

3774

2009-2010 Regular Sessions

I N A S S E M B L Y

January 28, 2009

Introduced by M. of A. SCHIMMINGER, FIELDS, SCHROEDER, MAISEL, DESTITO, GABRYSZAK, KOON, MAGNARELLI -- Multi-Sponsored by -- M. of A. DelMONTE, JAFFEE, V. LOPEZ, SWEENEY, TOBACCO -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to reducing the tax on aviation fuel businesses under article 13-A thereof; and to repeal section 301-e of the tax law relating to aviation fuel taxes

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

1 Section 1. Section 301-e of the tax law is REPEALED.  
2 S 2. Subdivision (a) and paragraph 3 of subdivision (b) of section  
3 301-g of the tax law, subdivision (a) as amended by chapter 170 of the  
4 laws of 1994 and paragraph 3 of subdivision (b) as amended by chapter  
5 309 of the laws of 1996, are amended to read as follows:  
6 (a) Imposition of tax surcharge. In addition to the taxes imposed by  
7 sections three hundred one-a, [three hundred one-e,] three hundred  
8 one-h, three hundred one-i and three hundred one-j of this article, for  
9 taxable months commencing on or after September first, nineteen hundred  
10 ninety up to and including the month of May, nineteen hundred ninety-  
11 four, there is hereby imposed a tax surcharge for each or any part of a  
12 taxable month at the rate of fifteen percent of the applicable rate of  
13 tax imposed by such sections three hundred one-a, [three hundred one-e,]  
14 three hundred one-h, three hundred one-i and three hundred one-j of this  
15 article with respect to the products included in each component of such  
16 taxes imposed by such sections, to be computed on a per quantity basis  
17 (rounded to the nearest hundredth cent per quantity)[, provided that  
18 such tax surcharge shall not be imposed with respect to kero-jet fuel  
19 included in the kero-jet fuel component under subdivision (c) of section  
20 three hundred one-e for taxable months beginning prior to July first,  
21 nineteen hundred ninety-one]. Provided further, for taxable months  
22 commencing on or after June first, nineteen hundred ninety-four up to

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

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1 and including the month of May, nineteen hundred ninety-five, there is  
2 hereby imposed a tax surcharge for each or any part of a taxable month  
3 at the rate of twelve and one-half percent of the applicable rate of tax  
4 imposed by such sections three hundred one-a, [three hundred one-e,]  
5 three hundred one-h, three hundred one-i and three hundred one-j of this  
6 article with respect to the products included in each component of such  
7 taxes imposed by such sections, to be computed on a per quantity basis  
8 (rounded to the nearest hundredth cent per quantity). Provided further,  
9 for taxable months commencing on or after June first, nineteen hundred  
10 ninety-five up to and including the month of May, nineteen hundred nine-  
11 ty-six, there is hereby imposed a tax surcharge for each or any part of  
12 a taxable month at the rate of seven and one-half percent of the appli-  
13 cable rate of tax imposed by such sections three hundred one-a, [three  
14 hundred one-e,] three hundred one-h, three hundred one-i and three  
15 hundred one-j of this article with respect to the products included in  
16 each component of such taxes imposed by such sections, to be computed on  
17 a per quantity basis (rounded to the nearest hundredth cent per quanti-  
18 ty). Provided, further, for taxable months commencing on or after June  
19 first, nineteen hundred ninety-six up to and including the month of May,  
20 nineteen hundred ninety-seven, there is hereby imposed a tax surcharge  
21 for each or any part of a taxable month at the rate of two and one-half  
22 percent of the applicable rate of tax imposed by such sections three  
23 hundred one-a, [three hundred one-e,] three hundred one-h, three hundred  
24 one-i and three hundred one-j of this article with respect to the  
25 products included in each component of such taxes imposed by such  
26 sections, to be computed on a per quantity basis (rounded to the nearest  
27 hundredth cent per quantity). Provided, further, however, for purposes  
28 of imposition of the tax surcharge with respect to the tax imposed by  
29 section three hundred one-h of this article, the rate of the surcharge  
30 applicable to any calendar quarter during which the rate of the tax  
31 surcharge changes in accordance with the first three sentences of this  
32 subdivision shall be the average of the rates otherwise applicable  
33 pursuant to such first three sentences for each month of such calendar  
34 quarter. In the case of a taxpayer who files returns and pays taxes  
35 under article twenty-one or article twenty-one-A of this chapter, as the  
36 case may be, on an annual or other basis other than monthly or quarter-  
37 ly, for purposes of imposition of the tax surcharge with respect to the  
38 tax imposed by section three hundred one-h of this article, the rate of  
39 surcharge for a return period which would include a change in such rate  
40 but for this sentence shall be, in the case of taxpayers filing on an  
41 annual basis, equal to the sum of the respective rates otherwise appli-  
42 cable under this subdivision in each month of the return period divided  
43 by the number of months in the return period, and, in the case of a  
44 taxpayer filing on other than a monthly, quarterly or annual basis,  
45 equal to the sum of the respective rates otherwise applicable under this  
46 subdivision on each of the days of the return period divided by the  
47 number of days in the return period.

48 (3) Partial credit, refund or reimbursement with respect to aviation  
49 gasoline. (i) A partial credit or refund of the tax surcharge paid  
50 under this section relative to the tax imposed with respect to aviation  
51 gasoline under [sections three hundred one-e and] SECTION three hundred  
52 one-j of this article shall be available with respect to aviation gaso-  
53 line which qualifies for the partial credit or refund under [paragraph  
54 two of subdivision (b) of section three hundred one-e of] this article.  
55 The amount of the credit or refund shall be equal to the tax surcharge  
56 imposed [(A) with respect to the partial credit or refund allowed under

1 paragraph two of subdivision (b) of section three hundred one-e of this  
2 article and (B)] with respect to the credit or refund allowed under  
3 [paragraph two of] subdivision (b) of section three hundred one-j of  
4 this article.

5 (ii) A partial reimbursement of the tax surcharge paid under this  
6 section relative to the tax imposed with respect to aviation gasoline  
7 under [sections three hundred one-e and] SECTION three hundred one-j of  
8 this article shall be available with respect to aviation gasoline which  
9 qualifies for the partial reimbursement under [paragraph three of subdivi-  
10 vision (d) of section three hundred one-e of] this article and for which  
11 no partial credit or refund under subparagraph (i) of this paragraph was  
12 provided. The amount of the reimbursement shall be equal to the tax  
13 surcharge imposed [(A) with respect to the partial reimbursement allowed  
14 under paragraph three of subdivision (d) of section three hundred one-e  
15 of this article and (B)] with respect to the reimbursement allowed under  
16 [subparagraph] PARAGRAPH (ii) [of paragraph two] of subdivision (b) of  
17 section three hundred one-j of this article.

18 S 3. Paragraphs 1 and 5 of subdivision (a) and subdivision (c) of  
19 section 301-j of the tax law, paragraphs 1 and 5 of subdivision (a) as  
20 amended by chapter 309 of the laws of 1996, subdivision (c) as amended  
21 by chapter 410 of the laws of 1991, are amended to read as follows:

22 (1) In addition to the taxes imposed by [sections] SECTION three  
23 hundred one-a [and three hundred one-e] of this article, for taxable  
24 months commencing on or after July first, nineteen hundred ninety-one  
25 there is hereby imposed upon every petroleum business subject to tax  
26 imposed under section three hundred one-a of this article [and every  
27 aviation fuel business subject to the aviation gasoline component of the  
28 tax imposed under section three hundred one-e of this article], a  
29 supplemental monthly tax for each or any part of a taxable month at a  
30 rate of four and one-half cents per gallon with respect to the products  
31 included in each component of the taxes imposed by such [sections]  
32 SECTION three hundred one-a [and the aviation gasoline component of the  
33 tax imposed by such section three hundred one-e] of this article.

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

43 (c) Rate adjustment and surcharge. Commencing January first, nineteen  
44 hundred ninety-two and on the first day of January every year thereaft-  
45 er, the rate of the supplemental tax shall be adjusted at the same time  
46 as the rates of the components of the taxes imposed by [sections]  
47 SECTION three hundred one-a [and three hundred one-e] of this article,  
48 and the method of making adjustments to the rate of the supplemental tax  
49 shall be the same as the method used for such rates.

50 S 4. The opening paragraph and subdivision (c) of section 301-l of the  
51 tax law, as added by chapter 170 of the laws of 1994, are amended to  
52 read as follows:

53 There shall be allowed to a registered petroleum business or aviation  
54 fuel business a refund under this section for the taxes and tax  
55 surcharge imposed by sections three hundred one-a, [three hundred  
56 one-e,] three hundred one-g and three hundred one-j of this article for

1 the tax paid under such sections with respect to gallonage which is  
2 represented by a worthless debt as follows:

3 (c) Upon receipt of a claim for refund in processible form, interest  
4 shall be allowed and paid at the overpayment rate set by the commission-  
5 er pursuant to subdivision twenty-sixth of section one hundred seventy-  
6 one of this chapter from the date of the receipt of the refund claim to  
7 the date immediately preceding the date of the refund check except no  
8 such interest shall be allowed or paid if the refund check is mailed  
9 within ninety days of such receipt and except no interest shall be  
10 allowed or paid if the amount thereof would be less than one dollar.  
11 Provided, further, the refund shall be granted pro rata against sections  
12 three hundred one-a, [three hundred one-e,] three hundred one-g and  
13 three hundred one-j of this article, as the case may be, to the same  
14 extent as represented by the remittance of the petroleum business or  
15 aviation fuel business with respect to the gallonage represented by the  
16 worthless debt.

17 S 5. Subdivision (a) of section 308 of the tax law, as amended by  
18 chapter 2 of the laws of 1995, is amended to read as follows:

19 (a) General.--Every petroleum business subject to tax under this arti-  
20 cle shall monthly, on or before the twentieth day following the close of  
21 its taxable month, file a return which shall state (i) the number of  
22 gallons of motor fuel imported or caused to be imported into this state  
23 for use, distribution, storage or sale in the state or produced,  
24 refined, manufactured or compounded in the state during the preceding  
25 calendar month, (ii) the number of gallons of diesel motor fuel sold or  
26 used or, with respect to gallonage which prior thereto has not been  
27 included in the measure of the tax imposed by this article, delivered by  
28 the petroleum business to a filling station or into the fuel tank  
29 connecting with the engine of a motor vehicle for use in the operation  
30 thereof during the preceding calendar month, (iii) the number of gallons  
31 of, and the resultant product produced, manufactured or blended, using  
32 diesel motor fuel as a component of such resultant product and the sales  
33 of such resultant product, and (iv) the number of gallons of residual  
34 petroleum product sold or used in this state and the sales of such resi-  
35 dual petroleum product, for the period covered by such return. A resi-  
36 dual petroleum business shall include in its reports the number of  
37 gallons of residual petroleum product imported into the state or  
38 purchased in this state, the number of gallons of diesel motor fuel  
39 purchased in this state and the number of gallons of, and the resultant  
40 product produced, manufactured or blended by such petroleum business,  
41 using diesel motor fuel as a component of such resultant product. The  
42 commissioner of taxation and finance may permit the filing of a return  
43 on a quarterly basis in the case of a petroleum business which only  
44 makes sales of diesel motor fuel solely for residential heating purposes  
45 and which is registered under article twelve-A of this chapter as a  
46 diesel motor fuel distributor under a limited registration applicable  
47 only to the importation, sale and distribution of diesel motor fuel for  
48 the purposes described in subparagraph (i) of paragraph (b) of subdivi-  
49 sion three of section two hundred eighty-two-a of this chapter or in the  
50 case of a petroleum business registered as a "distributor of kero-jet  
51 fuel only" pursuant to the provisions of subdivision two of section two  
52 hundred eighty-two-a of this chapter. In the case of such returns  
53 permitted to be filed on a quarterly basis, the adjustments to the rates  
54 of tax then in effect, as provided for in [sections] SECTION three  
55 hundred one-a [and three hundred one-e] of this article, which take  
56 effect on the first day of January of each year shall, with respect to

1 such quarterly return, take effect on the first day of the next succeed-  
2 ing March. Returns shall be filed with the commissioner in a form  
3 prescribed by the commissioner, setting forth such other information as  
4 the commissioner may prescribe. Every petroleum business shall also  
5 transmit such other returns and such facts and information as the  
6 commissioner may require in the administration of this article. Every  
7 petroleum business which is a corporation subject to tax under this  
8 article and which ceases to exercise its franchise or to be subject to  
9 the tax imposed by this article shall transmit to the commissioner a  
10 return on the date of such cessation, or at such other time as the  
11 commissioner may require, covering each month or period for which no  
12 return was theretofore filed. The commissioner may, if the commissioner  
13 deems it necessary in order to insure the payment of the tax imposed by  
14 this article, require returns to be made at such times and covering such  
15 periods as the commissioner may deem necessary. Notwithstanding the  
16 foregoing provisions of this subdivision, the commissioner may require  
17 any corporation or unincorporated business which engages in transactions  
18 involving petroleum or similar products, including aviation fuels, to  
19 file a monthly return, which shall contain any data specified by him,  
20 regardless of whether such corporation or unincorporated business is  
21 subject to tax under this article.

22 S 6. Subdivision (b) of section 312 of the tax law, as amended by  
23 section 8 of part EE of chapter 63 of the laws of 2000, is amended to  
24 read as follows:

25 (b) Of all of the taxes collected or received by the commissioner on  
26 or before March thirty-first, nineteen hundred ninety-one under the  
27 taxes imposed by [sections] SECTION three hundred one-a [and three  
28 hundred one-e] of this article, and all interest and penalties relating  
29 thereto, eighty-seven and five-hundredths percent of such collections  
30 shall be deposited and disposed of pursuant to the provisions of section  
31 one hundred seventy-one-a of this chapter and the balance thereof shall  
32 be deposited in the mass transportation operating assistance fund to the  
33 credit of the metropolitan mass transportation operating assistance  
34 account and the public transportation systems operating assistance  
35 account thereof in the manner provided by subdivision eleven of section  
36 one hundred eighty-two-a of this chapter. Of all taxes, interest and  
37 penalties collected or received after March thirty-first, nineteen  
38 hundred ninety-one, and before April first, nineteen hundred ninety-  
39 three, from the taxes imposed by [sections] SECTION three hundred one-a  
40 [and three hundred one-e] of this article, initially thirty-five percent  
41 shall be deposited and disposed of pursuant to such section one hundred  
42 seventy-one-a. The balance thereof shall then be disposed of as follows:  
43 seventy-two and seven-tenths percent shall be deposited and disposed of  
44 pursuant to such section one hundred seventy-one-a and twenty-seven and  
45 three-tenths percent shall be deposited in such mass transportation  
46 operating assistance fund as prescribed in the aforesaid manner.  
47 Except as otherwise provided, of all taxes, interest and penalties  
48 collected or received after March thirty-first, nineteen hundred nine-  
49 ty-three, and before April first, nineteen hundred ninety-four, from the  
50 taxes imposed by [sections] SECTION three hundred one-a [and three  
51 hundred one-e] of this article, (i) initially fifty-four percent shall  
52 be deposited, as prescribed by subdivision (d) of section three hundred  
53 one-j of this chapter, (ii) twenty-eight and three-tenths percent shall  
54 be deposited and disposed of pursuant to such section one hundred seven-  
55 ty-one-a of this chapter in the general fund and (iii) seventeen and  
56 seven-tenths percent shall be deposited in such mass transportation

1 operating assistance fund as prescribed in the aforestated manner.  
2 Provided, however, that, prior to such deposit, from the amounts so  
3 collected or received during the period commencing on January first,  
4 nineteen hundred ninety-four and ending on March thirty-first, nineteen  
5 hundred ninety-four, an amount equal to the portion of the taxes, inter-  
6 est and penalties so received or collected resulting from the amendments  
7 made by sections forty-two, forty-three and forty-four of chapter  
8 fifty-seven of the laws of nineteen hundred ninety-three shall be depos-  
9 ited and disposed of pursuant to the provisions of subdivision one of  
10 section one hundred seventy-one-a of this chapter. Except as otherwise  
11 provided, of all taxes, interest and penalties collected or received on  
12 or after April first, nineteen hundred ninety-four, from the taxes  
13 imposed by [sections] SECTION three hundred one-a [and three hundred  
14 one-e] of this article, (i) initially fifty-four percent shall be depos-  
15 ited, as prescribed by subdivision (d) of section three hundred one-j of  
16 this article, (ii) twenty-eight and three-tenths percent shall be depos-  
17 ited and disposed of pursuant to such section one hundred seventy-one-a  
18 of this chapter in the general fund, (iii) seven and nine hundred  
19 sixty-five thousandths percent shall be deposited in such mass transpor-  
20 tation operating assistance fund as prescribed in the aforestated manner  
21 and (iv) nine and seven hundred thirty-five thousandths percent shall be  
22 deposited in the revenue accumulation fund. Except as otherwise  
23 provided, of all taxes, interest and penalties collected or received on  
24 or after September first, nineteen hundred ninety-four and before  
25 September first, nineteen hundred ninety-five, from the taxes imposed by  
26 [sections] SECTION three hundred one-a [and three hundred one-e] of this  
27 article, (i) initially fifty-nine percent shall be deposited, as  
28 prescribed by subdivision (d) of section three hundred one-j of this  
29 article, (ii) twenty-two and four-tenths percent shall be deposited and  
30 disposed of pursuant to such section one hundred seventy-one-a of this  
31 chapter in the general fund, (iii) eight and three hundred seventy thou-  
32 sandths percent shall be deposited in such mass transportation operating  
33 assistance fund as prescribed in the aforestated manner and (iv) ten and  
34 two hundred thirty thousandths percent shall be deposited in the revenue  
35 accumulation fund. Except as otherwise provided, of all taxes, interest  
36 and penalties, collected or received on or after September first, nine-  
37 teen hundred ninety-five and before April first, nineteen hundred nine-  
38 ty-six from the taxes imposed by [sections] SECTION three hundred one-a  
39 [and three hundred one-e] of this article, (i) initially sixty-two and  
40 eight-tenths percent shall be deposited as prescribed by subdivision (d)  
41 of section three hundred one-j of this article, (ii) eighteen percent  
42 shall be deposited and disposed of pursuant to section one hundred  
43 seventy-one-a of this chapter in the general fund, (iii) eight and six  
44 hundred forty thousandths percent shall be deposited in such mass trans-  
45 portation operating assistance fund as prescribed in the aforestated  
46 manner and (iv) ten and five hundred sixty thousandths percent shall be  
47 deposited in the revenue accumulation fund. Except as otherwise  
48 provided, of all taxes, interest and penalties collected or received on  
49 or after April first, nineteen hundred ninety-six, and before January  
50 first, nineteen hundred ninety-seven from the taxes imposed by  
51 [sections] SECTION three hundred one-a [and three hundred one-e] of this  
52 article, (i) initially sixty-three and three-tenths percent shall be  
53 deposited, as prescribed by subdivision (d) of section three hundred  
54 one-j of this article, (ii) seventeen and four-tenths percent shall be  
55 deposited and disposed of pursuant to such section one hundred seventy-  
56 one-a of this chapter in the general fund and (iii) nineteen and three-

1 tenths percent shall be deposited in such mass transportation operating  
2 assistance fund as prescribed in the aforesated manner. Except as  
3 otherwise provided, of all taxes, interest and penalties collected or  
4 received on or after January first, nineteen hundred ninety-seven and  
5 before January first, nineteen hundred ninety-eight from the taxes  
6 imposed by [sections] SECTION three hundred one-a [and three hundred  
7 one-e] of this article, (i) initially sixty-six and two-tenths percent  
8 shall be deposited, as prescribed by subdivision (d) of section three  
9 hundred one-j of this article, (ii) fourteen and one-half percent shall  
10 be deposited and disposed of pursuant to such section one hundred seven-  
11 ty-one-a of this chapter in the general fund and (iii) nineteen and  
12 three-tenths percent shall be deposited in such mass transportation  
13 operating assistance fund as prescribed in the aforesated manner.  
14 Except as otherwise provided, of all taxes, interest and penalties  
15 collected or received on or after January first, nineteen hundred nine-  
16 ty-eight and before April first, nineteen hundred ninety-nine from the  
17 taxes imposed by [sections] SECTION three hundred one-a [and three  
18 hundred one-e] of this article, (i) initially sixty-eight and one-tenth  
19 percent shall be deposited, as prescribed by subdivision (d) of section  
20 three hundred one-j of this article, (ii) twelve and four-tenths percent  
21 shall be deposited and disposed of pursuant to such section one hundred  
22 seventy-one-a of this chapter in the general fund and (iii) nineteen and  
23 one-half percent shall be deposited in such mass transportation operat-  
24 ing assistance fund as prescribed in the aforesated manner. Except as  
25 otherwise provided, of all taxes, interest and penalties collected or  
26 received on or after April first, nineteen hundred ninety-nine, from the  
27 taxes imposed by [sections] SECTION three hundred one-a [and three  
28 hundred one-e] of this article, (i) initially sixty-nine and eight-  
29 tenths percent shall be deposited, as prescribed by subdivision (d) of  
30 section three hundred one-j of this article, (ii) ten and seven-tenths  
31 percent shall be deposited and disposed of pursuant to such section one  
32 hundred seventy-one-a of this chapter in the general fund and (iii)  
33 nineteen and one-half percent shall be deposited in such mass transpor-  
34 tation operating assistance fund as prescribed in the aforesated  
35 manner. Except as otherwise provided, of all taxes, interest and penal-  
36 ties collected or received on or after April first, two thousand one,  
37 from the taxes imposed by [sections] SECTION three hundred one-a [and  
38 three hundred one-e] of this article, (i) initially eighty and three-  
39 tenths percent shall be deposited, as prescribed by subdivision (d) of  
40 section three hundred one-j of this article and (ii) nineteen and  
41 seven-tenths percent shall be deposited in such mass transportation  
42 operating assistance fund as prescribed in the aforesated manner.

43 Provided, further, that on or before the twenty-fifth day of each  
44 month commencing with October, nineteen hundred ninety and terminating  
45 with the month of March, two thousand one, the comptroller shall deduct  
46 the amount of six hundred twenty-five thousand dollars prior to any  
47 deposit or disposition of the taxes, interest and penalties collected or  
48 received pursuant to such [sections] SECTION three hundred one-a [and  
49 three hundred one-e] and shall pay such amount to the state treasury to  
50 the credit of the general fund. Provided, further that on or before the  
51 twenty-fifth day of each month commencing with April, two thousand one,  
52 the comptroller shall deduct the amount of six hundred twenty-five thou-  
53 sand dollars prior to any deposit or disposition of the taxes, interest,  
54 and penalties collected or received pursuant to such [sections] SECTION  
55 three hundred one-a [and three hundred one-e] and shall deposit such  
56 amount in the dedicated fund accounts pursuant to subdivision (d) of

1 section three hundred one-j of this article. Provided, further, that  
2 commencing January fifteenth, nineteen hundred ninety-one, and on or  
3 before the tenth day of March and the fifteenth day of June and Septem-  
4 ber of such year, the commissioner shall, based on information supplied  
5 by taxpayers and other appropriate sources, estimate the amount of the  
6 utility credit authorized by section three hundred one-d of this article  
7 which has been accrued to reduce tax liability under section one hundred  
8 eighty-six-a of this chapter during the period covered by such estimate  
9 and certify to the state comptroller such estimated amount. The comp-  
10 troller shall forthwith, after receiving such certificate, deduct the  
11 amount of such credit so certified by the commissioner prior to any  
12 deposit or disposition of the taxes, interest and penalties collected or  
13 received pursuant to such [sections] SECTION three hundred one-a [and  
14 three hundred one-e] and shall pay such amount so certified and deducted  
15 into the state treasury to the credit of the general fund. As soon as  
16 practicable after April first, nineteen hundred ninety-one, nineteen  
17 hundred ninety-two and nineteen hundred ninety-three, but before June  
18 fifteenth of each such year, the commissioner shall determine the amount  
19 of the utility tax credit which has been actually used to reduce tax  
20 liability under such section one hundred eighty-six-a and shall certify  
21 the difference between such actual amount and the earlier estimated  
22 amount. Also, subsequently, during the fiscal year when the commissioner  
23 becomes aware of changes or modifications with respect to actual credit  
24 usage, the commissioner shall, as soon as practicable, issue a certif-  
25 ication setting forth the amount of any required adjustment to the  
26 amount of actual credit usage previously certified. After receiving the  
27 certificate of the commissioner with respect to actual credit usage or  
28 modification of the same, the comptroller shall forthwith adjust general  
29 fund receipts and the revenues to be deposited or disposed of under this  
30 article to reflect the difference so certified by the commissioner. The  
31 commissioner shall not be liable for any overestimate or underestimate  
32 of the amount of the utility credit which has been accrued to reduce tax  
33 liability under such section one hundred eighty-six-a. Nor shall the  
34 commissioner be liable for any inaccuracy in any certificate with  
35 respect to the amount of such credit actually used or any required  
36 adjustment with respect to actual credit usage, but the commissioner  
37 shall as soon as practicable after discovery of any error adjust the  
38 next certification under this section to reflect any such error.

39 On or before July thirty-first, nineteen hundred ninety-two and on or  
40 before July thirty-first, nineteen hundred ninety-three, the commission-  
41 er shall conduct the following reconciliation with respect to the  
42 preceding fiscal year: he shall multiply the total of all taxes, penal-  
43 ties and interest, after refunds and reimbursements, which are derived  
44 from the motor fuel component, the automotive-type diesel motor fuel  
45 component and the aviation gasoline component by twenty fifty-fifths;  
46 the total of all taxes, penalties and interest, after refunds and  
47 reimbursements, which are derived from the nonautomotive-type diesel  
48 motor fuel component (excluding taxes, penalties and interest which are  
49 derived from product with respect to which the credit or reimbursement  
50 provided by section three hundred one-d is taken) by twenty-fiftieths;  
51 and all taxes, penalties and interest, after refunds and reimbursements,  
52 which are derived from the residual petroleum product component (exclud-  
53 ing taxes, penalties and interest which are derived from product with  
54 respect to which the credit or reimbursement provided by section three  
55 hundred one-d is taken) by twenty-fortieths. The products of the forego-  
56 ing multiplications shall be added together and the resulting sum of

1 such products shall be compared with the total of the amounts initially  
2 distributed during such fiscal year with respect to such components  
3 (excluding receipts derived from product with respect to which the cred-  
4 it or reimbursement provided by section three hundred one-d is taken and  
5 excluding any amount which represents a reconciliation adjustment pursu-  
6 ant to this paragraph) pursuant to section one hundred seventy-one-a of  
7 this chapter which represented thirty-five percent of the total, after  
8 refunds and reimbursements, of all taxes, penalties and interest  
9 collected or received during such fiscal year under [sections] SECTION  
10 three hundred one-a [and three hundred one-e] during the months of such  
11 fiscal year with respect to such components. The commissioner shall then  
12 certify the amount of such difference to the comptroller. If the amounts  
13 initially distributed in such fiscal year are greater than the sum of  
14 such products, the comptroller shall withhold an amount equal to twen-  
15 ty-seven and three-tenths percent of such difference from the first  
16 moneys otherwise payable to the general fund pursuant to this subdivi-  
17 sion and shall pay such amount to the mass transportation operating  
18 assistance fund to the credit of the metropolitan mass transportation  
19 operating assistance account and the public transportation systems oper-  
20 ating assistance account thereof in the aforesated manner. If the  
21 amounts initially distributed in such fiscal year are less than the sum  
22 of such products, the comptroller shall withhold an amount equal to  
23 twenty-seven and three-tenths percent of such difference from the first  
24 moneys otherwise payable to the mass transportation operating assistance  
25 fund pursuant to this subdivision and shall pay such amount to the  
26 general fund.

27 When the commissioner becomes aware of changes or modifications with  
28 respect to the distribution of revenue under this article, the commis-  
29 sioner shall, as soon as practicable, issue a certification setting  
30 forth the amount of any required adjustment. After receiving the certif-  
31 icate of the commissioner with respect to any adjustments, the comp-  
32 troller shall forthwith adjust general fund receipts and the revenues to  
33 be deposited or disposed of under this article to reflect the difference  
34 so certified by the commissioner. The commissioner shall not be liable  
35 for any overestimate or underestimate of the amount of the distribution.  
36 Nor shall the commissioner be liable for any inaccuracy in any certif-  
37 icate with respect to the amount of the distribution or any required  
38 adjustment with respect to the distribution, but the commissioner shall  
39 as soon as practicable after discovery of any error adjust the next  
40 certification under this section to reflect any such error.

41 Prior to making deposits as provided in this subdivision, the comp-  
42 troller shall retain such amount as the commissioner may determine to be  
43 necessary, subject to the approval of the director of the budget, for  
44 reasonable costs of the department in administering and collecting the  
45 taxes deposited pursuant to this subdivision and for refunds and  
46 reimbursements with respect to such taxes, out of which the comptroller  
47 shall pay any refunds or reimbursements of such taxes to which taxpayers  
48 shall be entitled.

49 S 7. This act shall take effect on the first of April next succeeding  
50 the date on which it shall have become a law.