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

S. 60--A A. 160--A

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

(PREFILED)

January 7, 2009

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law and the administrative code of the city of New York, in relation to the definition of presence in New York in determining a taxpayer's New York residency status (Part A); to amend the tax law, in relation to conforming the definition of manufacturing under the capital base to the definition of manufacturing under the entire net income base (Part B); to amend the tax law, in relation to the exemption from the franchise tax on insurance corporations under article thirty-three of such law for town or county cooperative insurance corporations (Part C); to amend the tax law, in relation to increasing the rate of the premiums tax on certain insurance companies and eliminating the franchise tax imposed on life insurance companies, and to repeal certain provisions of the tax law relating thereto (Part D); to amend the tax law, in relation to collection and offset agreements with the United States or other states (Part E); to amend the tax law, in relation to the treatment of overcapitalized captive insurance companies (Part F); to amend the tax law, in relation to limiting various underutilized tax credits (Part G); to amend the tax law, in relation to requiring nonresidents to include as a source of income the gain or loss from the sale of a partnership, limited liability corporation, S corporation or a non-publicly traded C corporation with one hundred or fewer shareholders to the extent that the gain or loss includes gain or loss from real property located in New York (Part H); to amend the tax law, in relation to changing the percentage used to complete the mandatory first installment of franchise tax and the metropolitan commuter transportation district business tax surcharge under articles 9, 9-A, 32 and 33 (Part I); to amend

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

LBD12374-02-9

the tax law, in relation to adding filing fees for partnerships (Part J); to amend the general municipal law and the tax law, in relation to enacting reforms to the empire zones program; and to repeal certain provisions of such laws relating thereto (Part K); 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 L); to amend the tax law and the administrative code of the city of New York, in relation to limiting itemized deductions for certain taxpayers and determining the amount of estimated tax installments to be paid (Part M); to amend the tax law, in relation to the treatment of income received by partners for performing investment management services as New York source income received for the performance of services (Part N); to amend the tax law, in relation to providing taxpayers with a credit for increasing research activities (Part O); to amend the tax law, in relation to the qualified emerging technology company facilities, operations and training credit (Part P); to amend the tax law, in relation to imposing sales tax on cable television service (Part Q); to amend the tax law, in relation to the tobacco products and cigarette taxes to remedy various compliance and enforcement problems and in relation to taxing cigars by unit rather than by a percentage of the wholesale price (Part R); to amend the tax law, in relation to including the amount of any discount given for a coupon in the amounts subject to the sales and compensating use taxes (Part S); to amend the state finance law, in relation to investment of lottery moneys available and retained on deposit for the payment of lottery prizes (Part T); to amend the tax law, in relation to replacing the year-round sales and compensating use tax exemption for clothing and footwear under one hundred ten dollars with two one-week exemption periods with a five hundred dollar threshold and authorizing counties and cities that impose such taxes to elect or decline such exemption weeks; and to repeal subdivision (k) of section 1210 of such law relating thereto (Part U); to amend the tax law, in relation to imposing state and local sales and compensating use taxes on certain personal services and credit rating and reporting services currently imposed by a city of one million or more, and to repeal section 11-2002 and subchapter 3 of chapter 20 of title 11 of the administrative code of the city of New York, relating to that city's sales and use taxes on those personal services and credit rating and reporting services (Part V); to amend the tax law, in relation to making technical corrections regarding the operation of video lottery gaming and approving the construction or alteration of any facility housing video lottery gaming; and 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; and to repeal certain provisions of the tax law relating thereto (Part W); to amend the tax law and the alcoholic beverage control law, in relation to taxing flavored malt beverages at the low liquor tax rate (Part X); 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 Y); to amend the tax law, in relation to changing the rate of the prepaid sales tax on cigarettes (Part Z); to amend the tax law, in relation to curtailing certain abusive sales and use tax avoidance schemes by narrowing the use tax non-resident exemption for certain items of tangible personal property and the sales tax exemption for commercial aircraft (Part AA); to repeal subdivision (e-1) of section 1132 of the tax law relating to a sales tax bad debt credit or refund for purchases made by private label credit cards (Part BB); to amend the tax law and the rural electric cooperative law, in relation to imposing sales and compensating use tax on digital products and clarifying the corporation franchise tax treatment of these products (Part CC); to amend the tax law, chapter 35 of the laws of 2006 amending the tax law relating to computing sales and compensating use tax on motor fuel and diesel motor fuel and amending the tax law and the general business law relating to requiring retail dealers of motor fuel and diesel motor fuel to reduce prices for such fuel, and chapter 109 of the laws of 2006 amending the tax law and other laws relating to the sales tax imposed on motor fuel and diesel motor fuel, in relation to repealing the state and any local sales and compensating use tax cap on motor fuel and diesel motor fuel and restoring the percentage rate of those taxes on those fuels (Part DD); to amend the tax law, in relation to reauthorizing the commissioner of taxation and finance to require the use of decals in certain instances (Part EE); to amend the tax law, in relation to expanding the definition of vendor for purposes of the sales and compensating use taxes (Part FF); to amend the racing, pari-mutuel wagering and breeding law and the tax law, in relation to authorizing video lottery gaming at Belmont Park (Part GG); to amend the tax law and the state finance law, in relation to imposing a state sales and compensating use tax surcharge on certain beverage products (Part HH); 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 II); to amend the tax law, in relation to participation in more than one joint, multi-jurisdiction and out-of-state lottery (Part JJ); to amend the alcoholic beverage control law, in relation to creating a new grocery or drug store wine license (Part KK); to amend the tax law, in relation to taxes on beer and wine under article 18 of the tax law (Part LL); to amend the tax law, in relation to the special tax on passenger car rentals under article 28-A of such law (Part MM); to amend the tax law, in relation to imposing state and local sales taxes on certain transportation services (Part NN); to amend the tax law, in relation to expanding sales taxes on certain amusement charges; and to repeal sections 1122 and 1123 of such law relating thereto (Part OO); to amend the tax law, in relation to narrowing the sales taxes definition and treatment of capital improvement (Part PP); to amend the tax law, in relation to the fees for replacement highway use tax credentials (Part QQ); to amend the tax law, in relation to imposing an additional rate of sales tax on certain luxury property (Part RR); and to amend the tax law, in relation to reporting information regarding deposits and bank settlements (Subpart A); 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 (Subpart B); to amend the tax law, in relation to imposing a penalty for failure to keep mandatory records, to provide records in auditable format or to provide access to mandatory records maintained electronically (Subpart C); to amend the tax law, in relation to the failure of a responsible person to collect and pay over withholding tax (Subpart D); to amend the tax law, in relation to certain penalties; to amend chapter 61 of the laws of 2005 amending the tax law relating to certain transactions and related information, in relation to making the penalty amount for aiding or assisting in the giving of fraudulent returns permanent; and to repeal certain provisions of the tax law relating thereto (Subpart E); to amend the tax law, in relation to providing expedited hearings relating to cancellations, revocations, or suspensions of certain credentials and to penalties imposed on persons who aid or assist in the filing of fraudulent tax documents (Subpart F); to amend the tax law, in relation to establishing an award program for significant information concerning noncompliance with the tax laws of the state of New York (Subpart G); to amend the tax law, in relation to changing the last quarterly withholding filing date for employers (Subpart H); to amend the tax law, in relation to a branch or separate office of a bank (Subpart I); to amend the criminal procedure law, the penal law and the tax law, in relation to creating the offense of "tax fraud act"; to amend the tax law, in relation to simplifying and consolidating the provisions describing the acts that constitute offenses under such law; and to repeal certain provisions of the tax law relating thereto (Subpart J); to amend the county law, in relation to authorizing district attorneys to appoint attorneys employed by the department of taxation and finance as special assistant district attorneys in tax cases (Subpart K); to amend the tax law, in relation to clarifying some technical aspects of the voluntary disclosure and compliance program (Subpart L); to amend the tax law, abandoned property law, environmental conservation law, insurance law, lien law, mental hygiene law, public health law, real property tax law, social services law, state finance law and the administrative code of the city of New York, in relation to decreasing the overpayment and increasing the underpayment rates of interest, changing the overpayment interest accrual date for sales and compensating use taxes and providing for an interest-free period for refunds or credits of sales and compensating use taxes (Subpart M); to amend the tax law, in relation to requiring certain third-parties to file information returns providing information about vendors, hotel operators and recipients of amusement charges (Subpart N); to amend the tax law, in relation to the filing of tax warrants and related records in the department of state; and to repeal section 6 of such law relating thereto (Subpart O); and to amend the tax law, in relation to the collection of a penalty and interest on sales and use taxes upon a bulk sale of assets (Subpart P) (Part SS)

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 2009-2010 state fiscal year. Each component is wholly contained within a Part

identified as Parts A through SS. 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. Subparagraph (A) of paragraph 1 of subsection (b) of section 605 of the tax law, as amended by chapter 760 of the laws of 1992, is amended to read as follows:

(A) who is domiciled in this state, unless (i) [he] THE TAXPAYER maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state, or (ii) (I) within any period of five hundred forty-eight consecutive days [he] THE TAXPAYER is present in a foreign country or countries for at least four hundred fifty days, and (II) during [such] THE period of five hundred forty-eight consecutive days [he is] THE TAXPAYER, THE TAXPAYER'S SPOUSE (UNLESS THE SPOUSE IS LEGALLY SEPARATED) AND THE TAXPAYER'S MINOR CHILDREN ARE not present in this state for more than ninety days [and does not maintain a permanent place of abode in this state at which his spouse (unless such spouse is legally separated) or minor children are present for more than ninety days], and (III) during the nonresident portion of the taxable year with or within which [such] THE period of five hundred forty-eight consecutive days begins and the nonresident portion of the taxable year with or within which [such] THE period ends, [he] THE TAXPAYER is present in this state for a number of days which does not exceed an amount which bears the same ratio to ninety as the number of days contained in [such] THAT portion of the taxable year bears to five hundred forty-eight, or

S 2. Paragraph 1 of subsection (a) of section 1305 of the tax law, as amended by chapter 790 of the laws of 1978, is amended to read as follows:

(1) who is domiciled in the city wherein the tax is imposed, unless (A) [he] THE TAXPAYER maintains no permanent place of abode in [such] THE city, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in [such] THE city, or (B) (i) within any period of five hundred forty-eight consecutive days [he] THE TAXPAYER is present in a foreign country or countries for at least four hundred fifty days, and (ii) during such period of five hundred forty-eight consecutive days [he is] THE TAXPAYER, THE TAXPAYER'S SPOUSE (UNLESS THE SPOUSE IS LEGALLY SEPARATED) AND THE TAXPAYER'S MINOR CHILDREN ARE not present in [such] THE city for more than ninety days [and does not maintain a permanent place of abode in such city at which his spouse (unless such spouse is legally separated) or minor children are present for more than ninety days], and (iii) during any period of less than twelve months, which would be treated as a separate taxable period pursuant to section thirteen hundred seven, and which period is contained within [such] THE period of five hundred forty-eight consecutive days, [he] THE TAXPAYER is present in [such] THE city for a number of days which does not exceed an amount which bears the same ratio to ninety as the number of days contained in

[such] THAT period of less than twelve months bears to five hundred forty-eight, or

S 3. Subparagraph (A) of paragraph 1 of subdivision (b) of section 11-1705 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:

(A) who is domiciled in this city, unless (i) [he] THE TAXPAYER maintains no permanent place of abode in this city, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this city, or (ii) (I) within any period of five hundred forty-eight consecutive days [he] THE TAXPAYER is present in a foreign country or countries for at least four hundred fifty days, and (II) during [such] THE period of five hundred forty-eight consecutive days [he is] THE TAXPAYER, THE TAXPAYER'S SPOUSE (UNLESS THE SPOUSE IS LEGALLY SEPARATED) AND THE TAXPAYER'S MINOR CHILDREN ARE not present in this city for more than ninety days [and does not maintain a permanent place of abode in this city at which his spouse (unless such spouse is legally separated) or minor children are present for more than ninety days], and (III) during any period of less than twelve months, which would be treated as a separate taxable period pursuant to section 11-1754, and which period is contained within [such] THE period of five hundred forty-eight consecutive days, [he] THE TAXPAYER is present in this city for a number of days which does not exceed an amount which bears the same ratio to ninety as the number of days contained in [such] THAT period of less than twelve months bears to five hundred forty-eight, or

S 4. Paragraph 1 of subsection (a) of section 1325 of the tax law, as added by chapter 345 of the laws of 1984, is amended to read as follows:

(1) who is domiciled in the city wherein the city income tax surcharge is imposed pursuant to the authority of this article, unless (A) [he] THE TAXPAYER maintains no permanent place of abode in such city, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in [such] THE city, or (B)(i) within any period of five hundred forty-eight consecutive days [he is] THE TAXPAYER, THE TAXPAYER'S SPOUSE (UNLESS THE SPOUSE IS LEGALLY SEPARATED) AND THE TAXPAYER'S MINOR CHILDREN ARE present in a foreign country or countries for at least four hundred fifty days, and (ii) during [such] THE period of five hundred forty-eight consecutive days [he] THE TAXPAYER is not present in [such] THE city for more than ninety days [and does not maintain a permanent place of abode in such city at which his spouse (unless such spouse is legally separated) or minor children are present for more than ninety days], and (iii) during any period of less than twelve months, which would be treated as a separate taxable period pursuant to section thirteen hundred twenty-seven of this article, and which period is contained within [such] THE period of five hundred forty-eight consecutive days, [he] THE TAXPAYER is present in [such] THE city for a number of days which does not exceed an amount which bears the same ratio to ninety as the number of days contained in [such] THAT period of less than twelve months bears to five hundred forty-eight, or

S 5. Paragraph 1 of subsection (f) of section 1 contained in subsection (c) of section 1340 of the tax law, as added by chapter 345 of the laws of 1984, is amended to read as follows:

(1) who is domiciled in the city, unless (A) [he] THE TAXPAYER maintains no permanent place of abode in the city, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in the city, or (B) (i) within any peri-

od of five hundred forty-eight consecutive days [he] THE TAXPAYER is present in a foreign country or countries for at least four hundred fifty days, and (ii) during such period of five hundred forty-eight consecutive days [he is] THE TAXPAYER, THE TAXPAYER'S SPOUSE (UNLESS THE SPOUSE IS LEGALLY SEPARATED) AND THE TAXPAYER'S MINOR CHILDREN ARE not present in the city for more than ninety days [and does not maintain a permanent place of abode in the city at which his spouse (unless such spouse is legally separated) or minor children are present for more than ninety days], and (iii) during any period of less than twelve months, which would be treated as a separate taxable period based on a change of resident status, and which period is contained within [such] THE period of five hundred forty-eight consecutive days, [he] THE TAXPAYER is present in the city for a number of days which does not exceed an amount which bears the same ratio to ninety as the number of days contained in [such] THAT period of less than twelve months bears to five hundred forty-eight, or

S 6. This act shall take effect immediately and apply to taxable years beginning on or after January 1, 2009.

PART B

Section 1. Subparagraph 2 of paragraph (b) of subdivision 1 of section 210 of the tax law, as amended by section 1 of part GG-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(2) For purposes of subparagraph one of this paragraph, the term "manufacturer" shall mean a taxpayer which during the taxable year is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing. HOWEVER, THE GENERATION AND DISTRIBUTION OF ELECTRICITY, THE DISTRIBUTION OF NATURAL GAS, AND THE PRODUCTION OF STEAM ASSOCIATED WITH THE GENERATION OF ELECTRICITY ARE NOT QUALIFYING ACTIVITIES FOR A MANUFACTURER UNDER THIS SUBPARAGRAPH. Moreover, for purposes of computing the capital base in a combined report, the combined group shall be considered a "manufacturer" for purposes of this subparagraph only if the combined group during the taxable year is principally engaged in the activities set forth in this subparagraph, or any combination thereof. A taxpayer or a combined group shall be "principally engaged" in activities described above if, during the taxable year, more than fifty percent of the gross receipts of the taxpayer or combined group, respectively, are derived from receipts from the sale of goods produced by such activities. In computing a combined group's gross receipts, intercorporate receipts shall be eliminated. A "qualified New York manufacturer" is a manufacturer that has property in New York that is described in clause (A) of subparagraph (i) of paragraph (b) of subdivision twelve of this section and either (i) the adjusted basis of that property for federal income tax purposes at the close of the taxable year is at least one million dollars or (ii) all of its real and personal property is located in New York. In addition, a "qualified New York manufacturer" means a taxpayer that is defined as a qualified emerging technology company under paragraph (c) of subdivision one of section thirty-one hundred two-e of the public authorities law regardless of the ten million dollar limitation expressed in subparagraph one of such paragraph.

S 2. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2009.

PART C

Section 1. Paragraph 7 of subdivision (a) of section 1512 of the tax law, as amended by chapter 817 of the laws of 1987, is amended to read as follows:

(7) a town or county cooperative insurance corporation as heretofore contemplated by section one hundred eighty-seven of this chapter in effect immediately prior to January first, nineteen hundred seventy-four, THAT PROPERLY REPORTED TO THE SUPERINTENDENT OF INSURANCE TOTAL DIRECT PREMIUMS WRITTEN FOR THE TAXABLE YEAR OF TWENTY-FIVE MILLION DOLLARS OR LESS.

S 2. This act shall take effect immediately and apply to taxable years beginning on or after January 1, 2009.

PART D

Section 1. Subdivisions (g), (h), (i) and (j) of section 1500, and sections 1501, 1502, 1502-a, 1503, 1504, and 1505 of the tax law are REPEALED.

S 2. Subdivision (e) of section 1500 of the tax law, as amended by section 1 of part H3 of chapter 62 of the laws of 2003, is amended to read as follows:

(e) The term "taxpayer" means any insurance corporation subject to the tax imposed under section [fifteen hundred one, fifteen hundred two-a, or] fifteen hundred ten or any captive insurance company subject to the tax imposed under section fifteen hundred two-b of this article.

S 3. Subdivision (a) of section 1502-b of the tax law, as separately amended by section 3 of part H1 of chapter 62 and chapter 188 of the laws of 2003, is amended to read as follows:

(a) In lieu of the [taxes] TAX and tax surcharge imposed by sections [fifteen hundred one, fifteen hundred two-a,] fifteen hundred five-a[,] and fifteen hundred ten of this article, every captive insurance company licensed by the superintendent of insurance pursuant to the provisions of article seventy of the insurance law, other than the metropolitan transportation authority and a public benefit corporation or not-for-profit corporation formed by a city with a population of one million or more pursuant to subsection (a) of section seven thousand five of the insurance law, each of which is expressly exempt from the payment of fees, taxes or assessments whether state or local, shall, for the privilege of exercising its corporate franchise, pay a tax on (1) all gross direct premiums, less return premiums thereon, written on risks located or resident in this state and (2) all assumed reinsurance premiums, less return premiums thereon, written on risks located or resident in this state. The rate of the tax imposed on gross direct premiums shall be four-tenths of one percent on all or any part of the first twenty million dollars of premiums, three-tenths of one percent on all or any part of the second twenty million dollars of premiums, two-tenths of one percent on all or any part of the third twenty million dollars of premiums, and seventy-five thousandths of one percent on each dollar of premiums thereafter. The rate of the tax on assumed reinsurance premiums shall be two hundred twenty-five thousandths of one percent on all or any part of the first twenty million dollars of premiums, one hundred and fifty thousandths of one percent on all or any part of the second twenty million dollars of premiums, fifty thousandths of one percent on all or any part of the third twenty million dollars of premiums and twenty-five thousandths of one percent on each dollar of premiums there-

after. The tax imposed by this section shall be equal to the greater of (i) the sum of the tax imposed on gross direct premiums and the tax imposed on assumed reinsurance premiums or (ii) five thousand dollars.

S 4. Subdivisions (a) and (e) of section 1505-a of the tax law, subdivision (a) as amended by section 6 of part II-1 of chapter 57 of the laws of 2008 and subdivision (e) as amended by chapter 166 of the laws of 1991, are amended to read as follows:

(a) (1) Every domestic insurance corporation and every foreign or alien insurance corporation, and every life insurance corporation described in PARAGRAPH TWO OF subdivision (b) of section fifteen hundred [one] TEN of this article, for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in the metropolitan commuter transportation district in a corporate or organized capacity, or of maintaining an office in the metropolitan commuter transportation district, for all or any part of its taxable years commencing on or after January first, nineteen hundred eighty-two, but ending before December thirty-first, two thousand thirteen, except corporations specified in subdivision (c) of section fifteen hundred twelve of this article, shall annually pay, in addition to the [taxes otherwise] TAX imposed by SECTION FIFTEEN HUNDRED TEN OF this article, a tax surcharge on [the taxes imposed under this article] THAT TAX after the deduction of any credits otherwise allowable under this article as allocated to such district. [Such taxes shall be allocated to such district for purposes of computing such tax surcharge upon taxpayers subject to tax under subdivision (b) of section fifteen hundred ten of this article by applying the methodology, procedures and computations set forth in subdivisions (a) and (b) of section fifteen hundred four of this article, except that references to terms denoting New York premiums, and total wages, salaries, personal service compensation and commissions within New York shall be read as denoting within the metropolitan commuter transportation district and terms denoting total premiums and total wages, salaries, personal service compensation and commissions shall be read as denoting within the state. If it shall appear to the commissioner that the application of the methodology, procedures and computations set forth in such subdivisions (a) and (b) does not properly reflect the activity, business or income of a taxpayer within the metropolitan commuter transportation district, then the commissioner shall be authorized, in the commissioner's discretion, to adjust such methodology, procedures and computations for the purpose of allocating such taxes by:

(A) excluding one or more factors therein;

(B) including one or more other factors therein, such as expenses, purchases, receipts other than premiums, real property or tangible personal property; or

(C) any other similar or different method which allocates such taxes by attributing a fair and proper portion of such taxes to the metropolitan commuter transportation district. The commissioner from time to time shall publish all rulings of general public interest with respect to any application of the provisions of the preceding sentence. The commissioner may promulgate rules and regulations to further implement the provisions of this section.

(2) Such taxes] THE TAX IMPOSED BY SECTION FIFTEEN HUNDRED TEN shall be allocated to such district for purposes of computing such tax surcharge [upon taxpayers subject to tax under section fifteen hundred two-a of this article] pursuant to a fraction, the denominator of which shall be the direct premiums subject to tax under section fifteen

hundred ten of this article, and the numerator of which shall be the direct premiums subject to tax under section fifteen hundred ten of this article that are written on risks located or resident in the metropolitan commuter transportation district, including premiums written, procured or received in the metropolitan commuter transportation district on business that cannot be specifically assigned as located or resident in an area of New York state outside the metropolitan commuter transportation district, or in another state or states; provided, however, in the case of special risk premiums, the numerator shall include only those premiums written, procured or received in the metropolitan commuter transportation district on property or risks located or resident in the metropolitan commuter transportation district. If it shall appear to the commissioner that the application of the methodology, procedures and computations set forth in this paragraph does not properly reflect the activity[,] OR business [or income] of a taxpayer within the metropolitan commuter transportation district, then the commissioner shall be authorized, in the commissioner's discretion, to adjust such methodology, procedures and computations for the purpose of allocating such taxes by: (A) excluding the factor therein and including one or more other factors such as expenses, purchases, receipts other than premiums, real property or tangible personal property; or (B) any other similar or different method which allocates such taxes by attributing a fair and proper portion of such taxes to the metropolitan commuter transportation district. The commissioner from time to time shall publish all rulings of general public interest with respect to any application of the provisions of the preceding sentence. The commissioner may promulgate rules and regulations to further implement the provisions of this section.

[(3)] (2) Such tax surcharge shall be computed at the rate of [eighteen percent of the taxes imposed under sections fifteen hundred one and fifteen hundred ten of this article as limited by section fifteen hundred five of this article, as allocated to such district, for such taxable years or any part of such taxable years ending before December thirty-first, nineteen hundred eighty-three after the deduction of any credits otherwise allowable under this article, at the rate of seventeen percent of the taxes imposed under such sections as limited by section fifteen hundred five of this article, as allocated to such district, for such taxable years or any part of such taxable years ending on or after December thirty-first, nineteen hundred eighty-three and before January first, two thousand three after the deduction of any credits otherwise allowable under this article, and at the rate of seventeen percent of the taxes imposed under sections fifteen hundred one, fifteen hundred two-a, and fifteen hundred ten of this article, as limited or otherwise determined by subdivision (a) or (b) of section fifteen hundred five of this article, as allocated to such district, for such taxable years or any part of such taxable years ending after December thirty-first, two thousand two after the deduction of any credits otherwise allowable under this article] SEVENTEEN PERCENT OF THE TAX IMPOSED BY SECTION FIFTEEN HUNDRED TEN OF THIS ARTICLE AFTER THE DEDUCTION OF ANY CREDITS OTHERWISE ALLOWABLE UNDER THIS ARTICLE, AS ALLOCATED TO SUCH DISTRICT, FOR TAXABLE YEARS OR ANY PART OF A TAXABLE YEAR ENDING AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND EIGHT; provided, however, that the tax surcharge imposed by this section shall not be imposed upon any taxpayer for more than three hundred seventy-two months. [Provided however, that for taxable years commencing on or after July first, two thousand, and in the case of taxpayers subject to tax under section fifteen hundred

two-a of this article, for taxable years of such taxpayers beginning on or after July first, two thousand and before January first, two thousand three, such surcharge shall be calculated as if (i) the rate of the tax computed under paragraph one of subdivision (a) of section fifteen hundred two of this article was nine percent and (ii) the rate of the limitation on tax set forth in section fifteen hundred five of this article for domestic, foreign and alien insurance corporations except life insurance corporations was two and six-tenths percent.]

(e) The provisions concerning returns under section fifteen hundred fifteen of this article shall be applicable to this section, except that for purposes of an automatic extension for six months for filing a return covering the tax surcharges imposed by this section, such automatic extension shall be allowed only if a taxpayer files with the commissioner an application for extension in such form and manner as said commissioner may prescribe by regulation and such taxpayer pays on or before the date of such filing in addition to any other amounts required under this article, either ninety percent of the entire tax required to be paid under this section for the applicable period, or not less than the tax surcharge shown on the taxpayer's return for the preceding taxable year, if such preceding taxable year was a taxable year of twelve months. The tax surcharge imposed by this section shall be payable to the commissioner in full at the time the return is required to be filed, and such tax surcharge or the balance thereof, imposed on any taxpayer which ceases to exercise its franchise or be subject to the tax surcharge imposed by this section shall be payable to the commissioner at the time the return is required to be filed, provided such tax surcharge of such domestic, foreign or alien insurance corporation including life insurance corporations, as described in PARAGRAPH TWO OF subdivision (b) of section fifteen hundred [one] TEN of this article, shall be subject to adjustment as the circumstances may require; all other tax surcharges of any such taxpayer, which pursuant to the foregoing provisions of this section would otherwise be payable subsequent to the time such return is required to be filed, shall nevertheless be payable at such time. All of the provisions of this article presently applicable are applicable to the tax surcharge imposed by this section.

S 5. The section heading of section 1510 of the tax law, as amended by section 7 of part H3 of chapter 62 of the laws of 2003, is amended to read as follows:

[Additional franchise] FRANCHISE tax on insurance corporations.

S 6. Subdivision (a) of section 1510 of the tax law, as amended by section 7 of part H3 of chapter 62 of the laws of 2003, is amended to read as follows:

(a) Domestic, foreign and alien insurance corporations except life insurance corporations. [Except as hereinafter provided, for taxable years beginning before January first, two thousand three every] EVERY domestic insurance corporation, every foreign insurance corporation and every alien insurance corporation, other than such corporations transacting the business of life insurance, (1) authorized to transact business in this state under a certificate of authority from the superintendent of insurance or (2) which is a risk retention group as defined in subsection (n) of section five thousand nine hundred two of the insurance law, shall, for the privilege of exercising corporate franchises or for carrying on business in a corporate or organized capacity within this state, and in addition to any other taxes imposed for such privilege, pay a tax on all gross direct premiums, less return premiums ther-

eon, written on risks located or resident in this state. The rate of tax imposed by this subdivision shall be two percent on premiums [written on or after January first, nineteen hundred seventy-four and before January first, nineteen hundred seventy-five, one and nine-tenths percent on premiums written on or after January first, nineteen hundred seventy-five and before January first, nineteen hundred seventy-six, one and eight-tenths percent on premiums written on or after January first, nineteen hundred seventy-six and before January first, nineteen hundred seventy-eight, one and two-tenths percent on premiums written on or after January first, nineteen hundred seventy-eight and before January first, nineteen hundred ninety-two and one and three-tenths percent on premiums written on and after such date. Provided, however, that the rate of tax imposed by this subdivision on all gross direct premiums, less return premiums thereon, for accident and health insurance contracts shall be one and six-tenths percent for such premiums written on or after January first, nineteen hundred seventy-four and before January first, nineteen hundred seventy-eight, and one percent for such premiums written on or after January first, nineteen hundred seventy-eight].

S 7. Paragraph 1 of subdivision (b) of section 1510 of the tax law, as amended by section 7 of part H3 of chapter 62 of the laws of 2003, is amended to read as follows:

(1) Except as hereinafter provided, every domestic life insurance corporation, and every foreign and alien life insurance corporation authorized to transact business in this state under a certificate of authority from the superintendent of insurance, shall, for the privilege of exercising corporate franchises or for carrying on business in a corporate or organized capacity within this state, and in addition to any other taxes imposed for such privilege, pay a tax on all gross direct premiums, less return premiums thereon, received in cash or otherwise on risks resident in this state, including supplemental contracts for total and permanent disability benefits and accidental death benefits. The rate of such tax shall be [(i) one and six-tenths] TWO percent on such premiums [received on or after January first, nineteen hundred seventy-four and before January first, nineteen hundred seventy-eight, (ii) one percent on such premiums received on or after January first, nineteen hundred seventy-eight and before January first, nineteen hundred eighty-seven, (iii) eight-tenths percent on such premiums received on or after January first, nineteen hundred eighty-seven and before January first, nineteen hundred ninety-eight, and (iv) seven-tenths percent on such premiums received on or after January first, nineteen hundred ninety-eight].

S 8. Section 1510 of the tax law is amended by adding a new subdivision (d) to read as follows:

(D) IN NO EVENT CAN THE TAX IMPOSED UNDER THIS SECTION BE LESS THAN TWO HUNDRED FIFTY DOLLARS.

S 9. Paragraph 2 of subdivision (e) of section 1511 of the tax law, as amended by section 8 of part H3 of chapter 62 of the laws of 2003, is amended to read as follows:

(2) In no event shall the credit herein provided for be allowed in an amount which will reduce the tax payable to less than the minimum tax fixed by [paragraph four of subdivision (a) of section fifteen hundred two of this article or section fifteen hundred two-a of this article, whichever is applicable] SUBDIVISION (D) OF SECTION FIFTEEN HUNDRED TEN OF THIS ARTICLE. If, however, the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount, any

amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

S 10. Subparagraph (A) of paragraph 3 and paragraph 5 of subdivision (f) of section 1511 of the tax law, subparagraph (A) of paragraph 3 as amended by chapter 803 of the laws of 1985 and paragraph 5 as amended by section 9 of part H3 of chapter 62 of the laws of 2003, are amended to read as follows:

(A) For each calendar year for which a credit has been authorized pursuant to section seven thousand seven hundred twelve of the insurance law, the commissioner of taxation and finance shall determine the total tax liability of all life insurance corporations under this article, [other than under section fifteen hundred five-a of this article,] before the application of any credits allowed pursuant to this section, for taxable years beginning in such calendar year. Such total tax liability shall be published in the state register on or before the thirtieth day of September of the next succeeding calendar year.

(5) No credit allowed pursuant to this subdivision shall reduce the tax payable by any taxpayer under this article for any taxable year to an amount less than the minimum tax fixed by [paragraph four of subdivision (a) of section fifteen hundred two of this article or section fifteen hundred two-a of this article, whichever is applicable] SUBDIVISION (D) OF SECTION FIFTEEN HUNDRED TEN OF THIS ARTICLE.

S 11. The closing paragraph of paragraph 4 and paragraph 5 of subdivision (g) of section 1511 of the tax law, the closing paragraph of paragraph 4 as amended by section 10 and paragraph 5 as amended by section 11 of part H3 of chapter 62 of the laws of 2003, are amended to read as follows:

Provided, further, however, that the credit provided for herein with respect to the taxable year, and carryovers of such credit to the taxable year, deducted from the tax otherwise due, may not, in the aggregate, exceed fifty percent of [(i) in the case of taxpayers subject to tax under subdivision (b) of section fifteen hundred ten of this article, the lesser of (I) the limitation on tax computed pursuant to subdivision (a) of section fifteen hundred five, or (II) the greater of the sum of the taxes imposed under sections fifteen hundred one and fifteen hundred ten or the amount of tax computed pursuant to subdivision (b) of section fifteen hundred five, or (ii) for all other insurance corporations,] the tax imposed under section fifteen hundred [two-a] TEN of this article, computed without regard to any credit provided for under this article.

(5) The credit or carryovers of such credit allowed under this subdivision for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the minimum tax fixed by [paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable] SUBDIVISION (D) OF SECTION FIFTEEN HUNDRED TEN OF THIS ARTICLE. However, if the amount of credit or carryovers of such credit, or both, allowed under this subdivision for any taxable year reduces the tax to such amount, or if any part of the credit or carryovers of such credit may not be deducted from the tax otherwise due by reason of the final sentence in paragraph four [hereof] OF THIS SUBDIVISION, any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

S 12. Paragraphs 2 and 3 of subdivision (h) of section 1511 of the tax law, paragraph 2 as amended by section 12 of part H3 of chapter 62 of the laws of 2003 and paragraph 3 as amended by chapter 708 of the laws of 1993, are amended to read as follows:

(2) The credit and carryover of such credit allowed under this subdivision for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the minimum fixed by [paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable] SUBDIVISION (D) OF SECTION FIFTEEN HUNDRED TEN OF THIS ARTICLE. However, if the amount of credit or carryovers of such credit, or both, allowed under this subdivision for any taxable year reduces the tax to such amount, or if any part of the credit or carryovers of such credit may not be deducted from the tax otherwise due by reason of the final sentence of this paragraph, any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the tax for such year or years. In addition, the amount of such credit, and carryovers of such credit to the taxable year, deducted from the tax otherwise due may not, in the aggregate, exceed fifty percent of [(i) in the case of taxpayers subject to tax under subdivision (b) of section fifteen hundred ten of this article, the lesser of (I) the limitation on tax computed pursuant to subdivision (a) of section fifteen hundred five, or (II) the greater of the sum of the taxes imposed under sections fifteen hundred one and fifteen hundred ten or the amount of tax computed pursuant to subdivision (b) of section fifteen hundred five, or (ii) for all other insurance corporations,] the tax imposed under section fifteen hundred [two-a] TEN of this article, computed without regard to any credit provided for under this article.

[(3) Where the stock, partnership interest or other ownership interest arising from a qualified investment as described in subparagraphs (A) and (B) of paragraph one of this subdivision is disposed of, the taxpayer's entire net income shall be computed, pursuant to regulations promulgated by the commissioner, so as to properly reflect the reduced cost thereof arising from the application of the credit provided for herein.]

S 13. Paragraph 5 of subdivision (j) of section 1511 of the tax law, as amended by section 13 of part H3 of chapter 62 of the laws of 2003, is amended to read as follows:

(5) Carryover. The credit and carryovers of such credit allowed under this subdivision for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the minimum tax fixed by [paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable] SUBDIVISION (D) OF SECTION FIFTEEN HUNDRED TEN OF THIS ARTICLE. However, if the amount of credit or carryovers of such credit, or both, allowed under this subdivision for any taxable year reduces the tax to such amount, then any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

S 14. Paragraph 3 of subdivision (k) of section 1511 of the tax law, as amended by section 14 of part H3 of chapter 62 of the laws of 2003, is amended to read as follows:

(3) No credit allowable pursuant to this subdivision shall reduce the tax payable under this article to less than the minimum tax fixed by

[paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable] SUBDIVISION (D) OF SECTION FIFTEEN HUNDRED TEN OF THIS ARTICLE. If, however, the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount, any amount of credit not taken in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

S 15. Subdivision 1 of section 1511 of the tax law, as amended by section 15 of part H3 of chapter 62 of the laws of 2003, is amended to read as follows:

(l) Credit for purchase of an automated external defibrillator. A taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article for the purchase, other than for resale, of an automated external defibrillator, as such term is defined in section three thousand-b of the public health law. The amount of the credit shall be the cost to the taxpayer of automated external defibrillators purchased during the taxable year, such credit not to exceed five hundred dollars with respect to each unit purchased. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by [paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable] SUBDIVISION (D) OF SECTION FIFTEEN HUNDRED TEN OF THIS ARTICLE.

S 16. Paragraph 2 of subdivision (m) of section 1511 of the tax law, as amended by section 16 of part H3 of chapter 62 of the laws of 2003, is amended to read as follows:

(2) In no event shall the credit herein provided for be allowed in an amount which will reduce the tax payable to less than the minimum tax fixed by [paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable] SUBDIVISION (D) OF SECTION FIFTEEN HUNDRED TEN OF THIS ARTICLE. If, however, the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

S 17. Paragraph 2 of subdivision (n) of section 1511 of the tax law, as amended by section 17 of part H3 of chapter 62 of the laws of 2003, is amended to read as follows:

(2) Application of credit. The credit and carryovers of such credit allowed under this subdivision for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the minimum tax fixed by [paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable] SUBDIVISION (D) OF SECTION FIFTEEN HUNDRED TEN OF THIS ARTICLE. However, if the amount of credit or carryovers of such credit, or both, allowed under this subdivision for any taxable year reduces the tax to such amount, then any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

S 18. Paragraph 2 of subdivision (o) of section 1511 of the tax law, as amended by section 18 of part H3 of chapter 62 of the laws of 2003, is amended to read as follows:

(2) Carryover. The credit and carryovers of such credit allowed under this subdivision for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the minimum tax fixed by [paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable] SUBDIVISION (D) OF SECTION FIFTEEN HUNDRED TEN OF THIS ARTICLE. However, if the amount of credit or carryovers of such credit, or both, allowed under this subdivision for any taxable year reduces the tax to such amount, then any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

S 19. Paragraph 2 of subdivision (p) of section 1511 of the tax law, as amended by section 19 of part H3 of chapter 62 of the laws of 2003, is amended to read as follows:

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by [paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable] SUBDIVISION (D) OF SECTION FIFTEEN HUNDRED TEN OF THIS ARTICLE. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, then any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

S 20. Paragraph 4 of subdivision (q) of section 1511 of the tax law, as amended by section 20 of part H3 of chapter 62 of the laws of 2003, is amended to read as follows:

(4) Except as otherwise provided in this paragraph, the credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount fixed as a minimum tax by [paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable] SUBDIVISION (D) OF SECTION FIFTEEN HUNDRED TEN OF THIS ARTICLE. However, if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount, any amount of credit allowed for a taxable year may be carried over to the fifteen taxable years next following such taxable year and may be deducted from the taxpayer's tax for such year or years. In lieu of such carryover, any such taxpayer which qualifies as a new business under paragraph seven of this subdivision may elect to treat the amount of such carryover 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 shall be paid thereon.

S 21. Paragraph 2 of subdivision (r) of section 1511 of the tax law, as amended by section 21 of part H3 of chapter 62 of the laws of 2003, is amended to read as follows:

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by [paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen

hundred two-a of this article, whichever is applicable] SUBDIVISION (D) OF SECTION FIFTEEN HUNDRED TEN OF THIS ARTICLE. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, then any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

S 22. Paragraph 2 of subdivision (s) of section 1511 of the tax law, as amended by section 22 of part H3 of chapter 62 of the laws of 2003, is amended to read as follows:

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by [paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable] SUBDIVISION (D) OF SECTION FIFTEEN HUNDRED TEN OF THIS ARTICLE.

S 23. Paragraph 2 of subdivision (u) of section 1511 of the tax law, as added by section 11 of part H of chapter 1 of the laws of 2003, is amended to read as follows:

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum fixed by [paragraph four of subdivision (a) of section fifteen hundred two of this article] SUBDIVISION (D) OF SECTION FIFTEEN HUNDRED TEN OF THIS ARTICLE. However, if the amount of credits 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 shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

S 24. Paragraph 2 of subdivision (v) of section 1511 of the tax law, as added by section 18 of part H of chapter 1 of the laws of 2003, is amended to read as follows:

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by [paragraph four of subdivision (a) of section fifteen hundred two of this article] SUBDIVISION (D) OF SECTION FIFTEEN HUNDRED TEN OF 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 shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

S 25. Paragraph 2 of subdivision (w) of section 1511 of the tax law, as added by section 29 of part H of chapter 1 of the laws of 2003, is amended to read as follows:

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum fixed by [paragraph four of subdivision (a) of section fifteen hundred two or section fifteen hundred two-a of this article] SUBDIVISION (D) OF SECTION FIFTEEN HUNDRED TEN OF THIS ARTICLE. However,

if the amount of credits 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 shall 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 shall be paid thereon.

S 26. Paragraph 2 of subdivision (x) of section 1511 of the tax law, as added by chapter 537 of the laws of 2005, is amended to read as follows:

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum fixed by [paragraph four of subdivision (a) of section fifteen hundred two or section fifteen hundred two-a of this article] SUBDIVISION (D) OF SECTION FIFTEEN HUNDRED TEN OF THIS ARTICLE. However, if the amount of credits 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 shall 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 shall be paid thereon.

S 27. Paragraph 3 of subdivision (x) of section 1511 of the tax law, as added by chapter 446 of the laws of 2005, is amended to read as follows:

(3) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by [paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable] SUBDIVISION (D) OF SECTION FIFTEEN HUNDRED TEN OF 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 may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

S 28. Subdivision (b) of section 1513 of the tax law, as amended by section 25 of part H3 of chapter 62 of the laws of 2003, is amended to read as follows:

(b) Definition of estimated tax and estimated tax surcharge. The terms "estimated tax" and "estimated tax surcharge" mean the amounts which the taxpayer estimates to be the taxes imposed by [sections fifteen hundred one, fifteen hundred two-a and] SECTION fifteen hundred ten of this article or the tax surcharge imposed by section fifteen hundred five-a of this article, respectively, for the current taxable year, less the sum of any credits which it estimates to be allowable against such taxes or tax surcharge, respectively.

S 29. Subdivisions (e) and (f) of section 1514 of the tax law, subdivision (e) as amended by chapter 166 of the laws of 1991 and subdivision (f) as amended by section 26 of part H3 of chapter 62 of the laws of 2003, are amended to read as follows:

(e) Interest on certain installments based on the preceding year's tax. Notwithstanding the provisions of section one thousand eighty-eight of this chapter or section sixteen of the state finance law, if an amount paid pursuant to subdivision (a) of this section exceeds the tax or tax surcharge, respectively, shown on the return required to be filed by the taxpayer for the taxable year during which such amount was paid,

interest shall be allowed and paid on the amount by which the amount so paid pursuant to SUCH subdivision (a) exceeds such tax or tax surcharge, at the overpayment rate set by the commissioner of taxation and finance pursuant to subdivision (e) of section one thousand ninety-six or, if no rate is set, at the rate of six percent per annum, from the date of payment of the amount so paid pursuant to such subdivision (a) to the fifteenth day of the third month following the close of the taxable year, provided, however, that no interest shall be allowed or paid under this subdivision if the amount thereof is less than one dollar [or if such interest becomes payable solely because of a loss described in paragraph four of subdivision (b) of section fifteen hundred three].

(f) The preceding year's tax defined. As used in this section, "the preceding year's tax" means[, for taxpayers subject to tax under subdivision (b) of section fifteen hundred ten of this article, the taxes imposed upon the taxpayer by sections fifteen hundred one and fifteen hundred ten of this article from the preceding taxable year or as otherwise determined by subdivision (b) of section fifteen hundred five of this article, and for taxpayers subject to tax under section fifteen hundred two-a of this article, the tax imposed upon the taxpayer by such section fifteen hundred two-a of this article from the preceding year,] THE TAX IMPOSED ON THE TAXPAYER BY THIS ARTICLE WITHOUT REGARD TO THE TAX SURCHARGE IMPOSED BY SECTION FIFTEEN HUNDRED FIVE-A, or for purposes of computing the first installment of estimated tax when an application has been filed for extension of the time for filing the return required to be filed for such preceding taxable year, the amount properly estimated pursuant to paragraph one of subdivision (b) of section fifteen hundred sixteen of this article as the tax imposed upon the taxpayer for such taxable year.

S 30. Paragraph 1 of subdivision (e) of section 1515 of the tax law, as amended by chapter 770 of the laws of 1992, is amended to read as follows:

(1) [If] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, IF the amount of the life insurance company taxable income (which shall include, in the case of a stock life insurance company which has an existing policyholders surplus account, the amount of direct and indirect distributions during the taxable year to shareholders from such account), taxable income of a partnership or taxable income, as the case may be, or alternative minimum taxable income for any year of any taxpayer as returned to the United States treasury department is changed or corrected by the commissioner of internal revenue or other officer of the United States or other competent authority, such taxpayer shall report such change or corrected taxable income or alternative minimum taxable income within ninety days (or one hundred twenty days, in the case of a taxpayer making a combined return under this article for such year) after the final determination of such change or correction or as required by the commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return with such department shall also file within ninety days (or one hundred twenty days, in the case of a taxpayer making a combined return under this article for such year) thereafter an amended return with the commissioner which shall contain such information as the commissioner shall require. The allowance of a tentative carryback adjustment based upon a net operating loss carryback or net capital loss carryback pursuant to section sixty-four hundred eleven of the internal revenue code or upon an operations loss carryback pursuant

to section eight hundred ten of the internal revenue code, shall be treated as a final determination for purposes of this subdivision.

S 31. Subdivisions (f) and (g) of section 1515, subdivision (g) of section 1518 and section 1520 of the tax law are REPEALED.

S 32. Paragraph 1, clause (ii) of subparagraph (B) of paragraph 2 and subparagraph (A) of paragraph 3 of subdivision (f) of section 16 of the tax law, as amended by section 14 of part CC of chapter 85 of the laws of 2002, are amended to read as follows:

(1) General. The tax factor shall be, in the case of article nine-A of this chapter, the larger of the amounts of tax determined for the taxable year under paragraphs (a) and (c) of subdivision one of section two hundred ten of such article. The tax factor shall be, in the case of article twenty-two of this chapter, the tax determined for the taxable year under subsections (a) through (d) of section six hundred one of such article. The tax factor shall be, in the case of article thirty-two of this chapter, the larger of the amounts of tax determined for the taxable year under subsection (a) and paragraph two of subsection (b) of section fourteen hundred fifty-five of such article. The tax factor shall be, in the case of article thirty-three of this chapter, the [larger of the amounts] AMOUNT of tax determined for the taxable year under [paragraphs one and three of] subdivision (a) OR (B) of section fifteen hundred [two] TEN of such article.

(ii) For purposes of article nine-A[,] OR thirty-two [or thirty-three] of this chapter, the term "partner's income from the partnership" means partnership items of income, gain, loss and deduction, and New York modifications thereto, entering into entire net income, minimum taxable income, alternative entire net income or entire net income plus compensation and the term "partner's entire income" means entire net income, minimum taxable income, alternative entire net income or entire net income plus compensation, allocated within the state. For purposes of article twenty-two of this chapter, the term "partner's income from the partnership" means partnership items of income, gain, loss and deduction, and New York modifications thereto, entering into New York adjusted gross income, and the term "partner's entire income" means New York adjusted gross income.

(A) Where the taxpayer is a qualified empire zone enterprise and is required or permitted to make a return or report on a combined basis under article nine-A[,] OR thirty-two [or thirty-three] of this chapter, the taxpayer's tax factor shall be the amount determined in paragraph one of this subdivision which is attributable to the income of the qualified empire zone enterprise. Such attribution shall be made in accordance with the ratio of the qualified empire zone enterprise's income allocated within the state to the combined group's income, or in accordance with such other methods as the commissioner may prescribe as providing an apportionment which reasonably reflects the portion of the combined group's tax attributable to the income of the qualified empire zone enterprise. In no event may the ratio so determined exceed 1.0.

S 33. Subparagraph (A) of paragraph 3 of subsection (d) of section 1085 of the tax law, as amended by chapter 170 of the laws of 1994, is amended to read as follows:

(A) General. An amount equal to ninety-one percent of the tax for the taxable year computed on all items entering into the computation of the tax or taxes of the taxpayer for the taxable year under article nine, nine-A[,] OR thirty-two [or thirty-three] of this chapter. For purposes of computing the tax, all items of receipts, income and expenses shall be placed on an annualized basis--

(i) for the first three months of the taxable year, in the case of the installment required to be paid in the sixth month,

(ii) for the first six months of the taxable year, in the case of the installment required to be paid in the ninth month, and

(iii) for the first nine months of the taxable year, in the case of the installment required to be paid in the twelfth month.

S 34. Clause (i) of subparagraph (A) of paragraph 4 of subsection (d) of section 1085 of the tax law, as amended by chapter 57 of the laws of 1993, is amended to read as follows:

(i) take the items entering into the computation of the tax or taxes of the taxpayer for the taxable year under article nine, nine-A[,] OR thirty-two [or thirty-three] of this chapter, for all months during the taxable year preceding the filing month,

S 35. Paragraph 1 of subsection (e) of section 1085 of the tax law, as amended by section 28 of part H3 of chapter 62 of the laws of 2003, is amended to read as follows:

(1) Paragraphs (1) and (2) of subsection (d) of this section shall not apply in the case of any corporation (or any predecessor corporation) which had entire net income, or the portion thereof allocated within the state, of one million dollars or more for any taxable year during the three taxable years immediately preceding the taxable year involved; provided, however, that in the case of a corporation subject to tax under section fifteen hundred [two-a] TEN of this chapter, paragraphs (1) and (2) of subsection (d) of this section shall not apply if [such corporation had entire net income, or the portion thereof allocated within the state, of one million dollars or more for any of the three taxable years immediately preceding the taxable year involved, or if] the direct premiums subject to tax under section fifteen hundred [two-a] TEN of this chapter of the corporation for any of such three preceding taxable years [beginning on or after January first, two thousand three] equals or exceeds three million seven hundred fifty thousand dollars.

S 36. This act shall take effect immediately and apply to taxable years beginning on or after January 1, 2009; provided however, that section four of this act shall apply to taxable years ending after December 31, 2008.

PART E

Section 1. The tax law is amended by adding a new section 171-t to read as follows:

S 171-T. RECIPROCAL OFFSET AGREEMENTS WITH THE UNITED STATES OR OTHER STATES. (1) FOR THE PURPOSES OF THIS SECTION, THE DEFINITIONS PROVIDED FOR IN SECTION ONE HUNDRED SEVENTY-ONE-N OF THIS ARTICLE APPLY TOGETHER WITH THE FOLLOWING:

(A) "CLAIMANT" MEANS ANY STATE OR THE UNITED STATES THAT ENTERS INTO A RECIPROCAL AGREEMENT UNDER THIS SECTION OR REQUESTS APPLICATION OF A VENDOR PAYMENT OR AN OVERPAYMENT TO A DEBT.

(B) "DEBT" MEANS A "TAX DEBT" AS DEFINED IN SECTION ONE HUNDRED SEVENTY-ONE-N OF THIS ARTICLE AND ANY OTHER PAST DUE LEGALLY ENFORCEABLE OBLIGATION OWED TO A STATE OR THE UNITED STATES, WHICH ARISES FROM (I) AN ENFORCEABLE JUDGMENT OF A COURT OF COMPETENT JURISDICTION THAT IS NO LONGER SUBJECT TO JUDICIAL REVIEW, OR (II) AN ENFORCEABLE DETERMINATION OF AN ADMINISTRATIVE BODY THAT IS NO LONGER SUBJECT TO ADMINISTRATIVE OR JUDICIAL REVIEW, OR (III) A DETERMINATION THAT HAS BECOME FINAL OR FINALLY AND IRREVOCABLY FIXED AND NO LONGER SUBJECT TO ADMINISTRATIVE OR JUDICIAL REVIEW.

(C) "DEBTOR" MEANS A PERSON WHO OWES A DEBT.

(D) "PERSON" HAS THE SAME MEANING AS THAT TERM HAS IN SUBDIVISION (A) OF SECTION ELEVEN HUNDRED ONE OF THIS CHAPTER.

(E) "VENDOR PAYMENT" MEANS ANY PAYMENT, OTHER THAN AN OVERPAYMENT, MADE BY A STATE OR THE UNITED STATES TO ANY PERSON, AND INCLUDES BUT IS NOT LIMITED TO ANY EXPENSE REIMBURSEMENT TO AN EMPLOYEE OF THE STATE OR THE UNITED STATES; BUT DOES NOT INCLUDE A PERSON'S SALARY, WAGES OR PENSION.

(2) THE COMMISSIONER MAY, IN HIS OR HER DISCRETION, ENTER INTO A COLLECTION AND OFFSET AGREEMENT WITH ANOTHER STATE OR WITH THE UNITED STATES SECRETARY OF THE TREASURY THROUGH THE INTERNAL REVENUE SERVICE OR THE FINANCIAL MANAGEMENT SERVICE OF THE DEPARTMENT OF THE TREASURY OF THE UNITED STATES UNDER WHICH THE COMMISSIONER, ON BEHALF OF THE STATE OF NEW YORK, MAY, IN HIS OR HER DISCRETION, AGREE TO PAY TO A CLAIMANT OWED A DEBT BY A TAXPAYER OR OTHER PERSON THE WHOLE OR PART OF AN OVERPAYMENT OR A VENDOR PAYMENT OWED BY THE STATE TO THAT TAXPAYER OR OTHER PERSON, PROVIDED THE CLAIMANT GRANTS SUBSTANTIALLY SIMILAR PRIVILEGES TO THIS STATE. HOWEVER, THE UNITED STATES WILL NOT BE REQUIRED UNDER THIS SECTION TO OFFSET TAX OVERPAYMENTS OWED BY IT EXCEPT TO THE EXTENT THAT IT AGREES TO DO SO. AN AGREEMENT WITH THE CLAIMANT MUST SPECIFY THAT A TAXPAYER OR ANY PERSON OWED A VENDOR PAYMENT WILL RECEIVE THIRTY DAYS ADVANCE WRITTEN NOTICE OF THE OFFSET AND WILL BE PROVIDED WITH AN OPPORTUNITY TO PRESENT WRITTEN OR ORAL EVIDENCE ABOUT THE APPLICATION OF THE OVERPAYMENT OR VENDOR PAYMENT TO THE DEBT. A PROCEEDING FOR JUDICIAL REVIEW OF THE DECISION IN THE MANNER PROVIDED BY ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES MAY BE COMMENCED BY A TAXPAYER OR A PERSON OWED A VENDOR PAYMENT WITHIN FOUR MONTHS AFTER A COPY OF A DECISION ADVERSE TO THE TAXPAYER OR THAT PERSON IS MAILED TO THE TAXPAYER OR THAT PERSON. ARTICLE FORTY OF THIS CHAPTER DOES NOT APPLY TO ANY HEARING OR PROCEEDING ON WHETHER AN OVERPAYMENT OR VENDOR PAYMENT MAY BE APPLIED TO A DEBT UNDER THIS SECTION. THE REMEDY PROVIDED BY THIS SECTION FOR REVIEW OF HEARINGS AND PROCEEDINGS IS THE EXCLUSIVE REMEDY AVAILABLE TO JUDICIALLY DETERMINE WHETHER AN OVERPAYMENT OR VENDOR PAYMENT MAY BE APPLIED TO A DEBT UNDER THIS SECTION. THE AMOUNT OF A DEBT REMAINING DUE AS CERTIFIED BY A CLAIMANT WILL BE PRIMA FACIE EVIDENCE OF THE CORRECT AMOUNT OF A DEBT.

(3) THE COMMISSIONER WILL CALCULATE THE AMOUNT OF AN OVERPAYMENT AND INTEREST THEREON THAT IS TO BE CREDITED AGAINST THE AMOUNT OF A PAST DUE LEGALLY ENFORCEABLE DEBT OWED BY A TAXPAYER WHICH IS CERTIFIED TO THE DEPARTMENT FOR COLLECTION UNDER THIS SECTION USING THE RULES IN SUBDIVISION FIVE OF SECTION ONE HUNDRED SEVENTY-ONE-F OF THIS ARTICLE. IF A TAXPAYER OR A PERSON OWES MORE THAN ONE DEBT WHICH IS CERTIFIED TO THE COMMISSIONER FOR COLLECTION UNDER THIS SECTION, ANY OVERPAYMENT OR VENDOR PAYMENT WILL BE CREDITED AGAINST THE DEBTS IN THE ORDER IN WHICH THE DEBTS ACCRUED. A DEBT WILL BE CONSIDERED TO HAVE ACCRUED AT THE TIME AT WHICH THE DEBT BECAME PAST DUE.

(4) NOTWITHSTANDING ANY OTHER LAW, THE COMMISSIONER IS AUTHORIZED TO RELEASE TO A CLAIMANT TAXPAYER INFORMATION FOR PURPOSES OF IMPLEMENTING AND ADMINISTERING AN AGREEMENT ENTERED INTO BETWEEN THE CLAIMANT AND THIS STATE UNDER THIS SECTION.

S 2. Subdivision 2 of section 171-p of the tax law, as added by section 1 of part BB-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(2) The commissioner may implement procedures under which any cost or fee imposed or charged by the United States or any state, with respect to payment or remittance of a taxpayer's overpayment to satisfy a tax

debt of the taxpayer, must not be credited by the commissioner to payment or satisfaction of the tax debt, must be deemed to be part of the taxpayer's tax debt, and must be eligible for offset against the taxpayer's overpayment to the extent permitted by law. THE COMMISSIONER MAY ALSO IMPLEMENT PROCEDURES UNDER WHICH ANY COST OR FEE IMPOSED OR CHARGED BY THE UNITED STATES OR ANY OTHER STATE, WITH RESPECT TO ANY OTHER PAYMENT OR REMITTANCE OF A TAXPAYER'S OVERPAYMENT OR A VENDOR PAYMENT TO SATISFY A DEBT OF THE TAXPAYER OR THE PERSON WHO IS OWED THE VENDOR PAYMENT AS AUTHORIZED BY SECTION ONE HUNDRED SEVENTY-ONE-T OF THIS ARTICLE, MUST NOT BE CREDITED BY THE STATE OF NEW YORK TO PAYMENT OR SATISFACTION OF THE DEBT, MUST BE DEEMED TO BE PART OF THE TAXPAYER'S OR PERSON'S DEBT, AND MUST BE ELIGIBLE FOR OFFSET AGAINST THE TAXPAYER'S OVERPAYMENT OR THE PERSON'S VENDOR PAYMENT TO THE EXTENT PERMITTED BY LAW.

S 3. Paragraph (c) of subdivision 1 of section 171-n of the tax law, as added by section 2 of part O of chapter 61 of the laws of 2005, is amended to read as follows:

(c) "tax debt" means any past due, legally enforceable tax obligation owed any other state administering that tax, which arises from (i) an enforceable judgment of a court of competent jurisdiction which is no longer subject to judicial review, or (ii) an enforceable determination of an administrative body which is no longer subject to administrative or judicial review, or (iii) an assessment or determination (including self-assessment or self-assessed determination) which has become final or finally and irrevocably fixed and no longer subject to administrative or judicial review[, and which has not been delinquent for more than ten years]; and

S 4. This act shall take effect immediately.

PART F

Section 1. Section 2 of the tax law is amended by adding a new subdivision 11 to read as follows:

11. THE TERM "OVERCAPITALIZED CAPTIVE INSURANCE COMPANY" MEANS AN ENTITY THAT IS TREATED AS AN ASSOCIATION TAXABLE AS A CORPORATION UNDER THE INTERNAL REVENUE CODE (A) MORE THAN FIFTY PERCENT OF THE VOTING STOCK OF WHICH IS OWNED OR CONTROLLED, DIRECTLY OR INDIRECTLY, BY A SINGLE ENTITY THAT IS TREATED AS AN ASSOCIATION TAXABLE AS A CORPORATION UNDER THE INTERNAL REVENUE CODE AND NOT EXEMPT FROM FEDERAL INCOME TAX; (B) THAT IS LICENSED AS A CAPTIVE INSURANCE COMPANY UNDER THE LAWS OF THIS STATE OR ANOTHER JURISDICTION; (C) WHOSE BUSINESS INCLUDES PROVIDING, DIRECTLY AND INDIRECTLY, INSURANCE OR REINSURANCE COVERING THE RISKS OF ITS PARENT AND/OR MEMBERS OF ITS AFFILIATED GROUP; AND (D) FIFTY PERCENT OR LESS OF WHOSE GROSS RECEIPTS FOR THE TAXABLE YEAR CONSIST OF PREMIUMS. FOR PURPOSES OF THIS SUBDIVISION, "AFFILIATED GROUP" HAS THE SAME MEANING AS THAT TERM IS GIVEN IN SECTION 1504 OF THE INTERNAL REVENUE CODE, EXCEPT THAT THE TERM "COMMON PARENT CORPORATION" IN THAT SECTION IS DEEMED TO MEAN ANY PERSON, AS DEFINED IN SECTION 7701 OF THE INTERNAL REVENUE CODE; REFERENCES TO "AT LEAST EIGHTY PERCENT" IN SECTION 1504 OF THE INTERNAL REVENUE CODE ARE TO BE READ AS "FIFTY PERCENT OR MORE;" SECTION 1504 OF THE INTERNAL REVENUE CODE IS TO BE READ WITHOUT REGARD TO THE EXCLUSIONS PROVIDED FOR IN SUBSECTION (B) OF THAT SECTION; "PREMIUMS" HAS THE SAME MEANING AS THAT TERM IS GIVEN IN PARAGRAPH ONE OF SUBDIVISION (C) OF SECTION FIFTEEN HUNDRED TEN OF THIS CHAPTER, EXCEPT THAT IT INCLUDES CONSIDERATION FOR ANNUITY CONTRACTS AND EXCLUDES ANY PART OF THE CONSIDERATION FOR INSURANCE, REINSURANCE OR

ANNUITY CONTRACTS THAT DO NOT PROVIDE BONA FIDE INSURANCE, REINSURANCE OR ANNUITY BENEFITS; AND "GROSS RECEIPTS" INCLUDES THE AMOUNTS INCLUDED IN GROSS RECEIPTS FOR PURPOSES OF SECTION 501(C) (15) OF THE INTERNAL REVENUE CODE, EXCEPT THAT THOSE AMOUNTS ALSO INCLUDE ALL PREMIUMS AS DEFINED IN THIS SUBDIVISION.

S 2. Paragraph (a) of subdivision 4 of section 211 of the tax law is amended by adding a new subparagraph 7 to read as follows:

(7) (I) FOR PURPOSES OF THIS SUBPARAGRAPH, THE TERM "CLOSEST CONTROLLING STOCKHOLDER" MEANS THE CORPORATION THAT INDIRECTLY OWNS OR CONTROLS OVER FIFTY PERCENT OF THE VOTING STOCK OF AN OVERCAPITALIZED CAPTIVE INSURANCE COMPANY; IS SUBJECT TO TAX UNDER THIS ARTICLE OR ARTICLE THIRTY-TWO OF THIS CHAPTER, OR IS OTHERWISE REQUIRED TO BE INCLUDED IN A COMBINED RETURN OR REPORT UNDER THIS ARTICLE OR ARTICLE THIRTY-TWO OF THIS CHAPTER; AND IS THE FEWEST TIERS OF CORPORATIONS AWAY IN THE OWNERSHIP STRUCTURE FROM THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY. THE COMMISSIONER IS AUTHORIZED TO PRESCRIBE BY REGULATION OR PUBLISHED GUIDANCE THE CRITERIA FOR DETERMINING THE CLOSEST CONTROLLING STOCKHOLDER.

(II) AN OVERCAPITALIZED CAPTIVE INSURANCE COMPANY MUST BE INCLUDED IN A COMBINED REPORT WITH THE CORPORATION THAT DIRECTLY OWNS OR CONTROLS OVER FIFTY PERCENT OF THE VOTING STOCK OF THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY IF THAT CORPORATION IS SUBJECT TO TAX OR REQUIRED TO BE INCLUDED IN A COMBINED REPORT UNDER THIS ARTICLE.

(III) IF OVER FIFTY PERCENT OF THE VOTING STOCK OF AN OVERCAPITALIZED CAPTIVE INSURANCE COMPANY IS NOT DIRECTLY OWNED OR CONTROLLED BY A CORPORATION THAT IS SUBJECT TO TAX OR REQUIRED TO BE INCLUDED IN A COMBINED REPORT UNDER THIS ARTICLE, THEN THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY MUST BE INCLUDED IN A COMBINED RETURN OR REPORT WITH THE CORPORATION THAT IS THE CLOSEST CONTROLLING STOCKHOLDER OF THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY. IF THE CLOSEST CONTROLLING STOCKHOLDER OF THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY IS SUBJECT TO TAX OR OTHERWISE REQUIRED TO BE INCLUDED IN A COMBINED REPORT UNDER THIS ARTICLE, THEN THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY MUST BE INCLUDED IN A COMBINED REPORT UNDER THIS ARTICLE.

(IV) IF THE CORPORATION THAT DIRECTLY OWNS OR CONTROLS THE VOTING STOCK OF THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY IS DESCRIBED IN SUBPARAGRAPH TWO, THREE, OR FIVE OF THIS PARAGRAPH AS A CORPORATION NOT PERMITTED TO MAKE A COMBINED REPORT, THEN THE PROVISIONS IN CLAUSE (III) OF THIS SUBPARAGRAPH MUST BE APPLIED TO DETERMINE THE CORPORATION IN WHOSE COMBINED RETURN OR REPORT THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY SHOULD BE INCLUDED. IF, UNDER CLAUSE (III) OF THIS SUBPARAGRAPH, THE CORPORATION THAT IS THE CLOSEST CONTROLLING STOCKHOLDER OF THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY IS DESCRIBED IN SUBPARAGRAPH TWO, THREE OR FIVE OF THIS PARAGRAPH AS A CORPORATION NOT PERMITTED TO MAKE A COMBINED RETURN, THEN THAT CORPORATION IS DEEMED NOT TO BE IN THE OWNERSHIP STRUCTURE OF THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY, AND THE CLOSEST CONTROLLING STOCKHOLDER WILL BE DETERMINED WITHOUT REGARD TO THAT CORPORATION.

(V) IF AN OVERCAPITALIZED CAPTIVE INSURANCE COMPANY IS REQUIRED UNDER THIS SUBPARAGRAPH TO BE INCLUDED IN A COMBINED REPORT WITH ANOTHER CORPORATION, AND THAT OTHER CORPORATION IS ALSO REQUIRED TO BE INCLUDED IN A COMBINED REPORT WITH ANOTHER RELATED CORPORATION OR CORPORATIONS UNDER THIS PARAGRAPH, THEN THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY MUST BE INCLUDED IN THAT COMBINED REPORT WITH THOSE CORPORATIONS.

(VI) IF AN OVERCAPITALIZED CAPTIVE INSURANCE COMPANY IS NOT REQUIRED TO BE INCLUDED IN A COMBINED REPORT WITH ANOTHER CORPORATION UNDER CLAUSE (II) OR (III) OF THIS SUBPARAGRAPH, OR IN A COMBINED RETURN UNDER

THE PROVISIONS OF SUBPARAGRAPH (V) OF PARAGRAPH TWO OF SUBSECTION (F) OF SECTION FOURTEEN HUNDRED SIXTY-TWO OF THIS CHAPTER, THEN THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY IS SUBJECT TO THE OPENING PROVISIONS OF THIS PARAGRAPH AND THE PROVISIONS OF SUBPARAGRAPH FOUR OF THIS PARAGRAPH. THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY MUST BE INCLUDED IN A COMBINED REPORT UNDER THIS ARTICLE WITH ANOTHER CORPORATION IF EITHER THE SUBSTANTIAL INTERCORPORATE TRANSACTIONS REQUIREMENT IN THE OPENING PROVISIONS OF THIS PARAGRAPH OR THE INTER-COMPANY TRANSACTIONS OR AGREEMENT, UNDERSTANDING, ARRANGEMENT OR TRANSACTION REQUIREMENT OF SUBPARAGRAPH FOUR OF THIS PARAGRAPH IS SATISFIED, AND BOTH MORE THAN FIFTY PERCENT OF THE VOTING STOCK OF THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY AND SUBSTANTIALLY ALL OF THE CAPITAL STOCK OF THAT OTHER CORPORATION ARE OWNED AND CONTROLLED, DIRECTLY OR INDIRECTLY, BY THE SAME CORPORATION.

S 3. Subparagraph 1 of paragraph (b) of subdivision 4 of section 211 of the tax law, as amended by section 4 of part FF-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(1) Tax. (i) In the case of a combined report the tax shall be measured by the combined entire net income, combined minimum taxable income, combined pre-nineteen hundred ninety minimum taxable income or combined capital, of all the corporations included in the report, including any captive REIT [or], captive RIC OR OVERCAPITALIZED CAPTIVE INSURANCE COMPANY; provided, however, in no event shall the tax measured by combined capital exceed the limitation provided for in paragraph (b) of subdivision one of section two hundred ten of this article.

(ii) In the case of a captive REIT or captive RIC required under this subdivision to be included in a combined report, entire net income must be computed as required under subdivision five (in the case of a captive REIT) or subdivision seven (in the case of a captive RIC) of section two hundred nine of this article. However, the deduction under the internal revenue code for dividends paid by the captive REIT or captive RIC to any member of the affiliated group that includes the corporation that directly or indirectly owns over fifty percent of the voting stock of the captive REIT or captive RIC shall not be allowed for taxable years beginning on or after January first, two thousand eight. The term "affiliated group" means "affiliated group" as defined in section fifteen hundred four of the internal revenue code, but without regard to the exceptions provided for in subsection (b) of that section.

(III) IN THE CASE OF AN OVERCAPITALIZED CAPTIVE INSURANCE COMPANY REQUIRED UNDER THIS SUBDIVISION TO BE INCLUDED IN A COMBINED REPORT, ENTIRE NET INCOME MUST BE COMPUTED AS REQUIRED BY SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS ARTICLE.

S 4. Subsection (d) of section 1452 of the tax law, as amended by section 5 of part FF-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(d) Corporations taxable under article nine-A. Notwithstanding the provisions of this article, all corporations of classes now or heretofore taxable under article nine-A of this chapter shall continue to be taxable under article nine-A, except: (1) corporations organized under article five-A of the banking law; (2) corporations subject to article three-A of the banking law, or registered under the federal bank holding company act of nineteen hundred fifty-six, as amended, or registered as a savings and loan holding company (but excluding a diversified savings and loan holding company) under the federal national housing act, as amended, which make a combined return under the provisions of subsection (f) of section fourteen hundred sixty-two; (3) banking corporations

described in paragraph nine of subsection (a) of this section; [and] (4) any captive REIT or captive RIC that is required to be included in a combined return under the provisions of subsection (f) of section fourteen hundred sixty-two of this article; AND (5) ANY OVERCAPITALIZED CAPTIVE INSURANCE COMPANY REQUIRED TO BE INCLUDED IN A COMBINED RETURN UNDER SUBSECTION (F) OF SECTION FOURTEEN HUNDRED SIXTY-TWO OF THIS ARTICLE. Provided, however, that a corporation described in paragraph three of this subsection which was subject to the tax imposed by article nine-A of this chapter for its taxable year ending during nineteen hundred eighty-four may, on or before the due date for filing its return (determined with regard to extensions) for its taxable year ending during nineteen hundred eighty-five, make a one time election to continue to be taxable under such article nine-A. Such election shall continue to be in effect until revoked by the taxpayer. In no event shall such election or revocation be for a part of a taxable year.

S 5. Paragraph 4 of subsection (m) of section 1452 of the tax law, as added by section 6 of part FF-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(4) The provisions of this subsection shall not apply to a captive REIT [or], a captive RIC OR AN OVERCAPITALIZED CAPTIVE INSURANCE COMPANY.

S 6. Paragraph 2 of subsection (f) of section 1462 of the tax law is amended by adding a new subparagraph (vi) to read as follows:

(VI) (A) FOR PURPOSES OF THIS SUBPARAGRAPH, THE TERM "CLOSEST CONTROLLING STOCKHOLDER" MEANS THE CORPORATION THAT INDIRECTLY OWNS OR CONTROLS OVER FIFTY PERCENT OF THE VOTING STOCK OF AN OVERCAPITALIZED CAPTIVE INSURANCE COMPANY, IS SUBJECT TO TAX UNDER THIS ARTICLE OR ARTICLE NINE-A OF THIS CHAPTER OR OTHERWISE REQUIRED TO BE INCLUDED IN A COMBINED RETURN UNDER THIS ARTICLE OR ARTICLE NINE-A OF THIS CHAPTER, AND IS THE FEWEST TIERS OF CORPORATIONS AWAY IN THE OWNERSHIP STRUCTURE FROM THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY. THE COMMISSIONER IS AUTHORIZED TO PRESCRIBE BY REGULATION OR PUBLISHED GUIDANCE THE CRITERIA FOR DETERMINING THE CLOSEST CONTROLLING STOCKHOLDER.

(B) AN OVERCAPITALIZED CAPTIVE INSURANCE COMPANY MUST BE INCLUDED IN A COMBINED RETURN WITH THE BANKING CORPORATION OR BANK HOLDING COMPANY THAT DIRECTLY OWNS OR CONTROLS OVER FIFTY PERCENT OF THE VOTING STOCK OF THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY IF THAT BANKING CORPORATION OR BANK HOLDING COMPANY IS SUBJECT TO TAX OR REQUIRED TO BE INCLUDED IN A COMBINED RETURN UNDER THIS ARTICLE.

(C) IF OVER FIFTY PERCENT OF THE VOTING STOCK OF AN OVERCAPITALIZED CAPTIVE INSURANCE COMPANY IS NOT DIRECTLY OWNED OR CONTROLLED BY A BANKING CORPORATION OR BANK HOLDING COMPANY THAT IS SUBJECT TO TAX OR REQUIRED TO BE INCLUDED IN A COMBINED RETURN UNDER THIS ARTICLE, THEN THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY MUST BE INCLUDED IN A COMBINED RETURN OR REPORT WITH THE CORPORATION THAT IS THE CLOSEST CONTROLLING STOCKHOLDER OF THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY. IF THE CLOSEST CONTROLLING STOCKHOLDER OF THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY IS A BANKING CORPORATION OR BANK HOLDING COMPANY THAT IS SUBJECT TO TAX OR OTHERWISE REQUIRED TO BE INCLUDED IN A COMBINED RETURN UNDER THIS ARTICLE, THEN THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY MUST BE INCLUDED IN A COMBINED RETURN UNDER THIS ARTICLE.

(D) IF THE CORPORATION THAT DIRECTLY OWNS OR CONTROLS THE VOTING STOCK OF THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY IS DESCRIBED IN SUBPARAGRAPH (II) OR (IV) OF PARAGRAPH FOUR OF THIS SUBSECTION AS A CORPORATION NOT PERMITTED TO MAKE A COMBINED RETURN, THEN THE PROVISIONS IN

CLAUSE (C) OF THIS SUBPARAGRAPH MUST BE APPLIED TO DETERMINE THE CORPORATION IN WHOSE COMBINED RETURN OR REPORT THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY SHOULD BE INCLUDED. IF, UNDER CLAUSE (C) OF THIS SUBPARAGRAPH, THE CORPORATION THAT IS THE CLOSEST CONTROLLING STOCKHOLDER OF THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY IS DESCRIBED IN SUBPARAGRAPH (II) OR (IV) OF PARAGRAPH FOUR OF THIS SUBSECTION AS A CORPORATION NOT PERMITTED TO MAKE A COMBINED RETURN, THEN THAT CORPORATION IS DEEMED NOT TO BE IN THE OWNERSHIP STRUCTURE OF THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY, AND THE CLOSEST CONTROLLING STOCKHOLDER WILL BE DETERMINED WITHOUT REGARD TO THAT CORPORATION.

(E) IF AN OVERCAPITALIZED CAPTIVE INSURANCE COMPANY IS REQUIRED UNDER THIS SUBPARAGRAPH TO BE INCLUDED IN A COMBINED RETURN WITH ANOTHER CORPORATION, AND THAT OTHER CORPORATION IS REQUIRED TO BE INCLUDED IN A COMBINED RETURN WITH ANOTHER CORPORATION UNDER OTHER PROVISIONS OF THIS SUBSECTION, THE OVERCAPITALIZED CAPTIVE INSURANCE COMPANY MUST BE INCLUDED IN THAT COMBINED RETURN WITH THOSE CORPORATIONS.

S 7. Paragraph 3 of subsection (f) of section 1462 of the tax law, as amended by section 11 of part FF-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(3) (i) In the case of a combined return, the tax shall be measured by the combined entire net income, combined alternative entire net income or combined assets of all the corporations included in the return, including any captive REIT [or], captive RIC OR OVERCAPITALIZED CAPTIVE INSURANCE COMPANY. The allocation percentage shall be computed based on the combined factors with respect to all the corporations included in the combined return. In computing combined entire net income and combined alternative entire net income intercorporate dividends and all other intercorporate transactions shall be eliminated and in computing combined assets intercorporate stockholdings and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness shall be eliminated.

(ii) In the case of a captive REIT required under this subsection to be included in a combined return, "entire net income" means "real estate investment trust taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-seven (as modified by section eight hundred fifty-eight) of the internal revenue code, plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-seven of that code, subject to the modifications required by section fourteen hundred fifty-three of this article. In the case of a captive RIC required under this subsection to be included in a combined return, "entire net income" means "investment company taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-two (as modified by section eight hundred fifty-five) of the internal revenue code, plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-two of that code, subject to the modifications required by section fourteen hundred fifty-three of this article. However, the deduction under the internal revenue code for dividends paid by the captive REIT or captive RIC to any member of the affiliated group that includes the corporation that directly or indirectly owns over fifty percent of the voting stock of the captive REIT or captive RIC will be limited to the following percentages: (A) fifty percent for taxable years beginning on or after January first, two thousand eight and before January first, two thousand nine; (B) twenty-five percent for taxable years beginning on or after January first, two thousand nine and before January first, two thousand eleven; and (C) zero percent for taxable years beginning on or after

January first, two thousand eleven. The term "affiliated group" means "affiliated group" as defined in section fifteen hundred four of the internal revenue code, but without regard to the exceptions provided for in subsection (b) of SUCH section fifteen hundred four.

(III) IN THE CASE OF AN OVERCAPITALIZED CAPTIVE INSURANCE COMPANY REQUIRED UNDER THIS SUBSECTION TO BE INCLUDED IN A COMBINED RETURN, ENTIRE NET INCOME MUST BE COMPUTED AS REQUIRED BY SECTION FOURTEEN HUNDRED FIFTY-THREE OF THIS ARTICLE.

S 8. Subdivision (a) of section 1500 of the tax law, as amended by chapter 188 of the laws of 2003, is amended to read as follows:

(a) The term "insurance corporation" includes a corporation, association, joint stock company or association, person, society, aggregation or partnership, by whatever name known, doing an insurance business, and, notwithstanding the provisions of section fifteen hundred twelve of this article, shall include (1) a risk retention group as defined in subsection (n) of section five thousand nine hundred two of the insurance law, (2) the state insurance fund and (3) a corporation, association, joint stock company or association, person, society, aggregation or partnership doing an insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of the insurance law. The definition of the "state insurance fund" contained in this subdivision shall be limited in its effect to the provisions of this article and the related provisions of this chapter and shall have no force and effect other than with respect to such provisions. The term "insurance corporation" shall also include a captive insurance company doing a captive insurance business, as defined in subsections (c) and (b), respectively, of section seven thousand two of the insurance law; provided, however, "insurance corporation" shall not include the metropolitan transportation authority, or a public benefit corporation or not-for-profit corporation formed by a city with a population of one million or more pursuant to subsection (a) of section seven thousand five of the insurance law, each of which is expressly exempt from the payment of fees, taxes or assessments, whether state or local; AND PROVIDED FURTHER "INSURANCE CORPORATION" DOES NOT INCLUDE ANY OVERCAPITALIZED CAPTIVE INSURANCE COMPANY. The term "insurance corporation" shall also include an unauthorized insurer operating from an office within the state, pursuant to paragraph five of subsection (b) of section one thousand one hundred one and subsection (i) of section two thousand one hundred seventeen of the insurance law.

S 9. Subdivision (a) of section 1502-b of the tax law, as separately amended by chapter 188 and section 3 of part H3 of chapter 62 of the laws of 2003, is amended to read as follows:

(a) In lieu of the taxes and tax surcharge imposed by sections fifteen hundred one, fifteen hundred two-a, fifteen hundred five-a, and fifteen hundred ten of this article, every captive insurance company licensed by the superintendent of insurance pursuant to the provisions of article seventy of the insurance law, other than the metropolitan transportation authority and a public benefit corporation or not-for-profit corporation formed by a city with a population of one million or more pursuant to subsection (a) of section seven thousand five of the insurance law, each of which is expressly exempt from the payment of fees, taxes or assessments whether state or local, AND OTHER THAN AN OVERCAPITALIZED CAPTIVE INSURANCE COMPANY, shall, for the privilege of exercising its corporate franchise, pay a tax on (1) all gross direct premiums, less return premiums thereon, written on risks located or resident in this state and (2) all assumed reinsurance premiums, less return premiums thereon,

written on risks located or resident in this state. The rate of the tax imposed on gross direct premiums shall be four-tenths of one percent on all or any part of the first twenty million dollars of premiums, three-tenths of one percent on all or any part of the second twenty million dollars of premiums, two-tenths of one percent on all or any part of the third twenty million dollars of premiums, and seventy-five thousandths of one percent on each dollar of premiums thereafter. The rate of the tax on assumed reinsurance premiums shall be two hundred twenty-five thousandths of one percent on all or any part of the first twenty million dollars of premiums, one hundred and fifty thousandths of one percent on all or any part of the second twenty million dollars of premiums, fifty thousandths of one percent on all or any part of the third twenty million dollars of premiums and twenty-five thousandths of one percent on each dollar of premiums thereafter. The tax imposed by this section shall be equal to the greater of (i) the sum of the tax imposed on gross direct premiums and the tax imposed on assumed reinsurance premiums or (ii) five thousand dollars.

S 10. This act shall take effect immediately and apply to taxable years beginning on or after January 1, 2009; provided, however that the amendments to subparagraph 1 of paragraph (b) of subdivision 4 of section 211 of the tax law made by section three of this act shall not affect the expiration of such subparagraph and shall be deemed expired therewith; the amendments to subsection (d) and paragraph 4 of subsection (m) of section 1452 of the tax law made by sections four and five of this act, respectively, shall not affect the expiration and repeal of such subsection and paragraph and shall be deemed expired and repealed therewith; and the amendments to paragraph 3 of subsection (f) of section 1462 of the tax law made by section seven of this act shall not affect the expiration and reversion of such paragraph and shall expire and be deemed repealed therewith.

PART G

Section 1. Subdivision 1 of section 187-b of the tax law, as amended by section 14 of part W-1 of chapter 109 of the laws of 2006, is amended to read as follows:

1. General. [A] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, A taxpayer shall be allowed a credit, to be credited against the taxes imposed under sections one hundred eighty-three, one hundred eighty-four, and one hundred eighty-five of this article. Such credit, to be computed as hereinafter provided, shall be allowed for alternative fuel vehicle refueling property placed in service during the taxable year. Provided, however, that the amount of such credit allowable against the tax imposed by section one hundred eighty-four of this article shall be the excess of the credit allowed by this section over the amount of such credit allowable against the tax imposed by section one hundred eighty-three of this article.

S 2. Paragraph (g) of subdivision 24 of section 210 of the tax law, as amended by section 15 of part W-1 of chapter 109 of the laws of 2006, is amended to read as follows:

(g) Termination. The credit allowed by paragraph (b) of this subdivision shall not apply in taxable years beginning after December thirty-first, two thousand [ten] EIGHT.

S 3. Paragraph 6 of subsection (p) of section 606 of the tax law, as amended by section 16 of part W-1 of chapter 109 of the laws of 2006, is amended to read as follows:

(6) Termination. The credit allowed by paragraph two of this subsection shall not apply in taxable years beginning after December thirty-first, two thousand [ten] EIGHT.

S 4. Subdivision 25 of section 210 of the tax law, as added by section 1 of part J of chapter 407 of the laws of 1999, is amended to read as follows:

25. Credit for purchase of an automated external defibrillator. [A] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article, for the purchase, other than for resale, of an automated external defibrillator, as such term is defined in section three thousand-b of the public health law. The amount of credit shall be the cost to the taxpayer of automated external defibrillators purchased during the taxable year, such credit not to exceed five hundred dollars with respect to each unit purchased. The credit allowed under this subdivision for any taxable year shall 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.

S 5. Subsection (s) of section 606 of the tax law, as added by section 3 of part J of chapter 407 of the laws of 1999, is amended to read as follows:

(s) Credit for purchase of an automated external defibrillator. [A] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, A taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article for the purchase, other than for resale, of an automated external defibrillator, as such term is defined in section three thousand-b of the public health law. The amount of credit shall be the cost to the taxpayer of automated external defibrillators purchased during the taxable year, such credit not to exceed five hundred dollars with respect to each unit purchased.

S 6. Subsection (j) of section 1456 of the tax law, as added by section 4 of part J of chapter 407 of the laws of 1999, is amended to read as follows:

(j) Credit for purchase of an automated external defibrillator. [A] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, A taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article for the purchase, other than for resale, of an automated external defibrillator, as such term is defined in section three thousand-b of the public health law. The amount of the credit shall be the cost to the taxpayer of automated external defibrillators purchased during the taxable year, such credit not to exceed five hundred dollars with respect to each unit purchased. The credit allowed under this subsection for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by subsection (b) of section fourteen hundred fifty-five of this article.

S 7. Subdivision (l) of section 1511 of the tax law, as amended by section 15 of part H3 of chapter 62 of the laws of 2003, is amended to read as follows:

(l) Credit for purchase of an automated external defibrillator. [A] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, A taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article for the purchase, other than for resale, of an automated external defibrillator, as such term is defined in section three thousand-b of the public health law. The amount of the credit shall be the cost to the taxpayer of automated external defibrillators purchased during the taxable year, such credit not to exceed five

hundred dollars with respect to each unit purchased. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable.

S 8. Subdivision (a) of section 26 of the tax law, as added by chapter 537 of the laws of 2005, is amended to read as follows:

(a) Allowance of credit. [A] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, A taxpayer, which is subject to tax under article nine, nine-A, twenty-two, thirty-two or thirty-three of this chapter and which is a qualified building owner, shall be allowed a credit against such tax. The amount of the credit allowed under this section shall equal the sum of the number of qualified security officers providing protection to a building or buildings owned by the taxpayer multiplied by three thousand dollars. Provided, however, that in the case of a worker not so employed for a full year, such amount shall be prorated to reflect the length of such employment under regulations of the commissioner.

S 9. Subdivision 1 of section 187-n of the tax law, as added by chapter 537 of the laws of 2005, is amended to read as follows:

1. Allowance of credit. [A] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, A taxpayer shall be allowed a credit, to be computed as provided in section twenty-six of this chapter, against the tax imposed by this article.

S 10. Paragraph 1 of subsection (ii) of section 606 of the tax law, as added by chapter 537 of the laws of 2005, is amended to read as follows:

(1) Allowance of credit. [A] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, A taxpayer shall be allowed a credit, to be computed as provided in section twenty-six of this chapter, against the tax imposed by this article.

S 11. Paragraph 1 of subsection (t) of section 1456 of the tax law, as added by chapter 537 of the laws of 2005, is amended to read as follows:

(1) Allowance of credit. [A] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, A taxpayer shall be allowed a credit, to be computed as provided in section twenty-six of this chapter, against the tax imposed by this article.

S 12. Paragraph 1 of subdivision (x) of section 1511 of the tax law, as added by chapter 537 of the laws of 2005, is amended to read as follows:

(1) Allowance of credit. [A] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, A taxpayer shall be allowed a credit, to be computed as provided in section twenty-six of this chapter, against the tax imposed by this article.

S 13. Subdivision 1 of section 187-n of the tax law, as added by chapter 446 of the laws of 2005, is amended to read as follows:

(1) Allowance of credit. [A] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, A taxpayer whose business is not substantially engaged in the commercial generation, distribution, transmission, or servicing of energy or energy products shall be allowed a credit against the taxes imposed by sections one hundred eighty-three, one hundred eighty-four and one hundred eighty-five of this article, equal to its qualified fuel cell electric generating equipment expenditures. Provided, however, that the amount of such credit allowable against the tax imposed by section one hundred eighty-four of this article shall be the excess of the amount of such credit over the amount of any credit allowed by this section against the tax imposed by section one hundred

eighty-three of this article. This credit shall not exceed one thousand five hundred dollars per generating unit with respect to any taxable year. The credit provided for herein shall be allowed with respect to the taxable year in which the fuel cell electric generating equipment is placed in service.

S 14. Paragraph (a) of subdivision 37 of section 210 of the tax law, as added by chapter 446 of the laws of 2005, is amended to read as follows:

(a) Allowance of credit. [A] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, A taxpayer shall be allowed a credit against the tax imposed by this article, equal to its qualified fuel cell electric generating equipment expenditures. This credit shall not exceed one thousand five hundred dollars per generating unit with respect to any taxable year. The credit provided for herein shall be allowed with respect to the taxable year in which the fuel cell electric generating equipment is placed in service.

S 15. Paragraph 1 of subsection (g-2) of section 606 of the tax law, as added by chapter 446 of the laws of 2005, is amended to read as follows:

(1) General. [An] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, AN individual taxpayer shall be allowed a credit against the tax imposed by this article equal to twenty percent of qualified fuel cell electric generating equipment expenditures. This credit shall not exceed one thousand five hundred dollars per generating unit with respect to any taxable year. The credit provided for herein shall be allowed with respect to the taxable year in which the fuel cell electric generating equipment is placed in service.

S 16. Paragraph 1 of subsection (t) of section 1456 of the tax law, as added by chapter 446 of the laws of 2005, is amended to read as follows:

(1) Allowance of credit. [A] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, A taxpayer shall be allowed a credit against the tax imposed by this article, equal to its qualified fuel cell electric generating equipment expenditures. This credit shall not exceed one thousand five hundred dollars per generating unit with respect to any taxable year. The credit provided for in this subsection shall be allowed with respect to the taxable year in which the fuel cell electric generating equipment is placed in service.

S 17. Paragraph 1 of subdivision (x) of section 1511 of the tax law, as added by chapter 446 of the laws of 2005, is amended to read as follows:

(1) Allowance of credit. [A] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, A taxpayer shall be allowed a credit against the tax imposed by this article, equal to its qualified fuel cell electric generating equipment expenditures. This credit shall not exceed one thousand five hundred dollars per generating unit with respect to any taxable year. The credit provided for in this subdivision shall be allowed with respect to the taxable year in which the fuel cell electric generating equipment is placed in service.

S 18. Paragraph (a) of subdivision 12-F of section 210 of the tax law, as added by section 32 of part A of chapter 56 of the laws of 1998, is amended to read as follows:

(a) [A] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, A taxpayer shall be allowed a credit against the tax imposed by this article. The amount of the credit shall be equal to one of the following percentages, per each qualified investment in a qualified emerging technology company as defined in section thirty-one hundred

two-e of the public authorities law, made during the taxable year, and certified by the commissioner, either:

(1) ten percent of qualified investments in qualified emerging technology companies, except for investments made by or on behalf of an owner of the business, including, but not limited to, a stockholder, partner or sole proprietor, or any related person, as defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, and provided, however, that the taxpayer certifies to the commissioner that the qualified investment will not be sold, transferred, traded, or disposed of during the four years following the year in which the credit is first claimed; or

(2) twenty percent of qualified investments in qualified emerging technology companies, except for investments made by or on behalf of an owner of the business, including, but not limited to, a stockholder, partner or sole proprietor, or any related person, as defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, and provided, however, that the taxpayer certifies to the commissioner that the qualified investment will not be sold, transferred, traded, or disposed of during the nine years following the year in which the credit is first claimed.

"Qualified investment" means the contribution of property to a corporation in exchange for original issue capital stock or other ownership interest, the contribution of property to a partnership in exchange for an interest in the partnership, and similar contributions in the case of a business entity not in corporate or partnership form in exchange for an ownership interest in such entity.

The total amount of credit allowable to a taxpayer under this provision for all years, taken in the aggregate, shall not exceed one hundred fifty thousand dollars in the case of investments made pursuant to subparagraph one of this paragraph and shall not exceed three hundred thousand dollars in the case of investments made pursuant to subparagraph two of this paragraph.

S 19. Paragraph 1 of subsection (r) of section 606 of the tax law, as added by section 2 of part I of chapter 407 of the laws of 1999, is amended to read as follows:

(1) [A] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, A taxpayer shall be allowed a credit against the tax imposed by this article. The amount of the credit shall be equal to one of the following percentages, per each qualified investment in a qualified emerging technology company as defined in section thirty-one hundred two-e of the public authorities law, made during the taxable year, and certified by the commissioner, either:

(A) ten percent of qualified investments in qualified emerging technology companies, except for investments made by or on behalf of an owner of the business, including, but not limited to, a stockholder, partner or sole proprietor, or any related person, as defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, and provided, however, that the taxpayer certifies to the commissioner that the qualified investment will not be sold, transferred, traded, or disposed of during the four years following the year in which the credit is first claimed; or

(B) twenty percent of qualified investments in qualified emerging technology companies, except for investments made by or on behalf of an owner of the business, including, but not limited to, a stockholder, partner or sole proprietor, or any related person, as defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred

sixty-five of the internal revenue code, and provided, however, that the taxpayer certifies to the commissioner that the qualified investment will not be sold, transferred, traded, or disposed of during the nine years following the year in which the credit is first claimed.

(C) "Qualified investment" means the contribution of property to a corporation in exchange for original issue capital stock or other ownership interest, the contribution of property to a partnership in exchange for an interest in the partnership, and similar contributions in the case of a business entity not in corporate or partnership form in exchange for an ownership interest in such entity. The total amount of credit allowable to a taxpayer under this provision for all years, taken in the aggregate, shall not exceed one hundred fifty thousand dollars in the case of investments made pursuant to subparagraph (A) of this paragraph and shall not exceed three hundred thousand dollars in the case of investments made pursuant to subparagraph (B) of this paragraph.

S 20. Subdivision (a) of section 20 of the tax law, as added by section 1 of part I of chapter 63 of the laws of 2000, is amended to read as follows:

(a) Allowance of credit. [A] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, A taxpayer subject to tax under article nine, 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 (d) of this section. The credit shall be allowed where a taxpayer has made a certified contribution of at least ten million dollars to a qualified transportation improvement project in a prior taxable year. The credit shall be equal to six percent of the taxpayer's increased qualified business facility payroll for the taxable year. The aggregate of all credit amounts allowed to the taxpayer pursuant to this section with respect to a certified contribution shall not exceed the amount of such certified contribution.

S 21. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law, as amended by section 2 of part ZZ-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(B) shall be treated as the owner of a new business with respect to such share if the corporation qualifies as a new business pursuant to paragraph (j) of subdivision twelve of section two hundred ten of this chapter.

With respect to the following credit under this section:	The corporation's credit base under section two hundred ten or section fourteen hundred fifty-six of this chapter is:
Investment tax credit under subsection (a)	Investment credit base or qualified rehabilitation expenditures under subdivision twelve of section two hundred ten
Empire zone investment tax credit under subsection (j)	Cost or other basis under subdivision twelve-B of section two hundred ten

Empire zone wage tax credit under subsection (k)	Eligible wages under subdivision nineteen of section two hundred ten or subsection (e) of section fourteen hundred fifty-six
Empire zone capital tax credit under subsection (l)	Qualified investments and contributions under subdivision twenty of section two hundred ten or subsection (d) of section fourteen hundred fifty-six
Agricultural property tax credit under subsection (n)	Allowable school district property taxes under subdivision twenty-two of section two hundred ten
Credit for employment of persons with disabilities under subsection (o)	Qualified first-year wages or qualified second-year wages under subdivision twenty-three of section two hundred ten or subsection (f) of section fourteen hundred fifty-six
Employment incentive credit under subsection (a-1)	Applicable investment credit base under subdivision twelve-D of section two hundred ten
Empire zone employment incentive credit under subsection (j-1)	Applicable investment credit under subdivision twelve-C of section two hundred ten
Alternative fuels credit under subsection (p)	[Cost] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, COST under subdivision twenty-four of section two hundred ten
Qualified emerging technology company employment credit under subsection (q)	Applicable credit base under subdivision twelve-E of section two hundred ten
Qualified emerging technology company capital tax credit under subsection (r)	[Qualified] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, QUALIFIED

	investments under subdivision twelve-F of section two hundred ten
Credit for purchase of an automated external defibrillator under subsection (s)	[Cost] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, COST of an automated external defibrillator under subdivision twenty-five of section two hundred ten or subsection (j) of section fourteen hundred fifty-six
Low-income housing credit under subsection (x)	Credit amount under subdivision thirty of section two hundred ten or subsection (l) of section fourteen hundred fifty-six
Credit for transportation improvement contributions under subsection (z)	[Amount] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, AMOUNT of credit under sub-division thirty-two of section two hundred ten or subsection (n) of section fourteen hundred fifty-six
QEZE credit for real property taxes under subsection (bb)	Amount of credit under subdivision twenty-seven of section two hundred ten or subsection (o) of section fourteen hundred fifty-six
QEZE tax reduction credit under subsection (cc)	Amount of benefit period factor, employment increase factor and zone allocation factor (without regard to pro ration) under subdivision twenty-eight of section two hundred ten or subsection (p) of section fourteen hundred fifty-six and amount of tax factor as determined under subdivision (f) of section sixteen
Green building credit under subsection (y)	Amount of green building credit under subdivision thirty-one of section two hundred ten or subsection (m) of section fourteen hundred fifty-six

Credit for long-term care insurance premiums under subsection (aa)	Qualified costs under subdivision twenty-five-a of section two hundred ten or subsection (k) of section fourteen hundred fifty-six
Brownfield redevelopment credit under subsection (dd)	Amount of credit under subdivision thirty-three of section two hundred ten or subsection (q) of section fourteen hundred fifty-six
Remediated brownfield credit for real property taxes for qualified sites under subsection (ee)	Amount of credit under subdivision thirty-four of section two hundred ten or subsection (r) of section fourteen hundred fifty-six
Environmental remediation insurance credit under subsection (ff)	Amount of credit under subdivision thirty-five of section two hundred ten or subsection (s) of section fourteen hundred fifty-six
Empire state film production credit under subsection (gg)	Amount of credit for qualified production costs in production of a qualified film under subdivision thirty-six of section two hundred ten
Qualified emerging technology company facilities, operations and training credit under subsection (nn)	Qualifying expenditures and development activities under subdivision twelve-G of section two hundred ten
Security training tax credit under subsection (ii)	[Amount] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, AMOUNT of credit under subdivision thirty-seven of section two hundred ten or under subsection (t) of section fourteen hundred fifty-six
Credit for qualified fuel cell electric generating equipment expenditures under subsection (g-2)	[Amount] FOR TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND NINE, AMOUNT of credit under subdivision thirty-seven

	of section two hundred ten or subsection (t) of section fourteen hundred fifty-six
Empire state commercial production credit under subsection (jj)	Amount of credit for qualified production costs in production of a qualified commercial under subdivision thirty-eight of section two hundred ten
Biofuel production tax credit under subsection (jj)	Amount of credit under subdivision thirty-eight of section two hundred ten
Clean heating fuel credit under subsection (mm)	Amount of credit under subdivision thirty-nine of section two hundred ten
Credit for rehabilitation of historic properties under subsection (oo)	Amount of credit under subdivision forty of subsection two hundred ten
Credit for companies who provide transportation to individuals with disabilities under subsection (oo)	Amount of credit under subdivision forty of section two hundred ten

S 22. This act shall take effect immediately; provided, however that the empire state film production credit under subsection (gg), the empire state commercial production credit under subsection (jj) and the credit for companies who provide transportation to individuals with disabilities under subsection (oo) of section 606 of the tax law contained in section twenty-one of this act shall expire on the same date as provided in section 9 of part P of chapter 60 of the laws of 2004, as amended, section 10 of part V of chapter 62 of the laws of 2006, as amended and section 5 of chapter 522 of the laws of 2006, as amended, respectively.

PART H

Section 1. Subparagraph (A) of paragraph 1 of subsection (b) of section 631 of the tax law is amended by adding a new clause 1 to read as follows:

(1) FOR PURPOSES OF THIS SUBPARAGRAPH, THE TERM "REAL PROPERTY LOCATED IN THIS STATE" INCLUDES AN INTEREST IN A PARTNERSHIP, LIMITED LIABILITY CORPORATION, S CORPORATION, OR NON-PUBLICLY TRADED C CORPORATION WITH ONE HUNDRED OR FEWER SHAREHOLDERS (HEREINAFTER THE "ENTITY") THAT OWNS REAL PROPERTY THAT IS LOCATED IN NEW YORK AND HAS A FAIR MARKET VALUE THAT EQUALS OR EXCEEDS FIFTY PERCENT OF ALL THE ASSETS OF THE ENTITY ON THE DATE OF SALE OR EXCHANGE OF THE TAXPAYER'S INTEREST IN THE ENTITY. ONLY THOSE ASSETS THAT THE ENTITY OWNED FOR AT LEAST TWO YEARS BEFORE THE DATE OF THE SALE OR EXCHANGE OF THE TAXPAYER'S INTEREST IN THE ENTITY ARE TO BE USED IN DETERMINING THE FAIR MARKET VALUE OF ALL THE ASSETS

OF THE ENTITY ON THE DATE OF SALE OR EXCHANGE. THE GAIN OR LOSS DERIVED FROM NEW YORK SOURCES FROM THE TAXPAYER'S SALE OR EXCHANGE OF AN INTEREST IN AN ENTITY THAT IS SUBJECT TO THE PROVISIONS OF THIS SUBPARAGRAPH IS THE TOTAL GAIN OR LOSS FOR FEDERAL INCOME TAX PURPOSES FROM THAT SALE OR EXCHANGE MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS THE FAIR MARKET VALUE OF THE REAL PROPERTY LOCATED IN NEW YORK ON THE DATE OF SALE OR EXCHANGE AND THE DENOMINATOR OF WHICH IS THE FAIR MARKET VALUE OF ALL THE ASSETS OF THE ENTITY ON THE DATE OF SALE OR EXCHANGE.

S 2. This act shall take effect immediately and shall apply to sales or exchanges of entity interests that occur thirty or more days after the date this act becomes law.

PART I

Section 1. Paragraph (a) of subdivision 1 of section 197-b of the tax law, as amended by section 1 of part JJ-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(a) For taxable years beginning on or after January first, nineteen hundred seventy-seven, every taxpayer subject to tax under section one hundred eighty-two, one hundred eighty-two-a, former section one hundred eighty-two-b, one hundred eighty-four, one hundred eighty-six-a or one hundred eighty-six-e of this article, must pay in each year an amount equal to (i) twenty-five percent of the tax imposed under each of such sections for the preceding taxable year if the preceding year's tax exceeded one thousand dollars but was equal to or less than one hundred thousand dollars, or (ii) [thirty] FORTY percent of the tax imposed under any of these sections for the preceding taxable year if the preceding year's tax exceeded one hundred thousand dollars. If the preceding year's tax under section one hundred eighty-four, one hundred eighty-six-a or one hundred eighty-six-e of this article exceeded one thousand dollars and the taxpayer is subject to the tax surcharge imposed by section one hundred eighty-four-a or one hundred eighty-six-c of this article, respectively, the taxpayer must also pay in each such year an amount equal to (i) twenty-five percent of the tax surcharge imposed under such section for the preceding taxable year if the preceding year's tax exceeded one thousand dollars but was equal to or less than one hundred thousand dollars, or (ii) [thirty] FORTY percent of the tax surcharge imposed under that section for the preceding taxable year if the preceding year's tax exceeded one hundred thousand dollars. The amount or amounts must be paid with the return or report required to be filed with respect to the tax or tax surcharge for the preceding taxable year or with an application for extension of the time for filing the return or report.

S 2. Subdivision (a) of section 213-b of the tax law, as amended by section 2 of part JJ-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(a) First installments for certain taxpayers.--In privilege periods of twelve months ending at any time during the calendar year nineteen hundred seventy and thereafter, every taxpayer subject to the tax imposed by section two hundred nine of this chapter must pay with the report required to be filed for the preceding privilege period, or with an application for extension of the time for filing the report, an amount equal to (i) twenty-five percent of the preceding year's tax if the preceding year's tax exceeded one thousand dollars but was equal to or less than one hundred thousand dollars, or (ii) [thirty] FORTY percent of the preceding year's tax if the preceding year's tax exceeded

one hundred thousand dollars. If the preceding year's tax under section two hundred nine of this chapter exceeded one thousand dollars and the taxpayer is subject to the tax surcharge imposed by section two hundred nine-B of this chapter, the taxpayer must also pay with the tax surcharge report required to be filed for the preceding privilege period, or with an application for extension of the time for filing the report, an amount equal to (i) twenty-five percent of the tax surcharge imposed for the preceding year if the preceding year's tax was equal to or less than one hundred thousand dollars, or (ii) [thirty] FORTY percent of the tax surcharge imposed for the preceding year if the preceding year's tax exceeded one hundred thousand dollars.

S 3. Subsection (a) of section 1461 of the tax law, as amended by section 3 of part JJ-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(a) Every taxpayer subject to the tax imposed by section fourteen hundred fifty-one must pay an amount equal to (i) twenty-five percent of the preceding year's tax if the preceding year's tax exceeded one thousand dollars but was equal to or less than one hundred thousand dollars, or (ii) [thirty] FORTY percent of the preceding year's tax if the preceding year's tax exceeded one hundred thousand dollars. The amount must be paid with the return required to be filed for the preceding taxable year or with an application for an extension of the time for filing the return. If the preceding year's tax under section fourteen hundred fifty-one OF THIS ARTICLE exceeded one thousand dollars and the taxpayer is subject to the tax surcharge imposed by section fourteen hundred fifty-five-B OF THIS ARTICLE, the taxpayer must also pay with the tax surcharge return required to be filed for the preceding taxable year, or with an application for an extension of the time for filing the return, an amount equal to (i) twenty-five percent of the tax surcharge imposed for the preceding year if the preceding year's tax was equal to or less than one hundred thousand dollars, or (ii) [thirty] FORTY percent of the tax surcharge imposed for the preceding year if the preceding year's tax exceeded one hundred thousand dollars.

S 4. Paragraph 1 of subdivision (a) of section 1514 of the tax law, as amended by section 4 of part JJ-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(1) Except as otherwise provided in paragraph two of this subdivision, for taxable years beginning on or after January first, nineteen hundred seventy-six, every taxpayer subject to tax under this article must pay in each year an amount equal to (i) twenty-five percent of the tax imposed under this article for the preceding taxable year if the preceding year's tax exceeded one thousand dollars but was equal to or less than one hundred thousand dollars, or (ii) [thirty] FORTY percent of the tax imposed under this article for the preceding taxable year if the preceding year's tax exceeded one hundred thousand dollars. If the preceding year's tax exceeded one thousand dollars and the taxpayer is subject to the tax surcharge imposed by section fifteen hundred five-a of this article, the taxpayer must also pay an amount equal to (i) twenty-five percent of the tax surcharge imposed under section fifteen hundred five-a for the preceding taxable year if the preceding year's tax was equal to or less than one hundred thousand dollars, or (ii) [thirty] FORTY percent of the tax surcharge imposed for the preceding taxable year if the preceding year's tax exceeded one hundred thousand dollars.

S 5. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2010.

PART J

Section 1. Paragraph 3 of subsection (c) of section 658 of the tax law, as amended by section 1 of part AA-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(3) Filing fees. (A) Every subchapter K limited liability company, every limited liability company that is a disregarded entity for federal income tax purposes, and every [limited liability] partnership [under article eight-B of the partnership law and every foreign limited liability partnership,] which has any income derived from New York sources, determined in accordance with the applicable rules of section six hundred thirty-one of this article as in the case of a nonresident individual, shall, within thirty days after the last day of the taxable year, make a payment of a filing fee. The amount of the filing fee is the amount set forth in subparagraph (B) of this paragraph. The minimum filing fee is twenty-five dollars for taxable years beginning in two thousand eight and [after] THEREAFTER. Limited liability companies that are disregarded [entitled] ENTITIES for federal income tax purposes must pay a filing fee of twenty-five dollars for taxable years beginning on or after January first, two thousand eight.

(B) The filing fee will be based on the New York source gross income of the limited liability company or [limited liability] partnership for the taxable year immediately preceding the taxable year for which the fee is due. If the limited liability company or [limited liability] partnership does not have any New York source gross income for the taxable year immediately preceding the taxable year for which the fee is due, the limited liability company or [limited liability] partnership shall pay the minimum filing fee. PARTNERSHIPS, OTHER THAN LIMITED LIABILITY PARTNERSHIPS UNDER ARTICLE EIGHT-B OF THE PARTNERSHIP LAW AND FOREIGN LIMITED LIABILITY PARTNERSHIPS, WITH LESS THAN ONE MILLION DOLLARS IN NEW YORK SOURCE GROSS INCOME ARE EXEMPT FROM THE FILING FEE. New York source gross income is the sum of the partners' or members' shares of federal gross income from the [limited liability] partnership or limited liability company derived from or connected with New York sources, determined in accordance with the provisions of section six hundred thirty-one of this article as if those provisions and any related provisions expressly referred to a computation of federal gross income from New York sources. For this purpose, federal gross income is computed without any allowance or deduction for cost of goods sold.

The amount of the filing fee for taxable years beginning on or after January first, two thousand eight will be determined in accordance with the following table:

If the New York source gross income is:	The fee is:
not more than $100,000	$25
more than $100,000 but not over $250,000	$50
more than $250,000 but not over $500,000	$175
more than $500,000 but not over $1,000,000	$500
more than $1,000,000 but not over $5,000,000	$1,500
more than $5,000,000 but not over $25,000,000	$3,000
Over $25,000,000	$4,500

(C) No credits provided by this article may be taken against the fee imposed by this paragraph.

(D) Where the filing fee is not timely paid, it shall be paid upon notice and demand and shall be assessed, collected and paid in the same

manner as taxes, and for those purposes any reference in this article to tax imposed by this article shall be deemed also to refer to this filing fee.

S 2. Subsection (a) of section 1304-C of the tax law, as amended by section 5 of part AA-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(a) In addition to any other taxes or fees authorized by this article or any other law, any city imposing the taxes authorized by this article is hereby authorized and empowered to adopt and amend local laws providing that every subchapter K limited liability company (as such term is defined in subsection (b) of section thirteen hundred two of this article), every limited liability company that is a disregarded entity for federal income tax purposes and every [limited liability] partnership [under article eight-B of the partnership law and every foreign limited liability partnership,] which has any income derived from sources within such city, determined in accordance with the applicable rules of section six hundred thirty-one of this chapter as in the case of a state nonresident individual (except that in making that determination any references in section six hundred thirty-one of this chapter to "New York source" or "New York sources" shall be read as references to "New York city source" or "New York city sources" and any references in that section to "this state" or "the state" shall be read as references to "this city" or "the city"), shall within thirty days after the last day of the taxable year make a payment of a filing fee. The amount of the filing fee shall be the amount determined under paragraph three of subsection (c) of section six hundred fifty-eight of this chapter, except that in making that determination any references in that section to "New York source gross income" must be read as reference to "New York city source gross income". Any local law imposing the filing fee authorized by this section shall provide that where the filing fee is not timely paid, it shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the taxes imposed pursuant to the authority of this article, and for these purposes any reference in the local law imposing those taxes to the taxes imposed by that local law shall be deemed also to refer to the filing fee imposed pursuant to the authority of this section.

S 3. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2009.

PART K

Section 1. Section 957 of the general municipal law, as added by chapter 686 of the laws of 1986, subdivisions (b) and (f) as amended and subdivisions (c), (g), (i), (j), (k), and (l) as added by chapter 624 of the laws of 1990, subdivision (d) as amended and subdivision (r) as added by section 1 of part HH of chapter 59 of the laws of 2006, paragraphs (iii), (iv), (v) and (vi) of subdivision (d) as added by section 5 of part A of chapter 63 of the laws of 2005, subdivision (e) as amended and subdivisions (m), (n) and (o) as added by chapter 708 of the laws of 1993, subdivision (h) as amended by chapter 39 of the laws of 2004, subdivision (p) as added by chapter 170 of the laws of 1994, subdivision (q) as amended by chapter 161 of the laws of 2005, subdivisions (s) and (t) as added by section 1 of part V-1 of chapter 109 of the laws of 2006, subdivision (u) as added by chapter 494 of the laws of 2008 and subdivisions (a), (e), (f), (k), and (m) as further amended

pursuant to section 15 of part GG of chapter 63 of the laws of 2000, is amended to read as follows:

S 957. Definitions. As used in this article, the following words and terms shall have the following meanings unless the context shall indicate another or different meaning or intent:

(a) "Applicant" shall mean the county, city, town or village submitting an application in the manner authorized by local law for designation of an area as an empire zone.

(b) "Commissioner" shall mean the commissioner of economic development.

(c) "Minority-owned business enterprise" shall [mean a business enterprise, including a sole proprietorship, partnership or corporation, that is:

(i) at least fifty-one percent owned by one or more minority group members;

(ii) an enterprise in which such minority ownership is real, substantial and continuing;

(iii) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and

(iv) an enterprise authorized to do business in this state and independently owned and operated] HAVE THE SAME MEANING AS PROVIDED IN SECTION THREE HUNDRED TEN OF THE EXECUTIVE LAW.

(d) "Empire zone" shall mean an area within the state that has been designated as an empire zone pursuant to this article and:

(i) all empire zones designated under paragraph (i) of subdivision (a) and subdivision (d) of section nine hundred fifty-eight of this article shall be referred to as "investment zones" and shall be wholly contained within up to three distinct and separate contiguous areas; provided, however, that empire zones designated prior to the enactment of this paragraph shall identify up to three distinct and separate contiguous areas, which shall equal up to their total allotted acreage at the time of designation by January first, two thousand six. Provided however, the existing zone must include as much designated acreage into the distinct and separate contiguous areas as possible. Provided, however, notwithstanding the provisions of paragraphs (i) and (ii) of subdivision (a) of section nine hundred fifty-eight and subdivision (d) of section nine hundred fifty-nine of this article a regionally significant project may be located outside of the investment zone's distinct and separate contiguous areas, provided such significant project is located within the zone applicant's municipal boundaries. Provided further however, if the investment zone is located in a county that does not have a development zone such significant project may be located within the county's boundaries. For the purpose of this article a "regionally significant project" shall mean: a manufacturer projecting the creation of fifty or more jobs; or an agri-business or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more jobs; or a financial or insurance services or distribution center creating three hundred or more jobs; or a clean energy research and development enterprise shall be eligible as a regionally significant project as determined by [the local zone administrative board and] the commissioner. Other projects may be considered by the zone designation board;

(ii) all empire zones designated under subdivisions (b) and (c) of section nine hundred fifty-eight of this article shall be referred to as "development zones" and shall be wholly contained within up to six distinct and separate contiguous areas. However, an empire zone located

in more than one county at the time of designation shall be wholly contained in up to twelve distinct and separate contiguous areas. Provided, however, that empire zones designated prior to the enactment of this paragraph shall identify up to six distinct and separate contiguous areas, which shall equal up to their total allotted acreage at the time of designation, by January first, two thousand six or in the case of an empire zone located in more than one county, at the time of designation shall identify twelve distinct and separate contiguous areas. Provided however, the existing zone must include as much designated acreage into the distinct and separate contiguous areas as possible. Provided, however, a regionally significant project may be located outside of the development zone's distinct and separate contiguous areas. For the purpose of this article a "regionally significant project" shall mean: a manufacturer projecting the creation of fifty or more jobs; or an agri-business or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more jobs; or a financial or insurance services or distribution center creating three hundred or more jobs; or a clean energy research and development enterprise shall be eligible as a regionally significant project as determined by [the local zone administrative board and] the commissioner. Other projects may be considered by the zone designation board;

(iii) provided, however, a zone may apply BY NO LATER THAN MARCH THIRTY-FIRST, TWO THOUSAND NINE to add one additional distinct and separate contiguous area, pursuant to paragraphs (i) and (ii) of this subdivision, to such zone upon the demonstration of need, provided, however, such additional distinct and separate contiguous area shall not result in an empire zone that exceeds the maximum allotted acreage;

(iv) a "development zone", pursuant to paragraph (ii) of this subdivision, shall apply BY NO LATER THAN MARCH THIRTY-FIRST, TWO THOUSAND NINE, pursuant to subdivisions (a) and (d) of section nine hundred fifty-eight of this article, to have up to three distinct and separate contiguous areas defined as "investment zones", pursuant to this subdivision;

(v) any certified businesses located outside of the empire zone's distinct and separate contiguous areas, pursuant to this section, shall be allowed the empire zone benefits until they are decertified; and

(vi) the boundaries that comprise the distinct and separate contiguous areas in this subdivision must include at least the real property on one side of a public thoroughfare when such street is used as a boundary. No boundary shall be constructed as to connect one tax parcel to another tax parcel by using a thoroughfare's center line, sidewalk or other similar means of connecting a non-contiguous area to the zone's distinct and separate contiguous areas.

(e) "Local empire zone administrative board" shall mean the entity designated by the applicant that is responsible for monitoring, evaluating and coordinating all empire zone benefits on behalf of the applicant. Such entity shall consist of at least six members, none of whom shall be the local empire zone certification officer, and shall be representative of local businesses, organized labor, community organizations, financial institutions, local educational institutions and residents of the empire zone.

(f) ["Local empire zone certification officer" shall mean the official designated by the applicant who is responsible for jointly certifying and decertifying together with the commissioner and the commissioner of labor those business enterprises eligible to receive benefits pursuant to this article.

(g)] "Women-owned business enterprise" shall [mean a business enterprise, including a sole proprietorship, partnership or corporation, that is:

(i) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women;

(ii) an enterprise in which the ownership interest of such women is real, substantial and continuing;

(iii) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and

(iv) an enterprise authorized to do business in this state and independently owned and operated] HAVE THE SAME MEANING AS PROVIDED IN SECTION THREE HUNDRED TEN OF THE EXECUTIVE LAW.

[(h)] (G) "Locally owned business enterprise" shall mean (i) a business firm in which the total ownership interest held by individuals who are full time bona fide residents of such zone is more than eighty percent, whose business activities are conducted in a manner whereby at least fifty percent of the assets of such firm are located and utilized in such zone, and at least forty percent of such firm's employees are principally employed in such zone; or (ii) an agricultural cooperative established pursuant to section one hundred eleven of the cooperative corporations law; provided however, for business firms located within zones designated in a city such individuals shall reside within a community planning board or within traditional neighborhood boundaries and provided further however for business firms located within zones outside of a city such individuals may reside in the county in which the zone is designated.

[(i)] (H) "Chief executive" shall mean (i) a county executive or manager of a county; (ii) in a county not having a county executive or manager, the chairperson or other presiding officer of the county legislative body; (iii) a mayor of a city or village, except where a city or village has a manager, it shall mean such a manager; or (iv) a supervisor of a town, except where a town has a manager, it shall mean such manager.

[(j)] (I) "Minority group member" shall [mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:

(i) Black persons having origins in any of the Black African racial groups;

(ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;

(iii) Native American or Alaskan native persons having origins in any of the original peoples of North America; and

(iv) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands] HAVE THE SAME MEANING AS PROVIDED IN SECTION THREE HUNDRED TEN OF THE EXECUTIVE LAW.

[(k)] (J) "Targeted employee" shall mean a New York resident who receives empire zone wages pursuant to subdivision nineteen of section two hundred ten of the tax law and who is (i) an eligible individual under the provision of the targeted jobs tax credit (section fifty-one of the internal revenue code), (ii) eligible for benefits under the provisions of the job training partnership act (P.L. 97-300, as amended), (iii) a recipient of public assistance benefits, or (iv) an individual whose income is below the most recently established poverty

rate promulgated by the United States department of commerce, or a member of a family whose family income is below the most recently established poverty rate promulgated by the appropriate federal agency.

An individual who satisfies the criteria set forth in clause (i), (ii) or (iv) of this subdivision at the time of initial employment in the job with respect to which the credit is claimed, or who satisfies the criterion set forth in clause (iii) of this subdivision at such time or at any time within the previous two years, shall be a targeted employee so long as such individual continues to receive empire zone wages.

[(l)] (K) "Single enterprise" means two or more related business enterprises characterized by an absence of arms length relationships found among enterprises that are not integrated. Factors to be considered, among other things, in determining the existence of a single enterprise are interrelation of operations, common management, centralized control of labor relations, common ownership and common financial control.

[(m)] (L) "Zone administrative entity" shall mean a community-based local development corporation or entity contracting with the local empire zone board pursuant to paragraph (viii) of subdivision [(b)] A of section nine hundred sixty-three of this article or the municipality in which the zone is located in those instances where the municipality actively participates in the local administration of the zone program.

[(n)] (M) "Human resource development" shall mean job preparation and placement, skills training and education for zone residents and employees of zone businesses, child and family care services and facilities, and activities to improve the health benefits and other benefits provided by zone businesses to their employees.

[(o)] (N) "Community development projects" shall mean projects sponsored by not-for-profit organizations which have been approved by the zone board, which will advance the zone development plan. For purposes described in subdivision twenty of section two hundred ten, subsection (l) of section six hundred six, subsection (d) of section fourteen hundred fifty-six and subdivision (h) of section fifteen hundred eleven of the tax law, such projects shall be limited to child care programs serving zone residents and businesses; community development projects in direct support of economic development and business revitalization activities, such as commercial revitalization projects; and business development activities of local development corporations.

[(p)] (O) "Zone equivalent area" shall mean an area designated as such pursuant to FORMER subdivision (bb) of section nine hundred fifty-nine of this article.

[(q)] (P) "Cost benefit analysis" shall mean, FOR PURPOSES OF PARAGRAPH (I) OF SUBDIVISION (A) OF SECTION NINE HUNDRED FIFTY-NINE AND SUBDIVISION (B) OF SECTION NINE HUNDRED SEVENTY OF THIS ARTICLE, a method of determining whether to certify a business [pursuant to section nine hundred sixty-three of this article] ENTERPRISE based on the [business'] BUSINESS ENTERPRISE'S projected job creation and/or investment [in the zone] AT THE LOCATION OR LOCATIONS APPROVED BY THE COMMISSIONER, versus the TOTAL amount of empire zone TAX benefits the business ENTERPRISE will potentially be allowed to [claim pursuant to sections fourteen, fifteen, and sixteen of the tax law.] USE AND HAVE REFUNDED TO IT AND SHALL BE A RATIO OF AT LEAST 20:1, THE NUMERATOR OF WHICH IS THE SUM OF (I) THE ESTIMATED VALUE OF ALL WAGES AND BENEFITS PAID FOR THE FIRST THREE YEARS OF CERTIFICATION TO ALL EXISTING AND PROJECTED EMPLOYEES OF THE BUSINESS ENTERPRISE AT THE LOCATION OR LOCATIONS APPROVED BY THE COMMISSIONER AND (II) THE ESTIMATED VALUE OF CAPITAL INVESTMENTS FOR THE

FIRST THREE YEARS OF CERTIFICATION AT THE LOCATION OR LOCATIONS APPROVED BY THE COMMISSIONER, AND THE DENOMINATOR OF WHICH IS THE ESTIMATED AMOUNT OF TOTAL EMPIRE ZONE TAX BENEFITS THAT MAY BE USED AND MAY BE REFUNDED FOR THE FIRST THREE YEARS OF CERTIFICATION AT THE LOCATION OR LOCATIONS APPROVED BY THE COMMISSIONER.

[Such cost benefit analysis shall include, but not be limited to, an estimate for the first five years commencing in the year in which the business is certified, of: (i) the amount of all the state tax credits under the empire zones program which may be claimed by the entity or its members, partners, or shareholders each year, (ii) the value of the sales tax exemption on an annual basis, (iii) the estimated number of jobs created, (iv) the total annual remuneration and benefits for the employees within the zone location, (v) the cost of construction, renovation or expansion of the business's location within the zone, and (vi) the investment being made with respect to tangible personal property or other tangible property which is depreciable pursuant to section 179(d) of the Internal Revenue Code. Non-quantifiable factors may include a business enterprise's positive impact on an area that has high commercial vacancy rates, and/or is characterized by blight and disinvestment or the business enterprise is part of a strategic industry cluster or supply chain; or is anticipated to access zone capital credits.]

(Q) "COST BENEFIT ANALYSIS" SHALL MEAN, FOR PURPOSES OF SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE AND SUBDIVISION (D) OF SECTION NINE HUNDRED SEVENTY OF THIS CHAPTER, A METHOD OF DETERMINING WHETHER TO CONTINUE TO CERTIFY A BUSINESS ENTERPRISE AT THE LOCATION OR LOCATIONS APPROVED BY THE COMMISSIONER BASED ON THE BUSINESS ENTERPRISE'S ACTUAL JOB CREATION AND/OR CAPITAL INVESTMENT VERSUS THE TOTAL AMOUNT OF EMPIRE ZONE BENEFITS THE BUSINESS ENTERPRISE USED AND HAD REFUNDED AND SHALL BE A RATIO OF AT LEAST 20:1, THE NUMERATOR OF WHICH IS THE SUM OF (I) THE ACTUAL VALUE OF ALL WAGES AND BENEFITS PAID FOR AT LEAST THREE YEARS OF CERTIFICATION TO ALL EMPLOYEES OF THE BUSINESS ENTERPRISE AT THE LOCATION OR LOCATIONS APPROVED BY THE COMMISSIONER AND (II) THE VALUE OF CAPITAL INVESTMENTS FOR AT LEAST THREE YEARS AT THE LOCATION OR LOCATIONS APPROVED BY THE COMMISSIONER, AND THE DENOMINATOR OF WHICH IS THE TOTAL AMOUNT OF EMPIRE ZONE TAX BENEFITS ACTUALLY REFUNDED AND USED BY THE BUSINESS ENTERPRISE FOR AT LEAST THREE YEARS, AT THE LOCATION OR LOCATIONS APPROVED BY THE COMMISSIONER.

(r) "Clean energy research and development enterprise" shall mean any electric generating facility that used pulverized coal technology, circulating fluidized bed technology or integrated gasification combined cycle technology and that is capable of capturing carbon dioxide for sequestration or capable of being retrofitted to capture carbon dioxide for sequestration.

(s) "Qualified investment project" shall mean a project (i) located within an empire zone, (ii) at which five hundred or more jobs will be created, provided such jobs are new to the state and are in addition to any other jobs previously created by the owner of such project in the state, and (iii) which will consist of tangible personal property and other tangible property, including buildings and structural components of buildings, described in subparagraphs (i), (ii), (iii), (iv) and clause (A) or (C) of subparagraph (v) of paragraph (b) of subdivision twelve-B of section two hundred ten of the tax law, the basis of which for federal income tax purposes will equal or exceed seven hundred fifty million dollars. Provided however, the owner of such project does not employ more than two hundred persons in the state at the time such project is commenced.

(t) "Significant capital investment project" shall mean a project (i) located within an empire zone, (ii) which will be either a newly constructed facility or a newly constructed addition to or expansion of a qualified investment project, consisting of tangible personal property and other tangible property, including buildings and structural components of buildings, described in subparagraphs (i), (ii), (iii), (iv) and clause (A) or (C) of subparagraph (v) of paragraph (b) of subdivision twelve-B of section two hundred ten of the tax law, the basis of which for federal income tax purposes will equal or exceed seven hundred fifty million dollars, (iii) which is constructed after the basis for federal income tax purposes of the property comprising such qualified investment project equals or exceeds seven hundred fifty million dollars, and (iv) at which five hundred or more jobs will be created, provided such jobs are new to the state and are in addition to any other jobs previously created by the owner of such project in the state.

(u) In the case of a manufacturer: (i) that has acquired a silicon manufacturing facility: (A) where more than seven hundred fifty persons are employed; (B) that has been designated as a regionally significant project as defined in this article; and (C) which has a cost or other basis for federal income tax purposes in tangible personal property at such silicon manufacturing facility, including equipment and machinery, buildings and structural components of buildings, equal to or exceeding two hundred million dollars; and (ii) that is projecting the creation of fifty or more silicon manufacturing jobs at the silicon manufacturing facility referred to in paragraph (i) of this subdivision, then, subject to the written approval of the commissioner, such manufacturer may elect an effective date for designation of such manufacturing facility as a regionally significant project for purposes of this article, and provided such manufacturer has been certified as an empire zone enterprise pursuant to this article, and has obtained the written approval of the commissioner, may elect an effective date for such certification as an empire zone enterprise pursuant to this article, provided that such dates are: (A) no earlier than the date that the manufacturing facility is acquired; (B) no earlier than sixty days prior to the date upon which a local law was enacted by the city, county, town or village approving the inclusion of the regionally significant project within the empire zone; and (C) no later than the date the local zone administrative board approves the application for certification as an empire zone enterprise, and further provided that such effective date for designation and such effective date for certification as an empire zone enterprise pursuant to this article shall be the same date. Subject to the written approval of the commissioner, such election shall be made by such manufacturer to the commissioner on or before the second anniversary of the date upon which the local law was enacted by the city, county, town or village approving the inclusion of the regionally significant project within the empire zone.

S 2. Paragraph (ii) and the opening paragraph of paragraph (vi) of subdivision (a), subdivision (b), the opening paragraph of subdivision (c), the opening paragraph of subdivision (d) and subdivision (g) of section 958 of the general municipal law, paragraph (ii) and the opening paragraph of paragraph (vi) of subdivision (a) and the opening paragraph of subdivision (c) as amended by chapter 708 of the laws of 1993, subdivision (b) as amended by chapter 624 of the laws of 1990, the opening paragraph of subdivision (d) as amended by chapter 41 of the laws of 2000, subdivision (g) as added by section 5 of part A of chapter 63 of the laws of 2005, and paragraph (ii) of subdivision (a), subdivision

(b), the opening paragraph of subdivision (c), and the opening paragraph of subdivision (d) as further amended pursuant to section 15 of part GG of chapter 63 of the laws of 2000, are amended to read as follows:

(ii) lands nearby or contiguous to census tracts or block numbering areas described in paragraph (i) of this subdivision may be eligible to be included within an empire zone if, upon the request of the applicant BY MARCH THIRTY-FIRST, TWO THOUSAND NINE, the commissioner finds, in accordance with regulations promulgated pursuant to this article, that such additional lands have significant potential for business development and job creation, which will enhance economic revitalization of the zone and benefit zone residents; provided, however, that lands nearby shall not be included in a zone until the commissioner, in consultation with the director of the budget, promulgates regulations governing the inclusion of such lands;

such other requirements as may be established in regulations promulgated by the commissioner [with the approval of the director of the budget and after consultation with the commissioner of labor], including but not limited to:

(b) Notwithstanding the provisions of paragraph (i) of subdivision (a) of this section, any county in which the average rate of unemployment in the two most recent calendar years was at least one and one-quarter times the state average for those years and in which the rate of poverty for individuals was at least thirteen percent according to the most recent census data available, and which does not contain a census tract or tracts, portion of a block numbering area or a city, town or village which meets the criteria specified in such paragraph (i) of subdivision (a), may apply BY NO LATER THAN MARCH THIRTY-FIRST, TWO THOUSAND NINE for designation of an area within a municipality as an empire zone. The area proposed for designation shall be characterized by pervasive poverty, high unemployment and general economic distress.

Notwithstanding the provisions of paragraph (i) of subdivision (a) of this section, any county may apply BY NO LATER THAN MARCH THIRTY-FIRST, TWO THOUSAND NINE for designation of an area within a municipality as an empire zone provided that the following requirements are met:

Notwithstanding the provisions of paragraph (i) of subdivision (a) of this section, any municipality may apply BY NO LATER THAN MARCH THIRTY-FIRST, TWO THOUSAND NINE for designation as an empire zone for an area which shall include a United States census tract or tracts or block numbering area or areas or portions thereof, each full census tract or portion of a block numbering area of which according to the most recent census data available has:

(g) Notwithstanding any other provision of this section, after March thirty-first, two thousand five, a municipality shall demonstrate in an application for designation as an empire zone SUBMITTED NO LATER THAN MARCH THIRTY-FIRST, TWO THOUSAND NINE, that there is no viable alternative area or areas that has or have existing public sewer or water infrastructure available other than the proposed zone.

S 3. Section 959 of the general municipal law, as amended by section 5 of part A of chapter 63 of the laws of 2005 and subdivision (w) as amended by section 2 of part CCC1 of chapter 57 of the laws of 2008, is amended to read as follows:

S 959. Responsibilities of the commissioner. The commissioner shall:

(a) [After consultation with the director of the budget, the commissioner of labor, and the commissioner of taxation and finance, promulgate] 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 [joint] certification by the commissioner[, the commissioner of labor, and, in the case of an empire zone, the local empire zone certification officer,] as to the eligibility of business enterprises for benefits referred to in section nine hundred sixty-six of this article[, 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 business 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)] (II) the [joint] decertification by the commissioner[, the commissioner of labor, and, in the case of an empire zone, the local empire zone certification officer] 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 (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 [provided, however, that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control]; (4) where applicable, the business enterprise has failed to submit an annual report after it has applied for zone [incentives] TAX BENEFITS or program assistance based on new hires or investments or failed to submit other information [to the local empire zone certification officer] when due; [or] (5) 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; OR (6) THE BUSINESS ENTERPRISE HAS FAILED TO MEET THE REQUIREMENTS OF THE COST-BENEFIT ANALYSIS AS ESTABLISHED BY AND CONDUCTED PURSUANT TO THIS ARTICLE UNLESS THE COMMISSIONER DETERMINES IN HIS OR HER SOLE DISCRETION THAT CONTINUED CERTIFICATION IS WARRANTED, BASED UPON OTHER ECONOMIC, SOCIAL AND ENVIRONMENTAL FACTORS, AS PROVIDED IN SUBDIVISION (W) OF THIS SECTION; 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 DECERTIFIED PURSUANT TO SUBPARAGRAPH SIX OF PARAGRAPH (II) OF THIS SUBDIVISION, THAT DECERTIFICATION (1) 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 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 (2) 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;

(b) Receive BY NO LATER THAN MARCH THIRTY-FIRST, TWO THOUSAND NINE and review applications for designation of areas as empire zones;

(c) Analyze and make recommendations to the empire zones designation board for designation of areas as empire zones, provided, however, that all such areas recommended by the commissioner shall meet the requirements of this article;

(d) [Review new applications to replace any previously designated empire zone the designation of which has been terminated or withdrawn;

(e)] File notice of the designation or redesignation of an empire zone or of the revision or termination of such designation with the applicant, the department of taxation and finance, the secretary of state, with the county, city, town or village clerk of each county, city, town, or village, respectively, in which the empire zone is located, with the school district governing body in which the empire zone is located, with the state board of real property services and with other state and local entities; provided, however, that such notice shall specify the date such action was taken and shall contain a description sufficient to identify the empire zone, including the names of the abutting streets, roads, highways, bodies of water, or other identifying physical features;

[(f)] (E) Request, and shall receive from any department, division, board, bureau, commission, agency or public authority of the state such assistance as may be necessary to establish a procedure whereby applications submitted by business entities, community-based organizations, not-for-profit organizations, human service agencies, labor unions and municipal agencies located within an empire zone requesting financial and other assistance provided by state programs, including, but not limited to, capital development, human resource development, business assistance, job training and job placement shall, consistent with federal law, be given priority over applications submitted by entities not located in empire zones;

[(g)] (F) Establish a priority for the allocation of authority to issue private activity bonds for the benefit of municipalities and business enterprises located or to be located within empire zones;

[(h)] (G) Coordinate, with the local empire zone administrative board and state agencies and authorities, the provision of business development programs and services for each empire zone in order to stimulate the creation and development of new small businesses, including new small minority-owned and women-owned business enterprises, and may request and shall receive from any department, division, board, bureau, commission, agency or public authority of the state such assistance as may be necessary;

[(i)] (H) Coordinate with the comptroller and the commissioner of taxation and finance a linked deposit program. The comptroller and the

commissioner of taxation and finance are hereby authorized and empowered to enter into agreements with financial institutions located in or serving the empire zones, to provide for the deposit of funds administered jointly by them in such institutions, at reduced rates of return to the state, in return for commitments by such institutions to businesses of loans of comparable amounts, at reduced interest rates, for business development projects in the zones that will create or preserve jobs;

[(j)] (I) Assist each local empire zone board in preparing a small business assistance plan as required by section nine hundred sixty-three of this article and coordinate with the local empire zone administrative board and state agencies and authorities the development of small business procurement, export and marketing programs for businesses within the empire zones;

[(k)] (J) Promulgate regulations[, in consultation with the commissioner of labor,] for program evaluation and coordinate implementation of an evaluation system, which is capable of compiling and analyzing accurate and consistent information necessary for an assessment of whether statutory objectives and criteria are being met;

[(l)] (K) Review performance objectives and progress in meeting objectives with zone boards and zone administrative entities as part of the annual administrative contract process;

[(m)] (L) Assist zone boards and zone administrative entities to effect and implement job training and social services agreements and programs provided for in paragraphs (v), (vi) and (vii) of subdivision [(b)] (A) of section nine hundred sixty-three of this article and request and receive from any agency or authority of the state such assistance as may be necessary to improve the delivery and coordination of human resource development programs to the zones;

[(n)] (M) Assist zones in increasing their child care capacity and in planning special care activities, including the provision of technical assistance by the department in planning for the provision of child care services in the zones;

[(o)] (N) Coordinate with the department of labor, the state education department, the job training partnership council and agencies of the state the inclusion in annual and biennial plans of such entities strategies for increasing and improving human resource development services on a priority basis, consistent with federal statutory and regulatory requirements, to residents of the zones and employees of zone businesses, including, but not limited to, the governor's plan for coordination and special services of the job training partnership council, the jobs plan and Wagner-Peyser annual plan for services of the department of labor, and the career education state plan of the state education department;

[(p)] (O) Arrange with the job training partnership council the provision of the workforce investment act funds for use within the zones with the cooperation of the service delivery areas in the governor's plan for coordination and special services;

[(q)] (P) Subject to the availability of funds, arrange for the allocation and reservation of funds from the infrastructure improvement programs of state agencies and authorities to assist the zones to make public improvements necessary for community, commercial, industrial and tourism development projects in support of zone revitalization;

[(r)] (Q) Systematically enlist other state agencies and authorities to participate in zone programs and projects and in cooperative planning of interagency zone activities in support of zone revitalization efforts;

[(s)] (R) Recommend for economic development loan and grant programs of the department of economic development, urban development corporation, job development authority, and science and technology foundation special terms and conditions for viable zone projects and programs;

[(t)] (S) Award preference to be given to applications submitted by or on behalf of zones for entrepreneurial assistance programs under article nine of the omnibus economic development act of nineteen hundred eighty-seven to support the creation of new entrepreneurial development and entrepreneurial support centers;

[(u)] (T) Coordinate with the urban development corporation the creation of a special category of assistance for zones within the regional economic development partnership program, which will make available economic development assistance grants for zone programs and activities, including, but not limited to, planning, service coordination, and local institutional capacity building for human resource development necessary for economic revitalization; planning and development of small business incubators; job placement and preparedness programs for zones residents; education and training programs for zone businesses; child care programs and projects supportive of business development; technical assistance for minority and women-owned business development; training for zone officials; business and tourism development and marketing programs; and other innovative programs and activities in support of economic and community development within the zones; [and]

[(v)] (U) Assist in the development of a plan, in coordination with the health and insurance departments, to assist zones in obtaining affordable employee health insurance for small business enterprises located within the zone[.];

[(w)] (V) Approve applications for qualification of a business enterprise as the owner of a qualified investment project or as the owner of a significant capital investment project, as defined in subdivisions (s) and (t), respectively, of section nine hundred fifty-seven of this article. As a condition for approval of such application, the commissioner is authorized to specify certain requirements to be satisfied as a condition for approval of such application as the commissioner deems necessary to ensure that the project will make a substantial contribution to the economic development of this state. An application for qualification of a business enterprise as the owner of a qualified investment must be submitted by December thirty-first, two thousand nine. An application for qualification of a business as the owner of a significant capital investment project as defined in subdivision (t) of section nine hundred fifty-seven of this article, which application is submitted by an entity previously qualified by the commissioner as the owner of a qualified investment project or an entity which is a related person, as that term is defined in section 465(b)(3)(c) of the internal revenue code, to an entity previously qualified by the commissioner as the owner of a qualified investment project, must be submitted by June thirtieth, two thousand eleven. No applications submitted after these dates may be approved; AND

(W) CONDUCT A REVIEW DURING CALENDAR YEAR TWO THOUSAND NINE OF ALL BUSINESS ENTERPRISES CERTIFIED BEFORE APRIL FIRST, TWO THOUSAND FIVE TO DETERMINE WHETHER THE BUSINESS ENTERPRISES HAVE MET THE REQUIREMENTS OF THE COST-BENEFIT ANALYSIS AS SET FORTH IN SUBDIVISION (Q) OF SECTION NINE HUNDRED FIFTY-SEVEN OF THIS ARTICLE AND THE REGULATIONS PROMULGATED UNDER THIS ARTICLE. THEREAFTER IN SUCCEEDING CALENDAR YEARS, THE COMMISSIONER SHALL CONDUCT A REVIEW OF ALL BUSINESS ENTERPRISES CERTIFIED ON

OR AFTER APRIL FIRST, TWO THOUSAND FIVE, TO DETERMINE WHETHER THE BUSINESS ENTERPRISES HAVE MET THE REQUIREMENTS OF THE COST-BENEFIT ANALYSIS AS SET FORTH IN SUBDIVISION (Q) OF SECTION NINE HUNDRED FIFTY-SEVEN OF THIS ARTICLE AND THE REGULATIONS PROMULGATED UNDER THIS ARTICLE. THE COST-BENEFIT ANALYSES REFERRED TO IN THIS SUBDIVISION SHALL BE BASED UPON DATA CONTAINED IN AT LEAST THREE BUSINESS ANNUAL REPORTS FILED BY THE BUSINESS ENTERPRISE. IF THE COMMISSIONER DETERMINES THAT A BUSINESS ENTERPRISE MEETS THE REQUIREMENTS OF THE COST-BENEFIT ANALYSIS DESCRIBED ABOVE, THE COMMISSIONER SHALL ISSUE AN EMPIRE ZONE RETENTION CERTIFICATE TO THE BUSINESS ENTERPRISE ESTABLISHING THAT THE BUSINESS ENTERPRISE HAS RETAINED ITS CERTIFICATION UNDER THIS ARTICLE. IF ANY BUSINESS ENTERPRISE FAILS THE COST-BENEFIT ANALYSIS DESCRIBED ABOVE, THE COMMISSIONER SHALL REVOKE THE CERTIFICATION OF SUCH BUSINESS ENTERPRISE PURSUANT TO PARAGRAPH (II) OF SUBDIVISION (A) OF THIS SECTION AND AS SPECIFIED HEREIN; PROVIDED, HOWEVER, THE COMMISSIONER MAY CONSIDER, 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 COMMISSIONER OF SUCH APPEAL NO LATER THAN TEN BUSINESS DAYS FROM THE DATE OF THE COMMISSIONER'S REVOCATION NOTIFICATION. PROVIDED THAT THE BUSINESS ENTERPRISE APPEALS THE COMMISSIONER'S DETERMINATION WITHIN TEN BUSINESS DAYS OF THE COMMISSIONER'S REVOCATION NOTIFICATION, THE BUSINESS ENTERPRISE MAY PRESENT A WRITTEN SUBMISSION TO THE COMMISSIONER NO LATER THAN SIXTY DAYS FOLLOWING THE DATE THE COMMISSIONER'S REVOCATION NOTIFICATION WAS SENT TO THE BUSINESS ENTERPRISE EXPLAINING WHY IT FAILED THE COST-BENEFIT ANALYSIS. THE COMMISSIONER SHALL CONSIDER THE EXPLANATION PROVIDED BY THE BUSINESS ENTERPRISE, BUT SHALL NOT REVERSE THE DETERMINATION TO REVOKE THE BUSINESS ENTERPRISE'S CERTIFICATION IF THE COMMISSIONER FINDS IN HIS OR HER SOLE DISCRETION THAT THERE WAS INSUFFICIENT EVIDENCE PRESENTED DEMONSTRATING THAT THE BUSINESS ENTERPRISE IN FACT MET THE REQUIREMENTS OF THE COST-BENEFIT ANALYSIS, OR THAT ANY EXTRAORDINARY CIRCUMSTANCES OCCURRED WHICH WOULD EXPLAIN WHY THE BUSINESS ENTERPRISE FAILED THE COST-BENEFIT ANALYSIS.

S 4. Subdivisions (b) and (c) of section 959-b of the general municipal law, as added by section 17 of part W1 of chapter 109 of the laws of 2006, are amended to read as follows:

(b) The commissioner of economic development shall serve as the sole certification officer for businesses seeking certification as a clean energy enterprise. The commissioner of economic development, after consultation with the executive director of the New York state energy research and development authority, shall promulgate regulations governing (i) criteria of eligibility for designation of a clean energy enterprise, (ii) the application process, and (iii) the certification by the commissioner of economic development as to the eligibility of business enterprises for benefits referred to in section nine hundred sixty-six of this article. A business so certified shall be deemed to be eligible for such benefits as if such business were located in an investment zone as defined in paragraph (i) of subdivision (d) of section nine hundred fifty-seven of this article. No such certification shall be made after [December] MARCH thirty-first, two thousand [eleven] NINE.

(c) Such enterprise shall be exempt from the requirements of paragraph (iii) of subdivision (a) of section nine hundred fifty-eight, sections

[nine hundred sixty-one,] nine hundred sixty-two and nine hundred sixty-three of this article.

S 5. Subdivisions (a-1) and (a-2) and the opening paragraph of paragraph (ii) of subdivision (e) of section 960 of the general municipal law, subdivision (a-1) as amended by section 2 of part HH of chapter 59 of the laws of 2006, subdivision (a-2) as added and the opening paragraph of paragraph (ii) of subdivision (e) as amended by section 5 of part A of chapter 63 of the laws of 2005, are amended to read as follows:

(a-1) The empire zones designation board may consider designating empire zone acreage for the following categories of regionally significant projects as set forth in section nine hundred fifty-seven of this article SUBMITTED FOR APPROVAL NO LATER THAN MARCH THIRTY-FIRST, TWO THOUSAND NINE: agri-business or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more jobs; or a financial or insurance services or distribution center creating three hundred or more jobs; or a clean energy research and development enterprise. Such consideration shall be upon application SUBMITTED by the [local zone administrative board and/or the] commissioner NO LATER THAN MARCH THIRTY-FIRST, TWO THOUSAND NINE. Such application shall be made after a public hearing in accordance with section nine hundred sixty-nine of this article and in accordance with findings which shall consider factors including but not limited to: the creation and retention of a regionally significant number of skilled or otherwise quality jobs; substantial capital investment; or the export of a substantial amount of goods or services beyond the immediate region; and further findings as to why such project cannot be accommodated within the distinct and separate contiguous areas pursuant to section nine hundred fifty-seven of this article. Such findings shall be published once a week for four successive weeks, in two newspapers of the county of which the project is to be located or if no newspaper is published therein, in the newspaper nearest thereto. Proof of such publication shall be submitted to the board. The board shall not act on such project or projects until thirty days of the final publication of such findings.

(a-2) The empire zones designation board may consider designating empire zone acreage for other regionally significant projects in accordance with section nine hundred fifty-seven of this article, upon application SUBMITTED by the [local zone administrative board and/or the] commissioner NO LATER THAN MARCH THIRTY-FIRST, TWO THOUSAND NINE. Such application shall be made after a public hearing in accordance with section nine hundred sixty-nine of this article and in accordance with findings which shall consider factors including, but not limited to: the creation and retention of a regionally significant number of skilled or otherwise quality jobs; substantial capital investment; or the export of a substantial amount of goods or services beyond the immediate region; and further findings as to why such project cannot be accommodated within the distinct and separate contiguous areas pursuant to section nine hundred fifty-seven of this article. Such findings shall be published once a week for four successive weeks, in two newspapers of the county of which the project is to be located or if no newspaper is published therein, in the newspaper nearest thereto. Proof of such publication shall be submitted to the board. The board shall not act on such project or projects until thirty days of the final publication of such findings. Provided, however, that the commissioner shall promulgate rules and regulations for the implementation of this subdivision after approval by the empire zones designation board. Provided further, approval of such

projects and related regulations requires an affirmative vote by at least five voting members of such board.

An entity independent of the department shall conduct and submit to the governor and the legislature by no later than [December] AUGUST thirty-first, two thousand [nine] TEN, a comprehensive evaluation of the performance of the zones program and of individual zones on meeting criteria established pursuant to this section. The criteria by which the empire zones program and individual zones are to be evaluated shall include, but not be limited to, the following:

S 6. Section 961 of the general municipal law is REPEALED.

S 7. Subdivision (y) of section 962 of the general municipal law, as added by section 5 of part A of chapter 63 of the laws of 2005, is amended to read as follows:

(y) a description of how the local economic development entities, [as described in paragraph (xii) of subdivision (b) of section nine hundred sixty-one of this article] INCLUDING BUT NOT LIMITED TO THE LOCAL DEVELOPMENT CORPORATION, LOCAL DEVELOPMENT COUNCILS, AUTHORITIES, AGENCIES AND ALL OTHER SUCH ENTITLES CONCERNED WITH THE ECONOMIC DEVELOPMENT OF THE MUNICIPALITY, will integrate its services to allow for the best possible economic development support for the zone;

S 8. Subdivision (cc) of section 962 of the general municipal law is REPEALED.

S 9. Subdivision (a) of section 963 of the general municipal law is REPEALED and subdivisions (b), (c), (d), (e), (f) and (g) are relettered (a), (b), (c), (d), (e) and (f).

S 10. Subdivision (f) of section 963 of the general municipal law, as added by section 5 of part A of chapter 63 of the laws of 2005, and as relettered by section nine of this act, is amended to read as follows:

(f) All [certified] businesses CERTIFIED ON OR BEFORE MARCH THIRTY-FIRST, TWO THOUSAND NINE are required to provide a certified annual report to the local zone administration board which report shall include but not be limited to the following:

(i) Business certification information to include: organization name, organization address in the zone, contact information, federal employment ID number, New York state unemployment insurance number, state of formation or incorporation, verification that the business is authorized to conduct business in the state of New York;

(ii) Employment numbers calculated in the same manner in which the employment number is required to be calculated by section fourteen of the tax law including: total existing full-time equivalent jobs [in the zone] AT THE LOCATION OR LOCATIONS APPROVED BY THE COMMISSIONER as of the date of certification [within that zone], total existing jobs [in the zone] AT THE LOCATION OR LOCATIONS APPROVED BY THE COMMISSIONER for the year for which the report is being provided, total remuneration paid to employees [in the zone] AT THE LOCATION OR LOCATIONS APPROVED BY THE COMMISSIONER each quarter of the reported year, total number of employees in all [zones] LOCATIONS, total annual remuneration in all [zones] LOCATIONS, total annual remuneration paid in New York state for the reported year, total employment number in New York state for the reported year as shown on each business' NYS-45 wage reporting form filed with the department of labor;

(iii) Capital investment to include: total investment made in the [zone] LOCATION OR LOCATIONS APPROVED BY THE COMMISSIONER for the reported year[, with such investment being made with respect to tangible personal property or other tangible property which is depreciable pursu-

ant to section one hundred seventy-nine (d) of the internal revenue code];

(iv) Tax [credits claimed] BENEFITS USED AND REFUNDED: provide an estimation of the amount of the [following credits claimed] TAX BENEFITS USED AND REFUNDED for the reported year by the certified business, or by the taxpayers within the certified business including its shareholders, members, partners or the owner of a sole proprietorship[:] INCLUDING THE wage tax credits, investment tax credits, employment incentive tax credits, real property tax credit, [and] tax reduction credit; and

(v) [Other benefits: estimated value to the certified business of the] THE sales tax [exemption] CREDITS AND REFUNDS for the reported year.

S 11. Subdivision (a) of section 964 of the general municipal law, as amended by chapter 708 of the laws of 1993 and as further amended pursuant to section 15 of part GG of chapter 63 of the laws of 2000, is amended to read as follows:

(a) No more than three empire zone capital corporations may be established in each zone for the purpose of raising funds through private and public grants, donations or investments, to be used in making investments in, and loans to, business firms certified pursuant to subdivision (a) of section nine hundred [sixty-three] FIFTY-NINE of this article for the purpose of encouraging the establishment or expansion of businesses and the provision of additional job opportunities within such area. A zone capital corporation may serve one or more zones within an economic development region or zones within two or more regions. Prior to the establishment of a zone capital corporation, the zone board and the commissioner of the department of economic development shall approve the formation of the proposed zone capital corporation, its board of directors and management, and its procedures for making, servicing and monitoring investments. In no event, however, shall an empire zone capital corporation acquire an ownership interest in any certified business firm which amounts to more than twenty-five percent of the ownership interest of such certified business firm. No loan to or investment in any business firm shall be made by an empire zone capital corporation located in a zone within a town with a population of more than twenty-five thousand, until such corporation has accumulated at least two hundred thousand dollars in capital stock. No loan or investment in any business firm shall be made by an empire zone capital corporation located in a zone within a town with a population of less than twenty-five thousand until such corporation has accumulated at least one hundred thousand dollars in capital stock. A zone capital corporation shall submit to the zone board an annual report on its activities.

S 12. Subdivision (b) and the opening paragraph of subdivision (c) of section 969 of the general municipal law, as amended by section 5 of part A of chapter 63 of the laws of 2005, are amended to read as follows:

(b) After consultation with the director of the budget [and the commissioner of labor], the commissioner may terminate the designation of an area as an empire zone upon a finding that (1) the applicant has failed substantially to implement the empire zone development plan within the time stated therein; (2) there has been no substantial business development or job creation within the area designated as an empire zone within five years after such designation; (3) there has been inadequate management and evaluation of the zone at the local level; or (4) the applicant has repeatedly failed to comply with program reporting requirements, provided, however, that no termination shall occur unless and until written notice has been given to the applicant and a public

hearing has been held thirty days prior to the effective date of such termination.

The governing body of a city, county, town or village may, by resolution, submit to the commissioner a request to revise the boundaries of an existing empire zone. The commissioner may[, after consultation with the commissioner of labor,] approve such revision subject to the following provisions:

S 13. The general municipal law is amended by adding a new section 970 to read as follows:

S 970. CERTIFICATION OF MANUFACTURING (INCLUDING HIGH-TECH, BIO-TECH, CLEAN-TECH AND AGRI-BUSINESS), AND FINANCIAL SERVICE ENTERPRISES, AND EXTRAORDINARY PROJECTS.

(A) NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS ARTICLE, COMMENCING APRIL FIRST, TWO THOUSAND NINE, ONLY (I) MANUFACTURING (INCLUDING HIGH-TECH, BIO-TECH, CLEAN-TECH, AND AGRI-BUSINESS) AND FINANCIAL SERVICE ENTERPRISES AND EXTRAORDINARY PROJECTS, AS DEFINED IN THE REGULATIONS PROMULGATED PURSUANT TO SUBDIVISIONS (B) AND (C) OF THIS SECTION, AND (II) THE OWNER OF A QUALIFIED INVESTMENT PROJECT OR A SIGNIFICANT CAPITAL INVESTMENT PROJECT, IN ACCORDANCE WITH THE REQUIREMENTS AND CONDITIONS SET FORTH IN SUBDIVISION (V) OF SECTION NINE HUNDRED FIFTY-NINE OF THIS ARTICLE, MAY APPLY FOR CERTIFICATION PURSUANT TO THIS ARTICLE.

(B) THE COMMISSIONER SHALL SERVE AS THE SOLE CERTIFICATION OFFICER FOR BUSINESS ENTERPRISES APPLYING FOR CERTIFICATION AS MANUFACTURING (INCLUDING HIGH-TECH, BIO-TECH, CLEAN-TECH AND AGRI-BUSINESS) AND FINANCIAL SERVICE ENTERPRISES. THE COMMISSIONER SHALL PROMULGATE REGULATIONS (I) DEFINING MANUFACTURING (INCLUDING HIGH-TECH, BIO-TECH, CLEAN-TECH AND AGRI-BUSINESS) AND FINANCIAL SERVICE ENTERPRISES; (II) GOVERNING THE CRITERIA FOR THE CERTIFICATION OF MANUFACTURING (INCLUDING HIGH-TECH, BIO-TECH, CLEAN-TECH AND AGRI-BUSINESS) AND FINANCIAL SERVICE ENTERPRISES (WHICH CRITERIA SHALL INCLUDE, BUT NOT BE LIMITED TO, MEETING THE REQUIREMENTS OF THE COST BENEFIT ANALYSIS REFERRED TO IN SUBDIVISION (P) OF SECTION NINE HUNDRED FIFTY-SEVEN OF THIS ARTICLE); AND (III) ESTABLISHING THE APPLICATION PROCESS FOR CERTIFICATION. NOTWITHSTANDING ANY OTHER PROVISIONS TO THE CONTRARY IN THE STATE ADMINISTRATIVE PROCEDURE ACT, SUCH REGULATIONS MAY BE ADOPTED ON AN EMERGENCY BASIS. A BUSINESS SO CERTIFIED SHALL BE DEEMED TO BE ELIGIBLE FOR BENEFITS REFERRED TO IN SECTION NINE HUNDRED SIXTY-SIX OF THIS ARTICLE AS IF SUCH BUSINESS WERE LOCATED IN AN INVESTMENT ZONE AS DEFINED IN PARAGRAPH (I) OF SUBDIVISION (D) OF SECTION NINE HUNDRED FIFTY-SEVEN OF THIS ARTICLE.

(C) THE COMMISSIONER SHALL SERVE AS THE SOLE CERTIFICATION OFFICER FOR BUSINESS ENTERPRISES APPLYING FOR CERTIFICATION OF EXTRAORDINARY PROJECTS. THE COMMISSIONER SHALL PROMULGATE REGULATIONS (I) DEFINING EXTRAORDINARY PROJECTS; (II) ESTABLISHING THE APPLICATION PROCESS FOR CERTIFICATION; AND (III) GOVERNING THE CRITERIA FOR CERTIFICATION OF AN EXTRAORDINARY PROJECT, WHICH CRITERIA SHALL INCLUDE, BUT NOT BE LIMITED TO, (1) WHETHER THE EXTRAORDINARY PROJECT, IF CERTIFIED, IS REASONABLY LIKELY TO CREATE SUBSTANTIAL NEW EMPLOYMENT OR PREVENT A SUBSTANTIAL LOSS OF EMPLOYMENT; (2) 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 OF MORE OTHER MUNICIPALITIES, TOWNS OR VILLAGES IN THE STATE; (3) WHETHER SUCH EXTRAORDINARY PROJECT IS LIKELY TO BRING SUBSTANTIAL CAPITAL INVESTMENT; (4) WHETHER THE EXTRAORDINARY PROJECT IS LIKELY TO LEAD TO THE EXPORT OF A SUBSTANTIAL AMOUNT OF GOODS OR SERVICES BEYOND THE IMME-

DIATE REGION; (5) WHETHER THE 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 ENVIRONMENTAL PROTECTION, 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) IF THE COMMISSIONER 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 PARAGRAPH FIVE OF THIS SUBDIVISION 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. NOTWITHSTANDING ANY OTHER PROVISIONS TO THE CONTRARY IN THE STATE ADMINISTRATIVE PROCEDURE ACT, SUCH REGULATIONS MAY BE ADOPTED ON AN EMERGENCY BASIS. A BUSINESS SO CERTIFIED SHALL BE DEEMED TO BE ELIGIBLE FOR SUCH BENEFITS AS IF SUCH BUSINESS WERE LOCATED IN AN INVESTMENT ZONE AS DEFINED IN PARAGRAPH (I) OF SUBDIVISION (D) OF SECTION NINE-HUNDRED FIFTY-SEVEN OF THIS ARTICLE.

(D) ALL BUSINESS ENTERPRISES CERTIFIED ON OR AFTER APRIL FIRST, TWO THOUSAND NINE PURSUANT TO SUBDIVISIONS (B) OR (C) OF THIS SECTION OR PURSUANT TO SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THIS ARTICLE SHALL BE REQUIRED TO MEET THE REQUIREMENTS OF THE COST-BENEFIT ANALYSIS ESTABLISHED IN SUBDIVISION (Q) OF SECTION NINE HUNDRED FIFTY-SEVEN OF THIS ARTICLE AND THE REGULATIONS PROMULGATED UNDER THIS ARTICLE AFTER THEY HAVE BEEN CERTIFIED FOR AT LEAST THREE YEARS. FAILURE TO MEET THE REQUIREMENTS OF THE COST-BENEFIT ANALYSIS SHALL RESULT IN THE BUSINESS ENTERPRISE BEING DECERTIFIED PURSUANT TO PARAGRAPH (II) OF SUBDIVISION (A) OF SECTION NINE HUNDRED FIFTY-NINE OF THIS ARTICLE, UNLESS THE COMMISSIONER MAKES A DETERMINATION IN HIS OR HER DISCRETION TO RETAIN THE CERTIFICATION OF A BUSINESS ENTERPRISE, NOTWITHSTANDING THE FAILURE TO MEET THE REQUIREMENTS OF THE COST-BENEFIT ANALYSIS, IN ACCORDANCE WITH SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THIS ARTICLE.

(E) ALL BUSINESSES CERTIFIED PURSUANT TO THIS SECTION ARE REQUIRED TO PROVIDE A CERTIFIED ANNUAL REPORT TO THE COMMISSIONER WHICH REPORT SHALL INCLUDE BUT NOT BE LIMITED TO THE FOLLOWING:

(I) BUSINESS CERTIFICATION INFORMATION TO INCLUDE: ORGANIZATION NAME, ORGANIZATION ADDRESS, CONTACT INFORMATION, FEDERAL EMPLOYMENT ID NUMBER, NEW YORK STATE UNEMPLOYMENT INSURANCE NUMBER, STATE OF FORMATION OR INCORPORATION, VERIFICATION THAT THE BUSINESS IS AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF NEW YORK;

(II) EMPLOYMENT NUMBERS CALCULATED IN THE SAME MANNER IN WHICH THE EMPLOYMENT NUMBER IS REQUIRED TO BE CALCULATED BY SECTION FOURTEEN OF THE TAX LAW INCLUDING: TOTAL EXISTING FULL-TIME EQUIVALENT JOBS AT THE LOCATION OR LOCATIONS APPROVED BY THE COMMISSIONER AS OF THE DATE OF CERTIFICATION, TOTAL EXISTING JOBS AT THE LOCATION OR LOCATIONS APPROVED BY THE COMMISSIONER FOR THE YEAR FOR WHICH THE REPORT IS BEING PROVIDED, TOTAL REMUNERATION PAID TO EMPLOYEES AT THE LOCATION OR LOCATIONS APPROVED BY THE COMMISSIONER EACH QUARTER OF THE REPORTED YEAR, TOTAL NUMBER OF EMPLOYEES IN ALL LOCATIONS, TOTAL ANNUAL REMUNERATION IN ALL LOCATIONS, TOTAL ANNUAL REMUNERATION PAID IN NEW YORK STATE FOR THE REPORTED YEAR, TOTAL EMPLOYMENT NUMBER IN NEW YORK STATE FOR THE REPORTED YEAR AS SHOWN ON EACH BUSINESS' NYS-45 WAGE REPORTING FORM FILED WITH THE DEPARTMENT OF LABOR;

(III) TOTAL CAPITAL INVESTMENT MADE IN THE LOCATION OR LOCATIONS APPROVED BY THE COMMISSIONER FOR THE REPORTED YEAR;

(IV) TOTAL EMPIRE ZONE TAX BENEFITS: PROVIDE AN ESTIMATION OF THE TOTAL AMOUNT OF EMPIRE ZONE TAX BENEFITS USED AND THE TOTAL AMOUNT OF EMPIRE ZONE TAX BENEFITS REFUNDED FOR THE REPORTED YEAR BY THE CERTIFIED BUSINESS, OR BY THE TAXPAYERS WITHIN THE CERTIFIED BUSINESS INCLUDING ITS SHAREHOLDERS, MEMBERS, PARTNERS OR THE OWNER OF A SOLE PROPRIETORSHIP, INCLUDING BUT NOT LIMITED TO WAGE TAX CREDITS, INVESTMENT TAX CREDITS, EMPLOYMENT INCENTIVE TAX CREDITS, REAL PROPERTY TAX CREDIT, TAX REDUCTION CREDIT; AND SALES TAX BENEFITS.

S 14. Subdivision 19 of section 210 of the tax law is amended by adding a new paragraph (e-1) to read as follows:

(E-1) ANY CARRY OVER OF A CREDIT FROM PRIOR TAXABLE YEARS WILL NOT BE ALLOWED IF AN EMPIRE ZONE RETENTION CERTIFICATE IS NOT ISSUED PURSUANT TO SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW TO THE EMPIRE ZONE ENTERPRISE WHICH IS THE BASIS OF THE CREDIT.

S 15. Subsection (k) of section 606 of the tax law is amended by adding a new paragraph 5-a to read as follows:

(5-A) ANY CARRY OVER OF A CREDIT FROM PRIOR TAXABLE YEARS WILL NOT BE ALLOWED IF AN EMPIRE ZONE RETENTION CERTIFICATE IS NOT ISSUED PURSUANT TO SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW TO THE EMPIRE ZONE ENTERPRISE WHICH IS THE BASIS OF THE CREDIT.

S 16. Subsection (e) of section 1456 of the tax law is amended by adding a new paragraph 5-a to read as follows:

(5-A) ANY CARRY OVER OF A CREDIT FROM PRIOR TAXABLE YEARS WILL NOT BE ALLOWED IF AN EMPIRE ZONE RETENTION CERTIFICATE IS NOT ISSUED PURSUANT TO SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW TO THE EMPIRE ZONE ENTERPRISE WHICH IS THE BASIS OF THE CREDIT.

S 17. Subdivision (g) of section 1511 of the tax law is amended by adding a new paragraph 5-a to read as follows:

(5-A) ANY CARRY OVER OF A CREDIT FROM PRIOR TAXABLE YEARS WILL NOT BE ALLOWED IF AN EMPIRE ZONE RETENTION CERTIFICATE IS NOT ISSUED PURSUANT TO SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW TO THE EMPIRE ZONE ENTERPRISE WHICH IS THE BASIS OF THE CREDIT.

S 18. Subdivision 12-B of section 210 of the tax law is amended by adding a new paragraph (d-1) to read as follows:

(D-1) ANY CARRY OVER OF A CREDIT FROM PRIOR TAXABLE YEARS WILL NOT BE ALLOWED IF AN EMPIRE ZONE RETENTION CERTIFICATE IS NOT ISSUED PURSUANT TO SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW TO THE EMPIRE ZONE ENTERPRISE WHICH IS THE BASIS OF THE CREDIT.

S 19. Subsection (j) of section 606 of the tax law is amended by adding a new paragraph 4-a to read as follows:

(4-A) ANY CARRY OVER OF A CREDIT FROM PRIOR TAXABLE YEARS WILL NOT BE ALLOWED IF AN EMPIRE ZONE RETENTION CERTIFICATE IS NOT ISSUED PURSUANT TO SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW TO THE EMPIRE ZONE ENTERPRISE WHICH IS THE BASIS OF THE CREDIT.

S 20. Subdivision 12-C of section 210 of the tax law is amended by adding a new paragraph (c-1) to read as follows:

(C-1) ANY CARRY OVER OF A CREDIT FROM PRIOR TAXABLE YEARS WILL NOT BE ALLOWED IF AN EMPIRE ZONE RETENTION CERTIFICATE IS NOT ISSUED PURSUANT

TO SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW TO THE EMPIRE ZONE ENTERPRISE WHICH IS THE BASIS OF THE CREDIT.

S 21. Subsection (j-1) of section 606 of the tax law is amended by adding a new paragraph 3-a to read as follows:

(3-A) ANY CARRY OVER OF A CREDIT FROM PRIOR TAXABLE YEARS WILL NOT BE ALLOWED TO AN EMPIRE ZONE ENTERPRISE WHICH IS THE BASIS OF THE CREDIT, IF AN EMPIRE ZONE RETENTION CERTIFICATE IS NOT ISSUED TO SUCH ENTITY PURSUANT TO SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW.

S 22. Subdivision 20 of section 210 of the tax law is amended by adding a new paragraph (b-1) to read as follows:

(B-1) ANY CARRY OVER OF A CREDIT FROM PRIOR TAXABLE YEARS WILL NOT BE ALLOWED TO AN EMPIRE ZONE ENTERPRISE WHICH IS THE BASIS OF THE CREDIT, IF AN EMPIRE ZONE RETENTION CERTIFICATE IS NOT ISSUED TO SUCH ENTITY PURSUANT TO SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW.

S 23. Subsection (1) of section 606 of the tax law is amended by adding a new paragraph 1-a to read as follows:

(1-A) ANY CARRY OVER OF A CREDIT FROM PRIOR TAXABLE YEARS WILL NOT BE ALLOWED TO AN EMPIRE ZONE ENTERPRISE WHICH IS THE BASIS OF THE CREDIT, IF AN EMPIRE ZONE RETENTION CERTIFICATE IS NOT ISSUED TO SUCH ENTITY PURSUANT TO SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW.

S 24. Subsection (d) of section 1456 of the tax law is amended by adding a new paragraph 2-a to read as follows:

(2-A) ANY CARRY OVER OF A CREDIT FROM PRIOR TAXABLE YEARS WILL NOT BE ALLOWED TO AN EMPIRE ZONE ENTERPRISE WHICH IS THE BASIS OF THE CREDIT, IF AN EMPIRE ZONE RETENTION CERTIFICATE IS NOT ISSUED TO SUCH ENTITY PURSUANT TO SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW.

S 25. Subdivision (h) of section 1511 of the tax law is amended by adding a new paragraph 2-a to read as follows:

(2-A) ANY CARRY OVER OF A CREDIT FROM PRIOR TAXABLE YEARS WILL NOT BE ALLOWED TO AN EMPIRE ZONE ENTERPRISE WHICH IS THE BASIS OF THE CREDIT, IF AN EMPIRE ZONE RETENTION CERTIFICATE IS NOT ISSUED TO SUCH ENTITY PURSUANT TO SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW.

S 26. Section 1088 of the tax law is amended by adding a new subsection (h) to read as follows:

(H) NOTWITHSTANDING ANY OTHER PROVISION IN THIS SECTION, FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND EIGHT AND BEFORE JANUARY FIRST, TWO THOUSAND NINE, INTEREST WILL BE ALLOWED ON AN OVER-PAYMENT ON ANY RETURN OR REPORT ON WHICH ONE OR MORE EMPIRE ZONE TAX CREDITS ARE CLAIMED, ONLY FROM THE ONE HUNDRED EIGHTIETH DAY AFTER THE TAXPAYER FILES WITH THE DEPARTMENT AN EMPIRE ZONE RETENTION CERTIFICATE ISSUED PURSUANT TO SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW TO THE EMPIRE ZONE ENTERPRISE WHICH IS THE BASIS FOR THE TAX CREDIT OR CREDITS CLAIMED ON THE RETURN OR REPORT.

S 27. Section 688 of the tax law is amended by adding a new subsection (h) to read as follows:

(H) NOTWITHSTANDING ANY OTHER PROVISIONS IN THIS SECTION, FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND EIGHT AND BEFORE JANUARY FIRST, TWO THOUSAND NINE, INTEREST WILL BE ALLOWED ON AN OVER-PAYMENT ON ANY RETURN OR REPORT ON WHICH ONE OR MORE EMPIRE ZONE TAX CREDITS ARE CLAIMED, ONLY FROM THE ONE HUNDRED EIGHTIETH DAY AFTER THE

TAXPAYER FILES WITH THE DEPARTMENT AN EMPIRE ZONE RETENTION CERTIFICATE ISSUED PURSUANT TO SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW TO THE EMPIRE ZONE ENTERPRISE WHICH IS THE BASIS FOR THE TAX CREDIT OR CREDITS CLAIMED ON THE RETURN OR REPORT.

S 28. Subsection (c) of section 1089 of the tax law is amended by adding a new paragraph 4 to read as follows:

(4) NOTWITHSTANDING PARAGRAPH THREE OF THIS SUBSECTION, NO PETITION MAY BE FILED BY A TAXPAYER CLAIMING A REFUND OF ONE OR MORE EMPIRE ZONE TAX CREDITS FOR A TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND EIGHT AND BEFORE JANUARY FIRST, TWO THOUSAND NINE, UNTIL SIX MONTHS HAVE EXPIRED AFTER THE DATE ON WHICH AN EMPIRE ZONE RETENTION CERTIFICATE WAS ISSUED PURSUANT TO SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW TO THE EMPIRE ZONE ENTERPRISE WHICH IS THE BASIS FOR THE TAX CREDIT OR CREDITS CLAIMED ON THE RETURN OR REPORT.

S 29. Subsection (c) of section 689 of the tax law is amended by adding a new paragraph 4 to read as follows:

(4) NOTWITHSTANDING PARAGRAPH THREE OF THIS SUBSECTION, NO PETITION MAY BE FILED BY A TAXPAYER CLAIMING A REFUND OF ONE OR MORE EMPIRE ZONE TAX CREDITS FOR A TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND EIGHT AND BEFORE JANUARY FIRST, TWO THOUSAND NINE, UNTIL SIX MONTHS HAVE EXPIRED AFTER THE DATE ON WHICH AN EMPIRE ZONE RETENTION CERTIFICATE WAS ISSUED PURSUANT TO SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW TO THE EMPIRE ZONE ENTERPRISE WHICH IS THE BASIS FOR THE TAX CREDIT OR CREDITS CLAIMED ON THE RETURN OR REPORT.

S 30. Section 1085 of the tax law is amended by adding a new subsection (k-2) to read as follows:

(K-2) NO PENALTY WILL BE IMPOSED PURSUANT TO SUBSECTION (C) OR (K) OF THIS SECTION FOR A TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND EIGHT AND BEFORE JANUARY FIRST, TWO THOUSAND NINE RESULTING FROM THE DENIAL OF AN EMPIRE ZONE TAX CREDIT CLAIMED BY THE TAXPAYER BECAUSE AN EMPIRE ZONE RETENTION CERTIFICATE WAS NOT ISSUED PURSUANT TO SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW TO THE EMPIRE ZONE ENTERPRISE WHICH IS THE BASIS FOR THE TAX CREDIT OR CREDITS CLAIMED ON THE RETURN OR REPORT.

S 31. Section 685 of the tax law is amended by adding a new subsection (p-2) to read as follows:

(P-2) NO PENALTY WILL BE IMPOSED PURSUANT TO SUBSECTION (C) OR (P) OF THIS SECTION FOR A TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND EIGHT AND BEFORE JANUARY FIRST, TWO THOUSAND NINE RESULTING FROM THE DENIAL OF AN EMPIRE ZONE TAX CREDIT CLAIMED BY THE TAXPAYER BECAUSE AN EMPIRE ZONE RETENTION CERTIFICATE WAS NOT ISSUED PURSUANT TO SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW TO THE EMPIRE ZONE ENTERPRISE WHICH IS THE BASIS FOR THE TAX CREDIT OR CREDITS CLAIMED ON THE RETURN.

S 32. Subdivision (z) of section 1115 of the tax law is REPEALED.

S 33. Section 1119 of the tax law is amended by adding a new subdivision (d) to read as follows:

(D)(1) SUBJECT TO THE CONDITIONS AND LIMITATIONS PROVIDED FOR IN THIS SECTION, A REFUND OR CREDIT WILL BE ALLOWED FOR TAXES IMPOSED ON THE RETAIL SALE OF TANGIBLE PERSONAL PROPERTY DESCRIBED IN SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE, AND ON EVERY SALE OF SERVICES DESCRIBED IN SUBDIVISIONS (B) AND (C) OF SUCH SECTION, AND ON THE RETAIL SALE OF PRE-WRITTEN COMPUTER SOFTWARE, WHETHER SUBJECT TO THE TAX UNDER SUBDIVISION (A) OR (G) OF SUCH SECTION, AND CONSIDERATION

GIVEN OR CONTRACTED TO BE GIVEN FOR, OR FOR THE USE OF, SUCH TANGIBLE PERSONAL PROPERTY OR SERVICES, OR PRE-WRITTEN COMPUTER SOFTWARE WHERE SUCH TANGIBLE PERSONAL PROPERTY OR SERVICES OR PRE-WRITTEN COMPUTER SOFTWARE ARE SOLD TO A QUALIFIED EMPIRE ZONE ENTERPRISE, PROVIDED THAT (A) SUCH TANGIBLE PERSONAL PROPERTY OR TANGIBLE PERSONAL PROPERTY UPON WHICH SUCH A SERVICE HAS BEEN PERFORMED OR SUCH SERVICE (OTHER THAN A SERVICE DESCRIBED IN SUBDIVISION (B) OF SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE) OR PRE-WRITTEN COMPUTER SOFTWARE IS DIRECTLY AND PREDOMINANTLY, OR SUCH A SERVICE DESCRIBED IN CLAUSE (A) OR (D) OF PARAGRAPH ONE OF SUCH SUBDIVISION (B) OF SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE IS DIRECTLY AND EXCLUSIVELY, USED OR CONSUMED BY SUCH ENTERPRISE IN AN AREA DESIGNATED AS AN EMPIRE ZONE PURSUANT TO ARTICLE EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW WITH RESPECT TO WHICH SUCH ENTERPRISE IS CERTIFIED PURSUANT TO SUCH ARTICLE EIGHTEEN-B, OR (B) SUCH A SERVICE DESCRIBED IN CLAUSE (B) OR (C) OF PARAGRAPH ONE OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE IS DELIVERED AND BILLED TO SUCH ENTERPRISE AT AN ADDRESS IN SUCH EMPIRE ZONE, OR (C) THE ENTERPRISE'S PLACE OF PRIMARY USE OF THE SERVICE DESCRIBED IN PARAGRAPH TWO OF SUCH SUBDIVISION (B) OF SECTION 1105 IS AT AN ADDRESS IN SUCH EMPIRE ZONE; PROVIDED, FURTHER, THAT, IN ORDER FOR A MOTOR VEHICLE, AS DEFINED IN SUBDIVISION (C) OF SECTION ELEVEN HUNDRED SEVENTEEN OF THIS ARTICLE, OR TANGIBLE PERSONAL PROPERTY RELATED TO SUCH A MOTOR VEHICLE TO BE FOUND TO BE USED PREDOMINANTLY IN SUCH A ZONE, AT LEAST FIFTY PERCENT OF SUCH MOTOR VEHICLE'S USE SHALL BE EXCLUSIVELY WITHIN SUCH ZONE OR AT LEAST FIFTY PERCENT OF SUCH MOTOR VEHICLE'S USE SHALL BE IN ACTIVITIES ORIGINATING OR TERMINATING IN SUCH ZONE, OR BOTH; AND EITHER OR BOTH SUCH USAGES SHALL BE COMPUTED EITHER ON THE BASIS OF MILEAGE OR HOURS OF USE, AT THE DISCRETION OF SUCH ENTERPRISE. FOR PURPOSES OF THIS SUBDIVISION, TANGIBLE PERSONAL PROPERTY RELATED TO SUCH A MOTOR VEHICLE SHALL INCLUDE A BATTERY, DIESEL MOTOR FUEL, AN ENGINE, ENGINE COMPONENTS, MOTOR FUEL, A MUFFLER, TIRES AND SIMILAR TANGIBLE PERSONAL PROPERTY USED IN OR ON SUCH A MOTOR VEHICLE.

(2) SUBJECT TO THE CONDITIONS AND LIMITATIONS PROVIDED FOR IN THIS SECTION, A REFUND OR CREDIT WILL BE ALLOWED FOR TAXES IMPOSED ON THE RETAIL SALE OF, AND CONSIDERATION GIVEN OR CONTRACTED TO BE GIVEN FOR, OR FOR THE USE OF, TANGIBLE PERSONAL PROPERTY SOLD TO A CONTRACTOR, SUBCONTRACTOR OR REPAIRMAN FOR USE IN (A) ERECTING A STRUCTURE OR BUILDING OF A QUALIFIED EMPIRE ZONE ENTERPRISE, (B) ADDING TO, ALTERING OR IMPROVING REAL PROPERTY, PROPERTY OR LAND OF SUCH AN ENTERPRISE OR (C) MAINTAINING, SERVICING OR REPAIRING REAL PROPERTY, PROPERTY OR LAND OF SUCH AN ENTERPRISE, AS THE TERMS REAL PROPERTY, PROPERTY OR LAND ARE DEFINED IN THE REAL PROPERTY TAX LAW; PROVIDED, HOWEVER, NO CREDIT OR REFUND WILL BE ALLOWED UNDER THIS PARAGRAPH UNLESS SUCH TANGIBLE PERSONAL PROPERTY IS TO BECOME AN INTEGRAL COMPONENT PART OF SUCH STRUCTURE, BUILDING, REAL PROPERTY, PROPERTY OR LAND LOCATED IN AN AREA DESIGNATED AS AN EMPIRE ZONE PURSUANT TO ARTICLE EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW IN, AND WITH RESPECT TO WHICH SUCH ENTERPRISE IS CERTIFIED PURSUANT TO SUCH ARTICLE EIGHTEEN-B.

(3) EXCEPT AS OTHERWISE PROVIDED BY LAW, THE REFUND OR CREDIT PROVIDED FOR IN THIS SUBDIVISION WILL NOT APPLY TO TAXES IMPOSED BY PARAGRAPHS TEN AND THIRTEEN OF SUBDIVISION (C) OF SECTIONS 1105-D, 1105-F, AND ELEVEN HUNDRED SEVEN OF THIS ARTICLE OR TO TAXES IMPOSED PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS CHAPTER.

(4) IN THOSE INSTANCES WHEN THE PROVISIONS OF SUBDIVISION (W) OF SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNICIPAL LAW ARE APPLICABLE, NO REFUND OR CREDIT WILL BE ALLOWED UNDER THIS SUBDIVISION UNLESS

THE QUALIFIED EMPIRE ZONE ENTERPRISE HAS BEEN ISSUED AN EMPIRE ZONE RETENTION CERTIFICATE.

(5) A TAXPAYER MAY NOT APPLY FOR A CREDIT OR REFUND UNDER THIS SUBDIVISION MORE FREQUENTLY THAN ONCE A SALES TAX QUARTER, PURSUANT TO SUBDIVISION (B) OF SECTION ELEVEN HUNDRED THIRTY-SIX OF THE TAX LAW.

(6) ANY REFERENCE IN THIS CHAPTER TO SUBDIVISION (Z) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS ARTICLE WILL BE DEEMED TO BE A REFERENCE TO THIS SUBDIVISION.

S 34. Paragraph 2 of subdivision (a) of section 14 of the tax law, as amended by section 1 of part AA of chapter 62 of the laws of 2006, is amended to read as follows:

(2) for purposes of articles twenty-eight and twenty-nine of this chapter, during the "sales and use tax benefit period." Such period shall consist of one hundred twenty consecutive months beginning on the later of (A) March first, two thousand one, or (B) WITH REGARD TO BUSINESS ENTERPRISES CERTIFIED PURSUANT TO ARTICLE EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW PRIOR TO APRIL FIRST, TWO THOUSAND NINE, the first day of the month next following the date of issuance of a qualified empire zone enterprise certification by the commissioner under subdivision (h) of this section, OR (C) WITH REGARD TO BUSINESS ENTERPRISES CERTIFIED PURSUANT TO SUCH ARTICLE EIGHTEEN-B ON OR AFTER APRIL FIRST, TWO THOUSAND NINE, THE FIRST DAY OF THE MONTH NEXT FOLLOWING THE DATE OF CERTIFICATION UNDER ARTICLE EIGHTEEN-B AS AN EMPIRE ZONE BUSINESS. Provided however, such period shall not include any month falling within a taxable year immediately preceded by a taxable year with respect to which the business enterprise did not meet the employment test.

S 35. Subdivision (h) of section 14 of the tax law is REPEALED.

S 36. Paragraph 1 of subdivision (a) of section 1210 of the tax law, as amended by section 4 of part SS1 of chapter 57 of the laws of 2008, is amended to read as follows:

(i) Either, all of the taxes described in article twenty-eight of this chapter, at the same uniform rate, as to which taxes all provisions of the local laws, ordinances or resolutions imposing such taxes shall be identical, except as to rate and except as otherwise provided, with the corresponding provisions in such article twenty-eight, including the definition and exemption provisions of such article, so far as the provisions of such article twenty-eight can be made applicable to the taxes imposed by such city or county and with such limitations and special provisions as are set forth in this article. The taxes authorized under this subdivision may not be imposed by a city or county unless the local law, ordinance or resolution imposes such taxes so as to include all portions and all types of receipts, charges or rents, subject to state tax under sections eleven hundred five and eleven hundred ten of this chapter, except as otherwise provided. (I) Any local law, ordinance or resolution enacted by any city of less than one million or by any county or school district, imposing the taxes authorized by this subdivision, shall, notwithstanding any provision of law to the contrary, exclude from the operation of such local taxes all sales of tangible personal property for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, generating, assembly, refining, mining or extracting; and all sales of tangible personal property for use or consumption predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both; and, unless such city, county or school district elects otherwise, shall omit

the provision for credit or refund contained in clause six of subdivision (a) OR SUBDIVISION (D) of section eleven hundred nineteen of this chapter. (II) Any local law, ordinance or resolution enacted by any city, county or school district, imposing the taxes authorized by this subdivision, shall omit the residential solar energy systems equipment exemption provided for in subdivision (ee)[,] AND the clothing and footwear exemption provided for in paragraph thirty of subdivision (a) [and the qualified empire zone enterprise exemptions provided for in subdivision (z)] of section eleven hundred fifteen of this chapter, unless such city, county or school district elects otherwise as to either such residential solar energy systems equipment exemption or such clothing and footwear exemption [or such qualified empire zone enterprise exemptions; provided that if such a city having a population of one million or more in which the taxes imposed by section eleven hundred seven of this chapter are in effect enacts the resolution described in subdivision (k) of this section or repeals such resolution or enacts the resolution described in subdivision (l) of this section or repeals such resolution or enacts the resolution described in subdivision (n) of this section or repeals such resolution, such resolution or repeal shall also be deemed to amend any local law, ordinance or resolution enacted by such a city imposing such taxes pursuant to the authority of this subdivision, whether or not such taxes are suspended at the time such city enacts its resolution pursuant to subdivision (k), (l) or (n) of this section or at the time of any such repeal; provided, further, that any such local law, ordinance or resolution and section eleven hundred seven of this chapter, as deemed to be amended in the event a city of one million or more enacts a resolution pursuant to the authority of subdivision (k), (l) or (n) of this section, shall be further amended, as provided in section twelve hundred eighteen of this subpart, so that the residential solar energy systems equipment exemption or the clothing and footwear exemption or the qualified empire zone enterprise exemptions in any such local law, ordinance or resolution or in such section eleven hundred seven are the same, as the case may be, as the residential solar energy systems equipment exemption provided for in subdivision (ee), the clothing and footwear exemption in paragraph thirty of subdivision (a) or the qualified empire zone enterprise exemptions in subdivision (z) of section eleven hundred fifteen of this chapter].

S 37. Paragraph 4 of subdivision (a) of section 1210 of the tax law, as amended by section 5 of part SS1 of chapter 57 of the laws of 2008, is amended to read as follows:

(4) Notwithstanding any other provision of law to the contrary, any local law enacted by any city of one million or more that imposes the taxes authorized by this subdivision (i) may omit the exception provided in subparagraph (ii) of paragraph three of subdivision (c) of section eleven hundred five of this chapter for receipts from laundering, drycleaning, tailoring, weaving, pressing, shoe repairing and shoe shining; (ii) may impose the tax described in paragraph six of subdivision (c) of section eleven hundred five of this chapter at a rate in addition to the rate prescribed by this section not to exceed two percent in multiples of one-half of one percent; (iii) shall provide that the tax described in paragraph six of subdivision (c) of section eleven hundred five of this chapter does not apply to facilities owned and operated by the city or an agency or instrumentality of the city or a public corporation the majority of whose members are appointed by the chief executive officer of the city or the legislative body of the city or both of them; (iv) shall not include any tax on receipts from, or the use of, the services

described in paragraph seven of subdivision (c) of section eleven hundred five of this chapter; (v) shall provide that, for purposes of the tax described in subdivision (e) of section eleven hundred five of this chapter, "permanent resident" means any occupant of any room or rooms in a hotel for at least one hundred eighty consecutive days with regard to the period of such occupancy; (vi) may omit the exception provided in paragraph one of subdivision (f) of section eleven hundred five of this chapter for charges to a patron for admission to, or use of, facilities for sporting activities in which the patron is to be a participant, such as bowling alleys and swimming pools; (vii) shall not provide the clothing and footwear exemption in paragraph thirty of subdivision (a) of section eleven hundred fifteen of this chapter but must exempt clothing and footwear and any item used or consumed to make or repair exempt clothing and which becomes a physical component part of that exempt clothing; (viii) shall omit the exemption provided in paragraph forty-one of subdivision (a) of section eleven hundred fifteen of this chapter; (ix) shall omit the exemption provided in subdivision (c) of section eleven hundred fifteen of this chapter insofar as it applies to fuel, gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in the production of gas, electricity, refrigeration or steam; and (x) shall omit, unless such city elects otherwise, the provision for refund or credit contained in clause six of subdivision (a) OR IN SUBDIVISION (D) of section eleven hundred nineteen of this chapter.

S 38. Paragraph 1 of subdivision (b) of section 1210 of the tax law, as separately amended by section 36 of part Y and section 11 of part GG of chapter 63 of the laws of 2000, is amended to read as follows:

(1) Or, one or more of the taxes described in subdivisions (b), (d), (e) and (f) of section eleven hundred five of this chapter, at the same uniform rate, including the transitional provisions in section eleven hundred six of this chapter covering such taxes, but not the taxes described in subdivisions (a) and (c) of section eleven hundred five of this chapter. Provided, further, that where the tax described in subdivision (b) of section eleven hundred five of this chapter is imposed, the compensating use taxes described in clauses (E), (G) and (H) of subdivision (a) of section eleven hundred ten of this chapter shall also be imposed. Provided, further, that where the taxes described in subdivision (b) of section eleven hundred five are imposed, such taxes shall omit the [exemptions provided for in subdivision (z) of section eleven hundred fifteen] PROVISION FOR REFUND OR CREDIT CONTAINED IN SUBDIVISION (D) OF SECTION ELEVEN HUNDRED NINETEEN OF THIS CHAPTER with respect to such taxes described in such subdivision (b) of section eleven hundred five unless such city or county elects to provide such [exemptions] PROVISION or, if so elected, to repeal such [exemptions] PROVISION.

S 39. Subdivision (d) of section 1210 of the tax law, as amended by section 12 of part GG of chapter 63 of the laws of 2000, is amended to read as follows:

(d) A local law, ordinance or resolution imposing any tax pursuant to this section, increasing or decreasing the rate of such tax, repealing or suspending such tax, exempting from such tax the energy sources and services described in paragraph three of subdivision (a) or of subdivision (b) of this section or changing the rate of tax imposed on such energy sources and services or providing for the credit or refund described in clause six of subdivision (a) of section eleven hundred nineteen of this chapter must go into effect only on one of the follow-

ing dates: March first, June first, September first or December first; provided, that a local law, ordinance or resolution providing for the exemption described in paragraph thirty of subdivision (a) [or providing for the exemptions described in subdivision (z)] of section eleven hundred fifteen of this chapter or repealing any such exemption [so provided and a resolution enacted pursuant to the authority of subdivision (k) of this section providing such exemption or subdivision (l) of this section providing such exemptions or repealing such exemption or exemptions so provided] OR A LOCAL LAW, ORDINANCE OR RESOLUTION PROVIDING FOR A REFUND OR CREDIT DESCRIBED IN SUBDIVISION (D) OF SECTION ELEVEN HUNDRED NINETEEN OF THIS CHAPTER OR REPEALING SUCH PROVISION SO PROVIDED must go into effect only on March first. No such local law, ordinance or resolution shall be effective unless a certified copy of such law, ordinance or resolution is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least ninety days prior to the date it is to become effective. However, the commissioner may waive and reduce such ninety-day minimum notice requirement to a mailing of such certified copy by registered or certified mail within a period of not less than thirty days prior to such effective date if the commissioner deems such action to be consistent with the commissioner's duties under section twelve hundred fifty of this article and the commissioner acts by resolution. Where the restriction provided for in section twelve hundred twenty-three of this article as to the effective date of a tax and the notice requirement provided for therein are applicable and have not been waived, the restriction and notice requirement in section twelve hundred twenty-three of this article shall also apply.

S 40. Subdivision (1) of section 1210 of the tax law is REPEALED.

S 41. Subdivision (d) of section 1211 of the tax law, as amended by chapter 577 of the laws of 1997, is amended to read as follows:

(d) A local law or resolution imposing any tax pursuant to this section, increasing or decreasing the rate of such tax, repealing or suspending such tax or providing for the credit or refund described in clause six of subdivision (a) of section eleven hundred nineteen of this chapter must go into effect only on one of the following dates: March first, June first, September first or December first, subject to further requirement as to effective date provided for in subdivision (b) of this section; PROVIDED, THAT A LOCAL LAW OR RESOLUTION PROVIDING FOR A REFUND OR CREDIT DESCRIBED IN SUBDIVISION (D) OF SECTION ELEVEN HUNDRED NINETEEN OF THIS CHAPTER OR REPEALING SUCH PROVISION SO PROVIDED MUST GO INTO EFFECT ONLY ON MARCH FIRST, SUBJECT TO FURTHER REQUIREMENT AS TO EFFECTIVE DATE PROVIDED FOR IN SUBDIVISION (B) OF THIS SECTION. No such local law or resolution shall be effective unless a certified copy of such local law or resolution is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least ninety days prior to the date it is to become effective. However, the commissioner may waive and reduce such ninety-day minimum notice requirement to a mailing of such certified copy by registered or certified mail within a period of not less than thirty days prior to such effective date if the commissioner deems such action to be consistent with the commissioner's duties under section twelve hundred fifty of this article and the commissioner acts by resolution. Where the restriction provided for in section twelve hundred twenty-three of this article as to the effective date of a tax and the notice requirement provided for therein are applicable and have not been waived, the

restriction and notice requirement in section twelve hundred twenty-three of this article shall also apply.

S 42. Subdivisions (a) and (e) of section 1212 of the tax law, as amended by section 14 of part GG and subdivision (a) as separately amended by section 37 of part Y of chapter 63 of the laws of 2000, are amended to read as follows:

(a) Any school district which is coterminous with, partly within or wholly within a city having a population of less than one hundred twenty-five thousand, is hereby authorized and empowered, by majority vote of the whole number of its school authorities, to impose for school district purposes, within the territorial limits of such school district and without discrimination between residents and nonresidents thereof, the taxes described in subdivision (b) of section eleven hundred five (but excluding the tax on prepaid telephone calling services) and the taxes described in clauses (E) and (H) of subdivision (a) of section eleven hundred ten, including the transitional provisions in subdivision (b) of section eleven hundred six of this chapter, so far as such provisions can be made applicable to the taxes imposed by such school district and with such limitations and special provisions as are set forth in this article, such taxes to be imposed at the rate of one-half, one, one and one-half, two, two and one-half or three percent which rate shall be uniform for all portions and all types of receipts and uses subject to such taxes. In respect to such taxes, all provisions of the resolution imposing them, except as to rate and except as otherwise provided herein, shall be identical with the corresponding provisions in such article twenty-eight of this chapter, including the applicable definition and exemption provisions of such article, so far as the provisions of such article twenty-eight of this chapter can be made applicable to the taxes imposed by such school district and with such limitations and special provisions as are set forth in this article. The taxes described in subdivision (b) of section eleven hundred five (but excluding the tax on prepaid telephone calling service) and clauses (E) and (H) of subdivision (a) of section eleven hundred ten, including the transitional provision in subdivision (b) of such section eleven hundred six of this chapter, may not be imposed by such school district unless the resolution imposes such taxes so as to include all portions and all types of receipts and uses subject to tax under such subdivision (but excluding the tax on prepaid telephone calling service) and clauses. Provided, however, that, where a school district imposes such taxes, such taxes shall omit the [exemptions provided for in subdivision (z) of section eleven hundred fifteen] PROVISION FOR REFUND OR CREDIT CONTAINED IN SUBDIVISION (D) OF SECTION ELEVEN HUNDRED NINETEEN OF THIS CHAPTER with respect to such taxes described in such subdivision (b) of section eleven hundred five unless such school district elects to provide such [exemptions] PROVISION or, if so elected, to repeal such [exemptions] PROVISION.

(e) A resolution imposing a tax pursuant to this section, increasing or decreasing the rate of such tax, or repealing or suspending such tax must go into effect only on one of the following dates: March first, June first, September first or December first; provided, that a resolution providing for the [exemptions described in subdivision (z) of section eleven hundred fifteen] REFUND OR CREDIT DESCRIBED IN SUBDIVISION (D) OF SECTION ELEVEN HUNDRED NINETEEN of this chapter or repealing such [exemptions so provided] PROVISION must go into effect only on March first. No such resolution shall be effective unless a certified copy of such resolution is mailed by registered or certified mail to the

commissioner at the commissioner's office in Albany at least ninety days prior to the date it is to become effective. However, the commissioner may waive and reduce such ninety-day minimum notice requirement to a mailing of such certified copy by registered or certified mail within a period of not less than thirty days prior to such effective date if the commissioner deems such action to be consistent with the commissioner's duties under section twelve hundred fifty of this article and the commissioner acts by resolution.

S 43. Notwithstanding any provision of state or local law, ordinance or resolution to the contrary:

(a) Every local enactment that elected the qualified empire zone enterprise exemptions described in subdivision (z) of section 1115 of the tax law elected by a county or city pursuant to the authority of article 29 of the tax law that is in effect on the day before this act becomes a law or was elected prior to such date to take effect at a later date is hereby amended to elect the refund or credit described in subdivision (d) of section 1119 of the tax law.

(b) A county or city that elected the qualified empire zone enterprise exemptions described in subdivision (z) of section 1115 of the tax law pursuant to the authority of article 29 of the tax law may repeal such exemptions in accord with the provisions of subdivisions (d) and (e) of section 1210 of the tax law.

S 44. Subdivision (m) of section 14 of the tax law is REPEALED.

S 45. The tax law is amended by adding a new section 17 to read as follows:

S 17. EMPIRE ZONES TAX BENEFITS REPORT. (A) THE DEPARTMENT OF TAXATION AND FINANCE MUST PUBLISH AN EMPIRE ZONES TAX BENEFITS REPORT ANNUALLY BY JANUARY THIRTY-FIRST. THE FIRST REPORT MUST BE PUBLISHED BY JANUARY THIRTY-FIRST, TWO THOUSAND THIRTEEN.

(B) (1) THE EMPIRE ZONES TAX BENEFITS REPORT MUST CONTAIN THE FOLLOWING INFORMATION ABOUT THE EMPIRE ZONE TAX CREDITS CLAIMED UNDER ARTICLES NINE, NINE-A, TWENTY-TWO, THIRTY-TWO AND THIRTY-THREE OF THIS CHAPTER DURING THE PREVIOUS CALENDAR YEAR:

(A) THE NAME OF EACH TAXPAYER CLAIMING A CREDIT; AND

(B) THE AMOUNT OF EACH CREDIT EARNED BY EACH TAXPAYER.

(2) IF THE TAXPAYER CLAIMS A EMPIRE ZONE TAX 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 THOSE CREDITS AND THE AMOUNT OF CREDIT EARNED BY EACH ENTITY MUST BE INCLUDED IN THE REPORT INSTEAD OF INFORMATION ABOUT THE TAXPAYER CLAIMING THE CREDIT.

(C) THE EMPIRE ZONES TAX BENEFITS REPORT MUST ALSO CONTAIN THE FOLLOWING INFORMATION ABOUT THE SALES AND USE TAX REFUNDS AND CREDITS CLAIMED UNDER SUBDIVISION (D) OF SECTION ELEVEN HUNDRED NINETEEN OF THIS CHAPTER DURING THE PREVIOUS CALENDAR YEAR:

(A) THE NAME OF EACH TAXPAYER CLAIMING A CREDIT OR REFUND; AND

(B) THE TOTAL AMOUNT OF CREDITS OR REFUNDS ALLOWED TO EACH TAXPAYER.

(D) THE INFORMATION INCLUDED IN THE EMPIRE ZONES TAX BENEFITS 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.

S 46. This act shall take effect immediately, provided, however, that:

(a) sections fourteen through twenty-five of this act shall apply to taxable years beginning on and after April 1, 2009;

(b) sections thirty-two and thirty-three and sections thirty-six through forty-three of this act shall take effect on the first day of the sales tax quarter next commencing at least 60 days after this act becomes a law; and provided further that any refund or credit allowed pursuant to the amendments made by section thirty-three of this act may not be paid for that quarter for at least two hundred seventy days after this act becomes a law;

(c) section thirty-five of this act shall take effect April 1, 2009; and

(d) the amendments to subdivision (u) of section 957 of the general municipal law made by section one of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith.

PART L

Section 1. Subdivision 4 of section 22 of the public housing law, as amended by section 1 of part XX-1 of chapter 57 of the laws of 2008, 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] TWENTY-FOUR 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. Paragraph (7) of subdivision (b) of section 18 of the tax law, as added by chapter 63 of the laws of 2000, is amended to read as follows:

(7) [Bond in lieu of recapture. In the case of a disposition of a building or an interest therein, the taxpayer shall be discharged from liability for any recapture under this subdivision by reason of such disposition if the taxpayer furnishes to the commissioner a bond or other security acceptable to the commissioner in an amount satisfactory to the commissioner and for the period required by the commissioner, and] (A) THE CREDIT RECAPTURE REQUIRED UNDER THIS SUBDIVISION WILL NOT APPLY SOLELY BY REASON OF THE DISPOSITION OF A BUILDING OR AN INTEREST THEREIN IF it is reasonably expected that such building will continue to be operated as an eligible low-income building for the remaining compliance period with respect to such building.

(B) STATUTE OF LIMITATIONS. IF A BUILDING (OR AN INTEREST THEREIN) IS DISPOSED OF DURING ANY TAXABLE YEAR AND THERE IS ANY REDUCTION IN THE QUALIFIED BASIS OF SUCH BUILDING WHICH RESULTS IN AN INCREASE IN TAX UNDER THIS SECTION FOR SUCH TAXABLE OR ANY SUBSEQUENT TAXABLE YEAR, THEN

(I) THE STATUTORY PERIOD FOR THE ASSESSMENT OF ANY DEFICIENCY WITH RESPECT TO SUCH INCREASE IN TAX WILL NOT EXPIRE BEFORE THE EXPIRATION OF THREE YEARS FROM THE DATE THE COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL IS NOTIFIED BY THE TAXPAYER (IN SUCH MANNER AS THE COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL MAY PRESCRIBE) OF SUCH REDUCTION IN QUALIFIED BASIS, AND

(II) SUCH DEFICIENCY MAY BE ASSESSED BEFORE THE EXPIRATION OF SUCH 3-YEAR PERIOD NOTWITHSTANDING THE PROVISIONS OF ANY OTHER LAW OR RULE OF LAW WHICH WOULD OTHERWISE PREVENT SUCH ASSESSMENT.

S 3. This act shall take effect immediately.

PART M

Section 1. Subsection (f) of section 615 of the tax law, as added by chapter 28 of the laws of 1987, is amended to read as follows:

(f) The New York itemized deduction otherwise allowable under this section shall be reduced by the sum of the amounts determined under paragraphs one [and], two AND THREE of this subsection.

(1) An amount equal to the New York itemized deduction otherwise allowable under subsection (a) of this section, multiplied by a percentage, such percentage to be determined by multiplying, for taxable years beginning in nineteen hundred eighty-eight, ten percent, and for taxable years beginning after nineteen hundred eighty-eight, twenty-five percent, by a fraction,

(A) in the case of an unmarried individual or married individual filing a separate return, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's New York adjusted gross income over one hundred thousand dollars and the denominator of which is fifty thousand dollars;

(B) in the case of a married individual filing a joint return or a surviving spouse, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's New York adjusted gross income over two hundred thousand dollars and the denominator of which is fifty thousand dollars;

(C) in the case of a head of household, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's New York adjusted gross income over one hundred fifty thousand dollars and the denominator of which is fifty thousand dollars.

(2) An amount equal to the New York itemized deduction of an individual otherwise allowable under subsection (a) of this section, multiplied by a percentage, such percentage to be determined by multiplying, for taxable years beginning in nineteen hundred eighty-eight, ten percent, and for taxable years beginning after nineteen hundred eighty-eight, twenty-five percent, by a fraction, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's New York adjusted gross income over four hundred seventy-five thousand dollars and the denominator of which is fifty thousand dollars.

(3) WITH RESPECT TO AN INDIVIDUAL WHOSE NEW YORK ADJUSTED GROSS INCOME IS OVER ONE MILLION DOLLARS, AN AMOUNT EQUAL TO THE NEW YORK ITEMIZED DEDUCTION OF AN INDIVIDUAL OTHERWISE ALLOWABLE UNDER SUBSECTION (A) OF THIS SECTION, EXCEPT THE PORTION OF THE DEDUCTION ATTRIBUTABLE TO ANY CHARITABLE CONTRIBUTION ALLOWED UNDER SECTION ONE HUNDRED SEVENTY OF THE INTERNAL REVENUE CODE, MULTIPLIED BY FIFTY PERCENT, FOR TAXABLE YEARS BEGINNING AFTER TWO THOUSAND EIGHT.

S 2. Clause (ii) of subparagraph (B) of paragraph 3 of subsection (c) of section 685 of the tax law, as amended by section 2 of part Y3 of chapter 62 of the laws of 2003, is amended to read as follows:

(ii) one hundred percent of the tax shown on the return of the individual for the preceding taxable year. Provided, however, the tax shown on such return for taxable years beginning in two thousand two shall be the tax calculated as if such years began in two thousand three. PROVIDED FURTHER, HOWEVER, THAT THE TAX SHOWN ON SUCH RETURN FOR TAXABLE YEARS BEGINNING IN TWO THOUSAND EIGHT SHALL BE CALCULATED AS IF PARAGRAPH THREE OF SUBSECTION (F) OF SECTION SIX HUNDRED FIFTEEN OF THIS ARTICLE HAS BEEN IN EFFECT FOR TAXABLE YEARS BEGINNING IN TWO THOUSAND EIGHT.

S 3. Subdivision (f) of section 11-1715 of the administrative code of the city of New York, as added by chapter 333 of the laws of 1987, is amended to read as follows:

(f) The city itemized deduction otherwise allowable under this section shall be reduced by the sum of the amounts determined under paragraphs one [and], two AND THREE of this subdivision.

(1) An amount equal to the city itemized deduction otherwise allowable under subdivision (a) of this section, multiplied by a percentage, such percentage to be determined by multiplying, for taxable years beginning in nineteen hundred eighty-eight, ten percent, and for taxable years beginning after nineteen hundred eighty-eight, twenty-five percent, by a fraction,

(A) in the case of an unmarried individual or married individual filing a separate return, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's city adjusted gross income over one hundred thousand dollars and the denominator of which is fifty thousand dollars;

(B) in the case of a married individual filing a joint return or a surviving spouse, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's city adjusted gross income over two hundred thousand dollars and the denominator of which is fifty thousand dollars;

(C) in the case of a head of household, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's city adjusted gross income over one hundred fifty thousand dollars and the denominator of which is fifty thousand dollars.

(2) An amount equal to the city itemized deduction of an individual otherwise allowable under subdivision (a) of this section, multiplied by a percentage, such percentage to be determined by multiplying, for taxable years beginning in nineteen hundred eighty-eight, ten percent, and for taxable years beginning after nineteen hundred eighty-eight, twenty-five percent, by a fraction, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's city adjusted gross income over four hundred seventy-five thousand dollars and the denominator of which is fifty thousand dollars.

(3) WITH RESPECT TO AN INDIVIDUAL WHOSE CITY ADJUSTED GROSS INCOME IS OVER ONE MILLION DOLLARS, AN AMOUNT EQUAL TO THE CITY ITEMIZED DEDUCTION OF AN INDIVIDUAL OTHERWISE ALLOWABLE UNDER SUBDIVISION (A) OF THIS SECTION, EXCEPT THE PORTION OF THE DEDUCTION ATTRIBUTABLE TO ANY CHARITABLE CONTRIBUTION ALLOWED UNDER SECTION ONE HUNDRED SEVENTY OF THE INTERNAL REVENUE CODE, MULTIPLIED BY FIFTY PERCENT, FOR TAXABLE YEARS BEGINNING AFTER TWO THOUSAND EIGHT.

S 4. Clause (ii) of subparagraph (B) of paragraph 3 of subdivision (c) of section 11-1785 of the administrative code of the city of New York, as amended by chapter 55 of the laws of 1992, is amended to read as follows:

(ii) one hundred percent of the tax shown on the return of the individual for the preceding taxable year. PROVIDED, HOWEVER, THAT THE TAX SHOWN ON SUCH RETURN FOR TAXABLE YEARS BEGINNING IN TWO THOUSAND EIGHT SHALL BE CALCULATED AS IF PARAGRAPH THREE OF SUBDIVISION (F) OF SECTION 11-1715 OF THIS CHAPTER WAS IN EFFECT FOR TAXABLE YEARS BEGINNING IN TWO THOUSAND EIGHT.

S 5. Notwithstanding the provisions of subsection (c) of section 685 of the tax law or subdivision (c) of section 11-1785 of the administrative code of the city of New York, no addition to tax as a result of an underpayment of estimated tax that is attributable to the amendments made by sections one, two and three of this act shall be imposed with respect to any installment the due date for the payment of which is prior to 45 days after the date this act shall have become a law.

S 6. Notwithstanding any provision of law to the contrary, the commissioner of taxation and finance is authorized to prescribe by regulations the method of determining the amount to be deducted and withheld from wages on account of taxes imposed by or pursuant to the authority of article 22 of the tax law in taxable years beginning in 2009 in connection with the implementation of section one of this act. The commissioner of taxation and finance may adjust the withholding tables in regard to taxable years beginning in 2009 to account for the provisions of this act. In prescribing any such regulations, the commissioner of taxation and finance may adopt rules on an emergency basis notwithstanding anything to the contrary in section 202 of the state administrative procedure act. In carrying out his duties and responsibilities under this section, the commissioner of taxation and finance may accompany any such rule making procedure with a similar procedure with respect to the taxes required to be deducted and withheld by local laws imposing taxes pursuant to the authority of articles 30, 30-A and 30-B of the tax law that take effect and become applicable in taxable years beginning in 2009, the provisions of any other law in relation to such a procedure to the contrary notwithstanding.

S 7. This act shall take effect immediately.

PART N

Section 1. Subparagraph (B) of paragraph 1 of subsection (b) of section 631 of the tax law, as amended by chapter 28 of the laws of 1987, is amended to read as follows:

(B) a business, trade, profession or occupation carried on in this state, INCLUDING INVESTMENT MANAGEMENT SERVICES PERFORMED IN EXCHANGE FOR CONSIDERATION TO A PARTNERSHIP OR OTHER ENTITY AS DEFINED IN SUBSECTION (H) OF THIS SECTION; or

S 2. Section 631 of the tax law is amended by adding a new subsection (h) to read as follows:

(H) SPECIAL RULES FOR PARTNERS PROVIDING INVESTMENT MANAGEMENT SERVICES. (1) FOR PURPOSES OF THIS SECTION, THE TERM "INVESTMENT MANAGEMENT SERVICES TO A PARTNERSHIP OR OTHER ENTITY" MEANS PROVIDING A SUBSTANTIAL QUANTITY OF ANY OF THE FOLLOWING SERVICES TO THE PARTNERSHIP OR OTHER ENTITY:

(I) ADVISING THE PARTNERSHIP AS TO THE VALUE OF ANY SPECIFIED ASSET, OR

(II) ADVISING THE PARTNERSHIP AS TO THE ADVISABILITY OF INVESTING IN, PURCHASING, OR SELLING ANY SPECIFIED ASSET, OR

(III) MANAGING, ACQUIRING, OR DISPOSING OF ANY SPECIFIED ASSET, OR

(IV) ARRANGING FINANCING WITH RESPECT TO ACQUIRING SPECIFIED ASSETS, OR

(V) ANY ACTIVITY IN SUPPORT OF ANY SERVICE DESCRIBED IN SUBPARAGRAPHS (I) THROUGH (IV) OF THIS PARAGRAPH.

(2) FOR PURPOSES OF THIS SUBSECTION, THE TERM "SPECIFIED ASSET" MEANS SECURITIES (AS DEFINED IN SECTION FOUR HUNDRED SEVENTY-FIVE (C)(2) OF THE INTERNAL REVENUE CODE WITHOUT REGARD TO THE LAST SENTENCE THEREOF), REAL ESTATE, COMMODITIES (AS DEFINED IN SECTION FOUR HUNDRED SEVENTY-FIVE (E)(2) OF THE INTERNAL REVENUE CODE), OR OPTIONS OR DERIVATIVE CONTRACTS WITH RESPECT TO SECURITIES (AS SO DEFINED), REAL ESTATE, OR COMMODITIES (AS SO DEFINED).

(3) FOR PURPOSES OF THIS SUBSECTION, SUBSECTION (D) OF THIS SECTION SHALL NOT APPLY.

S 3. Subsection (d) of section 631 of the tax law is amended to read as follows:

(d) Purchase and sale for own account.-- A nonresident, other than a dealer holding property primarily for sale to customers in the ordinary course of his trade or business, shall not be deemed to carry on a business, trade, profession or occupation in this state solely by reason of the purchase and sale of property or the purchase, sale or writing of stock option contracts, or both, for his own account EXCEPT WHEN SUBSECTION (H) OF THIS SECTION APPLIES.

S 4. Subdivision (a) of section 632 of the tax law is amended by adding new paragraph (3) to read as follows:

(3) IN DETERMINING THE 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 IS IN EFFECT AND THE S CORPORATION IS A PARTNER OF A PARTNERSHIP TO WHICH SECTION 631(H) APPLIES, THERE SHALL BE INCLUDED THE INCOME AND LOSSES FROM INTANGIBLE PERSONAL PROPERTY, INCLUDING ANNUITIES, DIVIDENDS, INTEREST AND GAINS FROM THE DISPOSITION OF INTANGIBLE PERSONAL PROPERTY ATTRIBUTABLE TO THE PARTNERSHIP OF WHICH SECTION 631(H) APPLIES. THOSE ITEMS OF INCOME AND LOSS AND DEDUCTION SHALL BE ALLOCABLE BY THE NONRESIDENT SHAREHOLDERS BY THE S CORPORATION'S BUSINESS ALLOCATION PERCENTAGE, DETERMINED UNDER THE REGULATIONS OF THE COMMISSIONER CONSISTENT WITH THE APPLICABLE METHODS AND RULES FOR ALLOCATION UNDER ARTICLE 9-A.

S 5. This act shall take effect immediately and apply to taxable years beginning on or after January 1, 2009.

PART O

Section 1. The tax law is amended by adding a new section 30 to read as follows:

S 30. RESEARCH EXPENDITURES CREDIT. (A) GENERAL. (1) 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 (E) OF THIS SECTION. THE CREDIT IS EQUAL TO TEN PERCENT OF THE EXCESS OF THE TAXPAYER'S NEW YORK RESEARCH EXPENDITURES INCURRED DURING THE TAXABLE YEAR OVER THE AVERAGE AMOUNT OF THE TAXPAYER'S NEW YORK RESEARCH EXPENDITURES INCURRED DURING THE TWO IMMEDIATELY PRECEDING TAXABLE YEARS. IF THE TAXPAYER DOES NOT HAVE TWO IMMEDIATELY PRECEDING TAXABLE YEARS, THEN THE CREDIT IS EQUAL TO TEN PERCENT OF THE EXCESS OF THE TAXPAYER'S NEW YORK RESEARCH EXPENDITURES INCURRED DURING THE TAXABLE YEAR OVER THE TAXPAYER'S NEW YORK RESEARCH EXPENDITURES INCURRED DURING THE IMMEDIATELY PRECEDING TAXABLE YEAR. THE TAXPAYER IS NOT ALLOWED TO CLAIM THIS CREDIT DURING ITS FIRST TAXABLE YEAR IN NEW YORK. IF THE TAXPAYER IS A PARTNER IN A PARTNERSHIP THAT IS INCURRING RESEARCH EXPENDITURES, THE AMOUNT OF CREDIT THE TAXPAYER WILL BE ALLOWED TO CLAIM IS EQUAL TO THE TAXPAYER'S PRO RATA SHARE OF THE CREDIT THAT THE PARTNERSHIP WOULD HAVE BEEN ALLOWED TO CLAIM IF IT WERE A TAXPAYER. ANY TAXPAYER THAT HAS RESEARCH EXPENDITURES THAT MAY BE USED IN CALCULATING BOTH THE CREDIT DESCRIBED IN THIS SECTION AND THE CREDIT FOR "QUALIFIED EMERGING TECHNOLOGY COMPANY FACILITIES, OPERATIONS AND TRAINING" ALLOWED UNDER EITHER SUBSECTION (NN) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER OR SUBDIVISION 12-G OF SECTION TWO HUNDRED TEN OF THIS CHAPTER, MAY USE THOSE EXPENDITURES TO CALCULATE EITHER THE CREDIT DESCRIBED IN THIS SECTION OR THE CREDIT ALLOWED UNDER SUCH SUBSECTION (NN) OR SUCH SUBDIVISION (12-G), BUT NOT BOTH.

(2) NEW YORK RESEARCH EXPENDITURES EQUAL THE SUM OF:
(A) THE QUALIFIED RESEARCH EXPENSES THAT WOULD QUALIFY FOR THE CREDIT ALLOWED UNDER SECTION 41 OF THE INTERNAL REVENUE CODE FOR RESEARCH ACTIVITIES CONDUCTED IN THIS STATE, AND
(B) THE GRANTS MADE FOR QUALIFIED RESEARCH BY THE TAXPAYER TO A QUALIFIED RESEARCH CONSORTIUM, AN EDUCATIONAL INSTITUTION, AND AN ORGANIZATION WHICH IS A STATE OR FEDERAL LABORATORY FOR RESEARCH ACTIVITIES TO BE CONDUCTED BY THAT ORGANIZATION IN THIS STATE.
(B) MEANING OF TERMS. THE TERMS "QUALIFIED RESEARCH EXPENSES", "QUALIFIED RESEARCH", "QUALIFIED RESEARCH CONSORTIUM", AND "EDUCATIONAL INSTITUTION" SHALL HAVE THE SAME MEANINGS AS WHEN USED IN SECTION 41 OF THE INTERNAL REVENUE CODE, AS SUCH SECTION OF SUCH CODE APPLIED ON DECEMBER THIRTY-FIRST, TWO THOUSAND EIGHT.
(C) RESEARCH EXPENDITURES CREDIT CERTIFICATES. TO BE ELIGIBLE FOR THE CREDIT ALLOWED BY THIS SECTION, A TAXPAYER SHALL OBTAIN A RESEARCH EXPENDITURES CREDIT CERTIFICATE FROM THE URBAN DEVELOPMENT CORPORATION. A TAXPAYER SHALL APPLY TO THE URBAN DEVELOPMENT CORPORATION BY JANUARY THIRTY-FIRST OF EACH YEAR WITH RESPECT TO NEW YORK RESEARCH EXPENDITURES INCURRED DURING THE IMMEDIATELY PRECEDING TAXABLE YEAR THAT ENDED ON OR BEFORE DECEMBER THIRTY-FIRST OF THE PRECEDING YEAR. THE URBAN DEVELOPMENT CORPORATION SHALL ISSUE RESEARCH EXPENDITURES CREDIT CERTIFICATES BY MARCH THIRTY-FIRST OF EACH YEAR, PURSUANT TO PROCEDURES SPECIFIED IN RULES AND REGULATIONS PROMULGATED BY SUCH CORPORATION. EACH RESEARCH EXPENDITURES CREDIT CERTIFICATE SHALL SPECIFY THE MAXIMUM AMOUNT OF CREDIT THAT THE TAXPAYER IS ALLOWED TO CLAIM FOR THE TAXABLE YEAR TO WHICH THE CREDIT CERTIFICATE RELATES. FOR THE STATE FISCAL YEAR COMMENCING APRIL FIRST, TWO THOUSAND NINE, THE URBAN DEVELOPMENT CORPORATION SHALL NOT ISSUE, IN THE AGGREGATE, MORE THAN TWENTY MILLION DOLLARS OF RESEARCH EXPENDITURES CREDIT CERTIFICATES. FOR THE STATE FISCAL YEAR COMMENCING APRIL FIRST, TWO THOUSAND TEN, THE AGGREGATE AMOUNT OF SUCH CERTIFICATES SHALL NOT BE MORE THAN THIRTY-THREE MILLION DOLLARS. FOR THE STATE FISCAL YEAR COMMENCING APRIL FIRST, TWO THOUSAND ELEVEN AND FOR EACH FISCAL YEAR THEREAFTER, THE AGGREGATE OF SUCH CERTIFICATES SHALL NOT BE MORE THAN FORTY-FIVE MILLION DOLLARS.
(D) RESEARCH EXPENDITURES CREDIT REPORT. (1) THE DEPARTMENT SHALL PUBLISH A RESEARCH EXPENDITURES CREDIT REPORT ANNUALLY BY JANUARY THIRTY-FIRST. THE FIRST REPORT SHALL BE PUBLISHED BY JANUARY THIRTY-FIRST, TWO THOUSAND THIRTEEN.
(2)(A) THE RESEARCH EXPENDITURES CREDIT REPORT SHALL CONTAIN THE FOLLOWING INFORMATION ABOUT THE CREDITS CLAIMED UNDER THIS SECTION DURING THE PREVIOUS CALENDAR YEAR:
(I) THE NAME OF EACH TAXPAYER CLAIMING A RESEARCH CREDIT; AND
(II) THE AMOUNT OF RESEARCH CREDIT EARNED BY EACH TAXPAYER;
(B) IF THE TAXPAYER CLAIMS A CREDIT PURSUANT TO THIS SECTION BECAUSE THE TAXPAYER IS A MEMBER OF A LIMITED LIABILITY COMPANY TREATED AS A PARTNERSHIP FOR FEDERAL TAX PURPOSES, 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 ASSOCIATED WITH ANY OF THOSE CREDITS AND THE AMOUNT OF CREDIT ASSOCIATED WITH EACH ENTITY SHALL BE INCLUDED IN THE REPORT INSTEAD OF INFORMATION ABOUT THE TAXPAYER CLAIMING THE CREDIT.
(3) THE INFORMATION INCLUDED IN THE RESEARCH EXPENDITURES CREDIT REPORT SHALL 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.

(E) 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 2. Section 210 of the tax law is amended by adding a new subdivision 41 to read as follows:

41. RESEARCH EXPENDITURES CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL 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 CREDITS 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 SHALL 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 SHALL BE PAID THEREON.

S 3. Section 606 of the tax law is amended by adding a new subsection (qq) to read as follows:

(QQ) RESEARCH EXPENDITURES CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO THE EXTENT ALLOWED UNDER SECTION THIRTY 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 SHALL 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 SHALL BE PAID THEREON.

S 4. Subparagraph (B) of paragraph (1) of subsection (i) of section 606 of the tax law, as amended by section 2 of part ZZ-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(B) shall be treated as the owner of a new business with respect to such share if the corporation qualifies as a new business pursuant to paragraph (j) of subdivision twelve of section two hundred ten of this chapter.

With respect to the following credit under this section:	The corporation's credit base under section two hundred ten or section fourteen hundred fifty-six of this chapter is:
Investment tax credit under subsection (a)	Investment credit base or qualified rehabilitation expenditures under subdivision twelve of section two hundred ten
Empire zone investment tax credit under subsection (j)	Cost or other basis under subdivision twelve-B

	of section two hundred ten
Empire zone wage tax credit under subsection (k)	Eligible wages under subdivision nineteen of section two hundred ten or subsection (e) of section fourteen hundred fifty-six
Empire zone capital tax credit under subsection (l)	Qualified investments and contributions under subdivision twenty of section two hundred ten or subsection (d) of section fourteen hundred fifty-six
Agricultural property tax credit under subsection (n)	Allowable school district property taxes under subdivision twenty-two of section two hundred ten
Credit for employment of persons with disabilities under subsection (o)	Qualified first-year wages or qualified second-year wages under subdivision twenty-three of section two hundred ten or subsection (f) of section fourteen hundred fifty-six
Employment incentive credit under subsection (a-1)	Applicable investment credit base under subdivision twelve-D of section two hundred ten
Empire zone employment incentive credit under subsection (j-1)	Applicable investment credit under subdivision twelve-C of section two hundred ten
Alternative fuels credit under subsection (p)	Cost under subdivision twenty-four of section two hundred ten
Qualified emerging technology company employment credit under subsection (q)	Applicable credit base under subdivision twelve-E of section two hundred ten
Qualified emerging technology company capital tax credit under subsection (r)	Qualified investments under subdivision twelve-F of section two hundred ten

Credit for purchase of an automated external defibrillator under subsection (s)	Cost of an automated external defibrillator under subdivision twenty-five of section two hundred ten or subsection (j) of section fourteen hundred fifty-six
Low-income housing credit under subsection (x)	Credit amount under subdivision thirty of section two hundred ten or subsection (l) of section fourteen hundred fifty-six
Credit for transportation improvement contributions under subsection (z)	Amount of credit under subdivision thirty-two of section two hundred ten or subsection (n) of section fourteen hundred fifty-six
QEZE credit for real property taxes under subsection (bb)	Amount of credit under subdivision twenty-seven of section two hundred ten or subsection (o) of section fourteen hundred fifty-six
QEZE tax reduction credit under subsection (cc)	Amount of benefit period factor, employment increase factor and zone allocation factor (without regard to pro ration) under subdivision twenty-eight of section two hundred ten or subsection (p) of section fourteen hundred fifty-six and amount of tax factor as determined under subdivision (f) of section sixteen
Green building credit under subsection (y)	Amount of green building credit under subdivision thirty-one of section two hundred ten or subsection (m) of section fourteen hundred fifty-six
Credit for long-term care insurance premiums under subsection (aa)	Qualified costs under subdivision twenty-five-a of section two hundred ten or subsection (k) of section fourteen hundred fifty-six
Brownfield redevelopment credit under subsection (dd)	Amount of credit under subdivision thirty-three of section two hundred ten or subsection (q) of section fourteen hundred

	fifty-six
Remediated brownfield credit for real property taxes for qualified sites under subsection (ee)	Amount of credit under subdivision thirty-four of section two hundred ten or subsection (r) of section fourteen hundred fifty-six
Environmental remediation insurance credit under subsection (ff)	Amount of credit under subdivision thirty-five of section two hundred ten or subsection (s) of section fourteen hundred fifty-six
Empire state film production credit under subsection (gg)	Amount of credit for qualified production costs in production of a qualified film under subdivision thirty-six of section two hundred ten
Qualified emerging technology company facilities, operations and training credit under subsection (nn)	Qualifying expenditures and development activities under subdivision twelve-G of section two hundred ten
Security training tax credit under subsection (ii)	Amount of credit under subdivision thirty-seven of section two hundred ten or under subsection (t) of section fourteen hundred fifty-six
Credit for qualified fuel cell electric generating equipment expenditures under subsection (g-2)	Amount of credit under subdivision thirty-seven of section two hundred ten or subsection (t) of section fourteen hundred fifty-six
Empire state commercial production credit under subsection (jj)	Amount of credit for qualified production costs in production of a qualified commercial under subdivision thirty-eight of section two hundred ten
Biofuel production tax credit under subsection (jj)	Amount of credit under subdivision thirty-eight of section two hundred ten
Clean heating fuel credit under subsection (mm)	Amount of credit under subdivision thirty-nine of section two hundred ten

Credit for rehabilitation of historic properties under subsection (oo)	Amount of credit under subdivision forty of subsection two hundred ten
Credit for companies who provide transportation to individuals with disabilities under subsection (oo)	Amount of credit under subdivision forty of section two hundred ten
RESEARCH EXPENDITURES CREDIT UNDER SUBSECTION (QQ)	AMOUNT OF CREDIT UNDER SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN OR UNDER SUBSECTION (U) OF SECTION FOURTEEN HUNDRED FIFTY-SIX

S 5. Section 1456 of the tax law is amended by adding a new subsection (u) to read as follows:

(U) RESEARCH EXPENDITURES CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(2) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL 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 CREDITS 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 SHALL 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 SHALL BE PAID THEREON.

S 6. Section 1511 of the tax law is amended by adding a new subdivision (y) to read as follows:

(Y) RESEARCH EXPENDITURES CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY OF THIS CHAPTER, AGAINST THE TAXES IMPOSED BY THIS ARTICLE.

(2) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM TAX FIXED BY THIS ARTICLE. HOWEVER, IF THE AMOUNT OF CREDITS 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 SHALL 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 SHALL BE PAID THEREON.

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

(I) ANY TAXPAYER THAT HAS RESEARCH EXPENDITURES THAT MAY BE USED IN CALCULATING BOTH THE CREDIT DESCRIBED IN THIS SUBDIVISION AND THE "RESEARCH EXPENDITURES CREDIT" DESCRIBED IN SECTION THIRTY OF THIS CHAPTER, MAY ELECT TO USE THOSE EXPENDITURES TO CALCULATE EITHER THE CREDIT ALLOWED UNDER THIS SUBDIVISION OR THE CREDIT DESCRIBED IN SECTION THIRTY OF THIS CHAPTER, BUT NOT BOTH.

S 8. Subsection (nn) of section 606 of the tax law is amended by adding a new paragraph (9) to read as follows:

(9) ANY TAXPAYER THAT HAS RESEARCH EXPENDITURES THAT MAY BE USED IN CALCULATING BOTH THE CREDIT DESCRIBED IN THIS SUBSECTION AND THE "RESEARCH EXPENDITURES CREDIT" DESCRIBED IN SECTION THIRTY OF THIS CHAPTER, MAY USE THOSE EXPENDITURES TO CALCULATE EITHER THE CREDIT ALLOWED UNDER THIS SUBSECTION OR THE CREDIT DESCRIBED IN SECTION THIRTY OF THIS CHAPTER, BUT NOT BOTH.

S 9. The chairman of the urban development corporation, after consulting with the commissioner of taxation and finance and the director of the division of the budget shall promulgate regulations by October 31, 2009 to establish procedures for the awarding and allocation of the research expenditures credits allowed under section thirty of the tax law, as added by section one of this act. Such rules and regulations shall include a description of the standards to be used to evaluate the applications, the type of documentation to be provided by taxpayers to substantiate the taxpayer's New York research expenditures, and any other provisions the chairman determines to be necessary. Notwithstanding any other provisions to the contrary in the state administrative procedure act, the rules and regulations described in this section shall be adopted on an emergency basis if necessary.

S 10. The chairman of the urban development corporation shall publish a report on the research expenditures credit and the research expenditures credit certificate issuance process on or before January first of each year. Such report shall include, but not be limited to, the following information:

(a) the total number of recipients and the total amount of credits awarded;

(b) the name of every recipient of a research credit certificate; and

(c) the amount of credit awarded to each recipient of a research credit certificate.

The report shall be issued no later than 60 days after the conclusion of the research expenditures credit allocation process.

S 11. The chairman of the urban development corporation shall not issue research expenditures credit certificates for the credit for increasing research activities allowed under section 30 of the tax law, as added by section one of this act, until the director of the division of the budget, in consultation with the commissioner of taxation and finance, validates that the Empire Zone Program reforms enacted as part of the 2009-2010 Executive Budget have resulted in $100 million in savings for the 2009-10 state fiscal year.

S 12. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2009; provided, however that the empire state film production credit under subsection (gg), the empire state commercial production credit under subsection (jj) and the credit for companies who provide transportation to individuals with disabilities under subsection (oo) of section 606 of the tax law contained in section four of this act shall expire on the same date as provided in section 9 of part P of chapter 60 of the laws of 2004, as amended, section 10 of part V of chapter 62 of the laws of 2006, as amended and section 5 of chapter 522 of the laws of 2006, as amended, respectively.

PART P

Section 1. Paragraph (b) 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:

(b) An eligible taxpayer shall (i) have no more than one hundred full-time employees, of which at least seventy-five percent are employed in New York state, EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, (ii) have a ratio of research and development funds to net sales, as referred to in section thirty-one hundred two-e of the public authorities law, which equals or exceeds six percent during its taxable year, and (iii) have gross revenues, along with the gross revenues of its affiliates and related members, not exceeding twenty million dollars for the taxable year immediately preceding the year the taxpayer is allowed a credit under this subdivision. For purposes of this paragraph, the term "related member" shall have the same meaning as set forth in [clauses] CLAUSE (A) [and (B)] of subparagraph one of paragraph (o) of subdivision nine of section two hundred eight of this article, and the term "affiliates" shall mean those corporations that are members of the same affiliated group (as defined in section fifteen hundred four of the internal revenue code) as the taxpayer. FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, EMPLOYEES WHO ARE EMPLOYED OUTSIDE THE UNITED STATES DURING THE TAXABLE YEAR CANNOT BE CONSIDERED; A TAXPAYER THAT MEETS THE EMPLOYMENT REQUIREMENTS IN SUBPARAGRAPH (I) OF THIS PARAGRAPH IN THE FIRST YEAR IN WHICH THE CREDIT ALLOWED BY THIS SUBDIVISION IS CLAIMED WILL NOT BE CONSIDERED INELIGIBLE SOLELY AS A RESULT OF HAVING MORE THAN ONE HUNDRED FULL-TIME EMPLOYEES IN OTHER TAXABLE YEARS IN WHICH THE CREDIT IS CLAIMED, PROVIDED AT LEAST SEVENTY-FIVE PERCENT OF THE FULL-TIME EMPLOYEES IN THE OTHER TAXABLE YEARS ARE EMPLOYED IN NEW YORK STATE; AND AN INDIVIDUAL WHO IS A PARTNER IN A PARTNERSHIP THAT IS A QUALIFIED EMERGING TECHNOLOGY COMPANY WILL BE CONSIDERED A FULL-TIME EMPLOYEE IF THE INDIVIDUAL PARTNER PARTICIPATES IN THE PARTNERSHIP ON A FULL-TIME BASIS DURING THE TAXABLE YEAR AND THE INVOLVEMENT OF THE INDIVIDUAL PARTNER IN THE ACTIVITIES OF THE PARTNERSHIP DURING THE TAXABLE YEAR SATISFIES THE REQUIREMENTS FOR MATERIAL PARTICIPATION FOR THE SAME TAXABLE YEAR WITHIN THE MEANING OF SUBSECTION (H) OF SECTION 469 OF THE INTERNAL REVENUE CODE.

S 2. Subparagraphs (i) and (iii) of paragraph 2 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, are amended to read as follows:

(i) have no more than one hundred full-time employees, of which at least seventy-five percent are employed in New York state, EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH,

(iii) have gross revenues, along with the gross revenues of its affiliates and related members, not exceeding twenty million dollars for the taxable year immediately preceding the year the taxpayer is allowed a credit under this subsection. For purposes of this paragraph, the term "related member" shall have the same meaning as set forth in [clauses] CLAUSE (A) [and (B)] of subparagraph one of paragraph (o) of subdivision 9 of section two hundred eight of this chapter, and the term "affiliates" shall mean those corporations that are members of the same affiliated group (as defined in section fifteen hundred four of the internal revenue code) as the taxpayer. FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, EMPLOYEES WHO ARE EMPLOYED OUTSIDE THE UNITED STATES DURING THE TAXABLE YEAR CANNOT BE CONSIDERED; A TAXPAYER THAT MEETS THE EMPLOYMENT REQUIREMENTS IN SUBPARAGRAPH (I) OF THIS PARAGRAPH IN THE FIRST YEAR IN WHICH THE CREDIT ALLOWED BY THIS SUBSECTION IS CLAIMED WILL NOT BE CONSIDERED INELIGIBLE SOLELY AS A RESULT OF HAVING MORE THAN ONE

HUNDRED FULL-TIME EMPLOYEES IN OTHER TAXABLE YEARS IN WHICH THE CREDIT IS CLAIMED, PROVIDED AT LEAST SEVENTY-FIVE PERCENT OF THE FULL-TIME EMPLOYEES IN THE OTHER TAXABLE YEARS ARE EMPLOYED IN NEW YORK STATE; AND AN INDIVIDUAL WHO IS A PARTNER IN A PARTNERSHIP THAT IS A QUALIFIED EMERGING TECHNOLOGY COMPANY WILL BE CONSIDERED A FULL-TIME EMPLOYEE IF THE INDIVIDUAL PARTNER PARTICIPATES IN THE PARTNERSHIP ON A FULL-TIME BASIS DURING THE TAXABLE YEAR AND THE INVOLVEMENT OF THE INDIVIDUAL PARTNER IN THE ACTIVITIES OF THE PARTNERSHIP DURING THE TAXABLE YEAR SATISFIES THE REQUIREMENTS FOR MATERIAL PARTICIPATION FOR THE SAME TAXABLE YEAR WITHIN THE MEANING OF SUBSECTION (H) OF SECTION 469 OF THE INTERNAL REVENUE CODE.

S 3. This act shall take effect immediately and apply to taxable years beginning on or after January 1, 2010.

PART Q

Section 1. Subdivision (b) of section 1101 of the tax law is amended by adding a new paragraph 27-a to read as follows:

(27-A) (I) "CABLE SERVICE" MEANS THE FURNISHING TO PURCHASERS OF PROGRAMS AND OTHER CONTENT FROM ONE OR MORE TELEVISION OR RADIO STATIONS OR NETWORKS OR OTHER PERSONS, BY MEANS OF WIRE, CABLE, FIBER-OPTIC, LASER, MICROWAVE, RADIO WAVE, SATELLITE, OR ANY OTHER MEANS.

(II) "DIRECT-TO-HOME SATELLITE SERVICE" MEANS ONLY PROGRAMMING TRANSMITTED OR BROADCAST BY SATELLITE DIRECTLY TO THE SUBSCRIBERS' PREMISES WITHOUT THE USE OF GROUND RECEIVING OR DISTRIBUTION EQUIPMENT, EXCEPT AT THE SUBSCRIBERS' PREMISES OR IN THE UPLINK PROCESS TO THE SATELLITE.

S 2. Subdivision (c) of section 1105 of the tax law is amended by adding a new paragraph 12 to read as follows:

(12) (A) CABLE SERVICE, INCLUDING ANY TANGIBLE PERSONAL PROPERTY AND ANY SERVICE OR OTHER CONTENT PROVIDED WITH THE CABLE SERVICE, WHETHER OR NOT FOR A SEPARATE CHARGE, BUT NOT INCLUDING DIRECT-TO-HOME SATELLITE SERVICE, INTERNET ACCESS SERVICE AS DEFINED IN NOTE SECTION 1101 OF SECTION 151 OF TITLE 47 OF THE UNITED STATES CODE, OR TELEPHONY OR TELEGRAPHY OR TELEPHONE OR TELEGRAPH SERVICE OF WHATEVER NATURE.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, IF CABLE SERVICE IS RECEIVED IN A MOTOR VEHICLE OR VESSEL, THE SERVICE IS SOURCED TO THE PURCHASER'S "PLACE OF PRIMARY USE," AS THAT TERM IS DEFINED IN PARAGRAPH TWENTY-SIX OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED ONE OF THIS ARTICLE, EXCEPT THAT: (I) THE TERM "MOBILE TELECOMMUNICATIONS CUSTOMER" MEANS "PURCHASER"; AND (II) SUBPARAGRAPH (II) OF SUCH PARAGRAPH DOES NOT APPLY.

S 3. The tax law is amended by adding a new section 1105-E to read as follows:

S 1105-E. STATE TAX ON DIRECT-TO-HOME SATELLITE SERVICE. (A) A TAX IS HEREBY IMPOSED AND MUST BE PAID ON DIRECT-TO-HOME SATELLITE SERVICE, AT A RATE EQUAL TO THE SUM OF: (1) THE STATE RATE IN THE OPENING PARAGRAPH OF SECTION ELEVEN HUNDRED FIVE OF THIS PART; (2) THE RATE IN SUBDIVISION (A) OF SECTION ELEVEN HUNDRED NINE OF THIS PART IF THE SERVICE IS DELIVERED WITHIN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT ESTABLISHED PURSUANT TO SECTION TWELVE HUNDRED SIXTY-TWO OF THE PUBLIC AUTHORITIES LAW; AND (3) THE SUM OF THE LOCAL RATES OF TAX DESCRIBED IN SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OR SECTION TWELVE HUNDRED ELEVEN OF THIS CHAPTER IMPOSED PURSUANT TO THE AUTHORITY OF SUBPART B OF PART I OF ARTICLE TWENTY-NINE OF THIS CHAPTER IN THE PLACE WHERE THE SERVICE IS DELIVERED.

(B) DEPOSIT AND DISTRIBUTION OF REVENUE. AFTER SUBTRACTING THE AMOUNT DISPOSED OF PURSUANT TO SUBDIVISION (H) OF SECTION TWELVE HUNDRED SIXTY-ONE OF THIS CHAPTER AND THE AMOUNT DISPOSED OF UNDER SUBDIVISION (I) OF SECTION ELEVEN HUNDRED NINE OF THIS PART, ANY REMAINING TAXES, INTEREST AND PENALTIES COLLECTED OR RECEIVED BY THE COMMISSIONER FROM THE TAX IMPOSED BY THIS SECTION WILL BE DISPOSED OF IN ACCORDANCE WITH SECTION ONE HUNDRED SEVENTY-ONE-A OF THIS CHAPTER AS PROVIDED IN SECTION ELEVEN HUNDRED FORTY-EIGHT OF THIS ARTICLE.

(C) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE TAXES IMPOSED BY THIS SECTION WILL BE IDENTICAL TO, AND ADMINISTERED AND COLLECTED IN A LIKE MANNER AS, THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE. ALL THE PROVISIONS OF THIS ARTICLE, INCLUDING THE DEFINITION AND EXEMPTION PROVISIONS AND THE PROVISIONS RELATING OR APPLICABLE TO THE ADMINISTRATION, COLLECTION AND DISPOSITION OF THE TAXES IMPOSED BY THAT SECTION WILL APPLY TO THE TAX IMPOSED BY THIS SECTION SO FAR AS THOSE PROVISIONS CAN BE MADE APPLICABLE TO THE TAX IMPOSED BY THIS SECTION, WITH SUCH MODIFICATIONS AS MAY BE NECESSARY IN ORDER TO ADAPT THE LANGUAGE OF THOSE PROVISIONS TO THE TAX IMPOSED BY THIS SECTION. THOSE PROVISIONS WILL APPLY WITH THE SAME FORCE AND EFFECT AS IF THE LANGUAGE OF THOSE PROVISIONS HAD BEEN SET FORTH IN FULL IN THIS SECTION, EXCEPT TO THE EXTENT THAT ANY OF THOSE PROVISIONS IS EITHER INCONSISTENT WITH A PROVISION OF THIS SECTION OR IS NOT RELEVANT TO THE TAX IMPOSED BY THIS SECTION. FOR PURPOSES OF THIS SECTION, ANY REFERENCE IN THIS CHAPTER TO A TAX OR THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE WILL BE DEEMED ALSO TO REFER TO THE TAX IMPOSED BY THIS SECTION UNLESS A DIFFERENT MEANING IS CLEARLY REQUIRED.

(D) SEPARATE STATEMENT OF TAX. EVERY PERSON REQUIRED TO COLLECT THE TAX IMPOSED BY THIS SECTION SHALL STATE, CHARGE, AND SHOW THAT TAX SEPARATELY FROM THE PRICE OR CHARGE, AND ALSO SEPARATELY FROM ANY OTHER TAX IMPOSED BY THIS ARTICLE OR OTHER LAW ON ANY SALES SLIP, INVOICE, RECEIPT OR OTHER STATEMENT OR MEMORANDUM OF THE PRICE OR CHARGE, PAID OR PAYABLE, GIVEN TO THE CUSTOMER.

(E) TAXES TO BE IN ADDITION TO ANY OTHER. THE TAXES IMPOSED BY THIS SECTION SHALL BE IN ADDITION TO ANY OTHER TAX IMPOSED OR AUTHORIZED TO BE IMPOSED BY THIS CHAPTER OR OTHER LAW.

(F) TAXES NOT TO APPLY TO OTHER IMPOSITIONS. THE TAXES IMPOSED BY THIS SECTION SHALL NOT APPLY TO THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN, ELEVEN HUNDRED EIGHT, OR ELEVEN HUNDRED NINE OF THIS ARTICLE OR TO TAXES AUTHORIZED TO BE IMPOSED BY ARTICLE TWENTY-NINE OF THIS CHAPTER.

S 4. Section 1109 of the tax law is amended by adding a new subdivision (i) to read as follows:

(I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE PORTION OF THE TAXES, INTEREST AND PENALTIES COLLECTED OR RECEIVED BY THE COMMISSIONER FROM THE TAX IMPOSED BY SECTION ELEVEN HUNDRED FIVE-E OF THIS PART IN THE AREA OF THE STATE WITHIN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT BASED ON THE RATE OF TAX IN EFFECT IN SUBDIVISION (A) OF THIS SECTION, WILL BE DISPOSED OF IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION (D) OF THIS SECTION.

S 5. Clause (ii) of paragraph 1 of subdivision (b) of section 1116 of the tax law, as amended by section 1 of part KK-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(ii) sales, other than for resale, of services described in subdivision (b) or paragraph five OR TWELVE of subdivision (c) of section eleven hundred five of this article OR IN SECTION ELEVEN HUNDRED FIVE-E OF THIS ARTICLE by that organization, whether or not at a shop or store;

S 6. Section 1148 of the tax law, as amended by chapter 3 of the laws of 2004, is amended to read as follows:

S 1148. Deposit and disposition of revenue. All taxes, interest and penalties collected or received by the commissioner under this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter; provided however, the comptroller shall on or before the twelfth day of each month, pay all such taxes, interest and penalties collected under this article and remaining to the comptroller's credit in such banks, banking houses or trust companies at the close of business on the last day of the preceding month, into the general fund of the state treasury, except as otherwise provided in sections ninety-two-d and ninety-two-r of the state finance law [and], sections eleven hundred two, eleven hundred four and eleven hundred nine of this article, AND SUBDIVISION (B) OF SECTION ELEVEN HUNDRED FIVE-E OF THIS ARTICLE.

S 7. Section 1261 of the tax law is amended by adding a new subdivision (h) to read as follows:

(H) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, A PORTION OF THE TAXES, INTEREST AND PENALTIES COLLECTED OR RECEIVED BY THE COMMISSIONER FROM THE TAX IMPOSED BY SECTION ELEVEN HUNDRED FIVE-E OF THIS CHAPTER WILL BE ALLOCATED TO EACH LOCALITY THAT IMPOSES THE TAXES DESCRIBED IN SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OR SECTION TWELVE HUNDRED ELEVEN OF THIS ARTICLE BASED ON THE SUM OF THE LOCAL RATES OF TAX IN EFFECT IN THAT LOCALITY IMPOSED PURSUANT TO THE AUTHORITY OF SUBPART B OF PART I OF THIS ARTICLE. THE AMOUNT TO BE ALLOCATED TO EACH LOCALITY WILL BE CERTIFIED BY THE COMMISSIONER IN ACCORDANCE WITH SUBDIVISION (A) OF THIS SECTION AND, AFTER RESERVING AN AMOUNT FOR REFUNDS AND THE REASONABLE COSTS OF THE COMMISSIONER IN ACCORDANCE WITH SUBDIVISION (B) OF THIS SECTION, THE REMAINDER WILL BE NET COLLECTIONS AND WILL BE DISTRIBUTED TO EACH LOCALITY IN ACCORDANCE WITH THE PROVISIONS OF THIS PART APPLICABLE TO THE RESPECTIVE LOCALITY.

S 8. In accordance with section 1105-E of the tax law, as added by section three of this act, the legislature intends that the tax on direct-to-home satellite service be imposed at the same total rate as similar services are taxed under article 28 and pursuant to the authority of article 29 of the tax law, and that, consistent with the provisions of section 152 of title 47 of the United States code, the state revenues derived from the tax on direct-to-home satellite service be shared with each locality that imposes the taxes described in subdivision (a) of section 1210 or 1211 of the tax law as provided in this act. However, the legislature further intends that, if the state rate set forth in such section 1105-E is invalidated or reduced by a court of final, competent jurisdiction, revenues from the sales tax imposed on direct-to-home satellite service must be preserved by imposing a uniform state rate of sales tax on that service. Therefore, if a court of final, competent jurisdiction adjudges the state sales tax rate set forth in such section 1105-E to be invalid, the state rate imposed on direct-to-home satellite service will be eight and three-quarters percent and that rate will apply statewide. The taxes, interest and penalties collected or received by the commissioner of taxation and finance from such statewide rate, after reserving an amount for refunds and the reasonable costs of the commissioner will be allocated based on the respective rates among the state and any county and city imposing general sales taxes pursuant to the authority of subdivision (a) of section 1210 of the tax law and any school district in which the taxes authorized by section 1211 of the tax law are in effect, and if the taxes imposed by

section 1109 of the tax law are in effect where the service is delivered, will be deposited with the mass transit operating assistance fund as provided in such section 1109. Moreover, the state rate provided for in this section will, in that event, take effect on the first day of the first month following the date the judgment of the court becomes final and will apply to sales occurring and services rendered on or after that date, in accordance with the applicable transitional provisions in section 1106 of the tax law.

S 9. This act shall take effect on June 1, 2009, and shall apply to sales occurring and services rendered on or after that date in accordance with the applicable transitional provisions in sections 1106 and 1217 of the tax law.

PART R

Section 1. Subdivisions 1 and 19 of section 470 of the tax law, as amended by section 1 of part MM1 of chapter 57 of the laws of 2008, are amended to read as follows:

1. "Cigarette." (a) Any roll for smoking made wholly or in part of tobacco or of any other substance wrapped in paper or in any other substance not containing tobacco, and (b) any roll for smoking made wholly or in part of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this subdivision. [However, a roll will not be considered to be a cigarette for purposes of paragraph (b) of this subdivision if it is not treated as a cigarette for federal excise tax purposes under the applicable federal statute in effect on April first, two thousand eight.]

19. "Cigar." Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco that is a cigarette as defined in subdivision one of this section). [However, a roll will not be considered to be a cigar for purposes of this subdivision if it is not treated as a cigar for federal excise tax purposes under the applicable federal statute in effect on April first, two thousand eight.]

S 2. Paragraph (a) of subdivision 1 of section 471-b of the tax law, as amended by section 2 of part QQ1 of chapter 57 of the laws of 2008, is amended and a new paragraph (c) is added to read as follows:

(a) Such tax on tobacco products other than snuff AND CIGARS shall be at the rate of thirty-seven percent of the wholesale price, and is intended to be imposed only once upon the sale of any tobacco products other than snuff AND CIGARS.

(C) SUCH TAX ON CIGARS SHALL BE AT THE RATE OF FIFTY CENTS PER CIGAR.

S 3. Section 471-c of the tax law, as separately amended by section 3 of part QQ1 of chapter 57 and chapter 552 of the laws of 2008, is amended to read as follows:

S 471-c. Use tax on tobacco products. (A) There is hereby imposed and shall be paid a tax on all tobacco products used in the state by any person, except that no such tax shall be imposed (1) if the tax provided in section four hundred seventy-one-b of this article is paid, or (2) on the use of tobacco products which are exempt from the tax imposed by said section, or (3) on the use of two hundred fifty cigars or less, or five pounds or less of tobacco other than roll-your-own tobacco, or thirty-six ounces or less of roll-your-own tobacco brought into the state on, or in the possession of, any person.

[(a)] (I) Such tax on tobacco products other than snuff AND CIGARS shall be at the rate of thirty-seven percent of the wholesale price.

[(b)] (II) Such tax on snuff shall be at the rate of ninety-six cents per ounce and a proportionate rate on any fractional parts of an ounce, provided that cans or packages of snuff with a net weight of less than one ounce shall be taxed at the equivalent rate of cans or packages weighing one ounce. Such tax shall be computed based on the net weight as listed by the manufacturer.

(III) SUCH TAX ON CIGARS SHALL BE AT THE RATE OF FIFTY CENTS PER CIGAR.

(B) 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 the 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 4. Paragraphs (e) and (f) of subdivision 2 of section 480 of the tax law, as amended by chapter 744 of the laws of 1990, are amended and a new paragraph (g) is added to read as follows:

(e) [Any] SUCH APPLICANT OR ANY controlling person [of such applicant] has committed any of the acts specified in subdivision three of this section within the preceding five years, [or]

(f) Such applicant or any controlling person has been finally determined to have violated any of the provisions of this article or article twenty-A of this chapter, or any rule or regulation adopted pursuant to this article or article twenty-A of this chapter[.], OR

(G) AFTER CAREFULLY EVALUATING THE CHARACTER, FITNESS, EXPERIENCE, MATURITY AND FINANCIAL RESPONSIBILITY OF THE APPLICANT OR ANY CONTROLLING PERSON, THE COMMISSIONER DETERMINES THAT THE PUBLIC CONVENIENCE AND ADVANTAGE WOULD NOT BE SERVED BY APPROVAL OF THE APPLICATION.

S 5. Subparagraphs (ii), (iii) and (iv) of paragraph (b) of subdivision 3 of section 480 of the tax law, subparagraphs (ii) and (iii) as added by chapter 860 of the laws of 1987 and subparagraph (iv) as amended by chapter 61 of the laws of 1989, are amended and two new subparagraphs (v) and (vi) are added to read as follows:

(ii) Has been convicted in a court of competent jurisdiction, either within or without the state, of a [felony] CRIME, bearing on the licensee's duties and obligations under this chapter,

(iii) Has impersonated any person represented to be a wholesale dealer under this article but not in fact licensed under this section, [or]

(iv) Has knowingly aided and abetted the sale of cigarettes or tobacco products by a person which such licensee or controlling person knows (A) has not been licensed by the commissioner [of taxation and finance] and (B) is a wholesale dealer pursuant to the terms of subdivision eight of section four hundred seventy of this [chapter.] ARTICLE,

(V) HAS BEEN CONVICTED IN A COURT OF COMPETENT JURISDICTION, EITHER WITHIN OR WITHOUT THE STATE, OF A CRIME INVOLVING MORAL TURPITUDE, OR

(VI) HAS ENGAGED IN CONDUCT WHICH BEARS ON THE LICENSEE'S OR CONTROLLING PERSON'S CHARACTER, FITNESS, EXPERIENCE, MATURITY OR FINANCIAL RESPONSIBILITY AND WOULD HAVE ALLOWED THE COMMISSIONER TO REFUSE TO ISSUE A LICENSE TO SUCH LICENSEE.

S 6. Paragraphs (a) and (b) of subdivision 4 of section 480-a of the tax law, as added by chapter 629 of the laws of 1996, are amended to read as follows:

(a) If a retail dealer possesses or sells unstamped or unlawfully stamped packages of cigarettes, or if a retail dealer is also licensed as an agent pursuant to section four hundred seventy-two OF THIS ARTICLE and it possesses unlawfully stamped packages of cigarettes or sells unstamped or unlawfully stamped packages of cigarettes at retail, OR IF A RETAIL DEALER POSSESSES OR SELLS TOBACCO PRODUCTS WITH RESPECT TO WHICH THE TOBACCO PRODUCTS TAX HAS NOT BEEN PAID OR ASSUMED BY A DISTRIBUTOR OR A TOBACCO PRODUCTS DEALER, (i) its registration shall be suspended for a period of not more than six months, or (ii) for a second such possession or sale within a period of five years, its registration shall be suspended for a period of up to thirty-six months, or (iii) for a third such possession or sale within a period of five years, its registration may be revoked for a period of up to five years. A retail dealer registration shall be suspended or revoked pursuant to this subdivision immediately upon such dealer's receipt of written notice of suspension or revocation from the commissioner. If a retail dealer sells cigarettes OR TOBACCO PRODUCTS through more than one place of business in this state, the retail dealer registration shall not be suspended or revoked pursuant to this subdivision, but the certificate of registration issued to the place of business, cart, stand, truck or other merchandising device where unstamped or unlawfully stamped cigarettes OR TOBACCO PRODUCTS WITH RESPECT TO WHICH THE TOBACCO PRODUCTS TAX HAS NOT BEEN PAID OR ASSUMED BY A DISTRIBUTOR OR A TOBACCO PRODUCTS DEALER were found shall be suspended or cancelled for possession or sale of unstamped or unlawfully stamped packages of cigarettes OR SUCH TOBACCO PRODUCTS, as if such certificate of registration were a retail dealer registration. A suspension or cancellation of a certificate of registration shall be treated as if it were a suspension or revocation of a registration. If unstamped or unlawfully stamped cigarettes OR SUCH TOBACCO PRODUCTS are found in a retail dealer's warehouse, the suspension or revocation of the retail dealer's registration pursuant to this subdivision shall be applicable to each retail place of business in this state through which such retail dealer sells cigarettes OR TOBACCO PRODUCTS.

(b) A retail dealer who is notified of a suspension or revocation of its registration pursuant to this subdivision shall have the right to have the suspension or revocation reviewed by the commissioner or his OR HER designee by contacting the department at a telephone number or an address to be disclosed in the notice of suspension or revocation within ten days of such dealer's receipt of such notification. The retail dealer may present written evidence or argument in support of its defense to the suspension or revocation, or may appear at a scheduled conference with the commissioner or his OR HER designee to present oral arguments and written and oral evidence in support of such defense. The commissioner or his OR HER designee is authorized to delay the effective date of the suspension or revocation to enable the retail dealer to present further evidence or arguments in connection with the suspension or revocation. The commissioner or his OR HER designee shall cancel the suspension or revocation of registration if the commissioner or his OR HER designee is not satisfied by a preponderance of the evidence that the retail dealer possessed or sold unstamped or unlawfully stamped packages of cigarettes OR TOBACCO PRODUCTS WITH RESPECT TO WHICH THE TOBACCO

PRODUCTS TAX HAD NOT BEEN PAID OR ASSUMED BY A DISTRIBUTOR OR A TOBACCO PRODUCTS DEALER.

S 7. Paragraph (b) of subdivision 1 of section 481 of the tax law, as amended by chapter 262 of the laws of 2000, subparagraph (i) and clause (A) of subparagraph (ii) as amended by chapter 604 of the laws of 2008, is amended and a new paragraph (e) is added to read as follows:

(b) (i) In addition to any other penalty imposed by this article, the commissioner may (A) impose a penalty of not more than one hundred fifty dollars for each two hundred cigarettes, or fraction thereof, in excess of one thousand cigarettes in unstamped or unlawfully stamped packages in the possession or under the control of any person or (B) impose a penalty of not more than two hundred dollars for each ten unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, or fraction thereof, in the possession or under the control of any person. In addition, the commissioner may impose a penalty of not more than seventy-five dollars for each fifty cigars or one pound of [tobacco] SNUFF, or fraction thereof, in excess of two hundred fifty cigars or five pounds of [tobacco] SNUFF in the possession or under the control of any person and a penalty of not more than one hundred fifty dollars for each fifty cigars or pound of [tobacco] SNUFF, or fraction thereof, in excess of five hundred cigars or ten pounds of [tobacco] SNUFF in the possession or under the control of any person, with respect to which the tobacco products tax has not been paid or assumed by a distributor or tobacco products dealer; provided, however, that any such penalty imposed shall not exceed seven thousand five hundred dollars in the aggregate. The commissioner may impose a penalty of not more than seventy-five dollars for each fifty cigars or one pound of [tobacco] SNUFF, or fraction thereof, in excess of fifty cigars or one pound of [tobacco] SNUFF in the possession or under the control of any tobacco products dealer or distributor appointed by the commissioner, and a penalty of not more than one hundred fifty dollars for each fifty cigars or pound of [tobacco] SNUFF, or fraction thereof, in excess of two hundred fifty cigars or five pounds of [tobacco] SNUFF in the possession or under the control of any such dealer or distributor, with respect to which the tobacco products tax has not been paid or assumed by a distributor or a tobacco products dealer; provided, however, that any such penalty imposed shall not exceed fifteen thousand dollars in the aggregate.

(ii) The penalties imposed by this subparagraph may be imposed by the commissioner in addition to any other penalty imposed by this article, but in lieu of the penalties imposed by subparagraph (i) of this paragraph:

(A) (I) (1) not less than thirty dollars but not more than two hundred dollars for each two hundred cigarettes, or fraction thereof, in excess of one thousand cigarettes but less than or equal to five thousand cigarettes in unstamped or unlawfully stamped packages knowingly in the possession or knowingly under the control of any person or (2) not less than thirty dollars but not more than two hundred dollars for each ten unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, or fraction thereof, less than or equal to two hundred fifty unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, knowingly in the possession or [knowing] KNOWINGLY under the control of any person;

(II) (1) not less than seventy-five dollars but not more than two hundred dollars for each two hundred cigarettes, or fraction thereof, in excess of five thousand cigarettes but less than or equal to twenty

thousand cigarettes in unstamped or unlawfully stamped packages knowingly in the possession or knowingly under the control of any person or (2) not less than seventy-five dollars but not more than two hundred dollars for each ten unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, or fraction thereof, in excess of two hundred fifty unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions but less than or equal to one thousand unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, knowingly in the possession or knowingly under the control of any person; and

(III) (1) not less than one hundred dollars but not more than two hundred dollars for each two hundred cigarettes, or fraction thereof, in excess of twenty thousand cigarettes in unstamped or unlawfully stamped packages, knowingly in the possession or knowingly under the control of any person or (2) not less than one hundred dollars but not more than two hundred dollars for each ten unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, or fraction thereof, in excess of one thousand unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, knowingly in the possession or knowingly under the control of any person.

(B)(I) not less than twenty-five dollars but not more than one hundred dollars for each fifty cigars or one pound of [tobacco] SNUFF, or fraction thereof, in excess of two hundred fifty cigars or five pounds of [tobacco] SNUFF knowingly in the possession or knowingly under the control of any person, with respect to which the tobacco products tax has not been paid or assumed by a distributor or tobacco products dealer; and

(II) not less than fifty dollars but not more than two hundred dollars for each fifty cigars or pound of [tobacco] SNUFF, or fraction thereof, in excess of five hundred cigars or ten pounds of [tobacco] SNUFF knowingly in the possession or knowingly under the control of any person, with respect to which the tobacco products tax has not been paid or assumed by a distributor or tobacco products dealer; provided, however, that any such penalty imposed under this clause shall not exceed ten thousand dollars in the aggregate.

(C) (I) not less than twenty-five dollars but not more than one hundred dollars for each fifty cigars or one pound of [tobacco] SNUFF, or fraction thereof, in excess of fifty cigars or one pound of [tobacco] SNUFF knowingly in the possession or knowingly under the control of any person, with respect to which the tobacco products tax has not been paid or assumed by a distributor or tobacco products dealer; and

(II) not less than fifty dollars but not more than two hundred dollars for each fifty cigars or pound of [tobacco] SNUFF, or fraction thereof, in excess of two hundred fifty cigars or five pounds of [tobacco] SNUFF knowingly in the possession or knowingly under the control of any person, with respect to which the tobacco products tax has not been paid or assumed by a distributor or a tobacco products dealer; provided, however, that any such penalty imposed under this clause shall not exceed twenty thousand dollars in the aggregate.

(iii) IN ADDITION TO ANY OTHER PENALTY IMPOSED BY LAW, THE COMMISSIONER MAY IMPOSE A PENALTY OF TWO HUNDRED PERCENT OF THE AMOUNT OF THE TAX FOR EACH POUND OF TOBACCO, OTHER THAN CIGARS AND SNUFF, IN THE POSSESSION OR UNDER THE CONTROL OF ANY PERSON, WITH RESPECT TO WHICH THE TOBACCO PRODUCTS TAX HAS NOT BEEN PAID OR ASSUMED BY A DISTRIBUTOR OR TOBACCO PRODUCTS DEALER. PROVIDED, HOWEVER, THE PENALTY IMPOSED UNDER

THIS SUBPARAGRAPH SHALL ONLY APPLY IF THE AMOUNT OF TOBACCO, OTHER THAN CIGARS AND SNUFF, EQUALS OR EXCEEDS FIVE POUNDS.

(IV) Any penalty provided for in this paragraph shall be determined as provided in section four hundred seventy-eight of this [chapter] ARTICLE, and may be reviewed only pursuant to such section. Such penalty shall be collected in the same manner as the taxes imposed by this article. The commissioner in [the commissioner's] HIS OR HER discretion, may remit all or part of such penalty. Such penalty shall be paid to the department and disposed of as hereinafter provided with respect to moneys derived from the tax.

(E) IN ADDITION TO ANY OTHER PENALTIES THAT MAY BE IMPOSED BY LAW, ANY OR ALL OF THE FOLLOWING PENALTIES MAY BE IMPOSED:

(I) ANY PERSON WHO FAILS TO FILE AN INFORMATIONAL RETURN UNDER THIS ARTICLE ON OR BEFORE THE PRESCRIBED DATE MUST PAY A PENALTY OF FIFTEEN HUNDRED DOLLARS FOR THE FIRST VIOLATION AND A PENALTY OF THREE THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION, UNLESS IT CAN BE SHOWN THAT THIS FAILURE IS DUE TO REASONABLE CAUSE AND NOT WILLFUL NEGLECT.

(II) ANY PERSON WHO FAILS TO FILE AN INFORMATIONAL RETURN WITHIN SIXTY DAYS OF THE DATE PRESCRIBED FOR FILING MUST PAY A PENALTY OF TWO THOUSAND DOLLARS FOR THE FIRST VIOLATION AND A PENALTY OF FOUR THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION, UNLESS IT CAN BE SHOWN THAT THIS FAILURE IS DUE TO REASONABLE CAUSE AND NOT WILLFUL NEGLECT.

(III) ANY PERSON WHO FAILS TO FILE A COMPLETE INFORMATIONAL RETURN MUST PAY A PENALTY OF FIFTEEN HUNDRED DOLLARS FOR THE FIRST VIOLATION AND A PENALTY OF THREE THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION, UNLESS IT CAN BE SHOWN THAT THIS FAILURE IS DUE TO REASONABLE CAUSE AND NOT WILLFUL NEGLECT.

(IV) IN ADDITION TO ANY CRIMINAL PENALTY PROVIDED BY LAW, IF ANY PERSON MAKES A STATEMENT ON AN INFORMATIONAL RETURN AND, AS OF THE TIME OF THE STATEMENT, THERE WAS NO REASONABLE BASIS FOR SUCH STATEMENT, THAT PERSON MUST PAY A PENALTY OF TWO THOUSAND DOLLARS FOR THE FIRST VIOLATION AND A PENALTY OF FOUR THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION.

S 8. Section 481 of the tax law is amended by adding a new subdivision 2-a to read as follows:

2-A. ANY OFFICER, DIRECTOR, SHAREHOLDER OR EMPLOYEE OF A CORPORATION OR OF A DISSOLVED CORPORATION, ANY EMPLOYEE OF A PARTNERSHIP OR ANY EMPLOYEE OF AN INDIVIDUAL PROPRIETORSHIP, WHO AS AN OFFICER, DIRECTOR, SHAREHOLDER OR EMPLOYEE IS UNDER A DUTY TO ACT FOR SUCH CORPORATION, PARTNERSHIP OR PROPRIETORSHIP IN COMPLYING WITH ANY REQUIREMENT OF THIS ARTICLE, AND ANY PARTNER OF A PARTNERSHIP, THAT FAILS TO PAY THE TAXES IMPOSED BY OR PURSUANT TO THIS ARTICLE, WILL, IN ADDITION TO OTHER PENALTIES PROVIDED BY LAW, BE LIABLE FOR A PENALTY EQUAL TO THE TOTAL AMOUNT OF THE TAX NOT PAID, PLUS PENALTIES AND INTEREST COMPUTED PURSUANT TO THIS SECTION. IF THE COMMISSIONER DETERMINES THAT THIS FAILURE WAS DUE TO REASONABLE CAUSE AND NOT DUE TO WILLFUL NEGLECT, IT MAY WAIVE ALL OR PART OF THE PENALTY IMPOSED UNDER THIS SUBDIVISION. THAT PENALTY 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.

S 9. Subdivision 1 of section 11-1301 of the administrative code of the city of New York, is amended by section 3 of part MM-1 of chapter 57 of the laws of 2008, is amended to read as follows:

1. "Cigarette." (a) Any roll for smoking made wholly or in part of tobacco or any other substance wrapped in paper or in any other substance not containing tobacco, and (b) any roll for smoking made

wholly or in part of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this subdivision. [However, a roll will not be considered to be a cigarette for purposes of paragraph (b) of this subdivision if it is not treated as a cigarette for federal excise tax purposes under the applicable federal statute in effect on April first, two thousand eight.]

S 10. Subdivision b of section 20-201 of the administrative code of the city of New York, as amended by section 4 of part MM-1 of chapter 57 of the laws of 2008, is amended to read as follows:

b. "Cigarette" shall mean (1) any roll for smoking made wholly or in part of tobacco or any other substance wrapped in paper or in any other substance not containing tobacco, and (2) any roll for smoking made wholly or in part of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph one of this subdivision. [However, a roll will not be considered to be a cigarette for purposes of paragraph two of this subdivision if it is not treated as a cigarette for federal excise tax purposes under the applicable federal statute in effect on April first, two thousand eight.]

S 11. Subdivision 2 of section 1 of chapter 235 of the laws of 1952 relating to enabling any city of the state having a population of one million or more to adopt, and amend local laws, imposing certain specified types of taxes on cigarettes which the legislature has or would have power and authority to impose, to provide for the review of such taxes, and to limit the application of such local laws, as amended by section 5 of part MM-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(2) As used herein, the term "cigarette" shall mean and include (a) any roll for smoking made wholly or in part of tobacco or of any other substance wrapped in paper or in any other substance not containing tobacco, and (b) any roll for smoking made wholly or in part of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this subdivision. [However, a roll will not be considered to be a cigarette for purposes of paragraph (b) of this subdivision if it is not treated as a cigarette for federal excise tax purposes under the applicable federal statute in effect on April first, two thousand eight.] The term "cigar" does not include any cigarette as defined in this subdivision.

S 12. This act shall take effect immediately; provided however that section one of this act shall take effect April 1, 2009; provided, further, that any tobacco product manufacturer required to file a certification between April 16 and April 30, 2008, under subdivision 1 of section 480-b of the tax law, with respect to cigarettes that are first being defined as cigarettes as a result of the amendments made by this act, must file that certification no later than 60 days after the date this act becomes a law; and provided further that sections two, three and four of this act shall take effect April 1, 2009, and shall apply to cigars that first become subject to taxation under article 20 of the tax law on or after that date; and provided further that sections five, six, seven and eight of this act shall take effect on the first

day of the first month next occurring 90 days after this act becomes a law and shall apply to sales made on or after such date.

PART S

Section 1. Paragraph 3 of subdivision (b) of section 1101 of the tax law, as amended by section 21 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(3) Receipt. The amount of the sale price of any property and the charge for any service taxable under this article, including gas and gas service and electricity and electric service of whatever nature, valued in money, whether received in money or otherwise AND WHETHER RECEIVED FROM THE PURCHASER OR A THIRD PARTY, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses [or], early payment discounts [and] OR ANY DISCOUNT GIVEN FOR A COUPON. RECEIPT also [including] INCLUDES any charges by the vendor to the purchaser for shipping or delivery, and, with respect to gas and gas service and electricity and electric service, any charges by the vendor for transportation, transmission or distribution, regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser and regardless of whether such shipping or delivery or transportation, transmission, or distribution is provided by such vendor or a third party, but [excluding] EXCLUDES any credit for tangible personal property accepted in part payment and intended for resale. For special rules governing computation of receipts, see section eleven hundred eleven OF THIS ARTICLE.

S 2. Subdivision (b) of section 1101 of the tax law is amended by adding a new paragraph 33 to read as follows:

(33) COUPON. (A) AN INSTRUMENT PROVIDED BY A VENDOR OR A THIRD PARTY, THAT IS PRESENTED AND SURRENDERED BY A PURCHASER TO THE VENDOR IN ORDER TO RECEIVE A REDUCTION IN THE SALE PRICE, WHETHER OR NOT ANY PORTION OF THE PRICE REDUCTION IS PAID TO THE VENDOR BY A THIRD PARTY.

(B) FOR PURPOSES OF THE TAX IMPOSED BY SECTION ELEVEN HUNDRED TEN AND FOR PURPOSES OF SECTION ELEVEN HUNDRED ELEVEN OF THIS ARTICLE, THE TERM "CONSIDERATION" INCLUDES ANY DISCOUNT GIVEN FOR A COUPON.

S 3. This act shall take effect on June 1, 2009 and shall apply to sales or uses occurring on or after that date in accordance with the applicable transitional provisions in sections 1106 and 1217 of the tax law.

PART T

Section 1. The closing paragraph of subdivision 1 of section 98-a of the state finance law, as amended by section 13 of part Y of chapter 61 of the laws of 2005, is amended to read as follows:

Provided, however, that income received from the investment of moneys of the local assistance account, the state purposes account and the capital projects fund may be credited in whole or in part to one or more of such funds to the extent necessary to reimburse first instance appropriations for interest on temporary obligations issued on behalf of the fund or funds to be credited. Notwithstanding any other provision of this section or of any other general or special law, all moneys available and retained on deposit for the payment of lottery prizes may be invested OR CAUSED TO BE INVESTED, BY THE COMPTROLLER, OR BY THE DIVISION OF THE LOTTERY IF THE COMPTROLLER HAS AUTHORIZED THE DIVISION OF THE LOTTERY TO DIRECTLY INVEST SUCH FUNDS, in obligations [by the comp-

troller] as herein provided[, except that] OR IN THE SAME MANNER AND IN SUCH SECURITIES OR OTHER INVESTMENTS AS THE TRUSTEE OR TRUSTEES OF A PUBLIC PENSION FUND ARE AUTHORIZED TO INVEST PURSUANT TO ARTICLE FOUR-A OF THE RETIREMENT AND SOCIAL SECURITY LAW, AND PROVIDED FURTHER THAT such obligations need not mature or be redeemable at the option of the holder within seven years of the date of such investment. Income received from such investments may be used for the payment of prizes awarded and made payable in more than one payment, including prizes awarded and made payable throughout the lifetime of the lottery prize winner.

S 2. This act shall take effect immediately.

PART U

Section 1. Paragraph 30 of subdivision (a) of section 1115 of the tax law, as amended by section 84 of part A of chapter 56 of the laws of 1998, is amended to read as follows:

(30) [Clothing] DURING THE SEVEN-DAY PERIODS EACH YEAR BEGINNING THE MONDAY IMMEDIATELY PRECEDING THE FIRST SUNDAY OF FEBRUARY AND ENDING SUCH SUNDAY, AND BEGINNING AUGUST TWENTY-FIFTH AND ENDING AUGUST THIRTY-FIRST, CLOTHING and footwear for which the receipt or consideration given or contracted to be given is less than [one] FIVE hundred [ten] dollars per article of clothing, per pair of shoes or other articles of footwear or per item used or consumed to make or repair such clothing and which becomes a physical component part of such clothing.

S 2. Subdivision (g) of section 1109 of the tax law is amended by adding a new paragraph 9 to read as follows:

(9) NOTWITHSTANDING THAT THE SALES AND COMPENSATING USE TAXES IMPOSED BY A CITY OF ONE MILLION OR MORE LOCATED IN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT EXEMPT CLOTHING AND FOOTWEAR PURSUANT TO THE AUTHORITY OF CLAUSE (VII) OF PARAGRAPH FOUR OF SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE, DURING THE TWO SEVEN-DAY PERIODS DURING WHICH CLOTHING AND FOOTWEAR ARE EXEMPT FROM THE TAXES IMPOSED BY THIS ARTICLE, SUCH CITY SHALL, FOR PURPOSES OF THIS SUBDIVISION, BE DEEMED TO HAVE EXEMPTED SUCH CLOTHING AND FOOTWEAR PURSUANT TO THE AUTHORITY OF PARAGRAPH ONE OF SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS CHAPTER AND SUCH CITY AND THE STATE SHALL BE SUBJECT TO THE REIMBURSEMENT AND OTHER PROVISIONS OF THIS SUBDIVISION.

S 3. Paragraph 1 of subdivision (a) of section 1210 of the tax law, as amended by chapter 306 of the laws of 2005, subparagraph (i) of paragraph 1 as amended by section 4 of part SS1 of chapter 57 of the laws of 2008 and subparagraph (ii) of paragraph 1 as amended by chapter 144 of the laws of 2006, is amended to read as follows:

(1) [(i)] Either, all of the taxes described in article twenty-eight of this chapter, at the same uniform rate, as to which taxes all provisions of the local laws, ordinances or resolutions imposing such taxes shall be identical, except as to rate and except as otherwise provided, with the corresponding provisions in such article twenty-eight, including the definition and exemption provisions of such article, so far as the provisions of such article twenty-eight can be made applicable to the taxes imposed by such city or county and with such limitations and special provisions as are set forth in this article. The taxes authorized under this subdivision may not be imposed by a city or county unless the local law, ordinance or resolution imposes such taxes so as to include all portions and all types of receipts, charges or

rents, subject to state tax under sections eleven hundred five and eleven hundred ten of this chapter, except as otherwise provided.

(I) Any local law, ordinance or resolution enacted by any city of less than one million or by any county or school district, imposing the taxes authorized by this subdivision, shall, notwithstanding any provision of law to the contrary, exclude from the operation of such local taxes all sales of tangible personal property for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, generating, assembly, refining, mining or extracting; and all sales of tangible personal property for use or consumption predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both; and, unless such city, county or school district elects otherwise, shall omit the provision for credit or refund contained in clause six of subdivision (a) of section eleven hundred nineteen of this chapter.

(II) Any local law, ordinance or resolution enacted by any city, county or school district, imposing the taxes authorized by this subdivision, shall omit the residential solar energy systems equipment exemption provided for in subdivision (ee), the clothing and footwear exemption provided for in paragraph thirty of subdivision (a) and the qualified empire zone enterprise exemptions provided for in subdivision (z) of section eleven hundred fifteen of this chapter, unless such city, county or school district elects otherwise as to either such residential solar energy systems equipment exemption or such clothing and footwear exemption or such qualified empire zone enterprise exemptions[; provided that if such a city having a population of one million or more in which the taxes imposed by section eleven hundred seven of this chapter are in effect enacts the resolution described in subdivision (k) of this section or repeals such resolution or enacts the resolution described in subdivision (l) of this section or repeals such resolution or enacts the resolution described in subdivision (n) of this section or repeals such resolution, such resolution or repeal shall also be deemed to amend any local law, ordinance or resolution enacted by such a city imposing such taxes pursuant to the authority of this subdivision, whether or not such taxes are suspended at the time such city enacts its resolution pursuant to subdivision (k), (l) or (n) of this section or at the time of any such repeal; provided, further, that any such local law, ordinance or resolution and section eleven hundred seven of this chapter, as deemed to be amended in the event a city of one million or more enacts a resolution pursuant to the authority of subdivision (k), (l) or (n) of this section, shall be further amended, as provided in section twelve hundred eighteen of this subpart, so that the residential solar energy systems equipment exemption or the clothing and footwear exemption or the qualified empire zone enterprise exemptions in any such local law, ordinance or resolution or in such section eleven hundred seven are the same, as the case may be, as the residential solar energy systems equipment exemption provided for in subdivision (ee), the clothing and footwear exemption in paragraph thirty of subdivision (a) or the qualified empire zone enterprise exemptions in subdivision (z) of section eleven hundred fifteen of this chapter.

(ii) Notwithstanding any other provision of the law to the contrary, any county, imposing the taxes authorized by this subdivision, having a population of not less than one hundred thirty-nine thousand and not more than one hundred forty thousand, determined in accordance with the two thousand decennial federal census, may by local law, ordinance or

resolution elect to exempt from such local sales and compensating use taxes clothing and footwear, as defined in paragraph fifteen of subdivision (b) of section eleven hundred one of this chapter, for which the receipt or consideration given or contracted to be given is less than one hundred ten dollars per article of clothing, per pair of shoes or other articles of footwear or per item used or consumed to make or repair such clothing and which becomes a physical component part of such clothing. Every such county shall comply with the provisions of subdivisions (d) and (e) of this section, including such provisions applicable to providing or repealing the exemption described in paragraph thirty of subdivision (a) of section eleven hundred fifteen of this chapter.]

S 4. Subdivision (k) of section 1210 of the tax law is REPEALED.

S 5. Notwithstanding any provision of state or local law, ordinance or resolution to the contrary: (a) Every local law, ordinance or resolution or part of it providing for an exemption of clothing and footwear described in paragraph 30 of subdivision (a) of section 1115 of the tax law elected by a county or city (other than a city of one million or more) pursuant to the authority of article 29 of the tax law that is in effect on the day before this act shall have become a law or was elected prior to such date to take effect at a later date is REPEALED.

(b) A county or city (other than a city of one million or more) that imposes sales and compensating use taxes pursuant to the authority of paragraph 1 of subdivision (a) of section 1210 of the tax law, acting through its local legislative body, is authorized to adopt a resolution to take effect August 1, 2009, to elect the exemption for clothing and footwear described in paragraph 30 of subdivision (a) of section 1115 of the tax law, as amended by section one of this act. For the resolution to be effective, the county or city must: (i) adopt the resolution in exactly the form prepared by the commissioner of taxation and finance, on or before July 1, 2009; and (ii) mail a certified copy of it by that date to the commissioner of taxation and finance otherwise in accordance with the provisions of subdivision (d) of section 1210 of the tax law; and (iii) the county or city must also comply with the provisions of subdivision (e) of such section 1210. Such resolution shall, if properly adopted pursuant to this section, be deemed to amend the county's or city's local law, ordinance or resolution imposing its sales and use taxes to provide this exemption.

S 6. This act shall take effect June 1, 2009, and shall apply in accordance with applicable transitional provisions in sections 1106 and 1217 of the tax law, provided that a county or city that imposes sales and compensating use taxes pursuant to the authority of subdivision (a) of section 1210 of the tax law (other than a city of one million or more) shall be authorized to adopt a resolution described in section five of this act on or after the date this act becomes a law.

PART V

Section 1. Subdivision (c) of section 1105 of the tax law is amended by adding two new paragraphs 10 and 11 to read as follows:

(10) BEAUTY, BARBERING, HAIR RESTORING, MANICURING, PEDICURING, ELECTROLYSIS, MASSAGE SERVICES AND SIMILAR SERVICES, AND EVERY SERVICE SOLD BY WEIGHT CONTROL SALONS, HEALTH SALONS, GYMNASIUMS, TURKISH AND SAUNA BATH AND SIMILAR ESTABLISHMENTS AND EVERY CHARGE FOR THE USE OF THOSE FACILITIES, WHETHER OR NOT ANY TANGIBLE PERSONAL PROPERTY IS TRANSFERRED IN CONJUNCTION THEREWITH; BUT EXCLUDING SERVICES RENDERED BY A PHYSICIAN, OSTEOPATH, DENTIST, NURSE, PHYSIOTHERAPIST, CHIROPRACTOR, PODIA-

TRIST, OPTOMETRIST, OPHTHALMIC DISPENSER OR A PERSON PERFORMING SIMILAR SERVICES LICENSED UNDER TITLE EIGHT OF THE EDUCATION LAW, AS AMENDED, AND EXCLUDING THOSE SERVICES WHEN PERFORMED ON PETS AND OTHER ANIMALS. A SALE OF TANGIBLE PERSONAL PROPERTY TO A PERSON FOR USE BY THE PERSON IN PERFORMING A SERVICE SUBJECT TO THE TAX IMPOSED BY THIS PARAGRAPH IS NOT A PURCHASE FOR RESALE.

(11) CREDIT RATING AND CREDIT REPORTING SERVICES, INCLUDING, BUT NOT LIMITED TO, THOSE SERVICES PROVIDED BY MERCANTILE AND CONSUMER CREDIT RATING OR REPORTING BUREAUS OR AGENCIES AND CREDIT ADJUSTMENT OR COLLECTION BUREAUS OR AGENCIES, WHETHER RENDERED IN WRITTEN OR ORAL FORM OR IN ANY OTHER MANNER, EXCEPT TO THE EXTENT OTHERWISE TAXABLE UNDER OTHER PROVISIONS OF THIS SECTION. A SALE OF TANGIBLE PERSONAL PROPERTY TO A PERSON FOR USE BY THE PERSON IN PERFORMING A SERVICE SUBJECT TO THE TAX IMPOSED BY THIS PARAGRAPH IS NOT A PURCHASE FOR RESALE. HOWEVER, A REFUND OR CREDIT EQUAL TO THE AMOUNT OF THE SALES OR COMPENSATING USE TAX IMPOSED BY SUBDIVISION (A) OF THIS SECTION OR SECTION ELEVEN HUNDRED TEN OF THIS PART AND PAID ON THE SALE OR USE OF TANGIBLE PERSONAL PROPERTY WHICH IS LATER USED BY SUCH PURCHASER IN PERFORMING A SERVICE SUBJECT TO TAX UNDER THIS PARAGRAPH WILL BE ALLOWED THAT PURCHASER AGAINST THE TAX IMPOSED BY THIS PARAGRAPH AND COLLECTED BY THAT PERSON ON THE SALE OF THAT SERVICE IF THAT PROPERTY HAS BECOME A PHYSICAL COMPONENT PART OF THE PROPERTY UPON WHICH THE SERVICE IS PERFORMED OR HAS BEEN TRANSFERRED TO THE PURCHASER OF THE SERVICE IN CONJUNCTION WITH THE PERFORMANCE OF THE SERVICE SUBJECT TO TAX, IN THE MANNER PRESCRIBED BY SUBDIVISION (C) OF SECTION ELEVEN HUNDRED NINETEEN OF THIS ARTICLE.

S 2. The closing paragraph of subdivision (c) of section 1105 of the tax law, as amended by chapter 190 of the laws of 1990, is amended to read as follows:

Wages, salaries and other compensation paid by an employer to an employee for performing as an employee the services described in [paragraphs (1) through (9) of] this subdivision [(c)] are not receipts subject to the taxes imposed [under such] BY THIS subdivision.

S 3. Section 1106 of the tax law is amended by adding a new subdivision (k) to read as follows:

(K) THE TAXES IMPOSED BY PARAGRAPHS TEN AND ELEVEN OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED FIVE OF THIS PART MUST BE PAID WITH RESPECT TO RECEIPTS FROM ALL SALES OF SERVICES ON OR AFTER THE EFFECTIVE DATE OF SUCH TAXES ALTHOUGH RENDERED OR AGREED TO BE RENDERED UNDER A PRIOR CONTRACT. WHERE A SERVICE IS SOLD ON A MONTHLY, QUARTERLY, YEARLY OR OTHER TERM BASIS, THE CHARGE FOR THE SERVICE WILL BE SUBJECT TO THE TAX IMPOSED BY THOSE PARAGRAPHS TO THE EXTENT THAT THE CHARGE IS APPLICABLE TO ANY PERIOD ON OR AFTER THE DATE THE TAX BECOMES EFFECTIVE, AND THE CHARGE SHALL BE APPORTIONED ON THE BASIS OF THE RATIO OF THE NUMBER OF DAYS FALLING WITHIN THE PERIOD TO THE TOTAL NUMBER OF DAYS IN THE FULL TERM OR PERIOD.

S 4. Subdivision (a) of section 1110 of the tax law, as amended by section 28 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(a) Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state on and after June first, nineteen hundred seventy-one except as otherwise exempted under this article, (A) of any tangible personal property purchased at retail, (B) of any tangible personal property (other than computer software used by the author or other creator) manufactured, processed or assembled by the user, (i) if items of the same kind of

tangible personal property are offered for sale by him in the regular course of business or (ii) if items are used as such or incorporated into a structure, building or real property by a contractor, subcontractor or repairman in erecting structures or buildings, or building on, or otherwise adding to, altering, improving, maintaining, servicing or repairing real property, property or land, as the terms real property, property or land are defined in the real property tax law, if items of the same kind are not offered for sale as such by such contractor, subcontractor or repairman or other user in the regular course of business, (C) of any of the services described in paragraphs (1), (7) [and], (8) AND (11) of subdivision (c) of section eleven hundred five of this part, (D) of any tangible personal property, however acquired, where not acquired for purposes of resale, upon which any of the services described in paragraphs (2), (3) and (7) of subdivision (c) of section eleven hundred five of this part have been performed, (E) of any telephone answering service described in subdivision (b) of section eleven hundred five of this part, (F) of any computer software written or otherwise created by the user if the user offers software of a similar kind for sale as such or as a component part of other property in the regular course of business, (G) of any prepaid telephone calling service, and (H) of any gas or electricity described in subdivision (b) of section eleven hundred five of this part.

S 5. Subdivision (d) of section 1115 of the tax law, as amended by chapter 190 of the laws of 1990, is amended to read as follows:

(d) Services otherwise taxable under paragraph (1), (2), (3), (7) [or], (8) OR (11) of subdivision (c) of section eleven hundred five OF THIS ARTICLE shall be exempt from tax under this article if the tangible property upon which the services were performed is delivered to the purchaser outside this state for use outside this state.

S 6. Subdivision (z) of section 1115 of the tax law is amended by adding a new paragraph 4 to read as follows:

(4) THE EXEMPTIONS PROVIDED IN THIS SUBDIVISION SHALL NOT APPLY TO THE TAX IMPOSED BY PARAGRAPH TEN OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE OR TO SIMILAR TAXES IMPOSED PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS CHAPTER.

S 7. Subdivision (b) of section 1116 of the tax law is amended by adding a new paragraph 8 to read as follows:

(8) SALES OF SERVICES DESCRIBED IN PARAGRAPH TEN OR ELEVEN OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE, UNLESS THE PURCHASER IS AN EXEMPT ORGANIZATION.

S 8. Subdivision 4 of section 1131 of the tax law, as amended by section 34 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(4) "Property and services the use of which is subject to tax" shall include: (a) all property sold to a person within the state, whether or not the sale is made within the state, the use of which property is subject to tax under section eleven hundred ten of this article or will become subject to tax when such property is received by or comes into the possession or control of such person within the state; (b) all information services, protective and detective services [and], interior decorating and design services, AND CREDIT RATING AND REPORTING SERVICES as such services are described in subdivision (c) of section eleven hundred five of this article, rendered to a person within the state, whether or not such services are rendered from or at a location within the state; (c) all services rendered to a person within the state, whether or not such services are performed within the state, upon tangi-

ble personal property the use of which is subject to tax under section eleven hundred ten of this article or will become subject to tax when such property is received by or comes into possession or control of such person within the state; (d) all property sold by a person making sales described in clause (F) of subparagraph (i) of paragraph eight of subdivision (b) of section eleven hundred one of this article to a person described in such clause (F) who purchases such property at retail, whether or not the sale is made within the state; (e) all telephone answering service rendered to a person within the state, whether or not such services are performed within the state, the use of which is subject to tax under section eleven hundred ten of this article or will become subject to tax when such service is received by or comes into possession or control of such person within the state; (f) all prepaid telephone calling services sold to a person within the state, whether or not the sale is made within the state, the use of which services are subject to tax under section eleven hundred ten of this article or will become subject to tax when such services are received by or come into the possession or control of such person within the state, and whether or not such services are rendered from or at a location within the state; and (g) all gas or electricity sold to a person within the state, whether or not the sale is made within the state, the use of which is subject to tax under section eleven hundred ten of this article or will become subject to tax when it is received by or comes into the possession or control of such person within the state, and whether or not it is rendered from or at a location within the state.

S 9. Paragraphs 2 and 3 of subdivision (a) of section 1212-A of the tax law, paragraph 2 as amended by chapter 190 of the laws of 1990 and paragraph 3 as amended by chapter 525 of the laws of 2008, are amended to read as follows:

(2) [a tax, at the same uniform rate, but at a rate not to exceed four per centum, in multiples of one-half of one per centum, on the receipts from every sale of the following services: beauty, barbering, hair restoring, manicuring, pedicuring, electrolysis, massage services and similar services, and every sale of services by weight control salons, health salons, gymnasiums, turkish and sauna bath and similar establishments and every charge for the use of such facilities, whether or not any tangible personal property is transferred in conjunction therewith; but excluding services rendered by a physician, osteopath, dentist, nurse, physiotherapist, chiropractor, podiatrist, optometrist, ophthalmic dispenser or a person performing similar services licensed under title VIII of the education law, as amended, and excluding such services when performed on pets and other animals.

(3) for a period beginning no earlier than January first, nineteen hundred ninety and ending December thirty-first, two thousand eleven,] a tax, at the same uniform rate, but at a rate not to exceed four per centum, in multiples of one-half of one per centum, on the receipts from every sale of any or all of the following services in whole or in part: [credit rating, credit reporting,] credit adjustment and collection services, including, but not limited to, those services provided by mercantile and consumer credit rating or reporting bureaus or agencies and credit adjustment or collection bureaus or agencies, whether rendered in written or oral form or in any other manner, except to the extent otherwise taxable under article twenty-eight of this chapter; notwithstanding the foregoing, collection services shall not include those services performed by a law office or a law and collection office, the maintenance or conduct of which constitutes the practice of law, if

the services are performed by an attorney at law who has been duly licensed and admitted to practice law in this state. The local law imposing the taxes authorized by this paragraph may provide for exclusions and exemptions in addition to those provided for in such paragraph.

S 10. Paragraphs 1 and 2 of subdivision (b) of section 1212-A of the tax law, as amended by chapter 190 of the laws of 1990, are amended to read as follows:

(1) All provisions set forth in article twenty-eight of this chapter applicable to the taxes imposed under section eleven hundred five OF THIS CHAPTER, including the definition and exemption provisions of such article, shall apply in respect to a tax imposed under the authority of subdivision (a) of this section, except as to rate and except as otherwise provided herein. A sale of tangible personal property to a person for use by [him] SUCH PERSON in performing a service subject to the tax imposed under the authority of paragraph two [or three] of subdivision (a) of this section shall not be deemed a purchase for resale for purposes of the taxes imposed by article twenty-eight OF THIS CHAPTER or pursuant to the authority of this article.

(2) However, with respect to a tax imposed under the authority of paragraph [three] TWO of subdivision (a) of this section a refund or credit equal to the amount of the sale or compensating use tax imposed by section eleven hundred seven of this chapter and paid on the sale or use of tangible personal property which is later used by such purchaser in performing a service subject to tax under such paragraph shall be allowed such purchaser against the tax imposed pursuant to such paragraph and collected by such person on the sale of such service if such property has become a physical component part of the property upon which the service is performed or has been transferred to the purchaser of the service in conjunction with the performance of the service subject to tax.

S 11. Section 11-2002 of the administrative code of the city of New York is REPEALED.

S 12. Subchapter 3 of chapter 20 of title 11 of the administrative code of the city of New York is REPEALED.

S 13. This act shall take effect June 1, 2009.

PART W

Section 1. Subdivision b of section 1612 of the tax law, as amended by chapter 140 of the laws of 2008, clauses (D) and (F) of subparagraph (ii) and subparagraph (iii) of paragraph 1 and paragraph 2 as separately amended by chapter 286 of the laws of 2008 and clause (G) of subparagraph (ii) of paragraph 1 as added and clause (H) of subparagraph (ii) of paragraph 1 as amended by chapter 286 of the laws of 2008, is amended to read as follows:

b. 1. Notwithstanding section one hundred twenty-one of the state finance law, on or before the twentieth day of each month, 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, not less than forty-five percent of the total amount for which tickets have been sold for games defined in paragraph four of subdivision a of this section during the preceding month, not less than thirty-five percent of the total amount for which tickets have been sold for games defined in paragraph three of subdivision a of this section during the preceding month, not less than twenty percent of the total amount for which tick-

ets have been sold for games defined in paragraph two of subdivision a of this section during the preceding month, provided however that for games with a prize payout of seventy-five percent of the total amount for which tickets have been sold, the division shall pay not less than ten percent of sales into the state treasury and not less than twenty-five percent of the total amount for which tickets have been sold for games defined in paragraph one of subdivision a of this section during the preceding month; and the balance of the total revenue after payout for prizes for games known as "video lottery gaming," (i) less ten percent of the total revenue wagered after payout for prizes to be retained by the division for operation, administration, and procurement purposes; (ii) less a vendor's fee the amount of which is to be paid for serving as a lottery agent to the track operator of a vendor track:

(A) having fewer than one thousand one hundred video gaming machines, at a rate of thirty-six percent for the first fifty million dollars annually, twenty-nine percent for the next hundred million dollars annually, and twenty-six percent thereafter of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(B) having one thousand one hundred or more video gaming machines, at a rate of thirty-two percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, except for such facility located in the county of Westchester, in which case the rate shall be thirty-four percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, for a period of twenty-four months effective beginning April first, two thousand eight; provided, however, that in the event that the vendor track located in Westchester county completes a successful restructuring prior to March thirty-first, two thousand ten, the vendor fee will be reduced to thirty-two percent ninety days following the completion of the successful restructuring. A successful restructuring is defined as a restructuring of the existing debt obligations of such vendor track located in Westchester county that meets the following two conditions:

(i) it requires no more than twenty million dollars of additional equity invested in such track; and

(ii) results in average net interest costs of less than nine percent.

Notwithstanding the foregoing, the vendor fee at such track will become thirty-one percent effective April first, two thousand ten and remain at that level for a period equal to two times the period of time (measured in days) that the vendor fee was thirty-four percent or until March thirty-first, two thousand twelve, whichever is later. Notwithstanding the foregoing, not later than April first, two thousand twelve, the vendor fee shall become thirty-two percent and remain at that level thereafter; and except for Aqueduct racetrack, in which case the vendor fee shall be thirty-eight percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(C) notwithstanding clauses (A) and (B) of this subparagraph, when the vendor track is located in an area with a population of less than one million within the forty mile radius around such track, at a rate of forty percent for the first fifty million dollars annually, twenty-nine percent for the next hundred million dollars annually, and twenty-six percent thereafter of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(D) notwithstanding clauses (A), (B) and (C) of this subparagraph, when the vendor track is located within fifteen miles of a Native American class III gaming facility [or, for a period of five years effective beginning April first, two thousand eight when the vendor track is

located within Sullivan county and within sixty miles from any gaming facility in a contiguous state,] at a rate of forty-two percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter [unless such vendor track relocates outside the specified geographic area sooner, in which case such rate shall be as for all other tracks in the applicable clause of this subparagraph];

[(D) notwithstanding clauses (A), (B) and (C) of this subparagraph, when the vendor track is within fifteen miles of a Native American gaming facility, at a rate of forty-two percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;]

(E) notwithstanding clauses (A), (B), (C) and (D) of this subparagraph, when a Native American class III gaming facility is established, after the effective date of this subparagraph, within fifteen miles of the vendor track, at a rate of forty-two percent of the total revenue wagered after payout for prizes pursuant to this chapter;

[(F) notwithstanding clauses (A), (B), (C), (D) and (E) of this subparagraph, the track operator of a vendor track shall be eligible for a vendor's capital award of up to four percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, which shall be used exclusively for capital project investments to improve the facilities of the vendor track which promote or encourage increased attendance at the video lottery gaming facility including, but not limited to hotels, other lodging facilities, entertainment facilities, retail facilities, dining facilities, events arenas, parking garages and other improvements that enhance facility amenities; provided that such capital investments shall be approved by the division, in consultation with the state racing and wagering board, and that such vendor track demonstrates that such capital expenditures will increase patronage at such vendor track's facilities and increase the amount of revenue generated to support state education programs. The annual amount of such vendor's capital awards that a vendor track shall be eligible to receive shall be limited to two million five hundred thousand dollars, except for Aqueduct racetrack, for which there shall be no vendor's capital awards. Except for tracks having less than one thousand one hundred video gaming machines, each track operator shall be required to co-invest an amount of capital expenditure equal to its cumulative vendor's capital awards. For all tracks, except for Aqueduct racetrack, the amount of any vendor's capital award that is not used during any one year period may be carried over into subsequent years ending before April first, two thousand thirteen. Any amount attributable to a capital expenditure approved prior to April first, two thousand thirteen and completed before April first, two thousand fifteen shall be eligible to receive the vendor's capital award. In the event that a vendor track's capital expenditures, approved by the division prior to April first, two thousand thirteen and completed prior to April first, two thousand fifteen, exceed the vendor track's cumulative capital award during the five year period ending April first, two thousand thirteen, the vendor shall continue to receive the capital award after April first, two thousand thirteen until such approved capital expenditures are paid to the vendor track subject to any required co-investment. In no event shall such track facility located in Sullivan county and within sixty miles from any gaming facility in a contiguous state be eligible for a vendor's capital award under this section, unless it shall have moved from such location or the five year period commencing on April first, two thousand eight has expired, whichever comes first. Any operator of a

vendor track which has received a vendor's capital award, choosing to divest the capital improvement toward which the award was applied, prior to reaching the forty year straightline depreciation value of the improvement, shall reimburse the state in amounts equal to the total of any such awards. Any capital award not approved for a capital expenditure at a video lottery gaming facility by April first, two thousand thirteen shall be deposited in the state lottery fund for education aid; and]

(E-1) FOR PURPOSES OF THIS SUBDIVISION, THE TERM "CLASS III GAMING" SHALL HAVE THE MEANING DEFINED IN 25 U.S.C. S 2703(8).

(F) notwithstanding clauses (A), (B), (C), (D) and (E) of this subparagraph, when a vendor track, is located in Sullivan county and within sixty miles from any gaming facility in a contiguous state such vendor fee shall, for a period of five years commencing April first, two thousand eight, be at a rate of forty-two percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, after which time such rate shall be as for all tracks in clause (C) of this subparagraph.

[(G) For purposes of this subdivision, the term "class III gaming" shall have the meaning defined in 25 U.S.C. S 2703(8).]

(G) notwithstanding any other provisions of this section, when a relocated vendor track at which a qualified capital investment has been made and no fewer than two 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 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 the relocated vendor track, 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 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 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 exceed five million dollars.

The balance shall be paid as a vendor's fee to the track operator of the relocated vendor track for serving as a lottery agent under this chapter.

Provided, however, that in the case of a relocated vendor track with a qualified capital investment, if at any time after July first, two thousand ten 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 one billion 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 popu-

lation 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, convention centers, 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 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 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 two thousand full-time permanent employees.

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) sixty-six percent of the recapture amount if the employment shortfall is greater than fifty percent of the employment goal;

(ii) sixty percent of the recapture amount if the employment shortfall is greater than forty percent of the employment goal;

(iii) forty-five percent of the recapture amount if the employment shortfall is greater than thirty percent of the employment goal;

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

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

(H) notwithstanding clauses (A), (B), (C), (D), (E), (F) and (G) of this subparagraph, the track operator of a vendor track shall be eligible for a vendor's capital award of up to four percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, which shall be used exclusively for capital project investments to improve the facilities of the vendor track which promote or encourage increased attendance at the video lottery gaming facility including, but not limited to hotels, other lodging facilities, entertainment facilities, retail facilities, dining facilities, events arenas, parking garages and other improvements that enhance facility amenities; provided that such capital investments shall be approved by the division, in consultation with the state racing and wagering board,

and that such vendor track demonstrates that such capital expenditures will increase patronage at such vendor track's facilities and increase the amount of revenue generated to support state education programs. The annual amount of such vendor's capital awards that a vendor track shall be eligible to receive shall be limited to two million five hundred thousand dollars, except for Aqueduct racetrack, for which there shall be no vendor's capital awards. Except for tracks having less than one thousand one hundred video gaming machines, each track operator shall be required to co-invest an amount of capital expenditure equal to its cumulative vendor's capital award. For all tracks, except for Aqueduct racetrack, the amount of any vendor's capital award that is not used during any one year period may be carried over into subsequent years ending before April first, two thousand thirteen. Any amount attributable to a capital expenditure approved prior to April first, two thousand thirteen and completed before April first, two thousand fifteen shall be eligible to receive the vendor's capital award. IN THE EVENT THAT A VENDOR TRACK'S CAPITAL EXPENDITURES, APPROVED BY THE DIVISION PRIOR TO APRIL FIRST, TWO THOUSAND THIRTEEN AND COMPLETED PRIOR TO APRIL FIRST, TWO THOUSAND FIFTEEN, EXCEED THE VENDOR TRACK'S CUMULATIVE CAPITAL AWARD DURING THE FIVE YEAR PERIOD ENDING APRIL FIRST, TWO THOUSAND THIRTEEN, THE VENDOR SHALL CONTINUE TO RECEIVE THE CAPITAL AWARD AFTER APRIL FIRST, TWO THOUSAND THIRTEEN UNTIL SUCH APPROVED CAPITAL EXPENDITURES ARE PAID TO THE VENDOR TRACK SUBJECT TO ANY REQUIRED CO-INVESTMENT. In no event shall any vendor track that receives a vendor fee pursuant to clause (F) or (G) of this [paragraph] SUBPARAGRAPH be eligible for a vendor's capital award under this section. Any operator of a vendor track which has received a vendor's capital award, choosing to divest the capital improvement toward which the award was applied, prior to [reaching the forty year straightline depreciation value of the improvement] THE FULL DEPRECIATION OF THE CAPITAL IMPROVEMENT IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES, shall reimburse the state in amounts equal to the total of any such awards. ANY CAPITAL AWARD NOT APPROVED FOR A CAPITAL EXPENDITURE AT A VIDEO LOTTERY GAMING FACILITY BY APRIL FIRST, TWO THOUSAND THIRTEEN SHALL BE DEPOSITED INTO THE STATE LOTTERY FUND FOR EDUCATION AID; and

(iii) less an additional vendor's marketing allowance at a rate of ten percent for the first one hundred million dollars annually and eight percent thereafter of the total revenue wagered at the vendor track after payout for prizes to be used by the vendor track for the marketing and promotion and associated costs of its video lottery gaming operations and pari-mutuel horse racing operations, as long as any such costs associated with pari-mutuel horse racing operations simultaneously encourage increased attendance at such vendor's video lottery gaming facilities, consistent with the customary manner of marketing comparable operations in the industry and subject to the overall supervision of the division; provided, however, that the additional vendor's marketing allowance shall not exceed eight percent in any year for any operator of a racetrack located in the county of Westchester or Queens; provided, however, a vendor track that receives a vendor fee pursuant to clause (G) of [this] subparagraph (II) OF THIS PARAGRAPH shall not receive the additional vendor's marketing allowance. In establishing the vendor fee, the division shall ensure the maximum lottery support for education while also ensuring the effective implementation of section sixteen hundred seventeen-a of this article through the provision of reasonable reimbursements and compensation to vendor tracks for participation in such program. Within twenty days after any award of lottery prizes, the

division shall pay into the state treasury, to the credit of the state lottery fund, the balance of all moneys received from the sale of all tickets for the lottery in which such prizes were awarded remaining after provision for the payment of prizes as herein provided. Any revenues derived from the sale of advertising on lottery tickets shall be deposited in the state lottery fund.

2. As consideration for the operation of a video lottery gaming facility, the division, shall cause the investment in the racing industry of a portion of the vendor fee received pursuant to paragraph one of this subdivision in the manner set forth in this subdivision. With the exception of Aqueduct racetrack, each such track shall dedicate a portion of its vendor fees, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, solely for the purpose of enhancing purses at such track, in an amount equal to eight and three-quarters percent of the total revenue wagered at the vendor track after pay out for prizes. In addition, WITH THE EXCEPTION OF AQUEDUCT RACETRACK, one and one-quarter percent of total revenue wagered at the vendor track after pay out for prizes, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, shall be distributed to the appropriate breeding fund for the manner of racing conducted by such track.

Provided, further, that nothing in this paragraph shall prevent each track from entering into an agreement, not to exceed five years, with the organization authorized to represent its horsemen to increase or decrease the portion of its vendor fee dedicated to enhancing purses at such track during the years of participation by such track, or to race fewer dates than required herein.

3. Nothing in paragraph two of this subdivision shall affect any agreement in effect on or before the effective date of this paragraph.

S 2. Subdivisions a and 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 and paragraph 3 of subdivision a as amended by chapter 18 of the laws of 2008, are amended to read as follows:

a. The division of the lottery is hereby authorized to license, pursuant to rules and regulations to be promulgated by the division of the lottery, the operation of video lottery gaming at Aqueduct, Monticello, Yonkers, Finger Lakes, and Vernon Downs racetracks, or at any other racetrack licensed pursuant to article three of the racing, pari-mutuel wagering and breeding law that are located in a county or counties in which video lottery gaming has been authorized pursuant to local law, excluding the licensed racetrack commonly referred to in article three of the racing, pari-mutuel wagering and breeding law as the "New York state exposition" held in Onondaga county and the racetracks of the non-profit racing association known as Belmont Park racetrack and the Saratoga thoroughbred racetrack. Such rules and regulations shall provide, as a condition of licensure, that racetracks to be licensed are certified to be in compliance with all state and local fire and safety codes, that the division is afforded adequate space, infrastructure, and amenities consistent with industry standards for such video gaming operations as found at racetracks in other states, that racetrack employees involved in the operation of video lottery gaming pursuant to this section are licensed by the racing and wagering board, and such other terms and conditions of licensure as the division may establish. Notwithstanding any inconsistent provision of law, video lottery gaming at a racetrack pursuant to this section shall be deemed an approved

activity for such racetrack under the relevant city, county, town, or village land use or zoning ordinances, rules, or regulations. No [racetrack] ENTITY LICENSED BY THE DIVISION operating video lottery gaming pursuant to this section may house such gaming activity in a structure deemed or approved by the division as "temporary" for a duration of longer than eighteen-months. NOTHING IN THIS SECTION SHALL PROHIBIT THE DIVISION FROM LICENSING AN ENTITY TO OPERATE VIDEO LOTTERY GAMING AT AN EXISTING RACETRACK AS AUTHORIZED IN THIS SUBDIVISION WHETHER OR NOT A DIFFERENT ENTITY IS LICENSED TO CONDUCT HORSE RACING AND PARI-MUTUEL WAGERING AT SUCH RACETRACK PURSUANT TO ARTICLE TWO OR THREE OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW.

The division, in consultation with the racing and wagering board, shall establish standards for approval of the temporary and permanent physical layout and construction of any facility or building devoted to a video lottery gaming operation. In reviewing such application for the construction or reconstruction of facilities related or devoted to the operation or housing of video lottery gaming operations, the division, in consultation with the racing and wagering board, shall ensure that such facility:

(1) possesses superior consumer amenities and conveniences to encourage and attract the patronage of tourists and other visitors from across the region, state, and nation.

(2) has adequate motor vehicle parking facilities to satisfy patron requirements.

(3) has a physical layout and location that facilitates access to and from the horse racing track portion of such facility to encourage patronage of live horse racing events that are conducted at such track.

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 3. Section 1617-a of the tax law is amended by adding a new subdivision e to read as follows:

E. THE DIVISION SHALL NOT APPROVE THE CONSTRUCTION OR ALTERATION OF ANY FACILITY OR BUILDING DEVOTED TO THE OPERATION OR HOUSING OF VIDEO LOTTERY GAMING UNTIL THE PERSON OR ENTITY SELECTED TO OPERATE SUCH VIDEO LOTTERY GAMING SHALL HAVE SUBMITTED TO THE DIVISION A STATEMENT OF THE LOCATION OF THE PROPOSED FACILITY OR BUILDING, TOGETHER WITH A PLAN OF SUCH RACETRACK, AND PLANS OF ALL EXISTING BUILDINGS, SEATING STANDS AND OTHER STRUCTURES ON THE GROUNDS OF SUCH RACETRACK, IN SUCH FORM AS THE DIVISION MAY PRESCRIBE, AND SUCH PLANS SHALL HAVE BEEN APPROVED BY THE DIVISION. THE DIVISION, AT THE EXPENSE OF THE APPLICANT, MAY ORDER SUCH ENGINEERING EXAMINATION THEREOF AS THE DIVISION MAY DEEM NECESSARY. SUCH CONSTRUCTION OR ALTERATION MAY BE MADE ONLY WITH THE APPROVAL OF THE DIVISION AND AFTER EXAMINATION AND INSPECTION OF THE PLANS THEREOF AND THE ISSUANCE OF A PERMIT THEREFOR BY THE DIVISION.

S 4. 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 5. 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 6. Subdivision a of section 1617-a of the tax law, as amended by chapter 140 of the laws of 2008, is REPEALED.

S 7. Subdivision a of section 1617-a of the tax law, as amended by chapter 286 of the laws of 2008, is REPEALED.

S 8. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2008.

PART X

Section 1. Section 420 of the tax law is amended by adding a new subdivision 17 to read as follows:

17. "FLAVORED MALT BEVERAGES" MEANS ALCOHOLIC PRODUCTS MANUFACTURED FROM MALT THAT ALSO CONTAIN LIQUOR AND THAT CONTAIN MORE THAN ONE-HALF OF ONE PERCENT BUT NOT MORE THAN TWENTY-FOUR PERCENT OF ALCOHOL BY VOLUME.

S 2. Subdivision 3 of section 420 of the tax law, as amended by chapter 94 of the laws of 1934, is amended to read as follows:

3. "Alcoholic beverages" mean and include beers, FLAVORED MALT BEVERAGES, wines or liquors.

S 3. Subdivision 5 of section 420 of the tax law, as amended by chapter 237 of the laws of 1956, is amended to read as follows:

5. "Beers" mean and include all alcoholic beer, lager beer, ale, porter, and stout, and all other fermented beverages of any name or description manufactured from malt, wholly or in part, or from any substitute therefor containing one-half of one per centum, or more, of alcohol by volume, BUT NOT INCLUDING ANY FLAVORED MALT BEVERAGES.

S 4. Subdivision 7 of section 420 of the tax law, as amended by chapter 80 of the laws of 1935, is amended to read as follows:

7. "Liquors" mean and include any and all distilled or rectified spirits, alcohol, brandy, cordial (whether the base therefor be wine or liquor), whiskey, rum, gin and all other distilled beverages containing alcohol, including all dilutions and mixtures of one or more of the foregoing, and also mean and include any alcoholic liquids which would be wines OR FLAVORED MALT BEVERAGES if the alcoholic content thereof were not more than twenty-four per centum by volume.

S 5. Subdivision 14 of section 420 of the tax law, as amended by chapter 508 of the laws of 1993, is amended to read as follows:

14. "Noncommercial importer" means a person other than a distributor who imports or causes to be imported into this state beers, FLAVORED MALT BEVERAGES, or wines, except that such person shall not be a noncommercial importer where such person imports or causes to be imported into this state such alcoholic beverages in the quantities and under the conditions provided by subdivision four of section four hundred twenty-four OF THIS ARTICLE. Such term is inapplicable with respect to liquors.

S 6. Subdivision 1 of section 424 of the tax law is amended by adding a new paragraph (e-1) to read as follows:

(E-1) TWO DOLLARS AND FIFTY-FOUR CENTS PER GALLON UPON FLAVORED MALT BEVERAGES;

S 7. The opening paragraph of paragraph (g) of subdivision 1 of section 424 of the tax law, as amended by chapter 508 of the laws of 1993, is amended to read as follows:

For purposes of this chapter, it is presumed that liquors are possessed for the purpose of sale in this state if the quantity of liquors possessed in this state, imported or caused to be imported into this state or produced, distilled, manufactured, compounded, mixed or fermented in this state exceeds ninety liters. Such presumption may be rebutted by the introduction of substantial evidence to the contrary. In any case where the quantity of alcoholic beverages taxable pursuant to this article is a fractional part of one liter (or one gallon in the case of beers, FLAVORED MALT BEVERAGES, AND WINES) or an amount greater than a whole multiple of liters (or gallons in the case of beers, FLAVORED MALT BEVERAGES AND WINES), the amount of tax levied and imposed on such fractional part of one liter (or one gallon in the case of beers, FLAVORED MALT BEVERAGES, AND WINES), or fractional part of a liter (or gallon) in excess of a whole multiple of liters or gallons shall be such fractional part of the rate imposed by paragraphs (a) through (f) OF THIS SUBDIVISION.

S 8. Section 425 of the tax law, as amended by chapter 508 of the laws of 1993, is amended to read as follows:

S 425. Special provision as to imposition of taxes on certain alcoholic beverages. If a person shall receive any alcoholic beverages from the distributor with respect thereto, under such circumstances so as to preclude the collection of the taxes under this article, because this state was without power to impose such taxes under this article against such distributor by reason of the constitution or the law of the United States enacted pursuant thereto or the constitution or laws of this state, and such person shall thereafter sell or use any such alcoholic beverages in such manner and under such circumstances as may subject the same to the taxing power of this state with respect to any sale or use thereof, such person shall be liable for the tax imposed by section four hundred twenty-four OF THIS ARTICLE with respect to such sale or use, and shall make the same reports and returns, pay the same taxes and be subject to the other applicable provisions of this article relating to distributors, except that with respect to beers, FLAVORED MALT BEVERAGES, and wines such a person shall not be subject to the provisions of sections four hundred twenty-one and four hundred twenty-two of this article if such person does not offer such alcoholic beverages for sale or use such alcoholic beverages for any commercial purpose. Provided, further, that if the taxing power of this state does not extend to the imposition of such taxes on, and the requirement of payment of such taxes by, such person selling or using such beverages, then such person shall be required to collect such taxes from its purchaser on the sale of such beverages and to pay over such taxes to the commissioner. In such event, the same reports and returns relating to distributors, along with remittance, shall be required by such person and all the other provisions of this article relating to distributors shall apply. If such taxes are not so collected, then such purchaser shall, along with such person, be liable for such taxes.

S 9. Section 425-a of the tax law, as added by chapter 508 of the laws of 1993, is amended to read as follows:

S 425-a. Presumption of taxability. For the purpose of the proper administration of the taxes imposed by this article and to prevent evasion thereof, it shall be presumed with respect to this chapter that all alcoholic beverages possessed or found in this state are subject to

the taxes imposed by this article until the contrary is established by substantial evidence. Except with respect to a purchase at retail of beers, FLAVORED MALT BEVERAGES, or wines and a purchase at retail of ninety liters or less of liquors, no person shall purchase alcoholic beverages in this state unless the taxes imposed by this article with respect to such beverages have been assumed by a distributor registered under this article or paid by such distributor pursuant to and in accordance with the manner provided herein and evidenced in accordance with the manner provided herein. In the case of liquors, such taxes shall be assumed by a distributor in accordance with the invoice required, and the certification of tax payment included therein, under section four hundred twenty-seven of this article; in the case of other alcoholic beverages, the taxes shall be assumed by such distributor pursuant to and in accordance with the rules or regulations of the department.

S 10. Section 426 of the tax law, as amended by chapter 891 of the laws of 1986, is amended to read as follows:

S 426. Records to be kept by brand owners, distributors, owners and others. Every brand owner, distributor, owner or other person shall keep a complete and accurate record of all purchases and sales or other dispositions of alcoholic beverages, and a complete and accurate record of the number of gallons of beers, FLAVORED MALT BEVERAGES, AND WINES produced, manufactured, brewed or fermented and liters of all other alcoholic beverages produced, distilled, manufactured, brewed, compounded, mixed or fermented. Such records shall be in such form and contain such other information as the [tax commission] COMMISSIONER shall prescribe. [Said commission] THE COMMISSIONER, by rule or regulation, also may require the delivery of statements to purchasers of alcoholic beverages, and prescribe the matters to be contained therein. Such records and statements, unless required by the [tax commission] COMMISSIONER to be preserved for a longer period, shall be preserved for a period of [one year] THREE YEARS and shall be offered for inspection at any time upon oral or written demand by the commissioner [of taxation and finance] or his OR HER duly authorized agents, and every such distributor, brand owner, owner or other person shall make such reports to the department [of taxation and finance] as may be required by the [tax commission] COMMISSIONER. Nothing in this section contained shall be construed to require the keeping of a record of the purchase or disposition of alcoholic beverages by a consumer thereof, except by a person who uses the same for commercial purposes, or of the sale of alcoholic beverages at retail.

S 11. Section 429 of the tax law, as amended by chapter 433 of the laws of 1978, is amended to read as follows:

S 429. Payment of tax; returns. 1. Every distributor, noncommercial importer or other person shall, on or before the twentieth day of each month, file with the department [of taxation and finance] a return, on forms to be prescribed by the [tax commission] COMMISSIONER and furnished by such department, stating separately the number of gallons, or lesser quantity, of beers, FLAVORED MALT BEVERAGES, AND WINES, and the number of liters, or lesser quantity, of [wines and] liquors sold or used by such distributor, noncommercial importer or other person in this state during the preceding calendar month, except that the [tax commission] COMMISSIONER may, if [it] HE OR SHE deems it necessary in order to insure the payment of the tax imposed by this article, require returns to be made at such times and covering such periods as [it] HE OR SHE may deem necessary. Such return shall contain such further information as

the [tax commission] COMMISSIONER shall require. The fact that the name of the distributor, noncommercial importer or other person is signed to a filed return shall be prima facie evidence for all purposes that the return was actually signed by such distributor, noncommercial importer or other person.

2. Each such distributor, noncommercial importer or other person shall pay to such department with the filing of such return, the tax imposed by this article, on each gallon, or lesser quantity, of beers, FLAVORED MALT BEVERAGES, AND WINES and on each liter, or lesser quantity of all other alcoholic beverages sold or used by such distributor, noncommercial importer or other person in this state, as so reported, during the period covered by such return, except that, where a distributor has purchased alcoholic beverages prior to the expiration of the period covered by the return, upon which the taxes imposed by this article have been or are required to be paid by another distributor, a credit shall be allowed for the amount of such taxes.

3. All alcoholic beverages which have come into the possession of a distributor shall be deemed to have been sold or used by such distributor unless it shall be proved to the satisfaction of the [tax commission] COMMISSIONER that such alcoholic beverages have not been sold or used.

4. A distributor entitled to a refund under the provisions of section four hundred thirty-four of this [chapter] ARTICLE, in lieu of such refund, may take credit therefor on a return filed pursuant to this section, unless the [tax commission] COMMISSIONER shall withdraw such privilege.

S 12. Subdivision 1 of section 445 of the tax law, as amended by chapter 433 of the laws of 1978, is 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 excise taxes on a distributor and a noncommercial importer at the following rates:

(a) Twelve cents per gallon upon beers [and];

(b) Twenty-six and four-tenths cents per liter on the liquors described in paragraph (f) of subdivision one of section four hundred twenty-four OF THIS ARTICLE; AND

(C) THIRTY-NINE CENTS PER GALLON UPON FLAVORED MALT BEVERAGES, when sold or used in such city.

Such local law shall provide that if prior to the date upon which the taxes go into effect, a contract of sale of any beer or other alcoholic beverages described above was made, and delivery thereof pursuant to such contract is made within the city imposing such taxes on or after the effective date thereof, the vendor shall be deemed a distributor, and such beer and other alcoholic beverages shall be deemed to be sold, and shall be subject to the tax at the time of such delivery. THE CITY HAS THE OPTION OF IMPOSING TAX ON BEERS AND LIQUORS OR ON BEERS, LIQUORS, AND FLAVORED MALT BEVERAGES.

S 13. (a) If a contract for the sale of flavored malt beverages was entered into prior to April 1, 2009 and delivery under that contract is made within the state on or after April 1, 2009, the flavored malt beverages sold under that contract will be subject to tax under article 18 of the tax law, as amended by this act, at the time of delivery.

(b) In order to subject flavored malt beverages in this state on April 1, 2009 to the increased taxes imposed by section six of this act, a special floor tax is imposed on each wholesaler or retailer (as defined

in the alcoholic beverage control law) or other sellers of flavored malt beverages, other than those registered as distributors under article 18 of the tax law, at the rate of two dollars and forty-three cents per gallon on all flavored malt beverages in the possession or under the control on April 1, 2009 of those wholesalers, retailers and other sellers of flavored malt beverages for purposes of sale in the state. Additionally, any person who is a distributor or manufacturer under article 18 of the tax law is subject to this special floor tax on any flavored malt beverages in his or her possession or under his or her control on which the tax under article 18 of the tax law was already imposed at the beer rate prior to April 1, 2009. The first 25 gallons of all flavored malt beverages on April 1, 2009 in the possession or under the control of any manufacturer, wholesaler, retailer, distributor or any other seller of flavored malt beverages are exempt from this floor tax. This floor tax is due and payable to the commissioner of taxation and finance on or before June 22, 2009.

(c) If the city of New York imposes tax on flavored malt beverages effective April 1, 2009, under the authority of subdivision 1 of section 445 of the tax law, as amended by section twelve of this act, a special floor tax is imposed on each wholesaler or retailer, as defined in the alcoholic beverage control law, other than those registered as distributors under article 18 of the tax law, at the rate of twenty-seven cents per gallon on all flavored malt beverages in the possession or under the control on April 1, 2009 of wholesalers, retailers, or all other sellers of flavored malt beverages, for purposes of sale in that city and the floor tax authorized by subdivision 2 of section 445 of the tax law does not apply. Additionally, any person who is a distributor or manufacturer under article 18 of the tax law is subject to the same special floor tax on any flavored malt beverages in his or her possession or under his or her control on which the tax under article 18 of the tax law was already imposed at the beer rate prior to April 1, 2009. The special city floor tax authorized by this subdivision must be administered, collected and enforced jointly with, and under the same terms as, the special floor tax imposed by subdivision (b) of this section with respect to the increased taxes imposed by section six of this act. If such city imposes a tax on flavored malt beverages that is not effective on April 1, 2009, the provisions of subdivision 2 of section 445 of the tax law do not apply to the increased taxes authorized by section twelve of this act.

(d) Except as provided in this section, all the provisions of articles 18 and 37 of the tax law will apply to taxes imposed by this section.

(e) The commissioner of taxation and finance is authorized to prescribe any terms and conditions such commissioner deems advisable and require any reports such commissioner deems necessary to effectuate the provisions of this section.

(f) The commissioner of taxation and finance may request from the state liquor authority, and the state liquor authority is authorized and directed to provide, any cooperation and assistance, including data, that will enable such commissioner to carry out the imposition of the flavored malt beverages tax rate and the implementation of the floor tax.

S 14. Subdivision 12-c of section 3 of the alcoholic beverage control law, as renumbered by chapter 366 of the laws of 1992, is renumbered subdivision 12-d and a new subdivision 12-c is added to read as follows:

12-C. "FLAVORED MALT BEVERAGE" MEANS AND INCLUDES ANY FERMENTED BEVERAGES OF ANY NAME OR DESCRIPTION MANUFACTURED FROM MALT, OR FROM ANY SUBSTITUTE THEREFOR, CONTAINING FLAVORS AND OTHER INGREDIENTS DERIVED

FROM LIQUOR OR SPIRITS PROVIDED THAT NO MORE THAN FORTY-NINE PERCENT OF THE OVERALL ALCOHOL CONTENT OF THE FINISHED PRODUCT MAY BE DERIVED FROM THE ADDITION OF SAID FLAVORS AND OTHER INGREDIENTS. FOR PURPOSES OF THIS CHAPTER, "FLAVORED MALT BEVERAGES" SHALL BE CONSIDERED "BEER" AND MAY BE BOUGHT, STORED AND SOLD BY ANY PERSON LICENSED PURSUANT TO THIS CHAPTER WITH A LICENSE THAT ALREADY CONTAINS THE PRIVILEGE TO BUY, SELL OR STORE BEER.

S 15. This act shall take effect April 1, 2009.

PART Y

Section 1. Paragraph (a) of subdivision 1 of section 1003 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 18 of the laws of 2008, 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 [chapter] 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 [nine] TEN; 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 [nine] TEN; 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 chapter 18 of the laws of 2008, 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 [nine] TEN, 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 chapter 18 of the laws of 2008, 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 meeting in Saratoga county at Saratoga thoroughbred racetrack until June thirtieth, two thousand [nine] TEN 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 [nine] TEN. 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 chapter 18 of the laws of 2008, 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 [nine] TEN. 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 chapter 18 of the laws of 2008, 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 [nine] TEN. 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 chapter 18 of the laws of 2008, is amended to read as follows:

Notwithstanding any other provision of this chapter, for the period July twenty-fifth, two thousand one through September [ninth] EIGHTH, two thousand [eight] NINE, 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 chapter 18 of the laws of 2008, 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, [2009] 2010; 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 chapter 18 of the laws of 2008, 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, [2009] 2010; 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 chapter 115 of the laws of 2008, 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 [nine] TEN, 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 [nine] TEN, 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 chapter 18 of the laws of 2008, 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 [nine] TEN, such tax on all wagers shall be one and six-tenths per centum, plus, in each such peri-

od, 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 [eight] TEN, 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 chapter 18 of the laws of 2008, 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 [nine] TEN.

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 Z

Section 1. Paragraph 1 of subdivision (j) of section 1111 of the tax law, as amended by section 1 of part E of chapter 85 of the laws of 2002, is amended to read as follows:

(1) The tax required to be prepaid pursuant to section eleven hundred three of this article shall be computed by multiplying the base retail price by a tax rate of [seven] EIGHT percent and rounding the result thereof to the nearest whole cent per package.

S 2. This act shall take effect June 1, 2009; and shall apply to sales made and uses occurring on or after that date in accordance with applicable transitional provisions in article 28 of the tax law.

PART AA

Section 1. Paragraph 17 of subdivision (b) of section 1101 of the tax law, as added by chapter 309 of the laws of 1996, 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 [primarily] 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.

S 2. Subdivision 2 of section 1118 of the tax law, as amended by chapter 651 of the laws of 1999, 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.

S 3. This act shall take effect on June 1, 2009, 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.

PART BB

Section 1. Subdivision (e-1) of section 1132 of the tax law is REPEALED.

S 2. This act shall take effect on June 1, 2009.

PART CC

Section 1. Section 208 of the tax law is amended by adding a new subdivision 20 to read as follows:

20. THE TERM "DIGITAL PRODUCT" MEANS ANY PROPERTY OR SERVICE, OR COMBINATION THEREOF, OF WHATEVER NATURE DELIVERED TO THE PURCHASER THROUGH THE USE OF WIRE, CABLE, FIBER-OPTIC, LASER, MICROWAVE, RADIO WAVE, SATELLITE OR SIMILAR SUCCESSOR MEDIA, OR ANY COMBINATION THEREOF. DIGITAL PRODUCT INCLUDES, BUT IS NOT LIMITED TO, AN AUDIO WORK, AUDIOVISUAL WORK, VISUAL WORK, BOOK OR LITERARY WORK, GRAPHIC WORK, GAME, INFORMATION OR ENTERTAINMENT SERVICE, STORAGE OF DIGITAL PRODUCTS AND COMPUTER SOFTWARE BY WHATEVER MEANS DELIVERED. THE TERM "DELIVERED TO" INCLUDES FURNISHED OR PROVIDED TO OR ACCESSED BY. FOR PURPOSES OF PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION TWO HUNDRED NINE-B OF THIS ARTICLE, SUBPARAGRAPH ONE OF PARAGRAPH (A) OF SUBDIVISION THREE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE AND SUBDIVISIONS TWELVE, TWELVE-B AND THIRTY-THREE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, DIGITAL PRODUCTS WILL BE DEEMED INTANGIBLE PROPERTY. A DIGITAL PRODUCT DOES NOT INCLUDE LEGAL, MEDICAL, ACCOUNTING, ARCHITECTURAL OR ENGINEERING SERVICES.

S 2. Clause (B) of subparagraph 2 of paragraph (a) of subdivision 3 of section 210 of the tax law, as separately amended by section 1 of part K and section 13 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(B) services performed within the state, provided, however, that (i) in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, receipts arising from sales of advertising contained in such newspapers and periodicals shall be deemed to arise from services performed within the state to the extent that such newspapers and periodicals are delivered to points within the state, (ii) receipts from an investment company arising from the sale of management, administration or distribution services to such investment company shall be deemed to arise from services performed within the state to the extent set forth in subparagraph six of this paragraph, (iii) in the case of taxpayers principally engaged in the activity of air freight forwarding acting as principal and like indirect air carriage receipts arising from such activity shall arise from services performed within the state as follows: one hundred percent of such receipts if both the pickup and delivery associated with such receipts are made in this state and fifty percent of such receipts if either the pickup or delivery associated with such receipts is made in this state and (iv) in the case of a taxpayer which is a registered securities or commodities broker or dealer, the receipts specified in subparagraph nine of this paragraph shall be deemed to arise from services performed within the state to the extent set forth in such subparagraph nine, [and (iv)] (V) IN THE CASE OF A TAXPAYER ENGAGED IN THE BUSINESS OF BROADCASTING TELEVISION OR RADIO PROGRAMS OR OTHERWISE TRANSMITTING TELEVISION OR RADIO PROGRAMS, RECEIPTS ARISING FROM SALES OF ADVERTISING ON TELEVISION OR RADIO WILL BE DEEMED TO BE RECEIPTS FROM SERVICES PERFORMED WITHIN THE STATE BASED ON THE RATIO OF THE NUMBER OF VIEWERS OR LISTENERS WITHIN THE STATE TO THE TOTAL NUMBER OF VIEWERS OR LISTENERS WITHIN AND WITHOUT THE STATE, AND (VI) IN THE CASE OF A TAXPAYER NOT DESCRIBED IN SUBCLAUSE (V) OF THIS CLAUSE, RECEIPTS ARISING FROM SALES OF ADVERTISING THAT IS FURNISHED, PROVIDED OR DELIVERED TO, OR ACCESSED BY THE VIEWER OR LISTENER THROUGH THE USE OF WIRE, CABLE, FIBER-OPTIC, LASER, MICROWAVE, RADIO WAVE, SATELLITE OR SIMILAR SUCCESSOR MEDIA OR ANY COMBINATION THEREOF, WILL BE DEEMED TO BE RECEIPTS FROM A SERVICE PERFORMED WITHIN THE STATE BASED ON THE RATIO OR THE NUMBER OF VIEWERS OR LISTENERS WITHIN THE STATE TO THE TOTAL NUMBER OF VIEWERS OR LISTENERS WITHIN AND WITHOUT THE STATE, AND (VII) in the case of receipts arising from the transportation or transmission of gas through pipes, the portion of such receipts which constitute receipts from services performed within the state shall be the product of (I) the total of such receipts and (II) a fraction, the numerator of which is the taxpayer's transportation units within the state and the denominator of which is the taxpayer's transportation units within and without the state. A transportation unit is the transportation of one cubic foot of gas over a distance of one mile,

S 3. Clause (C) of subparagraph 2 of paragraph (a) of subdivision 3 of section 210 of the tax law, as amended by chapter 802 of the laws of 1975, is amended to read as follows:

(C) EXCEPT AS PROVIDED IN CLAUSE (D) OF THIS SUBPARAGRAPH, rentals from property situated, and royalties from the use of patents or copyrights, AND OTHER SIMILAR INTANGIBLE PROPERTY within the state, [and receipts from the sales of rights for closed-circuit and cable television transmissions of an event (other than events occurring on a regularly scheduled basis) taking place within the state as a result of the

rendition of services by employees of the corporation, as athletes, entertainers or performing artists, but only to the extent that such receipts are attributable to such transmissions received or exhibited within the state] and

S 4. Clause (D) of subparagraph 2 of paragraph (a) of subdivision 3 of section 210 of the tax law, as amended by chapter 802 of the laws of 1975, is amended to read as follows:

[(D)] (E) all other business receipts earned within the state, bear to the total amount of the taxpayer's receipts, similarly computed, arising during such period from all sales of its tangible personal property, services, rentals, royalties, [receipts from the sales of rights for closed-circuit and cable television transmissions] RECEIPTS FROM DIGITAL PRODUCTS and all other business transactions, whether within or without the state;

S 5. Subparagraph 2 of paragraph (a) of subdivision 3 of section 210 of the tax law is amended by adding new clause (D) to read as follows:

(D) RECEIPTS FROM THE SALE OF, LICENSE TO USE, OR GRANTING OF REMOTE ACCESS TO DIGITAL PRODUCTS WITHIN THE STATE DETERMINED ACCORDING TO THE HIERARCHY OF METHODS SET FORTH IN THIS CLAUSE IN THE ORDER STATED IN SUBCLAUSES (I) THROUGH (IV) OF THIS CLAUSE. THE TAXPAYER MUST EXERCISE DUE DILIGENCE UNDER EACH METHOD DESCRIBED IN THIS CLAUSE BEFORE REJECTING IT AND PROCEEDING TO THE NEXT METHOD IN THE HIERARCHY. IF THE RECEIPT FOR A DIGITAL PRODUCT IS COMPRISED OF A COMBINATION OF PROPERTY AND SERVICES, IT CANNOT BE DIVIDED INTO SEPARATE COMPONENTS AND IS CONSIDERED TO BE ONE RECEIPT REGARDLESS OF WHETHER IT IS SEPARATELY STATED FOR BILLING PURPOSES. THE ENTIRE RECEIPT MUST BE ALLOCATED BY THIS HIERARCHY.

(I) RECEIPTS ALLOCATED TO THE DELIVERY DESTINATION OF THE DIGITAL PRODUCT. A DIGITAL PRODUCT IS DEEMED DELIVERED WITHIN THE STATE IF THE LOCATION FROM WHICH THE PURCHASER OR ITS AUTHORIZED USER ACCESSES OR USES THE DIGITAL PRODUCT IS IN THE STATE. DESTINATION MAY BE DEMONSTRATED BY INTERNET PROTOCOL ADDRESS OR OTHER SIMILAR OR SUCCESSOR INDICATOR, THE GEOGRAPHIC LOCATION OF THE EQUIPMENT TO WHICH THE DIGITAL PRODUCT IS DELIVERED OR FROM WHICH THE DIGITAL PRODUCT IS ACCESSED, OR THE DELIVERY DESTINATION INDICATED ON A BILL OF LADING OR PURCHASE INVOICE. A DIGITAL PRODUCT ACCESSED OR USED BY THE PURCHASER OR ITS AUTHORIZED USER DURING THE TAXPAYER'S TAXABLE YEAR IN MULTIPLE LOCATIONS IS DELIVERED WITHIN THE STATE TO THE EXTENT THAT THE DIGITAL PRODUCT IS ACCESSED OR USED IN THE STATE;

(II) THE BILLING ADDRESS OF THE PURCHASER;

(III) THE ZIP CODE OR OTHER GEOGRAPHIC INDICATOR OF THE PURCHASER'S LOCATION; OR

(IV) THE PERCENTAGE OF THE TAXPAYER'S RECEIPTS WITHIN THE STATE DETERMINED PURSUANT TO THIS SUBPARAGRAPH FOR THE PRECEDING TAXABLE YEAR. HOWEVER, IF THE TAXPAYER WAS NOT SUBJECT TO TAX IN THE PRECEDING TAXABLE YEAR, THEN THE RECEIPTS WITHIN THE STATE IN THE CURRENT TAXABLE YEAR DETERMINED PURSUANT TO THIS SUBPARAGRAPH.

S 6. Subparagraph 2 of paragraph (b) of subdivision 2 of section 209-B of the tax law, as amended by section 3 of part K of chapter 63 of the laws of 2000, is amended to read as follows:

(2) services performed within the metropolitan commuter transportation district, provided, however, that (i) in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, receipts arising from sales of advertising contained in such newspapers and periodicals shall be deemed to arise from services performed within the metropolitan commuter transportation district to the extent that such

newspapers and periodicals are delivered to points within the metropolitan commuter transportation district, (ii) receipts from an investment company from the sale of management, administration or distribution services to such investment company shall be deemed to arise from services performed within the metropolitan commuter transportation district to the extent set forth in subparagraph six of paragraph (a) of subdivision three of section two hundred ten of this chapter (except that references in such subparagraph six to the state shall be deemed, for purposes of application to this clause, to be references to the metropolitan commuter transportation district), (iii) in the case of taxpayers principally engaged in the activity of air freight forwarding acting as principal and like indirect air carriage receipts arising from such activity shall arise from services performed within the metropolitan commuter transportation district as follows: one hundred percent of such receipts if both the pickup and delivery associated with such receipts are made in the metropolitan commuter transportation district and fifty percent of such receipts if either the pickup or delivery associated with such receipts is made in the metropolitan commuter transportation district, [and] (iv) in the case of a taxpayer which is a registered securities or commodities broker or dealer, the receipts specified in subparagraph nine of paragraph (a) of subdivision three of section two hundred ten of this article shall be deemed to arise from services performed within the metropolitan commuter transportation district to the extent set forth in such subparagraph nine (except that references in such subparagraph nine to the state shall be deemed, for purposes of the application of this clause, to be references to the metropolitan commuter transportation district) AND (V) IN THE CASE OF A TAXPAYER ENGAGED IN THE BUSINESS OF BROADCASTING TELEVISION OR RADIO PROGRAMS OR OTHERWISE TRANSMITTING TELEVISION OR RADIO PROGRAMS, RECEIPTS ARISING FROM SALES OF ADVERTISING ON TELEVISION OR RADIO WILL BE DEEMED TO BE RECEIPTS FROM SERVICES PERFORMED WITHIN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT BASED ON THE RATIO OF THE NUMBER OF VIEWERS OR LISTENERS WITHIN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT TO THE TOTAL NUMBER OF VIEWERS OR LISTENERS WITHIN THE STATE, AND (VI) IN THE CASE OF A TAXPAYER NOT DESCRIBED IN CLAUSE (V) OF THIS SUBPARAGRAPH, RECEIPTS ARISING FROM SALES OF ADVERTISING THAT IS FURNISHED TO, PROVIDED OR DELIVERED TO, OR ACCESSED BY THE VIEWER OR LISTENER THROUGH THE USE OF WIRE, CABLE, FIBER-OPTIC, LASER, MICROWAVE, RADIO WAVE, SATELLITE OR SIMILAR SUCCESSOR MEDIA OR ANY COMBINATION THEREOF, WILL BE DEEMED TO BE RECEIPTS FROM A SERVICE PERFORMED WITHIN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT BASED ON THE RATIO OF THE NUMBER OF VIEWERS OR LISTENERS WITHIN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT TO THE TOTAL NUMBER OF VIEWERS OR LISTENERS WITHIN THE STATE,

S 7. Subparagraph 3 of paragraph (b) of subdivision 2 of section 209-B of the tax law, as amended by chapter 11 of the laws of 1983, is amended to read as follows:

(3) EXCEPT AS PROVIDED IN SUBPARAGRAPH FOUR OF THIS PARAGRAPH, rentals from property situated and royalties from the use of patents or copyrights AND OTHER SIMILAR INTANGIBLE within the metropolitan commuter transportation district, [and receipts from the sales of rights for closed-circuit and cable television transmissions of an event (other than events occurring on a regularly scheduled basis) taking place within the metropolitan commuter transportation district as a result of the rendition of services by employees of the corporation, as athletes, entertainers or performing artists, but only to the extent that such

receipts are attributable to such transmissions received or exhibited within the metropolitan commuter transportation district,] and

S 8. Subparagraph 4 of paragraph (b) of subdivision 2 of section 209-B of the tax law, as amended by chapter 11 of the laws of 1983, is amended to read as follows:

[(4)] (5) all other business receipts earned within the metropolitan commuter transportation district, bear to the total amount of the taxpayer's receipts, similarly computed, arising during such period from all sales of its tangible personal property, services, rentals, royalties, [receipts from the sales of rights for closed-circuit and cable television transmissions] RECEIPTS FROM DIGITAL PRODUCTS and all other business transactions, within the state;

S 9. Paragraph (b) of subdivision 2 of section 209-B of the tax law is amended by adding a new subparagraph 4 to read as follows:

(4) RECEIPTS FROM THE SALE OF, LICENSE TO USE, OR GRANTING OF REMOTE ACCESS TO DIGITAL PRODUCTS WITHIN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT DETERMINED ACCORDING TO THE HIERARCHY OF METHODS SET FORTH IN THIS SUBPARAGRAPH IN THE ORDER STATED IN CLAUSES (I) THROUGH (IV) OF THIS SUBPARAGRAPH. THE TAXPAYER MUST EXERCISE DUE DILIGENCE UNDER EACH METHOD DESCRIBED IN THIS SUBPARAGRAPH BEFORE REJECTING IT AND PROCEEDING TO THE NEXT METHOD IN THE HIERARCHY. IF THE RECEIPT FOR A DIGITAL PRODUCT IS COMPRISED OF A COMBINATION OF PROPERTY AND SERVICES, IT CANNOT BE DIVIDED INTO SEPARATE COMPONENTS AND IS CONSIDERED TO BE ONE RECEIPT REGARDLESS OF WHETHER IT IS SEPARATELY STATED FOR BILLING PURPOSES. THE ENTIRE RECEIPT MUST BE ALLOCATED BY THIS HIERARCHY.

(I) RECEIPTS ALLOCATED TO THE DELIVERY DESTINATION OF THE DIGITAL PRODUCT. A DIGITAL PRODUCT IS DEEMED DELIVERED WITHIN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT IF THE LOCATION FROM WHICH THE PURCHASER OR ITS AUTHORIZED USER ACCESSES OR USES THE DIGITAL PRODUCT IS IN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT. DESTINATION MAY BE DEMONSTRATED BY INTERNET PROTOCOL ADDRESS OR OTHER SIMILAR OR SUCCESSOR INDICATOR, THE GEOGRAPHIC LOCATION OF THE EQUIPMENT TO WHICH THE DIGITAL PRODUCT IS DELIVERED OR FROM WHICH THE DIGITAL PRODUCT IS ACCESSED, THE DELIVERY DESTINATION INDICATED ON A BILL OF LADING OR PURCHASE INVOICE. A DIGITAL PRODUCT ACCESSED OR USED BY THE PURCHASER OR ITS AUTHORIZED USER DURING THE TAXPAYER'S TAXABLE YEAR IN MULTIPLE LOCATIONS IS DELIVERED WITHIN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT TO THE EXTENT THAT THE DIGITAL PRODUCT IS ACCESSED OR USED IN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT;

(II) THE BILLING ADDRESS OF THE PURCHASER;

(III) THE ZIP CODE OR OTHER GEOGRAPHIC INDICATOR OF THE PURCHASER'S LOCATION; OR

(IV) THE PERCENTAGE OF THE TAXPAYER'S RECEIPTS WITHIN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT DETERMINED PURSUANT TO THIS PARAGRAPH FOR THE PRECEDING TAXABLE YEAR. HOWEVER, IF THE TAXPAYER WAS NOT SUBJECT TO TAX IN THE PRECEDING TAXABLE YEAR, THEN THE RECEIPTS WITHIN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT IN THE CURRENT TAXABLE YEAR DETERMINED PURSUANT TO THIS PARAGRAPH.

S 9-a. Subparagraph 4 of paragraph (b) of subdivision 2 of section 186-e of the tax law, as added by section 5 of part S of chapter 85 of the laws of 2002, is amended to read as follows:

(4) With respect to services [or], property OR DIGITAL PRODUCTS described in subparagraph (B) of paragraph one of subdivision [(1)] ONE of section eleven hundred eleven of this chapter and internet access service, a home service provider shall pay tax on the gross receipt from any charge that is aggregated with and not separately stated from other

charges for mobile telecommunications service. Provided, however, if such home service provider uses an objective, reasonable and verifiable standard for identifying each of the components of the charge for mobile telecommunications service, then such home service provider may separately account for and quantify the amount of each such component charge. If a home service provider chooses to so separately account for and quantify and separately sells the subparagraph (B) property, DIGITAL PRODUCT or service or internet access service, then the charge for such property, DIGITAL PRODUCT or service shall be based upon the price for such property, DIGITAL PRODUCT or service as separately sold. If a home service provider chooses to so separately account for and quantify and does not separately sell such property, DIGITAL PRODUCT or service, then the charge for such property, DIGITAL PRODUCT or service shall be based upon the prevailing retail price of comparable property, DIGITAL PRODUCT or service sold separately by other home service providers. In any case, the charge for such property, DIGITAL PRODUCT or service shall be reasonable and proportionate to the total charge to the mobile telecommunications customer. Such charges for such subparagraph (B) services [or], property, DIGITAL PRODUCTS or internet access service, as the case may be, will not constitute gross receipts from charges for mobile telecommunications services. Nothing herein shall be construed to exempt from tax any service or property, OR DIGITAL PRODUCT otherwise subject to tax under this section.

S 10. Section 1101 of the tax law is amended by adding a new subdivision (e) to read as follows:

(E) DIGITAL PRODUCT. (1) WHEN USED IN THIS ARTICLE FOR THE PURPOSES OF THE TAXES IMPOSED BY SUBDIVISION (G) OF SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE AND BY SECTION ELEVEN HUNDRED TEN OF THIS ARTICLE, THE TERM "DIGITAL PRODUCT" MEANS ANY PROPERTY OR SERVICE OF WHATEVER NATURE, DELIVERED TO THE PURCHASER THROUGH THE USE OF WIRE, CABLE, FIBER OPTIC, LASER, MICROWAVE, RADIO WAVE, SATELLITE OR SIMILAR OR SUCCESSOR MEDIA, OR ANY COMBINATION THEREOF. DIGITAL PRODUCT INCLUDES, BUT IS NOT LIMITED TO, AN AUDIO WORK, AUDIOVISUAL WORK, VISUAL WORK, BOOK OR LITERARY WORK, GRAPHIC WORK, GAME, INFORMATION OR ENTERTAINMENT SERVICE, STORAGE OF DIGITAL PRODUCTS AND COMPUTER SOFTWARE. THE TERM "DELIVERED TO" INCLUDES FURNISHED OR PROVIDED TO OR ACCESSED BY.

(2) DIGITAL PRODUCT DOES NOT INCLUDE THE FOLLOWING:

(I) ANY TANGIBLE PERSONAL PROPERTY OR SERVICE THAT IS SUBJECT TO TAX UNDER ANY PROVISION OF THIS ARTICLE OTHER THAN SUBDIVISION (G) OF SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE.

(II) ANY SERVICE, OTHER THAN A GAME OR ENTERTAINMENT SERVICE, UNLESS THAT SERVICE WOULD OTHERWISE BE SUBJECT TO TAX UNDER PARAGRAPHS ONE, SEVEN OR EIGHT OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE IF THAT SERVICE WERE FURNISHED, PROVIDED OR DELIVERED IN TANGIBLE FORM OR AS A SERVICE TO TANGIBLE PERSONAL PROPERTY OR REAL PROPERTY.

(III) TELEVISION OR RADIO PROGRAMMING WHERE THE PURCHASER DOES NOT SELECT BOTH THE CONTENT AND THE TIME AT WHICH THE CONTENT IS DISPLAYED.

(IV) PURCHASER-SELECTED CONTENT SOLD WITH TELEVISION PROGRAMMING FOR A SINGLE CHARGE.

(V) COMPUTER SOFTWARE THAT IS NOT PRE-WRITTEN COMPUTER SOFTWARE.

S 11. Section 1105 of the tax law is amended by adding a new subdivision (g) to read as follows:

(G) RECEIPTS FROM EVERY RETAIL SALE OF A DIGITAL PRODUCT. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A DIGITAL PRODUCT IS DELIVERED TO THE LOCATION TO WHICH THE DIGITAL PRODUCT IS TRANSMITTED TO THE PURCHASER OR ITS AGENT, OR FROM WHICH THE PURCHASER OR ITS AGENT ACCESSES THE

DIGITAL PRODUCT. FOR PURPOSES OF DETERMINING THE JURISDICTION OR JURISDICTIONS IN WHICH THE RETAIL SALE OF A DIGITAL PRODUCT OCCURS, THE FOLLOWING RULES APPLY:

(1) RECEIPTS FROM THE RETAIL SALE OF DIGITAL PRODUCTS, OTHER THAN PRE-WRITTEN COMPUTER SOFTWARE THAT IS NOT IN TANGIBLE FORM, ARE SOURCED TO THE PLACE WHERE DELIVERED TO THE PURCHASER. THE FOREGOING RULE IS AMPLIFIED, BUT NOT LIMITED, BY THE FOLLOWING SPECIAL PROVISIONS:

(I) IF THE VENDOR KNOWS, EITHER BY INTERNET PROTOCOL ADDRESS OR OTHER SIMILAR OR SUCCESSOR INDICATOR, THE GEOGRAPHIC LOCATION OF THE EQUIPMENT TO WHICH THE DIGITAL PRODUCT IS DELIVERED, THE RETAIL SALE IS SOURCED TO THE JURISDICTION OR JURISDICTIONS IN WHICH THAT EQUIPMENT IS LOCATED;

(II) IF THE GEOGRAPHIC LOCATION OF THE EQUIPMENT DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH IS UNKNOWN, THE RETAIL SALE IS SOURCED TO THE JURISDICTION OR JURISDICTIONS IN WHICH THE BILLING ADDRESS OF THE PURCHASER ASSOCIATED WITH THE METHOD OF PAYMENT FOR THE DIGITAL PRODUCT IS LOCATED;

(III) IF THE GEOGRAPHIC LOCATION OF THE EQUIPMENT DESCRIBED IN SUBPARAGRAPH (I) AND THE BILLING ADDRESS DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH ARE UNKNOWN, THE RETAIL SALE IS SOURCED TO THE RESIDENTIAL OR BUSINESS STREET ADDRESS OF THE PURCHASER, AS APPLICABLE, PROVIDED THAT THE USE OF THAT ADDRESS DOES NOT CONSTITUTE BAD FAITH.

(2) RECEIPTS FROM THE RETAIL SALE OF PRE-WRITTEN COMPUTER SOFTWARE THAT IS NOT IN TANGIBLE FORM ARE SOURCED AS FOLLOWS:

(I) IF THE RECEIPT FROM THE RETAIL SALE OF THE SOFTWARE IS LESS THAN ONE THOUSAND DOLLARS, OR THE RETAIL SALE OF THE SOFTWARE INCLUDES FEWER THAN TEN SITE LICENSES, OR BOTH, THE RETAIL SALE OF THE SOFTWARE IS SOURCED IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH ONE OF THIS SUBDIVISION;

(II) IF THE RECEIPT FROM THE RETAIL SALE OF THE SOFTWARE IS ONE THOUSAND DOLLARS OR MORE, OR THE SOFTWARE INCLUDES TEN OR MORE SITE LICENSES, THE RETAIL SALE OF THE SOFTWARE IS SOURCED IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH ONE OF THIS SUBDIVISION, UNLESS THE VENDOR HAS TIMELY RECEIVED FROM THE PURCHASER A PROPERLY COMPLETED MULTIPLE POINTS OF USE CERTIFICATE IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED THIRTY-TWO OF THIS ARTICLE.

S 12. Subdivision (c) of section 1132 of the tax law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

(c) (1) For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all receipts for property, DIGITAL PRODUCTS or services of any type mentioned in subdivisions (a), (b), (c) [and], (d) AND (G) of section eleven hundred five OF THIS ARTICLE, all rents for occupancy of the type mentioned in subdivision (e) of [said] SUCH section, and all amusement charges of any type mentioned in subdivision (f) of [said] SUCH section, are subject to tax until the contrary is established, and the burden of proving that any receipt, amusement charge or rent is not taxable hereunder shall be upon the person required to collect tax or the customer. Except as provided in subdivision (h) or (k) of this section, unless (i) a vendor, not later than ninety days after delivery of the property OR DIGITAL PRODUCT, or the rendition of the service, shall have taken from the purchaser a resale or exemption certificate in such form as the commissioner may prescribe, signed by the purchaser and setting forth the purchaser's name and address and, except as otherwise provided by regulation of the commissioner, the number of the purchaser's certificate of authority, together with such other information as the commissioner may require, to the effect that the property, DIGITAL PRODUCT or

service was purchased for resale or for some use by reason of which the sale is exempt from tax under the provisions of section eleven hundred fifteen OF THIS ARTICLE, and, where such resale or exemption certificate requires the inclusion of the purchaser's certificate of authority number or other identification number required by regulations of the commissioner, that the purchaser's certificate of authority has not been suspended or revoked and has not expired as provided in section eleven hundred thirty-four OF THIS PART, or (ii) the purchaser, not later than ninety days after delivery of the property OR DIGITAL PRODUCT or the rendition of the service, furnishes to the vendor: any affidavit, statement or additional evidence, documentary or otherwise, which the commissioner may require demonstrating that the purchaser is an exempt organization described in section eleven hundred sixteen OF THIS ARTICLE, the sale shall be deemed a taxable sale at retail. Where a resale or exemption certificate or an affidavit, statement or additional evidence referred to in the previous sentence is received within the time limit set forth therein, but is deficient in some material manner, and where such deficiency is thereafter removed, the receipt of such resale or exemption certificate or such affidavit, statement or additional evidence shall be deemed to have satisfied all of the requirements of the preceding sentence. Where such a resale or exemption certificate or such an affidavit, statement or additional evidence has been furnished to the vendor, the burden of proving that the receipt, amusement charge or rent is not taxable hereunder shall be solely upon the customer. The vendor shall not be required to collect tax from purchasers who furnish a resale or exemption certificate, or such an affidavit, statement or additional evidence in proper form, unless, in the case of a resale or exemption certificate described in [clause] SUBPARAGRAPH (i) [of the second sentence] of this paragraph whereon the purchaser's certificate of authority number, or other identification number required by regulation of the commissioner, is required to be included, such purchaser's certificate of authority is invalid because it has been suspended or revoked as provided in section eleven hundred thirty-four OF THIS PART, and the commissioner has furnished registered vendors with information identifying those persons whose certificates of authority have been suspended or revoked, or unless such purchaser's certificate of authority is invalid because it has expired, and the commissioner has provided registered vendors with a means of determining whether such expiration has occurred. Where the vendor accepts such a resale or exemption certificate from a person identified by the commissioner as one whose certificate of authority has been suspended or revoked or from a person whose certificate of authority has been identified as having expired, the receipt, amusement charge or rent from such transaction shall be deemed to be a taxable sale at retail.

(2) Notwithstanding paragraph one of this subdivision or any other law to the contrary, the commissioner may authorize a purchaser, who acquires tangible personal property, DIGITAL PRODUCTS or services under circumstances which make it impossible at the time of acquisition to determine the manner in which the tangible personal property, DIGITAL PRODUCTS or services will be used, to pay the tax directly to the commissioner and waive the collection of the tax by the vendor. Subject to such reasonable conditions as the commissioner may require, the commissioner shall authorize an omnibus carrier described in subdivision (b) of section eleven hundred nineteen OF THIS ARTICLE to pay the tax on the purchase or use of an omnibus directly to the commissioner and waive the collection of the tax by the vendor. No such authority shall be

granted or exercised except upon application to the commissioner, and the issuance by the commissioner, in the commissioner's discretion, of a direct payment permit. If a direct payment permit is granted, its use shall be subject to conditions specified by the commissioner, and the payment of tax on all acquisitions pursuant to the permit shall be made directly to the commissioner by the permit holder. The commissioner may suspend or revoke a direct payment permit where the permit holder fails to comply with any of the provisions of this article or any rule promulgated by the commissioner with respect to this article. The notice and hearing provisions applicable to the revocation and suspension of certificates of authority under section eleven hundred thirty-four OF THIS PART shall apply to the suspension and revocation of direct payment permits. A vendor shall not be required to collect tax from a purchaser who furnishes a direct payment permit in proper form, unless such purchaser's direct payment permit has been suspended or revoked by the commissioner and the commissioner has provided registered vendors with information identifying those persons whose direct payment permits have been suspended or revoked. Where a vendor accepts a direct payment permit from a person whose direct payment permit has been suspended or revoked, and the commissioner has provided registered vendors with information identifying those persons whose direct payment permits have been suspended or revoked, the receipt, amusement charge or rent from such transaction shall be deemed to be subject to tax.

(3) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, IF A VENDOR OF PRE-WRITTEN COMPUTER SOFTWARE DESCRIBED IN CLAUSE (II) OF PARAGRAPH TWO OF SUBDIVISION (G) OF SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE HAS, NOT LATER THAN NINETY DAYS AFTER THE DELIVERY OF THE PRE-WRITTEN COMPUTER SOFTWARE, TAKEN FROM THE PURCHASER A PROPERLY COMPLETED MULTIPLE POINTS OF USE CERTIFICATE THAT SETS FORTH THE JURISDICTION OR JURISDICTIONS IN WHICH THE SOFTWARE IS DELIVERED, THE SALE OF THE SOFTWARE MUST BE SOURCED, AND THE VENDOR MUST ALLOCATE, COLLECT, AND REMIT THE TAXES IMPOSED BY THIS ARTICLE AND PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS CHAPTER, BASED ON THE JURISDICTION OR JURISDICTIONS WITHIN NEW YORK STATE IN WHICH EACH USER IS LOCATED, AS INDICATED BY THE PURCHASER IN THE CERTIFICATE. THE MULTIPLE POINTS OF USE CERTIFICATE SHALL BE IN THE FORM THE COMMISSIONER MAY PRESCRIBE, SIGNED BY THE PURCHASER, SHALL SET FORTH THE PURCHASER'S NAME AND ADDRESS AND, EXCEPT AS OTHERWISE PROVIDED BY REGULATION OF THE COMMISSIONER, STATE THE NUMBER OF THE PURCHASER'S CERTIFICATE OF AUTHORITY, TOGETHER WITH ANY OTHER INFORMATION THE COMMISSIONER MAY REQUIRE. WHEN A PROPERLY COMPLETED MULTIPLE POINTS OF USE CERTIFICATE HAS BEEN FURNISHED TO THE VENDOR, THE BURDEN OF PROVING THE JURISDICTION OR JURISDICTIONS TO WHICH THE PRE-WRITTEN COMPUTER SOFTWARE WAS DELIVERED WILL BE SOLELY UPON THE PURCHASER. WHEN A MULTIPLE POINTS OF USE CERTIFICATE IS TIMELY RECEIVED BY THE VENDOR BUT IS DEFICIENT IN SOME MATERIAL WAY, AND THE DEFICIENCY IS LATER REMOVED, THE RECEIPT OF THE CERTIFICATE WILL BE DEEMED TO HAVE SATISFIED ALL OF THE REQUIREMENTS OF THIS PARAGRAPH.

(4) A MULTIPLE POINTS OF USE CERTIFICATE IS NOT VALID IF THE PURCHASER'S CERTIFICATE OF AUTHORITY HAS BEEN SUSPENDED OR REVOKED AND THE COMMISSIONER HAS FURNISHED REGISTERED VENDORS WITH INFORMATION IDENTIFYING THOSE PERSONS WHOSE CERTIFICATES OF AUTHORITY HAVE BEEN SUSPENDED OR REVOKED, OR THE PURCHASER'S CERTIFICATE OF AUTHORITY IS INVALID BECAUSE IT HAS EXPIRED AS PROVIDED IN SECTION ELEVEN HUNDRED THIRTY-FOUR OF THIS PART AND THE COMMISSIONER HAS PROVIDED REGISTERED VENDORS WITH A MEANS OF DETERMINING THAT THE PURCHASER'S CERTIFICATE OF AUTHORITY HAS EXPIRED. THE VENDOR WILL NOT BE REQUIRED TO COLLECT TAX ALLOCABLE TO THE

PORTION OF THE RECEIPT THAT THE PROPERLY COMPLETED MULTIPLE POINTS OF USE CERTIFICATE INDICATES IS ATTRIBUTABLE TO USE OF THE SOFTWARE OUTSIDE NEW YORK STATE.

S 13. Paragraph (i) of subdivision (d) of section 12 of the tax law, as added by chapter 615 of the laws of 1998, is amended to read as follows:

(i) Except as provided in clause (B) of subparagraph (ii) of paragraph eight of subdivision (b) of section eleven hundred one of this chapter, a person selling telecommunication services or an Internet access service shall not be deemed to be a vendor, for purposes of article twenty-eight or twenty-nine of this chapter, of tangible personal property, DIGITAL PRODUCTS or services sold by the purchaser of such telecommunication services or Internet access service solely because such purchaser uses such telecommunication services or Internet access service as a means to sell such tangible personal property, DIGITAL PRODUCTS or services.

S 14. The opening paragraph of subdivision (b) of section 1101 of the tax law, as added by chapter 93 of the laws of 1965, is amended to read as follows:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) [and], (d) AND (G) of section eleven hundred five and by section eleven hundred ten OF THIS ARTICLE, the following terms shall mean:

S 15. Paragraph 2 of subdivision (b) of section 1101 of the tax law, as amended by section 7 of part S of chapter 85 of the laws of 2002, is amended to read as follows:

(2) Purchaser. A person who purchases property OR A DIGITAL PRODUCT or to whom are rendered services, the receipts from which are taxable under this article, including a mobile telecommunications customer.

S 16. Paragraph 3 of subdivision (b) of section 1101 of the tax law, as amended by section 21 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(3) Receipt. The amount of the sale price of any property OR DIGITAL PRODUCT and the charge for any service taxable under this article, including gas and gas service and electricity and electric service of whatever nature, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts and also including any charges by the vendor to the purchaser for shipping or delivery, and, with respect to gas and gas service and electricity and electric service, any charges by the vendor for transportation, transmission or distribution, regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser and regardless of whether such shipping or delivery or transportation, transmission, or distribution is provided by such vendor or a third party, but excluding any credit for tangible personal property accepted in part payment and intended for resale. For special rules governing computation of receipts, see section eleven hundred eleven OF THIS ARTICLE.

S 17. Subparagraph (i) of paragraph 4 of subdivision (b) of section 1101 of the tax law, as amended by chapter 190 of the laws of 1990, is amended to read as follows:

(i) A sale of tangible personal property OR A DIGITAL PRODUCT to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property OR, IN THE CASE OF A DIGITAL PRODUCT, AS A COMPONENT PART OF TANGIBLE PERSONAL PROPERTY, or

(B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of section eleven hundred five OF THIS ARTICLE where the TANGIBLE PERSONAL property so sold becomes a physical component part OR THE DIGITAL PRODUCT BECOMES A COMPONENT PART of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax. Notwithstanding the preceding provisions of this subparagraph, a sale of any tangible personal property to a contractor, subcontractor or repairman for use or consumption in erecting structures or buildings, or building on, or otherwise adding to, altering, improving, maintaining, servicing or repairing real property, property or land, as the terms real property, property or land are defined in the real property tax law, is deemed to be a retail sale regardless of whether the tangible personal property is to be resold as such before it is so used or consumed, except that a sale of a new mobile home to a contractor, subcontractor or repairman who, in such capacity, installs such property is not a retail sale. Notwithstanding the preceding provisions of this subparagraph, the purchase of a truck, trailer or tractor-trailer combination for rental or lease to an authorized carrier, as described in paragraph twenty-two of subdivision (a) of section eleven hundred fifteen OF THIS ARTICLE, shall be deemed a retail sale.

S 18. Clause (A) of 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 and such subparagraph as renumbered by chapter 2 of the laws of 1995, is amended to read as follows:

(A) The transfer of tangible personal property OR A DIGITAL PRODUCT 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.

S 19. Paragraph 6 of subdivision (b) of section 1101 of the tax law, as amended by chapter 498 of the laws of 1994, is amended to read as follows:

(6) Tangible personal property. Corporeal personal property of any nature. However, except for purposes of the tax imposed by subdivision (b) of section eleven hundred five, such term shall not include gas, electricity, refrigeration and steam. Such term shall also include prewritten computer software, whether sold as part of a package, as a separate component, or otherwise, [and regardless of the medium by means of which such software is conveyed to a purchaser. Such term shall also include newspapers and periodicals where the vendor ships or delivers the entire edition or issue of the newspaper or periodical, with or without the advertising included in the paper edition or issue, but not including anything, other than advertising, not in such paper edition or issue, to the purchaser by means of telephony or telegraphy or other electronic media, but only where the amount of the sale price to such purchaser of such newspaper or magazine or the subscription price, in the case of a subscription to a newspaper or periodical, including any charge by such vendor for shipping or delivery to the purchaser, is separately stated to such purchaser] WHEN DELIVERED TO THE PURCHASER IN TANGIBLE FORM.

S 20. Paragraph 7 of subdivision (b) of section 1101 of the tax law, as amended by chapter 651 of the laws of 1999, is amended to read as follows:

(7) Use. The exercise of any right or power over tangible personal property OR A DIGITAL PRODUCT, or over any of the services which are subject to tax under section eleven hundred ten of this article or pursuant to the authority of article twenty-nine of this chapter, by the purchaser thereof, and includes, but is not limited to, the receiving, storage or any keeping or retention for any length of time, withdrawal from storage, any installation, any affixation to real or personal property, or any consumption of such property OR DIGITAL PRODUCT or of any such service subject to tax under such section eleven hundred ten or pursuant to the authority of such article twenty-nine. Without limiting the foregoing, use also [shall include] INCLUDES THE ACCESSING OF A DIGITAL PRODUCT FROM A LOCATION WITHIN THE STATE, REGARDLESS OF WHERE THE DIGITAL PRODUCT IS INSTALLED OR RESIDES ON A SERVER OR OTHER EQUIPMENT, AND the distribution of [only] tangible personal property OR DIGITAL PRODUCTS, such as promotional materials, or of any such service subject to tax under such section eleven hundred ten OF THIS ARTICLE or pursuant to the authority of such article twenty-nine OF THIS CHAPTER.

S 21. Subparagraph (i) of paragraph 8 of subdivision (b) of section 1101 of the tax law, as amended by chapter 61 of the laws of 1989, clause (F) as added and clauses (G) and (H) as relettered by chapter 190 of the laws of 1990, is amended to read as follows:

(i) The term "vendor" includes:

(A) A person making sales of tangible personal property, DIGITAL PRODUCTS or services, the receipts from which are taxed by this article;

(B) A person maintaining a place of business in the state and making sales, whether at such place of business or elsewhere, to persons within the state of tangible personal property, DIGITAL PRODUCTS or services, the use of which is taxed by this article;

(C) A person who solicits business either:

(I) by employees, independent contractors, agents or other representatives; or

(II) by distribution of catalogs or other advertising matter, without regard to whether such distribution is the result of regular or systematic solicitation, if such person has some additional connection with the state which satisfies the nexus requirement of the United States constitution;

and by reason thereof makes sales to persons within the state of tangible personal property, DIGITAL PRODUCTS or services, the use of which is taxed by this article;

(D) A person who makes sales of tangible personal property or services, the use of which is taxed by this article, and who regularly or systematically delivers such property or services in this state by means other than the United States mail or common carrier;

(E) A person who regularly or systematically solicits business in this state by the distribution, without regard to the location from which such distribution originated, of catalogs, advertising flyers or letters, or by any other means of solicitation of business, to persons in this state and by reason thereof makes sales to persons within the state of tangible personal property, the use of which is taxed by this article, if such solicitation satisfies the nexus requirement of the United States constitution;

(F) A person making sales of tangible personal property, the use of which is taxed by this article, where such person retains an ownership interest in such property and where such property is brought into this state by the person to whom such property is sold and the person to whom such property is sold becomes or is a resident or uses such property in

any manner in carrying on in this state any employment, trade, business or profession;

(G) Any other person making sales to persons within the state of tangible personal property, DIGITAL PRODUCTS or services, the use of which is taxed by this article, who may be authorized by the commissioner [of taxation and finance] to collect such tax by part [IV] FOUR of this article; and

(H) The state of New York, any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions when such entity sells services [or], property OR DIGITAL PRODUCTS of a kind ordinarily sold by private persons.

S 22. Subparagraph (ii) of paragraph 8 of subdivision (b) of section 1101 of the tax law, as amended by chapter 190 of the laws of 1990, clause (A) as amended by chapter 75 of the laws of 1998, is amended to read as follows:

(ii) (A) In addition, when in the opinion of the commissioner it is necessary for the efficient administration of this article to treat any salesman, representative, peddler or canvasser as the agent of the vendor, distributor, supervisor or employer under whom he OR SHE operates or from whom he OR SHE obtains tangible personal property OR DIGITAL PRODUCTS sold by him OR HER, or for whom he OR SHE solicits business, the commissioner may, in his OR HER discretion, treat such agent as the vendor jointly responsible with his OR HER principal, distributor, supervisor or employer for the collection and payment over of the tax. An unaffiliated person providing fulfillment services to a purchaser shall not be treated as a vendor by the commissioner under this paragraph with respect to such activity. For purposes of this clause, persons are affiliated persons with respect to each other where one of such 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 such persons by another person or by a group of other persons which are affiliated persons with respect to each other.

(B) A person shall be deemed a vendor of [the services enumerated in paragraph nine of subdivision (c)] A DIGITAL PRODUCT SUBJECT TO TAX UNDER SUBDIVISION (G) of section eleven hundred five of this article, liable for all the obligations of a vendor, including the collection, reporting and remittance of the tax imposed under this article and possessing all the rights of a vendor including the right to an exclusion or a credit or refund of tax as provided in subdivision (e) of section eleven hundred thirty-two of this article, with respect to [such services] THE DIGITAL PRODUCTS which are provided by a vendor thereof and are subject to taxation under this article, where such person, its affiliate or agent bills, on behalf of such vendor, either (I) as part of, or as a schedule to, the statement of such person to its purchasers or (II) separately (without regard to whether or not such person has customers of its own), [such enumerated services] A DIGITAL PRODUCT provided by such vendor. For the purpose of this paragraph, "affiliate" means an entity which directly, indirectly or constructively controls a vendor of [such enumerated services] DIGITAL PRODUCTS or is controlled by such vendor or is under the control of, along with such vendor, a common parent. Provided, however, the provisions of this clause shall not in any way be construed to otherwise limit or remove the obligations and liabilities of any person with respect to the tax imposed by this article.

S 23. Clause (B) of subparagraph (v) of paragraph 8 of subdivision (b) of section 1101 of the tax law, as amended by chapter 75 of the laws of 1998, is amended to read as follows:

(B) a person who is not otherwise a vendor who owns tangible personal property OR A DIGITAL PRODUCT located on the premises of an unaffiliated person performing fulfillment services for such person.

For purposes of this subparagraph, persons are affiliated persons with respect to each other where one of such 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 such persons by another person or by a group of other persons which are affiliated persons with respect to each other.

S 24. Subparagraph (vi) of paragraph 8 of subdivision (b) of section 1101 of the tax law, as added by section 1 of part OO-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(vi) For purposes of subclause (I) of clause (C) of subparagraph (i) of this paragraph, a person making sales of tangible personal property, DIGITAL PRODUCTS or services taxable under this article ("seller") shall be presumed to be soliciting business through an independent contractor or other representative if the seller enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an internet website or otherwise, to the seller, if the cumulative gross receipts from sales by the seller to customers in the state who are referred to the seller by all residents with this type of an agreement with the seller is in excess of ten thousand dollars during the preceding four quarterly periods ending on the last day of February, May, August, and November. This presumption may be rebutted by proof that the resident with whom the seller has an agreement did not engage in any solicitation in the state on behalf of the seller that would satisfy the nexus requirement of the United States constitution during the four quarterly periods in question. Nothing in this subparagraph shall be construed to narrow the scope of the terms independent contractor or other representative for purposes of subclause (I) of clause (C) of subparagraph (i) of this paragraph.

S 25. Paragraph 12 of subdivision (b) of section 1101 of the tax law, as amended by chapter 220 of the laws of 2000, is amended to read as follows:

(12) Promotional materials. Any advertising literature, other related tangible personal property OR DIGITAL PRODUCTS (whether or not personalized by the recipient's name or other information uniquely related to such person) and envelopes used exclusively to deliver the same. Such other related tangible personal property [includes] AND DIGITAL PRODUCTS INCLUDE, but [is] ARE not limited to, free gifts, complimentary maps or other items given to travel club members, applications, order forms and return envelopes with respect to such advertising literature, annual reports, prospectuses, promotional displays and Cheshire labels but does not include invoices, statements and the like. Promotional materials shall also include paper or ink furnished to a printer for use in providing the services of producing, printing or imprinting promotional materials or in producing, printing or imprinting promotional materials, where such paper and ink become a physical component part of the promotional materials and such printer sells such services or such promotional materials to the person who furnished the paper and ink to such printer.

S 26. Paragraph 2 of subdivision (d) of section 1103 of the tax law, as added by chapter 2 of the laws of 1995, is amended to read as follows:

(2) On or before the twelfth day of each month, after reserving such amount for such refunds and such costs, the commissioner shall determine the amount of all revenues so received during the prior month as a result of the taxes, interest and penalties so imposed and, in addition, on or before the last day of June and December the commissioner shall determine in like manner the amount of such moneys received during and including the first twenty-five days of said months. The commissioner shall determine the proportion of revenues attributable to receipts for the period for which the determination is made pursuant to the preceding sentence from taxes on sales and uses of TANGIBLE PERSONAL property, DIGITAL PRODUCTS and services and rent and amusement charges imposed by this article and pursuant to the authority of article twenty-nine of this chapter and administered by the commissioner which is payable to each jurisdiction determined without regard to this section. The amount of revenues so determined pursuant to this section shall be deposited and distributed by the comptroller in accordance with the same percentage amount to which a jurisdiction is entitled determined without regard to this section. Where the amount so determined in any distribution from such taxes (other than the tax imposed by this section) is more or less than the amount due, the amount of the overpayment or underpayment shall be determined as soon after the discovery of the overpayment or underpayment as is reasonably possible and subsequent determinations shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments as the comptroller and the commissioner shall consider reasonable in view of the amount of the overpayment or underpayment and all other pertinent facts and circumstances. The commissioner shall not be liable for any overestimate or underestimate of the amount of the distribution. Nor shall the commissioner be liable for any inaccuracy in any determination with respect to the amount of the distribution or any required adjustment with respect to the distribution, but the commissioner shall as soon as practicable after discovery of any error adjust the next determination under this section to reflect any such error.

S 27. Paragraph 9 of subdivision (c) of section 1105 of the tax law, as amended by chapter 170 of the laws of 1994, is amended to read as follows:

(9) [(i) The furnishing or provision of an entertainment service or of an information service (but not an information service subject to tax under paragraph one of this subdivision), which is furnished, provided, or delivered by means of telephony or telegraphy or telephone or telegraph service (whether intrastate or interstate) of whatever nature, such as entertainment or information services provided through 800 or 900 numbers or mass announcement services or interactive information network services. Provided, however, that in no event (i) shall the furnishing or provision of an information service be taxed under this paragraph unless it would otherwise be subject to taxation under paragraph one of this subdivision if it were furnished by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner nor (ii) shall the provision of cable television service to customers be taxed under this paragraph.

(ii)] Notwithstanding the rate and date set forth in the opening undesignated paragraph of this section and notwithstanding the opening undesignated paragraph of this subdivision, [on and after September

first, nineteen hundred ninety-three,] in addition to any other tax imposed under this section, and in addition to any other tax or fee imposed under any other provision of law, there is hereby imposed and there shall be paid an additional tax at the rate of five percent upon the receipts [which are subject to tax under subparagraph (i) of this paragraph on the] FROM THE furnishing or provision of an entertainment or information service (BUT NOT AN INFORMATION SERVICE SUBJECT TO TAX UNDER PARAGRAPH ONE OF THIS SUBDIVISION), WHICH IS FURNISHED, PROVIDED, OR DELIVERED BY MEANS OF TELEPHONY OR TELEGRAPHY OR TELEPHONE OR TELEGRAPH SERVICE (WHETHER INTRASTATE OR INTERSTATE) OF WHATEVER NATURE, SUCH AS ENTERTAINMENT OR INFORMATION SERVICES PROVIDED THROUGH 800 OR 900 NUMBERS OR MASS ANNOUNCEMENT SERVICES OR INTERACTIVE INFORMATION NETWORK SERVICES, AND which is received by the customer exclusively in an aural manner. PROVIDED, HOWEVER, THAT IN NO EVENT (I) SHALL THE FURNISHING OR PROVISION OF AN INFORMATION SERVICE BE TAXED UNDER THIS PARAGRAPH UNLESS IT WOULD OTHERWISE BE SUBJECT TO TAXATION UNDER PARAGRAPH ONE OF THIS SUBDIVISION IF IT WERE FURNISHED BY PRINTED, MIMEOGRAPHED OR MULTIGRAPHED MATTER OR BY DUPLICATING WRITTEN OR PRINTED MATTER IN ANY OTHER MANNER NOR (II) SHALL THE PROVISION OF CABLE TELEVISION SERVICE TO CUSTOMERS BE TAXED UNDER THIS PARAGRAPH. Such additional tax shall not be imposed by section eleven hundred seven, eleven hundred eight or eleven hundred nine of this [article] PART and shall not be included among the taxes authorized to be imposed pursuant to the authority of article twenty-nine of this chapter.

S 28. The closing paragraph of subdivision (c) of section 1105 of the tax law, as amended by chapter 190 of the laws of 1990, is amended to read as follows:

Wages, salaries and other compensation paid by an employer to an employee for performing as an employee the services described in [paragraphs (1) through (9) of this subdivision] SUBDIVISIONS (c) AND (G) OF THIS SECTION are not receipts subject to the taxes imposed under such [subdivision] SUBDIVISIONS.

S 29. Clause 3 of subdivision (b) of section 1107 of the tax law, as amended by chapter 651 of the laws of 1999, is amended to read as follows:

(3) Where a sale of tangible personal property, A DIGITAL PRODUCT or services, including an agreement therefor, is made in a city in which the taxes imposed by subdivision (a) of this section apply, but the TANGIBLE PERSONAL property OR DIGITAL PRODUCT sold, the TANGIBLE PERSONAL property upon which the services were performed or such service is or will be delivered to the purchaser elsewhere, such sale will not be subject to taxes imposed by such subdivision (a). However, if delivery occurs or will occur in any city where the tax imposed by such subdivision (a) applies, a vendor will be required to collect from the purchaser the sales or compensating use taxes imposed by this section. For the purposes of this section delivery shall be deemed to include transfer of possession to the purchaser and the receiving of the TANGIBLE PERSONAL property or of the service by the purchaser AND, FOR A DIGITAL PRODUCT, DELIVERY WILL BE DETERMINED IN ACCORDANCE WITH THE RULES IN SUBDIVISION (G) OF SECTION ELEVEN HUNDRED FIVE OF THIS PART.

S 30. Clause 5 of subdivision (b) of section 1107 of the tax law, as amended by chapter 376 of the laws of 1989, is amended to read as follows:

(5) Where a retail sales tax or a compensating use tax was legally due and paid to any municipal corporation in this state, without any right to a refund or credit thereof, with respect to the sale or use of tangi-

ble personal property, A DIGITAL PRODUCT or any of the services subject to sales or compensating use tax, if the use of such property, DIGITAL PRODUCT or services is then subject to the compensating use tax imposed by this section and such tax is at a higher rate than the rate of tax imposed by such municipal corporation, the tax imposed by this section shall also apply but only to the extent of the difference in such rates.

S 31. Subdivision (b) of section 1108 of the tax law, as added by chapter 168 of the laws of 1975, paragraph 1 as separately amended by section 4 of part B and section 4 of part S of chapter 63 of the laws of 2000 and paragraph 3 as amended by chapter 651 of the laws of 1999, is amended to read as follows:

(b) Exceptions. (1) Notwithstanding any provision of law to the contrary, the receipts from the following shall be exempt from the tax on retail sales and the compensating use tax imposed by this section: All sales of tangible personal property OR DIGITAL PRODUCTS for use or consumption directly and predominantly in the production of tangible personal property, DIGITAL PRODUCTS, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting; and all sales of tangible personal property OR DIGITAL PRODUCTS for use or consumption predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both.

(2) The transitional provisions contained in section eleven hundred six OF THIS PART shall not apply to the taxes imposed by this section.

(3) Where a sale of tangible personal property, A DIGITAL PRODUCT or services, including an agreement therefor, is made in a city in which the taxes imposed by subdivision (a) of this section apply, but the TANGIBLE PERSONAL property OR DIGITAL PRODUCT sold, the TANGIBLE PERSONAL property upon which the services were performed or such service is or will be delivered to the purchaser elsewhere, such sale will not be subject to taxes imposed by such subdivision (a). However, if delivery occurs or will occur in any city where the tax imposed by such subdivision (a) applies, a vendor will be required to collect from the purchaser[,] the sales or compensating use taxes imposed by this section. For the purposes of this section delivery shall be deemed to include transfer of possession to the purchaser and the receiving of the TANGIBLE PERSONAL property or of the service by the purchaser AND, FOR A DIGITAL PRODUCT, DELIVERY WILL BE DETERMINED IN ACCORDANCE WITH THE RULES IN SUBDIVISION (G) OF SECTION ELEVEN HUNDRED FIVE OF THIS PART.

(4) The provisions of section twelve hundred fourteen OF THIS CHAPTER shall be applicable to this section, but any reference in that section to a local sales or use tax imposed by a city shall mean the additional taxes imposed by subdivision (a) [hereof] OF THIS SECTION.

(5) Where a retail sales tax or a compensating use tax was legally due and paid to any municipal corporation in this state, without any right to a refund or credit thereof, with respect to the sale or use of tangible personal property, A DIGITAL PRODUCT or any of the services subject to sales or compensating use tax, if the use of such TANGIBLE PERSONAL property, DIGITAL PRODUCT or services is then subject to the compensating use tax imposed by this section and such tax is at a higher rate than the rate of tax imposed by such municipal corporation, the tax imposed by this section shall also apply but only to the extent of the difference in such rates. For purposes of this subdivision, a payment to the [tax commission] COMMISSIONER of a tax imposed by a municipal corporation shall be deemed a payment to such municipal corporation.

S 32. Subdivision (c) of section 1109 of the tax law, as amended by chapter 651 of the laws of 1999, is amended to read as follows:

(c) Deliveries outside the district; deliveries within the district of property sold or serviced elsewhere. Where a sale of tangible personal property, A DIGITAL PRODUCT or services, including an agreement therefor, is made in the district in which the taxes imposed by this section apply, but the TANGIBLE PERSONAL property OR DIGITAL PRODUCT sold, the TANGIBLE PERSONAL property upon which the services were performed or such service is or will be delivered to the purchaser elsewhere, such sale will not be subject to taxes imposed by this section. However, if delivery occurs or will occur in the district where the tax imposed by this section applies, a vendor will be required to collect from the purchaser the sales or compensating use taxes imposed by this section. For the purposes of this section, delivery shall be deemed to include transfer of possession to the purchaser and the receiving of the TANGIBLE PERSONAL property or of the service by the purchaser AND, FOR A DIGITAL PRODUCT, DELIVERY WILL BE DETERMINED IN ACCORDANCE WITH THE RULES IN SUBDIVISION (G) OF SECTION ELEVEN HUNDRED FIVE OF THIS PART. The provisions of section twelve hundred fourteen of this chapter shall be applicable to this section, but any reference in that section to a local sales or use tax imposed by a city, county or school district shall mean the additional taxes imposed by this section.

S 33. Subdivision (a) of section 1110 of the tax law, as amended by section 28 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(a) Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state on and after June first, nineteen hundred seventy-one except as otherwise exempted under this article, (A) of any tangible personal property OR DIGITAL PRODUCT purchased at retail, (B) of any tangible personal property OR DIGITAL PRODUCT (other than computer software used by the author or other creator) manufactured, processed or assembled by the user, (i) if items of the same kind of tangible personal property OR DIGITAL PRODUCT are offered for sale by him OR HER in the regular course of business or (ii) if items are used as such or incorporated into a structure, building or real property by a contractor, subcontractor or repairman in erecting structures or buildings, or building on, or otherwise adding to, altering, improving, maintaining, servicing or repairing real property, property or land, as the terms real property, property or land are defined in the real property tax law, if items of the same kind are not offered for sale as such by such contractor, subcontractor or repairman or other user in the regular course of business, (C) of any of the services described in paragraphs [(1), (7) and (8)] ONE, SEVEN AND EIGHT of subdivision (c) of section eleven hundred five of this part, (D) of any tangible personal property OR DIGITAL PRODUCT, however acquired, where not acquired for purposes of resale, upon which any of the services described in paragraphs [(2), (3) and (7)] TWO, THREE AND SEVEN of subdivision (c) of section eleven hundred five of this part have been performed, (E) of any telephone answering service described in subdivision (b) of section eleven hundred five of this part, (F) of any computer software OR DIGITAL PRODUCT written or otherwise created by the user if the user offers software OR A DIGITAL PRODUCT of a similar kind for sale as such or as a component part of other property in the regular course of business, (G) of any prepaid telephone calling service, and

(H) of any gas or electricity described in subdivision (b) of section eleven hundred five of this part.

S 34. Subdivision (b) of section 1110 of the tax law, as separately amended by sections 19, 158 and 161 of chapter 166 of the laws of 1991, is amended to read as follows:

(b) For purposes of clause (A) of subdivision (a) of this section, the tax shall be at the rate of four percent of the consideration given or contracted to be given for such TANGIBLE PERSONAL property OR DIGITAL PRODUCT, or for the use of such TANGIBLE PERSONAL property OR DIGITAL PRODUCT, including any charges for shipping or delivery as described in paragraph three of subdivision (b) of section eleven hundred one OF THIS ARTICLE, but excluding any credit for tangible personal property accepted in part payment and intended for resale.

S 35. Subdivision (c) of section 1110 of the tax law, as amended by section 1 of part E of chapter 407 of the laws of 1999, is amended to read as follows:

(c) For purposes of subclause (i) of clause (B) of subdivision (a) of this section, the tax shall be at the rate of four percent of the price at which items of the same kind of tangible personal property OR DIGITAL PRODUCT are offered for sale by the user, and the mere storage, keeping, retention or withdrawal from storage of tangible personal property OR A DIGITAL PRODUCT by the person who manufactured, processed or assembled such property OR DIGITAL PRODUCT shall not be deemed a taxable use by [him] THAT PERSON; provided, however, that if the user uses such an item itself on its own premises (not including making a gift of such tangible personal property OR DIGITAL PRODUCT), solely in the conduct of the user's own business operations, and the item retains its characteristic as EITHER tangible personal property OR A DIGITAL PRODUCT when so used, the tax shall be at the rate, and on the consideration, described in subdivision (d) of this section.

S 36. Subdivision (f) of section 1110 of the tax law, as separately amended by sections 19, 158 and 161 of chapter 166 of the laws of 1991, is amended to read as follows:

(f) For purposes of clauses (C), (D), and (E) of subdivision (a) of this section, the tax shall be at the rate of four percent of the consideration given or contracted to be given for the service, including the consideration for any tangible personal property OR DIGITAL PRODUCT transferred in conjunction with the performance of the service and also including any charges for shipping and delivery of the property so transferred and of the tangible personal property OR DIGITAL PRODUCT upon which the service was performed as such charges are described in paragraph three of subdivision (b) of section eleven hundred one OF THIS ARTICLE.

S 37. Subdivision (g) of section 1110 of the tax law, as separately amended by sections 19, 158 and 161 of chapter 166 of the laws of 1991, is amended to read as follows:

(g) For purposes of clause (F) of subdivision (a) of this section, the tax shall be at the rate of four percent of the consideration given or contracted to be given for the tangible personal property which constitutes the blank medium, such as disks or tapes, used in conjunction with the software OR DIGITAL PRODUCT, or for the use of such property, and the mere storage, keeping, retention or withdrawal from storage of computer software OR DIGITAL PRODUCTS described in such clause (F) by its author or other creator shall not be deemed a taxable use by such person.

S 38. Subdivision (h) of section 1110 of the tax law, as added by chapter 651 of the laws of 1999, is amended to read as follows:

(h) For purposes of clause (G) of subdivision (a) of this section, the tax shall be at the rate of four percent of the consideration given or contracted to be given for the service, including the consideration for any tangible personal property OR DIGITAL PRODUCTS transferred in conjunction with the service and also including any charges for shipping and delivery of the TANGIBLE PERSONAL property OR DIGITAL PRODUCT so transferred as such charges are described in paragraph three of subdivision (b) of section eleven hundred one OF THIS ARTICLE; provided that, if the user offers like services for sale in the regular course of business, the tax shall be at the rate of four percent of the price at which the user offers such like services for sale.

S 39. Subdivision (a) of section 1111 of the tax law, as amended by chapter 473 of the laws of 1969, is amended to read as follows:

(a) The retail sales tax imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten OF THIS PART, when computed in respect to tangible personal property OR A DIGITAL PRODUCT wherever manufactured, processed or assembled and used by such manufacturer, processor or assembler in the regular course of business within this state, shall be based on the price at which items of the same kind of tangible personal property OR DIGITAL PRODUCT are offered for sale by him OR HER, except to the extent otherwise provided in section eleven hundred ten of this [chapter] PART.

S 40. Subdivision (b) of section 1111 of the tax law, as added by chapter 93 of the laws of 1965, is amended to read as follows:

(b) Tangible personal property OR A DIGITAL PRODUCT, which has been purchased by a resident of New York state outside of this state for use outside of this state and subsequently becomes subject to the compensating use tax imposed under this article, shall be taxed on the basis of the purchase price of such property, provided, however:

(1) That where a taxpayer affirmatively shows that the TANGIBLE PERSONAL property OR DIGITAL PRODUCT was used outside [such] THIS state by him OR HER for more than six months prior to its use within this state, [such] THE TANGIBLE PERSONAL property OR DIGITAL PRODUCT shall be taxed on the basis of current market value of the TANGIBLE PERSONAL property OR DIGITAL PRODUCT at the time of its first use within this state. The value of [such] THE TANGIBLE PERSONAL property OR DIGITAL PRODUCT, for compensating use tax purposes, may not exceed its cost.

(2) That the compensating use tax on such tangible personal property OR DIGITAL PRODUCT brought into this state (other than for complete consumption or for incorporation into real property located in this state) and used in the performance of a contract or sub-contract within this state by a purchaser or user for a period of less than six months may be based, at the option of the taxpayer, on the fair rental value of such TANGIBLE PERSONAL property OR DIGITAL PRODUCT for the period of use within this state.

S 41. Subdivision (l) of section 1111 of the tax law, as added by section 10 of part S of chapter 85 of the laws of 2002, is amended to read as follows:

(l) (1) Receipts from the sale of mobile telecommunications service provided by a home service provider shall include "charges for mobile telecommunications services." Such term shall mean any charge by a home service provider to its mobile telecommunications customer for (A) commercial mobile radio service, and shall include property [and], services AND DIGITAL PRODUCTS that are ancillary to the provision of

commercial mobile radio service (such as dial tone, voice service, directory information, call forwarding, caller-identification and call-waiting), and (B) any service [and], property OR DIGITAL PRODUCT provided therewith.

(2) With respect to services [or], property OR DIGITAL PRODUCTS described in subparagraph (B) of paragraph one of this subdivision, internet access service, any mobile telecommunications service which the mobile telecommunications customer originates in a foreign country to the extent included in the fixed periodic charge, any interstate or international telephony or telegraphy or telephone or telegraph service of whatever nature which is not a voice service, and any property, DIGITAL PRODUCT or service which is not telephony or telegraphy or telephone or telegraph service of whatever nature, a home service provider shall collect and pay over tax, and a mobile telecommunications customer shall pay such tax, on receipts from any charge that is aggregated with and not separately stated from other charges for mobile telecommunications service. Provided, however, if such home service provider uses an objective, reasonable and verifiable standard for identifying each of the components of the charge for mobile telecommunications service, then such home service provider may separately account for and quantify the amount of each such component charge. If a home service provider chooses to so separately account for and quantify and separately sells any such property, DIGITAL PRODUCT or service, then the charge for such property, DIGITAL PRODUCT or service shall be based upon the price for such property, DIGITAL PRODUCT or service as separately sold. If a home service provider chooses to so separately account for and quantify and does not separately sell such property, DIGITAL PRODUCT or service, then the charge for such property, DIGITAL PRODUCT or service shall be based upon the prevailing retail price of comparable property, DIGITAL PRODUCT or service sold separately by other home service providers. In any case, the charge for such property, DIGITAL PRODUCT or service shall be reasonable and proportionate to the total charge to the mobile telecommunications customer. Such charges for such services [or], property OR DIGITAL PRODUCTS, as the case may be, will not constitute receipts from charges for mobile telecommunications services subject to tax under subdivision (b) of section eleven hundred five of this article. Nothing herein shall be construed to exempt from tax or subject to tax any such service [or], property OR DIGITAL PRODUCT otherwise subject to tax or exempt from tax under this article.

(3) (A) Any charge for a service [or], property OR DIGITAL PRODUCT billed by or for a mobile telecommunications customer's home service provider shall be deemed to be provided by such mobile telecommunications customer's home service provider.

(B) Charges for mobile telecommunications service that are provided or deemed to be provided by a mobile telecommunications customer's home service provider shall be sourced to the taxing jurisdiction where the mobile telecommunications customer's place of primary use is located, regardless of where the mobile telecommunications service originates, terminates or passes through.

S 42. Subdivision (a) of section 1112 of the tax law, as added by section 6 of part K of chapter 61 of the laws of 2005, is amended to read as follows:

(a) Where TANGIBLE PERSONAL property, DIGITAL PRODUCTS or services subject to sales or compensating use tax have been purchased on or from a qualified Indian reservation, as defined in section four hundred seventy of this chapter, the purchaser shall not be relieved of his or

her liability to pay the tax due. Such tax due and not collected shall be paid by the purchaser directly to the department.

S 43. The opening paragraph of subdivision (a) of section 1115 of the tax law, as added by chapter 93 of the laws of 1965, is amended to read as follows:

Receipts from the following shall be exempt from the tax on retail sales imposed under [subdivision] SUBDIVISIONS (a) AND (G) of section eleven hundred five OF THIS ARTICLE and the compensating use tax imposed under section eleven hundred ten OF THIS ARTICLE:

S 44. Clause (A) of paragraph 6 of subdivision (a) of section 1115 of the tax law, as amended by section 5 of part B of chapter 63 of the laws of 2000, is amended to read as follows:

(A) Tangible personal property OR A DIGITAL PRODUCT, whether or not incorporated in a building or structure, for use or consumption predominantly either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both.

S 45. Paragraph 7 of subdivision (a) of section 1115 of the tax law, as added by chapter 93 of the laws of 1965, is amended to read as follows:

(7) Tangible personal property OR A DIGITAL PRODUCT sold by a mortician, undertaker or funeral director. However, all tangible personal property OR DIGITAL PRODUCTS sold to a mortician, undertaker or funeral director for use in the conducting of funerals shall not be deemed a sale for resale within the meaning of paragraph [(4)] FOUR of subdivision (b) of section eleven hundred one of this [chapter] ARTICLE and shall not be exempt from the retail sales tax.

S 46. Paragraph 8 of subdivision (a) of section 1115 of the tax law, as added by chapter 93 of the laws of 1965, is amended to read as follows:

(8) Commercial vessels primarily engaged in interstate or foreign commerce and TANGIBLE PERSONAL property OR DIGITAL PRODUCTS used by or purchased for the use of such vessels for fuel, provisions, supplies, maintenance and repairs (other than articles purchased for the original equipping of a new ship).

S 47. Paragraph 10 of subdivision (a) of section 1115 of the tax law, as amended by chapter 851 of the laws of 1974, is amended to read as follows:

(10) Tangible personal property OR A DIGITAL PRODUCT purchased for use or consumption directly and predominantly in research and development in the experimental or laboratory sense. Such research and development shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects.

S 48. Paragraph 12-a of subdivision (a) of section 1115 of the tax law, as added by section 7 of part S of chapter 63 of the laws of 2000, is amended to read as follows:

(12-a) Tangible personal property OR A DIGITAL PRODUCT for use or consumption directly and predominantly in the receiving, initiating, amplifying, processing, transmitting, retransmitting, switching or monitoring of switching of telecommunications services for sale or internet access services for sale or any combination thereof. Such tangible personal property OR A DIGITAL PRODUCT exempt under this subdivision shall include, but not be limited to, tangible personal property OR A DIGITAL PRODUCT used or consumed to upgrade systems to allow for the receiving, initiating, amplifying, processing, transmitting, retransmit-

ting, switching or monitoring of switching of telecommunications services for sale or internet access services for sale or any combination thereof. As used in this paragraph, the term "telecommunications services" shall have the same meaning as defined in paragraph (g) of subdivision one of section one hundred eighty-six-e of this chapter.

S 49. Paragraph 21 of subdivision (a) of section 1115 of the tax law, as added by chapter 773 of the laws of 1978, is amended to read as follows:

(21) Commercial aircraft primarily engaged in intrastate, interstate or foreign commerce, machinery or equipment to be installed on such aircraft and property OR A DIGITAL PRODUCTS used by or purchased for the use of such aircraft for maintenance and repairs and flight simulators purchased by commercial airlines.

S 50. Paragraph 24 of subdivision (a) of section 1115 of the tax law, as added by chapter 799 of the laws of 1985, is amended to read as follows:

(24) Fishing vessels used directly and predominantly in the harvesting of fish for sale, and property OR DIGITAL PRODUCTS used by or purchased for the use of such vessels for fuel, provisions, supplies, maintenance and repairs. For the purpose of this paragraph the term fishing vessel shall not include any vessel used predominantly for sport fishing purposes.

S 51. Paragraph 28 of subdivision (a) of section 1115 of the tax law, as added by chapter 166 of the laws of 1991, is amended to read as follows:

(28) Computer software designed and developed by the author or creator to the specifications of a specific purchaser which is transferred directly or indirectly to a corporation which is a member of an affiliated group of corporations [within the meaning of subparagraph six of paragraph (b) of subdivision seventeen of section two hundred eight of this chapter except for clauses (ii) and (iii) of such subparagraph] that includes such purchaser, or to a partnership in which such purchaser and other members of such affiliated group have at least a fifty percent capital or profits interest (but only if the transfer is not in pursuance of a plan having as its principal purpose the avoidance or evasion of tax under this article), but in no case including computer software which is pre-written, as defined in paragraph six of subdivision (b) of section eleven hundred one of this article and available to be sold to customers in the ordinary course of the seller's business. "AFFILIATED GROUP" HAS THE SAME MEANING THAT TERM HAS IN SECTION 1504 OF THE INTERNAL REVENUE CODE, EXCEPT THAT REFERENCES TO "AT LEAST EIGHTY PERCENT" IN THAT SECTION MUST BE READ AS "MORE THAN FIFTY PERCENT."

S 52. Paragraph 35 of subdivision (a) of section 1115 of the tax law, as amended by section 1 of part HH of chapter 407 of the laws of 1999, is amended to read as follows:

(35) Computer system hardware used or consumed directly and predominantly in designing and developing computer software OR DIGITAL PRODUCTS for sale or in providing the service, for sale, of designing and developing internet websites.

S 53. Paragraph 38 of subdivision (a) of section 1115 of the tax law, as added by section 1 of part T of chapter 63 of the laws of 2000, is amended to read as follows:

(38) (A) Machinery or equipment or other tangible personal property (including parts, tools and supplies) OR A DIGITAL PRODUCT for use or consumption by a broadcaster directly and predominantly in the production (including post-production) of live or recorded programs

which are used or consumed by a broadcaster predominantly for the purpose of broadcast over-the-air by such broadcaster or transmission through a cable television or direct broadcast satellite system by such broadcaster. Tangible personal property OR A DIGITAL PRODUCT, which is described in the preceding sentence, and which is leased by a broadcaster to another person for that person's use or consumption directly and predominantly in the production (including post-production) of such live or recorded programs by such person, shall be deemed to be used or consumed by the lessor for purposes of applying the directly and predominantly requirement of this subparagraph.

(B) Machinery or equipment or other tangible personal property (including parts, tools and supplies) OR A DIGITAL PRODUCT for use or consumption by a broadcaster directly and predominantly in the transmission of live or recorded programs over-the-air or through a cable television or direct broadcast satellite system by such broadcaster. Tangible personal property OR A DIGITAL PRODUCT, which is described in the preceding sentence, and which is leased by a broadcaster to another person for that person's use or consumption directly and predominantly in the transmission of such live or recorded programs by such person, shall be deemed to be used or consumed by the lessor for purposes of applying the directly and predominantly requirement of this subparagraph.

(C) For purposes of this paragraph: (i) the term "broadcaster" means a television or radio station licensed by the federal communications commission, a television or radio broadcast network or a cable television network. The term "television or radio broadcast network" means an organization which produces and/or purchases programs intended for transmission by affiliated television or radio stations licensed by the federal communications commission and which has distribution facilities or circuits available to such affiliated stations during all or some portion of one or more days during each week. The term "cable television network" means an organization which produces and/or purchases programs intended for transmission either by direct broadcast satellite systems or by cable systems pursuant to an affiliation or similar agreement and which has distribution facilities or circuits available to such direct broadcast satellite systems or such cable systems during all or some portion of one or more days during each week. For the purpose of subparagraph (B) of this paragraph, the term "broadcaster" shall not include cable system operators and direct broadcast satellite system operators. Provided, however, for the purpose of subparagraph (A) of this paragraph, such term shall also include a cable system operator or a direct broadcast satellite system operator solely with respect to machinery or equipment or other tangible personal property (including parts, tools and supplies) OR A DIGITAL PRODUCT for use or consumption by it directly and predominantly in the production (including post-production) of live or recorded programs intended for transmission to its viewers over its system; (ii) the term "programs" means any performance, event, play, story or literary, musical, artistic or other work used for entertainment or educational purposes, including but not limited to news, news specials, sporting events, game shows, talk shows and commercials; and (iii) the term "recorded programs" means any program contained on film, tape, disc or any other [physical] media.

S 54. Paragraph 39 of subdivision (a) of section 1115 of the tax law, as added by chapter 66 of the laws of 2002, is amended to read as follows:

(39) Tangible personal property OR A DIGITAL PRODUCT for use or consumption directly and predominantly in the production, including editing, dubbing and mixing, of a film for sale regardless of the medium by means of which the film is conveyed to a purchaser. For purposes of this paragraph, the term "film" means feature films, documentary films, shorts, television films, television commercials and similar productions.

S 55. Subdivision (d) of section 1115 of the tax law, as amended by chapter 190 of the laws of 1990, is amended to read as follows:

(d) Services otherwise taxable under paragraph [(1), (2), (3), (7) or (8)] ONE, TWO, THREE, SEVEN OR EIGHT of subdivision (c) of section eleven hundred five OF THIS ARTICLE shall be exempt from tax under this article if the tangible property OR DIGITAL PRODUCT upon which the services were performed is delivered to the purchaser outside this state for use outside this state.

S 56. Subdivision (l) of section 1115 of the tax law, as added by chapter 185 of the laws of 1987, is amended to read as follows:

(l) Tangible personal property OR A DIGITAL PRODUCT manufactured, processed or assembled and donated by the manufacturer, processor or assembler to an organization described in subdivision (a) of section eleven hundred sixteen shall be exempt from tax under this article provided that the manufacturer, processor or assembler offers the same kind of tangible personal property OR DIGITAL PRODUCT for sale in the regular course of business and provided further that the manufacturer, processor or assembler has not made any other use of the tangible personal property OR DIGITAL PRODUCT which is donated. Nothing in this subdivision shall be construed to allow a refund or credit of tax properly paid pursuant to this article.

S 57. Paragraph 7 of subdivision (n) of section 1115 of the tax law, as added by chapter 220 of the laws of 2000, is amended to read as follows:

(7) Mechanicals, layouts, artwork, photographs, color separations and like property, WHETHER OR NOT IN TANGIBLE FORM, shall be exempt from tax under this article where such property is purchased, manufactured, processed or assembled by a person who furnishes such property to a printer and the printer uses such property directly and predominantly in the production of promotional materials exempt under paragraph four of this subdivision, or in performing services exempt under paragraph five of this subdivision, for sale by such printer to the person who furnished such property to the printer.

S 58. Paragraph 8 of subdivision (n) of section 1115 of the tax law, as added by chapter 309 of the laws of 1996 and as renumbered by chapter 220 of the laws of 2000, is amended to read as follows:

(8) Nothing in this subdivision shall be construed to exempt tangible personal property OR A DIGITAL PRODUCT (i) purchased by a person (other than exempt promotional materials described in paragraph four of this subdivision) or (ii) manufactured, processed or assembled by the manufacturer, processor or assembler, who furnishes such TANGIBLE PERSONAL property OR DIGITAL PRODUCT to the vendor of promotional materials exempt under paragraph one or four of this subdivision to be included as free gifts with such exempt promotional materials to be mailed or shipped to such purchaser's or such manufacturer's, processor's or assembler's customers or prospective customers or who otherwise uses such TANGIBLE PERSONAL property OR DIGITAL PRODUCT in this state, for example, by giving or donating the property as free gifts to another person, unless such tangible personal property OR DIGITAL PRODUCT is

mailed, shipped or otherwise distributed from a point within this state to such customers or prospective customers located outside this state for use outside this state.

S 59. Subdivision (o) of section 1115 of the tax law, as added by chapter 166 of the laws of 1991, is amended to read as follows:

(o) Services otherwise taxable under subdivision (c) of section eleven hundred five or under section eleven hundred ten OF THIS ARTICLE shall be exempt from tax under this article where performed on computer software of any nature; provided, however, that where such services are provided to a customer in conjunction with the sale of tangible personal property OR A DIGITAL PRODUCT, any charge for such services shall be exempt only when such charge is reasonable and separately stated on an invoice or other statement of the price given to the purchaser.

S 60. Subdivision (x) of section 1115 of the tax law, as added by section 3 of part C of chapter 407 of the laws of 1999, is amended to read as follows:

(x) Receipts from every sale of, and consideration given or contracted to be given for, or for the use of, the following tangible personal property, DIGITAL PRODUCTS and services shall be exempt from the taxes imposed by this article:

(1) Tangible personal property OR A DIGITAL PRODUCT for use or consumption directly and predominantly in production of live dramatic or musical arts performances in a theater or other similar place of assembly (but not including a roof garden, cabaret or other similar place), with a seating capacity of one hundred or more chairs that are rigidly anchored to the construction or fixed in place so as to prevent movement in any direction, but only where it can be shown at the time [such] THE tangible personal property OR DIGITAL PRODUCT is purchased that such performances are to be presented to the public in such theater or other similar place on a regular basis of at least five performances per week for a period of at least two consecutive weeks, the content of each such performance shall be the same and a charge is or is to be made for admission to the place where such performances occur. For purposes of this subdivision, the term "place of assembly" shall mean a place of assembly with a stage in which scenery and scenic elements are used, as described in section 27-232 and subdivision (a) of section 27-255 of the administrative code of the city of New York (as such section and subdivision [exist] EXISTED on January first, nineteen hundred ninety-eight), and for which an approved seating plan is required to be kept, as described in section 27-528 of the administrative code of the city of New York (as such section [exists] EXISTED on January first, nineteen hundred ninety-eight), whether or not such theater or other similar place is located in such city. Nothing in this paragraph shall be construed to exempt tangible personal property which is permanently affixed to, or becomes an integral component part of, a structure, building, or real property.

(2) Services described in paragraph two or three of subdivision (c) of section eleven hundred five of this article when rendered with respect to TANGIBLE PERSONAL property OR A DIGITAL PRODUCT exempt under paragraph one of this subdivision.

S 61. Paragraph 1 of subdivision (z) of section 1115 of the tax law, as amended by section 17 of part CC of chapter 85 of the laws of 2002, is amended to read as follows:

(1) Receipts from the retail sale of tangible personal property described in subdivision (a) of section eleven hundred five of this article, receipts from every sale of services described in subdivisions

(b) and (c) of such section [eleven hundred five], RECEIPTS FROM THE RETAIL SALE OF PRE-WRITTEN COMPUTER SOFTWARE, WHETHER SUBJECT TO TAX UNDER SUBDIVISION (A) OR (G) OF SUCH SECTION, and consideration given or contracted to be given for, or for the use of, such tangible personal property [or], services [shall be] OR PRE-WRITTEN COMPUTER SOFTWARE ARE exempt from the taxes imposed by this article where such tangible personal property [or], services OR PRE-WRITTEN COMPUTER SOFTWARE are sold to a qualified empire zone enterprise, provided that (i) such TANGIBLE PERSONAL property or TANGIBLE PERSONAL property upon which such a service has been performed, or such service (other than a service described in subdivision (b) of section eleven hundred five OF THIS ARTICLE) OR THE PRE-WRITTEN COMPUTER SOFTWARE is directly and predominantly, or such a service described in clause (A) or (D) of paragraph one of such subdivision (b) of section eleven hundred five is directly and exclusively, used or consumed by such enterprise in an area designated as an empire zone pursuant to article eighteen-B of the general municipal law with respect to which such enterprise is certified pursuant to such article eighteen-B, or (ii) such a service described in clause (B) or (C) of paragraph one of such subdivision (b) of section eleven hundred five is delivered and billed to such enterprise at an address in such empire zone; provided, further, that, in order for a motor vehicle, as defined in subdivision (c) of section eleven hundred seventeen of this [article] PART, or tangible personal property related to such a motor vehicle to be found to be used predominantly in such a zone, at least fifty percent of such motor vehicle's use shall be exclusively within such zone or at least fifty percent of such motor vehicle's use shall be in activities originating or terminating in such zone, or both; and either or both such usages shall be computed either on the basis of mileage or hours of use, at the discretion of such enterprise. For purposes of this subdivision, tangible personal property related to such a motor vehicle shall include a battery, diesel motor fuel, an engine, engine components, motor fuel, a muffler, tires and similar tangible personal property used in or on such a motor vehicle.

S 62. Paragraph 1 of subdivision (a) of section 1116 of the tax law, as amended by chapter 530 of the laws of 1976, is amended to read as follows:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services, DIGITAL PRODUCTS or property of a kind not ordinarily sold by private persons;

S 63. Paragraph 2 of subdivision (a) of section 1116 of the tax law, as amended by chapter 530 of the laws of 1976, is amended to read as follows:

(2) The United States of America, and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user or consumer, or where it sells services, DIGITAL PRODUCTS or property of a kind not ordinarily sold by private persons;

S 64. Paragraph 3 of subdivision (a) of section 1116 of the tax law, as amended by chapter 530 of the laws of 1976, is amended to read as follows:

(3) The United Nations or any international organization of which the United States of America is a member where it is the purchaser, user or consumer, or where it sells services, DIGITAL PRODUCTS or property of a kind not ordinarily sold by private persons;

S 65. Paragraph 9 of subdivision (a) of section 1116 of the tax law, as amended by chapter 591 of the laws of 2005, is amended to read as follows:

(9) A credit union, as defined in subdivision nine of section two of the banking law, where it is the purchaser, user, or consumer, or where it is a vendor of services, DIGITAL PRODUCTS or property of a kind not ordinarily sold by private persons.

S 66. Subdivision (b) of section 1116 of the tax law, as amended by chapter 888 of the laws of 1983, paragraph 1 as amended by section 1 of part KK-1 of chapter 57 of the laws of 2008, paragraph 5 as amended by chapter 619 of the laws of 1995, paragraph 6 as added by chapter 2 of the laws of 1995 and paragraph 7 as added by chapter 387 of the laws of 1996, is amended to read as follows:

(b) Nothing in this section shall exempt:

(1) (i) retail sales of tangible personal property OR DIGITAL PRODUCTS by any shop or store operated by an organization described in paragraph [(4), (5) or (6)] FOUR, FIVE OR SIX of subdivision (a) of this section; (ii) sales, other than for resale, of services described in subdivision (b) or paragraph five of subdivision (c) of section eleven hundred five of this article by that organization, whether or not at a shop or store; (iii) retail sales of tangible personal property OR DIGITAL PRODUCTS and sales, other than for resale, of those services by that organization, made with a degree of regularity, frequency, and continuity by remote means, such as by telephone, the internet, mail order or otherwise; or (iv) retail sales of tangible personal property OR DIGITAL PRODUCTS by lease or rental by that organization as lessor, whether or not at a shop or store;

(2) sales of food or drink in or by a restaurant, tavern or other establishment operated by an organization described in paragraph [(1)] ONE, paragraph [(4)] FOUR, paragraph [(5)] FIVE or paragraph [(6)] SIX of subdivision (a) of this section, other than sales exempt under paragraph (ii) of subdivision (d) of section eleven hundred five OF THIS ARTICLE, from the taxes imposed hereunder, unless the purchaser is an organization exempt under this section;

(3) sales of the service of providing parking, garaging or storing for motor vehicles by an organization described in paragraph [(4)] FOUR or paragraph [(5)] FIVE of subdivision (a) of this section operating a garage (other than a garage which is part of premises occupied solely as a private one or two family dwelling), parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles; [or]

(4) sales of tangible personal property, DIGITAL PRODUCTS or services by cooperative and foreign corporations doing business in this state pursuant to the rural electric cooperative law, unless the purchaser is an organization exempt under this section[.];

(5) purchases of motor fuel or diesel motor fuel from the tax required to be prepaid pursuant to section eleven hundred two of this article and retail sales of motor fuel or diesel motor fuel subject to the tax imposed by sections eleven hundred five and eleven hundred ten of this article, except that purchases of such fuel by an organization described in paragraph one or two of subdivision (a) of this section for its own use or consumption, purchases of motor fuel by a hospital included in the organizations described in paragraph four of such subdivision for its own use and consumption, purchases of motor fuel and diesel motor fuel by a fire company or fire department, as defined in section three of the volunteer firefighters' benefit law or a voluntary ambulance

service, as defined in section three thousand one of the public health law, for such department, company or service's own use and consumption for use in firefighting vehicles, apparatus or equipment, or emergency rescue or first aid response vehicles, apparatus or equipment, owned and operated by such department, company or service if such company, department or service qualifies as an exempt organization pursuant to the provisions of paragraph four of subdivision (a) of this section and purchases of diesel motor fuel by an organization described in paragraph four of such subdivision for its own heating use and consumption shall be exempt from such tax required to be prepaid and from retail sales and use taxes on such fuel[.];

(6) purchases of cigarettes from the tax required to be prepaid pursuant to section eleven hundred three of this article, except that no prepayment of tax shall be required on sales of 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 sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States, to the extent provided in such regulations and written policy statements of such agency applicable to such sales[.]; OR

(7) rent received by a hotel operated by a college or university, where such hotel offers one hundred or more rooms for occupancy, and where the individual paying said rent is not doing business on behalf of any organization exempted pursuant to subdivision (a) of this section.

S 67. Subdivision 2 of section 1118 of the tax law, as amended by chapter 651 of the laws of 1999, is amended to read as follows:

(2) In respect to the use of TANGIBLE PERSONAL property, DIGITAL PRODUCTS 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 TANGIBLE PERSONAL property, DIGITAL PRODUCTS or services in such employment, trade, business or profession.

S 68. Subdivision 3 of section 1118 of the tax law, as amended by chapter 286 of the laws of 1985, is amended to read as follows:

(3) In respect to the use of TANGIBLE PERSONAL property, DIGITAL PRODUCTS or services upon the sale of which the purchaser would be expressly exempt from the taxes imposed under subdivision (a), (b) [or], (c) OR (G) of section eleven hundred five OF THIS ARTICLE. In respect to the use of TANGIBLE PERSONAL property to the extent that it is exempt from the sales tax under subdivision (g) of section eleven hundred eleven of this article.

S 69. Subdivision 4 of section 1118 of the tax law, as added by chapter 93 of the laws of 1965, is amended to read as follows:

(4) In respect to the use of TANGIBLE PERSONAL property OR A DIGITAL PRODUCT which is converted into or becomes a component part of a product produced for sale by the purchaser.

S 70. Paragraph (a) of subdivision 7 of section 1118 of the tax law, as amended by chapter 300 of the laws of 1967, is amended to read as follows:

(a) In respect to the use of TANGIBLE PERSONAL property, A DIGITAL PRODUCT or services to the extent that a retail sales or use tax was legally due and paid thereon, without any right to a refund or credit

thereof, to any other state or jurisdiction within any other state but only when it is shown that such other state or jurisdiction allows a corresponding exemption with respect to the sale or use of tangible personal property, DIGITAL PRODUCTS or services upon which such a sales tax or compensating use tax was paid to this state. To the extent that the tax imposed by this article is at a higher rate than the rate of tax in the first taxing jurisdiction, this exemption shall be inapplicable and the tax imposed by section eleven hundred ten of this [chapter] ARTICLE shall apply to the extent of the difference in such rates, except as provided in paragraph (b) of this subdivision.

S 71. Section 1118 of the tax law is amended by adding a new subdivision 13 to read as follows:

(13) IN RESPECT TO THE USE IN THIS STATE OF A DIGITAL PRODUCT, OTHER THAN COMPUTER SOFTWARE DESCRIBED IN PARAGRAPH ELEVEN OF THIS SUBDIVISION, BEFORE THE EFFECTIVE DATE OF A CHAPTER OF THE LAWS OF TWO THOUSAND NINE THAT ADDED THIS SUBDIVISION.

S 72. Subdivision (a) of section 1119 of the tax law, as amended by chapter 686 of the laws of 1986 and as further amended by section 15 of part GG of chapter 63 of the laws of 2000, is amended to read as follows:

(a) Subject to the conditions and limitations provided for herein, a refund or credit shall be allowed for a tax paid pursuant to subdivision (a) of section eleven hundred five or section eleven hundred ten OF THIS ARTICLE (1) on the sale or use of tangible personal property if the purchaser or user, in the performance of a contract, later incorporates that tangible personal property into real property located outside this state, (2) on the sale or use of tangible personal property OR DIGITAL PRODUCTS purchased in bulk, or any portion thereof, which is stored and not used by the purchaser or user within this state if that property is subsequently reshipped by such purchaser or user to a point outside this state for use outside this state, (3) on the sale to or use by a contractor or subcontractor of tangible personal property OR DIGITAL PRODUCTS if that TANGIBLE PERSONAL property OR DIGITAL PRODUCT is used by him OR HER solely in the performance of a pre-existing lump sum or unit price construction contract, (4) on the sale or use within this state of tangible personal property, not purchased for resale, if the use of such property in this state is restricted to fabricating such property (including incorporating it into or assembling it with other tangible personal property), processing, printing or imprinting such property and such property is then shipped to a point outside this state for use outside this state, (5) on the sale to or use by a veterinarian of drugs or medicine if such drugs or medicine are used by such veterinarian in rendering services, which are exempt pursuant to subdivision (f) of section eleven hundred fifteen of this [chapter] PART, to livestock or poultry used in the production for sale of tangible personal property by farming or if such drugs or medicine are sold to a person qualifying for the exemption provided for in paragraph [(6)] SIX of subdivision (a) of section eleven hundred fifteen of this [chapter] PART for use by such person on such livestock or poultry, or (6) on the sale of tangible personal property purchased for use in constructing, expanding or rehabilitating industrial or commercial real property (other than property used or to be used exclusively by one or more registered vendors primarily engaged in the retail sale of tangible personal property) located in an area designated as an empire zone pursuant to article eighteen-B of the general municipal law, but only to the extent that such property becomes an integral component part of the real property.

(For the purpose of [clause (3) of the preceding sentence] PARAGRAPH THREE OF THIS SUBDIVISION, the term "pre-existing lump sum or unit price construction contract" shall mean a contract for the construction of improvements to real property under which the amount payable to the contractor or subcontractor is fixed without regard to the costs incurred by him in the performance thereof, and which (i) was irrevocably entered into prior to the date of the enactment of this article or the enactment of a law increasing the rate of tax imposed under this article, or (ii) resulted from the acceptance by a governmental agency of a bid accompanied by a bond or other performance guaranty which was irrevocably submitted prior to such date.) Where the tax on the sale or use of such tangible personal property OR DIGITAL PRODUCT has been paid to the vendor, to qualify for such refund or credit, such tangible personal property OR DIGITAL PRODUCT must be incorporated into real property as required in [clause (1) above] PARAGRAPH ONE OF THIS SUBDIVISION, reshipped as required in [clause (2) above] PARAGRAPH TWO OF THIS SUBDIVISION, used in the manner described in [clauses (3), (4), (5) and (6) above] PARAGRAPHS THREE, FOUR, FIVE AND SIX OF THIS SUBDIVISION within three years after the date such tax was payable to the [tax commission] COMMISSIONER by the vendor pursuant to section eleven hundred thirty-seven OF THIS ARTICLE. Where the tax on the sale or use of such tangible personal property OR DIGITAL PRODUCT was paid by the applicant for the credit or refund directly to the [tax commission] COMMISSIONER, to qualify for such refund or credit, such tangible personal property OR DIGITAL PRODUCT must be incorporated into real property as required in [clause (1) above] PARAGRAPH ONE OF THIS SUBDIVISION, reshipped as required in [clause (2) above] PARAGRAPH TWO OF THIS SUBDIVISION, used in the manner described in [clauses (3), (4), (5) and (6) above] PARAGRAPHS THREE, FOUR, FIVE AND SIX OF THIS SUBDIVISION within three years after the date such tax was payable to the [tax commission] COMMISSIONER by such applicant pursuant to this article. An application for a refund or credit pursuant to this section must be filed with [such commission] THE COMMISSIONER within the time provided by subdivision (a) of section eleven hundred thirty-nine OF THIS ARTICLE. Such application shall be in such form as the [tax commission] 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 that [he] THE APPLICANT files [his] THE application for credit. However, the taking of the credit on the return shall be deemed to be part of the application for credit and shall be subject to the provisions in respect to applications for credit in section eleven hundred thirty-nine OF THIS ARTICLE as provided in subdivision (e) of such section. With respect to a sale or use described in [clause (3) above] PARAGRAPH THREE OF THIS SUBDIVISION where a pre-existing lump sum or unit price construction contract was irrevocably entered into prior to the date of the enactment of this article or the bid accompanied by the performance guaranty was irrevocably submitted to the governmental agency prior to such date, the purchaser or user shall be entitled to a refund or credit only of the amount by which the tax on such sale or use imposed under this article plus any tax imposed under the authority of article twenty-nine OF THIS CHAPTER exceeds the amount computed by applying against such sale or use the local rate of tax, if any, in effect at the time such contract was entered into or such bid was submitted.

In the case of the enactment of a law increasing the rate of tax imposed by this article, the purchaser or user shall be entitled only to

a refund or credit of the amount by which the increased tax on such sale or use imposed under this article plus any tax imposed under the authority of article twenty-nine OF THIS CHAPTER exceeds the amount computed by applying against such sale or use the state and local rates of tax in effect at the time such contract was entered into or such bid was submitted.

S 73. Subdivision (c) of section 1119 of the tax law, as amended by chapter 760 of the laws of 1992, is amended to read as follows:

(c) A refund or credit equal to the amount of sales or compensating use tax imposed by this article and pursuant to the authority of article twenty-nine OF THIS CHAPTER, and paid on the sale or use of tangible personal property OR A DIGITAL PRODUCT, shall be allowed the purchaser where [such] THE TANGIBLE PERSONAL property OR DIGITAL PRODUCT is later used by the purchaser in performing a service subject to tax under paragraph [(1), (2), (3), (5), (7) or (8)] ONE, TWO, THREE, FIVE, SEVEN OR EIGHT of subdivision (c) of section eleven hundred five or under section eleven hundred ten OF THIS ARTICLE and such TANGIBLE PERSONAL property has become a physical component part OR, IN THE CASE OF A DIGITAL PRODUCT, A COMPONENT PART, of the property upon which the service is performed or has been transferred to the purchaser of the service in conjunction with the performance of the service subject to tax or if a contractor, subcontractor or repairman purchases tangible personal property and later makes a retail sale of such tangible personal property, the acquisition of which would not have been a sale at retail to him but for the second to last sentence of subparagraph (i) of paragraph [(4)] FOUR of subdivision (b) of section eleven hundred one OF THIS ARTICLE. An application for the refund or credit provided for herein must be filed with the commissioner [of taxation and finance] within the time provided by subdivision (a) of section eleven hundred thirty-nine OF THIS ARTICLE. Such application 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 that [he] THE APPLICANT files [his] THE application for credit. However, the taking of the credit on the return shall be deemed to be part of the application for credit. The procedure for granting or denying such applications for refund or credit and review of such determinations shall be as provided in subdivision (e) of section eleven hundred thirty-nine OF THIS ARTICLE.

S 74. Subdivision 1 of section 1131 of the tax law, as amended by chapter 576 of the laws of 1994, is amended to read as follows:

(1) "Persons required to collect tax" or "person required to collect any tax imposed by this article" shall include: every vendor of tangible personal property, DIGITAL PRODUCTS or services; every recipient of amusement charges; and every operator of a hotel. Said terms shall also include any officer, director or employee of a corporation or of a dissolved corporation, any employee of a partnership, any employee or manager of a limited liability company, or any employee of an individual proprietorship who as such officer, director, employee or manager is under a duty to act for such corporation, partnership, limited liability company or individual proprietorship in complying with any requirement of this article; and any member of a partnership or limited liability company. Provided, however, that any person who is a vendor solely by reason of clause (D) or (E) of subparagraph (i) of paragraph [(8)] EIGHT of subdivision (b) of section eleven hundred one OF THIS ARTICLE shall not be a "person required to collect any tax imposed by this article"

until twenty days after the date by which such person is required to file a certificate of registration pursuant to section eleven hundred thirty-four OF THIS PART.

S 75. Subdivision 2 of section 1131 of the tax law, as added by chapter 93 of the laws of 1965, is amended to read as follows:

(2) "Customer" shall include: every purchaser of tangible personal property, DIGITAL PRODUCTS or services; every patron paying or liable for the payment of any amusement charge; and every occupant of a room or rooms in a hotel.

S 76. Subdivision 3 of section 1131 of the tax law, as amended by chapter 621 of the laws of 1967, is amended to read as follows:

(3) "Tax" shall include any tax imposed by sections eleven hundred five[,] or eleven hundred ten OF THIS ARTICLE, and any amount payable to the [tax commission] COMMISSIONER by a person required to file a return, as provided in section eleven hundred thirty-seven OF THIS PART.

S 77. Paragraphs (a), (c), and (d) of subdivision 4 of section 1131 of the tax law, as amended by section 34 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(a) all property AND DIGITAL PRODUCTS sold to a person within the state, whether or not the sale is made within the state, the use of which property [is] OR DIGITAL PRODUCTS ARE subject to tax under section eleven hundred ten of this article or will become subject to tax when such property [is] OR DIGITAL PRODUCTS ARE received by or [comes] COME into the possession or control of such person within the state; (c) all services rendered to a person within the state, whether or not such services are performed within the state, upon tangible personal property OR DIGITAL PRODUCTS the use of which is subject to tax under section eleven hundred ten of this article or will become subject to tax when [such] THE TANGIBLE PERSONAL property OR DIGITAL PRODUCT is received by or comes into possession or control of such person within the state; (d) all TANGIBLE PERSONAL property OR DIGITAL PRODUCTS sold by a person making sales described in clause (F) of subparagraph (i) of paragraph eight of subdivision (b) of section eleven hundred one of this article to a person described in such clause (F) who purchases [such] THE TANGIBLE PERSONAL property OR DIGITAL PRODUCT at retail, whether or not the sale is made within the state;

S 78. Subdivision 11 of section 1131 of the tax law, as added by chapter 170 of the laws of 1994, is amended to read as follows:

(11) "Temporary vendor" shall include any person who makes sales of tangible personal property, DIGITAL PRODUCTS or services subject to tax (other than at a show or entertainment event) in not more than two consecutive quarterly periods in any twelve month period, as such quarterly periods are described in subdivision (b) of section eleven hundred thirty-six of this [article] PART.

S 79. Subdivision (e) of section 1132 of the tax law, as amended by section 2-d of part M-1 of chapter 109 of the laws of 2006, is amended to read as follows:

(e) The commissioner may provide, by regulation, for the exclusion from taxable receipts, gallons of motor fuel or diesel motor fuel sold, amusement charges or rents of amounts representing sales where the contract of sale has been cancelled, the property OR DIGITAL PRODUCT returned or the receipt, charge or rent has been ascertained to be uncollectible or, in case the tax has been paid upon such receipt, gallons, charge or rent, for refund of or credit for the tax so paid. Where the commissioner provides for a credit for the tax so paid, he or she shall require an application for credit to be filed, but he or she

may also allow the applicant to immediately take the credit on the return which is due coincident with or immediately subsequent to the time the applicant files his or her application for credit. However, the taking of the credit on the return shall be deemed to be part of the application for credit and shall be subject to the provisions in respect to applications for credit in section eleven hundred thirty-nine of this part as provided in subdivision (e) of such section.

S 80. Paragraph 2 of subdivision (e-1) of section 1132 of the tax law, as added by chapter 664 of the laws of 2006, is amended to read as follows:

(2) A vendor shall be considered the vendor of the tangible personal property, DIGITAL PRODUCT or services giving rise to a worthless account even though the TANGIBLE PERSONAL property, DIGITAL PRODUCT or services are sold by a leased department or concession provided all the following conditions are met:

(i) the leased department or concession accounts for and pays over all of its receipts to the lessor-vendor;

(ii) the lessor-vendor reports and remits to the department the tax on all of the leased department or concession's receipts; and

(iii) the transfer of all the receivables from the leased department or concession to the lessor-vendor is made without any discount for any credit transactions which involve the lessor-vendor's receivables and without recourse to the leased department or concession.

S 81. Paragraph 1 of subdivision (a) of section 1134 of the tax law, as amended by section 160 of part A of chapter 389 of the laws of 1997, is amended to read as follows:

(1) (i) Every person required to collect any tax imposed by this article, other than a person who is a vendor solely by reason of clause (D), (E) or (F) of subparagraph (i) of paragraph eight of subdivision (b) of section eleven hundred one of this article, commencing business or opening a new place of business, (ii) every person purchasing or selling tangible personal property OR DIGITAL PRODUCTS for resale commencing business or opening a new place of business, (iii) every person selling automotive fuel including persons who or which are not distributors, (iv) every person described in this subdivision who takes possession of or pays for business assets under circumstances requiring notification by such person to the commissioner pursuant to subdivision (c) of section eleven hundred forty-one of this [chapter] PART, (v) every person selling cigarettes including persons who or which are not agents, and (vi) every person described in subparagraph (i), (ii), (iii), (iv) or (v) of this paragraph or every person who is a vendor solely by reason of clause (D), (E) or (F) of subparagraph (i) of paragraph eight of subdivision (b) of section eleven hundred one of this article who or which has had its certificate of authority revoked under paragraph four of this subdivision, shall file with the commissioner a certificate of registration, in a form prescribed by the commissioner, at least twenty days prior to commencing business or opening a new place of business or such purchasing, selling or taking of possession or payment, whichever comes first. Every person who is a vendor solely by reason of clause (D) of subparagraph (i) of paragraph eight of subdivision (b) of section eleven hundred one of this article shall file with the commissioner a certificate of registration, in a form prescribed by such commissioner, within thirty days after the day on which the cumulative total number of occasions that such person came into the state to deliver property or services, for the immediately preceding four quarterly periods ending on the last day of February, May, August and November, exceeds twelve.

Every person who is a vendor solely by reason of clause (E) of subparagraph (i) of paragraph eight of subdivision (b) of section eleven hundred one of this article shall file with the commissioner a certificate of registration, in a form prescribed by such commissioner, within thirty days after the day on which the cumulative total, for the immediately preceding four quarterly periods ending on the last day of February, May, August and November, of such person's gross receipts from sales of property delivered in this state exceeds three hundred thousand dollars and number of such sales exceeds one hundred. Every person who is a vendor solely by reason of clause (F) of subparagraph (i) of paragraph eight of subdivision (b) of section eleven hundred one of this article shall file with the commissioner a certificate of registration, in a form prescribed by such commissioner, within thirty days after the day on which tangible personal property in which such person retains an ownership interest is brought into this state by the person to whom such property is sold, where the person to whom such property is sold becomes or is a resident or uses such property in any manner in carrying on in this state any employment, trade, business or profession. Information with respect to the notice requirements of a purchaser, transferee or assignee and such person's liability pursuant to the provisions of subdivision (c) of section eleven hundred forty-one of this [chapter] PART shall be included in or accompany the certificate of registration form furnished the applicant. The commissioner shall also include with such information furnished to each applicant general information about the tax imposed under this article including information on records to be kept, returns and payments, notification requirements and forms. Such certificate of registration may be amended in accordance with rules promulgated by the commissioner.

S 82. Paragraph 3 of subdivision (a) of section 1134 of the tax law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

(3) A person, other than one described in clauses (A), (B), and (C) of subparagraph (i) of paragraph [(8)] EIGHT of subdivision (b) of section eleven hundred one OF THIS ARTICLE, and other than one described in clause (D), (E) or (F) of such subparagraph who is required to file a certificate of registration with the commissioner, but who makes sales to persons within the state of tangible personal property, DIGITAL PRODUCTS or services, the use of which is subject to tax under this article, may if such person so elects file a certificate of registration with the commissioner who may, in the commissioner's discretion and subject to such conditions as the commissioner may impose, issue to such person a certificate of authority to collect the compensating use tax imposed by this article.

S 83. Paragraph 3 of subdivision (a) of section 1136 of the tax law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

(3) However, a person required to register with the commissioner as provided in section eleven hundred thirty-four OF THIS PART only because such person is purchasing or selling tangible personal property OR DIGITAL PRODUCTS for resale, and who is not required to collect any tax or pay any tax directly to the commissioner under this article, shall file an information return annually in such form as the commissioner may prescribe. Likewise, a person, who is required to register and who is selling automotive fuel who is not a distributor of motor fuel, shall file an information return quarterly or, if the commissioner deems necessary, monthly, in such form as the commissioner shall prescribe.

S 84. Paragraph 4 of subdivision (a) of section 1136 of the tax law, as amended by section 2-e of part M-1 of chapter 109 of the laws of 2006, is amended to read as follows:

(4) The return of a vendor of tangible personal property, DIGITAL PRODUCTS or services shall show such vendor's receipts from sales and the number of gallons of any motor fuel or diesel motor fuel sold and also the aggregate value of tangible personal property, DIGITAL PRODUCTS and services and number of gallons of such fuels sold by the vendor, the use of which is subject to tax under this article, and the amount of tax payable thereon pursuant to the provisions of section eleven hundred thirty-seven of this part. The return of a recipient of amusement charges shall show all such charges and the amount of tax thereon, and the return of an operator required to collect tax on rents shall show all rents received or charged and the amount of tax thereon.

S 85. Subdivision (a) of section 1137 of the tax law, as amended by section 2-f of part M-1 of chapter 109 of the laws of 2006, is amended to read as follows:

(a) Every person required to file a return under the preceding section whose total taxable receipts (as "taxable receipts" are described in subdivision (a) of such section), amusement charges and rents are subject to the tax imposed pursuant to subdivisions (a), (c), (d), (e) [and], (f) AND (G) of section eleven hundred five of this article shall, at the time of filing such return, pay to the commissioner the total of the following:

(i) Four percent of the total of all receipts, amusement charges and rents subject to tax under this article, and if any of such receipts, amusement charges and rents are subject to local tax imposed pursuant to article twenty-nine of this chapter, an additional percentage of the total thereof equal to the percentage rate of such local tax;

(ii) All taxes imposed by section eleven hundred ten OF THIS ARTICLE or pursuant to article twenty-nine of this chapter upon such person's use of TANGIBLE PERSONAL property, DIGITAL PRODUCTS or services;

(iii) All moneys collected by such person, purportedly as tax imposed by this article or pursuant to article twenty-nine of this chapter, with respect to any receipt, gallon of motor fuel or diesel motor fuel sold, amusement charge or rent not subject to tax, and all moneys collected with respect to any receipt, gallon of such fuel, amusement charge or rent subject to tax, purportedly in accordance with a schedule prescribed by the commissioner but actually in excess of the amount stated in such schedule as the amount to be collected; and

(iv) The correct number of cents per gallon of motor fuel and diesel motor fuel sold subject to tax under this article, and, if any of such gallons sold are subject to local tax imposed pursuant to article twenty-nine of this chapter, an additional number of cents per gallon sold subject to such local taxes equal to the rates of such taxes.

S 86. Paragraph (ii) of subdivision (b) of section 1137 of the tax law, as amended by section 2-f of part M-1 of chapter 109 of the laws of 2006, is amended to read as follows:

(ii) All taxes imposed by section eleven hundred ten OF THIS ARTICLE or pursuant to article twenty-nine of this chapter upon such person's use of TANGIBLE PERSONAL property, DIGITAL PRODUCTS or services;

S 87. Paragraph 1 of subdivision (e) of section 1137 of the tax law, as amended by chapter 95 of the laws of 1976 and such subdivision as relettered by chapter 89 of the laws of 1976, is amended to read as follows:

(1) The amount so payable to the [tax commission] COMMISSIONER for the period for which a return is required to be filed shall be due and payable to the [tax commission] 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 amount of receipts, amusement charges or rents or the value of property, DIGITAL PRODUCTS or services sold or purchased or the taxes due thereon.

S 88. Subparagraph (B) of paragraph 3 of subdivision (a) of section 1138 of the tax law, as amended by chapter 456 of the laws of 1998, is amended to read as follows:

(B) The liability, pursuant to subdivision (a) of section eleven hundred thirty-three of this article, of any officer, director or employee of a corporation or of a dissolved corporation, member or employee of a partnership or employee of an individual proprietorship who as such officer, director, employee or member is under a duty to act for such corporation, partnership or individual proprietorship in complying with any requirement of this article for the tax imposed, collected or required to be collected, or for the tax required to be paid or paid over to the [tax commission] COMMISSIONER under this article, and the amount of such tax liability (whether or not a return is filed under this article, whether or not such return when filed is incorrect or insufficient, or where the tax shown to be due on the return filed under this article has not been paid or has not been paid in full) shall be determined by the [tax commission] COMMISSIONER in the manner provided for in paragraphs one and two of this subdivision. Such determination shall be an assessment of the tax and liability for the tax with respect to such person unless such person, within ninety days after the giving of notice of such determination, shall apply to the division of tax appeals for a hearing. If such determination is identical to or arises out of a previously issued determination of tax of the corporation, dissolved corporation, partnership or individual proprietorship for which such person is under a duty to act, an application filed with the division of tax appeals on behalf of the corporation, dissolved corporation, partnership or individual proprietorship shall be deemed to include any and all subsequently issued personal determinations and a separate application to the division of tax appeals for a hearing shall not be required. The [tax commission] COMMISSIONER may, nevertheless, [of its] ON HIS OR HER own motion, redetermine such determination of tax or liability for tax. Where the [tax commission] COMMISSIONER determines or redetermines that the amount of tax claimed to be due from a vendor of tangible personal property, DIGITAL PRODUCTS or services, a recipient of amusement charges, or an operator of a hotel is erroneous or excessive in whole or in part, [it] THE COMMISSIONER shall redetermine the amount of tax properly due from any such person as a person required to collect tax with respect to such vendor, recipient, or operator, and if such amount is less than the amount of tax for which such person would have been liable in the absence of such determination or redetermination, [it] THE COMMISSIONER shall reduce such liability accordingly. Furthermore, the [tax commission] COMMISSIONER may, [of its] ON HIS OR HER own motion, abate on behalf of any such person, any part of the tax determined to be erroneous or excessive whether or not such tax had become finally and irrevocably fixed with respect to such person but no claim for abatement may be filed by any such person. The provisions of this paragraph shall not be construed to limit in any manner the powers of the attorney general under subdivision (a) of section eleven hundred forty-one OF THIS PART or the powers of the [tax

commission] COMMISSIONER to issue a warrant under subdivision (b) of such section against any person whose liability has become finally and irrevocably fixed.

S 89. Subparagraph (i) of paragraph 3 of subdivision (a) of section 1145 of the tax law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

(i) Any person required to obtain a certificate of authority under section eleven hundred thirty-four OF THIS PART who, without possessing a valid certificate of authority, (A) sells tangible personal property, DIGITAL PRODUCTS or services subject to tax, receives amusement charges or operates a hotel, (B) purchases or sells tangible personal property OR DIGITAL PRODUCTS for resale, (C) sells automotive fuel, or (D) sells cigarettes shall, in addition to any other penalty imposed by this chapter, be subject to a penalty in an amount not exceeding five hundred dollars for the first day on which such sales or purchases are made, plus an amount not exceeding two hundred dollars for each subsequent day on which such sales or purchases are made, not to exceed ten thousand dollars in the aggregate.

S 90. Subparagraph (i) of paragraph 1 of subdivision (a) of section 1210 of the tax law, as amended by section 4 of part SS-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(i) Either, all of the taxes described in article twenty-eight of this chapter, at the same uniform rate, as to which taxes all provisions of the local laws, ordinances or resolutions imposing such taxes shall be identical, except as to rate and except as otherwise provided, with the corresponding provisions in such article twenty-eight, including the definition and exemption provisions of such article, so far as the provisions of such article twenty-eight can be made applicable to the taxes imposed by such city or county and with such limitations and special provisions as are set forth in this article. The taxes authorized under this subdivision may not be imposed by a city or county unless the local law, ordinance or resolution imposes such taxes so as to include all portions and all types of receipts, charges or rents, subject to state tax under sections eleven hundred five and eleven hundred ten of this chapter, except as otherwise provided. Any local law, ordinance or resolution enacted by any city of less than one million or by any county or school district, imposing the taxes authorized by this subdivision, shall, notwithstanding any provision of law to the contrary, exclude from the operation of such local taxes all sales of tangible personal property OR DIGITAL PRODUCTS for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, generating, assembly, refining, mining or extracting; and all sales of tangible personal property OR DIGITAL PRODUCTS for use or consumption predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both; and, unless such city, county or school district elects otherwise, shall omit the provision for credit or refund contained in clause six of subdivision (a) of section eleven hundred nineteen of this chapter. Any local law, ordinance or resolution enacted by any city, county or school district, imposing the taxes authorized by this subdivision, shall omit the residential solar energy systems equipment exemption provided for in subdivision (ee), the clothing and footwear exemption provided for in paragraph thirty of subdivision (a) and the qualified empire zone enterprise exemptions provided for in subdivision (z) of section eleven hundred fifteen of this chapter, unless such

city, county or school district elects otherwise as to either such residential solar energy systems equipment exemption or such clothing and footwear exemption or such qualified empire zone enterprise exemptions; provided that if such a city having a population of one million or more in which the taxes imposed by section eleven hundred seven of this chapter are in effect enacts the resolution described in subdivision (k) of this section or repeals such resolution or enacts the resolution described in subdivision (l) of this section or repeals such resolution or enacts the resolution described in subdivision (n) of this section or repeals such resolution, such resolution or repeal shall also be deemed to amend any local law, ordinance or resolution enacted by such a city imposing such taxes pursuant to the authority of this subdivision, whether or not such taxes are suspended at the time such city enacts its resolution pursuant to subdivision (k), (l) or (n) of this section or at the time of any such repeal; provided, further, that any such local law, ordinance or resolution and section eleven hundred seven of this chapter, as deemed to be amended in the event a city of one million or more enacts a resolution pursuant to the authority of subdivision (k), (l) or (n) of this section, shall be further amended, as provided in section twelve hundred eighteen of this subpart, so that the residential solar energy systems equipment exemption or the clothing and footwear exemption or the qualified empire zone enterprise exemptions in any such local law, ordinance or resolution or in such section eleven hundred seven are the same, as the case may be, as the residential solar energy systems equipment exemption provided for in subdivision (ee), the clothing and footwear exemption in paragraph thirty of subdivision (a) or the qualified empire zone enterprise exemptions in subdivision (z) of section eleven hundred fifteen of this chapter.

S 91. Paragraph 2 of subdivision (l) of section 1210 of the tax law, as amended by section 13 of part GG of chapter 63 of the laws of 2000, is amended to read as follows:

(2) Form of Resolution: Be it enacted by the (insert proper title of local legislative body) as follows:

Section one. Receipts from sales of and consideration given or contracted to be given for, or for the use of, property, PRE-WRITTEN COMPUTER SOFTWARE and services exempt from state sales and compensating use taxes pursuant to subdivision (z) of section 1115 of the tax law shall also be exempt from sales and compensating use taxes imposed in this jurisdiction.

Section two. This resolution shall take effect March 1, (insert the year, but not earlier than the year 2001) and shall apply to sales made, services rendered and uses occurring on and after that date in accordance with the applicable transitional provisions in sections 1106, 1216 and 1217 of the New York tax law.

S 92. Paragraph 2 of subdivision (b) of section 1212-A of the tax law, as amended by chapter 190 of the laws of 1990, is amended to read as follows:

(2) However, with respect to a tax imposed under the authority of paragraph three of subdivision (a) of this section a refund or credit equal to the amount of the sale or compensating use tax imposed by section eleven hundred seven of this chapter and paid on the sale or use of tangible personal property OR A DIGITAL PRODUCT which is later used by such purchaser in performing a service subject to tax under such paragraph shall be allowed such purchaser against the tax imposed pursuant to such paragraph and collected by such person on the sale of such service if such TANGIBLE PERSONAL property has become a physical compo-

nent part OR THE DIGITAL PRODUCT BECOMES A COMPONENT PART of the property upon which the service is performed or IF SUCH TANGIBLE PERSONAL PROPERTY OR DIGITAL PRODUCT has been transferred to the purchaser of the service in conjunction with the performance of the service subject to tax.

S 93. Section 1213 of the tax law, as amended by chapter 651 of the laws of 1999, is amended to read as follows:

S 1213. Deliveries outside the jurisdiction where sale is made. Where a sale of tangible personal property, A DIGITAL PRODUCT or services, including prepaid telephone calling services, but not including other services described in subdivision (b) of section eleven hundred five OF THIS CHAPTER, including an agreement therefor, is made in any city, county or school district, but the TANGIBLE PERSONAL property OR DIGITAL PRODUCT sold, the property upon which the services were performed or prepaid telephone calling or other service is or will be delivered to the purchaser elsewhere, such sale shall not be subject to tax by such city, county or school district. However, if delivery occurs or will occur in a city, county or school district imposing a tax on the sale or use of such property, DIGITAL PRODUCT, prepaid telephone calling or other services, the vendor shall be required to collect from the purchaser, as provided in section twelve hundred fifty-four OF THIS ARTICLE, the aggregate sales or compensating use taxes imposed by the city, if any, county and school district in which delivery occurs or will occur, for distribution by the commissioner to such taxing jurisdiction or jurisdictions. For the purposes of this section delivery shall be deemed to include transfer of possession to the purchaser and the receiving of the TANGIBLE PERSONAL property or of the service, including prepaid telephone calling service, by the purchaser AND, FOR A DIGITAL PRODUCT, DELIVERY WILL BE DETERMINED IN ACCORDANCE WITH THE RULES IN SUBDIVISION (G) OF SECTION ELEVEN HUNDRED FIVE OF THIS CHAPTER.

S 94. Section 1235 of the tax law, as amended by chapter 459 of the laws of 1968, is amended to read as follows:

S 1235. Taxes paid to other jurisdictions. (a) With respect to taxes imposed pursuant to subdivision (a) of section twelve hundred ten OF THIS ARTICLE and pursuant to section twelve hundred eleven OF THIS ARTICLE, the use of tangible personal property OR A DIGITAL PRODUCT purchased at retail and of any of the services subject to the sales tax shall be exempt from the compensating use tax authorized under subdivision (a) of such section twelve hundred ten and under section twelve hundred eleven OF THIS ARTICLE, to the extent that a retail sales tax or a compensating use tax was legally due and paid thereon, without any right to a refund or credit thereof, to (1) any municipal corporation in this state or (2) any other state or jurisdiction within any other state, but only when it is shown that such other state or jurisdiction allows a corresponding exemption with respect to the sale or use of tangible personal property, A DIGITAL PRODUCT or of any of the services upon which such a sale or compensating use tax was paid to this state and any of its municipal corporations, except as provided in subdivision (b) of this section.

(b) To the extent that a compensating use tax imposed pursuant to this article and the compensating use tax imposed by article twenty-eight OF THIS CHAPTER are at a higher aggregate rate than the rate of tax imposed in any other state or jurisdiction within any other state, the exemption provided in subdivision (a) of this section shall be inapplicable and the taxes imposed pursuant to this article and by article twenty-eight OF THIS CHAPTER shall apply to the extent of the difference between such

aggregate rate and the rate paid in such other state or jurisdiction. In such event, the amount payable shall be allocated between the tax imposed pursuant to this article and the tax imposed by article twenty-eight OF THIS CHAPTER in proportion to the respective rates of such taxes. Where a retail sales tax or a compensating use tax was legally due and paid to any municipal corporation in this state, without any right to a refund or credit thereof, with respect to the sale or use of tangible personal property, A DIGITAL PRODUCT or any of the services subject to sales or compensating use tax, if the use of such property, DIGITAL PRODUCT or services is then subject to a compensating use tax imposed by any other municipal corporation in this state and such tax is at a higher rate than the rate of tax imposed by the first municipal corporation, the tax of the municipal corporation with the higher rate shall also apply but only to the extent of the difference in such rates and such tax shall be distributable to such municipal corporation, pursuant to section twelve hundred sixty-one OF THIS ARTICLE, without allocation as hereinabove provided. Where a retail sales tax or a compensating use tax was legally due and paid to this state only, with respect to the sale or use of tangible personal property, A DIGITAL PRODUCT or any of the services subject to sales or compensating use tax, if the use of such property, DIGITAL PRODUCT or services is then subject to a compensating use tax imposed by a municipal corporation in this state, such tax shall be distributable to the municipal corporation, pursuant to section twelve hundred sixty-one OF THIS ARTICLE, without allocation as hereinabove provided.

(c) For purposes of this section, a payment to the [tax commission] COMMISSIONER of a tax imposed by a municipal corporation shall be deemed a payment to such municipal corporation.

S 95. Subdivision (a) of section 1251 of the tax law, as amended by chapter 155 of the laws of 1982, is amended to read as follows:

(a) Every person required to collect any of the taxes imposed under the authority of section twelve hundred ten, twelve hundred eleven, twelve hundred twelve or twelve hundred twelve-A OF THIS ARTICLE shall file a return as required by subdivision (a) of section eleven hundred thirty-six OF THIS CHAPTER with the [tax commission] COMMISSIONER, except that return for the quarterly period ending August thirty-first, nineteen hundred sixty-five shall only cover the month of August, nineteen hundred sixty-five. The return of a vendor of tangible personal property, DIGITAL PRODUCTS or services shall show his OR HER receipts from sales and also the aggregate value of tangible personal property, DIGITAL PRODUCTS and services sold by him OR HER, the use of which is subject to a tax imposed under the authority of this article and the amount of taxes required to be collected with respect to such sales and use. The return of a recipient of amusement charges shall show all such charges and the amount of tax thereon, and the return of an operator required to collect tax on rents shall show all rents received or charged and the amount of tax thereon. Every person required to file a part-quarterly return pursuant to subdivision (a) of section eleven hundred thirty-six OF THIS CHAPTER shall file a return for the same periods for the taxes imposed pursuant to this article. Provided, however, where a part-quarterly return described in paragraph (i) or (ii) of subdivision (a) of section eleven hundred thirty-six OF THIS CHAPTER is filed for purposes of complying with this section and section eleven hundred thirty-six or subdivision (a) or (b) of section eleven hundred thirty-seven-A OF THIS CHAPTER, on such returns separate amounts due for the taxes imposed by each county, city or school district, pursuant to

the authority of section twelve hundred ten, twelve hundred eleven, twelve hundred twelve or twelve hundred twelve-A OF THIS ARTICLE, need not be shown. Rather, such returns shall only show the aggregate amount of all such local taxes calculated in the manner provided for in paragraph (i) or (ii) of subdivision (a) of section eleven hundred thirty-six OF THIS CHAPTER except that in the case of a short-form, part-quarterly return, where a county, city or school district did not impose a tax in the comparable quarter of the immediately preceding year, the tax for that locality shall be calculated on such basis as the [tax commission] COMMISSIONER shall by regulation prescribe.

S 96. Section 1252 of the tax law, as added by chapter 93 of the laws of 1965, subdivision (a) as amended by chapter 89 of the laws of 1976 and subdivision (b) as amended by chapter 169 of the laws of 1970, is amended to read as follows:

S 1252. Payment of tax. (a) Every person required to file a return or returns under subdivision (a) of the preceding section shall, at the time of filing such return or returns, pay to the [state tax commission] COMMISSIONER the amount which section eleven hundred thirty-seven or section eleven hundred thirty-seven-A of [article twenty-eight] THIS CHAPTER requires to be paid with respect to local taxes imposed pursuant to this article. The amount so required to be paid for the period for which a return or returns is required to be filed shall be due and payable to the [state tax commission] COMMISSIONER on the date limited for the filing of the return or returns for such period, without regard to whether a return is filed or whether the return which is filed clearly shows the amount of receipts, amusement charges or returns or the value of property, DIGITAL PRODUCTS or services sold or purchased or the taxes due thereon. Where the [state tax commission] COMMISSIONER, in [its] HIS OR HER discretion, deems it necessary to protect the revenues to be obtained under this article, [it] THE COMMISSIONER shall have the power to require a bond, cash or other security under procedures which are set forth in section eleven hundred thirty-seven OF THIS CHAPTER.

(b) The [tax commission] COMMISSIONER, in [its] HIS OR HER discretion, may require or permit any or all persons liable for any tax or required to collect any tax authorized under section twelve hundred ten, twelve hundred eleven, twelve hundred twelve or twelve hundred twelve-A OF THIS ARTICLE to make payment to such banks, banking houses or trust companies designated by the [tax commission] COMMISSIONER and to file returns with such banks, banking houses or trust companies, as agent of the [state tax commission] COMMISSIONER, in lieu of paying the taxes imposed under the authority of section twelve hundred ten, twelve hundred eleven, twelve hundred twelve or twelve hundred twelve-A directly to the [state tax commission] COMMISSIONER. However, the [tax commission] COMMISSIONER can only designate such banks, banking houses and trust companies which are already designated by the comptroller as depositories pursuant to section eleven hundred forty-eight of this chapter.

S 97. Subdivision (b) of section 1254 of the tax law, as amended by chapter 169 of the laws of 1970, is amended to read as follows:

(b) Where the state of New York, any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions sells services [or], property OR DIGITAL PRODUCTS of a kind ordinarily sold by private persons it shall be considered a vendor for purposes of the taxes imposed under the authority of sections twelve hundred ten, twelve hundred eleven, twelve hundred twelve and twelve hundred twelve-A OF THIS ARTICLE and shall be required to collect the

taxes imposed by cities, counties and school districts under the authority of such sections.

S 98. Subdivision (d) of section 1817 of the tax law, as added by chapter 65 of the laws of 1985, is amended to read as follows:

(d) Any person required to obtain a certificate of authority under section eleven hundred thirty-four of this chapter who, without possessing a valid certificate of authority, willfully (1) sells tangible personal property, A DIGITAL PRODUCT or services subject to tax, receives amusement charges or operates a hotel, (2) purchases or sells tangible personal property OR A DIGITAL PRODUCT for resale, or (3) sells automotive fuel; and any person who fails to surrender a certificate of authority as required by such article shall be guilty of a misdemeanor.

S 99. Subdivision (e) of section 1817 of the tax law, as amended by chapter 765 of the laws of 1985, is amended to read as follows:

(e) Any person required to obtain a certificate of authority under section eleven hundred thirty-four of this chapter who within five years after a determination by the [tax commission] COMMISSIONER, pursuant to such section, to suspend, revoke or refuse to issue a certificate of authority has become final, and without possession of a valid certificate of authority (1) sells tangible personal property, A DIGITAL PRODUCT or services subject to tax, receives amusement charges or operates a hotel, (2) purchases or sells tangible personal property OR A DIGITAL PRODUCT for resale, or (3) sells automotive fuel, shall be guilty of a misdemeanor. It shall be an affirmative defense that such person performed the acts described in this subdivision without knowledge of such determination. Any person who violates a provision of this subdivision, upon conviction, shall be subject to a fine in any amount authorized by this article, but not less than five hundred dollars, in addition to any other penalty provided by law.

S 100. Section 66 of the rural electric cooperative law, as amended by chapter 888 of the laws of 1983, is amended to read as follows:

S 66. License fee in lieu of all franchise, excise, income, corporation and sales and compensating use taxes. Each cooperative and foreign corporation doing business in this state pursuant to this chapter shall pay annually, on or before the first day of July, to the [state tax commission] COMMISSIONER OF TAXATION AND FINANCE, a fee of ten dollars, but shall be exempt from all other franchise, excise, income, corporation and sales and compensating use taxes whatsoever. The exemption from the sales and compensating use taxes provided by this section shall not apply to the taxes imposed pursuant to section eleven hundred seven or eleven hundred eight of the tax law. Nothing contained in this section shall be deemed to exempt such corporations from collecting and paying over sales and compensating use taxes on retail sales of tangible personal property, DIGITAL PRODUCTS and services made by such corporations to purchasers required to pay such taxes imposed pursuant to article twenty-eight or authorized pursuant to the authority of article twenty-nine of the tax law.

S 101. This act shall take effect immediately; provided however, that:

1. sections one through nine-a of this act shall apply to taxable years beginning on and after January 1, 2010; and

2. sections ten through one hundred of this act shall take effect June 1, 2009 and shall apply to sales or uses occurring on or after that date in accordance with applicable transitional provisions in sections 1106 and 1217 of the tax law.

PART DD

Section 1. Subdivision (b) of section 523 of the tax law, as amended by section 7 of part M-1 of chapter 109 of the laws of 2006, is amended to read as follows:

(b) Rate of tax. The tax imposed by this section shall be at a composite rate determined by adding together (1) a fuel tax component which shall be equal to the applicable rate per gallon in effect under the taxes on motor fuel and diesel motor fuel imposed by article twelve-A of this chapter and (2) a sales tax component, which shall be equal to [the sum of (A) a state sales and compensating use tax subcomponent, equal to] the [applicable] rate per gallon APPLICABLE TO THE RECEIPTS FROM THE SALE OF A GALLON OF MOTOR FUEL OR DIESEL MOTOR FUEL in effect under the sales and compensating use taxes [on motor fuel and diesel motor fuel] imposed by sections eleven hundred five and eleven hundred ten of this chapter [as described in subdivision (m) of section eleven hundred eleven of this chapter] plus [(B) a local sales and compensating use tax subcomponent, which shall be the lower of (i) the lowest applicable rate per gallon in effect under the sales and compensating use taxes on such fuels in effect in any county of this state imposing a local sales and compensating use tax on a cents per gallon basis pursuant to the authority of subpart B of part one of article twenty-nine of this chapter, or (ii) the equivalent rate per gallon based on] the highest rate applicable to the receipts from the sale of a gallon of motor fuel or diesel motor fuel in effect in any locality of this state imposing a local sales and compensating use tax on [a percentage rate basis on] the sale of motor fuel and diesel motor fuel pursuant to the authority of subpart B of part one of article twenty-nine of this chapter. Provided, however, that the total rate per gallon applicable to the receipts from the sale of a gallon of such fuels imposed under [clause (ii) of subparagraph (B) of] paragraph two of this subdivision shall not exceed [three] SEVEN percent. Such TOTAL equivalent rate per gallon under [clause (ii) of subparagraph B of] paragraph two of this subdivision shall be determined as provided in subdivision (d) [or (m)] of section eleven hundred eleven of this chapter and the schedules prescribed by the commissioner pursuant to such subdivision (d), and shall be based on the average price per gallon (including all federal and state and any local taxes included in such price or imposed on the use or consumption of such fuels upon which the state and local sales and compensating use taxes are computed but determined without the inclusion of any state or local sales tax on receipts from sales of such fuels) paid by the carrier during the reporting period for all motor fuel and diesel motor fuel purchased for use in its operations either within or without this state. [For purposes of clause (ii) of subparagraph (B) of paragraph two of this subdivision, the] THE price for motor fuel and diesel motor fuel purchased by such carrier shall be deemed to be the prevailing price for motor fuel and diesel motor fuel, as established by the commissioner each calendar quarter pursuant to this section, applicable to the reporting period. The commissioner shall for each calendar quarter establish a prevailing price for motor fuel and diesel motor fuel based on the prices being charged on any given day during the first fifteen days of the previous calendar quarter at a minimum of ten selected truck stops widely scattered throughout the state. The tax imposed by this section shall be computed by multiplying such composite rate by the amount of motor fuel or diesel motor fuel, as the case may be, used by a carrier in its operations within this state during each reporting period. The amount of motor fuel and diesel motor fuel used in the operations of any carrier within this state shall be determined by dividing the number of miles

traveled in this state subject to tax under this section by the average miles per gallon for the type of fuel. Where the records of any carrier are inadequate or incomplete, the qualified motor vehicles of a carrier filing returns shall be deemed to have consumed, on the average, one gallon of diesel motor fuel for every four miles traveled or one gallon of motor fuel for every three miles traveled unless substantial evidence discloses that a different amount was consumed; provided, however, that if the commissioner enters into a cooperative agreement pursuant to section five hundred twenty-eight of this article and such agreement prescribes a different average miles per gallon deemed to be consumed, the commissioner shall prescribe such different average.

S 2. Subdivision (c) of section 524 of the tax law, as amended by section 8 of part M-1 of chapter 109 of the laws of 2006, is amended to read as follows:

(c) Actual price. Every carrier which can substantiate that its average price paid per gallon (including all federal and state and any local taxes included in such price or imposed on the use or consumption of such fuels upon which the state and local sales and compensating use taxes are computed but determined [with out] WITHOUT the inclusion of any state or local sales tax on receipts from sales of such fuels) during a reporting period is less than the prevailing price determined for such period pursuant to subdivision (b) of section five hundred twenty-three of this article[, if such calculation was based upon an amount determined under clause (ii) of subparagraph (B) of paragraph two of subdivision (b) of section five hundred twenty-three of this article,] may apply for a refund of the difference between the tax paid relating to the sales tax component computed based upon such prevailing price for such period and the tax relating to the sales tax component computed based upon the carrier's actual average purchase price for such period. Such refund must be applied for on or before the last day of the month immediately following the four-year period commencing with the end of the reporting period which gave rise to the refund.

S 3. Subdivision (n) of section 1111 of the tax law, as amended by section 10 of part W-1 of chapter 109 of the laws of 2006, is amended to read as follows:

(n) The sales and compensating use taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter on B20 shall be imposed [at eighty percent of the rate of the cents per gallon taxes described in subdivision (m) of this section. However, if a county or city does not make the cents per gallon election authorized by such subdivision (m), the taxes of such county or city imposed pursuant to the authority of such article twenty-nine or the taxes imposed in a city of one million or more by section eleven hundred seven of this article shall be imposed] on eighty percent of the receipts from the retail sale of or the consideration given or contracted to be given for, or for the use of, such B20.

S 4. Paragraph 7 of subdivision (a) of section 1136 of the tax law, as amended by section 2-e of part M-1 of chapter 109 of the laws of 2006, is amended to read as follows:

(7) Taxable receipts as used in this section shall include taxable receipts from the sale of automotive fuel and cigarettes and any receipts from the sale of motor fuel or diesel motor fuel or cigarettes in this state whether or not such receipts are subject to the taxes imposed by section eleven hundred two, eleven hundred three, eleven hundred five or eleven hundred ten of this article and regardless of whether the provisions of section eleven hundred twenty or eleven

hundred twenty-one of this article are applicable to the taxes imposed in respect of such receipts [or numbers of gallons of motor fuel or diesel motor fuel sold].

S 5. Section 8 of part A of chapter 35 of the laws of 2006 amending the tax law relating to computing sales and compensating use tax on motor fuel and diesel motor fuel and amending the tax law and the general business law relating to requiring retail dealers of motor fuel and diesel motor fuel to reduce prices for such fuel, is amended to read as follows:

S 8. This act shall take effect immediately, provided that sections one through five of this act shall take effect June 1, 2006; PROVIDED THAT THIS ACT SHALL EXPIRE JUNE 1, 2009, IN ACCORDANCE WITH THE APPLICABLE TRANSITIONAL PROVISIONS OF ARTICLES 28 AND 29 OF THE TAX LAW, WHEN UPON SUCH DATE THE PROVISIONS OF THIS ACT SHALL BE DEEMED REPEALED AND ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED PURSUANT TO THIS ACT OR PURSUANT TO PROVISIONS OF THE TAX LAW AS ADDED OR AMENDED BY THIS ACT SHALL BE DEEMED TO BE REPEALED THEREWITH; PROVIDED, HOWEVER, THAT ALL PROVISIONS OF STATE OR LOCAL LAW, ORDINANCE OR RESOLUTION AND OF REGULATIONS ADOPTED THEREUNDER, IN RESPECT OF ASSESSMENT, PAYMENT, DETERMINATION, COLLECTION, CREDIT AND REFUND OF TAXES IMPOSED THEREUNDER, THE KEEPING OF RECORDS AND THE FILING OF RETURNS FOR THE PURPOSES OF SUCH TAXES, THE SECRECY OF RETURNS, AND DISPOSITION OF REVENUES AND NET COLLECTIONS, SHALL CONTINUE IN EFFECT WITH RESPECT TO ALL SUCH TAXES ACCRUED THROUGH AND INCLUDING MAY 31, 2009.

S 6. Section 14 of part M-1 of chapter 109 of the laws of 2006 amending the tax law and other laws relating to the sales tax imposed on motor fuel and diesel motor fuel, is amended to read as follows:

S 14. This act shall take effect immediately; provided that:

(a) sections one through ten of this act shall take effect on the same date and in the same manner as part A of chapter 35 of the laws of 2006, takes effect; PROVIDED THAT SECTIONS ONE THROUGH TWO-D, TWO-F, THREE, THREE-B THROUGH SIX, NINE, AND TEN OF THIS ACT SHALL EXPIRE JUNE 1, 2009, IN ACCORDANCE WITH THE APPLICABLE TRANSITIONAL PROVISIONS OF ARTICLES 28 AND 29 OF THE TAX LAW, WHEN UPON SUCH DATE SUCH SECTIONS OF THIS ACT SHALL BE DEEMED REPEALED AND ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED PURSUANT TO THIS ACT OR PURSUANT TO PROVISIONS OF THE TAX LAW AS ADDED OR AMENDED BY THIS ACT SHALL BE DEEMED TO BE REPEALED THEREWITH; PROVIDED, HOWEVER, THAT ALL PROVISIONS OF STATE OR LOCAL LAW, ORDINANCE OR RESOLUTION AND OF REGULATIONS ADOPTED THEREUNDER, IN RESPECT OF ASSESSMENT, PAYMENT, DETERMINATION, COLLECTION, CREDIT AND REFUND OF TAXES IMPOSED THEREUNDER, THE KEEPING OF RECORDS AND THE FILING OF RETURNS FOR THE PURPOSES OF SUCH TAXES, THE SECRECY OF RETURNS, AND DISPOSITION OF REVENUES AND NET COLLECTIONS, SHALL CONTINUE IN EFFECT WITH RESPECT TO ALL SUCH TAXES ACCRUED THROUGH AND INCLUDING MAY 31, 2009; and

(b) sections eleven, twelve and thirteen of this act shall take effect on the same date and in the same manner as part B of chapter 35 of the laws of 2006, takes effect.

S 7. The repeal of any provision of state or local law, ordinance or resolution by this act shall not be construed to take away, impair or affect any right or remedy acquired or given by the provisions hereby repealed; and all existing suits or proceedings may be continued and completed; and all offenses committed or penalties or forfeitures incurred shall continue and remain in force with the same effect as though this act had not become law.

S 8. Notwithstanding any other provision of law: (a) The commissioner of taxation and finance may prescribe the schedules of regional average retail sales prices pursuant to paragraph 3 of subdivision (e) of section 1111 of the tax law, as restored by this act, any date after this act becomes a law and that action will be timely for the period beginning June 1, 2009, if it is taken after the date this act becomes a law and prior to June 1, 2009, and the notice prescribed by subparagraph (iii) of such paragraph 3 is filed after the date this act becomes a law and prior to June 1, 2009.

(b) The commissioner of taxation and finance is authorized on any date after this act becomes a law to adopt regulations by emergency action to set forth the methodology to determine the regional average retail selling prices and to establish the sales tax components and the motor fuel and diesel motor fuel composite rates for the fuel use taxes imposed by article 21-A of the tax law for the quarter including the effective date of this act and the next calendar quarter.

S 9. This act shall take effect immediately; provided however that sections one, two, three, four, five, six and seven of this act shall take effect June 1, 2009, and shall apply in accordance with applicable transitional provisions in articles 28 and 29 of the tax law; provided however that the amendment to subdivision (n) of section 1111 of the tax law made by section three of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith.

PART EE

Section 1. Section 502 of the tax law is amended by adding a new subdivision 6 to read as follows:

6. A. THE COMMISSIONER MAY REQUIRE THE USE OF DECALS AS EVIDENCE THAT A CARRIER HAS A VALID CERTIFICATE OF REGISTRATION FOR EACH MOTOR VEHICLE OPERATED OR TO BE OPERATED ON THE PUBLIC HIGHWAYS OF THIS STATE AS REQUIRED BY PARAGRAPH A OF SUBDIVISION ONE OF THIS SECTION. IF THE COMMISSIONER REQUIRES THE USE OF DECALS, THE COMMISSIONER SHALL ISSUE FOR EACH MOTOR VEHICLE WITH A VALID CERTIFICATE OF REGISTRATION A DECAL THAT SHALL BE OF A SIZE AND DESIGN AND CONTAINING SUCH INFORMATION AS THE COMMISSIONER PRESCRIBES. THE FEE FOR ANY DECAL ISSUED PURSUANT TO THIS PARAGRAPH IS FOUR DOLLARS. IN THE CASE OF THE LOSS, MUTILATION, OR DESTRUCTION OF A DECAL, THE COMMISSIONER SHALL ISSUE A NEW DECAL UPON PROOF OF THE FACTS AND PAYMENT OF FOUR DOLLARS. THE DECAL SHALL BE FIRMLY AND CONSPICUOUSLY AFFIXED UPON THE MOTOR VEHICLE FOR WHICH IT IS ISSUED AS CLOSELY AS PRACTICAL TO THE REGISTRATION OR LICENSE PLATES AND AT ALL TIMES BE VISIBLE AND LEGIBLE. NO DECAL IS TRANSFERABLE. A DECAL SHALL BE VALID UNTIL IT EXPIRES OR IS REVOKED, SUSPENDED, OR SURRENDERED.

B. THE COMMISSIONER MAY REQUIRE THE USE OF SPECIAL DECALS AS EVIDENCE THAT AN AUTOMOTIVE FUEL CARRIER HAS A VALID SPECIAL CERTIFICATE OF REGISTRATION FOR EACH MOTOR VEHICLE OPERATED OR TO BE OPERATED ON THE PUBLIC HIGHWAYS OF THIS STATE TO TRANSPORT AUTOMOTIVE FUEL AS REQUIRED BY PARAGRAPH B OF SUBDIVISION ONE OF THIS SECTION. IF THE COMMISSIONER REQUIRES THE USE OF SPECIAL DECALS, THE COMMISSIONER SHALL ISSUE FOR EACH MOTOR VEHICLE WITH A VALID SPECIAL CERTIFICATE OF REGISTRATION A SPECIAL DECAL THAT SHALL BE DISTINCTIVELY COLORED AND OF A SIZE AND DESIGN AND CONTAINING SUCH INFORMATION AS THE COMMISSIONER PRESCRIBES. THE FEE FOR ANY SPECIAL DECAL ISSUED PURSUANT TO THIS PARAGRAPH IS FOUR DOLLARS. IN THE CASE OF THE LOSS, MUTILATION, OR DESTRUCTION OF A SPECIAL DECAL, THE COMMISSIONER SHALL ISSUE A NEW SPECIAL DECAL UPON

PROOF OF THE FACTS AND PAYMENT OF FOUR DOLLARS. THE SPECIAL DECAL SHALL BE FIRMLY AND CONSPICUOUSLY AFFIXED UPON THE MOTOR VEHICLE FOR WHICH IT IS ISSUED PURSUANT TO THE RULES AND REGULATIONS PRESCRIBED BY THE COMMISSIONER TO ENABLE THE EASY IDENTIFICATION OF THE AUTOMOTIVE FUEL CARRIER CERTIFICATE OF REGISTRATION NUMBER AND AT ALL TIMES BE VISIBLE AND LEGIBLE. NO SPECIAL DECAL IS TRANSFERABLE AND SHALL BE VALID UNTIL IT EXPIRES OR IS REVOKED, SUSPENDED, OR SURRENDERED.

C. THE SUSPENSION OR REVOCATION OF ANY CERTIFICATE OF REGISTRATION ISSUED UNDER THIS ARTICLE SHALL BE DEEMED TO INCLUDE THE SUSPENSION AND REVOCATION OF ANY DECAL ISSUED UNDER THIS SUBDIVISION.

S 2. Subdivision 5-a of section 509 of the tax law, as amended by section 4 of part E of chapter 60 of the laws of 2007, is amended to read as follows:

5-a. To take possession of any certificate of registration which has been suspended or revoked under the provisions of this article AND ANY DECAL ISSUED IN CONJUNCTION THEREWITH, and any certificate of registration which is being used for a motor vehicle other than the one for which it was issued AND ANY DECAL THAT IS ON A MOTOR VEHICLE OTHER THAN THE ONE FOR WHICH IT WAS ISSUED, OR TO DIRECT ANY PEACE OFFICER, ACTING PURSUANT TO HIS OR HER SPECIAL DUTIES, OR ANY POLICE OFFICER OR ANY EMPLOYEE OF THE DEPARTMENT TO TAKE POSSESSION THEREOF AND RETURN THE SAME TO THE COMMISSIONER.

S 3. Subdivision 8 of section 509 of the tax law, as amended by section 5 of part E of chapter 60 of the laws of 2007, is amended to read as follows:

8. To issue replacement certificates of registration OR DECALS at such times as the commissioner may deem necessary for the proper and efficient enforcement of the provisions of this article, but not more often than once every year and to require the surrender of the then outstanding certificates of registration AND DECALS. All of the provisions of this article with respect to certificates of registration AND DECALS shall be applicable to replacement certificates of registration AND DECALS issued hereunder, except that the replacement certificate of registration OR DECAL shall be issued upon payment of a fee of four dollars for each motor vehicle and two dollars for any trailer, semi-trailer, dolly or other device drawn thereby for which a certificate of registration OR DECAL is required to be issued under this article;

S 4. Paragraph (e) of subdivision 1 of section 512 of the tax law, as added by section 8 of part E of chapter 60 of the laws of 2007, is amended to read as follows:

(e) In addition to any other penalty imposed by this chapter, any person who fails to obtain a certificate of registration OR DECAL as required under this article shall, after due notice and an opportunity for a hearing, for a first violation be liable for a civil fine not less than five hundred dollars but not to exceed two thousand dollars and for a second or subsequent violation within three years following a prior finding of violation be liable for a civil fine not less than one thousand dollars but not to exceed three thousand five hundred dollars.

S 5. Clause (i) of subparagraph (A) of paragraph 1 of subdivision (a) of section 1815 of the tax law, as amended by section 10 of part E of chapter 60 of the laws of 2007, is amended to read as follows:

(i) Use or cause or permit to be used, any public highway in this state for the operation of a motor vehicle subject to the provisions of article twenty-one of this chapter without first applying for and obtaining the certificate of registration required under such article OR A DECAL THAT HAS BEEN SUSPENDED OR REVOKED OR THAT WAS ISSUED FOR A

MOTOR VEHICLE OTHER THAN THE ONE ON WHICH AFFIXED. THE OPERATION OF ANY MOTOR VEHICLE ON ANY PUBLIC HIGHWAY OF THIS STATE WITHOUT A DECAL REQUIRED UNDER SUCH ARTICLE SHALL BE PRESUMPTIVE EVIDENCE THAT A CERTIFICATE OF REGISTRATION OR DECAL HAS NOT BEEN OBTAINED FOR SUCH MOTOR VEHICLE;

S 6. This act shall take effect immediately.

PART FF

Section 1. Clauses (G) and (H) of subparagraph (i) of paragraph 8 of subdivision (b) of section 1101 of the tax law, as amended by chapter 61 of the laws of 1989 and as relettered by chapter 190 of the laws of 1990, are amended and a new clause (I) is added to read as follows:

(G) Any other person making sales to persons within the state of tangible personal property or services, the use of which is taxed by this article, who may be authorized by the commissioner of taxation and finance to collect such tax by part IV of this article; [and]

(H) The state of New York, any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions when such entity sells services or property of a kind ordinarily sold by private persons[.]; AND

(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.

S 2. This act shall take effect 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 GG

Section 1. Subdivision 6 of section 212 of the racing, pari-mutuel wagering and breeding law, as added by chapter 18 of the laws of 2008, is amended and a new subdivision 7-a is added to read as follows:

6. Within thirty days following the appointment of the members of the franchise oversight board, the members of the oversight board shall establish a local advisory board for each racing operation comprised of the following members to meet at least twice yearly:

a. The local advisory board for the Saratoga racetrack facility shall be comprised of fifteen members and include five designees from each of the following: the board of supervisors, the mayor of the city of Saratoga and the franchised corporation.

b. The local advisory board for the Aqueduct racetrack facility shall be comprised of fifteen members, nine of whom shall be designees of New York City Queens Community Board Ten, three designees of the franchised corporation and three designees of the video lottery gaming operator.

C. THE LOCAL ADVISORY BOARD OF BELMONT PARK SHALL CONSIST OF FIFTEEN PERSONS, TWO OF WHOM SHALL BE DESIGNEES OF THE NEW YORK CITY QUEENS COMMUNITY BOARD THIRTEEN, FOUR OF WHOM SHALL BE DESIGNEES OF THE COUNTY EXECUTIVE OF THE COUNTY OF NASSAU, THREE OF WHOM SHALL BE DESIGNEES OF THE SUPERVISOR OF THE TOWN OF HEMPSTEAD, THREE DESIGNEES OF THE FRANCHISED CORPORATION AND THREE DESIGNEES OF THE VIDEO LOTTERY GAMING OPERATOR.

The members of the local advisory boards shall serve for a period of two years. In the event of a vacancy occurring during a term of appointment by reason of death, resignation, disqualification or otherwise such vacancy shall be filled for the unexpired term in the same manner as the original appointment. The members of the local advisory board shall serve without compensation, except that each member shall be allowed the necessary and actual expenses incurred in the performance of his or her duties pursuant to this section.

7-A. THE LOCAL ADVISORY BOARD OF BELMONT PARK SHALL, AFTER CONDUCTING PUBLIC HEARINGS WITHIN THE UNINCORPORATED HAMLET OF ELMONT AND THE AFFECTED COMMUNITIES, DEVELOP A STRATEGIC MASTER PLAN FOR THE REVITALIZATION OF BELMONT PARK RACETRACK, THE DEVELOPMENT OF A VIDEO LOTTERY TERMINAL GAMING FACILITY AND REDEVELOPMENT OF THE UNINCORPORATED HAMLET OF ELMONT AND THE AFFECTED COMMUNITIES.

S 2. Clause (B) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by chapter 140 of the laws of 2008, is amended to read as follows:

(B) having one thousand one hundred or more video gaming machines, at a rate of thirty-two percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, except for such facility located in the county of Westchester, in which case the rate shall be thirty-four percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, for a period of twenty-four months effective beginning April first, two thousand eight; provided, however, that in the event that the vendor track located in Westchester county completes a successful restructuring prior to March thirty-first, two thousand ten, the vendor fee will be reduced to thirty-two percent ninety days following the completion of the successful restructuring. A successful restructuring is defined as a restructuring of the existing debt obligations of such vendor track located in Westchester county that meets the following two conditions:

(i) it requires no more than twenty million dollars of additional equity invested in such track; and

(ii) results in average net interest costs of less than nine percent.

Notwithstanding the foregoing, the vendor fee at such track will become thirty-one percent effective April first, two thousand ten and remain at that level for a period equal to two times the period of time (measured in days) that the vendor fee was thirty-four percent or until March thirty-first, two thousand twelve, whichever is later. Notwithstanding the foregoing, not later than April first, two thousand twelve, the vendor fee shall become thirty-two percent and remain at that level thereafter; and except for Aqueduct racetrack, in which case the vendor fee shall be thirty-eight percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter; AND EXCEPT FOR BELMONT RACETRACK, IN WHICH CASE THE VENDOR FEE SHALL BE THIRTY-SIX AND ONE-HALF PERCENT OF THE TOTAL REVENUE WAGERED AT THE VENDOR TRACK AFTER PAYOUT FOR PRIZES PURSUANT TO THIS CHAPTER;

S 3. Subparagraph (iii) of paragraph 1 of subdivision b of section 1612 of the tax law, as separately amended by chapters 140 and 286 of the laws of 2008, is amended to read as follows:

(iii) less an additional vendor's marketing allowance at a rate of ten percent for the first one hundred million dollars annually and eight percent thereafter of the total revenue wagered at the vendor track after payout for prizes to be used by the vendor track for the marketing and promotion and associated costs of its video lottery gaming operations and pari-mutuel horse racing operations, as long as any such costs associated with pari-mutuel horse racing operations simultaneously encourage increased attendance at such vendor's video lottery gaming facilities, consistent with the customary manner of marketing comparable operations in the industry and subject to the overall supervision of the division; provided, however, that the additional vendor's marketing allowance shall not exceed eight percent in any year for any operator of a racetrack located in the county of Westchester [or], Queens OR NASSAU; provided, however, a vendor track that receives a vendor fee pursuant to clause (G) of [this] subparagraph (II) OF THIS PARAGRAPH shall not receive the additional vendor's marketing allowance. In establishing the vendor fee, the division shall ensure the maximum lottery support for education while also ensuring the effective implementation of section sixteen hundred seventeen-a of this article through the provision of reasonable reimbursements and compensation to vendor tracks for participation in such program. Within twenty days after any award of lottery prizes, the division shall pay into the state treasury, to the credit of the state lottery fund, the balance of all moneys received from the sale of all tickets for the lottery in which such prizes were awarded remaining after provision for the payment of prizes as herein provided. Any revenues derived from the sale of advertising on lottery tickets shall be deposited in the state lottery fund.

S 4. Clause (F) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by chapter 140 of the laws of 2008, is amended to read as follows:

(F) notwithstanding clauses (A), (B), (C), (D) and (E) of this subparagraph, the track operator of a vendor track shall be eligible for a vendor's capital award of up to four percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, which shall be used exclusively for capital project investments to improve the facilities of the vendor track which promote or encourage increased attendance at the video lottery gaming facility including, but not limited to hotels, other lodging facilities, entertainment facilities, retail facilities, dining facilities, events arenas, parking garages and other improvements that enhance facility amenities; provided that such capital investments shall be approved by the division, in consultation with the state racing and wagering board, and that such vendor track demonstrates that such capital expenditures will increase patronage at such vendor track's facilities and increase the amount of revenue generated to support state education programs. The annual amount of such vendor's capital awards that a vendor track shall be eligible to receive shall be limited to two million five hundred thousand dollars, except for Aqueduct [racetrack] AND BELMONT RACETRACKS, for which there shall be no vendor's capital awards. Except for tracks having less than one thousand one hundred video gaming machines, each track operator shall be required to co-invest an amount of capital expenditure equal to its cumulative vendor's capital awards. For all tracks, except for Aqueduct [racetrack] AND BELMONT RACETRACKS, the amount of any vendor's

capital award that is not used during any one year period may be carried over into subsequent years ending before April first, two thousand thirteen. Any amount attributable to a capital expenditure approved prior to April first, two thousand thirteen and completed before April first, two thousand fifteen shall be eligible to receive the vendor's capital award. In the event that a vendor track's capital expenditures, approved by the division prior to April first, two thousand thirteen and completed prior to April first, two thousand fifteen, exceed the vendor track's cumulative capital award during the five year period ending April first, two thousand thirteen, the vendor shall continue to receive the capital award after April first, two thousand thirteen until such approved capital expenditures are paid to the vendor track subject to any required co-investment. In no event shall such track facility located in Sullivan county and within sixty miles from any gaming facility in a contiguous state be eligible for a vendor's capital award under this section, unless it shall have moved from such location or the five year period commencing on April first, two thousand eight has expired, whichever comes first. Any operator of a vendor track which has received a vendor's capital award, choosing to divest the capital improvement toward which the award was applied, prior to reaching the forty year straightline depreciation value of the improvement, shall reimburse the state in amounts equal to the total of any such awards. Any capital award not approved for a capital expenditure at a video lottery gaming facility by April first, two thousand thirteen shall be deposited in the state lottery fund for education aid; and

S 5. Paragraph 2 of subdivision b of section 1612 of the tax law, as separately amended by chapters 140 and 286 of the laws of 2008, is amended to read as follows:

2. As consideration for the operation of a video lottery gaming facility, the division, shall cause the investment in the racing industry of a portion of the vendor fee received pursuant to paragraph one of this subdivision in the manner set forth in this subdivision. With the exception of Aqueduct [racetrack] AND BELMONT RACETRACKS, each such track shall dedicate a portion of its vendor fees, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, solely for the purpose of enhancing purses at such track, in an amount equal to eight and three-quarters percent of the total revenue wagered at the vendor track after pay out for prizes. In addition, WITH THE EXCEPTION OF THE AQUEDUCT AND BELMONT RACETRACKS, one and one-quarter percent of total revenue wagered at the vendor track after pay out for prizes, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, shall be distributed to the appropriate breeding fund for the manner of racing conducted by such track.

Provided, further, that nothing in this paragraph shall prevent each track from entering into an agreement, not to exceed five years, with the organization authorized to represent its horsemen to increase or decrease the portion of its vendor fee dedicated to enhancing purses at such track during the years of participation by such track, or to race fewer dates than required herein.

S 6. Section 1612 of the tax law is amended by adding three new subdivisions h, i and j to read as follows:

H. THE VIDEO LOTTERY GAMING OPERATOR SELECTED TO OPERATE A VIDEO LOTTERY TERMINAL FACILITY AT BELMONT WILL BE SUBJECT TO A MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY. NOTWITHSTANDING SUBPARAGRAPH (I) OF

PARAGRAPH A OF SUBDIVISION EIGHT OF SECTION TWO HUNDRED TWELVE OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW, THE STATE, PURSUANT TO AN AGREEMENT WITH THE VIDEO LOTTERY GAMING OPERATOR TO OPERATE A VIDEO LOTTERY TERMINAL FACILITY AT BELMONT, MAY AUTHORIZE, AS PART OF SUCH AGREEMENT OR IN CONJUNCTION WITH SUCH AGREEMENT AT THE TIME IT IS EXECUTED, ADDITIONAL DEVELOPMENT AT THE BELMONT RACING FACILITY. THE SELECTION SHALL BE MADE IN CONSULTATION WITH THE FRANCHISED CORPORATION, BUT IS NOT SUBJECT TO SUCH CORPORATION'S APPROVAL. THE FRANCHISED CORPORATION SHALL NOT BE ELIGIBLE TO COMPETE TO OPERATE OR TO OPERATE A VIDEO LOTTERY TERMINAL FACILITY AT BELMONT. THE STATE WILL USE ITS BEST EFFORTS TO ENSURE THAT THE VIDEO LOTTERY TERMINAL FACILITY AT BELMONT IS OPENED AS SOON AS IS PRACTICABLE AND WILL, IF PRACTICABLE, PURSUE THE CONSTRUCTION OF A TEMPORARY VIDEO LOTTERY TERMINAL FACILITY AT BELMONT SUBJECT TO STAYING WITHIN AN AGREED BUDGET FOR SUCH VIDEO LOTTERY TERMINAL FACILITY AND SUBJECT TO SUCH TEMPORARY FACILITY NOT HAVING AN ADVERSE IMPACT ON OPENING OF THE PERMANENT FACILITY AT BELMONT.

I. IN CONSIDERATION OF ITS LICENSURE AND PARTICIPATION IN THIS PROGRAM, THE VIDEO LOTTERY GAMING OPERATOR AT BELMONT RACETRACK SHALL REINVEST IN THE RACING INDUSTRY A PERCENTAGE OF THE VENDOR FEE RECEIVED PURSUANT TO SUBDIVISION B OF THIS SECTION IN THE MANNER SET FORTH IN THIS SUBDIVISION. THE VIDEO LOTTERY GAMING OPERATOR AT BELMONT RACETRACK SHALL PROVIDE THE FOLLOWING PERCENTAGES OF ITS VENDOR FEE TO THE FRANCHISED CORPORATION ESTABLISHED PURSUANT TO SECTION TWO HUNDRED SIX OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW, AS FOLLOWS:

1. THREE AND THREE-QUARTERS PERCENT OF THE TOTAL WAGERED AFTER PAYOUT OF PRIZES FOR THE PURPOSE OF ENHANCING PURSES AT AQUEDUCT RACETRACK, BELMONT PARK RACETRACK AND SARATOGA RACE COURSE.

2. THREE-QUARTERS PERCENT OF THE TOTAL WAGERED AFTER PAYOUT OF PRIZES FOR AN APPROPRIATE BREEDING FUND FOR THE MANNER OF RACING CONDUCTED AT AQUEDUCT RACETRACK, BELMONT PARK RACETRACK AND SARATOGA RACE COURSE.

3. TWO PERCENT OF THE TOTAL REVENUE WAGERED AFTER PAYOUT OF PRIZES TO BE DEPOSITED INTO AN ACCOUNT OF THE FRANCHISED CORPORATION ESTABLISHED PURSUANT TO SECTION TWO HUNDRED SIX OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW TO BE USED FOR CAPITAL EXPENDITURES IN MAINTAINING AND UPGRADING AQUEDUCT RACETRACK, BELMONT PARK RACETRACK AND SARATOGA RACE COURSE.

4. ONE AND ONE-HALF PERCENT OF THE TOTAL REVENUE WAGERED AFTER PAYOUT FOR PRIZES TO BE DEPOSITED INTO AN ACCOUNT OF THE FRANCHISED CORPORATION ESTABLISHED PURSUANT TO SECTION TWO HUNDRED SIX OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW TO BE USED FOR GENERAL THOROUGHBRED RACING OPERATIONS AT AQUEDUCT RACETRACK, BELMONT PARK RACETRACK AND SARATOGA RACE COURSE.

5. PARAGRAPHS ONE, TWO, THREE AND FOUR OF THIS SUBDIVISION SHALL BE KNOWN COLLECTIVELY AS THE "BELMONT RACING SUPPORT PAYMENTS".

J. NOTWITHSTANDING ANY PROVISION OF SUBDIVISION B OR F OF THIS SECTION TO THE CONTRARY, UPON COMMENCEMENT OF THE OPERATION OF VIDEO LOTTERY GAMING AT BELMONT RACETRACK, THE VENDOR FEE TO BE PAID FOR SERVING AS A LOTTERY AGENT TO THE TRACK OPERATOR OF AQUEDUCT RACETRACK, SHALL BE THIRTY-SEVEN AND ONE-QUARTER PERCENT OF THE TOTAL REVENUE WAGERED AT THE VENDOR TRACK AFTER PAYOUT FOR PRIZES PURSUANT TO THIS ARTICLE FOR THE FIRST YEAR OF OPERATION OF VIDEO LOTTERY GAMING AT AQUEDUCT RACETRACK, THIRTY-SIX AND EIGHT HUNDRED SEVENTY-FIVE-THOUSANDTHS PERCENT OF THE TOTAL REVENUE WAGERED AT THE VENDOR TRACK AFTER PAYOUT FOR PRIZES PURSUANT TO THIS ARTICLE FOR THE SECOND YEAR OF OPERATION OF VIDEO LOTTERY GAMING AT AQUEDUCT RACETRACK, AND THIRTY-SIX AND ONE-HALF PERCENT OF THE TOTAL REVENUE WAGERED AT THE VENDOR TRACK AFTER PAYOUT FOR PRIZES PURSU-

ANT TO THIS ARTICLE FOR THE THIRD YEAR OF OPERATION OF VIDEO LOTTERY GAMING AT AQUEDUCT RACETRACK AND THEREAFTER. AS CONSIDERATION FOR THE OPERATION OF THE VIDEO LOTTERY GAMING FACILITY AT AQUEDUCT RACETRACK, THE DIVISION SHALL CAUSE THE INVESTMENT IN THE RACING INDUSTRY OF THE FOLLOWING PERCENTAGES OF THE VENDOR FEE DESCRIBED IN THIS SUBDIVISION TO BE DEPOSITED OR PAID, AS FOLLOWS:

1. THREE AND ONE-QUARTER PERCENT OF THE TOTAL WAGERED AFTER PAYOUT OF PRIZES FOR THE FIRST YEAR OF OPERATION OF VIDEO LOTTERY GAMING AT AQUEDUCT RACETRACK, THREE AND ONE-HALF PERCENT OF THE TOTAL WAGERED AFTER PAYOUT OF PRIZES FOR THE SECOND YEAR OF OPERATION, AND THREE AND THREE-QUARTERS PERCENT OF THE TOTAL WAGERED AFTER PAYOUT OF PRIZES FOR THE THIRD YEAR OF OPERATION AND THEREAFTER, FOR THE PURPOSE OF ENHANCING PURSES AT AQUEDUCT RACETRACK, BELMONT PARK RACETRACK AND SARATOGA RACE COURSE.

2. ONE-HALF PERCENT OF THE TOTAL WAGERED AFTER PAYOUT OF PRIZES FOR THE FIRST YEAR OF OPERATION OF VIDEO LOTTERY GAMING AT AQUEDUCT RACETRACK, SIX HUNDRED TWENTY-FIVE THOUSANDTHS PERCENT OF THE TOTAL WAGERED AFTER PAYOUT OF PRIZES FOR THE SECOND YEAR OF OPERATION, AND THREE-QUARTERS PERCENT OF THE TOTAL WAGERED AFTER PAYOUT OF PRIZES FOR THE THIRD YEAR OF OPERATION AND THEREAFTER, FOR AN APPROPRIATE BREEDING FUND FOR THE MANNER OF RACING CONDUCTED AT AQUEDUCT RACETRACK, BELMONT PARK RACETRACK AND SARATOGA RACE COURSE.

3. TWO PERCENT OF THE TOTAL REVENUE WAGERED AFTER PAYOUT OF PRIZES TO BE DEPOSITED INTO AN ACCOUNT OF THE FRANCHISED CORPORATION ESTABLISHED PURSUANT TO SECTION TWO HUNDRED SIX OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW TO BE USED FOR CAPITAL EXPENDITURES IN MAINTAINING AND UPGRADING AQUEDUCT RACETRACK, BELMONT PARK RACETRACK AND SARATOGA RACE COURSE.

4. ONE AND ONE-HALF PERCENT OF THE TOTAL REVENUE WAGERED AFTER PAYOUT FOR PRIZES TO BE DEPOSITED INTO AN ACCOUNT OF THE FRANCHISED CORPORATION ESTABLISHED PURSUANT TO SECTION TWO HUNDRED SIX OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW TO BE USED FOR GENERAL THOROUGHBRED RACING OPERATIONS AT AQUEDUCT RACETRACK, BELMONT PARK RACETRACK AND SARATOGA RACE COURSE.

5. PARAGRAPHS ONE, TWO, THREE AND FOUR OF THIS SUBDIVISION SHALL BE KNOWN COLLECTIVELY AS THE "AQUEDUCT RACING SUPPORT PAYMENTS".

S 7. The opening paragraph of subdivision a 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:

The division of the lottery is hereby authorized to license, pursuant to rules and regulations to be promulgated by the division of the lottery, the operation of video lottery gaming at Aqueduct AND BELMONT, Monticello, Yonkers, Finger Lakes, and Vernon Downs racetracks, or at any other racetrack licensed pursuant to article three of the racing, pari-mutuel wagering and breeding law that are located in a county or counties in which video lottery gaming has been authorized pursuant to local law, excluding the licensed racetrack commonly referred to in article three of the racing, pari-mutuel wagering and breeding law as the "New York state exposition" held in Onondaga county and the [racetracks] RACETRACK of the [non-profit racing association] FRANCHISED CORPORATION known as [Belmont Park racetrack and] the Saratoga thoroughbred racetrack. Such rules and regulations shall provide, as a condition of licensure, that racetracks to be licensed are certified to be in compliance with all state and local fire and safety codes, that the division is afforded adequate space, infrastructure, and amenities consistent with industry standards for such video gaming operations as

found at racetracks in other states, that racetrack employees involved in the operation of video lottery gaming pursuant to this section are licensed by the racing and wagering board, and such other terms and conditions of licensure as the division may establish. Notwithstanding any inconsistent provision of law, video lottery gaming at a racetrack pursuant to this section shall be deemed an approved activity for such racetrack under the relevant city, county, town, or village land use or zoning ordinances, rules, or regulations. No racetrack operating video lottery gaming pursuant to this section may house such gaming activity in a structure deemed or approved by the division as "temporary" for a duration of longer than eighteen-months.

S 8. The opening paragraph of subdivision a of section 1617-a of the tax law, as amended by chapter 140 of the laws of 2008, is amended to read as follows:

The division of the lottery is hereby authorized to license, pursuant to rules and regulations to be promulgated by the division of the lottery, the operation of video lottery gaming at Aqueduct [racetrack] AND BELMONT RACETRACKS. Such rules and regulations shall provide, as a condition of licensure, that [such racetrack is] RACETRACKS TO BE LICENSED ARE certified to be in compliance with all state and local fire and safety codes, that the division is afforded adequate space, infrastructure, and amenities consistent with industry standards for such video gaming operations as found at racetracks in other states, that racetrack employees involved in the operation of video lottery gaming pursuant to this section are licensed by the racing and wagering board, and such other terms and conditions of licensure as the division may establish. Notwithstanding any inconsistent provision of law, video lottery gaming at a racetrack pursuant to this section shall be deemed an approved activity for such racetrack under the relevant city, county, town, or village land use or zoning ordinances, rules, or regulations. No racetrack operating video lottery gaming pursuant to this section may house such gaming activity in a structure deemed or approved by the division as "temporary" for a duration of longer than eighteen-months.

S 9. This act shall take effect immediately; provided, that section eight of this act shall take effect on the same date and in the same manner as section 13 of chapter 140 of the laws of 2008 when upon such date the provisions of section seven of this act, shall expire and be deemed repealed; provided, further, that the amendments to section 1617-a of the tax law, made by sections seven and eight of this act, shall not affect the expiration and repeal of such section, and shall expire and be deemed repealed therewith; and provided further that the amendments to section 212 of the racing, pari-mutuel wagering and breeding law, made by section one of this act shall take effect on the same date and in the same manner as such section takes effect pursuant to chapter 18 of the laws of 2008.

PART HH

Section 1. 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), 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 OR ELEVEN HUNDRED FIVE-D 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] THE COMPTROLLER 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 2. The tax law is amended by adding a new section 1105-D to read as follows:

S 1105-D. ADDITIONAL STATE SALES AND COMPENSATING USE TAXES ON CERTAIN BEVERAGE PRODUCTS. NOTWITHSTANDING ANY LAW TO THE CONTRARY:

(A) IMPOSITION OF ADDITIONAL TAXES. (1) IN ADDITION TO THE SALES AND COMPENSATING USE TAXES IMPOSED BY SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIVE AND CLAUSES (A) AND (B) OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED TEN OF THIS PART, THERE ARE HEREBY IMPOSED AND THERE SHALL BE PAID ADDITIONAL SALES AND COMPENSATING USE TAXES, AT THE RATE OF EIGHTEEN PERCENT, ON (I) FRUIT DRINKS THAT CONTAIN LESS THAN SEVENTY PERCENT OF NATURAL FRUIT JUICE AND (II) SOFT DRINKS, SODAS, AND BEVERAGES SUCH AS ARE ORDINARILY DISPENSED AT SODA FOUNTAINS OR IN CONNECTION THEREWITH (OTHER THAN COFFEE, TEA AND COCOA), WHETHER OR NOT THE ITEM IS SOLD IN LIQUID FORM, WHICH EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION SHALL BE IDENTICAL TO THE TAXES IMPOSED BY SUCH SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIVE AND CLAUSES (A) AND (B) OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED TEN OF THIS PART.

(2) IN ADDITION TO THE SALES TAXES IMPOSED BY SUBDIVISION (D) AND PARAGRAPH THREE OF SUBDIVISION (F) OF SECTION ELEVEN HUNDRED FIVE OF THIS PART, THERE ARE HEREBY IMPOSED AND THERE SHALL BE PAID ADDITIONAL SALES TAXES, AT THE RATE OF EIGHTEEN PERCENT, ON (I) FRUIT DRINKS WHICH CONTAIN LESS THAN SEVENTY PERCENT OF NATURAL FRUIT JUICE AND (II) SOFT DRINKS, SODAS AND BEVERAGES SUCH AS ARE ORDINARILY DISPENSED AT SODA FOUNTAINS OR IN CONNECTION THEREWITH (OTHER THAN COFFEE, TEA AND COCOA), WHETHER OR NOT THE ITEM IS SOLD IN LIQUID FORM, WHICH EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION SHALL BE IDENTICAL TO THE TAXES IMPOSED BY SUCH SUBDIVISION (D) AND PARAGRAPH THREE OF SUBDIVISION (F) OF SECTION ELEVEN HUNDRED FIVE OF THIS PART.

(B) SPECIAL RULES FOR COMPUTING RECEIPTS AND CONSIDERATION. (1) IF A VENDOR SELLS, OR A RECIPIENT CHARGES FOR, A DRINK, SODA OR BEVERAGE SUBJECT TO THE ADDITIONAL TAXES IMPOSED BY THIS SECTION TOGETHER WITH OTHER PROPERTY OR WITH SERVICES (FOR EXAMPLE, AS PART OF A MEAL OR A SPECIAL PROMOTION, OR MIXED WITH AN ALCOHOLIC OR OTHER BEVERAGE) OR TOGETHER WITH A COVER, MINIMUM, ENTERTAINMENT OR OTHER CHARGE OR TOGETHER WITH OTHER CHARGES OF A ROOF GARDEN, CABARET OR OTHER SIMILAR PLACE, FOR A SINGLE PRICE OR CHARGE, AND THE VENDOR ALSO SEPARATELY SELLS, OR THE RECIPIENT ALSO SEPARATELY CHARGES FOR, SUCH A DRINK, SODA OR BEVERAGE IN THE SAME FORM AND CONDITION, QUANTITIES, AND PACKAGING, THEN THE TAX IMPOSED BY THIS SECTION SHALL APPLY TO THE AMOUNT AT WHICH THAT VENDOR OR RECIPIENT SEPARATELY SELLS OR CHARGES FOR SUCH DRINK, SODA OR BEVERAGE IN THE SAME FORM AND CONDITION, QUANTITY, AND PACKAGING.

(2) IF A VENDOR SELLS, OR A RECIPIENT CHARGES FOR, A DRINK, SODA, OR BEVERAGE SUBJECT TO THE ADDITIONAL TAXES IMPOSED BY THIS SECTION TOGETHER WITH OTHER PROPERTY OR WITH SERVICES (FOR EXAMPLE, AS PART OF A MEAL OR A SPECIAL PROMOTION, OR MIXED WITH AN ALCOHOLIC OR OTHER BEVERAGE) OR TOGETHER WITH A COVER, MINIMUM, ENTERTAINMENT OR OTHER CHARGE OR TOGETHER WITH OTHER CHARGES OF A ROOF GARDEN, CABARET OR OTHER SIMILAR PLACE, FOR A SINGLE PRICE OR CHARGE, BUT THE VENDOR DOES NOT SEPARATELY SELL, OR THE RECIPIENT DOES NOT SEPARATELY CHARGE FOR, SUCH A DRINK, SODA OR BEVERAGE IN THE SAME FORM AND CONDITION, QUANTITIES, AND PACKAGING, THEN THE TAX IMPOSED BY THIS SECTION SHALL BE COMPUTED ON FIVE HUNDRED PERCENT OF THE VENDOR'S OR RECIPIENT'S COST FOR SUCH DRINK, SODA OR BEVERAGE. FOR PURPOSES OF THIS PARAGRAPH, "COST" MEANS THE CONSIDERATION GIVEN OR CONTRACTED TO BE GIVEN FOR SUCH PROPERTY, OR FOR THE USE OF SUCH PROPERTY, INCLUDING ANY CHARGES FOR SHIPPING OR DELIVERY AS DESCRIBED IN PARAGRAPH THREE OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED ONE OF THIS ARTICLE, BUT EXCLUDING ANY CREDIT FOR TANGIBLE PERSONAL PROPERTY ACCEPTED IN PART PAYMENT AND INTENDED FOR RESALE.

(3) THE ADDITIONAL COMPENSATING USE TAX IMPOSED BY PARAGRAPH ONE OF SUBDIVISION (A) OF THIS SECTION SHALL BE COMPUTED IN THE SAME MANNER AS THE ADDITIONAL SALES TAX IS COMPUTED UNDER PARAGRAPH ONE OR TWO OF THIS SUBDIVISION IN LIKE CIRCUMSTANCES.

(C) APPLICABILITY OF CERTAIN EXEMPTIONS AND EXCLUSIONS FROM TAX. (1) THE EXEMPTIONS FOR PROVISIONS AND OTHER PROPERTY IN PARAGRAPHS EIGHT, TWENTY-FOUR AND FORTY-THREE OF SUBDIVISION (A) AND IN SUBDIVISION (Z) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS ARTICLE SHALL NOT APPLY TO THE TAXES IMPOSED BY PARAGRAPH ONE OF SUBDIVISION (A) OF THIS SECTION.

(2) THE EXCLUSION FROM TAX IN SUBPARAGRAPH (B) OF PARAGRAPH (II) OF SUBDIVISION (D) OF SECTION ELEVEN HUNDRED FIVE OF THIS PART SHALL NOT APPLY TO THE TAX IMPOSED BY PARAGRAPH TWO OF SUBDIVISION (A) OF THIS SECTION.

(3) SALES OF DRINK IN OR BY A RESTAURANT, TAVERN, OR OTHER ESTABLISHMENT OPERATED BY AN ORGANIZATION DESCRIBED IN PARAGRAPH ONE, FOUR, FIVE OR SIX OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED SIXTEEN OF THIS ARTICLE, INCLUDING SALES OTHERWISE EXEMPT UNDER PARAGRAPH (II) OF SUBDIVISION (D) OF SECTION ELEVEN HUNDRED FIVE OF THIS PART, SHALL BE SUBJECT TO THE TAXES IMPOSED BY PARAGRAPH TWO OF SUBDIVISION (A) OF THIS SECTION, UNLESS THE PURCHASER IS AN ORGANIZATION DESCRIBED IN SUBDIVISION (A) OF SECTION ELEVEN HUNDRED SIXTEEN OF THIS ARTICLE.

(4) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO IMPOSE ANY TAX ON FOOD EXEMPT FROM TAX PURSUANT TO SUBDIVISION (K) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS ARTICLE.

(D) TAX FILERS UNDER SECTION TEN OF THIS CHAPTER FOR THE MONTHS OF FEBRUARY AND MARCH, TWO THOUSAND NINE. IF A PERSON IS REQUIRED TO

COLLECT OR PAY OR PAY OVER ANY TAX IMPOSED BY THIS SECTION AND THAT PERSON IS REQUIRED TO MAKE PAYMENTS OF TAX IN ACCORD WITH SECTION TEN OF THIS CHAPTER, THAT PERSON SHALL, FOR PURPOSES OF PAYMENTS REQUIRED TO BE MADE UNDER SECTION TEN OF THIS CHAPTER DURING THE MONTHS OF FEBRUARY AND MARCH, TWO THOUSAND NINE, INCLUDE IN THE PAYMENTS FOR EACH OF THOSE MONTHS THE AMOUNT DESCRIBED IN SUBCLAUSE (II) OF CLAUSE (I) OF SUBPARAGRAPH (A) OF PARAGRAPH ONE OF SUBDIVISION (C) OF SECTION TEN OF THIS CHAPTER WITH RESPECT TO THE LIABILITY FOR THE TAXES IMPOSED BY THIS SECTION FOR SUCH MONTHS, TOGETHER WITH ANY OTHER AMOUNTS REQUIRED BY SECTION TEN OF THIS CHAPTER FOR THOSE MONTHS.

(E) SEPARATE STATEMENT OF TAX. EVERY PERSON REQUIRED TO COLLECT THE TAX IMPOSED BY THIS SECTION SHALL STATE, CHARGE, AND SHOW THAT TAX SEPARATELY FROM THE PRICE OR CHARGE, AND ALSO SEPARATELY FROM ANY OTHER TAX IMPOSED BY THIS ARTICLE OR OTHER LAW ON ANY SALES SLIP, INVOICE, RECEIPT OR OTHER STATEMENT OR MEMORANDUM OF THE PRICE OR CHARGE, PAID OR PAYABLE, GIVEN TO THE CUSTOMER.

(F) VENDOR COLLECTION CREDIT NOT TO INCLUDE TAX IMPOSED BY THIS SECTION. THE TAXES IMPOSED BY, AND COLLECTED OR PAID OR PAID OVER UNDER, THIS SECTION SHALL NOT BE INCLUDED OR CONSIDERED IN COMPUTING THE CREDIT ALLOWED BY SUBDIVISION (F) OF SECTION ELEVEN HUNDRED THIRTY-SEVEN OF THIS ARTICLE.

(G) INCORPORATION OF OTHER PROVISIONS OF THIS ARTICLE. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, SECTIONS ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED TEN AND THE OTHER SECTIONS OF THIS ARTICLE, INCLUDING THE DEFINITION AND EXEMPTION PROVISIONS, SHALL APPLY FOR PURPOSES OF THE TAXES IMPOSED BY THIS SECTION IN THE SAME MANNER AND WITH THE SAME FORCE AND EFFECT AS IF THE LANGUAGE OF THOSE SECTIONS HAD BEEN INCORPORATED IN FULL INTO THIS SECTION AND HAD EXPRESSLY REFERRED TO THE TAXES IMPOSED BY THIS SECTION.

(H) TAXES TO BE IN ADDITION TO ANY OTHER. THE TAXES IMPOSED BY THIS SECTION SHALL BE IN ADDITION TO ANY OTHER TAX IMPOSED OR AUTHORIZED TO BE IMPOSED BY THIS CHAPTER OR OTHER LAW.

(I) TAXES NOT TO APPLY TO OTHER IMPOSITIONS. THE TAXES IMPOSED BY THIS SECTION SHALL NOT APPLY TO THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN, ELEVEN HUNDRED EIGHT, OR ELEVEN HUNDRED NINE OF THIS PART OR TO TAXES AUTHORIZED TO BE IMPOSED BY ARTICLE TWENTY-NINE OF THIS CHAPTER.

(J) DEPOSIT AND DISPOSITION OF REVENUE. ALL TAXES, FEES, INTEREST, AND PENALTIES COLLECTED OR RECEIVED BY THE COMMISSIONER UNDER THIS SECTION SHALL BE DEPOSITED AND DISPOSED OF PURSUANT TO THE PROVISIONS OF SECTION ONE HUNDRED SEVENTY-ONE-A OF THIS CHAPTER. HOWEVER, ALL OF THOSE TAXES, INTEREST AND PENALTIES SHALL 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. TO EFFECT THE DEPOSIT AND DISPOSITION OF REVENUES ARISING FROM THE TAXES IMPOSED BY THIS SECTION DURING PERIODS FOR WHICH THE COMMISSIONER DOES NOT HAVE ADEQUATE DATA, THE COMMISSIONER IS AUTHORIZED TO ESTIMATE THE AMOUNT OF THOSE TAXES FOR ANY PERIOD AND TO CERTIFY SUCH AMOUNTS AS REQUIRED BASED ON SUCH ESTIMATES. THESE ESTIMATES MAY BE BASED ON INFORMATION AVAILABLE TO THE COMMISSIONER AT THE TIME DISTRIBUTIONS SHALL BE MADE UNDER THIS SUBDIVISION AND MAY BE ESTIMATED ON THE BASIS OF RESPECTIVE STATE AND LOCAL SALES AND COMPENSATING USE TAX RATES, PERCENTAGES, OR OTHER INDICES CALCULATED FROM RETURNS, REPORTS, OR DISTRIBUTIONS FROM PRIOR PERIODS FOR THESE OR OTHER PERIODS OR WITH RESPECT TO SALES AND COMPENSATING USE TAXES IMPOSED BY COUNTIES AND CITIES THAT IMPOSE TAXES PURSUANT TO SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS CHAPTER. THE

COMMISSIONER IS AUTHORIZED TO REQUIRE WHATEVER INFORMATION THE COMMISSIONER DEEMS NECESSARY TO COMPLY WITH THE REQUIREMENTS OF THIS SUBDIVISION FROM PERSONS REQUIRED TO FILE RETURNS, REPORTS, OR SCHEDULES UNDER THIS SECTION. IF ESTIMATED DISTRIBUTIONS ARE MADE UNDER THIS SECTION, THEY MUST BE RECONCILED BASED ON TAX RETURNS AS SOON AS IS PRACTICABLE. NEITHER THE COMMISSIONER NOR THE COMPTROLLER SHALL BE HELD LIABLE FOR ANY INACCURACY IN THE DETERMINATIONS AND CERTIFICATIONS MADE PURSUANT TO THIS SUBDIVISION. ANY OVERPAYMENT OR UNDERPAYMENT SHALL BE ADJUSTED IN THE MANNER DESCRIBED IN SUBDIVISION (C) OF SECTION TWELVE HUNDRED SIXTY-ONE OF THIS CHAPTER, PROVIDED THAT NO INTEREST IS TO BE PAID ON ANY OVERPAYMENT OR UNDERPAYMENT.

(K) THIS SECTION SHALL NOT APPLY TO DIET SODA OR TO WATER PRODUCTS. "DIET SODA" MEANS NON-ALCOHOLIC CARBONATED BEVERAGE THAT DOES NOT CONTAIN SUGAR AND IS SWEETENED WITH ARTIFICIAL SWEETENER. "WATER PRODUCTS" MEANS PLAIN WATER, PLAIN WATER TO WHICH ONLY CARBONATION HAS BEEN ADDED, AND PLAIN WATER, CARBONATED OR NOT, WITH MERE NATURAL FLAVORINGS ADDED, BUT NOT INCLUDING ANY CARBONATED WATER THAT CONTAINS SUGAR, FRUIT JUICE, OR OTHER ADDITIVES OR FLAVORINGS.

S 3. 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) and (iv) 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] SUBPARAGRAPH (i)[, (ii) and (iii)] of this paragraph shall be exempt under this paragraph when sold for seventy-five cents or less through any 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 shall be construed as exempting food or drink from the tax imposed under subdivision (d) of section eleven hundred five OF THIS ARTICLE.

S 4. Subparagraph 15 of paragraph j of subdivision 1 of section 54 of the state finance law, as added by chapter 430 of the laws of 1997, is amended to read as follows:

(15) article twenty-eight of the tax law, EXCEPT TAXES, PENALTIES AND INTEREST IMPOSED BY SECTION ELEVEN HUNDRED FIVE-D OF THE TAX LAW;

S 5. Subdivisions (g) and (k) of section 1817 of the tax law, subdivision (g) as amended by chapter 412 of the laws of 1986 and subdivision (k) as amended by chapter 3 of the laws of 2004, are amended to read as follows:

(g) Any person (1) who willfully fails to charge separately [the] ANY tax OR TAXES imposed under article twenty-eight of this chapter or to state [such] ANY SUCH tax OR TAXES separately on any bill, statement, memorandum or receipt issued or employed by [him] SUCH PERSON upon which the tax is required to be stated separately as provided in subdivision (a) of section eleven hundred thirty-two OR SECTION ELEVEN HUNDRED FIVE-D of this chapter; or (2) who shall refer or cause reference to be

made to ANY such tax OR TAXES in a form or manner other than that required by such article twenty-eight, shall be guilty of a misdemeanor.

(k) The penalties provided for in this section shall not preclude prosecution pursuant to the penal law with respect to the willful failure of any person to pay over to the state any sales tax imposed by section eleven hundred four, eleven hundred five, ELEVEN HUNDRED FIVE-D, eleven hundred seven, eleven hundred eight or eleven hundred nine of this chapter or by any local law adopted by any city or county pursuant to article twenty-nine of this chapter, whenever such person has been required to collect and has collected any such sales tax. In any such prosecution under the penal law, a person who has been required to collect and has collected any such tax shall be deemed to have acted in a fiduciary character with respect to the state or a political subdivision thereof, and the tax OR TAXES collected shall be deemed to have been entrusted to such person by the state or a political subdivision thereof.

S 6. Subdivisions (a) and (b) of section 92-dd of the state finance law, as added by section 89 of part B of chapter 58 of the laws of 2005, are amended to read as follows:

(a) On and after April first, two thousand five, such fund shall consist of the revenues heretofore and hereafter collected or required to be deposited pursuant to paragraph (a) of subdivision eighteen of section twenty-eight hundred seven-c, and sections twenty-eight hundred seven-j, twenty-eight hundred seven-s and twenty-eight hundred seven-t of the public health law, [section] SECTIONS four hundred eighty-two AND ELEVEN HUNDRED FIVE-D of the tax law and required to be credited to the tobacco control and insurance initiatives pool, subparagraph (O) of paragraph four of subsection (j) of section four thousand three hundred one of the insurance law, section twenty-seven of part A of chapter one of the laws of two thousand two and all other moneys credited or transferred thereto from any other fund or source pursuant to law.

(b) The pool administrator under contract with the commissioner of health pursuant to section twenty-eight hundred seven-y of the public health law shall continue to collect moneys required to be collected or deposited pursuant to paragraph (a) of subdivision eighteen of section twenty-eight hundred seven-c, and sections twenty-eight hundred seven-j, twenty-eight hundred seven-s and twenty-eight hundred seven-t of the public health law, and shall deposit such moneys in the HCRA resources fund. The comptroller shall deposit moneys collected or required to be deposited pursuant to [section] SECTIONS four hundred eighty-two AND ELEVEN HUNDRED FIVE-D of the tax law and required to be credited to the tobacco control and insurance initiatives pool, subparagraph (O) of paragraph four of subsection (j) of section four thousand three hundred one of the insurance law, section twenty-seven of part A of chapter one of the laws of two thousand two and all other moneys credited or transferred thereto from any other fund or source pursuant to law in the HCRA resources fund.

S 7. This act shall take effect June 1, 2009, and shall apply to sales and charges made, uses occurring and services rendered on and after such date, in accordance with applicable transitional provisions in section 1106 of the tax law.

PART II

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 adminis-

tration 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 JJ

Section 1. Section 1617 of the tax law, as added by section 3 of part D of chapter 383 of the laws of 2001, is amended to read as follows:

S 1617. Joint, multi-jurisdiction, and out-of-state lottery. The director may enter into an agreement with a government-authorized group of one or more other jurisdictions providing for the operation and administration of a joint, multi-jurisdiction, and out-of-state lottery[, except the director may not agree to participate in the games of more than one such group at any single time]. Such a joint, multi-jurisdiction, and out-of-state lottery game or games may include a combined drawing, a combined prize pool, the transfer of sales and prize monies to other jurisdictions as may be necessary, and such other cooperative arrangements as the director deems necessary or desirable.

S 2. This act shall take effect immediately.

PART KK

Section 1. 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 STORE 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 STORE 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.

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 SECTION EIGHTY OF THIS ARTICLE.

8. 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, PARAGRAPH (A) OF SUBDIVISION THREE, PARAGRAPH (B) OF SUBDIVISION TEN, OR PARAGRAPH (C) OF SUBDIVISION TEN OF SECTION ONE HUNDRED FIVE OF THIS CHAPTER.

9. (A) A ONE-TIME FRANCHISE FEE SHALL BE PAID FOR BY EACH RETAIL OUTLET TO THE STATE LIQUOR AUTHORITY. THIS FRANCHISE FEE IS HEREBY IMPOSED AT A RATE OF 0.46 OF ONE PERCENT OF THE TOTAL GROSS SALES OF THE LICENSEE IN THE PREVIOUS YEAR.

(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 AT 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 AND GREATER	$495,000

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.

10. THE STATE LIQUOR AUTHORITY MAY MAKE SUCH RULES AS IT DEEMS NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION.

S 2. 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 ONE HUNDRED TEN 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.

S 3. 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 ANY 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 EMPLOYED AS A CASHIER BY A PERSON HOLDING A GROCERY OR DRUG STORE WINE LICENSE SHALL BE PERMITTED TO RECORD AND RECEIVE PAYMENT FOR WINE WHEN IN THE PRESENCE OF AND UNDER THE DIRECT SUPERVISION OF A PERSON EIGHTEEN YEARS OF AGE OR OVER.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law.

PART LL

Section 1. Paragraphs (a), (b), (c), and (d) of subdivision 1 of section 424 of the tax law, paragraph (a) as amended by section 1 of part V of chapter 63 of the laws of 2000, paragraph (b) as amended by chapter 490 of the laws of 1993, and paragraphs (c) and (d) as amended by chapter 170 of the laws of 1994, are amended to read as follows:

(a) [Eleven] TWENTY-FOUR cents per gallon upon beers;

(b) [Eighteen and ninety-three hundredths] FIFTY-ONE cents per gallon upon still wines, except cider containing more than three and two-tenths per centum of alcohol by volume, upon which the tax shall be three and seventy-nine hundredths cents per gallon;

(c) [Eighteen and ninety-three hundredths] FIFTY-ONE cents per gallon upon artificially carbonated sparkling wines, except artificially carbonated sparkling cider containing more than three and two-tenths per centum of alcohol by volume, upon which the tax shall be three and seventy-nine hundredths cents per gallon;

(d) [Eighteen and ninety-three hundredths] FIFTY-ONE cents per gallon upon natural sparkling wines, except natural sparkling cider containing more than three and two-tenths per centum of alcohol by volume, upon

which the tax shall be three and seventy-nine hundredths cents per gallon;

S 2. (a) If a contract for the sale of beer and wines was entered into prior to April 1, 2009 and delivery under that contract is made within the state on or after April 1, 2009, the beer and wines sold under that contract will be subject to tax under article 18 of the tax law, as amended by this act, at the time of delivery.

(b) In order to subject beer and wines in this state on April 1, 2009 to the increased taxes imposed by section one of this act, a special floor tax is imposed on each wholesaler or retailer (as defined in the alcoholic beverage control law) or other sellers of beer and wine, other than those registered as distributors under article 18 of the tax law, at the rates shown below with respect to all beer and wines in the possession or under the control on April 1, 2009 of those wholesalers, retailers and other sellers of beer and wines for purposes of sale in the state. Additionally, any person who is a distributor or manufacturer under article 18 of the tax law is subject to this special floor tax on any beer and wines in his or her possession or under his or her control on which the tax under article 18 of the tax law was already imposed. The rate of the floor tax will be:

(1) On beer, thirteen cents per gallon; and

(2) On wines, thirty-two and seven hundredths cents per gallon.

This floor tax will be due and payable to the commissioner of taxation and finance on or before June 22, 2009.

(c) Except as provided in this section, all the provisions of articles 18 and 37 of the tax law will apply to floor taxes imposed by this section.

(d) The commissioner of taxation and finance is authorized to prescribe any terms and conditions the commissioner deems advisable and require any reports the commissioner deems necessary to effectuate the provisions of this section.

(e) The commissioner of taxation and finance may request from the state liquor authority, and the state liquor authority is authorized and directed to provide, any cooperation and assistance, including data, that will enable the commissioner to carry out the imposition and implementation of the floor tax.

S 3. This act shall take effect April 1, 2009.

PART MM

Section 1. Paragraph 1 of subdivision (a) of section 1160 of the tax law, as added by chapter 190 of the laws of 1990, is amended to read as follows:

(1) [On and after June first, nineteen hundred ninety, in] IN addition to any tax imposed under any other article of this chapter, there is hereby imposed and there shall be paid a tax of [five] SIX percent upon the receipts from every rental of a passenger car which is a retail sale of such passenger car.

S 2. Paragraph 2 of subdivision (a) of section 1160 of the tax law, as amended by chapter 166 of the laws of 1991, is amended to read as follows:

(2) Except to the extent that a passenger car rental described in paragraph one of this subdivision has already been or will be subject to the tax imposed under such paragraph and except as otherwise exempted under this article, there is hereby imposed on every person and there shall be paid a use tax for the use within this state [on and after June

first, nineteen hundred ninety] of any passenger car rented by the user, which is a purchase at retail of such passenger car, but not including any lease of a passenger car to which subdivision (i) of section eleven hundred eleven of this chapter applies. For purposes of this paragraph, the tax shall be at the rate of [five] SIX percent of the consideration given or contracted to be given for such property, or for the use of such property, including any charges for shipping or delivery as described in paragraph three of subdivision (b) of section eleven hundred one of this chapter, but excluding any credit for tangible personal property accepted in part payment and intended for resale.

S 3. This act shall take effect June 1, 2009, and shall apply to sales made or uses occurring on or after such date in accordance with applicable transitional provisions in sections 1106 and 1217 of the tax law.

PART NN

Section 1. Subdivision (b) of section 1101 of the tax law is amended by adding a new paragraph 34 to read as follows:

(34) "TRANSPORTATION SERVICE" SHALL MEAN THE SERVICE OF TRANSPORTING, CARRYING OR CONVEYING A PERSON OR PERSONS BY ANY MEANS, INCLUDING BUT NOT LIMITED TO (I) TAXICAB, CHARTER, BLACK CAR, LIMOUSINE, COACH, FOR-HIRE VEHICLE, COMMUTER VAN, OR OTHER VEHICLE SERVICE, (II) HORSE-DRAWN CAB OR COACH SERVICE, AND PEDICAB SERVICE, (III) INTRA-STATE CHARTER BUS, VESSEL, TRAIN, AND PLANE SERVICE, (IV) CHARTER FISHING SERVICE, AND (V) SIGHTSEEING SERVICE REGARDLESS OF WHETHER SCHEDULED OR THE MEANS OF CONVEYANCE; WHETHER ONE-WAY OR ROUND-TRIP; WHETHER TO A SINGLE DESTINATION OR TO MULTIPLE DESTINATIONS; AND WHETHER THE COMPENSATION PAID BY OR ON BEHALF OF THE PASSENGER IS BASED ON MILEAGE, TRIP, TIME CONSUMED OR ANY OTHER BASIS. A SERVICE THAT BEGINS AND ENDS IN THIS STATE IS DEEMED INTRA-STATE EVEN IF IT PASSES OUTSIDE THIS STATE DURING A PORTION OF THE TRIP. HOWEVER, TRANSPORTATION SERVICE DOES NOT INCLUDE (I) "COMMUTER SERVICE" CONSISTING OF MASS TRANSPORTATION SERVICE, LOCAL TRANSIT SERVICE, SUBWAY OR COMMUTER RAIL SERVICE, AND OTHER SCHEDULED SERVICE; (II) VESSEL OR FERRY SERVICE DESCRIBED IN SUBDIVISION (B) OF SECTION ELEVEN HUNDRED NINETEEN OR PARAGRAPH FORTY-THREE OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS ARTICLE, (III) THE TRANSPORTATION OF CHILDREN TO AND FROM SCHOOLS AND DAY CAMPS OPERATED BY AN ENTITY OR ORGANIZATION DESCRIBED IN PARAGRAPH ONE, TWO, THREE, FOUR, OR SIX OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED SIXTEEN OF THIS ARTICLE, (IV) TRANSPORTATION OF PERSONS IN CONNECTION WITH FUNERALS, OR (V) AMBULANCE, AMBULETTE, OR EMERGENCY SERVICE TRANSPORTATION, WHETHER GROUND, WATER, OR AIR. TRANSPORTATION SERVICE INCLUDES TRANSPORTING, CARRYING, OR CONVEYING PROPERTY OF THE PERSON BEING TRANSPORTED, WHETHER OWNED BY OR IN THE CARE OF SUCH PERSON. IN ADDITION TO WHAT IS INCLUDED IN THE DEFINITION OF "RECEIPT" IN PARAGRAPH THREE OF THIS SUBDIVISION, RECEIPTS FROM THE SALE OF TRANSPORTATION SERVICE SUBJECT TO TAX INCLUDE ANY HANDLING, CARRYING, BAGGAGE, BOOKING SERVICE, ADMINISTRATIVE OR OTHER CHARGE, OF ANY NATURE, MADE IN CONJUNCTION WITH THE TRANSPORTATION SERVICE.

S 2. Subdivision (c) of section 1105 of the tax law is amended by adding a new paragraph 13 to read as follows:

(13) TRANSPORTATION SERVICE, WHETHER OR NOT ANY TANGIBLE PERSONAL PROPERTY IS TRANSFERRED IN CONJUNCTION THEREWITH, AND REGARDLESS OF WHETHER THE CHARGE IS PAID IN THIS STATE OR OUT OF STATE SO LONG AS THE SERVICE IS PROVIDED IN THIS STATE.

S 3. Section 1106 of the tax law is amended by adding a new subdivision (1) to read as follows:

(1) THE TAX IMPOSED BY PARAGRAPH THIRTEEN OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED FIVE OF THIS PART MUST BE PAID WITH RESPECT TO RECEIPTS FROM ALL SALES OF SERVICES ON OR AFTER THE EFFECTIVE DATE OF SUCH PARAGRAPH ALTHOUGH RENDERED OR AGREED TO BE RENDERED UNDER A PRIOR CONTRACT. WHERE A SERVICE IS SOLD ON A MONTHLY, QUARTERLY, YEARLY, OR OTHER TERM BASIS, THE CHARGE FOR THE SERVICE WILL BE SUBJECT TO THE TAX IMPOSED BY THAT PARAGRAPH TO THE EXTENT THAT THE CHARGE IS APPLICABLE TO ANY PERIOD ON OR AFTER THE DATE THE TAX BECOMES EFFECTIVE, AND THE CHARGE MUST BE APPORTIONED ON THE BASIS OF THE RATIO OF THE NUMBER OF DAYS FALLING WITHIN THE PERIOD TO THE TOTAL NUMBER OF DAYS IN THE FULL TERM OR PERIOD.

S 4. Section 1111 of the tax law is amended by adding a new subdivision (o) to read as follows:

(O) (1) IF A TRANSPORTATION SERVICE SUBJECT TO TAX UNDER PARAGRAPH THIRTEEN OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED FIVE OF THIS PART IS PROVIDED BY TAXICAB, BLACK CAR, LIMOUSINE OR OTHER VEHICLE, AND THE OWNER OR LESSOR OF THE VEHICLE LEASES OR RENTS THE VEHICLE TO AN UNRELATED PERSON WHO PROVIDES THE TRANSPORTATION SERVICE, SUCH AS A TAXICAB DRIVER WHO DRIVES A TAXICAB OWNED BY ANOTHER PERSON, THEN (I) THE OWNER OR LESSOR IS DEEMED TO PROVIDE THE TRANSPORTATION SERVICE DURING THE DAY OR OTHER PERIOD THAT THE UNRELATED PERSON USES THE VEHICLE TO PROVIDE THE SERVICE, (II) THE OWNER OR LESSOR IS DEEMED TO BE THE VENDOR OF THE SERVICE PROVIDED BY THE UNRELATED PERSON, (III) THE TAX IMPOSED BY SUCH PARAGRAPH THIRTEEN IS DEEMED TO BE IMPOSED ON THE UNRELATED PERSON, (IV) THE OWNER OR LESSOR, AS VENDOR, MUST COLLECT THE TAX FROM THE UNRELATED PERSON, BASED ON THE LOCAL JURISDICTION WHERE THE DRIVER TAKES DELIVERY OF THE VEHICLE AND PAY OVER SUCH TAX REQUIRED TO BE COLLECTED WITH ITS RETURNS REQUIRED TO BE FILED UNDER THIS ARTICLE, AND (V) THE RECEIPTS SUBJECT TO THE TAX EQUAL TWO HUNDRED PERCENT OF THE AMOUNT THAT THE OWNER OR LESSOR CHARGES THE UNRELATED PERSON FOR THE USE OF THE VEHICLE DURING THE DAY OR OTHER PERIOD, INCLUDING ANY CHARGE RELATED TO INSURANCE, MAINTENANCE, REPAIRS, FUEL, THE USE, RENTAL OR ECONOMIC VALUE OF ANY TAXICAB OR OTHER LICENSE OR MEDALLION, AND ANY OTHER CHARGE MADE BY THE OWNER OR LESSOR TO THE UNRELATED PERSON FOR THE DAY OR OTHER PERIOD, REGARDLESS OF WHETHER THE UNRELATED PERSON TRANSPORTED, CARRIED OR CONVEYED ANY PERSON OR EARNED ANY FARES WITH THAT VEHICLE DURING THAT DAY OR OTHER PERIOD.

(2) NOTWITHSTANDING ANY LAW TO THE CONTRARY:

(I) ANY MUNICIPALITY OR PUBLIC CORPORATION THAT ESTABLISHES OR REGULATES TAXICAB, BLACK CAR, LIMOUSINE OR OTHER VEHICLE SERVICE FARES MUST ADJUST THOSE FARES TO INCLUDE THEREIN THE TAX IMPOSED BY PARAGRAPH THIRTEEN OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED FIVE OF THIS PART AND THE TAXES IMPOSED BY OTHER SECTIONS OF THIS PART AND PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS CHAPTER ON THE SERVICES TAXED BY SUCH PARAGRAPH THIRTEEN AND MUST REQUIRE THAT ANY METERS OR OTHER DEVICES IN THE VEHICLES OR OTHERWISE THAT MEASURE FARES BE ADJUSTED TO INCLUDE THESE TAXES, AS THE SAME ARE FROM TIME TO TIME IMPOSED AND AS THE RATES OF THOSE TAXES MAY CHANGE.

(II) ANY PERSON THAT SELLS THE SERVICES DESCRIBED IN PARAGRAPH ONE OF THIS SUBDIVISION MUST ADJUST ANY METERS OR OTHER DEVICES IN THE VEHICLES OR OTHERWISE THAT MEASURE FARES SO THAT THEY TIMELY REFLECT ANY CHANGE IN THE RATES OF THE TAXES DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH. NEITHER THE FAILURE OF A MUNICIPAL OR OTHER PUBLIC CORPORATION TO ADJUST FARES NOR THE FAILURE OF ANY PERSON TO ADJUST THE METERS OR

DEVICES WILL RELIEVE ANY PERSON FROM THE OBLIGATION TO COLLECT SUCH TAXES TIMELY, AT THE CORRECT COMBINED RATE.

(3) FOR PURPOSES OF THIS SUBDIVISION, "UNRELATED PERSON" MEANS A PERSON OTHER THAN A RELATED PERSON AS DEFINED FOR PURPOSES OF SECTION FOURTEEN OF THIS CHAPTER.

S 5. Subdivision (z) of section 1115 of the tax law is amended by adding a new paragraph 5 to read as follows:

(5) THE EXEMPTIONS PROVIDED IN THIS SUBDIVISION SHALL NOT APPLY TO THE TAX IMPOSED BY PARAGRAPH THIRTEEN OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE OR TO SIMILAR TAXES IMPOSED PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS CHAPTER.

S 6. Section 1213 of the tax law, as amended by chapter 651 of the laws of 1999, is amended to read as follows:

S 1213. Deliveries outside the jurisdiction where sale is made. Where a sale of tangible personal property or services, including prepaid telephone calling services, but not including other services described in subdivision (b) of section eleven hundred five OF THIS CHAPTER, including an agreement therefor, is made in any city, county or school district, but the property sold, the property upon which the services were performed or prepaid telephone calling or other service is or will be delivered to the purchaser elsewhere, such sale shall not be subject to tax by such city, county or school district. However, if delivery occurs or will occur in a city, county or school district imposing a tax on the sale or use of such property, prepaid telephone calling or other services, the vendor shall be required to collect from the purchaser, as provided in section twelve hundred fifty-four OF THIS ARTICLE, the aggregate sales or compensating use taxes imposed by the city, if any, county and school district in which delivery occurs or will occur, for distribution by the commissioner to such taxing jurisdiction or jurisdictions. For the purposes of this section delivery shall be deemed to include transfer of possession to the purchaser and the receiving of the property or of the service, including prepaid telephone calling service, by the purchaser. NOTWITHSTANDING THE FOREGOING, WHERE A TRANSPORTATION SERVICE DESCRIBED IN PARAGRAPH THIRTEEN OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED FIVE OF THIS CHAPTER BEGINS IN ONE JURISDICTION BUT ENDS IN ANOTHER JURISDICTION, ANY TAX IMPOSED BY THIS ARTICLE SHALL BE DUE THE JURISDICTION OR JURISDICTIONS WHERE THE SERVICE COMMENCED.

S 7. This act shall take effect June 1, 2009.

PART OO

Section 1. Paragraph 2 of subdivision (d) of section 1101 of the tax law, as added by chapter 93 of the laws of 1965, is amended to read as follows:

(2) Admission charge. The amount paid for admission, including any DUES (OTHER THAN DUES PAID TO A CLUB DESCRIBED IN PARAGRAPH THIRTEEN OF THIS SUBDIVISION), MEMBERSHIP FEE, PARTICIPATION FEE, USAGE FEE, OR service charge, and any charge for entertainment [or], amusement, or SPORTS, AND ANY AMOUNT PAID for the use of ANY DEVICES, RIDES, GAMES, EQUIPMENT, APPARATUS, OR ANY OTHER facilities therefor AT A PLACE OF AMUSEMENT OTHER THAN LAWFULLY OPERATED VIDEO LOTTERY TERMINALS.

S 2. Paragraph 4 of subdivision (d) of section 1101 of the tax law, as added by chapter 93 of the laws of 1965, is amended to read as follows:

(4) Charge of a roof garden, cabaret or other similar place. Any charge made for admission, refreshment, service, or merchandise OR FOR

THE USE OF ANY FACILITIES FOR ENTERTAINMENT OR AMUSEMENT at a roof garden, cabaret or other similar place.

S 3. Paragraph 6 of subdivision (d) of section 1101 of the tax law, as amended by chapter 470 of the laws of 1979, is amended to read as follows:

(6) Dues. Any dues or membership fee including any assessment, irrespective of the purpose for which made, and any charges for social, ATHLETIC or sports privileges or facilities[, except charges for sports privileges or facilities offered to members' guests which would otherwise be exempt if paid directly by such guests], AND FOR THE USE OF OTHER FACILITIES FURNISHED OR LEASED BY A CLUB TO ITS MEMBERS OR GUESTS.

S 4. Paragraph 10 of subdivision (d) of section 1101 of the tax law, as added by chapter 93 of the laws of 1965, is amended to read as follows:

(10) Place of amusement. Any place where A PERFORMANCE IS GIVEN, A MOTION PICTURE OR OTHER THEATER, FAIR, RACE TRACK, EXHIBITION, CIRCUS, GOLF COURSE, ATHLETIC FIELD, SPORTING ARENA, CLUB (OTHER THAN A CLUB DESCRIBED IN PARAGRAPH THIRTEEN OF THIS SUBDIVISION), GYMNASIUM, BOWLING ALLEY, SHOOTING GALLERY, SWIMMING POOL, BEACH, SKATING RINK, SKIING MOUNTAIN OR FACILITY, CAMPGROUND, PARK AND ANY OTHER PLACE WHERE any EQUIPMENT, APPARATUS, EXHIBIT, DISPLAY, OR OTHER facilities for entertainment, amusement, or sports are provided, INCLUDING AMUSEMENT DEVICES OR RIDES AND GAMES OF CHANCE OR SKILL, WHETHER OR NOT CONTAINED IN AN ENCLOSURE AND WHETHER OR NOT COIN-OPERATED.

S 5. Paragraph 12 of subdivision (d) of section 1101 of the tax law, as amended by chapter 609 of the laws of 1986, is amended to read as follows:

(12) Roof garden, cabaret or other similar place. Any roof garden, cabaret or other similar place which furnishes a public performance for profit, INCLUDING ANY HOTEL, RESTAURANT, HALL OR OTHER PUBLIC PLACE WHERE MUSIC AND DANCING PRIVILEGES OR ANY OTHER ENTERTAINMENT, EXCEPT INSTRUMENTAL OR MECHANICAL MUSIC ALONE, ARE AFFORDED TO PATRONS IN CONJUNCTION WITH THE SERVING OR SELLING OF FOOD, REFRESHMENT OR MERCHANDISE, but not including a place where merely live dramatic or musical arts performances are offered in conjunction with the serving or selling of food, refreshment or merchandise, so long as such serving or selling of food, refreshment or merchandise is merely incidental to such performances. A PERFORMANCE WILL BE REGARDED AS BEING FURNISHED FOR PROFIT EVEN THOUGH THE CHARGE MADE FOR ADMISSION, REFRESHMENT, SERVICE OR MERCHANDISE IS NOT INCREASED BY REASON OF THE FURNISHING OF THAT PERFORMANCE.

S 6. Paragraph 13 of subdivision (d) of section 1101 of the tax law, as added by chapter 93 of the laws of 1965, is amended to read as follows:

(13) Social [or], athletic, OR SPORTING club. Any club or organization of which a material purpose or activity is social [or], athletic OR SPORTING, OR ANY COMBINATION OF THOSE PURPOSES OR ACTIVITIES.

S 7. The opening paragraph of paragraph (i) of subdivision (d) of section 1105 of the tax law, as amended by chapter 405 of the laws of 1971, is amended to read as follows:

The receipts from every sale of beer, wine or other alcoholic beverages or any other drink of any nature, or from every sale of food and drink of any nature or of food alone, when sold in or by restaurants, taverns or other establishments in this state, or by caterers, including in the amount of such receipts any cover, minimum, entertainment, ADMIS-

SION, or other charge made to patrons or customers (except those receipts taxed pursuant to subdivision (f) of this section):

S 8. Paragraph 1 of subdivision (f) of section 1105 of the tax law, as amended by section 100 of part A of chapter 389 of the laws of 1997, is amended to read as follows:

(1) Any admission charge [where such admission charge is in excess of ten cents] to or for the use of any place of amusement in the state[, except charges for admission to race tracks, boxing, sparring or wrestling matches or exhibitions which charges are taxed under any other law of this state, or dramatic or musical arts performances, or live circus performances, or motion picture theaters, and except charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools] OR TO OR FOR THE USE OF ANY EQUIPMENT, APPARATUS, DEVICES, RIDES, GAMES, OR OTHER FACILITIES AT THAT PLACE OF AMUSEMENT, OTHER THAN A LAWFULLY OPERATED VIDEO LOTTERY TERMINAL, REGARDLESS OF WHETHER THE CHARGE IS PAID IN THIS STATE OR OUT OF STATE SO LONG AS THE PLACE OF AMUSEMENT IS IN THIS STATE. For any person having the permanent use or possession of a box or seat or a lease or a license, other than a season ticket, for the use of a box or seat at a place of amusement, the tax shall be upon the amount for which a similar box or seat is sold for each performance or exhibition at which the box or seat is used or reserved by the holder, licensee or lessee, and shall be paid by the holder, licensee or lessee.

S 9. Paragraph 2 of subdivision (f) of section 1105 of the tax law, as amended by chapter 673 of the laws of 1995, is amended to read as follows:

(2) (i) The dues paid to any social [or], athletic OR SPORTING club in this state if the dues of an active annual member, exclusive of the initiation fee, are in excess of ten dollars per year, and on the initiation fee alone, regardless of the amount of dues, if such initiation fee is in excess of ten dollars, REGARDLESS OF WHETHER THE DUES OR INITIATION FEE IS PAID IN THIS STATE OR OUT OF THIS STATE SO LONG AS THE CLUB IS IN THIS STATE. Where the tax on dues applies to any such social [or], athletic OR SPORTING club, the tax shall be paid by all members, other than honorary members, thereof regardless of the amount of their dues, and shall be paid on all dues or initiation fees [for a period commencing on or after August first, nineteen hundred sixty-five]. In the case of a life membership, the tax shall be upon the amount paid as life membership dues, however, a life member, other than an honorary member, paying an annual sales tax, based on the dues of an active annual member, shall continue such payments until the total amount of such tax paid is equal to the amount of tax that would have otherwise been due had the tax been imposed at the time such paid life membership has been purchased and at the then applicable rate.

(ii) Dues and initiation fees paid to the following shall not be subject to the tax imposed by this paragraph:

(A) A fraternal society, order or association operating under the lodge system; OR

(B) Any fraternal association of students of a college or university[;

(C) A homeowners association. For purposes of this subparagraph, a homeowners association is an association (including a cooperative housing or apartment corporation) (I) the membership of which is comprised exclusively of owners or residents of residential dwelling units, including owners of units in a condominium, and including shareholders in a cooperative housing or apartment corporation, where such units are

located in a defined geographical area such as a housing development or subdivision and (II) which operates social or athletic facilities located in such area for use (whether or not exclusive) by such owners or residents].

S 10. Paragraph 3 of subdivision (f) of section 1105 of the tax law, as amended by chapter 72 of the laws of 1971, is amended to read as follows:

(3) The amount paid as charges of a roof garden, cabaret or other similar place in the state, REGARDLESS OF WHETHER PAID IN THIS STATE OR OUT OF STATE SO LONG AS THE PLACE IS IN THIS STATE.

S 11. Section 1122 of the tax law is REPEALED.

S 12. Section 1123 of the tax law is REPEALED.

S 13. Paragraph 4 of subdivision (a) of section 1210 of the tax law, as amended by section 5 of part SS-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(4) Notwithstanding any other provision of law to the contrary, any local law enacted by any city of one million or more that imposes the taxes authorized by this subdivision (i) may omit the exception provided in subparagraph (ii) of paragraph three of subdivision (c) of section eleven hundred five of this chapter for receipts from laundering, dry-cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining; (ii) may impose the tax described in paragraph six of subdivision (c) of section eleven hundred five of this chapter at a rate in addition to the rate prescribed by this section not to exceed two percent in multiples of one-half of one percent; (iii) shall provide that the tax described in paragraph six of subdivision (c) of section eleven hundred five of this chapter does not apply to facilities owned and operated by the city or an agency or instrumentality of the city or a public corporation the majority of whose members are appointed by the chief executive officer of the city or the legislative body of the city or both of them; (iv) shall not include any tax on receipts from, or the use of, the services described in paragraph seven of subdivision (c) of section eleven hundred five of this chapter; (v) shall provide that, for purposes of the tax described in subdivision (e) of section eleven hundred five of this chapter, "permanent resident" means any occupant of any room or rooms in a hotel for at least one hundred eighty consecutive days with regard to the period of such occupancy; [(vi) may omit the exception provided in paragraph one of subdivision (f) of section eleven hundred five of this chapter for charges to a patron for admission to, or use of, facilities for sporting activities in which the patron is to be a participant, such as bowling alleys and swimming pools;] (vii) shall not provide the clothing and footwear exemption in paragraph thirty of subdivision (a) of section eleven hundred fifteen of this chapter but must exempt clothing and footwear and any item used or consumed to make or repair exempt clothing and which becomes a physical component part of that exempt clothing; (viii) shall omit the exemption provided in paragraph forty-one of subdivision (a) of section eleven hundred fifteen of this chapter; (ix) shall omit the exemption provided in subdivision (c) of section eleven hundred fifteen of this chapter insofar as it applies to fuel, gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in the production of gas, electricity, refrigeration or steam; and (x) shall omit, unless such city elects otherwise, the provision for refund or credit contained in clause six of subdivision (a) of section eleven hundred nineteen of this chapter.

S 14. Paragraph 2 of subdivision (b) of section 1210 of the tax law, as amended by section 36 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(2) In respect to the taxes described in such subdivisions (b), (d), (e) and (f) of section eleven hundred five of this chapter and in such clauses (E), (G) and (H) of subdivision (a) of section eleven hundred ten of this chapter and the transitional provisions in such section eleven hundred six covering those taxes, all provisions of a local law imposing any such tax, except as to rate and except as otherwise provided herein, shall be identical with the corresponding provisions in such article twenty-eight of this chapter, including the definition and exemption provisions of such article, so far as the provisions of such article twenty-eight of this chapter can be made applicable to the taxes imposed by such city or county and with such limitations and special provisions as are set forth in this article; provided, however, that any local law enacted by any city of one million or more, imposing the taxes authorized by this subdivision, shall omit the exemption provided in subdivision (c) of section eleven hundred fifteen of this chapter [and may omit the exception provided in paragraph (1) of subdivision (f) of section eleven hundred five of this chapter for charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools. The transitional provisions contained in subdivision (d) of section eleven hundred six of this chapter shall apply in the same manner and to the same extent to a tax imposed by omitting the exception in paragraph (1) of subdivision (f) of section eleven hundred five of this chapter, as described in the preceding sentence, except that an equivalent date shall be substituted to accord with the date when the tax so imposed becomes effective]. The tax described in any one of such subdivisions (b), (d), (e) and (f) of section eleven hundred five of this chapter, including the related transitional provisions in [such] section eleven hundred six of this chapter, and the taxes described in clauses (E), (G) and (H) of subdivision (a) of section eleven hundred ten of this chapter where the tax described in such subdivision (b) of section eleven hundred five of this chapter is imposed, may not be imposed by a city or county unless the local law, ordinance or resolution imposes such tax so as to include all portions and all types of receipts, charges or rents, as the case may be, subject to state tax under the applicable subdivision of section eleven hundred five of this chapter and uses subject to tax under the applicable provisions of section eleven hundred ten of this chapter where the tax described in subdivision (b) of section eleven hundred five of this chapter is imposed.

S 15. Subdivision (h) of section 1210 of the tax law, as added by chapter 168 of the laws of 1975, is amended to read as follows:

(h) Notwithstanding the provisions of subdivision (f) of this section, any city having a population of one million or more in which a municipal assistance corporation is created under article ten of the public authorities law shall continue to be authorized and empowered to adopt and amend local laws, imposing taxes, at a rate not to exceed four percent on the receipts of sales from the services of laundering, dry-cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining[, and charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant such as bowling alleys and swimming pools]. Such taxes shall be administered,

collected and distributed by the [state tax commission] COMMISSIONER as provided in subpart B of part III and in part IV of this article.

S 16. This act shall take effect June 1, 2009, and shall apply in accordance with applicable transitional provisions in sections 1106 and 1217 of the tax law.

PART PP

Section 1. Paragraph 9 of subdivision (b) of section 1101 of the tax law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

(9) Capital improvement. (i) An addition or alteration to real property which:

(A) Substantially adds to the value of the real property, or appreciably prolongs [the] ITS useful life [of the real property]; and

(B) Becomes part of the real property or is permanently affixed to [the real property] IT so that removal would cause material damage to [the property] IT or TO THE article itself; and

(C) Is intended to become a permanent installation; AND

(D) IN THE CASE OF A BUILDING OR OTHER STRUCTURE, CONSTITUTES NEW CONSTRUCTION OR A NEW ADDITION TO OR TOTAL RECONSTRUCTION OF EXISTING CONSTRUCTION.

(ii) A mobile home shall not constitute [an addition or] A capital improvement [to real property, property or land], regardless of the nature of its installation.

(iii) Notwithstanding the provisions of subparagraph (i) of this paragraph: (A) Floor covering, such as carpet, carpet padding, linoleum and vinyl roll flooring, carpet tile, linoleum tile and vinyl tile, installed as the initial finished floor covering in new construction or a new addition to or total reconstruction of existing construction shall constitute [an addition or] A capital improvement [to real property, property or land]; and

(B) Floor covering, such as carpet, carpet padding, linoleum and vinyl roll flooring, carpet tile, linoleum tile and vinyl tile, installed other than as described in clause (A) of this subparagraph shall not constitute [an addition or] A capital improvement [to real property, property or land].

S 2. Subparagraph (iii) of paragraph 3 of subdivision (c) of section 1105 of the tax law, as separately amended by chapters 103 and 471 of the laws of 1981, is amended to read as follows:

(iii) for installing property which, when installed, will constitute [an addition or] A capital improvement [to real property, property or land, as the terms real property, property or land are defined in the real property tax law as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter]; and

S 3. Paragraph 5 of subdivision (c) of section 1105 of the tax law, as amended by chapter 321 of the laws of 2005, is amended to read as follows:

(5) Maintaining, servicing or repairing real property[, property or land, as such terms are defined in the real property tax law], whether the services are performed in or outside of a building, as distinguished from adding to or improving such real property[, property or land,] by a capital improvement [as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this article], but excluding (i) services rendered by an individual who is

not in a regular trade or business offering his services to the public, (ii) services rendered directly with respect to real property[, property or land] used or consumed directly and predominantly in the production for sale of gas or oil by manufacturing, processing, generating, assembling, refining, mining, or extracting, (iii) services rendered with respect to real property[, property or land] used or consumed predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both and (iv) services of removal of waste material from a facility regulated as a transfer station or construction and demolition debris processing facility by the department of environmental conservation, provided that the waste material to be removed was not generated by the facility.

S 4. Subdivision (e) of section 1110 of the tax law, as separately amended by sections 19, 158 and 161 of chapter 166 of the laws of 1991, is amended to read as follows:

(e) Notwithstanding the foregoing[,] provisions of this section, for purposes of clause (B) of subdivision (a) of this section, there shall be no tax on any portion of such price which represents the value added by the user to tangible personal property which he fabricates and installs to the specifications of [an addition or] A capital improvement [to real property, property or land, as the terms real property, property or land are defined in the real property tax law], over and above the prevailing normal purchase price prior to such fabrication of such tangible personal property which a manufacturer, producer or assembler would charge an unrelated contractor who similarly fabricated and installed such tangible personal property to the specifications of [an addition or] A capital improvement [to such real property, property or land].

S 5. Paragraph 17 of subdivision (a) of section 1115 of the tax law, as amended by chapter 221 of the laws of 1971, is amended to read as follows:

(17) Tangible personal property sold by a contractor, subcontractor or [repairman] REPAIRPERSON to a person other than an organization described in subdivision (a) of section eleven hundred sixteen OF THIS PART, for whom [he] THE CONTRACTOR, SUBCONTRACTOR OR REPAIRPERSON is [adding to, or improving real property, property or land by] PERFORMING OR IS ABOUT TO PERFORM a capital improvement, [or for whom he is about to do any of the foregoing,] if such tangible personal property is to become an integral component part of [such structure, building or] THE real property [; provided, however, that if such sale is made pursuant to a contract irrevocably entered into before September first, nineteen hundred sixty-nine, no exemption shall exist under this paragraph] UPON WHICH THE CAPITAL IMPROVEMENT IS OR WILL BE PERFORMED.

S 6. Subparagraph (iii) of paragraph 37 of subdivision (a) of section 1115 of the tax law, as added by section 1 of part C of chapter 63 of the laws of 2000, is amended to read as follows:

(iii) Receipts from the retail sale of the tangible personal property exempt pursuant to subparagraph (i) of this paragraph if purchased by an operator of an internet data center, shall be exempt when purchased by a contractor, subcontractor or [repairman] REPAIRPERSON for use as described in such subparagraph (i), where such property is to become [a] AN INTEGRAL COMPONENT PART OF REAL PROPERTY DESCRIBED IN SUCH SUBPARAGRAPH (I) OF THIS PARAGRAPH UPON WHICH THE capital improvement [to real property] IS TO BE PERFORMED.

S 7. Subparagraph (iii) of paragraph 1 of subdivision (aa) of section 1115 of the tax law, as added by section 2 of part T of chapter 63 of the laws of 2000, is amended to read as follows:

(iii) The services described in paragraph five of subdivision (c) of section eleven hundred five of this article when performed on property described in paragraph thirty-eight of subdivision (a) of this section which subsequent to its installation has become [an addition or] A capital improvement [to real property, property or land, as such terms are defined in the real property tax law].

S 8. This act shall take effect June 1, 2009, and shall apply in accordance with applicable transitional provisions in sections 1106 and 1217 of the tax law.

PART QQ

Section 1. Paragraph b of subdivision 1 of section 502 of the tax law, as amended by section 1 of part E of chapter 60 of the laws of 2007, is amended to read as follows:

b. Every automotive fuel carrier shall apply to the commissioner for a special certificate of registration, in place of the certificate of registration described in paragraph a of this subdivision, for each motor vehicle operated or to be operated by him on the public highways in this state to transport automotive fuel. Provided, however, a special certificate of registration shall not be required under this paragraph for a tractor or other self-propelled device which, except with respect to the fuel in the ordinary fuel tank intended for its propulsion, transports automotive fuel solely by means of a trailer, dolly or other device drawn by such tractor or other self-propelled device if a certificate of registration prescribed by paragraph a of this subdivision has been issued for the self-propelled device. Application shall be made upon an application form prescribed by the commissioner. The application shall be accompanied by a fee of [five] FIFTEEN dollars for each trailer, semi-trailer, dolly or other device [and fifteen dollars for each self-propelled device] listed in the application. The commissioner shall issue without further charge such special certificate of registration for each motor vehicle listed in the application or a consolidated certificate of registration for all or any portion of such vehicles of such carrier. All of the provisions of this article with respect to certificates of registration shall be applicable to the special certificates of registration issued to automotive fuel carriers under this paragraph as if those provisions had been set forth in full in this paragraph and expressly referred to the special certificates of registration required by this paragraph except to the extent that any such provision is either inconsistent with a provision of this paragraph or not relevant to the certificates of registration required by this paragraph. Any certificate of registration shall not be transferable, and shall be valid until revoked, suspended or surrendered. Such special certificate of registration shall be maintained in the carrier's regular place of business. Nothing contained in this paragraph shall in any way exempt an automotive fuel carrier from payment of the taxes imposed pursuant to this article.

S 2. Subdivision 8 of section 509 of the tax law, as amended by section 5 of part E of chapter 60 of the laws of 2007, is amended to read as follows:

8. To issue replacement certificates of registration at such times as the commissioner may deem necessary for the proper and efficient

enforcement of the provisions of this article, but not more often than once every year and to require the surrender of the then outstanding certificates of registration. All of the provisions of this article with respect to certificates of registration shall be applicable to replacement certificates of registration issued hereunder, except that the replacement certificate of registration shall be issued upon payment of a fee of [four] FIFTEEN dollars for each motor vehicle and [two dollars] for any trailer, semi-trailer, dolly or other device drawn thereby for which a certificate of registration is required to be issued under this article;

S 3. This act shall take effect immediately.

PART RR

Section 1. The tax law is amended by adding a new section 1105-F to read as follows:

S 1105-F. ADDITIONAL STATE SALES AND COMPENSATING USE TAX ON CERTAIN LUXURY PROPERTY. (A) DEFINITIONS. FOR PURPOSES OF THE TAX IMPOSED BY THIS SECTION, THE FOLLOWING TERMS MEAN:

(1) PASSENGER MOTOR VEHICLE. A MOTOR VEHICLE AS DEFINED IN SECTION ONE HUNDRED TWENTY-FIVE OF THE VEHICLE AND TRAFFIC LAW, WITH A GROSS VEHICLE WEIGHT OF TEN THOUSAND POUNDS OR LESS, BUT NOT INCLUDING A VEHICLE PURCHASED FOR USE EXCLUSIVELY IN THE ACTIVE CONDUCT OF A TRADE OR BUSINESS OF TRANSPORTING PERSONS OR PROPERTY FOR COMPENSATION OR HIRE, A VEHICLE PURCHASED FOR USE EXCLUSIVELY IN PROVIDING EMERGENCY MEDICAL SERVICES, OR A DEMONSTRATOR VEHICLE.

(2) VESSEL. A VESSEL, AS DEFINED IN SECTION TWENTY-TWO HUNDRED FIFTY OF THE VEHICLE AND TRAFFIC LAW, BUT NOT INCLUDING A COMMERCIAL VESSEL, AS DEFINED IN PARAGRAPH SIXTEEN OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED ONE OF THIS ARTICLE, A VESSEL PURCHASED FOR USE EXCLUSIVELY IN PROVIDING EMERGENCY MEDICAL SERVICES, OR A DEMONSTRATOR VESSEL.

(3) AIRCRAFT. ANY AIRCRAFT THAT IS PROPELLED BY A MOTOR OR ENGINE AND IS CAPABLE OF CARRYING ONE OR MORE INDIVIDUALS, BUT NOT INCLUDING COMMERCIAL AIRCRAFT AS DEFINED IN PARAGRAPH SEVENTEEN OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED ONE OF THIS ARTICLE, AN AIRCRAFT PURCHASED FOR USE EXCLUSIVELY IN PROVIDING EMERGENCY MEDICAL SERVICES, OR A DEMONSTRATOR AIRCRAFT.

(4) JEWELRY. ALL ARTICLES COMMONLY OR COMMERCIALLY KNOWN AS JEWELRY, WHETHER REAL OR IMITATION, INCLUDING BUT NOT LIMITED TO RINGS, EARRINGS, NECKLACES, BRACELETS AND WATCHES, AND ALSO INCLUDING LOOSE PEARLS AND PRECIOUS AND SEMI-PRECIOUS STONES.

(5) FUR CLOTHING AND FOOTWEAR. CLOTHING AND FOOTWEAR MADE, IN WHOLE OR IN PART, OF ANY ANIMAL SKIN OR PART THEREOF WITH HAIR, FLEECE, OR FUR FIBERS ATTACHED THERETO, IN EITHER ITS RAW OR PROCESSED STATE, BUT NOT INCLUDING SKINS THAT ARE CONVERTED INTO LEATHER OR THAT IN PROCESSING HAVE HAD THE HAIR, FLEECE, OR FUR FIBER COMPLETELY REMOVED.

(B) IMPOSITION OF ADDITIONAL TAXES. NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, IN ADDITION TO THE SALES AND COMPENSATING USE TAXES IMPOSED BY SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIVE AND SUBDIVISION (A) OF SECTION ELEVEN HUNDRED TEN OF THIS PART, THERE ARE HEREBY IMPOSED AND THERE SHALL BE PAID ADDITIONAL SALES AND COMPENSATING USE TAXES, AT THE RATE OF FIVE PERCENT, ON THE RETAIL SALE OR USE WITHIN THE STATE OF THE FOLLOWING:

(1) A PASSENGER MOTOR VEHICLE TO THE EXTENT THAT THE SALE PRICE EXCEEDS SIXTY THOUSAND DOLLARS;

(2) A VESSEL TO THE EXTENT THAT THE SALE PRICE EXCEEDS TWO HUNDRED THOUSAND DOLLARS;

(3) AN AIRCRAFT TO THE EXTENT THAT THE SALE PRICE EXCEEDS FIVE HUNDRED THOUSAND DOLLARS;

(4) JEWELRY OR FUR CLOTHING AND FOOTWEAR TO THE EXTENT THAT THE SALE PRICE PER ITEM OF JEWELRY OR FUR CLOTHING AND FOOTWEAR EXCEEDS TWENTY THOUSAND DOLLARS. AN ITEM THAT IS ORDINARILY SOLD AS A PAIR, SUCH AS EARRINGS OR GLOVES, ARE CONSIDERED TO BE ONE ITEM FOR PURPOSES OF THIS SECTION.

(C) SPECIAL RULES FOR COMPUTING RECEIPTS AND CONSIDERATION. NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS ARTICLE OR OTHER LAW, FOR PURPOSES OF THIS SECTION:

(1) SALE PRICE HAS THE SAME DEFINITION AS RECEIPT, BUT WITHOUT ANY DEDUCTION FOR TANGIBLE PERSONAL PROPERTY ACCEPTED IN PART PAYMENT AND INTENDED FOR RESALE. SALE PRICE ALSO INCLUDES THE PRICE OF ANY PROPERTY INSTALLED ON A PASSENGER MOTOR VEHICLE, VESSEL, OR AIRCRAFT BY THE VENDOR OF THAT VEHICLE, VESSEL OR AIRCRAFT WITHIN SIX MONTHS OF THE SALE OF THE VEHICLE, VESSEL OR AIRCRAFT, PLUS ANY CHARGE FOR INSTALLING THAT PROPERTY, BUT DOES NOT INCLUDE THE SALE PRICE OF ANY PROPERTY INSTALLED ON A PASSENGER MOTOR VEHICLE TO MAKE IT ADAPTABLE FOR USE BY A PERSON WITH A DISABILITY, OR THE REPLACEMENT OF DAMAGED, DEFECTIVE, OR MALFUNCTIONING PROPERTY, OR ANY CHARGE FOR INSTALLING THAT PROPERTY.

(2) WITH RESPECT TO ANY LEASE OF A PASSENGER MOTOR VEHICLE, VESSEL, OR AIRCRAFT FOR A TERM OF ONE YEAR OR MORE, SALE PRICE MEANS THE MANUFACTURER'S SUGGESTED RETAIL PRICE FOR THAT VEHICLE, VESSEL, OR AIRCRAFT, WITHOUT ANY DEDUCTION FOR TANGIBLE PERSONAL PROPERTY ACCEPTED IN PART PAYMENT AND INTENDED FOR RESALE. THE TAX DUE UNDER THIS SECTION MUST BE COLLECTED AT THE TIME THE FIRST PAYMENT IS MADE UNDER THE LEASE, OPTION TO RENEW, OR SIMILAR PROVISION OR COMBINATION OF THEM, OR AS OF THE DATE OF REGISTRATION WITH THE COMMISSIONER OF MOTOR VEHICLES, WHICHEVER IS EARLIER.

(D) INCORPORATION OF OTHER PROVISIONS OF THIS ARTICLE. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE TAXES IMPOSED BY THIS SECTION WILL BE IDENTICAL TO, AND ADMINISTERED AND COLLECTED IN A LIKE MANNER AS, THE TAXES IMPOSED BY SECTIONS ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS PART. ALL THE PROVISIONS OF THIS ARTICLE, INCLUDING THE DEFINITION AND EXEMPTION PROVISIONS AND THE PROVISIONS RELATING OR APPLICABLE TO THE ADMINISTRATION, COLLECTION, AND DISPOSITION OF THE TAXES IMPOSED BY THOSE SECTIONS WILL APPLY TO THE TAX IMPOSED BY THIS SECTION SO FAR AS THOSE PROVISIONS CAN BE MADE APPLICABLE TO THE TAX IMPOSED BY THIS SECTION, WITH SUCH MODIFICATIONS AS MAY BE NECESSARY IN ORDER TO ADAPT THE LANGUAGE OF THOSE PROVISIONS TO THE TAX IMPOSED BY THIS SECTION. THOSE PROVISIONS WILL APPLY WITH THE SAME FORCE AND EFFECT AS IF THE LANGUAGE OF THOSE PROVISIONS HAD BEEN SET FORTH IN FULL IN THIS SECTION, EXCEPT TO THE EXTENT THAT ANY OF THOSE PROVISIONS ARE EITHER INCONSISTENT WITH A PROVISION OF THIS SECTION OR ARE NOT RELEVANT TO THE TAX IMPOSED BY THIS SECTION. FOR PURPOSES OF THIS SECTION, ANY REFERENCE TO RECEIPT OR CONSIDERATION WILL BE READ AS SALE PRICE AS DEFINED BY THIS SECTION AND ANY REFERENCE IN THIS CHAPTER TO A TAX OR THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED FIVE OR ELEVEN HUNDRED TEN OF THIS PART WILL BE DEEMED ALSO TO REFER TO THE TAX IMPOSED BY THIS SECTION UNLESS A DIFFERENT MEANING IS CLEARLY REQUIRED. NOTWITHSTANDING THE FOREGOING, THE EXEMPTION PROVIDED BY SUBDIVISION (Z) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS ARTICLE SHALL NOT APPLY TO THE TAX IMPOSED BY THIS SECTION.

(E) SEPARATE STATEMENT OF TAX. EVERY PERSON REQUIRED TO COLLECT THE TAX IMPOSED BY THIS SECTION SHALL STATE, CHARGE, AND SHOW THAT TAX SEPARATELY FROM THE PRICE OR CHARGE, AND ALSO SEPARATELY FROM ANY OTHER TAX IMPOSED BY THIS ARTICLE OR OTHER LAW ON ANY SALES SLIP, INVOICE, RECEIPT, OR OTHER STATEMENT OR MEMORANDUM OF THE PRICE OR CHARGE, PAID OR PAYABLE, GIVEN TO THE CUSTOMER.

(F) VENDOR COLLECTION CREDIT NOT TO INCLUDE TAX IMPOSED BY THIS SECTION. THE TAXES IMPOSED BY, AND COLLECTED OR PAID OVER UNDER, THIS SECTION SHALL NOT BE INCLUDED OR CONSIDERED IN COMPUTING THE CREDIT ALLOWED BY SUBDIVISION (F) OF SECTION ELEVEN HUNDRED THIRTY-SEVEN OF THIS ARTICLE.

(G) TAXES TO BE IN ADDITION TO ANY OTHER. THE TAXES IMPOSED BY THIS SECTION SHALL BE IN ADDITION TO ANY OTHER TAX IMPOSED OR AUTHORIZED TO BE IMPOSED BY THIS CHAPTER OR OTHER LAW.

(H) TAXES NOT TO APPLY TO OTHER IMPOSITIONS. THE TAXES IMPOSED BY THIS SECTION SHALL NOT APPLY TO THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN, ELEVEN HUNDRED EIGHT, OR ELEVEN HUNDRED NINE OF THIS PART OR TO TAXES AUTHORIZED TO BE IMPOSED BY ARTICLE TWENTY-NINE OF THIS CHAPTER.

S 2. This act shall take effect June 1, 2009, and shall apply to sales made or uses occurring on or after such date in accordance with applicable transitional provisions in section 1106 of the tax law.

PART SS

Section 1. This act enacts into law major components of legislation which are necessary to implement the state fiscal plan for the 2009-2010 state fiscal year. Each component is wholly contained within a Subpart identified as Subparts A through P. 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 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 Subpart in which it is found. Section three of this Part sets forth the general effective date of this Part.

SUBPART A

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

S 1703. INFORMATION RETURN RELATING TO DEPOSITS AND BANK SETTLEMENTS. 1. DEFINITIONS. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "ACCOUNT" MEANS ANY ACCOUNT WITH A BANK AND INCLUDES, WITHOUT LIMITATION, A CHECKING, TIME, INTEREST, SAVINGS, OR BROKERAGE ACCOUNT.

(B) "BANK" MEANS A FINANCIAL INSTITUTION AS DEFINED IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION SEVENTEEN HUNDRED ONE OF THIS ARTICLE.

(C) "CASH" MEANS CURRENCY AUTHORIZED OR ADOPTED AS A MEDIUM OF EXCHANGE BY A DOMESTIC OR FOREIGN GOVERNMENT.

(D) "CHECK" MEANS A NEGOTIABLE INSTRUMENT DRAWN ON A BANK AND PAYABLE ON DEMAND.

(E) "REPORTABLE SETTLEMENT" MEANS A FINAL PAYMENT DEPOSITED INTO AN ACCOUNT HOLDER'S ACCOUNT, BY ANY BANK, ASSOCIATION OF BANKS, OR OTHER PAYORS REGULARLY CLEARING ITEMS, AS PAYMENT FOR TRANSACTIONS IN WHICH THE ACCOUNT HOLDER ACCEPTED SOMETHING OTHER THAN A CHECK OR CASH AS PAYMENT FOR GOODS SOLD OR SERVICES PROVIDED.

2. THE DEPARTMENT SHALL SUPPLY EACH BANK WITH A LIST OF ALL REGISTERED SALES TAX VENDORS BY DECEMBER THIRTY-FIRST OF EACH YEAR. EACH BANK SHALL MAKE AN INFORMATION RETURN FOR EACH CALENDAR YEAR SETTING FORTH: (A) THE NAME, ADDRESS, AND TAXPAYER IDENTIFICATION NUMBER OF EACH ACCOUNT HOLDER WHICH IS A REGISTERED SALES TAX VENDOR BASED ON THE LIST SUPPLIED BY THE DEPARTMENT FOR THAT CALENDAR YEAR; (B) THE GROSS AMOUNT OF THAT ACCOUNT HOLDER'S REPORTABLE SETTLEMENTS DURING THE CALENDAR YEAR; AND (C) THE GROSS AMOUNTS, DESIGNATED AS SUCH, OF EACH OF THE FOLLOWING: CASH, CHECKS AND OTHER FUNDS DEPOSITED INTO THAT ACCOUNT HOLDER'S ACCOUNT DURING THE CALENDAR YEAR. THAT INFORMATION RETURN SHALL BE FILED ELECTRONICALLY WITH THE DEPARTMENT ON OR BEFORE JANUARY THIRTY-FIRST OF THE FOLLOWING YEAR.

3. (A) ANY BANK FAILING TO FILE AN INFORMATION RETURN REQUIRED BY SUBDIVISION TWO OF THIS SECTION WITHIN THE TIME PRESCRIBED OR FAILING TO INCLUDE CORRECT INFORMATION IN THAT RETURN SHALL, IN ADDITION TO ANY OTHER PENALTY PROVIDED IN THIS CHAPTER OR OTHERWISE IMPOSED BY LAW, BE SUBJECT TO A PENALTY OF FIFTY DOLLARS FOR EACH FAILURE, BUT THE TOTAL AMOUNT IMPOSED ON ANY SUCH BANK FOR SUCH FAILURES DURING ANY CALENDAR YEAR SHALL NOT EXCEED TWO HUNDRED FIFTY THOUSAND DOLLARS.

(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 FAILURE TO PROVIDE INFORMATION OR TO INCLUDE TRUE AND CORRECT INFORMATION IN A RETURN REQUIRED TO BE FILED, OR 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; provided however that information returns required to be filed by January 31, 2010 shall include information regarding reportable settlements and deposits that were made on and after January 1, 2009.

SUBPART B

Section 1. 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 THIS ARTICLE. ANY SUCH DETERMINATION WILL NOT BE DEEMED TO BE AN ESTIMATE BASED ON AN EXTERNAL INDEX AND WILL NOT BE PRECLUDED BY ANY PROVISION OF SECTION ELEVEN HUNDRED THIRTY-EIGHT OF THIS PART OR ANY OTHER LAW. THE COMMISSIONER IS NOT AUTHORIZED UNDER THIS SUBDIVISION TO USE THESE SAMPLING TECHNIQUES TO DETERMINE TAX DUE IN THE CASE OF 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 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.

(B) THE TECHNIQUES TO DETERMINE TAX AUTHORIZED BY THIS SUBDIVISION WILL BE IN ADDITION TO OTHER METHODS AUTHORIZED BY LAW, AND NOTHING IN THIS SUBDIVISION MAY BE CONSTRUED TO LIMIT THE USE OF THOSE OTHER METHODS. NOR MAY ANYTHING IN THIS SUBDIVISION OR OTHER PROVISION OF LAW BE CONSTRUED TO LIMIT THE COMMISSIONER'S AUTHORITY AND POWER TO USE GENERALLY ACCEPTED STATISTICAL SAMPLING TECHNIQUES TO EXAMINE RECORDS

REQUIRED TO BE KEPT BY THIS ARTICLE AND RETURNS AND REPORTS REQUIRED TO BE FILED OR SUBMITTED BY THIS ARTICLE. NO SUCH EXAMINATION BY STATISTICAL SAMPLING TECHNIQUES OR THE RESULTS THEREOF WILL BE DEEMED TO BE AN ESTIMATE BASED ON AN EXTERNAL INDEX OR PRECLUDED BY ANY PROVISION OF SECTION ELEVEN HUNDRED THIRTY-EIGHT OF THIS PART OR OTHER LAW.

S 2. This act shall take effect immediately; provided, however, that the provisions of this act shall, 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, apply to any tax due that has not been assessed on the date this act becomes a law.

SUBPART C

Section 1. Section 1135 of the tax law is amended by adding a new subdivision (h) to read as follows:

(H) NOTWITHSTANDING THE PROVISIONS OF SECTION THREE HUNDRED FIVE AND THREE HUNDRED NINE OF THE STATE TECHNOLOGY LAW OR ANY OTHER LAW, THE COMMISSIONER MAY REQUIRE ANY PERSON WHO HAS ELECTED TO MAINTAIN IN AN ELECTRONIC FORMAT ANY PORTION OF THE RECORDS REQUIRED TO BE MAINTAINED BY THAT PERSON UNDER THIS ARTICLE, TO MAKE THE ELECTRONIC RECORDS AVAILABLE AND ACCESSIBLE TO THE COMMISSIONER, NOTWITHSTANDING THAT THE RECORDS ARE ALSO MAINTAINED IN A HARD COPY FORMAT.

S 2. Section 1145 of the tax law is amended by adding a new subdivision (i) to read as follows:

(I) ANY PERSON REQUIRED TO MAKE OR MAINTAIN RECORDS UNDER THIS ARTICLE (BUT NOT INCLUDING THE RECORDS REQUIRED UNDER SECTION ELEVEN HUNDRED FORTY-TWO-A OF THIS PART) WHO FAILS TO MAKE OR MAINTAIN OR MAKE AVAILABLE TO THE COMMISSIONER THESE RECORDS IS SUBJECT TO A PENALTY OF ONE THOUSAND DOLLARS FOR THE FIRST QUARTER OR PART THEREOF FOR WHICH THE FAILURE OCCURS AND FIVE THOUSAND DOLLARS FOR EACH ADDITIONAL QUARTERLY PERIOD OR PART THEREOF FOR WHICH THE FAILURE OCCURS. THIS PENALTY IS IN ADDITION TO ANY OTHER PENALTY PROVIDED FOR IN THIS ARTICLE BUT MAY NOT BE IMPOSED AND COLLECTED MORE THAN ONCE FOR FAILURES FOR THE SAME QUARTERLY PERIOD OR PART THEREOF. IF THE COMMISSIONER DETERMINES THAT A FAILURE TO MAKE OR MAINTAIN OR MAKE AVAILABLE RECORDS IN ANY QUARTER WAS ENTIRELY DUE TO REASONABLE CAUSE AND NOT TO WILLFUL NEGLECT, THE COMMISSIONER MUST REMIT THE PENALTY IMPOSED FOR THAT QUARTER. THESE PENALTIES WILL BE PAID AND DISPOSED OF IN THE SAME MANNER AS OTHER REVENUES FROM THIS ARTICLE. THESE PENALTIES WILL BE DETERMINED, ASSESSED, COLLECTED, PAID AND ENFORCED IN THE SAME MANNER AS THE TAX IMPOSED BY THIS ARTICLE, AND ALL THE PROVISIONS OF THIS ARTICLE RELATING TO TAX WILL BE DEEMED ALSO TO APPLY TO THE PENALTIES IMPOSED BY THIS SUBDIVISION. FOR PURPOSES OF THE PENALTY IMPOSED BY THIS SUBDIVISION, A PERSON WILL BE CONSIDERED TO HAVE FAILED TO MAKE OR MAINTAIN THE REQUIRED RECORDS WHEN THE RECORDS MADE OR MAINTAINED BY THAT PERSON FOR A QUARTERLY PERIOD MAKE IT VIRTUALLY IMPOSSIBLE TO VERIFY SALES RECEIPTS OR THE TAXABILITY OF THOSE RECEIPTS AND TO CONDUCT A COMPLETE AUDIT.

S 3. Section 1145 of the tax law is amended by adding a new subdivision (j) to read as follows:

(J) ANY PERSON REQUIRED TO MAKE OR MAINTAIN RECORDS UNDER THIS ARTICLE WHO FAILS TO PRESENT AND MAKE AVAILABLE THESE RECORDS IN AN AUDITABLE FORM IS SUBJECT TO A PENALTY OF ONE THOUSAND DOLLARS FOR EACH QUARTERLY PERIOD OR PART THEREOF FOR WHICH RECORDS MAINTAINED BY THAT PERSON ARE NOT PRESENTED AND MADE AVAILABLE BY THAT PERSON IN AUDITABLE FORM, EVEN IF THESE RECORDS ARE ADEQUATE TO VERIFY CREDITS, RECEIPTS, AND THE TAXA-

BILITY THEREOF AND TO PERFORM A COMPLETE AUDIT. THIS PENALTY IS IN ADDITION TO ANY OTHER PENALTY PROVIDED FOR IN THIS ARTICLE, BUT WILL NOT BE IMPOSED AND COLLECTED MORE THAN ONCE FOR THESE FAILURES FOR THE SAME QUARTERLY PERIOD OR PART THEREOF. IF THE COMMISSIONER DETERMINES THAT ANY FAILURE DESCRIBED IN THIS SUBDIVISION FOR A QUARTERLY PERIOD WAS ENTIRELY DUE TO REASONABLE CAUSE AND NOT TO WILLFUL NEGLECT, THE COMMISSIONER MUST REMIT THE PENALTY IMPOSED FOR THAT QUARTER. THE PENALTIES IMPOSED BY THIS SUBDIVISION WILL BE PAID AND DISPOSED OF IN THE SAME MANNER AS OTHER REVENUES FROM THIS ARTICLE. THESE PENALTIES WILL BE DETERMINED, ASSESSED, COLLECTED, PAID AND ENFORCED IN THE SAME MANNER AS THE TAX IMPOSED BY THIS ARTICLE, AND ALL THE PROVISIONS OF THIS ARTICLE RELATING TO TAX WILL BE DEEMED ALSO TO APPLY TO THE PENALTIES IMPOSED BY THIS SUBDIVISION. FOR PURPOSES OF THE PENALTY IMPOSED BY THIS SUBDIVISION, A PERSON WILL BE CONSIDERED TO HAVE FAILED TO PRESENT AND MAKE RECORDS AVAILABLE IN AUDITABLE FORM WHEN THE RECORDS PRESENTED BY THAT PERSON FOR THAT QUARTER LACK SUFFICIENT ORGANIZATION, SUCH AS BY DATE, INVOICE NUMBER, SALES RECEIPTS, OR SEQUENTIAL NUMBERING, OR ARE OTHERWISE INADEQUATE (WITHOUT REORGANIZING, REORDERING OR OTHERWISE REARRANGING THE RECORDS INTO AN AUDITABLE FORM) TO PERMIT DIRECT RECONCILIATION OF THE RECEIPTS, INVOICES OR OTHER SOURCE DOCUMENTS WITH THE ENTRIES FOR THE QUARTERLY PERIOD IN THE BOOKS AND RECORDS AND ON THE RETURNS OF THAT PERSON.

S 4. Section 1145 of the tax law is amended by adding a new subdivision (k) to read as follows:

(K) ANY PERSON WHO, HAVING ELECTED TO MAINTAIN IN AN ELECTRONIC FORMAT ANY PORTION OR ALL OF THE RECORDS HE OR SHE IS REQUIRED TO MAKE AND MAINTAIN BY THIS ARTICLE, FAILS TO PRESENT AND MAKE THESE RECORDS AVAILABLE AND ACCESSIBLE TO THE COMMISSIONER IN ELECTRONIC FORMAT, IS SUBJECT TO A PENALTY OF FIVE THOUSAND DOLLARS FOR EACH QUARTERLY PERIOD OR PART THEREOF FOR WHICH THESE ELECTRONIC RECORDS ARE NOT PRESENTED AND MADE AVAILABLE AND ACCESSIBLE UPON REQUEST, NOTWITHSTANDING THAT THE RECORDS MAY ALSO BE MAINTAINED AND AVAILABLE IN HARD COPY FORMAT. THIS PENALTY IS IN ADDITION TO ANY OTHER PENALTY PROVIDED FOR IN THIS ARTICLE, BUT MAY NOT BE IMPOSED AND COLLECTED MORE THAN ONCE FOR A FAILURE FOR THE SAME QUARTERLY PERIOD OR PART THEREOF. PROVIDED, HOWEVER, NOTHING IN THIS SUBDIVISION WILL PREVENT THE SEPARATE IMPOSITION, IF APPLICABLE, OF ANY PENALTY IMPOSED BY SUBDIVISION (I) OR (J) OF THIS SECTION FOR THE SAME QUARTERLY PERIOD OR PART THEREOF. IF THE COMMISSIONER DETERMINES THAT THE FAILURE TO PRESENT AND MAKE ELECTRONICALLY MAINTAINED RECORDS AVAILABLE AND ACCESSIBLE FOR A QUARTERLY PERIOD WAS ENTIRELY DUE TO REASONABLE CAUSE AND NOT TO WILLFUL NEGLECT, THE COMMISSIONER MUST REMIT THE PENALTY IMPOSED FOR THAT QUARTER. THESE PENALTIES WILL BE PAID AND DISPOSED OF IN THE SAME MANNER AS OTHER REVENUES FROM THIS ARTICLE. THESE PENALTIES WILL BE DETERMINED, ASSESSED, COLLECTED, PAID AND ENFORCED IN THE SAME MANNER AS THE TAX IMPOSED BY THIS ARTICLE, AND ALL THE PROVISION OF THIS ARTICLE RELATING TO TAX WILL BE DEEMED ALSO TO APPLY TO THE PENALTY IMPOSED BY THIS SUBDIVISION. FOR PURPOSES OF THE PENALTY IMPOSED BY THIS SUBDIVISION, A FAILURE TO PRESENT AND MAKE AVAILABLE AND ACCESSIBLE A RECORD MAINTAINED IN ELECTRONIC FORMAT INCLUDES NOT ONLY THE DENIAL OF ACCESS TO THE REQUESTED RECORDS THAT WERE MAINTAINED ELECTRONICALLY, BUT ALSO THE FAILURE TO MAKE AVAILABLE TO THE COMMISSIONER THE INFORMATION, KNOWLEDGE, OR MEANS NECESSARY TO ACCESS AND OTHERWISE USE THE ELECTRONICALLY MAINTAINED RECORDS IN THE INSPECTION AND EXAMINATION OF THESE RECORDS.

S 5. This act shall take effect immediately and apply to failures occurring on and after such date, except that subdivision (i) of section

1145 of the tax law, as added by section two of this act, shall only apply for records required to be made and maintained for sales tax quarterly periods commencing on or after such date.

SUBPART D

Section 1. Subsection (g) of section 685 of the tax law, as amended by chapter 9 of the laws of 1976, is amended to read as follows:

(g) Willful failure to collect and pay over tax.-- Any person required to collect, truthfully account for, and pay over the tax imposed by this article who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to THE SUM OF (I) the total amount of the tax evaded, or not collected, or not accounted for and paid over, (II) THE INTEREST THAT HAS ACCRUED ON THE TOTAL AMOUNT OF TAX EVADED ON THE DATE THIS PENALTY IS FIRST IMPOSED UNTIL THIS PENALTY IS PAID WITH INTEREST THEREON, AND (III) THE ADDITION TO TAX PROVIDED BY SUBSECTION (A) OF THIS SECTION. No addition to tax under subsections (b) or (e) OF THIS SECTION shall be imposed for any offense to which this subsection applies. The tax commission shall have the power, in its discretion, to waive, reduce or compromise any penalty under this subsection.

S 2. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2009.

SUBPART E

Section 1. Paragraph (d) of subdivision 1 of section 289-b of the tax law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

(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 [fifty per centum of] THREE TIMES the amount of tax due, plus (ii) interest on such unpaid tax at the underpayment rate set by the commissioner of taxation and finance 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[, plus (iii) 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 the amount of tax due is finally determined or, if earlier, on the day on which such tax is paid, an amount equal to fifty per centum of the interest payable under subparagraph (ii) of this paragraph on that portion of the unpaid tax which is attributable to fraud].

S 2. Subdivision 1 of section 289-b of the tax law is amended by adding a new paragraph (e-1) to read as follows:

(E-1) IN ADDITION TO ANY OTHER PENALTIES THAT MAY BE IMPOSED BY LAW, ANY OF THE FOLLOWING PENALTIES MAY BE IMPOSED.

(I) ANY PERSON WHO FAILS TO FILE AN INFORMATIONAL RETURN UNDER THIS ARTICLE ON OR BEFORE THE PRESCRIBED DATE, MUST PAY A PENALTY OF FIFTEEN HUNDRED DOLLARS FOR THE FIRST VIOLATION AND A PENALTY OF THREE THOUSAND

DOLLARS FOR EACH SUBSEQUENT VIOLATION, UNLESS IT CAN BE SHOWN THAT SUCH FAILURE IS DUE TO REASONABLE CAUSE AND NOT WILLFUL NEGLECT.

(II) ANY PERSON WHO FAILS TO FILE AN INFORMATIONAL RETURN WITHIN SIXTY DAYS OF THE DATE PRESCRIBED FOR FILING MUST PAY A PENALTY OF TWO THOUSAND DOLLARS FOR THE FIRST VIOLATION AND A PENALTY OF FOUR THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION, UNLESS IT CAN BE SHOWN THAT SUCH FAILURE IS DUE TO REASONABLE CAUSE AND NOT WILLFUL NEGLECT.

(III) ANY PERSON WHO FAILS TO FILE A COMPLETE INFORMATIONAL RETURN MUST PAY A PENALTY OF FIFTEEN HUNDRED DOLLARS FOR THE FIRST VIOLATION AND A PENALTY OF THREE THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION, UNLESS IT CAN BE SHOWN THAT SUCH FAILURE IS DUE TO REASONABLE CAUSE AND NOT WILLFUL NEGLECT.

(IV) IF ANY PERSON MAKES A STATEMENT ON AN INFORMATIONAL RETURN AND, AS OF THE TIME OF THE STATEMENT, THERE WAS NO REASONABLE BASIS FOR THAT STATEMENT, THAT PERSON MUST PAY A PENALTY OF TWO THOUSAND DOLLARS FOR THE FIRST VIOLATION AND A PENALTY OF FOUR THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION.

S 3. Paragraph (d) of subdivision 1 of section 433 of the tax law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

(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 [fifty per centum of] THREE TIMES the amount of tax due, plus (ii) interest on such unpaid tax at the underpayment rate set by the commissioner of taxation and finance 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[, plus (iii) 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 the amount of tax due is finally determined or, if earlier, on the day on which such tax is paid, an amount equal to fifty per centum of the interest payable under subparagraph (ii) of this paragraph on that portion of the unpaid tax which is attributable to fraud].

S 4. Subparagraph (iv) of paragraph (a) of subdivision 1 of section 481 of the tax law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

(iv) 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 subparagraphs (i) and (ii) of this paragraph, there shall be added to the tax (A) a penalty of [fifty per centum of] THREE TIMES the amount of tax due, plus (B) interest on such unpaid tax at the underpayment rate set by the commissioner of taxation and finance 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[, plus (C) 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 the amount of tax due is finally determined or, if earlier, on the day on which such tax is paid, an amount equal to fifty per centum of the

interest payable under clause (B) of this subparagraph on that portion of the unpaid tax which is attributable to fraud].

S 5. Paragraph (d) of subdivision 1 of section 512 of the tax law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

(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 [fifty per centum of] THREE TIMES the amount of tax due, plus (ii) interest on such unpaid tax at the underpayment rate set by the commissioner of taxation and finance 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[, plus (iii) 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 the amount of tax due is finally determined or, if earlier, on the day on which such tax is paid, an amount equal to fifty per centum of the interest payable under subparagraph (ii) of this paragraph on that portion of the unpaid tax which is attributable to fraud].

S 6. Subdivision (d) of section 527 of the tax law, as added by chapter 170 of the laws of 1994, is amended to read as follows:

(d) Fraud. 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 subdivision (b) of this section, there shall be added to the tax (1) a penalty of [fifty percent of] THREE TIMES the amount of tax due[, plus (2) 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 the amount of tax due is finally determined or, if earlier, on the day on which such tax is paid, an interest penalty equal to fifty percent of the interest payable under subdivision (a) of this section on that portion of the unpaid tax which is attributable to fraud].

S 7. Paragraph 1 of subsection (e) of section 685 of the tax law, as amended by chapter 65 of the laws of 1985, is amended to read as follows:

(1) If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to [fifty percent of] THREE TIMES the deficiency.

S 8. Paragraph 2 of subsection (e) of section 685 of the tax law is REPEALED and paragraphs 3 and 4 are renumbered paragraphs 2 and 3.

S 9. Subsection (q) of section 685 of the tax law, as added by chapter 65 of the laws of 1985, is amended to read as follows:

(q) Frivolous tax returns AND SPECIFIED FRIVOLOUS SUBMISSIONS.-- (1) If any individual files what purports to be a return of any tax imposed by this article but which does not contain information on which the substantial correctness of the self-assessment may be judged, or contains information that on its face indicates that the self-assessment is substantially incorrect; and such conduct is due to a position which is frivolous, INCLUDING A POSITION IDENTIFIED AS FRIVOLOUS UNDER PARAGRAPH THREE OF THIS SUBSECTION, or an intent [(which appears on the purported return)] to delay or impede the administration of this article, then such individual shall pay a penalty not exceeding five

[hundred] THOUSAND dollars. This penalty shall be in addition to any other penalty provided by law.

(2) PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS. (A) ANY PERSON WHO SUBMITS A SPECIFIED FRIVOLOUS SUBMISSION SHALL PAY A PENALTY OF FIVE THOUSAND DOLLARS. THIS PENALTY SHALL BE IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW.

(B) THE TERM "SPECIFIED FRIVOLOUS SUBMISSION" MEANS A SPECIFIED SUBMISSION IF ANY PORTION OF THAT SUBMISSION (I) IS BASED ON A POSITION THAT THE COMMISSIONER HAS IDENTIFIED AS FRIVOLOUS UNDER PARAGRAPH THREE OF THIS SUBDIVISION, OR (II) REFLECTS A DESIRE TO DELAY OR IMPEDE THE ADMINISTRATION OF THIS CHAPTER.

(C) THE TERM "SPECIFIED SUBMISSION" MEANS A REQUEST FOR CONCILIATION CONFERENCE, A PETITION TO THE DIVISION OF TAX APPEALS, AN APPLICATION FOR AN INSTALLMENT PAYMENT AGREEMENT, OR AN OFFER IN COMPROMISE.

(D) IF THE COMMISSIONER PROVIDES AN INDIVIDUAL WITH NOTICE THAT A SUBMISSION IS A SPECIFIED FRIVOLOUS SUBMISSION AND THAT PERSON WITHDRAWS THE SUBMISSION WITHIN THIRTY DAYS AFTER SUCH NOTICE, THE PENALTY IMPOSED UNDER THIS PARAGRAPH WILL NOT APPLY WITH RESPECT TO THAT SUBMISSION.

(3) LISTING OF FRIVOLOUS POSITIONS. THE COMMISSIONER WILL PRESCRIBE (AND PERIODICALLY REVISE) A LIST OF POSITIONS THAT THE COMMISSIONER HAS IDENTIFIED AS FRIVOLOUS FOR PURPOSES OF THIS SUBSECTION.

(4) REDUCTION OF PENALTY. THE COMMISSIONER MAY REDUCE THE AMOUNT OF ANY PENALTY IMPOSED UNDER THIS SECTION IF THE COMMISSIONER DETERMINES THAT SUCH A REDUCTION WOULD PROMOTE COMPLIANCE WITH AND ADMINISTRATION OF THIS CHAPTER.

S 10. Section 685 of the tax law is amended by adding a new subsection (cc) to read as follows:

(CC) FALSE OR FRAUDULENT DOCUMENT PENALTY. ANY TAXPAYER THAT SUBMITS A FALSE OR FRAUDULENT DOCUMENT TO THE DEPARTMENT WILL BE SUBJECT TO A PENALTY OF ONE HUNDRED DOLLARS PER DOCUMENT SUBMITTED, OR FIVE HUNDRED DOLLARS PER TAX RETURN SUBMITTED. THIS PENALTY WILL BE IN ADDITION TO ANY OTHER PENALTY OR ADDITION PROVIDED BY LAW.

S 11. Paragraph 1 of subsection (f) of section 1085 of the tax law, as amended by chapter 65 of the laws of 1985, is amended to read as follows:

(1) If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to [fifty percent of] THREE TIMES the deficiency.

S 12. Paragraph 2 of subsection (f) of section 1085 of the tax law is REPEALED and paragraph 3 is renumbered paragraph 2.

S 13. Section 1085 of the tax law is amended by adding a new subsection (u) to read as follows:

(U) FALSE OR FRAUDULENT DOCUMENT PENALTY. ANY TAXPAYER THAT SUBMITS A FALSE OR FRAUDULENT DOCUMENT TO THE DEPARTMENT WILL BE SUBJECT TO A PENALTY OF ONE HUNDRED DOLLARS PER DOCUMENT SUBMITTED, OR FIVE HUNDRED DOLLARS PER TAX RETURN SUBMITTED. THIS PENALTY WILL BE IN ADDITION TO ANY OTHER PENALTY OR ADDITION PROVIDED BY LAW.

S 14. Paragraph 2 of subdivision (a) of section 1145 of the tax law, as amended by section 12 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(2) If the failure to pay or pay over any tax to the commissioner within the time required by this article is due to fraud, in lieu of the penalties and interest provided for in subparagraphs (i) and (ii) of paragraph one of this subdivision, there shall be added to the tax (i) a penalty of [fifty percent of] THREE TIMES the amount of the tax due, plus (ii) interest on such unpaid tax at the rate of fourteen percent

per annum or the underpayment rate of interest set by the commissioner pursuant to section eleven hundred forty-two OF THIS PART, whichever is greater, 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[, plus (iii) 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 the amount of tax due is finally determined or, if earlier, on the day on which such tax is paid, an amount equal to fifty percent of the interest payable under subparagraph (ii) of this paragraph, on that portion of the unpaid tax which is attributable to fraud].

S 15. Section 1145 of the tax law is amended by adding two new subdivisions (i) and (j) to read as follows:

(I) AIDING OR ASSISTING IN THE GIVING OF FRAUDULENT RETURNS, REPORTS, STATEMENTS OR OTHER DOCUMENTS. ANY PERSON WHO, WITH THE INTENT THAT TAX BE EVADED, FOR A FEE OR OTHER COMPENSATION OR AS AN INCIDENT TO THE PERFORMANCE OF OTHER SERVICES FOR WHICH THAT PERSON RECEIVES COMPENSATION, AIDS OR ASSISTS IN, OR PROCURES, COUNSELS, OR ADVISES THE PREPARATION OR PRESENTATION UNDER THIS ARTICLE, OR IN CONNECTION WITH ANY MATTER ARISING UNDER THIS ARTICLE, OF ANY RETURN, REPORT, DECLARATION, STATEMENT OR OTHER DOCUMENT THAT IS FRAUDULENT OR FALSE AS TO ANY MATERIAL MATTER, OR SUPPLIES ANY FALSE OR FRAUDULENT INFORMATION, WHETHER OR NOT SUCH FALSITY OR FRAUD IS WITH THE KNOWLEDGE OR CONSENT OF THE PERSON AUTHORIZED OR REQUIRED TO PRESENT THAT RETURN, REPORT, DECLARATION, STATEMENT OR OTHER DOCUMENT, WILL PAY A PENALTY NOT EXCEEDING FIVE THOUSAND DOLLARS. THE DEFINITIONS IN SUBSECTION (L) OF SECTION TEN HUNDRED EIGHTY-FIVE OF THIS CHAPTER APPLY FOR THE PURPOSES OF THIS PENALTY.

(J) FALSE OR FRAUDULENT DOCUMENT PENALTY. ANY TAXPAYER THAT SUBMITS A FALSE OR FRAUDULENT DOCUMENT TO THE DEPARTMENT WILL BE SUBJECT TO A PENALTY OF ONE HUNDRED DOLLARS PER DOCUMENT SUBMITTED, OR FIVE HUNDRED DOLLARS PER TAX RETURN SUBMITTED. THIS PENALTY WILL BE IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW.

S 16. Subdivision (iii) of section 12 of part N of chapter 61 of the laws of 2005 amending the tax law relating to certain transactions and related information, as amended by section 1 of part DD-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(iii) provided, further, that the provisions of this act, except section five of this act, shall expire and be deemed repealed July 1, 2011. The commissioner of taxation and finance shall cause to be prepared a written report on the tax shelter law. Notwithstanding any other provision of law to the contrary, such report shall include, but not be limited to, statistical information regarding the listed and reportable transactions and avoidance transactions under this act. A copy of such report shall be delivered to the governor, the temporary president of the senate, and the speaker of the assembly no later than April 1, 2007; provided, that, such expiration and repeal shall not affect any requirement imposed pursuant to this act.

S 17. This act shall take effect immediately and apply to returns and other documents filed or required to be filed and actions taken and omissions occurring on or after the date this act becomes a law; provided however, that sections seven through thirteen of this act shall apply to taxable years beginning on or after January 1, 2009.

SUBPART F

Section 1. Paragraphs (b) and (e) of subdivision 3-a of section 170 of the tax law, as added by chapter 282 of the laws of 1986, are 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, 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. [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.] The commissioner shall notify the division of tax appeals when any person requests a conference or requests to discontinue such conference.

(e) A conciliation order shall be rendered within thirty days after the proceeding is concluded and such order shall, in the absence of a showing of fraud, malfeasance or misrepresentation of a material fact, be binding upon the department and the person who requested the conference, except such order shall not be binding on such person if such person petitions for the hearing provided for under this chapter within ninety days after the conciliation order is issued, OR, FOR A CONCILIATION ORDER AFFIRMING A WRITTEN NOTICE DESCRIBED IN PARAGRAPH (H) OF THIS SUBDIVISION, WITHIN THIRTY DAYS AFTER THE CONCILIATION ORDER IS ISSUED, notwithstanding any other provision of law to the contrary.

S 2. Subdivision 3-a of section 170 the tax law is amended by adding a new paragraph (h) 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, (II) THE DENIAL OF AN APPLICATION FOR A LICENSE, PERMIT, REGISTRATION, OR OTHER CREDENTIAL ISSUED UNDER THE AUTHORITY OF THIS CHAPTER EXCLUDING 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 OF THAT NOTICE.

S 3. Section 2008 of the tax law, as amended by chapter 401 of the laws of 1987, is amended to read as follows:

S 2008. Commencement of proceedings. 1. All proceedings in the division of tax appeals shall be commenced by the filing of a petition with the division of tax appeals protesting any written notice of the division of taxation which has advised the petitioner of a tax deficiency, a determination of tax due, a denial of a refund or credit application, a cancellation, revocation or suspension of a license, permit or registration, a denial of an application for a license, permit or registration or any other notice which gives a person the right to a hearing in the division of tax appeals under this chapter or other law.

2. EXPEDITED HEARINGS. (A) NOTWITHSTANDING ANY PROVISION 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, (II) THE DENIAL OF AN APPLICATION FOR A LICENSE, PERMIT, REGISTRATION, OR OTHER CREDENTIAL ISSUED UNDER THE AUTHORITY OF THIS CHAPTER EXCLUDING 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 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 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 EXIGENT CIRCUMSTANCES BY THE MOVING PARTY AND MUST RENDER A DEFAULT DETERMINATION OR DECISION AGAINST THE DILATORY PARTY FOR ANY UNWARRANTED DELAY.

(C) IN ANY CASE WHERE AN EXPEDITED HEARING IS REQUIRED UNDER THIS SUBDIVISION, IF THE COMMISSIONER BELIEVES THAT THE COLLECTION OF ANY TAX OR THE PUBLIC SAFETY WILL BE JEOPARDIZED BY DELAY, HE OR SHE MAY IMMEDIATELY CANCEL, REVOKE, OR SUSPEND A LICENSE, PERMIT, REGISTRATION, OR OTHER CREDENTIAL ISSUED UNDER THE AUTHORITY OF THIS CHAPTER BEFORE THE COMMENCEMENT OF THOSE PROCEEDINGS. WRITTEN NOTICE OF THE CANCELLATION, REVOCATION, OR SUSPENSION MUST BE GIVEN TO THE LICENSEE, PERMITTEE, REGISTRANT, OR OTHERWISE CREDENTIALED PERSON BY REGISTERED OR CERTIFIED MAIL OR PERSONAL SERVICE AS PROVIDED BY THE CIVIL PRACTICE LAW AND RULES. THE LICENSE, PERMIT, REGISTRATION, OR OTHER CREDENTIAL WILL BE PERMANENTLY AND IRREVOCABLY CANCELLED, REVOKED, OR SUSPENDED, UNLESS THE LICENSEE, PERMITTEE, REGISTRANT, OR OTHERWISE CREDENTIALED PERSON, WITHIN THIRTY DAYS OF RECEIPT OF THE WRITTEN NOTICE, FILES A PETITION WITH THE DIVISION OF TAX APPEALS TO REVIEW THE CANCELLATION, REVOCATION, OR SUSPENSION. AN EXPEDITED HEARING MUST BE SCHEDULED WITHIN TEN BUSINESS DAYS OF RECEIPT OF THE PETITION.

S 4. This act shall take effect immediately and shall apply to notices issued on and after such date.

SUBPART G

Section 1. The tax law is amended by adding a new section 1702 to read as follows:

S 1702. CLAIMS FOR AWARDS FOR INFORMATION RELATING TO NONCOMPLIANCE WITH THE TAX LAW. 1. THE COMMISSIONER, PURSUANT TO STANDARDS SET FORTH IN REGULATIONS, IS AUTHORIZED TO AWARD SUCH SUMS AS HE OR SHE DEEMS APPROPRIATE, FOR INFORMATION REPORTED TO THE COMMISSIONER THAT LEADS TO THE DETERMINATION OF SUBSTANTIAL UNDERPAYMENTS OF TAX OR LEADS TO THE PROSECUTION AND CONVICTION OF PERSONS GUILTY OF VIOLATING, ATTEMPTING TO VIOLATE, OR CONSPIRING TO VIOLATE PROVISIONS OF THIS CHAPTER OR THE PENAL LAW THAT RELATE TO THE UNDERPAYMENT OF TAXES, THE FILING OF FALSE

OR FRAUDULENT TAX DOCUMENTS OR ANY REGISTRATION OR LICENSING REQUIREMENT OF THIS CHAPTER. THE COMMISSIONER SHALL PROMULGATE REGULATIONS TO SPECIFY THE AWARD VALUES, INCLUDING MINIMUM AND MAXIMUM AWARD LEVELS. THE PROCEDURES FOR PROVIDING INFORMATION AND CLAIMING AWARDS MAY BE SET FORTH IN FORMS AND INSTRUCTIONS.

2. ALL AWARDS PAID PURSUANT TO THIS SECTION SHALL BE PAID, SUBJECT TO THE AVAILABILITY OF APPROPRIATION AUTHORITY, FROM THE GENERAL FUND OF THE STATE UPON CERTIFICATION BY THE COMMISSIONER.

3. THE AWARD DETERMINED BY THE COMMISSIONER TO BE PAYABLE UNDER THIS SECTION SHALL BE EITHER A PRESCRIBED PERCENTAGE OF THE AMOUNT OF TAX (BUT NOT PENALTY OR INTEREST) COLLECTED BY THE DEPARTMENT AS A RESULT OF THE INFORMATION PROVIDED, OR A LUMP SUM AWARD. THE COMMISSIONER IS AUTHORIZED TO PRESCRIBE BY REGULATION THE CIRCUMSTANCES WHEN A LUMP SUM AWARD WOULD BE PAYABLE AND THE AMOUNTS. IN NO EVENT MAY A LUMP SUM AWARD EXCEED ONE THOUSAND DOLLARS.

4. TO BE ELIGIBLE FOR AN AWARD OTHER THAN IN INSTANCES WHERE A LUMP SUM AWARD IS AUTHORIZED, THE AMOUNT OF TAX EVADED OR UNPAID AS A RESULT OF THE ACTIONS BEING REPORTED PURSUANT TO THIS SECTION MUST BE AT LEAST FIVE THOUSAND DOLLARS IF THE TAX AT ISSUE IS THE PERSONAL INCOME TAX AND THIRTY THOUSAND DOLLARS FOR ALL OTHER TAXES. A PERSON IS INELIGIBLE FOR AN AWARD IF THAT PERSON HAS BEEN CONVICTED OF A CRIME RELATING TO THE ACTIONS BEING REPORTED UNDER THIS SECTION, OR PARTICIPATED IN THAT CRIME EVEN IF NOT CHARGED, OR IF THAT PERSON PLANNED AND INITIATED THE ACTIONS THAT ARE BEING REPORTED PURSUANT TO THIS SECTION.

5. THE IDENTITY OF A CLAIMANT FOR AN AWARD MADE PURSUANT TO THE PROVISIONS OF THIS SECTION CANNOT BE DISCLOSED. A CLAIM FOR AN AWARD MAY BE SUBMITTED BY THE EXECUTOR, ADMINISTRATOR, OR OTHER LEGAL REPRESENTATIVE ON BEHALF OF A DECEASED INFORMANT. AN EMPLOYEE OR OFFICER OF THE DEPARTMENT, OR IMMEDIATE FAMILY MEMBER OF AN EMPLOYEE OR OFFICER OF THE DEPARTMENT, IS NOT ELIGIBLE FOR ANY AWARD AVAILABLE PURSUANT TO THE PROVISIONS OF THIS SECTION. IF, AT THE TIME A PERSON CAME INTO POSSESSION OF INFORMATION OTHERWISE ELIGIBLE FOR AN AWARD, THAT PERSON WAS AN EMPLOYEE OR OFFICER OF THE DEPARTMENT, OR AN IMMEDIATE FAMILY MEMBER OF AN EMPLOYEE OR OFFICER OF THE DEPARTMENT, THAT INFORMATION IS INELIGIBLE FOR AN AWARD.

S 2. This act shall take effect immediately.

SUBPART H

Section 1. Subparagraph (A) of paragraph (4) of subdivision (a) of section 674 of the tax law, as amended by chapter 477 of the laws of 1998, is amended to read as follows:

(4)(A) All employers described in paragraph one of subsection (a) of section six hundred seventy-one of this part, including those whose wages paid are not sufficient to require the withholding of tax from the wages of any of their employees, all employers required to provide the wage reporting information for the employees described in subdivision one of section one hundred seventy-one-a of this chapter, and all employers liable for unemployment insurance contributions or for payments in lieu of such contributions pursuant to article eighteen of the labor law, shall file a quarterly combined withholding, wage reporting and unemployment insurance return detailing the preceding calendar quarter's withholding tax transactions, such quarter's wage reporting information, such quarter's unemployment insurance contributions, and such other related information as the commissioner of taxation and finance or the commissioner of labor, as applicable, may prescribe. In

addition, the return covering the last calendar quarter of each year shall also include withholding reconciliation information for such calendar year. Such returns shall be filed no later than the last day of the month following the last day of each calendar quarter[; provided, however, that an employer may provide the wage reporting information covering the last calendar quarter of each year, and the withholding reconciliation information for such year no later than February twenty-eighth of the succeeding year].

S 2. This act shall take effect immediately.

SUBPART I

Section 1. The tax law is amended by adding a new section 179-a to read as follows:

S 179-A. TAX LEVIES UPON A BRANCH OR SEPARATE OFFICE OF A BANK. NOTWITHSTANDING SECTION 4-106 OF THE UNIFORM COMMERCIAL CODE, ANY OTHER PROVISIONS OF ARTICLE THREE OR FOUR OF THE UNIFORM COMMERCIAL CODE, OR ANY OTHER LAW OR RULING TO THE CONTRARY, A BRANCH OR SEPARATE OFFICE OF A BANK IS NOT A SEPARATE BANK FOR THE PURPOSE OF THE RECEIPT OF NOTICE OF AND COMPLIANCE WITH A TAX LEVY SERVED ON ANY BRANCH OR OFFICE OF THE SAME BANK LOCATED WITHIN THE STATE.

S 2. This act shall take effect immediately.

SUBPART J

Section 1. Subdivision 4 of section 20.40 of the criminal procedure law is amended by adding a new paragraph (m) to read as follows:

(M) AN OFFENSE UNDER THE TAX LAW OR THE PENAL LAW OF FILING A FALSE OR FRAUDULENT RETURN, REPORT, DOCUMENT, DECLARATION, STATEMENT, OR FILING, OR OF TAX EVASION, FRAUD, OR LARCENY RESULTING FROM THE FILING OF A FALSE OR FRAUDULENT RETURN, REPORT, DOCUMENT, DECLARATION, OR FILING IN CONNECTION WITH THE PAYMENT OF TAXES TO THE STATE OR A POLITICAL SUBDIVISION OF THE STATE, MAY BE PROSECUTED IN ANY COUNTY IN WHICH AN UNDERLYING TRANSACTION REFLECTED, REPORTED OR REQUIRED TO BE REFLECTED OR REPORTED, IN WHOLE OR PART, ON SUCH RETURN, REPORT, DOCUMENT, DECLARATION, STATEMENT, OR FILING OCCURRED.

S 2. Subdivision 1 of section 470.05 of the penal law, as added by chapter 489 of the laws of 2000, is amended to read as follows:

1. Knowing that the property involved in one or more financial transactions represents the proceeds of criminal conduct:

(a) he or she conducts one or more such financial transactions which in fact involve the proceeds of specified criminal conduct:

(i) With intent to:

(A) promote the carrying on of criminal conduct; or

(B) engage in conduct constituting a felony as set forth in section [eighteen hundred two,] eighteen hundred three, eighteen hundred four, eighteen hundred five, [eighteen hundred seven or eighteen hundred eight] OR EIGHTEEN HUNDRED SIX of the tax law; or

(ii) Knowing that the transaction or transactions in whole or in part are designed to:

(A) conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of criminal conduct; or

(B) avoid any transaction reporting requirement imposed by law; and

(b) The total value of the property involved in such financial transaction or transactions exceeds five thousand dollars; or

S 3. Subdivision 1 of section 470.10 of the penal law, as added by chapter 489 of the laws of 2000, is amended to read as follows:

1. Knowing that the property involved in one or more financial transactions represents:

(a) the proceeds of the criminal sale of a controlled substance, he or she conducts one or more such financial transactions which in fact involve the proceeds of the criminal sale of a controlled substance:

(i) With intent to:

(A) promote the carrying on of specified criminal conduct; or

(B) engage in conduct constituting a felony as set forth in section [eighteen hundred two,] eighteen hundred three, eighteen hundred four, eighteen hundred five, [eighteen hundred seven or eighteen hundred eight] OR EIGHTEEN HUNDRED SIX of the tax law; or

(ii) Knowing that the transaction or transactions in whole or in part are designed to:

(A) conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of specified criminal conduct; or

(B) avoid any transaction reporting requirement imposed by law; and

(iii) The total value of the property involved in such financial transaction or transactions exceeds ten thousand dollars; or

(b) the proceeds of criminal conduct, he or she conducts one or more such financial transactions which in fact involve the proceeds of specified criminal conduct:

(i) With intent to:

(A) promote the carrying on of criminal conduct; or

(B) engage in conduct constituting a felony as set forth in section [eighteen hundred two,] eighteen hundred three, eighteen hundred four, eighteen hundred five, [eighteen hundred seven or eighteen hundred eight] OR EIGHTEEN HUNDRED SIX of the tax law; or

(ii) knowing that the transaction or transactions in whole or in part are designed to:

(A) conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of criminal conduct; or

(B) avoid any transaction reporting requirement imposed by law; and

(iii) The total value of the property involved in such financial transaction or transactions exceeds fifty thousand dollars; or

S 4. Subdivision 1 of section 470.15 of the penal law, as added by chapter 489 of the laws of 2000, is amended to read as follows:

1. Knowing that the property involved in one or more financial transactions represents:

(a) the proceeds of the criminal sale of a controlled substance, he or she conducts one or more such financial transactions which in fact involve the proceeds of the criminal sale of a controlled substance:

(i) With intent to:

(A) promote the carrying on of specified criminal conduct; or

(B) engage in conduct constituting a felony as set forth in section [eighteen hundred two,] eighteen hundred three, eighteen hundred four, eighteen hundred five, [eighteen hundred seven or eighteen hundred eight] OR EIGHTEEN HUNDRED SIX of the tax law; or

(ii) Knowing that the transaction or transactions in whole or in part are designed to:

(A) conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of specified criminal conduct; or

(B) avoid any transaction reporting requirement imposed by law; and

(iii) The total value of the property involved in such financial transaction or transactions exceeds fifty thousand dollars; or

(b) the proceeds of specified criminal conduct, he or she conducts one or more such financial transactions which in fact involve the proceeds of specified criminal conduct:

(i) With intent to:

(A) promote the carrying on of specified criminal conduct; or

(B) engage in conduct constituting a felony as set forth in section [eighteen hundred two,] eighteen hundred three, eighteen hundred four, eighteen hundred five, [eighteen hundred seven or eighteen hundred eight] OR EIGHTEEN HUNDRED SIX of the tax law; or

(ii) Knowing that the transaction or transactions in whole or in part are designed to:

(A) conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of specified criminal conduct; or

(B) avoid any transaction reporting requirement imposed by law; and

(iii) The total value of the property involved in such financial transaction or transactions exceeds one hundred thousand dollars; or

S 5. Subdivision 1 of section 470.20 of the penal law, as added by chapter 489 of the laws of 2000, is amended to read as follows:

1. Knowing that the property involved in one or more financial transactions represents:

(a) the proceeds of the criminal sale of a controlled substance, he or she conducts one or more such financial transactions which in fact involve the proceeds of the criminal sale of a controlled substance:

(i) With intent to:

(A) promote the carrying on of specified criminal conduct; or

(B) engage in conduct constituting a felony as set forth in section [eighteen hundred two,] eighteen hundred three, eighteen hundred four, eighteen hundred five, [eighteen hundred seven or eighteen hundred eight] OR EIGHTEEN HUNDRED SIX of the tax law; or

(ii) Knowing that the transaction or transactions in whole or in part are designed to:

(A) conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of specified criminal conduct; or

(B) avoid any transaction reporting requirement imposed by law; and

(iii) The total value of the property involved in such financial transaction or transactions exceeds five hundred thousand dollars; or

(b) the proceeds of a class A, B or C felony, or of a crime in any other jurisdiction that is or would be a class A, B or C felony under the laws of this state, he or she conducts one or more such financial transactions which in fact involve the proceeds of any such felony:

(i) With intent to:

(A) promote the carrying on of specified criminal conduct; or

(B) engage in conduct constituting a felony as set forth in section [eighteen hundred two,] eighteen hundred three, eighteen hundred four, eighteen hundred five, [eighteen hundred seven or eighteen hundred eight] EIGHTEEN HUNDRED SIX of the tax law; or

(ii) Knowing that the transaction or transactions in whole or in part are designed to:

(A) conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of specified criminal conduct; or

(B) avoid any transaction reporting requirement imposed by law; and

(iii) The total value of the property involved in such financial transaction or transactions exceeds one million dollars.

S 6. Subdivision 1 of section 470.21 of the penal law, as added by section 18 of part A of chapter 1 of the laws of 2004, is amended to read as follows:

1. Knowing that the property involved in one or more financial transactions represents either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(a) he or she conducts one or more such financial transactions which in fact involve either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(i) With intent to:

(A) promote the carrying on of criminal conduct; or

(B) engage in conduct constituting a felony as set forth in section [eighteen hundred two,] eighteen hundred three, eighteen hundred four, eighteen hundred five, [eighteen hundred seven or eighteen hundred eight] OR EIGHTEEN HUNDRED SIX of the tax law; or

(ii) Knowing that the transaction or transactions in whole or in part are designed to:

(A) conceal or disguise the nature, the location, the source, the ownership or the control of either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part; or

(B) avoid any transaction reporting requirement imposed by law; and

(b) the total value of the property involved in such financial transaction or transactions exceeds one thousand dollars; or

S 7. Subdivision 1 of section 470.22 of the penal law, as added by section 18 of part A of chapter 1 of the laws of 2004, is amended to read as follows:

1. Knowing that the property involved in one or more financial transactions represents either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(a) he or she conducts one or more such financial transactions which in fact involve either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(i) With intent to:

(A) promote the carrying on of specified criminal conduct; or

(B) engage in conduct constituting a felony as set forth in section [eighteen hundred two,] eighteen hundred three, eighteen hundred four, eighteen hundred five, [eighteen hundred seven or eighteen hundred eight] OR EIGHTEEN HUNDRED SIX of the tax law; or

(ii) Knowing that the transaction or transactions in whole or in part are designed to:

(A) conceal or disguise the nature, the location, the source, the ownership or the control of either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a mone-

tary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part; or

(B) avoid any transaction reporting requirement imposed by law; and

(b) the total value of the property involved in such financial transaction or transactions exceeds five thousand dollars; or

S 8. Subdivision 1 of section 470.23 of the penal law, as added by section 18 of part A of chapter 1 of the laws of 2004, is amended to read as follows:

1. Knowing that the property involved in one or more financial transactions represents either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(a) he or she conducts one or more such financial transactions which in fact involve either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(i) With intent to:

(A) promote the carrying on of specified criminal conduct; or

(B) engage in conduct constituting a felony as set forth in section [eighteen hundred two,] eighteen hundred three, eighteen hundred four, eighteen hundred five, [eighteen hundred seven or eighteen hundred eight] OR EIGHTEEN HUNDRED SIX of the tax law; or

(ii) Knowing that the transaction or transactions in whole or in part are designed to:

(A) conceal or disguise the nature, the location, the source, the ownership or the control of either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part; or

(B) avoid any transaction reporting requirement imposed by law; and

(b) the total value of the property involved in such financial transaction or transactions exceeds twenty-five thousand dollars; or

S 9. Subdivision 1 of section 470.24 of the penal law, as added by section 18 of part A of chapter 1 of the laws of 2004, is amended to read as follows:

1. Knowing that the property involved in one or more financial transactions represents either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(a) he or she conducts one or more financial transactions which in fact involve either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(i) With intent to:

(A) promote the carrying on of specified criminal conduct; or

(B) engage in conduct constituting a felony as set forth in section [eighteen hundred two,] eighteen hundred three, eighteen hundred four, eighteen hundred five, [eighteen hundred seven or eighteen hundred eight] OR EIGHTEEN HUNDRED SIX of the tax law; or

(ii) Knowing that the transaction or transactions in whole or in part are designed to:

(A) conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part; or

(B) avoid any transaction reporting requirement imposed by law; and

(iii) The total value of the property involved in such financial transaction or transactions exceeds seventy-five thousand dollars.

S 10. Subdivision 5 of section 480-a of the tax law, as amended by chapter 760 of the laws of 1992 and as renumbered by chapter 629 of the laws of 1996, is amended to read as follows:

5. Except for subdivision [(k)] (I) of section eighteen hundred fourteen of this chapter, the criminal penalties set forth in article thirty-seven of this chapter shall not apply to a violation of this section.

S 11. Paragraph 7 of subdivision (m) of section 1111 of the tax law, as added by section 1 of part M1 of chapter 109 of the laws of 2006, is amended to read as follows:

(7) Notwithstanding any foregoing provision of this subdivision or other law to the contrary, this subdivision, subdivision (h) of section eleven hundred nine OF THIS PART and subdivision [(t)] (N) of section eighteen hundred seventeen of this chapter, section three hundred ninety-two-i of the general business law and other provisions of law which refer or relate to this subdivision shall apply only to (A) motor fuel or diesel motor fuel sold for use directly and exclusively in the engine of a motor vehicle and (B) motor fuel or diesel motor fuel, other than water-white kerosene sold exclusively for heating purposes in containers of no more than twenty gallons, sold by a retail gas station. For purposes of this subdivision and such other provisions of law, "retail gas station" shall mean a filling station where such fuel is stored primarily for sale by delivery directly into the ordinary fuel tank connected with the engine of a motor vehicle to be consumed in the operation of such motor vehicle or where such fuel is stored primarily for sale by delivery directly into the ordinary fuel tank connected with the engine of a vessel to be consumed in the operation of such vessel. The commissioner is hereby authorized to require the use of certificates or other documents, and procedures related thereto, to effect the purposes of this subdivision; and any such certificate or other document so required by the commissioner for a purchaser to tender to a vendor to purchase such fuel subject to tax on the reduced base established by or pursuant to this subdivision is hereby deemed to be an exemption certificate as such term is used in subdivision (c) of section eleven hundred thirty-two of this article and as if the provisions of such subdivision (c) referred to such a certificate or document required pursuant to this subdivision.

S 12. Paragraph 5 of subdivision (f) of section 1137 of the tax law, as added by chapter 170 of the laws of 1994, is amended to read as follows:

(5) (i) Where a person takes a credit pursuant to this subdivision in an amount greater than allowed or under circumstances where the credit is not authorized, or (ii) where a person takes a credit pursuant to this subdivision at the time of filing a return for a quarterly or longer period and such person later becomes subject to a penalty imposed under subparagraph (vi) of paragraph one of subdivision (a) or under paragraph two of subdivision (a) of section eleven hundred forty-five of this [article] PART or is later found guilty of a crime or offense under section EIGHTEEN HUNDRED THREE, EIGHTEEN HUNDRED FOUR, EIGHTEEN HUNDRED

FIVE, EIGHTEEN HUNDRED SIX, OR eighteen hundred seventeen of this chapter, relating to the period for which the return was filed, the amount of such credit taken in such greater amount, under such circumstances or for such period shall be disallowed and the person shall be required to pay, as tax, an amount equal to the credit so taken, at such time and in such manner as prescribed by the commissioner; provided, however, that such amount shall be paid and disposed of in the same manner as other revenues from this article, and may be determined, assessed, collected and enforced in the same manner as the tax imposed by this article.

S 13. Subdivision (c) of section 1800 of the tax law, as added by chapter 65 of the laws of 1985, is amended to read as follows:

(c) As used in this article, the term "felony" and the term "misdemeanor" shall have the same meaning as they have in the penal law, and the disposition of such offenses and the sentences imposed therefor shall be as provided in such law except; (1) notwithstanding the provisions of paragraph a of subdivision one of section 80.00 and paragraph (a) of subdivision one of section 80.10 of the penal law relating to the fine for a felony, the court may impose a fine not to exceed THE GREATER OF DOUBLE THE AMOUNT OF THE UNDERPAID TAX LIABILITY RESULTING FROM THE COMMISSION OF THE CRIME OR fifty thousand dollars, [except that] OR, in the case of a corporation the fine may not exceed THE GREATER OF DOUBLE THE AMOUNT OF THE UNDERPAID TAX LIABILITY RESULTING FROM THE COMMISSION OF THE CRIME OR two hundred fifty thousand dollars and (2) notwithstanding the provisions of subdivision one of section 80.05 and paragraph (b) of subdivision one of section 80.10 of the penal law relating to the fine for a class A misdemeanor, the court may impose a fine not to exceed ten thousand dollars, except that in the case of a corporation the fine may not exceed twenty thousand dollars.

S 14. The part heading of part 2 of article 37 of the tax law, as added by chapter 65 of the laws of 1985, is amended to read as follows:

PART II-[INCOME, EARNINGS AND CORPORATE TAXES] TAX FRAUD ACTS AND PENALTIES

S 15. Section 1801 of the tax law is REPEALED and a new section 1801 is added to read as follows:

S 1801. TAX FRAUD ACTS. (A) AS USED IN THIS ARTICLE, "TAX FRAUD ACT" MEANS WILLFULLY ENGAGING IN AN ACT OR ACTS OR WILLFULLY CAUSING ANOTHER TO ENGAGE IN AN ACT OR ACTS PURSUANT TO WHICH A PERSON:

(1) FAILS TO MAKE, RENDER, SIGN, CERTIFY, OR FILE ANY RETURN OR REPORT REQUIRED UNDER THIS CHAPTER OR ANY REGULATION PROMULGATED UNDER THIS CHAPTER WITHIN THE TIME REQUIRED BY OR UNDER THE PROVISIONS OF THIS CHAPTER OR SUCH REGULATION;

(2) KNOWING THAT A RETURN, REPORT, STATEMENT OR OTHER DOCUMENT UNDER THIS CHAPTER CONTAINS ANY FALSE OR FRAUDULENT INFORMATION, OR OMITS ANY MATERIAL INFORMATION, FILES OR SUBMITS THAT RETURN, REPORT, STATEMENT OR DOCUMENT WITH THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE, OR WITH ANY PUBLIC OFFICE OR PUBLIC OFFICER OF THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE;

(3) KNOWINGLY SUPPLIES OR SUBMITS FALSE OR FRAUDULENT INFORMATION IN CONNECTION WITH ANY RETURN, AUDIT, INVESTIGATION, OR PROCEEDING OR FAILS TO SUPPLY INFORMATION WITHIN THE TIME REQUIRED BY OR UNDER THE PROVISIONS OF THIS CHAPTER OR ANY REGULATION PROMULGATED UNDER THIS CHAPTER;

(4) ENGAGES IN ANY SCHEME TO DEFRAUD THE STATE OR A POLITICAL SUBDIVISION OF THE STATE OR A GOVERNMENT INSTRUMENTALITY WITHIN THE STATE BY FALSE OR FRAUDULENT PRETENSES, REPRESENTATIONS OR PROMISES IN CONNECTION

WITH ANY TAX IMPOSED UNDER THIS CHAPTER OR ANY MATTER UNDER THIS CHAPTER;

(5) FAILS TO REMIT ANY TAX COLLECTED IN THE NAME OF THE STATE OR ON BEHALF OF THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE WHEN SUCH COLLECTION IS REQUIRED UNDER THIS CHAPTER;

(6) FAILS TO COLLECT ANY TAX REQUIRED TO BE COLLECTED UNDER ARTICLES TWELVE-A, EIGHTEEN, TWENTY, TWENTY-TWO OR TWENTY-EIGHT OF THIS CHAPTER, OR PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS CHAPTER;

(7) WITH INTENT TO EVADE ANY TAX FAILS TO PAY THAT TAX; OR

(8) ISSUES AN EXEMPTION CERTIFICATE, INTERDISTRIBUTOR SALES CERTIFICATE, RESALE CERTIFICATE, OR ANY OTHER DOCUMENT CAPABLE OF EVIDENCING A CLAIM THAT TAXES DO NOT APPLY TO A TRANSACTION, WHICH HE OR SHE DOES NOT BELIEVE TO BE TRUE AND CORRECT AS TO ANY MATERIAL MATTER, WHICH OMITS ANY MATERIAL INFORMATION, OR WHICH IS FALSE, FRAUDULENT, OR COUNTERFEIT.

(B) FOR PURPOSES OF THIS SUBDIVISION, "THIS CHAPTER" INCLUDES ANY "RELATED STATUTE" OR ANY "RELATED INCOME OR EARNINGS TAX STATUTE", AS DEFINED IN SECTION EIGHTEEN HUNDRED OF THIS ARTICLE.

S 16. Section 1802 of the tax law is REPEALED and a new section 1802 is added to read as follows:

S 1802. CRIMINAL TAX FRAUD IN THE FIFTH DEGREE. A PERSON COMMITS CRIMINAL TAX FRAUD IN THE FIFTH DEGREE WHEN HE OR SHE COMMITS A TAX FRAUD ACT. CRIMINAL TAX FRAUD IN THE FIFTH DEGREE IS A CLASS A MISDEMEANOR.

S 17. Section 1803 of the tax law is REPEALED and a new section 1803 is added to read as follows:

S 1803. CRIMINAL TAX FRAUD IN THE FOURTH DEGREE. A PERSON COMMITS CRIMINAL TAX FRAUD IN THE FOURTH DEGREE WHEN HE OR SHE COMMITS A TAX FRAUD ACT OR ACTS AND, WITH THE INTENT TO EVADE ANY TAX DUE UNDER THIS CHAPTER, OR TO DEFRAUD THE STATE OR ANY SUBDIVISION THEREOF, THE PERSON PAYS THE STATE AND/OR A POLITICAL SUBDIVISION OF THE STATE (WHETHER BY MEANS OF UNDERPAYMENT OR RECEIPT OF REFUND OR BOTH) IN EXCESS OF ONE THOUSAND DOLLARS LESS THAN THE TAX LIABILITY THAT IS DUE. CRIMINAL TAX FRAUD IN THE FOURTH DEGREE IS A CLASS E FELONY.

S 18. Section 1804 of the tax law is REPEALED and a new section 1804 is added to read as follows:

S 1804. CRIMINAL TAX FRAUD IN THE THIRD DEGREE. A PERSON COMMITS CRIMINAL TAX FRAUD IN THE THIRD DEGREE WHEN HE OR SHE COMMITS A TAX FRAUD ACT OR ACTS AND, WITH THE INTENT TO EVADE ANY TAX DUE UNDER THIS CHAPTER, OR TO DEFRAUD THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE, THE PERSON PAYS THE STATE AND/OR A POLITICAL SUBDIVISION OF THE STATE (WHETHER BY MEANS OF UNDERPAYMENT OR RECEIPT OF REFUND OR BOTH) IN EXCESS OF THREE THOUSAND DOLLARS LESS THAN THE TAX LIABILITY THAT IS DUE. CRIMINAL TAX FRAUD IN THE THIRD DEGREE IS A CLASS D FELONY.

S 19. Section 1805 of the tax law is REPEALED and a new section 1805 is added to read as follows:

S 1805. CRIMINAL TAX FRAUD IN THE SECOND DEGREE. A PERSON COMMITS CRIMINAL TAX FRAUD IN THE SECOND DEGREE WHEN HE OR SHE COMMITS A TAX FRAUD ACT OR ACTS AND, WITH THE INTENT TO EVADE ANY TAX DUE UNDER THIS CHAPTER, OR TO DEFRAUD THE STATE OR ANY SUBDIVISION OF THE STATE, THE PERSON PAYS THE STATE AND/OR A POLITICAL SUBDIVISION OF THE STATE (WHETHER BY MEANS OF UNDERPAYMENT OR RECEIPT OF REFUND OR BOTH) IN EXCESS OF FIFTY THOUSAND DOLLARS LESS THAN THE TAX LIABILITY THAT IS DUE. CRIMINAL TAX FRAUD IN THE SECOND DEGREE IS A CLASS C FELONY.

S 20. Section 1806 of the tax law is REPEALED and a new section 1806 is added to read as follows:

S 1806. CRIMINAL TAX FRAUD IN THE FIRST DEGREE. A PERSON COMMITS CRIMINAL TAX FRAUD IN THE FIRST DEGREE WHEN HE OR SHE COMMITS A TAX FRAUD

ACT OR ACTS AND, WITH THE INTENT TO EVADE ANY TAX DUE UNDER THIS CHAPTER, OR TO DEFRAUD THE STATE OR ANY SUBDIVISION OF THE STATE, THE PERSON PAYS THE STATE AND/OR A POLITICAL SUBDIVISION OF THE STATE (WHETHER BY MEANS OF UNDERPAYMENT OR RECEIPT OF REFUND OR BOTH) IN EXCESS OF ONE MILLION DOLLARS LESS THAN THE TAX LIABILITY THAT IS DUE. CRIMINAL TAX FRAUD IN THE FIRST DEGREE IS A CLASS B FELONY.

S 21. Section 1807 of the tax law is REPEALED and a new section 1807 is added to read as follows:

S 1807. AGGREGATION. FOR PURPOSES OF THIS ARTICLE, THE PAYMENTS DUE AND NOT PAID UNDER ARTICLE ONE OF THIS CHAPTER PURSUANT TO A COMMON SCHEME OR PLAN, OR DUE AND NOT PAID CONTINUOUSLY OVER CONSECUTIVE PERIODS MAY BE CHARGED AS A CONTINUING CRIME IN A SINGLE COUNT, AND THE AMOUNT OF UNDERPAID TAX LIABILITY MAY BE AGGREGATED OVER ALL TAX PERIODS ENCOMPASSED BY THE SCHEME TO DEFRAUD OR OVER THE CONSECUTIVE YEARS OF UNDERPAYMENT.

S 22. Section 1808 of the tax law is REPEALED.

S 23. Sections 1809 and 1810 of the tax law are REPEALED.

S 24. Section 1811 of the tax law, as amended by section 116, subdivisions (a) and (b) as separately amended by section 145 of chapter 190 of the laws of 1990, is amended to read as follows:

S 1811. Estate, gift and transfer taxes.[--(a) Failure to file a return or report, or pay tax.--Any person required under article twenty-six, twenty-six-A or twenty-six-B of this chapter to pay tax, or make a return or report, who, with intent to evade tax or any requirement of such articles, fails to pay such tax or make such return or report, at the time or times so required, shall be guilty of a misdemeanor.

(b) Fraudulent returns, reports, statements or other documents.--(1) Any person who, with intent to evade the tax or any requirement of article twenty-six, twenty-six-A or twenty-six-B of this chapter or any lawful requirement of the commissioner of taxation and finance thereunder, makes and subscribes any return, report, statement or other document which is required to be filed with or furnished to the commissioner or to any person, pursuant to or under the provisions of such articles, which he does not believe to be true and correct as to every material matter shall be guilty of a misdemeanor.

(2) Any person who, with intent to evade the tax or any requirement of article twenty-six, twenty-six-A or twenty-six-B of this chapter or any lawful requirement of the commissioner of taxation and finance thereunder, who delivers or discloses to the commissioner or to any person, pursuant to or under the provisions of such articles, any list, return, report, account, statement or other document known by him to be fraudulent or to be false as to any material matter shall be guilty of a misdemeanor.

(3) For purposes of this section, the omission by any person of any material matter with intent to deceive shall constitute the delivery or disclosure of a document known by him to be fraudulent or to be false as to any material matter.

(c)] Wrongful entry into safe deposit box.--Any person who enters a safe deposit box of a decedent, or a box standing in the joint names of such a decedent and one or more persons, with knowledge of the death of the lessee of such box, which entry results in an evasion of the tax imposed by article twenty-six of this chapter shall be guilty of a misdemeanor.

S 25. Section 1812 of the tax law, as added by chapter 65 of the laws of 1985, paragraphs 4 and 5 of subdivision (c) as added and subdivision (d) as amended by chapter 261 of the laws of 1988 and subdivisions (g)

and (h) as added by chapter 276 of the laws of 1986, is amended to read as follows:

S 1812. Motor fuel taxes.--(a) Attempt to evade or defeat tax.--Any person who willfully attempts in any manner to evade or defeat any tax imposed by article twelve-A of this chapter or the payment thereof shall, in addition to other penalties provided by law, be guilty of a class E felony.

(b) [Willful failure to file a return or report, or pay tax.--Any person required under article twelve-A of this chapter to pay tax, or make a return or report, who willfully fails to pay such tax or make such return or report, at the time or times so required, shall be guilty of a misdemeanor.

(c) Fraudulent returns, reports, statements or other documents.--(1) Any person who willfully makes and subscribes any return, report, statement or other document which is required to be filed with or furnished to the tax commission or to any person, pursuant to the provisions of article twelve-A of this chapter, which he does not believe to be true and correct as to every material matter shall be guilty of a class E felony.

(2) Any person who willfully delivers or discloses to the tax commission or to any person, pursuant to the provisions of article twelve-A of this chapter, any list, return, report, account, statement or other document known by him to be fraudulent or to be false as to any material matter shall be guilty of a misdemeanor.

(3) For purposes of this section, the omission by any person of any material matter with intent to deceive shall constitute the delivery or disclosure of a document known by him to be fraudulent or to be false as to any material matter.

(4) Any person who willfully issues an exempt transaction certificate (or similar document which has been prescribed by the commissioner of taxation and finance) or interdistributor sale certificate in order to claim an exemption from the taxes imposed on Diesel motor fuel by article twelve-A of this chapter which he does not believe to be true and correct as to any material matter shall, in addition to any other penalty provided by law, be guilty of a misdemeanor.

(5)] Any person who willfully accepts an exempt transaction certificate (or similar document which has been prescribed by the commissioner [of taxation and finance]) or interdistributor sale certificate with respect to claiming exemption from the taxes imposed on Diesel motor fuel by article twelve-A of this chapter which he does not believe to be true and correct as to any material matter shall, in addition to any other penalty provided by law, be guilty of a misdemeanor.

[(d)] (C) Any owner of a filling station who shall willfully and knowingly have in his custody, possession or under his control any motor fuel or Diesel motor fuel on which (1) the taxes imposed by or pursuant to the authority of such article have not been assumed or paid by a distributor registered as such under such article or (2) the taxes imposed by or pursuant to the authority of such article have not been included in the cost to him of such fuel where such taxes were required to have been passed through to him and included in the cost to him of such fuel, shall in either case, be guilty of a class E felony. For purposes of this subdivision, such owner shall willfully and knowingly have in his custody, possession or under his control any motor fuel or Diesel motor fuel on which such taxes have not been assumed or paid by a distributor registered as such where such owner has knowledge of the requirement that such taxes be paid and where, to his knowledge, such

taxes have not been assumed or paid by a registered distributor on such motor fuel or Diesel motor fuel. Such owner shall willfully and knowingly have in his custody, possession or under his control any motor fuel or Diesel motor fuel on which such taxes are required to have been passed through to him and have not been included in his cost where such owner has knowledge of the requirement that such taxes be passed through and where to his knowledge such taxes have not been so included.

[(e)] (D) Any willful act or omission, other than those described in subdivision (a), (b), OR (c) [or (d)] of this section, by any person which constitutes a violation of any provision of article twelve-A of this chapter shall constitute a misdemeanor.

[(f)] (E) The provisions of this section shall apply for purposes of the tax imposed pursuant to the authority of section two hundred eighty-four-b of this chapter.

[(g) Any person who, being duly subpoenaed, pursuant to section one hundred seventy-four of this chapter or the provisions of the civil practice law and rules, in connection with a matter arising under article twelve-A of this chapter, to attend as a witness or to produce books, accounts, records, memoranda, documents or other papers who (i) fails or refuses to attend without lawful excuse, (ii) refuses to be sworn, (iii) refuses to answer any material and proper question, or (iv) refuses, after reasonable notice, to produce books, accounts, records, memoranda, documents or other papers in his possession or under his control which constitute material and proper evidence shall be guilty of a misdemeanor.

(h)] (F) Any person who willfully makes a manifest required by section two hundred eighty-six-b of this chapter which he does not believe to be true and correct as to every material matter or who willfully produces any manifest for inspection as required under section two hundred eighty-six-b of this chapter which is known to be fraudulent or to be false as to any material matter shall be guilty of a class E felony.

S 26. Section 1812-f of the tax law, as added by chapter 190 of the laws of 1990, is amended to read as follows:

S 1812-f. Article thirteen-A tax. (a) [Attempt to evade or defeat tax. Any person who willfully attempts in any manner to evade or defeat any tax imposed by article thirteen-A 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.

(b) Willful failure to file a return or report, or pay tax. Any person required under article thirteen-A of this chapter to pay tax, or make a return or report, who willfully fails to pay such tax or make such return or report, at the time or times so required, shall be guilty of a misdemeanor.

(c) Fraudulent returns, reports, statements or other documents. (1) Any person who willfully makes and subscribes any return, report, statement or other document which is required to be filed with or furnished to the commissioner of taxation and finance or to any person, pursuant to the provisions of article thirteen-A of this chapter, which he does not believe to be true and correct as to every material matter shall be guilty of a misdemeanor. Provided, however, where such person substantially understates on such return, report, statement, or other document his tax liability under such article, such person shall be guilty of a class E felony. For purposes of this subdivision, the term "substantially understates" refers to the excess amount of the tax required to be

shown on the return or report for the taxable period over the amount of the tax imposed which is shown on the return, report, statement, or other document, provided that the excess is one thousand dollars or more, and provided that the taxpayer, acting without reasonable ground for believing that his conduct is lawful, intended to evade at least the amount of such excess.

(2) Any person who willfully delivers or discloses to the commissioner of taxation and finance or to any person, pursuant to the provisions of article thirteen-A of this chapter, any list, return, report, account, statement or other document known by him to be fraudulent or to be false as to any material matter shall be guilty of a misdemeanor.

(3) For purposes of this section, the omission by any person of any material matter with intent to deceive shall constitute the delivery or disclosure of a document known by him to be fraudulent or to be false as to any material matter.

(4) Any person who willfully issues an exempt transaction certificate (or similar document which has been prescribed by the commissioner of taxation and finance) or interdistributor sale certificate in order to claim an exemption from taxes imposed with respect to diesel motor fuel or residual petroleum product by article thirteen-A of this chapter which he does not believe to be true and correct as to any material matter shall be guilty of a misdemeanor.

(5)] Any person who willfully accepts an exempt transaction certificate (or similar document which has been prescribed by the commissioner of taxation and finance) or interdistributor sale certificate with respect to claiming exemption from the taxes imposed with respect to diesel motor fuel or residual petroleum product by article thirteen-A of this chapter which he does not believe to be true and correct as to any material matter shall be guilty of a misdemeanor.

[(d)] (B) Any willful act or omission, other than those described in SECTION EIGHTEEN HUNDRED ONE OF THIS ARTICLE OR subdivision (a)[, (b)] or (c) of this section, by any person which constitutes a violation of any provision of article thirteen-A of this chapter shall constitute a misdemeanor.

[(e) Any person who duly is subpoenaed, pursuant to section one hundred seventy-four of this chapter or the provisions of the civil practice law and rules, in connection with a matter arising under article thirteen-A of this chapter, to attend as a witness or to produce books, accounts, records, memoranda, documents or other papers and who (i) fails or refuses to attend without lawful excuse, (ii) refuses to be sworn, (iii) refuses to answer any material and proper question, or (iv) refuses, after reasonable notice, to produce books, accounts, records, memoranda, documents or other papers in his possession or under his control which constitute material and proper evidence shall be guilty of a misdemeanor.

(f)] (C) Any person who willfully makes a movement tracking document required pursuant to subdivision (b) of section three hundred fifteen of this chapter, which he does not believe to be true and correct as to every material matter or who willfully produces any such document for inspection as required under subdivision (b) of section three hundred fifteen of this chapter which he knows to be fraudulent or to be false as to any material matter shall be guilty of a misdemeanor; provided, however, that if the tax liability under article thirteen-A of this chapter with respect to the product being transported, is equal to or greater than one thousand dollars, such person shall be guilty of a class E felony.

S 27. Section 1813 of the tax law, as added by chapter 65 of the laws of 1985, subdivisions (h), (i) and (j) as added by chapter 508 of the laws of 1993, is amended to read as follows:

S 1813. Alcoholic beverage tax.--(a) [Attempt to evade or defeat tax.--Any person who willfully attempts in any manner to evade or defeat any tax imposed by article eighteen of this chapter or the payment thereof shall, in addition to other penalties provided by law, be guilty of a misdemeanor.

(b) Willful failure to file a return or report, or pay tax.--Any person required under article eighteen of this chapter to pay or make a return or report, who willfully fails to pay such tax or make such return or report at the time or times so required, shall be guilty of a misdemeanor.

(c) Fraudulent returns, reports, statements or other documents.--(1) Any person who willfully makes and subscribes any return, report, statement or other document which is required to be filed with or furnished to the tax commission or to any person, pursuant to article eighteen of this chapter, which he does not believe to be true and correct as to every material matter shall be guilty of a class E felony.

(2) Any person who willfully delivers or discloses to the tax commission or to any person, pursuant to article eighteen of this chapter, any list, return, report, account, statement or other document known by him to be fraudulent or to be false as to any material matter shall be guilty of a misdemeanor.

(3) For purposes of this section, the omission by any person of any material matter with intent to deceive shall constitute the delivery or disclosure of a document known by him to be fraudulent or to be false as to any material matter.

(d)] Unlawful use of stamps.--Any person who shall counterfeit stamps prescribed by section four hundred thirty-eight of this chapter or who shall willfully remove or alter or knowingly permit to be removed or altered, the cancellation or defacing marks required to be placed upon any stamp under provisions of article eighteen of this chapter with intent to use such stamp, or who shall willfully open any container of alcoholic beverages without first destroying the stamp affixed thereto or who shall knowingly or willfully buy, prepare for use, use, have in his possession or suffer to be used any washed, restored or counterfeit stamp shall be guilty of a misdemeanor.

[(e)] (B) Unlawful use of alcoholic beverages.--Any person who shall willfully sell or use any alcoholic beverages upon which tax has not been paid by the affixation of stamps as prescribed pursuant to section four hundred thirty-eight of this chapter shall be guilty of a misdemeanor.

[(f)] (C) Any willful act or omission, other than those described in SECTION EIGHTEEN HUNDRED ONE OF THIS ARTICLE OR subdivision (a)[,] OR (b)[, (c), (d) or (e)] of this section, by any person which constitutes a violation of any provision of article eighteen of this chapter shall constitute a misdemeanor.

[(g)] (D) The provisions of this section shall apply for purposes of any tax imposed pursuant to the authority of section four hundred forty-five of this chapter.

[(h)] (E) Person not registered as a distributor. (1) Any person required to be registered as a distributor pursuant to the provisions of article eighteen of this chapter who, while not so registered, knowingly imports or causes to be imported into the state, for sale or use therein, any liquors or, who, except in accordance with clause (i) or (ii) of

paragraph (b) of subdivision four of section four hundred twenty of this chapter, knowingly produces, distills, manufactures, compounds, mixes or ferments in this state any such liquors for sale, or who, as a purchaser of a warehouse receipt, knowingly causes liquors covered by such receipt to be removed from a warehouse in this state, shall be guilty of a class A misdemeanor. Provided, however, that any person who has twice been convicted under this section within the preceding five years, shall be guilty of a class E felony for any subsequent violation of this paragraph.

(2) Any person who, while not registered as a distributor pursuant to the provisions of article eighteen of this chapter, knowingly and intentionally imports or causes to be imported into this state, for sale or use therein, more than three hundred sixty liters of liquors into this state in a one-year period or, except in accordance with clause (i) or (ii) of paragraph (b) of subdivision four of section four hundred twenty of this chapter, knowingly and intentionally produces, distills, manufactures, compounds, mixes or ferments for sale more than three hundred sixty liters of such liquors within this state in a one-year period, or, as a purchaser of a warehouse receipt, knowingly and intentionally causes more than three hundred sixty liters of liquors in a one-year period to be removed from a warehouse in this state, shall be guilty of a class E felony.

(3) For purposes of this subdivision, it shall be presumed that the importation or the causing to be imported into this state or the production, distillation, manufacture, compounding, mixing or fermenting in this state of more than ninety liters of such liquors by any person in a one-year period is for purposes of sale. Such presumption may be rebutted by the introduction of substantial evidence to the contrary.

[(i)] (F) Person not registered as a distributor for city purposes. (1) Any person required to be registered as a distributor for city purposes pursuant to the provisions of section four hundred forty-five of article eighteen of this chapter who, while not so registered, knowingly imports or causes to be imported into such city, for sale or use therein, any liquors or, who, except in accordance with clause (i) or (ii) of paragraph (b) of subdivision four of section four hundred twenty of this chapter as incorporated into such section four hundred forty-five, knowingly produces, distills, manufactures, compounds, mixes or ferments in such city any such liquors for sale, or who, as a purchaser of a warehouse receipt, causes liquors covered by such receipt to be removed from a warehouse in this state, shall be guilty of a class A misdemeanor. Provided, however, that any person who has twice been convicted under this section within the preceding five years shall be guilty of a class E felony for any subsequent violation of this paragraph.

(2) Any person who, while not registered as a distributor for city purposes pursuant to the provisions of section four hundred forty-five of article eighteen of this chapter, knowingly and intentionally imports or causes to be imported into such city, for sale or use therein, more than three hundred sixty liters of liquors into such city in a one-year period or, except in accordance with clause (i) or (ii) of paragraph (b) of subdivision four of section four hundred twenty of this chapter as incorporated into such section four hundred forty-five, knowingly and intentionally produces, distills, manufactures, compounds, mixes or ferments for sale more than three hundred sixty liters of such liquors within such city in a one-year period, or, as a purchaser of a warehouse receipt, knowingly and intentionally causes more than three hundred

sixty liters of liquors in a one-year period to be removed from a warehouse in this [store] STATE, shall be guilty of a class E felony.

(3) For purposes of this subdivision, it shall be presumed that the importation or the causing to be imported into such city or the production, distillation, manufacture, compounding, mixing or fermenting in such city of more than ninety liters of liquors by any person in a one-year period is for purposes of sale. Such presumption may be rebutted by the introduction of substantial evidence to the contrary.

[(j)] (G) Any person, other than the distributor registered under article eighteen of this chapter which imported or caused the liquors to be imported into this state, who shall willfully and knowingly have in his custody, possession or under his control liquors with respect to which the taxes imposed by or pursuant to the authority of article eighteen of this chapter have not been assumed or paid by a distributor registered as such under such article, shall be guilty of a class B misdemeanor; if such person shall willfully and knowingly have more than ninety liters of such liquors in his custody or possession or under his control, such person shall be guilty of a class A misdemeanor; or if such person shall knowingly and intentionally have more than three hundred sixty liters of such liquors in his custody or possession or under his control, such person shall be guilty of a class E felony. For purposes of this subdivision, such person shall willfully and knowingly have in his custody, possession or under his control any liquors with respect to which such taxes have not been assumed or paid by a distributor registered as such where such person has knowledge of the requirement of such taxes and where, to his knowledge, such taxes have not been assumed or paid by a registered distributor with respect to such liquors.

S 28. Section 1814 of the tax law, as added by chapter 65 of the laws of 1985, the section heading and subdivisions (c), (g) and (h) as amended and subdivision (j) as added by chapter 61 of the laws of 1989, paragraph 2 of subdivision (a) and paragraph 1 of subdivision (e) as amended by chapter 508 of the laws of 2004, subdivisions (d) and (e) as amended by chapter 262 of the laws of 2000 and subdivision (k) as added by chapter 190 of the laws of 1990, is amended to read as follows:

S 1814. Cigarette and tobacco products tax.--(a) [Attempt to evade or defeat tax.--(1) Any person who willfully attempts in any manner to evade or defeat any tax imposed by article twenty of this chapter or the payment thereof shall, in addition to other penalties provided by law, be guilty of a misdemeanor.

(2)] Any person who willfully attempts in any manner to evade or defeat the taxes imposed by article twenty of this chapter or payment thereof on (i) ten thousand cigarettes or more (ii) twenty-two thousand cigars or more, or (iii) four hundred forty pounds of tobacco or more or has previously been convicted two or more times of a violation of paragraph one of this subdivision shall be guilty of a class E felony.

(b) [Willful failure to file a return or report, or pay tax.--Any person required under article twenty of this chapter to pay or make a return or report, who willfully fails to pay such tax or make such return or report, at the time or times so required, shall be guilty of a misdemeanor.

(c) Fraudulent returns, reports, statements or other documents.--(1) Any person who willfully makes and subscribes any return, report, statement or other document which is required to be filed with or furnished to the commissioner of taxation and finance or to any person, pursuant to article twenty of this chapter, which he does not believe to be true

and correct as to every material matter shall be guilty of a misdemeanor.

(2) Any person who willfully delivers or discloses to the commissioner of taxation and finance or to any person, pursuant to article twenty of this chapter, any list, return, report, account, statement or other document known by him to be fraudulent or to be false as to any material matter shall be guilty of a misdemeanor.

(3) For purposes of this section, the omission by any person of any material matter with intent to deceive shall constitute the delivery or disclosure of a document known by him to be fraudulent or to be false as to any material matter.

(d)] Any person, other than an agent licensed by the commissioner, who possesses or transports for the purpose of sale any unstamped or unlawfully stamped packages of cigarettes subject to tax imposed by section four hundred seventy-one of this chapter, or who sells or offers for sale unstamped or unlawfully stamped packages of cigarettes in violation of the provisions of article twenty of this chapter shall be guilty of a misdemeanor. Any person who violates the provisions of this subdivision after having previously been convicted of a violation of this subdivision within the preceding five years shall be guilty of a class E felony.

[(e)] (C) (1) Any person, other than an agent licensed by the commissioner, who willfully possesses or transports for the purpose of sale ten thousand or more cigarettes subject to the tax imposed by section four hundred seventy-one of this chapter in any unstamped or unlawfully stamped packages or who willfully sells or offers for sale ten thousand or more cigarettes in any unstamped or unlawfully stamped packages in violation of article twenty of this chapter shall be guilty of a class E felony.

(2) Any person, other than an agent licensed by the commissioner, who willfully possesses or transports for the purpose of sale thirty thousand or more cigarettes subject to the tax imposed by section four hundred seventy-one of this chapter in any unstamped or unlawfully stamped packages or who willfully sells or offers for sale thirty thousand or more cigarettes in any unstamped or unlawfully stamped packages in violation of article twenty of this chapter shall be guilty of a class D felony.

[(f)] (D) For the purposes of this section, the possession or transportation within this state by any person, other than an agent, at any one time of five thousand or more cigarettes in unstamped or unlawfully stamped packages shall be presumptive evidence that such cigarettes are possessed or transported for the purpose of sale and are subject to the tax imposed by section four hundred seventy-one of this chapter. With respect to such possession or transportation any provisions of article twenty of this chapter providing for a time period during which a use tax imposed by such article may be paid on unstamped cigarettes or unlawfully or improperly stamped cigarettes or during which such cigarettes may be returned to an agent shall not apply. The possession within this state of more than four hundred cigarettes in unstamped or unlawfully stamped packages by any person other than an agent at any one time shall be presumptive evidence that such cigarettes are subject to tax as provided by article twenty of this chapter.

[(g)] (E) Nothing in this section shall apply to common or contract carriers or warehousemen while engaged in lawfully transporting or storing unstamped packages of cigarettes as merchandise, or lawfully transporting or storing tobacco products, nor to any employee of such carrier

or warehouseman acting within the scope of his employment, nor to public officers or employees in the performance of their official duties requiring possession or control of unstamped or unlawfully stamped packages of cigarettes or possession or control of tobacco products, nor to temporary incidental possession by employees or agents of persons lawfully entitled to possession, nor to persons whose possession is for the purpose of aiding police officers in performing their duties.

[(h)] (F) Any willful act or omission, other than those described in SECTION EIGHTEEN HUNDRED ONE OF THIS ARTICLE OR subdivision (a), (b), (c), (d), (e), [(f),] (g), (H) OR (i) [or (j)] of this section, by any person which constitutes a violation of any provision of article twenty of this chapter shall constitute a misdemeanor.

[(i)] (G) Any person who falsely or fraudulently makes, alters or counterfeits any stamp prescribed by the tax commission under the provisions of article twenty of this chapter, or causes or procures to be falsely or fraudulently made, altered or counterfeited any such stamp, or knowingly and willfully utters, purchases, passes or tenders as true any such false, altered or counterfeited stamp, or knowingly and willfully possesses any cigarettes in packages bearing any such false, altered or counterfeited stamp, and any person who knowingly and willfully makes, causes to be made, purchases or receives any device for forging or counterfeiting any stamp, prescribed by the tax commission under the provisions of article twenty of this chapter, or who knowingly and willfully possesses any such device, shall be guilty of a class E felony. For the purposes of this subdivision, the words "stamp prescribed by the tax commission" shall include a stamp, impression or imprint made by a metering machine, the design of which has been approved by such commission.

[(j)] (H) (1) Any dealer, other than a distributor appointed by the commissioner of taxation and finance under article twenty of this chapter, who shall knowingly transport or have in his custody, possession or under his control more than ten pounds of tobacco or more than five hundred cigars upon which the taxes imposed by article twenty of this chapter have not been assumed or paid by a distributor appointed by the commissioner of taxation and finance under article twenty of this chapter, or other person treated as a distributor pursuant to section four hundred seventy-one-d of this chapter, shall be guilty of a misdemeanor punishable by a fine of not more than five thousand dollars or by a term of imprisonment not to exceed thirty days.

(2) Any person, other than a dealer or a distributor appointed by the commissioner [of taxation and finance] under article twenty of this chapter, who shall knowingly transport or have in his custody, possession or under his control more than fifteen pounds of tobacco or more than seven hundred fifty cigars upon which the taxes imposed by article twenty of this chapter have not been assumed or paid by a distributor appointed by the commissioner [of taxation and finance] under article twenty of this chapter, or other person treated as a distributor pursuant to section four hundred seventy-one-d of this chapter shall be guilty of a misdemeanor punishable by a fine of not more than five thousand dollars or by a term of imprisonment not to exceed thirty days.

(3) Any person, other than a distributor appointed by the commissioner [of taxation and finance] under article twenty of this chapter, who shall knowingly transport or have in his custody, possession or under his control twenty-five hundred or more cigars or fifty or more pounds of tobacco upon which the taxes imposed by article twenty of this chap-

ter have not been assumed or paid by a distributor appointed by the commissioner [of taxation and finance] under article twenty of this chapter, or other person treated as a distributor pursuant to section four hundred seventy-one-d of this chapter shall be guilty of a misdemeanor. Provided further, that any person who has twice been convicted under this subdivision shall be guilty of a class E felony for any subsequent violation of this section, regardless of the amount of tobacco products involved in such violation.

(4) For purposes of this subdivision, such person shall knowingly transport or have in his custody, possession or under his control tobacco or cigars on which such taxes have not been assumed or paid by a distributor appointed by the commissioner [of taxation and finance] where such person has knowledge of the requirement of the tax on tobacco products and, where to his knowledge, such taxes have not been assumed or paid on such tobacco products by a distributor appointed by the commissioner of taxation and finance.

[(k)] (I) Any person who falsely or fraudulently makes, alters or counterfeits a registration certificate or sticker required under the provisions of section four hundred eighty-a of this chapter, or causes or procures to be falsely or fraudulently made, altered or counterfeited any such registration certificate or sticker, or knowingly and willfully utters, purchases, passes or tenders as true any such false, altered or counterfeited registration certificate or sticker, and any person who knowingly and willfully makes, causes to be made, purchases or receives any device for forging or counterfeiting any registration certificate or sticker required under the provisions of such section, or who knowingly and willfully possesses any such device, shall be guilty of a class B misdemeanor.

S 29. Section 1815 of the tax law, as amended by chapter 170 of the laws of 1994, clause (i) of subparagraph (A) of paragraph 1 of subdivision (a) as amended by section 10, subparagraph (B) of paragraph 1 of subdivision (a) as amended by section 11 and subparagraph (C) of paragraph 1 of subdivision (a) as amended by section 12 of part E of chapter 60 of the laws of 2007, is amended to read as follows:

S 1815. Highway use and fuel use taxes. - (a) Violations. (1) It shall be unlawful for any person to:

(A) (i) Use or cause or permit to be used, any public highway in this state for the operation of a motor vehicle subject to the provisions of article twenty-one of this chapter without first applying for and obtaining the certificate of registration required under such article;

(ii) Use or cause or permit to be used, any public highway in this state for the operation of a qualified motor vehicle subject to the provisions of article twenty-one-A of this chapter without first obtaining the license and decal required pursuant to such article or to carry or cause or permit to be carried upon any qualified motor vehicle a license or decal which has been suspended or revoked or which was issued for a qualified motor vehicle other than the one on which carried. The operation of any qualified motor vehicle on any public highway of this state without carrying thereon the license or decal required under such article shall be presumptive evidence that a license or decal has not been obtained for such qualified motor vehicle;

(B) Operate, or cause or permit to be operated, on any public highway any motor vehicle subject to the provisions of article twenty-one of this chapter having an actual gross or unloaded weight in excess of the gross or unloaded weight set forth on the certificate of registration issued for such motor vehicle;

(C) Fail to deliver or surrender, pursuant to the provisions of article twenty-one or twenty-one-A of this chapter or any rule or regulation promulgated by the commissioner, a certificate of registration or license or decal to such commissioner, or any person directed by such commissioner to take possession thereof;

(D) Fail [to make any return under article twenty-one or twenty-one-A of this chapter or] to keep records of operations of motor vehicles or qualified motor vehicles as the commissioner shall prescribe;

(E) [Make any false return; or

(F)] Violate any other provision of article twenty-one or twenty-one-A of this chapter or any rule or regulation promulgated thereunder.

(2) Any person who violates any provision of this subdivision, upon a first conviction shall be subject to a fine of not less than one hundred dollars or more than two hundred fifty dollars; and upon a second or subsequent conviction to a fine of not less than two hundred fifty dollars or more than five hundred dollars or by imprisonment for not more than ten days. Except as otherwise provided by law such a violation shall not be a crime and the penalty or punishment imposed therefor shall not be deemed for any purpose a penal or criminal penalty or punishment and shall not impose any disability upon or affect or impair the credibility as a witness, or otherwise, of any person convicted thereof.

(3) For the purposes of conferring jurisdiction upon courts and police officers, and on the officers specified in subdivision four of section 2.10 of the criminal procedure law and on judicial officers generally, such violations shall be deemed traffic infractions and for such purpose only all provisions of law relating to traffic infractions shall apply to such violations; provided, however, that the commissioner of motor vehicles, any hearing officer appointed by him, or any administrative tribunal authorized to hear and determine any charges or offenses which are traffic infractions shall not have jurisdiction of such infractions.

(4) Upon the conviction of any person for a violation of any of the provisions of this subdivision, the trial court or the clerk thereof shall within forty-eight hours certify the facts of the case to the commissioner and such certificate shall be presumptive evidence of the facts recited therein. If any such conviction shall be reversed upon appeal therefrom, the person whose conviction has been so reversed may serve upon the commissioner a certified copy of the order of reversal and the commissioner shall thereupon record the same.

(b) [Felonies. Any person who files or causes to be filed any return, affidavit or statement required or permitted by article twenty-one or twenty-one-A of this chapter which is willfully false or fraudulent or who willfully fails to file a return with intent to evade the tax is guilty of a class E felony.

(c)] An official weigh slip or ticket issued and certified by any truck weigher in the employ of the department of transportation or by any duly licensed weight master shall constitute prima facie evidence of the information therein set forth and of the operation of the vehicle therein described upon a public highway and shall be admissible before any court in any violation proceeding or criminal proceeding.

S 30. Section 1817 of the tax law, as added by chapter 65 of the laws of 1985, paragraph 1 of subdivision (c) as amended by chapter 411 of the laws of 1986, subdivision (e) as amended by chapter 765 of the laws of 1985, subdivision (g) as amended by chapter 412 of the laws of 1986, subdivision (h) as amended by chapter 275 of the laws of 1986, subdivision (i) as amended by chapter 261 of the laws of 1988, subdivision (k)

as amended by chapter 3 of the laws of 2004, subdivisions (l) and (s) as amended and subdivisions (q) and (r) as added by chapter 2 of the laws of 1995, subdivision (o) as added by chapter 61 of the laws of 1989, subdivision (p) as added by chapter 810 of the laws of 1992 and subdivision (t) as added by section 3 of part A of chapter 35 of the laws of 2006, is amended to read as follows:

S 1817. Sales and compensating use taxes.--(a) [Willful failure to file a return or report.--Any person required under article twenty-eight of this chapter to make a return or report (other than a return of compensating use tax), who willfully fails to make such return or report, at the time or times so required, shall be guilty of a misdemeanor.

(b) Fraudulent returns, reports, statements or other documents.--(1) Any person who willfully makes and subscribes any return, report, statement or other document which is required to be filed with or furnished to the tax commission or to any person, pursuant to the provisions of article twenty-eight of this chapter, which he does not believe to be true and correct as to every material matter shall be guilty of a misdemeanor.

(2) Any person who willfully delivers or discloses to the tax commission or to any person, pursuant to the provisions of article twenty-eight of this chapter, any list, return, report, account, statement or other document known by him to be fraudulent or to be false as to any material matter shall be guilty of a misdemeanor.

(3) For purposes of this section, the omission by any person of any material matter with intent to deceive shall constitute the delivery or disclosure of a document known by him to be fraudulent or to be false as to any material matter.

(c) Failure to collect tax.--(1) Any person who willfully fails to collect the tax imposed under article twenty-eight of this chapter from a customer shall, in addition to other penalties provided by law, be guilty of a misdemeanor.

(2) A person is guilty of failure to collect sales tax when he fails to collect a sales tax required to be collected by article twenty-eight of this chapter and when (a) he does so with intent to defraud the state or a political subdivision thereof and thereby deprives the state or a political subdivision thereof, or both together, of ten thousand dollars or more, or (b) he does so with intent to defraud the state or a political subdivision thereof through a common scheme or plan consisting of ten or more failures to collect the required tax on sales in the amount of one hundred dollars or more each. Failure to collect sales tax under this paragraph is a class E felony.

(d)] Any person required to obtain a certificate of authority under section eleven hundred thirty-four of this chapter who, without possessing a valid certificate of authority, willfully (1) sells tangible personal property or services subject to tax, receives amusement charges or operates a hotel, (2) purchases or sells tangible personal property for resale, or (3) sells automotive fuel; and any person who fails to surrender a certificate of authority as required by such article shall be guilty of a misdemeanor.

[(e)] (B) Any person required to obtain a certificate of authority under section eleven hundred thirty-four of this chapter who within five years after a determination by the tax commission, pursuant to such section, to suspend, revoke or refuse to issue a certificate of authority has become final, and without possession of a valid certificate of authority (1) sells tangible personal property or services subject to

tax, receives amusement charges or operates a hotel, (2) purchases or sells tangible personal property for resale, or (3) sells automotive fuel, shall be guilty of a misdemeanor. It shall be an affirmative defense that such person performed the acts described in this subdivision without knowledge of such determination. Any person who violates a provision of this subdivision, upon conviction, shall be subject to a fine in any amount authorized by this article, but not less than five hundred dollars, in addition to any other penalty provided by law.

[(f)] (C) Any person who willfully fails to file a notice of a show as required by article twenty-eight of this chapter or who willfully rents, leases or grants a license to use space for a show or operates a show without obtaining a permit pursuant to paragraph two of subdivision (b) of section eleven hundred thirty-four of this chapter shall be guilty of a misdemeanor.

[(g)] (D) Any person (1) who willfully fails to charge separately the tax imposed under article twenty-eight of this chapter or to state such tax separately on any bill, statement, memorandum or receipt issued or employed by him upon which the tax is required to be stated separately as provided in subdivision (a) of section eleven hundred thirty-two of this chapter; or (2) who shall refer or cause reference to be made to such tax in a form or manner other than that required by such article twenty-eight, shall be guilty of a misdemeanor.

[(h)] (E) Any person willfully failing to file a bond or other security or deposit taxes in any banking institution where such filing or deposit is required pursuant to the provisions of paragraph two or three of subdivision (e) of section eleven hundred thirty-seven of this chapter shall be guilty of a misdemeanor.

[(i)] (F) Any owner of a filling station who shall willfully and knowingly have in his custody, possession or under his control any motor fuel or diesel motor fuel on which (1) the prepaid tax imposed by section eleven hundred two of this chapter has not been assumed or paid by a distributor registered as such under article twelve-A of this chapter or (2) the prepaid tax imposed by section eleven hundred two of this chapter was required to have been passed through to him and has not been included in the cost of such fuel to him, shall in either case, be guilty of a class E felony. For purposes of this subdivision, such owner shall willfully and knowingly have in his custody, possession or under his control any motor fuel or diesel motor fuel on which such tax has not been assumed or paid by a distributor registered as such where such owner has knowledge of the requirement that such tax be paid and where, to his knowledge, such tax has not been assumed or paid by such registered distributor on such motor fuel or diesel motor fuel. Such owner shall willfully and knowingly have in his custody, possession or under his control motor fuel or diesel motor fuel on which such tax is required to have been passed through to him and has not been included in the cost to him where such owner has knowledge of the requirement that such tax be passed through and where to his knowledge such tax has not been so included.

[(j)] (G) Any person who willfully fails to keep any records required by article twenty-eight of this chapter shall be guilty of a misdemeanor.

[(k)] (H) The penalties provided for in this section shall not preclude prosecution pursuant to the penal law with respect to the willful failure of any person to pay over to the state any sales tax imposed by section eleven hundred four, eleven hundred five, eleven hundred seven, eleven hundred eight or eleven hundred nine of this chapter or by

any local law adopted by any city or county pursuant to article twenty-nine of this chapter, whenever such person has been required to collect and has collected any such sales tax. In any such prosecution under the penal law, a person who has been required to collect and has collected any such tax shall be deemed to have acted in a fiduciary character with respect to the state or a political subdivision thereof, and the tax collected shall be deemed to have been entrusted to such person by the state or a political subdivision thereof.

[(l) Any person who willfully fails to pay sales or compensating use tax, or to file a return of compensating use tax imposed by or pursuant to the authority of article twenty-eight or twenty-nine of this chapter, with respect to the purchase or use of automotive fuel or cigarettes shall be guilty of a misdemeanor.

(m) Any person who willfully issues a false or fraudulent resale or other exemption certificate or document with intent to evade tax shall be guilty of a misdemeanor.

(n) Any person who, being duly subpoenaed, pursuant to section one hundred seventy-four of this chapter or the provisions of the civil practice law and rules, in connection with a matter arising under article twenty-eight of this chapter, to attend as a witness or to produce books, accounts, records, memoranda, documents or other papers who (i) fails or refuses to attend without lawful excuse, (ii) refuses to be sworn, (iii) refuses to answer any material and proper question, or (iv) refuses, after reasonable notice, to produce books, accounts, records, memoranda, documents or other papers in his possession or under his control which constitute material and proper evidence shall be guilty of a misdemeanor.

(o)] (I) Any entertainment promoter who willfully authorizes an entertainment vendor, to whom such promoter has either directly or indirectly rented, leased, granted a license to use or under any other arrangement made space available in order for such vendor to make taxable sales of tangible personal property at an entertainment event, without first requiring such vendor to obtain a certificate of authority or who willfully fails to obtain an entertainment promoter certificate as required under article twenty-eight of this chapter shall be guilty of a misdemeanor.

[(p)] (J) Any person described in subdivision (a) of section eleven hundred forty-two-A of this chapter who willfully fails to include all information required under such section on a ticket or other memorandum as described in such section shall be guilty of a misdemeanor.

[(q)] (K) Any owner of a place of business selling cigarettes at retail who shall willfully and knowingly have in such owner's custody or possession or under such owner's control any cigarettes on which (1) the prepaid tax imposed by section eleven hundred three of this chapter has not been assumed or paid by an agent licensed as such under article twenty of this chapter or (2) the prepaid tax imposed by section eleven hundred three of this chapter was required to have been passed through to such owner and has not been included in the cost of such cigarettes to such owner shall, in either case, be guilty of a misdemeanor. Provided, however, if the amount of cigarettes is twenty thousand or more, such owner shall be guilty of a class E felony. For purposes of this subdivision, such owner shall willfully and knowingly have in such owner's custody or possession or under such owner's control any cigarettes on which such tax has not been assumed or paid by an agent licensed as such under such article twenty where such owner has knowledge of the requirement that such tax be assumed or paid and where, to

such owner's knowledge, such tax has not been assumed or paid by such an agent on such cigarettes. Such owner shall willfully and knowingly have in such owner's custody or possession or under such owner's control cigarettes on which such tax is required to have been passed through to such owner and has not been included in the cost to such owner where such owner has knowledge of the requirement that such tax be passed through and where to such owner's knowledge such tax has not been so included.

[(r)] (L) Any person who falsely or fraudulently makes, alters or counterfeits any stamp prescribed by the commissioner under the provisions of article twenty-eight or pursuant to the authority of article twenty-nine of this chapter, or causes or procures to be falsely or fraudulently made, altered or counterfeited any such stamp, or knowingly and willfully utters, purchases, passes or tenders as true any such false, altered or counterfeited stamp, or knowingly and willfully possesses any cigarettes in packages bearing any such false, altered or counterfeited stamp, and any person who knowingly and willfully makes, causes to be made, purchases or receives any device for forging or counterfeiting any stamp prescribed by the commissioner under the provisions of article twenty-eight or pursuant to the authority of article twenty-nine of this chapter, or who knowingly and willfully possesses any such device, shall be guilty of a class E felony. For the purposes of this subdivision, the words "stamp prescribed by the commissioner" shall include a stamp, impression or imprint made by a metering machine, the design of which has been approved by the commissioner.

[(s)] (M) All of the provisions of this section shall apply for purposes of any taxes administered by the commissioner and imposed pursuant to the authority of article twenty-nine of this chapter and for the purposes of any taxes imposed by article twenty-eight-A of this chapter. References in subdivisions [(i), (l), (q) and (r)] (F), (K), AND (L) of this section to taxes imposed by or pursuant to the authority of article twenty-eight or twenty-nine of this chapter include the taxes required to be prepaid pursuant to section eleven hundred two or eleven hundred three of this chapter.

[(t)] (N) (1) Every person engaged in the retail sale of motor fuel and/or diesel motor fuel or a distributor of such fuels, as defined in article twelve-A of this chapter, shall comply with the provisions of section three hundred ninety-two-i of the general business law by reducing the prices charged for motor fuel and diesel motor fuel in an amount equal to any reduction in taxes prepaid by the distributor or imposed on retail customers resulting from computing sales and compensating use taxes at a cents per gallon rate pursuant to the provisions of paragraph two of subdivision (e) and subdivision (m) of section one thousand one hundred eleven of this chapter.

(2) The commissioner, in cooperation with the state consumer protection board, shall monitor the prices charged by persons engaged in the retail sale or distribution of motor fuel and diesel motor fuel.

(3) Upon a finding by the commissioner that a person engaged in the retail sale of motor fuel and/or diesel motor fuel or in the distribution of such fuels has violated the provisions of section three hundred ninety-two-i of the general business law, the commissioner shall provide notice of such violation to such person and hold a hearing on such violation, with an opportunity for the accused to be heard, not less than ten days after notice is provided. A violation of section three hundred ninety-two-i of the general business law shall subject the

person violating such section to a civil penalty of up to five thousand dollars for each day such violation occurs.

S 31. Section 1818 of the tax law, as added by chapter 65 of the laws of 1985, is amended to read as follows:

S 1818. Real estate transfer tax.--Any willful act or omission, by any person which constitutes a violation of any provision of article thirty-one of this chapter [or any willful attempt to evade or defeat the tax imposed by such article] shall constitute a misdemeanor.

S 32. Section 1820 of the tax law, as added by chapter 833 of the laws of 1987, is amended to read as follows:

S 1820. Boxing and wrestling exhibitions tax. Any willful act or omission by any person which constitutes a violation of any provision of article nineteen of this chapter [or any willful attempt to evade or defeat the tax imposed by such article] shall constitute a misdemeanor.

S 33. The tax law is amended by adding three new sections 1831, 1832 and 1833 to read as follows:

S 1831. FAILURE TO OBEY SUBPOENAS. ANY PERSON WHO IS DULY SUBPOENAED, PURSUANT TO SECTION ONE HUNDRED SEVENTY-FOUR OF THIS CHAPTER OR THE PROVISIONS OF THE CIVIL PRACTICE LAW AND RULES, IN CONNECTION WITH ANY MATTER ARISING UNDER THIS CHAPTER, OR ANY RELATED INCOME OR EARNINGS TAX STATUTE, TO ATTEND AS A WITNESS OR TO PRODUCE BOOKS, ACCOUNTS, RECORDS, MEMORANDA, DOCUMENTS OR OTHER PAPERS, AND WHO (1) FAILS OR REFUSES TO ATTEND WITHOUT LAWFUL EXCUSE, (2) REFUSES TO BE SWORN, (3) WITHOUT ASSERTING A VALID LEGAL PRIVILEGE REFUSES TO ANSWER ANY MATERIAL AND PROPER QUESTION, OR (4) WITHOUT ASSERTING A VALID LEGAL PRIVILEGE REFUSES, AFTER REASONABLE NOTICE, TO PRODUCE BOOKS, ACCOUNTS, RECORDS, MEMORANDA, DOCUMENTS OR OTHER PAPERS THAT CONSTITUTE MATERIAL AND PROPER EVIDENCE IN HIS OR HER POSSESSION OR UNDER HIS OR HER CONTROL, SHALL BE GUILTY OF A MISDEMEANOR.

S 1832. NON-PREEMPTION; PENAL LAW ANTICIPATORY OFFENSES AND ACCESSORIAL LIABILITY APPLY. (A) UNLESS EXPRESSLY STATED OTHERWISE, THE PENALTIES PROVIDED IN THIS CHAPTER SHALL NOT PRECLUDE PROSECUTION FOR ANY OFFENSE UNDER THE PENAL LAW OR ANY OTHER CRIMINAL STATUTE.

(B) THE OFFENSES SPECIFIED IN TITLE G OF THE PENAL LAW AND THE PROVISIONS OF ARTICLE TWENTY OF THE PENAL LAW ARE APPLICABLE TO ALL OFFENSES DEFINED IN THIS CHAPTER.

S 1833. TAX PREPARER REGISTRATION. A COMMERCIAL TAX RETURN PREPARER, AS DEFINED BY PARAGRAPH THREE OF SUBDIVISION (A) OF SECTION THIRTY-TWO OF THIS CHAPTER, WHO WILLFULLY AND WITH THE INTENT TO EVADE THE REQUIREMENTS OF SECTION THIRTY-TWO OF THIS CHAPTER, FAILS TO SIGN HIS OR HER NAME TO ANY TAX RETURN THAT REQUIRES A SIGNATURE OR FAILS TO REGISTER AS REQUIRED BY SUCH SECTION THIRTY-TWO, WILL BE GUILTY OF A CLASS A MISDEMEANOR.

S 34. This act shall take effect immediately and apply to offenses committed on and after such effective date.

SUBPART K

Section 1. Section 702 of the county law is amended by adding a new subdivision 7 to read as follows:

7. NOTWITHSTANDING ANY PROVISION OF LAW WITH RESPECT TO THE REQUIREMENTS OF RESIDENCE, A DISTRICT ATTORNEY MAY APPOINT ONE OR MORE ATTORNEYS EMPLOYED BY THE DEPARTMENT OF TAXATION AND FINANCE AS SPECIAL ASSISTANT DISTRICT ATTORNEYS WITH RESPECT TO ANY INVESTIGATION OR PROSECUTION CONCERNING, IN WHOLE OR PART, A VIOLATION OF ARTICLE THIRTY-SEVEN

OF THE TAX LAW OR OF THE PENAL LAW AS IT APPLIES TO THE ENFORCEMENT OF ANY PROVISION OF THE TAX LAW.

S 2. This act shall take effect immediately.

SUBPART L

Section 1. Subdivision 4 of section 1700 of the tax law, as added by section 1 of part CC1 of chapter 57 of the laws of 2008, is amended to read as follows:

4. To participate in the voluntary disclosure and compliance program, an eligible taxpayer must apply by submitting a disclosure statement in the form and manner prescribed by the commissioner. The disclosure statement shall contain all the information the commissioner reasonably deems necessary to effectively administer the program. As long as all the requirements of the voluntary disclosure and compliance program are met, no application shall be denied solely because the taxpayer has admitted that the delinquency was the result of willful or fraudulent conduct. Except in instances where the taxpayer has failed to comply with the terms of a voluntary disclosure and compliance agreement, the commissioner shall not use the taxpayer's disclosure as evidence in any proceeding brought against the taxpayer or reveal the contents of the disclosure to any law enforcement or other agency. HOWEVER, THE DISCLOSURE OF ANY RETURNS OR REPORTS FILED UNDER THIS PROGRAM WITH THE SECRETARY OF THE TREASURY OF THE UNITED STATES, HIS OR HER DELEGATES, OR THE PROPER TAX OFFICER OF ANY STATE OR CITY IS PERMITTED AS OTHERWISE PROVIDED FOR IN THIS CHAPTER.

S 2. This act shall take effect immediately.

SUBPART M

Section 1. Paragraph a of subdivision twenty-sixth of section 171 of the tax law, as amended by section 1 of part M3 of chapter 62 of the laws of 2003, is amended to read as follows:

a. Set the overpayment and underpayment rates of interest for purposes of articles twelve-A, 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 [six] 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. Subsections (a) and (j) of section 684 of the tax law, as amended by section 6 of part R of chapter 85 of the laws of 2002, are amended to read as follows:

(a) General.--If any amount of income 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 section six hundred ninety-seven OF THIS PART, or if no rate is set, at

the rate of [six per cent] SEVEN AND ONE-HALF PERCENT per annum shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subsection shall not be paid if the amount thereof is less than one dollar. If the time for filing of a return of tax withheld by an employer is extended, the employer shall pay interest for the period for which the extension is granted and may not charge such interest to the employee.

(j) Interest on erroneous refund.--Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the commissioner, shall bear interest at the underpayment rate set by the commissioner pursuant to section six hundred ninety-seven OF THIS PART, or if no rate is set, at the rate of [six per cent] SEVEN AND ONE-HALF PERCENT per annum from the date of the payment of the refund, but only if it appears that any part of the refund was induced by fraud or a misrepresentation of a material fact.

S 3. Paragraph 1 of subsection (c) of section 685 of the tax law, as amended by section 7 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(1) Addition to the tax.--Except as otherwise provided in this subsection and subsection (d) OF THIS SECTION, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax under this article for the taxable year an amount determined by applying the underpayment rate established under subsection (j) of section six hundred ninety-seven OF THIS PART, or if no rate is set, at the rate of [six] SEVEN AND ONE-HALF percent per annum, to the amount of the underpayment for the period of the underpayment. Such period shall run from the due date for the required installment to the earlier of the fifteenth day of the fourth month following the close of the taxable year or, with respect to any portion of the underpayment, the date on which such portion is paid. For purposes of determining such date, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid. There shall be four required installments for each taxable year, due on April fifteenth, June fifteenth and September fifteenth of such taxable year and on January fifteenth of the following taxable year.

S 4. Paragraph 1 of subsection (j) of section 697 of the tax law, as amended by section 2 of part M3 of chapter 62 of the laws of 2003, is amended to read as follows:

(1) The commissioner shall set the overpayment and underpayment rates of interest to be paid pursuant to sections six hundred eighty-four, six hundred eighty-five and six hundred eighty-eight OF THIS PART, but if no such rates of interest are set, such [rates] OVERPAYMENT RATE shall be deemed to be set at six percent per annum AND SUCH UNDERPAYMENT RATE SHALL BE DEEMED TO BE SET AT SEVEN AND ONE-HALF PERCENT PER ANNUM. Such rates shall be the rates prescribed in paragraphs two and four of this subsection, but the underpayment rate shall not be less than [six] SEVEN AND ONE-HALF percent per annum. Any such rates set by the commissioner shall apply to taxes, or any portion thereof, which remain or become due or overpaid 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.

S 5. Paragraph 2 of subsection (j) of section 697 of the tax law, as amended by section 10 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(2) Rates of interest. (A) Overpayment rate. The overpayment rate of interest set under this subsection shall be the [sum of (i) the] federal short-term rate as provided under paragraph three of this subsection[, plus (ii) two percentage points].

(B) Underpayment rate. The underpayment rate of interest set under this subsection shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subsection, plus (ii) [four] FIVE AND ONE-HALF percentage points.

S 6. Subsections (a) and (j) of section 1084 of the tax law, as amended by section 123 and subsection (j) as relettered by section 148 of chapter 61 of the laws of 1989, are amended to read as follows:

(a) General.--If any amount of tax is not paid on or before the last date prescribed in article nine or nine-a OF THIS CHAPTER for payment, interest on such amount at the underpayment rate set by the commissioner [of taxation and finance] pursuant to section one thousand ninety-six OF THIS ARTICLE, or if no rate is set, at the rate of [six] SEVEN AND ONE-HALF percent per annum shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subsection shall not be paid if the amount thereof is less than one dollar.

(j) Interest on erroneous refund.---Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the commissioner [of taxation and finance], shall bear interest at the underpayment rate set by the commissioner pursuant to section one thousand ninety-six OF THIS ARTICLE, or if no rate is set, at the rate of [six] SEVEN AND ONE-HALF percent per annum from the date of the payment of the refund, but only if it appears that any part of the refund was induced by fraud or a misrepresentation of a material fact.

S 7. Paragraph 1 of subsection (c) of section 1085 of the tax law, as amended by chapter 57 of the laws of 1993, is amended to read as follows:

(1) If any taxpayer fails to file a declaration of estimated tax under article nine-A OF THIS CHAPTER, or fails to pay all or any part of an amount which is applied as an installment against such estimated tax, it shall be deemed to have made an underpayment of estimated tax. There shall be added to the tax for the taxable year an amount at the underpayment rate set by the commissioner pursuant to section one thousand ninety-six OF THIS ARTICLE, or if no rate is set, at the rate of [six] SEVEN AND ONE-HALF percent per annum upon the amount of the underpayment for the period of the underpayment but not beyond the fifteenth day of the third month following the close of the taxable year. The amount of the underpayment shall be, with respect to any installment of estimated tax computed on the basis of the preceding year's tax, the excess of the amount required to be paid over the amount, if any, paid on or before the last day prescribed for such payment or, with respect to any other installment of estimated tax, the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to ninety-one percent of the tax shown on the return for the taxable year (or if no return was filed, ninety-one percent of the tax for such year) over the amount, if any, of the installment paid on or before the last day prescribed for such payment. In any case in which there would be no underpayment if "eighty percent" were substituted for "ninety-one percent" each place it appears in this subsection, the addition to the tax shall be equal to seventy-five percent of the amount otherwise determined. No underpayment shall be deemed to exist with respect to a

declaration or installment otherwise due on or after the termination of existence of the taxpayer.

S 8. Paragraph 1 of subsection (e) of section 1096 of the tax law, as amended by section 3 of part M3 of chapter 62 of the laws of 2003, is amended to read as follows:

(1) Authority to set interest rates.---The commissioner shall set the overpayment and underpayment rates of interest to be paid pursuant to sections two hundred thirteen, two hundred thirteen-b, two hundred fifty-eight, two hundred sixty-three, two hundred ninety-four, one thousand eighty-four, one thousand eighty-five, one thousand eighty-eight, fourteen hundred sixty-one and fourteen hundred sixty-three OF THIS CHAPTER, but if no such rate or rates of interest are set, such OVERPAYMENT rate [or rates] shall be deemed to be set at six percent per annum AND SUCH UNDERPAYMENT RATE SHALL BE DEEMED TO BE SET AT SEVEN AND ONE-HALF PERCENT PER ANNUM. Such overpayment and underpayment rates shall be the rates prescribed in paragraph two of this subsection, but the underpayment rate shall not be less than [six] SEVEN AND ONE-HALF percent per annum. Any such rates set by the commissioner shall apply to taxes, or any portion thereof, which remain or become due or overpaid 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.

S 9. Paragraph 2 of subsection (e) of section 1096 of the tax law, as amended by chapter 61 of the laws of 1989 and subparagraph (B) as amended by section 11 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(2) General rule. (A) Overpayment rate. The overpayment rate set under this subsection shall be the [sum of (i) the] federal short-term rate as provided under paragraph three of this subsection[, plus (ii) two percentage points].

(B) Underpayment rate. The underpayment rate set under this subsection shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subsection, plus (ii) [five] SEVEN percentage points.

S 10. Subdivision (d) of section 1139 of the tax law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

(d) (1) Except in respect to an overpayment made on a return described in paragraph [(ii)] TWO of subdivision (a) of section eleven hundred thirty-six [hereof] OF THIS PART or on a return described in subdivision (c) of section eleven hundred thirty-seven-A OF THIS PART, interest shall be allowed and paid upon any refund made or credit allowed pursuant to this section except as otherwise provided in PARAGRAPH TWO OF THIS SUBDIVISION OR subdivision (e) of this section and except that no interest shall be allowed or paid if the amount thereof would be less than one dollar. Such interest shall be at the overpayment rate set by the commissioner [of taxation and finance] pursuant to section eleven hundred forty-two OF THIS PART, or if no rate is set, at the rate of six [per cent] PERCENT per annum from the date when the tax, penalty or interest refunded or credited was paid to a date preceding the date of the refund check by not more than thirty days, provided, however, that for the purposes of this subdivision any tax paid before the last day prescribed for its payment shall be deemed to have been paid on such last day. In the case of a REFUND OR CREDIT CLAIMED ON A return of tax which is filed after the last date prescribed for filing such return (determined with regard to extensions), OR CLAIMED ON AN APPLICATION FOR

REFUND OR CREDIT, no interest shall be allowed or paid for any day before the date on which the return OR APPLICATION is filed. For purposes of this subdivision, a return OR APPLICATION FOR REFUND OR CREDIT shall not be treated as filed until it is filed in processible form. A return OR APPLICATION is in a processible form if [such return] IT is filed on a permitted form, and [such return] contains the taxpayer's name, address and identifying number and the required signatures, and sufficient required information (whether on the return OR APPLICATION or on required attachments) to permit the mathematical verification of tax liability shown on the return OR REFUND OR CREDIT CLAIMED ON THE APPLICATION.

(2) IF A REFUND IS MADE OR A CREDIT IS ALLOWED WITHIN THREE MONTHS AFTER THE LAST DATE PRESCRIBED OR PERMITTED BY EXTENSION OF TIME FOR FILING A RETURN ON WHICH THE REFUND OR CREDIT WAS CLAIMED OR WITHIN THREE MONTHS AFTER THE RETURN WAS FILED, WHICHEVER IS LATER, OR WITHIN THREE MONTHS AFTER AN APPLICATION FOR REFUND OR CREDIT IS FILED ON WHICH THAT REFUND OR CREDIT WAS CLAIMED, NO INTEREST WILL BE ALLOWED OR PAID ON THAT REFUND OR CREDIT.

S 11. Subdivision 9 of section 1142 of the tax law, as amended by section 4 of part M3 of chapter 62 of the laws of 2003, is amended to read as follows:

9. To set the overpayment and underpayment rates of interest for purposes of sections eleven hundred thirty-nine and eleven hundred forty-five OF THIS PART. 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 [six] SEVEN AND ONE-HALF percent per annum. Any such rates set by the commissioner shall apply to taxes, or any portion thereof, which remain or become due or overpaid 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 this article by the 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. The preceding sentence shall not apply for purposes of computing the amount of any interest for failure to pay estimated tax under subparagraph (iv) of paragraph one of subdivision (a) of section [one thousand one] ELEVEN hundred forty-five of this [article] PART.

S 12. Subparagraph (ii) of paragraph 1 and paragraph 2 of subdivision (a) of section 1145 of the tax law, as amended by section 12 of part R of chapter 85 of the laws of 2002, are amended to read as follows:

(ii) 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 rate of fourteen AND ONE-HALF percent per annum or at the underpayment rate set by the commissioner pursuant to section eleven hundred forty-two OF THIS PART, whichever is greater, shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subparagraph shall not be paid if the amount thereof is less than one dollar.

(2) If the failure to pay or pay over any tax to the commissioner within the time required by this article is due to fraud, in lieu of the penalties and interest provided for in subparagraphs (i) and (ii) of paragraph one of this subdivision, there shall be added to the tax (i) a penalty of fifty percent of the amount of the tax due, plus (ii) inter-

est on such unpaid tax at the rate of fourteen AND ONE-HALF percent per annum or the underpayment rate of interest set by the commissioner pursuant to section eleven hundred forty-two OF THIS PART, whichever is greater, 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, plus (iii) 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 the amount of tax due is finally determined or, if earlier, on the day on which such tax is paid, an amount equal to fifty percent of the interest payable under subparagraph (ii) of this paragraph, on that portion of the unpaid tax which is attributable to fraud.

S 13. Paragraph (a) of subdivision 1 of section 1405 of the abandoned property law, as amended by section 13 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(a) Notwithstanding any other provision of law, no owner of abandoned property shall be entitled to receive interest on account of such abandoned property from and after the date a payment of such abandoned property is hereafter made to the state comptroller pursuant to this chapter or any law relating to abandoned property, whether or not he OR SHE was entitled to interest on such property prior to such date, except that interest at the overpayment rate set by the commissioner of taxation and finance pursuant to subsection (j) of section six hundred ninety-seven of the tax law, [less] PLUS one percentage point, shall accrue to abandoned property hereafter paid to the state comptroller under the following provisions of this chapter, for the first five years such property is held by him OR HER:

(i) paragraph (a) of subdivision one of section three hundred of this chapter; or

(ii) subdivision one of section four hundred of this chapter; or

(iii) paragraph (a) of subdivision one of section six hundred of this chapter; or

(iv) subdivision one of section [ten hundred] ONE THOUSAND of this chapter.

S 14. Subdivision 6 of section 72-0201 of the environmental conservation law, as amended by section 14 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

6. In addition to any penalty that may be assessed pursuant to subdivision five of this section, there shall be collected interest upon the unpaid amount at the underpayment rate set by the commissioner of taxation and finance pursuant to section one thousand ninety-six of the tax law, minus [two] FOUR percentage points. Such interest shall accrue thirty days from the date prescribed for fee payment until payment is actually made to the department.

S 15. Subparagraph (iii) of paragraph 2 of subsection (a) of section 1112 of the insurance law, as amended by section 15 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(iii) If any insurer fails to pay all or any part of the initial payment or estimated payment due pursuant to subparagraph (i) or (ii) of this paragraph, it shall be deemed to have made an underpayment. There shall be added to the amount due pursuant to paragraph one of this subsection, an amount at the rate set for underpayments by the commissioner of taxation and finance pursuant to section one thousand ninety-six of the tax law, minus [two] FOUR percentage points, or if no rate is set, at the rate of six percent per annum upon the amount of the under-

payment for the period of the underpayment. In computing the amount of any interest required to be paid, such interest shall not be compounded. The amount of the underpayment shall be, with respect to the initial payment or any estimated payment, the excess of the amount required to be paid over the amount, if any, paid on or before the last day prescribed for such payment. If the superintendent demands payment of the initial payment or any estimated payment, and if such amount is paid within ten days after the date of such demand, interest on the amount so paid shall not be imposed for the period after the date of such demand. No portion of the interest imposed pursuant to this subparagraph may be waived.

S 16. Subparagraph (iv) of paragraph 2 of subsection (a) of section 1112 of the insurance law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

(iv) Notwithstanding the provisions of section sixteen of the state finance law, interest shall be allowed and paid at the rate set for overpayments, PLUS TWO PERCENTAGE POINTS, by the commissioner of taxation and finance pursuant to section one thousand ninety-six of the tax law, or if no rate is set, at the rate of six percent per annum upon any overpayment, from the date payment was due to a date (to be determined by the superintendent) preceding the date of a refund check by not more than thirty days. In the case of a payment which is made after the last date prescribed for payment of such payment, no interest shall be allowed or paid for any day before the date on which the payment was made. In computing the amount of interest required to be paid, such interest shall not be compounded. No interest shall be allowed or paid if the amount thereof is less than one dollar.

S 17. Paragraph (a) of subsection 4 of section 9110 of the insurance law, as amended by section 16 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(a) Interest. If any amount of tax is not paid on or before the date prescribed for payment thereof in subsection two of this section, interest on such amount of tax at the underpayment rate set by the commissioner of taxation and finance pursuant to section one thousand ninety-six of the tax law, plus [three] ONE percentage [points] POINT, shall be paid to the superintendent for the period from the date prescribed for payment until the date paid.

S 18. Paragraph (a) of subsection 4 of section 9111 of the insurance law, as amended by section 17 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(a) Interest. If any amount of tax is not paid on or before the date prescribed for payment thereof in subsection two of this section, interest on such amount of tax at the underpayment rate set by the commissioner of taxation and finance pursuant to section one thousand ninety-six of the tax law, plus [three] ONE percentage [points] POINT, shall be paid to the superintendent for the period from the date prescribed for payment until the date paid.

S 19. Paragraph 1 of subsection (d) of section 9111-a of the insurance law, as amended by section 18 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(1) Interest. If any amount of tax is not paid on or before the date prescribed for payment thereof in paragraph two of this subsection, interest on such amount of tax at the underpayment rate set by the commissioner of taxation and finance pursuant to section one thousand ninety-six of the tax law, plus [three] ONE percentage [points] POINT,

shall be paid to the superintendent for the period from the date prescribed for payment until the date paid.

S 20. Paragraph 1 of subsection (d) of section 9111-b of the insurance law, as amended by section 19 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(1) Interest. If any amount of tax is not paid on or before the date prescribed for payment thereof in paragraph two of this subsection, interest on such amount of tax at the underpayment rate set by the commissioner of taxation and finance pursuant to section one thousand ninety-six of the tax law, plus [three] ONE percentage [points] POINT, shall be paid to the superintendent for the period from the date prescribed for payment until the date paid.

S 21. Paragraph 1 of subsection (d) of section 9111-c of the insurance law, as amended by section 20 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(1) Interest. If any amount of tax is not paid on or before the date prescribed for payment thereof in paragraph two of this subsection, interest on such amount of tax at the underpayment rate set by the commissioner of taxation and finance pursuant to section one thousand ninety-six of the tax law, plus [three] ONE percentage [points] POINT, shall be paid to the superintendent for the period from the date prescribed for payment until the date paid.

S 22. Subparagraph (i) of paragraph (a) of subdivision 3 of section 77 of the lien law, as amended by section 21 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(i) Relief to compel an interim or final accounting by the trustee; to identify and recover trust assets in the hands of any person together with interest accrued thereon from the time of the diversion. Interest shall be computed at the rate equal to the underpayment rate set by the commissioner of taxation and finance pursuant to subsection (e) of section one thousand ninety-six of the tax law, minus [two] FOUR percentage points; to set aside as a diversion any unauthorized payment, assignment or other transfer, whether voluntary or involuntary; to enjoin a diversion; to recover damages for breach of trust or partic-ipation therein;

S 23. Paragraph (a) of subdivision 8 of section 43.04 of the mental hygiene law, as amended by section 22 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(a) If an estimated payment made for a month to which an assessment applies is less than ninety percent of the actual amount due for such month, interest shall be due and payable to the commissioner of the office of mental retardation and developmental disabilities on the difference between the amount paid and the amount due from the day of the month the estimated payment was due until the date of payment. The rate of interest shall be twelve percent per annum or at the rate of interest set by the commissioner of taxation and finance with respect to underpayments of tax pursuant to subsection (e) of section one thousand ninety-six of the tax law minus [two] FOUR percentage points. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar. Interest, if not paid by the due date of the following month's estimated payment, may be collected by the commissioner of the office of mental retardation and developmental disabilities pursuant to paragraph (c) of subdivision six of this section in the same manner as an assessment pursuant to subdivision two of this section.

S 24. Paragraph (a) of subdivision 8 of section 43.06 of the mental hygiene law, as amended by section 23 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(a) If an estimated payment made for a month to which an assessment applies is less than ninety percent of the actual amount due for such month, interest shall be due and payable to the commissioner on the difference between the amount paid and the amount due from the day of the month the estimated payment was due until the date of payment. The rate of interest shall be twelve percent per annum or at the rate of interest set by the commissioner of taxation and finance with respect to underpayments of tax pursuant to subsection (e) of section one thousand ninety-six of the tax law minus [two] FOUR percentage points. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar. Interest, if not paid by the due date of the following month's estimated payment, may be collected by the commissioner pursuant to paragraph (c) of subdivision six of this section in the same manner as an assessment pursuant to subdivision two of this section.

S 25. Subparagraph (i) of paragraph (c) of subdivision 20 of section 2807-c of the public health law, as amended by section 24 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(i) Interest shall be due and payable to the commissioner by a general hospital or by a payor paying directly to a pool on the difference between the amount paid to a pool and the amount due to such pool by the hospital or payor from the day of the month the payment was due until the date of payment. The rate of interest shall be twelve percent per annum or at the rate of interest set by the commissioner of taxation and finance with respect to underpayments of tax pursuant to subsection (e) of section one thousand ninety-six of the tax law minus [two] FOUR percentage points. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar. Interest may be collected by the commissioner in the same manner as an arrearage pursuant to this subdivision.

S 26. Paragraph (a) of subdivision 8 of section 2807-d of the public health law, as amended by section 25 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(a) If an estimated payment made for a month to which an assessment applies is less than ninety percent of the actual amount due for such month, interest shall be due and payable to the commissioner on the difference between the amount paid and the amount due from the day of the month the estimated payment was due until the date of payment. The rate of interest shall be twelve percent per annum or at the rate of interest set by the commissioner of taxation and finance with respect to underpayments of tax pursuant to subsection (e) of section one thousand ninety-six of the tax law minus [two] FOUR percentage points. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar. Interest, if not paid by the due date of the following month's estimated payment, may be collected by the commissioner pursuant to paragraph (c) of subdivision six of this section in the same manner as an assessment pursuant to subdivision two of this section.

S 27. Subparagraph (i) of paragraph (c) of subdivision 4 of section 2807-f of the public health law, as amended by section 26 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(i) If a payment made for a month to which a payment factor applies is less than ninety percent of the actual amount due for such month, interest shall be due and payable to the commissioner by a health maintenance organization on the difference between the amount paid and the amount

due from the day of the month the payment was due until the date of payment. The rate of interest shall be twelve percent per annum or, if greater, at the rate of interest set by the commissioner of taxation and finance with respect to underpayments of tax pursuant to subsection (e) of section one thousand ninety-six of the tax law minus [two] FOUR percentage points. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar.

S 28. Paragraph (a) of subdivision 8 of section 2807-j of the public health law, as amended by section 27 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(a) If a payment made pursuant to this section or to section twenty-eight hundred seven-s or twenty-eight hundred seven-t of this article for a month to which an allowance applies is less than ninety percent of the amount due or which the commissioner estimates, based on available financial and statistical data, is due for such month, interest shall be due and payable to the commissioner by a designated provider of services, or by a third-party payor, other than a state governmental agency, that has elected to pay an allowance directly, on the difference between the amount paid and the amount due or estimated to be due from the day of the month the payment was due until the date of payment. The rate of interest shall be twelve percent per annum or, if greater, at the rate of interest set by the commissioner of taxation and finance with respect to underpayments of tax pursuant to subsection (e) of section one thousand ninety-six of the tax law minus [two] FOUR percentage points. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar. Interest due from a designated provider of services, if not paid by the due date of the following month's payment, may be collected by the commissioner pursuant to paragraph (c) of subdivision six of this section in the same manner as an allowance pursuant to subdivision two of this section.

S 29. Paragraph (a) of subdivision 8 of section 3614-a of the public health law, as amended by section 28 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(a) If an estimated payment made for a month to which an assessment applies is less than ninety percent of the actual amount due for such month, interest shall be due and payable to the commissioner on the difference between the amount paid and the amount due from the day of the month the estimated payment was due until the date of payment. The rate of interest shall be twelve percent per annum or at the rate of interest set by the commissioner of taxation and finance with respect to underpayments of tax pursuant to subsection (e) of section one thousand ninety-six of the tax law minus [two] FOUR percentage points. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar. Interest, if not paid by the due date of the following month's estimated payment, may be collected by the commissioner pursuant to paragraph (c) of subdivision six of this section in the same manner as an assessment pursuant to subdivision two of this section.

S 30. Paragraph (a) of subdivision 8 of section 3614-b of the public health law, as amended by section 29 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(a) If an estimated payment made for a month to which assessment applies is less than ninety percent of the actual amount due for such month, interest shall be due and payable to the commissioner on the difference between the amount paid and the amount due from the day of the month the estimated payment was due until the date of the payment. The rate of interest shall be twelve percent per annum or at the rate of

interest set by the commissioner of taxation and finance with respect to underpayment of tax pursuant to subsection (e) of section one thousand ninety-six of the tax law minus [two] FOUR percentage points. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar. Interest, if not paid by the due date of the following month's estimated payment, may be collected by the commissioner pursuant to paragraph (c) of subdivision six of this section in the same manner as an assessment pursuant to subdivision two of this section.

S 31. Subdivision 2 of section 726 of the real property tax law, as amended by section 30 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

2. Interest shall be paid on the amount of any refund made pursuant to this section, computed from the date of payment of the tax or other levy or portion thereof refunded; provided, however, that interest on the amount of any such refund for the period after any final order determining the assessment reviewed to be excessive, unequal or unlawful, or determining that real property was misclassified, notwithstanding that an appeal in the proceeding or from such order may be pending, shall be paid only from the date that application for audit and payment of such refund shall have been duly made to the appropriate fiscal officer or body. Such rate of interest shall be the overpayment rate set by the commissioner of taxation and finance pursuant to subsection (j) of section six hundred ninety-seven of the tax law, PLUS TWO PERCENTAGE POINTS, and such interest rate shall not be greater than nine percent per annum. Provided, the interest rate of the first calendar quarter set forth in the first month of the calendar year shall be the annual interest rate, and shall be the rate of interest prescribed by this subdivision. If, as a result of an appeal, there shall be an increase in the amount to be refunded, for the purposes of computing the interest thereon the determination upon such appeal shall be deemed a determination only with respect to such increase.

S 32. Subdivision 2 of section 924-a of the real property tax law, as amended by chapter 355 of the laws of 2003, is amended to read as follows:

2. The rate of interest applicable to the third calendar quarter of each year, as set by the commissioner of taxation and finance pursuant to subparagraph (A) of paragraph two of subsection (j) of section six hundred ninety-seven of the tax law, PLUS TWO PERCENTAGE POINTS, shall be the rate of interest applicable to unpaid real property taxes for purposes of this section. Such commissioner shall set such rate on or before the fifteenth day of July in each year. Such rate shall be effective for all warrants issued for a collection period commencing on or after the first day of September next succeeding the date the rate of interest is set. Provided, however, the rate of interest prescribed by this subdivision shall in no event be less than twelve per centum per annum. The state board shall inform each affected municipality of any change in the rate established pursuant to this subdivision.

S 33. Paragraph (a) of subdivision 7 of section 367-i of the social services law, as amended by section 32 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(a) If an estimated payment made for a month to which an assessment applies is less than ninety percent of the actual amount due for such month, interest shall be due and payable to the commissioner of health on the difference between the amount paid and the amount due from the day of the month the estimated payment was due until the date of payment. The rate of interest shall be twelve percent per annum or at

the rate of interest set by the commissioner of taxation and finance with respect to underpayments of tax pursuant to subsection (e) of section one thousand ninety-six of the tax law minus [two] FOUR percentage points. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar. Interest, if not paid by the due date of the following month's estimated payment, may be collected by the commissioner of health pursuant to paragraph (c) of subdivision five of this section in the same manner as an assessment pursuant to subdivision two of this section.

S 34. Subdivision 4 of section 18 of the state finance law, as amended by section 33 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

4. Unless provided otherwise by contract, statute or regulation, a debtor that fails to make payment of a debt within the period set forth in subdivision three of this section shall pay, in addition to the amount of debt, the greater of: (a) interest on the outstanding balance of the debt, accruing on the date on which the receipt of the first billing invoice or first notice occurs, computed at the underpayment rate which is in effect on the date which the receipt of the first billing invoice or first billing notice occurs; or (b) a late payment charge of ten dollars. For the purposes of this section, the underpayment rate shall be that rate set by the commissioner of taxation and finance and published in the state register pursuant to subsection (e) of section one thousand ninety-six of the tax law minus [two] FOUR percentage points. With respect to specific classes of debt collected by a state agency, the director of the budget or official of a state agency so designated by the director of the budget may approve the assessment of interest or late payment charges at a date later than the thirtieth day following such debtor's receipt of any billing invoice or notice sent by the state agency.

S 35. Subdivisions (a) and (j) of section 11-1784 of the administrative code of the city of New York, as amended by section 34 of part R of chapter 85 of the laws of 2002, are amended to read as follows:

(a) General. If any amount of income tax is not paid on or before the last date prescribed in this chapter for payment, interest on such amount at the underpayment rate set by the commissioner of taxation and finance pursuant to section 11-1797 OF THIS SUBCHAPTER, or if no rate is set, at the rate of [six] SEVEN AND ONE-HALF percent per annum shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar. If the time for filing of a return of tax withheld by an employer is extended, the employer shall pay interest for the period for which the extension is granted and may not charge such interest to the employee.

(j) Interest on erroneous refund. Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the commissioner of taxation and finance, shall bear interest at the underpayment rate set by such commissioner pursuant to section 11-1797 OF THIS SUBCHAPTER, or if no rate is set, at the rate of [six] SEVEN AND ONE-HALF percent per annum from the date of the payment of the refund, but only if it appears that any part of the refund was induced by fraud or a misrepresentation of a material fact.

S 36. Paragraph 1 of subdivision (c) of section 11-1785 of the administrative code of the city of New York, as amended by section 35 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(1) Addition to the tax. Except as otherwise provided in this subdivision and subdivision (d) OF THIS SECTION, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax under this chapter for the taxable year an amount determined by applying the underpayment rate established under section 11-1797 OF THIS SUBCHAPTER, or if no rate is set, at the rate of [six] SEVEN AND ONE-HALF percent per annum, to the amount of the underpayment for the period of the underpayment. Such period shall run from the due date for the required installment to the earlier of the fifteenth day of the fourth month following the close of the taxable year or, with respect to any portion of the underpayment, the date on which such portion is paid. For purposes of determining such date, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid. There shall be four required installments for each taxable year, due on April fifteenth, June fifteenth and September fifteenth of such taxable year and on January fifteenth of the following taxable year.

S 37. Paragraph 1 of subdivision (j) of section 11-1797 of the administrative code of the city of New York, as amended by section 5 of part M3 of chapter 62 of the laws of 2003, is amended to read as follows:

(1) Authority to set interest rates. The commissioner of taxation and finance shall set the overpayment and underpayment rates of interest to be paid pursuant to sections 11-1784, 11-1785 and 11-1788 OF THIS SUBCHAPTER, but if no such rates of interest are set, such [rates] OVERPAYMENT RATE shall be deemed to be set at six percent per annum AND THE UNDERPAYMENT RATE SHALL BE DEEMED TO BE SET AT SEVEN AND ONE-HALF PERCENT PER ANNUM. Such rates shall be the rates prescribed by paragraphs two and four of this subdivision, but the underpayment rate shall not be less than [six] 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 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.

S 38. Paragraph 2 of subdivision (j) of section 11-1797 of the administrative code of the city of New York, as amended by section 37 of part R of chapter 85 of the laws of 2002, is amended to read as follows:

(2) Rates of interest. (A) Overpayment rate. The overpayment rate of interest set under this subdivision shall be the [sum of (i) the] federal short-term rate as provided under paragraph three of this subdivision[, plus (ii) two percentage points].

(B) Underpayment rate. The underpayment rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) [four] FIVE AND ONE-HALF percentage points.

S 39. This act shall take effect immediately, and shall apply to the interest chargeable or due on taxes or on any other amounts, or any portion thereof, that remain or become due or overpaid on that day, except that:

(a) Section ten of this act shall take effect on June 1, 2009, and shall apply to refunds or credits claimed on returns or applications for refund or credit filed on or after that date;

(b) Provided, however, that the amendments to paragraph (a) of subdivision 8 of section 2807-j of the public health law made by section twenty-eight of this act shall not affect the expiration of such section and shall be deemed to expire therewith; and

(c) Notwithstanding any other provision of law, for the calendar quarter in which this act becomes a law, the department of taxation and finance may provide appropriate general notice of the new interest rates for that calendar quarter within twenty days after the date this act has become a law, without needing to have notice of the rates published in advance in the State Register, and shall cause such a notice to be published in the State Register as soon as is practicable.

SUBPART N

Section 1. Section 1136 of the tax law is amended by adding a new subdivision (i) to read as follows:

(I) (1) THE FOLLOWING PERSONS MUST FILE, IN ADDITION TO ANY OTHER RETURN REQUIRED BY THIS CHAPTER, ANNUAL INFORMATION RETURNS WITH THE COMMISSIONER PROVIDING THE INFORMATION SPECIFIED BELOW ABOUT THEIR TRANSACTIONS WITH VENDORS, HOTEL OPERATORS, AND RECIPIENTS OF AMUSEMENT CHARGES:

(A) EVERY INSURER LICENSED TO ISSUE MOTOR VEHICLE PHYSICAL DAMAGE OR MOTOR VEHICLE PROPERTY DAMAGE LIABILITY INSURANCE FOR MOTOR VEHICLES REGISTERED IN THIS STATE IF, DURING THE PERIOD COVERED BY THE RETURN, IT HAS PAID CONSIDERATION OR AN AMOUNT UNDER AN INSURANCE CONTRACT FOR THE SERVICING OR REPAIR OF A MOTOR VEHICLE ON BEHALF OF AN INSURED. FOR EACH PERSON TO WHOM THE INSURER HAS PAID THE CONSIDERATION OR AMOUNT DESCRIBED IN THE PRECEDING SENTENCE, THE RETURN MUST REPORT THE TOTAL AMOUNT PAID FOR THAT PERIOD, ALONG WITH THE OTHER INFORMATION REQUIRED BY PARAGRAPH TWO OF THIS SUBDIVISION.

(B) EVERY FRANCHISOR, AS DEFINED BY SECTION SIX HUNDRED EIGHTY-ONE OF THE GENERAL BUSINESS LAW, THAT HAS AT LEAST ONE FRANCHISEE, AS DEFINED BY SUBDIVISION FOUR OF SECTION SIX HUNDRED EIGHTY-ONE OF THE GENERAL BUSINESS LAW, THAT IS REQUIRED TO BE REGISTERED UNDER SECTION ELEVEN HUNDRED THIRTY-FOUR OF THIS PART. FOR EACH FRANCHISEE, THE RETURN MUST INCLUDE THE GROSS SALES OF THE FRANCHISEE IN THIS STATE REPORTED BY THE FRANCHISEE TO THE FRANCHISOR, THE TOTAL AMOUNT OF SALES BY THE FRANCHISOR TO THE FRANCHISEE, AND ANY INCOME REPORTED TO THE FRANCHISOR BY EACH FRANCHISEE, ALONG WITH THE INFORMATION REQUIRED BY PARAGRAPH TWO OF THIS SUBDIVISION.

(C) EVERY WHOLESALER, AS DEFINED BY SECTION THREE OF THE ALCOHOLIC BEVERAGE CONTROL LAW, IF IT HAS MADE A SALE OF AN ALCOHOLIC BEVERAGE, AS DEFINED BY SECTION FOUR HUNDRED TWENTY OF THIS CHAPTER, WITHOUT COLLECTING SALES OR USE TAX DURING THE PERIOD COVERED BY THE RETURN, EXCEPT (I) A SALE TO A PERSON THAT HAS FURNISHED AN EXEMPT ORGANIZATION CERTIFICATE TO THE WHOLESALER FOR THAT SALE; OR (II) A SALE TO ANOTHER WHOLESALER WHOSE LICENSE UNDER THE ALCOHOLIC BEVERAGE CONTROL LAW DOES NOT ALLOW IT TO MAKE RETAIL SALES OF THE ALCOHOLIC BEVERAGE. FOR EACH VENDOR, OPERATOR, OR RECIPIENT TO WHOM THE WHOLESALER HAS MADE A SALE WITHOUT COLLECTING SALES OR COMPENSATING USE TAX, THE RETURN MUST INCLUDE THE TOTAL VALUE OF THOSE SALES MADE DURING THE PERIOD COVERED BY THE RETURN (EXCEPTING THE SALES DESCRIBED IN CLAUSES (I) AND (II) OF THIS SUBPARAGRAPH) AND THE VENDOR'S, OPERATOR'S OR RECIPIENT'S STATE LIQUOR AUTHORITY LICENSE NUMBER, ALONG WITH THE INFORMATION REQUIRED BY PARAGRAPH TWO OF THIS SUBDIVISION.

(2) THE RETURNS REQUIRED BY PARAGRAPH ONE OF THIS SUBDIVISION MUST ALSO INCLUDE, FOR EACH VENDOR, OPERATOR, OR RECIPIENT ABOUT WHOM INFORMATION IS REQUIRED TO BE REPORTED UNDER SUCH PARAGRAPH, THE NAME AND ADDRESS, AND THE CERTIFICATE OF AUTHORITY OR FEDERAL IDENTIFICATION NUMBER, AND ANY OTHER INFORMATION REQUIRED BY THE COMMISSIONER. THE

COMMISSIONER MAY, IN THE COMMISSIONER'S DISCRETION, REQUIRE THE REPORTING OF LESS THAN ALL THE INFORMATION OTHERWISE REQUIRED TO BE REPORTED BY THIS PARAGRAPH AND PARAGRAPH ONE OF THIS SUBDIVISION.

(3) THE RETURNS REQUIRED BY PARAGRAPH ONE OF THIS SUBDIVISION MUST BE FILED ANNUALLY ON OR BEFORE MARCH TWENTIETH AND MUST COVER THE FOUR SALES TAX QUARTERLY PERIODS IMMEDIATELY PRECEDING SUCH DATE. NOTWITHSTANDING SECTION THREE HUNDRED FIVE OF THE STATE TECHNOLOGY LAW OR ANY OTHER LAW TO THE CONTRARY, THE RETURNS MUST BE FILED ELECTRONICALLY IN THE MANNER PRESCRIBED BY THE COMMISSIONER.

(4) ANY PERSON REQUIRED TO FILE A RETURN UNDER PARAGRAPH ONE OF THIS SUBDIVISION MUST, ON OR BEFORE MARCH TWENTIETH, GIVE TO EACH VENDOR, OPERATOR, OR RECIPIENT ABOUT WHOM INFORMATION IS REQUIRED TO BE REPORTED IN THE RETURN THE INFORMATION PERTAINING TO THAT PERSON. THE COMMISSIONER MAY PRESCRIBE A FORM TO BE USED TO PROVIDE THE INFORMATION REQUIRED TO BE GIVEN BY THIS PARAGRAPH.

(5) NOTHING IN THIS SUBDIVISION IS TO BE CONSTRUED TO LIMIT THE PERSONS FROM WHOM THE COMMISSIONER CAN SECURE INFORMATION OR THE INFORMATION THE COMMISSIONER CAN REQUIRE FROM THOSE PERSONS PURSUANT TO THE COMMISSIONER'S AUTHORITY UNDER SECTION ELEVEN HUNDRED FORTY-THREE OF THIS PART OR ANY OTHER PROVISION OF LAW.

S 2. Section 1145 of the tax law is amended by adding a new subdivision (i) to read as follows:

(I)(1) EVERY PERSON REQUIRED TO FILE AN INFORMATION RETURN BY SUBDIVISION (I) OF SECTION ELEVEN HUNDRED THIRTY-SIX OF THIS PART WHO (A) FAILS TO PROVIDE ANY OF THE INFORMATION REQUIRED BY PARAGRAPH ONE OR TWO OF SUBDIVISION (I) OF SECTION ELEVEN HUNDRED THIRTY-SIX OF THIS PART FOR A VENDOR, OPERATOR, OR RECIPIENT, OR WHO FAILS TO INCLUDE ANY SUCH INFORMATION THAT IS TRUE AND CORRECT (WHETHER OR NOT SUCH A REPORT IS FILED) FOR A VENDOR, OPERATOR, OR RECIPIENT, OR (B) FAILS TO PROVIDE THE INFORMATION REQUIRED BY PARAGRAPH FOUR OF SUBDIVISION (I) OF SECTION ELEVEN HUNDRED THIRTY-SIX OF THIS PART TO A VENDOR, OPERATOR, OR RECIPIENT SPECIFIED IN PARAGRAPH FOUR OF SUBDIVISION (I) OF SECTION ELEVEN HUNDRED THIRTY-SIX OF THIS PART, WILL, IN ADDITION TO ANY OTHER PENALTY PROVIDED IN THIS ARTICLE OR OTHERWISE IMPOSED BY LAW, BE SUBJECT TO A PENALTY OF FIVE HUNDRED DOLLARS FOR TEN OR FEWER FAILURES, AND UP TO FIFTY DOLLARS FOR EACH ADDITIONAL FAILURE.

(2) EVERY PERSON FAILING TO FILE AN INFORMATION RETURN REQUIRED BY SUBDIVISION (I) OF SECTION ELEVEN HUNDRED THIRTY-SIX OF THIS PART WITHIN THE TIME REQUIRED BY SUBDIVISION (I) OF SECTION ELEVEN HUNDRED THIRTY-SIX OF THIS PART WILL, IN ADDITION TO ANY OTHER PENALTY PROVIDED FOR IN THIS ARTICLE OR OTHERWISE IMPOSED BY LAW, BE SUBJECT TO A PENALTY IN AN AMOUNT NOT TO EXCEED TWO THOUSAND DOLLARS FOR EACH SUCH FAILURE, PROVIDED THAT THE MINIMUM PENALTY UNDER THIS PARAGRAPH IS FIVE HUNDRED DOLLARS.

(3) IN NO EVENT WILL THE PENALTY IMPOSED BY PARAGRAPH ONE, OR THE AGGREGATE OF THE PENALTIES IMPOSED UNDER PARAGRAPHS ONE AND TWO OF THIS SUBDIVISION, EXCEED TEN THOUSAND DOLLARS FOR ANY ANNUAL FILING PERIOD AS DESCRIBED BY PARAGRAPH THREE OF SUBDIVISION (I) OF SECTION ELEVEN HUNDRED THIRTY-SIX OF THIS PART.

(4) IF THE COMMISSIONER DETERMINES THAT ANY OF THE FAILURES THAT ARE SUBJECT TO PENALTY UNDER THIS SUBDIVISION WAS ENTIRELY DUE TO REASONABLE CAUSE AND NOT DUE TO WILLFUL NEGLECT, THE COMMISSIONER MUST REMIT THE PENALTY IMPOSED UNDER THIS SUBDIVISION. THESE PENALTIES WILL BE DETERMINED, ASSESSED, COLLECTED, PAID, DISPOSED OF AND ENFORCED IN THE SAME MANNER AS TAXES IMPOSED BY THIS ARTICLE AND ALL THE PROVISIONS OF THIS

ARTICLE RELATING THERETO WILL BE DEEMED ALSO TO REFER TO THESE PENALTIES.

S 3. This act shall take effect immediately, provided that the first return required by subdivision (i) of section 1136 of the tax law, as added by section one of this act, shall be due on or before September 20, 2009 and shall cover the period March 1, 2009 through August 31, 2009; provided, further, that the returns required to be filed by such subdivision on or before March 20, 2010, shall cover the period from September 1, 2009 to February 28, 2010.

SUBPART O

Section 1. Section 6 of the tax law is REPEALED and a new section 6 is added to read as follows:

S 6. FILING OF TAX WARRANTS AND RELATED RECORDS IN THE DEPARTMENT OF STATE. (A) DEFINITIONS. AS USED IN THIS SECTION:

(1) "DATE OF FILING" MEANS THE DATE ON WHICH THE DEPARTMENT OF STATE ENTERS THE COMPLETE DATA RECEIVED FROM THE DEPARTMENT REGARDING A WARRANT OR RELATED RECORD INTO THE DEPARTMENT OF STATE DATABASE FOR TAX WARRANTS AND RELATED RECORDS FOR FILING;

(2) "ELECTRONIC" HAS THE SAME MEANING GIVEN SUCH TERM BY SUBDIVISION ONE OF SECTION THREE HUNDRED TWO OF THE STATE TECHNOLOGY LAW;

(3) "RELATED RECORDS" MEANS ONE OR MORE OF THE FOLLOWING: SATISFACTION-PIECE, VACATUR OF A WARRANT, AMENDED WARRANT, RELEASE OF LIEN, OR OTHER DOCUMENT AUTHORIZED BY APPLICABLE LAW, RELATED TO A WARRANT, OTHER THAN A WARRANT;

(4) "RELATED STATUTE" MEANS ANY LAW, ORDINANCE OR RESOLUTION ENACTED PURSUANT TO THE AUTHORITY OF THIS CHAPTER, THE ENVIRONMENTAL CONSERVATION LAW, THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW, OR ANY OTHER LAW, THAT IMPOSES A TAX;

(5) "TAX" MEANS ANY TAX, SPECIAL ASSESSMENT, FEE, ADDITION TO TAX, PENALTY, INTEREST, OR OTHER IMPOSITION THAT IS ADMINISTERED BY THE COMMISSIONER, AS WELL AS CHILD SUPPORT AND COMBINED CHILD AND SPOUSAL SUPPORT ARREARS COLLECTED BY THE COMMISSIONER PURSUANT TO THE PROVISIONS OF SECTION ONE HUNDRED SEVENTY ONE-I OF THIS CHAPTER; AND

(6) "WARRANT" MEANS A WARRANT ISSUED BY THE COMMISSIONER TO COLLECT ANY TAX.

(B) FILING IN THE DEPARTMENT OF STATE. (1) FILING OF TAX WARRANTS. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR A RELATED STATUTE TO THE CONTRARY, ALL WARRANTS MUST BE FILED BY THE DEPARTMENT SOLELY IN THE DEPARTMENT OF STATE. NO FEE WILL BE REQUIRED TO BE PAID FOR THESE FILINGS. ON THE DATE OF FILING OF A WARRANT:

(1) THE AMOUNT OF THE TAX STATED IN THE WARRANT WILL BECOME A LIEN UPON THE TITLE TO AND INTEREST IN ALL REAL, PERSONAL OR OTHER PROPERTY LOCATED IN THE STATE, OWNED BY THE PERSON OR PERSONS NAMED IN THE WARRANT. THE LIEN SO CREATED WILL

(A) ATTACH TO ALL REAL PROPERTY AND RIGHTS TO REAL PROPERTY LOCATED IN THE STATE THAT IS OWNED BY THE PERSON OR PERSONS NAMED IN THE WARRANT AT ANY TIME DURING THE PERIOD OF THE LIEN, INCLUDING ANY REAL PROPERTY OR RIGHTS TO REAL PROPERTY LOCATED IN THE STATE THAT IS ACQUIRED BY THE PERSON OR PERSONS AFTER THE LIEN ARISES; AND

(B) APPLY TO ALL PERSONAL OR OTHER PROPERTY AND RIGHTS TO PERSONAL OR OTHER PROPERTY LOCATED IN THE STATE THAT IS OWNED BY THE PERSON OR PERSONS NAMED IN THE WARRANT AT ANY TIME DURING THE PERIOD OF THE LIEN, INCLUDING ANY PERSONAL OR OTHER PROPERTY OR RIGHTS TO PERSONAL OR OTHER

PROPERTY LOCATED IN THE STATE THAT IS ACQUIRED BY THE PERSON OR PERSONS AFTER THE LIEN ARISES.

(2) THE COMMISSIONER WILL, IN THE RIGHT OF THE PEOPLE OF THE STATE OF NEW YORK, BE DEEMED TO HAVE OBTAINED A JUDGMENT AGAINST THE PERSON OR PERSONS NAMED IN THE WARRANT FOR THE AMOUNT OF THE TAX STATED IN THE WARRANT.

(C) IF THE DEPARTMENT FILED A WARRANT IN A COUNTY CLERK'S OFFICE BEFORE OCTOBER FIRST, TWO THOUSAND NINE, THEN, AS OF OCTOBER FIRST, TWO THOUSAND NINE AND THEREAFTER, THE DEPARTMENT WILL BE DEEMED TO HAVE FILED THAT WARRANT IN THE COUNTY CLERK'S OFFICE IN EVERY OTHER COUNTY OF THE STATE, AND THE COMMISSIONER WILL BE DEEMED TO HAVE OBTAINED A JUDGMENT IN EVERY OTHER COUNTY OF THE STATE AGAINST THE PERSON OR PERSONS NAMED IN THAT WARRANT FOR THE AMOUNT OF THE TAX STATED IN THAT WARRANT. BY OCTOBER FIRST, TWO THOUSAND NINE, THE COMMISSIONER MUST PROVIDE NOTICE, IN A FORM PRESCRIBED BY THE COMMISSIONER, TO ALL PERSONS AFFECTED BY THIS SUBDIVISION.

(D) ENFORCEMENT OF A JUDGMENT OBTAINED PURSUANT TO THE PROVISIONS OF SUBDIVISION (B) OR (C) OF THIS SECTION WILL BE AS PRESCRIBED IN ARTICLE FIFTY-TWO OF THE CIVIL PRACTICE LAW AND RULES.

(E) FILING OF RELATED RECORDS. (1) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR A RELATED STATUTE TO THE CONTRARY, IF THE DEPARTMENT IS FILING ANY RELATED RECORD, THE RECORD MUST BE FILED SOLELY IN THE DEPARTMENT OF STATE; PROVIDED, HOWEVER, THAT ANY RELATED RECORD FILED ON OR AFTER OCTOBER FIRST, TWO THOUSAND NINE THAT PERTAINS TO A WARRANT FILED PRIOR TO OCTOBER FIRST, TWO THOUSAND NINE, MUST BE FILED IN THE DEPARTMENT OF STATE.

(2) NO FEE WILL BE REQUIRED TO BE PAID FOR THE FILINGS DESCRIBED IN PARAGRAPH ONE OF THIS SUBDIVISION.

(F) MANNER OF FILING WITH THE DEPARTMENT OF STATE AND PUBLIC NOTICE OF FILINGS. THE DEPARTMENT MUST FILE WARRANTS AND RELATED RECORDS ELECTRONICALLY WITH THE DEPARTMENT OF STATE. THE DEPARTMENT OF STATE WILL PROVIDE ACKNOWLEDGEMENT TO THE DEPARTMENT OF THE DATE OF FILING OF THE WARRANTS AND RELATED RECORDS. THE DEPARTMENT OF STATE MUST ALSO MAKE INFORMATION REGARDING THE WARRANTS AND RELATED RECORDS, INCLUDING THE DATE OF FILING, AVAILABLE TO THE PUBLIC. THIS INFORMATION MUST BE SEARCHABLE ELECTRONICALLY BY THE NAME OF THE PERSON OR PERSONS LISTED IN THE TAX WARRANT. WARRANT AND RELATED RECORD INFORMATION MUST BE MADE AVAILABLE TO THE PUBLIC ELECTRONICALLY.

S 2. Subdivision 1 of section 174-a of the tax law, as added by chapter 176 of the laws of 1997, is amended to read as follows:

1. General rule. Notwithstanding any provision of law to the contrary, the provisions of the civil practice law and rules relating to the duration of a lien of a docketed judgment in and upon real property of a judgment debtor, and the extension of [any such] THAT lien, [shall] WILL apply to any warrant filed on behalf of the commissioner against a taxpayer with [the clerk of a county wherein such taxpayer owns or has an interest in real property] ANY RECORDING OR FILING OFFICER, INCLUDING A COUNTY CLERK OR THE DEPARTMENT OF STATE, whether [such] THE warrant is being enforced by a sheriff or an officer or employee of the department.

S 3. Section 279-b of the tax law is amended by adding a new closing paragraph to read as follows:

NOTWITHSTANDING ANY PROVISION OF THIS SECTION CONCERNING THE PLACE OF FILING OF A TAX WARRANT AND THE CREATION THEREBY OF A TAX LIEN AND JUDGMENT, THE PROVISIONS OF SECTION SIX OF THIS CHAPTER WILL GOVERN THESE MATTERS FOR PURPOSES OF THE TAXES IMPOSED BY THIS ARTICLE.

S 4. Section 289 of the tax law is amended by adding a new closing paragraph to read as follows:

NOTWITHSTANDING ANY PROVISION OF THIS SECTION CONCERNING THE PLACE OF FILING OF A TAX WARRANT AND THE CREATION THEREBY OF A TAX LIEN AND JUDGMENT, THE PROVISIONS OF SECTION SIX OF THIS CHAPTER WILL GOVERN THESE MATTERS FOR PURPOSES OF THE TAXES IMPOSED BY THIS ARTICLE.

S 5. Section 431 of the tax law is amended by adding a new subdivision 4 to read as follows:

4. NOTWITHSTANDING ANY PROVISION OF THIS SECTION CONCERNING THE PLACE OF FILING OF A TAX WARRANT AND THE CREATION THEREBY OF A TAX LIEN AND JUDGMENT, THE PROVISIONS OF SECTION SIX OF THIS CHAPTER WILL GOVERN THESE MATTERS FOR PURPOSES OF THE TAXES IMPOSED BY THIS ARTICLE.

S 6. Section 479 of the tax law is amended by adding a new closing paragraph to read as follows:

NOTWITHSTANDING ANY PROVISION OF THIS SECTION CONCERNING THE PLACE OF FILING OF A TAX WARRANT AND THE CREATION THEREBY OF A TAX LIEN AND JUDGMENT, THE PROVISIONS OF SECTION SIX OF THIS CHAPTER WILL GOVERN THESE MATTERS FOR PURPOSES OF THE TAXES IMPOSED BY THIS ARTICLE.

S 7. Subdivisions 3, 4 and 5 of section 511 of the tax law are renumbered subdivisions 4, 5 and 6, and a new subdivision 3 is added to read as follows:

3. NOTWITHSTANDING ANY PROVISION OF THIS SECTION CONCERNING THE PLACE OF FILING OF A TAX WARRANT AND THE CREATION THEREBY OF A TAX LIEN AND JUDGMENT, THE PROVISIONS OF SECTION SIX OF THIS CHAPTER WILL GOVERN THESE MATTERS FOR PURPOSES OF THE TAXES IMPOSED BY THIS ARTICLE.

S 8. Section 692 of the tax law is amended by adding a new subsection (j) to read as follows:

(J) NOTWITHSTANDING ANY PROVISION OF THIS SECTION CONCERNING THE PLACE OF FILING OF A TAX WARRANT AND THE CREATION THEREBY OF A TAX LIEN AND JUDGMENT, THE PROVISIONS OF SECTION SIX OF THIS CHAPTER WILL GOVERN THESE MATTERS FOR PURPOSES OF THE TAXES IMPOSED BY THIS ARTICLE.

S 9. Subsection (j) of section 1092 of the tax law is relettered subsection (k), and a new subsection (j) is added to read as follows:

(J) NOTWITHSTANDING ANY PROVISION OF THIS SECTION CONCERNING THE PLACE OF FILING OF A TAX WARRANT AND THE CREATION THEREBY OF A TAX LIEN AND JUDGMENT, THE PROVISIONS OF SECTION SIX OF THIS CHAPTER WILL GOVERN THESE MATTERS FOR PURPOSES OF ANY TAX TO WHICH THIS ARTICLE APPLIES.

S 10. Subdivision (c) of section 1141 of the tax law is relettered subdivision (d), and a new subdivision (c) is added to read as follows:

(C) NOTWITHSTANDING ANY PROVISION OF THIS SECTION CONCERNING THE PLACE OF FILING OF A TAX WARRANT AND THE CREATION THEREBY OF A TAX LIEN AND JUDGMENT, THE PROVISIONS OF SECTION SIX OF THIS CHAPTER WILL GOVERN THESE MATTERS FOR PURPOSES OF THE TAXES IMPOSED BY THIS ARTICLE.

S 11. Section 1414 of the tax law is amended by adding a new subdivision (c) to read as follows:

(C) NOTWITHSTANDING ANY PROVISION OF THIS SECTION CONCERNING THE PLACE OF FILING OF A TAX WARRANT AND THE CREATION THEREBY OF A TAX LIEN AND JUDGMENT, THE PROVISIONS OF SECTION SIX OF THIS CHAPTER WILL GOVERN THESE MATTERS FOR PURPOSES OF THE TAXES IMPOSED BY THIS ARTICLE.

S 12. This act shall take effect October 1, 2009; provided, however, that:

(a) effective immediately, the department of taxation and finance and the department of state are authorized to take any steps necessary to implement the provisions of this act on its effective date on or before such date; and

(b) the provisions of this act shall apply to warrants and related records pertaining to those warrants filed, or deemed to have been filed, on or after October 1, 2009.

SUBPART P

Section 1. Subdivision (c) of section 1141 of the tax law, as amended by chapter 27 of the laws of 1977, the third undesignated paragraph as added by chapter 706 of the laws of 1980, is amended to read as follows:

(c) Whenever a person required to collect tax shall make a sale, transfer, or assignment in bulk of any part or the whole of his OR HER business assets, otherwise than in the ordinary course of business, the purchaser, transferee or assignee shall at least ten days before taking possession of the subject of said sale, transfer or assignment, or paying therefor, notify the [tax commission] COMMISSIONER by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferrer or assignor, has represented to, or informed the purchaser, transferee or assignee that he OR SHE owes any tax, PENALTY, OR INTEREST pursuant to this article, and whether or not the purchaser, transferee, or assignee has knowledge that such taxes, PENALTY, OR INTEREST are owing, and whether any such taxes, PENALTY, OR INTEREST are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the [tax commission] COMMISSIONER as required by the preceding paragraph, or whenever the [tax commission] COMMISSIONER shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes, PENALTY, OR INTEREST exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferrer or assignor shall be subject to a first priority right and lien for any such taxes, PENALTY, OR INTEREST theretofore or thereafter determined to be due from the seller, transferrer or assignor to the state, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferrer or assignor any such sums of money, property or choses in action to the extent of the amount of the state's claim. Within ninety days of receipt of the notice of the sale, transfer, or assignment from the purchaser, transferee or assignee, the [tax commission] COMMISSIONER shall give notice to the purchaser, transferee or assignee and to the seller, transferrer, or assignor of the total amount of any tax or taxes, PENALTY, OR INTEREST which the state claims to be due from the seller, transferrer, or assignor to the state, and whenever the [tax commission] COMMISSIONER shall fail to give such notice to the purchaser, transferee, or assignee and the seller, transferrer, or assignor within ninety days from receipt of notice of the sale, transfer, or assignment, such failure will release the purchaser, transferee or assignee from any further obligation to withhold any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferrer or assignor[, except that with respect to pending matters such ninety day periods shall not begin to run until ninety days after the effective date of this provision]. For failure to comply with the provisions of this subdivision the purchaser, transferee or assignee[, in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the uniform commercial code,] shall be personally liable for the payment to the state of any such taxes, PENALTY, OR INTEREST theretofore or thereafter determined to be

due to the state from the seller, transferrer or assignor, except that the liability of the purchaser, transferee or assignee shall be limited to an amount not in excess of the purchase price or fair market value of the business assets sold, transferred or assigned to such purchaser, transferee, or assignee, whichever is higher, and such liability may be assessed and enforced in the same manner as the liability for tax under this article. Upon receipt within the ninety days as aforesaid of the notice of the total amount of the state's claim from the [tax commission] COMMISSIONER, and demand for payment thereof, the purchaser, transferee or assignee may make payment of such claim to the state from any sums of money, property, or choses in action withheld in accord with the provisions of this paragraph, except that such payment shall be limited to an amount not in excess of the purchase price or fair market value of the business assets sold, transferred, or assigned to such purchaser, transferee, or assignee, whichever is higher, and upon making the payment, such purchaser, transferee, or assignee shall be relieved of all liability for such amounts to the seller, transferrer, or assignor, and such amounts paid to the state shall be deemed satisfaction of the tax liability of the seller, transferrer, or assignor to the extent of the amount of such payment. ANY REFERENCE IN ANY PROVISION OF LAW TO THE LIABILITY OF A PURCHASER, TRANSFEREE, OR ASSIGNEE FOR TAX UNDER THIS SUBDIVISION SHALL INCLUDE THE LIABILITY OF THE PURCHASER, TRANSFEREE OR ASSIGNEE FOR PENALTY OR INTEREST UNDER THIS SUBDIVISION.

Where the liability of a purchaser, transferee or assignee, for the payment to the state of any such taxes, PENALTY, OR INTEREST determined to be due from the seller, transferrer or assignor, has been wholly paid or satisfied or no longer exists, the [tax commission] COMMISSIONER shall mail to such purchaser, transferee or assignee a notice, addressed to his last known address, setting forth that such liability has been wholly paid or satisfied or no longer exists. The [tax commission] COMMISSIONER shall include in such notice the following additional information:

(1) the name and last known address of the purchaser, transferee or assignee;

(2) the amount of the lien paid, satisfied or vacated; and

(3) a statement to the effect that consumer reporting agencies must delete from a credit file any reference to the particular tax lien within thirty days of receipt from the purchaser, transferee or assignee of such notice. Provided, however, no order or decree in a bankruptcy proceeding shall be construed as giving rise to the requirement that the notice provided for in this paragraph be given.

S 2. This act shall take effect June 1, 2009 and shall apply to sales, transfers, or assignments in bulk occurring on or after that 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 P of this act shall be as specifically set forth in the last section of such Subparts.

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 SS of this act shall be as specifically set forth in the last section of such Parts.