

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:

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

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

10 PART A

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

14 1. The term "corporation" as used in this section shall include an
15 association, within the meaning of paragraph three of subsection (a) of
16 section seventy-seven hundred one of the internal revenue code (includ-
17 ing a limited liability company), a publicly traded partnership treated
18 as a corporation for purposes of the internal revenue code pursuant to
19 section seventy-seven hundred four thereof and any business conducted by
20 a trustee or trustees wherein interest or ownership is evidenced by
21 certificates or other written instruments. Every corporation, joint-
22 stock company or association formed for or principally engaged in the
23 conduct of canal, steamboat, ferry (except a ferry company operating
24 between any of the boroughs of the city of New York under a lease grant-
25 ed by the city), express, navigation, pipe line, transfer, baggage
26 express, omnibus, taxicab, telegraph, or telephone business, or formed
27 for or principally engaged in the conduct of two or more such busi-
28 nesses, and every corporation, joint-stock company or association formed
29 for or principally engaged in the conduct of a railroad, palace car,
30 sleeping car or trucking business or formed for or principally engaged
31 in the conduct of two or more of such businesses and which has made an
32 election pursuant to subdivision ten of section one hundred eighty-three
33 of this article, and every other corporation, joint-stock company or
34 association principally engaged in the conduct of a transportation or
35 transmission business, except a corporation, joint-stock company or
36 association formed for or principally engaged in the conduct of a rail-
37 road, palace car, sleeping car or trucking business or formed for or
38 principally engaged in the conduct of two or more of such businesses and
39 which has not made the election provided for in subdivision ten of
40 section one hundred eighty-three of this article, and except a corpo-
41 ration, joint-stock company or association principally engaged in the
42 conduct of aviation (including air freight forwarders acting as princi-
43 pal and like indirect air carriers) and except a corporation principally
44 engaged in providing telecommunication services between aircraft and
45 dispatcher, aircraft and air traffic control or ground station and
46 ground station (or any combination of the foregoing), at least ninety
47 percent of the voting stock of which corporation is owned, directly or
48 indirectly, by air carriers and which corporation's principal function
49 is to fulfill the requirements of (i) the federal aviation adminis-
50 tration (or the successor thereto) or (ii) the international civil
51 aviation organization (or the successor thereto), relating to the exist-
52 ence of a communication system between aircraft and dispatcher, aircraft
53 and air traffic control or ground station and ground station (or any
54 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

1 conduct of two or more such businesses and which has not made the
2 election provided for in subdivision ten of section one hundred eighty-
3 three of this article, and except a corporation, joint-stock company or
4 association principally engaged in the conduct of aviation (including
5 air freight forwarders acting as principal and like indirect air carri-
6 ers) and except a corporation principally engaged in providing telecom-
7 munication services between aircraft and dispatcher, aircraft and air
8 traffic control or ground station and ground station (or any combination
9 of the foregoing), at least ninety percent of the voting stock of which
10 corporation is owned, directly or indirectly, by air carriers and which
11 corporation's principal function is to fulfill the requirements of (i)
12 the federal aviation administration (or the successor thereto) or (ii)
13 the international civil aviation organization (or the successor there-
14 to), relating to the existence of a communication system between
15 aircraft and dispatcher, aircraft and air traffic control or ground
16 station and ground station (or any combination of the foregoing) for the
17 purposes of air safety and navigation and except a corporation, joint-
18 stock company or association which is liable to taxation under article
19 thirty-two of this chapter, shall pay for the privilege of exercising
20 its corporate franchise, or of doing business, or of employing capital,
21 or of owning or leasing property in the metropolitan commuter transpor-
22 tation district in such corporate or organized capacity, or of maintain-
23 ing an office in such district, a tax surcharge for all or any part of
24 its taxable years commencing on or after January first, nineteen hundred
25 eighty-two, but ending before December thirty-first, two thousand [thir-
26 teen] EIGHTEEN, which tax surcharge, in addition to the tax imposed by
27 section one hundred eighty-four of this article, shall be computed at
28 the rate of eighteen percent of the tax imposed under such section one
29 hundred eighty-four for such taxable years or any part of such taxable
30 years ending before December thirty-first, nineteen hundred eighty-three
31 after the deduction of any credits otherwise allowable under this arti-
32 cle, and at the rate of seventeen percent of the tax imposed under such
33 section for such taxable years or any part of such taxable years ending
34 on or after December thirty-first, nineteen hundred eighty-three after
35 the deduction of any credits otherwise allowable under this article;
36 provided, however, that such rates of tax surcharge shall be applied
37 only to that portion of the tax imposed under section one hundred eight-
38 y-four of this article after the deduction of any credits otherwise
39 allowable under this article which is attributable to the taxpayer's
40 business activity carried on within the metropolitan commuter transpor-
41 tation district; and provided, further, that the tax surcharge imposed
42 by this section on corporations, joint-stock companies and associations
43 formed for or principally engaged in the conduct of telephone or tele-
44 graph business shall be computed in accordance with this subdivision and
45 paragraph (c) of subdivision two of this section as if the three-quar-
46 ters of one percent rate of tax provided for in subdivision one of
47 section one hundred eighty-four of this article were applicable to such
48 telephone and telegraph businesses for taxable years commencing on or
49 after January first, nineteen hundred eighty-five and ending on or
50 before December thirty-first, nineteen hundred eighty-nine; and
51 provided, further, that the tax surcharge imposed by this section shall
52 not be imposed upon any taxpayer for more than [three] FOUR hundred
53 [seventy-two] THIRTY-TWO months. Provided, however, that for taxable
54 years beginning in two thousand and thereafter, for purposes of this
55 subdivision the tax imposed under section one hundred eighty-four of
56 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,

1 nineteen hundred eighty-three after the deduction of any credits other-
2 wise allowable under this article; provided, however, that such rates of
3 tax surcharge shall be applied only to that portion of the tax imposed
4 under section two hundred nine of this article after the deduction of
5 any credits otherwise allowable under this article which is attributable
6 to the taxpayer's business activity carried on within the metropolitan
7 commuter transportation district; and provided, further, that the tax
8 surcharge imposed by this section shall not be imposed upon any taxpayer
9 for more than [three] FOUR hundred [seventy-two] THIRTY-TWO months.
10 Provided however, that for taxable years commencing on or after July
11 first, nineteen hundred ninety-eight, such surcharge shall be calculated
12 as if the tax imposed under section two hundred ten of this article were
13 imposed under the law in effect for taxable years commencing on or after
14 July first, nineteen hundred ninety-seven and before July first, nine-
15 teen hundred ninety-eight. Provided however, that for taxable years
16 commencing on or after January first, two thousand seven, such surcharge
17 shall be calculated using the highest of the tax bases imposed pursuant
18 to paragraphs (a), (b), (c) or (d) of subdivision one of section two
19 hundred ten of this article and the amount imposed under paragraph (e)
20 of subdivision one of such section two hundred ten, for the taxable
21 year; and, provided further that, if such highest amount is the tax base
22 imposed under paragraph (a), (b) or (c) of such subdivision, then the
23 surcharge shall be computed as if the tax rates and limitations under
24 such paragraph were the tax rates and limitations under such paragraph
25 in effect for taxable years commencing on or after July first, nineteen
26 hundred ninety-seven and before July first, nineteen hundred ninety-
27 eight.

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

31 1. For the privilege of exercising its franchise or doing business in
32 the metropolitan commuter transportation district in a corporate or
33 organized capacity, there is hereby imposed on every taxpayer subject to
34 tax under this article, other than a New York S corporation, for the
35 taxable years commencing on or after January first, nineteen hundred
36 eighty-two but ending before December thirty-first, two thousand [thir-
37 teen] EIGHTEEN, a tax surcharge, in addition to the tax imposed under
38 section fourteen hundred fifty-one of this article, at the rate of eigh-
39 teen percent of the tax imposed under such section fourteen hundred
40 fifty-one of this article, for such taxable years or any part of such
41 taxable years ending before December thirty-first, nineteen hundred
42 eighty-three after the deduction of any credits otherwise allowable
43 under this article, and at the rate of seventeen percent of the tax
44 imposed under such section for such taxable years or any part of such
45 taxable years ending on or after December thirty-first, nineteen hundred
46 eighty-three after the deduction of any credits otherwise allowable
47 under this article; provided however, that such rates of tax surcharge
48 shall be applied only to that portion of the tax imposed under section
49 fourteen hundred fifty-one of this article after the deduction of any
50 credits otherwise allowable under this article which is attributable to
51 the taxpayer's business activity carried on within the metropolitan
52 commuter transportation district; and provided, further, that the tax
53 surcharge imposed by this section shall not be imposed upon any taxpayer
54 for more than [three] FOUR hundred [seventy-two] THIRTY-TWO months.
55 Provided however, that for taxable years commencing on or after July
56 first, two thousand, such surcharge shall be calculated as if the rate

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

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

6 (1) Every domestic insurance corporation and every foreign or alien
7 insurance corporation, and every life insurance corporation described in
8 subdivision (b) of section fifteen hundred one of this article, for the
9 privilege of exercising its corporate franchise, or of doing business,
10 or of employing capital, or of owning or leasing property in the metro-
11 politan commuter transportation district in a corporate or organized
12 capacity, or of maintaining an office in the metropolitan commuter
13 transportation district, for all or any part of its taxable years
14 commencing on or after January first, nineteen hundred eighty-two, but
15 ending before December thirty-first, two thousand [thirteen] EIGHTEEN,
16 except corporations specified in subdivision (c) of section fifteen
17 hundred twelve of this article, shall annually pay, in addition to the
18 taxes otherwise imposed by this article, a tax surcharge on the taxes
19 imposed under this article after the deduction of any credits otherwise
20 allowable under this article as allocated to such district. Such taxes
21 shall be allocated to such district for purposes of computing such tax
22 surcharge upon taxpayers subject to tax under subdivision (b) of section
23 fifteen hundred ten of this article by applying the methodology, proce-
24 dures and computations set forth in subdivisions (a) and (b) of section
25 fifteen hundred four of this article, except that references to terms
26 denoting New York premiums, and total wages, salaries, personal service
27 compensation and commissions within New York shall be read as denoting
28 within the metropolitan commuter transportation district and terms
29 denoting total premiums and total wages, salaries, personal service
30 compensation and commissions shall be read as denoting within the state.
31 If it shall appear to the commissioner that the application of the meth-
32 odology, procedures and computations set forth in such subdivisions (a)
33 and (b) does not properly reflect the activity, business or income of a
34 taxpayer within the metropolitan commuter transportation district, then
35 the commissioner shall be authorized, in the commissioner's discretion,
36 to adjust such methodology, procedures and computations for the purpose
37 of allocating such taxes by:

38 (A) excluding one or more factors therein;

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

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

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

15 fifteen hundred five of this article, as allocated to such district, for
16 such taxable years or any part of such taxable years ending on or after
17 December thirty-first, nineteen hundred eighty-three and before January
18 first, two thousand three after the deduction of any credits otherwise
19 allowable under this article, and at the rate of seventeen percent of
20 the taxes imposed under sections fifteen hundred one, fifteen hundred
21 two-a, and fifteen hundred ten of this article, as limited or otherwise
22 determined by subdivision (a) or (b) of section fifteen hundred five of
23 this article, as allocated to such district, for such taxable years or
24 any part of such taxable years ending after December thirty-first, two
25 thousand two after the deduction of any credits otherwise allowable
26 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 corpo-
rations 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

41 S 7. This act shall take effect immediately, provided, however, that
42 sections four and five of this act shall apply to taxpayers submitting
43 initial applications to the governor's office of motion picture and
44 television development on or after the date this act shall have become a
45 law, and to taxpayers who filed an initial application before this act
46 shall have become a law but who have not yet submitted a final applica-
47 tion to the governor's office of motion picture and television develop-
48 ment on or before the date this act shall have become a law; and the
49 amendments made to section 3 of part Y-1 of chapter 57 of the laws of
50 2009, amending the tax law relating to the empire state film production
51 credit, with the exception of subdivision b of such section, shall only
52 apply to taxpayers submitting initial applications to the governor's
53 office of motion picture and television development on or after the date
54 this act shall become a law.

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

11 S 2. The economic development law is amended by adding a new section
12 361 to read as follows:

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

15 (A) "INNOVATION HOT SPOT" SHALL MEAN A FACILITY OR FACILITIES DESIG-
16 NATED AS SUCH BY THE COMMISSIONER.

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

18 (I) IN THE FORMATIVE STAGE OF DEVELOPMENT;

19 (II) LOCATED IN NEW YORK STATE;

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

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

28 (2) IS SUBSTANTIALLY SIMILAR IN OPERATION AND IN OWNERSHIP TO A BUSI-
29 NESS ENTITY (OR ENTITIES) TAXABLE OR PREVIOUSLY TAXABLE UNDER THE
30 FOLLOWING PROVISIONS OF THE TAX LAW: ARTICLE NINE-A; SECTION ONE HUNDRED
31 EIGHTY-THREE, ONE HUNDRED EIGHTY-FOUR, ONE HUNDRED EIGHTY-FIVE OR FORMER
32 SECTION ONE HUNDRED EIGHTY-SIX OF ARTICLE NINE; ARTICLE THIRTY-TWO;
33 ARTICLE THIRTY-THREE; ARTICLE TWENTY-THREE, OR WOULD HAVE BEEN SUBJECT
34 TO TAX UNDER SUCH ARTICLE TWENTY-THREE (AS SUCH ARTICLE WAS IN EFFECT ON
35 JANUARY FIRST, NINETEEN HUNDRED EIGHTY) OR THE INCOME (OR LOSSES) OF
36 WHICH IS (OR WAS) INCLUDABLE UNDER ARTICLE TWENTY-TWO; OR

37 (B) A SOLE PROPRIETORSHIP, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR
38 NEW YORK SUBCHAPTER S CORPORATION THAT IS NOT SUBSTANTIALLY SIMILAR IN
39 OPERATION AND IN OWNERSHIP TO A BUSINESS ENTITY (OR ENTITIES) TAXABLE,
40 OR PREVIOUSLY TAXABLE, UNDER ARTICLE NINE-A OF THE TAX LAW, SECTION ONE
41 HUNDRED EIGHTY-THREE, ONE HUNDRED EIGHTY-FOUR, ONE HUNDRED EIGHTY-FIVE
42 OR FORMER SECTION ONE HUNDRED EIGHTY-SIX OF ARTICLE NINE OF THE TAX LAW,
43 ARTICLE THIRTY-TWO OR THIRTY-THREE OF THE TAX LAW, ARTICLE TWENTY-THREE
44 OF THE TAX LAW OR WHICH WOULD HAVE BEEN SUBJECT TO TAX UNDER SUCH ARTI-
45 CLE TWENTY-THREE (AS SUCH ARTICLE WAS IN EFFECT ON JANUARY FIRST, NINE-
46 TEEN HUNDRED EIGHTY) OR THE INCOME (OR LOSSES) OF WHICH IS (OR WAS)
47 INCLUDABLE UNDER ARTICLE TWENTY-TWO OF THE TAX LAW; AND

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

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

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

56 (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-

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

4 4. EACH OPERATOR OF AN INNOVATION HOT SPOT SHALL REPORT ON AN ANNUAL
5 BASIS ON ITS ACTIVITIES TO THE COMMISSIONER IN A MANNER AND ACCORDING TO
6 THE SCHEDULE ESTABLISHED BY THE DEPARTMENT, AND SHALL PROVIDE SUCH ADDI-
7 TIONAL INFORMATION AS THE COMMISSIONER MAY REQUIRE. THE COMMISSIONER
8 SHALL EVALUATE THE OPERATIONS OF THE INNOVATION HOT SPOTS USING METHODS
9 INCLUDING BUT NOT LIMITED TO SITE VISITS, REPORTS PURSUANT TO SPECIFIED
10 INFORMATION, AND REVIEW EVALUATIONS. IF THE COMMISSIONER IS UNSATISFIED
11 WITH THE PROGRESS OF AN OPERATOR OF AN INNOVATION HOT SPOT, THE COMMIS-
12 SIONER SHALL NOTIFY SUCH OPERATOR OF THE RESULTS OF ITS EVALUATIONS AND
13 THE FINDINGS OF DEFICIENCIES IN THE OPERATION OF SUCH HOT SPOT AND SHALL
14 ALLOW AND COOPERATE WITH SUCH OPERATOR TO REMEDY SUCH FINDINGS IN A
15 TIMELY MANNER.

16 5. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER, EMPLOYEES AND OFFI-
17 CERS OF THE DEPARTMENT AND THE DEPARTMENT OF TAXATION AND FINANCE SHALL
18 BE ALLOWED AND ARE DIRECTED TO SHARE AND EXCHANGE:

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

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

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

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

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

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

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

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

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

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

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

20 (I) ARTICLE 9-A, SECTION 208, SUBDIVISION (9), PARAGRAPH (A), SUBPARA-
21 GRAPH (18).

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

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

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

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

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

33 S 5. Section 209 of the tax law is amended by adding a new subdivision
34 11 to read as follows:

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

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

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

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

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

1 services described in subdivisions (b) and (c) of such section, and
2 consideration given or contracted to be given for, or for the use of,
3 such tangible personal property or services, where such tangible
4 personal property or services are sold to a qualified empire zone enter-
5 prise OR TO A QUALIFIED ENTITY THAT IS ALSO A TENANT IN AN INNOVATION
6 HOT SPOT AS PROVIDED IN SECTION THIRTY-EIGHT OF THIS CHAPTER, provided
7 that (A) such tangible personal property or tangible personal property
8 upon which such a service has been performed or such service (other than
9 a service described in subdivision (b) of section eleven hundred five of
10 this article) is directly and predominantly, or such a service described
11 in clause (A) or (D) of paragraph one of such subdivision (b) of section
12 eleven hundred five of this article is directly and exclusively, used or
13 consumed by (I) such QUALIFIED EMPIRE ZONE enterprise in an area desig-
14 nated as an empire zone pursuant to article eighteen-B of the general
15 municipal law with respect to which such enterprise is certified pursu-
16 ant to such article eighteen-B, OR (II) SUCH QUALIFIED ENTITY IN AN
17 INNOVATION HOT SPOT or (B) such a service described in clause (B) or (C)
18 of paragraph one of subdivision (b) of section eleven hundred five of
19 this article is delivered and billed to (I) such enterprise at an
20 address in such empire zone OR (II) SUCH QUALIFIED ENTITY AT THE ADDRESS
21 OF THE INNOVATION HOT SPOT WHERE IT IS A TENANT, or (C) the enterprise's
22 place of primary use of the service described in paragraph two of such
23 subdivision (b) of section eleven hundred five is at an address in such
24 empire zone OR AT AN INNOVATION HOT SPOT; provided, further, that, in
25 order for a motor vehicle, as defined in subdivision (c) of section
26 eleven hundred seventeen of this article, or tangible personal property
27 related to such a motor vehicle to be found to be used predominantly in
28 such a zone, at least fifty percent of such motor vehicle's use shall be
29 exclusively within such zone or at least fifty percent of such motor
30 vehicle's use shall be in activities originating or terminating in such
31 zone, or both; and either or both such usages shall be computed either
32 on the basis of mileage or hours of use, at the discretion of such
33 enterprise. For purposes of this subdivision, tangible personal property
34 related to such a motor vehicle shall include a battery, diesel motor
35 fuel, an engine, engine components, motor fuel, a muffler, tires and
36 similar tangible personal property used in or on such a motor vehicle.

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

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

50 S 9. This act shall take effect immediately.

51

PART D

52 Section 1. Subsection (g) of section 615 of the tax law, as added by
53 section 3 of part HH of chapter 57 of the laws of 2010, is amended to
54 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

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

9 (B) [Controlling interest. A controlling interest shall mean (i) in
10 the case of a corporation, either thirty percent or more of the total
11 combined voting power of all classes of stock of such corporation, or
12 thirty percent or more of the capital, profits or beneficial interest in
13 such voting stock of such corporation, and (ii) in the case of a part-
14 nership, association, trust or other entity, thirty percent or more of
15 the capital, profits or beneficial interest in such partnership, associ-
16 ation, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF
17 TAX" MEANS, AS TO ANY STATE OR U.S. POSSESSION, THE MAXIMUM STATUTORY
18 RATE OF TAX IMPOSED BY THE STATE OR POSSESSION ON OR MEASURED BY A
19 RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE,
20 IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURIS-
21 DICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS
22 TO ANY STATE OR U.S. POSSESSION IS ZERO WHERE THE RELATED MEMBER'S NET
23 INCOME TAX LIABILITY IN SAID JURISDICTION IS REPORTED ON A COMBINED OR
24 CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED MEMBER
25 WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED
26 MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION,
27 WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A JURISDICTION IN WHICH A
28 RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR SIMI-
29 LAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAIN-
30 TAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME IN
31 THAT JURISDICTION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID
32 JURISDICTION SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX
33 THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT
34 OR SIMILAR ADJUSTMENT.

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

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

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

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

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

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

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

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

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

47 (III) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE
48 TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND
49 IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (I) THE ROYALTY PAYMENT
50 WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGANIZED UNDER THE
51 LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (II) THE RELATED
52 MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHENSIVE
53 INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (III) THE
54 RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE THAT
55 INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER;
56 (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.

1 (iii) Royalty payments. Royalty payments are payments directly
2 connected to the acquisition, use, maintenance or management, ownership,
3 sale, exchange, or any other disposition of licenses, trademarks, copy-
4 rights, trade names, trade dress, service marks, mask works, trade
5 secrets, patents and any other similar types of intangible assets as
6 determined by the commissioner, and [includes] INCLUDE amounts allowable
7 as interest deductions under section one hundred sixty-three of the
8 internal revenue code to the extent such amounts are directly or indi-
9 rectly for, related to or in connection with the acquisition, use, main-
10 tenance or management, ownership, sale, exchange or disposition of such
11 intangible assets.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 such voting stock of such corporation, and (ii) in the case of a part-
2 nership, association, trust or other entity, thirty percent or more of
3 the capital, profits or beneficial interest in such partnership, associ-
4 ation, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE
5 OF TAX" MEANS, AS TO ANY STATE OR U.S. POSSESSION, THE MAXIMUM STATUTORY
6 RATE OF TAX IMPOSED BY THE STATE OR POSSESSION ON OR MEASURED BY A
7 RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE,
8 IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURIS-
9 DICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS
10 TO ANY STATE OR U.S. POSSESSION IS ZERO WHERE THE RELATED MEMBER'S NET
11 INCOME TAX LIABILITY IN SAID JURISDICTION IS REPORTED ON A COMBINED OR
12 CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED MEMBER
13 WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED
14 MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION,
15 WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A JURISDICTION IN WHICH A
16 RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR SIMI-
17 LAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAIN-
18 TAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME IN
19 THAT JURISDICTION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID
20 JURISDICTION SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX
21 THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT
22 OR SIMILAR ADJUSTMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (B) [Controlling interest. A controlling interest shall mean (i) in
21 the case of a corporation, either thirty percent or more of the total
22 combined voting power of all classes of stock of such corporation, or
23 thirty percent or more of the capital, profits or beneficial interest in
24 such voting stock of such corporation, and (ii) in the case of a part-
25 nership, association, trust or other entity, thirty percent or more of
26 the capital, profits or beneficial interest in such partnership, associ-
27 ation, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF
28 TAX" MEANS, AS TO ANY STATE OR U.S. POSSESSION, THE MAXIMUM STATUTORY
29 RATE OF TAX IMPOSED BY THE STATE OR POSSESSION ON OR MEASURED BY A
30 RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE,
31 IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURIS-
32 DICTION. FOR PURPOSES OF THIS DEFINITION, THE EFFECTIVE RATE OF TAX AS
33 TO ANY STATE OR U.S. POSSESSION IS ZERO WHERE THE RELATED MEMBER'S NET
34 INCOME TAX LIABILITY IN SAID JURISDICTION IS REPORTED ON A COMBINED OR
35 CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED MEMBER
36 WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED
37 MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION,
38 WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A JURISDICTION IN WHICH A
39 RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR SIMI-
40 LAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAIN-
41 TAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME IN
42 THAT JURISDICTION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID
43 JURISDICTION SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX
44 THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT
45 OR SIMILAR ADJUSTMENT.

46 (C) Royalty payments. Royalty payments are payments directly connected
47 to the acquisition, use, maintenance or management, ownership, sale,
48 exchange, or any other disposition of licenses, trademarks, copyrights,
49 trade names, trade dress, service marks, mask works, trade secrets,
50 patents and any other similar types of intangible assets as determined
51 by the commissioner, and [includes] INCLUDE amounts allowable as inter-
52 est deductions under section one hundred sixty-three of the internal
53 revenue code to the extent such amounts are directly or indirectly for,
54 related to or in connection with the acquisition, use, maintenance or
55 management, ownership, sale, exchange or disposition of such intangible
56 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.

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

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

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

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

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

1 WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE RELATED
2 MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS DEFINITION,
3 WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A JURISDICTION IN WHICH A
4 RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR SIMI-
5 LAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER MAIN-
6 TAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST INCOME
7 IN THAT JURISDICTION, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID
8 JURISDICTION SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX
9 THAT APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT
10 OR SIMILAR ADJUSTMENT.

11 (iii) Royalty payments. Royalty payments are payments directly
12 connected to the acquisition, use, maintenance or management, ownership,
13 sale, exchange, or any other disposition of licenses, trademarks, copy-
14 rights, trade names, trade dress, service marks, mask works, trade
15 secrets, patents and any other similar types of intangible assets as
16 determined by the commissioner, and [includes] INCLUDE amounts allowable
17 as interest deductions under section one hundred sixty-three of the
18 internal revenue code to the extent such amounts are directly or indi-
19 rectly for, related to or in connection with the acquisition, use, main-
20 tenance or management, ownership, sale, exchange or disposition of such
21 intangible assets.

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

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

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

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

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

49 (C) Royalty income exclusions. For the purpose of computing entire net
50 income, a taxpayer shall be allowed to deduct royalty payments directly
51 or indirectly received from a related member during the taxable year to
52 the extent included in the taxpayer's federal taxable income unless such
53 royalty payments would not be required to be added back under subpara-
54 graph (B) of this paragraph or other similar provision in this chapter.]

55 EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT
56 APPLY TO THE PORTION OF THE ROYALTY PAYMENT THAT THE TAXPAYER ESTAB-

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

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

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

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

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

47 (e) Related members expense add back [and income exclusion]. (1)
48 Definitions. (A) Related member [or members. For purposes of this subdi-
49 vision, the term related member or members means a person, corporation,
50 or other entity, including an entity that is treated as a partnership or
51 other pass-through vehicle for purposes of federal taxation, whether
52 such person, corporation or entity is a taxpayer or not, where one such
53 person, corporation, or entity, or set of related persons, corporations
54 or entities, directly or indirectly owns or controls a controlling
55 interest in another entity. Such entity or entities may include all
56 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:

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

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

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

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

40 (III) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF
41 THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE
42 AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE
43 ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGAN-
44 IZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (II) THE
45 RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHEN-
46 SIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (III)
47 THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE
48 THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE
49 TAXPAYER; (IV) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS
50 TAXED IN SUCH COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT
51 IMPOSED BY THIS CITY; AND (V) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR
52 INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSI-
53 NESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

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

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

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

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

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

46 (C) Royalty payments. Royalty payments are payments directly connected
47 to the acquisition, use, maintenance or management, ownership, sale,
48 exchange, or any other disposition of licenses, trademarks, copyrights,
49 trade names, trade dress, service marks, mask works, trade secrets,
50 patents and any other similar types of intangible assets as determined
51 by the commissioner of finance, and [includes] INCLUDE amounts allowable
52 as interest deductions under section one hundred sixty-three of the
53 internal revenue code to the extent such amounts are directly or indi-
54 rectly for, related to or in connection with the acquisition, use, main-
55 tenance or management, ownership, sale, exchange or disposition of such
56 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.

1 (III) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE
2 TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND
3 IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE
4 ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGAN-
5 IZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (II) THE
6 RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHEN-
7 SIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (III)
8 THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE
9 THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE
10 TAXPAYER; (IV) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS
11 TAXED IN SUCH COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT
12 IMPOSED BY THIS CITY; AND (V) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR
13 INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSI-
14 NESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

15 (IV) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE
16 TAXPAYER AND THE COMMISSIONER OF FINANCE AGREE IN WRITING TO THE APPLI-
17 CATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE COMMIS-
18 SIONER OF FINANCE MAY, IN HIS OR HER DISCRETION, AGREE TO THE APPLICA-
19 TION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS WHEN HE OR SHE
20 CONCLUDES THAT IN THE ABSENCE OF SUCH AGREEMENT THE INCOME OF THE
21 TAXPAYER WOULD NOT BE PROPERLY REFLECTED.

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

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

38 (B) [Controlling interest. A controlling interest shall mean (i) in
39 the case of a corporation, either thirty percent or more of the total
40 combined voting power of all classes of stock of such corporation, or
41 thirty percent or more of the capital, profits or beneficial interest in
42 such voting stock of such corporation, and (ii) in the case of a part-
43 nership, association, trust or other entity, thirty percent or more of
44 the capital, profits or beneficial interest in such partnership, associ-
45 ation, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE
46 OF TAX" MEANS, AS TO ANY CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED
47 BY THE CITY ON OR MEASURED BY A RELATED MEMBER'S NET INCOME MULTIPLIED
48 BY THE APPORTIONMENT PERCENTAGE, IF ANY, APPLICABLE TO THE RELATED
49 MEMBER UNDER THE LAWS OF SAID JURISDICTION. FOR PURPOSES OF THIS DEFINI-
50 TION, THE EFFECTIVE RATE OF TAX AS TO ANY CITY IS ZERO WHERE THE
51 RELATED MEMBER'S NET INCOME TAX LIABILITY IN SAID CITY IS REPORTED ON A
52 COMBINED OR CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE
53 RELATED MEMBER WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND
54 THE RELATED MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS
55 DEFINITION, WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A CITY IN WHICH
56 A RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR

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

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

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

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

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

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

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

43 (3) Royalty income exclusions. For the purpose of computing entire net
44 income, a taxpayer shall be allowed to deduct royalty payments directly
45 or indirectly received from a related member during the taxable year to
46 the extent included in the taxpayer's federal taxable income unless such
47 royalty payments would not be required to be added back under paragraph
48 two of this subdivision or other similar provision in this chapter.]

49 EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT
50 APPLY TO THE PORTION OF THE ROYALTY PAYMENT THAT THE TAXPAYER ESTAB-
51 LISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM
52 SPECIFIED BY THE COMMISSIONER OF FINANCE, MEETS ALL OF THE FOLLOWING
53 REQUIREMENTS: (I) THE RELATED MEMBER WAS SUBJECT TO TAX IN THIS CITY OR
54 ANOTHER CITY WITHIN THE UNITED STATES OR A FOREIGN NATION OR SOME COMBI-
55 NATION THEREOF ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID,
56 ACCRUED OR INCURRED BY THE TAXPAYER; (II) THE RELATED MEMBER DURING THE

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

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

16 (III) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF
17 THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE
18 AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE
19 ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGAN-
20 IZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (II) THE
21 RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHEN-
22 SIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (III)
23 THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE
24 THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE
25 TAXPAYER; (IV) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS
26 TAXED IN SUCH COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT
27 IMPOSED BY THIS CITY; AND (V) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR
28 INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSI-
29 NESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (III) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF
34 THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE
35 AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE
36 ROYALTY PAYMENT WAS PAID, ACCRUED OR INCURRED TO A RELATED MEMBER ORGAN-
37 IZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED STATES; (II) THE
38 RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHEN-
39 SIVE INCOME TAX TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (III)
40 THE RELATED MEMBER WAS SUBJECT TO TAX IN A FOREIGN NATION ON A TAX BASE
41 THAT INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE
42 TAXPAYER; (IV) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS
43 TAXED IN SUCH COUNTRY AT AN EFFECTIVE RATE OF TAX AT LEAST EQUAL TO THAT
44 IMPOSED BY THIS CITY; AND (V) THE ROYALTY PAYMENT WAS PAID, ACCRUED OR
45 INCURRED PURSUANT TO A TRANSACTION THAT WAS UNDERTAKEN FOR A VALID BUSI-
46 NESS PURPOSE AND USING TERMS THAT REFLECT AN ARM'S LENGTH RELATIONSHIP.

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

54 S 13. This act shall take effect immediately and shall apply to taxa-
55 ble years beginning on or after January 1, 2013.

1

PART F

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

7 (A) For taxable years beginning on or after January first, two thou-
8 sand ten and before January first, two thousand [fifteen] TWENTY, a
9 taxpayer shall be allowed a credit as hereinafter provided, against the
10 tax imposed by this article, in an amount equal to one hundred percent
11 of the amount of credit allowed the taxpayer with respect to a certified
12 historic structure under subsection (a) (2) of section 47 of the federal
13 internal revenue code with respect to a certified historic structure
14 located within the state. Provided, however, the credit shall not exceed
15 five million dollars. For taxable years beginning on or after January
16 first, two thousand [fifteen] TWENTY, a taxpayer shall be allowed a
17 credit as hereinafter provided, against the tax imposed by this article,
18 in an amount equal to thirty percent of the amount of credit allowed the
19 taxpayer with respect to a certified historic structure under subsection
20 (a)(2) of section 47 of the federal internal revenue code with respect
21 to a certified historic structure located within the state; provided,
22 however, the credit shall not exceed one hundred thousand dollars.

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

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

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

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

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

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

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

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

30 (A) For taxable years beginning on or after January first, two thou-
31 sand ten and before January first, two thousand [fifteen] TWENTY, a
32 taxpayer shall be allowed a credit as hereinafter provided, against the
33 tax imposed by this article, in an amount equal to one hundred percent
34 of the amount of credit allowed the taxpayer with respect to a certified
35 historic structure under subsection (a)(2) of section 47 of the federal
36 internal revenue code with respect to a certified historic structure
37 located within the state. Provided, however, the credit shall not exceed
38 five million dollars. For taxable years beginning on or after January
39 first, two thousand [fifteen] TWENTY, a taxpayer shall be allowed a
40 credit as hereinafter provided, against the tax imposed by this article,
41 in an amount equal to thirty percent of the amount of credit allowed the
42 taxpayer with respect to a certified historic structure under subsection
43 (a)(2) of section 47 of the federal internal revenue code with respect
44 to a certified historic structure located within the state. Provided,
45 however, the credit shall not exceed one hundred thousand dollars.

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

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

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

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

15 (A) For taxable years beginning on or after January first, two thou-
16 sand ten and before January first, two thousand [fifteen] TWENTY, a
17 taxpayer shall be allowed a credit as hereinafter provided, against the
18 tax imposed by this article, in an amount equal to one hundred percent
19 of the amount of credit allowed the taxpayer with respect to a certified
20 historic structure under subsection (a)(2) of section 47 of the federal
21 internal revenue code with respect to a certified historic structure
22 located within the state. Provided, however, the credit shall not exceed
23 five million dollars. For taxable years beginning on or after January
24 first, two thousand [fifteen] TWENTY, a taxpayer shall be allowed a
25 credit as hereinafter provided, against the tax imposed by this article,
26 in an amount equal to thirty percent of the amount of credit allowed the
27 taxpayer with respect to a certified historic structure under subsection
28 (a)(2) of section 47 of the federal internal revenue code with respect
29 to a certified historic structure located within the state. Provided,
30 however, the credit shall not exceed one hundred thousand dollars.

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

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

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

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

8

PART G

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

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

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

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

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

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

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

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

51 4. Carryovers. In no event shall the credit under this section be
52 allowed in an amount which will reduce the tax payable to less than the
53 applicable minimum tax fixed by section one hundred eighty-three or one
54 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.

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

8 [(ii)] (B) Cessation of qualification. [(I) A qualified hybrid vehicle
9 ceases to be qualified if
10 (a) it is modified by the taxpayer so that it no longer meets the
11 requirements of a qualified hybrid vehicle as defined in subparagraph
12 (B) of paragraph three of this subsection.
13 (b) the taxpayer receiving the credit under this subsection sells or
14 disposes of the vehicle and knows or has reason to know that the vehicle
15 will be so modified.

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

20 (ii) Cessation of qualification. Clean-fuel vehicle refueling] ELEC-
21 TRIC VEHICLE RECHARGING property ceases to be qualified if:
22 [(I)] (I) the property no longer qualifies as [property described in
23 section thirty C of the internal revenue code] ELECTRIC VEHICLE RECHARG-
24 ING PROPERTY, or
25 [(II)] (II) fifty percent or more of the use of the property in a
26 taxable year is other than in a trade or business in this state, or
27 [(III)] (III) the taxpayer receiving the credit under this subsection
28 sells or disposes of the property and knows or has reason to know that
29 the property will be used in a manner described in [item (I)] CLAUSE (I)
30 or [(II)] (II) of this [clause] SUBPARAGRAPH.
31 [(iii)] (C) Recapture amount. The recapture amount is equal to the
32 credit allowable under this subsection multiplied by a fraction, the
33 numerator of which is the total recovery period for the property minus
34 the number of recovery years prior to, but not including, the recapture
35 year, and the denominator of which is the total recovery period.

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

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

| | |
|--------------------------------|-------------------------------|
| 42 (ix) [Alternative fuels] | [Cost] AMOUNT OF CREDIT |
| 43 ELECTRIC VEHICLE | under subdivision twenty-four |
| 44 RECHARGING PROPERTY | of section two hundred ten |
| 45 credit under subsection (p) | |

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

49 PART H

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

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

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

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

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

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

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

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

35 (c) sections fourteen-a and fifteen-a of this act shall take effect
36 September 15, 2011 and expire and be deemed repealed December 31, 2012
37 but shall take effect only if the commissioner of taxation and finance
38 has reported in the report required by section seventeen-b of this act
39 that the percentage of individual taxpayers electronically filing their
40 2010 income tax returns is eighty-five percent or greater; AND

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

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

49 S 6. This act shall take effect immediately.

50 PART I

51 Section 1. Legislative intent. The legislature seeks to demonstrate
52 that the state of New York is open for business by promoting, attract-
53 ing, and encouraging the development of business in the state. The
54 legislature intends to encourage businesses to locate in the state and

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

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

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

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

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

25 S 4. Section 1115 of the tax law is amended by adding a new subdivi-
26 sion (ii) to read as follows:

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

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

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

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

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

1 4. A LICENSE UNDER THIS SECTION SHALL BE ISSUED TO ALL ELIGIBLE APPLI-
2 CANTS EXCEPT FOR GOOD CAUSE SHOWN.

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

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

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

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

17 (B) EACH SAMPLE SHALL BE LIMITED:

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

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

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

22 (C) NO SAMPLE SHALL BE PROVIDED TO A CUSTOMER DURING THE HOURS PROHIB-
23 ITED BY THE PROVISIONS OF SUBDIVISION FIVE OF SECTION ONE HUNDRED SIX OF
24 THIS CHAPTER; AND

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

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

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

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

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

46 2. LICENSES issued pursuant to sections sixty-four, sixty-four-a and
47 sixty-four-b of this article shall be effective for two years at two
48 times that annual fee, except that, in implementing the purposes of this
49 section, the liquor authority shall schedule the commencement dates,
50 duration and expiration dates thereof to provide for an equal cycle of
51 license renewals issued under each such section through the course of
52 the fiscal year. [Notwithstanding the foregoing, commencing on December
53 first, nineteen hundred ninety-eight and concluding on July thirty-
54 first, two thousand two, a licensee issued a license pursuant to section
55 sixty-four, sixty-four-a or sixty-four-b of this article may elect to
56 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.

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

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

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

24 (ii) any such premises or business constituting the overnight lodging
25 and resort facility located wholly within the boundaries of that tract
26 or parcel of land situate in the city of Canandaigua, county of Ontario,
27 beginning at a point in the northerly line of village lot nine where it
28 meets with South Main Street, thence south sixty-nine degrees fifty-four
29 minutes west a distance of nine hundred sixteen and twenty-three
30 hundredths feet to an iron pin; thence in the same course a distance of
31 fourteen feet to an iron pin; thence in the same course a distance of
32 fourteen and four-tenths feet to a point; thence south fifteen degrees
33 thirty-eight minutes and forty seconds east a distance of four hundred
34 forty-six and eighty-seven hundredths feet to a point; thence south
35 twenty-eight degrees thirty-seven minutes and fifty seconds east a
36 distance of one hundred thirteen and eighty-four hundredths feet to a
37 point; thence south eighty-five degrees and forty-seven minutes east a
38 distance of forty-seven and sixty-one hundredths feet to an iron pin;
39 thence on the same course a distance of three hundred and sixty-five
40 feet to an iron pin; thence north seventeen degrees twenty-one minutes
41 and ten seconds east a distance of four hundred fifty-seven and thirty-
42 two hundredths feet to an iron pin; thence north nineteen degrees and
43 thirty minutes west a distance of two hundred and forty-eight feet to a
44 point; thence north sixty-nine degrees and fifty-four minutes east a
45 distance of two hundred eighty-four and twenty-six hundredths feet to a
46 point; thence north nineteen degrees and thirty minutes west a distance
47 of sixty feet to the point and place of beginning, provided that such
48 facility maintains not less than one hundred twenty rooms and suites for
49 overnight lodging[,];

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

1 side of seventh avenue one hundred feet five inches to the center line
2 of the block; running thence easterly and parallel with the northerly
3 side of west fifty-fourth street and along the center line of the block
4 fifty feet to a point; running thence northerly and parallel with the
5 easterly side of seventh avenue one hundred feet five inches to the
6 southerly side of west fifty-fifth street at a point distant one hundred
7 fifty feet easterly from the intersection of the said southerly side of
8 west fifty-fifth street and the easterly side of seventh avenue; running
9 thence easterly along the southerly side of west fifty-fifth street
10 thirty-one feet three inches to a point; running thence southerly and
11 parallel with the easterly side of the seventh avenue one hundred feet
12 five inches to the center line of the block; running thence easterly
13 along the center line of the block and parallel with the southerly side
14 of west fifty-fifth street, one hundred feet; running thence northerly
15 and parallel with the easterly side of seventh avenue one hundred feet
16 five inches to the southerly side of west fifty-fifth street; running
17 thence easterly along the southerly side of west fifty-fifth street
18 twenty-one feet ten and one-half inches to a point; running thence
19 southerly and parallel with the easterly side of seventh avenue one
20 hundred feet five inches to the center line of the block; running thence
21 westerly along the center line of the block and parallel with the north-
22 erly side of west fifty-fourth street three feet one and one-half inch-
23 es; running thence southerly and parallel with the easterly side of
24 seventh avenue one hundred feet five inches to the northerly side of
25 west fifty-fourth street at a point distant three hundred feet easterly
26 from the intersection of the said northerly side of west fifty-fourth
27 street and the easterly side of seventh avenue; running thence westerly
28 and along the northerly side of west fifty-fourth street two hundred
29 feet to the point or place of beginning, provided that such facility
30 maintains not less than four hundred guest rooms and suites for over-
31 night lodging[.];

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

1 distance of 119 feet, more or less, to the northerly line of Lot. No.
2 22; from thence easterly in the northerly line of Lot 22 and 23 to the
3 northeast corner of Lot No. 23 and the point of beginning. Also includ-
4 ing the lands to the center of Shore Drive included between the norther-
5 ly straight line continuation of the side lines of the above described
6 parcel, and to the center of Park Place, where they abut the above
7 described premises SUBJECT to the use thereof for street purposes. Being
8 the same premises conveyed by Morestuff, Inc. to Madeline Sellers by
9 deed dated June 30, 1992, recorded in the Essex County Clerk's Office on
10 July 10, 1992 in Book 1017 of Deeds at Page 318;

11 (v) any such premises or business located on that certain piece or
12 parcel of land, or any subdivision thereof, situate, lying and being in
13 the Town of Plattsburgh, County of Clinton, State of New York and being
14 more particularly bounded and described as follows: Starting at an iron
15 pipe found in the easterly bounds of the highway known as the Old Mili-
16 tary Turnpike, said iron pipe being located 910.39 feet southeasterly,
17 as measured along the easterly bounds of said highway, from the souther-
18 ly bounds of the roadway known as Industrial Parkway West, THENCE
19 running S 31° 54' 33" E along the easterly bounds of said Old Military
20 Turnpike Extension, 239.88 feet to a point marking the beginning of a
21 curve concave to the west; thence southerly along said curve, having a
22 radius of 987.99 feet, 248.12 feet to an iron pipe found marking the
23 point of beginning for the parcel herein being described, said point
24 also marked the southerly corner of lands of Larry Garrow, et al, as
25 described in Book 938 of Deeds at page 224; thence N 07° 45' 4" E along
26 the easterly bounds of said Garrow, 748.16 feet to a 3"x4" concrete
27 monument marking the northeasterly corner of said Garrow, the northwes-
28 terly corner of the parcel herein being described and said monument also
29 marking the southerly bounds of lands of Salerno Plastic Corp. as
30 described in Book 926 of Deeds at Page 186; thence S 81° 45' 28" E along
31 a portion of the southerly bounds of said Salerno Plastic Corp., 441.32
32 feet to an iron pin found marking the northeasterly corner of the parcel
33 herein being described and also marking the northwest corner of the
34 remaining lands now or formerly owned by said Marx and DeLaura; thence S
35 07° 45' 40" W along the Westerly bounds of lands now of formerly of said
36 Marx and DeLaura and along the easterly bounds of the parcel herein
37 being described, 560.49 feet to an iron pin; thence N 83° 43' 21" W
38 along a portion of the remaining lands of said Marx and DeLaura, 41.51
39 feet to an iron pin; thence S 08° 31' 30" W, along a portion of the
40 remaining lands of said Marx and DeLaura, 75.01 feet to an iron pin
41 marking northeasterly corner of lands currently owned by the Joint Coun-
42 cil for Economic Opportunity of Plattsburgh and Clinton County, Inc. as
43 described in Book 963 of Deeds at Page 313; thence N 82° 20' 32" W along
44 a portion of the northerly bounds of said J.C.E.O., 173.50 feet to an
45 iron pin; thence 61° 21' 12" W, continuing along a portion of the north-
46 erly bounds of said J.C.E.O., 134.14 feet to an iron pin; thence S 07°
47 45' 42" W along the westerly bounds of said J.C.E.O., 50 feet to an iron
48 pin; thence S 66° 48' 56" W along a portion of the northerly bounds of
49 remaining lands of said Marx and DeLaura, 100.00 feet to an iron pipe
50 found on the easterly bounds of the aforesaid highway, said from pipe
51 also being located on a curve concave to the west; thence running and
52 running northerly along the easterly bounds of the aforesaid highway and
53 being along said curve, with the curve having a radius of 987.93 feet,
54 60.00 feet to the point of beginning and containing 6.905 acres of land.
55 Being the same premises as conveyed to Ronald Marx and Alice Marx by
56 deed of CIT Small Business Lending Corp., as agent of the administrator,

1 U.S. Small Business Administration, an agency of the United States
2 Government dated September 10, 2001 and recorded in the office of the
3 Clinton County Clerk on September 21, 2001 as Instrument #135020; [or]
4 (vi) any such premises or business located on the west side of New
5 York state route 414 in military lots 64 and 75 located wholly within
6 the boundaries of that tract or parcel of land situated in the town of
7 Lodi, county of Seneca beginning at an iron pin on the assumed west line
8 of New York State Route 414 on the apparent north line of lands reputed-
9 ly of White (lib. 420, page 155); said iron pin also being northerly a
10 distance of 1200 feet more or less from the centerline of South Miller
11 Road; Thence leaving the point of beginning north 85-17'-44" west along
12 said lands of White a distance of 2915.90 feet to an iron pin Thence
13 north 03-52'-48" east along said lands of White, passing through an iron
14 pin 338.36 feet distant, and continuing further along that same course a
15 distance of 13.64 feet farther, the total distance being 352.00 feet to
16 a point in the assumed centerline of Nellie Neal Creek; Thence in gener-
17 ally a north westerly direction the following courses and distances
18 along the assumed centerline of Nellie Neal Creek; north 69-25'-11" west
19 a distance of 189.56 feet to a point; north 63-40'-00" west a distance
20 of 156.00 feet to a point; north 49-25'-00" west a distance of 80.00
21 feet to a point; south 80-21'-00" west a distance of 90.00 feet to a
22 point; north 72-03'-00" west a distance of 566.00 feet to a point; north
23 68-15'-00" west a distance of 506.00 feet to a point; north 55-16'-00"
24 west a distance of 135.00 feet to a point; south 69-18'-00" west a
25 distance of 200.00 feet to a point; south 88-00'-00" west a distance of
26 170.00 feet to a point on a tie line at or near the high water line of
27 Seneca Lake; Thence north 25-17'-00" east along said tie line a distance
28 of 238.00 feet to an iron pipe; Thence south 82-04'-15" east along lands
29 reputedly of M. Wagner (lib. 464, page 133) a distance of 100.00 feet to
30 an iron pin; Thence north 06-56'-47" east along said lands of M. Wagner
31 a distance of 100.00 feet to an iron pipe; Thence north 09-34'-28" east
32 along lands reputedly of Schneider (lib. 429, page 37) a distance of
33 50.10 feet to an iron pipe; Thence north 07-49'-11" east along lands
34 reputedly of Oney (lib. 484, page 24) a distance of 50.00 feet to an
35 iron pipe; Thence north 82-29'-40" west along said lands of Oney a
36 distance of 95.30 feet to an iron pipe on a tie line at or near the
37 highwater line of Seneca Lake; Thence north 08-15'-22" east along said
38 tie line a distance of 25.00 feet to an iron pin; Thence south
39 82-28'-00" east along lands reputedly of Yu (lib. 405, page 420) a
40 distance of 96.53 feet to an iron pipe; Thence north 34-36'-59" east
41 along said lands of Yu a distance of 95.00 feet to a point in the
42 assumed centerline of Van Liew Creek; Thence in generally an easterly
43 direction the following courses and distances along the assumed center-
44 line of Van Liew Creek; north 72-46'-37" east a distance of 159.98 feet
45 to a point; north 87-53'-00" east a distance of 94.00 feet to a point;
46 south 71-12'-00" east a distance of 52.00 feet to a point; south
47 84-10'-00" east a distance of 158.00 feet to a point; south 59-51'-00"
48 east a distance of 160.00 feet to a point; south 83-29'-00" east a
49 distance of 187.00 feet to a point; Thence north 01-33'-40" east along
50 lands reputedly of Hansen (lib. 515, page 205) passing through an iron
51 pipe 32.62 feet distant, and continuing further along that same course
52 passing through an iron pin 205.38 feet farther, and continuing still
53 further along that same course a distance of 21.45 feet farther, the
54 total distance being 259.45 feet to the assumed remains of a White Oak
55 stump; Thence north 69-16'-11" east along lands reputedly of Schwartz
56 (lib. 374, page 733) being tie lines along the top of the south bank of

1 Campbell Creek a distance of 338.00 feet to a point; Thence south
2 57-17'32" east along said tie line a distance of 136.60 feet to a point;
3 Thence south 74-45'-00" east along said tie line a distance of 100.00
4 feet to an iron pin; Thence north 04-46'-00" east along said lands of
5 Schwartz a distance of 100.00 feet to a point in the assumed centerline
6 of Campbell Creek; Thence in generally an easterly direction the follow-
7 ing courses and distances along the assumed centerline of Campbell
8 Creek; south 71-34'-00" east a distance of 330.00 feet to a point; north
9 76-53'-00" east a distance of 180.00 feet to a point; north 83-05'00"
10 east a distance of 230.00 feet to a point; south 66-44'-00" east a
11 distance of 90.00 feet to a point; south 81-10'-00" east a distance of
12 240.00 feet to a point; south 45-29'-15" east a distance of 73.18 feet
13 to a point; Thence south 05-25'-50" west along lands reputedly of Stan-
14 ley Wagner (lib. 450, page 276) a distance of 135.00 feet to a point on
15 the assumed north line of Military Lot 75; Thence south 84-34'-10" east
16 along said lands of Wagner and the assumed north line of Military Lot 75
17 a distance of 1195.06 feet to an iron pin; Thence south 06-57'52" west
18 along said lands of M. Wagner (lib. 414, page 267) passing through an
19 iron pin 215.58 feet distant, and continuing further along that same
20 course a distance of 20.59 feet farther, the total distance being 236.17
21 feet to a point in the assumed centerline of Campbell Creek; Thence in
22 generally a south easterly direction the following course and distances
23 along the assumed centerline of Campbell Creek; north 78-23'-09" east a
24 distance of 29.99 feet to a point; south 46-09'-15" east a distance of
25 65.24 feet to a point; north 85-55'-09" east a distance of 60.10 feet to
26 a point; south 61-59'-50" east a distance of 206.91 feet to a point;
27 north 63-58'-27" east a distance of 43.12 feet to a point; south
28 28-51'-21" east a distance of 47.72 feet to a point; south 15-14'-08"
29 west a distance of 33.42 feet to a point; south 79-16'-32" east a
30 distance of 255.15 feet to a point; south 62-19'-46" east a distance of
31 75.82 feet to a point; north 76-10'-42" east a distance of 99.60 feet to
32 a point; north 82-12'55" east a distance of 86.00 feet to a point; south
33 44-13'53" east a distance of 64.08 feet to a point; north 67-52'-46"
34 east a distance of 73.98 feet to a point; north 88-13'-13" east a
35 distance of 34.64 feet to a point on the assumed west line of New York
36 State Route 414; Thence south 20-13'-30" east along the assumed west
37 line of New York State Route 414 a distance of 248.04 feet to a concrete
38 monument; Thence south 02-10'-30" west along said road line a distance
39 of 322.90 feet to an iron pin; Thence 13-14'-50" west along said road
40 line a distance of 487.41 feet to an iron pin, said iron pin being the
41 point and place of beginning; Comprising an area of 126.807 acres of
42 land according to a survey completed by Michael D. Karlsen entitled
43 "Plan Owned by Stanley A. Wagner" known as Parcel A of Job number
44 98-505. This survey is subject to all utility easements and easements
45 and right-of-ways of record which may affect the parcel of land. This
46 survey is also subject to the rights of the public in and to lands here-
47 in referred to as New York State Route 414. This survey intends to
48 describe a portion of the premises as conveyed by Ruth V. Wagner to
49 Stanley A. Wagner by deed recorded February 10, 1989 in Liber 450 of
50 deeds, at Page 286. This survey also intends to describe a portion of
51 the premises as conveyed by Stanley W. VanVleet to Stanley A. Wagner by
52 deed recorded April 30, 1980 in Liber 385 of Deeds, at Page 203.
53 ALSO ALL THAT OTHER TRACT OR PARCEL OF LAND SITUATE on the east side of
54 New York State Route 414 in Military Lot 75 in the Town of Lodi, County
55 of Seneca, State of New York bounded and described as follows: Begin-
56 ning at an iron pin on the assumed east line of New York State Route

1 414, said iron pin being north 50-44'-57" east a distance of 274.92 feet
2 from the south east corner of the parcel of land herein above described;
3 Thence leaving the point of beginning north 00-26'01" east along a math-
4 ematical tie line a distance of 504.91 feet to an iron pin; Thence south
5 37-00'-20" east along lands reputedly of Tomberelli (lib. 419, page 243)
6 passing through an iron pin 176.00 feet distant, and continuing further
7 along that same course a distance of 2.01 feet farther, the total
8 distance being 178.01 feet to a point; Thence south 09-03'-55" west
9 along lands reputedly of M. Wagner (lib. 491, page 181) a distance of
10 68.19 feet to an iron pipe; Thence south 15-36'-04" west along said
11 lands of M. Wagner a distance of 300.15 feet to an iron pipe; Thence
12 south 72-04'-59" west along said lands of M. Wagner a distance of 20.49
13 feet to an iron pin, said iron pin being the point and place of begin-
14 ning. Comprising an area of 0.727 acre of lands according to a survey
15 completed by Michael D. Karlsen entitled "Plan of Land Owned by Stanley
16 A. Wagner" known as Parcel B of job number 98-505. This survey is
17 subject to all utility easements and easements and right-of-ways of
18 record which may affect this parcel of land. This survey is also
19 subject to the rights of the public in and to lands herein referred to
20 as New York State Route 414. This survey intends to describe the same
21 premises as conveyed by Henry W. Eighmey as executor of the Last Will
22 and Testament of Mary C. Eighmey to Stanley A. Wagner by deed recorded
23 July 2, 1996 in liber 542, page 92. This survey also intends to
24 describe a portion of the premises as conveyed by Ruth V. Wagner to
25 Stanley A. Wagner by deed recorded February 10, 1989 in Liber 450 of
26 deeds, at Page 286[.];

27 [The provisions of this paragraph shall not apply to] (VII) any prem-
28 ises or business located wholly within the following described parcel:
29 ALL THAT TRACT OR PARCEL OF LAND situate in the City of Corning, County
30 of Steuben and State of New York bounded and described as follows:
31 Beginning at an iron pin situate at the terminus of the westerly line of
32 Townley Avenue at its intersection with the southwesterly line of New
33 York State Route 17; thence S 00° 45' 18" E along the westerly line of
34 Townley Avenue, a distance of 256.09 feet to a point; thence S 89° 02'
35 07" W through an iron pin placed at a distance of 200.00 feet, a total
36 distance of 300.00 feet to an iron pin; thence N 00° 59' 17" W a
37 distance of 47.13 feet to an iron pin; thence S 89° 02' 07" W a distance
38 of 114.56 feet to a point situate in the southeast corner of Parcel A-2
39 as set forth on a survey map hereinafter described; thence N 14° 18' 49"
40 E a distance of 124.40 feet to an iron pin situate at the southeast
41 corner of lands now or formerly of Cicci (Liber 923, Page 771); thence N
42 14° 18' 49" E a distance of 76.46 feet to an iron pin; thence N 00° 57'
43 53" W a distance of 26.25 feet to an iron pin marking the southeast
44 corner of parcel A-1 as set forth on the hereinafter described survey
45 map; thence N 00° 58' 01" W a distance of 166.00 to an iron pin situate
46 at the northeast corner of said Parcel A-1, which pin also marks the
47 southeast corner of lands now or formerly of Becraft (Liber 1048, Page
48 1086); thence N 00° 57' 53" W a distance of 106.00 feet to an iron pin
49 situate in the southerly line of lands now or formerly of the United
50 States Postal Service; thence N 89° 02' 07" E along the southerly line
51 of said United States Postal Service a distance of 81.47 feet to a
52 point; thence N 14° 18' 49" E along the easterly line of said United
53 States Postal Service a distance of 114.29 feet to an iron pin situate
54 in the southwesterly line of New York State Route 17; thence S 32° 00'
55 31" E along the southwesterly line of New York State Route 17, a
56 distance of 358.93 feet to an iron pin; thence continuing along the

1 southwesterly line of New York state Route 17, S 38° 30' 04" E a
2 distance of 108.18 feet to the iron pin marking the place of beginning.
3 Said premises are set forth and shown as approximately 4.026 acres of
4 land designated as Parcel A (excluding Parcels A-1 and A-2) on a survey
5 map entitled "As-Built Survey of Lands of New York Inn, LLC, City of
6 Corning, Steuben County, New York" by Weiler Associates, dated December
7 27, 2001, designated Job No. 12462; [or (vii)]

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

21 Also all that tract or parcel of land, with the buildings thereon,
22 situate in the City of Schenectady, County of Schenectady, and State of
23 New York, situate in the First, formerly the Second Ward of the said
24 City, on the Northerly side of Union Street, which was conveyed by
25 William Meeker and wife to Elisha L. Freeman by deed dated the second
26 day of December 1843, and recorded in the Clerk's Office of Schenectady
27 County on December 5, 1843, in Book V of Deeds at page 392, which lot in
28 said deed is bounded and described as follows: Beginning at a point in
29 the Northerly line of Union Street where it is intersected by the East-
30 erly line of property numbered 235 Union Street, which is hereby
31 conveyed, and running thence Northerly along the Easterly line of said
32 property, One Hundred Forty and Five-tenths (140.5) feet to a point
33 sixteen (16) feet Southerly from the Southerly line of the new garage
34 built upon land adjoining on the North; thence Westerly parallel with
35 said garage, Forty-six and Seven-tenths (46.7) feet; thence Southerly
36 One Hundred Forty and Eight-tenths (140.8) feet to the Northerly margin
37 of Union Street; thence Easterly along the Northerly margin of Union
38 Street, about Forty-eight and three-tenths (48.3) feet to the point or
39 place of beginning. The two above parcels are together more particular-
40 ly described as follows: All that parcel of land in the City of Sche-
41 nectady beginning at a point in the northerly margin of Union Street at
42 the southwesterly corner of lands now or formerly of Friedman (Deed Book
43 636 at page 423) which point is about 60 feet westerly of the westerly
44 line of North College Street and runs thence N. 86 deg. 42' 20" W. 92.30
45 feet to the southeasterly corner of other lands now or formerly of
46 Friedman (Deed Book 798 at page 498); thence N. 04 deg. 06' 48" E.
47 140.50 feet to the southwesterly corner of lands now or formerly of
48 Stockade Associates (Deed Book 1038 at page 521); thence S. 87 deg. 05'
49 27" E. 46.70 feet to lands now or formerly of McCarthy (Deed Book 1129
50 at page 281); thence along McCarthy S. 00 deg. 52' 02" E. 3.69 feet to
51 the northwesterly corner of lands now or formerly of SONYMA (Deed Book
52 1502 at page 621); thence along lands of SONYMA S. 02 deg 24' 56"
53 W.34.75 feet to a corner; thence still along lands of SONYMA and lands
54 now or formerly of Magee (Deed Book 399 at page 165) S. 86 deg. 11' 52"
55 E. 42.57 feet to a corner; thence still along lands of Magee and Lands
56 of Friedman first above mentioned S. 03 deg. 10' 08" W. 102.00 feet to

1 the point of beginning. Excepting and reserving all that portion of the
2 above parcel lying easterly of a line described as follows: All that
3 tract or parcel of land, situated in the City of Schenectady and County
4 of Schenectady and State of New York, on the Northerly side of Union
5 Street bounded and described as follows: Beginning at a point in the
6 northerly line of Union Street, said point being in the division line
7 between lands now or formerly of Electric Brew Pubs, Inc. (1506 of Deeds
8 at page 763) on the West and lands now or formerly of Margaret Wexler
9 and Donna Lee Wexler Pavlovic, as trustees under Will of Ruth F. Wexler
10 (Street number 241 Union Street) on the East; thence North 03 deg. 04'
11 10" East, along the building known as Street No. 241 Union Street, a
12 distance of 30.50 feet to a point; thence North 88 deg. 45' 45" West,
13 along said building and building eve, a distance of 5.62 feet to a
14 point; thence North 03 deg. 03' 30" East, along said building eve of
15 Street No. 241 Union Street, a distance of 32.74 feet; thence South 88
16 deg. 45' 45" East, along said building eve, a distance of 1.2 feet to an
17 intersection of building corner of Street No. 241 Union Street and a
18 brick wall; thence north 03 deg. 37' 30" East, along said brick wall, a
19 distance of 14.47 feet to a point in the corner of the brick wall,
20 thence South 86 deg. 46' 45" East along said brick wall a distance of
21 4.42 feet to the intersection of brick wall with the boundary line
22 between the Electric Brew Pubs, Inc. (aforesaid) on the West and lands
23 of Margaret Wexler and Donna Lee Wexler Pavlovic, (aforesaid) on the
24 East; thence North 03 deg 10' 08" East a distance of 0.62 feet to the
25 Northeast corner of lands belonging to Margaret Wexler and Donna Lee
26 Wexler Pavlovic. Also all that tract or parcel of land commonly known
27 as the Union Street School, located on the Northeasterly corner of Union
28 and North College Streets in the First Ward of the City and County of
29 Schenectady and State of New York, more particularly bounded and
30 described as follows: Beginning at a point in the Northerly street line
31 of Union Street where it is intersected by the Easterly street line of
32 North College Street, and runs thence Northerly along the Easterly
33 street line of North College Street, one hundred seven and five-tenths
34 (107.5) feet to a point, thence easterly at an angle of ninety (90)
35 degrees, one hundred ninety-one and seventy-five hundredths (191.75)
36 feet to a point in the Northwesternly street line of Erie Boulevard
37 thence southwesterly along the Northwesternly street line of Erie Boule-
38 vard, one hundred twenty-three and eight-tenths (123.8) feet to its
39 intersection with the Northerly street line of Union Street; thence
40 Westerly along the Northerly street line of Union Street, one hundred
41 twenty-four and fifty-five hundredths (124.55) feet to the point or
42 place of beginning.

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

50 The two above parcels are together more particularly described as
51 follows: All that parcel of land in the City of Schenectady beginning at
52 a point in the northerly margin of Union Street and the northwesterly
53 margin of Erie Boulevard and runs thence along Union Street N. 86 deg.
54 42' 20" W. 124.55 feet to the easterly margin of North College Street;
55 thence along North College Street N. 05 deg 04' 40" E. 107.50 feet to
56 the southeasterly corner of lands now or formerly of McCarthy (Deed Book

1 1129 at page 279); thence along McCarthy, Cottage Alley and lands now or
2 formerly of McGregor (Deed Book 912 at page 624) S. 84 deg. 55' 20" E.
3 191.75 feet to the northwesterly margin of Erie Boulevard; thence along
4 Erie Boulevard S. 38 deg. 03' 53" W. 123.54 feet to the point of begin-
5 ning; [or (viii)]

6 (IX) any such premises or businesses located on that tract or parcel
7 of land situate in the Town of Hopewell, Ontario County, State of New
8 York, bounded and described as follows: Commencing at a 5/8" rebar found
9 on the division line between lands now or formerly of Ontario County -
10 Finger Lakes Community College (Liber 698 of Deeds, Page 466) on the
11 north and lands now or formerly of James W. Baird (Liber 768 of Deeds,
12 Page 1109) on the south; thence, North 43°-33'-40" West, on said divi-
13 sion line, a distance of 77.32 feet to the Point of Beginning. Thence,
14 North 43°-33'-40" West, continuing on said division line and through
15 said lands of Ontario County, a distance of 520.45 feet to a point on
16 the southeasterly edge of an existing concrete pad; thence, South
17 74°-19'-53" West, along said edge of concrete and the projection there-
18 of, a distance of 198.78 feet to a point on the easterly edge of pave-
19 ment of an existing campus drive; thence, the following two (2) courses
20 and distances along said edge of pavement: Northeasterly on a curve to
21 the left having a radius of 2221.65 feet, a chord bearing of North
22 30°-16'-39" East, a chord distance of 280.79, a central angle of
23 07°-14'-47", a length of 280.98 feet to a point of reverse curvature;
24 thence, Northeasterly on a curve to the right having a radius of 843.42
25 feet, a chord bearing of North 45°-25'-09" East, a chord distance of
26 534.08, a central angle of 36°-55'-01", a length of 543.43 feet to a
27 point; thence, South 30°-04'-59" East, a distance of 18.28 feet to the
28 corner of the property acquired by Ontario County (Liber 766 of Deeds,
29 Page 1112), as shown on a map recorded in the Ontario County Clerk's
30 Office as Map No. 6313; thence, the following four (4) courses and
31 distances along said property line: South 30°-04'-59" East, a distance
32 of 177.17 feet to a point; thence, South 02°-20'-33" East, a distance of
33 147.53 feet to a point; thence, South 41°-31'-35" East, a distance of
34 200.93 feet to a point; thence, South 23°-48'-53" West, along said prop-
35 erty line, and the projection thereof, through the first said lands of
36 Ontario County - Finger Lakes Community College (Liber 698 of Deeds,
37 Page 466), a distance of 517.96 feet to Point of Beginning. Said parcel
38 containing 7.834 acres, more or less, as shown on a map entitled
39 "Proposed Lease Area - Friends of the Finger Lakes Performing Arts
40 Center, Hopewell, NY", prepared by Bergmann Associates, drawing LM-01,
41 dated June 10, 2005, last revised August 17, 2005. The related PAC Prop-
42 erties are shown on the Map denominated "FLCC Campus Property, FLPAC
43 Ground Lease, Parking, Vehicular & Pedestrian Access", recorded in the
44 Ontario County Clerk's Office on December 10, 2009 in Book 1237 of Deeds
45 at page 9 and are comprised of the areas separately labeled as Parking
46 Lot 'A', Parking Lot 'G', the Ticket Booth area, the Sidewalks, and the
47 Entry Roads[.];

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

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

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

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

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

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

12 PART J

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

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

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

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

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

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

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

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

19 (F) NOTWITHSTANDING THE FOREGOING, IF AT THE TIME AN IDA PROPOSES A
20 STATE SALES AND USE TAX EXEMPTION BENEFIT PLAN THERE IS NO REGIONAL
21 ECONOMIC DEVELOPMENT COUNCIL IN THE APPLICABLE REGION, THEN THE COMMIS-
22 SIONER OF ECONOMIC DEVELOPMENT SHALL REVIEW SUCH PLAN AND ANY SUCH FIND-
23 INGS AS PROVIDED IN PARAGRAPH (D) OF THIS SUBDIVISION, WITHOUT REGARD TO
24 THE RECOMMENDATION OF ANY OTHER BODY.

25 (G) AN IDA SHALL NOT PROVIDE STATE SALES AND USE TAX EXEMPTION BENE-
26 FITS IN AN AMOUNT GREATER, FOR PROPERTY OR SERVICES OTHER, OR FOR A TIME
27 PERIOD LONGER THAN AS APPROVED BY THE COMMISSIONER OF ECONOMIC DEVELOP-
28 MENT. ANY AMOUNT OF STATE SALES AND USE TAX EXEMPTION BENEFITS THAT AN
29 IDA PURPORTS TO PROVIDE IN EXCESS OF THE AMOUNT APPROVED, OR FOR DIFFER-
30 ENT PROPERTY OR SERVICES THAN APPROVED, OR FOR A PERIOD LONGER THAN
31 APPROVED BY SUCH COMMISSIONER SHALL BE VOID FROM ITS INCEPTION, AND AN
32 AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY THAT MAKES A PURCHASE
33 OR USE WITHOUT PAYING STATE SALES AND USE TAXES, OR WHO PAID SUCH TAXES
34 BUT OBTAINED A REFUND OR CREDIT OF THEM, AS A RESULT SHALL BE REQUIRED
35 TO PAY SUCH AMOUNT OF TAX TO THE COMMISSIONER OF TAXATION AND FINANCE IN
36 ACCORDANCE WITH ARTICLES TWENTY-EIGHT AND TWENTY-NINE OF THE TAX LAW.
37 THE COMMISSIONER SHALL BE AUTHORIZED TO DETERMINE AND ASSESS STATE SALES
38 AND USE TAXES FOREGONE ON ACCOUNT OF AN AGENT, PROJECT OPERATOR OR OTHER
39 PERSON OR ENTITY NOT HAVING PAID SUCH STATE SALES OR USE TAX THAT SHOULD
40 HAVE BEEN PAID, OR WHO OBTAINED SUCH A REFUND OR CREDIT BUT SHOULD NOT
41 HAVE, IN ACCORD WITH THE APPLICABLE PROVISIONS OF THE TAX LAW, EXCEPT
42 THAT ANY STATUTE THAT LIMITS THE TIME BY WHICH THE COMMISSIONER MUST
43 DETERMINE OR ASSESS SUCH TAX SHALL NOT BEGIN TO RUN UNTIL THE COMMIS-
44 SIONER HAS RECEIVED ACTUAL NOTICE OF SUCH IMPROPER PURCHASES OR USES.

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

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

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

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

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

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

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

8 8. IF AN IDA RECOVERS, RECAPTURES, RECEIVES, OR OTHERWISE OBTAINS, ANY
9 AMOUNT OF STATE SALES AND USE TAX EXEMPTION BENEFITS FROM AN AGENT,
10 PROJECT OPERATOR OR OTHER PERSON OR ENTITY, THE IDA SHALL, WITHIN THIRTY
11 DAYS OF COMING INTO POSSESSION OF SUCH AMOUNT, REMIT IT TO THE COMMIS-
12 SIONER, TOGETHER WITH SUCH INFORMATION AND REPORT THAT THE COMMISSIONER
13 DEEMS NECESSARY TO ADMINISTER PAYMENT OVER OF SUCH AMOUNT. AN IDA SHALL
14 JOIN THE COMMISSIONER AS A PARTY IN ANY ACTION OR PROCEEDING THAT THE
15 IDA COMMENCES TO RECOVER, RECAPTURE, OBTAIN, OR OTHERWISE SEEK THE
16 RETURN OF, STATE SALES AND USE TAX EXEMPTION BENEFITS FROM AN AGENT,
17 PROJECT OPERATOR OR OTHER PERSON OR ENTITY. THIS SUBDIVISION SHALL
18 APPLY TO ANY AMOUNTS OF STATE SALES AND USE TAX EXEMPTION BENEFITS THAT
19 AN IDA RECOVERS, RECAPTURES, RECEIVES, OR OTHERWISE OBTAINS, REGARDLESS
20 OF WHETHER THE IDA OR THE AGENT, PROJECT OPERATOR OR OTHER PERSON OR
21 ENTITY CHARACTERIZES SUCH BENEFITS RECOVERED, RECAPTURED, RECEIVED, OR
22 OTHERWISE OBTAINED, AS A PENALTY OR LIQUIDATED OR CONTRACT DAMAGES OR
23 OTHERWISE. THE PROVISIONS OF THIS SUBDIVISION SHALL ALSO APPLY TO ANY
24 INTEREST OR PENALTY THAT THE IDA IMPOSES ON ANY SUCH AMOUNTS OR THAT ARE
25 IMPOSED ON SUCH AMOUNTS BY OPERATION OF LAW OR BY JUDICIAL ORDER OR
26 OTHERWISE. ANY SUCH AMOUNTS OR PAYMENTS THAT AN IDA RECOVERS, RECAP-
27 TURES, RECEIVES, OR OTHERWISE OBTAINS, TOGETHER WITH ANY INTEREST OR
28 PENALTIES THEREON, SHALL BE DEEMED TO BE STATE SALES AND USE TAXES AND
29 THE IDA SHALL RECEIVE ANY SUCH AMOUNTS OR PAYMENTS, WHETHER AS A RESULT
30 OF COURT ACTION OR OTHERWISE, AS TRUSTEE FOR AND ON ACCOUNT OF THE
31 STATE.

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

46 10. THE STATEMENT THAT AN IDA IS REQUIRED BY SUBDIVISION NINE OF
47 SECTION EIGHT HUNDRED SEVENTY-FOUR OF THIS ARTICLE TO FILE WITH THE
48 COMMISSIONER SHALL NOT BE CONSIDERED AN EXEMPTION OR OTHER CERTIFICATE
49 OR DOCUMENT UNDER ARTICLE TWENTY-EIGHT OR TWENTY-NINE OF THE TAX LAW.
50 THE IDA SHALL NOT REPRESENT TO ANY AGENT, PROJECT OPERATOR, OR OTHER
51 PERSON OR ENTITY THAT A COPY OF SUCH STATEMENT MAY SERVE AS A SALES OR
52 USE TAX EXEMPTION CERTIFICATE OR DOCUMENT. NO AGENT OR PROJECT OPERATOR
53 MAY TENDER A COPY OF SUCH STATEMENT TO ANY PERSON REQUIRED TO COLLECT
54 SALES OR USE TAXES AS THE BASIS TO MAKE ANY PURCHASE EXEMPT FROM TAX. NO
55 SUCH PERSON REQUIRED TO COLLECT SALES OR USE TAXES MAY ACCEPT SUCH A
56 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.

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

12 S 8. Subdivision 4 of section 1963 of the public authorities law, as
13 added by section 2 of subpart C of part S of chapter 57 of the laws of
14 2010, is amended to read as follows;

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

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

40 S 9. Subdivision 4 of section 2326 of the public authorities law, as
41 added by section 3 of subpart C of part S of chapter 57 of the laws of
42 2010, is amended to read as follows:

43 4. (A) Within thirty days of the date that the authority designates a
44 project operator or other person to act as agent of the authority for
45 purposes of providing financial assistance consisting of any sales and
46 compensating use tax exemption to such person, the agency shall file a
47 statement with the department of taxation and finance relating thereto,
48 on a form and in such manner as is prescribed by the commissioner of
49 taxation and finance, identifying each such agent so named by the
50 authority, setting forth the taxpayer identification number of each such
51 agent, giving a brief description of the property and/or services
52 intended to be exempted from such taxes as a result of such appointment
53 as agent, indicating the authority's rough estimate of the value of the
54 property and/or services to which such appointment as agent relates,
55 indicating the date when such designation as agent became effective and
56 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:

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

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

19

PART M

20 Section 1. Subparagraphs (A) and (B) of paragraph 4 of subdivision (a)
21 of section 1134 of the tax law, subparagraph (A) as amended by section
22 21-a of part U of chapter 61 of the laws of 2011 and subparagraph (B) as
23 amended by chapter 2 of the laws of 1995, are amended to read as
24 follows:

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

51 (B) Where a person files a certificate of registration for a certifi-
52 cate of authority under this subdivision and in considering such appli-
53 cation the commissioner ascertains that (i) any tax imposed under this
54 chapter or any related statute, as defined in section eighteen hundred

1 of this chapter, has been finally determined to be due from such person
2 and has not been paid in full, (ii) [a] ANY tax [due under this article
3 or any law, ordinance or resolution enacted pursuant to the authority of
4 article twenty-nine] IMPOSED BY OR PURSUANT TO THE AUTHORITY OF THIS
5 CHAPTER OR ANY RELATED STATUTE AS DEFINED IN SECTION EIGHTEEN HUNDRED of
6 this chapter has been finally determined to be due from an officer,
7 director, partner or employee of such person, and, where such person is
8 a limited liability company, also a member or manager of such person, in
9 the officer's, director's, partner's, member's, manager's or employee's
10 capacity as a person required to collect tax on behalf of such person or
11 another person and has not been paid, (iii) such person has been
12 convicted of a crime provided for in this chapter, OR UNDER THE PENAL
13 LAW OF THIS STATE WHERE THE UNDERLYING CONDUCT CONSTITUTES A CRIME UNDER
14 THIS CHAPTER, OR IS CONVICTED OF A CRIMINAL OFFENSE OF THE UNITED
15 STATES, ANY OTHER STATE, OR A POLITICAL SUBDIVISION OF THIS STATE OR ANY
16 OTHER STATE, WHICH, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE A SIMI-
17 LAR CRIME UNDER THIS CHAPTER within [one year] FIVE YEARS from the date
18 on which such certificate of registration is filed, (iv) an officer,
19 director, partner or employee of such person, and, where such person is
20 a limited liability company, also a member or manager of such person,
21 which officer, director, partner, member, manager or employee is a
22 person required to collect tax on behalf of such person filing a certif-
23 icate of registration has in the officer's, director's, partner's,
24 member's, manager's or employee's capacity as a person required to
25 collect tax on behalf of such person or of another person been convicted
26 of a crime [provided for in this chapter] SET FORTH IN CLAUSE (III) OF
27 THIS SUBPARAGRAPH WHERE THE CONVICTION REFERRED TO OCCURRED within [one
28 year] FIVE YEARS from the date on which such certificate of registration
29 is filed, (v) a shareholder owning more than fifty percent of the number
30 of shares of stock of such person (where such person is a corporation)
31 entitling the holder thereof to vote for the election of directors or
32 trustees, OR A PERSON HAVING MORE THAN FIFTY PERCENT OF THE VOTING
33 RIGHTS OF SUCH PERSON (WHERE SUCH PERSON IS A LIMITED LIABILITY COMPA-
34 NY), OR A PERSON HAVING A CONTROLLING INTEREST IN ANY FORM OF PARTNER-
35 SHIP (CONTROLLING INTEREST MEANING MORE THAN FIFTY PERCENT OF THE CAPI-
36 TAL, PROFITS OR BENEFICIAL INTEREST IN SUCH PARTNERSHIP) who owned more
37 than fifty percent of the number of such shares of another person (where
38 such other person is a corporation), OR HAD MORE THAN FIFTY PERCENT OF
39 THE VOTING RIGHTS OF A LIMITED LIABILITY COMPANY, OR HAD CONTROLLING
40 INTEREST IN ANY FORM OF PARTNERSHIP (CONTROLLING INTEREST MEANING MORE
41 THAN FIFTY PERCENT OF THE CAPITAL, PROFITS OR BENEFICIAL INTEREST IN
42 SUCH PARTNERSHIP) at the time any tax imposed under this chapter or any
43 related statute as defined in section eighteen hundred of this chapter
44 was finally determined to be due FROM SUCH CORPORATION OR LIMITED
45 LIABILITY COMPANY and where such tax has not been paid in full, or at
46 the time such other person was convicted of a crime [provided for in
47 this chapter] SET FORTH IN CLAUSE (III) OF THIS SUBPARAGRAPH WHERE THE
48 CONVICTION REFERRED TO OCCURRED within [one year] FIVE YEARS from the
49 date on which such certificate of registration is filed, [or] (vi) a
50 certificate of authority issued to such person has been revoked or
51 suspended pursuant to subparagraph (A) of this paragraph within [one
52 year] THREE YEARS from the date on which such certificate of registra-
53 tion is filed, (VII) A CERTIFICATE OF AUTHORITY ISSUED TO ANY OTHER
54 PERSON HAS BEEN REVOKED OR SUSPENDED PURSUANT TO SUBPARAGRAPH (A) OF
55 THIS PARAGRAPH WITHIN THREE YEARS FROM THE DATE ON WHICH SUCH CERTIF-
56 ICATE 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

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

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

37 S 4. Subparagraph (i) of paragraph 3 of subdivision (a) of section
38 1145 of the tax law, as amended by section 48 of part K of chapter 61 of
39 the laws of 2011, is amended to read as follows:

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

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

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

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

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

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

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

34 (4) Any person required by this article to display a certificate of
35 authority, who fails to display such certificate in the manner required
36 by this article or any rule or regulation adopted by the [tax commis-
37 sion] COMMISSIONER in connection with such requirement shall, in addi-
38 tion to any other penalty imposed by this chapter, be subject to a
39 penalty of [fifty] ONE HUNDRED dollars. If the [tax commission] COMMIS-
40 SIONER determines that such failure was due to reasonable cause [and not
41 due to willful neglect], [it] HE OR SHE may remit all or part of such
42 penalty.

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

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

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

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

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

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

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

47 S 9. This act shall take effect immediately, provided that the amend-
48 ments to subparagraph (A) of paragraph 4 of subdivision (a) of section
49 1134 of the tax law made by section one of this act shall be subject to
50 the expiration and reversion of such subparagraph pursuant to section 23
51 of part U of chapter 61 of the laws of 2011, as amended when upon such
52 date the provisions of section two of this act shall take effect.

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

3 (F) WHEN A PERSON FILES AN APPLICATION FOR A CERTIFICATE OF REGISTRA-
4 TION UNDER THIS SECTION, AND IN CONSIDERING SUCH APPLICATION THE COMMIS-
5 SIONER ASCERTAINS THE EXISTENCE OF ONE OR MORE OF THE GROUNDS FOR
6 REFUSAL OF A CERTIFICATE OF AUTHORITY IN CLAUSES (I), (II), (III), (IV),
7 AND (V) OF SUBPARAGRAPH (B) OF PARAGRAPH FOUR OF SUBDIVISION (A) OF
8 SECTION ELEVEN HUNDRED THIRTY-FOUR OF THIS CHAPTER, THE COMMISSIONER MAY
9 REFUSE TO ISSUE A CERTIFICATE OF REGISTRATION. NOTWITHSTANDING ANY
10 PROVISION OF THIS CHAPTER TO THE CONTRARY, IF THE COMMISSIONER REFUSES
11 TO ISSUE A CERTIFICATE OF REGISTRATION UNDER THIS SUBDIVISION, THE
12 COMMISSIONER SHALL UPON WRITTEN REQUEST OF THE PERSON FILING SUCH APPLI-
13 CATION DISCLOSE THE NAME OF THE PERSON OR PERSONS WHOSE TAX LIABILITIES
14 WERE GROUNDS FOR THE REFUSAL TO ISSUE THE CERTIFICATE OF REGISTRATION.

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

18 (d) Except as otherwise provided in this section, all the provisions
19 of article twenty-eight of this chapter relating to the personal liabil-
20 ity for the tax, administration, collection and determination of tax,
21 and deposit and disposition of revenue, including section eleven hundred
22 thirty-eight of this chapter relating to determination of tax and
23 section eleven hundred forty-five of this chapter (but only paragraphs
24 one and two of subdivision (a) of such section) relating to penalties
25 and interest for failure to file a return or pay tax within the time
26 required, shall apply to the applications for registration and the fees
27 for filing such applications required by this section and the penalty
28 imposed pursuant to subdivision three of this section, as if such appli-
29 cations were returns required under section eleven hundred thirty-six of
30 this chapter and such filing fees, penalties and interest were taxes
31 required to be paid pursuant to such article twenty-eight, in the same
32 manner and with the same force and effect as if the language of such
33 provisions of such article twenty-eight had been incorporated in full
34 into this article, except to the extent that any such provision is
35 either inconsistent with a provision of this section or is not relevant
36 thereto and with such other modifications as may be necessary to adapt
37 the language of such provisions to the provisions of this section.
38 [Section] EXCEPT AS PROVIDED FOR IN PARAGRAPH (F) OF SUBDIVISION ONE OF
39 THIS SECTION, SECTION eleven hundred thirty-four of such article twen-
40 ty-eight shall not apply to this section. Provided, however, that the
41 commissioner of taxation and finance shall refund or credit an applica-
42 tion fee paid with respect to the registration of a vending machine or a
43 retail place of business in this state through which cigarettes or
44 tobacco products were to be sold if, prior to the beginning of the
45 calendar year with respect to which such registration relates, the
46 certificate of registration described in paragraph (a) of this subdivi-
47 sion is returned to the department of taxation and finance, or if such
48 certificate has been destroyed, the retail dealer or vending machine
49 operator satisfactorily accounts to the commissioner for the missing
50 certificate, but such vending machine or retail place of business may
51 not be used to sell cigarettes or tobacco products in this state during
52 such calendar year, unless it is re-registered. The provisions of
53 section eleven hundred thirty-nine of this chapter shall apply to the
54 refund or credit authorized by the preceding sentence and for such
55 purposes, such refund or credit shall be deemed a refund of tax paid in

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

3 S 3. This act shall take effect immediately and shall apply to certif-
4 icates of registration applications filed for calendar year 2014 and
5 thereafter.

6 PART O

7 Section 1. Subparagraph (i) of paragraph (b) of subdivision 1 of
8 section 481 of the tax law, as amended by chapter 604 of the laws of
9 2008, is amended to read as follows:

10 (i) In addition to any other penalty imposed by this article, the
11 commissioner may (A) impose a penalty of not more than [one] SIX hundred
12 [fifty] dollars for each two hundred cigarettes, or fraction thereof, in
13 excess of one thousand cigarettes in unstamped or unlawfully stamped
14 packages in the possession or under the control of any person or (B)
15 impose a penalty of not more than two hundred dollars for each ten unaf-
16 fixed false, altered or counterfeit cigarette tax stamps, imprints or
17 impressions, or fraction thereof, in the possession or under the control
18 of any person. In addition, the commissioner may impose a penalty of not
19 more than seventy-five dollars for each fifty cigars or one pound of
20 tobacco, or fraction thereof, in excess of two hundred fifty cigars or
21 five pounds of tobacco in the possession or under the control of any
22 person and a penalty of not more than one hundred fifty dollars for each
23 fifty cigars or pound of tobacco, or fraction thereof, in excess of five
24 hundred cigars or ten pounds of tobacco in the possession or under the
25 control of any person, with respect to which the tobacco products tax
26 has not been paid or assumed by a distributor or tobacco products deal-
27 er; provided, however, that any such penalty imposed shall not exceed
28 seven thousand five hundred dollars in the aggregate. The commissioner
29 may impose a penalty of not more than seventy-five dollars for each
30 fifty cigars or one pound of tobacco, or fraction thereof, in excess of
31 fifty cigars or one pound of tobacco in the possession or under the
32 control of any tobacco products dealer or distributor appointed by the
33 commissioner, and a penalty of not more than one hundred fifty dollars
34 for each fifty cigars or pound of tobacco, or fraction thereof, in
35 excess of two hundred fifty cigars or five pounds of tobacco in the
36 possession or under the control of any such dealer or distributor, with
37 respect to which the tobacco products tax has not been paid or assumed
38 by a distributor or a tobacco products dealer; provided, however, that
39 any such penalty imposed shall not exceed fifteen thousand dollars in
40 the aggregate.

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

42 PART P

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

45 S 171-V. ENFORCEMENT OF DELINQUENT TAX LIABILITIES THROUGH THE SUSPEN-
46 SION OF DRIVERS' LICENSES. (1) THE COMMISSIONER SHALL ENTER INTO A WRIT-
47 TEN AGREEMENT WITH THE COMMISSIONER OF MOTOR VEHICLES, WHICH SHALL SET
48 FORTH THE PROCEDURES FOR THE TWO DEPARTMENTS TO COOPERATE IN A PROGRAM
49 TO IMPROVE TAX COLLECTION THROUGH THE SUSPENSION OF DRIVERS' LICENSES OF
50 TAXPAYERS WITH PAST-DUE TAX LIABILITIES EQUAL TO OR IN EXCESS OF TEN
51 THOUSAND DOLLARS. FOR THE PURPOSES OF THIS SECTION, THE TERM "TAX
52 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

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

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

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

41 (6) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY, THE
42 DEPARTMENT MAY DISCLOSE TO THE DEPARTMENT OF MOTOR VEHICLES THE INFORMA-
43 TION DESCRIBED IN THIS SECTION THAT, IN THE DISCRETION OF THE COMMIS-
44 SIONER, IS NECESSARY FOR THE PROPER IDENTIFICATION OF A TAXPAYER
45 REFERRED TO THE DEPARTMENT OF MOTOR VEHICLES FOR THE PURPOSE OF SUSPEND-
46 ING THE TAXPAYER'S DRIVER'S LICENSE PURSUANT TO THIS SECTION AND SUBDI-
47 VISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THE VEHICLE AND TRAFFIC
48 LAW. THE DEPARTMENT OF MOTOR VEHICLES MAY NOT REDISCLOSE THIS INFORMA-
49 TION TO ANY OTHER ENTITY OR PERSON, OTHER THAN FOR THE PURPOSE OF
50 INFORMING THE TAXPAYER THAT HIS OR HER DRIVER'S LICENSE HAS BEEN
51 SUSPENDED.

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

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

3 4-F. SUSPENSION FOR FAILURE TO PAY PAST-DUE TAX LIABILITIES. (1) THE
4 COMMISSIONER SHALL ENTER INTO A WRITTEN AGREEMENT WITH THE COMMISSIONER
5 OF TAXATION AND FINANCE, AS PROVIDED IN SECTION ONE HUNDRED
6 SEVENTY-ONE-V OF THE TAX LAW, WHICH SHALL SET FORTH THE PROCEDURES FOR
7 SUSPENDING THE DRIVERS' LICENSES OF INDIVIDUALS WHO HAVE FAILED TO
8 SATISFY PAST-DUE TAX LIABILITIES AS SUCH TERMS ARE DEFINED IN SUCH
9 SECTION.

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

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

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

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

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

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

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

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

12 (5-B) ISSUANCE OF A RESTRICTED LICENSE SHALL NOT BE DENIED TO ANY
13 PERSON WHOSE LICENSE IS SUSPENDED PURSUANT TO SUBDIVISION FOUR-F OF
14 SECTION FIVE HUNDRED TEN OF THIS TITLE FOR ANY REASON OTHER THAN SUCH
15 PERSON'S FAILURE TO OTHERWISE HAVE A VALID OR RENEWABLE DRIVER'S
16 LICENSE. THE RESTRICTIONS ON THE TYPES OF VEHICLES WHICH MAY BE OPERATED
17 WITH A RESTRICTED LICENSE CONTAINED IN SUCH SUBDIVISION FIVE OF THIS
18 SECTION SHALL NOT BE APPLICABLE TO A RESTRICTED LICENSE ISSUED TO A
19 PERSON PURSUANT TO SUBDIVISION FOUR-F OF SECTION FIVE HUNDRED TEN OF
20 THIS TITLE. THE ISSUANCE OF A RESTRICTED LICENSE ISSUED AS A RESULT OF A
21 SUSPENSION UNDER SUBDIVISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THIS
22 TITLE SHALL NOT IN ANY WAY AFFECT A PERSON'S ELIGIBILITY FOR A
23 RESTRICTED LICENSE AT SOME FUTURE TIME.

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

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

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

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

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

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

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

18 PART Q

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

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

52 2. THE PROVISIONS OF THIS SECTION SHALL BE IN ADDITION TO THE PROCE-
53 DURES RELATING TO COLLECTION OR ADMINISTRATION PROVIDED WITH RESPECT TO
54 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

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

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

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

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

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

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

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

1 THE OPENING PARAGRAPH OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE
2 REPEALED BY SECTION ONE OR TWO OF THE CHAPTER OF THE LAWS OF TWO THOU-
3 SAND THIRTEEN THAT ADDED THIS SECTION OR TO SECTION TWELVE HUNDRED TEN-E
4 OF THIS ARTICLE REPEALED BY SECTION FIVE OF SUCH CHAPTER OF THE LAWS OF
5 TWO THOUSAND THIRTEEN SHALL BE DEEMED TO BE A REFERENCE TO NET
6 COLLECTIONS OR REVENUES FROM A TAX IMPOSED BY THAT COUNTY OR CITY PURSU-
7 ANT TO THE AUTHORITY OF THE EQUIVALENT PROVISION OF CLAUSE TWO OF
8 SUBPARAGRAPH (I) OR TO SUBPARAGRAPH (II) OF THE OPENING PARAGRAPH OF
9 SUCH SECTION TWELVE HUNDRED TEN AS ADDED BY SUCH SECTION ONE OR TWO OF
10 SUCH CHAPTER OF THE LAWS OF TWO THOUSAND THIRTEEN.

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

19 S 12. This act shall take effect immediately.

20

PART S

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

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

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

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

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

38 (I) a commercial bowling establishment, or

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

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

50 S 2. This act shall take effect immediately.

51

PART T

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

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

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

14 PART U

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

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

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

15 S 2. Subparagraph (iii) of paragraph d of subdivision 3 of section
16 1007 of the racing, pari-mutuel wagering and breeding law, as amended by
17 section 2 of part 0 of chapter 59 of the laws of 2012, is amended to
18 read as follows:

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

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

33 S 4. Subdivision 1 of section 1015 of the racing, pari-mutuel wagering
34 and breeding law, as amended by section 4 of part 0 of chapter 59 of the
35 laws of 2012, is amended to read as follows:

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

41 S 5. The opening paragraph of subdivision 1 of section 1016 of the
42 racing, pari-mutuel wagering and breeding law, as amended by section 5
43 of part 0 of chapter 59 of the laws of 2012, is amended to read as
44 follows:

45 The provisions of this section shall govern the simulcasting of races
46 conducted at thoroughbred tracks located in another state or country on
47 any day during which a franchised corporation is not conducting a race
48 meeting in Saratoga county at Saratoga thoroughbred racetrack [until
49 June thirtieth, two thousand thirteen]. Every off-track betting corpo-
50 ration branch office and every simulcasting facility licensed in accord-
51 ance with section one thousand seven that have entered into a written
52 agreement with such facility's representative horsemen's organization as
53 approved by the board, one thousand eight or one thousand nine of this
54 article shall be authorized to accept wagers and display the live full-
55 card simulcast signal of thoroughbred tracks (which may include quarter
56 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 0 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 0 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 0 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 0 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

1 winning tickets therein, provided such tickets be presented for payment
2 before April first of the year following the year of their purchase,
3 less an amount which shall be established and retained by such fran-
4 chised corporation of between twelve to seventeen per centum of the
5 total deposits in pools resulting from on-track regular bets, and four-
6 teen to twenty-one per centum of the total deposits in pools resulting
7 from on-track multiple bets and fifteen to twenty-five per centum of the
8 total deposits in pools resulting from on-track exotic bets and fifteen
9 to thirty-six per centum of the total deposits in pools resulting from
10 on-track super exotic bets, plus the breaks. The retention rate to be
11 established is subject to the prior approval of the racing and wagering
12 board. Such rate may not be changed more than once per calendar quarter
13 to be effective on the first day of the calendar quarter. "Exotic bets"
14 and "multiple bets" shall have the meanings set forth in section five
15 hundred nineteen of this chapter. "Super exotic bets" shall have the
16 meaning set forth in section three hundred one of this chapter. For
17 purposes of this section, a "pick six bet" shall mean a single bet or
18 wager on the outcomes of six races. The breaks are hereby defined as the
19 odd cents over any multiple of five for payoffs greater than one dollar
20 five cents but less than five dollars, over any multiple of ten for
21 payoffs greater than five dollars but less than twenty-five dollars,
22 over any multiple of twenty-five for payoffs greater than twenty-five
23 dollars but less than two hundred fifty dollars, or over any multiple of
24 fifty for payoffs over two hundred fifty dollars. Out of the amount so
25 retained there shall be paid by such franchised corporation to the
26 commissioner of taxation and finance, as a reasonable tax by the state
27 for the privilege of conducting pari-mutuel betting on the races run at
28 the race meetings held by such franchised corporation, the following
29 percentages of the total pool for regular and multiple bets five per
30 centum of regular bets and four per centum of multiple bets plus twenty
31 per centum of the breaks; for exotic wagers seven and one-half per
32 centum plus twenty per centum of the breaks, and for super exotic bets
33 seven and one-half per centum plus fifty per centum of the breaks. For
34 the period June first, nineteen hundred ninety-five through September
35 ninth, nineteen hundred ninety-nine, such tax on regular wagers shall be
36 three per centum and such tax on multiple wagers shall be two and one-
37 half per centum, plus twenty per centum of the breaks. For the period
38 September tenth, nineteen hundred ninety-nine through March thirty-
39 first, two thousand one, such tax on all wagers shall be two and six-
40 tenths per centum and for the period COMMENCING April first, two thou-
41 sand one [through December thirty-first, two thousand thirteen], such
42 tax on all wagers shall be one and six-tenths per centum, plus, in each
43 such period, twenty per centum of the breaks. Payment to the New York
44 state thoroughbred breeding and development fund by such franchised
45 corporation shall be one-half of one per centum of total daily on-track
46 pari-mutuel pools resulting from regular, multiple and exotic bets and
47 three per centum of super exotic bets provided, however, that for the
48 period September tenth, nineteen hundred ninety-nine through March thir-
49 ty-first, two thousand one, such payment shall be six-tenths of one per
50 centum of regular, multiple and exotic pools and for the period COMMENC-
51 ING April first, two thousand one [through December thirty-first, two
52 thousand thirteen], such payment shall be seven-tenths of one per centum
53 of such pools.

54 S 10. Subdivision 5 of section 1012 of the racing, pari-mutuel wager-
55 ing and breeding law is REPEALED.

56 S 11. This act shall take effect immediately.

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

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