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

6323

2011-2012 Regular Sessions

I N A S S E M B L Y

March 14, 2011

Introduced by M. of A. BLANKENBUSH, CROUCH, D. MILLER, MONTESANO -- Multi-Sponsored by -- M. of A. McLAUGHLIN, PALMESANO -- read once and referred to the Committee on Transportation

AN ACT to amend the transportation law and the tax law, in relation to establishing the New Century railroad investment program and providing for certain tax credits for rail carriers; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. The transportation law is amended by adding a new article 18-A to read as follows:

ARTICLE 18-A

NEW CENTURY RAILROAD INVESTMENT PROGRAM

SECTION 435. LEGISLATIVE INTENT.
436. PROGRAM OBJECTIVES.
437. ELIGIBILITY.
438. RAILROAD CAPITAL FACILITY.
439. JOINT APPLICATIONS.

S 435. LEGISLATIVE INTENT. THE CONTINUATION AND IMPROVEMENT OF THE APPROPRIATE LEVEL OF RAIL FREIGHT AND PASSENGER SERVICE AND THE ENHANCEMENT OF THE STATE'S RAILROAD INFRASTRUCTURE ARE A NECESSARY COMPONENT IN ESTABLISHING AND MAINTAINING THE ECONOMIC VITALITY OF THE STATE AND ITS COMMUNITIES. THE PURCHASE AND DIVISION OF THE CONRAIL SYSTEM HAS THE POTENTIAL TO INVIGORATE COMPETITION AMONG RAIL CARRIERS IN NEW YORK AND ESTABLISH THE STATE AS AN INCREASINGLY IMPORTANT CROSSROAD FOR FREIGHT ON BOTH THE EAST-WEST AND NORTH-SOUTH CORRIDORS. IN ORDER TO MEET THE ANTICIPATED LEVEL OF RAIL FREIGHT SERVICE IN THE POST-CONRAIL ERA, MODIFICATIONS AND IMPROVEMENTS TO THE STATE'S RAIL INFRASTRUCTURE WILL BE NECESSARY. THE NEW CENTURY RAILROAD INVESTMENT PROGRAM WILL PROVIDE THE STATE'S RAIL CARRIERS WITH A TIMELY PARTNERSHIP THAT WILL STIMULATE INVESTMENT BY THE RAIL CARRIERS INTO THE NEXT CENTURY. THIS PROGRAM WILL

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

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PERMIT THE RAILROAD COMPANIES TO IMPROVE THE STATE'S RAIL INFRASTRUCTURE IN A MANNER THAT WILL ENHANCE THEIR ABILITY TO COMPETE FOR BUSINESS. IN TURN, THIS INVESTMENT WILL PROVIDE THE STATE WITH NEW OPPORTUNITIES FOR ECONOMIC DEVELOPMENT AND WILL ENHANCE THE INCREASINGLY IMPORTANT RELATIONSHIPS BETWEEN THE VARIOUS MODES OF TRANSPORTATION.

S 436. PROGRAM OBJECTIVES. THE OBJECTIVES OF THE NEW CENTURY RAILROAD INVESTMENT PROGRAM SHALL BE:

1. THE PRESERVATION, IMPROVEMENT AND ENHANCEMENT OF THE RAILROAD INFRASTRUCTURE;

2. THE IMPROVEMENT OF THE QUALITY AND QUANTITY OF RAILROAD FREIGHT AND PASSENGER SERVICE, INCLUDING THE DEVELOPMENT OF INTERMODAL CONNECTIONS; AND

3. THE FACILITATION OF INVESTMENT THAT WILL STIMULATE THE COST-EFFECTIVE MOVEMENT OF FREIGHT AND PASSENGERS THROUGHOUT THE STATE, INCLUDING THOSE AREAS THAT WERE PREVIOUSLY UNDERSERVED.

S 437. ELIGIBILITY. 1. A RAILROAD COMPANY, AS DEFINED IN SECTION TWO OF THIS CHAPTER, SHALL BE ELIGIBLE FOR A TAX CREDIT AGAINST THE PETROLEUM BASED TAX IMPOSED PURSUANT TO SECTION THREE HUNDRED ONE-A OF THE TAX LAW FOR QUALIFYING PROJECTS CERTIFIED BY THE COMMISSIONER PURSUANT TO THE REQUIREMENTS SET FORTH IN THIS SECTION. AN INVESTMENT MADE IN NEW YORK SHALL BE DEEMED A QUALIFYING PROJECT IF IT PROVIDES FOR THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION, ESTABLISHMENT, IMPROVEMENT OR REHABILITATION OF A RAILROAD CAPITAL FACILITY. STANDARD MAINTENANCE OF RAILROAD FACILITIES WILL NOT BE CONSIDERED A QUALIFYING PROJECT UNDER THIS PROGRAM.

2. A RAILROAD MAY SUBMIT AN APPLICATION FOR CERTIFICATION OF A QUALIFYING PROJECT UNDER THIS PROGRAM IN SUCH FORM AND CONTAINING SUCH INFORMATION AS THE COMMISSIONER MAY REQUIRE. IF THE PROJECT MEETS THE STATUTORY REQUIREMENTS SET FORTH IN THIS SECTION, THE COMMISSIONER SHALL CERTIFY TO ITS ELIGIBILITY FOR THE TAX CREDIT IN A MANNER THAT WILL FACILITATE GRANTING OF THE CREDIT OR REIMBURSEMENT SET FORTH IN SECTION THREE HUNDRED ONE-N OF THE TAX LAW. IF THE COMMISSIONER REJECTS ANY SUCH APPLICATION HE OR SHE SHALL STATE THE REASONS THEREFOR IN WRITING AND MAY MAKE RECOMMENDATIONS FOR MODIFICATION.

S 438. RAILROAD CAPITAL FACILITY. FOR THE PURPOSES OF THIS ARTICLE, A RAILROAD CAPITAL FACILITY SHALL MEAN AND INCLUDE RAILROAD RIGHTS OF WAY, AS WELL AS TRACKAGE, RAILS, BRIDGES, CLEARANCES, SIGNALS, STATIONS, TERMINALS, STORAGE YARDS, REPAIR AND MAINTENANCE SHOPS, YARDS, OFFICES AND REAL ESTATE USED OR HELD FOR OR INCIDENTAL TO THE OPERATION, REHABILITATION OR IMPROVEMENT OF ANY RAILROAD OPERATING RAIL FREIGHT AND RAIL PASSENGER TRANSPORTATION SERVICES.

S 439. JOINT APPLICATIONS. TWO OR MORE RAILROAD COMPANIES MAY SUBMIT JOINT APPLICATIONS TO THE COMMISSIONER FOR QUALIFYING PROJECTS IN WHICH MORE THAN ONE RAILROAD PLANS TO PARTICIPATE. THE TAX CREDIT OR REIMBURSEMENT ALLOWED BY SECTION THREE HUNDRED ONE-N OF THE TAX LAW PURSUANT TO THIS PROGRAM SHALL BE BASED UPON THE AMOUNT OF CAPITAL INVESTED BY EACH RAILROAD IN ANY SUCH PROJECT.

S 2. The tax law is amended by adding a new section 301-n to read as follows:

S 301-N. CREDIT FOR CAPITAL IMPROVEMENTS BY RAILROADS. A RAILROAD COMPANY, AS DEFINED IN SECTION TWO OF THE TRANSPORTATION LAW, SHALL BE ENTITLED TO A CREDIT AGAINST THAT PORTION OF THE TAX IMPOSED BY SECTION THREE HUNDRED ONE-A OF THIS ARTICLE WHICH IS DEPOSITED PURSUANT TO SECTION ONE HUNDRED SEVENTY-ONE-A OF THIS CHAPTER, OR A REIMBURSEMENT OF SUCH TAX, UP TO THE AMOUNT OF CAPITAL INVESTMENT MADE IN A QUALIFYING

PROJECT AS DEFINED IN SECTION FOUR HUNDRED THIRTY-SEVEN OF THE TRANSPORTATION LAW.

S 3. Paragraph 4 of subdivision (e) of section 301-a of the tax law, as added by chapter 309 of the laws of 1996, is amended to read as follows:

(4) Notwithstanding any other provision of this article, commencing January first, nineteen hundred ninety-seven, the per gallon rate with respect to "railroad diesel" shall be the adjusted motor fuel and automotive-type diesel motor fuel rate under paragraphs one through three of this subdivision for the period commencing such January first, nineteen hundred ninety-seven, minus one and three tenths cents per gallon. Commencing on the first day of January each year thereafter, the per gallon rate with respect to "railroad diesel" shall be [determined by taking the then motor fuel and automotive-type diesel motor fuel rate under paragraphs one through three of this subdivision which commences on such first day of January and subtracting one and three tenths] ONE AND FORTY-SIX HUNDREDTHS cents per gallon.

S 4. Subdivision (b) of section 312 of the tax law, as amended by section 8 of part EE of chapter 63 of the laws of 2000, is amended to read as follows:

(b) Of all of the taxes collected or received by the commissioner on or before March thirty-first, nineteen hundred ninety-one under the taxes imposed by sections three hundred one-a and three hundred one-e of this article, and all interest and penalties relating thereto, eighty-seven and five-hundredths percent of such collections shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter and the balance thereof shall be deposited in the mass transportation operating assistance fund to the credit of the metropolitan mass transportation operating assistance account and the public transportation systems operating assistance account thereof in the manner provided by subdivision eleven of section one hundred eighty-two-a of this chapter. Of all taxes, interest and penalties collected or received after March thirty-first, nineteen hundred ninety-one, and before April first, nineteen hundred ninety-three, from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, initially thirty-five percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a. The balance thereof shall then be disposed of as follows: seventy-two and seven-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a and twenty-seven and three-tenths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner. Except as otherwise provided, of all taxes, interest and penalties collected or received after March thirty-first, nineteen hundred ninety-three, and before April first, nineteen hundred ninety-four, from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially fifty-four percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this [chapter] ARTICLE, (ii) twenty-eight and three-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund and (iii) seventeen and seven-tenths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner. Provided, however, that, prior to such deposit, from the amounts so collected or received during the period commencing on January first, nineteen hundred ninety-four and ending on March thirty-first, nineteen hundred ninety-four, an amount equal to

the portion of the taxes, interest and penalties so received or collected resulting from the amendments made by sections forty-two, forty-three and forty-four of chapter fifty-seven of the laws of nineteen hundred ninety-three shall be deposited and disposed of pursuant to the provisions of subdivision one of section one hundred seventy-one-a of this chapter. Except as otherwise provided, of all taxes, interest and penalties collected or received on or after April first, nineteen hundred ninety-four, from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially fifty-four percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) twenty-eight and three-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund, (iii) seven and nine hundred sixty-five thousandths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner and (iv) nine and seven hundred thirty-five thousandths percent shall be deposited in the revenue accumulation fund. Except as otherwise provided, of all taxes, interest and penalties collected or received on or after September first, nineteen hundred ninety-four and before September first, nineteen hundred ninety-five, from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially fifty-nine percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) twenty-two and four-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund, (iii) eight and three hundred seventy thousandths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner and (iv) ten and two hundred thirty thousandths percent shall be deposited in the revenue accumulation fund. Except as otherwise provided, of all taxes, interest and penalties, collected or received on or after September first, nineteen hundred ninety-five and before April first, nineteen hundred ninety-six from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially sixty-two and eight-tenths percent shall be deposited as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) eighteen percent shall be deposited and disposed of pursuant to section one hundred seventy-one-a of this chapter in the general fund, (iii) eight and six hundred forty thousandths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner and (iv) ten and five hundred sixty thousandths percent shall be deposited in the revenue accumulation fund. Except as otherwise provided, of all taxes, interest and penalties collected or received on or after April first, nineteen hundred ninety-six, and before January first, nineteen hundred ninety-seven from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially sixty-three and three-tenths percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) seventeen and four-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund and (iii) nineteen and three-tenths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner. Except as otherwise provided, of all taxes, interest and penalties collected or received on or after January first, nineteen hundred ninety-seven and before January first, nineteen hundred ninety-eight from the taxes

imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially sixty-six and two-tenths percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) fourteen and one-half percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund and (iii) nineteen and three-tenths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner. Except as otherwise provided, of all taxes, interest and penalties collected or received on or after January first, nineteen hundred ninety-eight and before April first, nineteen hundred ninety-nine from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially sixty-eight and one-tenth percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) twelve and four-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund and (iii) nineteen and one-half percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner. Except as otherwise provided, of all taxes, interest and penalties collected or received on or after April first, nineteen hundred ninety-nine, from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially sixty-nine and eight-tenths percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) ten and seven-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund and (iii) nineteen and one-half percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner. Except as otherwise provided, of all taxes, interest and penalties collected or received on or after April first, two thousand one, from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially eighty and three-tenths percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article and (ii) nineteen and seven-tenths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner, EXCEPT THAT FOR TAXES COLLECTED FOR RAILROAD DIESEL IMPOSED PURSUANT TO SECTION THREE HUNDRED ONE-A OF THIS ARTICLE ONE HUNDRED PERCENT SHALL BE DEPOSITED INTO SUCH FUND.

Provided, further, that on or before the twenty-fifth day of each month commencing with October, nineteen hundred ninety and terminating with the month of March, two thousand one, the comptroller shall deduct the amount of six hundred twenty-five thousand dollars prior to any deposit or disposition of the taxes, interest and penalties collected or received pursuant to such sections three hundred one-a and three hundred one-e and shall pay such amount to the state treasury to the credit of the general fund. Provided, further that on or before the twenty-fifth day of each month commencing with April, two thousand one, the comptroller shall deduct the amount of six hundred twenty-five thousand dollars prior to any deposit or disposition of the taxes, interest, and penalties collected or received pursuant to such sections three hundred one-a and three hundred one-e and shall deposit such amount in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this article. Provided, further, that commencing January fifteenth, nineteen hundred ninety-one, and on or before the tenth day of March and the fifteenth day of June and September of such year, the

commissioner shall, based on information supplied by taxpayers and other appropriate sources, estimate the amount of the utility credit authorized by section three hundred one-d of this article which has been accrued to reduce tax liability under section one hundred eighty-six-a of this chapter during the period covered by such estimate and certify to the state comptroller such estimated amount. The comptroller shall forthwith, after receiving such certificate, deduct the amount of such credit so certified by the commissioner prior to any deposit or disposition of the taxes, interest and penalties collected or received pursuant to such sections three hundred one-a and three hundred one-e and shall pay such amount so certified and deducted into the state treasury to the credit of the general fund. As soon as practicable after April first, nineteen hundred ninety-one, nineteen hundred ninety-two and nineteen hundred ninety-three, but before June fifteenth of each such year, the commissioner shall determine the amount of the utility tax credit which has been actually used to reduce tax liability under such section one hundred eighty-six-a and shall certify the difference between such actual amount and the earlier estimated amount. Also, subsequently, during the fiscal year when the commissioner becomes aware of changes or modifications with respect to actual credit usage, the commissioner shall, as soon as practicable, issue a certification setting forth the amount of any required adjustment to the amount of actual credit usage previously certified. After receiving the certificate of the commissioner with respect to actual credit usage or modification of the same, the comptroller shall forthwith adjust general fund receipts and the revenues to be deposited or disposed of under this article to reflect the difference so certified by the commissioner. The commissioner shall not be liable for any overestimate or underestimate of the amount of the utility credit which has been accrued to reduce tax liability under such section one hundred eighty-six-a. Nor shall the commissioner be liable for any inaccuracy in any certificate with respect to the amount of such credit actually used or any required adjustment with respect to actual credit usage, but the commissioner shall as soon as practicable after discovery of any error adjust the next certification under this section to reflect any such error.

On or before July thirty-first, nineteen hundred ninety-two and on or before July thirty-first, nineteen hundred ninety-three, the commissioner shall conduct the following reconciliation with respect to the preceding fiscal year: he shall multiply the total of all taxes, penalties and interest, after refunds and reimbursements, which are derived from the motor fuel component, the automotive-type diesel motor fuel component and the aviation gasoline component by twenty fifty-fifths; the total of all taxes, penalties and interest, after refunds and reimbursements, which are derived from the nonautomotive-type diesel motor fuel component (excluding taxes, penalties and interest which are derived from product with respect to which the credit or reimbursement provided by section three hundred one-d is taken) by twenty-fiftieths; and all taxes, penalties and interest, after refunds and reimbursements, which are derived from the residual petroleum product component (excluding taxes, penalties and interest which are derived from product with respect to which the credit or reimbursement provided by section three hundred one-d is taken) by twenty-fortieths. The products of the foregoing multiplications shall be added together and the resulting sum of such products shall be compared with the total of the amounts initially distributed during such fiscal year with respect to such components (excluding receipts derived from product with respect to which the cred-

it or reimbursement provided by section three hundred one-d is taken and excluding any amount which represents a reconciliation adjustment pursuant to this paragraph) pursuant to section one hundred seventy-one-a of this chapter which represented thirty-five percent of the total, after refunds and reimbursements, of all taxes, penalties and interest collected or received during such fiscal year under sections three hundred one-a and three hundred one-e during the months of such fiscal year with respect to such components. The commissioner shall then certify the amount of such difference to the comptroller. If the amounts initially distributed in such fiscal year are greater than the sum of such products, the comptroller shall withhold an amount equal to twenty-seven and three-tenths percent of such difference from the first moneys otherwise payable to the general fund pursuant to this subdivision and shall pay such amount to the mass transportation operating assistance fund to the credit of the metropolitan mass transportation operating assistance account and the public transportation systems operating assistance account thereof in the aforestated manner. If the amounts initially distributed in such fiscal year are less than the sum of such products, the comptroller shall withhold an amount equal to twenty-seven and three-tenths percent of such difference from the first moneys otherwise payable to the mass transportation operating assistance fund pursuant to this subdivision and shall pay such amount to the general fund.

When the commissioner becomes aware of changes or modifications with respect to the distribution of revenue under this article, the commissioner shall, as soon as practicable, issue a certification setting forth the amount of any required adjustment. After receiving the certificate of the commissioner with respect to any adjustments, the comptroller shall forthwith adjust general fund receipts and the revenues to be deposited or disposed of under this article to reflect the difference so certified by the commissioner. The commissioner shall not be liable for any overestimate or underestimate of the amount of the distribution. Nor shall the commissioner be liable for any inaccuracy in any certificate with respect to the amount of the distribution or any required adjustment with respect to the distribution, but the commissioner shall as soon as practicable after discovery of any error adjust the next certification under this section to reflect any such error.

Prior to making deposits as provided in this subdivision, the comptroller shall retain such amount as the commissioner may determine to be necessary, subject to the approval of the director of the budget, for reasonable costs of the department in administering and collecting the taxes deposited pursuant to this subdivision and for refunds and reimbursements with respect to such taxes, out of which the comptroller shall pay any refunds or reimbursements of such taxes to which taxpayers shall be entitled.

S 5. This act shall take effect October 1, 2011; provided however that sections one and two of this act shall expire and be deemed repealed December 31, 2013, and sections three and four of this act shall take effect January 1, 2014. Effective immediately the commissioner of transportation and the commissioner of taxation and finance are authorized to promulgate any rules and regulations necessary for the timely implementation of this act on or before its effective date.