

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

S. 6259--B

A. 9059--B

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

January 17, 2012

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

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

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 prop-

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

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erty tax administration, allowing the department of taxation and finance to use electronic communication means to furnish tax notices and other documents, mandatory electronic filing of tax documents, debit cards issued for tax refunds, improving sales tax compliance and 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
4 identified as Parts A through Q. The effective date for each particular
5 provision contained within such Part is set forth in the last section of
6 such Part. Any provision in any section contained within a Part, includ-
7 ing the effective date of the Part, which makes a reference to a section
8 "of this act", when used in connection with that particular component,
9 shall be deemed to mean and refer to the corresponding section of the
10 Part in which it is found. Section three of this act sets forth the
11 general effective date of this act.

12 PART A

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

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

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

28 PART B

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

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

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

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

(III) THE PROPERTY SHALL REMAIN INELIGIBLE FOR THE STAR EXEMPTION UNTIL THE DEPARTMENT NOTIFIES THE ASSESSOR THAT THE SUSPENSION OF ITS ELIGIBILITY HAS BEEN LIFTED. ONCE THE ASSESSOR HAS BEEN SO NOTIFIED, THE EXEMPTION MAY BE RESUMED ON A PROSPECTIVE BASIS ONLY, PROVIDED THAT THE ELIGIBILITY REQUIREMENTS OF THIS SECTION ARE OTHERWISE SATISFIED.

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

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

S 171-Y. ENFORCEMENT OF DELINQUENT STATE TAX LIABILITIES THROUGH THE SUSPENSION OF ELIGIBILITY FOR STAR EXEMPTIONS. 1. THE COMMISSIONER IS HEREBY AUTHORIZED TO DEVELOP A PROGRAM TO COLLECT DELINQUENT STATE TAX LIABILITIES FROM TAXPAYERS THROUGH THE SUSPENSION OF THE ELIGIBILITY OF PROPERTIES FOR STAR EXEMPTIONS WHERE ONE OR MORE OF THE PROPERTY OWNERS HAVE PAST-DUE STATE TAX LIABILITIES. FOR THE PURPOSES OF THIS SECTION, THE TERM "STATE TAX LIABILITY" MEANS ANY TAX (INCLUDING BUT NOT LIMITED TO LOCAL SALES AND INCOME TAXES), SURCHARGE, PENALTY, INTEREST CHARGE OR FEE ADMINISTERED BY THE COMMISSIONER THAT IS OWED BY A TAXPAYER; THE TERM "PAST-DUE STATE TAX LIABILITIES" MEANS ANY STATE TAX LIABILITY OR LIABILITIES WHICH HAVE BECOME FIXED AND FINAL SUCH THAT THE TAXPAYER NO LONGER HAS ANY RIGHT TO ADMINISTRATIVE OR JUDICIAL REVIEW AND FOR WHICH THE TAXPAYER HAS NOT MADE PAYMENT ARRANGEMENTS FOR THAT LIABILITY SATISFACTORY TO THE COMMISSIONER; THE TERM "TAXPAYER" SHALL MEAN THE INDIVIDUAL RESPONSIBLE FOR THE PAYMENT OF ANY OF THE PAST-DUE STATE TAX LIABILITIES; AND THE TERM "STAR EXEMPTION" MEANS THE EXEMPTION FROM REAL PROPERTY TAXATION AUTHORIZED BY SECTION FOUR HUNDRED TWENTY-FIVE OF THE REAL PROPERTY TAX LAW.

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

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

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

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

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

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

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

(G) THE PROCEDURES BY WHICH THE DEPARTMENT AND ASSESSORS SHALL COORDINATE AND EXECUTE THEIR OBLIGATIONS PURSUANT TO THIS SECTION AND PARAGRAPH (F) OF SUBDIVISION THREE OF SECTION FOUR HUNDRED TWENTY-FIVE OF THE REAL PROPERTY TAX LAW.

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

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

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

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

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

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

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

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

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

6. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE DEPARTMENT SHALL FURNISH THE APPROPRIATE ASSESSOR WITH THE NAME AND ADDRESS OF ANY TAXPAYER WHO OWNS PROPERTY WHICH HAS BECOME INELIGIBLE FOR THE STAR EXEMPTION PURSUANT TO THIS SECTION AND PARAGRAPH (F) OF SUBDIVISION THREE OF SECTION FOUR HUNDRED TWENTY-FIVE OF THE REAL PROPERTY TAX LAW AND A DESCRIPTION OF SUCH PROPERTY.

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

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

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

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

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

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

(1) For taxable years beginning after nineteen hundred ninety-seven, a state school tax reduction credit shall be allowed as provided in the following tables. The credit shall be allowed against the taxes authorized by this article reduced by the credits permitted by this article. If the credit exceeds the tax as so reduced, the taxpayer may receive, and the comptroller, subject to a certificate of the commissioner, shall pay as an overpayment, without interest, the amount of such excess. For purposes of this subsection, no credit shall be granted to (A) an individual with respect to whom a deduction under subsection (c) of section one hundred fifty-one of the internal revenue code is allowable to

1 another taxpayer for the taxable year, OR (B) A TAXPAYER WHO OWES A
2 PAST-DUE STATE TAX LIABILITY, AS THAT TERM IS DEFINED IN SECTION ONE
3 HUNDRED SEVENTY-ONE-Y OF THIS CHAPTER, ON THE LAST DAY OF THE TAXABLE
4 YEAR. IF A TAXPAYER WITH A PAST-DUE STATE TAX LIABILITY CLAIMS THIS
5 CREDIT, ANY AMOUNT OWED AS A RESULT OF THE DENIAL OF THIS CREDIT SHALL
6 BE TREATED AS A MATHEMATICAL ERROR AND THE COMMISSIONER MAY ISSUE A
7 NOTICE AND DEMAND TO THE TAXPAYER FOR SUCH AMOUNT. THE AMOUNT BY WHICH A
8 TAXPAYER'S INCOME TAX LIABILITY INCREASES AS A RESULT OF THE LOSS OF THE
9 TAX CREDIT PURSUANT TO THIS SECTION MAY NOT BE APPLIED IN ANY WAY AS AN
10 OFFSET AGAINST THE AMOUNT OF THE TAXPAYER'S PAST-DUE STATE TAX
11 LIABILITY.

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

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

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

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

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

(a) The amount of such reimbursement shall be estimated by the commissioner of taxation and finance on or before December first of the year preceding the state fiscal year during which such amount is to be paid begins. The commissioner shall use the best available information at his or her disposal to estimate such amount. In addition to such methods and information the commissioner may use in making such estimate, he or she shall consult with the city department of finance during the preparation of the determination of such amount. SUCH REIMBURSEMENT SHALL DISREGARD THE AMOUNT OF BENEFITS RECALCULATED PURSUANT TO SECTION THIRTEEN HUNDRED FOUR-E OF THE TAX LAW AND CREDITS DENIED PURSUANT TO PARAGRAPH ONE OF SUBSECTION (E) OF SECTION THIRTEEN HUNDRED TEN OF THE TAX LAW.

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

PART C

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

TAX ON CIGARETTES, CIGARS AND TOBACCO PRODUCTS

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

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

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

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

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

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

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

S 5. Subdivision 9 of section 470 of the tax law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

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

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

12. "Distributor." Any person who imports or causes to be imported into this state any CIGAR OR tobacco product (in excess of fifty cigars or one pound of tobacco) for sale, or who manufactures any CIGAR OR tobacco product in this state, and any person within or without the state who is authorized by the commissioner [of taxation and finance] to make returns and pay the tax on CIGARS OR tobacco products sold, shipped or delivered by [him] SUCH PERSON to any person in the state.

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

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

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

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

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

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

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

(a) Such tax on LOOSE tobacco [products other than snuff and little 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, and is intended to be imposed only once upon the sale of any LOOSE tobacco [products other than snuff and little cigars].

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

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

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

(a) There is hereby imposed and shall be paid a tax on all tobacco products 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-b of this article is paid, or (2) on the use of tobacco products which are exempt from the tax imposed by said section, or (3) on the use of [two hundred fifty cigars or less, or] five pounds or less of tobacco other than roll-your-own tobacco[, or thirty-six ounces or less of roll-your-

own tobacco brought into the state on, or in the possession of, any person.

(i) Such tax on LOOSE tobacco [products other than snuff and little 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 UPON ALL RECEIPTS PAID OR REQUIRED TO BE PAID FROM EVERY RETAIL SALE OF CIGARS.

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

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

S 471-H. PREPAYMENT OF CIGAR TAX. (A)(1) EVERY DISTRIBUTOR SHALL PAY, AS A PREPAYMENT ON ACCOUNT OF THE TAXES IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE AND PURSUANT TO THE AUTHORITY OF THIS ARTICLE, A TAX ON CIGARS POSSESSED FOR SALE OR USE IN THIS STATE, EXCEPT NO TAX SHALL BE REQUIRED TO BE PREPAID ON CIGARS SOLD UNDER CIRCUMSTANCES THAT THIS STATE IS WITHOUT POWER TO IMPOSE SUCH PREPAYMENT 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 WRITTEN POLICY STATEMENTS OF SUCH AN AGENCY APPLICABLE TO SUCH SALES.

(2) THE COMMISSIONER MAY, IN THE COMMISSIONER'S DISCRETION, REQUIRE ANY DISTRIBUTOR TO FILE WITH THE DEPARTMENT 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 THE STATE OR OTHER SECURITY ACCEPTABLE TO THE COMMISSIONER, IN SUCH AMOUNT AS THE COMMISSIONER MAY FIX, TO SECURE THE PAYMENT OF ANY SUMS DUE FROM SUCH DISTRIBUTOR PURSUANT TO THIS SECTION. IF SECURITIES ARE DEPOSITED AS SECURITY UNDER THIS SUBDIVISION, SUCH SECURITIES SHALL BE KEPT IN THE CUSTODY OF THE COMMISSIONER AND MAY BE SOLD BY THE COMMISSIONER IF IT BECOMES NECESSARY TO DO SO IN ORDER TO RECOVER ANY SUMS DUE FROM SUCH DISTRIBUTOR PURSUANT TO THIS SECTION, BUT NO SUCH SALE SHALL BE HAD UNTIL AFTER SUCH DISTRIBUTOR SHALL HAVE HAD AN OPPORTUNITY TO LITIGATE THE VALIDITY OF ANY PREPAYMENT OF TAX IF IT ELECTS TO DO SO. UPON ANY SUCH SALE, THE SURPLUS, IF ANY, ABOVE THE SUMS DUE UNDER THIS SECTION SHALL BE RETURNED TO SUCH DISTRIBUTOR.

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

(B) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE TAXES REQUIRED TO BE PREPAID PURSUANT TO THIS SECTION SHALL BE ADMINISTERED AND COLLECTED IN A LIKE MANNER AS THE TAXES IMPOSED BY SECTIONS FOUR HUNDRED SEVENTY-ONE-F AND FOUR HUNDRED SEVENTY-ONE-G OF THIS ARTICLE. ALL THE PROVISIONS OF THIS ARTICLE RELATING TO OR APPLICABLE TO THE ADMINISTRATION, COLLECTION AND DISPOSITION OF THE TAXES IMPOSED BY SUCH SECTIONS SHALL APPLY TO THE TAX REQUIRED TO BE PREPAID UNDER THIS

1 SECTION SO FAR AS SUCH PROVISIONS CAN BE MADE APPLICABLE TO SUCH PREPAY-
2 MENTS OF TAX WITH SUCH LIMITATIONS AS SET FORTH IN THIS ARTICLE AND SUCH
3 MODIFICATIONS AS MAY BE NECESSARY IN ORDER TO ADAPT SUCH LANGUAGE TO THE
4 TAX SO IMPOSED. SUCH PROVISIONS SHALL APPLY WITH THE SAME FORCE AND
5 EFFECT AS IF THE LANGUAGE OF THOSE PROVISIONS HAD BEEN SET FORTH IN FULL
6 IN THIS SECTION EXCEPT TO THE EXTENT THAT ANY PROVISION IS EITHER INCON-
7 SISTENT WITH A PROVISION OF THIS SECTION OR IS NOT RELEVANT TO THE TAX
8 REQUIRED TO BE PREPAID BY THIS SECTION. FOR PURPOSES OF THIS SECTION,
9 ANY REFERENCE IN THIS ARTICLE TO THE TAX OR TAXES IMPOSED BY SECTIONS
10 FOUR HUNDRED SEVENTY-ONE-F AND FOUR HUNDRED SEVENTY-ONE-G OF THIS ARTI-
11 CLE SHALL BE DEEMED TO REFER TO THE TAX REQUIRED TO BE PREPAID PURSUANT
12 TO THIS SECTION UNLESS A DIFFERENT MEANING IS CLEARLY REQUIRED.

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

24 (D) THE DISTRIBUTOR SHALL BE LIABLE FOR THE PREPAID TAX ON CIGARS
25 WHICH HE OR SHE IMPORTS OR CAUSES TO BE IMPORTED INTO THE STATE, OR
26 WHICH HE OR SHE MANUFACTURES IN THE STATE, AND EVERY DISTRIBUTOR AUTHOR-
27 IZED BY THE COMMISSIONER TO MAKE RETURNS AND PAY THE PREPAID TAX ON
28 CIGARS SOLD, SHIPPED OR DELIVERED BY HIM OR HER TO ANY PERSON IN THE
29 STATE SHALL BE LIABLE FOR THE PREPAID TAX ON ALL CIGARS SO SOLD, SHIPPED
30 OR DELIVERED.

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

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

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

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

52 (B) EXPORT, DESTRUCTION, TAX PAID IN ERROR. WHENEVER ANY CIGARS UPON
53 WHICH THE PREPAID TAX IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-H OF
54 THIS ARTICLE HAS BEEN PAID HAVE BEEN SOLD AND SHIPPED TO ANOTHER STATE
55 FOR SALE OR USE THERE OR HAVE BECOME UNFIT FOR USE OR UNSALABLE, OR HAVE
56 BEEN DESTROYED, OR WHENEVER THE COMMISSIONER SHALL HAVE DETERMINED THAT

1 ANY TAX REQUIRED TO BE PREPAID BY SUCH SECTION FOUR HUNDRED
2 SEVENTY-ONE-H OF THIS ARTICLE SHALL HAVE BEEN PAID IN ERROR, THE
3 DISTRIBUTOR OR DEALER, AS THE CASE MAY BE, SHALL BE ENTITLED TO A REFUND
4 OR CREDIT OF THE ACTUAL AMOUNT OF PREPAID TAX SO PAID WITH RESPECT TO
5 CIGARS WHICH WILL NOT BE POSSESSED FOR SALE OR USE IN THIS STATE.

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

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

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

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

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

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

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

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

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

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

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

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

55 (IV) IF THE CERTIFICATION REQUIRED BY THIS PARAGRAPH HAS BEEN
56 FURNISHED TO THE PURCHASER BY THE SELLER AT DELIVERY AND ACCEPTED IN

GOOD FAITH, THE BURDEN OF PROVING THAT THE TAX REQUIRED TO BE PAID BY SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE WAS ASSUMED OR PAID BY A DISTRIBUTOR REGISTERED UNDER THIS ARTICLE AND PASSED THROUGH SHALL 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.

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

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

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

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

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

55 4. At the time of delivering cigarettes to any person each agent or
56 wholesale dealer, and at the time of delivering CIGARS OR tobacco

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

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

41 General powers of the [tax commission] COMMISSIONER.

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

44 S 476. Refunds; sales of stamps. Whenever any cigarettes upon which
45 stamps have been placed or CIGARS OR tobacco products upon which the tax
46 has been paid have been sold and shipped into another state for sale or
47 use there or have become unfit for use and consumption or unsalable, or
48 have been destroyed, or whenever the commissioner [of taxation and
49 finance] shall have determined that any tax imposed by this article
50 shall have been paid in error, the agent, dealer or CIGAR OR tobacco
51 products distributor, as the case may be, shall be entitled to a refund
52 of the actual amount of tax so paid, provided application therefor is
53 filed with the commissioner [of taxation and finance] within two years
54 after the stamps were affixed to such cigarettes or the tax was paid
55 upon such CIGARS OR tobacco products, except if an agreement under the
56 provisions of section four hundred seventy-eight OF THIS ARTICLE

1 (extending the period for determination of tax imposed by this article)
2 is made within the two-year period for the filing of an application for
3 refund provided for in this section, the period for filing an applica-
4 tion for refund shall not expire prior to six months after the expira-
5 tion of the period within which a determination may be made pursuant to
6 the agreement or any extension thereof. If the commissioner [of taxation
7 and finance] is satisfied that any dealer is entitled to a refund he OR
8 SHE shall issue to such dealer stamps of sufficient value to cover the
9 refund of the tax on cigarettes or may, subject to audit by the comp-
10 troller, make a refund of the tax on cigarettes or on CIGARS OR tobacco
11 products. No person shall sell or offer for sale any stamp or stamps
12 issued under this article except by written permission of the commis-
13 sioner [of taxation and finance]. The commissioner [of taxation and
14 finance] may redeem unused stamps lawfully in possession of any person.
15 The commissioner [of taxation and finance] may prescribe necessary rules
16 and regulations concerning refunds, sales of stamps, and redemptions
17 under the provisions of this article.

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

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

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

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

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

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

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

1 (1) Paragraphs (b), (c) and (g) of this subdivision shall not apply to
2 the filing of an application for a license as a wholesale dealer that is
3 based solely upon the ownership, operation or maintenance of one or more
4 cigarette, CIGAR or tobacco products vending machines in, at or upon
5 premises owned or occupied by another person, or that is based solely
6 upon the sale of CIGARS OR tobacco products for resale, or that is based
7 upon both the ownership, operation or maintenance of one or more ciga-
8 rette, CIGAR or tobacco products vending machines in, at or upon prem-
9 ises owned or occupied by another person and the sale of CIGARS OR
10 tobacco products for resale.

11 S 28. Subparagraph (iv) of paragraph (b) of subdivision 3 of section
12 480 of the tax law, as amended by chapter 61 of the laws of 1989, is
13 amended to read as follows:

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

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

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

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

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

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

1 S 31. Paragraphs (a) and (b) of subdivision 2 of section 480-a of the
2 tax law, as amended by section 1 of part T of chapter 61 of the laws of
3 2011, are amended to read as follows:

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

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

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

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

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

50 (d) Except as otherwise provided in this section, all the provisions
51 of article twenty-eight of this chapter relating to the personal liabil-
52 ity for the tax, administration, collection and determination of tax,
53 and deposit and disposition of revenue, including section eleven hundred
54 thirty-eight of this chapter relating to determination of tax and
55 section eleven hundred forty-five of this chapter (but only paragraphs
56 one and two of subdivision (a) of such section) relating to penalties

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

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

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

53 S 34. Clause (B) of subparagraph (i) of paragraph (a) of subdivision 1
54 of section 481 of the tax law, as amended by chapter 61 of the laws of
55 1989, is amended to read as follows:

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

8 S 35. Subparagraph (i) of paragraph (b) of subdivision 1 of section
9 481 of the tax law, as amended by chapter 604 of the laws of 2008, is
10 amended to read as follows:

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

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

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

52 (II) not less than fifty dollars but not more than two hundred dollars
53 for each fifty cigars or pound of tobacco, or fraction thereof, in
54 excess of [five] ONE hundred cigars or ten pounds of tobacco knowingly
55 in the possession or knowingly under the control of any person, with
56 respect to which the CIGAR OR tobacco products tax has not been paid or

1 assumed by a distributor or CIGAR OR tobacco products dealer; provided,
2 however, that any such penalty imposed under this clause shall not
3 exceed ten thousand dollars in the aggregate.

4 (C)(I) not less than twenty-five dollars but not more than one hundred
5 dollars for each fifty cigars or one pound of tobacco, or fraction ther-
6 eof, in excess of fifty cigars or one pound of tobacco knowingly in the
7 possession or knowingly under the control of any person, with respect to
8 which the CIGAR OR tobacco products tax has not been paid or assumed by
9 a distributor or CIGAR OR tobacco products dealer; and

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

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

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

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

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

42 S 481-A. PENALTIES AND INTEREST FOR RETAIL DEALERS. (A) (1) (I) ANY
43 PERSON FAILING TO FILE A RETURN OR TO PAY OR PAY OVER ANY TAX TO THE
44 COMMISSIONER WITHIN THE TIME REQUIRED BY OR PURSUANT TO THIS ARTICLE
45 (DETERMINED WITH REGARD TO ANY EXTENSION OF TIME FOR FILING OR PAYING)
46 SHALL BE SUBJECT TO A PENALTY OF TEN PERCENT OF THE AMOUNT OF TAX DUE IF
47 SUCH FAILURE IS FOR NOT MORE THAN ONE MONTH, WITH AN ADDITIONAL ONE
48 PERCENT FOR EACH ADDITIONAL MONTH OR FRACTION THEREOF DURING WHICH SUCH
49 FAILURE CONTINUES, NOT EXCEEDING THIRTY PERCENT IN THE AGGREGATE.
50 PROVIDED, HOWEVER, IN THE CASE OF A FAILURE TO FILE SUCH RETURN WITHIN
51 SIXTY DAYS OF THE DATE PRESCRIBED FOR FILING OF SUCH RETURN BY OR PURSU-
52 ANT TO THIS ARTICLE (DETERMINED WITH REGARD TO ANY EXTENSION OF TIME FOR
53 FILING), THE PENALTY IMPOSED BY THIS SUBPARAGRAPH SHALL NOT BE LESS THAN
54 THE LESSER OF ONE HUNDRED DOLLARS OR ONE HUNDRED PERCENT OF THE AMOUNT
55 REQUIRED TO BE SHOWN AS TAX ON SUCH RETURN. FOR THE PURPOSE OF THE
56 PRECEDING SENTENCE, THE AMOUNT OF TAX REQUIRED TO BE SHOWN ON THE RETURN

1 SHALL BE REDUCED BY THE AMOUNT OF ANY PART OF THE TAX WHICH IS PAID ON
2 OR BEFORE THE DATE PRESCRIBED FOR PAYMENT OF THE TAX AND BY THE AMOUNT
3 OF ANY CREDIT AGAINST THE TAX WHICH MAY BE CLAIMED UPON THE RETURN. IN
4 THE CASE OF A FAILURE TO FILE A RETURN BY A PERSON REQUIRED TO REGISTER
5 WITH THE COMMISSIONER AS PROVIDED IN SECTION FOUR HUNDRED EIGHTY-A OF
6 THIS ARTICLE, IN NO EVENT SHALL THE PENALTY FOR FAILURE TO FILE A RETURN
7 BE LESS THAN ONE HUNDRED FIFTY DOLLARS.

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

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

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

32 (V) ANY PERSON REQUIRED TO COLLECT TAX WHO SELLS CIGARS AT RETAIL AND
33 WHO SHALL WILLFULLY AND KNOWINGLY HAVE IN SUCH PERSON'S CUSTODY OR
34 POSSESSION OR UNDER SUCH PERSON'S CONTROL ANY CIGARS ON WHICH (A) THE
35 PREPAID TAX IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTI-
36 CLE HAS NOT BEEN ASSUMED OR PAID BY A DISTRIBUTOR LICENSED AS SUCH UNDER
37 THIS ARTICLE, OR (B) THE PREPAID TAX IMPOSED BY SUCH SECTION FOUR
38 HUNDRED SEVENTY-ONE-H OF THIS ARTICLE WAS REQUIRED TO HAVE BEEN PASSED
39 THROUGH TO SUCH PERSON AND HAS NOT BEEN INCLUDED IN THE COST OF SUCH
40 CIGARS TO SUCH PERSON, SHALL BE LIABLE FOR A PENALTY IN THE AMOUNT OF
41 TWICE THE TAX NOT SO ASSUMED OR PAID, OR INCLUDED. SUCH PENALTY SHALL
42 BE DETERMINED, ASSESSED, COLLECTED AND PAID IN THE SAME MANNER AS TAXES
43 IMPOSED BY THIS ARTICLE AND ALL THE PROVISIONS OF THIS ARTICLE RELATING
44 THERETO SHALL BE DEEMED ALSO TO REFER TO THE PENALTY IMPOSED BY THIS
45 SUBPARAGRAPH. SUCH PENALTY MAY BE DETERMINED AT ANY TIME WITHIN THREE
46 YEARS AFTER SUCH CIGARS SHALL HAVE COME INTO SUCH PERSON'S CUSTODY OR
47 POSSESSION OR UNDER SUCH PERSON'S CONTROL. FOR PURPOSES OF THIS SUBPARA-
48 GRAPH, SUCH PERSON SHALL WILLFULLY AND KNOWINGLY HAVE IN SUCH PERSON'S
49 CUSTODY OR POSSESSION OR UNDER SUCH PERSON'S CONTROL ANY CIGAR ON WHICH
50 (A) SUCH TAX HAS NOT BEEN ASSUMED OR PAID BY A DISTRIBUTOR LICENSED AS
51 SUCH UNDER THIS ARTICLE, OR (B) SUCH TAX WAS REQUIRED TO HAVE BEEN
52 PASSED THROUGH TO SUCH PERSON AND HAS NOT BEEN INCLUDED IN THE COST OF
53 SUCH CIGARS TO SUCH PERSON, WHERE SUCH PERSON HAS KNOWLEDGE OF THE
54 REQUIREMENT THAT SUCH TAXES BE PAID OR ASSUMED OR SO INCLUDED AND WHERE,
55 TO SUCH PERSON'S KNOWLEDGE, SUCH TAXES HAVE NOT BEEN SO PAID OR ASSUMED
56 OR SO INCLUDED. FOR PURPOSES OF THIS SUBPARAGRAPH, IT SHALL BE PRESUMP-

1 TIVE EVIDENCE THAT SUCH PERSON SHALL WILLFULLY AND KNOWINGLY HAVE IN
2 SUCH PERSON'S CUSTODY OR POSSESSION OR UNDER SUCH PERSON'S CONTROL
3 CIGARS ON WHICH (A) SUCH TAX HAS NOT BEEN ASSUMED OR PAID BY A DISTRIBUTOR
4 AUTHORIZED AS SUCH UNDER THIS ARTICLE OR (B) SUCH TAX WAS REQUIRED
5 TO HAVE BEEN PASSED THROUGH TO SUCH PERSON AND HAS NOT BEEN INCLUDED IN
6 THE COST OF SUCH CIGARS TO SUCH PERSON WHERE SUCH PERSON HAS NOT
7 RECEIVED THE CERTIFICATION REQUIRED BY SECTION FOUR HUNDRED
8 SEVENTY-ONE-K OF THIS ARTICLE AT THE TIME OF DELIVERY OF SUCH CIGARS OR,
9 IN THOSE CIRCUMSTANCES WHERE THE COMMISSIONER HAS AUTHORIZED THE DELIV-
10 ERY OF SUCH CERTIFICATION AT A TIME AFTER DELIVERY OF THE CIGARS, AT THE
11 TIME PRESCRIBED BY THE COMMISSIONER.

12 (2) IF THE FAILURE TO PAY OR PAY OVER ANY TAX TO THE COMMISSIONER
13 WITHIN THE TIME REQUIRED BY THIS ARTICLE IS DUE TO FRAUD, IN LIEU OF THE
14 PENALTIES AND INTEREST PROVIDED FOR IN SUBPARAGRAPHS (I) AND (II) OF
15 PARAGRAPH ONE OF THIS SUBDIVISION, THERE SHALL BE ADDED TO THE TAX (I) A
16 PENALTY OF TWO TIMES THE AMOUNT OF THE TAX DUE, PLUS (II) INTEREST ON
17 SUCH UNPAID TAX AT THE RATE OF FOURTEEN AND ONE-HALF PERCENT PER ANNUM
18 OR THE UNDERPAYMENT RATE OF INTEREST SET BY THE COMMISSIONER PURSUANT TO
19 SUBDIVISION TWENTY-SIXTH OF SECTION ONE HUNDRED SEVENTY-ONE OF THIS
20 CHAPTER, WHICHEVER IS GREATER, FOR THE PERIOD BEGINNING ON THE LAST DAY
21 PRESCRIBED BY THIS ARTICLE FOR THE PAYMENT OF SUCH TAX (DETERMINED WITH-
22 OUT REGARD TO ANY EXTENSION OF TIME FOR PAYING) AND ENDING ON THE DAY ON
23 WHICH SUCH TAX IS PAID.

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

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

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

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

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

51 (C) ANY PERSON FAILING TO FILE A RETURN OR TO PAY ANY TAX REQUIRED TO
52 BE PREPAID TO THE COMMISSIONER WITH RESPECT TO CIGARS PURSUANT TO THE
53 PROVISIONS OF SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE WITHIN
54 THE TIME REQUIRED BY THIS ARTICLE SHALL, IN ADDITION TO ANY OTHER PENAL-
55 TY PROVIDED IN THIS ARTICLE OR OTHERWISE IMPOSED BY LAW, BE SUBJECT TO A
56 PENALTY EQUAL TO THE AMOUNT OF TAX REQUIRED TO BE SO PREPAID PURSUANT TO

1 THE PROVISIONS OF SUCH SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTI-
2 CLE. IF THE COMMISSIONER DETERMINES THAT SUCH FAILURE TO FILE A RETURN
3 OR TO PAY ANY SUCH TAX WAS DUE TO REASONABLE CAUSE AND NOT DUE TO WILL-
4 FUL NEGLECT, HE OR SHE MAY REMIT ALL OR ANY PART OF SUCH PENALTY.

5 (D) THE CERTIFICATE OF THE COMMISSIONER TO THE EFFECT THAT A TAX HAS
6 NOT BEEN PAID, THAT A RETURN, BOND OR REGISTRATION CERTIFICATE HAS NOT
7 BEEN FILED, OR THAT INFORMATION HAS NOT BEEN SUPPLIED PURSUANT TO THE
8 PROVISIONS OF THIS ARTICLE SHALL BE PRESUMPTIVE EVIDENCE THEREOF.

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

30 (F) FALSE OR FRAUDULENT DOCUMENT PENALTY. ANY TAXPAYER THAT SUBMITS A
31 FALSE OR FRAUDULENT DOCUMENT TO THE DEPARTMENT WILL BE SUBJECT TO A
32 PENALTY OF ONE HUNDRED DOLLARS PER DOCUMENT SUBMITTED, OR FIVE HUNDRED
33 DOLLARS PER TAX RETURN SUBMITTED. THIS PENALTY WILL BE IN ADDITION TO
34 ANY OTHER PENALTY PROVIDED BY LAW.

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

48 (H) ANY PERSON WHO, HAVING ELECTED TO MAINTAIN IN AN ELECTRONIC FORMAT
49 ANY PORTION OR ALL OF THE RECORDS HE OR SHE IS REQUIRED TO MAKE AND
50 MAINTAIN BY THIS ARTICLE, FAILS TO PRESENT AND MAKE THESE RECORDS AVAIL-
51 ABLE AND ACCESSIBLE TO THE COMMISSIONER IN ELECTRONIC FORMAT, IS SUBJECT
52 TO A PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS FOR EACH PERIOD OR PART
53 THEREOF FOR WHICH THESE ELECTRONIC RECORDS ARE NOT PRESENTED AND MADE
54 AVAILABLE AND ACCESSIBLE UPON REQUEST, NOTWITHSTANDING THAT THE RECORDS
55 MAY ALSO BE MAINTAINED AND AVAILABLE IN HARD COPY FORMAT. THIS PENALTY
56 IS IN ADDITION TO ANY OTHER PENALTY PROVIDED FOR IN THIS ARTICLE, BUT

1 MAY NOT BE IMPOSED AND COLLECTED MORE THAN ONCE FOR A FAILURE FOR THE
2 SAME PERIOD OR PART THEREOF. PROVIDED, HOWEVER, NOTHING IN THIS SUBDI-
3 VISION WILL PREVENT THE SEPARATE IMPOSITION, IF APPLICABLE, OF ANY
4 PENALTY IMPOSED BY THIS SECTION FOR THE SAME PERIOD OR PART THEREOF. IF
5 THE COMMISSIONER DETERMINES THAT THE FAILURE TO PRESENT AND MAKE ELEC-
6 TRONICALLY MAINTAINED RECORDS AVAILABLE AND ACCESSIBLE FOR A PERIOD WAS
7 ENTIRELY DUE TO REASONABLE CAUSE AND NOT TO WILLFUL NEGLECT, THE COMMIS-
8 SIONER MUST REMIT THE PENALTY IMPOSED FOR THAT PERIOD. THESE PENALTIES
9 WILL BE PAID AND DISPOSED OF IN THE SAME MANNER AS OTHER REVENUES FROM
10 THIS ARTICLE. THESE PENALTIES WILL BE DETERMINED, ASSESSED, COLLECTED,
11 PAID AND ENFORCED IN THE SAME MANNER AS THE TAX IMPOSED BY THIS ARTICLE,
12 AND ALL THE PROVISIONS OF THIS ARTICLE RELATING TO TAX WILL BE DEEMED
13 ALSO TO APPLY TO THE PENALTY IMPOSED BY THIS SUBDIVISION. FOR PURPOSES
14 OF THE PENALTY IMPOSED BY THIS SUBDIVISION, A FAILURE TO PRESENT AND
15 MAKE AVAILABLE AND ACCESSIBLE A RECORD MAINTAINED IN ELECTRONIC FORMAT
16 INCLUDES NOT ONLY THE DENIAL OF ACCESS TO THE REQUESTED RECORDS THAT
17 WERE MAINTAINED ELECTRONICALLY, BUT ALSO THE FAILURE TO MAKE AVAILABLE
18 TO THE COMMISSIONER THE INFORMATION, KNOWLEDGE, OR MEANS NECESSARY TO
19 ACCESS AND OTHERWISE USE THE ELECTRONICALLY MAINTAINED RECORDS IN THE
20 INSPECTION AND EXAMINATION OF THESE RECORDS.

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

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

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

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

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

50 (3) Any person, other than a distributor appointed by the commissioner
51 under article twenty of this chapter, who shall knowingly transport or
52 have in his OR HER custody, possession or under his OR HER control twen-
53 ty-five hundred or more cigars or fifty or more pounds of tobacco upon
54 which the taxes imposed by article twenty of this chapter have not been
55 assumed or paid by a distributor appointed by the commissioner under
56 article twenty of this chapter, or other person treated as a distributor

1 pursuant to section four hundred seventy-one-d of this chapter shall be
2 guilty of a misdemeanor. Provided further, that any person who has twice
3 been convicted under this subdivision shall be guilty of a class E felo-
4 ny for any subsequent violation of this section, regardless of the
5 amount of CIGARS OR tobacco products involved in such violation.

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

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

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

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

46 S 43. The section heading, subdivisions (a), (b) and (c) of section
47 1846-a of the tax law, as amended by chapter 556 of the laws of 2011,
48 are amended to read as follows:

49 Forfeiture action with respect to CIGARS AND tobacco products. (a)
50 Whenever a police officer designated in section 1.20 of the criminal
51 procedure law or a peace officer designated in subdivision four of
52 section 2.10 of such law, acting pursuant to his OR HER special duties,
53 shall discover any tobacco products in excess of five hundred cigars or
54 ten pounds of tobacco which are being imported for sale in the state
55 where the person importing or causing such CIGARS AND tobacco products
56 to be imported has not been appointed as a distributor pursuant to

1 section four hundred seventy-two of this chapter, such police officer or
2 peace officer is hereby authorized and empowered forthwith to seize and
3 take possession of such CIGARS AND tobacco products. Such CIGARS AND
4 tobacco products seized by a police officer or peace officer shall be
5 turned over to the commissioner. Such seized CIGARS AND tobacco products
6 shall be forfeited to the state. All CIGARS AND tobacco products
7 forfeited to the state shall be destroyed or used for law enforcement
8 purposes, except that CIGARS OR tobacco products that violate, or are
9 suspected of violating, federal trademark laws or import laws shall not
10 be used for law enforcement purposes. If the commissioner determines the
11 CIGARS OR tobacco products may not be used for law enforcement purposes,
12 the commissioner must, within a reasonable time thereafter, upon publi-
13 cation in the state registry of a notice to such effect before the day
14 of destruction, destroy such forfeited CIGARS OR tobacco products. The
15 commissioner may, prior to any destruction of CIGARS OR tobacco
16 products, permit the true holder of the trademark rights in the CIGARS
17 OR tobacco products to inspect such forfeited products in order to
18 assist in any investigation regarding such CIGARS OR tobacco products.

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

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

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

39 Seizure and forfeiture of vehicles or other means of transportation
40 used to transport or for deposit or concealment of cigarettes or used to
41 import CIGARS OR tobacco products.

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

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

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

3 PART D

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

9 S 19. This act shall take effect immediately; provided, however, that
10 sections one through thirteen of this act shall take effect September 1,
11 2006 and shall be deemed repealed on September 1, [2012] 2017 and such
12 repeal shall apply in accordance with the applicable transitional
13 provisions of sections 1106 and 1217 of the tax law, and shall apply to
14 sales made, fuel compounded or manufactured, and uses occurring on or
15 after such date, and with respect to sections seven through eleven of
16 this act, in accordance with applicable transitional provisions of
17 sections 1106 and 1217 of the tax law; provided, however, that the
18 commissioner of taxation and finance shall be authorized on and after
19 the date this act shall have become a law to adopt and amend any rules
20 or regulations and to take any steps necessary to implement the
21 provisions of this act; provided further that sections fourteen through
22 sixteen of this act shall take effect immediately and shall apply to
23 taxable years beginning on or after January 1, 2006.

24 S 2. This act shall take effect immediately.

25 PART E

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

29 14. "Diesel motor fuel" shall mean No. 1 Diesel fuel, No. 2 Diesel
30 fuel, biodiesel, kerosene, [crude oil,] fuel oil or other middle distil-
31 late and also motor fuel suitable for use in the operation of an engine
32 of the diesel type, excluding, however, any product specifically desig-
33 nated "No. 4 Diesel fuel" and not suitable as a fuel used in the opera-
34 tion of a motor vehicle engine.

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

38 (b) The tax on the incidence of sale or use imposed by subdivision one
39 of this section shall not apply to: (i) the sale or use of non-highway
40 Diesel motor fuel, but only if all of such fuel is consumed other than
41 on the public highways of this state (except for the use of the public
42 highway by farmers to reach adjacent farmlands); provided, however, this
43 exemption shall in no event apply to a sale of non-highway Diesel motor
44 fuel which involves a delivery at a filling station or into a repository
45 which is equipped with a hose or other apparatus by which such fuel can
46 be dispensed into the fuel tank of a motor vehicle (except for delivery
47 at a farm site which qualifies for the exemption under subdivision (g)
48 of section three hundred one-b of this chapter); or (ii) a sale to the
49 consumer consisting of not more than twenty gallons of water-white kero-
50 sene to be used and consumed exclusively for heating purposes; or (iii)
51 the sale to or delivery at a filling station or other retail vendor of
52 water-white kerosene provided such filling station or other retail

1 vendor only sells such water-white kerosene exclusively for heating
2 purposes in containers of no more than twenty gallons; or (iv) a sale of
3 kero-jet fuel to an airline for use in its airplanes or a use of kero-
4 jet fuel by an airline in its airplanes; or (v) a sale of kero-jet fuel
5 by a registered distributor of Diesel motor fuel to a fixed base opera-
6 tor registered under this article as a distributor of kero-jet fuel only
7 where such fixed base operator is engaged solely in making or offering
8 to make retail sales not in bulk of kero-jet fuel directly into the fuel
9 tank of an airplane for the purpose of operating such airplane; [or]
10 (vi) a retail sale not in bulk of kero-jet fuel by a fixed base operator
11 registered under this article as a distributor of kero-jet fuel only
12 where such fuel is delivered directly into the fuel tank of an airplane
13 for use in the operation of such airplane; OR (VII) THE SALE OF PREVI-
14 OUSLY UNTAXED QUALIFIED BIODIESEL TO A PERSON REGISTERED UNDER THIS
15 ARTICLE AS A DISTRIBUTOR OF DIESEL MOTOR FUEL OTHER THAN (A) A RETAIL
16 SALE TO SUCH PERSON OR (B) A SALE TO SUCH PERSON WHICH INVOLVES A DELIV-
17 ERY AT A FILLING STATION OR INTO A REPOSITORY WHICH IS EQUIPPED WITH A
18 HOSE OR OTHER APPARATUS BY WHICH SUCH QUALIFIED BIODIESEL CAN BE
19 DISPENSED INTO THE FUEL TANK OF A MOTOR VEHICLE.

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

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

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

28 (e) Sales of QUALIFIED BIODIESEL, non-highway diesel motor fuel and
29 residual petroleum product to registered distributors of diesel motor
30 fuel and registered residual petroleum product businesses.

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

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

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

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

53 (2) Every distributor of diesel motor fuel shall pay, as a prepayment
54 on account of the taxes imposed by this article and pursuant to the
55 authority of article twenty-nine of this chapter, a tax upon the sale or
56 use of diesel motor fuel in this state. The tax shall be computed based

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

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

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

MEANS SUCH TERM AS DEFINED IN SUBDIVISION TWENTY-THREE OF SECTION TWO HUNDRED EIGHTY-TWO OF THIS CHAPTER.

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

1 is filed, the commissioner may refuse to issue a certificate of authori-
2 ty.

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

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

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

31 S 3. This act shall take effect immediately.

32 PART G

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

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

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

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

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

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

53 (a) the amendments to section 29 of the tax law made by section thir-
54 teen of this act shall apply to tax documents filed or required to be

1 filed on or after the sixtieth day after which this act shall have
2 become a law [and shall expire and be deemed repealed December 31,
3 2012], provided however that the amendments to paragraph 4 of subdivi-
4 sion (a) of section 29 of the tax law and paragraph 2 of subdivision (e)
5 of section 29 of the tax law made by section thirteen of this act with
6 regard to individual taxpayers shall take effect September 15, 2011 but
7 only if the commissioner of taxation and finance has reported in the
8 report required by section seventeen-b of this act that the percentage
9 of individual taxpayers electronically filing their 2010 income tax
10 returns is less than eighty-five percent; provided that the commissioner
11 of taxation and finance shall notify the legislative bill drafting
12 commission of the date of the issuance of such report in order that the
13 commission may maintain an accurate and timely effective data base of
14 the official text of the laws of the state of New York in furtherance of
15 effectuating the provisions of section 44 of the legislative law and
16 section 70-b of the public officers law;

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

23 (c) sections fourteen-a and fifteen-a of this act shall take effect
24 September 15, 2011 and expire and be deemed repealed December 31, 2012
25 but shall take effect only if the commissioner of taxation and finance
26 has reported in the report required by section seventeen-b of this act
27 that the percentage of individual taxpayers electronically filing their
28 2010 income tax returns is eighty-five percent or greater; AND

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

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

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

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

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

1 Section 1. Paragraphs 2, 3 and 7 of subsection (g-1) of section 606 of
2 the tax law, paragraph 2 as amended by chapter 378 of the laws of 2005,
3 subparagraph (B) of paragraph 2 as amended by chapter 251 of the laws of
4 2006, paragraph 3 as amended by chapter 128 of the laws of 2007 and
5 paragraph 7 as renumbered by chapter 128 of the laws of 2007, are
6 amended to read as follows:

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

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

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

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

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

32 (C) Such qualified expenditures shall not include interest or other
33 finance charges.

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

38 (E) NOTWITHSTANDING PARAGRAPH ONE OF THIS SUBDIVISION, A TAXPAYER MAY
39 CLAIM CREDIT FOR EXPENDITURES DESCRIBED IN CLAUSE (II) OR (III) OF
40 SUBPARAGRAPH (A) OF THIS PARAGRAPH FOR THREE CONSECUTIVE TAXABLE YEARS;
41 PROVIDED, HOWEVER, THAT THE AMOUNT CLAIMED IN ANY TAXABLE YEAR SHALL NOT
42 EXCEED THE AMOUNT OF SUCH EXPENDITURES IN THAT YEAR AND THE TOTAL AMOUNT
43 OF CREDITS CLAIMED BY A TAXPAYER FOR ALL TAXABLE YEARS SHALL BE THE
44 LESSER OF TWELVE AND ONE-HALF PERCENT OF THE TOTAL AMOUNT TO BE PAID
45 UNDER THE WRITTEN AGREEMENTS DESCRIBED IN SUCH CLAUSES, OR FIVE THOUSAND
46 DOLLARS; AND PROVIDED FURTHER THAT NO CREDIT SHALL BE ALLOWED FOR
47 EXPENDITURES DESCRIBED IN CLAUSE (II) OR (III) OF SUBPARAGRAPH (A) OF
48 THIS PARAGRAPH WHERE THE WRITTEN AGREEMENT DESCRIBED IN SUCH CLAUSES WAS
49 ENTERED INTO ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN.

50 (3) Solar energy system equipment. The term "solar energy system
51 equipment" shall mean an arrangement or combination of components
52 utilizing solar radiation, which, when installed in a residence, produc-
53 es energy designed to provide heating, cooling, hot water or electricity
54 for use in such residence. Such arrangement or components shall not
55 include equipment connected to solar energy system equipment that is a
56 component of part or parts of a non-solar energy system or which uses

any sort of recreational facility or equipment as a storage medium. Solar energy system equipment that generates electricity for use in a residence must conform to applicable requirements set forth in section sixty-six-j of the public service law. Provided, however, where solar energy system equipment is purchased and installed by a condominium management association or a cooperative housing corporation, for purposes of this subsection only, the term ["ten kilowatts"] "TWENTY-FIVE KILOWATTS" in such section sixty-six-j shall be read as "fifty kilowatts."

(7) When credit allowed. The credit provided for herein shall be allowed with respect to the taxable year, commencing after nineteen hundred ninety-seven, in which the solar energy system equipment is placed in service, OR WHEN THE EXPENDITURES DESCRIBED IN CLAUSE (II) OR (III) OF SUBPARAGRAPH (A) OF THIS SECTION ARE INCURRED, AS APPLICABLE.

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

(ee) Receipts from the retail sale of [residential] solar energy systems equipment and of the service of installing such systems shall be exempt from tax under this article. For the purposes of this subdivision, "[residential] solar energy systems equipment" shall mean an arrangement or combination of components [installed in a residence] that utilizes solar radiation to produce energy designed to provide heating, cooling, hot water and/or electricity IN A BUILDING OR A STRUCTURE. Such arrangement or components shall not [include] EXCEED AN INSTALLED CAPACITY RATING OF TWO MEGAWATTS OR THE THERMAL EQUIVALENT THEREOF AND SHALL NOT INCLUDE equipment that is part of a non-solar energy system or [which uses any sort of recreational facility or equipment as a storage medium] SYSTEMS OR EQUIPMENT USED TO HEAT RESIDENTIAL SWIMMING POOLS.

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

(1) Either, all of the taxes described in article twenty-eight of this chapter, at the same uniform rate, as to which taxes all provisions of the local laws, ordinances or resolutions imposing such taxes shall be identical, except as to rate and except as otherwise provided, with the corresponding provisions in such article twenty-eight, including the definition and exemption provisions of such article, so far as the provisions of such article twenty-eight can be made applicable to the taxes imposed by such city or county and with such limitations and special provisions as are set forth in this article. The taxes authorized under this subdivision may not be imposed by a city or county unless the local law, ordinance or resolution imposes such taxes so as to include all portions and all types of receipts, charges or rents, subject to state tax under sections eleven hundred five and eleven hundred ten of this chapter, except as otherwise provided. (i) Any local law, ordinance or resolution enacted by any city of less than one million or by any county or school district, imposing the taxes authorized by this subdivision, shall, notwithstanding any provision of law to the contrary, exclude from the operation of such local taxes all sales of tangible personal property for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, generating, assembly, refining, mining or extracting; and all sales of tangible personal property for use or consumption predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both; and,

1 unless such city, county or school district elects otherwise, shall omit
2 the provision for credit or refund contained in clause six of subdivi-
3 sion (a) or subdivision (d) of section eleven hundred nineteen of this
4 chapter. (ii) Any local law, ordinance or resolution enacted by any
5 city, county or school district, imposing the taxes authorized by this
6 subdivision, shall omit the [residential] solar energy systems equipment
7 exemption provided for in subdivision (ee) and the clothing and footwear
8 exemption provided for in paragraph thirty of subdivision (a) of section
9 eleven hundred fifteen of this chapter, unless such city, county or
10 school district elects otherwise as to either such [residential] solar
11 energy systems equipment exemption or such clothing and footwear
12 exemption.

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

15 (1) Any city having a population of one million or more in which the
16 taxes imposed by section eleven hundred seven of this chapter are in
17 effect, acting through its local legislative body, is hereby authorized
18 and empowered to elect to provide the same exemptions from such taxes as
19 the [residential] solar energy systems equipment exemption from state
20 sales and compensating use taxes described in subdivision (ee) of
21 section eleven hundred fifteen of this chapter by enacting a resolution
22 in the form set forth in paragraph two of this subdivision; whereupon,
23 upon compliance with the provisions of subdivisions (d) and (e) of this
24 section, such enactment of such resolution shall be deemed to be an
25 amendment to such section eleven hundred seven and such section eleven
26 hundred seven shall be deemed to incorporate such exemptions as if they
27 had been duly enacted by the state legislature and approved by the
28 governor.

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

30 (1) section one of this act shall apply to leases of solar energy
31 system equipment and purchases of power under written agreements entered
32 into on or after such effective date; and

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

37

PART I

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

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

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

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

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

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

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

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

31 S 5. This act shall take effect immediately.

32 PART J

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

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

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

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

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

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

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

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

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

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

26 S 6. This act shall take effect immediately; provided, however,
27 section two of this act shall take effect April 1, 2013, section three
28 of this act shall take effect April 1, 2014, section four of this act
29 shall take effect April 1, 2015 and section five of this act shall take
30 effect April 1, 2016.

31 PART K

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

35 (a) General. A taxpayer subject to tax under article nine, nine-A or
36 twenty-two of this chapter shall be allowed a credit against such tax
37 pursuant to the provisions referenced in subdivision (d) of this
38 section. The credit (or pro rata share of earned credit in the case of a
39 partnership) for each gallon of biofuel produced at a biofuel plant on
40 or after January first, two thousand six shall equal fifteen cents per
41 gallon after the production of the first forty thousand gallons per year
42 presented to market. The credit under this section shall be capped at
43 two and one-half million dollars per taxpayer per taxable year for up to
44 no more than four consecutive taxable years per biofuel plant. If the
45 taxpayer is a partner in a partnership or shareholder of a New York S
46 corporation, then the cap imposed by the preceding sentence shall be
47 applied at the entity level, so that the aggregate credit allowed to all
48 the partners or shareholders of each such entity in the taxable year
49 does not exceed two and one-half million dollars. THE TAX CREDIT ALLOWED
50 PURSUANT TO THIS SECTION SHALL APPLY TO TAXABLE YEARS BEGINNING BEFORE
51 JANUARY FIRST, TWO THOUSAND TWENTY.

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

1 S 187-c. Biofuel production credit. A taxpayer shall be allowed a
2 credit to be computed as provided in section twenty-eight of this chap-
3 ter, AS ADDED BY PART X OF CHAPTER SIXTY-TWO OF THE LAWS OF TWO THOUSAND
4 SIX, against the tax imposed by this article. Provided, however, that
5 the amount of such credit allowed against the tax imposed by section one
6 hundred eighty-four of this article shall be the excess of the amount of
7 such credit over the amount of any credit allowed by this section
8 against the tax imposed by section one hundred eighty-three of this
9 article. In no event shall the credit under this section be allowed in
10 an amount which will reduce the tax payable to less than the applicable
11 minimum tax fixed by section one hundred eighty-three or one hundred
12 eighty-five of this article. If, however, the amount of the credit
13 allowed under this section for any taxable year reduces the tax to such
14 amount, the excess shall be treated as an overpayment of tax to be cred-
15 ited or refunded in accordance with the provisions of section six
16 hundred eighty-six of this chapter. Provided, however, the provisions of
17 subsection (c) of section one thousand eighty-eight of this chapter
18 notwithstanding, no interest shall be paid thereon. THE TAX CREDIT
19 ALLOWED PURSUANT TO THIS SECTION SHALL APPLY TO TAXABLE YEARS BEGINNING
20 BEFORE JANUARY FIRST, TWO THOUSAND TWENTY.

21 S 3. Subdivision 38 of section 210 of the tax law, as added by section
22 3 of part X of chapter 62 of the laws of 2006, is amended to read as
23 follows:

24 38. Biofuel production credit. A taxpayer shall be allowed a credit,
25 to be computed as provided in section twenty-eight of this chapter, AS
26 ADDED BY PART X OF CHAPTER SIXTY-TWO OF THE LAWS OF TWO THOUSAND SIX,
27 against the tax imposed by this article. The credit allowed under this
28 subdivision for any taxable year shall not reduce the tax due for such
29 year to less than the higher of the amounts prescribed in paragraphs (c)
30 and (d) of subdivision one of this section. However, if the amount of
31 credit allowed under this subdivision for any taxable year reduces the
32 tax to such amount, any amount of credit thus not deductible in such
33 taxable year shall be treated as an overpayment of tax to be credited or
34 refunded in accordance with the provisions of section one thousand
35 eighty-six of this chapter. Provided, however, the provisions of
36 subsection (c) of section one thousand eighty-eight of this chapter
37 notwithstanding, no interest shall be paid thereon. THE TAX CREDIT
38 ALLOWED PURSUANT TO THIS SECTION SHALL APPLY TO TAXABLE YEARS BEGINNING
39 BEFORE JANUARY FIRST, TWO THOUSAND TWENTY.

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

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

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

1 S 6. This act shall take effect immediately [and shall apply to taxa-
2 ble years commencing on and after January 1, 2006 and before January 1,
3 2013]; provided, however that the IMB credit for energy taxes under
4 subsection (t-1) and the state film production credit under subsection
5 (gg) of section 606 of the tax law contained in section four of this act
6 shall expire on the same date as provided in subdivision (a) of section
7 49 of part Y of chapter 63 of the laws of 2000, as amended and section 9
8 of part P of chapter 60 of the laws of 2004, as amended, respectively.

9 S 6. This act shall take effect immediately.

10 PART L

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

14 S 2. This act shall take effect immediately and shall apply to taxable
15 years beginning on or after January 1, 2006 [and before January 1,
16 2013].

17 S 2. This act shall take effect immediately.

18 PART M

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

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

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

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

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

34 PART N

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

38 (a) For the sole purpose of providing an additional stable and reli-
39 able dedicated funding source for the metropolitan transportation
40 authority and its subsidiaries and affiliates to preserve, operate and
41 improve essential transit and transportation services in the metropol-
42 itan commuter transportation district, a tax is hereby imposed on
43 EMPLOYERS AND INDIVIDUALS AS FOLLOWS: (1) FOR employers who engage in
44 business within the MCTD [(1)], THE TAX IS IMPOSED at a rate of (A)
45 eleven hundredths (.11) percent OF THE PAYROLL EXPENSE for employers
46 with payroll expense no greater than three hundred seventy-five thousand
47 dollars in any calendar quarter, (B) twenty-three hundredths (.23)
48 percent OF THE PAYROLL EXPENSE for employers with payroll expense great-
49 er than three hundred seventy-five thousand dollars and no greater than
50 four hundred thirty-seven thousand five hundred dollars in any calendar

1 quarter, and (C) thirty-four hundredths (.34) percent OF THE PAYROLL
2 EXPENSE for employers with payroll expense in excess of four hundred
3 thirty-seven thousand five hundred dollars in any calendar quarter[,
4 and]. IF THE EMPLOYER IS A PROFESSIONAL EMPLOYER ORGANIZATION, AS
5 DEFINED IN SECTION NINE HUNDRED SIXTEEN OF THE LABOR LAW, THE EMPLOYER'S
6 TAX SHALL BE CALCULATED BY DETERMINING THE PAYROLL EXPENSE ATTRIBUTABLE
7 TO EACH CLIENT WHO HAS ENTERED INTO A PROFESSIONAL EMPLOYER AGREEMENT
8 WITH SUCH ORGANIZATION AND THE PAYROLL EXPENSE ATTRIBUTABLE TO SUCH
9 ORGANIZATION ITSELF, MULTIPLYING EACH OF THOSE PAYROLL EXPENSE AMOUNTS
10 BY THE APPLICABLE RATE SET FORTH IN THIS PARAGRAPH AND ADDING THOSE
11 PRODUCTS TOGETHER. (2) FOR INDIVIDUALS, THE TAX IS IMPOSED at a rate of
12 thirty-four hundredths (.34) percent of the net earnings from self-em-
13 ployment of individuals that are attributable to the MCTD if such earn-
14 ings attributable to the MCTD exceed fifty thousand dollars for the tax
15 year.

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

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

24 S 3. This act shall take effect immediately; provided however that the
25 amendment in section one of this act concerning professional employer
26 organizations shall take effect for the quarter beginning on April 1,
27 2012.

28 PART O

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

33 (a) Any racing association or corporation or regional off-track
34 betting corporation, authorized to conduct pari-mutuel wagering under
35 this chapter, desiring to display the simulcast of horse races on which
36 pari-mutuel betting shall be permitted in the manner and subject to the
37 conditions provided for in this article may apply to the board for a
38 license so to do. Applications for licenses shall be in such form as may
39 be prescribed by the board and shall contain such information or other
40 material or evidence as the board may require. No license shall be
41 issued by the board authorizing the simulcast transmission of thorough-
42 bred races from a track located in Suffolk county. The fee for such
43 licenses shall be five hundred dollars per simulcast facility per year
44 payable by the licensee to the board for deposit into the general fund.
45 Except as provided herein, the board shall not approve any application
46 to conduct simulcasting into individual or group residences, homes or
47 other areas for the purposes of or in connection with pari-mutuel wager-
48 ing. The board may approve simulcasting into residences, homes or other
49 areas to be conducted jointly by one or more regional off-track betting
50 corporations and one or more of the following: a franchised corporation,
51 thoroughbred racing corporation or a harness racing corporation or asso-
52 ciation; provided (i) the simulcasting consists only of those races on
53 which pari-mutuel betting is authorized by this chapter at one or more
54 simulcast facilities for each of the contracting off-track betting

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

29 S 2. Subparagraph (iii) of paragraph d of subdivision 3 of section
30 1007 of the racing, pari-mutuel wagering and breeding law, as amended by
31 section 2 of part S of chapter 61 of the laws of 2011, is amended to
32 read as follows:

33 (iii) Of the sums retained by a receiving track located in Westchester
34 county on races received from a franchised corporation, for the period
35 commencing January first, two thousand eight and continuing through June
36 thirtieth, two thousand [twelve] THIRTEEN, the amount used exclusively
37 for purses to be awarded at races conducted by such receiving track
38 shall be computed as follows: of the sums so retained, two and one-half
39 percent of the total pools. Such amount shall be increased or decreased
40 in the amount of fifty percent of the difference in total commissions
41 determined by comparing the total commissions available after July twen-
42 ty-first, nineteen hundred ninety-five to the total commissions that
43 would have been available to such track prior to July twenty-first,
44 nineteen hundred ninety-five.

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

49 The provisions of this section shall govern the simulcasting of races
50 conducted at thoroughbred tracks located in another state or country on
51 any day during which a franchised corporation is conducting a race meet-
52 ing in Saratoga county at Saratoga thoroughbred racetrack until June
53 thirtieth, two thousand [twelve] THIRTEEN and on any day regardless of
54 whether or not a franchised corporation is conducting a race meeting in
55 Saratoga county at Saratoga thoroughbred racetrack after June thirtieth,
56 two thousand [twelve] THIRTEEN. On any day on which a franchised corpo-

ration has not scheduled a racing program but a thoroughbred racing corporation located within the state is conducting racing, every off-track betting corporation branch office and every simulcasting facility licensed in accordance with section one thousand seven (that have entered into a written agreement with such facility's representative horsemen's organization, as approved by the board), one thousand eight, or one thousand nine of this article shall be authorized to accept wagers and display the live simulcast signal from thoroughbred tracks located in another state or foreign country subject to the following provisions:

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

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

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

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

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

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

1 written agreement shall be required of a franchised corporation licensed
2 in accordance with section one thousand seven of this article.

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

7 S 32. This act shall take effect immediately and the pari-mutuel tax
8 reductions in section six of this act shall expire and be deemed
9 repealed on July 1, [2012] 2013; provided, however, that nothing
10 contained herein shall be deemed to affect the application, qualifica-
11 tion, expiration, or repeal of any provision of law amended by any
12 section of this act, and such provisions shall be applied or qualified
13 or shall expire or be deemed repealed in the same manner, to the same
14 extent and on the same date as the case may be as otherwise provided by
15 law; provided further, however, that sections twenty-three and twenty-
16 five of this act shall remain in full force and effect only until May 1,
17 1997 and at such time shall be deemed to be repealed.

18 S 8. Section 54 of chapter 346 of the laws of 1990, amending the
19 racing, pari-mutuel wagering and breeding law and other laws relating to
20 simulcasting and the imposition of certain taxes, as amended by section
21 8 of part S of chapter 61 of the laws of 2011, is amended to read as
22 follows:

23 S 54. This act shall take effect immediately; provided, however,
24 sections three through twelve of this act shall take effect on January
25 1, 1991, and section 1013 of the racing, pari-mutuel wagering and breed-
26 ing law, as added by section thirty-eight of this act, shall expire and
27 be deemed repealed on July 1, [2012] 2013; and section eighteen of this
28 act shall take effect on July 1, 2008 and sections fifty-one and fifty-
29 two of this act shall take effect as of the same date as chapter 772 of
30 the laws of 1989 took effect.

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

34 (a) The franchised corporation authorized under this chapter to
35 conduct pari-mutuel betting at a race meeting or races run thereat shall
36 distribute all sums deposited in any pari-mutuel pool to the holders of
37 winning tickets therein, provided such tickets be presented for payment
38 before April first of the year following the year of their purchase,
39 less an amount which shall be established and retained by such fran-
40 chised corporation of between twelve to seventeen per centum of the
41 total deposits in pools resulting from on-track regular bets, and four-
42 teen to twenty-one per centum of the total deposits in pools resulting
43 from on-track multiple bets and fifteen to twenty-five per centum of the
44 total deposits in pools resulting from on-track exotic bets and fifteen
45 to thirty-six per centum of the total deposits in pools resulting from
46 on-track super exotic bets, plus the breaks. The retention rate to be
47 established is subject to the prior approval of the racing and wagering
48 board. Such rate may not be changed more than once per calendar quarter
49 to be effective on the first day of the calendar quarter. "Exotic bets"
50 and "multiple bets" shall have the meanings set forth in section five
51 hundred nineteen of this chapter. "Super exotic bets" shall have the
52 meaning set forth in section three hundred one of this chapter. For
53 purposes of this section, a "pick six bet" shall mean a single bet or
54 wager on the outcomes of six races. The breaks are hereby defined as the
55 odd cents over any multiple of five for payoffs greater than one dollar
56 five cents but less than five dollars, over any multiple of ten for

1 payoffs greater than five dollars but less than twenty-five dollars,
2 over any multiple of twenty-five for payoffs greater than twenty-five
3 dollars but less than two hundred fifty dollars, or over any multiple of
4 fifty for payoffs over two hundred fifty dollars. Out of the amount so
5 retained there shall be paid by such franchised corporation to the
6 commissioner of taxation and finance, as a reasonable tax by the state
7 for the privilege of conducting pari-mutuel betting on the races run at
8 the race meetings held by such franchised corporation, the following
9 percentages of the total pool for regular and multiple bets five per
10 centum of regular bets and four per centum of multiple bets plus twenty
11 per centum of the breaks; for exotic wagers seven and one-half per
12 centum plus twenty per centum of the breaks, and for super exotic bets
13 seven and one-half per centum plus fifty per centum of the breaks. For
14 the period June first, nineteen hundred ninety-five through September
15 ninth, nineteen hundred ninety-nine, such tax on regular wagers shall be
16 three per centum and such tax on multiple wagers shall be two and one-
17 half per centum, plus twenty per centum of the breaks. For the period
18 September tenth, nineteen hundred ninety-nine through March thirty-
19 first, two thousand one, such tax on all wagers shall be two and six-
20 tenths per centum and for the period April first, two thousand one
21 through December thirty-first, two thousand [twelve] THIRTEEN, such tax
22 on all wagers shall be one and six-tenths per centum, plus, in each such
23 period, twenty per centum of the breaks. Payment to the New York state
24 thoroughbred breeding and development fund by such franchised corpo-
25 ration shall be one-half of one per centum of total daily on-track pari-
26 mutuel pools resulting from regular, multiple and exotic bets and three
27 per centum of super exotic bets provided, however, that for the period
28 September tenth, nineteen hundred ninety-nine through March thirty-
29 first, two thousand one, such payment shall be six-tenths of one per
30 centum of regular, multiple and exotic pools and for the period April
31 first, two thousand one through December thirty-first, two thousand
32 [twelve] THIRTEEN, such payment shall be seven-tenths of one per centum
33 of such pools.

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

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

39 S 11. This act shall take effect immediately.

40

PART P

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

44 3. [From the] THE moneys collected from the taxes imposed by sections
45 one hundred eighty-three and one hundred eighty-four of this article on
46 and after April first, two thousand [four] TWELVE, after reserving
47 amounts for refunds or reimbursements, SHALL BE DISTRIBUTED AS FOLLOWS:
48 twenty percent of such moneys shall be deposited to the credit of the
49 dedicated highway and bridge trust fund established by section eighty-
50 nine-b of the state finance law[. The remainder], FIFTY-FOUR PERCENT OF
51 SUCH MONEYS shall be deposited in the mass transportation operating
52 assistance fund to the credit of the metropolitan mass transportation
53 operating assistance account created pursuant to section eighty-eight-a
54 of the state finance law AND TWENTY-SIX PERCENT OF SUCH MONEYS SHALL BE

DEPOSITED IN THE MASS TRANSPORTATION OPERATING ASSISTANCE FUND TO THE CREDIT OF THE PUBLIC TRANSPORTATION SYSTEMS OPERATING ASSISTANCE ACCOUNT CREATED PURSUANT TO SECTION EIGHTY-EIGHT-A OF THE STATE FINANCE LAW.

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

PART Q

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

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

(2) [When] EXCEPT AS PROVIDED IN SUBDIVISION (R) OF SECTION ELEVEN HUNDRED ELEVEN OF THIS PART, 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 article, 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, receipt, or other statement given the occupant, and such rent is reasonable in relation to the value of such property, services, amusement charges or other items, only such separately stated rent will be subject to tax under paragraph one of this subdivision.

S 2. Section 1111 of the tax law is amended by adding a new subdivision (r) to read as follows:

(R) (1) IN REGARD TO THE COLLECTION OF SALES TAX ON OCCUPANCIES BY ROOM REMARKETERS, WHEN OCCUPANCY IS PROVIDED FOR A SINGLE CONSIDERATION WITH PROPERTY, SERVICES, AMUSEMENT CHARGES, OR ANY OTHER ITEMS, WHETHER OR NOT SUCH OTHER ITEMS ARE TAXABLE, THE RENT PORTION OF THE CONSIDERATION FOR SUCH TRANSACTION SHALL BE COMPUTED AS FOLLOWS: EITHER THE TOTAL CONSIDERATION RECEIVED BY THE ROOM REMARKETER MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH SHALL BE THE CONSIDERATION PAYABLE FOR THE OCCUPANCY BY THE ROOM REMARKETER AND THE DENOMINATOR OF WHICH SHALL BE SUCH CONSIDERATION PAYABLE FOR THE OCCUPANCY PLUS THE CONSIDERATION PAYABLE BY THE REMARKETER FOR THE OTHER ITEMS BEING SOLD, OR BY ANY OTHER METHOD AS MAY BE AUTHORIZED BY THE COMMISSIONER. IF THE ROOM REMARKETER FAILS TO SEPARATELY STATE THE TAX ON THE RENT SO COMPUTED ON A SALES SLIP, INVOICE, RECEIPT, OR OTHER STATEMENT GIVEN TO THE OCCUPANT IN THE MANNER PRESCRIBED BY PARAGRAPH TWO OF THIS SUBDIVISION OR FAILS TO MAINTAIN RECORDS OF THE PRICES OF ALL COMPONENTS OF A TRANSACTION COVERED BY THIS PARAGRAPH, THE ENTIRE CONSIDERATION SHALL BE TREATED AS RENT SUBJECT TO TAX UNDER PARAGRAPH ONE OF SUBDIVISION (E) OF SECTION ELEVEN HUNDRED FIVE OF THIS PART. NOTHING HEREIN SHALL BE CONSTRUED TO SUBJECT TO TAX OR EXEMPT FROM TAX ANY SERVICE OR PROPERTY OR AMUSEMENT CHARGE OR OTHER ITEMS OTHERWISE SUBJECT TO TAX OR EXEMPT FROM TAX UNDER THIS ARTICLE OR PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS CHAPTER. A ROOM REMARKETER'S RECORDS OF THE CONSIDERATION PAYABLE FOR ALL COMPONENTS OF A TRANSACTION COVERED BY THIS PARAGRAPH ARE RECORDS

1 REQUIRED TO BE MAINTAINED FOR PURPOSES OF SUBDIVISION (A) OF SECTION
2 ELEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE.

3 (2) IN REGARD TO THE COLLECTION OF SALES TAX ON OCCUPANCIES BY ROOM
4 REMARKETERS, INCLUDING A TRANSACTION DESCRIBED IN PARAGRAPH ONE OF THIS
5 SUBDIVISION, THE REQUIREMENTS OF THE SECOND SENTENCE OF PARAGRAPH ONE OF
6 SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-TWO OF THIS ARTICLE
7 SHALL BE DEEMED SATISFIED IF THE REMARKETER GIVES THE CUSTOMER A SALES
8 SLIP, INVOICE, RECEIPT, OR OTHER STATEMENT OF THE PRICE ("INVOICE")
9 PRIOR TO THE CUSTOMER'S COMPLETION OF HIS OR HER OCCUPANCY, ON WHICH THE
10 AMOUNT OF TAX DUE UNDER THIS ARTICLE AND PURSUANT TO THE AUTHORITY OF
11 ARTICLE TWENTY-NINE OF THIS CHAPTER IS STATED. THE ROOM REMARKETER MUST
12 KEEP EITHER A COPY OF THE INVOICE AS REQUIRED BY SUBDIVISION (A) OF
13 SECTION ELEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE, OR ELECTRONIC
14 RECORDS THAT ACCURATELY REFLECT THE INFORMATION THAT IS ON THE INVOICE
15 PROVIDED TO THE CUSTOMER.

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

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

27 (e) Subject to conditions and limitations provided in this subdivi-
28 sion, a room remarketer shall be allowed a refund or credit against the
29 amount of tax collected and required to be remitted under section eleven
30 hundred thirty-seven of this article in the amount of the tax it paid to
31 an operator of a hotel under section eleven hundred four of this arti-
32 cle, where applicable, and subdivision (e) of section eleven hundred
33 five of this article. Provided, however, that, in order to qualify for a
34 refund or credit under this subdivision for any sales tax quarterly
35 period, the room remarketer must, for that quarter, (1) be registered
36 for sales tax purposes under section eleven hundred thirty-four of this
37 article; (2) collect the taxes imposed by section eleven hundred four of
38 this article, where applicable, and subdivision (e) of section eleven
39 hundred five of this article; and (3) furnish the certificate of author-
40 ity number of the operator to whom the applicant paid the tax in its
41 application for refund or credit if required on that form or upon
42 request. PROVIDED THAT IF THE ROOM REMARKETER REQUESTS THE OPERATOR'S
43 CERTIFICATE OF AUTHORITY NUMBER AND IS NOT PROVIDED WITH THAT NUMBER,
44 THE ROOM REMARKETER MAY SATISFY THIS REQUIREMENT BY PROVIDING THE OPERA-
45 TOR'S NAME, BUSINESS ADDRESS, TELEPHONE NUMBER, AND THE ADDRESS OF THE
46 HOTEL WHERE THE OCCUPANCY TOOK PLACE. An application for refund or cred-
47 it under this subdivision must be filed with the commissioner within the
48 time provided by subdivision (a) of section eleven hundred thirty-nine
49 of this article. The application must be in the form prescribed by the
50 commissioner. Where an application for credit has been filed, the appli-
51 cant may immediately take the credit on the return that is due coinci-
52 dent with or immediately subsequent to the time that the applicant files
53 the application for credit. However, the taking of the credit on the
54 return is deemed to be part of the application for credit. The procedure
55 for granting or denying the applications for refund or credit and review
56 of those determinations shall be as provided in subdivision (e) of

1 section eleven hundred thirty-nine of this article. An operator, includ-
2 ing a room remarketer, who is paid tax by a room remarketer must upon
3 request provide the remarketer with its certificate of authority number,
4 provided that the operator's failure to do so does not change the
5 requirement set forth in paragraph three of this subdivision.

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

9 (4) (I) When occupancy is provided, for a single consideration, with
10 property, services, amusement charges, or any other items, the separate
11 sale of which is not subject to tax under this chapter, the entire
12 consideration shall be treated as rent subject to tax under paragraph
13 one of this subdivision; provided, however, that where the amount of the
14 rent for occupancy is stated separately from the price of such property,
15 services, amusement charges or other items on any sales slip, invoice,
16 receipt, or other statement given the occupant and such rent is reason-
17 able in relation to the value of such property, services, amusement
18 charges, or other items, only such separately stated rent will be
19 subject to tax under [paragraph one of] this subdivision.

20 (II) IN REGARD TO THE COLLECTION OF TAX ON OCCUPANCIES BY REMARKETERS,
21 WHEN OCCUPANCY IS PROVIDED, FOR A SINGLE CONSIDERATION, WITH PROPERTY,
22 SERVICES, AMUSEMENT CHARGES, OR ANY OTHER ITEMS, WHETHER OR NOT SUCH
23 OTHER ITEMS ARE TAXABLE, THE RENT PORTION OF THE CONSIDERATION FOR SUCH
24 SALE SHALL BE COMPUTED AS FOLLOWS: THE TOTAL CONSIDERATION FOR THE SALE
25 MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH SHALL BE THE CONSIDER-
26 ATION PAID TO THE HOTEL FOR THE OCCUPANCY AND THE DENOMINATOR OF WHICH
27 SHALL BE THE CONSIDERATION PAID TO THE HOTEL FOR THE OCCUPANCY PLUS THE
28 CONSIDERATION PAID TO THE PROVIDERS OF THE OTHER ITEMS BEING SOLD, OR BY
29 ANY OTHER REASONABLE METHOD PURSUANT TO WHICH THE RENT PORTION OF
30 CONSIDERATION WOULD BE NO LESS THAN THE COMPUTATION OF RENT PORTION OF
31 CONSIDERATION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH. NOTHING HEREIN
32 SHALL BE CONSTRUED TO SUBJECT TO TAX OR EXEMPT FROM TAX ANY SERVICE OR
33 PROPERTY OR AMUSEMENT CHARGE OR OTHER ITEMS OTHERWISE SUBJECT TO TAX OR
34 EXEMPT FROM TAX UNDER THIS CHAPTER.

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

38 (5) A room remarketer shall be allowed a refund or credit against the
39 taxes collected and required to be remitted pursuant to section 11-2505
40 of this chapter in the amount of the tax it paid to the operator of the
41 hotel or another room remarketer under [paragraph three of] this subdi-
42 vision. Provided, however, that in order to qualify for a refund or
43 credit under this paragraph with respect to any quarterly period, as
44 described in subdivision a of section 11-2504 of this chapter, the room
45 remarketer must, with respect to such quarter, (i) be registered for
46 hotel room occupancy tax purposes under section 11-2514 of this chapter,
47 and (ii) collect the taxes imposed by paragraphs two and three of this
48 subdivision. Subject to the conditions and limitations of this para-
49 graph, the provisions of section 11-2507 of this chapter shall apply to
50 refunds or credits under this paragraph.

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

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

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

15 (2) The operator or room remarketer and any officer of any corporate
16 operator or room remarketer shall be personally liable for the portion
17 of the tax collected or required to be collected under this chapter, and
18 the operator shall have the same right in respect to collecting the tax
19 from the occupant, or in respect to nonpayment of the tax by the occu-
20 pant as if the tax were a part of the rent for the occupancy payable at
21 the time such tax shall become due and owing, including all rights of
22 eviction, dispossession, repossession and enforcement of any innkeeper's
23 lien that he or she may have in the event of nonpayment of rent by the
24 occupant; provided however, that the commissioner of finance shall be
25 joined as a party in any action or proceeding brought by the operator to
26 collect or enforce collection of the tax.

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

29 S 2. Severability clause. If any clause, sentence, paragraph, subdivi-
30 sion, section or part of this act shall be adjudged by any court of
31 competent jurisdiction to be invalid, such judgment shall not affect,
32 impair, or invalidate the remainder thereof, but shall be confined in
33 its operation to the clause, sentence, paragraph, subdivision, section
34 or part thereof directly involved in the controversy in which such judg-
35 ment shall have been rendered. It is hereby declared to be the intent of
36 the legislature that this act would have been enacted even if such
37 invalid provisions had not been included herein.

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