

6837

2009-2010 Regular Sessions

I N   A S S E M B L Y

March 13, 2009

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Introduced by M. of A. SCOZZAFAVA -- read once and referred to the  
Committee on Transportation

AN ACT to amend the transportation law and the tax law, in relation to  
establishing the New Century railroad investment program and providing  
for certain tax credits for rail carriers; and providing for the  
repeal of certain provisions upon expiration thereof

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

1     Section 1. The transportation law is amended by adding a new article  
2     18-A to read as follows:

3     ARTICLE 18-A

4     NEW CENTURY RAILROAD INVESTMENT PROGRAM

5     SECTION 435. LEGISLATIVE INTENT.

6                     436. PROGRAM OBJECTIVES.

7                     437. ELIGIBILITY.

8                     438. RAILROAD CAPITAL FACILITY.

9                     439. JOINT APPLICATIONS.

10     S 435. LEGISLATIVE INTENT. THE CONTINUATION AND IMPROVEMENT OF THE  
11     APPROPRIATE LEVEL OF RAIL FREIGHT AND PASSENGER SERVICE AND THE ENHANCE-  
12     MENT OF THE STATE'S RAILROAD INFRASTRUCTURE ARE A NECESSARY COMPONENT IN  
13     ESTABLISHING AND MAINTAINING THE ECONOMIC VITALITY OF THE STATE AND ITS  
14     COMMUNITIES. THE PURCHASE AND DIVISION OF THE CONRAIL SYSTEM HAS THE  
15     POTENTIAL TO INVIGORATE COMPETITION AMONG RAIL CARRIERS IN NEW YORK AND  
16     ESTABLISH THE STATE AS AN INCREASINGLY IMPORTANT CROSSROAD FOR FREIGHT  
17     ON BOTH THE EAST-WEST AND NORTH-SOUTH CORRIDORS. IN ORDER TO MEET THE  
18     ANTICIPATED LEVEL OF RAIL FREIGHT SERVICE IN THE POST-CONRAIL ERA,  
19     MODIFICATIONS AND IMPROVEMENTS TO THE STATE'S RAIL INFRASTRUCTURE WILL  
20     BE NECESSARY. THE NEW CENTURY RAILROAD INVESTMENT PROGRAM WILL PROVIDE  
21     THE STATE'S RAIL CARRIERS WITH A TIMELY PARTNERSHIP THAT WILL STIMULATE  
22     INVESTMENT BY THE RAIL CARRIERS INTO THE NEXT CENTURY. THIS PROGRAM WILL  
23     PERMIT THE RAILROAD COMPANIES TO IMPROVE THE STATE'S RAIL INFRASTRUCTURE

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

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1 IN A MANNER THAT WILL ENHANCE THEIR ABILITY TO COMPETE FOR BUSINESS. IN  
2 TURN, THIS INVESTMENT WILL PROVIDE THE STATE WITH NEW OPPORTUNITIES FOR  
3 ECONOMIC DEVELOPMENT AND WILL ENHANCE THE INCREASINGLY IMPORTANT  
4 RELATIONSHIPS BETWEEN THE VARIOUS MODES OF TRANSPORTATION.

5 S 436. PROGRAM OBJECTIVES. THE OBJECTIVES OF THE NEW CENTURY RAILROAD  
6 INVESTMENT PROGRAM SHALL BE:

7 1. THE PRESERVATION, IMPROVEMENT AND ENHANCEMENT OF THE RAILROAD  
8 INFRASTRUCTURE;

9 2. THE IMPROVEMENT OF THE QUALITY AND QUANTITY OF RAILROAD FREIGHT AND  
10 PASSENGER SERVICE, INCLUDING THE DEVELOPMENT OF INTERMODAL CONNECTIONS;  
11 AND

12 3. THE FACILITATION OF INVESTMENT THAT WILL STIMULATE THE COST-EFFEC-  
13 TIVE MOVEMENT OF FREIGHT AND PASSENGERS THROUGHOUT THE STATE, INCLUDING  
14 THOSE AREAS THAT WERE PREVIOUSLY UNDERSERVED.

15 S 437. ELIGIBILITY. 1. A RAILROAD COMPANY, AS DEFINED IN SECTION TWO  
16 OF THIS CHAPTER, SHALL BE ELIGIBLE FOR A TAX CREDIT AGAINST THE PETROLE-  
17 UM BASED TAX IMPOSED PURSUANT TO SECTION THREE HUNDRED ONE-A OF THE TAX  
18 LAW FOR QUALIFYING PROJECTS CERTIFIED BY THE COMMISSIONER PURSUANT TO  
19 THE REQUIREMENTS SET FORTH IN THIS SECTION. AN INVESTMENT MADE IN NEW  
20 YORK SHALL BE DEEMED A QUALIFYING PROJECT IF IT PROVIDES FOR THE ACQUI-  
21 SITION, CONSTRUCTION, RECONSTRUCTION, ESTABLISHMENT, IMPROVEMENT OR  
22 REHABILITATION OF A RAILROAD CAPITAL FACILITY. STANDARD MAINTENANCE OF  
23 RAILROAD FACILITIES WILL NOT BE CONSIDERED A QUALIFYING PROJECT UNDER  
24 THIS PROGRAM.

25 2. A RAILROAD MAY SUBMIT AN APPLICATION FOR CERTIFICATION OF A QUALI-  
26 FYING PROJECT UNDER THIS PROGRAM IN SUCH FORM AND CONTAINING SUCH INFOR-  
27 MATION AS THE COMMISSIONER MAY REQUIRE. IF THE PROJECT MEETS THE STATU-  
28 TORY REQUIREMENTS SET FORTH IN THIS SECTION, THE COMMISSIONER SHALL  
29 CERTIFY TO ITS ELIGIBILITY FOR THE TAX CREDIT IN A MANNER THAT WILL  
30 FACILITATE GRANTING OF THE CREDIT OR REIMBURSEMENT SET FORTH IN SECTION  
31 THREE HUNDRED ONE-N OF THE TAX LAW. IF THE COMMISSIONER REJECTS ANY SUCH  
32 APPLICATION HE OR SHE SHALL STATE THE REASONS THEREFOR IN WRITING AND  
33 MAY MAKE RECOMMENDATIONS FOR MODIFICATION.

34 S 438. RAILROAD CAPITAL FACILITY. FOR THE PURPOSES OF THIS ARTICLE, A  
35 RAILROAD CAPITAL FACILITY SHALL MEAN AND INCLUDE RAILROAD RIGHTS OF WAY,  
36 AS WELL AS TRACKAGE, RAILS, BRIDGES, CLEARANCES, SIGNALS, STATIONS,  
37 TERMINALS, STORAGE YARDS, REPAIR AND MAINTENANCE SHOPS, YARDS, OFFICES  
38 AND REAL ESTATE USED OR HELD FOR OR INCIDENTAL TO THE OPERATION, REHA-  
39 BILITATION OR IMPROVEMENT OF ANY RAILROAD OPERATING RAIL FREIGHT AND  
40 RAIL PASSENGER TRANSPORTATION SERVICES.

41 S 439. JOINT APPLICATIONS. TWO OR MORE RAILROAD COMPANIES MAY SUBMIT  
42 JOINT APPLICATIONS TO THE COMMISSIONER FOR QUALIFYING PROJECTS IN WHICH  
43 MORE THAN ONE RAILROAD PLANS TO PARTICIPATE. THE TAX CREDIT OR  
44 REIMBURSEMENT ALLOWED BY SECTION THREE HUNDRED ONE-N OF THE TAX LAW  
45 PURSUANT TO THIS PROGRAM SHALL BE BASED UPON THE AMOUNT OF CAPITAL  
46 INVESTED BY EACH RAILROAD IN ANY SUCH PROJECT.

47 S 2. The tax law is amended by adding a new section 301-n to read as  
48 follows:

49 S 301-N. CREDIT FOR CAPITAL IMPROVEMENTS BY RAILROADS. A RAILROAD  
50 COMPANY, AS DEFINED IN SECTION TWO OF THE TRANSPORTATION LAW, SHALL BE  
51 ENTITLED TO A CREDIT AGAINST THAT PORTION OF THE TAX IMPOSED BY SECTION  
52 THREE HUNDRED ONE-A OF THIS ARTICLE WHICH IS DEPOSITED PURSUANT TO  
53 SECTION ONE HUNDRED SEVENTY-ONE-A OF THIS CHAPTER, OR A REIMBURSEMENT OF  
54 SUCH TAX, UP TO THE AMOUNT OF CAPITAL INVESTMENT MADE IN A QUALIFYING  
55 PROJECT AS DEFINED IN SECTION FOUR HUNDRED THIRTY-SEVEN OF THE TRANSPOR-  
56 TATION LAW.

1 S 3. Paragraph 4 of subdivision (e) of section 301-a of the tax law,  
2 as added by chapter 309 of the laws of 1996, is amended to read as  
3 follows:

4 (4) Notwithstanding any other provision of this article, commencing  
5 January first, nineteen hundred ninety-seven, the per gallon rate with  
6 respect to "railroad diesel" shall be the adjusted motor fuel and auto-  
7 motive-type diesel motor fuel rate under paragraphs one through three of  
8 this subdivision for the period commencing such January first, nineteen  
9 hundred ninety-seven, minus one and three tenths cents per gallon.  
10 Commencing on the first day of January each year thereafter, the per  
11 gallon rate with respect to "railroad diesel" shall be [determined by  
12 taking the then motor fuel and automotive-type diesel motor fuel rate  
13 under paragraphs one through three of this subdivision which commences  
14 on such first day of January and subtracting one and three tenths] ONE  
15 AND FORTY-SIX HUNDREDTHS cents per gallon.

16 S 4. Subdivision (b) of section 312 of the tax law, as amended by  
17 section 8 of part EE of chapter 63 of the laws of 2000, is amended to  
18 read as follows:

19 (b) Of all of the taxes collected or received by the commissioner on  
20 or before March thirty-first, nineteen hundred ninety-one under the  
21 taxes imposed by sections three hundred one-a and three hundred one-e of  
22 this article, and all interest and penalties relating thereto, eighty-  
23 seven and five-hundredths percent of such collections shall be deposited  
24 and disposed of pursuant to the provisions of section one hundred seven-  
25 ty-one-a of this chapter and the balance thereof shall be deposited in  
26 the mass transportation operating assistance fund to the credit of the  
27 metropolitan mass transportation operating assistance account and the  
28 public transportation systems operating assistance account thereof in  
29 the manner provided by subdivision eleven of section one hundred eight-  
30 y-two-a of this chapter. Of all taxes, interest and penalties collected  
31 or received after March thirty-first, nineteen hundred ninety-one, and  
32 before April first, nineteen hundred ninety-three, from the taxes  
33 imposed by sections three hundred one-a and three hundred one-e of this  
34 article, initially thirty-five percent shall be deposited and disposed  
35 of pursuant to such section one hundred seventy-one-a. The balance ther-  
36 eof shall then be disposed of as follows: seventy-two and seven-tenths  
37 percent shall be deposited and disposed of pursuant to such section one  
38 hundred seventy-one-a and twenty-seven and three-tenths percent shall be  
39 deposited in such mass transportation operating assistance fund as  
40 prescribed in the aforestated manner. Except as otherwise provided, of  
41 all taxes, interest and penalties collected or received after March  
42 thirty-first, nineteen hundred ninety-three, and before April first,  
43 nineteen hundred ninety-four, from the taxes imposed by sections three  
44 hundred one-a and three hundred one-e of this article, (i) initially  
45 fifty-four percent shall be deposited, as prescribed by subdivision (d)  
46 of section three hundred one-j of this [chapter] ARTICLE, (ii) twenty-  
47 eight and three-tenths percent shall be deposited and disposed of pursu-  
48 ant to such section one hundred seventy-one-a of this chapter in the  
49 general fund and (iii) seventeen and seven-tenths percent shall be  
50 deposited in such mass transportation operating assistance fund as  
51 prescribed in the aforestated manner. Provided, however, that, prior to  
52 such deposit, from the amounts so collected or received during the peri-  
53 od commencing on January first, nineteen hundred ninety-four and ending  
54 on March thirty-first, nineteen hundred ninety-four, an amount equal to  
55 the portion of the taxes, interest and penalties so received or  
56 collected resulting from the amendments made by sections forty-two,

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

1 ited, as prescribed by subdivision (d) of section three hundred one-j of  
2 this article, (ii) fourteen and one-half percent shall be deposited and  
3 disposed of pursuant to such section one hundred seventy-one-a of this  
4 chapter in the general fund and (iii) nineteen and three-tenths percent  
5 shall be deposited in such mass transportation operating assistance fund  
6 as prescribed in the aforestated manner. Except as otherwise provided,  
7 of all taxes, interest and penalties collected or received on or after  
8 January first, nineteen hundred ninety-eight and before April first,  
9 nineteen hundred ninety-nine from the taxes imposed by sections three  
10 hundred one-a and three hundred one-e of this article, (i) initially  
11 sixty-eight and one-tenth percent shall be deposited, as prescribed by  
12 subdivision (d) of section three hundred one-j of this article, (ii)  
13 twelve and four-tenths percent shall be deposited and disposed of pursu-  
14 ant to such section one hundred seventy-one-a of this chapter in the  
15 general fund and (iii) nineteen and one-half percent shall be deposited  
16 in such mass transportation operating assistance fund as prescribed in  
17 the aforestated manner. Except as otherwise provided, of all taxes,  
18 interest and penalties collected or received on or after April first,  
19 nineteen hundred ninety-nine, from the taxes imposed by sections three  
20 hundred one-a and three hundred one-e of this article, (i) initially  
21 sixty-nine and eight-tenths percent shall be deposited, as prescribed by  
22 subdivision (d) of section three hundred one-j of this article, (ii) ten  
23 and seven-tenths percent shall be deposited and disposed of pursuant to  
24 such section one hundred seventy-one-a of this chapter in the general  
25 fund and (iii) nineteen and one-half percent shall be deposited in such  
26 mass transportation operating assistance fund as prescribed in the  
27 aforestated manner. Except as otherwise provided, of all taxes, interest  
28 and penalties collected or received on or after April first, two thou-  
29 sand one, from the taxes imposed by sections three hundred one-a and  
30 three hundred one-e of this article, (i) initially eighty and three-  
31 tenths percent shall be deposited, as prescribed by subdivision (d) of  
32 section three hundred one-j of this article and (ii) nineteen and  
33 seven-tenths percent shall be deposited in such mass transportation  
34 operating assistance fund as prescribed in the aforestated manner,  
35 EXCEPT THAT FOR TAXES COLLECTED FOR RAILROAD DIESEL IMPOSED PURSUANT TO  
36 SECTION THREE HUNDRED ONE-A OF THIS ARTICLE ONE HUNDRED PERCENT SHALL BE  
37 DEPOSITED INTO SUCH FUND.

38 Provided, further, that on or before the twenty-fifth day of each  
39 month commencing with October, nineteen hundred ninety and terminating  
40 with the month of March, two thousand one, the comptroller shall deduct  
41 the amount of six hundred twenty-five thousand dollars prior to any  
42 deposit or disposition of the taxes, interest and penalties collected or  
43 received pursuant to such sections three hundred one-a and three hundred  
44 one-e and shall pay such amount to the state treasury to the credit of  
45 the general fund. Provided, further that on or before the twenty-fifth  
46 day of each month commencing with April, two thousand one, the comp-  
47 troller shall deduct the amount of six hundred twenty-five thousand  
48 dollars prior to any deposit or disposition of the taxes, interest, and  
49 penalties collected or received pursuant to such sections three hundred  
50 one-a and three hundred one-e and shall deposit such amount in the dedi-  
51 cated fund accounts pursuant to subdivision (d) of section three hundred  
52 one-j of this article. Provided, further, that commencing January  
53 fifteenth, nineteen hundred ninety-one, and on or before the tenth day  
54 of March and the fifteenth day of June and September of such year, the  
55 commissioner shall, based on information supplied by taxpayers and other  
56 appropriate sources, estimate the amount of the utility credit author-

1 ized by section three hundred one-d of this article which has been  
2 accrued to reduce tax liability under section one hundred eighty-six-a  
3 of this chapter during the period covered by such estimate and certify  
4 to the state comptroller such estimated amount. The comptroller shall  
5 forthwith, after receiving such certificate, deduct the amount of such  
6 credit so certified by the commissioner prior to any deposit or disposi-  
7 tion of the taxes, interest and penalties collected or received pursuant  
8 to such sections three hundred one-a and three hundred one-e and shall  
9 pay such amount so certified and deducted into the state treasury to the  
10 credit of the general fund. As soon as practicable after April first,  
11 nineteen hundred ninety-one, nineteen hundred ninety-two and nineteen  
12 hundred ninety-three, but before June fifteenth of each such year, the  
13 commissioner shall determine the amount of the utility tax credit which  
14 has been actually used to reduce tax liability under such section one  
15 hundred eighty-six-a and shall certify the difference between such actu-  
16 al amount and the earlier estimated amount. Also, subsequently, during  
17 the fiscal year when the commissioner becomes aware of changes or  
18 modifications with respect to actual credit usage, the commissioner  
19 shall, as soon as practicable, issue a certification setting forth the  
20 amount of any required adjustment to the amount of actual credit usage  
21 previously certified. After receiving the certificate of the commission-  
22 er with respect to actual credit usage or modification of the same, the  
23 comptroller shall forthwith adjust general fund receipts and the reven-  
24 ues to be deposited or disposed of under this article to reflect the  
25 difference so certified by the commissioner. The commissioner shall not  
26 be liable for any overestimate or underestimate of the amount of the  
27 utility credit which has been accrued to reduce tax liability under such  
28 section one hundred eighty-six-a. Nor shall the commissioner be liable  
29 for any inaccuracy in any certificate with respect to the amount of such  
30 credit actually used or any required adjustment with respect to actual  
31 credit usage, but the commissioner shall as soon as practicable after  
32 discovery of any error adjust the next certification under this section  
33 to reflect any such error.

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

1 ant to this paragraph) pursuant to section one hundred seventy-one-a of  
2 this chapter which represented thirty-five percent of the total, after  
3 refunds and reimbursements, of all taxes, penalties and interest  
4 collected or received during such fiscal year under sections three  
5 hundred one-a and three hundred one-e during the months of such fiscal  
6 year with respect to such components. The commissioner shall then certi-  
7 fy the amount of such difference to the comptroller. If the amounts  
8 initially distributed in such fiscal year are greater than the sum of  
9 such products, the comptroller shall withhold an amount equal to twen-  
10 ty-seven and three-tenths percent of such difference from the first  
11 moneys otherwise payable to the general fund pursuant to this subdivi-  
12 sion and shall pay such amount to the mass transportation operating  
13 assistance fund to the credit of the metropolitan mass transportation  
14 operating assistance account and the public transportation systems oper-  
15 ating assistance account thereof in the aforestated manner. If the  
16 amounts initially distributed in such fiscal year are less than the sum  
17 of such products, the comptroller shall withhold an amount equal to  
18 twenty-seven and three-tenths percent of such difference from the first  
19 moneys otherwise payable to the mass transportation operating assistance  
20 fund pursuant to this subdivision and shall pay such amount to the  
21 general fund.

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

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

44 S 5. This act shall take effect October 1, 2009; provided however that  
45 sections one and two of this act shall expire and be deemed repealed  
46 December 31, 2011, and sections three and four of this act shall take  
47 effect January 1, 2012. Effective immediately the commissioner of trans-  
48 portation and the commissioner of taxation and finance are authorized to  
49 promulgate any rules and regulations necessary for the timely implemen-  
50 tation of this act on or before its effective date.