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

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2011-2012 Regular Sessions

I N A S S E M B L Y

March 21, 2011

Introduced by M. of A. KOLB, BUTLER, CASTELLI, CONTE, REILICH, SAYWARD -- Multi-Sponsored by -- M. of A. AMEDORE, BARCLAY, BURLING, CALHOUN, CROUCH, DUPREY, FINCH, FITZPATRICK, GIGLIO, HAWLEY, HAYES, JORDAN, McKEVITT, J. MILLER, MOLINARO, MONTESANO, OAKS, RABBITT, RAIA, SALADINO, TEDISCO, TOBACCO -- read once and referred to the Committee on Ways and Means

AN ACT to amend the general municipal law, in relation to establishing the New York state cornerstone program; and to repeal article 18-B of such law relating thereto (Part A); to amend the public authorities law and the tax law, in relation to establishing the New York state discovery program (Part B); and to amend the tax law, in relation to net income base and in relation to certain taxes (Part C)

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

Section 1. This act enacts into law components of legislation relating to the "New York state cornerstone program and the New York state discovery program". Each component is wholly contained within a Part identified as Parts A through C. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

S 1-a. Statement of legislative findings and declaration. It is hereby found and declared that there exists within the state high unemployment, limited new job creation, a dependence on public assistance income, insufficient support for industrial and commercial businesses, and unnecessarily high taxes. These severe conditions require state government to target certain industries in order to stimulate private

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

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investment, private business development and job creation. It should be the public policy of the state to help promote the development of new businesses, rather than deter them with punitive regulation and excessive taxes. It is further found and declared that it is the public policy of the state to achieve these goals through the mutual cooperation of all levels of state and local government, the business community and academic institutions.

PART A

Section 1. Article 18-B of the general municipal law is REPEALED.

S 2. The general municipal law is amended by adding a new article 18-B to read as follows:

ARTICLE 18-B

NEW YORK STATE CORNERSTONE PROGRAM

SECTION 955. NEW YORK CORNERSTONE PROGRAM ESTABLISHED.
956. RESPONSIBILITIES OF THE COMMISSIONER.
957. CORNERSTONE DEVELOPMENT BOARD.
958. REPORTING REQUIREMENTS.

S 955. NEW YORK CORNERSTONE PROGRAM ESTABLISHED. THERE IS HEREBY ESTABLISHED THE NEW YORK CORNERSTONE PROGRAM.

S 956. RESPONSIBILITIES OF THE COMMISSIONER. 1. THE COMMISSIONER OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT SHALL, IN CONSULTATION WITH THE DIRECTOR OF THE BUDGET, THE COMMISSIONER OF LABOR, AND THE COMMISSIONER OF TAXATION AND FINANCE, PROMULGATE RULES AND REGULATIONS, WHICH, NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THE STATE ADMINISTRATIVE PROCEDURE ACT, MAY BE ADOPTED ON AN EMERGENCY BASIS, RELATING TO:

(A) THE APPLICATION PROCESS;

(B) DEFINING TYPES OF BUSINESSES ELIGIBLE, INCLUDING BUT NOT LIMITED TO MANUFACTURING, HIGH-TECH, BIO-TECH, CLEAN-TECH AND AGRI-BUSINESS;

(C) LIMITING BUSINESSES TO TEN YEARS OF PARTICIPATION;

(D) CERTIFICATION BY THE COMMISSIONER FOR ELIGIBILITY OF BUSINESS ENTERPRISES FOR BENEFITS REFERRED TO IN THIS ARTICLE. CRITERIA FOR CERTIFICATION SHALL INCLUDE, BUT NOT BE LIMITED TO:

(I) REQUIRING A BUSINESS TO HAVE BEEN OPERATIONAL IN NEW YORK STATE FOR AT LEAST TEN CONSECUTIVE YEARS PRIOR TO APPLYING TO THE CORNERSTONE PROGRAM;

(II) REQUIRING A BUSINESS TO SHOW PROOF THAT THEY WILL HAVE TO LOWER EMPLOYMENT LEVELS WITHOUT CERTIFICATION IN THE PROGRAM;

(III) REQUIRING A BUSINESS TO COMMIT TO MAINTAINING OR INCREASING CURRENT EMPLOYMENT LEVELS TO QUALIFY FOR TAX BENEFITS;

(IV) WHETHER CERTIFICATION WILL HAVE THE UNDESIRED EFFECT OF CAUSING INDIVIDUALS TO TRANSFER FROM EXISTING EMPLOYMENT WITH ANOTHER BUSINESS ENTERPRISE TO SIMILAR EMPLOYMENT WITH THE BUSINESS ENTERPRISE SO CERTIFIED, AND TRANSFERRING EXISTING EMPLOYMENT FROM ONE OR MORE OTHER MUNICIPALITIES, TOWNS OR VILLAGES IN THE STATE;

(V) WHETHER SUCH ENTERPRISE IS LIKELY TO ENHANCE THE ECONOMIC CLIMATE OF THE STATE; AND

(VI) WHETHER THE COMMISSIONER OF LABOR ESTABLISHES THAT SUCH BUSINESS ENTERPRISE, DURING THE TEN YEARS PRECEDING THE SUBMISSION OF AN APPLICATION FOR CERTIFICATION, HAS ENGAGED IN A SUBSTANTIAL VIOLATION OR A PATTERN OF VIOLATIONS OF LAWS REGULATING UNEMPLOYMENT INSURANCE, WORKERS COMPENSATION, PUBLIC WORK, CHILD LABOR, EMPLOYMENT OF MINORITIES AND WOMEN, SAFETY AND HEALTH, OR OTHER LAWS FOR THE PROTECTION OF WORKERS AS DETERMINED BY FINAL JUDGMENT OF A JUDICIAL OR ADMINISTRATIVE PROCEEDING.

2. THE COMMISSIONER OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT SHALL, IN CONSULTATION WITH THE DIRECTOR OF THE BUDGET, THE COMMISSIONER OF LABOR, AND THE COMMISSIONER OF TAXATION AND FINANCE, ESTABLISH A COST BENEFIT ANALYSIS.

3. THE COMMISSIONER OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT SHALL, IN CONSULTATION WITH THE DIRECTOR OF THE BUDGET, THE COMMISSIONER OF LABOR, AND THE COMMISSIONER OF TAXATION AND FINANCE, ESTABLISH A PROGRAM AND PROPOSE LEGISLATION GRANTING TAX EXEMPTIONS PREVIOUSLY APPLICABLE TO EMPIRE ZONES FOR BUSINESS ENTERPRISES ELIGIBLE UNDER THE CORNERSTONE PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE, TO THE GOVERNOR AND LEGISLATURE WITHIN ONE HUNDRED EIGHTY DAYS FROM THE EFFECTIVE DATE OF THIS ARTICLE.

S 957. CORNERSTONE DEVELOPMENT BOARD. 1. THE CORNERSTONE DEVELOPMENT BOARD IS HEREBY CREATED.

2. SUCH BOARD SHALL CONSIST OF THE COMMISSIONER OF TAXATION AND FINANCE, THE DIRECTOR OF THE BUDGET, THE COMMISSIONER OF LABOR AND TWO MEMBERS TO BE APPOINTED BY THE GOVERNOR; ONE MEMBER TO BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE; ONE MEMBER TO BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY; ONE MEMBER TO BE APPOINTED BY THE MINORITY LEADER OF THE SENATE AND ONE MEMBER TO BE APPOINTED BY THE MINORITY LEADER OF THE ASSEMBLY.

3. THE GOVERNOR SHALL DESIGNATE FROM AMONG THE VOTING MEMBERS THE CHAIR OF THE BOARD. EACH MEMBER OF THE BOARD SHALL BE ENTITLED TO DESIGNATE A REPRESENTATIVE TO ATTEND MEETINGS OF THE BOARD IN HIS OR HER PLACE, AND TO VOTE OR OTHERWISE ACT ON HIS OR HER BEHALF IN HIS OR HER ABSENCE.

4. NOTICE OF SUCH DESIGNATION SHALL BE FURNISHED IN WRITING TO THE BOARD BY THE DESIGNATING MEMBER.

5. A REPRESENTATIVE SHALL SERVE AT THE PLEASURE OF THE DESIGNATING MEMBER.

6. A REPRESENTATIVE SHALL NOT BE AUTHORIZED TO DELEGATE ANY OF HIS OR HER DUTIES OR FUNCTIONS TO ANY OTHER PERSON.

S 958. REPORTING REQUIREMENTS. 1. THE DEPARTMENT OF AUDIT AND CONTROL, THE DEPARTMENT OF TAXATION AND FINANCE AND THE DEPARTMENT OF ECONOMIC DEVELOPMENT SHALL PREPARE REPORTS ON THE MANAGEMENT AND THE ECONOMIC AND FISCAL IMPACT OF THE CORNERSTONE PROGRAM.

2. THE ANALYSIS OF THE FISCAL AND ECONOMIC IMPACT OF THE PROGRAM SHALL INCLUDE, BUT NOT BE LIMITED TO: A REVIEW OF THE COST OF PROVIDING THE TAX BENEFITS REFERRED TO IN THIS ARTICLE; PROGRESS OF THE PROGRAM; NUMBER OF TAX CREDITS CLAIMED BY EACH CERTIFIED BUSINESS; NUMBER OF JOBS CREATED AND/OR RETAINED BY EACH BUSINESS AND ALL OTHER INFORMATION REQUESTED AND NOT PROHIBITED BY LAW.

3. SUCH REPORTS SHALL BE TRANSMITTED TO THE GOVERNOR AND THE LEGISLATURE BY SEPTEMBER FIRST, TWO THOUSAND TWELVE AND EVERY YEAR THEREAFTER AND SHALL BE POSTED ONLINE FOR FULL PUBLIC DISCLOSURE.

S 3. This act shall take effect immediately; provided, however, that any rules and regulations necessary to carry out the provisions of this act shall be promulgated before such effective date.

PART B

Section 1. This act shall be known and may be cited as the "New York state discovery act".

S 2. Section 3166 of the public authorities law is renumbered section 3167 and a new section 3166 is added to read as follows:

S 3166. NEW YORK STATE DISCOVERY PROGRAM. 1. THE NEW YORK STATE DISCOVERY PROGRAM IS HEREBY ESTABLISHED.

2. THE FOUNDATION SHALL, AFTER CONSULTATION WITH THE DIRECTOR OF THE BUDGET, THE COMMISSIONER OF LABOR, AND THE COMMISSIONER OF TAXATION AND FINANCE, PROMULGATE RULES AND REGULATIONS, WHICH, NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THE STATE ADMINISTRATIVE PROCEDURE ACT, MAY BE ADOPTED ON AN EMERGENCY BASIS, RELATING TO:

(A) THE APPLICATION PROCESS;

(B) DEFINING TYPES OF BUSINESSES ELIGIBLE, INCLUDING BUT NOT LIMITED TO MANUFACTURING, HIGH-TECH, BIO-TECH, CLEAN-TECH AND AGRI-BUSINESS;

(C) LIMITING BUSINESSES TO TEN YEARS OF PARTICIPATION;

(D) CERTIFICATION BY THE FOUNDATION AS TO THE ELIGIBILITY OF BUSINESS ENTERPRISES FOR BENEFITS REFERRED TO IN THIS SECTION, WHICH SHALL BE GOVERNED BY CRITERIA INCLUDING, BUT NOT LIMITED TO:

(I) REQUIRING AN ELIGIBLE BUSINESS TO BE A START-UP BUSINESS, OR A BUSINESS OPERATING IN THE STATE FOR TWO YEARS OR LESS;

(II) A BUSINESS MUST OFFER INTERNSHIPS TO LOCAL HIGH SCHOOL STUDENTS, BOCES STUDENTS AND COLLEGE STUDENTS PER A PLAN DEVELOPED BY THE FOUNDATION;

(III) A BUSINESS MUST COMMIT TO INCREASING CURRENT EMPLOYMENT LEVELS TO QUALIFY FOR TAX BENEFITS;

(IV) WHETHER CERTIFICATION WILL HAVE THE UNDESIRED EFFECT OF CAUSING INDIVIDUALS TO TRANSFER FROM EXISTING EMPLOYMENT WITH ANOTHER BUSINESS ENTERPRISE TO SIMILAR EMPLOYMENT WITH THE BUSINESS ENTERPRISE SO CERTIFIED, AND TRANSFERRING EXISTING EMPLOYMENT FROM ONE OR MORE OTHER MUNICIPALITIES, TOWNS OR VILLAGES IN THE STATE;

(V) WHETHER SUCH ENTERPRISE IS LIKELY TO ENHANCE THE ECONOMIC CLIMATE OF THE STATE;

(VI) WHETHER THE COMMISSIONER OF LABOR ESTABLISHES THAT SUCH BUSINESS ENTERPRISE, DURING THE TWO YEARS PRECEDING THE SUBMISSION OF AN APPLICATION FOR CERTIFICATION, HAS ENGAGED IN A SUBSTANTIAL VIOLATION OR A PATTERN OF VIOLATIONS OF LAWS REGULATING UNEMPLOYMENT INSURANCE, WORKERS COMPENSATION, PUBLIC WORK, CHILD LABOR, EMPLOYMENT OF MINORITIES AND WOMEN, SAFETY AND HEALTH, OR OTHER LAWS FOR THE PROTECTION OF WORKERS AS DETERMINED BY FINAL JUDGMENT OF A JUDICIAL OR ADMINISTRATIVE PROCEEDING; AND

(VII) WHETHER SUCH BUSINESS MEETS THE REQUIREMENTS OF THE COST BENEFIT ANALYSIS AS ESTABLISHED BY THE COMMISSIONER OF ECONOMIC DEVELOPMENT.

3. THE DEPARTMENT OF AUDIT AND CONTROL, THE DEPARTMENT OF TAXATION AND FINANCE AND THE FOUNDATION SHALL PREPARE REPORTS ON THE MANAGEMENT AND THE ECONOMIC AND FISCAL IMPACT OF THE DISCOVERY PROGRAM. THE ANALYSIS OF THE FISCAL AND ECONOMIC IMPACT OF THE PROGRAM SHALL INCLUDE, BUT NOT BE LIMITED TO: A REVIEW OF THE COST OF PROVIDING THE TAX BENEFITS REFERRED TO IN THIS ARTICLE; PROGRESS OF THE PROGRAM; NUMBER OF TAX CREDITS CLAIMED BY EACH CERTIFIED BUSINESS; NUMBER OF JOBS CREATED BY EACH BUSINESS AND ALL OTHER INFORMATION REQUESTED AND NOT PROHIBITED BY LAW. SUCH REPORTS SHALL BE TRANSMITTED TO THE GOVERNOR AND THE LEGISLATURE BY SEPTEMBER FIRST, TWO THOUSAND TWELVE AND EVERY YEAR THEREAFTER AND SHALL BE POSTED ONLINE FOR FULL PUBLIC DISCLOSURE.

4. THE FOUNDATION SHALL PROVIDE GRANTS OF UP TO TWO THOUSAND DOLLARS FOR EVERY INTERNSHIP DEVELOPED UNDER THIS PROGRAM, TO BE PAID FOR OUT OF THE JOB DEVELOPMENT FUND ESTABLISHED PURSUANT TO SECTION THIRTY-ONE HUNDRED SIXTY-SIX-A OF THIS ARTICLE. SUCH GRANT ALLOCATIONS SHALL BE DIVIDED EVENLY BETWEEN THE CERTIFIED BUSINESS AND THE CORRESPONDING INSTITUTION OF HIGHER EDUCATION TO COVER COSTS ASSOCIATED WITH THE DEVELOPMENT OF SUCH INTERNSHIPS.

S 3. Subdivision 3 of section 3151 of the public authorities law, as amended by section 1 of part CC of chapter 59 of the laws of 2006, is amended to read as follows:

3. Membership. The voting members of the foundation board shall consist of: the executive director of the New York state foundation for science, technology and innovation who shall be a permanent member of the foundation board, [seven] ELEVEN members from the private sector, two of whom shall be appointed by the temporary president of the senate, two of whom shall be appointed by the speaker of the assembly, TWO OF WHOM SHALL BE APPOINTED BY THE MINORITY LEADER OF THE SENATE, TWO OF WHOM SHALL BE APPOINTED BY THE MINORITY LEADER OF THE ASSEMBLY and three of whom shall be appointed by the governor with the advice and consent of the senate, provided that all [seven] ELEVEN members are employed within the private sector throughout the time of their appointment to the foundation board. The private sector members shall demonstrate leadership and expertise and be broadly representative across different business sectors of the state and shall include, but not be limited to representatives of the industrial technology research and development sector, small business high technology sector; minority and women business enterprises, the venture capital industry; [five] SEVEN additional members shall be appointed from among the academic, government, and workforce development sectors, three of whom shall be appointed by the governor, with the advice and consent of the senate, one of whom shall be appointed by the temporary president of the senate, [and] one of whom shall be appointed by the speaker of the assembly[;], ONE OF WHOM SHALL BE APPOINTED BY THE MINORITY LEADER OF THE ASSEMBLY, ONE OF WHOM SHALL BE APPOINTED BY THE MINORITY LEADER OF THE SENATE; and representatives of the regional partnerships as established in this section shall also serve as non-voting members of the board, provided that each partnership shall nominate one of its members to serve as a non-voting member of the board. All members of the foundation board shall serve at the pleasure of the appointing authority and, notwithstanding any other provision of law, shall be subject to sections seventy-three and seventy-four of the public officers law. The chair of the foundation board shall be appointed by the governor from among the private sector members with the advice and consent of the senate. All other officers of the board shall be elected from among the voting members of the board of directors by the majority vote of currently serving voting members of the foundation board. The executive director of the foundation shall be appointed by the governor, with the advice and consent of the senate. The executive director of the New York state office of science, technology and academic research shall become the interim executive director of the foundation, and shall be the executive director of the foundation until the executive director of the foundation is appointed by the governor, with the advice and consent of the senate. The members of the New York state office of science, technology and academic research advisory council shall serve as interim voting members of the foundation board until the appointing authority appoints voting members of the foundation board. Nothing contained herein shall prohibit a member of the New York state office of science, technology and academic research advisory council from being appointed as a voting member of the foundation board by the appropriate appointing authority.

S 4. The public authorities law is amended by adding a new section 3166-a to read as follows:

S 3166-A. JOB DEVELOPMENT FUND. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMMISSIONER OF TAXATION AND FINANCE AND THE STATE COMPTROLLER A FUND TO BE KNOWN AS THE "JOB DEVELOPMENT FUND".

2. THE FUND SHALL CONSIST OF MONIES APPROPRIATED FOR THE FOUNDATION FOR SCIENCE, TECHNOLOGY AND INNOVATION.

3. MONEYS OF THE FUND SHALL BE EXPENDED FOR THE PURPOSES OF CARRYING OUT THE PROVISIONS OF SECTION THIRTY-ONE HUNDRED SIXTY-SIX OF THIS ARTICLE. MONEYS SHALL BE PAID OUT OF THE FUND ON THE AUDIT AND WARRANT OF THE STATE COMPTROLLER ON VOUCHERS APPROVED BY THE FOUNDATION FOR SCIENCE, TECHNOLOGY AND INNOVATION. ANY INTEREST RECEIVED BY THE COMPTROLLER ON MONEYS ON DEPOSIT IN THE JOB DEVELOPMENT FUND SHALL BE RETAINED IN AND BECOME PART OF SUCH FUND.

S 5. The tax law is amended by adding a new section 15-a to read as follows:

S 15-A. DISCOVERY ZONE PROPERTY TAX CREDIT. FOR A BUSINESS ENTERPRISE WHICH IS FIRST CERTIFIED UNDER THIS SECTION ON OR AFTER JULY FIRST, TWO THOUSAND ELEVEN, THE CREDIT SHALL BE FOR A PERIOD OF TEN YEARS AND SHALL NOT EXCEED THIRTY PERCENT OF THE ELIGIBLE REAL PROPERTY TAXES PAID IN THE CURRENT TAXABLE YEAR OF ELIGIBILITY.

S 6. Section 210 of the tax law is amended by adding two new subdivisions 43 and 44 to read as follows:

43. DISCOVERY INVESTMENT CREDIT. (A) A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE WHERE THE TAXPAYER HAS BEEN CERTIFIED PURSUANT TO SECTION THIRTY-ONE HUNDRED SIXTY-SIX OF THE PUBLIC AUTHORITIES LAW. THE AMOUNT OF SUCH CREDIT SHALL BE TWENTY PERCENT OF THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES OF TANGIBLE PERSONAL PROPERTY AND OTHER TANGIBLE PROPERTY, INCLUDING BUILDINGS AND STRUCTURAL COMPONENTS OF BUILDINGS, DESCRIBED IN PARAGRAPH (B) OF THIS SUBDIVISION, BUT ONLY IF THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION OR ERECTION OF SUCH PROPERTY OCCURRED OR WAS COMMENCED ON OR AFTER THE DATE OF SUCH DESIGNATION AND PRIOR TO THE EXPIRATION THEREOF. PROVIDED, HOWEVER, THAT IN THE CASE OF AN ACQUISITION, CONSTRUCTION, RECONSTRUCTION OR ERECTION WHICH WAS COMMENCED DURING SUCH PERIOD AND CONTINUED OR COMPLETED SUBSEQUENTLY, THE CREDIT SHALL BE TWENTY PERCENT OF THE PORTION OF THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES ATTRIBUTABLE TO SUCH PERIOD, WHICH PORTION SHALL BE ASCERTAINED BY MULTIPLYING SUCH COST OR BASIS BY A FRACTION THE NUMERATOR OF WHICH SHALL BE THE EXPENDITURES PAID OR INCURRED DURING SUCH PERIOD FOR SUCH PURPOSES AND THE DENOMINATOR OF WHICH SHALL BE THE TOTAL OF ALL EXPENDITURES PAID OR INCURRED FOR SUCH ACQUISITION, CONSTRUCTION, RECONSTRUCTION OR ERECTION.

(B) A CREDIT SHALL BE ALLOWED UNDER THIS SUBDIVISION WITH RESPECT TO TANGIBLE PERSONAL PROPERTY AND OTHER TANGIBLE PROPERTY, INCLUDING BUILDINGS AND STRUCTURAL COMPONENTS OF BUILDINGS WHICH: (1) ARE DEPRECIABLE PURSUANT TO SECTION ONE HUNDRED SIXTY-SEVEN OF THE INTERNAL REVENUE CODE, (2) HAVE A USEFUL LIFE OF FOUR YEARS OR MORE, (3) ARE ACQUIRED BY PURCHASE AS DEFINED IN SECTION ONE HUNDRED SEVENTY-NINE (D) OF THE INTERNAL REVENUE CODE, AND (4) ARE (I) PRINCIPALLY USED BY THE TAXPAYER IN THE PRODUCTION OF GOODS BY MANUFACTURING, PROCESSING, ASSEMBLING, REFINING, MINING, EXTRACTING, FARMING, AGRICULTURE, HORTICULTURE, FLORICULTURE, VITICULTURE OR COMMERCIAL FISHING, (II) INDUSTRIAL WASTE TREATMENT FACILITIES OR AIR POLLUTION CONTROL FACILITIES USED IN THE TAXPAYER'S TRADE OR BUSINESS, (III) RESEARCH AND DEVELOPMENT PROPERTY, (IV) PRINCIPALLY USED IN THE ORDINARY COURSE OF THE TAXPAYER'S TRADE OR BUSINESS AS A BROKER OR DEALER IN CONNECTION WITH THE PURCHASE OR SALE (WHICH SHALL INCLUDE BUT NOT BE LIMITED TO THE ISSUANCE, ENTERING INTO,

ASSUMPTION, OFFSET, ASSIGNMENT, TERMINATION, OR TRANSFER) OF STOCKS, BONDS OR OTHER SECURITIES AS DEFINED IN SECTION FOUR HUNDRED SEVENTY-FIVE (C)(2) OF THE INTERNAL REVENUE CODE, OR OF COMMODITIES AS DEFINED IN SECTION FOUR HUNDRED SEVENTY-FIVE (E) OF THE INTERNAL REVENUE CODE, OR (V) PRINCIPALLY USED IN THE ORDINARY COURSE OF THE TAXPAYER'S TRADE OR BUSINESS OF PROVIDING INVESTMENT ADVISORY SERVICES FOR A REGULATED INVESTMENT COMPANY AS DEFINED IN SECTION EIGHT HUNDRED FIFTY-ONE OF THE INTERNAL REVENUE CODE, OR LENDING, LOAN ARRANGEMENT OR LOAN ORIGINATION SERVICES TO CUSTOMERS IN CONNECTION WITH THE PURCHASE OR SALE (WHICH SHALL INCLUDE BUT NOT BE LIMITED TO THE ISSUANCE, ENTERING INTO, ASSUMPTION, OFFSET, ASSIGNMENT, TERMINATION, OR TRANSFER) OF SECURITIES AS DEFINED IN SECTION FOUR HUNDRED SEVENTY-FIVE (C)(2) OF THE INTERNAL REVENUE CODE. FOR PURPOSES OF CLAUSES (IV) AND (V) OF THIS SUBPARAGRAPH, PROPERTY PURCHASED BY A TAXPAYER AFFILIATED WITH A REGULATED BROKER, DEALER OR REGISTERED INVESTMENT ADVISER IS ALLOWED A CREDIT UNDER THIS SUBDIVISION IF THE PROPERTY IS USED BY ITS AFFILIATED REGULATED BROKER, DEALER OR REGISTERED INVESTMENT ADVISER IN ACCORDANCE WITH THIS SUBDIVISION. FOR PURPOSES OF DETERMINING IF THE PROPERTY IS PRINCIPALLY USED IN QUALIFYING USES, THE USES BY THE TAXPAYER DESCRIBED IN CLAUSES (IV) AND (V) OF THIS SUBPARAGRAPH MAY BE AGGREGATED. IN ADDITION, THE USES BY THE TAXPAYER, ITS AFFILIATED REGULATED BROKER, DEALER, AND REGISTERED INVESTMENT ADVISER UNDER EITHER OR BOTH OF THOSE CLAUSES MAY BE AGGREGATED. PROVIDED, HOWEVER, A TAXPAYER SHALL NOT BE ALLOWED THE CREDIT PROVIDED BY CLAUSES (IV) AND (V) OF THIS SUBPARAGRAPH UNLESS (I) EIGHTY PERCENT OR MORE OF THE EMPLOYEES PERFORMING THE ADMINISTRATIVE AND SUPPORT FUNCTIONS RESULTING FROM OR RELATED TO THE QUALIFYING USES OF SUCH EQUIPMENT ARE LOCATED IN THIS STATE, OR (II) THE AVERAGE NUMBER OF EMPLOYEES THAT PERFORM THE ADMINISTRATIVE AND SUPPORT FUNCTIONS RESULTING FROM OR RELATED TO THE QUALIFYING USES OF SUCH EQUIPMENT AND ARE LOCATED IN THIS STATE DURING THE TAXABLE YEAR FOR WHICH THE CREDIT IS CLAIMED IS EQUAL TO OR GREATER THAN NINETY-FIVE PERCENT OF THE AVERAGE NUMBER OF EMPLOYEES THAT PERFORM THESE FUNCTIONS AND ARE LOCATED IN THIS STATE DURING THE THIRTY-SIX MONTHS IMMEDIATELY PRECEDING THE YEAR FOR WHICH THE CREDIT IS CLAIMED, OR (III) THE NUMBER OF EMPLOYEES LOCATED IN THIS STATE DURING THE TAXABLE YEAR FOR WHICH THE CREDIT IS CLAIMED IS EQUAL TO OR GREATER THAN NINETY PERCENT OF THE NUMBER OF EMPLOYEES LOCATED IN THIS STATE ON DECEMBER THIRTY-FIRST, NINETEEN HUNDRED NINETY-EIGHT OR, IF THE TAXPAYER WAS NOT A CALENDAR YEAR TAXPAYER IN NINETEEN HUNDRED NINETY-EIGHT, THE LAST DAY OF ITS FIRST TAXABLE YEAR ENDING AFTER DECEMBER THIRTY-FIRST, NINETEEN HUNDRED NINETY-EIGHT. IF THE TAXPAYER BECOMES SUBJECT TO TAX IN THIS STATE AFTER THE TAXABLE YEAR BEGINNING IN NINETEEN HUNDRED NINETY-EIGHT, THEN THE TAXPAYER IS NOT REQUIRED TO SATISFY THE EMPLOYMENT TEST PROVIDED IN THE PRECEDING SENTENCE OF THIS SUBPARAGRAPH FOR ITS FIRST TAXABLE YEAR. FOR PURPOSES OF ITEM (III) OF THIS CLAUSE, THE EMPLOYMENT TEST WILL BE BASED ON THE NUMBER OF EMPLOYEES LOCATED IN THIS STATE ON THE LAST DAY OF THE FIRST TAXABLE YEAR THE TAXPAYER IS SUBJECT TO TAX IN THIS STATE. IF THE USES OF THE PROPERTY MUST BE AGGREGATED TO DETERMINE WHETHER THE PROPERTY IS PRINCIPALLY USED IN QUALIFYING USES, THEN EITHER EACH AFFILIATE USING THE PROPERTY MUST SATISFY THIS EMPLOYMENT TEST OR THIS EMPLOYMENT TEST MUST BE SATISFIED THROUGH THE AGGREGATION OF THE EMPLOYEES OF THE TAXPAYER, ITS AFFILIATED REGULATED BROKER, DEALER, AND REGISTERED INVESTMENT ADVISER USING THE PROPERTY. FOR PURPOSES OF THIS SUBDIVISION, THE TERM "GOODS" SHALL NOT INCLUDE ELECTRICITY. FOR PURPOSES OF THIS PARAGRAPH, MANUFACTURING SHALL MEAN THE PROCESS OF WORKING RAW MATERIALS INTO WARES SUITABLE FOR USE OR WHICH GIVES NEW SHAPES, NEW QUALITY OR

NEW COMBINATION TO MATTER WHICH ALREADY HAS GONE THROUGH SOME ARTIFICIAL PROCESS BY THE USE OF MACHINERY, TOOLS, APPLIANCES AND OTHER SIMILAR EQUIPMENT. PROPERTY USED IN THE PRODUCTION OF GOODS SHALL INCLUDE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PROPERTY WHICH IS PRINCIPALLY USED IN THE REPAIR AND SERVICE OF OTHER MACHINERY, EQUIPMENT OR OTHER TANGIBLE PROPERTY USED PRINCIPALLY IN THE PRODUCTION OF GOODS AND SHALL INCLUDE ALL FACILITIES USED IN THE PRODUCTION OPERATION, INCLUDING STORAGE OF MATERIAL TO BE USED IN PRODUCTION AND OF THE PRODUCTS THAT ARE PRODUCED. FOR PURPOSES OF THIS PARAGRAPH, THE TERMS "INDUSTRIAL WASTE TREATMENT FACILITIES", "AIR POLLUTION CONTROL FACILITIES" AND "RESEARCH AND DEVELOPMENT PROPERTY" SHALL HAVE THE MEANINGS ASCRIBED THERETO BY CLAUSES (II) AND (III), RESPECTIVELY, OF SUBPARAGRAPH FOUR OF THIS PARAGRAPH, AND THE PROVISIONS OF SUBPARAGRAPH THREE OF THIS PARAGRAPH SHALL APPLY.

(C) A TAXPAYER SHALL NOT BE ALLOWED A CREDIT UNDER THIS SUBDIVISION WITH RESPECT TO ANY TANGIBLE PERSONAL PROPERTY AND OTHER TANGIBLE PROPERTY, INCLUDING BUILDINGS AND STRUCTURAL COMPONENTS OF BUILDINGS, WHICH IT LEASES TO ANY OTHER PERSON OR CORPORATION EXCEPT WHERE A TAXPAYER LEASES PROPERTY TO AN AFFILIATED REGULATED BROKER, DEALER, OR REGISTERED INVESTMENT ADVISER THAT USES SUCH PROPERTY IN ACCORDANCE WITH CLAUSE (IV) OR (V) OF SUBPARAGRAPH FOUR OF PARAGRAPH (B) OF THIS SUBDIVISION. FOR PURPOSES OF THE PRECEDING SENTENCE, ANY CONTRACT OR AGREEMENT TO LEASE OR RENT OR FOR A LICENSE TO USE SUCH PROPERTY SHALL BE CONSIDERED A LEASE. PROVIDED, HOWEVER, IN DETERMINING WHETHER A TAXPAYER SHALL BE ALLOWED A CREDIT UNDER THIS SUBDIVISION WITH RESPECT TO SUCH PROPERTY, ANY ELECTION MADE WITH RESPECT TO SUCH PROPERTY PURSUANT TO THE PROVISIONS OF PARAGRAPH EIGHT OF SUBSECTION (F) OF SECTION ONE HUNDRED SIXTY-EIGHT OF THE INTERNAL REVENUE CODE, AS SUCH PARAGRAPH WAS IN EFFECT FOR AGREEMENTS ENTERED INTO PRIOR TO JANUARY FIRST, NINETEEN HUNDRED EIGHTY-FOUR, SHALL BE DISREGARDED.

(D) IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS. ANY REFUND PAID PURSUANT TO THIS PARAGRAPH SHALL BE DEEMED TO BE A REFUND OF AN OVERPAYMENT OF TAX AS PROVIDED IN SECTION SIX HUNDRED EIGHTY-SIX OF THIS CHAPTER, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

44. DISCOVERY WAGE TAX CREDIT. (A) A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, WHERE THE TAXPAYER HAS BEEN CERTIFIED PURSUANT TO SECTION THIRTY-ONE HUNDRED SIXTY-SIX OF THE PUBLIC AUTHORITIES LAW. THE AMOUNT OF SUCH CREDIT SHALL BE AS PRESCRIBED IN PARAGRAPH (C) OF THIS SUBDIVISION.

(B) "DISCOVERY WAGES" MEANS WAGES PAID BY THE TAXPAYER FOR FULL-TIME EMPLOYMENT DURING A TAXABLE YEAR, PROVIDED THAT THOSE WAGES ARE PAID BY A CERTIFIED BUSINESS AS DEFINED BY THE FOUNDATION AS REQUIRED IN ITS RESPONSIBILITIES.

(C) THE CREDIT PROVIDED IN THIS SUBDIVISION SHALL BE EQUAL TO THE PRODUCT OF THE GROSS WAGES PAID AND SIX AND EIGHTY-FIVE HUNDREDTHS PERCENT FOR EACH NET NEW JOB CREATED DURING THE TAXABLE YEAR.

(D) "NET NEW JOB" SHALL BE DEFINED AS EACH JOB THAT EXCEEDS THE AVERAGE NUMBER OF INDIVIDUALS EMPLOYED FULL-TIME BY THE TAXPAYER IN THE PREVIOUS TAXABLE YEAR.

(E) IF THE AMOUNT OF THIS CREDIT AND CARRYOVERS OF SUCH CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS, AS WELL AS ANY PART OF THE CREDIT OR

CARRYOVERS OF SUCH CREDIT, OR BOTH, WHICH MAY NOT BE DEDUCTED FROM THE TAX OTHERWISE DUE BY REASON OF PARAGRAPH (C) OF THIS SUBDIVISION, MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

S 7. Section 606 of the tax law is amended by adding two new subsections (j-2) and (j-3) to read as follows:

(J-2) DISCOVERY INVESTMENT CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE WHERE THE TAXPAYER HAS BEEN CERTIFIED PURSUANT TO SECTION THIRTY-ONE HUNDRED SIXTY-SIX OF THE PUBLIC AUTHORITIES LAW. THE AMOUNT OF SUCH CREDIT SHALL BE TWENTY PERCENT OF THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES OF TANGIBLE PERSONAL PROPERTY AND OTHER TANGIBLE PROPERTY, INCLUDING BUILDINGS AND STRUCTURAL COMPONENTS OF BUILDINGS, DESCRIBED IN PARAGRAPH TWO OF THIS SUBSECTION, BUT ONLY IF THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION OR ERECTION OF SUCH PROPERTY OCCURRED OR WAS COMMENCED ON OR AFTER THE DATE OF SUCH DESIGNATION AND PRIOR TO THE EXPIRATION THEREOF. PROVIDED, HOWEVER, THAT IN THE CASE OF AN ACQUISITION, CONSTRUCTION, RECONSTRUCTION OR ERECTION WHICH WAS COMMENCED DURING SUCH PERIOD AND CONTINUED OR COMPLETED SUBSEQUENTLY, THE CREDIT SHALL BE TWENTY PERCENT OF THE PORTION OF THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES ATTRIBUTABLE TO SUCH PERIOD, WHICH PORTION SHALL BE ASCERTAINED BY MULTIPLYING SUCH COST OR BASIS BY A FRACTION THE NUMERATOR OF WHICH SHALL BE THE EXPENDITURES PAID OR INCURRED DURING SUCH PERIOD FOR SUCH PURPOSES AND THE DENOMINATOR OF WHICH SHALL BE THE TOTAL OF ALL EXPENDITURES PAID OR INCURRED FOR SUCH ACQUISITION, CONSTRUCTION, RECONSTRUCTION OR ERECTION.

(2) A CREDIT SHALL BE ALLOWED UNDER THIS SUBSECTION WITH RESPECT TO TANGIBLE PERSONAL PROPERTY AND OTHER TANGIBLE PROPERTY, INCLUDING BUILDINGS AND STRUCTURAL COMPONENTS OF BUILDINGS WHICH: (A) ARE DEPRECIABLE PURSUANT TO SECTION ONE HUNDRED SIXTY-SEVEN OF THE INTERNAL REVENUE CODE, (B) HAVE A USEFUL LIFE OF FOUR YEARS OR MORE, (C) ARE ACQUIRED BY PURCHASE AS DEFINED IN SECTION ONE HUNDRED SEVENTY-NINE (D) OF THE INTERNAL REVENUE CODE, AND (D) ARE (I) PRINCIPALLY USED BY THE TAXPAYER IN THE PRODUCTION OF GOODS BY MANUFACTURING, PROCESSING, ASSEMBLING, REFINING, MINING, EXTRACTING, FARMING, AGRICULTURE, HORTICULTURE, FLORICULTURE, VITICULTURE OR COMMERCIAL FISHING, (II) INDUSTRIAL WASTE TREATMENT FACILITIES OR AIR POLLUTION CONTROL FACILITIES USED IN THE TAXPAYER'S TRADE OR BUSINESS, (III) RESEARCH AND DEVELOPMENT PROPERTY, (IV) PRINCIPALLY USED IN THE ORDINARY COURSE OF THE TAXPAYER'S TRADE OR BUSINESS AS A BROKER OR DEALER IN CONNECTION WITH THE PURCHASE OR SALE (WHICH SHALL INCLUDE BUT NOT BE LIMITED TO THE ISSUANCE, ENTERING INTO, ASSUMPTION, OFFSET, ASSIGNMENT, TERMINATION, OR TRANSFER) OF STOCKS, BONDS OR OTHER SECURITIES AS DEFINED IN SECTION FOUR HUNDRED SEVENTY-FIVE (C)(2) OF THE INTERNAL REVENUE CODE, OR OF COMMODITIES AS DEFINED IN SECTION FOUR HUNDRED SEVENTY-FIVE (E) OF THE INTERNAL REVENUE CODE, OR (V) PRINCIPALLY USED IN THE ORDINARY COURSE OF THE TAXPAYER'S TRADE OR BUSINESS OF PROVIDING INVESTMENT ADVISORY SERVICES FOR REGULATED INVESTMENT COMPANY AS DEFINED IN SECTION EIGHT HUNDRED FIFTY-ONE OF THE INTERNAL REVENUE CODE, OR LENDING, LOAN ARRANGEMENT OR LOAN ORIGINATION SERVICES TO CUSTOMERS IN CONNECTION WITH THE PURCHASE OR SALE (WHICH SHALL INCLUDE BUT NOT BE LIMITED TO THE ISSUANCE, ENTERING INTO, ASSUMPTION, OFFSET, ASSIGNMENT, TERMINATION, OR TRANSFER) OF SECURITIES AS DEFINED IN SECTION FOUR HUNDRED SEVENTY-FIVE(C)(2) OF THE INTERNAL REVENUE CODE. FOR PURPOSES OF CLAUSES (IV) AND (V) OF THIS SUBPARAGRAPH, PROPERTY PURCHASED BY A TAXPAYER AFFILIATED WITH A REGULATED BROKER, DEALER OR REGISTERED INVESTMENT ADVISER IS ALLOWED A CREDIT UNDER THIS

SUBSECTION IF THE PROPERTY IS USED BY ITS AFFILIATED REGULATED BROKER, DEALER OR REGISTERED INVESTMENT ADVISER IN ACCORDANCE WITH THIS SUBSECTION. FOR PURPOSES OF DETERMINING IF THE PROPERTY IS PRINCIPALLY USED IN QUALIFYING USES, THE USES BY THE TAXPAYER DESCRIBED IN CLAUSES (IV) AND (V) OF THIS SUBPARAGRAPH MAY BE AGGREGATED. IN ADDITION, THE USES BY THE TAXPAYER, ITS AFFILIATED REGULATED BROKER, DEALER, AND REGISTERED INVESTMENT ADVISER UNDER EITHER OR BOTH OF THOSE CLAUSES MAY BE AGGREGATED. PROVIDED, HOWEVER, A TAXPAYER SHALL NOT BE ALLOWED THE CREDIT PROVIDED BY CLAUSES (IV) AND (V) OF THIS SUBPARAGRAPH UNLESS (I) EIGHTY PERCENT OR MORE OF THE EMPLOYEES PERFORMING THE ADMINISTRATIVE AND SUPPORT FUNCTIONS RESULTING FROM OR RELATED TO THE QUALIFYING USES OF SUCH EQUIPMENT ARE LOCATED IN THIS STATE, OR (II) THE AVERAGE NUMBER OF EMPLOYEES THAT PERFORM THE ADMINISTRATIVE AND SUPPORT FUNCTIONS RESULTING FROM OR RELATED TO THE QUALIFYING USES OF SUCH EQUIPMENT AND ARE LOCATED IN THIS STATE DURING THE TAXABLE YEAR FOR WHICH THE CREDIT IS CLAIMED IS EQUAL TO OR GREATER THAN NINETY-FIVE PERCENT OF THE AVERAGE NUMBER OF EMPLOYEES THAT PERFORM THESE FUNCTIONS AND ARE LOCATED IN THIS STATE DURING THE THIRTY-SIX MONTHS IMMEDIATELY PRECEDING THE YEAR FOR WHICH THE CREDIT IS CLAIMED, OR (III) THE NUMBER OF EMPLOYEES LOCATED IN THIS STATE DURING THE TAXABLE YEAR FOR WHICH THE CREDIT IS CLAIMED IS EQUAL TO OR GREATER THAN NINETY PERCENT OF THE NUMBER OF EMPLOYEES LOCATED IN THIS STATE ON DECEMBER THIRTY-FIRST, NINETEEN HUNDRED NINETY-EIGHT OR, IF THE TAXPAYER WAS NOT A CALENDAR YEAR TAXPAYER IN NINETEEN HUNDRED NINETY-EIGHT, THE LAST DAY OF ITS FIRST TAXABLE YEAR ENDING AFTER DECEMBER THIRTY-FIRST, NINETEEN HUNDRED NINETY-EIGHT. IF THE TAXPAYER BECOMES SUBJECT TO TAX IN THIS STATE AFTER THE TAXABLE YEAR BEGINNING IN NINETEEN HUNDRED NINETY-EIGHT, THEN THE TAXPAYER IS NOT REQUIRED TO SATISFY THE EMPLOYMENT TEST PROVIDED IN THE PRECEDING SENTENCE OF THIS SUBPARAGRAPH FOR ITS FIRST TAXABLE YEAR. FOR PURPOSES OF ITEM (III) OF THIS CLAUSE, THE EMPLOYMENT TEST WILL BE BASED ON THE NUMBER OF EMPLOYEES LOCATED IN THIS STATE ON THE LAST DAY OF THE FIRST TAXABLE YEAR THE TAXPAYER IS SUBJECT TO TAX IN THIS STATE. IF THE USES OF THE PROPERTY MUST BE AGGREGATED TO DETERMINE WHETHER THE PROPERTY IS PRINCIPALLY USED IN QUALIFYING USES, THEN EITHER EACH AFFILIATE USING THE PROPERTY MUST SATISFY THIS EMPLOYMENT TEST OR THIS EMPLOYMENT TEST MUST BE SATISFIED THROUGH THE AGGREGATION OF THE EMPLOYEES OF THE TAXPAYER, ITS AFFILIATED REGULATED BROKER, DEALER, AND REGISTERED INVESTMENT ADVISOR USING THE PROPERTY. FOR PURPOSES OF THIS SUBSECTION, THE TERM "GOODS" SHALL NOT INCLUDE ELECTRICITY. FOR PURPOSES OF THIS PARAGRAPH, MANUFACTURING SHALL MEAN THE PROCESS OF WORKING RAW MATERIALS INTO WARES SUITABLE FOR USE OR WHICH GIVES NEW SHAPES, NEW QUALITY OR NEW COMBINATION TO MATTER WHICH ALREADY HAS GONE THROUGH SOME ARTIFICIAL PROCESS BY THE USE OF MACHINERY, TOOLS, APPLIANCES AND OTHER SIMILAR EQUIPMENT. PROPERTY USED IN THE PRODUCTION OF GOODS SHALL INCLUDE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PROPERTY WHICH IS PRINCIPALLY USED IN THE REPAIR AND SERVICE OF OTHER MACHINERY, EQUIPMENT OR OTHER TANGIBLE PROPERTY USED PRINCIPALLY IN THE PRODUCTION OF GOODS AND SHALL INCLUDE ALL FACILITIES USED IN THE PRODUCTION OPERATION, INCLUDING STORAGE OF MATERIAL TO BE USED IN PRODUCTION AND OF THE PRODUCTS THAT ARE PRODUCED. FOR PURPOSES OF THIS PARAGRAPH, THE TERMS "INDUSTRIAL WASTE TREATMENT FACILITIES", "AIR POLLUTION CONTROL FACILITIES" AND "RESEARCH AND DEVELOPMENT PROPERTY" SHALL HAVE THE MEANINGS ASCRIBED THERETO BY CLAUSES (II) AND (III), RESPECTIVELY, OF SUBPARAGRAPH (D) OF THIS PARAGRAPH, AND THE PROVISIONS OF SUBPARAGRAPH (C) OF THIS PARAGRAPH.

(3) A TAXPAYER SHALL NOT BE ALLOWED A CREDIT UNDER THIS SUBSECTION WITH RESPECT TO ANY TANGIBLE PERSONAL PROPERTY AND OTHER TANGIBLE PROP-

ERTY, INCLUDING BUILDINGS AND STRUCTURAL COMPONENTS OF BUILDINGS, WHICH IT LEASES TO ANY OTHER PERSON OR CORPORATION EXCEPT WHERE A TAXPAYER LEASES PROPERTY TO AN AFFILIATED REGULATED BROKER, DEALER, OR REGISTERED INVESTMENT ADVISER THAT USES SUCH PROPERTY IN ACCORDANCE WITH CLAUSE (IV) OR (V) OF SUBPARAGRAPH (D) OF PARAGRAPH TWO OF THIS SUBSECTION. FOR PURPOSES OF THE PRECEDING SENTENCE, ANY CONTRACT OR AGREEMENT TO LEASE OR RENT OR FOR A LICENSE TO USE SUCH PROPERTY SHALL BE CONSIDERED A LEASE. PROVIDED, HOWEVER, IN DETERMINING WHETHER A TAXPAYER SHALL BE ALLOWED A CREDIT UNDER THIS SUBSECTION WITH RESPECT TO SUCH PROPERTY, ANY ELECTION MADE WITH RESPECT TO SUCH PROPERTY PURSUANT TO THE PROVISIONS OF PARAGRAPH EIGHT OF SUBSECTION (F) OF SECTION ONE HUNDRED SIXTY-EIGHT OF THE INTERNAL REVENUE CODE, AS SUCH PARAGRAPH WAS IN EFFECT FOR AGREEMENTS ENTERED INTO PRIOR TO JANUARY FIRST, NINETEEN HUNDRED EIGHTY-FOUR, SHALL BE DISREGARDED.

(4) IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS. ANY REFUND PAID PURSUANT TO THIS PARAGRAPH SHALL BE DEEMED TO BE A REFUND OF AN OVERPAYMENT OF TAX AS PROVIDED IN SECTION SIX HUNDRED EIGHTY-SIX OF THIS CHAPTER, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

(J-3) DISCOVERY WAGE TAX CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, WHERE THE TAXPAYER HAS BEEN CERTIFIED PURSUANT TO SECTION THIRTY-ONE HUNDRED SIXTY-SIX OF THE PUBLIC AUTHORITIES LAW. THE AMOUNT OF SUCH CREDIT SHALL BE AS PRESCRIBED IN PARAGRAPH THREE OF THIS SUBSECTION.

(2) "DISCOVERY WAGES" MEANS WAGES PAID BY THE TAXPAYER FOR FULL-TIME EMPLOYMENT DURING A TAXABLE YEAR, PROVIDED THAT THOSE WAGES ARE PAID BY A CERTIFIED BUSINESS AS DEFINED BY THE FOUNDATION AS REQUIRED IN ITS RESPONSIBILITIES.

(3) THE CREDIT PROVIDED IN THIS SUBDIVISION SHALL BE EQUAL TO THE PRODUCT OF THE GROSS WAGES PAID AND SIX AND EIGHTY-FIVE HUNDREDTHS PERCENT FOR EACH NET NEW JOB CREATED DURING THE TAXABLE YEAR.

(4) "NET NEW JOB" SHALL BE DEFINED AS EACH JOB THAT EXCEEDS THE AVERAGE NUMBER OF INDIVIDUALS EMPLOYED FULL-TIME BY THE TAXPAYER IN THE PREVIOUS TAXABLE YEAR.

(5) IF THE AMOUNT OF THIS CREDIT AND CARRYOVERS OF SUCH CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS, AS WELL AS ANY PART OF THE CREDIT OR CARRYOVERS OF SUCH CREDIT, OR BOTH, WHICH MAY NOT BE DEDUCTED FROM THE TAX OTHERWISE DUE BY REASON OF PARAGRAPH THREE OF THIS SUBSECTION, MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

S 8. Section 1456 of the tax law is amended by adding two new subsections (x) and (y) to read as follows:

(X) DISCOVERY INVESTMENT CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE WHERE THE TAXPAYER HAS BEEN CERTIFIED PURSUANT TO SECTION THIRTY-ONE HUNDRED SIXTY-SIX OF THE PUBLIC AUTHORITIES LAW. THE AMOUNT OF SUCH CREDIT SHALL BE TWENTY PERCENT OF THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES OF TANGIBLE PERSONAL PROPERTY AND OTHER TANGIBLE PROPERTY, INCLUDING BUILDINGS AND STRUCTURAL COMPONENTS OF BUILDINGS, DESCRIBED IN PARAGRAPH TWO OF THIS SUBSECTION, BUT ONLY IF THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION OR ERECTION OF SUCH PROPERTY OCCURRED OR WAS COMMENCED ON OR AFTER THE DATE OF SUCH DESIGNATION

AND PRIOR TO THE EXPIRATION THEREOF. PROVIDED, HOWEVER, THAT IN THE CASE OF AN ACQUISITION, CONSTRUCTION, RECONSTRUCTION OR ERECTION WHICH WAS COMMENCED DURING SUCH PERIOD AND CONTINUED OR COMPLETED SUBSEQUENTLY, THE CREDIT SHALL BE TWENTY PERCENT OF THE PORTION OF THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES ATTRIBUTABLE TO SUCH PERIOD, WHICH PORTION SHALL BE ASCERTAINED BY MULTIPLYING SUCH COST OR BASIS BY A FRACTION THE NUMERATOR OF WHICH SHALL BE THE EXPENDITURES PAID OR INCURRED DURING SUCH PERIOD FOR SUCH PURPOSES AND THE DENOMINATOR OF WHICH SHALL BE THE TOTAL OF ALL EXPENDITURES PAID OR INCURRED FOR SUCH ACQUISITION, CONSTRUCTION, RECONSTRUCTION OR ERECTION.

(2) A CREDIT SHALL BE ALLOWED UNDER THIS SUBSECTION WITH RESPECT TO TANGIBLE PERSONAL PROPERTY AND OTHER TANGIBLE PROPERTY, INCLUDING BUILDINGS AND STRUCTURAL COMPONENTS OF BUILDINGS WHICH: (A) ARE DEPRECIABLE PURSUANT TO SECTION ONE HUNDRED SIXTY-SEVEN OF THE INTERNAL REVENUE CODE, (B) HAVE A USEFUL LIFE OF FOUR YEARS OR MORE, (C) ARE ACQUIRED BY PURCHASE AS DEFINED IN SECTION ONE HUNDRED SEVENTY-NINE (D) OF THE INTERNAL REVENUE CODE, AND (D) ARE (I) PRINCIPALLY USED BY THE TAXPAYER IN THE PRODUCTION OF GOODS BY MANUFACTURING, PROCESSING, ASSEMBLING, REFINING, MINING, EXTRACTING, FARMING, AGRICULTURE, HORTICULTURE, FLORICULTURE, VITICULTURE OR COMMERCIAL FISHING, (II) INDUSTRIAL WASTE TREATMENT FACILITIES OR AIR POLLUTION CONTROL FACILITIES USED IN THE TAXPAYER'S TRADE OR BUSINESS, (III) RESEARCH AND DEVELOPMENT PROPERTY, (IV) PRINCIPALLY USED IN THE ORDINARY COURSE OF THE TAXPAYER'S TRADE OR BUSINESS AS A BROKER OR DEALER IN CONNECTION WITH THE PURCHASE OR SALE (WHICH SHALL INCLUDE BUT NOT BE LIMITED TO THE ISSUANCE, ENTERING INTO, ASSUMPTION, OFFSET, ASSIGNMENT, TERMINATION, OR TRANSFER) OF STOCKS, BONDS OR OTHER SECURITIES AS DEFINED IN SECTION FOUR HUNDRED SEVENTY-FIVE (C)(2) OF THE INTERNAL REVENUE CODE, OR OF COMMODITIES AS DEFINED IN SECTION FOUR HUNDRED SEVENTY-FIVE (E) OF THE INTERNAL REVENUE CODE, OR (V) PRINCIPALLY USED IN THE ORDINARY COURSE OF THE TAXPAYER'S TRADE OR BUSINESS OF PROVIDING INVESTMENT ADVISORY SERVICES FOR A REGULATED INVESTMENT COMPANY AS DEFINED IN SECTION EIGHT HUNDRED FIFTY-ONE OF THE INTERNAL REVENUE CODE, OR LENDING, LOAN ARRANGEMENT OR LOAN ORIGINATION SERVICES TO CUSTOMERS IN CONNECTION WITH THE PURCHASE OR SALE (WHICH SHALL INCLUDE BUT NOT BE LIMITED TO THE ISSUANCE, ENTERING INTO, ASSUMPTION, OFFSET, ASSIGNMENT, TERMINATION, OR TRANSFER) OF SECURITIES AS DEFINED IN SECTION FOUR HUNDRED SEVENTY-FIVE (C)(2) OF THE INTERNAL REVENUE CODE. FOR PURPOSES OF CLAUSES (IV) AND (V) OF THIS SUBPARAGRAPH, PROPERTY PURCHASED BY A TAXPAYER AFFILIATED WITH A REGULATED BROKER, DEALER OR REGISTERED INVESTMENT ADVISER IS ALLOWED A CREDIT UNDER THIS SUBSECTION IF THE PROPERTY IS USED BY ITS AFFILIATED REGULATED BROKER, DEALER OR REGISTERED INVESTMENT ADVISER IN ACCORDANCE WITH THIS SUBSECTION. FOR PURPOSES OF DETERMINING IF THE PROPERTY IS PRINCIPALLY USED IN QUALIFYING USES, THE USES BY THE TAXPAYER DESCRIBED IN CLAUSES (IV) AND (V) OF THIS SUBPARAGRAPH MAY BE AGGREGATED. IN ADDITION, THE USES BY THE TAXPAYER, ITS AFFILIATED REGULATED BROKER, DEALER, AND REGISTERED INVESTMENT ADVISER UNDER EITHER OR BOTH OF THOSE CLAUSES MAY BE AGGREGATED. PROVIDED, HOWEVER, A TAXPAYER SHALL NOT BE ALLOWED THE CREDIT PROVIDED BY CLAUSES (IV) AND (V) OF THIS SUBPARAGRAPH UNLESS (I) EIGHTY PERCENT OR MORE OF THE EMPLOYEES PERFORMING THE ADMINISTRATIVE AND SUPPORT FUNCTIONS RESULTING FROM OR RELATED TO THE QUALIFYING USES OF SUCH EQUIPMENT ARE LOCATED IN THIS STATE, OR (II) THE AVERAGE NUMBER OF EMPLOYEES THAT PERFORM THE ADMINISTRATIVE AND SUPPORT FUNCTIONS RESULTING FROM OR RELATED TO THE QUALIFYING USES OF SUCH EQUIPMENT AND ARE LOCATED IN THIS STATE DURING THE TAXABLE YEAR FOR WHICH THE CREDIT IS CLAIMED IS EQUAL TO OR GREATER THAN NINETY-FIVE PERCENT OF THE AVER-

AGE NUMBER OF EMPLOYEES THAT PERFORM THESE FUNCTIONS AND ARE LOCATED IN THIS STATE DURING THE THIRTY-SIX MONTHS IMMEDIATELY PRECEDING THE YEAR FOR WHICH THE CREDIT IS CLAIMED, OR (III) THE NUMBER OF EMPLOYEES LOCATED IN THIS STATE DURING THE TAXABLE YEAR FOR WHICH THE CREDIT IS CLAIMED IS EQUAL TO OR GREATER THAN NINETY PERCENT OF THE NUMBER OF EMPLOYEES LOCATED IN THIS STATE ON DECEMBER THIRTY-FIRST, NINETEEN HUNDRED NINETY-EIGHT OR, IF THE TAXPAYER WAS NOT A CALENDAR YEAR TAXPAYER IN NINETEEN HUNDRED NINETY-EIGHT, THE LAST DAY OF ITS FIRST TAXABLE YEAR ENDING AFTER DECEMBER THIRTY-FIRST, NINETEEN HUNDRED NINETY-EIGHT. IF THE TAXPAYER BECOMES SUBJECT TO TAX IN THIS STATE AFTER THE TAXABLE YEAR BEGINNING IN NINETEEN HUNDRED NINETY-EIGHT, THEN THE TAXPAYER IS NOT REQUIRED TO SATISFY THE EMPLOYMENT TEST PROVIDED IN THE PRECEDING SENTENCE OF THIS SUBPARAGRAPH FOR ITS FIRST TAXABLE YEAR. FOR PURPOSES OF ITEM (III) OF THIS CLAUSE, THE EMPLOYMENT TEST WILL BE BASED ON THE NUMBER OF EMPLOYEES LOCATED IN THIS STATE ON THE LAST DAY OF THE FIRST TAXABLE YEAR THE TAXPAYER IS SUBJECT TO TAX IN THIS STATE. IF THE USES OF THE PROPERTY MUST BE AGGREGATED TO DETERMINE WHETHER THE PROPERTY IS PRINCIPALLY USED IN QUALIFYING USES, THEN EITHER EACH AFFILIATE USING THE PROPERTY MUST SATISFY THIS EMPLOYMENT TEST OR THIS EMPLOYMENT TEST MUST BE SATISFIED THROUGH THE AGGREGATION OF THE EMPLOYEES OF THE TAXPAYER, ITS AFFILIATED REGULATED BROKER, DEALER, AND REGISTERED INVESTMENT ADVISER USING THE PROPERTY. FOR PURPOSES OF THIS SUBSECTION, THE TERM "GOODS" SHALL NOT INCLUDE ELECTRICITY. FOR PURPOSES OF THIS PARAGRAPH, MANUFACTURING SHALL MEAN THE PROCESS OF WORKING RAW MATERIALS INTO WARES SUITABLE FOR USE OR WHICH GIVES NEW SHAPES, NEW QUALITY OR NEW COMBINATION TO MATTER WHICH ALREADY HAS GONE THROUGH SOME ARTIFICIAL PROCESS BY THE USE OF MACHINERY, TOOLS, APPLIANCES AND OTHER SIMILAR EQUIPMENT. PROPERTY USED IN THE PRODUCTION OF GOODS SHALL INCLUDE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PROPERTY WHICH IS PRINCIPALLY USED IN THE REPAIR AND SERVICE OF OTHER MACHINERY, EQUIPMENT OR OTHER TANGIBLE PROPERTY USED PRINCIPALLY IN THE PRODUCTION OF GOODS AND SHALL INCLUDE ALL FACILITIES USED IN THE PRODUCTION OPERATION, INCLUDING STORAGE OF MATERIAL TO BE USED IN PRODUCTION AND OF THE PRODUCTS THAT ARE PRODUCED. FOR PURPOSES OF THIS PARAGRAPH, THE TERMS "INDUSTRIAL WASTE TREATMENT FACILITIES", AND "AIR POLLUTION CONTROL FACILITIES" AND "RESEARCH AND DEVELOPMENT PROPERTY" SHALL HAVE THE MEANINGS ASCRIBED THERETO BY CLAUSES (II) AND (III), RESPECTIVELY, OF SUBPARAGRAPH (D) OF THIS PARAGRAPH, AND THE PROVISIONS OF SUBPARAGRAPH (C) OF THIS PARAGRAPH SHALL APPLY.

(3) A TAXPAYER SHALL NOT BE ALLOWED A CREDIT UNDER THIS SUBSECTION WITH RESPECT TO ANY TANGIBLE PERSONAL PROPERTY AND OTHER TANGIBLE PROPERTY, INCLUDING BUILDINGS AND STRUCTURAL COMPONENTS OF BUILDINGS, WHICH IT LEASES TO ANY OTHER PERSON OR CORPORATION EXCEPT WHERE A TAXPAYER LEASES PROPERTY TO AN AFFILIATED REGULATED BROKER, DEALER, OR REGISTERED INVESTMENT ADVISER THAT USES SUCH PROPERTY IN ACCORDANCE WITH CLAUSE (IV) OR (V) OF SUBPARAGRAPH (D) OF PARAGRAPH TWO OF THIS SUBSECTION. FOR PURPOSES OF THE PRECEDING SENTENCE, ANY CONTRACT OR AGREEMENT TO LEASE OR RENT OR FOR A LICENSE TO USE SUCH PROPERTY SHALL BE CONSIDERED A LEASE. PROVIDED, HOWEVER, IN DETERMINING WHETHER A TAXPAYER SHALL BE ALLOWED A CREDIT UNDER THIS SUBSECTION WITH RESPECT TO SUCH PROPERTY, ANY ELECTION MADE WITH RESPECT TO SUCH PROPERTY PURSUANT TO THE PROVISIONS OF PARAGRAPH EIGHT OF SUBSECTION (F) OF SECTION ONE HUNDRED SIXTY-EIGHT OF THE INTERNAL REVENUE CODE, AS SUCH PARAGRAPH WAS IN EFFECT FOR AGREEMENTS ENTERED INTO PRIOR TO JANUARY FIRST, NINETEEN HUNDRED EIGHTY-FOUR, SHALL BE DISREGARDED.

(4) IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS. ANY REFUND PAID PURSUANT TO THIS PARAGRAPH SHALL BE DEEMED TO BE A REFUND OF AN OVERPAYMENT OF TAX AS PROVIDED IN SECTION SIX HUNDRED EIGHTY-SIX OF THIS CHAPTER, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

(Y) DISCOVERY WAGE TAX CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, WHERE THE TAXPAYER HAS BEEN CERTIFIED PURSUANT TO SECTION THIRTY-ONE HUNDRED SIXTY-SIX OF THE PUBLIC AUTHORITIES LAW. THE AMOUNT OF SUCH CREDIT SHALL BE AS PRESCRIBED IN PARAGRAPH THREE OF THIS SUBSECTION.

(2) "DISCOVERY WAGES" MEANS WAGES PAID BY THE TAXPAYER FOR FULL-TIME EMPLOYMENT DURING A TAXABLE YEAR, PROVIDED THAT THOSE WAGES ARE PAID BY A CERTIFIED BUSINESS AS DEFINED BY THE FOUNDATION AS REQUIRED IN ITS RESPONSIBILITIES.

(3) THE CREDIT PROVIDED IN THIS SUBDIVISION SHALL BE EQUAL TO THE PRODUCT OF THE GROSS WAGES PAID AND SIX AND EIGHTY-FIVE HUNDREDTHS PERCENT FOR EACH NET NEW JOB CREATED DURING THE TAXABLE YEAR.

(4) "NET NEW JOB" SHALL BE DEFINED AS EACH JOB THAT EXCEEDS THE AVERAGE NUMBER OF INDIVIDUALS EMPLOYED FULL-TIME BY THE TAXPAYER IN THE PREVIOUS TAXABLE YEAR.

(5) IF THE AMOUNT OF THIS CREDIT AND CARRYOVERS OF SUCH CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS, AS WELL AS ANY PART OF THE CREDIT OR CARRYOVERS OF SUCH CREDIT, OR BOTH, WHICH MAY NOT BE DEDUCTED FROM THE TAX OTHERWISE DUE BY REASON OF PARAGRAPH THREE OF THIS SUBSECTION, MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

S 9. Section 1511 of the tax law is amended by adding two new subdivisions (aa) and (bb) to read as follows:

(AA) DISCOVERY INVESTMENT CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE WHERE THE TAXPAYER HAS BEEN CERTIFIED PURSUANT TO SECTION THIRTY-ONE HUNDRED SIXTY-SIX OF THE PUBLIC AUTHORITIES LAW. THE AMOUNT OF SUCH CREDIT SHALL BE TWENTY PERCENT OF THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES OF TANGIBLE PERSONAL PROPERTY AND OTHER TANGIBLE PROPERTY, INCLUDING BUILDINGS AND STRUCTURAL COMPONENTS OF BUILDINGS, DESCRIBED IN PARAGRAPH TWO OF THIS SUBDIVISION, BUT ONLY IF THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION OR ERECTION OF SUCH PROPERTY OCCURRED OR WAS COMMENCED ON OR AFTER THE DATE OF SUCH DESIGNATION AND PRIOR TO THE EXPIRATION THEREOF. PROVIDED, HOWEVER, THAT IN THE CASE OF AN ACQUISITION, CONSTRUCTION, RECONSTRUCTION OR ERECTION WHICH WAS COMMENCED DURING SUCH PERIOD AND CONTINUED OR COMPLETED SUBSEQUENTLY, THE CREDIT SHALL BE TWENTY PERCENT OF THE PORTION OF THE COST OR OTHER BASIS FOR FEDERAL INCOME TAX PURPOSES ATTRIBUTABLE TO SUCH PERIOD, WHICH PORTION SHALL BE ASCERTAINED BY MULTIPLYING SUCH COST OR BASIS BY A FRACTION THE NUMERATOR OF WHICH SHALL BE THE EXPENDITURES PAID OR INCURRED DURING SUCH PERIOD FOR SUCH PURPOSES AND THE DENOMINATOR OF WHICH SHALL BE THE TOTAL OF ALL EXPENDITURES PAID OR INCURRED FOR SUCH ACQUISITION, CONSTRUCTION, RECONSTRUCTION OR ERECTION.

(2) A CREDIT SHALL BE ALLOWED UNDER THIS SUBDIVISION WITH RESPECT TO TANGIBLE PERSONAL PROPERTY AND OTHER TANGIBLE PROPERTY, INCLUDING BUILDINGS AND STRUCTURAL COMPONENTS OF BUILDINGS WHICH: (A) ARE DEPRECIABLE PURSUANT TO SECTION ONE HUNDRED SIXTY-SEVEN OF THE INTERNAL REVENUE

CODE, (B) HAVE A USEFUL LIFE OF FOUR YEARS OR MORE, (C) ARE ACQUIRED BY PURCHASE AS DEFINED IN SECTION ONE HUNDRED SEVENTY-NINE (D) OF THE INTERNAL REVENUE CODE, AND (D) ARE (I) PRINCIPALLY USED BY THE TAXPAYER IN THE PRODUCTION OF GOODS BY MANUFACTURING, PROCESSING, ASSEMBLING, REFINING, MINING, EXTRACTING, FARMING, AGRICULTURE, HORTICULTURE, FLORICULTURE, VITICULTURE OR COMMERCIAL FISHING, (II) INDUSTRIAL WASTE TREATMENT FACILITIES OR AIR POLLUTION CONTROL FACILITIES USED IN THE TAXPAYER'S TRADE OR BUSINESS, (III) RESEARCH AND DEVELOPMENT PROPERTY, (IV) PRINCIPALLY USED IN THE ORDINARY COURSE OF THE TAXPAYER'S TRADE OR BUSINESS AS A BROKER OR DEALER IN CONNECTION WITH THE PURCHASE OR SALE (WHICH SHALL INCLUDE BUT NOT BE LIMITED TO THE ISSUANCE, ENTERING INTO, ASSUMPTION, OFFSET, ASSIGNMENT, TERMINATION, OR TRANSFER) OF STOCKS, BONDS OR OTHER SECURITIES AS DEFINED IN SECTION FOUR HUNDRED SEVENTY-FIVE(C)(2) OF THE INTERNAL REVENUE CODE, OR OF COMMODITIES AS DEFINED IN SECTION FOUR HUNDRED SEVENTY-FIVE (E) OF THE INTERNAL REVENUE CODE, OR (V) PRINCIPALLY USED IN THE ORDINARY COURSE OF THE TAXPAYER'S TRADE OR BUSINESS OF PROVIDING INVESTMENT ADVISORY SERVICES FOR A REGULATED INVESTMENT COMPANY AS DEFINED IN SECTION EIGHT HUNDRED FIFTY-ONE OF THE INTERNAL REVENUE CODE, OR LENDING, LOAN ARRANGEMENT OR LOAN ORIGINATION SERVICES TO CUSTOMERS IN CONNECTION WITH THE PURCHASE OR SALE (WHICH SHALL INCLUDE BUT NOT BE LIMITED TO THE ISSUANCE, ENTERING INTO, ASSUMPTION, OFFSET, ASSIGNMENT, TERMINATION, OR TRANSFER) OF SECURITIES AS DEFINED IN SECTION FOUR HUNDRED SEVENTY-FIVE(C)(2) OF THE INTERNAL REVENUE CODE. FOR PURPOSES OF CLAUSES (IV) AND (V) OF THIS SUBPARAGRAPH, PROPERTY PURCHASED BY A TAXPAYER AFFILIATED WITH A REGULATED BROKER, DEALER OR REGISTERED INVESTMENT ADVISER IS ALLOWED A CREDIT UNDER THIS SUBDIVISION IF THE PROPERTY IS USED BY ITS AFFILIATED REGULATED BROKER, DEALER OR REGISTERED INVESTMENT ADVISER IN ACCORDANCE WITH THIS SUBDIVISION. FOR PURPOSES OF DETERMINING IF THE PROPERTY IS PRINCIPALLY USED IN QUALIFYING USES, THE USES BY THE TAXPAYER DESCRIBED IN CLAUSES (IV) AND (V) OF THIS SUBPARAGRAPH MAY BE AGGREGATED. IN ADDITION, THE USES BY THE TAXPAYER, ITS AFFILIATED REGULATED BROKER, DEALER, AND REGISTERED INVESTMENT ADVISER UNDER EITHER OR BOTH OF THOSE CLAUSES MAY BE AGGREGATED. PROVIDED, HOWEVER, A TAXPAYER SHALL NOT BE ALLOWED THE CREDIT PROVIDED BY CLAUSES (IV) AND (V) OF THIS SUBPARAGRAPH UNLESS (I) EIGHTY PERCENT OR MORE OF THE EMPLOYEES PERFORMING THE ADMINISTRATIVE AND SUPPORT FUNCTIONS RESULTING FROM OR RELATED TO THE QUALIFYING USES OF SUCH EQUIPMENT ARE LOCATED IN THIS STATE, OR (II) THE AVERAGE NUMBER OF EMPLOYEES THAT PERFORM THE ADMINISTRATIVE AND SUPPORT FUNCTIONS RESULTING FROM OR RELATED TO THE QUALIFYING USES OF SUCH EQUIPMENT AND ARE LOCATED IN THIS STATE DURING THE TAXABLE YEAR FOR WHICH THE CREDIT IS CLAIMED IS EQUAL TO OR GREATER THAN NINETY-FIVE PERCENT OF THE AVERAGE NUMBER OF EMPLOYEES THAT PERFORM THESE FUNCTIONS AND ARE LOCATED IN THIS STATE DURING THE THIRTY-SIX MONTHS IMMEDIATELY PRECEDING THE YEAR FOR WHICH THE CREDIT IS CLAIMED, OR (III) THE NUMBER OF EMPLOYEES LOCATED IN THIS STATE DURING THE TAXABLE YEAR FOR WHICH THE CREDIT IS CLAIMED IS EQUAL TO OR GREATER THAN NINETY PERCENT OF THE NUMBER OF EMPLOYEES LOCATED IN THIS STATE ON DECEMBER THIRTY-FIRST, NINETEEN HUNDRED NINETY-EIGHT OR, IF THE TAXPAYER WAS NOT A CALENDAR YEAR TAXPAYER IN NINETEEN HUNDRED NINETY-EIGHT, THE LAST DAY OF ITS FIRST TAXABLE YEAR ENDING AFTER DECEMBER THIRTY-FIRST, NINETEEN HUNDRED NINETY-EIGHT. IF THE TAXPAYER BECOMES SUBJECT TO TAX IN THIS STATE AFTER THE TAXABLE YEAR BEGINNING IN NINETEEN HUNDRED NINETY-EIGHT, THEN THE TAXPAYER IS NOT REQUIRED TO SATISFY THE EMPLOYMENT TEST PROVIDED IN THE PRECEDING SENTENCE OF THIS SUBPARAGRAPH FOR ITS FIRST TAXABLE YEAR. FOR PURPOSES OF ITEM (III) OF THIS CLAUSE, THE EMPLOYMENT TEST WILL BE BASED ON THE

NUMBER OF EMPLOYEES LOCATED IN THIS STATE ON THE LAST DAY OF THE FIRST TAXABLE YEAR THE TAXPAYER IS SUBJECT TO TAX IN THIS STATE. IF THE USES OF THE PROPERTY MUST BE AGGREGATED TO DETERMINE WHETHER THE PROPERTY IS PRINCIPALLY USED IN QUALIFYING USES, THEN EITHER EACH AFFILIATE USING THE PROPERTY MUST SATISFY THIS EMPLOYMENT TEST OR THIS EMPLOYMENT TEST MUST BE SATISFIED THROUGH THE AGGREGATION OF THE EMPLOYEES OF THE TAXPAYER, ITS AFFILIATED REGULATED BROKER, DEALER, AND REGISTERED INVESTMENT ADVISER USING THE PROPERTY. FOR PURPOSES OF THIS SUBDIVISION, THE TERM "GOODS" SHALL NOT INCLUDE ELECTRICITY. FOR PURPOSES OF THIS PARAGRAPH, MANUFACTURING SHALL MEAN THE PROCESS OF WORKING RAW MATERIALS INTO WARES SUITABLE FOR USE OR WHICH GIVES NEW SHAPES, NEW QUALITY OR NEW COMBINATION TO MATTER WHICH ALREADY HAS GONE THROUGH SOME ARTIFICIAL PROCESS BY THE USE OF MACHINERY, TOOLS, APPLIANCES AND OTHER SIMILAR EQUIPMENT. PROPERTY USED IN THE PRODUCTION OF GOODS SHALL INCLUDE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PROPERTY WHICH IS PRINCIPALLY USED IN THE REPAIR AND SERVICE OF OTHER MACHINERY, EQUIPMENT OR OTHER TANGIBLE PROPERTY USED PRINCIPALLY IN THE PRODUCTION OF GOODS AND SHALL INCLUDE ALL FACILITIES USED IN THE PRODUCTION OPERATION, INCLUDING STORAGE OF MATERIAL TO BE USED IN PRODUCTION AND OF THE PRODUCTS THAT ARE PRODUCED. FOR PURPOSES OF THIS PARAGRAPH, THE TERMS "INDUSTRIAL WASTE TREATMENT FACILITIES", "AIR POLLUTION CONTROL FACILITIES" AND "RESEARCH AND DEVELOPMENT PROPERTY" SHALL HAVE THE MEANINGS ASCRIBED THERETO BY CLAUSES (II) AND (III), RESPECTIVELY, OF SUBPARAGRAPH (D) OF THIS PARAGRAPH, AND THE PROVISIONS OF SUBPARAGRAPH (C) OF THIS PARAGRAPH SHALL APPLY.

(3) A TAXPAYER SHALL NOT BE ALLOWED A CREDIT UNDER THIS SUBDIVISION WITH RESPECT TO ANY TANGIBLE PERSONAL PROPERTY AND OTHER TANGIBLE PROPERTY, INCLUDING BUILDINGS AND STRUCTURAL COMPONENTS OF BUILDINGS, WHICH IT LEASES TO ANY OTHER PERSON OR CORPORATION EXCEPT WHERE A TAXPAYER LEASES PROPERTY TO AN AFFILIATED REGULATED BROKER, DEALER, OR REGISTERED INVESTMENT ADVISER THAT USES SUCH PROPERTY IN ACCORDANCE WITH CLAUSE (IV) OR (V) OF SUBPARAGRAPH (D) OF PARAGRAPH TWO OF THIS SUBDIVISION. FOR PURPOSES OF THE PRECEDING SENTENCE, ANY CONTRACT OR AGREEMENT TO LEASE OR RENT OR FOR A LICENSE TO USE SUCH PROPERTY SHALL BE CONSIDERED A LEASE. PROVIDED, HOWEVER, IN DETERMINING WHETHER A TAXPAYER SHALL BE ALLOWED A CREDIT UNDER THIS SUBDIVISION WITH RESPECT TO SUCH PROPERTY, ANY ELECTION MADE WITH RESPECT TO SUCH PROPERTY PURSUANT TO THE PROVISIONS OF PARAGRAPH EIGHT OF SUBSECTION (F) OF SECTION ONE HUNDRED SIXTY-EIGHT OF THE INTERNAL REVENUE CODE, AS SUCH PARAGRAPH WAS IN EFFECT FOR AGREEMENTS ENTERED INTO PRIOR TO JANUARY FIRST, NINETEEN HUNDRED EIGHTY-FOUR, SHALL BE DISREGARDED.

(4) IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS. ANY REFUND PAID PURSUANT TO THIS PARAGRAPH SHALL BE DEEMED TO BE A REFUND OF AN OVERPAYMENT OF TAX AS PROVIDED IN SECTION SIX HUNDRED EIGHTY-SIX OF THIS CHAPTER, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

(BB) DISCOVERY WAGE TAX CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE, WHERE THE TAXPAYER HAS BEEN CERTIFIED PURSUANT TO SECTION THIRTY-ONE HUNDRED SIXTY-SIX OF THE PUBLIC AUTHORITIES LAW. THE AMOUNT OF SUCH CREDIT SHALL BE AS PRESCRIBED IN PARAGRAPH THREE OF THIS SUBDIVISION.

(2) "DISCOVERY WAGES" MEANS WAGES PAID BY THE TAXPAYER FOR FULL-TIME EMPLOYMENT DURING A TAXABLE YEAR, PROVIDED THAT THOSE WAGES ARE PAID BY

A CERTIFIED BUSINESS AS DEFINED BY THE FOUNDATION AS REQUIRED IN ITS RESPONSIBILITIES.

(3) THE CREDIT PROVIDED IN THIS SUBDIVISION SHALL BE EQUAL TO THE PRODUCT OF THE GROSS WAGES PAID AND SIX AND EIGHTY-FIVE HUNDREDTHS PERCENT FOR EACH NET NEW JOB CREATED DURING THE TAXABLE YEAR.

(4) "NET NEW JOB" SHALL BE DEFINED AS EACH JOB THAT EXCEEDS THE AVERAGE NUMBER OF INDIVIDUALS EMPLOYED FULL-TIME BY THE TAXPAYER IN THE PREVIOUS TAXABLE YEAR.

(5) IF THE AMOUNT OF THIS CREDIT AND CARRYOVERS OF SUCH CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS, AS WELL AS ANY PART OF THE CREDIT OR CARRYOVERS OF SUCH CREDIT, OR BOTH, WHICH MAY NOT BE DEDUCTED FROM THE TAX OTHERWISE DUE BY REASON OF PARAGRAPH THREE OF THIS SUBDIVISION, MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

S 10. This act shall take effect immediately; provided, however, that any rules and regulations necessary to carry out the provisions of this act shall be promulgated by the New York state foundation for science, technology and innovation before such effective date.

PART C

Section 1. The opening paragraph and subparagraphs (iv) and (vi) of paragraph (a) of subdivision 1 of section 210 of the tax law, as amended by section 2 of part N of chapter 60 of the laws of 2007, are amended to read as follows:

For taxable years beginning before July first, nineteen hundred ninety-nine, the amount prescribed by this paragraph shall be computed at the rate of nine percent of the taxpayer's entire net income base. For taxable years beginning after June thirtieth, nineteen hundred ninety-nine and before July first, two thousand, the amount prescribed by this paragraph shall be computed at the rate of eight and one-half percent of the taxpayer's entire net income base. For taxable years beginning after June thirtieth, two thousand and before July first, two thousand one, the amount prescribed by this paragraph shall be computed at the rate of eight percent of the taxpayer's entire net income base. For taxable years beginning after June thirtieth, two thousand one and before January first, two thousand seven, the amount prescribed by this paragraph shall be computed at the rate of seven and one-half percent of the taxpayer's entire net income base. For taxable years beginning [on or] after January first, two thousand seven AND BEFORE JANUARY FIRST, TWO THOUSAND ELEVEN, the amount prescribed by this paragraph shall be computed at the rate of seven and one-tenth percent of the taxpayer's entire net income base. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, THE AMOUNT PRESCRIBED BY THIS PARAGRAPH SHALL BE COMPUTED AT THE RATE OF SIX AND EIGHTY-FIVE ONE HUNDREDTH PERCENT OF THE TAXPAYER'S ENTIRE NET INCOME BASE. The taxpayer's entire net income base shall mean the portion of the taxpayer's entire net income allocated within the state as hereinafter provided, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section. However, in the case of a small business taxpayer, as defined in paragraph (f) of this subdivision, the amount prescribed by this paragraph shall be computed pursuant to subparagraph (iv) of this paragraph and in the case of a manufacturer, as defined in subparagraph (vi) of this paragraph, the amount prescribed by this paragraph shall be computed pursuant to subparagraph (vi) of this paragraph.

(iv) for taxable years beginning [on or] after January first, two thousand seven AND BEFORE JANUARY FIRST, TWO THOUSAND ELEVEN, if the entire net income base is not more than two hundred ninety thousand dollars the amount shall be six and one-half percent of the entire net income base; if the entire net income base is more than two hundred ninety thousand dollars but not over three hundred ninety thousand dollars the amount shall be the sum of (1) eighteen thousand eight hundred fifty dollars, (2) seven and one-tenth percent of the excess of the entire net income base over two hundred ninety thousand dollars but not over three hundred ninety thousand dollars and (3) four and thirty-five hundredths percent of the excess of the entire net income base over three hundred fifty thousand dollars but not over three hundred ninety thousand dollars. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, IF THE ENTIRE NET INCOME IS NOT OVER THREE HUNDRED NINETY THOUSAND DOLLARS THE AMOUNT SHALL BE SIX PERCENT OF THE ENTIRE NET INCOME BASE;

(vi) for taxable years beginning [on or] after January thirty-first, two thousand seven AND BEFORE JANUARY FIRST, TWO THOUSAND ELEVEN, the amount prescribed by this paragraph for a taxpayer which is a qualified New York manufacturer, shall be computed at the rate of six and one-half (6.5) percent of the taxpayer's entire net income base. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, THE AMOUNT PRESCRIBED BY THIS PARAGRAPH SHALL BE COMPUTED AT THE RATE OF SIX PERCENT OF THE TAXPAYER'S ENTIRE NET INCOME BASE. The term "manufacturer" shall mean a taxpayer which during the taxable year is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing. However, the generation and distribution of electricity, the distribution of natural gas, and the production of steam associated with the generation of electricity shall not be qualifying activities for a manufacturer under this subparagraph. Moreover, the combined group shall be considered a "manufacturer" for purposes of this subparagraph only if the combined group during the taxable year is principally engaged in the activities set forth in this paragraph, or any combination thereof. A taxpayer or a combined group shall be "principally engaged" in activities described above if, during the taxable year, more than fifty percent of the gross receipts of the taxpayer or combined group, respectively, are derived from receipts from the sale of goods produced by such activities. In computing a combined group's gross receipts, intercorporate receipts shall be eliminated. A "qualified New York manufacturer" is a manufacturer which has property in New York which is described in clause (A) of subparagraph (i) of paragraph (b) of subdivision twelve of this section and either (I) the adjusted basis of such property for federal income tax purposes at the close of the taxable year is at least one million dollars or (II) all of its real and personal property is located in New York. In addition, a "qualified New York manufacturer" means a taxpayer which is defined as a qualified emerging technology company under paragraph (c) of subdivision one of section thirty-one hundred two-e of the public authorities law regardless of the ten million dollar limitation expressed in subparagraph one of such paragraph (c).

S 2. Subsection (a) of section 1455 of the tax law, as amended by section 3 of part N of chapter 60 of the laws of 2007, is amended to read as follows:

(a) Basic tax. For taxable years beginning before July first, two thousand, nine percent of the taxpayer's entire net income, or the

portion thereof allocated to this state, for the taxable year, or part thereof. For taxable years beginning after June thirtieth, two thousand and before July first, two thousand one, eight and one-half percent of the taxpayer's entire net income, or portion thereof allocated to this state, for the taxable year, or part thereof. For taxable years beginning after June thirtieth, two thousand one and before July first, two thousand two, eight percent of the taxpayer's entire net income, or portion thereof allocated to this state, for the taxable year, or part thereof. For taxable years beginning after June thirtieth, two thousand two and before January first, two thousand seven, seven and one-half percent of the taxpayer's entire net income, or portion thereof allocated to this state, for the taxable year, or part thereof. For taxable years beginning on [or after] January first, two thousand seven, AND BEFORE JANUARY FIRST, TWO THOUSAND ELEVEN, seven and one-tenth percent of the taxpayer's entire net income, or the portion thereof allocated to this state, for the taxable year, or part thereof. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, SIX AND EIGHTY-FIVE ONE HUNDREDTH PERCENT OF THE TAXPAYER'S ENTIRE NET INCOME, OR PORTION THEREOF ALLOCATED TO THIS STATE, FOR THE TAXABLE YEAR, OR PART THEREOF.

S 3. Paragraph 1 of subdivision (a) of section 1502 of the tax law, as amended by section 4 of part N of chapter 60 of the laws of 2007, is amended to read as follows:

(1) for taxable years beginning before July first, two thousand, nine percent of the taxpayer's entire net income, or portion thereof allocated within this state, for the taxable year, or part thereof, except that for taxable years beginning prior to January first, nineteen hundred seventy-eight, the rate shall be four and five-tenths percent; for taxable years beginning after June thirtieth, two thousand and before July first, two thousand one, eight and one-half percent of the taxpayer's entire net income, or portion thereof allocated within this state, for the taxable year, or part thereof; for taxable years beginning after June thirtieth, two thousand one and before July first, two thousand two, eight percent of the taxpayer's entire net income, or portion thereof allocated within this state, for the taxable year, or part thereof; for taxable years beginning after June thirtieth, two thousand two and before January first, two thousand seven, seven and one-half percent of the taxpayer's entire net income, or portion thereof allocated within this state, for the taxable year, or part thereof; [and] for taxable years beginning [on or] after January first, two thousand seven AND BEFORE JANUARY FIRST, TWO THOUSAND ELEVEN, seven and one-tenth percent of the taxpayer's entire net income, or portion thereof allocated within this state, for the taxable year, or part thereof; AND FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, SIX AND EIGHTY-FIVE ONE HUNDREDTH PERCENT OF THE TAXPAYER'S ENTIRE NET INCOME, OR PORTION THEREOF ALLOCATED WITHIN THIS STATE, FOR THE TAXABLE YEAR, OR PART THEREOF; or

S 4. Subparagraph 1 of paragraph (b) of subdivision 1 of section 186-a of the tax law, as amended by section 4 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(1) two and five-tenths percent on and after January first, two thousand through December thirty-first, two thousand, two and forty-five one hundredths percent from January first, two thousand one through December thirty-first, two thousand one, two and four-tenths percent from January first, two thousand two through December thirty-first, two thousand two, two and twenty-five one hundredths percent from January first, two thou-

sand three through December thirty-first, two thousand three, two and one hundred twenty-five one thousandths percent from January first, two thousand four through December thirty-first, two thousand four [and], two percent commencing January first, two thousand five AND ONE AND ONE-HALF PERCENT COMMENCING JANUARY FIRST, TWO THOUSAND ELEVEN and thereafter of that portion of its gross income derived from the transportation, transmission or distribution of gas or electricity by means of conduits, mains, pipes, wires, lines or the like and (2) two and one-tenth percent from January first, two thousand through December thirty-first, two thousand, two percent from January first, two thousand one through December thirty-first, two thousand one, one and nine-tenths percent from January first, two thousand two through December thirty-first, two thousand two, eighty-five one hundredths of one percent from January first, two thousand three through December thirty-first, two thousand three, four-tenths of one percent from January first, two thousand four through December thirty-first, two thousand four and zero percent commencing January first, two thousand five of all of its other gross income, is hereby imposed upon every utility not taxed under paragraph (a) of this subdivision doing business in this state which is subject to the supervision of the state department of public service which has a gross income for the year ending December thirty-first in excess of five hundred dollars, except motor carriers or brokers subject to such supervision under the public service law; and

S 5. Paragraph (a) of subdivision 2 of section 186-e of the tax law, as amended by section 4 of part S of chapter 85 of the laws of 2002, is amended to read as follows:

(a) There is hereby imposed an excise tax on the sale of telecommunication services by any person which is a provider of telecommunication services, to be paid by such person, at the rate of three and one-half percent prior to October first, nineteen hundred ninety-eight, three and one-quarter percent from October first, nineteen hundred ninety-eight through December thirty-first, nineteen hundred ninety-nine, [and] two and one-half percent [on and] after January first, two thousand FIVE AND TWO PERCENT ON AND AFTER JANUARY FIRST, TWO THOUSAND ELEVEN of gross receipt from: (1) any intrastate telecommunication services, except any telecommunication services the gross receipt from which is subject to tax under subparagraph four of this paragraph; (2) any interstate and international telecommunication services (other than interstate and international private telecommunication services and any telecommunication services the gross receipt from which is subject to tax under subparagraph four of this paragraph) which originate or terminate in this state and which telecommunication services are charged to a service address in this state, regardless of where the amounts charged for such services are billed or ultimately paid; (3) interstate and international private telecommunication services, the gross receipt to which the tax shall apply shall be determined as prescribed in subdivision three of this section, except any telecommunication services the gross receipt from which is subject to tax under subparagraph four of this paragraph; and (4) mobile telecommunications service provided by a home service provider where the mobile telecommunications customer's place of primary use is within this state.

S 6. Subparagraph 1 of paragraph (g) of subdivision 1 of section 210 of the tax law, as amended by section 4 of part AA-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(1) General. The amount prescribed by this paragraph shall be, in the case of each New York S corporation, (i) the higher of the amounts

prescribed in paragraphs (a) and (d) of this subdivision (other than the amount prescribed in the final clause of subparagraph one of that paragraph (d)) (ii) reduced by the article twenty-two tax equivalent; provided, however, that the amount thus determined shall not be less than the lowest of the amounts prescribed in subparagraph one of that paragraph (d) (applying the provisions of subparagraph three of that paragraph as necessary). Provided, however, notwithstanding any provision of this paragraph, in taxable years beginning in two thousand three and before two thousand eight, the amount prescribed by this paragraph shall be the amount prescribed in subparagraph one of that paragraph (d) (applying the provisions of subparagraph three of that paragraph as necessary) and applying the calculation of that amount in the case of a termination year as set forth in subparagraph four of this paragraph as necessary. In taxable years beginning in two thousand eight [and thereafter] AND TWO THOUSAND TEN, the amount prescribed by this paragraph is the amount prescribed in subparagraph four of that paragraph (d) (applying the provisions of subparagraph three of that paragraph as necessary) and applying the calculation of that amount in the case of a termination year as set forth in subparagraph four of this paragraph as necessary. PROVIDED, FURTHER, AND NOTWITHSTANDING ANY PROVISION OF THIS PARAGRAPH, IN TAXABLE YEARS BEGINNING ON AND AFTER TWO THOUSAND ELEVEN, THE AMOUNT PRESCRIBED BY THIS PARAGRAPH SHALL EQUAL ZERO, BUT THE PROVISIONS OF THIS PARAGRAPH SHALL HAVE NO EFFECT ON THE AMOUNT PRESCRIBED BY THE ARTICLE TWENTY-TWO TAX EQUIVALENT.

S 7. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2011, provided, however, that any rules and regulations necessary to carry out the provisions of this act shall be promulgated before such effective date.

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

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