

STATE OF NEW YORK

4663--B

2021-2022 Regular Sessions

IN ASSEMBLY

February 4, 2021

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law and the state finance law, in relation to the imposition of a pass-through entity tax

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The tax law is amended by adding a new article 24-A to read
2 as follows:

ARTICLE 24-A PASS-THROUGH ENTITY TAX

Section 860. Definitions.

6 861. Pass-through entity tax election.

7 862. Imposition and rate of tax.

8 863. Pass-through entity tax credit.

9 864. Payment of estimated tax.

10 865. Filing of return and payment of tax.

11 866. Accounting periods and methods.

12 867. Procedural provisions.

§ 860. Definitions. For purposes of this article:

14 (a) Eligible partnership. Eligible partnership means any partnership
15 as provided for in section 7701(a)(2) of the Internal Revenue Code that
16 consists solely of partners who are individuals. An eligible partner-
17 ship includes any limited liability company treated as a partnership for
18 federal income tax purposes that otherwise meets the requirements of
19 this subdivision.

20 (b) Eligible S corporation. Eligible S corporation means any New York
21 S corporation as defined pursuant to this chapter that consists solely
22 of shareholders who are individuals. An eligible S corporation includes
23 any limited liability company treated as an S corporation for federal
24 income tax purposes that otherwise meets the requirements of this subdi-
25 vision.

EXPLANATION--Matter in italics (underscoring) is new; matter in brackets
[-] is old law to be omitted.

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1 (c) Electing partnership. Electing partnership means any eligible
2 partnership that made a valid, timely election pursuant to section eight
3 hundred sixty-one of this article.

4 (d) Electing S corporation. Electing S corporation means any eligible
5 S corporation that made a valid, timely election pursuant to section
6 eight hundred sixty-one of this article.

7 (e) Taxpayer. Taxpayer means any electing partnership or electing S
8 corporation.

9 (f) Pass-through entity tax. Pass-through entity tax means the total
10 tax imposed by this article on electing partnerships and electing S
11 corporations.

12 (g) Pass-through adjusted net income (not less than zero). Pass-
13 through adjusted net income (not less than zero) means:

14 (1) In the case of an electing partnership, the sum of (i) federal
15 taxable income (not less than zero), as described in section 702(a)(8)
16 of the Internal Revenue Code, to the extent earned directly by such
17 partnership; (ii) taxes paid or incurred during the taxable year pursu-
18 ant to this article by a partnership to the extent deducted in computing
19 federal taxable income; (iii) taxes substantially similar to the tax
20 imposed pursuant to this article paid or incurred during the taxable
21 year to another state of the United States, a political subdivision of
22 such state, or the District of Columbia to the extent deducted in
23 computing federal taxable income; and (iv) guaranteed payments paid by
24 the partnership to its partners as described in section 707(c) of the
25 Internal Revenue Code.

26 (2) In the case of an electing S corporation, the sum of (i) federal
27 nonseparately computed income (not less than zero), as described in
28 section 1366(a)(2) of the Internal Revenue Code, whether earned by such
29 S corporation or by a partnership of which the S corporation is a part-
30 ner; (ii) taxes paid or incurred during the taxable year pursuant to
31 this article by an S corporation to the extent deducted in computing
32 federal ordinary income; and (iii) taxes substantially similar to the
33 tax imposed pursuant to this article paid or incurred during the taxable
34 year to another state of the United States, a political subdivision of
35 such state, or the District of Columbia to the extent deducted in
36 computing federal taxable income.

37 (h) Partnership taxable income. Partnership taxable income of an
38 electing partnership means the sum of (1) the electing partnership's
39 pass-through adjusted net income (not less than zero), allocated to New
40 York State pursuant to subdivision (b) of section eight hundred sixty-
41 two of this article; and (2) the electing partnership's proportionate
42 share of any pass-through adjusted net income (not less than zero) from
43 a partnership of which it is a partner to the extent it was sourced to
44 New York by such partnership pursuant to the principles of article twen-
45 ty-two of this chapter.

46 (i) S corporation taxable income. S corporation taxable income of an
47 electing S corporation means the electing S corporation's pass-through
48 adjusted net income (not less than zero) allocated to New York State
49 pursuant to subdivision (c) of section eight hundred sixty-two of this
50 article.

51 § 861. Pass-through entity tax election. (a) Any eligible partnership
52 or eligible S corporation doing business within this state shall be
53 allowed to make an annual election to be taxed pursuant to this article.

54 (b) In order to be effective, the annual election must be made (1) if
55 the entity is an S corporation, by any officer, manager or shareholder
56 of the S corporation who is authorized under the law of the state where

1 the corporation is incorporated or under the S corporation's organiza-
2 tional documents to make the election and who represents to having such
3 authorization under penalty of perjury; or (2) if the entity is not an S
4 corporation, by any member, partner, owner, or other individual with
5 authority to bind the entity or sign returns pursuant to section six
6 hundred fifty-three of this chapter.

7 (c) If the eligible partnership or eligible S corporation reports on a
8 calendar year basis, the annual election must be made by December first
9 of each calendar year and will take effect for the immediately succeed-
10 ing calendar year. If an election is made after December first of a
11 calendar year, it will first take effect in the second succeeding calen-
12 dar year.

13 (d) If the eligible partnership or eligible S corporation reports on a
14 fiscal year basis, the annual election must be made by the first day of
15 the last full month prior to the start of the fiscal year and will take
16 effect for the immediately succeeding fiscal year. If an election is
17 made after such date, it will first take effect in the second succeeding
18 fiscal year.

19 (e) (1) Termination of election. An election pursuant to subdivision
20 (a) of this section shall be terminated whenever, at any time during the
21 taxable year, the taxpayer ceases to be an eligible partnership or
22 eligible S corporation.

23 (2) Effective date of termination. The termination of an election is
24 effective immediately upon the taxpayer ceasing to be an eligible part-
25 nership or eligible S corporation and no tax will be due pursuant to
26 this article for the taxable year.

27 (3) Abatement of penalties. If a termination occurs pursuant to this
28 subdivision solely because a partner, member or shareholder of an other-
29 wise eligible partnership or eligible S corporation died during the
30 taxable year and the successor to the decedent's interest in the part-
31 nership or S corporation is not an individual, no addition to tax will
32 be imposed pursuant to subsection (c) of section six hundred eighty-five
33 of this chapter on the partners, members and shareholders of such part-
34 nership or S corporation solely for underpayment of estimated personal
35 income tax as a result of the termination of the election made pursuant
36 to this article.

37 § 862. Imposition and rate of tax. (a) General. A tax is hereby
38 imposed for each taxable year on the partnership taxable income of every
39 electing partnership doing business within this state and on the S
40 corporation taxable income of every electing S corporation doing busi-
41 ness within this state. This tax shall be in addition to any other taxes
42 imposed and shall be at the rate of six and eighty-five hundredths
43 percent for each taxable year beginning on or after January first, two
44 thousand twenty-one.

45 (b) Allocation to New York by an electing partnership. In determining
46 the amount of partnership taxable income, the adjusted net income of the
47 electing partnership shall be allocated to this state pursuant to the
48 principles of article twenty-two of this chapter.

49 (c) Allocation to New York by an electing S corporation. In determin-
50 ing the amount of S corporation taxable income, the adjusted net income
51 of the electing S corporation shall be allocated to this state by multi-
52 plying the adjusted net income of the electing S corporation by the
53 business apportionment factor of the electing S corporation as calcu-
54 lated pursuant to section two hundred ten-A of this chapter.

55 § 863. Pass-through entity tax credit. An individual subject to tax
56 under article twenty-two of this chapter that is a partner or member in

1 an electing partnership or a shareholder of an electing S corporation
2 subject to tax under this article shall be allowed a credit against the
3 tax imposed pursuant to article twenty-two of this chapter, computed
4 pursuant to the provisions of subsection (kkk) of section six hundred
5 six of this chapter.

6 § 864. Payment of estimated tax. (a) Definition of estimated tax.
7 Estimated tax means the amount that an electing partnership or electing
8 S corporation estimates to be the tax imposed by section eight hundred
9 sixty-two of this article for the current taxable year.

10 (b) General. The estimated tax shall be paid as follows for an elect-
11 ing partnership and an electing S corporation that reports on a calendar
12 year basis:

13 (1) The estimated tax shall be paid in four equal installments on
14 March fifteenth, June fifteenth, September fifteenth and December
15 fifteenth.

16 (2) The amount of any required installment shall be twenty-five
17 percent of the required annual payment.

18 (3) The required annual payment is the lesser of: (A) ninety percent
19 of the tax shown on the return for the taxable year; or (B) one hundred
20 percent of the tax shown on the return of the electing partnership or
21 electing S corporation for the preceding taxable year.

22 (c) Application to short taxable year. This section shall apply to a
23 taxable year of less than twelve months in accordance with procedures
24 established by the commissioner.

25 (d) Fiscal year. This section shall apply to a taxable year other than
26 a calendar year by the substitution of the months of such fiscal year
27 for the corresponding months specified in this section.

28 (e) Installments paid in advance. An electing partnership or electing
29 S corporation may elect to pay any installment of its estimated tax
30 prior to the date prescribed for the payment thereof.

31 § 865. Filing of return and payment of tax. (a) General. On or before
32 the fifteenth day of the third month following the close of the taxable
33 year, each electing partnership and each electing S corporation must
34 file a return for the taxable year reporting the information required
35 pursuant to this article.

36 (b) Certification of eligibility. Every return filed pursuant to
37 subdivision (a) of this section shall include, in a format as prescribed
38 by the commissioner, a certification by an individual authorized to act
39 on behalf of the electing partnership or electing S corporation that the
40 taxpayer:

41 (1) made a timely, valid election to be subject to tax pursuant to
42 this article;

43 (2) was at all times during the taxable year eligible to make such an
44 election, unless such return includes a notification of termination as
45 provided for in subdivision (c) of this section; and

46 (3) that all statements contained therein are true.

47 (c) Notification of termination. If an election is terminated during
48 the taxable year pursuant to subdivision (e) of section eight hundred
49 sixty-one of this article, the electing partnership or electing S corpo-
50 ration is required to file a return pursuant to subdivision (a) of this
51 section notifying the commissioner of such termination. Such notifica-
52 tion will be considered a claim for a credit or refund of an overpayment
53 of pass-through entity tax of any estimated payments made pursuant to
54 this article for the taxable year containing the date of termination.

55 (d) Information on return. Each electing partnership and electing S
56 corporation shall report on such return:

(1) The balance of any tax shown on such return, not previously paid as installments of estimated tax, shall be paid with such return;

(2) Identifying information of all partners, members and/or shareholders eligible to receive a credit pursuant to section eight hundred sixty three and such partner's, member's and/or shareholder's distributive or pro rata share of the pass-through entity tax imposed on the electing partnership or S corporation; and

(3) Any other information as required by the commissioner.

(e) Information provided to partners. Each electing partnership subject to tax under this article shall report to each partner or member its distributive share of:

(1) the partnership taxable income of the electing partnership;

(2) the pass-through entity tax imposed on the electing partnership; and

(3) any other information as required by the commissioner.

(f) Information provided to shareholders. Each electing S corporation subject to tax under this article shall report to each shareholder its pro rata share of:

(1) the S corporation taxable income of the electing S corporation;

(2) the pass-through entity tax imposed on the electing S corporation; and

(3) any other information as required by the commissioner.

§ 866. Accounting periods and methods. (a) Accounting periods. An electing partnership's or electing S corporation's taxable year pursuant to this article shall be the same as the electing partnership's or electing S corporation's taxable year for federal income tax purposes.

(b) Accounting methods. An electing partnership's or electing S corporation's method of accounting pursuant to this article shall be the same as the electing partnership's or electing S corporation's method of accounting for federal income tax purposes.

(c) Change of accounting period or method. (1) If an electing partnership's or electing S corporation's taxable year or method of accounting is changed for federal income tax purposes, the taxable year or method of accounting for purposes of this article shall be similarly changed.

(2) If an electing partnership's or electing S corporation's method of accounting is changed, any additional tax that results from adjustments determined to be necessary solely by reason of such change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the entity used the method of accounting from which the change is made.

§ 867. Procedural provisions. (a) General. All provisions of article twenty-two of this chapter will apply to the provisions of this article in the same manner and with the same force and effect as if the language of article twenty-two of this chapter had been incorporated in full into this article and had been specifically adjusted for and expressly referred to the tax imposed by this article, except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to this article. Notwithstanding the preceding sentence, no credit against tax in article twenty-two of this chapter can be used to offset the tax due pursuant to this article.

(b) Cross Article filings. Notwithstanding any other provisions of this article:

(1) The commissioner may require the filing of one return which, in addition to the return provided for in section eight hundred sixty-five of this article, may also include any of the returns required to be

1 filed by a taxpayer pursuant to the provisions of subsection (c) of
2 section six hundred fifty-eight or article nine-A of this chapter.

3 (2) Where such return is required, the commissioner may also require
4 the payment with it of a single amount which shall equal the total of
5 the amounts (total taxes less any credits or refunds) that would have
6 been required to be paid with the returns pursuant to the provisions of
7 this article and the provisions of article twenty-two of this chapter or
8 the provisions of article nine-A of this chapter, whichever is applica-
9 ble.

10 (3) Notwithstanding any other law to the contrary, the commissioner
11 may require that all forms or returns pursuant to this article must be
12 filed electronically and all payments of tax must be paid electron-
13 ically.

14 (c) Liability for tax. An electing partnership or electing S corpo-
15 ration shall be liable for the tax due pursuant to this article. In
16 addition, every individual eligible to claim a credit pursuant to
17 subsection (kkk) of section six hundred six of this chapter because he
18 or she is a partner or member in an electing partnership or a sharehold-
19 er in an electing S corporation shall be jointly and severally liable
20 for the tax imposed pursuant to this article on such electing partner-
21 ship or electing S corporation.

22 (d) Deposit and disposition of revenue. All taxes, interest, penal-
23 ties, and fees collected or received by the commissioner pursuant to
24 this article shall be deposited and disposed of pursuant to the
25 provisions of section one hundred seventy-one-a of this chapter.

26 (e) Secrecy provision. All the provisions of paragraphs one and two of
27 subsection (e) of section six hundred ninety-seven of this chapter will
28 apply to the provisions of this article. Notwithstanding any provisions
29 of this chapter to the contrary, the commissioner may disclose informa-
30 tion and returns regarding the calculation and payment of the tax
31 imposed by this article and any credit calculated on taxes paid pursuant
32 to this article by an electing partnership or electing S corporation to
33 a partner, member or shareholder of such entity.

34 § 2. Section 606 of the tax law is amended by adding a new subsection
35 (kkk) to read as follows:

36 (kkk) Credit for pass-through entity tax. (1) A taxpayer partner or
37 member of an electing partnership and a taxpayer shareholder of an
38 electing S corporation subject to tax under article twenty-four-A of
39 this chapter shall be entitled to a credit against the tax imposed by
40 this article as provided in this subsection. For purposes of this
41 subsection, the terms "electing partnership," "electing S corporation,"
42 and "pass-through entity tax" shall have the same meanings as used in
43 article twenty-four-A of this chapter.

44 (2) The credit shall be equal to the product of:

45 (i) the taxpayer's profit percentage of the electing partnership or
46 pro rata share of the electing S corporation;

47 (ii) ninety-two percent; and

48 (iii) the pass-through entity tax paid by the electing partnership or
49 S corporation for the taxable year.

50 (3) If a taxpayer is a partner, member or shareholder in multiple
51 electing partnerships and/or electing S corporations subject to tax
52 pursuant to article twenty-four-A of this chapter, the taxpayer's credit
53 shall be the sum of such credits calculated pursuant to paragraph two of
54 this subsection with regard to each entity in which the taxpayer has a
55 direct ownership interest.

(4) If the amount of the credit allowable pursuant to this subsection for any taxable year exceeds the tax due for such year pursuant to this article, the excess shall be treated as an overpayment, to be credited or refunded, without interest.

§ 3. Section 620 of the tax law, as amended by chapter 2 of the laws of 1962, subsection (a) as amended and paragraph 3 of subsection (b) as added by chapter 274 of the laws of 1987, and subsection (d) as added by chapter 166 of 1991, is amended to read as follows:

§ 620. Credit for income tax of another state. (a) General. A resident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed on such individual for the taxable year by another state of the United States, a political subdivision of such state, the District of Columbia or a province of Canada, upon income both derived therefrom and subject to tax under this article. The term "income tax imposed" in the previous sentence shall not include the portion of such tax (determined in the manner provided for in section six hundred twenty-A) which is imposed upon the ordinary income portion (or part thereof) of a lump sum distribution which is subject to the separate tax imposed by section [~~six hundred one-C~~] six hundred three.

(b) Pass-through entity taxes. (1) A resident shall be allowed a credit against the tax otherwise due pursuant to this article for any pass-through entity tax substantially similar to the tax imposed pursuant to article twenty-four-A of this chapter imposed on the income of a partnership or S corporation of which the resident is a partner, member or shareholder for the taxable year by another state of the United States, a political subdivision of such state, or the District of Columbia upon income both derived therefrom and subject to tax under this article.

(2) Such credit shall be equal to the product of:

(A) the taxpayer's profit percentage of the electing partnership or pro rata share of the electing S corporation;

(B) ninety-two percent; and

(C) the pass-through entity tax paid by the electing partnership or S corporation to such other state, political subdivision of such other state or the District of Columbia.

(3) However, such credit will be allowed on tax paid only if:

(A) the state of the United States, political subdivision of such state, or the District of Columbia imposing such tax also imposes an income tax substantially similar to the tax imposed under this article; and

(B) in the case of taxes paid by an S corporation, such S corporation was treated as a New York S corporation.

(c) Limitations. (1) The credit under this section shall not exceed the percentage of the tax otherwise due under this article determined by dividing the portion of the taxpayer's New York income subject to taxation by such other jurisdiction by the total amount of the taxpayer's New York income.

(2) The credit under this section shall not reduce the tax otherwise due under this article to an amount less than would have been due if the income subject to taxation by such other jurisdiction were excluded from the taxpayer's New York income.

(3) In the case of a taxpayer who elects to claim the foreign tax credit for federal income tax purposes, the credit under this section for income tax imposed by a province of Canada shall be allowed for that portion of the provincial tax not claimed for federal purposes for the taxable year or a preceding taxable year, provided however, to the extent the provincial tax is claimed for federal purposes for a succeed-

ing taxable year, the credit under this section must be added back in such succeeding taxable year. The provincial tax shall be deemed to be claimed last for federal income tax purposes and for purposes of this subsection.

~~[(e)]~~ (d) Definition. For purposes of this section New York income means:

(1) the New York adjusted gross income of an individual, or
(2) the amount of the income of an estate or trust, determined as if the estate or trust were an individual computing his New York adjusted gross income under section six hundred twelve.

~~[(d) S corporation shareholders. In the case of a shareholder of an S corporation, the term "income tax" in subsection (a) of this section shall not include any such tax imposed upon or payable by the corporation, but shall include any such tax with respect to the income of the corporation imposed upon or payable by the shareholder, without regard to whether an election independent of the federal S election was required to effect such imposition upon the shareholder.]~~

§ 4. Subdivision 1 of section 171-a of the tax law, as amended by section 3 of part XX of chapter 59 of the laws of 2019, is amended to read as follows:

1. All taxes, interest, penalties and fees collected or received by the commissioner or the commissioner's duly authorized agent under articles nine (except section one hundred eighty-two-a thereof and except as otherwise provided in section two hundred five thereof), nine-A, twelve-A (except as otherwise provided in section two hundred eighty-four-d thereof), thirteen, thirteen-A (except as otherwise provided in section three hundred twelve thereof), eighteen, nineteen, twenty (except as otherwise provided in section four hundred eighty-two thereof), twenty-B, twenty-D, twenty-one, twenty-two, twenty-four, twenty-four-a, twenty-six, twenty-eight (except as otherwise provided in section eleven hundred two or eleven hundred three thereof), twenty-eight-A, twenty-nine-B, thirty-one (except as otherwise provided in section fourteen hundred twenty-one thereof), thirty-three and thirty-three-A of this chapter shall be deposited daily in one account with such responsible banks, banking houses or trust companies as may be designated by the comptroller, to the credit of the comptroller. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under such articles of this chapter, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds or reimbursements under such articles of this chapter out of which amount the comptroller shall pay any refunds or reimbursements to which taxpayers shall be entitled under the provisions of such articles of this chapter. The commissioner and the comptroller shall maintain a system of accounts showing the amount of revenue collected or received from each of the taxes imposed by such articles. The comptroller, after reserving the amount to pay such refunds or reimbursements, shall, on or before the tenth day of each month, pay into the state treasury to the credit of the general fund all revenue deposited under this section during the preceding calendar month and remaining to the comptroller's credit on the last day of such preceding month, (i) except that the comptroller shall pay to the state department of social services that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount

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

53 § 5. Subdivision 1 of section 171-a of the tax law, as amended by
54 section 4 of part XX of chapter 59 of the laws of 2019, is amended to
55 read as follows:

1 1. All taxes, interest, penalties and fees collected or received by
2 the commissioner or the commissioner's duly authorized agent under arti-
3 cles nine (except section one hundred eighty-two-a thereof and except as
4 otherwise provided in section two hundred five thereof), nine-A,
5 twelve-A (except as otherwise provided in section two hundred eighty-
6 four-d thereof), thirteen, thirteen-A (except as otherwise provided in
7 section three hundred twelve thereof), eighteen, nineteen, twenty
8 (except as otherwise provided in section four hundred eighty-two there-
9 of), twenty-D, twenty-one, twenty-two, twenty-four, twenty-four-a, twen-
10 ty-six, twenty-eight (except as otherwise provided in section eleven
11 hundred two or eleven hundred three thereof), twenty-eight-A, twenty-
12 nine-B, thirty-one (except as otherwise provided in section fourteen
13 hundred twenty-one thereof), thirty-three and thirty-three-A of this
14 chapter shall be deposited daily in one account with such responsible
15 banks, banking houses or trust companies as may be designated by the
16 comptroller, to the credit of the comptroller. Such an account may be
17 established in one or more of such depositories. Such deposits shall be
18 kept separate and apart from all other money in the possession of the
19 comptroller. The comptroller shall require adequate security from all
20 such depositories. Of the total revenue collected or received under such
21 articles of this chapter, the comptroller shall retain in the comp-
22 troller's hands such amount as the commissioner may determine to be
23 necessary for refunds or reimbursements under such articles of this
24 chapter out of which amount the comptroller shall pay any refunds or
25 reimbursements to which taxpayers shall be entitled under the provisions
26 of such articles of this chapter. The commissioner and the comptroller
27 shall maintain a system of accounts showing the amount of revenue
28 collected or received from each of the taxes imposed by such articles.
29 The comptroller, after reserving the amount to pay such refunds or
30 reimbursements, shall, on or before the tenth day of each month, pay
31 into the state treasury to the credit of the general fund all revenue
32 deposited under this section during the preceding calendar month and
33 remaining to the comptroller's credit on the last day of such preceding
34 month, (i) except that the comptroller shall pay to the state department
35 of social services that amount of overpayments of tax imposed by article
36 twenty-two of this chapter and the interest on such amount which is
37 certified to the comptroller by the commissioner as the amount to be
38 credited against past-due support pursuant to subdivision six of section
39 one hundred seventy-one-c of this article, (ii) and except that the
40 comptroller shall pay to the New York state higher education services
41 corporation and the state university of New York or the city university
42 of New York respectively that amount of overpayments of tax imposed by
43 article twenty-two of this chapter and the interest on such amount which
44 is certified to the comptroller by the commissioner as the amount to be
45 credited against the amount of defaults in repayment of guaranteed
46 student loans and state university loans or city university loans pursu-
47 ant to subdivision five of section one hundred seventy-one-d and subdivi-
48 sion six of section one hundred seventy-one-e of this article, (iii)
49 and except further that, notwithstanding any law, the comptroller shall
50 credit to the revenue arrearage account, pursuant to section
51 ninety-one-a of the state finance law, that amount of overpayment of tax
52 imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B
53 or thirty-three of this chapter, and any interest thereon, which is
54 certified to the comptroller by the commissioner as the amount to be
55 credited against a past-due legally enforceable debt owed to a state
56 agency pursuant to paragraph (a) of subdivision six of section one

1 hundred seventy-one-f of this article, provided, however, he shall cred-
2 it to the special offset fiduciary account, pursuant to section ninety-
3 one-c of the state finance law, any such amount creditable as a liabil-
4 ity as set forth in paragraph (b) of subdivision six of section one
5 hundred seventy-one-f of this article, (iv) and except further that the
6 comptroller shall pay to the city of New York that amount of overpayment
7 of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A,
8 thirty-B or thirty-three of this chapter and any interest thereon that
9 is certified to the comptroller by the commissioner as the amount to be
10 credited against city of New York tax warrant judgment debt pursuant to
11 section one hundred seventy-one-l of this article, (v) and except
12 further that the comptroller shall pay to a non-obligated spouse that
13 amount of overpayment of tax imposed by article twenty-two of this chap-
14 ter and the interest on such amount which has been credited pursuant to
15 section one hundred seventy-one-c, one hundred seventy-one-d, one
16 hundred seventy-one-e, one hundred seventy-one-f or one hundred seven-
17 ty-one-l of this article and which is certified to the comptroller by
18 the commissioner as the amount due such non-obligated spouse pursuant to
19 paragraph six of subsection (b) of section six hundred fifty-one of this
20 chapter; and (vi) the comptroller shall deduct a like amount which the
21 comptroller shall pay into the treasury to the credit of the general
22 fund from amounts subsequently payable to the department of social
23 services, the state university of New York, the city university of New
24 York, or the higher education services corporation, or the revenue
25 arrearage account or special offset fiduciary account pursuant to
26 section ninety-one-a or ninety-one-c of the state finance law, as the
27 case may be, whichever had been credited the amount originally withheld
28 from such overpayment, and (vii) with respect to amounts originally
29 withheld from such overpayment pursuant to section one hundred seventy-
30 one-l of this article and paid to the city of New York, the comptroller
31 shall collect a like amount from the city of New York.

32 § 6. Subdivisions 2, 3 and paragraph (a) of subdivision 5 of section
33 92-z of the state finance law, as amended by section 5 of part MM of
34 chapter 59 of the laws of 2018, are amended to read as follows:

35 2. Such fund shall consist of (a) fifty percent of receipts from the
36 imposition of personal income taxes pursuant to article twenty-two of
37 the tax law, less such amounts as the commissioner of taxation and
38 finance may determine to be necessary for refunds, [and] (b) fifty
39 percent of receipts from the imposition of employer compensation expense
40 taxes pursuant to article twenty-four of the tax law, less such amounts
41 as the commissioner of taxation and finance may determine to be neces-
42 sary for refunds, and (c) fifty percent of receipts from the imposition
43 of the pass-through entity taxes pursuant to article twenty-four-A of
44 the tax law, less such amounts as the commission of taxation and finance
45 may determine to be necessary for refunds.

46 3. (a) Beginning on the first day of each month, the comptroller shall
47 deposit all of the receipts collected pursuant to section six hundred
48 seventy-one of the tax law in the revenue bond tax fund until the amount
49 of monthly receipts anticipated to be deposited pursuant to the certif-
50 icate required in paragraph (b) of subdivision five of this section are
51 met. On or before the twelfth day of each month, the commissioner of
52 taxation and finance shall certify to the state comptroller the amounts
53 specified in paragraph (a) of subdivision two of this section relating
54 to the preceding month and, in addition, no later than March thirty-
55 first of each fiscal year the commissioner of taxation and finance shall
56 certify such amounts relating to the last month of such fiscal year. The

1 amounts so certified shall be deposited by the state comptroller in the
2 revenue bond tax fund.

3 (b) Beginning on the first day of each month, the comptroller shall
4 deposit all of the receipts collected pursuant to section eight hundred
5 fifty-four of the tax law in the revenue bond tax fund until the amount
6 of monthly receipts anticipated to be deposited pursuant to the certifi-
7 cate required in paragraph (b) of subdivision five of this section are
8 met. On or before the twelfth day of each month, the commissioner of
9 taxation and finance shall certify to the state comptroller the amounts
10 specified in paragraph (b) of subdivision two of this section relating
11 to the preceding month and, in addition, no later than March thirty-
12 first of each fiscal year the commissioner of taxation and finance shall
13 certify such amounts relating to the last month of such fiscal year. The
14 amounts so certified shall be deposited by the state comptroller in the
15 revenue bond tax fund.

16 (c) Beginning on the first day of each month, the comptroller shall
17 deposit all of the receipts collected pursuant to sections eight hundred
18 sixty-four and eight hundred sixty-five of the tax law in the revenue
19 bond tax fund until the amount of monthly receipts anticipated to be
20 deposited pursuant to the certificate required in paragraph (b) of
21 subdivision five of this section are met. On or before the twelfth day
22 of each month, the commissioner of taxation and finance shall certify to
23 the state comptroller the amounts specified in paragraph (c) of subdivi-
24 sion two of this section relating to the preceding month and, in addi-
25 tion, no later than March thirty-first of each fiscal year the commis-
26 sioner of taxation and finance shall certify such amounts relating to
27 the last month of such fiscal year. The amounts so certified shall be
28 deposited by the state comptroller in the revenue bond tax fund.

29 (a) The state comptroller shall from time to time, but in no event
30 later than the fifteenth day of each month (other than the last month of
31 the fiscal year) and no later than the thirty-first day of the last
32 month of each fiscal year, pay over and distribute to the credit of the
33 general fund of the state treasury all moneys in the revenue bond tax
34 fund, if any, in excess of the aggregate amount required to be set aside
35 for the payment of cash requirements pursuant to paragraph (b) of this
36 subdivision, provided that an appropriation has been made to pay all
37 amounts specified in any certificate or certificates delivered by the
38 director of the budget pursuant to paragraph (b) of this subdivision as
39 being required by each authorized issuer as such term is defined in
40 section sixty-eight-a of this chapter for the payment of cash require-
41 ments of such issuers for such fiscal year. Subject to the rights of
42 holders of debt of the state, in no event shall the state comptroller
43 pay over and distribute any moneys on deposit in the revenue bond tax
44 fund to any person other than an authorized issuer pursuant to such
45 certificate or certificates (i) unless and until the aggregate of all
46 cash requirements certified to the state comptroller as required by such
47 authorized issuers to be set aside pursuant to paragraph (b) of this
48 subdivision for such fiscal year shall have been appropriated to such
49 authorized issuers in accordance with the schedule specified in the
50 certificate or certificates filed by the director of the budget or (ii)
51 if, after having been so certified and appropriated, any payment
52 required to be made pursuant to paragraph (b) of this subdivision has
53 not been made to the authorized issuers which was required to have been
54 made pursuant to such certificate or certificates; provided, however,
55 that no person, including such authorized issuers or the holders of
56 revenue bonds, shall have any lien on moneys on deposit in the revenue

1 bond tax fund. Any agreement entered into pursuant to section sixty-
2 eight-c of this chapter related to any payment authorized by this
3 section shall be executory only to the extent of such revenues available
4 to the state in such fund. Notwithstanding subdivisions two and three of
5 this section, in the event the aggregate of all cash requirements certi-
6 fied to the state comptroller as required by such authorized issuers to
7 be set aside pursuant to paragraph (b) of this subdivision for the
8 fiscal year beginning on April first shall not have been appropriated to
9 such authorized issuers in accordance with the schedule specified in the
10 certificate or certificates filed by the director of the budget or, (ii)
11 if, having been so certified and appropriated, any payment required to
12 be made pursuant to paragraph (b) of this subdivision has not been made
13 pursuant to such certificate or certificates, all receipts collected
14 pursuant to section six hundred seventy-one of the tax law, ~~[and]~~
15 section eight hundred fifty-four of the tax law, section eight hundred
16 sixty-four of the tax law, and section eight hundred sixty-five of the
17 tax law shall be deposited in the revenue bond tax fund until the great-
18 er of forty percent of the aggregate of the receipts from the imposition
19 of (A) the personal income tax imposed by article twenty-two of the tax
20 law, ~~[and]~~ (B) the employer compensation expense tax imposed by article
21 twenty-four of the tax law, and (C) the pass-through entity tax imposed
22 by article twenty-four-A of the tax law for the fiscal year beginning on
23 April first and as specified in the certificate or certificates filed by
24 the director of the budget pursuant to this paragraph or a total of
25 twelve billion dollars has been deposited in the revenue bond tax fund.
26 Notwithstanding any other provision of law, if the state has appropri-
27 ated and paid to the authorized issuers the amounts necessary for the
28 authorized issuers to meet their requirements for the current fiscal
29 year pursuant to the certificate or certificates submitted by the direc-
30 tor of the budget pursuant to paragraph (b) of this section, the state
31 comptroller shall, on the last day of each fiscal year, pay to the
32 general fund of the state all sums remaining in the revenue bond tax
33 fund on such date except such amounts as the director of the budget may
34 certify are needed to meet the cash requirements of authorized issuers
35 during the subsequent fiscal year.

36 § 7. Subdivision 5 of section 68-c of the state finance law, as
37 amended by section 6 of part MM of chapter 59 of the laws of 2018, is
38 amended to read as follows:

39 5. Nothing contained in this article shall be deemed to restrict the
40 right of the state to amend, repeal, modify or otherwise alter statutes
41 imposing or relating to the taxes imposed pursuant to article
42 twenty-two, ~~[and]~~ article twenty-four, and article twenty-four-A of the
43 tax law. The authorized issuers shall not include within any resolution,
44 contract or agreement with holders of the revenue bonds issued under
45 this article any provision which provides that a default occurs as a
46 result of the state exercising its right to amend, repeal, modify or
47 otherwise alter the taxes imposed pursuant to article twenty-two, ~~[and]~~
48 article twenty-four, and article twenty-four-A of the tax law.

49 § 8. This act shall take effect immediately and shall apply to all
50 taxable years beginning on or after January 1, 2021; provided, however,
51 that the amendments to subdivision 1 of section 171-a of the tax law
52 made by section four of this act shall not affect the expiration of such
53 subdivision and shall expire therewith, when upon such date the
54 provisions of section five of this act shall take effect.