

5285

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

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

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

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 Article 23 of the tax law is REPEALED.

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

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

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

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

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

9 S 3. Clause (i) of subparagraph 5 of paragraph (a) of subdivision 9 of  
10 section 208 of the tax law, as amended by section 2 of part C of chapter  
11 25 of the laws of 2009, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (or was) includable under article twenty-two whereby the intent and  
2 purpose of this subsection would be evaded.

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

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

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

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

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

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

29 (4) There shall be added or subtracted (as the case may be) the  
30 modifications described in paragraphs (6), (10), (17), (18), (19), (20),  
31 (21), (22), (23), (24), (25), (26), (27), [(28),] (29), AND (38) [and  
32 (39)] of subsection (b) and in paragraphs (11), (13), (15), (19), (20),  
33 (21), (22), (23), (24), (25), (26) and (28) of subsection (c) of section  
34 six hundred twelve of this part.

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

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

1 into the facts as disclosed by the return of the person who made the  
2 overpayment and other information and data available in the files of the  
3 commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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