

1 that overturned the longstanding tax policy in this state that nonresi-
2 dent New York S corporation shareholders who make an election under
3 section 338(h)(10) of the internal revenue code to treat their sale of
4 stock as a sale of assets of the S corporation are taxed in accordance
5 with that election and the transaction is treated as producing New York
6 source income to the extent that the S corporation owned New York prop-
7 erty. This curative legislation is to preserve the concept of federal
8 conformity in the personal income tax and is necessary to prevent much
9 confusion in the preparation of returns, unintended refunds and
10 protracted litigation of an issue that has been properly administered up
11 to now.

12 S 2. Paragraph 2 of subsection (a) of section 632 of the tax law, as
13 amended by section 65 of part A of chapter 389 of the laws of 1997, is
14 amended to read as follows:

15 (2) In determining New York source income of a nonresident shareholder
16 of an S corporation where the election provided for in subsection (a) of
17 section six hundred sixty of this article is in effect, there shall be
18 included only the portion derived from or connected with New York sour-
19 ces of such shareholder's pro rata share of items of S corporation
20 income, loss and deduction entering into his federal adjusted gross
21 income, increased by reductions for taxes described in paragraphs two
22 and three of subsection (f) of section thirteen hundred sixty-six of the
23 internal revenue code, as such portion shall be determined under regu-
24 lations of the commissioner consistent with the applicable methods and
25 rules for allocation under article nine-A or thirty-two of this chapter
26 REGARDLESS OF WHETHER OR NOT SUCH ITEM OR REDUCTION IS INCLUDED IN
27 ENTIRE NET INCOME UNDER ARTICLE NINE-A OR THIRTY-TWO FOR THE TAX YEAR.
28 IN ADDITION, IF A NONRESIDENT IS A SHAREHOLDER IN AN S CORPORATION WHERE
29 THE ELECTION PROVIDED FOR IN SUBSECTION (A) OF SECTION SIX HUNDRED SIXTY
30 OF THIS ARTICLE IS IN EFFECT AND THE SHAREHOLDERS OF THE S CORPORATION
31 HAVE MADE AN ELECTION UNDER SECTION 338(H)(10) OF THE INTERNAL REVENUE
32 CODE, THEN THE SHAREHOLDERS OF THE S CORPORATION ARE DEEMED TO HAVE MADE
33 SUCH ELECTION UNDER THIS ARTICLE AND ANY GAIN RECOGNIZED AS INCOME ON
34 THE TRANSACTION FOR FEDERAL INCOME TAX PURPOSES WILL BE TAXED AS NEW
35 YORK SOURCE INCOME TO THE EXTENT THE PROPERTY, SUBJECT TO THE ELECTION,
36 IS LOCATED IN NEW YORK.

37 S 3. This act shall take effect immediately and apply to tax years in
38 which the taxpayer made an election under section 338(h)(10) of the
39 internal revenue code and for which the statute of limitations under
40 section 683 of the tax law is still open.

41

PART B

42 Section 1. Section 32 of the tax law, as added by section 2 of part VV
43 of chapter 59 of the laws of 2009, is amended to read as follows:

44 S 32. [Registration of tax return preparers.] FACILITATORS. (a) For
45 purposes of this section, the following terms have the specified mean-
46 ings:

47 (1) ["Attorney" means an attorney admitted to practice law in New York
48 state or one or more of the other states or jurisdictions of the United
49 States.

50 (2) "Certified public accountant" means an accountant licensed pursu-
51 ant to section seventy-four hundred four of the education law or a simi-
52 lar law of one or more of the other states or jurisdictions of the
53 United States.

54 (3) "Commercial tax return preparer" means a tax return preparer who:

1 (A) prepared ten or more returns for compensation in the preceding
2 calendar year and will prepare at least one return for compensation
3 during the current calendar year; or (B) prepared fewer than ten returns
4 in the preceding calendar year but will prepare ten or more returns for
5 the current calendar year.

6 (4) "Commercial tax return preparation business" means an entity that
7 employs individuals who prepare tax returns and that meets the thresh-
8 olds described in paragraph three of this subdivision.

9 (5)] "Creditor" means any person who makes a refund anticipation loan
10 or who takes an assignment of a refund anticipation loan.

11 [(6)] (2) "Facilitator" means a person who individually or in conjunc-
12 tion or cooperation with another person: (a) solicits the execution of,
13 processes, receives, or accepts an application or agreement for a refund
14 anticipation loan or refund anticipation check, (b) serves or collects
15 upon a refund anticipation loan or refund anticipation check; or (c) in
16 any other manner facilitates the making of a refund anticipation loan or
17 refund anticipation check. This term excludes any employees of a facili-
18 tator who provide only clerical or other comparable support services to
19 such facilitator.

20 [(7)] "Electronic" means computer technology.

21 (8) "Enrolled agent" means an agent enrolled to practice before the
22 internal revenue service pursuant to section 10.4 of subpart A of part
23 ten of title thirty-one of the code of federal regulations.

24 (9) "Public accountant" means an accountant licensed pursuant to
25 section seventy-four hundred five of the education law or a similar law
26 of one or more of the other states or jurisdictions of the United
27 States.

28 (10)] (3) "Refund anticipation check" means a check, stored value
29 card, or other payment mechanism which: (a) represents the proceeds of a
30 tax refund; (b) was issued by a depository institution or other person
31 that received a direct deposit of the tax refund or tax credits; and (c)
32 a fee or other consideration is paid for such payment mechanism.

33 [(11)] (4) "Refund anticipation loan" means a loan that is secured by
34 or that the creditor arranges to be repaid directly or indirectly from
35 the proceeds of an income tax refund or tax credits. A refund antic-
36 ipation loan also includes any sale, assignment, or purchase of tax
37 refund at a discount or for a fee, whether or not the amount is required
38 to be repaid to the buyer or assignee if the internal revenue service or
39 the department denies or reduces the amount of the tax refund.

40 [(12)] "Return" means a return or report relating to a tax administered
41 by the commissioner.

42 (13) "Tax" means any tax, fee, special assessment or other imposition
43 administered by the commissioner.

44 (14) "Tax return preparer" means an individual who prepares a substan-
45 tial portion of any return for compensation. Enrolled agents or employ-
46 ees of a tax return preparer or a commercial tax return preparation
47 business who prepare returns for clients of that preparer or preparation
48 business, as applicable, and partners who prepare returns for clients of
49 a partnership engaged in a commercial tax return preparation business,
50 are all "tax return preparers" for purposes of this section. Excluded
51 from the definition of "tax return preparer" are attorneys, public
52 accountants, and certified public accountants, who are registered with
53 or licensed by the state, and employees preparing returns under the
54 supervision of such attorneys, public accountants, and certified public
55 accountants. Also excluded are volunteer tax preparers, employees of a
56 business or partners in a partnership whose job responsibilities include

1 preparation of only the business' or partnership's returns, and employ-
2 ees of a tax return preparer or a commercial tax return preparation
3 business who provides only clerical or other comparable services.]

4 (b)(1) [Each tax return preparer, who will prepare at least one return
5 in a calendar year, and each facilitator, who will facilitate the making
6 of a refund anticipation loan or refund anticipation check, must regis-
7 ter electronically with the department for that calendar year, in
8 accordance with instructions prescribed by the commissioner.

9 (2)(A) Upon completion of the registration process, each tax return
10 preparer and facilitator will be issued a tax preparer or facilitator
11 registration certificate. If an individual acts as both a tax return
12 preparer and a facilitator, one registration certificate shall indicate
13 both activities.

14 (B) In accordance with instructions prescribed by the commissioner,
15 each tax return preparer and facilitator will also be assigned a unique
16 identification number by the department, which must be used by the tax
17 return preparer and facilitator on each return which the tax return
18 preparer is required to sign and each refund anticipation loan and
19 refund anticipation check the facilitator is required to sign.

20 (C) If a tax return preparer or facilitator is an employee or prospec-
21 tive employee of a tax return preparer, a commercial tax return prepara-
22 tion business, or a facilitator, the tax return preparer, commercial tax
23 return preparation business or facilitator must ensure that the employee
24 or prospective employee is properly registered with the department and
25 possesses a valid tax preparer or facilitator registration certificate.
26 If an individual acts as both a tax return preparer and a facilitator
27 one registration certificate shall indicate both activities.

28 (3) Each registered tax return preparer and facilitator must electron-
29 ically re-register with the department annually, in accordance with
30 instructions prescribed by the commissioner. If, at any time during the
31 year following registration or re-registration, as applicable, any
32 information provided by the tax return preparer or facilitator upon
33 registration or re-registration is no longer correct, the tax return
34 preparer or facilitator must update his or her information in accordance
35 with instructions prescribed by the commissioner.

36 (4) Each tax return preparer preparing any return must sign the docu-
37 ment and include the unique identification number specified in paragraph
38 two of this subdivision, in accordance with instructions prescribed by
39 the commissioner.

40 (c)(1) Each commercial tax return preparer must electronically pay an
41 annual fee of one hundred dollars to the department, in accordance with
42 instructions prescribed by the commissioner. Registration of a commer-
43 cial tax return preparer is not complete until payment of the fee is
44 made.

45 (2) All fees received by the commissioner pursuant to this subdivi-
46 sion, reduced by those amounts the commissioner determines are necessary
47 to cover administrative costs to administer the registration program
48 prescribed by this section and the costs of any reimbursements to
49 commercial tax return preparers that may be required due to duplicative
50 fee payments under this subdivision, must be deposited monthly to the
51 credit of the general fund of the state. The commissioner will maintain
52 a system of accounts showing the amount of money collected and disbursed
53 from the fee imposed by this subdivision.

54 (d) The issuance of a tax preparer or facilitator registration certifi-
55 cate to provide tax preparation services or refund anticipation loan
56 services is not, and must not be advertised as, an endorsement by the

1 department of the tax return preparer or the facilitator, or his or her
2 qualifications or the services rendered by him or her.

3 (e) A tax return preparer who has not registered with the department,
4 or a commercial tax return preparer who has not paid the required regis-
5 tration fee, will not be allowed to represent his or her clients before
6 the division of taxation or the division of tax appeals. This sanction
7 is in addition to any penalties which may be imposed pursuant to subdivi-
8 sion (f) of this section.

9 (f) (1)] A [tax return preparer or] facilitator shall not: (A) charge
10 or impose any fee, charge or other consideration in the making or facil-
11 itating of a refund anticipation loan or refund anticipation check apart
12 from the fee charged by the creditor or bank that provided the loan or
13 check;

14 (B) Engage in unfair or deceptive acts or practices in the facilitat-
15 ing of a refund anticipation check or a refund anticipation loan,
16 including making any oral statements contradicting any of the informa-
17 tion required to be disclosed under the Taxpayer Bill of Rights as set
18 forth in sections three hundred seventy-one through three hundred seven-
19 ty-three of the general business law;

20 (C) Directly or indirectly arrange for a third party to charge any
21 interest, fee or charge related to a refund anticipation loan or refund
22 anticipation check;

23 (D) Include any of the following provisions in any documents provided
24 or signed to obtain a refund anticipation loan or refund anticipation
25 check, including the loan application or agreement: (i) a hold harmless
26 clause; (ii) a confession of judgment clause; (iii) a waiver of the
27 right to a jury trial; (iv) any assignment of or order for payment of
28 wages or other compensation for services; (v) a waiver of any provision
29 of the Taxpayer Bill of Rights, as set forth in sections three hundred
30 seventy-one through three hundred seventy-three of the general business
31 law; or (vi) a waiver of the right to injunctive, declaratory, other
32 equitable relief, or relief on a classwide basis. Any aforementioned
33 waivers shall be deemed null, void and of no effect;

34 (E) Take or arrange for a creditor to take a security interest in any
35 property interest of the taxpayer other than the proceeds of the tax
36 refund to secure payment of a refund anticipation loan;

37 (F) Directly or indirectly, individually or in conjunction or cooper-
38 ation with another person, engage in the collection of an outstanding or
39 delinquent refund anticipation loan for any creditor or assignee;

40 (G) Refer, facilitate, solicit consumers or conduct business on behalf
41 of, in conjunction with or on the same premises as a third party engaged
42 in check cashing for a fee;

43 (H) Make a misrepresentation of fact in obtaining or attempting to
44 obtain a registration; or

45 (I) Engage in any other action prohibited by rules promulgated by the
46 commissioner.

47 (2) [If a tax return preparer violates any one of the provisions
48 provided for in this subdivision, then the tax return preparer must pay
49 a penalty of five hundred dollars for each such violation, in addition
50 to any other penalties provided for in this section.

51 (g) (1) If a tax return preparer or facilitator is required to regis-
52 ter or re-register with the department pursuant to paragraph one or
53 three of subdivision (b) of this section, as applicable, and fails to do
54 so in accordance with the terms of this section, then the tax return
55 preparer or facilitator must pay a penalty of two hundred fifty dollars.
56 Provided, however, that if the tax return preparer or facilitator

1 complies with the registration requirements of this section within nine-
2 ty calendar days after notification of assessment of this penalty is
3 sent by the department, then this penalty must be abated. If the tax
4 return preparer or facilitator continues to fail to register or re-re-
5 gister after the ninety calendar day period, the tax return preparer or
6 facilitator must pay an additional penalty of five hundred dollars if
7 the failure is for not more than one month, with an additional five
8 hundred dollars for each additional month or fraction thereof during
9 which the failure continues. Once the ninety calendar days specified in
10 this paragraph have expired, the penalty can be waived only for good
11 cause shown by the tax return preparer or facilitator.

12 (2) If a commercial tax return preparer fails to pay the fee as
13 required in paragraph one of subdivision (c) of this section, for a
14 calendar year, then the commercial tax return preparer must pay a penal-
15 ty of fifty dollars for each return the commercial tax return preparer
16 has filed with the department in that calendar year. Provided however,
17 that if the commercial tax return preparer complies with the payment
18 requirements of paragraph one of subdivision (c) of this section, within
19 ninety calendar days after notification of the assessment of this penal-
20 ty is sent by the department, then this penalty must be abated. The
21 maximum penalty that may be imposed under this paragraph on any commer-
22 cial tax return preparer during any calendar year must not exceed five
23 thousand dollars. Once the ninety calendar days specified in this para-
24 graph have expired, the penalty can be waived only for good cause shown
25 by the commercial tax return preparer.

26 (3)] If a [tax return preparer fails to sign his or her name to any
27 return that requires the tax return preparer's signature, or a] facili-
28 tator fails to sign his or her name to any refund anticipation loan or
29 refund anticipation check facilitation documentation, then the [tax
30 return preparer or] facilitator must pay a penalty in the amount of two
31 hundred fifty dollars for each failure to so sign. Provided, however,
32 that this penalty can be waived only for good cause shown by the [tax
33 return preparer or] facilitator.

34 The maximum penalty imposed under this paragraph on any [tax return
35 preparer with respect to returns filed during any calendar year by the
36 tax return preparer, or on any] facilitator with respect to any refund
37 anticipation loan or refund anticipation check facilitation documenta-
38 tion completed during any calendar year by the facilitator must not
39 exceed ten thousand dollars. Provided, however, that if a [tax return
40 preparer or] facilitator has been penalized under this paragraph for a
41 preceding calendar year and again fails to sign his or her name on any
42 return that requires the [tax return preparer's] FACILITATOR'S signature
43 [or again fails to sign his or her name] on any refund anticipation loan
44 or refund anticipation check facilitation documentation during a subse-
45 quent calendar year, then the penalty under this paragraph for each
46 failure will be five hundred dollars, and no annual cap will apply.

47 [(4) If a tax return preparer or a facilitator fails to include the
48 unique identification number assigned by the department pursuant to
49 subparagraph (B) of paragraph two of subdivision (b) of this section on
50 any return, or any return anticipation loan or return anticipation check
51 facilitation documentation that requires his or her signature, then the
52 tax return preparer or facilitator must pay a penalty of one hundred
53 dollars for each failure to include his or her unique identification
54 number. Provided, however, that this penalty can be waived only for good
55 cause shown by the tax return preparer or facilitator. The maximum
56 penalty imposed under this paragraph on any tax return preparer or faci-

litator with respect to returns filed during any calendar year must not exceed two thousand five hundred dollars; provided, however, that if a tax return preparer or facilitator has been penalized under this paragraph for a preceding calendar year and again fails to include the unique identification number on one or more returns during a subsequent calendar year, then the penalty under this paragraph for each failure will be two hundred fifty dollars, and no annual cap will apply.

(5) If a tax return preparer, facilitator or a commercial tax return preparation business employs an individual to prepare tax returns who is not registered with the department and does not possess a valid tax preparer or facilitator registration certificate, then the tax return preparer, facilitator or commercial tax return preparation business, as applicable, will be subject to a penalty of five hundred dollars per occurrence. This penalty can be waived only for good cause shown.

(6)] (3) The penalties provided for by this subdivision must be paid upon notice and demand and will be assessed, collected and paid in the same manner as taxes under article twenty-seven of this chapter.

[(g) The provisions of this section will apply exclusively to the registration of tax return preparers and facilitators with the department, payment of the registration fee if required by commercial tax return preparers, the signing of returns and use of the unique identification numbers assigned by the department upon registration.]

(C) Other provisions of this chapter or any other provision of law prescribing additional requirements applicable to tax return preparers or facilitators will not be affected by the provisions of this section except as set forth expressly herein, and will remain in full force and effect.

S 2. Subsection (u) of section 685 of the tax law is amended by adding two new paragraphs 1 and 2 to read as follows:

(1) FAILURE TO SIGN RETURN OR CLAIM FOR REFUND. ANY INDIVIDUAL WHO IS A TAX RETURN PREPARER WITH RESPECT TO ANY RETURN OR CLAIM FOR REFUND, WHO IS REQUIRED PURSUANT TO PARAGRAPH ONE OF SUBSECTION (G) OF SECTION SIX HUNDRED FIFTY-EIGHT OF THIS ARTICLE TO SIGN SUCH RETURN OR CLAIM FOR REFUND, AND WHO FAILS TO COMPLY WITH SUCH REQUIREMENT WITH RESPECT TO SUCH RETURN OR CLAIM FOR REFUND, SHALL BE SUBJECT TO A PENALTY OF FIFTY DOLLARS FOR EACH SUCH FAILURE, UNLESS IT IS SHOWN THAT SUCH FAILURE IS DUE TO REASONABLE CAUSE AND NOT DUE TO WILLFUL NEGLECT. THE MAXIMUM PENALTY IMPOSED UNDER THIS PARAGRAPH ON ANY PERSON WITH RESPECT TO RETURNS OR CLAIMS FOR REFUND FILED DURING ANY CALENDAR YEAR SHALL NOT EXCEED TWENTY-FIVE THOUSAND DOLLARS.

(2) FAILURE TO FURNISH IDENTIFYING NUMBER. IF ANY IDENTIFYING NUMBER REQUIRED TO BE INCLUDED ON ANY RETURN OR CLAIM FOR REFUND PURSUANT TO PARAGRAPH TWO OF SUBSECTION (G) OF SECTION SIX HUNDRED FIFTY-EIGHT OF THIS ARTICLE IS NOT SO INCLUDED, THE PERSON WHO IS THE TAX RETURN PREPARER WITH RESPECT TO SUCH RETURN OR CLAIM FOR REFUND SHALL BE SUBJECT TO A PENALTY OF FIFTY DOLLARS WITH RESPECT TO SUCH RETURN OR CLAIM FOR REFUND UNLESS IT IS SHOWN THAT SUCH FAILURE IS DUE TO REASONABLE CAUSE AND NOT WILLFUL NEGLECT. FOR PURPOSES OF THIS PARAGRAPH, WHERE AN EMPLOYER AND ONE OR MORE EMPLOYEES OF SUCH EMPLOYER ARE TAX RETURN PREPARERS WITH RESPECT TO THE SAME RETURN OR CLAIM FOR REFUND OR WHERE A PARTNERSHIP AND ONE OR MORE PARTNERS IN SUCH PARTNERSHIP ARE TAX RETURN PREPARERS WITH RESPECT TO THE SAME RETURN OR CLAIM FOR REFUND, SUCH EMPLOYER OR SUCH PARTNERSHIP SHALL BE DEEMED TO BE THE SOLE TAX RETURN PREPARER WITH RESPECT TO SUCH RETURN OR CLAIM FOR REFUND. THE MAXIMUM PENALTY IMPOSED UNDER THIS PARAGRAPH ON ANY PERSON WITH RESPECT

1 TO RETURNS OR CLAIMS FOR REFUND FILED DURING ANY CALENDAR YEAR SHALL NOT
2 EXCEED TWENTY-FIVE THOUSAND DOLLARS.

3 S 3. This act shall take effect immediately.

4 PART C

5 Section 1. The article heading of article 29-A of the tax law, as
6 added by section 1 of part E of chapter 25 of the laws of 2009, is
7 amended to read as follows:

8 TAX ON MEDALLION TAXICAB [RIDES] TRIPS

9 IN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT

10 S 2. Subdivisions (d), (e), (f), and (h) of section 1280 of the tax
11 law, as added by section 1 of part E of chapter 25 of the laws of 2009,
12 are amended and five new subdivisions (i), (j), (k), (l) and (m) are
13 added to read as follows:

14 (d) "Taxicab" means a motor vehicle [carrying passengers for hire in
15 the city, duly] licensed by the [taxi and limousine commission of the
16 city] TLC TO CARRY PASSENGERS FOR HIRE and [permitted] AUTHORIZED to
17 accept hails from prospective passengers in the street.

18 (e) "Taxicab [ride] TRIP" means a taxicab [ride] TRIP provided to one
19 or more passengers [to a given destination] REGARDLESS OF THE NUMBER OF
20 STOPS, FOR WHICH THE TAXIMETER IS REQUIRED TO BE IN THE RECORDING OR
21 HIRED POSITION.

22 (f) "Taxicab owner" OR "OWNER" means [a person owning a taxicab and
23 shall include a purchaser under a reserve title contract, conditional
24 sales agreement or vendor's lien agreement. In addition, an owner shall
25 be deemed to include any lessee, licensee or bailee having the exclusive
26 use of a taxicab, under a lease or otherwise, for a period of thirty
27 days or more] AN INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY OR
28 CORPORATION LICENSED BY THE TLC TO OWN AND OPERATE A MEDALLION TAXICAB.
29 A TRUST, FOUNDATION, OR NON-PROFIT OR NOT-FOR-PROFIT ENTITY MAY NOT BE
30 AN OWNER AND MAY NOT OWN ANY INTEREST IN AN OWNER EXCEPT AS SPECIFICALLY
31 PROVIDED IN THE TLC'S REGULATIONS.

32 (h) "Taximeter" [shall include any device which, when affixed to a
33 motor vehicle, is so constructed as to operate as a fare indicator and a
34 time and distance register for the purpose of automatically determining
35 the charge for which a passenger becomes liable] MEANS AN INSTRUMENT OR
36 DEVICE APPROVED BY THE TLC BY WHICH THE CHARGE TO A PASSENGER FOR HIRE
37 OF A LICENSED TAXICAB IS AUTOMATICALLY CALCULATED AND ON WHICH SUCH
38 CHARGE IS PLAINLY INDICATED.

39 (I) "TLC" MEANS THE TAXI AND LIMOUSINE COMMISSION OF THE CITY.

40 (J) "AGENT" MEANS AN INDIVIDUAL, PARTNERSHIP, OR CORPORATION THAT
41 ACTS, BY EMPLOYMENT, CONTRACT, OR OTHERWISE, ON BEHALF OF ONE OR MORE
42 TAXICAB OWNERS TO OPERATE OR PROVIDE FOR THE OPERATION OF A LICENSED
43 MEDALLION TAXICAB IN ACCORDANCE WITH THE TLC'S RULES. "AGENT" SHALL NOT
44 INCLUDE AN ATTORNEY OR REPRESENTATIVE WHO APPEARS ON BEHALF OF ONE OR
45 MORE OWNERS BEFORE THE TLC OR THE TLC HEARING TRIBUNAL OR BEFORE THE
46 DIVISION OF TAX APPEALS, AND TAXICAB DRIVERS LICENSED PURSUANT TO CHAP-
47 TER FIVE OF TITLE NINETEEN OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW
48 YORK WHEN ACTING IN THAT CAPACITY.

49 (K) "MEDALLION" MEANS A PLATE ISSUED BY THE TLC AS THE PHYSICAL
50 EVIDENCE OF A TAXICAB LICENSE, AND AFFIXED TO THE OUTSIDE OF SUCH TAXI-
51 CAB.

52 (L) "TAXICAB LICENSE" MEANS THE AUTHORITY GRANTED BY THE TLC TO AN
53 OWNER TO OPERATE A DESIGNATED VEHICLE AS A TAXICAB IN THE CITY.

1 (M) "TRIP RECORD" ALSO KNOWN AS A TRIP SHEET OR TRIP LOG, MEANS THE
2 WRITTEN, COMPUTERIZED, AUTOMATED AND/OR ELECTRONIC ACCOUNTING OF A TAXI-
3 CAB RIDE. THE TRIP DATA TO BE TRANSMITTED OR RECORDED SHALL INCLUDE THE
4 TAXICAB LICENSE NUMBER (MEDALLION NUMBER); THE TAXICAB DRIVER'S LICENSE
5 NUMBER; THE LOCATION OF TRIP INITIATION; THE TIME OF TRIP INITIATION;
6 THE NUMBER OF PASSENGERS; THE LOCATION OF TRIP TERMINATION; THE TIME OF
7 TRIP TERMINATION; THE ITEMIZED METERED FARE FOR THE TRIP (TOLLS,
8 SURCHARGE, AND TIP IF PAID BY CREDIT OR DEBIT CARD); THE DISTANCE OF THE
9 TRIP, THE TRIP NUMBER, THE METHOD OF PAYMENT, THE TOTAL NUMBER OF
10 PASSENGERS, AS WELL AS SUCH OTHER INFORMATION AS MAY BE REQUIRED BY THE
11 TLC.

12 S 3. Section 1281 of the tax law, as added by section 1 of part E of
13 chapter 25 of the laws of 2009, is amended to read as follows:

14 S 1281. Imposition of tax. In addition to any other tax imposed by
15 this chapter or other law, there is hereby imposed on every taxicab
16 owner a tax of fifty cents per taxicab [ride] TRIP on every [ride] TRIP
17 that originates in the city and terminates anywhere within the territo-
18 rial boundaries of the MCTD.

19 S 4. Section 1282 of the tax law, as added by section 1 of part E of
20 chapter 25 of the laws of 2009, is amended to read as follows:

21 S 1282. Presumption of taxability. For the purpose of the proper
22 administration of this article and to prevent evasion of the tax imposed
23 by this article, it shall be presumed that every taxicab [ride] TRIP
24 that originates in the city is subject to the tax imposed by this arti-
25 cle. This presumption shall prevail until the contrary is proven, and
26 the burden of proving the contrary shall be on the person liable for
27 [payment of the] tax.

28 S 5. Section 1283 of the tax law, as added by section 1 of part E of
29 chapter 25 of the laws of 2009, is amended to read as follows:

30 S 1283. [Special] LIABILITY FOR TAX, SPECIAL provisions. Notwithstand-
31 ing any [provisions] PROVISION of this [article] CHAPTER to the contra-
32 ry: (a) [If a taxicab owner subject to the tax imposed by this article
33 leases, rents or otherwise furnishes a taxicab to an unrelated person
34 who uses the taxicab to provide taxicab rides originating in the city,
35 then: (1) the owner is deemed to provide such taxicab rides during the
36 day or other period that the unrelated person uses the taxicab to
37 provide such rides; (2) the tax imposed by this article shall be imposed
38 on such owner; and (3) the owner must pay the tax imposed by this arti-
39 cle on the number of rides subject to such tax provided by such unre-
40 related person during the day or other period] THE TAXICAB OWNER SHALL BE
41 LIABLE FOR THE TAX IMPOSED BY THIS ARTICLE. IF THE OWNER HAS DESIGNATED
42 AN AGENT, THEN THE AGENT SHALL BE JOINTLY LIABLE WITH THE OWNER FOR THE
43 TAX ON TRIPS OCCURRING DURING THE PERIOD THAT SUCH DESIGNATION IS IN
44 EFFECT. EVEN IF THE TLC HAS SPECIFIED THAT THE OWNER'S AGENT CANNOT
45 OPERATE AS AN AGENT, THAT AGENT SHALL BE JOINTLY LIABLE WITH THE OWNER
46 IF THE AGENT HAS ACTED FOR THE OWNER. DURING THE PERIOD THAT AN OWNER'S
47 DESIGNATION OF AN AGENT IS IN EFFECT, THE AGENT SHALL FILE THE RETURNS
48 REQUIRED BY THIS ARTICLE, BUT THE OWNER SHALL NOT BE RELIEVED OF LIABIL-
49 ITY FOR TAX, PENALTY OR INTEREST DUE UNDER THIS ARTICLE, OR FOR THE
50 FILING OF RETURNS REQUIRED TO BE FILED, UNLESS THE AGENT HAS TIMELY
51 FILED ACCURATE RETURNS AND TIMELY PAID THE TAX REQUIRED TO BE PAID UNDER
52 THIS ARTICLE. IF AN OWNER HAS DESIGNATED AN AGENT, THEN THE AGENT MUST
53 PERFORM ANY ACT THIS ARTICLE REQUIRES AN OWNER TO PERFORM, BUT THE FAIL-
54 URE OF SUCH AGENT TO PERFORM ANY SUCH ACT SHALL NOT RELIEVE THE OWNER
55 FROM THE OBLIGATION TO PERFORM SUCH ACT OR ANY LIABILITY THAT MAY ARISE
56 FROM FAILURE TO PERFORM THE ACT.

1 (b) [Notwithstanding any law to the contrary:] (1) Although the tax is
2 imposed on the taxicab owner, the taxicab owner must pass along the
3 economic incidence of the tax to the passenger by adjusting the fare for
4 the [ride] TRIP, and the passing along of such economic incidence may
5 not be construed by any court or administrative body as imposing the tax
6 on the person [or entity] that pays the fare for a [ride] TRIP. A city
7 that regulates taxicabs or taxicab fares must adjust the fares author-
8 ized to include therein the tax imposed by this article, as the rate of
9 such tax may from time to time change, and must timely require that any
10 taximeter in a taxicab used to provide [rides] TRIPS in the city be
11 adjusted to include the tax.

12 (2) A taxicab owner in such city must timely adjust the taximeter in
13 any of such person's taxicabs so that it reflects the tax imposed by
14 this article as such rate may from time to time change.

15 (3) Neither the failure of such city to adjust fares nor the failure
16 of a taxicab owner to adjust a taximeter will relieve any person liable
17 for the tax imposed by this article from the obligation to pay such tax
18 timely, at the correct rate.

19 [(c) For purposes of this section, "unrelated person" means a person
20 other than a related person as defined for purposes of section fourteen
21 of this chapter.]

22 S 6. Section 1284 of the tax law, as added by section 1 of part E of
23 chapter 25 of the laws of 2009, is amended to read as follows:

24 S 1284. Returns. Every person liable for the tax imposed by this arti-
25 cle shall file a return quarterly with the commissioner. Each return
26 shall show the number of [rides] TRIPS in the quarter for which the
27 return is filed, together with such other information as the commission-
28 er may require. The returns required by this section shall be filed for
29 quarterly periods ending on the last day of March, June, September, and
30 December of each year, and each return shall be filed within twenty days
31 after the end of the quarterly period covered thereby. Every such person
32 shall also file a return with the commissioner for the period of Novem-
33 ber and December two thousand nine, by January twentieth, two thousand
34 ten, containing the information described above. If the commissioner
35 deems it necessary in order to ensure the payment of the tax imposed by
36 this article, the commissioner may require returns to be made for short-
37 er periods than prescribed by the foregoing provisions of this section,
38 and upon such dates as the commissioner may specify. The form of returns
39 shall be prescribed by the commissioner and shall contain such informa-
40 tion as the commissioner may deem necessary for the proper adminis-
41 tration of this article. The commissioner may require amended returns to
42 be filed within twenty days after notice and to contain the information
43 specified in the notice. The commissioner may require that the returns
44 be filed electronically.

45 S 7. Section 1285 of the tax law, as added by section 1 of part E of
46 chapter 25 of the laws of 2009, is amended to read as follows:

47 S 1285. Payment of tax. Every person required to file a return under
48 this article shall, at the time of filing such return, pay to the
49 commissioner the total of all tax imposed by this article, on the
50 correct number of [rides] TRIPS subject to tax under this article. The
51 amount so payable to the commissioner for the period for which a return
52 is required to be filed shall be due and payable to the commissioner on
53 the date limited for the filing of the return for such period, without
54 regard to whether a return is filed or whether the return which is filed
55 correctly shows the correct number of [rides] TRIPS or the amount of tax

1 due thereon. The commissioner may require that the tax be paid electron-
2 ically.

3 S 8. Section 1286 of the tax law, as added by section 1 of part E of
4 chapter 25 of the laws of 2009, is amended to read as follows:

5 S 1286. Records to be kept. Every person [required to pay] LIABLE FOR
6 any tax imposed by this article shall keep:

7 (A) records of every [ride] TAXICAB TRIP originating in the city and
8 of all amounts paid, charged or due thereon and of the tax payable ther-
9 eon, in such form as the commissioner may require[. Every such person
10 shall also keep];

11 (B) a true and complete copy of every contract, agreement, or arrange-
12 ment concerning the lease, rental, or license to use a taxicab for which
13 the person is required to remit the tax on [rides] TRIPS imposed by this
14 article on such person;

15 (C) A TRUE AND COMPLETE COPY OF EVERY CONTRACT, AGREEMENT, OR ARRANGE-
16 MENT CONCERNING THE APPOINTMENT OF AN AGENT; AND

17 (D) ANY RECORDS REQUIRED TO BE KEPT BY THE TLC.

18 Such records shall be available for inspection and examination at any
19 time upon demand by the commissioner or the commissioner's duly author-
20 ized agent or employee and shall be preserved for a period of three
21 years, except that the commissioner may consent to their destruction
22 within that period or may require that they be kept longer. Such records
23 may be kept within the meaning of this section when reproduced on any
24 photographic, photostatic, microfilm, micro-card, miniature photographic
25 or other process which actually reproduces the original record. If those
26 records are maintained in an electronic format, they must be made avail-
27 able and accessible to the commissioner in electronic format.

28 S 9. Subdivision (b) of section 1287 of the tax law, as added by
29 section 1 of part E of chapter 25 of the laws of 2009, is amended to
30 read as follows:

31 (b) Notwithstanding the provisions of subdivision (a) of this section,
32 the commissioner may, in his or her discretion, permit the proper offi-
33 cer of a city that regulates taxicabs or the duly authorized represen-
34 tative of such officer, to inspect any return filed under this article,
35 or may furnish to such officer or such officer's authorized represen-
36 tative an abstract of any such return or supply such person with infor-
37 mation concerning an item contained in any such return, or disclosed by
38 any investigation of tax liability under this article; but such permis-
39 sion shall be granted or such information furnished only if such city
40 shall have furnished the commissioner with all information requested by
41 the commissioner pursuant to this article and shall have permitted the
42 commissioner or the commissioner's authorized representative to make any
43 inspection of any records or reports concerning taxicabs, [and their]
44 owners [or operators], AND AGENTS filed with or possessed by such city
45 which the commissioner may have requested from such city.

46 S 10. Section 1289 of the tax law, as added by section 1 of part E of
47 chapter 25 of the laws of 2009, is amended to read as follows:

48 S 1289. Cooperation by city. The city AND THE TLC shall cooperate with
49 and assist the commissioner to effect the purposes of this article and
50 the commissioner's responsibilities under this article. Such cooperation
51 shall include furnishing the names, addresses and all other information
52 concerning every owner, operator and driver of taxicabs in the city, AND
53 CONCERNING EVERY AGENT, AND THE TRIP RECORDS AND OTHER RECORDS OF ANY OF
54 THEM, IN THE CITY'S POSSESSION OR IN THE POSSESSION OF ANY OF ITS AGEN-
55 CIES OR INSTRUMENTALITIES, together with any other information the
56 commissioner requests, all without cost to the commissioner.

1 S 11. This act shall take effect on the same date and in the same
2 manner as section 1 of part E of chapter 25 of the laws of 2009, as
3 amended takes effect, and shall apply to taxicab trips commencing on or
4 after that date.

5 PART D

6 Section 1. The opening paragraph of subdivision 1 of section 72-0303
7 of the environmental conservation law, as amended by section 1 of part
8 BBB of chapter 59 of the laws of 2009, is amended to read as follows:

9 Commencing January first, nineteen hundred ninety-four and every year
10 thereafter all sources of regulated air contaminants identified pursuant
11 to subdivision one of section 19-0311 of this chapter shall submit to
12 the department an annual fee [of forty-five dollars per ton] NOT TO
13 EXCEED THE PER TON FEES DESCRIBED BELOW. THE PER TON FEE IS ASSESSED ON
14 EMISSIONS up to seven thousand tons annually of each regulated air
15 contaminant as follows: forty-five dollars per ton for facilities with
16 total emissions less than one thousand tons annually; fifty dollars per
17 ton for facilities with total emissions of one thousand or more but less
18 than two thousand tons annually; fifty-five dollars per ton for facili-
19 ties with total emissions of two thousand or more but less than five
20 thousand tons annually; and sixty-five dollars per ton for facilities
21 with total emissions of five thousand or more tons annually. Such fee
22 shall be sufficient to support an appropriation approved by the legisla-
23 ture for the direct and indirect costs associated with the operating
24 permit program established in section 19-0311 of this chapter. Such fee
25 shall be established by the department and shall be calculated by divid-
26 ing the amount of the current year appropriation from the operating
27 permit program account of the clean air fund by the total tons of emis-
28 sions of regulated air contaminants that are subject to the operating
29 permit program fees from sources subject to the operating permit program
30 pursuant to section 19-0311 of this chapter up to seven thousand tons
31 annually of each regulated air contaminant from each source; provided
32 that, in making such calculation, the department shall adjust their
33 calculation to account for any deficit or surplus in the operating
34 permit program account of the clean air fund established pursuant to
35 section ninety-seven-00 of the state finance law; any loan repayment
36 from the mobile source account of the clean air fund established pursu-
37 ant to section ninety-seven-00 of the state finance law; and the rate of
38 collection by the department of the bills issued for the fee for the
39 prior year.

40 S 2. This act shall take effect on the same date and in the same
41 manner as part BBB of chapter 59 of the laws of 2009, takes effect.

42 S 2. Severability clause. If any clause, sentence, paragraph, subdivi-
43 sion, section or part of this act shall be adjudged by any court of
44 competent jurisdiction to be invalid, such judgment shall not affect,
45 impair, or invalidate the remainder thereof, but shall be confined in
46 its operation to the clause, sentence, paragraph, subdivision, section
47 or part thereof directly involved in the controversy in which such judg-
48 ment shall have been rendered. It is hereby declared to be the intent of
49 the legislature that this act would have been enacted even if such
50 invalid provisions had not been included herein.

51 S 3. This act shall take effect immediately provided, however, that
52 the applicable effective date of Parts A through D of this act shall be
53 as specifically set forth in the last section of such Parts.