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

S. 4 A. 4

Second Extraordinary Session

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

July 30, 2010

IN SENATE -- Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to imposing tax on beverage syrups and soft drinks

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

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.

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

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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.

365. SPECIAL REVENUE DISPOSITION IN RESPECT OF SALES AND COMPENSATING USE TAXES.

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 (A) ANY 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 BY FOLLOWING THE MANUFACTURER'S DIRECTIONS;

(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.

6. SUGAR ADDED AT THE REQUEST OF PURCHASER. THE TAX DOES NOT APPLY TO INDIVIDUAL SERVINGS OF A BEVERAGE THAT WOULD NOT OTHERWISE BE SUBJECT TO TAX AS A SOFT DRINK IF SUGAR IS ADDED BY THE RETAILER AT THE REQUEST OF THE PURCHASER AT THE TIME OF SALE.

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 REFUND CLAIM 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.

S 365. SPECIAL REVENUE DISPOSITION IN RESPECT OF SALES AND COMPENSATING USE TAXES. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY: (A) THE COMMISSIONER SHALL ESTIMATE, FOR EACH SALES TAX QUARTERLY PERIOD, AS DESCRIBED IN SUBDIVISION (B) OF SECTION ELEVEN HUNDRED THIRTY-SIX OF THIS CHAPTER, THE NET CHANGE ON A STATEWIDE BASIS IN THE AMOUNT OF RECEIPTS AND CONSIDERATION EXEMPT FROM OR SUBJECT TO THE SALES TAX ON RETAIL SALES OF TANGIBLE PERSONAL PROPERTY AND THE CORRESPONDING COMPENSATING USE TAX UNDER ARTICLE TWENTY-EIGHT OF THIS CHAPTER RESULTING FROM CHANGING THE BASE OF SUCH PROPERTY EXEMPT FROM OR SUBJECT TO SUCH TAXES AS REGARDS (I) SYRUPS, SIMPLE SYRUPS, BOTTLED SOFT DRINKS, AND POWDERS OR BASE PRODUCTS, OTHER THAN UNSWEETENED COFFEE, TEA AND COCOA, SUBJECT TO SUCH TAXES AND (II) DRINKS AND BEVERAGES EXEMPT FROM SUCH TAXES, THE TAXABILITY OF WHICH CHANGED AS OF THE EFFECTIVE DATE OF THIS SECTION ON ACCOUNT OF CONFORMING THE BASE OF PROPERTY SUBJECT TO SUCH SALES AND USE TAXES TO THE BASE OF PROPERTY SUBJECT TO TAX UNDER THIS ARTICLE. FOR PURPOSES OF THIS QUARTERLY ESTIMATE, THE COMMISSIONER SHALL NOT TAKE INTO ACCOUNT ITEMS OF PROPERTY THAT WERE SUBJECT TO OR EXEMPT FROM SUCH SALES AND USE TAXES BEFORE SUCH EFFECTIVE DATE, THE STATUS OF WHICH WAS NOT CHANGED ON ACCOUNT OF SUCH BASE CONFORMITY. THE COMMISSIONER SHALL MAKE SUCH STATEWIDE ESTIMATE BASED ON INFORMATION AVAILABLE TO THE COMMISSIONER, INCLUDING FOOD AND BEVERAGE INDUSTRY SALES DATA AND MARKETING RESEARCH, CONSUMER EXPENDITURE SURVEYS, ECONOMIC TRENDS, AND THE LIKE, AND SHALL TAKE INTO ACCOUNT SEASONALITY AND OTHER FACTORS AS THEY MAY APPLY TO PURCHASE AND CONSUMPTION OF SUCH PROPERTY. THE COMMISSIONER SHALL ROUND SUCH STATEWIDE QUARTERLY ESTIMATE TO THE NEAREST MILLION DOLLARS BEFORE USING SUCH ESTIMATE AS PROVIDED IN SUBDIVISION (B) OF THIS SECTION.

(B) IF THE COMMISSIONER FINDS A NET REDUCTION IN THE AMOUNT OF RECEIPTS AND CONSIDERATION SUBJECT TO SALES AND COMPENSATING USE TAXES ON ACCOUNT OF SUCH BASE CONFORMITY, THE COMMISSIONER SHALL USE SUCH ESTIMATE TO DETERMINE THE AMOUNT OF REVENUE LOST UNDER THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED NINE OR PURSUANT TO THE AUTHORITY OF SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS CHAPTER RESULTING FROM SUCH BASE CONFORMITY. THE COMMISSIONER SHALL DETERMINE THE AMOUNT OF TAX REVENUE LOST UNDER SUCH TAXES IMPOSED BY SECTION ELEVEN HUNDRED NINE OF THIS CHAPTER BY MULTIPLYING SUCH NET REDUCTION BY THE RATE OF SUCH TAXES IN THAT QUARTERLY PERIOD, AND THEN MULTIPLYING THAT PRODUCT BY A FRACTION, THE NUMERATOR OF WHICH SHALL BE THE POPULATION OF THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT, AS ESTABLISHED BY SECTION TWELVE HUNDRED SIXTY-TWO OF THE PUBLIC AUTHORITIES LAW, AND THE DENOMINATOR OF WHICH SHALL BE THE STATE'S POPULATION. THE COMMISSIONER SHALL DETERMINE THE AMOUNT OF TAX REVENUE LOST UNDER THE TAXES IMPOSED BY A COUNTY OR CITY PURSUANT TO THE AUTHORITY OF SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS CHAPTER BY MULTIPLYING SUCH NET REDUCTION BY THE RATE OF THE COUNTY'S OR CITY'S TAXES IN THAT QUARTERLY PERIOD, AND THEN MULTIPLYING THAT PRODUCT BY A FRACTION, THE NUMERATOR OF WHICH SHALL BE

THE COUNTY'S OR CITY'S POPULATION AND THE DENOMINATOR OF WHICH SHALL BE THE STATE'S POPULATION. IF A COUNTY AND A CITY IN THE COUNTY EACH IMPOSE SUCH SALES AND USE TAXES, THE COUNTY'S REVENUE LOSS SHALL FIRST BE CALCULATED AS DESCRIBED IN THE PRIOR SENTENCE BUT EXCLUDING THE POPULATION IN THE AREA OF THE CITY, AND TO THAT AMOUNT SO DETERMINED SHALL BE ADDED AN AMOUNT CALCULATED AS REGARDS THE POPULATION IN THE CITY BUT USING THE COUNTY'S EFFECTIVE RATE OF TAX IN THE CITY RESULTING FROM THE CITY'S PREEMPTION. IN SUCH A CASE, THE CITY'S REVENUE LOSS SHALL LIKEWISE BE CALCULATED AS DESCRIBED ABOVE, BUT ALSO USING ITS EFFECTIVE RATE OF TAX RESULTING FROM THE COUNTY'S PREEMPTION. ALL SUCH POPULATIONS UNDER THIS SECTION SHALL BE AS DETERMINED IN ACCORDANCE WITH THE LATEST DECENNIAL FEDERAL CENSUS.

(C) THE COMMISSIONER SHALL SEPARATELY DETERMINE ANY SUCH LOSS IN TAX REVENUE DESCRIBED IN SUBDIVISION (B) OF THIS SECTION BY THE TWENTIETH DAY FOLLOWING THE END OF EACH SUCH QUARTERLY PERIOD. SUCH AMOUNTS DETERMINED BY THE COMMISSIONER SHALL BE DEEMED TO BE TAX REVENUE LOST ON ACCOUNT OF SUCH TAXES IMPOSED BY SECTION ELEVEN HUNDRED NINE OF THIS CHAPTER OR BY EACH SUCH COUNTY OR CITY PURSUANT TO THE AUTHORITY OF SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS CHAPTER. THE COMMISSIONER SHALL CERTIFY SUCH QUARTERLY AMOUNT OF TAX REVENUE LOST IN RESPECT OF EACH OF THEM TO THE STATE COMPTROLLER BY THE LAST DAY OF THAT MONTH. NEITHER THE COMMISSIONER NOR THE COMPTROLLER SHALL BE HELD LIABLE FOR ANY INACCURACY IN ANY SUCH ESTIMATE OR CERTIFICATION.

(D) IF THE COMMISSIONER CERTIFIES TO THE COMPTROLLER ANY NET TAX REVENUE LOSS DESCRIBED IN SUBDIVISION (C) OF THIS SECTION, THE COMPTROLLER SHALL, ON THE TWELFTH DAY OF THE FOLLOWING MONTH, WITHDRAW EACH SUCH AMOUNT FROM THE TAXES, PENALTIES, AND INTEREST IMPOSED BY THIS ARTICLE AND DEPOSITED AND DISPOSED OF PURSUANT TO THE PROVISIONS OF SECTION THREE HUNDRED SIXTY-FOUR OF THIS ARTICLE AND, WITH RESPECT TO THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED NINE OF THIS CHAPTER, DEPOSIT SUCH AMOUNT IN THE MASS TRANSPORTATION OPERATING ASSISTANCE FUND ESTABLISHED BY SECTION EIGHTY-EIGHT-A OF THE STATE FINANCE LAW TO THE CREDIT OF THE METROPOLITAN MASS TRANSPORTATION OPERATING ASSISTANCE ACCOUNT THEREIN, AS IF SUCH AMOUNT WAS REVENUE FROM THE TAXES IMPOSED BY SUCH SECTION ELEVEN HUNDRED NINE, AND WITH RESPECT TO TAXES IMPOSED BY A COUNTY OR CITY, PAY SUCH AMOUNT TO THE APPROPRIATE FISCAL OFFICER OF EACH SUCH COUNTY AND CITY AS DESCRIBED IN SECTION TWELVE HUNDRED SIXTY-ONE OF THIS CHAPTER. ANY SUCH AMOUNT PAID TO A COUNTY OR CITY SHALL BE DEEMED TO BE NET COLLECTIONS FROM THE TAXES IMPOSED BY THE COUNTY OR CITY FOR PURPOSES OF ARTICLE TWENTY-NINE OF THIS CHAPTER, AND, AS NET COLLECTIONS, SHALL BE SUBJECT TO ANY PROVISION OF STATE LAW OR OF A LOCAL LAW, ORDINANCE OR RESOLUTION OF SUCH COUNTY OR CITY, APPLICABLE TO NET COLLECTIONS FROM ITS SALES AND COMPENSATING USE TAXES. IF THE COUNTY OR CITY IMPOSES AN ADDITIONAL RATE OR RATES OF SUCH SALES AND COMPENSATING USE TAXES, SUCH PAYMENT SHALL BE PROPORTIONALLY SUBJECT TO THE PROVISIONS APPLICABLE TO THE COUNTY'S OR CITY'S MAXIMUM AUTHORIZED RATE AND TO ITS ADDITIONAL RATE OR RATES.

(E) THE COMMISSIONER SHALL CERTIFY TO THE COMPTROLLER THE AMOUNT OF ANY OVER ESTIMATION OR UNDER ESTIMATION AND RESULTING ERRONEOUS PAYMENT CERTIFICATION MADE UNDER THIS SECTION THAT RESULT FROM A MATHEMATICAL ERROR, AS SOON AFTER ITS DISCOVERY AS REASONABLY POSSIBLE. THE COMMISSIONER SHALL NOT BE HELD LIABLE FOR ANY INACCURACY IN SUCH CERTIFICATE. SUBSEQUENT DEPOSITS TO OR WITHDRAWALS FROM THE MASS TRANSPORTATION OPERATING ASSISTANCE FUND OR PAYMENTS TO A COUNTY OR CITY TO WHICH THE OVER ESTIMATION OR UNDER ESTIMATION AND ERRONEOUS PAYMENTS RELATE SHALL BE ADJUSTED ACCORDINGLY, PROVIDED THAT THE COMPTROLLER MAY ADJUST SUCH

NUMBER OF SUBSEQUENT DEPOSITS TO OR WITHDRAWALS FROM SUCH FUND AS THE COMPTROLLER SHALL CONSIDER REASONABLE IN VIEW OF THE AMOUNT OF THE ADJUSTMENT AND ALL OTHER FACTS AND CIRCUMSTANCES. SUBSEQUENT PAYMENTS BY THE COMPTROLLER TO A COUNTY OR CITY SHALL BE ADJUSTED BY SUBTRACTING THE AMOUNT OF ANY OVERPAYMENT FROM OR BY ADDING THE AMOUNT OF ANY UNDERPAYMENT TO SUCH NUMBER OF SUBSEQUENT PAYMENTS AS THE COMPTROLLER SHALL CONSIDER REASONABLE IN VIEW OF THE AMOUNT OF THE ADJUSTMENT AND ALL OTHER FACTS AND CIRCUMSTANCES. ESTIMATES AND CERTIFICATIONS MADE FOR A QUARTERLY PERIOD SHALL NOT BE REVISED BECAUSE THE COMMISSIONER USES A DIFFERENT ESTIMATE METHODOLOGY FOR A LATER QUARTERLY PERIOD.

S 3-a. Paragraph 1 of subdivision (a) of section 1115 of the tax law, as amended by section 1 of part O of chapter 63 of the laws of 2000, is amended to read as follows:

(1) Food, food products, beverages, dietary foods and health supplements, sold for human consumption, but not including (i) candy and confectionery, (ii) [fruit drinks which contain less than seventy percent of natural fruit juice, (iii) soft drinks, sodas and beverages such as are ordinarily dispensed at soda fountains or in connection therewith (other than coffee, tea and cocoa)] "SYRUP," "SIMPLE SYRUP," "BOTTLED SOFT DRINK," AND "POWDER OR BASE PRODUCT," AS SUCH TERMS ARE DEFINED IN ARTICLE SIXTEEN OF THIS CHAPTER, and [(iv)] (III) beer, wine or other alcoholic beverages, all of which shall be subject to the retail sales and compensating use taxes, whether or not the item is sold in liquid form. [The food and drink excluded from the exemption provided by this paragraph under subparagraphs] NOTWITHSTANDING THE FOREGOING, THE CANDY AND CONFECTIONERY DESCRIBED IN SUBPARAGRAPH (i)[, (ii) and (iii)] of this paragraph AND THE PRODUCTS DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, WHETHER OR NOT SOLD IN LIQUID FORM, shall be exempt [under this paragraph] FROM THE TAXES IMPOSED BY SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIVE AND SECTION ELEVEN HUNDRED TEN OF THIS ARTICLE when sold for seventy-five cents or less through [any] A vending machine activated by the use of coin, currency, credit card or debit card. [With the exception of the provision in this paragraph providing for an exemption for certain food or drink sold for seventy-five cents or less through vending machines, nothing herein] NOTHING IN THIS PARAGRAPH shall be construed as exempting food or drink from the tax imposed under subdivision (d) of section eleven hundred five OF THIS ARTICLE. SEE SUBDIVISION (GG) OF THIS SECTION FOR EXEMPTIONS FROM THE TAX IMPOSED UNDER SUCH SUBDIVISION (D) OF SECTION ELEVEN HUNDRED FIVE.

S 3-b. Subparagraph 3 of paragraph (i) of subdivision (d) of section 1105 of the tax law, as amended by section 1 of part DD of chapter 407 of the laws of 1999, is amended to read as follows:

(3) in those instances where EITHER the sale is made through a vending machine [that is activated by use of coin, currency, credit card or debit card (except the sale of drinks in a heated state made through such a vending machine)] or THE SALE is for consumption off the premises of the vendor, except where food (other than sandwiches) or drink or both are (A) sold in an unheated state and[,] (B) are of a type commonly sold for consumption off the premises and in the same form and condition, quantities and packaging, in establishments which are food stores other than those principally engaged in selling foods prepared and ready to be eaten.

S 3-c. Subdivision (d) of section 1105 of the tax law is amended by adding a new paragraph (iii) to read as follows:

(III) NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SUBDIVISION, NOTHING IN THIS SUBDIVISION, OTHER THAN SUBPARAGRAPH (A) OF PARAGRAPH

(II) OF THIS SUBDIVISION, SHALL EXCLUDE OR EXEMPT FROM THE TAX IMPOSED UNDER THIS SUBDIVISION RECEIPTS FROM THE SALE OF "SYRUP," "SIMPLE SYRUP," "BOTTLED SOFT DRINK," OR "POWDER OR BASE PRODUCT," AS SUCH TERMS ARE DEFINED IN ARTICLE SIXTEEN OF THIS CHAPTER.

S 3-d. Section 1115 of the tax law is amended by adding a new subdivision (gg) to read as follows:

(GG) (1) RECEIPTS FROM THE SALE OF (I) CANDY AND CONFECTIONERY, (II) FRUIT DRINKS WHICH CONTAIN LESS THAN SEVENTY PERCENT OF NATURAL FRUIT JUICE, AND (III) SOFT DRINKS, SODAS AND BEVERAGES SUCH AS ARE ORDINARILY DISPENSED AT SODA FOUNTAINS OR IN CONNECTION THEREWITH, SHALL BE EXEMPT FROM THE TAX IMPOSED BY SUBDIVISION (D) OF SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE WHEN SOLD IN OR BY A RESTAURANT, TAVERN OR OTHER ESTABLISHMENT IN THIS STATE, OR BY A CATERER, FOR SEVENTY-FIVE CENTS OR LESS THROUGH A VENDING MACHINE ACTIVATED BY THE USE OF COIN, CURRENCY, CREDIT CARD OR DEBIT CARD, WHETHER OR NOT SOLD IN LIQUID FORM.

(2) RECEIPTS FROM THE SALE OF DRINKS IN A HEATED STATE SHALL BE EXEMPT FROM THE TAX IMPOSED BY SUBDIVISION (D) OF SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE WHEN SOLD IN OR BY A RESTAURANT, TAVERN OR OTHER ESTABLISHMENT IN THIS STATE, OR BY A CATERER, THROUGH A VENDING MACHINE ACTIVATED BY THE USE OF COIN, CURRENCY, CREDIT CARD OR DEBIT CARD, WHETHER OR NOT SOLD IN LIQUID FORM.

S 3-e. Paragraph 1 of subdivision (f) of section 1262 of the tax law, as added by chapter 93 of the laws of 1965, such subdivision as relettered by chapter 363 of the laws of 1967, is amended to read as follows:

(1) Net collections. The moneys collected from a tax or taxes imposed pursuant to this article, after deducting therefrom expenses of administration and collection and amounts refunded or to be refunded, PLUS, IN THE CASE OF A COUNTY OR CITY THAT IMPOSES SALES AND COMPENSATING USE TAXES PURSUANT TO THE AUTHORITY OF SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE, THE AMOUNT DETERMINED BY THE COMMISSIONER, CERTIFIED TO THE STATE COMPTROLLER, AND PAID TO THE COUNTY OR CITY UNDER SECTION THREE HUNDRED SIXTY-FIVE OF THIS CHAPTER.

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 December 1, 2010, provided that sections three-a, three-b, three-c, and three-d of this act shall apply in accordance with applicable transitional provisions in sections 1106 and 1217 of the tax law.