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

5821

2009-2010 Regular Sessions

I N A S S E M B L Y

February 20, 2009

Introduced by M. of A. HAYES, BARCLAY, BUTLER, FINCH, KOLB, OAKS, QUINN -- Multi-Sponsored by -- M. of A. ALFANO, AMEDORE, BACALLES, BARRA, BURLING, CALHOUN, CONTE, CROUCH, DUPREY, ERRIGO, FITZPATRICK, GIGLIO, HAWLEY, P. LOPEZ, McDONOUGH, MOLINARO, O'MARA, RAIA, SAYWARD, SCOZZAFAVA, TEDISCO, THIELE, TOWNSEND -- read once and referred to the Committee on Ways and Means

AN ACT to repeal article 21 and subdivision (b) of section 524 of the tax law relating to highway use tax; to amend the canal law, the highway law, the public authorities law, the tax law, the vehicle and traffic law, and the state finance law, in relation to making technical changes relating thereto; and to repeal certain provisions of the state finance law relating thereto

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

Section 1. Article 21 of the tax law is REPEALED.

S 2. Paragraph (e) of subdivision 7 of section 30 of the canal law, as amended by chapter 335 of the laws of 2001, is amended to read as follows:

(e) No such certificate authorizing or approving the first partial payment or any final payment to a foreign contractor shall be made unless such contractor shall furnish satisfactory proof that all taxes due the commissioner of taxation and finance by such contractor under the provisions of or pursuant to a law enacted pursuant to the authority of article nine, nine-A, twelve-A, [twenty-one,] twenty-two, twenty-eight, twenty-nine or thirty of the tax law have been paid. The certificate of the commissioner of taxation and finance to the effect that all such taxes have been paid shall be, for purpose of this paragraph, conclusive proof of the payment of such taxes. The term "foreign contractor" as used in this subdivision means, in the case of an individual, a person who is not a resident of this state, in the case of a partnership, one having one or more partners not a resident of this

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

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state, and in the case of a corporation, one not organized under the laws of this state.

S 3. Paragraph (e) of subdivision 7 of section 38 of the highway law, as amended by chapter 196 of the laws of 1981 and as relettered by chapter 153 of the laws of 1984, is amended to read as follows:

(e) No such certificate approving or authorizing the first partial payment or any final payment to a foreign contractor shall be made unless such contractor shall furnish satisfactory proof that all taxes due the state tax commission by such contractor, under the provisions of or pursuant to a law enacted pursuant to the authority of article nine, nine-a, twelve-a, [sixteen, sixteen-a, twenty-one,] twenty-two, [twenty-three,] twenty-eight, twenty-nine or thirty of the tax law [or article two-E of the general city law] have been paid. The certificate of the state tax commission to the effect that all such taxes have been paid shall be, for purpose of this paragraph, conclusive proof of the payment of such taxes. The term "foreign contractor" as used in this subdivision means, in the case of an individual, a person who is not a resident of this state, in the case of a partnership, one having one or more partners not a resident of this state, and in the case of a corporation, one not organized under the laws of this state.

S 4. Paragraph (c) of subdivision 1 and subdivision 9 of section 385 of the public authorities law, paragraph (c) of subdivision 1 as amended by chapter 129 of the laws of 1995, subdivision 9 as added by chapter 56 of the laws of 1993, are amended to read as follows:

(c) Such obligations shall be issued or incurred with the approval of the director of the budget and shall be special obligations of the authority secured by and payable solely out of amounts appropriated by the legislature as authorized pursuant to section eighty-nine-b of the state finance law without recourse against any other assets, revenues or funds of or other payments due to the authority. Upon payments of such appropriated amounts from the fund established pursuant to section eighty-nine-b of the state finance law to the account of the authority, such funds may be pledged by the authority to secure its bonds, notes and other obligations authorized by paragraph (b) of this subdivision and shall be held free and clear of any claim by any person arising out of or in connection with articles twelve-A[,] AND thirteen-A [and twenty-one] of the tax law. Without limiting the generality of the foregoing and without limiting the rights and duties of the commissioner of taxation and finance under articles twelve-A[,] AND thirteen-A [and twenty-one] of the tax law, no taxpayer, or any other person, including the state, shall have any right or claim against the authority or any of its bondholders to any moneys appropriated and transferred from the dedicated highway and bridge trust fund established by section eighty-nine-b of the state finance law for or in respect of a refund, rebate, credit, reimbursement or other repayment of taxes paid under such articles of the tax law.

9. Nothing contained in this section shall be deemed to restrict the right of the state to amend, repeal, modify or otherwise alter statutes imposing or relating to any taxes or fees, including the taxes imposed pursuant to section two hundred eighty-four[, articles] AND ARTICLE thirteen-A [and twenty-one] of the tax law and fees imposed by section four hundred one of the vehicle and traffic law. The authority shall not include within any resolution, contract or agreement with holders of the bonds, notes and other obligations issued under this title any provision which provides that a default occurs as a result of the state exercising

its right to amend, repeal, modify or otherwise alter any such taxes and fees.

S 5. Subparagraph 11 of paragraph j of subdivision 1 of section 54 of the state finance law is REPEALED.

S 6. The twentieth and twenty-sixth subdivisions of section 171 of the tax law, the twentieth subdivision as amended by chapter 282 of the laws of 1986, the twenty-sixth subdivision as amended by chapter 61 of the laws of 1989, paragraph a of the twenty-sixth subdivision as amended by section 1 of part M3 of chapter 62 of the laws of 2003, are amended to read as follows:

Twentieth. Have authority, of his own motion, to abate any small unpaid balance of an assessment of tax, or any liability in respect thereof, under articles twelve-A, eighteen, OR twenty [or twenty-one] of this chapter, if such commissioner determines under uniform rules prescribed by him that the administration and collection costs involved would not warrant collection of the amount due. He may also abate, of his own motion, the unpaid portion of the assessment of any of such taxes, or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subdivision shall be filed for any of such taxes.

Twenty-sixth. a. Set the overpayment and underpayment rates of interest for purposes of articles twelve-A, eighteen, AND 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 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.

b. Cross-reference. For provisions relating to the power of the commissioner of taxation and finance to abate small amounts of interest, see subdivision twentieth of this section.

S 7. 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 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, (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, (iii) and except further that, notwithstanding any law, the comptroller shall credit to the revenue arrearage account, pursuant to section ninety-one-a of the state finance law, that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B, thirty-two or thirty-three of this chapter, and any interest thereon, which is certified to the comptroller by the commissioner as the amount to be credited against a past-due legally enforceable debt owed to a state agency pursuant to paragraph (a) of subdivision six of section one hundred seventy-one-f of this article, provided, however, he shall credit to the special offset fiduciary account, pursuant to section ninety-one-c of the state finance law, any such amount creditable as a liability as set forth in paragraph (b) of subdivision six of section one hundred seventy-one-f of this article, (iv) and except further that the comptroller shall pay to the city of New York that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B, thirty-two, or thirty-three of this chapter and any interest thereon that is certified to the comptroller by the commissioner as the amount to be credited against city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-1 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 8. Subdivision (a) of section 301-g of the tax law, as amended by chapter 170 of the laws of 1994, is amended to read as follows:

(a) Imposition of tax surcharge. In addition to the taxes imposed by sections three hundred one-a, three hundred one-e, three hundred one-h, three hundred one-i and three hundred one-j of this article, for taxable months commencing on or after September first, nineteen hundred ninety up to and including the month of May, nineteen hundred ninety-four, there is hereby imposed a tax surcharge for each or any part of a taxable month at the rate of fifteen percent of the applicable rate of tax imposed by such sections three hundred one-a, three hundred one-e, three hundred one-h, three hundred one-i and three hundred one-j of this article with respect to the products included in each component of such taxes imposed by such sections, to be computed on a per quantity basis (rounded to the nearest hundredth cent per quantity), provided that such tax surcharge shall not be imposed with respect to kero-jet fuel included in the kero-jet fuel component under subdivision (c) of section three hundred one-e for taxable months beginning prior to July first, nineteen hundred ninety-one. Provided further, for taxable months commencing on or after June first, nineteen hundred ninety-four up to and including the month of May, nineteen hundred ninety-five, there is hereby imposed a tax surcharge for each or any part of a taxable month at the rate of twelve and one-half percent of the applicable rate of tax imposed by such sections three hundred one-a, three hundred one-e, three hundred one-h, three hundred one-i and three hundred one-j of this article with respect to the products included in each component of such taxes imposed by such sections, to be computed on a per quantity basis (rounded to the nearest hundredth cent per quantity). Provided further, for taxable months commencing on or after June first, nineteen hundred ninety-five up to and including the month of May, nineteen hundred ninety-six, there is hereby imposed a tax surcharge for each or any part of a taxable month at the rate of seven and one-half percent of the applicable rate of tax imposed by such sections three hundred one-a, three hundred one-e, three hundred one-h, three hundred one-i and three hundred one-j of this article with respect to the products included in each component of such taxes imposed by such sections, to be computed on a per quantity basis (rounded to the nearest hundredth cent per quanti-

ty). Provided, further, for taxable months commencing on or after June first, nineteen hundred ninety-six up to and including the month of May, nineteen hundred ninety-seven, there is hereby imposed a tax surcharge for each or any part of a taxable month at the rate of two and one-half percent of the applicable rate of tax imposed by such sections three hundred one-a, three hundred one-e, three hundred one-h, three hundred one-i and three hundred one-j of this article with respect to the products included in each component of such taxes imposed by such sections, to be computed on a per quantity basis (rounded to the nearest hundredth cent per quantity). Provided, further, however, for purposes of imposition of the tax surcharge with respect to the tax imposed by section three hundred one-h of this article, the rate of the surcharge applicable to any calendar quarter during which the rate of the tax surcharge changes in accordance with the first three sentences of this subdivision shall be the average of the rates otherwise applicable pursuant to such first three sentences for each month of such calendar quarter. In the case of a taxpayer who files returns and pays taxes under article [twenty-one or article] twenty-one-A of this chapter, as the case may be, on an annual or other basis other than monthly or quarterly, for purposes of imposition of the tax surcharge with respect to the tax imposed by section three hundred one-h of this article, the rate of surcharge for a return period which would include a change in such rate but for this sentence shall be, in the case of taxpayers filing on an annual basis, equal to the sum of the respective rates otherwise applicable under this subdivision in each month of the return period divided by the number of months in the return period, and, in the case of a taxpayer filing on other than a monthly, quarterly or annual basis, equal to the sum of the respective rates otherwise applicable under this subdivision on each of the days of the return period divided by the number of days in the return period.

S 9. Subdivisions (c) and (d) of section 522 of the tax law, as added by chapter 170 of the laws of 1994, are amended to read as follows:

(c) Denial, suspension and revocation. The commissioner, for cause, may deny a license and suspend or revoke any license issued under this section, after an opportunity for a hearing has been afforded the carrier; provided, however, that a license may be denied or it may be suspended or revoked for failure to file a return as required pursuant to this article or for nonpayment of moneys due under this article prior to a hearing. A violation of any of the provisions of this article [or article twenty-one of this chapter] or of any rule or regulation of the commissioner promulgated under this article [or such article twenty-one] shall constitute sufficient cause for the denial, suspension or revocation of a license. In addition, if the commissioner enters into a cooperative agreement with other jurisdictions pursuant to section five hundred twenty-eight of this article, the commissioner may deny an application for license where a license previously issued to the applicant is under suspension or revocation by any member jurisdiction and a license may be revoked or suspended for failure to comply with such agreement. A denial, revocation or suspension of a license shall be final unless the applicant or licensee shall, within thirty days after the giving of notice of such denial, revocation or suspension, petition the division of tax appeals for a hearing in accordance with article forty of this chapter. If the commissioner enters into a cooperative agreement pursuant to such section five hundred twenty-eight, notice of a hearing shall be given and a hearing held within any time restrictions prescribed in such agreement.

(d) Trip permits. In lieu of the license and decal provided for in subdivision (a) of this section, any carrier, except as hereinafter limited, may apply to the commissioner for a trip permit for any qualified motor vehicle to be operated by him OR HER on the public highways of this state. Application for the trip permit shall be made on a form prescribed by the commissioner and shall contain such information as the commissioner shall require. The application shall be accompanied by a fee of twenty-five dollars for each qualified motor vehicle. Each trip permit shall be valid for a period of seventy-two hours from the time of its issuance. The issuance of a trip permit for a qualified motor vehicle shall exempt the carrier from the requirement of filing returns and payment of the taxes imposed by this article and section three hundred one-h of this chapter on the operation of such qualified motor vehicle for the effective period of the permit but no refund application may be filed on account of trip permit applications. [Provided, however, that in order for any person liable for the tax to claim such exemption, such person must retain a copy of the trip permit in his records for the complete period of time required by section five hundred seven of this chapter.] A carrier may not apply for more than ten trip permits under this section during a single calendar year.

S 10. Section 528 of the tax law, as added by chapter 170 of the laws of 1994, is amended to read as follows:

S 528. Procedure, administration and disposition of revenues. (a) [General. The provisions of subdivision two of section five hundred six and sections five hundred seven through five hundred fifteen of this chapter (excluding sections five hundred eight, five hundred twelve and five hundred thirteen) shall apply to the provisions of this article with the same force and effect as if the language of such subdivision and sections had been incorporated in full into this article and had expressly referred to the tax under this article, except to the extent that any such provision is either inconsistent with or not relevant to this article or inconsistent with a provision of any agreement which the commissioner enters into pursuant to subdivision (b) of this section, with such modification as may be necessary to adapt the language of such provisions to the tax imposed by this article, provided that (1) notwithstanding such section five hundred ten and subdivision four of section two thousand six of this chapter, a determination, as provided in such section five hundred ten, relating to the tax imposed by this article, shall finally and conclusively fix such tax, unless the person against whom it is assessed shall, within thirty days after the giving of notice of such determination, petition the division of tax appeals for a hearing, or unless the commissioner on the commissioner's own motion shall redetermine the same; (2) the term "vehicular unit" shall be read as "qualified motor vehicle"; (3) if the commissioner enters into a cooperative agreement under this section, the reference in section five hundred fourteen-a of this chapter to the United States postmark shall include a postmark made by the Canadian postal service; and (4) if the commissioner enters into a cooperative agreement under this section, for purposes of applying subdivision four of section five hundred fourteen of this chapter, the banks, banking houses or trust companies which may be designated by the commissioner may include any such banks, banking houses or trust companies designated or seeking designation by other member jurisdictions. For purposes of determining the amount of tax due in accordance with section five hundred ten of this chapter as incorporated by this subdivision, any return filed before the last day prescribed for its filing shall be deemed to be

filed on such last day. The commissioner is authorized to provide for the joint administration, in whole or in part, of the tax imposed by article twenty-one of this chapter and the tax imposed by this article.

(b)] Cooperative agreements. Notwithstanding any inconsistent provision of law, the commissioner is authorized to enter into a cooperative agreement with other states, the District of Columbia or provinces or territories of Canada for the administration of the tax imposed by this article and similar taxes imposed by other member jurisdictions and for the reporting and payment of tax to a single base state and a proportional sharing of revenue of taxes relating to fuel use among the jurisdictions where a qualified motor vehicle is operated. The agreement may provide for determining the base state for carriers, carriers records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required and requiring bonds to secure the tax imposed by this article and similar taxes imposed by other member jurisdictions, specifying reporting requirements and periods including defining uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of taxes, interest and penalties to another jurisdiction, notice and timing of hearings and other provisions as will facilitate the administration of the agreement. The commissioner may, pursuant to the terms of the agreement, forward to the proper officers of another member jurisdiction any information in the commissioner's possession relating to the manufacture, receipt, sale, use, transportation or shipment of automotive fuel by any person and may share any information relating to the administration of taxes pursuant to the agreement with such officers. The commissioner may disclose to the proper officers of another member jurisdiction the location of offices, motor vehicles and other real and personal property of carriers. The agreement may provide for each member jurisdiction to audit the records of persons based in the member jurisdiction and determine taxes due each member jurisdiction. The commissioner may adopt rules and regulations for the administration and enforcement of the agreement. In connection with the administration of taxes under such a cooperative agreement, the commissioner may enter into an agreement with other member jurisdictions and any banks, banking houses, trust companies or other similar institutions with respect to the payment of any tax, fees, penalty or interest to such banks, banking houses, trust companies or similar institutions and the filing of returns and reports with such banks, banking houses, trust companies or similar institutions as agent of the commissioner and such other member jurisdictions. Pursuant to a written agreement made with one or more of the appropriate departments, agencies, officers or instrumentalities of other jurisdictions, the commissioner may let contracts for provision of such services to the department and to one or more of such entities of other jurisdictions; provided, that provisions shall be made in all such agreements with the participating governmental entities and in all such contracts let by the commissioner for the assumption by each of the participating governmental entities of sole responsibility for its proportionate share of the costs under the terms of such contract. The commissioner may contract for such services jointly with and pursuant to a contract let by the appropriate department, agency, officer or instrumentality of another jurisdiction; provided that (1) the commissioner shall approve the proposed terms and conditions of all such joint governmental contracts, (2) the letting of such joint governmental contract shall be based on invitation of competitive bids or proposals, and (3) the participation by the department in

any such joint contract shall be preceded by an evaluation and finding in writing by the commissioner that a reasonable potential exists for the saving of costs by the state, by means of such joint governmental contract.

[(c)] (B) Rate changes. In the event the rate of tax imposed under this article or under section three hundred one-h of this chapter or the rate of surcharge imposed on such tax changes and such change does not coincide with the beginning of a reporting period, the rates of tax and surcharge for the reporting period which includes such change shall be equal to the sum of the respective rates otherwise applicable in each month of the reporting period divided by the number of months in the reporting period.

[(d)] (C) Construction. In the event the commissioner, pursuant to the authority of this article, enters into a cooperative agreement as provided in this section, the commissioner shall carry out any provision of such agreement required for continued New York state participation in such agreement, to the extent not inconsistent with a specific requirement of this article or any other provision of the laws and the constitution of the state of New York.

S 11. 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 of part E of chapter 60 of the laws of 2007, subparagraph (B) of paragraph 1 of subdivision (a) as amended by section 11 of part E of chapter 60 of the laws of 2007, 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)] (C) 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)] (D) Make any false return; or

[(F)] (E) 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 HER, 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 12. Paragraph (c) of subdivision 4-a of section 510 of the vehicle and traffic law, as added by section 10 of part J of chapter 62 of the laws of 2003, is amended to read as follows:

(c) Upon receipt of notification from a traffic and parking violations agency of the failure of a person to appear within sixty days of the return date or new subsequent adjourned date, pursuant to an appearance ticket charging said person with a violation of:

(i) any of the provisions of this chapter except one for parking, stopping or standing and except those violations described in paragraphs (a), (b), (d), (e) and (f) of subdivision two of section three hundred seventy-one of the general municipal law;

(ii) [section five hundred two or subdivision (a) of section eighteen hundred fifteen of the tax law;

(iii)] section fourteen-f (except paragraph (b) of subdivision four of section fourteen-f), two hundred eleven or two hundred twelve of the transportation law; or

[(iv)] (III) any lawful ordinance or regulation made by a local or public authority relating to traffic (except one for parking, stopping or standing) or the failure to pay a fine imposed for such a violation by a traffic and parking violations agency, the commissioner or his or her agent may suspend the driver's license or privileges of such person pending receipt of notice from the agency that such person has appeared in response to such appearance ticket or has paid such fine. Such suspension shall take effect no less than thirty days from the day upon which notice thereof is sent by the commissioner to the person whose driver's license or privileges are to be suspended. Any suspension issued pursuant to this paragraph shall be subject to the provisions of paragraph (j-1) of subdivision two of section five hundred three of this chapter.

S 13. Subdivision 3 of section 514 of the vehicle and traffic law, as amended by section 11 of part J of chapter 62 of the laws of 2003, is amended to read as follows:

3. (a) Upon the failure of a person to appear or answer, within sixty days of the return date or any subsequent adjourned date, or the failure to pay a fine imposed by a court, pursuant to a summons charging him or her with a violation of any of the provisions of this chapter (except one for parking, stopping or standing), [section five hundred two or five hundred twelve of the tax law,] section fourteen-f, two hundred eleven or two hundred twelve of the transportation law or of any law, ordinance, rule or regulation made by a local authority, relating to traffic (except for parking, stopping or standing), the trial court or the clerk thereof shall within ten days certify that fact to the commissioner, in the manner and form prescribed by the commissioner, who shall record the same in his or her office. Thereafter and upon the appearance of any such person in response to such summons or the receipt of the fine by the court, the trial court or the clerk thereof shall forthwith certify that fact to the commissioner, in the manner and form prescribed by the commissioner; provided, however, no such certification shall be made unless the court has collected the termination of suspension fee required to be paid pursuant to paragraph (j-1) of subdivision two of section five hundred three of this chapter.

(b) Upon the failure of a person to appear or answer, within sixty days of the return date or any subsequent adjourned date, or the failure to pay a fine imposed by a traffic and parking violations agency pursuant to a summons charging him or her with a violation of:

(1) any of the provisions of this chapter except one for parking, stopping or standing and except those violations described in paragraphs (a), (b), (d), (e) and (f) of subdivision two of section three hundred seventy-one of the general municipal law;

(2) [section five hundred two or subdivision (a) of section eighteen hundred fifteen of the tax law;

(3)] section fourteen-f (except paragraph (b) of subdivision four of section fourteen-f), two hundred eleven or two hundred twelve of the transportation law; or

[(4)] (3) any lawful ordinance or regulation made by a local or public authority relating to traffic (except one for parking, stopping or standing);

the clerk thereof shall within ten days certify that fact to the commissioner, in the manner and form prescribed by the commissioner, who shall record the same in his or her office. Thereafter and upon the appearance of any such person in response to such summons or the receipt of the fine by the agency, the traffic and parking violations agency or the clerk thereof shall forthwith certify that fact to the commissioner, in the manner and form prescribed by the commissioner; provided, however, no such certification shall be made unless the traffic and parking violations agency has collected the termination of suspension fee required to be paid pursuant to paragraph (j-1) of subdivision two of section five hundred three of this chapter.

S 14. Subdivision (b) of section 524 of the tax law is REPEALED.

S 15. Subdivision (d) of section 524 of the tax law, as amended by chapter 309 of the laws of 1996, is amended to read as follows:

(d) Erroneous payment. Whenever the commissioner shall determine that any moneys received under the provisions of this article were paid in error, he or she may cause the same to be refunded or credited. Such moneys received under the provisions of this article which the commissioner shall determine were paid in error, may be refunded or credited out of funds in the custody of the comptroller to the credit of such taxes provided an application therefor is filed with the commissioner within four years from the time the erroneous payment was made[, except if an agreement under the provisions of section five hundred ten of this chapter as made applicable to the tax imposed by this article by section five hundred twenty-eight of this article (extending the period for determination of tax imposed by this article) is made within the four-year period for the filing of an application for refund provided for in this subdivision, the period for filing an application for refund shall not expire prior to six months after the expiration of the period within which a determination may be made pursuant to the agreement or any extension thereof].

S 16. Section 525 of the tax law, as added by chapter 170 of the laws of 1994, is amended to read as follows:

S 525. Exemptions. (a) General. The provisions of this article shall not apply to any qualified motor vehicle[:

(1) Which] WHICH is a road roller, tractor crane, truck crane, power shovel, road building machine, snow plow, road sweeper, sand spreader or well driller.

[(2) Which is described in section five hundred four of this chapter, except subdivision four of such section.]

(b) Omnibus carriers. (1) An omnibus carrier shall not be required to apply for a license and decal or decals for a qualified motor vehicle which is an omnibus operated on a public highway in this state; except, if the commissioner enters into a cooperative agreement under subdivision [(b)] (A) of section five hundred twenty-eight of this article, the commissioner may, pursuant to such agreement, require such a carrier to be licensed and obtain such decal or decals with respect to such a vehicle.

(2) The taxes imposed by this article shall not apply to motor fuel and diesel motor fuel used by an omnibus carrier in the operation of an omnibus in local transit service in this state, as described under paragraph (d) of subdivision three of section two hundred eighty-nine-c of this chapter, pursuant to a certificate of public convenience and necessity issued by the commissioner of transportation of this state or by the interstate commerce commission of the United States or pursuant to a contract, franchise or consent between such carrier and a city having a

population of more than one million inhabitants, or any agency of such city.

(c) Effect of cooperative agreement. Notwithstanding subdivisions (a) and (b) of this section, in the event that the commissioner enters into a cooperative agreement under subdivision [(b)] (A) of section five hundred twenty-eight of this article, the commissioner may issue a license and decal or decals with respect to qualified motor vehicles described in subdivisions (a) and (b) of this section which are based in this state for the purpose of reporting and payment of tax imposed by other member jurisdictions with respect to such qualified motor vehicles.

S 17. Section 1825 of the tax law, as amended by section 2 of part N of chapter 686 of the laws of 2003, is amended to read as follows:

S 1825. Violation of secrecy provisions of the tax law.--Any person who violates the provisions of subdivision (b) of section twenty-one, subdivision one of section two hundred two, subdivision eight of section two hundred eleven, subdivision (a) of section three hundred fourteen, subdivision one or two of section four hundred thirty-seven, section four hundred eighty-seven, [subdivision one or two of section five hundred fourteen,] subsection (e) of section six hundred ninety-seven, subsection (a) of section nine hundred ninety-four, subdivision (a) of section eleven hundred forty-six, subdivision (a) of section fourteen hundred eighteen, subsection (a) of section fourteen hundred sixty-seven, subdivision (a) of section fifteen hundred eighteen, subdivision (a) of section fifteen hundred fifty-five of this chapter, and subdivision (e) of section 11-1797 of the administrative code of the city of New York shall be guilty of a misdemeanor.

S 18. Paragraph (a) of subdivision 3 of section 89-b of the state finance law, as amended by section 2 of chapter 165 of the laws of 2008, is amended to read as follows:

(a) The special obligation reserve and payment account shall consist (i) of all moneys required to be deposited in the dedicated highway and bridge trust fund pursuant to the provisions of sections two hundred five, two hundred eighty-nine-e, three hundred one-j, [five hundred fifteen] and eleven hundred sixty-seven of the tax law, section four hundred one of the vehicle and traffic law, and section thirty-one of chapter fifty-six of the laws of nineteen hundred ninety-three, (ii) all fees, fines or penalties collected by the commissioner of transportation pursuant to section fifty-two and subdivisions five, eight and twelve of section eighty-eight of the highway law, subdivision fifteen of section three hundred eighty-five of the vehicle and traffic law, section [two of the chapter] NINE OF PART U1 OF CHAPTER SIXTY-TWO of the laws of two thousand three that amended this paragraph, subdivision (d) of section three hundred four-a, paragraph one of subdivision (a) and subdivision (d) of section three hundred five, subdivision six-a of section four hundred fifteen and subdivision (g) of section twenty-one hundred twenty-five of the vehicle and traffic law, section fifteen of this chapter, excepting moneys deposited with the state on account of betterments performed pursuant to subdivision twenty-seven or subdivision thirty-five of section ten of the highway law, (iii) any moneys collected by the department of transportation for services provided pursuant to agreements entered into in accordance with section ninety-nine-r of the general municipal law, and (iv) any other moneys collected therefor or credited or transferred thereto from any other fund, account or source.

S 19. Paragraph (a) of subdivision 3 of section 89-b of the state finance law, as amended by section 3 of chapter 165 of the laws of 2008, is amended to read as follows:

(a) The special obligation reserve and payment account shall consist (i) of all moneys required to be deposited in the dedicated highway and bridge trust fund pursuant to the provisions of sections two hundred eighty-nine-e, three hundred one-j, [five hundred fifteen] and eleven hundred sixty-seven of the tax law, section four hundred one of the vehicle and traffic law, and section thirty-one of chapter fifty-six of the laws of nineteen hundred ninety-three, (ii) all fees, fines or penalties collected by the commissioner of transportation pursuant to section fifty-two and subdivisions five, eight and twelve of section eighty-eight of the highway law, subdivision fifteen of section three hundred eighty-five of the vehicle and traffic law, section fifteen of this chapter, excepting moneys deposited with the state on account of betterments performed pursuant to subdivision twenty-seven or subdivision thirty-five of section ten of the highway law, (iii) any moneys collected by the department of transportation for services provided pursuant to agreements entered into in accordance with section ninety-nine-r of the general municipal law, and (iv) any other moneys collected therefor or credited or transferred thereto from any other fund, account or source.

S 20. Subdivision 4 of section 2006 of the tax law, as amended by chapter 170 of the laws of 1994, is amended to read as follows:

4. To provide a hearing as a matter of right, to any petitioner upon such petitioner's request, pursuant to such rules, regulations, forms and instructions as the tribunal may prescribe, unless a right to such a hearing is specifically provided for, modified or denied by another provision of this chapter. Where such a request is made by a person seeking review of taxes determined or claimed to be due under this chapter, the liability of such person shall become finally and irrevocably fixed, unless such person, within ninety days from the time such liability is assessed, shall petition the division of tax appeals for a hearing to review such liability [except that, as provided in subdivision (a) of section five hundred twenty-eight of this chapter, a determination relating to the tax imposed by article twenty-one-A of this chapter shall finally and irrevocably fix such tax unless the person against whom it is assessed shall petition the division of tax appeals for a hearing within thirty days after the giving of notice of such determination].

S 21. This act shall take effect immediately; provided, however, that the amendments to paragraph (a) of subdivision 3 of section 89-b of the state finance law made by section eighteen of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 13 of part U1 of chapter 62 of the laws of 2003, as amended, when upon such date the provisions of section nineteen of this act shall take effect.