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

5326

2011-2012 Regular Sessions

I N A S S E M B L Y

February 15, 2011

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

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

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

Section 1. Article 23 of the tax law is REPEALED.

S 2. Clause (i) of subparagraph 5 of paragraph (a) of subdivision 9 of section 208 of the tax law, as amended by section 2 of part C of chapter 25 of the laws of 2009, is amended to read as follows:

(i) any refund or credit of a tax imposed under this article[, article twenty-three,] or article thirty-two of this chapter, for which tax no exclusion or deduction was allowed in determining the taxpayer's entire net income under this article[, article twenty-three,] or article thirty-two of this chapter for any prior year,

S 3. Subparagraph 20 of paragraph (b) of subdivision 9 of section 208 of the tax law is REPEALED.

S 4. Paragraph 2 of subdivision (a) of section 292 of the tax law, as amended by section 4 of part C of chapter 25 of the laws of 2009, is amended to read as follows:

(2) There shall be subtracted from federal unrelated business taxable income the amount of any refund or credit for overpayment of a tax imposed under this article [or article twenty-three of this chapter].

S 5. Paragraph 8 of subdivision (a) of section 292 of the tax law is REPEALED.

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

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 Paragraph 39 of subsection (b) of section 612 of the tax law is REPEALED.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) Special rules:

(1) For any taxable period, in order to constitute a new business, a business enterprise must have derived more than sixty percent of its aggregate gross receipts from sources other than royalties, rents, dividends, interest, annuities and sales or exchanges of stock or securities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S 31. Paragraphs 1 and 2 and subparagraph (B) of paragraph 4 of subdivision (j) of section 14 of the tax law, paragraphs 1 and 2 as amended by section 10 of part CC of chapter 85 of the laws of 2002 and subparagraph (B) of paragraph 4 as amended by chapter 161 of the laws of 2005, are amended to read as follows:

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

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

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

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

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

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

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

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

2-a. In addition to the rebate allowable under the provisions of subdivision one of this section, the portion of the amount of stock transfer tax paid which is to be allowed as a rebate to any person, firm, company or corporation registered with the United States securities and exchange commission in accordance with subsection (b) of section fifteen of the securities exchange act of nineteen hundred thirty-four, as amended, and acting as a dealer in a transaction described in paragraph (e) of subdivision twelve of this section, other than such a person, firm, company or corporation liable to file a report or return under article nine-A of this chapter, [or article twenty-three of this chapter, (as such article was in effect on or before December thirtieth, nineteen hundred eighty-two),] shall be one hundred percent of the stock transfer tax incurred and paid on transactions subject to the stock transfer tax executed by such person, firm, company or corporation pursuant to the acceptance of an order placed through an intermarket linkage system developed pursuant to subsection (a) of section eleven-A of such securities exchange act under a plan submitted by one or more national securities exchanges or national securities associations registered with such securities and exchange commission occurring on and after April seventeenth, nineteen hundred seventy-eight and on or before September thirtieth, nineteen hundred seventy-nine, seventy percent of the tax incurred and paid on such a transaction occurring on and after October first, nineteen hundred seventy-nine and on or before September thirtieth, nineteen hundred eighty and forty percent of the tax incurred and paid on such a transaction occurring on and after October first, nineteen hundred eighty and on or before September thirtieth, nineteen hundred eighty-one. Notwithstanding any other provision of law, the net amount to be rebated to any such person, firm, company or corporation under this subdivision with respect to stock transfer tax allowable as rebates during each of the periods ending on September thirtieth hereinbefore set forth shall not be allowed or paid prior to the first day of the eighth month following September thirtieth of each of such periods nor until the subsequent date on which the commissioner of taxation and finance shall next determine the amount allowable as rebates pursuant to the provisions of section ninety-two-i of the state finance law, provided, however, that the net amount to be allowed for the April seventeenth, nineteen hundred seventy-eight through September thirtieth, nineteen hundred seventy-eight period shall not be allowed or paid until the last business day of June, nineteen hundred seventy-nine.

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

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

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

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

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

(iv) within ninety days after the adoption of such plan, or, if a return is required, as part of such return, under such article nine[,] OR article nine-A [or article twenty-three (as such article was in effect on or before December thirtieth, nineteen hundred eighty-two), whichever is sooner] OF THIS CHAPTER, shall file a new business certificate with the state tax commission attesting to whether it meets, if subject to taxation under such articles, or intends to meet, if not so subject, all of the conditions stated in clauses (i), (ii) and (iii) of this subparagraph within the time set forth therein. Thereafter, during the first four taxable years of such new business, along with, and as part of, any return required under such articles, such new business shall make and file a new business certificate for the period covered by such return attesting to whether it has met the conditions specified in this subparagraph during the taxable period covered by such return. If no return is required under such articles, such certificate shall be filed annually on or before the fifteenth day of March which shall cover the twelve consecutive calendar month period ending on the last day of December immediately preceding such March fifteenth. If such new business fails to meet such conditions specified in this subparagraph, it shall, in addition, give notice of this fact, within the time prescribed by the state tax commission, to the holders of its "new business investments." The state tax commission shall prescribe the form and content of such new business certification and may require a new business to file such certificate for periods (even if no return is filed or required, but for this section) covering up to eight years from the date of adoption of such plan, as in its discretion, it deems the same necessary for the enforcement of this subparagraph, and

(2) A new business does not include (i) any new business of which twenty-five percent or more of the number of shares of stock that entitle the holders thereof to vote for the election of directors or trustees is owned, directly or indirectly, by a taxpayer subject to tax under section one hundred eighty-three, one hundred eighty-four[,] OR one hundred eighty-five [or one hundred eighty-six of article nine] of this chapter, or under article nine-A, thirty-two or thirty-three of this chapter or (ii) any new business substantially similar in operation and in ownership, directly or indirectly, to a business entity (or entities) taxable, or previously taxable, under such sections, such articles, [article twenty-three] or which would have been subject to [tax under article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or] the income (or losses) of which is (or was) includable under THIS article [twenty-two] whereby the intent and purpose of this subsection would be evaded.

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

(p) New business investment deferral. For taxable years beginning before January first, nineteen hundred eighty-eight, at the option of the taxpayer, there may be subtracted from federal adjusted gross income a reinvested amount of long-term capital gain realized in a taxable year from the sale of a capital asset, as such term is defined in section 1221 of the internal revenue code, which is not a new business investment. A reinvested amount of long-term capital gain shall mean an amount which bears the same ratio to the long-term capital gain realized from the sale of a capital asset which was includable in New York adjusted gross income as that portion of the sale proceeds which is reinvested, within one year from date of sale, in a New York new business bears to the total sale proceeds. For the purposes of this subsection, a New York new business is a business enterprise which (1) has been a taxpayer under this article for no more than three taxable years (including short taxable years), (2) over fifty percent of the number of shares of stock that entitle the holders thereof to vote for the election of directors or trustees is not owned, directly or indirectly, by a taxpayer subject to tax under section one hundred eighty-three, one hundred eighty-four[,] OR one hundred eighty-five [or one hundred eighty-six of article nine] of this chapter, or under article nine-A, thirty-two or thirty-three of this chapter, (3) is not substantially similar in operation or ownership, directly or indirectly, to a business entity (or entities) taxable, or previously taxable, under such sections, such articles, [article twenty-three] or which would have been subject to [tax under article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or] the income (or losses) of which is (or was) includable under THIS article [twenty-two] whereby the intent and purpose of this subsection would be evaded, (4) locates and employs at least ninety percent of its assets in the state, (5) employs principally in the state eighty percent of its employees (as ascertained within the meaning and intent of subparagraph three of paragraph (a) of subdivision three of section two hundred ten of this chapter and, in addition, in the case of a partnership, excluding partners), (6) derives less than forty percent of its gross income from dividends, interest, royalties (other than mineral, oil, or gas royalties or copyright royalties), and annuities and (7) reports at least twenty-five hundred dollars in gross income in any taxable year. The reinvested amount must qualify as a capital asset as defined in section 1221 of the internal revenue code and must be retained by the taxpayer for at least twelve months. The modification allowable under this subsection shall be utilized with respect to the taxable year in which the twelve month retention period ends. The commissioner [of taxation and finance] may require annual information reports on the investments in new businesses made pursuant to this subsection, and such other reports as he may require to ensure against the evasion of the intent and purposes of this subsection.

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

(g) Cooperation with the cities of the state of New York. Notwithstanding the provisions of subsection (e) OF THIS SECTION, the tax commission may permit the proper city officer of any city of the state of New York imposing a personal income tax upon the incomes of residents, or an unincorporated business income tax, or an earnings tax on nonresidents, or the authorized representative of any such officer, to inspect any return filed under this article, [or article twenty-three (as such article was in effect on or before December thirtieth, nineteen hundred eighty-two),] or may furnish to such officer or his authorized representative an abstract of any such return or supply him with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this article [or article twenty-three (as such article was in effect on or before December thirtieth, nineteen hundred eighty-two)], but such permission shall be granted or such information furnished to such officer or his representative only if the local laws of such city grant substantially similar privileges to the commission or officer of this state charged with the administration of the tax imposed by this article and such information is to be used for tax purposes only; and provided further the commissioner [of taxation and finance] may furnish to such city officer or the legal representative of such city such returns filed under this article [or article twenty-three (as such article was in effect on or before December thirtieth, nineteen hundred eighty-two)] and other tax information, as he may consider proper, for use in court actions or proceedings under such local law, whether civil or criminal, where a written request therefor has been made to the commissioner [of taxation and finance] by such city officer or his delegate, provided the local law of such city grants substantially similar powers to such city officer or his delegate. Where the commissioner [of taxation and finance] has so authorized use of returns and other information in such actions or proceedings, officers and employees of the department [of taxation and finance] may testify in such actions or proceedings in respect to such returns or other information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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