RULES TO PROVIDE FOR PREMIUM TAX PAYMENT, REPORTING, ALLOCATION, DATA COLLECTION AND DISSEMINATION FOR NON-ADMITTED INSURANCE OF MULTI-STATE RISKS AND SINGLE-STATE RISKS, IN ACCORDANCE WITH RULES TO BE ADOPTED BY THE COMMISSION, THEREBY PROMOTING THE OVERALL EFFICIENCY OF THE NON-ADMITTED INSURANCE MARKET.

(H) TO ADOPT UNIFORM MANDATORY RULES WITH RESPECT TO REGULATORY COMPLIANCE REQUIREMENTS FOR:

(1) FOREIGN INSURER ELIGIBILITY REQUIREMENTS; AND

(2) SURPLUS LINES POLICYHOLDER NOTICES.

(I) TO ESTABLISH THE SURPLUS LINES INSURANCE MULTI-STATE COMPLIANCE COMPACT COMMISSION.

(J) TO COORDINATE REPORTING OF CLEARINGHOUSE TRANSACTION DATA ON NON-ADMITTED INSURANCE OF MULTI-STATE RISKS AMONG COMPACTING STATES AND CONTRACTING STATES.

(K) TO PERFORM THESE AND SUCH OTHER RELATED FUNCTIONS AS MAY BE CONSISTENT WITH THE PURPOSES OF THE SURPLUS LINES INSURANCE MULTI-STATE COMPLIANCE COMPACT.

1 S 2903. DEFINITIONS. FOR THE PURPOSES OF THIS COMPACT THE FOLLOWING
2 DEFINITIONS SHALL APPLY:

3 (A) "ADMITTED INSURER" MEANS AN INSURER THAT IS LICENSED OR AUTHORIZED
4 TO TRANSACT THE BUSINESS OF INSURANCE UNDER THE LAW OF THE HOME STATE;
5 FOR PURPOSES OF THIS COMPACT "ADMITTED INSURER" SHALL NOT INCLUDE A
6 DOMESTIC SURPLUS LINES INSURER AS MAY BE DEFINED BY APPLICABLE STATE
7 LAW.

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

10 (C) "ALLOCATION FORMULA" MEANS THE UNIFORM METHODS PROMULGATED BY THE
11 COMMISSION BY WHICH INSURED RISK EXPOSURES WILL BE APPORTIONED TO EACH
12 STATE FOR THE PURPOSE OF CALCULATING PREMIUM TAXES DUE.

13 (D) "BYLAWS" MEANS THOSE BYLAWS ESTABLISHED BY THE COMMISSION FOR ITS
14 GOVERNANCE OR FOR DIRECTING OR CONTROLLING THE COMMISSION'S ACTIONS OR
15 CONDUCT.

16 (E) "CLEARINGHOUSE" MEANS THE COMMISSION'S OPERATIONS INVOLVING THE
17 ACCEPTANCE, PROCESSING AND DISSEMINATION AMONG THE COMPACTING STATES,
18 CONTRACTING STATES, SURPLUS LINES LICENSEES, INSUREDS AND OTHER PERSONS
19 OF PREMIUM TAX AND CLEARINGHOUSE TRANSACTION DATA FOR NON-ADMITTED
20 INSURANCE OF MULTI-STATE RISKS IN ACCORDANCE WITH THIS COMPACT AND RULES
21 TO BE ADOPTED BY THE COMMISSION.

22 (F) "CLEARINGHOUSE TRANSACTION DATA" MEANS THE INFORMATION REGARDING
23 NON-ADMITTED INSURANCE OF MULTI-STATE RISKS REQUIRED TO BE REPORTED,
24 ACCEPTED, COLLECTED, PROCESSED AND DISSEMINATED BY SURPLUS LINES LICEN-
25 SEES FOR SURPLUS LINES INSURANCE AND INSUREDS FOR INDEPENDENTLY PROCURED
26 INSURANCE UNDER THIS COMPACT AND RULES TO BE ADOPTED BY THE COMMISSION.
27 CLEARINGHOUSE TRANSACTION DATA INCLUDES INFORMATION RELATED TO
28 SINGLE-STATE RISKS IF A STATE ELECTS TO HAVE THE CLEARINGHOUSE COLLECT
29 TAXES ON SINGLE-STATE RISKS FOR SUCH STATE.

30 (G) "COMPACTING STATE" MEANS ANY STATE WHICH HAS ENACTED THIS COMPACT
31 LEGISLATION AND WHICH HAS NOT WITHDRAWN PURSUANT TO SUBSECTION (A) OF
32 SECTION TWENTY-NINE HUNDRED FIFTEEN OF THIS ARTICLE OR BEEN TERMINATED
33 PURSUANT TO SUBSECTION (B) OF SECTION TWENTY-NINE HUNDRED FIFTEEN OF
34 THIS ARTICLE.

35 (H) "COMMISSION" MEANS THE SURPLUS LINES INSURANCE MULTI-STATE COMPLI-
36 ANCE COMPACT COMMISSION ESTABLISHED BY THIS COMPACT.

37 (I) "COMMISSIONER" MEANS THE CHIEF INSURANCE REGULATORY OFFICIAL OF A
38 STATE INCLUDING, BUT NOT LIMITED TO, COMMISSIONER, SUPERINTENDENT,
39 DIRECTOR OR ADMINISTRATOR OR THEIR DESIGNEES.

40 (J) "CONTRACTING STATE" MEANS ANY STATE WHICH HAS NOT ENACTED THIS
41 COMPACT LEGISLATION BUT HAS ENTERED INTO A WRITTEN CONTRACT WITH THE
42 COMMISSION TO UTILIZE THE SERVICES OF AND FULLY PARTICIPATE IN THE
43 CLEARINGHOUSE.

44 (K) "CONTROL" MEANS ONE ENTITY HAS POWER OVER ANOTHER. FOR THE
45 PURPOSES OF THIS ARTICLE, AN ENTITY HAS CONTROL OVER ANOTHER ENTITY IF:

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

49 (2) SUCH ENTITY CONTROLS IN ANY MANNER THE ELECTION OF A MAJORITY OF
50 THE DIRECTORS OR TRUSTEES OF THE OTHER ENTITY.

51 (L) "HOME STATE" SHALL HAVE TWO MEANINGS DEPENDING ON CONTEXT:

52 (1) EXCEPT AS PROVIDED IN PARAGRAPH TWO OF THIS SUBSECTION, THE TERM
53 "HOME STATE" MEANS, WITH RESPECT TO AN INSURED:

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

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

5 (2) IF MORE THAN ONE INSURED FROM AN AFFILIATED GROUP ARE NAMED
6 INSUREDS ON A SINGLE NON-ADMITTED INSURANCE CONTRACT, THE TERM "HOME
7 STATE" MEANS THE HOME STATE, AS DETERMINED PURSUANT TO PARAGRAPH ONE OF
8 THIS SUBSECTION, OF THE MEMBER OF THE AFFILIATED GROUP THAT HAS THE
9 LARGEST PERCENTAGE OF PREMIUM ATTRIBUTED TO IT UNDER SUCH INSURANCE
10 CONTRACT.

11 (M) "INDEPENDENTLY PROCURED INSURANCE" MEANS INSURANCE PROCURED BY AN
12 INSURED DIRECTLY FROM A SURPLUS LINES INSURER OR OTHER NON-ADMITTED
13 INSURER AS PERMITTED BY THE LAWS OF THE HOME STATE.

14 (N) "INSURER ELIGIBILITY REQUIREMENTS" MEANS THE CRITERIA, FORMS AND
15 PROCEDURES ESTABLISHED TO QUALIFY AS A SURPLUS LINES INSURER UNDER THE
16 LAW OF THE HOME STATE PROVIDED THAT SUCH CRITERIA, FORMS AND PROCEDURES
17 ARE CONSISTENT WITH THE EXPRESS PROVISIONS OF THE NRRA ON AND AFTER JULY
18 TWENTY-FIRST, TWO THOUSAND ELEVEN.

19 (O) "MEMBER" MEANS THE PERSON OR PERSONS CHOSEN BY A COMPACTING STATE
20 AS ITS REPRESENTATIVE OR REPRESENTATIVES TO THE COMMISSION PROVIDED THAT
21 EACH COMPACTING STATE SHALL BE LIMITED TO ONE VOTE.

22 (P) "MULTI-STATE RISK" MEANS A RISK WITH INSURED EXPOSURES IN MORE
23 THAN ONE STATE.

24 (Q) "NON-COMPACTING STATE" MEANS ANY STATE WHICH HAS NOT ADOPTED THIS
25 COMPACT.

26 (R) "NON-ADMITTED INSURANCE" MEANS SURPLUS LINES INSURANCE AND INDE-
27 PENDENTLY PROCURED INSURANCE.

28 (S) "NON-ADMITTED INSURER" MEANS AN INSURER THAT IS NOT AUTHORIZED OR
29 ADMITTED TO TRANSACT THE BUSINESS OF INSURANCE UNDER THE LAW OF THE HOME
30 STATE.

31 (T) "NRRA" MEANS THE NON-ADMITTED AND REINSURANCE REFORM ACT OF 2010,
32 FOUND IN TITLE V, SUBTITLE B OF THE FEDERAL DODD-FRANK WALL STREET
33 REFORM AND CONSUMER PROTECTION ACT.

34 (U) "POLICYHOLDER NOTICE" MEANS THE DISCLOSURE NOTICE OR STAMP THAT IS
35 REQUIRED TO BE FURNISHED TO THE APPLICANT OR POLICYHOLDER IN CONNECTION
36 WITH A SURPLUS LINES INSURANCE PLACEMENT.

37 (V) "PREMIUM TAX" MEANS WITH RESPECT TO NON-ADMITTED INSURANCE, ANY
38 TAX, FEE, ASSESSMENT OR OTHER CHARGE IMPOSED BY A GOVERNMENT ENTITY
39 DIRECTLY OR INDIRECTLY BASED ON ANY PAYMENT MADE AS CONSIDERATION FOR
40 SUCH INSURANCE, INCLUDING PREMIUM DEPOSITS, ASSESSMENTS, REGISTRATION
41 FEES AND ANY OTHER COMPENSATION GIVEN IN CONSIDERATION FOR A CONTRACT OF
42 INSURANCE.

43 (W) "PRINCIPAL PLACE OF BUSINESS" MEANS WITH RESPECT TO DETERMINING
44 THE HOME STATE OF THE INSURED, THE STATE WHERE THE INSURED MAINTAINS ITS
45 HEADQUARTERS AND WHERE THE INSURED'S HIGH-LEVEL OFFICERS DIRECT, CONTROL
46 AND COORDINATE THE BUSINESS ACTIVITIES OF THE INSURED.

47 (X) "PURCHASING GROUP" MEANS ANY GROUP FORMED PURSUANT TO THE LIABIL-
48 ITY RISK RETENTION ACT WHICH HAS AS ONE OF ITS PURPOSES THE PURCHASE OF
49 LIABILITY INSURANCE ON A GROUP BASIS, PURCHASES SUCH INSURANCE ONLY FOR
50 ITS GROUP MEMBERS AND ONLY TO COVER THEIR SIMILAR OR RELATED LIABILITY
51 EXPOSURE AND IS COMPOSED OF MEMBERS WHOSE BUSINESSES OR ACTIVITIES ARE
52 SIMILAR OR RELATED WITH RESPECT TO THE LIABILITY TO WHICH MEMBERS ARE
53 EXPOSED BY VIRTUE OF ANY RELATED, SIMILAR OR COMMON BUSINESS, TRADE,
54 PRODUCT, SERVICES, PREMISES OR OPERATIONS AND IS DOMICILED IN ANY STATE.

55 (Y) "RULE" MEANS A STATEMENT OF GENERAL OR PARTICULAR APPLICABILITY
56 AND FUTURE EFFECT PROMULGATED BY THE COMMISSION DESIGNED TO IMPLEMENT,

1 INTERPRET OR PRESCRIBE LAW OR POLICY OR DESCRIBING THE ORGANIZATION,
2 PROCEDURE OR PRACTICE REQUIREMENTS OF THE COMMISSION WHICH SHALL HAVE
3 THE FORCE AND EFFECT OF LAW IN THE COMPACTING STATES.

4 (Z) "SINGLE-STATE RISK" MEANS A RISK WITH INSURED EXPOSURES IN ONLY
5 ONE STATE.

6 (AA) "STATE" MEANS ANY STATE, DISTRICT OR TERRITORY OF THE UNITED
7 STATES OF AMERICA.

8 (BB) "STATE TRANSACTION DOCUMENTATION" MEANS THE INFORMATION REQUIRED
9 UNDER THE LAWS OF THE HOME STATE TO BE FILED BY SURPLUS LINES LICENSEES
10 IN ORDER TO REPORT SURPLUS LINES INSURANCE AND VERIFY COMPLIANCE WITH
11 SURPLUS LINES LAWS AND BY INSUREDS IN ORDER TO REPORT INDEPENDENTLY
12 PROCURED INSURANCE.

13 (CC) "SURPLUS LINES INSURANCE" MEANS INSURANCE PROCURED BY A SURPLUS
14 LINES LICENSEE FROM A SURPLUS LINES INSURER OR OTHER NON-ADMITTED INSUR-
15 ER AS PERMITTED UNDER THE LAW OF THE HOME STATE. FOR THE PURPOSES OF
16 THIS COMPACT "SURPLUS LINES INSURANCE" SHALL ALSO MEAN EXCESS LINE
17 INSURANCE AS THAT TERM IS USED PURSUANT TO SECTION TWO THOUSAND ONE
18 HUNDRED FIVE OF THIS CHAPTER.

19 (DD) "SURPLUS LINES INSURER" MEANS A NON-ADMITTED INSURER ELIGIBLE
20 UNDER THE LAW OF THE HOME STATE TO ACCEPT BUSINESS FROM A SURPLUS LINES
21 LICENSEE. FOR THE PURPOSES OF THIS COMPACT "SURPLUS LINES INSURER"
22 SHALL ALSO MEAN AN INSURER WHICH IS PERMITTED TO WRITE SURPLUS LINES
23 INSURANCE UNDER THE LAWS OF THE STATE WHERE SUCH INSURER IS DOMICILED.

24 (EE) "SURPLUS LINES LICENSEE" MEANS AN INDIVIDUAL, FIRM OR CORPORATION
25 LICENSED UNDER THE LAW OF THE HOME STATE TO PLACE SURPLUS LINES INSUR-
26 ANCE.

27 S 2904. ESTABLISHMENT OF THE COMMISSION AND VENUE. (A) THE COMPACTING
28 STATES HEREBY CREATE AND ESTABLISH A JOINT PUBLIC AGENCY KNOWN AS THE
29 "SURPLUS LINES INSURANCE MULTI-STATE COMPLIANCE COMPACT COMMISSION."

30 (B) PURSUANT TO SECTION TWO THOUSAND NINE HUNDRED FIVE OF THIS ARTI-
31 CLE, THE COMMISSION WILL HAVE THE POWER TO ADOPT MANDATORY RULES WHICH
32 ESTABLISH EXCLUSIVE HOME STATE AUTHORITY REGARDING NON-ADMITTED INSUR-
33 ANCE OF MULTI-STATE RISKS, ALLOCATION FORMULAS, CLEARINGHOUSE TRANS-
34 ACTION DATA, A CLEARINGHOUSE FOR RECEIPT AND DISTRIBUTION OF ALLOCATED
35 PREMIUM TAX AND CLEARINGHOUSE TRANSACTION DATA AND UNIFORM RULEMAKING
36 PROCEDURES AND RULES FOR THE PURPOSE OF FINANCING, ADMINISTERING, OPER-
37 ATING AND ENFORCING COMPLIANCE WITH THE PROVISIONS OF THIS COMPACT, ITS
38 BYLAWS AND RULES.

39 (C) PURSUANT TO SECTION TWO THOUSAND NINE HUNDRED FIVE OF THIS ARTI-
40 CLE, THE COMMISSION WILL HAVE THE POWER TO ADOPT MANDATORY RULES ESTAB-
41 LISHING FOREIGN INSURER ELIGIBILITY REQUIREMENTS AND A CONCISE AND
42 OBJECTIVE POLICYHOLDER NOTICE REGARDING THE NATURE OF A SURPLUS LINES
43 PLACEMENT.

44 (D) THE COMMISSION IS A BODY CORPORATE AND POLITIC AND AN INSTRUMEN-
45 TALITY OF THE COMPACTING STATES.

46 (E) THE COMMISSION IS SOLELY RESPONSIBLE FOR ITS LIABILITIES, EXCEPT
47 AS OTHERWISE SPECIFICALLY PROVIDED IN THIS COMPACT.

48 (F) VENUE IS PROPER AND JUDICIAL PROCEEDINGS BY OR AGAINST THE COMMIS-
49 SION SHALL BE BROUGHT SOLELY AND EXCLUSIVELY IN A COURT OF COMPETENT
50 JURISDICTION WHERE THE PRINCIPAL OFFICE OF THE COMMISSION IS LOCATED.
51 THE COMMISSION MAY WAIVE VENUE AND JURISDICTIONAL DEFENSES TO THE EXTENT
52 IT ADOPTS OR CONSENTS TO PARTICIPATE IN ALTERNATIVE DISPUTE RESOLUTION
53 PROCEEDINGS.

54 S 2905. AUTHORITY TO ESTABLISH MANDATORY RULES. THE COMMISSION SHALL
55 ADOPT MANDATORY RULES WHICH ESTABLISH:

1 (A) ALLOCATION FORMULAS FOR EACH TYPE OF NON-ADMITTED INSURANCE COVER-
2 AGE, WHICH ALLOCATION FORMULAS MUST BE USED BY EACH COMPACTING STATE AND
3 CONTRACTING STATE IN ACQUIRING PREMIUM TAX AND CLEARINGHOUSE TRANSACTION
4 DATA FROM SURPLUS LINES LICENSEES AND INSUREDS FOR REPORTING TO THE
5 CLEARINGHOUSE CREATED BY THE COMPACT COMMISSION. SUCH ALLOCATION FORMU-
6 LAS WILL BE ESTABLISHED WITH INPUT FROM SURPLUS LINES LICENSEES AND BE
7 BASED UPON READILY AVAILABLE DATA WITH SIMPLICITY AND UNIFORMITY FOR THE
8 SURPLUS LINES LICENSEE AS A MATERIAL CONSIDERATION.

9 (B) UNIFORM CLEARINGHOUSE TRANSACTION DATA REPORTING REQUIREMENTS FOR
10 ALL INFORMATION REPORTED TO THE CLEARINGHOUSE.

11 (C) METHODS BY WHICH COMPACTING STATES AND CONTRACTING STATES REQUIRE
12 SURPLUS LINES LICENSEES AND INSUREDS TO PAY PREMIUM TAX AND TO REPORT
13 CLEARINGHOUSE TRANSACTION DATA TO THE CLEARINGHOUSE, INCLUDING BUT NOT
14 LIMITED TO PROCESSING CLEARINGHOUSE TRANSACTION DATA THROUGH STATE
15 STAMPING AND SERVICE OFFICES, STATE INSURANCE DEPARTMENTS, OR OTHER
16 STATE-DESIGNATED AGENCIES OR ENTITIES.

17 (D) THAT NON-ADMITTED INSURANCE OF MULTI-STATE RISKS SHALL BE SUBJECT
18 TO ALL OF THE REGULATORY COMPLIANCE REQUIREMENTS OF THE HOME STATE
19 EXCLUSIVELY. HOME STATE REGULATORY COMPLIANCE REQUIREMENTS APPLICABLE TO
20 SURPLUS LINES INSURANCE SHALL INCLUDE, BUT NOT BE LIMITED TO:

21 (1) PERSONS REQUIRED TO BE LICENSED TO SELL, SOLICIT OR NEGOTIATE
22 SURPLUS LINES INSURANCE;

23 (2) INSURER ELIGIBILITY REQUIREMENTS OR OTHER APPROVED NON-ADMITTED
24 INSURER REQUIREMENTS;

25 (3) DILIGENT SEARCH; AND

26 (4) STATE TRANSACTION DOCUMENTATION AND CLEARINGHOUSE TRANSACTION DATA
27 REGARDING THE PAYMENT OF PREMIUM TAX AS SET FORTH IN THIS COMPACT AND
28 RULES TO BE ADOPTED BY THE COMMISSION. HOME STATE REGULATORY COMPLIANCE
29 REQUIREMENTS APPLICABLE TO INDEPENDENTLY PROCURED INSURANCE PLACEMENTS
30 SHALL INCLUDE, BUT NOT BE LIMITED TO, PROVIDING STATE TRANSACTION
31 DOCUMENTATION AND CLEARINGHOUSE TRANSACTION DATA REGARDING THE PAYMENT
32 OF PREMIUM TAX AS SET FORTH IN THIS COMPACT AND RULES TO BE ADOPTED BY
33 THE COMMISSION.

34 (E) THAT EACH COMPACTING STATE AND CONTRACTING STATE MAY CHARGE ITS
35 OWN RATE OF TAXATION ON THE PREMIUM ALLOCATED TO SUCH STATE BASED ON THE
36 APPLICABLE ALLOCATION FORMULA PROVIDED THAT THE STATE ESTABLISHES ONE
37 SINGLE RATE OF TAXATION APPLICABLE TO ALL NON-ADMITTED INSURANCE TRANS-
38 ACTIONS AND NO OTHER TAX, FEE ASSESSMENT OR OTHER CHARGE BY ANY GOVERN-
39 MENTAL OR QUASI-GOVERNMENTAL AGENCY BE PERMITTED. NOTWITHSTANDING THE
40 FOREGOING, STAMPING OFFICE FEES MAY BE CHARGED AS A SEPARATE, ADDITIONAL
41 COST UNLESS SUCH FEES ARE INCORPORATED INTO A STATE'S SINGLE RATE OF
42 TAXATION.

43 (F) THAT ANY CHANGE IN THE RATE OF TAXATION BY ANY COMPACTING STATE OR
44 CONTRACTING STATE BE RESTRICTED TO CHANGES MADE PROSPECTIVELY ON NOT
45 LESS THAN NINETY DAYS ADVANCE NOTICE TO THE COMPACT COMMISSION.

46 (G) THAT EACH COMPACTING STATE AND CONTRACTING STATE SHALL REQUIRE
47 PREMIUM TAX PAYMENTS EITHER ANNUALLY, SEMI-ANNUALLY OR QUARTERLY UTILIZ-
48 ING ONE OR MORE OF THE FOLLOWING DATES ONLY: MARCH FIRST, JUNE FIRST,
49 SEPTEMBER FIRST AND DECEMBER FIRST.

50 (H) THAT EACH COMPACTING STATE AND CONTRACTING STATE PROHIBIT ANY
51 OTHER STATE AGENCY OR POLITICAL SUBDIVISION FROM REQUIRING SURPLUS LINES
52 LICENSEES TO PROVIDE CLEARINGHOUSE TRANSACTION DATA AND STATE TRANS-
53 ACTION DOCUMENTATION OTHER THAN TO THE INSURANCE DEPARTMENT OR TAX OFFI-
54 CIALS OF THE HOME STATE OR ONE SINGLE DESIGNATED AGENT THEREOF.

55 (I) THE OBLIGATION OF THE HOME STATE BY ITSELF, THROUGH A DESIGNATED
56 AGENT, SURPLUS LINES STAMPING OR SERVICE OFFICE, TO COLLECT CLEARING-

1 HOUSE TRANSACTION DATA FROM SURPLUS LINES LICENSEES AND FROM INSURED
2 FOR INDEPENDENTLY PROCURED INSURANCE, WHERE APPLICABLE, FOR REPORTING TO
3 THE CLEARINGHOUSE.

4 (J) A METHOD FOR THE CLEARINGHOUSE TO PERIODICALLY REPORT TO COMPACT-
5 ING STATES, CONTRACTING STATES, SURPLUS LINES LICENSEES AND INSURED WHO
6 INDEPENDENTLY PROCURE INSURANCE ALL PREMIUM TAXES OWED TO EACH OF THE
7 COMPACTING STATES AND CONTRACTING STATES, THE DATES UPON WHICH PAYMENT
8 OF SUCH PREMIUM TAXES ARE DUE AND A METHOD TO PAY THEM THROUGH THE
9 CLEARINGHOUSE.

10 (K) THAT EACH SURPLUS LINES LICENSEE IS REQUIRED TO BE LICENSED ONLY
11 IN THE HOME STATE OF EACH INSURED FOR WHOM SURPLUS LINES INSURANCE HAS
12 BEEN PROCURED.

13 (L) THAT A POLICY CONSIDERED TO BE SURPLUS LINES INSURANCE IN THE
14 INSURED'S HOME STATE SHALL BE CONSIDERED SURPLUS LINES INSURANCE IN ALL
15 COMPACTING STATES AND CONTRACTING STATES AND TAXED AS A SURPLUS LINES
16 TRANSACTION IN ALL STATES TO WHICH A PORTION OF THE RISK IS ALLOCATED.
17 EACH COMPACTING STATE AND CONTRACTING STATE SHALL REQUIRE EACH SURPLUS
18 LINES LICENSEE TO PAY TO EVERY OTHER COMPACTING STATE AND CONTRACTING
19 STATE PREMIUM TAXES ON EACH MULTI-STATE RISK THROUGH THE CLEARINGHOUSE
20 AT SUCH TAX RATE CHARGED ON SURPLUS LINES TRANSACTIONS IN SUCH OTHER
21 COMPACTING STATES AND CONTRACTING STATES ON THE PORTION OF THE RISK IN
22 EACH SUCH COMPACTING STATE AND CONTRACTING STATE AS DETERMINED BY THE
23 APPLICABLE UNIFORM ALLOCATION FORMULA ADOPTED BY THE COMMISSION. A POLI-
24 CY CONSIDERED TO BE INDEPENDENTLY PROCURED INSURANCE IN THE INSURED'S
25 HOME STATE SHALL BE CONSIDERED INDEPENDENTLY PROCURED INSURANCE IN ALL
26 COMPACTING STATES AND CONTRACTING STATES. EACH COMPACTING STATE AND
27 CONTRACTING STATE SHALL REQUIRE THE INSURED TO PAY EVERY OTHER COMPACT-
28 ING STATE AND CONTRACTING STATE THE INDEPENDENTLY PROCURED INSURANCE
29 PREMIUM TAX ON EACH MULTI-STATE RISK THROUGH THE CLEARINGHOUSE PURSUANT
30 TO THE UNIFORM ALLOCATION FORMULA ADOPTED BY THE COMMISSION.

31 (M) UNIFORM FOREIGN INSURER ELIGIBILITY REQUIREMENTS AS AUTHORIZED BY
32 THE NRRA.

33 (N) A UNIFORM POLICYHOLDER NOTICE.

34 (O) UNIFORM TREATMENT OF PURCHASING GROUP SURPLUS LINES INSURANCE
35 PLACEMENTS.

36 S 2906. POWERS OF THE COMMISSION. THE COMMISSION SHALL HAVE THE
37 FOLLOWING POWERS:

38 (A) TO PROMULGATE RULES AND OPERATING PROCEDURES, PURSUANT TO SECTION
39 TWO THOUSAND NINE HUNDRED NINE OF THIS ARTICLE, WHICH SHALL HAVE THE
40 FORCE AND EFFECT OF LAW AND SHALL BE BINDING IN THE COMPACTING STATES TO
41 THE EXTENT AND IN THE MANNER PROVIDED IN THIS ARTICLE;

42 (B) TO BRING AND PROSECUTE LEGAL PROCEEDINGS OR ACTIONS IN THE NAME OF
43 THE COMMISSION, PROVIDED THAT THE STANDING OF ANY STATE INSURANCE
44 DEPARTMENT TO SUE OR BE SUED UNDER APPLICABLE LAW SHALL NOT BE AFFECTED;

45 (C) TO ISSUE SUBPOENAS REQUIRING THE ATTENDANCE AND TESTIMONY OF
46 WITNESSES AND THE PRODUCTION OF EVIDENCE, PROVIDED HOWEVER, THE COMMIS-
47 SION IS NOT EMPOWERED TO DEMAND OR SUBPOENA RECORDS OR DATA FROM NON-AD-
48 MITTED INSURERS;

49 (D) TO ESTABLISH AND MAINTAIN OFFICES, INCLUDING THE CREATION OF A
50 CLEARINGHOUSE FOR THE RECEIPT OF PREMIUM TAX AND CLEARINGHOUSE TRANS-
51 ACTION DATA REGARDING NON-ADMITTED INSURANCE OF MULTI-STATE RISKS,
52 SINGLE-STATE RISKS FOR STATES WHICH ELECT TO REQUIRE SURPLUS LINES
53 LICENSEES TO PAY PREMIUM TAX ON SINGLE-STATE RISKS THROUGH THE CLEARING-
54 HOUSE AND TAX REPORTING FORMS;

55 (E) TO PURCHASE AND MAINTAIN INSURANCE AND BONDS;

1 (F) TO BORROW, ACCEPT OR CONTRACT FOR SERVICES OF PERSONNEL, INCLUD-
2 ING, BUT NOT LIMITED TO, EMPLOYEES OF A COMPACTING STATE OR STAMPING
3 OFFICE, PURSUANT TO AN OPEN, TRANSPARENT, OBJECTIVE COMPETITIVE PROCESS
4 AND PROCEDURE ADOPTED BY THE COMMISSION;

5 (G) TO HIRE EMPLOYEES, PROFESSIONALS OR SPECIALISTS AND ELECT OR
6 APPOINT OFFICERS AND TO FIX THEIR COMPENSATION, DEFINE THEIR DUTIES AND
7 GIVE THEM APPROPRIATE AUTHORITY TO CARRY OUT THE PURPOSES OF THE COMPACT
8 AND DETERMINE THEIR QUALIFICATIONS, PURSUANT TO AN OPEN, TRANSPARENT,
9 OBJECTIVE COMPETITIVE PROCESS AND PROCEDURE ADOPTED BY THE COMMISSION;
10 AND TO ESTABLISH THE COMMISSION'S PERSONNEL POLICIES AND PROGRAMS RELAT-
11 ING TO CONFLICTS OF INTEREST, RATES OF COMPENSATION AND QUALIFICATIONS
12 OF PERSONNEL AND OTHER RELATED PERSONNEL MATTERS;

13 (H) TO ACCEPT ANY AND ALL APPROPRIATE DONATIONS AND GRANTS OF MONEY,
14 EQUIPMENT, SUPPLIES, MATERIALS AND SERVICES AND TO RECEIVE, UTILIZE AND
15 DISPOSE OF THE SAME; PROVIDED THAT AT ALL TIMES THE COMMISSION SHALL
16 AVOID ANY APPEARANCE OF IMPROPRIETY AND/OR CONFLICT OF INTEREST;

17 (I) TO LEASE, PURCHASE, ACCEPT APPROPRIATE GIFTS OR DONATIONS OF, OR
18 OTHERWISE TO OWN, HOLD, IMPROVE OR USE ANY PROPERTY, REAL, PERSONAL OR
19 MIXED; PROVIDED THAT AT ALL TIMES THE COMMISSION SHALL AVOID ANY APPEAR-
20 ANCE OF IMPROPRIETY AND/OR CONFLICT OF INTEREST;

21 (J) TO SELL, CONVEY, MORTGAGE, PLEDGE, LEASE, EXCHANGE, ABANDON OR
22 OTHERWISE DISPOSE OF ANY PROPERTY, REAL, PERSONAL OR MIXED;

23 (K) TO PROVIDE FOR TAX AUDIT RULES AND PROCEDURES FOR THE COMPACTING
24 STATES WITH RESPECT TO THE ALLOCATION OF PREMIUM TAXES, INCLUDING:

25 (1) MINIMUM AUDIT STANDARDS, INCLUDING SAMPLING METHODS;

26 (2) REVIEW OF INTERNAL CONTROLS;

27 (3) COOPERATION AND SHARING OF AUDIT RESPONSIBILITIES BETWEEN COMPACT-
28 ING STATES;

29 (4) HANDLING OF REFUNDS OR CREDITS DUE TO OVERPAYMENTS OR IMPROPER
30 ALLOCATION OF PREMIUM TAXES;

31 (5) TAXPAYER RECORDS TO BE REVIEWED INCLUDING A MINIMUM RETENTION
32 PERIOD; AND

33 (6) AUTHORITY OF COMPACTING STATES TO REVIEW, CHALLENGE OR RE-AUDIT
34 TAXPAYER RECORDS.

35 (L) TO ENFORCE COMPLIANCE BY COMPACTING STATES AND CONTRACTING STATES
36 WITH RULES AND BYLAWS PURSUANT TO THE AUTHORITY SET FORTH IN SECTION TWO
37 THOUSAND NINE HUNDRED SEVENTEEN OF THIS ARTICLE;

38 (M) TO PROVIDE FOR DISPUTE RESOLUTION AMONG COMPACTING STATES AND
39 CONTRACTING STATES;

40 (N) TO ADVISE COMPACTING STATES AND CONTRACTING STATES ON TAX-RELATED
41 ISSUES RELATING TO INSURERS, INSURED, SURPLUS LINES LICENSEES, AGENTS
42 OR BROKERS DOMICILED OR DOING BUSINESS IN NON-COMPACTING STATES,
43 CONSISTENT WITH THE PURPOSES OF THIS COMPACT;

44 (O) TO MAKE AVAILABLE ADVICE AND TRAINING TO THOSE PERSONNEL IN STATE
45 STAMPING OFFICES, STATE INSURANCE DEPARTMENTS OR OTHER STATE DEPARTMENTS
46 FOR RECORD KEEPING, TAX COMPLIANCE AND TAX ALLOCATIONS; AND TO BE A
47 RESOURCE FOR STATE INSURANCE DEPARTMENTS AND OTHER STATE DEPARTMENTS;

48 (P) TO ESTABLISH A BUDGET AND MAKE EXPENDITURES;

49 (Q) TO BORROW MONEY;

50 (R) TO APPOINT AND OVERSEE COMMITTEES, INCLUDING ADVISORY COMMITTEES
51 COMPRISED OF MEMBERS, STATE INSURANCE REGULATORS, STATE LEGISLATORS OR
52 THEIR REPRESENTATIVES, INSURANCE INDUSTRY AND CONSUMER REPRESENTATIVES
53 AND SUCH OTHER INTERESTED PERSONS AS MAY BE DESIGNATED IN THIS COMPACT
54 AND THE BYLAWS;

55 (S) TO ESTABLISH AN EXECUTIVE COMMITTEE OF NOT LESS THAN SEVEN NOR
56 MORE THAN FIFTEEN REPRESENTATIVES, WHICH SHALL INCLUDE OFFICERS ELECTED

1 BY THE COMMISSION AND SUCH OTHER REPRESENTATIVES AS PROVIDED FOR HEREIN
2 AND DETERMINED BY THE BYLAWS. REPRESENTATIVES OF THE EXECUTIVE COMMIT-
3 TEE SHALL SERVE A ONE YEAR TERM. REPRESENTATIVES OF THE EXECUTIVE
4 COMMITTEE SHALL BE ENTITLED TO ONE VOTE EACH. THE EXECUTIVE COMMITTEE
5 SHALL HAVE THE POWER TO ACT ON BEHALF OF THE COMMISSION, WITH THE EXCEP-
6 TION OF RULEMAKING, DURING PERIODS WHEN THE COMMISSION IS NOT IN
7 SESSION. THE EXECUTIVE COMMITTEE SHALL OVERSEE THE DAY TO DAY ACTIVITIES
8 OF THE ADMINISTRATION OF THE COMPACT, INCLUDING THE ACTIVITIES OF THE
9 OPERATIONS COMMITTEE CREATED UNDER THIS ARTICLE AND COMPLIANCE AND
10 ENFORCEMENT OF THE PROVISIONS OF THE COMPACT, ITS BYLAWS AND RULES AND
11 SUCH OTHER DUTIES AS PROVIDED HEREIN AND AS DEEMED NECESSARY;

12 (T) TO ESTABLISH AN OPERATIONS COMMITTEE OF NOT LESS THAN SEVEN AND
13 NOT MORE THAN FIFTEEN REPRESENTATIVES TO PROVIDE ANALYSIS, ADVICE,
14 DETERMINATIONS AND RECOMMENDATIONS REGARDING TECHNOLOGY, SOFTWARE AND
15 SYSTEMS INTEGRATION TO BE ACQUIRED BY THE COMMISSION AND TO PROVIDE
16 ANALYSIS, ADVICE, DETERMINATIONS AND RECOMMENDATIONS REGARDING THE
17 ESTABLISHMENT OF MANDATORY RULES TO BE ADOPTED BY THE COMMISSION;

18 (U) TO ENTER INTO CONTRACTS WITH CONTRACTING STATES SO THAT CONTRACT-
19 ING STATES CAN UTILIZE THE SERVICES OF AND FULLY PARTICIPATE IN THE
20 CLEARINGHOUSE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SUCH
21 CONTRACTS;

22 (V) TO ADOPT AND USE A CORPORATE SEAL; AND

23 (W) TO PERFORM SUCH OTHER FUNCTIONS AS MAY BE NECESSARY OR APPROPRIATE
24 TO ACHIEVE THE PURPOSES OF THIS COMPACT CONSISTENT WITH THE STATE REGU-
25 LATION OF THE BUSINESS OF INSURANCE.

26 S 2907. ORGANIZATION OF THE COMMISSION. (A) (1) EACH COMPACTING STATE
27 SHALL HAVE AND BE LIMITED TO ONE MEMBER. EACH STATE SHALL DETERMINE THE
28 QUALIFICATIONS AND THE METHOD BY WHICH IT SELECTS A MEMBER AND SET FORTH
29 THE SELECTION PROCESS IN THE ENABLING PROVISION OF THE LEGISLATION WHICH
30 ENACTS THIS COMPACT. IN THE ABSENCE OF SUCH A PROVISION THE MEMBER SHALL
31 BE APPOINTED BY THE GOVERNOR OF SUCH COMPACTING STATE. ANY MEMBER MAY BE
32 REMOVED OR SUSPENDED FROM OFFICE AS PROVIDED BY THE LAW OF THE STATE
33 FROM WHICH HE OR SHE SHALL BE APPOINTED. ANY VACANCY OCCURRING IN THE
34 COMMISSION SHALL BE FILLED IN ACCORDANCE WITH THE LAWS OF THE COMPACTING
35 STATE WHEREIN THE VACANCY EXISTS.

36 (2) EACH MEMBER SHALL BE ENTITLED TO ONE VOTE AND SHALL OTHERWISE HAVE
37 AN OPPORTUNITY TO PARTICIPATE IN THE GOVERNANCE OF THE COMMISSION IN
38 ACCORDANCE WITH THE BYLAWS.

39 (3) THE COMMISSION SHALL, BY A MAJORITY VOTE OF THE MEMBERS, PRESCRIBE
40 BYLAWS TO GOVERN ITS CONDUCT AS MAY BE NECESSARY OR APPROPRIATE TO CARRY
41 OUT THE PURPOSES AND EXERCISE THE POWERS OF THE COMPACT INCLUDING, BUT
42 NOT LIMITED TO:

43 (A) ESTABLISHING THE FISCAL YEAR OF THE COMMISSION;

44 (B) PROVIDING REASONABLE PROCEDURES FOR HOLDING MEETINGS OF THE
45 COMMISSION, THE EXECUTIVE COMMITTEE, AND THE OPERATIONS COMMITTEE;

46 (C) PROVIDING REASONABLE STANDARDS AND PROCEDURES:

47 (I) FOR THE ESTABLISHMENT AND MEETINGS OF COMMITTEES, AND

48 (II) GOVERNING ANY GENERAL OR SPECIFIC DELEGATION OF ANY AUTHORITY OR
49 FUNCTION OF THE COMMISSION;

50 (D) PROVIDING REASONABLE PROCEDURES FOR CALLING AND CONDUCTING MEET-
51 INGS OF THE COMMISSION THAT CONSIST OF A MAJORITY OF COMMISSION MEMBERS,
52 ENSURING REASONABLE ADVANCE NOTICE OF EACH SUCH MEETING AND PROVIDING
53 FOR THE RIGHT OF CITIZENS TO ATTEND EACH SUCH MEETING WITH ENUMERATED
54 EXCEPTIONS DESIGNED TO PROTECT THE PUBLIC'S INTEREST, THE PRIVACY OF
55 INDIVIDUALS AND INSURERS' AND SURPLUS LINES LICENSEES' PROPRIETARY
56 INFORMATION, INCLUDING TRADE SECRETS. THE COMMISSION MAY MEET IN CAMERA

ONLY AFTER A MAJORITY OF THE ENTIRE MEMBERSHIP VOTES TO CLOSE A MEETING IN TOTO OR IN PART. AS SOON AS PRACTICABLE, THE COMMISSION MUST MAKE PUBLIC:

(I) A COPY OF THE VOTE TO CLOSE THE MEETING REVEALING THE VOTE OF EACH MEMBER WITH NO PROXY VOTES ALLOWED, AND

(II) VOTES TAKEN DURING SUCH MEETING;

(E) ESTABLISHING THE TITLES, DUTIES AND AUTHORITY AND REASONABLE PROCEDURES FOR THE ELECTION OF THE OFFICERS OF THE COMMISSION;

(F) PROVIDING REASONABLE STANDARDS AND PROCEDURES FOR THE ESTABLISHMENT OF THE PERSONNEL POLICIES AND PROGRAMS OF THE COMMISSION. NOTWITHSTANDING ANY CIVIL SERVICE OR OTHER SIMILAR LAWS OF ANY COMPACTING STATE, THE BYLAWS SHALL EXCLUSIVELY GOVERN THE PERSONNEL POLICIES AND PROGRAMS OF THE COMMISSION;

(G) PROMULGATING A CODE OF ETHICS TO ADDRESS PERMISSIBLE AND PROHIBITED ACTIVITIES OF COMMISSION MEMBERS AND EMPLOYEES; AND

(H) PROVIDING A MECHANISM FOR WINDING UP THE OPERATIONS OF THE COMMISSION AND THE EQUITABLE DISPOSITION OF ANY EXCESS FUNDS THAT MAY EXIST AFTER THE TERMINATION OF THE COMPACT AFTER THE PAYMENT AND/OR RESERVING OF ALL OF ITS DEBTS AND OBLIGATIONS;

(4) THE COMMISSION SHALL PUBLISH ITS BYLAWS IN A CONVENIENT FORM AND FILE A COPY THEREOF AND A COPY OF ANY AMENDMENT THERETO WITH THE APPROPRIATE AGENCY OR OFFICER IN EACH OF THE COMPACTING STATES.

(B) (1) AN EXECUTIVE COMMITTEE OF THE COMMISSION ("EXECUTIVE COMMITTEE") SHALL BE ESTABLISHED. ALL ACTIONS OF THE EXECUTIVE COMMITTEE, INCLUDING COMPLIANCE AND ENFORCEMENT ARE SUBJECT TO THE REVIEW AND RATIFICATION OF THE COMMISSION AS PROVIDED IN THE BYLAWS. THE EXECUTIVE COMMITTEE SHALL HAVE NO MORE THAN FIFTEEN REPRESENTATIVES OR ONE FOR EACH STATE IF THERE ARE LESS THAN FIFTEEN COMPACTING STATES, WHO SHALL SERVE FOR A TERM AND BE ESTABLISHED IN ACCORDANCE WITH THE BYLAWS.

(2) THE EXECUTIVE COMMITTEE SHALL HAVE SUCH AUTHORITY AND DUTIES AS MAY BE SET FORTH IN THE BYLAWS, INCLUDING BUT NOT LIMITED TO:

(A) MANAGING THE AFFAIRS OF THE COMMISSION IN A MANNER CONSISTENT WITH THE BYLAWS AND PURPOSES OF THE COMMISSION;

(B) ESTABLISHING AND OVERSEEING AN ORGANIZATIONAL STRUCTURE WITHIN AND APPROPRIATE PROCEDURES FOR THE COMMISSION TO PROVIDE FOR THE CREATION OF RULES AND OPERATING PROCEDURES;

(C) OVERSEEING THE OFFICES OF THE COMMISSION; AND

(D) PLANNING, IMPLEMENTING AND COORDINATING COMMUNICATIONS AND ACTIVITIES WITH OTHER STATE, FEDERAL AND LOCAL GOVERNMENT ORGANIZATIONS IN ORDER TO ADVANCE THE GOALS OF THE COMMISSION.

(3) THE COMMISSION SHALL ANNUALLY ELECT OFFICERS FROM THE EXECUTIVE COMMITTEE, WITH EACH HAVING SUCH AUTHORITY AND DUTIES AS MAY BE SPECIFIED IN THE BYLAWS.

(4) THE EXECUTIVE COMMITTEE MAY, SUBJECT TO THE APPROVAL OF THE COMMISSION, APPOINT OR RETAIN AN EXECUTIVE DIRECTOR FOR SUCH PERIOD, UPON SUCH TERMS AND CONDITIONS AND FOR SUCH COMPENSATION AS THE COMMISSION MAY DEEM APPROPRIATE. THE EXECUTIVE DIRECTOR SHALL SERVE AS SECRETARY TO THE COMMISSION BUT SHALL NOT BE A MEMBER OF THE COMMISSION. THE EXECUTIVE DIRECTOR SHALL HIRE AND SUPERVISE SUCH OTHER PERSONS AS MAY BE AUTHORIZED BY THE COMMISSION.

(C) (1) AN OPERATIONS COMMITTEE SHALL BE ESTABLISHED. ALL ACTIONS OF THE OPERATIONS COMMITTEE ARE SUBJECT TO THE REVIEW AND OVERSIGHT OF THE COMMISSION AND THE EXECUTIVE COMMITTEE AND MUST BE APPROVED BY THE COMMISSION. THE EXECUTIVE COMMITTEE WILL ACCEPT THE DETERMINATIONS AND RECOMMENDATIONS OF THE OPERATIONS COMMITTEE UNLESS GOOD CAUSE IS SHOWN WHY SUCH DETERMINATIONS AND RECOMMENDATIONS SHOULD NOT BE APPROVED. ANY

DISPUTES AS TO WHETHER GOOD CAUSE EXISTS TO REJECT ANY DETERMINATION OR RECOMMENDATION OF THE OPERATIONS COMMITTEE SHALL BE RESOLVED BY THE MAJORITY VOTE OF THE COMMISSION. THE OPERATIONS COMMITTEE SHALL HAVE NO MORE THAN FIFTEEN REPRESENTATIVES OR ONE FOR EACH STATE IF THERE ARE LESS THAN FIFTEEN COMPACTING STATES, WHO SHALL SERVE FOR A TERM AND SHALL BE ESTABLISHED AS SET FORTH IN THE BYLAWS. THE OPERATIONS COMMITTEE SHALL HAVE RESPONSIBILITY FOR:

(A) EVALUATING TECHNOLOGY REQUIREMENTS FOR THE CLEARINGHOUSE, ASSESSING EXISTING SYSTEMS USED BY STATE REGULATORY AGENCIES AND STATE STAMPING OFFICES TO MAXIMIZE THE EFFICIENCY AND SUCCESSFUL INTEGRATION OF THE CLEARINGHOUSE TECHNOLOGY SYSTEMS WITH STATE AND STATE STAMPING OFFICE TECHNOLOGY PLATFORMS AND TO MINIMIZE COSTS TO THE STATES, STATE STAMPING OFFICES AND THE CLEARINGHOUSE;

(B) MAKING RECOMMENDATIONS TO THE EXECUTIVE COMMITTEE BASED ON ITS ANALYSIS AND DETERMINATION OF THE CLEARINGHOUSE TECHNOLOGY REQUIREMENTS AND COMPATIBILITY WITH EXISTING STATE AND STATE STAMPING OFFICE SYSTEMS;

(C) EVALUATING THE MOST SUITABLE PROPOSALS FOR ADOPTION AS MANDATORY RULES, ASSESSING SUCH PROPOSALS FOR EASE OF INTEGRATION BY STATES AND LIKELIHOOD OF SUCCESSFUL IMPLEMENTATION AND TO REPORT TO THE EXECUTIVE COMMITTEE ITS DETERMINATIONS AND RECOMMENDATIONS; AND

(D) SUCH OTHER DUTIES AND RESPONSIBILITIES AS ARE DELEGATED TO IT BY THE BYLAWS, THE EXECUTIVE COMMITTEE OR THE COMMISSION.

(2) ALL REPRESENTATIVES OF THE OPERATIONS COMMITTEE SHALL BE INDIVIDUALS WHO HAVE EXTENSIVE EXPERIENCE AND/OR EMPLOYMENT IN THE SURPLUS LINES INSURANCE BUSINESS, INCLUDING, BUT NOT LIMITED TO, EXECUTIVES AND ATTORNEYS EMPLOYED BY SURPLUS LINES INSURERS, SURPLUS LINES LICENSEES, LAW FIRMS, STATE INSURANCE DEPARTMENTS AND/OR STATE STAMPING OFFICES. OPERATIONS COMMITTEE REPRESENTATIVES FROM COMPACTING STATES WHICH UTILIZE THE SERVICES OF A STATE STAMPING OFFICE MUST APPOINT THE CHIEF OPERATING OFFICER OR A SENIOR MANAGER OF THE STATE STAMPING OFFICE TO THE OPERATIONS COMMITTEE.

(D) (1) A LEGISLATIVE COMMITTEE COMPRISED OF STATE LEGISLATORS OR THEIR DESIGNEES SHALL BE ESTABLISHED TO MONITOR THE OPERATIONS OF AND MAKE RECOMMENDATIONS TO THE COMMISSION, INCLUDING THE EXECUTIVE COMMITTEE; PROVIDED THAT THE MANNER OF SELECTION AND TERM OF ANY LEGISLATIVE COMMITTEE MEMBER SHALL BE AS SET FORTH IN THE BYLAWS. PRIOR TO THE ADOPTION BY THE COMMISSION OF ANY UNIFORM STANDARD, REVISION TO THE BYLAWS, ANNUAL BUDGET OR OTHER SIGNIFICANT MATTER AS MAY BE PROVIDED IN THE BYLAWS, THE EXECUTIVE COMMITTEE SHALL CONSULT WITH AND REPORT TO THE LEGISLATIVE COMMITTEE.

(2) THE COMMISSION MAY ESTABLISH ADDITIONAL ADVISORY COMMITTEES AS ITS BYLAWS MAY PROVIDE FOR THE CARRYING OUT OF ITS FUNCTIONS.

(E) THE COMMISSION SHALL MAINTAIN ITS CORPORATE BOOKS AND RECORDS IN ACCORDANCE WITH THE BYLAWS.

(F) (1) THE MEMBERS, OFFICERS, EXECUTIVE DIRECTOR, EMPLOYEES AND REPRESENTATIVES OF THE COMMISSION, THE EXECUTIVE COMMITTEE AND ANY OTHER COMMITTEE OF THE COMMISSION SHALL BE IMMUNE FROM SUIT AND LIABILITY, EITHER PERSONALLY OR IN THEIR OFFICIAL CAPACITY, FOR ANY CLAIM FOR DAMAGE TO OR LOSS OF PROPERTY OR PERSONAL INJURY OR OTHER CIVIL LIABILITY CAUSED BY OR ARISING OUT OF ANY ACTUAL OR ALLEGED ACT, ERROR OR OMISSION THAT OCCURRED, OR THAT THE PERSON AGAINST WHOM THE CLAIM IS MADE HAD A REASONABLE BASIS FOR BELIEVING OCCURRED, WITHIN THE SCOPE OF COMMISSION EMPLOYMENT, DUTIES OR RESPONSIBILITIES; PROVIDED THAT NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO PROTECT ANY SUCH PERSON FROM SUIT AND/OR LIABILITY FOR ANY DAMAGE, LOSS, INJURY OR LIABILITY CAUSED BY THE INTENTIONAL OR WILLFUL OR WANTON MISCONDUCT OF THAT PERSON.

1 (2) THE COMMISSION SHALL DEFEND ANY MEMBER, OFFICER, EXECUTIVE DIREC-
2 TOR, EMPLOYEE OR REPRESENTATIVE OF THE COMMISSION, THE EXECUTIVE COMMIT-
3 TEE OR ANY OTHER COMMITTEE OF THE COMMISSION IN ANY CIVIL ACTION SEEKING
4 TO IMPOSE LIABILITY ARISING OUT OF ANY ACTUAL OR ALLEGED ACT, ERROR OR
5 OMISSION THAT OCCURRED WITHIN THE SCOPE OF COMMISSION EMPLOYMENT, DUTIES
6 OR RESPONSIBILITIES OR THAT THE PERSON AGAINST WHOM THE CLAIM IS MADE
7 HAD A REASONABLE BASIS FOR BELIEVING OCCURRED WITHIN THE SCOPE OF
8 COMMISSION EMPLOYMENT, DUTIES OR RESPONSIBILITIES; PROVIDED THAT NOTHING
9 HEREIN SHALL BE CONSTRUED TO PROHIBIT THAT PERSON FROM RETAINING HIS OR
10 HER OWN COUNSEL; AND PROVIDED FURTHER, THAT THE ACTUAL OR ALLEGED ACT,
11 ERROR OR OMISSION DID NOT RESULT FROM THAT PERSON'S INTENTIONAL OR WILL-
12 FUL OR WANTON MISCONDUCT.

13 (3) THE COMMISSION SHALL INDEMNIFY AND HOLD HARMLESS ANY MEMBER, OFFI-
14 CER, EXECUTIVE DIRECTOR, EMPLOYEE OR REPRESENTATIVE OF THE COMMISSION,
15 EXECUTIVE COMMITTEE OR ANY OTHER COMMITTEE OF THE COMMISSION FOR THE
16 AMOUNT OF ANY SETTLEMENT OR JUDGMENT OBTAINED AGAINST THAT PERSON ARIS-
17 ING OUT OF ANY ACTUAL OR ALLEGED ACT, ERROR OR OMISSION THAT OCCURRED
18 WITHIN THE SCOPE OF COMMISSION EMPLOYMENT, DUTIES OR RESPONSIBILITIES OR
19 THAT SUCH PERSON HAD A REASONABLE BASIS FOR BELIEVING OCCURRED WITHIN
20 THE SCOPE OF COMMISSION EMPLOYMENT, DUTIES OR RESPONSIBILITIES, PROVIDED
21 THAT THE ACTUAL OR ALLEGED ACT, ERROR OR OMISSION DID NOT RESULT FROM
22 THE INTENTIONAL OR WILLFUL OR WANTON MISCONDUCT OF THAT PERSON.

23 S 2908. MEETINGS AND ACTS OF THE COMMISSION. (A) THE COMMISSION SHALL
24 MEET AND TAKE SUCH ACTIONS AS ARE CONSISTENT WITH THE PROVISIONS OF THIS
25 COMPACT AND THE BYLAWS.

26 (B) EACH MEMBER OF THE COMMISSION SHALL HAVE THE RIGHT AND POWER TO
27 CAST A VOTE TO WHICH THAT COMPACTING STATE IS ENTITLED AND TO PARTIC-
28 IPATE IN THE BUSINESS AND AFFAIRS OF THE COMMISSION. A MEMBER SHALL VOTE
29 IN PERSON OR BY SUCH OTHER MEANS AS PROVIDED IN THE BYLAWS. THE BYLAWS
30 MAY PROVIDE FOR MEMBERS' PARTICIPATION IN MEETINGS BY TELEPHONE OR OTHER
31 MEANS OF COMMUNICATION.

32 (C) THE COMMISSION SHALL MEET AT LEAST ONCE DURING EACH CALENDAR YEAR.
33 ADDITIONAL MEETINGS SHALL BE HELD AS SET FORTH IN THE BYLAWS.

34 (D) PUBLIC NOTICE SHALL BE GIVEN OF ALL MEETINGS AND ALL MEETINGS
35 SHALL BE OPEN TO THE PUBLIC, EXCEPT AS SET FORTH IN THE RULES OR OTHER-
36 WISE PROVIDED IN THE COMPACT.

37 (E) THE COMMISSION SHALL PROMULGATE RULES CONCERNING ITS MEETINGS
38 CONSISTENT WITH THE PRINCIPLES CONTAINED IN THE GOVERNMENT IN THE
39 SUNSHINE ACT, 5 U.S.C. S 552B, AS MAY BE AMENDED.

40 (F) THE COMMISSION AND ITS COMMITTEES MAY CLOSE A MEETING, OR PORTION
41 THEREOF, WHERE IT DETERMINES BY MAJORITY VOTE THAT AN OPEN MEETING WOULD
42 BE LIKELY TO:

43 (1) RELATE SOLELY TO THE COMMISSION'S INTERNAL PERSONNEL PRACTICES AND
44 PROCEDURES;

45 (2) DISCLOSE MATTERS SPECIFICALLY EXEMPTED FROM DISCLOSURE BY FEDERAL
46 AND STATE STATUTE;

47 (3) DISCLOSE TRADE SECRETS OR COMMERCIAL OR FINANCIAL INFORMATION
48 WHICH IS PRIVILEGED OR CONFIDENTIAL;

49 (4) INVOLVE ACCUSING A PERSON OF A CRIME, OR FORMALLY CENSURING A
50 PERSON;

51 (5) DISCLOSE INFORMATION OF A PERSONAL NATURE WHERE DISCLOSURE WOULD
52 CONSTITUTE A CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY;

53 (6) DISCLOSE INVESTIGATIVE RECORDS COMPILED FOR LAW ENFORCEMENT
54 PURPOSES; OR

55 (7) SPECIFICALLY RELATE TO THE COMMISSION'S ISSUANCE OF A SUBPOENA OR
56 ITS PARTICIPATION IN A CIVIL ACTION OR OTHER LEGAL PROCEEDING.

1 (G) FOR A MEETING, OR PORTION OF A MEETING, CLOSED PURSUANT TO
2 SUBSECTION (F) OF THIS SECTION, THE COMMISSION'S LEGAL COUNSEL OR DESIG-
3 NEE SHALL CERTIFY THAT THE MEETING MAY BE CLOSED AND SHALL REFERENCE
4 EACH RELEVANT EXEMPTIVE PROVISION. THE COMMISSION SHALL KEEP MINUTES
5 WHICH SHALL FULLY AND CLEARLY DESCRIBE ALL MATTERS DISCUSSED IN A MEET-
6 ING AND SHALL PROVIDE A FULL AND ACCURATE SUMMARY OF ACTIONS TAKEN AND
7 THE REASONS THEREFORE, INCLUDING A DESCRIPTION OF THE VIEWS EXPRESSED
8 AND THE RECORD OF A ROLL CALL VOTE. ALL DOCUMENTS CONSIDERED IN
9 CONNECTION WITH AN ACTION SHALL BE IDENTIFIED IN SUCH MINUTES. ALL
10 MINUTES AND DOCUMENTS OF A CLOSED MEETING SHALL REMAIN UNDER SEAL,
11 SUBJECT TO RELEASE BY A MAJORITY VOTE OF THE COMMISSION.

12 S 2909. RULEMAKING FUNCTIONS OF THE COMMISSION. (A) THE COMMISSION
13 SHALL PROMULGATE REASONABLE RULES IN ORDER TO EFFECTIVELY AND EFFICIENT-
14 LY ACHIEVE THE PURPOSES OF THIS COMPACT. NOTWITHSTANDING THE FOREGOING,
15 IN THE EVENT THE COMMISSION EXERCISES ITS RULEMAKING AUTHORITY IN A
16 MANNER THAT IS BEYOND THE SCOPE OF THE PURPOSES OF THIS ARTICLE OR THE
17 POWERS GRANTED HEREUNDER, THEN SUCH AN ACTION BY THE COMMISSION SHALL BE
18 INVALID AND HAVE NO FORCE OR EFFECT.

19 (B) RULES SHALL BE MADE PURSUANT TO A RULEMAKING PROCESS THAT SUBSTAN-
20 Tially CONFORMS TO THE MODEL STATE ADMINISTRATIVE PROCEDURE ACT OF 1981,
21 FOUND IN VOLUME FIFTEEN OF THE UNIFORM LAWS ANNOTATED, AS AMENDED, AS
22 MAY BE APPROPRIATE TO THE OPERATIONS OF THE COMMISSION.

23 (C) ALL RULES AND AMENDMENTS THERETO SHALL BECOME EFFECTIVE AS OF THE
24 DATE SPECIFIED IN EACH RULE, OPERATING PROCEDURE OR AMENDMENT.

25 (D) NOT LATER THAN THIRTY DAYS AFTER A RULE IS PROMULGATED, ANY PERSON
26 MAY FILE A PETITION FOR JUDICIAL REVIEW OF THE RULE; PROVIDED THAT THE
27 FILING OF SUCH A PETITION SHALL NOT STAY OR OTHERWISE PREVENT THE RULE
28 FROM BECOMING EFFECTIVE UNLESS THE COURT FINDS THAT THE PETITIONER HAS A
29 SUBSTANTIAL LIKELIHOOD OF SUCCESS. THE COURT SHALL GIVE DEFERENCE TO THE
30 ACTIONS OF THE COMMISSION CONSISTENT WITH APPLICABLE LAW AND SHALL NOT
31 FIND THE RULE TO BE UNLAWFUL IF THE RULE REPRESENTS A REASONABLE EXER-
32 CISE OF THE COMMISSION'S AUTHORITY.

33 S 2910. COMMISSION RECORDS AND ENFORCEMENT. (A) THE COMMISSION SHALL
34 PROMULGATE RULES ESTABLISHING CONDITIONS AND PROCEDURES FOR PUBLIC
35 INSPECTION AND COPYING OF ITS INFORMATION AND OFFICIAL RECORDS, EXCEPT
36 SUCH INFORMATION AND RECORDS INVOLVING THE PRIVACY OF INDIVIDUALS,
37 INSURERS, INSUREDS OR SURPLUS LINES LICENSEE TRADE SECRETS. STATE TRANS-
38 ACTION DOCUMENTATION AND CLEARINGHOUSE TRANSACTION DATA COLLECTED BY THE
39 CLEARINGHOUSE SHALL BE USED FOR ONLY THOSE PURPOSES EXPRESSED IN OR
40 REASONABLY IMPLIED UNDER THE PROVISIONS OF THIS COMPACT AND THE COMMIS-
41 SION SHALL AFFORD THIS DATA THE BROADEST PROTECTIONS AS PERMITTED BY ANY
42 APPLICABLE LAW FOR PROPRIETARY INFORMATION, TRADE SECRETS OR PERSONAL
43 DATA. THE COMMISSION MAY PROMULGATE ADDITIONAL RULES UNDER WHICH IT MAY
44 MAKE AVAILABLE TO FEDERAL AND STATE AGENCIES, INCLUDING LAW ENFORCEMENT
45 AGENCIES, RECORDS AND INFORMATION OTHERWISE EXEMPT FROM DISCLOSURE AND
46 MAY ENTER INTO AGREEMENTS WITH SUCH AGENCIES TO RECEIVE OR EXCHANGE
47 INFORMATION OR RECORDS SUBJECT TO NONDISCLOSURE AND CONFIDENTIALITY
48 PROVISIONS.

49 (B) EXCEPT AS TO PRIVILEGED RECORDS, DATA AND INFORMATION, THE LAWS OF
50 ANY COMPACTING STATE PERTAINING TO CONFIDENTIALITY OR NONDISCLOSURE
51 SHALL NOT RELIEVE ANY COMPACTING STATE MEMBER OF THE DUTY TO DISCLOSE
52 ANY RELEVANT RECORDS, DATA OR INFORMATION TO THE COMMISSION; PROVIDED
53 THAT DISCLOSURE TO THE COMMISSION SHALL NOT BE DEEMED TO WAIVE OR OTHER-
54 WISE AFFECT ANY CONFIDENTIALITY REQUIREMENT AND FURTHER PROVIDED THAT,
55 EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS ARTICLE, THE COMMISSION
56 SHALL NOT BE SUBJECT TO THE COMPACTING STATE'S LAWS PERTAINING TO CONFIDENTIALITY

1 DENTIALITY AND NONDISCLOSURE WITH RESPECT TO RECORDS, DATA AND INFORMA-
2 TION IN ITS POSSESSION. CONFIDENTIAL INFORMATION OF THE COMMISSION
3 SHALL REMAIN CONFIDENTIAL AFTER SUCH INFORMATION IS PROVIDED TO ANY
4 MEMBER, AND THE COMMISSION SHALL MAINTAIN THE CONFIDENTIALITY OF ANY
5 INFORMATION PROVIDED BY A MEMBER THAT IS CONFIDENTIAL UNDER THAT
6 MEMBER'S STATE LAW.

7 (C) THE COMMISSION SHALL MONITOR COMPACTING STATES FOR COMPLIANCE WITH
8 DULY ADOPTED BYLAWS AND RULES. THE COMMISSION SHALL NOTIFY ANY NON-COM-
9 PLYING COMPACTING STATE IN WRITING OF ITS NONCOMPLIANCE WITH COMMISSION
10 BYLAWS OR RULES. IF A NON-COMPLYING COMPACTING STATE FAILS TO REMEDY
11 ITS NONCOMPLIANCE WITHIN THE TIME SPECIFIED IN THE NOTICE OF NONCOMPLI-
12 ANCE, THE COMPACTING STATE SHALL BE DEEMED TO BE IN DEFAULT AS SET FORTH
13 IN SECTION TWO THOUSAND NINE HUNDRED FIFTEEN OF THIS ARTICLE.

14 S 2911. DISPUTE RESOLUTION. (A) BEFORE A MEMBER MAY BRING AN ACTION IN
15 A COURT OF COMPETENT JURISDICTION FOR VIOLATION OF ANY PROVISION, STAND-
16 ARD OR REQUIREMENT OF THE COMPACT, THE COMMISSION SHALL ATTEMPT, UPON
17 THE REQUEST OF A MEMBER, TO RESOLVE ANY DISPUTES OR OTHER ISSUES THAT
18 ARE SUBJECT TO THIS COMPACT AND WHICH MAY ARISE BETWEEN TWO OR MORE
19 COMPACTING STATES, CONTRACTING STATES OR NON-COMPACTING STATES AND THE
20 COMMISSION SHALL PROMULGATE A RULE PROVIDING ALTERNATIVE DISPUTE RESOL-
21 UTION PROCEDURES FOR SUCH DISPUTES.

22 (B) THE COMMISSION SHALL ALSO PROVIDE ALTERNATIVE DISPUTE RESOLUTION
23 PROCEDURES TO RESOLVE ANY DISPUTES BETWEEN INSURED OR SURPLUS LINES
24 LICENSEES CONCERNING A TAX CALCULATION OR ALLOCATION OR RELATED ISSUES
25 WHICH ARE THE SUBJECT OF THIS COMPACT.

26 (C) ANY ALTERNATIVE DISPUTE RESOLUTION PROCEDURES SHALL BE UTILIZED IN
27 CIRCUMSTANCES WHERE A DISPUTE ARISES AS TO WHICH STATE CONSTITUTES THE
28 HOME STATE.

29 S 2912. REVIEW OF COMMISSION DECISIONS. REGARDING COMMISSION DECI-
30 SIONS:

31 (A) EXCEPT AS NECESSARY FOR PROMULGATING RULES TO FULFILL THE PURPOSES
32 OF THIS COMPACT, THE COMMISSION SHALL NOT HAVE AUTHORITY TO OTHERWISE
33 REGULATE INSURANCE IN THE COMPACTING STATES.

34 (B) NOT LATER THAN THIRTY DAYS AFTER THE COMMISSION HAS GIVEN NOTICE
35 OF ANY RULE OR ALLOCATION FORMULA, ANY THIRD PARTY FILER OR COMPACTING
36 STATE MAY APPEAL THE DETERMINATION TO A REVIEW PANEL APPOINTED BY THE
37 COMMISSION. THE COMMISSION SHALL PROMULGATE RULES TO ESTABLISH PROCE-
38 DURES FOR APPOINTING SUCH REVIEW PANELS AND PROVIDE FOR NOTICE AND HEAR-
39 ING. AN ALLEGATION THAT THE COMMISSION, IN MAKING COMPLIANCE OR TAX
40 DETERMINATIONS ACTED ARBITRARILY, CAPRICIOUSLY OR IN A MANNER THAT IS AN
41 ABUSE OF DISCRETION OR OTHERWISE NOT IN ACCORDANCE WITH THE LAW, IS
42 SUBJECT TO JUDICIAL REVIEW IN ACCORDANCE WITH SUBSECTION (F) OF SECTION
43 TWO THOUSAND NINE HUNDRED FOUR OF THIS ARTICLE.

44 (C) THE COMMISSION SHALL HAVE AUTHORITY TO MONITOR, REVIEW AND RECON-
45 sider COMMISSION DECISIONS UPON A FINDING THAT THE DETERMINATIONS OR
46 ALLOCATIONS DO NOT MEET THE RELEVANT RULE. WHERE APPROPRIATE, THE
47 COMMISSION MAY WITHDRAW OR MODIFY ITS DETERMINATION OR ALLOCATION AFTER
48 PROPER NOTICE AND HEARING, SUBJECT TO THE APPEAL PROCESS SET FORTH IN
49 SUBSECTION (B) OF THIS SECTION.

50 S 2913. FINANCE. (A) THE COMMISSION SHALL PAY OR PROVIDE FOR THE
51 PAYMENT OF THE REASONABLE EXPENSES OF ITS ESTABLISHMENT AND ORGANIZA-
52 TION. TO FUND THE COST OF ITS INITIAL OPERATIONS THE COMMISSION MAY
53 ACCEPT CONTRIBUTIONS, GRANTS AND OTHER FORMS OF FUNDING FROM THE STATE
54 STAMPING OFFICES, COMPACTING STATES AND OTHER SOURCES.

55 (B) THE COMMISSION SHALL COLLECT A FEE PAYABLE BY THE INSURED DIRECTLY
56 OR THROUGH A SURPLUS LINES LICENSEE ON EACH TRANSACTION PROCESSED

1 THROUGH THE COMPACT CLEARINGHOUSE TO COVER THE COST OF THE OPERATIONS
2 AND ACTIVITIES OF THE COMMISSION AND ITS STAFF IN A TOTAL AMOUNT SUFFI-
3 CIENT TO COVER THE COMMISSION'S ANNUAL BUDGET.

4 (C) THE COMMISSION'S BUDGET FOR A FISCAL YEAR SHALL NOT BE APPROVED
5 UNTIL IT HAS BEEN SUBJECT TO NOTICE AND COMMENT AS SET FORTH IN SECTION
6 TWO THOUSAND NINE HUNDRED NINE OF THIS ARTICLE.

7 (D) THE COMMISSION SHALL BE REGARDED AS PERFORMING ESSENTIAL GOVERN-
8 MENTAL FUNCTIONS IN EXERCISING SUCH POWERS AND FUNCTIONS AND IN CARRYING
9 OUT THE PROVISIONS OF THIS COMPACT AND OF ANY LAW RELATING THERETO AND
10 SHALL NOT BE REQUIRED TO PAY ANY TAXES OR ASSESSMENTS OF ANY CHARACTER
11 LEVIED BY ANY STATE OR POLITICAL SUBDIVISION THEREOF UPON ANY OF THE
12 PROPERTY USED BY IT FOR SUCH PURPOSES OR ANY INCOME OR REVENUE THERE-
13 FROM, INCLUDING ANY PROFIT FROM A SALE OR EXCHANGE.

14 (E) THE COMMISSION SHALL KEEP COMPLETE AND ACCURATE ACCOUNTS OF ALL
15 ITS INTERNAL RECEIPTS, INCLUDING GRANTS AND DONATIONS AND DISBURSEMENTS
16 FOR ALL FUNDS UNDER ITS CONTROL. THE INTERNAL FINANCIAL ACCOUNTS OF THE
17 COMMISSION SHALL BE SUBJECT TO THE ACCOUNTING PROCEDURES ESTABLISHED
18 UNDER ITS BYLAWS. THE FINANCIAL ACCOUNTS AND REPORTS INCLUDING THE
19 SYSTEM OF INTERNAL CONTROLS AND PROCEDURES OF THE COMMISSION SHALL BE
20 AUDITED ANNUALLY BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT. UPON THE
21 DETERMINATION OF THE COMMISSION, BUT NOT LESS FREQUENTLY THAN EVERY
22 THREE YEARS, THE REVIEW OF THE INDEPENDENT AUDITOR SHALL INCLUDE A
23 MANAGEMENT AND PERFORMANCE AUDIT OF THE COMMISSION. THE COMMISSION SHALL
24 MAKE AN ANNUAL REPORT TO THE GOVERNOR AND LEGISLATURE OF THE COMPACTING
25 STATES, WHICH SHALL INCLUDE A REPORT OF THE INDEPENDENT AUDIT. THE
26 COMMISSION'S INTERNAL ACCOUNTS SHALL NOT BE CONFIDENTIAL AND SUCH MATE-
27 RIALS MAY BE SHARED WITH THE COMMISSIONER, THE CONTROLLER OR THE STAMP-
28 ING OFFICE OF ANY COMPACTING STATE UPON REQUEST; PROVIDED, HOWEVER, THAT
29 ANY WORK PAPERS RELATED TO ANY INTERNAL OR INDEPENDENT AUDIT AND ANY
30 INFORMATION REGARDING THE PRIVACY OF INDIVIDUALS AND LICENSEES' AND
31 INSURERS' PROPRIETARY INFORMATION, INCLUDING TRADE SECRETS, SHALL REMAIN
32 CONFIDENTIAL.

33 (F) NO COMPACTING STATE SHALL HAVE ANY CLAIM TO OR OWNERSHIP OF ANY
34 PROPERTY HELD BY OR VESTED IN THE COMMISSION OR TO ANY COMMISSION FUNDS
35 HELD PURSUANT TO THE PROVISIONS OF THIS COMPACT.

36 (G) THE COMMISSION SHALL NOT MAKE ANY POLITICAL CONTRIBUTIONS TO
37 CANDIDATES FOR ELECTED OFFICE, ELECTED OFFICIALS, POLITICAL PARTIES OR
38 POLITICAL ACTION COMMITTEES. THE COMMISSION SHALL NOT ENGAGE IN LOBBYING
39 EXCEPT WITH RESPECT TO CHANGES TO THIS COMPACT.

40 S 2914. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT. (A) ANY STATE
41 IS ELIGIBLE TO BECOME A COMPACTING STATE.

42 (B) THE COMPACT SHALL BECOME EFFECTIVE AND BINDING UPON LEGISLATIVE
43 ENACTMENT OF THE COMPACT INTO LAW BY TWO COMPACTING STATES; PROVIDED,
44 THE COMMISSION SHALL BECOME EFFECTIVE FOR PURPOSES OF ADOPTING RULES AND
45 CREATING THE CLEARINGHOUSE WHEN THERE ARE A TOTAL OF TEN COMPACTING
46 STATES AND CONTRACTING STATES OR, ALTERNATIVELY, WHEN THERE ARE COMPACT-
47 ING STATES AND CONTRACTING STATES REPRESENTING GREATER THAN FORTY
48 PERCENT OF THE SURPLUS LINES INSURANCE PREMIUM VOLUME BASED ON RECORDS
49 OF THE PERCENTAGE OF SURPLUS LINES INSURANCE PREMIUM SET FORTH IN APPEN-
50 DIX A OF SECTION TWO THOUSAND ONE HUNDRED SEVENTEEN. THEREAFTER, IT
51 SHALL BECOME EFFECTIVE AND BINDING AS TO ANY OTHER COMPACTING STATE UPON
52 ENACTMENT OF THE COMPACT INTO LAW BY THAT STATE. NOTWITHSTANDING THE
53 FOREGOING, THE CLEARINGHOUSE OPERATIONS AND THE DUTY TO REPORT CLEARING-
54 HOUSE TRANSACTION DATA SHALL BEGIN ON THE FIRST OF JANUARY OR THE FIRST
55 OF JULY NEXT FOLLOWING THE FIRST ANNIVERSARY OF THE COMMISSION'S EFFEC-
56 TIVE DATE. FOR STATES WHICH JOIN THE COMPACT SUBSEQUENT TO THE EFFECTIVE

DATE, A START DATE FOR REPORTING CLEARINGHOUSE TRANSACTION DATA SHALL BE SET BY THE COMMISSION PROVIDED SURPLUS LINES LICENSEES AND ALL OTHER INTERESTED PARTIES RECEIVE NOT LESS THAN NINETY DAYS ADVANCE NOTICE.

(C) AMENDMENTS TO THE COMPACT MAY BE PROPOSED BY THE COMMISSION FOR ENACTMENT BY THE COMPACTING STATES. NO AMENDMENT SHALL BECOME EFFECTIVE AND BINDING UPON THE COMMISSION AND THE COMPACTING STATES UNLESS AND UNTIL ALL COMPACTING STATES ENACT THE AMENDMENT INTO LAW.

S 2915. WITHDRAWAL, DEFAULT AND TERMINATION. (A) (1) ONCE EFFECTIVE, THE COMPACT SHALL CONTINUE IN FORCE AND REMAIN BINDING UPON EACH AND EVERY COMPACTING STATE, PROVIDED THAT A COMPACTING STATE MAY WITHDRAW FROM THE COMPACT ("WITHDRAWING STATE") BY ENACTING A STATUTE SPECIFICALLY REPEALING THE STATUTE WHICH ENACTED THE COMPACT INTO LAW.

(2) THE EFFECTIVE DATE OF WITHDRAWAL IS THE EFFECTIVE DATE OF THE REPEALING STATUTE. HOWEVER, THE WITHDRAWAL SHALL NOT APPLY TO ANY TAX OR COMPLIANCE DETERMINATIONS APPROVED ON THE DATE THE REPEALING STATUTE BECOMES EFFECTIVE, EXCEPT BY MUTUAL AGREEMENT OF THE COMMISSION AND THE WITHDRAWING STATE UNLESS THE APPROVAL IS RESCINDED BY THE COMMISSION.

(3) THE MEMBER OF THE WITHDRAWING STATE SHALL IMMEDIATELY NOTIFY THE EXECUTIVE COMMITTEE OF THE COMMISSION IN WRITING UPON THE INTRODUCTION OF LEGISLATION REPEALING THIS COMPACT IN THE WITHDRAWING STATE.

(4) THE COMMISSION SHALL NOTIFY THE OTHER COMPACTING STATES OF THE INTRODUCTION OF SUCH LEGISLATION WITHIN TEN DAYS AFTER ITS RECEIPT OF NOTICE THEREOF.

(5) THE WITHDRAWING STATE IS RESPONSIBLE FOR ALL OBLIGATIONS, DUTIES AND LIABILITIES INCURRED THROUGH THE EFFECTIVE DATE OF WITHDRAWAL, INCLUDING ANY OBLIGATIONS, THE PERFORMANCE OF WHICH EXTEND BEYOND THE EFFECTIVE DATE OF WITHDRAWAL. TO THE EXTENT THOSE OBLIGATIONS MAY HAVE BEEN RELEASED OR RELINQUISHED BY MUTUAL AGREEMENT OF THE COMMISSION AND THE WITHDRAWING STATE, THE COMMISSION'S DETERMINATIONS PRIOR TO THE EFFECTIVE DATE OF WITHDRAWAL SHALL CONTINUE TO BE EFFECTIVE AND BE GIVEN FULL FORCE AND EFFECT IN THE WITHDRAWING STATE, UNLESS FORMALLY RESCINDED BY THE COMMISSION.

(6) REINSTATEMENT FOLLOWING WITHDRAWAL OF ANY COMPACTING STATE SHALL OCCUR UPON THE EFFECTIVE DATE OF THE WITHDRAWING STATE REENACTING THE COMPACT.

(B) (1) IF THE COMMISSION DETERMINES THAT ANY COMPACTING STATE HAS AT ANY TIME DEFAULTED ("DEFAULTING STATE") IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS OR RESPONSIBILITIES UNDER THIS COMPACT, THE BYLAWS OR DULY PROMULGATED RULES, THEN AFTER NOTICE AND HEARING AS SET FORTH IN THE BYLAWS, ALL RIGHTS, PRIVILEGES AND BENEFITS CONFERRED BY THIS COMPACT ON THE DEFAULTING STATE SHALL BE SUSPENDED FROM THE EFFECTIVE DATE OF DEFAULT AS FIXED BY THE COMMISSION. THE GROUNDS FOR DEFAULT INCLUDE, BUT ARE NOT LIMITED TO, FAILURE OF A COMPACTING STATE TO PERFORM ITS OBLIGATIONS OR RESPONSIBILITIES AND ANY OTHER GROUNDS DESIGNATED IN COMMISSION RULES. THE COMMISSION SHALL IMMEDIATELY NOTIFY THE DEFAULTING STATE IN WRITING OF THE DEFAULTING STATE'S SUSPENSION PENDING A CURE OF THE DEFAULT. THE COMMISSION SHALL STIPULATE THE CONDITIONS AND THE TIME PERIOD WITHIN WHICH THE DEFAULTING STATE MUST CURE ITS DEFAULT. IF THE DEFAULTING STATE FAILS TO CURE THE DEFAULT WITHIN THE TIME PERIOD SPECIFIED BY THE COMMISSION, THE DEFAULTING STATE SHALL BE TERMINATED FROM THE COMPACT AND ALL RIGHTS, PRIVILEGES AND BENEFITS CONFERRED BY THIS COMPACT SHALL BE TERMINATED FROM THE EFFECTIVE DATE OF TERMINATION.

(2) DECISIONS OF THE COMMISSION THAT ARE ISSUED ON THE EFFECTIVE DATE OF TERMINATION SHALL REMAIN IN FORCE IN THE DEFAULTING STATE IN THE SAME MANNER AS IF THE DEFAULTING STATE HAD WITHDRAWN VOLUNTARILY PURSUANT TO SUBSECTION (A) OF THIS SECTION.

1 (3) REINSTATEMENT FOLLOWING TERMINATION OF ANY COMPACTING STATE
2 REQUIRES A REENACTMENT OF THE COMPACT.

3 (C) (1) THE COMPACT DISSOLVES EFFECTIVE UPON THE DATE OF THE WITH-
4 DRAWAL OR DEFAULT OF THE COMPACTING STATE WHICH REDUCES MEMBERSHIP IN
5 THE COMPACT TO ONE COMPACTING STATE.

6 (2) UPON THE DISSOLUTION OF THIS COMPACT, THE COMPACT BECOMES NULL AND
7 VOID AND SHALL HAVE NO FURTHER FORCE OR EFFECT AND THE BUSINESS AND
8 AFFAIRS OF THE COMMISSION SHALL BE WOUND UP AND ANY EXCESS FUNDS SHALL
9 BE DISTRIBUTED IN ACCORDANCE WITH THE RULES AND BYLAWS.

10 S 2916. SEVERABILITY AND CONSTRUCTION. (A) THE PROVISIONS OF THIS
11 COMPACT SHALL BE SEVERABLE AND IF ANY PHRASE, CLAUSE, SENTENCE OR
12 PROVISION IS DEEMED UNENFORCEABLE, THE REMAINING PROVISIONS OF THE
13 COMPACT SHALL BE ENFORCEABLE.

14 (B) THE PROVISIONS OF THIS COMPACT SHALL BE LIBERALLY CONSTRUED TO
15 EFFECTUATE ITS PURPOSES.

16 (C) THROUGHOUT THIS COMPACT THE USE OF THE SINGULAR SHALL INCLUDE THE
17 PLURAL AND VICE-VERSA.

18 (D) THE HEADINGS AND CAPTIONS OF ARTICLES, SECTIONS AND SUBSECTIONS
19 USED IN THIS COMPACT ARE FOR CONVENIENCE ONLY AND SHALL BE IGNORED IN
20 CONSTRUING THE SUBSTANTIVE PROVISIONS OF THIS COMPACT.

21 S 2917. BINDING EFFECT OF COMPACT AND OTHER LAWS. (A) (1) NOTHING
22 HEREIN PREVENTS THE ENFORCEMENT OF ANY OTHER LAW OF A COMPACTING STATE,
23 EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION.

24 (2) DECISIONS OF THE COMMISSION AND ANY RULES AND ANY OTHER REQUIRE-
25 MENTS OF THE COMMISSION SHALL CONSTITUTE THE EXCLUSIVE RULE OR DETERMI-
26 NATION APPLICABLE TO THE COMPACTING STATES. ANY LAW OR REGULATION
27 REGARDING NON-ADMITTED INSURANCE OF MULTI-STATE RISKS THAT IS CONTRARY
28 TO RULES OF THE COMMISSION IS PREEMPTED WITH RESPECT TO THE FOLLOWING:

29 (A) CLEARINGHOUSE TRANSACTION DATA REPORTING REQUIREMENTS;

30 (B) ALLOCATION FORMULA;

31 (C) CLEARINGHOUSE TRANSACTION DATA COLLECTION REQUIREMENTS;

32 (D) PREMIUM TAX PAYMENT TIME FRAMES AND RULES CONCERNING DISSEMINATION
33 OF DATA AMONG THE COMPACTING STATES FOR NON-ADMITTED INSURANCE OF
34 MULTI-STATE RISKS AND SINGLE-STATE RISKS;

35 (E) EXCLUSIVE COMPLIANCE WITH SURPLUS LINES LAW OF THE HOME STATE OF
36 THE INSURED;

37 (F) RULES FOR REPORTING TO A CLEARINGHOUSE FOR RECEIPT AND DISTRIB-
38 UTION OF CLEARINGHOUSE TRANSACTION DATA RELATED TO NON-ADMITTED INSUR-
39 ANCE OF MULTI-STATE RISKS;

40 (G) UNIFORM FOREIGN INSURERS ELIGIBILITY REQUIREMENTS;

41 (H) UNIFORM POLICYHOLDER NOTICE; AND

42 (I) UNIFORM TREATMENT OF PURCHASING GROUPS PROCURING NON-ADMITTED
43 INSURANCE.

44 (3) EXCEPT AS SET FORTH IN SUBSECTION (B) OF THIS SECTION, ANY RULE,
45 UNIFORM STANDARD OR OTHER REQUIREMENT OF THE COMMISSION SHALL CONSTITUTE
46 THE EXCLUSIVE PROVISION THAT A COMMISSIONER MAY APPLY TO COMPLIANCE OR
47 TAX DETERMINATIONS. NOTWITHSTANDING THE FOREGOING, NO ACTION TAKEN BY
48 THE COMMISSION SHALL ABROGATE OR RESTRICT:

49 (A) THE ACCESS OF ANY PERSON TO STATE COURTS;

50 (B) THE AVAILABILITY OF ALTERNATIVE DISPUTE RESOLUTION UNDER SECTION
51 TWO THOUSAND NINE HUNDRED ELEVEN OF THIS ARTICLE;

52 (C) REMEDIES AVAILABLE UNDER STATE LAW RELATED TO BREACH OF CONTRACT,
53 TORT OR OTHER LAWS NOT SPECIFICALLY DIRECTED TO COMPLIANCE OR TAX DETER-
54 MINATIONS;

55 (D) STATE LAW RELATING TO THE CONSTRUCTION OF INSURANCE CONTRACTS; OR

(E) THE AUTHORITY OF THE ATTORNEY GENERAL OF THE STATE, INCLUDING BUT NOT LIMITED TO MAINTAINING ANY ACTIONS OR PROCEEDINGS, AS AUTHORIZED BY LAW.

(B) (1) ALL LAWFUL ACTIONS OF THE COMMISSION, INCLUDING ALL RULES PROMULGATED BY THE COMMISSION, ARE BINDING UPON THE COMPACTING STATES, EXCEPT AS PROVIDED HEREIN.

(2) ALL AGREEMENTS BETWEEN THE COMMISSION AND THE COMPACTING STATES ARE BINDING IN ACCORDANCE WITH THEIR TERMS.

(3) UPON THE REQUEST OF A PARTY TO A CONFLICT OVER THE MEANING OR INTERPRETATION OF COMMISSION ACTIONS AND UPON A MAJORITY VOTE OF THE COMPACTING STATES, THE COMMISSION MAY ISSUE ADVISORY OPINIONS REGARDING THE MEANING OR INTERPRETATION IN DISPUTE. THIS PROVISION MAY BE IMPLEMENTED BY RULE AT THE DISCRETION OF THE COMMISSION.

(4) IN THE EVENT ANY PROVISION OF THIS COMPACT EXCEEDS THE CONSTITUTIONAL LIMITS IMPOSED ON THE LEGISLATURE OF ANY COMPACTING STATE, THE OBLIGATIONS, DUTIES, POWERS OR JURISDICTION SOUGHT TO BE CONFERRED BY THAT PROVISION UPON THE COMMISSION SHALL BE INEFFECTIVE AS TO THAT STATE AND THOSE OBLIGATIONS, DUTIES, POWERS OR JURISDICTION SHALL REMAIN IN THE COMPACTING STATE AND SHALL BE EXERCISED BY THE AGENCY THEREOF TO WHICH THOSE OBLIGATIONS, DUTIES, POWERS OR JURISDICTION ARE DELEGATED BY LAW IN EFFECT AT THE TIME THIS COMPACT BECOMES EFFECTIVE.

APPENDIX A

SURPLUS LINE INSURANCE PREMIUMS BY STATE

STATE	PREMIUMS BASED ON TAXES PAID	SHARE OF TOTAL PREMIUMS
ALABAMA	445,746,000	1.47%
ALASKA	89,453,519	0.29%
ARIZONA	663,703,267	2.18%
ARKANSAS	201,859,750	0.66%
CALIFORNIA	5,622,450,467	18.49%
COLORADO	543,781,333	1.79%
CONNECTICUT	329,358,800	1.08%
DELAWARE	92,835,950	0.31%
FLORIDA	2,660,908,760	8.75%
GEORGIA	895,643,150	2.95%
HAWAII	232,951,489	0.77%
IDAHO	74,202,255	0.24%
ILLINOIS	1,016,504,629	3.34%
INDIANA	412,265,320	1.36%
IOWA	135,130,933	0.44%
KANSAS	160,279,300	0.53%
KENTUCKY	167,996,133	0.55%
LOUISIANA	853,173,280	2.81%
MAINE	60,111,200	0.20%
MARYLAND	434,887,600	1.43%
MASSACHUSETTS	708,640,225	2.33%
MICHIGAN	703,357,040	2.31%
MINNESOTA	393,128,400	1.29%
MISSISSIPPI	263,313,175	0.87%
MISSOURI	404,489,860	1.33%
MONTANA	64,692,873	0.21%
NEBRASKA	92,141,167	0.30%
NEVADA	354,271,514	1.17%
NEW HAMPSHIRE	102,946,250	0.34%
NEW JERSEY	1,087,994,033	3.58%
NEW MEXICO	67,608,458	0.22%

1	NEW YORK	2,768,618,083	9.11%
2	NORTH CAROLINA	514,965,060	1.69%
3	NORTH DAKOTA	36,223,943	0.12%
4	OHIO	342,000,000	1.12%
5	OKLAHOMA	319,526,400	1.05%
6	OREGON	312,702,150	1.03%
7	PENNSYLVANIA	780,666,667	2.57%
8	RHODE ISLAND	71,794,067	0.24%
9	SOUTH CAROLINA	412,489,825	1.36%
10	SOUTH DAKOTA	38,702,120	0.13%
11	TENNESSEE	451,775,240	1.49%
12	TEXAS	3,059,170,454	10.06%
13	UTAH	142,593,412	0.47%
14	VERMONT	41,919,433	0.14%
15	VIRGINIA	611,530,667	2.01%
16	WASHINGTON	739,932,050	2.43%
17	WEST VIRGINIA	130,476,250	0.43%
18	WISCONSIN	248,758,333	0.82%
19	WYOMING	40,526,967	0.13%

20	TOTAL	30,400,197,251	100.00%
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21 S 3. Subsection (d) of section 2118 of the insurance law is amended by
 22 adding a new paragraph 4 to read as follows:

23 (4) IN THE EVENT THAT THE SURPLUS LINES INSURANCE MULTISTATE COMPLI-
 24 ANCE COMPACT ("SLIMPACT") IS ENACTED BY THIS STATE AND THE COMMISSION
 25 CREATED THEREUNDER BECOMES ACTIVE PURSUANT TO THE PROVISION OF SLIMPACT,
 26 THEN THIS STATE, WHEN IT IS THE HOME STATE OF THE INSURED, WILL REQUIRE
 27 THE PAYMENT OF TAXES BE ALLOCATED BASED UPON SLIMPACT'S PROVISIONS TO
 28 ALL OTHER STATES WHICH HAVE ADOPTED SLIMPACT; PROVIDED, HOWEVER, THAT
 29 THIS STATE WILL APPLY ITS STATE TAX TO THE PREMIUM FOR ALL RISK EXPO-
 30 SURES ALLOCATED TO THIS STATE AND TO RISK EXPOSURES LOCATED IN ANY
 31 STATES WHICH HAVE NOT ENACTED SLIMPACT.

32 S 4. Paragraph 1 of subsection (b) of section 9102 of the insurance
 33 law, as amended by chapter 190 of the laws of 1990, is amended to read
 34 as follows:

35 (1) In determining the amount of gross premiums taxable in this state
 36 pursuant to paragraph one of subsection (d) of section two thousand one
 37 hundred eighteen of this chapter, where a placement of excess line
 38 insurance covers property or risks located or resident both in and out
 39 of this state, the sum paid to the superintendent shall be computed on
 40 that portion of the policy premium that is attributable to property or
 41 risks located or resident in this state, as determined by reference to
 42 an allocation schedule prescribed by the superintendent in a regulation.
 43 IN THE EVENT THAT THE SURPLUS LINES INSURANCE MULTISTATE COMPLIANCE
 44 COMPACT ("SLIMPACT") IS ENACTED BY THIS STATE AND THE COMMISSION CREATED
 45 THEREUNDER BECOMES ACTIVE PURSUANT TO THE PROVISIONS OF SLIMPACT, THEN
 46 THIS STATE, WHEN IT IS THE HOME STATE OF THE INSURED, WILL REQUIRE THE
 47 PAYMENT OF TAXES BE ALLOCATED BASED UPON SLIMPACT'S PROVISIONS TO ALL
 48 OTHER STATES WHICH HAVE ADOPTED SLIMPACT; PROVIDED, HOWEVER, THAT THIS
 49 STATE WILL APPLY ITS STATE TAX TO THE PREMIUM FOR ALL RISK EXPOSURES
 50 ALLOCATED TO THIS STATE AND TO RISK EXPOSURES LOCATED IN ANY STATES
 51 WHICH HAVE NOT ENACTED SLIMPACT.

52 S 5. Section 1552 of the tax law, as added by chapter 190 of the laws
 53 of 1990, is amended to read as follows:

54 S 1552. Allocation. Where the taxable insurance contract covers risks
 55 located or resident both within and without this state, the amount of

1 premiums allocable to risks resident or located within this state shall
2 be determined pursuant to rules and regulations of the commissioner of
3 taxation and finance. In promulgating such rules and regulations, the
4 commissioner of taxation and finance shall give due consideration to the
5 rules and regulations promulgated by the superintendent of insurance
6 pursuant to subsection (b) of section nine thousand one hundred two of
7 the insurance law. IN THE EVENT THAT THE SURPLUS LINES INSURANCE MULTI-
8 STATE COMPLIANCE COMPACT ("SLIMPACT") IS ENACTED BY THIS STATE AND THE
9 COMMISSION CREATED THEREUNDER BECOMES ACTIVE PURSUANT TO THE PROVISIONS
10 OF SLIMPACT, THEN THIS STATE, WHEN IT IS THE HOME STATE OF THE INSURED,
11 WILL REQUIRE THE PAYMENT OF TAXES BE ALLOCATED BASED UPON SLIMPACT'S
12 PROVISIONS TO ALL OTHER STATES WHICH HAVE ADOPTED SLIMPACT; PROVIDED,
13 HOWEVER, THAT THIS STATE WILL APPLY ITS STATE TAX TO THE PREMIUM FOR ALL
14 RISK EXPOSURES ALLOCATED TO THIS STATE AND TO RISK EXPOSURES LOCATED IN
15 ANY STATES WHICH HAVE NOT ENACTED SLIMPACT.

16 S 6. This act shall take effect ninety days after July 21, 2011.

17 PART FF

18 Section 1. The tax law is amended by adding a new section 35 to read
19 as follows:

20 S 35. COMMUNITY TRANSFORMATION PROGRAM CREDIT. (A) DEFINITIONS. AS
21 USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEAN-
22 INGS:

23 (1) "TRANSFORMATION COMMUNITY" MEANS A TOWN OR A CITY LOCATED WITHIN
24 THREE MILES OF A CORRECTIONAL FACILITY, AS DEFINED IN PARAGRAPH (A) OF
25 SUBDIVISION FOUR OF SECTION TWO OF THE CORRECTION LAW SUBJECT TO CLOSURE
26 PURSUANT TO A RECOMMENDATION OF THE PRISON EFFICIENCY TASK FORCE OR A
27 SECURE FACILITY AS DEFINED IN SECTION FIVE HUNDRED FOUR-A OF THE EXECU-
28 TIVE LAW SUBJECT TO CLOSURE PURSUANT TO A CHAPTER OF THE LAWS OF TWO
29 THOUSAND ELEVEN.

30 (2) "BASE EMPLOYMENT" MEANS THE AVERAGE NUMBER OF FULL TIME EMPLOYEES
31 OR FULL TIME EQUIVALENT EMPLOYEES IN THE STATE DURING THE BASE YEAR,
32 WHERE THE BASE YEAR IS TWO THOUSAND ELEVEN. FOR A NEW BUSINESS, BASE
33 EMPLOYMENT SHALL BE ZERO.

34 (3) "NET NEW JOB" MEANS ANY FULL TIME EMPLOYEE OR FULL TIME EQUIVALENT
35 EMPLOYEE THAT CAUSES THE TOTAL NUMBER OF EMPLOYEES TO INCREASE ABOVE
36 BASE EMPLOYMENT.

37 (4) "QUALIFIED BUSINESS ENTITY" MEANS A BUSINESS ENTITY THAT SHALL
38 OPERATE WITHIN A TRANSFORMATION COMMUNITY, PROVIDED, HOWEVER, A QUALI-
39 FIED BUSINESS ENTITY SHALL NOT INCLUDE RETAIL ESTABLISHMENTS OR OFFICES
40 OF PROFESSIONS REQUIRED TO BE LICENSED BY THE STATE UNLESS SUCH RETAIL
41 ESTABLISHMENTS OR OFFICES OF PROFESSIONS ARE TO BE LOCATED ON THE PROP-
42 erty OF THE CORRECTIONAL FACILITY OR SECURE FACILITY DESCRIBED IN PARA-
43 GRAPH ONE OF THIS SECTION.

44 (5) "QUALIFIED INVESTMENT" MEANS AN INVESTMENT IN TANGIBLE PROPERTY
45 (INCLUDING A BUILDING OR A STRUCTURAL COMPONENT OF A BUILDING) OWNED BY
46 A QUALIFIED BUSINESS ENTITY WHICH:

47 (I) IS DEPRECIABLE PURSUANT TO SECTION ONE HUNDRED SIXTY-SEVEN OF THE
48 INTERNAL REVENUE CODE;

49 (II) HAS A USEFUL LIFE OF FOUR YEARS OR MORE;

50 (III) IS ACQUIRED BY PURCHASE AS DEFINED IN SECTION ONE HUNDRED SEVEN-
51 TY-NINE (D) OF THE INTERNAL REVENUE CODE;

52 (IV) HAS A SITUS IN THE TRANSFORMATION COMMUNITY; AND

1 (V) IS PLACED IN SERVICE IN THE TRANSFORMATION COMMUNITY ON OR AFTER
2 THE DATE OF THE CLOSURE OF THE CORRECTIONAL FACILITY OR SECURED FACILI-
3 TY.

4 (6) "TAX BENEFIT PERIOD" MEANS (I) FOR THE TAX CREDIT ESTABLISHED
5 PURSUANT TO PARAGRAPH ONE OF SUBDIVISION (B) OF THIS SECTION, FIVE TAXA-
6 BLE YEARS STARTING WITH THE YEAR IN WHICH NET NEW JOB CREATION OCCURS OR
7 IN WHICH THE PROPERTY CONSTITUTING A QUALIFIED INVESTMENT PROJECT IS
8 FIRST PLACED IN SERVICE OR (II) FOR THE CREDIT ESTABLISHED PURSUANT TO
9 PARAGRAPH TWO OF SUBDIVISION (B) OF THIS SECTION, SIXTY CONSECUTIVE
10 MONTHS.

11 (7) "WITHHOLDING" MEANS THE WITHHOLDING REQUIRED UNDER SECTION SIX
12 HUNDRED SEVENTY-ONE OF THIS CHAPTER CALCULATED USING THE EMPLOYEE'S
13 APPLICABLE WAGE AND FILING STATUS WITH ONE EXEMPTION.

14 (B) GENERAL. (1) A QUALIFIED BUSINESS ENTITY THAT IS SUBJECT TO TAX
15 UNDER ARTICLE NINE-A, TWENTY-TWO, THIRTY-TWO OR THIRTY-THREE OF THIS
16 CHAPTER SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX, PURSUANT TO THE
17 PROVISIONS REFERENCED IN THIS SECTION. THE AMOUNT OF THE CREDIT, ALLOW-
18 ABLE FOR THE TAX BENEFIT PERIOD, IS THE SUM OF THE FOLLOWING THREE CRED-
19 IT COMPONENTS:

20 (I) COMMUNITY TRANSFORMATION JOBS CREDIT;

21 (II) COMMUNITY TRANSFORMATION INVESTMENT TAX CREDIT; AND

22 (III) COMMUNITY TRANSFORMATION REAL PROPERTY TAX CREDIT.

23 (2) A QUALIFIED BUSINESS ENTITY THAT MAKES PURCHASES THAT ARE SUBJECT
24 TO TAX UNDER ARTICLE TWENTY-EIGHT OR TWENTY-NINE OF THIS CHAPTER SHALL
25 BE ELIGIBLE TO CLAIM THE CREDIT OR REFUND DESCRIBED IN SUBDIVISIONS (A)
26 AND (D) OF SECTION ELEVEN HUNDRED NINETEEN OF THIS CHAPTER OR ANY LIKE
27 CREDIT OR REFUND IMPOSED PURSUANT TO THE AUTHORITY OF ARTICLE
28 TWENTY-NINE OF THIS CHAPTER.

29 (C) NOTIFICATION. THE DEPARTMENT OF CORRECTIONAL SERVICES AND THE
30 OFFICE OF CHILDREN AND FAMILY SERVICES SHALL NOTIFY THE DEPARTMENT WITH-
31 IN TEN DAYS SUBSEQUENT TO THE RECOMMENDATION OF THE PRISON EFFICIENCY
32 TASK FORCE OR THE DETERMINATION BY THE OFFICE OF CHILDREN AND FAMILY
33 SERVICES. SUCH NOTIFICATION SHALL INCLUDE THE NAME OF THE FACILITY TO BE
34 CLOSED, THE LOCATION OF SUCH FACILITY, AND THE NAME OF ANY TOWN OR CITY
35 LOCATED WITHIN THREE MILES OF SUCH FACILITY. THE DEPARTMENT SHALL MAKE
36 THE INFORMATION PROVIDED IN SUCH NOTIFICATION AVAILABLE TO TAXPAYERS.

37 (D) COMMUNITY TRANSFORMATION JOBS CREDIT COMPONENT. A QUALIFIED BUSI-
38 NESS ENTITY SHALL BE ELIGIBLE TO CLAIM A CREDIT FOR EACH NET NEW JOB IT
39 CREATES IN A TRANSFORMATION COMMUNITY. THE AMOUNT OF THE CREDIT ALLOWED
40 UNDER THIS SECTION SHALL BE EQUAL TO THE AMOUNT OF WITHHOLDING REMITTED
41 TO THE STATE FOR EACH NEW EMPLOYEE. THE CREDIT SHALL NOT BE MORE THAN
42 FIVE THOUSAND DOLLARS FOR ANY NEW EMPLOYEE FOR ONE FULL YEAR OF EMPLOY-
43 MENT; IF A NEW EMPLOYEE HAS BEEN HIRED FOR LESS THAN A FULL TAX YEAR
44 THIS AMOUNT SHALL BE PRORATED AND APPORTIONED TO EACH TAX YEAR BUT SHALL
45 IN NO WAY DECREASE THE FULL FIVE YEARS OF CREDIT ELIGIBILITY. THE
46 TAXPAYER MAY CLAIM THIS CREDIT FOR EACH NEW EMPLOYEE FOR A PERIOD OF
47 FIVE YEARS OF EMPLOYMENT. THE TAXPAYER MAY OFFSET QUARTERLY ESTIMATED
48 RETURNS WITH THE AMOUNT OF THIS CREDIT EARNED IN ANY PREVIOUS QUARTER.

49 (E) COMMUNITY TRANSFORMATION INVESTMENT TAX CREDIT COMPONENT. A QUALI-
50 FIED BUSINESS ENTITY SHALL BE ELIGIBLE TO CLAIM A CREDIT ON QUALIFIED
51 INVESTMENTS WITHIN THE TRANSFORMATION COMMUNITY. THE CREDIT SHALL BE
52 EQUAL TO FIVE PERCENT OF THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX
53 PURPOSES OF THE QUALIFIED INVESTMENT. PROVIDED, HOWEVER, IF THE QUALI-
54 FIED INVESTMENT IS MADE WITH RESPECT TO THE REDEVELOPMENT OF THE CORREC-
55 TIONAL FACILITY OR SECURE FACILITY, THE CREDIT SHALL BE EQUAL TO TEN

1 PERCENT OF THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES OF
2 THE QUALIFIED INVESTMENT.

3 A QUALIFIED BUSINESS ENTITY MAY CLAIM BOTH THE COMMUNITY TRANSFORMA-
4 TION INVESTMENT TAX CREDIT COMPONENT AND THE INVESTMENT TAX CREDIT SET
5 FORTH IN SUBDIVISION TWELVE OF SECTION TWO HUNDRED TEN, SUBSECTION (A)
6 OF SECTION SIX HUNDRED SIX, OR SUBSECTION (I) OF SECTION FOURTEEN
7 HUNDRED FIFTY-SIX OF THIS CHAPTER FOR THE SAME PROPERTY IN ANY TAXABLE
8 YEAR. EXPENSES INCURRED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION ARE
9 NOT ELIGIBLE TO BE INCLUDED IN THE CALCULATION OF THE CREDIT.

10 (F) COMMUNITY TRANSFORMATION REAL PROPERTY TAX CREDIT. A QUALIFIED
11 BUSINESS ENTITY SHALL BE ELIGIBLE TO CLAIM A CREDIT FOR A PERIOD OF FIVE
12 YEARS. THE CREDIT SHALL BE EQUAL TO FIFTY PERCENT OF THE ELIGIBLE REAL
13 PROPERTY TAXES ON THE REAL PROPERTY LOCATED IN THE TRANSFORMATION COMMU-
14 NITY THAT WERE ASSESSED AND PAID. IN THE REMAINING YEARS THE CREDIT
15 SHALL BE COMPUTED ACCORDING TO THE FOLLOWING SCHEDULE: YEAR TWO: FORTY
16 PERCENT OF ELIGIBLE REAL PROPERTY TAXES ON THE REAL PROPERTY LOCATED IN
17 THE TRANSFORMATION COMMUNITY THAT WERE ASSESSED AND PAID; YEAR THREE:
18 THIRTY PERCENT OF ELIGIBLE REAL PROPERTY TAXES ON THE REAL PROPERTY
19 LOCATED IN THE TRANSFORMATION COMMUNITY THAT WERE ASSESSED AND PAID;
20 YEAR FOUR: TWENTY PERCENT OF ELIGIBLE REAL PROPERTY TAXES ON REAL PROP-
21 erty LOCATED IN THE TRANSFORMATION COMMUNITY THAT WERE ASSESSED AND
22 PAID; AND YEAR FIVE: TEN PERCENT OF ELIGIBLE REAL PROPERTY TAXES ON THE
23 REAL PROPERTY LOCATED IN THE TRANSFORMATION COMMUNITY THAT WERE ASSESSED
24 AND PAID. PROVIDED, HOWEVER, IF THE REAL PROPERTY CONSISTS OF THE
25 CORRECTIONAL FACILITY OR THE SECURE FACILITY, THE CREDIT SHALL BE EQUAL
26 TO ONE HUNDRED PERCENT OF THE ELIGIBLE REAL PROPERTY TAXES ON THE REAL
27 PROPERTY THAT WERE ASSESSED AND PAID. IN THE REMAINING YEARS THE CREDIT
28 SHALL BE COMPUTED ACCORDING TO THE FOLLOWING SCHEDULE: YEAR TWO: EIGHTY
29 PERCENT OF ELIGIBLE REAL PROPERTY TAXES ON THE REAL PROPERTY THAT WERE
30 ASSESSED AND PAID; YEAR THREE: SIXTY PERCENT OF ELIGIBLE REAL PROPERTY
31 TAXES ON THE REAL PROPERTY THAT WERE ASSESSED AND PAID; YEAR FOUR: FORTY
32 PERCENT OF ELIGIBLE REAL PROPERTY TAXES ON REAL PROPERTY THAT WERE
33 ASSESSED AND PAID; AND YEAR FIVE: TWENTY PERCENT OF ELIGIBLE REAL PROP-
34 erty TAXES ON THE REAL PROPERTY LOCATED IN THE TRANSFORMATION COMMUNITY
35 THAT WERE ASSESSED AND PAID.

36 FOR PURPOSES OF THIS CREDIT, THE TERM "ELIGIBLE REAL PROPERTY TAXES"
37 SHALL HAVE THE SAME MEANING AS IN SUBDIVISION (E) OF SECTION FIFTEEN OF
38 THIS CHAPTER, PROVIDED THAT SUCH SUBDIVISION SHALL BE READ AS IF IT
39 SPECIFICALLY REFERENCED THE COMMUNITY TRANSFORMATION PROGRAM AND PARTIC-
40 IPANTS IN THAT PROGRAM.

41 (G) CROSS-REFERENCES. FOR APPLICATION OF THE CREDIT PROVIDED FOR IN
42 THIS SECTION, SEE THE FOLLOWING PROVISIONS OF THIS CHAPTER:

43 (1) ARTICLE 9-A: SECTION 210: SUBDIVISION 43.

44 (2) ARTICLE 22: SECTION 606: SUBSECTION (SS).

45 (3) ARTICLE 32: SECTION 1456: SUBSECTION (X).

46 (4) ARTICLE 33: SECTION 1511: SUBDIVISION (AA).

47 S 2. Section 210 of the tax law is amended by adding a new subdivision
48 43 to read as follows:

49 43. COMMUNITY TRANSFORMATION PROGRAM CREDIT. (A) ALLOWANCE OF CREDIT.
50 A TAXPAYER WILL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN
51 SECTION THIRTY-FIVE OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS
52 ARTICLE.

53 (B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION
54 FOR ANY TAXABLE YEAR MAY NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS
55 THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF
56 SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT

1 ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO
2 SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE
3 YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED
4 IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF
5 THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF
6 SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO
7 INTEREST WILL BE PAID THEREON.

8 S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
9 of the tax law is amended by adding a new clause (xxxii) to read as
10 follows:

11 (XXXII) COMMUNITY TRANSFORMATION	AMOUNT OF CREDIT UNDER
12 PROGRAM CREDIT UNDER SUBSECTION	SUBDIVISION FORTY-THREE
13 (SS)	OF SECTION TWO HUNDRED TEN
14	OR UNDER SUBSECTION (X)
15	OF SECTION FOURTEEN HUNDRED
16	FIFTY-SIX

17 S 4. Section 606 of the tax law is amended by adding a new subsection
18 (ss) to read as follows:

19 (SS) COMMUNITY TRANSFORMATION PROGRAM CREDIT. (1) A TAXPAYER WILL BE
20 ALLOWED A CREDIT, TO THE EXTENT ALLOWED UNDER SECTION THIRTY-ONE OF THIS
21 CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

22 (2) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWED UNDER
23 THIS SUBSECTION FOR ANY TAXABLE YEAR EXCEEDS THE TAXPAYER'S TAX FOR SUCH
24 YEAR, THE EXCESS WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED
25 OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED
26 EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST WILL BE
27 PAID THEREON.

28 S 5. Subdivision (a) of section 1119 of the tax law, as amended by
29 chapter 686 of the laws of 1986, and as further amended by section 15 of
30 part GG of chapter 63 of the laws of 2000, is amended to read as
31 follows:

32 (a) Subject to the conditions and limitations provided for herein, a
33 refund or credit shall be allowed for a tax paid pursuant to subdivision
34 (a) of section eleven hundred five or section eleven hundred ten (1) on
35 the sale or use of tangible personal property if the purchaser or user,
36 in the performance of a contract, later incorporates that tangible
37 personal property into real property located outside this state, (2) on
38 the sale or use of tangible personal property purchased in bulk, or any
39 portion thereof, which is stored and not used by the purchaser or user
40 within this state if that property is subsequently reshipped by such
41 purchaser or user to a point outside this state for use outside this
42 state, (3) on the sale to or use by a contractor or subcontractor of
43 tangible personal property if that property is used by him solely in the
44 performance of a pre-existing lump sum or unit price construction
45 contract, (4) on the sale or use within this state of tangible personal
46 property, not purchased for resale, if the use of such property in this
47 state is restricted to fabricating such property (including incorporat-
48 ing it into or assembling it with other tangible personal property),
49 processing, printing or imprinting such property and such property is
50 then shipped to a point outside this state for use outside this state,
51 (5) on the sale to or use by a veterinarian of drugs or medicine if such
52 drugs or medicine are used by such veterinarian in rendering services,
53 which are exempt pursuant to subdivision (f) of section eleven hundred
54 fifteen of this chapter, to livestock or poultry used in the production
55 for sale of tangible personal property by farming or if such drugs or
56 medicine are sold to a person qualifying for the exemption provided for

1 in paragraph (6) of subdivision (a) of section eleven hundred fifteen of
2 this chapter for use by such person on such livestock or poultry, [or]
3 (6) on the sale of tangible personal property purchased for use in
4 constructing, expanding or rehabilitating industrial or commercial real
5 property (other than property used or to be used exclusively by one or
6 more registered vendors primarily engaged in the retail sale of tangible
7 personal property) located in an area designated as an empire zone
8 pursuant to article eighteen-B of the general municipal law, but only to
9 the extent that such property becomes an integral component part of the
10 real property, OR (7) ON THE SALE OF TANGIBLE PERSONAL PROPERTY
11 PURCHASED FOR USE IN CONSTRUCTING, EXPANDING OR REHABILITATING INDUS-
12 TRIAL OR COMMERCIAL REAL PROPERTY (OTHER THAN PROPERTY USED OR TO BE
13 USED EXCLUSIVELY BY ONE OR MORE REGISTERED VENDORS PRIMARILY ENGAGED IN
14 THE RETAIL SALE OF TANGIBLE PERSONAL PROPERTY) LOCATED IN AN AREA DESIG-
15 NATED AS TRANSFORMATION COMMUNITY PURSUANT TO SECTION THIRTY-FIVE OF
16 THIS CHAPTER, BUT ONLY TO THE EXTENT THAT SUCH PROPERTY BECOMES AN INTE-
17 GRAL COMPONENT PART OF THE REAL PROPERTY. (For the purpose of clause
18 (3) of the preceding sentence, the term "pre-existing lump sum or unit
19 price construction contract" shall mean a contract for the construction
20 of improvements to real property under which the amount payable to the
21 contractor or subcontractor is fixed without regard to the costs
22 incurred by him in the performance thereof, and which (i) was irrevoca-
23 bly entered into prior to the date of the enactment of this article or
24 the enactment of a law increasing the rate of tax imposed under this
25 article, or (ii) resulted from the acceptance by a governmental agency
26 of a bid accompanied by a bond or other performance guaranty which was
27 irrevocably submitted prior to such date.) Where the tax on the sale or
28 use of such tangible personal property has been paid to the vendor, to
29 qualify for such refund or credit, such tangible personal property must
30 be incorporated into real property as required in clause (1) above,
31 reshipped as required in clause (2) above, used in the manner described
32 in clauses (3), (4), (5) [and], (6) AND (7) above within three years
33 after the date such tax was payable to the tax commission by the vendor
34 pursuant to section eleven hundred thirty-seven. Where the tax on the
35 sale or use of such tangible personal property was paid by the applicant
36 for the credit or refund directly to the tax commission, to qualify for
37 such refund or credit, such tangible personal property must be incorpo-
38 rated into real property as required in clause (1) above, reshipped as
39 required in clause (2) above, used in the manner described in clauses
40 (3), (4), (5) [and], (6) AND (7) above within three years after the date
41 such tax was payable to the tax commission by such applicant pursuant to
42 this article. An application for a refund or credit pursuant to this
43 section must be filed with such commission within the time provided by
44 subdivision (a) of section eleven hundred thirty-nine. Such application
45 shall be in such form as the tax commission may prescribe. Where an
46 application for credit has been filed, the applicant may immediately
47 take such credit on the return which is due coincident with or imme-
48 diately subsequent to the time that he files his application for credit.
49 However, the taking of the credit on the return shall be deemed to be
50 part of the application for credit and shall be subject to the
51 provisions in respect to applications for credit in section eleven
52 hundred thirty-nine as provided in subdivision (e) of such section. With
53 respect to a sale or use described in clause (3) above where a pre-ex-
54 isting lump sum or unit price construction contract was irrevocably
55 entered into prior to the date of the enactment of this article or the
56 bid accompanied by the performance guaranty was irrevocably submitted to

1 the governmental agency prior to such date, the purchaser or user shall
2 be entitled to a refund or credit only of the amount by which the tax on
3 such sale or use imposed under this article plus any tax imposed under
4 the authority of article twenty-nine exceeds the amount computed by
5 applying against such sale or use the local rate of tax, if any, in
6 effect at the time such contract was entered into or such bid was
7 submitted.

8 In the case of the enactment of a law increasing the rate of tax
9 imposed by this article, the purchaser or user shall be entitled only to
10 a refund or credit of the amount by which the increased tax on such sale
11 or use imposed under this article plus any tax imposed under the author-
12 ity of article twenty-nine exceeds the amount computed by applying
13 against such sale or use the state and local rates of tax in effect at
14 the time such contract was entered into or such bid was submitted.

15 S. 6. Paragraphs 1 and 2 of subdivision (d) of section 1119 of the tax
16 law, as added by section 31 of part S-1 of chapter 57 of the laws of
17 2009, are amended to read as follows:

18 (1) Subject to the conditions and limitations provided for in this
19 section, a refund or credit will be allowed for taxes imposed on the
20 retail sale of tangible personal property described in subdivision (a)
21 of section eleven hundred five of this article, and on every sale of
22 services described in subdivisions (b) and (c) of such section, and
23 consideration given or contracted to be given for, or for the use of,
24 such tangible personal property or services, where such tangible
25 personal property or services are sold to a qualified empire zone enter-
26 prise OR QUALIFIED BUSINESS ENTITY, AS DEFINED IN PARAGRAPH FOUR OF
27 SUBDIVISION (A) OF SECTION THIRTY-FIVE OF THIS CHAPTER, provided that
28 (A) such tangible personal property or tangible personal property upon
29 which such a service has been performed or such service (other than a
30 service described in subdivision (b) of section eleven hundred five of
31 this article) is directly and predominantly, or such a service described
32 in clause (A) or (D) of paragraph one of such subdivision (b) of section
33 eleven hundred five of this article is directly and exclusively, used or
34 consumed by such enterprise OR BUSINESS ENTITY in an area designated as
35 an empire zone pursuant to article eighteen-B of the general municipal
36 law with respect to which such enterprise is certified pursuant to such
37 article eighteen-B OR IN A TRANSFORMATION COMMUNITY AS DEFINED IN PARA-
38 GRAPH ONE OF SUBDIVISION (A) OF SECTION THIRTY-FIVE OF THIS CHAPTER, or
39 (B) such a service described in clause (B) or (C) of paragraph one of
40 subdivision (b) of section eleven hundred five of this article is deliv-
41 ered and billed to such enterprise OR BUSINESS ENTITY at an address in
42 such empire zone OR TRANSFORMATION COMMUNITY, or (C) the enterprise's OR
43 ENTITY'S place of primary use of the service described in paragraph two
44 of such subdivision (b) of section eleven hundred five is at an address
45 in such empire zone OR TRANSFORMATION COMMUNITY; provided, further,
46 that, in order for a motor vehicle, as defined in subdivision (c) of
47 section eleven hundred seventeen of this article, or tangible personal
48 property related to such a motor vehicle to be found to be used predomi-
49 nantly in such a zone OR COMMUNITY, at least fifty percent of such motor
50 vehicle's use shall be exclusively within such zone OR COMMUNITY or at
51 least fifty percent of such motor vehicle's use shall be in activities
52 originating or terminating in such zone OR COMMUNITY, or both; and
53 either or both such usages shall be computed either on the basis of
54 mileage or hours of use, at the discretion of such enterprise OR ENTITY.
55 For purposes of this subdivision, tangible personal property related to
56 such a motor vehicle shall include a battery, diesel motor fuel, an

1 engine, engine components, motor fuel, a muffler, tires and similar
2 tangible personal property used in or on such a motor vehicle.

3 (2) Subject to the conditions and limitations provided for in this
4 section, a refund or credit will be allowed for taxes imposed on the
5 retail sale of, and consideration given or contracted to be given for,
6 or for the use of, tangible personal property sold to a contractor,
7 subcontractor or repairman for use in (A) erecting a structure or build-
8 ing of a qualified empire zone enterprise OR QUALIFIED BUSINESS ENTITY,
9 (B) adding to, altering or improving real property, property or land of
10 such an enterprise OR ENTITY or (C) maintaining, servicing or repairing
11 real property, property or land of such an enterprise OR ENTITY, as the
12 terms real property, property or land are defined in the real property
13 tax law; provided, however, no credit or refund will be allowed under
14 this paragraph unless such tangible personal property is to become an
15 integral component part of such structure, building, real property,
16 property or land located in an area designated as an empire zone pursu-
17 ant to article eighteen-B of the general municipal law in, and with
18 respect to which such enterprise is certified pursuant to such article
19 eighteen-B OR IN A TRANSFORMATION COMMUNITY AS DEFINED IN PARAGRAPH ONE
20 OF SUBDIVISION (A) OF SECTION THIRTY-FIVE OF THIS CHAPTER.

21 S 7. Section 1456 of the tax law is amended by adding a new subsection
22 (x) to read as follows:

23 (X) COMMUNITY TRANSFORMATION PROGRAM CREDIT. (1) ALLOWANCE OF CREDIT.
24 A TAXPAYER WILL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN
25 SECTION THIRTY-FIVE OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS
26 ARTICLE.

27 (2) THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR WILL
28 NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM TAX FIXED
29 BY PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOURTEEN HUNDRED FIFTY-
30 FIVE OF THIS ARTICLE. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER
31 THIS SUBSECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY
32 AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR WILL BE TREAT-
33 ED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE
34 WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER.
35 PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOU-
36 SAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST WILL BE
37 PAID THEREON.

38 S 8. Section 1511 of the tax law is amended by adding a new subdivi-
39 sion (aa) to read as follows:

40 (AA) COMMUNITY TRANSFORMATION PROGRAM CREDIT. (1) ALLOWANCE OF CREDIT.
41 A TAXPAYER WILL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN
42 SECTION THIRTY-FIVE OF THIS CHAPTER, AGAINST THE TAXES IMPOSED BY THIS
43 ARTICLE.

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

54 S 9. This act shall take effect immediately.

1 Section 1. Subdivision 9 of section 602 of the racing, pari-mutuel
2 wagering and breeding law, as amended by chapter 115 of the laws of
3 2008, is amended and a new subdivision 15 is added to read as follows:

4 9. "Cost of corporation's functions." All costs and expenses incurred
5 by the corporation in connection with the performance of the functions
6 of the corporation, including, but not limited to, operating expenses of
7 the corporation, the cost of acquiring, constructing or equipping branch
8 offices and other facilities and premises of the corporation, [and
9 interest and principal on bonds,] notes or other obligations of the
10 corporation issued to finance the acquisition, construction or equipment
11 of such offices, facilities or premises.

12 15. "VENDOR OPERATOR." THE VENDOR OPERATOR SHALL BE SELECTED PURSUANT
13 TO THE PROVISIONS SET FORTH IN SECTION SIX HUNDRED TWENTY-FIVE OF THIS
14 ARTICLE AND SHALL BE RESPONSIBLE FOR THE ADMINISTRATION AND OPERATION OF
15 THE CORPORATION.

16 S 2. Section 603 of the racing, pari-mutuel wagering and breeding law,
17 as amended by chapter 115 of the laws of 2008, is amended to read as
18 follows:

19 S 603. New York city off-track betting corporation. 1. A corporation
20 to be known as the "New York city off-track betting corporation" is
21 hereby created. Such corporation shall be a body corporate and politic
22 constituting a public benefit corporation. It shall be [administered]
23 OVERSEEN by a board of directors consisting of five members, who may be
24 public officers, appointed by the governor for fixed terms as hereinaft-
25 er provided, one of whom shall be appointed on the recommendation of the
26 temporary president of the senate, and one of whom shall be appointed on
27 the recommendation of the speaker of the assembly.

28 2. THE TERMS OF ALL DIRECTORS SERVING A TERM THAT ENCOMPASSED JANUARY
29 TWENTY-FIFTH, TWO THOUSAND ELEVEN, SHALL BE DEEMED TO HAVE EXPIRED AND
30 NEW DIRECTORS SHALL BE APPOINTED. Of the directors, one shall be
31 appointed for a term ending on December thirty-first, two thousand
32 [nine] ELEVEN, one for a term ending on December thirty-first, two thou-
33 sand [ten] TWELVE, one for a term ending on December thirty-first, two
34 thousand [twelve] THIRTEEN, and the two directors appointed on the
35 recommendation of the temporary president of the senate and the speaker
36 of the assembly, for a term ending December thirty-first, two thousand
37 fourteen. Upon the expiration of such terms, the terms of office of
38 their successors shall be six years. Vacancies occurring otherwise than
39 by expiration of term shall be filled for the unexpired term.

40 3. The governor shall designate one of the directors to be chairman of
41 the board of directors and may at his pleasure, change his designation
42 of any such director to be chairman.

43 4. Each director shall continue to serve until the appointment and
44 qualification of his successor.

45 5. The directors shall be removable for cause by the governor, upon
46 charges and after a hearing.

47 6. The [powers] OVERSIGHT of the corporation shall be vested in and
48 exercised by the board at a meeting duly held at a time fixed by any
49 by-law adopted by the board, or at any duly adjourned meeting of such
50 meeting or at any meeting held upon reasonable notice to all of the
51 directors, or upon written waiver thereof, and a majority of the whole
52 number of directors shall constitute a quorum[; provided that neither
53 the business nor the powers of the corporation shall be transacted or
54 exercised except pursuant to the favorable vote of at least a majority
55 of the directors present at a meeting at which a quorum is in attend-
56 ance].

1 7. The board may delegate to one or more of the directors, officers,
2 agents or employees of the corporation such powers and duties as it may
3 deem proper.

4 8. The directors shall be reimbursed for their actual and necessary
5 expenses incurred in the performance of their official duties.

6 9. The directors may engage in outside employment or in a profession
7 or business EXCEPT AS AN EXECUTIVE OR LEGISLATIVE EMPLOYEE OR unless
8 otherwise prohibited from doing so by virtue of holding another public
9 office subject to the provisions of section seventy-three of the public
10 officers law.

11 10. The board shall hold an annual meeting.

12 11. The fiscal year of the corporation shall be the same as [that of
13 the city, provided, however, that the corporation shall have a nine
14 month fiscal year from July first, two thousand eight through March
15 thirty-first, two thousand nine, and then the fiscal year of the corpo-
16 ration shall be the same as] the state.

17 12. THE CORPORATION WILL BE ADMINISTERED BY THE VENDOR OPERATOR AND
18 THE POWERS OF THE CORPORATION SHALL BE VESTED IN THE VENDOR OPERATOR.

19 S 3. Section 617 of the racing, pari-mutuel wagering and breeding law
20 is amended to read as follows:

21 S 617. Exemption from taxation. [1.] The moneys and property of the
22 corporation and any property under its jurisdiction, control or super-
23 vision, and all of its activities and operations shall be exempt from
24 taxation.

25 [2. The state covenants with the purchasers of and with all subsequent
26 holders and transferees of bonds and notes issued by the corporation
27 pursuant to this article, in consideration of the acceptance of and
28 payment for the said bonds and notes, that the said bonds and notes and
29 the income therefrom, and all moneys, funds and revenue pledged to pay
30 or secure the payment of such bonds and notes shall at all time be free
31 from taxation, except for estate and gift taxes and taxes on transfers.]

32 S 4. The opening paragraph of section 621 of the racing, pari-mutuel
33 wagering and breeding law, as amended by chapter 115 of the laws of
34 2008, is amended to read as follows:

35 Within one hundred twenty days after the end of the fiscal year of the
36 corporation, the [directors thereof] VENDOR OPERATOR shall submit to the
37 governor, the legislature, the racing and wagering board and the state
38 comptroller a complete and detailed report setting forth:

39 S 5. The racing, pari-mutuel wagering and breeding law is amended by
40 adding a new section 625 to read as follows:

41 S 625. SELECTION OF VENDOR OPERATOR. 1. THE NEW YORK STATE RACING AND
42 WAGERING BOARD SHALL SUBMIT, WITHIN THIRTY DAYS AFTER THESE PROVISIONS
43 BECOME LAW, A REQUEST FOR PROPOSALS FROM QUALIFYING ENTITIES AS
44 DESCRIBED HEREIN FOR THE PURPOSE OF THE ADMINISTRATION OF THE CORPO-
45 RATION. THE ENTITY CHOSEN TO ADMINISTER THE CORPORATION SHALL ENTER INTO
46 A CONTRACT WITH THE STATE FOR A TERM OF TEN YEARS, WHICH MAY BE RENEWED
47 SUBJECT TO THE APPROVAL OF THE STATE RACING AND WAGERING BOARD AND THE
48 APPROVAL OF THE NEW YORK CITY OFF-TRACK BETTING BOARD OF DIRECTORS.

49 2. ELIGIBLE ENTITIES SHALL CONSIST OF INDIVIDUALS, PARTNERSHIPS OR
50 CORPORATIONS, PUBLIC OR PRIVATE, WHICH ARE REQUIRED AS PART OF THEIR
51 PROPOSAL TO SUBMIT AT LEAST ONE BUSINESS PLAN FOR THE RE-ESTABLISHMENT
52 AND CONTINUATION OF A PROFITABLE CORPORATION. IN AWARDING THE CONTRACT,
53 THE STATE RACING AND WAGERING BOARD MUST CONSIDER THE FOLLOWING CRITERIA
54 WITH RESPECT TO EACH APPLICANT: ITS EXPERIENCE IN MANAGING SUCCESSFUL
55 BUSINESS ENTERPRISES, ITS EXPERIENCE IN THE RACING INDUSTRY, ITS EXPERI-
56 ENCE IN THE PARI-MUTUEL AND/OR OFF-TRACK BETTING INDUSTRIES, ITS EXPERI-

ENCE IN THE ENTERTAINMENT INDUSTRY, THE FEASIBILITY OF ITS PROPOSED BUSINESS PLAN OR PLANS, AND ITS COMMITMENT TO USE ITS BEST EFFORTS TO SUPPORT THE VIABILITY OF OFF-TRACK BETTING IN THE CITY OF NEW YORK AS WELL AS THE RACING INDUSTRY THROUGHOUT THE STATE.

3. ALL BUSINESS PLANS SUBMITTED BY AN ENTITY MUST INCLUDE PROVISIONS FOR PRIORITY FOR CONSIDERATION FOR EMPLOYMENT BY ANY FORMER EMPLOYEE OF THE CORPORATION WHOSE EMPLOYMENT TERMINATED OTHER THAN FOR CAUSE, BY RETIREMENT, OR WITH A SEVERANCE AWARD. SUCH PLANS MUST ALSO PROVIDE FOR REPRESENTATION OF OFF-TRACK BETTING BRANCH OFFICES, OR AN EQUIVALENT, IN ALL OF THE BOROUGHES OF THE CITY OF NEW YORK, WITH PREFERENCE GIVEN FOR BUSINESS PLANS THAT HAVE AT LEAST THREE FACILITIES IN EACH BOROUGH AND THAT MAINTAIN THE SAME RATIO OF ACCESS TO OFF-TRACK BETTING FACILITIES AS WAS PREVIOUSLY PROVIDED BY THE CORPORATION PRIOR TO DECEMBER FIRST, TWO THOUSAND TEN.

4. THE STATE RACING AND WAGERING BOARD SHALL MAKE PUBLIC ITS PRELIMINARY SELECTION OF THE VENDOR OPERATOR NO LATER THAN THREE MONTHS AFTER THE SUBMISSION OF THE REQUEST FOR PROPOSALS, AND ALLOW FOR TWO WEEKS FOR PUBLIC COMMENT. THE FINAL SELECTION AND THE CONTRACT BETWEEN THE VENDOR AND THE STATE MUST BE FINALIZED WITHIN THIRTY DAYS OF THE PRELIMINARY SELECTION, BUT NO SOONER THAN THE END OF THE TWO WEEK PUBLIC COMMENT PERIOD.

5. THE SELECTION OF VENDOR MAY BE REVOKED AND CANCELLED BY THE STATE RACING AND WAGERING BOARD FOR A MATERIAL BREACH OF CONTRACT OR FOR A VIOLATION OF THE RULES OF THE STATE RACING AND WAGERING BOARD OR IF SUCH VENDOR OR ITS OFFICERS OR DIRECTORS SHALL KNOWINGLY VIOLATE THE PROVISIONS OF THIS CHAPTER OR OF THE PENAL LAW. THE ACTION OF THE STATE RACING AND WAGERING BOARD IN REVOKING THE SELECTION SHALL BE REVIEWABLE IN THE SUPREME COURT IN THE MANNER PROVIDED BY AND SUBJECT TO THE PROVISIONS OF ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

6. FOR CONTRACTS IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS, ENTERED INTO BY THE VENDOR FOR THE PROCUREMENT OF GOODS OR SERVICES, THE BOARD MAY REVIEW THE CHARACTER AND FITNESS OF THE ENTITY OR ITS PRINCIPALS ENTERING INTO CONTRACTS WITH THE VENDOR.

S 6. Clause (E) of subparagraph 5 and clause (F) of subparagraph 6 of paragraph b of subdivision 1 of section 1016 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 18 of the laws of 2008, are amended to read as follows:

(E) On days when a franchised corporation is not conducting a race meeting and when a licensed harness track is neither accepting wagers nor displaying the signal from an in-state thoroughbred corporation or association or an out-of-state thoroughbred track:

(i) Such licensed regional harness track shall receive in lieu of any other payments on wagers placed at off-track betting facilities outside the special betting district on races conducted by an in-state thoroughbred racing corporation, [two and eight-tenths] ONE AND FOUR-TENTHS percent on regular and multiple bets during a regional meeting and [one and nine-tenths] NINETY-FIVE HUNDREDTHS percent of such bets if there is no regional meeting and [four and eight-tenths] TWO AND FOUR-TENTHS percent on exotic bets on days on which there is a regional meeting and [three and four-tenths] ONE AND SEVEN-TENTHS percent of such bets if there is no regional meeting.

(ii) Such licensed regional harness track shall receive [one and one-half] SEVENTY-FIVE HUNDREDTHS per centum on total regional handle on races conducted at out-of-state or out-of-country thoroughbred tracks.

(iii) In those regions in which there is more than one licensed regional harness track, if no track is accepting wagers or displaying

1 the live simulcast signal from the out-of-state track, the total sum
2 shall be divided among the tracks in proportion to the ratio the wagers
3 placed on races conducted by each track bears to the corporation's total
4 in-region harness handle. If one or more tracks are accepting wagers or
5 displaying the live simulcast signal, the total amount shall be divided
6 among those tracks not accepting wagers or displaying the simulcast
7 signal for an out-of-state track or in-state thoroughbred corporation or
8 association.

9 (F) Of the sums retained by a licensed harness facility, [fifty] ONE
10 HUNDRED percent shall be used exclusively for purses awarded in races
11 conducted by such licensed facility [and the remaining fifty percent
12 shall be retained by such licensed facility for its general purposes,
13 provided, however, that in a harness special betting district the
14 portion of the sums retained by a licensed harness facility to be used
15 for purses or the methodology for calculating the amount to be used for
16 purses may be specified in a written contract between a harness racing
17 association or corporation and its representative horsemen's associ-
18 ation].

19 S 7. Section 1017 of the racing, pari-mutuel wagering and breeding
20 law, as amended by chapter 18 of the laws of 2008, is amended to read as
21 follows:

22 S 1017. Out-of-state or out-of-country races. 1. Licensed simulcast
23 facilities may accept wagers and display the signal of out-of-state or
24 out-of-country thoroughbred tracks after 7Labor P.M. in accordance with
25 the provisions of this section. Such simulcasting may include mixed
26 meetings if such meetings are integral to such racing programs and all
27 such wagering on such races shall be construed to be thoroughbred races.
28 For facilities located within the special betting district, such
29 approval shall also be required from a thoroughbred racing corporation
30 during the period a racing program is being conducted at such track.
31 Such approval shall not be required on any day such thoroughbred racing
32 corporation is also accepting an out-of-state or out-of-country signal
33 and wager, as authorized by this section. The provisions of section one
34 thousand sixteen of this article shall be applicable to the conduct of
35 such simulcasting and the provisions of clauses (A) and (B) of subpara-
36 graph four of paragraph b of subdivision one of section one thousand
37 sixteen of this article shall apply to those facilities licensed in
38 accordance with sections one thousand eight and one thousand nine of
39 this article and the provisions of clauses (A) and (B) of subparagraph
40 six of paragraph b of subdivision one of section one thousand sixteen of
41 this article shall apply to those facilities licensed in accordance with
42 section one thousand seven of this article, when such provisions are in
43 full force and effect pursuant to such section. Provided, however, the
44 provisions of section one thousand fourteen of this article shall be
45 applicable to the conduct of such simulcasting, when such provisions are
46 in full force and effect pursuant to such section.

47 2. a. Maintenance of effort. Any off-track betting corporation which
48 engages in accepting wagers on the simulcasts of thoroughbred races from
49 out-of-state or out-of-country as permitted under subdivision one of
50 this section shall submit to the board, for its approval, a schedule of
51 payments to be made in any year or portion thereof, that such off-track
52 corporation engages in nighttime thoroughbred simulcasting. In order to
53 be approved by the board, the payment schedule shall be identical to the
54 actual payments and distributions of such payments to [tracks and] purs-
55 es made by such off-track corporation pursuant to the provisions of
56 section one thousand fifteen of this article during the year two thou-

1 sand two, as derived from out-of-state harness races displayed after
2 6:00 P.M. If approved by the board, such scheduled payments shall be
3 made from revenues derived from any simulcasting conducted pursuant to
4 this section and section one thousand fifteen of this article.

5 b. Additional payments. During each calendar year, to the extent, and
6 at such time in the event, that aggregate statewide wagering handle
7 after 7Labor P.M. on out-of-state and out-of-country thoroughbred races
8 exceeds one hundred million dollars, each off-track betting corporation
9 conducting such simulcasting shall pay to its regional harness track or
10 tracks, an amount equal to [two] ONE percent of its proportionate share
11 of such excess handle. In any region where there are two or more
12 regional harness tracks, such two percent shall be divided between or
13 among the tracks in a proportion equal to the proportion of handle on
14 live harness races conducted at such tracks during the preceding calen-
15 dar year. [Fifty percent of the] THE sum received by each track pursuant
16 to this paragraph shall be used exclusively for increasing purses,
17 stakes and prizes at that regional harness track.

18 S 8. Subdivision 2 of section 529 of the racing, pari-mutuel wagering
19 and breeding law is amended to read as follows:

20 2. [Ninety-five percent of the balance of such account remaining
21 unclaimed as of the last day of February of such year shall be paid to
22 the state tax commission by March fifteenth. On or before April tenth of
23 each year the balance of such account and any other unclaimed amounts
24 received in the course of conducting off-track betting shall be paid by
25 such corporation to the state tax commission. A penalty of five percent
26 and interest at the rate of one percent per month from the due date to
27 the date of payment of the unclaimed balance due March fifteenth or
28 April tenth, as the case may be, shall be payable in case such balance
29 is not paid when due. Such amounts, interest and penalties when
30 collected by the state tax commission shall be deposited into the gener-
31 al fund of the state treasury] ON APRIL FIRST OF EACH YEAR, THE AMOUNT
32 OF TICKETS REMAINING UNCLAIMED FROM THE PRIOR YEAR MAY BE USED FOR
33 CORPORATE PURPOSES.

34 S 9. Section 509-a of the racing, pari-mutuel wagering and breeding
35 law, as added by chapter 681 of the laws of 1989 and the opening para-
36 graph as amended by chapter 346 of the laws of 1990, is amended to read
37 as follows

38 S 509-a. Capital acquisition fund. The corporation may create and
39 establish a capital acquisition fund for the purpose of financing the
40 acquisition, construction or equipping of offices, facilities or prem-
41 ises of the corporation. SUCH FUNDS MAY ALSO BE EXPENDED FOR THE RENO-
42 VATION OF ANY PROPERTIES, OR COSTS ASSOCIATED WITH THE CLOSURE OF ANY
43 FACILITIES, AND ANY INVESTMENT OR FUNDING NECESSARY TO EFFECTUATE A
44 SHARED SERVICES OR JOINT VENTURE PLAN WITH ANY OTHER PRIVATE OR PUBLIC
45 CORPORATION. Such capital acquisition fund shall consist of (i) the
46 amounts specified pursuant to subdivision three-a of section five
47 hundred thirty-two of this chapter; and (ii) contributions from the
48 corporation's pari-mutuel wagering pools, subject to the following limi-
49 tations:

50 (1) no contribution shall exceed the amount of one percent of the
51 total pari-mutuel wagering pools for the quarter in which the contrib-
52 ution is made;

53 (2) no contribution shall reduce the amount of quarterly net revenues,
54 exclusive of surcharge revenues, to an amount less than fifty percent of
55 such net revenues; and

(3) the balance of the fund shall not exceed the lesser of one percent of total pari-mutuel wagering pools for the previous twelve months or the undepreciated value of the corporation's offices, facilities and premises.

S 10. Notwithstanding the foregoing, all funds accumulated in the Suffolk regional off-track betting corporation capital acquisition fund, established pursuant to section 509-a of the racing, pari-mutuel wagering and breeding law, prior to January 1, 2011 or deposited into such fund thereafter shall be made available to the Suffolk regional off-track betting corporation for any corporate purpose under this act.

S 11. Subdivision 7 of section 532 of the racing, pari-mutuel wagering and breeding law, as added by chapter 115 of the laws of 2008, is amended to read as follows:

7. Notwithstanding any other provision of this section, any payments otherwise payable to a city with a population of one million or more, pursuant to this section, [other than payments pursuant to subparagraphs (i) and (iii) of paragraph b of subdivision three of this section, shall be payable to the corporation and shall be available for its corporate purposes] SHALL PAY REMAINING AMOUNTS TO THE COMPTROLLER OF THE STATE OF NEW YORK FOR DEPOSIT IN THE NEW YORK CITY OFF-TRACK BETTING CORPORATION FUND.

S 12. Subdivision 2 of section 610 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 115 of the laws of 2008, is amended to read as follows:

2. All moneys due the city pursuant to article five-A of this chapter shall be paid to the New York city [comptroller] OFF-TRACK BETTING CORPORATION FUND.

S 13. Subdivision 6 of section 527 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 115 of the laws of 2008, is amended to read as follows:

6. The net amount remaining to each regional corporation after payment of taxes and distributions pursuant to this section and after payment of operating expenses and principal and interest on any obligations shall, in the case of the New York city off-track betting corporation, be retained by the corporation, and in the case of other regional corporations shall accrue and be payable to participating counties pursuant to section five hundred sixteen of this chapter; provided, however, that the [New York city off-track betting corporation] VENDOR OPERATOR, after payment of all current taxes and distributions shall use such net amount to pay all [liabilities] OPERATING EXPENSES of such corporation [as of the effective date of the chapter of the laws of two thousand eight which amended this subdivision], and at such time as all [liabilities] OPERATING EXPENSES have been paid, such [corporation] VENDOR OPERATOR shall pay ANY remaining amounts to the comptroller of the state of New York for deposit in the [general fund of the state] NEW YORK CITY OFF-TRACK BETTING CORPORATION FUND.

S 14. The racing, pari-mutuel wagering and breeding law is amended by adding a new section 626 to read as follows:

S 626. VENDOR OPERATOR FEE. AS CONSIDERATION FOR THE OPERATION OF THE CORPORATION, THE COMPTROLLER SHALL PAY A VENDOR FEE IN EXCHANGE FOR THE DAILY OPERATIONS AND CAPITALIZATION OF A NEW YORK CITY OFF-TRACK BETTING OPERATION TO BE PAID AS FOLLOWS: IF THE ANNUAL DEPOSIT INTO THE NEW YORK CITY OFF-TRACK BETTING CORPORATION FUND IS LESS THAN TWO AND ONE-HALF MILLION DOLLARS, THE VENDOR OPERATOR SHALL RECEIVE ONE HUNDRED PERCENT OF THE ANNUAL DEPOSITS; IF THE ANNUAL DEPOSIT INTO THE NEW YORK CITY OFF-TRACK BETTING CORPORATION FUND IS LESS THAN OR EQUAL TO TEN

1 MILLION DOLLARS, THE VENDOR OPERATOR SHALL BE PAID TWO AND ONE-HALF
2 MILLION DOLLARS AND THE REMAINING FUNDS SHALL BE DEPOSITED TO THE STATE
3 GENERAL FUND; IF THE ANNUAL DEPOSIT IS MORE THAN TEN MILLION DOLLARS,
4 THE VENDOR OPERATOR SHALL BE PAID TWENTY-FIVE PERCENT OF THE TOTAL ANNU-
5 AL DEPOSITS AND THE REMAINING FUNDS SHALL BE DEPOSITED TO THE STATE
6 GENERAL FUND.

7 S 15. The state finance law is amended by adding a new section 97-kkkk
8 to read as follows:

9 S 97-KKKK. NEW YORK CITY OFF-TRACK BETTING CORPORATION FUND. 1. THERE
10 IS HEREBY ESTABLISHED IN THE CUSTODY OF THE COMPTROLLER, A SPECIAL FUND
11 TO BE KNOWN AS THE "NEW YORK CITY OFF-TRACK BETTING CORPORATION FUND".

12 2. SUCH FUND SHALL CONSIST OF ALL MONIES RECEIVED BY THE STATE PURSU-
13 ANT TO SUBDIVISIONS ONE AND SIX OF SECTION FIVE HUNDRED TWENTY-SEVEN AND
14 SUBDIVISION SEVEN OF SECTION FIVE HUNDRED THIRTY-TWO OF THE RACING,
15 PARI-MUTUEL WAGERING AND BREEDING LAW. ANY INTEREST EARNED BY THE
16 INVESTMENT OF MONEYS IN SUCH FUND SHALL BE ADDED TO SUCH FUND, BECOME A
17 PART OF SUCH FUND, AND BE USED FOR THE PURPOSE OF SUCH FUND.

18 3. MONEYS OF THE NEW YORK CITY OFF-TRACK BETTING CORPORATION FUND
19 SHALL BE MADE AVAILABLE TO THE COMPTROLLER FOR THE PURPOSE OF PAYING THE
20 NEW YORK CITY OFF-TRACK BETTING VENDOR OPERATOR FEE DISTRIBUTED ACCORD-
21 ING TO SECTION SIX HUNDRED TWENTY-SIX OF THE RACING, PARI-MUTUEL WAGER-
22 ING AND BREEDING LAW; ALL REMAINING MONEY SHALL BE DISBURSED INTO THE
23 STATE GENERAL FUND.

24 S 16. The racing, pari-mutuel wagering and breeding law is amended by
25 adding a new section 113 to read as follows:

26 S 113. TELEPHONE AND INTERNET WAGERING. THE STATE RACING AND WAGERING
27 BOARD SHALL DETERMINE WHETHER ELIMINATING OR REGULATING THE AUTHORITY OF
28 OUT-OF-STATE ENTITIES TO ACCEPT TELEPHONE AND/OR INTERNET WAGERING FROM
29 NEW YORK STATE RESIDENTS PLACED WHILE IN NEW YORK STATE, WOULD BE
30 CONSISTENT WITH THE OBJECTIVES OF OFF-TRACK PARI-MUTUEL BETTING AS
31 DEFINED IN SECTION FIVE HUNDRED EIGHTEEN OF THIS CHAPTER, AND IF SO
32 DETERMINED, THE STATE RACING AND WAGERING BOARD SHALL ESTABLISH SUCH
33 GENERAL REGULATIONS TO ELIMINATE OR REGULATE THE PRACTICE OF
34 OUT-OF-STATE ENTITIES OF ACCEPTING SUCH WAGERS.

35 S 17. Subdivision 4 of section 606 of the racing, pari-mutuel wagering
36 and breeding law, as amended by chapter 115 of the laws of 2008, is
37 amended to read as follows:

38 4. All [employees and officers] PRESENT AND FUTURE RETIREES of the
39 corporation in classes or positions whose incumbents, in equivalent
40 classes or positions of the city, are eligible, as of the effective date
41 hereof, to participate in, and receive benefits from any city authorized
42 health insurance or welfare benefit program, shall be eligible to
43 participate in, and receive benefits from any such health insurance or
44 welfare benefit program; provided, however, that the [corporation] STATE
45 shall reimburse the city or its designee for the actual cost of benefits
46 under this subdivision.

47 S 18. Subdivisions 4 and 5 of section 610 of the racing, pari-mutuel
48 wagering and breeding law are REPEALED.

49 S 19. Section 611 of the racing, pari-mutuel wagering and breeding law
50 is REPEALED.

51 S 20. Section 612 of the racing, pari-mutuel wagering and breeding law
52 is REPEALED.

53 S 21. Section 613 of the racing, pari-mutuel wagering and breeding law
54 is REPEALED.

55 S 22. Section 614 of the racing, pari-mutuel wagering and breeding law
56 is REPEALED.

1 S 23. Section 616 of the racing, pari-mutuel wagering and breeding law
2 is REPEALED.

3 S 24. Section 620 of the racing, pari-mutuel wagering and breeding law
4 is REPEALED.

5 S 25. This act shall take effect immediately; provided however that
6 section ten of this act shall expire and be deemed repealed June 30,
7 2014.

8 S 2. Severability clause. If any clause, sentence, paragraph, subdivi-
9 sion, section or part of this act shall be adjudged by any court of
10 competent jurisdiction to be invalid, such judgment shall not affect,
11 impair, or invalidate the remainder thereof, but shall be confined in
12 its operation to the clause, sentence, paragraph, subdivision, section
13 or part thereof directly involved in the controversy in which such judg-
14 ment shall have been rendered. It is hereby declared to be the intent of
15 the legislature that this act would have been enacted even if such
16 invalid provisions had not been included herein.

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