

5616

2011-2012 Regular Sessions

I N A S S E M B L Y

February 24, 2011

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

AN ACT to repeal article 23 of the tax law, relating to the metropolitan commuter transportation mobility tax; to amend the tax law, administrative code of the city of New York, education law and the highway law, in relation to making technical corrections related thereto; and to repeal provisions of the tax law, administrative code of the city of New York, education law, public authorities law and the state finance law, relating to the metropolitan commuter transportation mobility tax

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

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 Article 23 of the tax law is REPEALED.

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

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

15 (2) For purposes of article twenty-two of this chapter, an individual
16 who is either a sole proprietor or a member of a partnership shall qual-
17 ify as an owner of a new business unless the business of which the indi-
18 vidual is an owner is substantially similar in operation and in owner-
19 ship to a business entity taxable, or previously taxable, under section

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

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1 one hundred eighty-three, one hundred eighty-four[,] OR one hundred
2 eighty-five [or one hundred eighty-six] of article nine; article nine-A,
3 thirty-two or thirty-three of this chapter; [article twenty-three of
4 this chapter] or which would have been subject to tax under [such] arti-
5 cle twenty-three (as such article was in effect on January first, nine-
6 teen hundred eighty) or the income (or losses) of which is (or was)
7 includable under article twenty-two.

8 S 3. Clause (i) of subparagraph 5 of paragraph (a) of subdivision 9 of
9 section 208 of the tax law, as amended by section 2 of part C of chapter
10 25 of the laws of 2009, is amended to read as follows:

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

16 S 4. Subparagraph 20 of paragraph (b) of subdivision 9 of section 208
17 of the tax law is REPEALED.

18 S 5. Paragraph (c) of subdivision 1-c of section 210 of the tax law,
19 as amended by chapter 1043 of the laws of 1981, is amended to read as
20 follows:

21 (c) is not a corporation which is substantially similar in operation
22 and in ownership to a business entity (or entities) taxable, or previ-
23 ously taxable, under this article; section one hundred eighty-three, one
24 hundred eighty-four[,] OR one hundred eighty-five [or one hundred eight-
25 y-six] of article nine; article thirty-two or thirty-three of this chap-
26 ter; [article twenty-three of this chapter] or which would have been
27 subject to tax under [such] article twenty-three (as such article was in
28 effect on January first, nineteen hundred eighty) or the income (or
29 losses) of which is (or was) includable under article twenty-two of this
30 chapter, and

31 S 6. Subparagraph 2 of paragraph j of subdivision 12 of section 210 of
32 the tax law, as amended by chapter 1043 of the laws of 1981, is amended
33 to read as follows:

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

46 S 7. Paragraph 2 of subdivision (a) of section 292 of the tax law, as
47 amended by section 4 of part C of chapter 25 of the laws of 2009, is
48 amended to read as follows:

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

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

54 S 9. Subparagraph (A) of paragraph 10 of subsection (a) of section 606
55 of the tax law, as amended by section 3 of part CC of chapter 85 of the
56 laws of 2002, is amended to read as follows:

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

13 S 10. Paragraph 39 of subsection (b) of section 612 of the tax law is
14 REPEALED.

15 S 11. Paragraph 7 of subsection (c) of section 612 of the tax law, as
16 amended by section 7 of part C of chapter 25 of the laws of 2009, is
17 amended to read as follows:

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

22 S 12. Clause (ii) and subclause 2 of clause (v) of subparagraph (B) of
23 paragraph 1 of subsection (o) of section 612 of the tax law, clause (ii)
24 as amended by chapter 28 of the laws of 1987 and subclause 2 as amended
25 by chapter 1043 of the laws of 1981, are amended to read as follows:

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

40 (2) A new business does not include (i) any new business of which
41 twenty-five percent or more of the number of shares of stock that enti-
42 tle the holders thereof to vote for the election of directors or trus-
43 tees is owned, directly or indirectly, by a taxpayer subject to tax
44 under section one hundred eighty-three, one hundred eighty-four[,] OR
45 one hundred eighty-five [or one hundred eighty-six] of article nine of
46 this chapter, or under article nine-A, thirty-two or thirty-three of
47 this chapter or (ii) any new business substantially similar in operation
48 and in ownership, directly or indirectly, to a business entity (or enti-
49 ties) taxable, or previously taxable, under such sections, such arti-
50 cles, [article twenty-three] or which would have been subject to tax
51 under article twenty-three (as such article was in effect on January
52 first, nineteen hundred eighty) or the income (or losses) of which is
53 (or was) includable under article twenty-two whereby the intent and
54 purpose of this subsection would be evaded.

1 S 13. Paragraph 3 of subsection (p) of section 612 of the tax law, as
2 amended by chapter 28 of the laws of 1987, is amended to read as
3 follows:

4 (3) is not substantially similar in operation or ownership, directly
5 or indirectly, to a business entity (or entities) taxable, or previously
6 taxable, under such sections, such articles, [article twenty-three] or
7 which would have been subject to tax under article twenty-three (as such
8 article was in effect on January first, nineteen hundred eighty) or the
9 income (or losses) of which is (or was) includable under article twen-
10 ty-two whereby the intent and purpose of this subsection would be
11 evaded,

12 S 14. Paragraph 8 of subsection (c) of section 615 of the tax law is
13 REPEALED.

14 S 15. Subsection 4 of section 618 of the tax law, as amended by
15 section 9 of part C of chapter 25 of the laws of 2009, is amended to
16 read as follows:

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

23 S 16. Subsection 4 of section 618 of the tax law, as separately
24 amended by section 5 of part HH-1 of chapter 57 of the laws of 2008 and
25 section 9 of part C of chapter 25 of the laws of 2009, is amended to
26 read as follows:

27 (4) There shall be added or subtracted (as the case may be) the
28 modifications described in paragraphs (6), (10), (17), (18), (19), (20),
29 (21), (22), (23), (24), (25), (26), (27), [(28),] (29), AND (38) [and
30 (39)] of subsection (b) and in paragraphs (11), (13), (15), (19), (20),
31 (21), (22), (23), (24), (25), (26) and (28) of subsection (c) of section
32 six hundred twelve of this part.

33 S 17. Subsection (a) of section 686 of the tax law, as amended by
34 section 10 of part C of chapter 25 of the laws of 2009, is amended to
35 read as follows:

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

1 overpayment and other information and data available in the files of the
2 commissioner.

3 S 18. Section 1311 of the tax law, as amended by chapter 682 of the
4 laws of 1976, is amended to read as follows:

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

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

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

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

34 S 19. Paragraph 15 of subsection (b) of section 1453 of the tax law is
35 REPEALED.

36 S 20. Subsection (d) of section 1453 of the tax law, as amended by
37 section 13 of part C of chapter 25 of the laws of 2009, is amended to
38 read as follows:

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

43 S 21. Subparagraph (B) of paragraph 8 of subsection (i) of section
44 1456 of the tax law, as added by section 27 of part A of chapter 56 of
45 the laws of 1998, is amended to read as follows:

46 (B) is substantially similar in operation and in ownership to a busi-
47 ness entity (or entities) taxable, or previously taxable, under this
48 article; section one hundred eighty-three, one hundred eighty-four[,]
49 one hundred eighty-five [or one hundred eighty-six] of article nine;
50 article nine-A or article thirty-three of this chapter; [article twen-
51 ty-three of this chapter] or which would have been subject to tax under
52 [such] article twenty-three (as such article was in effect on January
53 first, nineteen hundred eighty) or the income (or losses) of which is
54 (or was) includable under article twenty-two of this chapter whereby the
55 intent and purpose of this paragraph and paragraph five of this

1 subsection with respect to refunding of credit to new business would be
2 evaded; or

3 S 22. Subparagraph (C) of paragraph 1 of subdivision (b) of section
4 1503 of the tax law, as amended by section 14 of part C of chapter 25 of
5 the laws of 2009, is amended to read as follows:

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

12 S 23. Subparagraph (V) of paragraph 2 of subdivision (b) of section
13 1503 of the tax law is REPEALED.

14 S 24. Subparagraph (B) of paragraph 7 of subdivision (q) of section
15 1511 of the tax law, as added by section 1 of part L of chapter 63 of
16 the laws of 2000, is amended to read as follows:

17 (B) is substantially similar in operation and in ownership to a busi-
18 ness entity (or entities) taxable, or previously taxable, under this
19 article; section one hundred eighty-three, one hundred eighty-four[,] OR
20 one hundred [eight-five or one hundred eighty-six] EIGHTY-FIVE of arti-
21 cle nine; article nine-A or article thirty-two of this chapter; [article
22 twenty-three of this chapter] or which would have been subject to tax
23 under [such] article twenty-three (as such article was in effect [of] ON
24 January first, nineteen hundred eighty) or the income (or losses) of
25 which is (or was) includable under article twenty-two of this chapter
26 whereby the intent and purpose of this paragraph and paragraph four of
27 this subdivision with respect to refunding of credit to new business
28 would be evaded; or

29 S 25. Subparagraph 5 of paragraph (a) of subdivision 8 of section
30 11-602 of the administrative code of the city of New York, as amended by
31 section 16 of part C of chapter 25 of the laws of 2009, is amended to
32 read as follows:

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

38 S 26. Subparagraph 19 of paragraph (b) of subdivision 8 of section
39 11-602 of the administrative code of the city of New York is REPEALED.

40 S 27. Paragraph 16 of subdivision b of section 11-641 of the adminis-
41 trative code of the city of New York is REPEALED.

42 S 28. Subdivision (d) of section 11-641 of the administrative code of
43 the city of New York, as amended by section 19 of part C of chapter 25
44 of the laws of 2009, is amended to read as follows:

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

50 S 29. Paragraph 35 of subdivision (b) of section 11-1712 of the admin-
51 istrative code of the city of New York is REPEALED.

52 S 30. Paragraph 7 of subdivision (c) of section 11-1712 of the admin-
53 istrative code of the city of New York, as amended by section 21 of part
54 C of chapter 25 of the laws of 2009, is amended to read as follows:

55 (7) The amount of any refund or credit for overpayment of income taxes
56 imposed by this city, OR any other taxing jurisdiction, [or any taxes

1 imposed by article twenty-three of the tax law] to the extent properly
2 included in gross income for federal income tax purposes.

3 S 31. Paragraph 3 of subdivision (p) of section 11-1712 of the admin-
4 istrative code of the city of New York, as amended by chapter 333 of the
5 laws of 1987, is amended to read as follows:

6 (3) is not substantially similar in operation or ownership, directly
7 or indirectly, to a business entity (or entities) taxable, or previously
8 taxable, under such sections, such articles, [article twenty-three of
9 the tax law] or which would have been subject to tax under article twen-
10 ty-three (as such article was in effect on January first, nineteen
11 hundred eighty) or the income (or losses) of which is (or was) includi-
12 ble under article twenty-two of the tax law whereby the intent and
13 purpose of this subdivision would be evaded,

14 S 32. Subdivision 4 of section 11-1718 of the administrative code of
15 the city of New York, as amended by section 22 of part C of chapter 25
16 of the laws of 2009, is amended to read as follows:

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

25 S 33. Subdivision 4 of section 11-1718 of the administrative code of
26 the city of New York, as separately amended by section 12 of part HH-1
27 of chapter 57 of the laws of 2008 and section 22 of part C of chapter 25
28 of the laws of 2009, is amended to read as follows:

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

37 S 34. Subparagraphs 17 and 18 of paragraph t of subdivision 1 of
38 section 3602 of the education law, as amended by section 2 of part D of
39 chapter 25 of the laws of 2009, are amended to read as follows:

40 (17) in any year in which expenditures are made to the New York state
41 teachers' retirement system or the New York state and local employees'
42 retirement system for both the prior school year and the current school
43 year, any expenditures made to such retirement systems and recorded in
44 the school year prior to the school year in which such obligations are
45 paid[; and (18) any payments to the commissioner of taxation and finance
46 pursuant to article twenty-three of the tax law].

47 S 35. Section 3609-g of the education law is REPEALED.

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

51 (e) No such certificate approving or authorizing the first partial
52 payment or any final payment to a foreign contractor shall be made
53 unless such contractor shall furnish satisfactory proof that all taxes
54 due the state tax commission by such contractor, under the provisions of
55 or pursuant to a law enacted pursuant to the authority of article nine,
56 nine-a, twelve-a, [sixteen, sixteen-a,] twenty-one, twenty-two, [twen-

1 ty-three,] twenty-eight, twenty-nine or thirty of the tax law [or arti-
2 cle two-E of the general city law] have been paid. The certificate of
3 the state tax commission to the effect that all such taxes have been
4 paid shall be, for purpose of this paragraph, conclusive proof of the
5 payment of such taxes. The term "foreign contractor" as used in this
6 subdivision means, in the case of an individual, a person who is not a
7 resident of this state, in the case of a partnership, one having one or
8 more partners not a resident of this state, and in the case of a corpo-
9 ration, one not organized under the laws of this state.

10 S 37. Section 1270-h of the public authorities law is REPEALED.

11 S 38. Section 92-ff of the state finance law is REPEALED.

12 S 39. This act shall take effect immediately; provided that the amend-
13 ments to subsection 4 of section 618 of the tax law made by section
14 fifteen of this act shall be subject to the expiration and reversion of
15 such subdivision pursuant to section 8 of chapter 782 of the laws of
16 1988, as amended, when upon such date the provisions of section sixteen
17 of this act shall take effect; and provided further that the amendments
18 to subdivision 4 of section 11-1718 of the administrative code of the
19 city of New York made by section thirty-two of this act shall be subject
20 to the expiration and reversion of such subdivision pursuant to section
21 8 of chapter 782 of the laws of 1988, as amended, when upon such date
22 the provisions of section thirty-three of this act shall take effect.