

STATE OF NEW YORK

3186--B

2021-2022 Regular Sessions

IN SENATE

January 28, 2021

Introduced by Sen. SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the 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:

3 ARTICLE 24-A
4 PASS-THROUGH ENTITY TAX

5 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.

13 § 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. An
16 eligible partnership includes any limited liability company treated as a
17 partnership for federal income tax purposes that otherwise meets the
18 requirements of this subdivision.

19 (b) Eligible S corporation. Eligible S corporation means any New York
20 S corporation as defined pursuant to this chapter. An eligible S corpo-
21 ration includes any limited liability company treated as an S corpo-

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

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ration for federal income tax purposes that otherwise meets the requirements of this subdivision.

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

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

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

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

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

(1) In the case of an electing partnership, the sum of (i) its separately and non-separately computed items, as described in section 702(a) of the Internal Revenue Code, to the extent earned directly by such partnership; (ii) taxes paid or incurred during the taxable year pursuant to this article by a partnership to the extent deducted in computing federal taxable income; (iii) taxes substantially similar to the tax imposed pursuant to this article paid or incurred during the taxable year to another state of the United States, a political subdivision of such state, or the District of Columbia to the extent deducted in computing federal taxable income; (iv) guaranteed payments paid by the partnership to its partners as described in section 707(c) of the Internal Revenue Code; and (v) the sum of any New York modifications under subsection (e) of section six hundred fifteen and section six hundred seventeen of this chapter.

(2) In the case of an electing S corporation, the sum of (i) its separately and non-separately computed items, as described in section 1366(a) of the Internal Revenue Code, whether earned by such S corporation or by a partnership of which the S corporation is a partner; (ii) taxes paid or incurred during the taxable year pursuant to this article by an S corporation to the extent deducted in computing federal ordinary income; (iii) taxes substantially similar to the tax imposed pursuant to this article paid or incurred during the taxable year to another state of the United States, a political subdivision of such state, or the District of Columbia to the extent deducted in computing federal taxable income; and (iv) the sum of any New York modifications under subsection (e) of section six hundred fifteen and section six hundred seventeen of this chapter.

(h) Partnership taxable income. Partnership taxable income of an electing partnership means the sum of (1) the product of (i) the electing partnership's pass-through adjusted net income (not less than zero), allocated to New York state pursuant to subdivision (b) of section eight hundred sixty-two of this article, and (ii) multiplied by the percentage of the profits interests of the electing partnership that are owned by partners or members who are subject to tax pursuant to article twenty-two of this chapter; and (2) the product of (i) the portion of the electing partnership's pass-through adjusted net income (not less than zero) that is not sourced or allocated to New York state, and (ii) multiplied by the percentage of the profits interests of the electing partnership that are owned by partners or members who are residents of New York state as defined in article twenty-two of this chapter. For purposes of determining partnership taxable income, an entity that is a

1 disregarded entity as described in section 301.7701-2(c)(2)(i) of inter-
2 nal revenue service regulations for federal income tax purposes is also
3 disregarded in determining the percentage of the profits interest of the
4 electing partnership that are owned by partners or members who are
5 subject to tax pursuant to article twenty-two of this chapter or that
6 are owned by partners or members who are residents of New York state. In
7 addition, for purposes of determining partnership taxable income, the
8 portion of a partnership interest treated as owned by the grantor of a
9 trust or by another person pursuant to section 671 of the Internal
10 Revenue Code shall be deemed owned by such grantor or other person for
11 the purpose of determining whether that portion of the partnership is
12 owned by a partner or member who is subject to tax pursuant to article
13 twenty-two or is owned by a partner or member who is a resident of New
14 York state as defined in article twenty-two of this chapter.

15 (i) S corporation taxable income. S corporation taxable income of an
16 electing S corporation means the sum of (1) the product of (i) the
17 electing S corporation's pass-through adjusted net income (not less than
18 zero) allocated to New York state pursuant to subdivision (c) of section
19 eight hundred sixty-two of this article, and (ii) multiplied by the
20 percentage of the pro rata shares of the electing S corporation that are
21 owned by individuals, trusts, and estates who are subject to tax pursu-
22 ant to article twenty-two of this chapter; and (2) the product of (i)
23 the portion of the electing S corporation's pass-through adjusted net
24 income (not less than zero) that is not allocated to New York state
25 pursuant to subdivision (c) of section eight hundred sixty-two of this
26 article, and (ii) multiplied by the percentage of the pro rata shares of
27 the electing S corporation that are owned by individuals, trusts, and
28 estates who are residents of New York state as defined in article twen-
29 ty-two of this chapter. For purposes of determining S corporation taxa-
30 ble income, an entity that is a disregarded entity as described in regu-
31 lation section 301.7701-2(c)(2)(i) for federal income tax purposes is
32 also disregarded in determining the percentage of the profits interest
33 of the electing S corporation that are owned by shareholders who are
34 subject to tax pursuant to article twenty-two of this chapter or that
35 are owned by shareholders who are residents of New York state pursuant
36 to the provisions of article twenty-two of this chapter. In addition,
37 for purposes of determining S corporation taxable income, the portion of
38 an S corporation interest treated as owned by the grantor of a trust or
39 by another person pursuant to section 671 of the Internal Revenue Code
40 shall be deemed owned by such grantor or other person for the purpose of
41 determining whether that portion of the S corporation is owned by a
42 shareholder who is subject to tax pursuant to article twenty-two or is
43 owned by a shareholder who is a resident of New York state as defined in
44 article twenty-two of this chapter.

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

48 (b) In order to be effective, the annual election must be made (1) if
49 the entity is an S corporation, by any officer, manager or shareholder
50 of the S corporation who is authorized under the law of the state where
51 the corporation is incorporated or under the S corporation's organiza-
52 tional documents to make the election and who represents to having such
53 authorization under penalty of perjury; or (2) if the entity is not an S
54 corporation, by any member, partner, owner, or other individual with
55 authority to bind the entity or sign returns pursuant to section six
56 hundred fifty-three of this chapter.

(c) The annual election shall be made in such manner as the commissioner may prescribe by regulation. An election pursuant to this subsection shall be effective for the affected pass-through entity only for the taxable year for which such election is made. An election under subsection (a) of this section may be made at any time during the preceding taxable year of the pass-through entity or at any time during the taxable year of the pass-through entity and on or before the fifteenth day of the third month of such taxable year. If an election under subsection (a) of this section is made for any taxable year of the pass-through entity and such election is made after the fifteenth day of the third month of such taxable year and on or before the fifteenth day of the third month of the following taxable year, such election shall be treated as made for the following taxable year. Provided, however, in a tax year beginning on or after January first, two thousand twenty-one but before June fifteenth, two thousand twenty-one, the pass-through entity may make such election at any time prior to June fifteenth, two thousand twenty-one.

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

(2) Effective date of termination. The termination of an election is effective immediately upon the taxpayer ceasing to be an eligible partnership or eligible S corporation and no tax will be due pursuant to this article for the taxable year. Provided, however, in a tax year beginning on or after January first, two thousand twenty-one but before June fifteenth, two thousand twenty-one, the pass-through entity may make such election at any time prior to June fifteenth, two thousand twenty-one.

(3) Abatement of penalties. If a termination occurs pursuant to this subdivision solely because a partner, member or shareholder of an otherwise eligible partnership or eligible S corporation died during the taxable year and the successor to the decedent's interest in the partnership or S corporation is an entity that will result in the partnership or the S corporation not being an eligible partnership or S corporation, no addition to tax will be imposed pursuant to subsection (c) of section six hundred eighty-five of this chapter on the partners, members and shareholders of such partnership or S corporation solely for underpayment of estimated personal income tax as a result of the termination of the election made pursuant to this article.

§ 862. Imposition and rate of tax. (a) General. A tax is hereby imposed for each taxable year on the partnership taxable income of every electing partnership doing business within this state and on the S corporation taxable income of every electing S corporation doing business within this state. This tax shall be in addition to any other taxes imposed and shall be at the rate of six and eighty-five hundredths percent if the sum of an entity's partners, members or shareholders share of distributive proceeds attributed to the pass-through entity is less than five million dollars and eight and eighty-two hundredths percent if the sum of an entity's partners, members or shareholders share of distributive proceeds attributed to the pass-through entity is five million dollars or more for each taxable year beginning on or after January first, two thousand twenty-one.

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

1 (c) Allocation to New York by an electing S corporation. In determin-
2 ing the amount of S corporation taxable income, the adjusted net income
3 of the electing S corporation shall be allocated to this state by multi-
4 plying the adjusted net income of the electing S corporation by the
5 business apportionment factor of the electing S corporation as calcu-
6 lated pursuant to section two hundred ten-A of this chapter.

7 § 863. Pass-through entity tax credit. A partner or member in an
8 electing partnership or a shareholder of an electing S corporation,
9 which partner, member or shareholder's federal taxable income includes
10 separately and non-separately computed items from the electing partner-
11 ship as described in section 702(a) of the Internal Revenue Code or from
12 the electing S corporation as described in section 1366(a) of the Inter-
13 nal Revenue Code and is subject to tax under article twenty-two of this
14 chapter shall be allowed a credit against the tax imposed pursuant to
15 article twenty-two of this chapter, computed pursuant to the provisions
16 of subsection (kkk) of section six hundred six of this chapter.

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

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

24 (1) The estimated tax shall be paid in four equal installments on
25 March fifteenth, June fifteenth, September fifteenth and December
26 fifteenth.

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

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

33 (c) Application to short taxable year. This section shall apply to a
34 taxable year of less than twelve months and to a taxable year for which
35 an election is made before June fifteenth, two thousand twenty-one, in
36 accordance with procedures established by the commissioner.

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

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

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

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

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

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

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

5 (c) Notification of termination. If an election is terminated during
6 the taxable year pursuant to subdivision (e) of section eight hundred
7 sixty-one of this article, the electing partnership or electing S corpo-
8 ration is required to file a return pursuant to subdivision (a) of this
9 section notifying the commissioner of such termination. Such notifica-
10 tion will be considered a claim for a credit or refund of an overpayment
11 of pass-through entity tax of any estimated payments made pursuant to
12 this article for the taxable year containing the date of termination.

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

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

17 (2) Identifying information of all partners, members and/or sharehold-
18 ers eligible to receive a credit pursuant to section eight hundred
19 sixty-three of this article and such partner's, member's and/or share-
20 holder's distributive or pro rata share of the pass-through entity tax
21 imposed on the electing partnership or S corporation; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (1) The commissioner may require the filing of one return which, in
14 addition to the return provided for in section eight hundred sixty-five
15 of this article, may also include any of the returns required to be
16 filed by a taxpayer pursuant to the provisions of subsection (c) of
17 section six hundred fifty-eight or article nine-A of this chapter.

18 (2) Where such return is required, the commissioner may also require
19 the payment with it of a single amount which shall equal the total of
20 the amounts (total taxes less any credits or refunds) that would have
21 been required to be paid with the returns pursuant to the provisions of
22 this article and the provisions of article twenty-two of this chapter or
23 the provisions of article nine-A of this chapter, whichever is applica-
24 ble.

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

29 (c) Deposit and disposition of revenue. All taxes, interest, penal-
30 ties, and fees collected or received by the commissioner pursuant to
31 this article shall be deposited and disposed of pursuant to the
32 provisions of section one hundred seventy-one-a of this chapter.

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

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

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

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

52 (i) the taxpayer's percentage of the interest in the electing partner-
53 ship or pro rata share of the electing S corporation that are owned by
54 partners, members or shareholders who are subject to the tax imposed by
55 this article as determined pursuant to the provisions of subsections (h)
56 and (i) of section eight hundred sixty of this chapter;

1 (ii) ninety-two percent; and

2 (iii) the pass-through entity tax paid with respect to income that is
3 sourced or allocated to New York state by the electing partnership or
4 electing S corporation for the taxable year; and

5 (B) for a taxpayer that is a resident, the product of: (i) the taxpay-
6 er's percentage of the interests in the electing S corporation or elect-
7 ing partnership that are owned by residents of New York state as deter-
8 mined pursuant to the provisions of subdivisions (h) and (i) of section
9 eight hundred sixty of this chapter; (ii) ninety-two percent; and (iii)
10 the pass-through entity tax paid with respect to income that is not
11 sourced or allocated to New York state by the electing partnership or
12 the electing S corporation.

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

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

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

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

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

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

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

49 (B) ninety-two percent; and

50 (C) the pass-through entity tax paid by the partnership or S corpo-
51 ration to such other state, political subdivision of such other state or
52 the District of Columbia.

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

54 (A) the state of the United States, political subdivision of such
55 state, or the District of Columbia imposing such tax also imposes an

income tax substantially similar to the tax imposed under article twenty-four-A of this chapter; 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 succeeding 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.

~~[(c)]~~ (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 chapter 92 of the laws of 2021, 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

1 possession of the comptroller. The comptroller shall require adequate
2 security from all such depositories. Of the total revenue collected or
3 received under such articles of this chapter, the comptroller shall
4 retain in the comptroller's hands such amount as the commissioner may
5 determine to be necessary for refunds or reimbursements under such arti-
6 cles of this chapter out of which amount the comptroller shall pay any
7 refunds or reimbursements to which taxpayers shall be entitled under the
8 provisions of such articles of this chapter. The commissioner and the
9 comptroller shall maintain a system of accounts showing the amount of
10 revenue collected or received from each of the taxes imposed by such
11 articles. The comptroller, after reserving the amount to pay such
12 refunds or reimbursements, shall, on or before the tenth day of each
13 month, pay into the state treasury to the credit of the general fund all
14 revenue deposited under this section during the preceding calendar month
15 and remaining to the comptroller's credit on the last day of such
16 preceding month, (i) except that the comptroller shall pay to the state
17 department of social services that amount of overpayments of tax imposed
18 by article twenty-two of this chapter and the interest on such amount
19 which is certified to the comptroller by the commissioner as the amount
20 to be credited against past-due support pursuant to subdivision six of
21 section one hundred seventy-one-c of this article, (ii) and except that
22 the comptroller shall pay to the New York state higher education
23 services corporation and the state university of New York or the city
24 university of New York respectively that amount of overpayments of tax
25 imposed by article twenty-two of this chapter and the interest on such
26 amount which is certified to the comptroller by the commissioner as the
27 amount to be credited against the amount of defaults in repayment of
28 guaranteed student loans and state university loans or city university
29 loans pursuant to subdivision five of section one hundred seventy-one-d
30 and subdivision six of section one hundred seventy-one-e of this arti-
31 cle, (iii) and except further that, notwithstanding any law, the comp-
32 troller shall credit to the revenue arrearage account, pursuant to
33 section ninety-one-a of the state finance law, that amount of overpay-
34 ment of tax imposed by article nine, nine-A, twenty-two, thirty, thir-
35 ty-A, thirty-B or thirty-three of this chapter, and any interest there-
36 on, which is certified to the comptroller by the commissioner as the
37 amount to be credited against a past-due legally enforceable debt owed
38 to a state agency pursuant to paragraph (a) of subdivision six of
39 section one hundred seventy-one-f of this article, provided, however, he
40 shall credit to the special offset fiduciary account, pursuant to
41 section ninety-one-c of the state finance law, any such amount credita-
42 ble as a liability as set forth in paragraph (b) of subdivision six of
43 section one hundred seventy-one-f of this article, (iv) and except
44 further that the comptroller shall pay to the city of New York that
45 amount of overpayment of tax imposed by article nine, nine-A, twenty-
46 two, thirty, thirty-A, thirty-B or thirty-three of this chapter and any
47 interest thereon that is certified to the comptroller by the commission-
48 er as the amount to be credited against city of New York tax warrant
49 judgment debt pursuant to section one hundred seventy-one-l of this
50 article, (v) and except further that the comptroller shall pay to a
51 non-obligated spouse that amount of overpayment of tax imposed by arti-
52 cle twenty-two of this chapter and the interest on such amount which has
53 been credited pursuant to section one hundred seventy-one-c, one hundred
54 seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or
55 one hundred seventy-one-l of this article and which is certified to the
56 comptroller by the commissioner as the amount due such non-obligated

1 spouse pursuant to paragraph six of subsection (b) of section six
2 hundred fifty-one of this chapter; and (vi) the comptroller shall deduct
3 a like amount which the comptroller shall pay into the treasury to the
4 credit of the general fund from amounts subsequently payable to the
5 department of social services, the state university of New York, the
6 city university of New York, or the higher education services corpo-
7 ration, or the revenue arrearage account or special offset fiduciary
8 account pursuant to section ninety-one-a or ninety-one-c of the state
9 finance law, as the case may be, whichever had been credited the amount
10 originally withheld from such overpayment, and (vii) with respect to
11 amounts originally withheld from such overpayment pursuant to section
12 one hundred seventy-one-l of this article and paid to the city of New
13 York, the comptroller shall collect a like amount from the city of New
14 York.

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

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

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

49 § 6. Subdivisions 2, 3 and paragraph (a) of subdivision 5 of section
50 92-z of the state finance law, as amended by section 5 of part MM of
51 chapter 59 of the laws of 2018, are amended to read as follows:

52 2. Such fund shall consist of (a) fifty percent of receipts from the
53 imposition of personal income taxes pursuant to article twenty-two of
54 the tax law, less such amounts as the commissioner of taxation and
55 finance may determine to be necessary for refunds, [and] (b) fifty
56 percent of receipts from the imposition of employer compensation expense

1 taxes pursuant to article twenty-four of the tax law, less such amounts
2 as the commissioner of taxation and finance may determine to be neces-
3 sary for refunds, and (c) fifty percent of receipts from the imposition
4 of the pass-through entity taxes pursuant to article twenty-four-A of
5 the tax law, less such amounts as the commission of taxation and finance
6 may determine to be necessary for refunds.

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

20 (b) Beginning on the first day of each month, the comptroller shall
21 deposit all of the receipts collected pursuant to section eight hundred
22 fifty-four of the tax law in the revenue bond tax fund until the amount
23 of monthly receipts anticipated to be deposited pursuant to the certif-
24 icate required in paragraph (b) of subdivision five of this section are
25 met. On or before the twelfth day of each month, the commissioner of
26 taxation and finance shall certify to the state comptroller the amounts
27 specified in paragraph (b) of subdivision two of this section relating
28 to the preceding month and, in addition, no later than March thirty-
29 first of each fiscal year the commissioner of taxation and finance shall
30 certify such amounts relating to the last month of such fiscal year. The
31 amounts so certified shall be deposited by the state comptroller in the
32 revenue bond tax fund.

33 (c) Beginning on the first day of each month, the comptroller shall
34 deposit all of the receipts collected pursuant to sections eight hundred
35 sixty-four and eight hundred sixty-five of the tax law in the revenue
36 bond tax fund until the amount of monthly receipts anticipated to be
37 deposited pursuant to the certificate required in paragraph (b) of
38 subdivision five of this section are met. On or before the twelfth day
39 of each month, the commissioner of taxation and finance shall certify to
40 the state comptroller the amounts specified in paragraph (c) of subdivi-
41 sion two of this section relating to the preceding month and, in addi-
42 tion, no later than March thirty-first of each fiscal year the commis-
43 sioner of taxation and finance shall certify such amounts relating to
44 the last month of such fiscal year. The amounts so certified shall be
45 deposited by the state comptroller in the revenue bond tax fund.

46 (a) The state comptroller shall from time to time, but in no event
47 later than the fifteenth day of each month (other than the last month of
48 the fiscal year) and no later than the thirty-first day of the last
49 month of each fiscal year, pay over and distribute to the credit of the
50 general fund of the state treasury all moneys in the revenue bond tax
51 fund, if any, in excess of the aggregate amount required to be set aside
52 for the payment of cash requirements pursuant to paragraph (b) of this
53 subdivision, provided that an appropriation has been made to pay all
54 amounts specified in any certificate or certificates delivered by the
55 director of the budget pursuant to paragraph (b) of this subdivision as
56 being required by each authorized issuer as such term is defined in

1 section sixty-eight-a of this chapter for the payment of cash require-
2 ments of such issuers for such fiscal year. Subject to the rights of
3 holders of debt of the state, in no event shall the state comptroller
4 pay over and distribute any moneys on deposit in the revenue bond tax
5 fund to any person other than an authorized issuer pursuant to such
6 certificate or certificates (i) unless and until the aggregate of all
7 cash requirements certified to the state comptroller as required by such
8 authorized issuers to be set aside pursuant to paragraph (b) of this
9 subdivision for such fiscal year shall have been appropriated to such
10 authorized issuers in accordance with the schedule specified in the
11 certificate or certificates filed by the director of the budget or (ii)
12 if, after having been so certified and appropriated, any payment
13 required to be made pursuant to paragraph (b) of this subdivision has
14 not been made to the authorized issuers which was required to have been
15 made pursuant to such certificate or certificates; provided, however,
16 that no person, including such authorized issuers or the holders of
17 revenue bonds, shall have any lien on moneys on deposit in the revenue
18 bond tax fund. Any agreement entered into pursuant to section sixty-
19 eight-c of this chapter related to any payment authorized by this
20 section shall be executory only to the extent of such revenues available
21 to the state in such fund. Notwithstanding subdivisions two and three of
22 this section, in the event the aggregate of all cash requirements certi-
23 fied to the state comptroller as required by such authorized issuers to
24 be set aside pursuant to paragraph (b) of this subdivision for the
25 fiscal year beginning on April first shall not have been appropriated to
26 such authorized issuers in accordance with the schedule specified in the
27 certificate or certificates filed by the director of the budget or, (ii)
28 if, having been so certified and appropriated, any payment required to
29 be made pursuant to paragraph (b) of this subdivision has not been made
30 pursuant to such certificate or certificates, all receipts collected
31 pursuant to section six hundred seventy-one of the tax law, ~~[and]~~
32 section eight hundred fifty-four of the tax law, section eight hundred
33 sixty-four of the tax law, and section eight hundred sixty-five of the
34 tax law shall be deposited in the revenue bond tax fund until the great-
35 er of forty percent of the aggregate of the receipts from the imposition
36 of (A) the personal income tax imposed by article twenty-two of the tax
37 law, ~~[and]~~ (B) the employer compensation expense tax imposed by article
38 twenty-four of the tax law, and (C) the pass-through entity tax imposed
39 by article twenty-four-A of the tax law for the fiscal year beginning on
40 April first and as specified in the certificate or certificates filed by
41 the director of the budget pursuant to this paragraph or a total of
42 twelve billion dollars has been deposited in the revenue bond tax fund.
43 Notwithstanding any other provision of law, if the state has appropri-
44 ated and paid to the authorized issuers the amounts necessary for the
45 authorized issuers to meet their requirements for the current fiscal
46 year pursuant to the certificate or certificates submitted by the direc-
47 tor of the budget pursuant to paragraph (b) of this section, the state
48 comptroller shall, on the last day of each fiscal year, pay to the
49 general fund of the state all sums remaining in the revenue bond tax
50 fund on such date except such amounts as the director of the budget may
51 certify are needed to meet the cash requirements of authorized issuers
52 during the subsequent fiscal year.

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

1 5. Nothing contained in this article shall be deemed to restrict the
2 right of the state to amend, repeal, modify or otherwise alter statutes
3 imposing or relating to the taxes imposed pursuant to article
4 twenty-two, ~~[and]~~ article twenty-four, and article twenty-four-A of the
5 tax law. The authorized issuers shall not include within any resolution,
6 contract or agreement with holders of the revenue bonds issued under
7 this article any provision which provides that a default occurs as a
8 result of the state exercising its right to amend, repeal, modify or
9 otherwise alter the taxes imposed pursuant to article twenty-two, ~~[and]~~
10 article twenty-four, and article twenty-four-A of the tax law.
11 § 8. This act shall take effect immediately and shall apply to all
12 taxable years beginning on or after January 1, 2021; provided, however,
13 that the amendments to subdivision 1 of section 171-a of the tax law
14 made by section four of this act shall not affect the expiration and
15 reversion of such subdivision pursuant to chapter 90 of the laws of
16 2014, as amended, when upon such date the provisions of section five of
17 this act shall take effect.