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

S. 6610 A. 9710

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

January 19, 2010

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to imposing a tax on the severing of natural gas (Part A); to amend the tax law, in relation to increasing the rate of the cigarette tax under article 20 of the tax law (Part B); to amend the tax law, in relation to imposing tax on beverage syrups and soft drinks (Part C); to amend the tax law, in relation to the statutory limitation on the biofuel production credit and the qualified emerging technology company facilities, operations and training credits (Part D); to amend the tax law, in relation to the inclusion of certain past employment related income in the calculation of the New York source income of nonresidents (Part E); to amend the tax law, in relation to clarifying that certain income constitutes New York source income of nonresident shareholders of an S corporation (Part F); to amend the tax law, in relation to taxation of certain resident trusts; and to repeal subparagraph (D) of paragraph 3 of subdivision (b) of section 605 of such law relating thereto (Part G); to amend the tax law, in relation to information reporting of payments made in settlement of payment card and third party network transactions (Part H); to amend the tax law, in relation to authorizing the use of generally accepted statistical sampling to determine the amount of sales and compensating use tax due under articles 28 and 29 of such law (Part I); to amend the tax law and the administrative code of the city of New York, in relation to the penalties imposed upon tax return preparers failing to electronically file returns and other tax documents when required by law to do so, to authorize reasonable correction periods for electronic tax filings and payments, and to prohibit tax return preparers and software companies from charging separately for electronic filing of New York tax documents (Part J); to amend the tax law, in relation to providing the department of taxation and finance with greater flexibility, and the ability to realize cost savings, by allowing the department to use alternative

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

LBD12674-01-0

means by which tax notices and other tax documents are communicated to addressees (Part K); to amend the tax law, in relation to reforming the offer-in-compromise program (Part L); to direct the department of taxation and finance to complete a report that makes recommendations about reforming and modernizing state and local taxes on communication services (Part M); to amend chapter 405 of the laws of 1999, amending the real property tax law relating to improving the administration of the school tax relief (STAR) program, in relation to eliminating the expiration and repeal of the Quick Draw lottery game; and to amend the tax law, in relation to the game of Quick Draw (Part N); to amend chapter 383 of the laws of 2001 amending the tax law and other laws relating to authorizing the division of the lottery to conduct a pilot program involving the operation of video lottery terminals at certain racetracks, in relation to the effectiveness thereof; to amend the tax law, in relation to the hours of operation of video lottery gaming and the recapture of the vendor fee at a certain track; and to repeal section 13 of chapter 140 of the laws of 2008 amending the racing, pari-mutuel wagering and breeding law and other laws relating to thoroughbred racing and to repeal section 5 of chapter 286 of the laws of 2008 amending the tax law relating to annual capital improvement credits for video lottery gaming operators, relating thereto (Part O); to amend the tax law and the uniform commercial code, in relation to imposing a recording tax on the filing of financing statements pertaining to cooperative interests in cooperative organizations (Part P); to amend the tax law, in relation to establishing a school tax circuit breaker tax credit; and to amend the state finance law, in relation to establishing a property tax circuit breaker reserve fund and annual spending growth cap, and increasing the rainy day reserve fund; and providing for the repeal of certain provisions upon expiration thereof (Part Q); to amend the tax law and the administrative code of the city of New York, in relation to allowing recognition of marriages performed outside New York state (Part R); to amend the tax law, in relation to narrowing the definition of vendor for purposes of the sales and compensating use taxes (Part S); to amend the alcoholic beverage control law and the state finance law, in relation to enacting the wine industry and liquor store revitalization act; to repeal certain provisions of the alcoholic beverage control law relating thereto; and providing for the repeal of certain provisions upon expiration thereof (Part T); to amend the public housing law, in relation to providing a credit against income tax for persons or entities investing in low-income housing (Part U); to amend chapter 60 of the laws of 2004, amending the tax law relating to the empire state film production credit, in relation to the empire state film production credit and in relation to the effectiveness of such provisions; and to amend the tax law, in relation to the empire state film production credit (Part V); to amend the economic development law and the tax law, in relation to creating the excelsior jobs program act (Part W); to amend the general municipal law, in relation to the decertification of business entities located in empire zones; to amend the tax law, in relation to a refund or credit provided to certain zone businesses and to a report on empire zone businesses produced by the department of taxation and finance, and to amend chapter 57 of the laws of 2009, amending the general municipal law and the tax law relating to enacting reforms to the empire zones program, in relation to the effectiveness thereof (Part X); to amend chapter 298 of the laws of 1985, amending the tax law relating to the franchise tax on banking corpo-

rations imposed by the tax law, authorized to be imposed by any city having a population of one million or more by chapter 772 of the laws of 1966 and imposed by the administrative code of the city of New York and relating to other provisions of the tax law, chapter 883 of the laws of 1975 and the administrative code of the city of New York which relates to such franchise tax, to amend chapter 817 of the laws of 1987, amending the tax law and the environmental conservation law, constituting the business tax reform and rate reduction act of 1987, and to amend chapter 525 of the laws of 1988, amending the tax law and the administrative code of the city of New York relating to the imposition of taxes in the city of New York, in relation to the effectiveness of certain provisions of such chapters; and to extend the Gramm-Leach-Bliley transitional provisions under the franchise taxes on banking corporations under the tax law and the administrative code of the city of New York (Part Y); to amend the tax law, in relation to making technical corrections to certain tax enforcement and sales tax avoidance provisions; and to amend chapter 57 of the laws of 2009 amending the criminal procedure law, the penal law, and the tax law relating to creating the offense of "tax fraud act", in relation to the effectiveness thereof (Subpart A); to amend the tax law, in relation to defining certain terms (Subpart B); and to amend the general municipal law and the public authorities law, in relation to statements of industrial agencies and their agents and project operators (Subpart C) (PART Z); to amend the racing, pari-mutuel wagering and breeding law, in relation to licenses for simulcast facilities, sums relating to track simulcast, simulcast of out-of-state thoroughbred races, simulcasting of races run by out-of-state harness tracks and distributions of wagers; to amend chapter 281 of the laws of 1994 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and to amend chapter 346 of the laws of 1990 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and the imposition of certain taxes, in relation to extending certain provisions thereof; and to amend the racing, pari-mutuel wagering and breeding law, in relation to extending certain provisions thereof (Part AA); to amend the tax law, in relation to the amount of the unified credit against the estate tax (Part BB); and to amend the tax law, the general municipal law, and the administrative code of the city of New York, in relation to the taxicab ride tax imposed in the metropolitan commuter transportation district by article 29-A of the tax law (Part CC)

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

Section 1. This act enacts into law major components of legislation which are necessary to implement the state fiscal plan for the 2010-2011 state fiscal year. Each component is wholly contained within a Part identified as Parts A through CC. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

Section 1. Paragraph a of subdivision twenty-sixth of section 171 of the tax law, as amended by section 1 of subpart D of part V-1 of chapter 57 of the laws of 2009, is amended to read as follows:

a. Set the overpayment and underpayment rates of interest for purposes of articles twelve-A, SEVENTEEN, eighteen, twenty and twenty-one of this chapter. Such rates shall be the overpayment and underpayment rates of interest set pursuant to subsection (e) of section one thousand ninety-six of this chapter, but the underpayment rate shall not be less than seven and one-half percent per annum. Any such rates set by such commissioner shall apply to taxes, or any portion thereof, which remain or become due or overpaid (other than overpayments under such article twenty and not including reimbursements, if any, under any of such articles) on or after the date on which such rates become effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period during which such rates are in effect. In computing the amount of any interest required to be paid under such articles by such commissioner or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily.

S 2. Subdivision 1 of section 171-a of the tax law, as amended by section 1 of part R of chapter 60 of the laws of 2004, 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), SEVENTEEN (EXCEPT AS OTHERWISE PROVIDED IN SECTION FOUR HUNDRED EIGHT THEREOF), eighteen, nineteen, twenty (except as otherwise provided in section four hundred eighty-two thereof), twenty-one, twenty-two, twenty-six, twenty-six-B, twenty-eight (except as otherwise provided in section eleven hundred two or eleven hundred three thereof), twenty-eight-A, thirty-one (except as otherwise provided in section fourteen hundred twenty-one thereof), thirty-two, thirty-three and thirty-three-A of this chapter shall be deposited daily in one account with such responsible banks, banking houses or trust companies as may be designated by the comptroller, to the credit of the comptroller. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under such articles of this chapter, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds or reimbursements under such articles of this chapter [and article ten thereof] out of which amount the comptroller shall pay any refunds or reimbursements to which taxpayers shall be entitled under the provisions of such articles of this chapter [and article ten thereof]. The commissioner and the comptroller shall maintain a system of accounts showing the amount of revenue collected or received from each of the taxes imposed by such articles. The comptroller, after reserving the amount to pay such refunds or reimbursements, shall, on or before the tenth day of each month, pay into the state treasury to the credit of the general fund all

revenue deposited under this section during the preceding calendar month and remaining to the comptroller's credit on the last day of such preceding month, (i) except that the comptroller shall pay to the state department of social services that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against past-due support pursuant to subdivision six of section one hundred seventy-one-c of this [chapter] ARTICLE, (ii) and except that the comptroller shall pay to the New York state higher education services corporation and the state university of New York or the city university of New York respectively that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against the amount of defaults in repayment of guaranteed student loans and state university loans or city university loans pursuant to subdivision five of section one hundred seventy-one-d and subdivision six of section one hundred seventy-one-e of this [chapter] ARTICLE, (iii) and except further that, notwithstanding any law, the comptroller shall credit to the revenue arrearage account, pursuant to section ninety-one-a of the state finance law, that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B, thirty-two or thirty-three of this chapter, and any interest thereon, which is certified to the comptroller by the commissioner as the amount to be credited against a past-due legally enforceable debt owed to a state agency pursuant to paragraph (a) of subdivision six of section one hundred seventy-one-f of this article, provided, however, he shall credit to the special offset fiduciary account, pursuant to section ninety-one-c of the state finance law, any such amount creditable as a liability as set forth in paragraph (b) of subdivision six of section one hundred seventy-one-f of this article, (iv) and except further that the comptroller shall pay to the city of New York that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B, thirty-two, or thirty-three of this chapter and any interest thereon that is certified to the comptroller by the commissioner as the amount to be credited against city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-l of this article, (v) and except further that the comptroller shall pay to a non-obligated spouse that amount of overpayment of tax imposed by article twenty-two of this chapter and the interest on such amount which has been credited pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-l of this article and which is certified to the comptroller by the commissioner as the amount due such non-obligated spouse pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter; and (vi) the comptroller shall deduct a like amount which the comptroller shall pay into the treasury to the credit of the general fund from amounts subsequently payable to the [department of social services] OFFICE OF CHILDREN AND FAMILY SERVICES AND THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, the state university of New York, the city university of New York, or the higher education services corporation, or the revenue arrearage account or special offset fiduciary account pursuant to section ninety-one-a or ninety-one-c of the state finance law, as the case may be, whichever had been credited the amount originally withheld from such overpayment, and (vii) with respect to amounts originally withheld from such overpayment pursuant to section one hundred seventy-one-l of this article and paid

to the city of New York, the comptroller shall collect a like amount from the city of New York.

S 3. The tax law is amended by adding a new article 17 to read as follows:

ARTICLE 17

TAX ON SEVERING NATURAL GAS

SECTION 400. GENERAL DEFINITIONS.
401. IMPOSITION OF TAX.
402. REGISTRATION OF PRODUCERS.
403. RECORDS TO BE KEPT BY PRODUCERS.
404. PAYMENT OF TAX; RETURNS.
405. DETERMINATION OF TAX.
406. PENALTIES AND INTEREST.
407. MAILING RULES; HOLIDAYS.
408. DEPOSIT AND DISPOSITION OF REVENUE.
409. REFUNDS.
410. SECRECY.
411. LIABILITY FOR OTHER TAXES NOT AFFECTED.

S 400. GENERAL DEFINITIONS. AS USED IN THIS ARTICLE:

1. "PERSON" INCLUDES AN INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, SOCIETY, ASSOCIATION, JOINT STOCK COMPANY, CORPORATION, ESTATE, RECEIVER, TRUSTEE, ASSIGNEE, REFEREE, AND ANY OTHER PERSON ACTING IN A FIDUCIARY OR REPRESENTATIVE CAPACITY, WHETHER APPOINTED BY A COURT OR OTHERWISE, AND ANY COMBINATION OF THE FOREGOING.

2. "PRODUCER" MEANS ANY PERSON WHO SEVERS NATURAL GAS FROM A GAS POOL IN THE MARCELLUS OR UTICA SHALE FORMATION USING A HORIZONTAL WELL.

3. "PURCHASER" MEANS ANY PERSON, CONSIGNOR, AGENT, OR OTHER DEALER, BY WHATEVER NAME CALLED, WHO OR WHICH ACQUIRES TITLE OUTRIGHT OR CONDITIONALLY TO ANY INTEREST IN SEVERED NATURAL GAS.

4. "MARKET VALUE," WHEN USED IN REFERENCE TO THE RATE OF SEVERANCE TAX ON NATURAL GAS, MEANS THE PRODUCER'S ACTUAL CASH RECEIPTS FROM THE SALE OF NATURAL GAS TO THE FIRST PURCHASER. IN A TRANSACTION INVOLVING RELATED PARTIES (AS THAT TERM IS DESCRIBED IN SECTION 267(B) OR SECTION 707(B) OF THE INTERNAL REVENUE CODE), MARKET VALUE CANNOT BE LESS THAN THE FAIR MARKET VALUE FOR NATURAL GAS OF SIMILAR GRADE AND QUALITY. IN THE ABSENCE OF A SALE, MARKET VALUE IS THE FAIR MARKET VALUE FOR NATURAL GAS OF SIMILAR GRADE AND QUALITY. "FAIR MARKET VALUE" IS THE MIDPOINT PRICE OF NATURAL GAS AT THE DOMINION, SOUTH POINT MARKET CENTER AS PUBLISHED IN PLATTS GAS DAILY OR, IF THAT PRICE IS UNATTAINABLE, THE FAIR MARKET PRICE OF NATURAL GAS AT A SIMILAR MARKET CENTER AS PUBLISHED BY A SIMILAR INDUSTRY ORGANIZATION.

5. "SEVER", "SEVERED", OR "SEVERING" MEANS, IN RELATION TO NATURAL GAS, TAKING OR REMOVING FOR COMMERCIAL PURPOSES FROM THE SOIL OR WATER BY A WELL WHOSE SURFACE HOLE IS LOCATED WITHIN THIS STATE. HOWEVER, "SEVER", "SEVERED", OR "SEVERING" DOES NOT APPLY TO ANY NATURAL GAS RETURNED TO ANY FORMATION, IN RECYCLING, REPRESSURING, PRESSURE MAINTENANCE OPERATION, OR OTHER OPERATION, FOR THE PRODUCTION OF OIL OR ANY OTHER LIQUID HYDROCARBON.

6. "COMPLETION" OR "COMPLETED" MEANS THE ACT OF MAKING A WELL CAPABLE OF PRODUCING NATURAL GAS.

7. "MCF" EQUALS ONE THOUSAND CUBIC FEET.

S 401. IMPOSITION OF TAX. THERE IS HEREBY IMPOSED UPON EVERY PRODUCER, FOR THE PRIVILEGE OF SEVERING NATURAL GAS FROM ANY OIL OR GAS WELL FROM A GAS POOL IN THE MARCELLUS OR THE UTICA SHALE FORMATION USING A HORIZONTAL WELL, A TAX OF THREE PERCENT OF THE MARKET VALUE OF THE NATURAL GAS.

S 402. REGISTRATION OF PRODUCERS. 1. THE DEPARTMENT, UPON THE APPLICATION OF A PERSON, SHALL REGISTER THAT PERSON AS A PRODUCER UNDER THIS ARTICLE IF THAT PERSON HAS OBTAINED ALL PERMITS REQUIRED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO SEVER NATURAL GAS FROM A GAS POOL IN THE MARCELLUS OR UTICA SHALE FORMATION USING A HORIZONTAL WELL. THE APPLICATION SHALL BE IN A FORM AND CONTAIN SUCH DATA AS THE DEPARTMENT PRESCRIBES. NO PRODUCER, UNLESS SO REGISTERED, MAY SEVER NATURAL GAS.

2. THE COMMISSIONER MAY REQUIRE A PRODUCER TO FILE WITH THE DEPARTMENT A BOND ISSUED BY A SURETY COMPANY THAT IS APPROVED BY THE SUPERINTENDENT OF INSURANCE AS TO SOLVENCY AND RESPONSIBILITY AND AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE OR ANOTHER SECURITY ACCEPTABLE TO THE COMMISSIONER, IN AN AMOUNT FIXED BY THE COMMISSIONER TO SECURE THE PAYMENT OF ANY SUMS DUE FROM SUCH PRODUCER PURSUANT TO THIS ARTICLE. THE COMMISSIONER MAY REQUIRE THAT THE BOND OR OTHER SECURITY BE FILED BEFORE A PRODUCER IS REGISTERED, AND THE AMOUNT THEREOF MAY BE INCREASED AT ANY TIME WHEN, IN HIS OR HER JUDGMENT, THE INCREASE IS NECESSARY AS A PROTECTION TO THE REVENUES UNDER THIS ARTICLE. SECURITIES DEPOSITED UNDER THIS SUBDIVISION WILL BE KEPT IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE COMMISSIONER AND MAY BE SOLD BY THE COMMISSIONER IF A SALE BECOMES NECESSARY TO RECOVER ANY SUMS DUE FROM THE PRODUCER PURSUANT TO THIS ARTICLE, BUT NO SALE WILL BE HELD UNTIL AFTER THE PRODUCER HAS AN OPPORTUNITY TO LITIGATE THE VALIDITY OF ANY TAX. AFTER ANY SALE OF SUCH SECURITIES, THE AMOUNT, IF ANY, ABOVE THE SUMS DUE UNDER THIS ARTICLE SHALL BE RETURNED TO THE PRODUCER. THE DEPARTMENT, WHEN AUTHORIZED BY THE PRODUCER, MAY FURNISH INFORMATION REGARDING THE PRODUCER'S REGISTRATION AND ANY OTHER INFORMATION THAT THE PRODUCER AUTHORIZES THE DEPARTMENT TO DISCLOSE.

3. (A) THE REGISTRATION OF ANY PRODUCER MAY BE CANCELLED OR SUSPENDED BY THE COMMISSIONER WHEN THE PRODUCER (I) FAILS TO FILE A BOND OR OTHER SECURITY WHEN REQUIRED OR THE AMOUNT THEREOF IS INCREASED, OR (II) FAILS TO CONTINUE TO MAINTAIN IN FULL FORCE AND EFFECT AT ALL TIMES THE REQUIRED BOND OR OTHER SECURITY FILED WITH THE COMMISSIONER.

(B) NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY:

(I) IN THE EVENT THAT THE COMMISSIONER DETERMINES THAT AN INCREASE IN THE AMOUNT OF THE BOND OR OTHER SECURITY FILED BY A REGISTRANT IS REQUIRED TO SECURE THE LIABILITY OF SUCH REGISTRANT, THAT BOND INCREASE OR OTHER SECURITY INCREASE SHALL BE FILED BY THE REGISTRANT WITHIN THIRTY DAYS FROM THE DAY THE NOTICE AND DEMAND THEREFOR HAS BEEN GIVEN BY THE COMMISSIONER. IF THE REGISTRANT FAILS TO: (1) FILE THAT INCREASE IN THE AMOUNT OF BOND OR OTHER SECURITY WITHIN THE THIRTY DAY PERIOD, OR (2) MAKE TIMELY APPLICATION FOR A HEARING WITH RESPECT TO THE AMOUNT OF THE INCREASE OF THE BOND OR OTHER SECURITY, THE COMMISSIONER SHALL CANCEL OR SUSPEND THE REGISTRATION OF SUCH REGISTRANT.

(II) THE REGISTRANT MAY APPLY TO THE DIVISION OF TAX APPEALS FOR A HEARING TO REVIEW AN INCREASE IN THE AMOUNT OF THE BOND OR OTHER SECURITY REQUIRED TO BE FILED BY MAKING APPLICATION THEREFOR WITHIN SEVEN DAYS OF THE DAY THAT THE NOTICE AND DEMAND FOR AN INCREASE IS GIVEN BY THE COMMISSIONER, PROVIDED, THE DIVISION OF TAX APPEALS MAY, BY REGULATION, FOR THE CAUSES STATED THEREIN, EXTEND THE PERIOD TO A PERIOD NOT EXCEEDING FIFTEEN DAYS FROM THE DAY THAT NOTICE AND DEMAND IS GIVEN. IF THE REGISTRANT TIMELY APPLIES FOR A HEARING TO REVIEW THE INCREASE, THE HEARING SHALL BE HELD, UNLESS EXTENDED BY THE DIVISION OF TAX APPEALS FOR GOOD CAUSE, NO LESS THAN SEVEN DAYS AND NO MORE THAN TEN DAYS AFTER THE APPLICATION FOR A HEARING IS RECEIVED BY THE DIVISION OF TAX APPEALS. WITHIN FIFTEEN DAYS OF THE RECEIPT OF THE APPLICATION FOR A HEARING, UNLESS EXTENDED BY THE DIVISION OF TAX APPEALS, THE ADMINISTRA-

TIVE LAW JUDGE SHALL RENDER A DETERMINATION WITH RESPECT TO THE INCREASE IN THE AMOUNT OF THE BOND OR OTHER SECURITY AND, IF THE AMOUNT OF THE BOND OR OTHER SECURITY IS DETERMINED TO BE DUE, THE INCREASE SHALL BE FILED WITHIN SEVEN DAYS FROM THE DAY THE ADMINISTRATIVE LAW JUDGE GIVES NOTICE OF THE DETERMINATION, OR, IF LATER, THIRTY DAYS FROM THE DAY THE NOTICE AND DEMAND FOR THE INCREASE HAD BEEN GIVEN BY THE COMMISSIONER. NOTWITHSTANDING THAT THE REGISTRANT TAKES EXCEPTION TO THE ADMINISTRATIVE LAW JUDGE'S DETERMINATION THAT AN INCREASED BOND OR OTHER SECURITY IS DUE, IF THE INCREASED BOND OR OTHER SECURITY IS NOT FILED WITHIN SUCH TIME, THE COMMISSIONER SHALL CANCEL OR SUSPEND THE REGISTRATION OF THE REGISTRANT. WHERE THE ADMINISTRATIVE LAW JUDGE DETERMINES THAT AN INCREASED BOND OR OTHER SECURITY IS NOT DUE BUT THAT DETERMINATION IS REVERSED BY THE TAX APPEALS TRIBUNAL, IF THE INCREASED BOND OR OTHER SECURITY IS NOT FILED WITHIN SEVEN DAYS FROM THE DAY THE TAX APPEALS TRIBUNAL GIVES NOTICE OF ITS DECISION, THEN NOTWITHSTANDING ANY JUDICIAL REVIEW OF SUCH DECISION OF THE TAX APPEALS TRIBUNAL, THE COMMISSIONER SHALL CANCEL OR SUSPEND THE REGISTRATION OF THE REGISTRANT.

4. THE REGISTRATION GRANTED TO A PRODUCER BY THE COMMISSIONER CANNOT BE TRANSFERRED TO ANY OTHER PERSON WITHOUT THE PRIOR WRITTEN APPROVAL OF THE COMMISSIONER, AND ANY TRANSFER WITHOUT APPROVAL CONSTITUTES GROUNDS FOR THE IMMEDIATE CANCELLATION OR SUSPENSION OF THE REGISTRATION. THE COMMISSIONER MAY ESTABLISH BY RULE OR REGULATION A SPECIFIC PROCEDURE FOR THE REVIEW OF AN APPLICATION FOR REGISTRATION IN THOSE INSTANCES WHERE THERE HAS BEEN A PROPOSED TRANSFER OF REGISTRATION. THE COMMISSIONER, IN MAKING HIS OR HER DETERMINATION WITH RESPECT TO THE APPROVAL OF A PROPOSED TRANSFER, WILL REVIEW THE APPLICATION AS ANY OTHER APPLICATION FOR REGISTRATION IS REVIEWED UNDER THIS SECTION AND WILL MAKE HIS OR HER DETERMINATION IN ACCORDANCE WITH THE CRITERIA SET FORTH IN THIS SECTION. PROVIDED FURTHER, THE COMMISSIONER SHALL ISSUE A DETERMINATION, WITH RESPECT TO AN APPLICATION FOR A PROPOSED TRANSFER OF REGISTRATION, WITHIN SEVENTY-FIVE DAYS AFTER THE DAY OF THE RECEIPT OF A PROPERLY COMPLETED APPLICATION CONTAINING SUCH INFORMATION AS THE COMMISSIONER MAY REQUIRE. IF THE COMMISSIONER FAILS TO ISSUE A DETERMINATION WITHIN SUCH TIME, THE COMMISSIONER WILL BE REQUIRED TO REGISTER THE PROPOSED TRANSFEREE.

S 403. RECORDS TO BE KEPT BY PRODUCERS. 1. EVERY PERSON WHO SEVERS NATURAL GAS FROM A GAS POOL IN THE MARCELLUS OR UTICA SHALE FORMATION USING A HORIZONTAL WELL IN THIS STATE SHALL KEEP A COMPLETE AND ACCURATE RECORD OF THE GROSS QUANTITY OF NATURAL GAS SEVERED AND THE MARKET VALUE THEREOF, THE AMOUNT OF TAX DUE, AND ANY OTHER INFORMATION THAT THE COMMISSIONER MAY REQUIRE FOR THE PROPER ENFORCEMENT OF THE PROVISIONS OF THIS ARTICLE. SUCH RECORDS SHALL BE IN THE FORM AND CONTAIN WHATEVER OTHER INFORMATION THE COMMISSIONER MAY PRESCRIBE. SUCH RECORDS, UNLESS REQUIRED BY THE COMMISSIONER TO BE PRESERVED FOR A LONGER PERIOD, SHALL BE PRESERVED FOR A PERIOD OF THREE YEARS AND SHALL BE OFFERED FOR INSPECTION AT ANY TIME UPON ORAL OR WRITTEN DEMAND BY THE COMMISSIONER OR THE COMMISSIONER'S DULY AUTHORIZED AGENTS. THE COMMISSIONER IS HEREBY FURTHER AUTHORIZED TO EXAMINE THE EQUIPMENT OF ANY PERSON PERTAINING TO THE SEVERANCE OF NATURAL GAS AND THE STOCK OF SUCH NATURAL GAS IN THE POSSESSION OR CONTROL OF ANY PERSON. TO VERIFY THE AMOUNT OF TAX DUE UNDER THIS ARTICLE, EACH PERSON IS HEREBY DIRECTED AND REQUIRED TO GIVE TO THE COMMISSIONER OR THE COMMISSIONER'S DULY AUTHORIZED REPRESENTATIVES THE MEANS, FACILITIES, AND OPPORTUNITY FOR SUCH EXAMINATIONS AS ARE HEREIN PROVIDED FOR AND REQUIRED.

2. THE COMMISSIONER MAY, BY REGULATION, PROVIDE FOR THE FILING OF MONTHLY INFORMATION RETURNS BY EVERY PERSON REQUIRED TO MAINTAIN RECORDS

AS PRESCRIBED IN SUBDIVISION ONE OF THIS SECTION. THESE RETURNS SHALL IN ALL MATERIAL RESPECTS REFLECT THE INFORMATION REQUIRED TO BE CONTAINED IN THOSE RECORDS. THESE RETURNS SHALL BE IN THE FORM AND CONTAIN ALL OTHER INFORMATION THE COMMISSIONER MAY REQUIRE.

S 404. PAYMENT OF TAX; RETURNS. 1. ON OR BEFORE THE TWENTIETH DAY AFTER THE END OF THE SECOND CALENDAR MONTH FOLLOWING A REPORTING PERIOD, EVERY PRODUCER SHALL FILE WITH THE DEPARTMENT A RETURN IN THE FORM PRESCRIBED BY THE COMMISSIONER THAT STATES THE GROSS QUANTITY OF NATURAL GAS SEVERED AND THE MARKET VALUE THEREOF, THE AMOUNT OF TAX DUE, AND ANY OTHER INFORMATION THAT THE COMMISSIONER MAY REQUIRE FOR THE PROPER ENFORCEMENT OF THE PROVISIONS OF THIS ARTICLE. THE COMMISSIONER MAY REQUIRE THESE RETURNS TO BE FILED ELECTRONICALLY. THE COMMISSIONER SHALL PRESCRIBE THE REPORTING PERIOD BY REGULATION AND MAY PERMIT THE FILING OF RETURNS BY PRODUCERS ON A MONTHLY, QUARTERLY, SEMI-ANNUAL, OR ANNUAL BASIS. THE COMMISSIONER MAY WAIVE THE FILING OF RETURNS BY A PRODUCER FOR SUCH TIME AND UPON SUCH TERMS AS HE OR SHE MAY DEEM PROPER IF SATISFIED THAT NO TAX IMPOSED BY THIS ARTICLE IS OR WILL BE PAYABLE BY THE PRODUCER DURING THE TIME FOR WHICH RETURNS ARE WAIVED. THE FACT THAT A PRODUCER'S NAME IS SIGNED TO A FILED RETURN IS PRIMA FACIE EVIDENCE FOR ALL PURPOSES THAT THE RETURN WAS ACTUALLY SIGNED BY THAT PRODUCER. EACH SUCH PRODUCER SHALL PAY TO THE DEPARTMENT WITH THE FILING OF THE RETURN, THE TAXES IMPOSED BY THIS ARTICLE DURING THE PERIOD COVERED BY THE RETURN. THE COMMISSIONER MAY REQUIRE THAT THOSE PAYMENTS BE MADE ELECTRONICALLY.

2. A PRODUCER WHO IS ENTITLED TO A REFUND UNDER THE PROVISIONS OF SECTION FOUR HUNDRED NINE OF THIS ARTICLE, MAY TAKE CREDIT THEREFOR ON A RETURN FILED PURSUANT TO THIS SECTION IN LIEU OF SUCH REFUND, UNLESS THE COMMISSIONER WITHDRAWS THAT PRIVILEGE.

S 405. DETERMINATION OF TAX. 1. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IF A PRODUCER FILES A RETURN UNDER THIS ARTICLE, BUT THAT RETURN IS INCORRECT OR INSUFFICIENT, THE COMMISSIONER MAY DETERMINE THE AMOUNT OF TAX DUE AT ANY TIME WITHIN THREE YEARS AFTER THE RETURN WAS FILED (WHETHER OR NOT SUCH RETURN WAS FILED ON OR AFTER THE DUE DATE), AND GIVE WRITTEN NOTICE OF THAT DETERMINATION TO THE PRODUCER.

2. THE COMMISSIONER MAY DETERMINE THE AMOUNT OF TAX DUE AT ANY TIME IF A PRODUCER (A) HAS NOT REGISTERED AS REQUIRED BY THIS ARTICLE, (B) FAILS TO FILE A RETURN, OR (C) WILLFULLY DELIVERS OR DISCLOSES TO THE COMMISSIONER ANY LIST, RETURN, REPORT, ACCOUNT, STATEMENT, OR OTHER DOCUMENT KNOWN BY THE PRODUCER TO BE FRAUDULENT OR TO BE FALSE AS TO ANY MATERIAL MATTER, OR OMITS ANY MATERIAL MATTER WITH INTENT TO DECEIVE.

3. NOTWITHSTANDING ANY OF THE FOREGOING PROVISIONS OF THIS SECTION, WHERE, BEFORE THE EXPIRATION OF THE TIME PRESCRIBED IN THIS SECTION FOR THE DETERMINATION OF TAX, BOTH THE COMMISSIONER AND THE PRODUCER HAVE CONSENTED IN WRITING TO ITS DETERMINATION AFTER SUCH TIME, THE TAX MAY BE DETERMINED AT ANY TIME PRIOR TO THE EXPIRATION OF THE PERIOD AGREED UPON. THE PERIOD SO AGREED UPON MAY BE EXTENDED BY SUBSEQUENT AGREEMENTS MADE IN WRITING BEFORE THE EXPIRATION OF THE PERIOD PREVIOUSLY AGREED UPON.

4. ANY DETERMINATION MADE PURSUANT TO THIS SECTION WILL FINALLY AND IRREVOCABLY FIX THE TAX UNLESS THE PRODUCER AGAINST WHOM IT IS ASSESSED, WITHIN NINETY DAYS AFTER THE GIVING OF NOTICE OF SUCH DETERMINATION, PETITIONS THE DIVISION OF TAX APPEALS FOR A HEARING, OR UNLESS THE COMMISSIONER ON HIS OR HER OWN MOTION, RE-DETERMINES THE SAME. AFTER SUCH HEARING, THE DIVISION OF TAX APPEALS WILL GIVE NOTICE OF THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE TO THE PRODUCER LIABLE FOR THE TAX AND TO THE COMMISSIONER. THAT DETERMINATION MAY BE REVIEWED BY THE

TAX APPEALS TRIBUNAL AS PROVIDED IN ARTICLE FORTY OF THIS CHAPTER. THE DECISION OF THE TAX APPEALS TRIBUNAL MAY BE REVIEWED AS PROVIDED IN SECTION TWO THOUSAND SIXTEEN OF THIS CHAPTER, BUT THE PROCEEDING MAY NOT BE COMMENCED UNLESS THE AMOUNT OF TAX STATED OR REFERRED TO IN THE DECISION, WITH PENALTIES AND INTEREST THEREON, IF ANY, AND THE AMOUNT OF ANY OTHER PENALTY STATED OR REFERRED TO IN THE DECISION, IS FIRST DEPOSITED WITH THE COMMISSIONER.

5. THE REMEDY PROVIDED BY THIS SECTION FOR REVIEW OF A DECISION OF THE TAX APPEALS TRIBUNAL IS THE EXCLUSIVE REMEDY AVAILABLE TO ANY TAXPAYER FOR JUDICIAL DETERMINATION OF THE LIABILITY OF THE TAXPAYER FOR TAXES UNDER THIS ARTICLE.

S 406. PENALTIES AND INTEREST. 1. (A) A PRODUCER OR OTHER PERSON WHO OR WHICH FAILS TO FILE A RETURN OR TO PAY ANY TAX WITHIN THE TIME REQUIRED BY THIS ARTICLE (DETERMINED WITH REGARD TO ANY EXTENSION OF TIME FOR FILING OR PAYING) WILL BE SUBJECT TO A PENALTY OF TEN PER CENTUM OF THE AMOUNT OF TAX DETERMINED TO BE DUE AS PROVIDED IN THIS ARTICLE PLUS ONE PER CENTUM OF SUCH AMOUNT FOR EACH MONTH OR FRACTION THEREOF DURING WHICH THE FAILURE CONTINUES AFTER THE EXPIRATION OF THE FIRST MONTH DURING WHICH THAT RETURN WAS REQUIRED TO BE FILED OR SUCH TAX BECAME DUE, NOT EXCEEDING THIRTY PER CENTUM IN THE AGGREGATE. PROVIDED, HOWEVER, IN THE CASE OF A FAILURE TO FILE A RETURN WITHIN SIXTY DAYS OF THE DATE PRESCRIBED FOR FILING OF A RETURN BY THIS ARTICLE (DETERMINED WITH REGARD TO ANY EXTENSION OF TIME FOR FILING), THE PENALTY IMPOSED BY THIS PARAGRAPH WILL NOT BE LESS THAN THE LESSER OF ONE HUNDRED DOLLARS OR ONE HUNDRED PER CENTUM OF THE AMOUNT REQUIRED TO BE SHOWN AS TAX ON THAT RETURN. FOR THE PURPOSE OF THE PRECEDING SENTENCE, THE AMOUNT OF TAX REQUIRED TO BE SHOWN ON THE RETURN WILL BE REDUCED BY THE AMOUNT OF ANY PART OF THE TAX THAT IS PAID ON OR BEFORE THE DATE PRESCRIBED FOR PAYMENT OF THE TAX.

(B) IF ANY AMOUNT OF TAX IS NOT PAID ON OR BEFORE THE LAST DATE PRESCRIBED IN THIS ARTICLE FOR PAYMENT, INTEREST ON SUCH AMOUNT AT THE UNDERPAYMENT RATE SET BY THE COMMISSIONER PURSUANT TO SUBDIVISION TWENTY-SIXTH OF SECTION ONE HUNDRED SEVENTY-ONE OF THIS CHAPTER SHALL BE PAID FOR THE PERIOD FROM THAT LAST DATE TO THE DATE PAID, WHETHER OR NOT ANY EXTENSION OF TIME FOR PAYMENT WAS GRANTED. INTEREST UNDER THIS PARAGRAPH WILL NOT BE OWED IF THE AMOUNT THEREOF IS LESS THAN ONE DOLLAR.

(C) IF THE COMMISSIONER DETERMINES THAT SUCH FAILURE OR DELAY WAS DUE TO REASONABLE CAUSE (AS DETERMINED UNDER REGULATIONS OF THE COMMISSIONER) AND NOT DUE TO WILLFUL NEGLECT, HE OR SHE SHALL ABATE ALL OR PART OF SUCH PENALTY.

(D) IF THE FAILURE TO PAY ANY TAX WITHIN THE TIME REQUIRED BY OR PURSUANT TO THIS ARTICLE IS DUE TO FRAUD, IN LIEU OF THE PENALTIES PROVIDED FOR IN PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION, THERE WILL BE ADDED TO THE TAX (I) A PENALTY OF TWO TIMES THE AMOUNT OF TAX DUE, PLUS (II) INTEREST ON SUCH UNPAID TAX AT THE UNDERPAYMENT RATE SET BY THE COMMISSIONER PURSUANT TO SUBDIVISION TWENTY-SIXTH OF SECTION ONE HUNDRED SEVENTY-ONE OF THIS CHAPTER FOR THE PERIOD BEGINNING ON THE LAST DAY PRESCRIBED BY THIS ARTICLE FOR THE PAYMENT OF SUCH TAX (DETERMINED WITHOUT REGARD TO ANY EXTENSION OF TIME FOR PAYING) AND ENDING ON THE DAY ON WHICH SUCH TAX IS PAID.

(E) THE PENALTIES AND INTEREST PROVIDED FOR IN THIS SECTION WILL BE DETERMINED, ASSESSED, COLLECTED AND PAID IN THE SAME MANNER AS THE TAXES IMPOSED BY THIS ARTICLE AND WILL BE DISPOSED OF AS HEREINAFTER PROVIDED WITH RESPECT TO MONEYS DERIVED FROM THE TAX.

2. FOR PURPOSES OF THIS CHAPTER, THE FAILURE TO DO ANY ACT REQUIRED BY THIS ARTICLE WILL BE DEEMED AN ACT COMMITTED IN PART AT THE OFFICE OF THE DEPARTMENT IN ALBANY. FOR PURPOSES OF THIS CHAPTER, THE CERTIFICATE OF THE DEPARTMENT TO THE EFFECT THAT A TAX HAS NOT BEEN PAID, THAT A RETURN HAS NOT BEEN FILED, OR THAT INFORMATION HAS NOT BEEN SUPPLIED, AS REQUIRED BY OR UNDER THE PROVISIONS OF THIS ARTICLE, OR THAT A CLAIM FOR REFUND HAS BEEN FILED, WILL BE PRIMA FACIE EVIDENCE THAT THE TAX HAS NOT BEEN PAID, THE RETURN HAS NOT BEEN FILED, THE INFORMATION HAS NOT BEEN SUPPLIED, OR THE CLAIM HAS BEEN FILED.

3. CROSS-REFERENCE: FOR CRIMINAL PENALTIES, SEE ARTICLE THIRTY-SEVEN OF THIS CHAPTER.

S 407. MAILING RULES; HOLIDAYS. THE RULES SET FORTH IN SECTION TWO HUNDRED EIGHTY-NINE-D OF THIS CHAPTER APPLY TO THIS ARTICLE.

S 408. DEPOSIT AND DISPOSITION OF REVENUE. ALL TAXES, INTEREST AND PENALTIES COLLECTED OR RECEIVED BY THE COMMISSIONER UNDER THE TAXES IMPOSED BY THIS ARTICLE WILL BE DEPOSITED AND DISPOSED OF PURSUANT TO THE PROVISIONS OF SECTION THREE HUNDRED TWELVE OF THIS CHAPTER.

S 409. REFUNDS. 1. IN THE MANNER PROVIDED IN THIS SECTION, THE COMMISSIONER WILL REFUND OR CREDIT ANY TAX, PENALTY, OR INTEREST ERRONEOUSLY, ILLEGALLY OR UNCONSTITUTIONALLY COLLECTED OR PAID IF APPLICATION THEREFOR IS FILED WITH THE COMMISSIONER WITHIN THREE YEARS AFTER THE DATE WHEN THE TAX, PENALTY, OR INTEREST WAS PAID UNDER THIS ARTICLE. THE APPLICATION SHALL BE IN A FORM PRESCRIBED BY THE COMMISSIONER.

2. IF AN APPLICATION FOR REFUND OR CREDIT IS FILED WITH THE COMMISSIONER AS PROVIDED IN SUBDIVISION ONE OF THIS SECTION, THE COMMISSIONER SHALL GRANT OR DENY THAT APPLICATION IN WHOLE OR IN PART WITHIN SIX MONTHS OF RECEIPT OF THE APPLICATION IN A FORM THAT IS ABLE TO BE PROCESSED AND SHALL NOTIFY THE APPLICANT BY MAIL ACCORDINGLY. THAT DETERMINATION WILL BE FINAL AND IRREVOCABLE UNLESS THE APPLICANT, WITHIN NINETY DAYS AFTER THE MAILING OF NOTICE OF SUCH DETERMINATION, PETITIONS THE DIVISION OF TAX APPEALS FOR A HEARING. AFTER THE HEARING, THE DIVISION OF TAX APPEALS WILL MAIL NOTICE OF THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE TO THE APPLICANT AND TO THE COMMISSIONER. THAT DETERMINATION MAY BE REVIEWED BY THE TAX APPEALS TRIBUNAL AS PROVIDED IN ARTICLE FORTY OF THIS CHAPTER. THE DECISION OF THE TAX APPEALS TRIBUNAL MAY BE REVIEWED AS PROVIDED IN SECTION TWO THOUSAND SIXTEEN OF THIS CHAPTER.

3. UPON RECEIPT OF A CLAIM FOR REFUND OR CREDIT IN PROCESSIBLE FORM, INTEREST WILL BE ALLOWED AND PAID AT THE OVERPAYMENT RATE SET BY THE COMMISSIONER PURSUANT TO SUBDIVISION TWENTY-SIXTH OF SECTION ONE HUNDRED SEVENTY-ONE OF THIS CHAPTER, OR IF NO RATE IS SET, AT THE RATE OF SEVEN AND ONE-HALF PERCENT PER ANNUM CALCULATED FROM THE DATE THE CLAIM IS FILED TO THE DATE IMMEDIATELY PRECEDING THE DATE OF THE REFUND CHECK EXCEPT NO INTEREST WILL BE ALLOWED OR PAID IF THE REFUND CHECK IS MAILED WITHIN THIRTY DAYS OF SUCH RECEIPT OR IF THE AMOUNT THEREOF WOULD BE LESS THAN ONE DOLLAR. FOR PURPOSES OF THIS SUBDIVISION, A CLAIM WILL NOT BE TREATED AS FILED UNTIL IT IS FILED IN PROCESSIBLE FORM. A CLAIM IS IN A PROCESSIBLE FORM IF THE CLAIM IS FILED ON A PERMITTED FORM, AND CONTAINS THE TAXPAYER'S NAME, ADDRESS AND IDENTIFYING NUMBER AND THE REQUIRED SIGNATURES, AND SUFFICIENT REQUIRED INFORMATION (WHETHER ON THE CLAIM OR ON REQUIRED ATTACHMENTS) TO PERMIT THE MATHEMATICAL VERIFICATION OF REFUND SHOWN ON THE CLAIM.

S 410. SECRECY. 1. FOR PURPOSES OF THIS ARTICLE, THE SECRECY PROVISIONS SET FORTH IN SECTION THREE HUNDRED FOURTEEN OF THIS CHAPTER WILL APPLY.

2. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION: (A) UPON AGREEMENT WITH THE HEAD OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

OR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, THE COMMISSIONER MAY DISCLOSE TO THAT AGENCY THE NAME, ADDRESS, EMPLOYER IDENTIFICATION NUMBER, APPLICATION STATUS INFORMATION, AND OTHER APPROPRIATE IDENTIFYING AND APPLICATION INFORMATION, OF (I) PERSONS WHOSE APPLICATION FOR REGISTRATION UNDER THIS ARTICLE IS PENDING; (II) PERSONS HOLDING A VALID REGISTRATION UNDER THIS ARTICLE; (III) PERSONS WHOSE REGISTRATION UNDER THIS ARTICLE HAS BEEN CANCELLED OR SUSPENDED; AND (IV) PERSONS WHOSE REGISTRATION APPLICATION UNDER THIS ARTICLE HAS BEEN DENIED, FOR THE PURPOSES OF IMPROVING THE SAFETY AND SECURITY OVERSIGHT OF THE NATURAL GAS INDUSTRY AND COORDINATING AND STREAMLINING THE CREDENTIALING PROCESS FOR SUCH INDUSTRY ADMINISTERED BY SUCH AGENCIES.

(B) ANY INFORMATION DISCLOSED BY THE COMMISSIONER PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION MAY, PURSUANT TO SUCH AGREEMENT, BE REDISCLOSED BY AND AMONG THE HEADS OF SUCH AGENCIES AND MAY ALSO BE REDISCLOSED TO THE HEADS OF COMPARABLE AGENCIES OF ANY OTHER STATE, THE DISTRICT OF COLUMBIA OR ANY PROVINCE OR TERRITORY OF CANADA IN FURTHERANCE OF THE PURPOSES SPECIFIED IN THIS SUBDIVISION.

3. THE COMMISSIONER MAY REQUEST FROM THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION IS AUTHORIZED AND DIRECTED TO PROVIDE, ANY COOPERATION AND ASSISTANCE, INCLUDING THE PROVISION OF RELEVANT INFORMATION, THAT WILL ENABLE THE COMMISSIONER TO ADMINISTER THE TAX IMPOSED BY THIS ARTICLE.

S 411. LIABILITY FOR OTHER TAXES NOT AFFECTED. PAYMENT OF THE TAX IMPOSED BY THIS ARTICLE BY A PRODUCER DOES NOT AFFECT THE REQUIREMENT OF THAT PRODUCER TO PAY ANY OTHER STATE, LOCAL, OR OTHER TAX IMPOSED UPON THE PRODUCER'S REAL OR PERSONAL PROPERTY OR THE PRODUCER'S OPERATIONS.

S 4. The tax law is amended by adding a new section 1812-g to read as follows:

S 1812-G. ARTICLE SEVENTEEN TAX. 1. ANY PERSON WHO WILLFULLY ATTEMPTS IN ANY MANNER TO EVADE OR DEFEAT ANY TAX IMPOSED BY ARTICLE SEVENTEEN OF THIS CHAPTER OR THE PAYMENT THEREOF SHALL BE GUILTY OF A MISDEMEANOR; PROVIDED, HOWEVER, THAT IF THE TAX LIABILITY EVADED OR DEFEATED AS A RESULT OF SUCH CONDUCT IS EQUAL TO OR GREATER THAN ONE THOUSAND DOLLARS, SUCH PERSON SHALL BE GUILTY OF A CLASS E FELONY.

2. ANY WILLFUL ACT OR OMISSION, OTHER THAN THOSE DESCRIBED IN SECTION EIGHTEEN HUNDRED ONE OF THIS ARTICLE OR SUBDIVISION ONE OF THIS SECTION, BY ANY PERSON THAT AMOUNTS TO A VIOLATION OF ANY PROVISION OF ARTICLE SEVENTEEN OF THIS CHAPTER CONSTITUTES A MISDEMEANOR.

S 5. This act shall take effect September 1, 2010; provided, however, that persons currently severing natural gas in this state and any other person who is or will be subject to the requirements of this act on September 1, 2010 may begin submitting their certification that they are not required to register or their applications to register as producers on July 1, 2010.

PART B

Section 1. Subdivision 1 of section 471 of the tax law, as amended by section 1 of part RR-1 of chapter 57 of the laws of 2008, is amended to read as follows:

1. There is hereby imposed and shall be paid a tax on all cigarettes possessed in the state by any person for sale, except that no tax shall be imposed on cigarettes sold under such circumstances that this state is without power to impose such tax or sold to the United States or sold to or by a voluntary unincorporated organization of the armed forces of

the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States, to the extent provided in such regulations and policy statements of such an agency applicable to such sales. Such tax on cigarettes shall be at the rate of [two] THREE dollars and seventy-five cents for each twenty cigarettes or fraction thereof, provided, however, that if a package of cigarettes contains more than twenty cigarettes, the rate of tax on the cigarettes in such package in excess of twenty shall be [sixty-eight] NINETY-THREE and three-quarters cents for each five cigarettes or fraction thereof. Such tax is intended to be imposed upon only one sale of the same package of cigarettes. It shall be presumed that all cigarettes within the state are subject to tax until the contrary is established, and the burden of proof that any cigarettes are not taxable hereunder shall be upon the person in possession thereof.

S 2. Section 471-a of the tax law, as amended by section 2 of part RR-1 of chapter 57 of the laws of 2008, is amended to read as follows:

S 471-a. Use tax on cigarettes. There is hereby imposed and shall be paid a tax on all cigarettes used in the state by any person, except that no tax shall be imposed (1) if the tax provided in section four hundred seventy-one of this article is paid, (2) on the use of cigarettes which are exempt from the tax imposed by said section, or (3) on the use of four hundred or less cigarettes, brought into the state on, or in the possession of, any person. Such tax on cigarettes shall be at the rate of [two] THREE dollars and seventy-five cents for each twenty cigarettes or fraction thereof, provided, however, that if a package of cigarettes contains more than twenty cigarettes, the rate of tax on the cigarettes in such package in excess of twenty shall be [sixty-eight] NINETY-THREE and three-quarters cents for each five cigarettes or fraction thereof. Within twenty-four hours after liability for the tax accrues, each such person shall file with the commissioner a return in such form as the commissioner may prescribe together with a remittance of the tax shown to be due thereon. For purposes of this article, the word "use" means the exercise of any right or power actual or constructive and shall include but is not limited to the receipt, storage or any keeping or retention for any length of time, but shall not include possession for sale. All other provisions of this article if not inconsistent shall apply to the administration and enforcement of the tax imposed by this section in the same manner as if the language of said provisions had been incorporated in full into this section.

S 3. Section 482 of the tax law, as amended by section 125-b of part C of chapter 58 of the laws of 2009, is amended to read as follows:

S 482. Deposit and disposition of revenue. (a) All taxes, fees, interest and penalties collected or received by the commissioner under this article and article twenty-A of this chapter shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter. (b) From the taxes, interest and penalties collected or received by the commissioner under sections four hundred seventy-one and four hundred seventy-one-a of this article, effective on and after March first, two thousand, forty-nine and fifty-five hundredths, and effective on and after February first, two thousand two, forty-three and seventy hundredths; and effective on and after May first, two thousand two, sixty-four and fifty-five hundredths; and effective on and after April first, two thousand three, sixty-one and twenty-two hundredths percent; and effective on and after June third, two thousand eight, seventy and sixty-three hundredths percent; AND

EFFECTIVE ON AND AFTER JUNE FIRST, TWO THOUSAND TEN, SEVENTY-FIVE PERCENT collected or received under those sections must be deposited to the credit of the tobacco control and insurance initiatives pool to be established and distributed by the commissioner of health in accordance with section twenty-eight hundred seven-v of the public health law. (c) From the fees collected or received by the commissioner under subdivision two of section four hundred eighty-a of this article, effective on or after September first, two thousand nine, any monies collected or received under that section in excess of three million dollars must be deposited to the credit of the tobacco control and insurance initiatives pool to be distributed by the commissioner of health in accordance with section twenty-eight hundred seven-v of the public health law.

S 4. Notwithstanding any other provision of law to the contrary, the tax due on cigarettes possessed in New York state as of the close of business on May 31, 2010 by any person for sale solely attributable to the increase imposed by the amendments to section 471 of the tax law, as amended by section one of this act, shall be paid by August 20, 2010, subject to such terms and conditions as the commissioner of taxation and finance shall prescribe.

S 5. This act shall take effect June 2, 2010, and shall apply to all cigarettes possessed in the state by any person for sale and all cigarettes used in the state by any person on or after June 2, 2010.

PART C

Section 1. Paragraph a of subdivision twenty-sixth of section 171 of the tax law, as amended by section 1 of subpart D of part V-1 of chapter 57 of the laws of 2009, is amended to read as follows:

a. Set the overpayment and underpayment rates of interest for purposes of articles twelve-A, SIXTEEN, eighteen, twenty and twenty-one of this chapter. Such rates shall be the overpayment and underpayment rates of interest set pursuant to subsection (e) of section one thousand ninety-six of this chapter, but the underpayment rate shall not be less than seven and one-half percent per annum. Any such rates set by such commissioner shall apply to taxes, or any portion thereof, which remain or become due or overpaid (other than overpayments under such article twenty and not including reimbursements, if any, under any of such articles) on or after the date on which such rates become effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period during which such rates are in effect. In computing the amount of any interest required to be paid under such articles by such commissioner or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily.

S 2. Subdivision 1 of section 171-a of the tax law, as amended by section 1 of part R of chapter 60 of the laws of 2004, 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), SIXTEEN (EXCEPT AS OTHERWISE PROVIDED IN SECTION THREE HUNDRED SIXTY-FOUR THEREOF), eighteen, nineteen, twenty (except as otherwise provided in section four hundred

eighty-two thereof), twenty-one, twenty-two, twenty-six, twenty-six-B, twenty-eight (except as otherwise provided in section eleven hundred two or eleven hundred three thereof), twenty-eight-A, thirty-one (except as otherwise provided in section fourteen hundred twenty-one thereof), thirty-two, thirty-three and thirty-three-A of this chapter shall be deposited daily in one account with such responsible banks, banking houses or trust companies as may be designated by the comptroller, to the credit of the comptroller. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under such articles of this chapter, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds or reimbursements under such articles of this chapter [and article ten thereof] out of which amount the comptroller shall pay any refunds or reimbursements to which taxpayers shall be entitled under the provisions of such articles of this chapter [and article ten thereof]. The commissioner and the comptroller shall maintain a system of accounts showing the amount of revenue collected or received from each of the taxes imposed by such articles. The comptroller, after reserving the amount to pay such refunds or reimbursements, shall, on or before the tenth day of each month, pay into the state treasury to the credit of the general fund all revenue deposited under this section during the preceding calendar month and remaining to the comptroller's credit on the last day of such preceding month, (i) except that the comptroller shall pay to the state department of social services that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against past-due support pursuant to subdivision six of section one hundred seventy-one-c of this [chapter] ARTICLE, (ii) and except that the comptroller shall pay to the New York state higher education services corporation and the state university of New York or the city university of New York respectively that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against the amount of defaults in repayment of guaranteed student loans and state university loans or city university loans pursuant to subdivision five of section one hundred seventy-one-d and subdivision six of section one hundred seventy-one-e of this [chapter] ARTICLE, (iii) and except further that, notwithstanding any law, the comptroller shall credit to the revenue arrearage account, pursuant to section ninety-one-a of the state finance law, that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B, thirty-two or thirty-three of this chapter, and any interest thereon, which is certified to the comptroller by the commissioner as the amount to be credited against a past-due legally enforceable debt owed to a state agency pursuant to paragraph (a) of subdivision six of section one hundred seventy-one-f of this article, provided, however, he OR SHE shall credit to the special offset fiduciary account, pursuant to section ninety-one-c of the state finance law, any such amount creditable as a liability as set forth in paragraph (b) of subdivision six of section one hundred seventy-one-f of this article, (iv) and except further that the comptroller shall pay to the city of New York that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B, thirty-two, or

thirty-three of this chapter and any interest thereon that is certified to the comptroller by the commissioner as the amount to be credited against city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-l of this article, (v) and except further that the comptroller shall pay to a non-obligated spouse that amount of overpayment of tax imposed by article twenty-two of this chapter and the interest on such amount which has been credited pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-l of this article and which is certified to the comptroller by the commissioner as the amount due such non-obligated spouse pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter; and (vi) the comptroller shall deduct a like amount which the comptroller shall pay into the treasury to the credit of the general fund from amounts subsequently payable to the department of social services, the state university of New York, the city university of New York, or the higher education services corporation, or the revenue arrearage account or special offset fiduciary account pursuant to section ninety-one-a or ninety-one-c of the state finance law, as the case may be, whichever had been credited the amount originally withheld from such overpayment, and (vii) with respect to amounts originally withheld from such overpayment pursuant to section one hundred seventy-one-l of this article and paid to the city of New York, the comptroller shall collect a like amount from the city of New York.

S 3. The tax law is amended by adding a new article 16 to read as follows:

ARTICLE 16

TAX ON BEVERAGE SYRUPS AND SOFT DRINKS

SECTION 350. GENERAL DEFINITIONS.
351. IMPOSITION OF TAX.
352. EXEMPTIONS.
353. REGISTRATION OF DISTRIBUTORS.
354. BONDS OF DISTRIBUTORS.
355. CANCELLATION OR SUSPENSION OF REGISTRATION OF DISTRIBUTORS.
356. PRESUMPTION OF TAXABILITY.
357. RECORDS TO BE KEPT BY DISTRIBUTORS AND OTHERS; EXAMINATION.
358. PAYMENT OF TAX; RETURNS.
359. DETERMINATION OF TAX.
360. PROCEEDINGS TO RECOVER TAX.
361. PENALTIES AND INTEREST.
362. REFUNDS.
363. MAILING RULES; HOLIDAYS.
364. DEPOSIT AND DISPOSITION OF REVENUE.

S 350. GENERAL DEFINITIONS. AS USED IN THIS ARTICLE: 1. "BOTTLE" MEANS ANY CLOSED OR SEALED GLASS, METAL, PAPER, PLASTIC OR OTHER TYPE OF CONTAINER, REGARDLESS OF SIZE OR SHAPE.

2. "BOTTLED SOFT DRINK" MEANS ANY SOFT DRINK CONTAINED IN A BOTTLE.

3. "DIETARY AID" MEANS A LIQUID PRODUCT THAT IS INTENDED BY ITS MANUFACTURER FOR USE AS (A) A REPLACEMENT FOR A DAILY MEAL FOR THE PURPOSES OF WEIGHT REDUCTION, (B) AN ORAL NUTRITIONAL THERAPY WHERE CALORIC AND DIETARY NUTRIENTS FROM FOOD CANNOT BE ABSORBED OR METABOLIZED, (C) A SOURCE OF NECESSARY NUTRITION DUE TO A MEDICAL CONDITION, OR (D) AN ORAL ELECTROLYTE SOLUTION FOR INFANTS AND CHILDREN FORMULATED TO PREVENT DEHYDRATION DUE TO DIARRHEA OR VOMITING.

4. "DISTRIBUTOR" MEANS ANY PERSON WHO (A) IMPORTS OR CAUSES TO BE IMPORTED INTO THE STATE, FOR USE, DISTRIBUTION, BOTTLING, STORAGE OR

SALE ANY (I) SYRUPS OR SIMPLE SYRUPS, (II) BOTTLED SOFT DRINKS, OR (III) POWDERS OR BASE PRODUCTS, OR (B) PRODUCES, REFINES, BOTTLES, MANUFACTURES, COMPOUNDS OR MIXES (I) SYRUPS OR SIMPLE SYRUPS, (II) BOTTLED SOFT DRINKS, OR (III) POWDERS OR BASE PRODUCTS.

5. "INFANT FORMULA" MEANS ANY PRODUCT, WHETHER SOLD IN LIQUID OR POWDER FORM, THAT IS INTENDED BY ITS MANUFACTURER FOR CONSUMPTION BY INFANTS AND THAT IS COMMONLY REFERRED TO AS INFANT FORMULA.

6. "MILK" MEANS NATURAL LIQUID MILK, REGARDLESS OF ANIMAL SOURCE OR BUTTERFAT CONTENT; AND NATURAL MILK CONCENTRATE, WHETHER OR NOT RECONSTITUTED, REGARDLESS OF ANIMAL SOURCE OR BUTTERFAT CONTENT; OR DEHYDRATED NATURAL MILK, WHETHER OR NOT RECONSTITUTED.

7. "MILK PRODUCT" MEANS ANY LIQUID THAT HAS MILK AS THE PREDOMINANT INGREDIENT BY WEIGHT IN ACCORDANCE WITH THE REGULATIONS OF THE UNITED STATES FOOD AND DRUG ADMINISTRATION.

8. "MILK SUBSTITUTE" MEANS ANY LIQUID THAT IS SOY-BASED AND IS INTENDED BY ITS MANUFACTURER AS A SUBSTITUTE FOR MILK.

9. "NATURAL FRUIT JUICE" MEANS THE ORIGINAL LIQUID RESULTING FROM THE PRESSING OF FRUIT, THE LIQUID RESULTING FROM THE RECONSTITUTION OF FRUIT JUICE CONCENTRATE OR THE LIQUID RESULTING FROM THE RESTORATION OF WATER TO DEHYDRATED FRUIT JUICE.

10. "NATURAL VEGETABLE JUICE" MEANS THE ORIGINAL LIQUID RESULTING FROM THE PRESSING OF VEGETABLES, THE LIQUID RESULTING FROM THE RECONSTITUTION OF VEGETABLE JUICE CONCENTRATE OR THE LIQUID RESULTING FROM THE RESTORATION OF WATER TO DEHYDRATED VEGETABLE JUICE.

11. "NONALCOHOLIC BEVERAGE" MEANS ANY BEVERAGE NOT SUBJECT TO TAX UNDER ARTICLE EIGHTEEN OF THIS CHAPTER.

12. "PERSON" INCLUDES AN INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, SOCIETY, ASSOCIATION, JOINT STOCK COMPANY, CORPORATION, ESTATE, RECEIVER, TRUSTEE, ASSIGNEE, REFEREE, AND ANY OTHER PERSON ACTING IN A FIDUCIARY OR REPRESENTATIVE CAPACITY, WHETHER APPOINTED BY A COURT OR OTHERWISE, AND ANY COMBINATION OF THE FOREGOING.

13. "PLACE OF BUSINESS" MEANS ANY PLACE WHERE (A) SYRUPS OR SIMPLE SYRUPS (B) BOTTLED SOFT DRINKS, OR (C) POWDERS OR BASE PRODUCTS ARE EITHER MANUFACTURED OR RECEIVED.

14. "POWDER OR BASE PRODUCT" MEANS A SOLID MIXTURE OF BASIC INGREDIENTS USED IN MAKING, MIXING, OR COMPOUNDING SOFT DRINKS, BY MIXING THE POWDER OR OTHER BASE WITH WATER, ICE, SYRUP, SIMPLE SYRUP, FRUITS, VEGETABLES, FRUIT JUICE, VEGETABLE JUICE OR ANY OTHER PRODUCT SUITABLE TO MAKE A SOFT DRINK.

15. "RETAIL DEALER" MEANS ANY PERSON, OTHER THAN A DISTRIBUTOR, WHO SELLS OR DISPENSES A SOFT DRINK TO AN ULTIMATE CONSUMER.

16. "SALE" MEANS ANY TRANSFER OF TITLE OR POSSESSION OR BOTH, EXCHANGE OR BARTER, RENTAL, LEASE OR LICENSE TO USE OR CONSUME, CONDITIONAL OR OTHERWISE, IN ANY MANNER OR BY ANY MEANS WHATSOEVER FOR CONSIDERATION, OR ANY AGREEMENT THEREFOR.

17. "SIMPLE SYRUP" MEANS A MIXTURE OF SUGAR AND WATER.

18. "SOFT DRINK" MEANS ANY NONALCOHOLIC BEVERAGE, WHETHER NATURALLY OR ARTIFICIALLY FLAVORED, WHETHER CARBONATED OR NONCARBONATED, SOLD FOR HUMAN CONSUMPTION, CONTAINING MORE THAN TEN CALORIES PER EIGHT OUNCES, INCLUDING, BUT NOT LIMITED TO, (A) SODA, WATER, SPORTS DRINKS, "ENERGY" DRINKS, COLAS, FLAVORED DRINKS, (B) FRUIT OR VEGETABLE DRINKS CONTAINING LESS THAN SEVENTY PERCENT (70%) OF NATURAL FRUIT JUICE OR NATURAL VEGETABLE JUICE, OR A COMBINATION OF JUICES, ANY FROZEN, FREEZE-DRIED, OR OTHER CONCENTRATE TO WHICH WATER IS ADDED TO PRODUCE A BEVERAGE CONTAINING LESS THAN SEVENTY PERCENT (70%) OF NATURAL FRUIT JUICE OR NATURAL VEGETABLE JUICE, AND (C) COFFEE AND TEA BOTTLED AS A LIQUID FOR SALE.

19. "SYRUP" MEANS THE LIQUID MIXTURE OF BASIC INGREDIENTS USED IN MAKING, MIXING OR COMPOUNDING SOFT DRINKS, BY MIXING THE SYRUP WITH WATER, SIMPLE SYRUP, ICE, FRUITS, VEGETABLES, FRUIT JUICE, VEGETABLE JUICE OR ANY OTHER PRODUCT SUITABLE TO MAKE A SOFT DRINK.

20. "USE" MEANS ANY (A) COMPOUNDING OR MIXING OF SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS WITH OTHER INGREDIENTS OR OTHER TREATMENT OR (B) THE ACTUAL CONSUMPTION OR POSSESSION FOR CONSUMPTION OF SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS AS A BEVERAGE OR OTHERWISE.

S 351. IMPOSITION OF TAX. 1. THERE ARE LEVIED AND IMPOSED TAXES AT THE FOLLOWING RATES ON:

(A) SYRUPS OR SIMPLE SYRUPS, THE TAX RATE SHALL BE SEVEN DOLLARS AND SIXTY-EIGHT CENTS PER GALLON BASED ON ONE GALLON BEING CONSTITUTED INTO SEVEN HUNDRED SIXTY-EIGHT OUNCES OF SOFT DRINK. IN THE EVENT SUCH GALLON OF SYRUP OR SIMPLE SYRUP RECONSTITUTES A GREATER AMOUNT OF SOFT DRINK THE RATE OF TAX PER GALLON SHALL BE INCREASED PROPORTIONALLY TO BE BASED ON THE ACTUAL NUMBER OF FLUID OUNCES OF SOFT DRINK PRODUCED BY SUCH GALLON OF SYRUP OR SIMPLE SYRUP;

(B) BOTTLED SOFT DRINKS, THE TAX RATE SHALL BE ONE DOLLAR AND TWENTY-EIGHT CENTS PER GALLON; AND

(C) POWDERS OR BASE PRODUCTS, THE TAX RATE SHALL BE ONE DOLLAR AND TWENTY-EIGHT CENTS FOR EACH GALLON OF SOFT DRINK THAT MAY BE PRODUCED FROM EACH PACKAGE OR CONTAINER OF POWDERS OR BASE PRODUCTS BY FOLLOWING THE MANUFACTURER'S DIRECTIONS.

2. THE TAXES SHALL BE IMPOSED WHEN THE (A) SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS ARE IMPORTED INTO OR CAUSED TO BE IMPORTED INTO THE STATE FOR USE, DISTRIBUTION, BOTTLING, STORAGE, OR SALE IN THE STATE OR (B) UPON SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS WHICH ARE PRODUCED, REFINED, BOTTLED, MANUFACTURED, COMPOUNDED OR MIXED BY A DISTRIBUTOR IN THE STATE (WHICH ACTS SHALL HEREINAFTER IN THIS SUBDIVISION BE ENCOMPASSED BY THE PHRASE "IMPORTED OR MANUFACTURED").

3. FOR PURPOSES OF THIS CHAPTER, IT IS PRESUMED THAT SYRUPS AND SIMPLE SYRUPS ARE POSSESSED FOR THE PURPOSE OF SALE IN THIS STATE. IT IS ALSO PRESUMED THAT BOTTLED SOFT DRINKS OR POWDERS OR BASE PRODUCTS ARE POSSESSED FOR THE PURPOSE OF SALE IN THIS STATE IF THE QUANTITY OF BOTTLED SOFT DRINKS OR POWDERS OR BASE PRODUCTS POSSESSED IN THIS STATE, IMPORTED OR CAUSED TO BE IMPORTED INTO THIS STATE OR PRODUCED, REFINED, BOTTLED, MANUFACTURED, COMPOUNDED OR MIXED IN THIS STATE EXCEEDS FIVE GALLONS. SUCH PRESUMPTION MAY BE REBUTTED BY THE INTRODUCTION OF SUBSTANTIAL EVIDENCE TO THE CONTRARY. IN ANY CASE WHERE THE QUANTITY OF SYRUPS AND SIMPLE SYRUPS, BOTTLE SOFT DRINKS, OR POWDERS OR BASE PRODUCTS TAXABLE PURSUANT TO THIS ARTICLE IS A FRACTIONAL PART OF ONE GALLON OR AN AMOUNT GREATER THAN A WHOLE MULTIPLE OF GALLONS, THE AMOUNT OF TAX LEVIED AND IMPOSED ON SUCH FRACTIONAL PART OF ONE GALLON, OR FRACTIONAL PART OF A GALLON IN EXCESS OF A WHOLE MULTIPLE OF GALLONS SHALL BE SUCH FRACTIONAL PART OF THE RATE IMPOSED BY SUBDIVISION ONE OF THIS SECTION.

4. WHEN A RETAILER PURCHASES SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS FROM ANY PERSON NOT REGISTERED AS A DISTRIBUTOR, THE RETAILER SHALL BE LIABLE FOR THE TAX IMPOSED IN SUBDIVISION ONE OF THIS SECTION.

5. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO REQUIRE THE PAYMENT TO THE DEPARTMENT OF THE TAXES IMPOSED BY THIS ARTICLE ON THE SAME GALLON OF PRODUCT MORE THAN ONCE.

S 352. EXEMPTIONS. THE FOLLOWING SHALL BE EXEMPT FROM THE TAX IMPOSED BY THIS ARTICLE ON:

1. PRODUCTS.

(A) DIETARY AIDS.

(B) INFANT FORMULA.

(C) MILK, MILK PRODUCTS AND MILK SUBSTITUTES.

2. EXPORTS. SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS IMPORTED OR CAUSED TO BE IMPORTED INTO THIS STATE OR PRODUCED, REFINED, BOTTLED, MANUFACTURED, COMPOUNDED OR MIXED IN THIS STATE BY A DISTRIBUTOR, WHERE SUCH DISTRIBUTOR OR THE IMMEDIATE PURCHASER OF SUCH SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS EXPORTS SUCH PRODUCTS FROM THIS STATE FOR SALE OR USE OUTSIDE THE STATE. IN ORDER TO RECEIVE THIS EXEMPTION, A DISTRIBUTOR SHALL HAVE TO COMPLY WITH ALL EVIDENTIARY REQUIREMENTS OF THE COMMISSIONER.

3. SALES TO THE FEDERAL GOVERNMENT. SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS IMPORTED OR CAUSED TO BE IMPORTED INTO THIS STATE OR PRODUCED, REFINED, BOTTLED, MANUFACTURED, COMPOUNDED OR MIXED IN THIS STATE BY A DISTRIBUTOR, AND THEN SOLD BY SUCH DISTRIBUTOR TO AN ORGANIZATION DESCRIBED IN PARAGRAPH TWO OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED SIXTEEN OF THIS CHAPTER WHERE SUCH SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS ARE USED BY SUCH ORGANIZATION FOR ITS OWN USE OR CONSUMPTION.

4. IMPORTATION FOR PERSONAL USE AND CONSUMPTION. BOTTLED SOFT DRINKS OR POWDERS OR BASE PRODUCTS IMPORTED OR CAUSED TO BE IMPORTED INTO THIS STATE IN THE POSSESSION OF AN INDIVIDUAL IN THE AMOUNT OF ONE GALLON OR LESS PER MONTH FOR SUCH INDIVIDUAL'S OWN USE AND CONSUMPTION.

5. MANUFACTURE FOR PERSONAL USE AND CONSUMPTION. SOFT DRINKS MANUFACTURED FOR SUCH INDIVIDUAL'S OWN USE AND CONSUMPTION AND NOT FOR RESALE.

S 353. REGISTRATION OF DISTRIBUTORS. 1. (A) THE COMMISSIONER MAY REGISTER PERSONS AS DISTRIBUTORS UNDER THIS ARTICLE AS THE COMMISSIONER SHALL PRESCRIBE. IF THE COMMISSIONER REGISTERS DISTRIBUTORS, THE COMMISSIONER SHALL REGISTER DISTRIBUTORS UPON APPLICATION. THE APPLICATION SHALL BE IN A FORM AND CONTAIN SUCH DATA AS THE COMMISSIONER SHALL PRESCRIBE.

(B) IF THE COMMISSIONER REGISTERS DISTRIBUTORS, THE FOLLOWING PROVISIONS APPLY. NO PERSON, UNLESS SO REGISTERED, SHALL IMPORT OR CAUSE ANY SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS TO BE IMPORTED INTO THE STATE, FOR USE, DISTRIBUTION, STORAGE OR SALE WITHIN THE STATE OR SHALL PRODUCE, REFINE, BOTTLE, MANUFACTURE, COMPOUND OR MIX SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS WITHIN THE STATE. NO DISTRIBUTOR, UNLESS SO REGISTERED, SHALL MAKE ANY SALE, TRANSFER, USE OR OTHER DISPOSITION OF SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS WITHIN THIS STATE, EXCEPT A SALE, TRANSFER, USE OR DISPOSITION, IF ANY, AS TO WHICH THIS STATE CANNOT IMPOSE SUCH CONDITION BY REASON OF THE UNITED STATES CONSTITUTION AND OF LAWS OF THE UNITED STATES ENACTED PURSUANT THERETO. PROVIDED, HOWEVER, THAT THE COMMISSIONER MAY EXCLUDE FROM THE REGISTRATION REQUIREMENTS, ANY PERSON WHO IS A DISTRIBUTOR OF SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS SOLELY BY REASON OF THE IMPORTATION INTO THIS STATE OF NO MORE THAN FIVE GALLONS OF BOTTLED SOFT DRINKS OR POWDERS OR BASE PRODUCTS SUBJECT TO TAX BY THIS ARTICLE EACH MONTH FOR SUCH PERSON'S PERSONAL USE AND CONSUMPTION.

2. IF THE COMMISSIONER REGISTERS DISTRIBUTORS, THE REGISTRATION GRANTED TO A DISTRIBUTOR BY THE COMMISSIONER SHALL NOT BE ASSIGNABLE OR TRANSFERABLE.

S 354. BONDS OF DISTRIBUTORS. 1. IF THE COMMISSIONER REGISTERS DISTRIBUTORS, THE COMMISSIONER MAY ALSO REQUIRE BONDS AS PROVIDED IN THIS SECTION.

2. THE COMMISSIONER MAY REQUIRE A DISTRIBUTOR TO FILE WITH THE COMMISSIONER A BOND ISSUED BY A SURETY COMPANY APPROVED BY THE SUPERINTENDENT OF INSURANCE AS TO SOLVENCY AND RESPONSIBILITY AND AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE OR ANOTHER SECURITY ACCEPTABLE TO THE COMMISSIONER, IN SUCH AMOUNT FIXED BY THE COMMISSIONER TO SECURE THE PAYMENT OF ANY SUMS DUE FROM SUCH DISTRIBUTOR PURSUANT TO THIS ARTICLE.

3. THE COMMISSIONER MAY REQUIRE THAT THE BOND OR OTHER SECURITY BE FILED BEFORE A DISTRIBUTOR IS REGISTERED, OR AT ANY TIME WHEN IN HIS OR HER JUDGMENT A BOND IS NECESSARY FOR THE PROTECTION OF THE REVENUES UNDER THIS ARTICLE.

4. THE COMMISSIONER MAY REQUIRE THAT THE AMOUNT OF A BOND OR OTHER SECURITY BE INCREASED AT ANY TIME WHEN, IN HIS OR HER JUDGMENT, THE INCREASE IS NECESSARY AS A PROTECTION TO THE REVENUES UNDER THIS ARTICLE.

5. IF SECURITIES ARE DEPOSITED UNDER THIS SECTION, THESE SECURITIES SHALL BE KEPT IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE COMMISSIONER AND MAY BE SOLD BY THE COMMISSIONER IF A SALE BECOMES NECESSARY TO RECOVER ANY SUMS DUE FROM THE DISTRIBUTOR PURSUANT TO THIS ARTICLE, BUT NO SALE SHALL BE HELD UNTIL AFTER THE DISTRIBUTOR SHALL HAVE HAD AN OPPORTUNITY TO LITIGATE THE VALIDITY OF ANY TAX. AFTER ANY SALE OF THE SECURITIES, THE SURPLUS AMOUNT, IF ANY, ABOVE THE SUMS DUE UNDER THIS ARTICLE SHALL BE RETURNED TO THE DISTRIBUTOR.

S 355. CANCELLATION OR SUSPENSION OF REGISTRATION OF DISTRIBUTORS. IF THE COMMISSIONER REGISTERS DISTRIBUTORS, THE REGISTRATION OF ANY DISTRIBUTOR MAY BE CANCELLED BY THE COMMISSIONER UPON A DISTRIBUTOR'S FAILURE TO FILE A BOND OR OTHER SECURITY WHEN REQUIRED, AND THE REGISTRATION OF A DISTRIBUTOR MAY BE CANCELLED BY THE COMMISSIONER UPON A DISTRIBUTOR'S FAILURE TO COMPLY WITH ANY OF THE PROVISIONS OF THIS ARTICLE OR ANY REASONABLE REQUIREMENT, RULE OR REGULATION ADOPTED PURSUANT TO THIS ARTICLE. ALL THE PROVISIONS OF SUBDIVISIONS FOUR THROUGH SIX AND EIGHT THROUGH TEN OF SECTION TWO HUNDRED EIGHTY-THREE OF THIS CHAPTER RELATING TO REGISTRATION OF DISTRIBUTORS OF MOTOR FUEL SHALL BE APPLICABLE TO THE REGISTRATION OF DISTRIBUTORS UNDER THIS ARTICLE WITH THE SAME FORCE AND EFFECT AS IF THE LANGUAGE OF THOSE SUBDIVISIONS HAD BEEN INCORPORATED IN FULL IN THIS SECTION AND HAD EXPRESSLY REFERRED TO THE REGISTRATION OF DISTRIBUTORS UNDER THIS ARTICLE AND THE TAX IMPOSED BY THIS ARTICLE, WITH SUCH MODIFICATION AS MAY BE NECESSARY IN ORDER TO ADAPT THE LANGUAGE OF SUCH PROVISIONS TO THE PROVISIONS OF THIS ARTICLE, PROVIDED, SPECIFICALLY, THAT THE TERM "MOTOR FUEL" SHALL BE READ AS "SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS".

S 356. PRESUMPTION OF TAXABILITY. 1. NO PERSON SHALL PURCHASE SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS IN THIS STATE, EXCLUDING A PURCHASE AT RETAIL, UNLESS THE TAXES IMPOSED BY THIS ARTICLE HAVE BEEN ASSUMED BY A DISTRIBUTOR IN ACCORDANCE WITH A CERTIFICATION UNDER SUBDIVISION TWO OF THIS SECTION OR PAID BY SUCH DISTRIBUTOR. IN ADDITION TO ANY OTHER CIVIL AND CRIMINAL PENALTIES WHICH MAY APPLY, ANY PERSON WHO PURCHASES SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS WITHOUT HAVING RECEIVED A CERTIFICATION FROM THE SELLER IN ACCORDANCE WITH SUBDIVISION TWO OF THIS

SECTION SHALL BE JOINTLY AND SEVERALLY LIABLE TO PAY THE TAXES IMPOSED BY THIS ARTICLE WITH RESPECT TO SUCH SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS.

2. (A) UPON EACH SALE OF SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS, OTHER THAN A SALE AT RETAIL, THE SELLER MUST GIVE TO THE PURCHASER AND THE PURCHASER SHALL RECEIVE AT THE TIME OF DELIVERY OF SUCH SALE OF SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS, A CERTIFICATION CONTAINING SUCH INFORMATION AS THE COMMISSIONER SHALL REQUIRE WHICH SHALL INCLUDE A STATEMENT TO THE EFFECT THAT THE SELLER ASSUMED THE PAYMENT OF OR PAID THE TAXES IMPOSED BY THIS ARTICLE.

(B) IF THE CERTIFICATION REQUIRED BY THIS SUBDIVISION HAS BEEN FURNISHED TO THE PURCHASER AT DELIVERY AND ACCEPTED IN GOOD FAITH, THE BURDEN OF PROVING THAT THE TAXES IMPOSED BY THIS ARTICLE WERE ASSUMED OR PAID BY A DISTRIBUTOR SHALL BE SOLELY ON THE SELLER.

(C) WHERE THE CERTIFICATION REQUIRED UNDER THIS SUBDIVISION IS NOT FURNISHED BY THE SELLER AT DELIVERY OF THE SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS, IT SHALL BE PRESUMED THAT THE TAXES IMPOSED BY THIS ARTICLE HAVE NOT BEEN ASSUMED OR PAID BY A DISTRIBUTOR AND THAT THE PURCHASER IN SUCH CASE IS JOINTLY AND SEVERALLY LIABLE FOR SUCH TAXES.

(D) IF, DUE TO THE CIRCUMSTANCES OF DELIVERY, IT IS NOT POSSIBLE TO ISSUE A CERTIFICATION REQUIRED UNDER THIS SUBDIVISION AT THE TIME OF DELIVERY OF SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS, THE COMMISSIONER MAY AUTHORIZE THE DELIVERY OF THE CERTIFICATION REQUIRED UNDER THIS SUBDIVISION AT A TIME AFTER THE DELIVERY OF THE SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS WHICH ARE THE SUBJECT OF THE SALE UNDER THE LIMITED CIRCUMSTANCES HE OR SHE SHALL PRESCRIBE AND UPON SUCH TERMS AND CONDITIONS HE OR SHE SHALL DEEM NECESSARY TO ENSURE COLLECTION OF THE TAXES IMPOSED BY THIS ARTICLE.

S 357. RECORDS TO BE KEPT BY DISTRIBUTORS AND OTHERS; EXAMINATION. 1. EVERY DISTRIBUTOR WHO IMPORTS OR CAUSES TO BE IMPORTED INTO THIS STATE, OR WHO PRODUCES, REFINES, BOTTLES, MANUFACTURES, COMPOUNDS OR MIXES WITHIN THIS STATE, SHALL KEEP A COMPLETE AND ACCURATE RECORD OF ALL PURCHASES AND SALES, USES OR OTHER DISPOSITIONS OF SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS, AND A COMPLETE AND ACCURATE RECORD OF THE NUMBER OF GALLONS OF SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS, PRODUCED, REFINED, BOTTLED, MANUFACTURED, COMPOUNDED AND MIXED. SUCH RECORDS SHALL BE IN THE FORM AND CONTAIN WHATEVER OTHER INFORMATION THE COMMISSIONER MAY PRESCRIBE. SUCH RECORDS, UNLESS REQUIRED BY THE COMMISSIONER TO BE PRESERVED FOR A LONGER PERIOD, SHALL BE PRESERVED FOR A PERIOD OF THREE YEARS AND SHALL BE OFFERED FOR INSPECTION AT ANY TIME UPON ORAL OR WRITTEN DEMAND BY THE COMMISSIONER OR THE COMMISSIONER'S DULY AUTHORIZED AGENTS, AND EVERY SUCH DISTRIBUTOR SHALL MAKE SUCH REPORTS TO THE COMMISSIONER AS MAY BE REQUIRED BY THE COMMISSIONER. TO VERIFY THE AMOUNT OF TAX DUE UNDER THIS ARTICLE, EACH PERSON IS HEREBY DIRECTED AND REQUIRED TO GIVE TO THE COMMISSIONER OR THE COMMISSIONER'S DULY AUTHORIZED REPRESENTATIVES THE MEANS, FACILITIES, AND OPPORTUNITY FOR SUCH EXAMINATIONS AS ARE HEREIN PROVIDED FOR AND REQUIRED.

2. EVERY PERSON WHO SHALL POSSESS OR TRANSPORT ANY SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS UPON THE PUBLIC HIGHWAYS, ROADS OR STREETS OF THE STATE, SHALL BE REQUIRED TO HAVE IN HIS OR HER ACTUAL POSSESSION INVOICES OR DELIVERY TICKETS FOR SUCH SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE

PRODUCTS. SUCH INVOICES OR DELIVERY TICKETS SHALL SHOW THE NAME AND ADDRESS OF THE CONSIGNOR OR SELLER, THE NAME AND ADDRESS OF THE CONSIGNEE OR PURCHASER, THE QUANTITY AND BRANDS OF THE SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS TRANSPORTED, AND THE NAME AND ADDRESS OF THE PERSON WHO HAS OR SHALL ASSUME THE PAYMENT OF THE TAX. THE ABSENCE OF SUCH INVOICES OR DELIVERY TICKETS SHALL BE PRIMA FACIE EVIDENCE THAT SUCH PERSON IS A DISTRIBUTOR OF SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THE KEEPING OF A RECORD OF PURCHASE OR DISPOSITION OF SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS BY A CONSUMER THEREOF, EXCEPT BY A PERSON WHO USES THE SAME FOR COMMERCIAL PURPOSES, OR OF THE SALE OF SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS AT RETAIL.

3. THE COMMISSIONER MAY, BY REGULATION, PROVIDE FOR THE FILING OF MONTHLY INFORMATION RETURNS BY EVERY PERSON REQUIRED TO MAINTAIN RECORDS AS PRESCRIBED IN SUBDIVISION ONE OF THIS SECTION. THESE RETURNS SHALL IN ALL MATERIAL RESPECTS REFLECT THE INFORMATION REQUIRED TO BE CONTAINED IN THOSE RECORDS. THESE RETURNS SHALL BE IN THE FORM AND CONTAIN ALL OTHER INFORMATION THE COMMISSIONER MAY REQUIRE.

S 358. PAYMENT OF TAX; RETURNS. 1. EVERY DISTRIBUTOR SHALL, ON OR BEFORE THE TWENTIETH DAY OF EACH MONTH, FILE WITH THE COMMISSIONER A RETURN, ON FORMS TO BE PRESCRIBED AND FURNISHED BY THE COMMISSIONER, STATING THE NUMBER OF GALLONS OF SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS IMPORTED OR CAUSED TO BE IMPORTED, PRODUCED, REFINED, BOTTLED, MANUFACTURED, COMPOUNDED OR MIXED BY THE DISTRIBUTOR IN THE STATE DURING THE PRECEDING CALENDAR MONTH AND ANY OTHER INFORMATION THAT THE COMMISSIONER MAY REQUIRE FOR THE PROPER ENFORCEMENT OF THE PROVISIONS OF THIS ARTICLE.

2. THE COMMISSIONER MAY ALSO, IF HE OR SHE DEEMS IT NECESSARY IN ORDER TO INSURE THE PAYMENT OF THE TAXES IMPOSED BY THIS ARTICLE, REQUIRE RETURNS TO BE MADE AT SUCH TIMES AND COVERING SUCH PERIODS AS HE OR SHE MAY DEEM NECESSARY, AND, BY REGULATION, MAY PERMIT THE FILING OF RETURNS BY DISTRIBUTORS ON A QUARTERLY, SEMI-ANNUAL, OR ANNUAL BASIS, OR MAY WAIVE THE FILING OF RETURNS BY A DISTRIBUTOR FOR SUCH TIME AND UPON SUCH TERMS AS HE OR SHE MAY DEEM PROPER IF SATISFIED THAT NO TAX IMPOSED BY THIS ARTICLE IS OR SHALL BE PAYABLE BY THE DISTRIBUTOR DURING THE TIME FOR WHICH RETURNS ARE WAIVED. SUCH RETURNS SHALL CONTAIN SUCH FURTHER INFORMATION AS THE COMMISSIONER SHALL REQUIRE.

3. THE COMMISSIONER MAY REQUIRE EACH DISTRIBUTOR UNDER THIS ARTICLE TO:

(A) ELECTRONICALLY PAY OVER TO THE COMMISSIONER ALL TAXES COLLECTED;

(B) ELECTRONICALLY FILE A RETURN WITH THE COMMISSIONER; AND

(C) ELECTRONICALLY FILE A RETURN INDICATING THAT NO TAX IS DUE IF NO TAX IS DUE.

4. THE FACT THAT A DISTRIBUTOR'S NAME IS SIGNED TO A FILED RETURN SHALL BE PRIMA FACIE EVIDENCE FOR ALL PURPOSES THAT THE RETURN WAS ACTUALLY SIGNED BY THAT DISTRIBUTOR. EACH SUCH DISTRIBUTOR SHALL PAY TO THE COMMISSIONER WITH THE FILING OF THE RETURN, THE TAXES IMPOSED BY THIS ARTICLE DURING THE PERIOD COVERED BY THE RETURN.

5. A DISTRIBUTOR WHO IS ENTITLED TO A REFUND UNDER THE PROVISIONS OF SECTION THREE HUNDRED SIXTY-TWO OF THIS ARTICLE, IN LIEU OF SUCH REFUND, MAY TAKE CREDIT THEREFOR ON A RETURN FILED PURSUANT TO THIS SECTION, UNLESS THE COMMISSIONER WITHDRAWS THAT PRIVILEGE.

S 359. DETERMINATION OF TAX. 1. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IF A DISTRIBUTOR FILES A RETURN UNDER THIS ARTICLE, BUT THAT

RETURN IS INCORRECT OR INSUFFICIENT, THE COMMISSIONER SHALL DETERMINE THE AMOUNT OF TAX DUE AT ANY TIME WITHIN THREE YEARS AFTER THE RETURN WAS FILED (WHETHER OR NOT SUCH RETURN WAS FILED ON OR AFTER THE DUE DATE), AND GIVE WRITTEN NOTICE OF THAT DETERMINATION TO THE DISTRIBUTOR. FOR THE PURPOSES OF THIS SECTION THE TERM DISTRIBUTOR SHALL ALSO INCLUDE ANY OTHER PERSON LIABLE FOR THE TAXES IMPOSED BY THIS ARTICLE.

2. THE COMMISSIONER SHALL DETERMINE THE AMOUNT OF TAX DUE AT ANY TIME IF A DISTRIBUTOR (A) HAS NOT REGISTERED AS REQUIRED BY THIS ARTICLE, (B) FAILS TO FILE A RETURN, OR (C) WILLFULLY DELIVERS OR DISCLOSES TO THE COMMISSIONER ANY LIST, RETURN, REPORT, ACCOUNT, STATEMENT, OR OTHER DOCUMENT KNOWN BY THE DISTRIBUTOR TO BE FRAUDULENT OR TO BE FALSE AS TO ANY MATERIAL MATTER, OR OMITS ANY MATERIAL MATTER WITH INTENT TO DECEIVE.

3. NOTWITHSTANDING ANY OF THE FOREGOING PROVISIONS OF THIS SECTION, WHERE, BEFORE THE EXPIRATION OF THE TIME PRESCRIBED IN THIS SECTION FOR THE DETERMINATION OF TAX, BOTH THE COMMISSIONER AND THE DISTRIBUTOR HAVE CONSENTED IN WRITING TO ITS DETERMINATION AFTER SUCH TIME, THE TAX MAY BE DETERMINED AT ANY TIME PRIOR TO THE EXPIRATION OF THE PERIOD AGREED UPON. THE PERIOD SO AGREED UPON MAY BE EXTENDED BY SUBSEQUENT AGREEMENTS IN WRITING MADE BEFORE THE EXPIRATION OF THE PERIOD PREVIOUSLY AGREED UPON.

4. ANY DETERMINATION MADE PURSUANT TO THIS SECTION WILL FINALLY AND IRREVOCABLY FIX THE TAX UNLESS THE DISTRIBUTOR AGAINST WHOM IT IS ASSESSED, WITHIN NINETY DAYS AFTER THE GIVING OF NOTICE OF SUCH DETERMINATION, PETITIONS THE DIVISION OF TAX APPEALS FOR A HEARING, OR UNLESS THE COMMISSIONER, ON HIS OR HER OWN MOTION, RE-DETERMINES THE SAME. AFTER SUCH HEARING, THE DIVISION OF TAX APPEALS SHALL GIVE NOTICE OF THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE TO THE DISTRIBUTOR LIABLE FOR THE TAX AND TO THE COMMISSIONER. THAT DETERMINATION MAY BE REVIEWED BY THE TAX APPEALS TRIBUNAL AS PROVIDED IN ARTICLE FORTY OF THIS CHAPTER. THE DECISION OF THE TAX APPEALS TRIBUNAL MAY BE REVIEWED AS PROVIDED IN SECTION TWO THOUSAND SIXTEEN OF THIS CHAPTER, BUT THE PROCEEDING MAY NOT BE COMMENCED UNLESS THE AMOUNT OF TAX STATED OR REFERRED TO IN THE DECISION, WITH PENALTIES AND INTEREST THEREON, IF ANY, AND THE AMOUNT OF ANY OTHER PENALTY STATED OR REFERRED TO IN THE DECISION, IS FIRST DEPOSITED WITH THE COMMISSIONER.

5. THE REMEDY PROVIDED BY THIS SECTION FOR REVIEW OF A DECISION OF THE TAX APPEALS TRIBUNAL IS THE EXCLUSIVE REMEDY AVAILABLE TO ANY TAXPAYER FOR JUDICIAL DETERMINATION OF THE LIABILITY OF THE TAXPAYER FOR TAXES UNDER THIS ARTICLE.

S 360. PROCEEDINGS TO RECOVER TAX. WHENEVER ANY DISTRIBUTOR SHALL FAIL TO PAY, WITHIN THE TIME LIMITED HEREIN, ANY TAX WHICH HE OR SHE IS REQUIRED TO PAY UNDER THE PROVISIONS OF THIS ARTICLE, THE ATTORNEY GENERAL SHALL, UPON THE REQUEST OF THE DEPARTMENT, ENFORCE PAYMENT OF SUCH TAX BY CIVIL ACTION IN THE SUPREME COURT, IN THE NAME OF THE PEOPLE OF THE STATE, AGAINST SUCH DISTRIBUTOR FOR THE AMOUNT OF SUCH TAX, WITH INTEREST. THE PROCEEDS OF THE JUDGMENT, IF ANY, SHALL BE PAID TO THE DEPARTMENT.

WHENEVER ANY DISTRIBUTOR SHALL FAIL TO PAY, WITHIN THE TIME LIMITED HEREIN, ANY TAX WHICH HE OR SHE IS REQUIRED TO PAY UNDER THE PROVISIONS OF THIS ARTICLE, THE COMMISSIONER MAY ISSUE A WARRANT UNDER HIS OR HER OFFICIAL SEAL, DIRECTED TO THE SHERIFF OF ANY COUNTY OF THE STATE, COMMANDING HIM OR HER TO LEVY UPON AND SELL THE REAL AND PERSONAL PROPERTY OF SUCH DISTRIBUTOR, FOUND WITHIN HIS OR HER COUNTY, FOR THE PAYMENT OF THE AMOUNT THEREOF, WITH THE ADDED PENALTIES, INTEREST AND THE COST OF EXECUTING THE WARRANT, AND TO RETURN SUCH WARRANT TO THE

DEPARTMENT AND TO PAY TO IT THE MONEY COLLECTED BY VIRTUE THEREOF WITHIN SIXTY DAYS AFTER THE RECEIPT OF SUCH WARRANT. THE SHERIFF SHALL, WITHIN FIVE DAYS AFTER THE RECEIPT OF THE WARRANT, FILE WITH THE CLERK OF HIS OR HER COUNTY A COPY THEREOF, AND THEREUPON THE CLERK SHALL ENTER IN THE JUDGMENT DOCKET THE NAME OF THE DISTRIBUTOR MENTIONED IN THE WARRANT, AND THE AMOUNT OF THE TAX, PENALTIES AND INTEREST FOR WHICH THE WARRANT IS ISSUED AND THE DATE WHEN SUCH COPY IS FILED, AND THEREUPON THE AMOUNT OF SUCH WARRANT SO DOCKETED SHALL BECOME A LIEN UPON THE TITLE TO, AND INTEREST IN, REAL AND PERSONAL PROPERTY OF THE DISTRIBUTOR AGAINST WHOM THE WARRANT IS ISSUED. SUCH LIEN SHALL NOT APPLY TO PERSONAL PROPERTY UNLESS SUCH WARRANT IS ALSO FILED IN THE DEPARTMENT OF STATE. THE SAID SHERIFF SHALL THEREUPON PROCEED UPON THE WARRANT IN ALL RESPECTS, WITH LIKE EFFECT, AND IN THE SAME MANNER PRESCRIBED BY LAW IN RESPECT TO EXECUTIONS ISSUED AGAINST PROPERTY UPON JUDGMENTS OF A COURT OF RECORD, AND SHALL BE ENTITLED TO THE SAME FEES FOR HIS OR HER SERVICES IN EXECUTING THE WARRANT, TO BE COLLECTED IN THE SAME MANNER. IN THE DISCRETION OF THE COMMISSIONER A WARRANT OF LIKE TERMS, FORCE AND EFFECT MAY BE ISSUED AND DIRECTED TO ANY OFFICER OR EMPLOYEE OF THE DEPARTMENT, AND IN THE EXECUTION THEREOF SUCH OFFICER OR EMPLOYEE SHALL HAVE ALL THE POWERS CONFERRED BY LAW UPON SHERIFFS, BUT SHALL BE ENTITLED TO NO FEE OR COMPENSATION IN EXCESS OF ACTUAL EXPENSES PAID IN THE PERFORMANCE OF SUCH DUTY. UPON SUCH FILING OF A COPY OF A WARRANT, THE COMMISSIONER SHALL HAVE THE SAME REMEDIES TO ENFORCE THE CLAIM FOR TAXES, PENALTIES AND INTEREST AGAINST THE DISTRIBUTOR AS IF THE PEOPLE OF THE STATE HAD RECOVERED JUDGMENT AGAINST SUCH DISTRIBUTOR FOR THE AMOUNT OF THE TAX.

S 361. PENALTIES AND INTEREST. 1. (A)(I) A DISTRIBUTOR OR OTHER PERSON WHO OR WHICH FAILS TO FILE A RETURN OR TO PAY ANY TAX WITHIN THE TIME REQUIRED BY THIS ARTICLE (DETERMINED WITH REGARD TO ANY EXTENSION OF TIME FOR FILING OR PAYING) SHALL BE SUBJECT TO A PENALTY OF TEN PER CENTUM OF THE AMOUNT OF TAX DETERMINED TO BE DUE AS PROVIDED IN THIS ARTICLE PLUS ONE PER CENTUM OF SUCH AMOUNT FOR EACH MONTH OR FRACTION THEREOF DURING WHICH THE FAILURE CONTINUES AFTER THE EXPIRATION OF THE FIRST MONTH DURING WHICH THAT RETURN WAS REQUIRED TO BE FILED OR SUCH TAX BECAME DUE, NOT EXCEEDING THIRTY PER CENTUM IN THE AGGREGATE.

(II) IN THE CASE OF A FAILURE TO FILE A RETURN WITHIN SIXTY DAYS OF THE DATE PRESCRIBED FOR FILING A RETURN BY THIS ARTICLE (DETERMINED WITH REGARD TO ANY EXTENSION OF TIME FOR FILING), THE PENALTY IMPOSED BY THIS PARAGRAPH SHALL NOT BE LESS THAN THE LESSER OF ONE HUNDRED DOLLARS OR ONE HUNDRED PER CENTUM OF THE AMOUNT REQUIRED TO BE SHOWN AS TAX ON THAT RETURN. FOR THE PURPOSE OF THE PRECEDING SENTENCE, THE AMOUNT OF TAX REQUIRED TO BE SHOWN ON THE RETURN SHALL BE REDUCED BY THE AMOUNT OF ANY PART OF THE TAX THAT IS PAID ON OR BEFORE THE DATE PRESCRIBED FOR PAYMENT OF THE TAX.

(B) IF ANY AMOUNT OF TAX IS NOT PAID ON OR BEFORE THE LAST DATE PRESCRIBED IN THIS ARTICLE FOR PAYMENT, INTEREST ON SUCH AMOUNT AT THE UNDERPAYMENT RATE SET BY THE COMMISSIONER PURSUANT TO SUBDIVISION TWENTY-SIXTH OF SECTION ONE HUNDRED SEVENTY-ONE OF THIS CHAPTER SHALL BE PAID FOR THE PERIOD FROM THAT LAST DATE TO THE DATE PAID, WHETHER OR NOT ANY EXTENSION OF TIME FOR PAYMENT WAS GRANTED. INTEREST UNDER THIS PARAGRAPH SHALL NOT BE OWED IF THE AMOUNT THEREOF IS LESS THAN ONE DOLLAR.

(C) IF THE COMMISSIONER DETERMINES THAT SUCH FAILURE WAS DUE TO REASONABLE CAUSE (AS DETERMINED UNDER REGULATIONS OF THE COMMISSIONER) AND NOT DUE TO WILLFUL NEGLECT, HE OR SHE SHALL ABATE ALL OR PART OF SUCH PENALTY.

(D) IF THE FAILURE TO PAY ANY TAX WITHIN THE TIME REQUIRED BY OR PURSUANT TO THIS ARTICLE IS DUE TO FRAUD, IN LIEU OF THE PENALTIES AND INTEREST PROVIDED FOR IN PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION, THERE SHALL BE ADDED TO THE TAX (I) A PENALTY OF TWO TIMES THE AMOUNT OF TAX DUE, PLUS (II) INTEREST ON SUCH UNPAID TAX AT THE UNDERPAYMENT RATE SET BY THE COMMISSIONER PURSUANT TO SUBDIVISION TWENTY-SIXTH OF SECTION ONE HUNDRED SEVENTY-ONE OF THIS CHAPTER FOR THE PERIOD BEGINNING ON THE LAST DAY PRESCRIBED BY THIS ARTICLE FOR THE PAYMENT OF SUCH TAX (DETERMINED WITHOUT REGARD TO ANY EXTENSION OF TIME FOR PAYING) AND ENDING ON THE DAY ON WHICH SUCH TAX IS PAID.

(E) THE PENALTIES AND INTEREST PROVIDED FOR IN THIS SECTION SHALL BE DETERMINED, ASSESSED, COLLECTED AND PAID IN THE SAME MANNER AS THE TAXES IMPOSED BY THIS ARTICLE AND SHALL BE DISPOSED OF AS HEREINAFTER PROVIDED WITH RESPECT TO MONIES DERIVED FROM THE TAX. UNPAID PENALTIES AND INTEREST UNDER THIS SUBDIVISION MAY BE RECOVERED BY THE ATTORNEY GENERAL IN AN ACTION BROUGHT PURSUANT TO SECTION THREE HUNDRED SIXTY OF THIS ARTICLE. INTEREST UNDER THIS SUBDIVISION SHALL BE COMPOUNDED DAILY.

2. FOR PURPOSES OF THIS CHAPTER, THE FAILURE TO DO ANY ACT REQUIRED BY THIS ARTICLE SHALL BE DEEMED AN ACT COMMITTED IN PART AT THE OFFICE OF THE COMMISSIONER IN ALBANY. FOR PURPOSES OF THIS CHAPTER, THE CERTIFICATE OF THE COMMISSIONER TO THE EFFECT THAT A TAX HAS NOT BEEN PAID, THAT A RETURN HAS NOT BEEN FILED, OR THAT INFORMATION HAS NOT BEEN SUPPLIED, AS REQUIRED BY OR UNDER THE PROVISIONS OF THIS ARTICLE, OR THAT A CLAIM FOR REFUND HAS BEEN FILED, SHALL BE PRIMA FACIE EVIDENCE THAT THE TAX HAS NOT BEEN PAID, THE RETURN HAS NOT BEEN FILED, THE INFORMATION HAS NOT BEEN SUPPLIED, OR THE CLAIM HAS NOT BEEN FILED.

3. FOR CRIMINAL PENALTIES, SEE ARTICLE THIRTY-SEVEN OF THIS CHAPTER.

S 362. REFUNDS. 1. IN THE MANNER PROVIDED IN THIS SECTION, THE COMMISSIONER SHALL REFUND OR CREDIT ANY TAX, PENALTY, OR INTEREST ERRONEOUSLY, ILLEGALLY OR UNCONSTITUTIONALLY COLLECTED OR PAID IF AN APPLICATION IS FILED WITH THE COMMISSIONER WITHIN THREE YEARS AFTER THE DATE WHEN THE TAX, PENALTY, OR INTEREST WAS PAID UNDER THIS ARTICLE. THE APPLICATION SHALL BE IN A FORM PRESCRIBED BY THE COMMISSIONER.

2. WITH RESPECT TO SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS IMPORTED, MANUFACTURED OR SOLD OR PURCHASED IN THIS STATE, A DISTRIBUTOR SHALL BE ALLOWED A REFUND OR CREDIT OF THE TAX REQUIRED TO BE PAID PURSUANT TO THIS ARTICLE UPON SUCH SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS IN THE AMOUNT OF SUCH TAX PAID IF SUCH SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS WERE EXPORTED FROM THIS STATE FOR SALE OR USE OUTSIDE THIS STATE. THE DISTRIBUTOR MUST FILE AN APPLICATION FOR SUCH REFUND OR CREDIT AND COMPLY WITH ALL REQUIREMENTS AND RULES AND REGULATIONS OF THE COMMISSIONER, INCLUDING ANY AND ALL EVIDENTIARY REQUIREMENTS. UPON RECEIPT OF A CLAIM FOR REFUND IN PROCESSIBLE FORM, INTEREST SHALL BE ALLOWED AND PAID AT THE OVERPAYMENT RATE SET BY THE COMMISSIONER PURSUANT TO SUBDIVISION TWENTY-SIXTH OF SECTION ONE HUNDRED SEVENTY-ONE OF THIS CHAPTER FROM THE DUE DATE OF THE RETURN TO THE DATE IMMEDIATELY PRECEDING THE DATE OF THE REFUND CHECK EXCEPT NO SUCH INTEREST SHALL BE ALLOWED OR PAID IF THE REFUND CHECK IS MAILED WITHIN THIRTY DAYS OF SUCH RECEIPT AND EXCEPT NO INTEREST SHALL BE ALLOWED OR PAID IF THE AMOUNT THEREOF WOULD BE LESS THAN ONE DOLLAR. FOR PURPOSES OF THIS SUBDIVISION, A CLAIM SHALL NOT BE TREATED AS FILED UNTIL IT IS FILED IN PROCESSIBLE FORM. A CLAIM IS IN A PROCESSIBLE FORM IF THE CLAIM IS FILED ON A PERMITTED FORM, AND CONTAINS THE TAXPAYER'S NAME, ADDRESS AND IDENTIFYING NUMBER AND THE REQUIRED SIGNATURES, AND SUFFICIENT REQUIRED

INFORMATION (WHETHER ON THE CLAIM OR ON REQUIRED ATTACHMENTS) TO PERMIT THE MATHEMATICAL VERIFICATION OF REFUND SHOWN ON THE CLAIM.

3. IF AN APPLICATION FOR REFUND OR CREDIT IS FILED WITH THE COMMISSIONER AS PROVIDED IN SUBDIVISION ONE OF THIS SECTION, THE COMMISSIONER SHALL GRANT OR DENY THAT APPLICATION IN WHOLE OR IN PART WITHIN SIX MONTHS OF RECEIPT OF THE APPLICATION IN A FORM THAT IS ABLE TO BE PROCESSED AND SHALL NOTIFY THE APPLICANT BY MAIL ACCORDINGLY. THAT DETERMINATION SHALL BE FINAL AND IRREVOCABLE UNLESS THE APPLICANT, WITHIN NINETY DAYS AFTER THE MAILING OF NOTICE OF SUCH DETERMINATION, PETITIONS THE DIVISION OF TAX APPEALS FOR A HEARING. AFTER THE HEARING, THE DIVISION OF TAX APPEALS SHALL MAIL NOTICE OF THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE TO THE APPLICANT AND TO THE COMMISSIONER. THAT DETERMINATION MAY BE REVIEWED BY THE TAX APPEALS TRIBUNAL AS PROVIDED IN ARTICLE FORTY OF THIS CHAPTER. THE DECISION OF THE TAX APPEALS TRIBUNAL MAY BE REVIEWED AS PROVIDED IN SECTION TWO THOUSAND SIXTEEN OF THIS CHAPTER.

4. A SUBSEQUENT PURCHASER SHALL BE ELIGIBLE FOR REIMBURSEMENT OF TAX IMPOSED UNDER THIS SECTION WITH RESPECT TO ANY SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS PURCHASED BY SUCH SUBSEQUENT PURCHASER TO WHICH AN EXEMPTION UNDER SUBDIVISIONS ONE, TWO OR THREE OF SECTION THREE HUNDRED FIFTY-TWO OF THIS ARTICLE WOULD HAVE APPLIED. THIS REIMBURSEMENT MAY BE CLAIMED ONLY WHERE (A) THE TAX IMPOSED PURSUANT TO THIS ARTICLE HAS BEEN PAID WITH RESPECT TO SYRUPS OR SIMPLE SYRUPS, BOTTLED SOFT DRINKS, OR POWDERS OR BASE PRODUCTS, AND THE ENTIRE AMOUNT OF SUCH TAX HAS BEEN ABSORBED BY SUCH PURCHASER, AND (B) SUCH PURCHASER POSSESSES DOCUMENTARY PROOF SATISFACTORY TO THE COMMISSIONER EVIDENCING THE ABSORPTION BY IT OF THE ENTIRE AMOUNT OF THE TAX IMPOSED PURSUANT TO THIS ARTICLE. PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL REQUIRE SUCH DOCUMENTARY PROOF TO QUALIFY FOR ANY REIMBURSEMENT OF TAX PROVIDED BY THIS SECTION AS THE COMMISSIONER DEEMS APPROPRIATE.

S 363. MAILING RULES; HOLIDAYS. 1. IF ANY RETURN, CLAIM, STATEMENT, NOTICE, APPLICATION, OR OTHER DOCUMENT REQUIRED TO BE FILED, OR ANY PAYMENT REQUIRED TO BE MADE, WITHIN A PRESCRIBED PERIOD OR ON OR BEFORE A PRESCRIBED DATE UNDER AUTHORITY OF ANY PROVISION OF THIS ARTICLE IS, AFTER SUCH PERIOD OR SUCH DATE, DELIVERED BY UNITED STATES MAIL TO THE COMMISSIONER, DEPARTMENT, BUREAU, OFFICE, OFFICER OR PERSON WITH WHICH OR WITH WHOM SUCH DOCUMENT IS REQUIRED TO BE FILED, OR TO WHICH OR TO WHOM SUCH PAYMENT IS REQUIRED TO BE MADE, THE DATE OF THE UNITED STATES POSTMARK STAMPED ON THE ENVELOPE SHALL BE DEEMED TO BE THE DATE OF DELIVERY. THIS SUBDIVISION SHALL APPLY ONLY IF THE POSTMARK DATE FALLS WITHIN THE PRESCRIBED PERIOD OR ON OR BEFORE THE PRESCRIBED DATE FOR THE FILING OF SUCH DOCUMENT, OR FOR MAKING THE PAYMENT, INCLUDING ANY EXTENSION GRANTED FOR SUCH FILING OR PAYMENT, AND ONLY IF SUCH DOCUMENT OR PAYMENT WAS DEPOSITED IN THE MAIL, POSTAGE PREPAID, PROPERLY ADDRESSED TO THE COMMISSIONER, DEPARTMENT, BUREAU, OFFICE, OFFICER OR PERSON WITH WHICH OR WITH WHOM THE DOCUMENT IS REQUIRED TO BE FILED OR TO WHICH OR TO WHOM SUCH PAYMENT IS REQUIRED TO BE MADE. IF ANY DOCUMENT IS SENT BY UNITED STATES REGISTERED MAIL, SUCH REGISTRATION SHALL BE PRIMA FACIE EVIDENCE THAT SUCH DOCUMENT WAS DELIVERED TO THE COMMISSIONER, DEPARTMENT, BUREAU, OFFICE, OFFICER OR PERSON TO WHICH OR TO WHOM ADDRESSED. TO THE EXTENT THAT THE COMMISSIONER SHALL PRESCRIBE BY REGULATION, CERTIFIED MAIL MAY BE USED IN LIEU OF REGISTERED MAIL UNDER THIS SECTION. THIS SUBDIVISION SHALL APPLY IN THE CASE OF POSTMARKS NOT MADE BY THE UNITED STATES POST OFFICE ONLY IF AND TO THE EXTENT PROVIDED BY REGULATIONS OF THE COMMISSIONER.

2. ANY NOTICE AUTHORIZED OR REQUIRED UNDER THIS ARTICLE MAY BE GIVEN BY MAILING IT TO THE PERSON FOR WHOM IT IS INTENDED, IN A POSTPAID ENVELOPE ADDRESSED TO SUCH PERSON AT THE ADDRESS GIVEN BY HIM OR HER IN HIS OR HER APPLICATION FOR REGISTRATION AS A DISTRIBUTOR OR IN THE LAST RETURN FILED BY HIM OR HER UNDER THIS ARTICLE OR, IF NO APPLICATION OR RETURN HAS BEEN FILED, THEN TO SUCH ADDRESS AS MAY BE OBTAINABLE. THE MAILING OF SUCH NOTICE SHALL BE PRESUMPTIVE EVIDENCE OF ITS RECEIPT BY THE PERSON TO WHOM ADDRESSED. ANY PERIOD OF TIME, WHICH IS DETERMINED ACCORDING TO THE PROVISIONS OF THIS ARTICLE, FOR THE GIVING OF NOTICE SHALL COMMENCE TO RUN FROM THE DATE OF MAILING OF SUCH NOTICE.

3. WHEN THE LAST DAY PRESCRIBED UNDER AUTHORITY OF THIS ARTICLE (INCLUDING ANY EXTENSION OF TIME) FOR PERFORMING ANY ACT FALLS ON SATURDAY, SUNDAY OR A LEGAL HOLIDAY IN THE STATE OF NEW YORK, THE PERFORMANCE OF SUCH ACT SHALL BE CONSIDERED TIMELY IF IT IS PERFORMED ON THE NEXT SUCCEEDING DAY WHICH IS NOT A SATURDAY, SUNDAY OR A LEGAL HOLIDAY.

4. (A) ANY REFERENCE IN SUBDIVISION ONE OF THIS SECTION TO THE UNITED STATES MAIL SHALL BE TREATED AS INCLUDING A REFERENCE TO ANY DELIVERY SERVICE DESIGNATED BY THE SECRETARY OF THE TREASURY OF THE UNITED STATES PURSUANT TO SECTION SEVENTY-FIVE HUNDRED TWO OF THE INTERNAL REVENUE CODE AND ANY REFERENCE IN SUBDIVISION ONE OF THIS SECTION TO A POSTMARK BY THE UNITED STATES MAIL SHALL BE TREATED AS INCLUDING A REFERENCE TO ANY DATE RECORDED OR MARKED IN THE MANNER DESCRIBED IN SECTION SEVENTY-FIVE HUNDRED TWO OF THE INTERNAL REVENUE CODE BY A DESIGNATED DELIVERY SERVICE. IF THE COMMISSIONER FINDS THAT ANY DELIVERY SERVICE DESIGNATED BY SUCH SECRETARY IS INADEQUATE FOR THE NEEDS OF THE STATE, THE COMMISSIONER MAY WITHDRAW SUCH DESIGNATION FOR PURPOSES OF THIS ARTICLE. THE COMMISSIONER MAY ALSO DESIGNATE ADDITIONAL DELIVERY SERVICES MEETING THE CRITERIA OF SECTION SEVENTY-FIVE HUNDRED TWO OF THE INTERNAL REVENUE CODE FOR PURPOSES OF THIS ARTICLE, OR MAY WITHDRAW ANY SUCH DESIGNATION IF THE COMMISSIONER FINDS THAT A DELIVERY SERVICE SO DESIGNATED IS INADEQUATE FOR THE NEEDS OF THE STATE. ANY REFERENCE IN SUBDIVISION ONE OF THIS SECTION TO THE UNITED STATES MAIL SHALL BE TREATED AS INCLUDING A REFERENCE TO ANY DELIVERY SERVICE DESIGNATED BY THE COMMISSIONER AND ANY REFERENCE IN SUBDIVISION ONE OF THIS SECTION TO A POSTMARK BY THE UNITED STATES MAIL SHALL BE TREATED AS INCLUDING A REFERENCE TO ANY DATE RECORDED OR MARKED IN THE MANNER DESCRIBED IN SECTION SEVENTY-FIVE HUNDRED TWO OF THE INTERNAL REVENUE CODE BY A DELIVERY SERVICE DESIGNATED BY THE COMMISSIONER.

(B) ANY EQUIVALENT OF REGISTERED OR CERTIFIED MAIL DESIGNATED BY THE UNITED STATES SECRETARY OF THE TREASURY, OR AS MAY BE DESIGNATED BY THE COMMISSIONER PURSUANT TO THE SAME CRITERIA USED BY SUCH SECRETARY FOR SUCH DESIGNATIONS PURSUANT TO SECTION SEVENTY-FIVE HUNDRED TWO OF THE INTERNAL REVENUE CODE, SHALL BE INCLUDED WITHIN THE MEANING OF REGISTERED OR CERTIFIED MAIL AS USED IN SUBDIVISION ONE OF THIS SECTION. IF THE COMMISSIONER FINDS THAT ANY EQUIVALENT OF REGISTERED OR CERTIFIED MAIL IS INADEQUATE FOR THE NEEDS OF THE STATE, THE COMMISSIONER MAY WITHDRAW SUCH DESIGNATION FOR PURPOSES OF THIS ARTICLE.

S 364. DEPOSIT AND DISPOSITION OF REVENUE. ALL TAXES, FEES, INTEREST AND PENALTIES COLLECTED OR RECEIVED BY THE COMMISSIONER UNDER THE TAXES IMPOSED BY THIS ARTICLE SHALL BE DEPOSITED AND DISPOSED OF PURSUANT TO THE PROVISIONS OF SECTION ONE HUNDRED SEVENTY-ONE-A OF THIS CHAPTER. FROM THE TAXES AND INTEREST AND PENALTIES COLLECTED OR RECEIVED BY THE COMMISSIONER UNDER SECTION THREE HUNDRED FIFTY-ONE OF THIS ARTICLE EFFECTIVE ON AND AFTER SEPTEMBER FIRST, TWO THOUSAND TEN, ALL MONIES COLLECTED OR RECEIVED UNDER SUCH SECTIONS SHALL BE DEPOSITED TO THE HCRA

RESOURCES FUND AS ESTABLISHED PURSUANT TO SECTION NINETY-TWO-DD OF THE STATE FINANCE LAW.

S 4. The tax law is amended by adding a new section 1812-g to read as follows:

S 1812-G. ARTICLE SIXTEEN TAX. 1. ANY PERSON WHO WILLFULLY ATTEMPTS IN ANY MANNER TO EVADE OR DEFEAT ANY TAX IMPOSED BY ARTICLE SIXTEEN OF THIS CHAPTER OR THE PAYMENT THEREOF SHALL BE GUILTY OF A MISDEMEANOR; PROVIDED, HOWEVER, THAT IF THE TAX LIABILITY EVADED OR DEFEATED AS A RESULT OF SUCH CONDUCT IS EQUAL TO OR GREATER THAN ONE THOUSAND DOLLARS, SUCH PERSON SHALL BE GUILTY OF CLASS E FELONY.

2. ANY WILLFUL ACT OR OMISSION, OTHER THAN THOSE DESCRIBED IN SECTION EIGHTEEN HUNDRED ONE OF THIS ARTICLE OR SUBDIVISION ONE OF THIS SECTION, BY ANY PERSON THAT AMOUNTS TO A VIOLATION OF ANY PROVISION OF ARTICLE SIXTEEN OF THIS CHAPTER, CONSTITUTES A MISDEMEANOR.

S 5. This act shall take effect September 1, 2010.

PART D

Section 1. Subdivision (a) of section 28 of the tax law, as added by section 1 of part X of chapter 62 of the laws of 2006, is amended to read as follows:

(a) General. A taxpayer subject to tax under article nine, nine-A or twenty-two of this chapter shall be allowed a credit against such tax pursuant to the provisions referenced in subdivision (d) of this section. The credit (or pro rata share of earned credit in the case of a partnership) for each gallon of biofuel produced at a biofuel plant on or after January first, two thousand six shall equal fifteen cents per gallon after the production of the first forty thousand gallons per year presented to market. The credit under this section shall be capped at two and one-half million dollars per taxpayer per taxable year for up to no more than four consecutive taxable years per biofuel plant. IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP OR SHAREHOLDER OF A NEW YORK S CORPORATION, THEN THE CAP IMPOSED BY THE PRECEDING SENTENCE SHALL BE APPLIED AT THE ENTITY LEVEL, SO THAT THE AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS OR SHAREHOLDERS OF EACH SUCH ENTITY IN THE TAXABLE YEAR DOES NOT EXCEED TWO AND ONE-HALF MILLION DOLLARS.

S 2. Paragraph (f) of subdivision 12-G of section 210 of the tax law, as amended by section 1-a of part A of chapter 63 of the laws of 2005, is amended to read as follows:

(f) An eligible taxpayer may claim credits under this subdivision for four consecutive taxable years, except, if a taxpayer is located in an academic incubator facility and relocates within New York state to a nonacademic incubator site, then the taxpayer (i) may make a revocable election to defer the credit provided under this subdivision to the first taxable year beginning after the taxpayer relocates from an academic incubator facility, and (ii) shall be eligible for such credit for five consecutive taxable years. In no case shall the credit allowed by this subdivision to a taxpayer exceed two hundred and fifty thousand dollars per year. IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP OR SHAREHOLDER OF A NEW YORK S CORPORATION, THEN THE LIMIT IMPOSED BY THE PRECEDING SENTENCE SHALL BE APPLIED AT THE ENTITY LEVEL, SO THAT THE AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS OR SHAREHOLDERS OF EACH SUCH ENTITY IN THE TAXABLE YEAR DOES NOT EXCEED TWO HUNDRED AND FIFTY THOUSAND DOLLARS.

S 3. Paragraph 6 of subsection (nn) of section 606 of the tax law, as amended by section 1-a of part A of chapter 63 of the laws of 2005, is amended to read as follows:

(6) An eligible taxpayer may claim credits under this subsection for four consecutive taxable years, except, if a taxpayer is located in an academic incubator facility and relocates within New York state to a nonacademic incubator site, then the taxpayer (i) may make a revocable election to defer the credit provided under this subsection to the first taxable year beginning after the taxpayer relocates from an academic incubator facility, and (ii) shall be eligible for such credit for five consecutive years. In no case shall the credit allowed by this subsection to a taxpayer exceed two hundred fifty thousand dollars per year. IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP OR SHAREHOLDER OF A NEW YORK S CORPORATION, THEN THE LIMIT IMPOSED BY THE PRECEDING SENTENCE SHALL BE APPLIED AT THE ENTITY LEVEL, SO THAT THE AGGREGATE CREDIT ALLOWED TO ALL THE PARTNERS OR SHAREHOLDERS OF EACH SUCH ENTITY IN THE TAXABLE YEAR DOES NOT EXCEED TWO HUNDRED FIFTY THOUSAND DOLLARS.

S 4. This act shall take effect immediately and apply to taxable years beginning on or after January 1, 2010.

PART E

Section 1. Subparagraph (E) of paragraph 1 of subsection (b) of section 631 of the tax law, as added by section 1 of part H of chapter 60 of the laws of 2004, is amended and a new subparagraph (F) is added to read as follows:

(E) gains from the sale, conveyance or other disposition of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof and subject to the provisions of article thirty-one of this chapter, whether such shares are held by a partnership, trust or otherwise[.]; OR

(F) INCOME RECEIVED BY NONRESIDENTS RELATED TO A BUSINESS, TRADE, PROFESSION OR OCCUPATION PREVIOUSLY CARRIED ON IN THIS STATE, WHETHER OR NOT AS AN EMPLOYEE, INCLUDING BUT NOT LIMITED TO, COVENANTS NOT TO COMPETE AND TERMINATION AGREEMENTS. INCOME RECEIVED BY NONRESIDENTS RELATED TO A BUSINESS, TRADE, PROFESSION OR OCCUPATION PREVIOUSLY CARRIED ON PARTLY WITHIN AND PARTLY WITHOUT THE STATE SHALL BE ALLOCATED IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (C) OF THIS SECTION.

S 2. This act shall take effect immediately and apply to taxable years on or after January 1, 2010.

PART F

Section 1. Legislative findings. The legislature finds that it is necessary to correct a decision of the tax appeals tribunal and a determination of the division of tax appeals that erroneously overturned the longstanding policies of department of taxation and finance that nonresident subchapter S shareholders who sell their interest in an S corporation pursuant to an election under section 338(h)(10) or section 453(h)(1)(A) of the Internal Revenue Code, respectively, are taxed in accordance with that election and the transaction is treated as an asset sale producing New York source income. Section two of this act is intended to clarify the concept of federal conformity in the personal income tax and is necessary to prevent confusion in the preparation of returns, unintended refunds, and protracted litigation of issues that have been properly administered up to now.

S 2. Paragraph 2 of subsection (a) of section 632 of the tax law, as amended by section 65 of part A of chapter 389 of the laws of 1997, is amended to read as follows:

(2) In determining New York source income of a nonresident shareholder of an S corporation where the election provided for in subsection (a) of section six hundred sixty of this article is in effect, there shall be included only the portion derived from or connected with New York sources of such shareholder's pro rata share of items of S corporation income, loss and deduction entering into his federal adjusted gross income, increased by reductions for taxes described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code, as such portion shall be determined under regulations of the commissioner consistent with the applicable methods and rules for allocation under article nine-A or thirty-two of this chapter, REGARDLESS OF WHETHER OR NOT SUCH ITEM OR REDUCTION IS INCLUDED IN ENTIRE NET INCOME UNDER ARTICLE NINE-A OR THIRTY-TWO FOR THE TAX YEAR. IF A NONRESIDENT IS A SHAREHOLDER IN AN S CORPORATION WHERE THE ELECTION PROVIDED FOR IN SUBSECTION (A) OF SECTION SIX HUNDRED SIXTY OF THIS ARTICLE IS IN EFFECT, AND THE S CORPORATION HAS DISTRIBUTED AN INSTALLMENT OBLIGATION UNDER SECTION 453(H)(1)(A) OF THE INTERNAL REVENUE CODE, THEN ANY GAIN RECOGNIZED ON THE RECEIPT OF PAYMENTS FROM THE INSTALLMENT OBLIGATION FOR FEDERAL INCOME TAX PURPOSES WILL BE TREATED AS NEW YORK SOURCE INCOME ALLOCATED IN A MANNER CONSISTENT WITH THE APPLICABLE METHODS AND RULES FOR ALLOCATION UNDER ARTICLE NINE-A OR THIRTY-TWO OF THIS CHAPTER IN THE YEAR THAT THE ASSETS WERE SOLD. IN ADDITION, IF THE SHAREHOLDERS OF THE S CORPORATION HAVE MADE AN ELECTION UNDER SECTION 338(H)(10) OF THE INTERNAL REVENUE CODE, THEN ANY GAIN RECOGNIZED ON THE DEEMED ASSET SALE FOR FEDERAL INCOME TAX PURPOSES WILL BE TREATED AS NEW YORK SOURCE INCOME ALLOCATED IN A MANNER CONSISTENT WITH THE APPLICABLE METHODS AND RULES FOR ALLOCATION UNDER ARTICLE NINE-A OR THIRTY-TWO OF THIS CHAPTER IN THE YEAR THAT THE SHAREHOLDER MADE THE SECTION 338(H)(10) ELECTION. FOR PURPOSES OF A SECTION 338(H)(10) ELECTION, WHEN A NONRESIDENT SHAREHOLDER EXCHANGES HIS OR HER S CORPORATION STOCK AS PART OF THE DEEMED LIQUIDATION, ANY GAIN OR LOSS RECOGNIZED SHALL BE TREATED AS THE DISPOSITION OF AN INTANGIBLE ASSET AND WILL NOT INCREASE OR OFFSET ANY GAIN RECOGNIZED ON THE DEEMED ASSETS SALE AS A RESULT OF THE SECTION 338(H)(10) ELECTION.

S 3. Paragraph 1 of subsection (b) of section 631 of the tax law is amended by adding a new subparagraph (E-1) to read as follows:

(E-1) IN THE CASE OF AN S CORPORATION FOR WHICH AN ELECTION IS IN EFFECT PURSUANT TO SUBSECTION (A) OF SECTION SIX HUNDRED SIXTY OF THIS ARTICLE THAT TERMINATES ITS TAXABLE STATUS IN NEW YORK, ANY INCOME OR GAIN RECOGNIZED ON THE RECEIPT OF PAYMENTS FROM AN INSTALLMENT SALE CONTRACT ENTERED INTO WHEN THE S CORPORATION WAS SUBJECT TO TAX IN NEW YORK, ALLOCATED IN A MANNER CONSISTENT WITH THE APPLICABLE METHODS AND RULES FOR ALLOCATION UNDER ARTICLE NINE-A OR THIRTY-TWO OF THIS CHAPTER, IN THE YEAR THAT THE S CORPORATION SOLD ITS ASSETS.

S 4. This act shall take effect immediately; provided however, that section two of this act shall apply to all tax years for which the statute of limitations for seeking a refund or assessing additional tax are still open, and section three of this act shall apply to taxable years beginning on or after January 1, 2010.

PART G

Section 1. Subparagraph (D) of paragraph 3 of subdivision (b) of section 605 of the tax law is REPEALED.

S 2. Section 618 of the tax law, as added by chapter 563 of the laws of 1960, subsection 4 as amended by section 9 of part C of chapter 25 of the laws of 2009 and subsection 5 as added by chapter 384 of the laws of 1988, is amended to read as follows:

S 618. New York taxable income of a resident estate or trust. (A)(1) The New York taxable income of a resident estate or trust, OTHER THAN A RESIDENT NONTESTAMENTARY TRUST WITH ONE OR MORE NONRESIDENT ASCERTAINABLE BENEFICIARIES BUT NO INCOME DERIVED FROM OR CONNECTED WITH NEW YORK SOURCES, means its federal taxable income as defined in the laws of the United States for the taxable year, with the following modifications:

(2) There shall be subtracted the modifications described in paragraphs [(4)] FOUR and [(5)] FIVE of subsection (c) of section six hundred twelve OF THIS PART, with respect to gains from the sale or other disposition of property, to the extent such gains are excluded from federal distributable net income of the estate or trust.

(3) There shall be added or subtracted (as the case may be) the share of the estate or trust in the New York fiduciary adjustment determined under section six hundred nineteen OF THIS PART.

(4) There shall be added or subtracted (as the case may be) the modifications described in paragraphs [(6), (10), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (29), (38) and (39)] SIX, TEN, SEVENTEEN, EIGHTEEN, NINETEEN, TWENTY, TWENTY-ONE, TWENTY-TWO, TWENTY-THREE, TWENTY-FOUR, TWENTY-FIVE, TWENTY-SIX, TWENTY-SEVEN, TWENTY-NINE, THIRTY-EIGHT AND THIRTY-NINE of subsection (b) and in paragraphs [(11), (13), (15), (19), (20), (21), (22), (23), (24), (25), (26) and (28)] ELEVEN, THIRTEEN, FIFTEEN, NINETEEN, TWENTY, TWENTY-ONE, TWENTY-TWO, TWENTY-THREE, TWENTY-FOUR, TWENTY-FIVE, TWENTY-SIX AND TWENTY-EIGHT of subsection (c) of section six hundred twelve of this part.

(5) In the case of a trust, there shall be added the amount of any includible gain, reduced by any deductions properly allocable thereto, upon which tax is imposed for the taxable year pursuant to section six hundred forty-four of the internal revenue code.

(B) (1) THE NEW YORK TAXABLE INCOME OF A RESIDENT NONTESTAMENTARY TRUST WITH ONE OR MORE NONRESIDENT ASCERTAINABLE BENEFICIARIES BUT NO INCOME DERIVED FROM OR CONNECTED WITH NEW YORK SOURCES SHALL BE THE PRODUCT OF THE NEW YORK TAXABLE INCOME BASE OF THE TRUST MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS THE NUMBER OF INDIVIDUAL ASCERTAINABLE BENEFICIARIES OF THE TRUST WHO ARE RESIDENTS, AND THE DENOMINATOR OF WHICH IS THE TOTAL NUMBER OF INDIVIDUAL ASCERTAINABLE BENEFICIARIES.

(2) FOR PURPOSES OF THIS SUBSECTION, THE NEW YORK TAXABLE INCOME BASE MEANS THE TRUST'S FEDERAL TAXABLE INCOME AS DEFINED IN THE LAWS OF THE UNITED STATES FOR THE TAXABLE YEAR, WITH THE MODIFICATIONS PRESCRIBED IN PARAGRAPHS TWO, THREE, FOUR AND FIVE OF SUBSECTION (A) OF THIS SECTION.

(3) FOR PURPOSES OF THIS SECTION, "DERIVED FROM OR CONNECTED WITH NEW YORK SOURCES" HAS THE SAME MEANING AS SUCH PHRASE IS USED IN SECTION SIX HUNDRED THIRTY-THREE OF THIS ARTICLE IN RELATION TO THE INCOME OF A NONRESIDENT TRUST.

(4) FOR PURPOSES OF THIS SECTION, "ASCERTAINABLE BENEFICIARY" MEANS A CURRENTLY LIVING ASCERTAINABLE BENEFICIARY WHO HAS A PRESENT OR FUTURE INTEREST IN THE TRUST, INCLUDING A BENEFICIARY WHOSE INTEREST HAS NOT VESTED BECAUSE IT IS IN A CLASS SUBJECT TO OPEN, AS DEFINED IN SECTION 6-4.8 OF THE ESTATES, POWERS AND TRUSTS LAW, AND A BENEFICIARY WHOSE INTEREST HAS NOT YET VESTED BECAUSE IT IS SUBJECT TO A CONDITION PRECE-

DENT, AS DEFINED IN SECTION 6-4.10 OF THE ESTATES, POWERS AND TRUSTS LAW.

(5) IF A BENEFICIARY OF A TRUST IS A PARTNERSHIP (OTHER THAN A PUBLICLY TRADED PARTNERSHIP AS DEFINED IN SECTION 7704 OF THE FEDERAL INTERNAL REVENUE CODE), SUBCHAPTER K LIMITED LIABILITY COMPANY, OR S CORPORATION FOR WHICH AN ELECTION HAS BEEN MADE UNDER SUBSECTION (A) OF SECTION SIX HUNDRED SIXTY OF THIS ARTICLE, THE TRUST SHALL, FOR PURPOSES OF DETERMINING THE NUMBER OF ASCERTAINABLE BENEFICIARIES OF THE TRUST WHO ARE RESIDENTS, COUNT EACH PARTNER, MEMBER, OR SHAREHOLDER AS A SEPARATE BENEFICIARY AND DETERMINE EACH INDIVIDUAL PARTNER'S, MEMBER'S OR SHAREHOLDER'S RESIDENCE SEPARATELY.

S 3. Subsection 4 of section 618 of the tax law, as separately amended by section 5 of part HH-1 of chapter 57 of the laws of 2008 and section 9 of part C of chapter 25 of the laws of 2009, as designated paragraph 4 of subsection (a) by section two of this act, is amended to read as follows:

(4) There shall be added or subtracted (as the case may be) the modifications described in paragraphs [(6), (10), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (38) and (39)] SIX, TEN, SEVENTEEN, EIGHTEEN, NINETEEN, TWENTY, TWENTY-ONE, TWENTY-TWO, TWENTY-THREE, TWENTY-FOUR, TWENTY-FIVE, TWENTY-SEVEN, TWENTY-NINE, THIRTY-EIGHT AND THIRTY-NINE of subsection (b) and in paragraphs [(11), (13), (15), (19), (20), (21), (22), (23), (24), (25), (26) and (28)] ELEVEN, THIRTEEN, FIFTEEN, NINETEEN, TWENTY, TWENTY-ONE, TWENTY-TWO, TWENTY-THREE, TWENTY-FOUR, TWENTY-FIVE, TWENTY-SIX AND TWENTY-EIGHT of subsection (c) of section six hundred twelve of this part.

S 4. This act shall take effect immediately and apply to taxable years beginning on or after January 1, 2010; provided that the amendments to paragraph 4 of subsection (a) of section 618 of the tax law made by section two of this act shall be subject to the expiration and reversion of such paragraph and shall be deemed to expire therewith when upon such date the provisions of section three of this act shall take effect.

PART H

Section 1. The tax law is amended by adding a new section 1703 to read as follows:

S 1703. INFORMATION RETURNS RELATING TO PAYMENTS MADE IN SETTLEMENT OF PAYMENT CARD AND THIRD PARTY NETWORK TRANSACTIONS. 1. (A) EVERY PAYMENT SETTLEMENT ENTITY, THIRD PARTY SETTLEMENT ORGANIZATION, ELECTRONIC PAYMENT FACILITATOR OR OTHER THIRD PARTY ACTING ON BEHALF OF A PAYMENT SETTLEMENT ENTITY, ALL AS DEFINED IN SECTION 6050W OF THE INTERNAL REVENUE CODE AND REFERRED TO HEREIN AS "A REPORTING ENTITY," REQUIRED TO FILE INFORMATION RETURNS PURSUANT TO THAT SECTION SHALL, WITHIN THIRTY DAYS OF THE FILING THEREOF, FILE WITH THE DEPARTMENT IN SUCH FORM AND MANNER AS PRESCRIBED BY THE COMMISSIONER EITHER (I) A DUPLICATE OF ALL SUCH INFORMATION RETURNS OR (II) A DUPLICATE OF SUCH INFORMATION RETURNS RELATED TO PARTICIPATING PAYEES, AS DEFINED IN SECTION 6050W OF THE INTERNAL REVENUE CODE, WITH A NEW YORK STATE ADDRESS OR NEW YORK STATE TAXPAYERS. THE COMMISSIONER MAY REQUIRE THAT SUCH RETURNS BE FILED ELECTRONICALLY.

(B) TO FACILITATE ACCURATE REPORTING BY THE ENTITIES REQUIRED TO FILE INFORMATION RETURNS PURSUANT TO THIS SECTION, THE DEPARTMENT SHALL PROVIDE A LIST OR DATABASE OF NEW YORK STATE TAXPAYERS NO LATER THAN FORTY-FIVE DAYS PRIOR TO THE INFORMATION REPORTING DEADLINE, IN SUCH

FORM AND MANNER AS PRESCRIBED BY THE COMMISSIONER. THE INFORMATION INCLUDED IN SUCH LIST OR DATABASE SHALL NOT BE USED BY A REPORTING ENTITY FOR ANY PURPOSE OTHER THAN PRODUCING AND FILING INFORMATION RETURNS PURSUANT TO THIS SECTION.

(C) ANY INFORMATION RECEIVED BY THE DEPARTMENT ON AN INFORMATION RETURN FILED PURSUANT TO THIS SECTION, CONCERNING A PERSON WHO IS NOT SUBJECT TO TAX IN NEW YORK, OR IS NOT SUBJECT TO ANY REQUIREMENT IMPOSED BY OR PURSUANT TO THE AUTHORITY OF THIS CHAPTER, MAY NOT BE USED BY THE DEPARTMENT. THE DEPARTMENT SHALL NOT REDISCLOSE ANY INFORMATION RECEIVED ON AN INFORMATION RETURN FILED PURSUANT TO THIS SECTION.

2. (A) ANY REPORTING ENTITY FAILING TO FILE AN INFORMATION RETURN REQUIRED PURSUANT TO SUBDIVISION ONE OF THIS SECTION WITHIN THE TIME PRESCRIBED WILL BE SUBJECT TO A PENALTY OF FIFTY DOLLARS FOR EACH FAILURE, IF FAILURE IS FOR NOT MORE THAN ONE MONTH, WITH AN ADDITIONAL FIFTY DOLLARS FOR EACH MONTH OR FRACTION THEREOF DURING WHICH EACH FAILURE CONTINUES. HOWEVER, THE TOTAL AMOUNT OF PENALTY IMPOSED ON A REPORTING ENTITY MAY NOT EXCEED TWO HUNDRED FIFTY THOUSAND DOLLARS ANNUALLY.

(B) THE COMMISSIONER MAY WAIVE ALL OR ANY PORTION OF ANY PENALTY IMPOSED BY THIS SUBDIVISION WITH RESPECT TO ANY VIOLATION IF (I) THE COMMISSIONER DETERMINES THAT THE FAILURE TO TIMELY FILE A RETURN, WAS DUE TO REASONABLE CAUSE AND NOT DUE TO WILLFUL NEGLECT, OR (II) RESCINDING THE PENALTY WOULD PROMOTE COMPLIANCE WITH THE REQUIREMENTS OF THIS CHAPTER AND EFFECTIVE TAX ADMINISTRATION.

S 2. This act shall take effect immediately.

PART I

Section 1. Paragraph 1 of subdivision (a) of section 1138 of the tax law, as amended by chapter 267 of the laws of 1996, is amended to read as follows:

(1) If a return required by this article is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the commissioner from [such information as may be available] THE RECORDS OF THE PERSON LIABLE FOR THE TAX DUE IF THOSE RECORDS ARE MADE AVAILABLE TO THE COMMISSIONER AND ARE ADEQUATE, INCLUDING BY USING GENERALLY ACCEPTED STATISTICAL SAMPLING TECHNIQUES ON THOSE RECORDS AS AUTHORIZED BY SUBDIVISION SIX-A OF SECTION ELEVEN HUNDRED FORTY-TWO OF THIS PART, UNLESS SUCH PERSON AND THE COMMISSIONER AGREE TO SOME OTHER METHOD. If [necessary] SUCH PERSON'S RECORDS ARE NOT ADEQUATE OR ARE NOT MADE AVAILABLE TO THE COMMISSIONER, the tax may be estimated on the basis of SUCH INFORMATION AS MAY BE AVAILABLE, INCLUDING external indices, such as stock on hand, purchases, rental paid, number of rooms, location, scale of rents or charges, comparable rents or charges, type of accommodations and service, number of employees or other factors. FOR THE PURPOSES OF THIS PARAGRAPH, RECORDS ARE "ADEQUATE" ONLY WHEN THEY ARE COMPLETE AND RELIABLE. In the case of retail food stores and other participants approved for participation in the federal food stamp program under or pursuant to the federal food stamp act of nineteen hundred seventy-seven (7 U.S.C. S 2011 et seq.), as amended, whose records are incomplete, UNAVAILABLE or inadequate to determine tax, the external indices upon which tax may be estimated and determined may also include information contained in applications, updates of applications, redemption certificates, returns and reports which such retail food stores and other participants furnish to or are furnished by the United States government or this state or their agencies in order for such retail food stores and other participants to

participate in the food stamp program or to redeem coupons issued under or pursuant to such food stamp act and any other available information considered relevant. Notice of such determination shall be mailed to the person or persons liable for the collection or payment of the tax. A notice of determination shall be mailed by certified or registered mail to the person or persons liable for the collection or payment of the tax at his last known address in or out of this state. If such person or persons is deceased or under a legal disability, a notice of determination may be mailed to his last known address in or out of this state, unless the department has received notice of the existence of a fiduciary relationship with respect to the taxpayer. After ninety days from the mailing of a notice of determination, such notice shall be an assessment of the amount of tax specified in such notice, together with the interest, additions to tax and penalties stated in such notice, except only for any such tax or other amounts as to which the taxpayer has within such ninety day period applied to the division of tax appeals for a hearing, or unless the commissioner of his own motion shall redetermine the same. If the notice of determination is addressed to a person outside of the United States, such period shall be one hundred fifty days instead of ninety days.

S 2. Section 1142 of the tax law is amended by adding a new subdivision 6-a to read as follows:

6-A. (A) TO USE GENERALLY ACCEPTED STATISTICAL SAMPLING TECHNIQUES TO DETERMINE THE AMOUNT OF TAX DUE UNDER SECTION ELEVEN HUNDRED THIRTY-EIGHT OF THIS PART. THE COMMISSIONER SHALL NOT USE THESE SAMPLING TECHNIQUES TO DETERMINE TAX DUE FROM A PERSON WHOSE "GROSS RECEIPTS OR SALES", AS THAT TERM IS USED FOR FEDERAL INCOME TAX REPORTING PURPOSES, ARE LESS THAN ONE MILLION DOLLARS IN EACH OF THE THREE TAXABLE YEARS FOR FEDERAL INCOME TAX PURPOSES IMMEDIATELY PRECEDING THE CALENDAR YEAR IN WHICH THE AUDIT IS COMMENCED, OR, IF THAT INFORMATION IS NOT AVAILABLE FOR THOSE YEARS, IN EACH OF THE THREE MOST RECENT OF THOSE YEARS (OR A LESSER NUMBER OF YEARS IF ONLY THE LESSER NUMBER OF YEARS IS AVAILABLE) FOR WHICH THAT INFORMATION IS AVAILABLE, UNLESS THE PERSON CONSENTS IN WRITING THAT THE COMMISSIONER MAY USE THESE TECHNIQUES TO DETERMINE TAX DUE FROM THAT PERSON. WITHIN A REASONABLE AMOUNT OF TIME AFTER THE COMMISSIONER DECIDES TO DETERMINE TAX DUE USING STATISTICAL SAMPLING TECHNIQUES, THE COMMISSIONER SHALL NOTIFY A PERSON FOR WHOM THE AMOUNT OF TAX DUE IS TO BE DETERMINED USING SUCH TECHNIQUES. SUCH NOTICE SHALL DESCRIBE THE SAMPLING TECHNIQUE TO BE USED, INCLUDING THE GENERAL DESIGN AND SIZE OF THE SAMPLE.

(B) THE COMMISSIONER'S AUTHORITY TO USE THE SAMPLING TECHNIQUES AUTHORIZED BY THIS SUBDIVISION SHALL BE IN ADDITION TO ANY OTHER METHODS AUTHORIZED BY LAW, AND NOTHING IN THIS SUBDIVISION MAY BE CONSTRUED TO LIMIT THE USE OF ANY OTHER METHOD. NOR MAY ANYTHING IN THIS SUBDIVISION OR OTHER PROVISION OF LAW BE CONSTRUED TO LIMIT THE COMMISSIONER'S AUTHORITY TO USE GENERALLY ACCEPTED STATISTICAL SAMPLING TECHNIQUES FOR PURPOSES OTHER THAN DETERMINING TAX DUE, SUCH AS EXAMINING RECORDS REQUIRED TO BE KEPT BY THIS ARTICLE OR RETURNS AND REPORTS REQUIRED TO BE FILED OR SUBMITTED BY THIS ARTICLE. STATISTICAL SAMPLING TECHNIQUES AND ANY RESULTS THEREFROM SHALL NOT BE DEEMED TO BE AN ESTIMATE BASED ON AN EXTERNAL INDEX.

S 3. This act shall take effect immediately; provided, however, that the provisions of this act shall apply, with respect to the determination of tax due under article 28 of the tax law or under or pursuant to the authority of other provisions of the tax law which incorporate or

make reference to such article 28, to any tax due that has not been assessed on the date this act becomes a law.

PART J

Section 1. Paragraph 1 of subdivision (e) of section 29 of the tax law, as added by section 1 of part UU-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(1) If a tax return preparer is required to file authorized tax documents electronically pursuant to subdivision (b) of this section, and that preparer fails to file one or more of those documents electronically, then that preparer will be subject to a penalty of fifty dollars for each failure to electronically file an authorized tax document, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. [For purposes of this paragraph, reasonable cause shall include, but not be limited to, a taxpayer's election not to electronically file the authorized tax document.]

S 2. The tax law is amended by adding a new section 33 to read as follows:

S 33. CORRECTION PERIODS FOR ELECTRONIC TAX DOCUMENTS AND PAYMENTS. (A) FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS HAVE THE SPECIFIED MEANINGS:

(1) "ELECTRONIC FUNDS WITHDRAWAL" MEANS THE PROCESS BY WHICH THE DEPARTMENT, WITH A TAXPAYER'S PERMISSION, ORIGINATES AN ELECTRONIC ORDER FROM ITS BANK TO THE TAXPAYER'S BANK TO WITHDRAW FUNDS FROM THE TAXPAYER'S BANK ACCOUNT SO THAT THE TAXPAYER MAY PAY A TAX LIABILITY ASSOCIATED WITH A TAX DOCUMENT.

(2) "ELECTRONIC POSTMARK" MEANS A RECORD OF THE DATE AND TIME (IN A PARTICULAR TIME ZONE) THAT AN AUTHORIZED ELECTRONIC TRANSMITTER RECEIVES THE TRANSMISSION OF A TAXPAYER'S ELECTRONICALLY FILED TAX DOCUMENT ON ITS HOST SYSTEM.

(3) "ELECTRONIC TRANSMITTER" MEANS A PERSON OR ENTITY THAT IS AUTHORIZED TO SUBMIT ELECTRONIC TAX DOCUMENTS DIRECTLY TO THE DEPARTMENT OR DIRECTLY TO THE INTERNAL REVENUE SERVICE FOR FORWARDING TO THE DEPARTMENT.

(4) "REJECT" OR "REJECTED" MEANS THAT AN ELECTRONICALLY FILED TAX DOCUMENT OR AN AUTHORIZATION FOR AN ELECTRONIC FUNDS WITHDRAWAL IS NOT ACCEPTED FOR PROCESSING.

(5) "SUBMIT" OR "SUBMITTED" MEANS THE DATE OF THE ELECTRONIC POSTMARK ASSIGNED BY AN ELECTRONIC TRANSMITTER TO AN ELECTRONICALLY FILED TAX DOCUMENT OR AUTHORIZATION FOR AN ELECTRONIC FUNDS WITHDRAWAL. HOWEVER, IF AN ELECTRONIC TRANSMITTER DOES NOT ASSIGN AN ELECTRONIC POSTMARK, THEN AN ELECTRONICALLY FILED TAX DOCUMENT OR AUTHORIZATION FOR AN ELECTRONIC FUNDS WITHDRAWAL SHALL BE DEEMED SUBMITTED ON THE EARLIER OF THE DATE THE INTERNAL REVENUE SERVICE RECEIVES THE ELECTRONICALLY FILED TAX DOCUMENT OR AUTHORIZATION FOR AN ELECTRONIC FUNDS WITHDRAWAL, OR THE DATE THE DEPARTMENT RECEIVES THE ELECTRONICALLY FILED TAX DOCUMENT OR AUTHORIZATION FOR AN ELECTRONIC FUNDS WITHDRAWAL. IN ANY OF THE AFOREMENTIONED CASES, IF THE TAXPAYER CAN ESTABLISH THAT THE TIME OF SUBMISSION, ADJUSTED FOR THE TAXPAYER'S TIME ZONE, WAS TIMELY, THE TIME OF SUBMISSION SHALL BE BASED ON THE TAXPAYER'S TIME ZONE.

(6) "TAX" MEANS ANY TAX, FEE, SPECIAL ASSESSMENT OR OTHER IMPOSITION ADMINISTERED BY THE COMMISSIONER.

(7) "TAX DOCUMENT" MEANS ANY RETURN, REPORT OR OTHER DOCUMENT RELATING TO A TAX.

(B) IF A TAX DOCUMENT IS REQUIRED OR PERMITTED TO BE FILED WITH THE DEPARTMENT ELECTRONICALLY (WHETHER DIRECTLY, DIRECTLY THROUGH A RETURN TRANSMITTER OR THROUGH THE INTERNAL REVENUE SERVICE), THE TAX DOCUMENT IS SUBMITTED ELECTRONICALLY ON OR BEFORE THE DUE DATE FOR SUCH DOCUMENT (INCLUDING ANY EXTENSION OF TIME), AND THE ELECTRONICALLY FILED TAX DOCUMENT IS REJECTED, THEN THE COMMISSIONER MAY, BY INSTRUCTION, PROVIDE FOR A REASONABLE PERIOD OF TIME DURING WHICH THE TAX DOCUMENT MAY BE CORRECTED AND RE-SUBMITTED. IF THE CORRECTED TAX DOCUMENT IS RE-SUBMITTED ON OR BEFORE THE EXPIRATION DATE OF THE EXTENDED TIME PERIOD, AND SUCH DOCUMENT IS ACCEPTED BY THE DEPARTMENT FOR PROCESSING, THEN THE RE-SUBMITTED TAX DOCUMENT SHALL BE DEEMED TO HAVE BEEN TIMELY FILED EVEN THOUGH THE DEPARTMENT RECEIVES IT AFTER THE APPLICABLE DUE DATE (INCLUDING ANY EXTENSION OF TIME).

(C) (1) IF A TAXPAYER HAS SUBMITTED AN AUTHORIZATION FOR AN ELECTRONIC FUNDS WITHDRAWAL ON OR BEFORE THE DUE DATE FOR PAYMENT (INCLUDING ANY EXTENSION OF TIME), AND SUCH AUTHORIZATION IS REJECTED BY THE DEPARTMENT, THEN THE COMMISSIONER MAY, BY INSTRUCTION, PROVIDE FOR A REASONABLE PERIOD OF TIME, COMMENCING FROM THE DATE OF REJECTION, FOR THE TAXPAYER TO RE-SUBMIT THE AUTHORIZATION FOR THE ELECTRONIC FUNDS WITHDRAWAL. IF THE AUTHORIZATION FOR THE ELECTRONIC FUNDS WITHDRAWAL IS RE-SUBMITTED ON OR BEFORE THE EXPIRATION DATE OF THE EXTENDED TIME PERIOD, THEN THE ELECTRONIC FUNDS WITHDRAWAL SHALL BE DEEMED TO HAVE BEEN TIMELY PAID EVEN THOUGH THE DEPARTMENT RECEIVES IT AFTER THE APPLICABLE DUE DATE (INCLUDING ANY EXTENSION OF TIME).

(2) ANY REASONABLE PERIOD OF TIME PROVIDED FOR BY THE COMMISSIONER FOR RE-SUBMISSION OF AN AUTHORIZATION FOR AN ELECTRONIC FUNDS WITHDRAWAL MAY DIFFER FROM THE REASONABLE TIME PERIOD, IF ANY, PROVIDED FOR BY THE COMMISSIONER WITH RESPECT TO THE ELECTRONICALLY FILED TAX DOCUMENT WITH WHICH THE TAXPAYER'S ELECTRONIC FUNDS WITHDRAWAL IS ASSOCIATED.

(3) IN LIEU OF RE-SUBMITTING AN AUTHORIZATION FOR AN ELECTRONIC FUNDS WITHDRAWAL, THE COMMISSIONER MAY PERMIT A TAXPAYER TO INSTEAD PAY BY SUBSTITUTE MEANS, AS DEFINED BY INSTRUCTION. ANY SUCH INSTRUCTION SHALL ADDRESS THE TIMELINESS OF PAYMENT BY SUBSTITUTE MEANS.

(D) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO TAXPAYERS PARTICIPATING IN THE ELECTRONIC FUNDS TRANSFER PROGRAMS PRESCRIBED BY SECTIONS NINE AND TEN OF THIS ARTICLE.

S 3. The tax law is amended by adding a new section 34 to read as follows:

S 34. TAX RETURN PREPARERS AND SOFTWARE COMPANIES NOT TO CHARGE SEPARATELY FOR NEW YORK E-FILE SERVICES. (A) FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS HAVE THE SPECIFIED MEANINGS:

(1) "AUTHORIZED TAX DOCUMENT" MEANS A TAX DOCUMENT WHICH THE COMMISSIONER HAS AUTHORIZED TO BE FILED ELECTRONICALLY.

(2) "ELECTRONIC" MEANS COMPUTER TECHNOLOGY.

(3) "SOFTWARE COMPANY" MEANS A DEVELOPER OF TAX SOFTWARE.

(4) "TAX" MEANS ANY TAX OR OTHER MATTER ADMINISTERED BY THE COMMISSIONER PURSUANT TO THIS CHAPTER OR ANY OTHER PROVISION OF LAW.

(5) "TAX DOCUMENT" MEANS A RETURN, REPORT OR ANY OTHER DOCUMENT RELATING TO A TAX OR OTHER MATTER ADMINISTERED BY THE COMMISSIONER.

(6) "TAX RETURN PREPARER" MEANS ANY PERSON WHO PREPARES FOR COMPENSATION, OR WHO EMPLOYS OR ENGAGES ONE OR MORE PERSONS TO PREPARE FOR COMPENSATION, ANY AUTHORIZED TAX DOCUMENT. FOR PURPOSES OF THIS SECTION, THE TERM "TAX RETURN PREPARER" ALSO INCLUDES A PAYROLL SERVICE.

(7) "TAX SOFTWARE" MEANS ANY COMPUTER SOFTWARE PROGRAM INTENDED FOR TAX RETURN PREPARATION PURPOSES. FOR PURPOSES OF THIS SECTION, THE TERM "TAX SOFTWARE" INCLUDES, BUT IS NOT LIMITED TO, AN OFF-THE-SHELF SOFT-

WARE PROGRAM LOADED ONTO A TAX RETURN PREPARER'S OR TAXPAYER'S COMPUTER, OR AN ONLINE TAX PREPARATION APPLICATION.

(B) IT SHALL BE UNLAWFUL FOR A TAX RETURN PREPARER OR A SOFTWARE COMPANY TO CHARGE A SEPARATE FEE FOR THE ELECTRONIC FILING OF AUTHORIZED TAX DOCUMENTS. IT SHALL ALSO BE UNLAWFUL FOR A SOFTWARE COMPANY TO OFFER A VERSION OF ITS TAX SOFTWARE THAT CHARGES A SEPARATE FEE FOR THE ELECTRONIC FILING OF AUTHORIZED TAX DOCUMENTS AND ONE VERSION OF THE SAME TAX SOFTWARE THAT DOES NOT.

(C) ANY TAX RETURN PREPARER OR SOFTWARE COMPANY VIOLATING THIS SECTION WILL BE LIABLE FOR A CIVIL PENALTY OF FIVE HUNDRED DOLLARS FOR THE FIRST VIOLATION AND ONE THOUSAND DOLLARS FOR EACH SUCCEEDING VIOLATION. THE CIVIL PENALTIES IMPOSED BY THIS SECTION SHALL BE PAID TO THE COMMISSIONER UPON NOTICE AND DEMAND, AND WILL BE ASSESSED, COLLECTED AND PAID IN THE SAME MANNER AS TAXES UNDER ARTICLE TWENTY-SEVEN OF THIS CHAPTER.

S 4. Paragraph 5 of subsection (u) of section 685 of the tax law, as added by section 2 of part Q of chapter 61 of the laws of 2005, is amended to read as follows:

(5) Failure to electronically file. If a tax return preparer is required to file returns electronically pursuant to paragraph ten of subsection (g) of section six hundred fifty-eight of this article, and such preparer fails to file one or more of such returns electronically, then such preparer shall be subject to a penalty of fifty dollars for each such failure to electronically file a return, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. [For purposes of this paragraph, reasonable cause shall include, but not be limited to, a taxpayer's election not to electronically file his or her return.]

S 5. Paragraph 5 of subdivision (t) of section 11-1785 of the administrative code of the city of New York, as added by section 4 of part Q of chapter 61 of the laws of 2005, is amended to read as follows:

(5) Failure to electronically file. If a tax return preparer is required to file returns electronically pursuant to paragraph ten of subdivision (g) of section 11-1758, and such preparer fails to file one or more of such returns electronically, then such preparer shall be subject to a penalty of fifty dollars for each such failure to electronically file a return, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. [For purposes of this paragraph, reasonable cause shall include, but not be limited to, a taxpayer's election not to electronically file his or her return.]

S 6. This act shall take effect immediately, provided, however, that sections one, four and five of this act shall apply to tax returns and other tax documents required to be filed electronically by tax return preparers on or after December 31, 2010, and section two of this act shall apply to electronic returns and payments made for tax years beginning after December 31, 2010.

PART K

Section 1. The tax law is amended by adding a new section 31 to read as follows:

S 31. USE OF ALTERNATIVE MEANS OF COMMUNICATION TO PROVIDE TAX NOTICES AND OTHER TAX DOCUMENTS. NOTWITHSTANDING ANY OTHER PROVISION OF NEW YORK STATE LAW OR REGULATION REQUIRING A TAX NOTICE OR OTHER TAX DOCUMENT TO BE MAILED BY FIRST CLASS MAIL, CERTIFIED MAIL, REGISTERED MAIL, CERTIFIED MAIL RETURN RECEIPT REQUESTED, OR REGISTERED MAIL RETURN RECEIPT REQUESTED, OR ANY OTHER SPECIFIED TYPE OF MAILING, THE DEPARTMENT MAY

USE ANY FORM OF COMMUNICATION DEEMED BY THE COMMISSIONER TO BE REASONABLY CALCULATED, UNDER ALL THE CIRCUMSTANCES, TO APPRISE THE ADDRESSEE OF THE INFORMATION CONTAINED THEREIN, INCLUDING, BUT NOT LIMITED TO, E-MAIL OR OTHER FORM OF ELECTRONIC COMMUNICATION WHEN THE DEPARTMENT HAS OBTAINED THE ADDRESSEE'S AUTHORIZATION TO COMMUNICATE USING ELECTRONIC MEANS. IF THE DEPARTMENT DEEMS AN ALTERNATIVE MEANS OF COMMUNICATION TO BE REASONABLY CALCULATED, UNDER ALL THE CIRCUMSTANCES, TO REACH THE ADDRESSEE, AND THEN TRANSMITS THE TAX NOTICE OR OTHER TAX DOCUMENT BY SUCH MEANS IN ACCORD WITH ITS ESTABLISHED BUSINESS RULES AND PROCESSES FOR THAT COMMUNICATION METHOD, THERE SHALL ARISE A PRESUMPTION THAT THE TAX NOTICE OR OTHER TAX DOCUMENT WAS DELIVERED TO AND RECEIVED BY THE ADDRESSEE.

S 2. This act shall take effect immediately.

PART L

Section 1. Subdivision fifteenth of section 171 of the tax law, as amended by chapter 513 of the laws of 2002, is amended to read as follows:

Fifteenth. Have authority to compromise any taxes OR OTHER IMPOSITIONS or any warrant or judgment for taxes OR OTHER IMPOSITIONS administered by the commissioner, and the penalties and interest in connection therewith, if the tax debtor has been discharged in bankruptcy, [or] is shown by proofs submitted to be insolvent, [but] OR SHOWS BY PROOFS THAT COLLECTION IN FULL WOULD CAUSE THE TAX DEBTOR UNDUE ECONOMIC HARDSHIP OR THAT THERE IS ANY OTHER EXCEPTIONAL MITIGATING CIRCUMSTANCE THAT WOULD RENDER ACCEPTANCE OF THE COMPROMISE JUST AND APPROPRIATE, PROVIDED THAT the amount payable in compromise [shall in no event be less than the amount, if any, recoverable through legal proceedings, and provided that where] REASONABLY REFLECTS COLLECTION POTENTIAL OR IS OTHERWISE JUSTIFIED BY THE PROOFS OFFERED BY THE TAX DEBTOR. PROVIDED, FURTHER, THE COMMISSIONER SHALL NOT ACCEPT ANY AMOUNT PAYABLE IN COMPROMISE THAT WOULD UNDERMINE COMPLIANCE WITH THE TAXES OR OTHER IMPOSITIONS ADMINISTERED BY THE COMMISSIONER, NOR SHALL THE COMMISSIONER ENTER INTO ANY OFFER OF COMPROMISE THAT WOULD BE ADVERSE TO THE BEST INTERESTS OF THE STATE. WHERE the amount owing for taxes OR OTHER IMPOSITIONS or the warrant or judgment, exclusive of any penalties and interest, is more than one hundred thousand dollars, such compromise shall be effective only when approved by a justice of the supreme court.

S 2. Subdivision eighteenth-a of section 171 of the tax law, as amended by chapter 577 of the laws of 1997, is amended to read as follows:

Eighteenth-a. Have authority to compromise civil liability, with such qualifications and limitations as may be established pursuant to such rules and regulations as the commissioner may prescribe, where such liability arises under [this chapter, or under a law enacted pursuant to the authority of this chapter] A TAX OR OTHER IMPOSITION which is administered by the [department, or under a law enacted pursuant to the authority of article two-E of the general city law] COMMISSIONER, at any time prior to the time the tax, OTHER IMPOSITION or administrative action becomes finally and irrevocably fixed and no longer subject to administrative review. Upon acceptance of an offer in compromise by the commissioner, the matter may not be reopened except upon a showing of fraud, malfeasance or misrepresentation of a material fact. The attorney general may compromise any such liability after reference to the department of law for prosecution or defense at any time prior to the time the

tax, OTHER IMPOSITION or administrative action taken by the [department] COMMISSIONER is no longer subject to judicial review. Whenever a compromise is made by the [department] COMMISSIONER of any such liability, there shall be placed on file in the office of the commissioner the opinion of the counsel for such department, with his OR HER reasons therefor, with a statement of: (a) the amount of tax OR OTHER IMPOSITION and any other issues which may be the subject of such compromise, (b) the amount of interest, additions to the tax, or penalty imposed by law on the taxpayer or other persons against whom the administrative action was taken by the department, and (c) the amount actually paid in accordance with the terms of the compromise. Notwithstanding the preceding sentence, no such opinion shall be required with respect to the compromise of any civil liability in which the unpaid amount of tax OR OTHER IMPOSITION which was the subject of the administrative action (including any interest, additions to tax, or penalty) is less than [twenty-five] FIFTY thousand dollars.

S 3. This act shall take effect immediately.

PART M

Section 1. Communication services study. On or before the date that is 245 days after this act shall have become a law, the commissioner of taxation and finance, in consultation with the department of public service and the office of real property services, shall submit to the governor, the temporary president of the senate, the speaker of the assembly, the minority leaders of the senate and the assembly, the chair and ranking minority member of the senate finance committee, and the chair and ranking minority member of the assembly ways and means committee a written report prepared by the office of tax policy analysis of the department of taxation and finance. The report shall examine statutory and policy options designed to achieve the goal of improved taxation of communication services in New York state (including, but not limited to, wireline and wireless telecommunication services, telecommunication services using voice over internet protocol, and cable and satellite television services), and the state and local revenue implications of those options. The report shall take into account commonly accepted goals of tax policy (such as fairness, simplicity and effect on the economic climate of this state and its communications industry). The report shall also take into consideration developments of new technologies and business models used in the provision of communication services and the desired goal that this state should formulate an effective communications tax policy. To this end, the report shall recommend tax policies that shall modernize the taxation of communication services.

S 2. This act shall take effect immediately.

PART N

Section 1. Section 1 of part J of chapter 405 of the laws of 1999, amending the real property tax law relating to improving the administration of the school tax relief (STAR) program, as amended by section 3 of part PP-1 of chapter 57 of the laws of 2008, is amended to read as follows:

Section 1. Notwithstanding the provisions of article 5 of the general construction law, the provisions of the tax law amended by sections 94-a, 94-d and 94-g of chapter 2 of the laws of 1995 are hereby revived and shall continue in full force and effect as they existed on March 31,

1999 [through May 31, 2010, when upon such date they shall expire and be repealed]. Sections 1, 2, 3, 4, and 5, and such part of section 10 of chapter 336 of the laws of 1999 as relates to providing for the effectiveness of such sections 1, 2, 3, 4 and 5 shall be nullified in effect on the effective date of this section, except that the amendments made to: paragraph (2) of subdivision a of section 1612 of the tax law by such section 1; and subdivision b of section 1612 of the tax law by such section 2; and the repeal of section 152 of chapter 166 of the laws of 1991 made by such section 5 shall continue to remain in effect.

S 2. Paragraph 1 of subdivision a of section 1612 of the tax law, as amended by chapter 336 of the laws of 1999, is amended to read as follows:

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

(A) drawings in such game shall be held during no more than thirteen hours each day, no more than eight hours of which shall be consecutive;

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

(i) if the licensee holds a license issued pursuant to the alcoholic beverage control law to sell alcoholic beverages for consumption on the premises, then not less than twenty-five percent of the gross sales must result from sales of food;

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

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

(I) a commercial bowling establishment, or

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

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

S 3. This act shall take effect immediately.

PART O

Section 1. Section 4 of part C of chapter 383 of the laws of 2001, amending the tax law and other laws relating to authorizing the division of the lottery to conduct a pilot program involving the operation of video lottery terminals at certain racetracks, as amended by chapter 140 of the laws of 2008, is amended to read as follows:

S 4. This act shall take effect immediately[; provided, however, that the provisions of this act shall expire and be deemed repealed December 31, 2033].

S 2. Section 4 of part C of chapter 383 of the laws of 2001, amending the tax law and other laws relating to authorizing the division of the lottery to conduct a pilot program involving the operation of video lottery terminals at certain racetracks, as amended by chapter 286 of the laws of 2008, is amended to read as follows:

S 4. This act shall take effect immediately[; provided, however, that the provisions of this act shall expire and be deemed repealed December 31, 2050].

S 3. Section 13 of chapter 140 of the laws of 2008 amending the racing, pari-mutuel wagering and breeding law and other laws relating to thoroughbred racing is REPEALED.

S 4. Section 5 of chapter 286 of the laws of 2008 amending the tax law relating to annual capital improvement credits for video lottery gaming operators is REPEALED.

S 5. Subdivision b of section 1617-a of the tax law, as amended by section 2 of part Z3 of chapter 62 of the laws of 2003, is amended to read as follows:

b. [Video] THE HOURS OF OPERATION OF VIDEO lottery gaming shall only be permitted [for no more than sixteen consecutive hours per day and on no day shall such operation be conducted past 2:00 a.m] AS PRESCRIBED BY THE DIVISION OF THE LOTTERY.

S 6. Clause (G) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by chapter 342 of the laws of 2009, is amended to read as follows:

(G) notwithstanding [any other provisions of this section,] CLAUSES (A), (B), (C), (D), (E) AND (F) OF THIS SUBPARAGRAPH, when no more than one vendor track located in the town of Thompson in Sullivan county at the site of the former Concord Resort at which a qualified capital investment has been made and no fewer than one thousand full-time, permanent employees have been newly hired, is located in Sullivan county and is within sixty miles from any gaming facility in a contiguous state, then for a period of forty years [the division shall pay into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law] THE VENDOR'S FEE SHALL EQUAL THE TOTAL REVENUE WAGERED AT THE VENDOR TRACK AFTER PAYOUT OF PRIZES PURSUANT TO THIS SUBDIVISION REDUCED BY the greater of (i) twenty-five percent of total revenue after payout for prizes for "video lottery games" or (ii) for the first eight years of operation thirty-eight million dollars, and beginning in the ninth year of operation such amount shall increase annually by the lesser of the increase in the consumer price index or two percent, plus [the division shall retain an amount equal to all actual expenses related to operations, administration and procurement of the video lottery terminal operation at no more than one vendor track located in the town of Thompson in Sullivan county at the site of the former Concord Resort, provided, however, such amount retained by the division shall not exceed] seven percent of total revenue after payout of prizes. In addition, in the event the [division makes a payment] VENDOR FEE IS CALCULATED pursuant to subclause (i) of this clause, the [division shall pay to the credit of the state lottery fund created by section ninety-two-c of the state finance law] VENDOR'S FEE SHALL BE FURTHER REDUCED BY 11.11 percent of the amount by which total revenue after payout for prizes exceeds two hundred fifteen million dollars, but in no event shall such [payment] REDUCTION exceed five million dollars.

[The balance shall be paid as a vendor's fee to the track operator of no more than one vendor track located in the town of Thompson in Sulli-

van county at the site of the former Concord Resort for serving as a lottery agent under this chapter.]

Provided, however, that in the case of no more than one vendor track located in the town of Thompson in Sullivan county at the site of the former Concord Resort with a qualified capital investment, and one thousand full-time, permanent employees [as of July first, two thousand eleven] if at any time after three years of opening operations of the licensed video gaming facility or licensed vendor track, the vendor track experiences an employment shortfall, then the recapture amount shall apply, for only such period as the shortfall exists.

For the purposes of this section "qualified capital investment" shall mean an investment of a minimum of six hundred million dollars as reflected by audited financial statements of which not less than three hundred million dollars shall be comprised of equity and/or mezzanine financing as an initial investment in a county where twelve percent of the population is below the federal poverty level as measured by the most recent Bureau of Census Statistics prior to the qualified capital investment commencing that results in the construction, development or improvement of at least one eighteen hole golf course, and the construction and issuance of certificates of occupancy for hotels, lodging, spas, dining, retail and entertainment venues, parking garages and other capital improvements at or adjacent to the licensed video gaming facility or licensed vendor track which promote or encourage increased attendance at such facilities.

For the purposes of this section, "full-time, permanent employee" shall mean an employee who has worked at the video gaming facility, vendor track or related and adjacent facilities for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties; or two part-time employees who have worked at the video gaming facility, vendor track or related and adjacent facilities for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties.

For the purpose of this section "employment goal" shall mean one thousand five hundred full-time permanent employees after three years of opening operations of the licensed video gaming facility or licensed vendor track.

For the purpose of this section "employment shortfall" shall mean a level of employment that falls below the employment goal, as certified annually by vendor's certified accountants and the chairman of the empire state development corporation.

For the purposes of this section "recapture amount" shall mean the difference between the amount of the vendor's fee paid to a vendor track with a qualified capital investment, and the vendor fee otherwise payable to a vendor track pursuant to clause (F) of this subparagraph, that is reimbursable by the vendor track to the division for payment into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law, due to an employment shortfall pursuant to the following schedule only for the period of the employment shortfall:

(i) one hundred percent of the recapture amount if the employment shortfall is greater than sixty-six and two-thirds percent of the employment goal;

(ii) seventy-five percent of the recapture amount if the employment shortfall is greater than thirty-three and one-third percent of the employment goal;

(iii) forty-nine and one-half percent of the recapture amount if the employment shortfall is greater than thirty percent of the employment goal;

(iv) twenty-two percent of the recapture amount if the employment shortfall is greater than twenty percent of the employment goal;

(v) eleven percent of the recapture amount if the employment shortfall is greater than ten percent of the employment goal.

S 7. This act shall take effect immediately.

PART P

Section 1. Section 253 of the tax law is amended by adding a new subdivision 4 to read as follows:

4. (A) A TAX, MEASURED BY THE AMOUNT OF PRINCIPAL DEBT OR OBLIGATION WHICH IS OR UNDER ANY CONTINGENCY MAY BE SECURED AT THE DATE OF THE EXECUTION THEREOF, OR AT ANY TIME THEREAFTER, BY A SECURITY AGREEMENT PERTAINING TO A COOPERATIVE INTEREST IN A COOPERATIVE ORGANIZATION, AS EVIDENCED BY A FINANCING STATEMENT, IS IMPOSED ON THE FILING OF THE FINANCING STATEMENT.

(B) THE RATE AND INCIDENCE OF THE TAX SHALL BE DETERMINED PURSUANT TO THIS SECTION.

(C) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, ALL THE PROVISIONS OF THIS ARTICLE RELATING TO OR APPLICABLE TO THE ADMINISTRATION, COLLECTION, DETERMINATION AND DISTRIBUTION OF THE TAX IMPOSED BY THIS SECTION SHALL APPLY TO THE TAX IMPOSED UNDER THE AUTHORITY OF THIS SUBDIVISION WITH SUCH MODIFICATION AS MAY BE NECESSARY TO ADAPT SUCH LANGUAGE TO THE TAX SO AUTHORIZED. ANY REFERENCE TO A MORTGAGE WILL BE DEEMED TO BE A REFERENCE TO A FINANCING STATEMENT THAT EVIDENCES A SECURITY AGREEMENT. SUCH PROVISIONS SHALL APPLY WITH THE SAME FORCE AND EFFECT AS IF THOSE PROVISIONS HAD BEEN SET FORTH IN THIS SUBDIVISION EXCEPT TO THE EXTENT THAT ANY PROVISION IS EITHER INCONSISTENT WITH A PROVISION OF THIS SUBDIVISION OR NOT RELEVANT TO THE TAX AUTHORIZED BY THIS SUBDIVISION.

(D) NO REMEDY OTHERWISE AVAILABLE TO A SECURED PARTY UNDER ARTICLE NINE OF THE UNIFORM COMMERCIAL CODE SHALL BE AVAILABLE TO ENFORCE A SECURITY AGREEMENT PERTAINING TO A COOPERATIVE INTEREST IN A COOPERATIVE ORGANIZATION THAT IS EVIDENCED BY A FINANCING STATEMENT, UNLESS THAT FINANCING STATEMENT IS FILED AND THE TAX IMPOSED PURSUANT TO THE AUTHORITY OF THIS SUBDIVISION HAS BEEN PAID.

(E) FOR THE PURPOSES OF THIS SUBDIVISION:

(1) "COOPERATIVE INTEREST" MEANS AN OWNERSHIP INTEREST IN A COOPERATIVE ORGANIZATION, WHICH INTEREST WHEN CREATED, IS COUPLED WITH POSSESSORY RIGHTS OF A PROPRIETARY NATURE IN IDENTIFIED PHYSICAL SPACE BELONGING TO THE COOPERATIVE ORGANIZATION.

(2) "COOPERATIVE ORGANIZATION" MEANS AN ORGANIZATION WHICH HAS AS ITS PRINCIPAL ASSET AN INTEREST IN REAL PROPERTY IN THIS STATE AND IN WHICH ORGANIZATION ALL OWNERSHIP INTERESTS ARE COOPERATIVE INTERESTS.

(3) "FINANCING STATEMENT" MEANS A RECORD OR RECORDS COMPOSED OF AN INITIAL FINANCING STATEMENT AND ANY FILED RECORD RELATING TO THE INITIAL FINANCING STATEMENT.

(4) "SECURITY AGREEMENT" MEANS AN AGREEMENT THAT CREATES OR PROVIDES FOR A SECURITY INTEREST.

(F) COUNTIES OR CITIES AUTHORIZED UNDER THIS ARTICLE TO IMPOSE A TAX ARE AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND LOCAL LAWS TO IMPOSE IN SUCH COUNTY OR CITY A TAX ON THE FILING OF FINANCING STATEMENTS PERTAINING TO A COOPERATIVE INTEREST IN A COOPERATIVE ORGANIZATION. ANY TAX THAT HAS BEEN IMPOSED BY A COUNTY OR CITY UNDER THE AUTHORITY OF THIS ARTICLE SHALL BE DEEMED TO INCLUDE THE AUTHORITY TO IMPOSE AND COLLECT THE TAX ON THE RECORDING OF A FINANCING STATEMENT PERTAINING TO A COOPERATIVE INTEREST IN A COOPERATIVE ORGANIZATION IN THE SAME MANNER AS THE LOCAL MORTGAGE RECORDING TAX.

S 2. Subdivisions 1 and 2 of section 253-a of the tax law, subdivision 1 and paragraph (a) of subdivision 2 as amended by chapter 343 of the laws of 1990 and subdivision 2 as added by chapter 241 of the laws of 1989, are amended to read as follows:

1. Any city in this state having a population of one million or more, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in any such city (A) prior to February first, nineteen hundred eighty-two a tax of fifty cents, (B) on or after February first, nineteen hundred eighty-two and before July first, nineteen hundred eighty-two with respect to (i) one, two or three-family houses, individual cooperative apartments and individual residential condominium units, and (ii) real property securing a principal debt or obligation of less than five hundred thousand dollars, a tax of fifty cents, and with respect to all other real property a tax of one dollar and twelve and one-half cents, (C) on and after July first, nineteen hundred eighty-two and before August first, nineteen hundred ninety with respect to real property securing a principal debt or obligation of less than five hundred thousand dollars, a tax of fifty cents, with respect to one, two or three-family houses, individual cooperative apartments and individual residential condominium units securing a principal debt or obligation of five hundred thousand dollars or more, a tax of sixty-two and one-half cents, and with respect to all other real property a tax of one dollar and twenty-five cents, [and] (D) on and after August first, nineteen hundred ninety with respect to real property securing a principal debt or obligation of less than five hundred thousand dollars, a tax of one dollar, with respect to one, two or three-family houses and individual residential condominium units securing a principal debt or obligation of five hundred thousand dollars or more, a tax of one dollar and twelve and one-half cents, and with respect to all other real property a tax of one dollar and seventy-five cents, for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on such real property situated within such city and recorded on or after the date upon which such tax takes effect and a tax of one dollar on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars. In each instance where the tax imposed pursuant to this subdivision is one dollar and twenty-five cents for each one hundred dollars and each remaining major fraction thereof of such principal debt or obligation, fifty percent of the total amount of such tax, including fifty percent of any interest or penalties thereon, shall be set aside in a special account by the commissioner of finance of such city. In each instance where the tax imposed pursuant to this subdivision is one dollar and seventy-five cents for each one hundred dollars and each remaining major fraction thereof of such principal debt or obligation, thirty-five and seven-tenths percent of the total amount of

such tax, including thirty-five and seven-tenths percent of any interest or penalties thereon, shall also be set aside in such special account. Moneys in such account shall be used for payment by such commissioner to the state comptroller for deposit in the urban mass transit operating assistance account of the mass transportation operating assistance fund of any amount of insufficiency certified by the state comptroller pursuant to the provisions of subdivision six of section eighty-eight-a of the state finance law, and, on the fifteenth day of each month, such commissioner shall transmit all funds in such account on the last day of the preceding month, except the amount required for the payment of any amount of insufficiency certified by the state comptroller and such amount as he deems necessary for refunds and such other amounts necessary to finance the New York city transportation disabled committee and the New York city paratransit system as established by section fifteen-b of the transportation law, provided, however, that such amounts shall not exceed six percent of the total funds in the account but in no event be less than two hundred twenty-five thousand dollars beginning April first, nineteen hundred eighty-six, and further that beginning November fifteenth, nineteen hundred eighty-four and during the entire period prior to operation of such system, the total of such amounts shall not exceed three hundred seventy-five thousand dollars for the administrative expenses of such committee and fifty thousand dollars for the expenses of the agency designated pursuant to paragraph b of subdivision five of such section FIFTEEN-B, and other amounts necessary to finance the operating needs of the private bus companies franchised by the city of New York and eligible to receive state operating assistance under section eighteen-b of the transportation law, provided, however, that such amounts shall not exceed four percent of the total funds in the account, to the New York city transit authority for mass transit within the city. THE TAX IMPOSED UNDER THE AUTHORITY OF PARAGRAPH (D) OF THIS SUBDIVISION IS DEEMED TO INCLUDE A TAX IMPOSED ON THE FILING OF FINANCING STATEMENTS EVIDENCING A SECURITY AGREEMENT PERTAINING TO A COOPERATIVE INTEREST IN A COOPERATIVE ORGANIZATION.

2. (a) For the purpose of determining whether a mortgage is subject to the tax authorized to be imposed by paragraph (B) or (C) of subdivision one of this section at a rate in excess of fifty cents, or by paragraph (D) of subdivision one of this section at a rate in excess of one dollar, for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation, the principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by such mortgage shall be aggregated with the principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by any other mortgage, where such mortgages form part of the same or related transactions and have the same or related mortgagors OR RELATED DEBTORS IN THE CASE OF A FINANCING STATEMENT EVIDENCING A SECURITY AGREEMENT PERTAINING TO A COOPERATIVE INTEREST IN A COOPERATIVE ORGANIZATION. If the commissioner of taxation and finance finds that a mortgage transaction or mortgage transactions have been formulated for the purpose of avoiding or evading a rate of tax authorized to be imposed under subdivision one of this section in excess of the lowest such authorized rate, rather than solely for an independent business or financial purpose, such commissioner shall treat all of the mortgages forming part of such transaction or transactions as a single mortgage for the purpose of determining the applicable rate of tax. For purposes of this subdivision, there shall be a presumption that all mortgages

offered for recording within a period of twelve consecutive months having the same or related mortgagors OR RELATED DEBTORS are part of a related transaction, and such presumption may be rebutted only with clear and convincing evidence to the contrary. The commissioner of taxation and finance may require such affidavits and forms, and may prescribe such rules and regulations, as he determines to be necessary to enforce the provisions of this subdivision. ANY REFERENCE TO A MORTGAGE IN THIS SUBDIVISION INCLUDES A FINANCING STATEMENT EVIDENCING A SECURITY AGREEMENT PERTAINING TO A COOPERATIVE INTEREST IN A COOPERATIVE ORGANIZATION.

(b) The term "related", when used in this subdivision with reference to mortgagors OR DEBTORS, shall include, but shall not be limited to, the following relationships:

(i) members of a family, including spouses, ancestors, lineal descendants, and brothers and sisters (whether by the whole or half blood);

(ii) a shareholder and a corporation more than fifty percent of the value of the outstanding stock of which is owned or controlled directly or indirectly by such shareholder;

(iii) a partner and a partnership more than fifty percent of the capital or profits interest in which is owned or controlled directly or indirectly by such partner;

(iv) a beneficiary and a trust more than fifty percent of the beneficial interest in which is owned or controlled directly or indirectly by such beneficiary;

(v) two or more corporations, partnerships, associations, or trusts, or any combination thereof, which are owned or controlled, either directly or indirectly, by the same person, corporation or other entity, or interests; and

(vi) a grantor of a trust and such trust.

S 3. Subsection (e) of section 9--502 of the uniform commercial code, as added by chapter 84 of the laws of 2001, is amended to read as follows:

(e) Contents of cooperative addendum. A cooperative addendum SHALL BE FILED AT THE SAME TIME AS A FINANCING STATEMENT AND is sufficient only if it satisfies subsection (a) and also:

(1) [if not filed simultaneously with the initial financing statement,] identifies, by its file number[, the initial] ANY PREVIOUSLY FILED financing statement AND COOPERATIVE ADDENDUM to which the addendum relates;

(2) indicates the street address of the cooperative unit;

(3) indicates the county in which the cooperative unit is located;

(4) indicates the city, town, or village in which the cooperative unit is located;

(5) indicates the real property tax designation associated with the real property in which the cooperative unit is located as assigned by the local real property tax assessing authority; [and]

(6) indicates the name of the cooperative organization, AND

(7) SPECIFIES THE AMOUNT OF PRINCIPAL DEBT THAT IS SECURED BY THE SECURITY AGREEMENT EVIDENCED BY THE FINANCING STATEMENT AND WHETHER THE DEBT IS FOR THE PURPOSE OF THE INITIAL PURCHASE OF THE COOPERATIVE INTEREST OR SUPPLEMENTAL FINANCING.

S 4. Section 9--601 of the uniform commercial code is amended by adding a new subsection (h) to read as follows:

(H) SECURITY INTEREST PERFECTED BY FINANCIAL STATEMENT. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, IF A SECURED PARTY'S SECURITY INTEREST IS COLLATERALIZED BY THE SHARES OF STOCK AND A PROPRIETARY LEASEHOLD OR EITHER OF THE FOREGOING FROM A COOPERATIVE ORGANIZATION AND THAT SECURITY INTEREST MAY BE PERFECTED ONLY BY THE FILING OF A FINANCIAL STATEMENT UNDER SECTION 9--310(D) OF THIS ARTICLE, THEN NO ENFORCEMENT PROCEDURES SHALL BE AVAILABLE UNTIL SUCH TAX IS PAID.

S 5. This act shall take effect on the first day of the third month after it shall have become a law and shall apply to financing statements filed on or after such date.

PART Q

Section 1. Subparagraph (E) of paragraph 1 of subsection (e) of section 606 of the tax law, as amended by chapter 105 of the laws of 2006, is amended to read as follows:

(E) "Qualifying real property taxes" means all real property taxes, special ad valorem levies and special assessments, exclusive of penalties and interest, levied on the residence of a qualified taxpayer and paid during the taxable year [less the credit claimed under subsection (n-1) of this section]. In addition, for taxable years beginning after December thirty-first, nineteen hundred eighty-four, a qualified taxpayer may elect to include any additional amount that would have been levied in the absence of an exemption from real property taxation pursuant to section four hundred sixty-seven of the real property tax law. If tenant-stockholders in a cooperative housing corporation have met the requirements of section two hundred sixteen of the internal revenue code by which they are allowed a deduction for real estate taxes, the amount of taxes so allowable, or which would be allowable if the taxpayer had filed returns on a cash basis, shall be qualifying real property taxes. If a residence is owned by two or more individuals as joint tenants or tenants in common, and one or more than one individual is not a member of the household, qualifying real property taxes is that part of such taxes on the residence which reflects the ownership percentage of the qualified taxpayer and members of his household. If a residence is an integral part of a larger unit, qualifying real property taxes shall be limited to that amount of such taxes paid as may be reasonably apportioned to such residence. If a household owns and occupies two or more residences during different periods in the same taxable year, qualifying real property taxes shall be the sum of the prorated qualifying real property taxes attributable to the household during the periods such household occupies each of such residences. If the household owns and occupies a residence for part of the taxable year and rents a residence for part of the same taxable year, it may include both the proration of qualifying real property taxes on the residence owned and the real property tax equivalent with respect to the months the residence is rented. Provided, however, for purposes of the credit allowed under this subsection, qualifying real property taxes may be included by a qualified taxpayer only to the extent that such taxpayer or the spouse of such taxpayer occupying such residence for six months or more of the taxable year owns or has owned the residence and paid such taxes.

S 2. Section 606 of the tax law is amended by adding a new subsection (e-2) to read as follows:

(E-2) SCHOOL TAX CIRCUIT BREAKER CREDIT. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SUBSECTION:

(A) "QUALIFIED TAXPAYER" MEANS A RESIDENT INDIVIDUAL WHO OWNS THE RESIDENTIAL REAL PROPERTY IN WHICH HE OR SHE RESIDES, AND HAS USED SUCH RESIDENTIAL REAL PROPERTY AS HIS OR HER PRIMARY RESIDENCE FOR NOT LESS THAN SIX MONTHS OF THE TAXABLE YEAR.

(B) "HOUSEHOLD" OR "MEMBERS OF THE HOUSEHOLD" SHALL HAVE THE SAME MEANING AS SET FORTH IN SUBPARAGRAPH (B) OF PARAGRAPH ONE OF SUBSECTION (E) OF THIS SECTION.

(C) "HOUSEHOLD GROSS INCOME" SHALL HAVE THE SAME MEANING AS SET FORTH IN SUBPARAGRAPH (C) OF PARAGRAPH ONE OF SUBSECTION (E) OF THIS SECTION BUT SHALL BE DECREASED BY MODIFICATIONS IN PARAGRAPHS SIXTEEN, TWENTY-TWO AND THIRTY-SEVEN OF SUBSECTION (C) AND SUBSECTION (L) OF SECTION SIX HUNDRED TWELVE OF THIS ARTICLE; PROVIDED HOWEVER, THAT, IN CALCULATING HOUSEHOLD GROSS INCOME, THE AMOUNT OF ANY LOSS FROM EACH THE FOLLOWING CATEGORIES OR ITEMS DEDUCTED IN DETERMINING FEDERAL ADJUSTED GROSS INCOME SHALL NOT EXCEED THREE THOUSAND DOLLARS:

(I) PARTNERSHIPS AND S CORPORATIONS,

(II) RENTAL REAL ESTATE AND ROYALTIES,

(III) BUSINESS,

(IV) FARMING,

(V) NET OPERATING LOSS, AND

(VI) REAL ESTATE MORTGAGE INVESTMENT CONDUITS.

(D) "RESIDENTIAL REAL PROPERTY" MEANS A DWELLING IN THIS STATE, OWNED BY A QUALIFIED TAXPAYER AND USED BY THE TAXPAYER AS HIS OR HER PRIMARY RESIDENCE, AND SO MUCH OF THE LAND ABUTTING IT AS IS REASONABLY NECESSARY FOR USE OF THE DWELLING AS A HOME, AND MAY CONSIST OF A PART OF A MULTI-DWELLING OR MULTI-PURPOSE BUILDING INCLUDING A COOPERATIVE OR CONDOMINIUM, BUT NOT A RENTED DWELLING OR RENTAL UNITS WITHIN A SINGLE DWELLING. RESIDENCE INCLUDES A TRAILER OR MOBILE HOME, USED EXCLUSIVELY FOR RESIDENTIAL PURPOSES AND DEFINED AS REAL PROPERTY PURSUANT TO PARAGRAPH (G) OF SUBDIVISION TWELVE OF SECTION ONE HUNDRED TWO OF THE REAL PROPERTY TAX LAW.

(E) "NET SCHOOL TAXES" MEANS THE SCHOOL TAXES LEVIED AND PAID ON THE RESIDENTIAL REAL PROPERTY OWNED AND OCCUPIED BY THE QUALIFIED TAXPAYER AFTER ANY EXEMPTION OR ABATEMENT RECEIVED PURSUANT TO THE REAL PROPERTY TAX LAW.

2. CREDIT. (A) SUBJECT IN EACH YEAR TO THE AVAILABILITY OF MONEYS IN THE PROPERTY TAX CIRCUIT BREAKER RESERVE FUND ESTABLISHED BY SECTION NINETY-TWO-GG OF THE STATE FINANCE LAW, A QUALIFIED TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAXES IMPOSED BY THIS ARTICLE EQUAL TO THE EXCESS AMOUNT OF NET SCHOOL TAXES PAID OVER THE MAXIMUM SCHOOL TAX AMOUNT APPLICABLE TO HIM OR HER AS SET FORTH IN PARAGRAPH THREE OF THIS SUBSECTION, MULTIPLIED BY A FIXED PERCENTAGE, THAT SHALL CAUSE, AS NEARLY AS POSSIBLE THE FULL UTILIZATION OF THE MONEYS AVAILABLE IN SUCH RESERVE FUND. SUCH FIXED PERCENTAGE SHALL BE DETERMINED BY THE COMMISSIONER IN CONSULTATION WITH THE DIRECTOR OF THE BUDGET FOR EACH SUBPARAGRAPH OF PARAGRAPH THREE OF THIS SUBSECTION NO LATER THAN JUNE THIRTIETH EACH YEAR. NO SUCH CREDIT SHALL BE ALLOWED IF THE HOUSEHOLD GROSS INCOME OF A QUALIFIED TAXPAYER RESIDING IN THE CITY OF NEW YORK, OR NASSAU, SUFFOLK, ROCKLAND, WESTCHESTER, PUTNAM, ORANGE OR DUTCHESS COUNTY EXCEEDS THREE HUNDRED THOUSAND DOLLARS, AND IF THE HOUSEHOLD GROSS INCOME OF A QUALIFIED TAXPAYER RESIDING IN ANY OTHER COUNTY OF THE STATE EXCEEDS TWO HUNDRED THOUSAND DOLLARS. IN TWO THOUSAND TWELVE AND THEREAFTER, THE HOUSEHOLD GROSS INCOME LIMITS SPECIFIED IN THE PREVIOUS SENTENCE SHALL BE INCREASED BY AN AMOUNT EQUAL TO (I) SUCH HOUSEHOLD GROSS INCOME LIMIT, MULTIPLIED BY (II) THE RATE OF INFLATION AS DETERMINED UNDER SUBPARAGRAPH (F) OF PARAGRAPH THREE OF THIS SUBSECTION FOR

THAT YEAR. IF ANY INCREASE IS NOT A MULTIPLE OF ONE HUNDRED DOLLARS, SUCH INCREASE SHALL BE ROUNDED TO THE NEAREST MULTIPLE OF ONE HUNDRED DOLLARS.

(B) (I) FOR TAX YEARS TWO THOUSAND TWELVE AND THEREAFTER, THE VALUE OF THE CREDIT SHALL BE MULTIPLIED BY AN ADJUSTMENT FACTOR, WHICH IS A FRACTION THE NUMERATOR OF WHICH IS THE CHANGE IN THE COST OF LIVING SINCE TWO THOUSAND ELEVEN, AND THE DENOMINATOR OF WHICH IS THE CHANGE IN THE SCHOOL DISTRICT TAX LEVY PER PUPIL SINCE TWO THOUSAND ELEVEN. A SEPARATE ADJUSTMENT FACTOR SHALL BE DETERMINED FOR EACH SCHOOL DISTRICT.

(II) THE NUMERATOR OF THE ADJUSTMENT FACTOR SHALL BE COMPUTED AS THE PRODUCT OF THE GROSS APPLICABLE RATES OF INFLATION FOR ALL YEARS BETWEEN TWO THOUSAND ELEVEN AND THE CURRENT YEAR WHERE:

(I) THE GROSS APPLICABLE RATE OF INFLATION IS OBTAINED BY COMPUTING THE ANNUAL RATE OF INFLATION AND TAKING THE LESSER OF FOUR PERCENT OR 1.2 TIMES THE ANNUAL RATE OF INFLATION AND ADDING ONE. FOR PURPOSES OF THIS PARAGRAPH, THE ANNUAL RATE OF INFLATION SHALL BE THE PERCENTAGE (IF ANY) BY WHICH THE CONSUMER PRICE INDEX FOR THE IMMEDIATELY PRECEDING YEAR EXCEEDS THE CONSUMER PRICE INDEX FOR THE PRIOR YEAR. THE CONSUMER PRICE INDEX FOR ANY YEAR SHALL BE THE AVERAGE OF THE CONSUMER PRICE INDEX AS OF THE SECOND QUARTER OF THAT YEAR. THE TERM "CONSUMER PRICE INDEX" MEANS THE CONSUMER PRICE INDEX FOR URBAN WAGE EARNERS AND CLERICAL WORKERS (CPI-W) PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS.

(III) THE DENOMINATOR OF THE ADJUSTMENT FACTOR SHALL BE COMPUTED AS ONE PLUS THE PERCENTAGE BY WHICH THE PER PUPIL TAX LEVY FOR THE CURRENT SCHOOL YEAR EXCEEDS THE PER PUPIL TAX LEVY FOR THE TWO THOUSAND TEN--TWO THOUSAND ELEVEN SCHOOL YEAR.

(IV) FOR PURPOSES OF THIS PARAGRAPH, THE PER PUPIL TAX LEVY FOR ANY SCHOOL YEAR SHALL BE CALCULATED AS FOLLOWS:

(I) DETERMINE THE TOTAL SCHOOL TAX LEVY IN THE SCHOOL DISTRICT FOR THE CURRENT SCHOOL YEAR, AS CERTIFIED TO THE OFFICE OF REAL PROPERTY SERVICES BY THE OFFICIAL WHO COMPUTES TAX RATES FOR THE SCHOOL DISTRICT BY JANUARY THIRTY-FIRST OF THAT SCHOOL YEAR.

(II) DIVIDE THE AMOUNT CERTIFIED IN CLAUSE (I) OF THIS SUBPARAGRAPH BY THE RESIDENT PUBLIC SCHOOL DISTRICT ENROLLMENT FOR THE CURRENT YEAR AS DEFINED IN PARAGRAPH N OF SUBDIVISION ONE OF SECTION THIRTY-SIX HUNDRED TWO OF THE EDUCATION LAW, BASED ON AN ELECTRONIC DATA FILE USED TO PRODUCE THE SCHOOL AID COMPUTER LISTING PRODUCED BY THE COMMISSIONER ON NOVEMBER FIFTEENTH, OR SUCH ALTERNATIVE DATE AS MAY BE REQUESTED BY THE DIRECTOR OF THE BUDGET FOR THE PURPOSE OF PREPARATION OF THE EXECUTIVE BUDGET, PURSUANT TO PARAGRAPH B OF SUBDIVISION TWENTY-ONE OF SECTION THREE HUNDRED FIVE OF THE EDUCATION LAW, AS CERTIFIED TO THE DEPARTMENT BY THE STATE EDUCATION DEPARTMENT BY JANUARY THIRTY-FIRST OF THAT SCHOOL YEAR.

3. MAXIMUM SCHOOL TAX. (A) IF THE AMOUNT AVAILABLE IN THE PROPERTY TAX CIRCUIT BREAKER RESERVE FUND IS AT LEAST ONE HUNDRED MILLION DOLLARS, BUT LESS THAN OR EQUAL TO FIVE HUNDRED MILLION DOLLARS, THE CREDIT ALLOWED BY THIS SUBPARAGRAPH SHALL NOT EXCEED TWO THOUSAND DOLLARS AND THE MAXIMUM SCHOOL TAX AMOUNT IS AS FOLLOWS:

(I) IN THE CITY OF NEW YORK, AND THE COUNTIES OF NASSAU, SUFFOLK, ROCKLAND, WESTCHESTER, PUTNAM, ORANGE AND DUTCHESS:

HOUSEHOLD GROSS INCOME	MAXIMUM SCHOOL TAX AMOUNT
ONE HUNDRED TWENTY THOUSAND DOLLARS OR LESS	SIX PERCENT OF THE HOUSEHOLD GROSS INCOME
MORE THAN ONE HUNDRED TWENTY THOUSAND	SEVEN PERCENT OF THE HOUSEHOLD

DOLLARS, BUT LESS THAN OR EQUAL TO ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS	GROSS INCOME
MORE THAN ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS, BUT LESS THAN OR EQUAL TO THREE HUNDRED THOUSAND DOLLARS	EIGHT PERCENT OF THE HOUSEHOLD GROSS INCOME

(II) IN ALL OTHER COUNTIES IN THE STATE:

HOUSEHOLD GROSS INCOME	MAXIMUM SCHOOL TAX AMOUNT
NINETY THOUSAND DOLLARS OR LESS	SIX PERCENT OF THE HOUSEHOLD GROSS INCOME
MORE THAN NINETY THOUSAND DOLLARS, BUT LESS THAN OR EQUAL TO ONE HUNDRED FIFTY THOUSAND DOLLARS	SEVEN PERCENT OF THE HOUSEHOLD GROSS INCOME
MORE THAN ONE HUNDRED FIFTY THOUSAND DOLLARS, BUT LESS THAN OR EQUAL TO TWO HUNDRED THOUSAND DOLLARS	EIGHT PERCENT OF THE HOUSEHOLD GROSS INCOME

(B) IF THE AMOUNT AVAILABLE IN THE PROPERTY TAX CIRCUIT BREAKER RESERVE FUND IS MORE THAN FIVE HUNDRED MILLION DOLLARS BUT LESS THAN OR EQUAL TO ONE BILLION DOLLARS, THE CREDIT ALLOWED BY THIS SUBPARAGRAPH SHALL NOT EXCEED TWO THOUSAND TWO HUNDRED FIFTY DOLLARS AND THE MAXIMUM SCHOOL TAX AMOUNT IS AS FOLLOWS:

(I) IN THE CITY OF NEW YORK, AND THE COUNTIES OF NASSAU, SUFFOLK, ROCKLAND, WESTCHESTER, PUTNAM, ORANGE AND DUTCHESS:

HOUSEHOLD GROSS INCOME	MAXIMUM SCHOOL TAX AMOUNT
ONE HUNDRED TWENTY THOUSAND DOLLARS OR LESS	FIVE PERCENT OF THE HOUSEHOLD GROSS INCOME
MORE THAN ONE HUNDRED TWENTY THOUSAND DOLLARS, BUT LESS THAN OR EQUAL TO ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS	SIX PERCENT OF THE HOUSEHOLD GROSS INCOME
MORE THAN ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS, BUT LESS THAN OR EQUAL TO THREE HUNDRED THOUSAND DOLLARS	SEVEN PERCENT OF THE HOUSEHOLD GROSS INCOME

(II) IN ALL OTHER COUNTIES IN THE STATE:

HOUSEHOLD GROSS INCOME	MAXIMUM SCHOOL TAX AMOUNT
NINETY THOUSAND DOLLARS OR LESS	FIVE PERCENT OF THE HOUSEHOLD GROSS INCOME
MORE THAN NINETY	SIX PERCENT OF

THOUSAND DOLLARS, BUT LESS THAN OR EQUAL TO ONE HUNDRED FIFTY THOUSAND DOLLARS	THE HOUSEHOLD GROSS INCOME
MORE THAN ONE HUNDRED FIFTY THOUSAND DOLLARS, BUT LESS THAN OR EQUAL TO TWO HUNDRED THOUSAND DOLLARS	SEVEN PERCENT OF THE HOUSEHOLD GROSS INCOME

(C) IF THE AMOUNT AVAILABLE IN THE PROPERTY TAX CIRCUIT BREAKER RESERVE FUND IS MORE THAN ONE BILLION DOLLARS BUT LESS THAN OR EQUAL TO ONE BILLION FIVE HUNDRED MILLION DOLLARS, THE CREDIT ALLOWED BY THIS SUBPARAGRAPH SHALL NOT EXCEED TWO THOUSAND TWO HUNDRED FIFTY DOLLARS AND THE MAXIMUM SCHOOL TAX AMOUNT IS AS FOLLOWS:

(I) IN THE CITY OF NEW YORK, AND THE COUNTIES OF NASSAU, SUFFOLK, ROCKLAND, WESTCHESTER, PUTNAM, ORANGE AND DUTCHESS:

HOUSEHOLD GROSS INCOME	MAXIMUM SCHOOL TAX AMOUNT
ONE HUNDRED TWENTY THOUSAND DOLLARS OR LESS	FOUR PERCENT OF THE HOUSEHOLD GROSS INCOME
MORE THAN ONE HUNDRED TWENTY THOUSAND DOLLARS, BUT LESS THAN OR EQUAL TO ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS	FIVE PERCENT OF THE HOUSEHOLD GROSS INCOME
MORE THAN ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS, BUT LESS THAN OR EQUAL TO THREE HUNDRED THOUSAND DOLLARS	SIX PERCENT OF THE HOUSEHOLD GROSS INCOME

(II) IN ALL OTHER COUNTIES IN THE STATE:

HOUSEHOLD GROSS INCOME	MAXIMUM SCHOOL TAX AMOUNT
NINETY THOUSAND DOLLARS OR LESS	FOUR PERCENT OF THE HOUSEHOLD GROSS INCOME
MORE THAN NINETY THOUSAND DOLLARS, BUT LESS THAN OR EQUAL TO ONE HUNDRED FIFTY THOUSAND DOLLARS	FIVE PERCENT OF THE HOUSEHOLD GROSS INCOME
MORE THAN ONE HUNDRED FIFTY THOUSAND DOLLARS, BUT LESS THAN OR EQUAL TO TWO HUNDRED THOUSAND DOLLARS	SIX PERCENT OF THE HOUSEHOLD GROSS INCOME

(D) IF THE AMOUNT AVAILABLE IN THE PROPERTY TAX CIRCUIT BREAKER RESERVE FUND IS MORE THAN ONE BILLION FIVE HUNDRED MILLION DOLLARS BUT LESS THAN OR EQUAL TO TWO BILLION DOLLARS, THE CREDIT ALLOWED BY THIS SUBPARAGRAPH SHALL NOT EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS AND THE MAXIMUM SCHOOL TAX AMOUNT IS AS FOLLOWS:

(I) IN THE CITY OF NEW YORK, AND THE COUNTIES OF NASSAU, SUFFOLK, ROCKLAND, WESTCHESTER, PUTNAM, ORANGE AND DUTCHESS:

HOUSEHOLD GROSS INCOME	MAXIMUM SCHOOL TAX AMOUNT
ONE HUNDRED TWENTY THOUSAND DOLLARS OR LESS	THREE PERCENT OF THE HOUSEHOLD GROSS INCOME
MORE THAN ONE HUNDRED TWENTY THOUSAND DOLLARS, BUT LESS THAN OR EQUAL TO ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS	FOUR PERCENT OF THE HOUSEHOLD GROSS INCOME
MORE THAN ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS, BUT LESS THAN OR EQUAL TO THREE HUNDRED THOUSAND DOLLARS	FIVE PERCENT OF THE HOUSEHOLD GROSS INCOME

(II) IN ALL OTHER COUNTIES IN THE STATE:

HOUSEHOLD GROSS INCOME	MAXIMUM SCHOOL TAX AMOUNT
NINETY THOUSAND DOLLARS OR LESS	THREE PERCENT OF THE HOUSEHOLD GROSS INCOME
MORE THAN NINETY THOUSAND DOLLARS, BUT LESS THAN OR EQUAL TO ONE HUNDRED FIFTY THOUSAND DOLLARS	FOUR PERCENT OF THE HOUSEHOLD GROSS INCOME
MORE THAN ONE HUNDRED FIFTY THOUSAND DOLLARS, BUT LESS THAN OR EQUAL TO TWO HUNDRED THOUSAND DOLLARS	FIVE PERCENT OF THE HOUSEHOLD GROSS INCOME

(E) IF THE AMOUNT AVAILABLE IN THE PROPERTY TAX CIRCUIT BREAKER RESERVE FUND IS MORE THAN TWO BILLION DOLLARS, THE CREDIT ALLOWED BY THIS SUBPARAGRAPH SHALL NOT EXCEED THREE THOUSAND DOLLARS AND THE MAXIMUM SCHOOL TAX AMOUNT IS AS FOLLOWS:

(I) IN THE CITY OF NEW YORK, AND THE COUNTIES OF NASSAU, SUFFOLK, ROCKLAND, WESTCHESTER, PUTNAM, ORANGE AND DUTCHESS:

HOUSEHOLD GROSS INCOME	MAXIMUM SCHOOL TAX AMOUNT
ONE HUNDRED TWENTY THOUSAND DOLLARS OR LESS	TWO AND A HALF PERCENT OF THE HOUSEHOLD GROSS INCOME
MORE THAN ONE HUNDRED TWENTY THOUSAND DOLLARS, BUT LESS THAN OR EQUAL TO ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS	THREE AND A HALF PERCENT OF THE HOUSEHOLD GROSS INCOME
MORE THAN ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS, BUT LESS THAN OR EQUAL TO THREE HUNDRED THOUSAND DOLLARS	FOUR AND A HALF PERCENT OF THE HOUSEHOLD GROSS INCOME

(II) IN ALL OTHER COUNTIES IN THE STATE:

HOUSEHOLD GROSS INCOME	MAXIMUM SCHOOL TAX AMOUNT
NINETY THOUSAND DOLLARS OR LESS	TWO AND A HALF PERCENT OF THE HOUSEHOLD GROSS INCOME
MORE THAN NINETY THOUSAND DOLLARS, BUT LESS THAN OR EQUAL TO ONE HUNDRED FIFTY THOUSAND DOLLARS	THREE AND A HALF PERCENT OF THE HOUSEHOLD GROSS INCOME
MORE THAN ONE HUNDRED FIFTY THOUSAND DOLLARS, BUT LESS THAN OR EQUAL TO TWO HUNDRED THOUSAND DOLLARS	FOUR AND A HALF PERCENT OF THE HOUSEHOLD GROSS INCOME

(F) FOR TWO THOUSAND TWELVE AND THEREAFTER, THE THRESHOLDS OF HOUSEHOLD GROSS INCOME SET FORTH IN THIS PARAGRAPH SHALL BE INCREASED BY AN AMOUNT EQUAL TO (I) SUCH HOUSEHOLD GROSS INCOME THRESHOLD, MULTIPLIED BY (II) THE RATE OF INFLATION FOR THAT YEAR. IF ANY INCREASE IS NOT A MULTIPLE OF ONE HUNDRED DOLLARS, SUCH INCREASE SHALL BE ROUNDED TO THE NEAREST MULTIPLE OF ONE HUNDRED DOLLARS.

THE RATE OF INFLATION SHALL BE THE PERCENTAGE (IF ANY) BY WHICH THE CONSUMER PRICE INDEX FOR THE PRECEDING YEAR, EXCEEDS THE CONSUMER PRICE INDEX FOR TWO THOUSAND ELEVEN. THE CONSUMER PRICE INDEX FOR ANY YEAR SHALL BE THE AVERAGE OF THE CONSUMER PRICE INDEX AS OF THE SECOND QUARTER OF THAT YEAR. THE TERM "CONSUMER PRICE INDEX" MEANS THE CONSUMER PRICE INDEX FOR URBAN WAGE EARNERS AND CLERICAL WORKERS (CPI-W) PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS.

4. IF THE AMOUNT OF THE CREDIT ALLOWABLE PURSUANT TO THIS SUBSECTION EXCEEDS A QUALIFIED TAXPAYER'S TAX FOR A TAXABLE YEAR, SUCH EXCESS AMOUNT SHALL BE TREATED AS AN OVERPAYMENT TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE; PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON. IF A QUALIFIED TAXPAYER IS NOT REQUIRED TO FILE A RETURN PURSUANT TO SECTION SIX HUNDRED FIFTY-ONE OF THIS ARTICLE, SUCH TAXPAYER MAY NEVERTHELESS RECEIVE AS AN OVERPAYMENT THE FULL AMOUNT OF SUCH CREDIT, WITHOUT INTEREST.

5. NO CREDIT SHALL BE ALLOWED UNDER THIS SUBSECTION:

(A) TO AN INDIVIDUAL WITH RESPECT TO WHOM A DEDUCTION UNDER SUBSECTION (C) OF SECTION ONE HUNDRED FIFTY-ONE OF THE INTERNAL REVENUE CODE IS ALLOWABLE TO ANOTHER TAXPAYER FOR THE TAXABLE YEAR;

(B) WITH RESPECT TO RESIDENTIAL REAL PROPERTY THAT IS WHOLLY EXEMPTED FROM TAXATION FOR SCHOOL PURPOSES;

(C) TO AN INDIVIDUAL WHO IS NOT A RESIDENT INDIVIDUAL OF THE STATE FOR THE ENTIRE TAXABLE YEAR;

(D) IF THE QUALIFIED TAXPAYER CLAIMS THE REAL PROPERTY TAX CIRCUIT BREAKER CREDIT, PURSUANT TO SUBSECTION (E) OF THIS SECTION, FOR THE TAXABLE YEAR; AND

(E) IF THE RESIDENTIAL REAL PROPERTY IS EXCLUDED FROM RECEIVING A STAR EXEMPTION UNDER SUBDIVISION FOUR-A OF SECTION FOUR HUNDRED TWENTY-FIVE OF THE REAL PROPERTY TAX LAW.

6. PARAGRAPHS FOUR, FIVE, SIX, EIGHT, NINE, TEN, ELEVEN, TWELVE, THIRTEEN AND FOURTEEN OF SUBSECTION (E) OF THIS SECTION SHALL ALSO APPLY TO THIS SUBSECTION.

S 3. The state finance law is amended by adding a new section 92-gg to read as follows:

S 92-GG. PROPERTY TAX CIRCUIT BREAKER RESERVE FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE A FUND TO BE KNOWN AS THE "PROPERTY TAX CIRCUIT BREAKER RESERVE FUND". SUCH FUND SHALL BE ESTABLISHED AND ACCOUNTED FOR BY THE COMPTROLLER WITHIN THE GENERAL FUND.

2. AT THE BEGINNING OF EACH FISCAL YEAR, THE DIRECTOR OF THE BUDGET AND THE COMMISSIONER OF TAXATION AND FINANCE SHALL DETERMINE THE AMOUNT OF CASH SURPLUS REMAINING IN THE GENERAL FUND AT THE CLOSE OF THE PRECEDING YEAR, AFTER DEPOSITS TO THE TAX STABILIZATION RESERVE FUND AND RAINY DAY RESERVE FUND. SUCH REMAINING AMOUNT SHALL BE TRANSFERRED INTO THE PROPERTY TAX CIRCUIT BREAKER RESERVE FUND.

3. SUCH FUND SHALL ALSO CONSIST OF ALL MONEYS TRANSFERRED OR CREDITED THERETO FROM ANY OTHER FUND OR SOURCE PURSUANT TO LAW.

4. MONEYS DEPOSITED IN SUCH FUND SHALL BE USED ONLY TO OFFSET THE COST OF THE TAX CREDITS PURSUANT TO SUBSECTION (E-2) OF SECTION SIX HUNDRED SIX OF THE TAX LAW. AT THE REQUEST OF THE DIRECTOR OF THE BUDGET, THE COMPTROLLER SHALL TRANSFER FROM THE PROPERTY TAX CIRCUIT BREAKER RESERVE FUND TO THE GENERAL FUND AN AMOUNT EQUAL TO THE ESTIMATED REDUCTION OF RECEIPTS RELATED TO THE TAX CREDIT. SUCH TRANSFERS SHALL OCCUR PURSUANT TO A SCHEDULE PREPARED BY THE DIRECTOR OF THE BUDGET IN CONSULTATION WITH THE COMMISSIONER OF TAXATION AND FINANCE.

5. MONEYS IN THE PROPERTY TAX CIRCUIT BREAKER RESERVE FUND MAY BE TEMPORARILY LOANED TO THE GENERAL FUND DURING ANY FISCAL YEAR IN ANTICIPATION OF THE RECEIPT OF REVENUES FROM TAXES, FEES AND OTHER SOURCES REQUIRED TO BE PAID INTO THE GENERAL FUND DURING SUCH FISCAL YEAR. MONEYS SO TEMPORARILY LOANED SHALL BE REPAID IN CASH DURING THE SAME FISCAL YEAR FROM REVENUES RECEIVED FROM SUCH TAXES, FEES AND OTHER SOURCES AS SUCH REVENUES ARE RECEIVED, TO THE EXTENT THAT SUCH REVENUES ARE NOT NECESSARY FOR CURRENT EXPENDITURES REQUIRED TO BE MADE FROM THE GENERAL FUND. TEMPORARY LOANS PURSUANT TO THIS SUBDIVISION SHALL BE WITHOUT INTEREST.

S 4. Subdivision 2 of section 92-cc of the state finance law, as added by chapter 1 of the laws of 2007, is amended to read as follows:

2. Such fund shall have a maximum balance not to exceed [three] TEN per centum of the aggregate amount projected to be disbursed from the general fund during the fiscal year immediately following the then-current fiscal year.

S 5. The state finance law is amended by adding a new article 17 to read as follows:

ARTICLE 17

ANNUAL SPENDING GROWTH CAP ACT

SECTION 244. DEFINITIONS.

245. ESTABLISHMENT OF ANNUAL SPENDING GROWTH CAP.

246. PROVISIONS REGARDING DECLARATION OF EMERGENCY.

S 244. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS, UNLESS OTHERWISE SPECIFIED:

1. "ANNUAL SPENDING GROWTH CAP" SHALL MEAN A PERCENTAGE DETERMINED BY ADDING THE INFLATION RATES FROM EACH OF THE THREE CALENDAR YEARS IMMEDIATELY PRIOR TO THE COMMENCEMENT OF A GIVEN FISCAL YEAR AND THEN DIVIDING THAT SUM BY THREE.

2. "STATE OPERATING FUNDS SPENDING" SHALL MEAN ANNUAL DISBURSEMENTS OF ALL GOVERNMENTAL FUND TYPES INCLUDED IN THE CASH-BASIS FINANCIAL PLAN OF THE STATE, EXCLUDING DISBURSEMENTS FROM FEDERAL FUNDS AND CAPITAL PROJECT FUNDS.

3. "INFLATION RATE" SHALL MEAN THE PERCENTAGE CHANGE IN THE TWELVE-MONTH AVERAGE OF THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS AS PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS OR ANY SUCCESSOR AGENCY FOR A GIVEN CALENDAR YEAR, AS COMPARED TO THE PRIOR CALENDAR YEAR.

4. "EXECUTIVE BUDGET" SHALL MEAN THE BUDGET SUBMITTED ANNUALLY BY THE GOVERNOR PURSUANT TO SECTION ONE OF ARTICLE VII OF THE STATE CONSTITUTION.

5. "STATE BUDGET AS ENACTED" SHALL MEAN THE BUDGET ACTED UPON BY THE LEGISLATURE IN A GIVEN FISCAL YEAR, AS SUBJECT TO SECTION FOUR OF ARTICLE VII OF THE STATE CONSTITUTION AND SECTION SEVEN OF ARTICLE IV OF THE STATE CONSTITUTION.

6. "EMERGENCY" SHALL MEAN AN EXTRAORDINARY, UNFORESEEN, OR UNEXPECTED OCCURRENCE, OR COMBINATION OF CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO A NATURAL DISASTER, INVASION, TERRORIST ATTACK, OR ECONOMIC CALAMITY.

S 245. ESTABLISHMENT OF ANNUAL SPENDING GROWTH CAP. 1. THERE IS HEREBY ESTABLISHED AN ANNUAL SPENDING GROWTH CAP.

2. THE GOVERNOR SHALL NOT SUBMIT, AND THE LEGISLATURE SHALL NOT ENACT, ANY BUDGET THAT CONTAINS AN ESTIMATED PERCENTAGE INCREASE OVER THE PRIOR FISCAL YEAR IN STATE OPERATING FUNDS SPENDING WHICH EXCEEDS THE ANNUAL SPENDING GROWTH CAP.

3. THE GOVERNOR SHALL CERTIFY IN WRITING THAT ESTIMATED STATE OPERATING FUNDS SPENDING IN THE EXECUTIVE BUDGET DOES NOT EXCEED THE ANNUAL SPENDING GROWTH CAP. IF FINAL INFLATION RATE DATA FOR THE PRIOR CALENDAR YEAR IS NOT YET AVAILABLE AT THE TIME THE GOVERNOR SUBMITS HIS OR HER EXECUTIVE BUDGET, HE OR SHE SHALL FURNISH A REASONABLE ESTIMATE OF SUCH PRIOR CALENDAR YEAR INFLATION RATE.

4. THE DIRECTOR OF THE BUDGET SHALL PROVIDE, WITHIN TEN DAYS OF ACTION BY THE LEGISLATURE UPON THE BUDGET, A DETERMINATION AS TO WHETHER ESTIMATED STATE OPERATING FUNDS SPENDING AS SET FORTH IN THE STATE BUDGET AS ENACTED EXCEEDS THE ANNUAL SPENDING GROWTH CAP.

5. IF THE DIRECTOR OF THE BUDGET FINDS THAT STATE OPERATING FUNDS SPENDING AS SET FORTH IN THE STATE BUDGET AS ENACTED EXCEEDS THE ANNUAL SPENDING GROWTH CAP, THE GOVERNOR SHALL TAKE CORRECTIVE ACTION TO ENSURE THAT FUNDING IS LIMITED TO THE AMOUNT OF THE ANNUAL SPENDING CAP.

S 246. PROVISIONS REGARDING DECLARATION OF EMERGENCY. 1. UPON A FINDING OF AN EMERGENCY BY THE GOVERNOR, HE OR SHE MAY DECLARE AN EMERGENCY BY AN EXECUTIVE ORDER WHICH SHALL SET FORTH THE REASONS FOR SUCH DECLARATION.

2. BASED UPON SUCH DECLARATION, THE GOVERNOR MAY SUBMIT, AND THE LEGISLATURE MAY APPROVE BY AN AFFIRMATIVE VOTE OF TWO-THIRDS OF THE MEMBERS ELECTED TO EACH HOUSE, A BUDGET CONTAINING A PERCENTAGE INCREASE OVER THE PRIOR FISCAL YEAR IN STATE OPERATING FUNDS SPENDING THAT EXCEEDS THE ANNUAL SPENDING GROWTH CAP.

S 6. This act shall take effect immediately; provided, however, that section two of this act shall apply to tax years beginning on or after January 1, 2011 and further provided that section five of this act shall expire April 1, 2014 when upon such date the provisions of such section shall be deemed repealed.

PART R

Section 1. Section 2 of the tax law is amended by adding two new subdivisions 12 and 13 to read as follows:

12. AS USED IN THIS CHAPTER, A "STATE RECOGNIZED MARRIAGE" SHALL MEAN A MARRIAGE RECOGNIZED BY NEW YORK STATE LAW, INCLUDING A MARRIAGE OUTSIDE THE STATE RECOGNIZED UNDER PRINCIPLES OF COMITY.

13. AS USED IN THIS CHAPTER, "MARRIED," "SPOUSE," "HUSBAND," "WIFE," "WIDOW," AND OTHER SIMILAR TERMS ENCOMPASS ANY INDIVIDUALS IN A STATE RECOGNIZED MARRIAGE, NOTWITHSTANDING THE TREATMENT AFFORDED SUCH MARRIAGE UNDER THE LAWS OF THE UNITED STATES.

S 2. The tax law is amended by adding a new section 31 to read as follows:

S 31. TREATMENT OF INDIVIDUALS IN ANY STATE RECOGNIZED MARRIAGE. (A) FOR PURPOSES OF THIS CHAPTER, INDIVIDUALS IN ANY STATE RECOGNIZED MARRIAGE SHALL BE TREATED AS MARRIED, AND THEIR STATUS AS "HUSBAND," "WIFE," "SPOUSE," "WIDOW" OR OTHER SIMILAR TERM INDICATING MARITAL STATUS AS USED IN THIS CHAPTER SHALL BE THAT OF SIMILARLY-SITUATED INDIVIDUALS IN ANY OTHER MARRIAGE RECOGNIZED UNDER FEDERAL AND STATE TAX LAW, NOTWITHSTANDING THE TREATMENT AFFORDED SUCH INDIVIDUALS UNDER THE LAWS OF THE UNITED STATES.

(B) TAX LIABILITY UNDER ARTICLES TWENTY-TWO, TWENTY-SIX, TWENTY-SIX-B, THIRTY, THIRTY-A, AND THIRTY-B OF THIS CHAPTER SHALL BE COMPUTED FOR ANY STATE RECOGNIZED MARRIAGE IN THE SAME WAY LIABILITY WOULD BE COMPUTED IN ANY OTHER MARRIAGE RECOGNIZED UNDER FEDERAL AND STATE TAX LAW.

S 3. Subsection (b) of section 607 of the tax law, as amended by chapter 760 of the laws of 1992, is amended to read as follows:

(b) Marital or other status. An individual's marital or other status under section six hundred one, subsection (b) of section six hundred six and section six hundred fourteen shall be the same as his OR HER marital or other status for purposes of establishing the applicable federal income tax rates; PROVIDED HOWEVER, THAT INDIVIDUALS IN ANY STATE RECOGNIZED MARRIAGE SHALL BE TREATED AS MARRIED AND AS "HUSBAND," "WIFE," "SPOUSE," "WIDOW" OR OTHER SIMILAR TERM USED IN THIS ARTICLE TO INDICATE MARITAL STATUS TO THE SAME EXTENT AND IN THE SAME WAY AS ARE INDIVIDUALS IN ANY OTHER LEGALLY PERFORMED MARRIAGE. IN APPLYING RELEVANT PROVISIONS OF THE LAWS OF THE UNITED STATES TO THIS ARTICLE, THE TERMS "MARRIED," "HUSBAND," "WIFE," "SPOUSE," "WIDOW" OR OTHER SIMILAR TERM INDICATING MARITAL STATUS AS USED IN THIS ARTICLE SHALL INCLUDE ANY STATE RECOGNIZED MARRIAGE, NOTWITHSTANDING THE TREATMENT AFFORDED SUCH INDIVIDUALS UNDER THE LAWS OF THE UNITED STATES.

S 4. Subsection (b) of section 651 of the tax law is amended by adding a new paragraph 8 to read as follows:

(8) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, AN INDIVIDUAL IN A STATE RECOGNIZED MARRIAGE NOT RECOGNIZED BY FEDERAL LAW SHALL FILE A STATE RETURN USING THE SAME FILING STATUS THAT WOULD HAVE BEEN AVAILABLE HAD SUCH MARRIAGE BEEN RECOGNIZED BY FEDERAL LAW.

S 5. Subsection (a) of section 951 of the tax law, as amended by section 1 of part A of chapter 407 of the laws of 1999, is amended to read as follows:

(a) Dates. For purposes of this article, any reference to the internal revenue code means the United States Internal Revenue Code of 1986, with all amendments enacted on or before July twenty-second, nineteen hundred ninety-eight, and, unless specifically provided otherwise in this article, any reference to December thirty-first, nineteen hundred seventy-six or January first, nineteen hundred seventy-seven contained in the provisions of such code which are applicable to the determination of the tax imposed by this article shall be read as a reference to June thirtieth, nineteen hundred seventy-eight or July first, nineteen hundred seventy-eight, respectively. Notwithstanding the foregoing, the unified

credit against the estate tax provided in section two thousand ten of the internal revenue code shall, for purposes of this article, be the amount allowed by such section under the applicable federal law in effect on the decedent's date of death. Provided, however, the amount of such credit allowable for purposes of this article shall not exceed the amount allowable as if the federal unified credit did not exceed the tax due under section two thousand one of the internal revenue code on a federal taxable estate of one million dollars. PROVIDED, FURTHER, ANY ELECTION TO TAKE A QUALIFIED TERMINABLE INTEREST PROPERTY DEDUCTION MADE ON THE RETURN FILED UNDER THIS ARTICLE SHALL BE TREATED AS IF THE ELECTION HAD BEEN MADE ON THE FEDERAL ESTATE TAX RETURN.

S 6. Section 1-112 of the administrative code of the city of New York is amended by adding a new subdivision 22 to read as follows:

22. FOR PURPOSES OF CHAPTER SEVENTEEN OF TITLE ELEVEN OF THIS CODE, "MARRIED," "SPOUSE," "HUSBAND," "WIFE," "WIDOW," AND OTHER SIMILAR TERMS ENCOMPASS ANY STATE RECOGNIZED MARRIAGE NOTWITHSTANDING THE TREATMENT AFFORDED SUCH INDIVIDUALS UNDER THE LAWS OF THE UNITED STATES.

S 7. Subdivision (b) of section 11-1707 of the administrative code of the city of New York, as amended by chapter 333 of the laws of 1987, is amended to read as follows:

(b) Marital or other status. An individual's marital or other status under section 11-1701 and section 11-1714 shall be the same as his OR HER marital or other status for purposes of establishing the applicable federal income tax rates; PROVIDED HOWEVER, THAT INDIVIDUALS IN ANY STATE RECOGNIZED MARRIAGE SHALL BE TREATED AS MARRIED AND AS "HUSBAND," "WIFE," "SPOUSE," "WIDOW" OR OTHER SIMILAR TERM INDICATING MARITAL STATUS AS USED IN THIS CHAPTER TO THE SAME EXTENT AND IN THE SAME WAY AS IN ANY OTHER MARRIAGE RECOGNIZED UNDER FEDERAL AND STATE TAX LAW. IN APPLYING RELEVANT PROVISIONS OF THE LAWS OF THE UNITED STATES TO THIS CHAPTER, THE TERMS "MARRIED," "HUSBAND," "WIFE," "SPOUSE," "WIDOW" AND OTHER SIMILAR TERMS INDICATING MARITAL STATUS AS USED IN THIS CHAPTER SHALL INCLUDE INDIVIDUALS IN ANY STATE RECOGNIZED MARRIAGE, NOTWITHSTANDING THE TREATMENT AFFORDED SUCH INDIVIDUALS UNDER THE LAWS OF THE UNITED STATES.

S 8. This act shall take effect immediately; provided however, that sections three, four, six and seven of this act shall apply to taxable years beginning on or after January 1, 2010.

PART S

Section 1. Clause (I) of subparagraph (i) of paragraph 8 of subdivision (b) of section 1101 of the tax law, as added by section 1 of part P-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(I) A seller of tangible personal property or services, the use of which is taxed by this article if either (I) an affiliated person that is a vendor as otherwise defined in this paragraph uses in the state trademarks, service marks, or trade names that are the same as those the seller uses; or (II) an affiliated person engages in activities in the state that inure to the benefit of the seller, in its development or maintenance of a market for its goods or services in the state, to the extent that those activities of the affiliate are sufficient to satisfy the nexus requirement of the United States constitution. For purposes of this clause, "affiliated person" has the same meaning as in clause (B) of subparagraph (v) of this paragraph. Nothing in this clause shall be construed to narrow the scope of any other provision in this paragraph. NOTWITHSTANDING THE PROVISIONS OF THIS CLAUSE, THE ACTIVITIES IN THE

STATE OF AN AFFILIATED PERSON IN PROVIDING ACCOUNTING OR LEGAL SERVICES OR ADVICE, OR IN DIRECTING THE ACTIVITIES OF A SELLER, INCLUDING, BUT NOT LIMITED TO, MAKING DECISIONS ABOUT (A) STRATEGIC PLANNING, (B) MARKETING, (C) INVENTORY, (D) STAFFING, (E) DISTRIBUTION, OR (F) CASH MANAGEMENT, WILL NOT RESULT IN MAKING THE SELLER A VENDOR UNDER THIS PARAGRAPH.

S 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after June 1, 2009 and shall apply to sales made or uses occurring on or after such date in accordance with the applicable transitional provisions of sections 1106 and 1217 of the tax law.

PART T

Section 1. This act shall be known and may be cited as the "wine industry and liquor store revitalization act".

S 2. Subdivisions 4 and 5 of section 63 of the alcoholic beverage control law, subdivision 4 as amended by chapter 603 of the laws of 1992, are amended and three new subdivisions 7, 8 and 9 are added to read as follows:

4. (A) No licensee under this section shall be engaged in any other business on the licensed premises. The SALE OF PRODUCTS COMPLEMENTARY TO THE BUSINESS OF THE LICENSED PREMISES SHALL NOT CONSTITUTE ENGAGING IN ANOTHER BUSINESS WITHIN THE MEANING OF THIS SUBDIVISION. SUCH PRODUCTS SHALL INCLUDE BUT NOT BE LIMITED TO THE sale of lottery tickets, when duly authorized and lawfully conducted, the sale of corkscrews or the sale of ice or the sale of publications, including prerecorded video and/or audio cassette tapes, designed to help educate consumers in their knowledge and appreciation of wine and wine products, as defined in section three of this chapter, or the sale of [non-carbonated, non-flavored mineral waters, spring waters and drinking waters or the sale of glasses designed for the consumption of wine] BOTTLED WATER, MIXERS, JUICE AND SODA, OR THE SALE OF CIGARS, CIGAR ACCESSORIES AND RELATED PUBLICATIONS DESIGNED TO HELP EDUCATE CONSUMERS IN THEIR KNOWLEDGE AND APPRECIATION OF CIGAR PRODUCTS, LIGHTERS, NEWSPAPERS OR FOOD AND FOOD PRODUCTS TYPICALLY CONSUMED WITH ALCOHOLIC BEVERAGES, INCLUDING BUT NOT LIMITED TO SNACK FOODS AND GOURMET FOODS SUCH AS LOCALLY PRODUCED CHEESES AND FRESH BREADS, GIFTS, GIFT BAGS AND GIFT BASKETS, GLASSWARE AND DECANTERS RELATED TO THE CONSUMPTION OR STORAGE OF WINE AND/OR LIQUOR, racks designed for the storage of wine, and devices designed to minimize oxidation in bottles of wine which have been uncorked[, shall not constitute engaging in another business within the meaning of this subdivision].

(B) THE INSTALLATION AND OPERATION OF AUTOMATED TELLER MACHINES SHALL NOT CONSTITUTE ENGAGING IN ANOTHER BUSINESS WITHIN THE MEANING OF THIS SUBDIVISION. FOR PURPOSES OF THIS SUBDIVISION, "AUTOMATED TELLER MACHINE" MEANS A DEVICE WHICH IS LINKED TO THE ACCOUNTS AND RECORDS OF A BANKING INSTITUTION AND WHICH ENABLES CONSUMERS TO CARRY OUT BANKING TRANSACTIONS, INCLUDING, BUT NOT LIMITED TO, ACCOUNT TRANSFERS, DEPOSITS, CASH WITHDRAWALS, BALANCE INQUIRIES, AND LOAN PAYMENTS.

5. [Not more than one license shall be] NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT MULTIPLE LICENSES FROM BEING granted to any person under this section.

7. ANY LICENSE UNDER THIS SECTION INCLUDES THE PRIVILEGES TO SELL LIQUOR TO ANY PERSON LICENSED UNDER THIS CHAPTER TO SELL LIQUOR AT RETAIL FOR CONSUMPTION ON THE PREMISES AND WINE TO ANY PERSON LICENSED

UNDER THIS CHAPTER TO SELL WINE AT RETAIL FOR CONSUMPTION ON THE PREMISES. SUCH SALES SHALL NOT BE SUBJECT TO THE PROVISIONS OF SECTION ONE HUNDRED ONE-AA OR SECTION ONE HUNDRED ONE-B OF THIS CHAPTER.

8. EVERY LICENSEE UNDER THIS SECTION SHALL HAVE AN INDIVIDUAL IN A POSITION OF MANAGEMENT AND CONTROL ASSIGNED TO IT WHO HAS BEEN ISSUED A CERTIFICATE OF COMPLETION FROM AN APPROVED ALCOHOL TRAINING AWARENESS PROGRAM.

9. (A) EXCEPT AS PROVIDED IN THIS SUBDIVISION, COMMENCING ON THE EFFECTIVE DATE OF THIS SUBDIVISION NO ADDITIONAL LICENSES SHALL BE ISSUED PURSUANT TO THIS SECTION.

(B) THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO (I) THE RENEWAL, TRANSFER OR CONTINUANCE OF A LICENSE PURSUANT TO THIS CHAPTER; (II) AN APPLICATION FOR A LICENSE FILED BEFORE THE EFFECTIVE DATE OF THIS SUBDIVISION; (III) THE ISSUANCE OF A LICENSE IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (C) OF THIS SUBDIVISION.

(C) EACH PERSON HOLDING A LICENSE ISSUED UNDER THIS SECTION PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION SHALL HAVE THE RIGHT TO APPLY FOR ONE ADDITIONAL LICENSE UNDER THIS SECTION. THIS RIGHT MAY BE EXERCISED BY THE EXISTING LICENSEE OR SOLD BY THE LICENSEE TO ANOTHER PARTY. SUCH A SALE SHALL BE SUBJECT TO SALES AND COMPENSATING USE TAX AS IMPOSED BY SECTION ELEVEN HUNDRED FIVE OF THE TAX LAW. THE PARTY EXERCISING THE RIGHT TO APPLY FOR THE LICENSE MUST FILE AN APPLICATION WITH THE AUTHORITY AND MEET ALL APPLICABLE RESTRICTIONS AND REQUIREMENTS.

(D) THE AUTHORITY MAY SELL, BY AUCTION, THE RIGHT TO APPLY FOR ANY LICENSE ISSUED UNDER THIS SECTION WHICH IS CANCELED OR REVOKED. PRIOR TO THE ISSUANCE OF ANY LICENSE, THE PERSON BUYING SUCH RIGHT MUST FILE AN APPLICATION WITH THE AUTHORITY AND MEET ALL APPLICABLE RESTRICTIONS AND REQUIREMENTS. THE AMOUNT OF THE SALE SHALL BE SUBJECT TO SALES AND COMPENSATING USE TAX AS IMPOSED BY SECTION ELEVEN HUNDRED FIVE OF THE TAX LAW.

(E) THE AUTHORITY MAY PROMULGATE SUCH RULES AND REGULATIONS AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SUBDIVISION.

S 3. Subdivision 2 of section 79 of the alcoholic beverage control law is amended and three new subdivisions 5, 6 and 7 are added to read as follows:

2. [Not more than one license shall be] NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT MULTIPLE LICENSES FROM BEING granted to any person under this section.

5. ANY LICENSE UNDER THIS SECTION INCLUDES THE PRIVILEGES TO SELL WINE TO ANY PERSON LICENSED UNDER THIS CHAPTER TO SELL WINE AT RETAIL FOR CONSUMPTION ON THE PREMISES OR ANY PERSON LICENSED UNDER SECTION SEVENTY-NINE-E OF THIS ARTICLE, PROVIDED THAT SUCH GROCERY OR DRUG STORE WINE LICENSEE'S PREMISES OCCUPIES LESS THAN ONE THOUSAND SQUARE FEET. SUCH SALES SHALL NOT BE SUBJECT TO THE PROVISIONS OF SECTION ONE HUNDRED ONE-AA OR SECTION ONE HUNDRED ONE-B OF THIS CHAPTER.

6. EVERY LICENSEE UNDER THIS SECTION SHALL HAVE AN INDIVIDUAL IN A POSITION OF MANAGEMENT AND CONTROL ASSIGNED TO IT WHO HAS BEEN ISSUED A CERTIFICATE OF COMPLETION FROM AN APPROVED ALCOHOL TRAINING AWARENESS PROGRAM.

7. (A) EXCEPT AS PROVIDED FOR IN THIS SUBDIVISION, COMMENCING ON THE EFFECTIVE DATE OF THIS SUBDIVISION, NO ADDITIONAL LICENSES SHALL BE ISSUED PURSUANT TO THIS SECTION.

(B) THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO (I) THE RENEWAL, TRANSFER OR CONTINUANCE OF A LICENSE PURSUANT TO THIS CHAPTER; (II) AN APPLICATION FOR A LICENSE FILED BEFORE THE EFFECTIVE DATE OF

THIS SUBDIVISION; (III) THE ISSUANCE OF A LICENSE IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (C) OF THIS SUBDIVISION.

(C) EACH PERSON HOLDING A LICENSE ISSUED UNDER THIS SECTION PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION SHALL HAVE THE RIGHT TO APPLY FOR ONE ADDITIONAL LICENSE UNDER THIS SECTION. THIS RIGHT MAY BE EXERCISED BY THE EXISTING LICENSEE OR SOLD BY THE LICENSEE TO ANOTHER PARTY. SUCH A SALE SHALL BE SUBJECT TO SALES AND COMPENSATING USE TAX AS IMPOSED BY SECTION ELEVEN HUNDRED FIVE OF THE TAX LAW. THE PARTY EXERCISING THE RIGHT TO APPLY FOR THE LICENSE MUST FILE AN APPLICATION WITH THE AUTHORITY AND MEET ALL APPLICABLE RESTRICTIONS AND REQUIREMENTS.

(D) THE AUTHORITY MAY SELL, BY AUCTION, THE RIGHT TO APPLY FOR ANY LICENSE ISSUED UNDER THIS SECTION WHICH IS CANCELED OR REVOKED. PRIOR TO THE ISSUANCE OF ANY LICENSE, THE PERSON BUYING SUCH RIGHT MUST FILE AN APPLICATION WITH THE AUTHORITY AND MEET ALL APPLICABLE RESTRICTIONS AND REQUIREMENTS. THE AMOUNT OF THE SALE SHALL BE SUBJECT TO SALES AND COMPENSATING USE TAX AS IMPOSED BY SECTION ELEVEN HUNDRED FIVE OF THE TAX LAW.

(E) THE AUTHORITY MAY PROMULGATE SUCH RULES AND REGULATIONS AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SUBDIVISION.

S 4. Section 83 of the alcoholic beverage control law is amended by adding a new subdivision 8 to read as follows:

8. THE ANNUAL FEE FOR A GROCERY OR DRUG STORE WINE LICENSE PURSUANT TO SECTION SEVENTY-NINE-E OF THIS ARTICLE SHALL BE FIVE HUNDRED DOLLARS. WHERE, HOWEVER, THE APPLICANT IS THE HOLDER OF TWO OR MORE SUCH LICENSES, THE ANNUAL FEE FOR EACH ADDITIONAL LICENSE SHALL BE DOUBLE THE AMOUNT HEREINABOVE SET FORTH. TEN PERCENT OF THE OVERALL FEES PAID UP TO ONE MILLION DOLLARS SHALL BE DEPOSITED TO THE MISCELLANEOUS SPECIAL REVENUE FUND (339) WINE INDUSTRY MARKETING ACCOUNT FOR APPROPRIATION AND ALLOCATION TO THE NEW YORK WINE MARKETING PROGRAM, AS ESTABLISHED IN SECTION THREE-A OF CHAPTER EIGHTY OF THE LAWS OF NINETEEN HUNDRED EIGHTY-FIVE, SUCH SECTION AS ADDED BY CHAPTER THREE HUNDRED THIRTY OF THE LAWS OF TWO THOUSAND FOUR.

S 4-a. The state finance law is amended by adding a new section 97-jjjj to read as follows:

S 97-JJJJ. NEW YORK WINE INDUSTRY MARKETING AND PROMOTION ACCOUNT. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE AN ACCOUNT TO BE KNOWN AS THE NEW YORK WINE INDUSTRY MARKETING AND PROMOTION ACCOUNT.

2. SUCH ACCOUNT SHALL CONSIST OF REVENUES RECEIVED FROM GROCERY OR DRUG STORE WINE LICENSE FEES PURSUANT TO SUBDIVISION EIGHT OF SECTION EIGHTY-THREE OF THE ALCOHOLIC BEVERAGE CONTROL LAW.

3. MONEYS OF THE ACCOUNT, FOLLOWING APPROPRIATION BY THE LEGISLATURE, MAY BE EXPENDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION THREE-A OF CHAPTER EIGHTY OF THE LAWS OF NINETEEN HUNDRED EIGHTY-FIVE, AS ADDED BY CHAPTER THREE HUNDRED THIRTY OF THE LAWS OF TWO THOUSAND FOUR. MONEYS SHALL BE PAID OUT OF THE ACCOUNT ON THE AUDIT AND WARRANT OF THE STATE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE COMMISSIONER OF AGRICULTURE AND MARKETS.

S 5. Subdivision 2-a of section 100 of the alcoholic beverage control law, as amended by chapter 249 of the laws of 2002, is amended to read as follows:

2-a. No retailer shall employ, or permit to be employed, or shall suffer to work, on any premises licensed for retail sale hereunder, any person under the age of eighteen years, as a hostess, waitress, waiter, or in any other capacity where the duties of such person require or permit such person to sell, dispense or handle alcoholic beverages;

except that: (1) any person under the age of eighteen years and employed by any person holding a grocery or drug store beer license shall be permitted to handle and deliver beer and wine products for such licensee, (2) any person under the age of eighteen employed as a cashier by a person holding a grocery or drug store beer license shall be permitted to record and receive payment for beer and wine product sales when in the presence of and under the direct supervision of a person eighteen years of age or over, (2-a) any person under the age of eighteen years and employed by a person holding a grocery store or drug store beer license as either a cashier or in any other position to which handling of containers which may have held alcoholic beverages is necessary, shall be permitted to handle the containers if such have been presented for redemption in accordance with the provisions of title ten of article twenty-seven of the environmental conservation law, [and] (3) any person under the age of eighteen years employed as a dishwasher, busboy, or other such position as to which handling of containers which may have held alcoholic beverages is necessary shall be permitted to do so under the direct supervision of a person of legal age to purchase alcoholic beverages in the state, (4) ANY PERSON UNDER THE AGE OF EIGHTEEN YEARS AND EMPLOYED BY A PERSON HOLDING A GROCERY OR DRUG STORE WINE LICENSE SHALL BE PERMITTED TO HANDLE AND DELIVER WINE FOR SUCH LICENSEE, AND (5) ANY PERSON UNDER THE AGE OF EIGHTEEN YEARS AND EMPLOYED BY A PERSON HOLDING A GROCERY OR DRUG STORE WINE LICENSE SHALL BE PERMITTED TO RECORD AND RECEIVE PAYMENT FOR WINE SALES WHEN IN THE PRESENCE OF AND UNDER THE DIRECT SUPERVISION OF A PERSON EIGHTEEN YEARS OR OVER.

S 6. Section 17 of the alcoholic beverage control law is amended by adding a new subdivision 8-b to read as follows:

8-B. ON AND AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, THE REPORT PROVIDED FOR IN SUBDIVISION EIGHT OF THIS SECTION SHALL INCLUDE INFORMATION RELATED TO THE NUMBER OF LICENSES APPLIED FOR, RENEWALS SOUGHT AND THE LENGTH OF TIME REQUIRED FOR THE APPROVAL OR DENIAL OF SUCH RETAIL LICENSES AND RENEWALS APPLIED FOR PURSUANT TO SUBDIVISION TWO-C OF SECTION SIXTY-ONE, SECTIONS SIXTY-FOUR, SEVENTY-SIX, SEVENTY-SIX-A, SEVENTY-SIX-C, SEVENTY-SIX-D AND SEVENTY-SIX-F OF THIS CHAPTER.

S 7. Paragraphs (a) and (b) of subdivision 14 of section 105 of the alcoholic beverage control law, paragraph (a) as amended by section 1 of part U of chapter 63 of the laws of 2003 and paragraph (b) as amended by chapter 334 of the laws of 2004, are amended to read as follows:

(a) No premises licensed to sell liquor and/or wine for off-premises consumption shall be permitted to [remain open] SELL LIQUOR AND/OR WINE:

(i) On Sunday before twelve o'clock post meridian and after nine o'clock post meridian.

(ii) On any day between midnight and eight o'clock antemeridian.

(iii) On the twenty-fifth day of December, known as Christmas day.

In any community where daylight saving time is in effect, such time shall be deemed the standard time for the purpose of this subdivision.

(b) This subdivision shall only be interpreted to prohibit the sale of liquor and/or wine for off-premises consumption [when it is closed to the public, provided however, retail licensees may undertake all other activities allowed during the course of normal business operations]. A LICENSEE MAY ENGAGE IN ANY OTHER LAWFUL ACTIVITY ALLOWED ON THE LICENSEE'S PREMISES, including but not limited to:

(i) placing orders with or taking deliveries from wholesalers AND MANUFACTURERS;

(ii) meeting with individuals who have valid solicitors permits issued by the liquor authority;

(iii) stocking shelves;
(iv) filling or building displays; [and]
(v) rotating product on store shelves; AND
(VI) IN THE CASE OF PERSONS LICENSED UNDER SECTION SEVENTY-NINE-E OF THIS CHAPTER, THE SALE OF OTHER PRODUCTS, INCLUDING BEER AND WINE PRODUCTS IF THE PERSON IS ALSO LICENSED UNDER SECTION FIFTY-FOUR OR SECTION FIFTY-FOUR-A OF THIS CHAPTER.

S 8. Section 105 of the alcoholic beverage control law is amended by adding a new subdivision 24 to read as follows:

24. COOPERATIVE AGREEMENTS BY LICENSEES TO SELL AT RETAIL FOR CONSUMPTION OFF THE PREMISES. FOR THE PURPOSES OF PURCHASING ONLY, ANY TWO OR MORE PERSONS LICENSED PURSUANT TO SECTIONS SIXTY-THREE AND/OR SEVENTY-NINE OF THIS CHAPTER MAY JOIN IN AN AGREEMENT TO MAKE JOINT PURCHASES OF LIQUOR AND/OR WINE IN LARGER QUANTITIES THAN MIGHT OTHERWISE BE PURCHASED; PROVIDED, HOWEVER, THAT ALL SUCH ALCOHOLIC BEVERAGES PURCHASED PURSUANT TO ANY SUCH AGREEMENT SHALL BE DISTRIBUTED TO NONE OTHER THAN A LICENSEE WHO IS A PARTY TO SUCH AGREEMENT. THE COOPERATIVE AGREEMENTS, AS AUTHORIZED UNDER THIS SUBDIVISION, SHALL BE VOID IF, WITHIN A CITY WITH A POPULATION OF ONE MILLION OR MORE, THE PREMISES OPERATING UNDER THE COOPERATIVE AGREEMENTS AUTHORIZED IN THIS SUBDIVISION ARE LOCATED MORE THAN ONE MILE FROM ONE ANOTHER. THE COOPERATIVE AGREEMENTS, AS AUTHORIZED UNDER THIS SUBDIVISION, SHALL BE VOID IF, OUTSIDE OF A CITY WITH A POPULATION OF ONE MILLION OR MORE, THE PREMISES OPERATING UNDER AGREEMENTS AUTHORIZED IN THIS SUBDIVISION ARE LOCATED MORE THAN FIFTY MILES FROM ONE ANOTHER. THE AUTHORITY MAY PROMULGATE SUCH RULES AND REGULATIONS AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SUBDIVISION.

S 9. Subdivision 2 of section 105 of the alcoholic beverage control law is REPEALED.

S 10. Subdivision 7 of section 105 of the alcoholic beverage control law is REPEALED.

S 11. The alcoholic beverage control law is amended by adding a new section 79-e to read as follows:

S 79-E. GROCERY OR DRUG STORE WINE LICENSE. 1. ANY PERSON MAY APPLY TO THE AUTHORITY FOR A LICENSE TO SELL FROM THE LICENSED PREMISES WINE IN SEALED CONTAINERS FOR CONSUMPTION OFF SUCH PREMISES.

2. NO SUCH LICENSE SHALL BE ISSUED, HOWEVER, TO ANY PERSON FOR ANY PREMISES OTHER THAN A GROCERY STORE, AS DEFINED IN SUBDIVISION THIRTEEN OF SECTION THREE OF THIS CHAPTER, OR A DRUG STORE, AS DEFINED IN SUBDIVISION TWELVE OF SECTION THREE OF THIS CHAPTER.

3. (A) NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, EXCEPT FOR GOOD CAUSE SHOWN, THE AUTHORITY SHALL ISSUE A GROCERY OR DRUG STORE WINE LICENSE TO THE HOLDER OF A LICENSE TO SELL BEER AT RETAIL FOR CONSUMPTION OFF THE PREMISES PURSUANT TO SECTION FIFTY-FOUR OF THIS CHAPTER, OR BEER AND WINE PRODUCTS AT RETAIL FOR CONSUMPTION OFF THE PREMISES PURSUANT TO SECTION FIFTY-FOUR-A OF THIS CHAPTER, AT THE REQUEST OF SUCH LICENSEE.

(B) FOR THE PURPOSES OF THIS SUBDIVISION, THE PREMISES OF THE GROCERY OR DRUG STORE WINE LICENSEE SHALL BE THE SAME AS THE PREMISES LICENSED UNDER SECTION FIFTY-FOUR OR FIFTY-FOUR-A OF THIS CHAPTER.

(C) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CHAPTER, ANY LICENSE ISSUED PURSUANT TO THIS SECTION SHALL RUN CONCURRENTLY WITH THE UNDERLYING LICENSE UNDER SECTION FIFTY-FOUR OR FIFTY-FOUR-A OF THIS CHAPTER, AND SHALL BE DEEMED EXPIRED AT SUCH TIME AS THE UNDERLYING LICENSE EXPIRES.

(D) WINE TASTING. ANY PERSON LICENSED TO SELL WINE PURSUANT TO THIS ARTICLE SHALL BE PERMITTED TO CONDUCT WINE TASTINGS. WINE TASTINGS WHICH ARE CONDUCTED UNDER THE AUSPICES OF AN OFFICIAL AGENT OF A FARM WINERY, WINERY, WHOLESALER, OR IMPORTER AND WHERE SUCH AGENT IS PHYSICALLY PRESENT AT ALL TIMES DURING THE CONDUCT OF THE TASTING, THEN, IN THAT EVENT, ANY LIABILITY STEMMING FROM A RIGHT OF ACTION RESULTING FROM A WINE TASTING AS AUTHORIZED PURSUANT TO THIS SECTION, AND IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 11-100 AND 11-101 OF THE GENERAL OBLIGATIONS LAW, SHALL ACCRUE TO THE FARM WINERY, WINERY, WHOLESALER, OR IMPORTER.

4. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, THE AUTHORITY MAY ISSUE A LICENSE UNDER THIS SECTION TO THE HOLDER OF A LICENSE TO SELL WINE AT RETAIL FOR CONSUMPTION OFF THE PREMISES PURSUANT TO SECTION SEVENTY-NINE OF THIS ARTICLE, PROVIDED THAT: (A) THE LICENSEE MEETS THE REQUIREMENTS OF SUBDIVISION TWO OF THIS SECTION; AND (B) UPON ISSUANCE OF A LICENSE, THE LICENSEE UNDER THIS SECTION SURRENDERS THE LICENSE CERTIFICATE ISSUED PURSUANT TO SUCH SECTION SEVENTY-NINE.

5. SUCH APPLICATION SHALL BE IN SUCH FORM AND SHALL CONTAIN SUCH INFORMATION AS SHALL BE REQUIRED BY THE RULES OF THE AUTHORITY AND SHALL BE ACCOMPANIED BY A CHECK OR DRAFT IN THE AMOUNT REQUIRED BY THIS ARTICLE FOR SUCH LICENSE.

6. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CHAPTER, ANY PERSON RECEIVING A LICENSE PURSUANT TO THIS SECTION SHALL NOT BE SUBJECT TO THE PROVISIONS OF SUBDIVISION TWO, THREE OR FOUR OF SECTION SEVENTY-NINE OF THIS ARTICLE.

7. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CHAPTER, ANY PERSON RECEIVING A LICENSE PURSUANT TO THIS SECTION SHALL NOT BE SUBJECT TO THE PROVISIONS OF PARAGRAPH (A) OF SUBDIVISION THREE OF SECTION ONE HUNDRED FIVE OF THIS CHAPTER.

8. (A) A ONE-TIME FRANCHISE FEE SHALL BE PAID BY EACH RETAIL OUTLET TO THE STATE LIQUOR AUTHORITY. THIS FRANCHISE FEE IS HEREBY IMPOSED PURSUANT TO THE FOLLOWING SCHEDULE PER LOCATION BASED UPON GROSS SALES IN THE PREVIOUS YEAR:

ANNUAL SALES	FRANCHISE FEE PER LOCATION
$0-$249,999	$1,000
$250,000-$999,999	0.40 OF ONE PERCENT OF TOTAL GROSS SALES
$1,000,000-$9,999,999	0.42 OF ONE PERCENT OF TOTAL GROSS SALES
$10,000,000-$39,999,999	0.46 OF ONE PERCENT OF TOTAL GROSS SALES
$40,000,000 AND GREATER	0.48 OF ONE PERCENT OF TOTAL GROSS SALES
WAREHOUSE STORES	0.50 OF ONE PERCENT OF TOTAL GROSS SALES

FOR THE PURPOSES OF THIS PARAGRAPH, "TOTAL GROSS SALES" SHALL NOT INCLUDE SALES RESULTING FROM THE SALE OF TOBACCO AS DEFINED BY ARTICLE TWENTY OF THE TAX LAW AND MOTOR FUEL AS DEFINED BY ARTICLE TWELVE-A OF THE TAX LAW. FOR THE PURPOSES OF THIS PARAGRAPH, NOTWITHSTANDING THE GROSS SALES OF THE APPLICANT, AN ESTABLISHMENT THAT CHARGES A MEMBERSHIP FEE TO ITS CUSTOMERS SHALL BE DEEMED A "WAREHOUSE STORE".

(B) IN THE EVENT AN APPLICANT HAS BEEN IN BUSINESS FOR LESS THAN TWELVE MONTHS PRIOR TO THE FILING OF THE APPLICATION FOR THIS LICENSE, SUCH APPLICANT SHALL, IN ACCORDANCE WITH THE RULES OF THE AUTHORITY, REMIT AN ESTIMATE OF ITS FRANCHISE FEE BASED ON SQUARE FOOTAGE AT A LICENSEE'S LOCATION PURSUANT TO THE FOLLOWING SCHEDULE:

SQUARE FOOTAGE LICENSEE'S LOCATION	FRANCHISE FEE PER LOCATION
0-999	$825
1,000-1,999	$1,650
2,000-3,999	$3,300
4,000-9,999	$8,250
10,000-19,999	$16,500

20,000-24,999	$33,000
25,000-29,999	$82,500
30,000-39,999	$132,000
40,000-79,999	$250,000
80,000 AND GREATER	$350,000

WITHIN SIXTY DAYS AFTER SUCH LICENSEE SHALL HAVE BEEN IN BUSINESS FOR TWELVE MONTHS, SUCH LICENSEE SHALL SUBMIT TO THE AUTHORITY, IN ACCORDANCE WITH THE RULES OF THE AUTHORITY, A STATEMENT SHOWING ITS ACTUAL TOTAL GROSS SALES FOR THE FIRST TWELVE MONTHS OF OPERATION AND THE FRANCHISE FEE DUE PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION. IN THE EVENT THE FRANCHISE FEE DETERMINED PURSUANT TO SUCH PARAGRAPH EXCEEDS THE AMOUNT PAID PURSUANT TO THIS PARAGRAPH, THE LICENSEE SHALL REMIT PAYMENT FOR THE BALANCE OF THE REQUIRED FRANCHISE FEE WITHIN SUCH SIXTY-DAY PERIOD. FAILURE TO REMIT PAYMENT WITHIN SUCH SIXTY-DAY PERIOD SHALL BE GROUNDS FOR CANCELLATION OR REVOCATION OF SUCH LICENSE. IN THE EVENT THAT THE FRANCHISE FEE DUE PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION IS LESS THAN THE AMOUNT PAID PURSUANT TO THIS PARAGRAPH, THE LICENSEE SHALL BE ENTITLED TO A REFUND EQUAL TO THE DIFFERENCE BETWEEN THE FRANCHISE FEE PAID PURSUANT TO THIS PARAGRAPH AND THE AMOUNT DUE PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION.

(C) NO LICENSE SHALL BE ISSUED PURSUANT TO THIS SECTION UNTIL THE FRANCHISE FEE OR ESTIMATED FRANCHISE FEE UNDER THIS SUBDIVISION REQUIRED BY EITHER PARAGRAPH (A) OR (B) OF THIS SUBDIVISION HAS BEEN PAID IN FULL.

(D) THE FRANCHISE FEE SHALL BE DEPOSITED AND DISPOSED OF IN THE SAME MANNER AS ANY LICENSE FEE AS PROVIDED IN SECTION ONE HUNDRED TWENTY-FIVE OF THIS CHAPTER.

9. ANY PERSON LICENSED TO SELL WINE PURSUANT TO THIS ARTICLE THAT OPERATES THE PREMISES OF THE GROCERY OR DRUG STORE WINE LICENSEE THAT OCCUPIES LESS THAN ONE THOUSAND SQUARE FEET MAY PURCHASE, AGREE TO PURCHASE OR RECEIVE ANY WINE FROM A PERSON LICENSED UNDER SECTIONS SIXTY-THREE AND SEVENTY-NINE OF THIS CHAPTER.

10. EVERY LICENSEE UNDER THIS SECTION SHALL HAVE AN INDIVIDUAL IN A POSITION OF MANAGEMENT AND CONTROL ASSIGNED TO IT WHO HAS BEEN ISSUED A CERTIFICATE OF COMPLETION FROM AN APPROVED ALCOHOL TRAINING AWARENESS PROGRAM.

11. NOTWITHSTANDING SUBDIVISION EIGHT OF THIS SECTION, NO FRANCHISE FEE SHALL BE REQUIRED FROM AN APPLICANT WHO IS PURCHASING THE BUSINESS OF A LICENSEE WHO HAS ALREADY PAID A FRANCHISE FEE, PROVIDED THAT SUCH APPLICANT CONTINUES THE BUSINESS OPERATION AT THE SAME GEOGRAPHIC LOCATION AS THE LICENSEE. IN THE EVENT THE APPLICANT SUBSEQUENTLY REMOVES THE BUSINESS TO ANOTHER LOCATION, PAYMENT OF THE APPROPRIATE FRANCHISE FEE SHALL BE REQUIRED PRIOR TO THE APPROVAL OF THE REMOVAL PURSUANT TO SUBDIVISION THREE OF SECTION NINETY-NINE-D OF THIS CHAPTER.

12. THE STATE LIQUOR AUTHORITY MAY MAKE SUCH RULES AS IT DEEMS NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION, HOWEVER, SUCH RULES SHALL NOT BE CONSTRUED TO PLACE ADDITIONAL LIMITATIONS UPON THE HOLDERS OF LICENSES ISSUED PURSUANT TO SECTION SEVENTY-NINE OF THIS ARTICLE UNRELATED TO THE SALE OF WINE.

S 12. Subdivision 10 of section 105 of the alcoholic beverage control law, paragraph (a) as amended by chapter 679 of the laws of 1950, is amended to read as follows:

10. [(a)] Each retail licensee of liquor and/or wine for off-premises consumption shall have conspicuously displayed within the interior of the licensed premises where sales are made and where it can be readily inspected by consumers a printed price list of the liquors and/or wines

offered for sale therein; and no liquor and/or wine shall be sold except at the price set forth in such list[;

(b) No screen, blind, curtain, partition, article or thing shall be permitted in the windows or upon the doors of such licensed premises, which shall prevent a clear view into the interior of such licensed premises from the sidewalk, at all times; and

(c) No booth, screen, partition or other obstruction shall be permitted in the interior of said licensed premises].

S 13. Section 97-a of the alcoholic beverage control law is REPEALED and a new section 97-a is added to read as follows:

S 97-A. TEMPORARY RETAIL PERMIT. 1. THE AUTHORITY IS HEREBY AUTHORIZED TO ISSUE A TEMPORARY RETAIL PERMIT:

(A) TO THE TRANSFEREE OF A RETAIL LICENSE TO CONTINUE THE OPERATIONS OF A RETAIL PREMISES DURING THE PERIOD THAT THE TRANSFER APPLICATION FOR THE LICENSE FROM PERSON TO PERSON AT THE SAME PREMISES IS PENDING; OR

(B) TO THE APPLICANT FOR A NEW RETAIL LICENSE WHERE THE PROSPECTIVE LICENSED PREMISES IS LOCATED IN A MUNICIPALITY WITH A POPULATION OF LESS THAN ONE MILLION DURING THE PERIOD THAT THE APPLICATION IS PENDING.

2. SUCH A PERMIT MAY BE ISSUED IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(A) THE APPLICANT FOR THE TEMPORARY PERMIT SHALL HAVE FILED WITH THE AUTHORITY AN APPLICATION FOR A RETAIL LICENSE AT SUCH PREMISES, TOGETHER WITH ALL REQUIRED FILING AND LICENSE FEES;

(B) THE APPLICANT SHALL HAVE FILED WITH THE AUTHORITY AN APPLICATION FOR A TEMPORARY RETAIL PERMIT, ACCOMPANIED BY A NONREFUNDABLE FILING FEE OF ONE HUNDRED TWENTY-EIGHT DOLLARS FOR ALL RETAIL BEER LICENSES OR SIX HUNDRED FORTY DOLLARS FOR ALL OTHER RETAIL LICENSES; PROVIDED, HOWEVER, THAT NO TEMPORARY RETAIL PERMIT SHALL BE ISSUED TO AN APPLICANT FOR A LICENSE PURSUANT TO SECTION SEVENTY-NINE-E OF THIS CHAPTER UNTIL THE FRANCHISE FEE OR ESTIMATED FRANCHISE FEE REQUIRED BY EITHER PARAGRAPH (A) OR (B) OF SUBDIVISION EIGHT OF SECTION SEVENTY-NINE-E OF THIS CHAPTER HAS BEEN PAID IN FULL. IN THE EVENT SUCH APPLICATION IS DENIED, THE APPLICANT SHALL RECEIVE A REFUND OF THE FRANCHISE FEE OR ESTIMATED FRANCHISE FEE;

(C) IN THE CASE OF A TRANSFER APPLICATION, THE PREMISES SHALL HAVE BEEN OPERATED UNDER A RETAIL LICENSE WITHIN THIRTY DAYS OF THE DATE OF FILING THE APPLICATION FOR A TEMPORARY PERMIT;

(D) AT THE TIME THE PERMIT IS ISSUED THE CURRENT LICENSE, IF ANY, IN EFFECT FOR SAID PREMISES SHALL HAVE BEEN SURRENDERED TO, PLACED INTO SAFEKEEPING WITH, OR OTHERWISE DEEMED ABANDONED BY THE AUTHORITY;

3. A TEMPORARY RETAIL PERMIT UNDER PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION MAY NOT BE ISSUED FOR ANY PREMISES THAT IS SUBJECT TO THE PROVISIONS OF SECTION SIXTY-THREE, PARAGRAPH (B) OF SUBDIVISION SEVEN OF SECTION SIXTY-FOUR, SUBPARAGRAPH (II) OF PARAGRAPH (A) OF SUBDIVISION SEVEN OF SECTION SIXTY-FOUR-A, SUBPARAGRAPH (II) OF PARAGRAPH (A) OF SUBDIVISION ELEVEN OF SECTION SIXTY-FOUR-C, PARAGRAPH (B) OF SUBDIVISION EIGHT OF SECTION SIXTY-FOUR-D, OR SECTION SEVENTY-NINE OF THIS CHAPTER.

4. A TEMPORARY RETAIL PERMIT ISSUED BY THE AUTHORITY PURSUANT TO THIS SECTION SHALL BE FOR A PERIOD NOT TO EXCEED NINETY DAYS. A TEMPORARY PERMIT MAY BE EXTENDED AT THE DISCRETION OF THE AUTHORITY, FOR AN ADDITIONAL THIRTY DAY PERIOD UPON PAYMENT OF AN ADDITIONAL FEE OF SIXTY-FOUR DOLLARS FOR ALL RETAIL BEER LICENSES AND NINETY-SIX DOLLARS FOR ALL OTHER TEMPORARY PERMITS AND UPON COMPLIANCE WITH ALL CONDITIONS REQUIRED IN THIS SECTION. THE AUTHORITY MAY, IN ITS DISCRETION, ISSUE ADDITIONAL THIRTY DAY EXTENSIONS UPON PAYMENT OF THE APPROPRIATE FEE.

5. A TEMPORARY RETAIL PERMIT IS A CONDITIONAL PERMIT AND AUTHORIZES THE HOLDER THEREOF:

(A) IN THE CASE OF A TRANSFER APPLICATION TO PURCHASE AND SELL SUCH ALCOHOLIC BEVERAGES AS WOULD BE PERMITTED TO BE PURCHASED AND SOLD UNDER THE PRIVILEGES OF THE RETAIL LICENSE FOR WHICH THE TRANSFER APPLICATION HAS BEEN FILED;

(B) IN THE CASE OF ALL OTHER RETAIL APPLICATIONS, TO PURCHASE AND SELL SUCH ALCOHOLIC BEVERAGES AS WOULD BE PERMITTED TO BE PURCHASED AND SOLD UNDER THE PRIVILEGES OF THE LICENSE APPLIED FOR; AND

(C) TO SELL SUCH ALCOHOLIC BEVERAGES TO CONSUMERS ONLY AND NOT FOR RESALE.

6. THE HOLDER OF A TEMPORARY RETAIL PERMIT SHALL PURCHASE ALCOHOLIC BEVERAGES ONLY BY PAYMENT IN CURRENCY OR CHECK FOR SUCH ALCOHOLIC BEVERAGES ON OR BEFORE THE DAY SUCH ALCOHOLIC BEVERAGES ARE DELIVERED, PROVIDED, HOWEVER, THAT THE HOLDER OF A TEMPORARY PERMIT ISSUED PURSUANT TO THIS SECTION WHO ALSO HOLDS ONE OR MORE RETAIL LICENSES AND IS OPERATING UNDER SUCH RETAIL LICENSE OR LICENSES IN ADDITION TO THE TEMPORARY RETAIL PERMIT, AND WHO IS NOT DELINQUENT UNDER THE PROVISIONS OF SECTION ONE HUNDRED ONE-AA OF THIS CHAPTER AS TO ANY RETAIL LICENSE UNDER WHICH HE OPERATES, MAY PURCHASE ALCOHOLIC BEVERAGES ON CREDIT UNDER THE TEMPORARY PERMIT.

7. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A TEMPORARY RETAIL PERMIT MAY BE SUMMARILY CANCELLED OR SUSPENDED AT ANY TIME IF THE AUTHORITY DETERMINES THAT GOOD CAUSE FOR SUCH CANCELLATION OR SUSPENSION EXISTS. THE AUTHORITY SHALL PROMPTLY NOTIFY THE HOLDER OF A TEMPORARY RETAIL PERMIT IN WRITING OF SUCH CANCELLATION OR SUSPENSION AND SHALL SET FORTH THE REASONS FOR SUCH ACTION.

8. THE APPLICATION FOR A TEMPORARY PERMIT SHALL BE ON SUCH FORM AS THE AUTHORITY SHALL PRESCRIBE.

9. APPROVAL OF, OR EXTENSION OF, A TEMPORARY RETAIL PERMIT SHALL NOT BE DEEMED AS AN APPROVAL OF THE RETAIL APPLICATION.

10. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW TO THE CONTRARY, THE AUTHORITY MAY PROMULGATE SUCH RULES AND REGULATIONS AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION.

S 14. Paragraph f of subdivision 1 of section 99-b of the alcoholic beverage control law, as added by chapter 486 of the laws of 1941, is amended to read as follows:

f. A licensee who is liquidating or selling [his] ITS business, or a former licensee whose license [was] HAS BEEN surrendered, REVOKED, CANCELLED or HAS expired, to sell [his] ITS entire stock of alcoholic beverages to other licensees, PROVIDED, HOWEVER, THAT NO SUCH PERMIT SHALL BE ISSUED TO A LICENSEE OR FORMER LICENSEE WHO IS DELINQUENT UNDER THE PROVISIONS OF SECTION ONE HUNDRED ONE-AA OR SECTION ONE HUNDRED ONE-AAA OF THIS CHAPTER. A FORMER LICENSEE WHOSE LICENSE HAS BEEN SURRENDERED, REVOKED, CANCELLED, OR HAS EXPIRED, MAY NOT TRANSFER ITS STOCK OF ALCOHOLIC BEVERAGES TO ANY OTHER PERSON UNLESS IT OBTAINS SUCH A PERMIT.

S 15. Section 3 of the alcoholic beverage control law is amended by adding a new subdivision 30-a to read as follows:

30-A. "TRANSFER" MEANS THE ADMINISTRATIVE PROCESSES INVOLVED IN ISSUING A LICENSE TO A NEW APPLICANT FOR AN EXISTING LICENSED BUSINESS. TRANSFER APPLICANTS SHALL BE UNDER CONTRACT WITH THE EXISTING LICENSEE FOR PURCHASE OF THE EXISTING LICENSED BUSINESS.

S 16. Subdivision 12 of section 17 of the alcoholic beverage control law, as amended by chapter 549 of the laws of 2001, is amended to read as follows:

12. To develop and establish minimum criteria for alcohol training awareness programs which may be given and administered by schools; other entities including trade associations whose members are engaged in or involved in the retail sale of alcoholic beverages; national and regional franchisors who have granted at least five franchises in the state which are licensed to sell beer at retail for off-premises consumption; licensees authorized to sell alcoholic beverages at retail for off-premises consumption operating five or more licensed premises; and persons interested, whether as an individual proprietor or partner or officer or member of a limited liability company, in five or more licensees authorized to sell alcoholic beverages at retail for off-premises consumption. The authority shall provide for the issuance of certificates of approval to all certified alcohol training awareness programs. Certificates of approval may be revoked by the authority for failure to adhere to the authority's rules and regulations. Such rules and regulations shall afford those who have been issued a certificate of approval an opportunity for a hearing prior to any determination of whether such certificate should be revoked.

No licensee shall be required to apply for any such certificate or renewal certificate and the licensee may voluntarily surrender such a certificate or renewal certificate at any time. A fee in the amount of nine hundred dollars shall be paid to the authority with each application for a certificate of approval or renewal certificate. The authority shall promptly refund such fee to an applicant whose application was denied. Each certificate of approval and renewal thereof shall be issued for a period of three years. To effectuate the provisions of this subdivision, the authority is empowered to require in connection with an application the submission of such information as the authority may direct; to prescribe forms of applications and of all reports which it deems necessary to be made by any applicant or certificate holder; to conduct investigations; to require the maintenance of such books and records as the authority may direct; to revoke, cancel, or suspend for cause any certificate provided for in this subdivision. Each entity authorized to give and administer an alcohol training awareness program shall issue certificates of completion to all licensees and employees who successfully complete such an approved alcohol training awareness program. Such entity shall regularly transmit to the authority the names, addresses and dates of attendance of all the licensees and employees of licensees who successfully complete an approved alcohol training awareness program. Such transmittal shall be in a form and manner prescribed by the authority. The authority shall adopt rules and regulations to effectuate the provisions of this subdivision, including the minimum requirements for the curriculum of each such training program and the regular ongoing training of employees holding certificates of completion or renewal certificates. Such rules and regulations shall include the minimum requirements for a separate curriculum for licensees and their employees authorized to sell alcoholic beverages at retail for off-premises consumption, minimum requirements for a separate curriculum for licensees and their employees authorized to sell alcoholic beverages at retail for on-premises consumption, and the form of a certificate of completion or renewal thereof to be issued in respect to each such type of program. A certificate of completion or renewal thereof issued by an entity authorized to give and administer an alcohol training awareness program pursuant to this subdivision to licensees and their employees authorized to sell alcoholic beverages at retail for off-premises consumption shall not be invalidated by a change of employ-

ment to another such licensee. A certificate of completion or renewal thereof issued by an entity authorized to give and administer an alcohol training awareness program pursuant to this subdivision to licensees and their employees authorized to sell alcoholic beverages at retail for on-premises consumption shall not be invalidated by a change of employment to another such licensee. ATTENDANCE AT ANY COURSE ESTABLISHED PURSUANT TO THIS SECTION SHALL BE IN PERSON, THROUGH DISTANCE LEARNING METHODS, OR THROUGH AN INTERNET BASED ONLINE PROGRAM.

S 17. Paragraph a of subdivision 1 of section 101-aa of the alcoholic beverage control law, as amended by chapter 84 of the laws of 2004, is amended to read as follows:

a. "Credit period" means a period beginning on the date alcoholic beverages are delivered and ending thirty days thereafter, EXCEPT THAT WITH REGARD TO LICENSEES LICENSED UNDER SECTION SIXTY-THREE OF THIS CHAPTER THE "CREDIT PERIOD" MEANS A PERIOD BEGINNING ON THE DATE ALCOHOLIC BEVERAGES ARE DELIVERED AND ENDING SIXTY DAYS THEREAFTER.

S 18. Paragraph (b) of subdivision 3 of section 101-b of the alcoholic beverage control law, as amended by section 1 of part E of chapter 56 of the laws of 2006, is amended to read as follows:

(b) No brand of liquor or wine shall be sold to or purchased by a retailer unless a schedule, as provided by this section, is transmitted to and received by the liquor authority, and is then in effect. Such schedule shall be transmitted to the authority in such form, manner, medium and format as the authority may direct; shall be deemed duly verified by the person submitting such schedule upon its transmission to the authority; and shall contain, with respect to each item, the exact brand or trade name, capacity of package, nature of contents, age and proof where stated on the label, the number of bottles contained in each case, the bottle and case price to retailers, the net bottle and case price paid by the seller, which prices, in each instance, shall be individual for each item and not in "combination" with any other item, the discounts for quantity, if any, and the discounts for time of payment, if any. PROVIDED HOWEVER THAT, FOR THE PURPOSES OF THIS PARAGRAPH, DIFFERENT PRODUCTS OR DIFFERENT SIZED BOTTLES FROM THE SAME MANUFACTURER MAY BE COMBINED. Such brand of liquor or wine shall not be sold to retailers except at the price and discounts then in effect unless prior written permission of the authority is granted for good cause shown and for reasons not inconsistent with the purpose of this chapter. Such schedule shall be transmitted by each manufacturer selling such brand to retailers and by each wholesaler selling such brand to retailers.

S 19. Section 101-aa of the alcoholic beverage control law is amended by adding a new subdivision 3-a to read as follows:

3-A. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION THREE OF THIS SECTION, THE HOLDER OF A LICENSE TO SELL LIQUOR AND WINE AT RETAIL FOR CONSUMPTION OFF THE PREMISES, PURSUANT TO SECTION SIXTY-THREE OF THIS CHAPTER, OR A LICENSE TO SELL WINE AT RETAIL FOR CONSUMPTION OFF THE PREMISES PURSUANT TO SECTION SEVENTY-NINE OF THIS CHAPTER, WHO IS IN DEFAULT MAY PURCHASE ALCOHOLIC BEVERAGES ON CREDIT EXCEPT FROM THE MANUFACTURER OR WHOLESALER WHO PLACED SUCH RETAIL LICENSEE IN DEFAULT.

S 20. This act shall take effect immediately; provided that:

(a) sections two, three, seven, eight, nine, ten, sixteen, seventeen, eighteen, and nineteen of this act shall take effect on the one hundred eightieth day after it shall have become a law; and

(b) subdivision 9 of section 63 and subdivision 7 of section 79 of the alcoholic beverage control law, as added by sections two and three of this act, respectively, shall expire three years after such effective

date when upon such date the provisions of such subdivisions shall be deemed repealed.

PART U

Section 1. Subdivision 4 of section 22 of the public housing law, as amended by section 1 of part J-1 of chapter 57 of the laws of 2009, is amended to read as follows:

4. Statewide limitation. The aggregate dollar amount of credit which the commissioner may allocate to eligible low-income buildings under this article shall be [twenty-four] TWENTY-EIGHT million dollars. The limitation provided by this subdivision applies only to allocation of the aggregate dollar amount of credit by the commissioner, and does not apply to allowance to a taxpayer of the credit with respect to an eligible low-income building for each year of the credit period.

S 2. This act shall take effect immediately.

PART V

Section 1. Subdivision (d) of section 7 of part P of chapter 60 of the laws of 2004 amending the tax law relating to the empire state film production credit, as added by section 2 of part Y-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(d) ADDITIONAL POOL 1 - The aggregate amount of tax credits allowed in subdivision (a) of this section shall be increased by an additional $350 million in 2009. This additional amount shall be allocated by the governor's office for motion picture and television development among taxpayers in accordance with subdivision (a) of this section.

S 2. Section 7 of part P of chapter 60 of the laws of 2004 amending the tax law relating to the empire state film production credit is amended by adding a new subdivision (e) to read as follows:

(E) ADDITIONAL POOL 2 - THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED IN SUBDIVISION (A) OF THIS SECTION SHALL BE INCREASED BY AN ADDITIONAL $420 MILLION IN 2010, $420 MILLION IN 2011, $420 MILLION IN 2012, $420 MILLION IN 2013 AND $420 MILLION IN 2014. THIS ADDITIONAL AMOUNT SHALL BE ALLOCATED BY THE GOVERNOR'S OFFICE FOR MOTION PICTURE AND TELEVISION DEVELOPMENT AMONG TAXPAYERS IN ACCORDANCE WITH SUBDIVISION (A) OF THIS SECTION. THE GOVERNOR'S OFFICE FOR MOTION PICTURE AND TELEVISION DEVELOPMENT MUST NOTIFY TAXPAYERS OF THEIR ALLOCATION YEAR AND INCLUDE THE ALLOCATION YEAR ON THE CERTIFICATE OF TAX CREDIT. TAXPAYERS ELIGIBLE TO CLAIM A CREDIT MUST REPORT THE ALLOCATION YEAR DIRECTLY ON THEIR EMPIRE STATE FILM PRODUCTION CREDIT TAX FORM FOR EACH YEAR A CREDIT IS CLAIMED AND INCLUDE A COPY OF THE CERTIFICATE WITH THEIR TAX RETURN. IN THE CASE OF A QUALIFIED FILM THAT RECEIVES FUNDS FROM ADDITIONAL POOL 2, NO EMPIRE STATE FILM PRODUCTION CREDIT SHALL BE CLAIMED BEFORE THE LATER OF (1) THE TAXABLE YEAR THE PRODUCTION OF THE QUALIFIED FILM IS COMPLETE, OR (2) THE TAXABLE YEAR IMMEDIATELY FOLLOWING THE ALLOCATION YEAR FOR WHICH THE FILM HAS BEEN ALLOCATED CREDIT BY THE GOVERNOR'S OFFICE FOR MOTION PICTURE AND TELEVISION DEVELOPMENT.

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

(1) Allowance of credit. A taxpayer which is a qualified film production company, OR A QUALIFIED INDEPENDENT FILM PRODUCTION COMPANY, or which is a sole proprietor of OR A MEMBER OF A PARTNERSHIP WHICH IS a qualified film production company OR A QUALIFIED INDEPENDENT FILM

PRODUCTION COMPANY, and which is subject to tax under articles nine-A or twenty-two of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (c) of this section, to be computed as hereinafter provided.

S 4. Paragraph 2 of subdivision (a) of section 24 of the tax law, as amended by section 1 of part Y-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(2) The amount of the credit shall be the product (or pro rata share of the product, in the case of a member of a partnership) of thirty percent and the qualified production costs paid or incurred in the production of a qualified film, provided that: (I) the qualified production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film equal or exceed seventy-five percent of the production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at any film production facility within and without the state in the production of such qualified film, AND (II) EXCEPT WITH RESPECT TO A QUALIFIED INDEPENDENT FILM PRODUCTION COMPANY OR PILOT, AT LEAST TEN PERCENT OF THE TOTAL PRINCIPAL PHOTOGRAPHY SHOOTING DAYS SPENT IN THE PRODUCTION OF SUCH QUALIFIED FILM MUST BE SPENT AT A QUALIFIED FILM PRODUCTION FACILITY. However, if the qualified production costs (excluding post production costs) which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film is less than three million dollars, then the portion of the qualified production costs attributable to the use of tangible property or the performance of services in the production of such qualified film outside of a qualified film production facility shall be allowed only if the shooting days spent in New York outside of a film production facility in the production of such qualified film equal or exceed seventy-five percent of the total shooting days spent within and without New York outside of a film production facility in the production of such qualified film. The credit shall be allowed for the taxable year in which the production of such qualified film is completed. HOWEVER, IN THE CASE OF A QUALIFIED FILM THAT RECEIVES FUNDS FROM ADDITIONAL POOL 2, NO CREDIT SHALL BE CLAIMED BEFORE THE LATER OF (1) THE TAXABLE YEAR THE PRODUCTION OF THE QUALIFIED FILM IS COMPLETE, OR (2) THE TAXABLE YEAR IMMEDIATELY FOLLOWING THE ALLOCATION YEAR FOR WHICH THE FILM HAS BEEN ALLOCATED CREDIT BY THE GOVERNOR'S OFFICE FOR MOTION PICTURE AND TELEVISION DEVELOPMENT. If the amount of the credit is at least one million dollars but less than five million dollars, the credit shall be claimed over a two year period beginning in the FIRST taxable year in which the [production of the qualified film is completed] CREDIT MAY BE CLAIMED and in the next succeeding taxable year, with one-half of the amount of credit allowed being claimed in each year. If the amount of the credit is at least five million dollars, the credit shall be claimed over a three year period beginning in the FIRST taxable year in which the [production of the qualified film is completed] CREDIT MAY BE CLAIMED and in the next two succeeding taxable years, with one-third of the amount of the credit allowed being claimed in each year.

S 5. Subdivision (a) of section 24 of the tax law is amended by adding a new paragraph 4 to read as follows:

(4) NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SUBDIVISION, A QUALIFIED FILM PRODUCTION COMPANY OR QUALIFIED INDEPENDENT FILM

PRODUCTION COMPANY, THAT HAS APPLIED FOR CREDIT UNDER THE PROVISIONS OF THIS SECTION, AGREES AS A CONDITION FOR THE GRANTING OF THE CREDIT: (I) TO INCLUDE IN EACH QUALIFIED FILM DISTRIBUTED BY DVD, OR OTHER MEDIA FOR THE SECONDARY MARKET, A NEW YORK PROMOTIONAL VIDEO APPROVED BY THE GOVERNOR'S OFFICE OF MOTION PICTURE AND TELEVISION DEVELOPMENT OR TO INCLUDE IN THE END CREDITS OF EACH QUALIFIED FILM "FILMED WITH THE SUPPORT OF THE NEW YORK STATE GOVERNOR'S OFFICE OF MOTION PICTURE AND TELEVISION DEVELOPMENT" AND A LOGO PROVIDED BY THE GOVERNOR'S OFFICE OF MOTION PICTURE AND TELEVISION DEVELOPMENT, AND (II) TO CERTIFY THAT IT WILL PURCHASE TAXABLE TANGIBLE PROPERTY AND SERVICES, DEFINED AS QUALIFIED PRODUCTION COSTS PURSUANT TO PARAGRAPH ONE OF SUBDIVISION (B) OF THIS SECTION, ONLY FROM COMPANIES REGISTERED TO COLLECT AND REMIT STATE AND LOCAL SALES AND USE TAXES PURSUANT TO ARTICLES TWENTY-EIGHT AND TWENTY-NINE OF THIS CHAPTER.

S 6. Paragraph 1 of subdivision (b) of section 24 of the tax law, as added by section 1 of part P of chapter 60 of the laws of 2004, is amended to read as follows:

(1) "Qualified production costs" means production costs only to the extent such costs are attributable to the use of tangible property or the performance of services within the state directly and predominantly in the production (including pre-production and post production) of a qualified film, PROVIDED, HOWEVER, THAT QUALIFIED PRODUCTION COSTS SHALL NOT INCLUDE POST PRODUCTION COSTS UNLESS THE PORTION OF THE POST PRODUCTION COSTS PAID OR INCURRED THAT IS ATTRIBUTABLE TO THE USE OF TANGIBLE PROPERTY OR THE PERFORMANCE OF SERVICES IN NEW YORK IN THE PRODUCTION OF SUCH QUALIFIED FILM EQUALS OR EXCEEDS SEVENTY-FIVE PERCENT OF THE TOTAL POST PRODUCTION COSTS SPENT WITHIN AND WITHOUT NEW YORK IN THE PRODUCTION OF SUCH QUALIFIED FILM.

S 7. Paragraph 4 of subdivision (b) of section 24 of the tax law, as added by section 1 of part P of chapter 60 of the laws of 2004, is amended to read as follows:

(4) "Film production facility" shall mean a building and/or complex of buildings and their improvements and associated back-lot facilities in which films are or are intended to be regularly produced and which contain at least one sound stage, PROVIDED, HOWEVER, THAT AN ARMORY OWNED BY THE STATE OR CITY OF NEW YORK LOCATED IN THE CITY OF NEW YORK SHALL NOT BE CONSIDERED TO BE A "FILM PRODUCTION FACILITY" UNLESS IT MEETS THE CRITERIA CONTAINED IN PARAGRAPH FIVE OF THIS SUBDIVISION OR UNLESS SUCH FACILITY IS USED BY A QUALIFIED INDEPENDENT FILM PRODUCTION COMPANY.

S 8. Paragraph 5 of subdivision (b) of section 24 of the tax law, as added by section 1 of part P of chapter 60 of the laws of 2004, is amended to read as follows:

(5) "Qualified film production facility" shall mean a film production facility in the state, which contains at least one sound stage having a minimum of seven thousand square feet of contiguous production space, PROVIDED, HOWEVER, THAT EXCEPT WITH RESPECT TO A QUALIFIED FILM PRODUCTION FACILITY BEING USED BY A QUALIFIED INDEPENDENT FILM PRODUCTION COMPANY: (I) A FILM PRODUCTION FACILITY IN THE CITY OF NEW YORK MUST CONTAIN AT LEAST ONE SOUND STAGE HAVING A MINIMUM OF SEVEN THOUSAND SQUARE FEET OF CONTIGUOUS PRODUCTION SPACE THAT IS SOUND PROOF WITH A NOISE CRITERIA ("NC") OF 30 OR BETTER, HAS SUFFICIENT HEATING AND AIR CONDITIONING FOR SHOOTING WITHOUT THE NEED FOR SUPPLEMENTAL UNITS, INCORPORATES A PERMANENT GRID AND SUFFICIENT BUILT-IN ELECTRIC SERVICE FOR SHOOTING WITHOUT THE NEED FOR GENERATORS, AND IS COLUMN-FREE WITH A CLEAR HEIGHT OF AT LEAST SIXTEEN FEET UNDER THE PERMANENT GRID; AND (II)

AN ARMORY OWNED BY THE STATE OR CITY OF NEW YORK LOCATED IN THE CITY OF NEW YORK THAT DOES NOT SATISFY THE CRITERIA OF SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE TREATED AS A QUALIFIED FILM PRODUCTION FACILITY UPON CERTIFICATION BY THE GOVERNOR'S OFFICE OF MOTION PICTURE AND TELEVISION DEVELOPMENT OF A PETITION SUBMITTED TO THAT OFFICE BY A QUALIFIED FILM PRODUCTION COMPANY ESTABLISHING THAT NO QUALIFIED FILM PRODUCTION FACILITY IS AVAILABLE IN THE CITY OF NEW YORK THAT HAS STAGE SPACE AVAILABLE FOR SHOOTING SUCH COMPANY'S FILM. SUCH PETITION SHALL BE SUBMITTED NO LATER THAN NINETY DAYS PRIOR TO THE START OF PRINCIPAL PHOTOGRAPHY FOR THE QUALIFIED FILM AND THE GOVERNOR'S OFFICE OF MOTION PICTURE AND TELEVISION DEVELOPMENT SHALL HAVE TEN DAYS TO CERTIFY OR REJECT THE PETITION. A STAGE WILL BE DEEMED UNAVAILABLE IF CONSIDERATION HAS BEEN PAID FOR ITS USE OR SUCH STAGE IS CURRENTLY UNDER AN AGREEMENT WITH AN OPTION FOR USE AND, IN EITHER CIRCUMSTANCE, SUCH PERIOD OF USE INCLUDES THE PETITIONER'S ESTIMATED START DATE OF PRINCIPAL PHOTOGRAPHY.

S 9. Subdivision (b) of section 24 of the tax law is amended by adding a new paragraph 7 to read as follows:

(7) "QUALIFIED INDEPENDENT FILM PRODUCTION COMPANY" IS A CORPORATION, PARTNERSHIP, LIMITED PARTNERSHIP, OR OTHER ENTITY OR INDIVIDUAL, THAT OR WHO (I) IS PRINCIPALLY ENGAGED IN THE PRODUCTION OF A QUALIFIED FILM WITH A MAXIMUM BUDGET OF FIFTEEN MILLION DOLLARS, AND (II) CONTROLS THE QUALIFIED FILM DURING PRODUCTION, AND (III) EITHER IS NOT A PUBLICLY TRADED ENTITY, OR NO MORE THAN FIVE PERCENT OF THE BENEFICIAL OWNERSHIP OF WHICH IS OWNED, DIRECTLY OR INDIRECTLY, BY A PUBLICLY TRADED ENTITY.

S 10. Section 24 of the tax law is amended by adding a new subdivision (d) to read as follows:

(D) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER, EMPLOYEES AND OFFICERS OF THE GOVERNOR'S OFFICE OF MOTION PICTURE AND TELEVISION DEVELOPMENT AND THE DEPARTMENT SHALL BE ALLOWED AND ARE DIRECTED TO SHARE AND EXCHANGE INFORMATION REGARDING THE CREDITS APPLIED FOR, ALLOWED, OR CLAIMED PURSUANT TO THIS SECTION AND TAXPAYERS WHO ARE APPLYING FOR CREDITS OR WHO ARE CLAIMING CREDITS, INCLUDING INFORMATION CONTAINED IN OR DERIVED FROM CREDIT CLAIM FORMS SUBMITTED TO THE DEPARTMENT AND APPLICATIONS FOR CREDIT SUBMITTED TO THE GOVERNOR'S OFFICE OF MOTION PICTURE AND TELEVISION DEVELOPMENT.

S 11. Section 9 of part P of chapter 60 of the laws of 2004 amending the tax law relating to the empire state film production credit, as amended by section 5 of part WW-1 of chapter 57 of the laws of 2008, is amended to read as follows:

S 9. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2004, with respect to "qualified production costs" paid or incurred on or after such effective date, providing final applications are approved on or after the effective date, regardless of whether the initial application relating to such qualified film was first submitted before such date, [provided further that this act shall expire and be deemed repealed January 1, 2014, provided further that the expiration and repeal of this act shall not affect the carry over of any credit allowed pursuant to this act and, subsequent to the expiration and repeal of this act, such carry over credits shall be allowed as provided by and pursuant to the provisions of this act, and] provided further that the IMB credit for energy taxes under subsection (t-l) of section 606 of the tax law contained in section three of this act shall expire on the same date as provided in subdivision (a) of section 49 of part Y of chapter 63 of the laws of 2000.

S 12. This act shall take effect immediately; provided that sections one through nine of this act shall apply to applications for credit awarded under additional pool 2 authorized by section two of this act.

PART W

Section 1. The economic development law is amended by adding a new article 17 to read as follows:

ARTICLE 17

EXCELSIOR JOBS PROGRAM ACT

SECTION 350. SHORT TITLE.
351. STATEMENT OF LEGISLATIVE FINDINGS AND DECLARATION.
352. DEFINITIONS.
353. ELIGIBILITY CRITERIA.
354. APPLICATION AND APPROVAL PROCESS.
355. EXCELSIOR JOBS PROGRAM CREDIT.
356. POWERS AND DUTIES OF THE COMMISSIONER.
357. MAINTENANCE OF RECORDS.
358. REPORTING.
359. CAP ON TAX CREDIT.

S 350. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "EXCELSIOR JOBS PROGRAM ACT".

S 351. STATEMENT OF LEGISLATIVE FINDINGS AND DECLARATION. IT IS HEREBY FOUND AND DECLARED THAT NEW YORK STATE NEEDS, AS A MATTER OF PUBLIC POLICY, TO CREATE COMPETITIVE FINANCIAL INCENTIVES FOR BUSINESSES TO CREATE JOBS IN THE NEW ECONOMY. THE EXCELSIOR JOBS PROGRAM ACT IS CREATED TO SUPPORT THE GROWTH OF THE STATE'S TRADITIONAL ECONOMIC PILLARS INCLUDING THE MANUFACTURING AND FINANCIAL INDUSTRIES AND TO ENSURE THAT NEW YORK EMERGES AS THE LEADER IN THE KNOWLEDGE, TECHNOLOGY AND INNOVATION BASED ECONOMY. THE PROGRAM WILL ENCOURAGE THE EXPANSION IN AND RELOCATION TO NEW YORK OF BUSINESSES IN GROWTH INDUSTRIES SUCH AS CLEAN-TECH, BROADBAND, INFORMATION SYSTEMS, RENEWABLE ENERGY AND BIOTECHNOLOGY.

THIS LEGISLATION CREATES THE EXCELSIOR JOBS PROGRAM CREDIT, WHICH HAS THREE COMPONENTS: THE EXCELSIOR JOBS TAX CREDIT, THE EXCELSIOR INVESTMENT TAX CREDIT, AND THE EXCELSIOR RESEARCH AND DEVELOPMENT TAX CREDIT. THESE CREDITS ARE DESIGNED TO PROMOTE BUSINESS EXPANSION IN NEW YORK STATE AND INCREASE JOBS IN THE NEW ECONOMY. AT THE SAME TIME, THE PROGRAM PROTECTS STATE TAXPAYERS' DOLLARS BY ENSURING THAT NEW YORK PROVIDES TAX BENEFITS ONLY TO BUSINESSES THAT HAVE CREATED THE PROMISED JOBS.

S 352. DEFINITIONS. 1. "CERTIFICATE OF ELIGIBILITY" MEANS THE DOCUMENT ISSUED BY THE DEPARTMENT TO AN APPLICANT THAT HAS COMPLETED AN APPLICATION TO BE ADMITTED INTO THE EXCELSIOR JOBS PROGRAM AND HAS BEEN ACCEPTED INTO THE PROGRAM BY THE DEPARTMENT.

2. "CERTIFICATE OF TAX CREDIT" MEANS THE DOCUMENT ISSUED TO A PARTICIPANT BY THE DEPARTMENT, AFTER THE DEPARTMENT HAS VERIFIED THAT THE PARTICIPANT HAS CREATED ITS PROJECTED NUMBER OF NET NEW JOBS IN NEW YORK STATE AND HAS MET THE OTHER ELIGIBILITY CRITERIA IN THIS ARTICLE. THE CERTIFICATE SHALL BE ISSUED ANNUALLY IF SUCH CRITERIA ARE SATISFIED AND SHALL SPECIFY THE EXACT AMOUNT OF EACH OF THE TAX CREDIT COMPONENTS UNDER THIS ARTICLE THAT A PARTICIPANT MAY CLAIM, PURSUANT TO SECTION THREE HUNDRED FIFTY-FIVE OF THIS ARTICLE, AND SHALL SPECIFY THE TAXABLE YEAR IN WHICH SUCH CREDIT MAY BE CLAIMED.

3. "FINANCIAL SERVICES DATA CENTERS OR FINANCIAL SERVICES CUSTOMER SERVICE CENTERS" MEANS OPERATIONS THAT MANAGE THE DATA OR ACCOUNTS OF

EXISTING CUSTOMERS OF FINANCIAL INSTITUTIONS, INCLUDING BANKS, OTHER LENDERS, SECURITIES AND COMMODITIES BROKERS AND DEALERS, INVESTMENT BANKS, PORTFOLIO MANAGERS, TRUST OFFICES, AND INSURANCE COMPANIES.

4. "INTERNET PUBLISHING" MEANS PUBLISHING CONTENT EXCLUSIVELY ON THE INTERNET.

5. "MANUFACTURING" MEANS THE PROCESS OF WORKING RAW MATERIALS INTO WARES SUITABLE FOR USE OR WHICH GIVES NEW SHAPES, NEW QUALITY OR NEW COMBINATIONS TO MATTER WHICH HAS ALREADY GONE THROUGH SOME ARTIFICIAL PROCESS BY THE USE OF MACHINERY, TOOLS, APPLIANCES, OR OTHER SIMILAR EQUIPMENT. "MANUFACTURING" DOES NOT INCLUDE AN OPERATION THAT INVOLVES ONLY THE ASSEMBLY OF COMPONENTS, OTHER THAN THE ASSEMBLY OF AUTOMOBILES.

6. "NET NEW JOBS" MEANS JOBS CREATED IN THIS STATE THAT:

(A) ARE NEW TO THE STATE;

(B) HAVE NOT BEEN TRANSFERRED FROM ANOTHER LOCATION IN THIS STATE OR FROM A RELATED BUSINESS ENTITY IN THIS STATE;

(C) ARE EITHER FULL-TIME JOBS OR EQUIVALENT TO A FULL-TIME JOB REQUIRING AT LEAST THIRTY-FIVE HOURS PER WEEK; AND

(D) ARE FILLED FOR MORE THAN SIX MONTHS.

7. "PARTICIPANT" MEANS A BUSINESS ENTITY THAT:

(A) HAS COMPLETED AN APPLICATION PRESCRIBED BY THE DEPARTMENT TO BE ADMITTED INTO THE PROGRAM;

(B) HAS BEEN ISSUED A CERTIFICATE OF ELIGIBILITY BY THE DEPARTMENT;

(C) HAS DEMONSTRATED THAT IT MEETS THE ELIGIBILITY CRITERIA IN SECTION THREE HUNDRED FIFTY-THREE AND SUBDIVISION TWO OF SECTION THREE HUNDRED FIFTY-FOUR OF THIS ARTICLE; AND

(D) HAS BEEN CERTIFIED AS A PARTICIPANT BY THE COMMISSIONER.

8. "PRELIMINARY SCHEDULE OF BENEFITS" MEANS THE MAXIMUM AGGREGATE AMOUNT OF EACH COMPONENT OF THE TAX CREDIT THAT A PARTICIPANT IN THE EXCELSIOR JOBS PROGRAM IS ELIGIBLE TO RECEIVE PURSUANT TO THIS ARTICLE. THE SCHEDULE SHALL INDICATE THE ANNUAL AMOUNT OF EACH COMPONENT OF THE CREDIT A PARTICIPANT MAY CLAIM IN EACH OF ITS FIVE YEARS OF ELIGIBILITY. THE PRELIMINARY SCHEDULE OF BENEFITS SHALL BE ISSUED BY THE DEPARTMENT WHEN THE DEPARTMENT APPROVES THE APPLICATION FOR ADMISSION INTO THE PROGRAM. THE COMMISSIONER MAY AMEND THAT SCHEDULE, PROVIDED THAT THE COMMISSIONER COMPLIES WITH THE CREDIT CAPS IN SECTION THREE HUNDRED FIFTY-NINE OF THIS ARTICLE.

9. "QUALIFIED INVESTMENT" MEANS AN INVESTMENT IN TANGIBLE PROPERTY (INCLUDING A BUILDING OR A STRUCTURAL COMPONENT OF A BUILDING) OWNED BY A BUSINESS ENTERPRISE WHICH:

(A) IS DEPRECIABLE PURSUANT TO SECTION ONE HUNDRED SIXTY-SEVEN OF THE INTERNAL REVENUE CODE;

(B) HAS A USEFUL LIFE OF FOUR YEARS OR MORE;

(C) IS ACQUIRED BY PURCHASE AS DEFINED IN SECTION ONE HUNDRED SEVENTY-NINE (D) OF THE INTERNAL REVENUE CODE;

(D) HAS A SITUS IN THIS STATE; AND

(E) IS PLACED IN SERVICE IN THE STATE ON OR AFTER THE DATE THE CERTIFICATE OF ELIGIBILITY IS ISSUED TO THE BUSINESS ENTERPRISE.

10. "RESEARCH AND DEVELOPMENT EXPENDITURES" MEAN THE EXPENSES OF THE BUSINESS ENTERPRISE THAT ARE QUALIFIED RESEARCH EXPENSES UNDER THE FEDERAL RESEARCH AND DEVELOPMENT CREDIT UNDER SECTION FORTY-ONE OF THE INTERNAL REVENUE CODE AND ARE ATTRIBUTABLE TO ACTIVITIES CONDUCTED IN THE STATE.

11. "SCIENTIFIC RESEARCH AND DEVELOPMENT" MEANS CONDUCTING RESEARCH AND EXPERIMENTAL DEVELOPMENT IN THE PHYSICAL, ENGINEERING, AND LIFE SCIENCES, INCLUDING BUT NOT LIMITED TO AGRICULTURE, ELECTRONICS, ENVIRONMENTAL, BIOLOGY, BOTANY, BIOTECHNOLOGY, COMPUTERS, CHEMISTRY, FOOD,

FISHERIES, FORESTS, GEOLOGY, HEALTH, MATHEMATICS, MEDICINE, OCEANOGRAPHY, PHARMACY, PHYSICS, VETERINARY, AND OTHER ALLIED SUBJECTS. FOR THE PURPOSES OF THIS ARTICLE, SCIENTIFIC RESEARCH AND DEVELOPMENT DOES NOT INCLUDE MEDICAL OR VETERINARY LABORATORY TESTING FACILITIES.

12. "SOFTWARE DEVELOPMENT" MEANS THE CREATION OF CODED COMPUTER INSTRUCTIONS.

S 353. ELIGIBILITY CRITERIA. 1. TO BE A PARTICIPANT IN THE EXCELSIOR JOBS PROGRAM, A BUSINESS ENTITY SHALL OPERATE PREDOMINANTLY:

(A) AS A FINANCIAL SERVICES DATA CENTER OR A FINANCIAL SERVICES CUSTOMER SERVICE CENTER;

(B) IN INTERNET PUBLISHING;

(C) IN MANUFACTURING;

(D) IN SOFTWARE DEVELOPMENT;

(E) IN SCIENTIFIC RESEARCH AND DEVELOPMENT; OR

(F) IN AN INDUSTRY WITH SIGNIFICANT POTENTIAL FOR PRIVATE-SECTOR ECONOMIC GROWTH AND DEVELOPMENT IN NEW YORK STATE AS ESTABLISHED BY THE COMMISSIONER IN REGULATIONS PROMULGATED PURSUANT TO THIS ARTICLE.

2. A NOT-FOR-PROFIT BUSINESS ENTITY, A BUSINESS ENTITY WHOSE PRIMARY FUNCTION IS THE PROVISION OF SERVICES INCLUDING PERSONAL SERVICES, BUSINESS SERVICES, OR THE PROVISION OF UTILITIES, AND A BUSINESS ENTITY ENGAGED PREDOMINANTLY IN THE RETAIL OR ENTERTAINMENT INDUSTRY, ARE NOT ELIGIBLE TO RECEIVE THE TAX CREDIT DESCRIBED IN THIS ARTICLE.

3. A BUSINESS ENTITY MUST BE IN SUBSTANTIAL COMPLIANCE WITH ALL WORKER PROTECTION AND ENVIRONMENTAL LAWS AND REGULATIONS. IN ADDITION, A BUSINESS ENTITY MAY NOT OWE PAST DUE NEW YORK STATE TAXES OR LOCAL PROPERTY TAXES.

4. A BUSINESS ENTITY MUST CREATE THE NET NEW JOBS THAT IT PROJECTED IN ITS APPLICATION FOR ADMISSION INTO THE PROGRAM AND THEN RETAIN THOSE JOBS IN SUBSEQUENT YEARS IN ORDER TO PARTICIPATE IN THE PROGRAM.

S 354. APPLICATION AND APPROVAL PROCESS. 1. A BUSINESS ENTERPRISE MUST SUBMIT A COMPLETED APPLICATION AS PRESCRIBED BY THE COMMISSIONER.

2. AS PART OF SUCH APPLICATION, EACH BUSINESS ENTERPRISE MUST:

(A) AGREE TO ALLOW THE DEPARTMENT OF TAXATION AND FINANCE TO SHARE ITS TAX INFORMATION WITH THE DEPARTMENT. HOWEVER, ANY INFORMATION SHARED AS A RESULT OF THIS AGREEMENT SHALL NOT BE AVAILABLE FOR DISCLOSURE OR INSPECTION UNDER THE STATE FREEDOM OF INFORMATION LAW.

(B) ALLOW THE DEPARTMENT AND ITS AGENTS ACCESS TO ANY AND ALL BOOKS AND RECORDS THE DEPARTMENT MAY REQUIRE TO MONITOR COMPLIANCE.

(C) VOLUNTARILY DECERTIFY FROM THE EMPIRE ZONES PROGRAM IF ADMITTED INTO THE EXCELSIOR JOBS PROGRAM, EFFECTIVE FOR THE FIRST TAXABLE YEAR THAT THE BUSINESS ENTERPRISE MAY CLAIM THE EXCELSIOR JOBS PROGRAM CREDIT AND FOR ALL SUBSEQUENT TAXABLE YEARS.

(D) SUBMIT THE PRIOR THREE YEARS OF FEDERAL AND NEW YORK STATE INCOME OR FRANCHISE TAX RETURNS AND UNEMPLOYMENT INSURANCE QUARTERLY RETURNS TO THE DEPARTMENT. IF THE BUSINESS ENTITY HAS BEEN SUBJECT TO TAX IN THIS STATE FOR LESS THAN THREE YEARS, IT MUST SUBMIT RETURNS FOR ALL THE YEARS IT HAS BEEN SUBJECT TO TAX.

(E) PROVIDE THE FOLLOWING INFORMATION TO THE DEPARTMENT:

(I) A PLAN FOR NO MORE THAN TWO YEARS, OUTLINING THE CREATION OF AT LEAST FIFTY NET NEW JOBS IN NEW YORK, INCLUDING DETAILS ON JOB TITLES AND EXPECTED SALARIES FOR NEW POSITIONS CREATED, AND A PLAN FOR THE SUBSEQUENT FIVE YEARS, OUTLINING ANY ADDITIONAL NET NEW JOBS (AND THE DETAILS ON JOB TITLES AND EXPECTED SALARIES) THAT IT PLANS TO CREATE IN THE FIVE YEARS AFTER THE BUSINESS ENTERPRISE RECEIVES ITS FIRST CERTIFICATE OF TAX CREDIT;

(II) THE AMOUNT AND DESCRIPTION OF PROJECTED QUALIFIED INVESTMENTS THAT IT PLANS TO MAKE BETWEEN THE TIME IT RECEIVES ITS CERTIFICATE OF ELIGIBILITY AND THE LAST YEAR IT WOULD BE ALLOWED TO CLAIM THE TAX CREDIT; AND

(III) AN ESTIMATE OF THE PORTION OF ANY FEDERAL RESEARCH AND DEVELOPMENT TAX CREDITS, ATTRIBUTABLE TO RESEARCH AND DEVELOPMENT ACTIVITIES CONDUCTED IN NEW YORK STATE, THAT IT ANTICIPATES CLAIMING FOR THE YEARS IT EXPECTS TO CLAIM THE STATE CREDIT.

(F) PROVIDE A CLEAR AND DETAILED PRESENTATION OF ALL RELATED PERSONS TO THE APPLICANT, AS THE TERM "RELATED PERSON" IS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, TO ASSURE THE DEPARTMENT THAT JOBS ARE NOT BEING SHIFTED WITHIN THE STATE.

(G) SUBMIT THE EMPLOYER IDENTIFICATION OR SOCIAL SECURITY NUMBERS FOR ALL RELATED PERSONS TO THE APPLICANT, AS THE TERM "RELATED PERSON" IS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, INCLUDING THOSE OF ANY MEMBERS OF A LIMITED LIABILITY COMPANY OR PARTNERS IN A PARTNERSHIP.

(H) CERTIFY, UNDER PENALTY OF PERJURY, THAT IT IS IN SUBSTANTIAL COMPLIANCE WITH ALL ENVIRONMENTAL, WORKER PROTECTION, AND LOCAL, STATE, AND FEDERAL TAX LAWS.

3. AFTER REVIEWING A BUSINESS ENTERPRISE'S COMPLETED APPLICATION AND DETERMINING THAT THE BUSINESS ENTERPRISE WILL MEET THE CONDITIONS SET FORTH IN SUBDIVISION TWO OF THIS SECTION, THE DEPARTMENT MAY ADMIT THE APPLICANT INTO THE PROGRAM AND PROVIDE THE APPLICANT WITH A CERTIFICATE OF ELIGIBILITY AND A PRELIMINARY SCHEDULE OF BENEFITS BY YEAR BASED ON THE APPLICANT'S PROJECTIONS AS SET FORTH IN ITS APPLICATION. THIS PRELIMINARY SCHEDULE OF BENEFITS DELINEATES THE MAXIMUM POSSIBLE BENEFITS AN APPLICANT MAY RECEIVE.

4. RECEIPT OF TAX BENEFITS. IN ORDER TO BECOME A PARTICIPANT IN THE PROGRAM, AN APPLICANT MUST MEET THE JOB PROJECTIONS SPECIFIED IN ITS APPLICATION WITHIN TWENTY-FOUR MONTHS OF THE DATE OF THE ISSUANCE OF ITS CERTIFICATE OF ELIGIBILITY. AN APPLICANT THAT MEETS ITS JOB PROJECTIONS WITHIN THAT TWENTY-FOUR MONTH PERIOD MUST SUBMIT PROOF OF THAT JOB CREATION TO THE DEPARTMENT AND PROOF OF ITS ACTUAL EXPENDITURES AND OTHER REQUIRED INFORMATION AS THE COMMISSIONER MAY PRESCRIBE RELATING TO THE EXCELSIOR JOBS PROGRAM CREDIT. AFTER REVIEWING SUCH PROOF, THE DEPARTMENT SHALL CERTIFY THE APPLICANT AS A PARTICIPANT AND ISSUE TO THAT PARTICIPANT A CERTIFICATE OF TAX CREDIT FOR ONE TAXABLE YEAR. TO RECEIVE A CERTIFICATE OF TAX CREDIT FOR SUBSEQUENT TAXABLE YEARS, THE PARTICIPANT MUST SUBMIT TO THE DEPARTMENT A PERFORMANCE REPORT REQUIRED BY SECTION THREE HUNDRED FIFTY-EIGHT OF THIS ARTICLE, PROOF THAT IT HAS CREATED AND RETAINED THE NET NEW JOBS, PROOF OF ITS ACTUAL EXPENDITURES FOR QUALIFIED INVESTMENTS CONTAINED IN ITS APPLICATION, AND OTHER REQUIRED INFORMATION AS THE COMMISSIONER MAY PRESCRIBE RELATING TO THE EXCELSIOR JOBS PROGRAM CREDIT. A PARTICIPANT'S INCREASE IN EMPLOYMENT, QUALIFIED INVESTMENT, OR FEDERAL RESEARCH AND DEVELOPMENT TAX CREDIT ATTRIBUTABLE TO RESEARCH AND DEVELOPMENT ACTIVITIES IN NEW YORK STATE ABOVE ITS PROJECTIONS LISTED IN ITS APPLICATION SHALL NOT RESULT IN AN INCREASE IN TAX BENEFITS UNDER THIS ARTICLE. HOWEVER, IF THE PARTICIPANT'S EXPENDITURES ARE LESS THAN THE ESTIMATED AMOUNTS, THE CREDIT SHALL BE LESS THAN THE ESTIMATE. IF AN APPLICANT FAILS TO CREATE ITS PROJECTED NUMBER OF NET NEW JOBS IN THE FIRST TWENTY-FOUR MONTHS AFTER BEING ADMITTED TO THE PROGRAM, SUCH APPLICANT SHALL NOT BE CERTIFIED AS A PARTICIPANT.

5. A PARTICIPANT MAY CLAIM TAX BENEFITS COMMENCING IN THE FIRST TAXABLE YEAR THAT THE BUSINESS ENTERPRISE RECEIVES A CERTIFICATE OF TAX CREDIT OR THE FIRST TAXABLE YEAR LISTED ON ITS PRELIMINARY SCHEDULE OF BENEFITS, WHICHEVER IS LATER. A PARTICIPANT MAY CLAIM SUCH BENEFITS FOR THE NEXT FOUR CONSECUTIVE TAXABLE YEARS, PROVIDED THAT THE PARTICIPANT DEMONSTRATES TO THE DEPARTMENT THAT IT CONTINUES TO SATISFY THE ELIGIBILITY CRITERIA SPECIFIED IN SECTION THREE HUNDRED FIFTY-THREE OF THIS ARTICLE AND SUBDIVISION TWO OF THIS SECTION IN EACH OF THOSE TAXABLE YEARS.

S 355. EXCELSIOR JOBS PROGRAM CREDIT. 1. EXCELSIOR JOBS TAX CREDIT COMPONENT. A PARTICIPANT IN THE EXCELSIOR JOBS PROGRAM SHALL BE ELIGIBLE TO CLAIM A CREDIT EQUAL TO AT LEAST TWO THOUSAND FIVE HUNDRED DOLLARS BUT NOT MORE THAN TEN THOUSAND DOLLARS FOR EACH NET NEW JOB IT CREATES IN NEW YORK STATE. THE AMOUNT OF SUCH CREDIT PER JOB SHALL BE ESTABLISHED IN THE SOLE DISCRETION OF THE COMMISSIONER AND SHALL BE BASED ON CRITERIA INCLUDING SALARY AND BENEFIT LEVELS AND LOCATION IN A CENSUS TRACT DESIGNATED AS DISTRESSED BY THE COMMISSIONER.

2. EXCELSIOR INVESTMENT TAX CREDIT COMPONENT. A PARTICIPANT IN THE EXCELSIOR JOBS PROGRAM SHALL BE ELIGIBLE TO CLAIM A CREDIT ON QUALIFIED INVESTMENTS MADE DURING THE TAXABLE YEAR. THE CREDIT SHALL BE EQUAL TO TWO PERCENT OF THE FEDERAL COST OR OTHER BASIS OF THE QUALIFIED INVESTMENT. A PARTICIPANT MAY NOT CLAIM BOTH THE EXCELSIOR INVESTMENT TAX CREDIT AND THE INVESTMENT TAX CREDIT SET FORTH IN SUBDIVISION TWELVE OF SECTION TWO HUNDRED TEN, SUBSECTION (A) OF SECTION SIX HUNDRED SIX, SUBSECTION (I) OF SECTION FOURTEEN HUNDRED FIFTY-SIX, OR SUBSECTION (Q) OF SECTION FIFTEEN HUNDRED ELEVEN OF THE TAX LAW FOR THE SAME PROPERTY IN ANY TAXABLE YEAR. IN ADDITION, A TAXPAYER WHO OR WHICH IS QUALIFIED TO CLAIM THE EXCELSIOR INVESTMENT TAX CREDIT COMPONENT AND IS ALSO QUALIFIED TO CLAIM THE BROWNFIELD TANGIBLE PROPERTY CREDIT COMPONENT UNDER SECTION TWENTY-ONE OF THE TAX LAW, AS ADDED BY CHAPTER ONE OF THE LAWS OF TWO THOUSAND THREE, MAY CLAIM EITHER THE EXCELSIOR INVESTMENT TAX CREDIT COMPONENT OR SUCH TANGIBLE PROPERTY CREDIT COMPONENT, BUT NOT BOTH WITH REGARD TO A PARTICULAR PIECE OF PROPERTY. A CREDIT MAY NOT BE CLAIMED UNTIL A BUSINESS ENTERPRISE HAS RECEIVED A CERTIFICATE OF TAX CREDIT, PROVIDED THAT QUALIFIED INVESTMENTS MADE ON OR AFTER THE ISSUANCE OF THE CERTIFICATE OF ELIGIBILITY BUT BEFORE THE ISSUANCE OF THE CERTIFICATE OF TAX CREDIT TO THE BUSINESS ENTERPRISE, MAY BE CLAIMED IN THE FIRST TAXABLE YEAR FOR WHICH THE BUSINESS ENTERPRISE IS ALLOWED TO CLAIM THE CREDIT. EXPENSES INCURRED PRIOR TO THE DATE THE CERTIFICATE OF ELIGIBILITY IS ISSUED ARE NOT ELIGIBLE TO BE INCLUDED IN THE CALCULATION OF THE CREDIT.

3. EXCELSIOR RESEARCH AND DEVELOPMENT TAX CREDIT COMPONENT. A PARTICIPANT IN THE EXCELSIOR JOBS PROGRAM SHALL BE ELIGIBLE TO CLAIM A CREDIT EQUAL TO TEN PERCENT OF THE PORTION OF THE PARTICIPANT'S FEDERAL RESEARCH AND DEVELOPMENT TAX CREDIT THAT RELATES TO THE PARTICIPANT'S RESEARCH AND DEVELOPMENT EXPENDITURES DURING THE TAXABLE YEAR.

4. REFUNDABILITY OF CREDITS. THE TAX CREDIT COMPONENTS ESTABLISHED IN THIS SECTION SHALL BE REFUNDABLE AS PROVIDED IN THE TAX LAW. IF A PARTICIPANT FAILS TO SATISFY THE ELIGIBILITY CRITERIA IN ANY ONE YEAR, IT WILL LOSE THE ABILITY TO CLAIM CREDIT FOR THAT YEAR. THE EVENT OF SUCH FAILURE SHALL NOT EXTEND THE ORIGINAL FIVE-YEAR ELIGIBILITY PERIOD.

5. CLAIM OF TAX CREDIT. THE BUSINESS ENTERPRISE SHALL BE ALLOWED TO CLAIM THE CREDIT AS PRESCRIBED IN SECTION THIRTY-ONE OF THE TAX LAW.

S 356. POWERS AND DUTIES OF THE COMMISSIONER. 1. THE COMMISSIONER SHALL PROMULGATE REGULATIONS ESTABLISHING AN APPLICATION PROCESS AND SELECTION CRITERIA, THAT WILL BE APPLIED CONSISTENT WITH THE PURPOSES OF

THIS ARTICLE, SO AS NOT TO EXCEED THE ANNUAL CAP ON TAX CREDITS SET FORTH IN SECTION THREE HUNDRED FIFTY-NINE OF THIS ARTICLE WHICH, NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THE STATE ADMINISTRATIVE PROCEDURE ACT, MAY BE ADOPTED ON AN EMERGENCY BASIS.

2. THE COMMISSIONER SHALL, IN CONSULTATION WITH THE DEPARTMENT OF TAXATION AND FINANCE, DEVELOP A CERTIFICATE OF TAX CREDIT THAT SHALL BE ISSUED BY THE COMMISSIONER TO THOSE PARTICIPANTS. PARTICIPANTS MUST INCLUDE THE CERTIFICATE OF TAX CREDIT WITH THEIR TAX RETURN TO RECEIVE ANY TAX BENEFITS UNDER THIS ARTICLE.

3. THE COMMISSIONER SHALL SOLELY DETERMINE THE ELIGIBILITY OF ANY APPLICANT APPLYING FOR ENTRY INTO THE PROGRAM AND SHALL REMOVE ANY PARTICIPANT FROM THE PROGRAM FOR FAILING TO MEET ANY OF THE REQUIREMENTS SET FORTH IN SUBDIVISION TWO OF SECTION THREE HUNDRED FIFTY-FOUR OF THIS ARTICLE.

S 357. MAINTENANCE OF RECORDS. EACH PARTICIPANT SHALL KEEP ALL RELEVANT RECORDS FOR THEIR DURATION OF PROGRAM PARTICIPATION PLUS THREE YEARS.

S 358. REPORTING. 1. EACH PARTICIPANT MUST SUBMIT A PERFORMANCE REPORT ANNUALLY, IN SUCH FORM AS THE COMMISSIONER MAY REQUIRE, WITHIN THIRTY DAYS OF THE END OF THEIR TAXABLE YEAR.

2. THE COMMISSIONER SHALL ANNUALLY PREPARE A PROGRAM REPORT FOR POSTING ON THE DEPARTMENT'S WEB SITE BY DECEMBER THIRTY-FIRST. THE FIRST REPORT WILL BE DUE DECEMBER THIRTY-FIRST, TWO THOUSAND ELEVEN. SUCH REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING: NUMBER OF APPLICANTS; NUMBER OF PARTICIPANTS APPROVED; NAMES OF PARTICIPANTS; TOTAL AMOUNT OF BENEFITS CERTIFIED; BENEFITS RECEIVED PER PARTICIPANT; TOTAL NUMBER OF NET NEW JOBS CREATED; NUMBER OF NET NEW JOBS CREATED PER PARTICIPANT; AGGREGATE NEW INVESTMENT IN THE STATE; NEW INVESTMENT PER PARTICIPANT; AND SUCH OTHER INFORMATION AS THE COMMISSIONER DETERMINES.

S 359. CAP ON TAX CREDIT. THE TOTAL AMOUNT OF TAX CREDITS LISTED ON CERTIFICATES OF TAX CREDIT ISSUED BY THE COMMISSIONER FOR ANY TAXABLE YEAR MAY NOT EXCEED THE LIMITATIONS SET FORTH IN THIS SECTION. ANY AMOUNT OF TAX CREDITS NOT AWARDED FOR A PARTICULAR TAXABLE YEAR MAY NOT BE USED BY THE COMMISSIONER TO AWARD TAX CREDITS IN ANOTHER TAXABLE YEAR.

CREDIT COMPONENTS IN THE AGGREGATE SHALL NOT EXCEED:	WITH RESPECT TO TAXABLE YEARS BEGINNING IN:
$ 50 MILLION	2011
$ 100 MILLION	2012
$ 150 MILLION	2013
$ 200 MILLION	2014
$ 250 MILLION	2015
$ 200 MILLION	2016
$ 150 MILLION	2017
$ 100 MILLION	2018
$ 50 MILLION	2019

S 2. The tax law is amended by adding a new section 31 to read as follows:

S 31. EXCELSIOR JOBS PROGRAM TAX CREDIT. (A) GENERAL. A TAXPAYER SUBJECT TO TAX UNDER ARTICLE NINE-A, TWENTY-TWO, THIRTY-TWO OR THIRTY-THREE OF THIS CHAPTER SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX, PURSUANT TO THE PROVISIONS REFERENCED IN SUBDIVISION (G) OF THIS

SECTION. THE AMOUNT OF THE CREDIT, ALLOWABLE FOR UP TO FIVE CONSECUTIVE TAXABLE YEARS, IS THE SUM OF THE FOLLOWING THREE CREDIT COMPONENTS:

(1) THE EXCELSIOR JOBS TAX CREDIT;

(2) THE EXCELSIOR INVESTMENT TAX CREDIT; AND

(3) THE EXCELSIOR RESEARCH AND DEVELOPMENT TAX CREDIT.

(B) TO BE ELIGIBLE FOR THE EXCELSIOR JOBS PROGRAM TAX CREDIT, THE TAXPAYER SHALL HAVE BEEN ISSUED A "CERTIFICATE OF TAX CREDIT" BY THE DEPARTMENT OF ECONOMIC DEVELOPMENT PURSUANT TO SUBDIVISION FOUR OF SECTION THREE HUNDRED FIFTY-FOUR OF THE ECONOMIC DEVELOPMENT LAW, WHICH CERTIFICATE SHALL SET FORTH THE AMOUNT OF EACH CREDIT COMPONENT FOR THE TAXABLE YEAR. A TAXPAYER MAY CLAIM SUCH CREDIT FOR FIVE CONSECUTIVE TAXABLE YEARS COMMENCING IN THE FIRST TAXABLE YEAR THAT THE TAXPAYER RECEIVES A CERTIFICATE OF TAX CREDIT OR THE FIRST TAXABLE YEAR LISTED ON ITS PRELIMINARY SCHEDULE OF BENEFITS, WHICHEVER IS LATER. THE TAXPAYER SHALL BE ALLOWED TO CLAIM ONLY THE AMOUNT LISTED ON THE CERTIFICATE OF TAX CREDIT FOR THAT TAXABLE YEAR. SUCH CERTIFICATE SHOULD BE ATTACHED TO THE TAXPAYER'S RETURN. NO COST OR EXPENSE PAID OR INCURRED BY THE TAXPAYER SHALL BE THE BASIS FOR MORE THAN ONE COMPONENT OF THIS CREDIT OR ANY OTHER TAX CREDIT.

(C) ELECTION OF CREDIT. A TAXPAYER WHO OR WHICH IS QUALIFIED TO CLAIM THE EXCELSIOR INVESTMENT TAX CREDIT COMPONENT AND IS ALSO QUALIFIED TO CLAIM THE INVESTMENT TAX CREDIT PROVIDED FOR UNDER SUBDIVISION TWELVE OF SECTION TWO HUNDRED TEN, SUBSECTION (A) OF SECTION SIX HUNDRED SIX, SUBSECTION (I) OF SECTION FOURTEEN HUNDRED FIFTY-SIX, OR SUBDIVISION (Q) OF SECTION FIFTEEN HUNDRED ELEVEN OF THIS CHAPTER, MAY CLAIM EITHER THE EXCELSIOR INVESTMENT TAX CREDIT COMPONENT OR THE INVESTMENT TAX CREDIT, BUT NOT BOTH WITH REGARD TO A PARTICULAR PIECE OF PROPERTY. IN ADDITION, A TAXPAYER WHO OR WHICH IS QUALIFIED TO CLAIM THE EXCELSIOR INVESTMENT TAX CREDIT COMPONENT AND IS ALSO QUALIFIED TO CLAIM THE BROWNFIELD TANGIBLE PROPERTY CREDIT COMPONENT UNDER SECTION TWENTY-ONE OF THIS ARTICLE, AS ADDED BY CHAPTER ONE OF THE LAWS OF TWO THOUSAND THREE, MAY CLAIM EITHER THE EXCELSIOR INVESTMENT TAX CREDIT COMPONENT OR SUCH TANGIBLE PROPERTY CREDIT COMPONENT, BUT NOT BOTH WITH REGARD TO A PARTICULAR PIECE OF PROPERTY. THE ELECTION TO CLAIM THE EXCELSIOR INVESTMENT TAX CREDIT COMPONENT, THE INVESTMENT TAX CREDIT OR THE BROWNFIELD TANGIBLE PROPERTY CREDIT COMPONENT, WITH REGARD TO THE SAME PROPERTY, IS IRREVOCABLE.

(D) INFORMATION SHARING. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER, EMPLOYEES AND OFFICERS OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT AND THE DEPARTMENT SHALL BE ALLOWED AND ARE DIRECTED TO SHARE AND EXCHANGE:

(1) INFORMATION DERIVED FROM TAX RETURNS OR REPORTS THAT IS RELEVANT TO A TAXPAYER'S ELIGIBILITY TO PARTICIPATE IN THE EXCELSIOR JOBS PROGRAM;

(2) INFORMATION REGARDING THE COMPONENT OR COMPONENTS OF THE CREDIT APPLIED FOR, ALLOWED, OR CLAIMED PURSUANT TO THIS SECTION AND TAXPAYERS WHO ARE APPLYING FOR THE CREDIT OR WHO ARE CLAIMING THE CREDIT; AND

(3) INFORMATION CONTAINED IN OR DERIVED FROM CREDIT CLAIM FORMS SUBMITTED TO THE DEPARTMENT AND APPLICATIONS FOR ADMISSION INTO THE EXCELSIOR JOBS PROGRAM.

OTHER THAN THE INFORMATION REQUIRED TO BE CONTAINED IN THE REPORT ISSUED PURSUANT TO SUBDIVISION (E) OF THIS SECTION, ALL INFORMATION EXCHANGED BETWEEN THE DEPARTMENT OF ECONOMIC DEVELOPMENT AND THE DEPARTMENT SHALL NOT BE SUBJECT TO DISCLOSURE OR INSPECTION UNDER THE STATE'S FREEDOM OF INFORMATION LAW.

(E) EXCELSIOR JOBS PROGRAM TAX CREDIT REPORT. (1) THE COMMISSIONER MUST PUBLISH AN EXCELSIOR JOBS PROGRAM TAX CREDIT REPORT ANNUALLY BY JUNE THIRTIETH. THE FIRST REPORT MUST BE PUBLISHED BY JUNE THIRTIETH, TWO THOUSAND ELEVEN.

(2) THE CREDIT REPORT MUST CONTAIN THE FOLLOWING INFORMATION ABOUT THE EXCELSIOR JOBS PROGRAM TAX CREDIT CLAIMED UNDER THIS CHAPTER DURING THE PREVIOUS CALENDAR YEAR:

(I) THE NAME OF EACH TAXPAYER CLAIMING A CREDIT; PROVIDED HOWEVER, IF THE TAXPAYER CLAIMS A CREDIT BECAUSE THE TAXPAYER IS A MEMBER OF A LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER IN A SUBCHAPTER S CORPORATION, THE NAME OF EACH LIMITED LIABILITY COMPANY, PARTNERSHIP OR SUBCHAPTER S CORPORATION EARNING ANY OF THE CREDIT MUST BE INCLUDED IN THE REPORT INSTEAD OF INFORMATION ABOUT THE TAXPAYER CLAIMING THE CREDIT; AND

(II) THE AMOUNT OF EACH CREDIT EARNED BY EACH TAXPAYER; PROVIDED HOWEVER, IF THE TAXPAYER CLAIMS A CREDIT BECAUSE THE TAXPAYER IS A MEMBER OF A LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER IN A SUBCHAPTER S CORPORATION, THE AMOUNT OF CREDIT EARNED BY EACH ENTITY MUST BE INCLUDED IN THE REPORT INSTEAD OF INFORMATION ABOUT THE TAXPAYER CLAIMING THE CREDIT.

(3) THE CREDIT REPORT MAY ALSO CONTAIN ANY OTHER INFORMATION RECEIVED BY THE COMMISSIONER WITH REGARD TO THE EXCELSIOR JOBS PROGRAM TAX CREDIT THAT THE COMMISSIONER DEEMS TO BE USEFUL IN EVALUATING THE USE OF THE CREDIT. THE INFORMATION INCLUDED IN THE CREDIT REPORT WILL BE BASED ON THE INFORMATION FILED WITH THE DEPARTMENT DURING THE PREVIOUS CALENDAR YEAR, TO THE EXTENT THAT IT IS PRACTICABLE TO USE THAT INFORMATION.

(F) CREDIT RECAPTURE. IF A CERTIFICATE OF ELIGIBILITY OR A CERTIFICATE OF TAX CREDIT ISSUED BY THE DEPARTMENT OF ECONOMIC DEVELOPMENT UNDER ARTICLE SEVENTEEN OF THE ECONOMIC DEVELOPMENT LAW IS REVOKED BY SUCH DEPARTMENT, THE AMOUNT OF CREDIT DESCRIBED IN THIS SECTION AND CLAIMED BY THE TAXPAYER PRIOR TO THAT REVOCATION SHALL BE ADDED BACK TO INCOME IN THE TAXABLE YEAR IN WHICH ANY SUCH REVOCATION BECOMES FINAL.

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

(1) ARTICLE 9-A: SECTION 210: SUBDIVISION 41.

(2) ARTICLE 22: SECTION 606: SUBSECTION (QQ).

(3) ARTICLE 32: SECTION 1456: SUBSECTION (U).

(4) ARTICLE 33: SECTION 1511: SUBDIVISION (Y).

S 3. Section 210 of the tax law is amended by adding a new subdivision 41 to read as follows:

41. EXCELSIOR JOBS PROGRAM TAX CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER WILL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-ONE OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR MAY NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST WILL BE PAID THEREON.

S 4. Section 606 of the tax law is amended by adding a new subsection (qq) to read as follows:

(QQ) EXCELSIOR JOBS PROGRAM TAX CREDIT. (1) A TAXPAYER WILL BE ALLOWED A CREDIT, TO THE EXTENT ALLOWED UNDER SECTION THIRTY-ONE OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(2) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR EXCEEDS THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST WILL BE PAID THEREON.

S 5. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xxxi) to read as follows:

(XXXI) EXCELSIOR JOBS PROGRAM TAX CREDIT UNDER SUBSECTION (QQ)	AMOUNT OF CREDIT UNDER SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN

S 6. Section 1456 of the tax law is amended by adding a new subsection (u) to read as follows:

(U) EXCELSIOR JOBS PROGRAM TAX CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER WILL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-ONE OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(2) THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR WILL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM TAX FIXED BY PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOURTEEN HUNDRED FIFTY-FIVE OF THIS ARTICLE. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST WILL BE PAID THEREON.

S 7. Section 1511 of the tax law is amended by adding a new subdivision (y) to read as follows:

(Y) EXCELSIOR JOBS PROGRAM TAX CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER WILL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-ONE OF THIS CHAPTER, AGAINST THE TAXES IMPOSED BY THIS ARTICLE.

(2) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR WILL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM TAX FIXED BY THIS ARTICLE. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST WILL BE PAID THEREON.

S 8. This act shall take effect July 1, 2010.

PART X

Section 1. It is the intent of the legislature to clarify and confirm that the amendments made to the general municipal law by chapter 57 of the laws of 2009 that require the revocation of certification of certain business entities previously certified under the empire zones program are intended to be effective for the taxable year in which the decertif-

ication occurs and for all subsequent taxable years, notwithstanding that any such business entity may subsequently apply for certification pursuant to part 11 of title 5 of the New York state codes, rules and regulations, and that such decertifications that occur in 2009 are deemed to be in effect for the taxable year commencing on or after January 1, 2008 and before January 1, 2009.

S 2. Subdivision (a) of section 959 of the general municipal law, as amended by section 3 of part S-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(a) After consultation with the director of the budget, the commissioner of labor, and the commissioner of taxation and finance, promulgate regulations, which, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis, governing (i) criteria of eligibility for empire zone designation, provided, however, that such criteria be approved by the director of the budget; (ii) the application process; (iii) the certification by the commissioner as to the eligibility of business enterprises for benefits referred to in section nine hundred sixty-six of this article, which shall be governed by criteria including, but not limited to: (1) whether the business enterprise, if certified, is reasonably likely to create new employment or prevent a loss of employment in the zone, (2) whether such new employment opportunities will be for individuals who will perform a substantial part of their employment activities in the zone, (3) whether certification will have the undesired effect of causing individuals to transfer from existing employment with another business enterprise to similar employment with the business enterprise so certified, and transferring existing employment from one or more other municipalities, towns or villages in the state, or transferring existing employment from one or more other businesses in the zone, (4) whether such enterprise is likely to enhance the economic climate of the zone, (5) whether the commissioner of labor establishes that such business enterprise, during the three years preceding the submission of an application for certification, has engaged in a substantial violation or a pattern of violations of laws regulating unemployment insurance, workers compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding; (6) whether such business meets the requirements of the cost benefit analysis as established in paragraph (p) of section nine hundred fifty-seven of this article, and (7) if the commissioner of labor establishes that the business enterprise has been found in a criminal proceeding to have violated, in the previous three years, any of the laws referred to in subparagraph five of this paragraph or regulations promulgated pursuant to such laws, the conditions of any permit issued thereunder, or similar statute, regulation, order or permit condition of any other government agency, foreign or domestic, such business shall not be certified; provided, however, that a business enterprise that has shifted its operations, or some portions thereof, from an area within New York state not designated as an empire zone or zone equivalent area to an area so designated shall not be certified to receive such benefits except where such shift is entirely within a municipality and has been approved by the local governing body of such municipality or in situations where it has been established, after a public hearing, that extraordinary circumstances exist which warrant the relocation of a business, in whole or part, into an empire zone or a zone equivalent area from another municipality and the municipality from which the busi-

ness is relocating approves of such relocation; or where such shift in operations is from a business incubator facility operated by a municipality or by a public or private not-for-profit entity which provides space and business support services to newly established firms; and (iv) the decertification by the commissioner, upon the recommendation of the commissioner of labor, so as to revoke the certification of business enterprises for benefits referred to in section nine hundred sixty-six of this article with respect to an empire zone or zone equivalent area upon a finding that the business enterprise has committed substantial violations of laws for the protection of workers including all federal, state and local labor laws, rules or regulations; and (v) the decertification by the commissioner so as to revoke the certification of business enterprises for benefits referred to in section nine hundred sixty-six of this article with respect to an empire zone or zone equivalent area upon a finding of any one of the following: (1) the business enterprise made material misrepresentations of fact on its application for certification or in any of its business annual reports, or the business enterprise failed to disclose facts in its application for certification that would constitute grounds for not issuing a certification; (2) the business enterprise has failed to construct, expand, rehabilitate or operate or invest in its facility substantially in accordance with the representations contained in its application for certification; (3) the business enterprise has failed to create new employment or prevent a loss of employment in the empire zone or zone equivalent area; (4) where applicable, the business enterprise has failed to submit an annual report after it has applied for zone tax benefits or program assistance based on new hires or investments or failed to submit other information when due; (5) the business enterprise, if first certified pursuant to this article prior to the first day of August, two thousand two, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (6) the business enterprise has failed to provide economic returns to the state in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; or (7) the business enterprise has changed ownership or moved its operations out of the empire zone; said regulations shall provide that whenever any business enterprise is decertified with respect to an empire zone: (A) the date determined to be the earliest event constituting grounds for revoking certification shall be the effective date of decertification; (B) its certified single enterprise, if any, may also be decertified; and (C) the commissioner shall notify the commissioner of taxation and finance that such decertification has occurred, and such notification should include the effective date of such decertification and the zone or zone equivalent area to which such decertification applies; WITH RESPECT TO ANY BUSINESS ENTERPRISE WHOSE CERTIFICATION HAS BEEN REVOKED PURSUANT TO SUBPARAGRAPH FIVE OR SIX OF THIS PARAGRAPH, THAT REVOCATION (I) WILL BE EFFECTIVE FOR A TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND EIGHT AND BEFORE JANUARY FIRST, TWO THOUSAND NINE AND FOR SUBSEQUENT TAXABLE YEARS, UNLESS THE BUSINESS ENTERPRISE IS SUBSEQUENTLY RE-CERTIFIED PURSUANT TO PART 11 OF TITLE 5 OF THE NEW YORK STATE CODES, RULES AND REGULATIONS FOR A BUSINESS ENTERPRISE FOR WHICH A REVIEW IS

REQUIRED TO BE CONDUCTED PURSUANT TO SUBDIVISION (W) OF THIS SECTION IN CALENDAR YEAR TWO THOUSAND NINE, AND (II) THEREAFTER WILL BE EFFECTIVE FOR THE TAXABLE YEAR DURING WHICH THE COMMISSIONER MAKES HIS OR HER DETERMINATION (PRIOR TO ANY APPEAL) TO REVOKE THE CERTIFICATION OF A BUSINESS ENTERPRISE AND FOR SUBSEQUENT TAXABLE YEARS;

S 3. Subdivision (w) of section 959 of the general municipal law, as amended by section 3 of part S-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(w) Conduct a review during calendar year two thousand nine of all business enterprises to determine whether the business enterprises should be decertified pursuant to subparagraphs five and six of paragraph (v) of subdivision (a) of this section and the regulations promulgated under this article. After such review, the commissioner shall issue an empire zone retention certificate to each firm that the commissioner determines is not subject to decertification under subparagraphs five and six of paragraph (v) of subdivision (a) of this section. The decertification referred to in subparagraph six of paragraph (v) of subdivision (a) of this section shall be based upon an analysis of data contained in at least three business annual reports filed by the business enterprise. If any business enterprise fails the analysis described in the immediately preceding sentence, or if the commissioner makes the finding described in subparagraph five of paragraph (v) of subdivision (a) of this section, the commissioner shall revoke the certification of such business enterprise pursuant to paragraph [(iv)] (V) of subdivision (a) of this section and as specified herein; provided, however, the commissioner may consider, after consultation with the director of the budget, and in his or her sole discretion, other economic, social and environmental factors when evaluating the costs and benefits of a project to the state and whether continued certification is warranted based on such factors. The commissioner shall provide written notification to such business enterprise of his or her determination to revoke the certification, including the reasons therefor. Such notification shall state that the business enterprise may appeal the determination by sending a written notice to the empire zone designation board of such appeal no later than fifteen business days from the date of the commissioner's revocation notification. Provided that the business enterprise appeals the commissioner's determination within fifteen business days of the commissioner's revocation notification, the business enterprise may present a written submission to the empire zone designation board no later than sixty days following the date the commissioner's revocation notification was sent to the business enterprise explaining why its certification should be continued. The empire zone designation board shall consider the explanation provided by the business enterprise, but shall only reverse the determination to revoke the business enterprise's certification if the empire zone designation board unanimously finds that there was [insufficient] SUFFICIENT evidence presented BY THE BUSINESS ENTERPRISE demonstrating that the commissioner's finding, with respect to subparagraph six of paragraph (v) of subdivision (a) of this section, was in error, or that, with respect to subparagraph five of paragraph (v) of subdivision (a) of this section, any extraordinary circumstances occurred which would justify the continued certification of the business enterprise.

S 4. Paragraph 6 of subdivision (d) of section 1119 of the tax law, as added by section 31 of part S-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(6) Any reference in this chapter OR IN ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS CHAPTER to former subdivision (z) of section eleven hundred fifteen of this article will be deemed to be a reference to this subdivision, AND ANY SUCH LOCAL LAW, ORDINANCE OR RESOLUTION WHICH PROVIDES THE EXEMPTIONS DESCRIBED IN FORMER SUBDIVISION (Z) OF SUCH SECTION ELEVEN HUNDRED FIFTEEN SHALL BE DEEMED INSTEAD TO PROVIDE THE REFUNDS AND CREDITS DESCRIBED IN THIS SUBDIVISION.

S 5. Subdivision (a) of section 17 of the tax law, as added by section 43 of part S-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(a) The department of taxation and finance must publish an empire zones tax benefits report annually by [January thirty-first] JUNE THIRTIETH. The first report must be published by [January thirty-first] JUNE THIRTIETH, two thousand [thirteen] ELEVEN.

S 6. Subdivision (d) of section 44 of part S-1 of chapter 57 of the laws of 2009, amending the general municipal law and the tax law relating to enacting reforms to the empire zones program, is amended to read as follows:

(d) section forty-two of this act shall take effect on January 1, [2012] 2010; and

S 7. Subdivision 12-B of section 210 of the tax law is amended by adding a new paragraph (g) to read as follows:

(G) NOTWITHSTANDING THE EXPIRATION OF THE EMPIRE ZONES PROGRAM UNDER ARTICLE EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW, A TAXPAYER THAT IS CERTIFIED AS A QUALIFIED INVESTMENT PROJECT PURSUANT TO SUCH ARTICLE EIGHTEEN-B ON THE DAY IMMEDIATELY PRECEDING THE DAY THE EMPIRE ZONES PROGRAM EXPIRED SHALL CONTINUE TO BE DEEMED CERTIFIED UNDER SUCH ARTICLE EIGHTEEN-B FOR PURPOSES OF THIS SUBDIVISION FOR THE REMAINDER OF THE TAXABLE YEAR IN WHICH THE EXPIRATION OCCURRED AND FOR THE NEXT SUCCEEDING NINE TAXABLE YEARS. IN ADDITION, THE AREAS DESIGNATED AS EMPIRE ZONES IN WHICH THE TAXPAYER IS CERTIFIED AS A QUALIFIED INVESTMENT PROJECT ON THE DAY IMMEDIATELY PRECEDING THE DAY THE EMPIRE ZONES PROGRAM EXPIRED SHALL CONTINUE TO BE DEEMED EMPIRE ZONES FOR PURPOSES OF THIS SUBDIVISION FOR THE REMAINDER OF THE TAXABLE YEAR IN WHICH THE EXPIRATION OCCURRED AND FOR THE NEXT SUCCEEDING NINE TAXABLE YEARS.

S 8. Subdivision 12-C of section 210 of the tax law is amended by adding a new paragraph (d) to read as follows:

(D) NOTWITHSTANDING THE EXPIRATION OF THE EMPIRE ZONES PROGRAM UNDER ARTICLE EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW, A TAXPAYER THAT IS CERTIFIED AS A QUALIFIED INVESTMENT PROJECT PURSUANT TO SUCH ARTICLE EIGHTEEN-B ON THE DAY IMMEDIATELY PRECEDING THE DAY THE EMPIRE ZONES PROGRAM EXPIRED SHALL CONTINUE TO BE DEEMED CERTIFIED UNDER SUCH ARTICLE EIGHTEEN-B FOR PURPOSES OF THIS SUBDIVISION FOR THE REMAINDER OF THE TAXABLE YEAR IN WHICH THE EXPIRATION OCCURRED AND FOR THE NEXT SUCCEEDING NINE TAXABLE YEARS. IN ADDITION, THE AREAS DESIGNATED AS EMPIRE ZONES IN WHICH THE TAXPAYER IS CERTIFIED AS A QUALIFIED INVESTMENT PROJECT ON THE DAY IMMEDIATELY PRECEDING THE DAY THE EMPIRE ZONES PROGRAM EXPIRED SHALL CONTINUE TO BE DEEMED EMPIRE ZONES FOR PURPOSES OF THIS SUBDIVISION FOR THE REMAINDER OF THE TAXABLE YEAR IN WHICH THE EXPIRATION OCCURRED AND FOR THE NEXT SUCCEEDING NINE TAXABLE YEARS.

S 9. This act shall take effect immediately, provided that the amendment to paragraph 6 of subdivision (d) of section 1119 of the tax law made by section four of this act shall take effect on the same date and apply in the same manner that section 31 of part S-1 of chapter 57 of the laws of 2009 took effect and applied.

PART Y

Section 1. Section 51 of chapter 298 of the laws of 1985, amending the tax law relating to the franchise tax on banking corporations imposed by the tax law, authorized to be imposed by any city having a population of one million or more by chapter 772 of the laws of 1966 and imposed by the administrative code of the city of New York and relating to other provisions of the tax law, chapter 883 of the laws of 1975 and the administrative code of the city of New York which relates to such franchise tax, as amended by section 1 of part H of chapter 60 of the laws of 2007, is amended to read as follows:

S 51. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 1985, except that:

(a) sections one through eight shall not apply to taxable years beginning on or after January 1, [2010] 2011;

(b) sections nine, twelve, the amendment made to paragraph 9 of subsection (a) of section 1452 of the tax law by section thirteen, sections fifteen, sixteen, eighteen, nineteen, twenty, twenty-three, twenty-seven, thirty and thirty-two, the amendment made to paragraph 9 of subdivision (a) of section 11-640 of the administrative code of the city of New York by section thirty-three, sections thirty-five, thirty-six, thirty-eight, thirty-nine, forty, and forty-five shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after January 1, [2010] 2011;

(c) sections twenty-one, twenty-two, twenty-four, forty-one and forty-two shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after January 1, [2010] 2011, provided, however, that the provisions of such sections which relate to the alternative minimum tax measured by taxable assets shall continue to apply to all taxpayers for taxable years beginning on or after January 1, [2010] 2011;

(d) the amendment to the section heading and the opening paragraph of section 11-643.3 of the administrative code of the city of New York made by section forty-three shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after January 1, [2010] 2011 with respect to those provisions of such section 11-643.3 which relate to the basic tax measured by entire net income; and

(e) section twenty-eight, and the addition of new section 11-643.5 of the administrative code of the city of New York made by section forty-four shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after January 1, [2010] 2011, provided, however, that the provisions of such sections which relate to the alternative minimum taxes measured by assets, issued capital stock and one hundred twenty-five dollars shall continue to apply to all taxpayers for taxable years beginning on or after January 1, [2010] 2011.

S 2. Subdivision (f) of section 110 of chapter 817 of the laws of 1987, amending the tax law and the environmental conservation law, constituting the business tax reform and rate reduction act of 1987, as amended by section 2 of part H of chapter 60 of the laws of 2007, is amended to read as follows:

(f) The provisions of section one hundred four of this act shall apply to taxable years beginning after December 31, 1986, and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after January 1, [2010] 2011,

provided, however, that the provisions of such section which relate to the alternative minimum tax measured by taxable assets shall continue to apply to all taxpayers for taxable years beginning on or after January 1, [2010] 2011.

S 3. Subdivision (d) of section 68 of chapter 525 of the laws of 1988, amending the tax law and the administrative code of the city of New York relating to the imposition of taxes in the city of New York, as amended by section 3 of part H of chapter 60 of the laws of 2007, is amended to read as follows:

(d) The provisions of section forty-six of this act shall apply to taxable years beginning after December 31, 1986, and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after January 1, [2010] 2011, provided, however, that the provisions of such section which relate to the alternative minimum tax measured by taxable assets shall continue to apply to all taxpayers for taxable years beginning on or after January 1, [2010] 2011;

S 4. Extension of Gramm-Leach-Bliley transitional provisions. References in subsection (m) of section 1452 of the tax law and subdivision (1) of section 11-640 of the administrative code of the city of New York to January 1, 2008 shall be read as January 1, 2010 and references in those provisions to January 1, 2010 shall be read as January 1, 2011, as if those dates were specifically referenced in those provisions of law. References in subparagraph (iv) of paragraph (2) of subsection (f) of section 1462 of the tax law and subparagraph (iv) of paragraph 2 of subdivision (f) of section 11-646 of the administrative code of the city of New York to January 1, 2010 shall be read as January 1, 2011, as if that date was specifically referenced in those provisions of law. The legislative bill drafting commission is hereby directed to effectuate this provision, and shall be guided by a memorandum of instruction setting forth the specific provisions of law to be amended. Such memorandum shall be transmitted to the legislative bill drafting commission within thirty days of enactment of this provision. Such memorandum shall be issued jointly by the governor, the temporary president of the senate, and the speaker of the assembly, or by the delegate of each.

S 5. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after January 1, 2010.

PART Z

Section 1. This act enacts into law major components of legislation relating to tax enforcement, sales tax avoidance and statements of industrial agencies and their agents. Each component is wholly contained within a Subpart identified as Subparts A through C. The effective date for each particular provision contained within such Subpart is set forth in the last section of such Subpart. Any provision in any section contained within a Subpart, including the effective date of the Subpart, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Subpart in which it is found. Section three of this act sets forth the general effective date of this act.

SUBPART A

Section 1. The tax law is amended by adding two new sections 1808 and 1809 to read as follows:

S 1808. PERSONAL INCOME AND EARNINGS TAXES; REPEATED FAILURE TO FILE. (A) ANY PERSON WHO, WITH INTENT TO EVADE PAYMENT OF ANY TAX IMPOSED UNDER ARTICLE TWENTY-TWO OF THIS CHAPTER OR ANY RELATED INCOME OR EARNINGS TAX STATUTE, FAILS TO FILE A RETURN FOR THREE CONSECUTIVE TAXABLE YEARS SHALL BE GUILTY OF A CLASS E FELONY, PROVIDED THAT SUCH PERSON HAD AN UNPAID TAX LIABILITY WITH RESPECT TO EACH OF THE THREE CONSECUTIVE TAXABLE YEARS.

(B) IN ANY PROSECUTION FOR A VIOLATION OF SUBDIVISION (A) OF THIS SECTION, IT SHALL BE A DEFENSE THAT THE DEFENDANT HAD NO UNPAID TAX LIABILITY FOR ANY OF THE THREE CONSECUTIVE TAXABLE YEARS.

(C) AS USED IN THIS SUBDIVISION, THE TERM "RETURN" SHALL MEAN A RETURN REQUIRED UNDER SECTION SIX HUNDRED FIFTY-ONE OF THIS CHAPTER, SECTION 11-1751 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK OR SECTION 92-85 OR 92-105 OF THE CODES AND ORDINANCES OF THE CITY OF YONKERS. IT SHALL NOT INCLUDE ANY INFORMATION RETURN REFERRED TO IN SUBSECTION (I) OF SECTION SIX HUNDRED FIFTY-ONE OF THIS CHAPTER, OR SUBDIVISION (I) OF SECTION 11-1751 OF SUCH CODE, OR SUBDIVISION (G) OF SECTION 92-105 OF SUCH CODES AND ORDINANCES, OR SECTION SIX HUNDRED FIFTY-EIGHT OF THIS CHAPTER OR SECTION 11-1758 OF SUCH CODE OR SECTION 92-111 OF SUCH CODES AND ORDINANCES, OR ANY EMPLOYER'S RETURN REQUIRED BY SECTION SIX HUNDRED SEVENTY-FOUR OF THIS CHAPTER OR SECTION 11-1774 OF SUCH CODE.

S 1809. CORPORATE TAXES; REPEATED FAILURE TO FILE. (A) ANY PERSON WHO, WITH INTENT TO EVADE PAYMENT OF ANY TAX IMPOSED UNDER ARTICLE NINE (OTHER THAN UNDER SECTION ONE HUNDRED EIGHTY OR ONE HUNDRED EIGHTY-ONE), NINE-A, THIRTEEN, THIRTY-TWO, THIRTY-THREE OR THIRTY-THREE-A OF THIS CHAPTER, FAILS TO FILE A RETURN OR REPORT FOR THREE CONSECUTIVE TAXABLE YEARS SHALL BE GUILTY OF A CLASS E FELONY, PROVIDED THAT SUCH PERSON HAD AN UNPAID TAX LIABILITY, IN EXCESS OF THE THRESHOLD AMOUNT WITH RESPECT TO EACH OF THE THREE CONSECUTIVE TAXABLE YEARS. THE THRESHOLD AMOUNT IN THE CASE OF A TAXABLE YEAR UNDER ARTICLE NINE-A OF THIS CHAPTER ENDING AFTER JUNE THIRTIETH, NINETEEN HUNDRED EIGHTY-NINE IS THE APPLICABLE FIXED DOLLAR MINIMUM PRESCRIBED UNDER PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION TWO HUNDRED TEN OF THIS CHAPTER. IN THE EVENT SUCH FIXED DOLLAR MINIMUM IS LESS THAN TWO HUNDRED FIFTY DOLLARS, THE THRESHOLD AMOUNT IN THE CASE OF SUCH TAXABLE YEAR IS TWO HUNDRED FIFTY DOLLARS. IN ALL OTHER CASES THE THRESHOLD AMOUNT IS TWO HUNDRED FIFTY DOLLARS.

(B) IN ANY PROSECUTION FOR A VIOLATION OF SUBDIVISION (A) OF THIS SECTION, IT SHALL BE A DEFENSE THAT THE DEFENDANT HAD NO UNPAID TAX LIABILITY FOR ANY OF THE THREE CONSECUTIVE TAXABLE YEARS.

(C) AS USED IN THIS SECTION, THE TERMS "RETURN" AND "REPORT" SHALL MEAN A RETURN OR REPORT REQUIRED UNDER SECTION ONE HUNDRED NINETY-TWO, TWO HUNDRED ELEVEN, TWO HUNDRED NINETY-FOUR, FOURTEEN HUNDRED SIXTY-TWO, FIFTEEN HUNDRED FIFTEEN OR FIFTEEN HUNDRED FIFTY-FOUR OF THIS CHAPTER. IT SHALL NOT INCLUDE ANY RETURN OR REPORT REFERRED TO IN SECTION ONE HUNDRED NINETY-SEVEN-A, TWO HUNDRED THIRTEEN-A, FOURTEEN HUNDRED SIXTY OR FIFTEEN HUNDRED THIRTEEN OF THIS CHAPTER.

S 2. Paragraph (b) of subdivision 3-a of section 170 of the tax law, as amended by section 1 of subpart C of part V-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(b) A request for a conciliation conference shall be applied for in the manner as set forth by regulation of the commissioner and, notwithstanding any provision of law to the contrary, shall suspend the running of the period of limitations for the filing of a petition protesting such notice and requesting a hearing. TO DISCONTINUE THE CONCILIATION

PROCEEDING, THE RECIPIENT OF THE NOTICE SHALL MAKE A REQUEST IN WRITING AND SUCH PERSON SHALL HAVE NINETY DAYS FROM THE TIME SUCH REQUEST OF DISCONTINUANCE IS MADE TO PETITION THE DIVISION OF TAX APPEALS FOR A HEARING, except that the recipient of a written notice described in paragraph (h) of this subdivision will have thirty days from the time such request of discontinuance is made to petition the division of tax appeals for a hearing. The commissioner shall notify the division of tax appeals when any person requests a conference or requests to discontinue such conference.

S 3. Paragraph (h) of subdivision 3-a of section 170 of the tax law, as added by section 2 of subpart C of part V-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(h) Notwithstanding any provision of law to the contrary, any person who seeks review by the bureau of conciliation and mediation services of a written notice that advises that person of (i) the proposed cancellation, revocation, or suspension of a license, permit, registration, or other credential issued under the authority of this chapter EXCLUDING A CERTIFICATE OF REGISTRATION OF A RETAIL DEALER UNDER SECTION FOUR HUNDRED EIGHTY-A OF THIS CHAPTER, (ii) the denial of an application for a license, permit, registration, or other credential issued under the authority of this chapter excluding AN APPLICATION FOR REGISTRATION AS A RETAIL DEALER UNDER SECTION FOUR HUNDRED EIGHTY-A OF THIS CHAPTER AND an application to renew a certificate of authority filed pursuant to paragraph five of subdivision (a) of section one thousand one hundred thirty-four of this chapter and any other law, or, (iii) the imposition of a fraud penalty under this chapter, must request a conciliation conference within thirty days of [receipt] THE MAILING of that notice.

S 4. Paragraphs (a) and (b) of subdivision 2 of section 2008 of the tax law, as added by section 3 of subpart C of part V-1 of chapter 57 of the laws of 2009, are amended to read as follows:

(a) Notwithstanding any provision of law to the contrary, any person who receives a written notice that advises that person of (i) the proposed cancellation, revocation, or suspension of a license, permit, registration, or other credential issued under the authority of this chapter EXCLUDING A CERTIFICATE OF REGISTRATION OF A RETAIL DEALER UNDER SECTION FOUR HUNDRED EIGHTY-A OF THIS CHAPTER, (ii) the denial of an application for a license, permit, registration, or other credential issued under the authority of this chapter excluding AN APPLICATION FOR REGISTRATION AS A RETAIL DEALER UNDER SECTION FOUR HUNDRED EIGHTY-A OF THIS CHAPTER AND an application to renew a certificate of authority filed pursuant to paragraph five of subdivision (a) of section one thousand one hundred thirty-four of this chapter and any other law, or, (iii) the imposition of a fraud penalty under this chapter, must file a petition with the division of tax appeals within thirty days of [receipt] THE MAILING of that notice (unless that person has requested a conciliation conference as provided in subdivision three-a of section one hundred seventy of this chapter), or the cancellation, revocation, suspension, denial, or penalty will be permanently and irrevocably fixed. An expedited hearing must be scheduled within ten business days of receipt of the petition.

(b) In the case of any expedited hearing provided for under this subdivision, the administrative law judge must render a decision within thirty days from receipt of the petition. When exception is taken to an administrative law judge's determination, the tax appeals tribunal must issue its decision within three months from receipt of the petition. Any request by [the petitioner] A PARTY that delays the expedited hearing

process will extend the time limitations imposed on the tribunal or the administrative law judge to issue a decision or determination. The tribunal or administrative law judge may not approve any postponement or other delay without a showing of good cause by the moving party and must render a default determination or decision against the dilatory party for any unwarranted delay.

S 5. Section 1807 of the tax law, as added by section 21 of subpart I of part V-1 of chapter 57 of the laws of 2009, is amended to read as follows:

S 1807. Aggregation. For purposes of this article, the payments due and not paid under A SINGLE article [one] of this chapter pursuant to a common scheme or plan or due and not paid, within one year, may be charged in a single count, and the amount of underpaid tax liability incurred, within one year, may be aggregated in a single count.

S 6. Section 34 of subpart I of part V-1 of chapter 57 of the laws of 2009, amending the criminal procedure law, the penal law, and the tax law relating to creating the offense of "tax fraud act", is amended to read as follows:

S 34. This act shall take effect immediately and SECTIONS TWO THROUGH THIRTY-THREE OF THIS ACT SHALL apply to offenses committed on and after such effective date.

S 7. This act shall take effect immediately; provided however that section one of this act shall apply to offenses committed on and after such effective date.

SUBPART B

Section 1. Subparagraph (iv) of paragraph 4 of subdivision (b) of section 1101 of the tax law, as added by chapter 93 of the laws of 1965, clause (B) as amended by chapter 575 of the laws of 1965 and as renumbered by chapter 2 of the laws of 1995, is amended to read as follows:

(iv) (A) The term retail sale does not include:

[(A)] (I) The transfer of tangible personal property to a corporation, solely in consideration for the issuance of its stock, pursuant to a merger or consolidation effected under the law of New York or any other jurisdiction.

[(B)] (II) The distribution of property by a corporation to its stockholders as a liquidating dividend.

[(C)] (III) The distribution of property by a partnership to its partners in whole or partial liquidation.

[(D)] (IV) The transfer of property to a corporation upon its organization in consideration for the issuance of its stock.

[(E)] (V) The contribution of property to a partnership in consideration for a partnership interest therein.

(B) FOR AN EXCEPTION APPLICABLE TO THIS SUBPARAGRAPH, SEE SUBDIVISION (Q) OF SECTION ELEVEN HUNDRED ELEVEN OF THIS ARTICLE.

S 2. Paragraph 17 of subdivision (b) of section 1101 of the tax law, as amended by section 1 of part N-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(17) Commercial aircraft. Aircraft used primarily (i) to transport persons or property, for hire, (ii) by the purchaser of the aircraft to transport such person's tangible personal property in the conduct of such person's business, or (iii) for both such purposes. Transporting persons for hire does not include transporting agents, employees, officers, members, partners, managers or directors of affiliated persons. Persons are affiliated persons with respect to each other where one of

the persons has an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of the persons by another person or by a group of other persons that are affiliated persons with respect to each other. FOR AN EXCEPTION TO THE EXCLUSIONS FROM THE DEFINITION OF "RETAIL SALE" APPLICABLE TO AIRCRAFT, SEE SUBDIVISION (Q) OF SECTION ELEVEN HUNDRED ELEVEN OF THIS ARTICLE.

S 3. Section 1111 of the tax law is amended by adding a new subdivision (q) to read as follows:

(Q) (1) THE EXCLUSIONS FROM THE DEFINITION OF RETAIL SALE IN SUBPARAGRAPH (IV) OF PARAGRAPH FOUR OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED ONE OF THIS ARTICLE SHALL NOT APPLY TO TRANSFERS, DISTRIBUTIONS, OR CONTRIBUTIONS OF AN AIRCRAFT OR VESSEL, EXCEPT WHERE, IN THE CASE OF THE EXCLUSION IN SUBCLAUSE (I) OF CLAUSE (A) OF SUCH SUBPARAGRAPH (IV), THE TWO CORPORATIONS TO BE MERGED OR CONSOLIDATED ARE NOT AFFILIATED PERSONS WITH RESPECT TO EACH OTHER. FOR PURPOSES OF THIS SUBDIVISION, CORPORATIONS ARE AFFILIATED PERSONS WITH RESPECT TO EACH OTHER WHERE (I) MORE THAN FIVE PERCENT OF THEIR COMBINED SHARES ARE OWNED BY MEMBERS OF THE SAME FAMILY, AS DEFINED BY PARAGRAPH FOUR OF SUBSECTION (C) OF SECTION TWO HUNDRED SIXTY-SEVEN OF THE INTERNAL REVENUE CODE OF NINETEEN HUNDRED EIGHTY-SIX; (II) ONE OF THE CORPORATIONS HAS AN OWNERSHIP INTEREST OF MORE THAN FIVE PERCENT, WHETHER DIRECT OR INDIRECT, IN THE OTHER; OR (III) ANOTHER PERSON OR A GROUP OF OTHER PERSONS THAT ARE AFFILIATED PERSONS WITH RESPECT TO EACH OTHER HOLD AN OWNERSHIP INTEREST OF MORE THAN FIVE PERCENT, WHETHER DIRECT OR INDIRECT, IN EACH OF THE CORPORATIONS.

(2) NOTWITHSTANDING ANY CONTRARY PROVISION OF LAW, IN RELATION TO ANY TRANSFER, DISTRIBUTION, OR CONTRIBUTION OF AN AIRCRAFT OR VESSEL THAT QUALIFIES AS A RETAIL SALE AS A RESULT OF PARAGRAPH ONE OF THIS SUBDIVISION, THE SALES TAX IMPOSED BY SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIVE OF THIS PART SHALL BE COMPUTED BASED ON THE PRICE AT WHICH THE SELLER PURCHASED THE TANGIBLE PERSONAL PROPERTY, PROVIDED THAT WHERE THE SELLER OR PURCHASER AFFIRMATIVELY SHOWS THAT THE SELLER OWNED THE PROPERTY FOR SIX MONTHS PRIOR TO MAKING THE TRANSFER, DISTRIBUTION OR CONTRIBUTION COVERED BY PARAGRAPH ONE OF THIS SUBDIVISION, SUCH AIRCRAFT OR VESSEL SHALL BE TAXED ON THE BASIS OF THE CURRENT MARKET VALUE OF THE AIRCRAFT OR VESSEL AT THE TIME OF THAT TRANSFER, DISTRIBUTION, OR CONTRIBUTION. FOR THE PURPOSES OF THE PRIOR SENTENCE, "CURRENT MARKET VALUE" SHALL NOT EXCEED THE COST OF THE AIRCRAFT OR VESSEL. SEE SUBDIVISION (B) OF THIS SECTION FOR A SIMILAR RULE ON THE COMPUTATION OF ANY COMPENSATING USE TAX DUE UNDER SECTION ELEVEN HUNDRED TEN OF THIS PART ON SUCH TRANSFERS, DISTRIBUTIONS, OR CONTRIBUTIONS.

(3) A PURCHASER OF AN AIRCRAFT OR VESSEL COVERED BY PARAGRAPH ONE OF THIS SUBDIVISION WILL BE ENTITLED TO A REFUND OR CREDIT AGAINST THE SALES OR COMPENSATING USE TAX DUE AS A RESULT OF A TRANSFER, DISTRIBUTION, OR CONTRIBUTION OF SUCH AIRCRAFT OR VESSEL IN THE AMOUNT OF ANY SALES OR USE TAX PAID TO THIS STATE OR ANY OTHER STATE ON THE SELLER'S PURCHASE OR USE OF THE AIRCRAFT OR VESSEL SO TRANSFERRED, DISTRIBUTED OR CONTRIBUTED, BUT NOT TO EXCEED THE TAX DUE ON THE TRANSFER, DISTRIBUTION, OR CONTRIBUTION OF THE AIRCRAFT OR VESSEL OR ON THE PURCHASER'S USE IN THE STATE OF THE AIRCRAFT OR VESSEL SO TRANSFERRED, DISTRIBUTED OR CONTRIBUTED. AN APPLICATION FOR A REFUND OR CREDIT UNDER THIS SUBDIVISION MUST BE FILED AND SHALL BE IN SUCH FORM AS THE COMMISSIONER MAY PRESCRIBE. WHERE AN APPLICATION FOR CREDIT HAS BEEN FILED, THE APPLICANT MAY IMMEDIATELY TAKE SUCH CREDIT ON THE RETURN WHICH IS DUE COINCIDENT WITH OR IMMEDIATELY SUBSEQUENT TO THE TIME THE APPLICATION FOR CREDIT IS

FILED. HOWEVER, THE TAKING OF THE CREDIT ON THE RETURN SHALL BE DEEMED TO BE PART OF THE APPLICATION FOR CREDIT. PROVIDED THAT THE COMMISSIONER MAY, IN HIS OR HER DISCRETION AND NOTWITHSTANDING ANY OTHER LAW, WAIVE THE APPLICATION REQUIREMENT FOR ANY OR ALL CLASSES OF PERSONS WHERE THE AMOUNT OF THE CREDIT OR REFUND IS EQUAL TO THE AMOUNT OF THE TAX DUE FROM THE PURCHASER. THE PROVISIONS OF SUBDIVISIONS (A), (B), AND (C) OF SECTION ELEVEN HUNDRED THIRTY-NINE OF THIS ARTICLE SHALL APPLY TO APPLICATIONS FOR REFUND OR CREDIT UNDER THIS SUBDIVISION. NO INTEREST SHALL BE ALLOWED OR PAID ON ANY REFUND MADE OR CREDIT ALLOWED UNDER THIS SUBDIVISION. IF A REFUND IS GRANTED OR A CREDIT ALLOWED UNDER THIS PARAGRAPH, THE SELLER OR PURCHASER SHALL NOT BE ELIGIBLE FOR A REFUND OR CREDIT PURSUANT TO SUBDIVISION SEVEN OF SECTION ELEVEN HUNDRED EIGHTEEN OF THIS ARTICLE WITH REGARD TO THE SAME PURCHASE OR USE.

S 4. Subdivision 2 of section 1118 of the tax law, as amended by section 2 of part N-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(2) In respect to the use of property or services purchased by the user while a nonresident of this state, except in the case of tangible personal property or services which the user, in the performance of a contract, incorporates into real property located in the state. A person while engaged in any manner in carrying on in this state any employment, trade, business or profession, shall not be deemed a nonresident with respect to the use in this state of property or services in such employment, trade, business or profession. This exemption does not apply to the use of qualified property where the qualified property is purchased primarily to carry individuals, whether or not for hire, who are agents, employees, officers, shareholders, members, managers, partners, or directors of (A) the purchaser, where any of those individuals was a resident of this state when the qualified property was purchased or (B) any affiliated person that was a resident when the qualified property was purchased. For purposes of this subdivision: (i) persons are affiliated persons with respect to each other where one of the persons has an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of the persons by another person or by a group of other persons that are affiliated persons with respect to each other; (ii) "qualified property" means aircraft, vessels and motor vehicles; and (iii) "carry" means to take any person from one point to another, whether for the business purposes or pleasure of that person. FOR AN EXCEPTION TO THE EXCLUSIONS FROM THE DEFINITION OF "RETAIL SALE" APPLICABLE TO AIRCRAFT AND VESSELS, SEE SUBDIVISION (Q) OF SECTION ELEVEN HUNDRED ELEVEN OF THIS ARTICLE.

S 5. This act shall take effect on June 1, 2010, and shall apply to sales made and uses occurring on or after such date in accordance with the applicable transitional provisions in sections 1106 and 1217 of the tax law, provided that sales or use tax paid on the seller's purchase or use of the aircraft or vessel transferred, distributed or contributed may be refunded or credited as authorized by the new subdivision (q) of section 1111 of the tax law, as added by section three of this act, regardless of the date on which the seller purchased or used the aircraft or vessel.

SUBPART C

Section 1. Section 874 of the general municipal law is amended by adding a new subdivision 9 to read as follows:

(9) WITHIN THIRTY DAYS OF THE DATE THAT THE AGENCY DESIGNATES A PROJECT OPERATOR OR OTHER PERSON TO ACT AS AGENT OF THE AGENCY FOR PURPOSES OF PROVIDING FINANCIAL ASSISTANCE CONSISTING OF ANY SALES AND COMPENSATING USE TAX EXEMPTION TO SUCH PERSON, THE AGENCY SHALL FILE A STATEMENT WITH THE DEPARTMENT OF TAXATION AND FINANCE RELATING THERETO, ON A FORM AND IN SUCH MANNER AS IS PRESCRIBED BY THE COMMISSIONER OF TAXATION AND FINANCE, IDENTIFYING EACH SUCH AGENT SO NAMED BY THE AGENCY, SETTING FORTH THE TAXPAYER IDENTIFICATION NUMBER OF EACH SUCH AGENT, GIVING A BRIEF DESCRIPTION OF THE PROPERTY AND/OR SERVICES INTENDED TO BE EXEMPTED FROM SUCH TAXES AS A RESULT OF SUCH APPOINTMENT AS AGENT, INDICATING THE AGENCY'S ROUGH ESTIMATE OF THE VALUE OF THE PROPERTY AND/OR SERVICES TO WHICH SUCH APPOINTMENT AS AGENT RELATES, INDICATING THE DATE WHEN SUCH DESIGNATION AS AGENT BECAME EFFECTIVE AND INDICATING THE DATE UPON WHICH SUCH DESIGNATION AS AGENT SHALL CEASE.

S 2. Section 1963 of the public authorities law is amended by adding two new subdivisions 3 and 4 to read as follows:

3. AGENTS OF THE AUTHORITY AND PROJECT OPERATORS SHALL ANNUALLY FILE A STATEMENT WITH THE DEPARTMENT OF TAXATION AND FINANCE, ON A FORM AND IN SUCH A MANNER AS IS PRESCRIBED BY THE COMMISSIONER OF TAXATION AND FINANCE, OF THE VALUE OF ALL SALES AND USE TAX EXEMPTIONS CLAIMED BY SUCH AGENTS OR AGENTS OF SUCH AGENTS OR PROJECT OPERATORS, INCLUDING, BUT NOT LIMITED TO, CONSULTANTS OR SUBCONTRACTORS OF SUCH AGENTS OR PROJECT OPERATORS, UNDER THE AUTHORITY GRANTED PURSUANT TO THIS SECTION. THE PENALTY FOR FAILURE TO FILE SUCH STATEMENT SHALL BE THE REMOVAL OF THE AUTHORITY TO ACT AS AN AGENT OF THE AUTHORITY OR AS A PROJECT OPERATOR.

4. WITHIN THIRTY DAYS OF THE DATE THAT THE AUTHORITY DESIGNATES A PROJECT OPERATOR OR OTHER PERSON TO ACT AS AGENT OF THE AUTHORITY FOR PURPOSES OF PROVIDING FINANCIAL ASSISTANCE CONSISTING OF ANY SALES AND COMPENSATING USE TAX EXEMPTION TO SUCH PERSON, THE AGENCY SHALL FILE A STATEMENT WITH THE DEPARTMENT OF TAXATION AND FINANCE RELATING THERETO, ON A FORM AND IN SUCH MANNER AS IS PRESCRIBED BY THE COMMISSIONER OF TAXATION AND FINANCE, IDENTIFYING EACH SUCH AGENT SO NAMED BY THE AUTHORITY, SETTING FORTH THE TAXPAYER IDENTIFICATION NUMBER OF EACH SUCH AGENT, GIVING A BRIEF DESCRIPTION OF THE PROPERTY AND/OR SERVICES INTENDED TO BE EXEMPTED FROM SUCH TAXES AS A RESULT OF SUCH APPOINTMENT AS AGENT, INDICATING THE AUTHORITY'S ROUGH ESTIMATE OF THE VALUE OF THE PROPERTY AND/OR SERVICES TO WHICH SUCH APPOINTMENT AS AGENT RELATES, INDICATING THE DATE WHEN SUCH DESIGNATION AS AGENT BECAME EFFECTIVE AND INDICATING THE DATE UPON WHICH SUCH DESIGNATION AS AGENT SHALL CEASE.

S 3. Section 2326 of the public authorities law is amended by adding two new subdivisions 3 and 4 to read as follows:

3. AGENTS OF THE AUTHORITY AND PROJECT OPERATORS SHALL ANNUALLY FILE A STATEMENT WITH THE DEPARTMENT OF TAXATION AND FINANCE, ON A FORM AND IN SUCH A MANNER AS IS PRESCRIBED BY THE COMMISSIONER OF TAXATION AND FINANCE, OF THE VALUE OF ALL SALES AND USE TAX EXEMPTIONS CLAIMED BY SUCH AGENTS OR AGENTS OF SUCH AGENTS OR PROJECT OPERATORS, INCLUDING, BUT NOT LIMITED TO, CONSULTANTS OR SUBCONTRACTORS OF SUCH AGENTS OR PROJECT OPERATORS, UNDER THE AUTHORITY GRANTED PURSUANT TO THIS SECTION. THE PENALTY FOR FAILURE TO FILE SUCH STATEMENT SHALL BE THE REMOVAL OF THE AUTHORITY TO ACT AS AN AGENT OF THE AUTHORITY OR AS A PROJECT OPERATOR.

4. WITHIN THIRTY DAYS OF THE DATE THAT THE AUTHORITY DESIGNATES A PROJECT OPERATOR OR OTHER PERSON TO ACT AS AGENT OF THE AUTHORITY FOR PURPOSES OF PROVIDING FINANCIAL ASSISTANCE CONSISTING OF ANY SALES AND COMPENSATING USE TAX EXEMPTION TO SUCH PERSON, THE AGENCY SHALL FILE A

STATEMENT WITH THE DEPARTMENT OF TAXATION AND FINANCE RELATING THERETO, ON A FORM AND IN SUCH MANNER AS IS PRESCRIBED BY THE COMMISSIONER OF TAXATION AND FINANCE, IDENTIFYING EACH SUCH AGENT SO NAMED BY THE AUTHORITY, SETTING FORTH THE TAXPAYER IDENTIFICATION NUMBER OF EACH SUCH AGENT, GIVING A BRIEF DESCRIPTION OF THE PROPERTY AND/OR SERVICES INTENDED TO BE EXEMPTED FROM SUCH TAXES AS A RESULT OF SUCH APPOINTMENT AS AGENT, INDICATING THE AUTHORITY'S ROUGH ESTIMATE OF THE VALUE OF THE PROPERTY AND/OR SERVICES TO WHICH SUCH APPOINTMENT AS AGENT RELATES, INDICATING THE DATE WHEN SUCH DESIGNATION AS AGENT BECAME EFFECTIVE AND INDICATING THE DATE UPON WHICH SUCH DESIGNATION AS AGENT SHALL CEASE.

S 4. This act shall take effect immediately, provided, however, that:

(a) section one of this act shall be deemed to have been in full force and effect on and after January 31, 2008;

(b) sections two and three of this act shall be deemed to have been in full force and effect on and after January 1, 2010; and

(c) any statement of an industrial development agency or authority to the department of taxation and finance required by this act with respect to having appointed an agent or project operator before the effective date of this act shall be deemed timely if it is filed within 90 days of such date.

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

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

PART AA

Section 1. Paragraph (a) of subdivision 1 of section 1003 of the racing, pari-mutuel wagering and breeding law, as amended by section 1 of part L-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(a) Any racing association or corporation or regional off-track betting corporation, authorized to conduct pari-mutuel wagering under this chapter, desiring to display the simulcast of horse races on which pari-mutuel betting shall be permitted in the manner and subject to the conditions provided for in this article may apply to the board for a license so to do. Applications for licenses shall be in such form as may be prescribed by the board and shall contain such information or other material or evidence as the board may require. No license shall be issued by the board authorizing the simulcast transmission of thoroughbred races from a track located in Suffolk county. The fee for such licenses shall be five hundred dollars per simulcast facility per year payable by the licensee to the board for deposit into the general fund. Except as provided herein, the board shall not approve any application to conduct simulcasting into individual or group residences, homes or other areas for the purposes of or in connection with pari-mutuel wagering. The board may approve simulcasting into residences, homes or other areas to be conducted jointly by one or more regional off-track betting

corporations and one or more of the following: a franchised corporation, thoroughbred racing corporation or a harness racing corporation or association; provided (i) the simulcasting consists only of those races on which pari-mutuel betting is authorized by this chapter at one or more simulcast facilities for each of the contracting off-track betting corporations which shall include wagers made in accordance with section one thousand fifteen, one thousand sixteen and one thousand seventeen of this article; provided further that the contract provisions or other simulcast arrangements for such simulcast facility shall be no less favorable than those in effect on January first, two thousand five; (ii) that each off-track betting corporation having within its geographic boundaries such residences, homes or other areas technically capable of receiving the simulcast signal shall be a contracting party; (iii) the distribution of revenues shall be subject to contractual agreement of the parties except that statutory payments to non-contracting parties, if any, may not be reduced; provided, however, that nothing herein to the contrary shall prevent a track from televising its races on an irregular basis primarily for promotional or marketing purposes as found by the board. For purposes of this paragraph, the provisions of section one thousand thirteen of this article shall not apply. Any agreement authorizing an in-home simulcasting experiment commencing prior to May fifteenth, nineteen hundred ninety-five, may, and all its terms, be extended until June thirtieth, two thousand [ten] ELEVEN; provided, however, that any party to such agreement may elect to terminate such agreement upon conveying written notice to all other parties of such agreement at least forty-five days prior to the effective date of the termination, via registered mail. Any party to an agreement receiving such notice of an intent to terminate, may request the board to mediate between the parties new terms and conditions in a replacement agreement between the parties as will permit continuation of an in-home experiment until June thirtieth, two thousand [ten] ELEVEN; and (iv) no in-home simulcasting in the thoroughbred special betting district shall occur without the approval of the regional thoroughbred track.

S 2. Subparagraph (iii) of paragraph d of subdivision 3 of section 1007 of the racing, pari-mutuel wagering and breeding law, as amended by section 2 of part L-1 of chapter 57 of the laws of 2009, is amended to read as follows:

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

S 3. The opening paragraph of subdivision 1 of section 1014 of the racing, pari-mutuel wagering and breeding law, as amended by section 3 of part L-1 of chapter 57 of the laws of 2009, is amended to read as follows:

The provisions of this section shall govern the simulcasting of races conducted at thoroughbred tracks located in another state or country on any day during which a franchised corporation is conducting a race meet-

ing in Saratoga county at Saratoga thoroughbred racetrack until June thirtieth, two thousand [ten] ELEVEN and on any day regardless of whether or not a franchised corporation is conducting a race meeting in Saratoga county at Saratoga thoroughbred racetrack after June thirtieth, two thousand [ten] ELEVEN. On any day on which a franchised corporation has not scheduled a racing program but a thoroughbred racing corporation located within the state is conducting racing, every off-track betting corporation branch office and every simulcasting facility licensed in accordance with section one thousand seven (that have entered into a written agreement with such facility's representative horsemen's organization, as approved by the board), one thousand eight, or one thousand nine of this article shall be authorized to accept wagers and display the live simulcast signal from thoroughbred tracks located in another state or foreign country subject to the following provisions:

S 4. Subdivision 1 of section 1015 of the racing, pari-mutuel wagering and breeding law, as amended by section 4 of part L-1 of chapter 57 of the laws of 2009, is amended to read as follows:

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

S 5. The opening paragraph of subdivision 1 of section 1016 of the racing, pari-mutuel wagering and breeding law, as amended by section 5 of part L-1 of chapter 57 of the laws of 2009, is amended to read as follows:

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

S 6. The opening paragraph of section 1018 of the racing, pari-mutuel wagering and breeding law, as amended by section 6 of part L-1 of chapter 57 of the laws of 2009, is amended to read as follows:

Notwithstanding any other provision of this chapter, for the period July twenty-fifth, two thousand one through September eighth, two thousand [nine] TEN, when a franchised corporation is conducting a race meeting within the state at Saratoga Race Course, every off-track betting corporation branch office and every simulcasting facility licensed in accordance with section one thousand seven (that has entered into a written agreement with such facility's representative horsemen's organization as approved by the board), one thousand eight or one thousand nine of this article shall be authorized to accept wagers and display the live simulcast signal from thoroughbred tracks located in another state, provided that such facility shall accept wagers on races

run at all in-state thoroughbred tracks which are conducting racing programs subject to the following provisions; provided, however, no such written agreement shall be required of a franchised corporation licensed in accordance with section one thousand seven of this article.

S 7. Section 32 of chapter 281 of the laws of 1994, amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting, as amended by section 7 of part L-1 of chapter 57 of the laws of 2009, is amended to read as follows:

S 32. This act shall take effect immediately and the pari-mutuel tax reductions in section six of this act shall expire and be deemed repealed on July 1, [2010] 2011; provided, however, that nothing contained herein shall be deemed to affect the application, qualification, expiration, or repeal of any provision of law amended by any section of this act, and such provisions shall be applied or qualified or shall expire or be deemed repealed in the same manner, to the same extent and on the same date as the case may be as otherwise provided by law; provided further, however, that sections twenty-three and twenty-five of this act shall remain in full force and effect only until May 1, 1997 and at such time shall be deemed to be repealed.

S 8. Section 54 of chapter 346 of the laws of 1990, amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and the imposition of certain taxes, as amended by section 8 of part L-1 of chapter 57 of the laws of 2009, is amended to read as follows:

S 54. This act shall take effect immediately; provided, however, sections three through twelve of this act shall take effect on January 1, 1991, and section 1013 of the racing, pari-mutuel wagering and breeding law, as added by section thirty-eight of this act, shall expire and be deemed repealed on July 1, [2010] 2011; and section eighteen of this act shall take effect on July 1, 2008 and sections fifty-one and fifty-two of this act shall take effect as of the same date as chapter 772 of the laws of 1989 took effect.

S 9. Paragraph (a) of subdivision 1 of section 238 of the racing, pari-mutuel wagering and breeding law, as amended by section 9 of part L-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(a) The franchised corporation authorized under this chapter to conduct pari-mutuel betting at a race meeting or races run thereat shall distribute all sums deposited in any pari-mutuel pool to the holders of winning tickets therein, provided such tickets be presented for payment before April first of the year following the year of their purchase, less an amount which shall be established and retained by such franchised corporation of between sixteen to seventeen per centum of the total deposits in pools resulting from on-track regular bets, and eighteen and one-half to twenty-one per centum of the total deposits in pools resulting from on-track multiple bets and twenty-six per centum of the total deposits in pools resulting from on-track exotic bets and sixteen to thirty-six per centum of the total deposits in pools resulting from on-track super exotic bets, and twenty-six to thirty-six per centum when such on-track super exotic betting pools are carried forward, plus the breaks. The retention rate to be established is subject to the prior approval of the racing and wagering board. Such rate may not be changed more than once per calendar quarter to be effective on the first day of the calendar quarter. "Exotic bets" and "multiple bets" shall have the meanings set forth in section five hundred nineteen of this chapter. "Super exotic bets" shall have the meaning set forth in section three hundred one of this chapter. For

purposes of this section, a "pick six bet" shall mean a single bet or wager on the outcomes of six races. The breaks are hereby defined as the odd cents over any multiple of five for payoffs greater than one dollar five cents but less than five dollars, over any multiple of ten for payoffs greater than five dollars but less than twenty-five dollars, over any multiple of twenty-five for payoffs greater than twenty-five dollars but less than two hundred fifty dollars, or over any multiple of fifty for payoffs over two hundred fifty dollars. Out of the amount so retained there shall be paid by such franchised corporation to the commissioner of taxation and finance, as a reasonable tax by the state for the privilege of conducting pari-mutuel betting on the races run at the race meetings held by such franchised corporation, the following percentages of the total pool for regular and multiple bets five per centum of regular bets and four per centum of multiple bets plus twenty per centum of the breaks; for exotic wagers seven and one-half per centum plus twenty per centum of the breaks, and for super exotic bets seven and one-half per centum plus fifty per centum of the breaks. For the period June first, nineteen hundred ninety-five through September ninth, nineteen hundred ninety-nine, such tax on regular wagers shall be three per centum and such tax on multiple wagers shall be two and one-half per centum, plus twenty per centum of the breaks. For the period September tenth, nineteen hundred ninety-nine through March thirty-first, two thousand one, such tax on all wagers shall be two and six-tenths per centum and for the period April first, two thousand one through December thirty-first, two thousand [ten] ELEVEN, such tax on all wagers shall be one and six-tenths per centum, plus, in each such period, twenty per centum of the breaks. Payment to the New York state thoroughbred breeding and development fund by such franchised corporation shall be one-half of one per centum of total daily on-track pari-mutuel pools resulting from regular, multiple and exotic bets and three per centum of super exotic bets provided, however, that for the period September tenth, nineteen hundred ninety-nine through March thirty-first, two thousand one, such payment shall be six-tenths of one per centum of regular, multiple and exotic pools and for the period April first, two thousand one through December thirty-first, two thousand [ten] ELEVEN, such payment shall be seven-tenths of one per centum of such pools.

S 10. Paragraph (a) of subdivision 1 of section 238 of the racing, pari-mutuel wagering and breeding law, as amended by section 10 of part L-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(a) The franchised corporation authorized under this chapter to conduct pari-mutuel betting at a race meeting or races run thereat shall distribute all sums deposited in any pari-mutuel pool to the holders of winning tickets therein, provided such tickets be presented for payment before April first of the year following the year of their purchase, less an amount which shall be established and retained by such franchised corporation of between twelve to seventeen per centum of the total deposits in pools resulting from on-track regular bets, and fourteen to twenty-one per centum of the total deposits in pools resulting from on-track multiple bets and fifteen to twenty-five per centum of the total deposits in pools resulting from on-track exotic bets and fifteen to thirty-six per centum of the total deposits in pools resulting from on-track super exotic bets, plus the breaks. The retention rate to be established is subject to the prior approval of the racing and wagering board. Such rate may not be changed more than once per calendar quarter to be effective on the first day of the calendar quarter. "Exotic bets"

and "multiple bets" shall have the meanings set forth in section five hundred nineteen of this chapter. "Super exotic bets" shall have the meaning set forth in section three hundred one of this chapter. For purposes of this section, a "pick six bet" shall mean a single bet or wager on the outcomes of six races. The breaks are hereby defined as the odd cents over any multiple of five for payoffs greater than one dollar five cents but less than five dollars, over any multiple of ten for payoffs greater than five dollars but less than twenty-five dollars, over any multiple of twenty-five for payoffs greater than twenty-five dollars but less than two hundred fifty dollars, or over any multiple of fifty for payoffs over two hundred fifty dollars. Out of the amount so retained there shall be paid by such franchised corporation to the commissioner of taxation and finance, as a reasonable tax by the state for the privilege of conducting pari-mutuel betting on the races run at the race meetings held by such franchised corporation, the following percentages of the total pool for regular and multiple bets five per centum of regular bets and four per centum of multiple bets plus twenty per centum of the breaks; for exotic wagers seven and one-half per centum plus twenty per centum of the breaks, and for super exotic bets seven and one-half per centum plus fifty per centum of the breaks. For the period June first, nineteen hundred ninety-five through September ninth, nineteen hundred ninety-nine, such tax on regular wagers shall be three per centum and such tax on multiple wagers shall be two and one-half per centum, plus twenty per centum of the breaks. For the period September tenth, nineteen hundred ninety-nine through March thirty-first, two thousand one, such tax on all wagers shall be two and six-tenths per centum and for the period April first, two thousand one through December thirty-first, two thousand [ten] ELEVEN, such tax on all wagers shall be one and six-tenths per centum, plus, in each such period, twenty per centum of the breaks. Payment to the New York state thoroughbred breeding and development fund by such franchised corporation shall be one-half of one per centum of total daily on-track pari-mutuel pools resulting from regular, multiple and exotic bets and three per centum of super exotic bets provided, however, that for the period September tenth, nineteen hundred ninety-nine through March thirty-first, two thousand one, such payment shall be six-tenths of one per centum of regular, multiple and exotic pools and for the period April first, two thousand one through December thirty-first, two thousand [ten] ELEVEN, such payment shall be seven-tenths of one per centum of such pools.

S 11. Subdivision 5 of section 1012 of the racing, pari-mutuel wagering and breeding law, as amended by section 11 of part L-1 of chapter 57 of the laws of 2009, is amended to read as follows:

5. The provisions of this section shall expire and be of no further force and effect after June thirtieth, two thousand [ten] ELEVEN.

S 12. This act shall take effect immediately, provided that the amendments to paragraph (a) of subdivision 1 of section 238 of the racing, pari-mutuel wagering and breeding law made by section nine of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 32 of chapter 115 of the laws of 2008, as amended, when upon such date the provisions of section ten of this act shall take effect.

PART BB

Section 1. Subsection (a) of section 951 of the tax law, as amended by section 1 of part A of chapter 407 of the laws of 1999, is amended to read as follows:

(a) Dates. For purposes of this article, any reference to the internal revenue code means the United States Internal Revenue Code of 1986, with all amendments enacted on or before July twenty-second, nineteen hundred ninety-eight, and, unless specifically provided otherwise in this article, any reference to December thirty-first, nineteen hundred seventy-six or January first, nineteen hundred seventy-seven contained in the provisions of such code which are applicable to the determination of the tax imposed by this article shall be read as a reference to June thirtieth, nineteen hundred seventy-eight or July first, nineteen hundred seventy-eight, respectively. Notwithstanding the foregoing, the unified credit against the estate tax provided in section two thousand ten of the internal revenue code shall, for purposes of this article, be the amount [allowed by such section under the applicable federal law in effect on the decedent's date of death. Provided, however, the amount of such credit allowable for purposes of this article shall not exceed the amount] allowable as if the federal [unified credit did not exceed the tax due under section two thousand one of the internal revenue code on a federal taxable estate of] APPLICABLE EXCLUSION AMOUNT WERE one million dollars.

S 2. This act shall take effect immediately and shall apply to estates of decedents dying on or after January 1, 2010.

PART CC

Section 1. The article heading of article 29-A of the tax law, as added by section 1 of part E of chapter 25 of the laws of 2009, is amended to read as follows:

[TAX ON] MEDALLION TAXICAB [RIDES] OWNERS TAX
IN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT

S 2. Subdivisions (d), (e), (f) and (h) of section 1280 of the tax law, as added by section 1 of part E of chapter 25 of the laws of 2009, are amended and two new subdivisions (i) and (j) are added to read as follows:

(d) "Taxicab" means a motor vehicle [carrying passengers for hire in the city, duly] licensed by the [taxi and limousine commission of the city] TLC TO CARRY PASSENGERS FOR HIRE and [permitted] AUTHORIZED to accept hails from prospective passengers in the street.

(e) ["Taxicab ride" means a taxicab ride provided to one or more passengers to a given destination] "TLC" MEANS THE TAXI AND LIMOUSINE COMMISSION OF THE CITY.

(f) "Taxicab owner" OR "OWNER" means a person [owning a taxicab and shall include a purchaser under a reserve title contract, conditional sales agreement or vendor's lien agreement. In addition, an owner shall be deemed to include any lessee, licensee or bailee having the exclusive use of a taxicab, under a lease or otherwise, for a period of thirty days or more] LICENSED BY THE TLC TO OWN AND OPERATE A MEDALLION TAXICAB.

(h) ["Taximeter" shall include any device which, when affixed to a motor vehicle, is so constructed as to operate as a fare indicator and a time and distance register for the purpose of automatically determining the charge for which a passenger becomes liable] "TAXICAB LICENSE" MEANS THE AUTHORITY GRANTED BY THE TLC TO AN OWNER TO OPERATE A DESIGNATED VEHICLE AS A TAXICAB IN THE CITY.

(I) "MEDALLION" MEANS A PLATE ISSUED BY THE TLC AS THE PHYSICAL EVIDENCE OF A TAXICAB LICENSE, AND AFFIXED TO THE OUTSIDE OF SUCH TAXICAB.

(J) "MEDALLION TAXICAB" MEANS A TAXICAB TO WHICH A MEDALLION HAS BEEN AFFIXED IN ACCORDANCE WITH APPLICABLE LAW AND REGULATIONS.

S 3. Section 1281 of the tax law, as added by section 1 of part E of chapter 25 of the laws of 2009, is amended to read as follows:

S 1281. Imposition of tax. In addition to any other tax imposed by this chapter or other law, there is hereby imposed on every taxicab owner a tax ON THE USE OF A MEDALLION TAXICAB IN THE CITY, OR ON THE PRIVILEGE OF USING THE PUBLIC HIGHWAYS OR STREETS OF THE CITY FOR SUCH MEDALLION TAXICAB, OR ON BOTH SUCH USE AND SUCH PRIVILEGE. THE TAX IMPOSED BY THIS SECTION SHALL BE AT THE RATE of ONE THOUSAND SEVEN HUNDRED fifty [cents per taxicab ride on every ride that originates in the city and terminates anywhere within the territorial boundaries of the MCTD] DOLLARS PER QUARTERLY FILING PERIOD FOR EACH MEDALLION TAXICAB THAT THE TLC LICENSES SUCH PERSON TO OPERATE, WHETHER OR NOT OPERATED.

S 4. Section 1282 of the tax law, as added by section 1 of part E of chapter 25 of the laws of 2009, is amended to read as follows:

S 1282. Presumption of taxability. For the purpose of the proper administration of this article and to prevent evasion of the tax imposed by this article, it shall be presumed that every taxicab [ride that originates in the city is] OWNER AND EVERY USE OF A MEDALLION TAXICAB IN THE CITY ARE subject to the tax imposed by this article WITH RESPECT TO EVERY MEDALLION TAXICAB LICENSED TO SUCH OWNER TO OPERATE. This presumption shall prevail until the contrary is proven, and the burden of proving the contrary shall be on [the person liable for payment of the tax] SUCH OWNER.

S 5. Section 1283 of the tax law, as added by section 1 of part E of chapter 25 of the laws of 2009, is amended to read as follows:

S 1283. [Special] LIABILITY FOR TAX, SPECIAL provisions. Notwithstanding any [provisions] PROVISION of [this article] LAW to the contrary: (a) [If a taxicab owner subject to the tax imposed by this article leases, rents or otherwise furnishes a taxicab to an unrelated person who uses the taxicab to provide taxicab rides originating in the city, then: (1) the owner is deemed to provide such taxicab rides during the day or other period that the unrelated person uses the taxicab to provide such rides; (2) the tax imposed by this article shall be imposed on such owner; and (3) the owner must pay the tax imposed by this article on the number of rides subject to such tax provided by such unrelated person during the day or other period.] ANY PERSON THAT THE TLC HAS LICENSED AS THE TAXICAB OWNER AS OF THE END OF EACH QUARTERLY PERIOD FOR WHICH A RETURN IS REQUIRED TO BE FILED SHALL BE LIABLE FOR THE TAX IMPOSED BY THIS ARTICLE FOR THAT QUARTER, WHETHER OR NOT THAT PERSON IS THE TAXICAB OWNER FOR THE ENTIRE QUARTER. IF A TAXICAB OWNER TRANSFERS OWNERSHIP OF A MEDALLION TO ANOTHER PERSON, THE TRANSFEREE SHALL BE LIABLE FOR THE TAX IMPOSED BY THIS ARTICLE WITH RESPECT TO USE OF THE TAXICAB TO WHICH THAT MEDALLION RELATES FOR THE ENTIRE QUARTERLY PERIOD IN WHICH SUCH TRANSFER OCCURS.

(b) Notwithstanding any law to the contrary: (1) Although the tax is imposed on the taxicab owner, the [taxicab owner must pass along] CITY OR THE TLC SHALL ADOPT OR AMEND ORDINANCES OR REGULATIONS AND SHALL INCREASE MAXIMUM TAXICAB VEHICLE LEASE RATE OR RENTAL CHARGE (INCLUDING ANY CHARGE ATTRIBUTABLE TO THE RENTAL OF THE MEDALLION) AND TAXICAB TRIP FARES TO ENSURE THAT the economic incidence of the tax IS ULTIMATELY PASSED THROUGH to [the passenger] PASSENGERS, SUCH AS by [adjusting the

fare for the ride, and the] INCREASING TAXICAB TRIP FARES AND ALSO BY INCREASING THE AMOUNT OF ANY SUCH MAXIMUM LEASE RATE OR RENTAL CHARGE (INCLUDING ANY CHARGE ATTRIBUTABLE TO THE RENTAL OF THE MEDALLION) MADE BY A TAXICAB OWNER OR TAXICAB VEHICLE OWNER, AS THE CASE MAY BE, TO A DRIVER FOR THE USE OF THE TAXICAB VEHICLE. THE passing along of such economic incidence OF THE TAX IMPOSED BY THIS ARTICLE may not be construed by any court or administrative body as imposing the tax on [the] ANY person [or entity that pays the fare for a ride] OTHER THAN THE TAXICAB OWNER. [A] THE city [that regulates taxicabs or taxicab fares] OR THE TLC must adjust the fares AND ANY SUCH MAXIMUM LEASE RATE OR RENTAL CHARGE (INCLUDING ANY CHARGE ATTRIBUTABLE TO THE RENTAL OF THE MEDALLION) authorized to include therein the PASS-THROUGH OF THE ECONOMIC INCIDENCE OF THE tax imposed by this article, as the rate of such tax may from time to time change, and must timely require that any taximeter in a taxicab used to provide rides THAT ORIGINATE in the city be adjusted to include the [tax] PASS-THROUGH.

(2) A taxicab owner in such city must timely adjust the taximeter in any of such person's taxicabs so that it reflects [the tax imposed by this article] SUCH PASS-THROUGH PRESCRIBED BY THE CITY OR TLC as such [rate] PASS-THROUGH AMOUNT may from time to time change.

(3) Neither the failure of such city OR THE TLC to adjust fares nor the failure of a taxicab owner OR OTHER PERSON to adjust a taximeter will relieve any [person] TAXICAB OWNER liable for the tax imposed by this article from the obligation to pay such tax timely, [at] IN the correct [rate] AMOUNT.

[(c) For purposes of this section, "unrelated person" means a person other than a related person as defined for purposes of section fourteen of this chapter.]

S 6. Section 1284 of the tax law, as added by section 1 of part E of chapter 25 of the laws of 2009, is amended to read as follows:

S 1284. Returns. Every person liable for the tax imposed by this article shall file a return quarterly with the commissioner. Each return shall show the number of [rides] TAXICABS in the quarter [for] WITH RESPECT TO which the return is filed, together with such other information as the commissioner may require. The returns required by this section shall be filed for quarterly periods [ending] COMMENCING on the [last] FIRST day of March, June, September, and December of each year, and each return shall be filed [within twenty days after the end] ON THE LAST DAY of the quarterly period covered thereby. [Every such person shall also file a return with the commissioner for the period of November and December two thousand nine, by January twentieth, two thousand ten, containing the information described above. If the commissioner deems it necessary in order to ensure the payment of the tax imposed by this article, the commissioner may require returns to be made for shorter periods than prescribed by the foregoing provisions of this section, and upon such dates as the commissioner may specify.] The form of returns shall be prescribed by the commissioner and shall contain such information as the commissioner may deem necessary for the proper administration of this article. The commissioner may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice. The commissioner may require that the returns be filed electronically.

S 7. Section 1285 of the tax law, as added by section 1 of part E of chapter 25 of the laws of 2009, is amended to read as follows:

S 1285. Payment of tax. Every person required to file a return under this article shall, at the time of filing such return, pay to the

commissioner the total of all tax imposed by this article, on the correct number of [rides] TAXICABS WITH RESPECT TO WHICH SUCH PERSON IS subject to tax under this article. The amount so payable to the commissioner for the period for which a return is required to be filed shall be due and payable to the commissioner on the date limited for the filing of the return for such period, without regard to whether a return is filed or whether the return which is filed correctly shows the correct number of [rides] TAXICABS or the amount of tax due [thereon] ON SUCH RETURN. The commissioner may require that the tax be paid electronically.

S 8. Section 1286 of the tax law, as added by section 1 of part E of chapter 25 of the laws of 2009, is amended to read as follows:

S 1286. Records to be kept. (A) Every person [required to pay] LIABLE FOR any tax imposed by this article shall keep:

(1) records of every [ride originating] TAXICAB THE PERSON USES in the city [and of all amounts paid, charged or due thereon and of the tax payable thereon], in such form as the commissioner may require[. Every such person shall also keep a true and complete copy of every contract, agreement, or arrangement concerning the lease, rental, or license to use a taxicab for which the person is required to remit the tax on rides imposed by this article on such person];

(2) A TRUE AND COMPLETE COPY OF EVERY CONTRACT, AGREEMENT, OR ARRANGEMENT CONCERNING THE SALE, TRANSFER, OR ASSIGNMENT OF A MEDALLION OR TAXICAB;

(3) TRUE AND COMPLETE COPIES OF ANY RECORDS REQUIRED TO BE KEPT BY THE TLC; AND

(4) SUCH OTHER RECORDS AND INFORMATION THAT THE COMMISSIONER MAY REQUIRE TO PERFORM HIS OR HER DUTIES UNDER THIS ARTICLE.

[Such] (B) THE records REQUIRED TO BE KEPT BY THIS SECTION shall be available for inspection and examination at any time upon demand by the commissioner or the commissioner's duly authorized agent or employee and shall be preserved for a period of three years, except that the commissioner may consent to their destruction within that period or may require that they be kept longer. Such records may be kept within the meaning of this section when reproduced on any photographic, photostatic, microfilm, micro-card, miniature photographic or other process which actually reproduces the original record. If those records are maintained in an electronic format, they must be made available and accessible to the commissioner in electronic format.

S 9. Subdivision (b) of section 1287 of the tax law, as added by section 1 of part E of chapter 25 of the laws of 2009, is amended to read as follows:

(b) Notwithstanding the provisions of subdivision (a) of this section, the commissioner may, in his or her discretion, permit the proper officer of [a] THE city [that regulates taxicabs] or the duly authorized representative of such officer, to inspect any return filed under this article, or may furnish to such officer or such officer's authorized representative an abstract of any such return or supply such person with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this article; but such permission shall be granted or such information furnished only if such city OR THE TLC shall have furnished the commissioner with all information requested by the commissioner pursuant to this article and shall have permitted the commissioner or the commissioner's authorized representative to make any inspection of any records or reports concerning taxicabs, and [their] TAXICAB owners [or operators] filed with or

possessed by such city OR THE TLC which the commissioner may have requested from such city OR THE TLC. PROVIDED, FURTHER, THAT THE COMMISSIONER MAY DISCLOSE TO SUCH CITY OR THE TLC WHETHER OR NOT A PERSON LIABLE FOR THE TAX IMPOSED BY THIS ARTICLE HAS PAID ALL OF THE TAX DUE UNDER THIS ARTICLE AS OF ANY GIVEN DATE.

S 10. Section 1289 of the tax law, as added by section 1 of part E of chapter 25 of the laws of 2009, is amended to read as follows:

S 1289. Cooperation by city. The city AND THE TLC shall cooperate with and assist the commissioner to effect the purposes of this article and the commissioner's responsibilities under this article. Such cooperation shall include furnishing the names, addresses and all other information concerning every TAXICAB owner, [operator] MEDALLION, and [driver of taxicabs] TAXICAB in the city, AND THE RECORDS OF ANY OF THEM, IN THE CITY'S POSSESSION OR IN THE POSSESSION OF ANY OF ITS AGENCIES OR INSTRUMENTALITIES, together with any other information the commissioner requests, all without cost to the commissioner.

S 11. Section 1290 of the tax law, as added by section 1 of part E of chapter 25 of the laws of 2009, is amended to read as follows:

S 1290. Practice and procedure. The provisions of article twenty-seven of this chapter shall apply with respect to the administration of and procedure with respect to the tax imposed by this article in the same manner and with the same force and effect as if the language of such article twenty-seven had been incorporated in full into this article and had expressly referred to the tax under this article, except to the extent that any such provision is either inconsistent with a provision of this article or is not relevant to this article. [Criminal penalties provided in section one thousand eight hundred twenty of this chapter shall apply in the same manner and with the same force and effect with respect to this article.]

S 12. The tax law is amended by adding a new section 1821 to read as follows:

S 1821. MEDALLION TAXICAB OWNERS TAX IN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT. ANY WILLFUL ACT OR OMISSION BY ANY PERSON WHICH CONSTITUTES A VIOLATION OF ANY PROVISION OF ARTICLE TWENTY-NINE-A OF THIS CHAPTER SHALL CONSTITUTE A MISDEMEANOR.

S 13. Subdivision 1 of section 181 of the general municipal law, as amended by chapter 430 of the laws of 2003, is amended to read as follows:

1. The registration and licensing of taxicabs and may limit the number of taxicabs to be licensed and the county of Westchester may adopt ordinances regulating the registration and licensing of taxicabs and limousines and may limit the number to be licensed; and the county of Nassau may adopt ordinances regulating the registration of taxicabs and limousines; PROVIDED, HOWEVER, THAT A CITY WITH A POPULATION OF A MILLION OR MORE IN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT ESTABLISHED BY SECTION TWELVE HUNDRED SIXTY-TWO OF THE PUBLIC AUTHORITIES LAW SHALL ADOPT OR AMEND ORDINANCES, REGULATIONS, AND PROCEDURES THAT COMPLY WITH THE REQUIREMENTS OF ARTICLE TWENTY-NINE-A OF THE TAX LAW, INCLUDING PROVIDING THAT THE TAXICAB OWNER LIABLE FOR TAX UNDER ARTICLE TWENTY-NINE-A OF THE TAX LAW SHALL, IF SUCH OWNER'S MEDALLION TAXICAB IS DRIVEN BY A PERSON OTHER THAN SUCH OWNER, BE PERMITTED TO CHARGE A LESSEE OF SUCH TAXICAB, IN ADDITION TO ANY LEASE FEE AUTHORIZED BY THE TLC OF THE CITY, AN AMOUNT EQUAL TO THE ANNUALIZED AMOUNT OF SUCH TAX IMPOSED BY ARTICLE TWENTY-NINE-A OF THE TAX LAW DIVIDED BY THE NUMBER OF LEASE PERIODS SUCH VEHICLE IS REQUIRED TO BE OPERATED EACH YEAR BY SUCH TLC. THE TERMS "TAXICAB OWNER," "MEDALLION," "MEDALLION TAXICAB," "TLC,"

AND "CITY" SHALL HAVE THE SAME MEANINGS THEY HAVE IN SECTION TWELVE HUNDRED EIGHTY OF THE TAX LAW.

S 14. Section 19-504 of the administrative code of the city of New York is amended by adding a new subdivision q to read as follows:

Q. NOTWITHSTANDING ANY CONTRARY PROVISION OF LAW, THE COMMISSION SHALL NOT ISSUE OR RENEW A TAXICAB LICENSE UNLESS THE APPLICANT OR HOLDER, AS THE CASE MAY BE, AVOWS UNDER PENALTY OF PERJURY THAT SUCH PERSON HAS FULLY PAID ALL AND ANY TAX IMPOSED ON SUCH PERSON BY ARTICLE TWENTY-NINE-A OF THE TAX LAW. THE COMMISSION MAY ASK THE COMMISSIONER OF TAXATION AND FINANCE FOR CONFIRMATION THAT SUCH PERSON HAS PAID SUCH TAX. IF THE PERSON DOES NOT MAKE SUCH AVOWAL OR THE COMMISSIONER OF TAXATION AND FINANCE ADVISES THAT SUCH PERSON OWES ANY SUCH TAX, THE COMMISSION SHALL NOT ISSUE OR RENEW SUCH LICENSE UNLESS AND UNTIL SUCH PERSON PRESENTS PROOF THAT ALL SUCH TAX HAS BEEN PAID. NOTHING IN THIS SUBDIVISION SHALL PREVENT A PERSON TO WHOM A TAXICAB LICENSE HAS BEEN ISSUED FROM MOVING THE MEDALLION WHICH EVIDENCES THE LICENSE TO A STAND-BY VEHICLE IF THE TLC'S REGULATIONS PERMIT SUCH PERSON TO DO SO.

S 15. The legislature hereby declares that it is an essential public interest to support public transportation in the metropolitan commuter transportation district, to enable citizens to commute to work and school, to access health care and to engage in all the other activities that are part of a healthy and robust society and article 29-A of the tax law has been enacted and the revenues from the tax imposed by that article have been expressly dedicated to support the metropolitan transportation authority financial assistance fund for those purposes. Thus the legislature considers it vital to the public health and welfare of the people of the state of New York to ensure that the revenues from article 29-A of the tax law continue unabated. Therefore, notwithstanding any provision of law to the contrary, if any court of competent jurisdiction issues any temporary restraining order, permanent injunction, or other injunctive relief, or any order or decision, or takes any other action, that invalidates or prevents or delays from taking effect all or any portion of article 29-A of the tax law as amended by this act, then the sections of this act, other than sections eleven and twelve of this act and this section, shall expire and article 29-A of the tax law as it existed prior to the amendments made by this act, other than by sections eleven and twelve of this act, shall be restored effective the first day of the first month next commencing at least 30 days after any such court order, injunction, decision, or relief takes effect, and such restored article 29-A shall apply to taxicab rides occurring on and after such first day of such first month, provided, however that sections eleven and twelve of this act shall apply to such restored article 29-A. Provided, further, that, notwithstanding any provision of law to the contrary, if any such order, injunction, or other injunctive relief, or any order or decision, or any such other action that invalidated or prevented or delayed from taking effect all or any portion of such article 29-A shall be overturned, overruled, or reversed or shall expire or be of no further force and effect, then the sections of this act that expired, as described above in this section, shall be restored and take effect the first day of a quarterly period, as described in section 1284 of the tax law as amended by section six of this act, next commencing at least 30 days after the date of such overturn, overrule, reversal, or expiration.

S 16. This act shall take effect June 1, 2010, and shall apply to uses made and privileges exercised on and after that date; provided that:

(a) the provisions of article 29-A of the tax law in existence prior to that date shall continue to apply to all liabilities accrued up to that date;

(b) notwithstanding any contrary provision of law, a person required to file a return and pay tax under sections 1284 and 1285 of the tax law for the period commencing April 1, 2010, shall file that return and pay tax by June 20, 2010, for the period commencing April 1, 2010, and ending May 31, 2010; and

(c) sections nine, eleven and twelve of this act shall be deemed to have taken effect on the same date and apply in the same manner that part E of chapter 25 of the laws of 2009 took effect.

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

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