

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

S. 2609--A

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

January 22, 2013

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

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

AN ACT to amend the tax law, in relation to the temporary metropolitan transportation business tax surcharge (Part A); to amend the tax law, in relation to the empire state film production credit and the empire state film post production credit; and to amend part Y-1 of chapter 57 of the laws of 2009 amending the tax law relating to the empire state film production credit, in relation to reports (Part B); to amend the economic development law, the tax law and the administrative code of the city of New York, in relation to establishing the New York innovation hot spot program (Part C); to amend the tax law and the administrative code of the city of New York, in relation to extending for three years the charitable contributions deduction limitation (Part D); to amend the tax law and the administrative code of the city of New York, in relation to the exclusion of certain royalty payments from the entire net income or other taxable basis of corporations, banking corporations, and insurance corporations, from the unrelated business income of corporations, and from the adjusted gross income of individual taxpayers; and to repeal certain provisions of the tax law relating thereto (Part E); to amend the tax law, in relation to the historic preservation tax credit (Part F); to amend the tax law, in relation to providing a tax credit for electric vehicle recharging property (Part G); to amend chapter 61 of the laws of 2011 amending the real property tax law and other laws relating to establishing standards for electronic real property tax administration, 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 H); to amend the tax

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

LBD12574-02-3

law, in relation to exempting sales made at a Taste-NY facility from sales and compensating use taxes; and to amend the alcoholic beverage control law, in relation to allowing sales of all types of alcoholic beverages at a Taste-NY facility (Part I); to amend the general municipal law and the public authorities law, in relation to industrial development agencies and authorities (Part J); to amend the tax law, in relation to expanding the exemption of CNG in the sales tax to include natural gas purchased and used to produce CNG for use exclusively and directly in the engine of a motor vehicle (Part K); to amend the tax law, in relation to allowing voluntary ambulance services, fire companies, fire departments and rescue squads to claim reimbursement of the petroleum business tax for fuel used in their vehicles (Part L); 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 use taxes and the power of the commissioner of taxation and finance to revoke such a certificate once granted and penalties related to the operation of a business without such certificate (Part M); to amend the tax law, in relation to allowing the department of taxation and finance to refuse a certificate of registration to retail dealers of cigarettes and tobacco products if such dealers have certain tax liabilities or have been convicted of a tax crime within one year of applying for or renewing a certificate of registration (Part N); to amend the tax law, in relation to increasing the penalty for the possession of unstamped and unlawfully stamped cigarettes (Part O); to amend the tax law, the vehicle and traffic law and the insurance law, in relation to the suspension of drivers' licenses of persons who are delinquent in the payment of past-due tax liabilities (Part P); to amend the tax law, in relation to serving an income execution with respect to individual tax debtors without filing a warrant (Part Q); to amend the tax law, in relation to the authority of counties to impose sales and compensating use taxes pursuant to the authority of article 29 of such law; and to repeal certain provisions of sections 1210 and 1224 and section 1210-E of such law relating thereto (Part R); to amend the tax law, in relation to a keno style lottery game (Part S); to amend the tax law, in relation to vendor fees paid to vendor tracks (Part T); 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 making permanent certain provisions thereof; to amend the racing, pari-mutuel wagering and breeding law, in relation to making permanent certain provisions thereof; and to repeal subdivision 5 of section 1012 of the racing, pari-mutuel wagering and breeding law relating to telephone accounts and telephone wagering and section 1014 of the racing, pari-mutuel wagering and breeding law relating to simulcasting of out-of-state thoroughbred races (Part U); and to amend the tax law, in relation to the credit for the rehabilitation of historic homes (Part V)

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act enacts into law major components of legislation
2 which are necessary to implement the state fiscal plan for the 2013-2014
3 state fiscal year. Each component is wholly contained within a Part
4 identified as Parts A through V. The effective date for each particular
5 provision contained within such Part is set forth in the last section of
6 such Part. Any provision in any section contained within a Part, 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. Subdivision 1 of section 183-a of the tax law, as amended
14 by section 1 of part II-1 of chapter 57 of the laws of 2008, is amended
15 to read as follows:

16 1. The term "corporation" as used in this section shall include an
17 association, within the meaning of paragraph three of subsection (a) of
18 section seventy-seven hundred one of the internal revenue code (includ-
19 ing a limited liability company), a publicly traded partnership treated
20 as a corporation for purposes of the internal revenue code pursuant to
21 section seventy-seven hundred four thereof and any business conducted by
22 a trustee or trustees wherein interest or ownership is evidenced by
23 certificates or other written instruments. Every corporation, joint-
24 stock company or association formed for or principally engaged in the
25 conduct of canal, steamboat, ferry (except a ferry company operating
26 between any of the boroughs of the city of New York under a lease grant-
27 ed by the city), express, navigation, pipe line, transfer, baggage
28 express, omnibus, taxicab, telegraph, or telephone business, or formed
29 for or principally engaged in the conduct of two or more such busi-
30 nesses, and every corporation, joint-stock company or association formed
31 for or principally engaged in the conduct of a railroad, palace car,
32 sleeping car or trucking business or formed for or principally engaged
33 in the conduct of two or more of such businesses and which has made an
34 election pursuant to subdivision ten of section one hundred eighty-three
35 of this article, and every other corporation, joint-stock company or
36 association principally engaged in the conduct of a transportation or
37 transmission business, except a corporation, joint-stock company or
38 association formed for or principally engaged in the conduct of a rail-
39 road, palace car, sleeping car or trucking business or formed for or
40 principally engaged in the conduct of two or more of such businesses and
41 which has not made the election provided for in subdivision ten of
42 section one hundred eighty-three of this article, and except a corpo-
43 ration, joint-stock company or association principally engaged in the
44 conduct of aviation (including air freight forwarders acting as princi-
45 pal and like indirect air carriers) and except a corporation principally
46 engaged in providing telecommunication services between aircraft and
47 dispatcher, aircraft and air traffic control or ground station and
48 ground station (or any combination of the foregoing), at least ninety
49 percent of the voting stock of which corporation is owned, directly or
50 indirectly, by air carriers and which corporation's principal function
51 is to fulfill the requirements of (i) the federal aviation adminis-

1 tration (or the successor thereto) or (ii) the international civil
2 aviation organization (or the successor thereto), relating to the exist-
3 ence of a communication system between aircraft and dispatcher, aircraft
4 and air traffic control or ground station and ground station (or any
5 combination of the foregoing) for the purposes of air safety and naviga-
6 tion and except a corporation, joint-stock company or association which
7 is liable to taxation under article thirty-two of this chapter, shall
8 pay for the privilege of exercising its corporate franchise, or of doing
9 business, or of employing capital, or of owning or leasing property in
10 the metropolitan commuter transportation district in such corporate or
11 organized capacity, or of maintaining an office in such district, a tax
12 surcharge for all or any part of its years commencing on or after Janu-
13 ary first, nineteen hundred eighty-two but ending before December thir-
14 ty-first, two thousand [thirteen] EIGHTEEN, which tax surcharge, in
15 addition to the tax imposed by section one hundred eighty-three of this
16 article, shall be computed at the rate of eighteen percent of the tax
17 imposed under such section one hundred eighty-three for such years or
18 any part of such years ending before December thirty-first, nineteen
19 hundred eighty-three after the deduction of any credits otherwise allow-
20 able under this article, and at the rate of seventeen percent of the tax
21 imposed under such section for such years or any part of such years
22 ending on or after December thirty-first, nineteen hundred eighty-three
23 after the deduction of any credits otherwise allowable under this arti-
24 cle; provided, however, that such rates of tax surcharge shall be
25 applied only to that portion of the tax imposed under section one
26 hundred eighty-three of this article after the deduction of any credits
27 otherwise allowable under this article which is attributable to the
28 taxpayer's business activity carried on within the metropolitan commuter
29 transportation district as so determined in the manner prescribed by the
30 rules and regulations promulgated by the commissioner; and provided,
31 further, that the tax surcharge imposed by this section shall not be
32 imposed upon any taxpayer for more than [three] FOUR hundred [seventy-
33 two] THIRTY-TWO months.

34 S 2. The opening paragraph of subdivision 1 of section 184-a of the
35 tax law, as amended by section 2 of part II-1 of chapter 57 of the laws
36 of 2008, is amended to read as follows:

37 The term "corporation" as used in this section shall include an asso-
38 ciation, within the meaning of paragraph three of subsection (a) of
39 section seventy-seven hundred one of the internal revenue code (includ-
40 ing a limited liability company), and a publicly traded partnership
41 treated as a corporation for purposes of the internal revenue code
42 pursuant to section seventy-seven hundred four thereof. Every corpo-
43 ration, joint-stock company or association formed for or principally
44 engaged in the conduct of canal, steamboat, ferry (except a ferry compa-
45 ny operating between any of the boroughs of the city of New York under a
46 lease granted by the city), express, navigation, pipe line, transfer,
47 baggage express, omnibus, taxicab, telegraph or local telephone busi-
48 ness, or formed for or principally engaged in the conduct of two or more
49 such businesses, and every corporation, joint-stock company or associ-
50 ation formed for or principally engaged in the conduct of a surface
51 railroad, whether or not operated by steam, subway railroad, elevated
52 railroad, palace car, sleeping car or trucking business or principally
53 engaged in the conduct of two or more such businesses and which has made
54 an election pursuant to subdivision ten of section one hundred eighty-
55 three of this article, and every other corporation, joint-stock company
56 or association formed for or principally engaged in the conduct of a

1 transportation or transmission business (other than a telephone busi-
2 ness) except a corporation, joint-stock company or association formed
3 for or principally engaged in the conduct of a surface railroad, whether
4 or not operated by steam, subway railroad, elevated railroad, palace
5 car, sleeping car or trucking business or principally engaged in the
6 conduct of two or more such businesses and which has not made the
7 election provided for in subdivision ten of section one hundred eighty-
8 three of this article, and except a corporation, joint-stock company or
9 association principally engaged in the conduct of aviation (including
10 air freight forwarders acting as principal and like indirect air carri-
11 ers) and except a corporation principally engaged in providing telecom-
12 munication services between aircraft and dispatcher, aircraft and air
13 traffic control or ground station and ground station (or any combination
14 of the foregoing), at least ninety percent of the voting stock of which
15 corporation is owned, directly or indirectly, by air carriers and which
16 corporation's principal function is to fulfill the requirements of (i)
17 the federal aviation administration (or the successor thereto) or (ii)
18 the international civil aviation organization (or the successor there-
19 to), relating to the existence of a communication system between
20 aircraft and dispatcher, aircraft and air traffic control or ground
21 station and ground station (or any combination of the foregoing) for the
22 purposes of air safety and navigation and except a corporation, joint-
23 stock company or association which is liable to taxation under article
24 thirty-two of this chapter, shall pay for the privilege of exercising
25 its corporate franchise, or of doing business, or of employing capital,
26 or of owning or leasing property in the metropolitan commuter transpor-
27 tation district in such corporate or organized capacity, or of maintain-
28 ing an office in such district, a tax surcharge for all or any part of
29 its taxable years commencing on or after January first, nineteen hundred
30 eighty-two, but ending before December thirty-first, two thousand [thir-
31 teen] EIGHTEEN, which tax surcharge, in addition to the tax imposed by
32 section one hundred eighty-four of this article, shall be computed at
33 the rate of eighteen percent of the tax imposed under such section one
34 hundred eighty-four for such taxable years or any part of such taxable
35 years ending before December thirty-first, nineteen hundred eighty-three
36 after the deduction of any credits otherwise allowable under this arti-
37 cle, and at the rate of seventeen percent of the tax imposed under such
38 section for such taxable years or any part of such taxable years ending
39 on or after December thirty-first, nineteen hundred eighty-three after
40 the deduction of any credits otherwise allowable under this article;
41 provided, however, that such rates of tax surcharge shall be applied
42 only to that portion of the tax imposed under section one hundred eight-
43 y-four of this article after the deduction of any credits otherwise
44 allowable under this article which is attributable to the taxpayer's
45 business activity carried on within the metropolitan commuter transpor-
46 tation district; and provided, further, that the tax surcharge imposed
47 by this section on corporations, joint-stock companies and associations
48 formed for or principally engaged in the conduct of telephone or tele-
49 graph business shall be computed in accordance with this subdivision and
50 paragraph (c) of subdivision two of this section as if the three-quar-
51 ters of one percent rate of tax provided for in subdivision one of
52 section one hundred eighty-four of this article were applicable to such
53 telephone and telegraph businesses for taxable years commencing on or
54 after January first, nineteen hundred eighty-five and ending on or
55 before December thirty-first, nineteen hundred eighty-nine; and
56 provided, further, that the tax surcharge imposed by this section shall

1 not be imposed upon any taxpayer for more than [three] FOUR hundred
2 [seventy-two] THIRTY-TWO months. Provided, however, that for taxable
3 years beginning in two thousand and thereafter, for purposes of this
4 subdivision the tax imposed under section one hundred eighty-four of
5 this article shall be deemed to have been imposed at the rate of three-
6 quarters of one percent, except that in the case of a corporation,
7 joint-stock company or association which has made an election pursuant
8 to subdivision ten of section one hundred eighty-three of this article,
9 for purposes of this subdivision the tax imposed under section one
10 hundred eighty-four of this article shall be deemed to have been imposed
11 at the rate of six-tenths of one percent.

12 S 3. Subparagraph 1 of paragraph (a) of subdivision 1 of section 186-c
13 of the tax law, as amended by section 3 of part II-1 of chapter 57 of
14 the laws of 2008, is amended to read as follows:

15 (1) Every utility doing business in the metropolitan commuter trans-
16 portation district shall pay a tax surcharge, in addition to the tax
17 imposed by section one hundred eighty-six-a of this article, for all or
18 any parts of its taxable years commencing on or after January first,
19 nineteen hundred eighty-two but ending before December thirty-first, two
20 thousand [thirteen] EIGHTEEN, to be computed at the rate of eighteen
21 percent of the tax imposed under section one hundred eighty-six-a of
22 this article for such taxable years or any part of such taxable years
23 ending before December thirty-first, nineteen hundred eighty-three after
24 the deduction of any credits otherwise allowable under this article, and
25 at the rate of seventeen percent of the tax imposed under such section
26 for such taxable years or any part of such taxable years ending on or
27 after December thirty-first, nineteen hundred eighty-three after the
28 deduction of credits otherwise allowable under this article except any
29 utility credit provided for by article thirteen-A of this chapter;
30 provided, however, that such rates of tax surcharge shall be applied
31 only to that portion of the tax imposed under section one hundred eight-
32 y-six-a of this article after the deduction of credits otherwise allow-
33 able under this article, except any utility credit provided for by arti-
34 cle thirteen-A of this chapter, which is attributable to the taxpayer's
35 gross income or gross operating income from business activity carried on
36 within the metropolitan commuter transportation district; and provided,
37 further, that the tax surcharge imposed by this section shall not be
38 imposed upon any taxpayer for more than [three] FOUR hundred [seventy-
39 two] THIRTY-TWO months.

40 S 4. Subdivision 1 of section 209-B of the tax law, as amended by
41 section 4 of part II-1 of chapter 57 of the laws of 2008, is amended to
42 read as follows:

43 1. For the privilege of exercising its corporate franchise, or of
44 doing business, or of employing capital, or of owning or leasing proper-
45 ty in a corporate or organized capacity, or of maintaining an office in
46 the metropolitan commuter transportation district, for all or any part
47 of its taxable year, there is hereby imposed on every corporation, other
48 than a New York S corporation, subject to tax under section two hundred
49 nine of this article, or any receiver, referee, trustee, assignee or
50 other fiduciary, or any officer or agent appointed by any court, who
51 conducts the business of any such corporation, for the taxable years
52 commencing on or after January first, nineteen hundred eighty-two but
53 ending before December thirty-first, two thousand [thirteen] EIGHTEEN, a
54 tax surcharge, in addition to the tax imposed under section two hundred
55 nine of this article, to be computed at the rate of eighteen percent of
56 the tax imposed under such section two hundred nine for such taxable

1 years or any part of such taxable years ending before December thirty-
2 first, nineteen hundred eighty-three after the deduction of any credits
3 otherwise allowable under this article, and at the rate of seventeen
4 percent of the tax imposed under such section for such taxable years or
5 any part of such taxable years ending on or after December thirty-first,
6 nineteen hundred eighty-three after the deduction of any credits other-
7 wise allowable under this article; provided, however, that such rates of
8 tax surcharge shall be applied only to that portion of the tax imposed
9 under section two hundred nine of this article after the deduction of
10 any credits otherwise allowable under this article which is attributable
11 to the taxpayer's business activity carried on within the metropolitan
12 commuter transportation district; and provided, further, that the tax
13 surcharge imposed by this section shall not be imposed upon any taxpayer
14 for more than [three] FOUR hundred [seventy-two] THIRTY-TWO months.
15 Provided however, that for taxable years commencing on or after July
16 first, nineteen hundred ninety-eight, such surcharge shall be calculated
17 as if the tax imposed under section two hundred ten of this article were
18 imposed under the law in effect for taxable years commencing on or after
19 July first, nineteen hundred ninety-seven and before July first, nine-
20 teen hundred ninety-eight. Provided however, that for taxable years
21 commencing on or after January first, two thousand seven, such surcharge
22 shall be calculated using the highest of the tax bases imposed pursuant
23 to paragraphs (a), (b), (c) or (d) of subdivision one of section two
24 hundred ten of this article and the amount imposed under paragraph (e)
25 of subdivision one of such section two hundred ten, for the taxable
26 year; and, provided further that, if such highest amount is the tax base
27 imposed under paragraph (a), (b) or (c) of such subdivision, then the
28 surcharge shall be computed as if the tax rates and limitations under
29 such paragraph were the tax rates and limitations under such paragraph
30 in effect for taxable years commencing on or after July first, nineteen
31 hundred ninety-seven and before July first, nineteen hundred ninety-
32 eight.

33 S 5. Subsection 1 of section 1455-B of the tax law, as amended by
34 section 5 of part II-1 of chapter 57 of the laws of 2008, is amended to
35 read as follows:

36 1. For the privilege of exercising its franchise or doing business in
37 the metropolitan commuter transportation district in a corporate or
38 organized capacity, there is hereby imposed on every taxpayer subject to
39 tax under this article, other than a New York S corporation, for the
40 taxable years commencing on or after January first, nineteen hundred
41 eighty-two but ending before December thirty-first, two thousand [thir-
42 teen] EIGHTEEN, a tax surcharge, in addition to the tax imposed under
43 section fourteen hundred fifty-one of this article, at the rate of eigh-
44 teen percent of the tax imposed under such section fourteen hundred
45 fifty-one of this article, for such taxable years or any part of such
46 taxable years ending before December thirty-first, nineteen hundred
47 eighty-three after the deduction of any credits otherwise allowable
48 under this article, and at the rate of seventeen percent of the tax
49 imposed under such section for such taxable years or any part of such
50 taxable years ending on or after December thirty-first, nineteen hundred
51 eighty-three after the deduction of any credits otherwise allowable
52 under this article; provided however, that such rates of tax surcharge
53 shall be applied only to that portion of the tax imposed under section
54 fourteen hundred fifty-one of this article after the deduction of any
55 credits otherwise allowable under this article which is attributable to
56 the taxpayer's business activity carried on within the metropolitan

1 commuter transportation district; and provided, further, that the tax
2 surcharge imposed by this section shall not be imposed upon any taxpayer
3 for more than [three] FOUR hundred [seventy-two] THIRTY-TWO months.
4 Provided however, that for taxable years commencing on or after July
5 first, two thousand, such surcharge shall be calculated as if the rate
6 of the basic tax computed under subsection (a) of section fourteen
7 hundred fifty-five of this article was nine percent.

8 S 6. Paragraphs 1 and 3 of subdivision (a) of section 1505-a of the
9 tax law, as amended by section 6 of part II-1 of chapter 57 of the laws
10 of 2008, are amended to read as follows:

11 (1) Every domestic insurance corporation and every foreign or alien
12 insurance corporation, and every life insurance corporation described in
13 subdivision (b) of section fifteen hundred one of this article, for the
14 privilege of exercising its corporate franchise, or of doing business,
15 or of employing capital, or of owning or leasing property in the metro-
16 politan commuter transportation district in a corporate or organized
17 capacity, or of maintaining an office in the metropolitan commuter
18 transportation district, for all or any part of its taxable years
19 commencing on or after January first, nineteen hundred eighty-two, but
20 ending before December thirty-first, two thousand [thirteen] EIGHTEEN,
21 except corporations specified in subdivision (c) of section fifteen
22 hundred twelve of this article, shall annually pay, in addition to the
23 taxes otherwise imposed by this article, a tax surcharge on the taxes
24 imposed under this article after the deduction of any credits otherwise
25 allowable under this article as allocated to such district. Such taxes
26 shall be allocated to such district for purposes of computing such tax
27 surcharge upon taxpayers subject to tax under subdivision (b) of section
28 fifteen hundred ten of this article by applying the methodology, proce-
29 dures and computations set forth in subdivisions (a) and (b) of section
30 fifteen hundred four of this article, except that references to terms
31 denoting New York premiums, and total wages, salaries, personal service
32 compensation and commissions within New York shall be read as denoting
33 within the metropolitan commuter transportation district and terms
34 denoting total premiums and total wages, salaries, personal service
35 compensation and commissions shall be read as denoting within the state.
36 If it shall appear to the commissioner that the application of the meth-
37 odology, procedures and computations set forth in such subdivisions (a)
38 and (b) does not properly reflect the activity, business or income of a
39 taxpayer within the metropolitan commuter transportation district, then
40 the commissioner shall be authorized, in the commissioner's discretion,
41 to adjust such methodology, procedures and computations for the purpose
42 of allocating such taxes by:

43 (A) excluding one or more factors therein;

44 (B) including one or more other factors therein, such as expenses,
45 purchases, receipts other than premiums, real property or tangible
46 personal property; or

47 (C) any other similar or different method which allocates such taxes
48 by attributing a fair and proper portion of such taxes to the metropol-
49 itan commuter transportation district. The commissioner from time to
50 time shall publish all rulings of general public interest with respect
51 to any application of the provisions of the preceding sentence. The
52 commissioner may promulgate rules and regulations to further implement
53 the provisions of this section.

54 (3) Such tax surcharge shall be computed at the rate of eighteen
55 percent of the taxes imposed under sections fifteen hundred one and
56 fifteen hundred ten of this article as limited by section fifteen

1 hundred five of this article, as allocated to such district, for such
2 taxable years or any part of such taxable years ending before December
3 thirty-first, nineteen hundred eighty-three after the deduction of any
4 credits otherwise allowable under this article, at the rate of seventeen
5 percent of the taxes imposed under such sections as limited by section
6 fifteen hundred five of this article, as allocated to such district, for
7 such taxable years or any part of such taxable years ending on or after
8 December thirty-first, nineteen hundred eighty-three and before January
9 first, two thousand three after the deduction of any credits otherwise
10 allowable under this article, and at the rate of seventeen percent of
11 the taxes imposed under sections fifteen hundred one, fifteen hundred
12 two-a, and fifteen hundred ten of this article, as limited or otherwise
13 determined by subdivision (a) or (b) of section fifteen hundred five of
14 this article, as allocated to such district, for such taxable years or
15 any part of such taxable years ending after December thirty-first, two
16 thousand two after the deduction of any credits otherwise allowable
17 under this article; provided, however, that the tax surcharge imposed by
18 this section shall not be imposed upon any taxpayer for more than
19 [three] FOUR hundred [seventy-two] THIRTY-TWO months. Provided however,
20 that for taxable years commencing on or after July first, two thousand,
21 and in the case of taxpayers subject to tax under section fifteen
22 hundred two-a of this article, for taxable years of such taxpayers
23 beginning on or after July first, two thousand and before January first,
24 two thousand three, such surcharge shall be calculated as if (i) the
25 rate of the tax computed under paragraph one of subdivision (a) of
26 section fifteen hundred two of this article was nine percent and (ii)
27 the rate of the limitation on tax set forth in section fifteen hundred
28 five of this article for domestic, foreign and alien insurance corpo-
29 rations except life insurance corporations was two and six-tenths
30 percent.

31 S 7. This act shall take effect immediately.

32

PART B

33 Section 1. Paragraph 3 of subdivision (b) of section 24 of the tax
34 law, as added by section 1 of part P of chapter 60 of the laws of 2004,
35 is amended to read as follows:

36 (3) "Qualified film" means a feature-length film, television film,
37 RELOCATED TELEVISION PRODUCTION, television pilot and/or each episode of
38 a television series, regardless of the medium by means of which the
39 film, pilot or episode is created or conveyed. "Qualified film" shall
40 not include (i) a documentary film, news or current affairs program,
41 interview or talk program, "how-to" (i.e., instructional) film or
42 program, film or program consisting primarily of stock footage, sporting
43 event or sporting program, game show, award ceremony, film or program
44 intended primarily for industrial, corporate or institutional end-users,
45 fundraising film or program, daytime drama (i.e., daytime "soap opera"),
46 commercials, music videos or "reality" program, or (ii) a production for
47 which records are required under section 2257 of title 18, United States
48 code, to be maintained with respect to any performer in such production
49 (reporting of books, films, etc. with respect to sexually explicit
50 conduct).

51 S 2. Subdivision (b) of section 24 of the tax law is amended by adding
52 a new paragraph 8 to read as follows:

53 (8) "RELOCATED TELEVISION PRODUCTION" SHALL MEAN, NOTWITHSTANDING THE
54 LIMITATIONS IN SUBPARAGRAPH (I) OF PARAGRAPH THREE OF THIS SUBDIVISION,

1 A TELEVISION PRODUCTION THAT IS A TALK OR VARIETY PROGRAM THAT FILMED AT
2 LEAST FIVE SEASONS OUTSIDE THE STATE PRIOR TO ITS FIRST RELOCATED SEASON
3 IN NEW YORK, THE EPISODES ARE FILMED BEFORE A STUDIO AUDIENCE OF TWO
4 HUNDRED OR MORE, AND THE RELOCATED TELEVISION PRODUCTION INCURS (I) AT
5 LEAST THIRTY MILLION DOLLARS IN ANNUAL PRODUCTION COSTS IN THE STATE, OR
6 (II) AT LEAST TEN MILLION DOLLARS IN CAPITAL EXPENDITURES AT A QUALIFIED
7 PRODUCTION FACILITY IN THE STATE.

8 S 3. Paragraph 4 of subdivision (e) of section 24 of the tax law, as
9 added by chapter 268 of the laws of 2012, is amended to read as follows:

10 (4) Additional pool 2 - The aggregate amount of tax credits allowed in
11 subdivision (a) of this section shall be increased by an [addition]
12 ADDITIONAL four hundred twenty million dollars in EACH YEAR STARTING IN
13 two thousand ten[, four hundred twenty million dollars in two thousand
14 eleven, four hundred twenty million dollars in two thousand twelve, four
15 hundred twenty million dollars in two thousand thirteen and four hundred
16 twenty million dollars in two thousand fourteen] THROUGH TWO THOUSAND
17 NINETEEN provided however, seven million dollars of the annual allo-
18 cation shall be available for the empire state film post production
19 credit pursuant to section thirty-one of this [chapter] ARTICLE IN TWO
20 THOUSAND THIRTEEN AND TWO THOUSAND FOURTEEN AND TWENTY-FIVE MILLION
21 DOLLARS OF THE ANNUAL ALLOCATION SHALL BE AVAILABLE FOR THE EMPIRE STATE
22 FILM POST PRODUCTION CREDIT PURSUANT TO SECTION THIRTY-ONE OF THIS ARTI-
23 CLE IN EACH YEAR STARTING IN TWO THOUSAND FIFTEEN THROUGH TWO THOUSAND
24 NINETEEN. This amount shall be allocated by the governor's office for
25 motion picture and television development among taxpayers in accordance
26 with subdivision (a) of this section. If the [director of the governor's
27 office for motion picture and television development] COMMISSIONER OF
28 ECONOMIC DEVELOPMENT determines that the aggregate amount of tax credits
29 available from additional pool 2 for the empire state film production
30 tax credit have been previously allocated, and determines that the pend-
31 ing applications from eligible applicants for the EMPIRE STATE FILM post
32 production tax credit pursuant to section thirty-one of this [chapter]
33 ARTICLE is insufficient to utilize the balance of unallocated EMPIRE
34 STATE FILM post production tax credits from such pool, the remainder,
35 after such pending applications are considered, shall be made available
36 for allocation in the empire state film tax credit pursuant to this
37 section, subdivision thirty-six of section two hundred ten and
38 subsection (gg) of section six hundred six of this chapter. ALSO, IF
39 THE COMMISSIONER OF ECONOMIC DEVELOPMENT DETERMINES THAT THE AGGREGATE
40 AMOUNT OF TAX CREDITS AVAILABLE FROM ADDITIONAL POOL 2 FOR THE EMPIRE
41 STATE FILM POST PRODUCTION TAX CREDIT HAVE BEEN PREVIOUSLY ALLOCATED,
42 AND DETERMINES THAT THE PENDING APPLICATIONS FROM ELIGIBLE APPLICANTS
43 FOR THE EMPIRE STATE FILM PRODUCTION TAX CREDIT PURSUANT TO THIS SECTION
44 IS INSUFFICIENT TO UTILIZE THE BALANCE OF UNALLOCATED FILM PRODUCTION
45 TAX CREDITS FROM SUCH POOL, THEN ALL OR PART OF THE REMAINDER, AFTER
46 SUCH PENDING APPLICATIONS ARE CONSIDERED, SHALL BE MADE AVAILABLE FOR
47 ALLOCATION FOR THE EMPIRE STATE FILM POST PRODUCTION CREDIT PURSUANT TO
48 THIS SECTION, SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN AND
49 SUBSECTION (GG) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER. The gover-
50 nor's office for motion picture and television development must notify
51 taxpayers of their allocation year and include the allocation year on
52 the certificate of tax credit. Taxpayers eligible to claim a credit
53 must report the allocation year directly on their empire state film
54 production credit tax form for each year a credit is claimed and include
55 a copy of the certificate with their tax return. In the case of a quali-
56 fied film that receives funds from additional pool 2, no empire state

1 film production credit shall be claimed before the later of the taxable
2 year the production of the qualified film is complete, or the taxable
3 year immediately following the allocation year for which the film has
4 been allocated credit by the governor's office for motion picture and
5 television development.

6 S 4. Paragraph 1 of subdivision (b) of section 24 of the tax law, as
7 amended by section 6 of part Q of chapter 57 of the laws of 2010, is
8 amended to read as follows:

9 (1) "Qualified production costs" means production costs only to the
10 extent such costs are attributable to the use of tangible property or
11 the performance of services within the state directly and predominantly
12 in the production (including pre-production and post production) of a
13 qualified film[, provided, however, that qualified production costs
14 shall not include post production costs unless the portion of the post
15 production costs paid or incurred that is attributable to the use of
16 tangible property or the performance of services in New York in the
17 production of such qualified film equals or exceeds seventy-five percent
18 of the total post production costs spent within and without New York in
19 the production of such qualified film].

20 S 5. Paragraph 3 of subdivision (a) of section 31 of the tax law, as
21 added by section 12 of part Q of chapter 57 of the laws of 2010, is
22 amended to read as follows:

23 (3) (I) A taxpayer shall not be eligible for the credit established by
24 this section FOR QUALIFIED POST PRODUCTION COSTS, EXCLUDING THE COSTS
25 FOR VISUAL EFFECTS AND ANIMATION, unless the qualified post production
26 costs, EXCLUDING THE COSTS FOR VISUAL EFFECTS AND ANIMATION, at a quali-
27 fied post production facility meet or exceed seventy-five percent of the
28 total post production costs, EXCLUDING THE COSTS FOR VISUAL EFFECTS AND
29 ANIMATION, paid or incurred in the post production of the qualified film
30 at any post production facility. (II) A TAXPAYER SHALL NOT BE ELIGIBLE
31 FOR THE CREDIT ESTABLISHED BY THIS SECTION FOR QUALIFIED POST PRODUCTION
32 COSTS WHICH ARE COSTS FOR VISUAL EFFECTS OR ANIMATION UNLESS THE QUALI-
33 FIED POST PRODUCTION COSTS FOR VISUAL EFFECTS OR ANIMATION AT A QUALI-
34 FIED POST PRODUCTION FACILITY MEET OR EXCEED THREE MILLION DOLLARS OR
35 TWENTY PERCENT OF THE TOTAL POST PRODUCTION COSTS FOR VISUAL EFFECTS OR
36 ANIMATION PAID OR INCURRED IN THE POST PRODUCTION OF A QUALIFIED FILM AT
37 ANY POST PRODUCTION FACILITY, WHICHEVER IS LESS. (III) A TAXPAYER MAY
38 CLAIM A CREDIT FOR QUALIFIED POST PRODUCTION COSTS EXCLUDING THE COSTS
39 FOR VISUAL EFFECTS AND ANIMATION, AND FOR QUALIFIED POST PRODUCTION
40 COSTS OF VISUAL EFFECTS AND ANIMATION, PROVIDED THAT THE CRITERIA IN
41 SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH ARE BOTH SATISFIED. The
42 credit shall be allowed for the taxable year in which the production of
43 such qualified film is completed.

44 S 5-a. Subdivision (a) of section 31 of the tax law, as added by
45 section 12 of part Q of chapter 57 of the laws of 2010, is amended by
46 adding a new paragraph 5 to read as follows:

47 (5) IF THE AMOUNT OF THE CREDIT IS AT LEAST ONE MILLION DOLLARS BUT
48 LESS THAN FIVE MILLION DOLLARS, THE CREDIT SHALL BE CLAIMED OVER A TWO
49 YEAR PERIOD BEGINNING IN THE FIRST TAXABLE YEAR IN WHICH THE CREDIT MAY
50 BE CLAIMED AND IN THE NEXT SUCCEEDING TAXABLE YEAR, WITH ONE-HALF OF THE
51 AMOUNT OF CREDIT ALLOWED BEING CLAIMED IN EACH YEAR. IF THE AMOUNT OF
52 THE CREDIT IS AT LEAST FIVE MILLION DOLLARS, THE CREDIT SHALL BE CLAIMED
53 OVER A THREE YEAR PERIOD BEGINNING IN THE FIRST TAXABLE YEAR IN WHICH
54 THE CREDIT MAY BE CLAIMED AND IN THE NEXT TWO SUCCEEDING TAXABLE YEARS,
55 WITH ONE-THIRD OF THE AMOUNT OF THE CREDIT ALLOWED BEING CLAIMED IN EACH
56 YEAR.

1 S 6. Section 3 of part Y-1 of chapter 57 of the laws of 2009, amending
2 the tax law relating to the empire state film production credit, is
3 amended to read as follows:

4 S 3. A. The governor's office of motion picture and television devel-
5 opment shall file a report on a quarterly basis with the director of the
6 division of the budget and the chairmen of the assembly ways and means
7 committee and senate finance committee. The report shall be filed within
8 fifteen days after the close of the calendar quarter. The first report
9 shall cover the calendar quarter that begins April 1, 2009. The report
10 must contain the following information for the calendar quarter:

11 (1) the total dollar amount of credits allocated during each month of
12 the calendar quarter, broken down by month;

13 (2) the number of film projects which have been allocated tax credits
14 of less than \$1 million per project and the total dollar amount of cred-
15 its allocated to those projects;

16 (3) the number of film projects which have been allocated tax credits
17 of \$1 million or more but less than \$5 million per project and the total
18 dollar amount of credits allocated to those projects;

19 (4) the number of film projects which have been allocated tax credits
20 of \$5 million or more per project and the total dollar amount of credits
21 allocated to those projects; [and]

22 (5) a list of each film project which has been allocated a tax credit
23 and for each of those projects (a) the estimated number of employees
24 associated with the project, (b) the estimated qualified costs for the
25 project, [and] (c) the estimated total costs of the project, AND (D) THE
26 CREDIT-ELIGIBLE MAN HOURS FOR EACH PROJECT; AND

27 (6)(A) THE NAME OF EACH TAXPAYER ALLOCATED A TAX CREDIT FOR EACH
28 PROJECT; PROVIDED HOWEVER, IF THE TAXPAYER CLAIMS A TAX CREDIT BECAUSE
29 THE TAXPAYER IS A MEMBER OF A LIMITED LIABILITY COMPANY, A PARTNER IN A
30 PARTNERSHIP OR A SHAREHOLDER IN A SUBCHAPTER S CORPORATION, THE NAME OF
31 EACH LIMITED LIABILITY COMPANY, PARTNERSHIP OR SUBCHAPTER S CORPORATION
32 EARNING ANY OF THOSE TAX CREDITS MUST BE INCLUDED IN THE REPORT INSTEAD
33 OF INFORMATION ABOUT THE TAXPAYER CLAIMING THE TAX CREDIT, (B) THE
34 AMOUNT OF TAX CREDIT ALLOCATED TO EACH TAXPAYER; PROVIDED HOWEVER, IF
35 THE TAXPAYER CLAIMS A TAX CREDIT BECAUSE THE TAXPAYER IS A MEMBER OF A
36 LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER
37 IN A SUBCHAPTER S CORPORATION, THE AMOUNT OF TAX CREDIT EARNED BY EACH
38 ENTITY MUST BE INCLUDED IN THE REPORT INSTEAD OF INFORMATION ABOUT THE
39 TAXPAYER CLAIMING THE TAX CREDIT, AND (C) INFORMATION IDENTIFYING THE
40 PROJECT ASSOCIATED WITH EACH TAXPAYER FOR WHICH A TAX CREDIT WAS CLAIMED
41 UNDER SECTION 24 OR SECTION 31, AS ADDED BY CHAPTER 57 OF THE LAWS OF
42 2010, OF THE TAX LAW, INCLUDING THE NAME OF THE FILM AND COUNTY IN WHICH
43 THE PROJECT IS LOCATED; AND

44 B. THE GOVERNOR'S OFFICE OF MOTION PICTURE AND TELEVISION DEVELOPMENT
45 SHALL FILE A REPORT ON A BIENNIAL BASIS WITH THE DIRECTOR OF THE DIVI-
46 SION OF THE BUDGET AND THE CHAIRS OF THE ASSEMBLY WAYS AND MEANS COMMIT-
47 TEE AND SENATE FINANCE COMMITTEE. THE REPORT SHALL BE FILED WITHIN
48 FIFTEEN DAYS AFTER THE CLOSE OF THE CALENDAR YEAR. THE FIRST REPORT
49 SHALL COVER A TWO YEAR PERIOD THAT BEGINS ON JANUARY FIRST, TWO THOUSAND
50 THIRTEEN. THE REPORT MUST BE PREPARED BY AN INDEPENDENT THIRD PARTY
51 AUDITOR AND INCLUDE: (1) INFORMATION REGARDING THE EMPIRE STATE FILM
52 PRODUCTION CREDIT AND POST PRODUCTION CREDIT PROGRAMS INCLUDING THE
53 EFFICIENCY OF OPERATIONS, RELIABILITY OF FINANCIAL REPORTING, COMPLIANCE
54 WITH LAWS AND REGULATIONS AND DISTRIBUTION OF ASSETS AND FUNDS; (2) AN
55 ECONOMIC IMPACT STUDY PREPARED BY AN INDEPENDENT THIRD PARTY OF THE FILM
56 CREDIT PROGRAMS; AND (3) ANY OTHER INFORMATION AND/OR OTHER STATISTICAL

1 INFORMATION THAT THE COMMISSIONER OF ECONOMIC DEVELOPMENT DEEMS TO BE
2 USEFUL IN ANALYZING THE EFFECTS OF THE PROGRAM.

3 S 7. This act shall take effect immediately, provided, however, that
4 sections four and five of this act shall apply to taxpayers submitting
5 initial applications to the governor's office of motion picture and
6 television development on or after the date this act shall have become a
7 law, and to taxpayers who filed an initial application before this act
8 shall have become a law but who have not yet submitted a final applica-
9 tion to the governor's office of motion picture and television develop-
10 ment on or before the date this act shall have become a law; and the
11 amendments made to section 3 of part Y-1 of chapter 57 of the laws of
12 2009, amending the tax law relating to the empire state film production
13 credit, with the exception of subdivision b of such section, shall only
14 apply to taxpayers submitting initial applications to the governor's
15 office of motion picture and television development on or after the date
16 this act shall become a law.

17 PART C

18 Section 1. Legislative intent. This act is intended to create a state-
19 wide network of university affiliated or college affiliated and private
20 sector affiliated innovation hot spots in New York state to support
21 start-up companies and those in the early stage of development. The
22 mission of the innovation hot spots shall be to promote job creation,
23 entrepreneurship and technology transfer, as well as to provide support
24 services to hot spot tenants, including, but not limited to, business
25 planning, management assistance, financial-packaging, linkages to
26 financing and technology services, and coordination with other sources
27 of assistance.

28 S 2. The economic development law is amended by adding a new section
29 361 to read as follows:

30 S 361. NEW YORK INNOVATION HOT SPOT PROGRAM. 1. DEFINITIONS. AS USED
31 IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

32 (A) "INNOVATION HOT SPOT" SHALL MEAN A FACILITY OR FACILITIES DESIG-
33 NATED AS SUCH BY THE COMMISSIONER.

34 (B) "QUALIFIED ENTITY" SHALL MEAN A BUSINESS ENTERPRISE THAT IS:

35 (I) IN THE FORMATIVE STAGE OF DEVELOPMENT;

36 (II) LOCATED IN NEW YORK STATE;

37 (III) EITHER: (A) ANY CORPORATION, EXCEPT A CORPORATION WHICH:

38 (1) OVER FIFTY PERCENT OF THE NUMBER OF SHARES OF STOCK ENTITLING THE
39 HOLDERS THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES IS
40 OWNED OR CONTROLLED, EITHER DIRECTLY OR INDIRECTLY, BY A TAXPAYER
41 SUBJECT TO TAX UNDER THE FOLLOWING PROVISIONS OF THE TAX LAW: ARTICLE
42 NINE-A; SECTION ONE HUNDRED EIGHTY-THREE, ONE HUNDRED EIGHTY-FOUR OR ONE
43 HUNDRED EIGHTY-FIVE OF ARTICLE NINE; ARTICLE THIRTY-TWO OR ARTICLE THIR-
44 TY-THREE; OR

45 (2) IS SUBSTANTIALLY SIMILAR IN OPERATION AND IN OWNERSHIP TO A BUSI-
46 NESS ENTITY (OR ENTITIES) TAXABLE OR PREVIOUSLY TAXABLE UNDER THE
47 FOLLOWING PROVISIONS OF THE TAX LAW: ARTICLE NINE-A; SECTION ONE HUNDRED
48 EIGHTY-THREE, ONE HUNDRED EIGHTY-FOUR, ONE HUNDRED EIGHTY-FIVE OR FORMER
49 SECTION ONE HUNDRED EIGHTY-SIX OF ARTICLE NINE; ARTICLE THIRTY-TWO;
50 ARTICLE THIRTY-THREE; ARTICLE TWENTY-THREE, OR WOULD HAVE BEEN SUBJECT
51 TO TAX UNDER SUCH ARTICLE TWENTY-THREE (AS SUCH ARTICLE WAS IN EFFECT ON
52 JANUARY FIRST, NINETEEN HUNDRED EIGHTY) OR THE INCOME (OR LOSSES) OF
53 WHICH IS (OR WAS) INCLUDABLE UNDER ARTICLE TWENTY-TWO; OR

1 (B) A SOLE PROPRIETORSHIP, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR
2 NEW YORK SUBCHAPTER S CORPORATION THAT IS NOT SUBSTANTIALLY SIMILAR IN
3 OPERATION AND IN OWNERSHIP TO A BUSINESS ENTITY (OR ENTITIES) TAXABLE,
4 OR PREVIOUSLY TAXABLE, UNDER ARTICLE NINE-A OF THE TAX LAW, SECTION ONE
5 HUNDRED EIGHTY-THREE, ONE HUNDRED EIGHTY-FOUR, ONE HUNDRED EIGHTY-FIVE
6 OR FORMER SECTION ONE HUNDRED EIGHTY-SIX OF ARTICLE NINE OF THE TAX LAW,
7 ARTICLE THIRTY-TWO OR THIRTY-THREE OF THE TAX LAW, ARTICLE TWENTY-THREE
8 OF THE TAX LAW OR WHICH WOULD HAVE BEEN SUBJECT TO TAX UNDER SUCH ARTI-
9 CLE TWENTY-THREE (AS SUCH ARTICLE WAS IN EFFECT ON JANUARY FIRST, NINE-
10 TEEN HUNDRED EIGHTY) OR THE INCOME (OR LOSSES) OF WHICH IS (OR WAS)
11 INCLUDABLE UNDER ARTICLE TWENTY-TWO OF THE TAX LAW; AND

12 (IV) IS APPROVED TO LOCATE IN AN INNOVATION HOT SPOT BY THE OPERATOR
13 OF SUCH INNOVATION HOT SPOT.

14 (C) "OPERATOR OF AN INNOVATION HOT SPOT" SHALL MEAN:

15 (I) AN ACCREDITED POST-SECONDARY EDUCATIONAL INSTITUTION, COLLEGE OR
16 UNIVERSITY; NOT-FOR-PROFIT ENTITY AFFILIATED WITH A HIGHER EDUCATIONAL
17 INSTITUTION; OR, COLLABORATIVE ENTERPRISE BETWEEN ONE OR MORE ACCREDITED
18 POST-SECONDARY EDUCATIONAL INSTITUTION, COLLEGE OR UNIVERSITY AND
19 NOT-FOR-PROFIT ENTITY AFFILIATED WITH A HIGHER EDUCATIONAL INSTITUTION;

20 (II) LOCATED IN NEW YORK STATE; AND

21 (III) DESIGNATED BY THE COMMISSIONER TO OPERATE A FACILITY THAT
22 PROVIDES: LOW-COST SPACE; TECHNICAL ASSISTANCE; SUPPORT SERVICES,
23 INCLUDING, BUT NOT LIMITED TO, CENTRAL SERVICES; AND, EDUCATIONAL OPPOR-
24 TUNITIES, TO A "QUALIFIED ENTITY."

25 2. THE COMMISSIONER SHALL:

26 (A) SOLICIT APPLICATIONS FROM POST-SECONDARY EDUCATIONAL INSTITUTIONS,
27 COLLEGES, UNIVERSITIES, OR NOT-FOR-PROFIT ENTITIES AFFILIATED WITH A
28 HIGHER EDUCATION INSTITUTION OR COLLABORATIVE ENTERPRISES BETWEEN ONE OR
29 MORE ACCREDITED POST-SECONDARY EDUCATIONAL INSTITUTIONS, COLLEGES, OR
30 UNIVERSITIES AND NOT-FOR-PROFIT ENTITIES FOR APPROVAL TO OPERATE INNO-
31 VATION HOT SPOTS IN PROPERTY OWNED OR LEASED BY SUCH ENTITIES TO ATTRACT
32 INDUSTRIES WITH SIGNIFICANT POTENTIAL FOR ECONOMIC GROWTH AND DEVELOP-
33 MENT IN NEW YORK STATE, AND IDENTIFY TECHNOLOGICAL AREAS THAT CAN
34 CONTRIBUTE TO THE GROWTH OF VARIOUS INDUSTRIES LOCATED THROUGHOUT NEW
35 YORK STATE;

36 (B) RECEIVE RECOMMENDATIONS FROM THE REGIONAL ECONOMIC DEVELOPMENT
37 COUNCILS REGARDING THE APPROVAL OR REJECTION OF THE APPLICANTS AS OPERA-
38 TORS OF INNOVATION HOT SPOTS.

39 3. THE COMMISSIONER SHALL ESTABLISH CRITERIA CONCERNING THE INNOVATION
40 HOT SPOT PROGRAM. (A) THE CRITERIA THAT APPLICANTS MUST SATISFY TO BE
41 DESIGNATED AS AN OPERATOR OF AN INNOVATION HOT SPOT INCLUDE, BUT ARE NOT
42 LIMITED TO, THE FOLLOWING:

43 (I) A RECORD OF, OR PLAN TO CONFORM TO, BEST PRACTICES INCLUDING, BUT
44 NOT LIMITED TO, CLEAR POLICIES FOR THE RESIDENT BUSINESS ENTITIES AND
45 GRADUATION FROM THE SPACE;

46 (II) A COMPREHENSIVE SUITE OF ENTREPRENEURIAL MENTORING PRACTICES
47 INCLUDING, BUT NOT LIMITED TO, ADVISING, COACHING, PLANNING AND CONNECT-
48 ING TO FUNDING AND TECHNOLOGY SOURCES;

49 (III) THE CAPACITY TO SECURE SUBSTANTIAL PRIVATE AND OTHER NON-STATE
50 GOVERNMENTAL FUNDING FOR THE PROPOSED INNOVATION HOT SPOT, IN ADDITION
51 TO DIRECT SUPPORT FROM THE SPONSORING ACADEMIC INSTITUTION OR RELATED
52 FOUNDATION;

53 (IV) THE ABILITY AND WILLINGNESS TO COOPERATE WITH OTHER LOCAL,
54 REGIONAL AND STATEWIDE ECONOMIC DEVELOPMENT ORGANIZATIONS, BUSINESS
55 SUPPORT NETWORKS, VENTURE AND ANGEL CAPITAL FUNDING SOURCES, AND WORK-
56 FORCE DEVELOPMENT ADVOCATES;

(V) THE CAPACITY TO COLLABORATE WITH OTHER BUSINESSES AND INDUSTRIES INDIVIDUALLY; AND

(VI) SUCH OTHER REQUIREMENTS AS THE DEPARTMENT DEEMS APPROPRIATE FOR THE FORMAT, CONTENT AND FILING OF APPLICATIONS FOR DESIGNATION AS INNOVATION HOT SPOTS.

(B) THE COMMISSIONER SHALL ALSO ESTABLISH CRITERIA FOR THE DESIGNATION OF INNOVATION HOT SPOTS.

(C) AFTER ESTABLISHING SUCH CRITERIA, THE COMMISSIONER SHALL APPROVE AND DESIGNATE FIVE INNOVATION HOT SPOTS AND THEIR OPERATORS IN FISCAL YEAR TWO THOUSAND THIRTEEN--TWO THOUSAND FOURTEEN AND FIVE ADDITIONAL INNOVATION HOT SPOTS AND THEIR OPERATORS IN FISCAL YEAR TWO THOUSAND FOURTEEN--TWO THOUSAND FIFTEEN.

(D) THE COMMISSIONER SHALL ISSUE A CERTIFICATE OF APPROVAL FOR EACH DESIGNATED INNOVATION HOT SPOT AND EACH APPROVED OPERATOR OF AN INNOVATION HOT SPOT.

(E) THE OPERATOR OF AN APPROVED INNOVATION HOT SPOT MAY ACCEPT APPLICATIONS FOR TENANCIES FROM QUALIFIED ENTITIES FOR A PERIOD OF FIVE YEARS AFTER THE RECEIPT BY SUCH INNOVATION HOT SPOT OF ITS CERTIFICATE OF APPROVAL FROM THE COMMISSIONER. QUALIFIED ENTITIES THAT LOCATE THEIR BUSINESSES IN AN INNOVATION HOT SPOT ARE ELIGIBLE TO RECEIVE TAX BENEFITS UNDER SECTION THIRTY-EIGHT OF THE TAX LAW FOR FIVE TAXABLE YEARS, BEGINNING WITH THE FIRST TAXABLE YEAR DURING WHICH SUCH QUALIFIED ENTITIES BECOME TENANTS IN AN INNOVATION HOT SPOT.

4. EACH OPERATOR OF AN INNOVATION HOT SPOT SHALL REPORT ON AN ANNUAL BASIS ON ITS ACTIVITIES TO THE COMMISSIONER IN A MANNER AND ACCORDING TO THE SCHEDULE ESTABLISHED BY THE DEPARTMENT, AND SHALL PROVIDE SUCH ADDITIONAL INFORMATION AS THE COMMISSIONER MAY REQUIRE. THE COMMISSIONER SHALL EVALUATE THE OPERATIONS OF THE INNOVATION HOT SPOTS USING METHODS INCLUDING BUT NOT LIMITED TO SITE VISITS, REPORTS PURSUANT TO SPECIFIED INFORMATION, AND REVIEW EVALUATIONS. IF THE COMMISSIONER IS UNSATISFIED WITH THE PROGRESS OF AN OPERATOR OF AN INNOVATION HOT SPOT, THE COMMISSIONER SHALL NOTIFY SUCH OPERATOR OF THE RESULTS OF ITS EVALUATIONS AND THE FINDINGS OF DEFICIENCIES IN THE OPERATION OF SUCH HOT SPOT AND SHALL ALLOW AND COOPERATE WITH SUCH OPERATOR TO REMEDY SUCH FINDINGS IN A TIMELY MANNER.

5. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER, EMPLOYEES AND OFFICERS OF THE DEPARTMENT AND THE DEPARTMENT OF TAXATION AND FINANCE SHALL BE ALLOWED AND ARE DIRECTED TO SHARE AND EXCHANGE:

(I) INFORMATION DERIVED FROM TAX RETURNS OR REPORTS THAT IS RELEVANT TO A QUALIFIED ENTITY'S ELIGIBILITY TO PARTICIPATE IN THE INNOVATION HOT SPOTS PROGRAM, AND

(II) INFORMATION REGARDING THE TAX BENEFITS APPLIED FOR, ALLOWED, OR CLAIMED PURSUANT TO SECTION THIRTY-EIGHT OF THE TAX LAW AND THE TAXPAYERS WHO ARE APPLYING FOR OR ARE CLAIMING THE TAX BENEFITS.

ALL INFORMATION EXCHANGED BETWEEN THE DEPARTMENT AND THE DEPARTMENT OF TAXATION AND FINANCE SHALL NOT BE SUBJECT TO DISCLOSURE OR INSPECTION PURSUANT TO THE STATE'S FREEDOM OF INFORMATION LAW. THE DEPARTMENT SHALL NOT DISCLOSE ANY INFORMATION OBTAINED FROM THE DEPARTMENT OF TAXATION AND FINANCE THAT CONCERNS SPECIFIC TAXPAYERS.

S 3. The tax law is amended by adding a new section 38 to read as follows:

S 38. NEW YORK INNOVATION HOT SPOT PROGRAM TAX BENEFITS. (A) AS USED IN THIS CHAPTER, THE TERMS "INNOVATION HOT SPOT" AND "QUALIFIED ENTITY" SHALL HAVE THE SAME MEANING AS UNDER SECTION THREE HUNDRED SIXTY-ONE OF THE ECONOMIC DEVELOPMENT LAW.

(B) A TAXPAYER UNDER ARTICLE NINE-A OF THIS CHAPTER THAT IS A QUALIFIED ENTITY AND ALSO A TENANT IN AN INNOVATION HOT SPOT SHALL BE SUBJECT ONLY TO THE FIXED DOLLAR MINIMUM TAX, IMPOSED UNDER PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION TWO HUNDRED TEN OF THIS CHAPTER, FOR FIVE TAXABLE YEARS, BEGINNING WITH THE FIRST TAXABLE YEAR DURING WHICH THE QUALIFIED ENTITY BECOMES A TENANT IN AN INNOVATION HOT SPOT. A TAXPAYER UNDER ARTICLE NINE-A OF THIS CHAPTER THAT IS A CORPORATE PARTNER IN A QUALIFIED ENTITY, OR IS A QUALIFIED ENTITY THAT IS LOCATED BOTH WITHIN AND WITHOUT AN INNOVATION HOT SPOT, SHALL BE ALLOWED ONLY A DEDUCTION FOR THE AMOUNT OF INCOME OR GAIN INCLUDED IN ITS FEDERAL TAXABLE INCOME TO THE EXTENT THAT THE INCOME OR GAIN IS ATTRIBUTABLE TO THE OPERATIONS AT THE INNOVATION HOT SPOT. THE DEDUCTION IS ALLOWED FOR FIVE TAXABLE YEARS, BEGINNING WITH THE FIRST TAXABLE YEAR DURING WHICH THE QUALIFIED ENTITY BECOMES A TENANT IN AN INNOVATION HOT SPOT.

(C) AN INDIVIDUAL WHO IS THE SOLE PROPRIETOR OF A QUALIFIED ENTITY OR A MEMBER OF A LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER IN A NEW YORK SUBCHAPTER S CORPORATION WHERE THE LIMITED LIABILITY COMPANY, PARTNERSHIP, OR S CORPORATION IS A QUALIFIED ENTITY, THAT IS TAXABLE UNDER ARTICLE TWENTY-TWO OF THIS CHAPTER SHALL BE ALLOWED A DEDUCTION FOR THE AMOUNT OF INCOME OR GAIN INCLUDED IN ITS FEDERAL ADJUSTED GROSS INCOME TO THE EXTENT THAT THE INCOME OR GAIN IS ATTRIBUTABLE TO THE OPERATIONS OF A QUALIFIED ENTITY WHICH IS A TENANT IN AN INNOVATION HOT SPOT. THE DEDUCTION IS ALLOWED FOR FIVE TAXABLE YEARS, BEGINNING WITH THE FIRST TAXABLE YEAR DURING WHICH THE QUALIFIED ENTITY BECOMES A TENANT IN AN INNOVATION HOT SPOT.

(D) A QUALIFIED ENTITY THAT IS A TENANT IN AN INNOVATION HOT SPOT SHALL BE ELIGIBLE FOR A CREDIT OR REFUND FOR SALES AND USE TAXES IMPOSED ON THE RETAIL SALE OF TANGIBLE PERSONAL PROPERTY OR SERVICES UNDER SUBDIVISIONS (A), (B), AND (C) OF SECTION ELEVEN HUNDRED FIVE AND SECTION ELEVEN HUNDRED TEN OF THIS CHAPTER. THE CREDIT OR REFUND SHALL BE ALLOWED FOR SIXTY MONTHS BEGINNING WITH THE FIRST FULL MONTH AFTER THE QUALIFIED ENTITY BECOMES A TENANT IN AN INNOVATION HOT SPOT.

(E) A TAXPAYER WHO CLAIMS ANY OF THE TAX BENEFITS DESCRIBED IN THIS SECTION IS NO LONGER ELIGIBLE FOR ANY OTHER NEW YORK STATE EXEMPTIONS, DEDUCTIONS, OR CREDIT OR REFUNDS UNDER THIS CHAPTER TO THE EXTENT THAT ANY SUCH EXEMPTION, DEDUCTION, CREDIT OR REFUND IS ATTRIBUTABLE TO THE BUSINESS OPERATIONS OF A TENANT IN AN INNOVATION HOT SPOT. THE ELECTION TO CLAIM THE TAX BENEFITS DESCRIBED IN THIS SECTION IS NOT REVOCABLE.

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

(I) ARTICLE 9-A, SECTION 208, SUBDIVISION (9), PARAGRAPH (A), SUBPARAGRAPH (18).

(II) ARTICLE 9-A, SECTION 209, SUBDIVISION 11.

(III) ARTICLE 22, SECTION 612, SUBSECTION (C), PARAGRAPH (39).

(IV) ARTICLE 28, SECTION 1119, SUBDIVISION (D).

S 4. Paragraph (a) of subdivision 9 of section 208 of the tax law is amended by adding a new subparagraph 18 to read as follows:

(18) THE AMOUNT OF INCOME OR GAIN INCLUDED IN FEDERAL TAXABLE INCOME OF A TAXPAYER THAT IS A PARTNER IN A QUALIFIED ENTITY OR IS A QUALIFIED ENTITY THAT IS LOCATED BOTH WITHIN AND WITHOUT AN INNOVATION HOT SPOT, TO THE EXTENT THAT THE INCOME OR GAIN IS ATTRIBUTABLE TO THE OPERATIONS OF A QUALIFIED ENTITY AT THE INNOVATION HOT SPOT AS PROVIDED IN SECTION THIRTY-EIGHT OF THIS CHAPTER.

S 5. Section 209 of the tax law is amended by adding a new subdivision 11 to read as follows:

11. EXCEPT AS PROVIDED IN SUBPARAGRAPH EIGHTEEN OF PARAGRAPH (A) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS ARTICLE, A CORPORATION THAT IS A QUALIFIED ENTITY AND ALSO A TENANT IN AN INNOVATION HOT SPOT SHALL BE SUBJECT ONLY TO THE FIXED DOLLAR MINIMUM TAX UNDER PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, AS PROVIDED IN SECTION THIRTY-EIGHT OF THIS CHAPTER.

S 6. Subsection (c) of section 612 of the tax law is amended by adding a new paragraph 39 to read as follows:

(39) ANY INCOME OR GAIN, TO THE EXTENT IT IS INCLUDED IN FEDERAL ADJUSTED GROSS INCOME OF AN INDIVIDUAL WHO IS THE SOLE PROPRIETOR OF A QUALIFIED ENTITY OR A MEMBER OF A LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER IN A NEW YORK SUBCHAPTER S CORPORATION THAT IS A QUALIFIED ENTITY, ATTRIBUTABLE TO THE OPERATIONS OF A QUALIFIED ENTITY AT ITS LOCATION IN AN INNOVATION HOT SPOT, AS PROVIDED IN SECTION THIRTY-EIGHT OF THIS CHAPTER.

S 7. Paragraph 1 of subdivision (d) of section 1119 of the tax law, as added by section 31 of part S-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(1) Subject to the conditions and limitations provided for in this section, a refund or credit will be allowed for taxes imposed on the retail sale of tangible personal property described in subdivision (a) of section eleven hundred five of this article, and on every sale of services described in subdivisions (b) and (c) of such section, and consideration given or contracted to be given for, or for the use of, such tangible personal property or services, where such tangible personal property or services are sold to a qualified empire zone enterprise OR TO A QUALIFIED ENTITY THAT IS ALSO A TENANT IN AN INNOVATION HOT SPOT AS PROVIDED IN SECTION THIRTY-EIGHT OF THIS CHAPTER, provided that (A) such tangible personal property or tangible personal property upon which such a service has been performed or such service (other than a service described in subdivision (b) of section eleven hundred five of this article) is directly and predominantly, or such a service described in clause (A) or (D) of paragraph one of such subdivision (b) of section eleven hundred five of this article is directly and exclusively, used or consumed by (I) such QUALIFIED EMPIRE ZONE enterprise in an area designated as an empire zone pursuant to article eighteen-B of the general municipal law with respect to which such enterprise is certified pursuant to such article eighteen-B, OR (II) SUCH QUALIFIED ENTITY IN AN INNOVATION HOT SPOT or (B) such a service described in clause (B) or (C) of paragraph one of subdivision (b) of section eleven hundred five of this article is delivered and billed to (I) such enterprise at an address in such empire zone OR (II) SUCH QUALIFIED ENTITY AT THE ADDRESS OF THE INNOVATION HOT SPOT WHERE IT IS A TENANT, or (C) the enterprise's place of primary use of the service described in paragraph two of such subdivision (b) of section eleven hundred five is at an address in such empire zone OR AT AN INNOVATION HOT SPOT; provided, further, that, in order for a motor vehicle, as defined in subdivision (c) of section eleven hundred seventeen of this article, or tangible personal property related to such a motor vehicle to be found to be used predominantly in such a zone, at least fifty percent of such motor vehicle's use shall be exclusively within such zone or at least fifty percent of such motor vehicle's use shall be in activities originating or terminating in such zone, or both; and either or both such usages shall be computed either on the basis of mileage or hours of use, at the discretion of such enterprise. For purposes of this subdivision, tangible personal property related to such a motor vehicle shall include a battery, diesel motor

fuel, an engine, engine components, motor fuel, a muffler, tires and similar tangible personal property used in or on such a motor vehicle.

S 8. Subdivision (c) of section 11-1712 of the administrative code of the city of New York is amended by adding a new paragraph 35 to read as follows:

(35) AS PROVIDED IN SECTION THIRTY-EIGHT OF THE TAX LAW, ANY INCOME OR GAIN, TO THE EXTENT IT IS INCLUDED IN FEDERAL ADJUSTED GROSS INCOME OF AN INDIVIDUAL WHO IS THE SOLE PROPRIETOR OF A QUALIFIED ENTITY OR A MEMBER OF A LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER IN A NEW YORK SUBCHAPTER S CORPORATION THAT IS A QUALIFIED ENTITY AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION THREE HUNDRED SIXTY-ONE OF THE ECONOMIC DEVELOPMENT LAW, ATTRIBUTABLE TO THE OPERATIONS OF SUCH QUALIFIED ENTITY AT ITS LOCATION IN AN INNOVATION HOT SPOT, AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION THREE HUNDRED SIXTY-ONE OF THE ECONOMIC DEVELOPMENT LAW.

S 9. This act shall take effect immediately.

PART D

Section 1. Subsection (g) of section 615 of the tax law, as added by section 3 of part HH of chapter 57 of the laws of 2010, is amended to read as follows:

(g)(1) With respect to an individual whose New York adjusted gross income is over one million dollars and no more than ten million dollars, the New York itemized deduction shall be an amount equal to fifty percent of any charitable contribution deduction allowed under section one hundred seventy of the internal revenue code for taxable years beginning after two thousand nine and before two thousand [thirteen] SIXTEEN. With respect to an individual whose New York adjusted gross income is over one million dollars, the New York itemized deduction shall be an amount equal to fifty percent of any charitable contribution deduction allowed under section one hundred seventy of the internal revenue code for taxable years beginning in two thousand nine or after two thousand [twelve] FIFTEEN.

(2) With respect to an individual whose New York adjusted gross income is over ten million dollars, the New York itemized deduction shall be an amount equal to twenty-five percent of any charitable contribution deduction allowed under section one hundred seventy of the internal revenue code for taxable years beginning after two thousand nine and ending before two thousand [thirteen] SIXTEEN.

S 2. Subdivision (g) of section 11-1715 of the administrative code of the city of New York, as added by section 7 of part HH of chapter 57 of the laws of 2010, is amended to read as follows:

(g) (1) With respect to an individual whose New York adjusted gross income is over one million dollars but no more than ten million dollars, the New York itemized deduction shall be an amount equal to fifty percent of any charitable contribution deduction allowed under section one hundred seventy of the internal revenue code for taxable years beginning after two thousand nine and before two thousand [thirteen] SIXTEEN. With respect to an individual whose New York adjusted gross income is over one million dollars, the New York itemized deduction shall be an amount equal to fifty percent of any charitable contribution deduction allowed under section one hundred seventy of the internal revenue code for taxable years beginning in two thousand nine or after two thousand [twelve] FIFTEEN.

(2) With respect to an individual whose New York adjusted gross income is over ten million dollars, the New York itemized deduction shall be an amount equal to twenty-five percent of any charitable contribution deduction allowed under section one hundred seventy of the internal revenue code for taxable years beginning after two thousand nine AND ENDING BEFORE TWO THOUSAND SIXTEEN.

S 3. This act shall take effect immediately.

PART E

Section 1. Subparagraph 17 of paragraph (a) of subdivision 9 of section 208 of the tax law is REPEALED.

S 2. Paragraph (o) of subdivision 9 of section 208 of the tax law, as amended by section 1 of part M of chapter 686 of the laws of 2003, clause (A) of subparagraph 2 as amended by section 4 of part J of chapter 60 of the laws of 2007, is amended to read as follows:

(o) Related members expense add back [and income exclusion]. (1) Definitions. (A) Related member [or members. For purposes of this paragraph, the term related member or members means a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation, or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under articles nine, nine-A, thirteen, twenty-two, thirty-two, thirty-three or thirty-three-A of this chapter]. "RELATED MEMBER" MEANS A RELATED PERSON AS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, EXCEPT THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED FOR "TEN PERCENT".

(B) [Controlling interest. A controlling interest shall mean (i) in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF TAX" MEANS, AS TO ANY STATE OR U.S. POSSESSION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY THE STATE OR POSSESSION ON OR MEASURED BY A RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE, IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURISDICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS TO ANY STATE OR U.S. POSSESSION IS ZERO WHERE THE RELATED MEMBER'S NET INCOME TAX LIABILITY IN SAID JURISDICTION IS REPORTED ON A COMBINED OR CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED MEMBER WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION, WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A JURISDICTION IN WHICH A RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR SIMILAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAINTAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME IN THAT JURISDICTION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID JURISDICTION SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX

1 THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT
2 OR SIMILAR ADJUSTMENT.

3 (C) Royalty payments. Royalty payments are payments directly connected
4 to the acquisition, use, maintenance or management, ownership, sale,
5 exchange, or any other disposition of licenses, trademarks, copyrights,
6 trade names, trade dress, service marks, mask works, trade secrets,
7 patents and any other similar types of intangible assets as determined
8 by the commissioner, and [includes] INCLUDE amounts allowable as inter-
9 est deductions under section one hundred sixty-three of the internal
10 revenue code to the extent such amounts are directly or indirectly for,
11 related to or in connection with the acquisition, use, maintenance or
12 management, ownership, sale, exchange or disposition of such intangible
13 assets.

14 (D) Valid Business Purpose. A valid business purpose is one or more
15 business purposes, other than the avoidance or reduction of taxation,
16 which alone or in combination constitute the primary motivation for some
17 business activity or transaction, which activity or transaction changes
18 in a meaningful way, apart from tax effects, the economic position of
19 the taxpayer. The economic position of the taxpayer includes an increase
20 in the market share of the taxpayer, or the entry by the taxpayer into
21 new business markets.

22 (2) Royalty expense add backs. (A) Except where a taxpayer is included
23 in a combined report with a related member pursuant to subdivision four
24 of section two hundred eleven of this article, for the purpose of
25 computing entire net income or other applicable taxable basis, a taxpay-
26 er must add back royalty payments [to a] DIRECTLY OR INDIRECTLY PAID,
27 ACCRUED, OR INCURRED IN CONNECTION WITH ONE OR MORE DIRECT OR INDIRECT
28 TRANSACTIONS WITH ONE OR MORE related [member] MEMBERS during the taxa-
29 ble year to the extent deductible in calculating federal taxable income.

30 (B) [The add back of royalty payments shall not be required if and to
31 the extent that such payments meet either of the following conditions:

32 (i) the related member during the same taxable year directly or indi-
33 rectly paid or incurred the amount to a person or entity that is not a
34 related member, and such transaction was done for a valid business
35 purpose and the payments are made at arm's length;

36 (ii) the royalty payments are paid or incurred to a related member
37 organized under the laws of a country other than the United States, are
38 subject to a comprehensive income tax treaty between such country and
39 the United States, and are taxed in such country at a tax rate at least
40 equal to that imposed by this state.

41 (3) Royalty income exclusions. For the purpose of computing entire net
42 income or other taxable basis, a taxpayer shall be allowed to deduct
43 royalty payments directly or indirectly received from a related member
44 during the taxable year to the extent included in the taxpayer's federal
45 taxable income unless such royalty payments would not be required to be
46 added back under subparagraph two of this paragraph or other similar
47 provision in this chapter.] EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN
48 THIS PARAGRAPH SHALL NOT APPLY TO THE PORTION OF THE ROYALTY PAYMENT
49 THAT THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE
50 TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, MEETS ALL OF THE
51 FOLLOWING REQUIREMENTS: (I) THE RELATED MEMBER WAS SUBJECT TO TAX IN
52 THIS STATE OR ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR A
53 FOREIGN NATION OR SOME COMBINATION THEREOF ON A TAX BASE THAT INCLUDED
54 THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (II) THE
55 RELATED MEMBER DURING THE SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID,
56 ACCRUED OR INCURRED SUCH PORTION TO A PERSON THAT IS NOT A RELATED

MEMBER; AND (III) THE TRANSACTION GIVING RISE TO THE ROYALTY PAYMENT BETWEEN THE TAXPAYER AND THE RELATED MEMBER WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE.

(II) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (I) THE RELATED MEMBER WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN THIS STATE OR ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR SOME COMBINATION THEREOF; (II) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (III) THE AGGREGATE EFFECTIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDICTIONS IS NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT APPLIED TO THE TAXPAYER UNDER SECTION TWO HUNDRED TEN OF THIS ARTICLE FOR THE TAXABLE YEAR.

(III) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (I) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGANIZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (II) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHENSIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (III) THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (IV) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS TAXED IN SUCH COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT IMPOSED BY THIS STATE; AND (V) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

(IV) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE TAXPAYER AND THE COMMISSIONER AGREE IN WRITING TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE COMMISSIONER MAY, IN HIS OR HER DISCRETION, AGREE TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS WHEN HE OR SHE CONCLUDES THAT IN THE ABSENCE OF SUCH AGREEMENT THE INCOME OF THE TAXPAYER WOULD NOT BE PROPERLY REFLECTED.

S 3. Paragraph 6 of subdivision (a) of section 292 of the tax law, as amended by section 15 of part M of chapter 686 of the laws of 2003, is amended to read as follows:

(6) Related members expense add back [and income exclusion]. (A) Definitions. (i) Related member [or members. For purposes of this paragraph, the term related member or members means a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation, or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under article nine, nine-A, thirteen, twenty-two, thirty-two, thirty-three or thirty-three-A of this chapter]. "RELATED MEMBER" MEANS A RELATED PERSON AS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, EXCEPT THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED FOR "TEN PERCENT".

(ii) [Controlling interest. A controlling interest shall mean (I) in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or

1 thirty percent or more of the capital, profits or beneficial interest in
2 such voting stock of such corporation, and (II) in the case of a part-
3 nership, association, trust or other entity, thirty percent or more of
4 the capital, profits or beneficial interest in such partnership, associ-
5 ation, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF
6 TAX" MEANS, AS TO ANY STATE OR U.S. POSSESSION, THE MAXIMUM STATUTORY
7 RATE OF TAX IMPOSED BY THE STATE OR POSSESSION ON OR MEASURED BY A
8 RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE,
9 IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURIS-
10 DICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS
11 TO ANY STATE OR U.S. POSSESSION IS ZERO WHERE THE RELATED MEMBER'S NET
12 INCOME TAX LIABILITY IN SAID JURISDICTION IS REPORTED ON A COMBINED OR
13 CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED MEMBER
14 WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED
15 MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION,
16 WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A JURISDICTION IN WHICH A
17 RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR SIMI-
18 LAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAIN-
19 TAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME IN
20 THAT JURISDICTION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID
21 JURISDICTION SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX
22 THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT
23 OR SIMILAR ADJUSTMENT.

24 (iii) Royalty payments. Royalty payments are payments directly
25 connected to the acquisition, use, maintenance or management, ownership,
26 sale, exchange, or any other disposition of licenses, trademarks, copy-
27 rights, trade names, trade dress, service marks, mask works, trade
28 secrets, patents and any other similar types of intangible assets as
29 determined by the commissioner, and [includes] INCLUDE amounts allowable
30 as interest deductions under section one hundred sixty-three of the
31 internal revenue code to the extent such amounts are directly or indi-
32 rectly for, related to or in connection with the acquisition, use, main-
33 tenance or management, ownership, sale, exchange or disposition of such
34 intangible assets.

35 (iv) Valid business purpose. A valid business purpose is one or more
36 business purposes other than the avoidance or reduction of taxation
37 which alone or in combination constitute the primary motivation for some
38 business activity or transaction, which activity or transaction changes
39 in a meaningful way, apart from tax effects, the economic position of
40 the taxpayer. The economic position of the taxpayer includes an increase
41 in the market share of the taxpayer, or the entry by the taxpayer into
42 new business markets.

43 (B) Royalty expense add backs. (i) For the purpose of computing New
44 York unrelated business taxable income, a taxpayer must add back royalty
45 payments [to a] DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED IN
46 CONNECTION WITH ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH ONE OR
47 MORE related [member] MEMBERS during the taxable year to the extent
48 deductible in calculating federal unrelated business taxable income;

49 (ii) [The add back of royalty payments shall not be required if and to
50 the extent that such payments meet either of the following conditions:

51 (I) the related member during the same taxable year directly or indi-
52 rectly paid or incurred the amount to a person or entity that is not a
53 related member, and such transaction was done for a valid business and
54 the payments are made at arm's length;

55 (II) the royalty payments are paid or incurred to a related member
56 organized under the laws of a country other than the United States, are

1 subject to a comprehensive income tax treaty between such country and
2 the United States, and are taxed in such country at a tax rate at least
3 equal to that imposed by this state.

4 (C) Royalty income exclusions. For the purpose of computing New York
5 unrelated business taxable income, a taxpayer shall be allowed to deduct
6 royalty payments directly or indirectly received from a related member
7 during the taxable year to the extent included in the taxpayer's federal
8 taxable income unless such royalty payments would not be required to be
9 added back under subparagraph (B) of this paragraph or other similar
10 provision in this chapter.] EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN
11 THIS PARAGRAPH SHALL NOT APPLY TO THE PORTION OF THE ROYALTY PAYMENT
12 THAT THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE
13 TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, MEETS ALL OF THE
14 FOLLOWING REQUIREMENTS: (A) THE RELATED MEMBER WAS SUBJECT TO TAX IN
15 THIS STATE OR ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR A
16 FOREIGN NATION OR SOME COMBINATION THEREOF ON A TAX BASE THAT INCLUDED
17 THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (B) THE
18 RELATED MEMBER DURING THE SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID,
19 ACCRUED OR INCURRED SUCH PORTION TO A PERSON THAT IS NOT A RELATED
20 MEMBER; AND (C) THE TRANSACTION GIVING RISE TO THE ROYALTY PAYMENT
21 BETWEEN THE TAXPAYER AND THE RELATED MEMBER WAS UNDERTAKEN FOR A VALID
22 BUSINESS PURPOSE.

23 (II) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE
24 TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND
25 IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (A) THE RELATED MEMBER
26 WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN THIS STATE OR
27 ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR SOME COMBINATION
28 THEREOF; (B) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT
29 PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (C) THE AGGREGATE EFFEC-
30 TIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDICTIONS IS
31 NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT APPLIED TO
32 THE TAXPAYER UNDER SECTION TWO HUNDRED NINETY OF THIS ARTICLE FOR THE
33 TAXABLE YEAR.

34 (III) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE
35 TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND
36 IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (A) THE ROYALTY PAYMENT
37 WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGANIZED UNDER THE
38 LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (B) THE RELATED MEMBER'S
39 INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHENSIVE INCOME TAX
40 TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (C) THE RELATED
41 MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE THAT
42 INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER;
43 (D) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS TAXED IN SUCH
44 COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT IMPOSED BY
45 THIS STATE; AND (E) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED
46 PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSINESS
47 PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

48 (IV) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE
49 TAXPAYER AND THE COMMISSIONER AGREE IN WRITING TO THE APPLICATION OR USE
50 OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE COMMISSIONER MAY, IN HIS
51 OR HER DISCRETION, AGREE TO THE APPLICATION OR USE OF ALTERNATIVE
52 ADJUSTMENTS OR COMPUTATIONS WHEN HE OR SHE CONCLUDES THAT IN THE ABSENCE
53 OF SUCH AGREEMENT THE INCOME OF THE TAXPAYER WOULD NOT BE PROPERLY
54 REFLECTED.

55 S 4. Paragraph 19 of subsection (c) of section 612 of the tax law is
56 REPEALED.

1 S 5. Subsection (r) of section 612 of the tax law, as amended by
2 section 3 of part M of chapter 686 of the laws of 2003, is amended to
3 read as follows:

4 (r) Related members expense add back [and income exclusion]. (1)
5 Definitions. (A) Related member [or members. For purposes of this
6 subsection, the term related member or members means a person, corpo-
7 ration, or other entity, including an entity that is treated as a part-
8 nership or other pass-through vehicle for purposes of federal taxation,
9 whether such person, corporation or entity is a taxpayer or not, where
10 one such person, corporation, or entity, or set of related persons,
11 corporations or entities, directly or indirectly owns or controls a
12 controlling interest in another entity. Such entity or entities may
13 include all taxpayers under article nine, nine-A, thirteen, twenty-two,
14 thirty-two, thirty-three or thirty-three-A of this chapter]. "RELATED
15 MEMBER" MEANS A RELATED PERSON AS DEFINED IN SUBPARAGRAPH (C) OF PARA-
16 GRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE
17 INTERNAL REVENUE CODE, EXCEPT THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED
18 FOR "TEN PERCENT".

19 (B) [Controlling interest. A controlling interest shall mean (i) in
20 the case of a corporation, either thirty percent or more of the total
21 combined voting power of all classes of stock of such corporation, or
22 thirty percent or more of the capital, profits or beneficial interest in
23 such voting stock of such corporation, and (ii) in the case of a part-
24 nership, association, trust or other entity, thirty percent or more of
25 the capital, profits or beneficial interest in such partnership, associ-
26 ation, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE
27 OF TAX" MEANS, AS TO ANY STATE OR U.S. POSSESSION, THE MAXIMUM STATUTORY
28 RATE OF TAX IMPOSED BY THE STATE OR POSSESSION ON OR MEASURED BY A
29 RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE,
30 IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURIS-
31 DICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS
32 TO ANY STATE OR U.S. POSSESSION IS ZERO WHERE THE RELATED MEMBER'S NET
33 INCOME TAX LIABILITY IN SAID JURISDICTION IS REPORTED ON A COMBINED OR
34 CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED MEMBER
35 WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED
36 MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION,
37 WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A JURISDICTION IN WHICH A
38 RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR SIMI-
39 LAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAIN-
40 TAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME IN
41 THAT JURISDICTION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID
42 JURISDICTION SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX
43 THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT
44 OR SIMILAR ADJUSTMENT.

45 (C) Royalty payments. Royalty payments are payments directly connected
46 to the acquisition, use, maintenance or management, ownership, sale,
47 exchange, or any other disposition of licenses, trademarks, copyrights,
48 trade names, trade dress, service marks, mask works, trade secrets,
49 patents and any other similar types of intangible assets as determined
50 by the commissioner, and [includes] INCLUDE amounts allowable as inter-
51 est deductions under section one hundred sixty-three of the internal
52 revenue code to the extent such amounts are directly or indirectly for,
53 related to or in connection with the acquisition, use, maintenance or
54 management, ownership, sale, exchange or disposition of such intangible
55 assets.

(D) Valid business purpose. A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(2) Royalty expense add backs. (A) For the purpose of computing New York adjusted gross income, a taxpayer must add back royalty payments [to a] DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED IN CONNECTION WITH ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH ONE OR MORE related [member] MEMBERS during the taxable year to the extent deductible in calculating federal taxable income.

(B) [The add back of royalty payments shall not be required if and to the extent that such payments meet either of the following conditions:

(i) the related member during the same taxable year directly or indirectly paid or incurred the amount to a person or entity that is not a related member, and such transaction was done for a valid business and the payments are made at arm's length;

(ii) the royalty payments are paid or incurred to a related member organized under the laws of a country other than the United States, are subject to a comprehensive income tax treaty between such country and the United States, and are taxed in such country at a tax rate at least equal to that imposed by this state.

(3) Royalty income exclusions. For the purpose of computing New York adjusted gross income, a taxpayer shall be allowed to deduct royalty payments directly or indirectly received from a related member during the taxable year to the extent included in the taxpayer's federal taxable income unless such royalty payments would not be required to be added back under paragraph two of this subsection or other similar provision in this chapter.] EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN THIS SUBSECTION SHALL NOT APPLY TO THE PORTION OF THE ROYALTY PAYMENT THAT THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, MEETS ALL OF THE FOLLOWING REQUIREMENTS: (I) THE RELATED MEMBER WAS SUBJECT TO TAX IN THIS STATE OR ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR A FOREIGN NATION OR SOME COMBINATION THEREOF ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (II) THE RELATED MEMBER DURING THE SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID, ACCRUED OR INCURRED SUCH PORTION TO A PERSON THAT IS NOT A RELATED MEMBER; AND (III) THE TRANSACTION GIVING RISE TO THE ROYALTY PAYMENT BETWEEN THE TAXPAYER AND THE RELATED MEMBER WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE.

(II) THE ADJUSTMENT REQUIRED IN THIS SUBSECTION SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (I) THE RELATED MEMBER WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN THIS STATE OR ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR SOME COMBINATION THEREOF; (II) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (III) THE AGGREGATE EFFECTIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDICTIONS IS NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT APPLIED TO THE TAXPAYER UNDER SECTION SIX HUNDRED ONE OF THIS ARTICLE FOR THE TAXABLE YEAR.

1 (III) THE ADJUSTMENT REQUIRED IN THIS SUBSECTION SHALL NOT APPLY IF
2 THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE
3 AND IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (I) THE ROYALTY
4 PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGANIZED
5 UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (II) THE
6 RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHEN-
7 SIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (III)
8 THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE
9 THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE
10 TAXPAYER; (IV) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS
11 TAXED IN SUCH COUNTRY AT AN EFFECTIVE TAX RATE AT LEAST EQUAL TO THAT
12 IMPOSED BY THIS STATE; AND (V) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR
13 INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSI-
14 NESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

15 (IV) THE ADJUSTMENT REQUIRED IN THIS SUBSECTION SHALL NOT APPLY IF THE
16 TAXPAYER AND THE COMMISSIONER AGREE IN WRITING TO THE APPLICATION OR USE
17 OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE COMMISSIONER MAY, IN
18 HIS OR HER DISCRETION, AGREE TO THE APPLICATION OR USE OF ALTERNATIVE
19 ADJUSTMENTS OR COMPUTATIONS WHEN HE OR SHE CONCLUDES THAT IN THE ABSENCE
20 OF SUCH AGREEMENT THE INCOME OF THE TAXPAYER WOULD NOT BE PROPERLY
21 REFLECTED.

22 S 6. Paragraph 17 of subsection (e) of section 1453 of the tax law is
23 REPEALED.

24 S 7. Subsection (r) of section 1453 of the tax law, as amended by
25 section 5 of part M of chapter 686 of the laws of 2003, subparagraph (A)
26 of paragraph 2 as amended by section 5 of part J of chapter 60 of the
27 laws of 2007, is amended to read as follows:

28 (r) Related members expense add back [and income exclusion]. (1)
29 Definitions. (A) Related member [or members. For purposes of this
30 subsection, the term related member or members means a person, corpo-
31 ration, or other entity, including an entity that is treated as a part-
32 nership or other pass-through vehicle for purposes of federal taxation,
33 whether such person, corporation or entity is a taxpayer or not, where
34 one such person, corporation, or entity, or set of related persons,
35 corporations or entities, directly or indirectly owns or controls a
36 controlling interest in another entity. Such entity or entities may
37 include all taxpayers under article nine, nine-A, thirteen, twenty-two,
38 thirty-two, thirty-three or thirty-three-A of this chapter]. "RELATED
39 MEMBER" MEANS A RELATED PERSON AS DEFINED IN SUBPARAGRAPH (C) OF PARA-
40 GRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE
41 INTERNAL REVENUE CODE, EXCEPT THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED
42 FOR "TEN PERCENT".

43 (B) [Controlling interest. A controlling interest shall mean (i) in
44 the case of a corporation, either thirty percent or more of the total
45 combined voting power of all classes of stock of such corporation, or
46 thirty percent or more of the capital, profits or beneficial interest in
47 such voting stock of such corporation, and (ii) in the case of a part-
48 nership, association, trust or other entity, thirty percent or more of
49 the capital, profits or beneficial interest in such partnership, associ-
50 ation, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF
51 TAX" MEANS, AS TO ANY STATE OR U.S. POSSESSION, THE MAXIMUM STATUTORY
52 RATE OF TAX IMPOSED BY THE STATE OR POSSESSION ON OR MEASURED BY A
53 RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE,
54 IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURIS-
55 DICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS
56 TO ANY STATE OR U.S. POSSESSION IS ZERO WHERE THE RELATED MEMBER'S NET

1 INCOME TAX LIABILITY IN SAID JURISDICTION IS REPORTED ON A COMBINED OR
2 CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED MEMBER
3 WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED
4 MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION,
5 WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A JURISDICTION IN WHICH A
6 RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR SIMI-
7 LAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAIN-
8 TAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME IN
9 THAT JURISDICTION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID
10 JURISDICTION SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX
11 THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT
12 OR SIMILAR ADJUSTMENT.

13 (C) Royalty payments. Royalty payments are payments directly connected
14 to the acquisition, use, maintenance or management, ownership, sale,
15 exchange, or any other disposition of licenses, trademarks, copyrights,
16 trade names, trade dress, service marks, mask works, trade secrets,
17 patents and any other similar types of intangible assets as determined
18 by the commissioner, and [includes] INCLUDE amounts allowable as inter-
19 est deductions under section one hundred sixty-three of the internal
20 revenue code to the extent such amounts are directly or indirectly for,
21 related to or in connection with the acquisition, use, maintenance or
22 management, ownership, sale, exchange or disposition of such intangible
23 assets.

24 (D) Valid business purpose. A valid business purpose is one or more
25 business purposes, other than the avoidance or reduction of taxation,
26 which alone or in combination constitute the primary motivation for some
27 business activity or transaction, which activity or transaction changes
28 in a meaningful way, apart from tax effects, the economic position of
29 the taxpayer. The economic position of the taxpayer includes an increase
30 in the market share of the taxpayer, or the entry by the taxpayer into
31 new business markets.

32 (2) Royalty expense add backs. (A) Except where a taxpayer is included
33 in a combined return with a related member pursuant to subsection (f) of
34 section fourteen hundred sixty-two of this article, for the purpose of
35 computing entire net income, a taxpayer must add back royalty payments
36 [to a] DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED IN CONNECTION
37 WITH ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH ONE OR MORE
38 related [member] MEMBERS during the taxable year to the extent deduct-
39 ible in calculating federal taxable income.

40 (B) [The add back of royalty payments shall not be required if and to
41 the extent that such payments meet either of the following conditions:

42 (i) the related member during the same taxable year directly or indi-
43 rectly paid or incurred the amount to a person or entity that is not a
44 related member, and such transaction was done for a valid business and
45 the payments are made at arm's length;

46 (ii) the royalty payments are paid or incurred to a related member
47 organized under the laws of a country other than the United States, are
48 subject to a comprehensive income tax treaty between such country and
49 the United States, and are taxed in such country at a tax rate at least
50 equal to that imposed by this state.

51 (3) Royalty income exclusions. For the purpose of computing entire net
52 income, a taxpayer shall be allowed to deduct royalty payments directly
53 or indirectly received from a related member during the taxable year to
54 the extent included in the taxpayer's federal taxable income unless such
55 royalty payments would not be required to be added back under paragraph
56 two of this subsection or other similar provision in this chapter.]

1 EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN THIS SUBSECTION SHALL NOT
2 APPLY TO THE PORTION OF THE ROYALTY PAYMENT THAT THE TAXPAYER ESTAB-
3 LISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM
4 SPECIFIED BY THE COMMISSIONER, MEETS ALL OF THE FOLLOWING REQUIREMENTS:
5 (I) THE RELATED MEMBER WAS SUBJECT TO TAX IN THIS STATE OR ANOTHER STATE
6 OR POSSESSION OF THE UNITED STATES OR A FOREIGN NATION OR SOME COMBINA-
7 TION THEREOF ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID,
8 ACCRUED OR INCURRED BY THE TAXPAYER; (II) THE RELATED MEMBER DURING THE
9 SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID, ACCRUED OR INCURRED SUCH
10 PORTION TO A PERSON THAT IS NOT A RELATED MEMBER; AND (III) THE TRANS-
11 ACTION GIVING RISE TO THE ROYALTY PAYMENT BETWEEN THE TAXPAYER AND THE
12 RELATED MEMBER WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE.

13 (II) THE ADJUSTMENT REQUIRED IN THIS SUBSECTION SHALL NOT APPLY IF THE
14 TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND
15 IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (I) THE RELATED MEMBER
16 WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN THIS STATE OR
17 ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR SOME COMBINATION
18 THEREOF; (II) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT
19 PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (III) THE AGGREGATE
20 EFFECTIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDIC-
21 TIONS IS NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT
22 APPLIED TO THE TAXPAYER UNDER SECTION FOURTEEN HUNDRED FIFTY-FIVE OF
23 THIS ARTICLE FOR THE TAXABLE YEAR.

24 (III) THE ADJUSTMENT REQUIRED IN THIS SUBSECTION SHALL NOT APPLY IF
25 THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE
26 AND IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (I) THE ROYALTY
27 PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGANIZED
28 UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (II) THE
29 RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHEN-
30 SIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (III)
31 THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE
32 THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE
33 TAXPAYER; (IV) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS
34 TAXED IN SUCH COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT
35 IMPOSED BY THIS STATE; AND (V) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR
36 INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSI-
37 NESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

38 (IV) THE ADJUSTMENT REQUIRED IN THIS SUBSECTION SHALL NOT APPLY IF THE
39 TAXPAYER AND THE COMMISSIONER AGREE IN WRITING TO THE APPLICATION OR USE
40 OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE COMMISSIONER MAY, IN HIS
41 OR HER DISCRETION, AGREE TO THE APPLICATION OR USE OF ALTERNATIVE
42 ADJUSTMENTS OR COMPUTATIONS WHEN HE OR SHE CONCLUDES THAT IN THE ABSENCE
43 OF SUCH AGREEMENT THE INCOME OF THE TAXPAYER WOULD NOT BE PROPERLY
44 REFLECTED.

45 S 8. Paragraph 14 of subdivision (b) of section 1503 of the tax law,
46 as amended by section 7 of part M of chapter 686 of the laws of 2003,
47 clause (i) of subparagraph (B) as amended by section 6 of part J of
48 chapter 60 of the laws of 2007, is amended to read as follows:

49 (14) Related members expense add back [and income exclusion]. (A)
50 Definitions. (i) Related member [or members. For purposes of this para-
51 graph, the term related member or members means a person, corporation,
52 or other entity, including an entity that is treated as a partnership or
53 other pass-through vehicle for purposes of federal taxation, whether
54 such person, corporation or entity is a taxpayer or not, where one such
55 person, corporation, or entity, or set of related persons, corporations
56 or entities, directly or indirectly owns or controls a controlling

1 interest in another entity. Such entity or entities may include all
2 taxpayers under article nine, nine-A, thirteen, twenty-two, thirty-two,
3 thirty-three or thirty-three-A of this chapter]. "RELATED MEMBER" MEANS
4 A RELATED PERSON AS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF
5 SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE
6 CODE, EXCEPT THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED FOR "TEN
7 PERCENT".

8 (ii) [Controlling interest. A controlling interest shall mean (I) in
9 the case of a corporation, either thirty percent or more of the total
10 combined voting power of all classes of stock of such corporation, or
11 thirty percent or more of the capital, profits or beneficial interest in
12 such voting stock of such corporation, and (II) in the case of a part-
13 nership, association, trust or other entity, thirty percent or more of
14 the capital, profits or beneficial interest in such partnership, associ-
15 ation, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF
16 TAX" MEANS, AS TO ANY STATE OR U.S. POSSESSION, THE MAXIMUM STATUTORY
17 RATE OF TAX IMPOSED BY THE STATE OR POSSESSION ON OR MEASURED BY A
18 RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE,
19 IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURIS-
20 DICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS
21 TO ANY STATE OR U.S. POSSESSION IS ZERO WHERE THE RELATED MEMBER'S NET
22 INCOME TAX LIABILITY IN SAID JURISDICTION IS REPORTED ON A COMBINED OR
23 CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED MEMBER
24 WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED
25 MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION,
26 WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A JURISDICTION IN WHICH A
27 RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR SIMI-
28 LAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAIN-
29 TAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME
30 IN THAT JURISDICTION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID
31 JURISDICTION SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX
32 THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT
33 OR SIMILAR ADJUSTMENT.

34 (iii) Royalty payments. Royalty payments are payments directly
35 connected to the acquisition, use, maintenance or management, ownership,
36 sale, exchange, or any other disposition of licenses, trademarks, copy-
37 rights, trade names, trade dress, service marks, mask works, trade
38 secrets, patents and any other similar types of intangible assets as
39 determined by the commissioner, and [includes] INCLUDE amounts allowable
40 as interest deductions under section one hundred sixty-three of the
41 internal revenue code to the extent such amounts are directly or indi-
42 rectly for, related to or in connection with the acquisition, use, main-
43 tenance or management, ownership, sale, exchange or disposition of such
44 intangible assets.

45 (iv) Valid business purpose. A valid business purpose is one or more
46 business purposes, other than the avoidance or reduction of taxation,
47 which alone or in combination constitute the primary motivation for some
48 business activity or transaction, which activity or transaction changes
49 in a meaningful way, apart from tax effects, the economic position of
50 the taxpayer. The economic position of the taxpayer includes an increase
51 in the market share of the taxpayer, or the entry by the taxpayer into
52 new business markets.

53 (B) Royalty expense add backs. (i) Except where a taxpayer is included
54 in a combined return with a related member pursuant to subdivision (f)
55 of section fifteen hundred fifteen of this article, for the purpose of
56 computing entire net income, a taxpayer must add back royalty payments

1 [to a] DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED IN CONNECTION
2 WITH ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH ONE OR MORE
3 related [member] MEMBERS during the taxable year to the extent deduct-
4 ible in calculating federal taxable income.

5 (ii) [The add back of royalty payments shall not be required if and to
6 the extent that such payments meet either of the following conditions:

7 (I) the related member during the same taxable year directly or indi-
8 rectly paid or incurred the amount to a person or entity that is not a
9 related member, and such transaction was done for a valid business and
10 the payments are made at arm's length;

11 (II) the royalty payments are paid or incurred to a related member
12 organized under the laws of a country other than the United States, are
13 subject to a comprehensive income tax treaty between such country and
14 the United States, and are taxed in such country at a tax rate at least
15 equal to that imposed by this state.

16 (C) Royalty income exclusions. For the purpose of computing entire net
17 income, a taxpayer shall be allowed to deduct royalty payments directly
18 or indirectly received from a related member during the taxable year to
19 the extent included in the taxpayer's federal taxable income unless such
20 royalty payments would not be required to be added back under subpara-
21 graph (B) of this paragraph or other similar provision in this chapter.]

22 EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT
23 APPLY TO THE PORTION OF THE ROYALTY PAYMENT THAT THE TAXPAYER ESTAB-
24 LISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM
25 SPECIFIED BY THE COMMISSIONER, MEETS ALL OF THE FOLLOWING REQUIREMENTS:

26 (A) THE RELATED MEMBER WAS SUBJECT TO TAX IN THIS STATE OR ANOTHER STATE
27 OR POSSESSION OF THE UNITED STATES OR A FOREIGN NATION OR SOME COMBINA-
28 TION THEREOF ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID,
29 ACCRUED OR INCURRED BY THE TAXPAYER; (B) THE RELATED MEMBER DURING THE
30 SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID, ACCRUED OR INCURRED SUCH
31 PORTION TO A PERSON THAT IS NOT A RELATED MEMBER; AND (C) THE TRANS-
32 ACTION GIVING RISE TO THE ROYALTY PAYMENT BETWEEN THE TAXPAYER AND THE
33 RELATED MEMBER WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE.

34 (II) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE
35 TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND
36 IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (A) THE RELATED MEMBER
37 WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN THIS STATE OR
38 ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR SOME COMBINATION
39 THEREOF; (B) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT
40 PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (C) THE AGGREGATE EFFEC-
41 TIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDICTIONS IS
42 NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT APPLIED TO
43 THE TAXPAYER UNDER SECTION FIFTEEN HUNDRED TWO, FIFTEEN HUNDRED TWO-A,
44 OR FIFTEEN HUNDRED TWO-B OF THIS ARTICLE FOR THE TAXABLE YEAR.

45 (III) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE
46 TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND
47 IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (A) THE ROYALTY PAYMENT
48 WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGANIZED UNDER THE
49 LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (B) THE RELATED MEMBER'S
50 INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHENSIVE INCOME TAX
51 TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (C) THE RELATED
52 MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE THAT
53 INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER;
54 (D) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS TAXED IN SUCH
55 COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT IMPOSED BY
56 THIS STATE; AND (E) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED

PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

(IV) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE TAXPAYER AND THE COMMISSIONER AGREE IN WRITING TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE COMMISSIONER MAY, IN HIS OR HER DISCRETION, AGREE TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS WHEN HE OR SHE CONCLUDES THAT IN THE ABSENCE OF SUCH AGREEMENT THE INCOME OF THE TAXPAYER WOULD NOT BE PROPERLY REFLECTED.

S 9. Subdivision (e) of section 11-506 of the administrative code of the city of New York, as added by section 17 of part M of chapter 686 of the laws of 2003 and as relettered by chapter 633 of the laws of 2005, is amended to read as follows:

(e) Related members expense add back [and income exclusion]. (1) Definitions. (A) Related member [or members. For purposes of this subdivision, the term related member or members means a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation, or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under this title]. "RELATED MEMBER" MEANS A RELATED PERSON AS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, EXCEPT THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED FOR "TEN PERCENT".

(B) [Controlling interest. A controlling interest shall mean (i) in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF TAX" MEANS, AS TO ANY CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY THE CITY ON OR MEASURED BY A RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE, IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURISDICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS TO ANY CITY IS ZERO WHERE THE RELATED MEMBER'S NET INCOME TAX LIABILITY IN SAID CITY IS REPORTED ON A COMBINED OR CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED MEMBER WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION, WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A CITY IN WHICH A RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR SIMILAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAINTAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME IN THAT CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID CITY SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT OR SIMILAR ADJUSTMENT.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined

by the commissioner of finance, and [includes] INCLUDE amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(D) Valid business purpose. A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(2) Royalty expense add backs. (A) For the purpose of computing unincorporated business entire net income, a taxpayer must add back royalty payments [to a] DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED IN CONNECTION WITH ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH ONE OR MORE related [member] MEMBERS during the taxable year to the extent deductible in calculating federal taxable income.

(B) [The add back of royalty payments shall not be required if and to the extent that such payments meet either of the following conditions:

(i) the related member during the same taxable year directly or indirectly paid or incurred the amount to a person or entity that is not a related member, and such transaction was done for a valid business and the payments are made at arm's length;

(ii) the royalty payments are paid or incurred to a related member organized under the laws of a country other than the United States, are subject to a comprehensive income tax treaty between such country and the United States, and are taxed in such country at a tax rate at least equal to that imposed by this state.

(3) Royalty income exclusions. For the purpose of computing unincorporated business entire net income, a taxpayer shall be allowed to deduct royalty payments directly or indirectly received from a related member during the taxable year to the extent included in the taxpayer's federal taxable income unless such royalty payments would not be required to be added back under paragraph two of this subdivision or other similar provision in this chapter.] EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY TO THE PORTION OF THE ROYALTY PAYMENT THAT THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, MEETS ALL OF THE FOLLOWING REQUIREMENTS: (I) THE RELATED MEMBER WAS SUBJECT TO TAX IN THIS CITY OR ANOTHER CITY WITHIN THE UNITED STATES OR A FOREIGN NATION OR SOME COMBINATION THEREOF ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (II) THE RELATED MEMBER DURING THE SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID, ACCRUED OR INCURRED SUCH PORTION TO A PERSON THAT IS NOT A RELATED MEMBER; AND (III) THE TRANSACTION GIVING RISE TO THE ROYALTY PAYMENT BETWEEN THE TAXPAYER AND THE RELATED MEMBER WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE.

(II) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE RELATED MEMBER WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN THIS CITY OR ANOTHER CITY WITHIN THE UNITED STATES, OR SOME COMBINATION THEREOF; (II) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT

PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (III) THE AGGREGATE EFFECTIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDICTIONS IS NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT APPLIED TO THE TAXPAYER UNDER SECTION 11-503 OF THIS CHAPTER FOR THE TAXABLE YEAR.

(III) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGANIZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (II) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHENSIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (III) THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (IV) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS TAXED IN SUCH COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT IMPOSED BY THIS CITY; AND (V) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

(IV) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF THE TAXPAYER AND THE COMMISSIONER OF FINANCE AGREE IN WRITING TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE COMMISSIONER OF FINANCE MAY, IN HIS OR HER DISCRETION, AGREE TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS WHEN HE OR SHE CONCLUDES THAT IN THE ABSENCE OF SUCH AGREEMENT THE INCOME OF THE TAXPAYER WOULD NOT BE PROPERLY REFLECTED.

S 10. Paragraph (n) of subdivision 8 of section 11-602 of the administrative code of the city of New York, as amended by section 19 of part M of chapter 686 of the laws of 2003, is amended to read as follows:

(n) Related members expense add back [and income exclusion]. (1) Definitions. (A) Related member [or members. For purposes of this paragraph, the term related member or members means a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation, or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under this title]. "RELATED MEMBER" MEANS A RELATED PERSON AS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, EXCEPT THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED FOR "TEN PERCENT".

(B) [Controlling interest. A controlling interest shall mean (i) in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF TAX" MEANS, AS TO ANY CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY THE CITY ON OR MEASURED BY A RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE, IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURISDICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS TO ANY CITY IS ZERO WHERE THE RELATED MEMBER'S NET INCOME TAX LIABILITY IN SAID CITY IS REPORTED ON A COMBINED

1 OR CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED
2 MEMBER WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE
3 RELATED MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS
4 DEFINITION, WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A CITY IN WHICH
5 A RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR
6 SIMILAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER
7 MAINTAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST
8 INCOME IN THAT CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID
9 CITY SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX THAT
10 APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT OR
11 SIMILAR ADJUSTMENT.

12 (C) Royalty payments. Royalty payments are payments directly connected
13 to the acquisition, use, maintenance or management, ownership, sale,
14 exchange, or any other disposition of licenses, trademarks, copyrights,
15 trade names, trade dress, service marks, mask works, trade secrets,
16 patents and any other similar types of intangible assets as determined
17 by the commissioner of finance, and [includes] INCLUDE amounts allowable
18 as interest deductions under section one hundred sixty-three of the
19 internal revenue code to the extent such amounts are directly or indi-
20 rectly for, related to or in connection with the acquisition, use, main-
21 tenance or management, ownership, sale, exchange or disposition of such
22 intangible assets.

23 (D) Valid business purpose. A valid business purpose is one or more
24 business purposes, other than the avoidance or reduction of taxation,
25 which alone or in combination constitute the primary motivation for some
26 business activity or transaction, which activity or transaction changes
27 in a meaningful way, apart from tax effects, the economic position of
28 the taxpayer. The economic position of the taxpayer includes an increase
29 in the market share of the taxpayer, or the entry by the taxpayer into
30 new business markets.

31 (2) Royalty expense add backs. (A) For the purpose of computing entire
32 net income or other applicable taxable basis, a taxpayer must add back
33 royalty payments [to a] DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR
34 INCURRED IN CONNECTION WITH ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS
35 WITH ONE OR MORE related [member] MEMBERS during the taxable year to the
36 extent deductible in calculating federal taxable income.

37 (B) [The add back of royalty payments shall not be required if and to
38 the extent that such payments meet either of the following conditions:

39 (i) the related member during the same taxable year directly or indi-
40 rectly paid or incurred the amount to a person or entity that is not a
41 related member, and such transaction was done for a valid business
42 purpose and the payments are made at arm's length;

43 (ii) the royalty payments are paid or incurred to a related member
44 organized under the laws of a country other than the United States, are
45 subject to a comprehensive income tax treaty between such country and
46 the United States, and are taxed in such country at a tax rate at least
47 equal to that imposed by this state.

48 (3) Royalty income exclusions. For the purpose of computing entire net
49 income or other taxable basis, a taxpayer shall be allowed to deduct
50 royalty payments directly or indirectly received from a related member
51 during the taxable year to the extent included in the taxpayer's federal
52 taxable income unless such royalty payments would not be required to be
53 added back under subparagraph two of this paragraph or other similar
54 provision in this chapter.] EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN
55 THIS PARAGRAPH SHALL NOT APPLY TO THE PORTION OF THE ROYALTY PAYMENT
56 THAT THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE

1 TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, MEETS ALL
2 OF THE FOLLOWING REQUIREMENTS: (I) THE RELATED MEMBER WAS SUBJECT TO TAX
3 IN THIS CITY OR ANOTHER CITY WITHIN THE UNITED STATES OR A FOREIGN
4 NATION OR SOME COMBINATION THEREOF ON A TAX BASE THAT INCLUDED THE
5 ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (II) THE
6 RELATED MEMBER DURING THE SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID,
7 ACCRUED OR INCURRED SUCH PORTION TO A PERSON THAT IS NOT A RELATED
8 MEMBER; AND (III) THE TRANSACTION GIVING RISE TO THE ROYALTY PAYMENT
9 BETWEEN THE TAXPAYER AND THE RELATED MEMBER WAS UNDERTAKEN FOR A VALID
10 BUSINESS PURPOSE.

11 (II) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE
12 TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND
13 IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE
14 RELATED MEMBER WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN
15 THIS CITY OR ANOTHER CITY WITHIN THE UNITED STATES, OR SOME COMBINATION
16 THEREOF; (II) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT
17 PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (III) THE AGGREGATE
18 EFFECTIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDIC-
19 TIONS IS NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT
20 APPLIED TO THE TAXPAYER UNDER SECTION 11-604 OF THIS SUBCHAPTER FOR THE
21 TAXABLE YEAR.

22 (III) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE
23 TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND
24 IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE
25 ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGAN-
26 IZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (II) THE
27 RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHEN-
28 SIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (III)
29 THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE
30 THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE
31 TAXPAYER; (IV) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS
32 TAXED IN SUCH COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT
33 IMPOSED BY THIS CITY; AND (V) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR
34 INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSI-
35 NESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

36 (IV) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE
37 TAXPAYER AND THE COMMISSIONER OF FINANCE AGREE IN WRITING TO THE APPLI-
38 CATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE COMMIS-
39 SIONER OF FINANCE MAY, IN HIS OR HER DISCRETION, AGREE TO THE APPLICA-
40 TION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS WHEN HE OR SHE
41 CONCLUDES THAT IN THE ABSENCE OF SUCH AGREEMENT THE INCOME OF THE
42 TAXPAYER WOULD NOT BE PROPERLY REFLECTED.

43 S 11. Subdivision (q) of section 11-641 of the administrative code of
44 the city of New York, as added by section 21 of part M of chapter 686 of
45 the laws of 2003, is amended to read as follows:

46 (q) Related members expense add back [and income exclusion]. (1)
47 Definitions. (A) Related member [or members. For purposes of this subdi-
48 vision, the term related member or members means a person, corporation,
49 or other entity, including an entity that is treated as a partnership or
50 other pass-through vehicle for purposes of federal taxation, whether
51 such person, corporation or entity is a taxpayer or not, where one such
52 person, corporation, or entity, or set of related persons, corporations
53 or entities, directly or indirectly owns or controls a controlling
54 interest in another entity. Such entity or entities may include all
55 taxpayers under this title]. "RELATED MEMBER" MEANS A RELATED PERSON AS
56 DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF

SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, EXCEPT THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED FOR "TEN PERCENT".

(B) [Controlling interest. A controlling interest shall mean (i) in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF TAX" MEANS, AS TO ANY CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY THE CITY ON OR MEASURED BY A RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE, IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURISDICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS TO ANY CITY IS ZERO WHERE THE RELATED MEMBER'S NET INCOME TAX LIABILITY IN SAID CITY IS REPORTED ON A COMBINED OR CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED MEMBER WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION, WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A CITY IN WHICH A RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR SIMILAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAINTAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME IN THAT CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID CITY SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT OR SIMILAR ADJUSTMENT.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner of finance, and [includes] INCLUDE amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(D) Valid business purpose. A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(2) Royalty expense add backs. (A) For the purpose of computing entire net income, a taxpayer must add back royalty payments [to a] DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED IN CONNECTION WITH ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH ONE OR MORE related [member] MEMBERS during the taxable year to the extent deductible in calculating federal taxable income.

(B) [The add back of royalty payments shall not be required if and to the extent that such payments meet either of the following conditions:

(i) the related member during the same taxable year directly or indirectly paid or incurred the amount to a person or entity that is not a

1 related member, and such transaction was done for a valid business and
2 the payments are made at arm's length;

3 (ii) the royalty payments are paid or incurred to a related member
4 organized under the laws of a country other than the United States, are
5 subject to a comprehensive income tax treaty between such country and
6 the United States, and are taxed in such country at a tax rate at least
7 equal to that imposed by this state.

8 (3) Royalty income exclusions. For the purpose of computing entire net
9 income, a taxpayer shall be allowed to deduct royalty payments directly
10 or indirectly received from a related member during the taxable year to
11 the extent included in the taxpayer's federal taxable income unless such
12 royalty payments would not be required to be added back under paragraph
13 two of this subdivision or other similar provision in this chapter.]

14 EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT
15 APPLY TO THE PORTION OF THE ROYALTY PAYMENT THAT THE TAXPAYER ESTAB-
16 LISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM
17 SPECIFIED BY THE COMMISSIONER OF FINANCE, MEETS ALL OF THE FOLLOWING
18 REQUIREMENTS: (I) THE RELATED MEMBER WAS SUBJECT TO TAX IN THIS CITY OR
19 ANOTHER CITY WITHIN THE UNITED STATES OR A FOREIGN NATION OR SOME COMBI-
20 NATION THEREOF ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID,
21 ACCRUED OR INCURRED BY THE TAXPAYER; (II) THE RELATED MEMBER DURING THE
22 SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID, ACCRUED OR INCURRED SUCH
23 PORTION TO A PERSON THAT IS NOT A RELATED MEMBER; AND (III) THE TRANS-
24 ACTION GIVING RISE TO THE ROYALTY PAYMENT BETWEEN THE TAXPAYER AND THE
25 RELATED MEMBER WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE.

26 (II) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF
27 THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE
28 AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE
29 RELATED MEMBER WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN
30 THIS CITY OR ANOTHER CITY WITHIN THE UNITED STATES, OR SOME COMBINATION
31 THEREOF; (II) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT
32 PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (III) THE AGGREGATE
33 EFFECTIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDIC-
34 TIONS IS NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT
35 APPLIED TO THE TAXPAYER UNDER SECTION 11-643.5 OF THIS PART FOR THE
36 TAXABLE YEAR.

37 (III) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF
38 THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE
39 AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE
40 ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGAN-
41 IZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (II) THE
42 RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHEN-
43 SIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (III)
44 THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE
45 THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE
46 TAXPAYER; (IV) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS
47 TAXED IN SUCH COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT
48 IMPOSED BY THIS CITY; AND (V) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR
49 INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSI-
50 NESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

51 (IV) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF
52 THE TAXPAYER AND THE COMMISSIONER OF FINANCE AGREE IN WRITING TO THE
53 APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE
54 COMMISSIONER OF FINANCE MAY, IN HIS OR HER DISCRETION, AGREE TO THE
55 APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS WHEN HE OR

1 SHE CONCLUDES THAT IN THE ABSENCE OF SUCH AGREEMENT THE INCOME OF THE
2 TAXPAYER WOULD NOT BE PROPERLY REFLECTED.

3 S 12. Subdivision (t) of section 11-1712 of the administrative code of
4 the city of New York, as added by section 26 of part M of chapter 686 of
5 the laws of 2003, is amended to read as follows:

6 (t) Related members expense add back [and income exclusion]. (1)
7 Definitions. (A) Related member [or members. For purposes of this subdi-
8 vision, the term related member or members means a person, corporation,
9 or other entity, including an entity that is treated as a partnership or
10 other pass-through vehicle for purposes of federal taxation, whether
11 such person, corporation or entity is a taxpayer or not, where one such
12 person, corporation or entity, or set of related persons, corporations
13 or entities, directly or indirectly owns or controls a controlling
14 interest in another entity. Such entity or entities may include all
15 taxpayers under this title]. "RELATED MEMBER" MEANS A RELATED PERSON AS
16 DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF
17 SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, EXCEPT
18 THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED FOR "TEN PERCENT".

19 (B) [Controlling interest. A controlling interest shall mean (i) in
20 the case of a corporation, either thirty percent or more of the total
21 combined voting power of all classes of stock of such corporation, or
22 thirty percent or more of the capital, profits or beneficial interest in
23 such voting stock of such corporation, and (ii) in the case of a part-
24 nership, association, trust or other entity, thirty percent or more of
25 the capital, profits or beneficial interest in such partnership, associ-
26 ation, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF
27 TAX" MEANS, AS TO ANY CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY
28 THE CITY ON OR MEASURED BY A RELATED MEMBER'S NET INCOME MULTIPLIED BY
29 THE APPORTIONMENT PERCENTAGE, IF ANY, APPLICABLE TO THE RELATED MEMBER
30 UNDER THE LAWS OF SAID JURISDICTION. FOR PURPOSES OF THIS DEFINITION,
31 THE EFFECTIVE RATE OF TAX AS TO ANY CITY IS ZERO WHERE THE RELATED
32 MEMBER'S NET INCOME TAX LIABILITY IN SAID CITY IS REPORTED ON A COMBINED
33 OR CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED
34 MEMBER WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE
35 RELATED MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS
36 DEFINITION, WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A CITY IN WHICH
37 A RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR
38 SIMILAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER
39 MAINTAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST
40 INCOME IN THAT CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID
41 CITY SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX THAT
42 APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT OR
43 SIMILAR ADJUSTMENT.

44 (C) Royalty payments. Royalty payments are payments directly connected
45 to the acquisition, use, maintenance or management, ownership, sale,
46 exchange, or any other disposition of licenses, trademarks, copyrights,
47 trade names, trade dress, service marks, mask works, trade secrets,
48 patents and any other similar types of intangible assets as determined
49 by the state commissioner of taxation and finance, and [includes]
50 INCLUDE amounts allowable as interest deductions under section one
51 hundred sixty-three of the internal revenue code to the extent such
52 amounts are directly or indirectly for, related to or in connection with
53 the acquisition, use, maintenance or management, ownership, sale,
54 exchange or disposition of such intangible assets.

55 (D) Valid business purpose. A valid business purpose is one or more
56 business purposes, other than the avoidance or reduction of taxation,

1 which alone or in combination constitute the primary motivation for some
2 business activity or transaction, which activity or transaction changes
3 in a meaningful way, apart from tax effects, the economic position of
4 the taxpayer. The economic position of the taxpayer includes an increase
5 in the market share of the taxpayer, or the entry by the taxpayer into
6 new business markets.

7 (2) Royalty expense add backs. (A) For the purpose of computing city
8 adjusted gross income, a taxpayer must add back royalty payments [to a]
9 DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED IN CONNECTION WITH ONE
10 OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH ONE OR MORE related
11 [member] MEMBERS during the taxable year to the extent deductible in
12 calculating federal taxable income.

13 (B) [The add back of royalty payments shall not be required if and to
14 the extent that such payments meet either of the following conditions:

15 (i) the related member during the same taxable year directly or indi-
16 rectly paid or incurred the amount to a person or entity that is not a
17 related member, and such transaction was done for a valid business and
18 the payments are made at arm's length;

19 (ii) the royalty payments are paid or incurred to a related member
20 organized under the laws of a country other than the United States, are
21 subject to a comprehensive income tax treaty between such country and
22 the United States, and are taxed in such country at a tax rate at least
23 equal to that imposed by this state.

24 (3) Royalty income exclusions. (A) For the purpose of computing city
25 adjusted gross income, a taxpayer shall be allowed to deduct royalty
26 payments directly or indirectly received from a related member during
27 the taxable year to the extent included in the taxpayer's federal taxa-
28 ble income unless such royalty payments would not be required to be
29 added back under paragraph two of this subdivision or other similar
30 provision in this title.] EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN
31 THIS SUBDIVISION SHALL NOT APPLY TO THE PORTION OF THE ROYALTY PAYMENT
32 THAT THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE
33 TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, MEETS ALL
34 OF THE FOLLOWING REQUIREMENTS: (I) THE RELATED MEMBER WAS SUBJECT TO TAX
35 IN THIS CITY OR ANOTHER CITY WITHIN THE UNITED STATES OR A FOREIGN
36 NATION OR SOME COMBINATION THEREOF ON A TAX BASE THAT INCLUDED THE
37 ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (II) THE
38 RELATED MEMBER DURING THE SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID,
39 ACCRUED OR INCURRED SUCH PORTION TO A PERSON THAT IS NOT A RELATED
40 MEMBER; AND (III) THE TRANSACTION GIVING RISE TO THE ROYALTY PAYMENT
41 BETWEEN THE TAXPAYER AND THE RELATED MEMBER WAS UNDERTAKEN FOR A VALID
42 BUSINESS PURPOSE.

43 (II) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF
44 THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE
45 AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE
46 RELATED MEMBER WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN
47 THIS CITY OR ANOTHER CITY WITHIN THE UNITED STATES, OR SOME COMBINATION
48 THEREOF; (II) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT
49 PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (III) THE AGGREGATE
50 EFFECTIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDIC-
51 TIONS IS NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT
52 APPLIED TO THE TAXPAYER UNDER SECTION 11-1701 OF THIS CHAPTER FOR THE
53 TAXABLE YEAR.

54 (III) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF
55 THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE
56 AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE

1 ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGAN-
2 IZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (II) THE
3 RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHEN-
4 SIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (III)
5 THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE
6 THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE
7 TAXPAYER; (IV) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS
8 TAXED IN SUCH COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT
9 IMPOSED BY THIS CITY; AND (V) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR
10 INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSI-
11 NESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.
12 (IV) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF
13 THE TAXPAYER AND THE COMMISSIONER OF FINANCE AGREE IN WRITING TO THE
14 APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE
15 COMMISSIONER OF FINANCE MAY, IN HIS OR HER DISCRETION, AGREE TO THE
16 APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS WHEN HE OR
17 SHE CONCLUDES THAT IN THE ABSENCE OF SUCH AGREEMENT THE INCOME OF THE
18 TAXPAYER WOULD NOT BE PROPERLY REFLECTED.
19 S 13. This act shall take effect immediately and shall apply to taxa-
20 ble years beginning on or after January 1, 2013.

21 PART F

22 Section 1. Subparagraph (A) of paragraph 1, and paragraphs 4 and 5 of
23 subsection (oo) of section 606 of the tax law, subparagraph (A) of para-
24 graph 1 as amended by chapter 472 of the laws of 2010 and paragraph 4 as
25 amended and paragraph 5 as added by chapter 239 of the laws of 2009, are
26 amended to read as follows:

27 (A) For taxable years beginning on or after January first, two thou-
28 sand ten and before January first, two thousand [fifteen] TWENTY, a
29 taxpayer shall be allowed a credit as hereinafter provided, against the
30 tax imposed by this article, in an amount equal to one hundred percent
31 of the amount of credit allowed the taxpayer with respect to a certified
32 historic structure under subsection (a) (2) of section 47 of the federal
33 internal revenue code with respect to a certified historic structure
34 located within the state. Provided, however, the credit shall not exceed
35 five million dollars. For taxable years beginning on or after January
36 first, two thousand [fifteen] TWENTY, a taxpayer shall be allowed a
37 credit as hereinafter provided, against the tax imposed by this article,
38 in an amount equal to thirty percent of the amount of credit allowed the
39 taxpayer with respect to a certified historic structure under subsection
40 (a)(2) of section 47 of the federal internal revenue code with respect
41 to a certified historic structure located within the state; provided,
42 however, the credit shall not exceed one hundred thousand dollars.

43 (4) If the amount of the credit [allowable under this subsection for
44 any taxable year shall exceed the taxpayer's tax for such year, the
45 excess may be carried over to the following year or years, and may be
46 applied against the taxpayer's tax for such year or years] ALLOWED UNDER
47 THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR
48 SUCH YEAR, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE
49 CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX
50 HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST
51 SHALL BE PAID THEREON.

52 (5) To be eligible for the credit allowable under this subsection the
53 rehabilitation project shall be in whole or in part [a targeted area
54 residence within the meaning of section 143(j) of the internal revenue

code or] located within a census tract which is identified as being at or below one hundred percent of the state median family income [in the most recent federal census] AS CALCULATED USING A FIVE YEAR SAMPLE FROM THE AMERICAN COMMUNITY SURVEY BEGINNING WITH THE YEAR TWO THOUSAND SIX--YEAR TWO THOUSAND ELEVEN SAMPLE.

S 2. Subparagraph (A) of paragraph 1, and paragraphs 4 and 5 of subdivision 40 of section 210 of the tax law, subparagraph (A) of paragraph 1 and paragraph 4 as amended and paragraph 5 as added by chapter 472 of the laws of 2010, are amended to read as follows:

(A) For taxable years beginning on or after January first, two thousand ten and before January first, two thousand [fifteen] TWENTY, a taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to one hundred percent of the amount of credit allowed the taxpayer with respect to a certified historic structure under subsection (a) (2) of section 47 of the federal internal revenue code with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed five million dollars. For taxable years beginning on or after January first, two thousand [fifteen] TWENTY, a taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to thirty percent of the amount of credit allowed the taxpayer with respect to a certified historic structure under subsection (a)(2) of section 47 of the federal internal revenue code with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed one hundred thousand dollars.

(4) The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the higher of the amounts prescribed in paragraphs (c) and (d) of subdivision one of this section. However, if the amount of the credit [allowable under this subdivision for any taxable year shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years, and may be deducted from the taxpayer's tax for such year or years] ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

(5) To be eligible for the credit allowable under this subdivision, the rehabilitation project shall be in whole or in part [a targeted area residence within the meaning of section 143(j) of the internal revenue code or] located within a census tract which is identified as being at or below one hundred percent of the state median family income [in the most recent federal census] AS CALCULATED USING A FIVE YEAR SAMPLE FROM THE AMERICAN COMMUNITY SURVEY BEGINNING WITH THE YEAR TWO THOUSAND SIX--YEAR TWO THOUSAND ELEVEN SAMPLE.

S 3. Subparagraph (A) of paragraph 1, and paragraphs 4 and 5 of subsection (u) of section 1456 of the tax law, as added by chapter 472 of the laws of 2010, are amended to read as follows:

(A) For taxable years beginning on or after January first, two thousand ten and before January first, two thousand [fifteen] TWENTY, a taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to one hundred percent of the amount of credit allowed the taxpayer with respect to a certified historic structure under subsection (a)(2) of section 47 of the federal

1 internal revenue code with respect to a certified historic structure
2 located within the state. Provided, however, the credit shall not exceed
3 five million dollars. For taxable years beginning on or after January
4 first, two thousand [fifteen] TWENTY, a taxpayer shall be allowed a
5 credit as hereinafter provided, against the tax imposed by this article,
6 in an amount equal to thirty percent of the amount of credit allowed the
7 taxpayer with respect to a certified historic structure under subsection
8 (a)(2) of section 47 of the federal internal revenue code with respect
9 to a certified historic structure located within the state. Provided,
10 however, the credit shall not exceed one hundred thousand dollars.

11 (4) The credit allowed under this subsection for any taxable year
12 shall not reduce the tax to less than the dollar amount fixed as a mini-
13 mum tax by subsection (b) of section fourteen hundred fifty-five of this
14 article. [If the amount of credit allowable under this subsection for
15 any taxable year reduces the tax to such amount, the excess may be
16 carried over to the following year or years, and may be deducted from
17 the taxpayer's tax for such year or years.] HOWEVER, IF THE AMOUNT OF
18 CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR REDUCES THE
19 TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH
20 TAXABLE YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR
21 REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND
22 EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF
23 SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER
24 NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

25 (5) To be eligible for the credit allowable under this subsection the
26 rehabilitation project shall be in whole or in part [a targeted area
27 residence within the meaning of section 143(j) of the internal revenue
28 code or] located within a census tract which is identified as being at
29 or below one hundred percent of the state median family income [in the
30 most recent federal census] AS CALCULATED USING A FIVE YEAR SAMPLE FROM
31 THE AMERICAN COMMUNITY SURVEY BEGINNING WITH THE YEAR TWO THOUSAND SIX-
32 -YEAR TWO THOUSAND ELEVEN SAMPLE.

33 S 4. Subparagraph (A) of paragraph 1, and paragraphs 4 and 5 of subdi-
34 vision (y) of section 1511 of the tax law, as added by chapter 472 of
35 the laws of 2010, are amended to read as follows:

36 (A) For taxable years beginning on or after January first, two thou-
37 sand ten and before January first, two thousand [fifteen] TWENTY, a
38 taxpayer shall be allowed a credit as hereinafter provided, against the
39 tax imposed by this article, in an amount equal to one hundred percent
40 of the amount of credit allowed the taxpayer with respect to a certified
41 historic structure under subsection (a)(2) of section 47 of the federal
42 internal revenue code with respect to a certified historic structure
43 located within the state. Provided, however, the credit shall not exceed
44 five million dollars. For taxable years beginning on or after January
45 first, two thousand [fifteen] TWENTY, a taxpayer shall be allowed a
46 credit as hereinafter provided, against the tax imposed by this article,
47 in an amount equal to thirty percent of the amount of credit allowed the
48 taxpayer with respect to a certified historic structure under subsection
49 (a)(2) of section 47 of the federal internal revenue code with respect
50 to a certified historic structure located within the state. Provided,
51 however, the credit shall not exceed one hundred thousand dollars.

52 (4) The credit allowed under this subdivision for any taxable year
53 shall not reduce the tax due for such year to less than the minimum
54 fixed by paragraph four of subdivision (a) of section fifteen hundred
55 two or section fifteen hundred two-a of this article, whichever is
56 applicable. [If the amount of the credit allowable under this subdivi-

1 sion for any taxable year reduces the tax to such amount, the excess may
2 be carried over to the following year or years, and may be deducted from
3 the taxpayer's tax for such year or years.] HOWEVER, IF THE AMOUNT OF
4 CREDITS ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE
5 TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH
6 TAXABLE YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR
7 REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND
8 EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF
9 SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER
10 NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

11 (5) To be eligible for the credit allowable under this subdivision,
12 the rehabilitation project shall be in whole or in part [a targeted area
13 residence within the meaning of section 143(j) of the internal revenue
14 code or] located within a census tract which is identified as being at
15 or below one hundred percent of the state median family income [in the
16 most recent federal census] AS CALCULATED USING A FIVE YEAR SAMPLE FROM
17 THE AMERICAN COMMUNITY SURVEY BEGINNING WITH THE YEAR TWO THOUSAND SIX-
18 -YEAR TWO THOUSAND ELEVEN SAMPLE.

19 S 5. This act shall take effect immediately and shall apply to taxable
20 years beginning on and after January 1, 2013; provided however the
21 amendments to paragraph 4 of subsection (oo) of section 606 of the tax
22 law made by section one of this act, the amendments to paragraph 4 of
23 subdivision 40 of section 210 of the tax law made by section two of this
24 act, the amendments to paragraph 4 of subsection (u) of section 1456 of
25 the tax law made by section three of this act and the amendments to
26 paragraph 4 of subdivision (y) of section 1511 of the tax law made by
27 section four of this act shall take effect January 1, 2015 and shall
28 apply to taxable years beginning on and after January 1, 2015 for quali-
29 fied rehabilitation placed in service on or after January 1, 2015.

30

PART G

31 Section 1. Section 187-b of the tax law, as amended by section 14 of
32 part W-1 of chapter 109 of the laws of 2006, is amended to read as
33 follows:

34 S 187-b. [Alternative fuels credit] ELECTRIC VEHICLE RECHARGING PROP-
35 ERTY CREDIT. 1. General. A taxpayer shall be allowed a credit, to be
36 credited against the taxes imposed under sections one hundred eighty-
37 three, one hundred eighty-four, and one hundred eighty-five of this
38 article. Such credit, to be computed as hereinafter provided, shall be
39 allowed for [alternative fuel vehicle refueling] ELECTRIC VEHICLE
40 RECHARGING property placed in service during the taxable year. Provided,
41 however, that the amount of such credit allowable against the tax
42 imposed by section one hundred eighty-four of this article shall be the
43 excess of the credit allowed by this section over the amount of such
44 credit allowable against the tax imposed by section one hundred eighty-
45 three of this article.

46 2. [Alternative fuel vehicle refueling property] ELECTRIC VEHICLE
47 RECHARGING PROPERTY. The credit under this section for [alternative
48 fuel vehicle refueling] ELECTRIC VEHICLE RECHARGING property shall equal
49 FOR EACH INSTALLATION OF PROPERTY THE LESSER OF FIVE THOUSAND DOLLARS OR
50 fifty percent of the cost of any such property:

51 (a) which is located in this state; [and]

52 (b) [for which a credit is allowed under section thirty C of the
53 internal revenue code but not including alternative fuel vehicle refuel-
54 ing property relating to a qualified hybrid vehicle as such vehicle is

defined in subparagraph (B) of paragraph three of subsection (p) of section six hundred six of this chapter] WHICH CONSTITUTES ELECTRIC VEHICLE RECHARGING PROPERTY; AND

(C) FOR WHICH NONE OF THE COST HAS BEEN PAID FOR FROM THE PROCEEDS OF GRANTS, INCLUDING GRANTS FROM THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY OR THE NEW YORK POWER AUTHORITY.

3. Definitions. [(a)] The term ["alternative fuel vehicle refueling property"] "ELECTRIC VEHICLE RECHARGING PROPERTY" means [any such property which is qualified within the meaning of section thirty C of the internal revenue code, but shall not include alternative fuel vehicle refueling property relating to a qualified hybrid vehicle as such vehicle is defined in subparagraph (B) of paragraph three of subsection (p) of section six hundred six of this chapter] ALL THE EQUIPMENT NEEDED TO CONVEY ELECTRIC POWER FROM THE ELECTRIC GRID OR ANOTHER POWER SOURCE TO AN ONBOARD VEHICLE ENERGY STORAGE SYSTEM.

[(b) The term "qualified hybrid vehicle" shall have the same meaning as provided for under subparagraph (B) of paragraph three of subsection (p) of section six hundred six of this chapter.]

4. Carryovers. In no event shall the credit under this section be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three or one hundred eighty-five of this article. If, however, the amount of credit allowable under this section for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

5. Credit recapture[; Alternative fuel vehicle refueling property]. If, at any time before the end of its recovery period, [alternative fuel vehicle refueling] ELECTRIC VEHICLE RECHARGING property ceases to be qualified, a recapture amount must be added back in the year in which such cessation occurs.

(i) Cessation of qualification. [Alternative fuel vehicle refueling property] ELECTRIC VEHICLE RECHARGING PROPERTY ceases to be qualified if:

(I) the property no longer qualifies as [property described in section thirty C of the internal revenue code] ELECTRIC VEHICLE RECHARGING PROPERTY; or

(II) fifty percent or more of the use of the property in a taxable year is other than a trade or business in this state; or

(III) the taxpayer receiving the credit under this section sells or disposes of the property and knows or has reason to know that the property will be used in a manner described in this subparagraph.

(ii) Recapture amount. The recapture amount is equal to the credit allowable under this section multiplied by a fraction, the numerator of which is the total recovery period for the property minus the number of recovery years prior to, but not including, the recapture year, and the denominator of which is the total recovery period.

6. Termination. The credit allowed by subdivision two of this section shall not apply in taxable years beginning after December thirty-first, two thousand [ten] SEVENTEEN.

S 2. Subdivision 24 of section 210 of the tax law, as amended by section 15 of part W-1 of chapter 109 of the laws of 2006, is amended to read as follows:

24. [Alternative fuels] ELECTRIC VEHICLE RECHARGING PROPERTY credit.

(a) General. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article for

1 [alternative fuel vehicle refueling] ELECTRIC VEHICLE RECHARGING proper-
2 ty placed in service during the taxable year.

3 (b) [Alternative fuel vehicle refueling property] ELECTRIC VEHICLE
4 RECHARGING PROPERTY. The credit under this subdivision for [alternative
5 fuel vehicle refueling] ELECTRIC VEHICLE RECHARGING property shall equal
6 FOR EACH INSTALLATION OF PROPERTY THE LESSER OF FIVE THOUSAND DOLLARS OR
7 fifty percent of the cost of any such property:

8 (i) which is located in this state; [and]

9 (ii) [for which a credit is allowed under section thirty C of the
10 internal revenue code but not including alternative fuel refueling prop-
11 erty relating to a qualified hybrid vehicle as such vehicle is defined
12 in subparagraph (B) of paragraph three of subsection (p) of section six
13 hundred six of this chapter] WHICH IS ELECTRIC VEHICLE RECHARGING PROP-
14 ERTY; AND

15 (III) FOR WHICH NONE OF THE COST HAS BEEN PAID FOR FROM THE PROCEEDS
16 OF GRANTS, INCLUDING GRANTS FROM THE NEW YORK STATE ENERGY RESEARCH AND
17 DEVELOPMENT AUTHORITY OR THE NEW YORK POWER AUTHORITY.

18 (c) Definitions. The term ["alternative fuel vehicle refueling proper-
19 ty"] "ELECTRIC VEHICLE RECHARGING PROPERTY" means [any such property
20 which is qualified within the meaning of section thirty C of the inter-
21 nal revenue code but shall not include alternative fuel vehicle refuel-
22 ing property relating to a qualified hybrid vehicle as such vehicle is
23 defined in subparagraph (B) of paragraph three of subsection (p) of
24 section six hundred six of this chapter] ALL OF THE EQUIPMENT NEEDED TO
25 CONVEY ELECTRIC POWER FROM THE ELECTRIC GRID OR ANOTHER POWER SOURCE TO
26 AN ONBOARD VEHICLE ENERGY STORAGE SYSTEM.

27 (d) Carryovers. In no event shall the credit under this subdivision be
28 allowed in an amount which will reduce the tax payable to less than the
29 higher of the amounts prescribed in paragraphs (c) and (d) of subdivi-
30 sion one of this section. Provided, however, that if the amount of cred-
31 it allowable under this subdivision for any taxable year reduces the tax
32 to such amount, any amount of credit not deductible in such taxable year
33 may be carried over to the following year or years and may be deducted
34 from the taxpayer's tax for such year or years.

35 (e) Credit recapture. [(i) Alternative fuel vehicle refueling proper-
36 ty.] If, at any time before the end of its recovery period, [alternative
37 fuel vehicle refueling] ELECTRIC VEHICLE RECHARGING property ceases to
38 be qualified, a recapture amount must be added back in the year in which
39 such cessation occurs.

40 (A) [Alternative fuel vehicle refueling] ELECTRIC VEHICLE RECHARGING
41 property ceases to be qualified if:

42 (1) the property no longer qualifies as [property described in section
43 thirty C of the internal revenue code] ELECTRIC VEHICLE RECHARGING PROP-
44 ERTY; or

45 (2) fifty percent or more of the use of the property in a taxable year
46 is other than in a trade or business in this state; or

47 (3) the taxpayer receiving the credit under this subdivision sells or
48 disposes of the property and knows or has reason to know that the prop-
49 erty will be used in a manner described in clauses one and two of this
50 subparagraph.

51 (B) Recapture amount. The recapture amount is equal to the credit
52 allowable under this subdivision multiplied by a fraction, the numerator
53 of which is the total recovery period for the property minus the number
54 of recovery years prior to, but not including, the recapture year, and
55 the denominator of which is the total recovery period.

1 [(f) Affiliates. (i) If a credit under this subdivision is allowed to
2 a taxpayer with respect to a taxable year, the action taken by such
3 taxpayer which resulted in such credit being allowed thereto may, at the
4 election of the taxpayer and an affiliate thereof, be ascribed to such
5 affiliate. Where such affiliate, based on such ascription, is allowed
6 such credit and deducts from the tax otherwise due the amount of such
7 credit, such credit shall be deemed in all respects to have been allowed
8 to such affiliate, provided that any action or inaction by the taxpayer
9 which constitutes an event of recapture described in paragraph (e) of
10 this subdivision shall be ascribed to the affiliate and shall constitute
11 an event of recapture with respect to the credit allowed to the affil-
12 iate pursuant to this subdivision.

13 (ii) Notwithstanding any other provision of law to the contrary, in
14 the case of the credit provided for under this subdivision being allowed
15 to, or asserted to be allowed to, an affiliate, pursuant to subparagraph
16 (i) of this paragraph, the commissioner shall have the same powers with
17 respect to examining the books and records of the taxpayer, and have
18 such other powers of investigation with respect to the taxpayer, as are
19 afforded under this chapter with respect to a taxpayer which has
20 deducted the credit allowed under this section from tax otherwise due,
21 as if it were the taxpayer which had deducted such credit from tax
22 otherwise due.

23 (iii) The term "affiliate" shall mean a corporation substantially all
24 the capital stock of which is owned or controlled either directly or
25 indirectly by the taxpayer, or which owns or controls either directly or
26 indirectly substantially all the capital stock of the taxpayer, or
27 substantially all the capital stock of which is owned or controlled
28 either directly or indirectly by interests which own or control either
29 directly or indirectly substantially all the capital stock of the
30 taxpayer.]

31 [(g)] (F) Termination. The credit allowed by paragraph (b) of this
32 subdivision shall not apply in taxable years beginning after December
33 thirty-first, two thousand [ten] SEVENTEEN.

34 S 3. Subsection (p) of section 606 of the tax law, as amended by
35 section 16 of part W-1 of chapter 109 of the laws of 2006, is amended to
36 read as follows:

37 (p) [Alternative fuels] ELECTRIC VEHICLE RECHARGING PROPERTY credit.

38 (1) General. A taxpayer shall be allowed a credit, to be computed as
39 hereinafter provided, against the tax imposed by this article, for
40 [alternative fuel vehicle refueling] ELECTRIC VEHICLE RECHARGING proper-
41 ty placed in service during the taxable year.

42 (2) [Alternative fuel vehicle refueling property] ELECTRIC VEHICLE
43 RECHARGING PROPERTY. The credit under this subsection for [clean-fuel
44 vehicle refueling] ELECTRIC VEHICLE RECHARGING property shall equal FOR
45 EACH INSTALLATION OF PROPERTY THE LESSER OF FIVE THOUSAND DOLLARS OR
46 fifty percent of the cost of any such property

47 (A) which is located in this state [and];

48 (B) [for which a credit is allowed under section thirty C of the
49 internal revenue code but not including alternative fuel vehicle refuel-
50 ing property relating to a qualified hybrid vehicle as such vehicle is
51 defined in subparagraph (B) of paragraph three of this subsection] WHICH
52 IS ELECTRIC VEHICLE RECHARGING PROPERTY; AND

53 (C) FOR WHICH NONE OF THE COST HAS BEEN PAID FOR FROM THE PROCEEDS OF
54 GRANTS, INCLUDING GRANTS FROM THE NEW YORK STATE ENERGY RESEARCH AND
55 DEVELOPMENT AUTHORITY OR THE NEW YORK POWER AUTHORITY.

(3) Definitions. [(A)] The term ["alternative fuel vehicle refueling property"] "ELECTRIC VEHICLE RECHARGING PROPERTY" means [any such property which is qualified within the meaning of section thirty C of the internal revenue code, but such term shall not include alternative fuel vehicle refueling property relating to a qualified hybrid vehicle as such vehicle is defined in subparagraph (B) of this paragraph] ALL THE EQUIPMENT NEEDED TO CONVEY ELECTRIC POWER FROM THE ELECTRIC GRID OR ANOTHER POWER SOURCE TO AN ONBOARD VEHICLE ENERGY STORAGE SYSTEM.

[(B) The term "qualified hybrid vehicle" means a motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law,, that:

(i) draws propulsion energy from both

(a) an internal combustion engine (or heat engine that uses combustible fuel); and

(b) an energy storage device; and

(ii) employs a regenerative vehicle braking system that recovers waste energy to charge such energy storage device.]

(4) Carryovers. If the amount of credit allowable under this subsection shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(5) Credit recapture. (A) [Vehicles.

(i) If, within three full years from the date a qualified hybrid vehicle or a vehicle of which alternative fuel vehicle property is a part is placed in service, such qualified hybrid vehicle or vehicle of which alternative fuel vehicle property is a part] IF, AT ANY TIME BEFORE THE END OF ITS RECOVERY PERIOD, ELECTRIC VEHICLE RECHARGING PROPERTY ceases to be qualified, a recapture amount must be added back in the tax year in which such cessation occurs.

[(ii)] (B) Cessation of qualification. [(I) A qualified hybrid vehicle ceases to be qualified if

(a) it is modified by the taxpayer so that it no longer meets the requirements of a qualified hybrid vehicle as defined in subparagraph (B) of paragraph three of this subsection.

(b) the taxpayer receiving the credit under this subsection sells or disposes of the vehicle and knows or has reason to know that the vehicle will be so modified.

(B) Alternative fuel vehicle refueling property. (i) If, at any time before the end of its recovery period, alternative fuel vehicle refueling property ceases to be qualified, a recapture amount must be added back in the year in which such cessation occurs.

(ii) Cessation of qualification. Clean-fuel vehicle refueling] ELECTRIC VEHICLE RECHARGING property ceases to be qualified if:

[(I)] (I) the property no longer qualifies as [property described in section thirty C of the internal revenue code] ELECTRIC VEHICLE RECHARGING PROPERTY, or

[(II)] (II) fifty percent or more of the use of the property in a taxable year is other than in a trade or business in this state, or

[(III)] (III) the taxpayer receiving the credit under this subsection sells or disposes of the property and knows or has reason to know that the property will be used in a manner described in [item (I)] CLAUSE (I) or [(II)] (II) of this [clause] SUBPARAGRAPH.

[(iii)] (C) Recapture amount. The recapture amount is equal to the credit allowable under this subsection multiplied by a fraction, the numerator of which is the total recovery period for the property minus

the number of recovery years prior to, but not including, the recapture year, and the denominator of which is the total recovery period.

(6) Termination. The credit allowed by [paragraph two of] this subsection shall not apply in taxable years beginning after December thirty-first, two thousand [ten] SEVENTEEN.

S 4. Clause (ix) of subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law, as amended by section 7 of part C-1 of chapter 57 of the laws of 2009, is amended to read as follows:

| | |
|-----------------------------|-------------------------------|
| (ix) [Alternative fuels] | [Cost] AMOUNT OF CREDIT |
| ELECTRIC VEHICLE | under subdivision twenty-four |
| RECHARGING PROPERTY | of section two hundred ten |
| credit under subsection (p) | |

S 5. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2013 for property placed in service on or after such date.

PART H

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

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

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

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

S 5. Section 23 of part U of chapter 61 of the laws of 2011, as amended by section 1 of part G of chapter 59 of the laws of 2012, is amended to read as follows:

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

(a) the amendments to section 29 of the tax law made by section thirteen of this act shall apply to tax documents filed or required to be filed on or after the sixtieth day after which this act shall have become a law [and shall expire and be deemed repealed December 31, 2013], provided however that the amendments to paragraph 4 of subdivision (a) of section 29 of the tax law and paragraph 2 of subdivision (e) of section 29 of the tax law made by section thirteen of this act with regard to individual taxpayers shall take effect September 15, 2011 but only if the commissioner of taxation and finance has reported in the report required by section seventeen-b of this act that the percentage of individual taxpayers electronically filing their 2010 income tax returns is less than eighty-five percent; provided that the commissioner of taxation and finance shall notify the legislative bill drafting commission of the date of the issuance of such report in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law;

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

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

(d) sections fourteen-b, fifteen-b, sixteen-a and seventeen-a of this act shall take effect January 1, 2014 but only if the commissioner of taxation and finance has reported in the report required by section seventeen-b of this act that the percentage of individual taxpayers electronically filing their 2010 income tax returns is less than eighty-five percent[; and

(e) sections twenty-one and twenty-one-a of this act shall expire and be deemed repealed December 31, 2013].

S 6. This act shall take effect immediately.

PART I

Section 1. Legislative intent. The legislature seeks to demonstrate that the state of New York is open for business by promoting, attracting, and encouraging the development of business in the state. The legislature intends to encourage businesses to locate in the state and produce goods and services within the state, thereby increasing job creation and economic growth. The legislature further intends to foster economic development by showcasing various goods that are produced in New York. In order to accomplish these objectives, the legislature intends that there shall be established "Taste-NY facilities," which will sell a variety of products, including but not limited to products produced within the state, and prominently feature New York produced goods, including alcoholic beverages.

S 2. Subdivision (b) of section 1101 of the tax law is amended by adding a new paragraph 39 to read as follows:

(39) TASTE-NY FACILITY. "TASTE-NY FACILITY" SHALL MEAN A FACILITY OPERATED BY A PERSON DESIGNATED BY AND PURSUANT TO A WRITTEN AGREEMENT WITH A STATE AGENCY, PUBLIC AUTHORITY, OR AN INTERSTATE AGENCY OR PUBLIC CORPORATION CREATED PURSUANT TO AN AGREEMENT OR COMPACT WITH ANOTHER STATE OR THE DOMINION OF CANADA, FROM WHICH SALES ARE MADE OF TANGIBLE PERSONAL PROPERTY OR FOOD AND DRINK (WHETHER OR NOT FOR CONSUMPTION ON THE PREMISES OF SUCH FACILITY), AND THAT PROMINENTLY FEATURES PRODUCTS PRODUCED WITHIN THE STATE.

S 3. Subdivision (a) of section 1115 of the tax law is amended by adding a new paragraph 44 to read as follows:

(44) TANGIBLE PERSONAL PROPERTY SOLD AT A TASTE-NY FACILITY, AS DEFINED IN PARAGRAPH THIRTY-NINE OF SECTION ELEVEN HUNDRED ONE OF THIS ARTICLE, FOR WHICH THE RECEIPT OR CONSIDERATION GIVEN OR CONTRACTED TO BE GIVEN IS LESS THAN TWO HUNDRED DOLLARS PER ITEM.

S 4. Section 1115 of the tax law is amended by adding a new subdivision (ii) to read as follows:

(II) RECEIPTS FROM SALES OF THE FOLLOWING AT A TASTE-NY FACILITY SHALL BE EXEMPT FROM THE SALES TAX IMPOSED UNDER SECTION ELEVEN HUNDRED FIVE AND THE COMPENSATING USE TAX IMPOSED UNDER SECTION ELEVEN HUNDRED TEN OF THIS ARTICLE: (1) FOOD OR DRINK FOR CONSUMPTION ON THE PREMISES OF SUCH FACILITY; (2) FOOD OR DRINK SOLD FOR CONSUMPTION OFF THE PREMISES OF SUCH FACILITY THAT IS SOLD IN A HEATED STATE; (3) SANDWICHES SOLD FOR CONSUMPTION OFF THE PREMISES OF SUCH FACILITY, WHETHER OR NOT SOLD IN A HEATED STATE; (4) FOOD OR DRINK SOLD THROUGH VENDING MACHINES; AND (5)

1 FOOD OR DRINK SOLD IN AN UNHEATED STATE THAT IS OF A TYPE COMMONLY SOLD
2 FOR OFF-PREMISES CONSUMPTION AND IS NOT IN THE SAME FORM, CONDITION,
3 QUANTITIES AND PACKAGING AS IN ESTABLISHMENTS THAT ARE FOOD STORES OTHER
4 THAN THOSE PRINCIPALLY ENGAGED IN SELLING FOODS PREPARED AND READY TO BE
5 EATEN.

6 S 5. The alcoholic beverage control law is amended by adding a new
7 section 63-b to read as follows:

8 S 63-B. SPECIAL LICENSE TO SELL ALCOHOLIC BEVERAGES AT RETAIL FOR
9 CONSUMPTION OFF THE PREMISES. 1. ANY PERSON AUTHORIZED TO OPERATE A
10 TASTE-NY FACILITY DESIGNATED BY AND PURSUANT TO A WRITTEN AGREEMENT WITH
11 A STATE AGENCY, PUBLIC AUTHORITY, OR AN INTERSTATE AGENCY OR PUBLIC
12 CORPORATION CREATED PURSUANT TO AN AGREEMENT OR COMPACT WITH ANOTHER
13 STATE OR THE DOMINION OF CANADA MAY MAKE APPLICATION TO THE AUTHORITY
14 FOR A SPECIAL LICENSE TO SELL ALCOHOLIC BEVERAGES AT RETAIL FOR CONSUMP-
15 TION OFF THE LICENSED PREMISES.

16 2. AN APPLICATION FOR A LICENSE UNDER THIS SECTION SHALL BE IN SUCH
17 FORM AND SHALL CONTAIN SUCH INFORMATION AS SHALL BE REQUIRED BY THE
18 AUTHORITY AND SHALL BE ACCOMPANIED BY A CHECK OR DRAFT IN THE AMOUNT
19 REQUIRED BY THIS ARTICLE.

20 3. SECTION FIFTY-FOUR OF THIS CHAPTER SHALL CONTROL SO FAR AS IS
21 APPLICABLE THE PROCEDURE IN CONNECTION WITH SUCH APPLICATION.

22 4. A LICENSE UNDER THIS SECTION SHALL BE ISSUED TO ALL ELIGIBLE APPLI-
23 CANTS EXCEPT FOR GOOD CAUSE SHOWN.

24 5. A LICENSE UNDER THIS CHAPTER SHALL NOT BE SUBJECT TO THE PROVISIONS
25 OF SUBDIVISIONS TWO, THREE, SIX AND SIXTEEN OF SECTION ONE HUNDRED FIVE
26 OF THIS CHAPTER.

27 6. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION FOURTEEN OF SECTION
28 ONE HUNDRED FIVE OF THIS CHAPTER, THE HOURS OF OPERATION AND SALE OF
29 ALCOHOLIC BEVERAGES SHALL BE GOVERNED BY THE LICENSEE'S WRITTEN AGREE-
30 MENT WITH THE STATE AGENCY, PUBLIC AUTHORITY, INTERSTATE AGENCY OR
31 COMPACT ENTITY.

32 7. SUBJECT TO ANY RESTRICTION CONTAINED IN THE WRITTEN AGREEMENT WITH
33 THE STATE AGENCY, PUBLIC AUTHORITY, INTERSTATE AGENCY OR COMPACT ENTITY,
34 THE HOLDER OF A LICENSE ISSUED UNDER THIS SECTION MAY OFFER SAMPLES OF
35 ALCOHOLIC BEVERAGES TO CUSTOMERS TO BE CONSUMED ON THE LICENSED PREMISES
36 UPON THE FOLLOWING CONDITIONS:

37 (A) NO FEE SHALL BE CHARGED FOR ANY SAMPLE;

38 (B) EACH SAMPLE SHALL BE LIMITED:

39 (I) IN THE CASE OF BEER, WINE PRODUCTS AND CIDER, TO THREE OUNCES OR
40 LESS;

41 (II) IN THE CASE OF WINE, TO TWO OUNCES;

42 (III) IN THE CASE OF LIQUOR, TO ONE-QUARTER OUNCE;

43 (C) NO SAMPLE SHALL BE PROVIDED TO A CUSTOMER DURING THE HOURS PROHIB-
44 ITED BY THE PROVISIONS OF SUBDIVISION FIVE OF SECTION ONE HUNDRED SIX OF
45 THIS CHAPTER; AND

46 (D) NO CUSTOMER MAY BE PROVIDED WITH MORE THAN THREE SAMPLES IN ONE
47 CALENDAR DAY.

48 S 6. Section 66 of the alcoholic beverage control law is amended by
49 adding a new subdivision 11 to read as follows:

50 11. THE ANNUAL FEE FOR A SPECIAL LICENSE TO SELL ALCOHOLIC BEVERAGES
51 AT RETAIL FOR CONSUMPTION OFF THE LICENSED PREMISES SHALL BE FIVE
52 HUNDRED DOLLARS.

53 S 7. Section 67 of the alcoholic beverage control law, as amended by
54 section 4 of part Z of chapter 85 of the laws of 2002, is amended to
55 read as follows:

1 S 67. License fees, duration of licenses; fee for part of year.
2 [Effective April first, nineteen hundred eighty-three, licenses] 1.
3 LICENSES issued pursuant to sections sixty-one, sixty-two, sixty-three,
4 [sixty-four, sixty-four-a and sixty-four-b] AND SIXTY-THREE-B of this
5 article shall be effective for three years at three times that annual
6 fee, except that, in implementing the purposes of this section, the
7 liquor authority shall schedule the commencement dates, duration and
8 expiration dates thereof to provide for an equal cycle of license
9 renewals issued under each such section through the course of the fiscal
10 year. [Effective December first, nineteen hundred ninety-eight,
11 licenses]

12 2. LICENSES issued pursuant to sections sixty-four, sixty-four-a and
13 sixty-four-b of this article shall be effective for two years at two
14 times that annual fee, except that, in implementing the purposes of this
15 section, the liquor authority shall schedule the commencement dates,
16 duration and expiration dates thereof to provide for an equal cycle of
17 license renewals issued under each such section through the course of
18 the fiscal year. [Notwithstanding the foregoing, commencing on December
19 first, nineteen hundred ninety-eight and concluding on July thirty-
20 first, two thousand two, a licensee issued a license pursuant to section
21 sixty-four, sixty-four-a or sixty-four-b of this article may elect to
22 remit the fee for such license in equal annual installments. Such
23 installments shall be due on dates established by the liquor authority
24 and the failure of a licensee to have remitted such annual installments
25 after a due date shall be a violation of this chapter. For licenses
26 issued for less than the three-year licensing period, the license fee
27 shall be levied on a pro-rated basis.]

28 3. The entire license fee shall be due and payable at the time of
29 application. The liquor authority may make such rules as shall be appro-
30 priate to carry out the purpose of this section.

31 S 8. Subdivisions 1 and 2 of section 56-a of the alcoholic beverage
32 control law, as amended by chapter 108 of the laws of 2012, are amended
33 to read as follows:

34 1. In addition to the annual fees provided for in this chapter, there
35 shall be paid to the authority with each initial application for a
36 license filed pursuant to section fifty-one, fifty-one-a, fifty-three,
37 fifty-eight, sixty-one, sixty-two, seventy-six or seventy-eight of this
38 chapter, a filing fee of four hundred dollars; with each initial appli-
39 cation for a license filed pursuant to section sixty-three,
40 SIXTY-THREE-B, sixty-four, sixty-four-a or sixty-four-b of this chapter,
41 a filing fee of two hundred dollars; with each initial application for a
42 license filed pursuant to section fifty-three-a, fifty-four, fifty-five,
43 fifty-five-a, seventy-nine, eighty-one or eighty-one-a of this chapter,
44 a filing fee of one hundred dollars; with each initial application for a
45 permit filed pursuant to section ninety-one, ninety-one-a, ninety-two,
46 ninety-two-a, ninety-three, ninety-three-a, if such permit is to be
47 issued on a calendar year basis, ninety-four, ninety-five, ninety-six or
48 ninety-six-a, or pursuant to paragraph b, c, e or j of subdivision one
49 of section ninety-nine-b of this chapter if such permit is to be issued
50 on a calendar year basis, or for an additional bar pursuant to subdivi-
51 sion four of section one hundred of this chapter, a filing fee of twenty
52 dollars; and with each application for a permit under section ninety-
53 three-a of this chapter, other than a permit to be issued on a calendar
54 year basis, section ninety-seven, ninety-eight, ninety-nine, or ninety-
55 nine-b of this chapter, other than a permit to be issued pursuant to

paragraph b, c, e or j of subdivision one of section ninety-nine-b of this chapter on a calendar year basis, a filing fee of ten dollars.

2. In addition to the annual fees provided for in this chapter, there shall be paid to the authority with each renewal application for a license filed pursuant to section fifty-one, fifty-one-a, fifty-three, fifty-eight, sixty-one, sixty-two, seventy-six or seventy-eight of this chapter, a filing fee of one hundred dollars; with each renewal application for a license filed pursuant to section sixty-three, SIXTY-THREE-B, sixty-four, sixty-four-a or sixty-four-b of this chapter, a filing fee of ninety dollars; with each renewal application for a license filed pursuant to section seventy-nine, eighty-one or eighty-one-a of this chapter, a filing fee of twenty-five dollars; and with each renewal application for a license or permit filed pursuant to section fifty-three-a, fifty-four, fifty-five, fifty-five-a, ninety-one, ninety-one-a, ninety-two, ninety-two-a, ninety-three, ninety-three-a, if such permit is issued on a calendar year basis, ninety-four, ninety-five, ninety-six or ninety-six-a of this chapter or pursuant to subdivisions b, c, e or j of section ninety-nine-b, if such permit is issued on a calendar year basis, or with each renewal application for an additional bar pursuant to subdivision four of section one hundred of this chapter, a filing fee of thirty dollars.

S 9. Paragraph (a) of subdivision 1 of section 101 of the alcoholic beverage control law, as amended by chapter 22 of the laws of 2011, is amended to read as follows:

(a) Be interested directly or indirectly in any premises where any alcoholic beverage is sold at retail; or in any business devoted wholly or partially to the sale of any alcoholic beverage at retail by stock ownership, interlocking directors, mortgage or lien or any personal or real property, or by any other means. The provisions of this paragraph shall not apply to:

(i) any such premises or business constituting the overnight lodging and resort facility located wholly within the boundaries of the town of North Elba, county of Essex, township eleven, Richard's survey, great lot numbers two hundred seventy-eight, two hundred seventy-nine, two hundred eighty, two hundred ninety-eight, two hundred ninety-nine, three hundred, three hundred eighteen, three hundred nineteen, three hundred twenty, three hundred thirty-five and three hundred thirty-six, and township twelve, Thorn's survey, great lot numbers one hundred six and one hundred thirteen, as shown on the Adirondack map, compiled by the conservation department of the state of New York - nineteen hundred sixty-four edition, in the Essex county atlas at page twenty-seven in the Essex county clerk's office, Elizabethtown, New York, provided that such facility maintains not less than two hundred fifty rooms and suites for overnight lodging[.];

(ii) any such premises or business constituting the overnight lodging and resort facility located wholly within the boundaries of that tract or parcel of land situate in the city of Canandaigua, county of Ontario, beginning at a point in the northerly line of village lot nine where it meets with South Main Street, thence south sixty-nine degrees fifty-four minutes west a distance of nine hundred sixteen and twenty-three hundredths feet to an iron pin; thence in the same course a distance of fourteen feet to an iron pin; thence in the same course a distance of fourteen and four-tenths feet to a point; thence south fifteen degrees thirty-eight minutes and forty seconds east a distance of four hundred forty-six and eighty-seven hundredths feet to a point; thence south twenty-eight degrees thirty-seven minutes and fifty seconds east a

1 distance of one hundred thirteen and eighty-four hundredths feet to a
2 point; thence south eighty-five degrees and forty-seven minutes east a
3 distance of forty-seven and sixty-one hundredths feet to an iron pin;
4 thence on the same course a distance of three hundred and sixty-five
5 feet to an iron pin; thence north seventeen degrees twenty-one minutes
6 and ten seconds east a distance of four hundred fifty-seven and thirty-
7 two hundredths feet to an iron pin; thence north nineteen degrees and
8 thirty minutes west a distance of two hundred and forty-eight feet to a
9 point; thence north sixty-nine degrees and fifty-four minutes east a
10 distance of two hundred eighty-four and twenty-six hundredths feet to a
11 point; thence north nineteen degrees and thirty minutes west a distance
12 of sixty feet to the point and place of beginning, provided that such
13 facility maintains not less than one hundred twenty rooms and suites for
14 overnight lodging[,];

15 (iii) any such premises or business constituting the overnight lodging
16 facility located wholly within the boundaries of that tract or parcel of
17 land situated in the borough of Manhattan, city and county of New York,
18 beginning at a point on the northerly side of west fifty-fourth street
19 at a point one hundred feet easterly from the intersection of the said
20 northerly side of west fifty-fourth street and the easterly side of
21 seventh avenue; running thence northerly and parallel with the easterly
22 side of seventh avenue one hundred feet five inches to the center line
23 of the block; running thence easterly and parallel with the northerly
24 side of west fifty-fourth street and along the center line of the block
25 fifty feet to a point; running thence northerly and parallel with the
26 easterly side of seventh avenue one hundred feet five inches to the
27 southerly side of west fifty-fifth street at a point distant one hundred
28 fifty feet easterly from the intersection of the said southerly side of
29 west fifty-fifth street and the easterly side of seventh avenue; running
30 thence easterly along the southerly side of west fifty-fifth street
31 thirty-one feet three inches to a point; running thence southerly and
32 parallel with the easterly side of the seventh avenue one hundred feet
33 five inches to the center line of the block; running thence easterly
34 along the center line of the block and parallel with the southerly side
35 of west fifty-fifth street, one hundred feet; running thence northerly
36 and parallel with the easterly side of seventh avenue one hundred feet
37 five inches to the southerly side of west fifty-fifth street; running
38 thence easterly along the southerly side of west fifty-fifth street
39 twenty-one feet ten and one-half inches to a point; running thence
40 southerly and parallel with the easterly side of seventh avenue one
41 hundred feet five inches to the center line of the block; running thence
42 westerly along the center line of the block and parallel with the north-
43 erly side of west fifty-fourth street three feet one and one-half inch-
44 es; running thence southerly and parallel with the easterly side of
45 seventh avenue one hundred feet five inches to the northerly side of
46 west fifty-fourth street at a point distant three hundred feet easterly
47 from the intersection of the said northerly side of west fifty-fourth
48 street and the easterly side of seventh avenue; running thence westerly
49 and along the northerly side of west fifty-fourth street two hundred
50 feet to the point or place of beginning, provided that such facility
51 maintains not less than four hundred guest rooms and suites for over-
52 night lodging[,];

53 (iv) any such premises or business located on that tract or parcel of
54 land, or any subdivision thereof, situate in the Village of Lake Placid,
55 Town of North Elba, Essex County, New York; it being also a part of Lot
56 No. 279, Township No. 11, Old Military Tract, Richard's Survey; it

1 being also all of Lot No. 23 and part of Lot No. 22 as shown and desig-
2 nated on a certain map entitled "Map of Building Sites for Sale by B.R.
3 Brewster" made by G.T. Chellis C.E. in 1892; also being PARCEL No. 1 on
4 a certain map of lands of Robert J. Mahoney and wife made by G.C.
5 Sylvester, P.E. & L.S. # 21300, dated August 4, 1964, and filed in the
6 Essex County Clerk's Office on August 27, 1964, and more particularly
7 bounded and described as follows; BEGINNING at the intersection of the
8 northerly bounds of Shore Drive (formerly Mirror Street) with the
9 westerly bounds of Park Place (formerly Rider Street) which point is
10 also the northeast corner of Lot No. 23, from thence South $21^{\circ}50'$ East
11 in the westerly bounds of Park Place a distance of 119 feet, more or
12 less, to a lead plug in the edge of the sidewalk marking the southeast
13 corner of Lot No. 23 and the northeast corner of Lot No. 24; from thence
14 South $68^{\circ}00'50''$ West a distance of 50.05 feet to an iron pipe set in
15 concrete at the corner of Lots 23 and 22; from thence South $65^{\circ}10'50''$
16 West a distance of 7.94 feet along the south line of Lot No. 22 to an
17 iron pipe for a corner; from thence North $23^{\circ}21'40''$ West and at 17.84
18 feet along said line passing over a drill hole in a concrete sidewalk,
19 and at 68.04 feet further along said line passing over an iron pipe at
20 the southerly edge of another sidewalk, and at 1.22 feet further along
21 said line passing over another drill hole in a sidewalk, a total
22 distance of 119 feet, more or less, to the northerly line of Lot. No.
23 22; from thence easterly in the northerly line of Lot 22 and 23 to the
24 northeast corner of Lot No. 23 and the point of beginning. Also includ-
25 ing the lands to the center of Shore Drive included between the norther-
26 ly straight line continuation of the side lines of the above described
27 parcel, and to the center of Park Place, where they abut the above
28 described premises SUBJECT to the use thereof for street purposes. Being
29 the same premises conveyed by Morestuff, Inc. to Madeline Sellers by
30 deed dated June 30, 1992, recorded in the Essex County Clerk's Office on
31 July 10, 1992 in Book 1017 of Deeds at Page 318;

32 (v) any such premises or business located on that certain piece or
33 parcel of land, or any subdivision thereof, situate, lying and being in
34 the Town of Plattsburgh, County of Clinton, State of New York and being
35 more particularly bounded and described as follows: Starting at an iron
36 pipe found in the easterly bounds of the highway known as the Old Mili-
37 tary Turnpike, said iron pipe being located 910.39 feet southeasterly,
38 as measured along the easterly bounds of said highway, from the souther-
39 ly bounds of the roadway known as Industrial Parkway West, THENCE
40 running S $31^{\circ}54'33''$ E along the easterly bounds of said Old Military
41 Turnpike Extension, 239.88 feet to a point marking the beginning of a
42 curve concave to the west; thence southerly along said curve, having a
43 radius of 987.99 feet, 248.12 feet to an iron pipe found marking the
44 point of beginning for the parcel herein being described, said point
45 also marked the southerly corner of lands of Larry Garrow, et al, as
46 described in Book 938 of Deeds at page 224; thence N $07^{\circ}45'4''$ E along
47 the easterly bounds of said Garrow, 748.16 feet to a 3"x4" concrete
48 monument marking the northeasterly corner of said Garrow, the northwes-
49 terly corner of the parcel herein being described and said monument also
50 marking the southerly bounds of lands of Salerno Plastic Corp. as
51 described in Book 926 of Deeds at Page 186; thence S $81^{\circ}45'28''$ E along
52 a portion of the southerly bounds of said Salerno Plastic Corp., 441.32
53 feet to an iron pin found marking the northeasterly corner of the parcel
54 herein being described and also marking the northwest corner of the
55 remaining lands now or formerly owned by said Marx and Delaura; thence S
56 $07^{\circ}45'40''$ W along the Westerly bounds of lands now of formerly of said

1 Marx and DeLaura and along the easterly bounds of the parcel herein
2 being described, 560.49 feet to an iron pin; thence N 83° 43' 21" W
3 along a portion of the remaining lands of said Marx and DeLaura, 41.51
4 feet to an iron pin; thence S 08° 31' 30" W, along a portion of the
5 remaining lands of said Marx and DeLaura, 75.01 feet to an iron pin
6 marking northeasterly corner of lands currently owned by the Joint Coun-
7 cil for Economic Opportunity of Plattsburgh and Clinton County, Inc. as
8 described in Book 963 of Deeds at Page 313; thence N 82° 20' 32" W along
9 a portion of the northerly bounds of said J.C.E.O., 173.50 feet to an
10 iron pin; thence 61° 21' 12" W, continuing along a portion of the north-
11 erly bounds of said J.C.E.O., 134.14 feet to an iron pin; thence S 07°
12 45' 42" W along the westerly bounds of said J.C.E.O., 50 feet to an iron
13 pin; thence S 66° 48' 56" W along a portion of the northerly bounds of
14 remaining lands of said Marx and DeLaura, 100.00 feet to an iron pipe
15 found on the easterly bounds of the aforesaid highway, said from pipe
16 also being located on a curve concave to the west; thence running and
17 running northerly along the easterly bounds of the aforesaid highway and
18 being along said curve, with the curve having a radius of 987.93 feet,
19 60.00 feet to the point of beginning and containing 6.905 acres of land.
20 Being the same premises as conveyed to Ronald Marx and Alice Marx by
21 deed of CIT Small Business Lending Corp., as agent of the administrator,
22 U.S. Small Business Administration, an agency of the United States
23 Government dated September 10, 2001 and recorded in the office of the
24 Clinton County Clerk on September 21, 2001 as Instrument #135020; [or]
25 (vi) any such premises or business located on the west side of New
26 York state route 414 in military lots 64 and 75 located wholly within
27 the boundaries of that tract or parcel of land situated in the town of
28 Lodi, county of Seneca beginning at an iron pin on the assumed west line
29 of New York State Route 414 on the apparent north line of lands reputed-
30 ly of White (lib. 420, page 155); said iron pin also being northerly a
31 distance of 1200 feet more or less from the centerline of South Miller
32 Road; Thence leaving the point of beginning north 85-17'-44" west along
33 said lands of White a distance of 2915.90 feet to an iron pin Thence
34 north 03-52'-48" east along said lands of White, passing through an iron
35 pin 338.36 feet distant, and continuing further along that same course a
36 distance of 13.64 feet farther, the total distance being 352.00 feet to
37 a point in the assumed centerline of Nellie Neal Creek; Thence in gener-
38 ally a north westerly direction the following courses and distances
39 along the assumed centerline of Nellie Neal Creek; north 69-25'-11" west
40 a distance of 189.56 feet to a point; north 63-40'-00" west a distance
41 of 156.00 feet to a point; north 49-25'-00" west a distance of 80.00
42 feet to a point; south 80-21'-00" west a distance of 90.00 feet to a
43 point; north 72-03'-00" west a distance of 566.00 feet to a point; north
44 68-15'-00" west a distance of 506.00 feet to a point; north 55-16'-00"
45 west a distance of 135.00 feet to a point; south 69-18'-00" west a
46 distance of 200.00 feet to a point; south 88-00'-00" west a distance of
47 170.00 feet to a point on a tie line at or near the high water line of
48 Seneca Lake; Thence north 25-17'-00" east along said tie line a distance
49 of 238.00 feet to an iron pipe; Thence south 82-04'-15" east along lands
50 reputedly of M. Wagner (lib. 464, page 133) a distance of 100.00 feet to
51 an iron pin; Thence north 06-56'-47" east along said lands of M. Wagner
52 a distance of 100.00 feet to an iron pipe; Thence north 09-34'-28" east
53 along lands reputedly of Schneider (lib. 429, page 37) a distance of
54 50.10 feet to an iron pipe; Thence north 07-49'-11" east along lands
55 reputedly of Oney (lib. 484, page 24) a distance of 50.00 feet to an
56 iron pipe; Thence north 82-29'-40" west along said lands of Oney a

1 distance of 95.30 feet to an iron pipe on a tie line at or near the
2 highwater line of Seneca Lake; Thence north 08-15'-22" east along said
3 tie line a distance of 25.00 feet to an iron pin; Thence south
4 82-28'-00" east along lands reputedly of Yu (lib. 405, page 420) a
5 distance of 96.53 feet to an iron pipe; Thence north 34-36'-59" east
6 along said lands of Yu a distance of 95.00 feet to a point in the
7 assumed centerline of Van Liew Creek; Thence in generally an easterly
8 direction the following courses and distances along the assumed center-
9 line of Van Liew Creek; north 72-46'-37" east a distance of 159.98 feet
10 to a point; north 87-53'-00" east a distance of 94.00 feet to a point;
11 south 71-12'-00" east a distance of 52.00 feet to a point; south
12 84-10'-00" east a distance of 158.00 feet to a point; south 59-51'-00"
13 east a distance of 160.00 feet to a point; south 83-29'-00" east a
14 distance of 187.00 feet to a point; Thence north 01-33'-40" east along
15 lands reputedly of Hansen (lib. 515, page 205) passing through an iron
16 pipe 32.62 feet distant, and continuing further along that same course
17 passing through an iron pin 205.38 feet farther, and continuing still
18 further along that same course a distance of 21.45 feet farther, the
19 total distance being 259.45 feet to the assumed remains of a White Oak
20 stump; Thence north 69-16'-11" east along lands reputedly of Schwartz
21 (lib. 374, page 733) being tie lines along the top of the south bank of
22 Campbell Creek a distance of 338.00 feet to a point; Thence south
23 57-17'32" east along said tie line a distance of 136.60 feet to a point;
24 Thence south 74-45'-00" east along said tie line a distance of 100.00
25 feet to an iron pin; Thence north 04-46'-00" east along said lands of
26 Schwartz a distance of 100.00 feet to a point in the assumed centerline
27 of Campbell Creek; Thence in generally an easterly direction the follow-
28 ing courses and distances along the assumed centerline of Campbell
29 Creek; south 71-34'-00" east a distance of 330.00 feet to a point; north
30 76-53'-00" east a distance of 180.00 feet to a point; north 83-05'00"
31 east a distance of 230.00 feet to a point; south 66-44'-00" east a
32 distance of 90.00 feet to a point; south 81-10'-00" east a distance of
33 240.00 feet to a point; south 45-29'-15" east a distance of 73.18 feet
34 to a point; Thence south 05-25'-50" west along lands reputedly of Stan-
35 ley Wagner (lib. 450, page 276) a distance of 135.00 feet to a point on
36 the assumed north line of Military Lot 75; Thence south 84-34'-10" east
37 along said lands of Wagner and the assumed north line of Military Lot 75
38 a distance of 1195.06 feet to an iron pin; Thence south 06-57'52" west
39 along said lands of M. Wagner (lib. 414, page 267) passing through an
40 iron pin 215.58 feet distant, and continuing further along that same
41 course a distance of 20.59 feet farther, the total distance being 236.17
42 feet to a point in the assumed centerline of Campbell Creek; Thence in
43 generally a south easterly direction the following course and distances
44 along the assumed centerline of Campbell Creek; north 78-23'-09" east a
45 distance of 29.99 feet to a point; south 46-09'-15" east a distance of
46 65.24 feet to a point; north 85-55'-09" east a distance of 60.10 feet to
47 a point; south 61-59'-50" east a distance of 206.91 feet to a point;
48 north 63-58'-27" east a distance of 43.12 feet to a point; south
49 28-51'-21" east a distance of 47.72 feet to a point; south 15-14'-08"
50 west a distance of 33.42 feet to a point; south 79-16'-32" east a
51 distance of 255.15 feet to a point; south 62-19'-46" east a distance of
52 75.82 feet to a point; north 76-10'-42" east a distance of 99.60 feet to
53 a point; north 82-12'55" east a distance of 86.00 feet to a point; south
54 44-13'53" east a distance of 64.08 feet to a point; north 67-52'-46"
55 east a distance of 73.98 feet to a point; north 88-13'-13" east a
56 distance of 34.64 feet to a point on the assumed west line of New York

1 State Route 414; Thence south 20-13'-30" east along the assumed west
2 line of New York State Route 414 a distance of 248.04 feet to a concrete
3 monument; Thence south 02-10'-30" west along said road line a distance
4 of 322.90 feet to an iron pin; Thence 13-14'-50" west along said road
5 line a distance of 487.41 feet to an iron pin, said iron pin being the
6 point and place of beginning; Comprising an area of 126.807 acres of
7 land according to a survey completed by Michael D. Karlsen entitled
8 "Plan Owned by Stanley A. Wagner" known as Parcel A of Job number
9 98-505. This survey is subject to all utility easements and easements
10 and right-of-ways of record which may affect the parcel of land. This
11 survey is also subject to the rights of the public in and to lands here-
12 in referred to as New York State Route 414. This survey intends to
13 describe a portion of the premises as conveyed by Ruth V. Wagner to
14 Stanley A. Wagner by deed recorded February 10, 1989 in Liber 450 of
15 deeds, at Page 286. This survey also intends to describe a portion of
16 the premises as conveyed by Stanley W. VanVleet to Stanley A. Wagner by
17 deed recorded April 30, 1980 in Liber 385 of Deeds, at Page 203.

18 ALSO ALL THAT OTHER TRACT OR PARCEL OF LAND SITUATE on the east side of
19 New York State Route 414 in Military Lot 75 in the Town of Lodi, County
20 of Seneca, State of New York bounded and described as follows: Begin-
21 ning at an iron pin on the assumed east line of New York State Route
22 414, said iron pin being north 50-44'-57" east a distance of 274.92 feet
23 from the south east corner of the parcel of land herein above described;
24 Thence leaving the point of beginning north 00-26'01" east along a math-
25 ematical tie line a distance of 504.91 feet to an iron pin; Thence south
26 37-00'-20" east along lands reputedly of Tomberelli (lib. 419, page 243)
27 passing through an iron pin 176.00 feet distant, and continuing further
28 along that same course a distance of 2.01 feet farther, the total
29 distance being 178.01 feet to a point; Thence south 09-03'-55" west
30 along lands reputedly of M. Wagner (lib. 491, page 181) a distance of
31 68.19 feet to an iron pipe; Thence south 15-36'-04" west along said
32 lands of M. Wagner a distance of 300.15 feet to an iron pipe; Thence
33 south 72-04'-59" west along said lands of M. Wagner a distance of 20.49
34 feet to an iron pin, said iron pin being the point and place of begin-
35 ning. Comprising an area of 0.727 acre of lands according to a survey
36 completed by Michael D. Karlsen entitled "Plan of Land Owned by Stanley
37 A. Wagner" known as Parcel B of job number 98-505. This survey is
38 subject to all utility easements and easements and right-of-ways of
39 record which may affect this parcel of land. This survey is also
40 subject to the rights of the public in and to lands herein referred to
41 as New York State Route 414. This survey intends to describe the same
42 premises as conveyed by Henry W. Eighmey as executor of the Last Will
43 and Testament of Mary C. Eighmey to Stanley A. Wagner by deed recorded
44 July 2, 1996 in liber 542, page 92. This survey also intends to
45 describe a portion of the premises as conveyed by Ruth V. Wagner to
46 Stanley A. Wagner by deed recorded February 10, 1989 in Liber 450 of
47 deeds, at Page 286[.];

48 [The provisions of this paragraph shall not apply to] (VII) any prem-
49 ises or business located wholly within the following described parcel:
50 ALL THAT TRACT OR PARCEL OF LAND situate in the City of Corning, County
51 of Steuben and State of New York bounded and described as follows:
52 Beginning at an iron pin situate at the terminus of the westerly line of
53 Townley Avenue at its intersection with the southwesterly line of New
54 York State Route 17; thence S 00° 45' 18" E along the westerly line of
55 Townley Avenue, a distance of 256.09 feet to a point; thence S 89° 02'
56 07" W through an iron pin placed at a distance of 200.00 feet, a total

1 distance of 300.00 feet to an iron pin; thence N 00° 59' 17" W a
2 distance of 47.13 feet to an iron pin; thence S 89° 02' 07" W a distance
3 of 114.56 feet to a point situate in the southeast corner of Parcel A-2
4 as set forth on a survey map hereinafter described; thence N 14° 18' 49"
5 E a distance of 124.40 feet to an iron pin situate at the southeast
6 corner of lands now or formerly of Cicci (Liber 923, Page 771); thence N
7 14° 18' 49" E a distance of 76.46 feet to an iron pin; thence N 00° 57'
8 53" W a distance of 26.25 feet to an iron pin marking the southeast
9 corner of parcel A-1 as set forth on the hereinafter described survey
10 map; thence N 00° 58' 01" W a distance of 166.00 to an iron pin situate
11 at the northeast corner of said Parcel A-1, which pin also marks the
12 southeast corner of lands now or formerly of Becraft (Liber 1048, Page
13 1086); thence N 00° 57' 53" W a distance of 106.00 feet to an iron pin
14 situate in the southerly line of lands now or formerly of the United
15 States Postal Service; thence N 89° 02' 07" E along the southerly line
16 of said United States Postal Service a distance of 81.47 feet to a
17 point; thence N 14° 18' 49" E along the easterly line of said United
18 States Postal Service a distance of 114.29 feet to an iron pin situate
19 in the southwesterly line of New York State Route 17; thence S 32° 00'
20 31" E along the southwesterly line of New York State Route 17, a
21 distance of 358.93 feet to an iron pin; thence continuing along the
22 southwesterly line of New York state Route 17, S 38° 30' 04" E a
23 distance of 108.18 feet to the iron pin marking the place of beginning.
24 Said premises are set forth and shown as approximately 4.026 acres of
25 land designated as Parcel A (excluding Parcels A-1 and A-2) on a survey
26 map entitled "As-Built Survey of Lands of New York Inn, LLC, City of
27 Corning, Steuben County, New York" by Weiler Associates, dated December
28 27, 2001, designated Job No. 12462; [or (vii)]

29 (VIII) any such premises or businesses located on that certain plot,
30 piece or parcel of land, situate, lying and being in the Second Ward of
31 the City of Schenectady, on the Northerly side of Union Street, bounded
32 and described as follows: to wit; Beginning at the Southeasterly corner
33 of the lands lately owned by Elisha L. Freeman and now by Albert Shear;
34 and running from thence Easterly along the line of Union Street, 44 feet
35 to the lands now owned by or in the possession of James G. Van Vorst;
36 thence Northerly in a straight line along the last mentioned lands and
37 the lands of the late John Lake, 102 feet to the lands of one Miss Rodg-
38 ers; thence Westerly along the line of the last mentioned lands of said
39 Rodgers to the lands of the said Shear; and thence Southerly along the
40 lands of said Shear 101 feet, 6 inches to Union Street, the place of
41 beginning.

42 Also all that tract or parcel of land, with the buildings thereon,
43 situate in the City of Schenectady, County of Schenectady, and State of
44 New York, situate in the First, formerly the Second Ward of the said
45 City, on the Northerly side of Union Street, which was conveyed by
46 William Meeker and wife to Elisha L. Freeman by deed dated the second
47 day of December 1843, and recorded in the Clerk's Office of Schenectady
48 County on December 5, 1843, in Book V of Deeds at page 392, which lot in
49 said deed is bounded and described as follows: Beginning at a point in
50 the Northerly line of Union Street where it is intersected by the East-
51 erly line of property numbered 235 Union Street, which is hereby
52 conveyed, and running thence Northerly along the Easterly line of said
53 property, One Hundred Forty and Five-tenths (140.5) feet to a point
54 sixteen (16) feet Southerly from the Southerly line of the new garage
55 built upon land adjoining on the North; thence Westerly parallel with
56 said garage, Forty-six and Seven-tenths (46.7) feet; thence Southerly

1 One Hundred Forty and Eight-tenths (140.8) feet to the Northerly margin
2 of Union Street; thence Easterly along the Northerly margin of Union
3 Street, about Forty-eight and three-tenths (48.3) feet to the point or
4 place of beginning. The two above parcels are together more particular-
5 ly described as follows: All that parcel of land in the City of Sche-
6 nectady beginning at a point in the northerly margin of Union Street at
7 the southwesterly corner of lands now or formerly of Friedman (Deed Book
8 636 at page 423) which point is about 60 feet westerly of the westerly
9 line of North College Street and runs thence N. 86 deg. 42' 20" W. 92.30
10 feet to the southeasterly corner of other lands now or formerly of
11 Friedman (Deed Book 798 at page 498); thence N. 04 deg. 06' 48" E.
12 140.50 feet to the southwesterly corner of lands now or formerly of
13 Stockade Associates (Deed Book 1038 at page 521); thence S. 87 deg. 05'
14 27" E. 46.70 feet to lands now or formerly of McCarthy (Deed Book 1129
15 at page 281); thence along McCarthy S. 00 deg. 52' 02" E. 3.69 feet to
16 the northwesterly corner of lands now or formerly of SONYMA (Deed Book
17 1502 at page 621); thence along lands of SONYMA S. 02 deg 24' 56"
18 W.34.75 feet to a corner; thence still along lands of SONYMA and lands
19 now or formerly of Magee (Deed Book 399 at page 165) S. 86 deg. 11' 52"
20 E. 42.57 feet to a corner; thence still along lands of Magee and Lands
21 of Friedman first above mentioned S. 03 deg. 10' 08" W. 102.00 feet to
22 the point of beginning. Excepting and reserving all that portion of the
23 above parcel lying easterly of a line described as follows: All that
24 tract or parcel of land, situated in the City of Schenectady and County
25 of Schenectady and State of New York, on the Northerly side of Union
26 Street bounded and described as follows: Beginning at a point in the
27 northerly line of Union Street, said point being in the division line
28 between lands now or formerly of Electric Brew Pubs, Inc. (1506 of Deeds
29 at page 763) on the West and lands now or formerly of Margaret Wexler
30 and Donna Lee Wexler Pavlovic, as trustees under Will of Ruth F. Wexler
31 (Street number 241 Union Street) on the East; thence North 03 deg. 04'
32 10" East, along the building known as Street No. 241 Union Street, a
33 distance of 30.50 feet to a point; thence North 88 deg. 45' 45" West,
34 along said building and building eve, a distance of 5.62 feet to a
35 point; thence North 03 deg. 03' 30" East, along said building eve of
36 Street No. 241 Union Street, a distance of 32.74 feet; thence South 88
37 deg. 45' 45" East, along said building eve, a distance of 1.2 feet to an
38 intersection of building corner of Street No. 241 Union Street and a
39 brick wall; thence north 03 deg. 37' 30" East, along said brick wall, a
40 distance of 14.47 feet to a point in the corner of the brick wall,
41 thence South 86 deg. 46' 45" East along said brick wall a distance of
42 4.42 feet to the intersection of brick wall with the boundary line
43 between the Electric Brew Pubs, Inc. (aforesaid) on the West and lands
44 of Margaret Wexler and Donna Lee Wexler Pavlovic, (aforesaid) on the
45 East; thence North 03 deg 10' 08" East a distance of 0.62 feet to the
46 Northeast corner of lands belonging to Margaret Wexler and Donna Lee
47 Wexler Pavlovic. Also all that tract or parcel of land commonly known
48 as the Union Street School, located on the Northeasterly corner of Union
49 and North College Streets in the First Ward of the City and County of
50 Schenectady and State of New York, more particularly bounded and
51 described as follows: Beginning at a point in the Northerly street line
52 of Union Street where it is intersected by the Easterly street line of
53 North College Street, and runs thence Northerly along the Easterly
54 street line of North College Street, one hundred seven and five-tenths
55 (107.5) feet to a point, thence easterly at an angle of ninety (90)
56 degrees, one hundred ninety-one and seventy-five hundredths (191.75)

1 feet to a point in the Northwesterly street line of Erie Boulevard
2 thence southwesterly along the Northwesterly street line of Erie Boule-
3 vard, one hundred twenty-three and eight-tenths (123.8) feet to its
4 intersection with the Northerly street line of Union Street; thence
5 Westerly along the Northerly street line of Union Street, one hundred
6 twenty-four and fifty-five hundredths (124.55) feet to the point or
7 place of beginning.

8 The above described parcel of property includes the Blue Line parcel
9 of land, which is a portion of the abandoned Erie Canal Lands, located
10 in the First Ward of the City of Schenectady, New York, and which Blue
11 Line parcel lies between the Northwesterly line of Erie Boulevard as set
12 forth in the above described premises and the Northeasterly lot line of
13 the old Union Street School as it runs parallel with the Northwesterly
14 line of Erie Boulevard as aforesaid.

15 The two above parcels are together more particularly described as
16 follows: All that parcel of land in the City of Schenectady beginning at
17 a point in the northerly margin of Union Street and the northwesterly
18 margin of Erie Boulevard and runs thence along Union Street N. 86 deg.
19 42' 20" W. 124.55 feet to the easterly margin of North College Street;
20 thence along North College Street N. 05 deg 04' 40" E. 107.50 feet to
21 the southeasterly corner of lands now or formerly of McCarthy (Deed Book
22 1129 at page 279); thence along McCarthy, Cottage Alley and lands now or
23 formerly of McGregor (Deed Book 912 at page 624) S. 84 deg. 55' 20" E.
24 191.75 feet to the northwesterly margin of Erie Boulevard; thence along
25 Erie Boulevard S. 38 deg. 03' 53" W. 123.54 feet to the point of begin-
26 ning; [or (viii)]

27 (IX) any such premises or businesses located on that tract or parcel
28 of land situate in the Town of Hopewell, Ontario County, State of New
29 York, bounded and described as follows: Commencing at a 5/8" rebar found
30 on the division line between lands now or formerly of Ontario County -
31 Finger Lakes Community College (Liber 698 of Deeds, Page 466) on the
32 north and lands now or formerly of James W. Baird (Liber 768 of Deeds,
33 Page 1109) on the south; thence, North 43°-33'-40" West, on said divi-
34 sion line, a distance of 77.32 feet to the Point of Beginning. Thence,
35 North 43°-33'-40" West, continuing on said division line and through
36 said lands of Ontario County, a distance of 520.45 feet to a point on
37 the southeasterly edge of an existing concrete pad; thence, South
38 74°-19'-53" West, along said edge of concrete and the projection there-
39 of, a distance of 198.78 feet to a point on the easterly edge of pave-
40 ment of an existing campus drive; thence, the following two (2) courses
41 and distances along said edge of pavement: Northeasterly on a curve to
42 the left having a radius of 2221.65 feet, a chord bearing of North
43 30°-16'-39" East, a chord distance of 280.79, a central angle of
44 07°-14'-47", a length of 280.98 feet to a point of reverse curvature;
45 thence, Northeasterly on a curve to the right having a radius of 843.42
46 feet, a chord bearing of North 45°-25'-09" East, a chord distance of
47 534.08, a central angle of 36°-55'-01", a length of 543.43 feet to a
48 point; thence, South 30°-04'-59" East, a distance of 18.28 feet to the
49 corner of the property acquired by Ontario County (Liber 766 of Deeds,
50 Page 1112), as shown on a map recorded in the Ontario County Clerk's
51 Office as Map No. 6313; thence, the following four (4) courses and
52 distances along said property line: South 30°-04'-59" East, a distance
53 of 177.17 feet to a point; thence, South 02°-20'-33" East, a distance of
54 147.53 feet to a point; thence, South 41°-31'-35" East, a distance of
55 200.93 feet to a point; thence, South 23°-48'-53" West, along said prop-
56 erty line, and the projection thereof, through the first said lands of

1 Ontario County - Finger Lakes Community College (Liber 698 of Deeds,
2 Page 466), a distance of 517.96 feet to Point of Beginning. Said parcel
3 containing 7.834 acres, more or less, as shown on a map entitled
4 "Proposed Lease Area - Friends of the Finger Lakes Performing Arts
5 Center, Hopewell, NY", prepared by Bergmann Associates, drawing LM-01,
6 dated June 10, 2005, last revised August 17, 2005. The related PAC Prop-
7 erties are shown on the Map denominated "FLCC Campus Property, FLPAC
8 Ground Lease, Parking, Vehicular & Pedestrian Access", recorded in the
9 Ontario County Clerk's Office on December 10, 2009 in Book 1237 of Deeds
10 at page 9 and are comprised of the areas separately labeled as Parking
11 Lot 'A', Parking Lot 'G', the Ticket Booth area, the Sidewalks, and the
12 Entry Roads[.];

13 (X) ANY PREMISES LICENSED PURSUANT TO SECTION SIXTY-THREE-B OF THIS
14 CHAPTER.

15 [The provisions of this paragraph shall not apply to] (XI) any prem-
16 ises licensed under section sixty-four of this chapter in which a
17 manufacturer or wholesaler holds a direct or indirect interest, provided
18 that: [(I)] (1) said premises consist of an interactive entertainment
19 facility which predominantly offers interactive computer and video
20 entertainment attractions, and other games and also offers themed
21 merchandise and food and beverages, [(II)] (2) the sale of alcoholic
22 beverages within the premises shall be restricted to an area consisting
23 of not more than twenty-five percent of the total interior floor area of
24 the premises, [(III)] (3) the retail licenses shall derive not less than
25 sixty-five percent of the total revenue generated by the facility from
26 interactive video entertainment activities and other games, including
27 related attractions and sales of merchandise other than food and alco-
28 holic beverages, [(IV)] (4) the interested manufacturer or wholesaler,
29 or its parent company, shall be listed on a national securities exchange
30 and its direct or indirect equity interest in the retail licensee shall
31 not exceed twenty-five percent, [(V)] (5) no more than fifteen percent
32 of said licensee's purchases of alcoholic beverages for sale in the
33 premises shall be products produced or distributed by the manufacturer
34 or wholesaler, [(VI)] (6) neither the name of the manufacturer or whole-
35 saler nor the name of any brand of alcoholic beverage produced or
36 distributed by said manufacturer or wholesaler shall be part of the name
37 of the premises, [(VII)] (7) the name of the manufacturer or wholesaler
38 or the name of products sold or distributed by such manufacturer or
39 wholesaler shall not be identified on signage affixed to either the
40 interior or the exterior of the premises in any fashion, [(VIII)] (8)
41 promotions involving alcoholic beverages produced or distributed by the
42 manufacturer or wholesaler are not held in such premises and further,
43 retail and consumer advertising specialties bearing the name of the
44 manufacturer or wholesaler or the name of alcoholic beverages produced
45 or distributed by the manufacturer or wholesaler are not utilized in any
46 fashion, given away or sold in said premises, and [(IX)] (9) except to
47 the extent provided in this paragraph, the licensing of each premises
48 covered by this exception is subject to all provisions of section
49 sixty-four of this chapter, including but not limited to liquor authori-
50 ty approval of the specific location thereof.

51 The provisions of this paragraph shall not prohibit (1) a manufacturer
52 or wholesaler, if an individual, or a partner, of a partnership, or, if
53 a corporation, an officer or director thereof, from being an officer or
54 director of a duly licensed charitable organization which is the holder
55 of a license for on-premises consumption under this chapter, nor (2) a
56 manufacturer from acquiring any such premises if the liquor authority

first consents thereto after determining, upon such proofs as it shall deem sufficient, that such premises is contiguous to the licensed premises of such manufacturer, and is reasonably necessary for the expansion of the facilities of such manufacturer. After any such acquisition, it shall be illegal for a manufacturer acquiring any such premises to sell or deliver alcoholic beverages manufactured by him to any licensee occupying such premises.

S 10. If any provision of this act or the application thereof shall for any reason be finally adjudged by a court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder of this act but shall be confined in its operation to the provision or provisions directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provision or provisions had not been included. In the event that any provision of the laws of New York, as amended by this act, shall be finally adjudged by a court of competent jurisdiction to be invalid or unconstitutional, the provisions of such laws in effect prior to the date this act shall have become law shall not be affected by such judgment.

S 11. This act shall take effect immediately; provided, however, that the sales tax exemptions created by sections three and four of this act shall take effect on the first day of a sales tax quarterly period, as described in subdivision (b) of section 1136 of the tax law, next commencing at least 30 days after this act shall have become a law and shall apply in accordance with the applicable transitional provisions in sections 1106 and 1217 of the tax law; and provided further that the amendments to subdivisions 1 and 2 of section 56-a of the alcoholic beverage control law made by section eight of this act shall take effect on the same date and in the same manner as sections 7 and 8, respectively, of chapter 108 of the laws of 2012, as amended, take effect.

PART J

Section 1. The general municipal law is amended by adding a new section 875 to read as follows:

S 875. SPECIAL PROVISIONS APPLICABLE TO STATE SALES AND COMPENSATING USE TAXES AND CERTAIN TYPES OF FACILITIES. 1. FOR PURPOSES OF THIS SECTION: "STATE SALES AND USE TAXES" MEANS SALES AND COMPENSATING USE TAXES AND FEES IMPOSED BY ARTICLE TWENTY-EIGHT OR TWENTY-EIGHT-A OF THE TAX LAW BUT EXCLUDING SUCH TAXES IMPOSED IN A CITY BY SECTION ELEVEN HUNDRED SEVEN OR ELEVEN HUNDRED EIGHT OF SUCH ARTICLE TWENTY-EIGHT. "IDA" MEANS AN INDUSTRIAL DEVELOPMENT AGENCY ESTABLISHED BY THIS ARTICLE OR AN INDUSTRIAL DEVELOPMENT AUTHORITY CREATED BY THE PUBLIC AUTHORITIES LAW. "COMMISSIONER" MEANS THE COMMISSIONER OF TAXATION AND FINANCE.

2. (A) AN IDA SHALL NOT PROVIDE STATE SALES AND USE TAX EXEMPTION BENEFITS WITH RESPECT TO ANY PROJECT UNLESS AND UNTIL THE PREREQUISITES SET FORTH IN PARAGRAPHS (B), (C), (D) AND (E) OF THIS SUBDIVISION ARE MET.

(B) EITHER (I) THE AGENT OR PROJECT OPERATOR OF SUCH PROJECT MUST HAVE BEEN CERTIFIED AS A PARTICIPANT IN THE EXCELSIOR JOBS PROGRAM, AS SUCH TERM "PARTICIPANT" IS DEFINED IN SECTION THREE HUNDRED FIFTY-TWO OF THE ECONOMIC DEVELOPMENT LAW, AND PROVIDES TO THE IDA VALID PROOF OF PARTICIPATION IN SUCH PROGRAM, OR (II) IF SUCH AGENT OR PROJECT OPERATOR IS NOT A PARTICIPANT IN SUCH PROGRAM, THE IDA, AFTER REVIEWING THE FACTS ON THE RECORD, MUST FIND THAT THE AGENT OR PROJECT OPERATOR IS A BUSINESS

1 ENTITY OF THE TYPE DESCRIBED IN SUBDIVISION ONE OF SECTION THREE HUNDRED
2 FIFTY-THREE OF THE ECONOMIC DEVELOPMENT LAW AND REGULATIONS ADOPTED
3 PURSUANT TO SUCH SECTION.

4 (C) IF THE PREREQUISITE IN EITHER SUBPARAGRAPH (I) OR (II) OF PARA-
5 GRAPH (B) OF THIS SUBDIVISION HAS BEEN MET, THE IDA SHALL SUBMIT IN
6 WRITING ITS PLAN TO PROVIDE SUCH STATE SALES AND USE TAX EXEMPTION BENE-
7 FITS FOR SUCH PROJECT, TOGETHER WITH THE FINDINGS IT MADE UNDER SUCH
8 SUBPARAGRAPH (II) OF PARAGRAPH (B) TO THE COMMISSIONER OF ECONOMIC
9 DEVELOPMENT.

10 (D) THE COMMISSIONER OF ECONOMIC DEVELOPMENT SHALL REVIEW SUCH
11 PROPOSED STATE SALES AND USE TAX EXEMPTION BENEFIT PLAN FOR SUCH PROJECT
12 AND DETERMINE, IN CONSULTATION WITH THE REGIONAL ECONOMIC DEVELOPMENT
13 COUNCIL ESTABLISHED BY THE GOVERNOR THAT ENCOMPASSES THE JURISDICTION
14 FOR WHOSE BENEFIT THE IDA RECOMMENDING THE TAX EXEMPTION BENEFITS WAS
15 CREATED, WHETHER SUCH PROPOSED STATE SALES AND USE TAX EXEMPTION BENEFIT
16 PLAN FOR SUCH PROJECT IS CONSISTENT WITH REGIONAL ECONOMIC DEVELOPMENT
17 STRATEGIES.

18 (E) THE COMMISSIONER OF ECONOMIC DEVELOPMENT SHALL REVIEW THE IDA'S
19 FINDINGS, IF ANY, AND APPROVE OR DISAPPROVE THE PROPOSED BENEFITS OR
20 DENY THEM IF SUCH COMMISSIONER DOES NOT APPROVE SUCH IDA'S FINDINGS THAT
21 THE AGENT/PROJECT OPERATOR IS A BUSINESS ENTITY OF THE TYPE REQUIRED.
22 SUCH COMMISSIONER IS ALSO AUTHORIZED TO MODIFY THE IDA'S PROPOSED PLAN
23 BY REDUCING THE TOTAL AMOUNT OF ANY SUCH STATE SALES AND USE TAX
24 EXEMPTION BENEFITS OR BY SPECIFYING THAT SUCH BENEFITS SHALL APPLY TO
25 ONLY SOME OF THE TYPES OF PROPERTY OR SERVICES PROPOSED TO BE EXEMPT
26 FROM SUCH STATE TAXES OR BY REDUCING THE TIME PERIOD DURING WHICH SUCH
27 BENEFITS MAY BE PROVIDED. SUCH COMMISSIONER SHALL ADVISE THE IDA IN
28 WRITING OF HIS OR HER APPROVAL, DISAPPROVAL, DENIAL, OR MODIFICATION OF
29 THE IDA'S PLAN, AND SUCH APPROVAL, DISAPPROVAL, DENIAL, OR MODIFICATION
30 SHALL BIND THE IDA AS TO WHETHER THE IDA CAN PROVIDE STATE SALES AND USE
31 TAX EXEMPTION BENEFITS AND, IF APPROVED IN WHOLE OR AS MODIFIED, THE
32 AMOUNT OF STATE SALES AND USE TAX EXEMPTION BENEFITS THAT THE IDA CAN
33 PROVIDE WITH RESPECT TO SUCH PROJECT, THE TYPES OF PROPERTY AND SERVICES
34 THAT MAY BE ELIGIBLE FOR EXEMPTION, AND THE DURATION OF TIME DURING
35 WHICH SUCH EXEMPTION BENEFITS MAY APPLY. HOWEVER, THE IDA MAY PROVIDE
36 STATE SALES AND USE TAX EXEMPTION BENEFITS IN A LESSER AMOUNT, FOR FEWER
37 TYPES OF PROPERTY OR SERVICES, OR FOR A SHORTER PERIOD, THAN AS APPROVED
38 BY SUCH COMMISSIONER.

39 (F) NOTWITHSTANDING THE FOREGOING, IF AT THE TIME AN IDA PROPOSES A
40 STATE SALES AND USE TAX EXEMPTION BENEFIT PLAN THERE IS NO REGIONAL
41 ECONOMIC DEVELOPMENT COUNCIL IN THE APPLICABLE REGION, THEN THE COMMIS-
42 SIONER OF ECONOMIC DEVELOPMENT SHALL REVIEW SUCH PLAN AND ANY SUCH FIND-
43 INGS AS PROVIDED IN PARAGRAPH (D) OF THIS SUBDIVISION, WITHOUT REGARD TO
44 THE RECOMMENDATION OF ANY OTHER BODY.

45 (G) AN IDA SHALL NOT PROVIDE STATE SALES AND USE TAX EXEMPTION BENE-
46 FITS IN AN AMOUNT GREATER, FOR PROPERTY OR SERVICES OTHER, OR FOR A TIME
47 PERIOD LONGER THAN AS APPROVED BY THE COMMISSIONER OF ECONOMIC DEVELOP-
48 MENT. ANY AMOUNT OF STATE SALES AND USE TAX EXEMPTION BENEFITS THAT AN
49 IDA PURPORTS TO PROVIDE IN EXCESS OF THE AMOUNT APPROVED, OR FOR DIFFER-
50 ENT PROPERTY OR SERVICES THAN APPROVED, OR FOR A PERIOD LONGER THAN
51 APPROVED BY SUCH COMMISSIONER SHALL BE VOID FROM ITS INCEPTION, AND AN
52 AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY THAT MAKES A PURCHASE
53 OR USE WITHOUT PAYING STATE SALES AND USE TAXES, OR WHO PAID SUCH TAXES
54 BUT OBTAINED A REFUND OR CREDIT OF THEM, AS A RESULT SHALL BE REQUIRED
55 TO PAY SUCH AMOUNT OF TAX TO THE COMMISSIONER OF TAXATION AND FINANCE IN
56 ACCORDANCE WITH ARTICLES TWENTY-EIGHT AND TWENTY-NINE OF THE TAX LAW.

1 THE COMMISSIONER SHALL BE AUTHORIZED TO DETERMINE AND ASSESS STATE SALES
2 AND USE TAXES FOREGONE ON ACCOUNT OF AN AGENT, PROJECT OPERATOR OR OTHER
3 PERSON OR ENTITY NOT HAVING PAID SUCH STATE SALES OR USE TAX THAT SHOULD
4 HAVE BEEN PAID, OR WHO OBTAINED SUCH A REFUND OR CREDIT BUT SHOULD NOT
5 HAVE, IN ACCORD WITH THE APPLICABLE PROVISIONS OF THE TAX LAW, EXCEPT
6 THAT ANY STATUTE THAT LIMITS THE TIME BY WHICH THE COMMISSIONER MUST
7 DETERMINE OR ASSESS SUCH TAX SHALL NOT BEGIN TO RUN UNTIL THE COMMIS-
8 SIONER HAS RECEIVED ACTUAL NOTICE OF SUCH IMPROPER PURCHASES OR USES.

9 3. AN IDA SHALL KEEP RECORDS OF THE AMOUNT OF STATE AND LOCAL SALES
10 AND USE TAX EXEMPTION BENEFITS PROVIDED TO EACH PROJECT AND EACH AGENT
11 OR PROJECT OPERATOR, AND SHALL MAKE SUCH RECORDS AVAILABLE TO THE
12 COMMISSIONER AND STATE COMPTROLLER UPON REQUEST. SUCH IDA SHALL ALSO,
13 WITHIN THIRTY DAYS OF PROVIDING FINANCIAL ASSISTANCE TO A PROJECT THAT
14 INCLUDES ANY AMOUNT OF STATE SALES AND USE TAX EXEMPTION BENEFITS,
15 REPORT TO THE COMMISSIONER AND THE STATE COMPTROLLER THE AMOUNT OF SUCH
16 BENEFITS FOR SUCH PROJECT, THE PROJECT TO WHICH THEY ARE BEING PROVIDED,
17 ANY LIMITATION ON THE APPLICATION OR EXERCISE OF SUCH EXEMPTIONS, THE
18 TYPES OF PROPERTY AND SERVICES TO BE EXEMPTED, THE TIME DURING WHICH
19 SUCH EXEMPTION BENEFITS APPLY, AND THE NAME AND ADDRESS OF THE AGENT OR
20 PROJECT OPERATOR OF SUCH PROJECT, TOGETHER WITH SUCH OTHER INFORMATION
21 AND SUCH SPECIFICITY AND DETAIL AS THE COMMISSIONER MAY PRESCRIBE, WITH
22 A COPY OF SUCH REPORT FURNISHED AT THE SAME TIME TO THE AGENT OR PROJECT
23 OPERATOR. THIS REPORT MAY BE MADE IN CONJUNCTION WITH THE STATEMENT
24 REQUIRED BY SUBDIVISION NINE OF SECTION EIGHT HUNDRED SEVENTY-FOUR OF
25 THIS ARTICLE OR IT MAY BE MADE AS A SEPARATE REPORT, AT THE DISCRETION
26 OF THE COMMISSIONER. AN AGENT OR PROJECT OPERATOR OR OTHER PERSON OR
27 ENTITY SHALL NOT AVAIL ITSELF OF STATE OR LOCAL SALES AND USE TAX
28 EXEMPTIONS IN EXCESS OF THE AMOUNT OR IN CONTRAVENTION OF THE TIME AND
29 OTHER LIMITATIONS SET OUT IN SUCH REPORT OR FOR PROPERTY OR SERVICES
30 OTHER THAN THOSE SET OUT IN SUCH REPORT. AN IDA THAT FAILS TO MAKE SUCH
31 RECORDS AVAILABLE TO THE COMMISSIONER OR TO THE STATE COMPTROLLER OR TO
32 FILE SUCH REPORT OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS SUBDI-
33 VISION SHALL BE PROHIBITED FROM PROVIDING STATE SALES AND USE TAX
34 EXEMPTION BENEFITS FOR ANY PROJECT UNLESS AND UNTIL SUCH IDA COMES INTO
35 COMPLIANCE WITH ALL SUCH REQUIREMENTS.

36 4. NOTWITHSTANDING ANY PROVISION OF THIS SECTION OR OTHER LAW, IN NO
37 CASE SHALL AN IDA AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY
38 TAKE ANY STATE SALES AND USE TAX EXEMPTION BENEFITS AS EXEMPTIONS AT THE
39 TIME OF PURCHASE OR USE. RATHER, IN ALL CASES, THE PERSON OR ENTITY
40 SHALL PAY STATE SALES OR USE TAX TO THE PERSON REQUIRED TO COLLECT IT AT
41 THE TIME OF PURCHASE OR TO THE COMMISSIONER IN ACCORD WITH THE REQUIRE-
42 MENTS OF ARTICLE TWENTY-EIGHT OF THE TAX LAW. AFTER HAVING PAID TAX TO
43 THE PERSON REQUIRED TO COLLECT IT OR TO THE COMMISSIONER, SUCH PERSON OR
44 ENTITY MAY THEN APPLY TO THE COMMISSIONER FOR A REFUND OR CREDIT OF SUCH
45 TAX ACTUALLY PAID. ANY SUCH REFUND OR CREDIT SHALL THEN BE APPLIED FOR
46 IN THE MANNER ESTABLISHED BY AND SUBJECT TO THE PROVISIONS OF SUCH ARTI-
47 CLE TWENTY-EIGHT.

48 5. NOTWITHSTANDING ANY PROVISION OF THIS SECTION OR OTHER LAW, AN IDA
49 SHALL NOT CREATE A PROJECT OR ANY PORTION OF A PROJECT, OR AUTHORIZE THE
50 USE OF ANY PROJECT OR PROJECT PROPERTY, OUTSIDE THIS STATE.

51 6. AN IDA THAT ENTERS INTO AN AGREEMENT REQUIRING PAYMENTS IN LIEU OF
52 STATE SALES AND USE TAXES TO BE PAID TO IT SHALL REMIT THE FULL AMOUNT
53 OF ANY SUCH PAYMENTS IT RECEIVES TO THE COMMISSIONER WITHIN THIRTY DAYS
54 OF THE DATE THAT THE IDA RECEIVES THE PAYMENT, TOGETHER WITH A RETURN OR
55 REPORT REQUIRED BY THE COMMISSIONER. THE IDA SHALL SEND A COPY OF ANY
56 SUCH AGREEMENT FOR PAYMENT IN LIEU OF SUCH TAXES TO THE COMMISSIONER

1 WITHIN THIRTY DAYS OF THE DATE IT IS EXECUTED. IF THE PERSON OR ENTITY
2 REQUIRED TO MAKE SUCH PAYMENTS TO THE IDA FAILS TO DO SO TIMELY, OR IF
3 THE IDA FAILS TO REMIT SUCH PAYMENTS TO THE COMMISSIONER TIMELY, THE
4 AMOUNT OF ANY SUCH UNTIMELY PAYMENTS OR REMISSIONS, TOGETHER WITH A
5 PENALTY OF FIVE PERCENT OF THE AMOUNT OF SUCH LATE PAYMENTS AND INTEREST
6 ON SUCH LATE PAYMENTS AT THE RATE OF ONE PERCENT PER MONTH, SHALL ALL
7 BE DEEMED TO BE SALES TAX WHICH A RETURN OR REPORT SHOWS TO BE DUE UNDER
8 SECTION ONE HUNDRED SEVENTY-THREE-A OF THE TAX LAW AND SUCH AMOUNTS
9 SHALL BE PAID UPON NOTICE AND DEMAND AND SHALL BE ASSESSED, COLLECTED,
10 AND PAID IN THE MANNER PROVIDED FOR SALES TAX, AND SUCH NOTICE AND
11 DEMAND SHALL NOT BE CONSIDERED AS A NOTICE OF DETERMINATION, AS
12 DESCRIBED IN SUCH SECTION ONE HUNDRED SEVENTY-THREE-A. AN IDA SHALL JOIN
13 THE COMMISSIONER AS A PARTY IN ANY ACTION OR PROCEEDING THAT THE IDA
14 COMMENCES TO RECOVER, OBTAIN, OR OTHERWISE SEEK, ANY UNPAID PAYMENTS IN
15 LIEU OF STATE SALES AND USE TAX FROM AN AGENT, PROJECT OPERATOR OR OTHER
16 PERSON OR ENTITY. THE PROVISIONS OF THIS SUBDIVISION SHALL ALSO APPLY TO
17 ANY INTEREST OR PENALTY THAT THE IDA IMPOSES ON ANY SUCH PAYMENTS IN
18 LIEU OF TAXES OR THAT ARE IMPOSED ON SUCH PAYMENTS BY OPERATION OF LAW
19 OR BY JUDICIAL ORDER OR OTHERWISE. ANY SUCH PAYMENTS, TOGETHER WITH ANY
20 INTEREST OR PENALTIES THEREON, SHALL BE DEEMED TO BE STATE SALES AND USE
21 TAXES AND THE IDA SHALL RECEIVE ANY SUCH PAYMENTS, WHETHER AS A RESULT
22 OF COURT ACTION OR OTHERWISE, AS TRUSTEE FOR AND ON ACCOUNT OF THE
23 STATE.

24 7. AN IDA OR IDA AGENT OR PROJECT OPERATOR SHALL NOT BE EXEMPT FROM
25 THE TAXES IMPOSED BY PARAGRAPH TEN OF SUBDIVISION (C) OF SECTION ELEVEN
26 HUNDRED FIVE OR BY ARTICLE TWENTY-EIGHT-A OR TWENTY-NINE-A OF THE TAX
27 LAW.

28 8. IF AN IDA RECOVERS, RECAPTURES, RECEIVES, OR OTHERWISE OBTAINS, ANY
29 AMOUNT OF STATE SALES AND USE TAX EXEMPTION BENEFITS FROM AN AGENT,
30 PROJECT OPERATOR OR OTHER PERSON OR ENTITY, THE IDA SHALL, WITHIN THIRTY
31 DAYS OF COMING INTO POSSESSION OF SUCH AMOUNT, REMIT IT TO THE COMMIS-
32 SIONER, TOGETHER WITH SUCH INFORMATION AND REPORT THAT THE COMMISSIONER
33 DEEMS NECESSARY TO ADMINISTER PAYMENT OVER OF SUCH AMOUNT. AN IDA SHALL
34 JOIN THE COMMISSIONER AS A PARTY IN ANY ACTION OR PROCEEDING THAT THE
35 IDA COMMENCES TO RECOVER, RECAPTURE, OBTAIN, OR OTHERWISE SEEK THE
36 RETURN OF, STATE SALES AND USE TAX EXEMPTION BENEFITS FROM AN AGENT,
37 PROJECT OPERATOR OR OTHER PERSON OR ENTITY. THIS SUBDIVISION SHALL
38 APPLY TO ANY AMOUNTS OF STATE SALES AND USE TAX EXEMPTION BENEFITS THAT
39 AN IDA RECOVERS, RECAPTURES, RECEIVES, OR OTHERWISE OBTAINS, REGARDLESS
40 OF WHETHER THE IDA OR THE AGENT, PROJECT OPERATOR OR OTHER PERSON OR
41 ENTITY CHARACTERIZES SUCH BENEFITS RECOVERED, RECAPTURED, RECEIVED, OR
42 OTHERWISE OBTAINED, AS A PENALTY OR LIQUIDATED OR CONTRACT DAMAGES OR
43 OTHERWISE. THE PROVISIONS OF THIS SUBDIVISION SHALL ALSO APPLY TO ANY
44 INTEREST OR PENALTY THAT THE IDA IMPOSES ON ANY SUCH AMOUNTS OR THAT ARE
45 IMPOSED ON SUCH AMOUNTS BY OPERATION OF LAW OR BY JUDICIAL ORDER OR
46 OTHERWISE. ANY SUCH AMOUNTS OR PAYMENTS THAT AN IDA RECOVERS, RECAP-
47 TURES, RECEIVES, OR OTHERWISE OBTAINS, TOGETHER WITH ANY INTEREST OR
48 PENALTIES THEREON, SHALL BE DEEMED TO BE STATE SALES AND USE TAXES AND
49 THE IDA SHALL RECEIVE ANY SUCH AMOUNTS OR PAYMENTS, WHETHER AS A RESULT
50 OF COURT ACTION OR OTHERWISE, AS TRUSTEE FOR AND ON ACCOUNT OF THE
51 STATE.

52 9. THE COMMISSIONER SHALL DEPOSIT AND DISPOSE OF ANY AMOUNT OF ANY
53 PAYMENTS OR MONEYS RECEIVED FROM OR PAID OVER BY AN IDA OR FROM OR BY
54 ANY PERSON OR ENTITY, OR RECEIVED PURSUANT TO AN ACTION OR PROCEEDING
55 COMMENCED BY AN IDA, TOGETHER WITH ANY INTEREST OR PENALTIES THEREON,
56 PURSUANT TO SUBDIVISION SIX OR EIGHT OF THIS SECTION, AS STATE SALES AND

USE TAXES IN ACCORD WITH THE PROVISIONS OF ARTICLE TWENTY-EIGHT OF THE TAX LAW. THE AMOUNT OF ANY SUCH PAYMENTS OR MONEYS, TOGETHER WITH ANY INTEREST OR PENALTIES THEREON, SHALL BE ATTRIBUTED TO THE TAXES IMPOSED BY SECTIONS ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED TEN, ON THE ONE HAND, AND SECTION ELEVEN HUNDRED NINE OF THE TAX LAW, ON THE OTHER HAND, OR TO ANY LIKE TAXES OR FEES IMPOSED BY SUCH ARTICLE, BASED ON THE PROPORTION THAT THE RATES OF SUCH TAXES OR FEES BEAR TO EACH OTHER, UNLESS THERE IS EVIDENCE TO SHOW THAT ONLY ONE OR THE OTHER OF SUCH TAXES OR FEES WAS IMPOSED OR RECEIVED OR PAID OVER.

10. THE STATEMENT THAT AN IDA IS REQUIRED BY SUBDIVISION NINE OF SECTION EIGHT HUNDRED SEVENTY-FOUR OF THIS ARTICLE TO FILE WITH THE COMMISSIONER SHALL NOT BE CONSIDERED AN EXEMPTION OR OTHER CERTIFICATE OR DOCUMENT UNDER ARTICLE TWENTY-EIGHT OR TWENTY-NINE OF THE TAX LAW. THE IDA SHALL NOT REPRESENT TO ANY AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY THAT A COPY OF SUCH STATEMENT MAY SERVE AS A SALES OR USE TAX EXEMPTION CERTIFICATE OR DOCUMENT. NO AGENT OR PROJECT OPERATOR MAY TENDER A COPY OF SUCH STATEMENT TO ANY PERSON REQUIRED TO COLLECT SALES OR USE TAXES AS THE BASIS TO MAKE ANY PURCHASE EXEMPT FROM TAX. NO SUCH PERSON REQUIRED TO COLLECT SALES OR USE TAXES MAY ACCEPT SUCH A STATEMENT IN LIEU OF COLLECTING ANY TAX REQUIRED TO BE COLLECTED. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF SUCH STATEMENT AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN IDA OR AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY OF SUCH STATEMENT, OR THE IDA'S RECOMMENDATION OF THE USE OR TENDERING OF SUCH STATEMENT, AS SUCH AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY-EIGHT AND THIRTY-SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH INTENT TO EVADE TAX.

11. IN CONSULTATION WITH THE COMMISSIONER OF ECONOMIC DEVELOPMENT, THE COMMISSIONER OF TAXATION AND FINANCE IS HEREBY AUTHORIZED TO ADOPT RULES AND REGULATIONS AND TO ISSUE PUBLICATIONS AND OTHER GUIDANCE IMPLEMENTING THE PROVISIONS OF THIS SECTION AND OF THE OTHER SECTIONS OF THIS ARTICLE RELATING TO ANY STATE OR LOCAL TAX OR FEE, OR EXEMPTION OR EXCLUSION THEREFROM, THAT THE COMMISSIONER ADMINISTERS AND THAT MAY BE AFFECTED BY ANY PROVISION OF THIS ARTICLE, AND ANY SUCH RULES AND REGULATIONS OF THE COMMISSIONER SHALL HAVE THE SAME FORCE AND EFFECT WITH RESPECT TO SUCH TAXES AND FEES, OR AMOUNTS MEASURED IN RESPECT OF THEM, AS IF THEY HAD BEEN ADOPTED BY THE COMMISSIONER PURSUANT TO THE AUTHORITY OF THE TAX LAW.

12. TO THE EXTENT THAT A PROVISION OF THIS SECTION CONFLICTS WITH A PROVISION OF ANY OTHER SECTION OF THIS ARTICLE, THE PROVISIONS OF THIS SECTION SHALL CONTROL.

S 2. The public authorities law is amended by adding a new section 1963-b to read as follows:

S 1963-B. SPECIAL PROVISIONS APPLICABLE TO STATE SALES AND COMPENSATING USE TAXES AND CERTAIN TYPES OF FACILITIES. THE PROVISIONS OF SECTION EIGHT HUNDRED SEVENTY-FIVE OF THE GENERAL MUNICIPAL LAW SHALL APPLY TO THE PROVISIONS OF THIS TITLE AND TO THE AUTHORITY CREATED BY THIS TITLE WITH THE SAME FORCE AND EFFECT AS IF THE PROVISIONS OF SUCH SECTION EIGHT HUNDRED SEVENTY-FIVE HAD BEEN INCORPORATED IN FULL INTO THIS TITLE AND HAD EXPRESSLY REFERRED TO THE PROVISIONS OF THIS TITLE AND TO SUCH AUTHORITY, WITH SUCH CHANGES TO SUCH SECTION AS ARE NECESSARY TO REFER TO THE PROVISIONS OF THIS TITLE AND TO THE AUTHORITY CREATED BY THIS TITLE.

1 S 3. The public authorities law is amended by adding a new section
2 2326-a to read as follows:

3 S 2326-A. SPECIAL PROVISIONS APPLICABLE TO STATE SALES AND COMPENSAT-
4 ING USE TAXES AND CERTAIN TYPES OF FACILITIES. THE PROVISIONS OF SECTION
5 EIGHT HUNDRED SEVENTY-FIVE OF THE GENERAL MUNICIPAL LAW SHALL APPLY TO
6 THE PROVISIONS OF THIS TITLE AND TO THE AUTHORITY CREATED BY THIS TITLE
7 WITH THE SAME FORCE AND EFFECT AS IF THE PROVISIONS OF SUCH SECTION
8 EIGHT HUNDRED SEVENTY-FIVE HAD BEEN INCORPORATED IN FULL INTO THIS TITLE
9 AND HAD EXPRESSLY REFERRED TO THE PROVISIONS OF THIS TITLE AND TO SUCH
10 AUTHORITY, WITH SUCH CHANGES TO SUCH SECTION AS ARE NECESSARY TO REFER
11 TO THE PROVISIONS OF THIS TITLE AND TO THE AUTHORITY CREATED BY THIS
12 TITLE.

13 S 4. Subdivision 3 of section 810 of the general municipal law, as
14 amended by chapter 356 of the laws of 1993, is amended to read as
15 follows:

16 3. The term "local officer or employee" shall mean the heads (other
17 than local elected officials) of any agency, department, division, coun-
18 cil, board, commission, or bureau of a political subdivision and their
19 deputies and assistants, and the officers and employees of such agen-
20 cies, departments, divisions, boards, bureaus, commissions or councils
21 who hold policy-making positions, as annually determined by the appoint-
22 ing authority and set forth in a written instrument which shall be filed
23 with the appropriate body during the month of February; except that the
24 term "local officer or employee" shall not mean a judge, justice, offi-
25 cer or employee of the unified court system. Members, officers, and
26 employees of each industrial development agency and authority ESTAB-
27 LISHED BY THIS CHAPTER OR CREATED BY THE PUBLIC AUTHORITIES LAW shall be
28 deemed officers or employees of the county, city, village, or town for
29 whose benefit such agency or authority is established OR CREATED.

30 S 5. Subdivision 4 of section 854 of the general municipal law, as
31 amended by chapter 478 of the laws of 2011, is amended to read as
32 follows:

33 (4) "Project" - shall mean any land, any building or other improve-
34 ment, and all real and personal properties located within the state of
35 New York and within or outside or partially within and partially outside
36 the municipality for whose benefit the agency was created, including,
37 but not limited to, machinery, equipment and other facilities deemed
38 necessary or desirable in connection therewith, or incidental thereto,
39 whether or not now in existence or under construction, which shall be
40 suitable for manufacturing, warehousing, research, commercial or indus-
41 trial purposes or other economically sound purposes identified and
42 called for to implement a state designated urban cultural park manage-
43 ment plan as provided in title G of the parks, recreation and historic
44 preservation law and which may include or mean an industrial pollution
45 control facility, a recreation facility, educational or cultural facili-
46 ty, a horse racing facility, a railroad facility or an automobile racing
47 facility, provided, however, no agency shall use its funds OR PROVIDE
48 FINANCIAL ASSISTANCE in respect of any project wholly or partially
49 outside the municipality for whose benefit the agency was created with-
50 out the prior consent thereto by the governing body or bodies of all the
51 other municipalities in which a part or parts of the project is, or is
52 to be, located, AND SUCH PORTION OF THE PROJECT LOCATED OUTSIDE SUCH
53 MUNICIPALITY FOR WHOSE BENEFIT THE AGENCY WAS CREATED SHALL BE CONTIG-
54 UOUS WITH THE PORTION OF THE PROJECT INSIDE SUCH MUNICIPALITY.

55 S 6. Section 883 of the general municipal law, as added by chapter 356
56 of the laws of 1993, is amended to read as follows:

1 S 883. Conflicts of interest. All members, officers, and employees of
2 an agency or INDUSTRIAL DEVELOPMENT authority ESTABLISHED BY THIS CHAP-
3 TER OR CREATED BY THE PUBLIC AUTHORITIES LAW shall be subject to the
4 provisions of article eighteen of this chapter.

5 S 7. Subdivision 9 of section 874 of the general municipal law, as
6 added by section 1 of subpart C of part S of chapter 57 of the laws of
7 2010, is amended to read as follows:

8 (9) (A) Within thirty days of the date that the agency designates a
9 project operator or other person to act as agent of the agency for
10 purposes of providing financial assistance consisting of any sales and
11 compensating use tax exemption to such person, the agency shall file a
12 statement with the department of taxation and finance relating thereto,
13 on a form and in such manner as is prescribed by the commissioner of
14 taxation and finance, identifying each such agent so named by the agen-
15 cy, setting forth the taxpayer identification number of each such agent,
16 giving a brief description of the property and/or services intended to
17 be exempted from such taxes as a result of such appointment as agent,
18 indicating the agency's rough estimate of the value of the property
19 and/or services to which such appointment as agent relates, indicating
20 the date when such designation as agent became effective and indicating
21 the date upon which such designation as agent shall cease.

22 (B) WITHIN THIRTY DAYS OF THE DATE THAT THE AGENCY'S DESIGNATION
23 DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION HAS BEEN AMENDED, TERMI-
24 NATED, BEEN REVOKED, OR BECOME INVALID OR INEFFECTIVE FOR ANY REASON,
25 THE AGENCY SHALL FILE A STATEMENT WITH THE DEPARTMENT OF TAXATION AND
26 FINANCE RELATING THERETO, ON A FORM AND IN SUCH MANNER AS IS PRESCRIBED
27 BY THE COMMISSIONER OF TAXATION AND FINANCE, IDENTIFYING EACH SUCH AGENT
28 SO NAMED BY THE AGENCY IN THE ORIGINAL DESIGNATION AND SETTING FORTH THE
29 TAXPAYER IDENTIFICATION NUMBER AND OTHER IDENTIFYING INFORMATION OF EACH
30 SUCH AGENT, THE DATE AS OF WHICH THE ORIGINAL DESIGNATION WAS AMENDED,
31 TERMINATED, REVOKED, OR BECAME INVALID OR INEFFECTIVE AND THE REASON
32 THEREFOR, TOGETHER WITH A COPY OF THE ORIGINAL DESIGNATION.

33 S 8. Subdivision 4 of section 1963 of the public authorities law, as
34 added by section 2 of subpart C of part S of chapter 57 of the laws of
35 2010, is amended to read as follows;

36 4. (A) Within thirty days of the date that the authority designates a
37 project operator or other person to act as agent of the authority for
38 purposes of providing financial assistance consisting of any sales and
39 compensating use tax exemption to such person, the agency shall file a
40 statement with the department of taxation and finance relating thereto,
41 on a form and in such manner as is prescribed by the commissioner of
42 taxation and finance, identifying each such agent so named by the
43 authority, setting forth the taxpayer identification number of each such
44 agent, giving a brief description of the property and/or services
45 intended to be exempted from such taxes as a result of such appointment
46 as agent, indicating the authority's rough estimate of the value of the
47 property and/or services to which such appointment as agent relates,
48 indicating the date when such designation as agent became effective and
49 indicating the date upon which such designation as agent shall cease.

50 (B) WITHIN THIRTY DAYS OF THE DATE THAT THE AUTHORITY'S DESIGNATION
51 DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION HAS BEEN AMENDED, TERMI-
52 NATED, BEEN REVOKED, OR BECOME INVALID OR INEFFECTIVE FOR ANY REASON,
53 THE AUTHORITY SHALL FILE A STATEMENT WITH THE DEPARTMENT OF TAXATION AND
54 FINANCE RELATING THERETO, ON A FORM AND IN SUCH MANNER AS IS PRESCRIBED
55 BY THE COMMISSIONER OF TAXATION AND FINANCE, IDENTIFYING EACH SUCH AGENT
56 SO NAMED BY THE AUTHORITY IN THE ORIGINAL DESIGNATION AND SETTING FORTH

1 THE TAXPAYER IDENTIFICATION NUMBER AND OTHER IDENTIFYING INFORMATION OF
2 EACH SUCH AGENT, THE DATE AS OF WHICH THE ORIGINAL DESIGNATION WAS
3 AMENDED, TERMINATED, REVOKED, OR BECAME INVALID OR INEFFECTIVE AND THE
4 REASON THEREFOR, TOGETHER WITH A COPY OF THE ORIGINAL DESIGNATION.

5 S 9. Subdivision 4 of section 2326 of the public authorities law, as
6 added by section 3 of subpart C of part S of chapter 57 of the laws of
7 2010, is amended to read as follows:

8 4. (A) Within thirty days of the date that the authority designates a
9 project operator or other person to act as agent of the authority for
10 purposes of providing financial assistance consisting of any sales and
11 compensating use tax exemption to such person, the agency shall file a
12 statement with the department of taxation and finance relating thereto,
13 on a form and in such manner as is prescribed by the commissioner of
14 taxation and finance, identifying each such agent so named by the
15 authority, setting forth the taxpayer identification number of each such
16 agent, giving a brief description of the property and/or services
17 intended to be exempted from such taxes as a result of such appointment
18 as agent, indicating the authority's rough estimate of the value of the
19 property and/or services to which such appointment as agent relates,
20 indicating the date when such designation as agent became effective and
21 indicating the date upon which such designation as agent shall cease.

22 (B) WITHIN THIRTY DAYS OF THE DATE THAT THE AUTHORITY'S DESIGNATION
23 DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION HAS BEEN AMENDED, TERMI-
24 NATED, BEEN REVOKED, OR BECOME INVALID OR INEFFECTIVE FOR ANY REASON,
25 THE AUTHORITY SHALL FILE A STATEMENT WITH THE DEPARTMENT OF TAXATION AND
26 FINANCE RELATING THERETO, ON A FORM AND IN SUCH MANNER AS IS PRESCRIBED
27 BY THE COMMISSIONER OF TAXATION AND FINANCE, IDENTIFYING EACH SUCH AGENT
28 SO NAMED BY THE AUTHORITY IN THE ORIGINAL DESIGNATION AND SETTING FORTH
29 THE TAXPAYER IDENTIFICATION NUMBER AND OTHER IDENTIFYING INFORMATION OF
30 EACH SUCH AGENT, THE DATE AS OF WHICH THE ORIGINAL DESIGNATION WAS
31 AMENDED, TERMINATED, REVOKED, OR BECAME INVALID OR INEFFECTIVE AND THE
32 REASON THEREFOR, TOGETHER WITH A COPY OF THE ORIGINAL DESIGNATION.

33 S 10. Severability. If any provision of this act shall for any reason
34 be finally adjudged by any court of competent jurisdiction to be inval-
35 id, such judgment shall not affect, impair, or invalidate the remainder
36 of this act, but shall be confined in its operation to the provision
37 directly involved in the controversy in which such judgment shall have
38 been rendered. It is hereby declared to be the intent of the legislature
39 that this act would have been enacted even if such invalid provision had
40 not been included in this act.

41 S 11. This act shall take effect immediately and shall apply to (a)
42 any project established, agent or project operator appointed, financial
43 assistance provided, and agreement regarding payments in lieu of taxes
44 entered into, on or after the date this act shall have become a law, (b)
45 any amendment or revision made on or after the date this act shall have
46 become a law to any project established, agent or project operator
47 appointed, financial assistance provided, or payment in lieu of taxes
48 entered into, prior to that date, (c) any state sales and compensating
49 use tax exemption benefits recovered, recaptured, received, or otherwise
50 obtained by an industrial development agency or authority established by
51 the general municipal law or created by the public authorities law on or
52 after such date, and (d) any payments in lieu of state sales and compen-
53 sating use taxes of such an industrial development agency or authority
54 receives on or after such date.

1 Section 1. Paragraph 42 of subdivision (a) of section 1115 of the tax
2 law, as added by section 11 of part W-1 of chapter 109 of the laws of
3 2006, is amended to read as follows:

4 (42) E85, CNG or hydrogen, for use or consumption directly and exclu-
5 sively in the engine of a motor vehicle AND NATURAL GAS PURCHASED AND
6 CONVERTED INTO CNG, FOR USE OR FOR SALE FOR USE OR CONSUMPTION DIRECTLY
7 AND EXCLUSIVELY IN THE ENGINE OF A MOTOR VEHICLE.

8 S 2. This act shall take effect on the first day of a sales tax quar-
9 terly period, as described in subdivision (b) of section 1136 of the tax
10 law, next commencing after this act shall have become a law and shall
11 apply in accordance with the applicable transitional provisions in
12 sections 1106 and 1217 of the tax law; provided, however, that the
13 amendments to paragraph 42 of subdivision (a) of section 1115 of the tax
14 law made by section one of this act shall not affect the repeal of such
15 paragraph and shall be deemed repealed therewith.

16 PART L

17 Section 1. Section 301-c of the tax law is amended by adding a new
18 subdivision (p) to read as follows:

19 (P) REIMBURSEMENT FOR MOTOR FUEL AND DIESEL MOTOR FUEL USED BY A
20 VOLUNTARY AMBULANCE SERVICE, AS DEFINED IN SECTION THREE THOUSAND ONE OF
21 THE PUBLIC HEALTH LAW, A FIRE COMPANY OR A FIRE DEPARTMENT, AS DEFINED
22 IN SECTION THREE OF THE VOLUNTEER FIREFIGHTERS' BENEFIT LAW, OR A VOLUN-
23 TEER RESCUE SQUAD SUPPORTED IN WHOLE OR IN PART BY TAX MONIES, WHERE ANY
24 SUCH ENTITY IS THE PURCHASER, USER OR CONSUMER OF MOTOR FUEL OR DIESEL
25 MOTOR FUEL IN A VEHICLE OWNED AND OPERATED BY SUCH ENTITY AND USED
26 EXCLUSIVELY FOR SUCH ENTITY'S PURPOSES. A PURCHASER SHALL BE ELIGIBLE
27 FOR REIMBURSEMENT OF THE TAX IMPOSED PURSUANT TO THIS ARTICLE IF (1) ANY
28 TAX IMPOSED PURSUANT TO THIS ARTICLE HAS BEEN PAID WITH RESPECT TO SUCH
29 GALLONAGE AND THE ENTIRE AMOUNT OF SUCH TAX HAS BEEN ABSORBED BY SUCH
30 PURCHASER, AND (2) SUCH PURCHASER POSSESSES DOCUMENTARY PROOF SATISFAC-
31 TORY TO THE COMMISSIONER EVIDENCING THE ABSORPTION BY SUCH PURCHASER OF
32 THE ENTIRE AMOUNT OF SUCH TAX. PROVIDED, THAT THE COMMISSIONER SHALL
33 REQUIRE SUCH DOCUMENTARY PROOF TO QUALIFY FOR ANY REIMBURSEMENT PROVIDED
34 HEREUNDER AS THE COMMISSIONER DEEMS APPROPRIATE.

35 S 2. This act shall take effect on the first day of the first month
36 next succeeding the sixtieth day after it shall have become a law.

37 PART M

38 Section 1. Subparagraphs (A) and (B) of paragraph 4 of subdivision (a)
39 of section 1134 of the tax law, subparagraph (A) as amended by section
40 21-a of part U of chapter 61 of the laws of 2011 and subparagraph (B) as
41 amended by chapter 2 of the laws of 1995, are amended to read as
42 follows:

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

1 eleven hundred thirty-seven of this part, or fails to comply with a
2 notice issued by the commissioner pursuant to paragraph three of such
3 subdivision, [or] (vi) has been convicted of a crime provided for in
4 this chapter, OR UNDER THE PENAL LAW OF THIS STATE WHERE THE UNDERLYING
5 CONDUCT CONSTITUTES A CRIME UNDER THIS CHAPTER, OR IS CONVICTED OF A
6 CRIMINAL OFFENSE OF THE UNITED STATES, ANY OTHER STATE, OR A POLITICAL
7 SUBDIVISION OF THIS STATE OR ANY OTHER STATE, WHICH, IF COMMITTED IN
8 THIS STATE, WOULD CONSTITUTE A SIMILAR CRIME UNDER THIS CHAPTER OR (VII)
9 SUCH PERSON WOULD BE INELIGIBLE TO RECEIVE SUCH CERTIFICATE OF AUTHORITY
10 PURSUANT TO CLAUSES (I), (II), (IV) OR (V) OF SUBPARAGRAPH (B) OF THIS
11 PARAGRAPH, the commissioner may revoke or suspend such certificate of
12 authority and all duplicates thereof. Provided, however, that the
13 commissioner may revoke or suspend a certificate of authority based on
14 the grounds set forth in clause (vi) of this subparagraph only where the
15 conviction referred to occurred not more than [one year] FIVE YEARS
16 prior to the date of revocation or suspension.

17 (B) Where a person files a certificate of registration for a certif-
18 icate of authority under this subdivision and in considering such appli-
19 cation the commissioner ascertains that (i) any tax imposed under this
20 chapter or any related statute, as defined in section eighteen hundred
21 of this chapter, has been finally determined to be due from such person
22 and has not been paid in full, (ii) [a] ANY tax [due under this article
23 or any law, ordinance or resolution enacted pursuant to the authority of
24 article twenty-nine] IMPOSED BY OR PURSUANT TO THE AUTHORITY OF THIS
25 CHAPTER OR ANY RELATED STATUTE AS DEFINED IN SECTION EIGHTEEN HUNDRED of
26 this chapter has been finally determined to be due from an officer,
27 director, partner or employee of such person, and, where such person is
28 a limited liability company, also a member or manager of such person, in
29 the officer's, director's, partner's, member's, manager's or employee's
30 capacity as a person required to collect tax on behalf of such person or
31 another person and has not been paid, (iii) such person has been
32 convicted of a crime provided for in this chapter, OR UNDER THE PENAL
33 LAW OF THIS STATE WHERE THE UNDERLYING CONDUCT CONSTITUTES A CRIME UNDER
34 THIS CHAPTER, OR IS CONVICTED OF A CRIMINAL OFFENSE OF THE UNITED
35 STATES, ANY OTHER STATE, OR A POLITICAL SUBDIVISION OF THIS STATE OR ANY
36 OTHER STATE, WHICH, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE A SIMI-
37 LAR CRIME UNDER THIS CHAPTER within [one year] FIVE YEARS from the date
38 on which such certificate of registration is filed, (iv) an officer,
39 director, partner or employee of such person, and, where such person is
40 a limited liability company, also a member or manager of such person,
41 which officer, director, partner, member, manager or employee is a
42 person required to collect tax on behalf of such person filing a certif-
43 icate of registration has in the officer's, director's, partner's,
44 member's, manager's or employee's capacity as a person required to
45 collect tax on behalf of such person or of another person been convicted
46 of a crime [provided for in this chapter] SET FORTH IN CLAUSE (III) OF
47 THIS SUBPARAGRAPH WHERE THE CONVICTION REFERRED TO OCCURRED within [one
48 year] FIVE YEARS from the date on which such certificate of registration
49 is filed, (v) a shareholder owning more than fifty percent of the number
50 of shares of stock of such person (where such person is a corporation)
51 entitling the holder thereof to vote for the election of directors or
52 trustees, OR A PERSON HAVING MORE THAN FIFTY PERCENT OF THE VOTING
53 RIGHTS OF SUCH PERSON (WHERE SUCH PERSON IS A LIMITED LIABILITY COMPA-
54 NY), OR A PERSON HAVING A CONTROLLING INTEREST IN ANY FORM OF PARTNER-
55 SHIP (CONTROLLING INTEREST MEANING MORE THAN FIFTY PERCENT OF THE CAPI-
56 TAL, PROFITS OR BENEFICIAL INTEREST IN SUCH PARTNERSHIP) who owned more

1 than fifty percent of the number of such shares of another person (where
2 such other person is a corporation), OR HAD MORE THAN FIFTY PERCENT OF
3 THE VOTING RIGHTS OF A LIMITED LIABILITY COMPANY, OR HAD CONTROLLING
4 INTEREST IN ANY FORM OF PARTNERSHIP (CONTROLLING INTEREST MEANING MORE
5 THAN FIFTY PERCENT OF THE CAPITAL, PROFITS OR BENEFICIAL INTEREST IN
6 SUCH PARTNERSHIP) at the time any tax imposed under this chapter or any
7 related statute as defined in section eighteen hundred of this chapter
8 was finally determined to be due FROM SUCH CORPORATION, PARTNERSHIP OR
9 LIMITED LIABILITY COMPANY and where such tax has not been paid in full,
10 or at the time such other person was convicted of a crime [provided for
11 in this chapter] SET FORTH IN CLAUSE (III) OF THIS SUBPARAGRAPH WHERE
12 THE CONVICTION REFERRED TO OCCURRED within [one year] FIVE YEARS from
13 the date on which such certificate of registration is filed, [or] (vi) a
14 certificate of authority issued to such person has been revoked or
15 suspended pursuant to subparagraph (A) of this paragraph within [one
16 year] THREE YEARS from the date on which such certificate of registra-
17 tion is filed, (VII) A CERTIFICATE OF AUTHORITY ISSUED TO ANY OTHER
18 PERSON HAS BEEN REVOKED OR SUSPENDED PURSUANT TO SUBPARAGRAPH (A) OF
19 THIS PARAGRAPH WITHIN THREE YEARS FROM THE DATE ON WHICH SUCH CERTIF-
20 ICATE OF REGISTRATION IS FILED AND AN OFFICER, DIRECTOR, MEMBER, MANAG-
21 ER, PARTNER OR EMPLOYEE OF SUCH PERSON WAS, AT THAT TIME OF SUCH REVOC-
22 TION, A PERSON REQUIRED TO COLLECT TAX ON BEHALF OF SUCH PERSON AND SUCH
23 OFFICER, DIRECTOR, MEMBER, MANAGER, PARTNER OR EMPLOYEE IS A PERSON
24 REQUIRED TO COLLECT TAX ON BEHALF OF THE PERSON FILING A CERTIFICATE OF
25 REGISTRATION, OR (VIII) SUCH PERSON HAS COMMITTED AN ACT WHICH WOULD
26 GIVE THE COMMISSIONER THE AUTHORITY TO REVOKE OR SUSPEND SUCH CERTIF-
27 ICATE PURSUANT TO CLAUSE (I), (II), (III), (IV), OR (V) OF SUBPARAGRAPH
28 (A) OF THIS PARAGRAPH, the commissioner may refuse to issue a certif-
29 icate of authority.

30 S 2. Subparagraph (A) of paragraph 4 of subdivision (a) of section
31 1134 of the tax law, as amended by chapter 2 of the laws of 1995, is
32 amended to read as follows:

33 (A) Where a person who holds a certificate of authority (i) willfully
34 fails to file a report or return required by this article, (ii) willful-
35 ly files, causes to be filed, gives or causes to be given a report,
36 return, certificate or affidavit required under this article which is
37 false, (iii) willfully fails to comply with the provisions of paragraph
38 two or three of subdivision (e) of section eleven hundred thirty-seven
39 of this article, (iv) willfully fails to prepay, collect, truthfully
40 account for or pay over any tax imposed under this article or pursuant
41 to the authority of article twenty-nine of this chapter, [or] (v) has
42 been convicted of a crime provided for in this chapter, OR UNDER THE
43 PENAL LAW OF THIS STATE WHERE THE UNDERLYING CONDUCT CONSTITUTES A CRIME
44 UNDER THIS CHAPTER, OR IS CONVICTED OF A CRIMINAL OFFENSE OF THE UNITED
45 STATES, ANY OTHER STATE, OR A POLITICAL SUBDIVISION OF THIS STATE OR ANY
46 OTHER STATE, WHICH, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE A SIMI-
47 LAR CRIME UNDER THIS CHAPTER, OR (VI) SUCH PERSON WOULD BE INELIGIBLE TO
48 RECEIVE SUCH CERTIFICATE OF AUTHORITY PURSUANT TO CLAUSES (I), (II),
49 (IV) OR (V) OF SUBPARAGRAPH (B) OF THIS PARAGRAPH, the commissioner may
50 revoke or suspend such certificate of authority and all duplicates ther-
51 eof. Provided, however, that the commissioner may revoke or suspend a
52 certificate of authority based on the grounds set forth in clause (v) of
53 this subparagraph only where the conviction referred to occurred not
54 more than [one year] FIVE YEARS prior to the date of revocation or
55 suspension.

1 S 3. Subparagraphs (C) and (E) of paragraph 4 and paragraph 5 of
2 subdivision (a) of section 1134 of the tax law, as amended by chapter 2
3 of the laws of 1995, are amended to read as follows:

4 (C) In any of the foregoing instances where the commissioner may
5 suspend or revoke or refuse to issue a certificate of authority, the
6 commissioner may condition the retention or issuance of a certificate of
7 authority upon (I) the filing of a bond [or], (II) the deposit of tax in
8 the manner provided in paragraph two or three of subdivision (e) of
9 section eleven hundred thirty-seven OF THIS PART, (III) NOTWITHSTANDING
10 PARAGRAPH TWO OF SUBDIVISION (A) OF THIS SECTION, THE ISSUANCE OF SUCH
11 CERTIFICATE FOR A SPECIFIED TERM OF LESS THAN THREE YEARS, (IV) THE
12 FILING OF PART-QUARTERLY RETURNS PURSUANT TO PARAGRAPH TWO OF SUBDIVI-
13 SION (A) OF SECTION ELEVEN HUNDRED THIRTY-SIX OF THIS PART, (V) THE
14 FILING OF ANY UNFILED RETURNS, (VI) ENTERING INTO AN INSTALLMENT PAYMENT
15 AGREEMENT OR OTHERWISE MAKING PAYMENT ARRANGEMENTS SATISFACTORY TO THE
16 COMMISSIONER, AND/OR (VII) SUCH OTHER TERMS AS THE COMMISSIONER AND
17 APPLICANT MAY AGREE TO.

18 (E) After the commissioner has suspended or revoked a person's certif-
19 icate of authority, by a notice of suspension or revocation, or has
20 refused to issue a certificate of authority, by a notice of refusal, to
21 such person and such decision has become final as provided for in this
22 paragraph, or after a person's certificate of authority has expired, OR
23 A PERSON WAS NOTIFIED THAT SUCH PERSON'S CERTIFICATE OF AUTHORITY WAS
24 DEEMED TO EXPIRE PURSUANT TO PARAGRAPH FIVE OF SUBDIVISION (A) OF THIS
25 SECTION and such person has failed to renew such certificate or obtain a
26 new certificate of authority, OR WHERE A PERSON REQUIRED TO COLLECT TAX
27 HAS FAILED TO APPLY FOR SUCH CERTIFICATE OF AUTHORITY, ANY such person
28 is prohibited from engaging in any business in this state for which a
29 certificate of authority is required. If despite such prohibition such
30 person continues to be so engaged in business, the commissioner may
31 bring an action to enjoin such person from so engaging in business. NO
32 SUCH ACTION SHALL BE INSTITUTED BY THE COMMISSIONER BEFORE THE COMMIS-
33 SIONER GIVES NOTICE TO THE ATTORNEY GENERAL APPRISING HIM OR HER OF SUCH
34 ACTION AND THE NATURE AND PURPOSE THEREOF, SO THAT THE ATTORNEY GENERAL
35 MAY PARTICIPATE OR JOIN THEREIN IF IN HIS OR HER OPINION THE INTERESTS
36 OF THE STATE SO WARRANT, AND THE COMMISSIONER MAY NOT INSTITUTE SUCH
37 ACTION UNTIL TWO WEEKS AFTER PROVIDING SUCH NOTICE TO THE ATTORNEY
38 GENERAL.

39 (5) If the commissioner considers it necessary for the proper adminis-
40 tration of the sales and use taxes and prepaid taxes imposed by this
41 article and pursuant to the authority of article twenty-nine of this
42 chapter, it may require every person under this section or section
43 twelve hundred fifty-three of this chapter who holds a certificate of
44 authority to file a new certificate of registration in such form and at
45 such time as the commissioner may prescribe and to surrender such
46 certificate of authority. The commissioner may require such filing and
47 such surrender not more often than once every three years; HOWEVER, IN
48 ANY INSTANCE WHERE A HOLDER OF A CERTIFICATE OF AUTHORITY HAS FAILED TO
49 FILE A SALES TAX RETURN AS REQUIRED BY THIS CHAPTER FOR A PERIOD OF AT
50 LEAST ONE YEAR SUCH CERTIFICATE SHALL BE DEEMED EXPIRED AND THE COMMIS-
51 SIONER SHALL REQUIRE A NEW CERTIFICATE OF REGISTRATION PURSUANT TO THIS
52 SUBDIVISION. Upon the filing of such certificate of registration and, TO
53 THE EXTENT REQUIRED BY THE COMMISSIONER, the surrender of such certif-
54 icate of authority, the commissioner shall issue, within such time as
55 the commissioner may prescribe, a new certificate of authority, without

1 charge, to each registrant and a duplicate thereof for each additional
2 place of business of such registrant.

3 S 4. Subparagraph (i) of paragraph 3 of subdivision (a) of section
4 1145 of the tax law, as amended by section 48 of part K of chapter 61 of
5 the laws of 2011, is amended to read as follows:

6 (i) Any person required to obtain a certificate of authority under
7 section eleven hundred thirty-four of this part who, without possessing
8 a valid certificate of authority, (A) sells tangible personal property
9 or services subject to tax, receives amusement charges or operates a
10 hotel, (B) purchases or sells tangible personal property for resale, (C)
11 sells petroleum products, or (D) sells cigarettes shall, in addition to
12 any other penalty imposed by this chapter, be subject to a penalty in an
13 amount [not exceeding] OF five hundred dollars [for the first] A day
14 FROM THE FIRST DAY on which such sales or purchases are made, [plus an
15 amount not exceeding two hundred dollars for each subsequent day on
16 which such sales or purchases are made,] not to exceed [ten] TWENTY
17 thousand dollars in the aggregate. THE WILLFUL FAILURE TO OBTAIN OR
18 MAINTAIN A VALID CERTIFICATE OF AUTHORITY SHALL BE SUBJECT TO A PENALTY
19 IN AN AMOUNT OF ONE THOUSAND DOLLARS A DAY FROM THE FIRST DAY SUCH SALES
20 OR PURCHASES ARE MADE, NOT TO EXCEED FIFTY THOUSAND DOLLARS IN THE
21 AGGREGATE, IN ADDITION TO THE PENALTIES IMPOSED BY SUBDIVISION (B) OF
22 SECTION EIGHTEEN HUNDRED SEVENTEEN OF THIS ARTICLE, OR ANY OTHER PENALTY
23 IMPOSED BY THIS CHAPTER. FOR THE PURPOSES OF THIS SECTION, THE PENALTY
24 FOR THE WILLFUL FAILURE TO OBTAIN OR MAINTAIN A VALID CERTIFICATE OF
25 AUTHORITY SHALL BE ALTERNATE TO THE TWENTY THOUSAND DOLLAR PENALTY
26 DESCRIBED ABOVE, AND THE TERM "WILLFUL" SHALL HAVE THE SAME MEANING AS
27 "WILLFULLY" AS DEFINED IN SUBDIVISION (C) OF SECTION EIGHTEEN HUNDRED
28 ONE OF THIS CHAPTER.

29 S 5. Subparagraphs (ii), (iii) and (iv) of paragraph 3 of subdivision
30 (a) of section 1145 of the tax law, as amended by chapter 65 of the laws
31 of 1985, are amended to read as follows:

32 (ii) Any person who fails to surrender a certificate of authority when
33 a notice of revocation, EXPIRATION or suspension has become final shall,
34 in addition to any other penalty imposed by this chapter, be subject to
35 a penalty in an amount not exceeding five hundred dollars [for the first
36 day of such failure, together with a penalty in an amount not exceeding
37 two hundred dollars for each subsequent] A day [of] FOR such failure,
38 not to exceed [ten] TWENTY thousand dollars in the aggregate.

39 (iii) Any person described in paragraph one or two of subdivision (a)
40 of section eleven hundred thirty-four OF THIS PART who takes possession
41 of or pays for business assets under circumstances requiring notifica-
42 tion by such person to the [tax commission] COMMISSIONER pursuant to
43 subdivision (c) of section eleven hundred forty-one OF THIS PART without
44 having filed a certificate of registration pursuant to section eleven
45 hundred thirty-four OF THIS PART shall, in addition to any other penalty
46 imposed by this chapter, be subject to a penalty in an amount not
47 exceeding two [hundred] THOUSAND dollars.

48 (iv) If the [tax commission] COMMISSIONER determines that any failure
49 or act described in this paragraph was due to reasonable cause and not
50 due to willful neglect, [it] HE OR SHE may remit all or part of such
51 penalty. PROVIDED, HOWEVER, THIS CLAUSE SHALL NOT APPLY TO A PENALTY FOR
52 THE WILLFUL FAILURE TO OBTAIN A CERTIFICATE OF AUTHORITY.

53 S 6. Paragraph 4 of subdivision (a) of section 1145 of the tax law, as
54 amended by chapter 65 of the laws of 1985, is amended to read as
55 follows:

(4) Any person required by this article to display a certificate of authority, who fails to display such certificate in the manner required by this article or any rule or regulation adopted by the [tax commission] COMMISSIONER in connection with such requirement shall, in addition to any other penalty imposed by this chapter, be subject to a penalty of [fifty] ONE HUNDRED dollars. If the [tax commission] COMMISSIONER determines that such failure was due to reasonable cause [and not due to willful neglect], [it] HE OR SHE may remit all or part of such penalty.

S 7. Subdivision (g) of section 1146 of the tax law, as added by chapter 577 of the laws of 1997, is amended to read as follows:

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

(2) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY, FOR THE PURPOSES OF SUBPARAGRAPH (B) OF PARAGRAPH FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-FOUR OF THIS PART, IF THE COMMISSIONER DETERMINES THAT 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 A PERSON REQUIRED TO COLLECT TAX AND HAS NOT BEEN PAID, UPON WRITTEN REQUEST OF THE PERSON WHO FILED THE CERTIFICATE OF REGISTRATION FOR A CERTIFICATE OF AUTHORITY THAT WAS REFUSED, THE COMMISSIONER MAY DISCLOSE TO SUCH PERSON THE NAME OF THE PERSON OR PERSONS REQUIRED TO COLLECT TAX WHOSE TAX LIABILITY OR LIABILITIES WERE GROUNDS FOR THE REFUSAL TO ISSUE THE CERTIFICATE OF AUTHORITY AND THE AMOUNT OR AMOUNTS OF TAX DUE FOR EACH SUCH PERSON OR PERSONS.

S 8. Subdivisions (a) and (b) of section 1817 of the tax law, as amended by section 53 of part K of chapter 61 of the laws of 2011, are amended to read as follows:

(a) Any person required to obtain a certificate of authority under section eleven hundred thirty-four of this chapter who, without possessing a valid certificate of authority, OR POSSESSING A CERTIFICATE OF AUTHORITY THAT WAS DEEMED TO HAVE EXPIRED PURSUANT TO PARAGRAPH FIVE OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-FOUR OF THIS CHAPTER willfully (1) sells tangible personal property or services subject to tax, receives amusement charges or operates a hotel, (2) purchases or sells tangible personal property for resale, or (3) sells petroleum products; and any person who fails to surrender a certificate of authority as required by such article shall be guilty of [a misdemeanor] CRIMINAL TAX FRAUD IN THE FIFTH DEGREE.

(b) Any person required to obtain a certificate of authority under section eleven hundred thirty-four of this chapter who within five years after a determination by the commissioner[,] pursuant to such section[,] to suspend, revoke or refuse to issue a certificate of authority has become final, OR WAS NOTIFIED BY THE COMMISSIONER THAT THE PERSON'S

1 CERTIFICATE OF AUTHORITY WAS DEEMED TO HAVE EXPIRED PURSUANT TO PARA-
2 GRAPH FIVE OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-FOUR OF
3 THIS CHAPTER, and without possession of a valid certificate of authority
4 WILLFULLY (1) sells tangible personal property or services subject to
5 tax, receives amusement charges or operates a hotel, (2) purchases or
6 sells tangible personal property for resale, or (3) sells petroleum
7 products, shall be guilty of [a misdemeanor] CRIMINAL TAX FRAUD IN THE
8 FOURTH DEGREE. It shall be an affirmative defense that such person
9 performed the acts described in this subdivision without knowledge of
10 such determination. Any person who violates a provision of this subdivi-
11 sion, upon conviction, shall be subject to a fine in any amount author-
12 ized by this article, but not less than five hundred dollars, in addi-
13 tion to any other penalty provided by law.

14 S 9. This act shall take effect immediately, provided that the amend-
15 ments to subparagraph (A) of paragraph 4 of subdivision (a) of section
16 1134 of the tax law made by section one of this act shall be subject to
17 the expiration and reversion of such subparagraph pursuant to section 23
18 of part U of chapter 61 of the laws of 2011, as amended when upon such
19 date the provisions of section two of this act shall take effect.

20

PART N

21 Section 1. Subdivision 1 of section 480-a of the tax law is amended by
22 adding a new paragraph (f) to read as follows:

23 (F) WHEN A PERSON FILES AN APPLICATION FOR A CERTIFICATE OF REGISTRA-
24 TION UNDER THIS SECTION, AND IN CONSIDERING SUCH APPLICATION THE COMMIS-
25 SIONER ASCERTAINS THE EXISTENCE OF ONE OR MORE OF THE GROUNDS FOR
26 REFUSAL OF A CERTIFICATE OF AUTHORITY IN CLAUSES (I), (II), (III), (IV),
27 AND (V) OF SUBPARAGRAPH (B) OF PARAGRAPH FOUR OF SUBDIVISION (A) OF
28 SECTION ELEVEN HUNDRED THIRTY-FOUR OF THIS CHAPTER, THE COMMISSIONER MAY
29 REFUSE TO ISSUE A CERTIFICATE OF REGISTRATION. NOTWITHSTANDING ANY
30 PROVISION OF THIS CHAPTER TO THE CONTRARY, IF THE COMMISSIONER REFUSES
31 TO ISSUE A CERTIFICATE OF REGISTRATION UNDER THIS SUBDIVISION, THE
32 COMMISSIONER SHALL UPON WRITTEN REQUEST OF THE PERSON FILING SUCH APPLI-
33 CATION DISCLOSE THE NAME OF THE PERSON OR PERSONS WHOSE TAX LIABILITIES
34 WERE GROUNDS FOR THE REFUSAL TO ISSUE THE CERTIFICATE OF REGISTRATION.

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

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

1 either inconsistent with a provision of this section or is not relevant
2 thereto and with such other modifications as may be necessary to adapt
3 the language of such provisions to the provisions of this section.
4 [Section] EXCEPT AS PROVIDED FOR IN PARAGRAPH (F) OF SUBDIVISION ONE OF
5 THIS SECTION, SECTION eleven hundred thirty-four of such article twen-
6 ty-eight shall not apply to this section. Provided, however, that the
7 commissioner of taxation and finance shall refund or credit an applica-
8 tion fee paid with respect to the registration of a vending machine or a
9 retail place of business in this state through which cigarettes or
10 tobacco products were to be sold if, prior to the beginning of the
11 calendar year with respect to which such registration relates, the
12 certificate of registration described in paragraph (a) of this subdivi-
13 sion is returned to the department of taxation and finance, or if such
14 certificate has been destroyed, the retail dealer or vending machine
15 operator satisfactorily accounts to the commissioner for the missing
16 certificate, but such vending machine or retail place of business may
17 not be used to sell cigarettes or tobacco products in this state during
18 such calendar year, unless it is re-registered. The provisions of
19 section eleven hundred thirty-nine of this chapter shall apply to the
20 refund or credit authorized by the preceding sentence and for such
21 purposes, such refund or credit shall be deemed a refund of tax paid in
22 error provided, however, no interest shall be allowed or paid on any
23 such refund.

24 S 3. This act shall take effect immediately and shall apply to certif-
25 icates of registration applications filed for calendar year 2014 and
26 thereafter.

27

PART O

28 Section 1. Subparagraph (i) of paragraph (b) of subdivision 1 of
29 section 481 of the tax law, as amended by chapter 604 of the laws of
30 2008, is amended to read as follows:

31 (i) In addition to any other penalty imposed by this article, the
32 commissioner may (A) impose a penalty of not more than [one] SIX hundred
33 [fifty] dollars for each two hundred cigarettes, or fraction thereof, in
34 excess of one thousand cigarettes in unstamped or unlawfully stamped
35 packages in the possession or under the control of any person or (B)
36 impose a penalty of not more than two hundred dollars for each ten unaf-
37 fixed false, altered or counterfeit cigarette tax stamps, imprints or
38 impressions, or fraction thereof, in the possession or under the control
39 of any person. In addition, the commissioner may impose a penalty of not
40 more than seventy-five dollars for each fifty cigars or one pound of
41 tobacco, or fraction thereof, in excess of two hundred fifty cigars or
42 five pounds of tobacco in the possession or under the control of any
43 person and a penalty of not more than one hundred fifty dollars for each
44 fifty cigars or pound of tobacco, or fraction thereof, in excess of five
45 hundred cigars or ten pounds of tobacco in the possession or under the
46 control of any person, with respect to which the tobacco products tax
47 has not been paid or assumed by a distributor or tobacco products deal-
48 er; provided, however, that any such penalty imposed shall not exceed
49 seven thousand five hundred dollars in the aggregate. The commissioner
50 may impose a penalty of not more than seventy-five dollars for each
51 fifty cigars or one pound of tobacco, or fraction thereof, in excess of
52 fifty cigars or one pound of tobacco in the possession or under the
53 control of any tobacco products dealer or distributor appointed by the
54 commissioner, and a penalty of not more than one hundred fifty dollars

1 for each fifty cigars or pound of tobacco, or fraction thereof, in
2 excess of two hundred fifty cigars or five pounds of tobacco in the
3 possession or under the control of any such dealer or distributor, with
4 respect to which the tobacco products tax has not been paid or assumed
5 by a distributor or a tobacco products dealer; provided, however, that
6 any such penalty imposed shall not exceed fifteen thousand dollars in
7 the aggregate.

8 S 2. This act shall take effect June 1, 2013.

9 PART P

10 Section 1. The tax law is amended by adding a new section 171-v to
11 read as follows:

12 S 171-V. ENFORCEMENT OF DELINQUENT TAX LIABILITIES THROUGH THE SUSPEN-
13 SION OF DRIVERS' LICENSES. (1) THE COMMISSIONER SHALL ENTER INTO A WRIT-
14 TEN AGREEMENT WITH THE COMMISSIONER OF MOTOR VEHICLES, WHICH SHALL SET
15 FORTH THE PROCEDURES FOR THE TWO DEPARTMENTS TO COOPERATE IN A PROGRAM
16 TO IMPROVE TAX COLLECTION THROUGH THE SUSPENSION OF DRIVERS' LICENSES OF
17 TAXPAYERS WITH PAST-DUE TAX LIABILITIES EQUAL TO OR IN EXCESS OF TEN
18 THOUSAND DOLLARS. FOR THE PURPOSES OF THIS SECTION, THE TERM "TAX
19 LIABILITIES" SHALL MEAN ANY TAX, SURCHARGE, OR FEE ADMINISTERED BY THE
20 COMMISSIONER, OR ANY PENALTY OR INTEREST DUE ON THESE AMOUNTS OWED BY AN
21 INDIVIDUAL WITH A NEW YORK DRIVER'S LICENSE, THE TERM "DRIVER'S LICENSE"
22 MEANS ANY LICENSE ISSUED BY THE DEPARTMENT OF MOTOR VEHICLES, EXCEPT FOR
23 A COMMERCIAL DRIVER'S LICENSE AS DEFINED IN SECTION FIVE HUNDRED ONE-A
24 OF THE VEHICLE AND TRAFFIC LAW, AND THE TERM "PAST-DUE TAX LIABILITIES"
25 MEANS ANY TAX LIABILITY OR LIABILITIES WHICH HAVE BECOME FIXED AND FINAL
26 SUCH THAT THE TAXPAYER NO LONGER HAS ANY RIGHT TO ADMINISTRATIVE OR
27 JUDICIAL REVIEW.

28 (2) THE AGREEMENT SHALL INCLUDE THE FOLLOWING PROVISIONS:

29 (A) THE PROCEDURES BY WHICH THE DEPARTMENT SHALL NOTIFY THE COMMIS-
30 SIONER OF MOTOR VEHICLES OF TAXPAYERS WITH PAST-DUE TAX LIABILITIES,
31 INCLUDING THE PROCEDURES BY WHICH THE DEPARTMENT AND THE DEPARTMENT OF
32 MOTOR VEHICLES SHALL SHARE THE INFORMATION NECESSARY TO IDENTIFY INDIV-
33 IDUALS WITH PAST-DUE TAX LIABILITIES, WHICH SHALL INCLUDE A TAXPAYER'S
34 NAME, SOCIAL SECURITY NUMBER, AND ANY OTHER INFORMATION NECESSARY TO
35 ENSURE THE PROPER IDENTIFICATION OF THE TAXPAYER;

36 (B) THE PROCEDURES BY WHICH THE COMMISSIONER SHALL NOTIFY THE DEPART-
37 MENT OF MOTOR VEHICLES THAT A TAXPAYER HAS SATISFIED HIS OR HER PAST-DUE
38 TAX LIABILITIES, OR HAS ENTERED INTO AN INSTALLMENT PAYMENT AGREEMENT OR
39 HAS OTHERWISE MADE PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMISSION-
40 ER, SO THAT THE SUSPENSION OF THE TAXPAYER'S DRIVER'S LICENSE MAY BE
41 LIFTED; AND

42 (C) ANY OTHER MATTER THE DEPARTMENT AND THE DEPARTMENT OF MOTOR VEHI-
43 CLES SHALL DEEM NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION.

44 (3) THE DEPARTMENT SHALL PROVIDE NOTICE TO THE TAXPAYER OF HIS OR HER
45 INCLUSION IN THE LICENSE SUSPENSION PROGRAM NO LATER THAN FORTY-FIVE
46 DAYS PRIOR TO THE DATE THE DEPARTMENT INTENDS TO INFORM THE COMMISSIONER
47 OF MOTOR VEHICLES OF THE TAXPAYER'S INCLUSION. HOWEVER, NO SUCH NOTICE
48 SHALL BE ISSUED TO A TAXPAYER WHOSE WAGES ARE BEING GARNISHED BY THE
49 DEPARTMENT FOR THE PAYMENT OF PAST-DUE TAX LIABILITIES OR PAST-DUE CHILD
50 SUPPORT OR COMBINED CHILD AND SPOUSAL SUPPORT ARREARS. NOTICE SHALL BE
51 PROVIDED BY FIRST CLASS MAIL TO THE TAXPAYER'S LAST KNOWN ADDRESS AS
52 SUCH ADDRESS APPEARS IN THE ELECTRONIC SYSTEMS OR RECORDS OF THE DEPART-
53 MENT. SUCH NOTICE SHALL INCLUDE:

1 (A) A CLEAR STATEMENT OF THE PAST-DUE TAX LIABILITIES ALONG WITH A
2 STATEMENT THAT THE DEPARTMENT SHALL PROVIDE TO THE DEPARTMENT OF MOTOR
3 VEHICLES THE TAXPAYER'S NAME, SOCIAL SECURITY NUMBER AND ANY OTHER IDEN-
4 TIFYING INFORMATION NECESSARY FOR THE PURPOSE OF SUSPENDING HIS OR HER
5 DRIVER'S LICENSE PURSUANT TO THIS SECTION AND SUBDIVISION FOUR-F OF
6 SECTION FIVE HUNDRED TEN OF THE VEHICLE AND TRAFFIC LAW FORTY-FIVE DAYS
7 AFTER THE MAILING OR SENDING OF SUCH NOTICE TO THE TAXPAYER;

8 (B) A STATEMENT THAT THE TAXPAYER MAY AVOID SUSPENSION OF HIS OR HER
9 LICENSE BY FULLY SATISFYING THE PAST-DUE TAX LIABILITIES OR BY MAKING
10 PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMISSIONER, AND INFORMATION
11 AS TO HOW THE TAXPAYER CAN PAY THE PAST-DUE TAX LIABILITIES TO THE
12 DEPARTMENT, ENTER INTO A PAYMENT ARRANGEMENT OR REQUEST ADDITIONAL
13 INFORMATION;

14 (C) A STATEMENT THAT THE TAXPAYER'S RIGHT TO PROTEST THE NOTICE IS
15 LIMITED TO RAISING ISSUES SET FORTH IN SUBDIVISION FIVE OF THIS SECTION;

16 (D) A STATEMENT THAT THE SUSPENSION OF THE TAXPAYER'S DRIVER'S LICENSE
17 SHALL CONTINUE UNTIL THE PAST-DUE TAX LIABILITIES ARE FULLY PAID OR THE
18 TAXPAYER MAKES PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMISSIONER;
19 AND

20 (E) ANY OTHER INFORMATION THAT THE COMMISSIONER DEEMS NECESSARY.

21 (4) AFTER THE EXPIRATION OF THE FORTY-FIVE DAY PERIOD, IF THE TAXPAYER
22 HAS NOT CHALLENGED THE NOTICE PURSUANT TO SUBDIVISION FIVE OF THIS
23 SECTION AND THE TAXPAYER HAS FAILED TO SATISFY THE PAST-DUE TAX LIABIL-
24 ITIES OR MAKE PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMISSIONER, THE
25 DEPARTMENT SHALL NOTIFY THE DEPARTMENT OF MOTOR VEHICLES, IN THE MANNER
26 AGREED UPON BY THE TWO AGENCIES, THAT THE TAXPAYER'S DRIVER'S LICENSE
27 SHALL BE SUSPENDED PURSUANT TO SUBDIVISION FOUR-F OF SECTION FIVE
28 HUNDRED TEN OF THE VEHICLE AND TRAFFIC LAW; PROVIDED, HOWEVER, IN ANY
29 CASE WHERE A TAXPAYER FAILS TO COMPLY WITH THE TERMS OF A CURRENT
30 PAYMENT ARRANGEMENT MORE THAN ONCE WITHIN A TWELVE MONTH PERIOD, THE
31 COMMISSIONER SHALL IMMEDIATELY NOTIFY THE DEPARTMENT OF MOTOR VEHICLES
32 THAT THE TAXPAYER'S DRIVER'S LICENSE SHALL BE SUSPENDED.

33 (5) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AND EXCEPT AS SPECIF-
34 ICALLY PROVIDED HEREIN, THE TAXPAYER SHALL HAVE NO RIGHT TO COMMENCE A
35 COURT ACTION OR PROCEEDING OR TO ANY OTHER LEGAL RECOURSE AGAINST THE
36 DEPARTMENT OR THE DEPARTMENT OF MOTOR VEHICLES REGARDING A NOTICE ISSUED
37 BY THE DEPARTMENT PURSUANT TO THIS SECTION AND THE REFERRAL BY THE
38 DEPARTMENT OF ANY TAXPAYER WITH PAST-DUE TAX LIABILITIES TO THE DEPART-
39 MENT OF MOTOR VEHICLES PURSUANT TO THIS SECTION FOR THE PURPOSE OF
40 SUSPENDING THE TAXPAYER'S DRIVER'S LICENSE. A TAXPAYER MAY ONLY CHAL-
41 LENGE SUCH SUSPENSION OR REFERRAL ON THE GROUNDS THAT (I) THE INDIVIDUAL
42 TO WHOM THE NOTICE WAS PROVIDED IS NOT THE TAXPAYER AT ISSUE; (II) THE
43 PAST-DUE TAX LIABILITIES WERE SATISFIED; (III) THE TAXPAYER'S WAGES ARE
44 BEING GARNISHED BY THE DEPARTMENT FOR THE PAYMENT OF THE PAST-DUE TAX
45 LIABILITIES AT ISSUE OR FOR PAST-DUE CHILD SUPPORT OR COMBINED CHILD AND
46 SPOUSAL SUPPORT ARREARS; (IV) THE TAXPAYER'S WAGES ARE BEING GARNISHED
47 FOR THE PAYMENT OF PAST-DUE CHILD SUPPORT OR COMBINED CHILD AND SPOUSAL
48 SUPPORT ARREARS PURSUANT TO AN INCOME EXECUTION ISSUED PURSUANT TO
49 SECTION FIVE THOUSAND TWO HUNDRED FORTY-ONE OF THE CIVIL PRACTICE LAW
50 AND RULES; (V) THE TAXPAYER'S DRIVER'S LICENSE IS A COMMERCIAL DRIVER'S
51 LICENSE AS DEFINED IN SECTION FIVE HUNDRED ONE-A OF THE VEHICLE AND
52 TRAFFIC LAW; OR (VI) THE DEPARTMENT INCORRECTLY FOUND THAT THE TAXPAYER
53 HAS FAILED TO COMPLY WITH THE TERMS OF A PAYMENT ARRANGEMENT MADE WITH
54 THE COMMISSIONER MORE THAN ONCE WITHIN A TWELVE MONTH PERIOD FOR THE
55 PURPOSES OF SUBDIVISION THREE OF THIS SECTION.

1 HOWEVER, NOTHING IN THIS SUBDIVISION IS INTENDED TO LIMIT A TAXPAYER
2 FROM SEEKING RELIEF FROM JOINT AND SEVERAL LIABILITY PURSUANT TO SECTION
3 SIX HUNDRED FIFTY-FOUR OF THIS CHAPTER, TO THE EXTENT THAT HE OR SHE IS
4 ELIGIBLE PURSUANT TO THAT SUBDIVISION, OR ESTABLISHING TO THE DEPARTMENT
5 THAT THE ENFORCEMENT OF THE UNDERLYING TAX LIABILITIES HAS BEEN STAYED
6 BY THE FILING OF A PETITION PURSUANT TO THE BANKRUPTCY CODE OF 1978
7 (TITLE ELEVEN OF THE UNITED STATES CODE).

8 (6) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY, THE
9 DEPARTMENT MAY DISCLOSE TO THE DEPARTMENT OF MOTOR VEHICLES THE INFORMA-
10 TION DESCRIBED IN THIS SECTION THAT, IN THE DISCRETION OF THE COMMIS-
11 SIONER, IS NECESSARY FOR THE PROPER IDENTIFICATION OF A TAXPAYER
12 REFERRED TO THE DEPARTMENT OF MOTOR VEHICLES FOR THE PURPOSE OF SUSPEND-
13 ING THE TAXPAYER'S DRIVER'S LICENSE PURSUANT TO THIS SECTION AND SUBDI-
14 VISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THE VEHICLE AND TRAFFIC
15 LAW. THE DEPARTMENT OF MOTOR VEHICLES MAY NOT REDISCLOSE THIS INFORMA-
16 TION TO ANY OTHER ENTITY OR PERSON, OTHER THAN FOR THE PURPOSE OF
17 INFORMING THE TAXPAYER THAT HIS OR HER DRIVER'S LICENSE HAS BEEN
18 SUSPENDED.

19 (7) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE ACTIVITIES TO
20 COLLECT PAST-DUE TAX LIABILITIES UNDERTAKEN BY THE DEPARTMENT PURSUANT
21 TO THIS SECTION SHALL NOT IN ANY WAY LIMIT, RESTRICT OR IMPAIR THE
22 DEPARTMENT FROM EXERCISING ANY OTHER AUTHORITY TO COLLECT OR ENFORCE TAX
23 LIABILITIES UNDER ANY OTHER APPLICABLE PROVISION OF LAW.

24 S 2. Section 510 of the vehicle and traffic law is amended by adding a
25 new subdivision 4-f to read as follows:

26 4-F. SUSPENSION FOR FAILURE TO PAY PAST-DUE TAX LIABILITIES. (1) THE
27 COMMISSIONER SHALL ENTER INTO A WRITTEN AGREEMENT WITH THE COMMISSIONER
28 OF TAXATION AND FINANCE, AS PROVIDED IN SECTION ONE HUNDRED
29 SEVENTY-ONE-V OF THE TAX LAW, WHICH SHALL SET FORTH THE PROCEDURES FOR
30 SUSPENDING THE DRIVERS' LICENSES OF INDIVIDUALS WHO HAVE FAILED TO
31 SATISFY PAST-DUE TAX LIABILITIES AS SUCH TERMS ARE DEFINED IN SUCH
32 SECTION.

33 (2) UPON RECEIPT OF NOTIFICATION FROM THE DEPARTMENT OF TAXATION AND
34 FINANCE THAT AN INDIVIDUAL HAS FAILED TO SATISFY PAST-DUE TAX LIABIL-
35 ITIES, OR TO OTHERWISE MAKE PAYMENT ARRANGEMENTS SATISFACTORY TO THE
36 COMMISSIONER OF TAXATION AND FINANCE, OR HAS FAILED TO COMPLY WITH THE
37 TERMS OF SUCH PAYMENT ARRANGEMENTS MORE THAN ONCE WITHIN A TWELVE MONTH
38 PERIOD, THE COMMISSIONER OR HIS OR HER AGENT SHALL SUSPEND THE LICENSE
39 OF SUCH PERSON TO OPERATE A MOTOR VEHICLE. IN THE EVENT SUCH PERSON IS
40 UNLICENSED, SUCH PERSON'S PRIVILEGE OF OBTAINING A LICENSE SHALL BE
41 SUSPENDED. SUCH SUSPENSION SHALL TAKE EFFECT NO LATER THAN FIFTEEN DAYS
42 FROM THE DATE OF THE NOTICE THEREOF PROVIDED TO THE PERSON WHOSE LICENSE
43 OR PRIVILEGE OF OBTAINING A LICENSE IS TO BE SUSPENDED, AND SHALL REMAIN
44 IN EFFECT UNTIL SUCH TIME AS THE COMMISSIONER IS ADVISED THAT THE PERSON
45 HAS SATISFIED HIS OR HER PAST-DUE TAX LIABILITIES, OR HAS OTHERWISE MADE
46 PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMISSIONER OF TAXATION AND
47 FINANCE.

48 (3) FROM THE TIME THE COMMISSIONER IS NOTIFIED BY THE DEPARTMENT OF
49 TAXATION AND FINANCE UNDER THIS SECTION, THE COMMISSIONER SHALL BE
50 RELIEVED FROM ALL LIABILITY TO SUCH PERSON WHICH MAY OTHERWISE ARISE
51 UNDER THIS SECTION, AND SUCH PERSON SHALL HAVE NO RIGHT TO COMMENCE A
52 COURT ACTION OR PROCEEDING OR TO ANY OTHER LEGAL RECOURSE AGAINST THE
53 COMMISSIONER TO RECOVER SUCH DRIVING PRIVILEGES AS AUTHORIZED BY THIS
54 SECTION. IN ADDITION, NOTWITHSTANDING ANY OTHER PROVISION OF LAW, SUCH
55 PERSON SHALL HAVE NO RIGHT TO A HEARING OR APPEAL PURSUANT TO THIS CHAP-

TER WITH RESPECT TO A SUSPENSION OF DRIVING PRIVILEGES AS AUTHORIZED BY THIS SECTION.

(4) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE DEPARTMENT SHALL FURNISH THE DEPARTMENT OF TAXATION AND FINANCE WITH THE INFORMATION NECESSARY FOR THE PROPER IDENTIFICATION OF AN INDIVIDUAL REFERRED TO THE DEPARTMENT FOR THE PURPOSE OF DRIVER'S LICENSE SUSPENSION PURSUANT TO THIS SECTION AND SECTION ONE HUNDRED SEVENTY-ONE-V OF THE TAX LAW. THIS SHALL INCLUDE THE INDIVIDUAL'S NAME, SOCIAL SECURITY NUMBER AND ANY OTHER INFORMATION THE COMMISSIONER OF MOTOR VEHICLES DEEMS NECESSARY.

(5) ANY PERSON WHOSE DRIVER'S LICENSE IS SUSPENDED PURSUANT TO PARAGRAPH TWO OF THIS SUBDIVISION MAY APPLY FOR THE ISSUANCE OF A RESTRICTED USE LICENSE AS PROVIDED IN SECTION FIVE HUNDRED THIRTY OF THIS TITLE.

S 3. Subdivision 7 of section 511 of the vehicle and traffic law, as added by chapter 81 of the laws of 1995, is amended to read as follows:

7. Exceptions. When a person is convicted of a violation of subdivision one [of] OR two of this section, and the suspension was issued pursuant to (A) subdivision four-e of section five hundred ten of this article due to a support arrears, OR (B) SUBDIVISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THE ARTICLE DUE TO PAST-DUE TAX LIABILITIES, the mandatory penalties set forth in subdivision one or two of this section shall not be applicable if, on or before the return date or subsequent adjourned date, such person presents proof that such support arrears OR PAST-DUE TAX LIABILITIES have been satisfied as shown by certified check, notice issued by the court ordering the suspension, or notice from a support collection unit OR DEPARTMENT OF TAXATION AND FINANCE AS APPLICABLE. The sentencing court shall take the satisfaction of arrears OR THE PAYMENT OF THE PAST-DUE TAX LIABILITIES into account when imposing a sentence for any such conviction. FOR LICENSES SUSPENDED FOR NON-PAYMENT OF PAST-DUE TAX LIABILITIES, THE COURT SHALL ALSO TAKE INTO CONSIDERATION PROOF, IN THE FORM OF A NOTICE FROM THE DEPARTMENT OF TAXATION AND FINANCE, THAT SUCH PERSON HAS MADE PAYMENT ARRANGEMENTS THAT ARE SATISFACTORY TO THE COMMISSIONER OF TAXATION AND FINANCE.

S 4. Section 530 of the vehicle and traffic law is amended by adding a new subdivision 5-b to read as follows:

(5-B) ISSUANCE OF A RESTRICTED LICENSE SHALL NOT BE DENIED TO ANY PERSON WHOSE LICENSE IS SUSPENDED PURSUANT TO SUBDIVISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THIS TITLE FOR ANY REASON OTHER THAN SUCH PERSON'S FAILURE TO OTHERWISE HAVE A VALID OR RENEWABLE DRIVER'S LICENSE. THE RESTRICTIONS ON THE TYPES OF VEHICLES WHICH MAY BE OPERATED WITH A RESTRICTED LICENSE CONTAINED IN SUCH SUBDIVISION FIVE OF THIS SECTION SHALL NOT BE APPLICABLE TO A RESTRICTED LICENSE ISSUED TO A PERSON PURSUANT TO SUBDIVISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THIS TITLE. THE ISSUANCE OF A RESTRICTED LICENSE ISSUED AS A RESULT OF A SUSPENSION UNDER SUBDIVISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THIS TITLE SHALL NOT IN ANY WAY AFFECT A PERSON'S ELIGIBILITY FOR A RESTRICTED LICENSE AT SOME FUTURE TIME.

S 5. Section 2335-a of the insurance law, as added by chapter 152 of the laws of 1998, is amended to read as follows:

S 2335-a. Prohibition of rate increases for persons involved in emergency use of vehicles OR DUE TO A DRIVER'S LICENSE SUSPENSION FOR PAST-DUE TAX LIABILITIES.

(A) No insurer authorized to transact or transacting business in this state, or controlling or controlled by or under common control by or with an insurer authorized to transact or transacting business in this state, [which] THAT sells a policy providing motor vehicle liability

1 insurance coverage in this state, shall increase the policy premium in
2 connection with the insurance permitted or required by this chapter
3 solely because the insured or any other person who customarily operates
4 an automobile covered by the policy has had an accident while operating
5 a motor vehicle in response to an emergency, where the insured was
6 either responding to a call to duty as a paid or volunteer member of any
7 police or fire department or first aid squad[;], or was performing any
8 other function on behalf of the state, any political subdivision there-
9 of, a public authority, public benefit corporation, or any other govern-
10 mental agency or instrumentality in a public emergency.

11 (B) NO INSURER AUTHORIZED TO TRANSACT OR TRANSACTING BUSINESS IN THIS
12 STATE, OR CONTROLLING OR CONTROLLED BY OR UNDER COMMON CONTROL BY OR
13 WITH AN INSURER AUTHORIZED TO TRANSACT OR TRANSACTING BUSINESS IN THIS
14 STATE, THAT SELLS A POLICY PROVIDING MOTOR VEHICLE INSURANCE COVERAGE IN
15 THIS STATE SHALL INCREASE THE POLICY PREMIUM IN CONNECTION WITH THE
16 INSURANCE PERMITTED OR REQUIRED BY THIS CHAPTER SOLELY BECAUSE THE
17 INSURED OR ANY OTHER PERSON WHO CUSTOMARILY OPERATES AN AUTOMOBILE
18 COVERED BY THE POLICY HAS HAD HIS OR HER DRIVER'S LICENSE SUSPENDED
19 PURSUANT TO SUBDIVISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THE VEHI-
20 CLE AND TRAFFIC LAW FOR PAST-DUE TAX LIABILITIES, AS DEFINED IN SECTION
21 ONE HUNDRED SEVENTY-ONE-V OF THE TAX LAW, OR HAS APPLIED FOR OR RECEIVED
22 A RESTRICTED USE LICENSE AS PROVIDED FOR BY SECTION FIVE HUNDRED THIRTY
23 OF THE VEHICLE AND TRAFFIC LAW, AS THE RESULT OF SUCH SUSPENSION.

24 S 6. The insurance law is amended by adding a new section 2616 to read
25 as follows:

26 S 2616. DISCRIMINATION BECAUSE OF A DRIVER'S LICENSE SUSPENSION FOR
27 PAST-DUE TAX LIABILITIES. AN INDIVIDUAL OR ENTITY SHALL NOT REFUSE TO
28 ISSUE ANY POLICY OF MOTOR VEHICLE INSURANCE, OR CANCEL OR DECLINE TO
29 RENEW SUCH POLICY, BECAUSE THE APPLICANT OR POLICY HOLDER HAS HAD HIS OR
30 HER DRIVER'S LICENSE SUSPENDED PURSUANT TO SUBDIVISION FOUR-F OF SECTION
31 FIVE HUNDRED TEN OF THE VEHICLE AND TRAFFIC LAW FOR PAST-DUE TAX LIABIL-
32 ITIES, AS DEFINED IN SECTION ONE HUNDRED SEVENTY-ONE-V OF THE TAX LAW,
33 OR HAS APPLIED FOR OR RECEIVED A RESTRICTED USE LICENSE, AS PROVIDED FOR
34 BY SECTION FIVE HUNDRED THIRTY OF THE VEHICLE AND TRAFFIC LAW, AS THE
35 RESULT OF SUCH SUSPENSION.

36 S 7. This act shall take effect immediately; provided, however, that
37 the department of taxation and finance and the department of motor vehi-
38 cles shall have up to six months after this act shall have become a law
39 to execute the written agreement and implement the necessary procedures
40 as described in sections one and two of this act.

41 PART Q

42 Section 1. The tax law is amended by adding a new section 174-c to
43 read as follows:

44 S 174-C. SERVICE OF INCOME EXECUTION WITHOUT FILING A WARRANT. 1.
45 NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, IF ANY INDIVIDUAL
46 LIABLE FOR THE PAYMENT OF ANY TAX OR OTHER IMPOSITION ADMINISTERED BY
47 THE COMMISSIONER, INCLUDING ANY ADDITIONS TO TAX, PENALTIES AND INTEREST
48 IN CONNECTION THEREWITH, FAILS TO PAY OR TO COLLECT OR PAY OVER THE SAME
49 WITHIN TWENTY-ONE CALENDAR DAYS AFTER NOTICE AND DEMAND THEREFOR IS
50 GIVEN TO SUCH INDIVIDUAL (TEN BUSINESS DAYS IF THE AMOUNT FOR WHICH SUCH
51 NOTICE AND DEMAND IS MADE EQUALS OR EXCEEDS ONE HUNDRED THOUSAND
52 DOLLARS), THE COMMISSIONER IS AUTHORIZED TO SERVE AN INCOME EXECUTION ON
53 THE INDIVIDUAL OR ON THE PERSON FROM WHOM THE INDIVIDUAL IS RECEIVING,
54 OR WILL RECEIVE, MONEY, WITHOUT FILING A WARRANT IN THE OFFICE OF THE

1 CLERK OF THE APPROPRIATE COUNTY OR IN THE DEPARTMENT OF STATE AS
2 PROVIDED FOR IN THIS CHAPTER. FOR PURPOSES OF SERVING AN INCOME
3 EXECUTION PURSUANT TO THIS SECTION, THE COMMISSIONER SHALL, IN THE RIGHT
4 OF THE PEOPLE OF THE STATE OF NEW YORK, BE DEEMED TO HAVE OBTAINED JUDG-
5 MENT AGAINST THE INDIVIDUAL FOR THE TAX OR OTHER IMPOSITION, AND THE
6 ADDITIONS TO TAX, PENALTIES AND INTEREST IN CONNECTION THEREOF, AND
7 THERE SHALL BE A LIEN ON THE AMOUNT OF THE INDIVIDUAL'S INCOME THAT MAY
8 BE GARNISHED. IF THE COMMISSIONER CHOOSES TO SERVE AN INCOME EXECUTION
9 WITHOUT FILING A WARRANT PURSUANT TO THIS SECTION, THE COMMISSIONER MUST
10 SERVE THE INCOME EXECUTION WITHIN SIX YEARS AFTER THE FIRST DATE A
11 WARRANT COULD BE FILED PURSUANT TO SECTION ONE HUNDRED SEVENTY-FOUR-B OF
12 THIS ARTICLE. WHEN SERVING AN INCOME EXECUTION WITHOUT THE FILING OF A
13 WARRANT, THE COMMISSIONER SHALL FOLLOW THE PROCEDURES SET FORTH IN
14 SECTION FIVE THOUSAND TWO HUNDRED THIRTY-ONE OF THE CIVIL PRACTICE LAW
15 AND RULES, WITH THE REFERENCES IN SUCH SECTION TO "SHERIFF" TO BE READ
16 AS REFERRING TO THE COMMISSIONER OR THE DEPARTMENT. SUCH INCOME
17 EXECUTION SHALL CONTINUE TO BE IN EFFECT UNTIL SUCH LIABILITY IS SATIS-
18 FIED OR UNTIL TWENTY YEARS FROM THE FIRST DATE A WARRANT COULD BE FILED
19 BY THE COMMISSIONER PURSUANT TO SECTION ONE HUNDRED SEVENTY-FOUR-B OF
20 THIS ARTICLE, WHETHER OR NOT A WARRANT IS FILED FOR THAT LIABILITY.

21 2. THE PROVISIONS OF THIS SECTION SHALL BE IN ADDITION TO THE PROCE-
22 DURES RELATING TO COLLECTION OR ADMINISTRATION PROVIDED WITH RESPECT TO
23 ANY TAX OR OTHER IMPOSITION ADMINISTERED BY THE COMMISSIONER. WHERE A
24 PROVISION OF THIS SECTION IS INCONSISTENT WITH ANY SUCH PROVISION WITH
25 RESPECT TO SUCH TAX OR OTHER IMPOSITION, THE PROVISIONS OF THIS SECTION
26 WILL APPLY. NOTHING IN THIS SECTION SHALL PREVENT THE COMMISSIONER FROM
27 TIMELY FILING A WARRANT IN ORDER TO PURSUE ANY OF THE COLLECTION METHODS
28 AUTHORIZED UNDER ARTICLE FIFTY-TWO OF THE CIVIL PRACTICE LAW AND RULES.

29 S 2. This act shall take effect immediately.

30

PART R

31 Section 1. Subparagraph (i) of the opening paragraph of section 1210
32 of the tax law is REPEALED and a new subparagraph (i) is added to read
33 as follows:

34 (I) WITH RESPECT TO A CITY OF ONE MILLION OR MORE AND THE FOLLOWING
35 COUNTIES (1) ANY SUCH CITY HAVING A POPULATION OF ONE MILLION OR MORE IS
36 HEREBY AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND LOCAL LAWS, ORDI-
37 NANCES OR RESOLUTIONS IMPOSING SUCH TAXES IN ANY SUCH CITY, AT THE RATE
38 OF FOUR AND ONE-HALF PERCENT;

39 (2) THE FOLLOWING COUNTIES THAT IMPOSE TAXES DESCRIBED IN SUBDIVISION
40 (A) OF THIS SECTION AT THE RATE OF THREE PERCENT AS AUTHORIZED ABOVE IN
41 THIS PARAGRAPH FOR SUCH COUNTIES ARE HEREBY FURTHER AUTHORIZED AND
42 EMPOWERED TO ADOPT AND AMEND LOCAL LAWS, ORDINANCES, OR RESOLUTIONS
43 IMPOSING SUCH TAXES DESCRIBED IN SUBDIVISION (A) OF THIS SECTION AT THE
44 FOLLOWING ADDITIONAL RATES, IN QUARTER PERCENT INCREMENTS, WHICH RATES
45 ARE ADDITIONAL TO THE THREE PERCENT RATE AUTHORIZED ABOVE IN THIS PARA-
46 GRAPH, AND, IN THE CASE OF A COUNTY AUTHORIZED TO IMPOSE MORE THAN ONE
47 ADDITIONAL RATE, ALSO IN ADDITION TO EACH OTHER, FOR EACH SUCH COUNTY,
48 PROVIDED THAT (A) THE COUNTY OF ROCKLAND MAY IMPOSE ADDITIONAL RATES OF
49 FIVE-EIGHTHS PERCENT AND THREE-EIGHTHS PERCENT, IN LIEU OF IMPOSING SUCH
50 ADDITIONAL RATE IN QUARTER PERCENT INCREMENTS; (B) THE COUNTY OF ONTARIO
51 MAY IMPOSE ADDITIONAL RATES OF ONE-EIGHTH PERCENT AND THREE-EIGHTHS
52 PERCENT, IN LIEU OF IMPOSING SUCH ADDITIONAL RATE IN QUARTER PERCENT
53 INCREMENTS; (C) THREE-QUARTERS PERCENT OF THE ADDITIONAL RATE AUTHORIZED

1 TO BE IMPOSED BY THE COUNTY OF NASSAU SHALL BE SUBJECT TO THE LIMITATION
2 SET FORTH IN SECTION TWELVE HUNDRED SIXTY-TWO-E OF THIS ARTICLE:

3 (A) ONE-QUARTER OF ONE PERCENT - NONE.

4 (B) ONE-HALF OF ONE PERCENT - CHAUTAUQUA, ONTARIO, SCHENECTADY.

5 (C) THREE-QUARTERS OF ONE PERCENT - DUTCHESS, ESSEX, JEFFERSON, LEWIS,
6 ORANGE.

7 (D) ONE PERCENT - ALBANY, BROOME, CATTARAUGUS, CAYUGA, CHEMUNG,
8 CHENANGO, CLINTON, COLUMBIA, CORTLAND, DELAWARE, FRANKLIN, FULTON, GENE-
9 SEE, GREENE, LIVINGSTON, MADISON, MONROE, MONTGOMERY, NIAGARA, ONONDAGA,
10 ORLEANS, OSWEGO, OTSEGO, PUTNAM, RENSSELAER, ROCKLAND, SCHOHARIE,
11 SCHUYLER, SENECA, STEUBEN, SUFFOLK, SULLIVAN, TIOGA, TOMPKINS, ULSTER,
12 WAYNE, WYOMING, YATES.

13 (E) ONE AND ONE-QUARTER PERCENT - HERKIMER, NASSAU.

14 (F) ONE AND ONE-HALF PERCENT - ALLEGANY.

15 (G) ONE AND THREE-QUARTERS PERCENT - ERIE, ONEIDA.

16 S 2. Subparagraph (ii) of the opening paragraph of section 1210 of the
17 tax law is REPEALED and a new subparagraph (ii) is added to read as
18 follows:

19 (II) THE FOLLOWING CITIES THAT IMPOSE TAXES DESCRIBED IN SUBDIVISION

20 (A) OF THIS SECTION AT THE RATE OF ONE AND ONE-HALF PERCENT OR HIGHER AS
21 AUTHORIZED ABOVE IN THIS PARAGRAPH FOR SUCH CITIES ARE HEREBY FURTHER
22 AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND LOCAL LAWS, ORDINANCES, OR
23 RESOLUTIONS IMPOSING SUCH TAXES DESCRIBED IN SUBDIVISION (A) OF THIS
24 SECTION AT THE FOLLOWING ADDITIONAL RATES, IN QUARTER PERCENT INCRE-
25 MENTS, WHICH RATES ARE ADDITIONAL TO THE ONE AND ONE-HALF PERCENT OR
26 HIGHER RATES AUTHORIZED ABOVE IN THIS PARAGRAPH AND, IN THE CASE OF A
27 CITY AUTHORIZED TO IMPOSE MORE THAN ONE ADDITIONAL RATE, ALSO IN ADDI-
28 TION TO EACH OTHER, FOR EACH SUCH CITY:

29 (1) ONE-QUARTER OF ONE PERCENT - NONE.

30 (2) ONE-HALF OF ONE PERCENT - NONE.

31 (3) THREE-QUARTERS OF ONE PERCENT - NONE.

32 (4) ONE PERCENT - MOUNT VERNON; YONKERS; OSWEGO, FOR THE PERIOD BEGIN-
33 NING DECEMBER FIRST, TWO THOUSAND ELEVEN, AND ENDING NOVEMBER THIRTIETH,
34 TWO THOUSAND THIRTEEN; NEW ROCHELLE, FOR THE PERIOD BEGINNING JANUARY
35 FIRST, TWO THOUSAND TWELVE, AND ENDING DECEMBER THIRTY-FIRST, TWO THOU-
36 SAND THIRTEEN; WHITE PLAINS, FOR THE PERIOD BEGINNING SEPTEMBER FIRST,
37 TWO THOUSAND ELEVEN, AND ENDING AUGUST THIRTY-FIRST, TWO THOUSAND THIR-
38 TEEN.

39 (5) ONE AND ONE-QUARTER PERCENT - NONE.

40 (6) ONE AND ONE-HALF PERCENT - NONE.

41 (7) ONE AND THREE-QUARTERS PERCENT - NONE.

42 S 3. Subparagraph (iii) of the opening paragraph of section 1210 of
43 the tax law is REPEALED and a new subparagraph (iii) is added to read as
44 follows:

45 (III) THE MAXIMUM RATE REFERRED TO IN SECTION TWELVE HUNDRED
46 TWENTY-FOUR OF THIS ARTICLE SHALL BE CALCULATED WITHOUT REFERENCE TO THE
47 ADDITIONAL RATES AUTHORIZED FOR COUNTIES, OTHER THAN THE COUNTIES OF
48 CAYUGA, CORTLAND, FULTON, MADISON, AND OTSEGO IN SUBPARAGRAPH (I) AND
49 THE CITIES IN SUBPARAGRAPH (II) OF THIS PARAGRAPH.

50 S 4. Section 1210 of the tax law is amended by adding a new subdivi-
51 sion (q) to read as follows:

52 (Q) NOTWITHSTANDING ANY PROVISION OF THIS SECTION OR ANY OTHER LAW, A
53 COUNTY MAY, BY A MAJORITY VOTE OF ITS GOVERNING BODY, PASS A LOCAL LAW,
54 ORDINANCE OR RESOLUTION TO IMPOSE THE ADDITIONAL RATE OR RATES OF SUCH
55 SALES AND COMPENSATING USE TAXES AUTHORIZED BY CLAUSE TWO OF SUBPARA-
56 GRAPH (I) OF THE OPENING PARAGRAPH OF THIS SECTION FOR A PERIOD NOT TO

1 EXCEED TWO YEARS. ANY SUCH LOCAL LAW, ORDINANCE, OR RESOLUTION SHALL
2 ALSO BE SUBJECT TO THE PROVISIONS OF SUBDIVISIONS (D) AND (E) OF THIS
3 SECTION.

4 S 5. Section 1210-E of the tax law is REPEALED.

5 S 6. Subdivisions (d), (e), (f), (g), (h) (i), (j), (k), (l), (m),
6 (n), (o), (p), (q), (r), (t), (u), (v), (w), (x), (y), (z), (z-1), (aa),
7 (bb), (cc), (dd), (ee), (ff) and (gg) of section 1224 of the tax law are
8 REPEALED.

9 S 7. Section 1224 of the tax law is amended by adding four new subdi-
10 visions (d), (e), (f), and (g) to read as follows:

11 (D) FOR PURPOSES OF THIS SECTION, THE TERM "PRIOR RIGHT" SHALL MEAN
12 THE PREFERENTIAL RIGHT TO IMPOSE ANY TAX DESCRIBED IN SECTIONS TWELVE
13 HUNDRED TWO AND TWELVE HUNDRED THREE, OR TWELVE HUNDRED TEN AND TWELVE
14 HUNDRED ELEVEN, OF THIS ARTICLE AND THEREBY TO PREEMPT SUCH TAX AND TO
15 PRECLUDE ANOTHER MUNICIPAL CORPORATION FROM IMPOSING OR CONTINUING THE
16 IMPOSITION OF SUCH TAX TO THE EXTENT THAT SUCH RIGHT IS EXERCISED.
17 HOWEVER, THE RIGHT OF PREEMPTION SHALL ONLY APPLY WITHIN THE TERRITORIAL
18 LIMITS OF THE TAXING JURISDICTION HAVING THE RIGHT OR PREEMPTION.

19 (E) EACH OF THE FOLLOWING COUNTIES AND CITIES SHALL HAVE THE SOLE
20 RIGHT TO IMPOSE THE FOLLOWING ADDITIONAL RATE OF SALES AND COMPENSATING
21 USE TAXES IN EXCESS OF THREE PERCENT THAT SUCH COUNTY OR CITY IS AUTHOR-
22 IZED TO IMPOSE PURSUANT TO THE AUTHORITY OF SUBDIVISION (A) OF SECTION
23 TWELVE HUNDRED TEN OF THIS ARTICLE. SUCH ADDITIONAL RATES OF TAX SHALL
24 NOT BE SUBJECT TO PREEMPTION.

25 (1) COUNTIES:

26 (A) ONE-QUARTER OF ONE PERCENT - NONE.

27 (B) ONE-HALF OF ONE PERCENT - CHAUTAUQUA, ONTARIO, SCHENECTADY.

28 (C) THREE-QUARTERS OF ONE PERCENT - DUTCHESS, ESSEX, JEFFERSON, LEWIS,
29 ORANGE.

30 (D) ONE PERCENT - ALBANY, BROOME, CATTARAUGUS, CHEMUNG, CHENANGO,
31 CLINTON, COLUMBIA, DELAWARE, FRANKLIN, GENESEE, GREENE, LIVINGSTON,
32 MONROE, MONTGOMERY, NIAGARA, ONONDAGA, ORLEANS, OTSEGO, PUTNAM, RENSSE-
33 LAER, ROCKLAND, SCHOHARIE, SCHUYLER, SENECA, STEUBEN, SUFFOLK, SULLIVAN,
34 TIOGA, TOMPKINS, ULSTER, WAYNE, WYOMING, YATES.

35 (E) ONE AND ONE-QUARTER PERCENT - HERKIMER, NASSAU.

36 (F) ONE AND ONE-HALF PERCENT - ALLEGANY.

37 (G) ONE AND THREE-QUARTERS PERCENT - ERIE, ONEIDA.

38 (2) CITIES:

39 (A) ONE-QUARTER OF ONE PERCENT - NONE.

40 (B) ONE-HALF OF ONE PERCENT - NONE.

41 (C) THREE-QUARTERS OF ONE PERCENT - NONE.

42 (D) ONE PERCENT - MOUNT VERNON, NEW ROCHELLE, WHITE PLAINS, YONKERS.

43 (F) EACH OF THE FOLLOWING CITIES IS AUTHORIZED TO PREEMPT THE TAXES
44 IMPOSED BY THE COUNTY IN WHICH IT IS LOCATED PURSUANT TO THE AUTHORITY
45 OF SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE, TO THE
46 EXTENT OF ONE-HALF THE MAXIMUM AGGREGATE RATE AUTHORIZED UNDER SECTION
47 TWELVE HUNDRED TEN OF THIS ARTICLE, INCLUDING THE ADDITIONAL RATE THAT
48 THE COUNTY IN WHICH SUCH CITY IS LOCATED IS AUTHORIZED TO IMPOSE:
49 AUBURN, IN CAYUGA COUNTY; CORTLAND, IN CORTLAND COUNTY; GLOVERSVILLE AND
50 JOHNSTOWN, IN FULTON COUNTY; ONEIDA, IN MADISON COUNTY; ONEONTA, IN
51 OTSEGO COUNTY. AS OF THE DATE THIS SUBDIVISION TAKES EFFECT, ANY SUCH
52 PREEMPTION BY SUCH A CITY IN EFFECT ON SUCH DATE SHALL CONTINUE IN FULL
53 FORCE AND EFFECT UNTIL THE EFFECTIVE DATE OF A LOCAL LAW, ORDINANCE, OR
54 RESOLUTION ADOPTED OR AMENDED BY THE CITY TO CHANGE SUCH PREEMPTION,
55 PROVIDED SUCH A CITY'S RATE OF TAX IN EXCESS OF ONE AND ONE-HALF PERCENT
56 SHALL NOT CONTINUE IN EFFECT IF THE COUNTY IN WHICH IT IS LOCATED DOES

1 NOT EXTEND ITS ADDITIONAL RATE IN EXCESS OF THREE PERCENT. ANY
2 PREEMPTION BY SUCH A CITY TO TAKE EFFECT UNDER THIS SUBDIVISION AFTER
3 THE DATE THIS SUBDIVISION TAKES EFFECT SHALL BE SUBJECT TO THE NOTICE
4 REQUIREMENTS IN SECTION TWELVE HUNDRED TWENTY-THREE OF THIS SUBPART AND
5 TO THE OTHER REQUIREMENTS OF THIS ARTICLE.

6 (G) NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION OR OTHER
7 LAW, IF THE COUNTY OF DUTCHESS WITHDRAWS FROM THE METROPOLITAN COMMUTER
8 TRANSPORTATION DISTRICT AND IMPOSES THE ADDITIONAL THREE-EIGHTHS PERCENT
9 RATE OF TAX, THE NET COLLECTIONS FROM WHICH THE COUNTY HAS SET ASIDE FOR
10 MASS TRANSPORTATION PURPOSES, AS AUTHORIZED BY SUBPARAGRAPH (IV) OF THE
11 OPENING PARAGRAPH OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE, SUCH
12 ADDITIONAL THREE-EIGHTHS PERCENT RATE OF TAX SHALL BE IN ADDITION TO ANY
13 OTHER ADDITIONAL RATE OF TAX SUCH COUNTY IS AUTHORIZED TO IMPOSE AND
14 SHALL NOT BE SUBJECT TO PREEMPTION AND SUCH COUNTY SHALL NOT INCLUDE
15 SUCH ADDITIONAL THREE-EIGHTHS PERCENT RATE OF TAX IN DETERMINING ITS
16 ADDITIONAL RATE OF TAX ON THE AREA OF THE COUNTY OUTSIDE ANY CITY IN THE
17 COUNTY IMPOSING TAX FOR PURPOSES OF SUBDIVISION (D) OF SECTION TWELVE
18 HUNDRED SIXTY-TWO OF THIS ARTICLE.

19 S 8. The tax law is amended by adding three new sections 1262-t,
20 1262-u, and 1262-v to read as follows:

21 S 1262-T. ONEIDA COUNTY NET COLLECTIONS FROM ADDITIONAL RATE OF TAX.
22 NET COLLECTIONS FROM AN ADDITIONAL THREE-QUARTERS PERCENT RATE OF ONEIDA
23 COUNTY'S SALES AND COMPENSATING USE TAXES IMPOSED PURSUANT TO THE
24 AUTHORITY OF CLAUSE TWO OF SUBPARAGRAPH (I) OF THE OPENING PARAGRAPH OF
25 SECTION TWELVE HUNDRED TEN OF THIS ARTICLE SHALL NOT BE SUBJECT TO ANY
26 REVENUE DISTRIBUTION AGREEMENT ENTERED INTO BY THE COUNTY AND THE CITIES
27 IN THE COUNTY UNDER SUBDIVISION (C) OF SECTION TWELVE HUNDRED SIXTY-TWO
28 OF THIS PART.

29 S 1262-U. CLINTON COUNTY NET COLLECTIONS FROM ADDITIONAL RATE OF TAX.
30 NET COLLECTIONS FROM ANY ADDITIONAL RATE OF SALES AND COMPENSATING USE
31 TAXES CLINTON COUNTY IMPOSES PURSUANT TO THE AUTHORITY OF CLAUSE TWO OF
32 SUBPARAGRAPH (I) OF THE OPENING PARAGRAPH OF SECTION TWELVE HUNDRED TEN
33 OF THIS ARTICLE SHALL BE PAID TO THE COUNTY AND THE COUNTY SHALL SET
34 ASIDE SUCH NET COLLECTIONS AND USE THEM SOLELY FOR COUNTY PURPOSES. SUCH
35 NET COLLECTIONS SHALL NOT BE SUBJECT TO ANY REVENUE DISTRIBUTION AGREE-
36 MENT ENTERED INTO BY THE COUNTY AND THE CITY IN THE COUNTY UNDER SUBDI-
37 VISION (C) OF SECTION TWELVE HUNDRED SIXTY-TWO OF THIS PART.

38 S 1262-V. ONTARIO COUNTY NET COLLECTIONS FROM ADDITIONAL RATE OF TAX.
39 NOTWITHSTANDING ANY LAW TO THE CONTRARY, AFTER ONTARIO COUNTY ALLOCATES
40 NET COLLECTIONS FROM ITS ADDITIONAL ONE-EIGHTH OF ONE PERCENT RATE OF
41 SALES AND COMPENSATING USE TAXES PURSUANT TO THE AUTHORITY OF SECTION
42 TWELVE HUNDRED SIXTY-TWO-R OF THIS PART, AS ADDED BY CHAPTER THIRTY-SEV-
43 EN OF THE LAWS OF TWO THOUSAND SIX, NET COLLECTIONS FROM THE COUNTY'S
44 ADDITIONAL THREE-EIGHTHS OF ONE PERCENT RATE OF SUCH TAXES SHALL BE SET
45 ASIDE FOR COUNTY PURPOSES AND SHALL NOT BE SUBJECT TO ANY AGREEMENT
46 ENTERED INTO BY THE COUNTY AND THE CITIES IN THE COUNTY UNDER SUBDIVI-
47 SION (C) OF SECTION TWELVE HUNDRED SIXTY-TWO OR SECTION TWELVE HUNDRED
48 SIXTY-TWO-R OF THIS PART, AS ADDED BY CHAPTER THIRTY-SEVEN OF THE LAWS
49 OF TWO THOUSAND SIX.

50 S 9. Section 1262-s of the tax law, as amended by chapter 226 of the
51 laws of 2011, is amended to read as follows:

52 S 1262-s. Disposition of net collections from the additional one-quar-
53 ter of one percent rate of sales and compensating use taxes in the coun-
54 ty of Herkimer. Notwithstanding any contrary provision of law, if the
55 county of Herkimer imposes the additional one-quarter of one percent
56 rate of sales and compensating use taxes IN EXCESS OF FOUR PERCENT

1 authorized by [section twelve hundred ten-E] THE OPENING PARAGRAPH OF
2 SECTION TWELVE HUNDRED TEN of this article [for all or any portion of
3 the period beginning December first, two thousand seven and ending
4 November thirtieth, two thousand thirteen], the county shall use all net
5 collections from such additional one-quarter of one percent rate to pay
6 the county's expenses for the construction of additional correctional
7 facilities. The net collections from [the] SUCH additional rate imposed
8 [pursuant to section twelve hundred ten-E] shall be deposited in a
9 special fund to be created by such county separate and apart from any
10 other funds and accounts of the county. Any and all remaining net
11 collections from such additional tax, after the expenses of such
12 construction are paid, shall be deposited by the county of Herkimer in
13 the general fund of such county for any county purpose.

14 S 10. The tax law is amended by adding a new section 1265 to read as
15 follows:

16 S 1265. REFERENCES TO CERTAIN PROVISIONS AUTHORIZING ADDITIONAL RATES
17 OR TO EXPIRATIONS OF A PERIOD. NOTWITHSTANDING ANY PROVISION OF LAW TO
18 THE CONTRARY: ANY REFERENCE IN ANY SECTION OF THIS CHAPTER OR OTHER LAW,
19 OR IN ANY LOCAL LAW, ORDINANCE, OR RESOLUTION ADOPTED PURSUANT TO THE
20 AUTHORITY OF THIS ARTICLE, OR IN ANY AGREEMENT ENTERED INTO BY A COUNTY
21 AND ALL THE CITIES IN THAT COUNTY UNDER SUBDIVISION (C) OF SECTION
22 TWELVE HUNDRED SIXTY-TWO OF THIS PART, TO NET COLLECTIONS OR REVENUES
23 FROM A TAX IMPOSED BY A COUNTY OR CITY PURSUANT TO THE AUTHORITY OF A
24 CLAUSE, OR TO A SUBCLAUSE OF A CLAUSE, OF SUBPARAGRAPH (I) OR (II) OF
25 THE OPENING PARAGRAPH OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE
26 REPEALED BY SECTION ONE OR TWO OF THE CHAPTER OF THE LAWS OF TWO THOU-
27 SAND THIRTEEN THAT ADDED THIS SECTION OR TO SECTION TWELVE HUNDRED TEN-E
28 OF THIS ARTICLE REPEALED BY SECTION FIVE OF SUCH CHAPTER OF THE LAWS OF
29 TWO THOUSAND THIRTEEN SHALL BE DEEMED TO BE A REFERENCE TO NET
30 COLLECTIONS OR REVENUES FROM A TAX IMPOSED BY THAT COUNTY OR CITY PURSU-
31 ANT TO THE AUTHORITY OF THE EQUIVALENT PROVISION OF CLAUSE TWO OF
32 SUBPARAGRAPH (I) OR TO SUBPARAGRAPH (II) OF THE OPENING PARAGRAPH OF
33 SUCH SECTION TWELVE HUNDRED TEN AS ADDED BY SUCH SECTION ONE OR TWO OF
34 SUCH CHAPTER OF THE LAWS OF TWO THOUSAND THIRTEEN.

35 S 11. Severability. If any provision of this act shall for any reason
36 be finally adjudged by any court of competent jurisdiction to be inval-
37 id, such judgment shall not affect, impair, or invalidate the remainder
38 of this act, but shall be confined in its operation to the provision
39 directly involved in the controversy in which such judgment shall have
40 been rendered. It is hereby declared to be the intent of the legislature
41 that this act would have been enacted even if such invalid provision had
42 not been included in this act.

43 S 12. This act shall take effect immediately.

44 PART S

45 Section 1. Paragraph 1 of subdivision a of section 1612 of the tax
46 law, as amended by chapter 147 of the laws of 2010, subparagraph (A) as
47 amended by section 1 of part S of chapter 59 of the laws of 2012, is
48 amended to read as follows:

49 (1) sixty percent of the total amount for which tickets have been sold
50 for [a lawful lottery] THE QUICK DRAW game [introduced on or after the
51 effective date of this paragraph,] subject to [the following provisions:

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

(i) if the licensee does not hold a license issued pursuant to the alcoholic beverage control law to sell alcoholic beverages for consumption on the premises, then the premises must have a minimum square footage greater than two thousand five hundred square feet;

(ii) notwithstanding the foregoing provisions, television equipment that automatically displays the results of such drawings may be installed and used without regard to the square footage if such premises are used as:

(I) a commercial bowling establishment, or

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

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

S 2. This act shall take effect immediately.

PART T

Section 1. Clause (F) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 6 of part K of chapter 57 of the laws of 2010, is amended to read as follows:

(F) notwithstanding clauses (A), (B), (C), (D) and (E) of this subparagraph, when a vendor track, is located in Sullivan county and within sixty miles from any gaming facility in a contiguous state such vendor fee shall, for a period of [five] SIX years commencing April first, two thousand eight, be at a rate of forty-one percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, after which time such rate shall be as for all tracks in clause (C) of this subparagraph.

S 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2013.

PART U

Section 1. Paragraph (a) of subdivision 1 of section 1003 of the racing, pari-mutuel wagering and breeding law, as amended by section 1 of part O of chapter 59 of the laws of 2012, is amended to read as follows:

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

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

39 S 2. Subparagraph (iii) of paragraph d of subdivision 3 of section
40 1007 of the racing, pari-mutuel wagering and breeding law, as amended by
41 section 2 of part 0 of chapter 59 of the laws of 2012, is amended to
42 read as follows:

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

55 S 3. Section 1014 of the racing, pari-mutuel wagering and breeding law
56 is REPEALED.

1 S 4. Subdivision 1 of section 1015 of the racing, pari-mutuel wagering
2 and breeding law, as amended by section 4 of part 0 of chapter 59 of the
3 laws of 2012, is amended to read as follows:

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

9 S 5. The opening paragraph of subdivision 1 of section 1016 of the
10 racing, pari-mutuel wagering and breeding law, as amended by section 5
11 of part 0 of chapter 59 of the laws of 2012, is amended to read as
12 follows:

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

29 S 6. The opening paragraph of section 1018 of the racing, pari-mutuel
30 wagering and breeding law, as amended by section 6 of part 0 of chapter
31 59 of the laws of 2012, is amended to read as follows:

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

47 S 7. Section 32 of chapter 281 of the laws of 1994, amending the
48 racing, pari-mutuel wagering and breeding law and other laws relating
49 to simulcasting, as amended by section 7 of part 0 of chapter 59 of the
50 laws of 2012, is amended to read as follows:

51 S 32. This act shall take effect immediately [and the pari-mutuel tax
52 reductions in section six of this act shall expire and be deemed
53 repealed on July 1, 2013]; provided, however, that nothing contained
54 herein shall be deemed to affect the application, qualification, expira-
55 tion, or repeal of any provision of law amended by any section of this
56 act, and such provisions shall be applied or qualified or shall expire

1 or be deemed repealed in the same manner, to the same extent and on the
2 same date as the case may be as otherwise provided by law; provided
3 further, however, that sections twenty-three and twenty-five of this act
4 shall remain in full force and effect only until May 1, 1997 and at such
5 time shall be deemed to be repealed.

6 S 8. Section 54 of chapter 346 of the laws of 1990, amending the
7 racing, pari-mutuel wagering and breeding law and other laws relating to
8 simulcasting and the imposition of certain taxes, as amended by section
9 8 of part 0 of chapter 59 of the laws of 2012, is amended to read as
10 follows:

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

19 S 9. Paragraph (a) of subdivision 1 of section 238 of the racing,
20 pari-mutuel wagering and breeding law, as amended by section 9 of part 0
21 of chapter 59 of the laws of 2012, is amended to read as follows:

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

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

22 S 10. Subdivision 5 of section 1012 of the racing, pari-mutuel wager-
23 ing and breeding law is REPEALED.

24 S 11. This act shall take effect immediately.

25

PART V

26 Section 1. Subparagraphs (A) and (B) of paragraph 2 of subsection (pp)
27 of section 606 of the tax law, as amended by chapter 472 of the laws of
28 2010, are amended to read as follows:

29 (A) With respect to any particular residence of a taxpayer, the credit
30 allowed under paragraph one of this subsection shall not exceed fifty
31 thousand dollars for taxable years beginning on or after January first,
32 two thousand ten and before January first, two thousand [fifteen] TWENTY
33 and twenty-five thousand dollars for taxable years beginning on or after
34 January first, two thousand [fifteen] TWENTY. In the case of a husband
35 and wife, the amount of the credit shall be divided between them equally
36 or in such other manner as they may both elect. If a taxpayer incurs
37 qualified rehabilitation expenditures in relation to more than one resi-
38 dence in the same year, the total amount of credit allowed under para-
39 graph one of this subsection for all such expenditures shall not exceed
40 fifty thousand dollars for taxable years beginning on or after January
41 first, two thousand ten and before January first, two thousand [fifteen]
42 TWENTY and twenty-five thousand dollars for taxable years beginning on
43 or after January first, two thousand [fifteen] TWENTY.

44 (B) For taxable years beginning on or after January first, two thou-
45 sand ten and before January first, two thousand [fifteen] TWENTY, if the
46 amount of credit allowable under this subsection shall exceed the
47 taxpayer's tax for such year, and the taxpayer's New York adjusted gross
48 income for such year does not exceed sixty thousand dollars, the excess
49 shall be treated as an overpayment of tax to be credited or refunded in
50 accordance with the provisions of section six hundred eighty-six of this
51 article, provided, however, that no interest shall be paid thereon. If
52 the taxpayer's New York adjusted gross income for such year exceeds
53 sixty thousand dollars, the excess credit that may be carried over to
54 the following year or years and may be deducted from the taxpayer's tax

1 for such year or years. For taxable years beginning on or after January
2 first, two thousand [fifteen] TWENTY, if the amount of credit allowable
3 under this subsection shall exceed the taxpayer's tax for such year, the
4 excess may be carried over to the following year or years and may be
5 deducted from the taxpayer's tax for such year or years.

6 S 2. This act shall take effect immediately.

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

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