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

7219--A

I N S E N A T E

May 2, 2012

Introduced by Sen. GRISANTI -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to establishing exemptions from state sales tax and the petroleum business tax for retail sales of motor fuel and diesel motor fuel; to amend the general business law, in relation to providing for the regulation of motor fuel distributors, importing transporters and terminal operators; to amend the agriculture and markets law, the canal law, the criminal procedure law, the general business law, the highway law, the public authorities law, the state finance law and the tax law, in relation to making conforming changes thereto; to repeal article 12-A of the tax law, in relation to taxes on gasoline and similar motor fuel; and repealing certain provisions of the state finance law and the tax law relating thereto

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

Section 1. Article 12-A of the tax law is REPEALED.

S 2. Subdivision (a) of section 1115 of the tax law is amended by adding a new paragraph 44 to read as follows:

(44) RETAIL SALES OF MOTOR FUEL AND DIESEL MOTOR FUEL.

S 3. Subdivision (b) of section 1107 of the tax law is amended by adding a new clause 12 to read as follows:

(12) EXCEPT AS OTHERWISE PROVIDED BY LAW, THE EXEMPTION PROVIDED IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS ARTICLE RELATING TO MOTOR FUEL AND DIESEL MOTOR FUEL SHALL NOT APPLY.

S 4. Paragraph 1 of subdivision (a) of section 1210 of the tax law, as amended by section 3 of part GG of chapter 57 of the laws of 2010, is amended to read as follows:

(1) Either, all of the taxes described in article twenty-eight of this chapter, at the same uniform rate, as to which taxes all provisions of the local laws, ordinances or resolutions imposing such taxes shall be

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

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identical, except as to rate and except as otherwise provided, with the corresponding provisions in such article twenty-eight, including the definition and exemption provisions of such article, so far as the provisions of such article twenty-eight can be made applicable to the taxes imposed by such city or county and with such limitations and special provisions as are set forth in this article. The taxes authorized under this subdivision may not be imposed by a city or county unless the local law, ordinance or resolution imposes such taxes so as to include all portions and all types of receipts, charges or rents, subject to state tax under sections eleven hundred five and eleven hundred ten of this chapter, except as otherwise provided. (i) Any local law, ordinance or resolution enacted by any city of less than one million or by any county or school district, imposing the taxes authorized by this subdivision, shall, notwithstanding any provision of law to the contrary, exclude from the operation of such local taxes all sales of tangible personal property for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, generating, assembly, refining, mining or extracting; and all sales of tangible personal property for use or consumption predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both; and, unless such city, county or school district elects otherwise, shall omit the provision for credit or refund contained in clause six of subdivision (a) or subdivision (d) of section eleven hundred nineteen of this chapter. (ii) Any local law, ordinance or resolution enacted by any city, county or school district, imposing the taxes authorized by this subdivision, shall omit the residential solar energy systems equipment exemption provided for in subdivision (ee) and the clothing and footwear exemption provided for in paragraph thirty of subdivision (a) of section eleven hundred fifteen of this chapter, unless such city, county or school district elects otherwise as to either such residential solar energy systems equipment exemption or such clothing and footwear exemption. EXCEPT AS OTHERWISE PROVIDED BY LAW, ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED BY ANY CITY OF LESS THAN ONE MILLION OR BY ANY COUNTY OR SCHOOL DISTRICT, IMPOSING THE TAXES AUTHORIZED BY THIS SUBDIVISION, SHALL OMIT THE MOTOR FUEL AND DIESEL MOTOR FUEL EXEMPTION PROVIDED FOR IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SUCH SECTION ELEVEN HUNDRED FIFTEEN.

S 5. Subdivision (m) of section 1111 of the tax law, as amended by section 1 of part M-1 of chapter 109 of the laws of 2006, paragraph 7 as amended by section 11 of subpart I of part V-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(m) Notwithstanding any provision of law to the contrary:

(1) [The sales tax imposed by subdivision (a) of section eleven hundred five of this article and the compensating use tax imposed by section eleven hundred ten of this article, in regard to retail sales of motor fuel and diesel motor fuel, shall be eight cents per gallon.

(2)] The sales and compensating use taxes imposed by subdivision (a) of section eleven hundred nine of this article, in regard to retail sales of motor fuel and diesel motor fuel, shall be three-quarters of one cent per gallon.

[(3) Paragraph one of this subdivision shall not apply to the sales and compensating use taxes imposed by subdivision (a) of section eleven hundred seven of this article in regard to retail sales of motor fuel and diesel motor fuel. However, the]

(2) THE legislative body of a city in which the taxes imposed by [such] section eleven hundred seven OF THIS PART are in effect, by local law, ordinance, or resolution in exactly the form prepared by the commissioner, may elect that such taxes, in regard to retail sales of motor fuel and diesel motor fuel, shall be computed, as determined by the commissioner, at a rate of cents per gallon, rounded to the nearest cent, equal to two or three dollars, as determined by the municipality, multiplied by the percentage rate of such taxes within the municipality.

[(4) Paragraph one of this subdivision shall not apply to the sales and compensating use taxes imposed by a local law, ordinance or resolution of a municipality pursuant to the authority of subpart B of part one of article twenty-nine of this chapter, in regard to retail sales of motor fuel and diesel motor fuel.]

(3) The legislative body of [such] a municipality, by local law, ordinance or resolution in exactly the form prepared by the commissioner, PURSUANT TO THE AUTHORITY OF SUBPART B OF PART ONE OF ARTICLE TWENTY-NINE OF THIS CHAPTER, may elect that its sales and compensating use taxes, in regard to the retail sale of motor fuel and diesel motor fuel, shall be computed, as determined by the commissioner, at a rate of cents per gallon, rounded to the nearest cent, equal to two or three dollars, as determined by the municipality, multiplied by the percentage rate of such taxes within the municipality.

[(5)] (4) (i) Prior to the start of any sales tax quarter, the commissioner shall apply the local percentage sales tax rate of each county or city that has elected a cents per gallon rate pursuant to paragraph [three] TWO or [four] THREE of this subdivision to the average price of motor fuel and diesel motor fuel, not including sales tax and the motor fuel excise tax, for three consecutive months beginning four months prior to the start of any sales tax quarter. If the result of this computation is less than the elected cents per gallon rate for a county or city, the cents per gallon rate for such county or city shall be adjusted to be equal to such computation, rounded to the nearest one cent. Such rates shall be published by the commissioner and effective in the next succeeding sales tax quarter.

(ii) Prior to the start of any sales tax quarter, the commissioner shall also adjust in a like manner the cents per gallon rates prescribed by [paragraphs] PARAGRAPH one [and two] of this subdivision based on percentage sales tax [rates] RATE of [four percent and] three-eighths of a percent [respectively]. Provided, however, adjustments made to the cents per gallon rate prescribed by paragraph two of this subdivision shall be rounded to the nearest one-tenth of one cent.

[(6)] (5) A local law, ordinance or resolution making or revoking the election made pursuant to paragraph three or four of this subdivision must go into effect in accordance with the provisions of subdivisions (d) and (e) of section twelve hundred ten of this chapter.

[(7)] (6) Notwithstanding any foregoing provision of this subdivision or other law to the contrary, this subdivision, subdivision (h) of section eleven hundred nine of this part and subdivision (n) of section eighteen hundred seventeen of this chapter, section three hundred ninety-two-i of the general business law and other provisions of law which refer or relate to this subdivision shall apply only to (A) motor fuel or diesel motor fuel sold for use directly and exclusively in the engine of a motor vehicle and (B) motor fuel or diesel motor fuel, other than water-white kerosene sold exclusively for heating purposes in containers of no more than twenty gallons, sold by a retail gas station. For purposes of this subdivision and such other provisions of law, "retail

gas station" shall mean a filling station where such fuel is stored primarily for sale by delivery directly into the ordinary fuel tank connected with the engine of a motor vehicle to be consumed in the operation of such motor vehicle or where such fuel is stored primarily for sale by delivery directly into the ordinary fuel tank connected with the engine of a vessel to be consumed in the operation of such vessel. The commissioner is hereby authorized to require the use of certificates or other documents, and procedures related thereto, to effect the purposes of this subdivision; and any such certificate or other document so required by the commissioner for a purchaser to tender to a vendor to purchase such fuel subject to tax on the reduced base established by or pursuant to this subdivision is hereby deemed to be an exemption certificate as such term is used in subdivision (c) of section eleven hundred thirty-two of this article and as if the provisions of such subdivision (c) referred to such a certificate or document required pursuant to this subdivision.

S 6. Paragraph 1 of subdivision (h) of section 1109 of the tax law, as amended by section 2 of part M-1 of chapter 109 of the laws of 2006, is amended to read as follows:

(1) EXCEPT AS OTHERWISE PROVIDED BY LAW, THE EXEMPTION CONTAINED IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS ARTICLE RELATING TO MOTOR FUEL AND DIESEL MOTOR FUEL SHALL NOT APPLY. The commissioner shall determine and certify to the comptroller the amount of revenue foregone as a result of the cents per gallon tax in paragraph two of subdivision (m) of section eleven hundred eleven of this part in lieu of tax at the rate provided in subdivision (a) of this section.

S 7. Subdivision (a) of section 301-b of the tax law is amended by adding a new paragraph 9 to read as follows:

(9) MOTOR FUEL OR DIESEL MOTOR FUEL SOLD OR USED BY A PETROLEUM BUSINESS WHICH IS REGISTERED UNDER ARTICLE ELEVEN-C OF THE GENERAL BUSINESS LAW AT RETAIL TO A CONSUMER FOR USE AS FUEL TO OPERATE A MOTOR VEHICLE.

S 8. The general business law is amended by adding a new article 11-C to read as follows:

ARTICLE 11-C

REGULATION OF MOTOR FUEL DISTRIBUTORS, IMPORTING TRANSPORTERS AND TERMINAL OPERATORS

SECTION 199-O. DEFINITIONS.
199-P. REGISTRATION OF DISTRIBUTORS.
199-Q. LICENSING OF IMPORTING TRANSPORTERS.
199-R. LICENSING OF TERMINAL OPERATORS.
199-S. LIQUEFIED PETROLEUM GAS FUEL PERMIT.
199-T. PETROLEUM TESTING FEE.
199-U. RECORDS TO BE KEPT BY DISTRIBUTORS AND OTHERS.
199-V. RECORDS AND REPORTS OF TRANSPORTATION OF MOTOR FUEL AND DIESEL MOTOR FUEL.
199-W. TRANSPORTATION OF MOTOR FUEL OR DIESEL MOTOR FUEL; MANIFEST REQUIRED.

S 199-O. DEFINITIONS. AS USED IN THIS ARTICLE, 1. A. WITH RESPECT TO MOTOR FUEL, "DISTRIBUTOR" MEANS ANY PERSON, FIRM, ASSOCIATION OR CORPORATION, WHO OR WHICH IMPORTS OR CAUSES TO BE IMPORTED INTO THE STATE, FOR USE, DISTRIBUTION, STORAGE OR SALE WITHIN THE STATE, ANY MOTOR FUEL; AND ALSO ANY PERSON, FIRM, ASSOCIATION OR CORPORATION WHO OR WHICH PRODUCES, REFINES, MANUFACTURES OR COMPOUNDS MOTOR FUEL WITHIN THE STATE.

B. WITH RESPECT TO DIESEL MOTOR FUEL, "DISTRIBUTOR" MEANS ANY PERSON, FIRM, ASSOCIATION OR CORPORATION (I) WHO OR WHICH IMPORTS OR CAUSES TO BE IMPORTED INTO THE STATE, FOR USE, DISTRIBUTION, STORAGE OR SALE WITHIN THE STATE, ANY DIESEL MOTOR FUEL; (II) WHO OR WHICH PRODUCES, REFINES, MANUFACTURES OR COMPOUNDS DIESEL MOTOR FUEL WITHIN THE STATE; (III) WHO OR WHICH MAKES A SALE OR USE OF DIESEL MOTOR FUEL IN THIS STATE OTHER THAN: (A) A RETAIL SALE NOT IN BULK OR (B) THE SELF-USE OF DIESEL MOTOR FUEL WHICH HAS BEEN THE SUBJECT OF A RETAIL SALE TO SUCH PERSON; (IV) WHO OR WHICH IS REGISTERED BY THE DEPARTMENT AS A DISTRIBUTOR OF KERO-JET FUEL. FOR THE PURPOSES OF THIS ARTICLE WHEN USED WITH RESPECT TO DIESEL MOTOR FUEL, A "RETAIL SALE NOT IN BULK" MEANS THE MAKING OR OFFERING TO MAKE ANY SALE OF DIESEL MOTOR FUEL TO A CONSUMER OF SUCH FUEL WHICH IS DELIVERED DIRECTLY INTO A MOTOR VEHICLE FOR USE IN THE OPERATION OF SUCH VEHICLE. A "RETAIL SALE IN BULK" MEANS THE MAKING OR OFFERING TO MAKE ANY SALE OF DIESEL MOTOR FUEL TO A CONSUMER WHICH IS OTHER THAN A "RETAIL SALE NOT IN BULK". MOTOR FUEL OR DIESEL MOTOR FUEL BROUGHT INTO THE STATE IN THE ORDINARY FUEL TANK CONNECTING WITH THE ENGINE OF A MOTOR VEHICLE, AEROPLANE, MOTOR BOAT OR OTHER CONVEYANCE PROPELLED BY THE USE OF SUCH MOTOR FUEL OR DIESEL MOTOR FUEL, AND TO BE USED ONLY IN THE OPERATION THEREOF, SHALL NOT BE DEEMED IMPORTED WITHIN THE MEANING OF THIS ARTICLE, IF NOT REMOVED FROM SUCH TANK EXCEPT AS USED IN THE PROPULSION OF SUCH ENGINE.

2. "MOTOR FUEL" MEANS GASOLINE, BENZOL, REFORMULATED BLEND STOCK FOR OXYGENATE BLENDING, CONVENTIONAL BLEND STOCK FOR OXYGENATE BLENDING, E85, FUEL GRADE ETHANOL THAT MEETS THE ASTM INTERNATIONAL ACTIVE STANDARDS SPECIFICATIONS D4806 OR D4814 OR OTHER PRODUCT WHICH IS SUITABLE FOR USE IN OPERATION OF A MOTOR VEHICLE ENGINE.

3. "MOTOR VEHICLE" MEANS ANY VEHICLE PROPELLED BY ANY POWER OTHER THAN MUSCULAR, EXCEPT BOATS, ROAD BUILDING MACHINERY, POWER SHOVELS, TRACTOR CRANES, TRACTORS USED EXCLUSIVELY FOR AGRICULTURAL PURPOSES AND SUCH VEHICLES AS ARE RUN ONLY ON RAILS OR TRACKS.

4. "PURCHASER" SHALL INCLUDE, IN ADDITION TO ITS USUAL MEANING, THE DISTRIBUTOR IN THE CASE OF TRANSFER OF MOTOR FUEL BY A DISTRIBUTOR FROM HIS, THEIR OR ITS STOCK, INTO A MOTOR VEHICLE, OR INTO A CONTAINER FROM WHICH MOTOR FUEL IS SUPPLIED BY THE DISTRIBUTOR TO A MOTOR VEHICLE OR VEHICLES OF THE DISTRIBUTOR OR OF OTHERS.

5. "SALE" SHALL INCLUDE, IN ADDITION TO ITS MEANING UNDER ARTICLE TWENTY-EIGHT OF THE TAX LAW, THE TRANSFER OF FUEL BY A DISTRIBUTOR INTO A MOTOR VEHICLE OR INTO A RECEPTACLE FROM WHICH FUEL IS SUPPLIED BY HIM OR IT TO HIS OR ITS OWN OR OTHER MOTOR VEHICLES.

6. "OWNER" SHALL INCLUDE ANY PERSON OFFERING MOTOR FUEL FOR SALE AT RETAIL.

7. "PERSON" INCLUDES AN INDIVIDUAL, CO-PARTNERSHIP, LIMITED LIABILITY COMPANY, SOCIETY, ASSOCIATION, CORPORATION, JOINT STOCK COMPANY, AND ANY COMBINATION OF INDIVIDUALS AND ALSO AN EXECUTOR, ADMINISTRATOR, RECEIVER, TRUSTEE OR OTHER FIDUCIARY.

8. "TRANSPORTER" MEANS ANY PERSON WHO OR WHICH HAS THE USE OR CONTROL, OR THE RIGHT TO THE USE OR CONTROL OF ANY MEANS OF TRANSPORTATION USED IN TRANSPORTING MOTOR FUEL INCLUDING A BARGE, TRUCK OR PIPELINE. "IMPORTING TRANSPORTER" MEANS ANY TRANSPORTER WHO OR WHICH TRANSPORTS MOTOR FUEL IN THE STATE WHERE SUCH MOTOR FUEL IS BEING IMPORTED INTO THE STATE FOR USE, DISTRIBUTION, STORAGE OR SALE IN THE STATE. "EXPORTING TRANSPORTER" MEANS ANY TRANSPORTER WHO OR WHICH TRANSPORTS MOTOR FUEL IN THIS STATE WHERE SUCH MOTOR FUEL IS BEING EXPORTED FROM A POINT IN THIS STATE TO WITHOUT THIS STATE.

9. "TERMINAL" MEANS A MOTOR FUEL STORAGE FACILITY WITH A STORAGE CAPACITY OF FIFTY THOUSAND GALLONS OR MORE EXCLUDING SUCH FACILITY AT WHICH MOTOR FUEL IS STORED SOLELY FOR ITS RETAIL SALE AT SUCH FACILITY. "TERMINAL OPERATOR" MEANS ANY PERSON WHO OR WHICH HAS THE USE OF OR CONTROL OVER, OR THE RIGHT TO SO USE OR CONTROL, A TERMINAL.

10. "DIESEL MOTOR FUEL" SHALL MEAN NO. 1 DIESEL FUEL, NO. 2 DIESEL FUEL, BIODIESEL, KEROSENE, FUEL OIL OR OTHER MIDDLE DISTILLATE AND ALSO MOTOR FUEL SUITABLE FOR USE IN THE OPERATION OF AN ENGINE OF THE DIESEL TYPE, EXCLUDING, HOWEVER, ANY PRODUCT SPECIFICALLY DESIGNATED "NO. 4 DIESEL FUEL" AND NOT SUITABLE AS A FUEL USED IN THE OPERATION OF A MOTOR VEHICLE ENGINE.

11. "PUBLIC HIGHWAY" MEANS ANY PUBLIC HIGHWAY, STREET, AVENUE, ROAD, PUBLIC PLACE, PUBLIC DRIVEWAY OR ANY OTHER PUBLIC WAY.

12. "DEPARTMENT" MEANS THE DEPARTMENT OF STATE.

13. "SECRETARY" MEANS THE SECRETARY OF STATE.

S 199-P. REGISTRATION OF DISTRIBUTORS. 1. THE DEPARTMENT, UPON THE APPLICATION OF A PERSON, SHALL REGISTER SUCH PERSON AS A DISTRIBUTOR UNDER THIS ARTICLE EXCEPT AS PROVIDED IN SUBDIVISIONS TWO AND FIVE OF THIS SECTION. THE APPLICATION SHALL BE IN A FORM AND CONTAIN SUCH DATA AS THE DEPARTMENT SHALL PRESCRIBE. NO PERSON, UNLESS SO REGISTERED, SHALL IMPORT OR CAUSE ANY MOTOR FUEL TO BE IMPORTED INTO THE STATE, FOR USE, DISTRIBUTION, STORAGE OR SALE WITHIN THE STATE OR SHALL PRODUCE, REFINE, MANUFACTURE OR COMPOUND MOTOR FUEL WITHIN THE STATE. NO DISTRIBUTOR, UNLESS SO REGISTERED, SHALL MAKE ANY SALE, TRANSFER, USE OR OTHER DISPOSITION OF MOTOR FUEL WITHIN THE STATE, EXCEPT A SALE, TRANSFER, USE OR OTHER DISPOSITION, IF ANY, AS TO WHICH THE STATE CANNOT IMPOSE SUCH CONDITION BY REASON OF THE UNITED STATES CONSTITUTION AND OF LAWS OF THE UNITED STATES ENACTED PURSUANT THERETO.

2. WHERE A PERSON FILES AN APPLICATION FOR REGISTRATION UNDER THIS SECTION AND IN CONSIDERING SUCH APPLICATION THE DEPARTMENT ASCERTAINS THAT SUCH APPLICANT:

(A) HAS BEEN CONVICTED UNDER THE TAX LAWS OR PENAL LAWS OF ANY OTHER STATE, OR A POLITICAL SUBDIVISION OF THIS STATE OR SUCH OTHER STATE, OR OF THE UNITED STATES OF A CRIMINAL OFFENSE WHICH, IF COMMITTED AND PROSECUTED IN THIS STATE, WOULD CONSTITUTE A SIMILAR CRIME, WITHIN THE PRECEDING FIVE YEARS,

(B) AN OFFICER, DIRECTOR OR PARTNER OF SUCH APPLICANT, A SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH APPLICANT (WHERE SUCH APPLICANT IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR AN EMPLOYEE OR SHAREHOLDER OF SUCH APPLICANT, HAS BEEN CONVICTED UNDER THE TAX LAWS OR PENAL LAWS OF ANY OTHER STATE, OR A POLITICAL SUBDIVISION OF THIS STATE OR SUCH OTHER STATE, OR OF THE UNITED STATES OF A CRIMINAL OFFENSE WHICH, IF COMMITTED AND PROSECUTED IN THIS STATE, WOULD CONSTITUTE A SIMILAR CRIME, WITHIN THE PRECEDING FIVE YEARS,

(C) SUCH APPLICANT, OR AN OFFICER, DIRECTOR OR PARTNER OF SUCH APPLICANT, SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH APPLICANT (WHERE SUCH APPLICANT IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR EMPLOYEE OR SHAREHOLDER OF SUCH APPLICANT, WHO WAS AN OFFICER, DIRECTOR OR PARTNER OF ANOTHER PERSON, OR WHO DIRECTLY OR INDIRECTLY OWNED MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF ANOTHER PERSON (WHERE SUCH OTHER PERSON IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR WHO WAS AN EMPLOYEE OR SHAREHOLDER OF ANOTHER PERSON AT THE

TIME SUCH OTHER PERSON WAS CONVICTED OF A CRIME PROVIDED FOR IN THIS CHAPTER OR HAS BEEN CONVICTED UNDER THE TAX LAWS OR PENAL LAWS OF ANY OTHER STATE, OR A POLITICAL SUBDIVISION OF THIS STATE OR SUCH OTHER STATE, OR OF THE UNITED STATES OF A CRIMINAL OFFENSE WHICH, IF COMMITTED AND PROSECUTED IN THIS STATE, WOULD CONSTITUTE A SIMILAR CRIME, WITHIN THE PRECEDING FIVE YEARS, OR AT THE TIME THE REGISTRATION OF SUCH OTHER PERSON WAS CANCELLED OR SUSPENDED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION WITHIN THE PRECEDING FIVE YEARS, OR AT THE TIME SUCH OTHER PERSON COMMITTED ANY OF THE ACTS OR OMISSIONS WHICH ARE, OR WAS CONVICTED AS, SPECIFIED IN SUBDIVISION FOUR OF THIS SECTION WITHIN THE PRECEDING FIVE YEARS, PROVIDED, HOWEVER, WHERE AN APPLICANT OR SUCH OFFICER, DIRECTOR, PARTNER, SHAREHOLDER OR EMPLOYEE OF SUCH APPLICANT WAS ONLY AN EMPLOYEE OF ANOTHER PERSON, THE APPLICABLE EXAMINATION OF SUCH OTHER PERSON SHALL BE LIMITED TO ACTS OR OMISSIONS WITH RESPECT TO MOTOR FUEL AND THE APPLICABLE EXAMINATION OF PRIOR CRIMINAL CONVICTIONS SHALL BE LIMITED TO THOSE WHICH RELATE TO MOTOR FUEL,

(D) THE REGISTRATION OF SUCH APPLICANT OR OF AN OFFICER, DIRECTOR OR PARTNER OF SUCH APPLICANT, SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH APPLICANT (WHERE SUCH APPLICANT IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR EMPLOYEE OR SHAREHOLDER OF SUCH APPLICANT, HAS BEEN CANCELLED OR SUSPENDED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION WITHIN THE PRECEDING FIVE YEARS, OR

(E) THE APPLICANT, AN OFFICER, DIRECTOR OR PARTNER OF THE APPLICANT, A SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH APPLICANT (WHERE SUCH APPLICANT IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR AN EMPLOYEE OR SHAREHOLDER OF SUCH APPLICANT, HAS COMMITTED ANY OF THE ACTS OR OMISSIONS WHICH ARE, OR WAS CONVICTED AS, SPECIFIED IN SUBDIVISION FOUR OF THIS SECTION WITHIN THE PRECEDING FIVE YEARS, THE DEPARTMENT MAY REFUSE TO REGISTER SUCH APPLICANT.

3. THE DEPARTMENT SHALL REQUIRE A DISTRIBUTOR TO FILE WITH THE DEPARTMENT A BOND ISSUED BY A SURETY COMPANY APPROVED BY THE SUPERINTENDENT OF FINANCIAL SERVICES AS TO SOLVENCY AND RESPONSIBILITY AND AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE OR OTHER SECURITY ACCEPTABLE TO THE DEPARTMENT ON, IN SUCH AMOUNT AS THE DEPARTMENT MAY FIX, IN AN AMOUNT DETERMINED IN ACCORDANCE WITH RULES AND REGULATIONS PRESCRIBED BY IT, TO SECURE THE PAYMENT OF ANY SUMS DUE FROM SUCH DISTRIBUTOR PURSUANT TO THIS ARTICLE AND PURSUANT TO ANY OTHER SECTION OF LAW, RULE OR REGULATION WITH RESPECT TO MOTOR FUEL. THE DEPARTMENT SHALL REQUIRE THAT SUCH A BOND OR OTHER SECURITY BE FILED BEFORE A DISTRIBUTOR IS REGISTERED, AND THE AMOUNT THEREOF MAY BE INCREASED AT ANY TIME WHEN IN ITS JUDGMENT THE SAME IS NECESSARY. IF SECURITIES ARE DEPOSITED AS SECURITY UNDER THIS SUBDIVISION, SUCH SECURITIES SHALL BE KEPT IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE SECRETARY AND MAY BE SOLD BY THE DEPARTMENT IF IT BECOMES NECESSARY SO TO DO IN ORDER TO RECOVER ANY SUMS DUE FROM SUCH DISTRIBUTOR PURSUANT TO THIS ARTICLE AND PURSUANT TO ANY OTHER SECTION OF LAW, RULE OR REGULATION WITH RESPECT TO SALES AND USES OF MOTOR FUEL, BUT NO SUCH SALE SHALL BE HAD UNTIL AFTER SUCH DISTRIBUTOR SHALL HAVE HAD OPPORTUNITY TO LITIGATE THE VALIDITY OF ANY SUM ALLEGED DUE IF IT ELECTS SO TO DO. UPON ANY SUCH SALE THE SURPLUS, IF ANY, ABOVE THE SUMS DUE UNDER THIS ARTICLE AND PURSUANT TO ANY OTHER SECTION OF LAW, RULE OR REGULATION WITH RESPECT TO SALES AND USES OF MOTOR FUEL SHALL BE RETURNED TO SUCH DISTRIBUTOR. THE DEPARTMENT, WHEN AUTHORIZED BY THE DISTRIBUTOR, SHALL FURNISH INFORMATION REGARDING THE

DISTRIBUTOR'S REGISTRATION AND ANY OTHER INFORMATION WHICH THE DISTRIBUTOR AUTHORIZES IT TO DISCLOSE.

4. THE REGISTRATION OF ANY DISTRIBUTOR MAY BE CANCELLED OR SUSPENDED BY THE DEPARTMENT WHERE A REGISTRANT, OR AN OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER OF THE REGISTRANT WHO AS SUCH OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER IS UNDER A DUTY TO ACT FOR SUCH REGISTRANT OR ANY SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF THE REGISTRANT (WHERE SUCH REGISTRANT IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES OF SUCH REGISTRANT, FAILS TO FILE A BOND OR OTHER SECURITY WHEN REQUIRED OR WHEN THE AMOUNT THEREOF IS INCREASED, OR FAILS TO CONTINUE TO MAINTAIN IN FULL FORCE AND EFFECT AT ALL TIMES THE REQUIRED BOND OR OTHER SECURITY FILED WITH THE DEPARTMENT, OR FAILS TO COMPLY WITH ANY OF THE PROVISIONS OF THIS ARTICLE OR ANY OTHER SECTION OF LAW, RULE OR REGULATION WITH RESPECT TO MOTOR FUEL, OR KNOWINGLY AIDS AND ABETS ANOTHER PERSON IN VIOLATING ANY OF THE PROVISIONS OF SUCH ARTICLES OR OF ANY SUCH RULE OR REGULATION WITH RESPECT TO MOTOR FUEL, OR TRANSFERS ITS REGISTRATION AS A DISTRIBUTOR WITHOUT THE PRIOR WRITTEN APPROVAL OF THE DEPARTMENT. A REGISTRATION MAY ALSO BE CANCELLED OR SUSPENDED IF THE DEPARTMENT DETERMINES THAT A REGISTRANT OR AN OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER OF THE REGISTRANT WHO AS SUCH OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER IS UNDER A DUTY TO ACT FOR SUCH REGISTRANT OR ANY SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF THE REGISTRANT (WHERE SUCH REGISTRANT IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES OF SUCH REGISTRANT:

(A) COMMITS FRAUD OR DECEIT IN HIS OPERATIONS AS A DISTRIBUTOR OR HAS COMMITTED FRAUD OR DECEIT IN PROCURING HIS REGISTRATION;

(B) HAS BEEN CONVICTED IN A COURT OF COMPETENT JURISDICTION, EITHER WITHIN OR WITHOUT THE STATE, OF A FELONY, WITHIN THE MEANING OF SUBDIVISION EIGHT OF THIS SECTION, BEARING ON SUCH DISTRIBUTOR'S DUTIES AND OBLIGATIONS UNDER THIS CHAPTER;

(C) HAS KNOWINGLY AIDED AND ABETTED A PERSON WHO IS NOT REGISTERED AS A DISTRIBUTOR IN THE IMPORTATION, PRODUCTION, REFINING, MANUFACTURE OR COMPOUNDING OF MOTOR FUEL;

(D) HAS IMPERSONATED ANY PERSON REPRESENTED TO BE A DISTRIBUTOR UNDER THIS ARTICLE BUT NOT IN FACT REGISTERED UNDER THIS SECTION; OR

(E) HAS KNOWINGLY AIDED AND ABETTED THE DISTRIBUTION OF MOTOR FUEL IMPORTED, CAUSED TO BE IMPORTED, PRODUCED, REFINED, MANUFACTURED OR COMPOUNDED BY A DISTRIBUTOR WHO IS NOT REGISTERED BY THE DEPARTMENT.

A REGISTRATION MAY ALSO BE CANCELLED OR SUSPENDED IF THE DEPARTMENT DETERMINES THAT A REGISTRANT OR AN OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER OF THE REGISTRANT WHO AS SUCH OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER IS UNDER A DUTY TO ACT FOR SUCH REGISTRANT OR ANY SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF THE REGISTRANT (WHERE SUCH REGISTRANT IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES OF SUCH REGISTRANT, WAS AN OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER OF ANOTHER PERSON WHO AS SUCH OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER WAS UNDER A DUTY TO ACT FOR SUCH OTHER PERSON OR WAS A SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH OTHER PERSON (WHERE SUCH OTHER PERSON IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES OF SUCH OTHER PERSON AT THE TIME SUCH OTHER PERSON COMMITTED ANY OF THE

ACTS OR OMISSIONS WHICH ARE, OR WAS CONVICTED AS, SPECIFIED IN THIS SUBDIVISION WITHIN THE PRECEDING FIVE YEARS.

5. A REGISTRATION SHALL NOT BE CANCELLED OR SUSPENDED NOR SHALL AN APPLICATION FOR REGISTRATION BE REFUSED UNLESS THE REGISTRANT OR APPLICANT HAS HAD AN OPPORTUNITY FOR A HEARING, PROVIDED, HOWEVER, THAT AN APPLICATION FOR REGISTRATION MAY BE DENIED WITHOUT A PRIOR HEARING. PROVIDED, A REGISTRATION MAY ALSO BE CANCELLED OR SUSPENDED PRIOR TO A HEARING FOR THE FAILURE TO CONTINUE TO MAINTAIN IN FULL FORCE AND EFFECT AT ALL TIMES THE BOND OR OTHER SECURITY FILED WITH THE DEPARTMENT. PROVIDED, HOWEVER, IF A SURETY BOND IS CANCELLED PRIOR TO EXPIRATION, THE DEPARTMENT, AFTER CONSIDERING ALL THE RELEVANT CIRCUMSTANCES, MAY MAKE SUCH OTHER ARRANGEMENTS AND REQUIRE THE FILING OF SUCH OTHER BOND OR OTHER SECURITY AS THE DEPARTMENT DEEMS APPROPRIATE. PROVIDED, FURTHER, A REGISTRATION MAY BE CANCELLED OR SUSPENDED PRIOR TO A HEARING FOR THE TRANSFER OF SUCH REGISTRATION WITHOUT THE PRIOR WRITTEN APPROVAL OF THE DEPARTMENT. A DISTRIBUTOR SHALL IMMEDIATELY INFORM THE DEPARTMENT, IN WRITING, OF ANY CHANGE IN ITS ADDRESS AND, IF THE DISTRIBUTOR IS A CORPORATION OR PARTNERSHIP, THE DISTRIBUTOR SHALL IMMEDIATELY INFORM THE DEPARTMENT, IN WRITING, OF ANY CHANGE IN ITS OFFICERS, DIRECTORS OR PARTNERS OR THEIR RESIDENCE ADDRESSES AS SHOWN IN ITS APPLICATION FOR REGISTRATION.

6. (A) A NOTICE OF PROPOSED CANCELLATION OR SUSPENSION OF REGISTRATION OR REFUSAL TO REGISTER SHALL BE GIVEN TO THE PERSON REGISTERED PURSUANT TO THIS ARTICLE OR TO A PERSON APPLYING FOR SUCH REGISTRATION. IN THE CASE OF A PERSON APPLYING TO REGISTER, A NOTICE OF PROPOSED REFUSAL TO REGISTER SHALL BE ISSUED PROMPTLY AFTER APPLICATION FOR REGISTRATION IS RECEIVED BY THE DEPARTMENT. UPON TIMELY APPLICATION THEREFOR, A HEARING SHALL BE SCHEDULED BEFORE AN ADMINISTRATIVE LAW JUDGE, AND WITHIN THREE MONTHS FROM SUCH APPLICATION FOR HEARING (DETERMINED WITH REGARD TO ANY POSTPONEMENTS OF ANY SCHEDULED HEARING OR CONFERENCE OR OTHER DELAY MADE AT THE REQUEST OF THE APPLICANT) THE ADMINISTRATIVE LAW JUDGE SHALL RENDER A DETERMINATION EITHER UPHOLDING THE DEPARTMENT'S REFUSAL TO REGISTER OR ORDERING THE DEPARTMENT TO REGISTER THE APPLICANT. THE ACTION OF THE DEPARTMENT AND THE DECISION OF THE ADMINISTRATIVE LAW JUDGE SHALL BE SUBJECT TO REVIEW BY THE SUPREME COURT IN THE MANNER PROVIDED IN ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES. THE APPLICANT SHALL NOT BE REGISTERED UNTIL THERE HAS BEEN FILED A BOND OR OTHER SECURITY IN THE REQUIRED AMOUNT.

(B) ALL OF SUCH NOTICES OF PROPOSED CANCELLATION OR SUSPENSION OR OF PROPOSED REFUSAL TO REGISTER SHALL CONTAIN A STATEMENT ADVISING THE PERSON TO WHOM IT IS ISSUED THAT THE CANCELLATION, SUSPENSION OR REFUSAL TO REGISTER MAY BE CHALLENGED THROUGH A HEARING PROCESS AND THAT THE PETITION FOR SUCH CHALLENGE MUST BE FILED WITH THE DEPARTMENT WITHIN NINETY DAYS AFTER THE GIVING OF SUCH NOTICE. WHERE A REGISTRATION IS CANCELLED OR SUSPENDED PRIOR TO A HEARING, THE CANCELLATION OR SUSPENSION MAY BE CHALLENGED THROUGH THE HEARING PROCESS PROVIDED THE PETITION FOR SUCH CHALLENGE IS FILED WITHIN NINETY DAYS AFTER THE GIVING OF NOTICE OF SUCH CANCELLATION OR SUSPENSION.

(C) NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY:

(I) IN THE EVENT THAT THE DEPARTMENT DETERMINES THAT AN INCREASE IN THE AMOUNT OF THE BOND OR OTHER SECURITY FILED BY A REGISTRANT IS REQUIRED TO SECURE THE LIABILITY OF SUCH REGISTRANT, SUCH BOND INCREASE OR OTHER SECURITY INCREASE MUST BE FILED BY SUCH REGISTRANT WITHIN THIRTY DAYS FROM THE DAY THE NOTICE AND DEMAND THEREFOR HAS BEEN GIVEN BY THE DEPARTMENT. IF THE REGISTRANT FAILS TO (A) FILE SUCH INCREASE IN THE AMOUNT OF BOND OR OTHER SECURITY WITHIN SUCH PERIOD OR (B) MAKE TIMELY

APPLICATION FOR A HEARING WITH PARTICULAR RESPECT TO THE AMOUNT OF THE INCREASE OF SUCH BOND OR OTHER SECURITY, THE DEPARTMENT SHALL CANCEL OR SUSPEND THE REGISTRATION OF SUCH REGISTRANT.

(II) THE REGISTRANT MAY APPLY TO THE DEPARTMENT FOR A HEARING TO REVIEW AN INCREASE IN THE AMOUNT OF THE BOND OR OTHER SECURITY REQUIRED TO BE FILED BY MAKING APPLICATION THEREFOR WITHIN SEVEN DAYS OF THE DAY THAT THE NOTICE AND DEMAND FOR AN INCREASE IS GIVEN BY THE DEPARTMENT, PROVIDED, THE DEPARTMENT MAY, BY REGULATION, FOR THE CAUSES STATED THEREIN, EXTEND SUCH PERIOD TO A PERIOD NOT EXCEEDING FIFTEEN DAYS FROM THE DAY SUCH NOTICE AND DEMAND IS GIVEN. IF THE REGISTRANT TIMELY APPLIES FOR A HEARING TO REVIEW THE INCREASE, SUCH HEARING SHALL BE HELD, UNLESS EXTENDED BY THE DEPARTMENT FOR GOOD CAUSE, NO LESS THAN SEVEN DAYS AND NO MORE THAN TEN DAYS AFTER THE APPLICATION FOR A HEARING IS RECEIVED BY THE DEPARTMENT. WITHIN FIFTEEN DAYS OF THE RECEIPT OF THE APPLICATION FOR A HEARING, UNLESS EXTENDED BY THE DEPARTMENT, THE ADMINISTRATIVE LAW JUDGE SHALL RENDER A DETERMINATION WITH RESPECT TO THE INCREASE IN THE AMOUNT OF THE BOND OR OTHER SECURITY AND, IF THE AMOUNT OF SUCH BOND OR OTHER SECURITY IS DETERMINED TO BE DUE, SUCH INCREASE SHALL BE FILED WITHIN SEVEN DAYS FROM THE DAY THE ADMINISTRATIVE LAW JUDGE GIVES NOTICE OF THE DETERMINATION, OR, IF LATER, THIRTY DAYS FROM THE DAY THE NOTICE AND DEMAND FOR THE INCREASE HAD BEEN GIVEN BY THE DEPARTMENT. NOTWITHSTANDING THAT THE REGISTRANT TAKES EXCEPTION TO THE ADMINISTRATIVE LAW JUDGE'S DETERMINATION THAT AN INCREASED BOND OR OTHER SECURITY IS DUE, IF THE INCREASED BOND OR OTHER SECURITY IS NOT FILED WITHIN SUCH TIME, THE DEPARTMENT SHALL CANCEL OR SUSPEND THE REGISTRATION OF THE REGISTRANT. WHERE THE ADMINISTRATIVE LAW JUDGE DETERMINES THAT AN INCREASED BOND OR OTHER SECURITY IS NOT DUE BUT SUCH DETERMINATION IS REVERSED, IF THE INCREASED BOND OR OTHER SECURITY IS NOT FILED WITHIN SEVEN DAYS FROM THE DAY THE DEPARTMENT GIVES NOTICE OF THE DECISION OF THE ADMINISTRATIVE LAW JUDGE NOTWITHSTANDING ANY JUDICIAL REVIEW OF SUCH DECISION, THE DEPARTMENT SHALL CANCEL OR SUSPEND THE REGISTRATION OF THE REGISTRANT.

7. (A) WHENEVER EVIDENCE IS FURNISHED BY THE SECRETARY TO ANY JUSTICE OF THE SUPREME COURT, IN COURT OR AT CHAMBERS, SHOWING THAT ANY PERSON NOT REGISTERED AS A DISTRIBUTOR AS REQUIRED BY THIS ARTICLE HAS IMPORTED MOTOR FUEL OR DIESEL MOTOR FUEL INTO THIS STATE OR CAUSED MOTOR FUEL OR DIESEL MOTOR FUEL TO BE IMPORTED INTO THIS STATE OR HAS PRODUCED, REFINED, MANUFACTURED OR COMPOUNDED MOTOR FUEL OR DIESEL MOTOR FUEL, SUCH JUSTICE MAY MAKE A TEMPORARY ORDER WITHOUT NOTICE PROHIBITING SUCH PERSON AND HIS AGENTS FROM SELLING, TRANSFERRING OR OTHERWISE DISPOSING OF ANY SUCH FUEL OR ANY FUEL AND ALSO PROHIBITING ALL OTHER PERSONS IN POSSESSION OF OR HAVING CONTROL OVER THE SAME FROM SELLING, RELEASING, TRANSFERRING OR OTHERWISE DISPOSING OF ANY MOTOR FUEL OR DIESEL MOTOR FUEL IMPORTED, PRODUCED, REFINED, MANUFACTURED, COMPOUNDED, SOLD OR TRANSFERRED BY SUCH PERSON NOT SO REGISTERED PENDING A HEARING FOR A PRELIMINARY INJUNCTION.

(B) UPON GRANTING A TEMPORARY ORDER, THE COURT SHALL DIRECT THAT A HEARING BE HELD AT THE EARLIEST POSSIBLE TIME UPON SUCH NOTICE AND SERVICE AS THE COURT SHALL DIRECT AND AT THE SAME TIME, IF SUCH ACTION HAS NOT YET BEEN COMMENCED, THE SECRETARY SHALL COMMENCE AN ACTION IN SUPREME COURT FOR A PERMANENT INJUNCTION AND FORFEITURE OF MOTOR FUEL OR DIESEL MOTOR FUEL PURSUANT TO PARAGRAPH (C) OF THIS SUBDIVISION. WHERE, AFTER SUCH OPPORTUNITY FOR A HEARING, THE COURT DETERMINES THAT THERE IS A SUBSTANTIAL PROBABILITY THAT THE SECRETARY WILL PREVAIL IN SUCH ACTION, THE COURT SHALL GRANT A PRELIMINARY INJUNCTION RESTRAINING THE SALE, RELEASE, TRANSFER OR OTHER DISPOSITION OF FUEL SUBJECT TO THE TEMPORARY ORDER.

(C) (I) IF IT IS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT MOTOR FUEL OR DIESEL MOTOR FUEL WAS IMPORTED, CAUSED TO BE IMPORTED, PRODUCED, REFINED, MANUFACTURED OR COMPOUNDED BY ANY PERSON NOT REGISTERED AS A DISTRIBUTOR AS REQUIRED BY THIS ARTICLE, THE COURT SHALL GRANT A JUDGMENT (A) PERMANENTLY ENJOINING SUCH PERSON AND HIS AGENTS FROM SELLING, TRANSFERRING OR OTHERWISE DISPOSING OF ANY SUCH FUEL OR ANY FUEL WITHIN THIS STATE AND (B) DECLARING THE FORFEITURE OF ANY FUEL THAT WAS SO IMPORTED, CAUSED TO BE IMPORTED, PRODUCED, REFINED, MANUFACTURED, OR COMPOUNDED BY SUCH PERSON.

(II) WITH RESPECT TO MOTOR FUEL OR DIESEL MOTOR FUEL THAT WAS IMPORTED, CAUSED TO BE IMPORTED, PRODUCED, REFINED, MANUFACTURED OR COMPOUNDED, BY A PERSON NOT REGISTERED AS A DISTRIBUTOR AS REQUIRED BY THIS ARTICLE OR THAT WAS UNLAWFULLY SOLD OR TRANSFERRED BY SUCH PERSON, IF IT IS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT ANY OTHER PERSON IN POSSESSION OF OR HAVING CONTROL OVER SUCH FUEL WAS NOT A PURCHASER OR TRANSFEREE IN GOOD FAITH OF SUCH FUEL WITH RESPECT TO THE FACT THAT SUCH FUEL WAS SO IMPORTED, CAUSED TO BE IMPORTED, PRODUCED, REFINED, MANUFACTURED, OR COMPOUNDED BY A PERSON NOT REGISTERED AS A DISTRIBUTOR AS REQUIRED BY THIS ARTICLE OR THAT SUCH FUEL WAS SO UNLAWFULLY SOLD OR TRANSFERRED BY SUCH PERSON, THE COURT SHALL GRANT A JUDGMENT (A) PERMANENTLY ENJOINING SUCH OTHER PERSON AND HIS OR HER AGENTS FROM SELLING, RELEASING, TRANSFERRING OR OTHERWISE DISPOSING OF ANY SUCH FUEL AND (B) DECLARING THE FORFEITURE OF SUCH FUEL IN THE POSSESSION OR UNDER THE CONTROL OF SUCH OTHER PERSON.

(D) THE SECRETARY MAY, AT ANY TIME SUBSEQUENT TO THE GRANTING OF THE TEMPORARY ORDER PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, IN HIS OR HER SOLE DISCRETION CONSENT TO A SALE OF MOTOR FUEL OR DIESEL MOTOR FUEL SUBJECT TO SUCH TEMPORARY ORDER WHICH IS IN THE POSSESSION OR UNDER THE CONTROL OF A PERSON OTHER THAN THE PERSON OR THE AGENT OF THE PERSON WHO IMPORTED, CAUSED TO BE IMPORTED, PRODUCED, REFINED, MANUFACTURED, COMPOUNDED OR UNLAWFULLY SOLD OR TRANSFERRED SUCH FUEL. AS A CONDITION OF GRANTING PERMISSION TO A SALE OF MOTOR FUEL OR DIESEL MOTOR FUEL PURSUANT TO THIS SUBDIVISION, THE SECRETARY SHALL REQUIRE THE PAYMENT OF ALL FEES, PENALTIES AND INTEREST IMPOSED BY AND PURSUANT TO THE AUTHORITY OF THIS CHAPTER WITH RESPECT TO SUCH FUEL.

(E) (I) AT ANY TIME DURING THE PENDENCY OF AN ACTION UNDER THIS SECTION, THE MOTOR FUEL OR DIESEL MOTOR FUEL SUBJECT TO A TEMPORARY, PRELIMINARY OR PERMANENT ORDER HEREUNDER MAY BE RELEASED FROM THE SCOPE OF SUCH ORDER IF THERE IS GIVEN AN UNDERTAKING, IN AN AMOUNT EQUAL TO THE MARKET VALUE OF SUCH FUEL, TO THE EFFECT THAT THERE WILL BE PAID TO THE DEPARTMENT THE AMOUNT OF THE MARKET VALUE OF SUCH FUEL IN THE EVENT THAT SUCH FUEL IS ADJUDGED FORFEITED.

(II) ANY PERSON ENJOINED BY A TEMPORARY ORDER OR A PRELIMINARY INJUNCTION ISSUED PURSUANT TO THIS SUBDIVISION MAY MOVE AT ANY TIME, ON NOTICE, TO VACATE OR MODIFY IT.

(F) THE PROCEDURES OF THE CIVIL PRACTICE LAW AND RULES APPLICABLE TO TEMPORARY RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS AND PERMANENT INJUNCTIONS NOT INCONSISTENT WITH THIS SUBDIVISION SHALL APPLY TO TEMPORARY ORDERS, PRELIMINARY INJUNCTIONS AND PERMANENT INJUNCTIONS ISSUED UNDER THIS SUBDIVISION AND ANY PROVISION OF THIS SUBDIVISION WHICH IS NOT IN ACCORD WITH THE CONSTITUTIONAL MANDATE OF SUCH PROCEDURES OF THE CIVIL PRACTICE LAW AND RULES SHALL BE DEEMED TO BE MODIFIED AS NECESSARY TO ACCORD WITH SUCH A MANDATE. THE PROCEDURAL PROVISIONS SET FORTH IN PARAGRAPH THREE OF SUBDIVISION (D) AND IN SUBDIVISION (J) OF SECTION EIGHTEEN HUNDRED FORTY-EIGHT OF THE TAX LAW SHALL APPLY TO THE FORFEITURE PROCEEDINGS UNDER THIS SUBDIVISION AND, IN RESPECT TO A DECLARATION

OF FORFEITURE UNDER THIS SUBDIVISION, THE COURT SHALL DIRECT THE SECRETARY TO SELL OR OTHERWISE DISPOSE OF SUCH FORFEITED MOTOR FUEL OR DIESEL MOTOR FUEL ON SUCH CONDITIONS THE SECRETARY DEEMS MOST ADVANTAGEOUS AND JUST UNDER THE CIRCUMSTANCES. THE SECRETARY SHALL NOT BE REQUIRED TO FILE ANY UNDERTAKING IN CONNECTION WITH AN ACTION PURSUANT TO THIS SUBDIVISION.

8. (A) FOR THE PURPOSES OF THIS SECTION, IN DETERMINING WHETHER ANY PERSON HAS BEEN CONVICTED OF A FELONY, THE PROVISIONS OF THIS SUBDIVISION SHALL APPLY; PROVIDED, HOWEVER IF ANY SUCH CONVICTION BE SUBSEQUENTLY SET ASIDE OR REVERSED UPON APPEAL AND THE ACCUSED ACQUITTED OR DISCHARGED, THE REGISTRATION WHICH HAS BEEN CANCELLED OR SUSPENDED AS A RESULT OF SUCH CONVICTION SHALL BE RESTORED.

(B) A CONVICTION OF A FELONY SHALL INCLUDE THE CONVICTION OF A FELONY BY ANY COURT IN THIS STATE OR BY ANY COURT OF THE UNITED STATES OR BY ANY COURT OF ANY OTHER STATE OF THE UNITED STATES; PROVIDED, HOWEVER, THAT IF A CRIME OF WHICH A PERSON IS CONVICTED BY ANY COURT OF THE UNITED STATES OR ANY OTHER STATE IS A FELONY IN THE JURISDICTION IN WHICH THE CONVICTION IS HAD BUT IS NOT A FELONY IN THE STATE OF NEW YORK, THEN THE CONVICTION SHALL NOT BE DEEMED A CONVICTION OF A FELONY FOR THE PURPOSE OF THIS ARTICLE. IN THE EVENT THAT A CRIME OF WHICH A PERSON IS CONVICTED BY ANY COURT OF THE UNITED STATES OR BY ANY COURT OF ANY OTHER STATE IS NOT A FELONY IN THE JURISDICTION IN WHICH THE CONVICTION IS HAD BUT IS A FELONY IN THE STATE OF NEW YORK, THEN THE CONVICTION SHALL BE DEEMED A CONVICTION OF A FELONY FOR THE PURPOSES OF THIS ARTICLE.

(C) IF A PERSON CONVICTED OF A FELONY OR CRIME DEEMED HEREBY TO BE A FELONY IS SUBSEQUENTLY PARDONED BY THE GOVERNOR OF THE STATE WHERE SUCH CONVICTION WAS HAD, OR BY THE PRESIDENT OF THE UNITED STATES, OR SHALL RECEIVE A CERTIFICATE OF RELIEF FROM DISABILITIES OR A CERTIFICATE OF GOOD CONDUCT PURSUANT TO ARTICLE TWENTY-THREE OF THE CORRECTION LAW FOR THE PURPOSE OF REMOVING THE DISABILITY UNDER THIS SECTION BECAUSE OF SUCH CONVICTION, THE DEPARTMENT MAY, IN ITS DISCRETION, ON APPLICATION OF SUCH PERSON AND COMPLIANCE WITH SUBDIVISION TWO OF THIS SECTION, AND ON THE SUBMISSION TO IT OF SATISFACTORY EVIDENCE OF GOOD MORAL CHARACTER AND SUITABILITY, AGAIN REGISTER SUCH PERSON AS A DISTRIBUTOR UNDER THIS ARTICLE.

9. (A) THE REGISTRATION GRANTED TO A DISTRIBUTOR BY THE DEPARTMENT SHALL BE PERSONAL TO THE PERSON TO WHOM IT IS GRANTED. THE TRANSFER OF SUCH REGISTRATION WITHOUT THE PRIOR WRITTEN APPROVAL OF THE DEPARTMENT IS INVALID AND SUCH TRANSFER WITHOUT APPROVAL SHALL BE GROUNDS FOR THE IMMEDIATE CANCELLATION OR SUSPENSION OF THE REGISTRATION OF THE REGISTRANT. THE DEPARTMENT SHALL ESTABLISH BY RULE OR REGULATION A SPECIFIC PROCEDURE FOR THE REVIEW OF AN APPLICATION FOR REGISTRATION IN THESE INSTANCES WHERE THERE HAS BEEN A PROPOSED TRANSFER OF REGISTRATION, AND THE DEPARTMENT IN MAKING ITS DETERMINATION WITH RESPECT TO SUCH APPROVAL SHALL REVIEW SUCH APPLICATION IN SUCH INSTANCE AS ANY OTHER APPLICATION FOR REGISTRATION UNDER THIS SECTION AND SHALL MAKE ITS DETERMINATION IN ACCORDANCE WITH THE CRITERIA SET FORTH IN THIS SECTION. PROVIDED FURTHER, THE DEPARTMENT SHALL ISSUE A DETERMINATION WITH RESPECT TO SUCH APPLICATION WHERE THERE HAS BEEN A PROPOSED TRANSFER OF REGISTRATION WITHIN SEVENTY-FIVE DAYS AFTER THE DAY OF THE RECEIPT OF A PROPERLY COMPLETED APPLICATION CONTAINING SUCH INFORMATION AS THE SAID DEPARTMENT MAY REQUIRE. IF THE DEPARTMENT FAILS TO ISSUE A DETERMINATION WITHIN SUCH TIME, THE DEPARTMENT SHALL BE REQUIRED TO REGISTER SUCH PROPOSED TRANSFEREE.

(B) FOR THE PURPOSES OF THIS SUBDIVISION, A REGISTRATION SHALL BE CONSIDERED TO BE TRANSFERRED WHERE, AMONG OTHER THINGS, THERE IS ANY ADDITION OR SUBSTITUTION OF A PARTNER OF THE REGISTRANT OR THE ACQUISITION BY ANY PERSON OF SUCH SHARES OF STOCK OF THE REGISTRANT (WHERE SUCH REGISTRANT IS A CORPORATION) SO THAT SUCH PERSON BECOMES THE OWNER OF MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH REGISTRANT ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES. PROVIDED, HOWEVER, WHERE STOCK OF THE REGISTRANT OR A PARTNERSHIP INTEREST IN THE REGISTRANT OR, WHERE THE REGISTRANT IS A SOLE PROPRIETORSHIP, THE INTEREST OF THE DECEDENT THEREIN ALONG WITH THE REGISTRATION, IS TRANSFERRED PURSUANT TO BEQUEST OR INHERITANCE TO (I) AN ANCESTOR OF THE DECEDENT, (II) THE SPOUSE OF THE DECEDENT, (III) A LINEAL DESCENDENT OF THE DECEDENT, OF THE DESCENDENT'S SPOUSE, OR OF A PARENT OF THE DECEDENT, OR (IV) THE SPOUSE OF ANY LINEAL DESCENDENT DESCRIBED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH, SUCH TRANSFER SHALL NOT, IN AND OF ITSELF, BE GROUNDS FOR CANCELLATION OR SUSPENSION. PROVIDED, HOWEVER, WITHIN NINETY DAYS OF THE DEATH OF THE DECEDENT IN SUCH INSTANCE, THE REGISTRANT, THE PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE OR SUCH PERSON DESCRIBED IN SUBPARAGRAPHS (I), (II), (III) OR (IV) OF THIS PARAGRAPH MUST SUBMIT A REVISED APPLICATION FOR REGISTRATION AS A DISTRIBUTOR. THE DEPARTMENT MAY THEN CANCEL OR SUSPEND THE REGISTRATION BECAUSE OF THE EXISTENCE OF GROUNDS TO DO SO SPECIFIED IN THIS SECTION FOR REFUSAL OR DENIAL OF AN APPLICATION FOR REGISTRATION OR FOR CANCELLATION OR SUSPENSION OF A REGISTRATION. THE FAILURE TO SUBMIT A REVISED APPLICATION FOR REGISTRATION WITHIN SUCH NINETY DAY PERIOD SHALL BE GROUNDS FOR IMMEDIATE CANCELLATION OR SUSPENSION OF THE REGISTRATION.

10. FOR PURPOSES OF THIS SECTION, WHERE REFERENCE IS MADE TO OWNERSHIP, DIRECTLY OR INDIRECTLY, OF MORE THAN TEN PERCENT OF THE SHARES OF STOCK OF THE APPLICANT OR ANOTHER PERSON ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, IN THE CASE OF AN APPLICANT OR ANOTHER PERSON WHICH AT THE RELEVANT TIME HAS FOUR OR FEWER SHAREHOLDERS HOLDING SHARES ENTITLING THE HOLDERS THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, TWENTY-FIVE PERCENT OR MORE SHALL BE SUBSTITUTED AS THE APPLICABLE PERCENTAGE IN SUCH REFERENCES TO OWNERSHIP, DIRECTLY OR INDIRECTLY, OF VOTING STOCK.

S 199-Q. LICENSING OF IMPORTING TRANSPORTERS. 1. THE DEPARTMENT, UPON THE APPLICATION OF A PERSON WHO TRANSPORTS MOTOR FUEL, SHALL LICENSE SUCH PERSON AS AN IMPORTING TRANSPORTER OR EXPORTING TRANSPORTER, AS THE CASE MAY BE, UNDER THIS ARTICLE EXCEPT AS PROVIDED IN SUBDIVISIONS TWO AND FIVE OF THIS SECTION. THE APPLICATION SHALL BE IN A FORM AND CONTAIN SUCH DATA AS THE DEPARTMENT SHALL PRESCRIBE. NO PERSON, UNLESS LICENSED AS AN IMPORTING TRANSPORTER, SHALL TRANSPORT MOTOR FUEL IN THE STATE WHERE SUCH MOTOR FUEL IS BEING IMPORTED INTO THE STATE FOR USE, DISTRIBUTION, STORAGE OR SALE IN THE STATE. NO PERSON, UNLESS LICENSED AS AN EXPORTING TRANSPORTER, SHALL TRANSPORT MOTOR FUEL IN THIS STATE WHERE SUCH MOTOR FUEL IS BEING EXPORTED FROM A POINT IN THIS STATE TO WITHOUT THIS STATE.

2. WHERE A PERSON FILES AN APPLICATION FOR LICENSING UNDER THIS SECTION AND IN CONSIDERING SUCH APPLICATION THE DEPARTMENT ASCERTAINS THAT:

(A) HAS BEEN CONVICTED UNDER THE TAX LAWS OR PENAL LAWS OF ANY OTHER STATE, OR A POLITICAL SUBDIVISION OF THIS STATE OR SUCH OTHER STATE, OR OF THE UNITED STATES OF A CRIMINAL OFFENSE WHICH, IF COMMITTED AND PROSECUTED IN THIS STATE, WOULD CONSTITUTE A SIMILAR CRIME, WITHIN THE PRECEDING FIVE YEARS,

(B) AN OFFICER, DIRECTOR OR PARTNER OF SUCH APPLICANT, A SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH APPLICANT (WHERE SUCH APPLICANT IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR AN EMPLOYEE OR SHAREHOLDER OF SUCH APPLICANT, HAS BEEN CONVICTED UNDER THE TAX LAWS OR PENAL LAWS OF ANY OTHER STATE, OR A POLITICAL SUBDIVISION OF THIS STATE OR SUCH OTHER STATE, OR OF THE UNITED STATES OF A CRIMINAL OFFENSE WHICH, IF COMMITTED AND PROSECUTED IN THIS STATE, WOULD CONSTITUTE A SIMILAR CRIME, WITHIN THE PRECEDING FIVE YEARS,

(C) SUCH APPLICANT, OR AN OFFICER, DIRECTOR OR PARTNER OF SUCH APPLICANT, SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH APPLICANT (WHERE SUCH APPLICANT IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR EMPLOYEE OR SHAREHOLDER OF SUCH APPLICANT, WHO WAS AN OFFICER, DIRECTOR OR PARTNER OF ANOTHER PERSON, OR WHO DIRECTLY OR INDIRECTLY OWNED MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF ANOTHER PERSON (WHERE SUCH OTHER PERSON IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR WHO WAS AN EMPLOYEE OR SHAREHOLDER OF ANOTHER PERSON AT THE TIME SUCH OTHER PERSON WAS CONVICTED OF A CRIME PROVIDED FOR IN THIS CHAPTER OR HAS BEEN CONVICTED UNDER THE TAX LAWS OR PENAL LAWS OF ANY OTHER STATE, OR A POLITICAL SUBDIVISION OF THIS STATE OR SUCH OTHER STATE, OR OF THE UNITED STATES OF A CRIMINAL OFFENSE WHICH, IF COMMITTED AND PROSECUTED IN THIS STATE, WOULD CONSTITUTE A SIMILAR CRIME, WITHIN THE PRECEDING FIVE YEARS, OR AT THE TIME THE LICENSE OF SUCH OTHER PERSON WAS CANCELLED OR SUSPENDED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION WITHIN THE PRECEDING FIVE YEARS, OR AT THE TIME SUCH OTHER PERSON COMMITTED ANY OF THE ACTS OR OMISSIONS WHICH ARE, OR WAS CONVICTED AS, SPECIFIED IN SUBDIVISION FOUR OF THIS SECTION WITHIN THE PRECEDING FIVE YEARS, PROVIDED, HOWEVER, WHERE AN APPLICANT OR SUCH OFFICER, DIRECTOR, PARTNER, SHAREHOLDER OR EMPLOYEE OF SUCH APPLICANT WAS ONLY AN EMPLOYEE OF ANOTHER PERSON, THE APPLICABLE EXAMINATION OF SUCH OTHER PERSON SHALL BE LIMITED TO ACTS OR OMISSIONS WITH RESPECT TO MOTOR FUEL AND THE APPLICABLE EXAMINATION OF PRIOR CRIMINAL CONVICTIONS SHALL BE LIMITED TO THOSE WHICH RELATE TO MOTOR FUEL,

(D) THE LICENSE OF SUCH APPLICANT OR OF AN OFFICER, DIRECTOR OR PARTNER OF SUCH APPLICANT, SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH APPLICANT (WHERE SUCH APPLICANT IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR EMPLOYEE OR SHAREHOLDER OF SUCH APPLICANT, HAS BEEN CANCELLED OR SUSPENDED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION WITHIN THE PRECEDING FIVE YEARS, OR

(E) THE APPLICANT, AN OFFICER, DIRECTOR OR PARTNER OF THE APPLICANT, A SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH APPLICANT (WHERE SUCH APPLICANT IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR AN EMPLOYEE OR SHAREHOLDER OF SUCH APPLICANT, HAS COMMITTED ANY OF THE ACTS OR OMISSIONS WHICH ARE, OR WAS CONVICTED AS, SPECIFIED IN SUBDIVISION FOUR OF THIS SECTION WITHIN THE PRECEDING FIVE YEARS, THE DEPARTMENT MAY REFUSE TO LICENSE SUCH APPLICANT.

3. THE DEPARTMENT MAY REQUIRE A TRANSPORTER SEEKING LICENSING TO FILE WITH THE DEPARTMENT A BOND ISSUED BY A SURETY COMPANY APPROVED BY THE SUPERINTENDENT OF FINANCIAL SERVICES AS TO SOLVENCY AND RESPONSIBILITY AND AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE OR OTHER SECURITY ACCEPTABLE TO THE DEPARTMENT, IN SUCH AMOUNT AS THE DEPARTMENT MAY FIX,

IN AN AMOUNT DETERMINED IN ACCORDANCE WITH RULES AND REGULATIONS PRESCRIBED BY IT, TO SECURE THE PERFORMANCE BY SUCH TRANSPORTER OF THE DUTIES AND RESPONSIBILITIES REQUIRED PURSUANT TO THIS ARTICLE AND PURSUANT TO ANY OTHER SECTION OF LAW, RULE OR REGULATION WITH RESPECT TO MOTOR FUEL. THE DEPARTMENT MAY REQUIRE THAT SUCH A BOND OR OTHER SECURITY BE FILED BEFORE A TRANSPORTER IS LICENSED, AND THE AMOUNT THEREOF MAY BE INCREASED AT ANY TIME WHEN IN ITS JUDGMENT THE SAME IS NECESSARY. IF SECURITIES ARE DEPOSITED AS SECURITY UNDER THIS SUBDIVISION, SUCH SECURITIES SHALL BE KEPT IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE SECRETARY AND MAY BE SOLD BY THE DEPARTMENT IF IT BECOMES NECESSARY SO TO DO IN ORDER TO RECOVER AGAINST SUCH TRANSPORTER BUT NO SUCH SALE SHALL BE HAD UNTIL AFTER SUCH TRANSPORTER SHALL HAVE HAD OPPORTUNITY TO LITIGATE THE VALIDITY OF THE LIABILITY IF IT ELECTS SO TO DO. UPON ANY SUCH SALE THE SURPLUS, IF ANY, ABOVE THE SUMS DUE SHALL BE RETURNED TO SUCH TRANSPORTER. THE DEPARTMENT, WHEN AUTHORIZED BY THE TRANSPORTER, SHALL FURNISH INFORMATION REGARDING THE TRANSPORTER'S LICENSE AND ANY OTHER INFORMATION WHICH THE TRANSPORTER AUTHORIZES IT TO DISCLOSE.

4. THE LICENSE OF ANY IMPORTING OR EXPORTING TRANSPORTER MAY BE CANCELLED OR SUSPENDED BY THE DEPARTMENT WHERE A LICENSEE, OR AN OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER OF THE LICENSEE WHO AS SUCH OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER IS UNDER A DUTY TO ACT FOR SUCH LICENSEE OR ANY SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF THE LICENSEE (WHERE SUCH LICENSEE IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES OF SUCH LICENSEE, FAILS TO FILE A BOND OR OTHER SECURITY WHEN REQUIRED OR WHEN THE AMOUNT THEREOF IS INCREASED, OR FAILS TO CONTINUE TO MAINTAIN IN FULL FORCE AND EFFECT AT ALL TIMES THE REQUIRED BOND OR OTHER SECURITY FILED WITH THE DEPARTMENT, OR FAILS TO COMPLY WITH ANY OF THE PROVISIONS OF THIS ARTICLE OR ANY OTHER SECTION OF LAW, RULE OR REGULATION WITH RESPECT TO MOTOR FUEL, OR KNOWINGLY AIDS AND ABETS ANOTHER PERSON IN VIOLATING ANY OF THE PROVISIONS OF SUCH ARTICLES OR OF ANY SUCH RULE OR REGULATION WITH RESPECT TO MOTOR FUEL, OR TRANSFERS ITS LICENSE AS AN IMPORTING TRANSPORTER OR EXPORTING TRANSPORTER. A LICENSE MAY ALSO BE CANCELLED OR SUSPENDED IF THE DEPARTMENT DETERMINES THAT A LICENSEE OR AN OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER OF THE LICENSEE WHO AS SUCH OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER IS UNDER A DUTY TO ACT FOR SUCH LICENSEE OR ANY SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF THE LICENSEE (WHERE SUCH LICENSEE IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES OF SUCH LICENSEE:

(A) COMMITS FRAUD OR DECEIT IN HIS OPERATIONS AS A TRANSPORTER OR HAS COMMITTED FRAUD OR DECEIT IN PROCURING HIS LICENSE;

(B) HAS BEEN CONVICTED IN A COURT OF COMPETENT JURISDICTION, EITHER WITHIN OR WITHOUT THE STATE, OF A FELONY, AS DEFINED UNDER SUBDIVISION EIGHT OF SECTION ONE HUNDRED NINETY-NINE-P OF THIS ARTICLE, BEARING ON SUCH TRANSPORTER'S DUTIES AND OBLIGATIONS UNDER THIS CHAPTER;

(C) HAS KNOWINGLY AIDED AND ABETTED A PERSON WHO IS NOT REGISTERED AS A DISTRIBUTOR IN THE IMPORTATION, PRODUCTION, REFINING, MANUFACTURE OR COMPOUNDING OF MOTOR FUEL; OR

(D) HAS KNOWINGLY AIDED AND ABETTED THE DISTRIBUTION OF MOTOR FUEL IMPORTED, CAUSED TO BE IMPORTED, PRODUCED, REFINED, MANUFACTURED OR COMPOUNDED BY A DISTRIBUTOR WHO IS NOT REGISTERED BY THE DEPARTMENT.

A LICENSE MAY ALSO BE CANCELLED OR SUSPENDED IF THE DEPARTMENT DETERMINES THAT A LICENSEE OR AN OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR

PARTNER OF THE LICENSEE WHO AS SUCH OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER IS UNDER A DUTY TO ACT FOR SUCH LICENSEE OR ANY SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF THE LICENSEE (WHERE SUCH LICENSEE IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES OF SUCH LICENSEE, WAS AN OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER OF ANOTHER PERSON WHO AS SUCH OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER WAS UNDER A DUTY TO ACT FOR SUCH OTHER PERSON OR WAS A SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH OTHER PERSON (WHERE SUCH OTHER PERSON IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES OF SUCH OTHER PERSON AT THE TIME SUCH OTHER PERSON COMMITTED ANY OF THE ACTS OR OMISSIONS WHICH ARE, OR WAS CONVICTED AS, SPECIFIED IN THIS SUBDIVISION WITHIN THE PRECEDING FIVE YEARS.

5. A LICENSE SHALL NOT BE CANCELLED OR SUSPENDED NOR SHALL AN APPLICATION FOR A LICENSE BE REFUSED UNLESS THE LICENSEE OR APPLICANT FOR A LICENSE HAS HAD AN OPPORTUNITY FOR A HEARING, PROVIDED, HOWEVER, THAT AN APPLICATION FOR A LICENSE MAY BE DENIED WITHOUT A PRIOR HEARING. PROVIDED, A LICENSE MAY ALSO BE CANCELLED OR SUSPENDED PRIOR TO A HEARING FOR THE FAILURE TO CONTINUE TO MAINTAIN IN FULL FORCE AND EFFECT AT ALL TIMES THE BOND OR OTHER SECURITY FILED WITH THE DEPARTMENT. PROVIDED, HOWEVER, IF A SURETY BOND IS CANCELLED PRIOR TO EXPIRATION, THE DEPARTMENT, AFTER CONSIDERING ALL THE RELEVANT CIRCUMSTANCES, MAY MAKE SUCH OTHER ARRANGEMENTS AND REQUIRE THE FILING OF SUCH OTHER BOND OR OTHER SECURITY AS THE DEPARTMENT DEEMS APPROPRIATE. PROVIDED, FURTHER, A LICENSE MAY BE CANCELLED OR SUSPENDED PRIOR TO A HEARING FOR THE TRANSFER OF SUCH LICENSE. A TRANSPORTER SHALL IMMEDIATELY INFORM THE DEPARTMENT, IN WRITING, OF ANY CHANGE IN ITS ADDRESS AND, IF THE TRANSPORTER IS A CORPORATION OR PARTNERSHIP, THE TRANSPORTER SHALL IMMEDIATELY INFORM THE DEPARTMENT, IN WRITING, OF ANY CHANGE IN ITS OFFICERS, DIRECTORS OR PARTNERS OR THEIR RESIDENCE ADDRESSES AS SHOWN IN ITS APPLICATION FOR A LICENSE.

6. THE PROVISIONS OF SUBDIVISIONS SIX, EIGHT, NINE AND TEN OF SECTION ONE HUNDRED NINETY-NINE-P OF THIS ARTICLE SHALL APPLY TO THE PROVISIONS OF THIS SECTION IN THE SAME MANNER AND WITH THE SAME FORCE AND EFFECT AS IF THE LANGUAGE OF THESE SUBDIVISIONS HAD BEEN INCORPORATED IN FULL INTO THIS SECTION AND HAD EXPRESSLY REFERRED TO THE IMPORTING TRANSPORTER'S LICENSE OR THE EXPORTING TRANSPORTER'S LICENSE UNDER THIS SECTION, EXCEPT TO THE EXTENT THAT ANY SUCH PROVISION IS EITHER INCONSISTENT WITH A PROVISION OF THIS SECTION OR IS NOT RELEVANT TO THIS SECTION.

S 199-R. LICENSING OF TERMINAL OPERATORS. 1. THE DEPARTMENT UPON THE APPLICATION OF A PERSON WHO OPERATES A FACILITY WHERE MOTOR FUEL IS DEPOSITED, SHALL LICENSE SUCH PERSON AS A TERMINAL OPERATOR UNDER THIS ARTICLE EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION. THE APPLICATION SHALL BE IN A FORM AND CONTAIN SUCH INFORMATION AS THE DEPARTMENT SHALL PRESCRIBE. NO PERSON, UNLESS SO LICENSED, SHALL OPERATE A TERMINAL, EXCEPT THAT A PERSON MAY OPERATE A TERMINAL WITHOUT A LICENSE IF ALL OF THE MOTOR FUEL STORED IN SUCH FACILITY IS SOLELY FOR SUCH PERSON'S OWN USE AND CONSUMPTION.

2. WHERE A PERSON FILES AN APPLICATION FOR A LICENSE UNDER THIS SECTION AND IN CONSIDERING SUCH APPLICATION THE DEPARTMENT ASCERTAINS THAT:

(A) BEEN CONVICTED UNDER THE TAX LAWS OR PENAL LAWS OF ANY OTHER STATE, OR A POLITICAL SUBDIVISION OF THIS STATE OR SUCH OTHER STATE, OR OF THE UNITED STATES OF A CRIMINAL OFFENSE WHICH, IF COMMITTED AND PROS-

ECUTED IN THIS STATE, WOULD CONSTITUTE A SIMILAR CRIME, WITHIN THE PRECEDING FIVE YEARS,

(B) AN OFFICER, DIRECTOR OR PARTNER OF SUCH APPLICANT, A SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH APPLICANT (WHERE SUCH APPLICANT IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR AN EMPLOYEE OR SHAREHOLDER OF SUCH APPLICANT, HAS BEEN CONVICTED UNDER THE TAX LAWS OR PENAL LAWS OF ANY OTHER STATE, OR A POLITICAL SUBDIVISION OF THIS STATE OR SUCH OTHER STATE, OR OF THE UNITED STATES OF A CRIMINAL OFFENSE WHICH, IF COMMITTED AND PROSECUTED IN THIS STATE, WOULD CONSTITUTE A SIMILAR CRIME, WITHIN THE PRECEDING FIVE YEARS,

(C) SUCH APPLICANT, OR AN OFFICER, DIRECTOR OR PARTNER OF SUCH APPLICANT, SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH APPLICANT (WHERE SUCH APPLICANT IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR EMPLOYEE OR SHAREHOLDER OF SUCH APPLICANT, WHO WAS AN OFFICER, DIRECTOR OR PARTNER OF ANOTHER PERSON, OR WHO DIRECTLY OR INDIRECTLY OWNED MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF ANOTHER PERSON (WHERE SUCH OTHER PERSON IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR WHO WAS AN EMPLOYEE OR SHAREHOLDER OF ANOTHER PERSON AT THE TIME SUCH OTHER PERSON WAS CONVICTED OF A CRIME PROVIDED FOR IN THIS CHAPTER OR HAS BEEN CONVICTED UNDER THE TAX LAWS OR PENAL LAWS OF ANY OTHER STATE, OR A POLITICAL SUBDIVISION OF THIS STATE OR SUCH OTHER STATE, OR OF THE UNITED STATES OF A CRIMINAL OFFENSE WHICH, IF COMMITTED AND PROSECUTED IN THIS STATE, WOULD CONSTITUTE A SIMILAR CRIME, WITHIN THE PRECEDING FIVE YEARS, OR AT THE TIME THE LICENSE OF SUCH OTHER PERSON WAS CANCELLED OR SUSPENDED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION WITHIN THE PRECEDING FIVE YEARS, OR AT THE TIME SUCH OTHER PERSON COMMITTED ANY OF THE ACTS OR OMISSIONS WHICH ARE, OR WAS CONVICTED AS, SPECIFIED IN SUBDIVISION FOUR OF THIS SECTION WITHIN THE PRECEDING FIVE YEARS, PROVIDED, HOWEVER, WHERE AN APPLICANT OR SUCH OFFICER, DIRECTOR, PARTNER, SHAREHOLDER OR EMPLOYEE OF SUCH APPLICANT WAS ONLY AN EMPLOYEE OF ANOTHER PERSON, THE APPLICABLE EXAMINATION OF SUCH OTHER PERSON SHALL BE LIMITED TO ACTS OR OMISSIONS WITH RESPECT TO MOTOR FUEL AND THE APPLICABLE EXAMINATION OF PRIOR CRIMINAL CONVICTIONS SHALL BE LIMITED TO THOSE WHICH RELATE TO MOTOR FUEL,

(D) THE LICENSE OF SUCH APPLICANT OR OF AN OFFICER, DIRECTOR OR PARTNER OF SUCH APPLICANT, SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH APPLICANT (WHERE SUCH APPLICANT IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR EMPLOYEE OR SHAREHOLDER OF SUCH APPLICANT, HAS BEEN CANCELLED OR SUSPENDED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION WITHIN THE PRECEDING FIVE YEARS, OR

(E) THE APPLICANT, AN OFFICER, DIRECTOR OR PARTNER OF THE APPLICANT, A SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH APPLICANT (WHERE SUCH APPLICANT IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR AN EMPLOYEE OR SHAREHOLDER OF SUCH APPLICANT, HAS COMMITTED ANY OF THE ACTS OR OMISSIONS WHICH ARE, OR WAS CONVICTED AS, SPECIFIED IN SUBDIVISION FOUR OF THIS SECTION WITHIN THE PRECEDING FIVE YEARS, THE DEPARTMENT MAY REFUSE TO LICENSE SUCH APPLICANT.

3. THE DEPARTMENT MAY REQUIRE A TERMINAL OPERATOR TO FILE WITH THE DEPARTMENT A BOND ISSUED BY A SURETY COMPANY APPROVED BY THE SUPERINTENDENT OF FINANCIAL SERVICES AS TO SOLVENCY AND RESPONSIBILITY AND AUTHOR-

IZED TO TRANSACT BUSINESS IN THIS STATE OR OTHER SECURITY ACCEPTABLE TO THE DEPARTMENT, IN SUCH AMOUNT AS THE DEPARTMENT MAY FIX, IN AN AMOUNT DETERMINED IN ACCORDANCE WITH RULES AND REGULATIONS PRESCRIBED BY IT, TO SECURE THE PERFORMANCE BY SUCH TERMINAL OPERATOR OF THE DUTIES AND RESPONSIBILITIES REQUIRED PURSUANT TO THIS ARTICLE AND PURSUANT TO ANY OTHER SECTION OF LAW, RULE OR REGULATION WITH RESPECT TO MOTOR FUEL. THE DEPARTMENT MAY REQUIRE THAT SUCH A BOND OR OTHER SECURITY BE FILED BEFORE A TERMINAL OPERATOR IS LICENSED, AND THE AMOUNT THEREOF MAY BE INCREASED AT ANY TIME WHEN IN ITS JUDGMENT THE SAME IS NECESSARY. IF SECURITIES ARE DEPOSITED AS SECURITY UNDER THIS SUBDIVISION, SUCH SECURITIES SHALL BE KEPT IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE SECRETARY AND MAY BE SOLD BY THE DEPARTMENT IF IT BECOMES NECESSARY SO TO DO IN ORDER TO RECOVER AGAINST SUCH TERMINAL OPERATOR BUT NO SUCH SALE SHALL BE HAD UNTIL AFTER SUCH TERMINAL OPERATOR SHALL HAVE HAD OPPORTUNITY TO LITIGATE THE VALIDITY OF THE LIABILITY IF IT ELECTS SO TO DO. UPON ANY SUCH SALE THE SURPLUS, IF ANY, ABOVE THE SUMS DUE SHALL BE RETURNED TO SUCH TERMINAL OPERATOR. THE DEPARTMENT, WHEN AUTHORIZED BY THE TERMINAL OPERATOR, SHALL FURNISH INFORMATION REGARDING THE TERMINAL OPERATOR'S LICENSE AND ANY OTHER INFORMATION WHICH THE TERMINAL OPERATOR AUTHORIZES IT TO DISCLOSE.

4. THE LICENSE OF ANY TERMINAL OPERATOR MAY BE CANCELLED OR SUSPENDED BY THE DEPARTMENT WHERE A LICENSEE, OR AN OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER OF THE LICENSEE WHO AS SUCH OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER IS UNDER A DUTY TO ACT FOR SUCH LICENSEE OR ANY SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF THE LICENSEE (WHERE SUCH LICENSEE IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES OF SUCH LICENSEE, FAILS TO FILE A BOND OR OTHER SECURITY WHEN REQUIRED OR WHEN THE AMOUNT THEREOF IS INCREASED, OR FAILS TO CONTINUE TO MAINTAIN IN FULL FORCE AND EFFECT AT ALL TIMES THE REQUIRED BOND OR OTHER SECURITY FILED WITH THE DEPARTMENT, OR FAILS TO COMPLY WITH ANY OF THE PROVISIONS OF THIS ARTICLE OR ANY OTHER SECTION OF LAW, RULE OR REGULATION WITH RESPECT TO MOTOR FUEL, OR KNOWINGLY AIDS AND ABETS ANOTHER PERSON IN VIOLATING ANY OF THE PROVISIONS OF SUCH ARTICLES OR OF ANY SUCH RULE OR REGULATION WITH RESPECT TO MOTOR FUEL, OR TRANSFERS ITS LICENSE AS AN IMPORTING TRANSPORTER OR EXPORTING TRANSPORTER. A LICENSE MAY ALSO BE CANCELLED OR SUSPENDED IF THE DEPARTMENT DETERMINES THAT A LICENSEE OR AN OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER OF THE LICENSEE WHO AS SUCH OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER IS UNDER A DUTY TO ACT FOR SUCH LICENSEE OR ANY SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF THE LICENSEE (WHERE SUCH LICENSEE IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES OF SUCH LICENSEE:

(A) COMMITS FRAUD OR DECEIT IN HIS OPERATIONS AS A TERMINAL OPERATOR OR HAS COMMITTED FRAUD OR DECEIT IN PROCURING HIS LICENSE;

(B) HAS BEEN CONVICTED IN A COURT OF COMPETENT JURISDICTION, EITHER WITHIN OR WITHOUT THE STATE, OF A FELONY, WITHIN THE MEANING OF SUBDIVISION EIGHT OF SECTION ONE HUNDRED NINETY-NINE-P OF THIS ARTICLE, BEARING ON SUCH TERMINAL OPERATOR'S DUTIES AND OBLIGATIONS UNDER THIS CHAPTER;

(C) HAS KNOWINGLY AIDED AND ABETTED A PERSON WHO IS NOT REGISTERED AS A DISTRIBUTOR IN THE IMPORTATION, PRODUCTION, REFINING, MANUFACTURE OR COMPOUNDING OF MOTOR FUEL; OR

(D) HAS KNOWINGLY AIDED AND ABETTED THE DISTRIBUTION OF MOTOR FUEL WHICH HE HAS KNOWLEDGE OF AS BEING IMPORTED, CAUSED TO BE IMPORTED,

PRODUCED, REFINED, MANUFACTURED OR COMPOUNDED BY A DISTRIBUTOR WHO IS NOT REGISTERED BY THE DEPARTMENT.

A LICENSE MAY ALSO BE CANCELLED OR SUSPENDED IF THE DEPARTMENT DETERMINES THAT A LICENSEE OR AN OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER OF THE LICENSEE WHO AS SUCH OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER IS UNDER A DUTY TO ACT FOR SUCH LICENSEE OR ANY SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF THE LICENSEE (WHERE SUCH LICENSEE IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES OF SUCH LICENSEE, WAS AN OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER OF ANOTHER PERSON WHO AS SUCH OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE OR PARTNER WAS UNDER A DUTY TO ACT FOR SUCH OTHER PERSON OR WAS A SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH OTHER PERSON (WHERE SUCH OTHER PERSON IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES OF SUCH OTHER PERSON AT THE TIME SUCH OTHER PERSON COMMITTED ANY OF THE ACTS OR OMISSIONS WHICH ARE, OR WAS CONVICTED AS, SPECIFIED IN THIS SUBDIVISION WITHIN THE PRECEDING FIVE YEARS.

5. A LICENSE SHALL NOT BE CANCELLED OR SUSPENDED NOR SHALL AN APPLICATION FOR LICENSE BE REFUSED UNLESS THE LICENSEE OR APPLICANT HAS HAD AN OPPORTUNITY FOR A HEARING, PROVIDED, HOWEVER, THAT AN APPLICATION FOR A LICENSE MAY BE DENIED WITHOUT A PRIOR HEARING. PROVIDED, A LICENSE MAY BE CANCELLED OR SUSPENDED PRIOR TO A HEARING FOR THE TRANSFER OF SUCH REGISTRATION WITHOUT THE PRIOR WRITTEN APPROVAL OF THE DEPARTMENT. A TERMINAL OPERATOR SHALL IMMEDIATELY INFORM THE DEPARTMENT, IN WRITING, OF ANY CHANGE IN ITS ADDRESS AND, IF THE TERMINAL OPERATOR IS A CORPORATION OR PARTNERSHIP, THE TERMINAL OPERATOR SHALL IMMEDIATELY INFORM THE DEPARTMENT, IN WRITING, OF ANY CHANGE IN ITS OFFICERS, DIRECTORS OR PARTNERS OR THEIR RESIDENCE ADDRESSES AS SHOWN IN ITS APPLICATION FOR FOR A LICENSE.

6. THE PROVISIONS OF SUBDIVISIONS SIX, EIGHT, NINE AND TEN OF SECTION ONE HUNDRED NINETY-NINE-P OF THIS ARTICLE SHALL APPLY TO THE PROVISIONS OF THIS SECTION IN THE SAME MANNER AND WITH THE SAME FORCE AND EFFECT AS IF THE LANGUAGE OF THESE SUBDIVISIONS HAD BEEN INCORPORATED IN FULL INTO THIS SECTION AND HAD EXPRESSLY REFERRED TO THE TERMINAL OPERATOR'S LICENSE UNDER THIS SECTION, EXCEPT TO THE EXTENT THAT ANY SUCH PROVISION IS EITHER INCONSISTENT WITH A PROVISION OF THIS SECTION OR IS NOT RELEVANT TO THIS SECTION.

S 199-S. LIQUEFIED PETROLEUM GAS FUEL PERMIT. THE DEPARTMENT, UPON THE APPLICATION OF A PERSON IMPORTING, MANUFACTURING OR SELLING LIQUEFIED PETROLEUM GAS IDENTIFIED AS A FUEL FOR USE IN THE OPERATION OF A MOTOR VEHICLE OR FOR USE IN THE OPERATION OF A PLEASURE OR RECREATIONAL MOTOR BOAT OR USING OR CONSUMING LIQUEFIED PETROLEUM GAS FOR SUCH PURPOSE, MAY ISSUE SUCH PERSON A LIQUEFIED PETROLEUM GAS FUEL PERMIT IN LIEU OF REGISTRATION AS A DISTRIBUTOR OF MOTOR FUEL PURSUANT TO SECTION ONE HUNDRED NINETY-NINE-P OF THIS ARTICLE, PROVIDED SUCH PERSON DOES NOT IMPORT MOTOR FUEL OTHER THAN LIQUEFIED PETROLEUM GAS FUEL OR CAUSE MOTOR FUEL OTHER THAN LIQUEFIED PETROLEUM GAS FUEL TO BE IMPORTED INTO THE STATE FOR USE, DISTRIBUTION, STORAGE OR SALE IN THE STATE OR PRODUCE, REFINE, MANUFACTURE OR COMPOUND MOTOR FUEL OTHER THAN LIQUEFIED PETROLEUM GAS FUEL IN THE STATE. ALL THE PROVISIONS OF SECTION ONE HUNDRED NINETY-NINE-P OF THIS ARTICLE SHALL APPLY TO APPLICANTS FOR LIQUEFIED PETROLEUM GAS FUEL PERMITS UNDER THIS SECTION AND TO HOLDERS OF LIQUEFIED PETROLEUM GAS FUEL PERMITS, PROVIDED THAT THE DEPARTMENT MAY WAIVE THE REQUIREMENT THAT HOLDERS OF LIQUEFIED PETROLEUM GAS FUEL PERMITS

FILE A BOND OR OTHER SECURITY. HOLDERS OF LIQUEFIED PETROLEUM GAS FUEL PERMITS SHALL BE SUBJECT TO ALL OTHER PROVISIONS OF THIS ARTICLE AND ANY OTHER SECTION OF LAW, RULE OR REGULATION RELATING TO DISTRIBUTORS OF MOTOR FUEL, INCLUDING BUT NOT LIMITED TO THE KEEPING OF RECORDS. A LIQUEFIED PETROLEUM GAS FUEL PERMIT APPLIES ONLY TO THE IMPORTATION, MANUFACTURE, SALE, USE OR CONSUMPTION OF LIQUEFIED PETROLEUM GAS FUEL AND SHALL NOT BE CONSIDERED A DISTRIBUTOR REGISTRATION UNDER THIS CHAPTER WITH RESPECT TO ANY MOTOR FUEL PRODUCT OTHER THAN LIQUEFIED PETROLEUM GAS. NO HOLDER OF A LIQUEFIED PETROLEUM GAS FUEL PERMIT SHALL IMPORT OR CAUSE ANY MOTOR FUEL OTHER THAN LIQUEFIED PETROLEUM GAS FUEL TO BE IMPORTED INTO THE STATE, FOR USE, DISTRIBUTION, STORAGE OR SALE WITHIN THE STATE OR SHALL PRODUCE, REFINE, MANUFACTURE OR COMPOUND MOTOR FUEL OTHER THAN LIQUEFIED PETROLEUM GAS FUEL WITHIN THE STATE.

S 199-T. PETROLEUM TESTING FEE. 1. THERE IS HEREBY IMPOSED A REGULATORY FEE AT THE RATE OF ONE-HALF OF ONE MILL PER GALLON UPON MOTOR FUEL IMPORTED, MANUFACTURED OR SOLD WITHIN THIS STATE BY A DISTRIBUTOR. THE FEE IMPOSED BY THIS SECTION SHALL BE ADMINISTERED AND COLLECTED BY THE DEPARTMENT. THE DEPARTMENT MAY MAKE SUCH PROVISIONS AS THE DEPARTMENT DEEMS NECESSARY FOR THE JOINT ADMINISTRATION OF THE FEE IMPOSED BY THIS SECTION.

2. ALL FEES IMPOSED BY THIS SECTION, TOGETHER WITH PENALTIES AND INTEREST THEREON, WHICH ARE COLLECTED OR RECEIVED BY THE DEPARTMENT, SHALL BE DEPOSITED DAILY WITH SUCH RESPONSIBLE BANKS, BANKING HOUSES OR TRUST COMPANIES, AS MAY BE DESIGNATED BY THE COMPTROLLER, TO THE CREDIT OF THE COMPTROLLER. THE COMPTROLLER SHALL REQUIRE ADEQUATE SECURITY FROM ALL SUCH DEPOSITORIES OF SUCH REVENUE COLLECTED BY THE DEPARTMENT. THE COMPTROLLER SHALL RETAIN SUCH AMOUNT AS THE DEPARTMENT MAY DETERMINE TO BE NECESSARY FOR REFUNDS IN RESPECT TO THE FEES IMPOSED BY THIS SECTION, OUT OF WHICH THE COMPTROLLER SHALL PAY ANY REFUNDS OF SUCH FEES TO WHICH DISTRIBUTORS SHALL BE ENTITLED UNDER THE PROVISIONS OF THIS SECTION. THE DEPARTMENT AND THE COMPTROLLER SHALL MAINTAIN A SYSTEM OF ACCOUNTS SHOWING THE AMOUNT OF REVENUE COLLECTED OR RECEIVED FROM THE FEE IMPOSED BY THIS SECTION. THE COMPTROLLER, AFTER RESERVING SUCH REFUNDS SHALL, ON OR BEFORE THE TENTH DAY OF EACH MONTH, DEPOSIT TO THE CREDIT OF THE MOTOR FUEL QUALITY ACCOUNT, WHICH IS HEREBY ESTABLISHED WITHIN THE MISCELLANEOUS STATE SPECIAL REVENUE FUND, THE FEES IMPOSED BY THIS SECTION, TOGETHER WITH PENALTIES AND INTEREST THEREON, COLLECTED OR RECEIVED BY SUCH DEPARTMENT PURSUANT TO THIS SECTION DURING THE PRECEDING CALENDAR MONTH. THE AMOUNT SO PAYABLE SHALL BE CERTIFIED TO THE COMPTROLLER BY THE SECRETARY OR HIS DELEGATE, WHO SHALL NOT BE HELD LIABLE FOR ANY INACCURACY IN SUCH CERTIFICATE. WHERE THE AMOUNT SO PAID OVER TO SUCH FUND IN ANY SUCH DISTRIBUTION IS MORE OR LESS THAN THE AMOUNT DUE TO SUCH FUND, THE AMOUNT OF THE OVERPAYMENT OR UNDERPAYMENT SHALL BE CERTIFIED TO THE COMPTROLLER BY THE SECRETARY OR HIS DELEGATE, WHO SHALL NOT BE HELD LIABLE FOR ANY INACCURACY IN SUCH CERTIFICATE. THE AMOUNT OF THE OVERPAYMENT OR UNDERPAYMENT SHALL BE SO CERTIFIED TO THE COMPTROLLER AS SOON AFTER THE DISCOVERY OF THE OVERPAYMENT OR UNDERPAYMENT AS REASONABLY POSSIBLE AND SUBSEQUENT PAYMENTS AND DISTRIBUTIONS BY THE COMPTROLLER TO SUCH FUND SHALL BE ADJUSTED BY SUBTRACTING THE AMOUNT OF ANY SUCH UNDERPAYMENT FROM SUCH NUMBER OF SUBSEQUENT PAYMENTS AND DISTRIBUTIONS AS THE COMPTROLLER AND THE DEPARTMENT SHALL CONSIDER REASONABLE IN VIEW OF THE AMOUNT OF THE OVERPAYMENT OR UNDERPAYMENT AND ALL OTHER FACTS OR CIRCUMSTANCES.

S 199-U. RECORDS TO BE KEPT BY DISTRIBUTORS AND OTHERS. 1. EVERY PERSON WHO IMPORTS OR CAUSES TO BE IMPORTED INTO THIS STATE, OR WHO PRODUCES, REFINES, MANUFACTURES OR COMPOUNDS WITHIN THIS STATE, OR WHO

PURCHASES OR SELLS IN THIS STATE MOTOR FUEL OR DIESEL MOTOR FUEL OR INGREDIENTS WHICH MAY BE MANUFACTURED OR COMPOUNDED INTO MOTOR FUEL OR DIESEL MOTOR FUEL, SHALL KEEP A COMPLETE AND ACCURATE RECORD OF ALL PURCHASES AND SALES, USES OR OTHER DISPOSITIONS THEREOF AND A COMPLETE AND ACCURATE RECORD OF THE NUMBER OF GALLONS OF MOTOR FUEL OR DIESEL MOTOR FUEL OR SUCH INGREDIENTS SO IMPORTED, PRODUCED, REFINED, MANUFACTURED OR COMPOUNDED. EVERY PERSON WHO STORES MOTOR FUEL OR DIESEL MOTOR FUEL SHALL KEEP A COMPLETE AND ACCURATE RECORD OF THE IDENTITY OF THE PERSON FOR WHOM SUCH FUEL IS STORED, THE QUANTITY AND TYPE OF FUEL SO STORED, THE IDENTITY OF THE PERSON TO WHOM SUCH FUEL IS RELEASED FROM STORAGE AND THE QUANTITY AND TYPE OF FUEL SO RELEASED. SUCH RECORDS SHALL BE IN SUCH FORM AND CONTAIN SUCH OTHER INFORMATION AS THE DEPARTMENT SHALL PRESCRIBE. SAID DEPARTMENT, BY RULE OR REGULATION, ALSO MAY REQUIRE THE DELIVERY OF STATEMENTS TO PURCHASERS WITH CONSIGNMENTS OF MOTOR FUEL OR DIESEL MOTOR FUEL OR SUCH INGREDIENTS, AND PRESCRIBE THE MATTERS TO BE CONTAINED THEREIN. SUCH RECORDS AND STATEMENTS, UNLESS REQUIRED BY THE DEPARTMENT TO BE PRESERVED FOR A LONGER PERIOD, SHALL BE PRESERVED FOR A PERIOD OF THREE YEARS AND SHALL BE OFFERED FOR INSPECTION AT ANY TIME UPON ORAL OR WRITTEN DEMAND BY THE SECRETARY OR THE SECRETARY'S DULY AUTHORIZED AGENTS. THE SECRETARY IS HEREBY FURTHER AUTHORIZED TO EXAMINE THE EQUIPMENT OF ANY SUCH PERSON PERTAINING TO THE STORAGE, SALE OR DELIVERY OF SUCH FUELS, AS WELL AS THE STOCK OF SUCH FUELS IN THE POSSESSION OR CONTROL OF SUCH PERSON. EACH SUCH PERSON IS HEREBY DIRECTED AND REQUIRED TO GIVE TO THE SECRETARY OR THE SECRETARY'S DULY AUTHORIZED REPRESENTATIVES, THE MEANS, FACILITIES AND OPPORTUNITY FOR SUCH EXAMINATIONS AS ARE HEREIN PROVIDED FOR AND REQUIRED. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THE KEEPING FOR PURPOSES OF THIS ARTICLE OF A RECORD OF PURCHASES OR SALES OF MOTOR FUEL OR DIESEL MOTOR FUEL OR SUCH INGREDIENTS AT RETAIL IN SMALL QUANTITIES (LESS THAN THIRTY GALLONS) OR OF MOTOR FUEL OR DIESEL MOTOR FUEL IMPORTED INTO THIS STATE IN THE TANK OF A MOTOR VEHICLE WHICH SUPPLIES THE FUEL FOR ITS OPERATION.

2. THE DEPARTMENT MAY, BY REGULATION, PROVIDE FOR THE FILING OF MONTHLY INFORMATION RETURNS BY EVERY PERSON REQUIRED TO MAINTAIN SUCH RECORDS, AS PRESCRIBED IN SUBDIVISION ONE OF THIS SECTION, WHICH SHALL IN ALL MATERIAL RESPECTS REFLECT THE INFORMATION REQUIRED TO BE CONTAINED IN SUCH RECORDS. SUCH RETURNS SHALL BE IN SUCH FORM AND CONTAIN SUCH OTHER INFORMATION AS THE DEPARTMENT SHALL REQUIRE. IN ADDITION, SUCH DEPARTMENT SHALL BE AUTHORIZED TO REQUIRE BY REGULATION THE KEEPING OF RECORDS AND THE FILING OF INFORMATION RETURNS OR REPORTS BY ANY PERSON REGISTERED AS THE OWNER UNDER THE VEHICLE AND TRAFFIC LAW OF A MOTOR VEHICLE USING DIESEL MOTOR FUEL WHICH IS OPERATED ON THE PUBLIC HIGHWAYS OF THIS STATE AND THE PERSON HAVING A REGISTRATION ISSUED PURSUANT TO SECTION FOUR HUNDRED FIFTEEN OF THE VEHICLE AND TRAFFIC LAW IN THE CASE OF A MOTOR VEHICLE OPERATED UNDER SUCH REGISTRATION.

3. THE DEPARTMENT SHALL PROVIDE FOR THE FILING OF MONTHLY INFORMATION RETURNS BY EVERY DISTRIBUTOR AND EVERY PERSON REGISTERED AS A "RETAIL SELLER OF AVIATION GASOLINE" REQUIRED TO MAINTAIN SUCH RECORDS, AS PRESCRIBED IN SUBDIVISION ONE OF THIS SECTION, WHICH SHALL IN ALL MATERIAL RESPECTS REFLECT THE INFORMATION REQUIRED TO BE CONTAINED IN SUCH RECORDS. SUCH RETURNS SHALL BE IN SUCH FORM AND CONTAIN SUCH OTHER INFORMATION AS THE DEPARTMENT SHALL REQUIRE, PROVIDED, THE DEPARTMENT SHALL PERMIT THE FILING OF SUCH RETURN ON A QUARTERLY BASIS BY DISTRIBUTORS WHOSE ONLY SALES OF DIESEL MOTOR FUEL ARE SALES TO CONSUMERS SOLELY FOR CONSUMPTION OTHER THAN ON THE PUBLIC HIGHWAYS OF THIS STATE (EXCEPT FOR THE USE OF THE PUBLIC HIGHWAY BY FARMERS TO REACH ADJACENT FARM-

LANDS) AND BY PERSONS REGISTERED UNDER THIS ARTICLE AS DISTRIBUTORS OF KERO-JET FUEL ONLY.

S 199-V. RECORDS AND REPORTS OF TRANSPORTATION OF MOTOR FUEL AND DIESEL MOTOR FUEL. EVERY PERSON TRANSPORTING MOTOR FUEL OR DIESEL MOTOR FUEL WITHIN THIS STATE, WHETHER SUCH TRANSPORTATION ORIGINATES WITHIN OR WITHOUT THIS STATE, WHEN REQUIRED BY THE DEPARTMENT, SHALL KEEP A TRUE AND ACCURATE RECORD OF ALL MOTOR FUEL AND DIESEL MOTOR FUEL SO TRANSPORTED, INCLUDING INGREDIENTS WHICH MAY BE MANUFACTURED OR COMPOUNDED INTO MOTOR FUEL OR DIESEL MOTOR FUEL, SHOWING SUCH FACTS WITH RELATION TO SUCH FUEL AND INGREDIENTS AND THEIR TRANSPORTATION AS THE DEPARTMENT MAY REQUIRE. SUCH RECORD SHALL BE OPEN TO INSPECTION BY THE REPRESENTATIVES OF THE DEPARTMENT AT ANY TIME AND THE DEPARTMENT MAY REQUIRE FROM ANY SUCH PERSON SWORN RETURNS OF ALL OR ANY PART OF THE INFORMATION SHOWN BY SUCH RECORDS.

S 199-W. TRANSPORTATION OF MOTOR FUEL OR DIESEL MOTOR FUEL; MANIFEST REQUIRED. 1. THE MASTER OR OTHER PERSON IN CHARGE OF ANY BARGE, TANKER OR OTHER VESSEL IN WHICH MOTOR FUEL OR DIESEL MOTOR FUEL IS BEING TRANSPORTED OVER ANY OF THE NAVIGABLE WATERS OF THIS STATE, THE OPERATOR OF A MOTOR VEHICLE IN WHICH MOTOR FUEL OR DIESEL MOTOR FUEL IS BEING TRANSPORTED IN THIS STATE, OR THE OPERATOR OF A PIPELINE THROUGH WHICH MOTOR FUEL OR DIESEL MOTOR FUEL IS BEING TRANSPORTED IN THIS STATE, OTHER THAN MOTOR FUEL OR DIESEL MOTOR FUEL BEING TRANSPORTED FOR USE IN OPERATING THE ENGINE WHICH PROPELS SUCH VESSEL OR MOTOR VEHICLE, AS THE CASE MAY BE, MUST HAVE IN HIS OR HER POSSESSION A MANIFEST WHICH SHOWS THE NAME AND ADDRESS OF THE PERSON FROM WHOM SUCH FUEL WAS RECEIVED BY HIM OR HER AND THE PLACE OF RECEIPT OF SUCH FUEL AND THE NAME AND ADDRESS OF EVERY PERSON TO WHOM HE OR SHE IS TO MAKE DELIVERY OF THE SAME AND THE PLACE OF DELIVERY, TOGETHER WITH THE NUMBER OF GALLONS TO BE DELIVERED TO EACH SUCH PERSON, AND, IF SUCH FUEL IS BEING IMPORTED INTO THE STATE IN SUCH VESSEL, MOTOR VEHICLE OR PIPELINE FOR USE, STORAGE, DISTRIBUTION OR SALE IN THE STATE, THE NAME OF THE DISTRIBUTOR IMPORTING OR CAUSING SUCH FUEL TO BE IMPORTED INTO THE STATE AND SUCH OTHER INFORMATION AS THE DEPARTMENT MAY REQUIRE PURSUANT TO RULE OR REGULATION, AND SHALL AT THE REQUEST OF A PEACE OFFICER, ACTING PURSUANT TO HIS OR HER SPECIAL DUTIES, A POLICE OFFICER, ANY REPRESENTATIVE OF THE DEPARTMENT OR ANY OTHER PERSON AUTHORIZED BY LAW TO INQUIRE INTO OR INVESTIGATE THE TRANSPORTATION OF SUCH FUEL, PRODUCE SUCH MANIFEST FOR INSPECTION. THE PERSON CAUSING THE OPERATION OF SUCH VESSEL, MOTOR VEHICLE OR PIPELINE SHALL BE RESPONSIBLE TO CAUSE THE OPERATOR OF SUCH VESSEL, MOTOR VEHICLE OR PIPELINE TO KEEP IN HIS OR HER POSSESSION ON SUCH VESSEL, IN SUCH MOTOR VEHICLE OR IN THE MAIN CONTROL BUILDING OF SUCH PIPELINE IN THIS STATE THE MANIFEST REQUIRED BY THIS SECTION. THE ABSENCE OF THE MANIFEST REQUIRED BY THIS SECTION SHALL GIVE RISE TO A PRESUMPTION THAT THE MOTOR FUEL OR DIESEL MOTOR FUEL BEING TRANSPORTED IS INTENDED FOR SALE, USE, DISTRIBUTION OR STORAGE IN THIS STATE AND IS BEING IMPORTED OR CAUSED TO BE IMPORTED BY OTHER THAN A REGISTERED DISTRIBUTOR. MOREOVER, THE ABSENCE OF:

(A) THE PLACE OF DELIVERY OF MOTOR FUEL OR DIESEL MOTOR FUEL ON THE MANIFEST WITH RESPECT TO MOTOR FUEL OR DIESEL MOTOR FUEL BEING IMPORTED INTO THE STATE SHALL GIVE RISE TO A PRESUMPTION THAT SUCH FUEL IS BEING IMPORTED INTO THE STATE FOR USE, DISTRIBUTION, STORAGE OR SALE IN THE STATE, AND

(B) THE NAME OF A REGISTERED DISTRIBUTOR ON THE MANIFEST WITH RESPECT TO MOTOR FUEL OR DIESEL MOTOR FUEL BEING IMPORTED INTO THE STATE FOR USE, DISTRIBUTION, STORAGE OR SALE IN THE STATE SHALL GIVE RISE TO A

PRESUMPTION THAT SUCH FUEL IS BEING SO IMPORTED OR CAUSED TO BE IMPORTED BY OTHER THAN A REGISTERED DISTRIBUTOR.

EVERY BARGE, TANKER OR OTHER VESSEL SO USED FOR THE TRANSPORTATION OF MOTOR FUEL MUST BE PLAINLY AND VISIBLY MARKED ON BOTH SIDES THEREOF AND ABOVE THE WATER LINE WITH THE WORD "GASOLINE," OR OTHER NAME OF THE MOTOR FUEL BEING TRANSPORTED, IN LETTERS AT LEAST EIGHT INCHES HIGH AND OF CORRESPONDING APPROPRIATE WIDTH, OR MUST BE IDENTIFIED AS PRESCRIBED BY THE DEPARTMENT PURSUANT TO RULE OR REGULATION. THE MASTER OR PERSON IN CHARGE OF SUCH BARGE, TANKER OR OTHER VESSEL, AS WELL AS THE OWNERS THEREOF, SHALL BE GUILTY OF A VIOLATION OF THIS SECTION IF SUCH BARGE, TANKER OR OTHER VESSEL IS NOT SO MARKED.

2. THE DEPARTMENT MAY, BY REGULATION PROVIDE FOR THE FORM AND CONTENT OF THE MANIFEST REQUIRED FOR MOTOR AND DIESEL MOTOR FUEL AND FOR THE FILING OF MONTHLY INFORMATION RETURNS BY EVERY PERSON REQUIRED TO MAINTAIN RECORDS, DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, WHICH SHALL IN ALL MATERIAL RESPECTS REFLECT THE INFORMATION REQUIRED TO BE CONTAINED IN SUCH RECORDS. SUCH RETURNS SHALL BE IN SUCH FORM AND CONTAIN SUCH OTHER INFORMATION AS THE DEPARTMENT SHALL REQUIRE.

S 9. Paragraph a of subdivision 19 of section 179 of the agriculture and markets law, as amended by chapter 190 of the laws of 1990, is amended to read as follows:

a. Inspect, test, and take samples, of any and all petroleum products kept, offered or exposed for sale or in the process of delivery or transport and inspect any and all documents and records required to be maintained by this article. The commissioner of taxation and finance AND THE SECRETARY OF STATE, RESPECTIVELY may request from the commissioner cooperation and technical assistance, including, among other things, the inspection, testing and sampling of petroleum products, in connection with the administration and enforcement of the fee and taxes imposed with respect to such products by or pursuant to article [twelve-A,] thirteen-A, twenty-eight or twenty-nine of the tax law OR ARTICLE ELEVEN-C OF THE GENERAL BUSINESS LAW.

S 10. Paragraph (e) of subdivision 7 of section 30 of the canal law, as amended by chapter 335 of the laws of 2001, is amended to read as follows:

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

S 11. Paragraph (q) of subdivision 34 of section 1.20 of the criminal procedure law, as amended by section 55 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(q) An employee of the department of taxation and finance (i) assigned to enforcement of the [taxes imposed under or pursuant to the authority of article twelve-A of the tax law and administered by the commissioner

of taxation and finance,] taxes imposed under or pursuant to the authority of article eighteen of the tax law and administered by the commissioner, taxes imposed under article twenty of the tax law, or sales or compensating use taxes relating to petroleum products or cigarettes imposed under article twenty-eight or pursuant to the authority of article twenty-nine of the tax law and administered by the commissioner or (ii) designated as a revenue crimes specialist and assigned to the enforcement of the taxes described in paragraph (c) of subdivision four of section 2.10 of this title, for the purpose of applying for and executing search warrants under article six hundred ninety of this chapter, for the purpose of acting as a claiming agent under article thirteen-A of the civil practice law and rules in connection with the enforcement of the taxes referred to above and for the purpose of executing warrants of arrest relating to the respective crimes specified in subdivision four of section 2.10 of this title.

S 12. Paragraph (a) of subdivision 4 of section 2.10 of the criminal procedure law, as amended by section 56 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(a) to the enforcement of any of the criminal or seizure and forfeiture provisions of the tax law relating to [(i) taxes imposed under or pursuant to the authority of article twelve-A of the tax law and administered by the commissioner, (ii)] taxes imposed under or pursuant to the authority of article eighteen of the tax law and administered by the commissioner, [(iii)] taxes imposed under article twenty of the tax law, or [(iv)] sales or compensating use taxes relating to petroleum products or cigarettes imposed under article twenty-eight or pursuant to the authority of article twenty-nine of the tax law and administered by the commissioner or

S 13. Section 392-i of the general business law, as amended by section 5 of part M-1 of chapter 109 of the laws of 2006, is amended to read as follows:

S 392-i. Prices reduced to reflect change in sales tax computation. Every person engaged in the retail sale of motor fuel and/or diesel motor fuel or a distributor of such fuels, as defined in article [twelve-A of the tax law] ELEVEN-C OF THIS CHAPTER, shall reduce the price such person charges for motor fuel and/or diesel motor fuel in an amount equal to any reduction in taxes prepaid by the distributor or paid by retail customers resulting from computing sales and compensating use taxes at a cents per gallon rate pursuant to the provisions of paragraph two of subdivision (e) and subdivision (m) of section eleven hundred eleven of the tax law.

S 14. Subdivision 5 of section 10-c of the highway law, as amended by chapter 20 of the laws of 1983, is amended to read as follows:

5. For amounts to be distributed pursuant to this section above the funding level, as defined in this subdivision, received by any municipality, such municipality shall use at least seventy-five percent of such apportioned moneys for the construction, reconstruction or improvement of local highways, bridges and/or highway-railroad crossings, including right of way acquisition, preliminary engineering, and construction supervision and inspection, where the service life of the project is at least ten years. Such moneys made available may be used to match other state and federal funds made available for such projects under federal-aid highway acts. The remainder of the apportionment, may be used for any highway purposes, except debt service, including but not limited to, the acquisition of materials and equipment devoted to operation and maintenance of local highways, bridges and/or highway-railroad

crossings and the payment of any costs directly attributable to operation and maintenance of local highways, bridges and/or highway-railroad crossings. At the discretion of the commissioner, the requirement specified in this subdivision may be waived for assistance payments in amounts of less than five thousand dollars. For purposes of this section "funding level" shall mean the average amounts, calculated for each municipality, received over two years ending March thirty-first, nineteen hundred eighty-two from the provisions of the town highway improvement program, the distribution made by former section one hundred twelve of this chapter, as repealed by section twenty-one of the transportation systems assistance and financing act of 1981 of amounts collected from taxes on motor fuel imposed by FORMER sections two hundred eighty-four and two hundred eighty-four-a of the tax law and on Diesel motor fuel imposed by FORMER sections two hundred eighty-two-a and two hundred eighty-two-b of the tax law, and from motor vehicle fees collected from residents pursuant to the vehicle and traffic law, and the distribution made by former section two hundred seventy-nine of this chapter, as repealed by section twenty-one of the transportation systems assistance and financing act of 1981.

S 15. Paragraph (e) of subdivision 7 of section 38 of the highway law, as amended by chapter 196 of the laws of 1981 and as relettered by chapter 153 of the laws of 1984, is amended to read as follows:

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

S 16. Subdivision 9 of section 385 of the public authorities law, as added by chapter 56 of the laws of 1993, is amended to read as follows:

9. Nothing contained in this section shall be deemed to restrict the right of the state to amend, repeal, modify or otherwise alter statutes imposing or relating to any taxes or fees, including the taxes imposed pursuant to [section two hundred eighty-four,] articles thirteen-A and twenty-one of the tax law and fees imposed by section four hundred one of the vehicle and traffic law. The authority shall not include within any resolution, contract or agreement with holders of the bonds, notes and other obligations issued under this title any provision which provides that a default occurs as a result of the state exercising its right to amend, repeal, modify or otherwise alter any such taxes and fees.

S 17. Paragraph (b) of subdivision 5 of section 376 of the public authorities law, as amended by chapter 55 of the laws of 1992, is amended to read as follows:

(b) To assure the continued operation and solvency of the authority for the carrying out of the purposes relating to this section, provision is made in this section for the accumulation in the debt service reserve

fund of an amount equal to the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year on all bonds of the authority then outstanding and secured by such reserve fund; provided however for such bonds issued by the authority after April first, nineteen hundred ninety-two, such debt service reserve fund may in the discretion of the authority and consistent with any covenants with any existing bondholders and without impairing the rights of any existing bondholders be sized in an amount equal to not less than one-half of the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year on such bonds of the authority then outstanding and secured by such debt service reserve fund. In order to further assure the maintenance of such debt service reserve fund, with respect to bonds of the authority issued pursuant to subdivisions two-a, two-b and two-c of this section after April first, nineteen hundred ninety, the authority shall create a special subaccount in each revenue fund established pursuant to any resolution or resolutions authorizing such bonds. [Such subaccounts shall consist of the moneys available after April first, nineteen hundred ninety, pursuant to sections two hundred eighty-two-b, two hundred eighty-two-c, two hundred eighty-four-a and two hundred eighty-four-c of the tax law, respectively, in the emergency highway reconditioning and preservation fund reserve account established pursuant to paragraph (b) of subdivision two of section eighty-nine of the state finance law and in the emergency highway construction and reconstruction fund reserve account established pursuant to paragraph (b) of subdivision two of section eighty-nine-a of the state finance law, apportioned and paid to the authority for deposit in such subaccount of the revenue fund.] Amounts in each such subaccount shall be kept separate and shall not be commingled with any other moneys in the custody of the authority. Amounts in each such subaccount shall be applied solely to pay such sum, if any, as shall semi-annually, (on such dates as are established under the terms of any cooperative highway contractual agreement of the department of transportation with the New York state thruway authority entered into on or after April first, nineteen hundred ninety which is then in effect), be certified by the chairman of the authority to the governor and state director of the budget as necessary to provide funds in an amount sufficient together with other moneys available to the authority for such purpose, to pay one-half of the total annual principal and interest maturing and becoming due during the next succeeding twelve calendar months on all bonds of the authority issued pursuant to subdivisions two-a, two-b and two-c of this section after April first, nineteen hundred ninety and maintaining or funding debt service reserve funds therefor. [Any surplus of funds in excess of such certified amounts remaining in each such subaccount after such payments, if any, have been made shall on the dates established under the terms of such cooperative highway agreements, be paid over for deposit, respectively, in the emergency highway reconditioning and preservation fund reserve account established pursuant to paragraph (b) of subdivision two of section eighty-nine of the state finance law and in the emergency highway construction and reconstruction fund reserve account established pursuant to paragraph (b) of subdivision two of section eighty-nine-a of the state finance law.]

S 18. Paragraph (c) of subdivision 1 of section 385 of the public authorities law, as added by chapter 129 of the laws of 1995, is amended to read as follows:

(c) Such obligations shall be issued or incurred with the approval of the director of the budget and shall be special obligations of the

authority secured by and payable solely out of amounts appropriated by the legislature as authorized pursuant to section eighty-nine-b of the state finance law without recourse against any other assets, revenues or funds of or other payments due to the authority. Upon payments of such appropriated amounts from the fund established pursuant to section eighty-nine-b of the state finance law to the account of the authority, such funds may be pledged by the authority to secure its bonds, notes and other obligations authorized by paragraph (b) of this subdivision and shall be held free and clear of any claim by any person arising out of or in connection with articles [twelve-A,] thirteen-A and twenty-one of the tax law. Without limiting the generality of the foregoing and without limiting the rights and duties of the commissioner of taxation and finance under articles [twelve-A,] thirteen-A and twenty-one of the tax law, no taxpayer, or any other person, including the state, shall have any right or claim against the authority or any of its bondholders to any moneys appropriated and transferred from the dedicated highway and bridge trust fund established by section eighty-nine-b of the state finance law for or in respect of a refund, rebate, credit, reimbursement or other repayment of taxes paid under such articles of the tax law.

S 19. Subparagraph 7 of paragraph j of subdivision 1 of section 54 of the state finance law is REPEALED.

S 20. Paragraph (a) of subdivision 3 of section 89-b of the state finance law, as amended by section 2 of part B of chapter 58 of the laws of 2012, is amended to read as follows:

(a) The special obligation reserve and payment account shall consist (i) of all moneys required to be deposited in the dedicated highway and bridge trust fund pursuant to the provisions of sections two hundred five, [two hundred eighty-nine-e,] three hundred one-j, five hundred fifteen and eleven hundred sixty-seven of the tax law, section four hundred one of the vehicle and traffic law, and section thirty-one of chapter fifty-six of the laws of nineteen hundred ninety-three, (ii) all fees, fines or penalties collected by the commissioner of transportation pursuant to section fifty-two, section three hundred twenty-six, and subdivisions five, eight and twelve of section eighty-eight of the highway law, subdivision fifteen of section three hundred eighty-five of the vehicle and traffic law, section two of the chapter of the laws of two thousand three that amended this paragraph, subdivision (d) of section three hundred four-a, paragraph one of subdivision (a) and subdivision (d) of section three hundred five, subdivision six-a of section four hundred fifteen and subdivision (g) of section twenty-one hundred twenty-five of the vehicle and traffic law, section fifteen of this chapter, excepting moneys deposited with the state on account of betterments performed pursuant to subdivision twenty-seven or subdivision thirty-five of section ten of the highway law, (iii) any moneys collected by the department of transportation for services provided pursuant to agreements entered into in accordance with section ninety-nine-r of the general municipal law, and (iv) any other moneys collected therefor or credited or transferred thereto from any other fund, account or source.

S 21. Paragraph (a) of subdivision 3 of section 89-b of the state finance law, as amended by section 3 of part B of chapter 58 of the laws of 2012, is amended to read as follows:

(a) The special obligation reserve and payment account shall consist (i) of all moneys required to be deposited in the dedicated highway and bridge trust fund pursuant to the provisions of sections [two hundred eighty-nine-e,] three hundred one-j, five hundred fifteen and eleven hundred sixty-seven of the tax law, section four hundred one of the

vehicle and traffic law, and section thirty-one of chapter fifty-six of the laws of nineteen hundred ninety-three, (ii) all fees, fines or penalties collected by the commissioner of transportation pursuant to section fifty-two, section three hundred twenty-six, and subdivisions five, eight and twelve of section eighty-eight of the highway law, subdivision fifteen of section three hundred eighty-five of the vehicle and traffic law, section fifteen of this chapter, excepting moneys deposited with the state on account of betterments performed pursuant to subdivision twenty-seven or subdivision thirty-five of section ten of the highway law, (iii) any moneys collected by the department of transportation for services provided pursuant to agreements entered into in accordance with section ninety-nine-r of the general municipal law, and (iv) any other moneys collected therefor or credited or transferred thereto from any other fund, account or source.

S 22. Subparagraph (C) of paragraph 1, paragraph 2 and subparagraph (B) of paragraph 4 of subdivision (b) of section 10 of the tax law, subparagraph (C) of paragraph 1 as amended by chapter 38 of the laws of 1997, paragraph 2 and subparagraph (B) of paragraph 4 as added by chapter 55 of the laws of 1992, are amended to read as follows:

(C) more than five million dollars of the total of the tax on [gasoline and similar motor fuel and the tax on] petroleum businesses imposed by and pursuant to the authority of [articles twelve-A and] ARTICLE thirteen-A of this chapter, then such taxpayer shall make payments of the taxes for which such dollar threshold was met by electronic funds transfer or certified check in accordance with the provisions of subdivision (c) of this section.

(2) Special transitional rule. Notwithstanding the provisions of paragraph one of this subdivision, for purposes of determining whether a taxpayer described in subparagraph (C) of such paragraph shall be required to initially participate in the program prescribed by this section, if such taxpayer was liable for more than three million seven hundred fifty thousand dollars in total article [twelve-A and] thirteen-A taxes during the September first, nineteen hundred ninety through May thirty-first, nineteen hundred ninety-one period, then such taxpayer shall make payments of tax by electronic funds transfer or certified check in accordance with the provisions of this section.

(B) If a taxpayer having liability described in subparagraph (B) or (C) of paragraph one of this subdivision can demonstrate to the satisfaction of the commissioner that (i) for the most recent six-month period, (I) the prepaid state and local sales and compensating use taxes on motor fuel and diesel motor fuel or (II) the total article [twelve-A and] thirteen-A taxes, as the case may be, properly payable by such taxpayer are less than fifty percent of such applicable taxes described in subclause (I) or (II), as the case may be, properly payable by such taxpayer for the comparable six-month period of the preceding year and (ii) the sum of such taxpayer's liability for such applicable taxes for the most recent six months together with the product of such applicable taxes properly payable by such taxpayer for the six-month period immediately preceding the six-month period referred to in clause (i) of this subparagraph multiplied by the percentage arrived at under such clause is less than two and one-half million dollars in amount, then such taxpayer shall not be required to participate in the program prescribed by this section for the remaining months of the period ending on the next May thirty-first and for the immediately succeeding twelve months.

S 23. Item (i) of subparagraph (C) of paragraph 1 and subparagraph (C) of paragraph 2 of subdivision (c) of section 10 of the tax law, item (i)

of subparagraph (C) of paragraph 1 as amended by chapter 38 of the laws of 1997 and subparagraph (C) of paragraph 2 as added by chapter 129 of the laws of 2000, are amended to read as follows:

(i) three-fourths of the total [article twelve-A and] article thirteen-A taxes properly payable by such taxpayer for the comparable month of the preceding year; or

(C) A taxpayer having liability described in subparagraph (C) of paragraph one of subdivision (b) of this section shall file the returns required under and pursuant to the authority of [articles twelve-A and] ARTICLE thirteen-A of this chapter and shall pay to the commissioner the amounts required to be paid with such returns, less the amounts remitted by electronic funds transfer or certified check under this section, for each of the periods for which such returns are filed under and pursuant to the authority of such articles.

S 24. Paragraphs 2 and 3 of subdivision (g) of section 10 of the tax law, paragraph 2 as amended by chapter 129 of the laws of 2000 and paragraph 3 as amended by chapter 38 of the laws of 1997, are amended to read as follows:

(2) Failure to pay or late payment. (A) A taxpayer required or approved to participate in the program prescribed by this section who fails to make a payment of tax by electronic funds transfer or certified check on or before the applicable due date prescribed by subdivision (c) of this section, or who fails to pay any tax required to be remitted on or before such applicable due date shall, in the case of the taxes imposed pursuant to article twenty-eight and pursuant to the authority of article twenty-nine of this chapter, be liable for penalty and interest as prescribed by subparagraphs (i) and (ii) of paragraph one of subdivision (a) of section eleven hundred forty-five of this chapter[, and in the case of the taxes imposed by and pursuant to the authority of articles twelve-A and thirteen-A of this chapter, be liable for penalty and interest as prescribed by paragraphs (a) and (b) of subdivision one of section two hundred eighty-nine-b of this chapter].

(B) Notwithstanding any provision of law to the contrary, if a taxpayer described in subparagraph (B) or (C) of paragraph one of subdivision (b) of this section fails to make a payment of tax by electronic funds transfer or certified check on or before the applicable due date prescribed by subdivision (c) of this section or fails to pay any tax required to be remitted on or before such applicable due date, as prescribed by subparagraph (A) of this paragraph, and also fails to pay or pay over to the commissioner the amounts required to be paid or paid over with the applicable return described in paragraph two of subdivision (c) of this section due the twentieth day of the following month, then penalty and interest for such additional failure, as provided by subparagraphs (i) and (ii) of paragraph one of subdivision (a) of section eleven hundred forty-five of this chapter [or paragraphs (a) and (b) of subdivision one of section two hundred eighty-nine-b of this chapter, as the case may be], shall be computed on the amount equal to the difference between the total of the amount of tax due or determined to be due with such return and the total of the amount of tax required to be paid by electronic funds transfer or certified check on or before the applicable due date prescribed by subdivision (c) of this section for the preceding month.

(3) Failure to file required returns. A taxpayer required or approved to participate in the program prescribed by this section who complies with the payment requirements of subdivision (c) of this section (including the payment of remaining liabilities described in paragraph

two of such subdivision), but who fails to file any return required pursuant to article [twelve-A,] thirteen-A, twenty-eight or twenty-nine of this chapter, as the case may be, for the period for which such payments were timely and fully paid or paid over, shall be liable for a penalty equal to five hundred dollars.

S 25. Subdivision (h) of section 10 of the tax law, as amended by chapter 38 of the laws of 1997, is amended to read as follows:

(h) Administration. Except as otherwise provided in this section, the provisions of part IV of article twenty-eight of this chapter shall apply to the administration of and procedures with respect to the provisions of this section relating to the taxes described by subparagraph (A) of paragraph one of subdivision (b) of this section, the provisions of section eleven hundred two of this chapter relating to the administration of and procedures with respect to such section shall apply to the administration of and procedures with respect to the provisions of this section relating to the taxes described by subparagraph (B) of such paragraph one[, and the provisions of article twelve-A relating to the administration of and procedures with respect to such article shall apply to the provisions of this section relating to the taxes described in subparagraph (C) of such paragraph one].

S 26. Subdivision twentieth and paragraph a of subdivision twenty-sixth of section 171 of the tax law, subdivision twentieth as amended by chapter 282 of the laws of 1986 and paragraph a of subdivision twenty-sixth as amended by section 1 of subpart D of part V-1 of chapter 57 of the laws of 2009, are amended to read as follows:

Twentieth. Have authority, of his own motion, to abate any small unpaid balance of an assessment of tax, or any liability in respect thereof, under articles [twelve-A,] eighteen, twenty or twenty-one of this chapter, if such commissioner determines under uniform rules prescribed by him that the administration and collection costs involved would not warrant collection of the amount due. He may also abate, of his own motion, the unpaid portion of the assessment of any of such taxes, or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subdivision shall be filed for any of such taxes.

a. Set the overpayment and underpayment rates of interest for purposes of articles [twelve-A,] eighteen, twenty and twenty-one of this chapter. Such rates shall be the overpayment and underpayment rates of interest set pursuant to subsection (e) of section one thousand ninety-six of this chapter, but the underpayment rate shall not be less than seven and one-half percent per annum. Any such rates set by such commissioner shall apply to taxes, or any portion thereof, which remain or become due or overpaid (other than overpayments under such article twenty and not including reimbursements, if any, under any of such articles) on or after the date on which such rates become effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period during which such rates are in effect. In computing the amount of any interest required to be paid under such articles by such commissioner or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily.

S 27. Subdivision 1 of section 171-a of the tax law, as amended by section 1 of part R of chapter 60 of the laws of 2004, is amended to read as follows:

1. All taxes, interest, penalties and fees collected or received by the commissioner or the commissioner's duly authorized agent under articles nine (except section one hundred eighty-two-a thereof and except as otherwise provided in section two hundred five thereof), nine-A, [twelve-A (except as otherwise provided in section two hundred eighty-four-d thereof),] thirteen, thirteen-A (except as otherwise provided in section three hundred twelve thereof), eighteen, nineteen, twenty (except as otherwise provided in section four hundred eighty-two thereof), twenty-one, twenty-two, twenty-six, twenty-six-B, twenty-eight (except as otherwise provided in section eleven hundred two or eleven hundred three thereof), twenty-eight-A, thirty-one (except as otherwise provided in section fourteen hundred twenty-one thereof), thirty-two, thirty-three and thirty-three-A of this chapter shall be deposited daily in one account with such responsible banks, banking houses or trust companies as may be designated by the comptroller, to the credit of the comptroller. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under such articles of this chapter, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds or reimbursements under such articles of this chapter and article ten thereof out of which amount the comptroller shall pay any refunds or reimbursements to which taxpayers shall be entitled under the provisions of such articles of this chapter and article ten thereof. The commissioner and the comptroller shall maintain a system of accounts showing the amount of revenue collected or received from each of the taxes imposed by such articles. The comptroller, after reserving the amount to pay such refunds or reimbursements, shall, on or before the tenth day of each month, pay into the state treasury to the credit of the general fund all revenue deposited under this section during the preceding calendar month and remaining to the comptroller's credit on the last day of such preceding month, (i) except that the comptroller shall pay to the state department of social services that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against past-due support pursuant to subdivision six of section one hundred seventy-one-c of this [chapter] ARTICLE, (ii) and except that the comptroller shall pay to the New York state higher education services corporation and the state university of New York or the city university of New York respectively that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against the amount of defaults in repayment of guaranteed student loans and state university loans or city university loans pursuant to subdivision five of section one hundred seventy-one-d and subdivision six of section one hundred seventy-one-e of this [chapter] ARTICLE, (iii) and except further that, notwithstanding any law, the comptroller shall credit to the revenue arrearage account, pursuant to section ninety-one-a of the state finance law, that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B, thirty-two or thirty-three of this chapter, and any interest thereon, which is certified to the comptroller by the commissioner as the amount to be credited against a past-due legally enforceable debt owed to a state agency pursuant to paragraph (a) of subdivision

six of section one hundred seventy-one-f of this article, provided, however, he shall credit to the special offset fiduciary account, pursuant to section ninety-one-c of the state finance law, any such amount creditable as a liability as set forth in paragraph (b) of subdivision six of section one hundred seventy-one-f of this article, (iv) and except further that the comptroller shall pay to the city of New York that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B, thirty-two, or thirty-three of this chapter and any interest thereon that is certified to the comptroller by the commissioner as the amount to be credited against city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-l of this article, (v) and except further that the comptroller shall pay to a non-obligated spouse that amount of overpayment of tax imposed by article twenty-two of this chapter and the interest on such amount which has been credited pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-l of this article and which is certified to the comptroller by the commissioner as the amount due such non-obligated spouse pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter; and (vi) the comptroller shall deduct a like amount which the comptroller shall pay into the treasury to the credit of the general fund from amounts subsequently payable to the department of social services, the state university of New York, the city university of New York, or the higher education services corporation, or the revenue arrearage account or special offset fiduciary account pursuant to section ninety-one-a or ninety-one-c of the state finance law, as the case may be, whichever had been credited the amount originally withheld from such overpayment, and (vii) with respect to amounts originally withheld from such overpayment pursuant to section one hundred seventy-one-l of this article and paid to the city of New York, the comptroller shall collect a like amount from the city of New York.

S 28. Paragraph (c) of subdivision 1 of section 183 of the tax law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

(c) Notwithstanding the provisions of paragraph (b) of this subdivision, during the period that the state tax on motor fuel, [computed without regard to any reimbursement allowable under paragraph (d) of subdivision three of section two hundred eighty-nine-c of this chapter,] exceeds two cents per gallon, the corporations, herein classed as "taxicab" and "omnibus," other than corporations described in subdivision nine of this section, shall be taxed under the provisions of article nine-a of this chapter and not under this section.

S 29. Paragraph (a) of subdivision 2 of section 184 of the tax law, as amended by chapter 485 of the laws of 1988, is amended to read as follows:

(a) During the period that the state tax on motor fuel, [computed without regard to any reimbursement allowable under paragraph (d) of subdivision three of section two hundred eighty-nine-c of this chapter,] exceeds two cents per gallon the corporations herein classed as "taxicab" and "omnibus", other than corporations described in paragraph (b) of this subdivision, shall be taxed under the provisions of article nine-a of [the tax law] THIS CHAPTER and as other business corporations are taxed and not upon their gross receipts.

S 30. Paragraphs 1 and 2 of subdivision (b) of section 300 of the tax law, paragraph 1 as amended by chapter 170 of the laws of 1994 and para-

graph 2 as amended by section 17 of part K of chapter 61 of the laws of 2011, are amended to read as follows:

(1) With respect to motor fuel, every corporation and unincorporated business (i) importing motor fuel or causing motor fuel to be imported into the state for use, distribution, storage or sale in the state, or (ii) producing, refining, manufacturing or compounding motor fuel in the state. Provided, however, a corporation or unincorporated business which has been issued a liquefied petroleum gas fuel permit under section [two hundred eighty-three-c of this chapter] ONE HUNDRED NINETY-NINE-S OF THE GENERAL BUSINESS LAW and which does not import motor fuel other than liquefied petroleum gas fuel or cause motor fuel other than liquefied petroleum gas fuel to be imported into the state for use, distribution, storage or sale in the state or produce, refine, manufacture or compound motor fuel other than liquefied petroleum gas fuel in the state shall not be considered a petroleum business with respect to motor fuel within the meaning of this paragraph. Motor fuel brought into this state in the ordinary fuel tank connecting with the engine of a motor vehicle, airplane, or other conveyance, but not a vessel (other than a recreational motor boat or a commercial fishing vessel, as defined in subdivision (j) of this section, if the motor fuel imported into and consumed in this state is used to operate such vessel while it is engaged in the harvesting of fish for sale), propelled by the use of such motor fuel and to be used only in the operation thereof, shall not be deemed imported within the meaning of this article, if not removed from such tank except as used in the propulsion of such engine.

(2) With respect to diesel motor fuel, every corporation and unincorporated business (i) importing diesel motor fuel or causing diesel motor fuel to be imported into the state for use, distribution, storage or sale in the state, (ii) producing, refining, manufacturing or compounding diesel motor fuel within the state, (iii) making a sale or use of diesel motor fuel in the state, other than a retail sale not in bulk or self-use of diesel motor fuel which has been the subject of a retail sale to such corporation or unincorporated business, or (iv) registered by the department as a "distributor of kero-jet fuel only" [pursuant to the provisions of subdivision two of section two hundred eighty-two-a of this chapter]. Diesel motor fuel brought into this state in the ordinary fuel tank connecting with the engine of a motor vehicle, airplane or other conveyance, but not a vessel (other than a recreational motor boat or a commercial fishing vessel as defined in subdivision (j) of this section if the diesel motor fuel imported into and consumed in this state is used to operate such vessel while it is engaged in the harvesting of fish for sale), propelled by the use of such diesel motor fuel and to be used only in the operation thereof, shall not be deemed imported within the meaning of this article, if not removed from such tank except as used in the propulsion of such engine.

S 31. Subdivisions (c) and (d) of section 300 of the tax law, subdivision (c) as amended by section 17 of part K of chapter 61 of the laws of 2011 and subdivision (d) as added by chapter 190 of the laws of 1990, are amended to read as follows:

(c) The terms (1) "diesel motor fuel" means such term as defined in subdivision [fourteen] TEN of section [two hundred eighty-two of this chapter] ONE HUNDRED NINETY-NINE-O OF THE GENERAL BUSINESS LAW, and

(2) "highway diesel motor fuel" means [such term as defined in subdivision sixteen-a of section two hundred eighty-two of this chapter] ANY DIESEL MOTOR FUEL WHICH IS NOT NON-HIGHWAY DIESEL MOTOR FUEL, and

(3) "non-highway diesel motor fuel" means [such term as defined in subdivision sixteen of section two hundred eighty-two of this chapter] ANY DIESEL MOTOR FUEL THAT IS DESIGNATED FOR USE OTHER THAN ON A PUBLIC HIGHWAY (EXCEPT FOR THE USE OF THE PUBLIC HIGHWAY BY FARMERS TO REACH ADJACENT LANDS), AND IS DYED DIESEL MOTOR FUEL, MEANING DIESEL MOTOR FUEL WHICH HAS BEEN DYED IN ACCORDANCE WITH AND FOR THE PURPOSE OF COMPLYING WITH THE PROVISIONS OF 26 USC S 4082(A) AND THE REGULATIONS THEREUNDER, AS MAY BE AMENDED FROM TIME TO TIME.

(4) As used in this article, references to persons or petroleum businesses registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW as distributors of diesel motor fuel shall include all such persons or petroleum businesses registered under such article as distributors of diesel motor fuel and persons or petroleum businesses operating under valid limited registrations relating to persons or petroleum businesses making retail sales of diesel motor fuel to consumers solely for [the purposes described in subparagraph (i) of paragraph (b) of subdivision three of section two hundred eighty-two-a of this chapter] CONSUMPTION OTHER THAN ON THE PUBLIC HIGHWAYS OF THIS STATE (EXCEPT FOR THE USE OF THE PUBLIC HIGHWAY BY FARMERS TO REACH ADJACENT FARMLANDS), but such references shall not include persons and petroleum businesses registered as "distributors of kero-jet fuel only" [pursuant to the provisions of subdivision two of section two hundred eighty-two-a of this chapter].

(d) The term "motor fuel" means such term as defined in subdivision two of section [two hundred eighty-two of this chapter] ONE HUNDRED NINETY-NINE-O OF THE GENERAL BUSINESS LAW.

S 32. Subdivisions (o), (p), (q) and (r) of section 300 of the tax law, as added by section 3 of part W-1 of chapter 109 of the laws of 2006, are amended to read as follows:

(o) The term "E85" [shall have the same meaning as in subdivision twenty-two of section two hundred eighty-two of this chapter] MEANS A FUEL BLEND CONSISTING OF ETHANOL AND MOTOR FUEL, WHICH MEETS THE ASTM INTERNATIONAL ACTIVE STANDARD D5798 FOR FUEL ETHANOL.

(p) The term "B20" [shall have the same meaning as in subdivision twenty-three of section two hundred eighty-two of this chapter] MEANS A MIXTURE CONSISTING BY VOLUME OF TWENTY PERCENT BIODIESEL AND THE REMAINDER OF WHICH IS DIESEL MOTOR FUEL. "BIODIESEL" SHALL MEAN EITHER "QUALIFIED BIODIESEL" OR "UNQUALIFIED BIODIESEL". "QUALIFIED BIODIESEL" MEANS A DIESEL MOTOR FUEL SUBSTITUTE PRODUCED FROM NONPETROLEUM RENEWABLE RESOURCES THAT MEETS THE REGISTRATION REQUIREMENTS FOR FUELS AND FUEL ADDITIVES ESTABLISHED BY THE ENVIRONMENTAL PROTECTION AGENCY UNDER SECTION 211 OF THE CLEAN AIR ACT (42 U.S.C. 7545) AND THAT MEETS THE ASTM INTERNATIONAL ACTIVE STANDARD D6751 FOR BIODIESEL FUEL. "UNQUALIFIED BIODIESEL" MEANS A DIESEL MOTOR FUEL SUBSTITUTE PRODUCED FROM NONPETROLEUM RENEWABLE RESOURCES THAT DOES NOT MEET THE ASTM INTERNATIONAL ACTIVE STANDARD D6751 FOR BIODIESEL FUEL.

(q) The term "CNG" [shall have the same meaning as in subdivision twenty-four of section two hundred eighty-two of this chapter] MEANS FUEL COMPRISED PRIMARILY OF METHANE, STORED IN EITHER A GASEOUS OR LIQUID STATE, SUITABLE FOR USE AND CONSUMPTION IN THE ENGINE OF A MOTOR VEHICLE.

(r) The term "hydrogen" [shall have the same meaning as in subdivision twenty-five of section two hundred eighty-two of this chapter] MEANS FUEL COMPRISED PRIMARILY OF MOLECULAR HYDROGEN, STORED IN EITHER A GASEOUS OR LIQUID STATE, SUITABLE FOR USE AND CONSUMPTION IN THE ENGINE OF A MOTOR VEHICLE.

S 33. Subdivision (l) of section 301-a of the tax law, as amended by section 5 of part K of chapter 61 of the laws of 2005, is amended to read as follows:

(l) Taxes imposed on qualified reservations. In furtherance of the joint administration of [the taxes imposed by article twelve-A of this chapter and] the taxes imposed by this article, the provisions of FORMER section two hundred eighty-four-e of this chapter concerning the sales of motor fuel and Diesel motor fuel on qualified Indian reservations shall apply to the payment and pass-through of the petroleum business tax in the same manner and with the same force and effect as if the provisions of such section had been incorporated in full into this article, except to the extent that any such provision is either inconsistent with a provision of this article or not relevant thereto.

S 34. Paragraphs 1, 2, 3, 6 and 7 of subdivision (a) of section 301-b of the tax law, paragraphs 1, 2 and 3 as added by chapter 190 of the laws of 1990 and paragraphs 6 and 7 as added by section 4 of part W-1 of chapter 109 of the laws of 2006, are amended to read as follows:

(1) Kerosene sold or used by a petroleum business which is registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW as a distributor of diesel motor fuel so long as (i) such product has not been blended or mixed with any other product constituting diesel motor fuel or motor fuel or a residual petroleum product and (ii) such product is not used by the petroleum business as fuel to operate a motor vehicle or sold by such petroleum business to a consumer for use as fuel to operate a motor vehicle.

(2) Kero-jet fuel (i) sold by a petroleum business which is registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW as a distributor of diesel motor fuel to a consumer for use exclusively as jet aircraft fuel or to a petroleum business registered under such article [twelve-A] ELEVEN-C OF THE GENERAL BUSINESS LAW as a "distributor of kero-jet fuel only" where such fixed base operator is engaged solely in making or offering to make retail sales not in bulk of kero-jet fuel directly into the fuel tank of an airplane for the purpose of operating such airplane, (ii) used by a petroleum business, registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW as a distributor of diesel motor fuel, exclusively as jet aircraft fuel, or (iii) sold at retail not in bulk by a petroleum business registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW as a "distributor of kero-jet fuel only" where such fuel is delivered directly into the fuel tank of a jet airplane for use in the operation of such airplane.

(3) Aviation gasoline, meeting the specifications set forth in American Standard Testing Material Specification D910 or Military Specification MIL-G-5572, which is imported or caused to be imported into this state by a petroleum business which is registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW as a distributor of motor fuel or produced, refined, manufactured or compounded in this state by such a petroleum business.

(6) E85 imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW, as a distributor of motor fuel, and then sold by such petroleum business and delivered to a filling station and placed in a storage tank of such filling station for such E85 to be dispensed directly into a motor vehicle for use in the operation of such vehicle.

(7)(i) Partial B20 exemption. B20 imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW, as a distributor of diesel motor fuel, and then sold by such petroleum business.

(ii) Calculation of partial exemption. The amount of the partial exemption under this paragraph shall be determined by multiplying the quantity of B20 times twenty percent of the applicable taxes otherwise imposed by this article on such fuel.

S 35. The opening paragraph of paragraph 1 and the opening paragraph of paragraph 2 of subdivision (b) of section 301-b of the tax law, the opening paragraph of paragraph 1 as added by chapter 190 of the laws of 1990 and the opening paragraph of paragraph 2 as amended by section 21 of part K of chapter 61 of the laws of 2011, are amended to read as follows:

Motor fuel imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW, as a distributor of motor fuel, where

Highway diesel motor fuel imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW, as a distributor of diesel motor fuel, which is sold by such petroleum business to a purchaser who then exports such highway diesel motor fuel from this state for sale or use outside the state where

S 36. Paragraphs 1, 2 and 3 of subdivision (c) and paragraphs 1 and 2 of subdivision (d) of section 301-b of the tax law, paragraph 1 of subdivision (c) as added by chapter 190 of the laws of 1990, paragraphs 2 and 3 of subdivision (c) and paragraphs 1 and 2 of subdivision (d) as amended by section 21 of part K of chapter 61 of the laws of 2011, are amended to read as follows:

(1) Motor fuel imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW, as a distributor of motor fuel, and then sold by such petroleum business to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where such motor fuel is used by such organization for its own use or consumption.

(2) Highway diesel motor fuel imported or caused to be imported into this state or produced, refined, manufactured or compounded by a petroleum business registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW, as a distributor of diesel motor fuel, and then sold by such petroleum business to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where such highway diesel motor fuel is used by such organization for its own use or consumption.

(3) Non-highway Diesel motor fuel sold by a petroleum business registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW as a distributor of diesel motor fuel to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where such non-highway diesel motor fuel is used by such organization for its own use or consumption.

(1) Total residential heating exemption. Non-highway diesel motor fuel sold by a petroleum business registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW as a distributor of diesel motor fuel or residual petroleum product sold by a petroleum business registered under this article as a residual petroleum product business to the consumer exclusively for residential heating purposes only if such non-highway diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel.

(2) Partial non-residential heating exemption. (A) Non-highway diesel motor fuel sold by a petroleum business registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW as a distributor of diesel motor fuel or residual petroleum product sold by a petroleum business registered under this article as a residual petroleum product business to the consumer exclusively for heating, other than residential heating purposes only if such non-highway diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel.

(B) Calculation of partial exemption. The partial exemption under this paragraph shall be determined by multiplying the quantity of non-highway diesel motor fuel and residual petroleum product eligible for the exemption times the sum of the then current rate of the supplemental tax imposed by section three hundred one-j of this article and forty-six percent of the then current rate of the tax imposed by section three hundred one-a of this article, with respect to the specific non-highway diesel motor fuel or residual petroleum product rate, as the case may be.

S 37. Subdivision (e) of section 301-b of the tax law, as amended by section 4 of part E of chapter 59 of the laws of 2012, is amended to read as follows:

(e) Sales of qualified biodiesel, non-highway diesel motor fuel and residual petroleum product to registered distributors of diesel motor fuel and registered residual petroleum product businesses.

(1) Qualified biodiesel and non-highway Diesel motor fuel sold by a person registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW as a distributor of diesel motor fuel to a person registered under such article [twelve-A] ELEVEN-C OF THE GENERAL BUSINESS LAW as a distributor of diesel motor fuel where such sale is not a retail sale or a sale that involves a delivery at a filling station or into a repository equipped with a hose or other apparatus by which such qualified biodiesel or non-highway Diesel motor fuel can be dispensed into the fuel tank of a motor vehicle.

(2) Residual petroleum product sold by a person registered under this article as a residual petroleum product business to a person registered under this article as a residual petroleum product business where such sale is not a retail sale. Provided, however, that the commissioner may require such documentary proof to qualify for any exemption provided in this section as the commissioner deems appropriate[, including the expansion of any certifications required pursuant to section two hundred eighty-five-a or two hundred eighty-five-b of this chapter to cover the taxes imposed by this article].

(3) "Qualified biodiesel" means [such term as defined in subdivision twenty-three of section two hundred eighty-two of this chapter] A DIESEL

MOTOR FUEL SUBSTITUTE PRODUCED FROM NONPETROLEUM RENEWABLE RESOURCES THAT MEETS THE REGISTRATION REQUIREMENTS FOR FUELS AND FUEL ADDITIVES ESTABLISHED BY THE ENVIRONMENTAL PROTECTION AGENCY UNDER SECTION 211 OF THE CLEAN AIR ACT (42 U.S.C. 7545) AND THAT MEETS THE ASTM INTERNATIONAL ACTIVE STANDARD D6751 FOR BIODIESEL FUEL.

S 38. Paragraph 2 of subdivision (b) and paragraph 3 of subdivision (d) of section 301-e of the tax law, paragraph 2 of subdivision (b) as added by chapter 2 of the laws of 1995 and paragraph 3 of subdivision (d) as added by chapter 309 of the laws of 1996, are amended to read as follows:

(2) Partial credit or refund with respect to aviation gasoline. A distributor of motor fuel shall be entitled to a partial credit or refund of the tax paid under this section on aviation gasoline sold to a fixed base operator registered under article [twelve-a of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW as a "retail seller of aviation gasoline" under the circumstances described in FORMER subparagraph (i) of paragraph (b) of subdivision one-a of section two hundred eighty-nine-c of this chapter. Provided, that in order to qualify for the credit or refund the amount of tax claimed as a credit or refund shall have been paid or assumed on such sale by such distributor and shall have not been passed on to such "retail seller of aviation gasoline". A distributor of motor fuel, also registered as a "retail seller of aviation gasoline", shall be entitled to a partial credit or refund for aviation gasoline delivered and stored at its fixed base operations premises in such subparagraph (i), and such credit or refund shall accrue at the time the fuel is so delivered and placed in such storage facility. An airline which is registered as a distributor of motor fuel and which imports aviation gasoline into this state for use in its airplanes, where delivery and storage take place as described in such subparagraph (i), shall also be allowed such partial credit or refund of tax on such fuel so imported and used exclusively in the operation of its airplanes. An aviation fuel business, taxed as such, by reason of importation in the fuel tank of an airplane shall also be allowed such partial credit or refund for aviation gasoline consumed in this state. The amount of the partial credit or refund allowable under this subparagraph shall be the excess of tax which exceeds five and two-tenths cents per gallon. Provided, that such five and two-tenths cents rate used to compute this partial credit and refund shall be adjusted at the same time as the rate of the aviation gasoline component imposed by paragraph one of this subdivision, and the methods of making such adjustments to this partial credit and refund shall be the same as the method used for such rates.

(3) Any purchaser of aviation gasoline in this state who consumes such aviation gasoline exclusively as aviation fuel in the operation of its aircraft shall be entitled to a partial reimbursement of the tax imposed by this section with respect to aviation gasoline which was purchased by such purchaser and upon which such purchaser paid or absorbed the full amount of the tax imposed by this section (where no partial credit or refund under paragraph two of subdivision (b) of this section was provided with respect to such aviation gasoline) where: (i) such purchaser purchases the aviation gasoline from a fixed base operator which qualifies as a retail seller of aviation gasoline but is not so registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW, or (ii) such purchaser purchases the aviation gasoline in bulk from a distributor of motor fuel registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW where such distributor delivers such aviation gasoline directly into a

bulk storage facility of the purchaser which is at a fixed and permanent place at an airport within this state and is used solely to fill the fuel tanks of its aircraft for use in the operations thereof. The amount of the reimbursement allowable under this paragraph shall be equal to the amount of the partial credit or refund allowable under paragraph two of subdivision (b) of this section.

S 39. Subdivisions (b), (c) and (d) of section 301-c of the tax law, subdivision (b) as amended and subdivisions (c) and (d) as added by chapter 330 of the laws of 1991, are amended to read as follows:

(b) Sales to New York state and the federal government. Motor fuel and diesel motor fuel purchased in this state and sold by such purchaser in this state to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where (i) such motor fuel or diesel motor fuel is for such organization's own use or consumption, (ii) the tax imposed pursuant to this article has been paid with respect to such motor fuel or diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser and, (iii) such purchaser possesses documentary proof satisfactory to the commissioner of taxation and finance evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner of taxation and finance shall require such documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate[, including the expansion of any certification required pursuant to section two hundred eighty-five-a or two hundred eighty-five-b of this chapter to cover the taxes imposed pursuant to this article].

(c) Motor fuel and diesel motor fuel used by certain omnibus carriers. Motor fuel and diesel motor fuel purchased in this state by an omnibus carrier and consumed by such omnibus carrier in the operation of an omnibus (i) in local transit service in this state[, as described under paragraph (d) of subdivision three of section two hundred eighty-nine-c of this chapter], pursuant to a certificate of public convenience and necessity issued by the commissioner of transportation of this state or by the interstate commerce commission of the United States or pursuant to a contract, franchise or consent between such carrier and a city having a population of more than one million inhabitants, or any agency of such city, or (ii) in the transportation of school children in the state under a contract made pursuant to the provisions of the education law. Provided, however, the reimbursement under this subdivision is available only where the tax imposed pursuant to this article has been paid with respect to such motor fuel or diesel motor fuel and the entire amount of such tax has been absorbed by such omnibus carrier, where such omnibus carrier possesses documentary proof satisfactory to the commissioner of taxation and finance evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article[, and where, in the case of the reimbursement under clause (i) of this subdivision, such motor fuel or diesel motor fuel is included in the gallonage upon which reimbursement is calculated under paragraph (d) of subdivision three of section two hundred eighty-nine-c of this chapter and, in the case of the reimbursement under clause (ii) of this subdivision, such motor fuel or diesel motor fuel is included in the gallonage upon which reimbursement is calculated under paragraph (b) of such subdivision three of section two hundred eighty-nine-c].

(d) Motor fuel and diesel motor fuel used by certain nonpublic school operators. Motor fuel and diesel motor fuel purchased in this state by a nonpublic school operator, [as defined in subdivision eleven of section

two hundred eighty-two of this chapter] MEANING ANY NONPUBLIC ELEMENTARY OR SECONDARY SCHOOL WHICH OWNS OR LEASES AND OPERATES ANY VEHICLE SOLELY AND EXCLUSIVELY FOR ITS PURPOSES, and consumed by such nonpublic school operator exclusively in educational related activities. Provided, however, the reimbursement under this subdivision is available only where the tax imposed pursuant to this article has been paid with respect to such motor fuel or diesel motor fuel and the entire amount of such tax has been absorbed by such nonpublic school operator, where such nonpublic school operator possesses documentary proof satisfactory to the commissioner of taxation and finance evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article[, and where such motor fuel or diesel motor fuel is included in the gallonage upon which the reimbursement is calculated under paragraph (e) of subdivision three of section two hundred eighty-nine-c of this chapter].

S 40. Section 302 of the tax law, as added by chapter 190 of the laws of 1990, subdivision (b) as amended by section 31 of part K of chapter 61 of the laws of 2011, subdivision (c) as further amended by section 104 of part A of chapter 62 of the laws of 2011, subdivision (d) as amended and subdivision (e) as added by chapter 57 of the laws of 1993, is amended to read as follows:

S 302. Registration of petroleum businesses. (a) Registration required. Each petroleum business with respect to motor fuel must be registered with the department of taxation and finance as a distributor of motor fuel under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW. Each petroleum business with respect to diesel motor fuel must be registered with the department of taxation and finance as a distributor of diesel motor fuel under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW or, where applicable, as a "distributor of kero-jet fuel only" under such article. Each petroleum business with respect to residual petroleum product must be registered as a residual petroleum product business under subdivision (b) of this section. No petroleum business unless so registered, shall make any sale, transfer, use or other disposition of motor fuel, diesel motor fuel or residual petroleum product within the state, except a sale, transfer, use or other disposition, if any, as to which the state cannot impose such condition by reason of the United States constitution and of laws of the United States enacted pursuant thereto. No person, unless registered as a residual petroleum product business under this section, shall (i) import or cause residual petroleum product to be imported into this state, (ii) produce, refine, manufacture or compound residual petroleum product within the state, or (iii) make a sale or use of residual petroleum product in the state other than a self-use of residual petroleum product which has been the subject of a retail sale to such person.

(b) Residual petroleum product business. The department, upon the application of a corporation or unincorporated business, shall register such corporation or unincorporated business as a residual petroleum product business except that the commissioner may refuse to register an applicant for any of the grounds specified in subdivision two or five of section [two hundred eighty-three of this chapter] ONE HUNDRED NINETY-NINE-P OF THE GENERAL BUSINESS LAW or in subdivision (d) of this section. The application shall be in such form and contain such information as the commissioner shall prescribe. All of the provisions of subdivisions two, four, five, six, seven, eight, nine and ten of section [two hundred eighty-three of this chapter] ONE HUNDRED NINETY-NINE-P OF THE GENERAL BUSINESS LAW relating to registration of distributors shall

be applicable to the registration of residual petroleum product businesses under this section with the same force and effect as if the language of those subdivisions had been incorporated in full in this section and had expressly referred to the registration of residual petroleum product businesses and the tax imposed by this article, with such modification as may be necessary in order to adapt the language of such provisions to the provisions of this article, provided, specifically, that the term "distributor" shall be read as "residual petroleum product business" and the term "motor fuel" shall be read as "residual petroleum product". Provided, however, that if the commissioner is satisfied that the requirements of such provisions for registration are not necessary in order to protect tax revenues, the commissioner may limit or modify such requirements with respect to corporations or unincorporated businesses not required to be registered as distributors of motor fuel or diesel motor fuel.

(c) Bond or other security. The commissioner may require a petroleum business to file with it a bond issued by a surety company approved by the superintendent of financial services as to solvency and responsibility and authorized to transact business in this state or other security acceptable to the commissioner, in such amount as the commissioner may fix in an amount determined in accordance with rules and regulations prescribed by the commissioner, to secure the payment of any sums due from such petroleum business pursuant to this article. The commissioner may require that such a bond or other security be filed before a petroleum business is registered, and the amount thereof may be increased at any time when in the commissioner's judgment the same is necessary as a protection to the revenues under this article. If securities are deposited as security under this subdivision, such securities shall be kept in the joint custody of the comptroller and the commissioner of taxation and finance. Such securities may be sold by the commissioner if it becomes necessary so to do in order to recover any sums due from such petroleum business pursuant to this article, but no such sale shall be had until after such petroleum business shall have had opportunity to litigate the validity of any tax if it elects so to do. Upon any such sale the surplus, if any, above the sums due under this article shall be returned to such petroleum business. All of the provisions of paragraph (b) of subdivision six of section [two hundred eighty-three of this chapter] ONE HUNDRED NINETY-NINE-P OF THE GENERAL BUSINESS LAW relating to increasing the amount of the bond or other security required to be filed pursuant to article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW shall be applicable to bonds or other security required to be filed pursuant to this subdivision.

(d) Refusal to register. [For the purposes of determining whether to refuse an application for registration under article twelve-A of this chapter as a distributor of motor fuel, diesel motor fuel or kero-jet fuel only or under this section as a residual petroleum product business, the references in subdivision two of section two hundred eighty-three of this chapter to employees or shareholders under a duty to file a return under or pursuant to the authority of article twelve-A of this chapter or pay the taxes imposed by or pursuant to the authority of such article on behalf of the applicant or another person shall be deemed to also include an employee under a duty to file a return or pay taxes under or pursuant to the authority of this article on behalf of such applicant or other person.] In addition to the grounds specified in section [two hundred eighty-three of this chapter] ONE HUNDRED NINETY-NINE-P OF THE GENERAL BUSINESS LAW, the commissioner may refuse

to register an applicant as a distributor of motor fuel, diesel motor fuel or kero-jet fuel only or as a residual petroleum product business where the commissioner ascertains that the applicant, an officer, director or partner of the applicant, a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or an employee or shareholder of such applicant under a duty to file a return under or pursuant to the authority of this article [or article twelve-A of this chapter] or to pay the taxes imposed by or pursuant to the authority of this article [or article twelve-A of this chapter] on behalf of the applicant, (1) has committed any of the acts or omissions which are, or was convicted as, specified in subdivision (e) of this section within the preceding five years, or (2) was an officer, director or partner of another person, or who directly or indirectly owned more than ten percent of the shares of stock of another person (where such other person is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or who was an employee or shareholder of another person under a duty to file a return under or pursuant to the authority of this article [or article twelve-A of this chapter] or pay the taxes imposed by or pursuant to the authority of this article [or article twelve-A of this chapter] on behalf of such other person at the time such other person committed any of the acts or omissions which are, or was convicted as, specified in subdivision (e) of this section within the preceding five years.

(e) Cancellation or suspension of registration. The grounds for a cancellation or suspension of a registration under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW as a distributor of motor fuel, diesel motor fuel or kero-jet fuel only or under this section as a residual petroleum product business are those grounds specified in section [two hundred eighty-three of this chapter] ONE HUNDRED NINETY-NINE-P OF THE GENERAL BUSINESS LAW and, in addition to such grounds, the following grounds relating to this article shall apply:

(1) A registration as a distributor of motor fuel, diesel motor fuel or kero-jet fuel only or as a residual petroleum product business may be cancelled or suspended if the commissioner determines that a registrant or an officer, director or partner of the registrant, a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such registrant (where such registrant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or an employee or shareholder of such registrant under a duty to file a return under or pursuant to the authority of this article [or article twelve-A of this chapter] or to pay the taxes imposed by or pursuant to the authority of this article [or article twelve-A of this chapter] on behalf of the registrant (A) fails to file or maintain in full force and effect a bond or other security when required pursuant to subdivision (c) of this section or when the amount thereof is increased,

(B) fails to comply with any of the provisions of this article or any rule or regulation adopted pursuant to this article by the commissioner,

(C) knowingly aids and abets another person in violating any of the provisions of this article or any rule or regulation adopted pursuant to this article by the commissioner,

(D) transfers its registration as a petroleum business without the prior written approval of the commissioner,

(E) with respect to a petroleum business which is a corporation, has been dissolved pursuant to section two hundred three-a of this chapter and subdivision (d) of section three hundred ten of this article,

(F) commits fraud or deceit in his or its operations as a petroleum business or has committed fraud or deceit in procuring his or its registration,

(G) has impersonated any person represented to be a petroleum business under this article but not in fact registered as a distributor of motor fuel, diesel motor fuel or kero-jet fuel only or a residual petroleum product business, or

(H) has knowingly aided and abetted the distribution of motor fuel, diesel motor fuel or residual petroleum product by corporation or unincorporated business which such registrant or such other person knows (i) has not been registered by the commissioner as a distributor of motor fuel, diesel motor fuel or kero-jet fuel only or as a residual petroleum product business and (ii) is a petroleum business pursuant to the terms of subdivision (b) of section three hundred of this article.

(2) A registration as a distributor of motor fuel, diesel motor fuel or kero-jet fuel only or as a residual petroleum product business may be cancelled or suspended if the commissioner determines that a registrant or an officer, director or partner of the registrant, a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such registrant (where such registrant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or an employee or shareholder of such registrant under a duty to file a return under or pursuant to the authority of this article [or article twelve-A of this chapter] on behalf of the registrant, was an officer, director or partner of another person or was a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of another person (where such other person is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or was an employee or shareholder of another person under a duty to file a return under or pursuant to the authority of this article [or article twelve-A of this chapter] or to pay the taxes imposed by or pursuant to the authority of this article [or article twelve-A of this chapter] on behalf of such other person at the time such other person committed any of the acts specified in paragraph one of this subdivision within the preceding five years.

(f) Cancellation or suspension of registration prior to a hearing. The grounds for cancelling or suspending a registration under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW as a distributor of motor fuel, diesel motor fuel or kero-jet fuel only or under this section as a residual petroleum product business prior to a hearing are those specified in subdivision five of section [two hundred eighty-three of this chapter] ONE HUNDRED NINETY-NINE-P OF THE GENERAL BUSINESS LAW and, in addition to such grounds, the following grounds relating to this article shall apply:

(1) the failure to file a return within ten days of the date prescribed for filing a return under this article or nonpayment of any tax due pursuant to this article if the registrant shall have failed to file such return or pay such taxes within ten days after the date the demand therefor is sent by registered or certified mail to the address of the distributor or residual petroleum business given in its application, or an address substituted therefor as provided in subdivision five of section [two hundred eighty-three of this chapter] ONE HUNDRED NINETY-NINE-P OF THE GENERAL BUSINESS LAW,

(2) the failure to continue to maintain in full force and effect at all times the bond or other security required to be filed pursuant to subdivision (c) of this section, provided, however, that if a surety bond is cancelled prior to expiration, the commissioner may after considering all the relevant circumstances make such other arrangements, and may require the filing of such other bond or other security as it deems appropriate,

(3) the transfer of a registration as a residual petroleum business without the prior written approval of the commissioner, or

(4) with respect to a petroleum business which is a corporation, the dissolution or annulment of such corporation pursuant to section three hundred ten of this article.

S 41. Subdivisions (a) and (i) of section 308 of the tax law, subdivision (a) as amended by chapter 2 of the laws of 1995 and subdivision (i) as amended by chapter 190 of the laws of 1990, are amended to read as follows:

(a) General.--Every petroleum business subject to tax under this article shall monthly, on or before the twentieth day following the close of its taxable month, file a return which shall state (i) the number of gallons of motor fuel imported or caused to be imported into this state for use, distribution, storage or sale in the state or produced, refined, manufactured or compounded in the state during the preceding calendar month, (ii) the number of gallons of diesel motor fuel sold or used or, with respect to gallonage which prior thereto has not been included in the measure of the tax imposed by this article, delivered by the petroleum business to a filling station or into the fuel tank connecting with the engine of a motor vehicle for use in the operation thereof during the preceding calendar month, (iii) the number of gallons of, and the resultant product produced, manufactured or blended, using diesel motor fuel as a component of such resultant product and the sales of such resultant product, and (iv) the number of gallons of residual petroleum product sold or used in this state and the sales of such residual petroleum product, for the period covered by such return. A residual petroleum business shall include in its reports the number of gallons of residual petroleum product imported into the state or purchased in this state, the number of gallons of diesel motor fuel purchased in this state and the number of gallons of, and the resultant product produced, manufactured or blended by such petroleum business, using diesel motor fuel as a component of such resultant product. The commissioner of taxation and finance may permit the filing of a return on a quarterly basis in the case of a petroleum business which only makes sales of diesel motor fuel solely for residential heating purposes and which is registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW as a diesel motor fuel distributor under a limited registration applicable only to the importation, sale and distribution of diesel motor fuel for [the purposes described in subparagraph (i) of paragraph (b) of subdivision three of section two hundred eighty-two-a of this chapter] CONSUMPTION OTHER THAN ON THE PUBLIC HIGHWAYS OF THIS STATE (EXCEPT FOR THE USE OF THE PUBLIC HIGHWAY BY FARMERS TO REACH ADJACENT FARMLANDS) or in the case of a petroleum business registered as a "distributor of kero-jet fuel only" [pursuant to the provisions of subdivision two of section two hundred eighty-two-a of this chapter]. In the case of such returns permitted to be filed on a quarterly basis, the adjustments to the rates of tax then in effect, as provided for in sections three hundred one-a and three hundred one-e of this article, which take effect on the first day of January of each year

shall, with respect to such quarterly return, take effect on the first day of the next succeeding March. Returns shall be filed with the commissioner in a form prescribed by the commissioner, setting forth such other information as the commissioner may prescribe. Every petroleum business shall also transmit such other returns and such facts and information as the commissioner may require in the administration of this article. Every petroleum business which is a corporation subject to tax under this article and which ceases to exercise its franchise or to be subject to the tax imposed by this article shall transmit to the commissioner a return on the date of such cessation, or at such other time as the commissioner may require, covering each month or period for which no return was theretofore filed. The commissioner may, if the commissioner deems it necessary in order to insure the payment of the tax imposed by this article, require returns to be made at such times and covering such periods as the commissioner may deem necessary. Notwithstanding the foregoing provisions of this subdivision, the commissioner may require any corporation or unincorporated business which engages in transactions involving petroleum or similar products, including aviation fuels, to file a monthly return, which shall contain any data specified by him, regardless of whether such corporation or unincorporated business is subject to tax under this article.

(i) Returns and records.--Returns shall be preserved for five years, and thereafter until the commissioner of taxation and finance orders them to be destroyed. Every petroleum business subject to tax under this article shall keep the records and documents referred to in subdivision one of section [two hundred eighty-six of this chapter] ONE HUNDRED NINETY-NINE-U OF THE GENERAL BUSINESS LAW and such other records of its business in such form as the commissioner may require; moreover, the records required of transporters and storers under such subdivision shall apply with the same force and effect to transporters and storers of any product included in the measure of the tax imposed by this article. All such records shall be preserved for a period of three years, except that the commissioner may consent to their destruction within that period or may require that they be kept longer.

S 42. Subdivisions (a) and (f) of section 314 of the tax law, subdivision (a) as amended by chapter 190 of the laws of 1990 and subdivision (f) as added by chapter 577 of the laws of 1997, are amended to read as follows:

(a) General.--Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any tax commissioner, any officer or employee of the department of taxation and finance, or any person who, pursuant to this section, is permitted to inspect any return, or to whom any information contained in any return is furnished, or any person engaged or retained by such department on an independent contract basis, or any person who in any manner may acquire knowledge of the contents of a return filed pursuant to this article, to divulge or make known in any manner the amount of income or gross receipts or any particulars set forth or disclosed in any return under this article. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the state or the commissioner of taxation and finance in an action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of a tax due under this chapter to which the state or the commissioner is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this article

when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby as are pertinent to the action or proceeding and no more. The commissioner may, nevertheless, publish a copy or a summary of any determination or decision rendered after the formal hearing provided for in this chapter. Nothing herein shall be construed to prohibit the delivery to a petroleum business or its duly authorized representative of a copy of any return filed by it, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the publication of delinquent lists showing the names of petroleum businesses who have failed to pay their taxes at the time and in the manner provided by section three hundred eight of this article together with any relevant information which in the opinion of the commissioner may assist in the collection of such delinquent taxes; or the inspection by the attorney general or other legal representatives of the state of the return of any petroleum business which shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding under this chapter has been recommended by the commissioner or the attorney general or has been instituted; or the inspection of the returns of any petroleum business by the comptroller or duly designated officer or employee of the state department of audit and control, for purposes of the audit of a refund of any tax paid by such petroleum business under this article. Provided, further, nothing herein shall be construed to prohibit the disclosure of taxpayer identity information, including name, mailing address and taxpayer identifying number (social security account number, or such other number as has been assigned by the secretary of the United States treasury or his delegate, or by the commissioner of taxation and finance), with respect to persons who are registered as residual petroleum product or aviation fuel businesses under this article or as distributors of motor fuel or diesel motor fuel or kero-jet fuel only for the purpose of article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW or this article, whose registration as a residual petroleum product business or as such distributor has been cancelled or suspended pursuant to this article or such article [twelve-A] ELEVEN-C OF THE GENERAL BUSINESS LAW or whose application for registration as a residual petroleum product business or as such distributor has been refused pursuant to this article or such article [twelve-A] ELEVEN-C OF THE GENERAL BUSINESS LAW. In addition, the commissioner may disclose the fact that a person is not registered as a residual petroleum business under this article or as a distributor of motor fuel, diesel motor fuel or kero-jet fuel only under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW. Information disclosed pursuant to this subdivision shall not, by itself, be construed as proof of compliance or noncompliance with the provisions of this chapter.

[(f) Disclosure of certain information where more than one person is subject to penalty. If the commissioner determines that a person is liable for a penalty under subdivision two of section two hundred eighty-nine-b of this chapter (as applicable to this article under section three hundred fifteen of this article) with respect to any failure, upon request in writing of such person, the commissioner shall disclose in writing to such person (1) the name of any other person whom the commissioner has determined to be liable for such penalty with respect to such failure, and (2) whether the commissioner has attempted to collect such

penalty from such other person, the general nature of such collection activities, and the amount collected.]

S 43. Section 315 of the tax law, as amended by chapter 190 of the laws of 1990 and subdivision (b) as amended by section 33 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

S 315. Practice and procedure.--(a) The provisions of subsections (g) and (j) of section one thousand ninety-two[,] AND section one thousand ninety-three [and article twelve-A] of this chapter[, including those provisions of such article twelve-A relating to penalty and interest,] shall apply to the administration of and procedure with respect to the tax imposed under this article in the same manner and with the same force and effect as if the language of such subsections (g) and (j)[,] AND section one thousand ninety-three [and article twelve-A] had been incorporated in full into this article and had expressly referred to the tax under this article, except to the extent that any such provision is either inconsistent with a provision of this article or is not relevant to this article [or that the provisions of such article twelve-A are inconsistent with the provisions of such subsections (g) and (j) or with such section one thousand ninety-three].

(b) Joint administration of taxes. In addition to the powers granted to the commissioner in this chapter, the commissioner is hereby authorized to make provisions for the joint administration, in whole or in part, of the taxes imposed by [articles twelve-A and] ARTICLE twenty-eight and pursuant to the authority of article twenty-nine of this chapter upon motor fuel and diesel motor fuel and the taxes imposed by this article, including the joint reporting, assessment, collection, determination and refund of such taxes, and for that purpose to prescribe that any of the commissioner's functions under such articles, and any returns, forms, statements, documents or information to be submitted to the commissioner under such articles, any books and records to be kept for purposes of the taxes imposed or authorized to be imposed by such articles, any schedules of amounts to be collected under such articles, any registration required under such articles, and the payment of taxes under such articles, shall be on a joint basis with respect to the taxes imposed by or pursuant to such articles. [Provided, notwithstanding any provision of this article to the contrary, in the furtherance of joint administration, the provisions of subdivision one of section two hundred eighty-five-a and subdivision one of section two hundred eighty-nine-c of this chapter shall apply to the taxes imposed under this article with the same force and effect as if those provisions specifically referred to the taxes imposed hereunder and all the products with respect to which the taxes are imposed under this article. Provided, further, a reimbursement (or credit) of taxes imposed under this article shall be available to subsequent purchasers of motor fuel, diesel motor fuel or residual petroleum product under the circumstances specified in subdivision eight of section two hundred eighty-nine-c of this chapter with respect to the export of such products.] In addition, all the provisions of subdivision one of section [two hundred eighty-six of this chapter] ONE HUNDRED NINETY-NINE-U OF THE GENERAL BUSINESS LAW shall be applicable to all of the products included in the measure of the tax imposed by this article and the powers of the commissioner in administering the tax imposed by this article shall include these set forth in such subdivision. Moreover, the commissioner, in order to preserve the revenue from the tax imposed by this article, shall, by regulation, require that the movement of residual petroleum product into or in this state be accompanied by a tracking document. Also, the commissioner may require (i)

that any [returns,] forms, statements or other document with respect to motor fuel or diesel motor fuel required of transporters or terminal operators under [such] article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW apply with the same force and effect to persons transporting or storing residual petroleum product, AND (ii) a certification that particular gallonage of motor fuel, diesel motor fuel or residual petroleum product has been included in the measure of the tax imposed by this article and such tax has been paid[, and (iii) that the certification required pursuant to section two hundred eighty-five-a or two hundred eighty-five-b of this chapter be expanded to include the tax imposed by this article].

S 44. Section 423 of the tax law, as amended by chapter 508 of the laws of 1993, is amended to read as follows:

S 423. Cancellation of registration of distributors. The registration of any distributor may be cancelled by the commissioner upon its failure to file a bond or other security when required, and the registration of a distributor may be cancelled by the commissioner upon its failure to comply with any of the provisions of this article or any reasonable requirement, rule or regulation adopted pursuant to this article by the department of taxation and finance or by the commissioner. All the provisions of subdivisions four through six and eight through ten of section [two hundred eighty-three of this chapter] ONE HUNDRED NINETY-NINE-P OF THE GENERAL BUSINESS LAW relating to registration of distributors of motor fuel shall be applicable to the registration of distributors under this article with the same force and effect as if the language of those subdivisions had been incorporated in full in this section and had expressly referred to the registration of distributors under this article and the tax imposed by this article, with such modification as may be necessary in order to adapt the language of such provisions to the provisions of this article, provided, specifically, that the term "motor fuel" shall be read as "alcoholic beverages". Provided, however, a registration shall be cancelled immediately, upon cancellation or revocation for cause of a license under the alcoholic beverage control law. A distributor shall immediately inform the department in writing of any change in its name or address, and a corporate distributor shall immediately inform the department, in writing, of any change in its name, or in its officers or directors, or their residence addresses.

S 45. Subdivision 2 of section 428 of the tax law, as added by chapter 508 of the laws of 1993, is amended to read as follows:

2. The operator of a motor vehicle, as such term is defined in subdivision three of section [two hundred eighty-two of this chapter] ONE HUNDRED NINETY-NINE-O OF THE GENERAL BUSINESS LAW, or any other means of transport of liquors in which more than ninety liters of liquors is being transported in this state must have in his or her possession a manifest, invoice or other document which shows the name and address of the person from whom such liquors were received and the date and place of receipt of such liquor and the name and address of every person to whom such operator is to make delivery of the same and the place of delivery, together with the number of liters to be delivered to each person, and, if such liquor is being imported into the state in such motor vehicle or such other means of transport, the name of the distributor importing or causing such liquors to be imported into the state and such other information as the commissioner may require pursuant to rule or regulation. Every operator of such motor vehicle or such other means of transport shall at the request of a peace officer, acting pursuant to

his special duties, a police officer, any representative of the department or any other person authorized by law to inquire into or investigate the transportation of such liquors, produce such manifest, invoice or other document for inspection. The person causing the operation of such motor vehicle or such other means of transport shall be responsible to cause the operator to keep in such operator's possession in such motor vehicle or such other means of transport the manifest, invoice or other document required by this section. The absence of the manifest, invoice or other document required by this section shall give rise to a presumption that the liquors being transported are being imported or caused to be imported into this state for sale or use therein by other than a registered distributor. Moreover, the absence of (1) the place of delivery of liquors on the manifest, invoice or other document with respect to liquors being imported into the state shall give rise to a presumption that such liquors are being imported into the state for sale or use in the state and (2) the name of a registered distributor on the manifest, invoice or other document with respect to liquors being imported into the state shall give rise to a presumption that such liquors are being so imported or caused to be imported into this state, for sale or use therein, by other than a registered distributor. Such presumptions may be rebutted by the introduction of substantial evidence to the contrary.

S 46. Section 482 of the tax law, as amended by section 2 of part T of chapter 61 of the laws of 2011, is amended to read as follows:

S 482. Deposit and disposition of revenue. (a) All taxes, fees, interest and penalties collected or received by the commissioner under this article [and article twenty-A of this chapter] shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter. (b) From the taxes, interest and penalties collected or received by the commissioner under sections four hundred seventy-one and four hundred seventy-one-a of this article, effective on and after March first, two thousand, forty-nine and fifty-five hundredths, and effective on and after February first, two thousand two, forty-three and seventy hundredths; and effective on and after May first, two thousand two, sixty-four and fifty-five hundredths; and effective on and after April first, two thousand three, sixty-one and twenty-two hundredths percent; and effective on and after June third, two thousand eight, seventy and sixty-three hundredths percent; and effective on and after July first, two thousand ten, seventy-six percent collected or received under those sections must be deposited to the credit of the tobacco control and insurance initiatives pool to be established and distributed by the commissioner of health in accordance with section twenty-eight hundred seven-v of the public health law.

S 47. Subdivisions 9 and 10 of section 501 of the tax law, subdivision 9 as amended by chapter 469 of the laws of 1982 and subdivision 10 as amended by section 34 of part K of chapter 61 of the laws of 2011, are amended to read as follows:

9. "Automotive fuel carriers manifest" shall mean a detailed record of all automotive fuel transported by an automotive fuel carrier. Such manifest shall contain such information as prescribed by the tax commission pursuant to rules and regulations, and shall include the location, name, and any license, registration or permit identification numbers of any distributor, filling station or person from which such automotive fuel is transported and to which such automotive fuel is delivered. Such manifest shall include for each such location the total quantity of automotive fuel transported therefrom or delivered thereto and any taxes

paid or collected thereon pursuant to or authorized pursuant to this chapter. The term "distributor" shall have the same meaning as it has for purposes of article [twelve-A of this chapter, excluding persons who are not required pursuant to section two hundred eighty-two-a to pay the tax imposed thereby] ELEVEN-C OF THE GENERAL BUSINESS LAW. The term "filling station" shall mean any place, location or station where automotive fuel is offered for sale to a purchaser of such fuel, to be delivered directly to a vehicle propelled by any power other than muscular.

10. "Automotive fuel" shall mean, solely for purposes of this article, diesel motor fuel as defined in subdivision [fourteen] TEN of section [two hundred eighty-two of this chapter] ONE HUNDRED NINETY-NINE-O OF THE GENERAL BUSINESS LAW and motor fuel as defined in subdivision two of section [two hundred eighty-two of this chapter] ONE HUNDRED NINETY-NINE-O OF THE GENERAL BUSINESS LAW.

S 48. Subdivisions 2, 3, 4 and 6 of section 503-a of the tax law, subdivisions 2, 4 and 6 as amended by chapter 407 of the laws of 1990 and subdivision 3 as amended by chapter 309 of the laws of 1996, are amended to read as follows:

2. Such tax shall be at a composite rate determined by adding together (i) a fuel tax component which shall be equivalent to the rate per gallon in effect under the taxes on motor fuel and diesel motor fuel imposed by FORMER article [twelve-a] TWELVE-A of this chapter and (ii) a sales tax component, which shall be equivalent to the rate per gallon applicable to the receipts from the sale of a gallon of motor fuel and diesel motor fuel in effect under the sales and compensating use taxes imposed by sections eleven hundred five and eleven hundred ten of this chapter plus the highest rate applicable to the receipts from the sale of a gallon of motor fuel and diesel motor fuel in effect in any locality of this state imposing a local sales and compensating use tax on the sale of motor fuel and diesel motor fuel under the authority of section twelve hundred ten of this chapter; provided, however, that the aggregate rate per gallon applicable to the receipts from the sale of a gallon of such fuels imposed under clause (ii) of this subdivision shall not exceed seven percent. Such total equivalent rate per gallon under clause (ii) of this subdivision shall be determined as provided in subdivision (d) of section eleven hundred eleven of this chapter and the schedules prescribed by the commissioner of taxation and finance pursuant to such subdivision, and shall be based on the average price per gallon (including all federal and state and any local taxes included in such price or imposed on the use or consumption of such fuels but determined without the inclusion of any state and local sales tax on receipts from sales of such fuels) paid by the carrier during the return period for all motor fuel and diesel motor fuel purchased for use in its operations either within or without this state. Provided, however, if the commissioner shall determine that the records of any carrier are inadequate or incomplete for such a determination of average price, the price for motor fuel and diesel motor fuel purchased by such carrier shall be deemed to be the prevailing price for motor fuel and diesel motor fuel, as established by the commissioner each calendar quarter pursuant to this section, applicable to the return period. Each calendar quarter, the commissioner shall for each calendar quarter establish a prevailing price for motor fuel and diesel motor fuel based on the prices being charged on any given day during the first fifteen days of the previous calendar quarter at a minimum of ten selected truck stops widely scattered throughout the state. For any return period, a carrier may elect

to use the prevailing price per gallon so established by the commissioner. Such tax shall be computed by multiplying such composite rate by the amount of motor fuel or diesel motor fuel, as the case may be, used by a carrier in its operations within this state during each calendar quarter or, where the commissioner has required or permitted a return to be based upon a different period, during such other period. The amount of motor fuel and diesel motor fuel used in the operations of any carrier within this state shall be such proportion of the total amount of such motor fuel and diesel motor fuel used in its entire operations within and without this state as the total number of miles traveled within this state bears to the total number of miles traveled within and without this state. The commissioner may, by regulation, allow use of a miles per gallon factor in computing fuel used in operations in lieu of the above formula if evidence is presented to the commissioner's satisfaction that no loss of revenue will result. Where the records of any carrier are inadequate or incomplete the vehicular units of a carrier filing returns shall be deemed to have consumed, on the average, one gallon of diesel motor fuel for every four miles traveled or one gallon of motor fuel for every three miles traveled unless substantial evidence discloses that a different amount was consumed.

3. Every carrier subject to the tax imposed by this section shall be entitled to a credit against such tax determined by adding together the following components: (i) a fuel tax component computed by multiplying the number of gallons of motor fuel or diesel motor fuel purchased by such carrier within this state in a return period, for use in its operations either within or without this state, by the applicable rate per gallon imposed on such fuel under FORMER article twelve-A of this chapter[, provided, however, no credit shall be allowed unless the tax imposed under such article twelve-A upon such purchase of fuel has been paid by such carrier], and (ii) a sales tax component computed by multiplying the number of gallons of motor fuel or diesel motor fuel purchased by such carrier within this state in a return period, for use in its operations either within or without this state (as determined in a manner similar to the method for determining the use of fuel in the state as provided for under subdivision two of this section), by the applicable equivalent rate per gallon of the sales tax component of the tax rate (as determined under subdivision two of this section), provided, however, no credit shall be allowed unless the tax imposed under article twenty-eight of this chapter upon such purchase of fuel has been paid by the carrier. Each carrier claiming such credit components shall furnish to the commissioner such evidence of payment of such taxes as the commissioner may require. When the amount of the credit to which any carrier is entitled for any return period with respect to gallonage purchased in such return period exceeds the amount of tax for which such carrier is liable under this section for such return period, such excess shall be allowed as a credit against the tax or which such carrier would otherwise be liable for those succeeding periods (after application of any credits derived with respect to gallonage purchased in each such succeeding period) which fall wholly within the twenty-four month period commencing with the end of the return period from which the excess was derived or, if a claim for refund is filed on or before the last day of the month immediately following the forty-eight month period commencing with the end of the return period which gave rise to the refund, the amount of such excess for such period shall be refunded; but, such a claim for refund may be filed no more frequently than quarterly, with respect to the calendar quarters: January through March,

April through June, July through September and October through December. The commissioner shall grant or deny any such claim for refund in whole or in part and shall notify the claimant by mail of the commissioner's determination. Such determination shall be final and irrevocable unless the claimant shall, within thirty days after the mailing of notice of such determination, petition the division of tax appeals for a hearing. After such hearing, the division of tax appeals shall mail notice of the determination of the administrative law judge to the claimant and to the commissioner. Such determination may be reviewed by the tax appeals tribunal as provided in article forty of this chapter. The decision of the tax appeals tribunal may be reviewed as provided in section two thousand sixteen of this chapter. However, such a proceeding may not be commenced unless an undertaking is filed with the commissioner in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if the proceeding be dismissed or the decision confirmed, the petitioner will pay all costs and charges which may accrue against him in the prosecution of the proceeding.

4. Except as otherwise provided in this subdivision, every carrier subject to the tax imposed by this section shall file returns reporting its operations pursuant to the provisions of section five hundred five of this article for the reporting periods provided pursuant thereto. If the commissioner of taxation and finance finds that the enforcement of the tax imposed by this section would not be adversely affected, the commissioner may provide, by regulation, that a carrier operating primarily within this state may file an information return, rather than the aforementioned returns, provided the carrier has purchased in this state all the motor fuel and diesel motor fuel used in its operations during the period covered by such return and pays the taxes imposed under [articles twelve-a and] ARTICLE twenty-eight and pursuant to the authority of article twenty-nine of this chapter on such fuels in the manner required by such articles. An election to file an information return shall be made in such form, for such time and upon such terms as the commissioner shall require.

6. For purposes of this section, the definition of "motor fuel" in subdivision two of section [two hundred eighty-two] ONE HUNDRED NINETY-NINE-O OF THE GENERAL BUSINESS LAW and the definition of "Diesel motor fuel" in subdivision [fourteen] TEN of section [two hundred eighty-two of this chapter] ONE HUNDRED NINETY-NINE-O OF THE GENERAL BUSINESS LAW shall apply.

S 49. Subdivision (b) of section 523 of the tax law, as amended by section 7 of part M-1 of chapter 109 of the laws of 2006, is amended to read as follows:

(b) Rate of tax. The tax imposed by this section shall be at a composite rate determined by adding together (1) a fuel tax component which shall be equal to the applicable rate per gallon in effect under the taxes on motor fuel and diesel motor fuel imposed by FORMER article twelve-A of this chapter and (2) a sales tax component, which shall be equal to the sum of (A) a state sales and compensating use tax subcomponent, equal to the applicable rate per gallon in effect under the sales and compensating use taxes on motor fuel and diesel motor fuel imposed by sections eleven hundred five and eleven hundred ten of this chapter as described in subdivision (m) of section eleven hundred eleven of this chapter plus (B) a local sales and compensating use tax subcomponent, which shall be the lower of (i) the lowest applicable rate per gallon in effect under the sales and compensating use taxes on such fuels in effect in any county of this state imposing a local sales and compensat-

ing use tax on a cents per gallon basis pursuant to the authority of subpart B of part one of article twenty-nine of this chapter, or (ii) the equivalent rate per gallon based on the highest rate applicable to the receipts from the sale of a gallon of motor fuel or diesel motor fuel in effect in any locality of this state imposing a local sales and compensating use tax on a percentage rate basis on the sale of motor fuel and diesel motor fuel pursuant to the authority of subpart B of part one of article twenty-nine of this chapter. Provided, however, that the total rate per gallon applicable to the receipts from the sale of a gallon of such fuels imposed under clause (ii) of subparagraph (B) of paragraph two of this subdivision shall not exceed three percent. Such equivalent rate per gallon under clause (ii) of subparagraph B of paragraph two of this subdivision shall be determined as provided in subdivision (d) or (m) of section eleven hundred eleven of this chapter and the schedules prescribed by the commissioner pursuant to such subdivision (d), and shall be based on the average price per gallon (including all federal and state and any local taxes included in such price or imposed on the use or consumption of such fuels upon which the state and local sales and compensating use taxes are computed but determined without the inclusion of any state or local sales tax on receipts from sales of such fuels) paid by the carrier during the reporting period for all motor fuel and diesel motor fuel purchased for use in its operations either within or without this state. For purposes of clause (ii) of subparagraph (B) of paragraph two of this subdivision, the price for motor fuel and diesel motor fuel purchased by such carrier shall be deemed to be the prevailing price for motor fuel and diesel motor fuel, as established by the commissioner each calendar quarter pursuant to this section, applicable to the reporting period. The commissioner shall for each calendar quarter establish a prevailing price for motor fuel and diesel motor fuel based on the prices being charged on any given day during the first fifteen days of the previous calendar quarter at a minimum of ten selected truck stops widely scattered throughout the state. The tax imposed by this section shall be computed by multiplying such composite rate by the amount of motor fuel or diesel motor fuel, as the case may be, used by a carrier in its operations within this state during each reporting period. The amount of motor fuel and diesel motor fuel used in the operations of any carrier within this state shall be determined by dividing the number of miles traveled in this state subject to tax under this section by the average miles per gallon for the type of fuel. Where the records of any carrier are inadequate or incomplete, the qualified motor vehicles of a carrier filing returns shall be deemed to have consumed, on the average, one gallon of diesel motor fuel for every four miles traveled or one gallon of motor fuel for every three miles traveled unless substantial evidence discloses that a different amount was consumed; provided, however, that if the commissioner enters into a cooperative agreement pursuant to section five hundred twenty-eight of this article and such agreement prescribes a different average miles per gallon deemed to be consumed, the commissioner shall prescribe such different average.

S 50. Subdivision (a) of section 524 of the tax law, as amended by section 8 of part M-1 of chapter 109 of the laws of 2006, is amended to read as follows:

(a) Purchases. Every carrier subject to the tax imposed by this article shall be entitled to a credit against such tax determined by adding together the following components: (1) a fuel tax component computed by multiplying the number of gallons of motor fuel or diesel motor fuel

purchased by such carrier within this state in a return period, for use in its operations either within or without this state, by the applicable rate per gallon imposed on such fuel under FORMER article twelve-A of this chapter[; provided, however, no credit shall be allowed unless the tax imposed under such article twelve-A upon such purchase of fuel has been paid by such carrier], and (2) a sales tax component computed by multiplying the number of gallons of motor fuel or diesel motor fuel purchased by such carrier within this state in a return period, for use in its operations within or without this state by the applicable rate per gallon of the sales tax component; provided, however, such credit shall not exceed the tax imposed under article twenty-eight or pursuant to the authority of article twenty-nine of this chapter upon such purchase of fuel that has been paid by the carrier. Each carrier claiming such credit components shall furnish to the commissioner such evidence of payment of such taxes as the commissioner may require. When the amount of the credit to which any carrier is entitled for any return period exceeds the amount of tax for which such carrier is liable under this article for such return period, such excess shall be allowed as a credit against the tax for which such carrier would otherwise be liable for the eight succeeding calendar quarters following the end of the reporting period from which the excess was derived or, if a claim for refund is filed on or before the last day of the month immediately following the four-year period commencing with the end of the reporting period for which such excess is derived, the amount of such excess for such period shall be refunded.

S 51. Paragraph 2 of subdivision (b) of section 525 of the tax law, as added by chapter 170 of the laws of 1994, is amended to read as follows:

(2) The taxes imposed by this article shall not apply to motor fuel and diesel motor fuel used by an omnibus carrier in the operation of an omnibus in local transit service in this state, as described under FORMER paragraph (d) of subdivision three of section two hundred eighty-nine-c of this chapter, pursuant to a certificate of public convenience and necessity issued by the commissioner of transportation of this state or by the interstate commerce commission of the United States or pursuant to a contract, franchise or consent between such carrier and a city having a population of more than one million inhabitants, or any agency of such city.

S 52. Clauses (A), (B), (C), (D), (E) and (F) of subparagraph (ii) of paragraph 4 of subdivision (b) of section 1101 of the tax law, clauses (B), (C), (D) and (E) as amended by chapter 261 of the laws of 1988, clause (A) as amended by section 37 and clause (F) as added by section 38 of part K of chapter 61 of the laws of 2011, are amended to read as follows:

(A) "Petroleum products" means diesel motor fuel as defined in subdivision [fourteen] TEN of section [two hundred eighty-two of this chapter] ONE HUNDRED NINETY-NINE-O OF THE GENERAL BUSINESS LAW, other than kerosene or propane used for residential purposes, or motor fuel as defined in subdivision two of section [two hundred eighty-two of this chapter] ONE HUNDRED NINETY-NINE-O OF THE GENERAL BUSINESS LAW. The phrase "used for residential purposes" shall have the same meaning as it has for purposes of section eleven hundred five-A of this article.

(B) The term "distributor" shall have the same meaning as it has for purposes of article [twelve-A of this chapter, excluding persons who are not required pursuant to section two hundred eighty-two-a to pay the tax imposed thereby] ELEVEN-C OF THE GENERAL BUSINESS LAW.

(C) The term "motor fuel" means motor fuel as defined in subdivision two of section [two hundred eighty-two of this chapter] ONE HUNDRED NINETY-NINE-O OF THE GENERAL BUSINESS LAW.

(D) The terms "filling station" and "owner" shall have the same meaning as they have for the purposes of article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW.

(E) The term "diesel motor fuel" means diesel motor fuel as defined in subdivision [fourteen] TEN of section [two hundred eighty-two of this chapter] ONE HUNDRED NINETY-NINE-O OF THE GENERAL BUSINESS LAW.

(F) The [terms] TERM "highway diesel motor fuel" MEANS ANY DIESEL MOTOR FUEL WHICH IS NOT NON-HIGHWAY DIESEL MOTOR FUEL and "non-highway diesel motor fuel" [shall have the same meaning as they have for purposes of article twelve-A of this chapter] MEANS ANY DIESEL MOTOR FUEL THAT IS DESIGNATED FOR USE OTHER THAN ON A PUBLIC HIGHWAY (EXCEPT FOR THE USE OF THE PUBLIC HIGHWAY BY FARMERS TO REACH ADJACENT LANDS), AND IS DYED DIESEL MOTOR FUEL, MEANING DIESEL MOTOR FUEL WHICH HAS BEEN DYED IN ACCORDANCE WITH AND FOR THE PURPOSE OF COMPLYING WITH THE PROVISIONS OF 26 USC S4082(A) AND THE REGULATIONS THEREUNDER, AS MAY BE AMENDED FROM TIME TO TIME.

S 53. Paragraphs 29, 30, 31 and 32 of subdivision (b) of section 1101 of the tax law, as added by section 7 of part W-1 of chapter 109 of the laws of 2006, are amended to read as follows:

(29) "E85" shall have the same meaning as in subdivision [twenty-two] (O) of section [two hundred eighty-two] THREE HUNDRED of this chapter.

(30) "B20" shall have the same meaning as in subdivision [twenty-three] (P) of section [two hundred eighty-two] THREE HUNDRED of this chapter.

(31) "CNG" shall have the same meaning as in subdivision [twenty-four] (Q) of section [two hundred eighty-two] THREE HUNDRED of this chapter.

(32) "Hydrogen" shall have the same meaning as in subdivision [twenty-five] (R) of section [two hundred eighty-two] THREE HUNDRED of this chapter.

S 54. Paragraph 2 of subdivision (a) of section 1102 of the tax law, as amended by section 5 of part E of chapter 59 of the laws of 2012, is amended to read as follows:

(2) Every distributor of diesel motor fuel shall pay, as a prepayment on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, a tax upon the sale or use of diesel motor fuel in this state. The tax shall be computed based upon the number of gallons of diesel motor fuel sold or used. Provided, however, if the tax has not been imposed prior thereto, it shall be imposed on the delivery of diesel motor fuel to a retail service station. The collection of such tax shall not be made applicable to the sale or use of diesel motor fuel under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto. The prepaid tax on diesel motor fuel shall not apply to (i) the sale of previously untaxed non-highway Diesel motor fuel to a person registered as a distributor of Diesel motor fuel other than a sale to such person which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle, (ii) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for heating purposes in containers of no more than twenty gallons or to the sale of CNG or hydrogen; or

(iii) the sale of previously untaxed qualified biodiesel to a person registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW as a distributor of Diesel motor fuel other than (A) a retail sale to such person or (B) a sale to such person which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such qualified biodiesel can be dispensed into the fuel tank of a motor vehicle. "Qualified biodiesel" means [such term as defined in subdivision twenty-three of section two hundred eighty-two of this chapter] A DIESEL MOTOR FUEL SUBSTITUTE PRODUCED FROM NONPETROLEUM RENEWABLE RESOURCES THAT MEETS THE REGISTRATION REQUIREMENTS FOR FUELS AND FUEL ADDITIVES ESTABLISHED BY THE ENVIRONMENTAL PROTECTION AGENCY UNDER SECTION 211 OF THE CLEAN AIR ACT (42 U.S.C. 7545) AND THAT MEETS ASTM INTERNATIONAL ACTIVE STANDARD D6751 FOR BIODIESEL FUEL.

S 55. Paragraph 2 of subdivision (a) of section 1102 of the tax law, as amended by section 6 of part E of chapter 59 of the laws of 2012, is amended to read as follows:

(2) Every distributor of diesel motor fuel shall pay, as a prepayment on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, a tax upon the sale or use of diesel motor fuel in this state. The tax shall be computed based upon the number of gallons of diesel motor fuel sold or used. Provided, however, if the tax has not been imposed prior thereto, it shall be imposed on the delivery of diesel motor fuel to a retail service station. The collection of such tax shall not be made applicable to the sale or use of diesel motor fuel under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto. The prepaid tax on diesel motor fuel shall not apply to (i) the sale of non-highway Diesel motor fuel to a person registered as a distributor of Diesel motor fuel other than a sale to such person which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle, (ii) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for heating purposes in containers of no more than twenty gallons; or (iii) the sale of previously untaxed qualified biodiesel to a person registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW as a distributor of Diesel motor fuel other than (A) a retail sale to such person or (B) a sale to such person which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such qualified biodiesel can be dispensed into the fuel tank of a motor vehicle. "Qualified biodiesel" means [such term as defined in subdivision twenty-three of section two hundred eighty-two of this chapter] A DIESEL MOTOR FUEL SUBSTITUTE PRODUCED FROM NONPETROLEUM RENEWABLE RESOURCES THAT MEETS THE REGISTRATION REQUIREMENTS FOR FUELS AND FUEL ADDITIVES ESTABLISHED BY THE ENVIRONMENTAL PROTECTION AGENCY UNDER SECTION 211 OF THE CLEAN AIR ACT (42 U.S.C. 7545) AND THAT MEETS THE ASTM INTERNATIONAL ACTIVE STANDARD D6751 FOR BIODIESEL FUEL.

S 56. Subdivision (e) of section 1102 of the tax law, as amended by chapter 261 of the laws of 1988, is amended to read as follows:

(e) For the purposes of this section [and article twelve-A of this chapter], the term "use" shall mean, in addition to the meaning set forth in paragraph seven of subdivision (b) of section eleven hundred

one of this article, the exercise of any right or power over motor fuel or diesel motor fuel by any person, whether or not a purchaser, including, but not limited to, the receiving, the withdrawal from storage or any consumption of such fuel.

S 57. Subdivision (c) of section 1112 of the tax law, as added by section 6 of part K of chapter 61 of the laws of 2005, is amended to read as follows:

(c) The provisions of FORMER section two hundred eighty-four-e of this chapter concerning sales of motor fuel and Diesel motor fuel on qualified Indian reservations shall apply to the prepayment of sales tax imposed on motor fuel and Diesel motor fuel pursuant to section eleven hundred two of this article in the same manner and with the same force and effect as if the provisions of such FORMER section two hundred eighty-four-e had been incorporated in full into this article, except to the extent that any such provision is either inconsistent with a provision of such section eleven hundred two or not relevant thereto.

S 58. Paragraph 1 of subdivision (h) of section 1132 of the tax law, as amended by chapter 276 of the laws of 1986, is amended to read as follows:

(1) (i) No person shall purchase motor fuel in this state, excluding a purchase at retail, unless the tax required to be prepaid by subdivision (a) of section eleven hundred two of this article has been assumed by a distributor registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW in accordance with a certification under this paragraph or paid by such distributor, and, in each of such instances, is passed through to such purchaser. In addition to any other civil and criminal penalties which may apply, any person who purchases motor fuel in violation of this subparagraph shall be jointly and severally liable to pay the tax required to be prepaid by section eleven hundred two of this article with respect to such motor fuel.

(ii) For the purpose of the proper administration of this article and to prevent evasion of the tax on motor fuel imposed by and pursuant to this article, it shall be presumed that all motor fuel imported, manufactured or sold, received or possessed in the state is intended for use, distribution, storage or sale in the state and subject to the tax required to be prepaid by section eleven hundred two of this article until the contrary is established. It shall be further presumed that all motor fuel so imported, manufactured, sold, received or possessed in the state by any person, other than motor fuel delivered into the ordinary fuel tank connected with the engine of a means of conveyance in order to propel it, or in small drums or similar containers, which such person cannot otherwise account for, is subject to the tax required to be prepaid under section eleven hundred two of this article and such person is responsible for such prepayment. Provided, however, a distributor of motor fuel who imports, manufactures or sells and stores in the state or who purchases and stores motor fuel in the state on which he has prepaid the tax required to be prepaid pursuant to section eleven hundred two of this article shall be allowed an adjustment in arriving at the gallons subject to the taxes imposed by such section on account of the gallons the distributor establishes were lost due to shrinkage, evaporation and handling; provided, however, such allowance shall not exceed two percent of the fuel stored. Provided, further, that in arriving at the gallons of motor fuel subject to the tax required to be prepaid pursuant to section eleven hundred two of this article, there shall be allowed an adjustment on account of gallons lost or destroyed due to an accident, such as fire, and at the time of such loss or destruction were being

held or transported for sale other than at retail. The burden of proving that any motor fuel is not so subject shall be upon the person so responsible for such prepayment with respect to such fuel.

(iii) Upon each sale of motor fuel, other than a sale at retail, the seller must give to the purchaser and the purchaser shall receive, at the time of delivery of such motor fuel, a certification containing such information as the tax commission shall require which shall include a statement to the effect (A) if such seller is a distributor registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW, that he has assumed the payment of or paid the tax required to be prepaid by section eleven hundred two of this article and, in each case, is passing through such tax or (B) that such seller is passing through such tax which was so previously assumed or paid by an identified distributor registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW, and passed through to him.

(iv) If the certification required by this paragraph has been furnished to the purchaser by the seller at delivery and accepted in good faith, the burden of proving that the tax required to be paid by section eleven hundred two of this article was assumed or paid by a distributor registered as such under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW and passed through shall be solely on the seller.

(v) Where the certification required under this paragraph is not furnished by the seller at delivery of motor fuel, it shall be presumed that the tax required to be prepaid by section eleven hundred two of this article has not been assumed or paid by a distributor registered as such under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW and that the purchaser in such case is jointly and severally liable for the tax.

(vi) If, due to the circumstances of delivery, it is not possible to issue a certification required under this paragraph at the time of delivery of motor fuel, the tax commission may authorize the delivery of the certification required under this paragraph at a time after the delivery of the motor fuel which is the subject of the sale under the limited circumstances it shall prescribe and upon such terms and conditions it shall deem necessary to ensure collection of the tax imposed by section eleven hundred two of this article [and the motor fuel taxes imposed by article twelve-A of this chapter].

S 59. Subparagraph (iv) of paragraph 2 of subdivision (h) of section 1132 of the tax law, as added by chapter 261 of the laws of 1988, is amended to read as follows:

(iv) (A) Upon each sale, other than a retail sale at a filling station, the seller must give to the purchaser and the purchaser shall receive at the time of delivery of such Diesel motor fuel, a certification containing such information as the commissioner of taxation and finance shall require which, unless otherwise provided in this paragraph, shall include a statement to the effect: (i) if such seller is a distributor registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW, that he has assumed the payment of or paid the taxes imposed by this article and, in each case, is passing through such taxes; (ii) that such seller is passing through such taxes which were so previously assumed or paid by an identified distributor registered under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW, and passed through to him; or (iii) if such seller is making a retail sale to a purchaser, that such taxes are not being passed through on the retail sale of Diesel motor fuel, in accordance

with subparagraph (i) of this paragraph. In the case of a sale of Diesel motor fuel described in paragraph two of subdivision (a) of section eleven hundred two of this article which is exempt from the tax required to be prepaid by section eleven hundred two, the certificate, in lieu of the foregoing statements, shall state that, based upon good faith reliance on the interdistributor sales certificate, such Diesel motor fuel is being sold under the circumstances described in such paragraph two of subdivision (a) of section eleven hundred two and that the tax imposed by section eleven hundred two of this article is not applicable.

(B) In the case of a sale of Diesel motor fuel subject to the tax required to be prepaid by section eleven hundred two of this article and in all cases where such tax is required to be passed through, if the certification required by this subparagraph has been furnished to the purchaser at the time of delivery of such fuel and accepted in good faith, the burden of proving that the tax required to be prepaid by section eleven hundred two of this article was assumed or paid by a distributor registered as such under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW and passed through shall be solely on the seller.

(C) Where the certification required under this subdivision is not furnished by the seller at the time of delivery of the Diesel motor fuel, it shall be presumed that the tax required to be prepaid by section eleven hundred two of this article is due and owing and has not been assumed or paid by a distributor registered as such under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW and that the purchaser in such case is jointly and severally liable for the tax.

(D) If, due to the circumstances of delivery, it is not possible to issue a certification required under this subdivision at the time of delivery of Diesel motor fuel, the commissioner of taxation and finance may authorize the delivery of the certification required under this subdivision at a time after the delivery of the Diesel motor fuel which is the subject of the sale under the limited circumstances he shall prescribe and upon such terms and conditions he shall deem necessary to ensure collection of the tax imposed by section eleven hundred two of this article [and the Diesel motor fuel taxes imposed by article twelve-A of this chapter].

S 60. Subparagraphs (A) and (C) of paragraph 3 of subdivision (h) of section 1139 of the tax law, as added by chapter 102 of the laws of 2008, are amended to read as follows:

(A) The term "government entity" means an entity described in paragraph one, two or three of subdivision (a) of section eleven hundred sixteen of this article or any diplomatic mission or diplomatic personnel who are permitted by the United States to purchase fuel and diesel motor fuel exempt from the taxes imposed pursuant to this article and [articles twelve-A and] ARTICLE thirteen-A of this chapter.

(C) The term "fuel distributor" means any person who is a registered distributor under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW and who is registered as a person required to collect tax pursuant to this article.

S 61. Subdivision 11 of section 1142 of the tax law, as amended by section 47 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

11. To make such provision pursuant to rules and regulations for the joint administration, in whole or in part, of the state and local taxes imposed by this article and authorized by article twenty-nine of this chapter upon the sale of petroleum products [and the taxes imposed by

article twelve-A of this chapter and authorized to be imposed by such article], including the joint reporting, assessment, collection, determination and refund of such taxes, and for that purpose to prescribe that any of the commissioner's functions under said articles, and any returns, forms, statements, documents or information to be submitted to the commissioner under said articles, any books and records to be kept for purposes of the taxes imposed or authorized by said articles, any schedules of amounts to be collected under said articles, any registration required under said articles, and the payment of taxes under said articles shall be on a joint basis with respect to the taxes imposed by said articles.

S 62. Subparagraph (vii) of paragraph 1 of subdivision (a) of section 1145 of the tax law, as amended by chapter 261 of the laws of 1988, is amended to read as follows:

(vii) Any owner of a filling station who shall willfully and knowingly have in his custody, possession or under his control any motor fuel or diesel motor fuel on which (A) the prepaid tax imposed by section eleven hundred two of this article has not been assumed or paid by a distributor registered as such under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW, or (B) the prepaid tax imposed by section eleven hundred two of this article was required to have been passed through to him and has not been included in the cost of such fuel to him shall be liable for a penalty in the amount of twice the tax so not assumed or paid, or included. Such penalty shall be determined, assessed, collected and paid in the same manner as taxes imposed by this article and all the provisions of this article relating thereto shall be deemed also to refer to the penalty imposed by this paragraph and, for this purpose, the term "person required to collect tax" shall be deemed to include an owner of a filling station. Such penalty may be determined at any time within three years after such motor fuel or diesel motor fuel shall have come into his custody, possession or control. For purposes of this subparagraph, such owner shall willfully and knowingly have in his custody, possession or under his control motor fuel or diesel motor fuel on which (A) such tax has not been assumed or paid by a distributor registered as such or (B) such tax was required to have been passed through to him and has not been included in the cost of such fuel to him where such owner has knowledge of the requirement that such taxes be paid and where, to his knowledge, such taxes have not been so included. For purposes of this subparagraph, it shall be presumptive evidence that such owner shall willfully and knowingly have in his custody, possession or under his control motor fuel or diesel motor fuel (A) on which such tax has not been assumed or paid by a distributor registered as such or (B) on which such tax was required to have been passed through to him and has not been included in the cost of such fuel to him where such owner has not received the certification required by subdivision (h) of section eleven hundred thirty-two of this article at the time of delivery of such motor fuel or diesel motor fuel or, in those circumstances where the commissioner has authorized the delivery of such certification at a time after delivery of the motor fuel or diesel motor fuel, at the time prescribed by the commissioner.

S 63. Subdivision (e) of section 1145 of the tax law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

(e) Any officer, director, shareholder or employee of a corporation or of a dissolved corporation, any employee of a partnership, any employee or manager of a limited liability company, or any employee of an individual proprietorship, who as such officer, director, shareholder,

employee or manager is under a duty to act for such corporation, partnership, limited liability company or proprietorship in complying with any requirement of this article, and any member of a partnership or limited liability company, which fails to pay the tax required to be prepaid by section eleven hundred two or eleven hundred three of this article, shall, in addition to other penalties provided by law, be liable for a penalty equal to the total amount of the tax not paid, plus penalties and interest computed pursuant to subdivision (a) of this section as if such person were a distributor under article [twelve-a of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW or an agent under article twenty of this chapter, respectively. If the commissioner determines that such failure was due to reasonable cause and not due to willful neglect, the commissioner shall remit all or part of such penalty imposed under this subdivision. Such penalty shall be determined, assessed, collected and paid in the same manner as the tax required to be prepaid by section eleven hundred two or eleven hundred three, as the case may be, of this article and shall be disposed of as provided with respect to moneys derived from either such tax, respectively. Provided, however, that the penalty provided for by this subdivision shall not be imposed on any person on account of the failure of such a distributor or agent to pay the tax required to be prepaid by section eleven hundred two or eleven hundred three, respectively, of this article if such person is liable for such tax pursuant to subdivision (b) of such section eleven hundred two or subdivision (b) of such section eleven hundred three, respectively.

S 64. Sections 1812, 1812-a, 1812-b, 1812-c and 1812-d of the tax law are REPEALED.

S 65. Subdivision (f) and paragraph 1 of subdivision (n) of section 1817 of the tax law, as amended by section 30 of subpart I of part V-1 of chapter 57 of the laws of 2009, are amended to read as follows:

(f) Any owner of a filling station who shall willfully and knowingly have in his custody, possession or under his control any motor fuel or diesel motor fuel on which (1) the prepaid tax imposed by section eleven hundred two of this chapter has not been assumed or paid by a distributor registered as such under article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW or (2) the prepaid tax imposed by section eleven hundred two of this chapter was required to have been passed through to him and has not been included in the cost of such fuel to him, shall in either case, be guilty of a class E felony. For purposes of this subdivision, such owner shall willfully and knowingly have in his custody, possession or under his control any motor fuel or diesel motor fuel on which such tax has not been assumed or paid by a distributor registered as such where such owner has knowledge of the requirement that such tax be paid and where, to his knowledge, such tax has not been assumed or paid by such registered distributor on such motor fuel or diesel motor fuel. Such owner shall willfully and knowingly have in his custody, possession or under his control motor fuel or diesel motor fuel on which such tax is required to have been passed through to him and has not been included in the cost to him where such owner has knowledge of the requirement that such tax be passed through and where to his knowledge such tax has not been so included.

(1) Every person engaged in the retail sale of motor fuel and/or diesel motor fuel or a distributor of such fuels, as defined in article [twelve-A of this chapter] ELEVEN-C OF THE GENERAL BUSINESS LAW, shall comply with the provisions of section three hundred ninety-two-i of the general business law by reducing the prices charged for motor fuel and

diesel motor fuel in an amount equal to any reduction in taxes prepaid by the distributor or imposed on retail customers resulting from computing sales and compensating use taxes at a cents per gallon rate pursuant to the provisions of paragraph two of subdivision (e) and subdivision (m) of section one thousand one hundred eleven of this chapter.

S 66. Subdivision (a) and paragraph 3 of subdivision (d) of section 1848 of the tax law, as amended by section 54 of part K of chapter 61 of the laws of 2011, are amended to read as follows:

(a) Temporary seizure. Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four of section 2.10 of such law, acting pursuant to his special duties, shall discover any motor fuel or diesel motor fuel which is being imported for use, distribution, storage or sale in the state where the person importing or causing such motor fuel or diesel motor fuel to be imported is not registered as a distributor under section [two hundred eighty-three or section two hundred eighty-two-a, of this chapter, as the case may be] ONE HUNDRED NINETY-NINE-P OF THE GENERAL BUSINESS LAW, such police officer or peace officer is hereby authorized to seize and take possession of such motor fuel or diesel motor fuel, together with the vehicle or other means of transportation used to transport such motor fuel.

(3) Forfeiture of motor fuel or diesel motor fuel together with the vehicle or other means of transportation used to transport such motor fuel or diesel motor fuel shall be adjudged where the department proves, by clear and convincing evidence, that the person importing or causing such motor fuel or diesel motor fuel to be imported was not registered as a distributor under section [two hundred eighty-three or section two hundred eighty-two-a of this chapter, as the case may be] ONE HUNDRED NINETY-NINE-P OF THE GENERAL BUSINESS LAW. All defendants in a forfeiture action brought pursuant to this article shall have the right to trial by jury on any issue of fact.

S 67. Subparagraph (D) of paragraph 4 and paragraph 6 of subdivision (d) of section 1848 of the tax law, as amended by section 54 of part K of chapter 61 of the laws of 2011, are amended to read as follows:

(D) The court may grant the relief provided in subparagraph (A) of this paragraph if it finds that such relief is warranted by the existence of some compelling factor, consideration or circumstance demonstrating that forfeiture of the property or any part thereof, would not serve the ends of justice. Reporting and payment of the tax imposed pursuant to [article twelve-A or] article twenty-eight of this chapter with respect to such motor fuel or diesel motor fuel subsequent to the seizure of such fuel shall not constitute a compelling factor, consideration or circumstance warranting the granting of the relief provided for in subparagraph (A) of this paragraph. In determining whether such relief is warranted by the existence of some compelling factor, consideration or circumstances pursuant to this paragraph, the court may, however, take into account the fact that such taxes with respect to the seized fuel have been reported and remitted to the state prior to the temporary seizure of such fuel if the unregistered importation into the state was effected in good faith and without knowledge of the requirement of registration and without intent to evade tax. The court must issue a written decision, stating the basis for an order issued pursuant to this paragraph.

(6) The total that may be recovered shall not exceed the value of the motor fuel or diesel motor fuel seized and, in addition, either the value of the vehicle or other means of transportation used to transport

such fuel or three times the amount of the tax and penalty under articles [twelve-A,] thirteen-A and twenty-eight and pursuant to the authority of article twenty-nine of this chapter with respect to the motor fuel or diesel motor fuel, whichever is less.

S 68. Subdivision (f) of section 1848 of the tax law, as amended by chapter 190 of the laws of 1990, is amended to read as follows:

(f) Release of property. A person whose property has been seized may move, upon notice to the department of taxation and finance, in the supreme court in any county, provided that if the department shall have moved to confirm the temporary seizure of such property, in the supreme court of such county for an order releasing all or part of the property seized upon payment of the department's fees and expenses, if any. On such a motion, the defendant shall give an undertaking in accordance with article twenty-five of the civil practice law and rules, in an amount equal to the value of the property sought to be released, that he will pay the department the value of such property which may be adjudged forfeited (but in the case of the owner of a vehicle or other means of transportation, the amount of the undertaking required shall not exceed three times the amount of all taxes and penalties due under articles [twelve-A,] thirteen-A and twenty-eight and pursuant to the authority of article twenty-nine of this chapter).

S 69. This act shall take effect January 1, 2013; provided, however, that:

(a) the amendments to paragraph (a) of subdivision 3 of section 89-b of the state finance law made by section twenty of this act shall be subject to the expiration and reversion of such paragraph, pursuant to section 13 of part U-1 of chapter 62 of the laws of 2003, as amended, when upon such date the provisions of section twenty-one of this act shall take effect;

(b) the amendments to subdivisions (o), (p), (q) and (r) of section 300 of the tax law made by section thirty-two of this act shall not affect the repeal of such subdivisions and shall be deemed repealed therewith;

(c) the amendments to paragraphs 6 and 7 of subdivision (a) of section 301-b of the tax law made by section thirty-four of this act shall not affect the repeal of such paragraphs and shall be deemed repealed therewith;

(d) if part E of chapter 59 of the laws of 2012 shall not have taken effect on or before such date then sections thirty-seven and fifty-five of this act shall take effect on the same date and in the same manner as such part of such chapter of the laws of 2012 takes effect;

(e) the amendments to paragraphs 29, 30, 31 and 32 of subdivision (b) of section 1101 of the tax law made by section fifty-three of this act shall not affect the repeal of such paragraphs and shall be deemed repealed therewith; and

(f) the amendments to paragraph 2 of subdivision a of section 1102 of the tax law made by section fifty-four of this act shall be subject to the expiration and reversion of such paragraph, pursuant to section 19 of part W-1 of chapter 109 of the laws of 2006, as amended, when upon such date the provisions of section fifty-five of this act shall take effect.