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

S. 2609 A. 3009

S E N A T E - A S S E M B L Y

January 22, 2013

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to the temporary metropolitan transportation business tax surcharge (Part A); to amend the tax law, in relation to the empire state film production credit and the empire state film post production credit; and to amend part Y-1 of chapter 57 of the laws of 2009 amending the tax law relating to the empire state film production credit, in relation to reports (Part B); to amend the economic development law, the tax law and the administrative code of the city of New York, in relation to establishing the New York innovation hot spot program (Part C); to amend the tax law and the administrative code of the city of New York, in relation to extending for three years the charitable contributions deduction limitation (Part D); to amend the tax law and the administrative code of the city of New York, in relation to the exclusion of certain royalty payments from the entire net income or other taxable basis of corporations, banking corporations, and insurance corporations, from the unrelated business income of corporations, and from the adjusted gross income of individual taxpayers; and to repeal certain provisions of the tax law relating thereto (Part E); to amend the tax law, in relation to the historic preservation tax credit (Part F); to amend the tax law, in relation to providing a tax credit for electric vehicle recharging property (Part G); to amend chapter 61 of the laws of 2011 amending the real property tax law and other laws relating to establishing standards for electronic real property tax administration, in relation to making permanent, provisions relating to mandatory electronic filing of tax documents and improving sales tax compliance and to repeal certain provisions of the tax law and the administrative code of the city of New York relating thereto (Part H); to amend the tax law, in relation to exempting sales made at a Taste-NY facility from sales and compensating use taxes; and to amend the alcoholic beverage control law, in relation to allowing sales of all types of alcoholic

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

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beverages at a Taste-NY facility (Part I); to amend the general municipal law and the public authorities law, in relation to industrial development agencies and authorities (Part J); to amend the tax law, in relation to expanding the exemption of CNG in the sales tax to include natural gas purchased and used to produce CNG for use exclusively and directly in the engine of a motor vehicle (Part K); to amend the tax law, in relation to allowing voluntary ambulance services, fire companies, fire departments and rescue squads to claim reimbursement of the petroleum business tax for fuel used in their vehicles (Part L); to amend the tax law, in relation to the power of the commissioner of taxation and finance to refuse to issue a certificate of authority to collect the sales and use taxes and the power of the commissioner of taxation and finance to revoke such a certificate once granted and penalties related to the operation of a business without such certificate (Part M); to amend the tax law, in relation to allowing the department of taxation and finance to refuse a certificate of registration to retail dealers of cigarettes and tobacco products if such dealers have certain tax liabilities or have been convicted of a tax crime within one year of applying for or renewing a certificate of registration (Part N); to amend the tax law, in relation to increasing the penalty for the possession of unstamped and unlawfully stamped cigarettes (Part O); to amend the tax law, the vehicle and traffic law and the insurance law, in relation to the suspension of drivers' licenses of persons who are delinquent in the payment of past-due tax liabilities (Part P); to amend the tax law, in relation to serving an income execution with respect to individual tax debtors without filing a warrant (Part Q); to amend the tax law, in relation to the authority of counties to impose sales and compensating use taxes pursuant to the authority of article 29 of such law; and to repeal certain provisions of sections 1210 and 1224 and section 1210-E of such law relating thereto (Part R); to amend the tax law, in relation to a keno style lottery game (Part S); to amend the tax law, in relation to vendor fees paid to vendor tracks (Part T); and to amend the racing, pari-mutuel wagering and breeding law, in relation to licenses for simulcast facilities, sums relating to track simulcast, simulcast of out-of-state thoroughbred races, simulcasting of races run by out-of-state harness tracks and distributions of wagers; to amend chapter 281 of the laws of 1994, amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and chapter 346 of the laws of 1990, amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and the imposition of certain taxes, in relation to making permanent certain provisions thereof; to amend the racing, pari-mutuel wagering and breeding law, in relation to making permanent certain provisions thereof; and to repeal subdivision 5 of section 1012 of the racing, pari-mutuel wagering and breeding law relating to telephone accounts and telephone wagering and section 1014 of the racing, pari-mutuel wagering and breeding law relating to simulcasting of out-of-state thoroughbred races (Part U)

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

Section 1. This act enacts into law major components of legislation which are necessary to implement the state fiscal plan for the 2013-2014

state fiscal year. Each component is wholly contained within a Part identified as Parts A through U. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

Section 1. Subdivision 1 of section 183-a of the tax law, as amended by section 1 of part II-1 of chapter 57 of the laws of 2008, is amended to read as follows:

1. The term "corporation" as used in this section shall include an association, within the meaning of paragraph three of subsection (a) of section seventy-seven hundred one of the internal revenue code (including a limited liability company), a publicly traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificates or other written instruments. Every corporation, joint-stock company or association formed for or principally engaged in the conduct of canal, steamboat, ferry (except a ferry company operating between any of the boroughs of the city of New York under a lease granted by the city), express, navigation, pipe line, transfer, baggage express, omnibus, taxicab, telegraph, or telephone business, or formed for or principally engaged in the conduct of two or more such businesses, and every corporation, joint-stock company or association formed for or principally engaged in the conduct of a railroad, palace car, sleeping car or trucking business or formed for or principally engaged in the conduct of two or more of such businesses and which has made an election pursuant to subdivision ten of section one hundred eighty-three of this article, and every other corporation, joint-stock company or association principally engaged in the conduct of a transportation or transmission business, except a corporation, joint-stock company or association formed for or principally engaged in the conduct of a railroad, palace car, sleeping car or trucking business or formed for or principally engaged in the conduct of two or more of such businesses and which has not made the election provided for in subdivision ten of section one hundred eighty-three of this article, and except a corporation, joint-stock company or association principally engaged in the conduct of aviation (including air freight forwarders acting as principal and like indirect air carriers) and except a corporation principally engaged in providing telecommunication services between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the foregoing), at least ninety percent of the voting stock of which corporation is owned, directly or indirectly, by air carriers and which corporation's principal function is to fulfill the requirements of (i) the federal aviation administration (or the successor thereto) or (ii) the international civil aviation organization (or the successor thereto), relating to the existence of a communication system between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the foregoing) for the purposes of air safety and naviga-

tion and except a corporation, joint-stock company or association which is liable to taxation under article thirty-two of this chapter, shall pay for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in the metropolitan commuter transportation district in such corporate or organized capacity, or of maintaining an office in such district, a tax surcharge for all or any part of its years commencing on or after January first, nineteen hundred eighty-two but ending before December thirty-first, two thousand [thirteen] EIGHTEEN, which tax surcharge, in addition to the tax imposed by section one hundred eighty-three of this article, shall be computed at the rate of eighteen percent of the tax imposed under such section one hundred eighty-three for such years or any part of such years ending before December thirty-first, nineteen hundred eighty-three after the deduction of any credits otherwise allowable under this article, and at the rate of seventeen percent of the tax imposed under such section for such years or any part of such years ending on or after December thirty-first, nineteen hundred eighty-three after the deduction of any credits otherwise allowable under this article; provided, however, that such rates of tax surcharge shall be applied only to that portion of the tax imposed under section one hundred eighty-three of this article after the deduction of any credits otherwise allowable under this article which is attributable to the taxpayer's business activity carried on within the metropolitan commuter transportation district as so determined in the manner prescribed by the rules and regulations promulgated by the commissioner; and provided, further, that the tax surcharge imposed by this section shall not be imposed upon any taxpayer for more than [three] FOUR hundred [seventy-two] THIRTY-TWO months.

S 2. The opening paragraph of subdivision 1 of section 184-a of the tax law, as amended by section 2 of part II-1 of chapter 57 of the laws of 2008, is amended to read as follows:

The term "corporation" as used in this section shall include an association, within the meaning of paragraph three of subsection (a) of section seventy-seven hundred one of the internal revenue code (including a limited liability company), and a publicly traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof. Every corporation, joint-stock company or association formed for or principally engaged in the conduct of canal, steamboat, ferry (except a ferry company operating between any of the boroughs of the city of New York under a lease granted by the city), express, navigation, pipe line, transfer, baggage express, omnibus, taxicab, telegraph or local telephone business, or formed for or principally engaged in the conduct of two or more such businesses, and every corporation, joint-stock company or association formed for or principally engaged in the conduct of a surface railroad, whether or not operated by steam, subway railroad, elevated railroad, palace car, sleeping car or trucking business or principally engaged in the conduct of two or more such businesses and which has made an election pursuant to subdivision ten of section one hundred eighty-three of this article, and every other corporation, joint-stock company or association formed for or principally engaged in the conduct of a transportation or transmission business (other than a telephone business) except a corporation, joint-stock company or association formed for or principally engaged in the conduct of a surface railroad, whether or not operated by steam, subway railroad, elevated railroad, palace car, sleeping car or trucking business or principally engaged in the

conduct of two or more such businesses and which has not made the election provided for in subdivision ten of section one hundred eighty-three of this article, and except a corporation, joint-stock company or association principally engaged in the conduct of aviation (including air freight forwarders acting as principal and like indirect air carriers) and except a corporation principally engaged in providing telecommunication services between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the foregoing), at least ninety percent of the voting stock of which corporation is owned, directly or indirectly, by air carriers and which corporation's principal function is to fulfill the requirements of (i) the federal aviation administration (or the successor thereto) or (ii) the international civil aviation organization (or the successor thereto), relating to the existence of a communication system between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the foregoing) for the purposes of air safety and navigation and except a corporation, joint-stock company or association which is liable to taxation under article thirty-two of this chapter, shall pay for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in the metropolitan commuter transportation district in such corporate or organized capacity, or of maintaining an office in such district, a tax surcharge for all or any part of its taxable years commencing on or after January first, nineteen hundred eighty-two, but ending before December thirty-first, two thousand [thirteen] EIGHTEEN, which tax surcharge, in addition to the tax imposed by section one hundred eighty-four of this article, shall be computed at the rate of eighteen percent of the tax imposed under such section one hundred eighty-four for such taxable years or any part of such taxable years ending before December thirty-first, nineteen hundred eighty-three after the deduction of any credits otherwise allowable under this article, and at the rate of seventeen percent of the tax imposed under such section for such taxable years or any part of such taxable years ending on or after December thirty-first, nineteen hundred eighty-three after the deduction of any credits otherwise allowable under this article; provided, however, that such rates of tax surcharge shall be applied only to that portion of the tax imposed under section one hundred eighty-four of this article after the deduction of any credits otherwise allowable under this article which is attributable to the taxpayer's business activity carried on within the metropolitan commuter transportation district; and provided, further, that the tax surcharge imposed by this section on corporations, joint-stock companies and associations formed for or principally engaged in the conduct of telephone or telegraph business shall be computed in accordance with this subdivision and paragraph (c) of subdivision two of this section as if the three-quarters of one percent rate of tax provided for in subdivision one of section one hundred eighty-four of this article were applicable to such telephone and telegraph businesses for taxable years commencing on or after January first, nineteen hundred eighty-five and ending on or before December thirty-first, nineteen hundred eighty-nine; and provided, further, that the tax surcharge imposed by this section shall not be imposed upon any taxpayer for more than [three] FOUR hundred [seventy-two] THIRTY-TWO months. Provided, however, that for taxable years beginning in two thousand and thereafter, for purposes of this subdivision the tax imposed under section one hundred eighty-four of this article shall be deemed to have been imposed at the rate of three-

quarters of one percent, except that in the case of a corporation, joint-stock company or association which has made an election pursuant to subdivision ten of section one hundred eighty-three of this article, for purposes of this subdivision the tax imposed under section one hundred eighty-four of this article shall be deemed to have been imposed at the rate of six-tenths of one percent.

S 3. Subparagraph 1 of paragraph (a) of subdivision 1 of section 186-c of the tax law, as amended by section 3 of part II-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(1) Every utility doing business in the metropolitan commuter transportation district shall pay a tax surcharge, in addition to the tax imposed by section one hundred eighty-six-a of this article, for all or any parts of its taxable years commencing on or after January first, nineteen hundred eighty-two but ending before December thirty-first, two thousand [thirteen] EIGHTEEN, to be computed at the rate of eighteen percent of the tax imposed under section one hundred eighty-six-a of this article for such taxable years or any part of such taxable years ending before December thirty-first, nineteen hundred eighty-three after the deduction of any credits otherwise allowable under this article, and at the rate of seventeen percent of the tax imposed under such section for such taxable years or any part of such taxable years ending on or after December thirty-first, nineteen hundred eighty-three after the deduction of credits otherwise allowable under this article except any utility credit provided for by article thirteen-A of this chapter; provided, however, that such rates of tax surcharge shall be applied only to that portion of the tax imposed under section one hundred eighty-six-a of this article after the deduction of credits otherwise allowable under this article, except any utility credit provided for by article thirteen-A of this chapter, which is attributable to the taxpayer's gross income or gross operating income from business activity carried on within the metropolitan commuter transportation district; and provided, further, that the tax surcharge imposed by this section shall not be imposed upon any taxpayer for more than [three] FOUR hundred [seventy-two] THIRTY-TWO months.

S 4. Subdivision 1 of section 209-B of the tax law, as amended by section 4 of part II-1 of chapter 57 of the laws of 2008, is amended to read as follows:

1. For the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in a corporate or organized capacity, or of maintaining an office in the metropolitan commuter transportation district, for all or any part of its taxable year, there is hereby imposed on every corporation, other than a New York S corporation, subject to tax under section two hundred nine of this article, or any receiver, referee, trustee, assignee or other fiduciary, or any officer or agent appointed by any court, who conducts the business of any such corporation, for the taxable years commencing on or after January first, nineteen hundred eighty-two but ending before December thirty-first, two thousand [thirteen] EIGHTEEN, a tax surcharge, in addition to the tax imposed under section two hundred nine of this article, to be computed at the rate of eighteen percent of the tax imposed under such section two hundred nine for such taxable years or any part of such taxable years ending before December thirty-first, nineteen hundred eighty-three after the deduction of any credits otherwise allowable under this article, and at the rate of seventeen percent of the tax imposed under such section for such taxable years or any part of such taxable years ending on or after December thirty-first,

nineteen hundred eighty-three after the deduction of any credits otherwise allowable under this article; provided, however, that such rates of tax surcharge shall be applied only to that portion of the tax imposed under section two hundred nine of this article after the deduction of any credits otherwise allowable under this article which is attributable to the taxpayer's business activity carried on within the metropolitan commuter transportation district; and provided, further, that the tax surcharge imposed by this section shall not be imposed upon any taxpayer for more than [three] FOUR hundred [seventy-two] THIRTY-TWO months. Provided however, that for taxable years commencing on or after July first, nineteen hundred ninety-eight, such surcharge shall be calculated as if the tax imposed under section two hundred ten of this article were imposed under the law in effect for taxable years commencing on or after July first, nineteen hundred ninety-seven and before July first, nineteen hundred ninety-eight. Provided however, that for taxable years commencing on or after January first, two thousand seven, such surcharge shall be calculated using the highest of the tax bases imposed pursuant to paragraphs (a), (b), (c) or (d) of subdivision one of section two hundred ten of this article and the amount imposed under paragraph (e) of subdivision one of such section two hundred ten, for the taxable year; and, provided further that, if such highest amount is the tax base imposed under paragraph (a), (b) or (c) of such subdivision, then the surcharge shall be computed as if the tax rates and limitations under such paragraph were the tax rates and limitations under such paragraph in effect for taxable years commencing on or after July first, nineteen hundred ninety-seven and before July first, nineteen hundred ninety-eight.

S 5. Subsection 1 of section 1455-B of the tax law, as amended by section 5 of part II-1 of chapter 57 of the laws of 2008, is amended to read as follows:

1. For the privilege of exercising its franchise or doing business in the metropolitan commuter transportation district in a corporate or organized capacity, there is hereby imposed on every taxpayer subject to tax under this article, other than a New York S corporation, for the taxable years commencing on or after January first, nineteen hundred eighty-two but ending before December thirty-first, two thousand [thirteen] EIGHTEEN, a tax surcharge, in addition to the tax imposed under section fourteen hundred fifty-one of this article, at the rate of eighteen percent of the tax imposed under such section fourteen hundred fifty-one of this article, for such taxable years or any part of such taxable years ending before December thirty-first, nineteen hundred eighty-three after the deduction of any credits otherwise allowable under this article, and at the rate of seventeen percent of the tax imposed under such section for such taxable years or any part of such taxable years ending on or after December thirty-first, nineteen hundred eighty-three after the deduction of any credits otherwise allowable under this article; provided however, that such rates of tax surcharge shall be applied only to that portion of the tax imposed under section fourteen hundred fifty-one of this article after the deduction of any credits otherwise allowable under this article which is attributable to the taxpayer's business activity carried on within the metropolitan commuter transportation district; and provided, further, that the tax surcharge imposed by this section shall not be imposed upon any taxpayer for more than [three] FOUR hundred [seventy-two] THIRTY-TWO months. Provided however, that for taxable years commencing on or after July first, two thousand, such surcharge shall be calculated as if the rate

of the basic tax computed under subsection (a) of section fourteen hundred fifty-five of this article was nine percent.

S 6. Paragraphs 1 and 3 of subdivision (a) of section 1505-a of the tax law, as amended by section 6 of part II-1 of chapter 57 of the laws of 2008, are amended to read as follows:

(1) Every domestic insurance corporation and every foreign or alien insurance corporation, and every life insurance corporation described in subdivision (b) of section fifteen hundred one of this article, for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in the metropolitan commuter transportation district in a corporate or organized capacity, or of maintaining an office in the metropolitan commuter transportation district, for all or any part of its taxable years commencing on or after January first, nineteen hundred eighty-two, but ending before December thirty-first, two thousand [thirteen] EIGHTEEN, except corporations specified in subdivision (c) of section fifteen hundred twelve of this article, shall annually pay, in addition to the taxes otherwise imposed by this article, a tax surcharge on the taxes imposed under this article after the deduction of any credits otherwise allowable under this article as allocated to such district. Such taxes shall be allocated to such district for purposes of computing such tax surcharge upon taxpayers subject to tax under subdivision (b) of section fifteen hundred ten of this article by applying the methodology, procedures and computations set forth in subdivisions (a) and (b) of section fifteen hundred four of this article, except that references to terms denoting New York premiums, and total wages, salaries, personal service compensation and commissions within New York shall be read as denoting within the metropolitan commuter transportation district and terms denoting total premiums and total wages, salaries, personal service compensation and commissions shall be read as denoting within the state. If it shall appear to the commissioner that the application of the methodology, procedures and computations set forth in such subdivisions (a) and (b) does not properly reflect the activity, business or income of a taxpayer within the metropolitan commuter transportation district, then the commissioner shall be authorized, in the commissioner's discretion, to adjust such methodology, procedures and computations for the purpose of allocating such taxes by:

(A) excluding one or more factors therein;

(B) including one or more other factors therein, such as expenses, purchases, receipts other than premiums, real property or tangible personal property; or

(C) any other similar or different method which allocates such taxes by attributing a fair and proper portion of such taxes to the metropolitan commuter transportation district. The commissioner from time to time shall publish all rulings of general public interest with respect to any application of the provisions of the preceding sentence. The commissioner may promulgate rules and regulations to further implement the provisions of this section.

(3) Such tax surcharge shall be computed at the rate of eighteen percent of the taxes imposed under sections fifteen hundred one and fifteen hundred ten of this article as limited by section fifteen hundred five of this article, as allocated to such district, for such taxable years or any part of such taxable years ending before December thirty-first, nineteen hundred eighty-three after the deduction of any credits otherwise allowable under this article, at the rate of seventeen percent of the taxes imposed under such sections as limited by section

fifteen hundred five of this article, as allocated to such district, for such taxable years or any part of such taxable years ending on or after December thirty-first, nineteen hundred eighty-three and before January first, two thousand three after the deduction of any credits otherwise allowable under this article, and at the rate of seventeen percent of the taxes imposed under sections fifteen hundred one, fifteen hundred two-a, and fifteen hundred ten of this article, as limited or otherwise determined by subdivision (a) or (b) of section fifteen hundred five of this article, as allocated to such district, for such taxable years or any part of such taxable years ending after December thirty-first, two thousand two after the deduction of any credits otherwise allowable under this article; provided, however, that the tax surcharge imposed by this section shall not be imposed upon any taxpayer for more than [three] FOUR hundred [seventy-two] THIRTY-TWO months. Provided however, that for taxable years commencing on or after July first, two thousand, and in the case of taxpayers subject to tax under section fifteen hundred two-a of this article, for taxable years of such taxpayers beginning on or after July first, two thousand and before January first, two thousand three, such surcharge shall be calculated as if (i) the rate of the tax computed under paragraph one of subdivision (a) of section fifteen hundred two of this article was nine percent and (ii) the rate of the limitation on tax set forth in section fifteen hundred five of this article for domestic, foreign and alien insurance corporations except life insurance corporations was two and six-tenths percent.

S 7. This act shall take effect immediately.

PART B

Section 1. Paragraph 3 of subdivision (b) of section 24 of the tax law, as added by section 1 of part P of chapter 60 of the laws of 2004, is amended to read as follows:

(3) "Qualified film" means a feature-length film, television film, RELOCATED TELEVISION PRODUCTION, television pilot and/or each episode of a television series, regardless of the medium by means of which the film, pilot or episode is created or conveyed. "Qualified film" shall not include (i) a documentary film, news or current affairs program, interview or talk program, "how-to" (i.e., instructional) film or program, film or program consisting primarily of stock footage, sporting event or sporting program, game show, award ceremony, film or program intended primarily for industrial, corporate or institutional end-users, fundraising film or program, daytime drama (i.e., daytime "soap opera"), commercials, music videos or "reality" program, or (ii) a production for which records are required under section 2257 of title 18, United States code, to be maintained with respect to any performer in such production (reporting of books, films, etc. with respect to sexually explicit conduct).

S 2. Subdivision (b) of section 24 of the tax law is amended by adding a new paragraph 8 to read as follows:

(8) "RELOCATED TELEVISION PRODUCTION" SHALL MEAN, NOTWITHSTANDING THE LIMITATIONS IN SUBPARAGRAPH (I) OF PARAGRAPH THREE OF THIS SUBDIVISION, A TELEVISION PRODUCTION THAT IS A TALK OR VARIETY PROGRAM THAT FILMED AT LEAST FIVE SEASONS OUTSIDE THE STATE PRIOR TO ITS FIRST RELOCATED SEASON IN NEW YORK, THE EPISODES ARE FILMED BEFORE A STUDIO AUDIENCE OF TWO HUNDRED OR MORE, AND THE RELOCATED TELEVISION PRODUCTION INCURS (I) AT LEAST THIRTY MILLION DOLLARS IN ANNUAL PRODUCTION COSTS IN THE STATE, OR

(II) AT LEAST TEN MILLION DOLLARS IN CAPITAL EXPENDITURES AT A QUALIFIED PRODUCTION FACILITY IN THE STATE.

S 3. Paragraph 4 of subdivision (e) of section 24 of the tax law, as added by chapter 268 of the laws of 2012, is amended to read as follows:

(4) Additional pool 2 - The aggregate amount of tax credits allowed in subdivision (a) of this section shall be increased by an [addition] ADDITIONAL four hundred twenty million dollars in EACH YEAR STARTING IN two thousand ten[, four hundred twenty million dollars in two thousand eleven, four hundred twenty million dollars in two thousand twelve, four hundred twenty million dollars in two thousand thirteen and four hundred twenty million dollars in two thousand fourteen] THROUGH TWO THOUSAND NINETEEN provided however, seven million dollars of the annual allocation shall be available for the empire state film post production credit pursuant to section thirty-one of this [chapter] ARTICLE IN TWO THOUSAND THIRTEEN AND TWO THOUSAND FOURTEEN AND TWENTY-FIVE MILLION DOLLARS OF THE ANNUAL ALLOCATION SHALL BE AVAILABLE FOR THE EMPIRE STATE FILM POST PRODUCTION CREDIT PURSUANT TO SECTION THIRTY-ONE OF THIS ARTICLE IN EACH YEAR STARTING IN TWO THOUSAND FIFTEEN THROUGH TWO THOUSAND NINETEEN. This amount shall be allocated by the governor's office for motion picture and television development among taxpayers in accordance with subdivision (a) of this section. If the [director of the governor's office for motion picture and television development] COMMISSIONER OF ECONOMIC DEVELOPMENT determines that the aggregate amount of tax credits available from additional pool 2 for the empire state film production tax credit have been previously allocated, and determines that the pending applications from eligible applicants for the EMPIRE STATE FILM post production tax credit pursuant to section thirty-one of this [chapter] ARTICLE is insufficient to utilize the balance of unallocated EMPIRE STATE FILM post production tax credits from such pool, the remainder, after such pending applications are considered, shall be made available for allocation in the empire state film tax credit pursuant to this section, subdivision thirty-six of section two hundred ten and subsection (gg) of section six hundred six of this chapter. ALSO, IF THE COMMISSIONER OF ECONOMIC DEVELOPMENT DETERMINES THAT THE AGGREGATE AMOUNT OF TAX CREDITS AVAILABLE FROM ADDITIONAL POOL 2 FOR THE EMPIRE STATE FILM POST PRODUCTION TAX CREDIT HAVE BEEN PREVIOUSLY ALLOCATED, AND DETERMINES THAT THE PENDING APPLICATIONS FROM ELIGIBLE APPLICANTS FOR THE EMPIRE STATE FILM PRODUCTION TAX CREDIT PURSUANT TO THIS SECTION IS INSUFFICIENT TO UTILIZE THE BALANCE OF UNALLOCATED FILM PRODUCTION TAX CREDITS FROM SUCH POOL, THEN ALL OR PART OF THE REMAINDER, AFTER SUCH PENDING APPLICATIONS ARE CONSIDERED, SHALL BE MADE AVAILABLE FOR ALLOCATION FOR THE EMPIRE STATE FILM POST PRODUCTION CREDIT PURSUANT TO THIS SECTION, SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN AND SUBSECTION (GG) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER. The governor's office for motion picture and television development must notify taxpayers of their allocation year and include the allocation year on the certificate of tax credit. Taxpayers eligible to claim a credit must report the allocation year directly on their empire state film production credit tax form for each year a credit is claimed and include a copy of the certificate with their tax return. In the case of a qualified film that receives funds from additional pool 2, no empire state film production credit shall be claimed before the later of the taxable year the production of the qualified film is complete, or the taxable year immediately following the allocation year for which the film has been allocated credit by the governor's office for motion picture and television development.

S 4. Paragraph 1 of subdivision (b) of section 24 of the tax law, as amended by section 6 of part Q of chapter 57 of the laws of 2010, is amended to read as follows:

(1) "Qualified production costs" means production costs only to the extent such costs are attributable to the use of tangible property or the performance of services within the state directly and predominantly in the production (including pre-production and post production) of a qualified film[, provided, however, that qualified production costs shall not include post production costs unless the portion of the post production costs paid or incurred that is attributable to the use of tangible property or the performance of services in New York in the production of such qualified film equals or exceeds seventy-five percent of the total post production costs spent within and without New York in the production of such qualified film].

S 5. Paragraph 3 of subdivision (a) of section 31 of the tax law, as added by section 12 of part Q of chapter 57 of the laws of 2010, is amended to read as follows:

(3) (I) A taxpayer shall not be eligible for the credit established by this section FOR QUALIFIED POST PRODUCTION COSTS, EXCLUDING THE COSTS FOR VISUAL EFFECTS AND ANIMATION, unless the qualified post production costs, EXCLUDING THE COSTS FOR VISUAL EFFECTS AND ANIMATION, at a qualified post production facility meet or exceed seventy-five percent of the total post production costs, EXCLUDING THE COSTS FOR VISUAL EFFECTS AND ANIMATION, paid or incurred in the post production of the qualified film at any post production facility. (II) A TAXPAYER SHALL NOT BE ELIGIBLE FOR THE CREDIT ESTABLISHED BY THIS SECTION FOR QUALIFIED POST PRODUCTION COSTS WHICH ARE COSTS FOR VISUAL EFFECTS OR ANIMATION UNLESS THE QUALIFIED POST PRODUCTION COSTS FOR VISUAL EFFECTS OR ANIMATION AT A QUALIFIED POST PRODUCTION FACILITY MEET OR EXCEED THREE MILLION DOLLARS OR TWENTY PERCENT OF THE TOTAL POST PRODUCTION COSTS FOR VISUAL EFFECTS OR ANIMATION PAID OR INCURRED IN THE POST PRODUCTION OF A QUALIFIED FILM AT ANY POST PRODUCTION FACILITY, WHICHEVER IS LESS. (III) A TAXPAYER MAY CLAIM A CREDIT FOR QUALIFIED POST PRODUCTION COSTS EXCLUDING THE COSTS FOR VISUAL EFFECTS AND ANIMATION, AND FOR QUALIFIED POST PRODUCTION COSTS OF VISUAL EFFECTS AND ANIMATION, PROVIDED THAT THE CRITERIA IN SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH ARE BOTH SATISFIED. The credit shall be allowed for the taxable year in which the production of such qualified film is completed.

S 6. Section 3 of part Y-1 of chapter 57 of the laws of 2009, amending the tax law relating to the empire state film production credit, is amended to read as follows:

S 3. A. The governor's office of motion picture and television development shall file a report on a quarterly basis with the director of the division of the budget and the chairmen of the assembly ways and means committee and senate finance committee. The report shall be filed within fifteen days after the close of the calendar quarter. The first report shall cover the calendar quarter that begins April 1, 2009. The report must contain the following information for the calendar quarter:

(1) the total dollar amount of credits allocated during each month of the calendar quarter, broken down by month;

(2) the number of film projects which have been allocated tax credits of less than $1 million per project and the total dollar amount of credits allocated to those projects;

(3) the number of film projects which have been allocated tax credits of $1 million or more but less than $5 million per project and the total dollar amount of credits allocated to those projects;

(4) the number of film projects which have been allocated tax credits of $5 million or more per project and the total dollar amount of credits allocated to those projects; [and]

(5) a list of each film project which has been allocated a tax credit and for each of those projects (a) the estimated number of employees associated with the project, (b) the estimated qualified costs for the project, [and] (c) the estimated total costs of the project, AND (D) THE CREDIT-ELIGIBLE MAN HOURS FOR EACH PROJECT; AND

(6)(A) THE NAME OF EACH TAXPAYER ALLOCATED A TAX CREDIT FOR EACH PROJECT; PROVIDED HOWEVER, IF THE TAXPAYER CLAIMS A TAX CREDIT BECAUSE THE TAXPAYER IS A MEMBER OF A LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER IN A SUBCHAPTER S CORPORATION, THE NAME OF EACH LIMITED LIABILITY COMPANY, PARTNERSHIP OR SUBCHAPTER S CORPORATION EARNING ANY OF THOSE TAX CREDITS MUST BE INCLUDED IN THE REPORT INSTEAD OF INFORMATION ABOUT THE TAXPAYER CLAIMING THE TAX CREDIT, (B) THE AMOUNT OF TAX CREDIT ALLOCATED TO EACH TAXPAYER; PROVIDED HOWEVER, IF THE TAXPAYER CLAIMS A TAX CREDIT BECAUSE THE TAXPAYER IS A MEMBER OF A LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER IN A SUBCHAPTER S CORPORATION, THE AMOUNT OF TAX CREDIT EARNED BY EACH ENTITY MUST BE INCLUDED IN THE REPORT INSTEAD OF INFORMATION ABOUT THE TAXPAYER CLAIMING THE TAX CREDIT, AND (C) INFORMATION IDENTIFYING THE PROJECT ASSOCIATED WITH EACH TAXPAYER FOR WHICH A TAX CREDIT WAS CLAIMED UNDER SECTION 24 OR SECTION 31, AS ADDED BY CHAPTER 57 OF THE LAWS OF 2010, OF THE TAX LAW, INCLUDING THE NAME OF THE FILM AND COUNTY IN WHICH THE PROJECT IS LOCATED; AND

B. THE GOVERNOR'S OFFICE OF MOTION PICTURE AND TELEVISION DEVELOPMENT SHALL FILE A REPORT ON A BIENNIAL BASIS WITH THE DIRECTOR OF THE DIVISION OF THE BUDGET AND THE CHAIRS OF THE ASSEMBLY WAYS AND MEANS COMMITTEE AND SENATE FINANCE COMMITTEE. THE REPORT SHALL BE FILED WITHIN FIFTEEN DAYS AFTER THE CLOSE OF THE CALENDAR YEAR. THE FIRST REPORT SHALL COVER A TWO YEAR PERIOD THAT BEGINS ON JANUARY FIRST, TWO THOUSAND THIRTEEN. THE REPORT MUST BE PREPARED BY AN INDEPENDENT THIRD PARTY AUDITOR AND INCLUDE: (1) INFORMATION REGARDING THE EMPIRE STATE FILM PRODUCTION CREDIT AND POST PRODUCTION CREDIT PROGRAMS INCLUDING THE EFFICIENCY OF OPERATIONS, RELIABILITY OF FINANCIAL REPORTING, COMPLIANCE WITH LAWS AND REGULATIONS AND DISTRIBUTION OF ASSETS AND FUNDS; (2) AN ECONOMIC IMPACT STUDY PREPARED BY AN INDEPENDENT THIRD PARTY OF THE FILM CREDIT PROGRAMS; AND (3) ANY OTHER INFORMATION AND/OR OTHER STATISTICAL INFORMATION THAT THE COMMISSIONER OF ECONOMIC DEVELOPMENT DEEMS TO BE USEFUL IN ANALYZING THE EFFECTS OF THE PROGRAM.

S 7. This act shall take effect immediately, provided, however, that sections four and five of this act shall apply to taxpayers submitting initial applications to the governor's office of motion picture and television development on or after the date this act shall have become a law, and to taxpayers who filed an initial application before this act shall have become a law but who have not yet submitted a final application to the governor's office of motion picture and television development on or before the date this act shall have become a law; and the amendments made to section 3 of part Y-1 of chapter 57 of the laws of 2009, amending the tax law relating to the empire state film production credit, with the exception of subdivision b of such section, shall only apply to taxpayers submitting initial applications to the governor's office of motion picture and television development on or after the date this act shall become a law.

PART C

Section 1. Legislative intent. This act is intended to create a statewide network of university affiliated or college affiliated and private sector affiliated innovation hot spots in New York state to support start-up companies and those in the early stage of development. The mission of the innovation hot spots shall be to promote job creation, entrepreneurship and technology transfer, as well as to provide support services to hot spot tenants, including, but not limited to, business planning, management assistance, financial-packaging, linkages to financing and technology services, and coordination with other sources of assistance.

S 2. The economic development law is amended by adding a new section 361 to read as follows:

S 361. NEW YORK INNOVATION HOT SPOT PROGRAM. 1. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "INNOVATION HOT SPOT" SHALL MEAN A FACILITY OR FACILITIES DESIGNATED AS SUCH BY THE COMMISSIONER.

(B) "QUALIFIED ENTITY" SHALL MEAN A BUSINESS ENTERPRISE THAT IS:

(I) IN THE FORMATIVE STAGE OF DEVELOPMENT;

(II) LOCATED IN NEW YORK STATE;

(III) EITHER: (A) ANY CORPORATION, EXCEPT A CORPORATION WHICH:

(1) OVER FIFTY PERCENT OF THE NUMBER OF SHARES OF STOCK ENTITLING THE HOLDERS THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES IS OWNED OR CONTROLLED, EITHER DIRECTLY OR INDIRECTLY, BY A TAXPAYER SUBJECT TO TAX UNDER THE FOLLOWING PROVISIONS OF THE TAX LAW: ARTICLE NINE-A; SECTION ONE HUNDRED EIGHTY-THREE, ONE HUNDRED EIGHTY-FOUR OR ONE HUNDRED EIGHTY-FIVE OF ARTICLE NINE; ARTICLE THIRTY-TWO OR ARTICLE THIRTY-THREE; OR

(2) IS SUBSTANTIALLY SIMILAR IN OPERATION AND IN OWNERSHIP TO A BUSINESS ENTITY (OR ENTITIES) TAXABLE OR PREVIOUSLY TAXABLE UNDER THE FOLLOWING PROVISIONS OF THE TAX LAW: ARTICLE NINE-A; SECTION ONE HUNDRED EIGHTY-THREE, ONE HUNDRED EIGHTY-FOUR, ONE HUNDRED EIGHTY-FIVE OR FORMER SECTION ONE HUNDRED EIGHTY-SIX OF ARTICLE NINE; ARTICLE THIRTY-TWO; ARTICLE THIRTY-THREE; ARTICLE TWENTY-THREE, OR 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; OR

(B) A SOLE PROPRIETORSHIP, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR NEW YORK SUBCHAPTER S CORPORATION THAT IS NOT SUBSTANTIALLY SIMILAR IN OPERATION AND IN OWNERSHIP TO A BUSINESS ENTITY (OR ENTITIES) TAXABLE, OR PREVIOUSLY TAXABLE, UNDER ARTICLE NINE-A OF THE TAX LAW, SECTION ONE HUNDRED EIGHTY-THREE, ONE HUNDRED EIGHTY-FOUR, ONE HUNDRED EIGHTY-FIVE OR FORMER SECTION ONE HUNDRED EIGHTY-SIX OF ARTICLE NINE OF THE TAX LAW, ARTICLE THIRTY-TWO OR THIRTY-THREE OF THE TAX LAW, ARTICLE TWENTY-THREE OF THE TAX LAW 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 THE TAX LAW; AND

(IV) IS APPROVED TO LOCATE IN AN INNOVATION HOT SPOT BY THE OPERATOR OF SUCH INNOVATION HOT SPOT.

(C) "OPERATOR OF AN INNOVATION HOT SPOT" SHALL MEAN:

(I) AN ACCREDITED POST-SECONDARY EDUCATIONAL INSTITUTION, COLLEGE OR UNIVERSITY; NOT-FOR-PROFIT ENTITY AFFILIATED WITH A HIGHER EDUCATIONAL INSTITUTION; OR, COLLABORATIVE ENTERPRISE BETWEEN ONE OR MORE ACCREDITED POST-SECONDARY EDUCATIONAL INSTITUTION, COLLEGE OR UNIVERSITY AND NOT-FOR-PROFIT ENTITY AFFILIATED WITH A HIGHER EDUCATIONAL INSTITUTION;

(II) LOCATED IN NEW YORK STATE; AND

(III) DESIGNATED BY THE COMMISSIONER TO OPERATE A FACILITY THAT PROVIDES: LOW-COST SPACE; TECHNICAL ASSISTANCE; SUPPORT SERVICES, INCLUDING, BUT NOT LIMITED TO, CENTRAL SERVICES; AND, EDUCATIONAL OPPORTUNITIES, TO A "QUALIFIED ENTITY."

2. THE COMMISSIONER SHALL:

(A) SOLICIT APPLICATIONS FROM POST-SECONDARY EDUCATIONAL INSTITUTIONS, COLLEGES, UNIVERSITIES, OR NOT-FOR-PROFIT ENTITIES AFFILIATED WITH A HIGHER EDUCATION INSTITUTION OR COLLABORATIVE ENTERPRISES BETWEEN ONE OR MORE ACCREDITED POST-SECONDARY EDUCATIONAL INSTITUTIONS, COLLEGES, OR UNIVERSITIES AND NOT-FOR-PROFIT ENTITIES FOR APPROVAL TO OPERATE INNOVATION HOT SPOTS IN PROPERTY OWNED OR LEASED BY SUCH ENTITIES TO ATTRACT INDUSTRIES WITH SIGNIFICANT POTENTIAL FOR ECONOMIC GROWTH AND DEVELOPMENT IN NEW YORK STATE, AND IDENTIFY TECHNOLOGICAL AREAS THAT CAN CONTRIBUTE TO THE GROWTH OF VARIOUS INDUSTRIES LOCATED THROUGHOUT NEW YORK STATE;

(B) RECEIVE RECOMMENDATIONS FROM THE REGIONAL ECONOMIC DEVELOPMENT COUNCILS REGARDING THE APPROVAL OR REJECTION OF THE APPLICANTS AS OPERATORS OF INNOVATION HOT SPOTS.

3. THE COMMISSIONER SHALL ESTABLISH CRITERIA CONCERNING THE INNOVATION HOT SPOT PROGRAM. (A) THE CRITERIA THAT APPLICANTS MUST SATISFY TO BE DESIGNATED AS AN OPERATOR OF AN INNOVATION HOT SPOT INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

(I) A RECORD OF, OR PLAN TO CONFORM TO, BEST PRACTICES INCLUDING, BUT NOT LIMITED TO, CLEAR POLICIES FOR THE RESIDENT BUSINESS ENTITIES AND GRADUATION FROM THE SPACE;

(II) A COMPREHENSIVE SUITE OF ENTREPRENEURIAL MENTORING PRACTICES INCLUDING, BUT NOT LIMITED TO, ADVISING, COACHING, PLANNING AND CONNECTING TO FUNDING AND TECHNOLOGY SOURCES;

(III) THE CAPACITY TO SECURE SUBSTANTIAL PRIVATE AND OTHER NON-STATE GOVERNMENTAL FUNDING FOR THE PROPOSED INNOVATION HOT SPOT, IN ADDITION TO DIRECT SUPPORT FROM THE SPONSORING ACADEMIC INSTITUTION OR RELATED FOUNDATION;

(IV) THE ABILITY AND WILLINGNESS TO COOPERATE WITH OTHER LOCAL, REGIONAL AND STATEWIDE ECONOMIC DEVELOPMENT ORGANIZATIONS, BUSINESS SUPPORT NETWORKS, VENTURE AND ANGEL CAPITAL FUNDING SOURCES, AND WORKFORCE DEVELOPMENT ADVOCATES;

(V) THE CAPACITY TO COLLABORATE WITH OTHER BUSINESSES AND INDUSTRIES INDIVIDUALLY; AND

(VI) SUCH OTHER REQUIREMENTS AS THE DEPARTMENT DEEMS APPROPRIATE FOR THE FORMAT, CONTENT AND FILING OF APPLICATIONS FOR DESIGNATION AS INNOVATION HOT SPOTS.

(B) THE COMMISSIONER SHALL ALSO ESTABLISH CRITERIA FOR THE DESIGNATION OF INNOVATION HOT SPOTS.

(C) AFTER ESTABLISHING SUCH CRITERIA, THE COMMISSIONER SHALL APPROVE AND DESIGNATE FIVE INNOVATION HOT SPOTS AND THEIR OPERATORS IN FISCAL YEAR TWO THOUSAND THIRTEEN--TWO THOUSAND FOURTEEN AND FIVE ADDITIONAL INNOVATION HOT SPOTS AND THEIR OPERATORS IN FISCAL YEAR TWO THOUSAND FOURTEEN--TWO THOUSAND FIFTEEN.

(D) THE COMMISSIONER SHALL ISSUE A CERTIFICATE OF APPROVAL FOR EACH DESIGNATED INNOVATION HOT SPOT AND EACH APPROVED OPERATOR OF AN INNOVATION HOT SPOT.

(E) THE OPERATOR OF AN APPROVED INNOVATION HOT SPOT MAY ACCEPT APPLICATIONS FOR TENANCIES FROM QUALIFIED ENTITIES FOR A PERIOD OF FIVE YEARS AFTER THE RECEIPT BY SUCH INNOVATION HOT SPOT OF ITS CERTIFICATE OF APPROVAL FROM THE COMMISSIONER. QUALIFIED ENTITIES THAT LOCATE THEIR BUSINESSES IN AN INNOVATION HOT SPOT ARE ELIGIBLE TO RECEIVE TAX BENE-

FITS UNDER SECTION THIRTY-EIGHT OF THE TAX LAW FOR FIVE TAXABLE YEARS, BEGINNING WITH THE FIRST TAXABLE YEAR DURING WHICH SUCH QUALIFIED ENTITIES BECOME TENANTS IN AN INNOVATION HOT SPOT.

4. EACH OPERATOR OF AN INNOVATION HOT SPOT SHALL REPORT ON AN ANNUAL BASIS ON ITS ACTIVITIES TO THE COMMISSIONER IN A MANNER AND ACCORDING TO THE SCHEDULE ESTABLISHED BY THE DEPARTMENT, AND SHALL PROVIDE SUCH ADDITIONAL INFORMATION AS THE COMMISSIONER MAY REQUIRE. THE COMMISSIONER SHALL EVALUATE THE OPERATIONS OF THE INNOVATION HOT SPOTS USING METHODS INCLUDING BUT NOT LIMITED TO SITE VISITS, REPORTS PURSUANT TO SPECIFIED INFORMATION, AND REVIEW EVALUATIONS. IF THE COMMISSIONER IS UNSATISFIED WITH THE PROGRESS OF AN OPERATOR OF AN INNOVATION HOT SPOT, THE COMMISSIONER SHALL NOTIFY SUCH OPERATOR OF THE RESULTS OF ITS EVALUATIONS AND THE FINDINGS OF DEFICIENCIES IN THE OPERATION OF SUCH HOT SPOT AND SHALL ALLOW AND COOPERATE WITH SUCH OPERATOR TO REMEDY SUCH FINDINGS IN A TIMELY MANNER.

5. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER, EMPLOYEES AND OFFICERS OF THE DEPARTMENT AND THE DEPARTMENT OF TAXATION AND FINANCE SHALL BE ALLOWED AND ARE DIRECTED TO SHARE AND EXCHANGE:

(I) INFORMATION DERIVED FROM TAX RETURNS OR REPORTS THAT IS RELEVANT TO A QUALIFIED ENTITY'S ELIGIBILITY TO PARTICIPATE IN THE INNOVATION HOT SPOTS PROGRAM, AND

(II) INFORMATION REGARDING THE TAX BENEFITS APPLIED FOR, ALLOWED, OR CLAIMED PURSUANT TO SECTION THIRTY-EIGHT OF THE TAX LAW AND THE TAXPAYERS WHO ARE APPLYING FOR OR ARE CLAIMING THE TAX BENEFITS.

ALL INFORMATION EXCHANGED BETWEEN THE DEPARTMENT AND THE DEPARTMENT OF TAXATION AND FINANCE SHALL NOT BE SUBJECT TO DISCLOSURE OR INSPECTION PURSUANT TO THE STATE'S FREEDOM OF INFORMATION LAW. THE DEPARTMENT SHALL NOT DISCLOSE ANY INFORMATION OBTAINED FROM THE DEPARTMENT OF TAXATION AND FINANCE THAT CONCERNS SPECIFIC TAXPAYERS.

S 3. The tax law is amended by adding a new section 38 to read as follows:

S 38. NEW YORK INNOVATION HOT SPOT PROGRAM TAX BENEFITS. (A) AS USED IN THIS CHAPTER, THE TERMS "INNOVATION HOT SPOT" AND "QUALIFIED ENTITY" SHALL HAVE THE SAME MEANING AS UNDER SECTION THREE HUNDRED SIXTY-ONE OF THE ECONOMIC DEVELOPMENT LAW.

(B) A TAXPAYER UNDER ARTICLE NINE-A OF THIS CHAPTER THAT IS A QUALIFIED ENTITY AND ALSO A TENANT IN AN INNOVATION HOT SPOT SHALL BE SUBJECT ONLY TO THE FIXED DOLLAR MINIMUM TAX, IMPOSED UNDER PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION TWO HUNDRED TEN OF THIS CHAPTER, FOR FIVE TAXABLE YEARS, BEGINNING WITH THE FIRST TAXABLE YEAR DURING WHICH THE QUALIFIED ENTITY BECOMES A TENANT IN AN INNOVATION HOT SPOT. A TAXPAYER UNDER ARTICLE NINE-A OF THIS CHAPTER THAT IS A CORPORATE PARTNER IN A QUALIFIED ENTITY, OR IS A QUALIFIED ENTITY THAT IS LOCATED BOTH WITHIN AND WITHOUT AN INNOVATION HOT SPOT, SHALL BE ALLOWED ONLY A DEDUCTION FOR THE AMOUNT OF INCOME OR GAIN INCLUDED IN ITS FEDERAL ADJUSTED GROSS INCOME TO THE EXTENT THAT THE INCOME OR GAIN IS ATTRIBUTABLE TO THE OPERATIONS AT THE INNOVATION HOT SPOT. THE DEDUCTION IS ALLOWED FOR FIVE TAXABLE YEARS, BEGINNING WITH THE FIRST TAXABLE YEAR DURING WHICH THE QUALIFIED ENTITY BECOMES A TENANT IN AN INNOVATION HOT SPOT.

(C) AN INDIVIDUAL WHO IS THE SOLE PROPRIETOR OF A QUALIFIED ENTITY OR A MEMBER OF A LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER IN A NEW YORK SUBCHAPTER S CORPORATION WHERE THE LIMITED LIABILITY COMPANY, PARTNERSHIP, OR S CORPORATION IS A QUALIFIED ENTITY, THAT IS TAXABLE UNDER ARTICLE TWENTY-TWO OF THIS CHAPTER SHALL BE ALLOWED A DEDUCTION FOR THE AMOUNT OF INCOME OR GAIN INCLUDED IN ITS FEDERAL ADJUSTED GROSS INCOME TO THE EXTENT THAT THE INCOME OR GAIN IS

ATTRIBUTABLE TO THE OPERATIONS OF A QUALIFIED ENTITY WHICH IS A TENANT IN AN INNOVATION HOT SPOT. THE DEDUCTION IS ALLOWED FOR FIVE TAXABLE YEARS, BEGINNING WITH THE FIRST TAXABLE YEAR DURING WHICH THE QUALIFIED ENTITY BECOMES A TENANT IN AN INNOVATION HOT SPOT.

(D) A QUALIFIED ENTITY THAT IS A TENANT IN AN INNOVATION HOT SPOT SHALL BE ELIGIBLE FOR A CREDIT OR REFUND FOR SALES AND USE TAXES IMPOSED ON THE RETAIL SALE OF TANGIBLE PERSONAL PROPERTY OR SERVICES UNDER SUBDIVISIONS (A), (B), AND (C) OF SECTION ELEVEN HUNDRED FIVE AND SECTION ELEVEN HUNDRED TEN OF THIS CHAPTER. THE CREDIT OR REFUND SHALL BE ALLOWED FOR SIXTY MONTHS BEGINNING WITH THE FIRST FULL MONTH AFTER THE QUALIFIED ENTITY BECOMES A TENANT IN AN INNOVATION HOT SPOT.

(E) A TAXPAYER WHO CLAIMS ANY OF THE TAX BENEFITS DESCRIBED IN THIS SECTION IS NO LONGER ELIGIBLE FOR ANY OTHER NEW YORK STATE EXEMPTIONS, DEDUCTIONS, OR CREDIT OR REFUNDS UNDER THIS CHAPTER TO THE EXTENT THAT ANY SUCH EXEMPTION, DEDUCTION, CREDIT OR REFUND IS ATTRIBUTABLE TO THE BUSINESS OPERATIONS OF A TENANT IN AN INNOVATION HOT SPOT. THE ELECTION TO CLAIM THE TAX BENEFITS DESCRIBED IN THIS SECTION IS NOT REVOCABLE.

(F) CROSS-REFERENCES. FOR APPLICATION OF THE TAX BENEFITS PROVIDED FOR IN THIS SECTION, SEE THE FOLLOWING PROVISIONS OF THIS CHAPTER:

(I) ARTICLE 9-A, SECTION 208, SUBDIVISION (9), PARAGRAPH (A), SUBPARAGRAPH (18).

(II) ARTICLE 9-A, SECTION 209, SUBDIVISION 11.

(III) ARTICLE 22, SECTION 612, SUBSECTION (C), PARAGRAPH (39).

(IV) ARTICLE 28, SECTION 1119, SUBDIVISION (D).

S 4. Paragraph (a) of subdivision 9 of section 208 of the tax law is amended by adding a new subparagraph 18 to read as follows:

(18) THE AMOUNT OF INCOME OR GAIN INCLUDED IN FEDERAL ADJUSTED GROSS INCOME OF A TAXPAYER THAT IS A PARTNER IN A QUALIFIED ENTITY OR IS A QUALIFIED ENTITY THAT IS LOCATED BOTH WITHIN AND WITHOUT AN INNOVATION HOT SPOT, TO THE EXTENT THAT THE INCOME OR GAIN IS ATTRIBUTABLE TO THE OPERATIONS OF A QUALIFIED ENTITY AT THE INNOVATION HOT SPOT AS PROVIDED IN SECTION THIRTY-EIGHT OF THIS CHAPTER.

S 5. Section 209 of the tax law is amended by adding a new subdivision 11 to read as follows:

11. EXCEPT AS PROVIDED IN SUBPARAGRAPH EIGHTEEN OF PARAGRAPH (A) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OF THIS ARTICLE, A CORPORATION THAT IS A QUALIFIED ENTITY AND ALSO A TENANT IN AN INNOVATION HOT SPOT SHALL BE SUBJECT ONLY TO THE FIXED DOLLAR MINIMUM TAX UNDER PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, AS PROVIDED IN SECTION THIRTY-EIGHT OF THIS CHAPTER.

S 6. Subsection (c) of section 612 of the tax law is amended by adding a new paragraph 39 to read as follows:

(39) ANY INCOME OR GAIN, TO THE EXTENT IT IS INCLUDED IN FEDERAL ADJUSTED GROSS INCOME OF AN INDIVIDUAL WHO IS THE SOLE PROPRIETOR OF A QUALIFIED ENTITY OR A MEMBER OF A LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER IN A NEW YORK SUBCHAPTER S CORPORATION THAT IS A QUALIFIED ENTITY, ATTRIBUTABLE TO THE OPERATIONS OF A QUALIFIED ENTITY AT ITS LOCATION IN AN INNOVATION HOT SPOT, AS PROVIDED IN SECTION THIRTY-EIGHT OF THIS CHAPTER.

S 7. Paragraph 1 of subdivision (d) of section 1119 of the tax law, as added by section 31 of part S-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(1) Subject to the conditions and limitations provided for in this section, a refund or credit will be allowed for taxes imposed on the retail sale of tangible personal property described in subdivision (a) of section eleven hundred five of this article, and on every sale of

services described in subdivisions (b) and (c) of such section, and consideration given or contracted to be given for, or for the use of, such tangible personal property or services, where such tangible personal property or services are sold to a qualified empire zone enterprise OR TO A QUALIFIED ENTITY THAT IS ALSO A TENANT IN AN INNOVATION HOT SPOT AS PROVIDED IN SECTION THIRTY-EIGHT OF THIS CHAPTER, provided that (A) such tangible personal property or tangible personal property upon which such a service has been performed or such service (other than a service described in subdivision (b) of section eleven hundred five of this article) is directly and predominantly, or such a service described in clause (A) or (D) of paragraph one of such subdivision (b) of section eleven hundred five of this article is directly and exclusively, used or consumed by (I) such QUALIFIED EMPIRE ZONE enterprise in an area designated as an empire zone pursuant to article eighteen-B of the general municipal law with respect to which such enterprise is certified pursuant to such article eighteen-B, OR (II) SUCH QUALIFIED ENTITY IN AN INNOVATION HOT SPOT or (B) such a service described in clause (B) or (C) of paragraph one of subdivision (b) of section eleven hundred five of this article is delivered and billed to (I) such enterprise at an address in such empire zone OR (II) SUCH QUALIFIED ENTITY AT THE ADDRESS OF THE INNOVATION HOT SPOT WHERE IT IS A TENANT, or (C) the enterprise's place of primary use of the service described in paragraph two of such subdivision (b) of section eleven hundred five is at an address in such empire zone OR AT AN INNOVATION HOT SPOT; provided, further, that, in order for a motor vehicle, as defined in subdivision (c) of section eleven hundred seventeen of this article, or tangible personal property related to such a motor vehicle to be found to be used predominantly in such a zone, at least fifty percent of such motor vehicle's use shall be exclusively within such zone or at least fifty percent of such motor vehicle's use shall be in activities originating or terminating in such zone, or both; and either or both such usages shall be computed either on the basis of mileage or hours of use, at the discretion of such enterprise. For purposes of this subdivision, tangible personal property related to such a motor vehicle shall include a battery, diesel motor fuel, an engine, engine components, motor fuel, a muffler, tires and similar tangible personal property used in or on such a motor vehicle.

S 8. Subdivision (c) of section 11-1712 of the administrative code of the city of New York is amended by adding a new paragraph 35 to read as follows:

(35) AS PROVIDED IN SECTION THIRTY-EIGHT OF THE TAX LAW, ANY INCOME OR GAIN, TO THE EXTENT IT IS INCLUDED IN FEDERAL ADJUSTED GROSS INCOME OF AN INDIVIDUAL WHO IS THE SOLE PROPRIETOR OF A QUALIFIED ENTITY OR A MEMBER OF A LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER IN A NEW YORK SUBCHAPTER S CORPORATION THAT IS A QUALIFIED ENTITY AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION THREE HUNDRED SIXTY-ONE OF THE ECONOMIC DEVELOPMENT LAW, ATTRIBUTABLE TO THE OPERATIONS OF SUCH QUALIFIED ENTITY AT ITS LOCATION IN AN INNOVATION HOT SPOT, AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION THREE HUNDRED SIXTY-ONE OF THE ECONOMIC DEVELOPMENT LAW.

S 9. This act shall take effect immediately.

PART D

Section 1. Subsection (g) of section 615 of the tax law, as added by section 3 of part HH of chapter 57 of the laws of 2010, is amended to read as follows:

(g)(1) With respect to an individual whose New York adjusted gross income is over one million dollars and no more than ten million dollars, the New York itemized deduction shall be an amount equal to fifty percent of any charitable contribution deduction allowed under section one hundred seventy of the internal revenue code for taxable years beginning after two thousand nine and before two thousand [thirteen] SIXTEEN. With respect to an individual whose New York adjusted gross income is over one million dollars, the New York itemized deduction shall be an amount equal to fifty percent of any charitable contribution deduction allowed under section one hundred seventy of the internal revenue code for taxable years beginning in two thousand nine or after two thousand [twelve] FIFTEEN.

(2) With respect to an individual whose New York adjusted gross income is over ten million dollars, the New York itemized deduction shall be an amount equal to twenty-five percent of any charitable contribution deduction allowed under section one hundred seventy of the internal revenue code for taxable years beginning after two thousand nine and ending before two thousand [thirteen] SIXTEEN.

S 2. Subdivision (g) of section 11-1715 of the administrative code of the city of New York, as added by section 7 of part HH of chapter 57 of the laws of 2010, is amended to read as follows:

(g) (1) With respect to an individual whose New York adjusted gross income is over one million dollars but no more than ten million dollars, the New York itemized deduction shall be an amount equal to fifty percent of any charitable contribution deduction allowed under section one hundred seventy of the internal revenue code for taxable years beginning after two thousand nine and before two thousand [thirteen] SIXTEEN. With respect to an individual whose New York adjusted gross income is over one million dollars, the New York itemized deduction shall be an amount equal to fifty percent of any charitable contribution deduction allowed under section one hundred seventy of the internal revenue code for taxable years beginning in two thousand nine or after two thousand [twelve] FIFTEEN.

(2) With respect to an individual whose New York adjusted gross income is over ten million dollars, the New York itemized deduction shall be an amount equal to twenty-five percent of any charitable contribution deduction allowed under section one hundred seventy of the internal revenue code for taxable years beginning after two thousand nine AND ENDING BEFORE TWO THOUSAND SIXTEEN.

S 3. This act shall take effect immediately.

PART E

Section 1. Subparagraph 17 of paragraph (a) of subdivision 9 of section 208 of the tax law is REPEALED.

S 2. Paragraph (o) of subdivision 9 of section 208 of the tax law, as amended by section 1 of part M of chapter 686 of the laws of 2003, clause (A) of subparagraph 2 as amended by section 4 of part J of chapter 60 of the laws of 2007, is amended to read as follows:

(o) Related members expense add back [and income exclusion]. (1) Definitions. (A) Related member [or members. For purposes of this paragraph, the term related member or members means a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation, or entity, or set of related persons, corporations

or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under articles nine, nine-A, thirteen, twenty-two, thirty-two, thirty-three or thirty-three-A of this chapter]. "RELATED MEMBER" MEANS A RELATED PERSON AS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, EXCEPT THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED FOR "TEN PERCENT".

(B) [Controlling interest. A controlling interest shall mean (i) in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF TAX" MEANS, AS TO ANY STATE OR U.S. POSSESSION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY THE STATE OR POSSESSION ON OR MEASURED BY A RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE, IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURISDICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS TO ANY STATE OR U.S. POSSESSION IS ZERO WHERE THE RELATED MEMBER'S NET INCOME TAX LIABILITY IN SAID JURISDICTION IS REPORTED ON A COMBINED OR CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED MEMBER WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION, WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A JURISDICTION IN WHICH A RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR SIMILAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAINTAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME IN THAT JURISDICTION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID JURISDICTION SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT OR SIMILAR ADJUSTMENT.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner, and [includes] INCLUDE amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(D) Valid Business Purpose. A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(2) Royalty expense add backs. (A) Except where a taxpayer is included in a combined report with a related member pursuant to subdivision four of section two hundred eleven of this article, for the purpose of

computing entire net income or other applicable taxable basis, a taxpayer must add back royalty payments [to a] DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED IN CONNECTION WITH ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH ONE OR MORE related [member] MEMBERS during the taxable year to the extent deductible in calculating federal taxable income.

(B) [The add back of royalty payments shall not be required if and to the extent that such payments meet either of the following conditions:

(i) the related member during the same taxable year directly or indirectly paid or incurred the amount to a person or entity that is not a related member, and such transaction was done for a valid business purpose and the payments are made at arm's length;

(ii) the royalty payments are paid or incurred to a related member organized under the laws of a country other than the United States, are subject to a comprehensive income tax treaty between such country and the United States, and are taxed in such country at a tax rate at least equal to that imposed by this state.

(3) Royalty income exclusions. For the purpose of computing entire net income or other taxable basis, a taxpayer shall be allowed to deduct royalty payments directly or indirectly received from a related member during the taxable year to the extent included in the taxpayer's federal taxable income unless such royalty payments would not be required to be added back under subparagraph two of this paragraph or other similar provision in this chapter.] EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY TO THE PORTION OF THE ROYALTY PAYMENT THAT THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, MEETS ALL OF THE FOLLOWING REQUIREMENTS: (I) THE RELATED MEMBER WAS SUBJECT TO TAX IN THIS STATE OR ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR A FOREIGN NATION OR SOME COMBINATION THEREOF ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (II) THE RELATED MEMBER DURING THE SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID, ACCRUED OR INCURRED SUCH PORTION TO A PERSON THAT IS NOT A RELATED MEMBER; AND (III) THE TRANSACTION GIVING RISE TO THE ROYALTY PAYMENT BETWEEN THE TAXPAYER AND THE RELATED MEMBER WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE.

(II) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (I) THE RELATED MEMBER WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN THIS STATE OR ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR SOME COMBINATION THEREOF; (II) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (III) THE AGGREGATE EFFECTIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDICTIONS IS NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT APPLIED TO THE TAXPAYER UNDER SECTION TWO HUNDRED TEN OF THIS ARTICLE FOR THE TAXABLE YEAR.

(III) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (I) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGANIZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (II) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHENSIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (III) THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (IV) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS TAXED IN SUCH

COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT IMPOSED BY THIS STATE; AND (V) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

(IV) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE TAXPAYER AND THE COMMISSIONER AGREE IN WRITING TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE COMMISSIONER MAY, IN HIS OR HER DISCRETION, AGREE TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS WHEN HE OR SHE CONCLUDES THAT IN THE ABSENCE OF SUCH AGREEMENT THE INCOME OF THE TAXPAYER WOULD NOT BE PROPERLY REFLECTED.

S 3. Paragraph 6 of subdivision (a) of section 292 of the tax law, as amended by section 15 of part M of chapter 686 of the laws of 2003, is amended to read as follows:

(6) Related members expense add back [and income exclusion]. (A) Definitions. (i) Related member [or members. For purposes of this paragraph, the term related member or members means a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation, or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under article nine, nine-A, thirteen, twenty-two, thirty-two, thirty-three or thirty-three-A of this chapter]. "RELATED MEMBER" MEANS A RELATED PERSON AS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, EXCEPT THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED FOR "TEN PERCENT".

(ii) [Controlling interest. A controlling interest shall mean (I) in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (II) in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF TAX" MEANS, AS TO ANY STATE OR U.S. POSSESSION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY THE STATE OR POSSESSION ON OR MEASURED BY A RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE, IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURISDICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS TO ANY STATE OR U.S. POSSESSION IS ZERO WHERE THE RELATED MEMBER'S NET INCOME TAX LIABILITY IN SAID JURISDICTION IS REPORTED ON A COMBINED OR CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED MEMBER WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION, WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A JURISDICTION IN WHICH A RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR SIMILAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAINTAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME IN THAT JURISDICTION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID JURISDICTION SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT OR SIMILAR ADJUSTMENT.

(iii) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner, and [includes] INCLUDE amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(iv) Valid business purpose. A valid business purpose is one or more business purposes other than the avoidance or reduction of taxation which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(B) Royalty expense add backs. (i) For the purpose of computing New York unrelated business taxable income, a taxpayer must add back royalty payments [to a] DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED IN CONNECTION WITH ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH ONE OR MORE related [member] MEMBERS during the taxable year to the extent deductible in calculating federal unrelated business taxable income;

(ii) [The add back of royalty payments shall not be required if and to the extent that such payments meet either of the following conditions:

(I) the related member during the same taxable year directly or indirectly paid or incurred the amount to a person or entity that is not a related member, and such transaction was done for a valid business and the payments are made at arm's length;

(II) the royalty payments are paid or incurred to a related member organized under the laws of a country other than the United States, are subject to a comprehensive income tax treaty between such country and the United States, and are taxed in such country at a tax rate at least equal to that imposed by this state.

(C) Royalty income exclusions. For the purpose of computing New York unrelated business taxable income, a taxpayer shall be allowed to deduct royalty payments directly or indirectly received from a related member during the taxable year to the extent included in the taxpayer's federal taxable income unless such royalty payments would not be required to be added back under subparagraph (B) of this paragraph or other similar provision in this chapter.] EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY TO THE PORTION OF THE ROYALTY PAYMENT THAT THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, MEETS ALL OF THE FOLLOWING REQUIREMENTS: (A) THE RELATED MEMBER WAS SUBJECT TO TAX IN THIS STATE OR ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR A FOREIGN NATION OR SOME COMBINATION THEREOF ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (B) THE RELATED MEMBER DURING THE SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID, ACCRUED OR INCURRED SUCH PORTION TO A PERSON THAT IS NOT A RELATED MEMBER; AND (C) THE TRANSACTION GIVING RISE TO THE ROYALTY PAYMENT BETWEEN THE TAXPAYER AND THE RELATED MEMBER WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE.

(II) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (A) THE RELATED MEMBER WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN THIS STATE OR ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR SOME COMBINATION THEREOF; (B) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (C) THE AGGREGATE EFFECTIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDICTIONS IS NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT APPLIED TO THE TAXPAYER UNDER SECTION TWO HUNDRED NINETY OF THIS ARTICLE FOR THE TAXABLE YEAR.

(III) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (A) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGANIZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (B) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHENSIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (C) THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (D) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS TAXED IN SUCH COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT IMPOSED BY THIS STATE; AND (E) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

(IV) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE TAXPAYER AND THE COMMISSIONER AGREE IN WRITING TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE COMMISSIONER MAY, IN HIS OR HER DISCRETION, AGREE TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS WHEN HE OR SHE CONCLUDES THAT IN THE ABSENCE OF SUCH AGREEMENT THE INCOME OF THE TAXPAYER WOULD NOT BE PROPERLY REFLECTED.

S 4. Paragraph 19 of subsection (c) of section 612 of the tax law is REPEALED.

S 5. Subsection (r) of section 612 of the tax law, as amended by section 3 of part M of chapter 686 of the laws of 2003, is amended to read as follows:

(r) Related members expense add back [and income exclusion]. (1) Definitions. (A) Related member [or members. For purposes of this subsection, the term related member or members means a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation, or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under article nine, nine-A, thirteen, twenty-two, thirty-two, thirty-three or thirty-three-A of this chapter]. "RELATED MEMBER" MEANS A RELATED PERSON AS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, EXCEPT THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED FOR "TEN PERCENT".

(B) [Controlling interest. A controlling interest shall mean (i) in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in

such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF TAX" MEANS, AS TO ANY STATE OR U.S. POSSESSION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY THE STATE OR POSSESSION ON OR MEASURED BY A RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE, IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURISDICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS TO ANY STATE OR U.S. POSSESSION IS ZERO WHERE THE RELATED MEMBER'S NET INCOME TAX LIABILITY IN SAID JURISDICTION IS REPORTED ON A COMBINED OR CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED MEMBER WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION, WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A JURISDICTION IN WHICH A RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR SIMILAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAINTAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME IN THAT JURISDICTION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID JURISDICTION SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT OR SIMILAR ADJUSTMENT.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner, and [includes] INCLUDE amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(D) Valid business purpose. A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(2) Royalty expense add backs. (A) For the purpose of computing New York adjusted gross income, a taxpayer must add back royalty payments [to a] DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED IN CONNECTION WITH ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH ONE OR MORE related [member] MEMBERS during the taxable year to the extent deductible in calculating federal taxable income.

(B) [The add back of royalty payments shall not be required if and to the extent that such payments meet either of the following conditions:

(i) the related member during the same taxable year directly or indirectly paid or incurred the amount to a person or entity that is not a related member, and such transaction was done for a valid business and the payments are made at arm's length;

(ii) the royalty payments are paid or incurred to a related member organized under the laws of a country other than the United States, are subject to a comprehensive income tax treaty between such country and

the United States, and are taxed in such country at a tax rate at least equal to that imposed by this state.

(3) Royalty income exclusions. For the purpose of computing New York adjusted gross income, a taxpayer shall be allowed to deduct royalty payments directly or indirectly received from a related member during the taxable year to the extent included in the taxpayer's federal taxable income unless such royalty payments would not be required to be added back under paragraph two of this subsection or other similar provision in this chapter.] EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN THIS SUBSECTION SHALL NOT APPLY TO THE PORTION OF THE ROYALTY PAYMENT THAT THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, MEETS ALL OF THE FOLLOWING REQUIREMENTS: (I) THE RELATED MEMBER WAS SUBJECT TO TAX IN THIS STATE OR ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR A FOREIGN NATION OR SOME COMBINATION THEREOF ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (II) THE RELATED MEMBER DURING THE SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID, ACCRUED OR INCURRED SUCH PORTION TO A PERSON THAT IS NOT A RELATED MEMBER; AND (III) THE TRANSACTION GIVING RISE TO THE ROYALTY PAYMENT BETWEEN THE TAXPAYER AND THE RELATED MEMBER WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE.

(II) THE ADJUSTMENT REQUIRED IN THIS SUBSECTION SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (I) THE RELATED MEMBER WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN THIS STATE OR ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR SOME COMBINATION THEREOF; (II) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (III) THE AGGREGATE EFFECTIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDICTIONS IS NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT APPLIED TO THE TAXPAYER UNDER SECTION SIX HUNDRED ONE OF THIS ARTICLE FOR THE TAXABLE YEAR.

(III) THE ADJUSTMENT REQUIRED IN THIS SUBSECTION SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (I) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGANIZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (II) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHENSIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (III) THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (IV) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS TAXED IN SUCH COUNTRY AT AN EFFECTIVE TAX RATE AT LEAST EQUAL TO THAT IMPOSED BY THIS STATE; AND (V) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

(IV) THE ADJUSTMENT REQUIRED IN THIS SUBSECTION SHALL NOT APPLY IF THE TAXPAYER AND THE COMMISSIONER AGREE IN WRITING TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE COMMISSIONER MAY, IN HIS OR HER DISCRETION, AGREE TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS WHEN HE OR SHE CONCLUDES THAT IN THE ABSENCE OF SUCH AGREEMENT THE INCOME OF THE TAXPAYER WOULD NOT BE PROPERLY REFLECTED.

S 6. Paragraph 17 of subsection (e) of section 1453 of the tax law is REPEALED.

S 7. Subsection (r) of section 1453 of the tax law, as amended by section 5 of part M of chapter 686 of the laws of 2003, subparagraph (A) of paragraph 2 as amended by section 5 of part J of chapter 60 of the laws of 2007, is amended to read as follows:

(r) Related members expense add back [and income exclusion]. (1) Definitions. (A) Related member [or members. For purposes of this subsection, the term related member or members means a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation, or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under article nine, nine-A, thirteen, twenty-two, thirty-two, thirty-three or thirty-three-A of this chapter]. "RELATED MEMBER" MEANS A RELATED PERSON AS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, EXCEPT THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED FOR "TEN PERCENT".

(B) [Controlling interest. A controlling interest shall mean (i) in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF TAX" MEANS, AS TO ANY STATE OR U.S. POSSESSION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY THE STATE OR POSSESSION ON OR MEASURED BY A RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE, IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURISDICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS TO ANY STATE OR U.S. POSSESSION IS ZERO WHERE THE RELATED MEMBER'S NET INCOME TAX LIABILITY IN SAID JURISDICTION IS REPORTED ON A COMBINED OR CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED MEMBER WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION, WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A JURISDICTION IN WHICH A RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR SIMILAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAINTAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME IN THAT JURISDICTION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID JURISDICTION SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT OR SIMILAR ADJUSTMENT.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner, and [includes] INCLUDE amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(D) Valid business purpose. A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(2) Royalty expense add backs. (A) Except where a taxpayer is included in a combined return with a related member pursuant to subsection (f) of section fourteen hundred sixty-two of this article, for the purpose of computing entire net income, a taxpayer must add back royalty payments [to a] DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED IN CONNECTION WITH ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH ONE OR MORE related [member] MEMBERS during the taxable year to the extent deductible in calculating federal taxable income.

(B) [The add back of royalty payments shall not be required if and to the extent that such payments meet either of the following conditions:

(i) the related member during the same taxable year directly or indirectly paid or incurred the amount to a person or entity that is not a related member, and such transaction was done for a valid business and the payments are made at arm's length;

(ii) the royalty payments are paid or incurred to a related member organized under the laws of a country other than the United States, are subject to a comprehensive income tax treaty between such country and the United States, and are taxed in such country at a tax rate at least equal to that imposed by this state.

(3) Royalty income exclusions. For the purpose of computing entire net income, a taxpayer shall be allowed to deduct royalty payments directly or indirectly received from a related member during the taxable year to the extent included in the taxpayer's federal taxable income unless such royalty payments would not be required to be added back under paragraph two of this subsection or other similar provision in this chapter.] EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN THIS SUBSECTION SHALL NOT APPLY TO THE PORTION OF THE ROYALTY PAYMENT THAT THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, MEETS ALL OF THE FOLLOWING REQUIREMENTS: (I) THE RELATED MEMBER WAS SUBJECT TO TAX IN THIS STATE OR ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR A FOREIGN NATION OR SOME COMBINATION THEREOF ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (II) THE RELATED MEMBER DURING THE SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID, ACCRUED OR INCURRED SUCH PORTION TO A PERSON THAT IS NOT A RELATED MEMBER; AND (III) THE TRANSACTION GIVING RISE TO THE ROYALTY PAYMENT BETWEEN THE TAXPAYER AND THE RELATED MEMBER WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE.

(II) THE ADJUSTMENT REQUIRED IN THIS SUBSECTION SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (I) THE RELATED MEMBER WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN THIS STATE OR ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR SOME COMBINATION THEREOF; (II) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (III) THE AGGREGATE EFFECTIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDICTIONS IS NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT APPLIED TO THE TAXPAYER UNDER SECTION FOURTEEN HUNDRED FIFTY-FIVE OF THIS ARTICLE FOR THE TAXABLE YEAR.

(III) THE ADJUSTMENT REQUIRED IN THIS SUBSECTION SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (I) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGANIZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (II) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHENSIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (III) THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (IV) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS TAXED IN SUCH COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT IMPOSED BY THIS STATE; AND (V) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

(IV) THE ADJUSTMENT REQUIRED IN THIS SUBSECTION SHALL NOT APPLY IF THE TAXPAYER AND THE COMMISSIONER AGREE IN WRITING TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE COMMISSIONER MAY, IN HIS OR HER DISCRETION, AGREE TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS WHEN HE OR SHE CONCLUDES THAT IN THE ABSENCE OF SUCH AGREEMENT THE INCOME OF THE TAXPAYER WOULD NOT BE PROPERLY REFLECTED.

S 8. Paragraph 14 of subdivision (b) of section 1503 of the tax law, as amended by section 7 of part M of chapter 686 of the laws of 2003, clause (i) of subparagraph (B) as amended by section 6 of part J of chapter 60 of the laws of 2007, is amended to read as follows:

(14) Related members expense add back [and income exclusion]. (A) Definitions. (i) Related member [or members. For purposes of this paragraph, the term related member or members means a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation, or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under article nine, nine-A, thirteen, twenty-two, thirty-two, thirty-three or thirty-three-A of this chapter]. "RELATED MEMBER" MEANS A RELATED PERSON AS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, EXCEPT THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED FOR "TEN PERCENT".

(ii) [Controlling interest. A controlling interest shall mean (I) in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (II) in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF TAX" MEANS, AS TO ANY STATE OR U.S. POSSESSION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY THE STATE OR POSSESSION ON OR MEASURED BY A RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE, IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURISDICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS TO ANY STATE OR U.S. POSSESSION IS ZERO WHERE THE RELATED MEMBER'S NET INCOME TAX LIABILITY IN SAID JURISDICTION IS REPORTED ON A COMBINED OR CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED MEMBER

WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION, WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A JURISDICTION IN WHICH A RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR SIMILAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAINTAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME IN THAT JURISDICTION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID JURISDICTION SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT OR SIMILAR ADJUSTMENT.

(iii) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner, and [includes] INCLUDE amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(iv) Valid business purpose. A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(B) Royalty expense add backs. (i) Except where a taxpayer is included in a combined return with a related member pursuant to subdivision (f) of section fifteen hundred fifteen of this article, for the purpose of computing entire net income, a taxpayer must add back royalty payments [to a] DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED IN CONNECTION WITH ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH ONE OR MORE related [member] MEMBERS during the taxable year to the extent deductible in calculating federal taxable income.

(ii) [The add back of royalty payments shall not be required if and to the extent that such payments meet either of the following conditions:

(I) the related member during the same taxable year directly or indirectly paid or incurred the amount to a person or entity that is not a related member, and such transaction was done for a valid business and the payments are made at arm's length;

(II) the royalty payments are paid or incurred to a related member organized under the laws of a country other than the United States, are subject to a comprehensive income tax treaty between such country and the United States, and are taxed in such country at a tax rate at least equal to that imposed by this state.

(C) Royalty income exclusions. For the purpose of computing entire net income, a taxpayer shall be allowed to deduct royalty payments directly or indirectly received from a related member during the taxable year to the extent included in the taxpayer's federal taxable income unless such royalty payments would not be required to be added back under subparagraph (B) of this paragraph or other similar provision in this chapter.] EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY TO THE PORTION OF THE ROYALTY PAYMENT THAT THE TAXPAYER ESTAB-

LISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, MEETS ALL OF THE FOLLOWING REQUIREMENTS: (A) THE RELATED MEMBER WAS SUBJECT TO TAX IN THIS STATE OR ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR A FOREIGN NATION OR SOME COMBINATION THEREOF ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (B) THE RELATED MEMBER DURING THE SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID, ACCRUED OR INCURRED SUCH PORTION TO A PERSON THAT IS NOT A RELATED MEMBER; AND (C) THE TRANSACTION GIVING RISE TO THE ROYALTY PAYMENT BETWEEN THE TAXPAYER AND THE RELATED MEMBER WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE.

(II) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (A) THE RELATED MEMBER WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN THIS STATE OR ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR SOME COMBINATION THEREOF; (B) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (C) THE AGGREGATE EFFECTIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDICTIONS IS NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT APPLIED TO THE TAXPAYER UNDER SECTION FIFTEEN HUNDRED TWO, FIFTEEN HUNDRED TWO-A, OR FIFTEEN HUNDRED TWO-B OF THIS ARTICLE FOR THE TAXABLE YEAR.

(III) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (A) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGANIZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (B) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHENSIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (C) THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (D) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS TAXED IN SUCH COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT IMPOSED BY THIS STATE; AND (E) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

(IV) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE TAXPAYER AND THE COMMISSIONER AGREE IN WRITING TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE COMMISSIONER MAY, IN HIS OR HER DISCRETION, AGREE TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS WHEN HE OR SHE CONCLUDES THAT IN THE ABSENCE OF SUCH AGREEMENT THE INCOME OF THE TAXPAYER WOULD NOT BE PROPERLY REFLECTED.

S 9. Subdivision (e) of section 11-506 of the administrative code of the city of New York, as added by section 17 of part M of chapter 686 of the laws of 2003 and as relettered by chapter 633 of the laws of 2005, is amended to read as follows:

(e) Related members expense add back [and income exclusion]. (1) Definitions. (A) Related member [or members. For purposes of this subdivision, the term related member or members means a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation, or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under this title]. "RELATED MEMBER" MEANS A RELATED PERSON AS

DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, EXCEPT THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED FOR "TEN PERCENT".

(B) [Controlling interest. A controlling interest shall mean (i) in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF TAX" MEANS, AS TO ANY CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY THE CITY ON OR MEASURED BY A RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE, IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURISDICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS TO ANY CITY IS ZERO WHERE THE RELATED MEMBER'S NET INCOME TAX LIABILITY IN SAID CITY IS REPORTED ON A COMBINED OR CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED MEMBER WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION, WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A CITY IN WHICH A RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR SIMILAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAINTAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME IN THAT CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID CITY SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT OR SIMILAR ADJUSTMENT.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner of finance, and [includes] INCLUDE amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(D) Valid business purpose. A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(2) Royalty expense add backs. (A) For the purpose of computing unincorporated business entire net income, a taxpayer must add back royalty payments [to a] DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED IN CONNECTION WITH ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH ONE OR MORE related [member] MEMBERS during the taxable year to the extent deductible in calculating federal taxable income.

(B) [The add back of royalty payments shall not be required if and to the extent that such payments meet either of the following conditions:

(i) the related member during the same taxable year directly or indirectly paid or incurred the amount to a person or entity that is not a related member, and such transaction was done for a valid business and the payments are made at arm's length;

(ii) the royalty payments are paid or incurred to a related member organized under the laws of a country other than the United States, are subject to a comprehensive income tax treaty between such country and the United States, and are taxed in such country at a tax rate at least equal to that imposed by this state.

(3) Royalty income exclusions. For the purpose of computing unincorporated business entire net income, a taxpayer shall be allowed to deduct royalty payments directly or indirectly received from a related member during the taxable year to the extent included in the taxpayer's federal taxable income unless such royalty payments would not be required to be added back under paragraph two of this subdivision or other similar provision in this chapter.] EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY TO THE PORTION OF THE ROYALTY PAYMENT THAT THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, MEETS ALL OF THE FOLLOWING REQUIREMENTS: (I) THE RELATED MEMBER WAS SUBJECT TO TAX IN THIS CITY OR ANOTHER CITY WITHIN THE UNITED STATES OR A FOREIGN NATION OR SOME COMBINATION THEREOF ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (II) THE RELATED MEMBER DURING THE SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID, ACCRUED OR INCURRED SUCH PORTION TO A PERSON THAT IS NOT A RELATED MEMBER; AND (III) THE TRANSACTION GIVING RISE TO THE ROYALTY PAYMENT BETWEEN THE TAXPAYER AND THE RELATED MEMBER WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE.

(II) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE RELATED MEMBER WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN THIS CITY OR ANOTHER CITY WITHIN THE UNITED STATES, OR SOME COMBINATION THEREOF; (II) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (III) THE AGGREGATE EFFECTIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDICTIONS IS NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT APPLIED TO THE TAXPAYER UNDER SECTION 11-503 OF THIS CHAPTER FOR THE TAXABLE YEAR.

(III) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGANIZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (II) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHENSIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (III) THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (IV) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS TAXED IN SUCH COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT IMPOSED BY THIS CITY; AND (V) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

(IV) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF THE TAXPAYER AND THE COMMISSIONER OF FINANCE AGREE IN WRITING TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE

COMMISSIONER OF FINANCE MAY, IN HIS OR HER DISCRETION, AGREE TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS WHEN HE OR SHE CONCLUDES THAT IN THE ABSENCE OF SUCH AGREEMENT THE INCOME OF THE TAXPAYER WOULD NOT BE PROPERLY REFLECTED.

S 10. Paragraph (n) of subdivision 8 of section 11-602 of the administrative code of the city of New York, as amended by section 19 of part M of chapter 686 of the laws of 2003, is amended to read as follows:

(n) Related members expense add back [and income exclusion]. (1) Definitions. (A) Related member [or members. For purposes of this paragraph, the term related member or members means a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation, or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under this title]. "RELATED MEMBER" MEANS A RELATED PERSON AS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, EXCEPT THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED FOR "TEN PERCENT".

(B) [Controlling interest. A controlling interest shall mean (i) in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF TAX" MEANS, AS TO ANY CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY THE CITY ON OR MEASURED BY A RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE, IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURISDICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS TO ANY CITY IS ZERO WHERE THE RELATED MEMBER'S NET INCOME TAX LIABILITY IN SAID CITY IS REPORTED ON A COMBINED OR CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED MEMBER WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION, WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A CITY IN WHICH A RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR SIMILAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAINTAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME IN THAT CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID CITY SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT OR SIMILAR ADJUSTMENT.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner of finance, and [includes] INCLUDE amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(D) Valid business purpose. A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(2) Royalty expense add backs. (A) For the purpose of computing entire net income or other applicable taxable basis, a taxpayer must add back royalty payments [to a] DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED IN CONNECTION WITH ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH ONE OR MORE related [member] MEMBERS during the taxable year to the extent deductible in calculating federal taxable income.

(B) [The add back of royalty payments shall not be required if and to the extent that such payments meet either of the following conditions:

(i) the related member during the same taxable year directly or indirectly paid or incurred the amount to a person or entity that is not a related member, and such transaction was done for a valid business purpose and the payments are made at arm's length;

(ii) the royalty payments are paid or incurred to a related member organized under the laws of a country other than the United States, are subject to a comprehensive income tax treaty between such country and the United States, and are taxed in such country at a tax rate at least equal to that imposed by this state.

(3) Royalty income exclusions. For the purpose of computing entire net income or other taxable basis, a taxpayer shall be allowed to deduct royalty payments directly or indirectly received from a related member during the taxable year to the extent included in the taxpayer's federal taxable income unless such royalty payments would not be required to be added back under subparagraph two of this paragraph or other similar provision in this chapter.] EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY TO THE PORTION OF THE ROYALTY PAYMENT THAT THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, MEETS ALL OF THE FOLLOWING REQUIREMENTS: (I) THE RELATED MEMBER WAS SUBJECT TO TAX IN THIS CITY OR ANOTHER CITY WITHIN THE UNITED STATES OR A FOREIGN NATION OR SOME COMBINATION THEREOF ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (II) THE RELATED MEMBER DURING THE SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID, ACCRUED OR INCURRED SUCH PORTION TO A PERSON THAT IS NOT A RELATED MEMBER; AND (III) THE TRANSACTION GIVING RISE TO THE ROYALTY PAYMENT BETWEEN THE TAXPAYER AND THE RELATED MEMBER WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE.

(II) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE RELATED MEMBER WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN THIS CITY OR ANOTHER CITY WITHIN THE UNITED STATES, OR SOME COMBINATION THEREOF; (II) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (III) THE AGGREGATE EFFECTIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDICTIONS IS NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT APPLIED TO THE TAXPAYER UNDER SECTION 11-604 OF THIS SUBCHAPTER FOR THE TAXABLE YEAR.

(III) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGANIZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (II) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHENSIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (III) THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (IV) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS TAXED IN SUCH COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT IMPOSED BY THIS CITY; AND (V) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

(IV) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE TAXPAYER AND THE COMMISSIONER OF FINANCE AGREE IN WRITING TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE COMMISSIONER OF FINANCE MAY, IN HIS OR HER DISCRETION, AGREE TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS WHEN HE OR SHE CONCLUDES THAT IN THE ABSENCE OF SUCH AGREEMENT THE INCOME OF THE TAXPAYER WOULD NOT BE PROPERLY REFLECTED.

S 11. Subdivision (q) of section 11-641 of the administrative code of the city of New York, as added by section 21 of part M of chapter 686 of the laws of 2003, is amended to read as follows:

(q) Related members expense add back [and income exclusion]. (1) Definitions. (A) Related member [or members. For purposes of this subdivision, the term related member or members means a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation, or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under this title]. "RELATED MEMBER" MEANS A RELATED PERSON AS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, EXCEPT THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED FOR "TEN PERCENT".

(B) [Controlling interest. A controlling interest shall mean (i) in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF TAX" MEANS, AS TO ANY CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY THE CITY ON OR MEASURED BY A RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE, IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURISDICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS TO ANY CITY IS ZERO WHERE THE RELATED MEMBER'S NET INCOME TAX LIABILITY IN SAID CITY IS REPORTED ON A COMBINED OR CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED MEMBER WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION, WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A CITY IN WHICH A RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR

SIMILAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAINTAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME IN THAT CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID CITY SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT OR SIMILAR ADJUSTMENT.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner of finance, and [includes] INCLUDE amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(D) Valid business purpose. A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(2) Royalty expense add backs. (A) For the purpose of computing entire net income, a taxpayer must add back royalty payments [to a] DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED IN CONNECTION WITH ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH ONE OR MORE related [member] MEMBERS during the taxable year to the extent deductible in calculating federal taxable income.

(B) [The add back of royalty payments shall not be required if and to the extent that such payments meet either of the following conditions:

(i) the related member during the same taxable year directly or indirectly paid or incurred the amount to a person or entity that is not a related member, and such transaction was done for a valid business and the payments are made at arm's length;

(ii) the royalty payments are paid or incurred to a related member organized under the laws of a country other than the United States, are subject to a comprehensive income tax treaty between such country and the United States, and are taxed in such country at a tax rate at least equal to that imposed by this state.

(3) Royalty income exclusions. For the purpose of computing entire net income, a taxpayer shall be allowed to deduct royalty payments directly or indirectly received from a related member during the taxable year to the extent included in the taxpayer's federal taxable income unless such royalty payments would not be required to be added back under paragraph two of this subdivision or other similar provision in this chapter.] EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY TO THE PORTION OF THE ROYALTY PAYMENT THAT THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, MEETS ALL OF THE FOLLOWING REQUIREMENTS: (I) THE RELATED MEMBER WAS SUBJECT TO TAX IN THIS CITY OR ANOTHER CITY WITHIN THE UNITED STATES OR A FOREIGN NATION OR SOME COMBINATION THEREOF ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (II) THE RELATED MEMBER DURING THE

SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID, ACCRUED OR INCURRED SUCH PORTION TO A PERSON THAT IS NOT A RELATED MEMBER; AND (III) THE TRANSACTION GIVING RISE TO THE ROYALTY PAYMENT BETWEEN THE TAXPAYER AND THE RELATED MEMBER WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE.

(II) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE RELATED MEMBER WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN THIS CITY OR ANOTHER CITY WITHIN THE UNITED STATES, OR SOME COMBINATION THEREOF; (II) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (III) THE AGGREGATE EFFECTIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDICTIONS IS NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT APPLIED TO THE TAXPAYER UNDER SECTION 11-643.5 OF THIS PART FOR THE TAXABLE YEAR.

(III) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGANIZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (II) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHENSIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (III) THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (IV) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS TAXED IN SUCH COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT IMPOSED BY THIS CITY; AND (V) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

(IV) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF THE TAXPAYER AND THE COMMISSIONER OF FINANCE AGREE IN WRITING TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE COMMISSIONER OF FINANCE MAY, IN HIS OR HER DISCRETION, AGREE TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS WHEN HE OR SHE CONCLUDES THAT IN THE ABSENCE OF SUCH AGREEMENT THE INCOME OF THE TAXPAYER WOULD NOT BE PROPERLY REFLECTED.

S 12. Subdivision (t) of section 11-1712 of the administrative code of the city of New York, as added by section 26 of part M of chapter 686 of the laws of 2003, is amended to read as follows:

(t) Related members expense add back [and income exclusion]. (1) Definitions. (A) Related member [or members. For purposes of this subdivision, the term related member or members means a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under this title]. "RELATED MEMBER" MEANS A RELATED PERSON AS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, EXCEPT THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED FOR "TEN PERCENT".

(B) [Controlling interest. A controlling interest shall mean (i) in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in

such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF TAX" MEANS, AS TO ANY CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY THE CITY ON OR MEASURED BY A RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE, IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURISDICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS TO ANY CITY IS ZERO WHERE THE RELATED MEMBER'S NET INCOME TAX LIABILITY IN SAID CITY IS REPORTED ON A COMBINED OR CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED MEMBER WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION, WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A CITY IN WHICH A RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR SIMILAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAINTAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME IN THAT CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID CITY SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT OR SIMILAR ADJUSTMENT.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the state commissioner of taxation and finance, and [includes] INCLUDE amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(D) Valid business purpose. A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(2) Royalty expense add backs. (A) For the purpose of computing city adjusted gross income, a taxpayer must add back royalty payments [to a] DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED IN CONNECTION WITH ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH ONE OR MORE related [member] MEMBERS during the taxable year to the extent deductible in calculating federal taxable income.

(B) [The add back of royalty payments shall not be required if and to the extent that such payments meet either of the following conditions:

(i) the related member during the same taxable year directly or indirectly paid or incurred the amount to a person or entity that is not a related member, and such transaction was done for a valid business and the payments are made at arm's length;

(ii) the royalty payments are paid or incurred to a related member organized under the laws of a country other than the United States, are subject to a comprehensive income tax treaty between such country and

the United States, and are taxed in such country at a tax rate at least equal to that imposed by this state.

(3) Royalty income exclusions. (A) For the purpose of computing city adjusted gross income, a taxpayer shall be allowed to deduct royalty payments directly or indirectly received from a related member during the taxable year to the extent included in the taxpayer's federal taxable income unless such royalty payments would not be required to be added back under paragraph two of this subdivision or other similar provision in this title.] EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY TO THE PORTION OF THE ROYALTY PAYMENT THAT THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, MEETS ALL OF THE FOLLOWING REQUIREMENTS: (I) THE RELATED MEMBER WAS SUBJECT TO TAX IN THIS CITY OR ANOTHER CITY WITHIN THE UNITED STATES OR A FOREIGN NATION OR SOME COMBINATION THEREOF ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (II) THE RELATED MEMBER DURING THE SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID, ACCRUED OR INCURRED SUCH PORTION TO A PERSON THAT IS NOT A RELATED MEMBER; AND (III) THE TRANSACTION GIVING RISE TO THE ROYALTY PAYMENT BETWEEN THE TAXPAYER AND THE RELATED MEMBER WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE.

(II) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE RELATED MEMBER WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN THIS CITY OR ANOTHER CITY WITHIN THE UNITED STATES, OR SOME COMBINATION THEREOF; (II) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (III) THE AGGREGATE EFFECTIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDICTIONS IS NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT APPLIED TO THE TAXPAYER UNDER SECTION 11-1701 OF THIS CHAPTER FOR THE TAXABLE YEAR.

(III) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGANIZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (II) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHENSIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (III) THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (IV) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS TAXED IN SUCH COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT IMPOSED BY THIS CITY; AND (V) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

(IV) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF THE TAXPAYER AND THE COMMISSIONER OF FINANCE AGREE IN WRITING TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE COMMISSIONER OF FINANCE MAY, IN HIS OR HER DISCRETION, AGREE TO THE APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS WHEN HE OR SHE CONCLUDES THAT IN THE ABSENCE OF SUCH AGREEMENT THE INCOME OF THE TAXPAYER WOULD NOT BE PROPERLY REFLECTED.

S 13. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2013.

PART F

Section 1. Subparagraph (A) of paragraph 1, and paragraphs 4 and 5 of subsection (oo) of section 606 of the tax law, subparagraph (A) of paragraph 1 as amended by chapter 472 of the laws of 2010 and paragraph 4 as amended and paragraph 5 as added by chapter 239 of the laws of 2009, are amended to read as follows:

(A) For taxable years beginning on or after January first, two thousand ten and before January first, two thousand [fifteen] TWENTY, a taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to one hundred percent of the amount of credit allowed the taxpayer with respect to a certified historic structure under subsection (a) (2) of section 47 of the federal internal revenue code with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed five million dollars. For taxable years beginning on or after January first, two thousand [fifteen] TWENTY, a taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to thirty percent of the amount of credit allowed the taxpayer with respect to a certified historic structure under subsection (a)(2) of section 47 of the federal internal revenue code with respect to a certified historic structure located within the state; provided, however, the credit shall not exceed one hundred thousand dollars.

(4) If the amount of the credit [allowable under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years, and may be applied against the taxpayer's tax for such year or years] ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

(5) To be eligible for the credit allowable under this subsection the rehabilitation project shall be in whole or in part [a targeted area residence within the meaning of section 143(j) of the internal revenue code or] located within a census tract which is identified as being at or below one hundred percent of the state median family income [in the most recent federal census] AS CALCULATED USING A FIVE YEAR SAMPLE FROM THE AMERICAN COMMUNITY SURVEY BEGINNING WITH THE YEAR TWO THOUSAND SIX--YEAR TWO THOUSAND ELEVEN SAMPLE.

S 2. Subparagraph (A) of paragraph 1, and paragraphs 4 and 5 of subdivision 40 of section 210 of the tax law, subparagraph (A) of paragraph 1 and paragraph 4 as amended and paragraph 5 as added by chapter 472 of the laws of 2010, are amended to read as follows:

(A) For taxable years beginning on or after January first, two thousand ten and before January first, two thousand [fifteen] TWENTY, a taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to one hundred percent of the amount of credit allowed the taxpayer with respect to a certified historic structure under subsection (a) (2) of section 47 of the federal internal revenue code with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed five million dollars. For taxable years beginning on or after January first, two thousand [fifteen] TWENTY, a taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to thirty percent of the amount of credit allowed the

taxpayer with respect to a certified historic structure under subsection (a)(2) of section 47 of the federal internal revenue code with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed one hundred thousand dollars.

(4) The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the higher of the amounts prescribed in paragraphs (c) and (d) of subdivision one of this section. However, if the amount of the credit [allowable under this subdivision for any taxable year shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years, and may be deducted from the taxpayer's tax for such year or years] ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

(5) To be eligible for the credit allowable under this subdivision, the rehabilitation project shall be in whole or in part [a targeted area residence within the meaning of section 143(j) of the internal revenue code or] located within a census tract which is identified as being at or below one hundred percent of the state median family income [in the most recent federal census] AS CALCULATED USING A FIVE YEAR SAMPLE FROM THE AMERICAN COMMUNITY SURVEY BEGINNING WITH THE YEAR TWO THOUSAND SIX--YEAR TWO THOUSAND ELEVEN SAMPLE.

S 3. Subparagraph (A) of paragraph 1, and paragraphs 4 and 5 of subsection (u) of section 1456 of the tax law, as added by chapter 472 of the laws of 2010, are amended to read as follows:

(A) For taxable years beginning on or after January first, two thousand ten and before January first, two thousand [fifteen] TWENTY, a taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to one hundred percent of the amount of credit allowed the taxpayer with respect to a certified historic structure under subsection (a)(2) of section 47 of the federal internal revenue code with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed five million dollars. For taxable years beginning on or after January first, two thousand [fifteen] TWENTY, a taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to thirty percent of the amount of credit allowed the taxpayer with respect to a certified historic structure under subsection (a)(2) of section 47 of the federal internal revenue code with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed one hundred thousand dollars.

(4) The credit allowed under this subsection for any taxable year shall not reduce the tax to less than the dollar amount fixed as a minimum tax by subsection (b) of section fourteen hundred fifty-five of this article. [If the amount of credit allowable under this subsection for any taxable year reduces the tax to such amount, the excess may be carried over to the following year or years, and may be deducted from the taxpayer's tax for such year or years.] HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND

EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

(5) To be eligible for the credit allowable under this subsection the rehabilitation project shall be in whole or in part [a targeted area residence within the meaning of section 143(j) of the internal revenue code or] located within a census tract which is identified as being at or below one hundred percent of the state median family income [in the most recent federal census] AS CALCULATED USING A FIVE YEAR SAMPLE FROM THE AMERICAN COMMUNITY SURVEY BEGINNING WITH THE YEAR TWO THOUSAND SIX--YEAR TWO THOUSAND ELEVEN SAMPLE.

S 4. Subparagraph (A) of paragraph 1, and paragraphs 4 and 5 of subdivision (y) of section 1511 of the tax law, as added by chapter 472 of the laws of 2010, are amended to read as follows:

(A) For taxable years beginning on or after January first, two thousand ten and before January first, two thousand [fifteen] TWENTY, a taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to one hundred percent of the amount of credit allowed the taxpayer with respect to a certified historic structure under subsection (a)(2) of section 47 of the federal internal revenue code with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed five million dollars. For taxable years beginning on or after January first, two thousand [fifteen] TWENTY, a taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to thirty percent of the amount of credit allowed the taxpayer with respect to a certified historic structure under subsection (a)(2) of section 47 of the federal internal revenue code with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed one hundred thousand dollars.

(4) The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum fixed by paragraph four of subdivision (a) of section fifteen hundred two or section fifteen hundred two-a of this article, whichever is applicable. [If the amount of the credit allowable under this subdivision for any taxable year reduces the tax to such amount, the excess may be carried over to the following year or years, and may be deducted from the taxpayer's tax for such year or years.] HOWEVER, IF THE AMOUNT OF CREDITS ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

(5) To be eligible for the credit allowable under this subdivision, the rehabilitation project shall be in whole or in part [a targeted area residence within the meaning of section 143(j) of the internal revenue code or] located within a census tract which is identified as being at or below one hundred percent of the state median family income [in the most recent federal census] AS CALCULATED USING A FIVE YEAR SAMPLE FROM THE AMERICAN COMMUNITY SURVEY BEGINNING WITH THE YEAR TWO THOUSAND SIX--YEAR TWO THOUSAND ELEVEN SAMPLE.

S 5. This act shall take effect immediately and shall apply to taxable years beginning on and after January 1, 2013; provided however the amendments to paragraph 4 of subsection (oo) of section 606 of the tax

law made by section one of this act, the amendments to paragraph 4 of subdivision 40 of section 210 of the tax law made by section two of this act, the amendments to paragraph 4 of section 1456 of the tax law made by section three of this act and the amendments to paragraph 4 of section 1511 of the tax law made by section four of this act shall take effect January 1, 2015 and shall apply to taxable years beginning on and after January 1, 2015.

PART G

Section 1. Section 187-b of the tax law, as amended by section 14 of part W-1 of chapter 109 of the laws of 2006, is amended to read as follows:

S 187-b. [Alternative fuels credit] ELECTRIC VEHICLE RECHARGING PROPERTY CREDIT. 1. General. A taxpayer shall be allowed a credit, to be credited against the taxes imposed under sections one hundred eighty-three, one hundred eighty-four, and one hundred eighty-five of this article. Such credit, to be computed as hereinafter provided, shall be allowed for [alternative fuel vehicle refueling] ELECTRIC VEHICLE RECHARGING property placed in service during the taxable year. Provided, however, that the amount of such credit allowable against the tax imposed by section one hundred eighty-four of this article shall be the excess of the credit allowed by this section over the amount of such credit allowable against the tax imposed by section one hundred eighty-three of this article.

2. [Alternative fuel vehicle refueling property] ELECTRIC VEHICLE RECHARGING PROPERTY. The credit under this section for [alternative fuel vehicle refueling] ELECTRIC VEHICLE RECHARGING property shall equal FOR EACH INSTALLATION OF PROPERTY THE LESSER OF FIVE THOUSAND DOLLARS OR fifty percent of the cost of any such property:

(a) which is located in this state; [and]

(b) [for which a credit is allowed under section thirty C of the internal revenue code but not including alternative fuel vehicle refueling property relating to a qualified hybrid vehicle as such vehicle is defined in subparagraph (B) of paragraph three of subsection (p) of section six hundred six of this chapter] WHICH CONSTITUTES ELECTRIC VEHICLE RECHARGING PROPERTY; AND

(C) FOR WHICH NONE OF THE COST HAS BEEN PAID FOR FROM THE PROCEEDS OF GRANTS, INCLUDING GRANTS FROM THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY OR THE NEW YORK POWER AUTHORITY.

3. Definitions. [(a)] The term ["alternative fuel vehicle refueling property"] "ELECTRIC VEHICLE RECHARGING PROPERTY" means [any such property which is qualified within the meaning of section thirty C of the internal revenue code, but shall not include alternative fuel vehicle refueling property relating to a qualified hybrid vehicle as such vehicle is defined in subparagraph (B) of paragraph three of subsection (p) of section six hundred six of this chapter] ALL THE EQUIPMENT NEEDED TO CONVEY ELECTRIC POWER FROM THE ELECTRIC GRID OR ANOTHER POWER SOURCE TO AN ONBOARD VEHICLE ENERGY STORAGE SYSTEM.

[(b) The term "qualified hybrid vehicle" shall have the same meaning as provided for under subparagraph (B) of paragraph three of subsection (p) of section six hundred six of this chapter.]

4. Carryovers. In no event shall the credit under this section be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three or one hundred eighty-five of this article. If, however, the amount of credit

allowable under this section for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

5. Credit recapture[; Alternative fuel vehicle refueling property]. If, at any time before the end of its recovery period, [alternative fuel vehicle refueling] ELECTRIC VEHICLE RECHARGING property ceases to be qualified, a recapture amount must be added back in the year in which such cessation occurs.

(i) Cessation of qualification. [Alternative fuel vehicle refueling property] ELECTRIC VEHICLE RECHARGING PROPERTY ceases to be qualified if:

(I) the property no longer qualifies as [property described in section thirty C of the internal revenue code] ELECTRIC VEHICLE RECHARGING PROPERTY; or

(II) fifty percent or more of the use of the property in a taxable year is other than a trade or business in this state; or

(III) the taxpayer receiving the credit under this section sells or disposes of the property and knows or has reason to know that the property will be used in a manner described in this subparagraph.

(ii) Recapture amount. The recapture amount is equal to the credit allowable under this section multiplied by a fraction, the numerator of which is the total recovery period for the property minus the number of recovery years prior to, but not including, the recapture year, and the denominator of which is the total recovery period.

6. Termination. The credit allowed by subdivision two of this section shall not apply in taxable years beginning after December thirty-first, two thousand [ten] SEVENTEEN.

S 2. Subdivision 24 of section 210 of the tax law, as amended by section 15 of part W-1 of chapter 109 of the laws of 2006, is amended to read as follows:

24. [Alternative fuels] ELECTRIC VEHICLE RECHARGING PROPERTY credit. (a) General. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article for [alternative fuel vehicle refueling] ELECTRIC VEHICLE RECHARGING property placed in service during the taxable year.

(b) [Alternative fuel vehicle refueling property] ELECTRIC VEHICLE RECHARGING PROPERTY. The credit under this subdivision for [alternative fuel vehicle refueling] ELECTRIC VEHICLE RECHARGING property shall equal FOR EACH INSTALLATION OF PROPERTY THE LESSER OF FIVE THOUSAND DOLLARS OR fifty percent of the cost of any such property:

(i) which is located in this state; [and]

(ii) [for which a credit is allowed under section thirty C of the internal revenue code but not including alternative fuel refueling property relating to a qualified hybrid vehicle as such vehicle is defined in subparagraph (B) of paragraph three of subsection (p) of section six hundred six of this chapter] WHICH IS ELECTRIC VEHICLE RECHARGING PROPERTY; AND

(III) FOR WHICH NONE OF THE COST HAS BEEN PAID FOR FROM THE PROCEEDS OF GRANTS, INCLUDING GRANTS FROM THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY OR THE NEW YORK POWER AUTHORITY.

(c) Definitions. The term ["alternative fuel vehicle refueling property"] "ELECTRIC VEHICLE RECHARGING PROPERTY" means [any such property which is qualified within the meaning of section thirty C of the internal revenue code but shall not include alternative fuel vehicle refueling property relating to a qualified hybrid vehicle as such vehicle is

defined in subparagraph (B) of paragraph three of subsection (p) of section six hundred six of this chapter] ALL OF THE EQUIPMENT NEEDED TO CONVEY ELECTRIC POWER FROM THE ELECTRIC GRID OR ANOTHER POWER SOURCE TO AN ONBOARD VEHICLE ENERGY STORAGE SYSTEM.

(d) Carryovers. In no event shall the credit under this subdivision be allowed in an amount which will reduce the tax payable to less than the higher of the amounts prescribed in paragraphs (c) and (d) of subdivision one of this section. Provided, however, that if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(e) Credit recapture. [(i) Alternative fuel vehicle refueling property.] If, at any time before the end of its recovery period, [alternative fuel vehicle refueling] ELECTRIC VEHICLE RECHARGING property ceases to be qualified, a recapture amount must be added back in the year in which such cessation occurs.

(A) [Alternative fuel vehicle refueling] ELECTRIC VEHICLE RECHARGING property ceases to be qualified if:

(1) the property no longer qualifies as [property described in section thirty C of the internal revenue code] ELECTRIC VEHICLE RECHARGING PROPERTY; or

(2) fifty percent or more of the use of the property in a taxable year is other than in a trade or business in this state; or

(3) the taxpayer receiving the credit under this subdivision sells or disposes of the property and knows or has reason to know that the property will be used in a manner described in clauses one and two of this subparagraph.

(B) Recapture amount. The recapture amount is equal to the credit allowable under this subdivision multiplied by a fraction, the numerator of which is the total recovery period for the property minus the number of recovery years prior to, but not including, the recapture year, and the denominator of which is the total recovery period.

[(f) Affiliates. (i) If a credit under this subdivision is allowed to a taxpayer with respect to a taxable year, the action taken by such taxpayer which resulted in such credit being allowed thereto may, at the election of the taxpayer and an affiliate thereof, be ascribed to such affiliate. Where such affiliate, based on such ascription, is allowed such credit and deducts from the tax otherwise due the amount of such credit, such credit shall be deemed in all respects to have been allowed to such affiliate, provided that any action or inaction by the taxpayer which constitutes an event of recapture described in paragraph (e) of this subdivision shall be ascribed to the affiliate and shall constitute an event of recapture with respect to the credit allowed to the affiliate pursuant to this subdivision.

(ii) Notwithstanding any other provision of law to the contrary, in the case of the credit provided for under this subdivision being allowed to, or asserted to be allowed to, an affiliate, pursuant to subparagraph (i) of this paragraph, the commissioner shall have the same powers with respect to examining the books and records of the taxpayer, and have such other powers of investigation with respect to the taxpayer, as are afforded under this chapter with respect to a taxpayer which has deducted the credit allowed under this section from tax otherwise due, as if it were the taxpayer which had deducted such credit from tax otherwise due.

(iii) The term "affiliate" shall mean a corporation substantially all the capital stock of which is owned or controlled either directly or indirectly by the taxpayer, or which owns or controls either directly or indirectly substantially all the capital stock of the taxpayer, or substantially all the capital stock of which is owned or controlled either directly or indirectly by interests which own or control either directly or indirectly substantially all the capital stock of the taxpayer.]

[(g)] (F) Termination. The credit allowed by paragraph (b) of this subdivision shall not apply in taxable years beginning after December thirty-first, two thousand [ten] SEVENTEEN.

S 3. Subsection (p) of section 606 of the tax law, as amended by section 16 of part W-1 of chapter 109 of the laws of 2006, is amended to read as follows:

(p) [Alternative fuels] ELECTRIC VEHICLE RECHARGING PROPERTY credit. (1) General. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article, for [alternative fuel vehicle refueling] ELECTRIC VEHICLE RECHARGING property placed in service during the taxable year.

(2) [Alternative fuel vehicle refueling property] ELECTRIC VEHICLE RECHARGING PROPERTY. The credit under this subsection for [clean-fuel vehicle refueling] ELECTRIC VEHICLE RECHARGING property shall equal FOR EACH INSTALLATION OF PROPERTY THE LESSER OF FIVE THOUSAND DOLLARS OR fifty percent of the cost of any such property

(A) which is located in this state [and];

(B) [for which a credit is allowed under section thirty C of the internal revenue code but not including alternative fuel vehicle refueling property relating to a qualified hybrid vehicle as such vehicle is defined in subparagraph (B) of paragraph three of this subsection] WHICH IS ELECTRIC VEHICLE RECHARGING PROPERTY; AND

(C) FOR WHICH NONE OF THE COST HAS BEEN PAID FOR FROM THE PROCEEDS OF GRANTS, INCLUDING GRANTS FROM THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY OR THE NEW YORK POWER AUTHORITY.

(3) Definitions. [(A)] The term ["alternative fuel vehicle refueling property"] "ELECTRIC VEHICLE RECHARGING PROPERTY" means [any such property which is qualified within the meaning of section thirty C of the internal revenue code, but such term shall not include alternative fuel vehicle refueling property relating to a qualified hybrid vehicle as such vehicle is defined in subparagraph (B) of this paragraph] ALL THE EQUIPMENT NEEDED TO CONVEY ELECTRIC POWER FROM THE ELECTRIC GRID OR ANOTHER POWER SOURCE TO AN ONBOARD VEHICLE ENERGY STORAGE SYSTEM.

[(B) The term "qualified hybrid vehicle" means a motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law,, that:

(i) draws propulsion energy from both

(a) an internal combustion engine (or heat engine that uses combustible fuel); and

(b) an energy storage device; and

(ii) employs a regenerative vehicle braking system that recovers waste energy to charge such energy storage device.]

(4) Carryovers. If the amount of credit allowable under this subsection shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(5) Credit recapture. (A) [Vehicles.

(i) If, within three full years from the date a qualified hybrid vehicle or a vehicle of which alternative fuel vehicle property is a part is placed in service, such qualified hybrid vehicle or vehicle of which alternative fuel vehicle property is a part] IF, AT ANY TIME BEFORE THE END OF ITS RECOVERY PERIOD, ELECTRIC VEHICLE RECHARGING PROPERTY ceases to be qualified, a recapture amount must be added back in the tax year in which such cessation occurs.

[(ii)] (B) Cessation of qualification. [(I) A qualified hybrid vehicle ceases to be qualified if

(a) it is modified by the taxpayer so that it no longer meets the requirements of a qualified hybrid vehicle as defined in subparagraph (B) of paragraph three of this subsection.

(b) the taxpayer receiving the credit under this subsection sells or disposes of the vehicle and knows or has reason to know that the vehicle will be so modified.

(B) Alternative fuel vehicle refueling property. (i) If, at any time before the end of its recovery period, alternative fuel vehicle refueling property ceases to be qualified, a recapture amount must be added back in the year in which such cessation occurs.

(ii) Cessation of qualification. Clean-fuel vehicle refueling] ELECTRIC VEHICLE RECHARGING property ceases to be qualified if:

[(I)] (I) the property no longer qualifies as [property described in section thirty C of the internal revenue code] ELECTRIC VEHICLE RECHARGING PROPERTY, or

[(II)] (II) fifty percent or more of the use of the property in a taxable year is other than in a trade or business in this state, or

[(III)] (III) the taxpayer receiving the credit under this subsection sells or disposes of the property and knows or has reason to know that the property will be used in a manner described in [item (I)] CLAUSE (I) or [(II)] (II) of this [clause] SUBPARAGRAPH.

[(iii)] (C) Recapture amount. The recapture amount is equal to the credit allowable under this subsection multiplied by a fraction, the numerator of which is the total recovery period for the property minus the number of recovery years prior to, but not including, the recapture year, and the denominator of which is the total recovery period.

(6) Termination. The credit allowed by [paragraph two of] this subsection shall not apply in taxable years beginning after December thirty-first, two thousand [ten] SEVENTEEN.

S 4. Clause (ix) of subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law, as amended by section 7 of part C-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(ix) [Alternative fuels] ELECTRIC VEHICLE RECHARGING PROPERTY credit under subsection (p)	[Cost] AMOUNT OF CREDIT under subdivision twenty-four of section two hundred ten

S 5. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2013 for property placed in service on or after such date.

PART H

Section 1. Paragraph 10 of subsection (g) of section 658 of the tax law is REPEALED.

S 2. Paragraph 10 of subdivision (g) of section 11-1758 of the administrative code of the city of New York is REPEALED.

S 3. Paragraph 5 of subsection (u) of section 685 of the tax law is REPEALED.

S 4. Paragraph 5 of subdivision (t) of section 11-1785 of the administrative code of the city of New York is REPEALED.

S 5. Section 23 of part U of chapter 61 of the laws of 2011, as amended by section 1 of part G of chapter 59 of the laws of 2012, is amended to read as follows:

S 23. This act shall take effect immediately; provided, however, that:

(a) the amendments to section 29 of the tax law made by section thirteen of this act shall apply to tax documents filed or required to be filed on or after the sixtieth day after which this act shall have become a law [and shall expire and be deemed repealed December 31, 2013], provided however that the amendments to paragraph 4 of subdivision (a) of section 29 of the tax law and paragraph 2 of subdivision (e) of section 29 of the tax law made by section thirteen of this act with regard to individual taxpayers shall take effect September 15, 2011 but only if the commissioner of taxation and finance has reported in the report required by section seventeen-b of this act that the percentage of individual taxpayers electronically filing their 2010 income tax returns is less than eighty-five percent; provided that the commissioner of taxation and finance shall notify the legislative bill drafting commission of the date of the issuance of such report in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law;

(b) sections fourteen, fifteen, sixteen and seventeen of this act shall take effect September 15, 2011 but only if the commissioner of taxation and finance has reported in the report required by section seventeen-b of this act that the percentage of individual taxpayers electronically filing their 2010 income tax returns is less than eighty-five percent;

(c) sections fourteen-a and fifteen-a of this act shall take effect September 15, 2011 and expire and be deemed repealed December 31, 2012 but shall take effect only if the commissioner of taxation and finance has reported in the report required by section seventeen-b of this act that the percentage of individual taxpayers electronically filing their 2010 income tax returns is eighty-five percent or greater; AND

(d) sections fourteen-b, fifteen-b, sixteen-a and seventeen-a of this act shall take effect January 1, 2014 but only if the commissioner of taxation and finance has reported in the report required by section seventeen-b of this act that the percentage of individual taxpayers electronically filing their 2010 income tax returns is less than eighty-five percent[; and

(e) sections twenty-one and twenty-one-a of this act shall expire and be deemed repealed December 31, 2013].

S 6. This act shall take effect immediately.

PART I

Section 1. Legislative intent. The legislature seeks to demonstrate that the state of New York is open for business by promoting, attracting, and encouraging the development of business in the state. The legislature intends to encourage businesses to locate in the state and

produce goods and services within the state, thereby increasing job creation and economic growth. The legislature further intends to foster economic development by showcasing various goods that are produced in New York. In order to accomplish these objectives, the legislature intends that there shall be established "Taste-NY facilities," which will sell a variety of products, including but not limited to products produced within the state, and prominently feature New York produced goods, including alcoholic beverages.

S 2. Subdivision (b) of section 1101 of the tax law is amended by adding a new paragraph 39 to read as follows:

(39) TASTE-NY FACILITY. "TASTE-NY FACILITY" SHALL MEAN A FACILITY OPERATED BY A PERSON DESIGNATED BY AND PURSUANT TO A WRITTEN AGREEMENT WITH A STATE AGENCY, PUBLIC AUTHORITY, OR AN INTERSTATE AGENCY OR PUBLIC CORPORATION CREATED PURSUANT TO AN AGREEMENT OR COMPACT WITH ANOTHER STATE OR THE DOMINION OF CANADA, FROM WHICH SALES ARE MADE OF TANGIBLE PERSONAL PROPERTY OR FOOD AND DRINK (WHETHER OR NOT FOR CONSUMPTION ON THE PREMISES OF SUCH FACILITY), AND THAT PROMINENTLY FEATURES PRODUCTS PRODUCED WITHIN THE STATE.

S 3. Subdivision (a) of section 1115 of the tax law is amended by adding a new paragraph 44 to read as follows:

(44) TANGIBLE PERSONAL PROPERTY SOLD AT A TASTE-NY FACILITY, AS DEFINED IN PARAGRAPH THIRTY-NINE OF SECTION ELEVEN HUNDRED ONE OF THIS ARTICLE, FOR WHICH THE RECEIPT OR CONSIDERATION GIVEN OR CONTRACTED TO BE GIVEN IS LESS THAN TWO HUNDRED DOLLARS PER ITEM.

S 4. Section 1115 of the tax law is amended by adding a new subdivision (ii) to read as follows:

(II) RECEIPTS FROM SALES OF THE FOLLOWING AT A TASTE-NY FACILITY SHALL BE EXEMPT FROM THE SALES TAX IMPOSED UNDER SECTION ELEVEN HUNDRED FIVE AND THE COMPENSATING USE TAX IMPOSED UNDER SECTION ELEVEN HUNDRED TEN OF THIS ARTICLE: (1) FOOD OR DRINK FOR CONSUMPTION ON THE PREMISES OF SUCH FACILITY; (2) FOOD OR DRINK SOLD FOR CONSUMPTION OFF THE PREMISES OF SUCH FACILITY THAT IS SOLD IN A HEATED STATE; (3) SANDWICHES SOLD FOR CONSUMPTION OFF THE PREMISES OF SUCH FACILITY, WHETHER OR NOT SOLD IN A HEATED STATE; (4) FOOD OR DRINK SOLD THROUGH VENDING MACHINES; AND (5) FOOD OR DRINK SOLD IN AN UNHEATED STATE THAT IS OF A TYPE COMMONLY SOLD FOR OFF-PREMISES CONSUMPTION AND IS NOT IN THE SAME FORM, CONDITION, QUANTITIES AND PACKAGING AS IN ESTABLISHMENTS THAT ARE FOOD STORES OTHER THAN THOSE PRINCIPALLY ENGAGED IN SELLING FOODS PREPARED AND READY TO BE EATEN.

S 5. The alcoholic beverage control law is amended by adding a new section 63-b to read as follows:

S 63-B. SPECIAL LICENSE TO SELL ALCOHOLIC BEVERAGES AT RETAIL FOR CONSUMPTION OFF THE PREMISES. 1. ANY PERSON AUTHORIZED TO OPERATE A TASTE-NY FACILITY DESIGNATED BY AND PURSUANT TO A WRITTEN AGREEMENT WITH A STATE AGENCY, PUBLIC AUTHORITY, OR AN INTERSTATE AGENCY OR PUBLIC CORPORATION CREATED PURSUANT TO AN AGREEMENT OR COMPACT WITH ANOTHER STATE OR THE DOMINION OF CANADA MAY MAKE APPLICATION TO THE AUTHORITY FOR A SPECIAL LICENSE TO SELL ALCOHOLIC BEVERAGES AT RETAIL FOR CONSUMPTION OFF THE LICENSED PREMISES.

2. AN APPLICATION FOR A LICENSE UNDER THIS SECTION SHALL BE IN SUCH FORM AND SHALL CONTAIN SUCH INFORMATION AS SHALL BE REQUIRED BY THE AUTHORITY AND SHALL BE ACCOMPANIED BY A CHECK OR DRAFT IN THE AMOUNT REQUIRED BY THIS ARTICLE.

3. SECTION FIFTY-FOUR OF THIS CHAPTER SHALL CONTROL SO FAR AS IS APPLICABLE THE PROCEDURE IN CONNECTION WITH SUCH APPLICATION.

4. A LICENSE UNDER THIS SECTION SHALL BE ISSUED TO ALL ELIGIBLE APPLICANTS EXCEPT FOR GOOD CAUSE SHOWN.

5. A LICENSE UNDER THIS CHAPTER SHALL NOT BE SUBJECT TO THE PROVISIONS OF SUBDIVISIONS TWO, THREE, SIX AND SIXTEEN OF SECTION ONE HUNDRED FIVE OF THIS CHAPTER.

6. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION FOURTEEN OF SECTION ONE HUNDRED FIVE OF THIS CHAPTER, THE HOURS OF OPERATION AND SALE OF ALCOHOLIC BEVERAGES SHALL BE GOVERNED BY THE LICENSEE'S WRITTEN AGREEMENT WITH THE STATE AGENCY, PUBLIC AUTHORITY, INTERSTATE AGENCY OR COMPACT ENTITY.

7. SUBJECT TO ANY RESTRICTION CONTAINED IN THE WRITTEN AGREEMENT WITH THE STATE AGENCY, PUBLIC AUTHORITY, INTERSTATE AGENCY OR COMPACT ENTITY, THE HOLDER OF A LICENSE ISSUED UNDER THIS SECTION MAY OFFER SAMPLES OF ALCOHOLIC BEVERAGES TO CUSTOMERS TO BE CONSUMED ON THE LICENSED PREMISES UPON THE FOLLOWING CONDITIONS:

(A) NO FEE SHALL BE CHARGED FOR ANY SAMPLE;

(B) EACH SAMPLE SHALL BE LIMITED:

(I) IN THE CASE OF BEER, WINE PRODUCTS AND CIDER, TO THREE OUNCES OR LESS;

(II) IN THE CASE OF WINE, TO TWO OUNCES;

(III) IN THE CASE OF LIQUOR, TO ONE-QUARTER OUNCE;

(C) NO SAMPLE SHALL BE PROVIDED TO A CUSTOMER DURING THE HOURS PROHIBITED BY THE PROVISIONS OF SUBDIVISION FIVE OF SECTION ONE HUNDRED SIX OF THIS CHAPTER; AND

(D) NO CUSTOMER MAY BE PROVIDED WITH MORE THAN THREE SAMPLES IN ONE CALENDAR DAY.

S 6. Section 66 of the alcoholic beverage control law is amended by adding a new subdivision 11 to read as follows:

11. THE ANNUAL FEE FOR A SPECIAL LICENSE TO SELL ALCOHOLIC BEVERAGES AT RETAIL FOR CONSUMPTION OFF THE LICENSED PREMISES SHALL BE FIVE HUNDRED DOLLARS.

S 7. Section 67 of the alcoholic beverage control law, as amended by section 4 of part Z of chapter 85 of the laws of 2002, is amended to read as follows:

S 67. License fees, duration of licenses; fee for part of year. [Effective April first, nineteen hundred eighty-three, licenses] 1. LICENSES issued pursuant to sections sixty-one, sixty-two, sixty-three, [sixty-four, sixty-four-a and sixty-four-b] AND SIXTY-THREE-B of this article shall be effective for three years at three times that annual fee, except that, in implementing the purposes of this section, the liquor authority shall schedule the commencement dates, duration and expiration dates thereof to provide for an equal cycle of license renewals issued under each such section through the course of the fiscal year. [Effective December first, nineteen hundred ninety-eight, licenses]

2. LICENSES issued pursuant to sections sixty-four, sixty-four-a and sixty-four-b of this article shall be effective for two years at two times that annual fee, except that, in implementing the purposes of this section, the liquor authority shall schedule the commencement dates, duration and expiration dates thereof to provide for an equal cycle of license renewals issued under each such section through the course of the fiscal year. [Notwithstanding the foregoing, commencing on December first, nineteen hundred ninety-eight and concluding on July thirty-first, two thousand two, a licensee issued a license pursuant to section sixty-four, sixty-four-a or sixty-four-b of this article may elect to remit the fee for such license in equal annual installments. Such

installments shall be due on dates established by the liquor authority and the failure of a licensee to have remitted such annual installments after a due date shall be a violation of this chapter. For licenses issued for less than the three-year licensing period, the license fee shall be levied on a pro-rated basis.]

3. The entire license fee shall be due and payable at the time of application. The liquor authority may make such rules as shall be appropriate to carry out the purpose of this section.

S 8. Subdivisions 1 and 2 of section 56-a of the alcoholic beverage control law, as amended by chapter 108 of the laws of 2012, are amended to read as follows:

1. In addition to the annual fees provided for in this chapter, there shall be paid to the authority with each initial application for a license filed pursuant to section fifty-one, fifty-one-a, fifty-three, fifty-eight, sixty-one, sixty-two, seventy-six or seventy-eight of this chapter, a filing fee of four hundred dollars; with each initial application for a license filed pursuant to section sixty-three, SIXTY-THREE-B, sixty-four, sixty-four-a or sixty-four-b of this chapter, a filing fee of two hundred dollars; with each initial application for a license filed pursuant to section fifty-three-a, fifty-four, fifty-five, fifty-five-a, seventy-nine, eighty-one or eighty-one-a of this chapter, a filing fee of one hundred dollars; with each initial application for a permit filed pursuant to section ninety-one, ninety-one-a, ninety-two, ninety-two-a, ninety-three, ninety-three-a, if such permit is to be issued on a calendar year basis, ninety-four, ninety-five, ninety-six or ninety-six-a, or pursuant to paragraph b, c, e or j of subdivision one of section ninety-nine-b of this chapter if such permit is to be issued on a calendar year basis, or for an additional bar pursuant to subdivision four of section one hundred of this chapter, a filing fee of twenty dollars; and with each application for a permit under section ninety-three-a of this chapter, other than a permit to be issued on a calendar year basis, section ninety-seven, ninety-eight, ninety-nine, or ninety-nine-b of this chapter, other than a permit to be issued pursuant to paragraph b, c, e or j of subdivision one of section ninety-nine-b of this chapter on a calendar year basis, a filing fee of ten dollars.

2. In addition to the annual fees provided for in this chapter, there shall be paid to the authority with each renewal application for a license filed pursuant to section fifty-one, fifty-one-a, fifty-three, fifty-eight, sixty-one, sixty-two, seventy-six or seventy-eight of this chapter, a filing fee of one hundred dollars; with each renewal application for a license filed pursuant to section sixty-three, SIXTY-THREE-B, sixty-four, sixty-four-a or sixty-four-b of this chapter, a filing fee of ninety dollars; with each renewal application for a license filed pursuant to section seventy-nine, eighty-one or eighty-one-a of this chapter, a filing fee of twenty-five dollars; and with each renewal application for a license or permit filed pursuant to section fifty-three-a, fifty-four, fifty-five, fifty-five-a, ninety-one, ninety-one-a, ninety-two, ninety-two-a, ninety-three, ninety-three-a, if such permit is issued on a calendar year basis, ninety-four, ninety-five, ninety-six or ninety-six-a of this chapter or pursuant to subdivisions b, c, e or j of section ninety-nine-b, if such permit is issued on a calendar year basis, or with each renewal application for an additional bar pursuant to subdivision four of section one hundred of this chapter, a filing fee of thirty dollars.

S 9. Paragraph (a) of subdivision 1 of section 101 of the alcoholic beverage control law, as amended by chapter 22 of the laws of 2011, is amended to read as follows:

(a) Be interested directly or indirectly in any premises where any alcoholic beverage is sold at retail; or in any business devoted wholly or partially to the sale of any alcoholic beverage at retail by stock ownership, interlocking directors, mortgage or lien or any personal or real property, or by any other means. The provisions of this paragraph shall not apply to:

(i) any such premises or business constituting the overnight lodging and resort facility located wholly within the boundaries of the town of North Elba, county of Essex, township eleven, Richard's survey, great lot numbers two hundred seventy-eight, two hundred seventy-nine, two hundred eighty, two hundred ninety-eight, two hundred ninety-nine, three hundred, three hundred eighteen, three hundred nineteen, three hundred twenty, three hundred thirty-five and three hundred thirty-six, and township twelve, Thorn's survey, great lot numbers one hundred six and one hundred thirteen, as shown on the Adirondack map, compiled by the conservation department of the state of New York - nineteen hundred sixty-four edition, in the Essex county atlas at page twenty-seven in the Essex county clerk's office, Elizabethtown, New York, provided that such facility maintains not less than two hundred fifty rooms and suites for overnight lodging[,];

(ii) any such premises or business constituting the overnight lodging and resort facility located wholly within the boundaries of that tract or parcel of land situate in the city of Canandaigua, county of Ontario, beginning at a point in the northerly line of village lot nine where it meets with South Main Street, thence south sixty-nine degrees fifty-four minutes west a distance of nine hundred sixteen and twenty-three hundredths feet to an iron pin; thence in the same course a distance of fourteen feet to an iron pin; thence in the same course a distance of fourteen and four-tenths feet to a point; thence south fifteen degrees thirty-eight minutes and forty seconds east a distance of four hundred forty-six and eighty-seven hundredths feet to a point; thence south twenty-eight degrees thirty-seven minutes and fifty seconds east a distance of one hundred thirteen and eighty-four hundredths feet to a point; thence south eighty-five degrees and forty-seven minutes east a distance of forty-seven and sixty-one hundredths feet to an iron pin; thence on the same course a distance of three hundred and sixty-five feet to an iron pin; thence north seventeen degrees twenty-one minutes and ten seconds east a distance of four hundred fifty-seven and thirty-two hundredths feet to an iron pin; thence north nineteen degrees and thirty minutes west a distance of two hundred and forty-eight feet to a point; thence north sixty-nine degrees and fifty-four minutes east a distance of two hundred eighty-four and twenty-six hundredths feet to a point; thence north nineteen degrees and thirty minutes west a distance of sixty feet to the point and place of beginning, provided that such facility maintains not less than one hundred twenty rooms and suites for overnight lodging[,];

(iii) any such premises or business constituting the overnight lodging facility located wholly within the boundaries of that tract or parcel of land situated in the borough of Manhattan, city and county of New York, beginning at a point on the northerly side of west fifty-fourth street at a point one hundred feet easterly from the intersection of the said northerly side of west fifty-fourth street and the easterly side of seventh avenue; running thence northerly and parallel with the easterly

side of seventh avenue one hundred feet five inches to the center line of the block; running thence easterly and parallel with the northerly side of west fifty-fourth street and along the center line of the block fifty feet to a point; running thence northerly and parallel with the easterly side of seventh avenue one hundred feet five inches to the southerly side of west fifty-fifth street at a point distant one hundred fifty feet easterly from the intersection of the said southerly side of west fifty-fifth street and the easterly side of seventh avenue; running thence easterly along the southerly side of west fifty-fifth street thirty-one feet three inches to a point; running thence southerly and parallel with the easterly side of the seventh avenue one hundred feet five inches to the center line of the block; running thence easterly along the center line of the block and parallel with the southerly side of west fifty-fifth street, one hundred feet; running thence northerly and parallel with the easterly side of seventh avenue one hundred feet five inches to the southerly side of west fifty-fifth street; running thence easterly along the southerly side of west fifty-fifth street twenty-one feet ten and one-half inches to a point; running thence southerly and parallel with the easterly side of seventh avenue one hundred feet five inches to the center line of the block; running thence westerly along the center line of the block and parallel with the northerly side of west fifty-fourth street three feet one and one-half inches; running thence southerly and parallel with the easterly side of seventh avenue one hundred feet five inches to the northerly side of west fifty-fourth street at a point distant three hundred feet easterly from the intersection of the said northerly side of west fifty-fourth street and the easterly side of seventh avenue; running thence westerly and along the northerly side of west fifty-fourth street two hundred feet to the point or place of beginning, provided that such facility maintains not less than four hundred guest rooms and suites for overnight lodging[,];

(iv) any such premises or business located on that tract or parcel of land, or any subdivision thereof, situate in the Village of Lake Placid, Town of North Elba, Essex County, New York; it being also a part of Lot No. 279, Township No. 11, Old Military Tract, Richard's Survey; it being also all of Lot No. 23 and part of Lot No. 22 as shown and designated on a certain map entitled "Map of Building Sites for Sale by B.R. Brewster" made by G.T. Chellis C.E. in 1892; also being PARCEL No. 1 on a certain map of lands of Robert J. Mahoney and wife made by G.C. Sylvester, P.E. & L.S. # 21300, dated August 4, 1964, and filed in the Essex County Clerk's Office on August 27, 1964, and more particularly bounded and described as follows; BEGINNING at the intersection of the northerly bounds of Shore Drive (formerly Mirror Street) with the westerly bounds of Park Place (formerly Rider Street) which point is also the northeast corner of Lot No. 23, from thence South 21°50' East in the westerly bounds of Park Place a distance of 119 feet, more or less, to a lead plug in the edge of the sidewalk marking the southeast corner of Lot No. 23 and the northeast corner of Lot No. 24; from thence South 68°00'50" West a distance of 50.05 feet to an iron pipe set in concrete at the corner of Lots 23 and 22; from thence South 65°10'50" West a distance of 7.94 feet along the south line of Lot No. 22 to an iron pipe for a corner; from thence North 23°21'40" West and at 17.84 feet along said line passing over a drill hole in a concrete sidewalk, and at 68.04 feet further along said line passing over an iron pipe at the southerly edge of another sidewalk, and at 1.22 feet further along said line passing over another drill hole in a sidewalk, a total

distance of 119 feet, more or less, to the northerly line of Lot. No. 22; from thence easterly in the northerly line of Lot 22 and 23 to the northeast corner of Lot No. 23 and the point of beginning. Also including the lands to the center of Shore Drive included between the northerly straight line continuation of the side lines of the above described parcel, and to the center of Park Place, where they abut the above described premises SUBJECT to the use thereof for street purposes. Being the same premises conveyed by Morestuff, Inc. to Madeline Sellers by deed dated June 30, 1992, recorded in the Essex County Clerk's Office on July 10, 1992 in Book 1017 of Deeds at Page 318;

(v) any such premises or business located on that certain piece or parcel of land, or any subdivision thereof, situate, lying and being in the Town of Plattsburgh, County of Clinton, State of New York and being more particularly bounded and described as follows: Starting at an iron pipe found in the easterly bounds of the highway known as the Old Military Turnpike, said iron pipe being located 910.39 feet southeasterly, as measured along the easterly bounds of said highway, from the southerly bounds of the roadway known as Industrial Parkway West, THENCE running S 31 ° 54' 33" E along the easterly bounds of said Old Military Turnpike Extension, 239.88 feet to a point marking the beginning of a curve concave to the west; thence southerly along said curve, having a radius of 987.99 feet, 248.12 feet to an iron pipe found marking the point of beginning for the parcel herein being described, said point also marked the southerly corner of lands of Larry Garrow, et al, as described in Book 938 of Deeds at page 224; thence N 07° 45' 4" E along the easterly bounds of said Garrow, 748.16 feet to a 3"x4" concrete monument marking the northeasterly corner of said Garrow, the northwesterly corner of the parcel herein being described and said monument also marking the southerly bounds of lands of Salerno Plastic Corp. as described in Book 926 of Deeds at Page 186; thence S 81° 45' 28" E along a portion of the southerly bounds of said Salerno Plastic Corp., 441.32 feet to an iron pin found marking the northeasterly corner of the parcel herein being described and also marking the northwest corner of the remaining lands now or formerly owned by said Marx and Delaura; thence S 07° 45' 40" W along the Westerly bounds of lands now of formerly of said Marx and DeLaura and along the easterly bounds of the parcel herein being described, 560.49 feet to an iron pin; thence N 83° 43' 21" W along a portion of the remaining lands of said Marx and DeLaura, 41.51 feet to an iron pin; thence S 08° 31' 30" W, along a portion of the remaining lands of said Marx and Delaura, 75.01 feet to an iron pin marking northeasterly corner of lands currently owned by the Joint Council for Economic Opportunity of Plattsburgh and Clinton County, Inc. as described in Book 963 of Deeds at Page 313; thence N 82° 20' 32" W along a portion of the northerly bounds of said J.C.E.O., 173.50 feet to an iron pin; thence 61° 21' 12" W, continuing along a portion of the northerly bounds of said J.C.E.O., 134.14 feet to an iron pin; thence S 07° 45' 42" W along the westerly bounds of said J.C.E.O., 50 feet to an iron pin; thence S 66° 48' 56" W along a portion of the northerly bounds of remaining lands of said Marx and DeLaura, 100.00 feet to an iron pipe found on the easterly bounds of the aforesaid highway, said from pipe also being located on a curve concave to the west; thence running and running northerly along the easterly bounds of the aforesaid highway and being along said curve, with the curve having a radius of 987.93 feet, 60.00 feet to the point of beginning and containing 6.905 acres of land. Being the same premises as conveyed to Ronald Marx and Alice Marx by deed of CIT Small Business Lending Corp., as agent of the administrator,

U.S. Small Business Administration, an agency of the United States Government dated September 10, 2001 and recorded in the office of the Clinton County Clerk on September 21, 2001 as Instrument #135020; [or]

(vi) any such premises or business located on the west side of New York state route 414 in military lots 64 and 75 located wholly within the boundaries of that tract or parcel of land situated in the town of Lodi, county of Seneca beginning at an iron pin on the assumed west line of New York State Route 414 on the apparent north line of lands reputedly of White (lib. 420, page 155); said iron pin also being northerly a distance of 1200 feet more or less from the centerline of South Miller Road; Thence leaving the point of beginning north 85-17'-44" west along said lands of White a distance of 2915.90 feet to an iron pin Thence north 03-52'-48" east along said lands of White, passing through an iron pin 338.36 feet distant, and continuing further along that same course a distance of 13.64 feet farther, the total distance being 352.00 feet to a point in the assumed centerline of Nellie Neal Creek; Thence in generally a north westerly direction the following courses and distances along the assumed centerline of Nellie Neal Creek; north 69-25'-11" west a distance of 189.56 feet to a point; north 63-40'-00" west a distance of 156.00 feet to a point; north 49-25'-00" west a distance of 80.00 feet to a point; south 80-21'-00" west a distance of 90.00 feet to a point; north 72-03'-00" west a distance of 566.00 feet to a point; north 68-15'-00" west a distance of 506.00 feet to a point; north 55-16'-00" west a distance of 135.00 feet to a point; south 69-18'-00" west a distance of 200.00 feet to a point; south 88-00'-00" west a distance of 170.00 feet to a point on a tie line at or near the high water line of Seneca Lake; Thence north 25-17'-00" east along said tie line a distance of 238.00 feet to an iron pipe; Thence south 82-04'-15" east along lands reputedly of M. Wagner (lib. 464, page 133) a distance of 100.00 feet to an iron pin; Thence north 06-56'-47" east along said lands of M. Wagner a distance of 100.00 feet to an iron pipe; Thence north 09-34'-28" east along lands reputedly of Schneider (lib. 429, page 37) a distance of 50.10 feet to an iron pipe; Thence north 07-49'-11" east along lands reputedly of Oney (lib. 484, page 24) a distance of 50.00 feet to an iron pipe; Thence north 82-29'-40" west along said lands of Oney a distance of 95.30 feet to an iron pipe on a tie line at or near the highwater line of Seneca Lake; Thence north 08-15'-22" east along said tie line a distance of 25.00 feet to an iron pin; Thence south 82-28'-00" east along lands reputedly of Yu (lib. 405, page 420) a distance of 96.53 feet to an iron pipe; Thence north 34-36'-59" east along said lands of Yu a distance of 95.00 feet to a point in the assumed centerline of Van Liew Creek; Thence in generally an easterly direction the following courses and distances along the assumed centerline of Van Liew Creek; north 72-46'-37" east a distance of 159.98 feet to a point; north 87-53'-00" east a distance of 94.00 feet to a point; south 71-12'-00" east a distance of 52.00 feet to a point; south 84-10'-00" east a distance of 158.00 feet to a point; south 59-51'-00" east a distance of 160.00 feet to a point; south 83-29'-00" east a distance of 187.00 feet to a point; Thence north 01-33'-40" east along lands reputedly of Hansen (lib. 515, page 205) passing through an iron pipe 32.62 feet distant, and continuing further along that same course passing through an iron pin 205.38 feet farther, and continuing still further along that same course a distance of 21.45 feet farther, the total distance being 259.45 feet to the assumed remains of a White Oak stump; Thence north 69-16'-11" east along lands reputedly of Schwartz (lib. 374, page 733) being tie lines along the top of the south bank of

Campbell Creek a distance of 338.00 feet to a point; Thence south 57-17'32" east along said tie line a distance of 136.60 feet to a point; Thence south 74-45'-00" east along said tie line a distance of 100.00 feet to an iron pin; Thence north 04-46'-00" east along said lands of Schwartz a distance of 100.00 feet to a point in the assumed centerline of Campbell Creek; Thence in generally an easterly direction the following courses and distances along the assumed centerline of Campbell Creek; south 71-34'-00" east a distance of 330.00 feet to a point; north 76-53'-00" east a distance of 180.00 feet to a point; north 83-05'00" east a distance of 230.00 feet to a point; south 66-44'-00" east a distance of 90.00 feet to a point; south 81-10'-00" east a distance of 240.00 feet to a point; south 45-29'-15" east a distance of 73.18 feet to a point; Thence south 05-25'-50" west along lands reputedly of Stanley Wagner (lib. 450, page 276) a distance of 135.00 feet to a point on the assumed north line of Military Lot 75; Thence south 84-34'-10" east along said lands of Wagner and the assumed north line of Military Lot 75 a distance of 1195.06 feet to an iron pin; Thence south O6-57'52" west along said lands of M. Wagner (lib. 414, page 267) passing through an iron pin 215.58 feet distant, and continuing further along that same course a distance of 20.59 feet farther, the total distance being 236.17 feet to a point in the assumed centerline of Campbell Creek; Thence in generally a south easterly direction the following course and distances along the assumed centerline of Campbell Creek; north 78-23'-09" east a distance of 29.99 feet to a point; south 46-09'-15" east a distance of 65.24 feet to a point; north 85-55'-09" east a distance of 60.10 feet to a point; south 61-59'-50" east a distance of 206.91 feet to a point; north 63-58'-27" east a distance of 43.12 feet to a point; south 28-51'-21" east a distance of 47.72 feet to a point; south 15-14'-08" west a distance of 33.42 feet to a point; south 79-16'-32" east a distance of 255.15 feet to a point; south 62-19'-46" east a distance of 75.82 feet to a point; north 76-10'-42" east a distance of 99.60 feet to a point; north 82-12'55" east a distance of 86.00 feet to a point; south 44-13'53" east a distance of 64.08 feet to a point; north 67-52'-46" east a distance of 73.98 feet to a point; north 88-13'-13" east a distance of 34.64 feet to a point on the assumed west line of New York State Route 414; Thence south 20-13'-30" east along the assumed west line of New York State Route 414 a distance of 248.04 feet to a concrete monument; Thence south 02-10'-30" west along said road line a distance of 322.90 feet to an iron pin; Thence 13-14'-50" west along said road line a distance of 487.41 feet to an iron pin, said iron pin being the point and place of beginning; Comprising an area of 126.807 acres of land according to a survey completed by Michael D. Karlsen entitled "Plan Owned by Stanley A. Wagner" known as Parcel A of Job number 98-505. This survey is subject to all utility easements and easements and right-of-ways of record which may affect the parcel of land. This survey is also subject to the rights of the public in and to lands herein referred to as New York State Route 414. This survey intends to describe a portion of the premises as conveyed by Ruth V. Wagner to Stanley A. Wagner by deed recorded February 10, 1989 in Liber 450 of deeds, at Page 286. This survey also intends to describe a portion of the premises as conveyed by Stanley W. VanVleet to Stanley A. Wagner by deed recorded April 30, 1980 in Liber 385 of Deeds, at Page 203.

ALSO ALL THAT OTHER TRACT OR PARCEL OF LAND SITUATE on the east side of New York State Route 414 in Military Lot 75 in the Town of Lodi, County of Seneca, State of New York bounded and described as follows: Beginning at an iron pin on the assumed east line of New York State Route

414, said iron pin being north 50-44'-57" east a distance of 274.92 feet from the south east corner of the parcel of land herein above described; Thence leaving the point of beginning north 00-26'01" east along a mathematical tie line a distance of 504.91 feet to an iron pin; Thence south 37-00'-20" east along lands reputedly of Tomberelli (lib. 419, page 243) passing through an iron pin 176.00 feet distant, and continuing further along that same course a distance of 2.01 feet farther, the total distance being 178.01 feet to a point; Thence south 09-03'-55" west along lands reputedly of M. Wagner (lib. 491, page 181) a distance of 68.19 feet to an iron pipe; Thence south 15-36'-04" west along said lands of M. Wagner a distance of 300.15 feet to an iron pipe; Thence south 72-04'-59" west along said lands of M. Wagner a distance of 20.49 feet to an iron pin, said iron pin being the point and place of beginning. Comprising an area of 0.727 acre of lands according to a survey completed by Michael D. Karlsen entitled "Plan of Land Owned by Stanley A. Wagner" known as Parcel B of job number 98-505. This survey is subject to all utility easements and easements and right-of-ways of record which may affect this parcel of land. This survey is also subject to the rights of the public in and to lands herein referred to as New York State Route 414. This survey intends to describe the same premises as conveyed by Henry W. Eighmey as executor of the Last Will and Testament of Mary C. Eighmey to Stanley A. Wagner by deed recorded July 2, 1996 in liber 542, page 92. This survey also intends to describe a portion of the premises as conveyed by Ruth V. Wagner to Stanley A. Wagner by deed recorded February 10, 1989 in Liber 450 of deeds, at Page 286[.];

[The provisions of this paragraph shall not apply to] (VII) any premises or business located wholly within the following described parcel: ALL THAT TRACT OR PARCEL OF LAND situate in the City of Corning, County of Steuben and State of New York bounded and described as follows: Beginning at an iron pin situate at the terminus of the westerly line of Townley Avenue at its intersection with the southwesterly line of New York State Route 17; thence S 00° 45' 18" E along the westerly line of Townley Avenue, a distance of 256.09 feet to a point; thence S 89° 02' 07" W through an iron pin placed at a distance of 200.00 feet, a total distance of 300.00 feet to an iron pin; thence N 00° 59' 17" W a distance of 47.13 feet to an iron pin; thence S 89° 02' 07" W a distance of 114.56 feet to a point situate in the southeast corner of Parcel A-2 as set forth on a survey map hereinafter described; thence N 14° 18' 49" E a distance of 124.40 feet to an iron pin situate at the southeast corner of lands now or formerly of Cicci (Liber 923, Page 771); thence N 14° 18' 49" E a distance of 76.46 feet to an iron pin; thence N 00° 57' 53" W a distance of 26.25 feet to an iron pin marking the southeast corner of parcel A-1 as set forth on the hereinafter described survey map; thence N 00° 58' 01" W a distance of 166.00 to an iron pin situate at the northeast corner of said Parcel A-1, which pin also marks the southeast corner of lands now or formerly of Becraft (Liber 1048, Page 1086); thence N 00° 57' 53" W a distance of 106.00 feet to an iron pin situate in the southerly line of lands now or formerly of the United States Postal Service; thence N 89° 02' 07" E along the southerly line of said United States Postal Service a distance of 81.47 feet to a point; thence N 14° 18' 49" E along the easterly line of said United States Postal Service a distance of 114.29 feet to an iron pin situate in the southwesterly line of New York State Route 17; thence S 32° 00' 31" E along the southwesterly line of New York State Route 17, a distance of 358.93 feet to an iron pin; thence continuing along the

southwesterly line of New York state Route 17, S 38° 30' 04" E a distance of 108.18 feet to the iron pin marking the place of beginning. Said premises are set forth and shown as approximately 4.026 acres of land designated as Parcel A (excluding Parcels A-1 and A-2) on a survey map entitled "As-Built Survey of Lands of New York Inn, LLC, City of Corning, Steuben County, New York" by Weiler Associates, dated December 27, 2001, designated Job No. 12462; [or (vii)]

(VIII) any such premises or businesses located on that certain plot, piece or parcel of land, situate, lying and being in the Second Ward of the City of Schenectady, on the Northerly side of Union Street, bounded and described as follows: to wit; Beginning at the Southeasterly corner of the lands lately owned by Elisha L. Freeman and now by Albert Shear; and running from thence Easterly along the line of Union Street, 44 feet to the lands now owned by or in the possession of James G. Van Vorst; thence Northerly in a straight line along the last mentioned lands and the lands of the late John Lake, 102 feet to the lands of one Miss Rodgers; thence Westerly along the line of the last mentioned lands of said Rodgers to the lands of the said Shear; and thence Southerly along the lands of said Shear 101 feet, 6 inches to Union Street, the place of beginning.

Also all that tract or parcel of land, with the buildings thereon, situate in the City of Schenectady, County of Schenectady, and State of New York, situate in the First, formerly the Second Ward of the said City, on the Northerly side of Union Street, which was conveyed by William Meeker and wife to Elisha L. Freeman by deed dated the second day of December 1843, and recorded in the Clerk's Office of Schenectady County on December 5, 1843, in Book V of Deeds at page 392, which lot in said deed is bounded and described as follows: Beginning at a point in the Northerly line of Union Street where it is intersected by the Easterly line of property numbered 235 Union Street, which is hereby conveyed, and running thence Northerly along the Easterly line of said property, One Hundred Forty and Five-tenths (140.5) feet to a point sixteen (16) feet Southerly from the Southerly line of the new garage built upon land adjoining on the North; thence Westerly parallel with said garage, Forty-six and Seven-tenths (46.7) feet; thence Southerly One Hundred Forty and Eight-tenths (140.8) feet to the Northerly margin of Union Street; thence Easterly along the Northerly margin of Union Street, about Forty-eight and three-tenths (48.3) feet to the point or place of beginning. The two above parcels are together more particularly described as follows: All that parcel of land in the City of Schenectady beginning at a point in the northerly margin of Union Street at the southwesterly corner of lands now or formerly of Friedman (Deed Book 636 at page 423) which point is about 60 feet westerly of the westerly line of North College Street and runs thence N. 86 deg. 42' 20" W. 92.30 feet to the southeasterly corner of other lands now or formerly of Friedman (Deed Book 798 at page 498); thence N. 04 deg. 06' 48" E. 140.50 feet to the southwesterly corner of lands now or formerly of Stockade Associates (Deed Book 1038 at page 521); thence S. 87 deg. 05' 27" E. 46.70 feet to lands now or formerly of McCarthy (Deed Book 1129 at page 281); thence along McCarthy S. 00 deg. 52' 02" E. 3.69 feet to the northwesterly corner of lands now or formerly of SONYMA (Deed Book 1502 at page 621); thence along lands of SONYMA S. 02 deg 24' 56" W.34.75 feet to a corner; thence still along lands of SONYMA and lands now or formerly of Magee (Deed Book 399 at page 165) S. 86 deg. 11' 52" E. 42.57 feet to a corner; thence still along lands of Magee and Lands of Friedman first above mentioned S. 03 deg. 10' 08" W. 102.00 feet to

the point of beginning. Excepting and reserving all that portion of the above parcel lying easterly of a line described as follows: All that tract or parcel of land, situated in the City of Schenectady and County of Schenectady and State of New York, on the Northerly side of Union Street bounded and described as follows: Beginning at a point in the northerly line of Union Street, said point being in the division line between lands now or formerly of Electric Brew Pubs, Inc. (1506 of Deeds at page 763) on the West and lands now or formerly of Margaret Wexler and Donna Lee Wexler Pavlovic, as trustees under Will of Ruth F. Wexler (Street number 241 Union Street) on the East; thence North 03 deg. 04' 10" East, along the building known as Street No. 241 Union Street, a distance of 30.50 feet to a point; thence North 88 deg. 45' 45" West, along said building and building eve, a distance of 5.62 feet to a point; thence North 03 deg. 03' 30" East, along said building eve of Street No. 241 Union Street, a distance of 32.74 feet; thence South 88 deg. 45' 45" East, along said building eve, a distance of 1.2 feet to an intersection of building corner of Street No. 241 Union Street and a brick wall; thence north 03 deg. 37' 30" East, along said brick wall, a distance of 14.47 feet to a point in the corner of the brick wall, thence South 86 deg. 46' 45" East along said brick wall a distance of 4.42 feet to the intersection of brick wall with the boundary line between the Electric Brew Pubs, Inc. (aforesaid) on the West and lands of Margaret Wexler and Donna Lee Wexler Pavlovic, (aforesaid) on the East; thence North 03 deg 10' 08" East a distance of 0.62 feet to the Northeast corner of lands belonging to Margaret Wexler and Donna Lee Wexler Pavlovic. Also all that tract or parcel of land commonly known as the Union Street School, located on the Northeasterly corner of Union and North College Streets in the First Ward of the City and County of Schenectady and State of New York, more particularly bounded and described as follows: Beginning at a point in the Northerly street line of Union Street where it is intersected by the Easterly street line of North College Street, and runs thence Northerly along the Easterly street line of North College Street, one hundred seven and five-tenths (107.5) feet to a point, thence easterly at an angle of ninety (90) degrees, one hundred ninety-one and seventy-five hundredths (191.75) feet to a point in the Northwesterly street line of Erie Boulevard thence southwesterly along the Northwesterly street line of Erie Boulevard, one hundred twenty-three and eight-tenths (123.8) feet to its intersection with the Northerly street line of Union Street; thence Westerly along the Northerly street line of Union Street, one hundred twenty-four and fifty-five hundredths (124.55) feet to the point or place of beginning.

The above described parcel of property includes the Blue Line parcel of land, which is a portion of the abandoned Erie Canal Lands, located in the First Ward of the City of Schenectady, New York, and which Blue Line parcel lies between the Northwesterly line of Erie Boulevard as set forth in the above described premises and the Northeasterly lot line of the old Union Street School as it runs parallel with the Northwesterly line of Erie Boulevard as aforesaid.

The two above parcels are together more particularly described as follows: All that parcel of land in the City of Schenectady beginning at a point in the northerly margin of Union Street and the northwesterly margin of Erie Boulevard and runs thence along Union Street N. 86 deg. 42' 20" W. 124.55 feet to the easterly margin of North College Street; thence along North College Street N. 05 deg 04' 40" E. 107.50 feet to the southeasterly corner of lands now or formerly of McCarthy (Deed Book

1129 at page 279); thence along McCarthy, Cottage Alley and lands now or formerly of McGregor (Deed Book 912 at page 624) S. 84 deg. 55' 20" E. 191.75 feet to the northwesterly margin of Erie Boulevard; thence along Erie Boulevard S. 38 deg. 03' 53" W. 123.54 feet to the point of beginning; [or (viii)]

(IX) any such premises or businesses located on that tract or parcel of land situate in the Town of Hopewell, Ontario County, State of New York, bounded and described as follows: Commencing at a 5/8" rebar found on the division line between lands now or formerly of Ontario County - Finger Lakes Community College (Liber 698 of Deeds, Page 466) on the north and lands now or formerly of James W. Baird (Liber 768 of Deeds, Page 1109) on the south; thence, North 43°-33'-40" West, on said division line, a distance of 77.32 feet to the Point of Beginning. Thence, North 43°-33'-40" West, continuing on said division line and through said lands of Ontario County, a distance of 520.45 feet to a point on the southeasterly edge of an existing concrete pad; thence, South 74°-19'-53" West, along said edge of concrete and the projection thereof, a distance of 198.78 feet to a point on the easterly edge of pavement of an existing campus drive; thence, the following two (2) courses and distances along said edge of pavement: Northeasterly on a curve to the left having a radius of 2221.65 feet, a chord bearing of North 30°-16'-39" East, a chord distance of 280.79, a central angle of 07°-14'-47", a length of 280.98 feet to a point of reverse curvature; thence, Northeasterly on a curve to the right having a radius of 843.42 feet, a chord bearing of North 45°-25'-09" East, a chord distance of 534.08, a central angle of 36°-55'-01", a length of 543.43 feet to a point; thence, South 30°-04'-59" East, a distance of 18.28 feet to the corner of the property acquired by Ontario County (Liber 766 of Deeds, Page 1112), as shown on a map recorded in the Ontario County Clerk's Office as Map No. 6313; thence, the following four (4) courses and distances along said property line: South 30°-04'-59" East, a distance of 177.17 feet to a point; thence, South 02°-20'-33" East, a distance of 147.53 feet to a point; thence, South 41°-31'-35" East, a distance of 200.93 feet to a point; thence, South 23°-48'-53" West, along said property line, and the projection thereof, through the first said lands of Ontario County - Finger Lakes Community College (Liber 698 of Deeds, Page 466), a distance of 517.96 feet to Point of Beginning. Said parcel containing 7.834 acres, more or less, as shown on a map entitled "Proposed Lease Area - Friends of the Finger Lakes Performing Arts Center, Hopewell, NY", prepared by Bergmann Associates, drawing LM-01, dated June 10, 2005, last revised August 17, 2005. The related PAC Properties are shown on the Map denominated "FLCC Campus Property, FLPAC Ground Lease, Parking, Vehicular & Pedestrian Access", recorded in the Ontario County Clerk's Office on December 10, 2009 in Book 1237 of Deeds at page 9 and are comprised of the areas separately labeled as Parking Lot 'A', Parking Lot 'G', the Ticket Booth area, the Sidewalks, and the Entry Roads[.];

(X) ANY PREMISES LICENSED PURSUANT TO SECTION SIXTY-THREE-B OF THIS CHAPTER.

[The provisions of this paragraph shall not apply to] (XI) any premises licensed under section sixty-four of this chapter in which a manufacturer or wholesaler holds a direct or indirect interest, provided that: [(I)] (1) said premises consist of an interactive entertainment facility which predominantly offers interactive computer and video entertainment attractions, and other games and also offers themed merchandise and food and beverages, [(II)] (2) the sale of alcoholic

beverages within the premises shall be restricted to an area consisting of not more than twenty-five percent of the total interior floor area of the premises, [(III)] (3) the retail licenses shall derive not less than sixty-five percent of the total revenue generated by the facility from interactive video entertainment activities and other games, including related attractions and sales of merchandise other than food and alcoholic beverages, [(IV)] (4) the interested manufacturer or wholesaler, or its parent company, shall be listed on a national securities exchange and its direct or indirect equity interest in the retail licensee shall not exceed twenty-five percent, [(V)] (5) no more than fifteen percent of said licensee's purchases of alcoholic beverages for sale in the premises shall be products produced or distributed by the manufacturer or wholesaler, [(VI)] (6) neither the name of the manufacturer or wholesaler nor the name of any brand of alcoholic beverage produced or distributed by said manufacturer or wholesaler shall be part of the name of the premises, [(VII)] (7) the name of the manufacturer or wholesaler or the name of products sold or distributed by such manufacturer or wholesaler shall not be identified on signage affixed to either the interior or the exterior of the premises in any fashion, [(VIII)] (8) promotions involving alcoholic beverages produced or distributed by the manufacturer or wholesaler are not held in such premises and further, retail and consumer advertising specialties bearing the name of the manufacturer or wholesaler or the name of alcoholic beverages produced or distributed by the manufacturer or wholesaler are not utilized in any fashion, given away or sold in said premises, and [(IX)] (9) except to the extent provided in this paragraph, the licensing of each premises covered by this exception is subject to all provisions of section sixty-four of this chapter, including but not limited to liquor authority approval of the specific location thereof.

The provisions of this paragraph shall not prohibit (1) a manufacturer or wholesaler, if an individual, or a partner, of a partnership, or, if a corporation, an officer or director thereof, from being an officer or director of a duly licensed charitable organization which is the holder of a license for on-premises consumption under this chapter, nor (2) a manufacturer from acquiring any such premises if the liquor authority first consents thereto after determining, upon such proofs as it shall deem sufficient, that such premises is contiguous to the licensed premises of such manufacturer, and is reasonably necessary for the expansion of the facilities of such manufacturer. After any such acquisition, it shall be illegal for a manufacturer acquiring any such premises to sell or deliver alcoholic beverages manufactured by him to any licensee occupying such premises.

S 10. If any provision of this act or the application thereof shall for any reason be finally adjudged by a court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder of this act but shall be confined in its operation to the provision or provisions directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provision or provisions had not been included. In the event that any provision of the laws of New York, as amended by this act, shall be finally adjudged by a court of competent jurisdiction to be invalid or unconstitutional, the provisions of such laws in effect prior to the date this act shall have become law shall not be affected by such judgment.

S 11. This act shall take effect immediately; provided, however, that the sales tax exemptions created by sections three and four of this act shall take effect on the first day of a sales tax quarterly period, as described in subdivision (b) of section 1136 of the tax law, next commencing at least 30 days after this act shall have become a law and shall apply in accordance with the applicable transitional provisions in sections 1106 and 1217 of the tax law; and provided further that the amendments to subdivisions 1 and 2 of section 56-a of the alcoholic beverage control law made by section eight of this act shall take effect on the same date and in the same manner as sections 7 and 8, respectively, of chapter 108 of the laws of 2012, as amended, take effect.

PART J

Section 1. The general municipal law is amended by adding a new section 875 to read as follows:

S 875. SPECIAL PROVISIONS APPLICABLE TO STATE SALES AND COMPENSATING USE TAXES AND CERTAIN TYPES OF FACILITIES. 1. FOR PURPOSES OF THIS SECTION: "STATE SALES AND USE TAXES" MEANS SALES AND COMPENSATING USE TAXES AND FEES IMPOSED BY ARTICLE TWENTY-EIGHT OR TWENTY-EIGHT-A OF THE TAX LAW BUT EXCLUDING SUCH TAXES IMPOSED IN A CITY BY SECTION ELEVEN HUNDRED SEVEN OR ELEVEN HUNDRED EIGHT OF SUCH ARTICLE TWENTY-EIGHT. "IDA" MEANS AN INDUSTRIAL DEVELOPMENT AGENCY ESTABLISHED BY THIS ARTICLE OR AN INDUSTRIAL DEVELOPMENT AUTHORITY CREATED BY THE PUBLIC AUTHORITIES LAW. "COMMISSIONER" MEANS THE COMMISSIONER OF TAXATION AND FINANCE.

2. (A) AN IDA SHALL NOT PROVIDE STATE SALES AND USE TAX EXEMPTION BENEFITS WITH RESPECT TO ANY PROJECT UNLESS AND UNTIL THE PREREQUISITES SET FORTH IN PARAGRAPHS (B), (C), (D) AND (E) OF THIS SUBDIVISION ARE MET.

(B) EITHER (I) THE AGENT OR PROJECT OPERATOR OF SUCH PROJECT MUST HAVE BEEN CERTIFIED AS A PARTICIPANT IN THE EXCELSIOR JOBS PROGRAM, AS SUCH TERM "PARTICIPANT" IS DEFINED IN SECTION THREE HUNDRED FIFTY-TWO OF THE ECONOMIC DEVELOPMENT LAW, AND PROVIDES TO THE IDA VALID PROOF OF PARTICIPATION IN SUCH PROGRAM, OR (II) IF SUCH AGENT OR PROJECT OPERATOR IS NOT A PARTICIPANT IN SUCH PROGRAM, THE IDA, AFTER REVIEWING THE FACTS ON THE RECORD, MUST FIND THAT THE AGENT OR PROJECT OPERATOR IS A BUSINESS ENTITY OF THE TYPE DESCRIBED IN SUBDIVISION ONE OF SECTION THREE HUNDRED FIFTY-THREE OF THE ECONOMIC DEVELOPMENT LAW AND REGULATIONS ADOPTED PURSUANT TO SUCH SECTION.

(C) IF THE PREREQUISITE IN EITHER SUBPARAGRAPH (I) OR (II) OF PARAGRAPH (B) OF THIS SUBDIVISION HAS BEEN MET, THE IDA SHALL SUBMIT IN WRITING ITS PLAN TO PROVIDE SUCH STATE SALES AND USE TAX EXEMPTION BENEFITS FOR SUCH PROJECT, TOGETHER WITH THE FINDINGS IT MADE UNDER SUCH SUBPARAGRAPH (II) OF PARAGRAPH (B) TO THE COMMISSIONER OF ECONOMIC DEVELOPMENT.

(D) THE COMMISSIONER OF ECONOMIC DEVELOPMENT SHALL REVIEW SUCH PROPOSED STATE SALES AND USE TAX EXEMPTION BENEFIT PLAN FOR SUCH PROJECT AND DETERMINE, IN CONSULTATION WITH THE REGIONAL ECONOMIC DEVELOPMENT COUNCIL ESTABLISHED BY THE GOVERNOR THAT ENCOMPASSES THE JURISDICTION FOR WHOSE BENEFIT THE IDA RECOMMENDING THE TAX EXEMPTION BENEFITS WAS CREATED, WHETHER SUCH PROPOSED STATE SALES AND USE TAX EXEMPTION BENEFIT PLAN FOR SUCH PROJECT IS CONSISTENT WITH REGIONAL ECONOMIC DEVELOPMENT STRATEGIES.

(E) THE COMMISSIONER OF ECONOMIC DEVELOPMENT SHALL REVIEW THE IDA'S FINDINGS, IF ANY, AND APPROVE OR DISAPPROVE THE PROPOSED BENEFITS OR DENY THEM IF SUCH COMMISSIONER DOES NOT APPROVE SUCH IDA'S FINDINGS THAT

THE AGENT/PROJECT OPERATOR IS A BUSINESS ENTITY OF THE TYPE REQUIRED. SUCH COMMISSIONER IS ALSO AUTHORIZED TO MODIFY THE IDA'S PROPOSED PLAN BY REDUCING THE TOTAL AMOUNT OF ANY SUCH STATE SALES AND USE TAX EXEMPTION BENEFITS OR BY SPECIFYING THAT SUCH BENEFITS SHALL APPLY TO ONLY SOME OF THE TYPES OF PROPERTY OR SERVICES PROPOSED TO BE EXEMPT FROM SUCH STATE TAXES OR BY REDUCING THE TIME PERIOD DURING WHICH SUCH BENEFITS MAY BE PROVIDED. SUCH COMMISSIONER SHALL ADVISE THE IDA IN WRITING OF HIS OR HER APPROVAL, DISAPPROVAL, DENIAL, OR MODIFICATION OF THE IDA'S PLAN, AND SUCH APPROVAL, DISAPPROVAL, DENIAL, OR MODIFICATION SHALL BIND THE IDA AS TO WHETHER THE IDA CAN PROVIDE STATE SALES AND USE TAX EXEMPTION BENEFITS AND, IF APPROVED IN WHOLE OR AS MODIFIED, THE AMOUNT OF STATE SALES AND USE TAX EXEMPTION BENEFITS THAT THE IDA CAN PROVIDE WITH RESPECT TO SUCH PROJECT, THE TYPES OF PROPERTY AND SERVICES THAT MAY BE ELIGIBLE FOR EXEMPTION, AND THE DURATION OF TIME DURING WHICH SUCH EXEMPTION BENEFITS MAY APPLY. HOWEVER, THE IDA MAY PROVIDE STATE SALES AND USE TAX EXEMPTION BENEFITS IN A LESSER AMOUNT, FOR FEWER TYPES OF PROPERTY OR SERVICES, OR FOR A SHORTER PERIOD, THAN AS APPROVED BY SUCH COMMISSIONER.

(F) NOTWITHSTANDING THE FOREGOING, IF AT THE TIME AN IDA PROPOSES A STATE SALES AND USE TAX EXEMPTION BENEFIT PLAN THERE IS NO REGIONAL ECONOMIC DEVELOPMENT COUNCIL IN THE APPLICABLE REGION, THEN THE COMMISSIONER OF ECONOMIC DEVELOPMENT SHALL REVIEW SUCH PLAN AND ANY SUCH FINDINGS AS PROVIDED IN PARAGRAPH (D) OF THIS SUBDIVISION, WITHOUT REGARD TO THE RECOMMENDATION OF ANY OTHER BODY.

(G) AN IDA SHALL NOT PROVIDE STATE SALES AND USE TAX EXEMPTION BENEFITS IN AN AMOUNT GREATER, FOR PROPERTY OR SERVICES OTHER, OR FOR A TIME PERIOD LONGER THAN AS APPROVED BY THE COMMISSIONER OF ECONOMIC DEVELOPMENT. ANY AMOUNT OF STATE SALES AND USE TAX EXEMPTION BENEFITS THAT AN IDA PURPORTS TO PROVIDE IN EXCESS OF THE AMOUNT APPROVED, OR FOR DIFFERENT PROPERTY OR SERVICES THAN APPROVED, OR FOR A PERIOD LONGER THAN APPROVED BY SUCH COMMISSIONER SHALL BE VOID FROM ITS INCEPTION, AND AN AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY THAT MAKES A PURCHASE OR USE WITHOUT PAYING STATE SALES AND USE TAXES, OR WHO PAID SUCH TAXES BUT OBTAINED A REFUND OR CREDIT OF THEM, AS A RESULT SHALL BE REQUIRED TO PAY SUCH AMOUNT OF TAX TO THE COMMISSIONER OF TAXATION AND FINANCE IN ACCORDANCE WITH ARTICLES TWENTY-EIGHT AND TWENTY-NINE OF THE TAX LAW. THE COMMISSIONER SHALL BE AUTHORIZED TO DETERMINE AND ASSESS STATE SALES AND USE TAXES FOREGONE ON ACCOUNT OF AN AGENT, PROJECT OPERATOR OR OTHER PERSON OR ENTITY NOT HAVING PAID SUCH STATE SALES OR USE TAX THAT SHOULD HAVE BEEN PAID, OR WHO OBTAINED SUCH A REFUND OR CREDIT BUT SHOULD NOT HAVE, IN ACCORD WITH THE APPLICABLE PROVISIONS OF THE TAX LAW, EXCEPT THAT ANY STATUTE THAT LIMITS THE TIME BY WHICH THE COMMISSIONER MUST DETERMINE OR ASSESS SUCH TAX SHALL NOT BEGIN TO RUN UNTIL THE COMMISSIONER HAS RECEIVED ACTUAL NOTICE OF SUCH IMPROPER PURCHASES OR USES.

3. AN IDA SHALL KEEP RECORDS OF THE AMOUNT OF STATE AND LOCAL SALES AND USE TAX EXEMPTION BENEFITS PROVIDED TO EACH PROJECT AND EACH AGENT OR PROJECT OPERATOR, AND SHALL MAKE SUCH RECORDS AVAILABLE TO THE COMMISSIONER AND STATE COMPTROLLER UPON REQUEST. SUCH IDA SHALL ALSO, WITHIN THIRTY DAYS OF PROVIDING FINANCIAL ASSISTANCE TO A PROJECT THAT INCLUDES ANY AMOUNT OF STATE SALES AND USE TAX EXEMPTION BENEFITS, REPORT TO THE COMMISSIONER AND THE STATE COMPTROLLER THE AMOUNT OF SUCH BENEFITS FOR SUCH PROJECT, THE PROJECT TO WHICH THEY ARE BEING PROVIDED, ANY LIMITATION ON THE APPLICATION OR EXERCISE OF SUCH EXEMPTIONS, THE TYPES OF PROPERTY AND SERVICES TO BE EXEMPTED, THE TIME DURING WHICH SUCH EXEMPTION BENEFITS APPLY, AND THE NAME AND ADDRESS OF THE AGENT OR PROJECT OPERATOR OF SUCH PROJECT, TOGETHER WITH SUCH OTHER INFORMATION

AND SUCH SPECIFICITY AND DETAIL AS THE COMMISSIONER MAY PRESCRIBE, WITH A COPY OF SUCH REPORT FURNISHED AT THE SAME TIME TO THE AGENT OR PROJECT OPERATOR. THIS REPORT MAY BE MADE IN CONJUNCTION WITH THE STATEMENT REQUIRED BY SUBDIVISION NINE OF SECTION EIGHT HUNDRED SEVENTY-FOUR OF THIS ARTICLE OR IT MAY BE MADE AS A SEPARATE REPORT, AT THE DISCRETION OF THE COMMISSIONER. AN AGENT OR PROJECT OPERATOR OR OTHER PERSON OR ENTITY SHALL NOT AVAIL ITSELF OF STATE OR LOCAL SALES AND USE TAX EXEMPTIONS IN EXCESS OF THE AMOUNT OR IN CONTRAVENTION OF THE TIME AND OTHER LIMITATIONS SET OUT IN SUCH REPORT OR FOR PROPERTY OR SERVICES OTHER THAN THOSE SET OUT IN SUCH REPORT. AN IDA THAT FAILS TO MAKE SUCH RECORDS AVAILABLE TO THE COMMISSIONER OR TO THE STATE COMPTROLLER OR TO FILE SUCH REPORT OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS SUBDIVISION SHALL BE PROHIBITED FROM PROVIDING STATE SALES AND USE TAX EXEMPTION BENEFITS FOR ANY PROJECT UNLESS AND UNTIL SUCH IDA COMES INTO COMPLIANCE WITH ALL SUCH REQUIREMENTS.

4. NOTWITHSTANDING ANY PROVISION OF THIS SECTION OR OTHER LAW, IN NO CASE SHALL AN IDA AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY TAKE ANY STATE SALES AND USE TAX EXEMPTION BENEFITS AS EXEMPTIONS AT THE TIME OF PURCHASE OR USE. RATHER, IN ALL CASES, THE PERSON OR ENTITY SHALL PAY STATE SALES OR USE TAX TO THE PERSON REQUIRED TO COLLECT IT AT THE TIME OF PURCHASE OR TO THE COMMISSIONER IN ACCORD WITH THE REQUIREMENTS OF ARTICLE TWENTY-EIGHT OF THE TAX LAW. AFTER HAVING PAID TAX TO THE PERSON REQUIRED TO COLLECT IT OR TO THE COMMISSIONER, SUCH PERSON OR ENTITY MAY THEN APPLY TO THE COMMISSIONER FOR A REFUND OR CREDIT OF SUCH TAX ACTUALLY PAID. ANY SUCH REFUND OR CREDIT SHALL THEN BE APPLIED FOR IN THE MANNER ESTABLISHED BY AND SUBJECT TO THE PROVISIONS OF SUCH ARTICLE TWENTY-EIGHT.

5. NOTWITHSTANDING ANY PROVISION OF THIS SECTION OR OTHER LAW, AN IDA SHALL NOT CREATE A PROJECT OR ANY PORTION OF A PROJECT, OR AUTHORIZE THE USE OF ANY PROJECT OR PROJECT PROPERTY, OUTSIDE THIS STATE.

6. AN IDA THAT ENTERS INTO AN AGREEMENT REQUIRING PAYMENTS IN LIEU OF STATE SALES AND USE TAXES TO BE PAID TO IT SHALL REMIT THE FULL AMOUNT OF ANY SUCH PAYMENTS IT RECEIVES TO THE COMMISSIONER WITHIN THIRTY DAYS OF THE DATE THAT THE IDA RECEIVES THE PAYMENT, TOGETHER WITH A RETURN OR REPORT REQUIRED BY THE COMMISSIONER. THE IDA SHALL SEND A COPY OF ANY SUCH AGREEMENT FOR PAYMENT IN LIEU OF SUCH TAXES TO THE COMMISSIONER WITHIN THIRTY DAYS OF THE DATE IT IS EXECUTED. IF THE PERSON OR ENTITY REQUIRED TO MAKE SUCH PAYMENTS TO THE IDA FAILS TO DO SO TIMELY, OR IF THE IDA FAILS TO REMIT SUCH PAYMENTS TO THE COMMISSIONER TIMELY, THE AMOUNT OF ANY SUCH UNTIMELY PAYMENTS OR REMISSIONS, TOGETHER WITH A PENALTY OF FIVE PERCENT OF THE AMOUNT OF SUCH LATE PAYMENTS AND INTEREST ON SUCH LATE PAYMENTS AT THE RATE OF ONE PERCENT PER MONTH, SHALL ALL BE DEEMED TO BE SALES TAX WHICH A RETURN OR REPORT SHOWS TO BE DUE UNDER SECTION ONE HUNDRED SEVENTY-THREE-A OF THE TAX LAW AND SUCH AMOUNTS SHALL BE PAID UPON NOTICE AND DEMAND AND SHALL BE ASSESSED, COLLECTED, AND PAID IN THE MANNER PROVIDED FOR SALES TAX, AND SUCH NOTICE AND DEMAND SHALL NOT BE CONSIDERED AS A NOTICE OF DETERMINATION, AS DESCRIBED IN SUCH SECTION ONE HUNDRED SEVENTY-THREE-A. AN IDA SHALL JOIN THE COMMISSIONER AS A PARTY IN ANY ACTION OR PROCEEDING THAT THE IDA COMMENCES TO RECOVER, OBTAIN, OR OTHERWISE SEEK, ANY UNPAID PAYMENTS IN LIEU OF STATE SALES AND USE TAX FROM AN AGENT, PROJECT OPERATOR OR OTHER PERSON OR ENTITY. THE PROVISIONS OF THIS SUBDIVISION SHALL ALSO APPLY TO ANY INTEREST OR PENALTY THAT THE IDA IMPOSES ON ANY SUCH PAYMENTS IN LIEU OF TAXES OR THAT ARE IMPOSED ON SUCH PAYMENTS BY OPERATION OF LAW OR BY JUDICIAL ORDER OR OTHERWISE. ANY SUCH PAYMENTS, TOGETHER WITH ANY INTEREST OR PENALTIES THEREON, SHALL BE DEEMED TO BE STATE SALES AND USE

TAXES AND THE IDA SHALL RECEIVE ANY SUCH PAYMENTS, WHETHER AS A RESULT OF COURT ACTION OR OTHERWISE, AS TRUSTEE FOR AND ON ACCOUNT OF THE STATE.

7. AN IDA OR IDA AGENT OR PROJECT OPERATOR SHALL NOT BE EXEMPT FROM THE TAXES IMPOSED BY PARAGRAPH TEN OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED FIVE OR BY ARTICLE TWENTY-EIGHT-A OR TWENTY-NINE-A OF THE TAX LAW.

8. IF AN IDA RECOVERS, RECAPTURES, RECEIVES, OR OTHERWISE OBTAINS, ANY AMOUNT OF STATE SALES AND USE TAX EXEMPTION BENEFITS FROM AN AGENT, PROJECT OPERATOR OR OTHER PERSON OR ENTITY, THE IDA SHALL, WITHIN THIRTY DAYS OF COMING INTO POSSESSION OF SUCH AMOUNT, REMIT IT TO THE COMMISSIONER, TOGETHER WITH SUCH INFORMATION AND REPORT THAT THE COMMISSIONER DEEMS NECESSARY TO ADMINISTER PAYMENT OVER OF SUCH AMOUNT. AN IDA SHALL JOIN THE COMMISSIONER AS A PARTY IN ANY ACTION OR PROCEEDING THAT THE IDA COMMENCES TO RECOVER, RECAPTURE, OBTAIN, OR OTHERWISE SEEK THE RETURN OF, STATE SALES AND USE TAX EXEMPTION BENEFITS FROM AN AGENT, PROJECT OPERATOR OR OTHER PERSON OR ENTITY. THIS SUBDIVISION SHALL APPLY TO ANY AMOUNTS OF STATE SALES AND USE TAX EXEMPTION BENEFITS THAT AN IDA RECOVERS, RECAPTURES, RECEIVES, OR OTHERWISE OBTAINS, REGARDLESS OF WHETHER THE IDA OR THE AGENT, PROJECT OPERATOR OR OTHER PERSON OR ENTITY CHARACTERIZES SUCH BENEFITS RECOVERED, RECAPTURED, RECEIVED, OR OTHERWISE OBTAINED, AS A PENALTY OR LIQUIDATED OR CONTRACT DAMAGES OR OTHERWISE. THE PROVISIONS OF THIS SUBDIVISION SHALL ALSO APPLY TO ANY INTEREST OR PENALTY THAT THE IDA IMPOSES ON ANY SUCH AMOUNTS OR THAT ARE IMPOSED ON SUCH AMOUNTS BY OPERATION OF LAW OR BY JUDICIAL ORDER OR OTHERWISE. ANY SUCH AMOUNTS OR PAYMENTS THAT AN IDA RECOVERS, RECAPTURES, RECEIVES, OR OTHERWISE OBTAINS, TOGETHER WITH ANY INTEREST OR PENALTIES THEREON, SHALL BE DEEMED TO BE STATE SALES AND USE TAXES AND THE IDA SHALL RECEIVE ANY SUCH AMOUNTS OR PAYMENTS, WHETHER AS A RESULT OF COURT ACTION OR OTHERWISE, AS TRUSTEE FOR AND ON ACCOUNT OF THE STATE.

9. THE COMMISSIONER SHALL DEPOSIT AND DISPOSE OF ANY AMOUNT OF ANY PAYMENTS OR MONEYS RECEIVED FROM OR PAID OVER BY AN IDA OR FROM OR BY ANY PERSON OR ENTITY, OR RECEIVED PURSUANT TO AN ACTION OR PROCEEDING COMMENCED BY AN IDA, TOGETHER WITH ANY INTEREST OR PENALTIES THEREON, PURSUANT TO SUBDIVISION SIX OR EIGHT OF THIS SECTION, AS STATE SALES AND USE TAXES IN ACCORD WITH THE PROVISIONS OF ARTICLE TWENTY-EIGHT OF THE TAX LAW. THE AMOUNT OF ANY SUCH PAYMENTS OR MONEYS, TOGETHER WITH ANY INTEREST OR PENALTIES THEREON, SHALL BE ATTRIBUTED TO THE TAXES IMPOSED BY SECTIONS ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED TEN, ON THE ONE HAND, AND SECTION ELEVEN HUNDRED NINE OF THE TAX LAW, ON THE OTHER HAND, OR TO ANY LIKE TAXES OR FEES IMPOSED BY SUCH ARTICLE, BASED ON THE PROPORTION THAT THE RATES OF SUCH TAXES OR FEES BEAR TO EACH OTHER, UNLESS THERE IS EVIDENCE TO SHOW THAT ONLY ONE OR THE OTHER OF SUCH TAXES OR FEES WAS IMPOSED OR RECEIVED OR PAID OVER.

10. THE STATEMENT THAT AN IDA IS REQUIRED BY SUBDIVISION NINE OF SECTION EIGHT HUNDRED SEVENTY-FOUR OF THIS ARTICLE TO FILE WITH THE COMMISSIONER SHALL NOT BE CONSIDERED AN EXEMPTION OR OTHER CERTIFICATE OR DOCUMENT UNDER ARTICLE TWENTY-EIGHT OR TWENTY-NINE OF THE TAX LAW. THE IDA SHALL NOT REPRESENT TO ANY AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY THAT A COPY OF SUCH STATEMENT MAY SERVE AS A SALES OR USE TAX EXEMPTION CERTIFICATE OR DOCUMENT. NO AGENT OR PROJECT OPERATOR MAY TENDER A COPY OF SUCH STATEMENT TO ANY PERSON REQUIRED TO COLLECT SALES OR USE TAXES AS THE BASIS TO MAKE ANY PURCHASE EXEMPT FROM TAX. NO SUCH PERSON REQUIRED TO COLLECT SALES OR USE TAXES MAY ACCEPT SUCH A STATEMENT IN LIEU OF COLLECTING ANY TAX REQUIRED TO BE COLLECTED. THE

CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF SUCH STATEMENT AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN IDA OR AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY OF SUCH STATEMENT, OR THE IDA'S RECOMMENDATION OF THE USE OR TENDERING OF SUCH STATEMENT, AS SUCH AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY-EIGHT AND THIRTY-SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH INTENT TO EVADE TAX.

11. IN CONSULTATION WITH THE COMMISSIONER OF ECONOMIC DEVELOPMENT, THE COMMISSIONER OF TAXATION AND FINANCE IS HEREBY AUTHORIZED TO ADOPT RULES AND REGULATIONS AND TO ISSUE PUBLICATIONS AND OTHER GUIDANCE IMPLEMENTING THE PROVISIONS OF THIS SECTION AND OF THE OTHER SECTIONS OF THIS ARTICLE RELATING TO ANY STATE OR LOCAL TAX OR FEE, OR EXEMPTION OR EXCLUSION THEREFROM, THAT THE COMMISSIONER ADMINISTERS AND THAT MAY BE AFFECTED BY ANY PROVISION OF THIS ARTICLE, AND ANY SUCH RULES AND REGULATIONS OF THE COMMISSIONER SHALL HAVE THE SAME FORCE AND EFFECT WITH RESPECT TO SUCH TAXES AND FEES, OR AMOUNTS MEASURED IN RESPECT OF THEM, AS IF THEY HAD BEEN ADOPTED BY THE COMMISSIONER PURSUANT TO THE AUTHORITY OF THE TAX LAW.

12. TO THE EXTENT THAT A PROVISION OF THIS SECTION CONFLICTS WITH A PROVISION OF ANY OTHER SECTION OF THIS ARTICLE, THE PROVISIONS OF THIS SECTION SHALL CONTROL.

S 2. The public authorities law is amended by adding a new section 1963-b to read as follows:

S 1963-B. SPECIAL PROVISIONS APPLICABLE TO STATE SALES AND COMPENSATING USE TAXES AND CERTAIN TYPES OF FACILITIES. THE PROVISIONS OF SECTION EIGHT HUNDRED SEVENTY-FIVE OF THE GENERAL MUNICIPAL LAW SHALL APPLY TO THE PROVISIONS OF THIS TITLE AND TO THE AUTHORITY CREATED BY THIS TITLE WITH THE SAME FORCE AND EFFECT AS IF THE PROVISIONS OF SUCH SECTION EIGHT HUNDRED SEVENTY-FIVE HAD BEEN INCORPORATED IN FULL INTO THIS TITLE AND HAD EXPRESSLY REFERRED TO THE PROVISIONS OF THIS TITLE AND TO SUCH AUTHORITY, WITH SUCH CHANGES TO SUCH SECTION AS ARE NECESSARY TO REFER TO THE PROVISIONS OF THIS TITLE AND TO THE AUTHORITY CREATED BY THIS TITLE.

S 3. The public authorities law is amended by adding a new section 2326-a to read as follows:

S 2326-A. SPECIAL PROVISIONS APPLICABLE TO STATE SALES AND COMPENSATING USE TAXES AND CERTAIN TYPES OF FACILITIES. THE PROVISIONS OF SECTION EIGHT HUNDRED SEVENTY-FIVE OF THE GENERAL MUNICIPAL LAW SHALL APPLY TO THE PROVISIONS OF THIS TITLE AND TO THE AUTHORITY CREATED BY THIS TITLE WITH THE SAME FORCE AND EFFECT AS IF THE PROVISIONS OF SUCH SECTION EIGHT HUNDRED SEVENTY-FIVE HAD BEEN INCORPORATED IN FULL INTO THIS TITLE AND HAD EXPRESSLY REFERRED TO THE PROVISIONS OF THIS TITLE AND TO SUCH AUTHORITY, WITH SUCH CHANGES TO SUCH SECTION AS ARE NECESSARY TO REFER TO THE PROVISIONS OF THIS TITLE AND TO THE AUTHORITY CREATED BY THIS TITLE.

S 4. Subdivision 3 of section 810 of the general municipal law, as amended by chapter 356 of the laws of 1993, is amended to read as follows:

3. The term "local officer or employee" shall mean the heads (other than local elected officials) of any agency, department, division, council, board, commission, or bureau of a political subdivision and their deputies and assistants, and the officers and employees of such agencies, departments, divisions, boards, bureaus, commissions or councils who hold policy-making positions, as annually determined by the appoint-

ing authority and set forth in a written instrument which shall be filed with the appropriate body during the month of February; except that the term "local officer or employee" shall not mean a judge, justice, officer or employee of the unified court system. Members, officers, and employees of each industrial development agency and authority ESTABLISHED BY THIS CHAPTER OR CREATED BY THE PUBLIC AUTHORITIES LAW shall be deemed officers or employees of the county, city, village, or town for whose benefit such agency or authority is established OR CREATED.

S 5. Subdivision 4 of section 854 of the general municipal law, as amended by chapter 478 of the laws of 2011, is amended to read as follows:

(4) "Project" - shall mean any land, any building or other improvement, and all real and personal properties located within the state of New York and within or outside or partially within and partially outside the municipality for whose benefit the agency was created, including, but not limited to, machinery, equipment and other facilities deemed necessary or desirable in connection therewith, or incidental thereto, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes or other economically sound purposes identified and called for to implement a state designated urban cultural park management plan as provided in title G of the parks, recreation and historic preservation law and which may include or mean an industrial pollution control facility, a recreation facility, educational or cultural facility, a horse racing facility, a railroad facility or an automobile racing facility, provided, however, no agency shall use its funds OR PROVIDE FINANCIAL ASSISTANCE in respect of any project wholly or partially outside the municipality for whose benefit the agency was created without the prior consent thereto by the governing body or bodies of all the other municipalities in which a part or parts of the project is, or is to be, located, AND SUCH PORTION OF THE PROJECT LOCATED OUTSIDE SUCH MUNICIPALITY FOR WHOSE BENEFIT THE AGENCY WAS CREATED SHALL BE CONTIGUOUS WITH THE PORTION OF THE PROJECT INSIDE SUCH MUNICIPALITY.

S 6. Section 883 of the general municipal law, as added by chapter 356 of the laws of 1993, is amended to read as follows:

S 883. Conflicts of interest. All members, officers, and employees of an agency or INDUSTRIAL DEVELOPMENT authority ESTABLISHED BY THIS CHAPTER OR CREATED BY THE PUBLIC AUTHORITIES LAW shall be subject to the provisions of article eighteen of this chapter.

S 7. Subdivision 9 of section 874 of the general municipal law, as added by section 1 of subpart C of part S of chapter 57 of the laws of 2010, is amended to read as follows:

(9) (A) Within thirty days of the date that the agency designates a project operator or other person to act as agent of the agency for purposes of providing financial assistance consisting of any sales and compensating use tax exemption to such person, the agency shall file a statement with the department of taxation and finance relating thereto, on a form and in such manner as is prescribed by the commissioner of taxation and finance, identifying each such agent so named by the agency, setting forth the taxpayer identification number of each such agent, giving a brief description of the property and/or services intended to be exempted from such taxes as a result of such appointment as agent, indicating the agency's rough estimate of the value of the property and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

(B) WITHIN THIRTY DAYS OF THE DATE THAT THE AGENCY'S DESIGNATION DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION HAS BEEN AMENDED, TERMINATED, BEEN REVOKED, OR BECOME INVALID OR INEFFECTIVE FOR ANY REASON, THE AGENCY SHALL FILE A STATEMENT WITH THE DEPARTMENT OF TAXATION AND FINANCE RELATING THERETO, ON A FORM AND IN SUCH MANNER AS IS PRESCRIBED BY THE COMMISSIONER OF TAXATION AND FINANCE, IDENTIFYING EACH SUCH AGENT SO NAMED BY THE AGENCY IN THE ORIGINAL DESIGNATION AND SETTING FORTH THE TAXPAYER IDENTIFICATION NUMBER AND OTHER IDENTIFYING INFORMATION OF EACH SUCH AGENT, THE DATE AS OF WHICH THE ORIGINAL DESIGNATION WAS AMENDED, TERMINATED, REVOKED, OR BECAME INVALID OR INEFFECTIVE AND THE REASON THEREFOR, TOGETHER WITH A COPY OF THE ORIGINAL DESIGNATION.

S 8. Subdivision 4 of section 1963 of the public authorities law, as added by section 2 of subpart C of part S of chapter 57 of the laws of 2010, is amended to read as follows;

4. (A) Within thirty days of the date that the authority designates a project operator or other person to act as agent of the authority for purposes of providing financial assistance consisting of any sales and compensating use tax exemption to such person, the agency shall file a statement with the department of taxation and finance relating thereto, on a form and in such manner as is prescribed by the commissioner of taxation and finance, identifying each such agent so named by the authority, setting forth the taxpayer identification number of each such agent, giving a brief description of the property and/or services intended to be exempted from such taxes as a result of such appointment as agent, indicating the authority's rough estimate of the value of the property and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

(B) WITHIN THIRTY DAYS OF THE DATE THAT THE AUTHORITY'S DESIGNATION DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION HAS BEEN AMENDED, TERMINATED, BEEN REVOKED, OR BECOME INVALID OR INEFFECTIVE FOR ANY REASON, THE AUTHORITY SHALL FILE A STATEMENT WITH THE DEPARTMENT OF TAXATION AND FINANCE RELATING THERETO, ON A FORM AND IN SUCH MANNER AS IS PRESCRIBED BY THE COMMISSIONER OF TAXATION AND FINANCE, IDENTIFYING EACH SUCH AGENT SO NAMED BY THE AUTHORITY IN THE ORIGINAL DESIGNATION AND SETTING FORTH THE TAXPAYER IDENTIFICATION NUMBER AND OTHER IDENTIFYING INFORMATION OF EACH SUCH AGENT, THE DATE AS OF WHICH THE ORIGINAL DESIGNATION WAS AMENDED, TERMINATED, REVOKED, OR BECAME INVALID OR INEFFECTIVE AND THE REASON THEREFOR, TOGETHER WITH A COPY OF THE ORIGINAL DESIGNATION.

S 9. Subdivision 4 of section 2326 of the public authorities law, as added by section 3 of subpart C of part S of chapter 57 of the laws of 2010, is amended to read as follows:

4. (A) Within thirty days of the date that the authority designates a project operator or other person to act as agent of the authority for purposes of providing financial assistance consisting of any sales and compensating use tax exemption to such person, the agency shall file a statement with the department of taxation and finance relating thereto, on a form and in such manner as is prescribed by the commissioner of taxation and finance, identifying each such agent so named by the authority, setting forth the taxpayer identification number of each such agent, giving a brief description of the property and/or services intended to be exempted from such taxes as a result of such appointment as agent, indicating the authority's rough estimate of the value of the property and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

(B) WITHIN THIRTY DAYS OF THE DATE THAT THE AUTHORITY'S DESIGNATION DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION HAS BEEN AMENDED, TERMINATED, BEEN REVOKED, OR BECOME INVALID OR INEFFECTIVE FOR ANY REASON, THE AUTHORITY SHALL FILE A STATEMENT WITH THE DEPARTMENT OF TAXATION AND FINANCE RELATING THERETO, ON A FORM AND IN SUCH MANNER AS IS PRESCRIBED BY THE COMMISSIONER OF TAXATION AND FINANCE, IDENTIFYING EACH SUCH AGENT SO NAMED BY THE AUTHORITY IN THE ORIGINAL DESIGNATION AND SETTING FORTH THE TAXPAYER IDENTIFICATION NUMBER AND OTHER IDENTIFYING INFORMATION OF EACH SUCH AGENT, THE DATE AS OF WHICH THE ORIGINAL DESIGNATION WAS AMENDED, TERMINATED, REVOKED, OR BECAME INVALID OR INEFFECTIVE AND THE REASON THEREFOR, TOGETHER WITH A COPY OF THE ORIGINAL DESIGNATION.

S 10. Severability. If any provision of this act shall for any reason be finally adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the provision directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provision had not been included in this act.

S 11. This act shall take effect immediately and shall apply to (a) any project established, agent or project operator appointed, financial assistance provided, and agreement regarding payments in lieu of taxes entered into, on or after the date this act shall have become a law, (b) any amendment or revision made on or after the date this act shall have become a law to any project established, agent or project operator appointed, financial assistance provided, or payment in lieu of taxes entered into, prior to that date, (c) any state sales and compensating use tax exemption benefits recovered, recaptured, received, or otherwise obtained by an industrial development agency or authority established by the general municipal law or created by the public authorities law on or after such date, and (d) any payments in lieu of state sales and compensating use taxes of such an industrial development agency or authority receives on or after such date.

PART K

Section 1. Paragraph 42 of subdivision (a) of section 1115 of the tax law, as added by section 11 of part W-1 of chapter 109 of the laws of 2006, is amended to read as follows:

(42) E85, CNG or hydrogen, for use or consumption directly and exclusively in the engine of a motor vehicle AND NATURAL GAS PURCHASED AND CONVERTED INTO CNG, FOR USE OR FOR SALE FOR USE OR CONSUMPTION DIRECTLY AND EXCLUSIVELY IN THE ENGINE OF A MOTOR VEHICLE.

S 2. This act shall take effect on the first day of a sales tax quarterly period, as described in subdivision (b) of section 1136 of the tax law, next commencing after this act shall have become a law and shall apply in accordance with the applicable transitional provisions in sections 1106 and 1217 of the tax law; provided, however, that the amendments to paragraph 42 of subdivision (a) of section 1115 of the tax law made by section one of this act shall not affect the repeal of such paragraph and shall be deemed repealed therewith.

PART L

Section 1. Section 301-c of the tax law is amended by adding a new subdivision (p) to read as follows:

(P) REIMBURSEMENT FOR MOTOR FUEL AND DIESEL MOTOR FUEL USED BY A VOLUNTARY AMBULANCE SERVICE, AS DEFINED IN SECTION THREE THOUSAND ONE OF THE PUBLIC HEALTH LAW, A FIRE COMPANY OR A FIRE DEPARTMENT, AS DEFINED IN SECTION THREE OF THE VOLUNTEER FIREFIGHTERS' BENEFIT LAW, OR A VOLUNTEER RESCUE SQUAD SUPPORTED IN WHOLE OR IN PART BY TAX MONIES, WHERE ANY SUCH ENTITY IS THE PURCHASER, USER OR CONSUMER OF MOTOR FUEL OR DIESEL MOTOR FUEL IN A VEHICLE OWNED AND OPERATED BY SUCH ENTITY AND USED EXCLUSIVELY FOR SUCH ENTITY'S PURPOSES. A PURCHASER SHALL BE ELIGIBLE FOR REIMBURSEMENT OF THE TAX IMPOSED PURSUANT TO THIS ARTICLE IF (1) ANY TAX IMPOSED PURSUANT TO THIS ARTICLE HAS BEEN PAID WITH RESPECT TO SUCH GALLONAGE AND THE ENTIRE AMOUNT OF SUCH TAX HAS BEEN ABSORBED BY SUCH PURCHASER, AND (2) SUCH PURCHASER POSSESSES DOCUMENTARY PROOF SATISFACTORY TO THE COMMISSIONER EVIDENCING THE ABSORPTION BY SUCH PURCHASER OF THE ENTIRE AMOUNT OF SUCH TAX. PROVIDED, THAT THE COMMISSIONER SHALL REQUIRE SUCH DOCUMENTARY PROOF TO QUALIFY FOR ANY REIMBURSEMENT PROVIDED HEREUNDER AS THE COMMISSIONER DEEMS APPROPRIATE.

S 2. This act shall take effect on the first day of the first month next succeeding the sixtieth day after it shall have become a law.

PART M

Section 1. Subparagraphs (A) and (B) of paragraph 4 of subdivision (a) of section 1134 of the tax law, subparagraph (A) as amended by section 21-a of part U of chapter 61 of the laws of 2011 and subparagraph (B) as amended by chapter 2 of the laws of 1995, are amended to read as follows:

(A) Where a person who holds a certificate of authority (i) willfully fails to file a report or return required by this article, (ii) willfully files, causes to be filed, gives or causes to be given a report, return, certificate or affidavit required under this article which is false, (iii) willfully fails to comply with the provisions of paragraph two or three of subdivision (e) of section eleven hundred thirty-seven of this article, (iv) willfully fails to prepay, collect, truthfully account for or pay over any tax imposed under this article or pursuant to the authority of article twenty-nine of this chapter, (v) fails to obtain a bond pursuant to paragraph two of subdivision (e) of section eleven hundred thirty-seven of this part, or fails to comply with a notice issued by the commissioner pursuant to paragraph three of such subdivision, [or] (vi) has been convicted of a crime provided for in this chapter, OR UNDER THE PENAL LAW OF THIS STATE WHERE THE UNDERLYING CONDUCT CONSTITUTES A CRIME UNDER THIS CHAPTER, OR IS CONVICTED OF A CRIMINAL OFFENSE OF THE UNITED STATES, ANY OTHER STATE, OR A POLITICAL SUBDIVISION OF THIS STATE OR ANY OTHER STATE, WHICH, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE A SIMILAR CRIME UNDER THIS CHAPTER OR (VII) SUCH PERSON WOULD BE INELIGIBLE TO RECEIVE SUCH CERTIFICATE OF AUTHORITY PURSUANT TO CLAUSES (I), (II), (IV) OR (V) OF SUBPARAGRAPH (B) OF THIS PARAGRAPH, the commissioner may revoke or suspend such certificate of authority and all duplicates thereof. Provided, however, that the commissioner may revoke or suspend a certificate of authority based on the grounds set forth in clause (vi) of this subparagraph only where the conviction referred to occurred not more than [one year] FIVE YEARS prior to the date of revocation or suspension.

(B) Where a person files a certificate of registration for a certificate of authority under this subdivision and in considering such application the commissioner ascertains that (i) any tax imposed under this chapter or any related statute, as defined in section eighteen hundred

of this chapter, has been finally determined to be due from such person and has not been paid in full, (ii) [a] ANY tax [due under this article or any law, ordinance or resolution enacted pursuant to the authority of article twenty-nine] IMPOSED BY OR PURSUANT TO THE AUTHORITY OF THIS CHAPTER OR ANY RELATED STATUTE AS DEFINED IN SECTION EIGHTEEN HUNDRED of this chapter has been finally determined to be due from an officer, director, partner or employee of such person, and, where such person is a limited liability company, also a member or manager of such person, in the officer's, director's, partner's, member's, manager's or employee's capacity as a person required to collect tax on behalf of such person or another person and has not been paid, (iii) such person has been convicted of a crime provided for in this chapter, OR UNDER THE PENAL LAW OF THIS STATE WHERE THE UNDERLYING CONDUCT CONSTITUTES A CRIME UNDER THIS CHAPTER, OR IS CONVICTED OF A CRIMINAL OFFENSE OF THE UNITED STATES, ANY OTHER STATE, OR A POLITICAL SUBDIVISION OF THIS STATE OR ANY OTHER STATE, WHICH, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE A SIMILAR CRIME UNDER THIS CHAPTER within [one year] FIVE YEARS from the date on which such certificate of registration is filed, (iv) an officer, director, partner or employee of such person, and, where such person is a limited liability company, also a member or manager of such person, which officer, director, partner, member, manager or employee is a person required to collect tax on behalf of such person filing a certificate of registration has in the officer's, director's, partner's, member's, manager's or employee's capacity as a person required to collect tax on behalf of such person or of another person been convicted of a crime [provided for in this chapter] SET FORTH IN CLAUSE (III) OF THIS SUBPARAGRAPH WHERE THE CONVICTION REFERRED TO OCCURRED within [one year] FIVE YEARS from the date on which such certificate of registration is filed, (v) a shareholder owning more than fifty percent of the number of shares of stock of such person (where such person is a corporation) entitling the holder thereof to vote for the election of directors or trustees, OR A PERSON HAVING MORE THAN FIFTY PERCENT OF THE VOTING RIGHTS OF SUCH PERSON (WHERE SUCH PERSON IS A LIMITED LIABILITY COMPANY), OR A PERSON HAVING A CONTROLLING INTEREST IN ANY FORM OF PARTNERSHIP (CONTROLLING INTEREST MEANING MORE THAN FIFTY PERCENT OF THE CAPITAL, PROFITS OR BENEFICIAL INTEREST IN SUCH PARTNERSHIP) who owned more than fifty percent of the number of such shares of another person (where such other person is a corporation), OR HAD MORE THAN FIFTY PERCENT OF THE VOTING RIGHTS OF A LIMITED LIABILITY COMPANY, OR HAD CONTROLLING INTEREST IN ANY FORM OF PARTNERSHIP (CONTROLLING INTEREST MEANING MORE THAN FIFTY PERCENT OF THE CAPITAL, PROFITS OR BENEFICIAL INTEREST IN SUCH PARTNERSHIP) at the time any tax imposed under this chapter or any related statute as defined in section eighteen hundred of this chapter was finally determined to be due FROM SUCH CORPORATION OR LIMITED LIABILITY COMPANY and where such tax has not been paid in full, or at the time such other person was convicted of a crime [provided for in this chapter] SET FORTH IN CLAUSE (III) OF THIS SUBPARAGRAPH WHERE THE CONVICTION REFERRED TO OCCURRED within [one year] FIVE YEARS from the date on which such certificate of registration is filed, [or] (vi) a certificate of authority issued to such person has been revoked or suspended pursuant to subparagraph (A) of this paragraph within [one year] THREE YEARS from the date on which such certificate of registration is filed, (VII) A CERTIFICATE OF AUTHORITY ISSUED TO ANY OTHER PERSON HAS BEEN REVOKED OR SUSPENDED PURSUANT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH WITHIN THREE YEARS FROM THE DATE ON WHICH SUCH CERTIFICATE OF REGISTRATION IS FILED AND AN OFFICER, DIRECTOR, MEMBER, MANAG-

ER, PARTNER OR EMPLOYEE OF SUCH PERSON WAS, AT THAT TIME OF SUCH REVOCATION, A PERSON REQUIRED TO COLLECT TAX ON BEHALF OF SUCH PERSON AND SUCH OFFICER, DIRECTOR, MEMBER, MANAGER, PARTNER OR EMPLOYEE IS A PERSON REQUIRED TO COLLECT TAX ON BEHALF OF THE PERSON FILING A CERTIFICATE OF REGISTRATION, OR (VIII) SUCH PERSON HAS COMMITTED AN ACT WHICH WOULD GIVE THE COMMISSIONER THE AUTHORITY TO REVOKE OR SUSPEND SUCH CERTIFICATE PURSUANT TO CLAUSE (I), (II), (III), (IV), OR (V) OF SUBPARAGRAPH (A) OF THIS PARAGRAPH, the commissioner may refuse to issue a certificate of authority.

S 2. Subparagraph (A) of paragraph 4 of subdivision (a) of section 1134 of the tax law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

(A) Where a person who holds a certificate of authority (i) willfully fails to file a report or return required by this article, (ii) willfully files, causes to be filed, gives or causes to be given a report, return, certificate or affidavit required under this article which is false, (iii) willfully fails to comply with the provisions of paragraph two or three of subdivision (e) of section eleven hundred thirty-seven of this article, (iv) willfully fails to prepay, collect, truthfully account for or pay over any tax imposed under this article or pursuant to the authority of article twenty-nine of this chapter, [or] (v) has been convicted of a crime provided for in this chapter, OR UNDER THE PENAL LAW OF THIS STATE WHERE THE UNDERLYING CONDUCT CONSTITUTES A CRIME UNDER THIS CHAPTER, OR IS CONVICTED OF A CRIMINAL OFFENSE OF THE UNITED STATES, ANY OTHER STATE, OR A POLITICAL SUBDIVISION OF THIS STATE OR ANY OTHER STATE, WHICH, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE A SIMILAR CRIME UNDER THIS CHAPTER, OR (VI) SUCH PERSON WOULD BE INELIGIBLE TO RECEIVE SUCH CERTIFICATE OF AUTHORITY PURSUANT TO CLAUSES (I), (II), (IV) OR (V) OF SUBPARAGRAPH (B) OF THIS PARAGRAPH, the commissioner may revoke or suspend such certificate of authority and all duplicates thereof. Provided, however, that the commissioner may revoke or suspend a certificate of authority based on the grounds set forth in clause (v) of this subparagraph only where the conviction referred to occurred not more than [one year] FIVE YEARS prior to the date of revocation or suspension.

S 3. Subparagraphs (C) and (E) of paragraph 4 and paragraph 5 of subdivision (a) of section 1134 of the tax law, as amended by chapter 2 of the laws of 1995, are amended to read as follows:

(C) In any of the foregoing instances where the commissioner may suspend or revoke or refuse to issue a certificate of authority, the commissioner may condition the retention or issuance of a certificate of authority upon (I) the filing of a bond [or], (II) the deposit of tax in the manner provided in paragraph two or three of subdivision (e) of section eleven hundred thirty-seven OF THIS PART, (III) NOTWITHSTANDING PARAGRAPH TWO OF SUBDIVISION (A) OF THIS SECTION, THE ISSUANCE OF SUCH CERTIFICATE FOR A SPECIFIED TERM OF LESS THAN THREE YEARS, (IV) THE FILING OF PART-QUARTERLY RETURNS PURSUANT TO PARAGRAPH TWO OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-SIX OF THIS PART, (V) THE FILING OF ANY UNFILED RETURNS, (VI) ENTERING INTO AN INSTALLMENT PAYMENT AGREEMENT OR OTHERWISE MAKING PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMISSIONER, AND/OR (VII) SUCH OTHER TERMS AS THE COMMISSIONER AND APPLICANT MAY AGREE TO.

(E) After the commissioner has suspended or revoked a person's certificate of authority, by a notice of suspension or revocation, or has refused to issue a certificate of authority, by a notice of refusal, to such person and such decision has become final as provided for in this

paragraph, or after a person's certificate of authority has expired, OR A PERSON WAS NOTIFIED THAT SUCH PERSON'S CERTIFICATE OF AUTHORITY WAS DEEMED TO EXPIRE PURSUANT TO PARAGRAPH FIVE OF SUBDIVISION (A) OF THIS SECTION and such person has failed to renew such certificate or obtain a new certificate of authority, OR WHERE A PERSON REQUIRED TO COLLECT TAX HAS FAILED TO APPLY FOR SUCH CERTIFICATE OF AUTHORITY, ANY such person is prohibited from engaging in any business in this state for which a certificate of authority is required. If despite such prohibition such person continues to be so engaged in business, the commissioner may bring an action to enjoin such person from so engaging in business. NO SUCH ACTION SHALL BE INSTITUTED BY THE COMMISSIONER BEFORE THE COMMISSIONER GIVES NOTICE TO THE ATTORNEY GENERAL APPRISING HIM OR HER OF SUCH ACTION AND THE NATURE AND PURPOSE THEREOF, SO THAT THE ATTORNEY GENERAL MAY PARTICIPATE OR JOIN THEREIN IF IN HIS OR HER OPINION THE INTERESTS OF THE STATE SO WARRANT, AND THE COMMISSIONER MAY NOT INSTITUTE SUCH ACTION UNTIL TWO WEEKS AFTER PROVIDING SUCH NOTICE TO THE ATTORNEY GENERAL.

(5) If the commissioner considers it necessary for the proper administration of the sales and use taxes and prepaid taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, it may require every person under this section or section twelve hundred fifty-three of this chapter who holds a certificate of authority to file a new certificate of registration in such form and at such time as the commissioner may prescribe and to surrender such certificate of authority. The commissioner may require such filing and such surrender not more often than once every three years; HOWEVER, IN ANY INSTANCE WHERE A HOLDER OF A CERTIFICATE OF AUTHORITY HAS FAILED TO FILE A SALES TAX RETURN AS REQUIRED BY THIS CHAPTER FOR A PERIOD OF AT LEAST ONE YEAR SUCH CERTIFICATE SHALL BE DEEMED EXPIRED AND THE COMMISSIONER SHALL REQUIRE A NEW CERTIFICATE OF REGISTRATION PURSUANT TO THIS SUBDIVISION. Upon the filing of such certificate of registration and, TO THE EXTENT REQUIRED BY THE COMMISSIONER, the surrender of such certificate of authority, the commissioner shall issue, within such time as the commissioner may prescribe, a new certificate of authority, without charge, to each registrant and a duplicate thereof for each additional place of business of such registrant.

S 4. Subparagraph (i) of paragraph 3 of subdivision (a) of section 1145 of the tax law, as amended by section 48 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(i) Any person required to obtain a certificate of authority under section eleven hundred thirty-four of this part who, without possessing a valid certificate of authority, (A) sells tangible personal property or services subject to tax, receives amusement charges or operates a hotel, (B) purchases or sells tangible personal property for resale, (C) sells petroleum products, or (D) sells cigarettes shall, in addition to any other penalty imposed by this chapter, be subject to a penalty in an amount [not exceeding] OF five hundred dollars [for the first] A day FROM THE FIRST DAY on which such sales or purchases are made, [plus an amount not exceeding two hundred dollars for each subsequent day on which such sales or purchases are made,] not to exceed [ten] TWENTY thousand dollars in the aggregate. THE WILLFUL FAILURE TO OBTAIN OR MAINTAIN A VALID CERTIFICATE OF AUTHORITY SHALL BE SUBJECT TO A PENALTY IN AN AMOUNT OF ONE THOUSAND DOLLARS A DAY FROM THE FIRST DAY SUCH SALES OR PURCHASES ARE MADE, NOT TO EXCEED FIFTY THOUSAND DOLLARS IN THE AGGREGATE, IN ADDITION TO THE PENALTIES IMPOSED BY SUBDIVISION (B) OF SECTION EIGHTEEN HUNDRED SEVENTEEN OF THIS ARTICLE, OR ANY OTHER PENALTY

IMPOSED BY THIS CHAPTER. FOR THE PURPOSES OF THIS SECTION, THE PENALTY FOR THE WILLFUL FAILURE TO OBTAIN OR MAINTAIN A VALID CERTIFICATE OF AUTHORITY SHALL BE ALTERNATE TO THE TWENTY THOUSAND DOLLAR PENALTY DESCRIBED ABOVE, AND THE TERM "WILLFUL" SHALL HAVE THE SAME MEANING AS "WILLFULLY" AS DEFINED IN SUBDIVISION (C) OF SECTION EIGHTEEN HUNDRED ONE OF THIS CHAPTER.

S 5. Subparagraphs (ii), (iii) and (iv) of paragraph 3 of subdivision (a) of section 1145 of the tax law, as amended by chapter 65 of the laws of 1985, are amended to read as follows:

(ii) Any person who fails to surrender a certificate of authority when a notice of revocation, EXPIRATION or suspension has become final shall, in addition to any other penalty imposed by this chapter, be subject to a penalty in an amount not exceeding five hundred dollars [for the first day of such failure, together with a penalty in an amount not exceeding two hundred dollars for each subsequent] A day [of] FOR such failure, not to exceed [ten] TWENTY thousand dollars in the aggregate.

(iii) Any person described in paragraph one or two of subdivision (a) of section eleven hundred thirty-four OF THIS PART who takes possession of or pays for business assets under circumstances requiring notification by such person to the [tax commission] COMMISSIONER pursuant to subdivision (c) of section eleven hundred forty-one OF THIS PART without having filed a certificate of registration pursuant to section eleven hundred thirty-four OF THIS PART shall, in addition to any other penalty imposed by this chapter, be subject to a penalty in an amount not exceeding two [hundred] THOUSAND dollars.

(iv) If the [tax commission] COMMISSIONER determines that any failure or act described in this paragraph was due to reasonable cause and not due to willful neglect, [it] HE OR SHE may remit all or part of such penalty. PROVIDED, HOWEVER, THIS CLAUSE SHALL NOT APPLY TO A PENALTY FOR THE WILLFUL FAILURE TO OBTAIN A CERTIFICATE OF AUTHORITY.

S 6. Paragraph 4 of subdivision (a) of section 1145 of the tax law, as amended by chapter 65 of the laws of 1985, is amended to read as follows:

(4) Any person required by this article to display a certificate of authority, who fails to display such certificate in the manner required by this article or any rule or regulation adopted by the [tax commission] COMMISSIONER in connection with such requirement shall, in addition to any other penalty imposed by this chapter, be subject to a penalty of [fifty] ONE HUNDRED dollars. If the [tax commission] COMMISSIONER determines that such failure was due to reasonable cause [and not due to willful neglect], [it] HE OR SHE may remit all or part of such penalty.

S 7. Subdivision (g) of section 1146 of the tax law, as added by chapter 577 of the laws of 1997, is amended to read as follows:

(g) (1) Notwithstanding the provisions of subdivision (a) of this section, if the commissioner determines that a person required to collect tax is liable for any tax, penalty or interest under this article or is liable for a penalty under subdivision (e) of section eleven hundred forty-five of this [article] PART with respect to any failure, upon request in writing of such person, the commissioner shall disclose in writing to such person [(1)] (I) the name of any other person required to collect tax or any other person liable for such penalty under such subdivision (e) whom the commissioner has determined to be liable for the same tax, penalty or interest or for such penalty with respect to such failure, and [(2)] (II) whether the commissioner has attempted to collect such tax, penalty or interest or such penalty from

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

(2) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY, FOR THE PURPOSES OF SUBPARAGRAPH (B) OF PARAGRAPH FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-FOUR OF THIS PART, IF THE COMMISSIONER DETERMINES THAT ANY TAX IMPOSED UNDER THIS CHAPTER OR ANY RELATED STATUTE, AS DEFINED IN SECTION EIGHTEEN HUNDRED OF THIS CHAPTER, HAS BEEN FINALLY DETERMINED TO BE DUE FROM A PERSON REQUIRED TO COLLECT TAX AND HAS NOT BEEN PAID, UPON WRITTEN REQUEST OF THE PERSON WHO FILED THE CERTIFICATE OF REGISTRATION FOR A CERTIFICATE OF AUTHORITY THAT WAS REFUSED, THE COMMISSIONER MAY DISCLOSE TO SUCH PERSON THE NAME OF THE PERSON OR PERSONS REQUIRED TO COLLECT TAX WHOSE TAX LIABILITY OR LIABILITIES WERE GROUNDS FOR THE REFUSAL TO ISSUE THE CERTIFICATE OF AUTHORITY AND THE AMOUNT OR AMOUNTS OF TAX DUE FOR EACH SUCH PERSON OR PERSONS.

S 8. Subdivisions (a) and (b) of section 1817 of the tax law, as amended by section 53 of part K of chapter 61 of the laws of 2011, are amended to read as follows:

(a) Any person required to obtain a certificate of authority under section eleven hundred thirty-four of this chapter who, without possessing a valid certificate of authority, OR POSSESSING A CERTIFICATE OF AUTHORITY THAT WAS DEEMED TO HAVE EXPIRED PURSUANT TO PARAGRAPH FIVE OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-FOUR OF THIS CHAPTER willfully (1) sells tangible personal property or services subject to tax, receives amusement charges or operates a hotel, (2) purchases or sells tangible personal property for resale, or (3) sells petroleum products; and any person who fails to surrender a certificate of authority as required by such article shall be guilty of [a misdemeanor] CRIMINAL TAX FRAUD IN THE FIFTH DEGREE.

(b) Any person required to obtain a certificate of authority under section eleven hundred thirty-four of this chapter who within five years after a determination by the commissioner[,] pursuant to such section[,] to suspend, revoke or refuse to issue a certificate of authority has become final, OR WAS NOTIFIED BY THE COMMISSIONER THAT THE PERSON'S CERTIFICATE OF AUTHORITY WAS DEEMED TO HAVE EXPIRED PURSUANT TO PARAGRAPH FIVE OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-FOUR OF THIS CHAPTER, and without possession of a valid certificate of authority WILLFULLY (1) sells tangible personal property or services subject to tax, receives amusement charges or operates a hotel, (2) purchases or sells tangible personal property for resale, or (3) sells petroleum products, shall be guilty of [a misdemeanor] CRIMINAL TAX FRAUD IN THE FOURTH DEGREE. It shall be an affirmative defense that such person performed the acts described in this subdivision without knowledge of such determination. Any person who violates a provision of this subdivision, upon conviction, shall be subject to a fine in any amount authorized by this article, but not less than five hundred dollars, in addition to any other penalty provided by law.

S 9. This act shall take effect immediately, provided that the amendments to subparagraph (A) of paragraph 4 of subdivision (a) of section 1134 of the tax law made by section one of this act shall be subject to the expiration and reversion of such subparagraph pursuant to section 23 of part U of chapter 61 of the laws of 2011, as amended when upon such date the provisions of section two of this act shall take effect.

PART N

Section 1. Subdivision 1 of section 480-a of the tax law is amended by adding a new paragraph (f) to read as follows:

(F) WHEN A PERSON FILES AN APPLICATION FOR A CERTIFICATE OF REGISTRATION UNDER THIS SECTION, AND IN CONSIDERING SUCH APPLICATION THE COMMISSIONER ASCERTAINS THE EXISTENCE OF ONE OR MORE OF THE GROUNDS FOR REFUSAL OF A CERTIFICATE OF AUTHORITY IN CLAUSES (I), (II), (III), (IV), AND (V) OF SUBPARAGRAPH (B) OF PARAGRAPH FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-FOUR OF THIS CHAPTER, THE COMMISSIONER MAY REFUSE TO ISSUE A CERTIFICATE OF REGISTRATION. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY, IF THE COMMISSIONER REFUSES TO ISSUE A CERTIFICATE OF REGISTRATION UNDER THIS SUBDIVISION, THE COMMISSIONER SHALL UPON WRITTEN REQUEST OF THE PERSON FILING SUCH APPLICATION DISCLOSE THE NAME OF THE PERSON OR PERSONS WHOSE TAX LIABILITIES WERE GROUNDS FOR THE REFUSAL TO ISSUE THE CERTIFICATE OF REGISTRATION.

S 2. Paragraph (d) of subdivision 2 of section 480-a of the tax law, as amended by chapter 760 of the laws of 1992, is amended to read as follows:

(d) Except as otherwise provided in this section, all the provisions of article twenty-eight of this chapter relating to the personal liability for the tax, administration, collection and determination of tax, and deposit and disposition of revenue, including section eleven hundred thirty-eight of this chapter relating to determination of tax and section eleven hundred forty-five of this chapter (but only paragraphs one and two of subdivision (a) of such section) relating to penalties and interest for failure to file a return or pay tax within the time required, shall apply to the applications for registration and the fees for filing such applications required by this section and the penalty imposed pursuant to subdivision three of this section, as if such applications were returns required under section eleven hundred thirty-six of this chapter and such filing fees, penalties and interest were taxes required to be paid pursuant to such article twenty-eight, in the same manner and with the same force and effect as if the language of such provisions of such article twenty-eight had been incorporated in full into this article, except to the extent that any such provision is either inconsistent with a provision of this section or is not relevant thereto and with such other modifications as may be necessary to adapt the language of such provisions to the provisions of this section. [Section] EXCEPT AS PROVIDED FOR IN PARAGRAPH (F) OF SUBDIVISION ONE OF THIS SECTION, SECTION eleven hundred thirty-four of such article twenty-eight shall not apply to this section. Provided, however, that the commissioner of taxation and finance shall refund or credit an application fee paid with respect to the registration of a vending machine or a retail place of business in this state through which cigarettes or tobacco products were to be sold if, prior to the beginning of the calendar year with respect to which such registration relates, the certificate of registration described in paragraph (a) of this subdivision is returned to the department of taxation and finance, or if such certificate has been destroyed, the retail dealer or vending machine operator satisfactorily accounts to the commissioner for the missing certificate, but such vending machine or retail place of business may not be used to sell cigarettes or tobacco products in this state during such calendar year, unless it is re-registered. The provisions of section eleven hundred thirty-nine of this chapter shall apply to the refund or credit authorized by the preceding sentence and for such purposes, such refund or credit shall be deemed a refund of tax paid in

error provided, however, no interest shall be allowed or paid on any such refund.

S 3. This act shall take effect immediately and shall apply to certificates of registration applications filed for calendar year 2014 and thereafter.

PART O

Section 1. Subparagraph (i) of paragraph (b) of subdivision 1 of section 481 of the tax law, as amended by chapter 604 of the laws of 2008, is amended to read as follows:

(i) In addition to any other penalty imposed by this article, the commissioner may (A) impose a penalty of not more than [one] SIX hundred [fifty] dollars for each two hundred cigarettes, or fraction thereof, in excess of one thousand cigarettes in unstamped or unlawfully stamped packages in the possession or under the control of any person or (B) impose a penalty of not more than two hundred dollars for each ten unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, or fraction thereof, in the possession or under the control of any person. In addition, the commissioner may impose a penalty of not more than seventy-five dollars for each fifty cigars or one pound of tobacco, or fraction thereof, in excess of two hundred fifty cigars or five pounds of tobacco in the possession or under the control of any person and a penalty of not more than one hundred fifty dollars for each fifty cigars or pound of tobacco, or fraction thereof, in excess of five hundred cigars or ten pounds of tobacco in the possession or under the control of any person, with respect to which the tobacco products tax has not been paid or assumed by a distributor or tobacco products dealer; provided, however, that any such penalty imposed shall not exceed seven thousand five hundred dollars in the aggregate. The commissioner may impose a penalty of not more than seventy-five dollars for each fifty cigars or one pound of tobacco, or fraction thereof, in excess of fifty cigars or one pound of tobacco in the possession or under the control of any tobacco products dealer or distributor appointed by the commissioner, and a penalty of not more than one hundred fifty dollars for each fifty cigars or pound of tobacco, or fraction thereof, in excess of two hundred fifty cigars or five pounds of tobacco in the possession or under the control of any such dealer or distributor, with respect to which the tobacco products tax has not been paid or assumed by a distributor or a tobacco products dealer; provided, however, that any such penalty imposed shall not exceed fifteen thousand dollars in the aggregate.

S 2. This act shall take effect June 1, 2013.

PART P

Section 1. The tax law is amended by adding a new section 171-v to read as follows:

S 171-V. ENFORCEMENT OF DELINQUENT TAX LIABILITIES THROUGH THE SUSPENSION OF DRIVERS' LICENSES. (1) THE COMMISSIONER SHALL ENTER INTO A WRITTEN AGREEMENT WITH THE COMMISSIONER OF MOTOR VEHICLES, WHICH SHALL SET FORTH THE PROCEDURES FOR THE TWO DEPARTMENTS TO COOPERATE IN A PROGRAM TO IMPROVE TAX COLLECTION THROUGH THE SUSPENSION OF DRIVERS' LICENSES OF TAXPAYERS WITH PAST-DUE TAX LIABILITIES EQUAL TO OR IN EXCESS OF TEN THOUSAND DOLLARS. FOR THE PURPOSES OF THIS SECTION, THE TERM "TAX LIABILITIES" SHALL MEAN ANY TAX, SURCHARGE, OR FEE ADMINISTERED BY THE

COMMISSIONER, OR ANY PENALTY OR INTEREST DUE ON THESE AMOUNTS OWED BY AN INDIVIDUAL WITH A NEW YORK DRIVER'S LICENSE, THE TERM "DRIVER'S LICENSE" MEANS ANY LICENSE ISSUED BY THE DEPARTMENT OF MOTOR VEHICLES, EXCEPT FOR A COMMERCIAL DRIVER'S LICENSE AS DEFINED IN SECTION FIVE HUNDRED ONE-A OF THE VEHICLE AND TRAFFIC LAW, AND THE TERM "PAST-DUE TAX LIABILITIES" MEANS ANY TAX LIABILITY OR LIABILITIES WHICH HAVE BECOME FIXED AND FINAL SUCH THAT THE TAXPAYER NO LONGER HAS ANY RIGHT TO ADMINISTRATIVE OR JUDICIAL REVIEW.

(2) THE AGREEMENT SHALL INCLUDE THE FOLLOWING PROVISIONS:

(A) THE PROCEDURES BY WHICH THE DEPARTMENT SHALL NOTIFY THE COMMISSIONER OF MOTOR VEHICLES OF TAXPAYERS WITH PAST-DUE TAX LIABILITIES, INCLUDING THE PROCEDURES BY WHICH THE DEPARTMENT AND THE DEPARTMENT OF MOTOR VEHICLES SHALL SHARE THE INFORMATION NECESSARY TO IDENTIFY INDIVIDUALS WITH PAST-DUE TAX LIABILITIES, WHICH SHALL INCLUDE A TAXPAYER'S NAME, SOCIAL SECURITY NUMBER, AND ANY OTHER INFORMATION NECESSARY TO ENSURE THE PROPER IDENTIFICATION OF THE TAXPAYER;

(B) THE PROCEDURES BY WHICH THE COMMISSIONER SHALL NOTIFY THE DEPARTMENT OF MOTOR VEHICLES THAT A TAXPAYER HAS SATISFIED HIS OR HER PAST-DUE TAX LIABILITIES, OR HAS ENTERED INTO AN INSTALLMENT PAYMENT AGREEMENT OR HAS OTHERWISE MADE PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMISSIONER, SO THAT THE SUSPENSION OF THE TAXPAYER'S DRIVER'S LICENSE MAY BE LIFTED; AND

(C) ANY OTHER MATTER THE DEPARTMENT AND THE DEPARTMENT OF MOTOR VEHICLES SHALL DEEM NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION.

(3) THE DEPARTMENT SHALL PROVIDE NOTICE TO THE TAXPAYER OF HIS OR HER INCLUSION IN THE LICENSE SUSPENSION PROGRAM NO LATER THAN FORTY-FIVE DAYS PRIOR TO THE DATE THE DEPARTMENT INTENDS TO INFORM THE COMMISSIONER OF MOTOR VEHICLES OF THE TAXPAYER'S INCLUSION. HOWEVER, NO SUCH NOTICE SHALL BE ISSUED TO A TAXPAYER WHOSE WAGES ARE BEING GARNISHED BY THE DEPARTMENT FOR THE PAYMENT OF PAST-DUE TAX LIABILITIES OR PAST-DUE CHILD SUPPORT OR COMBINED CHILD AND SPOUSAL SUPPORT ARREARS. NOTICE SHALL BE PROVIDED BY FIRST CLASS MAIL TO THE TAXPAYER'S LAST KNOWN ADDRESS AS SUCH ADDRESS APPEARS IN THE ELECTRONIC SYSTEMS OR RECORDS OF THE DEPARTMENT. SUCH NOTICE SHALL INCLUDE:

(A) A CLEAR STATEMENT OF THE PAST-DUE TAX LIABILITIES ALONG WITH A STATEMENT THAT THE DEPARTMENT SHALL PROVIDE TO THE DEPARTMENT OF MOTOR VEHICLES THE TAXPAYER'S NAME, SOCIAL SECURITY NUMBER AND ANY OTHER IDENTIFYING INFORMATION NECESSARY FOR THE PURPOSE OF SUSPENDING HIS OR HER DRIVER'S LICENSE PURSUANT TO THIS SECTION AND SUBDIVISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THE VEHICLE AND TRAFFIC LAW FORTY-FIVE DAYS AFTER THE MAILING OR SENDING OF SUCH NOTICE TO THE TAXPAYER;

(B) A STATEMENT THAT THE TAXPAYER MAY AVOID SUSPENSION OF HIS OR HER LICENSE BY FULLY SATISFYING THE PAST-DUE TAX LIABILITIES OR BY MAKING PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMISSIONER, AND INFORMATION AS TO HOW THE TAXPAYER CAN PAY THE PAST-DUE TAX LIABILITIES TO THE DEPARTMENT, ENTER INTO A PAYMENT ARRANGEMENT OR REQUEST ADDITIONAL INFORMATION;

(C) A STATEMENT THAT THE TAXPAYER'S RIGHT TO PROTEST THE NOTICE IS LIMITED TO RAISING ISSUES SET FORTH IN SUBDIVISION FIVE OF THIS SECTION;

(D) A STATEMENT THAT THE SUSPENSION OF THE TAXPAYER'S DRIVER'S LICENSE SHALL CONTINUE UNTIL THE PAST-DUE TAX LIABILITIES ARE FULLY PAID OR THE TAXPAYER MAKES PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMISSIONER; AND

(E) ANY OTHER INFORMATION THAT THE COMMISSIONER DEEMS NECESSARY.

(4) AFTER THE EXPIRATION OF THE FORTY-FIVE DAY PERIOD, IF THE TAXPAYER HAS NOT CHALLENGED THE NOTICE PURSUANT TO SUBDIVISION FIVE OF THIS

SECTION AND THE TAXPAYER HAS FAILED TO SATISFY THE PAST-DUE TAX LIABILITIES OR MAKE PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMISSIONER, THE DEPARTMENT SHALL NOTIFY THE DEPARTMENT OF MOTOR VEHICLES, IN THE MANNER AGREED UPON BY THE TWO AGENCIES, THAT THE TAXPAYER'S DRIVER'S LICENSE SHALL BE SUSPENDED PURSUANT TO SUBDIVISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THE VEHICLE AND TRAFFIC LAW; PROVIDED, HOWEVER, IN ANY CASE WHERE A TAXPAYER FAILS TO COMPLY WITH THE TERMS OF A CURRENT PAYMENT ARRANGEMENT MORE THAN ONCE WITHIN A TWELVE MONTH PERIOD, THE COMMISSIONER SHALL IMMEDIATELY NOTIFY THE DEPARTMENT OF MOTOR VEHICLES THAT THE TAXPAYER'S DRIVER'S LICENSE SHALL BE SUSPENDED.

(5) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AND EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE TAXPAYER SHALL HAVE NO RIGHT TO COMMENCE A COURT ACTION OR PROCEEDING OR TO ANY OTHER LEGAL RECOURSE AGAINST THE DEPARTMENT OR THE DEPARTMENT OF MOTOR VEHICLES REGARDING A NOTICE ISSUED BY THE DEPARTMENT PURSUANT TO THIS SECTION AND THE REFERRAL BY THE DEPARTMENT OF ANY TAXPAYER WITH PAST-DUE TAX LIABILITIES TO THE DEPARTMENT OF MOTOR VEHICLES PURSUANT TO THIS SECTION FOR THE PURPOSE OF SUSPENDING THE TAXPAYER'S DRIVER'S LICENSE. A TAXPAYER MAY ONLY CHALLENGE SUCH SUSPENSION OR REFERRAL ON THE GROUNDS THAT (I) THE INDIVIDUAL TO WHOM THE NOTICE WAS PROVIDED IS NOT THE TAXPAYER AT ISSUE; (II) THE PAST-DUE TAX LIABILITIES WERE SATISFIED; (III) THE TAXPAYER'S WAGES ARE BEING GARNISHED BY THE DEPARTMENT FOR THE PAYMENT OF THE PAST-DUE TAX LIABILITIES AT ISSUE OR FOR PAST-DUE CHILD SUPPORT OR COMBINED CHILD AND SPOUSAL SUPPORT ARREARS; (IV) THE TAXPAYER'S WAGES ARE BEING GARNISHED FOR THE PAYMENT OF PAST-DUE CHILD SUPPORT OR COMBINED CHILD AND SPOUSAL SUPPORT ARREARS PURSUANT TO AN INCOME EXECUTION ISSUED PURSUANT TO SECTION FIVE THOUSAND TWO HUNDRED FORTY-ONE OF THE CIVIL PRACTICE LAW AND RULES; (V) THE TAXPAYER'S DRIVER'S LICENSE IS A COMMERCIAL DRIVER'S LICENSE AS DEFINED IN SECTION FIVE HUNDRED ONE-A OF THE VEHICLE AND TRAFFIC LAW; OR (VI) THE DEPARTMENT INCORRECTLY FOUND THAT THE TAXPAYER HAS FAILED TO COMPLY WITH THE TERMS OF A PAYMENT ARRANGEMENT MADE WITH THE COMMISSIONER MORE THAN ONCE WITHIN A TWELVE MONTH PERIOD FOR THE PURPOSES OF SUBDIVISION THREE OF THIS SECTION.

HOWEVER, NOTHING IN THIS SUBDIVISION IS INTENDED TO LIMIT A TAXPAYER FROM SEEKING RELIEF FROM JOINT AND SEVERAL LIABILITY PURSUANT TO SECTION SIX HUNDRED FIFTY-FOUR OF THIS CHAPTER, TO THE EXTENT THAT HE OR SHE IS ELIGIBLE PURSUANT TO THAT SUBDIVISION, OR ESTABLISHING TO THE DEPARTMENT THAT THE ENFORCEMENT OF THE UNDERLYING TAX LIABILITIES HAS BEEN STAYED BY THE FILING OF A PETITION PURSUANT TO THE BANKRUPTCY CODE OF 1978 (TITLE ELEVEN OF THE UNITED STATES CODE).

(6) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY, THE DEPARTMENT MAY DISCLOSE TO THE DEPARTMENT OF MOTOR VEHICLES THE INFORMATION DESCRIBED IN THIS SECTION THAT, IN THE DISCRETION OF THE COMMISSIONER, IS NECESSARY FOR THE PROPER IDENTIFICATION OF A TAXPAYER REFERRED TO THE DEPARTMENT OF MOTOR VEHICLES FOR THE PURPOSE OF SUSPENDING THE TAXPAYER'S DRIVER'S LICENSE PURSUANT TO THIS SECTION AND SUBDIVISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THE VEHICLE AND TRAFFIC LAW. THE DEPARTMENT OF MOTOR VEHICLES MAY NOT REDISCLOSE THIS INFORMATION TO ANY OTHER ENTITY OR PERSON, OTHER THAN FOR THE PURPOSE OF INFORMING THE TAXPAYER THAT HIS OR HER DRIVER'S LICENSE HAS BEEN SUSPENDED.

(7) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE ACTIVITIES TO COLLECT PAST-DUE TAX LIABILITIES UNDERTAKEN BY THE DEPARTMENT PURSUANT TO THIS SECTION SHALL NOT IN ANY WAY LIMIT, RESTRICT OR IMPAIR THE DEPARTMENT FROM EXERCISING ANY OTHER AUTHORITY TO COLLECT OR ENFORCE TAX LIABILITIES UNDER ANY OTHER APPLICABLE PROVISION OF LAW.

S 2. Section 510 of the vehicle and traffic law is amended by adding a new subdivision 4-f to read as follows:

4-F. SUSPENSION FOR FAILURE TO PAY PAST-DUE TAX LIABILITIES. (1) THE COMMISSIONER SHALL ENTER INTO A WRITTEN AGREEMENT WITH THE COMMISSIONER OF TAXATION AND FINANCE, AS PROVIDED IN SECTION ONE HUNDRED SEVENTY-ONE-V OF THE TAX LAW, WHICH SHALL SET FORTH THE PROCEDURES FOR SUSPENDING THE DRIVERS' LICENSES OF INDIVIDUALS WHO HAVE FAILED TO SATISFY PAST-DUE TAX LIABILITIES AS SUCH TERMS ARE DEFINED IN SUCH SECTION.

(2) UPON RECEIPT OF NOTIFICATION FROM THE DEPARTMENT OF TAXATION AND FINANCE THAT AN INDIVIDUAL HAS FAILED TO SATISFY PAST-DUE TAX LIABILITIES, OR TO OTHERWISE MAKE PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMISSIONER OF TAXATION AND FINANCE, OR HAS FAILED TO COMPLY WITH THE TERMS OF SUCH PAYMENT ARRANGEMENTS MORE THAN ONCE WITHIN A TWELVE MONTH PERIOD, THE COMMISSIONER OR HIS OR HER AGENT SHALL SUSPEND THE LICENSE OF SUCH PERSON TO OPERATE A MOTOR VEHICLE. IN THE EVENT SUCH PERSON IS UNLICENSED, SUCH PERSON'S PRIVILEGE OF OBTAINING A LICENSE SHALL BE SUSPENDED. SUCH SUSPENSION SHALL TAKE EFFECT NO LATER THAN FIFTEEN DAYS FROM THE DATE OF THE NOTICE THEREOF PROVIDED TO THE PERSON WHOSE LICENSE OR PRIVILEGE OF OBTAINING A LICENSE IS TO BE SUSPENDED, AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE COMMISSIONER IS ADVISED THAT THE PERSON HAS SATISFIED HIS OR HER PAST-DUE TAX LIABILITIES, OR HAS OTHERWISE MADE PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMISSIONER OF TAXATION AND FINANCE.

(3) FROM THE TIME THE COMMISSIONER IS NOTIFIED BY THE DEPARTMENT OF TAXATION AND FINANCE UNDER THIS SECTION, THE COMMISSIONER SHALL BE RELIEVED FROM ALL LIABILITY TO SUCH PERSON WHICH MAY OTHERWISE ARISE UNDER THIS SECTION, AND SUCH PERSON SHALL HAVE NO RIGHT TO COMMENCE A COURT ACTION OR PROCEEDING OR TO ANY OTHER LEGAL RECOURSE AGAINST THE COMMISSIONER TO RECOVER SUCH DRIVING PRIVILEGES AS AUTHORIZED BY THIS SECTION. IN ADDITION, NOTWITHSTANDING ANY OTHER PROVISION OF LAW, SUCH PERSON SHALL HAVE NO RIGHT TO A HEARING OR APPEAL PURSUANT TO THIS CHAPTER WITH RESPECT TO A SUSPENSION OF DRIVING PRIVILEGES AS AUTHORIZED BY THIS SECTION.

(4) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE DEPARTMENT SHALL FURNISH THE DEPARTMENT OF TAXATION AND FINANCE WITH THE INFORMATION NECESSARY FOR THE PROPER IDENTIFICATION OF AN INDIVIDUAL REFERRED TO THE DEPARTMENT FOR THE PURPOSE OF DRIVER'S LICENSE SUSPENSION PURSUANT TO THIS SECTION AND SECTION ONE HUNDRED SEVENTY-ONE-V OF THE TAX LAW. THIS SHALL INCLUDE THE INDIVIDUAL'S NAME, SOCIAL SECURITY NUMBER AND ANY OTHER INFORMATION THE COMMISSIONER OF MOTOR VEHICLES DEEMS NECESSARY.

(5) ANY PERSON WHOSE DRIVER'S LICENSE IS SUSPENDED PURSUANT TO PARAGRAPH TWO OF THIS SUBDIVISION MAY APPLY FOR THE ISSUANCE OF A RESTRICTED USE LICENSE AS PROVIDED IN SECTION FIVE HUNDRED THIRTY OF THIS TITLE.

S 3. Subdivision 7 of section 511 of the vehicle and traffic law, as added by chapter 81 of the laws of 1995, is amended to read as follows:

7. Exceptions. When a person is convicted of a violation of subdivision one [of] OR two of this section, and the suspension was issued pursuant to (A) subdivision four-e of section five hundred ten of this article due to a support arrears, OR (B) SUBDIVISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THE ARTICLE DUE TO PAST-DUE TAX LIABILITIES, the mandatory penalties set forth in subdivision one or two of this section shall not be applicable if, on or before the return date or subsequent adjourned date, such person presents proof that such support arrears OR PAST-DUE TAX LIABILITIES have been satisfied as shown by certified

check, notice issued by the court ordering the suspension, or notice from a support collection unit OR DEPARTMENT OF TAXATION AND FINANCE AS APPLICABLE. The sentencing court shall take the satisfaction of arrears OR THE PAYMENT OF THE PAST-DUE TAX LIABILITIES into account when imposing a sentence for any such conviction. FOR LICENSES SUSPENDED FOR NON-PAYMENT OF PAST-DUE TAX LIABILITIES, THE COURT SHALL ALSO TAKE INTO CONSIDERATION PROOF, IN THE FORM OF A NOTICE FROM THE DEPARTMENT OF TAXATION AND FINANCE, THAT SUCH PERSON HAS MADE PAYMENT ARRANGEMENTS THAT ARE SATISFACTORY TO THE COMMISSIONER OF TAXATION AND FINANCE.

S 4. Section 530 of the vehicle and traffic law is amended by adding a new subdivision 5-b to read as follows:

(5-B) ISSUANCE OF A RESTRICTED LICENSE SHALL NOT BE DENIED TO ANY PERSON WHOSE LICENSE IS SUSPENDED PURSUANT TO SUBDIVISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THIS TITLE FOR ANY REASON OTHER THAN SUCH PERSON'S FAILURE TO OTHERWISE HAVE A VALID OR RENEWABLE DRIVER'S LICENSE. THE RESTRICTIONS ON THE TYPES OF VEHICLES WHICH MAY BE OPERATED WITH A RESTRICTED LICENSE CONTAINED IN SUCH SUBDIVISION FIVE OF THIS SECTION SHALL NOT BE APPLICABLE TO A RESTRICTED LICENSE ISSUED TO A PERSON PURSUANT TO SUBDIVISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THIS TITLE. THE ISSUANCE OF A RESTRICTED LICENSE ISSUED AS A RESULT OF A SUSPENSION UNDER SUBDIVISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THIS TITLE SHALL NOT IN ANY WAY AFFECT A PERSON'S ELIGIBILITY FOR A RESTRICTED LICENSE AT SOME FUTURE TIME.

S 5. Section 2335-a of the insurance law, as added by chapter 152 of the laws of 1998, is amended to read as follows:

S 2335-a. Prohibition of rate increases for persons involved in emergency use of vehicles OR DUE TO A DRIVER'S LICENSE SUSPENSION FOR PAST-DUE TAX LIABILITIES.

(A) No insurer authorized to transact or transacting business in this state, or controlling or controlled by or under common control by or with an insurer authorized to transact or transacting business in this state, [which] THAT sells a policy providing motor vehicle liability insurance coverage in this state, shall increase the policy premium in connection with the insurance permitted or required by this chapter solely because the insured or any other person who customarily operates an automobile covered by the policy has had an accident while operating a motor vehicle in response to an emergency, where the insured was either responding to a call to duty as a paid or volunteer member of any police or fire department or first aid squad[;], or was performing any other function on behalf of the state, any political subdivision thereof, a public authority, public benefit corporation, or any other governmental agency or instrumentality in a public emergency.

(B) NO INSURER AUTHORIZED TO TRANSACT OR TRANSACTING BUSINESS IN THIS STATE, OR CONTROLLING OR CONTROLLED BY OR UNDER COMMON CONTROL BY OR WITH AN INSURER AUTHORIZED TO TRANSACT OR TRANSACTING BUSINESS IN THIS STATE, THAT SELLS A POLICY PROVIDING MOTOR VEHICLE INSURANCE COVERAGE IN THIS STATE SHALL INCREASE THE POLICY PREMIUM IN CONNECTION WITH THE INSURANCE PERMITTED OR REQUIRED BY THIS CHAPTER SOLELY BECAUSE THE INSURED OR ANY OTHER PERSON WHO CUSTOMARILY OPERATES AN AUTOMOBILE COVERED BY THE POLICY HAS HAD HIS OR HER DRIVER'S LICENSE SUSPENDED PURSUANT TO SUBDIVISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THE VEHICLE AND TRAFFIC LAW FOR PAST-DUE TAX LIABILITIES, AS DEFINED IN SECTION ONE HUNDRED SEVENTY-ONE-V OF THE TAX LAW, OR HAS APPLIED FOR OR RECEIVED A RESTRICTED USE LICENSE AS PROVIDED FOR BY SECTION FIVE HUNDRED THIRTY OF THE VEHICLE AND TRAFFIC LAW, AS THE RESULT OF SUCH SUSPENSION.

S 6. The insurance law is amended by adding a new section 2616 to read as follows:

S 2616. DISCRIMINATION BECAUSE OF A DRIVER'S LICENSE SUSPENSION FOR PAST-DUE TAX LIABILITIES. AN INDIVIDUAL OR ENTITY SHALL NOT REFUSE TO ISSUE ANY POLICY OF MOTOR VEHICLE INSURANCE, OR CANCEL OR DECLINE TO RENEW SUCH POLICY, BECAUSE THE APPLICANT OR POLICY HOLDER HAS HAD HIS OR HER DRIVER'S LICENSE SUSPENDED PURSUANT TO SUBDIVISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THE VEHICLE AND TRAFFIC LAW FOR PAST-DUE TAX LIABILITIES, AS DEFINED IN SECTION ONE HUNDRED SEVENTY-ONE-V OF THE TAX LAW, OR HAS APPLIED FOR OR RECEIVED A RESTRICTED USE LICENSE, AS PROVIDED FOR BY SECTION FIVE HUNDRED THIRTY OF THE VEHICLE AND TRAFFIC LAW, AS THE RESULT OF SUCH SUSPENSION.

S 7. This act shall take effect immediately; provided, however, that the department of taxation and finance and the department of motor vehicles shall have up to six months after this act shall have become a law to execute the written agreement and implement the necessary procedures as described in sections one and two of this act.

PART Q

Section 1. The tax law is amended by adding a new section 174-c to read as follows:

S 174-C. SERVICE OF INCOME EXECUTION WITHOUT FILING A WARRANT. 1. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, IF ANY INDIVIDUAL LIABLE FOR THE PAYMENT OF ANY TAX OR OTHER IMPOSITION ADMINISTERED BY THE COMMISSIONER, INCLUDING ANY ADDITIONS TO TAX, PENALTIES AND INTEREST IN CONNECTION THEREWITH, FAILS TO PAY OR TO COLLECT OR PAY OVER THE SAME WITHIN TWENTY-ONE CALENDAR DAYS AFTER NOTICE AND DEMAND THEREFOR IS GIVEN TO SUCH INDIVIDUAL (TEN BUSINESS DAYS IF THE AMOUNT FOR WHICH SUCH NOTICE AND DEMAND IS MADE EQUALS OR EXCEEDS ONE HUNDRED THOUSAND DOLLARS), THE COMMISSIONER IS AUTHORIZED TO SERVE AN INCOME EXECUTION ON THE INDIVIDUAL OR ON THE PERSON FROM WHOM THE INDIVIDUAL IS RECEIVING, OR WILL RECEIVE, MONEY, WITHOUT FILING A WARRANT IN THE OFFICE OF THE CLERK OF THE APPROPRIATE COUNTY OR IN THE DEPARTMENT OF STATE AS PROVIDED FOR IN THIS CHAPTER. FOR PURPOSES OF SERVING AN INCOME EXECUTION PURSUANT TO THIS SECTION, THE COMMISSIONER SHALL, IN THE RIGHT OF THE PEOPLE OF THE STATE OF NEW YORK, BE DEEMED TO HAVE OBTAINED JUDGMENT AGAINST THE INDIVIDUAL FOR THE TAX OR OTHER IMPOSITION, AND THE ADDITIONS TO TAX, PENALTIES AND INTEREST IN CONNECTION THEREOF, AND THERE SHALL BE A LIEN ON THE AMOUNT OF THE INDIVIDUAL'S INCOME THAT MAY BE GARNISHED. IF THE COMMISSIONER CHOOSES TO SERVE AN INCOME EXECUTION WITHOUT FILING A WARRANT PURSUANT TO THIS SECTION, THE COMMISSIONER MUST SERVE THE INCOME EXECUTION WITHIN SIX YEARS AFTER THE FIRST DATE A WARRANT COULD BE FILED PURSUANT TO SECTION ONE HUNDRED SEVENTY-FOUR-B OF THIS ARTICLE. WHEN SERVING AN INCOME EXECUTION WITHOUT THE FILING OF A WARRANT, THE COMMISSIONER SHALL FOLLOW THE PROCEDURES SET FORTH IN SECTION FIVE THOUSAND TWO HUNDRED THIRTY-ONE OF THE CIVIL PRACTICE LAW AND RULES, WITH THE REFERENCES IN SUCH SECTION TO "SHERIFF" TO BE READ AS REFERRING TO THE COMMISSIONER OR THE DEPARTMENT. SUCH INCOME EXECUTION SHALL CONTINUE TO BE IN EFFECT UNTIL SUCH LIABILITY IS SATISFIED OR UNTIL TWENTY YEARS FROM THE FIRST DATE A WARRANT COULD BE FILED BY THE COMMISSIONER PURSUANT TO SECTION ONE HUNDRED SEVENTY-FOUR-B OF THIS ARTICLE, WHETHER OR NOT A WARRANT IS FILED FOR THAT LIABILITY.

2. THE PROVISIONS OF THIS SECTION SHALL BE IN ADDITION TO THE PROCEDURES RELATING TO COLLECTION OR ADMINISTRATION PROVIDED WITH RESPECT TO ANY TAX OR OTHER IMPOSITION ADMINISTERED BY THE COMMISSIONER. WHERE A

PROVISION OF THIS SECTION IS INCONSISTENT WITH ANY SUCH PROVISION WITH RESPECT TO SUCH TAX OR OTHER IMPOSITION, THE PROVISIONS OF THIS SECTION WILL APPLY. NOTHING IN THIS SECTION SHALL PREVENT THE COMMISSIONER FROM TIMELY FILING A WARRANT IN ORDER TO PURSUE ANY OF THE COLLECTION METHODS AUTHORIZED UNDER ARTICLE FIFTY-TWO OF THE CIVIL PRACTICE LAW AND RULES.

S 2. This act shall take effect immediately.

PART R

Section 1. Subparagraph (i) of the opening paragraph of section 1210 of the tax law is REPEALED and a new subparagraph (i) is added to read as follows:

(I) WITH RESPECT TO A CITY OF ONE MILLION OR MORE AND THE FOLLOWING COUNTIES (1) ANY SUCH CITY HAVING A POPULATION OF ONE MILLION OR MORE IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND LOCAL LAWS, ORDINANCES OR RESOLUTIONS IMPOSING SUCH TAXES IN ANY SUCH CITY, AT THE RATE OF FOUR AND ONE-HALF PERCENT;

(2) THE FOLLOWING COUNTIES THAT IMPOSE TAXES DESCRIBED IN SUBDIVISION (A) OF THIS SECTION AT THE RATE OF THREE PERCENT AS AUTHORIZED ABOVE IN THIS PARAGRAPH FOR SUCH COUNTIES ARE HEREBY FURTHER AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND LOCAL LAWS, ORDINANCES, OR RESOLUTIONS IMPOSING SUCH TAXES DESCRIBED IN SUBDIVISION (A) OF THIS SECTION AT THE FOLLOWING ADDITIONAL RATES, IN QUARTER PERCENT INCREMENTS, WHICH RATES ARE ADDITIONAL TO THE THREE PERCENT RATE AUTHORIZED ABOVE IN THIS PARAGRAPH, AND, IN THE CASE OF A COUNTY AUTHORIZED TO IMPOSE MORE THAN ONE ADDITIONAL RATE, ALSO IN ADDITION TO EACH OTHER, FOR EACH SUCH COUNTY, PROVIDED THAT (A) THE COUNTY OF ROCKLAND MAY IMPOSE ADDITIONAL RATES OF FIVE-EIGHTHS PERCENT AND THREE-EIGHTHS PERCENT, IN LIEU OF IMPOSING SUCH ADDITIONAL RATE IN QUARTER PERCENT INCREMENTS; (B) THE COUNTY OF ONTARIO MAY IMPOSE ADDITIONAL RATES OF ONE-EIGHTH PERCENT AND THREE-EIGHTHS PERCENT, IN LIEU OF IMPOSING SUCH ADDITIONAL RATE IN QUARTER PERCENT INCREMENTS; (C) THREE-QUARTERS PERCENT OF THE ADDITIONAL RATE AUTHORIZED TO BE IMPOSED BY THE COUNTY OF NASSAU SHALL BE SUBJECT TO THE LIMITATION SET FORTH IN SECTION TWELVE HUNDRED SIXTY-TWO-E OF THIS ARTICLE:

(A) ONE-QUARTER OF ONE PERCENT - NONE.

(B) ONE-HALF OF ONE PERCENT - CHAUTAUQUA, ONTARIO, SCHENECTADY.

(C) THREE-QUARTERS OF ONE PERCENT - DUTCHESS, ESSEX, JEFFERSON, LEWIS, ORANGE.

(D) ONE PERCENT - ALBANY, BROOME, CATTARAUGUS, CAYUGA, CHEMUNG, CHENANGO, CLINTON, COLUMBIA, CORTLAND, DELAWARE, FRANKLIN, FULTON, GENESEE, GREENE, LIVINGSTON, MADISON, MONROE, MONTGOMERY, NIAGARA, ONONDAGA, ORLEANS, OSWEGO, OTSEGO, PUTNAM, RENSSELAER, ROCKLAND, SCHOHARIE, SCHUYLER, SENECA, STEUBEN, SUFFOLK, SULLIVAN, TIOGA, TOMPKINS, ULSTER, WAYNE, WYOMING, YATES.

(E) ONE AND ONE-QUARTER PERCENT - HERKIMER, NASSAU.

(F) ONE AND ONE-HALF PERCENT - ALLEGANY.

(G) ONE AND THREE-QUARTERS PERCENT - ERIE, ONEIDA.

S 2. Subparagraph (ii) of the opening paragraph of section 1210 of the tax law is REPEALED and a new subparagraph (ii) is added to read as follows:

(II) THE FOLLOWING CITIES THAT IMPOSE TAXES DESCRIBED IN SUBDIVISION (A) OF THIS SECTION AT THE RATE OF ONE AND ONE-HALF PERCENT OR HIGHER AS AUTHORIZED ABOVE IN THIS PARAGRAPH FOR SUCH CITIES ARE HEREBY FURTHER AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND LOCAL LAWS, ORDINANCES, OR RESOLUTIONS IMPOSING SUCH TAXES DESCRIBED IN SUBDIVISION (A) OF THIS SECTION AT THE FOLLOWING ADDITIONAL RATES, IN QUARTER PERCENT INCRE-

MENTS, WHICH RATES ARE ADDITIONAL TO THE ONE AND ONE-HALF PERCENT OR HIGHER RATES AUTHORIZED ABOVE IN THIS PARAGRAPH AND, IN THE CASE OF A CITY AUTHORIZED TO IMPOSE MORE THAN ONE ADDITIONAL RATE, ALSO IN ADDITION TO EACH OTHER, FOR EACH SUCH CITY:

(1) ONE-QUARTER OF ONE PERCENT - NONE.

(2) ONE-HALF OF ONE PERCENT - NONE.

(3) THREE-QUARTERS OF ONE PERCENT - NONE.

(4) ONE PERCENT - MOUNT VERNON; YONKERS; OSWEGO, FOR THE PERIOD BEGINNING DECEMBER FIRST, TWO THOUSAND ELEVEN, AND ENDING NOVEMBER THIRTIETH, TWO THOUSAND THIRTEEN; NEW ROCHELLE, FOR THE PERIOD BEGINNING JANUARY FIRST, TWO THOUSAND TWELVE, AND ENDING DECEMBER THIRTY-FIRST, TWO THOUSAND THIRTEEN; WHITE PLAINS, FOR THE PERIOD BEGINNING SEPTEMBER FIRST, TWO THOUSAND ELEVEN, AND ENDING AUGUST THIRTY-FIRST, TWO THOUSAND THIRTEEN.

(5) ONE AND ONE-QUARTER PERCENT - NONE.

(6) ONE AND ONE-HALF PERCENT - NONE.

(7) ONE AND THREE-QUARTERS PERCENT - NONE.

S 3. Subparagraph (iii) of the opening paragraph of section 1210 of the tax law is REPEALED and a new subparagraph (iii) is added to read as follows:

(III) THE MAXIMUM RATE REFERRED TO IN SECTION TWELVE HUNDRED TWENTY-FOUR OF THIS ARTICLE SHALL BE CALCULATED WITHOUT REFERENCE TO THE ADDITIONAL RATES AUTHORIZED FOR COUNTIES, OTHER THAN THE COUNTIES OF CAYUGA, CORTLAND, FULTON, MADISON, AND OTSEGO IN SUBPARAGRAPH (I) AND THE CITIES IN SUBPARAGRAPH (II) OF THIS PARAGRAPH.

S 4. Section 1210 of the tax law is amended by adding a new subdivision (q) to read as follows:

(Q) NOTWITHSTANDING ANY PROVISION OF THIS SECTION OR ANY OTHER LAW, A COUNTY MAY, BY A MAJORITY VOTE OF ITS GOVERNING BODY, PASS A LOCAL LAW, ORDINANCE OR RESOLUTION TO IMPOSE THE ADDITIONAL RATE OR RATES OF SUCH SALES AND COMPENSATING USE TAXES AUTHORIZED BY CLAUSE TWO OF SUBPARAGRAPH (I) OF THE OPENING PARAGRAPH OF THIS SECTION FOR A PERIOD NOT TO EXCEED TWO YEARS. ANY SUCH LOCAL LAW, ORDINANCE, OR RESOLUTION SHALL ALSO BE SUBJECT TO THE PROVISIONS OF SUBDIVISIONS (D) AND (E) OF THIS SECTION.

S 5. Section 1210-E of the tax law is REPEALED.

S 6. Subdivisions (d), (e), (f), (g), (h) (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (t), (u), (v), (w), (x), (y), (z), (z-1), (aa), (bb), (cc), (dd), (ee), (ff) and (gg) of section 1224 of the tax law are REPEALED.

S 7. Section 1224 of the tax law is amended by adding four new subdivisions (d),(e), (f), and (g) to read as follows:

(D) FOR PURPOSES OF THIS SECTION, THE TERM "PRIOR RIGHT" SHALL MEAN THE PREFERENTIAL RIGHT TO IMPOSE ANY TAX DESCRIBED IN SECTIONS TWELVE HUNDRED TWO AND TWELVE HUNDRED THREE, OR TWELVE HUNDRED TEN AND TWELVE HUNDRED ELEVEN, OF THIS ARTICLE AND THEREBY TO PREEMPT SUCH TAX AND TO PRECLUDE ANOTHER MUNICIPAL CORPORATION FROM IMPOSING OR CONTINUING THE IMPOSITION OF SUCH TAX TO THE EXTENT THAT SUCH RIGHT IS EXERCISED. HOWEVER, THE RIGHT OF PREEMPTION SHALL ONLY APPLY WITHIN THE TERRITORIAL LIMITS OF THE TAXING JURISDICTION HAVING THE RIGHT OR PREEMPTION.

(E) EACH OF THE FOLLOWING COUNTIES AND CITIES SHALL HAVE THE SOLE RIGHT TO IMPOSE THE FOLLOWING ADDITIONAL RATE OF SALES AND COMPENSATING USE TAXES IN EXCESS OF THREE PERCENT THAT SUCH COUNTY OR CITY IS AUTHORIZED TO IMPOSE PURSUANT TO THE AUTHORITY OF SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE. SUCH ADDITIONAL RATES OF TAX SHALL NOT BE SUBJECT TO PREEMPTION.

(1) COUNTIES:
(A) ONE-QUARTER OF ONE PERCENT - NONE.
(B) ONE-HALF OF ONE PERCENT - CHAUTAUQUA, ONTARIO, SCHENECTADY.
(C) THREE-QUARTERS OF ONE PERCENT - DUTCHESS, ESSEX, JEFFERSON, LEWIS, ORANGE.
(D) ONE PERCENT - ALBANY, BROOME, CATTARAUGUS, CHEMUNG, CHENANGO, CLINTON, COLUMBIA, DELAWARE, FRANKLIN, GENESEE, GREENE, LIVINGSTON, MONROE, MONTGOMERY, NIAGARA, ONONDAGA, ORLEANS, OTSEGO, PUTNAM, RENSSELAER, ROCKLAND, SCHOHARIE, SCHUYLER, SENECA, STEUBEN, SUFFOLK, SULLIVAN, TIOGA, TOMPKINS, ULSTER, WAYNE, WYOMING, YATES.
(E) ONE AND ONE-QUARTER PERCENT - HERKIMER, NASSAU.
(F) ONE AND ONE-HALF PERCENT - ALLEGANY.
(G) ONE AND THREE-QUARTERS PERCENT - ERIE, ONEIDA.
(2) CITIES:
(A) ONE-QUARTER OF ONE PERCENT - NONE.
(B) ONE-HALF OF ONE PERCENT - NONE.
(C) THREE-QUARTERS OF ONE PERCENT - NONE.
(D) ONE PERCENT - MOUNT VERNON, NEW ROCHELLE, WHITE PLAINS, YONKERS.
(F) EACH OF THE FOLLOWING CITIES IS AUTHORIZED TO PREEMPT THE TAXES IMPOSED BY THE COUNTY IN WHICH IT IS LOCATED PURSUANT TO THE AUTHORITY OF SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE, TO THE EXTENT OF ONE-HALF THE MAXIMUM AGGREGATE RATE AUTHORIZED UNDER SECTION TWELVE HUNDRED TEN OF THIS ARTICLE, INCLUDING THE ADDITIONAL RATE THAT THE COUNTY IN WHICH SUCH CITY IS LOCATED IS AUTHORIZED TO IMPOSE: AUBURN, IN CAYUGA COUNTY; CORTLAND, IN CORTLAND COUNTY; GLOVERSVILLE AND JOHNSTOWN, IN FULTON COUNTY; ONEIDA, IN MADISON COUNTY; ONEONTA, IN OTSEGO COUNTY. AS OF THE DATE THIS SUBDIVISION TAKES EFFECT, ANY SUCH PREEMPTION BY SUCH A CITY IN EFFECT ON SUCH DATE SHALL CONTINUE IN FULL FORCE AND EFFECT UNTIL THE EFFECTIVE DATE OF A LOCAL LAW, ORDINANCE, OR RESOLUTION ADOPTED OR AMENDED BY THE CITY TO CHANGE SUCH PREEMPTION, PROVIDED SUCH A CITY'S RATE OF TAX IN EXCESS OF ONE AND ONE-HALF PERCENT SHALL NOT CONTINUE IN EFFECT IF THE COUNTY IN WHICH IT IS LOCATED DOES NOT EXTEND ITS ADDITIONAL RATE IN EXCESS OF THREE PERCENT. ANY PREEMPTION BY SUCH A CITY TO TAKE EFFECT UNDER THIS SUBDIVISION AFTER THE DATE THIS SUBDIVISION TAKES EFFECT SHALL BE SUBJECT TO THE NOTICE REQUIREMENTS IN SECTION TWELVE HUNDRED TWENTY-THREE OF THIS SUBPART AND TO THE OTHER REQUIREMENTS OF THIS ARTICLE.
(G) NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION OR OTHER LAW, IF THE COUNTY OF DUTCHESS WITHDRAWS FROM THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT AND IMPOSES THE ADDITIONAL THREE-EIGHTHS PERCENT RATE OF TAX, THE NET COLLECTIONS FROM WHICH THE COUNTY HAS SET ASIDE FOR MASS TRANSPORTATION PURPOSES, AS AUTHORIZED BY SUBPARAGRAPH (IV) OF THE OPENING PARAGRAPH OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE, SUCH ADDITIONAL THREE-EIGHTHS PERCENT RATE OF TAX SHALL BE IN ADDITION TO ANY OTHER ADDITIONAL RATE OF TAX SUCH COUNTY IS AUTHORIZED TO IMPOSE AND SHALL NOT BE SUBJECT TO PREEMPTION AND SUCH COUNTY SHALL NOT INCLUDE SUCH ADDITIONAL THREE-EIGHTHS PERCENT RATE OF TAX IN DETERMINING ITS ADDITIONAL RATE OF TAX ON THE AREA OF THE COUNTY OUTSIDE ANY CITY IN THE COUNTY IMPOSING TAX FOR PURPOSES OF SUBDIVISION (D) OF SECTION TWELVE HUNDRED SIXTY-TWO OF THIS ARTICLE.

S 8. The tax law is amended by adding three new sections 1262-t, 1262-u, and 1262-v to read as follows:

S 1262-T. ONEIDA COUNTY NET COLLECTIONS FROM ADDITIONAL RATE OF TAX. NET COLLECTIONS FROM AN ADDITIONAL THREE-QUARTERS PERCENT RATE OF ONEIDA COUNTY'S SALES AND COMPENSATING USE TAXES IMPOSED PURSUANT TO THE AUTHORITY OF CLAUSE TWO OF SUBPARAGRAPH (I) OF THE OPENING PARAGRAPH OF

SECTION TWELVE HUNDRED TEN OF THIS ARTICLE SHALL NOT BE SUBJECT TO ANY REVENUE DISTRIBUTION AGREEMENT ENTERED INTO BY THE COUNTY AND THE CITIES IN THE COUNTY UNDER SUBDIVISION (C) OF SECTION TWELVE HUNDRED SIXTY-TWO OF THIS PART.

S 1262-U. CLINTON COUNTY NET COLLECTIONS FROM ADDITIONAL RATE OF TAX. NET COLLECTIONS FROM ANY ADDITIONAL RATE OF SALES AND COMPENSATING USE TAXES CLINTON COUNTY IMPOSES PURSUANT TO THE AUTHORITY OF CLAUSE TWO OF SUBPARAGRAPH (I) OF THE OPENING PARAGRAPH OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE SHALL BE PAID TO THE COUNTY AND THE COUNTY SHALL SET ASIDE SUCH NET COLLECTIONS AND USE THEM SOLELY FOR COUNTY PURPOSES. SUCH NET COLLECTIONS SHALL NOT BE SUBJECT TO ANY REVENUE DISTRIBUTION AGREEMENT ENTERED INTO BY THE COUNTY AND THE CITY IN THE COUNTY UNDER SUBDIVISION (C) OF SECTION TWELVE HUNDRED SIXTY-TWO OF THIS PART.

S 1262-V. ONTARIO COUNTY NET COLLECTIONS FROM ADDITIONAL RATE OF TAX. NOTWITHSTANDING ANY LAW TO THE CONTRARY, AFTER ONTARIO COUNTY ALLOCATES NET COLLECTIONS FROM ITS ADDITIONAL ONE-EIGHTH OF ONE PERCENT RATE OF SALES AND COMPENSATING USE TAXES PURSUANT TO THE AUTHORITY OF SECTION TWELVE HUNDRED SIXTY-TWO-R OF THIS PART, AS ADDED BY CHAPTER THIRTY-SEVEN OF THE LAWS OF TWO THOUSAND SIX, NET COLLECTIONS FROM THE COUNTY'S ADDITIONAL THREE-EIGHTHS OF ONE PERCENT RATE OF SUCH TAXES SHALL BE SET ASIDE FOR COUNTY PURPOSES AND SHALL NOT BE SUBJECT TO ANY AGREEMENT ENTERED INTO BY THE COUNTY AND THE CITIES IN THE COUNTY UNDER SUBDIVISION (C) OF SECTION TWELVE HUNDRED SIXTY-TWO OR SECTION TWELVE HUNDRED SIXTY-TWO-R OF THIS PART, AS ADDED BY CHAPTER THIRTY-SEVEN OF THE LAWS OF TWO THOUSAND SIX.

S 9. Section 1262-s of the tax law, as amended by chapter 226 of the laws of 2011, is amended to read as follows:

S 1262-s. Disposition of net collections from the additional one-quarter of one percent rate of sales and compensating use taxes in the county of Herkimer. Notwithstanding any contrary provision of law, if the county of Herkimer imposes the additional one-quarter of one percent rate of sales and compensating use taxes IN EXCESS OF FOUR PERCENT authorized by [section twelve hundred ten-E] THE OPENING PARAGRAPH OF SECTION TWELVE HUNDRED TEN of this article [for all or any portion of the period beginning December first, two thousand seven and ending November thirtieth, two thousand thirteen], the county shall use all net collections from such additional one-quarter of one percent rate to pay the county's expenses for the construction of additional correctional facilities. The net collections from [the] SUCH additional rate imposed [pursuant to section twelve hundred ten-E] shall be deposited in a special fund to be created by such county separate and apart from any other funds and accounts of the county. Any and all remaining net collections from such additional tax, after the expenses of such construction are paid, shall be deposited by the county of Herkimer in the general fund of such county for any county purpose.

S 10. The tax law is amended by adding a new section 1265 to read as follows:

S 1265. REFERENCES TO CERTAIN PROVISIONS AUTHORIZING ADDITIONAL RATES OR TO EXPIRATIONS OF A PERIOD. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY: ANY REFERENCE IN ANY SECTION OF THIS CHAPTER OR OTHER LAW, OR IN ANY LOCAL LAW, ORDINANCE, OR RESOLUTION ADOPTED PURSUANT TO THE AUTHORITY OF THIS ARTICLE, OR IN ANY AGREEMENT ENTERED INTO BY A COUNTY AND ALL THE CITIES IN THAT COUNTY UNDER SUBDIVISION (C) OF SECTION TWELVE HUNDRED SIXTY-TWO OF THIS PART, TO NET COLLECTIONS OR REVENUES FROM A TAX IMPOSED BY A COUNTY OR CITY PURSUANT TO THE AUTHORITY OF A CLAUSE, OR TO A SUBCLAUSE OF A CLAUSE, OF SUBPARAGRAPH (I) OR (II) OF

THE OPENING PARAGRAPH OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE REPEALED BY SECTION ONE OR TWO OF THE CHAPTER OF THE LAWS OF TWO THOUSAND THIRTEEN THAT ADDED THIS SECTION OR TO SECTION TWELVE HUNDRED TEN-E OF THIS ARTICLE REPEALED BY SECTION FIVE OF SUCH CHAPTER OF THE LAWS OF TWO THOUSAND THIRTEEN SHALL BE DEEMED TO BE A REFERENCE TO NET COLLECTIONS OR REVENUES FROM A TAX IMPOSED BY THAT COUNTY OR CITY PURSUANT TO THE AUTHORITY OF THE EQUIVALENT PROVISION OF CLAUSE TWO OF SUBPARAGRAPH (I) OR TO SUBPARAGRAPH (II) OF THE OPENING PARAGRAPH OF SUCH SECTION TWELVE HUNDRED TEN AS ADDED BY SUCH SECTION ONE OR TWO OF SUCH CHAPTER OF THE LAWS OF TWO THOUSAND THIRTEEN.

S 11. Severability. If any provision of this act shall for any reason be finally adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the provision directly involved in the controversy in which such judgment shall have been rendered. It it hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provision had not been included in this act.

S 12. This act shall take effect immediately.

PART S

Section 1. Paragraph 1 of subdivision a of section 1612 of the tax law, as amended by chapter 147 of the laws of 2010, subparagraph (A) as amended by section 1 of part S of chapter 59 of the laws of 2012, is amended to read as follows:

(1) sixty percent of the total amount for which tickets have been sold for [a lawful lottery] THE QUICK DRAW game [introduced on or after the effective date of this paragraph,] subject to [the following provisions:

(A) such game shall be available only on premises occupied by licensed lottery sales agents, subject to the following provisions:

(i) if the licensee does not hold a license issued pursuant to the alcoholic beverage control law to sell alcoholic beverages for consumption on the premises, then the premises must have a minimum square footage greater than two thousand five hundred square feet;

(ii) notwithstanding the foregoing provisions, television equipment that automatically displays the results of such drawings may be installed and used without regard to the square footage if such premises are used as:

(I) a commercial bowling establishment, or

(II) a facility authorized under the racing, pari-mutuel wagering and breeding law to accept pari-mutuel wagers;

(B) the] rules for the operation of such game [shall be] as prescribed by regulations promulgated and adopted by the division[, provided however, that such rules shall provide that no person under the age of twenty-one may participate in such games on the premises of a licensee who holds a license issued pursuant to the alcoholic beverage control law to sell alcoholic beverages for consumption on the premises; and, provided, further, that such regulations may be revised on an emergency basis not later than ninety days after the enactment of this paragraph in order to conform such regulations to the requirements of this paragraph]; or

S 2. This act shall take effect immediately.

PART T

Section 1. Clause (F) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 6 of part K of chapter 57 of the laws of 2010, is amended to read as follows:

(F) notwithstanding clauses (A), (B), (C), (D) and (E) of this subparagraph, when a vendor track, is located in Sullivan county and within sixty miles from any gaming facility in a contiguous state such vendor fee shall, for a period of [five] SIX years commencing April first, two thousand eight, be at a rate of forty-one percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, after which time such rate shall be as for all tracks in clause (C) of this subparagraph.

S 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2013.

PART U

Section 1. Paragraph (a) of subdivision 1 of section 1003 of the racing, pari-mutuel wagering and breeding law, as amended by section 1 of part O of chapter 59 of the laws of 2012, is amended to read as follows:

(a) Any racing association or corporation or regional off-track betting corporation, authorized to conduct pari-mutuel wagering under this chapter, desiring to display the simulcast of horse races on which pari-mutuel betting shall be permitted in the manner and subject to the conditions provided for in this article may apply to the board for a license so to do. Applications for licenses shall be in such form as may be prescribed by the board and shall contain such information or other material or evidence as the board may require. No license shall be issued by the board authorizing the simulcast transmission of thoroughbred races from a track located in Suffolk county. The fee for such licenses shall be five hundred dollars per simulcast facility per year payable by the licensee to the board for deposit into the general fund. Except as provided herein, the board shall not approve any application to conduct simulcasting into individual or group residences, homes or other areas for the purposes of or in connection with pari-mutuel wagering. The board may approve simulcasting into residences, homes or other areas to be conducted jointly by one or more regional off-track betting corporations and one or more of the following: a franchised corporation, thoroughbred racing corporation or a harness racing corporation or association; provided (i) the simulcasting consists only of those races on which pari-mutuel betting is authorized by this chapter at one or more simulcast facilities for each of the contracting off-track betting corporations which shall include wagers made in accordance with section one thousand fifteen, one thousand sixteen and one thousand seventeen of this article; provided further that the contract provisions or other simulcast arrangements for such simulcast facility shall be no less favorable than those in effect on January first, two thousand five; (ii) that each off-track betting corporation having within its geographic boundaries such residences, homes or other areas technically capable of receiving the simulcast signal shall be a contracting party; (iii) the distribution of revenues shall be subject to contractual agreement of the parties except that statutory payments to non-contracting parties, if any, may not be reduced; provided, however, that nothing herein to the contrary shall prevent a track from televising its races on an irregular basis primarily for promotional or marketing purposes as found by the board. For purposes of this paragraph, the provisions of section

one thousand thirteen of this article shall not apply. Any agreement authorizing an in-home simulcasting experiment commencing prior to May fifteenth, nineteen hundred ninety-five, may, and all its terms, be extended [until June thirtieth, two thousand thirteen]; provided, however, that any party to such agreement may elect to terminate such agreement upon conveying written notice to all other parties of such agreement at least forty-five days prior to the effective date of the termination, via registered mail. Any party to an agreement receiving such notice of an intent to terminate, may request the board to mediate between the parties new terms and conditions in a replacement agreement between the parties as will permit continuation of an in-home experiment [until June thirtieth, two thousand thirteen]; and (iv) no in-home simulcasting in the thoroughbred special betting district shall occur without the approval of the regional thoroughbred track.

S 2. Subparagraph (iii) of paragraph d of subdivision 3 of section 1007 of the racing, pari-mutuel wagering and breeding law, as amended by section 2 of part O of chapter 59 of the laws of 2012, is amended to read as follows:

(iii) Of the sums retained by a receiving track located in Westchester county on races received from a franchised corporation, for the period commencing January first, two thousand eight [and continuing through June thirtieth, two thousand thirteen], the amount used exclusively for purses to be awarded at races conducted by such receiving track shall be computed as follows: of the sums so retained, two and one-half percent of the total pools. Such amount shall be increased or decreased in the amount of fifty percent of the difference in total commissions determined by comparing the total commissions available after July twenty-first, nineteen hundred ninety-five to the total commissions that would have been available to such track prior to July twenty-first, nineteen hundred ninety-five.

S 3. Section 1014 of the racing, pari-mutuel wagering and breeding law is REPEALED.

S 4. Subdivision 1 of section 1015 of the racing, pari-mutuel wagering and breeding law, as amended by section 4 of part O of chapter 59 of the laws of 2012, is amended to read as follows:

1. The provisions of this section shall govern the simulcasting of races conducted at harness tracks located in another state or country during the period COMMENCING July first, nineteen hundred ninety-four [through June thirtieth, two thousand thirteen]. This section shall supersede all inconsistent provisions of this chapter.

S 5. The opening paragraph of subdivision 1 of section 1016 of the racing, pari-mutuel wagering and breeding law, as amended by section 5 of part O of chapter 59 of the laws of 2012, is amended to read as follows:

The provisions of this section shall govern the simulcasting of races conducted at thoroughbred tracks located in another state or country on any day during which a franchised corporation is not conducting a race meeting in Saratoga county at Saratoga thoroughbred racetrack [until June thirtieth, two thousand thirteen]. Every off-track betting corporation branch office and every simulcasting facility licensed in accordance with section one thousand seven that have entered into a written agreement with such facility's representative horsemen's organization as approved by the board, one thousand eight or one thousand nine of this article shall be authorized to accept wagers and display the live full-card simulcast signal of thoroughbred tracks (which may include quarter horse or mixed meetings provided that all such wagering on such races

shall be construed to be thoroughbred races) located in another state or foreign country, subject to the following provisions; provided, however, no such written agreement shall be required of a franchised corporation licensed in accordance with section one thousand seven of this article:

S 6. The opening paragraph of section 1018 of the racing, pari-mutuel wagering and breeding law, as amended by section 6 of part O of chapter 59 of the laws of 2012, is amended to read as follows:

Notwithstanding any other provision of this chapter, for the period COMMENCING July twenty-fifth, two thousand one [through September eighth, two thousand twelve], when a franchised corporation is conducting a race meeting within the state at Saratoga Race Course, every off-track betting corporation branch office and every simulcasting facility licensed in accordance with section one thousand seven (that has entered into a written agreement with such facility's representative horsemen's organization as approved by the board), one thousand eight or one thousand nine of this article shall be authorized to accept wagers and display the live simulcast signal from thoroughbred tracks located in another state, provided that such facility shall accept wagers on races run at all in-state thoroughbred tracks which are conducting racing programs subject to the following provisions; provided, however, no such written agreement shall be required of a franchised corporation licensed in accordance with section one thousand seven of this article.

S 7. Section 32 of chapter 281 of the laws of 1994, amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting, as amended by section 7 of part O of chapter 59 of the laws of 2012, is amended to read as follows:

S 32. This act shall take effect immediately [and the pari-mutuel tax reductions in section six of this act shall expire and be deemed repealed on July 1, 2013]; provided, however, that nothing contained herein shall be deemed to affect the application, qualification, expiration, or repeal of any provision of law amended by any section of this act, and such provisions shall be applied or qualified or shall expire or be deemed repealed in the same manner, to the same extent and on the same date as the case may be as otherwise provided by law; provided further, however, that sections twenty-three and twenty-five of this act shall remain in full force and effect only until May 1, 1997 and at such time shall be deemed to be repealed.

S 8. Section 54 of chapter 346 of the laws of 1990, amending the racing, pari-mutuel wagering and breeding law and other laws relating to simulcasting and the imposition of certain taxes, as amended by section 8 of part O of chapter 59 of the laws of 2012, is amended to read as follows:

S 54. This act shall take effect immediately; provided, however, sections three through twelve of this act shall take effect on January 1, 1991, and [section 1013 of the racing, pari-mutuel wagering and breeding law, as added by section thirty-eight of this act, shall expire and be deemed repealed on July 1, 2013; and] section eighteen of this act shall take effect on July 1, 2008 and sections fifty-one and fifty-two of this act shall take effect as of the same date as chapter 772 of the laws of 1989 took effect.

S 9. Paragraph (a) of subdivision 1 of section 238 of the racing, pari-mutuel wagering and breeding law, as amended by section 9 of part O of chapter 59 of the laws of 2012, is amended to read as follows:

(a) The franchised corporation authorized under this chapter to conduct pari-mutuel betting at a race meeting or races run thereat shall distribute all sums deposited in any pari-mutuel pool to the holders of

winning tickets therein, provided such tickets be presented for payment before April first of the year following the year of their purchase, less an amount which shall be established and retained by such franchised corporation of between twelve to seventeen per centum of the total deposits in pools resulting from on-track regular bets, and fourteen to twenty-one per centum of the total deposits in pools resulting from on-track multiple bets and fifteen to twenty-five per centum of the total deposits in pools resulting from on-track exotic bets and fifteen to thirty-six per centum of the total deposits in pools resulting from on-track super exotic bets, plus the breaks. The retention rate to be established is subject to the prior approval of the racing and wagering board. Such rate may not be changed more than once per calendar quarter to be effective on the first day of the calendar quarter. "Exotic bets" and "multiple bets" shall have the meanings set forth in section five hundred nineteen of this chapter. "Super exotic bets" shall have the meaning set forth in section three hundred one of this chapter. For purposes of this section, a "pick six bet" shall mean a single bet or wager on the outcomes of six races. The breaks are hereby defined as the odd cents over any multiple of five for payoffs greater than one dollar five cents but less than five dollars, over any multiple of ten for payoffs greater than five dollars but less than twenty-five dollars, over any multiple of twenty-five for payoffs greater than twenty-five dollars but less than two hundred fifty dollars, or over any multiple of fifty for payoffs over two hundred fifty dollars. Out of the amount so retained there shall be paid by such franchised corporation to the commissioner of taxation and finance, as a reasonable tax by the state for the privilege of conducting pari-mutuel betting on the races run at the race meetings held by such franchised corporation, the following percentages of the total pool for regular and multiple bets five per centum of regular bets and four per centum of multiple bets plus twenty per centum of the breaks; for exotic wagers seven and one-half per centum plus twenty per centum of the breaks, and for super exotic bets seven and one-half per centum plus fifty per centum of the breaks. For the period June first, nineteen hundred ninety-five through September ninth, nineteen hundred ninety-nine, such tax on regular wagers shall be three per centum and such tax on multiple wagers shall be two and one-half per centum, plus twenty per centum of the breaks. For the period September tenth, nineteen hundred ninety-nine through March thirty-first, two thousand one, such tax on all wagers shall be two and six-tenths per centum and for the period COMMENCING April first, two thousand one [through December thirty-first, two thousand thirteen], such tax on all wagers shall be one and six-tenths per centum, plus, in each such period, twenty per centum of the breaks. Payment to the New York state thoroughbred breeding and development fund by such franchised corporation shall be one-half of one per centum of total daily on-track pari-mutuel pools resulting from regular, multiple and exotic bets and three per centum of super exotic bets provided, however, that for the period September tenth, nineteen hundred ninety-nine through March thirty-first, two thousand one, such payment shall be six-tenths of one per centum of regular, multiple and exotic pools and for the period COMMENCING April first, two thousand one [through December thirty-first, two thousand thirteen], such payment shall be seven-tenths of one per centum of such pools.

S 10. Subdivision 5 of section 1012 of the racing, pari-mutuel wagering and breeding law is REPEALED.

S 11. This act shall take effect immediately.

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

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