

3285

2013-2014 Regular Sessions

I N A S S E M B L Y

January 24, 2013

Introduced by M. of A. RABBITT, MONTESANO, RAIA, KATZ, FINCH -- Multi-Sponsored by -- M. of A. CROUCH, McLAUGHLIN, TENNEY -- read once and referred to the Committee on Ways and Means

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

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

1 Section 1. Article 23 of the tax law is REPEALED.
2 S 2. Clause (i) of subparagraph 5 of paragraph (a) of subdivision 9 of
3 section 208 of the tax law, as amended by section 2 of part C of chapter
4 25 of the laws of 2009, is amended to read as follows:
5 (i) any refund or credit of a tax imposed under this article[, article
6 twenty-three,] or article thirty-two of this chapter, for which tax no
7 exclusion or deduction was allowed in determining the taxpayer's entire
8 net income under this article[, article twenty-three,] or article thir-
9 ty-two of this chapter for any prior year,
10 S 3. Subparagraph 20 of paragraph (b) of subdivision 9 of section 208
11 of the tax law is REPEALED.
12 S 4. Paragraph 2 of subdivision (a) of section 292 of the tax law, as
13 amended by section 4 of part C of chapter 25 of the laws of 2009, is
14 amended to read as follows:
15 (2) There shall be subtracted from federal unrelated business taxable
16 income the amount of any refund or credit for overpayment of a tax
17 imposed under this article [or article twenty-three of this chapter].
18 S 5. Paragraph 8 of subdivision (a) of section 292 of the tax law is
19 REPEALED.

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

LBD05256-01-3

1 S 6. Paragraph 39 of subsection (b) of section 612 of the tax law is
2 REPEALED.

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

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

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

12 S 9. Subsection 4 of section 618 of the tax law, as amended by section
13 9 of part C of chapter 25 of the laws of 2009, is amended to read as
14 follows:

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

21 S 10. Subsection 4 of section 618 of the tax law, as separately
22 amended by section 5 of part HH-1 of chapter 57 of the laws of 2008 and
23 section 9 of part C of chapter 25 of the laws of 2009, is amended to
24 read as follows:

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

31 S 11. Subsection (a) of section 686 of the tax law, as amended by
32 section 10 of part C of chapter 25 of the laws of 2009, is amended to
33 read as follows:

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

1 S 12. Paragraph 15 of subsection (b) of section 1453 of the tax law is
2 REPEALED.

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

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

10 S 14. Subparagraph (C) of paragraph 1 of subdivision (b) of section
11 1503 of the tax law, as amended by section 14 of part C of chapter 25 of
12 the laws of 2009, is amended to read as follows:

13 (C) any refund or credit of a tax imposed under this article or
14 section one hundred eighty-seven[, or article twenty-three] of this
15 chapter heretofore in effect to the extent properly included as income
16 for federal income tax purposes, for which no exclusion or deduction was
17 allowed in determining the taxpayer's entire net income under this arti-
18 cle for any prior year;

19 S 15. Subparagraph (V) of paragraph 2 of subdivision (b) of section
20 1503 of the tax law is REPEALED.

21 S 16. Subparagraph 5 of paragraph (a) of subdivision 8 of section
22 11-602 of the administrative code of the city of New York, as amended by
23 section 16 of part C of chapter 25 of the laws of 2009, is amended to
24 read as follows:

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

30 S 17. Subparagraph 19 of paragraph (b) of subdivision 8 of section
31 11-602 of the administrative code of the city of New York is REPEALED.

32 S 18. Paragraph 16 of subdivision (b) of section 11-641 of the admin-
33 istrative code of the city of New York is REPEALED.

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

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

42 S 20. Paragraph 35 of subdivision (b) of section 11-1712 of the admin-
43 istrative code of the city of New York is REPEALED.

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

47 (7) The amount of any refund or credit for overpayment of income taxes
48 imposed by this city, OR any other taxing jurisdiction, [or any taxes
49 imposed by article twenty-three of the tax law] to the extent properly
50 included in gross income for federal income tax purposes.

51 S 22. Clauses (ii), (iv) and (v) of subparagraph (B) of paragraph 1 of
52 subdivision (o) of section 11-1712 of the administrative code of the
53 city of New York, clause (ii) as amended by chapter 333 of the laws of
54 1987, clauses (iv) and (v) as relettered by section 60 and such section
55 as renumbered by section 43 of chapter 639 of the laws of 1986, are
56 amended to read as follows:

1 (ii) is, at the date of adoption of such plan, subject to taxation
2 (whether or not any amount is owing) under section one hundred eighty-
3 three[,] OR one hundred eighty-four [or one hundred eighty-six of arti-
4 cle nine] of the tax law, or under article [nine-a] NINE-A of the tax
5 law [or article twenty-three of the tax law, or would have been subject
6 to tax under article twenty-three of such law (as such article was in
7 effect on January first, nineteen hundred eighty) if such article were
8 still in effect], and the first taxable period for which such new busi-
9 ness became subject to such taxation commenced on or after July first,
10 nineteen hundred eighty-one and before January first, nineteen hundred
11 eighty-eight, and such first taxable period includes the date of
12 adoption of such plan; if not so subject to taxation, the new business
13 must be subject to taxation under such sections or articles for the
14 first time within one year from the date of adoption of such plan, and

15 (iv) within ninety days after adoption of such plan, or, if a return
16 is required, as part of such return, under [such] article nine[,] OR
17 article [nine-a or article twenty-three] NINE-A OF THE TAX LAW, whichev-
18 er is sooner, shall file a new business certificate with the [tax
19 commission] COMMISSIONER attesting to whether it meets, if subject to
20 taxation under such articles, or intends to meet, if not so subject, all
21 of the conditions stated in clauses (i), (ii) and (iii) of this subpara-
22 graph within the time set forth therein. Thereafter, during the first
23 four taxable years of such new business, along with, and as part of, any
24 return required under such articles, such new business shall make and
25 file a new business certificate for the period covered by such return
26 attesting to whether it has met the conditions specified in this subpar-
27 agraph during the taxable period covered by such return. If no return is
28 required under such articles, such certificate shall be filed annually
29 on or before the fifteenth day of March which shall cover the twelve
30 consecutive calendar month period ending on the last day of December
31 immediately preceding such March fifteenth. If such new business fails
32 to meet such conditions specified in this subparagraph, it shall, in
33 addition, give notice of this fact, within the time prescribed by the
34 [tax commission] COMMISSIONER, to the holders of its "new business
35 investments." The [tax commission] COMMISSIONER shall prescribe the form
36 and content of such new business certification and may require a new
37 business to file such certificate for periods (even if no return is
38 filed or required, but for this section) covering up to eight years from
39 the date of adoption of such plan, as in its discretion, it deems the
40 same necessary for the enforcement of this section, and

41 (v) Special rules:

42 (1) For any taxable period, in order to constitute a new business, a
43 business enterprise must have derived more than sixty percent of its
44 aggregate gross receipts from sources other than royalties, rents, divi-
45 dends, interest, annuities and sales or exchanges of stock or securi-
46 ties.

47 (2) A new business does not include: (i) any new business of which
48 twenty-five percent or more of the number of shares of stock that enti-
49 tle the holders thereof to vote for the election of directors or trus-
50 tees is owned, directly or indirectly, by a taxpayer subject to tax
51 under section one hundred eighty-three, one hundred eighty-four[,] OR
52 one hundred eighty-five [or one hundred eighty-six of article nine] of
53 the tax law, or under article [nine-a] NINE-A, thirty-two or thirty-
54 three of the tax law or (ii) any new business substantially similar in
55 operation and in ownership, directly or indirectly, to a business entity
56 (or entities) taxable, or previously taxable, under such section, such

1 article[, article twenty-three of the tax law] or which would have been
2 subject to [tax under such article twenty-three (as such article was in
3 effect on January first, nineteen hundred eighty) or] the income (or
4 losses) of which is (or was) includible under article twenty-two of
5 [such] THE tax law whereby the intent and purpose of this section would
6 be evaded.

7 S 23. Subdivision (p) of section 11-1712 of the administrative code of
8 the city of New York, as amended by chapter 333 of the laws of 1987, is
9 amended to read as follows:

10 (p) New business investment deferral. For taxable years beginning
11 before January first, nineteen hundred eighty-eight, at the option of
12 the taxpayer, there may be subtracted from federal adjusted gross income
13 a reinvested amount of long-term capital gain realized in a taxable year
14 from the sale of a capital asset, as such term is defined in section
15 twelve hundred twenty-one of the internal revenue code, which is not a
16 new business investment. A reinvested amount of long-term capital gain
17 shall mean an amount which bears the same ratio to the long-term capital
18 gain realized from the sale of a capital asset which was includible in
19 New York adjusted gross income as that portion of the sale proceeds
20 which is reinvested, within one year from date of sale, in a New York
21 new business bears to the total sale proceeds. For the purposes of this
22 subdivision, a New York new business is a business enterprise which: (1)
23 has been a taxpayer under article nine-A, twenty-two, thirty-two or
24 thirty-three of the tax law for no more than three taxable years
25 (including short taxable years), (2) over fifty percent of the number of
26 shares of stock that entitle the holders thereof to vote for the
27 election of directors or trustees is not owned, directly or indirectly,
28 by a taxpayer subject to tax under section one hundred eighty-three, one
29 hundred eighty-four[,] OR one hundred eighty-five [or one hundred eight-
30 y-six of article nine] of the tax law, or under article nine-A, thirty-
31 two or thirty-three of the tax law, (3) is not substantially similar in
32 operation or ownership, directly or indirectly, to a business entity (or
33 entities) taxable, or previously taxable, under such sections, such
34 articles[, article twenty-three of the tax law] or which would have been
35 subject to [tax under article twenty-three (as such article was in
36 effect on January first, nineteen hundred eighty) or] the income (or
37 losses) of which is (or was) includible under article twenty-two of the
38 tax law whereby the intent and purpose of this subdivision would be
39 evaded, (4) locates and employs at least ninety percent of its assets in
40 the state, (5) employs principally in the state eighty percent of its
41 employees (as ascertained within the meaning and intent of subparagraph
42 three of paragraph (a) of subdivision three of section two hundred ten
43 of the tax law and, in addition, in the case of a partnership, excluding
44 partners), and (6) derives less than forty percent of its gross income
45 from dividends, interest, royalties (other than mineral, oil, or gas
46 royalties or copyright royalties), annuities and (7) reports at least
47 twenty-five hundred dollars in gross income in any taxable year. The
48 reinvested amount must qualify as a capital asset as defined pursuant to
49 section twelve hundred twenty-one of the internal revenue code and must
50 be retained by the taxpayer for at least twelve months. The modification
51 allowable under this subdivision shall be utilized with respect to the
52 taxable year in which the twelve month retention period ends.

53 S 24. Subdivision 4 of section 11-1718 of the administrative code of
54 the city of New York, as amended by section 22 of part C of chapter 25
55 of the laws of 2009, is amended to read as follows:

1 (4) There shall be added or subtracted (as the case may be) the
2 modifications described in paragraphs six, ten, seventeen, eighteen,
3 nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four,
4 twenty-five, twenty-six, twenty-seven, twenty-nine[,] AND thirty-four
5 [and thirty-five] of subdivision (b) and in paragraphs eleven, thirteen,
6 fifteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twen-
7 ty-four, twenty-five, twenty-six and twenty-eight of subdivision (c) of
8 section 11-1712 of this subchapter.

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

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

21 S 26. Subparagraphs 16, 17 and 18 of paragraph t of subdivision 1 of
22 section 3602 of the education law, as amended by section 2 of part D of
23 chapter 25 of the laws of 2009, are amended to read as follows:

24 (16) any tuition payments made pursuant to a contract under the
25 provisions of paragraphs e, f, g, h, i and l of subdivision two of
26 section forty-four hundred one of this chapter or any tuition payments
27 on behalf of pupils attending a state school under paragraph d of such
28 subdivision; AND (17) in any year in which expenditures are made to the
29 New York state teachers' retirement system or the New York state and
30 local employees' retirement system for both the prior school year and
31 the current school year, any expenditures made to such retirement
32 systems and recorded in the school year prior to the school year in
33 which such obligations are paid[; and (18) any payments to the commis-
34 sioner of taxation and finance pursuant to article twenty-three of the
35 tax law].

36 S 27. Section 3609-g of the education law is REPEALED.

37 S 28. Paragraph (e) of subdivision 7 of section 38 of the highway law,
38 as amended by chapter 196 of the laws of 1981 and as relettered by chap-
39 ter 153 of the laws of 1984, is amended to read as follows:

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

56 S 29. Section 1270-h of the public authorities law is REPEALED.

1 S 30. Section 92-ff of the state finance law is REPEALED.

2 S 31. Paragraphs 1 and 2 and subparagraph (B) of paragraph 4 of subdi-
3 vision (j) of section 14 of the tax law, paragraphs 1 and 2 as amended
4 by section 10 of part CC of chapter 85 of the laws of 2002 and subpara-
5 graph (B) of paragraph 4 as amended by chapter 161 of the laws of 2005,
6 are amended to read as follows:

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

17 (2) For purposes of article twenty-two of this chapter, an individual
18 who is either a sole proprietor or a member of a partnership shall qual-
19 ify as an owner of a new business unless the business of which the indi-
20 vidual is an owner is substantially similar in operation and in owner-
21 ship to a business entity taxable, or previously taxable, under section
22 one hundred eighty-three, one hundred eighty-four[,], OR one hundred
23 eighty-five [or one hundred eighty-six of article nine] OF THIS CHAPTER;
24 article nine-A, thirty-two or thirty-three of this chapter; [article
25 twenty-three of this chapter] or which would have been subject to [tax
26 under such article twenty-three (as such article was in effect on Janu-
27 ary first, nineteen hundred eighty) or] the income (or losses) of which
28 is (or was) includable under article twenty-two OF THIS CHAPTER.

29 (B) Notwithstanding any provisions of this subdivision to the contrary
30 and notwithstanding subdivision c of section eighteen of part CC of
31 chapter eighty-five of the laws of two thousand two, a corporation or
32 partnership, which was first certified under article eighteen-B of the
33 general municipal law before August first, two thousand two, has a base
34 period of zero years or zero employment for its base period, and is
35 similar in operation and in ownership to a business entity or entities
36 taxable, or previously taxable, under sections specified in paragraph
37 one or two of this subdivision or which would have been subject to [tax
38 under article twenty-three of this chapter (as such article was in
39 effect on January first, nineteen hundred eighty) or] the income or
40 losses of which is or was includable under article twenty-two of this
41 chapter shall not be deemed a new business if it was not formed for a
42 valid business purpose, as such term is defined in clause (D) of subpar-
43 agraph one of paragraph (o) of subdivision nine of section two hundred
44 eight of this chapter and was formed solely to gain empire zone bene-
45 fits.

46 S 32. Paragraph (c) of subdivision 1-c of section 210 of the tax law,
47 as amended by chapter 1043 of the laws of 1981, is amended to read as
48 follows:

49 (c) is not a corporation which is substantially similar in operation
50 and in ownership to a business entity (or entities) taxable, or previ-
51 ously taxable, under this article; section one hundred eighty-three, one
52 hundred eighty-four[,], OR one hundred eighty-five [or one hundred eight-
53 y-six of article nine] OF THIS CHAPTER; article thirty-two or thirty-
54 three of this chapter; [article twenty-three of this chapter] or which
55 would have been subject to [tax under such article twenty-three (as such
56 article was in effect on January first, nineteen hundred eighty) or] the

1 income (or losses) of which is (or was) includable under article twen-
2 ty-two of this chapter, and

3 S 33. Subparagraph 2 of paragraph (j) of subdivision 12 of section 210
4 of the tax law, as amended by chapter 1043 of the laws of 1981, is
5 amended to read as follows:

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

18 S 34. Subdivision 2-a of section 280-a of the tax law, as amended by
19 chapter 267 of the laws of 1987, is amended to read as follows:

20 2-a. In addition to the rebate allowable under the provisions of
21 subdivision one of this section, the portion of the amount of stock
22 transfer tax paid which is to be allowed as a rebate to any person,
23 firm, company or corporation registered with the United States securi-
24 ties and exchange commission in accordance with subsection (b) of
25 section fifteen of the securities exchange act of nineteen hundred thir-
26 ty-four, as amended, and acting as a dealer in a transaction described
27 in paragraph (e) of subdivision twelve of this section, other than such
28 a person, firm, company or corporation liable to file a report or return
29 under article nine-A of this chapter, [or article twenty-three of this
30 chapter, (as such article was in effect on or before December thirtieth,
31 nineteen hundred eighty-two)], shall be one hundred percent of the stock
32 transfer tax incurred and paid on transactions subject to the stock
33 transfer tax executed by such person, firm, company or corporation
34 pursuant to the acceptance of an order placed through an intermarket
35 linkage system developed pursuant to subsection (a) of section eleven-A
36 of such securities exchange act under a plan submitted by one or more
37 national securities exchanges or national securities associations regis-
38 tered with such securities and exchange commission occurring on and
39 after April seventeenth, nineteen hundred seventy-eight and on or before
40 September thirtieth, nineteen hundred seventy-nine, seventy percent of
41 the tax incurred and paid on such a transaction occurring on and after
42 October first, nineteen hundred seventy-nine and on or before September
43 thirtieth, nineteen hundred eighty and forty percent of the tax incurred
44 and paid on such a transaction occurring on and after October first,
45 nineteen hundred eighty and on or before September thirtieth, nineteen
46 hundred eighty-one. Notwithstanding any other provision of law, the net
47 amount to be rebated to any such person, firm, company or corporation
48 under this subdivision with respect to stock transfer tax allowable as
49 rebates during each of the periods ending on September thirtieth
50 hereinbefore set forth shall not be allowed or paid prior to the first
51 day of the eighth month following September thirtieth of each of such
52 periods nor until the subsequent date on which the commissioner [of
53 taxation and finance] shall next determine the amount allowable as
54 rebates pursuant to the provisions of section ninety-two-i of the state
55 finance law, provided, however, that the net amount to be allowed for
56 the April seventeenth, nineteen hundred seventy-eight through September

thirtieth, nineteen hundred seventy-eight period shall not be allowed or paid until the last business day of June, nineteen hundred seventy-nine.

No rebate shall be allowed under this subdivision with respect to any stock transfer tax incurred in a market making transaction occurring on or after October first, nineteen hundred eighty-one. No rebate shall be allowed or paid under this subdivision for stock transfer tax paid pursuant to section two hundred seventy-nine-a of this chapter nor shall any rebate be allowed or paid until the person, firm, company or corporation claiming the rebate complies with the rules, regulations and instructions of the [state tax commission] COMMISSIONER issued under this article including furnishing of a just and true book of account within the state as may be required by the [state tax commission] COMMISSIONER.

S 35. Subparagraph (A) of paragraph 10 of subsection (a) of section 606 of the tax law, as amended by section 3 of part CC of chapter 85 of the laws of 2002, is amended to read as follows:

(A) the business of which the individual is an owner is substantially similar in operation and in ownership to a business entity taxable, or previously taxable, under section one hundred eighty-three, one hundred eighty-four[,], OR one hundred eighty-five [or one hundred eighty-six of article nine] OF THIS CHAPTER; article nine-A, thirty-two or thirty-three of this chapter; [article twenty-three of this chapter] or which would have been subject to [tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or] the income (or losses) of which is (or was) includable under THIS article [twenty-two] of this chapter whereby the intent and purpose of this paragraph and paragraph five of this subsection with respect to refunding of credit to new business would be evaded; or

S 36. Clauses (ii), (iv) and subclause 2 of clause (v) of subparagraph (B) of paragraph 1 of subsection (o) of section 612 of the tax law, clause (ii) as amended by chapter 28 of the laws of 1987, clause (iv) as amended by chapter 267 of the laws of 1987 and subclause 2 of clause (v) as amended by chapter 1043 of the laws of 1981, are amended to read as follows:

(ii) is, at the date of adoption of such plan, subject to taxation (whether or not any amount is owing) under section one hundred eighty-three[,], OR one hundred eighty-four [or one hundred eighty-six of article nine] of this chapter, or under article nine-a of this chapter [or article twenty-three of this chapter, or would have been subject to tax under article twenty-three (as such article was in effect on January first, nineteen hundred eighty) if such article were still in effect], and the first taxable period for which such new business became subject to such taxation commenced on or after July first, nineteen hundred eighty-one and before January first, nineteen hundred eighty-eight, and such first taxable period includes the date of adoption of such plan; if not so subject to taxation, the new business must be subject to taxation under such sections or articles for the first time within one year from the date of adoption of such plan, and

(iv) within ninety days after the adoption of such plan, or, if a return is required, as part of such return, under such article nine[,], OR article nine-A [or article twenty-three (as such article was in effect on or before December thirtieth, nineteen hundred eighty-two), whichever is sooner] OF THIS CHAPTER, shall file a new business certificate with the [state tax commission] COMMISSIONER attesting to whether it meets, if subject to taxation under such articles, or intends to meet, if not so subject, all of the conditions stated in clauses (i),

(ii) and (iii) of this subparagraph within the time set forth therein. Thereafter, during the first four taxable years of such new business, along with, and as part of, any return required under such articles, such new business shall make and file a new business certificate for the period covered by such return attesting to whether it has met the conditions specified in this subparagraph during the taxable period covered by such return. If no return is required under such articles, such certificate shall be filed annually on or before the fifteenth day of March which shall cover the twelve consecutive calendar month period ending on the last day of December immediately preceding such March fifteenth. If such new business fails to meet such conditions specified in this subparagraph, it shall, in addition, give notice of this fact, within the time prescribed by the [state tax commission] COMMISSIONER, to the holders of its "new business investments." The [state tax commission] COMMISSIONER shall prescribe the form and content of such new business certification and may require a new business to file such certificate for periods (even if no return is filed or required, but for this section) covering up to eight years from the date of adoption of such plan, as in its discretion, it deems the same necessary for the enforcement of this subparagraph, and

(2) A new business does not include (i) any new business of which twenty-five percent or more of the number of shares of stock that entitle the holders thereof to vote for the election of directors or trustees is owned, directly or indirectly, by a taxpayer subject to tax under section one hundred eighty-three, one hundred eighty-four[,], OR one hundred eighty-five [or one hundred eighty-six of article nine] of this chapter, or under article nine-A, thirty-two or thirty-three of this chapter or (ii) any new business substantially similar in operation and in ownership, directly or indirectly, to a business entity (or entities) taxable, or previously taxable, under such sections, such articles, [article twenty-three] or which would have been subject to [tax under article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or] the income (or losses) of which is (or was) includable under THIS article [twenty-two] whereby the intent and purpose of this subsection would be evaded.

S 37. Subsection (p) of section 612 of the tax law, as amended by chapter 28 of the laws of 1987, is amended to read as follows:

(p) New business investment deferral. For taxable years beginning before January first, nineteen hundred eighty-eight, at the option of the taxpayer, there may be subtracted from federal adjusted gross income a reinvested amount of long-term capital gain realized in a taxable year from the sale of a capital asset, as such term is defined in section 1221 of the internal revenue code, which is not a new business investment. A reinvested amount of long-term capital gain shall mean an amount which bears the same ratio to the long-term capital gain realized from the sale of a capital asset which was includable in New York adjusted gross income as that portion of the sale proceeds which is reinvested, within one year from date of sale, in a New York new business bears to the total sale proceeds. For the purposes of this subsection, a New York new business is a business enterprise which (1) has been a taxpayer under this article for no more than three taxable years (including short taxable years), (2) over fifty percent of the number of shares of stock that entitle the holders thereof to vote for the election of directors or trustees is not owned, directly or indirectly, by a taxpayer subject to tax under section one hundred eighty-three, one hundred eighty-four[,], OR one hundred eighty-five [or one hundred eighty-six of article

1 nine] of this chapter, or under article nine-A, thirty-two or thirty-
2 three of this chapter, (3) is not substantially similar in operation or
3 ownership, directly or indirectly, to a business entity (or entities)
4 taxable, or previously taxable, under such sections, such articles,
5 [article twenty-three] or which would have been subject to [tax under
6 article twenty-three (as such article was in effect on January first,
7 nineteen hundred eighty) or] the income (or losses) of which is (or was)
8 includable under THIS article [twenty-two] whereby the intent and
9 purpose of this subsection would be evaded, (4) locates and employs at
10 least ninety percent of its assets in the state, (5) employs principally
11 in the state eighty percent of its employees (as ascertained within the
12 meaning and intent of subparagraph three of paragraph (a) of subdivision
13 three of section two hundred ten of this chapter and, in addition, in
14 the case of a partnership, excluding partners), (6) derives less than
15 forty percent of its gross income from dividends, interest, royalties
16 (other than mineral, oil, or gas royalties or copyright royalties), and
17 annuities and (7) reports at least twenty-five hundred dollars in gross
18 income in any taxable year. The reinvested amount must qualify as a
19 capital asset as defined in section 1221 of the internal revenue code
20 and must be retained by the taxpayer for at least twelve months. The
21 modification allowable under this subsection shall be utilized with
22 respect to the taxable year in which the twelve month retention period
23 ends. The commissioner [of taxation and finance] may require annual
24 information reports on the investments in new businesses made pursuant
25 to this subsection, and such other reports as he may require to ensure
26 against the evasion of the intent and purposes of this subsection.

27 S 38. Subsection (g) of section 697 of the tax law, as amended by
28 chapter 267 of the laws of 1987, is amended to read as follows:

29 (g) Cooperation with the cities of the state of New York. Notwith-
30 standing the provisions of subsection (e) OF THIS SECTION, the tax
31 commission may permit the proper city officer of any city of the state
32 of New York imposing a personal income tax upon the incomes of resi-
33 dents, or an unincorporated business income tax, or an earnings tax on
34 nonresidents, or the authorized representative of any such officer, to
35 inspect any return filed under this article, [or article twenty-three
36 (as such article was in effect on or before December thirtieth, nineteen
37 hundred eighty-two),] or may furnish to such officer or his authorized
38 representative an abstract of any such return or supply him with infor-
39 mation concerning an item contained in any such return, or disclosed by
40 any investigation of tax liability under this article [or article twen-
41 ty-three (as such article was in effect on or before December thirtieth,
42 nineteen hundred eighty-two)], but such permission shall be granted or
43 such information furnished to such officer or his representative only if
44 the local laws of such city grant substantially similar privileges to
45 the commission or officer of this state charged with the administration
46 of the tax imposed by this article and such information is to be used
47 for tax purposes only; and provided further the commissioner [of taxa-
48 tion and finance] may furnish to such city officer or the legal repre-
49 sentative of such city such returns filed under this article [or article
50 twenty-three (as such article was in effect on or before December thir-
51 tieth, nineteen hundred eighty-two)] and other tax information, as he
52 may consider proper, for use in court actions or proceedings under such
53 local law, whether civil or criminal, where a written request therefor
54 has been made to the commissioner [of taxation and finance] by such city
55 officer or his delegate, provided the local law of such city grants
56 substantially similar powers to such city officer or his delegate. Where

1 the commissioner [of taxation and finance] has so authorized use of
2 returns and other information in such actions or proceedings, officers
3 and employees of the department [of taxation and finance] may testify in
4 such actions or proceedings in respect to such returns or other informa-
5 tion.

6 S 39. Section 1311 of the tax law, as amended by chapter 682 of the
7 laws of 1976, is amended to read as follows:

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

18 (b) If the [state tax commission] COMMISSIONER takes action under such
19 article twenty-two [or articles twenty-two and twenty-three or under a
20 local law enacted pursuant to the authority of article two-E of the
21 general city law] OF THIS CHAPTER with respect to the enforcement and
22 collection of the tax or taxes assessed under such [articles] ARTICLE
23 the [state tax commission] COMMISSIONER shall, wherever possible, accom-
24 pany such action with a similar action under similar enforcement and
25 collection provisions of such city income tax.

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

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

38 S 40. Subparagraph (B) of paragraph 8 of subsection (i) of section
39 1456 of the tax law, as added by section 27 of part A of chapter 56 of
40 the laws of 1998, is amended to read as follows:

41 (B) is substantially similar in operation and in ownership to a busi-
42 ness entity (or entities) taxable, or previously taxable, under this
43 article; section one hundred eighty-three, one hundred eighty-four[,] OR
44 one hundred eighty-five [or one hundred eighty-six of article nine] OF
45 THIS CHAPTER; article nine-A or article thirty-three of this chapter;
46 [article twenty-three of this chapter or which would have been subject
47 to tax under such article twenty-three (as such article was in effect on
48 January first, nineteen hundred eighty)] or the income (or losses) of
49 which is (or was) includable under article twenty-two of this chapter
50 whereby the intent and purpose of this paragraph and paragraph five of
51 this subsection with respect to refunding of credit to new business
52 would be evaded; or

53 S 41. Subparagraph (B) of paragraph 7 of subdivision (q) of section
54 1511 of the tax law, as added by section 1 of part L of chapter 63 of
55 the laws of 2000, is amended to read as follows:

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

13 S 42. Section 1166-a of the tax law is REPEALED.

14 S 43. Section 1167 of the tax law, as amended by section 3 of part F
15 of chapter 25 of the laws of 2009, is amended to read as follows:

16 S 1167. Deposit and disposition of revenue. All taxes, interest and
17 penalties collected or received by the commissioner under this article
18 shall be deposited and disposed of pursuant to the provisions of section
19 one hundred seventy-one-a of this chapter, except that after reserving
20 amounts in accordance with such section one hundred seventy-one-a of
21 this chapter, the remainder shall be paid by the comptroller to the
22 credit of the highway and bridge trust fund established by section
23 eighty-nine-b of the state finance law[, provided, however, taxes,
24 interest and penalties collected or received pursuant to section eleven
25 hundred sixty-six-a of this article shall be paid to the credit of the
26 metropolitan transportation authority aid trust account of the metropol-
27 itan transportation authority financial assistance fund established by
28 section ninety-two-ff of the state finance law].

29 S 44. This act shall take effect immediately; provided, however that:

30 (a) the amendments to subsection (4) of section 618 of the tax law
31 made by section nine of this act shall be subject to the expiration and
32 reversion of such subsection pursuant to chapter 782 of the laws of
33 1988, as amended, when upon such date the provisions of section ten of
34 this act shall take effect; and

35 (b) the amendments to subdivision (4) of section 11-1718 of the admin-
36 istrative code of the city of New York made by section twenty-four of
37 this act shall be subject to the expiration and reversion of such subdi-
38 vision pursuant to chapter 782 of the laws of 1988, as amended, when
39 upon such date the provisions of section twenty-five of this act shall
40 take effect.