

S T A T E   O F   N E W   Y O R K

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S. 6259--A

A. 9059--A

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

January 17, 2012

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

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

AN ACT to amend chapter 540 of the laws of 1992, amending the real property tax law relating to oil and gas charges, in relation to the effective date of such chapter (Part A); to amend the real property tax law, the tax law, the administrative code of the city of New York and the state finance law, in relation to the suspension of STAR exemptions and related benefits of persons who are delinquent in the payment of outstanding state tax liabilities (Part B); to amend the tax law, in relation to reforming excise tax on tobacco products, imposing a fixed rate of tax on loose tobacco, and imposing a retail tax on cigars (Part C); 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 (Part D); to amend the tax law, in relation to making technical amendments to the tax treatment of diesel fuel to reflect industry practice (Part E); to amend the tax law, in relation to the power of the commissioner of taxation and finance to refuse to issue a certificate of authority to collect the sales and compensating use taxes imposed by article 28 of the tax law and pursuant to the authority of article 29 of the tax law (Part F); to amend the tax law and part U of chapter 61 of the laws of 2011, amending the real property tax law, the general municipal law, the public officers law, the tax law, the abandoned property law, the state finance law and the administrative code of the city of New York, relating to establishing standards for electronic real property tax administration, allowing the department of taxation and finance to use electronic communication means to furnish tax notices and other documents, mandatory electronic filing of tax documents,

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

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debit cards issued for tax refunds, improving sales tax compliance and repealing certain provisions of the tax law and the administrative code of the city of New York relating thereto, in relation to making permanent, provisions relating to mandatory electronic filing of tax documents and improving sales tax compliance; and to repeal certain provisions of the tax law and the administrative code of the city of New York relating thereto (Part G); to amend the tax law, in relation to the personal income tax credits for solar energy systems equipment and the sales and use tax exemption provided for such equipment (Part H); to amend the tax law, in relation to extending the empire state commercial production tax credit; and to amend part V of chapter 62 of the laws of 2006 relating to the empire state commercial production tax credit, in relation to the effectiveness thereof (Part I); to amend the public housing law, in relation to the credit against income tax for persons or entities investing in low-income housing (Part J); to amend the tax law, in relation to extending the biofuel production tax credit; and to amend part X of chapter 62 of the laws of 2006, amending the tax law relating to providing tax credits for biofuel production plants, in relation to the effectiveness thereof (Part K); to amend chapter 58 of the laws of 2006, relating to providing an enhanced earned income tax credit, in relation to the effectiveness thereof (Part L); to amend the civil practice law and rules and the debtor and creditor law, in relation to prohibiting banking institutions from deducting levy processing fees from tax and child support levy proceeds (Part M); to amend the tax law, in relation to tax rates and exclusions under the metropolitan commuter transportation mobility tax for professional employer organizations and to amend part B of chapter 56 of the laws of 2011 amending the tax law relating to the tax rates and exclusions under the metropolitan commuter transportation mobility tax, in relation to the effectiveness thereof (Part N); to amend the racing, pari-mutuel wagering and breeding law, in relation to licenses for simulcast facilities, sums relating to track simulcast, simulcast of out-of-state thoroughbred races, simulcasting of races run by out-of-state harness tracks and distributions of wagers; to amend chapter 281 of the laws of 1994 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and chapter 346 of the laws of 1990 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and the imposition of certain taxes, in relation to extending certain provisions thereof; to amend the racing, pari-mutuel wagering and breeding law, in relation to extending certain provisions thereof (Part O); to amend the tax law, in relation to the distribution of revenue collected from the corporate and utilities taxes imposed under sections 183 and 184 of the tax law (Part P); and to amend the tax law and the administrative code of the city of New York, in relation to facilitating the compliance of room remarketers with their obligation to collect sales tax on their sales of occupancy (Part Q)

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 2012-2013  
3 state fiscal year. Each component is wholly contained within a Part

1 identified as Parts A through Q. The effective date for each particular  
2 provision contained within such Part is set forth in the last section of  
3 such Part. Any provision in any section contained within a Part, includ-  
4 ing the effective date of the Part, which makes a reference to a section  
5 "of this act", when used in connection with that particular component,  
6 shall be deemed to mean and refer to the corresponding section of the  
7 Part in which it is found. Section three of this act sets forth the  
8 general effective date of this act.

9

## PART A

10 Section 1. Section 2 of chapter 540 of the laws of 1992, amending the  
11 real property tax law relating to oil and gas charges, as amended by  
12 section 1 of part II of chapter 56 of the laws of 2009, is amended to  
13 read as follows:

14 S 2. This act shall take effect immediately and shall be deemed to  
15 have been in full force and effect on and after April 1, 1992; provided,  
16 however that any charges imposed by section 593 of the real property tax  
17 law as added by section one of this act shall first be due for values  
18 for assessment rolls with tentative completion dates after July 1, 1992,  
19 and provided further, that this act shall remain in full force and  
20 effect until March 31, [2012] 2015, at which time section 593 of the  
21 real property tax law as added by section one of this act shall be  
22 repealed.

23 S 2. This act shall take effect immediately and shall be deemed to  
24 have been in full force and effect on and after April 1, 2012.

25

## PART B

26 Section 1. Subdivision 3 of section 425 of the real property tax law  
27 is amended by adding a new paragraph (f) to read as follows:

28 (F) COMPLIANCE WITH STATE TAX OBLIGATIONS. THE PROPERTY'S ELIGIBILITY  
29 FOR THE STAR EXEMPTION MUST NOT BE SUSPENDED PURSUANT TO SECTION ONE  
30 HUNDRED SEVENTY-ONE-Y OF THE TAX LAW DUE TO THE PAST-DUE STATE TAX  
31 LIABILITIES OF ONE OR MORE OF ITS OWNERS. NOTWITHSTANDING ANY PROVISION  
32 OF LAW TO THE CONTRARY, WHERE A PROPERTY'S ELIGIBILITY FOR A STAR  
33 EXEMPTION HAS BEEN SUSPENDED PURSUANT TO SUCH SECTION, THE FOLLOWING  
34 PROVISIONS SHALL BE APPLICABLE:

35 (I) THE PROPERTY SHALL BE INELIGIBLE FOR A BASIC OR ENHANCED STAR  
36 EXEMPTION EFFECTIVE WITH THE NEXT SCHOOL YEAR COMMENCING AFTER THE ISSU-  
37 ANCE OF NOTICE BY THE DEPARTMENT OF THE SUSPENSION OF ITS ELIGIBILITY  
38 FOR THE STAR EXEMPTION, EVEN IF THE NOTICE WAS ISSUED AFTER THE APPLICA-  
39 BLE TAXABLE STATUS DATE. IF A STAR EXEMPTION HAS BEEN GRANTED TO SUCH A  
40 PROPERTY ON A TENTATIVE OR FINAL ASSESSMENT ROLL, THE ASSESSOR OR OTHER  
41 PERSON HAVING CUSTODY OF THAT ROLL IS HEREBY AUTHORIZED AND DIRECTED TO  
42 IMMEDIATELY REMOVE THAT STAR EXEMPTION FROM THE ROLL.

43 (II) ANY CHALLENGE TO THE FACTUAL OR LEGAL BASIS BEHIND THE SUSPENSION  
44 OF A PROPERTY'S ELIGIBILITY FOR A STAR EXEMPTION PURSUANT TO SECTION ONE  
45 HUNDRED SEVENTY-ONE-Y OF THE TAX LAW MUST BE PRESENTED TO THE DEPARTMENT  
46 IN THE MANNER PRESCRIBED BY SUCH SECTION. NEITHER AN ASSESSOR NOR A  
47 BOARD OF ASSESSMENT REVIEW HAS THE AUTHORITY TO CONSIDER SUCH A CHAL-  
48 LENGE.

49 (III) THE PROPERTY SHALL REMAIN INELIGIBLE FOR THE STAR EXEMPTION  
50 UNTIL THE DEPARTMENT NOTIFIES THE ASSESSOR THAT THE SUSPENSION OF ITS  
51 ELIGIBILITY HAS BEEN LIFTED. ONCE THE ASSESSOR HAS BEEN SO NOTIFIED, THE

1 EXEMPTION MAY BE RESUMED ON A PROSPECTIVE BASIS ONLY, PROVIDED THAT THE  
2 ELIGIBILITY REQUIREMENTS OF THIS SECTION ARE OTHERWISE SATISFIED.

3 (IV) IN THE CASE OF A COOPERATIVE APARTMENT OR MOBILE HOME RECEIVING A  
4 STAR EXEMPTION PURSUANT TO PARAGRAPH (K) OR (L) OF SUBDIVISION TWO OF  
5 THIS SECTION, A SUSPENSION OF A STAR EXEMPTION DUE TO A TAXPAYER'S  
6 PAST-DUE STATE TAX LIABILITIES SHALL ONLY APPLY TO THE STAR EXEMPTION ON  
7 THE COOPERATIVE APARTMENT OR MOBILE HOME OWNED, OR DEEMED TO BE OWNED,  
8 BY THAT TAXPAYER.

9 S 2. The tax law is amended by adding a new section 171-y to read as  
10 follows:

11 S 171-Y. ENFORCEMENT OF DELINQUENT STATE TAX LIABILITIES THROUGH THE  
12 SUSPENSION OF ELIGIBILITY FOR STAR EXEMPTIONS. 1. THE COMMISSIONER IS  
13 HEREBY AUTHORIZED TO DEVELOP A PROGRAM TO COLLECT DELINQUENT STATE TAX  
14 LIABILITIES FROM TAXPAYERS THROUGH THE SUSPENSION OF THE ELIGIBILITY OF  
15 PROPERTIES FOR STAR EXEMPTIONS WHERE ONE OR MORE OF THE PROPERTY OWNERS  
16 HAVE PAST-DUE STATE TAX LIABILITIES. FOR THE PURPOSES OF THIS SECTION,  
17 THE TERM "STATE TAX LIABILITY" MEANS ANY TAX (INCLUDING BUT NOT LIMITED  
18 TO LOCAL SALES AND INCOME TAXES), SURCHARGE, PENALTY, INTEREST CHARGE OR  
19 FEE ADMINISTERED BY THE COMMISSIONER THAT IS OWED BY A TAXPAYER; THE  
20 TERM "PAST-DUE STATE TAX LIABILITIES" MEANS ANY STATE TAX LIABILITY OR  
21 LIABILITIES WHICH HAVE BECOME FIXED AND FINAL SUCH THAT THE TAXPAYER NO  
22 LONGER HAS ANY RIGHT TO ADMINISTRATIVE OR JUDICIAL REVIEW AND FOR WHICH  
23 THE TAXPAYER HAS NOT MADE PAYMENT ARRANGEMENTS FOR THAT LIABILITY SATIS-  
24 FACTORY TO THE COMMISSIONER; THE TERM "TAXPAYER" SHALL MEAN THE INDIVID-  
25 UAL RESPONSIBLE FOR THE PAYMENT OF ANY OF THE PAST-DUE STATE TAX LIABIL-  
26 ITIES; AND THE TERM "STAR EXEMPTION" MEANS THE EXEMPTION FROM REAL  
27 PROPERTY TAXATION AUTHORIZED BY SECTION FOUR HUNDRED TWENTY-FIVE OF THE  
28 REAL PROPERTY TAX LAW.

29 2. THE COMMISSIONER SHALL ESTABLISH PROCEDURES FOR THE ADMINISTRATION  
30 OF THIS PROGRAM, WHICH SHALL INCLUDE THE FOLLOWING PROVISIONS:

31 (A) THE CRITERIA FOR IDENTIFYING TAXPAYERS WITH PAST-DUE STATE TAX  
32 LIABILITIES.

33 (B) THE PROCEDURES BY WHICH THE DEPARTMENT SHALL DETERMINE WHETHER  
34 PROPERTIES OWNED BY SUCH TAXPAYERS ARE RECEIVING THE STAR EXEMPTION.

35 (C) THE PROCEDURES BY WHICH THE DEPARTMENT SHALL NOTIFY SUCH TAXPAYERS  
36 THAT THE ELIGIBILITY OF THEIR PROPERTIES FOR THE STAR EXEMPTION WILL BE  
37 SUSPENDED UNLESS THEY EITHER SATISFY THEIR PAST-DUE STATE TAX LIABIL-  
38 ITIES OR MAKE PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMISSIONER BY A  
39 DATE TO BE SPECIFIED IN THE NOTICE.

40 (D) THE PROCEDURES BY WHICH THE DEPARTMENT SHALL NOTIFY ASSESSORS OF  
41 PROPERTIES WHOSE ELIGIBILITY FOR STAR EXEMPTIONS HAS BEEN SUSPENDED DUE  
42 TO THE PAST-DUE STATE TAX LIABILITIES OF ONE OR MORE PROPERTY OWNERS.

43 (E) THE PROCEDURES BY WHICH TAXPAYERS MAY ACT TO LIFT SUCH SUSPENSIONS  
44 ON A PROSPECTIVE BASIS BY EITHER SATISFYING THEIR PAST-DUE STATE TAX  
45 LIABILITIES OR MAKING PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMIS-  
46 SIONER.

47 (F) THE PROCEDURES BY WHICH THE DEPARTMENT SHALL NOTIFY ASSESSORS WHEN  
48 THE SUSPENSION OF A PROPERTY'S ELIGIBILITY FOR THE STAR EXEMPTION HAS  
49 BEEN LIFTED.

50 (G) THE PROCEDURES BY WHICH THE DEPARTMENT AND ASSESSORS SHALL COORDI-  
51 NATE AND EXECUTE THEIR OBLIGATIONS PURSUANT TO THIS SECTION AND PARA-  
52 GRAPH (F) OF SUBDIVISION THREE OF SECTION FOUR HUNDRED TWENTY-FIVE OF  
53 THE REAL PROPERTY TAX LAW.

54 (H) ANY OTHER MATTER AS THE DEPARTMENT SHALL DEEM NECESSARY TO CARRY  
55 OUT THE PROVISIONS OF THIS SECTION.

1 3. THE DEPARTMENT SHALL NOTIFY THE TAXPAYER AT LEAST FORTY-FIVE DAYS  
2 PRIOR TO THE DATE THE DEPARTMENT INTENDS TO INFORM THE ASSESSOR OF THE  
3 SUSPENSION OF THE ELIGIBILITY FOR THE STAR EXEMPTION OF PROPERTY WHICH  
4 IS WHOLLY OR PARTIALLY OWNED BY THE TAXPAYER.

5 (A) SUCH NOTICE SHALL INCLUDE A STATEMENT THAT THE DEPARTMENT WILL  
6 NOTIFY THE ASSESSOR OF THE SUSPENSION OF THE ELIGIBILITY FOR THE STAR  
7 EXEMPTION OF PROPERTY WHOLLY OR PARTIALLY OWNED BY THE TAXPAYER UNLESS  
8 THE TAXPAYER FULLY SATISFIES THE OUTSTANDING STATE TAX LIABILITIES OR  
9 OTHERWISE MAKES PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMISSIONER IN  
10 ACCORDANCE WITH LAW. HOWEVER, IN ANY CASE WHERE A TAXPAYER FAILS TO  
11 COMPLY WITH THE TERMS OF AN INSTALLMENT PAYMENT AGREEMENT AS DESCRIBED  
12 HEREIN MORE THAN ONCE WITHIN A TWELVE MONTH PERIOD, THE COMMISSIONER MAY  
13 IMMEDIATELY NOTIFY THE ASSESSOR OF THE SUSPENSION OF THE PROPERTY'S  
14 ELIGIBILITY FOR THE STAR EXEMPTION.

15 (B) SUCH NOTICE SHALL ALSO INCLUDE THE INFORMATION NECESSARY FOR THE  
16 TAXPAYER TO PAY THE PAST-DUE LIABILITY, MAKE PAYMENT ARRANGEMENTS OR  
17 OTHERWISE REQUEST ADDITIONAL INFORMATION.

18 (C) SUCH NOTICE SHALL ALSO STATE THAT THE TAXPAYER'S RIGHT TO PROTEST  
19 THE NOTICE IS LIMITED TO RAISING ISSUES THAT CONSTITUTE A MISTAKE OF  
20 FACT AS DEFINED IN SUBDIVISION FIVE OF THIS SECTION.

21 (D) SUCH NOTICE SHALL ALSO INCLUDE A STATEMENT THAT THE SUSPENSION OF  
22 THE PROPERTY'S STAR EXEMPTION WILL CONTINUE UNTIL THE TAXPAYER HAS  
23 SATISFIED HIS OR HER PAST-DUE STATE TAX LIABILITIES OR HAS MADE PAYMENT  
24 ARRANGEMENTS SATISFACTORY TO THE COMMISSIONER, AND THAT THE PROPERTY  
25 WILL BE PERMANENTLY INELIGIBLE FOR THE STAR EXEMPTION FOR ANY SCHOOL  
26 YEARS THAT COMMENCE WHILE ITS ELIGIBILITY FOR THE STAR EXEMPTION IS  
27 SUSPENDED.

28 (E) SUCH NOTICE MAY ALSO INCLUDE ANY OTHER INFORMATION THAT THE  
29 COMMISSIONER DEEMS NECESSARY.

30 4. IF THE TAXPAYER FAILS TO SATISFY HIS OR HER PAST-DUE STATE TAX  
31 LIABILITIES OR MAKE SATISFACTORY PAYMENT ARRANGEMENTS BY THE DATE SPECI-  
32 FIED IN THE NOTICE, THE DEPARTMENT SHALL NOTIFY THE ASSESSOR OF THE  
33 SUSPENSION OF THE PROPERTY'S ELIGIBILITY FOR THE STAR EXEMPTION.

34 5. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE NOTICE ISSUED BY  
35 THE DEPARTMENT PURSUANT TO THIS SECTION FOR THE PURPOSE OF SUSPENDING  
36 THE PROPERTY'S ELIGIBILITY FOR THE STAR EXEMPTION MAY ONLY BE CHALLENGED  
37 BEFORE THE DEPARTMENT ON THE GROUNDS OF A MISTAKE OF FACT AS DEFINED IN  
38 THIS SUBDIVISION AND THE TAXPAYER WILL HAVE NO RIGHT TO COMMENCE A COURT  
39 ACTION, ADMINISTRATIVE PROCEEDING OR ANY OTHER FORM OF LEGAL RECOURSE  
40 AGAINST THE DEPARTMENT OR ASSESSOR REGARDING SUCH SUSPENSION. FOR THE  
41 PURPOSES OF THIS SUBDIVISION, "MISTAKE OF FACT" IS LIMITED TO CLAIMS  
42 THAT: (I) THE INDIVIDUAL NOTIFIED IS NOT THE TAXPAYER AT ISSUE; (II) THE  
43 PAST-DUE STATE TAX LIABILITIES WERE SATISFIED; OR (III) THE DEPARTMENT  
44 INCORRECTLY FOUND THAT THE TAXPAYER HAS FAILED TO COMPLY WITH THE TERMS  
45 OF AN INSTALLMENT PAYMENT AGREEMENT MORE THAN ONCE WITHIN A TWELVE MONTH  
46 PERIOD FOR THE PURPOSES OF SUBDIVISION THREE OF THIS SECTION. HOWEVER,  
47 NOTHING IN THIS SUBDIVISION IS INTENDED TO LIMIT A TAXPAYER FROM SEEKING  
48 RELIEF FROM JOINT AND SEVERAL LIABILITY PURSUANT TO SECTION SIX HUNDRED  
49 FIFTY-FOUR OF THIS CHAPTER TO THE EXTENT THAT HE OR SHE IS ELIGIBLE  
50 PURSUANT TO THAT SUBDIVISION OR ESTABLISHING TO THE DEPARTMENT THAT THE  
51 ENFORCEMENT OF THE UNDERLYING TAX LIABILITIES HAS BEEN STAYED BY THE  
52 FILING OF A PETITION PURSUANT TO THE BANKRUPTCY CODE OF 1978 (TITLE  
53 ELEVEN OF THE UNITED STATES CODE).

54 6. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE DEPART-  
55 MENT SHALL FURNISH THE APPROPRIATE ASSESSOR WITH THE NAME AND ADDRESS OF  
56 ANY TAXPAYER WHO OWNS PROPERTY WHICH HAS BECOME INELIGIBLE FOR THE STAR

1 EXEMPTION PURSUANT TO THIS SECTION AND PARAGRAPH (F) OF SUBDIVISION  
2 THREE OF SECTION FOUR HUNDRED TWENTY-FIVE OF THE REAL PROPERTY TAX LAW  
3 AND A DESCRIPTION OF SUCH PROPERTY.

4 7. ACTIVITIES TO COLLECT STATE TAX LIABILITIES UNDERTAKEN BY THE  
5 DEPARTMENT PURSUANT TO THIS SECTION SHALL NOT IN ANY WAY LIMIT, RESTRICT  
6 OR IMPAIR THE DEPARTMENT FROM EXERCISING ANY OTHER AUTHORITY TO COLLECT  
7 OR ENFORCE PAST-DUE STATE TAX LIABILITIES UNDER ANY OTHER APPLICABLE  
8 PROVISION OF LAW. THE AMOUNT BY WHICH A TAXPAYER'S PROPERTY TAX LIABIL-  
9 ITY INCREASES AS A RESULT OF THE LOSS OF THE STAR EXEMPTION PURSUANT TO  
10 PARAGRAPH (F) OF SUBDIVISION THREE OF SECTION FOUR HUNDRED TWENTY-FIVE  
11 OF THE REAL PROPERTY TAX LAW AND THIS SECTION MAY NOT BE APPLIED IN ANY  
12 WAY AS AN OFFSET AGAINST THE AMOUNT OF THE TAXPAYER'S PAST-DUE STATE TAX  
13 LIABILITY.

14 S 3. Subsection (e) of section 697 of the tax law is amended by adding  
15 a new paragraph 3-b to read as follows:

16 (3-B) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH ONE OF THIS  
17 SUBSECTION, THE COMMISSIONER MAY DISCLOSE TO ASSESSORS THE INFORMATION  
18 DESCRIBED IN SECTION ONE HUNDRED SEVENTY-ONE-Y OF THIS CHAPTER THAT IS  
19 NECESSARY IN THE COMMISSIONER'S DISCRETION FOR THE PROPER IDENTIFICATION  
20 OF A TAXPAYER WITH PAST-DUE STATE TAX LIABILITIES WHO OWNS PROPERTY WITH  
21 A STAR EXEMPTION THAT IS SUBJECT TO SUSPENSION PURSUANT TO SUCH SECTION  
22 AND PARAGRAPH (F) OF SUBDIVISION THREE OF SECTION FOUR HUNDRED  
23 TWENTY-FIVE OF THE REAL PROPERTY TAX LAW.

24 S 4. The tax law is amended by adding a new section 1304-E to read as  
25 follows:

26 S 1304-E. RECALCULATION OF TAX RATE FOR TAXPAYERS WITH PAST-DUE STATE  
27 TAX LIABILITIES. WHEN A TAXPAYER OWES A PAST-DUE STATE TAX LIABILITY, AS  
28 THAT TERM IS DEFINED IN SECTION ONE HUNDRED SEVENTY-ONE-Y OF THIS CHAP-  
29 TER, ON THE LAST DAY OF THE TAXABLE YEAR, THE TAX RATE APPLICABLE TO  
30 SUCH TAXPAYER UNDER SECTION THIRTEEN HUNDRED FOUR OF THIS ARTICLE FOR  
31 THE TAXABLE YEAR SHALL BE RECALCULATED BY THE COMMISSIONER SO AS TO  
32 ELIMINATE THE REDUCTION TO SUCH TAX RATE MADE BY CHAPTER THREE HUNDRED  
33 EIGHTY-NINE OF THE LAWS OF NINETEEN HUNDRED NINETY-SEVEN, AS ADJUSTED.  
34 SUCH RECALCULATION SHALL BE TREATED AS A MATHEMATICAL ERROR AND THE  
35 COMMISSIONER MAY ISSUE A NOTICE AND DEMAND TO THE TAXPAYER FOR THE  
36 AMOUNT DUE AS A RESULT OF SUCH RECALCULATION. THE AMOUNT BY WHICH A  
37 TAXPAYER'S INCOME TAX LIABILITY INCREASES AS A RESULT OF THE RECALCU-  
38 LATION OF THE APPLICABLE TAX RATE PURSUANT TO THIS SECTION MAY NOT BE  
39 APPLIED IN ANY WAY AS AN OFFSET AGAINST THE AMOUNT OF THE TAXPAYER'S  
40 PAST-DUE STATE TAX LIABILITY.

41 S 5. Paragraph 1 of subsection (e) of section 1310 of the tax law, as  
42 amended by section 3 of part A of chapter 56 of the laws of 1998, is  
43 amended to read as follows:

44 (1) For taxable years beginning after nineteen hundred ninety-seven, a  
45 state school tax reduction credit shall be allowed as provided in the  
46 following tables. The credit shall be allowed against the taxes author-  
47 ized by this article reduced by the credits permitted by this article.  
48 If the credit exceeds the tax as so reduced, the taxpayer may receive,  
49 and the comptroller, subject to a certificate of the commissioner, shall  
50 pay as an overpayment, without interest, the amount of such excess. For  
51 purposes of this subsection, no credit shall be granted to (A) an indi-  
52 vidual with respect to whom a deduction under subsection (c) of section  
53 one hundred fifty-one of the internal revenue code is allowable to  
54 another taxpayer for the taxable year, OR (B) A TAXPAYER WHO OWES A  
55 PAST-DUE STATE TAX LIABILITY, AS THAT TERM IS DEFINED IN SECTION ONE  
56 HUNDRED SEVENTY-ONE-Y OF THIS CHAPTER, ON THE LAST DAY OF THE TAXABLE

1 YEAR. IF A TAXPAYER WITH A PAST-DUE STATE TAX LIABILITY CLAIMS THIS  
2 CREDIT, ANY AMOUNT OWED AS A RESULT OF THE DENIAL OF THIS CREDIT SHALL  
3 BE TREATED AS A MATHEMATICAL ERROR AND THE COMMISSIONER MAY ISSUE A  
4 NOTICE AND DEMAND TO THE TAXPAYER FOR SUCH AMOUNT. THE AMOUNT BY WHICH A  
5 TAXPAYER'S INCOME TAX LIABILITY INCREASES AS A RESULT OF THE LOSS OF THE  
6 TAX CREDIT PURSUANT TO THIS SECTION MAY NOT BE APPLIED IN ANY WAY AS AN  
7 OFFSET AGAINST THE AMOUNT OF THE TAXPAYER'S PAST-DUE STATE TAX  
8 LIABILITY.

9 S 6. The administrative code of the city of New York is amended by  
10 adding a new section 11-1704.2 to read as follows:

11 S 11-1704.2 RECALCULATION OF TAX RATE FOR TAXPAYERS WITH PAST-DUE  
12 STATE TAX LIABILITIES. WHEN A TAXPAYER OWES A PAST-DUE STATE TAX LIABIL-  
13 ITY, AS THAT TERM IS DEFINED IN SECTION ONE HUNDRED SEVENTY-ONE-Y OF THE  
14 TAX LAW, ON THE LAST DAY OF THE TAXABLE YEAR, THE TAX RATE APPLICABLE TO  
15 SUCH TAXPAYER UNDER SECTION 11-1701 OF THIS SUBCHAPTER FOR THE TAXABLE  
16 YEAR SHALL BE RECALCULATED BY THE COMMISSIONER OF TAXATION AND FINANCE  
17 SO AS TO ELIMINATE THE REDUCTION TO SUCH TAX RATE MADE BY CHAPTER THREE  
18 HUNDRED EIGHTY-NINE OF THE LAWS OF NINETEEN HUNDRED NINETY-SEVEN, AS  
19 ADJUSTED. SUCH RECALCULATION SHALL BE TREATED AS A MATHEMATICAL ERROR  
20 AND THE COMMISSIONER OF TAXATION AND FINANCE MAY ISSUE A NOTICE AND  
21 DEMAND TO THE TAXPAYER FOR THE AMOUNT DUE AS A RESULT OF SUCH RECALCU-  
22 LATION. THE AMOUNT BY WHICH A TAXPAYER'S INCOME TAX LIABILITY INCREASES  
23 AS A RESULT OF THE RECALCULATION OF THE APPLICABLE TAX RATE PURSUANT TO  
24 THIS SECTION MAY NOT BE APPLIED IN ANY WAY AS AN OFFSET AGAINST THE  
25 AMOUNT OF THE TAXPAYER'S PAST-DUE STATE TAX LIABILITY.

26 S 7. Paragraph 1 of subdivision (c) of section 11-1706 of the adminis-  
27 trative code of the city of New York, as amended by section 6 of part A  
28 of chapter 56 of the laws of 1998, is amended to read as follows:

29 (1) For taxable years beginning after nineteen hundred ninety-seven, a  
30 state school tax reduction credit shall be allowed as provided in the  
31 following tables. The credit shall be allowed against the taxes author-  
32 ized by this article reduced by the credits permitted by this article.  
33 If the credit exceeds the tax as so reduced, the taxpayer may receive,  
34 and the comptroller, subject to a certificate of the commissioner, shall  
35 pay as an overpayment, without interest, the amount of such excess. For  
36 purposes of this subdivision, no credit shall be granted to (A) an indi-  
37 vidual with respect to whom a deduction under subsection (c) of section  
38 one hundred fifty-one of the internal revenue code is allowable to  
39 another taxpayer for the taxable year, OR (B) A TAXPAYER WHO OWES A  
40 PAST-DUE STATE TAX LIABILITY, AS THAT TERM IS DEFINED IN SECTION ONE  
41 HUNDRED SEVENTY-ONE-Y OF THE TAX LAW, ON THE LAST DAY OF THE TAXABLE  
42 YEAR. IF A TAXPAYER WITH A PAST-DUE STATE TAX LIABILITY CLAIMS THIS  
43 CREDIT, ANY AMOUNT OWED AS A RESULT OF THE DENIAL OF THIS CREDIT SHALL  
44 BE TREATED AS A MATHEMATICAL ERROR AND THE COMMISSIONER OF TAXATION AND  
45 FINANCE MAY ISSUE A NOTICE AND DEMAND TO THE TAXPAYER FOR SUCH AMOUNT.  
46 THE AMOUNT BY WHICH A TAXPAYER'S INCOME TAX LIABILITY INCREASES AS A  
47 RESULT OF THE LOSS OF THE TAX CREDIT PURSUANT TO THIS SECTION MAY NOT BE  
48 APPLIED IN ANY WAY AS AN OFFSET AGAINST THE AMOUNT OF THE TAXPAYER'S  
49 PAST-DUE STATE TAX LIABILITY.

50 S 8. Paragraph (a) of subdivision 3 of section 54-f of the state  
51 finance law, as added by section 139 of part A of chapter 389 of the  
52 laws of 1997, is amended to read as follows:

53 (a) The amount of such reimbursement shall be estimated by the commis-  
54 sioner of taxation and finance on or before December first of the year  
55 preceding the state fiscal year during which such amount is to be paid  
56 begins. The commissioner shall use the best available information at his

1 or her disposal to estimate such amount. In addition to such methods and  
2 information the commissioner may use in making such estimate, he or she  
3 shall consult with the city department of finance during the preparation  
4 of the determination of such amount. SUCH REIMBURSEMENT SHALL DISREGARD  
5 THE AMOUNT OF BENEFITS RECALCULATED PURSUANT TO SECTION THIRTEEN HUNDRED  
6 FOUR-E OF THE TAX LAW AND CREDITS DENIED PURSUANT TO PARAGRAPH ONE OF  
7 SUBSECTION (E) OF SECTION THIRTEEN HUNDRED TEN OF THE TAX LAW.

8 S 9. This act shall take effect immediately; provided however that  
9 sections four through seven of this act shall apply to taxable years  
10 beginning on or after January 1, 2012.

11 PART C

12 Section 1. The article heading of article 20 of the tax law, as  
13 amended by chapter 71 of the laws of 1959, is amended to read as  
14 follows:

15 TAX ON CIGARETTES, CIGARS AND TOBACCO PRODUCTS

16 S 2. Subdivision 2 of section 470 of the tax law, as amended by  
17 section 15 of part D of chapter 134 of the laws of 2010, is amended to  
18 read as follows:

19 2. "Tobacco products." Any [cigar, including a little cigar, or]  
20 tobacco, other than cigarettes AND CIGARS, intended for consumption [by  
21 smoking, chewing, or as snuff].

22 S 3. Subdivision 6 of section 470 of the tax law, as added by chapter  
23 61 of the laws of 1989, is amended to read as follows:

24 6. ["Wholesale price." The established price for which a manufacturer  
25 sells tobacco products to a distributor, before the allowance of any  
26 discount, trade allowance, rebate or other reduction.

27 In the absence of such an established price, a manufacturer's invoice  
28 price of any tobacco product shall be presumptive evidence of the whole-  
29 sale price of such tobacco product, and in its absence the price at  
30 which such tobacco products were purchased shall be presumed to be the  
31 wholesale price, unless evidence of a lower wholesale price shall be  
32 established or any industry standard of markups relating to the purchase  
33 price in relation to the wholesale price shall be established.] "LOOSE  
34 TOBACCO." ANY TOBACCO PRODUCTS, OTHER THAN SNUFF AND LITTLE CIGARS.

35 S 4. Subdivision 8 of section 470 of the tax law, as amended by  
36 section 1 of part K of chapter 61 of the laws of 2005, is amended to  
37 read as follows:

38 8. "Wholesale dealer." Any person who (a) sells cigarettes, CIGARS or  
39 tobacco products to retail dealers or other persons for purposes of  
40 resale, or (b) owns, operates or maintains one or more cigarette, CIGAR  
41 or tobacco product vending machines in, at or upon premises owned or  
42 occupied by any other person, or (c) sells cigarettes, CIGARS or tobacco  
43 products to an Indian nation or tribe or to a reservation cigarette  
44 seller on a qualified reservation.

45 S 5. Subdivision 9 of section 470 of the tax law, as amended by chap-  
46 ter 61 of the laws of 1989, is amended to read as follows:

47 9. "Retail dealer." Any person other than a wholesale dealer engaged  
48 in selling cigarettes, CIGARS or tobacco products.

49 S 6. Subdivision 12 of section 470 of the tax law, as added by chapter  
50 61 of the laws of 1989, is amended to read as follows:

51 12. "Distributor." Any person who imports or causes to be imported  
52 into this state any CIGAR OR tobacco product (in excess of fifty cigars  
53 or one pound of tobacco) for sale, or who manufactures any CIGAR OR  
54 tobacco product in this state, and any person within or without the



1 state who is authorized by the commissioner [of taxation and finance] to  
2 make returns and pay the tax on CIGARS OR tobacco products sold, shipped  
3 or delivered by [him] SUCH PERSON to any person in the state.

4 S 7. Subdivision 18 of section 470 of the tax law, as added by section  
5 1 of part QQ-1 of chapter 57 of the laws of 2008, is amended to read as  
6 follows:

7 18. "Snuff." Any finely cut, ground, or powdered tobacco that is not  
8 intended to be smoked. SNUFF INCLUDES BOTH MOIST AND DRY SNUFF, AND ANY  
9 SMOKELESS TOBACCO PRODUCT SIMILAR IN COMPOSITION AND MAKEUP TO SNUFF.  
10 SNUFF DOES NOT INCLUDE CHEWING TOBACCOS SUCH AS PLUG OR TWIST TOBACCO.

11 S 8. Subdivision 19 of section 470 of the tax law, as amended by  
12 section 17 of part D of chapter 134 of the laws of 2010, is amended to  
13 read as follows:

14 19. "Cigar." Any roll of tobacco wrapped in leaf tobacco or in any  
15 substance containing tobacco (other than any roll of tobacco that is a  
16 cigarette as defined in subdivision one of this section). "Cigar" shall  
17 NOT include[, except where expressly excluded,] any little cigar.

18 S 9. Section 470 of the tax law is amended by adding a new subdivision  
19 20 to read as follows:

20 20. "RECEIPT." THE AMOUNT RECEIVED IN OR BY REASON OF ANY SALE, CONDI-  
21 TIONAL OR OTHERWISE, OF CIGARS. RECEIPT IS EXPRESSED IN MONEY, WHETHER  
22 PAID IN CASH, CREDIT OR PROPERTY OF ANY KIND OR NATURE, AND SHALL BE  
23 DETERMINED WITHOUT ANY DEDUCTION THEREFROM ON ACCOUNT OF FEDERAL EXCISE  
24 TAXES, MANUFACTURER'S COUPONS, THE COST OF THE SERVICE SOLD OR THE COST  
25 OF MATERIALS, LABOR OR SERVICES USED OR OTHER COSTS, INTEREST OR  
26 DISCOUNT PAID OR ANY OTHER EXPENSES WHATSOEVER.

27 S 10. Paragraph (a) of subdivision 1 of section 471-b of the tax law,  
28 as amended by section 18 of part D of chapter 134 of the laws of 2010,  
29 is amended to read as follows:

30 (a) Such tax on LOOSE tobacco [products other than snuff and little  
31 cigars] shall be at the rate of [seventy-five percent of the wholesale  
32 price] FOUR DOLLARS AND FIFTY-THREE CENTS PER OUNCE AND A PROPORTIONATE  
33 RATE ON ANY FRACTIONAL PARTS OF AN OUNCE. SUCH TAX SHALL BE COMPUTED  
34 BASED ON THE NET WEIGHT AS LISTED BY THE MANUFACTURER, and is intended  
35 to be imposed only once upon the sale of any LOOSE tobacco [products  
36 other than snuff and little cigars].

37 S 11. Section 471-b of the tax law is amended by adding a new subdivi-  
38 sion 4 to read as follows:

39 4. THE TAX IMPOSED BY THIS SECTION SHALL NOT APPLY TO CIGARS ON OR  
40 AFTER, JUNE FIRST, TWO THOUSAND TWELVE.

41 S 12. Subdivision (a) of section 471-c of the tax law, as amended by  
42 section 2 of part I-1 of chapter 57 of the laws of 2009, paragraphs (i)  
43 and (ii) as amended by section 20 and paragraph (iii) as added by  
44 section 21 of part D of chapter 134 of the laws of 2010, is amended to  
45 read as follows:

46 (a) There is hereby imposed and shall be paid a tax on all tobacco  
47 products used in the state by any person, except that no such tax shall  
48 be imposed (1) if the tax provided in section four hundred seventy-one-b  
49 of this article is paid, or (2) on the use of tobacco products which are  
50 exempt from the tax imposed by said section, or (3) on the use of [two  
51 hundred fifty cigars or less, or] five pounds or less of tobacco other  
52 than roll-your-own tobacco[, or thirty-six ounces or less of roll-your-  
53 own tobacco brought into the state on, or in the possession of, any  
54 person.

55 (i) Such tax on LOOSE tobacco [products other than snuff and little  
56 cigars] shall be at the rate of [seventy-five percent of the wholesale

price] FOUR DOLLARS AND FIFTY-THREE CENTS PER OUNCE AND A PROPORTIONATE RATE ON ANY FRACTIONAL PARTS OF AN OUNCE. SUCH TAX SHALL BE COMPUTED BASED ON THE NET WEIGHT AS LISTED BY THE MANUFACTURER.

(ii) Such tax on snuff shall be at the rate of two dollars per ounce and a proportionate rate on any fractional parts of an ounce, provided that cans or packages of snuff with a net weight of less than one ounce shall be taxed at the equivalent rate of cans or packages weighing one ounce. Such tax shall be computed based on the net weight as listed by the manufacturer.

(iii) Such tax on little cigars shall be at the same rate imposed on cigarettes under this article and is intended to be imposed only once upon the sale of any little cigars.

S 13. The tax law is amended by adding a new section 471-f to read as follows:

S 471-F. IMPOSITION OF CIGAR TAX. 1. THERE IS HEREBY IMPOSED AND THERE SHALL BE PAID A TAX OF FIFTY PERCENT UPON THE RECEIPTS FROM EVERY RETAIL SALE OF CIGARS, EXCEPT THAT NO TAX SHALL BE IMPOSED ON CIGARS SOLD UNDER SUCH CIRCUMSTANCES THAT THIS STATE IS WITHOUT POWER TO IMPOSE SUCH TAX, OR SOLD TO THE UNITED STATES, OR SOLD TO OR BY A VOLUNTARY UNINCORPORATED ORGANIZATION OF THE ARMED FORCES OF THE UNITED STATES OPERATING A PLACE FOR THE SALE OF GOODS PURSUANT TO REGULATIONS PROMULGATED BY THE APPROPRIATE EXECUTIVE AGENCY OF THE UNITED STATES, TO THE EXTENT PROVIDED IN SUCH REGULATIONS AND POLICY STATEMENTS OF SUCH AN AGENCY APPLICABLE TO SUCH SALES. SUCH TAX IS INTENDED TO BE IMPOSED ONLY ONCE UPON THE SALE OF ANY CIGARS. IT SHALL BE PRESUMED THAT ALL CIGARS WITHIN THE STATE ARE SUBJECT TO TAX UNTIL THE CONTRARY IS ESTABLISHED, AND THE BURDEN OF PROOF THAT ANY CIGARS ARE NOT TAXABLE HEREUNDER SHALL BE UPON THE PERSON IN POSSESSION THEREOF.

2. IT IS INTENDED THAT THE ULTIMATE INCIDENCE OF AND LIABILITY FOR THE TAX SHALL BE UPON THE CONSUMER, AND THAT ANY RETAIL DEALER WHO SHALL PAY THE TAX TO THE COMMISSIONER SHALL COLLECT THE TAX FROM THE PURCHASER OR CONSUMER.

3. THE DISTRIBUTOR SHALL BE LIABLE UNDER SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE FOR THE PREPAYMENT OF THE CIGAR TAX ON CIGARS WHICH HE OR SHE IMPORTS OR CAUSES TO BE IMPORTED INTO THE STATE, OR WHICH HE OR SHE MANUFACTURES IN THE STATE, AND EVERY DISTRIBUTOR AUTHORIZED BY THE COMMISSIONER TO MAKE RETURNS AND PREPAY THE CIGAR TAX ON CIGARS SOLD, SHIPPED OR DELIVERED BY HIM OR HER TO ANY PERSON IN THE STATE SHALL BE LIABLE FOR THE PREPAYMENT OF THE CIGAR TAX ON ALL CIGARS SO SOLD, SHIPPED OR DELIVERED.

4. SEPARATE STATEMENT OF TAX. DISTRIBUTORS, WHOLESALE DEALERS, AND RETAIL DEALERS REQUIRED TO COLLECT OR PASS THROUGH THE TAX IMPOSED BY THIS SECTION SHALL STATE, CHARGE, AND SHOW THAT TAX SEPARATELY FROM THE PRICE OR CHARGE, AND ALSO SEPARATELY FROM ANY OTHER TAX IMPOSED BY THIS ARTICLE OR OTHER LAW ON ANY SALES SLIP, INVOICE, RECEIPT, OR OTHER STATEMENT OR MEMORANDUM OF THE PRICE OR CHARGE, PAID OR PAYABLE, GIVEN TO THE CUSTOMER.

S 14. The tax law is amended by adding a new section 471-g to read as follows:

S 471-G. USE TAX ON CIGARS. (A) THERE IS HEREBY IMPOSED ON ALL CIGARS USED IN THE STATE BY ANY PERSON, EXCEPT THAT NO SUCH TAX SHALL BE IMPOSED (1) IF THE TAX PROVIDED IN SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE IS PAID, OR (2) ON THE USE OF CIGARS WHICH ARE EXEMPT FROM THE TAX IMPOSED BY SAID SECTION, OR (3) ON THE USE OF FIFTY CIGARS OR LESS BROUGHT INTO THE STATE ON, OR IN THE POSSESSION OF, ANY PERSON. THERE IS HEREBY IMPOSED AND THERE SHALL BE PAID A TAX OF FIFTY PERCENT

1 UPON ALL RECEIPTS PAID OR REQUIRED TO BE PAID FROM EVERY RETAIL SALE OF  
2 CIGARS.

3 (B) WITHIN TWENTY-FOUR HOURS AFTER LIABILITY FOR THE TAX ACCRUES, EACH  
4 SUCH PERSON SHALL FILE WITH THE COMMISSIONER A RETURN IN SUCH FORM AS  
5 THE COMMISSIONER MAY PRESCRIBE TOGETHER WITH A REMITTANCE OF THE TAX  
6 SHOWN TO BE DUE THEREON. FOR PURPOSES OF THIS ARTICLE, THE WORD "USE"  
7 MEANS THE EXERCISE OF ANY RIGHT OR POWER ACTUAL OR CONSTRUCTIVE AND  
8 SHALL INCLUDE BUT IS NOT LIMITED TO THE RECEIPT, STORAGE OR ANY KEEPING  
9 OR RETENTION FOR ANY LENGTH OF TIME, BUT SHALL NOT INCLUDE POSSESSION  
10 FOR SALE. ALL THE OTHER PROVISIONS OF THIS ARTICLE, IF NOT INCONSISTENT,  
11 SHALL APPLY TO THE ADMINISTRATION AND ENFORCEMENT OF THE TAX IMPOSED BY  
12 THIS SECTION IN THE SAME MANNER AS IF THE LANGUAGE OF SAID PROVISIONS  
13 HAD BEEN INCORPORATED IN FULL INTO THIS SECTION.

14 S 15. The tax law is amended by adding a new section 471-h to read as  
15 follows:

16 S 471-H. PREPAYMENT OF CIGAR TAX. (A)(1) EVERY DISTRIBUTOR SHALL PAY,  
17 AS A PREPAYMENT ON ACCOUNT OF THE TAXES IMPOSED BY SECTION FOUR HUNDRED  
18 SEVENTY-ONE-F OF THIS ARTICLE AND PURSUANT TO THE AUTHORITY OF THIS  
19 ARTICLE, A TAX ON CIGARS POSSESSED FOR SALE OR USE IN THIS STATE, EXCEPT  
20 NO TAX SHALL BE REQUIRED TO BE PREPAID ON CIGARS SOLD UNDER CIRCUM-  
21 STANCES THAT THIS STATE IS WITHOUT POWER TO IMPOSE SUCH PREPAYMENT OR  
22 SOLD TO THE UNITED STATES OR SOLD TO OR BY A VOLUNTARY UNINCORPORATED  
23 ORGANIZATION OF THE ARMED FORCES OF THE UNITED STATES OPERATING A PLACE  
24 FOR THE SALE OF GOODS PURSUANT TO REGULATIONS PROMULGATED BY THE APPRO-  
25 PRIATE EXECUTIVE AGENCY OF THE UNITED STATES, TO THE EXTENT PROVIDED IN  
26 SUCH REGULATIONS AND WRITTEN POLICY STATEMENTS OF SUCH AN AGENCY APPLI-  
27 CABLE TO SUCH SALES.

28 (2) THE COMMISSIONER MAY, IN THE COMMISSIONER'S DISCRETION, REQUIRE  
29 ANY DISTRIBUTOR TO FILE WITH THE DEPARTMENT A BOND ISSUED BY A SURETY  
30 COMPANY APPROVED BY THE SUPERINTENDENT OF FINANCIAL SERVICES AS TO  
31 SOLVENCY AND RESPONSIBILITY AND AUTHORIZED TO TRANSACT BUSINESS IN THE  
32 STATE OR OTHER SECURITY ACCEPTABLE TO THE COMMISSIONER, IN SUCH AMOUNT  
33 AS THE COMMISSIONER MAY FIX, TO SECURE THE PAYMENT OF ANY SUMS DUE FROM  
34 SUCH DISTRIBUTOR PURSUANT TO THIS SECTION. IF SECURITIES ARE DEPOSITED  
35 AS SECURITY UNDER THIS SUBDIVISION, SUCH SECURITIES SHALL BE KEPT IN THE  
36 CUSTODY OF THE COMMISSIONER AND MAY BE SOLD BY THE COMMISSIONER IF IT  
37 BECOMES NECESSARY TO DO SO IN ORDER TO RECOVER ANY SUMS DUE FROM SUCH  
38 DISTRIBUTOR PURSUANT TO THIS SECTION, BUT NO SUCH SALE SHALL BE HAD  
39 UNTIL AFTER SUCH DISTRIBUTOR SHALL HAVE HAD AN OPPORTUNITY TO LITIGATE  
40 THE VALIDITY OF ANY PREPAYMENT OF TAX IF IT ELECTS TO DO SO. UPON ANY  
41 SUCH SALE, THE SURPLUS, IF ANY, ABOVE THE SUMS DUE UNDER THIS SECTION  
42 SHALL BE RETURNED TO SUCH DISTRIBUTOR.

43 (3) WHERE CIGARS ARE IMPORTED OR CAUSED TO BE IMPORTED INTO THE STATE,  
44 OR MANUFACTURED IN THE STATE, THE AMOUNT OF THE CIGAR TAX REQUIRED TO BE  
45 PREPAID PURSUANT TO THIS SECTION SHALL BE TWENTY CENTS ON EACH CIGAR.

46 (B) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE TAXES REQUIRED  
47 TO BE PREPAID PURSUANT TO THIS SECTION SHALL BE ADMINISTERED AND  
48 COLLECTED IN A LIKE MANNER AS THE TAXES IMPOSED BY SECTIONS FOUR HUNDRED  
49 SEVENTY-ONE-F AND FOUR HUNDRED SEVENTY-ONE-G OF THIS ARTICLE. ALL THE  
50 PROVISIONS OF THIS ARTICLE RELATING TO OR APPLICABLE TO THE ADMINIS-  
51 TRATION, COLLECTION AND DISPOSITION OF THE TAXES IMPOSED BY SUCH  
52 SECTIONS SHALL APPLY TO THE TAX REQUIRED TO BE PREPAID UNDER THIS  
53 SECTION SO FAR AS SUCH PROVISIONS CAN BE MADE APPLICABLE TO SUCH PREPAY-  
54 MENTS OF TAX WITH SUCH LIMITATIONS AS SET FORTH IN THIS ARTICLE AND SUCH  
55 MODIFICATIONS AS MAY BE NECESSARY IN ORDER TO ADAPT SUCH LANGUAGE TO THE  
56 TAX SO IMPOSED. SUCH PROVISIONS SHALL APPLY WITH THE SAME FORCE AND

EFFECT AS IF THE LANGUAGE OF THOSE PROVISIONS HAD BEEN SET FORTH IN FULL IN THIS SECTION EXCEPT TO THE EXTENT THAT ANY PROVISION IS EITHER INCONSISTENT WITH A PROVISION OF THIS SECTION OR IS NOT RELEVANT TO THE TAX REQUIRED TO BE PREPAID BY THIS SECTION. FOR PURPOSES OF THIS SECTION, ANY REFERENCE IN THIS ARTICLE TO THE TAX OR TAXES IMPOSED BY SECTIONS FOUR HUNDRED SEVENTY-ONE-F AND FOUR HUNDRED SEVENTY-ONE-G OF THIS ARTICLE SHALL BE DEEMED TO REFER TO THE TAX REQUIRED TO BE PREPAID PURSUANT TO THIS SECTION UNLESS A DIFFERENT MEANING IS CLEARLY REQUIRED.

(C) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO REQUIRE THE PAYMENT OF THE TAX REQUIRED TO BE PREPAID PURSUANT TO THIS SECTION MORE THAN ONCE UPON CIGARS POSSESSED FOR SALE OR USED WITHIN THE STATE. WHEN THE PREPAID TAX IMPOSED PURSUANT TO THIS SECTION IS PAID, IT SHALL HAVE BEEN SO PAID ON ACCOUNT OF THE TAXES IMPOSED BY SECTIONS FOUR HUNDRED SEVENTY-ONE-F OR FOUR HUNDRED SEVENTY-ONE-G OF THIS ARTICLE AND PURSUANT TO THE AUTHORITY OF THIS ARTICLE WITH RESPECT TO THE RETAIL SALE OR THE USE OF CIGARS. NOTHING IN THIS SECTION SHALL MODIFY OR AFFECT THE TAXES IMPOSED BY SECTIONS FOUR HUNDRED SEVENTY-ONE-F AND FOUR HUNDRED SEVENTY-ONE-G OF THIS ARTICLE AS APPLIED TO RECEIPTS FROM THE SALE, OR TO THE USE, OF SUCH CIGARS.

(D) THE DISTRIBUTOR SHALL BE LIABLE FOR THE PREPAID TAX ON CIGARS WHICH HE OR SHE IMPORTS OR CAUSES TO BE IMPORTED INTO THE STATE, OR WHICH HE OR SHE MANUFACTURES IN THE STATE, AND EVERY DISTRIBUTOR AUTHORIZED BY THE COMMISSIONER TO MAKE RETURNS AND PAY THE PREPAID TAX ON CIGARS SOLD, SHIPPED OR DELIVERED BY HIM OR HER TO ANY PERSON IN THE STATE SHALL BE LIABLE FOR THE PREPAID TAX ON ALL CIGARS SO SOLD, SHIPPED OR DELIVERED.

S 16. The tax law is amended by adding a new section 471-i to read as follows:

S 471-I. REFUNDS AND CREDITS WITH RESPECT TO CIGARS.

(A) RETAIL DEALER. (1) A RETAIL DEALER OF CIGARS WHO OR WHICH IS REQUIRED TO COLLECT THE TAXES IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE SHALL BE ALLOWED A REFUND OR CREDIT AGAINST THE AMOUNT OF TAX COLLECTED AND REQUIRED TO BE REMITTED TO THE COMMISSIONER PURSUANT TO THE PROVISIONS OF SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE UPON THE RETAIL SALE OF CIGARS IN THE AMOUNT OF THE TAX ON SUCH CIGARS PREPAID BY OR PASSED THROUGH TO AND INCLUDED IN THE PRICE PAID BY SUCH RETAIL DEALER PURSUANT TO THE PROVISIONS OF SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE.

(2) A REFUND OR CREDIT SHALL ALSO BE ALLOWED SUCH RETAIL DEALER FOR THE TAX PREPAID BY OR PASSED THROUGH TO AND INCLUDED IN THE PRICE PAID BY SUCH RETAIL DEALER UPON ANY CIGARS PURSUANT TO THE PROVISIONS OF SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE IF SUCH CIGARS ARE SOLD AT RETAIL BY SUCH RETAIL DEALER UNDER CIRCUMSTANCES WHERE THE TAXES IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE AND PURSUANT TO THE AUTHORITY OF THIS ARTICLE ARE NOT REQUIRED BY THE PROVISIONS OF THIS ARTICLE TO BE COLLECTED AND REMITTED UPON RECEIPTS FROM A RETAIL SALE THEREOF.

(B) EXPORT, DESTRUCTION, TAX PAID IN ERROR. WHENEVER ANY CIGARS UPON WHICH THE PREPAID TAX IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE HAS BEEN PAID HAVE BEEN SOLD AND SHIPPED TO ANOTHER STATE FOR SALE OR USE THERE OR HAVE BECOME UNFIT FOR USE OR UNSALABLE, OR HAVE BEEN DESTROYED, OR WHENEVER THE COMMISSIONER SHALL HAVE DETERMINED THAT ANY TAX REQUIRED TO BE PREPAID BY SUCH SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE SHALL HAVE BEEN PAID IN ERROR, THE DISTRIBUTOR OR DEALER, AS THE CASE MAY BE, SHALL BE ENTITLED TO A REFUND

OR CREDIT OF THE ACTUAL AMOUNT OF PREPAID TAX SO PAID WITH RESPECT TO CIGARS WHICH WILL NOT BE POSSESSED FOR SALE OR USE IN THIS STATE.

(C) REFUNDS OF THE TAX REQUIRED TO BE PREPAID PURSUANT TO THE PROVISIONS OF SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE SHALL BE ALLOWED ONLY TO THE EXTENT SUCH TAX PAID BY OR PASSED THROUGH TO THE RETAIL DEALER, OR THE PURCHASER OR USER, EXCEEDS THE AMOUNT OF TAX REQUIRED TO BE COLLECTED FROM SUCH PERSON OR REQUIRED TO BE REMITTED BY THE PROVISIONS OF THIS ARTICLE.

(D) A REFUND OR CREDIT SHALL BE ALLOWED UNDER THIS SECTION ONLY TO THE EXTENT THAT THE TAX REQUIRED TO BE PREPAID PURSUANT TO SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE HAS BEEN PREPAID BY OR PASSED THROUGH TO SUCH RETAIL DEALER, PURCHASER OR USER, BUT ONLY TO THE EXTENT THAT THE TAX IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE TOGETHER WITH THE TAX IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-G OF THIS ARTICLE REQUIRED TO BE PAID, COLLECTED AND REMITTED HAS BEEN PAID, COLLECTED AND REMITTED.

(E) SUCH REFUNDS AND CREDITS SHALL BE SUBJECT TO THE PROVISIONS OF SECTION FOUR HUNDRED SEVENTY-SIX OF THIS ARTICLE AS IF SUCH SECTION WAS INCORPORATED IN FULL INTO THIS SECTION AND HAD EXPRESSLY REFERRED TO THE REFUNDS AND CREDITS AUTHORIZED BY THIS SECTION INCLUDING THE PERIODS OF LIMITATIONS ON PAYMENTS AND APPLICATIONS TO THE COMMISSIONER; PROVIDED, HOWEVER, THAT, AS PROVIDED IN SECTION FOUR HUNDRED SEVENTY-SIX OF THIS ARTICLE, NO INTEREST SHALL BE ALLOWED OR PAID UPON ANY REFUND MADE OR CREDIT ALLOWED PURSUANT TO SUBDIVISIONS (A) AND (B) OF THIS SECTION. THE COMMISSIONER SHALL PROCESS APPLICATIONS FOR REFUND AS EXPEDITIOUSLY AS POSSIBLE.

S 17. The tax law is amended by adding a new section 471-j to read as follows:

S 471-J. SPECIAL PROVISION AS TO IMPOSITION OF TAXES ON CERTAIN CIGARS. IF A PERSON SHALL RECEIVE ANY CIGARS, UPON WHICH CIGARS THIS STATE WAS WITHOUT POWER TO IMPOSE THE TAXES UNDER THIS ARTICLE, AND SUCH PERSON SHALL THEREAFTER POSSESS SUCH CIGARS FOR SALE OR USE ANY SUCH CIGARS IN SUCH MANNER AND UNDER SUCH CIRCUMSTANCES AS MAY SUBJECT THE SAME TO THE TAXING POWER OF THIS STATE WITH RESPECT TO SUCH POSSESSION FOR SALE OR USE, SUCH PERSON SHALL BE LIABLE FOR THE TAX IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-F OR FOUR HUNDRED SEVENTY-ONE-G OF THIS ARTICLE, AS THE CASE MAY BE WITH RESPECT TO SUCH SALE OR USE, AND SHALL MAKE THE SAME REPORTS AND RETURNS, PAY THE SAME TAXES AND BE SUBJECT TO ALL OTHER PROVISIONS OF THIS ARTICLE RELATING TO DISTRIBUTORS OR RETAIL DEALERS, EXCEPT THAT SUCH A PERSON SHALL NOT BE SUBJECT TO THE PROVISIONS OF SECTIONS FOUR HUNDRED SEVENTY-TWO AND FOUR HUNDRED EIGHTY OF THIS ARTICLE IF SUCH PERSON DOES NOT OFFER CIGARS FOR SALE.

S 18. The tax law is amended by adding a new section 471-k to read as follows:

S 471-K. COLLECTION OF TAX FROM CUSTOMER; FILING OF RETURNS AND PAYMENT.

(A)(1) EVERY RETAIL DEALER SHALL COLLECT THE TAX IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE FROM THE CUSTOMER WHEN COLLECTING THE RECEIPT TO WHICH IT APPLIES. EACH CUSTOMER SHALL BE GIVEN SOME INDICIA OF SALE, INCLUDING SALES SLIP, INVOICE, RECEIPT OR OTHER STATEMENT OR MEMORANDUM OF THE PRICE, UPON WHICH THE TAX SHALL BE STAT-ED, CHARGED AND SHOWN SEPARATELY.

(2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ALL THE PROVISIONS OF ARTICLE TWENTY-EIGHT OF THIS CHAPTER RELATING TO THE PERSONAL LIABILITY FOR THE TAX, ADMINISTRATION AND COLLECTION AND DETERMINATION OF TAX, INCLUDING SECTION ELEVEN HUNDRED THIRTY-EIGHT OF THIS CHAPTER RELATING

1 TO DETERMINATION OF TAX BUT NOT INCLUDING SECTION ELEVEN HUNDRED FORTY-  
2 FIVE OF THIS CHAPTER, SHALL APPLY TO THE TAX IMPOSED BY SECTION FOUR  
3 HUNDRED SEVENTY-ONE-F OF THIS ARTICLE IN THE SAME MANNER AND WITH THE  
4 SAME FORCE AND EFFECT AS IF THE LANGUAGE OF SUCH PROVISIONS OF SUCH  
5 ARTICLE TWENTY-EIGHT HAD BEEN INCORPORATED IN FULL INTO THIS ARTICLE,  
6 EXCEPT TO THE EXTENT THAT ANY SUCH PROVISION IS EITHER INCONSISTENT WITH  
7 A PROVISION OF THIS SECTION OR IS NOT RELEVANT THERETO AND WITH SUCH  
8 OTHER MODIFICATIONS AS MAY BE NECESSARY TO ADAPT THE LANGUAGE OF SUCH  
9 PROVISIONS TO THE PROVISIONS OF THIS SECTION. PROVIDED, HOWEVER ALL  
10 TAXES, INTEREST AND PENALTIES COLLECTED OR RECEIVED BY THE COMMISSIONER  
11 UNDER SECTIONS FOUR HUNDRED SEVENTY-ONE-F, FOUR HUNDRED SEVENTY-ONE-G,  
12 AND FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE SHALL BE DEPOSITED AND  
13 DISPOSED OF PURSUANT TO SECTION FOUR HUNDRED EIGHTY-TWO OF THIS ARTICLE.  
14 PROVIDED, THE COMMISSIONER MAY REQUIRE RETURNS TO BE FILED WITH HIM OR  
15 HER AT SUCH TIMES AND CONTAINING SUCH INFORMATION AS HE OR SHE MAY  
16 PRESCRIBE.

17 (B) (1) (I) NO PERSON SHALL PURCHASE CIGARS IN THIS STATE, EXCLUDING A  
18 PURCHASE AT RETAIL, UNLESS THE TAX REQUIRED TO BE PREPAID BY SECTION  
19 FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE HAS BEEN ASSUMED BY A  
20 DISTRIBUTOR REGISTERED UNDER THIS ARTICLE IN ACCORDANCE WITH A CERTIF-  
21 ICATION UNDER THIS PARAGRAPH OR PAID BY SUCH DISTRIBUTOR, AND, IN EACH  
22 OF SUCH INSTANCES, IS PASSED THROUGH TO SUCH PURCHASER. IN ADDITION TO  
23 ANY OTHER CIVIL AND CRIMINAL PENALTIES WHICH MAY APPLY, ANY PERSON WHO  
24 PURCHASES CIGARS IN VIOLATION OF THIS SUBPARAGRAPH SHALL BE JOINTLY AND  
25 SEVERALLY LIABLE TO PAY THE TAX REQUIRED TO BE PREPAID BY SECTION FOUR  
26 HUNDRED SEVENTY-ONE-H OF THIS ARTICLE WITH RESPECT TO SUCH CIGARS.

27 (II) FOR THE PURPOSE OF THE PROPER ADMINISTRATION OF THIS ARTICLE AND  
28 TO PREVENT EVASION OF THE TAX ON CIGARS IMPOSED BY AND PURSUANT TO THIS  
29 ARTICLE, IT SHALL BE PRESUMED THAT ALL CIGARS IMPORTED, MANUFACTURED OR  
30 SOLD, RECEIVED OR POSSESSED IN THE STATE IS INTENDED FOR USE, DISTRIB-  
31 UTION, STORAGE OR SALE IN THE STATE AND SUBJECT TO THE TAX REQUIRED TO  
32 BE PREPAID BY SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE UNTIL  
33 THE CONTRARY IS ESTABLISHED. IT SHALL BE FURTHER PRESUMED THAT ALL  
34 CIGARS SO IMPORTED, MANUFACTURED, SOLD, RECEIVED OR POSSESSED IN THE  
35 STATE BY ANY PERSON ARE SUBJECT TO THE TAX REQUIRED TO BE PREPAID UNDER  
36 SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE AND SUCH PERSON IS  
37 RESPONSIBLE FOR SUCH PREPAYMENT. THE BURDEN OF PROVING THAT ANY CIGARS  
38 ARE NOT SO SUBJECT SHALL BE UPON THE PERSON SO RESPONSIBLE FOR SUCH  
39 PREPAYMENT WITH RESPECT TO SUCH CIGARS.

40 (III) UPON EACH SALE OF CIGARS, OTHER THAN A SALE AT RETAIL, THE SELL-  
41 ER MUST GIVE TO THE PURCHASER AND THE PURCHASER SHALL RECEIVE, AT THE  
42 TIME OF DELIVERY OF SUCH CIGARS, A CERTIFICATION CONTAINING SUCH INFOR-  
43 MATION AS THE COMMISSIONER SHALL REQUIRE WHICH SHALL INCLUDE A STATEMENT  
44 TO THE EFFECT (A) IF SUCH SELLER IS A DISTRIBUTOR REGISTERED UNDER THIS  
45 ARTICLE, THAT HE OR SHE HAS ASSUMED THE PAYMENT OF OR PAID THE TAX  
46 REQUIRED TO BE PREPAID BY SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS  
47 ARTICLE AND, IN EACH CASE, IS PASSING THROUGH SUCH TAX OR (B) THAT SUCH  
48 SELLER IS PASSING THROUGH SUCH TAX WHICH WAS SO PREVIOUSLY ASSUMED OR  
49 PAID BY AN IDENTIFIED DISTRIBUTOR OR WHOLESALE DEALER REGISTERED UNDER  
50 THIS ARTICLE, AND PASSED THROUGH TO HIM OR HER.

51 (IV) IF THE CERTIFICATION REQUIRED BY THIS PARAGRAPH HAS BEEN  
52 FURNISHED TO THE PURCHASER BY THE SELLER AT DELIVERY AND ACCEPTED IN  
53 GOOD FAITH, THE BURDEN OF PROVING THAT THE TAX REQUIRED TO BE PAID BY  
54 SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE WAS ASSUMED OR PAID  
55 BY A DISTRIBUTOR REGISTERED UNDER THIS ARTICLE AND PASSED THROUGH SHALL  
56 BE SOLELY ON THE SELLER.

(V) WHERE THE CERTIFICATION REQUIRED UNDER THIS PARAGRAPH IS NOT FURNISHED BY THE SELLER AT DELIVERY OF CIGARS, IT SHALL BE PRESUMED THAT THE TAX REQUIRED TO BE PREPAID BY SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE HAS NOT BEEN ASSUMED OR PAID BY A DISTRIBUTOR REGISTERED AS SUCH UNDER THIS ARTICLE AND THAT THE PURCHASER IN SUCH CASE IS JOINTLY AND SEVERALLY LIABLE FOR THE TAX.

S 19. Subdivision 3 of section 472 of the tax law, as added by chapter 61 of the laws of 1989 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

3. The commissioner [of taxation and finance] may appoint dealers in CIGARS AND tobacco products, manufacturers of CIGARS AND tobacco products and other persons within or without the state as distributors and may authorize them to make returns and to pay the tax on CIGARS AND tobacco products sold, shipped or delivered by them to any person in the state. The commissioner may, in his OR HER discretion, require the deposit of a bond issued by a surety company approved by the superintendent of financial services as to solvency and responsibility and authorized to transact business in this state, or other security acceptable to the commissioner in an amount and form satisfactory to him OR HER as a condition of appointing any such person as a distributor. If securities are deposited as security under this subdivision, such securities shall be kept in the custody of the commissioner [of taxation and finance] and may be sold by the commissioner if it becomes necessary so to do in order to recover any sums due from such distributor pursuant to this article, but no such sale shall be had until after such distributor shall have had an opportunity to litigate the validity of any tax if it elects so to do. Upon any such sale, the surplus, if any, above the sums due under this article shall be returned to such distributor.

S 20. Section 473-a of the tax law, as added by chapter 61 of the laws of 1989, is amended to read as follows:

S 473-a. Returns and payment of CIGARS PREPAID AND tobacco products [tax] TAXES by distributors. 1. (A) Every distributor shall, on or before the twentieth day of each month, file with the commissioner [of taxation and finance] a return on forms to be prescribed and furnished by the commissioner, showing the quantity and [wholesale price] WEIGHT of all tobacco products OR QUANTITY OF CIGARS imported or caused to be imported into the state by him OR HER or manufactured in the state by him OR HER, during the preceding calendar month. Every distributor authorized by the commissioner to make returns and pay the tax on CIGARS OR tobacco products sold, shipped or delivered by him OR HER to any person in the state shall file a return showing the quantity and [wholesale price] WEIGHT of all tobacco products so sold, shipped or delivered during the preceding calendar month. Provided, however, the commissioner may, if he OR SHE deems it necessary in order to insure the payment of the taxes imposed by this article, require returns to be made at such times and covering such periods as he OR SHE may deem necessary, and, by regulation, may permit the filing of returns on a quarterly, semi-annual or annual basis, or may waive the filing of returns by a distributor for such time and upon such terms as he OR SHE may deem proper if satisfied that no tax imposed by this article is or will be payable by him OR HER during the time for which returns are waived. Such returns shall contain such further information as the commissioner may require.

(B) EVERY DISTRIBUTOR SHALL, ON OR BEFORE THE TWENTIETH DAY OF EACH MONTH, FILE WITH THE COMMISSIONER A RETURN ON FORMS TO BE PRESCRIBED AND FURNISHED BY THE COMMISSIONER, SHOWING THE QUANTITY OF ALL CIGARS IMPORTED OR CAUSED TO BE IMPORTED INTO THE STATE BY HIM OR HER OR MANU-

1 FACTURED IN THE STATE BY HIM OR HER, DURING THE PRECEDING CALENDAR  
2 MONTH. EVERY DISTRIBUTOR AUTHORIZED BY THE COMMISSIONER TO MAKE RETURNS  
3 AND PAY THE CIGAR PREPAID TAX ON CIGARS SOLD, SHIPPED OR DELIVERED BY  
4 HIM OR HER TO ANY PERSON IN THE STATE SHALL FILE A RETURN SHOWING THE  
5 QUANTITY OF ALL CIGARS SO SOLD, SHIPPED OR DELIVERED DURING THE PRECED-  
6 ING CALENDAR MONTH. PROVIDED, HOWEVER, THE COMMISSIONER MAY, IF HE OR  
7 SHE DEEMS IT NECESSARY IN ORDER TO INSURE THE PAYMENT OF THE CIGAR  
8 PREPAID TAX IMPOSED BY THIS ARTICLE, REQUIRE RETURNS TO BE MADE AT SUCH  
9 TIMES AND COVERING SUCH PERIODS AS HE OR SHE MAY DEEM NECESSARY, AND, BY  
10 REGULATION, MAY PERMIT THE FILING OF RETURNS ON A QUARTERLY, SEMI-ANNUAL  
11 OR ANNUAL BASIS, OR MAY WAIVE THE FILING OF RETURNS BY A DISTRIBUTOR FOR  
12 SUCH TIME AND UPON SUCH TERMS AS HE OR SHE MAY DEEM PROPER IF SATISFIED  
13 THAT NO CIGAR PREPAID TAX IMPOSED BY THIS ARTICLE IS OR WILL BE PAYABLE  
14 BY HIM OR HER DURING THE TIME FOR WHICH RETURNS ARE WAIVED. SUCH RETURNS  
15 SHALL CONTAIN SUCH FURTHER INFORMATION AS THE COMMISSIONER MAY REQUIRE.

16 2. Every distributor shall pay to the commissioner with the filing of  
17 such return the tax on CIGARS OR tobacco products for such month imposed  
18 under this article.

19 S 21. Subdivisions 2, 3 and 4 of section 474 of the tax law, subdivi-  
20 sion 2 as amended by chapter 552 of the laws of 2008, subdivision 3 as  
21 added and subdivision 4 as amended by chapter 61 of the laws of 1989,  
22 are amended to read as follows:

23 2. Every person who shall possess or transport more than [two hundred]  
24 fifty cigars, or more than five pounds of tobacco other than roll-your-  
25 own tobacco[, ] or more than thirty-six ounces of roll-your-own tobacco  
26 upon the public highways, roads or streets of the state, shall be  
27 required to have in [his] SUCH PERSON'S actual possession invoices or  
28 delivery tickets for such CIGARS OR tobacco products. Such invoices or  
29 delivery tickets shall show the name and address of the consignor or  
30 seller, the name and address of the consignee or purchaser, the  
31 quantity, WEIGHT and brands of the CIGARS OR tobacco products trans-  
32 ported, and the name and address of the person who has or shall assume  
33 the payment of the tax [and the wholesale price] or the tax paid or  
34 payable. The absence of such invoices or delivery tickets shall be prima  
35 facie evidence that such person is a dealer in CIGARS OR tobacco  
36 products in this state and subject to the requirements of this article.

37 3. Every dealer or distributor or employee thereof, or other person  
38 acting on behalf of a dealer or distributor, who shall possess or trans-  
39 port more than fifty cigars or more than one pound of tobacco upon the  
40 public highways, roads or streets of the state, shall be required to  
41 have in his OR HER actual possession invoices or delivery tickets for  
42 such CIGARS OR tobacco products. Such invoices or delivery tickets shall  
43 show the name and address of the consignor or seller, the name and  
44 address of the consignee or purchaser, the quantity, WEIGHT and brands  
45 of the CIGARS OR tobacco products transported, and the name and address  
46 of the person who has or shall assume the payment of the tax [and the  
47 wholesale price] or the tax paid or payable. The absence of such  
48 invoices or delivery tickets shall be prima facie evidence that the tax  
49 imposed by this article on CIGARS OR tobacco products has not been paid  
50 and is due and owing.

51 4. At the time of delivering cigarettes to any person each agent or  
52 wholesale dealer, and at the time of delivering CIGARS OR tobacco  
53 products to any person each distributor or wholesale dealer of CIGARS OR  
54 tobacco products, shall make a true duplicate invoice showing the date  
55 of delivery, the number of packages and number of cigarettes contained  
56 therein, in each shipment of cigarettes delivered, and the items and



1 quantity and [wholesale price] WEIGHT of each item in each shipment of  
2 tobacco products OR QUANTITY OF CIGARS delivered, and the name of the  
3 purchaser to whom delivery is made, and shall retain the same for a  
4 period of three years subject to the use and inspection of the commis-  
5 sioner [of taxation and finance]. Each dealer shall procure and retain  
6 invoices showing the number of packages and number of cigarettes  
7 contained therein, in each shipment of cigarettes received by him OR  
8 HER, and the items and quantity and [wholesale price] WEIGHT of each  
9 item in each shipment of CIGARS OR tobacco products received by him OR  
10 HER, the date thereof, and the name of the shipper, and shall retain the  
11 same for a period of three years subject to the use and inspection of  
12 the commissioner [of taxation and finance]. The commissioner [of taxa-  
13 tion and finance] by regulation may provide that whenever cigarettes,  
14 CIGARS or tobacco products are shipped into the state, the railroad  
15 company, express company, trucking company or other public carrier  
16 transporting any shipment thereof shall file with the commissioner [of  
17 taxation and finance] a copy of the freight bill within ten days after  
18 the delivery in the state of each shipment. All dealers shall maintain  
19 and keep for a period of three years such other records of cigarettes,  
20 CIGARS or tobacco products received, sold or delivered within the state  
21 as may be required by the commissioner [of taxation and finance]. The  
22 commissioner [of taxation and finance] is hereby authorized to examine  
23 the books, papers, invoices and other records of any person in  
24 possession, control or occupancy of any premises where cigarettes,  
25 CIGARS or tobacco products are placed, stored, sold or offered for sale,  
26 and the equipment of any such person pertaining to the stamping of ciga-  
27 rettes or the sale and delivery of cigarettes, CIGARS or tobacco  
28 products taxable under this article, as well as the stock of cigarettes,  
29 CIGARS or tobacco products in any such premises or vehicle. To verify  
30 the accuracy of the tax imposed and assessed by this article, each such  
31 person is hereby directed and required to give to the commissioner [of  
32 taxation and finance] or his OR HER duly authorized representatives, the  
33 means, facilities and opportunity for such examinations as are herein  
34 provided for and required.

35 S 22. The section heading of section 475 of the tax law, as amended by  
36 chapter 227 of the laws of 1956, is amended to read as follows:

37 General powers of the [tax commission] COMMISSIONER.

38 S 23. Section 476 of the tax law, as amended by chapter 61 of the laws  
39 of 1989, is amended to read as follows:

40 S 476. Refunds; sales of stamps. Whenever any cigarettes upon which  
41 stamps have been placed or CIGARS OR tobacco products upon which the tax  
42 has been paid have been sold and shipped into another state for sale or  
43 use there or have become unfit for use and consumption or unsalable, or  
44 have been destroyed, or whenever the commissioner [of taxation and  
45 finance] shall have determined that any tax imposed by this article  
46 shall have been paid in error, the agent, dealer or CIGAR OR tobacco  
47 products distributor, as the case may be, shall be entitled to a refund  
48 of the actual amount of tax so paid, provided application therefor is  
49 filed with the commissioner [of taxation and finance] within two years  
50 after the stamps were affixed to such cigarettes or the tax was paid  
51 upon such CIGARS OR tobacco products, except if an agreement under the  
52 provisions of section four hundred seventy-eight OF THIS ARTICLE  
53 (extending the period for determination of tax imposed by this article)  
54 is made within the two-year period for the filing of an application for  
55 refund provided for in this section, the period for filing an applica-  
56 tion for refund shall not expire prior to six months after the expira-

tion of the period within which a determination may be made pursuant to the agreement or any extension thereof. If the commissioner [of taxation and finance] is satisfied that any dealer is entitled to a refund he OR SHE shall issue to such dealer stamps of sufficient value to cover the refund of the tax on cigarettes or may, subject to audit by the comptroller, make a refund of the tax on cigarettes or on CIGARS OR tobacco products. No person shall sell or offer for sale any stamp or stamps issued under this article except by written permission of the commissioner [of taxation and finance]. The commissioner [of taxation and finance] may redeem unused stamps lawfully in possession of any person. The commissioner [of taxation and finance] may prescribe necessary rules and regulations concerning refunds, sales of stamps, and redemptions under the provisions of this article.

S 24. Paragraph (d) of subdivision 1 of section 480 of the tax law, as added by chapter 629 of the laws of 1996, is amended to read as follows:

(d) Each applicant shall file satisfactory proof that it will maintain a secure separate warehousing facility for the purpose of receiving and distributing cigarettes, CIGARS or tobacco products and conducting its wholesale business. Such proof shall consist of a copy of a deed, or a copy of an executed lease for a minimum period of two years, to a separate, secure warehouse. If the applicant carries on another business in conjunction with the warehouse facility, the other business shall also be identified.

S 25. Paragraph (j) of subdivision 1 of section 480 of the tax law, as amended by chapter 629 of the laws of 1996, is amended to read as follows:

(j) The commissioner may for cause refuse to issue, or may suspend or revoke a wholesaler's license, or may forbid a retail dealer to continue selling cigarettes, CIGARS or tobacco products or may forbid a person required to be appointed as a distributor of CIGARS OR tobacco products who has not been so appointed from selling cigarettes, CIGARS or tobacco products, after an opportunity for hearing has been afforded. A violation of any provision of this article or of any regulation issued under it shall be cause to forbid a retail dealer to continue selling cigarettes, CIGARS or tobacco products.

S 26. Paragraph (k) of subdivision 1 of section 480 of the tax law, as amended by chapter 262 of the laws of 2000, is amended to read as follows:

(k) No agent shall sell cigarettes and no distributor shall sell CIGARS OR tobacco products to an unlicensed wholesale dealer, or to a wholesale dealer whose license has been suspended or revoked, or to a retail dealer who is not registered under section four hundred eighty-a of this article, or whose registration has been suspended or revoked, and no wholesale dealer shall sell cigarettes, CIGARS or tobacco products to a retail dealer who is not registered under section four hundred eighty-a of this article, or whose registration has been suspended or revoked, and no retail dealer shall sell cigarettes, CIGARS or tobacco products unless such dealer is registered under section four hundred eighty-a of this article.

S 27. Paragraph (l) of subdivision 1 of section 480 of the tax law, as added by chapter 629 of the laws of 1996, is amended to read as follows:

(l) Paragraphs (b), (c) and (g) of this subdivision shall not apply to the filing of an application for a license as a wholesale dealer that is based solely upon the ownership, operation or maintenance of one or more cigarette, CIGAR or tobacco products vending machines in, at or upon premises owned or occupied by another person, or that is based solely

1 upon the sale of CIGARS OR tobacco products for resale, or that is based  
2 upon both the ownership, operation or maintenance of one or more ciga-  
3 rette, CIGAR or tobacco products vending machines in, at or upon prem-  
4 ises owned or occupied by another person and the sale of CIGARS OR  
5 tobacco products for resale.

6 S 28. Subparagraph (iv) of paragraph (b) of subdivision 3 of section  
7 480 of the tax law, as amended by chapter 61 of the laws of 1989, is  
8 amended to read as follows:

9 (iv) Has knowingly aided and abetted the sale of cigarettes, CIGARS or  
10 tobacco products by a person which such licensee or controlling person  
11 knows (A) has not been licensed by the commissioner [of taxation and  
12 finance] and (B) is a wholesale dealer pursuant to the terms of subdivi-  
13 sion eight of section four hundred seventy of this [chapter] ARTICLE.

14 S 29. Subdivision 4 of section 480 of the tax law, as amended by chap-  
15 ter 61 of the laws of 1989, is amended to read as follows:

16 4. If the commissioner [of taxation and finance] considers it neces-  
17 sary for the proper administration of the cigarette tax, CIGAR TAX or  
18 tobacco products tax imposed by this article or the cigarette marketing  
19 standards contained in article twenty-A of this chapter he OR SHE may  
20 require every person under this article who holds a license to file a  
21 new application for a license in such form and at such time as the  
22 commissioner may prescribe and to surrender such license. The commis-  
23 sioner may require such filing and such surrender not more often than  
24 once every three years. Upon the filing of such application with the  
25 proper fee and the surrender of such license, the commissioner shall  
26 issue, within such time as he OR SHE may prescribe, a new license to  
27 each applicant.

28 S 30. Paragraphs (a) and (b) of subdivision 1 of section 480-a of the  
29 tax law, as added by chapter 190 of the laws of 1990, are amended to  
30 read as follows:

31 (a) [On and after January first, nineteen hundred ninety-one, every]  
32 EVERY retail dealer shall publicly display a certificate of registration  
33 from the department in each place of business in this state through  
34 which it sells cigarettes, CIGARS or tobacco products at retail. A  
35 retail dealer who has no regular place of business shall publicly  
36 display such certificate on each of its carts, stands, trucks or other  
37 merchandising devices through which it sells cigarettes, CIGARS or  
38 tobacco products in this state.

39 (b) Every person who owns or, if the owner is not the operator, then  
40 any person who operates one or more vending machines through which ciga-  
41 rettes, CIGARS or tobacco products are sold in this state, regardless of  
42 whether located on the premises of the vending machine owner or, if the  
43 owner is not the operator, then the premises of the operator or the  
44 premises of any other person, must register each such vending machine  
45 with the department. [On and after January first, nineteen hundred nine-  
46 ty-one, a] A vending machine registration certificate, in such form as  
47 may be prescribed by the commissioner [of taxation and finance], shall  
48 be affixed to each vending machine through which cigarettes, CIGARS or  
49 tobacco products are sold in this state.

50 S 31. Paragraphs (a) and (b) of subdivision 2 of section 480-a of the  
51 tax law, as amended by section 1 of part T of chapter 61 of the laws of  
52 2011, are amended to read as follows:

53 (a) (i) Every retail dealer and every person owning or, if the owner  
54 is not the operator, then any person operating one or more vending  
55 machines through which cigarettes, CIGARS or tobacco products are sold  
56 in this state, who is required under section eleven hundred thirty-six

1 of this chapter to file a return for the quarterly period ending on the  
2 last day of August OF EACH YEAR, [nineteen hundred ninety or for the  
3 quarterly period ending on the last day of August in any year thereaft-  
4 er,] must file an application for registration under this section with  
5 that quarterly return, in such form as shall be prescribed by the  
6 commissioner.

7 (ii) Each retail dealer must pay an application fee with the quarterly  
8 return of three hundred dollars for each retail place of business in  
9 this state through which it sells cigarettes, CIGARS or tobacco  
10 products.

11 (iii) Every person who owns or, if the owner is not the operator, then  
12 any person who operates one or more vending machines through which ciga-  
13 rettes, CIGARS or tobacco products are sold in this state, regardless of  
14 whether located on the premises of the vending machine owner or, if the  
15 owner is not the operator, then the premises of the operator or the  
16 premises of any other person, must pay an application fee with the quar-  
17 terly return of one hundred dollars for each vending machine. The  
18 department will issue a registration certificate, as prescribed by the  
19 commissioner, after receipt of a registration application and the appro-  
20 priate registration fee, prior to the next succeeding January first.

21 (b) Every retail dealer and every person who owns or, if the owner is  
22 not the operator, then any person who operates one or more vending  
23 machines through which cigarettes, CIGARS or tobacco products are sold  
24 in this state who commences business after the last day of August[,  
25 nineteen hundred ninety,] or who commences selling cigarettes, CIGARS or  
26 tobacco products at retail through a new or different place of business  
27 in this state after such date, or who commences selling cigarettes,  
28 CIGARS or tobacco products through new or different vending machines  
29 after such date, must file with the commissioner an application for  
30 registration, in a form prescribed by him or her, at least thirty days  
31 prior to commencing business or commencing sales. Each application must  
32 be accompanied by an application fee of three hundred dollars for each  
33 retail place of business and one hundred dollars for each vending  
34 machine to be registered. The department, within ten days after receipt  
35 of an application for registration under this paragraph and payment of  
36 the proper fee for application for registration, will issue a registra-  
37 tion certificate, as prescribed by the commissioner, for each retail  
38 place of business or cigarette, CIGAR or tobacco products vending  
39 machine registered.

40 S 32. Paragraph (d) of subdivision 2 of section 480-a of the tax law,  
41 as amended by chapter 760 of the laws of 1992, is amended to read as  
42 follows:

43 (d) Except as otherwise provided in this section, all the provisions  
44 of article twenty-eight of this chapter relating to the personal liabil-  
45 ity for the tax, administration, collection and determination of tax,  
46 and deposit and disposition of revenue, including section eleven hundred  
47 thirty-eight of this chapter relating to determination of tax and  
48 section eleven hundred forty-five of this chapter (but only paragraphs  
49 one and two of subdivision (a) of such section) relating to penalties  
50 and interest for failure to file a return or pay tax within the time  
51 required, shall apply to the applications for registration and the fees  
52 for filing such applications required by this section and the penalty  
53 imposed pursuant to subdivision three of this section, as if such appli-  
54 cations were returns required under section eleven hundred thirty-six of  
55 this chapter and such filing fees, penalties and interest were taxes  
56 required to be paid pursuant to such article twenty-eight, in the same

1 manner and with the same force and effect as if the language of such  
2 provisions of such article twenty-eight had been incorporated in full  
3 into this article, except to the extent that any such provision is  
4 either inconsistent with a provision of this section or is not relevant  
5 thereto and with such other modifications as may be necessary to adapt  
6 the language of such provisions to the provisions of this section.  
7 [Section] ANY REFERENCE TO A CERTIFICATE OF AUTHORITY SHOULD BE READ TO  
8 MEAN A CERTIFICATE OF REGISTRATION FOR THE PURPOSE OF THIS SECTION.  
9 PARAGRAPHS ONE THROUGH THREE OF SUBDIVISION A AND SUBDIVISIONS B AND C  
10 OF SECTION eleven hundred thirty-four of [such article twenty-eight]  
11 THIS CHAPTER shall not apply to this section AS WELL AS ANY LANGUAGE  
12 CONTAINED IN SUCH SECTION REFERRING TO AN OFFICER, DIRECTOR, PARTNER OR  
13 EMPLOYEE OF SUCH PERSON, AND, WHERE SUCH PERSON IS A LIMITED LIABILITY  
14 COMPANY, ALSO A MEMBER OR MANAGER OF SUCH PERSON, IN THE OFFICER'S,  
15 DIRECTOR'S, PARTNER'S, MEMBER'S, MANAGER'S OR EMPLOYEE'S CAPACITY AS A  
16 PERSON REQUIRED TO COLLECT TAX ON BEHALF OF SUCH PERSON OR ANOTHER  
17 PERSON. Provided, however, that the commissioner [of taxation and  
18 finance] shall refund or credit an application fee paid with respect to  
19 the registration of a vending machine or a retail place of business in  
20 this state through which cigarettes, CIGARS or tobacco products were to  
21 be sold if, prior to the beginning of the calendar year with respect to  
22 which such registration relates, the certificate of registration  
23 described in paragraph (a) of this subdivision is returned to the  
24 department [of taxation and finance], or if such certificate has been  
25 destroyed, the retail dealer or vending machine operator satisfactorily  
26 accounts to the commissioner for the missing certificate, but such vend-  
27 ing machine or retail place of business may not be used to sell ciga-  
28 rettes, CIGARS or tobacco products in this state during such calendar  
29 year, unless it is re-registered. The provisions of section eleven  
30 hundred thirty-nine of this chapter shall apply to the refund or credit  
31 authorized by the preceding sentence and for such purposes, such refund  
32 or credit shall be deemed a refund of tax paid in error provided, howev-  
33 er, no interest shall be allowed or paid on any such refund.

34 S 33. Paragraph (b) of subdivision 3 of section 480-a of the tax law,  
35 as amended by section 125-a of part C of chapter 58 of the laws of 2009,  
36 is amended to read as follows:

37 (b) Any person who owns or, if the owner is not the operator, then any  
38 person who operates one or more vending machines through which ciga-  
39 rettes, CIGARS or tobacco products are sold in this state and who  
40 violates the provisions of this section, after due notice and an oppor-  
41 tunity for a hearing, for a first violation is liable for a civil fine  
42 not less than seven hundred fifty dollars but not to exceed two thousand  
43 dollars and for a second or subsequent violation within three years  
44 following a prior finding of violation be liable for a civil fine not  
45 less than two thousand dollars but not to exceed six thousand dollars.

46 S 34. Clause (B) of subparagraph (i) of paragraph (a) of subdivision 1  
47 of section 481 of the tax law, as amended by chapter 61 of the laws of  
48 1989, is amended to read as follows:

49 (B) If a tax on cigarettes, CIGARS or on tobacco products under this  
50 article is not paid when due by any other person, the person liable for  
51 the payment of such tax shall be subject to a penalty of fifty per  
52 centum of the amount of such tax determined to be due as provided in  
53 this article plus one per centum of such amount for each month or frac-  
54 tion thereof during which such failure to pay continues after the expi-  
55 ration of the first month after such tax became due.

1 S 35. Subparagraph (i) of paragraph (b) of subdivision 1 of section  
2 481 of the tax law, as amended by chapter 604 of the laws of 2008, is  
3 amended to read as follows:

4 (i) In addition to any other penalty imposed by this article, the  
5 commissioner may (A) impose a penalty of not more than one hundred fifty  
6 dollars for each two hundred cigarettes, or fraction thereof, in excess  
7 of one thousand cigarettes in unstamped or unlawfully stamped packages  
8 in the possession or under the control of any person or (B) impose a  
9 penalty of not more than two hundred dollars for each ten unaffixed  
10 false, altered or counterfeit cigarette tax stamps, imprints or  
11 impressions, or fraction thereof, in the possession or under the control  
12 of any person. In addition, the commissioner may impose a penalty of not  
13 more than seventy-five dollars for each fifty cigars or one pound of  
14 tobacco, or fraction thereof, in excess of [two hundred] fifty cigars or  
15 five pounds of tobacco in the possession or under the control of any  
16 person and a penalty of not more than one hundred fifty dollars for each  
17 fifty cigars or pound of tobacco, or fraction thereof, in excess of five  
18 hundred cigars or ten pounds of tobacco in the possession or under the  
19 control of any person, with respect to which the CIGAR OR tobacco  
20 products tax has not been paid or assumed by a distributor or CIGAR OR  
21 tobacco products dealer; provided, however, that any such penalty  
22 imposed shall not exceed seven thousand five hundred dollars in the  
23 aggregate. The commissioner may impose a penalty of not more than seven-  
24 ty-five dollars for each fifty cigars or one pound of tobacco, or frac-  
25 tion thereof, in excess of fifty cigars or one pound of tobacco in the  
26 possession or under the control of any CIGAR OR tobacco products dealer  
27 or distributor appointed by the commissioner, and a penalty of not more  
28 than one hundred fifty dollars for each fifty cigars or pound of tobac-  
29 co, or fraction thereof, in excess of [two hundred] fifty cigars or five  
30 pounds of tobacco in the possession or under the control of any such  
31 dealer or distributor, with respect to which the CIGAR OR tobacco  
32 products tax has not been paid or assumed by a distributor or a CIGAR OR  
33 tobacco products dealer; provided, however, that any such penalty  
34 imposed shall not exceed fifteen thousand dollars in the aggregate.

35 S 36. Clauses (B) and (C) of subparagraph (ii) of paragraph (b) of  
36 subdivision 1 of section 481 of the tax law, as added by chapter 262 of  
37 the laws of 2000, are amended to read as follows:

38 (B)(I) not less than twenty-five dollars but not more than one hundred  
39 dollars for each fifty cigars or one pound of tobacco, or fraction ther-  
40 eof, in excess of [two hundred] fifty cigars or five pounds of tobacco  
41 knowingly in the possession or knowingly under the control of any  
42 person, with respect to which the CIGAR OR tobacco products tax has not  
43 been paid or assumed by a distributor or CIGAR OR tobacco products deal-  
44 er; and

45 (II) not less than fifty dollars but not more than two hundred dollars  
46 for each fifty cigars or pound of tobacco, or fraction thereof, in  
47 excess of [five] ONE hundred cigars or ten pounds of tobacco knowingly  
48 in the possession or knowingly under the control of any person, with  
49 respect to which the CIGAR OR tobacco products tax has not been paid or  
50 assumed by a distributor or CIGAR OR tobacco products dealer; provided,  
51 however, that any such penalty imposed under this clause shall not  
52 exceed ten thousand dollars in the aggregate.

53 (C)(I) not less than twenty-five dollars but not more than one hundred  
54 dollars for each fifty cigars or one pound of tobacco, or fraction ther-  
55 eof, in excess of fifty cigars or one pound of tobacco knowingly in the  
56 possession or knowingly under the control of any person, with respect to

1 which the CIGAR OR tobacco products tax has not been paid or assumed by  
2 a distributor or CIGAR OR tobacco products dealer; and

3 (II) not less than fifty dollars but not more than two hundred dollars  
4 for each fifty cigars or pound of tobacco, or fraction thereof, in  
5 excess of [two hundred fifty] ONE HUNDRED cigars or five pounds of  
6 tobacco knowingly in the possession or knowingly under the control of  
7 any person, with respect to which the CIGAR OR tobacco products tax has  
8 not been paid or assumed by a distributor or a CIGAR OR tobacco products  
9 dealer; provided, however, that any such penalty imposed under this  
10 clause shall not exceed twenty thousand dollars in the aggregate.

11 S 37. Subdivision 2 of section 481 of the tax law, as amended by chap-  
12 ter 61 of the laws of 1989 and paragraph (a) as amended by chapter 552  
13 of the laws of 2008, is amended to read as follows:

14 2. (a) The possession within this state of more than four hundred  
15 cigarettes in unstamped or unlawfully stamped packages, or more than  
16 [two hundred] fifty cigars, or more than five pounds of tobacco other  
17 than roll-your-own tobacco, or more than thirty-six ounces of roll-your-  
18 own tobacco by any person other than an agent or distributor, as the  
19 case may be, at any one time shall be presumptive evidence that such  
20 cigarettes, CIGARS or tobacco products are subject to tax as provided by  
21 this article.

22 (b) Nothing in this section shall apply to common or contract carriers  
23 or warehousemen while engaged in lawfully transporting or storing  
24 CIGARS, tobacco products or unstamped packages of cigarettes as merchan-  
25 dise, nor to any employee of such carrier or warehouseman acting within  
26 the scope of his OR HER employment, nor to public officers or employees  
27 in the performance of their official duties requiring possession or  
28 control of CIGARS, tobacco products or unstamped or unlawfully stamped  
29 packages of cigarettes, nor to temporary incidental possession by  
30 employees or agents of persons lawfully entitled to possession, nor to  
31 persons whose possession is for the purpose of aiding police officers in  
32 performing their duties.

33 S 38. The tax law is amended by adding new section 481-a to read as  
34 follows:

35 S 481-A. PENALTIES AND INTEREST FOR RETAIL DEALERS. (A) (1) (I) ANY  
36 PERSON FAILING TO FILE A RETURN OR TO PAY OR PAY OVER ANY TAX TO THE  
37 COMMISSIONER WITHIN THE TIME REQUIRED BY OR PURSUANT TO THIS ARTICLE  
38 (DETERMINED WITH REGARD TO ANY EXTENSION OF TIME FOR FILING OR PAYING)  
39 SHALL BE SUBJECT TO A PENALTY OF TEN PERCENT OF THE AMOUNT OF TAX DUE IF  
40 SUCH FAILURE IS FOR NOT MORE THAN ONE MONTH, WITH AN ADDITIONAL ONE  
41 PERCENT FOR EACH ADDITIONAL MONTH OR FRACTION THEREOF DURING WHICH SUCH  
42 FAILURE CONTINUES, NOT EXCEEDING THIRTY PERCENT IN THE AGGREGATE.  
43 PROVIDED, HOWEVER, IN THE CASE OF A FAILURE TO FILE SUCH RETURN WITHIN  
44 SIXTY DAYS OF THE DATE PRESCRIBED FOR FILING OF SUCH RETURN BY OR PURSU-  
45 ANT TO THIS ARTICLE (DETERMINED WITH REGARD TO ANY EXTENSION OF TIME FOR  
46 FILING), THE PENALTY IMPOSED BY THIS SUBPARAGRAPH SHALL NOT BE LESS THAN  
47 THE LESSER OF ONE HUNDRED DOLLARS OR ONE HUNDRED PERCENT OF THE AMOUNT  
48 REQUIRED TO BE SHOWN AS TAX ON SUCH RETURN. FOR THE PURPOSE OF THE  
49 PRECEDING SENTENCE, THE AMOUNT OF TAX REQUIRED TO BE SHOWN ON THE RETURN  
50 SHALL BE REDUCED BY THE AMOUNT OF ANY PART OF THE TAX WHICH IS PAID ON  
51 OR BEFORE THE DATE PRESCRIBED FOR PAYMENT OF THE TAX AND BY THE AMOUNT  
52 OF ANY CREDIT AGAINST THE TAX WHICH MAY BE CLAIMED UPON THE RETURN. IN  
53 THE CASE OF A FAILURE TO FILE A RETURN BY A PERSON REQUIRED TO REGISTER  
54 WITH THE COMMISSIONER AS PROVIDED IN SECTION FOUR HUNDRED EIGHTY-A OF  
55 THIS ARTICLE, IN NO EVENT SHALL THE PENALTY FOR FAILURE TO FILE A RETURN  
56 BE LESS THAN ONE HUNDRED FIFTY DOLLARS.

(II) IF ANY AMOUNT OF TAX IS NOT PAID ON OR BEFORE THE LAST DATE PRESCRIBED IN THIS ARTICLE FOR PAYMENT, INTEREST ON SUCH AMOUNT AT THE RATE OF FOURTEEN AND ONE-HALF PERCENT PER ANNUM OR AT THE UNDERPAYMENT RATE SET BY THE COMMISSIONER PURSUANT TO SUBDIVISION TWENTY-SIXTH OF SECTION ONE HUNDRED SEVENTY-ONE OF THIS CHAPTER, WHICHEVER IS GREATER, SHALL BE PAID FOR THE PERIOD FROM SUCH LAST DATE TO THE DATE PAID, WHETHER OR NOT ANY EXTENSION OF TIME FOR PAYMENT WAS GRANTED. INTEREST UNDER THIS SUBPARAGRAPH SHALL NOT BE PAID IF THE AMOUNT THEREOF IS LESS THAN ONE DOLLAR.

(III) IF THE COMMISSIONER DETERMINES THAT SUCH FAILURE OR DELAY WAS DUE TO REASONABLE CAUSE AND NOT DUE TO WILLFUL NEGLECT, HE OR SHE MAY REMIT ALL OF SUCH PENALTY AND THAT PORTION OF SUCH INTEREST THAT EXCEEDS THE INTEREST THAT WOULD BE PAYABLE IF SUCH INTEREST WERE COMPUTED AT THE UNDERPAYMENT RATE SET BY THE COMMISSIONER PURSUANT TO SUBDIVISION TWENTY-SIXTH OF SECTION ONE HUNDRED SEVENTY-ONE OF THIS CHAPTER. THE COMMISSIONER MAY PROMULGATE RULES AND REGULATIONS AS TO WHAT CONSTITUTES REASONABLE CAUSE.

(IV) ANY PERSON REQUIRED BY THIS ARTICLE TO FILE A RETURN, WHO OMITTS FROM THE TOTAL AMOUNT OF CIGAR EXCISE TAX REQUIRED TO BE SHOWN ON A RETURN AN AMOUNT WHICH IS IN EXCESS OF TWENTY-FIVE PERCENT OF THE AMOUNT OF SUCH TAXES REQUIRED TO BE SHOWN ON THE RETURN SHALL BE SUBJECT TO A PENALTY EQUAL TO TEN PERCENT OF THE AMOUNT OF SUCH OMISSION. IF THE COMMISSIONER DETERMINES THAT SUCH OMISSION WAS DUE TO REASONABLE CAUSE AND NOT DUE TO WILLFUL NEGLECT, HE OR SHE MAY REMIT ALL OF SUCH PENALTY.

(V) ANY PERSON REQUIRED TO COLLECT TAX WHO SELLS CIGARS AT RETAIL AND WHO SHALL WILLFULLY AND KNOWINGLY HAVE IN SUCH PERSON'S CUSTODY OR POSSESSION OR UNDER SUCH PERSON'S CONTROL ANY CIGARS ON WHICH (A) THE PREPAID TAX IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE HAS NOT BEEN ASSUMED OR PAID BY A DISTRIBUTOR LICENSED AS SUCH UNDER THIS ARTICLE, OR (B) THE PREPAID TAX IMPOSED BY SUCH SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE WAS REQUIRED TO HAVE BEEN PASSED THROUGH TO SUCH PERSON AND HAS NOT BEEN INCLUDED IN THE COST OF SUCH CIGARS TO SUCH PERSON, SHALL BE LIABLE FOR A PENALTY IN THE AMOUNT OF TWICE THE TAX NOT SO ASSUMED OR PAID, OR INCLUDED. SUCH PENALTY SHALL BE DETERMINED, ASSESSED, COLLECTED AND PAID IN THE SAME MANNER AS TAXES IMPOSED BY THIS ARTICLE AND ALL THE PROVISIONS OF THIS ARTICLE RELATING THERETO SHALL BE DEEMED ALSO TO REFER TO THE PENALTY IMPOSED BY THIS SUBPARAGRAPH. SUCH PENALTY MAY BE DETERMINED AT ANY TIME WITHIN THREE YEARS AFTER SUCH CIGARS SHALL HAVE COME INTO SUCH PERSON'S CUSTODY OR POSSESSION OR UNDER SUCH PERSON'S CONTROL. FOR PURPOSES OF THIS SUBPARAGRAPH, SUCH PERSON SHALL WILLFULLY AND KNOWINGLY HAVE IN SUCH PERSON'S CUSTODY OR POSSESSION OR UNDER SUCH PERSON'S CONTROL ANY CIGAR ON WHICH (A) SUCH TAX HAS NOT BEEN ASSUMED OR PAID BY A DISTRIBUTOR LICENSED AS SUCH UNDER THIS ARTICLE, OR (B) SUCH TAX WAS REQUIRED TO HAVE BEEN PASSED THROUGH TO SUCH PERSON AND HAS NOT BEEN INCLUDED IN THE COST OF SUCH CIGARS TO SUCH PERSON, WHERE SUCH PERSON HAS KNOWLEDGE OF THE REQUIREMENT THAT SUCH TAXES BE PAID OR ASSUMED OR SO INCLUDED AND WHERE, TO SUCH PERSON'S KNOWLEDGE, SUCH TAXES HAVE NOT BEEN SO PAID OR ASSUMED OR SO INCLUDED. FOR PURPOSES OF THIS SUBPARAGRAPH, IT SHALL BE PRESUMPTIVE EVIDENCE THAT SUCH PERSON SHALL WILLFULLY AND KNOWINGLY HAVE IN SUCH PERSON'S CUSTODY OR POSSESSION OR UNDER SUCH PERSON'S CONTROL CIGARS ON WHICH (A) SUCH TAX HAS NOT BEEN ASSUMED OR PAID BY A DISTRIBUTOR AUTHORIZED AS SUCH UNDER THIS ARTICLE OR (B) SUCH TAX WAS REQUIRED TO HAVE BEEN PASSED THROUGH TO SUCH PERSON AND HAS NOT BEEN INCLUDED IN THE COST OF SUCH CIGARS TO SUCH PERSON WHERE SUCH PERSON HAS NOT RECEIVED THE CERTIFICATION REQUIRED BY SECTION FOUR HUNDRED



SEVENTY-ONE-K OF THIS ARTICLE AT THE TIME OF DELIVERY OF SUCH CIGARS OR, IN THOSE CIRCUMSTANCES WHERE THE COMMISSIONER HAS AUTHORIZED THE DELIVERY OF SUCH CERTIFICATION AT A TIME AFTER DELIVERY OF THE CIGARS, AT THE TIME PRESCRIBED BY THE COMMISSIONER.

(2) IF THE FAILURE TO PAY OR PAY OVER ANY TAX TO THE COMMISSIONER WITHIN THE TIME REQUIRED BY THIS ARTICLE IS DUE TO FRAUD, IN LIEU OF THE PENALTIES AND INTEREST PROVIDED FOR IN SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH ONE OF THIS SUBDIVISION, THERE SHALL BE ADDED TO THE TAX (I) A PENALTY OF TWO TIMES THE AMOUNT OF THE TAX DUE, PLUS (II) INTEREST ON SUCH UNPAID TAX AT THE RATE OF FOURTEEN AND ONE-HALF PERCENT PER ANNUM OR THE UNDERPAYMENT RATE OF INTEREST SET BY THE COMMISSIONER PURSUANT TO SUBDIVISION TWENTY-SIXTH OF SECTION ONE HUNDRED SEVENTY-ONE OF THIS CHAPTER, WHICHEVER IS GREATER, FOR THE PERIOD BEGINNING ON THE LAST DAY PRESCRIBED BY THIS ARTICLE FOR THE PAYMENT OF SUCH TAX (DETERMINED WITHOUT REGARD TO ANY EXTENSION OF TIME FOR PAYING) AND ENDING ON THE DAY ON WHICH SUCH TAX IS PAID.

(3) (I) ANY PERSON REQUIRED TO OBTAIN A CERTIFICATE OF REGISTRATION UNDER SECTION FOUR HUNDRED EIGHTY-A OF THIS ARTICLE WHO, WITHOUT POSSESSING A VALID CERTIFICATE OF REGISTRATION, SELLS CIGARETTES, CIGARS AND TOBACCO PRODUCTS SHALL, IN ADDITION TO ANY OTHER PENALTY IMPOSED BY THIS CHAPTER, BE SUBJECT TO A PENALTY IN AN AMOUNT NOT EXCEEDING FIVE HUNDRED DOLLARS FOR THE FIRST DAY ON WHICH SUCH SALES OR PURCHASES ARE MADE, PLUS AN AMOUNT NOT EXCEEDING TWO HUNDRED DOLLARS FOR EACH SUBSEQUENT DAY ON WHICH SUCH SALES OR PURCHASES ARE MADE, NOT TO EXCEED TEN THOUSAND DOLLARS IN THE AGGREGATE.

(II) IF THE COMMISSIONER DETERMINES THAT ANY FAILURE OR ACT DESCRIBED IN THIS PARAGRAPH WAS DUE TO REASONABLE CAUSE AND NOT DUE TO WILLFUL NEGLIGENCE, HE OR SHE MAY REMIT ALL OR PART OF SUCH PENALTY.

(4) ANY PERSON REQUIRED BY THIS ARTICLE TO DISPLAY A CERTIFICATE OF REGISTRATION, WHO FAILS TO DISPLAY SUCH CERTIFICATE IN THE MANNER REQUIRED BY THIS ARTICLE OR ANY RULE OR REGULATION ADOPTED BY THE COMMISSIONER IN CONNECTION WITH SUCH REQUIREMENT SHALL, IN ADDITION TO ANY OTHER PENALTY IMPOSED BY THIS CHAPTER, BE SUBJECT TO A PENALTY OF FIFTY DOLLARS. IF THE COMMISSIONER DETERMINES THAT SUCH FAILURE WAS DUE TO REASONABLE CAUSE AND NOT DUE TO WILLFUL NEGLIGENCE, HE OR SHE MAY REMIT ALL OR PART OF SUCH PENALTY.

(5) THE PENALTIES AND INTEREST PROVIDED FOR IN THIS SUBDIVISION SHALL BE PAID AND DISPOSED OF IN THE SAME MANNER AS OTHER REVENUES FROM THIS ARTICLE. SUCH PENALTIES AND INTEREST MAY BE DETERMINED, ASSESSED, COLLECTED AND ENFORCED IN THE SAME MANNER AS THE TAX IMPOSED BY THIS ARTICLE. INTEREST UNDER THIS SUBDIVISION SHALL BE COMPOUNDED DAILY.

(B) CROSS-REFERENCE: FOR CRIMINAL PENALTIES, SEE ARTICLE THIRTY-SEVEN OF THIS CHAPTER.

(C) ANY PERSON FAILING TO FILE A RETURN OR TO PAY ANY TAX REQUIRED TO BE PREPAID TO THE COMMISSIONER WITH RESPECT TO CIGARS PURSUANT TO THE PROVISIONS OF SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE WITHIN THE TIME REQUIRED BY THIS ARTICLE SHALL, IN ADDITION TO ANY OTHER PENALTY PROVIDED IN THIS ARTICLE OR OTHERWISE IMPOSED BY LAW, BE SUBJECT TO A PENALTY EQUAL TO THE AMOUNT OF TAX REQUIRED TO BE SO PREPAID PURSUANT TO THE PROVISIONS OF SUCH SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE. IF THE COMMISSIONER DETERMINES THAT SUCH FAILURE TO FILE A RETURN OR TO PAY ANY SUCH TAX WAS DUE TO REASONABLE CAUSE AND NOT DUE TO WILLFUL NEGLIGENCE, HE OR SHE MAY REMIT ALL OR ANY PART OF SUCH PENALTY.

(D) THE CERTIFICATE OF THE COMMISSIONER TO THE EFFECT THAT A TAX HAS NOT BEEN PAID, THAT A RETURN, BOND OR REGISTRATION CERTIFICATE HAS NOT

1 BEEN FILED, OR THAT INFORMATION HAS NOT BEEN SUPPLIED PURSUANT TO THE  
2 PROVISIONS OF THIS ARTICLE SHALL BE PRESUMPTIVE EVIDENCE THEREOF.

3 (E) ANY PERSON REQUIRED TO MAKE OR MAINTAIN RECORDS UNDER THIS ARTICLE  
4 WHO FAILS TO MAKE OR MAINTAIN OR MAKE AVAILABLE TO THE COMMISSIONER  
5 THESE RECORDS IS SUBJECT TO A PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS  
6 FOR THE FIRST PERIOD OR PART THEREOF FOR WHICH THE FAILURE OCCURS AND  
7 NOT TO EXCEED FIVE THOUSAND DOLLARS FOR EACH ADDITIONAL PERIOD OR PART  
8 THEREOF FOR WHICH THE FAILURE OCCURS. THIS PENALTY IS IN ADDITION TO ANY  
9 OTHER PENALTY PROVIDED FOR IN THIS ARTICLE BUT MAY NOT BE IMPOSED AND  
10 COLLECTED MORE THAN ONCE FOR FAILURES FOR THE SAME PERIOD OR PART THERE-  
11 OF. IF THE COMMISSIONER DETERMINES THAT A FAILURE TO MAKE OR MAINTAIN OR  
12 MAKE AVAILABLE RECORDS IN ANY PERIOD WAS ENTIRELY DUE TO REASONABLE  
13 CAUSE AND NOT TO WILLFUL NEGLECT, THE COMMISSIONER MUST REMIT THE PENAL-  
14 TY IMPOSED FOR THAT PERIOD. THESE PENALTIES WILL BE PAID AND DISPOSED OF  
15 IN THE SAME MANNER AS OTHER REVENUES FROM THIS ARTICLE. THESE PENALTIES  
16 WILL BE DETERMINED, ASSESSED, COLLECTED, PAID AND ENFORCED IN THE SAME  
17 MANNER AS THE TAX IMPOSED BY THIS ARTICLE, AND ALL THE PROVISIONS OF  
18 THIS ARTICLE RELATING TO TAX WILL BE DEEMED ALSO TO APPLY TO THE PENAL-  
19 TIES IMPOSED BY THIS SUBDIVISION. FOR PURPOSES OF THE PENALTY IMPOSED BY  
20 THIS SUBDIVISION, A PERSON WILL BE CONSIDERED TO HAVE FAILED TO MAKE OR  
21 MAINTAIN THE REQUIRED RECORDS WHEN THE RECORDS MADE OR MAINTAINED BY  
22 THAT PERSON FOR A PERIOD MAKE IT VIRTUALLY IMPOSSIBLE TO VERIFY SALES  
23 RECEIPTS AND TO CONDUCT A COMPLETE AUDIT.

24 (F) FALSE OR FRAUDULENT DOCUMENT PENALTY. ANY TAXPAYER THAT SUBMITS A  
25 FALSE OR FRAUDULENT DOCUMENT TO THE DEPARTMENT WILL BE SUBJECT TO A  
26 PENALTY OF ONE HUNDRED DOLLARS PER DOCUMENT SUBMITTED, OR FIVE HUNDRED  
27 DOLLARS PER TAX RETURN SUBMITTED. THIS PENALTY WILL BE IN ADDITION TO  
28 ANY OTHER PENALTY PROVIDED BY LAW.

29 (G) AIDING OR ASSISTING IN THE GIVING OF FRAUDULENT RETURNS, REPORTS,  
30 STATEMENTS OR OTHER DOCUMENTS. ANY PERSON WHO, WITH THE INTENT THAT TAX  
31 BE EVADED, FOR A FEE OR OTHER COMPENSATION OR AS AN INCIDENT TO THE  
32 PERFORMANCE OF OTHER SERVICES FOR WHICH THAT PERSON RECEIVES COMPEN-  
33 SATION, AIDS OR ASSISTS IN, OR PROCURES, COUNSELS, OR ADVISES THE PREPA-  
34 RATION OR PRESENTATION UNDER THIS ARTICLE, OR IN CONNECTION WITH ANY  
35 MATTER ARISING UNDER THIS ARTICLE, OF ANY RETURN, REPORT, DECLARATION,  
36 STATEMENT OR OTHER DOCUMENT THAT IS FRAUDULENT OR FALSE AS TO ANY MATE-  
37 RIAL MATTER, OR SUPPLIES ANY FALSE OR FRAUDULENT INFORMATION, WHETHER OR  
38 NOT SUCH FALSITY OR FRAUD IS WITH THE KNOWLEDGE OR CONSENT OF THE PERSON  
39 AUTHORIZED OR REQUIRED TO PRESENT THAT RETURN, REPORT, DECLARATION,  
40 STATEMENT OR OTHER DOCUMENT, WILL PAY A PENALTY NOT EXCEEDING FIVE THOU-  
41 SAND DOLLARS.

42 (H) ANY PERSON WHO, HAVING ELECTED TO MAINTAIN IN AN ELECTRONIC FORMAT  
43 ANY PORTION OR ALL OF THE RECORDS HE OR SHE IS REQUIRED TO MAKE AND  
44 MAINTAIN BY THIS ARTICLE, FAILS TO PRESENT AND MAKE THESE RECORDS AVAIL-  
45 ABLE AND ACCESSIBLE TO THE COMMISSIONER IN ELECTRONIC FORMAT, IS SUBJECT  
46 TO A PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS FOR EACH PERIOD OR PART  
47 THEREOF FOR WHICH THESE ELECTRONIC RECORDS ARE NOT PRESENTED AND MADE  
48 AVAILABLE AND ACCESSIBLE UPON REQUEST, NOTWITHSTANDING THAT THE RECORDS  
49 MAY ALSO BE MAINTAINED AND AVAILABLE IN HARD COPY FORMAT. THIS PENALTY  
50 IS IN ADDITION TO ANY OTHER PENALTY PROVIDED FOR IN THIS ARTICLE, BUT  
51 MAY NOT BE IMPOSED AND COLLECTED MORE THAN ONCE FOR A FAILURE FOR THE  
52 SAME PERIOD OR PART THEREOF. PROVIDED, HOWEVER, NOTHING IN THIS SUBDI-  
53 VISION WILL PREVENT THE SEPARATE IMPOSITION, IF APPLICABLE, OF ANY  
54 PENALTY IMPOSED BY THIS SECTION FOR THE SAME PERIOD OR PART THEREOF. IF  
55 THE COMMISSIONER DETERMINES THAT THE FAILURE TO PRESENT AND MAKE ELEC-  
56 TRONICALLY MAINTAINED RECORDS AVAILABLE AND ACCESSIBLE FOR A PERIOD WAS

1 ENTIRELY DUE TO REASONABLE CAUSE AND NOT TO WILLFUL NEGLECT, THE COMMIS-  
2 SIONER MUST REMIT THE PENALTY IMPOSED FOR THAT PERIOD. THESE PENALTIES  
3 WILL BE PAID AND DISPOSED OF IN THE SAME MANNER AS OTHER REVENUES FROM  
4 THIS ARTICLE. THESE PENALTIES WILL BE DETERMINED, ASSESSED, COLLECTED,  
5 PAID AND ENFORCED IN THE SAME MANNER AS THE TAX IMPOSED BY THIS ARTICLE,  
6 AND ALL THE PROVISIONS OF THIS ARTICLE RELATING TO TAX WILL BE DEEMED  
7 ALSO TO APPLY TO THE PENALTY IMPOSED BY THIS SUBDIVISION. FOR PURPOSES  
8 OF THE PENALTY IMPOSED BY THIS SUBDIVISION, A FAILURE TO PRESENT AND  
9 MAKE AVAILABLE AND ACCESSIBLE A RECORD MAINTAINED IN ELECTRONIC FORMAT  
10 INCLUDES NOT ONLY THE DENIAL OF ACCESS TO THE REQUESTED RECORDS THAT  
11 WERE MAINTAINED ELECTRONICALLY, BUT ALSO THE FAILURE TO MAKE AVAILABLE  
12 TO THE COMMISSIONER THE INFORMATION, KNOWLEDGE, OR MEANS NECESSARY TO  
13 ACCESS AND OTHERWISE USE THE ELECTRONICALLY MAINTAINED RECORDS IN THE  
14 INSPECTION AND EXAMINATION OF THESE RECORDS.

15 S 39. Subdivision (h) of section 1111 of the tax law, as amended by  
16 section 1 of part Q-3 of chapter 62 of the laws of 2003, is amended to  
17 read as follows:

18 (h) Receipts subject to tax under subdivision (a) of section eleven  
19 hundred five on retail sales of cigarettes, CIGARS and tobacco products  
20 and consideration given or contracted to be given for cigarettes, CIGARS  
21 and tobacco products the uses of which are subject to tax under section  
22 eleven hundred ten shall be deemed to include any tax imposed on ciga-  
23 rettes, CIGARS and tobacco products by article twenty of this chapter  
24 and any tax imposed on cigarettes AND CIGARS by chapter thirteen of  
25 title eleven of the administrative code of the city of New York.

26 S 40. Subdivision (e) of section 1814 of the tax law, as amended by  
27 section 28 of subpart I of part V-1 of chapter 57 of the laws of 2009,  
28 is amended to read as follows:

29 (e) Nothing in this section shall apply to common or contract carriers  
30 or warehousemen while engaged in lawfully transporting or storing  
31 unstamped packages of cigarettes as merchandise, or lawfully transport-  
32 ing or storing CIGARS OR tobacco products, nor to any employee of such  
33 carrier or warehouseman acting within the scope of his OR HER employ-  
34 ment, nor to public officers or employees in the performance of their  
35 official duties requiring possession or control of unstamped or unlaw-  
36 fully stamped packages of cigarettes or possession or control of CIGARS  
37 OR tobacco products, nor to temporary incidental possession by employees  
38 or agents of persons lawfully entitled to possession, nor to persons  
39 whose possession is for the purpose of aiding police officers in  
40 performing their duties.

41 S 41. Paragraphs 3 and 4 of subdivision (h) of section 1814 of the tax  
42 law, as amended by section 28 of subpart I of part V-1 of chapter 57 of  
43 the laws of 2009, are amended to read as follows:

44 (3) Any person, other than a distributor appointed by the commissioner  
45 under article twenty of this chapter, who shall knowingly transport or  
46 have in his OR HER custody, possession or under his OR HER control twen-  
47 ty-five hundred or more cigars or fifty or more pounds of tobacco upon  
48 which the taxes imposed by article twenty of this chapter have not been  
49 assumed or paid by a distributor appointed by the commissioner under  
50 article twenty of this chapter, or other person treated as a distributor  
51 pursuant to section four hundred seventy-one-d of this chapter shall be  
52 guilty of a misdemeanor. Provided further, that any person who has twice  
53 been convicted under this subdivision shall be guilty of a class E felo-  
54 ny for any subsequent violation of this section, regardless of the  
55 amount of CIGARS OR tobacco products involved in such violation.

(4) For purposes of this subdivision, such person shall knowingly transport or have in his OR HER custody, possession or under his OR HER control tobacco PRODUCTS or cigars on which such taxes have not been assumed or paid by a distributor appointed by the commissioner where such person has knowledge of the requirement of the tax on CIGARS AND tobacco products and, where to his OR HER knowledge, such taxes have not been assumed or paid on such CIGARS OR tobacco products by a distributor appointed by the commissioner [of taxation and finance].

S 42. Section 1814-a of the tax law, as added by chapter 61 of the laws of 1989, is amended to read as follows:

S 1814-a. Person not appointed as a [tobacco products] distributor OF CIGARS OR TOBACCO PRODUCTS. (a) Any person who, while not appointed as a distributor of CIGARS OR tobacco products pursuant to the provisions of article twenty of this chapter, imports or causes to be imported into the state more than fifty cigars or more than one pound of tobacco, for sale within the state, or produces, manufactures or compounds CIGARS OR tobacco products within the state shall be guilty of a misdemeanor punishable by a fine of not more than five thousand dollars or by a term of imprisonment not to exceed thirty days. If, within any ninety day period, one thousand or more cigars or five hundred pounds or more of tobacco are imported or caused to be imported into the state for sale within the state or are produced, manufactured or compounded within the state by any person while not appointed as a distributor of CIGARS OR tobacco products, such person shall be guilty of a misdemeanor. Provided further, that any person who has twice been convicted under this section shall be guilty of a class E felony for any subsequent violation of this section, regardless of the amount of CIGARS OR tobacco products involved in such violation.

(b) For purposes of this section, the possession or transportation within this state by any person, other than a CIGAR OR tobacco products distributor appointed by the commissioner [of taxation and finance], at any one time of seven hundred fifty or more cigars or fifteen pounds or more of tobacco shall be presumptive evidence that such tobacco products are possessed or transported for the purpose of sale and are subject to the tax imposed by section four hundred seventy-one-b, SECTION FOUR HUNDRED SEVENTY-ONE-F OR SECTION FOUR HUNDRED SEVENTY-ONE-H of this chapter. With respect to such possession or transportation, any provisions of article twenty of this chapter providing for a time period during which the tax imposed by such article may be paid shall not apply.

S 43. The section heading, subdivisions (a), (b) and (c) of section 1846-a of the tax law, as amended by chapter 556 of the laws of 2011, are amended to read as follows:

Forfeiture action with respect to CIGARS AND tobacco products. (a) Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four of section 2.10 of such law, acting pursuant to his OR HER special duties, shall discover any tobacco products in excess of five hundred cigars or ten pounds of tobacco which are being imported for sale in the state where the person importing or causing such CIGARS AND tobacco products to be imported has not been appointed as a distributor pursuant to section four hundred seventy-two of this chapter, such police officer or peace officer is hereby authorized and empowered forthwith to seize and take possession of such CIGARS AND tobacco products. Such CIGARS AND tobacco products seized by a police officer or peace officer shall be turned over to the commissioner. Such seized CIGARS AND tobacco products

1 shall be forfeited to the state. All CIGARS AND tobacco products  
2 forfeited to the state shall be destroyed or used for law enforcement  
3 purposes, except that CIGARS OR tobacco products that violate, or are  
4 suspected of violating, federal trademark laws or import laws shall not  
5 be used for law enforcement purposes. If the commissioner determines the  
6 CIGARS OR tobacco products may not be used for law enforcement purposes,  
7 the commissioner must, within a reasonable time thereafter, upon publi-  
8 cation in the state registry of a notice to such effect before the day  
9 of destruction, destroy such forfeited CIGARS OR tobacco products. The  
10 commissioner may, prior to any destruction of CIGARS OR tobacco  
11 products, permit the true holder of the trademark rights in the CIGARS  
12 OR tobacco products to inspect such forfeited products in order to  
13 assist in any investigation regarding such CIGARS OR tobacco products.

14 (b) In the alternative, the commissioner, on reasonable notice by mail  
15 or otherwise, may permit the person from whom said CIGARS OR tobacco  
16 products were seized to redeem the said CIGARS OR tobacco products by  
17 the payment of the tax due, plus a penalty of fifty per centum thereof,  
18 plus interest on the amount of tax due for each month or fraction there-  
19 of after such tax became due (determined without regard to any extension  
20 of time for filing or paying) at the rate applicable under subparagraph  
21 (ii) of paragraph (a) of subdivision one of section four hundred eight-  
22 y-one of this chapter and the costs incurred in such proceeding, which  
23 total payment shall not be less than five dollars; provided, however,  
24 that such seizure and sale or redemption shall not be deemed to relieve  
25 any person from fine or imprisonment provided for in this article for  
26 violation of any provision of article twenty of this chapter.

27 (c) In the alternative, the commissioner may dispose of any CIGARS OR  
28 tobacco products seized pursuant to this section, except those that  
29 violate, or are suspected of violating, federal trademark or import  
30 laws, by transferring them to the department of corrections and communi-  
31 ty supervision for sale to or use by inmates in such institutions.

32 S 44. The section heading of section 1847 of the tax law, as amended  
33 by chapter 61 of the laws of 1989, is amended to read as follows:

34 Seizure and forfeiture of vehicles or other means of transportation  
35 used to transport or for deposit or concealment of cigarettes or used to  
36 import CIGARS OR tobacco products.

37 S 45. Subdivision (b) of section 1847 of the tax law, as added by  
38 chapter 61 of the laws of 1989, is amended to read as follows:

39 (b) Any peace officer designated in subdivision four of section 2.10  
40 of the criminal procedure law, acting pursuant to his OR HER special  
41 duties, or any police officer designated in section 1.20 of the criminal  
42 procedure law may seize any vehicle or other means of transportation  
43 used to import CIGARS OR tobacco products in excess of five hundred  
44 cigars or ten pounds of tobacco for sale where the person importing or  
45 causing such CIGARS OR tobacco products to be imported has not been  
46 appointed a distributor pursuant to section four hundred seventy-two of  
47 this chapter, other than a vehicle or other means of transportation used  
48 by any person as a common carrier in transaction of business as such  
49 common carrier, and such vehicle or other means of transportation shall  
50 be subject to forfeiture as hereinafter in this section provided.

51 S 46. This act shall take effect July 1, 2012; provided, however, that  
52 section eleven of this act shall take effect immediately.

Section 1. Section 19 of part W-1 of chapter 109 of the laws of 2006, amending the tax law relating to providing exemptions, reimbursements and credits from various taxes for certain alternative fuels, as amended by section 2 of part L of chapter 61 of the laws of 2011, is amended to read as follows:

S 19. This act shall take effect immediately; provided, however, that sections one through thirteen of this act shall take effect September 1, 2006 and shall be deemed repealed on September 1, [2012] 2017 and such repeal shall apply in accordance with the applicable transitional provisions of sections 1106 and 1217 of the tax law, and shall apply to sales made, fuel compounded or manufactured, and uses occurring on or after such date, and with respect to sections seven through eleven of this act, in accordance with applicable transitional provisions of sections 1106 and 1217 of the tax law; provided, however, that the commissioner of taxation and finance shall be authorized on and after the date this act shall have become a law to adopt and amend any rules or regulations and to take any steps necessary to implement the provisions of this act; provided further that sections fourteen through sixteen of this act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2006.

S 2. This act shall take effect immediately.

## PART E

Section 1. Subdivision 14 of section 282 of the tax law, as amended by section 1 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

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

S 2. Paragraph (b) of subdivision 3 of section 282-a of the tax law, as amended by section 5 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(b) The tax on the incidence of sale or use imposed by subdivision one of this section shall not apply to: (i) the sale or use of non-highway Diesel motor fuel, but only if all of such fuel is consumed other than on the public highways of this state (except for the use of the public highway by farmers to reach adjacent farmlands); provided, however, this exemption shall in no event apply to a sale of non-highway Diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle (except for delivery at a farm site which qualifies for the exemption under subdivision (g) of section three hundred one-b of this chapter); or (ii) a sale to the consumer consisting of not more than twenty gallons of water-white kerosene to be used and consumed exclusively for heating purposes; or (iii) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for heating purposes in containers of no more than twenty gallons; or (iv) a sale of kero-jet fuel to an airline for use in its airplanes or a use of kero-jet fuel by an airline in its airplanes; or (v) a sale of kero-jet fuel by a registered distributor of Diesel motor fuel to a fixed base opera-

1 tor registered under this article as a distributor of kero-jet fuel only  
2 where such fixed base operator is engaged solely in making or offering  
3 to make retail sales not in bulk of kero-jet fuel directly into the fuel  
4 tank of an airplane for the purpose of operating such airplane; [or]  
5 (vi) a retail sale not in bulk of kero-jet fuel by a fixed base operator  
6 registered under this article as a distributor of kero-jet fuel only  
7 where such fuel is delivered directly into the fuel tank of an airplane  
8 for use in the operation of such airplane; OR (VII) THE SALE OF PREVI-  
9 OUSLY UNTAXED QUALIFIED BIODIESEL TO A PERSON REGISTERED UNDER THIS  
10 ARTICLE AS A DISTRIBUTOR OF DIESEL MOTOR FUEL OTHER THAN (A) A RETAIL  
11 SALE TO SUCH PERSON OR (B) A SALE TO SUCH PERSON WHICH INVOLVES A DELIV-  
12 ERY AT A FILLING STATION OR INTO A REPOSITORY WHICH IS EQUIPPED WITH A  
13 HOSE OR OTHER APPARATUS BY WHICH SUCH QUALIFIED BIODIESEL CAN BE  
14 DISPENSED INTO THE FUEL TANK OF A MOTOR VEHICLE.

15 S 3. Paragraph 5 of subdivision (a) of section 301-b of the tax law,  
16 as added by chapter 190 of the laws of 1990, is amended to read as  
17 follows:

18 (5) [Crude oil and liquefied] LIQUIFIED petroleum gases, such as  
19 butane, ethane or propane.

20 S 4. Subdivision (e) of section 301-b of the tax law, as amended by  
21 section 21 of part K of chapter 61 of the laws of 2011, is amended to  
22 read as follows:

23 (e) Sales of QUALIFIED BIODIESEL, non-highway diesel motor fuel and  
24 residual petroleum product to registered distributors of diesel motor  
25 fuel and registered residual petroleum product businesses.

26 (1) [Non-highway] QUALIFIED BIODIESEL AND NON-HIGHWAY Diesel motor  
27 fuel sold by a person registered under article twelve-A of this chapter  
28 as a distributor of diesel motor fuel to a person registered under such  
29 article twelve-A as a distributor of diesel motor fuel where such sale  
30 is not a retail sale or a sale that involves a delivery at a filling  
31 station or into a repository equipped with a hose or other apparatus by  
32 which such QUALIFIED BIODIESEL OR non-highway Diesel motor fuel can be  
33 dispensed into the fuel tank of a motor vehicle.

34 (2) Residual petroleum product sold by a person registered under this  
35 article as a residual petroleum product business to a person registered  
36 under this article as a residual petroleum product business where such  
37 sale is not a retail sale. Provided, however, that the commissioner may  
38 require such documentary proof to qualify for any exemption provided in  
39 this section as the commissioner deems appropriate, including the expan-  
40 sion of any certifications required pursuant to section two hundred  
41 eighty-five-a or two hundred eighty-five-b of this chapter to cover the  
42 taxes imposed by this article.

43 (3) "QUALIFIED BIODIESEL" MEANS SUCH TERM AS DEFINED IN SUBDIVISION  
44 TWENTY-THREE OF SECTION TWO HUNDRED EIGHTY-TWO OF THIS CHAPTER.

45 S 5. Paragraph 2 of subdivision (a) of section 1102 of the tax law, as  
46 amended by section 39 of part K of chapter 61 of the laws of 2011, is  
47 amended to read as follows:

48 (2) Every distributor of diesel motor fuel shall pay, as a prepayment  
49 on account of the taxes imposed by this article and pursuant to the  
50 authority of article twenty-nine of this chapter, a tax upon the sale or  
51 use of diesel motor fuel in this state. The tax shall be computed based  
52 upon the number of gallons of diesel motor fuel sold or used. Provided,  
53 however, if the tax has not been imposed prior thereto, it shall be  
54 imposed on the delivery of diesel motor fuel to a retail service  
55 station. The collection of such tax shall not be made applicable to the  
56 sale or use of diesel motor fuel under circumstances which preclude the

1 collection of such tax by reason of the United States constitution and  
2 of laws of the United States enacted pursuant thereto. The prepaid tax  
3 on diesel motor fuel shall not apply to (i) the sale of previously  
4 untaxed non-highway Diesel motor fuel to a person registered as a  
5 distributor of Diesel motor fuel other than a sale to such person which  
6 involves a delivery at a filling station or into a repository which is  
7 equipped with a hose or other apparatus by which such fuel can be  
8 dispensed into the fuel tank of a motor vehicle, [or] (ii) the sale to  
9 or delivery at a filling station or other retail vendor of water-white  
10 kerosene provided such filling station or other retail vendor only sells  
11 such water-white kerosene exclusively for heating purposes in containers  
12 of no more than twenty gallons or to the sale of CNG or hydrogen; OR  
13 (III) THE SALE OF PREVIOUSLY UNTAXED QUALIFIED BIODIESEL TO A PERSON  
14 REGISTERED UNDER ARTICLE TWELVE-A OF THIS CHAPTER AS A DISTRIBUTOR OF  
15 DIESEL MOTOR FUEL OTHER THAN (A) A RETAIL SALE TO SUCH PERSON OR (B) A  
16 SALE TO SUCH PERSON WHICH INVOLVES A DELIVERY AT A FILLING STATION OR  
17 INTO A REPOSITORY WHICH IS EQUIPPED WITH A HOSE OR OTHER APPARATUS BY  
18 WHICH SUCH QUALIFIED BIODIESEL CAN BE DISPENSED INTO THE FUEL TANK OF A  
19 MOTOR VEHICLE. "QUALIFIED BIODIESEL" MEANS SUCH TERM AS DEFINED IN  
20 SUBDIVISION TWENTY-THREE OF SECTION TWO HUNDRED EIGHTY-TWO OF THIS CHAP-  
21 TER.

22 S 6. Paragraph 2 of subdivision (a) of section 1102 of the tax law, as  
23 amended by section 39-a of part K of chapter 61 of the laws of 2011, is  
24 amended to read as follows:

25 (2) Every distributor of diesel motor fuel shall pay, as a prepayment  
26 on account of the taxes imposed by this article and pursuant to the  
27 authority of article twenty-nine of this chapter, a tax upon the sale or  
28 use of diesel motor fuel in this state. The tax shall be computed based  
29 upon the number of gallons of diesel motor fuel sold or used. Provided,  
30 however, if the tax has not been imposed prior thereto, it shall be  
31 imposed on the delivery of diesel motor fuel to a retail service  
32 station. The collection of such tax shall not be made applicable to the  
33 sale or use of diesel motor fuel under circumstances which preclude the  
34 collection of such tax by reason of the United States constitution and  
35 of laws of the United States enacted pursuant thereto. The prepaid tax  
36 on diesel motor fuel shall not apply to (i) the sale of [previously  
37 untaxed] non-highway Diesel motor fuel to a person registered as a  
38 distributor of Diesel motor fuel other than a sale to such person which  
39 involves a delivery at a filling station or into a repository which is  
40 equipped with a hose or other apparatus by which such fuel can be  
41 dispensed into the fuel tank of a motor vehicle, [or] (ii) the sale to  
42 or delivery at a filling station or other retail vendor of water-white  
43 kerosene provided such filling station or other retail vendor only sells  
44 such water-white kerosene exclusively for heating purposes in containers  
45 of no more than twenty gallons; OR (III) THE SALE OF PREVIOUSLY UNTAXED  
46 QUALIFIED BIODIESEL TO A PERSON REGISTERED UNDER ARTICLE TWELVE-A OF  
47 THIS CHAPTER AS A DISTRIBUTOR OF DIESEL MOTOR FUEL OTHER THAN (A) A  
48 RETAIL SALE TO SUCH PERSON OR (B) A SALE TO SUCH PERSON WHICH INVOLVES A  
49 DELIVERY AT A FILLING STATION OR INTO A REPOSITORY WHICH IS EQUIPPED  
50 WITH A HOSE OR OTHER APPARATUS BY WHICH SUCH QUALIFIED BIODIESEL CAN BE  
51 DISPENSED INTO THE FUEL TANK OF A MOTOR VEHICLE. "QUALIFIED BIODIESEL"  
52 MEANS SUCH TERM AS DEFINED IN SUBDIVISION TWENTY-THREE OF SECTION TWO  
53 HUNDRED EIGHTY-TWO OF THIS CHAPTER.

54 S 7. This act shall take effect June 1, 2012; provided, however, that  
55 the amendments to paragraph 2 of subdivision (a) of section 1102 of the  
56 tax law made by section five of this act shall be subject to the expira-



tion and reversion of such paragraph pursuant to section 19 of part W1 of chapter 109 of the laws of 2006, as amended, when upon such date the provisions of section six of this act shall take effect; provided, further, that sections five and six of this act shall apply to sales made and uses occurring on and after such effective date in accordance with the applicable transitional provisions in sections 1106 and 1217 of the tax law.

PART F

Section 1. Subparagraph (B) of paragraph 4 of subdivision (a) of section 1134 of the tax law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

(B) Where a person files a certificate of registration for a certificate of authority under this subdivision and in considering such application the commissioner ascertains that (i) any tax imposed under this chapter or any related statute, as defined in section eighteen hundred of this chapter, has been finally determined to be due from such person and has not been paid in full, (ii) [a] ANY tax [due under this article or any law, ordinance or resolution enacted pursuant to the authority of article twenty-nine] IMPOSED UNDER THIS CHAPTER OR ANY RELATED STATUTE, AS DEFINED IN SECTION EIGHTEEN HUNDRED of this chapter, has been finally determined to be due from an officer, director, partner or employee of such person, and, where such person is a limited liability company, also a member or manager of such person, in the officer's, director's, partner's, member's, manager's or employee's capacity as a person required to collect tax on behalf of such person or another person and has not been paid, (iii) such person has been convicted of a crime provided for in this chapter within one year from the date on which such certificate of registration is filed, (iv) an officer, director, partner or employee of such person, and, where such person is a limited liability company, also a member or manager of such person, which officer, director, partner, member, manager or employee is a person required to collect tax on behalf of such person filing a certificate of registration has in the officer's, director's, partner's, member's, manager's or employee's capacity as a person required to collect tax on behalf of such person or of another person been convicted of a crime provided for in this chapter within one year from the date on which such certificate of registration is filed, (v) a shareholder owning more than fifty percent of the number of shares of stock of such person (where such person is a corporation) entitling the holder thereof to vote for the election of directors or trustees, who owned more than fifty percent of the number of such shares of another person (where such other person is a corporation) at the time any tax imposed under this chapter or any related statute as defined in section eighteen hundred of this chapter was finally determined to be due and where such tax has not been paid in full, or at the time such other person was convicted of a crime provided for in this chapter within one year from the date on which such certificate of registration is filed, or (vi) a certificate of authority issued to such person has been revoked or suspended pursuant to subparagraph (A) of this paragraph within one year from the date on which such certificate of registration is filed, the commissioner may refuse to issue a certificate of authority.

S 2. Subdivision (g) of section 1146 of the tax law, as added by chapter 577 of the laws of 1997, is amended to read as follows:

1 (g) (1) Notwithstanding the provisions of subdivision (a) of this  
2 section, if the commissioner determines that a person required to  
3 collect tax is liable for any tax, penalty or interest under this arti-  
4 cle or is liable for a penalty under subdivision (e) of section eleven  
5 hundred forty-five of this article with respect to any failure, upon  
6 request in writing of such person, the commissioner shall disclose in  
7 writing to such person [(1)] (I) the name of any other person required  
8 to collect tax or any other person liable for such penalty under such  
9 subdivision (e) whom the commissioner has determined to be liable for  
10 the same tax, penalty or interest or for such penalty with respect to  
11 such failure, and [(2)] (II) whether the commissioner has attempted to  
12 collect such tax, penalty or interest or such penalty from such other  
13 person, the general nature of such collection activities, and the amount  
14 collected.

15 (2) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY, FOR  
16 THE PURPOSES OF SUBPARAGRAPH (B) OF PARAGRAPH FOUR OF SUBDIVISION (A) OF  
17 SECTION ELEVEN HUNDRED THIRTY-FOUR OF THIS PART, IF THE COMMISSIONER  
18 DETERMINES THAT ANY TAX IMPOSED UNDER THIS CHAPTER OR ANY RELATED STAT-  
19 UTE, AS DEFINED IN SECTION EIGHTEEN HUNDRED OF THIS CHAPTER, HAS BEEN  
20 FINALLY DETERMINED TO BE DUE FROM A PERSON REQUIRED TO COLLECT TAX AND  
21 HAS NOT BEEN PAID, UPON WRITTEN REQUEST OF THE PERSON WHO FILED THE  
22 CERTIFICATE OF REGISTRATION FOR A CERTIFICATE OF AUTHORITY THAT WAS  
23 REFUSED, THE COMMISSIONER MAY DISCLOSE TO SUCH PERSON THE NAME AND  
24 AMOUNT OF TAX DUE OF THE PERSON OR PERSONS REQUIRED TO COLLECT TAX WHOSE  
25 TAX LIABILITY OR LIABILITIES WERE GROUNDS FOR THE REFUSAL TO ISSUE THE  
26 CERTIFICATE OF AUTHORITY.

27 S 3. This act shall take effect immediately.

28 PART G

29 Section 1. Paragraph 10 of subsection (g) of section 658 of the tax  
30 law is REPEALED.

31 S 2. Paragraph 10 of subdivision (g) of section 11-1758 of the admin-  
32 istrative code of the city of New York is REPEALED.

33 S 3. Paragraph 5 of subsection (u) of section 685 of the tax law is  
34 REPEALED.

35 S 4. Paragraph 5 of subdivision (t) of section 11-1785 of the adminis-  
36 trative code of the city of New York is REPEALED.

37 S 5. Section 23 of part U of chapter 61 of the laws of 2011, amending  
38 the real property tax law, the general municipal law, the public offi-  
39 cers law, the tax law, the abandoned property law, the state finance law  
40 and the administrative code of the city of New York, relating to estab-  
41 lishing standards for electronic real property tax administration,  
42 allowing the department of taxation and finance to use electronic commu-  
43 nication means to furnish tax notices and other documents, mandatory  
44 electronic filing of tax documents, debit cards issued for tax refunds,  
45 improving sales tax compliance and repealing certain provisions of the  
46 tax law and the administrative code of the city of New York relating  
47 thereto, is amended to read as follows:

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

49 (a) the amendments to section 29 of the tax law made by section thir-  
50 teen of this act shall apply to tax documents filed or required to be  
51 filed on or after the sixtieth day after which this act shall have  
52 become a law [and shall expire and be deemed repealed December 31,  
53 2012], provided however that the amendments to paragraph 4 of subdivi-  
54 sion (a) of section 29 of the tax law and paragraph 2 of subdivision (e)

1 of section 29 of the tax law made by section thirteen of this act with  
2 regard to individual taxpayers shall take effect September 15, 2011 but  
3 only if the commissioner of taxation and finance has reported in the  
4 report required by section seventeen-b of this act that the percentage  
5 of individual taxpayers electronically filing their 2010 income tax  
6 returns is less than eighty-five percent; provided that the commissioner  
7 of taxation and finance shall notify the legislative bill drafting  
8 commission of the date of the issuance of such report in order that the  
9 commission may maintain an accurate and timely effective data base of  
10 the official text of the laws of the state of New York in furtherance of  
11 effectuating the provisions of section 44 of the legislative law and  
12 section 70-b of the public officers law;

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

19 (c) sections fourteen-a and fifteen-a of this act shall take effect  
20 September 15, 2011 and expire and be deemed repealed December 31, 2012  
21 but shall take effect only if the commissioner of taxation and finance  
22 has reported in the report required by section seventeen-b of this act  
23 that the percentage of individual taxpayers electronically filing their  
24 2010 income tax returns is eighty-five percent or greater; AND

25 (d) sections fourteen-b, fifteen-b, sixteen-a and seventeen-a of this  
26 act shall take effect January 1, 2013 but only if the commissioner of  
27 taxation and finance has reported in the report required by section  
28 seventeen-b of this act that the percentage of individual taxpayers  
29 electronically filing their 2010 income tax returns is less than eight-  
30 y-five percent[; and

31 (e) sections twenty-one and twenty-one-a of this act shall expire and  
32 be deemed repealed December 31, 2012].

33 S 6. Paragraph 2 of subsection (b) of section 29 of the tax law as  
34 added by section 13 of part U of chapter 61 of the laws of 2011, is  
35 amended to read as follows:

36 (2) If a tax return preparer prepared more than five original tax  
37 documents during any calendar year beginning on or after January first,  
38 two thousand eleven, and if in any succeeding calendar year that tax  
39 return preparer prepares one or more authorized [returns] TAX DOCUMENTS  
40 using tax software, then, for such succeeding calendar year and for each  
41 subsequent calendar year thereafter, all authorized tax documents  
42 prepared by that tax return preparer must be filed electronically, in  
43 accordance with instructions prescribed by the commissioner.

44 S 7. This act shall take effect immediately, provided, however, that  
45 the amendments to paragraph 2 of subsection (b) of section 29 of the tax  
46 law made by section six of this act shall be deemed to have been in full  
47 force and effect on the same date and in the same manner as section 13  
48 of part U of chapter 61 of the laws of 2011, as amended, took effect.

49

## PART H

50 Section 1. Paragraphs 2 and 3 of subsection (g-1) of section 606 of  
51 the tax law, paragraph 2 as amended by chapter 378 of the laws of 2005,  
52 subparagraph (B) of paragraph 2 as amended by chapter 251 of the laws of  
53 2006 and paragraph 3 as amended by chapter 128 of the laws of 2007, are  
54 amended to read as follows:

1 (2) Qualified solar energy system equipment expenditures. (A) The term  
2 "qualified solar energy system equipment expenditures" means expendi-  
3 tures for:

4 (I) the purchase of solar energy system equipment which is installed  
5 in connection with residential property which is [(i)] (I) located in  
6 this state and [(ii) which is] (II) used by the taxpayer as his or her  
7 principal residence at the time the solar energy system equipment is  
8 placed in service;

9 (II) THE LEASE OF SOLAR ENERGY SYSTEM EQUIPMENT UNDER A WRITTEN AGREE-  
10 MENT THAT SPANS AT LEAST TEN YEARS WHERE SUCH EQUIPMENT OWNED BY A  
11 PERSON OTHER THAN THE TAXPAYER IS INSTALLED IN CONNECTION WITH RESIDEN-  
12 TIAL PROPERTY WHICH IS: (I) LOCATED IN THIS STATE; AND (II) USED BY THE  
13 TAXPAYER AS HIS OR HER PRINCIPAL RESIDENCE AT THE TIME THE SOLAR ENERGY  
14 SYSTEM EQUIPMENT IS PLACED IN SERVICE; OR

15 (III) THE PURCHASE OF POWER UNDER A WRITTEN AGREEMENT THAT SPANS AT  
16 LEAST TEN YEARS WHERE THE POWER PURCHASED IS GENERATED BY SOLAR ENERGY  
17 SYSTEM EQUIPMENT OWNED BY A PERSON OTHER THAN THE TAXPAYER AND IS  
18 INSTALLED IN CONNECTION WITH RESIDENTIAL PROPERTY WHICH IS: (I) LOCATED  
19 IN THIS STATE; AND (II) USED BY THE TAXPAYER AS HIS OR HER PRINCIPAL  
20 RESIDENCE AT THE TIME THE SOLAR ENERGY SYSTEM IS PLACED IN SERVICE.

21 (B) Such qualified expenditures shall include expenditures for materi-  
22 als, labor costs properly allocable to on-site preparation, assembly and  
23 original installation, architectural and engineering services, and  
24 designs and plans directly related to the construction or installation  
25 of the solar energy system equipment.

26 (C) Such qualified expenditures shall not include interest or other  
27 finance charges.

28 (D) SUCH QUALIFIED SOLAR ENERGY SYSTEM EQUIPMENT EXPENDITURES  
29 DESCRIBED IN CLAUSE (II) OR (III) OF SUBPARAGRAPH (A) OF THIS PARAGRAPH  
30 SHALL INCLUDE AN AMOUNT EQUAL TO ALL PAYMENTS MADE DURING THE TAXABLE  
31 YEAR UNDER SUCH AGREEMENT.

32 (E) NOTWITHSTANDING PARAGRAPH ONE OF THIS SUBDIVISION, THE PERCENTAGE  
33 TO BE USED TO CALCULATE THE AMOUNT OF CREDIT ALLOWED FOR QUALIFIED SOLAR  
34 ENERGY SYSTEM EQUIPMENT EXPENDITURES DESCRIBED IN CLAUSES (II) AND (III)  
35 OF SUBPARAGRAPH (A) OF THIS PARAGRAPH SHALL BE EQUAL TO TWELVE AND ONE-  
36 HALF PERCENT.

37 (3) Solar energy system equipment. The term "solar energy system  
38 equipment" shall mean an arrangement or combination of components  
39 utilizing solar radiation, which, when installed in a residence, produc-  
40 es energy designed to provide heating, cooling, hot water or electricity  
41 for use in such residence. Such arrangement or components shall not  
42 include equipment connected to solar energy system equipment that is a  
43 component of part or parts of a non-solar energy system or which uses  
44 any sort of recreational facility or equipment as a storage medium.  
45 Solar energy system equipment that generates electricity for use in a  
46 residence must conform to applicable requirements set forth in section  
47 sixty-six-j of the public service law. Provided, however, where solar  
48 energy system equipment is purchased and installed by a condominium  
49 management association or a cooperative housing corporation, for  
50 purposes of this subsection only, the term ["ten kilowatts"]  
51 "TWENTY-FIVE KILOWATTS" in such section sixty-six-j shall be read as  
52 "fifty kilowatts."

53 S 2. Subdivision (ee) of section 1115 of the tax law, as added by  
54 chapter 306 of the laws of 2005, is amended to read as follows:

55 (ee) Receipts from the retail sale of [residential] solar energy  
56 systems equipment and of the service of installing such systems shall be

1 exempt from tax under this article. For the purposes of this subdivi-  
2 sion, "[residential] solar energy systems equipment" shall mean an  
3 arrangement or combination of components [installed in a residence] that  
4 utilizes solar radiation to produce energy designed to provide heating,  
5 cooling, hot water and/or electricity IN A BUILDING OR A STRUCTURE.  
6 Such arrangement or components shall not [include] EXCEED AN INSTALLED  
7 CAPACITY RATING OF TWO MEGAWATTS OR THE THERMAL EQUIVALENT THEREOF AND  
8 SHALL NOT INCLUDE equipment that is part of a non-solar energy system or  
9 [which uses any sort of recreational facility or equipment as a storage  
10 medium] SYSTEMS OR EQUIPMENT USED TO HEAT RESIDENTIAL SWIMMING POOLS.

11 S 3. Paragraph 1 of subdivision (a) of section 1210 of the tax law, as  
12 amended by section 3 of part GG of chapter 57 of the laws of 2010, is  
13 amended to read as follows:

14 (1) Either, all of the taxes described in article twenty-eight of this  
15 chapter, at the same uniform rate, as to which taxes all provisions of  
16 the local laws, ordinances or resolutions imposing such taxes shall be  
17 identical, except as to rate and except as otherwise provided, with the  
18 corresponding provisions in such article twenty-eight, including the  
19 definition and exemption provisions of such article, so far as the  
20 provisions of such article twenty-eight can be made applicable to the  
21 taxes imposed by such city or county and with such limitations and  
22 special provisions as are set forth in this article. The taxes author-  
23 ized under this subdivision may not be imposed by a city or county  
24 unless the local law, ordinance or resolution imposes such taxes so as  
25 to include all portions and all types of receipts, charges or rents,  
26 subject to state tax under sections eleven hundred five and eleven  
27 hundred ten of this chapter, except as otherwise provided. (i) Any local  
28 law, ordinance or resolution enacted by any city of less than one  
29 million or by any county or school district, imposing the taxes author-  
30 ized by this subdivision, shall, notwithstanding any provision of law to  
31 the contrary, exclude from the operation of such local taxes all sales  
32 of tangible personal property for use or consumption directly and  
33 predominantly in the production of tangible personal property, gas,  
34 electricity, refrigeration or steam, for sale, by manufacturing, proc-  
35 essing, generating, assembly, refining, mining or extracting; and all  
36 sales of tangible personal property for use or consumption predominantly  
37 either in the production of tangible personal property, for sale, by  
38 farming or in a commercial horse boarding operation, or in both; and,  
39 unless such city, county or school district elects otherwise, shall omit  
40 the provision for credit or refund contained in clause six of subdivi-  
41 sion (a) or subdivision (d) of section eleven hundred nineteen of this  
42 chapter. (ii) Any local law, ordinance or resolution enacted by any  
43 city, county or school district, imposing the taxes authorized by this  
44 subdivision, shall omit the [residential] solar energy systems equipment  
45 exemption provided for in subdivision (ee) and the clothing and footwear  
46 exemption provided for in paragraph thirty of subdivision (a) of section  
47 eleven hundred fifteen of this chapter, unless such city, county or  
48 school district elects otherwise as to either such [residential] solar  
49 energy systems equipment exemption or such clothing and footwear  
50 exemption.

51 S 4. Paragraph 1 of subdivision (n) of section 1210 of the tax law, as  
52 added by chapter 306 of the laws of 2005, is amended to read as follows:

53 (1) Any city having a population of one million or more in which the  
54 taxes imposed by section eleven hundred seven of this chapter are in  
55 effect, acting through its local legislative body, is hereby authorized  
56 and empowered to elect to provide the same exemptions from such taxes as

the [residential] solar energy systems equipment exemption from state sales and compensating use taxes described in subdivision (ee) of section eleven hundred fifteen of this chapter by enacting a resolution in the form set forth in paragraph two of this subdivision; whereupon, upon compliance with the provisions of subdivisions (d) and (e) of this section, such enactment of such resolution shall be deemed to be an amendment to such section eleven hundred seven and such section eleven hundred seven shall be deemed to incorporate such exemptions as if they had been duly enacted by the state legislature and approved by the governor.

S 5. This act shall take effect immediately, provided that:

(1) section one of this act shall apply to leases of solar energy system equipment and purchases of power under written agreements entered into on or after such effective date; provided further, however, that the amendments to paragraph 2 of subsection (g-1) of section 606 of the tax law made by section one of this act shall not apply to any taxable year commencing on or after January 1, 2015; and

(2) sections two, three and four of this act shall apply to sales made or uses occurring on or after September 1, 2012 in accordance with the applicable transitional provisions of sections 1106 and 1217 of the tax law.

## PART I

Section 1. Paragraph 1 of subdivision (a) of section 28 of the tax law, as amended by chapter 440 of the laws of 2006, is amended to read as follows:

(1) A taxpayer which is a qualified commercial production company, or which is a sole proprietor of a qualified commercial production company, and which is subject to tax under article nine-A or twenty-two of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision [(d)] (C) of this section, to be computed as provided in this section. Provided, however, to be eligible for such credit, at least seventy-five percent of the production costs (excluding post production costs) paid or incurred directly and predominantly in the actual filming or recording of the qualified commercial must be costs incurred in New York state. THE TAX CREDIT ALLOWED PURSUANT TO THIS SECTION SHALL APPLY TO TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND SEVENTEEN.

S 2. Paragraph (a) of subdivision 38 of section 210 of the tax law, as added by section 3 of part V of chapter 62 of the laws of 2006, is amended to read as follows:

(a) Allowance of credit. A taxpayer that is eligible pursuant to provisions of section twenty-eight of this chapter shall be allowed a credit to be computed as provided in such section against the tax imposed by this article. THE TAX CREDIT ALLOWED PURSUANT TO THIS SECTION SHALL APPLY TO TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND SEVENTEEN.

S 3. Paragraph 1 of subsection (jj) of section 606 of the tax law, as added by section 5 of part V of chapter 62 of the laws of 2006, is amended to read as follows:

(1) Allowance of credit. A taxpayer that is eligible pursuant to the provisions of section twenty-eight of this chapter shall be allowed a credit to be computed as provided in such section against the tax imposed by this article. THE TAX CREDIT ALLOWED PURSUANT TO THIS

SECTION SHALL APPLY TO TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND SEVENTEEN.

S 4. Section 10 of part V of chapter 62 of the laws of 2006, relating to the empire state commercial production tax credit, is amended to read as follows:

S 10. This act shall take effect immediately [and shall apply to taxable years beginning on and after January 1, 2007 and shall expire and be deemed repealed on December 31, 2011]; provided, however that the IMB credit for energy taxes under subsection (t-1) and the state film production credit under subsection (gg) of section 606 of the tax law contained in section four of this act shall expire on the same date as provided in subdivision (a) of section 49 of part Y of chapter 63 of the laws of 2000, as amended and section 9 of part P of chapter 60 of the laws of 2004, as amended, respectively.

S 5. This act shall take effect immediately.

#### PART J

Section 1. Subdivision 4 of section 22 of the public housing law, as amended by section 1 of part F of chapter 61 of the laws of 2011, is amended to read as follows:

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

S 2. Subdivision 4 of section 22 of the public housing law, as amended by section one of this act, is amended to read as follows:

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

S 3. Subdivision 4 of section 22 of the public housing law, as amended by section two of this act, is amended to read as follows:

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

S 4. Subdivision 4 of section 22 of the public housing law, as amended by section three of this act, is amended to read as follows:

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

1 S 5. Subdivision 4 of section 22 of the public housing law, as amended  
2 by section four of this act, is amended to read as follows:

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

10 S 6. This act shall take effect immediately; provided, however,  
11 section two of this act shall take effect April 1, 2013, section three  
12 of this act shall take effect April 1, 2014, section four of this act  
13 shall take effect April 1, 2015 and section five of this act shall take  
14 effect April 1, 2016.

15 PART K

16 Section 1. Subdivision (a) of section 28 of the tax law, as amended by  
17 section 1 of part A of chapter 57 of the laws of 2010, is amended to  
18 read as follows:

19 (a) General. A taxpayer subject to tax under article nine, nine-A or  
20 twenty-two of this chapter shall be allowed a credit against such tax  
21 pursuant to the provisions referenced in subdivision (d) of this  
22 section. The credit (or pro rata share of earned credit in the case of a  
23 partnership) for each gallon of biofuel produced at a biofuel plant on  
24 or after January first, two thousand six shall equal fifteen cents per  
25 gallon after the production of the first forty thousand gallons per year  
26 presented to market. The credit under this section shall be capped at  
27 two and one-half million dollars per taxpayer per taxable year for up to  
28 no more than four consecutive taxable years per biofuel plant. If the  
29 taxpayer is a partner in a partnership or shareholder of a New York S  
30 corporation, then the cap imposed by the preceding sentence shall be  
31 applied at the entity level, so that the aggregate credit allowed to all  
32 the partners or shareholders of each such entity in the taxable year  
33 does not exceed two and one-half million dollars. THE TAX CREDIT ALLOWED  
34 PURSUANT TO THIS SECTION SHALL APPLY TO TAXABLE YEARS BEGINNING BEFORE  
35 JANUARY FIRST, TWO THOUSAND TWENTY.

36 S 2. Section 187-c of the tax law, as added by section 2 of part X of  
37 chapter 62 of the laws of 2006, is amended to read as follows:

38 S 187-c. Biofuel production credit. A taxpayer shall be allowed a  
39 credit to be computed as provided in section twenty-eight of this chap-  
40 ter, AS ADDED BY PART X OF CHAPTER SIXTY-TWO OF THE LAWS OF TWO THOUSAND  
41 SIX, against the tax imposed by this article. Provided, however, that  
42 the amount of such credit allowed against the tax imposed by section one  
43 hundred eighty-four of this article shall be the excess of the amount of  
44 such credit over the amount of any credit allowed by this section  
45 against the tax imposed by section one hundred eighty-three of this  
46 article. In no event shall the credit under this section be allowed in  
47 an amount which will reduce the tax payable to less than the applicable  
48 minimum tax fixed by section one hundred eighty-three or one hundred  
49 eighty-five of this article. If, however, the amount of the credit  
50 allowed under this section for any taxable year reduces the tax to such  
51 amount, the excess shall be treated as an overpayment of tax to be cred-  
52 ited or refunded in accordance with the provisions of section six  
53 hundred eighty-six of this chapter. Provided, however, the provisions of  
54 subsection (c) of section one thousand eighty-eight of this chapter



1 notwithstanding, no interest shall be paid thereon. THE TAX CREDIT  
2 ALLOWED PURSUANT TO THIS SECTION SHALL APPLY TO TAXABLE YEARS BEGINNING  
3 BEFORE JANUARY FIRST, TWO THOUSAND TWENTY.

4 S 3. Subdivision 38 of section 210 of the tax law, as added by section  
5 3 of part X of chapter 62 of the laws of 2006, is amended to read as  
6 follows:

7 38. Biofuel production credit. A taxpayer shall be allowed a credit,  
8 to be computed as provided in section twenty-eight of this chapter, AS  
9 ADDED BY PART X OF CHAPTER SIXTY-TWO OF THE LAWS OF TWO THOUSAND SIX,  
10 against the tax imposed by this article. The credit allowed under this  
11 subdivision for any taxable year shall not reduce the tax due for such  
12 year to less than the higher of the amounts prescribed in paragraphs (c)  
13 and (d) of subdivision one of this section. However, if the amount of  
14 credit allowed under this subdivision for any taxable year reduces the  
15 tax to such amount, any amount of credit thus not deductible in such  
16 taxable year shall be treated as an overpayment of tax to be credited or  
17 refunded in accordance with the provisions of section one thousand  
18 eighty-six of this chapter. Provided, however, the provisions of  
19 subsection (c) of section one thousand eighty-eight of this chapter  
20 notwithstanding, no interest shall be paid thereon. THE TAX CREDIT  
21 ALLOWED PURSUANT TO THIS SECTION SHALL APPLY TO TAXABLE YEARS BEGINNING  
22 BEFORE JANUARY FIRST, TWO THOUSAND TWENTY.

23 S 4. Subsection (jj) of section 606 of the tax law, as added by  
24 section 5 of part X of chapter 62 of the laws of 2006, is amended to  
25 read as follows:

26 (jj) Biofuel production credit. A taxpayer shall be allowed a credit  
27 to be computed as provided in section twenty-eight of this chapter, AS  
28 ADDED BY PART X OF CHAPTER SIXTY-TWO OF THE LAWS OF TWO THOUSAND SIX,  
29 against the tax imposed by this article. If the amount of the credit  
30 allowed under this subsection for any taxable year shall exceed the  
31 taxpayer's tax for such year, the excess shall be treated as an overpay-  
32 ment of tax to be credited or refunded in accordance with the provisions  
33 of section six hundred eighty-six of this article, provided, however,  
34 that no interest shall be paid thereon. THE TAX CREDIT ALLOWED PURSUANT  
35 TO THIS SECTION SHALL APPLY TO TAXABLE YEARS BEGINNING BEFORE JANUARY  
36 FIRST, TWO THOUSAND TWENTY.

37 S 5. Section 6 of part X of chapter 62 of the laws of 2006, amending  
38 the tax law relating to providing tax credits for biofuel production  
39 plants, is amended to read as follows:

40 S 6. This act shall take effect immediately [and shall apply to taxa-  
41 ble years commencing on and after January 1, 2006 and before January 1,  
42 2013]; provided, however that the IMB credit for energy taxes under  
43 subsection (t-1) and the state film production credit under subsection  
44 (gg) of section 606 of the tax law contained in section four of this act  
45 shall expire on the same date as provided in subdivision (a) of section  
46 49 of part Y of chapter 63 of the laws of 2000, as amended and section 9  
47 of part P of chapter 60 of the laws of 2004, as amended, respectively.

48 S 6. This act shall take effect immediately.

49 PART L

50 Section 1. Section 2 of part I of chapter 58 of the laws of 2006,  
51 relating to providing an enhanced earned income tax credit, is amended  
52 to read as follows:

1 S 2. This act shall take effect immediately and shall apply to taxable  
2 years beginning on or after January 1, 2006 [and before January 1,  
3 2013].

4 S 2. This act shall take effect immediately.

5 PART M

6 Section 1. Section 5232 of the civil practice law and rules is amended  
7 by adding a new subdivision (i) to read as follows:

8 (I) NO BANKING INSTITUTION SHALL SETOFF AND APPLY A LEVY PROCESSING  
9 FEE AGAINST THE PROCEEDS OF A LEVY FOR TAXES IMPOSED BY OR PURSUANT TO  
10 THE AUTHORITY OF THE TAX LAW OR FOR CHILD SUPPORT REGARDLESS OF ANY  
11 TERMS OF AGREEMENT, OR SCHEDULE OF FEES, OR OTHER CONTRACT BETWEEN THE  
12 DEBTOR AND THE BANKING INSTITUTION.

13 S 2. Subdivision (d) of section 151 of the debtor and creditor law, as  
14 amended by chapter 553 of the laws of 1990, is amended to read as  
15 follows:

16 (d) the issuance of any execution against any of the property of a  
17 creditor, EXCEPT AS PROVIDED FOR IN SUBDIVISION (I) OF SECTION FIFTY-TWO  
18 HUNDRED THIRTY-TWO OF THE CIVIL PRACTICE LAW AND RULES;

19 S 3. This act shall take effect on the ninetieth day after it shall  
20 have become a law.

21 PART N

22 Section 1. Subsection (a) of section 801 of the tax law, as amended by  
23 section 2 of part B of chapter 56 of the laws of 2011, is amended to  
24 read as follows:

25 (a) For the sole purpose of providing an additional stable and reli-  
26 able dedicated funding source for the metropolitan transportation  
27 authority and its subsidiaries and affiliates to preserve, operate and  
28 improve essential transit and transportation services in the metropol-  
29 itan commuter transportation district, a tax is hereby imposed on  
30 EMPLOYERS AND INDIVIDUALS AS FOLLOWS: (1) FOR employers who engage in  
31 business within the MCTD [(1)], THE TAX IS IMPOSED at a rate of (A)  
32 eleven hundredths (.11) percent OF THE PAYROLL EXPENSE for employers  
33 with payroll expense no greater than three hundred seventy-five thousand  
34 dollars in any calendar quarter, (B) twenty-three hundredths (.23)  
35 percent OF THE PAYROLL EXPENSE for employers with payroll expense great-  
36 er than three hundred seventy-five thousand dollars and no greater than  
37 four hundred thirty-seven thousand five hundred dollars in any calendar  
38 quarter, and (C) thirty-four hundredths (.34) percent OF THE PAYROLL  
39 EXPENSE for employers with payroll expense in excess of four hundred  
40 thirty-seven thousand five hundred dollars in any calendar quarter[,  
41 and]. IF THE EMPLOYER IS A PROFESSIONAL EMPLOYER ORGANIZATION, AS  
42 DEFINED IN SECTION NINE HUNDRED SIXTEEN OF THE LABOR LAW, THE EMPLOYER'S  
43 TAX SHALL BE CALCULATED BY DETERMINING THE PAYROLL EXPENSE ATTRIBUTABLE  
44 TO EACH CLIENT WHO HAS ENTERED INTO A PROFESSIONAL EMPLOYER AGREEMENT  
45 WITH SUCH ORGANIZATION AND THE PAYROLL EXPENSE ATTRIBUTABLE TO SUCH  
46 ORGANIZATION ITSELF, MULTIPLYING EACH OF THOSE PAYROLL EXPENSE AMOUNTS  
47 BY THE APPLICABLE RATE SET FORTH IN THIS PARAGRAPH AND ADDING THOSE  
48 PRODUCTS TOGETHER. (2) FOR INDIVIDUALS, THE TAX IS IMPOSED at a rate of  
49 thirty-four hundredths (.34) percent of the net earnings from self-em-  
50 ployment of individuals that are attributable to the MCTD if such earn-  
51 ings attributable to the MCTD exceed fifty thousand dollars for the tax  
52 year.

1 S 2. Section 4 of part B of chapter 56 of the laws of 2011 amending  
2 the tax law relating to the tax rates and exclusions under the metropol-  
3 itan commuter transportation mobility tax is amended to read as follows:

4 S 4. This act shall take effect immediately AND SHALL APPLY TO TAXABLE  
5 YEARS BEGINNING ON OR AFTER JANUARY 1, 2012; provided however, that  
6 section one of this act and the amendments in section two of this act  
7 that concern employers shall take effect for the quarter beginning on  
8 April 1, 2012.

9 S 3. This act shall take effect immediately; provided however that the  
10 amendment in section one of this act concerning professional employer  
11 organizations shall take effect for the quarter beginning on April 1,  
12 2012.

13 PART O

14 Section 1. Paragraph (a) of subdivision 1 of section 1003 of the  
15 racing, pari-mutuel wagering and breeding law, as amended by section 1  
16 of part S of chapter 61 of the laws of 2011, is amended to read as  
17 follows:

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

1 authorizing an in-home simulcasting experiment commencing prior to May  
2 fifteenth, nineteen hundred ninety-five, may, and all its terms, be  
3 extended until June thirtieth, two thousand [twelve] THIRTEEN; provided,  
4 however, that any party to such agreement may elect to terminate such  
5 agreement upon conveying written notice to all other parties of such  
6 agreement at least forty-five days prior to the effective date of the  
7 termination, via registered mail. Any party to an agreement receiving  
8 such notice of an intent to terminate, may request the board to mediate  
9 between the parties new terms and conditions in a replacement agreement  
10 between the parties as will permit continuation of an in-home experiment  
11 until June thirtieth, two thousand [twelve] THIRTEEN; and (iv) no  
12 in-home simulcasting in the thoroughbred special betting district shall  
13 occur without the approval of the regional thoroughbred track.

14 S 2. Subparagraph (iii) of paragraph d of subdivision 3 of section  
15 1007 of the racing, pari-mutuel wagering and breeding law, as amended by  
16 section 2 of part S of chapter 61 of the laws of 2011, is amended to  
17 read as follows:

18 (iii) Of the sums retained by a receiving track located in Westchester  
19 county on races received from a franchised corporation, for the period  
20 commencing January first, two thousand eight and continuing through June  
21 thirtieth, two thousand [twelve] THIRTEEN, the amount used exclusively  
22 for purses to be awarded at races conducted by such receiving track  
23 shall be computed as follows: of the sums so retained, two and one-half  
24 percent of the total pools. Such amount shall be increased or decreased  
25 in the amount of fifty percent of the difference in total commissions  
26 determined by comparing the total commissions available after July twen-  
27 ty-first, nineteen hundred ninety-five to the total commissions that  
28 would have been available to such track prior to July twenty-first,  
29 nineteen hundred ninety-five.

30 S 3. The opening paragraph of subdivision 1 of section 1014 of the  
31 racing, pari-mutuel wagering and breeding law, as amended by section 3  
32 of part S of chapter 61 of the laws of 2011, is amended to read as  
33 follows:

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

52 S 4. Subdivision 1 of section 1015 of the racing, pari-mutuel wagering  
53 and breeding law, as amended by section 4 of part S of chapter 61 of the  
54 laws of 2011, is amended to read as follows:

55 1. The provisions of this section shall govern the simulcasting of  
56 races conducted at harness tracks located in another state or country

1 during the period July first, nineteen hundred ninety-four through June  
2 thirtieth, two thousand [twelve] THIRTEEN. This section shall supersede  
3 all inconsistent provisions of this chapter.

4 S 5. The opening paragraph of subdivision 1 of section 1016 of the  
5 racing, pari-mutuel wagering and breeding law, as amended by section 5  
6 of part S of chapter 61 of the laws of 2011, is amended to read as  
7 follows:

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

25 S 6. The opening paragraph of section 1018 of the racing, pari-mutuel  
26 wagering and breeding law, as amended by section 6 of part S of chapter  
27 61 of the laws of 2011, is amended to read as follows:

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

43 S 7. Section 32 of chapter 281 of the laws of 1994, amending the  
44 racing, pari-mutuel wagering and breeding law and other laws relating to  
45 simulcasting, as amended by section 7 of part S of chapter 61 of the  
46 laws of 2011, is amended to read as follows:

47 S 32. This act shall take effect immediately and the pari-mutuel tax  
48 reductions in section six of this act shall expire and be deemed  
49 repealed on July 1, [2012] 2013; provided, however, that nothing  
50 contained herein shall be deemed to affect the application, qualifica-  
51 tion, expiration, or repeal of any provision of law amended by any  
52 section of this act, and such provisions shall be applied or qualified  
53 or shall expire or be deemed repealed in the same manner, to the same  
54 extent and on the same date as the case may be as otherwise provided by  
55 law; provided further, however, that sections twenty-three and twenty-

1 five of this act shall remain in full force and effect only until May 1,  
2 1997 and at such time shall be deemed to be repealed.

3 S 8. Section 54 of chapter 346 of the laws of 1990, amending the  
4 racing, pari-mutuel wagering and breeding law and other laws relating to  
5 simulcasting and the imposition of certain taxes, as amended by section  
6 8 of part S of chapter 61 of the laws of 2011, is amended to read as  
7 follows:

8 S 54. This act shall take effect immediately; provided, however,  
9 sections three through twelve of this act shall take effect on January  
10 1, 1991, and section 1013 of the racing, pari-mutuel wagering and breed-  
11 ing law, as added by section thirty-eight of this act, shall expire and  
12 be deemed repealed on July 1, [2012] 2013; and section eighteen of this  
13 act shall take effect on July 1, 2008 and sections fifty-one and fifty-  
14 two of this act shall take effect as of the same date as chapter 772 of  
15 the laws of 1989 took effect.

16 S 9. Paragraph (a) of subdivision 1 of section 238 of the racing,  
17 pari-mutuel wagering and breeding law, as amended by section 9 of part S  
18 of chapter 61 of the laws of 2011, is amended to read as follows:

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

1 three per centum and such tax on multiple wagers shall be two and one-  
2 half per centum, plus twenty per centum of the breaks. For the period  
3 September tenth, nineteen hundred ninety-nine through March thirty-  
4 first, two thousand one, such tax on all wagers shall be two and six-  
5 tenths per centum and for the period April first, two thousand one  
6 through December thirty-first, two thousand [twelve] THIRTEEN, such tax  
7 on all wagers shall be one and six-tenths per centum, plus, in each such  
8 period, twenty per centum of the breaks. Payment to the New York state  
9 thoroughbred breeding and development fund by such franchised corpo-  
10 ration shall be one-half of one per centum of total daily on-track pari-  
11 mutuel pools resulting from regular, multiple and exotic bets and three  
12 per centum of super exotic bets provided, however, that for the period  
13 September tenth, nineteen hundred ninety-nine through March thirty-  
14 first, two thousand one, such payment shall be six-tenths of one per  
15 centum of regular, multiple and exotic pools and for the period April  
16 first, two thousand one through December thirty-first, two thousand  
17 [twelve] THIRTEEN, such payment shall be seven-tenths of one per centum  
18 of such pools.

19 S 10. Subdivision 5 of section 1012 of the racing, pari-mutuel wager-  
20 ing and breeding law, as amended by section 10 of part S of chapter 61  
21 of the laws of 2011, is amended to read as follows:

22 5. The provisions of this section shall expire and be of no further  
23 force and effect after June thirtieth, two thousand [twelve] THIRTEEN.

24 S 11. This act shall take effect immediately.

25

## PART P

26 Section 1. Subdivision 3 of section 205 of the tax law, as added by  
27 section 8 of part U1 of chapter 62 of the laws of 2003, is amended to  
28 read as follows:

29 3. [From the] THE moneys collected from the taxes imposed by sections  
30 one hundred eighty-three and one hundred eighty-four of this article on  
31 and after April first, two thousand [four] TWELVE, after reserving  
32 amounts for refunds or reimbursements, SHALL BE DISTRIBUTED AS FOLLOWS:  
33 twenty percent of such moneys shall be deposited to the credit of the  
34 dedicated highway and bridge trust fund established by section eighty-  
35 nine-b of the state finance law[. The remainder], FIFTY-FOUR PERCENT OF  
36 SUCH MONEYS shall be deposited in the mass transportation operating  
37 assistance fund to the credit of the metropolitan mass transportation  
38 operating assistance account created pursuant to section eighty-eight-a  
39 of the state finance law AND TWENTY-SIX PERCENT OF SUCH MONEYS SHALL BE  
40 DEPOSITED IN THE MASS TRANSPORTATION OPERATING ASSISTANCE FUND TO THE  
41 CREDIT OF THE PUBLIC TRANSPORTATION SYSTEMS OPERATING ASSISTANCE ACCOUNT  
42 CREATED PURSUANT TO SECTION EIGHTY-EIGHT-A OF THE STATE FINANCE LAW.

43 S 2. This act shall take effect immediately and shall be deemed to be  
44 in full force and effect on and after April 1, 2012; provided, however,  
45 that the amendments to subdivision 3 of section 205 of the tax law made  
46 by section one of this act shall not affect the repeal of such subdivi-  
47 sion and shall be deemed to be repealed therewith.

48

## PART Q

49 Section 1. Subdivision (e) of section 1105 of the tax law, as amended  
50 by section 4 of part AA of chapter 57 of the laws of 2010, is amended to  
51 read as follows:

1 (e) (1) The rent for every occupancy of a room or rooms in a hotel in  
2 this state, except that the tax shall not be imposed upon (i) a perma-  
3 nent resident, or (ii) where the rent is not more than at the rate of  
4 two dollars per day.

5 (2) [When] EXCEPT AS PROVIDED IN SUBDIVISION (R) OF SECTION ELEVEN  
6 HUNDRED ELEVEN OF THIS PART, WHEN occupancy is provided, for a single  
7 consideration, with property, services, amusement charges, or any other  
8 items, the separate sale of which is not subject to tax under this arti-  
9 cle, the entire consideration shall be treated as rent subject to tax  
10 under paragraph one of this subdivision; provided, however, that where  
11 the amount of the rent for occupancy is stated separately from the price  
12 of such property, services, amusement charges, or other items, on any  
13 sales slip, invoice, receipt, or other statement given the occupant, and  
14 such rent is reasonable in relation to the value of such property,  
15 services, amusement charges or other items, only such separately stated  
16 rent will be subject to tax under paragraph one of this subdivision.

17 S 2. Section 1111 of the tax law is amended by adding a new subdivi-  
18 sion (r) to read as follows:

19 (R) (1) IN REGARD TO THE COLLECTION OF SALES TAX ON OCCUPANCIES BY  
20 ROOM REMARKETERS, WHEN OCCUPANCY IS PROVIDED FOR A SINGLE CONSIDERATION  
21 WITH PROPERTY, SERVICES, AMUSEMENT CHARGES, OR ANY OTHER ITEMS, WHETHER  
22 OR NOT SUCH OTHER ITEMS ARE TAXABLE, THE RENT PORTION OF THE CONSIDER-  
23 ATION FOR SUCH TRANSACTION SHALL BE COMPUTED AS FOLLOWS: EITHER THE  
24 TOTAL CONSIDERATION RECEIVED BY THE ROOM REMARKETER MULTIPLIED BY A  
25 FRACTION, THE NUMERATOR OF WHICH SHALL BE THE CONSIDERATION PAYABLE FOR  
26 THE OCCUPANCY BY THE ROOM REMARKETER AND THE DENOMINATOR OF WHICH SHALL  
27 BE SUCH CONSIDERATION PAYABLE FOR THE OCCUPANCY PLUS THE CONSIDERATION  
28 PAYABLE BY THE REMARKETER FOR THE OTHER ITEMS BEING SOLD, OR BY ANY  
29 OTHER METHOD AS MAY BE AUTHORIZED BY THE COMMISSIONER. IF THE ROOM  
30 REMARKETER FAILS TO SEPARATELY STATE THE TAX ON THE RENT SO COMPUTED ON  
31 A SALES SLIP, INVOICE, RECEIPT, OR OTHER STATEMENT GIVEN TO THE OCCUPANT  
32 IN THE MANNER PRESCRIBED BY PARAGRAPH TWO OF THIS SUBDIVISION OR FAILS  
33 TO MAINTAIN RECORDS OF THE PRICES OF ALL COMPONENTS OF A TRANSACTION  
34 COVERED BY THIS PARAGRAPH, THE ENTIRE CONSIDERATION SHALL BE TREATED AS  
35 RENT SUBJECT TO TAX UNDER PARAGRAPH ONE OF SUBDIVISION (E) OF SECTION  
36 ELEVEN HUNDRED FIVE OF THIS PART. NOTHING HEREIN SHALL BE CONSTRUED TO  
37 SUBJECT TO TAX OR EXEMPT FROM TAX ANY SERVICE OR PROPERTY OR AMUSEMENT  
38 CHARGE OR OTHER ITEMS OTHERWISE SUBJECT TO TAX OR EXEMPT FROM TAX UNDER  
39 THIS ARTICLE OR PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS  
40 CHAPTER. A ROOM REMARKETER'S RECORDS OF THE CONSIDERATION PAYABLE FOR  
41 ALL COMPONENTS OF A TRANSACTION COVERED BY THIS PARAGRAPH ARE RECORDS  
42 REQUIRED TO BE MAINTAINED FOR PURPOSES OF SUBDIVISION (A) OF SECTION  
43 ELEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE.

44 (2) IN REGARD TO THE COLLECTION OF SALES TAX ON OCCUPANCIES BY ROOM  
45 REMARKETERS, INCLUDING A TRANSACTION DESCRIBED IN PARAGRAPH ONE OF THIS  
46 SUBDIVISION, THE REQUIREMENTS OF THE SECOND SENTENCE OF PARAGRAPH ONE OF  
47 SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-TWO OF THIS ARTICLE  
48 SHALL BE DEEMED SATISFIED IF THE REMARKETER GIVES THE CUSTOMER A SALES  
49 SLIP, INVOICE, RECEIPT, OR OTHER STATEMENT OF THE PRICE ("INVOICE")  
50 PRIOR TO THE CUSTOMER'S COMPLETION OF HIS OR HER OCCUPANCY, ON WHICH THE  
51 AMOUNT OF TAX DUE UNDER THIS ARTICLE AND PURSUANT TO THE AUTHORITY OF  
52 ARTICLE TWENTY-NINE OF THIS CHAPTER IS STATED. THE ROOM REMARKETER MUST  
53 KEEP EITHER A COPY OF THE INVOICE AS REQUIRED BY SUBDIVISION (A) OF  
54 SECTION ELEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE, OR ELECTRONIC  
55 RECORDS THAT ACCURATELY REFLECT THE INFORMATION THAT IS ON THE INVOICE  
56 PROVIDED TO THE CUSTOMER.



(3) IN REGARD TO THE REPORTING AND THE PAYMENT TO THE COMMISSIONER BY ROOM REMARKETERS OF SALES TAX DUE ON OCCUPANCIES, SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-SEVEN OF THIS ARTICLE SHALL BE READ TO REQUIRE A ROOM REMARKETER TO REPORT SUCH SALES TAX DUE, INCLUDING IN REGARD TO A TRANSACTION DESCRIBED IN PARAGRAPH ONE OF THIS SUBDIVISION, ON THE RETURN DUE FOR THE FILING PERIOD IN WHICH THE OCCUPANCY ENDS AND, AT THE TIME OF FILING SUCH RETURN, TO PAY TO THE COMMISSIONER THE TOTAL AMOUNT DESCRIBED BY SUCH SUBDIVISION (A).

S 3. Subdivision (e) of section 1119 of the tax law, as added by section 5 of part AA of chapter 57 of the laws of 2010, is amended to read as follows:

(e) Subject to conditions and limitations provided in this subdivision, a room remarketer shall be allowed a refund or credit against the amount of tax collected and required to be remitted under section eleven hundred thirty-seven of this article in the amount of the tax it paid to an operator of a hotel under section eleven hundred four of this article, where applicable, and subdivision (e) of section eleven hundred five of this article. Provided, however, that, in order to qualify for a refund or credit under this subdivision for any sales tax quarterly period, the room remarketer must, for that quarter, (1) be registered for sales tax purposes under section eleven hundred thirty-four of this article; (2) collect the taxes imposed by section eleven hundred four of this article, where applicable, and subdivision (e) of section eleven hundred five of this article; and (3) furnish the certificate of authority number of the operator to whom the applicant paid the tax in its application for refund or credit if required on that form or upon request. PROVIDED THAT IF THE ROOM REMARKETER REQUESTS THE OPERATOR'S CERTIFICATE OF AUTHORITY NUMBER AND IS NOT PROVIDED WITH THAT NUMBER, THE ROOM REMARKETER MAY SATISFY THIS REQUIREMENT BY PROVIDING THE OPERATOR'S NAME, BUSINESS ADDRESS, TELEPHONE NUMBER, AND THE ADDRESS OF THE HOTEL WHERE THE OCCUPANCY TOOK PLACE. An application for refund or credit under this subdivision must be filed with the commissioner within the time provided by subdivision (a) of section eleven hundred thirty-nine of this article. The application must be in the form prescribed by the commissioner. Where an application for credit has been filed, the applicant may immediately take the credit on the return that is due coincident with or immediately subsequent to the time that the applicant files the application for credit. However, the taking of the credit on the return is deemed to be part of the application for credit. The procedure for granting or denying the applications for refund or credit and review of those determinations shall be as provided in subdivision (e) of section eleven hundred thirty-nine of this article. An operator, including a room remarketer, who is paid tax by a room remarketer must upon request provide the remarketer with its certificate of authority number, provided that the operator's failure to do so does not change the requirement set forth in paragraph three of this subdivision.

S 4. Paragraph 4 of subdivision a of section 11-2502 of the administrative code of the city of New York, as amended by section 8 of part AA of chapter 57 of the laws of 2010, is amended to read as follows:

(4) (I) When occupancy is provided, for a single consideration, with property, services, amusement charges, or any other items, the separate sale of which is not subject to tax under this chapter, the entire consideration shall be treated as rent subject to tax under paragraph one of this subdivision; provided, however, that where the amount of the rent for occupancy is stated separately from the price of such property, services, amusement charges or other items on any sales slip, invoice,

1 receipt, or other statement given the occupant and such rent is reason-  
2 able in relation to the value of such property, services, amusement  
3 charges, or other items, only such separately stated rent will be  
4 subject to tax under [paragraph one of] this subdivision.

5 (II) IN REGARD TO THE COLLECTION OF TAX ON OCCUPANCIES BY REMARKETERS,  
6 WHEN OCCUPANCY IS PROVIDED, FOR A SINGLE CONSIDERATION, WITH PROPERTY,  
7 SERVICES, AMUSEMENT CHARGES, OR ANY OTHER ITEMS, WHETHER OR NOT SUCH  
8 OTHER ITEMS ARE TAXABLE, THE RENT PORTION OF THE CONSIDERATION FOR SUCH  
9 SALE SHALL BE COMPUTED AS FOLLOWS: THE TOTAL CONSIDERATION FOR THE SALE  
10 MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH SHALL BE THE CONSIDER-  
11 ATION PAID TO THE HOTEL FOR THE OCCUPANCY AND THE DENOMINATOR OF WHICH  
12 SHALL BE THE CONSIDERATION PAID TO THE HOTEL FOR THE OCCUPANCY PLUS THE  
13 CONSIDERATION PAID TO THE PROVIDERS OF THE OTHER ITEMS BEING SOLD, OR BY  
14 ANY OTHER REASONABLE METHOD PURSUANT TO WHICH THE RENT PORTION OF  
15 CONSIDERATION WOULD BE NO LESS THAN THE COMPUTATION OF RENT PORTION OF  
16 CONSIDERATION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH. NOTHING HEREIN  
17 SHALL BE CONSTRUED TO SUBJECT TO TAX OR EXEMPT FROM TAX ANY SERVICE OR  
18 PROPERTY OR AMUSEMENT CHARGE OR OTHER ITEMS OTHERWISE SUBJECT TO TAX OR  
19 EXEMPT FROM TAX UNDER THIS CHAPTER.

20 S 5. Paragraph 5 of subdivision a of section 11-2502 of the adminis-  
21 trative code of the city of New York, as amended by section 8 of part AA  
22 of chapter 57 of the laws of 2010, is amended to read as follows:

23 (5) A room remarketer shall be allowed a refund or credit against the  
24 taxes collected and required to be remitted pursuant to section 11-2505  
25 of this chapter in the amount of the tax it paid to the operator of the  
26 hotel or another room remarketer under [paragraph three of] this subdi-  
27 vision. Provided, however, that in order to qualify for a refund or  
28 credit under this paragraph with respect to any quarterly period, as  
29 described in subdivision a of section 11-2504 of this chapter, the room  
30 remarketer must, with respect to such quarter, (i) be registered for  
31 hotel room occupancy tax purposes under section 11-2514 of this chapter,  
32 and (ii) collect the taxes imposed by paragraphs two and three of this  
33 subdivision. Subject to the conditions and limitations of this para-  
34 graph, the provisions of section 11-2507 of this chapter shall apply to  
35 refunds or credits under this paragraph.

36 S 6. Subdivision f of section 11-2502 of the administrative code of  
37 the city of New York, as amended by local law number 43 of the city of  
38 New York for the year 2009 and paragraph 2 as renumbered by section 9 of  
39 part AA of chapter 57 of the laws of 2010, is amended to read as  
40 follows:

41 f. The tax to be collected shall be stated [and charged] separately  
42 from the rent [and shown separately on any record thereof, at the time  
43 when the occupancy is arranged or contracted for and charged for and  
44 upon every evidence of occupancy or any bill or statement or charge made  
45 for said occupancy issued or delivered by the operator or room remarket-  
46 er] ON A SALES SLIP, INVOICE, RECEIPT, OR OTHER STATEMENT OF THE PRICE  
47 ("INVOICE") GIVEN TO THE OCCUPANT PRIOR TO THE OCCUPANT'S COMPLETION OF  
48 HIS OR HER OCCUPANCY AND BE VERIFIABLE FROM THE BOOKS AND RECORDS OF AN  
49 OPERATOR OR ROOM REMARKETER RESPONSIBLE FOR COLLECTING AND REMITTING THE  
50 TAX.

51 (1) Where an occupant rents a room directly from an operator, the tax  
52 shall be paid by the occupant to the operator as trustee for and on  
53 account of the city, and the operator shall be liable for the collection  
54 of the tax on the rent and for the payment of the tax on the rent.

55 (2) The operator or room remarketer and any officer of any corporate  
56 operator or room remarketer shall be personally liable for the portion

1 of the tax collected or required to be collected under this chapter, and  
2 the operator shall have the same right in respect to collecting the tax  
3 from the occupant, or in respect to nonpayment of the tax by the occu-  
4 pant as if the tax were a part of the rent for the occupancy payable at  
5 the time such tax shall become due and owing, including all rights of  
6 eviction, dispossession, repossession and enforcement of any innkeeper's  
7 lien that he or she may have in the event of nonpayment of rent by the  
8 occupant; provided however, that the commissioner of finance shall be  
9 joined as a party in any action or proceeding brought by the operator to  
10 collect or enforce collection of the tax.

11 S 7. This act shall take effect September 1, 2012 and shall apply to  
12 occupancies that commence on or after such date.

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

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