

5326

2011-2012 Regular Sessions

I N A S S E M B L Y

February 15, 2011

Introduced by M. of A. RABBITT -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, the administrative code of the city of New York, the education law, the highway law, the public authorities law and the state finance law, in relation to eliminating the metropolitan commuter transportation mobility tax; and to repeal certain provisions of the tax law, the administrative code of the city of New York, the education law, the public authorities law and the state finance law, relating thereto

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

- 1 Section 1. Article 23 of the tax law is REPEALED.
2 S 2. Clause (i) of subparagraph 5 of paragraph (a) of subdivision 9 of
3 section 208 of the tax law, as amended by section 2 of part C of chapter
4 25 of the laws of 2009, is amended to read as follows:
5 (i) any refund or credit of a tax imposed under this article[, article
6 twenty-three,] or article thirty-two of this chapter, for which tax no
7 exclusion or deduction was allowed in determining the taxpayer's entire
8 net income under this article[, article twenty-three,] or article thirty-two of this chapter for any prior year,
9
10 S 3. Subparagraph 20 of paragraph (b) of subdivision 9 of section 208
11 of the tax law is REPEALED.
12 S 4. Paragraph 2 of subdivision (a) of section 292 of the tax law, as
13 amended by section 4 of part C of chapter 25 of the laws of 2009, is
14 amended to read as follows:
15 (2) There shall be subtracted from federal unrelated business taxable
16 income the amount of any refund or credit for overpayment of a tax
17 imposed under this article [or article twenty-three of this chapter].
18 S 5. Paragraph 8 of subdivision (a) of section 292 of the tax law is
19 REPEALED.

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

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1 S 6. Paragraph 39 of subsection (b) of section 612 of the tax law is
2 REPEALED.

3 S 7. Paragraph 7 of subsection (c) of section 612 of the tax law, as
4 amended by section 7 of part C of chapter 25 of the laws of 2009, is
5 amended to read as follows:

6 (7) The amount of any refund or credit for overpayment of income taxes
7 imposed by this state, or any other taxing jurisdiction, [and any taxes
8 imposed by article twenty-three of this chapter,] to the extent properly
9 included in gross income for federal income tax purposes.

10 S 8. Paragraph 8 of subsection (c) of section 615 of the tax law is
11 REPEALED.

12 S 9. Subsection 4 of section 618 of the tax law, as amended by section
13 9 of part C of chapter 25 of the laws of 2009, is amended to read as
14 follows:

15 (4) There shall be added or subtracted (as the case may be) the
16 modifications described in paragraphs (6), (10), (17), (18), (19), (20),
17 (21), (22), (23), (24), (25), (26), (27), (29)[,] AND (38) [and (39)] of
18 subsection (b) and in paragraphs (11), (13), (15), (19), (20), (21),
19 (22), (23), (24), (25), (26) and (28) of subsection (c) of section six
20 hundred twelve of this part.

21 S 10. Subsection 4 of section 618 of the tax law, as separately
22 amended by section 5 of part HH-1 of chapter 57 of the laws of 2008 and
23 section 9 of part C of chapter 25 of the laws of 2009, is amended to
24 read as follows:

25 (4) There shall be added or subtracted (as the case may be) the
26 modifications described in paragraphs (6), (10), (17), (18), (19), (20),
27 (21), (22), (23), (24), (25), (26), (27), (28), (29)[,] AND (38) [and
28 (39)] of subsection (b) and in paragraphs (11), (13), (15), (19), (20),
29 (21), (22), (23), (24), (25), (26) and (28) of subsection (c) of section
30 six hundred twelve of this part.

31 S 11. Subsection (a) of section 686 of the tax law, as amended by
32 section 10 of part C of chapter 25 of the laws of 2009, is amended to
33 read as follows:

34 (a) General.-- The commissioner [of taxation and finance], within the
35 applicable period of limitations, may credit an overpayment of income
36 tax and interest on such overpayment against any liability in respect of
37 any tax imposed by this chapter[, including taxes imposed under article
38 twenty-three of this chapter,] on the person who made the overpayment,
39 against any liability in respect of any tax imposed pursuant to the
40 authority of this chapter or any other law on such person if such tax is
41 administered by the commissioner of taxation and finance and, as
42 provided in sections one hundred seventy-one-c, one hundred
43 seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f and
44 one hundred seventy-one-l of this chapter, against past-due support, a
45 past-due legally enforceable debt, a city of New York tax warrant judg-
46 ment debt, and against the amount of a default in repayment of a guaran-
47 teed student, state university or city university loan. The balance
48 shall be refunded by the comptroller out of the proceeds of the tax
49 retained by him for such general purpose. Any refund under this section
50 shall be made only upon the filing of a return and upon a certificate of
51 the commissioner approved by the comptroller. The comptroller, as a
52 condition precedent to the approval of such a certificate, may examine
53 into the facts as disclosed by the return of the person who made the
54 overpayment and other information and data available in the files of the
55 commissioner.

1 S 12. Paragraph 15 of subsection (b) of section 1453 of the tax law is
2 REPEALED.

3 S 13. Subsection (d) of section 1453 of the tax law, as amended by
4 section 13 of part C of chapter 25 of the laws of 2009, is amended to
5 read as follows:

6 (d) Entire net income shall not include any refund or credit of a tax
7 for which no exclusion or deduction was allowed in determining the
8 taxpayer's entire net income under this article or [articles nine-A or
9 twenty-three] ARTICLE NINE-A of this chapter for any prior year.

10 S 14. Subparagraph (C) of paragraph 1 of subdivision (b) of section
11 1503 of the tax law, as amended by section 14 of part C of chapter 25 of
12 the laws of 2009, is amended to read as follows:

13 (C) any refund or credit of a tax imposed under this article or
14 section one hundred eighty-seven[, or article twenty-three] of this
15 chapter heretofore in effect to the extent properly included as income
16 for federal income tax purposes, for which no exclusion or deduction was
17 allowed in determining the taxpayer's entire net income under this arti-
18 cle for any prior year;

19 S 15. Subparagraph (V) of paragraph 2 of subdivision (b) of section
20 1503 of the tax law is REPEALED.

21 S 16. Subparagraph 5 of paragraph (a) of subdivision 8 of section
22 11-602 of the administrative code of the city of New York, as amended by
23 section 16 of part C of chapter 25 of the laws of 2009, is amended to
24 read as follows:

25 (5) any refund or credit of a tax imposed under this chapter, or
26 imposed by article nine, nine-A[, twenty-three,] or thirty-two of the
27 tax law, for which tax no exclusion or deduction was allowed in deter-
28 mining the taxpayer's entire net income under this subchapter or
29 subchapter three of this chapter for any prior year;

30 S 17. Subparagraph 19 of paragraph (b) of subdivision 8 of section
31 11-602 of the administrative code of the city of New York is REPEALED.

32 S 18. Paragraph 16 of subdivision (b) of section 11-641 of the admin-
33 istrative code of the city of New York is REPEALED.

34 S 19. Subdivision (d) of section 11-641 of the administrative code of
35 the city of New York, as amended by section 19 of part C of chapter 25
36 of the laws of 2009, is amended to read as follows:

37 (d) Entire net income shall not include any refund or credit of a tax
38 for which no exclusion or deduction was allowed in determining the
39 taxpayer's entire net income under this subchapter or subchapter two of
40 this chapter[, or imposed by article twenty-three of the tax law] for
41 any prior year.

42 S 20. Paragraph 35 of subdivision (b) of section 11-1712 of the admin-
43 istrative code of the city of New York is REPEALED.

44 S 21. Paragraph 7 of subdivision (c) of section 11-1712 of the admin-
45 istrative code of the city of New York, as amended by section 21 of part
46 C of chapter 25 of the laws of 2009, is amended to read as follows:

47 (7) The amount of any refund or credit for overpayment of income taxes
48 imposed by this city, OR any other taxing jurisdiction, [or any taxes
49 imposed by article twenty-three of the tax law] to the extent properly
50 included in gross income for federal income tax purposes.

51 S 22. Clauses (ii), (iv) and (v) of subparagraph (B) of paragraph 1 of
52 subdivision (o) of section 11-1712 of the administrative code of the
53 city of New York, clause (ii) as amended by chapter 333 of the laws of
54 1987, clauses (iv) and (v) as relettered by section 60 and such section
55 as renumbered by section 43 of chapter 639 of the laws of 1986, are
56 amended to read as follows:

1 (ii) is, at the date of adoption of such plan, subject to taxation
2 (whether or not any amount is owing) under section one hundred eighty-
3 three[,] OR one hundred eighty-four [or one hundred eighty-six of arti-
4 cle nine] of the tax law, or under article nine-a of the tax law [or
5 article twenty-three of the tax law, or would have been subject to tax
6 under article twenty-three of such law (as such article was in effect on
7 January first, nineteen hundred eighty) if such article were still in
8 effect], and the first taxable period for which such new business became
9 subject to such taxation commenced on or after July first, nineteen
10 hundred eighty-one and before January first, nineteen hundred eighty-
11 eight, and such first taxable period includes the date of adoption of
12 such plan; if not so subject to taxation, the new business must be
13 subject to taxation under such sections or articles for the first time
14 within one year from the date of adoption of such plan, and

15 (iv) within ninety days after adoption of such plan, or, if a return
16 is required, as part of such return, under [such] article nine[,] OR
17 article nine-a [or article twenty-three] OF THE TAX LAW, whichever is
18 sooner, shall file a new business certificate with the tax commission
19 attesting to whether it meets, if subject to taxation under such arti-
20 cles, or intends to meet, if not so subject, all of the conditions stat-
21 ed in clauses (i), (ii) and (iii) of this subparagraph within the time
22 set forth therein. Thereafter, during the first four taxable years of
23 such new business, along with, and as part of, any return required under
24 such articles, such new business shall make and file a new business
25 certificate for the period covered by such return attesting to whether
26 it has met the conditions specified in this subparagraph during the
27 taxable period covered by such return. If no return is required under
28 such articles, such certificate shall be filed annually on or before the
29 fifteenth day of March which shall cover the twelve consecutive calendar
30 month period ending on the last day of December immediately preceding
31 such March fifteenth. If such new business fails to meet such conditions
32 specified in this subparagraph, it shall, in addition, give notice of
33 this fact, within the time prescribed by the tax commission, to the
34 holders of its "new business investments." The tax commission shall
35 prescribe the form and content of such new business certification and
36 may require a new business to file such certificate for periods (even if
37 no return is filed or required, but for this section) covering up to
38 eight years from the date of adoption of such plan, as in its
39 discretion, it deems the same necessary for the enforcement of this
40 section, and

41 (v) Special rules:

42 (1) For any taxable period, in order to constitute a new business, a
43 business enterprise must have derived more than sixty percent of its
44 aggregate gross receipts from sources other than royalties, rents, divi-
45 dends, interest, annuities and sales or exchanges of stock or securi-
46 ties.

47 (2) A new business does not include: (i) any new business of which
48 twenty-five percent or more of the number of shares of stock that enti-
49 tle the holders thereof to vote for the election of directors or trus-
50 tees is owned, directly or indirectly, by a taxpayer subject to tax
51 under section one hundred eighty-three, one hundred eighty-four[,] OR
52 one hundred eighty-five [or one hundred eighty-six of article nine] of
53 the tax law, or under article nine-a, thirty-two or thirty-three of the
54 tax law or (ii) any new business substantially similar in operation and
55 in ownership, directly or indirectly, to a business entity (or entities)
56 taxable, or previously taxable, under such section, such article[, arti-

cle twenty-three of the tax law] or which would have been subject to [tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or] the income (or losses) of which is (or was) includible under article twenty-two of [such] THE tax law whereby the intent and purpose of this section would be evaded.

S 23. Subdivision (p) of section 11-1712 of the administrative code of the city of New York, as amended by chapter 333 of the laws of 1987, is amended to read as follows:

(p) New business investment deferral. For taxable years beginning before January first, nineteen hundred eighty-eight, at the option of the taxpayer, there may be subtracted from federal adjusted gross income a reinvested amount of long-term capital gain realized in a taxable year from the sale of a capital asset, as such term is defined in section twelve hundred twenty-one of the internal revenue code, which is not a new business investment. A reinvested amount of long-term capital gain shall mean an amount which bears the same ratio to the long-term capital gain realized from the sale of a capital asset which was includible in New York adjusted gross income as that portion of the sale proceeds which is reinvested, within one year from date of sale, in a New York new business bears to the total sale proceeds. For the purposes of this subdivision, a New York new business is a business enterprise which: (1) has been a taxpayer under article nine-A, twenty-two, thirty-two or thirty-three of the tax law for no more than three taxable years (including short taxable years), (2) over fifty percent of the number of shares of stock that entitle the holders thereof to vote for the election of directors or trustees is not owned, directly or indirectly, by a taxpayer subject to tax under section one hundred eighty-three, one hundred eighty-four[,] OR one hundred eighty-five [or one hundred eighty-six of article nine] of the tax law, or under article nine-A, thirty-two or thirty-three of the tax law, (3) is not substantially similar in operation or ownership, directly or indirectly, to a business entity (or entities) taxable, or previously taxable, under such sections, such articles[, article twenty-three of the tax law] or which would have been subject to [tax under article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or] the income (or losses) of which is (or was) includible under article twenty-two of the tax law whereby the intent and purpose of this subdivision would be evaded, (4) locates and employs at least ninety percent of its assets in the state, (5) employs principally in the state eighty percent of its employees (as ascertained within the meaning and intent of subparagraph three of paragraph (a) of subdivision three of section two hundred ten of the tax law and, in addition, in the case of a partnership, excluding partners), and (6) derives less than forty percent of its gross income from dividends, interest, royalties (other than mineral, oil, or gas royalties or copyright royalties), annuities and (7) reports at least twenty-five hundred dollars in gross income in any taxable year. The reinvested amount must qualify as a capital asset as defined pursuant to section twelve hundred twenty-one of the internal revenue code and must be retained by the taxpayer for at least twelve months. The modification allowable under this subdivision shall be utilized with respect to the taxable year in which the twelve month retention period ends.

S 24. Subdivision 4 of section 11-1718 of the administrative code of the city of New York, as amended by section 22 of part C of chapter 25 of the laws of 2009, is amended to read as follows:

(4) There shall be added or subtracted (as the case may be) the modifications described in paragraphs six, ten, seventeen, eighteen,

1 nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four,
2 twenty-five, twenty-six, twenty-seven, twenty-nine[,] AND thirty-four
3 [and thirty-five] of subdivision (b) and in paragraphs eleven, thirteen,
4 fifteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twen-
5 ty-four, twenty-five, twenty-six and twenty-eight of subdivision (c) of
6 section 11-1712 of this subchapter.

7 S 25. Subdivision 4 of section 11-1718 of the administrative code of
8 the city of New York, as separately amended by section 12 of part HH-1
9 of chapter 57 of the laws of 2008 and section 22 of part C of chapter 25
10 of the laws of 2009, is amended to read as follows:

11 (4) There shall be added or subtracted (as the case may be) the
12 modifications described in paragraphs six, ten, seventeen, eighteen,
13 nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four,
14 twenty-five, twenty-seven, twenty-eight, twenty-nine[,] AND thirty-four
15 [and thirty-five] of subdivision (b) and in paragraphs eleven, thirteen,
16 fifteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twen-
17 ty-four, twenty-five, twenty-six and twenty-eight of subdivision (c) of
18 section 11-1712 of this subchapter.

19 S 26. Subparagraphs 16, 17 and 18 of paragraph t of subdivision 1 of
20 section 3602 of the education law, as amended by section 2 of part D of
21 chapter 25 of the laws of 2009, is amended to read as follows:

22 (16) any tuition payments made pursuant to a contract under the
23 provisions of paragraphs e, f, g, h, i and l of subdivision two of
24 section forty-four hundred one of this chapter or any tuition payments
25 on behalf of pupils attending a state school under paragraph d of such
26 subdivision; AND (17) in any year in which expenditures are made to the
27 New York state teachers' retirement system or the New York state and
28 local employees' retirement system for both the prior school year and
29 the current school year, any expenditures made to such retirement
30 systems and recorded in the school year prior to the school year in
31 which such obligations are paid[; and (18) any payments to the commis-
32 sioner of taxation and finance pursuant to article twenty-three of the
33 tax law].

34 S 27. Section 3609-g of the education law is REPEALED.

35 S 28. Paragraph (e) of subdivision 7 of section 38 of the highway law,
36 as amended by chapter 196 of the laws of 1981 and as relettered by chap-
37 ter 153 of the laws of 1984, is amended to read as follows:

38 (e) No such certificate approving or authorizing the first partial
39 payment or any final payment to a foreign contractor shall be made
40 unless such contractor shall furnish satisfactory proof that all taxes
41 due the state tax commission by such contractor, under the provisions of
42 or pursuant to a law enacted pursuant to the authority of article nine,
43 nine-a, twelve-a, [sixteen, sixteen-a,] twenty-one, twenty-two, [twen-
44 ty-three,] twenty-eight, twenty-nine or thirty of the tax law [or arti-
45 cle two-E of the general city law] have been paid. The certificate of
46 the state tax commission to the effect that all such taxes have been
47 paid shall be, for THE purpose of this paragraph, conclusive proof of
48 the payment of such taxes. The term "foreign contractor" as used in this
49 subdivision means, in the case of an individual, a person who is not a
50 resident of this state, in the case of a partnership, one having one or
51 more partners not a resident of this state, and in the case of a corpo-
52 ration, one not organized under the laws of this state.

53 S 29. Section 1270-h of the public authorities law is REPEALED.

54 S 30. Section 92-ff of the state finance law is REPEALED.

55 S 31. Paragraphs 1 and 2 and subparagraph (B) of paragraph 4 of subdi-
56 vision (j) of section 14 of the tax law, paragraphs 1 and 2 as amended

by section 10 of part CC of chapter 85 of the laws of 2002 and subparagraph (B) of paragraph 4 as amended by chapter 161 of the laws of 2005, are amended to read as follows:

(1) A new business shall include any corporation, except a corporation which is substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable, under section one hundred eighty-three, one hundred eighty-four[,], OR one hundred eighty-five [or one hundred eighty-six of article nine] OF THIS CHAPTER; article nine-A, article thirty-two or thirty-three of this chapter; [article twenty-three of this chapter] or which would have been subject to [tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or] the income (or losses) of which is (or was) includable under article twenty-two of this chapter.

(2) For purposes of article twenty-two of this chapter, an individual who is either a sole proprietor or a member of a partnership shall qualify as an owner of a new business unless the business of which the individual is an owner is substantially similar in operation and in ownership to a business entity taxable, or previously taxable, under section one hundred eighty-three, one hundred eighty-four[,], OR one hundred eighty-five [or one hundred eighty-six of article nine] OF THIS CHAPTER; article nine-A, thirty-two or thirty-three of this chapter; [article twenty-three of this chapter] or which would have been subject to [tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or] the income (or losses) of which is (or was) includable under article twenty-two OF THIS CHAPTER.

(B) Notwithstanding any provisions of this subdivision to the contrary and notwithstanding subdivision c of section eighteen of part CC of chapter eighty-five of the laws of two thousand two, a corporation or partnership, which was first certified under article eighteen-B of the general municipal law before August first, two thousand two, has a base period of zero years or zero employment for its base period, and is similar in operation and in ownership to a business entity or entities taxable, or previously taxable, under sections specified in paragraph one or two of this subdivision or which would have been subject to [tax under article twenty-three of this chapter (as such article was in effect on January first, nineteen hundred eighty) or] the income or losses of which is or was includable under article twenty-two of this chapter shall not be deemed a new business if it was not formed for a valid business purpose, as such term is defined in clause (D) of subparagraph one of paragraph (o) of subdivision nine of section two hundred eight of this chapter and was formed solely to gain empire zone benefits.

S 32. Paragraph (c) of subdivision 1-c of section 210 of the tax law, as amended by chapter 1043 of the laws of 1981, is amended to read as follows:

(c) is not a corporation which is substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable, under this article; section one hundred eighty-three, one hundred eighty-four[,], OR one hundred eighty-five [or one hundred eighty-six of article nine] OF THIS CHAPTER; article thirty-two or thirty-three of this chapter; [article twenty-three of this chapter] or which would have been subject to [tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or] the income (or losses) of which is (or was) includable under article twenty-two of this chapter, and

1 S 33. Subparagraph 2 of paragraph (j) of subdivision 12 of section 210
2 of the tax law, as amended by chapter 1043 of the laws of 1981, is
3 amended to read as follows:

4 (2) is substantially similar in operation and in ownership to a busi-
5 ness entity (or entities) taxable, or previously taxable, under this
6 article; section one hundred eighty-three, one hundred eighty-four[,] OR
7 one hundred eighty-five [or one hundred eighty-six of article nine] OF
8 THIS CHAPTER; article thirty-two or thirty-three of this chapter; [arti-
9 cle twenty-three of this chapter] or which would have been subject to
10 [tax under such article twenty-three (as such article was in effect on
11 January first, nineteen hundred eighty) or] the income (or losses) of
12 which is (or was) includable under article twenty-two of this chapter
13 whereby the intent and purpose of this paragraph and paragraph (e) of
14 this subdivision with respect to refunding of credit to new business
15 would be evaded; or

16 S 34. Subdivision 2-a of section 280-a of the tax law, as amended by
17 chapter 267 of the laws of 1987, is amended to read as follows:

18 2-a. In addition to the rebate allowable under the provisions of
19 subdivision one of this section, the portion of the amount of stock
20 transfer tax paid which is to be allowed as a rebate to any person,
21 firm, company or corporation registered with the United States securi-
22 ties and exchange commission in accordance with subsection (b) of
23 section fifteen of the securities exchange act of nineteen hundred thir-
24 ty-four, as amended, and acting as a dealer in a transaction described
25 in paragraph (e) of subdivision twelve of this section, other than such
26 a person, firm, company or corporation liable to file a report or return
27 under article nine-A of this chapter, [or article twenty-three of this
28 chapter, (as such article was in effect on or before December thirtieth,
29 nineteen hundred eighty-two),] shall be one hundred percent of the stock
30 transfer tax incurred and paid on transactions subject to the stock
31 transfer tax executed by such person, firm, company or corporation
32 pursuant to the acceptance of an order placed through an intermarket
33 linkage system developed pursuant to subsection (a) of section eleven-A
34 of such securities exchange act under a plan submitted by one or more
35 national securities exchanges or national securities associations regis-
36 tered with such securities and exchange commission occurring on and
37 after April seventeenth, nineteen hundred seventy-eight and on or before
38 September thirtieth, nineteen hundred seventy-nine, seventy percent of
39 the tax incurred and paid on such a transaction occurring on and after
40 October first, nineteen hundred seventy-nine and on or before September
41 thirtieth, nineteen hundred eighty and forty percent of the tax incurred
42 and paid on such a transaction occurring on and after October first,
43 nineteen hundred eighty and on or before September thirtieth, nineteen
44 hundred eighty-one. Notwithstanding any other provision of law, the net
45 amount to be rebated to any such person, firm, company or corporation
46 under this subdivision with respect to stock transfer tax allowable as
47 rebates during each of the periods ending on September thirtieth
48 hereinbefore set forth shall not be allowed or paid prior to the first
49 day of the eighth month following September thirtieth of each of such
50 periods nor until the subsequent date on which the commissioner of taxa-
51 tion and finance shall next determine the amount allowable as rebates
52 pursuant to the provisions of section ninety-two-i of the state finance
53 law, provided, however, that the net amount to be allowed for the April
54 seventeenth, nineteen hundred seventy-eight through September thirtieth,
55 nineteen hundred seventy-eight period shall not be allowed or paid until
56 the last business day of June, nineteen hundred seventy-nine.

1 No rebate shall be allowed under this subdivision with respect to any
2 stock transfer tax incurred in a market making transaction occurring on
3 or after October first, nineteen hundred eighty-one. No rebate shall be
4 allowed or paid under this subdivision for stock transfer tax paid
5 pursuant to section two hundred seventy-nine-a of this chapter nor shall
6 any rebate be allowed or paid until the person, firm, company or corpo-
7 ration claiming the rebate complies with the rules, regulations and
8 instructions of the state tax commission issued under this article
9 including furnishing of a just and true book of account within the state
10 as may be required by the state tax commission.

11 S 35. Subparagraph (A) of paragraph 10 of subsection (a) of section
12 606 of the tax law, as amended by section 3 of part CC of chapter 85 of
13 the laws of 2002, is amended to read as follows:

14 (A) the business of which the individual is an owner is substantially
15 similar in operation and in ownership to a business entity taxable, or
16 previously taxable, under section one hundred eighty-three, one hundred
17 eighty-four[,], OR one hundred eighty-five [or one hundred eighty-six of
18 article nine] OF THIS CHAPTER; article nine-A, thirty-two or thirty-
19 three of this chapter; [article twenty-three of this chapter] or which
20 would have been subject to [tax under such article twenty-three (as such
21 article was in effect on January first, nineteen hundred eighty) or] the
22 income (or losses) of which is (or was) includable under THIS article
23 [twenty-two] of this chapter whereby the intent and purpose of this
24 paragraph and paragraph five of this subsection with respect to refund-
25 ing of credit to new business would be evaded; or

26 S 36. Clauses (ii), (iv) and subclause 2 of clause (v) of subparagraph
27 (B) of paragraph 1 of subsection (o) of section 612 of the tax law,
28 clause (ii) as amended by chapter 28 of the laws of 1987, clause (iv) as
29 amended by chapter 267 of the laws of 1987 and subclause 2 of clause (v)
30 as amended by chapter 1043 of the laws of 1981, are amended to read as
31 follows:

32 (ii) is, at the date of adoption of such plan, subject to taxation
33 (whether or not any amount is owing) under section one hundred eighty-
34 three[,], OR one hundred eighty-four [or one hundred eighty-six of arti-
35 cle nine] of this chapter, or under article nine-a of this chapter [or
36 article twenty-three of this chapter, or would have been subject to tax
37 under article twenty-three (as such article was in effect on January
38 first, nineteen hundred eighty) if such article were still in effect],
39 and the first taxable period for which such new business became subject
40 to such taxation commenced on or after July first, nineteen hundred
41 eighty-one and before January first, nineteen hundred eighty-eight, and
42 such first taxable period includes the date of adoption of such plan; if
43 not so subject to taxation, the new business must be subject to taxation
44 under such sections or articles for the first time within one year from
45 the date of adoption of such plan, and

46 (iv) within ninety days after the adoption of such plan, or, if a
47 return is required, as part of such return, under such article nine[,],
48 OR article nine-A [or article twenty-three (as such article was in
49 effect on or before December thirtieth, nineteen hundred eighty-two),
50 whichever is sooner] OF THIS CHAPTER, shall file a new business certif-
51 icate with the state tax commission attesting to whether it meets, if
52 subject to taxation under such articles, or intends to meet, if not so
53 subject, all of the conditions stated in clauses (i), (ii) and (iii) of
54 this subparagraph within the time set forth therein. Thereafter, during
55 the first four taxable years of such new business, along with, and as
56 part of, any return required under such articles, such new business

1 shall make and file a new business certificate for the period covered by
2 such return attesting to whether it has met the conditions specified in
3 this subparagraph during the taxable period covered by such return. If
4 no return is required under such articles, such certificate shall be
5 filed annually on or before the fifteenth day of March which shall cover
6 the twelve consecutive calendar month period ending on the last day of
7 December immediately preceding such March fifteenth. If such new busi-
8 ness fails to meet such conditions specified in this subparagraph, it
9 shall, in addition, give notice of this fact, within the time prescribed
10 by the state tax commission, to the holders of its "new business invest-
11 ments." The state tax commission shall prescribe the form and content of
12 such new business certification and may require a new business to file
13 such certificate for periods (even if no return is filed or required,
14 but for this section) covering up to eight years from the date of
15 adoption of such plan, as in its discretion, it deems the same necessary
16 for the enforcement of this subparagraph, and

17 (2) A new business does not include (i) any new business of which
18 twenty-five percent or more of the number of shares of stock that enti-
19 tle the holders thereof to vote for the election of directors or trus-
20 tees is owned, directly or indirectly, by a taxpayer subject to tax
21 under section one hundred eighty-three, one hundred eighty-four[,], OR
22 one hundred eighty-five [or one hundred eighty-six of article nine] of
23 this chapter, or under article nine-A, thirty-two or thirty-three of
24 this chapter or (ii) any new business substantially similar in operation
25 and in ownership, directly or indirectly, to a business entity (or enti-
26 ties) taxable, or previously taxable, under such sections, such arti-
27 cles, [article twenty-three] or which would have been subject to [tax
28 under article twenty-three (as such article was in effect on January
29 first, nineteen hundred eighty) or] the income (or losses) of which is
30 (or was) includable under THIS article [twenty-two] whereby the intent
31 and purpose of this subsection would be evaded.

32 S 37. Subsection (p) of section 612 of the tax law, as amended by
33 chapter 28 of the laws of 1987, is amended to read as follows:

34 (p) New business investment deferral. For taxable years beginning
35 before January first, nineteen hundred eighty-eight, at the option of
36 the taxpayer, there may be subtracted from federal adjusted gross income
37 a reinvested amount of long-term capital gain realized in a taxable year
38 from the sale of a capital asset, as such term is defined in section
39 1221 of the internal revenue code, which is not a new business invest-
40 ment. A reinvested amount of long-term capital gain shall mean an amount
41 which bears the same ratio to the long-term capital gain realized from
42 the sale of a capital asset which was includable in New York adjusted
43 gross income as that portion of the sale proceeds which is reinvested,
44 within one year from date of sale, in a New York new business bears to
45 the total sale proceeds. For the purposes of this subsection, a New York
46 new business is a business enterprise which (1) has been a taxpayer
47 under this article for no more than three taxable years (including short
48 taxable years), (2) over fifty percent of the number of shares of stock
49 that entitle the holders thereof to vote for the election of directors
50 or trustees is not owned, directly or indirectly, by a taxpayer subject
51 to tax under section one hundred eighty-three, one hundred eighty-
52 four[,], OR one hundred eighty-five [or one hundred eighty-six of article
53 nine] of this chapter, or under article nine-A, thirty-two or thirty-
54 three of this chapter, (3) is not substantially similar in operation or
55 ownership, directly or indirectly, to a business entity (or entities)
56 taxable, or previously taxable, under such sections, such articles,

1 [article twenty-three] or which would have been subject to [tax under
2 article twenty-three (as such article was in effect on January first,
3 nineteen hundred eighty) or] the income (or losses) of which is (or was)
4 includable under THIS article [twenty-two] whereby the intent and
5 purpose of this subsection would be evaded, (4) locates and employs at
6 least ninety percent of its assets in the state, (5) employs principally
7 in the state eighty percent of its employees (as ascertained within the
8 meaning and intent of subparagraph three of paragraph (a) of subdivision
9 three of section two hundred ten of this chapter and, in addition, in
10 the case of a partnership, excluding partners), (6) derives less than
11 forty percent of its gross income from dividends, interest, royalties
12 (other than mineral, oil, or gas royalties or copyright royalties), and
13 annuities and (7) reports at least twenty-five hundred dollars in gross
14 income in any taxable year. The reinvested amount must qualify as a
15 capital asset as defined in section 1221 of the internal revenue code
16 and must be retained by the taxpayer for at least twelve months. The
17 modification allowable under this subsection shall be utilized with
18 respect to the taxable year in which the twelve month retention period
19 ends. The commissioner [of taxation and finance] may require annual
20 information reports on the investments in new businesses made pursuant
21 to this subsection, and such other reports as he may require to ensure
22 against the evasion of the intent and purposes of this subsection.

23 S 38. Subsection (g) of section 697 of the tax law, as amended by
24 chapter 267 of the laws of 1987, is amended to read as follows:

25 (g) Cooperation with the cities of the state of New York. Notwith-
26 standing the provisions of subsection (e) OF THIS SECTION, the tax
27 commission may permit the proper city officer of any city of the state
28 of New York imposing a personal income tax upon the incomes of resi-
29 dents, or an unincorporated business income tax, or an earnings tax on
30 nonresidents, or the authorized representative of any such officer, to
31 inspect any return filed under this article, [or article twenty-three
32 (as such article was in effect on or before December thirtieth, nineteen
33 hundred eighty-two),] or may furnish to such officer or his authorized
34 representative an abstract of any such return or supply him with infor-
35 mation concerning an item contained in any such return, or disclosed by
36 any investigation of tax liability under this article [or article twen-
37 ty-three (as such article was in effect on or before December thirtieth,
38 nineteen hundred eighty-two)], but such permission shall be granted or
39 such information furnished to such officer or his representative only if
40 the local laws of such city grant substantially similar privileges to
41 the commission or officer of this state charged with the administration
42 of the tax imposed by this article and such information is to be used
43 for tax purposes only; and provided further the commissioner [of taxa-
44 tion and finance] may furnish to such city officer or the legal repre-
45 sentative of such city such returns filed under this article [or article
46 twenty-three (as such article was in effect on or before December thir-
47 tieth, nineteen hundred eighty-two)] and other tax information, as he
48 may consider proper, for use in court actions or proceedings under such
49 local law, whether civil or criminal, where a written request therefor
50 has been made to the commissioner [of taxation and finance] by such city
51 officer or his delegate, provided the local law of such city grants
52 substantially similar powers to such city officer or his delegate. Where
53 the commissioner [of taxation and finance] has so authorized use of
54 returns and other information in such actions or proceedings, officers
55 and employees of the department [of taxation and finance] may testify in

1 such actions or proceedings in respect to such returns or other informa-
2 tion.

3 S 39. Section 1311 of the tax law, as amended by chapter 682 of the
4 laws of 1976, is amended to read as follows:

5 S 1311. Enforcement with other taxes. (a) If there is assessed a tax
6 under a city income tax imposed pursuant to the authority of this arti-
7 cle and there is also assessed a tax or taxes against the same taxpayer
8 pursuant to article twenty-two [or articles twenty-two and twenty-three]
9 of this chapter [or under a local law enacted pursuant to the authority
10 of article two-E of the general city law] and payment of a single amount
11 is required under the provisions of this article, such payment shall be
12 deemed to have been made with respect to the taxes so assessed in
13 proportion to the amounts of such taxes due, including tax, penalties,
14 interest and additions to tax.

15 (b) If the state tax commission takes action under such article twen-
16 ty-two [or articles twenty-two and twenty-three] or under a local law
17 enacted pursuant to the authority of article two-E of the general city
18 law with respect to the enforcement and collection of the tax or taxes
19 assessed under such articles the state tax commission shall, wherever
20 possible, accompany such action with a similar action under similar
21 enforcement and collection provisions of such city income tax.

22 (c) Any moneys collected as a result of such joint action shall be
23 deemed to have been collected in proportion to the amounts due, includ-
24 ing tax, penalties, interest and additions to tax, under article twen-
25 ty-two [or articles twenty-two and twenty-three] of this chapter and
26 such city income tax.

27 (d) Whenever the state tax commission takes any action with respect to
28 a deficiency of income tax under article twenty-two [or articles twen-
29 ty-two and twenty-three] of this chapter [or under a local law enacted
30 pursuant to the authority of article two-E of the general city law],
31 other than the action set forth in subdivision (a) of this section, it
32 may in its discretion accompany such action with a similar action under
33 such city income tax.

34 S 40. Subparagraph (B) of paragraph 8 of subsection (i) of section
35 1456 of the tax law, as added by section 27 of part A of chapter 56 of
36 the laws of 1998, is amended to read as follows:

37 (B) is substantially similar in operation and in ownership to a busi-
38 ness entity (or entities) taxable, or previously taxable, under this
39 article; section one hundred eighty-three, one hundred eighty-four[,] OR
40 one hundred eighty-five [or one hundred eighty-six of article nine] OF
41 THIS CHAPTER; article nine-A or article thirty-three of this chapter;
42 [article twenty-three of this chapter or which would have been subject
43 to tax under such article twenty-three (as such article was in effect on
44 January first, nineteen hundred eighty)] or the income (or losses) of
45 which is (or was) includable under article twenty-two of this chapter
46 whereby the intent and purpose of this paragraph and paragraph five of
47 this subsection with respect to refunding of credit to new business
48 would be evaded; or

49 S 41. Subparagraph (B) of paragraph 7 of subdivision (q) of section
50 1511 of the tax law, as added by section 1 of part L of chapter 63 of
51 the laws of 2000, is amended to read as follows:

52 (B) is substantially similar in operation and in ownership to a busi-
53 ness entity (or entities) taxable, or previously taxable, under this
54 article; section one hundred eighty-three, one hundred eighty-four[,] OR
55 one hundred eighty-five [or one hundred eighty-six of article nine] OF
56 THIS CHAPTER; article nine-A or article thirty-two of this chapter;

1 [article twenty-three of this chapter or which would have been subject
2 to tax under such article twenty-three (as such article was in effect of
3 January first, nineteen hundred eighty)] or the income (or losses) of
4 which is (or was) includable under article twenty-two of this chapter
5 whereby the intent and purpose of this paragraph and paragraph four of
6 this subdivision with respect to refunding of credit to new business
7 would be evaded; or

8 S 42. Section 1166-a of the tax law is REPEALED.

9 S 43. Section 1167 of the tax law, as amended by section 3 of part F
10 of chapter 25 of the laws of 2009, is amended to read as follows:

11 S 1167. Deposit and disposition of revenue. All taxes, interest and
12 penalties collected or received by the commissioner under this article
13 shall be deposited and disposed of pursuant to the provisions of section
14 one hundred seventy-one-a of this chapter, except that after reserving
15 amounts in accordance with such section one hundred seventy-one-a of
16 this chapter, the remainder shall be paid by the comptroller to the
17 credit of the highway and bridge trust fund established by section
18 eighty-nine-b of the state finance law[, provided, however, taxes,
19 interest and penalties collected or received pursuant to section eleven
20 hundred sixty-six-a of this article shall be paid to the credit of the
21 metropolitan transportation authority aid trust account of the metropol-
22 itan transportation authority financial assistance fund established by
23 section ninety-two-ff of the state finance law].

24 S 44. This act shall take effect immediately; provided, however that:

25 (a) the amendments to subsection (4) of section 618 of the tax law
26 made by section nine of this act shall be subject to the expiration and
27 reversion of such subsection pursuant to chapter 782 of the laws of
28 1988, as amended, when upon such date the provisions of section ten of
29 this act shall take effect; and

30 (b) the amendments to subdivision (4) of section 11-1718 of the admin-
31 istrative code of the city of New York made by section twenty-two of
32 this act shall be subject to the expiration and reversion of such subdivi-
33 sion pursuant to chapter 782 of the laws of 1988, as amended, when
34 upon such date the provisions of section twenty-three of this act shall
35 take effect.