

STATE OF NEW YORK

7949

2023-2024 Regular Sessions

IN ASSEMBLY

August 18, 2023

Introduced by M. of A. SIMON, KELLES -- read once and referred to the Committee on Economic Development

AN ACT to amend the economic development law and the public service law, in relation to limiting the use of fossil fuels in the research or production of energy for purposes of the excelsior jobs program; to amend the economic development law, in relation to prohibiting businesses engaged in the production, transmission, distribution, transportation or storage of fossil fuels from participation in the START-UP NY program; to amend the tax law, in relation to eliminating property that directly produces, transmits, distributes, transports or stores fossil fuels from qualifying tangible property for purposes of the investment tax credit and the Brownfield redevelopment tax credit; to amend the tax law, in relation to tax on sales of motor fuel and petroleum products and to make conforming changes; to amend the tax law, in relation to the definition of qualified rehabilitation expenditures for purposes of the tax credit for rehabilitation of historic properties; to amend the public authorities law, in relation to the definition of a qualified emerging technology company; to amend the tax law, in relation to the definition of manufacturer for purposes of the calculation of special tax benefits for qualified New York manufacturers; to repeal paragraph 3 of subdivision (f) and paragraph 4 of subdivision (g) of section 301-a of the tax law relating to manufacturing gallonage for purposes of the imposition of certain taxes; to repeal subdivisions (i), (j), and (l) of section 301-c of the tax law relating to reimbursement; to repeal section 301-d of the tax law relating to a utility credit or reimbursement; to repeal subdivision (f) of section 301-e of the tax law relating to an aviation fuel business which services four or more cities; to repeal subparagraph (xi) of paragraph 3 of subdivision (c) of section 1105 of the tax law relating to services rendered with respect to certain property; and to repeal paragraph 9 of subdivision (a) of section 1115 of the tax law relating to fuel sold to an airline for use in its airplanes

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

LBD08180-01-3

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "Fossil Fuel Subsidy Elimination Act".

3 § 2. Subdivisions 17, 18, 21, and 22 of section 352 of the economic
4 development law, subdivisions 17, 18 and 21 as amended by section 1 of
5 part K of chapter 59 of the laws of 2017, subdivision 18 as separately
6 amended by section 1 of part ZZ of chapter 59 of the laws of 2017,
7 subdivision 22 as amended by chapter 572 of the laws of 2022, are
8 amended to read as follows:

9 17. "Qualified investment" means an investment in tangible property
10 (including a building or a structural component of a building) owned by
11 a business enterprise which:

12 (a) is depreciable pursuant to section one hundred sixty-seven of the
13 internal revenue code;

14 (b) has a useful life of four years or more;

15 (c) is acquired by purchase as defined in section one hundred seven-
16 ty-nine (d) of the internal revenue code;

17 (d) does not directly produce, transmit, distribute, transport, or
18 store fossil fuels or directly utilize fossil fuels for the production
19 of on-site energy, including thermal energy, for any purpose. For the
20 purposes of this article, fossil fuel shall have the same definition as
21 in section 1-103 of the energy law;

22 (e) has a situs in this state; and

23 ~~(e)~~ (f) is placed in service in the state on or after the date the
24 certificate of eligibility is issued to the business enterprise.

25 18. "Regionally significant project" means (a) a manufacturer creating
26 at least ten net new jobs in the state and making significant capital
27 investment in the state; (b) a business creating at least ten net new
28 jobs in agriculture in the state and making significant capital invest-
29 ment in the state, (c) a financial services firm, distribution center,
30 or back office operation creating at least one hundred net new jobs in
31 the state and making significant capital investment in the state, (d) a
32 scientific research and development firm creating at least ten net new
33 jobs in the state, and making significant capital investment in the
34 state, (e) a life sciences company creating at least twenty net new jobs
35 in the state and making significant capital investment in the state or
36 (f) an entertainment company creating or obtaining at least two hundred
37 net new jobs in the state and making significant capital investment in
38 the state. Other businesses creating one hundred fifty or more net new
39 jobs in the state and making significant capital investment in the state
40 may be considered eligible as a regionally significant project by the
41 commissioner as well. A regionally significant project shall not be
42 engaged in the production, transmission, distribution, transportation,
43 storage, sale, purchase, or delivery of fossil fuels. The commissioner
44 shall promulgate regulations pursuant to section three hundred fifty-six
45 of this article to determine what additional criteria a business must
46 meet to be eligible as a regionally significant project, including, but
47 not limited to, whether a business exports a substantial portion of its
48 products or services outside of the state or outside of a metropolitan
49 statistical area or county within the state.

50 21. "Research and development expenditures" mean the expenses of the
51 business enterprise that are qualified research expenses under the
52 federal research and development credit under section forty-one of the
53 internal revenue code and are attributable to activities conducted in

1 the state. If the federal research and development credit has expired,
2 then the research and development expenditures shall be calculated as if
3 the federal research and development credit structure and definition in
4 effect in federal tax year two thousand nine were still in effect.

5 Research and development expenditures does not include any expenses for
6 tangible personal property that directly produces, transmits, distrib-
7 utes, transports, or stores fossil fuels or directly utilizes fossil
8 fuels for the production of on-site energy, including thermal energy,
9 for any purpose.

10 22. "Scientific research and development" means conducting research
11 and experimental development in the physical, engineering, and life
12 sciences, including but not limited to agriculture, animal fiber, elec-
13 tronics, environmental, biology, botany, biotechnology, computers, chem-
14 istry, food, fisheries, forests, geology, health, mathematics, medicine,
15 oceanography, pharmacy, physics, plant fiber, veterinary, and other
16 allied subjects. For the purposes of this article, scientific research
17 and development does not include medical or veterinary laboratory test-
18 ing facilities, or any research that contributes to the production,
19 transmission, distribution, transportation, storage, sale, purchase, or
20 delivery of fossil fuels.

21 § 3. Subdivision 7 of section 355 of the economic development law, as
22 amended by chapter 494 of the laws of 2022, is amended to read as
23 follows:

24 7. For availability of special excelsior jobs program rates governing
25 the provision of [~~gas or~~] electric service, see subdivision twelve-d of
26 section sixty-six of the public service law. Such special excelsior jobs
27 program rates may remain available to participants as defined in this
28 article for a period of up to ten years commencing in the first taxable
29 year that the participant receives a certificate of tax credit, or the
30 first taxable year listed on its preliminary schedule of benefits,
31 whichever is later. Notwithstanding any other provision of this section,
32 such special excelsior job program rates shall remain available to a
33 Green CHIPS project which enters into a phase two of such project for
34 the entirety of both of its schedules of benefits. Provided however, if
35 a participant is removed from the excelsior jobs program pursuant to
36 this article, the excelsior jobs program rates may be denied.

37 § 4. Subdivision 12-d of section 66 of the public service law, as
38 added by section 8 of part G of chapter 61 of the laws of 2011, is
39 amended to read as follows:

40 12-d. Notwithstanding any other provision of law, upon application of
41 [~~a gas or~~] an electric corporation, the commission shall authorize such
42 corporation to charge a special excelsior jobs program rate equal to the
43 incremental cost of providing electric service to participants in the
44 excelsior jobs program as defined in article seventeen of the economic
45 development law.

46 § 5. Subdivision 2 of section 433 of the economic development law, as
47 added by section 1 of part A of chapter 68 of the laws of 2013, is
48 amended to read as follows:

49 2. The following types of businesses are prohibited from participating
50 in the START-UP NY program.

- 51 (a) retail and wholesale businesses;
- 52 (b) restaurants;
- 53 (c) real estate brokers;
- 54 (d) law firms;
- 55 (e) medical or dental practices;
- 56 (f) real estate management companies;

(g) hospitality;
(h) finance and financial services;
(i) businesses providing personal services;
(j) businesses providing business administrative or support services, unless such business has received permission from the commissioner to apply to participate in the START-UP NY program upon demonstration that the business would create no fewer than one hundred net new jobs in the tax-free NY area;

(k) accounting firms;

(l) businesses providing utilities; ~~and~~

(m) businesses engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity; and

(n) businesses engaged in the production, transmission, distribution, transportation, or storage of fossil fuels as defined in section 1-103 of the energy law.

§ 6. Subparagraph (i) of paragraph (b) of subdivision 1 of section 210-B of the tax law, as amended by section 2 of part P of chapter 59 of the laws of 2017, is amended to read as follows:

(i) A credit shall be allowed under this subdivision with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable pursuant to section one hundred sixty-seven of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, have a situs in this state and are (A) principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing, (B) industrial waste treatment facilities or air pollution control facilities, used in the taxpayer's trade or business, (C) research and development property, or (D) principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, or of commodities as defined in section four hundred seventy-five (e) of the Internal Revenue Code, (E) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services for a regulated investment company as defined in section eight hundred fifty-one of the Internal Revenue Code, or lending, loan arrangement or loan origination services to customers in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, (F) principally used in the ordinary course of the taxpayer's business as an exchange registered as a national securities exchange within the meaning of sections 3(a)(1) and 6(a) of the Securities Exchange Act of 1934 or a board of trade as defined in subparagraph one of paragraph (a) of section fourteen hundred ten of the not-for-profit corporation law or as an entity that is wholly owned by one or more such national securities exchanges or boards of trade and that provides automation or technical services thereto, or (G) principally used as a qualified film production facility including qualified film production facilities having a situs in an empire zone designated as such pursuant

1 to article eighteen-B of the general municipal law, where the taxpayer
2 is providing three or more services to any qualified film production
3 company using the facility, including such services as a studio lighting
4 grid, lighting and grip equipment, multi-line phone service, broadband
5 information technology access, industrial scale electrical capacity,
6 food services, security services, and heating, ventilation and air
7 conditioning. For purposes of clauses (D), (E) and (F) of this subpara-
8 graph, property purchased by a taxpayer affiliated with a regulated
9 broker, dealer, registered investment advisor, national securities
10 exchange or board of trade, is allowed a credit under this subdivision
11 if the property is used by its affiliated regulated broker, dealer,
12 registered investment advisor, national securities exchange or board of
13 trade in accordance with this subdivision. For purposes of determining
14 if the property is principally used in qualifying uses, the uses by the
15 taxpayer described in clauses (D) and (E) of this subparagraph may be
16 aggregated. In addition, the uses by the taxpayer, its affiliated regu-
17 lated broker, dealer and registered investment advisor under either or
18 both of those clauses may be aggregated. Provided, however, a taxpayer
19 shall not be allowed the credit provided by clauses (D), (E) and (F) of
20 this subparagraph unless the property is first placed in service before
21 October first, two thousand fifteen and (i) eighty percent or more of
22 the employees performing the administrative and support functions
23 resulting from or related to the qualifying uses of such equipment are
24 located in this state or (ii) the average number of employees that
25 perform the administrative and support functions resulting from or
26 related to the qualifying uses of such equipment and are located in this
27 state during the taxable year for which the credit is claimed is equal
28 to or greater than ninety-five percent of the average number of employ-
29 ees that perform these functions and are located in this state during
30 the thirty-six months immediately preceding the year for which the cred-
31 it is claimed, or (iii) the number of employees located in this state
32 during the taxable year for which the credit is claimed is equal to or
33 greater than ninety percent of the number of employees located in this
34 state on December thirty-first, nineteen hundred ninety-eight or, if the
35 taxpayer was not a calendar year taxpayer in nineteen hundred ninety-
36 eight, the last day of its first taxable year ending after December
37 thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes
38 subject to tax in this state after the taxable year beginning in nine-
39 teen hundred ninety-eight, then the taxpayer is not required to satisfy
40 the employment test provided in the preceding sentence of this subpara-
41 graph for its first taxable year. For purposes of clause (iii) of this
42 subparagraph the employment test will be based on the number of employ-
43 ees located in this state on the last day of the first taxable year the
44 taxpayer is subject to tax in this state. If the uses of the property
45 must be aggregated to determine whether the property is principally used
46 in qualifying uses, then either each affiliate using the property must
47 satisfy this employment test or this employment test must be satisfied
48 through the aggregation of the employees of the taxpayer, its affiliated
49 regulated broker, dealer, and registered investment adviser using the
50 property. For purposes of clause (A) of this subparagraph, tangible
51 personal property and other tangible property shall not include property
52 principally used by the taxpayer in the production or distribution of
53 electricity, natural gas after extraction from wells, steam, or water
54 delivered through pipes and mains. For purposes of this subdivision,
55 tangible personal property and other tangible property does not include
56 property that directly produces, transmits, distributes, transports, or

stores fossil fuels as defined in section 1-103 of the energy law, or directly utilizes fossil fuels for the production of on-site energy, including thermal energy, for any purpose.

§ 7. Subdivision (m) of section 301-a of the tax law, as added by section 20 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(m) Special rate adjustment for certain vessels. Notwithstanding any provision of this section to the contrary, the use of non-highway diesel motor fuel in the engine of a vessel to propel such vessel shall be subject to tax at the motor fuel and highway diesel motor fuel rate provided for in this section, and shall be subject to the provisions of section three hundred one-j of this article, including the adjustment set forth in paragraph ~~four~~ three of subdivision (a) of such section three hundred one-j. A credit or refund shall be available to the extent tax paid on gallonage used to propel any such vessel exceeds the amount of tax due based on the tax rate set forth herein. Provided, however, that the commissioner shall require such documentary proof to qualify for any credit or reimbursement provided hereunder as the commissioner deems appropriate.

§ 8. Paragraph 3 of subdivision (f) and paragraph 4 of subdivision (g) of section 301-a of the tax law are REPEALED.

§ 9. Subdivisions (a) and (d) of section 301-b of the tax law, subdivision (a) as added by chapter 190 of the laws of 1990, paragraph 5 of subdivision (a) as amended by section 3 of part E of chapter 59 of the laws of 2012, paragraphs 6, 7 and 8 of subdivision (a) as added by section 4 of part W-1 of chapter 109 of the laws of 2006, and subdivision (d) as amended by section 21 of part K of chapter 61 of the laws of 2011, are amended to read as follows:

(a) Products. (1) ~~[Kerosene sold or used by a petroleum business which is registered under article twelve-A of this chapter as a distributor of diesel motor fuel so long as (i) such product has not been blended or mixed with any other product constituting diesel motor fuel or motor fuel or a residual petroleum product and (ii) such product is not used by the petroleum business as fuel to operate a motor vehicle or sold by such petroleum business to a consumer for use as fuel to operate a motor vehicle.]~~

~~(2) Kero-jet fuel (i) sold by a petroleum business which is registered under article twelve-A of this chapter as a distributor of diesel motor fuel to a consumer for use exclusively as jet aircraft fuel or to a petroleum business registered under such article twelve-A as a "distributor of kero-jet fuel only" where such fixed base operator is engaged solely in making or offering to make retail sales not in bulk of kero-jet fuel directly into the fuel tank of an airplane for the purpose of operating such airplane, (ii) used by a petroleum business, registered under article twelve-A of this chapter as a distributor of diesel motor fuel, exclusively as jet aircraft fuel, or (iii) sold at retail not in bulk by a petroleum business registered under article twelve-A of this chapter as a "distributor of kero-jet fuel only" where such fuel is delivered directly into the fuel tank of a jet airplane for use in the operation of such airplane.]~~

~~(3)~~ Aviation gasoline, meeting the specifications set forth in American Standard Testing Material Specification D910 or Military Specification MIL-G-5572, which is imported or caused to be imported into this state by a petroleum business which is registered under article twelve-A of this chapter as a distributor of motor fuel or produced, refined, manufactured or compounded in this state by such a petroleum business.

~~[(4) Residual petroleum product sold by a petroleum business registered under this article as a residual petroleum product business if such product is sold by such petroleum business to a consumer for use exclusively as bunker fuel for vessels or if such product is used by such petroleum business exclusively as bunker fuel in its own vessels.~~

~~(5) Liquefied petroleum gases, such as butane, ethane or propane.~~

~~(6)]~~ (2)

E85 imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article twelve-A of this chapter, as a distributor of motor fuel, and then sold by such petroleum business and delivered to a filling station and placed in a storage tank of such filling station for such E85 to be dispensed directly into a motor vehicle for use in the operation of such vehicle.

~~[(7)]~~ (i) Partial B20 exemption. B20 imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article twelve-A of this chapter, as a distributor of diesel motor fuel, and then sold by such petroleum business.

(ii) Calculation of partial exemption. The amount of the partial exemption under this paragraph shall be determined by multiplying the quantity of B20 times twenty percent of the applicable taxes otherwise imposed by this article on such fuel.

~~[(8)]~~ (3) CNG or hydrogen.

(d) Sales to consumers for heating purposes. ~~[(1)]~~ Total residential heating exemption. Non-highway diesel motor fuel sold by a petroleum business registered under article twelve-A of this chapter as a distributor of diesel motor fuel or residual petroleum product sold by a petroleum business registered under this article as a residual petroleum product business to the consumer exclusively for residential heating purposes only if such non-highway diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel.

~~[(2) Partial non-residential heating exemption. (A) Non-highway diesel motor fuel sold by a petroleum business registered under article twelve A of this chapter as a distributor of diesel motor fuel or residual petroleum product sold by a petroleum business registered under this article as a residual petroleum product business to the consumer exclusively for heating, other than residential heating purposes only if such non-highway diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel (B) Calculation of partial exemption. The partial exemption under this paragraph shall be determined by multiplying the quantity of non-highway diesel motor fuel and residual petroleum product eligible for the exemption times the sum of the then current rate of the supplemental tax imposed by section three hundred one j of this article and forty six percent of the then current rate of the tax imposed by section three hundred one a of this article, with respect to the specific non-highway diesel motor fuel or residual petroleum product rate, as the case may be.]~~

§ 10. The subdivision heading and paragraph 1 of subdivision (c) of section 301-b of the tax law, as added by chapter 190 of the laws of 1990, are amended to read as follows:

Sales to ~~[New York state and]~~ the federal government. (1) Motor fuel imported or caused to be imported into this state or produced, refined,

1 manufactured or compounded in this state by a petroleum business regis-
2 tered under article twelve-A of this chapter, as a distributor of motor
3 fuel, and then sold by such petroleum business to an organization
4 described in paragraph ~~[one or]~~ two of subdivision (a) of section eleven
5 hundred sixteen of this chapter where such motor fuel is used by such
6 organization for its own use or consumption.

7 § 11. The opening paragraph and subdivisions (a) and (b) of section
8 301-c of the tax law, the opening paragraph as amended by section 2 of
9 part T of chapter 59 of the laws of 2022, subdivision (a) as amended by
10 section 23 of part K of chapter 61 of the laws of 2011, and subdivision
11 (b) as amended by chapter 330 of the laws of 1991, are amended to read
12 as follows:

13 A subsequent purchaser shall be eligible for reimbursement of tax with
14 respect to the following gallonage, subsequently sold by such purchaser
15 in accordance with subdivision (a), (b), (e), (h), ~~[(j), (k), (n) or~~
16 ~~(e)]~~ (i), (k) or (l) of this section or used by such purchaser in
17 accordance with subdivision (c), (d), (f), (g), ~~[(i), (l), (m)]~~ (j) or
18 (q) of this section, which gallonage has been included in the measure of
19 the tax imposed by this article on a petroleum business:

20 (a) ~~[Non-highway Diesel motor fuel used for heating purposes. (1)]~~
21 Total residential heating reimbursement. Non-highway Diesel motor fuel
22 purchased in this state and sold by such purchaser to a consumer for use
23 exclusively for residential heating purposes but only where (i) such
24 non-highway diesel motor fuel is delivered into a storage tank which is
25 not equipped with a hose or other apparatus by which such non-highway
26 Diesel motor fuel can be dispensed into the fuel tank of a motor vehicle
27 and such storage tank is attached to the heating unit burning such non-
28 highway Diesel motor fuel, (ii) the tax imposed pursuant to this article
29 has been paid with respect to such non-highway diesel motor fuel and the
30 entire amount of such tax has been absorbed by such purchaser, and (iii)
31 such purchaser possesses documentary proof satisfactory to the commis-
32 sioner evidencing the absorption by it of the entire amount of the tax
33 imposed pursuant to this article. Provided, however, that the commis-
34 sioner is authorized, in the event that the commissioner determines that
35 it would not threaten the integrity of the administration and enforce-
36 ment of the tax imposed by this article, to provide a reimbursement with
37 respect to a retail sale to a consumer for residential heating purposes
38 of less than ten gallons of non-highway diesel motor fuel provided such
39 fuel is not dispensed into the tank of a motor vehicle.

40 ~~[(2) Partial non-residential heating reimbursement. (A) Non-highway~~
41 ~~Diesel motor fuel purchased in this state and sold by such purchaser to~~
42 ~~a consumer for use exclusively for heating, other than for residential~~
43 ~~heating purposes, but only where (i) such non-highway diesel motor fuel~~
44 ~~is delivered into a storage tank which is not equipped with a hose or~~
45 ~~other apparatus by which such non-highway Diesel motor fuel can be~~
46 ~~dispensed into the fuel tank of a motor vehicle and such storage tank is~~
47 ~~attached to the heating unit burning such non-highway Diesel motor fuel,~~
48 ~~(ii) the tax imposed pursuant to this article has been paid with respect~~
49 ~~to such non-highway diesel motor fuel and the entire amount of such tax~~
50 ~~has been absorbed by such purchaser, and (iii) such purchaser possesses~~
51 ~~documentary proof satisfactory to the commissioner evidencing the~~
52 ~~absorption by it of the entire amount of the tax imposed pursuant to~~
53 ~~this article.~~

54 ~~(B) Calculation of partial reimbursement. Notwithstanding any other~~
55 ~~provision of this article, the amount of the reimbursement under this~~
56 ~~paragraph shall be determined by multiplying the quantity of non-highway~~

~~diesel motor fuel eligible for the reimbursement times the sum of the then current rate of the supplemental tax imposed by section three hundred one-j of this article and forty six percent of the then current rate of the tax imposed by section three hundred one-a of this article, with respect to the non-highway diesel motor fuel rate, as the case may be.]~~

(b) Sales to ~~[New York state and]~~ the federal government. Motor fuel and diesel motor fuel purchased in this state and sold by such purchaser in this state to an organization described in paragraph ~~[one-or]~~ two of subdivision (a) of section eleven hundred sixteen of this chapter where (i) such motor fuel or diesel motor fuel is for such organization's own use or consumption, (ii) the tax imposed pursuant to this article has been paid with respect to such motor fuel or diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser and, (iii) such purchaser possesses documentary proof satisfactory to the commissioner of taxation and finance evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner ~~[of taxation and finance]~~ shall require such documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate, including the expansion of any certification required pursuant to section two hundred eighty-five-a or two hundred eighty-five-b of this chapter to cover the taxes imposed pursuant to this article.

§ 11-a. The opening paragraph of section 301-c of the tax law, as amended by section 3 of part T of chapter 59 of the laws of 2022, is amended to read as follows:

A subsequent purchaser shall be eligible for reimbursement of tax with respect to the following gallonage, subsequently sold by such purchaser in accordance with subdivision (a), (b), (e), (h), ~~[(j)]~~ or ~~[(k)]~~ (i) of this section or used by such purchaser in accordance with subdivision (c), (d), (f), (g), ~~[(i), (l), (m)]~~ (j) or (q) of this section, which gallonage has been included in the measure of the tax imposed by this article on a petroleum business:

§ 12. Subdivisions (i), (j) and (l) of section 301-c of the tax law are REPEALED.

§ 13. Subdivisions (k), (m), (n), (o) and (p) of section 301-c of the tax law are relettered subdivisions (i), (j), (k), (l) and (m).

§ 14. Section 301-d of the tax law is REPEALED.

§ 15. Subdivision (f) of section 301-e of the tax law is REPEALED.

§ 16. Subdivision (a) of section 301-j of the tax law, as amended by chapter 309 of the laws of 1996, paragraphs 1, 2, 3 and 4 as amended by section 29 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(a) Imposition of tax. (1) In addition to the taxes imposed by sections three hundred one-a and three hundred one-e of this article, there is hereby imposed upon every petroleum business subject to tax imposed under section three hundred one-a of this article and every aviation fuel business subject to the aviation gasoline component of the tax imposed under section three hundred one-e of this article, a supplemental monthly tax for each or any part of a taxable month at a rate of six and eight-tenths cents per gallon with respect to the products included in each component of the taxes imposed by such section three hundred one-a and the aviation gasoline component of the tax imposed by such section three hundred one-e of this article.

(2) [~~Provided, however, "commercial gallonage," as such term is defined in subdivision (k) of section three hundred of this article, shall be exempt from the measure of the tax imposed under this section.~~

~~(3)~~] Provided, further, "railroad diesel," as such term is defined in subdivision (l) of section three hundred of this article, shall be exempt from the measure of the tax imposed under this section.

[~~(4)~~] (3) Provided, further, a separate per gallon rate shall apply with respect to highway diesel motor fuel. Such rate shall be determined by taking the adjusted rate per gallon of tax imposed under paragraph one of this subdivision as adjusted in accordance with paragraph [five] four of this subdivision and subtracting therefrom one and three-quarters cents. Commencing January first, two thousand twelve, and each January thereafter, the per gallon rate applicable to highway diesel motor fuel shall be the adjusted rate under paragraph one of this subdivision as adjusted in accordance with paragraph [five] four of this subdivision which commences on such date minus one and three-quarters cents. The resulting rate under this paragraph shall be expressed in hundredths of a cent.

[~~(5)~~] (4) Except as herein provided, the tax imposed under this section shall be calculated in the same respective manner as the taxes imposed by section three hundred one-a and section three hundred one-e of this article. Except [~~for section three hundred one-d and except~~] as otherwise provided in this section, all the provisions of this article applicable to the taxes imposed by sections three hundred one-a and three hundred one-e of this article, shall apply with respect to the supplemental tax imposed by this section to the same extent as if it were respectively imposed by such sections.

§ 17. Subparagraph (A) of paragraph 2 of subsection (a) of section 606 of the tax law, as amended by section 3 of part P of chapter 59 of the laws of 2017, is amended to read as follows:

(A) A credit shall be allowed under this subsection with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable pursuant to section one hundred sixty-seven of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, have a situs in this state and are (i) principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing, (ii) industrial waste treatment facilities or air pollution control facilities, used in the taxpayer's trade or business, (iii) research and development property, (iv) principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, or of commodities as defined in section 475(e) of the Internal Revenue Code, (v) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services for a regulated investment company as defined in section eight hundred fifty-one of the Internal Revenue Code, or lending, loan arrangement or loan origination services to customers in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of securities as defined in

1 section four hundred seventy-five (c)(2) of the Internal Revenue Code,
2 or (vi) principally used as a qualified film production facility includ-
3 ing qualified film production facilities having a situs in an empire
4 zone designated as such pursuant to article eighteen-B of the general
5 municipal law, where the taxpayer is providing three or more services to
6 any qualified film production company using the facility, including such
7 services as a studio lighting grid, lighting and grip equipment, multi-
8 line phone service, broadband information technology access, industrial
9 scale electrical capacity, food services, security services, and heat-
10 ing, ventilation and air conditioning. For purposes of clauses (iv) and
11 (v) of this subparagraph, property purchased by a taxpayer affiliated
12 with a regulated broker, dealer, or registered investment adviser is
13 allowed a credit under this subsection if the property is used by its
14 affiliated regulated broker, dealer or registered investment adviser in
15 accordance with this subsection. For purposes of determining if the
16 property is principally used in qualifying uses, the uses by the taxpay-
17 er described in clauses (iv) and (v) of this subparagraph may be aggre-
18 gated. In addition, the uses by the taxpayer, its affiliated regulated
19 broker, dealer and registered investment adviser under either or both of
20 those clauses may be aggregated. Provided, however, a taxpayer shall not
21 be allowed the credit provided by clauses (iv) and (v) of this subpara-
22 graph unless (I) eighty percent or more of the employees performing the
23 administrative and support functions resulting from or related to the
24 qualifying uses of such equipment are located in this state, or (II) the
25 average number of employees that perform the administrative and support
26 functions resulting from or related to the qualifying uses of such
27 equipment and are located in this state during the taxable year for
28 which the credit is claimed is equal to or greater than ninety-five
29 percent of the average number of employees that perform these functions
30 and are located in this state during the thirty-six months immediately
31 preceding the year for which the credit is claimed, or (III) the number
32 of employees located in this state during the taxable year for which the
33 credit is claimed is equal to or greater than ninety percent of the
34 number of employees located in this state on December thirty-first,
35 nineteen hundred ninety-eight or, if the taxpayer was not a calendar
36 year taxpayer in nineteen hundred ninety-eight, the last day of its
37 first taxable year ending after December thirty-first, nineteen hundred
38 ninety-eight. If the taxpayer becomes subject to tax in this state after
39 the taxable year beginning in nineteen hundred ninety-eight, then the
40 taxpayer is not required to satisfy the employment test provided in the
41 preceding sentence of this subparagraph for its first taxable year. For
42 the purposes of clause (III) of this subparagraph the employment test
43 will be based on the number of employees located in this state on the
44 last day of the first taxable year the taxpayer is subject to tax in
45 this state. If the uses of the property must be aggregated to determine
46 whether the property is principally used in qualifying uses, then either
47 each affiliate using the property must satisfy this employment test or
48 this employment test must be satisfied through the aggregation of the
49 employees of the taxpayer, its affiliated regulated broker, dealer, and
50 registered investment adviser using the property. For purposes of clause
51 (i) of this subparagraph, tangible personal property and other tangible
52 property shall not include property principally used by the taxpayer in
53 the production or distribution of electricity, natural gas after
54 extraction from wells, steam, or water delivered through pipes and
55 mains. For purposes of this subsection, tangible personal property and
56 other tangible property does not include property that directly produc-

es, transmits, distributes, transports, or stores fossil fuels as defined in section 1-103 of the energy law, or directly utilizes fossil fuels for the production of on-site energy, including thermal energy, for any purpose.

§ 18. Paragraph 3 of subdivision (b) of section 21 of the tax law, as amended by chapter 420 of the laws of 2006, clause (i) of subparagraph (B) as amended by section 22 of part BB of chapter 56 of the laws of 2015, is amended to read as follows:

(3) Qualified tangible property. "Qualified tangible property" is property described in either subparagraph (A) or (B) and subparagraph (C) of this paragraph which:

(A) (i) is depreciable pursuant to section one hundred sixty-seven of the internal revenue code,

(ii) has a useful life of four years or more,

(iii) has been acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code,

(iv) has a situs on a qualified site in this state, and

(v) is principally used by the taxpayer for industrial, commercial, recreational or environmental conservation purposes (including the commercial development of residential housing); or

(B) (i) is, or when occupied becomes, part of a dwelling whose primary ownership structure is covered under either article nine-B of the real property law or meets the requirements of section 216 (b)(1) of the Internal Revenue Code or is part of an affordable housing project as defined in subdivision twenty-nine of section 27-1405 of the environmental conservation law, where units are sold as single family homes or multiple family dwellings;

(ii) has been acquired by purchase (as defined in section one hundred seventy-nine (d) of the Internal Revenue Code);

(iii) has a situs on a qualified site in this state; and

(iv) for purposes of this subparagraph only, and notwithstanding any other section of law to the contrary, property qualifying under this subparagraph shall be deemed to be qualified tangible property for the purposes of paragraph one of subdivision (d) of this section; and in addition, for the purposes of this subdivision only, property qualifying under this subparagraph shall be deemed to have been placed in service for the purposes of paragraph three of subdivision (a) of this section when a certificate of occupancy is issued for such property; and

(C) does not directly produce, transmit, distribute, transport, or store fossil fuels as defined in section 1-103 of the energy law, or directly utilize fossil fuels for the production of on-site energy, including thermal energy, for any purpose.

§ 19. Subdivision 26 of section 210-B of the tax law is amended by adding a new paragraph (g) to read as follows:

(g) For purposes of this subdivision, "qualified rehabilitation expenditures" does not include expenditures for property that directly produces, transmits, distributes, transports, or stores fossil fuels as defined in section 1-103 of the energy law, or directly utilizes fossil fuels for the production of on-site energy, including thermal energy, for any purpose.

§ 20. Subparagraphs (ix) and (x) of paragraph 3 and paragraph 5 of subdivision (c) of section 1105 of the tax law, subparagraph (ix) of paragraph 3 as added by chapter 395 of the laws of 1998, subparagraph (x) of paragraph 3 as added by section 1 of part FF of chapter 407 of the laws of 1999, and paragraph 5 as amended by chapter 321 of the laws of 2005, are amended to read as follows:

(ix) [~~such services rendered with respect to tangible property used or consumed directly and predominantly in the production for sale of gas or oil by manufacturing, processing, generating, assembling, refining, mining, or extracting,~~

~~(x)~~] such services rendered with respect to property described in paragraph twelve-a of subdivision (a) of section eleven hundred fifteen of this article.

(5) Maintaining, servicing or repairing real property, property or land, as such terms are defined in the real property tax law, whether the services are performed in or outside of a building, as distinguished from adding to or improving such real property, property or land, by a capital improvement as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this article, but excluding (i) services rendered by an individual who is not in a regular trade or business offering his services to the public, (ii) [~~services rendered directly with respect to real property, property or land used or consumed directly and predominantly in the production for sale of gas or oil by manufacturing, processing, generating, assembling, refining, mining, or extracting,~~ (iii)] services rendered with respect to real property, property or land used or consumed predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both and [~~(iv)~~] (iii) services of removal of waste material from a facility regulated as a transfer station or construction and demolition debris processing facility by the department of environmental conservation, provided that the waste material to be removed was not generated by the facility.

§ 21. Subparagraph (xi) of paragraph 3 of subdivision (c) of section 1105 of the tax law is REPEALED.

§ 22. Paragraph 9 of subdivision (a) of section 1115 of the tax law is REPEALED.

§ 23. Paragraph (ii) of subdivision (b) of section 1115 of the tax law, as amended by section 30 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(ii) [~~Gas, electricity~~] **Electricity**, refrigeration and steam, and [~~gas,~~] electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in research and development in the experimental or laboratory sense shall be exempt from the tax imposed under subdivision (b) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article. Such research and development shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects.

§ 24. Paragraph 1 of subdivision (c) of section 1115 of the tax law, as amended by section 7 of part B of chapter 63 of the laws of 2000, is amended to read as follows:

(1) [~~Fuel, gas, electricity~~] **Electricity**, refrigeration and steam, and [~~gas,~~] electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in the production of tangible personal property, [~~gas,~~] electricity, refrigeration or steam, for sale, by manufacturing, processing, assembling, generating, refining, mining or extracting shall be exempt from the taxes imposed under subdivisions (a) and (b) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article.

§ 25. Subdivision (j) of section 1115 of the tax law, as amended by section 41 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(j) The exemptions provided in this section shall not apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article nor to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to receipts from sales and uses of motor fuel or diesel motor fuel, ~~except that the exemptions provided in paragraphs nine and forty-two of subdivision (a) of this section shall apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article and to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to sales and uses of kero-jet fuel,~~ CNG, hydrogen and E85, provided, however, the exemption allowed for E85 shall be subject to the additional requirements provided in section eleven hundred two of this article with respect to E85. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel but only if all of such fuel is consumed other than on the public highways of this state. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel for use or consumption either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both but only if all of such fuel is consumed other than on the public highways of this state (except for the use of the public highways to reach adjacent farmlands or adjacent lands used in a commercial horse boarding operation, or both).

§ 25-a. Subdivision (j) of section 1115 of the tax law, as amended by section 41-a of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(j) The exemptions provided in this section shall not apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article nor to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to receipts from sales and uses of motor fuel or diesel motor fuel ~~except that the exemption provided in paragraph nine of subdivision (a) of this section shall apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article and to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to sales and uses of kero-jet fuel~~. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel but only if all of such fuel is consumed other than on the public highways of this state. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel for use or consumption either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both but only if all of such fuel is consumed other than on the public highways of this state (except for the use of the public highways to reach adjacent farmlands or adjacent lands used in a commercial horse boarding operation, or both).

§ 26. Subdivision (s) of section 1115 of the tax law, as added by chapter 201 of the laws of 1995, is relettered subdivision (p).

§ 27. Subdivision (w) of section 1115 of the tax law, as added by section 32 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(w) Receipts from the sale of ~~[gas-or]~~ electricity or ~~[gas-or]~~ electric service of whatever nature and consideration given or contracted to be given for, or for the use of, ~~[gas-or]~~ electricity or ~~[gas-or]~~ electric service of whatever nature purchased for use or consumption directly and exclusively to provide ~~[gas-or]~~ electric service of whatever nature consisting of operating ~~[a gas pipeline or gas distribution line or]~~ an electric transmission or distribution line ~~[and ensuring the necessary working pressure in an underground gas storage facility]~~ shall be exempt from sales and compensating use taxes imposed by this article. Such exempt ~~[gas-or]~~ electricity or ~~[gas-or]~~ electric service of whatever nature shall include, but shall not be limited to, such ~~[gas-or]~~ electricity or ~~[gas-or]~~ electric service of whatever nature used or consumed directly and exclusively to (1) ~~[ensure necessary working pressure in a gas pipeline used to transport, transmit or distribute gas, (2) operate compressors used to transport, transmit or distribute gas through such a gas pipeline or distribution line or used to ensure necessary working pressure in such a storage facility, (3) operate heaters to prevent gas in such a pipeline or distribution line from freezing, (4) operate equipment which removes impurities and moisture from gas in such a pipeline or distribution line, (5)]~~ operate substations and equipment related to electric transmission and distribution lines such as transformers, capacitors, meters, switches, communication devices and heating and cooling equipment, and ~~[(6)]~~ (2) ensure the reliability of electricity or electric service transmitted or distributed through such lines, for example, by operating reserve capacity machinery and equipment.

§ 28. Subdivision (k) of section 300 of the tax law, as amended by section 17 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(k) "Commercial gallonage" means gallonage (1) which is non-highway diesel motor fuel or residual petroleum product, (2) ~~[which is included in the full measure of the non-highway diesel motor fuel component or the residual petroleum product component of the tax imposed under section three hundred one-a of this article, (3)]~~ which does not (and will not) qualify (A) ~~[for the utility credit or reimbursement provided for in section three hundred one-d of this article, (B)]~~ as "manufacturing gallonage", as such term is defined in subdivision (m) of this section, ~~[(C)]~~ or (B) for the not-for-profit organization exemption provided for in subdivision (h) of section three hundred one-b of this article, ~~[or (D) for the heating exemption provided for in paragraph two of subdivision (d) of section three hundred one-b of this article or the heating reimbursement provided for in paragraph two of subdivision (a) of section three hundred one-c of this article,]~~ and ~~[(4)]~~ (3) which will not be used nor has been used in the fuel tank connecting with the engine of a vessel. No gallonage shall qualify as "commercial gallonage" where such gallonage is eligible for the ~~[(i) utility credit or reimbursement under such section three hundred one-d of this article, (ii) "manufacturing exemption" under paragraph three of subdivision (f) of section three hundred one-a of this article, (iii)]~~ not-for-profit organization exemption under subdivision (h) of section three hundred one-b of this article~~[, or (iv) heating exemption provided for in paragraph two of subdivision (d) of section three hundred one-b of this article or the heating reimbursement provided for in paragraph two of subdivision (a) of section three hundred one-c of this article]~~. The commissioner shall require such documentary proof to substantiate the

1 classification of product as "commercial gallonage" as the commissioner
2 deems appropriate.

3 § 29. Paragraph 1 of subdivision (f) of section 301-b of the tax law,
4 as amended by section 21 of part K of chapter 61 of the laws of 2011, is
5 amended to read as follows:

6 (1) Residual petroleum product and non-highway diesel motor fuel sold
7 to an electric corporation, ~~[as described in subdivision (a) of section~~
8 ~~three hundred one-d of this article,]~~ as defined in subdivision thirteen
9 of section two of the public service law, subject to the supervision of
10 the department of public service, which is registered with the depart-
11 ment as a petroleum business tax direct pay permittee, and used by such
12 electric corporation to fuel generators for the purpose of manufacturing
13 or producing electricity where such electric corporation provides a copy
14 of a direct pay permit authorized and issued by the commissioner, to the
15 petroleum business making such sale. If so registered, such corporation
16 shall be a taxpayer under this article and (i) such electric corporation
17 shall file a return monthly and pay the applicable tax under this arti-
18 cle, after the application of allowable credits, on all such purchases
19 directly to the commissioner, (ii) such electric corporation shall be
20 subject to all of the provisions of this article relating to the respon-
21 sibilities and liabilities of taxpayers under this article with respect
22 to such residual petroleum product and non-highway diesel motor fuel.

23 § 30. Subdivision (y) of section 1511 of the tax law, as added by
24 chapter 472 of the laws of 2010, is amended by adding a new paragraph 7
25 to read as follows:

26 (7) For purposes of this subdivision, "qualified rehabilitation
27 expenditures" does not include expenditures for property that directly
28 produces, transmits, distributes, transports, or stores fossil fuels as
29 defined in section 1-103 of the energy law, or directly utilizes fossil
30 fuels for the production of on-site energy, including thermal energy,
31 for any purpose.

32 § 31. Paragraph (c) of subdivision 1 of section 3102-e of the public
33 authorities law, as added by section 31 of part A of chapter 56 of the
34 laws of 1998, is amended to read as follows:

35 (c) "Qualified emerging technology company" shall mean a company
36 located in New York state: (1) whose primary products or services are
37 classified as emerging technologies and whose total annual product sales
38 are ten million dollars or less; or (2) a company which has research and
39 development activities in New York state and whose ratio of research and
40 development funds to net sales equals or exceeds the average ratio for
41 all surveyed companies classified as determined by the National Science
42 Foundation in the most recent published results from its Survey of
43 Industry Research and Development, or any comparable successor survey as
44 determined by the department, and whose total annual product sales are
45 ten million dollars or less. Qualified emerging technology company shall
46 not include a company engaged in the production, transmission, distrib-
47 ution, transportation, or storage of fossil fuels as defined in section
48 1-103 of the energy law.

49 The definition of "research and development funds" shall be the same
50 as that used by the National Science Foundation in the aforementioned
51 survey.

52 § 32. Subparagraph (vi) of paragraph (a) of subdivision 1 of section
53 210 of the tax law, as amended by section 1 of part D of chapter 59 of
54 the laws of 2019, is amended to read as follows:

55 (vi) for taxable years beginning on or after January first, two thou-
56 sand fourteen, the amount prescribed by this paragraph for a taxpayer

1 that is a qualified New York manufacturer, shall be computed at the rate
2 of zero percent of the taxpayer's business income base. The term
3 "manufacturer" shall mean a taxpayer that during the taxable year is
4 principally engaged in the production of goods by manufacturing, proc-
5 essing, assembling, refining, mining, extracting, farming, agriculture,
6 horticulture, floriculture, viticulture or commercial fishing. However,
7 the generation and distribution of electricity, the distribution of
8 natural gas, ~~[and]~~ the production of steam associated with the gener-
9 ation of electricity, and the production, transmission, distribution,
10 transportation, or storage of fossil fuels as defined in section 1-103
11 of the energy law shall not be qualifying activities for a manufacturer
12 under this subparagraph. Moreover, in the case of a combined report, the
13 combined group shall be considered a "manufacturer" for purposes of this
14 subparagraph only if the combined group during the taxable year is prin-
15 cipally engaged in the activities set forth in this paragraph, or any
16 combination thereof. A taxpayer or, in the case of a combined report, a
17 combined group shall be "principally engaged" in activities described
18 above if, during the taxable year, more than fifty percent of the gross
19 receipts of the taxpayer or combined group, respectively, are derived
20 from receipts from the sale of goods produced by such activities. In
21 computing a combined group's gross receipts, intercorporate receipts
22 shall be eliminated. A "qualified New York manufacturer" is a manufac-
23 turer that has property in New York that is described in clause (A) of
24 subparagraph (i) of paragraph (b) of subdivision one of section two
25 hundred ten-B of this article and either (I) the adjusted basis of such
26 property for New York state tax purposes at the close of the taxable
27 year is at least one million dollars or (II) all of its real and
28 personal property is located in New York. A taxpayer or, in the case of
29 a combined report, a combined group, that does not satisfy the princi-
30 pally engaged test may be a qualified New York manufacturer if the
31 taxpayer or the combined group employs during the taxable year at least
32 two thousand five hundred employees in manufacturing in New York and the
33 taxpayer or the combined group has property in the state used in manu-
34 facturing, the adjusted basis of which for New York state tax purposes
35 at the close of the taxable year is at least one hundred million
36 dollars.

37 § 33. Subparagraph 2 of paragraph (b) of subdivision 1 of section 210
38 of the tax law, as amended by section 2 of part D of chapter 59 of the
39 laws of 2019, is amended to read as follows:

40 (2) For purposes of subparagraph one of this paragraph, the term
41 "manufacturer" shall mean a taxpayer that during the taxable year is
42 principally engaged in the production of goods by manufacturing, proc-
43 essing, assembling, refining, mining, extracting, farming, agriculture,
44 horticulture, floriculture, viticulture or commercial fishing; provided,
45 however, the production, transmission, distribution, transportation, or
46 storage of fossil fuels as defined in section 1-103 of the energy law
47 shall not be qualifying activities for a manufacturer under this subpar-
48 agraph. Moreover, for purposes of computing the capital base in a
49 combined report, the combined group shall be considered a "manufacturer"
50 for purposes of this subparagraph only if the combined group during the
51 taxable year is principally engaged in the activities set forth in this
52 subparagraph, or any combination thereof. A taxpayer or, in the case of
53 a combined report, a combined group shall be "principally engaged" in
54 activities described above if, during the taxable year, more than fifty
55 percent of the gross receipts of the taxpayer or combined group, respec-
56 tively, are derived from receipts from the sale of goods produced by

1 such activities. In computing a combined group's gross receipts, inter-
2 corporate receipts shall be eliminated. A "qualified New York manufac-
3 turer" is a manufacturer that has property in New York that is described
4 in clause (A) of subparagraph (i) of paragraph (b) of subdivision one of
5 section two hundred ten-B of this article and either (i) the adjusted
6 basis of that property for New York state tax purposes at the close of
7 the taxable year is at least one million dollars or (ii) all of its real
8 and personal property is located in New York. In addition, a "qualified
9 New York manufacturer" means a taxpayer that is defined as a qualified
10 emerging technology company under paragraph (c) of subdivision one of
11 section thirty-one hundred two-e of the public authorities law regard-
12 less of the ten million dollar limitation expressed in subparagraph one
13 of such paragraph. A taxpayer or, in the case of a combined report, a
14 combined group, that does not satisfy the principally engaged test may
15 be a qualified New York manufacturer if the taxpayer or the combined
16 group employs during the taxable year at least two thousand five hundred
17 employees in manufacturing in New York and the taxpayer or the combined
18 group has property in the state used in manufacturing, the adjusted
19 basis of which for New York state tax purposes at the close of the taxa-
20 ble year is at least one hundred million dollars.

21 § 34. This act shall take effect immediately and shall apply to taxa-
22 ble years commencing on or after the first of January next succeeding
23 the date on which it shall have become a law; provided, however, that:

24 (a) the amendments to paragraphs 6, 7 and 8 of subdivision (a) of
25 section 301-b made by section nine of this act shall not affect the
26 repeal of such paragraphs and shall be deemed repealed therewith;

27 (b) the amendments to the opening paragraph of section 301-c of the
28 tax law made by section eleven of this act shall be subject to the expi-
29 ration and reversion of such paragraph pursuant to section 19 of part
30 W-1 of chapter 109 of the laws of 2006, as amended, when upon such date
31 the provisions of section eleven-a of this act shall take effect;

32 (c) the amendments to subdivisions (k) and (l) of section 301-c of the
33 tax law made by section thirteen of this act shall not affect the repeal
34 of such subdivisions and shall be deemed repealed therewith; and

35 (d) the amendments to subdivision (j) of section 1115 of the tax law
36 made by section twenty-five of this act shall be subject to the expira-
37 tion and reversion of such subdivision pursuant to section 19 of part
38 W-1 of chapter 109 of the laws of 2006, as amended, when upon such date
39 the provisions of section twenty-five-a of this act shall take effect.