

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

S. 2811

A. 4011

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

February 1, 2011

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 the abandoned property law, in relation to the dormancy period of miscellaneous unclaimed property (Part A); to amend part N of chapter 61 of the laws of 2005 amending the tax law relating to certain transactions and related information and relating to the voluntary compliance initiative; in relation to making permanent the disclosure and penalty provisions for transactions that present the potential for tax avoidance (Part B); to amend the tax law, in relation to the empire zones program (Part C); to amend the tax law, in relation to directing the crediting of lottery prizes of more than six hundred dollars against liability for any tax administered by the commissioner of taxation and finance (Part D); to amend chapter 56 of the laws of 1998, amending the tax law and other laws relating to extending the dates of application of the investment tax credit under articles 9-A, 22 and 32 of the tax law and to amend chapter 63 of the laws of 2000, amending the tax law and other laws relating to extending the dates of application of the investment tax credit under article 33 of the tax law, in relation to extending the effectiveness thereof (Part E); to amend the public housing law, in relation to providing a credit against income tax for persons or entities investing in low-income housing (Part F); to amend the economic development law, the tax law and the public service law, in relation to the excelsior jobs program (Part G); to amend the tax law, in relation to the exemption from the franchise tax on insurance corporations under article thirty-three of such law for town or county cooperative insurance corporations (Part H); to amend the insurance law, the general municipal law and the tax law, in relation to conforming to the federal Dodd-Frank Wall Street Reform and Consumer Protection Act; and to repeal paragraphs 8 and 9 of subsection (b) of section 2118 of the insurance law, relating thereto (Part I); to amend chapter 298 of the laws of 1985, amending the tax law relating to the franchise tax on

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

LBD12574-01-1

banking corporations imposed by the tax law, authorized to be imposed by any city having a population of one million or more by chapter 772 of the laws of 1966 and imposed by the administrative code of the city of New York and relating to other provisions of the tax law, chapter 883 of the laws of 1975 and the administrative code of the city of New York which relates to such franchise tax, to amend chapter 817 of the laws of 1987, amending the tax law and the environmental conservation law, constituting the business tax reform and rate reduction act of 1987, and to amend chapter 525 of the laws of 1988, amending the tax law and the administrative code of the city of New York relating to the imposition of taxes in the city of New York, in relation to the effectiveness of certain provisions of such chapters; and to amend the tax law and the administrative code of the city of New York, in relation to extending transitional provisions relating to the federal Gramm-Leach-Bliley act (Part J); to amend the tax law and the criminal procedure law, in relation to updating the tax classification of diesel motor fuel to be consistent with federal laws and make the diesel tax structure consistent with this new tax treatment; and to repeal certain provisions of the tax law and the administrative code of the city of New York relating thereto (Part K); to amend the tax law, in relation to making a technical correction to the E85 definition; and 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 for one year (Part L); to amend section 11 of part EE of chapter 63 of the laws of 2000, amending the tax law and other laws relating to modifying the distribution of funds from the motor vehicle fuel excise tax, in relation to the distribution of motor vehicle fees (Part M); to amend the tax law, in relation to restrictions on certain keno style lottery games (Part N); to amend the tax law, in relation to video lottery free play allowance program (Part O); to amend the tax law, in relation to prize payout of certain instant lottery games (Part P); to amend the tax law, in relation to prize payout in certain multi-jurisdictional lottery games (Part Q); to amend the tax law, in relation to multi-jurisdictional video lottery gaming (Part R); and 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; and to amend the racing, pari-mutuel wagering and breeding law, in relation to extending certain provisions thereof (Part S)

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

1 Section 1. This act enacts into law major components of legislation
2 which are necessary to implement the state fiscal plan for the 2011-2012
3 state fiscal year. Each component is wholly contained within a Part
4 identified as Parts A through S. The effective date for each particular

1 provision contained within such Part is set forth in the last section of
2 such Part. Any provision in any section contained within a Part, includ-
3 ing the effective date of the Part, which makes a reference to a section
4 "of this act", when used in connection with that particular component,
5 shall be deemed to mean and refer to the corresponding section of the
6 Part in which it is found. Section three of this act sets forth the
7 general effective date of this act.

8

PART A

9 Section 1. Paragraphs (a), (b) and (k) of subdivision 1 of section 300
10 of the abandoned property law, paragraph (a) as amended and paragraph
11 (k) as relettered by chapter 15 of the laws of 1983, subparagraph (iv)
12 of paragraph (a) as amended and subparagraph (v) of paragraph (a) as
13 added by chapter 409 of the laws of 1994, paragraph (b) as amended by
14 chapter 881 of the laws of 1945 and paragraph (k) as amended by chapter
15 78 of the laws of 1976, are amended to read as follows:

16 (a) Any amounts due on deposits or any amounts to which a shareholder
17 of a savings and loan association or a credit union is entitled, held or
18 owing by a banking organization, which shall have remained unclaimed for
19 [five] THREE years by the person or persons appearing to be entitled
20 thereto, including any interest or dividends credited thereon, excepting

21 (i) any such amount which has been reduced or increased, exclusive of
22 dividend or interest payment, within [five] THREE years, or

23 (ii) any such amount which is represented by a passbook not in the
24 possession of the banking organization, which has been presented for
25 entry of dividend or interest credit within [five] THREE years, or

26 (iii) any such amount with respect to which the banking organization
27 has on file written evidence received within [five] THREE years that the
28 person or persons appearing to be entitled to such amounts had knowledge
29 thereof, or

30 (iv) any such amount payable only at or by a branch office located in
31 a foreign country, or payable in currency other than United States
32 currency, or

33 (v) any such amount that is separately identifiable and has been set
34 aside to meet the burial and related expenses of an individual, provided
35 however that said amount shall be deemed abandoned property where it
36 remains unclaimed for [five] THREE years subsequent to the death of the
37 individual for whom the amount was deposited.

38 (b) Any amounts, together with all accumulations of interest or other
39 increment thereon, held or owing by a banking organization for the
40 payment of an interest in a bond and mortgage apportioned or transferred
41 by it pursuant to subdivision seven of former section one hundred eight-
42 y-eight of the banking law as it existed prior to July first, nineteen
43 hundred thirty-seven, which shall have remained unclaimed by the person
44 or persons appearing to be entitled thereto for [five] THREE years after
45 the full and final liquidation of such mortgage, excepting

46 (i) any such amount which has been reduced by payment to the person or
47 persons appearing to be entitled thereto within [five] THREE years, or

48 (ii) any such amount which is represented by a certificate of share
49 ownership not in the possession of the banking organization, which
50 certificate has been presented for transfer within [five] THREE years,
51 or

52 (iii) any such amount with respect to which the banking organization
53 has on file written evidence received within [five] THREE years that the

1 person or persons appearing to be entitled to such amount had knowledge
2 thereof.

3 (k) Lost property or instruments as defined in section two hundred
4 fifty-one of the personal property law which shall have been held by a
5 safe deposit company or bank for [five] THREE years pursuant to the
6 provisions of section two hundred fifty-six of the personal property
7 law.

8 S. 2. Paragraphs (a) and (c) of subdivision 1 of section 600 of the
9 abandoned property law, paragraph (a) as amended by chapter 655 of the
10 laws of 1978 and paragraph (c) as amended by chapter 281 of the laws of
11 1980, are amended to read as follows:

12 (a) Any moneys including the monetary proceeds from the sale of tangi-
13 ble personal property and securities or other intangible property paid
14 into court, which, except as provided in section ten hundred OF THIS
15 CHAPTER, shall have remained in the hands of any county treasurer, or
16 the commissioner of finance of the city of New York, for [five] THREE
17 years, together with all accumulations of interest or other increment
18 thereon, less such legal fees as he may be entitled to.

19 (c) Any moneys paid to a support bureau of a family court, for the
20 support of a spouse or child, which shall have remained in the custody
21 of a county treasurer, or the commissioner of finance of the city of New
22 York, for [five] THREE years, together with any interest due thereon,
23 less such legal fees as he may be entitled to. For purposes of this
24 section, "family court" includes the domestic relations court of the
25 city of New York prior to the first day of September, nineteen hundred
26 sixty-two.

27 S. 3. Subdivision 1 of section 1000 of the abandoned property law, as
28 amended by chapter 670 of the laws of 1989, is amended to read as
29 follows:

30 1. (a) Any moneys held or owing for the payment of an award made by a
31 court in any condemnation proceeding and payable by a public corporation
32 or other corporation possessing powers of condemnation, which shall have
33 remained unclaimed by the person or persons appearing to be entitled
34 thereto for [five] THREE years after confirmation by the court, together
35 with any interest due thereon, less, when an award is payable by a
36 public corporation, any amount due such public corporation at the time
37 of title vesting for tax, water or any other liens on the same parcel
38 the award was for, with any interest due thereon, and any amount due
39 such public corporation at the time of title vesting or at the time of
40 confirmation, whichever is later, for an assessment on the same parcel
41 the award was for, with any interest due thereon, shall be deemed aban-
42 doned property. In any condemnation proceedings in which the court shall
43 have not made an award, any moneys paid into court, including interest
44 thereon, shall be subject to the provisions of article six of this chap-
45 ter and this section shall have no application thereto.

46 (b) The issuance of a warrant for such an award shall not prevent an
47 award from being deemed abandoned property if such warrant is unclaimed
48 [five] THREE years after confirmation of such award by the court.

49 S. 4. Subdivision 1 of section 1300 of the abandoned property law is
50 amended to read as follows:

51 1. Any unclaimed moneys arising from the sale of any personal property
52 which shall have been pledged or mortgaged as security for the loan of
53 money with a corporation, except a banking organization or a licensed
54 lender, heretofore or hereafter organized by or pursuant to a special
55 statute for the purpose of, and principally engaged in, giving aid to
56 individuals by loans of money at interest upon the pledge or mortgage of

1 personal property, and which has subjected itself to special provisions
2 of the banking law, after deducting the amount of the loan, the interest
3 then due on the same and any other lawful charges, which shall have
4 remained in its possession for [six] THREE years from the date of such
5 sale, shall be deemed abandoned property.

6 S 5. Subdivisions 1 and 2 of section 1315 of the abandoned property
7 law, as amended by section 2 of part II of chapter 57 of the laws of
8 2010, are amended to read as follows:

9 1. Any unclaimed amount representing unredeemed gift certificates sold
10 after December thirty-first, nineteen hundred eighty-three, including
11 gift certificates for merchandise only in which case the face value of
12 such certificate shall be deemed the amount deemed abandoned, and owing
13 in this state, or held by any corporation (other than a public corpo-
14 ration), joint stock company, individual, association of two or more
15 individuals, committee or business trust in this state, and which has
16 remained unclaimed by the owner of such amount for [five] THREE years,
17 shall be deemed abandoned property.

18 2. Except as otherwise provided by law, any amount representing
19 unclaimed money or securities and held in escrow or otherwise by any
20 corporation (other than a public corporation), joint stock company,
21 individual, association of two or more individuals, committee or busi-
22 ness trust, to ensure the performance of any duty or obligation, shall
23 be deemed abandoned property when:

24 a. such amount is held or owing in this state, and

25 b. such amount has remained unclaimed by the person or persons enti-
26 tled thereto for [five] THREE years, except

27 c. where the duty or obligation for which such amount was deposited
28 has not been performed and such performance is still required, such
29 amounts shall not be deemed abandoned property.

30 S 6. This act shall take effect immediately.

31 PART B

32 Section 1. Section 12 of part N of chapter 61 of the laws of 2005,
33 amending the tax law relating to certain transactions and related infor-
34 mation and relating to the voluntary compliance initiative, subdivision
35 (iii) as amended by section 16 of subpart J of part V-1 of chapter 57 of
36 the laws of 2009, is amended to read as follows:

37 S 12. This act shall take effect immediately; provided, however, that
38 (i) section one of this act shall apply to all disclosure statements
39 described in paragraph 1 of subdivision (a) of section 25 of the tax
40 law, as added by section one of this act, that were required to be filed
41 with the internal revenue service at any time with respect to "listed
42 transactions" as described in such paragraph 1, and shall apply to all
43 disclosure statements described in paragraph 1 of subdivision (a) of
44 section 25 of the tax law, as added by section one of this act, that
45 were required to be filed with the internal revenue service with respect
46 to "reportable transactions" as described in such paragraph 1, other
47 than "listed transactions", in which a taxpayer participated during any
48 taxable year for which the statute of limitations for assessment has not
49 expired as of the date this act shall take effect, and shall apply to
50 returns or statements described in such paragraph 1 required to be filed
51 by taxpayers (or persons as described in such paragraph) with the
52 commissioner of taxation and finance on or after the sixtieth day after
53 this act shall have become a law; AND

1 (ii) sections two through four and seven through nine of this act
2 shall apply to any tax liability for which the statute of limitations on
3 assessment has not expired as of the date this act shall take effect[;
4 and
5 (iii) provided, further, that the provisions of this act, except
6 section five of this act, shall expire and be deemed repealed July 1,
7 2011. The commissioner of taxation and finance shall cause to be
8 prepared a written report on the tax shelter law. Notwithstanding any
9 other provision of law to the contrary, such report shall include, but
10 not be limited to, statistical information regarding the listed and
11 reportable transactions and avoidance transactions under this act. A
12 copy of such report shall be delivered to the governor, the temporary
13 president of the senate, and the speaker of the assembly no later than
14 April 1, 2007; provided, that, such expiration and repeal shall not
15 affect any requirement imposed pursuant to this act].
16 S 2. This act shall take effect immediately.

17

PART C

18 Section 1. Paragraphs (g) and (h) of subdivision 12-B of section 210
19 of the tax law, as added by section 8 of part R of chapter 57 of the
20 laws of 2010, are amended to read as follows:

21 (g) Notwithstanding the expiration of the empire zones program under
22 article eighteen-B of the general municipal law, a taxpayer that is
23 certified as a qualified investment project pursuant to such article
24 eighteen-B on the day immediately preceding the day the empire zones
25 program expired, AND HAS NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE
26 COMMISSIONER OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION NINE HUNDRED
27 FIFTY-NINE OF THE GENERAL MUNICIPAL LAW AND REGULATIONS PROMULGATED
28 THEREUNDER, shall continue to be deemed certified under such article
29 eighteen-B for purposes of this subdivision for the remainder of the
30 taxable year in which the expiration occurred and for the next succeed-
31 ing nine taxable years. In addition, the areas designated as empire
32 zones in which the taxpayer is certified as a qualified investment
33 project on the day immediately preceding the day the empire zones
34 program expired shall continue to be deemed empire zones for purposes of
35 this subdivision for the remainder of the taxable year in which the
36 expiration occurred and for the next succeeding nine taxable years.

37 (h) Notwithstanding the expiration of the empire zones program under
38 article eighteen-B of the general municipal law and except as provided
39 in paragraph (g) of this subdivision, a taxpayer that is certified as an
40 empire zone business pursuant to such article eighteen-B on the day
41 immediately preceding the day the empire zones program expired, AND HAS
42 NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE COMMISSIONER OF ECONOMIC DEVEL-
43 OPMENT PURSUANT TO SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNIC-
44 IPAL LAW AND REGULATIONS PROMULGATED THEREUNDER, shall continue to be
45 deemed certified under such article eighteen-B for purposes of this
46 subdivision until April first, two thousand fourteen. In addition, the
47 areas designated as empire zones in which the taxpayer is certified as
48 an empire zone business on the day immediately preceding the day the
49 empire zones program expired shall continue to be deemed empire zones
50 for purposes of this subdivision until April first, two thousand four-
51 teen.

52 S 2. Paragraph 7 of subsection (j) of section 606 of the tax law, as
53 added by section 9 of part R of chapter 57 of the laws of 2010, is
54 amended to read as follows:

1 (7) Notwithstanding the expiration of the empire zones program under
2 article eighteen-B of the general municipal law, a taxpayer that is
3 certified as an empire zone business pursuant to such article eighteen-B
4 on the day immediately preceding the day the empire zones program
5 expired, AND HAS NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE COMMISSIONER
6 OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION NINE HUNDRED FIFTY-NINE OF
7 THE GENERAL MUNICIPAL LAW AND REGULATIONS PROMULGATED THEREUNDER, shall
8 continue to be deemed certified under such article eighteen-B for
9 purposes of this subdivision until April first, two thousand fourteen.
10 In addition, the areas designated as empire zones in which the taxpayer
11 is certified as an empire zone business on the day immediately preceding
12 the day the empire zones program expired shall continue to be deemed
13 empire zones for purposes of this subdivision until April first, two
14 thousand fourteen.

15 S 3. Paragraphs (d) and (e) of subdivision 12-C of section 210 of the
16 tax law, as added by section 10 of part R of chapter 57 of the laws of
17 2010, are amended to read as follows:

18 (d) Notwithstanding the expiration of the empire zones program under
19 article eighteen-B of the general municipal law, a taxpayer that is
20 certified as a qualified investment project pursuant to such article
21 eighteen-B on the day immediately preceding the day the empire zones
22 program expired, AND HAS NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE
23 COMMISSIONER OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION NINE HUNDRED
24 FIFTY-NINE OF THE GENERAL MUNICIPAL LAW AND REGULATIONS PROMULGATED
25 THEREUNDER, shall continue to be deemed certified under such article
26 eighteen-B for purposes of this subdivision for the remainder of the
27 taxable year in which the expiration occurred and for the next succeed-
28 ing nine taxable years. In addition, the areas designated as empire
29 zones in which the taxpayer is certified as a qualified investment
30 project on the day immediately preceding the day the empire zones
31 program expired shall continue to be deemed empire zones for purposes of
32 this subdivision for the remainder of the taxable year in which the
33 expiration occurred and for the next succeeding nine taxable years.

34 (e) Notwithstanding the expiration of the empire zones program under
35 article eighteen-B of the general municipal law and except as provided
36 in paragraph (d) of this subdivision, a taxpayer that is certified as an
37 empire zone business pursuant to such article eighteen-B on the day
38 immediately preceding the day the empire zones program expired, AND HAS
39 NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE COMMISSIONER OF ECONOMIC DEVEL-
40 OPMENT PURSUANT TO SECTION NINE HUNDRED FIFTY-NINE OF THE GENERAL MUNIC-
41 IPAL LAW AND REGULATIONS PROMULGATED THEREUNDER, shall continue to be
42 deemed in the empire zone in which the taxpayer was certified as an
43 empire zone business on the day immediately preceding the day the empire
44 zones program expired for each of the three years next succeeding the
45 taxable year for which the credit under subdivision twelve-B OF THIS
46 SECTION is allowed.

47 S 4. Paragraph 4 of subsection (j-1) of section 606 of the tax law, as
48 added by section 11 of part R of chapter 57 of the laws of 2010, is
49 amended to read as follows:

50 (4) Notwithstanding the expiration of the empire zones program under
51 article eighteen-B of the general municipal law, a taxpayer that is
52 certified as an empire zone business pursuant to such article eighteen-B
53 on the day immediately preceding the day the empire zones program
54 expired, AND HAS NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE COMMISSIONER
55 OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION NINE HUNDRED FIFTY-NINE OF
56 THE GENERAL MUNICIPAL LAW AND REGULATIONS PROMULGATED THEREUNDER, shall

1 continue to be deemed in the empire zone in which the taxpayer was
2 certified as an empire zone business on the day immediately preceding
3 the day the empire zones program expired for each of the three years
4 next succeeding the taxable year for which the credit under [subdivi-
5 sion] SUBSECTION (j) OF THIS SECTION is allowed.

6 S 5. Subdivision (k) of section 14 of the tax law, as amended by
7 section 5 of part A of chapter 63 of the laws of 2005, is amended to
8 read as follows:

9 (k) If the designation of an area as an empire zone is no longer in
10 effect because section nine hundred sixty-nine of the general municipal
11 law was not amended to extend the effective date of such designation so
12 that the designations of all empire zones pursuant to article eighteen-B
13 of the general municipal law have expired, a business enterprise that
14 was certified pursuant to article eighteen-B of the general municipal
15 law on the day immediately preceding the day on which such designation
16 expired, AND HAS NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE COMMISSIONER
17 OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION NINE HUNDRED FIFTY-NINE OF
18 THE GENERAL MUNICIPAL LAW AND REGULATIONS PROMULGATED THEREUNDER, shall
19 be deemed to continue to be certified under such article eighteen-B for
20 purposes of this section, and sections fifteen, sixteen, section one
21 hundred eighty-seven-j, subdivisions twenty-seven and twenty-eight of
22 section two hundred ten, subsections (bb) and (cc) of section six
23 hundred six, [subdivision (z) of section eleven hundred fifteen,] SUBDI-
24 VISION (D) OF SECTION ELEVEN HUNDRED NINETEEN, subsections (o) and (p)
25 of section fourteen hundred fifty-six, and subdivisions (r) and (s) of
26 section fifteen hundred eleven of this chapter. In addition, if the
27 designation of an area as an empire zone is no longer in effect because
28 section nine hundred sixty-nine of the general municipal law was not
29 amended to extend the effective date of such designation so that the
30 designations of all empire zones pursuant to article eighteen-B of the
31 general municipal law have expired, all references to empire zones in
32 the provisions of this chapter listed in the previous sentence shall be
33 read as meaning areas designated as empire zones on the day immediately
34 preceding the day on which such designation expired.

35 S 6. Paragraph (f) of subdivision 20 of section 210 of the tax law, as
36 added by section 14 of part R of chapter 57 of the laws of 2010, is
37 amended to read as follows:

38 (f) If the designation of an area as an empire zone is no longer in
39 effect because the designations of all empire zones pursuant to article
40 eighteen-B of the general municipal law have expired, a taxpayer that
41 has made a contribution of money on or before the day immediately
42 preceding the day the empire zones expired to a community development
43 project approved by the commissioner of economic development shall be
44 deemed eligible to claim the empire zone capital credit under subpara-
45 graph three of paragraph (a) of this subdivision for additional contrib-
46 utions made prior to April first, two thousand fourteen and certified by
47 the commissioner of economic development to that community development
48 project as payment of a commitment made by the taxpayer to that communi-
49 ty development project before the empire zones expired, PROVIDED THAT
50 THE TAXPAYER HAS NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE COMMISSIONER
51 OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION NINE HUNDRED FIFTY-NINE OF
52 THE GENERAL MUNICIPAL LAW AND REGULATIONS PROMULGATED THEREUNDER.

53 S 7. Paragraph 5 of subsection (l) of section 606 of the tax law, as
54 added by section 15 of part R of chapter 57 of the laws of 2010, is
55 amended to read as follows:

1 (5) If the designation of an area as an empire zone is no longer in
2 effect because the designations of all empire zones pursuant to article
3 eighteen-B of the general municipal law have expired, a taxpayer that
4 has made a contribution of money on or before the day immediately
5 preceding the day the empire zones expired to a community development
6 project approved by the commissioner of economic development shall be
7 deemed eligible to claim the empire zone capital credit under subpara-
8 graph (C) of paragraph one of this subsection for additional contrib-
9 utions made prior to April first, two thousand fourteen and certified by
10 the commissioner of economic development to that community development
11 project as payment of a commitment made by the taxpayer to that communi-
12 ty development project before the empire zones expired, PROVIDED THAT
13 THE TAXPAYER HAS NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE COMMISSIONER
14 OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION NINE HUNDRED FIFTY-NINE OF
15 THE GENERAL MUNICIPAL LAW AND REGULATIONS PROMULGATED THEREUNDER.

16 S 8. Paragraph 5 of subsection (d) of section 1456 of the tax law, as
17 added by section 16 of part R of chapter 57 of the laws of 2010, is
18 amended to read as follows:

19 (5) If the designation of an area as an empire zone is no longer in
20 effect because the designations of all empire zones pursuant to article
21 eighteen-B of the general municipal law have expired, a taxpayer that
22 has made a contribution of money on or before the day immediately
23 preceding the day the empire zones expired to a community development
24 project approved by the commissioner of economic development shall be
25 deemed eligible to claim the empire zone capital credit under subpara-
26 graph (C) of paragraph one of this subsection for additional contrib-
27 utions made prior to April first, two thousand fourteen and certified by
28 the commissioner of economic development to that community development
29 project as payment of a commitment made by the taxpayer to that communi-
30 ty development project before the empire zones expired, PROVIDED THAT
31 THE TAXPAYER HAS NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE COMMISSIONER
32 OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION NINE HUNDRED FIFTY-NINE OF
33 THE GENERAL MUNICIPAL LAW AND REGULATIONS PROMULGATED THEREUNDER.

34 S 9. Paragraph 5 of subdivision (h) of section 1511 of the tax law, as
35 added by section 17 of part R of chapter 57 of the laws of 2010, is
36 amended to read as follows:

37 (5) If the designation of an area as an empire zone is no longer in
38 effect because the designations of all empire zones pursuant to article
39 eighteen-B of the general municipal law have expired, a taxpayer that
40 has made a contribution of money on or before the day immediately
41 preceding the day the empire zones expired to a community development
42 project approved by the commissioner of economic development shall be
43 deemed eligible to claim the empire zone capital credit under subpara-
44 graph (C) of paragraph one of this subdivision for additional contrib-
45 utions made prior to April first, two thousand fourteen and certified by
46 the commissioner of economic development to that community development
47 project as payment of a commitment made by the taxpayer to that communi-
48 ty development project before the empire zones expired, PROVIDED THAT
49 THE TAXPAYER HAS NOT SUBSEQUENTLY BEEN DECERTIFIED BY THE COMMISSIONER
50 OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION NINE HUNDRED FIFTY-NINE OF
51 THE GENERAL MUNICIPAL LAW AND REGULATIONS PROMULGATED THEREUNDER.

52 S 10. This act shall take effect immediately and shall be deemed to be
53 in full force and effect on and after August 11, 2010.

1 Section 1. The tax law is amended by adding a new section 1613-c to
2 read as follows:

3 S 1613-C. CREDITING OF LOTTERY PRIZES AGAINST LIABILITIES FOR TAXES
4 ADMINISTERED BY THE COMMISSIONER. (1) THE DIRECTOR, ON BEHALF OF THE
5 DIVISION, SHALL ENTER INTO A WRITTEN AGREEMENT WITH THE COMMISSIONER, ON
6 BEHALF OF THE DEPARTMENT, WITHIN SIXTY DAYS OF THE EFFECTIVE DATE OF
7 THIS SECTION, WHICH WILL SET FORTH PROCEDURES FOR CREDITING LOTTERY
8 PRIZES OF MORE THAN SIX HUNDRED DOLLARS AWARDED TO HOLDERS OF WINNING
9 LOTTERY TICKETS, WHETHER INDIVIDUALS, CORPORATIONS, ASSOCIATIONS, COMPA-
10 NIES, PARTNERSHIPS, LIMITED LIABILITY PARTNERSHIPS OR COMPANIES, PART-
11 NERS, MEMBERS, MANAGERS, ESTATES, TRUST FIDUCIARIES OR ENTITIES, AGAINST
12 PAST DUE TAX LIABILITIES OWED BY SUCH HOLDERS FOR ANY TAX ADMINISTERED
13 BY THE COMMISSIONER, ABOUT WHICH THE DIRECTOR HAS BEEN NOTIFIED BY THE
14 COMMISSIONER PURSUANT TO THE PROVISIONS OF SUCH AGREEMENT.

15 (2) SUCH AGREEMENT SHALL APPLY TO ANY PAST DUE TAX LIABILITY WHICH
16 ARISES FROM (I) AN ENFORCEABLE WARRANT OR JUDGMENT, (II) AN ENFORCEABLE
17 DETERMINATION OF AN ADMINISTRATIVE BODY WHICH IS NO LONGER SUBJECT TO
18 ADMINISTRATIVE OR JUDICIAL REVIEW, OR (III) AN ASSESSMENT OR DETERMI-
19 NATION (INCLUDING SELF-ASSESSMENT OR SELF-ASSESSED DETERMINATION) WHICH
20 HAS BECOME FINAL OR FINALLY AND IRREVOCABLY FIXED AND NO LONGER SUBJECT
21 TO ADMINISTRATIVE OR JUDICIAL REVIEW.

22 (3) SUCH AGREEMENT SHALL INCLUDE:

23 (A) THE PROCEDURE UNDER WHICH THE DEPARTMENT WILL NOTIFY THE DIVISION
24 OF TAX LIABILITIES, INCLUDING WHEN THE DIVISION WILL BE NOTIFIED AND THE
25 CONTENT OF THAT NOTIFICATION;

26 (B) THE PROCEDURE FOR REIMBURSEMENT OF THE DIVISION BY THE DEPARTMENT
27 FOR THE COST OF CARRYING OUT THE PROCEDURES AUTHORIZED BY THIS SECTION;
28 AND

29 (C) ANY OTHER MATTERS THE PARTIES TO THE AGREEMENT DEEM NECESSARY TO
30 CARRY OUT THE PROVISIONS OF THIS SECTION.

31 (4) PRIOR TO AWARDED LOTTERY PRIZES OF MORE THAN SIX HUNDRED DOLLARS,
32 THE DIVISION SHALL REVIEW THE MOST RECENT NOTICE OF TAX LIABILITIES
33 PROVIDED BY THE COMMISSIONER. FOR HOLDERS OF WINNING LOTTERY TICKETS
34 IDENTIFIED ON THAT NOTICE, THE DIVISION SHALL CREDIT TO THE DEPARTMENT
35 THE AMOUNT OF EACH HOLDER'S PRIZE NECESSARY TO SATISFY THAT HOLDER'S TAX
36 LIABILITY, AND THE REMAINDER OF THE PRIZE SHALL BE AWARDED TO THE HOLDER
37 OF THE WINNING TICKET.

38 (5) IF THE DIVISION HAS ALSO RECEIVED A NOTICE OF LIABILITY OF A PRIZE
39 WINNER FOR PAST-DUE SUPPORT OR PUBLIC ASSISTANCE BENEFITS PURSUANT TO
40 SECTION SIXTEEN HUNDRED THIRTEEN-A OR SIXTEEN HUNDRED THIRTEEN-B OF THIS
41 ARTICLE, THEN THE AMOUNT OF ANY PRIZE SHALL BE FIRST CREDITED OR APPLIED
42 TO THE INCOME TAX REQUIRED TO BE WITHHELD BY LAW, THEN AS REQUIRED BY
43 SECTION SIXTEEN HUNDRED THIRTEEN-A OR SIXTEEN HUNDRED THIRTEEN-B OF THIS
44 ARTICLE, THEN TO THE PAST DUE TAX LIABILITY AS REQUIRED BY THIS SECTION.
45 THE BALANCE WILL THEN BE PAID TO THE HOLDER OF THE WINNING LOTTERY TICK-
46 ET.

47 (6) THE DIVISION SHALL CERTIFY TO THE COMPTROLLER THE TOTAL AMOUNT OF
48 THE LOTTERY PRIZE TO BE CREDITED AGAINST PAST DUE TAX LIABILITIES AND
49 THE REMAINDER OF THE PRIZE TO BE AWARDED TO THE HOLDER OF THE WINNING
50 LOTTERY TICKET.

51 (7) THE DIVISION SHALL NOTIFY THE HOLDER OF THE WINNING LOTTERY TICK-
52 ET, IN WRITING, OF THE TOTAL AMOUNT OF THE LOTTERY PRIZE CREDITED
53 AGAINST PAST DUE TAX LIABILITIES AND THE REMAINDER OF THE PRIZE TO BE
54 AWARDED TO THE HOLDER. THAT NOTICE MUST ALSO ADVISE THE HOLDER THAT THE
55 DEPARTMENT WILL PROVIDE SEPARATE NOTICE, IN WRITING, OF THE PROCEDURE
56 FOR AND TIME FRAME BY WHICH THE HOLDER MAY CONTEST SUCH CREDITING.

(8) THE DEPARTMENT SHALL NOTIFY THE HOLDER OF THE WINNING LOTTERY TICKET, IN WRITING, OF THE AMOUNT OF A PRIZE TO BE CREDITED AGAINST PAST DUE TAX LIABILITIES AND THE PROCEDURE FOR AND TIME FRAME BY WHICH THE HOLDER MAY CONTEST THE CREDITING OF THE PRIZE.

(9) FROM THE TIME THE DIVISION IS NOTIFIED BY THE DEPARTMENT OF A PAST DUE TAX LIABILITY OF A HOLDER OF A WINNING LOTTERY TICKET, THE DIVISION SHALL BE RELIEVED FROM ALL LIABILITY TO THE HOLDER, AND THE HOLDER'S HEIRS, REPRESENTATIVES, ESTATE, SUCCESSORS OR ASSIGNS FOR THE AMOUNT OF A PRIZE CERTIFIED TO THE COMPTROLLER TO BE CREDITED AGAINST PAST DUE TAX LIABILITIES AND THE HOLDER AND THE HOLDER'S HEIRS, REPRESENTATIVES, ESTATE, SUCCESSOR OR ASSIGNS SHALL HAVE NO RIGHT TO COMMENCE A COURT ACTION OR PROCEEDING OR TO ANY OTHER LEGAL RECOURSE AGAINST THE DIVISION TO RECOVER ANY AMOUNT CERTIFIED TO THE COMPTROLLER TO BE CREDITED AGAINST PAST DUE TAX LIABILITIES. PROVIDED HOWEVER, NOTHING HEREIN SHALL BE CONSTRUED TO PROHIBIT A HOLDER OF A WINNING LOTTERY TICKET AND THE HOLDER'S HEIRS, REPRESENTATIVES, ESTATE, SUCCESSORS OR ASSIGNS FROM PROCEEDING AGAINST THE DEPARTMENT TO RECOVER THE PART OF THE PRIZE CERTIFIED TO THE COMPTROLLER AND CREDITED TO PAST DUE TAX LIABILITIES WHICH IS GREATER THAN THE AMOUNT OF PAST DUE TAX LIABILITIES OWED BY THAT HOLDER ON THE DATE OF CERTIFICATION.

(10) NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE DEPARTMENT AND ITS OFFICERS AND EMPLOYEES MAY FURNISH TO THE DIVISION ANY ABSTRACT OF ANY TAX RETURN OR REPORT, OR ANY INFORMATION CONCERNING AN ITEM CONTAINED IN ANY SUCH RETURN OR REPORT OR DISCLOSED BY ANY INVESTIGATION OF TAX LIABILITY UNDER THIS CHAPTER, BUT ONLY FOR THE PURPOSE OF CREDITING LOTTERY PRIZES AGAINST PAST DUE TAX LIABILITIES DESCRIBED IN SUBDIVISION TWO OF THIS SECTION.

S 2. This act shall take effect on the first of August next succeeding the date on which it shall have become a law, provided that the department of taxation and finance and the division of the lottery may take steps to effectuate the written agreement between the director of the division of the lottery and the commissioner of taxation and finance prior to such effective date.

34

PART E

Section 1. Paragraph c of subdivision 2 of section 124 of part A of chapter 56 of the laws of 1998, amending the tax law and other laws relating to extending the dates of application of the investment tax credit under articles 9-A, 22 and 32 of the tax law, as amended by section 1 of part YY-1 of chapter 57 of the laws of 2008, is amended to read as follows:

c. Sections fifteen through twenty-seven of this act shall apply to property placed in service on or after October 1, 1998 and before October 1, [2011] 2015.

S 2. Section 2 of part L of chapter 63 of the laws of 2000, amending the tax law and other laws relating to extending the dates of application of the investment tax credit under article 33 of the tax law, as amended by section 2 of part YY-1 of chapter 57 of the laws of 2008, is amended to read as follows:

S 2. This act shall take effect immediately and shall apply to property placed in service on or after January 1, 2002 and before October 1, [2011] 2015.

S 3. This act shall take effect immediately.

53

PART F

1 Section 1. Subdivision 4 of section 22 of the public housing law, as
2 amended by section 1 of part P of chapter 57 of the laws of 2010, is
3 amended to read as follows:

4 4. Statewide limitation. The aggregate dollar amount of credit which
5 the commissioner may allocate to eligible low-income buildings under
6 this article shall be [twenty-eight] THIRTY-TWO million dollars. The
7 limitation provided by this subdivision applies only to allocation of
8 the aggregate dollar amount of credit by the commissioner, and does not
9 apply to allowance to a taxpayer of the credit with respect to an eligi-
10 ble low-income building for each year of the credit period.

11 S 2. This act shall take effect immediately.

12 PART G

13 Section 1. Subdivision 12 of section 352 of the economic development
14 law, as added by section 1 of part MM of chapter 59 of the laws of 2010,
15 is amended to read as follows:

16 12. "Preliminary schedule of benefits" means the maximum aggregate
17 amount of each component of the tax credit that a participant in the
18 excelsior jobs program is eligible to receive pursuant to this article.
19 The schedule shall indicate the annual amount of each component of the
20 credit a participant may claim in each of its [five] TEN years of eligi-
21 bility. The preliminary schedule of benefits shall be issued by the
22 department when the department approves the application for admission
23 into the program. The commissioner may amend that schedule, provided
24 that the commissioner complies with the credit caps in section three
25 hundred fifty-nine of this article.

26 S 2. Section 353 of the economic development law, as added by section
27 1 of part MM of chapter 59 of the laws of 2010, is amended to read as
28 follows:

29 S 353. Eligibility criteria. 1. To be a participant in the excelsior
30 jobs program, a business entity shall operate in New York state predomi-
31 nantly:

32 (a) as a financial services data center or a financial services back
33 office operation;

34 (b) in manufacturing;

35 (c) in software development and new media;

36 (d) in scientific research and development;

37 (e) in agriculture;

38 (f) in the creation or expansion of back office operations in the
39 state;

40 (g) in a distribution center; or

41 (h) in an industry with significant potential for private-sector
42 economic growth and development in this state as established by the
43 commissioner in regulations promulgated pursuant to this article. In
44 promulgating such regulations the commissioner shall include job and
45 investment criteria.

46 2. WHEN DETERMINING WHETHER AN APPLICANT IS OPERATING PREDOMINATELY IN
47 ONE OF THE INDUSTRIES LISTED IN SUBDIVISION ONE OF THIS SECTION, THE
48 COMMISSIONER WILL EXAMINE THE NATURE OF THE BUSINESS ACTIVITY AT THE
49 LOCATION FOR THE PROPOSED PROJECT AND WILL MAKE ELIGIBILITY DETERMI-
50 NATIONS BASED ON SUCH ACTIVITY.

51 3. For the purposes of this article, in order to participate in the
52 excelsior jobs program, a business entity operating predominantly in
53 manufacturing must create at least twenty-five net new jobs; a business
54 entity operating predominately in agriculture must create at least ten

1 net new jobs; a business entity operating predominantly as a financial
2 service data center or financial services customer back office operation
3 must create at least one hundred net new jobs; a business entity operat-
4 ing predominantly in scientific research and development must create at
5 least ten net new jobs; a business entity operating predominantly in
6 software development must create at least ten net new jobs; a business
7 entity creating or expanding back office operations or a distribution
8 center in the state must create at least one hundred fifty net new jobs,
9 notwithstanding subdivision [four] FIVE of this section; or a business
10 entity must be a regionally significant project as defined in this arti-
11 cle; or

12 [3.] 4. A business entity operating predominantly in one of the indus-
13 tries referenced in paragraphs (a) through (h) of subdivision one of
14 this section but which does not meet the job requirements of subdivision
15 [two] THREE of this section must have at least fifty full-time job
16 equivalents and must demonstrate that its benefit-cost ratio is at least
17 ten to one.

18 [4.] 5. A not-for-profit business entity, a business entity whose
19 primary function is the provision of services including personal
20 services, business services, or the provision of utilities, and a busi-
21 ness entity engaged predominantly in the retail or entertainment indus-
22 try, and a company engaged in the generation or distribution of elec-
23 tricity, the distribution of natural gas, or the production of steam
24 associated with the generation of electricity are not eligible to
25 receive the tax credit described in this article.

26 [5.] 6. A business entity must be in compliance with all worker
27 protection and environmental laws and regulations. In addition, a busi-
28 ness entity may not owe past due state taxes or local property taxes.

29 S 3. Section 354 of the economic development law, as added by section
30 1 of part MM of chapter 59 of the laws of 2010, is amended to read as
31 follows:

32 S 354. Application and approval process. 1. A business enterprise must
33 submit a completed application as prescribed by the commissioner. An
34 application may be recommended by entities, including but not limited
35 to, those created pursuant to subdivision (e) of section nine hundred
36 fifty-seven of the general municipal law.

37 2. As part of such application, each business enterprise must:

38 (a) Agree to allow the department of taxation and finance to share its
39 tax information with the department. However, any information shared as
40 a result of this agreement shall not be available for disclosure or
41 inspection under the state freedom of information law.

42 (b) Agree to allow the department of labor to share its tax and
43 employer information with the department. However, any information
44 shared as a result of this agreement shall not be available for disclo-
45 sure or inspection under the state freedom of information law.

46 (c) Allow the department and its agents access to any and all books
47 and records the department may require to monitor compliance.

48 (d) Agree to be permanently [decertified from the empire zones program
49 if admitted into the excelsior jobs program, effective for the first
50 taxable year that the business enterprise may claim the excelsior jobs
51 program credit and for all subsequent taxable years] DISQUALIFIED FOR
52 EMPIRE ZONE BENEFITS AT ANY LOCATION OR LOCATIONS THAT QUALIFY FOR
53 EXCELSIOR JOBS PROGRAM BENEFITS IF ADMITTED INTO THE EXCELSIOR JOBS
54 PROGRAM.

55 (e) Provide the following information to the department upon request:

1 (i) a plan outlining the schedule for meeting the job and investment
2 requirements as set forth in subdivisions [two] THREE and [three] FOUR
3 of section three hundred fifty-three of this article. Such plan must
4 include details on job titles and expected salaries;
5 (ii) the prior three years of federal and state income or franchise
6 tax returns, unemployment insurance quarterly returns, real property tax
7 bills and audited financial statements;
8 (iii) the amount and description of projected qualified investments
9 for which it plans to claim the excelsior investment tax credit;
10 (iv) an estimate of the portion of any federal research and develop-
11 ment tax credits, attributable to research and development activities
12 conducted in New York state, that it anticipates claiming for the years
13 it expects to claim the excelsior research and development credit; and
14 (v) the employer identification or social security numbers for all
15 related persons to the applicant, including those of any members of a
16 limited liability company or partners in a partnership.
17 (f) Provide a clear and detailed presentation of all related persons
18 to the applicant to assure the department that jobs are not being shift-
19 ed within the state.
20 (g) Certify, under penalty of perjury, that it is in substantial
21 compliance with all environmental, worker protection, and local, state,
22 and federal tax laws.

23 3. After reviewing a business enterprise's completed application and
24 determining that the business enterprise will meet the conditions set
25 forth in subdivisions [two] THREE and [three] FOUR of section three
26 hundred fifty-three of this article, the department may admit the appli-
27 cant into the program and provide the applicant with a certificate of
28 eligibility and a preliminary schedule of benefits by year based on the
29 applicant's projections as set forth in its application. This prelimi-
30 nary schedule of benefits delineates the maximum possible benefits an
31 applicant may receive.

32 4. In order to become a participant in the program, an applicant must
33 submit evidence [of achieving job and investment requirements] THAT IT
34 SATISFIES THE ELIGIBILITY CRITERIA SPECIFIED IN SECTION THREE HUNDRED
35 FIFTY-THREE OF THIS ARTICLE AND SUBDIVISION TWO OF THIS SECTION in such
36 form as the commissioner may prescribe. After reviewing such evidence
37 and finding it sufficient, the department shall certify the applicant as
38 a participant and issue to that participant a certificate of tax credit
39 for one taxable year. To receive a certificate of tax credit for subse-
40 quent taxable years, the participant must submit to the department a
41 performance report DEMONSTRATING THAT THE PARTICIPANT CONTINUES TO
42 SATISFY THE ELIGIBILITY CRITERIA SPECIFIED IN SECTION THREE HUNDRED
43 FIFTY-THREE OF THIS ARTICLE AND SUBDIVISION TWO OF THIS SECTION. IF SUCH
44 ELIGIBILITY CRITERIA IS MET, A PARTICIPANT CAN RECEIVE TAX CREDITS BASED
45 ON INTERIM JOB, INVESTMENT OR RESEARCH AND DEVELOPMENT MILESTONES. A
46 participant's increase in employment, qualified investment, or federal
47 research and development tax credit attributable to research and devel-
48 opment activities in New York state above its projections listed in its
49 application shall not result in an increase in tax benefits under this
50 article. However, if the participant's expenditures are less than the
51 estimated amounts, the credit shall be less than the estimate.

52 5. A participant may claim tax benefits commencing in the first taxa-
53 ble year that the business enterprise receives a certificate of tax
54 credit or the first taxable year listed on its preliminary schedule of
55 benefits, whichever is later. A participant may claim such benefits for
56 the next [four] NINE consecutive taxable years, provided that the

1 participant demonstrates to the department that it continues to satisfy
2 the eligibility criteria specified in section three hundred fifty-three
3 of this article and subdivision two of this section in each of those
4 taxable years.

5 S 4. Section 355 of the economic development law, as added by section
6 1 of part MM of chapter 59 of the laws of 2010, is amended to read as
7 follows:

8 S 355. Excelsior jobs program credit. 1. Excelsior jobs tax credit
9 component. A participant in the excelsior jobs program shall be eligible
10 to claim a credit for each net new job it creates in New York state. The
11 amount of such credit per job shall be equal to the [sum of the follow-
12 ing: five percent of the amount of remuneration equal to or less than
13 fifty thousand dollars; four percent of the amount of remuneration in
14 excess of fifty thousand dollars and equal to or less than seventy-five
15 thousand dollars; and 1.33 percent of the amount of remuneration in
16 excess of seventy-five thousand dollars. However, the amount of the
17 credit for each net new job shall not exceed five thousand dollars]
18 PRODUCT OF THE GROSS WAGES PAID AND 6.85 PERCENT.

19 2. Excelsior investment tax credit component. A participant in the
20 excelsior jobs program shall be eligible to claim a credit on qualified
21 investments. The credit shall be equal to two percent of the cost or
22 other basis for federal income tax purposes of the qualified investment.
23 A participant may not claim both the excelsior investment tax credit
24 component and the investment tax credit set forth in subdivision twelve
25 of section two hundred ten, subsection (a) of section six hundred six,
26 [or] subsection (i) of section fourteen hundred fifty-six, OR SUBDIVI-
27 SION (Q) OF SECTION FIFTEEN HUNDRED ELEVEN of the tax law for the same
28 property in any taxable year, EXCEPT THAT A PARTICIPANT MAY CLAIM BOTH
29 THE EXCELSIOR INVESTMENT TAX CREDIT COMPONENT AND THE INVESTMENT TAX
30 CREDIT FOR RESEARCH AND DEVELOPMENT PROPERTY. In addition, a taxpayer
31 who or which is qualified to claim the excelsior investment tax credit
32 component and is also qualified to claim the brownfield tangible proper-
33 ty credit component under section twenty-one of the tax law may claim
34 either the excelsior investment tax credit component or such tangible
35 property credit component, but not both with regard to a particular
36 piece of property. A credit may not be claimed until a business enter-
37 prise has received a certificate of tax credit, provided that qualified
38 investments made on or after the issuance of the certificate of eligi-
39 bility but before the issuance of the certificate of tax credit to the
40 business enterprise, may be claimed in the first taxable year for which
41 the business enterprise is allowed to claim the credit. Expenses
42 incurred prior to the date the certificate of eligibility is issued are
43 not eligible to be included in the calculation of the credit.

44 3. Excelsior research and development tax credit component. A partic-
45 ipant in the excelsior jobs program shall be eligible to claim a credit
46 equal to [ten] FIFTY percent of the portion of the participant's federal
47 research and development tax credit that relates to the participant's
48 research and development expenditures in New York state during the taxa-
49 ble year; PROVIDED HOWEVER, THE EXCELSIOR RESEARCH AND DEVELOPMENT TAX
50 CREDIT SHALL NOT EXCEED THREE PERCENT OF THE QUALIFIED RESEARCH AND
51 DEVELOPMENT EXPENDITURES ATTRIBUTABLE TO ACTIVITIES CONDUCTED IN NEW
52 YORK STATE. If the federal research and development credit has expired,
53 then the research and development expenditures relating to the federal
54 research and development credit shall be calculated as if the federal
55 research and development credit structure and definition in effect in
56 two thousand nine were still in effect. NOTWITHSTANDING ANY OTHER

PROVISION OF THIS CHAPTER TO THE CONTRARY, RESEARCH AND DEVELOPMENT EXPENDITURES IN THIS STATE, INCLUDING SALARY OR WAGE EXPENSES FOR JOBS RELATED TO RESEARCH AND DEVELOPMENT ACTIVITIES IN THIS STATE, MAY BE USED AS THE BASIS FOR THE EXCELSIOR RESEARCH AND DEVELOPMENT TAX CREDIT COMPONENT AND THE QUALIFIED EMERGING TECHNOLOGY COMPANY FACILITIES, OPERATIONS AND TRAINING CREDIT UNDER THE TAX LAW.

4. Excelsior real property tax credit COMPONENT. (A) A participant in the excelsior jobs program who either qualified as a regionally significant project or is located in an investment zone shall be eligible to claim a credit for a period of [five] TEN years.

(B) The credit IN YEAR ONE shall be equal to fifty percent of the eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone [that were assessed and paid in the year immediately prior to application]. In the remaining years the credit shall be computed according to the following schedule:

Year two: [forty] FORTY-FIVE percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone [that were assessed and paid in the year immediately prior to application];

Year three: [thirty] FORTY percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone [that were assessed and paid in the year immediately prior to application];

Year four: [twenty] THIRTY-FIVE percent of eligible real property taxes on real property comprising the regionally significant project or located in the investment zone [that were assessed and paid in the year immediately prior to application]; [and]

Year five: [ten] THIRTY percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone [that were assessed and paid in the year immediately prior to application];

YEAR SIX: TWENTY-FIVE PERCENT OF ELIGIBLE REAL PROPERTY TAXES ON THE REAL PROPERTY COMPRISING THE REGIONALLY SIGNIFICANT PROJECT OR LOCATED IN THE INVESTMENT ZONE;

YEAR SEVEN: TWENTY PERCENT OF ELIGIBLE REAL PROPERTY TAXES ON THE REAL PROPERTY COMPRISING THE REGIONALLY SIGNIFICANT PROJECT OR LOCATED IN THE INVESTMENT ZONE;

YEAR EIGHT: FIFTEEN PERCENT OF ELIGIBLE REAL PROPERTY TAXES ON THE REAL PROPERTY COMPRISING THE REGIONALLY SIGNIFICANT PROJECT OR LOCATED IN THE INVESTMENT ZONE;

YEAR NINE: TEN PERCENT OF ELIGIBLE REAL PROPERTY TAXES ON THE REAL PROPERTY COMPRISING THE REGIONALLY SIGNIFICANT PROJECT OR LOCATED IN THE INVESTMENT ZONE; AND

YEAR TEN: FIVE PERCENT OF ELIGIBLE REAL PROPERTY TAXES ON THE REAL PROPERTY COMPRISING THE REGIONALLY SIGNIFICANT PROJECT OR LOCATED IN THE INVESTMENT ZONE.

(C) For purposes of this credit, the term "eligible real property taxes" shall have the same meaning as in subdivision (e) of section fifteen of the tax law, provided that such subdivision (e) shall be read as if it specifically referenced the excelsior jobs program and participants in that program.

(D) IN CALCULATING THE EXCELSIOR REAL PROPERTY TAX CREDIT AND DETERMINING THE MAXIMUM AGGREGATE AMOUNT OF SUCH CREDIT COMPONENT IN THE PRELIMINARY SCHEDULE OF BENEFITS, THE COMMISSIONER SHALL INCLUDE ANY IMPROVEMENTS PROJECTED TO BE MADE BY THE TAXPAYER TO THE PROPERTY

1	\$ 150 MILLION	2022
2	\$ 100 MILLION	2023
3	\$ 50 MILLION	2024

4 Twenty-five percent of tax credits shall be allocated to businesses
5 accepted into the program under subdivision [three] FOUR of section
6 three hundred fifty-three of this article and seventy-five percent of
7 tax credits shall be allocated to businesses accepted into the program
8 under subdivision [two] THREE of section three hundred fifty-three of
9 this article.

10 Provided, however, if by September thirtieth of a calendar year, the
11 department has not allocated the full amount of credits available in
12 that year to either: (i) businesses accepted into the program under
13 subdivision [three] FOUR of section three hundred fifty-three of this
14 article or (ii) businesses accepted into the program under subdivision
15 [two] THREE of section three hundred fifty-three of this article, the
16 commissioner may allocate any remaining tax credits to businesses refer-
17 enced in paragraphs (i) and (ii) of this section as needed; provided,
18 however, that under no circumstances may the statutory cap be exceeded.

19 S 7. Subdivisions (a), (b) and (f) of section 31 of the tax law, as
20 added by section 2 of part MM of chapter 59 of the laws of 2010, are
21 amended to read as follows:

22 (a) General. A taxpayer subject to tax under article nine-A, twenty-
23 two, thirty-two or thirty-three of this chapter shall be allowed a cred-
24 it against such tax, pursuant to the provisions referenced in subdivi-
25 sion (g) of this section. The amount of the credit, allowable for up to
26 [five] TEN consecutive taxable years, is the sum of the following four
27 credit components:

- 28 (1) the excelsior jobs tax credit COMPONENT;
- 29 (2) the excelsior investment tax credit COMPONENT;
- 30 (3) the excelsior research and development tax credit COMPONENT; and
- 31 (4) the excelsior real property tax credit COMPONENT.

32 (b) To be eligible for the excelsior jobs program credit, the taxpayer
33 shall have been issued a "certificate of tax credit" by the department
34 of economic development pursuant to subdivision four of section three
35 hundred fifty-four of the economic development law, which certificate
36 shall set forth the amount of each credit component that may be claimed
37 for the taxable year. A taxpayer may claim such credit for [five] TEN
38 consecutive taxable years commencing in the first taxable year that the
39 taxpayer receives a certificate of tax credit or the first taxable year
40 listed on its preliminary schedule of benefits, whichever is later. The
41 taxpayer shall be allowed to claim only the amount listed on the certif-
42 icate of tax credit for that taxable year. Such certificate [should]
43 MUST be attached to the taxpayer's return. No cost or expense paid or
44 incurred by the taxpayer shall be the basis for more than one component
45 of this credit or any other tax credit, EXCEPT AS PROVIDED IN SECTION
46 THREE HUNDRED FIFTY-FIVE OF THE ECONOMIC DEVELOPMENT LAW.

47 (f) Credit recapture. If a certificate of eligibility or a certificate
48 of tax credit issued by the department of economic development under
49 article seventeen of the economic development law is revoked by such
50 department BECAUSE THE TAXPAYER DOES NOT MEET THE ELIGIBILITY REQUIRE-
51 MENT SET FORTH IN SUBDIVISION SIX OF SECTION THREE HUNDRED FIFTY-THREE
52 OF THE ECONOMIC DEVELOPMENT LAW, the amount of credit described in this
53 section and claimed by the taxpayer prior to that revocation shall be
54 added back to income in the taxable year in which any such revocation
55 becomes final.

1 S 8. Section 66 of the public service law is amended by adding a new
2 subdivision 12-d to read as follows:

3 12-D. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, UPON APPLICATION OF
4 A GAS OR ELECTRIC CORPORATION, THE COMMISSION SHALL AUTHORIZE SUCH
5 CORPORATION TO CHARGE A SPECIAL EXCELSIOR JOBS PROGRAM RATE EQUAL TO THE
6 INCREMENTAL COST OF PROVIDING SERVICE TO PARTICIPANTS IN THE EXCELSIOR
7 JOBS PROGRAM AS DEFINED IN ARTICLE SEVENTEEN OF THE ECONOMIC DEVELOPMENT
8 LAW.

9 S 9. This act shall take effect immediately.

10 PART H

11 Section 1. Paragraph 7 of subdivision (a) of section 1512 of the tax
12 law, as amended by chapter 817 of the laws of 1987, is amended to read
13 as follows:

14 (7) a town or county cooperative insurance corporation as heretofore
15 contemplated by section one hundred eighty-seven of this chapter in
16 effect immediately prior to January first, nineteen hundred
17 seventy-four, THAT ACCURATELY AND IN ACCORDANCE WITH LAW REPORTED TO THE
18 SUPERINTENDENT OF INSURANCE TOTAL DIRECT PREMIUMS WRITTEN FOR THE TAXA-
19 BLE YEAR OF TWENTY-FIVE MILLION DOLLARS OR LESS.

20 S 2. This act shall take effect immediately and apply to taxable years
21 beginning on or after January 1, 2011.

22 PART I

23 Section 1. The opening paragraph of paragraph 1 of subsection (b) of
24 section 1101 of the insurance law, as amended by chapter 614 of the laws
25 of 1997, is amended to read as follows:

26 Except as provided in paragraph two, three [or], three-a, OR SEVEN of
27 this subsection, any of the following acts in this state, effected by
28 mail from outside this state or otherwise, by any person, firm, associ-
29 ation, corporation or joint-stock company shall constitute doing an
30 insurance business in this state and shall constitute doing business in
31 the state within the meaning of section three hundred two of the civil
32 practice law and rules:

33 S 2. Subparagraph (H) of paragraph 2 of subsection (b) of section 1101
34 of the insurance law is amended to read as follows:

35 (H) transactions with respect to insurance contracts negotiated or
36 placed pursuant to subsection (b) [or], (c), OR (J) of section two thou-
37 sand one hundred seventeen of this chapter;

38 S 3. Subsection (b) of section 1101 of the insurance law is amended by
39 adding a new paragraph 7 to read as follows:

40 (7)(A) NOTWITHSTANDING THE FOREGOING, THE MAKING OF A SWAP SHALL NOT
41 CONSTITUTE DOING AN INSURANCE BUSINESS IN THIS STATE.

42 (B) FOR THE PURPOSES OF THIS PARAGRAPH, "SWAP" SHALL HAVE THE MEANING
43 SET FORTH IN 7 U.S.C. S 1A.

44 S 4. Section 2101 of the insurance law is amended by adding two new
45 subsections (w) and (x) to read as follows:

46 (W) IN THIS ARTICLE, "STATE" MEANS THE DISTRICT OF COLUMBIA OR ANY
47 STATE OR TERRITORY OF THE UNITED STATES.

48 (X) IN THIS ARTICLE, WITH RESPECT TO EXCESS LINE INSURANCE AND EXCESS
49 LINE BROKERS:

50 (1) WITH RESPECT TO AN INSURED'S HOME STATE, "AFFILIATED GROUP" MEANS
51 ANY GROUP OF ENTITIES THAT ARE ALL AFFILIATED. FOR THE PURPOSES OF THIS
52 PARAGRAPH:

1 (A) "AFFILIATE" MEANS, WITH RESPECT TO AN INSURED, ANY ENTITY THAT
2 CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH THE INSURED;
3 AND
4 (B) AN ENTITY HAS CONTROL OVER ANOTHER ENTITY IF THE ENTITY:
5 (I) DIRECTLY OR INDIRECTLY OR ACTING THROUGH ONE OR MORE OTHER PERSONS
6 OWNS, CONTROLS, OR HAS THE POWER TO VOTE TWENTY-FIVE PERCENT OR MORE OF
7 ANY CLASS OF VOTING SECURITIES OF THE OTHER ENTITY; OR
8 (II) CONTROLS IN ANY MANNER THE ELECTION OF A MAJORITY OF THE DIREC-
9 TORS OR TRUSTEES OF THE OTHER ENTITY;
10 (2) "EXEMPT COMMERCIAL PURCHASER" MEANS ANY PERSON PURCHASING COMMER-
11 CIAL INSURANCE THAT, AT THE TIME OF PLACEMENT, MEETS THE FOLLOWING
12 REQUIREMENTS:
13 (A) THE PERSON EMPLOYS OR RETAINS A QUALIFIED RISK MANAGER TO NEGOTI-
14 ATE INSURANCE COVERAGE;
15 (B) THE PERSON HAS PAID AGGREGATE NATIONWIDE COMMERCIAL
16 PROPERTY/CASUALTY INSURANCE PREMIUMS IN EXCESS OF ONE HUNDRED THOUSAND
17 DOLLARS IN THE IMMEDIATELY PRECEDING TWELVE MONTHS; AND
18 (C) (I) THE PERSON MEETS AT LEAST ONE OF THE FOLLOWING CRITERIA:
19 (I) THE PERSON POSSESSES A NET WORTH IN EXCESS OF TWENTY MILLION
20 DOLLARS, AS SUCH AMOUNT IS ADJUSTED PURSUANT TO ITEM (II) OF THIS
21 SUBPARAGRAPH;
22 (II) THE PERSON GENERATES ANNUAL REVENUES IN EXCESS OF FIFTY MILLION
23 DOLLARS, AS SUCH AMOUNT IS ADJUSTED PURSUANT TO ITEM (II) OF THIS
24 SUBPARAGRAPH;
25 (III) THE PERSON EMPLOYS MORE THAN FIVE HUNDRED FULL-TIME OR FULL-TIME
26 EQUIVALENT EMPLOYEES PER INDIVIDUAL INSURED OR IS A MEMBER OF AN AFFIL-
27 IATED GROUP EMPLOYING MORE THAN ONE THOUSAND EMPLOYEES IN THE AGGREGATE;
28 (IV) THE PERSON IS A NOT-FOR-PROFIT ORGANIZATION OR PUBLIC ENTITY
29 GENERATING ANNUAL BUDGETED EXPENDITURES OF AT LEAST THIRTY MILLION
30 DOLLARS, AS SUCH AMOUNT IS ADJUSTED PURSUANT TO ITEM (II) OF THIS
31 SUBPARAGRAPH; OR
32 (V) THE PERSON IS A MUNICIPALITY WITH A POPULATION IN EXCESS OF FIFTY
33 THOUSAND PERSONS;
34 (II) EFFECTIVE ON THE FIFTH JANUARY FIRST OCCURRING AFTER JULY TWEN-
35 TY-FIRST, TWO THOUSAND TEN AND EACH FIFTH JANUARY FIRST OCCURRING THERE-
36 AFTER, THE AMOUNTS IN CLAUSES (I), (II), AND (IV) OF ITEM (I) OF THIS
37 SUBPARAGRAPH SHALL BE ADJUSTED TO REFLECT THE PERCENTAGE CHANGE FOR SUCH
38 FIVE-YEAR PERIOD IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS
39 PUBLISHED BY THE BUREAU OF LABOR STATISTICS OF THE UNITED STATES DEPART-
40 MENT OF LABOR;
41 (3) "INSURED'S HOME STATE" MEANS:
42 (A) THE STATE IN WHICH AN INSURED MAINTAINS ITS PRINCIPAL PLACE OF
43 BUSINESS OR, IN THE CASE OF AN INDIVIDUAL, THE INDIVIDUAL'S PRINCIPAL
44 RESIDENCE;
45 (B) IF ONE HUNDRED PERCENT OF THE INSURED RISK IS LOCATED OUTSIDE OF
46 THE STATE REFERRED TO IN SUBPARAGRAPH (A) OF THIS PARAGRAPH, THEN THE
47 STATE TO WHICH THE GREATEST PERCENTAGE OF THE INSURED'S TAXABLE PREMIUM
48 FOR THAT INSURANCE CONTRACT IS ALLOCATED;
49 (C) IF MORE THAN ONE INSURED FROM AN AFFILIATED GROUP ARE NAMED
50 INSUREDS ON A SINGLE INSURANCE CONTRACT, THEN THE INSURED'S HOME STATE,
51 AS DETERMINED PURSUANT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH, OF THE
52 MEMBER OF THE AFFILIATED GROUP THAT HAS THE LARGEST PERCENTAGE OF PREMI-
53 UM ATTRIBUTED TO IT UNDER SUCH INSURANCE CONTRACT; OR
54 (D) IN THE CASE OF A GROUP POLICY:
55 (I) WHEN THE GROUP POLICYHOLDER PAYS ONE HUNDRED PERCENT OF THE PREMI-
56 UM FROM ITS OWN FUNDS, THEN THE INSURED'S HOME STATE, AS DETERMINED

PURSUANT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH, OF THE GROUP POLICYHOLDER; OR

(II) WHEN THE GROUP POLICYHOLDER DOES NOT PAY ONE HUNDRED PERCENT OF THE PREMIUM FROM ITS OWN FUNDS, THEN THE HOME STATE, AS DETERMINED PURSUANT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH, OF THE GROUP MEMBER;

(4) WITH RESPECT TO DETERMINING AN INSURED'S HOME STATE, "PRINCIPAL PLACE OF BUSINESS" MEANS THE STATE WHERE:

(A) THE INSURED MAINTAINS ITS HEADQUARTERS AND WHERE THE INSURED'S HIGH-LEVEL OFFICERS DIRECT, CONTROL, AND COORDINATE THE BUSINESS ACTIVITIES; OR

(B) IF THE INSURED'S HIGH-LEVEL OFFICERS DIRECT, CONTROL, AND COORDINATE THE BUSINESS ACTIVITIES IN MORE THAN ONE STATE, OR IF THE INSURED'S PRINCIPAL PLACE OF BUSINESS IS LOCATED OUTSIDE ANY STATE, THEN THE STATE TO WHICH THE GREATEST PERCENTAGE OF THE INSURED'S TAXABLE PREMIUM FOR THAT INSURANCE CONTRACT IS ALLOCATED;

(5) WITH RESPECT TO DETERMINING AN INSURED'S HOME STATE, "PRINCIPAL RESIDENCE" MEANS THE STATE:

(A) WHERE THE INDIVIDUAL RESIDES FOR THE GREATEST NUMBER OF DAYS DURING A CALENDAR YEAR; OR

(B) IF THE INSURED'S PRINCIPAL RESIDENCE IS LOCATED OUTSIDE ANY STATE, THE STATE TO WHICH THE GREATEST PERCENTAGE OF THE INSURED'S TAXABLE PREMIUM FOR THAT INSURANCE CONTRACT IS ALLOCATED;

(6) "PROPERTY/CASUALTY INSURANCE" MEANS ANY KIND OF INSURANCE AS SPECIFIED IN SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER, EXCEPT INSURANCE ISSUED PURSUANT TO PARAGRAPH ONE, TWO, THREE, FIFTEEN, EIGHTEEN OR THIRTY-ONE OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER OR INSURANCE SUBSTANTIALLY SIMILAR THERETO; AND

(7) WITH RESPECT TO AN EXEMPT COMMERCIAL PURCHASER, "QUALIFIED RISK MANAGER" MEANS, WITH RESPECT TO A POLICYHOLDER OF COMMERCIAL INSURANCE, A PERSON WHO MEETS ALL OF THE FOLLOWING REQUIREMENTS:

(A) THE PERSON IS AN EMPLOYEE OF, OR THIRD-PARTY CONSULTANT RETAINED BY, THE COMMERCIAL POLICYHOLDER;

(B) THE PERSON PROVIDES SKILLED SERVICES IN LOSS PREVENTION, LOSS REDUCTION, OR RISK AND INSURANCE COVERAGE ANALYSIS, AND PURCHASE OF INSURANCE;

(C) THE PERSON:

(I)(I) HAS A BACHELOR'S DEGREE OR HIGHER FROM AN ACCREDITED COLLEGE OR UNIVERSITY IN RISK MANAGEMENT, BUSINESS ADMINISTRATION, FINANCE, ECONOMICS, OR ANY OTHER FIELD DETERMINED BY THE SUPERINTENDENT TO DEMONSTRATE MINIMUM COMPETENCE IN RISK MANAGEMENT; AND

(II)(AA) HAS THREE YEARS OF EXPERIENCE IN RISK FINANCING, CLAIMS ADMINISTRATION, LOSS PREVENTION, RISK AND INSURANCE ANALYSIS, OR PURCHASING COMMERCIAL LINES OF INSURANCE; OR

(BB) HAS:

(AAA) A DESIGNATION AS A CHARTERED PROPERTY AND CASUALTY UNDERWRITER (IN THIS CLAUSE REFERRED TO AS A "CPCU") ISSUED BY THE AMERICAN INSTITUTE FOR CPCU/INSURANCE INSTITUTE OF AMERICA;

(BBB) A DESIGNATION AS AN ASSOCIATE IN RISK MANAGEMENT (ARM) ISSUED BY THE AMERICAN INSTITUTE FOR CPCU/INSURANCE INSTITUTE OF AMERICA;

(CCC) A DESIGNATION AS CERTIFIED RISK MANAGER (CRM) ISSUED BY THE NATIONAL ALLIANCE FOR INSURANCE EDUCATION & RESEARCH;

(DDD) A DESIGNATION AS A RISK AND INSURANCE MANAGEMENT SOCIETY (RIMS) FELLOW (RF) ISSUED BY THE GLOBAL RISK MANAGEMENT INSTITUTE; OR

(EEE) ANY OTHER DESIGNATION, CERTIFICATION, OR LICENSE DETERMINED BY THE SUPERINTENDENT TO DEMONSTRATE MINIMUM COMPETENCY IN RISK MANAGEMENT;

(II) (I) HAS AT LEAST SEVEN YEARS OF EXPERIENCE IN RISK FINANCING, CLAIMS ADMINISTRATION, LOSS PREVENTION, RISK AND INSURANCE COVERAGE ANALYSIS, OR PURCHASING COMMERCIAL LINES OF INSURANCE; AND

(II) HAS ANY ONE OF THE DESIGNATIONS SPECIFIED IN SUBCLAUSES (AAA) THROUGH (EEE) OF SUBITEM (BB) OF CLAUSE (II) OF ITEM (I) OF THIS SUBPARAGRAPH;

(III) HAS AT LEAST TEN YEARS OF EXPERIENCE IN RISK FINANCING, CLAIMS ADMINISTRATION, LOSS PREVENTION, RISK AND INSURANCE COVERAGE ANALYSIS, OR PURCHASING COMMERCIAL LINES OF INSURANCE; OR

(IV) HAS A GRADUATE DEGREE FROM AN ACCREDITED COLLEGE OR UNIVERSITY IN RISK MANAGEMENT, BUSINESS ADMINISTRATION, FINANCE, ECONOMICS, OR ANY OTHER FIELD DETERMINED BY THE SUPERINTENDENT TO DEMONSTRATE MINIMUM COMPETENCE IN RISK MANAGEMENT.

S 5. Paragraphs 7 and 8 of subsection (c) of section 2101 of the insurance law, as added by chapter 687 of the laws of 2003, are amended and a new paragraph 9 is added to read as follows:

(7) a person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state; [or]

(8) a person who is not a resident of this state who sells, solicits or negotiates a contract for commercial property/casualty risks to an insured with risks located in more than one state insured under that contract, provided that such person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state[.]; OR

(9) A PERSON WHO IS NOT A RESIDENT OF THIS STATE WHO SELLS, SOLICITS OR NEGOTIATES A CONTRACT OF PROPERTY/CASUALTY INSURANCE, AS DEFINED IN PARAGRAPH SIX OF SUBSECTION (X) OF THIS SECTION, TO OR FOR AN INSURED, WITH REGARD TO AN UNAUTHORIZED INSURER, PROVIDED THAT: (A) THE INSURED'S HOME STATE IS A STATE OTHER THAN THIS STATE; (B) SUCH PERSON IS OTHERWISE LICENSED TO SELL, SOLICIT OR NEGOTIATE EXCESS LINE INSURANCE IN THE INSURED'S HOME STATE; AND (C) THE PERSON DOES NOT PERFORM THE DILIGENT SEARCH REQUIRED BY SECTION TWO THOUSAND ONE HUNDRED EIGHTEEN OF THIS ARTICLE.

S 6. Paragraphs 9 and 10 of subsection (k) of section 2101 of the insurance law, as added by chapter 687 of the laws of 2003, are amended and a new paragraph 11 is added to read as follows:

(9) a person who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property/casualty risks to an insured with risks located in more than one state insured under that contract, provided that such person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state; [or]

(10) any salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, provided that the employee does not sell or solicit insurance or receive a commission[.]; OR

(11) A PERSON WHO IS NOT A RESIDENT OF THIS STATE WHO SELLS, SOLICITS OR NEGOTIATES A CONTRACT OF PROPERTY/CASUALTY INSURANCE, AS DEFINED IN PARAGRAPH SIX OF SUBSECTION (X) OF THIS SECTION, TO OR FOR AN INSURED,

1 WITH REGARD TO AN UNAUTHORIZED INSURER, PROVIDED THAT: (A) THE INSURED'S
2 HOME STATE IS A STATE OTHER THAN THIS STATE; (B) SUCH PERSON IS OTHER-
3 WISE LICENSED TO SELL, SOLICIT OR NEGOTIATE EXCESS LINE INSURANCE IN THE
4 INSURED'S HOME STATE; AND (C) THE PERSON DOES NOT PERFORM THE DILIGENT
5 SEARCH REQUIRED BY SECTION TWO THOUSAND ONE HUNDRED EIGHTEEN OF THIS
6 ARTICLE.

7 S 7. Paragraph 1 of subsection (a) of section 2102 of the insurance
8 law, as amended by chapter 499 of the laws of 2009, is amended to read
9 as follows:

10 (1) (A) No person, firm, association or corporation shall act as an
11 insurance producer, insurance adjuster or life settlement broker in this
12 state without having authority to do so by virtue of a license issued
13 and in force pursuant to the provisions of this chapter.

14 (B) NO PERSON, FIRM, ASSOCIATION OR CORPORATION SHALL ACT AS AN EXCESS
15 LINE BROKER IN THIS STATE WITHOUT HAVING AUTHORITY TO DO SO BY VIRTUE OF
16 A LICENSE ISSUED AND IN FORCE PURSUANT TO SECTION TWO THOUSAND ONE
17 HUNDRED FIVE OF THIS ARTICLE, PROVIDED, HOWEVER, THAT SUCH PERSON, FIRM,
18 ASSOCIATION OR CORPORATION SHALL NOT BE REQUIRED TO BE LICENSED TO ACT
19 AS AN EXCESS LINE BROKER WHERE THE INSURED'S HOME STATE IS A STATE OTHER
20 THAN THIS STATE AND SUCH PERSON, FIRM, ASSOCIATION OR CORPORATION IS
21 OTHERWISE LICENSED TO SELL, SOLICIT OR NEGOTIATE EXCESS LINE INSURANCE
22 IN THE INSURED'S HOME STATE.

23 S 8. Subsection (a) of section 2105 of the insurance law, as amended
24 by chapter 626 of the laws of 2006, is amended to read as follows:

25 (a) The superintendent may issue an excess line broker's license to
26 any person, firm, association or corporation who or which [is domiciled
27 or maintains an office in this state and] is licensed as an insurance
28 broker under section two thousand one hundred four of this article, or
29 who or which is licensed as an excess line broker in the licensee's home
30 state, provided, however, that the applicant's home state grants non-re-
31 sident licenses to residents of this state on the same basis, except
32 that reciprocity is not required in regard to the placement of liability
33 insurance on behalf of a purchasing group or any of its members; author-
34 izing such person, firm, association or corporation to procure, subject
35 to the restrictions herein provided, policies of insurance from insurers
36 which are not authorized to transact business in this state of the kind
37 or kinds of insurance specified in paragraphs four through fourteen,
38 sixteen, seventeen, nineteen, twenty, twenty-two, twenty-seven, twenty-
39 eight and thirty-one of subsection (a) of section one thousand one
40 hundred thirteen of this chapter and in subsection (h) of this section,
41 provided, however, that the provisions of this section and section two
42 thousand one hundred eighteen of this article shall not apply to ocean
43 marine insurance and other contracts of insurance enumerated in
44 subsections (b) and (c) of section two thousand one hundred seventeen of
45 this article. Such license may be suspended or revoked by the super-
46 intendent whenever in his OR HER judgment such suspension or revocation
47 will best promote the interests of the people of this state.

48 S 9. Section 2117 of the insurance law is amended by adding a new
49 subsection (j) to read as follows:

50 (J) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, A PERSON WHO IS
51 NOT A RESIDENT OF THIS STATE MAY SELL, SOLICIT OR NEGOTIATE A CONTRACT
52 OF PROPERTY/CASUALTY INSURANCE TO OR FOR AN INSURED, WITH REGARD TO AN
53 UNAUTHORIZED INSURER, PROVIDED THAT: (1) THE INSURED'S HOME STATE IS A
54 STATE OTHER THAN THIS STATE; (2) THE PERSON IS LICENSED TO SELL, SOLICIT
55 OR NEGOTIATE EXCESS LINE INSURANCE IN THE INSURED'S HOME STATE; AND (3)
56 EITHER THE PERSON IS LICENSED AS AN INSURANCE BROKER IN THIS STATE OR

1 THE PERSON DOES NOT PERFORM THE DILIGENT SEARCH REQUIRED BY SECTION TWO
2 THOUSAND ONE HUNDRED EIGHTEEN OF THIS ARTICLE.

3 S 10. Paragraph 1 of subsection (b) of section 2118 of the insurance
4 law, as amended by chapter 630 of the laws of 1988, is amended to read
5 as follows:

6 (1) Within [forty-five] THIRTY days after a policy is procured, a
7 licensee shall submit the declarations page or cover note of every poli-
8 cy procured under his or her license to the excess line association
9 established pursuant to section two thousand one hundred thirty of this
10 article for recording and stamping. In the event that no declarations
11 page or cover note is available to the licensee, within [forty-five]
12 THIRTY days after the policy is procured, the licensee shall submit a
13 binder to the excess line association in lieu of such declarations page
14 or cover note. In the event that a binder is submitted to the excess
15 line association, the licensee shall submit the declarations page or
16 cover note to the excess line association promptly upon receipt. Every
17 insurance document submitted to the excess line association pursuant to
18 this subsection shall set forth:

- 19 (A) the name and address of the insured;
- 20 (B) the gross premium charged;
- 21 (C) the name of the unauthorized insurer; and
- 22 (D) the kind of insurance procured.

23 S 10-a. Paragraphs 8 and 9 of subsection (b) of section 2118 of the
24 insurance law are REPEALED.

25 S 11. Subparagraph (A) of paragraph 3 of subsection (b) of section
26 2118 of the insurance law, as amended by chapter 498 of the laws of
27 1996, is amended and a new subparagraph (F) is added to read as follows:

28 (A) [The] EXCEPT AS PROVIDED IN SUBPARAGRAPH (F) OF THIS PARAGRAPH,
29 submission of insurance documents to the excess line association shall
30 be accompanied by a statement subscribed to, and affirmed by, the licen-
31 see or sublicensee as true under the penalties of perjury that, after
32 diligent effort, the full amount of insurance required could not be
33 procured, from authorized insurers, each of which is authorized to write
34 insurance of the kind requested and which the licensee has reason to
35 believe might consider writing the type of coverage or class of insur-
36 ance involved, and further showing that the amount of insurance procured
37 from an unauthorized insurer is only the excess over the amount procura-
38 ble from an authorized insurer. The licensee, however, shall be excused
39 from affirming that a diligent effort, as defined above, was made to
40 procure the coverage from authorized insurers if the licensee's affida-
41 vit is accompanied by the affidavit of another broker involved in the
42 placement affirming as true under the penalties of perjury that, after
43 diligent effort by the affirming broker, the required insurance could
44 not be procured from an authorized insurer which the affirming broker
45 had reason to believe might consider writing the type of coverage or
46 class of insurance involved. The licensee and the affirming broker shall
47 be excused from affirming that a diligent effort was made if the super-
48 intendent determines, pursuant to paragraph four of this subsection,
49 that no declinations are required.

50 (F) A LICENSEE SEEKING TO PROCURE OR PLACE INSURANCE IN THIS STATE FOR
51 AN EXEMPT COMMERCIAL PURCHASER SHALL NOT BE REQUIRED TO SATISFY ANY
52 REQUIREMENT OF THIS STATE TO MAKE A DUE DILIGENCE SEARCH TO DETERMINE
53 WHETHER THE FULL AMOUNT OR TYPE OF INSURANCE SOUGHT BY THE EXEMPT
54 COMMERCIAL PURCHASER CAN BE OBTAINED FROM AUTHORIZED INSURERS IF:

55 (I) THE LICENSEE PROCURING OR PLACING THE EXCESS LINE INSURANCE HAS
56 DISCLOSED TO THE EXEMPT COMMERCIAL PURCHASER THAT THE INSURANCE MAY OR

1 MAY NOT BE AVAILABLE FROM THE AUTHORIZED MARKET THAT MAY PROVIDE GREATER
2 PROTECTION WITH MORE REGULATORY OVERSIGHT; AND

3 (II) THE EXEMPT COMMERCIAL PURCHASER HAS SUBSEQUENTLY REQUESTED IN
4 WRITING THAT THE LICENSEE PROCURE OR PLACE THE INSURANCE FROM AN UNAU-
5 THORIZED INSURER.

6 S 12. Subsection (d) of section 2118 of the insurance law, as amended
7 by chapter 220 of the laws of 1986, paragraph 1 as amended by chapter
8 190 of the laws of 1990, is amended to read as follows:

9 (d) (1) [Every] (A) WHERE THIS STATE IS THE INSURED'S HOME STATE, A
10 person, firm, association or corporation licensed pursuant to the
11 provisions of section two thousand one hundred five of this article
12 shall pay to the superintendent a sum equal to three and six-tenths
13 percent of the gross premiums charged the insureds by the insurers for
14 insurance procured by such licensee pursuant to such license, less the
15 amount of such premiums returned to such insureds. [Where the insurance
16 covers property or risks located or resident both in and out of this
17 state, the sum payable shall be computed on that portion of the gross
18 premiums allocated to this state pursuant to subsection (b) of section
19 nine thousand one hundred two of this chapter less the amount of gross
20 premiums allocated to this state and returned to the insured.]

21 (B) NOTWITHSTANDING SUBPARAGRAPH (A) OF THIS PARAGRAPH, IF THE SUPER-
22 INTENDENT ENTERS INTO A NONADMITTED INSURANCE MULTI-STATE AGREEMENT ON
23 BEHALF OF THIS STATE PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED THIR-
24 TY-EIGHT OF THIS ARTICLE, THEN, WHERE THIS STATE IS THE INSURED'S HOME
25 STATE, A PERSON, FIRM, ASSOCIATION OR CORPORATION LICENSED PURSUANT TO
26 THE PROVISIONS OF SECTION TWO THOUSAND ONE HUNDRED FIVE OF THIS ARTICLE
27 SHALL PAY TO THE SUPERINTENDENT, OR A CLEARINGHOUSE DESIGNATED BY THE
28 SUPERINTENDENT, A SUM EQUAL TO:

29 (I) THREE AND SIX-TENTHS PERCENT OF THE GROSS PREMIUMS ALLOCATED TO
30 THIS STATE BASED ON THE ALLOCATION SCHEDULE SET FORTH IN THE NONADMITTED
31 INSURANCE MULTI-STATE AGREEMENT AND ADOPTED BY THE SUPERINTENDENT PURSU-
32 ANT TO A REGULATION;

33 (II) THE PERCENTAGE SPECIFIED BY EACH OTHER STATE, WHICH HAS EXECUTED
34 THE NONADMITTED INSURANCE MULTI-STATE AGREEMENT AND HAS NOT WITHDRAWN OR
35 DEFAULTED, ON THE PORTION OF THE PREMIUM ALLOCATED TO THAT OTHER STATE
36 BASED ON THE ALLOCATION SCHEDULE SET FORTH IN THE NONADMITTED INSURANCE
37 MULTI-STATE AGREEMENT AND ADOPTED BY THE SUPERINTENDENT PURSUANT TO A
38 REGULATION; AND

39 (III) THREE AND SIX-TENTHS PERCENT OF THE GROSS PREMIUMS ON ANY
40 PORTION OF THE PREMIUM NOT ALLOCATED UNDER ITEMS (I) AND (II) OF THIS
41 SUBPARAGRAPH.

42 (2) The amount of such payments which represents a sum equal to three
43 percent of fire insurance premiums shall be distributed by the super-
44 intendent as prescribed in section nine thousand one hundred five of
45 this chapter, and the balance thereof shall be paid over by the super-
46 intendent to the state treasurer.

47 (3) Such licensee shall be required to make such payments to the
48 superintendent QUARTERLY on the fifteenth day of [March of each year]:
49 (A) FEBRUARY FOR THE QUARTER ENDING THE PRECEDING THIRTY-FIRST DAY OF
50 DECEMBER; (B) MAY FOR THE QUARTER ENDING THE PRECEDING THIRTY-FIRST DAY
51 OF MARCH; (C) AUGUST FOR THE QUARTER ENDING THE PRECEDING THIRTIETH DAY
52 OF JUNE; AND (D) NOVEMBER FOR THE QUARTER ENDING THE PRECEDING THIRTIETH
53 DAY OF SEPTEMBER, for the taxes on all policies procured by such licen-
54 see, pursuant to such license, during the next preceding [calendar year]
55 QUARTER, and on EACH such PAYMENT date such licensee shall also file
56 with the superintendent a return in the form prescribed by the super-

intendent, showing such information as may be necessary for the proper distribution of such payments.

S 13. Paragraph 5 of subsection (a) of section 2130 of the insurance law, as added by chapter 630 of the laws of 1988, is amended to read as follows:

(5) prepare and deliver to each licensee and to the superintendent [annually] the reports of excess line business ON THE SEVENTH DAY OF: (A) FEBRUARY FOR THE QUARTER ENDING THE PRECEDING THIRTY-FIRST DAY OF DECEMBER; (B) MAY FOR THE QUARTER ENDING THE PRECEDING THIRTY-FIRST DAY OF MARCH; (C) AUGUST FOR THE QUARTER ENDING THE PRECEDING THIRTIETH DAY OF JUNE; AND (D) NOVEMBER FOR THE QUARTER ENDING THE PRECEDING THIRTIETH DAY OF SEPTEMBER, which reports shall include a delineation of the classes and kinds of business procured during the preceding calendar year in such form as the superintendent may prescribe;

S 14. The insurance law is amended by adding a new section 2138 to read as follows:

S 2138. NONADMITTED INSURANCE MULTI-STATE AGREEMENT. (A) FOR THE PURPOSES OF IMPLEMENTING THE FEDERAL NONADMITTED AND REINSURANCE REFORM ACT OF 2010, THE SUPERINTENDENT, IN CONSULTATION WITH THE COMMISSIONER OF TAXATION AND FINANCE, MAY ENTER INTO A NONADMITTED INSURANCE MULTI-STATE AGREEMENT ON BEHALF OF THIS STATE IN ORDER TO:

(1) FACILITATE THE PAYMENT AND ALLOCATION AMONGST STATES OF EXCESS LINE PREMIUM TAXES AND TAXES ON INDEPENDENTLY PROCURED INSURANCE ATTRIBUTABLE TO THE PLACEMENT OF INSURANCE WITH UNAUTHORIZED INSURERS IN ACCORDANCE WITH THE PREMIUM TAX ALLOCATION SCHEDULE AND ALLOCATION FORMULA SET FORTH IN A NONADMITTED INSURANCE MULTI-STATE AGREEMENT AND BASED ON RATES ESTABLISHED BY EACH STATE;

(2) ADOPT NATIONWIDE UNIFORM REQUIREMENTS, FORMS, AND PROCEDURES THAT FACILITATE THE REPORTING, PAYMENT, COLLECTION, AND ALLOCATION OF EXCESS LINE PREMIUM TAXES AND TAXES ON INDEPENDENTLY PROCURED INSURANCE WITH REGARD TO INSURANCE PLACED WITH AN UNAUTHORIZED INSURER; AND

(3) COORDINATE REPORTING OF EXCESS LINE PREMIUM TAXES AND TAXES ON INDEPENDENTLY PROCURED INSURANCE AND TRANSACTION DATA AMONG STATES.

(B) THE SUPERINTENDENT MAY PARTICIPATE IN THE CLEARINGHOUSE DESIGNATED PURSUANT TO A NONADMITTED INSURANCE MULTI-STATE AGREEMENT THAT THE SUPERINTENDENT HAS ENTERED INTO ON BEHALF OF THIS STATE FOR THE PURPOSE OF COLLECTING AND ALLOCATING TO STATES EXCESS LINE PREMIUM TAXES AND TAXES ON INDEPENDENTLY PROCURED INSURANCE WITH REGARD TO INSURANCE PLACED WITH AN UNAUTHORIZED INSURER.

(C) IF THE SUPERINTENDENT ENTERS INTO A NONADMITTED INSURANCE MULTI-STATE AGREEMENT ON BEHALF OF THIS STATE, THEN THE SUPERINTENDENT SHALL ADOPT BY REGULATION THE PREMIUM TAX ALLOCATION SCHEDULE SET FORTH IN THE NONADMITTED INSURANCE MULTI-STATE AGREEMENT AND ANY AMENDMENTS THERETO.

(D) THE SUPERINTENDENT MAY WITHDRAW THIS STATE FROM PARTICIPATION IN A NONADMITTED INSURANCE MULTI-STATE AGREEMENT BY PROVIDING SIXTY DAYS WRITTEN NOTICE TO THE CLEARINGHOUSE DESIGNATED BY THE NONADMITTED INSURANCE MULTI-STATE AGREEMENT IF THE SUPERINTENDENT, IN CONSULTATION WITH THE COMMISSIONER OF TAXATION AND FINANCE, DETERMINES THAT THIS STATE'S PARTICIPATION IN THE NONADMITTED INSURANCE MULTI-STATE AGREEMENT IS NO LONGER IN THE BEST INTERESTS OF THE PEOPLE OF THIS STATE.

S 15. Section 9102 of the insurance law, as amended by chapter 190 of the laws of 1990, subsection (c) as amended by chapter 73 of the laws of 1991, is amended to read as follows:

S 9102. Allocation of premiums. [(a)] In determining the amount of direct premiums taxable in this state, all such premiums written,

procured, or received in this state shall be deemed written on property or risks located or resident in this state except such premiums properly allocated and reported as taxable premiums of any other state or states.

[(b) (1) In determining the amount of gross premiums taxable in this state pursuant to paragraph one of subsection (d) of section two thousand one hundred eighteen of this chapter, where a placement of excess line insurance covers property or risks located or resident both in and out of this state, the sum paid to the superintendent shall be computed on that portion of the policy premium that is attributable to property or risks located or resident in this state, as determined by reference to an allocation schedule prescribed by the superintendent in a regulation.]

(2) If the allocation schedule does not identify a classification appropriate to the property or risk being insured, an alternative method of equitable allocation shall be used for such coverage. In that circumstance, documented evidence of the underwriting bases and other criteria used by the insurer shall be given significant weight by the superintendent.

(3) The licensee shall report the method of allocation utilized in a form and in a manner prescribed by the superintendent in a regulation. Where the licensee bases the allocation on an alternative method of equitable allocation, such licensee shall provide additional information in support of the allocation as the superintendent may require.

(4) If the superintendent reasonably determines that the information provided is insufficient to substantiate the method of allocation or that the method used is incorrect, the superintendent shall determine the sum to be paid in accordance with the method prescribed by the superintendent in the regulation. The superintendent's determination of the sum to be paid shall finally and irrevocably fix the tax unless, within thirty days of notification of the superintendent's determination, the licensee requests a hearing to dispute such determination.

(c) (1) Any licensee who allocated the premium tax for any of the six years prior to the effective date of this subsection shall not be liable for the payment of any additional premium tax that would have been due had the licensee not allocated, unless the superintendent determines that the method of allocation was inequitable.

(2) The superintendent's determination under this subsection shall be in accordance with the procedures in paragraph four of subsection (b) of this section. Documented evidence of the underwriting bases and other criteria used by the insurer shall be given significant weight by the superintendent.

(3) Nothing in this subsection shall entitle a licensee to a refund of taxes previously paid.]

S 16. The general municipal law is amended by adding a new section 25 to read as follows:

S 25. PROCUREMENT OF EXCESS LINE INSURANCE. NOTWITHSTANDING SUBPARAGRAPH (F) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION TWO THOUSAND ONE HUNDRED EIGHTEEN OF THE INSURANCE LAW, A MUNICIPALITY WITH A POPULATION OF LESS THAN ONE HUNDRED THOUSAND PERSONS MAY NOT REQUEST THAT AN EXCESS LINE BROKER PROCURE OR PLACE INSURANCE FROM AN UNAUTHORIZED INSURER UNLESS THE EXCESS LINE BROKER OBTAINS THE DECLINATIONS REQUIRED BY SUBSECTION (B) OF SECTION TWO THOUSAND ONE HUNDRED EIGHTEEN OF THE INSURANCE LAW.

S 17. Subdivision 1 of section 171-a of the tax law, as amended by section 1 of part R of chapter 60 of the laws of 2004, is amended to read as follows:

1 1. All taxes, interest, penalties and fees collected or received by
2 the commissioner or the commissioner's duly authorized agent under arti-
3 cles nine (except section one hundred eighty-two-a thereof and except as
4 otherwise provided in section two hundred five thereof), nine-A,
5 twelve-A (except as otherwise provided in section two hundred eighty-
6 four-d thereof), thirteen, thirteen-A (except as otherwise provided in
7 section three hundred twelve thereof), eighteen, nineteen, twenty
8 (except as otherwise provided in section four hundred eighty-two there-
9 of), twenty-one, twenty-two, twenty-six, twenty-six-B, twenty-eight
10 (except as otherwise provided in section eleven hundred two or eleven
11 hundred three thereof), twenty-eight-A, thirty-one (except as otherwise
12 provided in section fourteen hundred twenty-one thereof), thirty-two,
13 thirty-three and thirty-three-A (EXCEPT AS OTHERWISE PROVIDED IN SECTION
14 FIFTEEN HUNDRED FIFTY-SEVEN THEREOF) of this chapter shall be deposited
15 daily in one account with such responsible banks, banking houses or
16 trust companies as may be designated by the comptroller, to the credit
17 of the comptroller. Such an account may be established in one or more of
18 such depositories. Such deposits shall be kept separate and apart from
19 all other money in the possession of the comptroller. The comptroller
20 shall require adequate security from all such depositories. Of the total
21 revenue collected or received under such articles of this chapter, the
22 comptroller shall retain in the comptroller's hands such amount as the
23 commissioner may determine to be necessary for refunds or reimbursements
24 under such articles of this chapter [and article ten thereof] out of
25 which amount the comptroller shall pay any refunds or reimbursements to
26 which taxpayers shall be entitled under the provisions of such articles
27 of this chapter [and article ten thereof]. The commissioner and the
28 comptroller shall maintain a system of accounts showing the amount of
29 revenue collected or received from each of the taxes imposed by such
30 articles. The comptroller, after reserving the amount to pay such
31 refunds or reimbursements, shall, on or before the tenth day of each
32 month, pay into the state treasury to the credit of the general fund all
33 revenue deposited under this section during the preceding calendar month
34 and remaining to the comptroller's credit on the last day of such
35 preceding month, (i) except that the comptroller shall pay to the state
36 department of social services that amount of overpayments of tax imposed
37 by article twenty-two of this chapter and the interest on such amount
38 which is certified to the comptroller by the commissioner as the amount
39 to be credited against past-due support pursuant to subdivision six of
40 section one hundred seventy-one-c of this [chapter] ARTICLE, (ii) and
41 except that the comptroller shall pay to the New York state higher
42 education services corporation and the state university of New York or
43 the city university of New York respectively that amount of overpayments
44 of tax imposed by article twenty-two of this chapter and the interest on
45 such amount which is certified to the comptroller by the commissioner as
46 the amount to be credited against the amount of defaults in repayment of
47 guaranteed student loans and state university loans or city university
48 loans pursuant to subdivision five of section one hundred seventy-one-d
49 and subdivision six of section one hundred seventy-one-e of this [chap-
50 ter] ARTICLE, (iii) and except further that, notwithstanding any law,
51 the comptroller shall credit to the revenue arrearage account, pursuant
52 to section ninety-one-a of the state finance law, that amount of over-
53 payment of tax imposed by article nine, nine-A, twenty-two, thirty,
54 thirty-A, thirty-B, thirty-two or thirty-three of this chapter, and any
55 interest thereon, which is certified to the comptroller by the commis-
56 sioner as the amount to be credited against a past-due legally enforcea-

1 ble debt owed to a state agency pursuant to paragraph (a) of subdivision
2 six of section one hundred seventy-one-f of this article, provided,
3 however, he shall credit to the special offset fiduciary account, pursu-
4 ant to section ninety-one-c of the state finance law, any such amount
5 creditable as a liability as set forth in paragraph (b) of subdivision
6 six of section one hundred seventy-one-f of this article, (iv) and
7 except further that the comptroller shall pay to the city of New York
8 that amount of overpayment of tax imposed by article nine, nine-A, twen-
9 ty-two, thirty, thirty-A, thirty-B, thirty-two, or thirty-three of this
10 chapter and any interest thereon that is certified to the comptroller by
11 the commissioner as the amount to be credited against city of New York
12 tax warrant judgment debt pursuant to section one hundred seventy-one-l
13 of this article, (v) and except further that the comptroller shall pay
14 to a non-obligated spouse that amount of overpayment of tax imposed by
15 article twenty-two of this chapter and the interest on such amount which
16 has been credited pursuant to section one hundred seventy-one-c, one
17 hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-
18 one-f or one hundred seventy-one-l of this article and which is certi-
19 fied to the comptroller by the commissioner as the amount due such non-
20 obligated spouse pursuant to paragraph six of subsection (b) of section
21 six hundred fifty-one of this chapter; and (vi) the comptroller shall
22 deduct a like amount which the comptroller shall pay into the treasury
23 to the credit of the general fund from amounts subsequently payable to
24 the department of social services, the state university of New York, the
25 city university of New York, or the higher education services corpo-
26 ration, or the revenue arrearage account or special offset fiduciary
27 account pursuant to section ninety-one-a or ninety-one-c of the state
28 finance law, as the case may be, whichever had been credited the amount
29 originally withheld from such overpayment, and (vii) with respect to
30 amounts originally withheld from such overpayment pursuant to section
31 one hundred seventy-one-l of this article and paid to the city of New
32 York, the comptroller shall collect a like amount from the city of New
33 York.

34 S 18. Subdivision (c) of section 1550 of the tax law, as added by
35 chapter 190 of the laws of 1990, is amended to read as follows:

36 (c) The term "taxable insurance contract" means a contract of insur-
37 ance of the [type] KIND described in [paragraphs four through fourteen,
38 sixteen, seventeen, nineteen, twenty and twenty-two of] subsection (a)
39 of section [one thousand one hundred thirteen] TWO THOUSAND ONE HUNDRED
40 FIVE of the insurance law [that covers risks located or resident within
41 this state].

42 S 19. Section 1550 of the tax law is amended by adding a new subdivi-
43 sion (d) to read as follows:

44 (D) THE TERM "HOME STATE" MEANS:

45 (1) IN GENERAL. EXCEPT AS PROVIDED IN PARAGRAPHS TWO AND THREE OF THIS
46 SUBDIVISION, THE TERM "HOME STATE" MEANS, WITH RESPECT TO AN INSURED:

47 (A) THE STATE IN WHICH AN INSURED MAINTAINS ITS PRINCIPAL PLACE OF
48 BUSINESS OR, IN THE CASE OF AN INDIVIDUAL, THE INDIVIDUAL'S PRINCIPAL
49 RESIDENCE;

50 (B) IF ONE HUNDRED PERCENT OF THE INSURED RISK IS LOCATED OUT OF THE
51 STATE REFERRED TO IN SUBPARAGRAPH (A) OF THIS PARAGRAPH, THE STATE TO
52 WHICH THE GREATEST PERCENTAGE OF THE INSURED'S TAXABLE PREMIUM FOR THAT
53 INSURANCE CONTRACT IS ALLOCATED;

54 (C) IF MORE THAN ONE INSURED FROM AN AFFILIATED GROUP, AS DEFINED IN
55 SECTION TWO THOUSAND ONE HUNDRED ONE OF THE INSURANCE LAW, ARE NAMED
56 INSUREDS ON A SINGLE INSURANCE CONTRACT, THE HOME STATE OF THE MEMBER OF

1 THE AFFILIATED GROUP THAT HAS THE LARGEST PERCENTAGE OF PREMIUM ATTRI-
2 BUTED TO IT UNDER SUCH INSURANCE CONTRACT; OR

3 (D) IN THE CASE OF A GROUP POLICY:

4 (I) IF THE GROUP POLICYHOLDER PAYS ONE HUNDRED PERCENT OF THE PREMIUM
5 FROM ITS OWN FUNDS, THE HOME STATE, AS DETERMINED PURSUANT TO SUBPARA-
6 GRAPH (A) OF THIS PARAGRAPH, OF THE GROUP POLICYHOLDER; OR

7 (II) IF THE GROUP POLICYHOLDER DOES NOT PAY ONE HUNDRED PERCENT OF THE
8 PREMIUM FROM ITS OWN FUNDS, THE HOME STATE, AS DETERMINED PURSUANT TO
9 SUBPARAGRAPH (A) OF THIS PARAGRAPH, OF THE GROUP MEMBER;

10 (2) "PRINCIPAL PLACE OF BUSINESS" MEANS, WITH RESPECT TO DETERMINING
11 THE HOME STATE OF THE INSURED, THE STATE WHERE:

12 (A) THE INSURED MAINTAINS ITS HEADQUARTERS AND WHERE THE INSURED'S
13 HIGH-LEVEL OFFICERS DIRECT, CONTROL AND COORDINATE THE BUSINESS ACTIV-
14 ITIES; OR

15 (B) IF THE INSURED'S HIGH-LEVEL OFFICERS DIRECT, CONTROL AND COORDI-
16 NATE THE BUSINESS ACTIVITIES IN MORE THAN ONE STATE, OR IF THE INSURED'S
17 PRINCIPAL PLACE OF BUSINESS IS LOCATED OUTSIDE ANY STATE, THE STATE TO
18 WHICH THE GREATEST PERCENTAGE OF THE INSURED'S TAXABLE PREMIUM FOR THAT
19 INSURANCE CONTRACT IS ALLOCATED.

20 (3) "PRINCIPAL RESIDENCE" MEANS, WITH RESPECT TO DETERMINING THE HOME
21 STATE OF THE INSURED, THE STATE WHERE:

22 (A) THE INSURED RESIDES FOR THE GREATEST NUMBER OF DAYS DURING A
23 CALENDAR YEAR; OR

24 (B) IF THE INSURED'S PRINCIPAL RESIDENCE IS LOCATED OUTSIDE ANY STATE,
25 THE STATE TO WHICH THE GREATEST PERCENTAGE OF THE INSURED'S TAXABLE
26 PREMIUM FOR THAT INSURANCE CONTRACT IS ALLOCATED.

27 S 20. Section 1551 of the tax law, as amended by chapter 73 of the
28 laws of 1991, is amended to read as follows:

29 S 1551. Imposition of tax. (A) There is hereby imposed on any person
30 WHOSE HOME STATE IS NEW YORK AND who purchases or renews a taxable
31 insurance contract from an insurer not authorized to transact business
32 in this state under a certificate of authority from the superintendent
33 of insurance a tax at the rate of three and six-tenths percent of the
34 premiums paid or to be paid, less returns thereon, for such insurance.
35 Nothing in this article modifies or abrogates any provision of the
36 insurance law.

37 (B) NOTWITHSTANDING SUBDIVISION (A) OF THIS SECTION, IF THE SUPER-
38 INTENDENT OF INSURANCE ENTERS INTO A NONADMITTED INSURANCE MULTI-STATE
39 AGREEMENT PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED THIRTY-EIGHT OF
40 THE INSURANCE LAW, THERE IS HEREBY IMPOSED ON ANY PERSON WHOSE HOME
41 STATE IS NEW YORK AND WHO PURCHASES OR RENEWS A TAXABLE INSURANCE
42 CONTRACT FROM AN INSURER NOT AUTHORIZED TO TRANSACT BUSINESS IN THIS
43 STATE UNDER A CERTIFICATE OF AUTHORITY FROM THE SUPERINTENDENT OF INSUR-
44 ANCE A TAX AT A RATE EQUAL TO:

45 (1) THREE AND SIX-TENTHS PERCENT OF THE GROSS PREMIUMS ALLOCATED TO
46 THIS STATE BASED ON THE ALLOCATION SCHEDULE SET FORTH IN THE NONADMITTED
47 INSURANCE MULTI-STATE AGREEMENT AND ADOPTED BY THE SUPERINTENDENT OF
48 INSURANCE PURSUANT TO A REGULATION;

49 (2) THE PERCENTAGE SPECIFIED BY EACH OTHER STATE THAT HAS EXECUTED THE
50 NONADMITTED INSURANCE MULTI-STATE AGREEMENT AND HAS NOT WITHDRAWN OR
51 DEFAULTED, ON THE PORTION OF THE PREMIUM ALLOCATED TO THAT OTHER STATE
52 BASED ON THE ALLOCATION SCHEDULE SET FORTH IN THE NONADMITTED INSURANCE
53 MULTI-STATE AGREEMENT AND ADOPTED BY THE SUPERINTENDENT OF INSURANCE
54 PURSUANT TO A REGULATION;

(3) THREE AND SIX-TENTHS PERCENT OF THE GROSS PREMIUMS ON ANY PORTION OF THE PREMIUM NOT ALLOCATED UNDER PARAGRAPHS ONE AND TWO OF THIS SUBDIVISION.

S 21. Section 1552 of the tax law, as added by chapter 190 of the laws of 1990, is amended to read as follows:

S 1552. Allocation. (A) Where the taxable insurance contract covers risks located or resident both within and without this state[, the amount of premiums allocable to risks resident or located within this state shall be determined pursuant to rules and regulations of the commissioner of taxation and finance. In promulgating such rules and regulations, the commissioner of taxation and finance shall give due consideration to the rules and regulations promulgated by the superintendent of insurance pursuant to subsection (b) of section nine thousand one hundred two of the insurance law] AND THE TAXPAYER'S HOME STATE IS NEW YORK, ONE HUNDRED PERCENT OF PREMIUMS SHALL BE ALLOCABLE TO THIS STATE.

(B) NOTWITHSTANDING SUBDIVISION (A) OF THIS SECTION, IF THE SUPERINTENDENT OF INSURANCE ENTERS INTO A NONADMITTED INSURANCE MULTI-STATE AGREEMENT PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED THIRTY-EIGHT OF THE INSURANCE LAW, THE COMMISSIONER IS AUTHORIZED TO ADOPT THE ALLOCATION SCHEDULE INCLUDED IN SUCH AGREEMENT FOR THE PURPOSE OF ALLOCATING RISK AND COMPUTING THE TAX DUE ON THE PORTION OF PREMIUM ATTRIBUTABLE TO EACH RISK CLASSIFICATION AND TO EACH STATE WHERE PROPERTIES, RISKS OR EXPOSURES ARE LOCATED.

(C) IF THE SUPERINTENDENT OF INSURANCE HAS ENTERED INTO THE NONADMITTED INSURANCE MULTI-STATE AGREEMENT, TO THE EXTENT THAT OTHER STATES WHERE PORTIONS OF THE PROPERTIES, RISKS OR EXPOSURES RESIDE HAVE NOT ENTERED INTO SUCH A MULTI-STATE AGREEMENT WITH THIS STATE, THE NET PREMIUM TAX IMPOSED SHALL BE RETAINED BY THIS STATE IF THIS STATE IS THE HOME STATE OF THE INSURED.

S 22. Section 1554 of the tax law is amended by adding a new subdivision (e) to read as follows:

(E) NOTWITHSTANDING ANY PROVISIONS OF THIS SECTION, THE COMMISSIONER, IN CONSULTATION WITH THE SUPERINTENDENT OF INSURANCE, MAY PERMIT ANY OR ALL PERSONS LIABLE FOR ANY TAX IMPOSED BY THIS ARTICLE TO FILE A RETURN WITH A CLEARINGHOUSE OR OTHER ENTITY DESIGNATED BY A NONADMITTED INSURANCE MULTI-STATE AGREEMENT IN ACCORDANCE WITH ADMINISTRATIVE PROVISIONS CONTAINED WITHIN SUCH AN AGREEMENT.

S 23. Section 1555 of the tax law is amended by adding a new subdivision (f) to read as follows:

(F) NOTWITHSTANDING ANY PROVISIONS OF THIS SECTION, THE COMMISSIONER MAY PERMIT OTHER PERSONS OR ENTITIES TO INSPECT THE RETURNS FILED UNDER THIS ARTICLE, OR MAY FURNISH TO SUCH PERSONS OR ENTITIES AN ABSTRACT OF ANY RETURN OR SUPPLY INFORMATION CONCERNING AN ITEM CONTAINED IN ANY SUCH RETURN, OR DISCLOSED BY AN INVESTIGATION OF TAX LIABILITY UNDER THIS ARTICLE, IF THE PERSONS OR ENTITIES ARE ENTITLED TO HAVE SUCH INFORMATION UNDER THE TERMS OF A NONADMITTED INSURANCE MULTI-STATE AGREEMENT ENTERED INTO BY THE SUPERINTENDENT OF INSURANCE.

THE COMMISSIONER MAY, PURSUANT TO THE TERMS OF SUCH AN AGREEMENT, FORWARD TO THE PROPER OFFICERS OF ANOTHER MEMBER JURISDICTION ANY INFORMATION IN THE COMMISSIONER'S POSSESSION RELATING TO NONADMITTED INSURANCE PREMIUM TAXES AND MAY SHARE ANY INFORMATION RELATING TO THE ADMINISTRATION OF TAXES PURSUANT TO THE AGREEMENT WITH SUCH OFFICERS. THE AGREEMENT MAY PROVIDE FOR EACH MEMBER JURISDICTION TO AUDIT THE RECORDS OF PERSONS BASED IN THE MEMBER JURISDICTION AND DETERMINE TAXES DUE EACH MEMBER JURISDICTION.

1 S 24. Section 1556 of the tax law, as added by chapter 190 of the laws
2 of 1990, is amended to read as follows:

3 S 1556. Procedural provisions. (A) The provisions of article twenty-
4 seven of this chapter shall apply to the provisions of this article in
5 the same manner and with the same force and effect as if the language of
6 such article twenty-seven had been incorporated in full into this arti-
7 cle and had expressly referred to the tax under this article, except to
8 the extent that any such provision is either inconsistent with a
9 provision of this article or is not relevant to this article.

10 (B) NONADMITTED INSURANCE MULTI-STATE AGREEMENT. IF THE SUPERINTEN-
11 DENT OF INSURANCE HAS ENTERED INTO A NONADMITTED INSURANCE MULTI-STATE
12 AGREEMENT, THE COMMISSIONER MAY PARTICIPATE IN THE CLEARINGHOUSE DESIG-
13 NATED PURSUANT TO SUCH AGREEMENT FOR THE PURPOSE OF COLLECTING AND ALLO-
14 CATING TO STATES EXCESS LINE PREMIUM TAXES AND TAXES ON INDEPENDENTLY
15 PROCURED INSURANCE, WITH REGARD TO INSURANCE PLACED WITH AN UNAUTHORIZED
16 INSURER.

17 S 25. Section 1557 of the tax law, as added by chapter 190 of the laws
18 of 1990, is amended to read as follows:

19 S 1557. Deposit and disposition of revenue. All taxes, interest and
20 penalties collected or received by the commissioner of taxation and
21 finance under this article shall be deposited and disposed of pursuant
22 to the provisions of section one hundred seventy-one-a of this chapter,
23 EXCEPT AS PROVIDED FOR BY SUBDIVISION (B) OF SECTION FIFTEEN HUNDRED
24 FIFTY-SIX OF THIS ARTICLE.

25 S 26. This act shall take effect July 21, 2011; provided, however,
26 that:

27 (1) sections one, two and three of this act shall take effect July 16,
28 2011;

29 (2) sections fourteen and twenty-four of this act shall take effect
30 immediately;

31 (3) the amendments to subsection (b) of section 2118 of the insurance
32 law made by sections ten and eleven of this act shall not affect the
33 expiration and reversion of such subsection and shall be deemed to
34 expire therewith;

35 (4) the amendments to paragraph 5 of subsection (a) of section 2130 of
36 the insurance law made by section thirteen of this act shall not affect
37 the expiration of such section and shall be deemed to expire therewith;

38 (5) a person, firm, association or corporation licensed pursuant to
39 the provisions of section 2105 of the insurance law shall make the
40 payments required by subsection (d) of section 2118 of the insurance law
41 to the superintendent of insurance on or before September 19, 2011 for
42 the taxes on the policies procured by such licensee, pursuant to such
43 license, between January 1, 2011 and July 20, 2011; and

44 (6) effective immediately, the addition, amendment, or repeal of any
45 rules and regulations necessary for the implementation of this act on
46 its effective date are authorized and directed to be made and completed
47 on or before such effective date.

48 PART J

49 Section 1. Section 51 of chapter 298 of the laws of 1985, amending the
50 tax law relating to the franchise tax on banking corporations imposed by
51 the tax law, authorized to be imposed by any city having a population of
52 one million or more by chapter 772 of the laws of 1966 and imposed by
53 the administrative code of the city of New York and relating to other
54 provisions of the tax law, chapter 883 of the laws of 1975 and the

1 administrative code of the city of New York which relates to such fran-
2 chise tax, as amended by chapter 67 of the laws of 2010, is amended to
3 read as follows:

4 S 51. This act shall take effect immediately and shall apply to taxa-
5 ble years beginning on or after January 1, 1985[, except that:

6 (a) sections one through eight shall not apply to taxable years begin-
7 ning on or after January 1, 2011;

8 (b) sections nine, twelve, the amendment made to paragraph 9 of
9 subsection (a) of section 1452 of the tax law by section thirteen,
10 sections fifteen, sixteen, eighteen, nineteen, twenty, twenty-three,
11 twenty-seven, thirty and thirty-two, the amendment made to paragraph 9
12 of subdivision (a) of section 11-640 of the administrative code of the
13 city of New York by section thirty-three, sections thirty-five, thirty-
14 six, thirty-eight, thirty-nine, forty, and forty-five shall not apply to
15 corporations other than savings banks and savings and loan associations
16 for taxable years beginning on or after January 1, 2011.

17 (c) sections twenty-one, twenty-two, twenty-four, forty-one and
18 forty-two shall not apply to corporations other than savings banks and
19 savings and loan associations for taxable years beginning on or after
20 January 1, 2011, provided, however, that the provisions of such sections
21 which relate to the alternative minimum tax measured by taxable assets
22 shall continue to apply to all taxpayers for taxable years beginning on
23 or after January 1, 2011;

24 (d) the amendment to the section heading and the opening paragraph of
25 section 11-643.3 of the administrative code of the city of New York made
26 by section forty-three shall not apply to corporations other than
27 savings banks and savings and loan associations for taxable years begin-
28 ning on or after January 1, 2011 with respect to those provisions of
29 such section 11-643.3 which relate to the basic tax measured by entire
30 net income; and

31 (e) section twenty-eight, and the addition of new section 11-643.5 of
32 the administrative code of the city of New York made by section forty-
33 four shall not apply to corporations other than savings banks and
34 savings and loan associations for taxable years beginning on or after
35 January 1, 2011, provided, however, that the provisions of such sections
36 which relate to the alternative minimum taxes measured by assets, issued
37 capital stock and one hundred twenty-five dollars shall continue to
38 apply to all taxpayers for taxable years beginning on or after January
39 1, 2011].

40 S 2. Subdivisions (d) and (f) of section 110 of chapter 817 of the
41 laws of 1987, amending the tax law and the environmental conservation
42 law, constituting the business tax reform and rate reduction act of
43 1987, as amended by chapter 67 of the laws of 2010, are amended to read
44 as follows:

45 (d) The provisions of section sixty-seven of this act except insofar
46 as it amends paragraph 10 of subsection (b) of section 1453 of the tax
47 law, seventy-one and seventy-four shall apply to taxable years beginning
48 after December 31, 1986[, provided, however, that new paragraphs 11 and
49 12 of subsection (b) of section 1453 of the tax law as added by section
50 sixty-seven of this act, the amendments made by section seventy-one of
51 this act, and new subsection (i) of section 1453 of the tax law as added
52 by section seventy-four of this act shall not apply to taxable years
53 beginning on or after January 1, 2011];

54 (f) The provisions of section one hundred four of this act shall apply
55 to taxable years beginning after December 31, 1986[, and shall not apply
56 to corporations other than savings banks and savings and loan associ-

1 ations for taxable years beginning on or after January 1, 2011,
2 provided, however, that the provisions of such section which relate to
3 the alternative minimum tax measured by taxable assets shall continue to
4 apply to all taxpayers for taxable years beginning on or after January
5 1, 2011].

6 S 3. Subdivisions (c) and (d) of section 68 of chapter 525 of the
7 laws of 1988, amending the tax law and the administrative code of the
8 city of New York relating to the imposition of taxes in the city of New
9 York, as amended by chapter 67 of the laws of 2010, are amended to read
10 as follows:

11 (c) The provisions of sections one, thirty-one, thirty-two, thirty-
12 three, thirty-six, thirty-seven, forty through forty-five, forty-seven
13 and forty-eight of this act shall apply to taxable years beginning after
14 December 31, 1986[, provided, however, that the amendments made by
15 sections thirty-six and forty-one of this act, and new subdivision (i)
16 of section 11-641 of the administrative code of the city of New York as
17 added by section forty-four of this act shall not apply to taxable years
18 beginning on or after January 1, 2011];

19 (d) The provisions of section forty-six of this act shall apply to
20 taxable years beginning after December 31, 1986[, and shall not apply to
21 corporations other than savings banks and savings and loan associations
22 for taxable years beginning on or after January 1, 2011, provided,
23 however, that the provisions of such section which relate to the alter-
24 native minimum tax measured by taxable assets shall continue to apply to
25 all taxpayers for taxable years beginning on or after January 1, 2011];

26 S 4. Paragraphs 1 and 2 of subsection (m) of section 1452 of the tax
27 law, as amended by chapter 24 of the laws of 2010, are amended to read
28 as follows:

29 (1) Notwithstanding anything to the contrary contained in this section
30 other than subsection (n) of this section, a corporation that was in
31 existence before January first, two thousand [ten] ELEVEN and was
32 subject to tax under article nine-A of this chapter for its last taxable
33 year beginning before January first, two thousand [ten] ELEVEN, shall
34 continue to be taxable under such article for all taxable years begin-
35 ning on or after January first, two thousand [ten] ELEVEN and before
36 January first, two thousand [eleven] THIRTEEN. The preceding sentence
37 shall not apply to any taxable year during which such corporation is a
38 banking corporation described in paragraphs one through eight of
39 subsection (a) of this section. Notwithstanding anything to the contrary
40 contained in this section other than subsection (n) of this section, a
41 banking corporation or corporation that was in existence before January
42 first, two thousand [ten] ELEVEN and was subject to tax under this arti-
43 cle for its last taxable year beginning before January first, two thou-
44 sand [ten] ELEVEN, shall continue to be taxable under this article for
45 all taxable years beginning on or after January first, two thousand
46 [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN or
47 in which the corporation satisfies the requirements for a corporation to
48 elect to be taxable under this article. Provided further, that nothing
49 in this subsection shall prohibit a corporation that elected pursuant to
50 subsection (d) of this section to be taxable under article nine-A of
51 this chapter from revoking that election in accordance with such
52 subsection (d).

53 For purposes of this paragraph, a corporation shall be considered to
54 be subject to tax under article nine-A of this chapter for a taxable
55 year if such corporation was not a taxpayer but was properly included in
56 a combined report filed pursuant to section two hundred eleven of this

chapter for such taxable year and a corporation shall be considered to be subject to tax under this article for a taxable year if such corporation was not a taxpayer but was properly included in a combined return filed pursuant to subsection (f) or (g) of section fourteen hundred sixty-two of this article for such taxable year. A corporation that was in existence before January first, two thousand [ten] ELEVEN but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN, shall be considered for purposes of this paragraph to have been subject to tax under article nine-A of this chapter for its last taxable year beginning before January first, two thousand [ten] ELEVEN if such corporation would have been subject to tax under such article for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand [ten] ELEVEN but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN, shall be considered for purposes of this paragraph to have been subject to tax under this article for its last taxable year beginning before January first, two thousand [ten] ELEVEN if such corporation would have been subject to tax under this article for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a corporation formed on or after January first, two thousand [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN may elect to be subject to tax under this article or under article nine-A of this chapter for its first taxable year beginning on or after January first, two thousand [ten] ELEVEN and before January first, two thousand [eleven] THIRTEEN in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section, or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subsection (a) of this section or in subsection (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section 368 of the internal revenue code of 1986, as amended, of a corporation described in paragraph one of this subsection if both corporations were sixty-five percent or more owned or controlled, directly or indirectly, by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return (determined with regard to extensions of time for filing) for the applicable taxable year. The election to be taxed under article nine-A of this chapter shall be made by the taxpayer by filing the report required pursuant to section two hundred eleven of this chapter and the election to be taxed under this article shall be made by the taxpayer by filing the return required pursuant to section fourteen hundred sixty-two of this article. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand [ten] ELEVEN and before January first, two thousand

1 [eleven] THIRTEEN, provided that the stock ownership and activities
2 requirements described in subparagraph (i) of this paragraph are met or
3 such corporation described in subparagraph (ii) of this paragraph
4 continues as a financial subsidiary.

5 S 5. Paragraphs 1 and 2 of subdivision (l) of section 11-640 of the
6 administrative code of the city of New York, as amended by chapter 24 of
7 the laws of 2010, are amended to read as follows:

8 (1) Notwithstanding anything to the contrary contained in this section
9 other than subdivision (m) of this section, a corporation that was in
10 existence before January first, two thousand [ten] ELEVEN and was
11 subject to tax under subchapter two of this chapter for its last taxable
12 year beginning before January first, two thousand [ten] ELEVEN, shall
13 continue to be taxable under such subchapter for all taxable years
14 beginning on or after January first, two thousand [ten] ELEVEN and
15 before January first, two thousand [eleven] THIRTEEN. The preceding
16 sentence shall not apply to any taxable year during which such corpo-
17 ration is a banking corporation described in paragraphs one through
18 eight of subdivision (a) of this section. Notwithstanding anything to
19 the contrary contained in this section other than subdivision (m) of
20 this section, a banking corporation or corporation that was in existence
21 before January first, two thousand [ten] ELEVEN and was subject to tax
22 under this subchapter for its last taxable year beginning before January
23 first, two thousand [ten] ELEVEN, shall continue to be taxable under
24 this subchapter for all taxable years beginning on or after January
25 first, two thousand [ten] ELEVEN and before January first, two thousand
26 [eleven] THIRTEEN or in which the corporation satisfies the requirements
27 for a corporation to elect to be taxable under this subchapter. Provided
28 further, that nothing in this subdivision shall prohibit a corporation
29 that elected pursuant to subdivision (d) of this section to be taxable
30 under subchapter two of this chapter from revoking that election in
31 accordance with subdivision (d) of this section. For purposes of this
32 paragraph, a corporation shall be considered to be subject to tax under
33 subchapter two of this chapter for a taxable year if such corporation
34 was not a taxpayer but was properly included in a combined report filed
35 pursuant to subdivision four of section 11-605 of this chapter for such
36 taxable year and a corporation shall be considered to be subject to tax
37 under this subchapter for a taxable year if such corporation was not a
38 taxpayer but was properly included in a combined report filed pursuant
39 to subdivision (f) or (g) of section 11-646 of this part for such taxa-
40 ble year. A corporation that was in existence before January first, two
41 thousand [ten] ELEVEN but first becomes a taxpayer in a taxable year
42 beginning on or after January first, two thousand [ten] ELEVEN and
43 before January first, two thousand [eleven] THIRTEEN, shall be consid-
44 ered for purposes of this paragraph to have been subject to tax under
45 subchapter two of this chapter for its last taxable year beginning
46 before January first, two thousand [ten] ELEVEN if such corporation
47 would have been subject to tax under such subchapter for such taxable
48 year if it had been a taxpayer during such taxable year. A corporation
49 that was in existence before January first, two thousand [ten] ELEVEN
50 but first becomes a taxpayer in a taxable year beginning on or after
51 January first, two thousand [ten] ELEVEN and before January first, two
52 thousand [eleven] THIRTEEN, shall be considered for purposes of this
53 paragraph to have been subject to tax under this subchapter for its last
54 taxable year beginning before January first, two thousand [ten] ELEVEN
55 if such corporation would have been subject to tax under this subchapter

1 for such taxable year if it had been a taxpayer during such taxable
2 year.

3 (2) Notwithstanding anything to the contrary contained in this section
4 other than subdivision (m) of this section, a corporation formed on or
5 after January first, two thousand [ten] ELEVEN and before January first,
6 two thousand [eleven] THIRTEEN may elect to be subject to tax under this
7 subchapter or under subchapter two of this chapter for its first taxable
8 year beginning on or after January first, two thousand [ten] ELEVEN and
9 before January first, two thousand [eleven] THIRTEEN in which either (i)
10 sixty-five percent or more of its voting stock is owned or controlled,
11 directly or indirectly by a financial holding company, provided the
12 corporation whose voting stock is so owned or controlled is principally
13 engaged in activities that are described in section 4(k)(4) or 4(k)(5)
14 of the federal bank holding company act of nineteen hundred fifty-six,
15 as amended and the regulations promulgated pursuant to the authority of
16 such section or (ii) it is a financial subsidiary. An election under
17 this paragraph may not be made by a corporation described in paragraphs
18 one through eight of subdivision (a) of this section or in subdivision
19 (e) of this section. In addition, an election under this paragraph may
20 not be made by a corporation that is a party to a reorganization, as
21 defined in subsection (a) of section 368 of the internal revenue code of
22 1986, as amended, of a corporation described in paragraph one of this
23 subdivision if both corporations were sixty-five percent or more owned
24 or controlled, directly or indirectly by the same interests at the time
25 of the reorganization.

26 An election under this paragraph must be made by the taxpayer on or
27 before the due date for filing its return (determined with regard to
28 extensions of time for filing) for the applicable taxable year. The
29 election to be taxed under subchapter two of this chapter shall be made
30 by the taxpayer by filing the return required pursuant to subdivision
31 one of section 11-605 of this chapter and the election to be taxed under
32 this subchapter shall be made by the taxpayer by filing the return
33 required pursuant to subdivision (a) of section 11-646 of this part. Any
34 election made pursuant to this paragraph shall be irrevocable and shall
35 apply to each subsequent taxable year beginning on or after January
36 first, two thousand [ten] ELEVEN and before January first, two thousand
37 [eleven] THIRTEEN, provided that the stock ownership and activities
38 requirements described in subparagraph (i) of this paragraph are met or
39 such corporation described in subparagraph (ii) of this paragraph
40 continues as a financial subsidiary.

41 S 6. Subparagraph (iv) of paragraph 2 of subdivision (f) of section
42 1462 of the tax law, as amended by chapter 24 of the laws of 2010, is
43 amended to read as follows:

44 (iv) (A) Notwithstanding any provision of this paragraph, any bank
45 holding company exercising its corporate franchise or doing business in
46 the state may make a return on a combined basis without seeking the
47 permission of the commissioner with any banking corporation exercising
48 its corporate franchise or doing business in the state in a corporate or
49 organized capacity sixty-five percent or more of whose voting stock is
50 owned or controlled, directly or indirectly, by such bank holding compa-
51 ny, for the first taxable year beginning on or after January first, two
52 thousand and before January first, two thousand [eleven] THIRTEEN during
53 which such bank holding company registers for the first time under the
54 federal bank holding company act, as amended, and also elects to be a
55 financial holding company. In addition, for each subsequent taxable year
56 beginning after January first, two thousand and before January first,

1 two thousand [eleven] THIRTEEN, any such bank holding company may file
2 on a combined basis without seeking the permission of the commissioner
3 with any banking corporation that is exercising its corporate franchise
4 or doing business in the state and sixty-five percent or more of whose
5 voting stock is owned or controlled, directly or indirectly, by such
6 bank holding company if either such banking corporation is exercising
7 its corporate franchise or doing business in the state in a corporate or
8 organized capacity for the first time during such subsequent taxable
9 year, or sixty-five percent or more of the voting stock of such banking
10 corporation is owned or controlled, directly or indirectly, by such bank
11 holding company for the first time during such subsequent taxable year.
12 Provided however, for each subsequent taxable year beginning after Janu-
13 ary first, two thousand and before January first, two thousand [eleven]
14 THIRTEEN, a banking corporation described in either of the two preceding
15 sentences which filed on a combined basis with any such bank holding
16 company in a previous taxable year, must continue to file on a combined
17 basis with such bank holding company if such banking corporation, during
18 such subsequent taxable year, continues to exercise its corporate fran-
19 chise or do business in the state in a corporate or organized capacity
20 and sixty-five percent or more of such banking corporation's voting
21 stock continues to be owned or controlled, directly or indirectly, by
22 such bank holding company, unless the permission of the commissioner has
23 been obtained to file on a separate basis for such subsequent taxable
24 year. Provided further, however, for each subsequent taxable year begin-
25 ning after January first, two thousand and before January first, two
26 thousand [eleven] THIRTEEN, a banking corporation described in either of
27 the first two sentences of this clause which did not file on a combined
28 basis with any such bank holding company in a previous taxable year, may
29 not file on a combined basis with such bank holding company during any
30 such subsequent taxable year unless the permission of the commissioner
31 has been obtained to file on a combined basis for such subsequent tax-
32 ble year.

33 (B) Notwithstanding any provision of this paragraph other than clause
34 (A) of this subparagraph, the commissioner may not require a bank hold-
35 ing company which, during a taxable year beginning on or after January
36 first, two thousand and before January first, two thousand [eleven]
37 THIRTEEN, registers for the first time during such taxable year under
38 the federal bank holding company act, as amended, and also elects to be
39 a financial holding company, to make a return on a combined basis for
40 any taxable year beginning on or after January first, two thousand and
41 before January first, two thousand [eleven] THIRTEEN with a banking
42 corporation sixty-five percent or more of whose voting stock is owned or
43 controlled, directly or indirectly, by such bank holding company.

44 S 7. Subparagraph (iv) of paragraph 2 of subdivision (f) of section
45 11-646 of the administrative code of the city of New York, as amended by
46 chapter 24 of the laws of 2010, is amended to read as follows:

47 (iv) (A) Notwithstanding any provision of this paragraph, any bank
48 holding company exercising its corporate franchise or doing business in
49 the city may make a return on a combined basis without seeking the
50 permission of the commissioner with any banking corporation exercising
51 its corporate franchise or doing business in the city in a corporate or
52 organized capacity sixty-five percent or more of whose voting stock is
53 owned or controlled, directly or indirectly, by such bank holding compa-
54 ny, for the first taxable year beginning on or after January first, two
55 thousand and before January first, two thousand [eleven] THIRTEEN during
56 which such bank holding company registers for the first time under the

1 federal bank holding company act, as amended, and also elects to be a
2 financial holding company. In addition, for each subsequent taxable year
3 beginning after January first, two thousand and before January first,
4 two thousand [eleven] THIRTEEN, any such bank holding company may file
5 on a combined basis without seeking the permission of the commissioner
6 with any banking corporation that is exercising its corporate franchise
7 or doing business in the city and sixty-five percent or more of whose
8 voting stock is owned or controlled, directly or indirectly, by such
9 bank holding company if either such banking corporation is exercising
10 its corporate franchise or doing business in the city in a corporate or
11 organized capacity for the first time during such subsequent taxable
12 year, or sixty-five percent or more of the voting stock of such banking
13 corporation is owned or controlled, directly or indirectly, by such bank
14 holding company for the first time during such subsequent taxable year.
15 Provided however, for each subsequent taxable year beginning after Janu-
16 ary first, two thousand and before January first, two thousand [eleven]
17 THIRTEEN, a banking corporation described in either of the two preceding
18 sentences which filed on a combined basis with any such bank holding
19 company in a previous taxable year, must continue to file on a combined
20 basis with such bank holding company if such banking corporation, during
21 such subsequent taxable year, continues to exercise its corporate fran-
22 chise or do business in the city in a corporate or organized capacity
23 and sixty-five percent or more of such banking corporation's voting
24 stock continues to be owned or controlled, directly or indirectly, by
25 such bank holding company, unless the permission of the commissioner has
26 been obtained to file on a separate basis for such subsequent taxable
27 year. Provided further, however, for each subsequent taxable year begin-
28 ning after January first, two thousand and before January first, two
29 thousand [eleven] THIRTEEN, a banking corporation described in either of
30 the first two sentences of this clause which did not file on a combined
31 basis with any such bank holding company in a previous taxable year, may
32 not file on a combined basis with such bank holding company during any
33 such subsequent taxable year unless the permission of the commissioner
34 has been obtained to file on a combined basis for such subsequent taxa-
35 ble year.

36 (B) Notwithstanding any provision of this paragraph other than clause
37 (A) of this subparagraph, the commissioner may not require a bank hold-
38 ing company which, during a taxable year beginning on or after January
39 first, two thousand and before January first, two thousand [eleven]
40 THIRTEEN, registers for the first time during such taxable year under
41 the federal bank holding company act, as amended, and also elects to be
42 a financial holding company, to make a return on a combined basis for
43 any taxable year beginning on or after January first, two thousand and
44 before January first, two thousand [eleven] THIRTEEN with a banking
45 corporation sixty-five percent or more of whose voting stock is owned or
46 controlled, directly or indirectly, by such bank holding company.
47 S 8. This act shall take effect immediately.

48

PART K

49 Section 1. Paragraph b of subdivision 1, subdivisions 2, 6, 14, 22 and
50 23 of section 282 of the tax law, paragraph b of subdivision 1 and
51 subdivision 14 as amended by chapter 245 of the laws of 1989, subdivi-
52 sion 2 as amended by chapter 509 of the laws of 1937, subdivision 6 as
53 amended by chapter 261 of the laws of 1988 and subdivisions 22 and 23 as

1 added by section 1 of part W-1 of chapter 109 of the laws of 2006, are
2 amended to read as follows:

3 b. With respect to Diesel motor fuel, "distributor" means any person,
4 firm, association or corporation (i) who or which imports or causes to
5 be imported into the state, for use, distribution, storage or sale with-
6 in the state, any Diesel motor fuel; (ii) who or which produces,
7 refines, manufactures or compounds Diesel motor fuel within the state;
8 (iii) [who or which engages in the enhancement of Diesel motor fuel in
9 this state; (iv)] who or which makes a sale or use of Diesel motor fuel
10 in this state other than: (A) a retail sale not in bulk or (B) the self-
11 use of Diesel motor fuel which has been the subject of a retail sale to
12 such person; [(v)] (IV) who or which is registered by the department [of
13 taxation and finance] as a distributor of kero-jet fuel pursuant to the
14 provisions of subdivision two of section two hundred eighty-two-a of
15 this article. For the purposes of this article when used with respect to
16 Diesel motor fuel, a "retail sale not in bulk" means the making or
17 offering to make any sale of Diesel motor fuel to a consumer of such
18 fuel which is delivered directly into a motor vehicle for use in the
19 operation of such vehicle. A "retail sale in bulk" means the making or
20 offering to make any sale of Diesel motor fuel to a consumer which is
21 other than a "retail sale not in bulk". Motor fuel or Diesel motor fuel
22 brought into the state in the ordinary fuel tank connecting with the
23 engine of a motor vehicle, aeroplane, motor boat or other conveyance
24 propelled by the use of such motor fuel or Diesel motor fuel, and to be
25 used only in the operation thereof, shall not be deemed imported within
26 the meaning of this article, if not removed from such tank except as
27 used in the propulsion of such engine.

28 2. "Motor fuel" means gasoline, benzol, E85, FUEL GRADE ETHANOL THAT
29 MEETS THE ASTM INTERNATIONAL ACTIVE STANDARDS SPECIFICATIONS D4806 OR
30 D4814 or other product[, except kerosene and crude oil,] which is suit-
31 able for use in operation of a motor vehicle engine[, but if kerosene or
32 crude oil is compounded or mixed with any other product or products, and
33 the resulting compound or mixture is suitable for use in the operation
34 of any such motor vehicle engine, such resulting compound or mixture in
35 its entirety shall be a "motor fuel."].

36 6. "Filling station" shall include any place, location or station
37 where motor fuel [or], HIGHWAY Diesel motor fuel OR WATER-WHITE KEROSENE
38 (EXCLUSIVELY FOR HEATING PURPOSES IN CONTAINERS OF NO MORE THAN TWENTY
39 GALLONS), is offered for sale at retail.

40 14. "Diesel motor fuel" shall mean NO. 1 DIESEL FUEL, NO. 2 DIESEL
41 FUEL, BIODIESEL, kerosene, crude oil, fuel oil or other middle distil-
42 late and also motor fuel suitable for use in the operation of an engine
43 of the diesel type, excluding, however, any product specifically desig-
44 nated "No. 4 Diesel fuel" and not suitable as a fuel used in the opera-
45 tion of a motor vehicle engine.

46 22. "E85" means a [mixture consisting by volume of eighty-five
47 percent] FUEL BLEND CONSISTING OF ethanol and [the remainder of which
48 is] motor fuel, WHICH MEETS THE ASTM INTERNATIONAL ACTIVE STANDARD D5798
49 FOR FUEL ETHANOL.

50 23. "B20" means a mixture consisting by volume of twenty percent biod-
51 iesel and the remainder of which is diesel motor fuel. [For purposes of
52 this subdivision "biodiesel"] "BIODIESEL" shall mean EITHER "QUALIFIED
53 BIODIESEL" OR "UNQUALIFIED BIODIESEL." "QUALIFIED BIODIESEL" MEANS a
54 diesel motor fuel substitute produced from nonpetroleum renewable
55 resources that meets the registration requirements for fuels and fuel
56 additives established by the Environmental Protection Agency under

1 section 211 of the Clean Air Act (42 U.S.C. 7545) and that meets the
2 [American Society for Testing and Materials D6751-02a Standard Specifi-
3 cation for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels] ASTM
4 INTERNATIONAL ACTIVE STANDARD D6751 FOR BIODIESEL FUEL. "UNQUALIFIED
5 BIODIESEL" MEANS A DIESEL MOTOR FUEL SUBSTITUTE PRODUCED FROM NONPETRO-
6 LEUM RENEWABLE RESOURCES THAT DOES NOT MEET THE ASTM INTERNATIONAL
7 ACTIVE STANDARD D6751 FOR BIODIESEL FUEL.

8 S 1-a. Subdivision 15 of section 282 of the tax law is REPEALED.

9 S 2. Subdivision 16 of section 282 of the tax law is REPEALED and two
10 new subdivisions 16 and 16-a are added to read as follows:

11 16. "NON-HIGHWAY DIESEL MOTOR FUEL" MEANS ANY DIESEL MOTOR FUEL THAT
12 IS DESIGNATED FOR USE OTHER THAN ON A PUBLIC HIGHWAY, AND IS DYED DIESEL
13 MOTOR FUEL AS DEFINED IN SUBDIVISION EIGHTEEN-A OF THIS SECTION.

14 16-A. "HIGHWAY DIESEL MOTOR FUEL" MEANS ANY DIESEL MOTOR FUEL WHICH IS
15 NOT NON-HIGHWAY DIESEL MOTOR FUEL.

16 S 3. Subdivision 18 of section 282 of the tax law, as added by chapter
17 302 of the laws of 2006, is renumbered subdivision 18-a and is amended
18 to read as follows:

19 18-a. "Dyed Diesel motor fuel" means Diesel motor fuel which [is
20 enhanced Diesel motor fuel and which] has been dyed in accordance with
21 and for the purpose of complying with the provisions of 26 USC S4082(a)
22 and the regulations thereunder, as may be amended from time to time.

23 S 4. Section 282 of the tax law is amended by adding a new subdivision
24 26 to read as follows:

25 26. "PUBLIC HIGHWAY" MEANS PUBLIC HIGHWAY AS DEFINED IN SUBDIVISION
26 SIX OF SECTION FIVE HUNDRED ONE OF THIS CHAPTER.

27 S 5. Subdivisions 2, 3, 4 and 5 of section 282-a of the tax law,
28 subdivision 2 and paragraph (b) of subdivision 3 as amended by chapter
29 245 of the laws of 1989, subdivisions 3, 4 and 5 as added by chapter 261
30 of the laws of 1988 and paragraph (c) of subdivision 3 as added by chap-
31 ter 302 of the laws of 2006, are amended to read as follows:

32 2. No person shall [engage] SELL OR USE DIESEL MOTOR FUEL within this
33 state [in the enhancement of Diesel motor fuel, make a sale or use of
34 Diesel motor fuel] (other than a retail sale not in bulk or self-use of
35 Diesel motor fuel which has been the subject of a retail sale), import
36 or cause the importation of Diesel motor fuel into the state or produce,
37 refine, manufacture or compound Diesel motor fuel within the state
38 unless such person shall be registered by the department [of taxation
39 and finance] as a distributor of Diesel motor fuel. Provided, the
40 commissioner [of taxation and finance] shall not register as a distribu-
41 tor of Diesel motor fuel any person who is engaged solely in one or both
42 of the following: (i) any person who makes or offers to make a retail
43 sale not in bulk of such fuel or (ii) any person who purchases Diesel
44 motor fuel in bulk in this state for the sole purpose of self-use. The
45 commissioner may, however, register as a distributor of kero-jet fuel
46 only a fixed base operator who makes no sales of kero-jet fuel other
47 than retail sales not in bulk delivered directly into the fuel tank of
48 an airplane for use in the operation of such airplane and who makes no
49 other sales of diesel motor fuel. Such registration shall apply only to
50 the wholesale purchase of kero-jet fuel and the retail sale of such fuel
51 not in bulk for delivery directly into the fuel tank of an airplane for
52 use in the operation thereof. Provided, further, that if the commission-
53 er is satisfied that full registration is not necessary in order to
54 protect tax revenues, the commissioner may limit or modify the require-
55 ment of registration as a distributor with respect to any person other-
56 wise required to register solely because such person engages in the sale

1 of NON-HIGHWAY Diesel motor fuel where such person makes sales of
2 NON-HIGHWAY Diesel motor fuel to the consumer solely for [the purposes
3 described in subparagraph (i) of paragraph (b) of subdivision three of
4 this section] USE OTHER THAN ON A PUBLIC HIGHWAY, provided that if the
5 commissioner so limits or modifies such registration requirement with
6 respect to such person, then such registration shall apply only to the
7 importation, sale and distribution of SUCH NON-HIGHWAY Diesel motor fuel
8 [for the purposes described in such subparagraph (i)]. The commissioner
9 [of taxation and finance] may also waive any other requirement imposed
10 by this article on such a distributor. All the provisions of section two
11 hundred eighty-three of this article shall apply to applicants for
12 registration and registrants with respect to Diesel motor fuel, and, in
13 addition, distributors with respect to Diesel motor fuel shall be
14 subject to all other provisions of this article relating to distributors
15 of motor fuel, including but not limited to, the keeping of records, the
16 fixing, determination and payment of tax and filing of returns.
17 PROVIDED, FURTHER, THE COMMISSIONER MAY LIMIT OR MODIFY THE REQUIREMENT
18 OF REGISTRATION AS A DISTRIBUTOR WITH RESPECT TO ANY PERSON WHO PRODUCES
19 FOR SELF USE "UNQUALIFIED BIODIESEL."

20 3. (a) The tax imposed by this section shall not apply to the sale of
21 untaxed Diesel motor fuel to or the use of such fuel by an organization
22 described in paragraph one or two of subdivision (a) of section eleven
23 hundred sixteen of this chapter where such Diesel motor fuel is used by
24 such organization for its own use or consumption.

25 (b) The tax on the [incident] INCIDENCE of sale or use imposed by
26 subdivision one of this section shall not apply to: (i) the sale [to] or
27 use [by the consumer of previously untaxed Diesel motor fuel which is
28 not enhanced Diesel motor fuel and which is used exclusively for heating
29 purposes or for the purpose of use or consumption directly and exclu-
30 sively in the production of tangible personal property, gas, electric-
31 ity, refrigeration or steam, for sale,] OF NON-HIGHWAY DIESEL MOTOR
32 FUEL, but only if all of such fuel is consumed other than on the PUBLIC
33 highways of this state (EXCEPT FOR THE USE OF THE PUBLIC HIGHWAY BY
34 FARMERS TO REACH ADJACENT FARMLANDS); provided, however, this exemption
35 shall in no event apply to a sale of NON-HIGHWAY Diesel motor fuel which
36 involves a delivery at a filling station or into a repository which is
37 equipped with a hose or other apparatus by which such fuel can be
38 dispensed into the fuel tank of a motor vehicle; or (ii) [the sale of
39 previously untaxed Diesel motor fuel which is not enhanced Diesel motor
40 fuel to a person registered under this article as a distributor of
41 Diesel motor fuel other than (A) a retail sale to such person or (B) a
42 sale to such person which involves a delivery at a filling station or
43 into a repository which is equipped with a hose or other apparatus by
44 which such fuel can be dispensed into the fuel tank of a motor vehicle;
45 or (iii) a sale or use of enhanced Diesel motor fuel to or by a consumer
46 exclusively for the purposes of heating specified in subparagraph (i) of
47 this paragraph but only if such enhanced Diesel motor fuel is delivered
48 into a storage tank which is not equipped with a hose or other apparatus
49 by which such fuel can be dispensed into the fuel tank of a motor vehi-
50 cle and such storage tank is attached to the heating unit burning such
51 fuel, provided that each delivery of such fuel of over four thousand
52 five hundred gallons shall be evidenced by a certificate signed by the
53 purchaser stating that the product will be used exclusively for heating
54 purposes; or (iv) a sale or use consisting of no more than four thousand
55 five hundred gallons of Diesel motor fuel in a thirty-day period to or
56 by a consumer who purchases or uses such fuel for use or consumption

1 directly and exclusively in the production for sale of tangible personal
2 property by farming but only if all of such fuel is delivered on the
3 farm site and is consumed other than on the highways of this state
4 (except for the use of the highway to reach adjacent farmlands)
5 provided, however, a farmer may purchase more than four thousand five
6 hundred gallons of Diesel motor fuel in a thirty-day period for such use
7 or consumption exempt from the tax in accordance with prior clearance
8 given by the commissioner of taxation and finance; or (v)] a sale to the
9 consumer consisting of not more than twenty gallons of water-white kero-
10 sene to be used and consumed exclusively for heating purposes; or [(vi)]
11 (III) the sale to or delivery at a filling station or other retail
12 vendor of water-white kerosene provided such filling station or other
13 retail vendor only sells such water-white kerosene exclusively for heat-
14 ing purposes in containers of no more than twenty gallons; or [(vii)]
15 (IV) a sale of kero-jet fuel to an airline for use in its airplanes or a
16 use of kero-jet fuel by an airline in its airplanes; or [(viii)] (V) a
17 sale of kero-jet fuel by a registered distributor of Diesel motor fuel
18 to a fixed base operator registered under this article as a distributor
19 of kero-jet fuel only where such fixed base operator is engaged solely
20 in making or offering to make retail sales not in bulk of kero-jet fuel
21 directly into the fuel tank of an airplane for the purpose of operating
22 such airplane; or [(ix)] (VI) a retail sale not in bulk of kero-jet fuel
23 by a fixed base operator registered under this article as a distributor
24 of kero-jet fuel only where such fuel is delivered directly into the
25 fuel tank of an airplane for use in the operation of such airplane.

26 (c) [Limited exemptions for dyed Diesel motor fuel. (i) The tax
27 imposed by this section shall not apply to: (A) the sale of dyed Diesel
28 motor fuel by the importer to a purchaser under the circumstances and
29 subject to the terms and conditions as follows: (1) the importer and
30 purchaser are each registered under this article as a full Diesel motor
31 fuel distributor; (2) such importer has imported the enhanced Diesel
32 motor fuel, which is the subject of the sale, into the state and has
33 dyed such fuel to comply with the provisions of 26 USC S 4082(a) and the
34 regulations thereunder, as may be amended from time to time; (3) the
35 purchaser is a holder of a currently valid direct payment permit issued
36 pursuant to section two hundred eighty-three-d of this article; and (4)
37 such purchaser is primarily engaged in the retail heating oil business
38 and such dyed Diesel motor fuel will be sold by such purchaser in a
39 retail sale to a consumer for use solely as residential or commercial
40 heating oil; (B) a first sale of the dyed Diesel motor fuel, which as
41 the subject of an exempt sale described in clause (A) of this subpara-
42 graph, by the purchaser described therein to a purchaser likewise hold-
43 ing a currently valid direct pay permit under the circumstances and
44 subject to the terms and conditions as follows: (1) the sale of such
45 second purchaser by such first purchaser is the first and only sale of
46 such dyed Diesel motor fuel by such first purchaser; (2) such second
47 purchaser is primarily engaged in the retail heating oil business and
48 such dyed Diesel motor fuel will be sold by such second purchaser in a
49 retail sale to a consumer for use solely as residential or commercial
50 heating oil; (3) on the sale to the second purchaser, such first
51 purchaser described in such clause (A) attaches to the invoice a copy of
52 the invoice given by the importer on the exempt sale described in such
53 clause (A), so as to identify the origin of the dyed Diesel fuel which
54 is the subject of the sale to such second purchaser; and (4) such second
55 purchaser certifies that such dyed Diesel motor fuel is to be sold by it
56 only to a consumer for use solely as residential or commercial heating

1 oil. (ii) Prior to, or at the time of, such sale of such dyed Diesel
2 motor fuel described in clause (A) or (B) of subparagraph (i) of this
3 paragraph, the purchaser shall give a certificate to the seller setting
4 forth the intended use of the dyed Diesel motor fuel which is sought to
5 be qualified for exemption under this paragraph, that the purchaser has
6 been issued a direct payment permit which is currently valid, that such
7 permit has not been suspended or revoked and that the purchaser other-
8 wise meets the qualifications of this paragraph. (iii) The limited
9 exemptions allowed under this paragraph shall in no event apply to any
10 dyed Diesel motor fuel which is delivered into a repository equipped
11 with hose or other apparatus capable of being used to dispense fuel into
12 the fuel tank of a motor vehicle, or where the purchaser's direct
13 payment permit has been suspended or revoked and the commissioner has
14 made generally available the identity of those persons whose direct
15 payment permits have been suspended or revoked.] NOTHING IN THIS ARTICLE
16 SHALL EXEMPT NON-HIGHWAY DIESEL MOTOR FUEL FROM THE IMPOSITION OF THE
17 TAX UNDER THIS SECTION, IF SUCH NON-HIGHWAY DIESEL MOTOR FUEL IS
18 INTENDED FOR USE ON THE WATERWAYS OF THE STATE INCLUDING ANY OTHER
19 WATERWAYS BORDERING ON THE STATE, FOR OPERATING PLEASURE OR RECREATIONAL
20 MOTOR BOATS THEREON.

21 4. The tax imposed by this section on Diesel motor fuel shall be
22 passed through by the seller and included as part of the selling price
23 to each purchaser of such fuel. Provided, however, the amount of the tax
24 imposed by this section may be excluded from the selling price of Diesel
25 motor fuel where (i) a sale of Diesel motor fuel is made to an organiza-
26 tion described in paragraph (a) of subdivision three of this section
27 solely for the purpose stated therein; (ii) a sale of [enhanced]
28 NON-HIGHWAY Diesel motor fuel is made to a consumer [exclusively for the
29 purposes of heating specified in subparagraph (i) of paragraph (b) of
30 subdivision three of this section] but only if such [enhanced] NON-HIGH-
31 WAY Diesel motor fuel is NOT DELIVERED TO A FILLING STATION, NOR deliv-
32 ered into a storage tank which is [not] equipped with a hose or other
33 apparatus by which such fuel can be dispensed into the fuel tank of a
34 motor vehicle [and such storage tank is attached to the heating unit
35 burning such fuel, provided that each delivery of such fuel of over four
36 thousand five hundred gallons shall be evidenced by a certificate signed
37 by the purchaser stating that the product will be used exclusively for
38 heating purposes; (iii) a sale is made consisting of no more than four
39 thousand five hundred gallons (or a greater amount which has been given
40 prior clearance by the commissioner of taxation and finance) of Diesel
41 motor fuel in a thirty-day period to a consumer who purchases such fuel
42 for use or consumption directly and exclusively in the production for
43 sale of tangible personal property by farming but only if all of such
44 fuel is consumed other than on the highways or waterways of this state];
45 or [(iv)] (III) the sale to or delivery at a filling station or other
46 retail vendor of water-white kerosene provided such filling station or
47 other retail vendor only sells such water-white kerosene exclusively for
48 heating purposes in containers of no more than twenty gallons; or [(v)]
49 (IV) a sale of kero-jet fuel is made to an airline for use in its
50 airplanes.

51 5. All the provisions of this article relating to the administration
52 and collection of the taxes on motor fuel, except sections two hundred
53 eighty-three-a and two hundred eighty-three-b of this article, shall be
54 applicable to the tax imposed by this section with such limitation as
55 specifically provided for in this article with respect to Diesel motor
56 fuel and with such modification as may be necessary to adapt the

1 language of such provisions to the tax imposed by this section. With
2 respect to the bond or other security required by subdivision three of
3 section two hundred eighty-three of this article, the commissioner [of
4 taxation and finance], in determining the amount of bond or other secu-
5 rity required for the purpose of securing tax payments, shall take into
6 account the volume of [heating fuel] NON-HIGHWAY DIESEL MOTOR FUEL and
7 other Diesel motor fuel sold for exempt purposes by a distributor of
8 Diesel motor fuel during prior periods as a factor reducing potential
9 tax liability along with any other relevant factors in determining the
10 amount of security required. With respect to the bond required to be
11 filed prior to registration as a Diesel motor fuel distributor, no bond
12 shall be required of an applicant upon a finding of the applicant's
13 fiscal responsibility, as reflected by such factors as net worth,
14 current assets and liabilities, and tax reporting and payment history,
15 and the department shall not provide for a minimum bond of every appli-
16 cant.

17 S. 6. Subdivision 7 of section 283 of the tax law, as amended by chap-
18 ter 261 of the laws of 1988, is amended to read as follows:

19 7. Temporary restraining order and permanent [injunction] INJUNCTION
20 against unlawful importation and forfeiture of unlawfully imported or
21 produced [automotive] MOTOR FUEL OR DIESEL MOTOR fuel. (a) Whenever
22 evidence is furnished by the commissioner [of taxation and finance] to
23 any justice of the supreme court, in court or at chambers, showing that
24 any person not registered as a distributor as required by this article
25 has imported [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL into this
26 state or caused [automotive] MOTOR FUEL OR DIESEL MOTOR fuel to be
27 imported into this state or has produced, refined, manufactured or
28 compounded [automotive fuel or has subjected diesel motor fuel to the
29 process of enhancement within this state] MOTOR FUEL OR DIESEL MOTOR
30 FUEL, such justice may make a temporary order without notice prohibiting
31 such person and his agents from selling, transferring or otherwise
32 disposing of any such fuel or any fuel and also prohibiting all other
33 persons in possession of or having control over the same from selling,
34 releasing, transferring or otherwise disposing of any [automotive fuel]
35 MOTOR FUEL OR DIESEL MOTOR FUEL imported, produced, refined, manufac-
36 tured, compounded, [enhanced,] sold or transferred by such person not so
37 registered pending a hearing for a preliminary injunction.

38 (b) Upon granting a temporary order, the court shall direct that a
39 hearing be held at the earliest possible time upon such notice and
40 service as the court shall direct and at the same time, if such action
41 has not yet been commenced, the commissioner [of taxation and finance]
42 shall commence an action in supreme court for a permanent injunction and
43 forfeiture of [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL pursuant
44 to paragraph (c) of this subdivision. Where, after such opportunity for
45 a hearing, the court determines that there is a substantial probability
46 that the commissioner will prevail in such action, the court shall grant
47 a preliminary injunction restraining the sale, release, transfer or
48 other disposition of fuel subject to the temporary order.

49 (c) (1) If it is established by clear and convincing evidence that
50 [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL was imported, caused
51 to be imported, produced, refined, manufactured or compounded [or diesel
52 motor fuel was subjected to the process of enhancement] by any person
53 not registered as a distributor as required by this article, the court
54 shall grant a judgment (i) permanently enjoining such person and his
55 agents from selling, transferring or otherwise disposing of any such
56 fuel or any fuel within this state and (ii) declaring the forfeiture of

1 any fuel that was so imported, caused to be imported, produced, refined,
2 manufactured, OR compounded [or enhanced] by such person.

3 (2) With respect to [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL
4 that was imported, caused to be imported, produced, refined, manufac-
5 tured or compounded, [or diesel motor fuel that was subjected to the
6 process of enhancement] by a person not registered as a distributor as
7 required by this article or that was unlawfully sold or transferred by
8 such person, if it is established by clear and convincing evidence that
9 any other person in possession of or having control over such fuel was
10 not a purchaser or transferee in good faith of such fuel with respect to
11 the fact that such fuel was so imported, caused to be imported,
12 produced, refined, manufactured, OR compounded [or enhanced] by a person
13 not registered as a distributor as required by this article or that such
14 fuel was so unlawfully sold or transferred by such person, the court
15 shall grant a judgment (i) permanently enjoining such other person and
16 his OR HER agents from selling, releasing, transferring or otherwise
17 disposing of any such fuel and (ii) declaring the forfeiture of such
18 fuel in the possession or under the control of such other person.

19 (d) The commissioner may, at any time subsequent to the granting of
20 the temporary order pursuant to paragraph (a) of this subdivision, in
21 his OR HER sole discretion consent to a sale of [automotive fuel] MOTOR
22 FUEL OR DIESEL MOTOR FUEL subject to such temporary order which is in
23 the possession or under the control of a person other than the person or
24 the agent of the person who imported, caused to be imported, produced,
25 refined, manufactured, compounded [or enhanced] or unlawfully sold or
26 transferred such fuel. As a condition of granting permission to a sale
27 of [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL pursuant to this
28 subdivision, the commissioner shall require the payment of all taxes,
29 penalties and interest imposed by and pursuant to the authority of this
30 chapter with respect to such fuel.

31 (e) (1) At any time during the pendency of an action under this
32 section, the [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL subject
33 to a temporary, preliminary or permanent order hereunder may be released
34 from the scope of such order if there is given an undertaking, in an
35 amount equal to the market value of such fuel plus state excise and
36 sales taxes and federal excise taxes, to the effect that there will be
37 paid to the commissioner the amount of the market value of such fuel and
38 such taxes in the event that such fuel is adjudged forfeited.

39 (2) Any person enjoined by a temporary order or a preliminary injunc-
40 tion issued pursuant to this subdivision may move at any time, on
41 notice, to vacate or modify it.

42 (f) The procedures of the civil practice law and rules applicable to
43 temporary restraining orders, preliminary injunctions and permanent
44 injunctions not inconsistent with this subdivision shall apply to tempo-
45 rary orders, preliminary injunctions and permanent injunctions issued
46 under this subdivision and any provision of this subdivision which is
47 not in accord with the constitutional mandate of such procedures of the
48 civil practice law and rules shall be deemed to be modified as necessary
49 to accord with such a mandate. The procedural provisions set forth in
50 paragraph three of subdivision (d) and in subdivision (j) of section
51 eighteen hundred forty-eight of this chapter shall apply to the forfei-
52 ture proceedings under this subdivision and, in respect to a declaration
53 of forfeiture under this subdivision, the court shall direct the commis-
54 sioner to sell or otherwise dispose of such forfeited [automotive fuel]
55 MOTOR FUEL OR DIESEL MOTOR FUEL on such conditions the commissioner
56 deems most advantageous and just under the circumstances. The commis-

1 sioner shall not be required to file any undertaking in connection with
2 an action pursuant to this subdivision.

3 S 7. Sections 283-d and 284-b of the tax law are REPEALED.

4 S 8. Subdivision 3 of section 285-b of the tax law, as amended by
5 chapter 245 of the laws of 1989, is amended to read as follows:

6 3. (a) The claim for or exemption from tax provided for in subpara-
7 graphs (i), (II), (iii), (iv), [(v),] AND (vi)[, (vii) and (ix)] of
8 paragraph (b) of subdivision three of section two hundred eighty-two-a
9 of this article shall be established by means of an exempt transaction
10 certificate. If any such exemption is applicable, such certificate shall
11 be provided by the purchaser to the seller at the time of or prior to
12 delivery of the Diesel motor fuel. Such exempt transaction certificate
13 shall set forth the name and address of the purchaser and the basis of
14 the exemption and shall be signed by such purchaser and by the seller.
15 Such certificate shall be in such form and contain such other informa-
16 tion as the commissioner [of taxation and finance] shall require. Where
17 a proper and complete exempt transaction certificate has been furnished
18 and accepted by the seller in good faith, such certificate under such
19 circumstance shall relieve the seller of the burden of proving that the
20 Diesel motor fuel covered by such certificate is exempt from tax by
21 reason of subparagraph (i), (II), (iii), (iv), [(v),] OR (vi)[, (vii) or
22 (ix)] of paragraph (b) of subdivision three of such section two hundred
23 eighty-two-a. Any purchaser who furnishes to his seller a false or frau-
24 dulent exempt transaction certificate for the purpose of establishing an
25 exemption from the tax imposed by section two hundred eighty-two-a of
26 this article shall be jointly and severally liable for the tax imposed
27 by such section. In lieu of an exempt transaction certificate, the
28 commissioner [of taxation and finance] may provide for the establishment
29 of such exemption by means of a procedure or other document which he OR
30 SHE deems appropriate so as to secure the revenues from the excise tax
31 on Diesel motor fuel. Provided, further, in the case of the exemption
32 provided by subparagraph (i) of paragraph (b) of subdivision three of
33 section two hundred eighty-two-a of this article, the commissioner shall
34 provide for an alternative procedure or other document signed only by
35 the seller, such as a metered delivery ticket, for the establishment of
36 such exemption in those cases where such commissioner is satisfied that
37 the use of such alternative procedure or other document will not jeop-
38 ardize the revenues from the excise tax on Diesel motor fuel.

39 (b) A claim for the exemption from tax provided for in subparagraph
40 [(ii) or (viii)] (V) of paragraph (b) of subdivision three of section
41 two hundred eighty-two-a of this article shall be established by means
42 of an interdistributor sale certificate. If such exemption is applica-
43 ble, such certificate shall be provided by the purchaser to the seller
44 at the time of or prior to delivery of the Diesel motor fuel. Such
45 certificate shall set forth the name and address of the purchaser, the
46 purchaser's registration number, an affirmation by such purchaser that
47 the purchaser is registered as a distributor and that such registration
48 has not been suspended or cancelled and shall be signed by such purchas-
49 er and by the seller. Such certificate shall be in such form and contain
50 such other information as the commissioner [of taxation and finance]
51 shall require. Where a proper and complete interdistributor sale certif-
52 icate has been furnished and accepted by the seller in good faith, such
53 certificate under such circumstance shall relieve the seller of the
54 burden of proving that the Diesel motor fuel covered by such certificate
55 is exempt from tax by reason of subparagraph [(ii) or (viii)] (V) of
56 paragraph (b) of subdivision three of such section two hundred eighty-

1 two-a. For purposes of this paragraph, a seller shall not have accepted
2 such certificate in good faith if the purchaser's registration is inval-
3 id because it has been suspended or cancelled, or if the purchaser is
4 not registered, and the commissioner [of taxation and finance] has
5 furnished registered distributors with information identifying all those
6 persons then validly registered as distributors of Diesel motor fuel and
7 those persons whose registrations have been suspended or cancelled. Any
8 purchaser who furnishes to his seller a false or fraudulent interdis-
9 tributor sale certificate for the purpose of establishing an exemption
10 from the tax imposed by section two hundred eighty-two-a of this article
11 shall be jointly and severally liable for the tax imposed by such
12 section.

13 S 9. Subdivision 1 of section 286 of the tax law, as amended by chap-
14 ter 302 of the laws of 2006, is amended to read as follows:

15 1. Every person who imports or causes to be imported into this state,
16 or who produces, refines, manufactures or compounds within this state,
17 or who purchases or sells in this state motor fuel or diesel motor fuel
18 or ingredients which may be manufactured or compounded into motor fuel
19 or diesel motor fuel, [or engages in the enhancement of diesel motor
20 fuel,] shall keep a complete and accurate record of all purchases and
21 sales, uses or other dispositions thereof and a complete and accurate
22 record of the number of gallons of motor fuel or diesel motor fuel or
23 such ingredients so imported, produced, refined, manufactured[,] OR
24 compounded [or enhanced]. Every person who stores motor fuel or diesel
25 motor fuel shall keep a complete and accurate record of the identity of
26 the person for whom such fuel is stored, the quantity and type of fuel
27 so stored, the identity of the person to whom such fuel is released from
28 storage and the quantity and type of fuel so released. Such records
29 shall be in such form and contain such other information as the commis-
30 sioner shall prescribe. Said commissioner, by rule or regulation, also
31 may require the delivery of statements to purchasers with consignments
32 of motor fuel or diesel motor fuel or such ingredients, and prescribe
33 the matters to be contained therein. Such records and statements, unless
34 required by the commissioner to be preserved for a longer period, shall
35 be preserved for a period of three years and shall be offered for
36 inspection at any time upon oral or written demand by such commissioner
37 or the commissioner's duly authorized agents. The commissioner is hereby
38 further authorized to examine the equipment of any such person pertain-
39 ing to the storage, sale or delivery of such fuels, as well as the stock
40 of such fuels in the possession or control of such person. To verify the
41 amount of tax due under this article, each such person is hereby
42 directed and required to give to the commissioner or the commissioner's
43 duly authorized representatives, the means, facilities and opportunity
44 for such examinations as are herein provided for and required. Nothing
45 CONTAINED in this section [contained] shall be construed to require the
46 keeping for purposes of this article of a record of purchases or sales
47 of motor fuel or diesel motor fuel or such ingredients at retail in
48 small quantities (less than thirty gallons) or of motor fuel or diesel
49 motor fuel imported into this state in the tank of a motor vehicle which
50 supplies the fuel for its operation.

51 S 10. Section 286-a of the tax law, as amended by chapter 261 of the
52 laws of 1988, is amended to read as follows:

53 S 286-a. Records and reports of transportation of [automotive] MOTOR
54 FUEL AND DIESEL MOTOR fuel. Every person transporting [automotive] MOTOR
55 FUEL OR DIESEL MOTOR fuel within this state, whether such transportation
56 originates within or without this state, when required by the [tax

1 commission] COMMISSIONER, shall keep a true and accurate record of all
2 [automotive] MOTOR FUEL AND DIESEL MOTOR fuel so transported, including
3 ingredients which may be manufactured or compounded into [automotive]
4 MOTOR FUEL OR DIESEL MOTOR fuel, showing such facts with relation to
5 such [automotive] fuel and ingredients and their transportation as the
6 [tax commission] COMMISSIONER may require. Such record shall be open to
7 inspection by the representatives of the department [of taxation and
8 finance] at any time and the [tax commission] COMMISSIONER may require
9 from any such person sworn returns of all or any part of the information
10 shown by such records.

11 S 11. Section 286-b of the tax law, as amended by chapter 261 of the
12 laws of 1988, is amended to read as follows:

13 S 286-b. Transportation of [automotive] MOTOR FUEL OR DIESEL MOTOR
14 fuel; manifest required. 1. The master or other person in charge of any
15 barge, tanker or other vessel in which [automotive] MOTOR FUEL OR DIESEL
16 MOTOR fuel is being transported over any of the navigable waters of this
17 state, the operator of a motor vehicle in which [automotive] MOTOR FUEL
18 OR DIESEL MOTOR fuel is being transported in this state, or the operator
19 of a pipeline through which [automotive] MOTOR FUEL OR DIESEL MOTOR fuel
20 is being transported in this state, other than [automotive] MOTOR FUEL
21 OR DIESEL MOTOR fuel being transported for use in operating the engine
22 which propels such vessel or motor vehicle, as the case may be, must
23 have in his OR HER possession a manifest which shows the name and
24 address of the person from whom such [automotive] fuel was received by
25 him OR HER and the place of receipt of such fuel and the name and
26 address of every person to whom he OR SHE is to make delivery of the
27 same and the place of delivery, together with the number of gallons to
28 be delivered to each such person, and, if such [automotive] fuel is
29 being imported into the state in such vessel, motor vehicle or pipeline
30 for use, storage, distribution or sale in the state, the name of the
31 distributor importing or causing such fuel to be imported into the state
32 and such other information as the [tax commission] COMMISSIONER may
33 require pursuant to rule or regulation, and shall at the request of a
34 peace officer, acting pursuant to his OR HER special duties, a police
35 officer, any representative of the department [of taxation and finance]
36 or any other person authorized by law to inquire into or investigate the
37 transportation of such [automotive] fuel, produce such manifest for
38 inspection. The person causing the operation of such vessel, motor vehi-
39 cle or pipeline shall be responsible to cause the operator of such
40 vessel, motor vehicle or pipeline to keep in his OR HER possession on
41 such vessel, in such motor vehicle or in the main control building of
42 such pipeline in this state the manifest required by this section. The
43 absence of the manifest required by this section shall give rise to a
44 presumption that the [automotive] MOTOR FUEL OR DIESEL MOTOR fuel being
45 transported is intended for sale, use, distribution or storage in this
46 state and is being imported or caused to be imported by other than a
47 registered distributor. Moreover, the absence of (1) the place of deliv-
48 ery of motor fuel OR DIESEL MOTOR FUEL on the manifest with respect to
49 [automotive] MOTOR FUEL OR DIESEL MOTOR fuel being imported into the
50 state shall give rise to a presumption that such fuel is being imported
51 into the state for use, distribution, storage or sale in the state and
52 (2) the name of a registered distributor on the manifest with respect to
53 [automotive] MOTOR FUEL OR DIESEL MOTOR fuel being imported into the
54 state for use, distribution, storage or sale in the state shall give
55 rise to a presumption that such fuel is being so imported or caused to
56 be imported by other than a registered distributor. Every barge, tanker

1 or other vessel so used for the transportation of motor fuel must be
2 plainly and visibly marked on both sides thereof and above the water
3 line with the word "Gasoline," or other name of the motor fuel being
4 transported, in letters at least eight inches high and of corresponding
5 appropriate width, or must be identified as prescribed by the [tax
6 commission] COMMISSIONER pursuant to rule or regulation. The master or
7 person in charge of such barge, tanker or other vessel, as well as the
8 owners thereof, shall be guilty of a violation of this section if such
9 barge, tanker or other vessel is not so marked.

10 2. The commissioner may, by regulation provide for the form and
11 content of the manifest required for [automotive] MOTOR AND DIESEL MOTOR
12 fuel and for the filing of monthly information returns by every person
13 required to maintain records, described in subdivision one of this
14 section, which shall in all material respects reflect the information
15 required to be contained in such records. Such returns shall be in such
16 form and contain such other information as the commissioner shall
17 require.

18 S 12. Subdivision 1 of section 287 of the tax law, as amended by chap-
19 ter 261 of the laws of 1988, is amended to read as follows:

20 1. Every distributor shall, on or before the twentieth day of each
21 month, file with the department [of taxation and finance] a return, on
22 forms to be prescribed by the commissioner and furnished by such depart-
23 ment, stating the number of gallons of motor fuel imported, manufactured
24 or sold by such distributor in the state during the preceding calendar
25 month and in the case of Diesel motor fuel, the number of gallons of
26 [enhanced] Diesel motor fuel imported[, the number of gallons enhanced]
27 and the number of gallons which have been sold or used. Provided, howev-
28 er, the commissioner may, if he OR SHE deems it necessary in order to
29 [insure] ENSURE the payment of the taxes imposed by this article,
30 require returns to be made at such times and covering such periods as he
31 OR SHE may deem necessary, and, by regulation, may permit the filing of
32 returns by distributors of Diesel motor fuel on a quarterly, semi-annual
33 or annual basis, or may waive the filing of returns by a distributor of
34 Diesel motor fuel for such time and upon such terms as he OR SHE may
35 deem proper if satisfied that no tax imposed by this article with
36 respect to Diesel motor fuel is or will be payable by him OR HER during
37 the time for which returns are waived. Such returns shall contain such
38 further information as the commissioner shall require. The fact that a
39 distributor's name is signed to a filed return shall be prima facie
40 evidence for all purposes that the return was actually signed by such
41 distributor. Each such distributor shall, with respect to motor fuel,
42 pay to the department with the filing of such return, the taxes imposed
43 by this article on each gallon of motor fuel imported, manufactured or
44 sold by such distributor in the state, and so reported, during the peri-
45 od covered by such return. Each distributor shall, with respect to
46 Diesel motor fuel, pay to the department with the filing of the return
47 the taxes imposed by this article on the number of gallons of Diesel
48 motor fuel sold or used or delivered to a filling station or delivered
49 into the fuel tank of a motor vehicle during the period covered by the
50 return. Provided, however, that where a distributor has purchased [auto-
51 motive] MOTOR FUEL OR DIESEL MOTOR fuel upon which the taxes imposed by
52 this article have been paid or paid over and in each instance the tax is
53 included in the price, a credit shall be allowed for the amount of such
54 taxes upon the subsequent sale of such fuel to the extent that such
55 taxes are so paid and included in the price.

1 S 13. Paragraphs (a) and (c) of subdivision 3 of section 289-c of the
2 tax law, paragraph (a) as amended by chapter 558 of the laws of 1965 and
3 paragraph (c) as amended by chapter 302 of the laws of 2006, are amended
4 to read as follows:

5 (a) Except as otherwise provided in paragraph (b) of this section, any
6 person who shall buy any motor fuel or diesel motor fuel, on which the
7 tax imposed by this article shall have been paid, and shall consume the
8 same in any manner except in the operation of a motor vehicle upon or
9 over the PUBLIC highways of this state, or in the operation of a pleas-
10 ure or recreational motor boat upon or over the waterways of the state
11 including waterways bordering on the state, shall be reimbursed the
12 amount of such tax in the manner and subject to the conditions herein
13 provided except that there shall be no reimbursement of tax paid on
14 motor fuel or diesel motor fuel taken out of this state in a fuel tank
15 connected with the engine of a motor vehicle and consumed outside of
16 this state.

17 (c) All claims for reimbursement shall be in such form and contain
18 such information as the commissioner shall prescribe and shall be filed
19 within three years from (i) the date of the purchase, in the case of the
20 purchaser; or (ii) the date of the sale, in the case of the seller, of
21 the motor fuel so subject to reimbursement. Every such claim shall
22 include a certificate by or on behalf of the party presenting the same
23 to the effect that it is just, true and correct, that no part thereof
24 has been paid, except as stated therein, and that the balance therein
25 stated is actually due and owing. The claimant shall satisfy the depart-
26 ment that the claimant has borne the tax and that the motor fuel has
27 been consumed by the claimant in a manner other than the operation of a
28 motor vehicle upon or over the PUBLIC highways of this state, the opera-
29 tion of a pleasure or recreational motorboat upon or over the waterways
30 of the state including waterways bordering on the state or, in the case
31 of an omnibus carrier, taxicab licensee, nonpublic school operator or
32 volunteer ambulance service, that the claimant has borne the tax and
33 that the amount claimed is the amount of such tax reimbursable under
34 paragraph (b), (d), (e) or (f) of THIS subdivision [three of this
35 section]. The department may require such further information or proof
36 as it shall deem necessary for the administration of such claim. Claims
37 for reimbursement approved by the department shall be paid from revenues
38 collected under this article and deposited to the credit of the comp-
39 troller as hereinafter provided; but no such claims shall be paid unless
40 the department is satisfied that the amount of the tax for which the
41 reimbursement is claimed has actually been collected by the state. The
42 amount of any erroneous or excessive payment to a claimant for
43 reimbursement may be determined by the department and may be recovered
44 from such claimant in the same manner as a tax imposed by this article,
45 provided, however, that any such determination shall be made within
46 three years after the date of such erroneous or excessive payment.

47 S 14. Subdivision 4 of sections 289-c of the tax law is REPEALED.

48 S 15. Subdivision 1 of section 289-e of the tax law, as amended by
49 section 5 of part EE of chapter 63 of the laws of 2000, is amended to
50 read as follows:

51 1. All taxes, interest, penalties and fees collected or received by
52 the commissioner under the taxes imposed by this article, except as
53 provided otherwise in subdivision two and subdivision three of this
54 section and sections two hundred eighty-two-b, two hundred eighty-two-c,
55 two hundred eighty-four-a and two hundred eighty-four-c, other than
56 [those imposed by section two hundred eighty-four-b and] the fee imposed

1 by section two hundred eighty-four-d and penalties and interest on such
2 fee, shall be deposited and disposed of pursuant to the provisions of
3 section one hundred seventy-one-a of this chapter; provided that an
4 amount equal to thirty-seven and one-half per centum of the moneys
5 collected under section two hundred eighty-four of this chapter shall be
6 appropriated and used for the acquisition of property necessary for the
7 construction and reconstruction of highways and bridges or culverts on
8 the state highway system, and for the construction, maintenance and
9 repair of such highways and bridges or culverts, all under the direction
10 of the commissioner of transportation.

11 S 16. Section 289-f of the tax law, as added by chapter 44 of the laws
12 of 1985, is amended to read as follows:

13 S 289-f. Joint administration of taxes. In addition to the powers
14 granted to the [tax commission] COMMISSIONER in this chapter, the
15 [commission] COMMISSIONER is hereby authorized to make provisions pursu-
16 ant to rules and regulations for the joint administration, in whole or
17 in part, of the state and local taxes imposed by article twenty-eight
18 and authorized to be imposed by article twenty-nine of this chapter upon
19 the sale of [automotive] MOTOR FUEL OR DIESEL MOTOR fuel and the taxes
20 imposed and authorized to be imposed by this article, including the
21 joint reporting, assessment, collection, determination and refund of
22 such taxes, and for that purpose to prescribe that any of the [commis-
23 sion's] COMMISSIONER'S functions under such articles, and any returns,
24 forms, statements, documents or information to be submitted to the
25 [commission] COMMISSIONER under such articles, any books and records to
26 be kept for purposes of the taxes imposed or authorized to be imposed by
27 such articles, any schedules of amounts to be collected under such arti-
28 cles, any registration required under such articles, and the payment of
29 taxes under such articles shall be on a joint basis with respect to the
30 taxes imposed by such articles.

31 S 17. Paragraph 2 of subdivision (b) and subdivisions (c), (k), (l)
32 and (m) of section 300 of the tax law, paragraph 2 of subdivision (b) as
33 amended by chapter 170 of the laws of 1994, subdivision (c) as added by
34 chapter 190 of the laws of 1990, subdivision (k) as amended by section 1
35 of part H of chapter 407 of the laws of 1999 and subdivisions (l) and
36 (m) as added by chapter 309 of the laws of 1996, are amended to read as
37 follows:

38 (2) With respect to diesel motor fuel, every corporation and unincor-
39 porated business (i) importing diesel motor fuel or causing diesel motor
40 fuel to be imported into the state for use, distribution, storage or
41 sale in the state, (ii) producing, refining, manufacturing or compound-
42 ing diesel motor fuel within the state, (iii) [engaging in the enhance-
43 ment of diesel motor fuel within the state, (iv)] making a sale or use
44 of diesel motor fuel in the state, other than a retail sale not in bulk
45 or self-use of diesel motor fuel which has been the subject of a retail
46 sale to such corporation or unincorporated business, or [(v)] (IV)
47 registered by the department [of taxation and finance] as a "distributor
48 of kero-jet fuel only" pursuant to the provisions of subdivision two of
49 section two hundred eighty-two-a of this chapter. Diesel motor fuel
50 brought into this state in the ordinary fuel tank connecting with the
51 engine of a motor vehicle, airplane or other conveyance, but not a
52 vessel (other than a recreational motor boat or a commercial fishing
53 vessel as defined in subdivision (j) of this section if the diesel motor
54 fuel imported into and consumed in this state is used to operate such
55 vessel while it is engaged in the harvesting of fish for sale),
56 propelled by the use of such diesel motor fuel and to be used only in

1 the operation thereof, shall not be deemed imported within the meaning
2 of this article, if not removed from such tank except as used in the
3 propulsion of such engine.

4 (c) [(1)] The [term (A)] TERMS (1) "diesel motor fuel" means such term
5 as defined in subdivision fourteen of section two hundred eighty-two of
6 this chapter [and regulations thereunder including any regulations
7 relating to product specifically designated "No. 4 diesel fuel" and not
8 suitable as a fuel used in the operation of a motor vehicle engine], and
9 [(B) "enhanced"] (2) "HIGHWAY diesel motor fuel" means such term as
10 defined in subdivision [sixteen] SIXTEEN-A of section two hundred eight-
11 y-two of this chapter, and

12 [(C)(i) "nonautomotive type diesel motor fuel" as used in relation to
13 the rates of the tax imposed by section three hundred one-a of this
14 article means any diesel motor fuel, as described in subparagraph (A) of
15 this paragraph, which would be excluded from the diesel motor fuel
16 excise tax imposed by section two hundred eighty-two-a of this chapter
17 solely by reason of the enumerated exclusions based on ultimate use of
18 the product set forth in paragraph (b) of subdivision three of such
19 section, and (ii) "automotive-type diesel motor fuel" as used in
20 relation to the rates of tax imposed by such section three hundred one-a
21 means diesel motor fuel which is not nonautomotive-type diesel motor
22 fuel.]

23 (3) "NON-HIGHWAY DIESEL MOTOR FUEL" MEANS SUCH TERM AS DEFINED IN
24 SUBDIVISION SIXTEEN OF SECTION TWO HUNDRED EIGHTY-TWO OF THIS CHAPTER.

25 [(2)] (4) As used in this article, references to persons or petroleum
26 businesses registered under article twelve-A of this chapter as distrib-
27 utors of diesel motor fuel shall include all such persons or petroleum
28 businesses registered under such article as distributors of diesel motor
29 fuel and persons or petroleum businesses operating under valid limited
30 registrations relating to persons or petroleum businesses making retail
31 sales of diesel motor fuel to consumers solely for the purposes
32 described in subparagraph (i) of paragraph (b) of subdivision three of
33 section two hundred eighty-two-a of this chapter, but such references
34 shall not include persons and petroleum businesses registered as
35 "distributors of kero-jet fuel only" pursuant to the provisions of
36 subdivision two of section two hundred eighty-two-a of this chapter.

37 (k) "Commercial gallonage" means gallonage (1) which is [nonautomo-
38 tive-type] NON-HIGHWAY diesel motor fuel [(which is not enhanced diesel
39 motor fuel)] or residual petroleum product, (2) which is included in the
40 full measure of the [nonautomotive-type] NON-HIGHWAY diesel motor fuel
41 component or the residual petroleum product component of the tax imposed
42 under section three hundred one-a of this article, [and] (3) which does
43 not (and will not) qualify (A) for the utility credit or reimbursement
44 provided for in section three hundred one-d of this article, (B) as
45 "manufacturing gallonage", as such term is defined in subdivision (m) of
46 this section, (C) for the not-for-profit organization exemption provided
47 for in subdivision (h) of section three hundred one-b of this article,
48 or (D) for the heating exemption provided for in paragraph two of subdivi-
49 sion (d) of section three hundred one-b of this article or the heating
50 reimbursement provided for in paragraph two of subdivision (a) of
51 section three hundred one-c of this article, AND (4) WHICH WILL NOT BE
52 USED NOR HAS BEEN USED IN THE FUEL TANK CONNECTING WITH THE ENGINE OF A
53 VESSEL. No gallonage shall qualify as "commercial gallonage" where such
54 gallonage is eligible for the (i) utility credit or reimbursement under
55 such section three hundred one-d of this article, (ii) [if before Janu-
56 ary first, nineteen hundred ninety-eight, the manufacturing exemption or

1 reimbursement under paragraph one of subdivision (b) of section three
2 hundred one-j of this article and, if on or after January first, nine-
3 teen hundred ninety-eight, the] "manufacturing exemption" under para-
4 graph [four] THREE of subdivision (f) of section three hundred one-a of
5 this article, (iii) [the] not-for-profit organization exemption under
6 subdivision (h) of section three hundred one-b of this article, or (iv)
7 heating exemption provided for in paragraph two of subdivision (d) of
8 section three hundred one-b of this article or the heating reimbursement
9 provided for in paragraph two of subdivision (a) of section three
10 hundred one-c of this article. The commissioner shall require such docu-
11 mentary proof to substantiate the classification of product as "commer-
12 cial gallonage" as the commissioner deems appropriate.

13 (l) "Railroad diesel" means NON-HIGHWAY diesel motor fuel for use and
14 consumption directly and exclusively in the operation of a locomotive or
15 a self-propelled vehicle run only on rails or tracks, but only if either
16 (1) all such fuel is delivered into a storage facility which is not
17 equipped with a hose or other apparatus by which such fuel can be
18 dispensed into the fuel tank of a motor vehicle and such facility is
19 used only to fuel such locomotives or such self-propelled vehicles, or
20 (2) in accordance with the terms of sale, all such fuel is delivered
21 directly into the tank of a locomotive or self-propelled vehicle.
22 Provided, however, that a sale to a purchaser who will use such
23 NON-HIGHWAY diesel motor fuel as "railroad diesel" shall be evidenced by
24 a certificate signed by the purchaser stating that such diesel motor
25 fuel will be used and consumed as prescribed in this subdivision and the
26 commissioner may require such other information as the commissioner
27 deems appropriate.

28 (m) "Manufacturing gallonage" means residual petroleum product or
29 NON-HIGHWAY diesel motor fuel [(which is not enhanced diesel motor
30 fuel)] used and consumed directly and exclusively in the production of
31 tangible personal property for sale by manufacturing, processing or
32 assembly, but only if (I) all of such fuel or product is delivered on
33 the manufacturing site [and is consumed other than on the highways of
34 this state], OR (II) THE PURCHASER CAUSES SUCH FUEL OR PRODUCT TO BE
35 DELIVERED TO ITS MANUFACTURING SITE. "Manufacturing gallonage" shall in
36 no event [include diesel motor fuel] BE CONSUMED ON THE PUBLIC HIGHWAYS
37 OF THIS STATE OR delivered at a filling station or into a repository
38 which is equipped with a hose or other apparatus by which such fuel can
39 be dispensed into the fuel tank of a motor vehicle. The commissioner
40 shall require such documentary proof to substantiate the classification
41 of product as "manufacturing gallonage" as the commissioner deems appro-
42 priate.

43 S 18. Section 301 of the tax law is REPEALED.

44 S 19. Subdivision (a), paragraph 1 of subdivision (b) and subdivisions
45 (c), (e), (f) and (h) of section 301-a of the tax law, subdivision (a)
46 as amended by section 1 of part U of chapter 63 of the laws of 2000,
47 paragraph 1 of subdivision (b) and paragraph 1 of subdivision (c) as
48 amended by section 154 of part A of chapter 389 of the laws of 1997,
49 subdivisions (c), (e), (f) and (h) as added by chapter 190 of the laws
50 of 1990, paragraph 3 of subdivision (e) and paragraph 3 of subdivision
51 (f) as amended by chapter 170 of the laws of 1994 and paragraph 4 of
52 subdivision (e) and paragraph 4 of subdivision (f) as added by chapter
53 309 of the laws of 1996, are amended to read as follows:

54 (a) General. Notwithstanding any other provision of this chapter, or
55 of any other law, [for taxable months commencing on or after the first
56 day of September, nineteen hundred ninety,] there is hereby imposed upon

1 every petroleum business for the privilege of engaging in business,
2 doing business, employing capital, owning or leasing property, or main-
3 taining an office in this state, a monthly tax for each or any part of a
4 taxable month equal to the sum of the motor fuel component determined
5 pursuant to subdivision (b) of this section, the [automotive-type] HIGH-
6 WAY diesel motor fuel component determined pursuant to paragraph one of
7 subdivision (c) of this section, the [nonautomotive-type] NON-HIGHWAY
8 diesel motor fuel component determined pursuant to paragraph two of
9 subdivision (c) of this section and the residual petroleum product
10 component determined pursuant to subdivision (d) of this section.

11 (1) The motor fuel component shall be determined by multiplying the
12 motor fuel and [automotive-type] HIGHWAY diesel motor fuel rate times
13 the number of gallons of (1) motor fuel imported or caused to be
14 imported into this state by the petroleum business for use, distrib-
15 ution, storage or sale in the state or (2) produced, refined, manufac-
16 tured or compounded in the state by the petroleum business during the
17 month covered by the return under this article. Provided, however, that
18 no motor fuel shall be included in the measure of the tax unless it
19 shall have previously come to rest within the meaning of federal deci-
20 sional law interpreting the United States constitution, nor shall any
21 motor fuel be included in the measure of the tax imposed by this article
22 more than once.

23 (c) (1) [Automotive-type] HIGHWAY Diesel motor fuel component. (A) The
24 [automotive-type] HIGHWAY diesel motor fuel component shall be deter-
25 mined by multiplying the motor fuel and [automotive-type] HIGHWAY diesel
26 motor fuel rate times (1) the number of gallons of [automotive-type]
27 HIGHWAY diesel motor fuel sold or used by a petroleum business in this
28 state during the month covered by the return under this article and (2)
29 with respect to any gallonage which prior thereto has not been included
30 in the measure of the tax imposed by this article, times the number of
31 gallons of HIGHWAY diesel motor fuel delivered (i) to a filling station
32 or (ii) into the fuel tank connecting with the engine of a motor vehicle
33 for use in the operation thereof, whichever of the latter two events
34 shall be the first to occur. Provided, however, that no HIGHWAY diesel
35 motor fuel shall be included in the measure of the tax unless it shall
36 have previously come to rest within the meaning of federal decisional
37 law interpreting the United States constitution, nor decisional law, nor
38 shall any HIGHWAY diesel motor fuel be included in the measure of the
39 tax imposed by this article more than once.

40 (B) [Diesel] HIGHWAY DIESEL motor fuel brought into this state in the
41 fuel tank connecting with the engine of a vessel propelled by the use of
42 such diesel motor fuel shall be deemed to constitute a taxable use of
43 diesel motor fuel for the purpose of this paragraph to the extent of the
44 fuel that is consumed in the operation of the vessel in this state.
45 Provided, however, this paragraph shall not apply to (i) a recreational
46 motor boat or (ii) [subsequent to August thirty-first, nineteen hundred
47 ninety-four,] a commercial fishing vessel (as defined in subdivision (j)
48 of section three hundred of this article) if the diesel motor fuel
49 imported into and consumed in this state is used to operate such commer-
50 cial fishing vessel while it is engaged in the harvesting of fish for
51 sale. Provided, further, that tax liability for gallonage that a vessel
52 consumes in this state shall be the tax liability with respect to the
53 positive difference between the gallonage consumed in this state during
54 the reporting period and the gallonage purchased in this state (upon
55 which the tax imposed by this section has been paid) during such period.
56 A credit or refund shall be available for any excess of tax liability

1 for gallonage purchased in this state during the period over tax liabil-
2 ity on gallonage so consumed in this state during such period, which
3 excess shall be presumed to have been used outside this state.

4 (2) [Nonautomotive-type] NON-HIGHWAY diesel motor fuel component. The
5 [nonautomotive-type] NON-HIGHWAY diesel fuel component shall be deter-
6 mined by multiplying the [nonautomotive-type] NON-HIGHWAY diesel motor
7 fuel rate times the number of gallons of [nonautomotive-type] NON-HIGH-
8 WAY diesel motor fuel sold or used by a petroleum business in this state
9 during the month covered by the return under this section. Provided,
10 however, that no NON-HIGHWAY diesel motor fuel shall be included in the
11 measure of the tax unless it shall have previously come to rest within
12 the meaning of federal decisional law interpreting the United States
13 constitution, nor shall any [nonautomotive-type] NON-HIGHWAY diesel
14 motor fuel be included in the measure of the tax imposed by this article
15 more than once.

16 (e) Motor fuel and [automotive-type] HIGHWAY diesel motor fuel rate.

17 (1) The basic motor fuel and HIGHWAY diesel [automotive-type] motor fuel
18 rate shall be [five and one-half] TEN AND TWO-TENTHS cents per gallon.

19 (2) [Commencing April first, nineteen hundred ninety-one, the motor
20 fuel and automotive-type diesel motor fuel rate shall be the product of
21 the basic rate set forth in paragraph one of this subdivision multiplied
22 by a fraction, the numerator of which is the sum of the monthly producer
23 price index (unadjusted) published by the bureau of labor statistics of
24 the United States department of labor for the category of commodities
25 designated "refined petroleum products" for the twelve consecutive
26 months ending with the month of November, nineteen hundred ninety, and
27 the denominator of which is the sum of the monthly producer price index
28 (unadjusted) published by the bureau of labor statistics of the United
29 States department of labor for the category of commodities designated
30 "refined petroleum products" for the twelve consecutive months ending
31 with the month of November, nineteen hundred eighty-nine.

32 (3) Commencing on the first day of January, nineteen hundred ninety-
33 two, the motor fuel and automotive-type diesel motor fuel rate then in
34 effect on the immediately preceding December thirty-first shall be
35 adjusted as follows: such rate shall be multiplied by a fraction the
36 numerator of which is the sum of the monthly producer price index (unad-
37 justed) published by the bureau of labor statistics of the United States
38 department of labor for the category of commodities designated "refined
39 petroleum products" for the twelve consecutive months ending with the
40 month of August, nineteen hundred ninety-one and the denominator of
41 which is the sum of the monthly producer price index (unadjusted)
42 published by the bureau of labor statistics of the United States depart-
43 ment of labor for the category of commodities designated "refined petro-
44 leum products" for the twelve consecutive months ending with the month
45 of August, nineteen hundred ninety. Commencing on the first day of Janu-
46 ary of nineteen hundred ninety-six and every] EVERY year [thereafter] AS
47 OF JANUARY FIRST, the motor fuel and [automotive-type] HIGHWAY diesel
48 motor fuel rate then in effect on the immediately preceding December
49 thirty-first shall be adjusted as follows: such rate shall be multiplied
50 by a fraction the numerator of which is the sum of the monthly producer
51 price index (unadjusted) published by the bureau of labor statistics of
52 the United States department of labor for the category of commodities
53 designated "refined petroleum products" for the twelve consecutive
54 months ending with the month of August of the immediately preceding year
55 and the denominator of which is the sum of the monthly producer price
56 index (unadjusted) published by the bureau of labor statistics of the

1 United States department of labor for the category of commodities desig-
2 nated "refined petroleum products" for the twelve consecutive months
3 ending with the month of August in the year prior to such immediately
4 preceding year, provided, however, that the adjusted rate [to take
5 effect on January first, nineteen hundred ninety-six and each January
6 first thereafter] shall not increase above or decrease below the rate in
7 effect on the immediately preceding December thirty-first by more than
8 five percent.

9 [(4)] (3) Notwithstanding any other provision of this article,
10 [commencing January first, nineteen hundred ninety-seven,] the per
11 gallon rate with respect to "railroad diesel" shall be the adjusted
12 motor fuel and [automotive-type] HIGHWAY diesel motor fuel rate under
13 paragraphs one [through three] AND TWO of this subdivision [for the
14 period commencing such January first, nineteen hundred ninety-seven,]
15 minus one and three tenths cents per gallon. [Commencing on the first
16 day of January each year thereafter, the per gallon rate with respect to
17 "railroad diesel" shall be determined by taking the then motor fuel and
18 automotive-type diesel motor fuel rate under paragraphs one through
19 three of this subdivision which commences on such first day of January
20 and subtracting one and three tenths cents per gallon.]

21 (f) [Nonautomotive-type] NON-HIGHWAY diesel motor fuel rate.

22 (1) The basic [nonautomotive-type] NON-HIGHWAY diesel motor fuel rate
23 shall be [five] NINE AND THREE-TENTHS cents per gallon.

24 (2) [Commencing April first, nineteen hundred ninety-one, the nonauto-
25 motive-type diesel motor fuel rate shall be the product of the basic
26 rate set forth in paragraph one of this subdivision multiplied by a
27 fraction the numerator of which is the sum of the monthly producer price
28 index (unadjusted) published by the bureau of labor statistics of the
29 United States department of labor for the category of commodities desig-
30 nated "refined petroleum products" for the twelve consecutive months
31 ending with the month of November, nineteen hundred ninety, and the
32 denominator of which is the sum of the monthly producer price index
33 (unadjusted) published by the bureau of the labor statistics of the
34 United States department of labor for the category of commodities desig-
35 nated "refined petroleum products" for the twelve consecutive months
36 ending with the month of November, nineteen hundred eighty-nine.

37 (3) Commencing on the first day of January, nineteen hundred ninety-
38 two, the nonautomotive-type diesel motor fuel rate then in effect on the
39 immediately preceding December thirty-first shall be adjusted as
40 follows: Such rate shall be multiplied by a fraction the numerator of
41 which is the sum of the monthly producer price index (unadjusted)
42 published by the bureau of labor statistics of the United States depart-
43 ment of labor for the category of commodities designated "refined petro-
44 leum products" for the twelve consecutive months ending with the month
45 of August, nineteen hundred ninety-one and the denominator of which is
46 the sum of the monthly producer price index (unadjusted) published by
47 the bureau of labor statistics of the United States department of labor
48 for the category of commodities designated "refined petroleum products"
49 for the twelve consecutive months ending with the month of August, nine-
50 teen hundred ninety. Commencing on the first day of January of nineteen
51 hundred ninety-six and every] EVERY year [thereafter,] AS OF JANUARY
52 FIRST the [nonautomotive-type] NON-HIGHWAY diesel motor fuel rate then
53 in effect on the immediately preceding December thirty-first shall be
54 adjusted as follows: Such rate shall be multiplied by a fraction the
55 numerator of which is the sum of the monthly producer price index (unad-
56 justed) published by the bureau of labor statistics of the United States

1 department of labor for the category of commodities designated "refined
2 petroleum products" for the twelve consecutive months ending with the
3 month of August of the immediately preceding year and the denominator of
4 which is the sum of the monthly producer price index (unadjusted)
5 published by the bureau of labor statistics of the United States depart-
6 ment of labor for the category of commodities designated "refined petro-
7 leum products" for the twelve consecutive months ending with the month
8 of August in the year prior to such immediately preceding year,
9 provided, however, that the adjusted rate [to take effect on January
10 first, nineteen hundred ninety-six and each January first thereafter]
11 shall not increase above or decrease below the rate in effect on the
12 immediately preceding December thirty-first by more than five percent.

13 [(4)] (3) Notwithstanding any other provision of this article,
14 [commencing January first, nineteen hundred ninety-eight, nonautomo-
15 tive-type] NON-HIGHWAY diesel motor fuel which is "manufacturing gallo-
16 nage," as such term is defined in subdivision (m) of section three
17 hundred of this article, shall be exempt from the measure of the [nonau-
18 tomotive-type] NON-HIGHWAY diesel motor fuel component of the tax
19 imposed under this section.

20 (h) Publication and rounding of rate. (1) The commissioner [of taxa-
21 tion and finance] shall cause to be published in the section for miscel-
22 laneous notices in the state register, and give other appropriate gener-
23 al notice of, the rate adjustment calculation and the resulting motor
24 fuel and [automotive-type] HIGHWAY diesel motor fuel rate, [nonautomo-
25 tive-type] NON-HIGHWAY diesel motor fuel rate and residual petroleum
26 product rate fixed by this section for the period commencing on [April
27 first, nineteen hundred ninety-one, no later than the immediately
28 preceding first day of March] JANUARY FIRST, TWO THOUSAND TWELVE, and
29 for each calendar year thereafter, no later than the immediately preced-
30 ing first day of December. The calculation and publication of the rates
31 of tax so fixed by provisions of this section shall not be included
32 within paragraph (a) of subdivision two of section one hundred two of
33 the state administrative procedure act relating to the definition of a
34 rule.

35 (2) The rates determined pursuant to this section shall be rounded to
36 the nearest one-tenth of one cent.

37 S 19-a. Subdivision (k) of section 301-a of the tax law is REPEALED.

38 S 20. Section 301-a of the tax law is amended by adding a new subdivi-
39 sion (m) to read as follows:

40 (M) SPECIAL PROVISION RELATING TO VESSELS. NOTWITHSTANDING ANY
41 PROVISION OF THIS SECTION TO THE CONTRARY, THE USE OF NON-HIGHWAY DIESEL
42 MOTOR FUEL IN THE ENGINE OF A VESSEL TO PROPEL SUCH VESSEL SHALL BE
43 SUBJECT TO TAX AT THE MOTOR FUEL AND HIGHWAY DIESEL MOTOR FUEL RATE
44 PROVIDED FOR IN THIS SECTION, AND SHALL BE SUBJECT TO THE PROVISIONS OF
45 SECTION THREE HUNDRED ONE-J OF THIS ARTICLE, INCLUDING THE ADJUSTMENT
46 SET FORTH IN PARAGRAPH FOUR OF SUBDIVISION (A) OF SUCH SECTION THREE
47 HUNDRED ONE-J. A CREDIT OR REFUND SHALL BE AVAILABLE TO THE EXTENT TAX
48 PAID ON GALLONAGE USED TO PROPEL ANY SUCH VESSEL EXCEEDS THE AMOUNT OF
49 TAX DUE BASED ON THE TAX RATE SET FORTH HEREIN. PROVIDED, THIS SUBDIVI-
50 SION SHALL NOT APPLY TO (A) A RECREATIONAL MOTOR BOAT, OR (B) A COMMER-
51 CIAL FISHING VESSEL (AS DEFINED IN SUBDIVISION (J) OF SECTION THREE
52 HUNDRED OF THIS ARTICLE) IF THE NON-HIGHWAY DIESEL MOTOR FUEL IS USED TO
53 OPERATE SUCH COMMERCIAL FISHING VESSEL WHILE IT IS ENGAGED IN THE
54 HARVESTING OF FISH FOR SALE. PROVIDED, HOWEVER, THAT THE COMMISSIONER
55 SHALL REQUIRE SUCH DOCUMENTARY PROOF TO QUALIFY FOR ANY CREDIT OR
56 REIMBURSEMENT PROVIDED HEREUNDER AS THE COMMISSIONER DEEMS APPROPRIATE.

1 S 21. Paragraph 2 of subdivision (b), paragraphs 2 and 3 of subdivi-
2 sion (c), subdivisions (d) and (e), paragraph 1 of subdivision (f) and
3 subdivisions (g), (h) and (i) of section 301-b of the tax law, paragraph
4 2 of subdivision (b) and paragraphs 2 and 3 of subdivision (c) and
5 subdivision (e) as added by chapter 190 of the laws of 1990, the opening
6 paragraph of paragraph 2 of subdivision (b) as amended by section 155 of
7 part A of chapter 389 of the laws of 1997, subdivision (d) as amended by
8 section 2 of part H of chapter 407 of the laws of 1999 and subparagraph
9 (C) of paragraph 2 of subdivision (d) as amended by section 1 of part X
10 of chapter 63 of the laws of 2000, paragraph 1 of subdivision (f) as
11 added by chapter 166 of the laws of 1991, subdivision (g) as added by
12 chapter 170 of the laws of 1994, subdivision (h) as amended by chapter
13 302 of the laws of 2006 and subdivision (i) as added by chapter 468 of
14 the laws of 2000, are amended to read as follows:

15 (2) [Enhanced] HIGHWAY diesel motor fuel imported or caused to be
16 imported into this state or produced, refined, manufactured or
17 compounded in this state by a petroleum business registered under arti-
18 cle twelve-A of this chapter, as a distributor of diesel motor fuel,
19 which is sold by such petroleum business to a purchaser who then exports
20 such HIGHWAY diesel motor fuel from this state for sale or use outside
21 the state where

22 (A) such purchaser exporting such fuel is duly registered with or
23 licensed by the taxing authorities of the state to which such fuel is
24 exported as a distributor or a dealer in the product being so exported,

25 (B) in connection with the exportation, such fuel was immediately
26 shipped to an identified facility in the state to which such fuel is
27 exported, and

28 (C) the rules and regulations of the commissioner [of taxation and
29 finance] relating to evidentiary requirements are complied with.

30 (2) [Enhanced] HIGHWAY diesel motor fuel imported or caused to be
31 imported into this state or produced, refined, manufactured or
32 compounded by a petroleum business registered under article twelve-A of
33 this chapter, as a distributor of diesel motor fuel, and then sold by
34 such petroleum business to an organization described in paragraph one or
35 two of subdivision (a) of section eleven hundred sixteen of this chapter
36 where such HIGHWAY DIESEL motor fuel is used by such organization for
37 its own use or consumption.

38 (3) NON-HIGHWAY Diesel motor fuel[, which is not enhanced diesel motor
39 fuel,] sold by a petroleum business registered under article twelve-A of
40 this chapter as a distributor of diesel motor fuel to an organization
41 described in paragraph one or two of subdivision (a) of section eleven
42 hundred sixteen of this chapter where such NON-HIGHWAY diesel motor fuel
43 is used by such organization for its own use or consumption.

44 (d) Sales to consumers for heating purposes. (1) Total residential
45 heating exemption. [(A) Unenhanced] NON-HIGHWAY diesel motor fuel sold
46 by a petroleum business registered under article twelve-A of this chap-
47 ter as a distributor of diesel motor fuel or residual petroleum product
48 sold by a petroleum business registered under this article as a residual
49 petroleum product business to the consumer exclusively for residential
50 heating purposes[.

51 (B) Enhanced diesel motor fuel sold by a petroleum business registered
52 under article twelve-A of this chapter as a distributor of diesel motor
53 fuel to the consumer exclusively for residential heating purposes but]
54 only if such [enhanced] NON-HIGHWAY diesel motor fuel is delivered into
55 a storage tank which is not equipped with a hose or other apparatus by
56 which such fuel can be dispensed into the fuel tank of a motor vehicle

1 and such storage tank is attached to the heating unit burning such
2 fuel[, provided, that with respect to each delivery of such fuel over
3 four thousand five hundred gallons, to obtain this exemption there shall
4 be required a certificate signed by the purchaser stating that the prod-
5 uct will be used exclusively for residential heating purposes].

6 (2) Partial non-residential heating exemption. (A) [Unenhanced]
7 NON-HIGHWAY diesel motor fuel sold by a petroleum business registered
8 under article twelve-A of this chapter as a distributor of diesel motor
9 fuel or residual petroleum product sold by a petroleum business regis-
10 tered under this article as a residual petroleum product business to the
11 consumer exclusively for heating, other than residential heating
12 purposes.

13 (B) [Enhanced diesel motor fuel sold by a petroleum business regis-
14 tered under article twelve-A of this chapter as a distributor of diesel
15 motor fuel to the consumer exclusively for heating, other than residen-
16 tial heating purposes, but] only if such [enhanced] NON-HIGHWAY diesel
17 motor fuel is delivered into a storage tank which is not equipped with a
18 hose or other apparatus by which such fuel can be dispensed into the
19 fuel tank of a motor vehicle and such storage tank is attached to the
20 heating unit burning such fuel[, provided, that with respect to each
21 delivery of such fuel over four thousand five hundred gallons, to obtain
22 this exemption there shall be required a certificate signed by the
23 purchaser stating that the product will be used exclusively for heating,
24 other than residential heating purposes.

25 (C)] Calculation of partial exemption. [Notwithstanding any other
26 provision of this article, commencing April first, two thousand one and
27 ending August thirty-first, two thousand two, the amount of the partial
28 exemption under this paragraph shall be determined by multiplying the
29 quantity of diesel motor fuel and residual petroleum product eligible
30 for the exemption times the sum of the then current rate of the supple-
31 mental tax imposed by section three hundred one-j of this article and
32 twenty percent of the then current rate of the tax imposed by section
33 three hundred one-a of this article, with respect to the specific diesel
34 motor fuel or residual petroleum product rate, as the case may be, and
35 commencing September first, two thousand two, the amount of the] THE
36 partial exemption under this paragraph shall be determined by multiply-
37 ing the quantity of NON-HIGHWAY diesel motor fuel and residual petroleum
38 product eligible for the exemption times the sum of the then current
39 rate of the supplemental tax imposed by section three hundred one-j of
40 this article and forty-six percent of the then current rate of the tax
41 imposed by section three hundred one-a of this article, with respect to
42 the specific NON-HIGHWAY diesel motor fuel or residual petroleum product
43 rate, as the case may be.

44 (e) Sales of NON-HIGHWAY diesel motor fuel and residual petroleum
45 product to registered distributors of diesel motor fuel and registered
46 residual petroleum product businesses.

47 (1) NON-HIGHWAY Diesel motor fuel[, which is not enhanced diesel motor
48 fuel,] sold by a person registered under article twelve-A of this chap-
49 ter as a distributor of diesel motor fuel to a person registered under
50 such article twelve-A as a distributor of diesel motor fuel where such
51 sale is not a retail sale or a sale that involves a delivery at a fill-
52 ing station or into a repository equipped with a hose or other apparatus
53 by which such NON-HIGHWAY DIESEL MOTOR fuel can be dispensed into the
54 fuel tank of a motor vehicle.

55 (2) Residual petroleum product sold by a person registered under this
56 article as a residual petroleum product business to a person registered

1 under this article as a residual petroleum product business where such
2 sale is not a retail sale. Provided, however, that the commissioner [of
3 taxation and finance] may require such documentary proof to qualify for
4 any exemption provided in this section as the commissioner deems appro-
5 priate, including the expansion of any certifications required pursuant
6 to section two hundred eighty-five-a or two hundred eighty-five-b of
7 this chapter to cover the taxes imposed by this article.

8 (1) Residual petroleum product and NON-HIGHWAY diesel motor fuel
9 [(which is not enhanced diesel motor fuel)] sold to an electric corpo-
10 ration, as described in subdivision (a) of section three hundred one-d
11 of this article, which is registered with the department [of taxation
12 and finance] as a petroleum business tax direct pay permittee, and used
13 by such electric corporation to fuel generators for the purpose of manu-
14 facturing or producing electricity where such electric corporation
15 provides a copy of a direct pay permit authorized and issued by the
16 commissioner [of taxation and finance], to the petroleum business making
17 such sale. If so registered, such corporation shall be a taxpayer under
18 this article and (i) such electric corporation shall file a return
19 monthly and pay the applicable tax under this article, after the appli-
20 cation of allowable credits, on all such purchases directly to the
21 commissioner, (ii) such electric corporation shall be subject to all of
22 the provisions of this article relating to the responsibilities and
23 liabilities of taxpayers under this article with respect to such resi-
24 dual petroleum product and NON-HIGHWAY diesel motor fuel.

25 (g) Sales or uses of NON-HIGHWAY diesel motor fuel and residual petro-
26 leum product for farm production. NON-HIGHWAY Diesel motor fuel or resi-
27 dual petroleum product sold to or used by a consumer who purchases or
28 uses such NON-HIGHWAY DIESEL MOTOR fuel or product for use or consump-
29 tion directly and exclusively in the production for sale of tangible
30 personal property by farming, but only if all such NON-HIGHWAY DIESEL
31 MOTOR fuel or product is delivered on the farm site and is consumed
32 other than on the PUBLIC highways of this state (except for the use of
33 the PUBLIC highway to reach adjacent farmlands)[; provided, however,
34 that a farmer may purchase no more than four thousand five hundred
35 gallons of diesel motor fuel in a thirty-day period for such use or
36 consumption exempt from the measure of the tax imposed by section three
37 hundred one-a of this article, except in accordance with prior clearance
38 given by the commissioner].

39 (h) Exemption for certain not-for-profit organizations. There shall be
40 exempt from the measure of the petroleum business tax imposed by section
41 three hundred one-a of this article a sale or use of residual petroleum
42 product, OR NON-HIGHWAY diesel motor fuel [(which is not enhanced diesel
43 motor fuel) or dyed diesel motor fuel,] to or by an organization which
44 has qualified under paragraph four or five of subdivision (a) of section
45 eleven hundred sixteen of this chapter where such NON-HIGHWAY diesel
46 motor fuel or residual petroleum product is exclusively for use and
47 consumption by such organization, but only if all of such NON-HIGHWAY
48 diesel motor fuel or product is consumed other than on the PUBLIC high-
49 ways of this state. Provided, however, this exemption shall in no event
50 apply to a sale of NON-HIGHWAY diesel motor fuel which involves a deliv-
51 ery at a filling station or into a repository which is equipped with a
52 hose or other apparatus by which such NON-HIGHWAY DIESEL MOTOR fuel can
53 be dispensed into the fuel tank of a motor vehicle and all deliveries
54 hereunder shall be made to the premises occupied by the qualifying
55 organization and used by such organization in furtherance of the exempt
56 purposes of such organization. Provided, however, that the commissioner

1 shall require such documentary proof to qualify for any exemption
2 provided herein as the commissioner deems appropriate. Provided,
3 further, the distributor selling such NON-HIGHWAY DIESEL MOTOR fuel and
4 product shall separately report on its return the gallonage sold during
5 the reporting period exempt from tax under the provisions of this subdivi-
6 sion and provide such other information with respect to such sales as
7 the commissioner deems appropriate to prevent evasion. [The term "dyed
8 diesel motor fuel" as used in this subdivision shall have the same mean-
9 ing it has in subdivision eighteen of section two hundred eighty-two of
10 this chapter.]

11 (i) Exemption for passenger commuter ferries. A use by a passenger
12 commuter ferry of NON-HIGHWAY diesel motor fuel or residual petroleum
13 product where such NON-HIGHWAY diesel motor fuel or residual petroleum
14 product was used and consumed by a passenger commuter ferry exclusively
15 in providing mass transportation service. Provided, that the commission-
16 er shall require such documentary proof to qualify for any exemption
17 provided hereunder as the commissioner deems appropriate.

18 S 22. Subdivision (j) of section 301-b of the tax law is REPEALED.

19 S 23. Subdivisions (a), (e), (f), (h), (i), (j), (k), (l) and (m) of
20 section 301-c of the tax law, subdivision (a) as amended by section 4
21 and subdivision (l) as added by section 5 of part H of chapter 407 of
22 the laws of 1999, subparagraph (B) of paragraph 2 of subdivision (a) as
23 amended by section 2 of part X of chapter 63 of the laws of 2000, subdivi-
24 sions (e) and (f) as added by chapter 170 of the laws of 1994, subdivi-
25 sion (h) as amended by chapter 302 of the laws of 2006, subdivisions
26 (i), (j) and (k) as added by chapter 309 of the laws of 1996, and subdivi-
27 sion (m) as added by chapter 468 of the laws of 2000, are amended to
28 read as follows:

29 (a) NON-HIGHWAY Diesel motor fuel used for heating purposes. (1) Total
30 residential heating reimbursement. NON-HIGHWAY Diesel motor fuel
31 purchased in this state and sold by such purchaser to a consumer for use
32 exclusively for residential heating purposes but only where (i) such
33 NON-HIGHWAY diesel motor fuel is delivered into a storage tank which is
34 not equipped with a hose or other apparatus by which such NON-HIGHWAY
35 DIESEL MOTOR fuel can be dispensed into the fuel tank of a motor vehicle
36 and such storage tank is attached to the heating unit burning such NON-
37 HIGHWAY DIESEL MOTOR fuel, (ii) the tax imposed pursuant to this article
38 has been paid with respect to such NON-HIGHWAY diesel motor fuel and the
39 entire amount of such tax has been absorbed by such purchaser, and (iii)
40 such purchaser possesses documentary proof satisfactory to the commis-
41 sioner evidencing the absorption by it of the entire amount of the tax
42 imposed pursuant to this article. Provided, however, that the commis-
43 sioner is authorized, in the event that the commissioner determines that
44 it would not threaten the integrity of the administration and enforce-
45 ment of the tax imposed by this article, to provide a reimbursement with
46 respect to a retail sale to a consumer for residential heating purposes
47 of less than ten gallons of NON-HIGHWAY diesel motor fuel provided such
48 fuel is not dispensed into the tank of a motor vehicle. [Provided,
49 further, that with respect to each delivery of enhanced diesel motor
50 fuel of over four thousand five hundred gallons, to obtain this
51 reimbursement there shall be required a certificate signed by the
52 consumer stating that the product will be used exclusively for residen-
53 tial heating purposes.]

54 (2) Partial non-residential heating reimbursement. (A) NON-HIGHWAY
55 Diesel motor fuel purchased in this state and sold by such purchaser to
56 a consumer for use exclusively for heating, other than for residential

1 heating purposes, but only where (i) such NON-HIGHWAY diesel motor fuel
2 is delivered into a storage tank which is not equipped with a hose or
3 other apparatus by which such NON-HIGHWAY DIESEL MOTOR fuel can be
4 dispensed into the fuel tank of a motor vehicle and such storage tank is
5 attached to the heating unit burning such NON-HIGHWAY DIESEL MOTOR fuel,
6 (ii) the tax imposed pursuant to this article has been paid with respect
7 to such NON-HIGHWAY diesel motor fuel and the entire amount of such tax
8 has been absorbed by such purchaser, and (iii) such purchaser possesses
9 documentary proof satisfactory to the commissioner evidencing the
10 absorption by it of the entire amount of the tax imposed pursuant to
11 this article. [Provided, however, that with respect to each delivery of
12 enhanced diesel motor fuel of over four thousand five hundred gallons,
13 to obtain this reimbursement there shall be required a certificate
14 signed by the consumer stating that the product will be used exclusively
15 for heating, other than for residential heating purposes.]

16 (B) Calculation of partial reimbursement. Notwithstanding any other
17 provision of this article, [commencing April first, two thousand one and
18 ending August thirty-first, two thousand two, the amount of the
19 reimbursement under this paragraph shall be determined by multiplying
20 the quantity of diesel motor fuel eligible for the reimbursement times
21 the sum of the then current rate of the supplemental tax imposed by
22 section three hundred one-j of this article and twenty percent of the
23 then current rate of the tax imposed by section three hundred one-a of
24 this article, with respect to the specific diesel motor fuel rate, as
25 the case may be, and commencing September first, two thousand two,] the
26 amount of the reimbursement under this paragraph shall be determined by
27 multiplying the quantity of NON-HIGHWAY diesel motor fuel eligible for
28 the reimbursement times the sum of the then current rate of the supple-
29 mental tax imposed by section three hundred one-j of this article and
30 forty-six percent of the then current rate of the tax imposed by section
31 three hundred one-a of this article, with respect to the [specific]
32 NON-HIGHWAY diesel motor fuel rate, as the case may be.

33 (e) NON-HIGHWAY Diesel motor fuel and residual petroleum product used
34 for farm production. NON-HIGHWAY Diesel motor fuel or residual petroleum
35 product purchased in this state and sold by such purchaser to a consumer
36 for use or consumption directly and exclusively in the production for
37 sale of tangible personal property by farming, but only if all of such
38 NON-HIGHWAY DIESEL MOTOR fuel or product is delivered on the farm site
39 and is consumed other than on the PUBLIC highways of this state (except
40 for the use of the PUBLIC highway to reach adjacent farmlands)[;
41 provided, however, that a subsequent purchaser shall be eligible for
42 this reimbursement with respect to no more than four thousand five
43 hundred gallons of diesel motor fuel sold to a consumer in a thirty-day
44 period for such use or consumption, except in accordance with prior
45 clearance given by the commissioner]. This reimbursement may be claimed
46 only where (i) the tax imposed pursuant to this article has been paid
47 with respect to such NON-HIGHWAY diesel motor fuel or residual petroleum
48 product and the entire amount of such tax has been absorbed by such
49 purchaser, and (ii) such purchaser possesses documentary proof satisfac-
50 tory to the commissioner evidencing the absorption by it of the entire
51 amount of the tax imposed pursuant to this article. Provided, however,
52 that the commissioner shall require such documentary proof to qualify
53 for any reimbursement of tax provided by this section as the commission-
54 er deems appropriate[, including any certification required pursuant to
55 section two hundred eighty-five-b of this chapter and any such prior
56 clearance described in the first sentence of this subdivision].

1 (f) Motor fuel used for farm production. No more than one thousand
2 five hundred gallons of motor fuel purchased in this state in a thirty-
3 day period or a greater amount which has been given prior clearance by
4 the commissioner, by a consumer for use or consumption directly and
5 exclusively in the production for sale of tangible personal property by
6 farming, but only if all of such fuel is delivered on the farm site and
7 is consumed other than on the PUBLIC highways of this state (except for
8 the use of the highway to reach adjacent farmlands). This reimbursement
9 to such purchaser who used such motor fuel in the manner specified in
10 this subdivision may be claimed only where, (i) the tax imposed pursuant
11 to this article has been paid with respect to such motor fuel and the
12 entire amount of such tax has been absorbed by such purchaser, and (ii)
13 such purchaser possesses documentary proof satisfactory to the commis-
14 sioner evidencing the absorption by it of the entire amount of the tax
15 imposed pursuant to this article. Provided, however, that the commis-
16 sioner shall require such documentary proof to qualify for any
17 reimbursement of tax provided by this subdivision as the commissioner
18 deems appropriate. The commissioner is hereby empowered to make such
19 provisions as deemed necessary to define the procedures for granting
20 prior clearance for purchases of more than one thousand five hundred
21 gallons in a thirty-day period.

22 (h) A subsequent purchaser which is registered as a distributor of
23 diesel motor fuel shall be eligible for reimbursement of the tax imposed
24 by section three hundred one-a of this article with respect to gallonage
25 of residual petroleum product[,] AND NON-HIGHWAY diesel motor fuel
26 [(which is not enhanced diesel motor fuel) and dyed diesel motor fuel,]
27 subsequently sold by such purchaser to an organization which has quali-
28 fied under paragraph four or five of subdivision (a) of section eleven
29 hundred sixteen of this chapter for the exclusive use and consumption by
30 such organization. Provided, however, this exemption shall in no event
31 apply to a sale of NON-HIGHWAY diesel motor fuel which involves a deliv-
32 ery at a filling station or into a repository which is equipped with a
33 hose or other apparatus by which such NON-HIGHWAY DIESEL MOTOR fuel can
34 be dispensed into the fuel tank of a motor vehicle and all deliveries
35 hereunder shall be made to the premises occupied by the qualifying
36 organization and used by such organization in furtherance of the exempt
37 purposes of such organization. This reimbursement may be claimed only
38 where (i) the tax imposed pursuant to this article has been paid with
39 respect to such NON-HIGHWAY diesel motor fuel or residual petroleum
40 product and the entire amount of such tax has been absorbed by such
41 purchaser, and (ii) such purchaser possesses documentary proof satisfac-
42 tory to the commissioner evidencing the absorption by it of the entire
43 amount of the tax imposed pursuant to this article. Provided, further,
44 that the commissioner shall require such other documentary proof to
45 qualify for any reimbursement of tax provided by this section as the
46 commissioner deems appropriate. [The term "dyed diesel motor fuel" as
47 used in this subdivision shall have the same meaning it has in subdivi-
48 sion eighteen of section two hundred eighty-two of this chapter.]

49 (i) Reimbursement for commercial gallonage. (1) [Commencing March
50 first, nineteen hundred ninety-seven, a] A reimbursement shall be
51 allowed to a consumer with respect to gallonage of [nonautomotive-type]
52 NON-HIGHWAY diesel motor fuel [(which is not enhanced diesel motor
53 fuel)] or residual petroleum product (i) which was purchased by such
54 consumer and where the supplemental tax imposed by section three hundred
55 one-j of this article with respect to such gallonage was paid by a
56 petroleum business and passed through to such consumer, (ii) such

1 consumer absorbed the entirety of such tax in the purchase price of such
2 gallonage, and (iii) such gallonage was used and consumed by such
3 consumer exclusively as "commercial gallonage". Provided, however, that
4 the commissioner shall require such documentary proof to qualify for any
5 reimbursement of tax provided by this subdivision as the commissioner
6 deems appropriate, including a certification by the consumer that the
7 product was used and consumed exclusively as "commercial gallonage" by
8 such consumer.

9 (2) Calculation. The amount of the reimbursement shall be determined
10 by multiplying the quantity of "commercial gallonage" eligible for
11 reimbursement times the then current rate of the supplemental tax
12 imposed by section three hundred one-j of this article with respect to
13 [nonautomotive-type] NON-HIGHWAY diesel motor fuel or residual petroleum
14 product, as the case may be. Any reimbursement of tax may be applied for
15 not more often than monthly.

16 (j) Reimbursement for manufacturing gallonage. [Commencing January
17 first, nineteen hundred ninety-eight, a] A subsequent purchaser shall be
18 eligible for reimbursement of any taxes imposed under this article with
19 respect to gallonage of residual petroleum product and NON-HIGHWAY
20 diesel motor fuel [(which is not enhanced diesel motor fuel),] subse-
21 quently sold by such purchaser to a consumer as "manufacturing gallo-
22 nage." This reimbursement may be claimed only where (1) any tax imposed
23 pursuant to this article has been paid with respect to such gallonage
24 and the entire amount of such tax has been absorbed by such purchaser,
25 and (2) such purchaser possesses documentary proof satisfactory to the
26 commissioner evidencing the absorption by it of the entire amount of
27 such tax. Provided, however, that the commissioner shall require such
28 documentary proof to qualify for any reimbursement of tax provided by
29 this subdivision as the commissioner deems appropriate including a
30 certificate by the consumer that such product is to be used and consumed
31 exclusively as "manufacturing gallonage".

32 (k) Reimbursement for railroad gallonage. (1) [Commencing January
33 first, nineteen hundred ninety-seven,] a subsequent purchaser, which is
34 registered as a distributor of diesel motor fuel, shall be eligible for
35 a reimbursement in accordance with this subdivision with respect to
36 NON-HIGHWAY diesel motor fuel subsequently sold by such purchaser to a
37 consumer as "railroad diesel".

38 (2) The amount of the reimbursement with respect to such product shall
39 be equal to the difference between (i) the tax actually paid under this
40 article by a petroleum business with respect to such product and subse-
41 quently passed through to and absorbed by such purchaser, and (ii) the
42 tax under this article that would have been paid with respect to such
43 product had an importing distributor sold such product directly to a
44 purchaser as "railroad diesel". Provided that the commissioner shall
45 require such documentary proof as the commissioner deems necessary to
46 substantiate a reimbursement claim under this subdivision. Any
47 reimbursement of tax may be applied for not more often than monthly.

48 (l) Reimbursement for mining and extraction. A purchaser shall be
49 eligible for reimbursement of the tax imposed by section three hundred
50 one-a of this article with respect to gallonage of residual petroleum
51 product and NON-HIGHWAY diesel motor fuel, purchased for use and
52 consumption directly and exclusively in the production of tangible
53 personal property for sale by mining or extracting, but only if all of
54 such fuel or product is delivered at the mining or extracting site and
55 is consumed other than on the PUBLIC highways of this state; provided,
56 however, this reimbursement shall in no event apply to a sale of

1 NON-HIGHWAY diesel motor fuel which involves a delivery at a filling
2 station. This reimbursement may be claimed only where (i) the tax
3 imposed pursuant to this article has been paid with respect to such
4 NON-HIGHWAY diesel motor fuel or residual petroleum product and the
5 entire amount of such tax has been absorbed by such purchaser, and (ii)
6 such purchaser possesses documentary proof satisfactory to the commis-
7 sioner evidencing the absorption by it of the entire amount of the tax
8 imposed pursuant to this article. Provided, however, that the commis-
9 sioner shall require such documentary proof to qualify for any
10 reimbursement of tax provided by this section as the commissioner deems
11 appropriate.

12 (m) Reimbursement for passenger commuter ferries. A use by a passenger
13 commuter ferry of NON-HIGHWAY diesel motor fuel or residual petroleum
14 product where such NON-HIGHWAY diesel motor fuel or residual petroleum
15 product was used and consumed by a passenger commuter ferry exclusively
16 in providing mass transportation service. This reimbursement may be
17 claimed only where (1) any tax imposed pursuant to this article has been
18 paid with respect to such gallonage and the entire amount of such tax
19 has been absorbed by such purchaser, and (2) such ferry possesses docu-
20 mentary proof satisfactory to the commissioner evidencing the absorption
21 by it of the entire amount of such tax. Provided, that the commissioner
22 shall require such documentary proof to qualify for any reimbursement
23 provided hereunder as the commissioner deems appropriate.

24 S 24. Paragraphs 1 and 2 of subdivision (a) of section 301-d of the
25 tax law, as amended by chapter 410 of the laws of 1991, are amended to
26 read as follows:

27 (1) Credit. Residual petroleum product and NON-HIGHWAY diesel motor
28 fuel [(which is not enhanced diesel motor fuel)] (i) imported into this
29 state by such electric corporation which is a petroleum business where
30 the tax liability under section three hundred one-a of this article is
31 imposed on such electric corporation and where the residual petroleum or
32 NON-HIGHWAY diesel product so imported is used by such electric corpo-
33 ration to fuel generators for the purpose of manufacturing or producing
34 electricity or (ii) purchased in this state by such electric corporation
35 by the use of a valid direct payment permit whereby such electric corpo-
36 ration assumed full liability for tax with respect to such product where
37 such product so purchased is used by such electric corporation to fuel
38 generators for the purpose of manufacturing or producing electricity.

39 (2) Reimbursement. Residual petroleum product and NON-HIGHWAY diesel
40 motor fuel [(which is not enhanced diesel motor fuel)] purchased in this
41 state by such electric corporation where the tax imposed by section
42 three hundred one-a of this article with respect to such residual petro-
43 leum or diesel product was paid and the utility absorbed such tax in the
44 purchase price of such fuel and where such product is used by such elec-
45 tric corporation to fuel generators for the purpose of manufacturing or
46 producing electricity.

47 S 25. Subdivision (c) of section 301-e of the tax law, as amended by
48 chapter 2 of the laws of 1995, is amended to read as follows:

49 (c) Kero-jet fuel component. The kero-jet fuel component shall be
50 determined by multiplying the kero-jet fuel rate times the number of
51 gallons of (1) kero-jet fuel imported or caused to be imported into this
52 state by an aviation fuel business and consumed in this state by such
53 business in the operation of its aircraft; and (2) kero-jet fuel, which
54 has not been previously included in the measure of the tax imposed by
55 this section, (i) which is sold in this state by an aviation fuel busi-
56 ness to persons other than those registered under this article as

1 aviation fuel businesses or (ii) which is consumed in this state by an
2 aviation fuel business in the operation of its aircraft. Provided that
3 importation of kero-jet fuel in the fuel tanks of aircraft shall be
4 importation for the purposes of this section. The basic kero-jet fuel
5 rate shall be [one and nine-tenths] SIX AND EIGHT-TENTHS cents per
6 gallon. The rate shall be adjusted at the same time as the rates of the
7 components of the petroleum business tax imposed by section three
8 hundred one-a of this article, and the method of making adjustments to
9 the kero-jet fuel rate shall be the same as the method used for such
10 rates. [Provided, however, that commencing July first, nineteen hundred
11 ninety-one, the kero-jet fuel rate shall be equal to the motor fuel and
12 automotive-type diesel motor fuel rate set by subdivision (e) of section
13 three hundred one-a of this article as such rate may be adjusted as
14 provided in such subdivision. Provided, further, that commencing Septem-
15 ber first, nineteen hundred ninety-five, the kero-jet fuel rate shall be
16 five and two-tenths cents per gallon. The rate shall be adjusted at the
17 same time as the rates of the components of the petroleum business tax
18 imposed by section three hundred one-a of this article, and the method
19 of making adjustments to the kero-jet fuel rate shall be the same as the
20 method used for such rates.]

21 S 26. Sections 301-f and 301-g of the tax law are REPEALED.

22 S 27. Paragraph 2 of subdivision (a) of section 301-h of the tax law,
23 as amended by chapter 170 of the laws of 1994, is amended to read as
24 follows:

25 (2) The rate of the tax imposed by this section shall be equal to the
26 motor fuel and [automotive-type] HIGHWAY diesel motor fuel rate set by
27 subdivision (e) of section three hundred one-a plus the rate of the
28 supplemental tax imposed by section three hundred one-j of this article
29 as such rates are specified therein and as they may be adjusted as
30 provided in such provisions. [In addition, the tax surcharge imposed by
31 section three hundred-one-g of this article shall be imposed with
32 respect to the tax imposed by this section as if the tax imposed here-
33 under were imposed by section three hundred-one-a of this article.]

34 S 28. Section 301-i of the tax law is REPEALED.

35 S 29. Paragraphs 1, 2, 3 and 4 of subdivision (a) and subdivision (c)
36 of section 301-j of the tax law, paragraph 1 of subdivision (a) as
37 amended and paragraphs 2, 3 and 4 of subdivision (a) as added by chapter
38 309 of the laws of 1996 and subdivision (c) as amended by chapter 410 of
39 the laws of 1991, are amended to read as follows:

40 (1) In addition to the taxes imposed by sections three hundred one-a
41 and three hundred one-e of this article, [for taxable months commencing
42 on or after July first, nineteen hundred ninety-one] there is hereby
43 imposed upon every petroleum business subject to tax imposed under
44 section three hundred one-a of this article and every aviation fuel
45 business subject to the aviation gasoline component of the tax imposed
46 under section three hundred one-e of this article, a supplemental month-
47 ly tax for each or any part of a taxable month at a rate of [four and
48 one-half] SIX AND EIGHT-TENTHS cents per gallon with respect to the
49 products included in each component of the taxes imposed by such
50 [sections] SECTION three hundred one-a and the aviation gasoline compo-
51 nent of the tax imposed by such section three hundred one-e of this
52 article.

53 (2) Provided, however, [commencing March first, nineteen hundred nine-
54 ty-seven,] "commercial gallonage," as such term is defined in subdivi-
55 sion (k) of section three hundred of this article, shall be exempt from
56 the measure of the tax imposed under this section.

(3) Provided, further, [commencing January first, nineteen hundred ninety-seven,] "railroad diesel," as such term is defined in subdivision (l) of section three hundred of this article, shall be exempt from the measure of the tax imposed under this section.

(4) Provided, further, [commencing January first, nineteen hundred ninety-eight,] a separate per gallon rate shall apply with respect to [automotive-type] HIGHWAY diesel motor fuel. Such rate shall be determined by taking the adjusted rate per gallon of tax imposed under paragraph one of this subdivision as adjusted in accordance with paragraph five of this subdivision [which commences on such date] and subtracting therefrom [three-quarters of one cent. On January first, nineteen hundred ninety-nine, the automotive-type diesel motor fuel rate shall be determined by taking the adjusted rate per gallon of tax imposed under paragraph one of this subdivision, as adjusted in accordance with paragraph five of this subdivision which commences on such date and subtracting therefrom three-quarters of one cent. On April first, nineteen hundred ninety-nine, there shall be a new rate applicable to such fuel which shall be such adjusted rate of tax per gallon under such paragraph one of this subdivision, as adjusted in accordance with paragraph five of this subdivision then in effect, minus] one and three-quarters cents. Commencing January first, two thousand TWELVE, and each January thereafter, the per gallon rate applicable to [automotive-type] HIGHWAY diesel motor fuel shall be the adjusted rate under paragraph one of this subdivision as adjusted in accordance with paragraph five of this subdivision which commences on such date minus one and three-quarters cents. The resulting rate under this paragraph shall be expressed in hundredths of a cent.

(c) Rate adjustment [and surcharge]. [Commencing January first, nineteen hundred ninety-two and on the first day of January every year thereafter, the] THE rate of the supplemental tax shall be adjusted at the same time as the rates of the components of the taxes imposed by sections three hundred one-a and three hundred one-e of this article, and the method of making adjustments to the rate of the supplemental tax shall be the same as the method used for such rates.

S 30. The opening paragraph and subdivisions (a) and (c) of section 301-1 of the tax law, as added by chapter 170 of the laws of 1994, are amended to read as follows:

There shall be allowed to a registered petroleum business or aviation fuel business a refund under this section for the taxes [and tax surcharge] imposed by sections three hundred one-a, three hundred one-e, [three hundred one-g] and three hundred one-j of this article for the tax paid under such sections with respect to gallonage which is represented by a worthless debt as follows:

(a) The refund shall be allowed to a registered petroleum business or aviation fuel business for gallonage with respect to which tax liability for the taxes under this article is imposed on such petroleum business or aviation fuel business where (i) such gallonage has been included in the reports filed by such petroleum business or aviation fuel business and all the taxes under this article with respect to such gallonage have been paid by such business, (ii) such gallonage was sold in-bulk by such petroleum or aviation fuel business to a purchaser for such purchaser's own use and consumption and (iii) such sale gave rise to a debt which became worthless, as that term is used for federal income tax purposes, and where such debt is deducted as a worthless debt for federal income tax purposes for the taxable year covering the month in which such refund claim relating to such debt is filed. Provided, however, for the

1 purposes of this section, a sale of motor fuel and [enhanced] HIGHWAY
2 diesel motor fuel to a filling station shall be deemed to be a sale
3 in-bulk for such filling station's own use and consumption and,
4 provided, further, in no event shall a worthless debt qualify with
5 respect to the refund hereunder where such debt arises from a retail
6 sale at a filling station or sale wherein product is delivered directly
7 into the fuel tank of a motor vehicle, airplane or other conveyance.

8 (c) Upon receipt of a claim for refund in processible form, interest
9 shall be allowed and paid at the overpayment rate set by the commission-
10 er pursuant to subdivision twenty-sixth of section one hundred seventy-
11 one of this chapter from the date of the receipt of the refund claim to
12 the date immediately preceding the date of the refund check except no
13 such interest shall be allowed or paid if the refund check is mailed
14 within ninety days of such receipt and except no interest shall be
15 allowed or paid if the amount thereof would be less than one dollar.
16 Provided, further, the refund shall be granted pro rata against sections
17 three hundred one-a, three hundred one-e, [three hundred one-g] and
18 three hundred one-j of this article, as the case may be, to the same
19 extent as represented by the remittance of the petroleum business or
20 aviation fuel business with respect to the gallonage represented by the
21 worthless debt.

22 S 31. Subdivision (b) of section 302 of the tax law, as added by chap-
23 ter 190 of the laws of 1990, is amended to read as follows:

24 (b) Residual petroleum product business. The department [of taxation
25 and finance], upon the application of a corporation or unincorporated
26 business, shall register such corporation or unincorporated business as
27 a residual petroleum product business except that the commissioner [of
28 taxation and finance] may refuse to register an applicant for any of the
29 grounds specified in subdivision two or five of section two hundred
30 eighty-three of this chapter or in subdivision (d) of this section. The
31 application shall be in such form and contain such information as the
32 commissioner shall prescribe. All of the provisions of subdivisions two,
33 four, five, six, seven, eight, nine and ten of section two hundred
34 eighty-three of this chapter relating to registration of distributors
35 shall be applicable to the registration of residual petroleum product
36 businesses under this section with the same force and effect as if the
37 language of those subdivisions had been incorporated in full in this
38 section and had expressly referred to the registration of residual
39 petroleum product businesses and the tax imposed by this article, with
40 such modification as may be necessary in order to adapt the language of
41 such provisions to the provisions of this article, provided, specif-
42 ically, that the term "distributor" shall be read as "residual petroleum
43 product business" and the [terms] TERM "motor fuel" [and "automotive
44 fuel"] shall be read as "residual petroleum product". Provided, however,
45 that if the commissioner is satisfied that the requirements of such
46 provisions for registration are not necessary in order to protect tax
47 revenues, the commissioner may limit or modify such requirements with
48 respect to corporations or unincorporated businesses not required to be
49 registered as distributors of motor fuel or diesel motor fuel.

50 S 32. Section 312 of the tax law, as amended by chapter 166 of the
51 laws of 1991 and subdivision (b) as amended by section 8 of part EE of
52 chapter 63 of the laws of 2000, is amended to read as follows:

53 S 312. Deposit and disposition of revenue.--[(a) Except as provided in
54 sections three hundred one-f and three hundred one-g of this chapter, of
55 all of the taxes, interest and penalties collected or received by the
56 commissioner of taxation and finance under section three hundred one of

1 this article with respect to any taxable year commencing on or after
2 April first, nineteen hundred eighty-four and to that portion of any
3 taxable year commencing prior thereto to the extent of that portion of
4 such year which includes the period which commences with April first,
5 nineteen hundred eighty-four, seventy-two and seven-tenths percent shall
6 be deposited and disposed of pursuant to the provisions of section one
7 hundred seventy-one-a of this chapter and the balance thereof shall be
8 deposited in the mass transportation operating assistance fund to the
9 credit of the metropolitan mass transportation operating assistance
10 account and the public transportation systems operating assistance
11 account thereof in the manner provided by subdivision eleven of section
12 one hundred eighty-two-a of this chapter. Provided, however, that the
13 actual amount of such taxes, interest and penalties which shall be
14 deposited in such mass transportation operating assistance fund pursuant
15 to this section during the twelve-month period from April first, nine-
16 teen hundred eighty-four to and including March thirty-first, nineteen
17 hundred eighty-five shall not be less than an amount which, when added
18 to the actual amount that is deposited in such fund during such twelve-
19 month period and that is attributable to the taxes, interest and penal-
20 ties collected and received under section one hundred eighty-two-a of
21 this chapter, yields the sum of seventy-nine million five hundred thou-
22 sand dollars and provided further that of such actual amounts deposited
23 in such fund pursuant to this section and to section one hundred eight-
24 y-two-a of this chapter during the twelve-month period from April first,
25 nineteen hundred eighty-five to March thirty-first, nineteen hundred
26 eighty-six and during the twelve-month period from April first, nineteen
27 hundred eighty-six to March thirty-first, nineteen hundred eighty-seven,
28 the amount which shall be deposited to the credit of the public trans-
29 portation systems operating assistance account thereof during each such
30 period shall be not less than thirty-six million dollars. Provided
31 further that if the total amount deposited in the mass transportation
32 operating assistance fund during the twelve month period commencing
33 April first, nineteen hundred eighty-five pursuant to this section and
34 to section one hundred eighty-two-a of this chapter is less than eighty
35 million dollars, the comptroller shall deposit to the credit of the
36 metropolitan mass transportation operating assistance account on or
37 after April first, nineteen hundred eighty-six and on or before June
38 thirtieth, nineteen hundred eighty-six from any taxes, interest, and
39 penalties collected or received by the commissioner of taxation and
40 finance under this article in addition to amounts which would otherwise
41 be deposited to the credit of the mass transportation operating assist-
42 ance fund, an amount equal to the difference between eighty million
43 dollars and the amounts actually deposited in the mass transportation
44 operating assistance fund during such twelve-month period pursuant to
45 this section and to section one hundred eighty-two-a of this chapter.
46 Provided further that if the total amount deposited in the mass trans-
47 portation operating assistance fund during the twelve month period
48 commencing April first, nineteen hundred eighty-six pursuant to this
49 section and to section one hundred eighty-two-a of this chapter, exclu-
50 sive of the amount deposited in such fund to the credit of the metropol-
51 itan mass transportation operating assistance account on or after April
52 first, nineteen hundred eighty-six and on or before June thirtieth,
53 nineteen hundred eighty-six pursuant to the preceding sentence, is less
54 than eighty million dollars, the comptroller shall deposit to the credit
55 of the metropolitan mass transportation operating assistance account on
56 or after April first, nineteen hundred eighty-seven and on or before

1 June thirtieth, nineteen hundred eighty-seven from any taxes, interest,
2 and penalties collected or received by the commissioner of taxation and
3 finance under this article in addition to amounts which would otherwise
4 be deposited to the credit of the mass transportation operating assist-
5 ance fund, an amount equal to the difference between eighty million
6 dollars and the amounts actually deposited in the mass transportation
7 operating assistance fund during such twelve-month period pursuant to
8 this section and to section one hundred eighty-two-a of this chapter,
9 exclusive of the amount deposited in such fund to the credit of the
10 metropolitan mass transportation operating assistance account on or
11 after April first, nineteen hundred eighty-six and on or before June
12 thirtieth, nineteen hundred eighty-six pursuant to the preceding
13 sentence. Provided, further, however, with respect to all taxes, and
14 interest and penalties relating thereto, collected or received by the
15 commissioner of taxation and finance under the tax imposed by section
16 three hundred one of this article with respect to any taxable year
17 commencing on and after June first, nineteen hundred ninety and to that
18 portion of any taxable year commencing prior thereto to the extent of
19 that portion of such year which includes the period which commences June
20 first, nineteen hundred ninety, eighty-nine and one-half percent of such
21 collections shall be deposited and disposed of pursuant to the
22 provisions of section one hundred seventy-one-a of this chapter and the
23 balance thereof shall be deposited in the mass transportation operating
24 assistance fund to the credit of the metropolitan mass transportation
25 operating assistance account and the public transportation systems oper-
26 ating assistance account thereof in the manner provided by subdivision
27 eleven of section one hundred eighty-two-a of this chapter.

28 (b) Of all of the taxes collected or received by the commissioner on
29 or before March thirty-first, nineteen hundred ninety-one under the
30 taxes imposed by sections three hundred one-a and three hundred one-e of
31 this article, and all interest and penalties relating thereto, eighty-
32 seven and five-hundredths percent of such collections shall be deposited
33 and disposed of pursuant to the provisions of section one hundred seven-
34 ty-one-a of this chapter and the balance thereof shall be deposited in
35 the mass transportation operating assistance fund to the credit of the
36 metropolitan mass transportation operating assistance account and the
37 public transportation systems operating assistance account thereof in
38 the manner provided by subdivision eleven of section one hundred eight-
39 y-two-a of this chapter. Of all taxes, interest and penalties collected
40 or received after March thirty-first, nineteen hundred ninety-one, and
41 before April first, nineteen hundred ninety-three, from the taxes
42 imposed by sections three hundred one-a and three hundred one-e of this
43 article, initially thirty-five percent shall be deposited and disposed
44 of pursuant to such section one hundred seventy-one-a. The balance ther-
45 eof shall then be disposed of as follows: seventy-two and seven-tenths
46 percent shall be deposited and disposed of pursuant to such section one
47 hundred seventy-one-a and twenty-seven and three-tenths percent shall be
48 deposited in such mass transportation operating assistance fund as
49 prescribed in the aforestated manner. Except as otherwise provided, of
50 all taxes, interest and penalties collected or received after March
51 thirty-first, nineteen hundred ninety-three, and before April first,
52 nineteen hundred ninety-four, from the taxes imposed by sections three
53 hundred one-a and three hundred one-e of this article, (i) initially
54 fifty-four percent shall be deposited, as prescribed by subdivision (d)
55 of section three hundred one-j of this chapter, (ii) twenty-eight and
56 three-tenths percent shall be deposited and disposed of pursuant to such

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

1 section one hundred seventy-one-a of this chapter in the general fund
2 and (iii) nineteen and three-tenths percent shall be deposited in such
3 mass transportation operating assistance fund as prescribed in the
4 aforestated manner. Except as otherwise provided, of all taxes, inter-
5 est and penalties collected or received on or after January first, nine-
6 teen hundred ninety-seven and before January first, nineteen hundred
7 ninety-eight from the taxes imposed by sections three hundred one-a and
8 three hundred one-e of this article, (i) initially sixty-six and two-
9 tenths percent shall be deposited, as prescribed by subdivision (d) of
10 section three hundred one-j of this article, (ii) fourteen and one-half
11 percent shall be deposited and disposed of pursuant to such section one
12 hundred seventy-one-a of this chapter in the general fund and (iii)
13 nineteen and three-tenths percent shall be deposited in such mass trans-
14 portation operating assistance fund as prescribed in the aforestated
15 manner. Except as otherwise provided, of all taxes, interest and penal-
16 ties collected or received on or after January first, nineteen hundred
17 ninety-eight and before April first, nineteen hundred ninety-nine from
18 the taxes imposed by sections three hundred one-a and three hundred
19 one-e of this article, (i) initially sixty-eight and one-tenth percent
20 shall be deposited, as prescribed by subdivision (d) of section three
21 hundred one-j of this article, (ii) twelve and four-tenths percent shall
22 be deposited and disposed of pursuant to such section one hundred seven-
23 ty-one-a of this chapter in the general fund and (iii) nineteen and
24 one-half percent shall be deposited in such mass transportation operat-
25 ing assistance fund as prescribed in the aforestated manner. Except as
26 otherwise provided, of all taxes, interest and penalties collected or
27 received on or after April first, nineteen hundred ninety-nine, from the
28 taxes imposed by sections three hundred one-a and three hundred one-e of
29 this article, (i) initially sixty-nine and eight-tenths percent shall be
30 deposited, as prescribed by subdivision (d) of section three hundred
31 one-j of this article, (ii) ten and seven-tenths percent shall be depos-
32 ited and disposed of pursuant to such section one hundred seventy-one-a
33 of this chapter in the general fund and (iii) nineteen and one-half
34 percent shall be deposited in such mass transportation operating assist-
35 ance fund as prescribed in the aforestated manner.] Except as otherwise
36 provided, of all taxes, interest and penalties collected or received on
37 or after April first, two thousand one, from the taxes imposed by
38 sections three hundred one-a and three hundred one-e of this article,
39 (i) initially eighty and three-tenths percent shall be deposited, as
40 prescribed by subdivision (d) of section three hundred one-j of this
41 article and (ii) nineteen and seven-tenths percent shall be deposited in
42 such mass transportation operating assistance fund [as prescribed in the
43 aforestated manner] TO THE CREDIT OF THE METROPOLITAN MASS TRANSPORTA-
44 TION OPERATING ASSISTANCE ACCOUNT AND THE PUBLIC TRANSPORTATION SYSTEMS
45 OPERATING ASSISTANCE ACCOUNT THEREOF IN THE MANNER PROVIDED BY SUBDIVI-
46 SION ELEVEN OF SECTION ONE HUNDRED EIGHTY-TWO-A OF THIS CHAPTER.
47 [Provided, further, that on or before the twenty-fifth day of each month
48 commencing with October, nineteen hundred ninety and terminating with
49 the month of March, two thousand one, the comptroller shall deduct the
50 amount of six hundred twenty-five thousand dollars prior to any deposit
51 or disposition of the taxes, interest and penalties collected or
52 received pursuant to such sections three hundred one-a and three hundred
53 one-e and shall pay such amount to the state treasury to the credit of
54 the general fund.] Provided, further that on or before the twenty-fifth
55 day of each month commencing with April, two thousand one, the comp-
56 troller shall deduct the amount of six hundred twenty-five thousand

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

43 [On or before July thirty-first, nineteen hundred ninety-two and on or
44 before July thirty-first, nineteen hundred ninety-three, the commission-
45 er shall conduct the following reconciliation with respect to the
46 preceding fiscal year: he shall multiply the total of all taxes, penal-
47 ties and interest, after refunds and reimbursements, which are derived
48 from the motor fuel component, the automotive-type diesel motor fuel
49 component and the aviation gasoline component by twenty fifty-fifths;
50 the total of all taxes, penalties and interest, after refunds and
51 reimbursements, which are derived from the nonautomotive-type diesel
52 motor fuel component (excluding taxes, penalties and interest which are
53 derived from product with respect to which the credit or reimbursement
54 provided by section three hundred one-d is taken) by twenty-fiftieths;
55 and all taxes, penalties and interest, after refunds and reimbursements,
56 which are derived from the residual petroleum product component (exclud-

1 ing taxes, penalties and interest which are derived from product with
2 respect to which the credit or reimbursement provided by section three
3 hundred one-d is taken) by twenty-fortieths. The products of the forego-
4 ing multiplications shall be added together and the resulting sum of
5 such products shall be compared with the total of the amounts initially
6 distributed during such fiscal year with respect to such components
7 (excluding receipts derived from product with respect to which the cred-
8 it or reimbursement provided by section three hundred one-d is taken and
9 excluding any amount which represents a reconciliation adjustment pursu-
10 ant to this paragraph) pursuant to section one hundred seventy-one-a of
11 this chapter which represented thirty-five percent of the total, after
12 refunds and reimbursements, of all taxes, penalties and interest
13 collected or received during such fiscal year under sections three
14 hundred one-a and three hundred one-e during the months of such fiscal
15 year with respect to such components. The commissioner shall then certi-
16 fy the amount of such difference to the comptroller. If the amounts
17 initially distributed in such fiscal year are greater than the sum of
18 such products, the comptroller shall withhold an amount equal to twen-
19 ty-seven and three-tenths percent of such difference from the first
20 moneys otherwise payable to the general fund pursuant to this subdivi-
21 sion and shall pay such amount to the mass transportation operating
22 assistance fund to the credit of the metropolitan mass transportation
23 operating assistance account and the public transportation systems oper-
24 ating assistance account thereof in the aforestated manner. If the
25 amounts initially distributed in such fiscal year are less than the sum
26 of such products, the comptroller shall withhold an amount equal to
27 twenty-seven and three-tenths percent of such difference from the first
28 moneys otherwise payable to the mass transportation operating assistance
29 fund pursuant to this subdivision and shall pay such amount to the
30 general fund.

31 When the commissioner becomes aware of changes or modifications with
32 respect to the distribution of revenue under this article, the commis-
33 sioner shall, as soon as practicable, issue a certification setting
34 forth the amount of any required adjustment. After receiving the certif-
35 icate of the commissioner with respect to any adjustments, the comp-
36 troller shall forthwith adjust general fund receipts and the revenues to
37 be deposited or disposed of under this article to reflect the difference
38 so certified by the commissioner. The commissioner shall not be liable
39 for any overestimate or underestimate of the amount of the distribution.
40 Nor shall the commissioner be liable for any inaccuracy in any certif-
41 icate with respect to the amount of the distribution or any required
42 adjustment with respect to the distribution, but the commissioner shall
43 as soon as practicable after discovery of any error adjust the next
44 certification under this section to reflect any such error.] Prior to
45 making deposits as provided in this [subdivision] SECTION, the comp-
46 troller shall retain such amount as the commissioner may determine to be
47 necessary, subject to the approval of the director of the budget, for
48 reasonable costs of the department in administering and collecting the
49 taxes deposited pursuant to this [subdivision] SECTION and for refunds
50 and reimbursements with respect to such taxes, out of which the comp-
51 troller shall pay any refunds or reimbursements of such taxes to which
52 taxpayers shall be entitled.

53 S 33. Subdivision (b) of section 315 of the tax law, as amended by
54 section 156 of part A of chapter 389 of the laws of 1997, is amended to
55 read as follows:

(b) Joint administration of taxes. In addition to the powers granted to the commissioner in this chapter, the commissioner is hereby authorized to make provisions for the joint administration, in whole or in part, of the taxes imposed by articles twelve-A and twenty-eight and pursuant to the authority of article twenty-nine of this chapter upon [automotive fuel] MOTOR FUEL AND DIESEL MOTOR FUEL and the taxes imposed by this article, including the joint reporting, assessment, collection, determination and refund of such taxes, and for that purpose to prescribe that any of the commissioner's functions under such articles, and any returns, forms, statements, documents or information to be submitted to the commissioner under such articles, any books and records to be kept for purposes of the taxes imposed or authorized to be imposed by such articles, any schedules of amounts to be collected under such articles, any registration required under such articles, and the payment of taxes under such articles, shall be on a joint basis with respect to the taxes imposed by or pursuant to such articles. Provided, notwithstanding any provision of this article to the contrary, in the furtherance of joint administration, the provisions of subdivision one of section two hundred eighty-five-a and subdivision one of section two hundred eighty-nine-c of this chapter shall apply to the taxes imposed under this article with the same force and effect as if those provisions specifically referred to the taxes imposed hereunder and all the products with respect to which the taxes are imposed under this article. Provided, further, a reimbursement (or credit) of taxes imposed under this article shall be available to subsequent purchasers of motor fuel, diesel motor fuel or residual petroleum product under the circumstances specified in subdivision eight of section two hundred eighty-nine-c of this chapter with respect to the export of such products. In addition, all the provisions of subdivision one of section two hundred eighty-six of this chapter shall be applicable to all of the products included in the measure of the tax imposed by this article and the powers of the commissioner in administering the tax imposed by this article shall include these set forth in such subdivision. Moreover, the commissioner, in order to preserve the revenue from the tax imposed by this article, shall, by regulation, require that the movement of residual petroleum product into or in this state be accompanied by a tracking document. [Such manifest or other tracking document shall be prescribed only after consultation with the state motor fuels taxation advisory council (created by section forty-one of chapter forty-four of the laws of nineteen hundred eighty-five) as to its form and content and as to whether an existing industry document (or a modified version thereof) may adequately serve the tracking purpose so that such existing industry document may be prescribed as the tracking document.] Also, the commissioner may require (i) that any returns, forms, statements or other document with respect to motor fuel or diesel motor fuel required of transporters or terminal operators under such article twelve-A of this chapter apply with the same force and effect to persons transporting or storing residual petroleum product, (ii) a certification that particular gallonage of motor fuel, diesel motor fuel or residual petroleum product has been included in the measure of the tax imposed by this article and such tax has been paid, and (iii) that the certification required pursuant to section two hundred eighty-five-a or two hundred eighty-five-b of this chapter be expanded to include the tax imposed by this article.

S 34. Subdivision 10 of section 501 of the tax law, as amended by chapter 407 of the laws of 1990, is amended to read as follows:

1 10. "Automotive fuel" shall mean, SOLELY FOR PURPOSES OF THIS ARTICLE,
2 diesel motor fuel as defined in subdivision fourteen of section two
3 hundred eighty-two of this chapter and motor fuel as defined in subdivi-
4 sion two of section two hundred eighty-two of this chapter.

5 S 35. Subdivision (b) of section 528 of the tax law, as added by chap-
6 ter 170 of the laws of 1994, is amended to read as follows:

7 (b) Cooperative agreements. Notwithstanding any inconsistent provision
8 of law, the commissioner is authorized to enter into a cooperative
9 agreement with other states, the District of Columbia or provinces or
10 territories of Canada for the administration of the tax imposed by this
11 article and similar taxes imposed by other member jurisdictions and for
12 the reporting and payment of tax to a single base state and a propor-
13 tional sharing of revenue of taxes relating to fuel use among the juris-
14 dictions where a qualified motor vehicle is operated. The agreement may
15 provide for determining the base state for carriers, carriers records
16 requirements, audit procedures, exchange of information, persons eligi-
17 ble for tax licensing, defining qualified motor vehicles, determining if
18 bonding is required and requiring bonds to secure the tax imposed by
19 this article and similar taxes imposed by other member jurisdictions,
20 specifying reporting requirements and periods including defining uniform
21 penalty and interest rates for late reporting, determining methods for
22 collecting and forwarding of taxes, interest and penalties to another
23 jurisdiction, notice and timing of hearings and other provisions as will
24 facilitate the administration of the agreement. The commissioner may,
25 pursuant to the terms of the agreement, forward to the proper officers
26 of another member jurisdiction any information in the commissioner's
27 possession relating to the manufacture, receipt, sale, use, transporta-
28 tion or shipment of [automotive fuel] MOTOR FUEL OR DIESEL MOTOR FUEL by
29 any person and may share any information relating to the administration
30 of taxes pursuant to the agreement with such officers. The commissioner
31 may disclose to the proper officers of another member jurisdiction the
32 location of offices, motor vehicles and other real and personal property
33 of carriers. The agreement may provide for each member jurisdiction to
34 audit the records of persons based in the member jurisdiction and deter-
35 mine taxes due each member jurisdiction. The commissioner may adopt
36 rules and regulations for the administration and enforcement of the
37 agreement. In connection with the administration of taxes under such a
38 cooperative agreement, the commissioner may enter into an agreement with
39 other member jurisdictions and any banks, banking houses, trust compa-
40 nies or other similar institutions with respect to the payment of any
41 tax, fees, penalty or interest to such banks, banking houses, trust
42 companies or similar institutions and the filing of returns and reports
43 with such banks, banking houses, trust companies or similar institutions
44 as agent of the commissioner and such other member jurisdictions. Pursu-
45 ant to a written agreement made with one or more of the appropriate
46 departments, agencies, officers or instrumentalities of other jurisdic-
47 tions, the commissioner may let contracts for provision of such services
48 to the department and to one or more of such entities of other jurisdic-
49 tions; provided, that provisions shall be made in all such agreements
50 with the participating governmental entities and in all such contracts
51 let by the commissioner for the assumption by each of the participating
52 governmental entities of sole responsibility for its proportionate share
53 of the costs under the terms of such contract. The commissioner may
54 contract for such services jointly with and pursuant to a contract let
55 by the appropriate department, agency, officer or instrumentality of
56 another jurisdiction; provided that (1) the commissioner shall approve

1 the proposed terms and conditions of all such joint governmental
2 contracts, (2) the letting of such joint governmental contract shall be
3 based on invitation of competitive bids or proposals, and (3) the
4 participation by the department in any such joint contract shall be
5 preceded by an evaluation and finding in writing by the commissioner
6 that a reasonable potential exists for the saving of costs by the state,
7 by means of such joint governmental contract.

8 S 36. The opening paragraph of subparagraph (ii) of paragraph 4 of
9 subdivision (b) of section 1101 of the tax law, as amended by chapter
10 261 of the laws of 1988, is amended to read as follows:

11 Notwithstanding the provisions of subparagraph (i) of this paragraph,
12 no motor fuel or diesel motor fuel shall be sold or used in this state
13 without payment, and inclusion in the sales price of such motor fuel, of
14 the tax on motor fuel required to be prepaid pursuant to the provisions
15 of section eleven hundred two of this article except where a provision
16 of this article relating to motor fuel or diesel motor fuel specifically
17 provides otherwise and except in the case of a sale or use subject to
18 tax under section eleven hundred five or eleven hundred ten, respective-
19 ly, of this article. Provided, however, except for such requirement of
20 prepayment of tax required by section eleven hundred two of this arti-
21 cle, the provisions of this subparagraph shall not otherwise modify the
22 meaning of the term "retail sale" as used in this article. For purposes
23 of this subparagraph and sections eleven hundred two, eleven hundred
24 eleven, eleven hundred twenty, eleven hundred thirty-two, eleven hundred
25 thirty-four, eleven hundred thirty-five, eleven hundred thirty-six,
26 ELEVEN HUNDRED FORTY-TWO, ELEVEN HUNDRED FORTY-FIVE and eighteen hundred
27 seventeen of this chapter, the following terms shall have the following
28 meanings:

29 S 37. Clause (A) of subparagraph (ii) of paragraph 4 of subdivision
30 (b) of section 1101 of the tax law, as amended by chapter 261 of the
31 laws of 1988, is amended to read as follows:

32 (A) "[Automotive fuel] PETROLEUM PRODUCTS" means diesel motor fuel as
33 defined in subdivision fourteen of section two hundred eighty-two of
34 this chapter, other than kerosene or propane used for residential
35 purposes, or motor fuel as defined in subdivision two of section two
36 hundred eighty-two of this chapter. The phrase "used for residential
37 purposes" shall have the same meaning as it has for purposes of section
38 eleven hundred five-A of this article.

39 S 38. Clause (F) of subparagraph (ii) of paragraph 4 of subdivision
40 (b) of section 1101 of the tax law is REPEALED and a new clause (F) is
41 added to read as follows:

42 (F) THE TERMS "HIGHWAY DIESEL MOTOR FUEL" AND "NON-HIGHWAY DIESEL
43 MOTOR FUEL" SHALL HAVE THE SAME MEANING AS THEY HAVE FOR PURPOSES OF
44 ARTICLE TWELVE-A OF THIS CHAPTER.

45 S 39. Paragraph 2 of subdivision (a) of section 1102 of the tax law,
46 as separately amended by section 9 of part W-1 of chapter 109 and chap-
47 ter 302 of the laws of 2006, is amended to read as follows:

48 (2) Every distributor of diesel motor fuel shall pay, as a prepayment
49 on account of the taxes imposed by this article and pursuant to the
50 authority of article twenty-nine of this chapter, a tax upon the sale or
51 use of diesel motor fuel in this state. The tax shall be computed based
52 upon the number of gallons of diesel motor fuel sold or used. Provided,
53 however, if the tax has not been imposed prior thereto, it shall be
54 imposed on the delivery of diesel motor fuel to a retail service
55 station. The collection of such tax shall not be made applicable to the
56 sale or use of diesel motor fuel under circumstances which preclude the

1 collection of such tax by reason of the United States constitution and
2 of laws of the United States enacted pursuant thereto. The prepaid tax
3 on diesel motor fuel shall not apply to (i) the sale of previously
4 untaxed [diesel motor fuel which is not enhanced] NON-HIGHWAY Diesel
5 motor fuel to a person registered as a distributor of Diesel motor fuel
6 other than a sale to such person which involves a delivery at a filling
7 station or into a repository which is equipped with a hose or other
8 apparatus by which such fuel can be dispensed into the fuel tank of a
9 motor vehicle, OR (ii) the sale to or delivery at a filling station or
10 other retail vendor of water-white kerosene provided such filling
11 station or other retail vendor only sells such water-white kerosene
12 exclusively for heating purposes in containers of no more than twenty
13 gallons or to the sale of CNG or hydrogen [or (iii) the sale of dyed
14 diesel motor fuel as set forth in clause (A) or (B) of subparagraph (i)
15 of paragraph (c) of subdivision three of section two hundred
16 eighty-two-a of this chapter].

17 S 39-a. Paragraph 2 of subdivision (a) of section 1102 of the tax law,
18 as amended by chapter 302 of the laws of 2006, is amended to read as
19 follows:

20 (2) Every distributor of diesel motor fuel shall pay, as a prepayment
21 on account of the taxes imposed by this article and pursuant to the
22 authority of article twenty-nine of this chapter, a tax upon the sale or
23 use of diesel motor fuel in this state. The tax shall be computed based
24 upon the number of gallons of diesel motor fuel sold or used. Provided,
25 however, if the tax has not been imposed prior thereto, it shall be
26 imposed on the delivery of diesel motor fuel to a retail service
27 station. The collection of such tax shall not be made applicable to the
28 sale or use of diesel motor fuel under circumstances which preclude the
29 collection of such tax by reason of the United States constitution and
30 of laws of the United States enacted pursuant thereto. The prepaid tax
31 on diesel motor fuel shall not apply to (i) the sale of previously
32 untaxed [diesel motor fuel which is not enhanced] NON-HIGHWAY Diesel
33 motor fuel to a person registered as a distributor of Diesel motor fuel
34 other than a sale to such person which involves a delivery at a filling
35 station or into a repository which is equipped with a hose or other
36 apparatus by which such fuel can be dispensed into the fuel tank of a
37 motor vehicle, OR (ii) the sale to or delivery at a filling station or
38 other retail vendor of water-white kerosene provided such filling
39 station or other retail vendor only sells such water-white kerosene
40 exclusively for heating purposes in containers of no more than twenty
41 gallons [or (iii) the sale of dyed diesel motor fuel as set forth in
42 clause (A) or (B) of subparagraph (i) of paragraph (c) of subdivision
43 three of section two hundred eighty-two-a of this chapter].

44 S 40. Subsection (a) of section 1105-A of the tax law, as amended by
45 section 1 of part B of chapter 35 of the laws of 2006, is amended to
46 read as follows:

47 (a) Notwithstanding any other provisions of this article, but not for
48 purposes of the taxes imposed by section eleven hundred eight of this
49 part or authorized pursuant to the authority of article twenty-nine of
50 this chapter, the taxes imposed by subdivision (a) or (b) of section
51 eleven hundred five OF THIS PART on the receipts from the retail sale of
52 fuel oil and coal used for residential purposes; the receipts from the
53 retail sale of wood used for residential heating purposes; and the
54 receipts from every sale, other than for resale, of propane (except when
55 sold in containers of less than one hundred pounds), natural gas, elec-
56 tricity, steam and gas, electric and steam services used for residential

1 purposes shall be paid at the rate of three percent for the period
2 commencing January first, nineteen hundred seventy-nine and ending
3 December thirty-first, nineteen hundred seventy-nine; at the rate of two
4 and one-half percent for the period commencing January first, nineteen
5 hundred eighty and ending September thirtieth, nineteen hundred eighty,
6 and at the rate of zero percent on and after October first, nineteen
7 hundred eighty. The provisions of this subsection shall not apply to a
8 sale of [(i)] diesel motor fuel which involves a delivery at a filling
9 station or into a repository which is equipped with a hose or other
10 apparatus by which such fuel can be dispensed into the fuel tank of a
11 motor vehicle [and (ii) enhanced diesel motor fuel except in the case of
12 a sale of such enhanced diesel motor fuel used exclusively for residen-
13 tial purposes which is delivered into a storage tank which is not
14 equipped with a hose or other apparatus by which such fuel can be
15 dispensed into the fuel tank of a motor vehicle and such storage tank is
16 attached to the heating unit burning such fuel, provided that each
17 delivery of such fuel of over four thousand five hundred gallons shall
18 be evidenced by a certificate signed by the purchaser stating that the
19 product will be used exclusively for residential purposes].

20 S 41. Subdivision (j) of section 1115 of the tax law, as amended by
21 section 12 of part W-1 of chapter 109 of the laws of 2006, is amended to
22 read as follows:

23 (j) The exemptions provided in this section shall not apply to the tax
24 required to be prepaid pursuant to the provisions of section eleven
25 hundred two of this article nor to the taxes imposed by sections eleven
26 hundred five and eleven hundred ten of this article with respect to
27 receipts from sales and uses of motor fuel or diesel motor fuel, except
28 that the exemptions provided in paragraphs nine and forty-two of subdivi-
29 sion (a) of this section shall apply to the tax required to be prepaid
30 pursuant to the provisions of section eleven hundred two of this article
31 and to the taxes imposed by sections eleven hundred five and eleven
32 hundred ten of this article with respect to sales and uses of kero-jet
33 fuel, CNG, hydrogen and E85, provided, however, the exemption allowed
34 for E85 shall be subject to the additional requirements provided in
35 section eleven hundred two of this article with respect to E85. The
36 exemption provided in subdivision (c) of this section shall apply to
37 sales and uses of NON-HIGHWAY diesel motor fuel [which is not enhanced
38 diesel motor fuel] but only if all of such fuel is consumed other than
39 on the PUBLIC highways of this state, provided, however, this exemption
40 shall in no event apply to a sale of NON-HIGHWAY diesel motor fuel which
41 involves a delivery at a filling station or into a repository which is
42 equipped with a hose or other apparatus by which such fuel can be
43 dispensed into the fuel tank of a motor vehicle. The exemption provided
44 in subdivision (c) of this section shall apply to sales and uses of no
45 more than four thousand five hundred gallons of NON-HIGHWAY diesel motor
46 fuel in a thirty-day period for use or consumption either in the
47 production for sale of tangible personal property by farming or in a
48 commercial horse boarding operation, or in both but only if all of such
49 fuel is consumed other than on the PUBLIC highways of this state (except
50 for the use of the PUBLIC highways to reach adjacent farmlands or adja-
51 cent lands used in a commercial horse boarding operation, or both),
52 provided, however, such exemption shall be applicable to the sale or use
53 of more than four thousand five hundred gallons of NON-HIGHWAY diesel
54 motor fuel in a thirty-day period for such use or consumption in accord-
55 ance with a prior clearance given by the commissioner.

1 S 41-a. Subdivision (j) of section 1115 of the tax law, as amended by
2 section 8 of part B of chapter 63 of the laws of 2000, is amended to
3 read as follows:

4 (j) The exemptions provided in this section shall not apply to the tax
5 required to be prepaid pursuant to the provisions of section eleven
6 hundred two of this article nor to the taxes imposed by sections eleven
7 hundred five and eleven hundred ten of this article with respect to
8 receipts from sales and uses of motor fuel or diesel motor fuel, except
9 that the exemption provided in paragraph nine of subdivision (a) of this
10 section shall apply to the tax required to be prepaid pursuant to the
11 provisions of section eleven hundred two of this article and to the
12 taxes imposed by sections eleven hundred five and eleven hundred ten of
13 this article with respect to sales and uses of kero-jet fuel. The
14 exemption provided in subdivision (c) of this section shall apply to
15 sales and uses of NON-HIGHWAY diesel motor fuel [which is not enhanced
16 diesel motor fuel] but only if all of such fuel is consumed other than
17 on the PUBLIC highways of this state, provided, however, this exemption
18 shall in no event apply to a sale of NON-HIGHWAY diesel motor fuel which
19 involves a delivery at a filling station or into a repository which is
20 equipped with a hose or other apparatus by which such fuel can be
21 dispensed into the fuel tank of a motor vehicle. The exemption provided
22 in subdivision (c) of this section shall apply to sales and uses of no
23 more than four thousand five hundred gallons of NON-HIGHWAY diesel motor
24 fuel in a thirty-day period for use or consumption either in the
25 production for sale of tangible personal property by farming or in a
26 commercial horse boarding operation, or in both but only if all of such
27 fuel is consumed other than on the PUBLIC highways of this state (except
28 for the use of the PUBLIC highways to reach adjacent farmlands or adja-
29 cent lands used in a commercial horse boarding operation, or both),
30 provided, however, such exemption shall be applicable to the sale or use
31 of more than four thousand five hundred gallons of NON-HIGHWAY diesel
32 motor fuel in a thirty-day period for such use or consumption in accord-
33 ance with a prior clearance given by the commissioner.

34 S 42. Subdivision (e) of section 1120 of the tax law, as amended by
35 chapter 2 of the laws of 1995, is amended to read as follows:

36 (e) Immediate export. With respect to (i) motor fuel imported, manu-
37 factured or sold or purchased in this state, and (ii) [enhanced] HIGHWAY
38 diesel motor fuel, a refund or credit shall be allowed a registered
39 distributor of this state or a purchaser of the tax required to be
40 prepaid pursuant to section eleven hundred two of this article in the
41 amount of such tax paid by or included in the price paid by a distribu-
42 tor or such purchaser if such fuel was exported from this state for sale
43 outside this state, such distributor or such purchaser, as the case may
44 be, exporting such fuel is duly registered with or licensed by the
45 taxing authorities of the state to which such fuel is exported as a
46 distributor or a dealer in the fuel being so exported, and in connection
47 with such exportation such fuel was immediately shipped to an identified
48 facility in the state to which such fuel is exported, and provided the
49 applicant complies with all requirements and rules and regulations of
50 the commissioner, including evidentiary requirements, relating thereto.

51 S 43. Subparagraph (i) of paragraph 3 of subdivision (h) of section
52 1132 of the tax law, as amended by chapter 261 of the laws of 1988, is
53 amended to read as follows:

54 (i) For the purpose of the proper administration of this article and
55 to prevent evasion of the tax hereby imposed, it shall be presumed that
56 all retail sales of motor fuel or diesel motor fuel are subject to the

1 tax required to be collected by subdivision (a) of section eleven
2 hundred five of this article or paid by the provisions of section eleven
3 hundred ten of this article until the contrary is established, and it
4 shall be presumed that all motor fuel or diesel motor fuel imported,
5 manufactured, [subjected to enhancement,] sold, received or possessed by
6 any person in this state, which such person cannot otherwise account for
7 as having been sold subject to the tax required to be collected by
8 subdivision (a) of section eleven hundred five or paid by the provisions
9 of section eleven hundred ten of this article, has been sold subject to
10 the tax required to be collected by subdivision (a) of section eleven
11 hundred five or paid by the provisions of section eleven hundred ten
12 except that no such presumption shall apply with respect to motor fuel
13 or diesel motor fuel in the fuel tank of a motor vehicle used to propel
14 such vehicle or to motor fuel in small drums or similar containers. The
15 burden of proving that any sale is not so subject shall be upon the
16 person required to collect such tax and the purchaser of such fuel.

17 S 44. Subparagraph (iii) of paragraph 1 of subdivision (a) of section
18 1134 of the tax law, as amended by section 160 of part A of chapter 389
19 of the laws of 1997, is amended to read as follows:

20 (iii) every person selling [automotive fuel] PETROLEUM PRODUCTS
21 including persons who or which are not distributors,

22 S 45. Subdivision (d) of section 1135 of the tax law, as amended by
23 chapter 44 of the laws of 1985 and as relettered by chapter 61 of the
24 laws of 1989, is amended to read as follows:

25 (d) Every person selling or holding large volumes of [automotive fuel]
26 PETROLEUM PRODUCTS shall keep records for such periods and in the manner
27 prescribed by the [tax commission] COMMISSIONER pursuant to rules and
28 regulations. Such records shall show (1) the number of gallons of [auto-
29 motive fuel] PETROLEUM PRODUCTS purchased, the price paid therefor, the
30 amount of tax paid pursuant to the provisions of section eleven hundred
31 two of this article and the regional average retail sales price applica-
32 ble thereto and (2) the number of gallons sold, and the price paid by
33 the purchaser to whom such person sells the [automotive fuel] PETROLEUM
34 PRODUCTS, and the amount of tax included in such price pursuant to the
35 provisions of section eleven hundred two of this article and the
36 [regional average retail sales price or the] amount of tax collected
37 pursuant to the provisions of subdivision (a) of section eleven hundred
38 five of this article applicable to such sale together with such addi-
39 tional information as the [tax commission] COMMISSIONER shall require.
40 The [regional average retail sales price, and the] amount of tax shall
41 be calculated in the manner set forth in section eleven hundred eleven
42 of this article.

43 S 46. Subdivision (a) of section 1136 of the tax law, as amended by
44 chapter 89 of the laws of 1976, paragraphs 1, 2, 3 and 5 as amended and
45 paragraph 6 as added by chapter 2 of the laws of 1995 and paragraphs 4
46 and 7 as amended by section 2-e of part M-1 of chapter 106 of the laws
47 of 2006, is amended to read as follows:

48 (a) (1) Every person required to register with the commissioner as
49 provided in section eleven hundred thirty-four OF THIS PART whose taxa-
50 ble receipts, amusement charges and rents total less than three hundred
51 thousand dollars, or in the case of any such person who is a distributor
52 whose sales of [automotive fuel] PETROLEUM PRODUCTS total less than one
53 hundred thousand gallons, in every quarter of the preceding four quar-
54 ters, shall only file a return quarterly with the commissioner.

55 (2) Every person required to register with the commissioner as
56 provided in section eleven hundred thirty-four OF THIS PART whose taxa-

1 ble receipts, amusement charges and rents total three hundred thousand
2 dollars or more, or in the case of any such person who is a distributor
3 whose sales of [automotive fuel] PETROLEUM PRODUCTS total one hundred
4 thousand gallons or more, in any quarter of the preceding four quarters,
5 shall, in addition to filing a quarterly return described in paragraph
6 one of this subdivision, and except as otherwise provided in section
7 eleven hundred two or eleven hundred three of this article, file either
8 a long-form or short-form part-quarterly return monthly with the commis-
9 sioner.

10 (3) However, a person required to register with the commissioner as
11 provided in section eleven hundred thirty-four OF THIS PART only because
12 such person is purchasing or selling tangible personal property for
13 resale, and who is not required to collect any tax or pay any tax
14 directly to the commissioner under this article, shall file an informa-
15 tion return annually in such form as the commissioner may prescribe.
16 Likewise, a person, who is required to register and who is selling
17 [automotive fuel] PETROLEUM PRODUCTS who is not a distributor of motor
18 fuel, shall file an information return quarterly or, if the commissioner
19 deems necessary, monthly, in such form as the commissioner shall
20 prescribe.

21 (4) The return of a vendor of tangible personal property or services
22 shall show such vendor's receipts from sales and the number of gallons
23 of any motor fuel or diesel motor fuel sold and also the aggregate value
24 of tangible personal property and services and number of gallons of such
25 fuels sold by the vendor, the use of which is subject to tax under this
26 article, and the amount of tax payable thereon pursuant to the
27 provisions of section eleven hundred thirty-seven of this part. The
28 return of a recipient of amusement charges shall show all such charges
29 and the amount of tax thereon, and the return of an operator required to
30 collect tax on rents shall show all rents received or charged and the
31 amount of tax thereon.

32 (5) The returns of any seller of [automotive fuel] PETROLEUM PRODUCTS
33 shall show the number of gallons of [automotive fuel] PETROLEUM PRODUCTS
34 sold, together with such additional information as the commissioner
35 shall require in order to certify the amount of taxes, penalties and
36 interest payable to local taxing jurisdictions imposed on the sale or
37 use of [automotive fuel] PETROLEUM PRODUCTS pursuant to the provisions
38 of section twelve hundred sixty-one of this chapter.

39 (6) The returns of any seller of cigarettes shall show the amount of
40 prepaid tax assumed or paid thereon and passed through, together with
41 such additional information as the commissioner shall require.

42 (7) Taxable receipts as used in this section shall include taxable
43 receipts from the sale of [automotive fuel] PETROLEUM PRODUCTS and ciga-
44 rettes and any receipts from the sale of motor fuel or diesel motor fuel
45 or cigarettes in this state whether or not such receipts are subject to
46 the taxes imposed by section eleven hundred two, eleven hundred three,
47 eleven hundred five or eleven hundred ten of this article and regardless
48 of whether the provisions of section eleven hundred twenty or eleven
49 hundred twenty-one of this article are applicable to the taxes imposed
50 in respect of such receipts or numbers of gallons of motor fuel or
51 diesel motor fuel sold.

52 [(i)] (8) For purposes of this article the term "long-form, part-quar-
53 terly return" shall mean a return in a form determined by the [tax
54 commission] COMMISSIONER providing for the calculation of the actual
55 sales and compensating use taxes for the preceding month in the manner
56 set forth in subdivisions (a) and (b) of section eleven hundred thirty-

seven OF THIS PART. A person filing a long-form, part-quarterly return for each of the months contained in a quarter shall also be required to file a quarterly return for such quarter.

[(ii)] (9) For purposes of this article the term "short-form, part-quarterly return" shall mean a return which shall be available for use in filing as a return for the first two months of any quarter and only by a person required to file a return monthly who has had at least four successive quarterly tax periods immediately preceding the month for which the return is to be filed and who elects such use, and is in a form determined by the [tax commission] COMMISSIONER and providing for the calculation of one-third of the total state and local sales and compensating use taxes paid by the person to the [tax commission] COMMISSIONER in the comparable quarter of the immediately preceding year under this article and as taxes imposed pursuant to the authority of article twenty-nine with respect to all receipts, amusement charges and rents.

S 47. Subdivision 11 of section 1142 of the tax law, as added by chapter 930 of the laws of 1982, is amended to read as follows:

11. To make such provision pursuant to rules and regulations for the joint administration, in whole or in part, of the state and local taxes imposed by this article and authorized by article twenty-nine of this chapter upon the sale of [automotive fuel] PETROLEUM PRODUCTS and the taxes imposed by article twelve-A of this chapter and authorized to be imposed by such article, including the joint reporting, assessment, collection, determination and refund of such taxes, and for that purpose to prescribe that any of the [commission's] COMMISSIONER'S functions under said articles, and any returns, forms, statements, documents or information to be submitted to the [commission] COMMISSIONER under said articles, any books and records to be kept for purposes of the taxes imposed or authorized by said articles, any schedules of amounts to be collected under said articles, any registration required under said articles, and the payment of taxes under said articles shall be on a joint basis with respect to the taxes imposed by said articles.

S 48. Subparagraph (i) of paragraph 3 of subdivision (a) of section 1145 of the tax law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

(i) Any person required to obtain a certificate of authority under section eleven hundred thirty-four OF THIS PART who, without possessing a valid certificate of authority, (A) sells tangible personal property or services subject to tax, receives amusement charges or operates a hotel, (B) purchases or sells tangible personal property for resale, (C) sells [automotive fuel] PETROLEUM PRODUCTS, or (D) sells cigarettes 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.

S 49. Subparagraph (i) of paragraph 3 of subdivision (a) of section 1210 of the tax law, as amended by section 2 of part B of chapter 35 of the laws of 2006, is amended to read as follows:

(i) Notwithstanding any other provision of law to the contrary but not with respect to cities subject to the provisions of section eleven hundred eight of this [article] CHAPTER, any city or county, except a county wholly contained within a city, may provide that the taxes imposed, pursuant to this subdivision, by such city or county on the

1 retail sale or use of fuel oil and coal used for residential purposes,
2 the retail sale or use of wood used for residential heating purposes,
3 the sale, other than for resale, of propane (except when sold in
4 containers of less than one hundred pounds), natural gas, electricity,
5 steam and gas, electric and steam services used for residential purposes
6 and the use of gas or electricity used for residential purposes may be
7 imposed at a lower rate than the uniform local rate imposed pursuant to
8 the opening paragraph of this section, as long as such rate is one of
9 the rates authorized by such paragraph or such sale or use may be
10 exempted from such taxes. Provided, however, such lower rate must apply
11 to all such energy sources and services and at the same rate and no such
12 exemption may be enacted unless such exemption applies to all such ener-
13 gy sources and services. The provisions of this subparagraph shall not
14 apply to a sale or use of [(i)] diesel motor fuel which involves a
15 delivery at a filling station or into a repository which is equipped
16 with a hose or other apparatus by which such fuel can be dispensed into
17 the fuel tank of a motor vehicle [and (ii) enhanced diesel motor fuel
18 except in the case of a sale or use of such enhanced diesel motor fuel
19 used exclusively for residential purposes which is delivered into a
20 storage tank which is not equipped with a hose or other apparatus by
21 which such fuel can be dispensed into the fuel tank of a motor vehicle
22 and such storage tank is attached to the heating unit burning such fuel,
23 provided that each delivery of such fuel of over four thousand five
24 hundred gallons shall be evidenced by a certificate signed by the
25 purchaser stating that the product will be used exclusively for residen-
26 tial purposes].

27 S 50. Subdivision (c) of section 1812 of the tax law, as amended by
28 section 25 of subpart I of part V-1 of chapter 57 of the laws of 2009,
29 is amended to read as follows:

30 (c) Any owner of a filling station who shall willfully and knowingly
31 have in his OR HER custody, possession or under his OR HER control any
32 motor fuel or Diesel motor fuel [on which] (1) ON WHICH the taxes
33 imposed by or pursuant to the authority of such article have not been
34 assumed or paid by a distributor registered as such under such article
35 [or], (2) ON WHICH the taxes imposed by or pursuant to the authority of
36 such article have not been included in the cost to him OR HER of such
37 fuel where such taxes were required to have been passed through to him
38 OR HER and included in the cost to him OR HER of such fuel, OR (3)
39 WHICH IS DYED DIESEL MOTOR FUEL AS DEFINED BY SUBDIVISION EIGHTEEN-A OF
40 SECTION TWO HUNDRED EIGHTY-TWO OF THIS CHAPTER (EXCEPT FOR WATER-WHITE
41 KEROSENE), shall [in either case,] be guilty of a class E felony. For
42 purposes of this subdivision, such owner shall willfully and knowingly
43 have in his OR HER custody, possession or under his OR HER control any
44 motor fuel or Diesel motor fuel on which such taxes have not been
45 assumed or paid by a distributor registered as such where such owner has
46 knowledge of the requirement that such taxes be paid and where, to his
47 OR HER knowledge, such taxes have not been assumed or paid by a regis-
48 tered distributor on such motor fuel or Diesel motor fuel. Such owner
49 shall willfully and knowingly have in his OR HER custody, possession or
50 under his OR HER control any motor fuel or Diesel motor fuel on which
51 such taxes are required to have been passed through to him OR HER and
52 have not been included in his OR HER cost where such owner has knowledge
53 of the requirement that such taxes be passed through and where to his
54 knowledge such taxes have not been so included. SUCH OWNER SHALL WILL-
55 FULLY AND KNOWINGLY HAVE IN HIS OR HER CUSTODY, POSSESSION OR UNDER HIS
56 OR HER CONTROL ANY DYED DIESEL MOTOR FUEL (EXCEPT WATER-WHITE KEROSENE)

1 WHERE SUCH OWNER HAS KNOWLEDGE OF THE REQUIREMENT THAT DYED DIESEL MOTOR
2 FUEL (EXCEPT WATER-WHITE KEROSENE) MAY NOT BE IN HIS OR HER CUSTODY,
3 POSSESSION OR UNDER HIS OR HER CONTROL.

4 S 51. Subdivision (e) of section 1812 of the tax law is REPEALED and
5 subdivision (f) is relettered subdivision (e).

6 S 52. Section 1812-a of the tax law, as added by chapter 261 of the
7 laws of 1988, is amended to read as follows:

8 S 1812-a. Person not registered as distributor of Diesel motor fuel.

9 (a) Any person who, while not registered as a distributor of Diesel
10 motor fuel pursuant to the provisions of article twelve-A of this chap-
11 ter, [engages in the enhancement,] makes a sale or use within the state
12 of Diesel motor fuel (other than a retail sale not in bulk or the self-
13 use of Diesel motor fuel which has been the subject of a retail sale),
14 imports or causes Diesel motor fuel to be imported into the state or
15 produces, refines, manufactures or compounds Diesel motor fuel within
16 the state shall be guilty of a misdemeanor. If, within any ninety day
17 period, two thousand nine hundred gallons or more of Diesel motor fuel
18 are subjected to [enhancement or] sale or use (other than a retail sale
19 not in bulk or the self-use of Diesel motor fuel which has been the
20 subject of a retail sale) within the state or are imported or caused to
21 be imported by any person while not so registered as a distributor of
22 Diesel motor fuel, such person shall be guilty of a class E felony.

23 (b) Any person whose registration under article twelve-A of this chap-
24 ter applies only to the importation, sale and distribution of Diesel
25 motor fuel for the purposes described in subparagraph (i) of paragraph
26 (b) of subdivision three of section two hundred eighty-two-a of this
27 chapter who delivers NON-HIGHWAY Diesel motor fuel at a filling station
28 [other than for the sole purpose of heating such station] or into a
29 repository equipped with a hose or other apparatus by which NON-HIGHWAY
30 Diesel motor fuel can be dispensed into the fuel tank of a motor vehi-
31 cle, other than such a repository which is located on the premises of
32 such registrant where the Diesel motor fuel delivered therein is used
33 exclusively for the purpose of fueling motor vehicles operated by regis-
34 trant for the purpose of distributing Diesel motor fuel for the purposes
35 described in such subparagraph (i), shall be guilty of a misdemeanor.
36 If, within any ninety day period, any such person whose registration
37 under article twelve-A of this chapter applies only to the importation,
38 sale and distribution of NON-HIGHWAY Diesel motor fuel for the purposes
39 described in subparagraph (i) of paragraph (b) of subdivision three of
40 section two hundred eighty-two-a of this chapter so unlawfully delivers
41 a total of one thousand gallons or more of Diesel motor fuel at such
42 filling station or stations or into such repository or repositories (or
43 a combination of both such filling stations and repositories), then,
44 such person shall be guilty of a class E felony.

45 (c) Any person who has twice been convicted under this section shall
46 be guilty of a class E felony for any subsequent violation of this
47 section, regardless of the amount of Diesel motor fuel involved in such
48 violation. For purposes of this section, the terms ["enhancement"]
49 "NON-HIGHWAY DIESEL MOTOR FUEL" and "retail sale not in bulk" shall have
50 the same meaning they have for purposes of article twelve-A of this
51 chapter.

52 S 53. Subdivisions (a) and (b) of section 1817 of the tax law, as
53 amended by section 30 of subpart I of part V-1 of chapter 57 of the laws
54 of 2009, is amended to read as follows:

55 (a) Any person required to obtain a certificate of authority under
56 section eleven hundred thirty-four of this chapter who, without possess-

1 ing a valid certificate of authority, willfully (1) sells tangible
2 personal property or services subject to tax, receives amusement charges
3 or operates a hotel, (2) purchases or sells tangible personal property
4 for resale, or (3) sells [automotive fuel] PETROLEUM PRODUCTS; and any
5 person who fails to surrender a certificate of authority as required by
6 such article shall be guilty of a misdemeanor.

7 (b) Any person required to obtain a certificate of authority under
8 section eleven hundred thirty-four of this chapter who within five years
9 after a determination by the [tax commission] COMMISSIONER, pursuant to
10 such section, to suspend, revoke or refuse to issue a certificate of
11 authority has become final, and without possession of a valid certifi-
12 cate of authority (1) sells tangible personal property or services
13 subject to tax, receives amusement charges or operates a hotel, (2)
14 purchases or sells tangible personal property for resale, or (3) sells
15 [automotive fuel] PETROLEUM PRODUCTS, shall be guilty of a misdemeanor.
16 It shall be an affirmative defense that such person performed the acts
17 described in this subdivision without knowledge of such determination.
18 Any person who violates a provision of this subdivision, upon
19 conviction, shall be subject to a fine in any amount authorized by this
20 article, but not less than five hundred dollars, in addition to any
21 other penalty provided by law.

22 S 54. The section heading, subdivisions (a), (b) and (c), paragraph 3,
23 subparagraph (D) of paragraph 4 and paragraph 6 of subdivision (d) and
24 subdivisions (e) and (g) of section 1848 of the tax law, as added by
25 chapter 276 of the laws of 1986 and subparagraph (D) of paragraph 4 and
26 paragraph 6 of subdivision (d) as amended by chapter 190 of the laws of
27 1990, are amended to read as follows:

28 Forfeiture action with respect to motor fuel and DIESEL MOTOR FUEL AND
29 vehicle carrying such fuel. (a) Temporary seizure. Whenever a police
30 officer designated in section 1.20 of the criminal procedure law or a
31 peace officer designated in subdivision four of section 2.10 of such
32 law, acting pursuant to his special duties, shall discover any motor
33 fuel OR DIESEL MOTOR FUEL which is being imported for use, distribution,
34 storage or sale in the state where the person importing or causing such
35 motor fuel OR DIESEL MOTOR FUEL to be imported is not registered as a
36 distributor under section two hundred eighty-three OR SECTION TWO
37 HUNDRED EIGHTY-TWO-A, of this chapter, AS THE CASE MAY BE, such police
38 officer or peace officer is hereby authorized to seize and take
39 possession of such motor fuel OR DIESEL MOTOR FUEL, together with the
40 vehicle or other means of transportation used to transport such motor
41 fuel.

42 (b) Retention of property. The department [of taxation and finance]
43 shall hold and safely keep such motor fuel, DIESEL MOTOR FUEL, vehicle
44 or other means of transportation seized pursuant to subdivision (a) of
45 this section. Seized motor fuel OR DIESEL MOTOR FUEL may be deposited
46 to the credit of the department [of taxation and finance] at a terminal
47 or other storage facility within the state or may be sold by the depart-
48 ment on the open market.

49 (c) Confirmation of temporary seizure. Within five business days after
50 the temporary seizure of motor fuel, DIESEL MOTOR FUEL, vehicle or other
51 means of transportation pursuant to subdivision (a) of this section, the
52 department [of taxation and finance] shall move in supreme court in any
53 county, on such notice as the court shall direct to the owners of the
54 property, to confirm the temporary seizure. If the department [of taxa-
55 tion and finance] fails to make such motion within the required period,
56 such seized property shall be restored to the owners thereof as provided

1 in subdivision (e) of this section. On a motion for an order confirming
2 the seizure, the department [of taxation and finance] shall show, by
3 affidavit and such other written evidence as may be submitted, that
4 there is a cause of action for forfeiture under subdivision (d) of this
5 section and that there are grounds for confirmation of the seizure. The
6 department shall include, in its motion papers, an inventory of all
7 seized property. The court shall grant an application for an order
8 confirming the seizure when it determines that there is a substantial
9 probability that the department [of taxation and finance] will prevail
10 on the issue of forfeiture.

11 (3) Forfeiture of motor fuel OR DIESEL MOTOR FUEL together with the
12 vehicle or other means of transportation used to transport such motor
13 fuel OR DIESEL MOTOR FUEL shall be adjudged where the department [of
14 taxation and finance] proves, by clear and convincing evidence, that the
15 person importing or causing such motor fuel OR DIESEL MOTOR FUEL to be
16 imported was not registered as a distributor under section two hundred
17 eighty-three OR SECTION TWO HUNDRED EIGHTY-TWO-A of this chapter, AS THE
18 CASE MAY BE. All defendants in a forfeiture action brought pursuant to
19 this article shall have the right to trial by jury on any issue of fact.

20 (D) The court may grant the relief provided in subparagraph (A) [here-
21 of] OF THIS PARAGRAPH if it finds that such relief is warranted by the
22 existence of some compelling factor, consideration or circumstance
23 demonstrating that forfeiture of the property or any part thereof, would
24 not serve the ends of justice. Reporting and payment of the tax imposed
25 pursuant to article twelve-A or article twenty-eight of this chapter
26 with respect to such motor fuel OR DIESEL MOTOR FUEL subsequent to the
27 seizure of such fuel shall not constitute a compelling factor, consider-
28 ation or circumstance warranting the granting of the relief provided for
29 in subparagraph (A) [hereof] of this paragraph. In determining whether
30 such relief is warranted by the existence of some compelling factor,
31 consideration or circumstances pursuant to this paragraph, the court
32 may, however, take into account the fact that such taxes with respect to
33 the seized fuel have been reported and remitted to the state prior to
34 the temporary seizure of such fuel if the unregistered importation into
35 the state was effected in good faith and without knowledge of the
36 requirement of registration and without intent to evade tax. The court
37 must issue a written decision, stating the basis for an order issued
38 pursuant to this paragraph.

39 (6) The total that may be recovered shall not exceed the value of the
40 motor fuel OR DIESEL MOTOR FUEL seized and, in addition, either the
41 value of the vehicle or other means of transportation used to transport
42 such fuel or three times the amount of the tax and penalty under arti-
43 cles twelve-A, thirteen-A and twenty-eight and pursuant to the authority
44 of article twenty-nine of this chapter with respect to the motor fuel OR
45 DIESEL MOTOR FUEL, whichever is less.

46 (e) Return of property. If (1) the department [of taxation and
47 finance] fails to move for confirmation of the seizure pursuant to
48 subdivision (c) of this section or (2) a court denies an application for
49 an order confirming the seizure or (3) judgment is entered against the
50 department in the forfeiture action and that judgment is affirmed after
51 all appeals are exhausted, then the department shall restore such seized
52 motor fuel OR DIESEL MOTOR FUEL, or motor fuel OR DIESEL MOTOR FUEL of a
53 like quantity and type, or such seized vehicle or other means of trans-
54 portation to the owners thereof. Alternatively, if such seized motor
55 fuel OR DIESEL MOTOR FUEL has been sold as provided in subdivision (b)
56 of this section, the department shall pay to the owners of such motor

1 fuel OR DIESEL MOTOR FUEL the proceeds of such sale or, if greater, an
2 amount of money representing the fair market value of the motor fuel OR
3 DIESEL MOTOR FUEL at the time of the seizure.

4 (g) Disposal of property. The department [of taxation and finance],
5 after a judicial determination of forfeiture, shall, in its discretion,
6 either retain such seized property for its official use or sell such
7 forfeited property at public sale. The net proceeds of any such sale, or
8 of any sale of seized motor fuel OR DIESEL MOTOR FUEL as provided in
9 subdivision (b) of this section, after deduction of the lawful expenses
10 incurred, shall be deposited and disposed of pursuant to the provisions
11 of section one hundred seventy-one-a of this chapter with respect to
12 deposit and disposition of revenue.

13 S 55. Paragraph (q) of subdivision 34 of section 1.20 of the criminal
14 procedure law, as amended by chapter 318 of the laws of 2002, is amended
15 to read as follows:

16 (q) An employee of the department of taxation and finance (i) assigned
17 to enforcement of the taxes imposed under or pursuant to the authority
18 of article twelve-A of the tax law and administered by the commissioner
19 of taxation and finance, taxes imposed under or pursuant to the authori-
20 ty of article eighteen of the tax law and administered by the commis-
21 sioner, taxes imposed under article twenty of the tax law, or sales or
22 compensating use taxes relating to [automotive fuel] PETROLEUM PRODUCTS
23 or cigarettes imposed under article twenty-eight or pursuant to the
24 authority of article twenty-nine of the tax law and administered by the
25 commissioner or (ii) designated as a revenue crimes specialist and
26 assigned to the enforcement of the taxes described in paragraph (c) of
27 subdivision four of section 2.10 of this title, for the purpose of
28 applying for and executing search warrants under article six hundred
29 ninety of this chapter, for the purpose of acting as a claiming agent
30 under article thirteen-A of the civil practice law and rules in
31 connection with the enforcement of the taxes referred to above and for
32 the purpose of executing warrants of arrest relating to the respective
33 crimes specified in subdivision four of section 2.10 of this title.

34 S 56. Paragraph (a) of subdivision 4 of section 2.10 of the criminal
35 procedure law, as amended by chapter 2 of the laws of 1995, is amended
36 to read as follows:

37 (a) to the enforcement of any of the criminal or seizure and forfei-
38 ture provisions of the tax law relating to (i) taxes imposed under or
39 pursuant to the authority of article twelve-A of the tax law and admin-
40 istered by the commissioner, (ii) taxes imposed under or pursuant to the
41 authority of article eighteen of the tax law and administered by the
42 commissioner, (iii) taxes imposed under article twenty of the tax law,
43 or (iv) sales or compensating use taxes relating to [automotive fuel]
44 PETROLEUM PRODUCTS or cigarettes imposed under article twenty-eight or
45 pursuant to the authority of article twenty-nine of the tax law and
46 administered by the commissioner or

47 S 57. Sections 11-2033, 11-2034, 11-2035, 11-2036, 11-2037 and 11-2038
48 of the administrative code of the city of New York are REPEALED.

49 S 58. This act shall take effect September 1, 2011 and shall apply to
50 sales or uses occurring on or after such date in accordance with the
51 applicable transitional provisions in sections 1106 and 1217 of the tax
52 law; provided, however, that:

53 (a) the amendments to subdivisions 22 and 23 of section 282 of the tax
54 law, made by section one of this act shall not affect the repeal of such
55 subdivisions and shall be deemed repealed therewith;

1 (b) the amendments to paragraph 2 of subdivision (a) of section 1102
2 of the tax law made by section thirty-nine of this act shall be subject
3 to the expiration and reversion of such paragraph pursuant to section 19
4 of part W-1 of chapter 109 of the laws of 2006, as amended, when upon
5 such date the provisions of section thirty-nine-a of this act shall take
6 effect; and
7 (c) the amendments to subdivision (j) of section 1115 of the tax law
8 made by section forty-one of this act shall be subject to the expiration
9 and reversion of such subdivision pursuant to section 19 of part W-1 of
10 chapter 109 of the laws of 2006, as amended, when upon such date the
11 provisions of section forty-one-a of this act shall take effect.

12 PART L

13 Section 1. Subdivision 22 of section 282 of the tax law, as added by
14 section 1 of part W-1 of chapter 109 of the laws of 2006, is amended to
15 read as follows:

16 22. "E85" means a [mixture consisting by volume of eighty-five
17 percent] FUEL BLEND CONSISTING OF ethanol and [the remainder of which
18 is] motor fuel, WHICH MEETS THE ASTM INTERNATIONAL ACTIVE STANDARD D5798
19 FOR FUEL ETHANOL.

20 S 2. Section 19 of part W-1 of chapter 109 of the laws of 2006, amend-
21 ing the tax law relating to providing exemptions, reimbursements and
22 credits from various taxes for certain alternative fuels, is amended to
23 read as follows:

24 S 19. This act shall take effect immediately; provided, however, that
25 sections one through thirteen of this act shall take effect September 1,
26 2006 and shall be deemed repealed on September 1, [2011] 2012 and such
27 repeal shall apply in accordance with the applicable transitional
28 provisions of sections 1106 and 1217 of the tax law, and shall apply to
29 sales made, fuel compounded or manufactured, and uses occurring on or
30 after such date, and with respect to sections seven through eleven of
31 this act, in accordance with applicable transitional provisions of
32 sections 1106 and 1217 of the tax law; provided, however, that the
33 commissioner of taxation and finance shall be authorized on and after
34 the date this act shall have become a law to adopt and amend any rules
35 or regulations and to take any steps necessary to implement the
36 provisions of this act; provided further that sections fourteen through
37 sixteen of this act shall take effect immediately and shall apply to
38 taxable years beginning on or after January 1, 2006.

39 S 3. This act shall take effect immediately; provided, however, that
40 the amendments made to subdivision 22 of section 282 of the tax law made
41 by section one of this act shall not affect the repeal of such subdivi-
42 sion and shall be deemed repealed therewith.

43 PART M

44 Section 1. Section 11 of part EE of chapter 63 of the laws of 2000,
45 amending the tax law and other laws relating to modifying the distrib-
46 ution of funds from the motor vehicle fuel excise tax, as amended by
47 section 1-b of part A of chapter 63 of the laws of 2005, is amended to
48 read as follows:

49 S 11. Notwithstanding any other law, rule or regulation to the contra-
50 ry, the comptroller is hereby authorized and directed to deposit in
51 equal monthly installments and distribute pursuant to the provisions of
52 subdivision (d) of section 301-j of the tax law amounts listed below to

1 the credit of the dedicated highway and bridge trust fund and the dedi-
2 cated mass transportation trust fund from [taxes and fees] ALL MOTOR
3 VEHICLE RECEIPTS now deposited into the general fund pursuant to
4 provisions of the vehicle and traffic law: twenty-eight million four
5 hundred thousand dollars from April 1, 2002 through March 31, 2003,
6 sixty-seven million nine hundred thousand dollars from April 1, 2003
7 through March 31, 2004, one hundred seventy million one hundred thousand
8 dollars from April 1, 2004 through March 31, 2005, and one hundred
9 percent of all [taxes and fees] MOTOR VEHICLE RECEIPTS pursuant to
10 provisions of the vehicle and traffic law that are not otherwise
11 directed to be deposited in a fund other than the general fund from
12 April 1, 2005 through March 31, 2006, and the same amount each year
13 thereafter.

14 S 2. This act shall take effect April 1, 2011.

15

PART N

16 Section 1. Paragraph 1 of subdivision a of section 1612 of the tax
17 law, as amended by chapter 147 of the laws of 2010, is amended to read
18 as follows:

19 (1) sixty percent of the total amount for which tickets have been sold
20 for a lawful KENO OR SIMILAR STYLE lottery game [introduced on or after
21 the effective date of this paragraph, subject to the following
22 provisions:

23 (A) such game shall be available only on premises occupied by licensed
24 lottery sales agents, subject to the following provisions:

25 (i) if the licensee holds a license issued pursuant to the alcoholic
26 beverage control law to sell alcoholic beverages for consumption on the
27 premises, then not less than twenty-five percent of the gross sales must
28 result from sales of food;

29 (ii) if the licensee does not hold a license issued pursuant to the
30 alcoholic beverage control law to sell alcoholic beverages for consump-
31 tion on the premises, then the premises must have a minimum square
32 footage greater than two thousand five hundred square feet;

33 (iii) notwithstanding the foregoing provisions, television equipment
34 that automatically displays the results of such drawings may be
35 installed and used without regard to the percentage of food sales or the
36 square footage if such premises are used as:

37 (I) a commercial bowling establishment, or

38 (II) a facility authorized under the racing, pari-mutuel wagering and
39 breeding law to accept pari-mutuel wagers;

40 (B) the rules for the operation of such game shall be as prescribed by
41 regulations promulgated and adopted by the division, provided however,
42 that such rules shall provide that no person under the age of twenty-one
43 may participate in such games on the premises of a licensee who holds a
44 license issued pursuant to the alcoholic beverage control law to sell
45 alcoholic beverages for consumption on the premises; and, provided,
46 further, that such regulations may be revised on an emergency basis not
47 later than ninety days after the enactment of this paragraph in order to
48 conform such regulations to the requirements of this paragraph]; or

49 S 2. This act shall take effect immediately.

50

PART O

1 Section 1. Subparagraph (ii) of paragraph 1 of subdivision b of
2 section 1612 of the tax law is amended by adding a new clause (I) to
3 read as follows:

4 (I) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, FREE PLAY
5 ALLOWANCE CREDITS AUTHORIZED BY THE DIVISION PURSUANT TO SUBDIVISION F
6 OF SECTION SIXTEEN HUNDRED SEVENTEEN-A OF THIS ARTICLE SHALL NOT BE
7 INCLUDED IN THE CALCULATION OF THE TOTAL AMOUNT WAGERED ON VIDEO LOTTERY
8 GAMES, THE TOTAL AMOUNT WAGERED AFTER PAYOUT OF PRIZES, THE VENDOR FEES
9 PAYABLE TO THE OPERATORS OF VIDEO LOTTERY FACILITIES, VENDOR'S CAPITAL
10 AWARDS, FEES PAYABLE TO THE DIVISION'S VIDEO LOTTERY GAMING EQUIPMENT
11 CONTRACTORS, OR RACING SUPPORT PAYMENTS.

12 S 2. Section 1617-a of the tax law is amended by adding a new subdivi-
13 sion f to read as follows:

14 F. (1) THE DIVISION MAY ADMINISTER A FREE PLAY ALLOWANCE PROGRAM TO
15 OFFER PLAYERS OR PROSPECTIVE PLAYERS OF VIDEO LOTTERY GAMES FREE PLAY
16 CREDITS FOR THE PURPOSE OF INCREASING REVENUES EARNED BY THE VIDEO
17 LOTTERY PROGRAM FOR THE SUPPORT OF EDUCATION. FOR THE PURPOSES OF THIS
18 SUBDIVISION, "FREE PLAY ALLOWANCE CREDIT" MEANS A SPECIFIED DOLLAR
19 AMOUNT THAT (I) MAY BE USED BY A PLAYER TO PLAY A VIDEO LOTTERY GAME
20 WITHOUT PAYING ANY OTHER CONSIDERATION, AND (II) IS NOT USED IN THE
21 CALCULATION OF TOTAL REVENUE WAGERED AFTER PAYOUT OF PRIZES.

22 (2) FOR EACH VIDEO LOTTERY FACILITY, THE DIVISION SHALL AUTHORIZE THE
23 USE OF FREE PLAY ALLOWANCE CREDITS IF THE OPERATOR OF SUCH FACILITY
24 SUBMITS A WRITTEN PLAN FOR THE USE OF THE FREE PLAY ALLOWANCE THAT THE
25 DIVISION DETERMINES IS DESIGNED TO INCREASE THE AMOUNT OF REVENUE EARNED
26 BY VIDEO LOTTERY GAMING AT SUCH FACILITY FOR THE SUPPORT OF EDUCATION.

27 (3) FOR EACH VIDEO LOTTERY FACILITY, THE ANNUAL VALUE OF THE FREE PLAY
28 ALLOWANCE CREDITS AUTHORIZED FOR USE BY THE OPERATOR PURSUANT TO THIS
29 SUBDIVISION SHALL NOT EXCEED AN AMOUNT EQUAL TO TEN PERCENT OF THE TOTAL
30 AMOUNT WAGERED ON VIDEO LOTTERY GAMES AFTER PAYOUT OF PRIZES. THE DIVI-
31 SION SHALL ESTABLISH PROCEDURES TO ASSURE THAT FREE PLAY ALLOWANCE CRED-
32 ITS DO NOT EXCEED SUCH AMOUNT.

33 (4) THE DIVISION, IN CONJUNCTION WITH THE DIRECTOR OF THE BUDGET, MAY
34 SUSPEND THE USE OF FREE PLAY ALLOWANCE CREDITS AUTHORIZED PURSUANT TO
35 THIS SUBDIVISION WHENEVER THEY JOINTLY DETERMINE THAT THE USE OF FREE
36 PLAY ALLOWANCE CREDITS ARE NOT EFFECTIVE IN INCREASING THE AMOUNT OF
37 REVENUE EARNED FOR THE SUPPORT OF EDUCATION, AND SUCH USE MAY NOT BE
38 RESUMED UNLESS THE OPERATOR OF SUCH FACILITY SUBMITS A NEW OR REVISED
39 WRITTEN PLAN FOR THE USE OF THE FREE PLAY ALLOWANCE THAT THE DIVISION
40 DETERMINES IS DESIGNED MORE EFFECTIVELY TO PRODUCE AN INCREASE IN THE
41 AMOUNT OF REVENUE EARNED BY VIDEO LOTTERY GAMING AT SUCH FACILITY FOR
42 THE SUPPORT OF EDUCATION.

43 (5) NOTHING IN THIS SUBDIVISION SHALL BE DEEMED TO PROHIBIT THE OPERA-
44 TOR OF A VIDEO LOTTERY FACILITY FROM OFFERING FREE PLAY CREDITS TO PLAY-
45 ERS OR PROSPECTIVE PLAYERS OF VIDEO LOTTERY GAMES WHEN THE VALUE OF SUCH
46 FREE PLAY CREDITS IS INCLUDED IN THE CALCULATION OF THE TOTAL AMOUNT
47 WAGERED ON VIDEO LOTTERY GAMES AND THE TOTAL AMOUNT WAGERED AFTER PAYOUT
48 OF PRIZES, AND THE OPERATOR OF SUCH FACILITY PAYS THE DIVISION THE FULL
49 AMOUNT DUE AS THE RESULT OF SUCH CALCULATIONS.

50 (6) THE DIVISION MAY AMEND THE CONTRACT WITH THE PROVIDER OF THE
51 CENTRAL COMPUTER SYSTEM THAT CONTROLS THE VIDEO LOTTERY NETWORK DURING
52 THE TERM OF SUCH CONTRACT IN EFFECT ON THE EFFECTIVE DATE OF THIS SUBDI-
53 VISION TO PROVIDE ADDITIONAL CONSIDERATION TO SUCH PROVIDER IN AN AMOUNT
54 DETERMINED BY THE DIVISION TO BE NECESSARY TO COMPENSATE FOR (I) PROC-
55 ESSING FREE PLAY ALLOWANCE TRANSACTIONS AND (II) SYSTEM UPDATES AND
56 MODIFICATIONS OTHERWISE NEEDED AS OF SUCH EFFECTIVE DATE.

S 3. This act shall take effect immediately.

PART P

Section 1. Paragraph 2 of subdivision a of section 1612 of the tax law, as amended by section 1 of part P of chapter 85 of the laws of 2002, is amended to read as follows:

(2) sixty-five percent of the total amount for which tickets have been sold for the "Instant Cash" game in which the participant purchases a preprinted ticket on which dollar amounts or symbols are concealed on the face or the back of such ticket, provided however up to [three such] FIVE NEW games may be offered during the fiscal year, seventy-five percent of the total amount for which tickets have been sold for such [three] FIVE games in which the participant purchases a preprinted ticket on which dollar amounts or symbols are concealed on the face or the back of such ticket; or

S 2. This act shall take effect immediately.

PART Q

Section 1. Paragraph 3 of subdivision a of section 1612 of the tax law, as amended by section 2 of part D of chapter 383 of the laws of 2001, is amended to read as follows:

(3) fifty percent of the total amount for which tickets have been sold for games known as: (A) the "Daily Numbers Game" or "Win 4", discrete games in which the participants select no more than three or four of their own numbers to match with three or four numbers drawn by the division for purposes of determining winners of such games, (B) "Pick 10", offered no more than once daily, in which participants select from a specified field of numbers a subset of ten numbers to match against a subset of numbers to be drawn by the division from such field of numbers for the purpose of determining winners of such game, (C) "Take 5", offered no more than once daily, in which participants select from a specified field of numbers a subset of five numbers to match against a subset of five numbers to be drawn by the division from such field of numbers for purposes of determining winners of such game, and (D) any joint, multi-jurisdiction, and out-of-state lottery, EXCEPT SUCH PERCENT MAY EXCEED FIFTY PERCENT OF THE TOTAL AMOUNT FOR WHICH TICKETS HAVE BEEN SOLD FOR ANY JOINT, MULTI-JURISDICTION, AND OUT-OF-STATE LOTTERY IF AT LEAST TWO-THIRDS OF THE LOTTERY JURISDICTIONS PARTICIPATING IN SUCH LOTTERY AGREE TO A PERCENTAGE THAT EXCEEDS FIFTY PERCENT AND EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH ONE OF SUBDIVISION B OF THIS SECTION FOR ANY JOINT, MULTI-JURISDICTION, OUT-OF-STATE VIDEO LOTTERY GAMING; or

S 2. This act shall take effect immediately.

PART R

Section 1. The opening paragraph of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 1 of part 0-1 of chapter 57 of the laws of 2009, is amended to read as follows:

Notwithstanding section one hundred twenty-one of the state finance law, on or before the twentieth day of each month, the division shall pay into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law, not less than forty-five percent of the total amount for which tickets have been sold for games defined in paragraph four of subdivision a of this section

1 during the preceding month, not less than thirty-five percent of the
2 total amount for which tickets have been sold for games defined in para-
3 graph three of subdivision a of this section during the preceding month,
4 not less than twenty percent of the total amount for which tickets have
5 been sold for games defined in paragraph two of subdivision a of this
6 section during the preceding month, provided however that for games with
7 a prize payout of seventy-five percent of the total amount for which
8 tickets have been sold, the division shall pay not less than ten percent
9 of sales into the state treasury and not less than twenty-five percent
10 of the total amount for which tickets have been sold for games defined
11 in paragraph one of subdivision a of this section during the preceding
12 month; and the balance of the total revenue after payout for prizes for
13 games known as "video lottery gaming," INCLUDING ANY JOINT, MULTI-JURIS-
14 DICTION, AND OUT-OF-STATE VIDEO LOTTERY GAMING,

15 S 2. Paragraph 1 of subdivision c of section 1612 of the tax law, as
16 amended by section 2 of part CC of chapter 61 of the laws of 2005, is
17 amended to read as follows:

18 1. The specifications for video lottery gaming, INCLUDING ANY JOINT,
19 MULTI-JURISDICTION, AND OUT-OF-STATE VIDEO LOTTERY GAMING, shall be
20 designed in such a manner as to pay prizes that average no less than
21 ninety percent of sales.

22 S 3. This act shall take effect immediately.

23

PART S

24 Section 1. Paragraph (a) of subdivision 1 of section 1003 of the
25 racing, pari-mutuel wagering and breeding law, as amended by section 1
26 of part C of chapter 134 of the laws of 2010, is amended to read as
27 follows:

28 (a) Any racing association or corporation or regional off-track
29 betting corporation, authorized to conduct pari-mutuel wagering under
30 this chapter, desiring to display the simulcast of horse races on which
31 pari-mutuel betting shall be permitted in the manner and subject to the
32 conditions provided for in this article may apply to the board for a
33 license so to do. Applications for licenses shall be in such form as may
34 be prescribed by the board and shall contain such information or other
35 material or evidence as the board may require. No license shall be
36 issued by the board authorizing the simulcast transmission of thorough-
37 bred races from a track located in Suffolk county. The fee for such
38 licenses shall be five hundred dollars per simulcast facility per year
39 payable by the licensee to the board for deposit into the general fund.
40 Except as provided herein, the board shall not approve any application
41 to conduct simulcasting into individual or group residences, homes or
42 other areas for the purposes of or in connection with pari-mutuel wager-
43 ing. The board may approve simulcasting into residences, homes or other
44 areas to be conducted jointly by one or more regional off-track betting
45 corporations and one or more of the following: a franchised corporation,
46 thoroughbred racing corporation or a harness racing corporation or asso-
47 ciation; provided (i) the simulcasting consists only of those races on
48 which pari-mutuel betting is authorized by this chapter at one or more
49 simulcast facilities for each of the contracting off-track betting
50 corporations which shall include wagers made in accordance with section
51 one thousand fifteen, one thousand sixteen and one thousand seventeen of
52 this article; provided further that the contract provisions or other
53 simulcast arrangements for such simulcast facility shall be no less
54 favorable than those in effect on January first, two thousand five; (ii)

1 that each off-track betting corporation having within its geographic
2 boundaries such residences, homes or other areas technically capable of
3 receiving the simulcast signal shall be a contracting party; (iii) the
4 distribution of revenues shall be subject to contractual agreement of
5 the parties except that statutory payments to non-contracting parties,
6 if any, may not be reduced; provided, however, that nothing herein to
7 the contrary shall prevent a track from televising its races on an
8 irregular basis primarily for promotional or marketing purposes as found
9 by the board. For purposes of this paragraph, the provisions of section
10 one thousand thirteen of this article shall not apply. Any agreement
11 authorizing an in-home simulcasting experiment commencing prior to May
12 fifteenth, nineteen hundred ninety-five, may, and all its terms, be
13 extended until June thirtieth, two thousand [eleven] TWELVE; provided,
14 however, that any party to such agreement may elect to terminate such
15 agreement upon conveying written notice to all other parties of such
16 agreement at least forty-five days prior to the effective date of the
17 termination, via registered mail. Any party to an agreement receiving
18 such notice of an intent to terminate, may request the board to mediate
19 between the parties new terms and conditions in a replacement agreement
20 between the parties as will permit continuation of an in-home experiment
21 until June thirtieth, two thousand [eleven] TWELVE; and (iv) no in-home
22 simulcasting in the thoroughbred special betting district shall occur
23 without the approval of the regional thoroughbred track.

24 S 2. Subparagraph (iii) of paragraph d of subdivision 3 of section
25 1007 of the racing, pari-mutuel wagering and breeding law, as amended by
26 section 2 of part C of chapter 134 of the laws of 2010, is amended to
27 read as follows:

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

40 S 3. The opening paragraph of subdivision 1 of section 1014 of the
41 racing, pari-mutuel wagering and breeding law, as amended by section 3
42 of part C of chapter 134 of the laws of 2010, is amended to read as
43 follows:

44 The provisions of this section shall govern the simulcasting of races
45 conducted at thoroughbred tracks located in another state or country on
46 any day during which a franchised corporation is conducting a race meet-
47 ing in Saratoga county at Saratoga thoroughbred racetrack until June
48 thirtieth, two thousand [eleven] TWELVE and on any day regardless of
49 whether or not a franchised corporation is conducting a race meeting in
50 Saratoga county at Saratoga thoroughbred racetrack after June thirtieth,
51 two thousand [eleven] TWELVE. On any day on which a franchised corpo-
52 ration has not scheduled a racing program but a thoroughbred racing
53 corporation located within the state is conducting racing, every off-
54 track betting corporation branch office and every simulcasting facility
55 licensed in accordance with section one thousand seven (that have
56 entered into a written agreement with such facility's representative

1 horsemen's organization, as approved by the board), one thousand eight,
2 or one thousand nine of this article shall be authorized to accept
3 wagers and display the live simulcast signal from thoroughbred tracks
4 located in another state or foreign country subject to the following
5 provisions:

6 S 4. Subdivision 1 of section 1015 of the racing, pari-mutuel wagering
7 and breeding law, as amended by section 4 of part C of chapter 134 of
8 the laws of 2010, is amended to read as follows:

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

14 S 5. The opening paragraph of subdivision 1 of section 1016 of the
15 racing, pari-mutuel wagering and breeding law, as amended by section 5
16 of part C of chapter 134 of the laws of 2010, is amended to read as
17 follows:

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

34 S 6. The opening paragraph of section 1018 of the racing, pari-mutuel
35 wagering and breeding law, as amended by section 6 of part C of chapter
36 134 of the laws of 2010, is amended to read as follows:

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

52 S 7. Section 32 of chapter 281 of the laws of 1994, amending the
53 racing, pari-mutuel wagering and breeding law and other laws relating to
54 simulcasting, as amended by section 7 of part C of chapter 134 of the
55 laws of 2010, is amended to read as follows:

1 S 32. This act shall take effect immediately and the pari-mutuel tax
2 reductions in section six of this act shall expire and be deemed
3 repealed on July 1, [2011] 2012; provided, however, that nothing
4 contained herein shall be deemed to affect the application, qualifica-
5 tion, expiration, or repeal of any provision of law amended by any
6 section of this act, and such provisions shall be applied or qualified
7 or shall expire or be deemed repealed in the same manner, to the same
8 extent and on the same date as the case may be as otherwise provided by
9 law; provided further, however, that sections twenty-three and twenty-
10 five of this act shall remain in full force and effect only until May 1,
11 1997 and at such time shall be deemed to be repealed.

12 S 8. Section 54 of chapter 346 of the laws of 1990, amending the
13 racing, pari-mutuel wagering and breeding law and other laws relating to
14 simulcasting and the imposition of certain taxes, as amended by section
15 8 of part C of chapter 134 of the laws of 2010, is amended to read as
16 follows:

17 S 54. This act shall take effect immediately; provided, however,
18 sections three through twelve of this act shall take effect on January
19 1, 1991, and section 1013 of the racing, pari-mutuel wagering and breed-
20 ing law, as added by section thirty-eight of this act, shall expire and
21 be deemed repealed on July 1, [2011] 2012; and section eighteen of this
22 act shall take effect on July 1, 2008 and sections fifty-one and fifty-
23 two of this act shall take effect as of the same date as chapter 772 of
24 the laws of 1989 took effect.

25 S 9. Paragraph (a) of subdivision 1 of section 238 of the racing,
26 pari-mutuel wagering and breeding law, as amended by section 10 of part
27 C of chapter 134 of the laws of 2010, is amended to read as follows:

28 (a) The franchised corporation authorized under this chapter to
29 conduct pari-mutuel betting at a race meeting or races run thereat shall
30 distribute all sums deposited in any pari-mutuel pool to the holders of
31 winning tickets therein, provided such tickets be presented for payment
32 before April first of the year following the year of their purchase,
33 less an amount which shall be established and retained by such fran-
34 chised corporation of between twelve to seventeen per centum of the
35 total deposits in pools resulting from on-track regular bets, and four-
36 teen to twenty-one per centum of the total deposits in pools resulting
37 from on-track multiple bets and fifteen to twenty-five per centum of the
38 total deposits in pools resulting from on-track exotic bets and fifteen
39 to thirty-six per centum of the total deposits in pools resulting from
40 on-track super exotic bets, plus the breaks. The retention rate to be
41 established is subject to the prior approval of the racing and wagering
42 board. Such rate may not be changed more than once per calendar quarter
43 to be effective on the first day of the calendar quarter. "Exotic bets"
44 and "multiple bets" shall have the meanings set forth in section five
45 hundred nineteen of this chapter. "Super exotic bets" shall have the
46 meaning set forth in section three hundred one of this chapter. For
47 purposes of this section, a "pick six bet" shall mean a single bet or
48 wager on the outcomes of six races. The breaks are hereby defined as the
49 odd cents over any multiple of five for payoffs greater than one dollar
50 five cents but less than five dollars, over any multiple of ten for
51 payoffs greater than five dollars but less than twenty-five dollars,
52 over any multiple of twenty-five for payoffs greater than twenty-five
53 dollars but less than two hundred fifty dollars, or over any multiple of
54 fifty for payoffs over two hundred fifty dollars. Out of the amount so
55 retained there shall be paid by such franchised corporation to the
56 commissioner of taxation and finance, as a reasonable tax by the state

1 for the privilege of conducting pari-mutuel betting on the races run at
2 the race meetings held by such franchised corporation, the following
3 percentages of the total pool for regular and multiple bets five per
4 centum of regular bets and four per centum of multiple bets plus twenty
5 per centum of the breaks; for exotic wagers seven and one-half per
6 centum plus twenty per centum of the breaks, and for super exotic bets
7 seven and one-half per centum plus fifty per centum of the breaks. For
8 the period June first, nineteen hundred ninety-five through September
9 ninth, nineteen hundred ninety-nine, such tax on regular wagers shall be
10 three per centum and such tax on multiple wagers shall be two and one-
11 half per centum, plus twenty per centum of the breaks. For the period
12 September tenth, nineteen hundred ninety-nine through March thirty-
13 first, two thousand one, such tax on all wagers shall be two and six-
14 tenths per centum and for the period April first, two thousand one
15 through December thirty-first, two thousand [eleven] TWELVE, such tax on
16 all wagers shall be one and six-tenths per centum, plus, in each such
17 period, twenty per centum of the breaks. Payment to the New York state
18 thoroughbred breeding and development fund by such franchised corpo-
19 ration shall be one-half of one per centum of total daily on-track pari-
20 mutuel pools resulting from regular, multiple and exotic bets and three
21 per centum of super exotic bets provided, however, that for the period
22 September tenth, nineteen hundred ninety-nine through March thirty-
23 first, two thousand one, such payment shall be six-tenths of one per
24 centum of regular, multiple and exotic pools and for the period April
25 first, two thousand one through December thirty-first, two thousand
26 [eleven] TWELVE, such payment shall be seven-tenths of one per centum of
27 such pools.

28 S 10. Subdivision 5 of section 1012 of the racing, pari-mutuel wager-
29 ing and breeding law, as amended by section 11 of part C of chapter 134
30 of the laws of 2010, is amended to read as follows:

31 5. The provisions of this section shall expire and be of no further
32 force and effect after June thirtieth, two thousand [eleven] TWELVE.

33 S 11. This act shall take effect immediately.

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

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