

9809

I N A S S E M B L Y

January 29, 2010

Introduced by M. of A. FIELDS, ALESSI, THIELE, SWEENEY -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Ways and Means

AN ACT to repeal article 23 of the tax law, relating to the metropolitan commuter transportation mobility tax; to amend the tax law, administrative code of the city of New York, education law and the highway law, in relation to making technical corrections related thereto; and to repeal provisions of the tax law, administrative code of the city of New York, education law, public authorities law and the state finance law, relating to the metropolitan commuter transportation mobility tax

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

1 Section 1. Article 23 of the tax law is REPEALED.

2 S 2. Paragraphs 1 and 2 of subdivision (j) of section 14 of the tax  
3 law, as amended by section 10 of part CC of chapter 85 of the laws of  
4 2002, are amended to read as follows:

5 (1) A new business shall include any corporation, except a corporation  
6 which is substantially similar in operation and in ownership to a busi-  
7 ness entity (or entities) taxable, or previously taxable, under section  
8 one hundred eighty-three, one hundred eighty-four[,] OR one hundred  
9 eighty-five [or one hundred eighty-six] of article nine; article nine-A,  
10 article thirty-two or thirty-three of this chapter; [article twenty-  
11 three of this chapter] or which would have been subject to tax under  
12 [such] article twenty-three (as such article was in effect on January  
13 first, nineteen hundred eighty) or the income (or losses) of which is  
14 (or was) includable under article twenty-two of this chapter.

15 (2) For purposes of article twenty-two of this chapter, an individual  
16 who is either a sole proprietor or a member of a partnership shall qual-  
17 ify as an owner of a new business unless the business of which the indi-  
18 vidual is an owner is substantially similar in operation and in owner-  
19 ship to a business entity taxable, or previously taxable, under section  
20 one hundred eighty-three, one hundred eighty-four[,] OR one hundred  
21 eighty-five [or one hundred eighty-six] of article nine; article nine-A,

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

LBD15533-01-0

1 thirty-two or thirty-three of this chapter; [article twenty-three of  
2 this chapter] or which would have been subject to tax under [such] arti-  
3 cle twenty-three (as such article was in effect on January first, nine-  
4 teen hundred eighty) or the income (or losses) of which is (or was)  
5 includable under article twenty-two.

6 S 3. Clause (i) of subparagraph 5 of paragraph (a) of subdivision 9 of  
7 section 208 of the tax law, as amended by section 2 of part C of chapter  
8 25 of the laws of 2009, is amended to read as follows:

9 (i) any refund or credit of a tax imposed under this article[, article  
10 twenty-three,] or article thirty-two of this chapter, for which tax no  
11 exclusion or deduction was allowed in determining the taxpayer's entire  
12 net income under this article[, article twenty-three,] or article thir-  
13 ty-two of this chapter for any prior year,

14 S 4. Subparagraph 20 of paragraph (b) of subdivision 9 of section 208  
15 of the tax law is REPEALED.

16 S 5. Paragraph (c) of subdivision 1-c of section 210 of the tax law,  
17 as amended by chapter 1043 of the laws of 1981, is amended to read as  
18 follows:

19 (c) is not a corporation which is substantially similar in operation  
20 and in ownership to a business entity (or entities) taxable, or previ-  
21 ously taxable, under this article; section one hundred eighty-three, one  
22 hundred eighty-four[, ] OR one hundred eighty-five [or one hundred eight-  
23 y-six] of article nine; article thirty-two or thirty-three of this chap-  
24 ter; [article twenty-three of this chapter] or which would have been  
25 subject to tax under [such] article twenty-three (as such article was in  
26 effect on January first, nineteen hundred eighty) or the income (or  
27 losses) of which is (or was) includable under article twenty-two of this  
28 chapter, and

29 S 6. Subparagraph 2 of paragraph j of subdivision 12 of section 210 of  
30 the tax law, as amended by chapter 1043 of the laws of 1981, is amended  
31 to read as follows:

32 (2) is substantially similar in operation and in ownership to a busi-  
33 ness entity (or entities) taxable, or previously taxable, under this  
34 article; section one hundred eighty-three, one hundred eighty-four[, ] OR  
35 one hundred eighty-five [or one hundred eighty-six] of article nine;  
36 article thirty-two or thirty-three of this chapter; [article twenty-  
37 three of this chapter] or which would have been subject to tax under  
38 [such] article twenty-three (as such article was in effect on January  
39 first, nineteen hundred eighty) or the income (or losses) of which is  
40 (or was) includable under article twenty-two of this chapter whereby the  
41 intent and purpose of this paragraph and paragraph (e) of this subdivi-  
42 sion with respect to refunding of credit to new business would be  
43 evaded; or

44 S 7. Paragraph 2 of subdivision (a) of section 292 of the tax law, as  
45 amended by section 4 of part C of chapter 25 of the laws of 2009, is  
46 amended to read as follows:

47 (2) There shall be subtracted from federal unrelated business taxable  
48 income the amount of any refund or credit for overpayment of a tax  
49 imposed under this article [or article twenty-three of this chapter].

50 S 8. Paragraph 8 of subdivision (a) of section 292 of the tax law is  
51 REPEALED.

52 S 9. Subparagraph (A) of paragraph 10 of subsection (a) of section 606  
53 of the tax law, as amended by section 3 of part CC of chapter 85 of the  
54 laws of 2002, is amended to read as follows:

55 (A) the business of which the individual is an owner is substantially  
56 similar in operation and in ownership to a business entity taxable, or

1 previously taxable, under section one hundred eighty-three, one hundred  
2 eighty-four[,] OR one hundred eighty-five [or one hundred eighty-six] of  
3 article nine; article nine-A, thirty-two or thirty-three of this chap-  
4 ter; [article twenty-three of this chapter] or which would have been  
5 subject to tax under [such] article twenty-three (as such article was in  
6 effect on January first, nineteen hundred eighty) or the income (or  
7 losses) of which is (or was) includable under article twenty-two of this  
8 chapter whereby the intent and purpose of this paragraph and paragraph  
9 five of this subsection with respect to refunding of credit to new busi-  
10 ness would be evaded; or

11 S 10. Paragraph 39 of subsection (b) of section 612 of the tax law is  
12 REPEALED.

13 S 11. Paragraph 7 of subsection (c) of section 612 of the tax law, as  
14 amended by section 7 of part C of chapter 25 of the laws of 2009, is  
15 amended to read as follows:

16 (7) The amount of any refund or credit for overpayment of income taxes  
17 imposed by this state, or any other taxing jurisdiction, [and any taxes  
18 imposed by article twenty-three of this chapter,] to the extent properly  
19 included in gross income for federal income tax purposes.

20 S 12. Clause (ii) and subclause 2 of clause (v) of subparagraph (B) of  
21 paragraph 1 of subsection (o) of section 612 of the tax law, clause (ii)  
22 as amended by chapter 28 of the laws of 1987 and subclause 2 as amended  
23 by chapter 1043 of the laws of 1981, are amended to read as follows:

24 (ii) is, at the date of adoption of such plan, subject to taxation  
25 (whether or not any amount is owing) under section one hundred eighty-  
26 three[,] OR one hundred eighty-four [or one hundred eighty-six] of arti-  
27 cle nine of this chapter, or under article [nine-a] NINE-A of this chap-  
28 ter [or article twenty-three of this chapter], or would have been  
29 subject to tax under article twenty-three (as such article was in effect  
30 on January first, nineteen hundred eighty) if such article were still in  
31 effect, and the first taxable period for which such new business became  
32 subject to such taxation commenced on or after July first, nineteen  
33 hundred eighty-one and before January first, nineteen hundred eighty-  
34 eight, and such first taxable period includes the date of adoption of  
35 such plan; if not so subject to taxation, the new business must be  
36 subject to taxation under such sections or articles for the first time  
37 within one year from the date of adoption of such plan, and

38 (2) A new business does not include (i) any new business of which  
39 twenty-five percent or more of the number of shares of stock that enti-  
40 tle the holders thereof to vote for the election of directors or trus-  
41 tees is owned, directly or indirectly, by a taxpayer subject to tax  
42 under section one hundred eighty-three, one hundred eighty-four[,] OR  
43 one hundred eighty-five [or one hundred eighty-six] of article nine of  
44 this chapter, or under article nine-A, thirty-two or thirty-three of  
45 this chapter or (ii) any new business substantially similar in operation  
46 and in ownership, directly or indirectly, to a business entity (or enti-  
47 ties) taxable, or previously taxable, under such sections, such arti-  
48 cles, [article twenty-three] or which would have been subject to tax  
49 under article twenty-three (as such article was in effect on January  
50 first, nineteen hundred eighty) or the income (or losses) of which is  
51 (or was) includable under article twenty-two whereby the intent and  
52 purpose of this subsection would be evaded.

53 S 13. Paragraph 3 of subsection (p) of section 612 of the tax law, as  
54 amended by chapter 28 of the laws of 1987, is amended to read as  
55 follows:

1 (3) is not substantially similar in operation or ownership, directly  
2 or indirectly, to a business entity (or entities) taxable, or previously  
3 taxable, under such sections, such articles, [article twenty-three] or  
4 which would have been subject to tax under article twenty-three (as such  
5 article was in effect on January first, nineteen hundred eighty) or the  
6 income (or losses) of which is (or was) includable under article twen-  
7 ty-two whereby the intent and purpose of this subsection would be  
8 evaded,

9 S 14. Paragraph 8 of subsection (c) of section 615 of the tax law is  
10 REPEALED.

11 S 15. Subdivision 4 of section 618 of the tax law, as amended by  
12 section 9 of part C of chapter 25 of the laws of 2009, is amended to  
13 read as follows:

14 (4) There shall be added or subtracted (as the case may be) the  
15 modifications described in paragraphs (6), (10), (17), (18), (19), (20),  
16 (21), (22), (23), (24), (25), (26), (27), (29), AND (38) [and (39)] of  
17 subsection (b) and in paragraphs (11), (13), (15), (19), (20), (21),  
18 (22), (23), (24), (25), (26) and (28) of subsection (c) of section six  
19 hundred twelve of this part.

20 S 16. Subdivision 4 of section 618 of the tax law, as separately  
21 amended by section 5 of part HH-1 of chapter 57 of the laws of 2008 and  
22 section 9 of part C of chapter 25 of the laws of 2009, is amended to  
23 read as follows:

24 (4) There shall be added or subtracted (as the case may be) the  
25 modifications described in paragraphs (6), (10), (17), (18), (19), (20),  
26 (21), (22), (23), (24), (25), (26), (27), [(28),] (29), AND (38) [and  
27 (39)] of subsection (b) and in paragraphs (11), (13), (15), (19), (20),  
28 (21), (22), (23), (24), (25), (26) and (28) of subsection (c) of section  
29 six hundred twelve of this part.

30 S 17. Subsection (a) of section 686 of the tax law, as amended by  
31 section 10 of part C of chapter 25 of the laws of 2009, is amended to  
32 read as follows:

33 (a) General.-- The commissioner of taxation and finance, within the  
34 applicable period of limitations, may credit an overpayment of income  
35 tax and interest on such overpayment against any liability in respect of  
36 any tax imposed by this chapter[, including taxes imposed under article  
37 twenty-three of this chapter,] on the person who made the overpayment,  
38 against any liability in respect of any tax imposed pursuant to the  
39 authority of this chapter or any other law on such person if such tax is  
40 administered by the commissioner of taxation and finance and, as  
41 provided in sections one hundred seventy-one-c, one hundred  
42 seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f and  
43 one hundred seventy-one-l of this chapter, against past-due support, a  
44 past-due legally enforceable debt, a city of New York tax warrant judg-  
45 ment debt, and against the amount of a default in repayment of a guaran-  
46 teed student, state university or city university loan. The balance  
47 shall be refunded by the comptroller out of the proceeds of the tax  
48 retained by him for such general purpose. Any refund under this section  
49 shall be made only upon the filing of a return and upon a certificate of  
50 the commissioner approved by the comptroller. The comptroller, as a  
51 condition precedent to the approval of such a certificate, may examine  
52 into the facts as disclosed by the return of the person who made the  
53 overpayment and other information and data available in the files of the  
54 commissioner.

55 S 18. Section 1311 of the tax law, as amended by chapter 682 of the  
56 laws of 1976, is amended to read as follows:

1 S 1311. Enforcement with other taxes. (a) If there is assessed a tax  
2 under a city income tax imposed pursuant to the authority of this arti-  
3 cle and there is also assessed a tax or taxes against the same taxpayer  
4 pursuant to article twenty-two [or articles twenty-two and twenty-three]  
5 of this chapter or under a local law enacted pursuant to the authority  
6 of FORMER article two-E of the general city law and payment of a single  
7 amount is required under the provisions of this article, such payment  
8 shall be deemed to have been made with respect to the taxes so assessed  
9 in proportion to the amounts of such taxes due, including tax, penal-  
10 ties, interest and additions to tax.

11 (b) If the state tax commission takes action under such article twen-  
12 ty-two [or articles twenty-two and twenty-three] or under a local law  
13 enacted pursuant to the authority of FORMER article two-E of the general  
14 city law with respect to the enforcement and collection of the tax or  
15 taxes assessed under such articles the state tax commission shall, wher-  
16 ever possible, accompany such action with a similar action under similar  
17 enforcement and collection provisions of such city income tax.

18 (c) Any moneys collected as a result of such joint action shall be  
19 deemed to have been collected in proportion to the amounts due, includ-  
20 ing tax, penalties, interest and additions to tax, under article twen-  
21 ty-two [or articles twenty-two and twenty-three] of this chapter and  
22 such city income tax.

23 (d) Whenever the state tax commission takes any action with respect to  
24 a deficiency of income tax under article twenty-two [or articles twen-  
25 ty-two and twenty-three] of this chapter or under a local law enacted  
26 pursuant to the authority of FORMER article two-E of the general city  
27 law, other than the action set forth in subdivision (a) of this section,  
28 it may in its discretion accompany such action with a similar action  
29 under such city income tax.

30 S 19. Paragraph 15 of subsection (b) of section 1453 of the tax law is  
31 REPEALED.

32 S 20. Subsection (d) of section 1453 of the tax law, as amended by  
33 section 13 of part C of chapter 25 of the laws of 2009, is amended to  
34 read as follows:

35 (d) Entire net income shall not include any refund or credit of a tax  
36 for which no exclusion or deduction was allowed in determining the  
37 taxpayer's entire net income under this article or [articles] ARTICLE  
38 nine-A [or twenty-three] of this chapter for any prior year.

39 S 21. Subparagraph (B) of paragraph 8 of subsection (i) of section  
40 1456 of the tax law, as added by section 27 of part A of chapter 56 of  
41 the laws of 1998, is amended to read as follows:

42 (B) is substantially similar in operation and in ownership to a busi-  
43 ness entity (or entities) taxable, or previously taxable, under this  
44 article; section one hundred eighty-three, one hundred eighty-four[, ] OR  
45 one hundred eighty-five [or one hundred eighty-six] of article nine;  
46 article nine-A or article thirty-three of this chapter; [article twen-  
47 ty-three of this chapter] or which would have been subject to tax under  
48 [such] article twenty-three (as such article was in effect on January  
49 first, nineteen hundred eighty) or the income (or losses) of which is  
50 (or was) includable under article twenty-two of this chapter whereby the  
51 intent and purpose of this paragraph and paragraph five of this  
52 subsection with respect to refunding of credit to new business would be  
53 evaded; or

54 S 22. Subparagraph (C) of paragraph 1 of subdivision (b) of section  
55 1503 of the tax law, as amended by section 14 of part C of chapter 25 of  
56 the laws of 2009, is amended to read as follows:

1 (C) any refund or credit of a tax imposed under this article or  
2 section one hundred eighty-seven, [or article twenty-three of this chap-  
3 ter] heretofore in effect to the extent properly included as income for  
4 federal income tax purposes, for which no exclusion or deduction was  
5 allowed in determining the taxpayer's entire net income under this arti-  
6 cle for any prior year;

7 S 23. Subparagraph (V) of paragraph 2 of subdivision (b) of section  
8 1503 of the tax law is REPEALED.

9 S 24. Subparagraph (B) of paragraph 7 of subdivision (q) of section  
10 1511 of the tax law, as added by section 1 of part L of chapter 63 of  
11 the laws of 2000, is amended to read as follows:

12 (B) is substantially similar in operation and in ownership to a busi-  
13 ness entity (or entities) taxable, or previously taxable, under this  
14 article; section one hundred eighty-three, one hundred eighty-four[, ] OR  
15 one hundred [eight-five or one hundred eighty-six] EIGHTY-FIVE of arti-  
16 cle nine; article nine-A or article thirty-two of this chapter; [article  
17 twenty-three of this chapter] or which would have been subject to tax  
18 under [such] article twenty-three (as such article was in effect [of] ON  
19 January first, nineteen hundred eighty) or the income (or losses) of  
20 which is (or was) includable under article twenty-two of this chapter  
21 whereby the intent and purpose of this paragraph and paragraph four of  
22 this subdivision with respect to refunding of credit to new business  
23 would be evaded; or

24 S 25. Subparagraph 5 of paragraph (a) of subdivision 8 of section  
25 11-602 of the administrative code of the city of New York, as amended by  
26 section 16 of part C of chapter 25 of the laws of 2009, is amended to  
27 read as follows:

28 (5) any refund or credit of a tax imposed under this chapter, or  
29 imposed by article nine, nine-A, [twenty-three,] or thirty-two of the  
30 tax law, for which tax no exclusion or deduction was allowed in deter-  
31 mining the taxpayer's entire net income under this subchapter or  
32 subchapter three of this chapter for any prior year;

33 S 26. Subparagraph 19 of paragraph (b) of subdivision 8 of section  
34 11-602 of the administrative code of the city of New York is REPEALED.

35 S 27. Paragraph 16 of subdivision b of section 11-641 of the adminis-  
36 trative code of the city of New York is REPEALED.

37 S 28. Subdivision (d) of section 11-641 of the administrative code of  
38 the city of New York, as amended by section 19 of part C of chapter 25  
39 of the laws of 2009, is amended to read as follows:

40 (d) Entire net income shall not include any refund or credit of a tax  
41 for which no exclusion or deduction was allowed in determining the  
42 taxpayer's entire net income under this subchapter or subchapter two of  
43 this chapter[, or imposed by article twenty-three of the tax law for any  
44 prior year].

45 S 29. Paragraph 35 of subdivision (b) of section 11-1712 of the admin-  
46 istrative code of the city of New York is REPEALED.

47 S 30. Paragraph 7 of subdivision (c) of section 11-1712 of the admin-  
48 istrative code of the city of New York, as amended by section 21 of part  
49 C of chapter 25 of the laws of 2009, is amended to read as follows:

50 (7) The amount of any refund or credit for overpayment of income taxes  
51 imposed by this city, OR any other taxing jurisdiction, [or any taxes  
52 imposed by article twenty-three of the tax law] to the extent properly  
53 included in gross income for federal income tax purposes.

54 S 31. Paragraph 3 of subdivision (p) of section 11-1712 of the admin-  
55 istrative code of the city of New York, as amended by chapter 333 of the  
56 laws of 1987, is amended to read as follows:

1 (3) is not substantially similar in operation or ownership, directly  
2 or indirectly, to a business entity (or entities) taxable, or previously  
3 taxable, under such sections, such articles, [article twenty-three of  
4 the tax law] or which would have been subject to tax under article twen-  
5 ty-three (as such article was in effect on January first, nineteen  
6 hundred eighty) or the income (or losses) of which is (or was) includi-  
7 ble under article twenty-two of the tax law whereby the intent and  
8 purpose of this subdivision would be evaded,

9 S 32. Subdivision 4 of section 11-1718 of the administrative code of  
10 the city of New York, as amended by section 22 of part C of chapter 25  
11 of the laws of 2009, is amended to read as follows:

12 (4) There shall be added or subtracted (as the case may be) the  
13 modifications described in paragraphs six, ten, seventeen, eighteen,  
14 nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four,  
15 twenty-five, twenty-six, twenty-seven, twenty-nine AND, thirty-four [and  
16 thirty-five] of subdivision (b) and in paragraphs eleven, thirteen,  
17 fifteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twen-  
18 ty-four, twenty-five, twenty-six and twenty-eight of subdivision (c) of  
19 section 11-1712 of this subchapter.

20 S 33. Subdivision 4 of section 11-1718 of the administrative code of  
21 the city of New York, as separately amended by section 12 of part HH-1  
22 of chapter 57 of the laws of 2008 and section 22 of part C of chapter 25  
23 of the laws of 2009, is amended to read as follows:

24 (4) There shall be added or subtracted (as the case may be) the  
25 modifications described in paragraphs six, ten, seventeen, eighteen,  
26 nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four,  
27 twenty-five, twenty-seven, [twenty-eight,] twenty-nine AND, thirty-four  
28 [and thirty-five] of subdivision (b) and in paragraphs eleven, thirteen,  
29 fifteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twen-  
30 ty-four, twenty-five, twenty-six and twenty-eight of subdivision (c) of  
31 section 11-1712 of this subchapter.

32 S 34. Subparagraphs 17 and 18 of paragraph t of subdivision 1 of  
33 section 3602 of the education law, as amended by section 2 of part D of  
34 chapter 25 of the laws of 2009, are amended to read as follows:

35 (17) in any year in which expenditures are made to the New York state  
36 teachers' retirement system or the New York state and local employees'  
37 retirement system for both the prior school year and the current school  
38 year, any expenditures made to such retirement systems and recorded in  
39 the school year prior to the school year in which such obligations are  
40 paid[; and (18) any payments to the commissioner of taxation and finance  
41 pursuant to article twenty-three of the tax law].

42 S 35. Section 3609-g of the education law is REPEALED.

43 S 36. Paragraph (e) of subdivision 7 of section 38 of the highway law,  
44 as amended by chapter 196 of the laws of 1981 and as relettered by chap-  
45 ter 153 of the laws of 1984, is amended to read as follows:

46 (e) No such certificate approving or authorizing the first partial  
47 payment or any final payment to a foreign contractor shall be made  
48 unless such contractor shall furnish satisfactory proof that all taxes  
49 due the state tax commission by such contractor, under the provisions of  
50 or pursuant to a law enacted pursuant to the authority of article nine,  
51 nine-a, twelve-a, [sixteen, sixteen-a,] twenty-one, twenty-two, [twen-  
52 ty-three,] twenty-eight, twenty-nine or thirty of the tax law [or arti-  
53 cle two-E of the general city law] have been paid. The certificate of  
54 the state tax commission to the effect that all such taxes have been  
55 paid shall be, for purpose of this paragraph, conclusive proof of the  
56 payment of such taxes. The term "foreign contractor" as used in this

1 subdivision means, in the case of an individual, a person who is not a  
2 resident of this state, in the case of a partnership, one having one or  
3 more partners not a resident of this state, and in the case of a corpo-  
4 ration, one not organized under the laws of this state.

5 S 37. Section 1270-h of the public authorities law is REPEALED.

6 S 38. Section 92-ff of the state finance law is REPEALED.

7 S 39. This act shall take effect immediately; provided that the amend-  
8 ments to subdivision 4 of section 618 of the tax law made by section  
9 fifteen of this act shall be subject to the expiration and reversion of  
10 such subdivision pursuant to section 8 of chapter 782 of the laws of  
11 1988, as amended, when upon such date the provisions of section sixteen  
12 of this act shall take effect; and provided further that the amendments  
13 to subdivision 4 of section 11-1718 of the administrative code of the  
14 city of New York made by section thirty-two of this act shall be subject  
15 to the expiration and reversion of such subdivision pursuant to section  
16 8 of chapter 782 of the laws of 1988, as amended, when upon such date  
17 the provisions of section thirty-three of this act shall take effect.