

5926

2013-2014 Regular Sessions

I N S E N A T E

August 21, 2013

Introduced by Sen. GIPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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 Article 23 of the tax law is REPEALED.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11 of the tax law is REPEALED.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19 REPEALED.
20 S 6. Paragraph 39 of subsection (b) of section 612 of the tax law is
21 REPEALED.

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

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

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

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9 REPEALED.

10 S 9. Subsection 4 of section 618 of the tax law, as amended by section
11 9 of part C of chapter 25 of the laws of 2009, is amended to read as
12 follows:

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

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

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

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

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

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

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

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

8 S 14. Subparagraph (C) of paragraph 1 of subdivision (b) of section
9 1503 of the tax law, as amended by section 14 of part C of chapter 25 of
10 the laws of 2009, is amended to read as follows:

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

17 S 15. Subparagraph (V) of paragraph 2 of subdivision (b) of section
18 1503 of the tax law is REPEALED.

19 S 16. Subparagraph 5 of paragraph (a) of subdivision 8 of section
20 11-602 of the administrative code of the city of New York, as amended by
21 section 16 of part C of chapter 25 of the laws of 2009, is amended to
22 read as follows:

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

28 S 17. Subparagraph 19 of paragraph (b) of subdivision 8 of section
29 11-602 of the administrative code of the city of New York is REPEALED.

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

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

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

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

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

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

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

55 (ii) is, at the date of adoption of such plan, subject to taxation
56 (whether or not any amount is owing) under section one hundred eighty-

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

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

39 (v) Special rules:

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

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

S 23. Subdivision (p) of section 11-1712 of the administrative code of the city of New York, as amended by chapter 333 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 twelve hundred twenty-one 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 includible 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 subdivision, a New York new business is a business enterprise which: (1) has been a taxpayer under article nine-A, twenty-two, thirty-two or thirty-three of the tax law 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 nine] of the tax law, or under article nine-A, thirty-two or thirty-three of the tax law, (3) is not substantially similar in operation or ownership, directly or indirectly, to a business entity (or entities) taxable, or previously taxable, under such sections, such articles[, article twenty-three of the tax law] 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) includible under article twenty-two of the tax law whereby the intent and purpose of this subdivision would be evaded, (4) locates and employs at least ninety percent of its assets in the state, (5) employs principally in the state eighty percent of its employees (as ascertained within the meaning and intent of subparagraph three of paragraph (a) of subdivision three of section two hundred ten of the tax law and, in addition, in the case of a partnership, excluding partners), and (6) derives less than forty percent of its gross income from dividends, interest, royalties (other than mineral, oil, or gas royalties or copyright royalties), annuities and (7) reports at least twenty-five hundred dollars in gross income in any taxable year. The reinvested amount must qualify as a capital asset as defined pursuant to section twelve hundred twenty-one of the internal revenue code and must be retained by the taxpayer for at least twelve months. The modification allowable under this subdivision shall be utilized with respect to the taxable year in which the twelve month retention period ends.

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

(4) There shall be added or subtracted (as the case may be) the modifications described in paragraphs six, ten, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four,

1 twenty-five, twenty-six, twenty-seven, twenty-nine[,] AND thirty-four
2 [and thirty-five] of subdivision (b) and in paragraphs eleven, thirteen,
3 fifteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twen-
4 ty-four, twenty-five, twenty-six and twenty-eight of subdivision (c) of
5 section 11-1712 of this subchapter.

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

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

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

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

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

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

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

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

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

55 S 31. Paragraphs 1 and 2 and subparagraph (B) of paragraph 4 of subdi-
56 vision (j) of section 14 of the tax law, paragraphs 1 and 2 as amended

by section 10 of part CC of chapter 85 of the laws of 2002 and subparagraph (B) of paragraph 4 as amended by chapter 161 of the laws of 2005, are amended to read as follows:

(1) A new business shall include any corporation, except a corporation which is substantially similar in operation and in ownership to a business entity (or entities) 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, article 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 article twenty-two of this chapter.

(2) For purposes of article twenty-two of this chapter, an individual who is either a sole proprietor or a member of a partnership shall qualify as an owner of a new business unless 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 article twenty-two OF THIS CHAPTER.

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

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

(c) is not a corporation which is substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable, under this article; 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 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 article twenty-two of this chapter, and

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

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

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

18 2-a. In addition to the rebate allowable under the provisions of
19 subdivision one of this section, the portion of the amount of stock
20 transfer tax paid which is to be allowed as a rebate to any person,
21 firm, company or corporation registered with the United States securi-
22 ties and exchange commission in accordance with subsection (b) of
23 section fifteen of the securities exchange act of nineteen hundred thir-
24 ty-four, as amended, and acting as a dealer in a transaction described
25 in paragraph (e) of subdivision twelve of this section, other than such
26 a person, firm, company or corporation liable to file a report or return
27 under article nine-A of this chapter, [or article twenty-three of this
28 chapter, (as such article was in effect on or before December thirtieth,
29 nineteen hundred eighty-two),] shall be one hundred percent of the stock
30 transfer tax incurred and paid on transactions subject to the stock
31 transfer tax executed by such person, firm, company or corporation
32 pursuant to the acceptance of an order placed through an intermarket
33 linkage system developed pursuant to subsection (a) of section eleven-A
34 of such securities exchange act under a plan submitted by one or more
35 national securities exchanges or national securities associations regis-
36 tered with such securities and exchange commission occurring on and
37 after April seventeenth, nineteen hundred seventy-eight and on or before
38 September thirtieth, nineteen hundred seventy-nine, seventy percent of
39 the tax incurred and paid on such a transaction occurring on and after
40 October first, nineteen hundred seventy-nine and on or before September
41 thirtieth, nineteen hundred eighty and forty percent of the tax incurred
42 and paid on such a transaction occurring on and after October first,
43 nineteen hundred eighty and on or before September thirtieth, nineteen
44 hundred eighty-one. Notwithstanding any other provision of law, the net
45 amount to be rebated to any such person, firm, company or corporation
46 under this subdivision with respect to stock transfer tax allowable as
47 rebates during each of the periods ending on September thirtieth
48 hereinbefore set forth shall not be allowed or paid prior to the first
49 day of the eighth month following September thirtieth of each of such
50 periods nor until the subsequent date on which the commissioner [of
51 taxation and finance] shall next determine the amount allowable as
52 rebates pursuant to the provisions of section ninety-two-i of the state
53 finance law, provided, however, that the net amount to be allowed for
54 the April seventeenth, nineteen hundred seventy-eight through September
55 thirtieth, nineteen hundred seventy-eight period shall not be allowed or
56 paid until the last business day of June, nineteen hundred seventy-nine.

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

12 S 35. Subparagraph (A) of paragraph 10 of subsection (a) of section
13 606 of the tax law, as amended by section 3 of part CC of chapter 85 of
14 the laws of 2002, is amended to read as follows:

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

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

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

47 (iv) within ninety days after the adoption of such plan, or, if a
48 return is required, as part of such return, under such article nine[,]
49 OR article nine-A [or article twenty-three (as such article was in
50 effect on or before December thirtieth, nineteen hundred eighty-two),
51 whichever is sooner] OF THIS CHAPTER, shall file a new business certif-
52 icate with the [state tax commission] COMMISSIONER attesting to whether
53 it meets, if subject to taxation under such articles, or intends to
54 meet, if not so subject, all of the conditions stated in clauses (i),
55 (ii) and (iii) of this subparagraph within the time set forth therein.
56 Thereafter, during the first four taxable years of such new business,

1 along with, and as part of, any return required under such articles,
2 such new business shall make and file a new business certificate for the
3 period covered by such return attesting to whether it has met the condi-
4 tions specified in this subparagraph during the taxable period covered
5 by such return. If no return is required under such articles, such
6 certificate shall be filed annually on or before the fifteenth day of
7 March which shall cover the twelve consecutive calendar month period
8 ending on the last day of December immediately preceding such March
9 fifteenth. If such new business fails to meet such conditions specified
10 in this subparagraph, it shall, in addition, give notice of this fact,
11 within the time prescribed by the [state tax commission] COMMISSIONER,
12 to the holders of its "new business investments." The [state tax commis-
13 sion] COMMISSIONER shall prescribe the form and content of such new
14 business certification and may require a new business to file such
15 certificate for periods (even if no return is filed or required, but for
16 this section) covering up to eight years from the date of adoption of
17 such plan, as in its discretion, it deems the same necessary for the
18 enforcement of this subparagraph, and

19 (2) A new business does not include (i) any new business of which
20 twenty-five percent or more of the number of shares of stock that enti-
21 tle the holders thereof to vote for the election of directors or trus-
22 tees is owned, directly or indirectly, by a taxpayer subject to tax
23 under section one hundred eighty-three, one hundred eighty-four[,] OR
24 one hundred eighty-five [or one hundred eighty-six of article nine] of
25 this chapter, or under article nine-A, thirty-two or thirty-three of
26 this chapter or (ii) any new business substantially similar in operation
27 and in ownership, directly or indirectly, to a business entity (or enti-
28 ties) taxable, or previously taxable, under such sections, such arti-
29 cles, [article twenty-three] or which would have been subject to [tax
30 under article twenty-three (as such article was in effect on January
31 first, nineteen hundred eighty) or] the income (or losses) of which is
32 (or was) includable under THIS article [twenty-two] whereby the intent
33 and purpose of this subsection would be evaded.

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

36 (p) New business investment deferral. For taxable years beginning
37 before January first, nineteen hundred eighty-eight, at the option of
38 the taxpayer, there may be subtracted from federal adjusted gross income
39 a reinvested amount of long-term capital gain realized in a taxable year
40 from the sale of a capital asset, as such term is defined in section
41 1221 of the internal revenue code, which is not a new business invest-
42 ment. A reinvested amount of long-term capital gain shall mean an amount
43 which bears the same ratio to the long-term capital gain realized from
44 the sale of a capital asset which was includable in New York adjusted
45 gross income as that portion of the sale proceeds which is reinvested,
46 within one year from date of sale, in a New York new business bears to
47 the total sale proceeds. For the purposes of this subsection, a New York
48 new business is a business enterprise which (1) has been a taxpayer
49 under this article for no more than three taxable years (including short
50 taxable years), (2) over fifty percent of the number of shares of stock
51 that entitle the holders thereof to vote for the election of directors
52 or trustees is not owned, directly or indirectly, by a taxpayer subject
53 to tax under section one hundred eighty-three, one hundred eighty-
54 four[,] OR one hundred eighty-five [or one hundred eighty-six of article
55 nine] of this chapter, or under article nine-A, thirty-two or thirty-
56 three of this chapter, (3) is not substantially similar in operation or

1 ownership, directly or indirectly, to a business entity (or entities)
2 taxable, or previously taxable, under such sections, such articles,
3 [article twenty-three] or which would have been subject to [tax under
4 article twenty-three (as such article was in effect on January first,
5 nineteen hundred eighty) or] the income (or losses) of which is (or was)
6 includable under THIS article [twenty-two] whereby the intent and
7 purpose of this subsection would be evaded, (4) locates and employs at
8 least ninety percent of its assets in the state, (5) employs principally
9 in the state eighty percent of its employees (as ascertained within the
10 meaning and intent of subparagraph three of paragraph (a) of subdivision
11 three of section two hundred ten of this chapter and, in addition, in
12 the case of a partnership, excluding partners), (6) derives less than
13 forty percent of its gross income from dividends, interest, royalties
14 (other than mineral, oil, or gas royalties or copyright royalties), and
15 annuities and (7) reports at least twenty-five hundred dollars in gross
16 income in any taxable year. The reinvested amount must qualify as a
17 capital asset as defined in section 1221 of the internal revenue code
18 and must be retained by the taxpayer for at least twelve months. The
19 modification allowable under this subsection shall be utilized with
20 respect to the taxable year in which the twelve month retention period
21 ends. The commissioner [of taxation and finance] may require annual
22 information reports on the investments in new businesses made pursuant
23 to this subsection, and such other reports as he may require to ensure
24 against the evasion of the intent and purposes of this subsection.

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

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

1 and employees of the department [of taxation and finance] may testify in
2 such actions or proceedings in respect to such returns or other informa-
3 tion.

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

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

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

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

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

36 S 40. Subparagraph (B) of paragraph 8 of subsection (i) of section
37 1456 of the tax law, as added by section 27 of part A of chapter 56 of
38 the laws of 1998, is amended to read as follows:

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

51 S 41. Subparagraph (B) of paragraph 7 of subdivision (q) of section
52 1511 of the tax law, as added by section 1 of part L of chapter 63 of
53 the laws of 2000, is amended to read as follows:

54 (B) is substantially similar in operation and in ownership to a busi-
55 ness entity (or entities) taxable, or previously taxable, under this
56 article; section one hundred eighty-three, one hundred eighty-four[,] OR

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

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

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

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

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

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

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