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

S. 6259 A. 9059

S E N A T E - A S S E M B L Y

January 17, 2012

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means

AN ACT to amend chapter 540 of the laws of 1992, amending the real property tax law relating to oil and gas charges, in relation to the effective date of such chapter (Part A); to amend the real property tax law, the tax law, the administrative code of the city of New York and the state finance law, in relation to the suspension of STAR exemptions and related benefits of persons who are delinquent in the payment of outstanding state tax liabilities (Part B); to amend the tax law, in relation to reforming excise tax on tobacco products, imposing a fixed rate of tax on loose tobacco, and imposing a retail tax on cigars (Part C); to amend chapter 109 of the laws of 2006, amending the tax law relating to providing exemptions, reimbursements and credits from various taxes for certain alternative fuels, in relation to extending the alternative fuels tax exemptions (Part D); to amend the tax law, in relation to making technical amendments to the tax treatment of diesel fuel to reflect industry practice (Part E); to amend the tax law, in relation to the power of the commissioner of taxation and finance to refuse to issue a certificate of authority to collect the sales and compensating use taxes imposed by article 28 of the tax law and pursuant to the authority of article 29 of the tax law (Part F); to amend the tax law and part U of chapter 61 of the laws of 2011, amending the real property tax law, the general municipal law, the public officers law, the tax law, the abandoned property law, the state finance law and the administrative code of the city of New York, relating to establishing standards for electronic real property tax administration, allowing the department of taxation and finance to use electronic communication means to furnish tax notices and other documents, mandatory electronic filing of tax documents, debit cards issued for tax refunds, improving sales tax compliance and repealing certain provisions of the tax law and the administrative code of the city of New York relating thereto, in relation to making

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

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permanent, provisions relating to mandatory electronic filing of tax documents and improving sales tax compliance; and to repeal certain provisions of the tax law and the administrative code of the city of New York relating thereto (Part G); to amend the tax law, in relation to the personal income tax credits for solar energy systems equipment and the sales and use tax exemption provided for such equipment (Part H); to amend the tax law, in relation to extending the empire state commercial production tax credit; and to amend part V of chapter 62 of the laws of 2006 relating to the empire state commercial production tax credit, in relation to the effectiveness thereof (Part I); to amend the public housing law, in relation to the credit against income tax for persons or entities investing in low-income housing (Part J); to amend the tax law, in relation to extending the biofuel production tax credit; and to amend part X of chapter 62 of the laws of 2006, amending the tax law relating to providing tax credits for biofuel production plants, in relation to the effectiveness thereof (Part K); to amend chapter 58 of the laws of 2006, relating to providing an enhanced earned income tax credit, in relation to the effectiveness thereof (Part L); to amend the civil practice law and rules and the debtor and creditor law, in relation to prohibiting banking institutions from deducting levy processing fees from tax and child support levy proceeds (Part M); to amend the tax law, in relation to tax rates and exclusions under the metropolitan commuter transportation mobility tax for professional employer organizations and to amend part B of chapter 56 of the laws of 2011 amending the tax law relating to the tax rates and exclusions under the metropolitan commuter transportation mobility tax, in relation to the effectiveness thereof (Part N); to amend the racing, pari-mutuel wagering and breeding law, in relation to licenses for simulcast facilities, sums relating to track simulcast, simulcast of out-of-state thoroughbred races, simulcasting of races run by out-of-state harness tracks and distributions of wagers; to amend chapter 281 of the laws of 1994 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and chapter 346 of the laws of 1990 amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and the imposition of certain taxes, in relation to extending certain provisions thereof; to amend the racing, pari-mutuel wagering and breeding law, in relation to extending certain provisions thereof (Part O); and to amend the tax law, in relation to the distribution of revenue collected from the corporate and utilities taxes imposed under sections 183 and 184 of the tax law (Part P)

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

Section 1. This act enacts into law major components of legislation which are necessary to implement the state fiscal plan for the 2012-2013 state fiscal year. Each component is wholly contained within a Part identified as Parts A through P. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the

Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

Section 1. Section 2 of chapter 540 of the laws of 1992, amending the real property tax law relating to oil and gas charges, as amended by section 1 of part II of chapter 56 of the laws of 2009, is amended to read as follows:

S 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 1992; provided, however that any charges imposed by section 593 of the real property tax law as added by section one of this act shall first be due for values for assessment rolls with tentative completion dates after July 1, 1992, and provided further, that this act shall remain in full force and effect until March 31, [2012] 2015, at which time section 593 of the real property tax law as added by section one of this act shall be repealed.

S 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2012.

PART B

Section 1. Subdivision 3 of section 425 of the real property tax law is amended by adding a new paragraph (f) to read as follows:

(F) COMPLIANCE WITH STATE TAX OBLIGATIONS. THE PROPERTY'S ELIGIBILITY FOR THE STAR EXEMPTION MUST NOT BE SUSPENDED PURSUANT TO SECTION ONE HUNDRED SEVENTY-ONE-Y OF THE TAX LAW DUE TO THE PAST-DUE STATE TAX LIABILITIES OF ONE OR MORE OF ITS OWNERS. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, WHERE A PROPERTY'S ELIGIBILITY FOR A STAR EXEMPTION HAS BEEN SUSPENDED PURSUANT TO SUCH SECTION, THE FOLLOWING PROVISIONS SHALL BE APPLICABLE:

(I) THE PROPERTY SHALL BE INELIGIBLE FOR A BASIC OR ENHANCED STAR EXEMPTION EFFECTIVE WITH THE NEXT SCHOOL YEAR COMMENCING AFTER THE ISSUANCE OF NOTICE BY THE DEPARTMENT OF THE SUSPENSION OF ITS ELIGIBILITY FOR THE STAR EXEMPTION, EVEN IF THE NOTICE WAS ISSUED AFTER THE APPLICABLE TAXABLE STATUS DATE. IF A STAR EXEMPTION HAS BEEN GRANTED TO SUCH A PROPERTY ON A TENTATIVE OR FINAL ASSESSMENT ROLL, THE ASSESSOR OR OTHER PERSON HAVING CUSTODY OF THAT ROLL IS HEREBY AUTHORIZED AND DIRECTED TO IMMEDIATELY REMOVE THAT STAR EXEMPTION FROM THE ROLL.

(II) ANY CHALLENGE TO THE FACTUAL OR LEGAL BASIS BEHIND THE SUSPENSION OF A PROPERTY'S ELIGIBILITY FOR A STAR EXEMPTION PURSUANT TO SECTION ONE HUNDRED SEVENTY-ONE-Y OF THE TAX LAW MUST BE PRESENTED TO THE DEPARTMENT IN THE MANNER PRESCRIBED BY SUCH SECTION. NEITHER AN ASSESSOR NOR A BOARD OF ASSESSMENT REVIEW HAS THE AUTHORITY TO CONSIDER SUCH A CHALLENGE.

(III) THE PROPERTY SHALL REMAIN INELIGIBLE FOR THE STAR EXEMPTION UNTIL THE DEPARTMENT NOTIFIES THE ASSESSOR THAT THE SUSPENSION OF ITS ELIGIBILITY HAS BEEN LIFTED. ONCE THE ASSESSOR HAS BEEN SO NOTIFIED, THE EXEMPTION MAY BE RESUMED ON A PROSPECTIVE BASIS ONLY, PROVIDED THAT THE ELIGIBILITY REQUIREMENTS OF THIS SECTION ARE OTHERWISE SATISFIED.

(IV) IN THE CASE OF A COOPERATIVE APARTMENT OR MOBILE HOME RECEIVING A STAR EXEMPTION PURSUANT TO PARAGRAPH (K) OR (L) OF SUBDIVISION TWO OF THIS SECTION, A SUSPENSION OF A STAR EXEMPTION DUE TO A TAXPAYER'S PAST-DUE STATE TAX LIABILITIES SHALL ONLY APPLY TO THE STAR EXEMPTION ON

THE COOPERATIVE APARTMENT OR MOBILE HOME OWNED, OR DEEMED TO BE OWNED, BY THAT TAXPAYER.

S 2. The tax law is amended by adding a new section 171-y to read as follows:

S 171-Y. ENFORCEMENT OF DELINQUENT STATE TAX LIABILITIES THROUGH THE SUSPENSION OF ELIGIBILITY FOR STAR EXEMPTIONS. 1. THE COMMISSIONER IS HEREBY AUTHORIZED TO DEVELOP A PROGRAM TO COLLECT DELINQUENT STATE TAX LIABILITIES FROM TAXPAYERS THROUGH THE SUSPENSION OF THE ELIGIBILITY OF PROPERTIES FOR STAR EXEMPTIONS WHERE ONE OR MORE OF THE PROPERTY OWNERS HAVE PAST-DUE STATE TAX LIABILITIES. FOR THE PURPOSES OF THIS SECTION, THE TERM "STATE TAX LIABILITY" MEANS ANY TAX (INCLUDING BUT NOT LIMITED TO LOCAL SALES AND INCOME TAXES), SURCHARGE, PENALTY, INTEREST CHARGE OR FEE ADMINISTERED BY THE COMMISSIONER THAT IS OWED BY A TAXPAYER; THE TERM "PAST-DUE STATE TAX LIABILITIES" MEANS ANY STATE TAX LIABILITY OR LIABILITIES WHICH HAVE BECOME FIXED AND FINAL SUCH THAT THE TAXPAYER NO LONGER HAS ANY RIGHT TO ADMINISTRATIVE OR JUDICIAL REVIEW AND FOR WHICH THE TAXPAYER HAS NOT MADE PAYMENT ARRANGEMENTS FOR THAT LIABILITY SATISFACTORY TO THE COMMISSIONER; THE TERM "TAXPAYER" SHALL MEAN THE INDIVIDUAL RESPONSIBLE FOR THE PAYMENT OF ANY OF THE PAST-DUE STATE TAX LIABILITIES; AND THE TERM "STAR EXEMPTION" MEANS THE EXEMPTION FROM REAL PROPERTY TAXATION AUTHORIZED BY SECTION FOUR HUNDRED TWENTY-FIVE OF THE REAL PROPERTY TAX LAW.

2. THE COMMISSIONER SHALL ESTABLISH PROCEDURES FOR THE ADMINISTRATION OF THIS PROGRAM, WHICH SHALL INCLUDE THE FOLLOWING PROVISIONS:

(A) THE CRITERIA FOR IDENTIFYING TAXPAYERS WITH PAST-DUE STATE TAX LIABILITIES.

(B) THE PROCEDURES BY WHICH THE DEPARTMENT SHALL DETERMINE WHETHER PROPERTIES OWNED BY SUCH TAXPAYERS ARE RECEIVING THE STAR EXEMPTION.

(C) THE PROCEDURES BY WHICH THE DEPARTMENT SHALL NOTIFY SUCH TAXPAYERS THAT THE ELIGIBILITY OF THEIR PROPERTIES FOR THE STAR EXEMPTION WILL BE SUSPENDED UNLESS THEY EITHER SATISFY THEIR PAST-DUE STATE TAX LIABILITIES OR MAKE PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMISSIONER BY A DATE TO BE SPECIFIED IN THE NOTICE.

(D) THE PROCEDURES BY WHICH THE DEPARTMENT SHALL NOTIFY ASSESSORS OF PROPERTIES WHOSE ELIGIBILITY FOR STAR EXEMPTIONS HAS BEEN SUSPENDED DUE TO THE PAST-DUE STATE TAX LIABILITIES OF ONE OR MORE PROPERTY OWNERS.

(E) THE PROCEDURES BY WHICH TAXPAYERS MAY ACT TO LIFT SUCH SUSPENSIONS ON A PROSPECTIVE BASIS BY EITHER SATISFYING THEIR PAST-DUE STATE TAX LIABILITIES OR MAKING PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMISSIONER.

(F) THE PROCEDURES BY WHICH THE DEPARTMENT SHALL NOTIFY ASSESSORS WHEN THE SUSPENSION OF A PROPERTY'S ELIGIBILITY FOR THE STAR EXEMPTION HAS BEEN LIFTED.

(G) THE PROCEDURES BY WHICH THE DEPARTMENT AND ASSESSORS SHALL COORDINATE AND EXECUTE THEIR OBLIGATIONS PURSUANT TO THIS SECTION AND PARAGRAPH (F) OF SUBDIVISION THREE OF SECTION FOUR HUNDRED TWENTY-FIVE OF THE REAL PROPERTY TAX LAW.

(H) ANY OTHER MATTER AS THE DEPARTMENT SHALL DEEM NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION.

3. THE DEPARTMENT SHALL NOTIFY THE TAXPAYER AT LEAST FORTY-FIVE DAYS PRIOR TO THE DATE THE DEPARTMENT INTENDS TO INFORM THE ASSESSOR OF THE SUSPENSION OF THE ELIGIBILITY FOR THE STAR EXEMPTION OF PROPERTY WHICH IS WHOLLY OR PARTIALLY OWNED BY THE TAXPAYER.

(A) SUCH NOTICE SHALL INCLUDE A STATEMENT THAT THE DEPARTMENT WILL NOTIFY THE ASSESSOR OF THE SUSPENSION OF THE ELIGIBILITY FOR THE STAR EXEMPTION OF PROPERTY WHOLLY OR PARTIALLY OWNED BY THE TAXPAYER UNLESS

THE TAXPAYER FULLY SATISFIES THE OUTSTANDING STATE TAX LIABILITIES OR OTHERWISE MAKES PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMISSIONER IN ACCORDANCE WITH LAW. HOWEVER, IN ANY CASE WHERE A TAXPAYER FAILS TO COMPLY WITH THE TERMS OF AN INSTALLMENT PAYMENT AGREEMENT AS DESCRIBED HEREIN MORE THAN ONCE WITHIN A TWELVE MONTH PERIOD, THE COMMISSIONER MAY IMMEDIATELY NOTIFY THE ASSESSOR OF THE SUSPENSION OF THE PROPERTY'S ELIGIBILITY FOR THE STAR EXEMPTION.

(B) SUCH NOTICE SHALL ALSO INCLUDE THE INFORMATION NECESSARY FOR THE TAXPAYER TO PAY THE PAST-DUE LIABILITY, MAKE PAYMENT ARRANGEMENTS OR OTHERWISE REQUEST ADDITIONAL INFORMATION.

(C) SUCH NOTICE SHALL ALSO STATE THAT THE TAXPAYER'S RIGHT TO PROTEST THE NOTICE IS LIMITED TO RAISING ISSUES THAT CONSTITUTE A MISTAKE OF FACT AS DEFINED IN SUBDIVISION FIVE OF THIS SECTION.

(D) SUCH NOTICE SHALL ALSO INCLUDE A STATEMENT THAT THE SUSPENSION OF THE PROPERTY'S STAR EXEMPTION WILL CONTINUE UNTIL THE TAXPAYER HAS SATISFIED HIS OR HER PAST-DUE STATE TAX LIABILITIES OR HAS MADE PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMISSIONER, AND THAT THE PROPERTY WILL BE PERMANENTLY INELIGIBLE FOR THE STAR EXEMPTION FOR ANY SCHOOL YEARS THAT COMMENCE WHILE ITS ELIGIBILITY FOR THE STAR EXEMPTION IS SUSPENDED.

(E) SUCH NOTICE MAY ALSO INCLUDE ANY OTHER INFORMATION THAT THE COMMISSIONER DEEMS NECESSARY.

4. IF THE TAXPAYER FAILS TO SATISFY HIS OR HER PAST-DUE STATE TAX LIABILITIES OR MAKE SATISFACTORY PAYMENT ARRANGEMENTS BY THE DATE SPECIFIED IN THE NOTICE, THE DEPARTMENT SHALL NOTIFY THE ASSESSOR OF THE SUSPENSION OF THE PROPERTY'S ELIGIBILITY FOR THE STAR EXEMPTION.

5. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE NOTICE ISSUED BY THE DEPARTMENT PURSUANT TO THIS SECTION FOR THE PURPOSE OF SUSPENDING THE PROPERTY'S ELIGIBILITY FOR THE STAR EXEMPTION MAY ONLY BE CHALLENGED BEFORE THE DEPARTMENT ON THE GROUNDS OF A MISTAKE OF FACT AS DEFINED IN THIS SUBDIVISION AND THE TAXPAYER WILL HAVE NO RIGHT TO COMMENCE A COURT ACTION, ADMINISTRATIVE PROCEEDING OR ANY OTHER FORM OF LEGAL RECOURSE AGAINST THE DEPARTMENT OR ASSESSOR REGARDING SUCH SUSPENSION. FOR THE PURPOSES OF THIS SUBDIVISION, "MISTAKE OF FACT" IS LIMITED TO CLAIMS THAT: (I) THE INDIVIDUAL NOTIFIED IS NOT THE TAXPAYER AT ISSUE; (II) THE PAST-DUE STATE TAX LIABILITIES WERE SATISFIED; OR (III) THE DEPARTMENT INCORRECTLY FOUND THAT THE TAXPAYER HAS FAILED TO COMPLY WITH THE TERMS OF AN INSTALLMENT PAYMENT AGREEMENT MORE THAN ONCE WITHIN A TWELVE MONTH PERIOD FOR THE PURPOSES OF SUBDIVISION THREE OF THIS SECTION. HOWEVER, NOTHING IN THIS SUBDIVISION IS INTENDED TO LIMIT A TAXPAYER FROM SEEKING RELIEF FROM JOINT AND SEVERAL LIABILITY PURSUANT TO SECTION SIX HUNDRED FIFTY-FOUR OF THIS CHAPTER TO THE EXTENT THAT HE OR SHE IS ELIGIBLE PURSUANT TO THAT SUBDIVISION OR ESTABLISHING TO THE DEPARTMENT THAT THE ENFORCEMENT OF THE UNDERLYING TAX LIABILITIES HAS BEEN STAYED BY THE FILING OF A PETITION PURSUANT TO THE BANKRUPTCY CODE OF 1978 (TITLE ELEVEN OF THE UNITED STATES CODE).

6. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE DEPARTMENT SHALL FURNISH THE APPROPRIATE ASSESSOR WITH THE NAME AND ADDRESS OF ANY TAXPAYER WHO OWNS PROPERTY WHICH HAS BECOME INELIGIBLE FOR THE STAR EXEMPTION PURSUANT TO THIS SECTION AND PARAGRAPH (F) OF SUBDIVISION THREE OF SECTION FOUR HUNDRED TWENTY-FIVE OF THE REAL PROPERTY TAX LAW AND A DESCRIPTION OF SUCH PROPERTY.

7. ACTIVITIES TO COLLECT STATE TAX LIABILITIES UNDERTAKEN BY THE DEPARTMENT PURSUANT TO THIS SECTION SHALL NOT IN ANY WAY LIMIT, RESTRICT OR IMPAIR THE DEPARTMENT FROM EXERCISING ANY OTHER AUTHORITY TO COLLECT OR ENFORCE PAST-DUE STATE TAX LIABILITIES UNDER ANY OTHER APPLICABLE

PROVISION OF LAW. THE AMOUNT BY WHICH A TAXPAYER'S PROPERTY TAX LIABILITY INCREASES AS A RESULT OF THE LOSS OF THE STAR EXEMPTION PURSUANT TO PARAGRAPH (F) OF SUBDIVISION THREE OF SECTION FOUR HUNDRED TWENTY-FIVE OF THE REAL PROPERTY TAX LAW AND THIS SECTION MAY NOT BE APPLIED IN ANY WAY AS AN OFFSET AGAINST THE AMOUNT OF THE TAXPAYER'S PAST-DUE STATE TAX LIABILITY.

S 3. Subsection (e) of section 697 of the tax law is amended by adding a new paragraph 3-b to read as follows:

(3-B) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH ONE OF THIS SUBSECTION, THE COMMISSIONER MAY DISCLOSE TO ASSESSORS THE INFORMATION DESCRIBED IN SECTION ONE HUNDRED SEVENTY-ONE-Y OF THIS CHAPTER THAT IS NECESSARY IN THE COMMISSIONER'S DISCRETION FOR THE PROPER IDENTIFICATION OF A TAXPAYER WITH PAST-DUE STATE TAX LIABILITIES WHO OWNS PROPERTY WITH A STAR EXEMPTION THAT IS SUBJECT TO SUSPENSION PURSUANT TO SUCH SECTION AND PARAGRAPH (F) OF SUBDIVISION THREE OF SECTION FOUR HUNDRED TWENTY-FIVE OF THE REAL PROPERTY TAX LAW.

S 4. The tax law is amended by adding a new section 1304-E to read as follows:

S 1304-E. RECALCULATION OF TAX RATE FOR TAXPAYERS WITH PAST-DUE STATE TAX LIABILITIES. WHEN A TAXPAYER OWES A PAST-DUE STATE TAX LIABILITY, AS THAT TERM IS DEFINED IN SECTION ONE HUNDRED SEVENTY-ONE-Y OF THIS CHAPTER, ON THE LAST DAY OF THE TAXABLE YEAR, THE TAX RATE APPLICABLE TO SUCH TAXPAYER UNDER SECTION THIRTEEN HUNDRED FOUR OF THIS ARTICLE FOR THE TAXABLE YEAR SHALL BE RECALCULATED BY THE COMMISSIONER SO AS TO ELIMINATE THE REDUCTION TO SUCH TAX RATE MADE BY CHAPTER THREE HUNDRED EIGHTY-NINE OF THE LAWS OF NINETEEN HUNDRED NINETY-SEVEN, AS ADJUSTED. SUCH RECALCULATION SHALL BE TREATED AS A MATHEMATICAL ERROR AND THE COMMISSIONER MAY ISSUE A NOTICE AND DEMAND TO THE TAXPAYER FOR THE AMOUNT DUE AS A RESULT OF SUCH RECALCULATION. THE AMOUNT BY WHICH A TAXPAYER'S INCOME TAX LIABILITY INCREASES AS A RESULT OF THE RECALCULATION OF THE APPLICABLE TAX RATE PURSUANT TO THIS SECTION MAY NOT BE APPLIED IN ANY WAY AS AN OFFSET AGAINST THE AMOUNT OF THE TAXPAYER'S PAST-DUE STATE TAX LIABILITY.

S 5. Paragraph 1 of subsection (e) of section 1310 of the tax law, as amended by section 3 of part A of chapter 56 of the laws of 1998, is amended to read as follows:

(1) For taxable years beginning after nineteen hundred ninety-seven, a state school tax reduction credit shall be allowed as provided in the following tables. The credit shall be allowed against the taxes authorized by this article reduced by the credits permitted by this article. If the credit exceeds the tax as so reduced, the taxpayer may receive, and the comptroller, subject to a certificate of the commissioner, shall pay as an overpayment, without interest, the amount of such excess. For purposes of this subsection, no credit shall be granted to (A) an individual with respect to whom a deduction under subsection (c) of section one hundred fifty-one of the internal revenue code is allowable to another taxpayer for the taxable year, OR (B) A TAXPAYER WHO OWES A PAST-DUE STATE TAX LIABILITY, AS THAT TERM IS DEFINED IN SECTION ONE HUNDRED SEVENTY-ONE-Y OF THIS CHAPTER, ON THE LAST DAY OF THE TAXABLE YEAR. IF A TAXPAYER WITH A PAST-DUE STATE TAX LIABILITY CLAIMS THIS CREDIT, ANY AMOUNT OWED AS A RESULT OF THE DENIAL OF THIS CREDIT SHALL BE TREATED AS A MATHEMATICAL ERROR AND THE COMMISSIONER MAY ISSUE A NOTICE AND DEMAND TO THE TAXPAYER FOR SUCH AMOUNT. THE AMOUNT BY WHICH A TAXPAYER'S INCOME TAX LIABILITY INCREASES AS A RESULT OF THE LOSS OF THE TAX CREDIT PURSUANT TO THIS SECTION MAY NOT BE APPLIED IN ANY WAY AS AN

OFFSET AGAINST THE AMOUNT OF THE TAXPAYER'S PAST-DUE STATE TAX LIABILITY.

S 6. The administrative code of the city of New York is amended by adding a new section 11-1704.2 to read as follows:

S 11-1704.2 RECALCULATION OF TAX RATE FOR TAXPAYERS WITH PAST-DUE STATE TAX LIABILITIES. WHEN A TAXPAYER OWES A PAST-DUE STATE TAX LIABILITY, AS THAT TERM IS DEFINED IN SECTION ONE HUNDRED SEVENTY-ONE-Y OF THE TAX LAW, ON THE LAST DAY OF THE TAXABLE YEAR, THE TAX RATE APPLICABLE TO SUCH TAXPAYER UNDER SECTION 11-1701 OF THIS SUBCHAPTER FOR THE TAXABLE YEAR SHALL BE RECALCULATED BY THE COMMISSIONER OF TAXATION AND FINANCE SO AS TO ELIMINATE THE REDUCTION TO SUCH TAX RATE MADE BY CHAPTER THREE HUNDRED EIGHTY-NINE OF THE LAWS OF NINETEEN HUNDRED NINETY-SEVEN, AS ADJUSTED. SUCH RECALCULATION SHALL BE TREATED AS A MATHEMATICAL ERROR AND THE COMMISSIONER OF TAXATION AND FINANCE MAY ISSUE A NOTICE AND DEMAND TO THE TAXPAYER FOR THE AMOUNT DUE AS A RESULT OF SUCH RECALCULATION. THE AMOUNT BY WHICH A TAXPAYER'S INCOME TAX LIABILITY INCREASES AS A RESULT OF THE RECALCULATION OF THE APPLICABLE TAX RATE PURSUANT TO THIS SECTION MAY NOT BE APPLIED IN ANY WAY AS AN OFFSET AGAINST THE AMOUNT OF THE TAXPAYER'S PAST-DUE STATE TAX LIABILITY.

S 7. Paragraph 1 of subdivision (c) of section 11-1706 of the administrative code of the city of New York, as amended by section 6 of part A of chapter 56 of the laws of 1998, is amended to read as follows:

(1) For taxable years beginning after nineteen hundred ninety-seven, a state school tax reduction credit shall be allowed as provided in the following tables. The credit shall be allowed against the taxes authorized by this article reduced by the credits permitted by this article. If the credit exceeds the tax as so reduced, the taxpayer may receive, and the comptroller, subject to a certificate of the commissioner, shall pay as an overpayment, without interest, the amount of such excess. For purposes of this subdivision, no credit shall be granted to (A) an individual with respect to whom a deduction under subsection (c) of section one hundred fifty-one of the internal revenue code is allowable to another taxpayer for the taxable year, OR (B) A TAXPAYER WHO OWES A PAST-DUE STATE TAX LIABILITY, AS THAT TERM IS DEFINED IN SECTION ONE HUNDRED SEVENTY-ONE-Y OF THE TAX LAW, ON THE LAST DAY OF THE TAXABLE YEAR. IF A TAXPAYER WITH A PAST-DUE STATE TAX LIABILITY CLAIMS THIS CREDIT, ANY AMOUNT OWED AS A RESULT OF THE DENIAL OF THIS CREDIT SHALL BE TREATED AS A MATHEMATICAL ERROR AND THE COMMISSIONER OF TAXATION AND FINANCE MAY ISSUE A NOTICE AND DEMAND TO THE TAXPAYER FOR SUCH AMOUNT. THE AMOUNT BY WHICH A TAXPAYER'S INCOME TAX LIABILITY INCREASES AS A RESULT OF THE LOSS OF THE TAX CREDIT PURSUANT TO THIS SECTION MAY NOT BE APPLIED IN ANY WAY AS AN OFFSET AGAINST THE AMOUNT OF THE TAXPAYER'S PAST-DUE STATE TAX LIABILITY.

S 8. Paragraph (a) of subdivision 3 of section 54-f of the state finance law, as added by section 139 of part A of chapter 389 of the laws of 1997, is amended to read as follows:

(a) The amount of such reimbursement shall be estimated by the commissioner of taxation and finance on or before December first of the year preceding the state fiscal year during which such amount is to be paid begins. The commissioner shall use the best available information at his or her disposal to estimate such amount. In addition to such methods and information the commissioner may use in making such estimate, he or she shall consult with the city department of finance during the preparation of the determination of such amount. SUCH REIMBURSEMENT SHALL DISREGARD THE AMOUNT OF BENEFITS RECALCULATED PURSUANT TO SECTION THIRTEEN HUNDRED

FOUR-E OF THE TAX LAW AND CREDITS DENIED PURSUANT TO PARAGRAPH ONE OF SUBSECTION (E) OF SECTION THIRTEEN HUNDRED TEN OF THE TAX LAW.

S 9. This act shall take effect immediately; provided however that sections four through seven of this act shall apply to taxable years beginning on or after January 1, 2012.

PART C

Section 1. The article heading of article 20 of the tax law, as amended by chapter 71 of the laws of 1959, is amended to read as follows:

TAX ON CIGARETTES, CIGARS AND TOBACCO PRODUCTS

S 2. Subdivision 2 of section 470 of the tax law, as amended by section 15 of part D of chapter 134 of the laws of 2010, is amended to read as follows:

2. "Tobacco products." Any [cigar, including a little cigar, or] tobacco, other than cigarettes AND CIGARS, intended for consumption [by smoking, chewing, or as snuff].

S 3. Subdivision 6 of section 470 of the tax law, as added by chapter 61 of the laws of 1989, is amended to read as follows:

6. ["Wholesale price." The established price for which a manufacturer sells tobacco products to a distributor, before the allowance of any discount, trade allowance, rebate or other reduction.

In the absence of such an established price, a manufacturer's invoice price of any tobacco product shall be presumptive evidence of the wholesale price of such tobacco product, and in its absence the price at which such tobacco products were purchased shall be presumed to be the wholesale price, unless evidence of a lower wholesale price shall be established or any industry standard of markups relating to the purchase price in relation to the wholesale price shall be established.] "LOOSE TOBACCO." ANY TOBACCO PRODUCTS, OTHER THAN SNUFF AND LITTLE CIGARS.

S 4. Subdivision 8 of section 470 of the tax law, as amended by section 1 of part K of chapter 61 of the laws of 2005, is amended to read as follows:

8. "Wholesale dealer." Any person who (a) sells cigarettes, CIGARS or tobacco products to retail dealers or other persons for purposes of resale, or (b) owns, operates or maintains one or more cigarette, CIGAR or tobacco product vending machines in, at or upon premises owned or occupied by any other person, or (c) sells cigarettes, CIGARS or tobacco products to an Indian nation or tribe or to a reservation cigarette seller on a qualified reservation.

S 5. Subdivision 9 of section 470 of the tax law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

9. "Retail dealer." Any person other than a wholesale dealer engaged in selling cigarettes, CIGARS or tobacco products.

S 6. Subdivision 12 of section 470 of the tax law, as added by chapter 61 of the laws of 1989, is amended to read as follows:

12. "Distributor." Any person who imports or causes to be imported into this state any CIGAR OR tobacco product (in excess of fifty cigars or one pound of tobacco) for sale, or who manufactures any CIGAR OR tobacco product in this state, and any person within or without the state who is authorized by the commissioner [of taxation and finance] to make returns and pay the tax on CIGARS OR tobacco products sold, shipped or delivered by [him] SUCH PERSON to any person in the state.

S 7. Subdivision 18 of section 470 of the tax law, as added by section 1 of part QQ-1 of chapter 57 of the laws of 2008, is amended to read as follows:

18. "Snuff." Any finely cut, ground, or powdered tobacco that is not intended to be smoked. SNUFF INCLUDES BOTH MOIST AND DRY SNUFF, AND ANY SMOKELESS TOBACCO PRODUCT SIMILAR IN COMPOSITION AND MAKEUP TO SNUFF. SNUFF DOES NOT INCLUDE CHEWING TOBACCOS SUCH AS PLUG OR TWIST TOBACCO.

S 8. Subdivision 19 of section 470 of the tax law, as amended by section 17 of part D of chapter 134 of the laws of 2010, is amended to read as follows:

19. "Cigar." Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco that is a cigarette as defined in subdivision one of this section). "Cigar" shall NOT include[, except where expressly excluded,] any little cigar.

S 9. Section 470 of the tax law is amended by adding a new subdivision 20 to read as follows:

20. "RECEIPT." THE AMOUNT RECEIVED IN OR BY REASON OF ANY SALE, CONDITIONAL OR OTHERWISE, OF CIGARS. RECEIPT IS EXPRESSED IN MONEY, WHETHER PAID IN CASH, CREDIT OR PROPERTY OF ANY KIND OR NATURE, AND SHALL BE DETERMINED WITHOUT ANY DEDUCTION THEREFROM ON ACCOUNT OF FEDERAL EXCISE TAXES, MANUFACTURER'S COUPONS, THE COST OF THE SERVICE SOLD OR THE COST OF MATERIALS, LABOR OR SERVICES USED OR OTHER COSTS, INTEREST OR DISCOUNT PAID OR ANY OTHER EXPENSES WHATSOEVER.

S 10. Paragraph (a) of subdivision 1 of section 471-b of the tax law, as amended by section 18 of part D of chapter 134 of the laws of 2010, is amended to read as follows:

(a) Such tax on LOOSE tobacco [products other than snuff and little cigars] shall be at the rate of [seventy-five percent of the wholesale price] FOUR DOLLARS AND FIFTY-THREE CENTS PER OUNCE AND A PROPORTIONATE RATE ON ANY FRACTIONAL PARTS OF AN OUNCE. SUCH TAX SHALL BE COMPUTED BASED ON THE NET WEIGHT AS LISTED BY THE MANUFACTURER, and is intended to be imposed only once upon the sale of any LOOSE tobacco [products other than snuff and little cigars].

S 11. Section 471-b of the tax law is amended by adding a new subdivision 4 to read as follows:

4. THE TAX IMPOSED BY THIS SECTION SHALL NOT APPLY TO CIGARS ON OR AFTER, JUNE FIRST, TWO THOUSAND TWELVE.

S 12. Subdivision (a) of section 471-c of the tax law, as amended by section 2 of part I-1 of chapter 57 of the laws of 2009, paragraphs (i) and (ii) as amended by section 20 and paragraph (iii) as added by section 21 of part D of chapter 134 of the laws of 2010, is amended to read as follows:

(a) There is hereby imposed and shall be paid a tax on all tobacco products used in the state by any person, except that no such tax shall be imposed (1) if the tax provided in section four hundred seventy-one-b of this article is paid, or (2) on the use of tobacco products which are exempt from the tax imposed by said section, or (3) on the use of [two hundred fifty cigars or less, or] five pounds or less of tobacco other than roll-your-own tobacco[,] or thirty-six ounces or less of roll-your-own tobacco brought into the state on, or in the possession of, any person.

(i) Such tax on LOOSE tobacco [products other than snuff and little cigars] shall be at the rate of [seventy-five percent of the wholesale price] FOUR DOLLARS AND FIFTY-THREE CENTS PER OUNCE AND A PROPORTIONATE RATE ON ANY FRACTIONAL PARTS OF AN OUNCE. SUCH TAX SHALL BE COMPUTED BASED ON THE NET WEIGHT AS LISTED BY THE MANUFACTURER.

(ii) Such tax on snuff shall be at the rate of two dollars per ounce and a proportionate rate on any fractional parts of an ounce, provided that cans or packages of snuff with a net weight of less than one ounce shall be taxed at the equivalent rate of cans or packages weighing one ounce. Such tax shall be computed based on the net weight as listed by the manufacturer.

(iii) Such tax on little cigars shall be at the same rate imposed on cigarettes under this article and is intended to be imposed only once upon the sale of any little cigars.

S 13. The tax law is amended by adding a new section 471-f to read as follows:

S 471-F. IMPOSITION OF CIGAR TAX. 1. THERE IS HEREBY IMPOSED AND THERE SHALL BE PAID A TAX OF FIFTY PERCENT UPON THE RECEIPTS FROM EVERY RETAIL SALE OF CIGARS, EXCEPT THAT NO TAX SHALL BE IMPOSED ON CIGARS SOLD UNDER SUCH CIRCUMSTANCES THAT THIS STATE IS WITHOUT POWER TO IMPOSE SUCH TAX, OR SOLD TO THE UNITED STATES, OR SOLD TO OR BY A VOLUNTARY UNINCORPORATED ORGANIZATION OF THE ARMED FORCES OF THE UNITED STATES OPERATING A PLACE FOR THE SALE OF GOODS PURSUANT TO REGULATIONS PROMULGATED BY THE APPROPRIATE EXECUTIVE AGENCY OF THE UNITED STATES, TO THE EXTENT PROVIDED IN SUCH REGULATIONS AND POLICY STATEMENTS OF SUCH AN AGENCY APPLICABLE TO SUCH SALES. SUCH TAX IS INTENDED TO BE IMPOSED ONLY ONCE UPON THE SALE OF ANY CIGARS. IT SHALL BE PRESUMED THAT ALL CIGARS WITHIN THE STATE ARE SUBJECT TO TAX UNTIL THE CONTRARY IS ESTABLISHED, AND THE BURDEN OF PROOF THAT ANY CIGARS ARE NOT TAXABLE HEREUNDER SHALL BE UPON THE PERSON IN POSSESSION THEREOF.

2. IT IS INTENDED THAT THE ULTIMATE INCIDENCE OF AND LIABILITY FOR THE TAX SHALL BE UPON THE CONSUMER, AND THAT ANY RETAIL DEALER WHO SHALL PAY THE TAX TO THE COMMISSIONER SHALL COLLECT THE TAX FROM THE PURCHASER OR CONSUMER.

3. THE DISTRIBUTOR SHALL BE LIABLE UNDER SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE FOR THE PREPAYMENT OF THE CIGAR TAX ON CIGARS WHICH HE OR SHE IMPORTS OR CAUSES TO BE IMPORTED INTO THE STATE, OR WHICH HE OR SHE MANUFACTURES IN THE STATE, AND EVERY DISTRIBUTOR AUTHORIZED BY THE COMMISSIONER TO MAKE RETURNS AND PREPAY THE CIGAR TAX ON CIGARS SOLD, SHIPPED OR DELIVERED BY HIM OR HER TO ANY PERSON IN THE STATE SHALL BE LIABLE FOR THE PREPAYMENT OF THE CIGAR TAX ON ALL CIGARS SO SOLD, SHIPPED OR DELIVERED.

4. SEPARATE STATEMENT OF TAX. DISTRIBUTORS, WHOLESALE DEALERS, AND RETAIL DEALERS REQUIRED TO COLLECT OR PASS THROUGH THE TAX IMPOSED BY THIS SECTION SHALL STATE, CHARGE, AND SHOW THAT TAX SEPARATELY FROM THE PRICE OR CHARGE, AND ALSO SEPARATELY FROM ANY OTHER TAX IMPOSED BY THIS ARTICLE OR OTHER LAW ON ANY SALES SLIP, INVOICE, RECEIPT, OR OTHER STATEMENT OR MEMORANDUM OF THE PRICE OR CHARGE, PAID OR PAYABLE, GIVEN TO THE CUSTOMER.

S 14. The tax law is amended by adding a new section 471-g to read as follows:

S 471-G. USE TAX ON CIGARS. (A) THERE IS HEREBY IMPOSED ON ALL CIGARS USED IN THE STATE BY ANY PERSON, EXCEPT THAT NO SUCH TAX SHALL BE IMPOSED (1) IF THE TAX PROVIDED IN SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE IS PAID, OR (2) ON THE USE OF CIGARS WHICH ARE EXEMPT FROM THE TAX IMPOSED BY SAID SECTION, OR (3) ON THE USE OF FIFTY CIGARS OR LESS BROUGHT INTO THE STATE ON, OR IN THE POSSESSION OF, ANY PERSON. THERE IS HEREBY IMPOSED AND THERE SHALL BE PAID A TAX OF FIFTY PERCENT UPON ALL RECEIPTS PAID OR REQUIRED TO BE PAID FROM EVERY RETAIL SALE OF CIGARS.

(B) WITHIN TWENTY-FOUR HOURS AFTER LIABILITY FOR THE TAX ACCRUES, EACH SUCH PERSON SHALL FILE WITH THE COMMISSIONER A RETURN IN SUCH FORM AS THE COMMISSIONER MAY PRESCRIBE TOGETHER WITH A REMITTANCE OF THE TAX SHOWN TO BE DUE THEREON. FOR PURPOSES OF THIS ARTICLE, THE WORD "USE" MEANS THE EXERCISE OF ANY RIGHT OR POWER ACTUAL OR CONSTRUCTIVE AND SHALL INCLUDE BUT IS NOT LIMITED TO THE RECEIPT, STORAGE OR ANY KEEPING OR RETENTION FOR ANY LENGTH OF TIME, BUT SHALL NOT INCLUDE POSSESSION FOR SALE. ALL THE OTHER PROVISIONS OF THIS ARTICLE, IF NOT INCONSISTENT, SHALL APPLY TO THE ADMINISTRATION AND ENFORCEMENT OF THE TAX IMPOSED BY THIS SECTION IN THE SAME MANNER AS IF THE LANGUAGE OF SAID PROVISIONS HAD BEEN INCORPORATED IN FULL INTO THIS SECTION.

S 15. The tax law is amended by adding a new section 471-h to read as follows:

S 471-H. PREPAYMENT OF CIGAR TAX. (A)(1) EVERY DISTRIBUTOR SHALL PAY, AS A PREPAYMENT ON ACCOUNT OF THE TAXES IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE AND PURSUANT TO THE AUTHORITY OF THIS ARTICLE, A TAX ON CIGARS POSSESSED FOR SALE OR USE IN THIS STATE, EXCEPT NO TAX SHALL BE REQUIRED TO BE PREPAID ON CIGARS SOLD UNDER CIRCUMSTANCES THAT THIS STATE IS WITHOUT POWER TO IMPOSE SUCH PREPAYMENT OR SOLD TO THE UNITED STATES OR SOLD TO OR BY A VOLUNTARY UNINCORPORATED ORGANIZATION OF THE ARMED FORCES OF THE UNITED STATES OPERATING A PLACE FOR THE SALE OF GOODS PURSUANT TO REGULATIONS PROMULGATED BY THE APPROPRIATE EXECUTIVE AGENCY OF THE UNITED STATES, TO THE EXTENT PROVIDED IN SUCH REGULATIONS AND WRITTEN POLICY STATEMENTS OF SUCH AN AGENCY APPLICABLE TO SUCH SALES.

(2) THE COMMISSIONER MAY, IN THE COMMISSIONER'S DISCRETION, REQUIRE ANY DISTRIBUTOR TO FILE WITH THE DEPARTMENT A BOND ISSUED BY A SURETY COMPANY APPROVED BY THE SUPERINTENDENT OF FINANCIAL SERVICES AS TO SOLVENCY AND RESPONSIBILITY AND AUTHORIZED TO TRANSACT BUSINESS IN THE STATE OR OTHER SECURITY ACCEPTABLE TO THE COMMISSIONER, IN SUCH AMOUNT AS THE COMMISSIONER MAY FIX, TO SECURE THE PAYMENT OF ANY SUMS DUE FROM SUCH DISTRIBUTOR PURSUANT TO THIS SECTION. IF SECURITIES ARE DEPOSITED AS SECURITY UNDER THIS SUBDIVISION, SUCH SECURITIES SHALL BE KEPT IN THE CUSTODY OF THE COMMISSIONER AND MAY BE SOLD BY THE COMMISSIONER IF IT BECOMES NECESSARY TO DO SO IN ORDER TO RECOVER ANY SUMS DUE FROM SUCH DISTRIBUTOR PURSUANT TO THIS SECTION, BUT NO SUCH SALE SHALL BE HAD UNTIL AFTER SUCH DISTRIBUTOR SHALL HAVE HAD AN OPPORTUNITY TO LITIGATE THE VALIDITY OF ANY PREPAYMENT OF TAX IF IT ELECTS TO DO SO. UPON ANY SUCH SALE, THE SURPLUS, IF ANY, ABOVE THE SUMS DUE UNDER THIS SECTION SHALL BE RETURNED TO SUCH DISTRIBUTOR.

(3) WHERE CIGARS ARE IMPORTED OR CAUSED TO BE IMPORTED INTO THE STATE, OR MANUFACTURED IN THE STATE, THE AMOUNT OF THE CIGAR TAX REQUIRED TO BE PREPAID PURSUANT TO THIS SECTION SHALL BE TWENTY CENTS ON EACH CIGAR.

(B) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE TAXES REQUIRED TO BE PREPAID PURSUANT TO THIS SECTION SHALL BE ADMINISTERED AND COLLECTED IN A LIKE MANNER AS THE TAXES IMPOSED BY SECTIONS FOUR HUNDRED SEVENTY-ONE-F AND FOUR HUNDRED SEVENTY-ONE-G OF THIS ARTICLE. ALL THE PROVISIONS OF THIS ARTICLE RELATING TO OR APPLICABLE TO THE ADMINISTRATION, COLLECTION AND DISPOSITION OF THE TAXES IMPOSED BY SUCH SECTIONS SHALL APPLY TO THE TAX REQUIRED TO BE PREPAID UNDER THIS SECTION SO FAR AS SUCH PROVISIONS CAN BE MADE APPLICABLE TO SUCH PREPAYMENTS OF TAX WITH SUCH LIMITATIONS AS SET FORTH IN THIS ARTICLE AND SUCH MODIFICATIONS AS MAY BE NECESSARY IN ORDER TO ADAPT SUCH LANGUAGE TO THE TAX SO IMPOSED. SUCH PROVISIONS SHALL APPLY WITH THE SAME FORCE AND EFFECT AS IF THE LANGUAGE OF THOSE PROVISIONS HAD BEEN SET FORTH IN FULL IN THIS SECTION EXCEPT TO THE EXTENT THAT ANY PROVISION IS EITHER INCON-

SISTENT WITH A PROVISION OF THIS SECTION OR IS NOT RELEVANT TO THE TAX REQUIRED TO BE PREPAID BY THIS SECTION. FOR PURPOSES OF THIS SECTION, ANY REFERENCE IN THIS ARTICLE TO THE TAX OR TAXES IMPOSED BY SECTIONS FOUR HUNDRED SEVENTY-ONE-F AND FOUR HUNDRED SEVENTY-ONE-G OF THIS ARTICLE SHALL BE DEEMED TO REFER TO THE TAX REQUIRED TO BE PREPAID PURSUANT TO THIS SECTION UNLESS A DIFFERENT MEANING IS CLEARLY REQUIRED.

(C) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO REQUIRE THE PAYMENT OF THE TAX REQUIRED TO BE PREPAID PURSUANT TO THIS SECTION MORE THAN ONCE UPON CIGARS POSSESSED FOR SALE OR USED WITHIN THE STATE. WHEN THE PREPAID TAX IMPOSED PURSUANT TO THIS SECTION IS PAID, IT SHALL HAVE BEEN SO PAID ON ACCOUNT OF THE TAXES IMPOSED BY SECTIONS FOUR HUNDRED SEVENTY-ONE-F OR FOUR HUNDRED SEVENTY-ONE-G OF THIS ARTICLE AND PURSUANT TO THE AUTHORITY OF THIS ARTICLE WITH RESPECT TO THE RETAIL SALE OR THE USE OF CIGARS. NOTHING IN THIS SECTION SHALL MODIFY OR AFFECT THE TAXES IMPOSED BY SECTIONS FOUR HUNDRED SEVENTY-ONE-F AND FOUR HUNDRED SEVENTY-ONE-G OF THIS ARTICLE AS APPLIED TO RECEIPTS FROM THE SALE, OR TO THE USE, OF SUCH CIGARS.

(D) THE DISTRIBUTOR SHALL BE LIABLE FOR THE PREPAID TAX ON CIGARS WHICH HE OR SHE IMPORTS OR CAUSES TO BE IMPORTED INTO THE STATE, OR WHICH HE OR SHE MANUFACTURES IN THE STATE, AND EVERY DISTRIBUTOR AUTHORIZED BY THE COMMISSIONER TO MAKE RETURNS AND PAY THE PREPAID TAX ON CIGARS SOLD, SHIPPED OR DELIVERED BY HIM OR HER TO ANY PERSON IN THE STATE SHALL BE LIABLE FOR THE PREPAID TAX ON ALL CIGARS SO SOLD, SHIPPED OR DELIVERED.

S 16. The tax law is amended by adding a new section 471-i to read as follows:

S 471-I. REFUNDS AND CREDITS WITH RESPECT TO CIGARS.

(A) RETAIL DEALER. (1) A RETAIL DEALER OF CIGARS WHO OR WHICH IS REQUIRED TO COLLECT THE TAXES IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE SHALL BE ALLOWED A REFUND OR CREDIT AGAINST THE AMOUNT OF TAX COLLECTED AND REQUIRED TO BE REMITTED TO THE COMMISSIONER PURSUANT TO THE PROVISIONS OF SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE UPON THE RETAIL SALE OF CIGARS IN THE AMOUNT OF THE TAX ON SUCH CIGARS PREPAID BY OR PASSED THROUGH TO AND INCLUDED IN THE PRICE PAID BY SUCH RETAIL DEALER PURSUANT TO THE PROVISIONS OF SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE.

(2) A REFUND OR CREDIT SHALL ALSO BE ALLOWED SUCH RETAIL DEALER FOR THE TAX PREPAID BY OR PASSED THROUGH TO AND INCLUDED IN THE PRICE PAID BY SUCH RETAIL DEALER UPON ANY CIGARS PURSUANT TO THE PROVISIONS OF SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE IF SUCH CIGARS ARE SOLD AT RETAIL BY SUCH RETAIL DEALER UNDER CIRCUMSTANCES WHERE THE TAXES IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE AND PURSUANT TO THE AUTHORITY OF THIS ARTICLE ARE NOT REQUIRED BY THE PROVISIONS OF THIS ARTICLE TO BE COLLECTED AND REMITTED UPON RECEIPTS FROM A RETAIL SALE THEREOF.

(B) EXPORT, DESTRUCTION, TAX PAID IN ERROR. WHENEVER ANY CIGARS UPON WHICH THE PREPAID TAX IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE HAS BEEN PAID HAVE BEEN SOLD AND SHIPPED TO ANOTHER STATE FOR SALE OR USE THERE OR HAVE BECOME UNFIT FOR USE OR UNSALABLE, OR HAVE BEEN DESTROYED, OR WHENEVER THE COMMISSIONER SHALL HAVE DETERMINED THAT ANY TAX REQUIRED TO BE PREPAID BY SUCH SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE SHALL HAVE BEEN PAID IN ERROR, THE DISTRIBUTOR OR DEALER, AS THE CASE MAY BE, SHALL BE ENTITLED TO A REFUND OR CREDIT OF THE ACTUAL AMOUNT OF PREPAID TAX SO PAID WITH RESPECT TO CIGARS WHICH WILL NOT BE POSSESSED FOR SALE OR USE IN THIS STATE.

(C) REFUNDS OF THE TAX REQUIRED TO BE PREPAID PURSUANT TO THE PROVISIONS OF SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE SHALL BE ALLOWED ONLY TO THE EXTENT SUCH TAX PAID BY OR PASSED THROUGH TO THE RETAIL DEALER, OR THE PURCHASER OR USER, EXCEEDS THE AMOUNT OF TAX REQUIRED TO BE COLLECTED FROM SUCH PERSON OR REQUIRED TO BE REMITTED BY THE PROVISIONS OF THIS ARTICLE.

(D) A REFUND OR CREDIT SHALL BE ALLOWED UNDER THIS SECTION ONLY TO THE EXTENT THAT THE TAX REQUIRED TO BE PREPAID PURSUANT TO SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE HAS BEEN PREPAID BY OR PASSED THROUGH TO SUCH RETAIL DEALER, PURCHASER OR USER, BUT ONLY TO THE EXTENT THAT THE TAX IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE TOGETHER WITH THE TAX IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-G OF THIS ARTICLE REQUIRED TO BE PAID, COLLECTED AND REMITTED HAS BEEN PAID, COLLECTED AND REMITTED.

(E) SUCH REFUNDS AND CREDITS SHALL BE SUBJECT TO THE PROVISIONS OF SECTION FOUR HUNDRED SEVENTY-SIX OF THIS ARTICLE AS IF SUCH SECTION WAS INCORPORATED IN FULL INTO THIS SECTION AND HAD EXPRESSLY REFERRED TO THE REFUNDS AND CREDITS AUTHORIZED BY THIS SECTION INCLUDING THE PERIODS OF LIMITATIONS ON PAYMENTS AND APPLICATIONS TO THE COMMISSIONER; PROVIDED, HOWEVER, THAT, AS PROVIDED IN SECTION FOUR HUNDRED SEVENTY-SIX OF THIS ARTICLE, NO INTEREST SHALL BE ALLOWED OR PAID UPON ANY REFUND MADE OR CREDIT ALLOWED PURSUANT TO SUBDIVISIONS (A) AND (B) OF THIS SECTION. THE COMMISSIONER SHALL PROCESS APPLICATIONS FOR REFUND AS EXPEDITIOUSLY AS POSSIBLE.

S 17. The tax law is amended by adding a new section 471-j to read as follows:

S 471-J. SPECIAL PROVISION AS TO IMPOSITION OF TAXES ON CERTAIN CIGARS. IF A PERSON SHALL RECEIVE ANY CIGARS, UPON WHICH CIGARS THIS STATE WAS WITHOUT POWER TO IMPOSE THE TAXES UNDER THIS ARTICLE, AND SUCH PERSON SHALL THEREAFTER POSSESS SUCH CIGARS FOR SALE OR USE ANY SUCH CIGARS IN SUCH MANNER AND UNDER SUCH CIRCUMSTANCES AS MAY SUBJECT THE SAME TO THE TAXING POWER OF THIS STATE WITH RESPECT TO SUCH POSSESSION FOR SALE OR USE, SUCH PERSON SHALL BE LIABLE FOR THE TAX IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-F OR FOUR HUNDRED SEVENTY-ONE-G OF THIS ARTICLE, AS THE CASE MAY BE WITH RESPECT TO SUCH SALE OR USE, AND SHALL MAKE THE SAME REPORTS AND RETURNS, PAY THE SAME TAXES AND BE SUBJECT TO ALL OTHER PROVISIONS OF THIS ARTICLE RELATING TO DISTRIBUTORS OR RETAIL DEALERS, EXCEPT THAT SUCH A PERSON SHALL NOT BE SUBJECT TO THE PROVISIONS OF SECTIONS FOUR HUNDRED SEVENTY-TWO AND FOUR HUNDRED EIGHTY OF THIS ARTICLE IF SUCH PERSON DOES NOT OFFER CIGARS FOR SALE.

S 18. The tax law is amended by adding a new section 471-k to read as follows:

S 471-K. COLLECTION OF TAX FROM CUSTOMER; FILING OF RETURNS AND PAYMENT.

(A)(1) EVERY RETAIL DEALER SHALL COLLECT THE TAX IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE FROM THE CUSTOMER WHEN COLLECTING THE RECEIPT TO WHICH IT APPLIES. EACH CUSTOMER SHALL BE GIVEN SOME INDICIA OF SALE, INCLUDING SALES SLIP, INVOICE, RECEIPT OR OTHER STATEMENT OR MEMORANDUM OF THE PRICE, UPON WHICH THE TAX SHALL BE STATED, CHARGED AND SHOWN SEPARATELY.

(2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ALL THE PROVISIONS OF ARTICLE TWENTY-EIGHT OF THIS CHAPTER RELATING TO THE PERSONAL LIABILITY FOR THE TAX, ADMINISTRATION AND COLLECTION AND DETERMINATION OF TAX, INCLUDING SECTION ELEVEN HUNDRED THIRTY-EIGHT OF THIS CHAPTER RELATING TO DETERMINATION OF TAX BUT NOT INCLUDING SECTION ELEVEN HUNDRED FORTY-FIVE OF THIS CHAPTER, SHALL APPLY TO THE TAX IMPOSED BY SECTION FOUR

HUNDRED SEVENTY-ONE-F OF THIS ARTICLE IN THE SAME MANNER AND WITH THE SAME FORCE AND EFFECT AS IF THE LANGUAGE OF SUCH PROVISIONS OF SUCH ARTICLE TWENTY-EIGHT HAD BEEN INCORPORATED IN FULL INTO THIS ARTICLE, EXCEPT TO THE EXTENT THAT ANY SUCH PROVISION IS EITHER INCONSISTENT WITH A PROVISION OF THIS SECTION OR IS NOT RELEVANT THERETO AND WITH SUCH OTHER MODIFICATIONS AS MAY BE NECESSARY TO ADAPT THE LANGUAGE OF SUCH PROVISIONS TO THE PROVISIONS OF THIS SECTION. PROVIDED, HOWEVER ALL TAXES, INTEREST AND PENALTIES COLLECTED OR RECEIVED BY THE COMMISSIONER UNDER SECTIONS FOUR HUNDRED SEVENTY-ONE-F, FOUR HUNDRED SEVENTY-ONE-G, AND FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE SHALL BE DEPOSITED AND DISPOSED OF PURSUANT TO SECTION FOUR HUNDRED EIGHTY-TWO OF THIS ARTICLE. PROVIDED, THE COMMISSIONER MAY REQUIRE RETURNS TO BE FILED WITH HIM OR HER AT SUCH TIMES AND CONTAINING SUCH INFORMATION AS HE OR SHE MAY PRESCRIBE.

(B) (1) (I) NO PERSON SHALL PURCHASE CIGARS IN THIS STATE, EXCLUDING A PURCHASE AT RETAIL, UNLESS THE TAX REQUIRED TO BE PREPAID BY SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE HAS BEEN ASSUMED BY A DISTRIBUTOR REGISTERED UNDER THIS ARTICLE IN ACCORDANCE WITH A CERTIFICATION UNDER THIS PARAGRAPH OR PAID BY SUCH DISTRIBUTOR, AND, IN EACH OF SUCH INSTANCES, IS PASSED THROUGH TO SUCH PURCHASER. IN ADDITION TO ANY OTHER CIVIL AND CRIMINAL PENALTIES WHICH MAY APPLY, ANY PERSON WHO PURCHASES CIGARS IN VIOLATION OF THIS SUBPARAGRAPH SHALL BE JOINTLY AND SEVERALLY LIABLE TO PAY THE TAX REQUIRED TO BE PREPAID BY SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE WITH RESPECT TO SUCH CIGARS.

(II) FOR THE PURPOSE OF THE PROPER ADMINISTRATION OF THIS ARTICLE AND TO PREVENT EVASION OF THE TAX ON CIGARS IMPOSED BY AND PURSUANT TO THIS ARTICLE, IT SHALL BE PRESUMED THAT ALL CIGARS IMPORTED, MANUFACTURED OR SOLD, RECEIVED OR POSSESSED IN THE STATE IS INTENDED FOR USE, DISTRIBUTION, STORAGE OR SALE IN THE STATE AND SUBJECT TO THE TAX REQUIRED TO BE PREPAID BY SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE UNTIL THE CONTRARY IS ESTABLISHED. IT SHALL BE FURTHER PRESUMED THAT ALL CIGARS SO IMPORTED, MANUFACTURED, SOLD, RECEIVED OR POSSESSED IN THE STATE BY ANY PERSON ARE SUBJECT TO THE TAX REQUIRED TO BE PREPAID UNDER SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE AND SUCH PERSON IS RESPONSIBLE FOR SUCH PREPAYMENT. THE BURDEN OF PROVING THAT ANY CIGARS ARE NOT SO SUBJECT SHALL BE UPON THE PERSON SO RESPONSIBLE FOR SUCH PREPAYMENT WITH RESPECT TO SUCH CIGARS.

(III) UPON EACH SALE OF CIGARS, OTHER THAN A SALE AT RETAIL, THE SELLER MUST GIVE TO THE PURCHASER AND THE PURCHASER SHALL RECEIVE, AT THE TIME OF DELIVERY OF SUCH CIGARS, A CERTIFICATION CONTAINING SUCH INFORMATION AS THE COMMISSIONER SHALL REQUIRE WHICH SHALL INCLUDE A STATEMENT TO THE EFFECT (A) IF SUCH SELLER IS A DISTRIBUTOR REGISTERED UNDER THIS ARTICLE, THAT HE OR SHE HAS ASSUMED THE PAYMENT OF OR PAID THE TAX REQUIRED TO BE PREPAID BY SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE AND, IN EACH CASE, IS PASSING THROUGH SUCH TAX OR (B) THAT SUCH SELLER IS PASSING THROUGH SUCH TAX WHICH WAS SO PREVIOUSLY ASSUMED OR PAID BY AN IDENTIFIED DISTRIBUTOR OR WHOLESALE DEALER REGISTERED UNDER THIS ARTICLE, AND PASSED THROUGH TO HIM OR HER.

(IV) IF THE CERTIFICATION REQUIRED BY THIS PARAGRAPH HAS BEEN FURNISHED TO THE PURCHASER BY THE SELLER AT DELIVERY AND ACCEPTED IN GOOD FAITH, THE BURDEN OF PROVING THAT THE TAX REQUIRED TO BE PAID BY SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE WAS ASSUMED OR PAID BY A DISTRIBUTOR REGISTERED UNDER THIS ARTICLE AND PASSED THROUGH SHALL BE SOLELY ON THE SELLER.

(V) WHERE THE CERTIFICATION REQUIRED UNDER THIS PARAGRAPH IS NOT FURNISHED BY THE SELLER AT DELIVERY OF CIGARS, IT SHALL BE PRESUMED THAT

THE TAX REQUIRED TO BE PREPAID BY SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE HAS NOT BEEN ASSUMED OR PAID BY A DISTRIBUTOR REGISTERED AS SUCH UNDER THIS ARTICLE AND THAT THE PURCHASER IN SUCH CASE IS JOINTLY AND SEVERALLY LIABLE FOR THE TAX.

S 19. Subdivision 3 of section 472 of the tax law, as added by chapter 61 of the laws of 1989 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

3. The commissioner [of taxation and finance] may appoint dealers in CIGARS AND tobacco products, manufacturers of CIGARS AND tobacco products and other persons within or without the state as distributors and may authorize them to make returns and to pay the tax on CIGARS AND tobacco products sold, shipped or delivered by them to any person in the state. The commissioner may, in his OR HER discretion, require the deposit of a bond issued by a surety company approved by the superintendent of financial services as to solvency and responsibility and authorized to transact business in this state, or other security acceptable to the commissioner in an amount and form satisfactory to him OR HER as a condition of appointing any such person as a distributor. If securities are deposited as security under this subdivision, such securities shall be kept in the custody of the commissioner [of taxation and finance] and may be sold by the commissioner if it becomes necessary so to do in order to recover any sums due from such distributor pursuant to this article, but no such sale shall be had until after such distributor shall have had an opportunity to litigate the validity of any tax if it elects so to do. Upon any such sale, the surplus, if any, above the sums due under this article shall be returned to such distributor.

S 20. Section 473-a of the tax law, as added by chapter 61 of the laws of 1989, is amended to read as follows:

S 473-a. Returns and payment of CIGARS PREPAID AND tobacco products [tax] TAXES by distributors. 1. (A) Every distributor shall, on or before the twentieth day of each month, file with the commissioner [of taxation and finance] a return on forms to be prescribed and furnished by the commissioner, showing the quantity and [wholesale price] WEIGHT of all tobacco products OR QUANTITY OF CIGARS imported or caused to be imported into the state by him OR HER or manufactured in the state by him OR HER, during the preceding calendar month. Every distributor authorized by the commissioner to make returns and pay the tax on CIGARS OR tobacco products sold, shipped or delivered by him OR HER to any person in the state shall file a return showing the quantity and [wholesale price] WEIGHT of all tobacco products so sold, shipped or delivered during the preceding calendar month. Provided, however, the commissioner may, if he OR SHE deems it necessary in order to insure the payment of the taxes imposed by this article, require returns to be made at such times and covering such periods as he OR SHE may deem necessary, and, by regulation, may permit the filing of returns on a quarterly, semi-annual or annual basis, or may waive the filing of returns by a distributor for such time and upon such terms as he OR SHE may deem proper if satisfied that no tax imposed by this article is or will be payable by him OR HER during the time for which returns are waived. Such returns shall contain such further information as the commissioner may require.

(B) EVERY DISTRIBUTOR SHALL, ON OR BEFORE THE TWENTIETH DAY OF EACH MONTH, FILE WITH THE COMMISSIONER A RETURN ON FORMS TO BE PRESCRIBED AND FURNISHED BY THE COMMISSIONER, SHOWING THE QUANTITY OF ALL CIGARS IMPORTED OR CAUSED TO BE IMPORTED INTO THE STATE BY HIM OR HER OR MANUFACTURED IN THE STATE BY HIM OR HER, DURING THE PRECEDING CALENDAR MONTH. EVERY DISTRIBUTOR AUTHORIZED BY THE COMMISSIONER TO MAKE RETURNS

AND PAY THE CIGAR PREPAID TAX ON CIGARS SOLD, SHIPPED OR DELIVERED BY HIM OR HER TO ANY PERSON IN THE STATE SHALL FILE A RETURN SHOWING THE QUANTITY OF ALL CIGARS SO SOLD, SHIPPED OR DELIVERED DURING THE PRECEDING CALENDAR MONTH. PROVIDED, HOWEVER, THE COMMISSIONER MAY, IF HE OR SHE DEEMS IT NECESSARY IN ORDER TO INSURE THE PAYMENT OF THE CIGAR PREPAID TAX IMPOSED BY THIS ARTICLE, REQUIRE RETURNS TO BE MADE AT SUCH TIMES AND COVERING SUCH PERIODS AS HE OR SHE MAY DEEM NECESSARY, AND, BY REGULATION, MAY PERMIT THE FILING OF RETURNS ON A QUARTERLY, SEMI-ANNUAL OR ANNUAL BASIS, OR MAY WAIVE THE FILING OF RETURNS BY A DISTRIBUTOR FOR SUCH TIME AND UPON SUCH TERMS AS HE OR SHE MAY DEEM PROPER IF SATISFIED THAT NO CIGAR PREPAID TAX IMPOSED BY THIS ARTICLE IS OR WILL BE PAYABLE BY HIM OR HER DURING THE TIME FOR WHICH RETURNS ARE WAIVED. SUCH RETURNS SHALL CONTAIN SUCH FURTHER INFORMATION AS THE COMMISSIONER MAY REQUIRE.

2. Every distributor shall pay to the commissioner with the filing of such return the tax on CIGARS OR tobacco products for such month imposed under this article.

S 21. Subdivisions 2, 3 and 4 of section 474 of the tax law, subdivision 2 as amended by chapter 552 of the laws of 2008, subdivision 3 as added and subdivision 4 as amended by chapter 61 of the laws of 1989, are amended to read as follows:

2. Every person who shall possess or transport more than [two hundred] fifty cigars, or more than five pounds of tobacco other than roll-your-own tobacco[,] or more than thirty-six ounces of roll-your-own tobacco upon the public highways, roads or streets of the state, shall be required to have in [his] SUCH PERSON'S actual possession invoices or delivery tickets for such CIGARS OR tobacco products. Such invoices or delivery tickets shall show the name and address of the consignor or seller, the name and address of the consignee or purchaser, the quantity, WEIGHT and brands of the CIGARS OR tobacco products transported, and the name and address of the person who has or shall assume the payment of the tax [and the wholesale price] or the tax paid or payable. The absence of such invoices or delivery tickets shall be prima facie evidence that such person is a dealer in CIGARS OR tobacco products in this state and subject to the requirements of this article.

3. Every dealer or distributor or employee thereof, or other person acting on behalf of a dealer or distributor, who shall possess or transport more than fifty cigars or more than one pound of tobacco upon the public highways, roads or streets of the state, shall be required to have in his OR HER actual possession invoices or delivery tickets for such CIGARS OR tobacco products. Such invoices or delivery tickets shall show the name and address of the consignor or seller, the name and address of the consignee or purchaser, the quantity, WEIGHT and brands of the CIGARS OR tobacco products transported, and the name and address of the person who has or shall assume the payment of the tax [and the wholesale price] or the tax paid or payable. The absence of such invoices or delivery tickets shall be prima facie evidence that the tax imposed by this article on CIGARS OR tobacco products has not been paid and is due and owing.

4. At the time of delivering cigarettes to any person each agent or wholesale dealer, and at the time of delivering CIGARS OR tobacco products to any person each distributor or wholesale dealer of CIGARS OR tobacco products, shall make a true duplicate invoice showing the date of delivery, the number of packages and number of cigarettes contained therein, in each shipment of cigarettes delivered, and the items and quantity and [wholesale price] WEIGHT of each item in each shipment of tobacco products OR QUANTITY OF CIGARS delivered, and the name of the

purchaser to whom delivery is made, and shall retain the same for a period of three years subject to the use and inspection of the commissioner [of taxation and finance]. Each dealer shall procure and retain invoices showing the number of packages and number of cigarettes contained therein, in each shipment of cigarettes received by him OR HER, and the items and quantity and [wholesale price] WEIGHT of each item in each shipment of CIGARS OR tobacco products received by him OR HER, the date thereof, and the name of the shipper, and shall retain the same for a period of three years subject to the use and inspection of the commissioner [of taxation and finance]. The commissioner [of taxation and finance] by regulation may provide that whenever cigarettes, CIGARS or tobacco products are shipped into the state, the railroad company, express company, trucking company or other public carrier transporting any shipment thereof shall file with the commissioner [of taxation and finance] a copy of the freight bill within ten days after the delivery in the state of each shipment. All dealers shall maintain and keep for a period of three years such other records of cigarettes, CIGARS or tobacco products received, sold or delivered within the state as may be required by the commissioner [of taxation and finance]. The commissioner [of taxation and finance] is hereby authorized to examine the books, papers, invoices and other records of any person in possession, control or occupancy of any premises where cigarettes, CIGARS or tobacco products are placed, stored, sold or offered for sale, and the equipment of any such person pertaining to the stamping of cigarettes or the sale and delivery of cigarettes, CIGARS or tobacco products taxable under this article, as well as the stock of cigarettes, CIGARS or tobacco products in any such premises or vehicle. To verify the accuracy of the tax imposed and assessed by this article, each such person is hereby directed and required to give to the commissioner [of taxation and finance] or his OR HER duly authorized representatives, the means, facilities and opportunity for such examinations as are herein provided for and required.

S 22. The section heading of section 475 of the tax law, as amended by chapter 227 of the laws of 1956, is amended to read as follows:

General powers of the [tax commission] COMMISSIONER.

S 23. Section 476 of the tax law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

S 476. Refunds; sales of stamps. Whenever any cigarettes upon which stamps have been placed or CIGARS OR tobacco products upon which the tax has been paid have been sold and shipped into another state for sale or use there or have become unfit for use and consumption or unsalable, or have been destroyed, or whenever the commissioner [of taxation and finance] shall have determined that any tax imposed by this article shall have been paid in error, the agent, dealer or CIGAR OR tobacco products distributor, as the case may be, shall be entitled to a refund of the actual amount of tax so paid, provided application therefor is filed with the commissioner [of taxation and finance] within two years after the stamps were affixed to such cigarettes or the tax was paid upon such CIGARS OR tobacco products, except if an agreement under the provisions of section four hundred seventy-eight OF THIS ARTICLE (extending the period for determination of tax imposed by this article) is made within the two-year period for the filing of an application for refund provided for in this section, the period for filing an application for refund shall not expire prior to six months after the expiration of the period within which a determination may be made pursuant to the agreement or any extension thereof. If the commissioner [of taxation

and finance] is satisfied that any dealer is entitled to a refund he OR SHE shall issue to such dealer stamps of sufficient value to cover the refund of the tax on cigarettes or may, subject to audit by the comptroller, make a refund of the tax on cigarettes or on CIGARS OR tobacco products. No person shall sell or offer for sale any stamp or stamps issued under this article except by written permission of the commissioner [of taxation and finance]. The commissioner [of taxation and finance] may redeem unused stamps lawfully in possession of any person. The commissioner [of taxation and finance] may prescribe necessary rules and regulations concerning refunds, sales of stamps, and redemptions under the provisions of this article.

S 24. Paragraph (d) of subdivision 1 of section 480 of the tax law, as added by chapter 629 of the laws of 1996, is amended to read as follows:

(d) Each applicant shall file satisfactory proof that it will maintain a secure separate warehousing facility for the purpose of receiving and distributing cigarettes, CIGARS or tobacco products and conducting its wholesale business. Such proof shall consist of a copy of a deed, or a copy of an executed lease for a minimum period of two years, to a separate, secure warehouse. If the applicant carries on another business in conjunction with the warehouse facility, the other business shall also be identified.

S 25. Paragraph (j) of subdivision 1 of section 480 of the tax law, as amended by chapter 629 of the laws of 1996, is amended to read as follows:

(j) The commissioner may for cause refuse to issue, or may suspend or revoke a wholesaler's license, or may forbid a retail dealer to continue selling cigarettes, CIGARS or tobacco products or may forbid a person required to be appointed as a distributor of CIGARS OR tobacco products who has not been so appointed from selling cigarettes, CIGARS or tobacco products, after an opportunity for hearing has been afforded. A violation of any provision of this article or of any regulation issued under it shall be cause to forbid a retail dealer to continue selling cigarettes, CIGARS or tobacco products.

S 26. Paragraph (k) of subdivision 1 of section 480 of the tax law, as amended by chapter 262 of the laws of 2000, is amended to read as follows:

(k) No agent shall sell cigarettes and no distributor shall sell CIGARS OR tobacco products to an unlicensed wholesale dealer, or to a wholesale dealer whose license has been suspended or revoked, or to a retail dealer who is not registered under section four hundred eighty-a of this article, or whose registration has been suspended or revoked, and no wholesale dealer shall sell cigarettes, CIGARS or tobacco products to a retail dealer who is not registered under section four hundred eighty-a of this article, or whose registration has been suspended or revoked, and no retail dealer shall sell cigarettes, CIGARS or tobacco products unless such dealer is registered under section four hundred eighty-a of this article.

S 27. Paragraph (l) of subdivision 1 of section 480 of the tax law, as added by chapter 629 of the laws of 1996, is amended to read as follows:

(l) Paragraphs (b), (c) and (g) of this subdivision shall not apply to the filing of an application for a license as a wholesale dealer that is based solely upon the ownership, operation or maintenance of one or more cigarette, CIGAR or tobacco products vending machines in, at or upon premises owned or occupied by another person, or that is based solely upon the sale of CIGARS OR tobacco products for resale, or that is based upon both the ownership, operation or maintenance of one or more ciga-

rette, CIGAR or tobacco products vending machines in, at or upon premises owned or occupied by another person and the sale of CIGARS OR tobacco products for resale.

S 28. Subparagraph (iv) of paragraph (b) of subdivision 3 of section 480 of the tax law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

(iv) Has knowingly aided and abetted the sale of cigarettes, CIGARS or tobacco products by a person which such licensee or controlling person knows (A) has not been licensed by the commissioner [of taxation and finance] and (B) is a wholesale dealer pursuant to the terms of subdivision eight of section four hundred seventy of this [chapter] ARTICLE.

S 29. Subdivision 4 of section 480 of the tax law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

4. If the commissioner [of taxation and finance] considers it necessary for the proper administration of the cigarette tax, CIGAR TAX or tobacco products tax imposed by this article or the cigarette marketing standards contained in article twenty-A of this chapter he OR SHE may require every person under this article who holds a license to file a new application for a license in such form and at such time as the commissioner may prescribe and to surrender such license. The commissioner may require such filing and such surrender not more often than once every three years. Upon the filing of such application with the proper fee and the surrender of such license, the commissioner shall issue, within such time as he OR SHE may prescribe, a new license to each applicant.

S 30. Paragraphs (a) and (b) of subdivision 1 of section 480-a of the tax law, as added by chapter 190 of the laws of 1990, are amended to read as follows:

(a) [On and after January first, nineteen hundred ninety-one, every] EVERY retail dealer shall publicly display a certificate of registration from the department in each place of business in this state through which it sells cigarettes, CIGARS or tobacco products at retail. A retail dealer who has no regular place of business shall publicly display such certificate on each of its carts, stands, trucks or other merchandising devices through which it sells cigarettes, CIGARS or tobacco products in this state.

(b) Every person who owns or, if the owner is not the operator, then any person who operates one or more vending machines through which cigarettes, CIGARS or tobacco products are sold in this state, regardless of whether located on the premises of the vending machine owner or, if the owner is not the operator, then the premises of the operator or the premises of any other person, must register each such vending machine with the department. [On and after January first, nineteen hundred ninety-one, a] A vending machine registration certificate, in such form as may be prescribed by the commissioner [of taxation and finance], shall be affixed to each vending machine through which cigarettes, CIGARS or tobacco products are sold in this state.

S 31. Paragraphs (a) and (b) of subdivision 2 of section 480-a of the tax law, as amended by section 1 of part T of chapter 61 of the laws of 2011, are amended to read as follows:

(a) (i) Every retail dealer and every person owning or, if the owner is not the operator, then any person operating one or more vending machines through which cigarettes, CIGARS or tobacco products are sold in this state, who is required under section eleven hundred thirty-six of this chapter to file a return for the quarterly period ending on the last day of August OF EACH YEAR, [nineteen hundred ninety or for the

quarterly period ending on the last day of August in any year thereafter,] must file an application for registration under this section with that quarterly return, in such form as shall be prescribed by the commissioner.

(ii) Each retail dealer must pay an application fee with the quarterly return of three hundred dollars for each retail place of business in this state through which it sells cigarettes, CIGARS or tobacco products.

(iii) Every person who owns or, if the owner is not the operator, then any person who operates one or more vending machines through which cigarettes, CIGARS or tobacco products are sold in this state, regardless of whether located on the premises of the vending machine owner or, if the owner is not the operator, then the premises of the operator or the premises of any other person, must pay an application fee with the quarterly return of one hundred dollars for each vending machine. The department will issue a registration certificate, as prescribed by the commissioner, after receipt of a registration application and the appropriate registration fee, prior to the next succeeding January first.

(b) Every retail dealer and every person who owns or, if the owner is not the operator, then any person who operates one or more vending machines through which cigarettes, CIGARS or tobacco products are sold in this state who commences business after the last day of August[, nineteen hundred ninety,] or who commences selling cigarettes, CIGARS or tobacco products at retail through a new or different place of business in this state after such date, or who commences selling cigarettes, CIGARS or tobacco products through new or different vending machines after such date, must file with the commissioner an application for registration, in a form prescribed by him or her, at least thirty days prior to commencing business or commencing sales. Each application must be accompanied by an application fee of three hundred dollars for each retail place of business and one hundred dollars for each vending machine to be registered. The department, within ten days after receipt of an application for registration under this paragraph and payment of the proper fee for application for registration, will issue a registration certificate, as prescribed by the commissioner, for each retail place of business or cigarette, CIGAR or tobacco products vending machine registered.

S 32. Paragraph (d) of subdivision 2 of section 480-a of the tax law, as amended by chapter 760 of the laws of 1992, is amended to read as follows:

(d) Except as otherwise provided in this section, all the provisions of article twenty-eight of this chapter relating to the personal liability for the tax, administration, collection and determination of tax, and deposit and disposition of revenue, including section eleven hundred thirty-eight of this chapter relating to determination of tax and section eleven hundred forty-five of this chapter (but only paragraphs one and two of subdivision (a) of such section) relating to penalties and interest for failure to file a return or pay tax within the time required, shall apply to the applications for registration and the fees for filing such applications required by this section and the penalty imposed pursuant to subdivision three of this section, as if such applications were returns required under section eleven hundred thirty-six of this chapter and such filing fees, penalties and interest were taxes required to be paid pursuant to such article twenty-eight, in the same manner and with the same force and effect as if the language of such provisions of such article twenty-eight had been incorporated in full

into this article, except to the extent that any such provision is either inconsistent with a provision of this section or is not relevant thereto and with such other modifications as may be necessary to adapt the language of such provisions to the provisions of this section. [Section] ANY REFERENCE TO A CERTIFICATE OF AUTHORITY SHOULD BE READ TO MEAN A CERTIFICATE OF REGISTRATION FOR THE PURPOSE OF THIS SECTION. PARAGRAPHS ONE THROUGH THREE OF SUBDIVISION A AND SUBDIVISIONS B AND C OF SECTION eleven hundred thirty-four of [such article twenty-eight] THIS CHAPTER shall not apply to this section AS WELL AS ANY LANGUAGE CONTAINED IN SUCH SECTION REFERRING TO AN OFFICER, DIRECTOR, PARTNER OR EMPLOYEE OF SUCH PERSON, AND, WHERE SUCH PERSON IS A LIMITED LIABILITY COMPANY, ALSO A MEMBER OR MANAGER OF SUCH PERSON, IN THE OFFICER'S, DIRECTOR'S, PARTNER'S, MEMBER'S, MANAGER'S OR EMPLOYEE'S CAPACITY AS A PERSON REQUIRED TO COLLECT TAX ON BEHALF OF SUCH PERSON OR ANOTHER PERSON. Provided, however, that the commissioner [of taxation and finance] shall refund or credit an application fee paid with respect to the registration of a vending machine or a retail place of business in this state through which cigarettes, CIGARS or tobacco products were to be sold if, prior to the beginning of the calendar year with respect to which such registration relates, the certificate of registration described in paragraph (a) of this subdivision is returned to the department [of taxation and finance], or if such certificate has been destroyed, the retail dealer or vending machine operator satisfactorily accounts to the commissioner for the missing certificate, but such vending machine or retail place of business may not be used to sell cigarettes, CIGARS or tobacco products in this state during such calendar year, unless it is re-registered. The provisions of section eleven hundred thirty-nine of this chapter shall apply to the refund or credit authorized by the preceding sentence and for such purposes, such refund or credit shall be deemed a refund of tax paid in error provided, however, no interest shall be allowed or paid on any such refund.

S 33. Paragraph (b) of subdivision 3 of section 480-a of the tax law, as amended by section 125-a of part C of chapter 58 of the laws of 2009, is amended to read as follows:

(b) Any person who owns or, if the owner is not the operator, then any person who operates one or more vending machines through which cigarettes, CIGARS or tobacco products are sold in this state and who violates the provisions of this section, after due notice and an opportunity for a hearing, for a first violation is liable for a civil fine not less than seven hundred fifty dollars but not to exceed two thousand dollars and for a second or subsequent violation within three years following a prior finding of violation be liable for a civil fine not less than two thousand dollars but not to exceed six thousand dollars.

S 34. Clause (B) of subparagraph (i) of paragraph (a) of subdivision 1 of section 481 of the tax law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

(B) If a tax on cigarettes, CIGARS or on tobacco products under this article is not paid when due by any other person, the person liable for the payment of such tax shall be subject to a penalty of fifty per centum of the amount of such tax determined to be due as provided in this article plus one per centum of such amount for each month or fraction thereof during which such failure to pay continues after the expiration of the first month after such tax became due.

S 35. Subparagraph (i) of paragraph (b) of subdivision 1 of section 481 of the tax law, as amended by chapter 604 of the laws of 2008, is amended to read as follows:

(i) In addition to any other penalty imposed by this article, the commissioner may (A) impose a penalty of not more than one hundred fifty dollars for each two hundred cigarettes, or fraction thereof, in excess of one thousand cigarettes in unstamped or unlawfully stamped packages in the possession or under the control of any person or (B) impose a penalty of not more than two hundred dollars for each ten unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, or fraction thereof, in the possession or under the control of any person. In addition, the commissioner may impose a penalty of not more than seventy-five dollars for each fifty cigars or one pound of tobacco, or fraction thereof, in excess of [two hundred] fifty cigars or five pounds of tobacco in the possession or under the control of any person and a penalty of not more than one hundred fifty dollars for each fifty cigars or pound of tobacco, or fraction thereof, in excess of five hundred cigars or ten pounds of tobacco in the possession or under the control of any person, with respect to which the CIGAR OR tobacco products tax has not been paid or assumed by a distributor or CIGAR OR tobacco products dealer; provided, however, that any such penalty imposed shall not exceed seven thousand five hundred dollars in the aggregate. The commissioner may impose a penalty of not more than seventy-five dollars for each fifty cigars or one pound of tobacco, or fraction thereof, in excess of fifty cigars or one pound of tobacco in the possession or under the control of any CIGAR OR tobacco products dealer or distributor appointed by the commissioner, and a penalty of not more than one hundred fifty dollars for each fifty cigars or pound of tobacco, or fraction thereof, in excess of [two hundred] fifty cigars or five pounds of tobacco in the possession or under the control of any such dealer or distributor, with respect to which the CIGAR OR tobacco products tax has not been paid or assumed by a distributor or a CIGAR OR tobacco products dealer; provided, however, that any such penalty imposed shall not exceed fifteen thousand dollars in the aggregate.

S 36. Clauses (B) and (C) of subparagraph (ii) of paragraph (b) of subdivision 1 of section 481 of the tax law, as added by chapter 262 of the laws of 2000, are amended to read as follows:

(B)(I) not less than twenty-five dollars but not more than one hundred dollars for each fifty cigars or one pound of tobacco, or fraction thereof, in excess of [two hundred] fifty cigars or five pounds of tobacco knowingly in the possession or knowingly under the control of any person, with respect to which the CIGAR OR tobacco products tax has not been paid or assumed by a distributor or CIGAR OR tobacco products dealer; and

(II) not less than fifty dollars but not more than two hundred dollars for each fifty cigars or pound of tobacco, or fraction thereof, in excess of [five] ONE hundred cigars or ten pounds of tobacco knowingly in the possession or knowingly under the control of any person, with respect to which the CIGAR OR tobacco products tax has not been paid or assumed by a distributor or CIGAR OR tobacco products dealer; provided, however, that any such penalty imposed under this clause shall not exceed ten thousand dollars in the aggregate.

(C)(I) not less than twenty-five dollars but not more than one hundred dollars for each fifty cigars or one pound of tobacco, or fraction thereof, in excess of fifty cigars or one pound of tobacco knowingly in the possession or knowingly under the control of any person, with respect to which the CIGAR OR tobacco products tax has not been paid or assumed by a distributor or CIGAR OR tobacco products dealer; and

(II) not less than fifty dollars but not more than two hundred dollars for each fifty cigars or pound of tobacco, or fraction thereof, in excess of [two hundred fifty] ONE HUNDRED cigars or five pounds of tobacco knowingly in the possession or knowingly under the control of any person, with respect to which the CIGAR OR tobacco products tax has not been paid or assumed by a distributor or a CIGAR OR tobacco products dealer; provided, however, that any such penalty imposed under this clause shall not exceed twenty thousand dollars in the aggregate.

S 37. Subdivision 2 of section 481 of the tax law, as amended by chapter 61 of the laws of 1989 and paragraph (a) as amended by chapter 552 of the laws of 2008, is amended to read as follows:

2. (a) The possession within this state of more than four hundred cigarettes in unstamped or unlawfully stamped packages, or more than [two hundred] fifty cigars, or more than five pounds of tobacco other than roll-your-own tobacco, or more than thirty-six ounces of roll-your-own tobacco by any person other than an agent or distributor, as the case may be, at any one time shall be presumptive evidence that such cigarettes, CIGARS or tobacco products are subject to tax as provided by this article.

(b) Nothing in this section shall apply to common or contract carriers or warehousemen while engaged in lawfully transporting or storing CIGARS, tobacco products or unstamped packages of cigarettes as merchandise, nor to any employee of such carrier or warehouseman acting within the scope of his OR HER employment, nor to public officers or employees in the performance of their official duties requiring possession or control of CIGARS, tobacco products or unstamped or unlawfully stamped packages of cigarettes, nor to temporary incidental possession by employees or agents of persons lawfully entitled to possession, nor to persons whose possession is for the purpose of aiding police officers in performing their duties.

S 38. The tax law is amended by adding new section 481-a to read as follows:

S 481-A. PENALTIES AND INTEREST FOR RETAIL DEALERS. (A) (1) (I) ANY PERSON FAILING TO FILE A RETURN OR TO PAY OR PAY OVER ANY TAX TO THE COMMISSIONER WITHIN THE TIME REQUIRED BY OR PURSUANT TO THIS ARTICLE (DETERMINED WITH REGARD TO ANY EXTENSION OF TIME FOR FILING OR PAYING) SHALL BE SUBJECT TO A PENALTY OF TEN PERCENT OF THE AMOUNT OF TAX DUE IF SUCH FAILURE IS FOR NOT MORE THAN ONE MONTH, WITH AN ADDITIONAL ONE PERCENT FOR EACH ADDITIONAL MONTH OR FRACTION THEREOF DURING WHICH SUCH FAILURE CONTINUES, NOT EXCEEDING THIRTY PERCENT IN THE AGGREGATE. PROVIDED, HOWEVER, IN THE CASE OF A FAILURE TO FILE SUCH RETURN WITHIN SIXTY DAYS OF THE DATE PRESCRIBED FOR FILING OF SUCH RETURN BY OR PURSUANT TO THIS ARTICLE (DETERMINED WITH REGARD TO ANY EXTENSION OF TIME FOR FILING), THE PENALTY IMPOSED BY THIS SUBPARAGRAPH SHALL NOT BE LESS THAN THE LESSER OF ONE HUNDRED DOLLARS OR ONE HUNDRED PERCENT OF THE AMOUNT REQUIRED TO BE SHOWN AS TAX ON SUCH RETURN. FOR THE PURPOSE OF THE PRECEDING SENTENCE, THE AMOUNT OF TAX REQUIRED TO BE SHOWN ON THE RETURN SHALL BE REDUCED BY THE AMOUNT OF ANY PART OF THE TAX WHICH IS PAID ON OR BEFORE THE DATE PRESCRIBED FOR PAYMENT OF THE TAX AND BY THE AMOUNT OF ANY CREDIT AGAINST THE TAX WHICH MAY BE CLAIMED UPON THE RETURN. IN THE CASE OF A FAILURE TO FILE A RETURN BY A PERSON REQUIRED TO REGISTER WITH THE COMMISSIONER AS PROVIDED IN SECTION FOUR HUNDRED EIGHTY-A OF THIS ARTICLE, IN NO EVENT SHALL THE PENALTY FOR FAILURE TO FILE A RETURN BE LESS THAN ONE HUNDRED FIFTY DOLLARS.

(II) IF ANY AMOUNT OF TAX IS NOT PAID ON OR BEFORE THE LAST DATE PRESCRIBED IN THIS ARTICLE FOR PAYMENT, INTEREST ON SUCH AMOUNT AT THE

RATE OF FOURTEEN AND ONE-HALF PERCENT PER ANNUM OR AT THE UNDERPAYMENT RATE SET BY THE COMMISSIONER PURSUANT TO SUBDIVISION TWENTY-SIXTH OF SECTION ONE HUNDRED SEVENTY-ONE OF THIS CHAPTER, WHICHEVER IS GREATER, SHALL BE PAID FOR THE PERIOD FROM SUCH LAST DATE TO THE DATE PAID, WHETHER OR NOT ANY EXTENSION OF TIME FOR PAYMENT WAS GRANTED. INTEREST UNDER THIS SUBPARAGRAPH SHALL NOT BE PAID IF THE AMOUNT THEREOF IS LESS THAN ONE DOLLAR.

(III) IF THE COMMISSIONER DETERMINES THAT SUCH FAILURE OR DELAY WAS DUE TO REASONABLE CAUSE AND NOT DUE TO WILLFUL NEGLECT, HE OR SHE MAY REMIT ALL OF SUCH PENALTY AND THAT PORTION OF SUCH INTEREST THAT EXCEEDS THE INTEREST THAT WOULD BE PAYABLE IF SUCH INTEREST WERE COMPUTED AT THE UNDERPAYMENT RATE SET BY THE COMMISSIONER PURSUANT TO SUBDIVISION TWENTY-SIXTH OF SECTION ONE HUNDRED SEVENTY-ONE OF THIS CHAPTER. THE COMMISSIONER MAY PROMULGATE RULES AND REGULATIONS AS TO WHAT CONSTITUTES REASONABLE CAUSE.

(IV) ANY PERSON REQUIRED BY THIS ARTICLE TO FILE A RETURN, WHO OMITS FROM THE TOTAL AMOUNT OF CIGAR EXCISE TAX REQUIRED TO BE SHOWN ON A RETURN AN AMOUNT WHICH IS IN EXCESS OF TWENTY-FIVE PERCENT OF THE AMOUNT OF SUCH TAXES REQUIRED TO BE SHOWN ON THE RETURN SHALL BE SUBJECT TO A PENALTY EQUAL TO TEN PERCENT OF THE AMOUNT OF SUCH OMISSION. IF THE COMMISSIONER DETERMINES THAT SUCH OMISSION WAS DUE TO REASONABLE CAUSE AND NOT DUE TO WILLFUL NEGLECT, HE OR SHE MAY REMIT ALL OF SUCH PENALTY.

(V) ANY PERSON REQUIRED TO COLLECT TAX WHO SELLS CIGARS AT RETAIL AND WHO SHALL WILLFULLY AND KNOWINGLY HAVE IN SUCH PERSON'S CUSTODY OR POSSESSION OR UNDER SUCH PERSON'S CONTROL ANY CIGARS ON WHICH (A) THE PREPAID TAX IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE HAS NOT BEEN ASSUMED OR PAID BY A DISTRIBUTOR LICENSED AS SUCH UNDER THIS ARTICLE, OR (B) THE PREPAID TAX IMPOSED BY SUCH SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE WAS REQUIRED TO HAVE BEEN PASSED THROUGH TO SUCH PERSON AND HAS NOT BEEN INCLUDED IN THE COST OF SUCH CIGARS TO SUCH PERSON, SHALL BE LIABLE FOR A PENALTY IN THE AMOUNT OF TWICE THE TAX NOT SO ASSUMED OR PAID, OR INCLUDED. SUCH PENALTY SHALL BE DETERMINED, ASSESSED, COLLECTED AND PAID IN THE SAME MANNER AS TAXES IMPOSED BY THIS ARTICLE AND ALL THE PROVISIONS OF THIS ARTICLE RELATING THERETO SHALL BE DEEMED ALSO TO REFER TO THE PENALTY IMPOSED BY THIS SUBPARAGRAPH. SUCH PENALTY MAY BE DETERMINED AT ANY TIME WITHIN THREE YEARS AFTER SUCH CIGARS SHALL HAVE COME INTO SUCH PERSON'S CUSTODY OR POSSESSION OR UNDER SUCH PERSON'S CONTROL. FOR PURPOSES OF THIS SUBPARAGRAPH, SUCH PERSON SHALL WILLFULLY AND KNOWINGLY HAVE IN SUCH PERSON'S CUSTODY OR POSSESSION OR UNDER SUCH PERSON'S CONTROL ANY CIGAR ON WHICH (A) SUCH TAX HAS NOT BEEN ASSUMED OR PAID BY A DISTRIBUTOR LICENSED AS SUCH UNDER THIS ARTICLE, OR (B) SUCH TAX WAS REQUIRED TO HAVE BEEN PASSED THROUGH TO SUCH PERSON AND HAS NOT BEEN INCLUDED IN THE COST OF SUCH CIGARS TO SUCH PERSON, WHERE SUCH PERSON HAS KNOWLEDGE OF THE REQUIREMENT THAT SUCH TAXES BE PAID OR ASSUMED OR SO INCLUDED AND WHERE, TO SUCH PERSON'S KNOWLEDGE, SUCH TAXES HAVE NOT BEEN SO PAID OR ASSUMED OR SO INCLUDED. FOR PURPOSES OF THIS SUBPARAGRAPH, IT SHALL BE PRESUMPTIVE EVIDENCE THAT SUCH PERSON SHALL WILLFULLY AND KNOWINGLY HAVE IN SUCH PERSON'S CUSTODY OR POSSESSION OR UNDER SUCH PERSON'S CONTROL CIGARS ON WHICH (A) SUCH TAX HAS NOT BEEN ASSUMED OR PAID BY A DISTRIBUTOR AUTHORIZED AS SUCH UNDER THIS ARTICLE OR (B) SUCH TAX WAS REQUIRED TO HAVE BEEN PASSED THROUGH TO SUCH PERSON AND HAS NOT BEEN INCLUDED IN THE COST OF SUCH CIGARS TO SUCH PERSON WHERE SUCH PERSON HAS NOT RECEIVED THE CERTIFICATION REQUIRED BY SECTION FOUR HUNDRED SEVENTY-ONE-K OF THIS ARTICLE AT THE TIME OF DELIVERY OF SUCH CIGARS OR, IN THOSE CIRCUMSTANCES WHERE THE COMMISSIONER HAS AUTHORIZED THE DELIV-

ERY OF SUCH CERTIFICATION AT A TIME AFTER DELIVERY OF THE CIGARS, AT THE TIME PRESCRIBED BY THE COMMISSIONER.

(2) IF THE FAILURE TO PAY OR PAY OVER ANY TAX TO THE COMMISSIONER WITHIN THE TIME REQUIRED BY THIS ARTICLE IS DUE TO FRAUD, IN LIEU OF THE PENALTIES AND INTEREST PROVIDED FOR IN SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH ONE OF THIS SUBDIVISION, THERE SHALL BE ADDED TO THE TAX (I) A PENALTY OF TWO TIMES THE AMOUNT OF THE TAX DUE, PLUS (II) INTEREST ON SUCH UNPAID TAX AT THE RATE OF FOURTEEN AND ONE-HALF PERCENT PER ANNUM OR THE UNDERPAYMENT RATE OF INTEREST SET BY THE COMMISSIONER PURSUANT TO SUBDIVISION TWENTY-SIXTH OF SECTION ONE HUNDRED SEVENTY-ONE OF THIS CHAPTER, WHICHEVER IS GREATER, FOR THE PERIOD BEGINNING ON THE LAST DAY PRESCRIBED BY THIS ARTICLE FOR THE PAYMENT OF SUCH TAX (DETERMINED WITHOUT REGARD TO ANY EXTENSION OF TIME FOR PAYING) AND ENDING ON THE DAY ON WHICH SUCH TAX IS PAID.

(3) (I) ANY PERSON REQUIRED TO OBTAIN A CERTIFICATE OF REGISTRATION UNDER SECTION FOUR HUNDRED EIGHTY-A OF THIS ARTICLE WHO, WITHOUT POSSESSING A VALID CERTIFICATE OF REGISTRATION, SELLS CIGARETTES, CIGARS AND TOBACCO PRODUCTS SHALL, IN ADDITION TO ANY OTHER PENALTY IMPOSED BY THIS CHAPTER, BE SUBJECT TO A PENALTY IN AN AMOUNT NOT EXCEEDING FIVE HUNDRED DOLLARS FOR THE FIRST DAY ON WHICH SUCH SALES OR PURCHASES ARE MADE, PLUS AN AMOUNT NOT EXCEEDING TWO HUNDRED DOLLARS FOR EACH SUBSEQUENT DAY ON WHICH SUCH SALES OR PURCHASES ARE MADE, NOT TO EXCEED TEN THOUSAND DOLLARS IN THE AGGREGATE.

(II) IF THE COMMISSIONER DETERMINES THAT ANY FAILURE OR ACT DESCRIBED IN THIS PARAGRAPH WAS DUE TO REASONABLE CAUSE AND NOT DUE TO WILLFUL NEGLECT, HE OR SHE MAY REMIT ALL OR PART OF SUCH PENALTY.

(4) ANY PERSON REQUIRED BY THIS ARTICLE TO DISPLAY A CERTIFICATE OF REGISTRATION, WHO FAILS TO DISPLAY SUCH CERTIFICATE IN THE MANNER REQUIRED BY THIS ARTICLE OR ANY RULE OR REGULATION ADOPTED BY THE COMMISSIONER IN CONNECTION WITH SUCH REQUIREMENT SHALL, IN ADDITION TO ANY OTHER PENALTY IMPOSED BY THIS CHAPTER, BE SUBJECT TO A PENALTY OF FIFTY DOLLARS. IF THE COMMISSIONER DETERMINES THAT SUCH FAILURE WAS DUE TO REASONABLE CAUSE AND NOT DUE TO WILLFUL NEGLECT, HE OR SHE MAY REMIT ALL OR PART OF SUCH PENALTY.

(5) THE PENALTIES AND INTEREST PROVIDED FOR IN THIS SUBDIVISION SHALL BE PAID AND DISPOSED OF IN THE SAME MANNER AS OTHER REVENUES FROM THIS ARTICLE. SUCH PENALTIES AND INTEREST MAY BE DETERMINED, ASSESSED, COLLECTED AND ENFORCED IN THE SAME MANNER AS THE TAX IMPOSED BY THIS ARTICLE. INTEREST UNDER THIS SUBDIVISION SHALL BE COMPOUNDED DAILY.

(B) CROSS-REFERENCE: FOR CRIMINAL PENALTIES, SEE ARTICLE THIRTY-SEVEN OF THIS CHAPTER.

(C) ANY PERSON FAILING TO FILE A RETURN OR TO PAY ANY TAX REQUIRED TO BE PREPAID TO THE COMMISSIONER WITH RESPECT TO CIGARS PURSUANT TO THE PROVISIONS OF SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE WITHIN THE TIME REQUIRED BY THIS ARTICLE SHALL, IN ADDITION TO ANY OTHER PENALTY PROVIDED IN THIS ARTICLE OR OTHERWISE IMPOSED BY LAW, BE SUBJECT TO A PENALTY EQUAL TO THE AMOUNT OF TAX REQUIRED TO BE SO PREPAID PURSUANT TO THE PROVISIONS OF SUCH SECTION FOUR HUNDRED SEVENTY-ONE-H OF THIS ARTICLE. IF THE COMMISSIONER DETERMINES THAT SUCH FAILURE TO FILE A RETURN OR TO PAY ANY SUCH TAX WAS DUE TO REASONABLE CAUSE AND NOT DUE TO WILLFUL NEGLECT, HE OR SHE MAY REMIT ALL OR ANY PART OF SUCH PENALTY.

(D) THE CERTIFICATE OF THE COMMISSIONER TO THE EFFECT THAT A TAX HAS NOT BEEN PAID, THAT A RETURN, BOND OR REGISTRATION CERTIFICATE HAS NOT BEEN FILED, OR THAT INFORMATION HAS NOT BEEN SUPPLIED PURSUANT TO THE PROVISIONS OF THIS ARTICLE SHALL BE PRESUMPTIVE EVIDENCE THEREOF.

(E) ANY PERSON REQUIRED TO MAKE OR MAINTAIN RECORDS UNDER THIS ARTICLE WHO FAILS TO MAKE OR MAINTAIN OR MAKE AVAILABLE TO THE COMMISSIONER THESE RECORDS IS SUBJECT TO A PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS FOR THE FIRST PERIOD OR PART THEREOF FOR WHICH THE FAILURE OCCURS AND NOT TO EXCEED FIVE THOUSAND DOLLARS FOR EACH ADDITIONAL PERIOD OR PART THEREOF FOR WHICH THE FAILURE OCCURS. THIS PENALTY IS IN ADDITION TO ANY OTHER PENALTY PROVIDED FOR IN THIS ARTICLE BUT MAY NOT BE IMPOSED AND COLLECTED MORE THAN ONCE FOR FAILURES FOR THE SAME PERIOD OR PART THEREOF. IF THE COMMISSIONER DETERMINES THAT A FAILURE TO MAKE OR MAINTAIN OR MAKE AVAILABLE RECORDS IN ANY PERIOD WAS ENTIRELY DUE TO REASONABLE CAUSE AND NOT TO WILLFUL NEGLECT, THE COMMISSIONER MUST REMIT THE PENALTY IMPOSED FOR THAT PERIOD. THESE PENALTIES WILL BE PAID AND DISPOSED OF IN THE SAME MANNER AS OTHER REVENUES FROM THIS ARTICLE. THESE PENALTIES WILL BE DETERMINED, ASSESSED, COLLECTED, PAID AND ENFORCED IN THE SAME MANNER AS THE TAX IMPOSED BY THIS ARTICLE, AND ALL THE PROVISIONS OF THIS ARTICLE RELATING TO TAX WILL BE DEEMED ALSO TO APPLY TO THE PENALTIES IMPOSED BY THIS SUBDIVISION. FOR PURPOSES OF THE PENALTY IMPOSED BY THIS SUBDIVISION, A PERSON WILL BE CONSIDERED TO HAVE FAILED TO MAKE OR MAINTAIN THE REQUIRED RECORDS WHEN THE RECORDS MADE OR MAINTAINED BY THAT PERSON FOR A PERIOD MAKE IT VIRTUALLY IMPOSSIBLE TO VERIFY SALES RECEIPTS AND TO CONDUCT A COMPLETE AUDIT.

(F) FALSE OR FRAUDULENT DOCUMENT PENALTY. ANY TAXPAYER THAT SUBMITS A FALSE OR FRAUDULENT DOCUMENT TO THE DEPARTMENT WILL BE SUBJECT TO A PENALTY OF ONE HUNDRED DOLLARS PER DOCUMENT SUBMITTED, OR FIVE HUNDRED DOLLARS PER TAX RETURN SUBMITTED. THIS PENALTY WILL BE IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW.

(G) AIDING OR ASSISTING IN THE GIVING OF FRAUDULENT RETURNS, REPORTS, STATEMENTS OR OTHER DOCUMENTS. ANY PERSON WHO, WITH THE INTENT THAT TAX BE EVADED, FOR A FEE OR OTHER COMPENSATION OR AS AN INCIDENT TO THE PERFORMANCE OF OTHER SERVICES FOR WHICH THAT PERSON RECEIVES COMPENSATION, AIDS OR ASSISTS IN, OR PROCURES, COUNSELS, OR ADVISES THE PREPARATION OR PRESENTATION UNDER THIS ARTICLE, OR IN CONNECTION WITH ANY MATTER ARISING UNDER THIS ARTICLE, OF ANY RETURN, REPORT, DECLARATION, STATEMENT OR OTHER DOCUMENT THAT IS FRAUDULENT OR FALSE AS TO ANY MATERIAL MATTER, OR SUPPLIES ANY FALSE OR FRAUDULENT INFORMATION, WHETHER OR NOT SUCH FALSITY OR FRAUD IS WITH THE KNOWLEDGE OR CONSENT OF THE PERSON AUTHORIZED OR REQUIRED TO PRESENT THAT RETURN, REPORT, DECLARATION, STATEMENT OR OTHER DOCUMENT, WILL PAY A PENALTY NOT EXCEEDING FIVE THOUSAND DOLLARS.

(H) ANY PERSON WHO, HAVING ELECTED TO MAINTAIN IN AN ELECTRONIC FORMAT ANY PORTION OR ALL OF THE RECORDS HE OR SHE IS REQUIRED TO MAKE AND MAINTAIN BY THIS ARTICLE, FAILS TO PRESENT AND MAKE THESE RECORDS AVAILABLE AND ACCESSIBLE TO THE COMMISSIONER IN ELECTRONIC FORMAT, IS SUBJECT TO A PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS FOR EACH PERIOD OR PART THEREOF FOR WHICH THESE ELECTRONIC RECORDS ARE NOT PRESENTED AND MADE AVAILABLE AND ACCESSIBLE UPON REQUEST, NOTWITHSTANDING THAT THE RECORDS MAY ALSO BE MAINTAINED AND AVAILABLE IN HARD COPY FORMAT. THIS PENALTY IS IN ADDITION TO ANY OTHER PENALTY PROVIDED FOR IN THIS ARTICLE, BUT MAY NOT BE IMPOSED AND COLLECTED MORE THAN ONCE FOR A FAILURE FOR THE SAME PERIOD OR PART THEREOF. PROVIDED, HOWEVER, NOTHING IN THIS SUBDIVISION WILL PREVENT THE SEPARATE IMPOSITION, IF APPLICABLE, OF ANY PENALTY IMPOSED BY THIS SECTION FOR THE SAME PERIOD OR PART THEREOF. IF THE COMMISSIONER DETERMINES THAT THE FAILURE TO PRESENT AND MAKE ELECTRONICALLY MAINTAINED RECORDS AVAILABLE AND ACCESSIBLE FOR A PERIOD WAS ENTIRELY DUE TO REASONABLE CAUSE AND NOT TO WILLFUL NEGLECT, THE COMMISSIONER MUST REMIT THE PENALTY IMPOSED FOR THAT PERIOD. THESE PENALTIES

WILL BE PAID AND DISPOSED OF IN THE SAME MANNER AS OTHER REVENUES FROM THIS ARTICLE. THESE PENALTIES WILL BE DETERMINED, ASSESSED, COLLECTED, PAID AND ENFORCED IN THE SAME MANNER AS THE TAX IMPOSED BY THIS ARTICLE, AND ALL THE PROVISIONS OF THIS ARTICLE RELATING TO TAX WILL BE DEEMED ALSO TO APPLY TO THE PENALTY IMPOSED BY THIS SUBDIVISION. FOR PURPOSES OF THE PENALTY IMPOSED BY THIS SUBDIVISION, A FAILURE TO PRESENT AND MAKE AVAILABLE AND ACCESSIBLE A RECORD MAINTAINED IN ELECTRONIC FORMAT INCLUDES NOT ONLY THE DENIAL OF ACCESS TO THE REQUESTED RECORDS THAT WERE MAINTAINED ELECTRONICALLY, BUT ALSO THE FAILURE TO MAKE AVAILABLE TO THE COMMISSIONER THE INFORMATION, KNOWLEDGE, OR MEANS NECESSARY TO ACCESS AND OTHERWISE USE THE ELECTRONICALLY MAINTAINED RECORDS IN THE INSPECTION AND EXAMINATION OF THESE RECORDS.

S 39. Subdivision (h) of section 1111 of the tax law, as amended by section 1 of part Q-3 of chapter 62 of the laws of 2003, is amended to read as follows:

(h) Receipts subject to tax under subdivision (a) of section eleven hundred five on retail sales of cigarettes, CIGARS and tobacco products and consideration given or contracted to be given for cigarettes, CIGARS and tobacco products the uses of which are subject to tax under section eleven hundred ten shall be deemed to include any tax imposed on cigarettes, CIGARS and tobacco products by article twenty of this chapter and any tax imposed on cigarettes AND CIGARS by chapter thirteen of title eleven of the administrative code of the city of New York.

S 40. Subdivision (e) of section 1814 of the tax law, as amended by section 28 of subpart I of part V-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(e) Nothing in this section shall apply to common or contract carriers or warehousemen while engaged in lawfully transporting or storing unstamped packages of cigarettes as merchandise, or lawfully transporting or storing CIGARS OR tobacco products, nor to any employee of such carrier or warehouseman acting within the scope of his OR HER employment, nor to public officers or employees in the performance of their official duties requiring possession or control of unstamped or unlawfully stamped packages of cigarettes or possession or control of CIGARS OR tobacco products, nor to temporary incidental possession by employees or agents of persons lawfully entitled to possession, nor to persons whose possession is for the purpose of aiding police officers in performing their duties.

S 41. Paragraphs 3 and 4 of subdivision (h) of section 1814 of the tax law, as amended by section 28 of subpart I of part V-1 of chapter 57 of the laws of 2009, are amended to read as follows:

(3) Any person, other than a distributor appointed by the commissioner under article twenty of this chapter, who shall knowingly transport or have in his OR HER custody, possession or under his OR HER control twenty-five hundred or more cigars or fifty or more pounds of tobacco upon which the taxes imposed by article twenty of this chapter have not been assumed or paid by a distributor appointed by the commissioner under article twenty of this chapter, or other person treated as a distributor pursuant to section four hundred seventy-one-d of this chapter shall be guilty of a misdemeanor. Provided further, that any person who has twice been convicted under this subdivision shall be guilty of a class E felony for any subsequent violation of this section, regardless of the amount of CIGARS OR tobacco products involved in such violation.

(4) For purposes of this subdivision, such person shall knowingly transport or have in his OR HER custody, possession or under his OR HER control tobacco PRODUCTS or cigars on which such taxes have not been

assumed or paid by a distributor appointed by the commissioner where such person has knowledge of the requirement of the tax on CIGARS AND tobacco products and, where to his OR HER knowledge, such taxes have not been assumed or paid on such CIGARS OR tobacco products by a distributor appointed by the commissioner [of taxation and finance].

S 42. Section 1814-a of the tax law, as added by chapter 61 of the laws of 1989, is amended to read as follows:

S 1814-a. Person not appointed as a [tobacco products] distributor OF CIGARS OR TOBACCO PRODUCTS. (a) Any person who, while not appointed as a distributor of CIGARS OR tobacco products pursuant to the provisions of article twenty of this chapter, imports or causes to be imported into the state more than fifty cigars or more than one pound of tobacco, for sale within the state, or produces, manufactures or compounds CIGARS OR tobacco products within the state shall be guilty of a misdemeanor punishable by a fine of not more than five thousand dollars or by a term of imprisonment not to exceed thirty days. If, within any ninety day period, one thousand or more cigars or five hundred pounds or more of tobacco are imported or caused to be imported into the state for sale within the state or are produced, manufactured or compounded within the state by any person while not appointed as a distributor of CIGARS OR tobacco products, such person shall be guilty of a misdemeanor. Provided further, that any person who has twice been convicted under this section shall be guilty of a class E felony for any subsequent violation of this section, regardless of the amount of CIGARS OR tobacco products involved in such violation.

(b) For purposes of this section, the possession or transportation within this state by any person, other than a CIGAR OR tobacco products distributor appointed by the commissioner [of taxation and finance], at any one time of seven hundred fifty or more cigars or fifteen pounds or more of tobacco shall be presumptive evidence that such tobacco products are possessed or transported for the purpose of sale and are subject to the tax imposed by section four hundred seventy-one-b, SECTION FOUR HUNDRED SEVENTY-ONE-F OR SECTION FOUR HUNDRED SEVENTY-ONE-H of this chapter. With respect to such possession or transportation, any provisions of article twenty of this chapter providing for a time period during which the tax imposed by such article may be paid shall not apply.

S 43. The section heading, subdivisions (a), (b) and (c) of section 1846-a of the tax law, as amended by chapter 556 of the laws of 2011, are amended to read as follows:

Forfeiture action with respect to CIGARS AND tobacco products. (a) Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four of section 2.10 of such law, acting pursuant to his OR HER special duties, shall discover any tobacco products in excess of five hundred cigars or ten pounds of tobacco which are being imported for sale in the state where the person importing or causing such CIGARS AND tobacco products to be imported has not been appointed as a distributor pursuant to section four hundred seventy-two of this chapter, such police officer or peace officer is hereby authorized and empowered forthwith to seize and take possession of such CIGARS AND tobacco products. Such CIGARS AND tobacco products seized by a police officer or peace officer shall be turned over to the commissioner. Such seized CIGARS AND tobacco products shall be forfeited to the state. All CIGARS AND tobacco products forfeited to the state shall be destroyed or used for law enforcement purposes, except that CIGARS OR tobacco products that violate, or are

suspected of violating, federal trademark laws or import laws shall not be used for law enforcement purposes. If the commissioner determines the CIGARS OR tobacco products may not be used for law enforcement purposes, the commissioner must, within a reasonable time thereafter, upon publication in the state registry of a notice to such effect before the day of destruction, destroy such forfeited CIGARS OR tobacco products. The commissioner may, prior to any destruction of CIGARS OR tobacco products, permit the true holder of the trademark rights in the CIGARS OR tobacco products to inspect such forfeited products in order to assist in any investigation regarding such CIGARS OR tobacco products.

(b) In the alternative, the commissioner, on reasonable notice by mail or otherwise, may permit the person from whom said CIGARS OR tobacco products were seized to redeem the said CIGARS OR tobacco products by the payment of the tax due, plus a penalty of fifty per centum thereof, plus interest on the amount of tax due for each month or fraction thereof after such tax became due (determined without regard to any extension of time for filing or paying) at the rate applicable under subparagraph (ii) of paragraph (a) of subdivision one of section four hundred eighty-one of this chapter and the costs incurred in such proceeding, which total payment shall not be less than five dollars; provided, however, that such seizure and sale or redemption shall not be deemed to relieve any person from fine or imprisonment provided for in this article for violation of any provision of article twenty of this chapter.

(c) In the alternative, the commissioner may dispose of any CIGARS OR tobacco products seized pursuant to this section, except those that violate, or are suspected of violating, federal trademark or import laws, by transferring them to the department of corrections and community supervision for sale to or use by inmates in such institutions.

S 44. The section heading of section 1847 of the tax law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

Seizure and forfeiture of vehicles or other means of transportation used to transport or for deposit or concealment of cigarettes or used to import CIGARS OR tobacco products.

S 45. Subdivision (b) of section 1847 of the tax law, as added by chapter 61 of the laws of 1989, is amended to read as follows:

(b) Any peace officer designated in subdivision four of section 2.10 of the criminal procedure law, acting pursuant to his OR HER special duties, or any police officer designated in section 1.20 of the criminal procedure law may seize any vehicle or other means of transportation used to import CIGARS OR tobacco products in excess of five hundred cigars or ten pounds of tobacco for sale where the person importing or causing such CIGARS OR tobacco products to be imported has not been appointed a distributor pursuant to section four hundred seventy-two of this chapter, other than a vehicle or other means of transportation used by any person as a common carrier in transaction of business as such common carrier, and such vehicle or other means of transportation shall be subject to forfeiture as hereinafter in this section provided.

S 46. This act shall take effect July 1, 2012; provided, however, that section eleven of this act shall take effect immediately.

PART D

Section 1. Section 19 of part W-1 of chapter 109 of the laws of 2006, amending the tax law relating to providing exemptions, reimbursements and credits from various taxes for certain alternative fuels, as amended

by section 2 of part L of chapter 61 of the laws of 2011, is amended to read as follows:

S 19. This act shall take effect immediately; provided, however, that sections one through thirteen of this act shall take effect September 1, 2006 and shall be deemed repealed on September 1, [2012] 2017 and such repeal shall apply in accordance with the applicable transitional provisions of sections 1106 and 1217 of the tax law, and shall apply to sales made, fuel compounded or manufactured, and uses occurring on or after such date, and with respect to sections seven through eleven of this act, in accordance with applicable transitional provisions of sections 1106 and 1217 of the tax law; provided, however, that the commissioner of taxation and finance shall be authorized on and after the date this act shall have become a law to adopt and amend any rules or regulations and to take any steps necessary to implement the provisions of this act; provided further that sections fourteen through sixteen of this act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2006.

S 2. This act shall take effect immediately.

PART E

Section 1. Subdivision 14 of section 282 of the tax law, as amended by section 1 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

14. "Diesel motor fuel" shall mean No. 1 Diesel fuel, No. 2 Diesel fuel, biodiesel, kerosene, [crude oil,] fuel oil or other middle distillate and also motor fuel suitable for use in the operation of an engine of the diesel type, excluding, however, any product specifically designated "No. 4 Diesel fuel" and not suitable as a fuel used in the operation of a motor vehicle engine.

S 2. Paragraph (b) of subdivision 3 of section 282-a of the tax law, as amended by section 5 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(b) The tax on the incidence of sale or use imposed by subdivision one of this section shall not apply to: (i) the sale or use of non-highway Diesel motor fuel, but only if all of such fuel is consumed other than on the public highways of this state (except for the use of the public highway by farmers to reach adjacent farmlands); provided, however, this exemption shall in no event apply to a sale of non-highway Diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle (except for delivery at a farm site which qualifies for the exemption under subdivision (g) of section three hundred one-b of this chapter); or (ii) a sale to the consumer consisting of not more than twenty gallons of water-white kerosene to be used and consumed exclusively for heating purposes; or (iii) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for heating purposes in containers of no more than twenty gallons; or (iv) a sale of kero-jet fuel to an airline for use in its airplanes or a use of kero-jet fuel by an airline in its airplanes; or (v) a sale of kero-jet fuel by a registered distributor of Diesel motor fuel to a fixed base operator registered under this article as a distributor of kero-jet fuel only where such fixed base operator is engaged solely in making or offering to make retail sales not in bulk of kero-jet fuel directly into the fuel

tank of an airplane for the purpose of operating such airplane; [or] (vi) a retail sale not in bulk of kero-jet fuel by a fixed base operator registered under this article as a distributor of kero-jet fuel only where such fuel is delivered directly into the fuel tank of an airplane for use in the operation of such airplane; OR (VII) THE SALE OF PREVIOUSLY UNTAXED QUALIFIED BIODIESEL TO A PERSON REGISTERED UNDER THIS ARTICLE AS A DISTRIBUTOR OF DIESEL MOTOR FUEL OTHER THAN (A) A RETAIL SALE TO SUCH PERSON OR (B) A SALE TO SUCH PERSON WHICH INVOLVES A DELIVERY AT A FILLING STATION OR INTO A REPOSITORY WHICH IS EQUIPPED WITH A HOSE OR OTHER APPARATUS BY WHICH SUCH QUALIFIED BIODIESEL CAN BE DISPENSED INTO THE FUEL TANK OF A MOTOR VEHICLE.

S 3. Paragraph 5 of subdivision (a) of section 301-b of the tax law, as added by chapter 190 of the laws of 1990, is amended to read as follows:

(5) [Crude oil and liquefied] LIQUIFIED petroleum gases, such as butane, ethane or propane.

S 4. Subdivision (e) of section 301-b of the tax law, as amended by section 21 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(e) Sales of QUALIFIED BIODIESEL, non-highway diesel motor fuel and residual petroleum product to registered distributors of diesel motor fuel and registered residual petroleum product businesses.

(1) [Non-highway] QUALIFIED BIODIESEL AND NON-HIGHWAY Diesel motor fuel sold by a person registered under article twelve-A of this chapter as a distributor of diesel motor fuel to a person registered under such article twelve-A as a distributor of diesel motor fuel where such sale is not a retail sale or a sale that involves a delivery at a filling station or into a repository equipped with a hose or other apparatus by which such QUALIFIED BIODIESEL OR non-highway Diesel motor fuel can be dispensed into the fuel tank of a motor vehicle.

(2) Residual petroleum product sold by a person registered under this article as a residual petroleum product business to a person registered under this article as a residual petroleum product business where such sale is not a retail sale. Provided, however, that the commissioner may require such documentary proof to qualify for any exemption provided in this section as the commissioner deems appropriate, including the expansion of any certifications required pursuant to section two hundred eighty-five-a or two hundred eighty-five-b of this chapter to cover the taxes imposed by this article.

(3) "QUALIFIED BIODIESEL" MEANS SUCH TERM AS DEFINED IN SUBDIVISION TWENTY-THREE OF SECTION TWO HUNDRED EIGHTY-TWO OF THIS CHAPTER.

S 5. Paragraph 2 of subdivision (a) of section 1102 of the tax law, as amended by section 39 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(2) Every distributor of diesel motor fuel shall pay, as a prepayment on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, a tax upon the sale or use of diesel motor fuel in this state. The tax shall be computed based upon the number of gallons of diesel motor fuel sold or used. Provided, however, if the tax has not been imposed prior thereto, it shall be imposed on the delivery of diesel motor fuel to a retail service station. The collection of such tax shall not be made applicable to the sale or use of diesel motor fuel under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto. The prepaid tax on diesel motor fuel shall not apply to (i) the sale of previously

untaxed non-highway Diesel motor fuel to a person registered as a distributor of Diesel motor fuel other than a sale to such person which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle, [or] (ii) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for heating purposes in containers of no more than twenty gallons or to the sale of CNG or hydrogen; OR (III) THE SALE OF PREVIOUSLY UNTAXED QUALIFIED BIODIESEL TO A PERSON REGISTERED UNDER ARTICLE TWELVE-A OF THIS CHAPTER AS A DISTRIBUTOR OF DIESEL MOTOR FUEL OTHER THAN (A) A RETAIL SALE TO SUCH PERSON OR (B) A SALE TO SUCH PERSON WHICH INVOLVES A DELIVERY AT A FILLING STATION OR INTO A REPOSITORY WHICH IS EQUIPPED WITH A HOSE OR OTHER APPARATUS BY WHICH SUCH QUALIFIED BIODIESEL CAN BE DISPENSED INTO THE FUEL TANK OF A MOTOR VEHICLE. "QUALIFIED BIODIESEL" MEANS SUCH TERM AS DEFINED IN SUBDIVISION TWENTY-THREE OF SECTION TWO HUNDRED EIGHTY-TWO OF THIS CHAPTER.

S 6. Paragraph 2 of subdivision (a) of section 1102 of the tax law, as amended by section 39-a of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(2) Every distributor of diesel motor fuel shall pay, as a prepayment on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, a tax upon the sale or use of diesel motor fuel in this state. The tax shall be computed based upon the number of gallons of diesel motor fuel sold or used. Provided, however, if the tax has not been imposed prior thereto, it shall be imposed on the delivery of diesel motor fuel to a retail service station. The collection of such tax shall not be made applicable to the sale or use of diesel motor fuel under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto. The prepaid tax on diesel motor fuel shall not apply to (i) the sale of [previously untaxed] non-highway Diesel motor fuel to a person registered as a distributor of Diesel motor fuel other than a sale to such person which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle, [or] (ii) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for heating purposes in containers of no more than twenty gallons; OR (III) THE SALE OF PREVIOUSLY UNTAXED QUALIFIED BIODIESEL TO A PERSON REGISTERED UNDER ARTICLE TWELVE-A OF THIS CHAPTER AS A DISTRIBUTOR OF DIESEL MOTOR FUEL OTHER THAN (A) A RETAIL SALE TO SUCH PERSON OR (B) A SALE TO SUCH PERSON WHICH INVOLVES A DELIVERY AT A FILLING STATION OR INTO A REPOSITORY WHICH IS EQUIPPED WITH A HOSE OR OTHER APPARATUS BY WHICH SUCH QUALIFIED BIODIESEL CAN BE DISPENSED INTO THE FUEL TANK OF A MOTOR VEHICLE. "QUALIFIED BIODIESEL" MEANS SUCH TERM AS DEFINED IN SUBDIVISION TWENTY-THREE OF SECTION TWO HUNDRED EIGHTY-TWO OF THIS CHAPTER.

S 7. This act shall take effect June 1, 2012; provided, however, that the amendments to paragraph 2 of subdivision (a) of section 1102 of the tax law made by section five of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 19 of part W1 of chapter 109 of the laws of 2006, as amended, when upon such date the provisions of section six of this act shall take effect; provided,

further, that sections five and six of this act shall apply to sales made and uses occurring on and after such effective date in accordance with the applicable transitional provisions in sections 1106 and 1217 of the tax law.

PART F

Section 1. Subparagraph (B) of paragraph 4 of subdivision (a) of section 1134 of the tax law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

(B) Where a person files a certificate of registration for a certificate of authority under this subdivision and in considering such application the commissioner ascertains that (i) any tax imposed under this chapter or any related statute, as defined in section eighteen hundred of this chapter, has been finally determined to be due from such person and has not been paid in full, (ii) [a] ANY tax [due under this article or any law, ordinance or resolution enacted pursuant to the authority of article twenty-nine] IMPOSED UNDER THIS CHAPTER OR ANY RELATED STATUTE, AS DEFINED IN SECTION EIGHTEEN HUNDRED of this chapter, has been finally determined to be due from an officer, director, partner or employee of such person, and, where such person is a limited liability company, also a member or manager of such person, in the officer's, director's, partner's, member's, manager's or employee's capacity as a person required to collect tax on behalf of such person or another person and has not been paid, (iii) such person has been convicted of a crime provided for in this chapter within one year from the date on which such certificate of registration is filed, (iv) an officer, director, partner or employee of such person, and, where such person is a limited liability company, also a member or manager of such person, which officer, director, partner, member, manager or employee is a person required to collect tax on behalf of such person filing a certificate of registration has in the officer's, director's, partner's, member's, manager's or employee's capacity as a person required to collect tax on behalf of such person or of another person been convicted of a crime provided for in this chapter within one year from the date on which such certificate of registration is filed, (v) a shareholder owning more than fifty percent of the number of shares of stock of such person (where such person is a corporation) entitling the holder thereof to vote for the election of directors or trustees, who owned more than fifty percent of the number of such shares of another person (where such other person is a corporation) at the time any tax imposed under this chapter or any related statute as defined in section eighteen hundred of this chapter was finally determined to be due and where such tax has not been paid in full, or at the time such other person was convicted of a crime provided for in this chapter within one year from the date on which such certificate of registration is filed, or (vi) a certificate of authority issued to such person has been revoked or suspended pursuant to subparagraph (A) of this paragraph within one year from the date on which such certificate of registration is filed, the commissioner may refuse to issue a certificate of authority.

S 2. Subdivision (g) of section 1146 of the tax law, as added by chapter 577 of the laws of 1997, is amended to read as follows:

(g) (1) Notwithstanding the provisions of subdivision (a) of this section, if the commissioner determines that a person required to collect tax is liable for any tax, penalty or interest under this article or is liable for a penalty under subdivision (e) of section eleven

hundred forty-five of this article with respect to any failure, upon request in writing of such person, the commissioner shall disclose in writing to such person [(1)] (I) the name of any other person required to collect tax or any other person liable for such penalty under such subdivision (e) whom the commissioner has determined to be liable for the same tax, penalty or interest or for such penalty with respect to such failure, and [(2)] (II) whether the commissioner has attempted to collect such tax, penalty or interest or such penalty from such other person, the general nature of such collection activities, and the amount collected.

(2) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY, FOR THE PURPOSES OF SUBPARAGRAPH (B) OF PARAGRAPH FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-FOUR OF THIS PART, IF THE COMMISSIONER DETERMINES THAT ANY TAX IMPOSED UNDER THIS CHAPTER OR ANY RELATED STATUTE, AS DEFINED IN SECTION EIGHTEEN HUNDRED OF THIS CHAPTER, HAS BEEN FINALLY DETERMINED TO BE DUE FROM A PERSON REQUIRED TO COLLECT TAX AND HAS NOT BEEN PAID, UPON WRITTEN REQUEST OF THE PERSON WHO FILED THE CERTIFICATE OF REGISTRATION FOR A CERTIFICATE OF AUTHORITY THAT WAS REFUSED, THE COMMISSIONER MAY DISCLOSE TO SUCH PERSON THE NAME AND AMOUNT OF TAX DUE OF THE PERSON OR PERSONS REQUIRED TO COLLECT TAX WHOSE TAX LIABILITY OR LIABILITIES WERE GROUNDS FOR THE REFUSAL TO ISSUE THE CERTIFICATE OF AUTHORITY.

S 3. This act shall take effect immediately.

PART G

Section 1. Paragraph 10 of subsection (g) of section 658 of the tax law is REPEALED.

S 2. Paragraph 10 of subdivision (g) of section 11-1758 of the administrative code of the city of New York is REPEALED.

S 3. Paragraph 5 of subsection (u) of section 685 of the tax law is REPEALED.

S 4. Paragraph 5 of subdivision (t) of section 11-1785 of the administrative code of the city of New York is REPEALED.

S 5. Section 23 of part U of chapter 61 of the laws of 2011, amending the real property tax law, the general municipal law, the public officers law, the tax law, the abandoned property law, the state finance law and the administrative code of the city of New York, relating to establishing standards for electronic real property tax administration, allowing the department of taxation and finance to use electronic communication means to furnish tax notices and other documents, mandatory electronic filing of tax documents, debit cards issued for tax refunds, improving sales tax compliance and repealing certain provisions of the tax law and the administrative code of the city of New York relating thereto, is amended to read as follows:

S 23. This act shall take effect immediately; provided, however, that:

(a) the amendments to section 29 of the tax law made by section thirteen of this act shall apply to tax documents filed or required to be filed on or after the sixtieth day after which this act shall have become a law [and shall expire and be deemed repealed December 31, 2012], provided however that the amendments to paragraph 4 of subdivision (a) of section 29 of the tax law and paragraph 2 of subdivision (e) of section 29 of the tax law made by section thirteen of this act with regard to individual taxpayers shall take effect September 15, 2011 but only if the commissioner of taxation and finance has reported in the report required by section seventeen-b of this act that the percentage

of individual taxpayers electronically filing their 2010 income tax returns is less than eighty-five percent; provided that the commissioner of taxation and finance shall notify the legislative bill drafting commission of the date of the issuance of such report in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law;

(b) sections fourteen, fifteen, sixteen and seventeen of this act shall take effect September 15, 2011 but only if the commissioner of taxation and finance has reported in the report required by section seventeen-b of this act that the percentage of individual taxpayers electronically filing their 2010 income tax returns is less than eighty-five percent;

(c) sections fourteen-a and fifteen-a of this act shall take effect September 15, 2011 and expire and be deemed repealed December 31, 2012 but shall take effect only if the commissioner of taxation and finance has reported in the report required by section seventeen-b of this act that the percentage of individual taxpayers electronically filing their 2010 income tax returns is eighty-five percent or greater; AND

(d) sections fourteen-b, fifteen-b, sixteen-a and seventeen-a of this act shall take effect January 1, 2013 but only if the commissioner of taxation and finance has reported in the report required by section seventeen-b of this act that the percentage of individual taxpayers electronically filing their 2010 income tax returns is less than eighty-five percent[; and

(e) sections twenty-one and twenty-one-a of this act shall expire and be deemed repealed December 31, 2012].

S 6. Paragraph 2 of subsection (b) of section 29 of the tax law as added by section 13 of part U of chapter 61 of the laws of 2011, is amended to read as follows:

(2) If a tax return preparer prepared more than five original tax documents during any calendar year beginning on or after January first, two thousand eleven, and if in any succeeding calendar year that tax return preparer prepares one or more authorized [returns] TAX DOCUMENTS using tax software, then, for such succeeding calendar year and for each subsequent calendar year thereafter, all authorized tax documents prepared by that tax return preparer must be filed electronically, in accordance with instructions prescribed by the commissioner.

S 7. This act shall take effect immediately, provided, however, that the amendments to paragraph 2 of subsection (b) of section 29 of the tax law made by section six of this act shall be deemed to have been in full force and effect on the same date and in the same manner as section 13 of part U of chapter 61 of the laws of 2011, as amended, took effect.

PART H

Section 1. Paragraphs 2 and 3 of subsection (g-1) of section 606 of the tax law, paragraph 2 as amended by chapter 378 of the laws of 2005, subparagraph (B) of paragraph 2 as amended by chapter 251 of the laws of 2006 and paragraph 3 as amended by chapter 128 of the laws of 2007, are amended to read as follows:

(2) Qualified solar energy system equipment expenditures. (A) The term "qualified solar energy system equipment expenditures" means expenditures for:

(I) the purchase of solar energy system equipment which is installed in connection with residential property which is [(i)] (I) located in this state and [(ii) which is] (II) used by the taxpayer as his or her principal residence at the time the solar energy system equipment is placed in service;

(II) THE LEASE OF SOLAR ENERGY SYSTEM EQUIPMENT UNDER A WRITTEN AGREEMENT THAT SPANS AT LEAST TEN YEARS WHERE SUCH EQUIPMENT OWNED BY A PERSON OTHER THAN THE TAXPAYER IS INSTALLED IN CONNECTION WITH RESIDENTIAL PROPERTY WHICH IS: (I) LOCATED IN THIS STATE; AND (II) USED BY THE TAXPAYER AS HIS OR HER PRINCIPAL RESIDENCE AT THE TIME THE SOLAR ENERGY SYSTEM EQUIPMENT IS PLACED IN SERVICE; OR

(III) THE PURCHASE OF POWER UNDER A WRITTEN AGREEMENT THAT SPANS AT LEAST TEN YEARS WHERE THE POWER PURCHASED IS GENERATED BY SOLAR ENERGY SYSTEM EQUIPMENT OWNED BY A PERSON OTHER THAN THE TAXPAYER AND IS INSTALLED IN CONNECTION WITH RESIDENTIAL PROPERTY WHICH IS: (I) LOCATED IN THIS STATE; AND (II) USED BY THE TAXPAYER AS HIS OR HER PRINCIPAL RESIDENCE AT THE TIME THE SOLAR ENERGY SYSTEM IS PLACED IN SERVICE.

(B) Such qualified expenditures shall include expenditures for materials, labor costs properly allocable to on-site preparation, assembly and original installation, architectural and engineering services, and designs and plans directly related to the construction or installation of the solar energy system equipment.

(C) Such qualified expenditures shall not include interest or other finance charges.

(D) SUCH QUALIFIED SOLAR ENERGY SYSTEM EQUIPMENT EXPENDITURES DESCRIBED IN CLAUSE (II) OR (III) OF SUBPARAGRAPH (A) OF THIS PARAGRAPH SHALL INCLUDE AN AMOUNT EQUAL TO ALL PAYMENTS MADE DURING THE TAXABLE YEAR UNDER SUCH AGREEMENT.

(E) NOTWITHSTANDING PARAGRAPH ONE OF THIS SUBDIVISION, THE PERCENTAGE TO BE USED TO CALCULATE THE AMOUNT OF CREDIT ALLOWED FOR QUALIFIED SOLAR ENERGY SYSTEM EQUIPMENT EXPENDITURES DESCRIBED IN CLAUSES (II) AND (III) OF SUBPARAGRAPH (A) OF THIS PARAGRAPH SHALL BE EQUAL TO TWELVE AND ONE-HALF PERCENT.

(3) Solar energy system equipment. The term "solar energy system equipment" shall mean an arrangement or combination of components utilizing solar radiation, which, when installed in a residence, produces energy designed to provide heating, cooling, hot water or electricity for use in such residence. Such arrangement or components shall not include equipment connected to solar energy system equipment that is a component of part or parts of a non-solar energy system or which uses any sort of recreational facility or equipment as a storage medium. Solar energy system equipment that generates electricity for use in a residence must conform to applicable requirements set forth in section sixty-six-j of the public service law. Provided, however, where solar energy system equipment is purchased and installed by a condominium management association or a cooperative housing corporation, for purposes of this subsection only, the term ["ten kilowatts"] "TWENTY-FIVE KILOWATTS" in such section sixty-six-j shall be read as "fifty kilowatts."

S 2. Subdivision (ee) of section 1115 of the tax law, as added by chapter 306 of the laws of 2005, is amended to read as follows:

(ee) Receipts from the retail sale of [residential] solar energy systems equipment and of the service of installing such systems shall be exempt from tax under this article. For the purposes of this subdivision, "[residential] solar energy systems equipment" shall mean an arrangement or combination of components [installed in a residence] that

utilizes solar radiation to produce energy designed to provide heating, cooling, hot water and/or electricity IN A BUILDING OR A STRUCTURE. Such arrangement or components shall not [include] EXCEED AN INSTALLED CAPACITY RATING OF TWO MEGAWATTS OR THE THERMAL EQUIVALENT THEREOF AND SHALL NOT INCLUDE equipment that is part of a non-solar energy system or [which uses any sort of recreational facility or equipment as a storage medium] SYSTEMS OR EQUIPMENT USED TO HEAT RESIDENTIAL SWIMMING POOLS.

S 3. Paragraph 1 of subdivision (a) of section 1210 of the tax law, as amended by section 3 of part GG of chapter 57 of the laws of 2010, is amended to read as follows:

(1) Either, all of the taxes described in article twenty-eight of this chapter, at the same uniform rate, as to which taxes all provisions of the local laws, ordinances or resolutions imposing such taxes shall be identical, except as to rate and except as otherwise provided, with the corresponding provisions in such article twenty-eight, including the definition and exemption provisions of such article, so far as the provisions of such article twenty-eight can be made applicable to the taxes imposed by such city or county and with such limitations and special provisions as are set forth in this article. The taxes authorized under this subdivision may not be imposed by a city or county unless the local law, ordinance or resolution imposes such taxes so as to include all portions and all types of receipts, charges or rents, subject to state tax under sections eleven hundred five and eleven hundred ten of this chapter, except as otherwise provided. (i) Any local law, ordinance or resolution enacted by any city of less than one million or by any county or school district, imposing the taxes authorized by this subdivision, shall, notwithstanding any provision of law to the contrary, exclude from the operation of such local taxes all sales of tangible personal property for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, generating, assembly, refining, mining or extracting; and all sales of tangible personal property for use or consumption predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both; and, unless such city, county or school district elects otherwise, shall omit the provision for credit or refund contained in clause six of subdivision (a) or subdivision (d) of section eleven hundred nineteen of this chapter. (ii) Any local law, ordinance or resolution enacted by any city, county or school district, imposing the taxes authorized by this subdivision, shall omit the [residential] solar energy systems equipment exemption provided for in subdivision (ee) and the clothing and footwear exemption provided for in paragraph thirty of subdivision (a) of section eleven hundred fifteen of this chapter, unless such city, county or school district elects otherwise as to either such [residential] solar energy systems equipment exemption or such clothing and footwear exemption.

S 4. Paragraph 1 of subdivision (n) of section 1210 of the tax law, as added by chapter 306 of the laws of 2005, is amended to read as follows:

(1) Any city having a population of one million or more in which the taxes imposed by section eleven hundred seven of this chapter are in effect, acting through its local legislative body, is hereby authorized and empowered to elect to provide the same exemptions from such taxes as the [residential] solar energy systems equipment exemption from state sales and compensating use taxes described in subdivision (ee) of section eleven hundred fifteen of this chapter by enacting a resolution

in the form set forth in paragraph two of this subdivision; whereupon, upon compliance with the provisions of subdivisions (d) and (e) of this section, such enactment of such resolution shall be deemed to be an amendment to such section eleven hundred seven and such section eleven hundred seven shall be deemed to incorporate such exemptions as if they had been duly enacted by the state legislature and approved by the governor.

S 5. This act shall take effect immediately, provided that:

(1) section one of this act shall apply to leases of solar energy system equipment and purchases of power under written agreements entered into on or after such effective date; provided further, however, that the amendments to paragraph 3 of subsection (g-1) of section 606 of the tax law made by section one of this act shall not apply to any taxable year commencing on or after January 1, 2015; and

(2) sections two, three and four of this act shall apply to sales made or uses occurring on or after September 1, 2012 in accordance with the applicable transitional provisions of sections 1106 and 1217 of the tax law.

PART I

Section 1. Paragraph 1 of subdivision (a) of section 28 of the tax law, as amended by chapter 440 of the laws of 2006, is amended to read as follows:

(1) A taxpayer which is a qualified commercial production company, or which is a sole proprietor of a qualified commercial production company, and which is subject to tax under article nine-A or twenty-two of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision [(d)] (C) of this section, to be computed as provided in this section. Provided, however, to be eligible for such credit, at least seventy-five percent of the production costs (excluding post production costs) paid or incurred directly and predominantly in the actual filming or recording of the qualified commercial must be costs incurred in New York state. THE TAX CREDIT ALLOWED PURSUANT TO THIS SECTION SHALL APPLY TO TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND SEVENTEEN.

S 2. Paragraph (a) of subdivision 38 of section 210 of the tax law, as added by section 3 of part V of chapter 62 of the laws of 2006, is amended to read as follows:

(a) Allowance of credit. A taxpayer that is eligible pursuant to provisions of section twenty-eight of this chapter shall be allowed a credit to be computed as provided in such section against the tax imposed by this article. THE TAX CREDIT ALLOWED PURSUANT TO THIS SECTION SHALL APPLY TO TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND SEVENTEEN.

S 3. Paragraph 1 of subsection (jj) of section 606 of the tax law, as added by section 5 of part V of chapter 62 of the laws of 2006, is amended to read as follows:

(1) Allowance of credit. A taxpayer that is eligible pursuant to the provisions of section twenty-eight of this chapter shall be allowed a credit to be computed as provided in such section against the tax imposed by this article. THE TAX CREDIT ALLOWED PURSUANT TO THIS SECTION SHALL APPLY TO TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND SEVENTEEN.

S 4. Section 10 of part V of chapter 62 of the laws of 2006, relating to the empire state commercial production tax credit, is amended to read as follows:

S 10. This act shall take effect immediately [and shall apply to taxable years beginning on and after January 1, 2007 and shall expire and be deemed repealed on December 31, 2011]; provided, however that the IMB credit for energy taxes under subsection (t-1) and the state film production credit under subsection (gg) of section 606 of the tax law contained in section four of this act shall expire on the same date as provided in subdivision (a) of section 49 of part Y of chapter 63 of the laws of 2000, as amended and section 9 of part P of chapter 60 of the laws of 2004, as amended, respectively.

S 5. This act shall take effect immediately.

PART J

Section 1. Subdivision 4 of section 22 of the public housing law, as amended by section 1 of part F of chapter 61 of the laws of 2011, is amended to read as follows:

4. Statewide limitation. The aggregate dollar amount of credit which the commissioner may allocate to eligible low-income buildings under this article shall be [thirty-two] FORTY million dollars. The limitation provided by this subdivision applies only to allocation of the aggregate dollar amount of credit by the commissioner, and does not apply to allowance to a taxpayer of the credit with respect to an eligible low-income building for each year of the credit period.

S 2. Subdivision 4 of section 22 of the public housing law, as amended by section one of this act, is amended to read as follows:

4. Statewide limitation. The aggregate dollar amount of credit which the commissioner may allocate to eligible low-income buildings under this article shall be [forty] FORTY-EIGHT million dollars. The limitation provided by this subdivision applies only to allocation of the aggregate dollar amount of credit by the commissioner, and does not apply to allowance to a taxpayer of the credit with respect to an eligible low-income building for each year of the credit period.

S 3. Subdivision 4 of section 22 of the public housing law, as amended by section two of this act, is amended to read as follows:

4. Statewide limitation. The aggregate dollar amount of credit which the commissioner may allocate to eligible low-income buildings under this article shall be [forty-eight] FIFTY-SIX million dollars. The limitation provided by this subdivision applies only to allocation of the aggregate dollar amount of credit by the commissioner, and does not apply to allowance to a taxpayer of the credit with respect to an eligible low-income building for each year of the credit period.

S 4. Subdivision 4 of section 22 of the public housing law, as amended by section three of this act, is amended to read as follows:

4. Statewide limitation. The aggregate dollar amount of credit which the commissioner may allocate to eligible low-income buildings under this article shall be [fifty-six] SIXTY-FOUR million dollars. The limitation provided by this subdivision applies only to allocation of the aggregate dollar amount of credit by the commissioner, and does not apply to allowance to a taxpayer of the credit with respect to an eligible low-income building for each year of the credit period.

S 5. Subdivision 4 of section 22 of the public housing law, as amended by section four of this act, is amended to read as follows:

4. Statewide limitation. The aggregate dollar amount of credit which the commissioner may allocate to eligible low-income buildings under this article shall be [sixty-four] SEVENTY-TWO million dollars. The limitation provided by this subdivision applies only to allocation of the aggregate dollar amount of credit by the commissioner, and does not apply to allowance to a taxpayer of the credit with respect to an eligible low-income building for each year of the credit period.

S 6. This act shall take effect immediately; provided, however, section two of this act shall take effect April 1, 2013, section three of this act shall take effect April 1, 2014, section four of this act shall take effect April 1, 2015 and section five of this act shall take effect April 1, 2016.

PART K

Section 1. Subdivision (a) of section 28 of the tax law, as amended by section 1 of part A of chapter 57 of the laws of 2010, is amended to read as follows:

(a) General. A taxpayer subject to tax under article nine, nine-A or twenty-two of this chapter shall be allowed a credit against such tax pursuant to the provisions referenced in subdivision (d) of this section. The credit (or pro rata share of earned credit in the case of a partnership) for each gallon of biofuel produced at a biofuel plant on or after January first, two thousand six shall equal fifteen cents per gallon after the production of the first forty thousand gallons per year presented to market. The credit under this section shall be capped at two and one-half million dollars per taxpayer per taxable year for up to no more than four consecutive taxable years per biofuel plant. If the taxpayer is a partner in a partnership or shareholder of a New York S corporation, then the cap imposed by the preceding sentence shall be applied at the entity level, so that the aggregate credit allowed to all the partners or shareholders of each such entity in the taxable year does not exceed two and one-half million dollars. THE TAX CREDIT ALLOWED PURSUANT TO THIS SECTION SHALL APPLY TO TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND TWENTY.

S 2. Section 187-c of the tax law, as added by section 2 of part X of chapter 62 of the laws of 2006, is amended to read as follows:

S 187-c. Biofuel production credit. A taxpayer shall be allowed a credit to be computed as provided in section twenty-eight of this chapter, AS ADDED BY PART X OF CHAPTER SIXTY-TWO OF THE LAWS OF TWO THOUSAND SIX, against the tax imposed by this article. Provided, however, that the amount of such credit allowed against the tax imposed by section one hundred eighty-four of this article shall be the excess of the amount of such credit over the amount of any credit allowed by this section against the tax imposed by section one hundred eighty-three of this article. In no event shall the credit under this section be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three or one hundred eighty-five of this article. If, however, the amount of the credit allowed under this section for any taxable year reduces the tax to such amount, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon. THE TAX CREDIT

ALLOWED PURSUANT TO THIS SECTION SHALL APPLY TO TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND TWENTY.

S 3. Subdivision 38 of section 210 of the tax law, as added by section 3 of part X of chapter 62 of the laws of 2006, is amended to read as follows:

38. Biofuel production credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-eight of this chapter, AS ADDED BY PART X OF CHAPTER SIXTY-TWO OF THE LAWS OF TWO THOUSAND SIX, against the tax imposed by this article. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the higher of the amounts prescribed in paragraphs (c) and (d) of subdivision one of this section. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon. THE TAX CREDIT ALLOWED PURSUANT TO THIS SECTION SHALL APPLY TO TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND TWENTY.

S 4. Subsection (jj) of section 606 of the tax law, as added by section 5 of part X of chapter 62 of the laws of 2006, is amended to read as follows:

(jj) Biofuel production credit. A taxpayer shall be allowed a credit to be computed as provided in section twenty-eight of this chapter, AS ADDED BY PART X OF CHAPTER SIXTY-TWO OF THE LAWS OF TWO THOUSAND SIX, against the tax imposed by this article. If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon. THE TAX CREDIT ALLOWED PURSUANT TO THIS SECTION SHALL APPLY TO TAXABLE YEARS BEGINNING BEFORE JANUARY FIRST, TWO THOUSAND TWENTY.

S 5. Section 6 of part X of chapter 62 of the laws of 2006, amending the tax law relating to providing tax credits for biofuel production plants, is amended to read as follows:

S 6. This act shall take effect immediately [and shall apply to taxable years commencing on and after January 1, 2006 and before January 1, 2013]; provided, however that the IMB credit for energy taxes under subsection (t-1) and the state film production credit under subsection (gg) of section 606 of the tax law contained in section four of this act shall expire on the same date as provided in subdivision (a) of section 49 of part Y of chapter 63 of the laws of 2000, as amended and section 9 of part P of chapter 60 of the laws of 2004, as amended, respectively.

S 6. This act shall take effect immediately.

PART L

Section 1. Section 2 of part I of chapter 58 of the laws of 2006, relating to providing an enhanced earned income tax credit, is amended to read as follows:

S 2. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2006 [and before January 1, 2013].

S 2. This act shall take effect immediately.

PART M

Section 1. Section 5232 of the civil practice law and rules is amended by adding a new subdivision (i) to read as follows:

(I) NO BANKING INSTITUTION SHALL SETOFF AND APPLY A LEVY PROCESSING FEE AGAINST THE PROCEEDS OF A LEVY FOR TAXES IMPOSED BY OR PURSUANT TO THE AUTHORITY OF THE TAX LAW OR FOR CHILD SUPPORT REGARDLESS OF ANY TERMS OF AGREEMENT, OR SCHEDULE OF FEES, OR OTHER CONTRACT BETWEEN THE DEBTOR AND THE BANKING INSTITUTION.

S 2. Subdivision (d) of section 151 of the debtor and creditor law, as amended by chapter 553 of the laws of 1990, is amended to read as follows:

(d) the issuance of any execution against any of the property of a creditor, EXCEPT AS PROVIDED FOR IN SUBDIVISION (I) OF SECTION FIFTY-TWO HUNDRED THIRTY-TWO OF THE CIVIL PRACTICE LAW AND RULES;

S 3. This act shall take effect on the ninetieth day after it shall have become a law.

PART N

Section 1. Subsection (a) of section 801 of the tax law, as amended by section 2 of part B of chapter 56 of the laws of 2011, is amended to read as follows:

(a) For the sole purpose of providing an additional stable and reliable dedicated funding source for the metropolitan transportation authority and its subsidiaries and affiliates to preserve, operate and improve essential transit and transportation services in the metropolitan commuter transportation district, a tax is hereby imposed on EMPLOYERS AND INDIVIDUALS AS FOLLOWS: (1) FOR employers who engage in business within the MCTD [(1)], THE TAX IS IMPOSED at a rate of (A) eleven hundredths (.11) percent OF THE PAYROLL EXPENSE for employers with payroll expense no greater than three hundred seventy-five thousand dollars in any calendar quarter, (B) twenty-three hundredths (.23) percent OF THE PAYROLL EXPENSE for employers with payroll expense greater than three hundred seventy-five thousand dollars and no greater than four hundred thirty-seven thousand five hundred dollars in any calendar quarter, and (C) thirty-four hundredths (.34) percent OF THE PAYROLL EXPENSE for employers with payroll expense in excess of four hundred thirty-seven thousand five hundred dollars in any calendar quarter[, and]. IF THE EMPLOYER IS A PROFESSIONAL EMPLOYER ORGANIZATION, AS DEFINED IN SECTION NINE HUNDRED SIXTEEN OF THE LABOR LAW, THE EMPLOYER'S TAX SHALL BE CALCULATED BY DETERMINING THE PAYROLL EXPENSE ATTRIBUTABLE TO EACH CLIENT WHO HAS ENTERED INTO A PROFESSIONAL EMPLOYER AGREEMENT WITH SUCH ORGANIZATION AND THE PAYROLL EXPENSE ATTRIBUTABLE TO SUCH ORGANIZATION ITSELF, MULTIPLYING EACH OF THOSE PAYROLL EXPENSE AMOUNTS BY THE APPLICABLE RATE SET FORTH IN THIS PARAGRAPH AND ADDING THOSE PRODUCTS TOGETHER. (2) FOR INDIVIDUALS, THE TAX IS IMPOSED at a rate of thirty-four hundredths (.34) percent of the net earnings from self-employment of individuals that are attributable to the MCTD if such earnings attributable to the MCTD exceed fifty thousand dollars for the tax year.

S 2. Section 4 of part B of chapter 56 of the laws of 2011 amending the tax law relating to the tax rates and exclusions under the metropolitan commuter transportation mobility tax is amended to read as follows:

S 4. This act shall take effect immediately AND SHALL APPLY TO TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2012; provided however, that section one of this act and the amendments in section two of this act that concern employers shall take effect for the quarter beginning on April 1, 2012.

S 3. This act shall take effect immediately; provided however that the amendment in section one of this act concerning professional employer organizations shall take effect for the quarter beginning on April 1, 2012.

PART O

Section 1. Paragraph (a) of subdivision 1 of section 1003 of the racing, pari-mutuel wagering and breeding law, as amended by section 1 of part S of chapter 61 of the laws of 2011, is amended to read as follows:

(a) Any racing association or corporation or regional off-track betting corporation, authorized to conduct pari-mutuel wagering under this chapter, desiring to display the simulcast of horse races on which pari-mutuel betting shall be permitted in the manner and subject to the conditions provided for in this article may apply to the board for a license so to do. Applications for licenses shall be in such form as may be prescribed by the board and shall contain such information or other material or evidence as the board may require. No license shall be issued by the board authorizing the simulcast transmission of thoroughbred races from a track located in Suffolk county. The fee for such licenses shall be five hundred dollars per simulcast facility per year payable by the licensee to the board for deposit into the general fund. Except as provided herein, the board shall not approve any application to conduct simulcasting into individual or group residences, homes or other areas for the purposes of or in connection with pari-mutuel wagering. The board may approve simulcasting into residences, homes or other areas to be conducted jointly by one or more regional off-track betting corporations and one or more of the following: a franchised corporation, thoroughbred racing corporation or a harness racing corporation or association; provided (i) the simulcasting consists only of those races on which pari-mutuel betting is authorized by this chapter at one or more simulcast facilities for each of the contracting off-track betting corporations which shall include wagers made in accordance with section one thousand fifteen, one thousand sixteen and one thousand seventeen of this article; provided further that the contract provisions or other simulcast arrangements for such simulcast facility shall be no less favorable than those in effect on January first, two thousand five; (ii) that each off-track betting corporation having within its geographic boundaries such residences, homes or other areas technically capable of receiving the simulcast signal shall be a contracting party; (iii) the distribution of revenues shall be subject to contractual agreement of the parties except that statutory payments to non-contracting parties, if any, may not be reduced; provided, however, that nothing herein to the contrary shall prevent a track from televising its races on an irregular basis primarily for promotional or marketing purposes as found by the board. For purposes of this paragraph, the provisions of section one thousand thirteen of this article shall not apply. Any agreement authorizing an in-home simulcasting experiment commencing prior to May fifteenth, nineteen hundred ninety-five, may, and all its terms, be extended until June thirtieth, two thousand [twelve] THIRTEEN; provided,

however, that any party to such agreement may elect to terminate such agreement upon conveying written notice to all other parties of such agreement at least forty-five days prior to the effective date of the termination, via registered mail. Any party to an agreement receiving such notice of an intent to terminate, may request the board to mediate between the parties new terms and conditions in a replacement agreement between the parties as will permit continuation of an in-home experiment until June thirtieth, two thousand [twelve] THIRTEEN; and (iv) no in-home simulcasting in the thoroughbred special betting district shall occur without the approval of the regional thoroughbred track.

S 2. Subparagraph (iii) of paragraph d of subdivision 3 of section 1007 of the racing, pari-mutuel wagering and breeding law, as amended by section 2 of part S of chapter 61 of the laws of 2011, is amended to read as follows:

(iii) Of the sums retained by a receiving track located in Westchester county on races received from a franchised corporation, for the period commencing January first, two thousand eight and continuing through June thirtieth, two thousand [twelve] THIRTEEN, the amount used exclusively for purses to be awarded at races conducted by such receiving track shall be computed as follows: of the sums so retained, two and one-half percent of the total pools. Such amount shall be increased or decreased in the amount of fifty percent of the difference in total commissions determined by comparing the total commissions available after July twenty-first, nineteen hundred ninety-five to the total commissions that would have been available to such track prior to July twenty-first, nineteen hundred ninety-five.

S 3. The opening paragraph of subdivision 1 of section 1014 of the racing, pari-mutuel wagering and breeding law, as amended by section 3 of part S of chapter 61 of the laws of 2011, is amended to read as follows:

The provisions of this section shall govern the simulcasting of races conducted at thoroughbred tracks located in another state or country on any day during which a franchised corporation is conducting a race meeting in Saratoga county at Saratoga thoroughbred racetrack until June thirtieth, two thousand [twelve] THIRTEEN and on any day regardless of whether or not a franchised corporation is conducting a race meeting in Saratoga county at Saratoga thoroughbred racetrack after June thirtieth, two thousand [twelve] THIRTEEN. On any day on which a franchised corporation has not scheduled a racing program but a thoroughbred racing corporation located within the state is conducting racing, every off-track betting corporation branch office and every simulcasting facility licensed in accordance with section one thousand seven (that have entered into a written agreement with such facility's representative horsemen's organization, as approved by the board), one thousand eight, or one thousand nine of this article shall be authorized to accept wagers and display the live simulcast signal from thoroughbred tracks located in another state or foreign country subject to the following provisions:

S 4. Subdivision 1 of section 1015 of the racing, pari-mutuel wagering and breeding law, as amended by section 4 of part S of chapter 61 of the laws of 2011, is amended to read as follows:

1. The provisions of this section shall govern the simulcasting of races conducted at harness tracks located in another state or country during the period July first, nineteen hundred ninety-four through June thirtieth, two thousand [twelve] THIRTEEN. This section shall supersede all inconsistent provisions of this chapter.

S 5. The opening paragraph of subdivision 1 of section 1016 of the racing, pari-mutuel wagering and breeding law, as amended by section 5 of part S of chapter 61 of the laws of 2011, is amended to read as follows:

The provisions of this section shall govern the simulcasting of races conducted at thoroughbred tracks located in another state or country on any day during which a franchised corporation is not conducting a race meeting in Saratoga county at Saratoga thoroughbred racetrack until June thirtieth, two thousand [twelve] THIRTEEN. Every off-track betting corporation branch office and every simulcasting facility licensed in accordance with section one thousand seven that have entered into a written agreement with such facility's representative horsemen's organization as approved by the board, one thousand eight or one thousand nine of this article shall be authorized to accept wagers and display the live full-card simulcast signal of thoroughbred tracks (which may include quarter horse or mixed meetings provided that all such wagering on such races shall be construed to be thoroughbred races) located in another state or foreign country, subject to the following provisions; provided, however, no such written agreement shall be required of a franchised corporation licensed in accordance with section one thousand seven of this article:

S 6. The opening paragraph of section 1018 of the racing, pari-mutuel wagering and breeding law, as amended by section 6 of part S of chapter 61 of the laws of 2011, is amended to read as follows:

Notwithstanding any other provision of this chapter, for the period July twenty-fifth, two thousand one through September eighth, two thousand [eleven] TWELVE, when a franchised corporation is conducting a race meeting within the state at Saratoga Race Course, every off-track betting corporation branch office and every simulcasting facility licensed in accordance with section one thousand seven (that has entered into a written agreement with such facility's representative horsemen's organization as approved by the board), one thousand eight or one thousand nine of this article shall be authorized to accept wagers and display the live simulcast signal from thoroughbred tracks located in another state, provided that such facility shall accept wagers on races run at all in-state thoroughbred tracks which are conducting racing programs subject to the following provisions; provided, however, no such written agreement shall be required of a franchised corporation licensed in accordance with section one thousand seven of this article.

S 7. Section 32 of chapter 281 of the laws of 1994, amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting, as amended by section 7 of part S of chapter 61 of the laws of 2011, is amended to read as follows:

S 32. This act shall take effect immediately and the pari-mutuel tax reductions in section six of this act shall expire and be deemed repealed on July 1, [2012] 2013; provided, however, that nothing contained herein shall be deemed to affect the application, qualification, expiration, or repeal of any provision of law amended by any section of this act, and such provisions shall be applied or qualified or shall expire or be deemed repealed in the same manner, to the same extent and on the same date as the case may be as otherwise provided by law; provided further, however, that sections twenty-three and twenty-five of this act shall remain in full force and effect only until May 1, 1997 and at such time shall be deemed to be repealed.

S 8. Section 54 of chapter 346 of the laws of 1990, amending the racing, pari-mutuel wagering and breeding law and other laws relating to

simulcasting and the imposition of certain taxes, as amended by section 8 of part S of chapter 61 of the laws of 2011, is amended to read as follows:

S 54. This act shall take effect immediately; provided, however, sections three through twelve of this act shall take effect on January 1, 1991, and section 1013 of the racing, pari-mutuel wagering and breeding law, as added by section thirty-eight of this act, shall expire and be deemed repealed on July 1, [2012] 2013; and section eighteen of this act shall take effect on July 1, 2008 and sections fifty-one and fifty-two of this act shall take effect as of the same date as chapter 772 of the laws of 1989 took effect.

S 9. Paragraph (a) of subdivision 1 of section 238 of the racing, pari-mutuel wagering and breeding law, as amended by section 9 of part S of chapter 61 of the laws of 2011, is amended to read as follows:

(a) The franchised corporation authorized under this chapter to conduct pari-mutuel betting at a race meeting or races run thereat shall distribute all sums deposited in any pari-mutuel pool to the holders of winning tickets therein, provided such tickets be presented for payment before April first of the year following the year of their purchase, less an amount which shall be established and retained by such franchised corporation of between twelve to seventeen per centum of the total deposits in pools resulting from on-track regular bets, and fourteen to twenty-one per centum of the total deposits in pools resulting from on-track multiple bets and fifteen to twenty-five per centum of the total deposits in pools resulting from on-track exotic bets and fifteen to thirty-six per centum of the total deposits in pools resulting from on-track super exotic bets, plus the breaks. The retention rate to be established is subject to the prior approval of the racing and wagering board. Such rate may not be changed more than once per calendar quarter to be effective on the first day of the calendar quarter. "Exotic bets" and "multiple bets" shall have the meanings set forth in section five hundred nineteen of this chapter. "Super exotic bets" shall have the meaning set forth in section three hundred one of this chapter. For purposes of this section, a "pick six bet" shall mean a single bet or wager on the outcomes of six races. The breaks are hereby defined as the odd cents over any multiple of five for payoffs greater than one dollar five cents but less than five dollars, over any multiple of ten for payoffs greater than five dollars but less than twenty-five dollars, over any multiple of twenty-five for payoffs greater than twenty-five dollars but less than two hundred fifty dollars, or over any multiple of fifty for payoffs over two hundred fifty dollars. Out of the amount so retained there shall be paid by such franchised corporation to the commissioner of taxation and finance, as a reasonable tax by the state for the privilege of conducting pari-mutuel betting on the races run at the race meetings held by such franchised corporation, the following percentages of the total pool for regular and multiple bets five per centum of regular bets and four per centum of multiple bets plus twenty per centum of the breaks; for exotic wagers seven and one-half per centum plus twenty per centum of the breaks, and for super exotic bets seven and one-half per centum plus fifty per centum of the breaks. For the period June first, nineteen hundred ninety-five through September ninth, nineteen hundred ninety-nine, such tax on regular wagers shall be three per centum and such tax on multiple wagers shall be two and one-half per centum, plus twenty per centum of the breaks. For the period September tenth, nineteen hundred ninety-nine through March thirty-first, two thousand one, such tax on all wagers shall be two and six-

tenths per centum and for the period April first, two thousand one through December thirty-first, two thousand [twelve] THIRTEEN, such tax on all wagers shall be one and six-tenths per centum, plus, in each such period, twenty per centum of the breaks. Payment to the New York state thoroughbred breeding and development fund by such franchised corporation shall be one-half of one per centum of total daily on-track pari-mutuel pools resulting from regular, multiple and exotic bets and three per centum of super exotic bets provided, however, that for the period September tenth, nineteen hundred ninety-nine through March thirty-first, two thousand one, such payment shall be six-tenths of one per centum of regular, multiple and exotic pools and for the period April first, two thousand one through December thirty-first, two thousand [twelve] THIRTEEN, such payment shall be seven-tenths of one per centum of such pools.

S 10. Subdivision 5 of section 1012 of the racing, pari-mutuel wagering and breeding law, as amended by section 10 of part S of chapter 61 of the laws of 2011, is amended to read as follows:

5. The provisions of this section shall expire and be of no further force and effect after June thirtieth, two thousand [twelve] THIRTEEN.

S 11. This act shall take effect immediately.

PART P

Section 1. Subdivision 3 of section 205 of the tax law, as added by section 8 of part U1 of chapter 62 of the laws of 2003, is amended to read as follows:

3. [From the] THE moneys collected from the taxes imposed by sections one hundred eighty-three and one hundred eighty-four of this article on and after April first, two thousand [four] TWELVE, after reserving amounts for refunds or reimbursements, SHALL BE DISTRIBUTED AS FOLLOWS: twenty percent of such moneys shall be deposited to the credit of the dedicated highway and bridge trust fund established by section eighty-nine-b of the state finance law[. The remainder], FIFTY-FOUR PERCENT OF SUCH MONEYS shall be deposited in the mass transportation operating assistance fund to the credit of the metropolitan mass transportation operating assistance account created pursuant to section eighty-eight-a of the state finance law AND TWENTY-SIX PERCENT OF SUCH MONEYS SHALL BE DEPOSITED IN THE MASS TRANSPORTATION OPERATING ASSISTANCE FUND TO THE CREDIT OF THE PUBLIC TRANSPORTATION SYSTEMS OPERATING ASSISTANCE ACCOUNT CREATED PURSUANT TO SECTION EIGHTY-EIGHT-A OF THE STATE FINANCE LAW.

S 2. This act shall take effect immediately and shall be deemed to be in full force and effect on and after April 1, 2012; provided, however, that the amendments to subdivision 3 of section 205 of the tax law made by section one of this act shall not affect the repeal of such subdivision and shall be deemed to be repealed therewith.

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

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